CAPITAL CASE
No. 23–6703

IN THE SUPREME COURT OF THE UNITED STATES

CHRISTOPHER COLLINGS, Petitioner,

v.

DAVID VANDERGRIFF, Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

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Brief in Opposition

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CAPITAL CASE

QUESTIONS PRESENTED

Christopher Collings filed a federal habeas petition challenging his death sentence in April of 2019. His petition argued that all of his claims had been exhausted in state court, either through fair presentation or procedural default. But after this Court's decision in *Shinn v. Ramirez*, 596 U.S. 366 (2022), emphasized statutes limiting the presentation of evidence outside the state-court record, Collings reversed himself and argued that some of his defaulted claims were unexhausted instead of procedurally defaulted. The district court declined to grant a stay, holding the claims at issue were exhausted through procedural default and there were no available state court avenues to pursue the claims.

The district court denied Collings's twenty-eight claim habeas petition and denied a certificate of appealability. Collings sought a certificate of appealability from the Eighth Circuit on eight claims, and also appealed the denial of the stay application. Collings did not request that the Eighth Circuit issue a written opinion explaining the decision. The Eighth Circuit denied the application for a certificate of appealability and dismissed the appeal in a summary order.

1. Was the court below required to exempt from the requirement for a certificate of appealability a claim that a habeas petitioner should have been granted a stay and abeyance of his habeas petition to exhaust claims in state court that the district court found were already exhausted through procedural default as

there were no additional state court procedures available to present the claims?

2. Was the court below required to issue a detailed opinion explaining why a certificate of appealability was denied on each of the claims on which a habeas petitioner requested a certificate of appealability even though this Court denies applications for certificate of appealability through summary orders?

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STATEMENT OF THE CASE

Christopher Collings's ("Collings") nine-year-old murder victim lived with her mother and step-father in rural Missouri. *State v. Collings*, 450 S.W.3d 741, 747 (Mo. 2014) ("*Collings I*"). Collings was friends with the victim's step-father, David Spears ("Spears"), and lived in the family's basement for several months during the summer and fall of 2007. *Id.* The victim referred to Collings as her uncle. *Id.* In late October 2007, Collings moved to a trailer on his own family's farm. *Id.*

On the evening of Friday November 2, 2007, Collings, Spears, and a third man, Nathan Mahurin ("Mahurin"), met at a farm where they had been working. *Id.* The three went to a liquor store, bought two six packs of beer, then went to Spears's home, where the victim lived, to drink and play pool. *Id.* The victim's mother left for work around 8:30 p.m., leaving the victim in the care of the three men. *Id.*

Later, Collings asked Mahurin to drive him home, and the two convinced Spears to go with them. *Id.* Spears left the victim asleep in her room and went with the two other men. *Id.* The men bought more liquor and went to Collings's trailer where they drank and smoked marijuana. *Id.*

After an hour, Mahurin and Spears left to go home, taking backroads rather than the direct highway route in order to avoid the police. *Id.* Collings later confessed that he took the highway directly to Spears's farm knowing that, if he hurried, then he could get there while the victim was alone. *Id.* at 750. Collings admitted arriving there while the nine-year-old victim was alone, and Collings admitted he raped her. *Id.* at 750–51. Collings also admitted that, after raping the nine-year-old victim, he

strangled her to death with a rope when she recognized him. *Id*. at 751. Collings took the victim's body to a sinkhole and threw the victim's body into the sinkhole. *Id*. Collings admitted he burned the clothing he wore during the attack, the victim's pajama pants and underwear, and the rope he used to strangle the victim in a wood stove. *Id*. He admitted burning his own mattress, which he believed he had contaminated with the victim's blood, in a fifty-five-gallon drum. *Id*.

Spears gave a confession in which he claimed he acted in concert with Collings in committing the murder, in contradiction of Collings's confession. *Collings v. State*, 543 S.W.3d 1, 15–16 (Mo. 2018) ("*Collings II*"). Collings's trial defense counsel viewed Spears's confession as placing Collings in an even worse light than Collings' own confession, making it more difficult to argue for a second-degree murder conviction. *Id*. So, counsel made a strategic decision to keep evidence of the step-father's confession out of the case if possible, and to argue for a second-degree murder conviction based on Collings's confession. *Id*. The Missouri Supreme Court affirmed the judgment of conviction and sentence on direct review. *Id*. at 768. This Court denied a petition for certiorari. *Collings v. Missouri*, 574 U.S. 1160 (2015).

Following an evidentiary hearing, the post-conviction review court denied Collings motion for Missouri post-conviction relief. *Collings v. State*, 15PH-CV00097 (Phelps Cnty. Cir. Ct. Nov. 1, 2016). The Missouri Supreme Court unanimously affirmed the denial of post-conviction relief. *Collings II*, 543 S.W.3d at 8. This Court denied a petition for certiorari. *Collings v. Missouri*, 139 S.Ct. 247 (2018).

Collings filed a petition for habeas corpus in the United States District Court for the Western District of Missouri, alleging twenty-eight claims for relief, in April 2019. Petition, *Collings v. Griffith*, No. 4:18-CV-08000-MDH (W.D. Mo. Apr. 16, 2019). The petition did not allege any of the claims were unexhausted. *Id.* Collings filed a traverse in the district court in September 2020. Traverse, *Collings v. Griffith*, No. 4:18-CV-08000-MDH (W.D. Mo. Sep. 11, 2020). The traverse did not argue that any claims were unexhausted. *Id.* at 22–30. Instead, Collings argued in the traverse that cause and prejudice existed to excuse the default of claims that were exhausted by procedural default. *Id.*

On July 1, 2022, over two years after filing his petition for habeas corpus, Collings filed a motion for stay and abeyance in the district court habeas proceedings, pursuant to *Rhines v. Weber*, 544 U.S. 269 (2005), in order to allow Collings the opportunity exhaust state remedies. Motion for Stay and Abeyance, *Collings v. Griffith*, No. 4:18-CV-08000-MDH (W.D. Mo. Jul. 1, 2022). On September 30, 2022, the district court denied the motion for stay and abeyance. Pet. App. at A123–A126. The district court found that the claims on which the petitioner sought a stay were defaulted and that there was no state court procedure to raise the claims. *Id.* The same day, the district court denied the petition for a writ of habeas corpus and denied to issue a certificate of appealability regarding Collings's habeas petition. Pet. App. at A82–A122. On December 13, 2022, the district court denied a Rule 59(e) motion and, again, denied a certificate of appealability. Pet. App. at A127 (citing Fed. R. Civ. P. 59(e)).

On January 11, 2023, Collings filed an application for a certificate of appealability in the United States Court of Appeals for the Eighth Circuit seeking to appeal the district court's final judgment, the district court's denial of the motion for stay and abeyance, and the district court's denial of Collings's Rule 59(e) motion. Pet. App. at A3–A80. Collings alleged that he was entitled to a certificate of appealability on eight claims and stated that he was also appealing the denial of a stay to raise claims he asserted were unexhausted in state court. *Id*. at A3–A6. The application did not assert that Collings requested a detailed opinion applying the standard for a certificate of appealability individually to each of the claims. Pet. App. at A3–A80. The Eighth Circuit denied the application for a certificate of appealability and dismissed the appeal, after carefully reviewing the findings of the district court. Pet. App. at A1. The Eighth Circuit denied rehearing on banc on September 8, 2023. Pet. App. at A2. After a motion by petitioner, this Court extended the due date for a certiorari petition from December 7, 2023, to February 5, 2024. *Collings v. Vandergriff*, No. 23A477 (Nov. 28, 2023).

Collings's statement of the case in his petition contains a lengthy recitation of facts that appears to be aimed at supporting four of the claims on which the court below denied a certificate of appealability, as opposed to being material to the questions Petitioner has presented to this Court. Pet. at 3–14.[1] United States

[1] The petition also contains lengthy argument that the court below erred in not granting a certificate of appealability on four of the eight claims presented to it that is also not material to the questions Collings actually presented to this Court. Pet. at 27–40. The writ of certiorari is not a writ of error correction and these facts and arguments are not material to the questions actually presented.

Supreme Court Rule 15 requires the correction in the brief in opposition of misstatements of law or fact. The petition contains mistakes of fact.

Collings's petition for certiorari states that the police's questioning of Collings violated due process, in that Collings was viewed as a suspect and police pursued questioning him "with the express purpose of extracting a confession." Pet. at 6–7. But the Missouri Supreme Court found that Collings's confession "was surprising to investigators," because investigators were operating under the assumption that another person, not Collings, committed the murder and that Collings "merely had knowledge of the event." *Collings I*, 450 S.W.3d at 751.

The petition for certiorari alleges that a particular State's witness had four convictions for "desertion" and that the State "suppressed" these convictions. Pet. at 8–10. In reality, the witness was convicted of being absent without leave ("AWOL") on four occasions. R. Doc. 10–43. The term "suppressed" is also misleading, as the prosecutor appears to have disclosed that the witness had military charges of which the prosecutor did not know the disposition, except that a desertion charge had been reduced to an AWOL charge. Pet. at 8. The district court below found that, even if there was a failure to disclose, which the district court found had not been proven, four AWOL convictions from 1968 and 1969, decades before the trial, did not create a reasonable possibility the outcome of the proceeding was changed. Pet. App. at 99–100.

Collings's petition for certiorari alleges that his trial counsel could not argue, under Missouri law, that voluntary intoxication negated the deliberation element of

the crime. Pet. at 10–11. While true,[2] this was not the only reason trial counsel chose to pursue an intoxication defense. *See Collings II*, 543 S.W.3d at 11–12. The Missouri Supreme Court, on post-conviction review, found that trial counsel had credibly testified at the post-conviction relief evidentiary hearing that counsel chose not to challenge the statute and instruction on voluntary intoxication because the jury would view that as an excuse, jurors do not like such defenses, and it was better strategy not to blame the murder on Collings being drunk or high. *Id.* The Missouri Supreme Court determined that trial counsel also made a strategic decision not to put on drug and alcohol abuse evidence at the penalty phase, in order to avoid antagonizing the jury. *Id.* at 13.

[2] Section 562.076 of the Revised Statutes of Missouri provides, "A person who is in an intoxicated or drugged condition, whether from alcohol, drugs, or other substance, is criminally responsible for conduct unless such condition is involuntarily produced and deprived him of the capacity to know or appreciate the nature, quality, or wrongfulness of his conduct." RSMo § 562.076.1 (2016). At Collings's underlying criminal trial, the State offered a corresponding jury instruction based on the Missouri Approved Instructions-Criminal ("MAI-CR"), stating: "The state must prove every element of the crime beyond a reasonable doubt. However, in determining the defendant's guilt or innocence, you are instructed that an intoxicated or a drugged condition whether from alcohol or drugs will not relieve a person of responsibility for his conduct." *Collings II*, 543 S.W.3d at 8 (quoting MAI-CR 3d 310.50). This Court has held that state laws like Missouri's are constitutional. *Montana v. Egelhoff*, 518 U.S. 37, 41–42, 56 (1996) ("The people of Montana have decided to resurrect the rule of an earlier era, disallowing consideration of voluntary intoxication when a defendant's state of mind is at issue. Nothing in the Due Process Clause prevents them from doing so…).

SUMMARY OF THE ARGUMENT

A certificate of appealability was required to appeal from the denial of a motion for a stay and abeyance in this case to raise allegedly, but not actually, unexhausted claims in state court. The district court below found that the claims were exhausted through procedural default. An appeal from the denial of a stay necessarily rejected the analysis of the district court rejecting the claims themselves and therefore required a certificate of appealability even under Collings's reasoning. There is no conflict with any decision of this Court or any decision of another circuit court of appeals. The decisions which Collings alleges are in conflict deal with fact patterns that did not contradict the district a court's resolution of underlying claims. Certiorari review is, therefore, not warranted.

The Eighth Circuit, below, was not required to issue a detailed opinion discussing each of the claims on which Collings sought a certificate of appealability. The one case that Collings alleges conflicts with the practice of the court below is a case in which a circuit court of appeals exercised its supervisory authority over district courts within its circuit. The circuit court of appeals did not hold that circuit court courts of appeals are bound to always issue detailed reasoned opinions on each claim the court denies a certificate of appealability. And, the practice of the Eighth Circuit is consistent with the practice of this Court. Further, Collings did not preserve the issue for review by this Court, since Collings did not argue in the court below that he thought a detailed opinion was required by law. For these reasons, certiorari review is not warranted.

REASONS FOR DENYING THE PETITION

I. There is no support for Collings's argument that a habeas petitioner can appeal, without a certificate of appealability, the denial of a request for stay and abeyance where the district court has found that the petitioner's claims were exhausted through fair presentation or procedural default and issued a final decision denying the claims.

Collings alleges that, by dismissing the appeal of the denial of his application for a stay, which was denied simultaneously with his habeas petition by the district court, the Eighth Circuit below created a conflict with this Court's decision in *Harbison v. Bell*, 556 U.S. 180 (2009). Pet. at 16–17 (citing *Harbison*, 556 U.S. at 183). But Collings is wrong. There is no conflict.

In *Harbison*, this Court found that a certificate of appealability was not needed to appeal the denial of the appointment of counsel to represent a capital offender in state clemency proceedings. *Harbison*, 556 U.S. at 183. This Court found that "an order that merely denies a motion to enlarge the authority of appointed counsel" is not within the class of "final orders that dispose of the merits of a habeas corpus proceeding." *Id.* In Collings's case, the district court denied the motion for stay and abeyance to litigate claims in state court that Collings claimed were unexhausted. Pet. App. at A123–A126. The district court below found that the claims on which Collings sought a stay were defaulted, more specifically exhausted through procedural default because there was no state court procedure to raise the claims. *Id.* Unlike in *Harbison*, the motion for stay and abeyance to litigate unexhausted claims here was a direct challenge to the district court's resolution of substantive claims. *Harbison*, 556 U.S. at 183. There is no conflict, here, with *Harbison*.

Collings also alleges conflicts with Eighth Circuit precedent, but the cases he cites are inapposite. *See* Pet. at 16–17. Unlike his own situation, Collings cites cases where petitioners have appealed from procedural issues that are completely separate from the decision denying the claims for relief. *See, e.g.*, *Johnson v. Steele*, 999 F.3d 584, 585–89 (8th Cir. 2021). He includes cases where the parties agreed that the petitioner's claims were unexhausted, but where the petitioner challenged the district court's finding that there was not "good cause" for a *Rhines* stay. *See Rhines*, 544 U.S. at 269. Collings, however, seeks to challenge the district court's determination that his claims are exhausted through procedural default. Pet. at 17 (arguing, contrary to the district court's finding below, that some of Collings's claims are "unexhausted"). Collings cites no case allowing a petitioner to challenge the district court's finding that the claims for relief were procedurally defaulted without a certificate of appealability. This is for good reason—this Court's cases hold that the certificate of appealability requirement applies where a petitioner seeks to challenge a finding of procedural default. *Slack v. McDaniel,* 529 U.S. 473, 485 (2000). Therefore, this Court's precedent forecloses Collings's argument, and Collings's citations fail to show a basis for certiorari review.

For example, Collings cites to two Eighth Circuit cases in which a certificate of appealability was not required to appeal a recusal of a judge, *Johnson v. Steele,* 999 F.3d 584, 585–89 (8th Cir. 2021), nor the denial of access to an expert, *Rhines v. Young,* No. 18-2376, 2018 WL 11302665 (8th Cir. Sep. 7 2018). Pet. at 17. In those cases, the Eighth Circuit reviewed certain issues of federal procedure that are

completely separate from the procedural and merits reasons for denying those petitioners' claims. The cases say nothing that would conflict with this Court's holding in *Slack* that the certificate of appealability requirement applies where, as here, a petitioner seeks to challenge the procedural reasons for denying his claims. *Slack*, 529 U.S. at 485.

Collings next alleges a conflict with cases from other federal circuits. Pet. at 18–19. But there is no conflict with those cases. In *Lave v. Dretke*, 416 F.3d 372 (5th Cir. 2005), the petitioner sought a stay to exhaust an unexhausted *Crawford*[3] claim and, then, to amend it into a federal petition. *Lave*, 416 F.3d at 383. There is no indication in *Lave* that the district court below had found that the claim at issue was procedurally defaulted, rather than unexhausted. *Id.* The same is true in *Dunn v. Cockrell*, 302 F.3d 491 (5th Cir. 2002). There, the petition sought review of the denial of a Fed. R. Civ. P. 60(b) motion, in which the petitioner alleged excusable neglect in filing a late notice of appeal, not the resolution of claims in a habeas petition. *Dunn*, 302 F.3d at 492. In *Young v. Stephens*, 795 F.3d 484 (5th Cir. 2015), the Fifth Circuit found that there was no abuse of discretion in denying a stay to exhaust a *Brady*[4] claim that was plainly without merit. *Young*, 795 F.3d at 494–96. The *Young* court noted that, insofar as the petitioner was arguing new evidence proved he is innocent, the claim was successive. *Id.* at 495.

[3] *Crawford v. Washington*, 541 U.S. 36 (2004).
[4] *Brady v. Maryland*, 373 U.S. 83 (1963).

Similarly, in *Blake v. Baker*, 745 F.3d. 977 (9th Cir. 2014) and *Smith v. Chappell*, 584 F. App'x 790 (9th Cir. 2014), the Ninth Circuit allowed appeals challenging a district court's finding that there was not good cause for a *Rhines* stay. *See Blake*, 745 F.3d at 979; *Smith*, 584 F. App'x at 791. Nothing in these Fifth and Ninth Circuit cases supports allowing an offender to challenge a district court's finding in a habeas proceeding that the claims are exhausted through procedural default absent a certificate of appealability.

In sum, Collings does not seek to challenge a collateral issue of federal procedure. Instead, he wants to challenge the underlying district court's finding that his claims are procedurally defaulted. Collings's argument that the certificate of appealability standard does not apply to this question is foreclosed by this Court's decision in *Slack*. 529 U.S. at 485. Collings's case raises no issue of conflict among the lower courts and presents no basis for this Court's review.

II. There is no support for Collings's argument that a court of appeals must issue a detailed reasoned opinion when it denies a certificate of appealability.This Court should deny certiorari on Collings's second question presented because no law supports Collings's argument, and there is no conflict worthy of this Court's review.

A. The well-established legal standards for reviewing a certificate of appealability do not require courts to issue a written statement of reasons.

In a habeas proceeding under 28 U.S.C. § 2254,[5] state prisoners have no right to an automatic appeal from the denial of a federal habeas petition. § 2253(c)(1). A

[5] All statutory citations will be to title 28 of the United States Code, unless otherwise noted.

habeas petitioner may not appeal a district court's final order "[u]nless a circuit justice or judge issues a certificate of appealability." § 2253(c). For a certificate to issue, the petitioner must make "a substantial showing of the denial of a constitutional right." § 2253(c)(2). Additionally, a judge *issuing* a certificate must "indicate what specific issue or issues" are certified for appeal. § 2253(c)(3). Nothing in the statute requires a court to explain in detail why it has *declined* to issue a certificate on each claim. *See* § 2253(c).

Nor does this Court's precedent require such an explanation. The certificate-of-appealability requirement mandates "a threshold inquiry into whether the circuit court may entertain an appeal." *Slack,* 529 U.S. at 482. The certificate process "screens out issues unworthy of judicial time and attention and ensures that frivolous claims are not assigned to merits panels." *Gonzalez v. Thaler,* 565 U.S. 134, 145 (2012). In this way, certification review serves an important gatekeeping function. *Miller-El v. Cockrell,* 537 U.S. 322, 337 (2003).

The analysis determining whether a certificate of appealability is appropriate "is not coextensive with merits analysis." *Buck v. Davis*, 580 U.S. 100, 114–15 (2017). This Court has cautioned that the courts of appeals should not engage with the merits of a petitioner's claim in order to justify denying a certificate. *Id.* at 115 (quoting *Miller-El,* 537 U.S. at 337). Courts reviewing issues for certification conduct the limited review necessary to determine the need for a certificate, instead of deciding the full merits of a petitioner's case. *See id.*

To receive a certificate, a petitioner must make "a substantial showing of the denial of a constitutional right," § 2253(c)(2), by "demonstrating that jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." *Miller-El,* 537 U.S. at 327. If the district court denies a petition on procedural grounds, a certificate is only appropriate if "jurists of reason" could disagree as to both "whether the petition states a valid claim of the denial of a constitutional right" and "whether the district court was correct in its procedural ruling." *Slack,* 529 U.S. at 484.

Applying these standards, the district court and the Eighth Circuit, below, declined to issue a certificate of appealability on any of Collings's claims for habeas relief. Pet. App. at A82, A94–122; *Collings v. Griffith*, No. 23-1064, 2023 WL 9231488, at *1 (8th Cir. Jun. 28, 2023). In the second question Collings presents for this Court's review, Collings does present a question challenging, generally, a circuit court issuing a non-detailed denial of a certificate of appealability. Pet. at 19. Within this point, Collings, however, also includes facts and argument that challenge the substantive merits of the district court's underlying denial on the facts. *See* Pet. at 29–40. For the most part, Collings asks this Court to read *Miller-El* and *Slack* to require an additional procedural step not found in the text of section 2253. *See* Pet. at 40. Nothing requires the courts of appeals to issue detailed, reasoned written opinions when denying a certificate of appealability.

B. There is no conflict of authority warranting this Court's review.

Collings attempts to manufacture a circuit split by arguing that the Eighth Circuit has a practice of declining to issue written opinions when denying a certificate of appealability, allegedly in conflict with most other courts of appeal. Pet. at 19–20. But the only case Collings cites as a direct conflict is *Murphy v. Ohio*, 263 F.3d 466 (6th Cir. 2001). Pet. at 20 (citing *Murphy*, 263 F.3d at 467). That case presents no conflict. *Murphy* is a decision exercising the supervisory powers of a court of appeals over district courts in its circuit, noting that the it was neither acceptable in that circuit for district courts to uniformly grant certificates of appealability on all claims without analysis or uniformly deny certificates on all claims without analysis. *Murphy*, 263 F.3d at 467. The Sixth Circuit found that the district courts were essentially delegating their job to the circuit court. *Id*. The Sixth Circuit did not hold that its sister circuit courts of appeals are legally required to follow its discretionary practice. *Id*.

In *Dansby v. Hobbs,* 691 F.3d 934, 936 (8th Cir. 2012), the Eighth Circuit found that neither § 2253, nor this Court's precedent, "dictate that a court of appeals must or must not publish a statement of reasons when it denies an application for a certificate [of appealability]." *Dansby*, 691 F.3d at 936. The court further held, "[w]hether to issue a summary denial or an explanatory opinion is within the discretion of the court." *Id.* The habeas petitioner in *Dansby* was criticizing the Eighth Circuit for issuing a written precedential decision on his motion to expand a certificate of appealability, rather than issuing a summary order. *Id.* at 935–36. In the past, however, petitioners had criticized the court for doing just that, issuing a

summary order. *Id.* The Eighth Circuit essentially noted that, whatever it did, a habeas petitioner would argue that the circuit court had utilized the improper practice. *Id.* at 936.

In manufacturing his alleged circuit split, Collings cites a string of cases in which circuit courts of appeals have issued written opinions detailing why they granted or denied a certificate of appealability. Pet. at 21 (citing *MocGonalge v. United States*, 137 F. App'x 373 (1st Cir. 2005); *Middleton v. Att'y Gen. of N.Y., Pa.*, 396 F.3d 207 (2d Cir. 2005); *Tomlin v. Britton*, 448 F. App'x 224 (3d Cir. 2011); *Swisher v. True*, 325 F.3d 225 (4th Cir. 2003); *Chanthakoummane v. Stephens*, 816 F.3d 62 (5th Cir. 2016); *Smith v. Mays*, No. 18-5133, 2018 WL 7247244 (6th Cir. Aug. 22, 2018); *Woods v. Buss*, 234 F. App'x 409 (7th Cir. 2007); *Dickens v. Ryan*, 552 F. App'x 770 (9th Cir. 2014); *Lafferty v. Benson*, 933 F.3d 1237 (10th Cir. 2019); *Woods v. Holman*, No. 18-14690, 2019 AL 5866719 (11th Cir. Feb. 22, 2019)). Collings, however, does not allege that any of these courts determined that they were compelled to issue a detailed written opinion. Pet. at 21. Nothing Collings alleges shows that issuing a detailed written opinion is an obligation rather than an exercise of discretion.

Summary denials are consistent with this Court's example of issuing summary denials when reviewing original applications for a certificate of appealability. *See e.g.*, *Grayson v. Thomas*, 565 U.S. 829 (Oct. 3, 2011); *Mathis v. Thaler*, 562 U.S. 1257 (Feb. 28, 2011); *Patrick v. United States*, 543 U.S. 860 (Oct. 4, 2004). In Collings's view, then, these summary denials would be insufficient to dispose of cases, since the

provisions of § 2253(c) apply to any "circuit justice or judge" who issues, or denies, a certificate of appealability. § 2253(c). There is no basis for this Court to grant certiorari to examine the Eighth Circuit's appropriate discretionary determination in this case.

C. Even if federal law required written findings, this case is a poor vehicle for review because Collings did not preserve this issue in the court of appeals.

In the Eighth Circuit, below, Collings filed a lengthy application for a certificate of appealability, claiming entitlement to a certificate of appealability on eight separate claims. Pet. App. at A2–A60. Below, Collings did not argue that the circuit court was, in his view, required to write a detailed opinion on all eight claims for which he sought a certificate of appealability. *Id*. Further, Collings's petition for rehearing before the Eighth Circuit did not present this theory that a habeas petition is entitled to a detailed written opinion on each claim granted or denied a certificate. Pet. App. at A61–A78. This Court has noted that most cases, at most, contain three significant issues, and that the effect of adding additional, weaker arguments is to dilute the stronger arguments. *Jones v. Barnes*, 463 U.S. 745, 752 (1983) (citing Jackson, *Advocacy Before the Supreme Court*, 25 Temple L.Q. 115, 119 (1951); R. Stern, *Appellate Practice in the United States* 266 (1981)). One of the most important roles of the appellate advocate is to examine the record and select only the most important issues. *Jones*, 463 U.S. at 751–52.

Here, Collings unfairly criticizes the Eighth Circuit, alleging that the court below made an error in deciding an issue which Collings failed to present to the court

below. In the Eighth Circuit below, Collings argued that he was entitled to a certificate of appealability on eight separate claims, but he has not contended, until now, that the court of appeals was required to issue a detailed opinion on each of these claims. Collings has forfeited this argument by failing to raise it before the court below, and this Court should thus deny certiorari on this point. *See, e.g.*, *Glover v. United States*, 531 U.S. 198, 205 (2001) ("In the ordinary course [the Supreme Court] do[es] not decide questions neither raised nor resolved below.").

II. Collings's extensive merits analysis, regarding the denial of four of his eight claims, has nothing to do with the questions presented for this Court's review, and seeks to use certiorari as a writ of error correction.

Collings includes several arguments about why he thinks the court below erred in not granting a certificate of appealability on four of the claims for which he sought a certificate. Pet. at 27–40. This analysis has nothing to do with the either of the questions presented before this Court for review. To the extent that Collings seeks correction of perceived errors by the court below in its merits analysis, the perceived correctness of the judgment below is not a proper factor to analyze in the granting of a writ of certiorari. *Ross v. Moffitt*, 417 U.S. 600, 616–17 (1974) ("This Court's review . . . is discretionary and depends on numerous factors other than the perceived correctness of the judgment we are asked to review."); *see also* Sup. Ct. R. 10. Review of the Eighth Circuit's merits analysis below is not properly before this Court. Collings should not be allowed to use his other claims as a Trojan horse to obtain this Court's review on this external basis.

CONCLUSION

This Court should deny the petition for a writ of certiorari.

Respectfully submitted,

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