NO. 23-1736

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ABDULLAHI KHALIF NOOR,

Petitioner-Appellant,

v.

MELISSA ANDREWJESKI,

Respondent-Appellee.

ON APPEAL FROM THE
UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

No. 2:22-cv-00270-JHC-BAT
The Honorable John H. Chun
United States District Court Judge

BRIEF OF RESPONDENT-APPELLEE

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II. STATEMENT OF ISSUE

Does 28 U.S.C. § 2253(c)'s certificate of appealability requirement violate the Fifth Amendment's due process and equal protection guarantees, where it rationally serves legitimate government interests in habeas proceedings despite disparately impacting prisoners.

III. STATEMENT OF THE CASE

In 2016, a King County jury convicted Abdullahi Khalif Noor of raping, assaulting, harassing, and intimidating S.K., a woman he had brought from Somalia to the United States when she was a minor. ER-36. Noor decided in 2011 or 2012 that S.K. and his young son M.N. should move from Kenya, where they were living at the time, to join him in the United States. *Id*. Noor instructed S.K. to use a false name, "Hadiyo Ali" (H.A.), and birthdate of 1990 for the immigration process, and he created false documents showing they were married. *Id*.

After S.K. arrived in Seattle in May 2014, Noor forced her to have sex with him, threatened her with a knife when she tried to refuse, and physically abused her. *Id*. This abuse culminated in a severe incident on May 28, 2015,

when Noor kicked and beat S.K. for hours after she accidentally locked herself out of their apartment. *Id*. The next day, bruised and vomiting blood, S.K. fled to a neighbor's house and the police were called. ER-36-37. Noor was arrested and a no-contact order was issued. ER-37.

Despite the no-contact order, Noor continued living with S.K. after his release and threatened to kill her if she did not convince authorities to drop the charges against him. *Id*. The State amended the charges to identify the victim as "S.K. (DOB []) aka H.F.A." *Id*. After a five-day trial, the jury convicted Noor of raping S.K. in the second degree, assaulting her in the fourth degree, witness intimidation, violating the no-contact order, and misdemeanor harassment. ER-37-38. The trial court imposed an indeterminate life sentence on the rape conviction. ER-6.

On federal habeas review, the district court denied Noor's petition challenging his state court convictions for rape, assault, witness intimidation, and court order violations. ER-6. In his petition, Noor argued that the trial court's references to the victim as "S.K." with a 1998 birthdate violated his rights, the prosecution withheld *Brady* material in the form of a CPS interview with Noor's son, jury coercion, insufficiency of the evidence, his convictions for harassment

and witness intimidation violated double jeopardy, and infective assistance of counsel. ER-14, 18, 21,23, 26-27.

The district court carefully analyzed each of Noor's claims and ultimately rejected them, finding that the state courts had reasonably determined Noor's constitutional rights were not violated. ER-11-31. Specifically, the court found no constitutional error in the trial court's use of the victim's initials "S.K." as an identifier, noting that her identity was not an element of the charged crimes. ER-15. The court also concluded that the state court reasonably rejected Noor's *Brady* claim, as the defense was aware of the essential facts that would have allowed them to discover the CPS interview with due diligence. ER-18-20. Finally, the court determined that Noor's separate convictions for harassment and witness intimidation were based on distinct conduct and therefore did not violate double jeopardy. ER-23-25.

Having found no merit to any of Noor's constitutional claims, the district court denied Noor's petition and request for an evidentiary hearing in its entirety. ER-6. However, the court did grant a certificate of appealability on one "relatively novel" issue raised by Noor—whether the certificate of appealability requirement itself violates due process and equal protection under the Fifth Amendment. ER 12, 33. The district court noted that this claim raised an

important constitutional question that warranted further review, even though the court itself did not reach the merits. ER-33-34.

Noor now appeals the denial of his habeas petition to this Court. ER-108-09. But in doing so, he improperly seeks to expand the scope of the appeal beyond the sole issue certified by the district court. Noor's opening brief argues at length and for the first time on appeal about an alleged violation of his "right of access to the courts." *See* Appellant's Br. at 25, 29-33, 38-40, 43, 50, 53, 69 -43. However, the district court did not grant a certificate of appealability on this issue. ER-31-34.

Under 28 U.S.C. § 2253(c), this Court's review is limited to the specific issue certified by the district court. By attempting to shoehorn additional uncertified constitutional claims into his appeal, Noor disregards the strict constraints imposed by Congress on habeas appeals. This Court should decline Noor's invitation to exceed its jurisdiction and should confine its review to the sole question properly presented—the constitutionality of the certificate of appealability requirement based on the grounds presented below.

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IV. STANDARD OF REVIEW

The Court reviews de novo the district court's decision to deny a habeas petition. *Dows v. Wood*, 211 F.3d 480, 484 (9th Cir. 2000). The Court reviews the district court's findings of fact for clear error. *Hendricks v. Calderon*, 70 F.3d 1032, 1037 (9th Cir. 1995). The state court's determination of a factual issue is presumed correct unless the petitioner rebuts the finding by clear and convincing evidence. 28 U.S.C. § 2254(e)(1). A state court determination of state law is binding on the federal courts. *Bradshaw v. Richey*, 546 U.S. 74, 76 (2005).

V. SUMMARY OF THE ARGUMENT

The district court correctly denied Noor's petition for a writ of habeas corpus because the state court's decision was neither contrary to, nor an unreasonable application of, clearly established federal law. The COA requirement in 28 U.S.C. § 2253(c) is constitutionally valid and does not violate Noor's rights under the Due Process Clause or the Equal Protection Clause of the Fourteenth Amendment.

First, the COA requirement serves legitimate government interests and does not unduly burden a habeas petitioner's access to appellate review. It is a reasonable threshold requirement that the Supreme Court has repeatedly upheld as a valid exercise of Congress's power to regulate federal court jurisdiction and

impose conditions on habeas appeals. The requirement conserves scarce judicial resources by filtering out frivolous claims while still allowing potentially meritorious cases to proceed. It does not create an absolute bar to appellate review.

Second, Noor's right of access claim is beyond the scope of the narrow certificate of appealability granted by the district court. This Court should decline to address that issue. However, even if the Court considers the merits, the COA requirement does not violate Noor's fundamental right of access to the courts. It is a reasonable limitation that the Supreme Court has consistently endorsed.

Third, the COA requirement does not violate equal protection principles. Habeas petitioners and the government are not similarly situated in federal habeas proceedings due to their materially different roles, interests, and incentives. The COA requirement's differential treatment of these parties is rationally related to the legitimate government objectives of promoting finality, conserving judicial resources, and maintaining the delicate balance of federalism in habeas review.

Fourth, the constitutionality of the COA requirement turns on its contemporary operation and effects, not its alleged historical origins. The

Supreme Court has repeatedly recognized the requirement's valid justifications without any indication that racial animus motivated its enactment. Noor's speculative attempt to undermine the statute's legitimacy based on its historical context fails to justify invalidating this well-established provision.

Finally, striking down the COA requirement would severely disrupt the federal habeas system and generate far-reaching negative consequences. It would undermine the finality of state court judgments, hinder the efficient allocation of judicial resources, and compromise the effective administration of justice. This Court should reject Noor's unfounded challenge and affirm the district court's denial of habeas relief.

VI. ARGUMENT

A. The Supreme Court has Consistently Upheld the COA requirement

1. The COA requirement is constitutional because it rationally serves legitimate government interests

a. The COA requirement does not violate due process because it is a reasonable limitation on habeas appeals

The certificate of appealability (COA) requirement in 28 U.S.C. § 2253(c) serves legitimate government interests and does not violate due process. The Supreme Court has repeatedly upheld the constitutionality of limiting appeals in habeas corpus proceedings. In *Miller-El v. Cockrell*, 537 U.S. 322 (2003) the

Court explained that the COA inquiry "does not require full consideration of the factual or legal bases adduced in support of the claims," but rather involves a "threshold inquiry" into the underlying merits. *Id.* at 336. This limited review serves the important purpose of conserving judicial resources and preventing frivolous appeals. *See Barefoot v. Estelle*, 463 U.S. 880, 892 (1983).

Requiring a substantial showing of a constitutional violation to obtain a COA does not unconstitutionally restrict access to the appellate courts. Due process allows for reasonable limitations on appellate review, as long as they are not absolute bars. *See Ross v. Moffitt*, 417 U.S. 600, 610–11 (1974) ("The defendant needs an attorney on appeal not as a shield to protect him against being 'haled into court' by the State and stripped of his presumption of innocence, but rather as a sword to upset the prior determination of guilt. This difference is significant for, while no one would agree that the State may simply dispense with the trial stage of proceedings without a criminal defendant's consent, it is clear that the State need not provide any appeal at all."); *Evitts v. Lucey*, 469 U.S. 387, 400 (1985) (noting prior opinions holding that a State need not provide a system of appellate review as of right at all).

The COA requirement, as a reasonable limitation, requires a threshold showing of constitutional error but does not prohibit appeals outright. *See*

28 U.S.C. § 2253(c)(2). Once this prima facie showing is made, the petitioner is entitled to full consideration of the merits by the appellate court. *Miller-El*, 537 U.S. at 341. This system rationally balances the competing interests of providing habeas review while curtailing baseless appeals. *See Slack v. McDaniel*, 529 U.S. 473 (2000); *Barefoot*, 463 U.S. at 892-96. Thus, the COA requirement comports with due process.

b. The Supreme Court has upheld similar provisions limiting habeas appeals, confirming the COA requirement's validity

The Supreme Court has consistently ruled that AEDPA's limitations on successive petitions and the COA requirement are constitutional. In *Tyler v. Cain*, 533 U.S. 656 (2001), the Court affirmed that AEDPA "greatly restricts the power of federal courts to award relief to state prisoners who file second or successive habeas corpus applications." *Id.*, at 661. The Court noted that AEDPA established a gatekeeping mechanism requiring the prospective applicant to file in the court of appeals a motion for leave to file a second or successive habeas application in the district court. *Id.* at 661 n.3. Significantly, the Court upheld these and similar restrictions as a valid exercise of Congress's authority to impose conditions on the writ of habeas corpus. *See Felker v. Turpin*, 518 U.S. 651, 658 (1996) (upholding the constitutionality of the AEDPA, which

imposed significant limitations on the ability of federal courts to grant habeas relief to state prisoners); *Woodford v. Garceau*, 538 U.S. 202 (2003) (affirming Congress's power to impose procedural requirements on federal habeas petitions and to have those requirements apply to pending cases).

Furthermore, in *Panetti v. Quarterman*, 551 U.S. 930 (2007), the Court reiterated that AEDPA's "design is to further the principles of comity, finality, and federalism" by imposing "new restrictions on successive petitions." *Id.* at 945 (internal quotation marks omitted). Rather than questioning the constitutionality of these restrictions, the Court construed the statute consistent with "AEDPA's purposes" and its "collateral review structure." *Id.* at 945, 946. Similarly, Courts of Appeals across the nation have recognized that AEDPA's one-year statute of limitations provides a reasonable opportunity for petitioners to have their claims heard on the merits. This limitation period does not render the habeas remedy inadequate or ineffective to test the legality of detention and thus does not constitute an unconstitutional suspension of the writ per se. *See, e.g.*, *David v. Hall*, 318 F.3d 343, 347 (1st Cir. 2003); *Rodriguez v. Artuz*, 161 F.3d 763, 764 (2nd Cir. 1999) (per curiam); *Molo v. Johnson*, 207 F.3d 773, 775 (5th Cir. 2000); *Green v. White*, 223 F.3d 1001, 1003-04 (9th Cir. 2000); *Miller v. Marr*, 141 F.3d 976, 977-978 (10th Cir. 1998).

These precedents demonstrate that statutory limitations, including the COA requirement, comport with the Constitution when they preserve an avenue for courts to grant the writ in appropriate cases. In *Felker*, the Court considered AEDPA's requirements for leave to file a second or successive petition under 28 U.S.C. § 2244(b)(3). *Id.*, 518 U.S. at 656-57. The Court held that these restrictions did not amount to an unconstitutional suspension because they still allow the writ to issue in qualifying cases. *Id.* at 664. Emphasizing that "judgments about the proper scope of the writ are 'normally for Congress to make,'" the Court deferred to the legislature's authority to define the boundaries of habeas review. *Id.* (quoting *Lonchar v. Thomas*, 517 U.S. 314, 323 (1996)).

Ultimately, the COA requirement fits comfortably within Congress's broad power to shape the contours of the writ without overstepping constitutional bounds. By allowing appeals to proceed upon a substantial showing of the denial of a constitutional right, 28 U.S.C. § 2253(c) strikes a permissible balance. The Supreme Court and lower federal courts have repeatedly affirmed the constitutionality of this provision and other AEDPA restrictions on successive petitions. These precedents confirm that the COA requirement is a valid exercise of Congress's authority to impose conditions on

habeas review that further legitimate government interests without violating due process or suspending the writ.

2. Noor bears the heavy burden of proving the COA requirement's unconstitutionality

a. There is a strong presumption of constitutionality for Acts of Congress

In assessing Noor's constitutional challenge to the COA requirement in 28 U.S.C. § 2253, the starting point must be the well-established principle that Acts of Congress are presumed constitutional. *United States v. Morrison*, 529 U.S. 598, 607 (2000). This presumption is rooted in the judiciary's respect for the legislative branch as a coordinate branch of government. *See Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 538 (2012). Courts must accord proper respect to Congress's enactments, invalidating a federal statute only upon a plain showing that Congress has exceeded its constitutional bounds. *Id.* The presumption of constitutionality applies even when a statute implicates constitutional rights or draws distinctions based on protected classes. *See City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 440–41 (1985) (citing general rule is that legislation is presumed valid and upholding law restricting group homes for disabled. Heightened scrutiny applied, but a legitimate government reason ("prevent overcrowding") saved the law); *see also Latta v.*

Otter, 771 F.3d 456, 468 (9th Cir. 2014). Thus, the mere invocation of principles like due process or equal protection is not enough to overcome the presumption. Rather, there must be a clear demonstration that Congress acted irrationally or arbitrarily in enacting the challenged provision. *Sebelius*, 567 U.S. at 538; *Morrison*, 529 U.S. at 607.

b. Noor must clearly demonstrate Congress lacked authority to enact the COA requirement

To prevail on his constitutional challenge, Noor bears the heavy burden of proving that Congress exceeded its authority in enacting the COA requirement. *See Morrison*, 529 U.S. at 607. This means Noor must present evidence and arguments that "clearly demonstrate" a lack of congressional power, not merely raise doubts about the wisdom or fairness of the statute. *Sebelius*, 567 U.S. at 538.

In the context of a facial challenge, Noor must show there is "no set of circumstances" under which the COA requirement would be valid. *United States v. Salerno*, 481 U.S. 739, 745 (1987). This is an exceptionally difficult standard to meet, as a facial challenge will fail if the statute has any "plainly legitimate sweep." *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 449 (2008). Given the well-established line of precedent recognizing Congress's power to regulate federal court jurisdiction and impose gatekeeping

requirements for habeas appeals (*see, e.g.*, *Felker* and *Tyler*, *supra*), Noor is unlikely to satisfy the "no set of circumstances" test for a successful facial challenge.

If Noor instead brings an as-applied challenge, he must demonstrate that the COA requirement is unconstitutional in its particular application to him. This requires showing that Congress lacked any rational basis for requiring habeas petitioners like Noor to obtain a COA before appealing, even if the COA requirement may be constitutional in other contexts. *See, e.g.*, *United States v. Virginia*, 518 U.S. 515, 555–57 (1996) (finding that Virginia Military Institute's exclusion of women was not rationally related to its educational goals); *Romer v. Evans*, 517 U.S. 620, 631–32 (1996) (Colorado's amendment banning anti-discrimination laws for gays/lesbians violated equal protection under rational basis review). However, Congress's legitimate interest in managing the federal courts' caseload and conserving judicial resources is likely sufficient to defeat an as-applied challenge, absent extraordinary circumstances suggesting Congress acted arbitrarily in Noor's specific case.

In sum, whether framed as a facial or as-applied challenge, Noor faces an uphill battle in proving the COA requirement's unconstitutionality. The strong presumption of validity afforded to Acts of Congress, coupled with the

legitimate interests served by the COA provision, pose significant obstacles to Noor's constitutional arguments. To prevail, Noor must come forward with compelling evidence and arguments that "clearly demonstrate" Congress overstepped its authority in requiring habeas petitioners to obtain a COA before proceeding with an appeal.

B. Noor's Right of Access Claim is Beyond the Scope of the Certificate of Appealability, and This Court Should Decline to Address it

In his objections to the report and recommendation of the Magistrate Judge, Noor did not specifically raise the discrete claim that his right of access to the courts has been restricted. ER-107. His generalized claim of a due process violation did not encompass that specific issue. Furthermore, in granting a certificate of appealability on Noor's challenge to the COA requirement itself, the District Court judge did not mention or certify any issue regarding an alleged violation of the right of access. ER-31-34. To the extent Noor now raises a separate challenge on appeal that the COA requirement results in an impermissible unconstitutional denial of the right of access to the courts, that issue goes beyond the scope of the certificate of appealability granted by the District Court. This Court should decline to address it. *See* 9th Cir. R. 22-1 & Advisory Committee Note; *Estrada v. Scribner*, 512 F.3d 1227, 1231 n.1 (9th Cir. 2008) ("We decline to expand the district court's certificate of appealability

to include these three issues, nor do we request a response from Respondent pursuant to 9th Cir. R. 22-1(f).”); *Schroeder v. Tilton*, 493 F.3d 1083, 1086 n. 4 (9th Cir. 2007) (“To the extent that Schroeder raises a separate challenge that the jury instructions resulted in an impermissibly retroactive application of § 1108 in his individual case, that issue goes beyond the scope of the certificate of appealability, and we decline to address it here. *See* 9th Cir. R. 22–1 & Advisory Committee Note.”).

Noor raises the right of access claim for the first time in his opening brief on appeal. Because he failed to properly present this discrete constitutional issue to the District Court and obtain a certificate of appealability on it, Respondent submits that this Court lacks jurisdiction to consider Noor’s new right of access claim now.

1. Without waiving the foregoing objection, Respondent submits the COA requirement does not violate Noor’s fundamental right of access to the Courts

To the extent the Court deems it appropriate to address the merits, Respondent does not waive the objection that the claim exceeds the certificate of appealability by proceeding to discuss the right of access in order to correct Noor’s discussion of that right.

a. The right to appeal is not unlimited and may be subject to reasonable restrictions

The right to appeal a criminal conviction is not a fundamental constitutional right, but rather a creature of statute. *See McKane v. Durston*, 153 U.S. 684, 687 (1894) (opining an appeal from a judgment of conviction is not a matter of absolute right, independently of constitutional or statutory provisions allowing such appeal). As such, a state may place reasonable restrictions on the exercise of that right without offending due process. In *Abney v. United States*, 431 U.S. 651, 656 (1977), the Supreme Court more recently recognized that "there is no constitutional right to an appeal." That right "may be accorded by the State to the accused upon such terms as in its wisdom may be deemed proper." *McKane*, 153 U.S. at 687.

Similarly, in the habeas context, the right to appeal is governed by statute, specifically 28 U.S.C. § 2253. This provision mandates that a prisoner obtain a COA before appealing the denial of habeas relief. *See* 28 U.S.C. § 2253(c)(1). The Supreme Court has consistently upheld the constitutionality of this filtering and screening mechanism. *See Slack*, 529 U.S. 473 (approvingly explaining the operation of § 2253(c)(2)'s "substantial showing" requirement when a district court denies a habeas petition on procedural grounds); *Hohn v. United States*, 524 U.S. 236, 248 (1998) (describing "the issuance of a [COA]" as "a threshold

prerequisite for court of appeals jurisdiction"); *Miller-El*, 537 U.S. at 336 (expressly stating that a COA is "a jurisdictional prerequisite," absent which "federal courts of appeals lack jurisdiction to rule on the merits of appeals from habeas petitioners"); *Gonzalez v. Thaler*, 565 U.S. 134, 154 (2012) (ruling that a COA must specify which issues meet the required showing, a mandatory but not jurisdictional rule, and that the COA requirement applies to all appeals from denied federal habeas petitions).

By enacting the COA requirement, Congress has simply invoked its power to set limits on appellate jurisdiction in habeas cases. *See Miller-El*, 537 U.S. at 336, 337 (AEDPA "placed more, rather than fewer, restrictions on the power of federal courts to grant writs of habeas corpus to state prisoners"); *Daniels v. United States*, 532 U.S. 374, 381 (2001) (indicating that such vehicles as § 2254 that afford review of constitutional challenges are neither unlimited nor indefinitely available but that procedural barriers such as statutes of limitations and other rules concerning availability of remedies legitimately operate to limit access to review); *see also Gonzalez*, 565 U.S. 134, 156, (Scalia, J., dissenting).

b. The COA requirement is a reasonable threshold, not an absolute bar

Critically, while the COA requirement places a threshold constraint on habeas appeals, it does not enact an absolute bar. Under 28 U.S.C. § 2253(c)(2),

a COA may issue upon a "substantial showing of the denial of a constitutional right." The Supreme Court has interpreted this standard to require a habeas petitioner to demonstrate that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further.

This threshold is not insurmountable. As the Court explained in *Miller-El*, the COA inquiry is a "threshold inquiry" that "does not require full consideration of the factual or legal bases adduced in support of the claims." *Miller-El*. 537 U.S. at 336. Rather, it simply asks whether the district court's resolution of the constitutional claims is debatable among jurists of reason. *Id.* at 338.

In this way, the COA requirement strikes a reasonable balance. It weeds out clearly frivolous appeals without foreclosing appellate review of arguably meritorious claims. *See Slack*, 529 U.S. at 484 (indicating that the COA requirement serves a gatekeeping function while still allowing an appeal to be taken "[w]here a district court has rejected the constitutional claims on the merits"). Noor's contention that the COA requirement violates due process by impeding access to the courts fails to grapple with the modest and surmountable nature of the COA threshold. In light of the Supreme Court's clear and consistent

approval of reasonable statutory restrictions on the right to appeal, including in habeas cases, Noor's due process argument is unavailing.

c. The cases cited by Noor are distinguishable from the COA requirement

The cases relied upon by Noor to argue that the COA requirement violates the right of access to the courts are inapposite. In *Bounds v. Smith*, 430 U.S. 817 (1977), the Supreme Court held that "[t]he fundamental constitutional right of access to the courts requires prison authorities to assist inmates in the preparation and filing of meaningful legal papers by providing prisoners with adequate law libraries or adequate assistance from persons trained in the law." *Bounds*, 430 U.S. 817, 828 (1977). The Court grounded this right in the Equal Protection Clause and, by implication, the Due Process Clause. *Id.* at 818, 822 (citing *Griffin v. Illinois*, 351 U.S. 12 (1956) (recognizing inmate's need for adequate and effective appellate review) and *Douglas v. California*, 372 U.S. 353 (1963) (reviewing indigent inmates' meaningful appeals from their convictions)).

However, *Bounds* and its progeny dealt with the affirmative obligations of prison officials to facilitate prisoners' access to the courts in the first instance. *See, e.g.*, *Lewis v. Casey*, 518 U.S. 343, 346 (1996) (addressing whether prison officials must provide inmates with a law library or legal assistance in view of their constitutional right of access to the courts). These cases did not address

reasonable procedural restrictions on the right to appeal, such as the COA requirement. Indeed, the Court in *Bounds* explicitly noted that its holding "does not foreclose alternative means to achieve" the goal of providing prisoners with meaningful access to the courts. *Bounds*, 430 U.S. at 830. The Court in *Lewis* later constrained and abrogated the holding in *Bounds* by emphasizing *Bounds*' declaration that law library facilities be made available to inmates was *merely one* constitutionally acceptable method to assure meaningful access to the courts. *Lewis*, 518 U.S. at 351.

Here, unlike the absolute deprivation of law libraries or legal assistance at issue in *Bounds*, the COA requirement does not completely foreclose access to the appellate courts. As discussed above, it simply requires a threshold showing that reasonable jurists could debate the district court's resolution of the petitioner's constitutional claims. *See Slack*, 529 U.S. at 482, 484. A prisoner who makes this showing will be granted a COA and allowed to proceed with his appeal. *Id.* Thus, the COA requirement is a far cry from the total denial of access that concerned the Court in *Bounds*.

d. The COA requirement serves legitimate interests, unlike the restrictions in Noor's cited cases

Moreover, the restrictions at issue in the cases cited by Noor did not serve any legitimate penological or judicial interests. For instance, in *Ex parte Hull*,

312 U.S. 546 (1941), the Supreme Court invalidated a prison regulation that allowed prison officials to intercept and screen habeas petitions before they could be filed in court. *Hull*, 312 U.S. at 547, 549. The Court found that this regulation served no legitimate purpose and impermissibly abridged or impaired the prisoner's right to apply for a writ of habeas corpus. *Id.*

Here, in contrast, the COA requirement is not an arbitrary or purposeless regulation. Rather, it serves the vital interests of preserving scarce judicial resources and promoting the finality of state court judgments. *See Miller-El*, 537 U.S. at 337-338 (explaining the COA requirement serves a gatekeeping function and protects the integrity of the appellate process by preventing the repeated filing of frivolous petitions). By weeding out clearly meritless appeals, the COA requirement allows appellate courts to focus their attention on potentially viable claims. *See Barefoot*, 463 U.S. at 892–93 (observing that the "primary means of separating meritorious from frivolous [habeas] appeals should be the decision to grant or withhold a certificate of probable cause").

Furthermore, by respecting the finality of state court judgments in cases where no reasonable jurist could debate the denial of habeas relief, the COA requirement reinforces the principles of comity and federalism that underlie our dual system of criminal justice. *See Woodford*, 538 U.S. at 206 (2003)

(emphasizing that AEDPA's new requirements constraining federal habeas authority to grant petitions serves an important function by preventing frivolous appeals and promoting comity between the state and federal courts). These legitimate judicial and federalism concerns differentiate the COA requirement from the arbitrary restrictions struck down in the cases relied upon by Noor.

In sum, Noor's attempt to analogize the COA requirement to the restrictions at issue in cases like *Bounds* and *Hull* is misplaced. Unlike those restrictions, the COA requirement does not completely deny access to the courts and serves vital judicial and societal interests. Noor's reliance on these inapposite cases fails to undermine the well-established constitutionality of the COA requirement.

C. The COA Requirement Does not Violate Equal Protection Because Prisoners and the Government are not Similarly Situated

Equal protection principles do not prohibit the COA requirement's disparate treatment of prisoners and the government in federal habeas proceedings because these parties are not similarly situated. The Equal Protection Clause requires states to "treat like cases alike" but allows them to "treat unlike cases accordingly." *Vacco v. Quill*, 521 U.S. 793, 799 (1997); *Plyler v. Doe*, 457 U.S. 202, 216 (1982) (quoting *Tigner v. Texas*, 310 U.S. 141, 147 (1940), declaring the Constitution does not require things which are different

in fact or opinion to be treated in law as though they were the same). In the habeas context, prisoners and the government stand in fundamentally different positions, justifying the differential treatment under the COA requirement.

1. The government bears unique responsibilities and interests in habeas proceedings

As the representative of the State of Washington in this case, the Respondent government has critical duties and concerns in defending its criminal judgments that prisoner-petitioners like Noor do not share. The Supreme Court has recognized that our federal system respects "the independent power of a State to articulate societal norms through criminal law," but this power "means little if the State cannot enforce them." *McCleskey v. Zant*, 499 U.S. 467, 491 (1991). While habeas corpus provides a vital means for prisoners to protect their constitutional rights, it necessarily intrudes upon states' sovereignty by empowering federal courts to overturn state convictions. *Davila v. Davis*, 582 U.S. 521, 537 (2017). The COA requirement serves as an essential safeguard against this intrusion by guaranteeing that only petitioners who substantially show the denial of a constitutional right can compel a state to defend its judgment on appeal in federal court. *Miller-El*, 537 U.S. at 337.

Moreover, the government has a substantial interest in preserving the finality of criminal judgments after a petitioner has fully and fairly litigated his

claims. As the Supreme Court has explained, "Finality is essential to both the retributive and the deterrent functions of criminal law. Neither innocence nor just punishment can be vindicated until the final judgment is known." *Calderon v. Thompson*, 523 U.S. 538, 555 (1998) (internal quotation marks omitted). Permitting any prisoner whose petition has been denied to appeal as of right would undercut these critical interests and burden states with the significant costs of perpetually defending against mostly meritless appeals. *Miller-El*, 537 U.S. at 337.

2. The COA requirement does not unduly burden prisoners' access to habeas review

Notably, the COA requirement does not unduly impair prisoners' ability to invoke the Great Writ. While the COA standard screens out insubstantial appeals, it is not exceedingly demanding. To obtain a COA, a petitioner need only demonstrate 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. This threshold assessment does not necessitate a full examination of the claims' factual or legal bases. *Id.* at 336.

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3. The Constitution permits and justifies differential treatment of prisoners, and the COA requirement mirrors the distinct roles and burdens in habeas litigation

Without even hinting that racial bias tainted the statute's origins, the Supreme Court has repeatedly acknowledged these valid justifications for the COA requirement. Prison regulations that treat inmates differently from non-inmates are constitutionally valid as long as they relate to legitimate penological interests and provide reasonable protections that comply with the Due Process Clause. *Wilkinson v. Austin*, 545 U.S. 209, 224-25, 230 (2005). In *Turner v. Safley*, 482 U.S. 78 (1987), the Court upheld a Missouri prison regulation that restricted inmate-to-inmate correspondence. The Court recognized that "prison administrators [...], and not the courts, [are] to make the difficult judgments concerning institutional operations." *Id.,* 482 U.S. at 89. The Court also noted that "when a prison regulation impinges on inmates' constitutional rights, the regulation is valid if it is reasonably related to legitimate penological interests." *Id.,* 482 U.S. at 87.

Further, the Supreme Court has effectively acknowledged that criminally convicted persons and the government, when acting to use judicial resources to effectuate a legal remedy, are not similarly situated. *See Ross v. Moffitt*, 417 U.S. 600, 616 (1974) (States are not constitutionally required to provide counsel for

indigent defendants seeking discretionary appeals; they must only assure "an adequate opportunity to present his claims fairly in the context of the State's appellate process"); *Pennsylvania v. Finley*, 481 U.S. 551, 557 (1987) (declaring states are not required to provide counsel for indigent defendants in post-conviction proceedings and emphasizing that "States have no obligation to provide [post-conviction] relief, . . . and when they do, the fundamental fairness mandated by the Due Process Clause does not require that the State supply a lawyer as well"); *District Attorney's Office for the Third Judicial District v. Osborne*, 557 U.S. 52, 68-69 (2009) (A convicted person does not have a constitutional right to access state evidence for post-conviction DNA testing; the State has more flexibility in determining post-conviction relief procedures due to the defendant's diminished liberty interests).

These well-established precedents squarely align with the COA requirement's differential treatment of prisoners and government litigators. Although the COA requirement imposes a threshold procedural hurdle on inmate appeals that does not apply when the government appeals, this distinction is justified by the materially different status, interests, and incentives of incarcerated litigants as compared to the government. The COA requirement's disparate application to habeas petitioners and respondents parallels the

well-established legal principles governing the distinct roles and burdens of prisoners and states in federal post-conviction proceedings.

Moreover, the Supreme Court has consistently recognized these differences in pivotal cases interpreting the AEDPA. In *Burt v. Titlow*, 571 U.S. 12 (2013), the Court clarified that under AEDPA's requirements for reviewing state court decisions, "the prisoner bears the burden of rebutting the state court's factual findings 'by clear and convincing evidence.'" *Id.*, 571 U.S. at 15 (quoting 28 U.S.C. § 2254(e)(1)). While the petitioner must persuade the federal court that the state ruling contravenes clearly established Supreme Court precedent, the respondent is not required to defend the reasoning of the state court decision. This allocation of burdens highlights the petitioner's weighty obligation to surmount AEDPA's deferential standard of review.

Likewise, in *Cullen v. Pinholster*, 563 U.S. 170 (2011), the Court held that review under 28 U.S.C. § 2254(d)(1) is limited to the record that was before the state court that adjudicated the claim on the merits. *Id.*, 563 U.S. at 181-82. This effectively means that the petitioner must rely on the state court record to argue that the state court's decision was contrary to, or involved an unreasonable application of, clearly established federal law, while the government is not required to defend the reasoning of the state court decision. Again, the state

respondent bears no obligation to vindicate the state court's rationale and can contend that the decision nevertheless withstands scrutiny under existing case law. This is because, as the Court in *Cullen* reasoned (*id*. at 186), federal courts sitting in habeas are not an alternative forum for trying facts and issues which a prisoner made insufficient effort to pursue in state proceedings, as state courts are the principal forum for asserting constitutional challenges to state convictions. *See also id*. (citing *Wainwright v. Sykes*, 433 U.S. 72, 90 (1977) ("'[T]he state trial on the merits [should be] the 'main event,' so to speak, rather than a 'tryout on the road' for what will later be the determinative federal habeas hearing')").

Even before AEDPA's enactment, the Supreme Court acknowledged crucial distinctions between habeas petitioners and respondents. In *Picard v. Connor*, 404 U.S. 270 (1971), the Court reaffirmed that "a state prisoner must normally exhaust available state judicial remedies before a federal court will entertain his petition for habeas corpus." *Id*., 404 U.S. at 275 (1971). The state respondent can raise failure to exhaust as a defense warranting dismissal. This underscores petitioners' obligation to provide state courts with the initial opportunity to address alleged defects in their convictions.

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These cases confirm the asymmetrical responsibilities of prisoners and states in federal habeas litigation. Petitioners shoulder the burden of overcoming AEDPA's relitigation bar by clearly and convincingly proving that a state decision contravened or unreasonably applied Supreme Court precedent. *See Burt*, 571 U.S. at 18 (reiterating that "[t]he prisoner bears the burden of rebutting the state court's factual findings 'by clear and convincing evidence.'"); *Cullen*, 563 U.S. at 181. In contrast, the government as respondents have no duty to establish the correctness of the state court's reasoning. *See Wilson v. Sellers*, 584 U.S. 122, 125–26 (2018) (holding that a federal court in a habeas corpus matter reviewing an unexplained state court decision on the merits should "look through" that decision to the last related state court decision that provides a relevant rationale and "presume that the unexplained decision adopted the same reasoning;" however, the state may rebut the presumption by showing that the unexplained decision most likely relied on different grounds). The COA requirement's differing treatment of petitioners and respondents reflects this longstanding framework allocating the burdens of proof and persuasion in habeas cases.

Noor's attempts to argue that the COA requirement is subject to strict scrutiny fail for multiple reasons. The Supreme Court has never recognized a

fundamental right of state prisoners to appeal the denial of federal habeas relief without reasonable limitations. On the contrary, it is well-established that "[t]here is no constitutional right to an appeal," *Abney*, 431 U.S. at 656, and the right to appeal in habeas proceedings is statutory, not constitutional, and Congress may place reasonable restrictions on that right. *See Felker*, 518 U.S. at 664.

Contrary to Noor's suggestion, the fact that the COA requirement applies only to habeas petitioners and not the government does not trigger strict scrutiny. Habeas petitioners are not a suspect class, and reasonable distinctions may be drawn between prisoners and other litigants without offending equal protection principles. *See Romer*, 517 U.S. at 631 (applying rational basis review to equal protection challenge not involving a suspect class); *Estelle v. Dorrough*, 420 U.S. 534, 538-39 (1975) (holding state law requiring dismissal of appeals by felons who escape during pendency of appeal did not violate equal protection because classification bore rational relationship to legitimate state interests). The COA requirement's differential treatment of prisoners is amply justified by the unique interests implicated in habeas proceedings, including the state's strong interest in preserving the finality of its criminal judgments, as discussed more fully in the argument sections that follow.

4. The COA requirement is rationally related to legitimate government interests

The COA requirement does not violate equal protection principles because it is rationally related to legitimate government interests. Reducing frivolous appeals is a valid government objective that the COA requirement rationally furthers. *See Barefoot*, 463 U.S. at 892-95; *Slack*, 529 U.S. at 484-86; *Woodford*, 538 U.S. at 206. The Supreme Court has acknowledged the government's substantial interest in conserving judicial resources and preventing abuse of the habeas corpus process through the COA requirement. *See Slack*, 529 U.S. at 484; *Miller-El*, 537 U.S. at 336-37; *Gonzalez*, 565 U.S. at 140-141.

Courts have long recognized the necessity of limiting access to appellate review to avoid overburdening the judicial system with meritless claims. *See Barefoot*, 463 U.S. at 887, 892 (discussing habeas courts are not forums in which to relitigate state trials); *Felker*, 518 U.S. at 664 (discussing appellate jurisdiction is subject to exception and the Congressional restrictions on repetitious habeas petitions validly constitute a modified res judicata rule, a restraint on what is called in habeas corpus practice "abuse of the writ"); *see also id. (*citing *McCleskey v. Zant*, 499 U.S. at 489, discussing the doctrine of abuse of the writ that refers to a complex and evolving body of equitable principles informed and controlled by historical usage, statutory developments, and judicial decisions;

noting the added restrictions which the Act places on second habeas petitions are well within the compass of this evolutionary process). The COA requirement serves this purpose by imposing a reasonable threshold that applicants must meet before pursuing an appeal. By reaffirming the "substantial showing" standard for obtaining a COA, the Supreme Court has underscored the provision's importance in screening out clearly deficient claims.

Importantly, as mentioned above, the COA requirement does not erect an insurmountable barrier to appellate review, but rather operates as a mechanism to filter out claims that plainly lack merit. The "reasonable jurists" test established in *Slack* for issuing a COA ensures that habeas petitioners who make a preliminary showing that their claims warrant appellate consideration can still access further review. By requiring habeas petitioners to make this initial showing, the COA requirement conserves scarce judicial resources for those cases that are most likely to involve actual constitutional violations.

5. Habeas petitioners and the government are not similarly situated

As discussed more thoroughly above, habeas petitioners and the government are not similarly situated in the appeals process, further justifying the differential treatment under the COA requirement. The government has a compelling interest in the finality of state court judgments and the efficient

allocation of judicial resources, which the COA requirement helps to protect. The COA requirement as a vital means to filter out claims that are unlikely to succeed while still preserving meaningful habeas review. In contrast, habeas petitioners have already had their claims fully adjudicated in state court proceedings by the government at trial, the "main event" as mentioned in *Wainwright* (433 U.S. at 90), and those proceedings are presumed to be correct. 28 U.S.C. § 2254(e)(1).

Given these material differences, subjecting habeas petitioners to an additional procedural hurdle before pursuing appellate review is rationally related to advancing the government's legitimate interests. The COA requirement neither targets a suspect class nor impinges upon a fundamental right, as access to appellate review may be reasonably restricted. *Slack*, 529 U.S. at 483-84. Consequently, the provision readily withstands rational basis scrutiny under equal protection principles.

6. Noor mischaracterizes access-to-court cases and misstates applicable standards of review.

Noor misconstrues precedent in arguing there is no justification for treating habeas petitioners differently from other civil appellants. *See* Opening Br. at 25-36 (citing, *inter alia*, *Wolff v. McDonnell*, 418 U.S. 539, 556, 561-63 (1970); *Silva v. Di Vittorio*, 658 F.3d 1090, 1103 (9th Cir. 2011); *Penton v. Pool*,

724 Fed. Appx. 546 (9th Cir. 2018) (unpublished); *Proctor v. Sparke*, 472 F. App'x 430 (9th Cir. 2012) (unpublished); *Ringgold-Lockhart v. County of Los Angeles*, 761 F.3d 1057 (9th Cir. 2014)).

Wolff addressed due process in prison disciplinary hearings, carefully calibrating requirements to balance prisoners' rights and institutional needs. 418 U.S. at 556, 561-63. It did not suggest prisoners must be treated identically to non-prisoners in all civil proceedings. *Id*. *Wolff*'s context-specific standard is inapposite to whether the COA requirement for federal habeas appeals violates equal protection. *See* 28 U.S.C. § 2253(c). Unlike in *Wolff*, the COA provision does not implicate daily prison operations or deprive inmates of liberty without due process. Habeas petitioners denied relief have already received extensive state and federal district court review. The COA requirement simply limits further review to debatable issues.

Silva and its unpublished progeny prohibited active interference with habeas litigation, but did not address reasonable procedural restrictions like the COA requirement. 658 F.3d at 1103; *Penton*, 724 Fed. Appx. at 549-50; *Proctor*, 472 F. App'x at 431. *Ringgold-Lockhart* is also inapposite, as its pre-filing orders on vexatious litigants are far more onerous than the COA's threshold showing. 761 F.3d at 1061.

Because the COA requirement neither burdens a fundamental right nor targets a suspect class, rational basis review applies. *See Romer*, 517 U.S. at 631. The requirement rationally serves the legitimate interests of conserving judicial resources and promoting finality. *See Barefoot*, 463 U.S. at 892; *Slack*, 529 U.S. at 483-84. Noor's misplaced arguments invoking strict scrutiny fail.

7. The Court must presume the COA requirement is constitutional

The COA requirement is a constitutionally valid means of furthering the government's legitimate interests in preserving judicial resources and maintaining the finality of state court decisions. The provision is rationally related to reducing frivolous habeas appeals while still affording a reasonable opportunity for appellate review of potentially meritorious claims. Noor's arguments fail to overcome the strong presumption of constitutionality accorded to acts of Congress, particularly for a well-established provision that the Supreme Court has consistently upheld. In light of the COA requirement's rational relationship to legitimate government objectives, and the material differences between habeas petitioners and the government in the appeals process, Noor's equal protection challenge must be rejected.

8. Moreover, Noor's arguments to the contrary disregard well-established habeas principles

a. Adopting Noor's view would upend federal habeas jurisprudence

Noor's contentions that if federal habeas procedures are severe, then habeas petitioners must be afforded leniency and ample appellate rights run counter to well-established habeas jurisprudence. *See* Opening Brief at 38. If the court adopted Noor's view, it would upend the carefully calibrated structure of federal habeas by shifting the balance heavily in favor of petitioners. On the contrary, the very arguments Noor advances about the rigorous and burdensome nature of federal habeas procedure, particularly the COA requirement, reinforce the conclusion that equally exacting standards must apply to a habeas petitioner who has not diligently pursued a proper and meritorious claim in federal court. The need for such a demanding standard, fully consistent with Congress's strict habeas statutes, is most clearly demonstrated by the importance of the finality of state criminal convictions.

The Supreme Court has long held that the significant burdens imposed on individuals collaterally attacking their convictions are justified because they have already been duly convicted and because states have a strong interest in the finality of their criminal judgments. *Herrera v. Collins*, 506 U.S. 390, 399

(1993); *Calderon v. Thompson*, 523 U.S. 538, 556 (1998); *Duncan v. Walker*, 533 U.S. 167, 178-79 (2001). As the Court has explained, "Procedural barriers, such as statutes of limitations and rules concerning procedural default and exhaustion of remedies, operate to limit access to review on the merits of a constitutional claim." *Daniels*, 532 U.S. at 381.

The Supreme Court has emphasized that "'[n]o procedural principle is more familiar to this Court than that a constitutional right . . . may be forfeited in criminal as well as civil cases by the failure to make timely assertion of the right before a tribunal having jurisdiction to determine it.'" *Daniels*, 532 U.S. at 381 (quoting *Yakus v. United States*, 321 U.S. 414, 444 (1944)). Congress's stringent habeas procedures and the finality assurances that states are entitled to establish that Noor incorrectly equates the government's position with his own litigation status.

b. The high threshold for habeas relief refutes Noor's Equal Protection claim

AEDPA creates "an independent, high standard to be met before a federal court may issue a writ of habeas corpus to set aside state-court rulings." *Uttecht v. Brown*, 551 U.S. 1, 10 (2007). The state respondent bears the burden of defending the state court judgment against a petitioner's attempt to meet this high standard. To obtain relief, the petitioner "must show that the state court's

ruling on the claim being presented in federal court was so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement." *Harrington v. Richter*, 562 U.S. 86, 103 (2011). This "standard [that] is difficult to meet . . . because it was meant to be." *Id.* at 98, 102. Given that AEDPA "demands that state-court decisions be given the benefit of the doubt," *Woodford v. Visciotti*, 537 U.S. 19, 24 (2002), the petitioner faces a distinctly heavier burden in showing his appeal has merit than the state respondent, whose legitimate interest in the finality of the judgment is heightened by ongoing and protracted litigation that undermines rather than promotes finality.

The Respondent-Appellee is not suggesting that its vital interest in the finality of criminal judgments categorically precludes habeas relief whenever a petitioner alleges a constitutional error. Rather, in this case, the differences in the parties' roles under AEDPA at the appellate stage, together with the prudential considerations of finality, support the conclusion that the government and the petitioner are not "similarly situated" for equal protection purposes. *Cf. United States v. Rivera*, 376 F.3d 86, 92 (2d Cir. 2004) ("A defendant has no due process right to continue to challenge his conviction in perpetuity."); *Herrera*, 506 U.S. at 426 (O'Connor, J., concurring) ("At some point in time, the State's

interest in finality must outweigh the prisoner's interest in yet another round of litigation.").

In conclusion, the dramatically different interests at stake for prisoners and the government in habeas proceedings, combined with the relatively minor burden the COA requirement imposes on prisoners, demonstrates that these parties are not similarly situated for equal protection purposes. The disparate treatment of prisoners and the government in this context is amply justified. Therefore, Noor's equal protection challenge to the COA requirement is without merit.

D. The COA Requirement's Contemporary Justifications Establish its Constitutionality

The constitutionality of the COA requirement hinges on its contemporary justifications, not its alleged historical origins. Irrespective of its historical context, the Supreme Court has consistently evaluated the COA provision based on its rational relationship to legitimate government objectives. *See Slack*, 529 U.S. at 483-84 (2000).

1. The COA requirement serves legitimate government interests

Preserving judicial resources and maintaining the finality of state court judgments are compelling justifications for the COA requirement. The provision acts as a crucial filtering mechanism, ensuring that federal courts are not

overwhelmed by frivolous habeas appeals. *See McQuiggin v. Perkins*, 569 U.S. 383, 400–01 (2013). By requiring petitioners to make a substantial showing of the denial of a constitutional right, the COA requirement allows courts to focus their limited resources on potentially meritorious claims. *See Slack*, 529 U.S. at 483-84.

Furthermore, the COA requirement respects the authority and competence of state courts by preventing the relitigation of fully adjudicated claims unless the petitioner demonstrates a reasonable probability of success on the merits. *See Miller-El*, 537 U.S. at 336. This high threshold promotes comity and federalism by according proper deference to state court factual findings and legal conclusions. *See Woodford v. Visciotti*, 537 U.S. 19, 24 (2002) (per curiam).

2. This court should reject Noor's arguments because they fail to invalidate the requirement's current application

Noor's arguments regarding the alleged racist origins of the COA requirement do not undermine its contemporary application and justifications. The Supreme Court has consistently evaluated the provision based on its rational relationship to legitimate government objectives, irrespective of its historical context. *See Slack*, 529 U.S. at 483-84.

The COA requirement has evolved and been consistently applied without any indication of racial animus, serving as an integral part of the well-established

system of federal habeas review. *See Miller-El*, 537 U.S. at 336. Invalidating the provision based on its alleged historical origins would disrupt this carefully calibrated system and undermine the important interests it serves.

Noor's attempt to cast doubt on the COA requirement's legitimacy by invoking its historical context fails to acknowledge the significant evolution of the provision and its consistent application without any suggestion of racial bias. *See McQuiggin*, 569 U.S. at 397–400. Striking down the COA requirement based on speculative and attenuated historical allegations would set a dangerous precedent of invalidating long-standing and constitutionally sound provisions based on alleged improprieties.

In sum, the COA requirement's contemporary justifications, rooted in legitimate government interests, firmly establish its constitutionality. Noor's arguments fail to invalidate the requirement's current application and should be rejected.

3. The COA requirement's evolution and consistent application negate its alleged racist origins

Noor's attempt to undermine the COA requirement's legitimacy by invoking its historical context fails to acknowledge the provision's significant evolution and consistent application without any indication of racial animus in modern times. *See Slack*, 529 U.S. at 483-84; *Miller-El*, 537 U.S. at 336. Since

initially enacting the COA requirement, Congress and the courts have substantially refined it, shaping it into a race-neutral provision focused on the legal substance of habeas claims. *See Slack*, 529 U.S. at 483-84 (establishing the "reasonable jurists" test for issuing a COA); *Miller-El*, 537 U.S. at 336 (emphasizing that a COA determination is a threshold inquiry distinct from the merits of the appeal).

Moreover, the Supreme Court has consistently applied the COA requirement without suggesting that racial bias taints it. *See Medellin v. Dretke*, 544 U.S. 660, 666 (2005) (Mexican national asserting habeas claim for relief under the Vienna Convention on Consular Relations requires a certificate of appealability in order to pursue the merits of his claim on appeal under 28 U.S.C. § 2253(c)(1)); *Buck v. Davis*, 580 U.S. 100, 122 (2017) (recognizing rule in a case involving racist assertions by petitioner, recognizing the rule that a litigant seeking a COA must demonstrate that a procedural ruling barring relief is itself debatable among jurists of reason). The Court's repeated endorsement of the provision based on its rational relationship to valid government objectives belies any notion that the COA requirement is motivated by racial animus or applied in a discriminatory manner.

E. Invalidating the COA Requirement Would Upend the Well-Established Federal Habeas System and Undermine Vital Judicial Interests

The federal habeas system has firmly entrenched the COA requirement, which serves vital functions that ensure the efficient and effective administration of justice. *Slack*, 529 U.S. at 483-84; *Miller-El*, 537 U.S. at 336. Invalidating this well-established provision based on Noor's speculative and attenuated historical allegations would upend the carefully crafted balance between state and federal courts, undermining the finality of state court judgments and straining judicial resources.

1. The COA requirement respects state court authority and maintains the delicate balance of federalism in habeas review

The COA requirement reinforces the presumption that state court factual findings and legal conclusions are correct. 28 U.S.C. § 2254(e)(1). By imposing a high threshold for appellate review, the provision acknowledges that state courts are the primary forum for adjudicating constitutional claims in criminal cases. *Harrington*, 562 U.S. at 103. Eliminating this threshold would signal a lack of trust in state court decisions, encouraging endless relitigation of fully adjudicated claims and disrupting the delicate balance between state and federal courts in the habeas context. *See id.*

2. The COA requirement preserves scarce judicial resources by filtering out frivolous claims and allowing courts to focus on meritorious cases

The COA requirement plays a crucial role in conserving limited appellate resources by filtering out frivolous claims. It allows appellate courts to focus their time and energy on cases with the greatest likelihood of success. *Miller-El*, 537 U.S. at 336. Striking down this essential screening mechanism would invite a flood of meritless appeals, overburdening federal courts and impeding their ability to administer justice effectively. *See McCleskey v. Zant*, 499 U.S. at 479, 491–92 (recognizing the limited resources of federal courts and the need to avoid unnecessary consumption of those resources by frivolous claims, including appeals.

Moreover, invalidating the COA requirement would significantly delay the resolution of meritorious claims by increasing the volume of habeas appeals. Deserving petitioners would face longer wait times as appellate courts struggle to keep up with the influx of frivolous petitions. This would undermine the prompt and efficient administration of justice, leaving potentially innocent individuals languishing in prison.

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3. Noor's speculative approach relying on alleged historical origins fails to justify invalidating the COA requirement and disregards Supreme Court precedent focusing on contemporary justifications

Noor's attempt to invalidate the COA requirement based on its alleged historical origins is misguided, if not merely unsubstantiated and speculative. The proper focus of constitutional analysis is on the contemporary operation and effects of a challenged provision, not its historical roots. *McCleskey v. Kemp*, 481 U.S. 279, 298 n.20 (1987) (rejecting McCleskey's argument based on historical evidence of racial bias in Georgia's legal system and acknowledging the undeniable history of racial discrimination, the Court ruled the historical evidence irrelevant because it was not reasonably contemporaneous with the capital punishment statute being challenged); *see Magwood v. Patterson*, 561 U.S. 320, 338 (2010) (stating that in light of the "complex history of the phrase 'second or successive,' we must rely upon the current [1996 AEDPA] text to determine when the phrase applies, rather than pre-AEDPA precedents or superseded statutory formulations"). To paraphrase the Supreme Court, *Kemp*, 481 U.S. at 298 n.20, "[a]lthough the history of racial discrimination in this country is undeniable, [a court] cannot accept official actions taken long ago as evidence of current intent."

Against these pronouncements, Noor proffers his own approach, exemplified by his mistaken reliance on *Edwards v. Aguillard*, 482 U.S. 578 (1987). *See* Opening Brief at 12 n.2. Noor cites *Edwards* attempting to prove § 2253's COA requirement's alleged historical origins govern its current constitutional validity. In *Edwards*, the Supreme Court considered the historical context and events leading up to passage of Louisiana's "Creationism Act" in determining that the law was motivated by a discriminatory intent to advance a particular religious belief. *Edwards*, 482 U.S. at 595.

However, the historical record relating to § 2253 is markedly different and does not similarly reveal an invidious discriminatory purpose. Unlike in *Edwards*, where the legislative history demonstrated the Creationism Act's primary purpose was to restructure the science curriculum to conform to a particular religious viewpoint, *id*. at 592, the COA requirement's background contains no comparable expressions of discriminatory animus. Rather, the COA provision evolved from earlier habeas statutes as part of Congress's efforts to reasonably limit appeals in habeas corpus proceedings. *See Barefoot*, 463 U.S. at 892 & n.3. This limitation served legitimate interests in conserving judicial resources and preventing frivolous appeals, not targeting any racial group. *See Miller-El*, 537 U.S. at 337.

The Supreme Court has repeatedly recognized these valid justifications for the COA requirement without even hinting that racial bias tainted the statute's origins. *See Slack*, 529 U.S. at 483-84; *Miller-El*, 537 U.S. at 337. If the COA requirement's historical roots raised the specter of racial animus discerned by the Court in *Edwards*, one would expect the nation's esteemed supreme court practitioners to have litigated Noor's assertion before the Court, and the Court itself to have acknowledged and grappled with that troubling context. The Court's silence underscores the lack of historical evidence that the COA provision was motivated by discriminatory intent.

Finally, unlike the Creationism Act in *Edwards*, which the Court found did little to advance its avowed secular purpose, 482 U.S. at 587-89, the COA requirement remains closely tethered to its legitimate ends. By filtering out insubstantial appeals while still allowing appellate review of potentially meritorious claims, the COA statute continues to serve its goals of conserving judicial resources and promoting the finality of state court judgments. *See Miller-El*, 537 U.S. at 337. This congruence between the COA requirement's purpose and effect bolsters the conclusion that racial bias did not motivate its enactment. The Court's analysis in *Edwards* thus provides no basis for invalidating § 2253's COA requirement. Noor has simply speculated his way

into deducing, without more, the historical context of § 2253's COA requirement evinces a racially discriminatory purpose.

Noor's speculative approach also manifestly leads him astray in invoking strict scrutiny by labeling the COA requirement an infringement on the fundamental right of access to the courts. The requirement is a valid procedural regulation of habeas appeals that is subject only to rational basis review, which it easily satisfies. *See Miller-El*, 537 U.S. at 337; *Slack*, 529 U.S. at 483-84. Therefore, this Court should reject Noor's strict scrutiny argument.

If courts adopted Noor's unfounded approach, it would invite endless challenges to established legal rules based simply on perceptions about their historical pedigree, creating significant uncertainty and instability in the law. Furthermore, the COA requirement has evolved and been consistently applied without racial animus. Its contemporary justifications, such as preserving judicial resources and maintaining the finality of state court judgments, are compelling and legitimate. If courts invalidated this well-established provision based on speculative historical allegations, they would disrupt the carefully crafted system of federal habeas review to the detriment of petitioners, the judiciary, and society as a whole.

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4. Amicus' arguments fail to overcome the strong presumption of constitutionality and well-established determination that the COA requirement serves legitimate government objectives

Despite Amicus' attempts to cast doubt on the constitutionality of the COA requirement, their arguments are ultimately unpersuasive. First, the anecdotal examples of COA litigation causing delay in individual cases fail to prove the requirement is not rationally related to legitimate government interests. *See Miller-El*, 537 U.S. at 337 (the COA process serves vital purposes by focusing the attention of the district court on those issues that are debatable among jurists of reason and helps the court weed out frivolous claims); *Barefoot*, 463 U.S. at 892-93 (the "primary means of separating meritorious from frivolous [habeas] appeals should be the decision to grant or withhold a certificate of probable cause").

While there may be instances where the COA process extends timelines (*see* Dkt. #19.1, Amicus Br. at 3-4), this alone does not render the statute unconstitutional. In fact, Congress purposefully erected the COA requirement to promote finality, comity, and conservation of judicial resources. *See Miller-El*, 537 U.S. at 337 (Congress enacted the COA requirement to curb the interminable delays caused by repeated petitions and appeals); *Felker*, 518 U.S. at 662-64

(upholding restrictions on successive petitions as a valid exercise of Congress' power to restrict the availability of relief in habeas cases).

Furthermore, Amicus' assertion that other tools like oral argument waivers and summary dispositions (Dkt. #19.1, at 2, 4, 6) could sufficiently streamline habeas appeals fails to appreciate the vital gatekeeping function of the COA requirement. By requiring a threshold showing that reasonable jurists could debate the district court's resolution, the COA process ensures frivolous appeals are filtered out at the earliest possible stage. *See Barefoot*, 463 U.S. at 892-93. In contrast, alternative methods like utilizing staff attorneys or issuing summary orders still require the court to expend resources considering the merits of the appeal, even if ultimately disposing of it in an expedited manner. The COA requirement avoids this unnecessary burden on judicial resources by weeding out insubstantial claims before full briefing.

Regarding Amicus' claim that the COA standard is unworkable because courts misapply it in cases where state judges have dissented, this argument elevates form over substance. (Dkt. #19.1, at 12-14). The mere existence of a dissent does not automatically mean the COA standard is satisfied—the dissent must explain the debatability of the constitutional issue. *See Miller-El*, 537 U.S. at 336–37. Amicus' examples of courts denying COAs despite dissents fail to

analyze the substance of those dissents to determine if they actually show the claims are reasonably debatable. This superficial argument does not establish the COA standard is unworkable or being disregarded.

Finally, Amicus' contention that the COA requirement ineffectively serves its purported purposes of reducing frivolous appeals because the State pursues dubious appeals, too, is a red herring. The relevant inquiry is whether the statute is rationally related to legitimate government interests, not whether it perfectly achieves those aims in every case. *See Heller v. Doe by Doe*, 509 U.S. 312, 321 (1993) (stating courts are compelled under rational-basis review to accept a legislature's generalizations even when there is an imperfect fit between means and ends. "A classification does not fail rational-basis review because it is not made with mathematical nicety or because in practice it results in some inequality.") (internal quotation marks omitted). The Supreme Court has consistently recognized the COA requirement reasonably promotes comity, finality, and federalism. *See Miller-El*, 537 U.S. at 337. Amicus' arguments do not overcome this well-established determination that the COA requirement is a constitutionally valid exercise of Congress's authority.

5. The Court should uphold the COA requirement to preserve the integrity of the federal habeas system and prevent far-reaching negative consequences of invalidation

Invalidating the COA requirement would severely and negatively impact the federal habeas system in far-reaching ways. It would undermine the finality of state court judgments, strain judicial resources, and hinder the effective administration of justice. The COA requirement serves critical functions in filtering out frivolous claims, conserving scarce appellate resources, and ensuring that meritorious cases receive prompt and thorough consideration. The court should firmly reject Noor's attempt to upend this well-established and constitutionally sound provision based on attenuated historical allegations.

VII. CONCLUSION

For the reasons stated above, Respondent-Appellee respectfully asks this Court to affirm the district court's judgment denying the habeas corpus petition.

DATED this 29th day of April 2024.

Respectfully submitted,

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

VIII. CERTIFICATE OF COMPLIANCE FOR BRIEFS

9th Cir. Case Number(s) 23-1736 *Noor v. Andrewjeski*

I am the attorney or self-represented party.

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