No. _____

In the Supreme Court of the United States

DUSTIN YOUNG,

Petitioner,

v.

JOHN R. SWANEY,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

A federal habeas petitioner seeking to appeal a district court's denial of habeas relief must obtain a certificate of appealability, commonly known as a COA. See 28 U.S.C. § 2253(c). The statute permits a "circuit justice or judge" to issue a COA "if the applicant has made a substantial showing of the denial of a constitutional right." *Ibid.* A petitioner makes such a showing when he demonstrates that "jurists of reason would find it debatable" that the district court's decision was correct. *Slack* v. *McDaniel*, 529 U.S. 473, 484 (2000).

There is a square conflict among the courts of appeals on the following question presented:

Whether a certificate of appealability may be granted under 28 U.S.C. § 2253(c) when the issue that the petitioner wishes to present on appeal has been resolved against him by binding circuit precedent but in his favor by another federal court of appeals.

PARTIES TO THE PROCEEDINGS BELOW

The parties to the proceeding below were petitioner Dustin Young and respondent John R. Swaney. The Butler County, Ohio Court of Common Pleas also was named as a respondent below.

Pursuant to Rule 12.6, Young states his belief that the Butler County, Ohio Court of Common Pleas has no interest in the outcome of the petition.

RELATED PROCEEDINGS

Federal courts:

- *Young* v. *Swaney*, No. 1:23-cv-37, U.S. District Court for the S.D. Ohio (Dec. 11, 2023)
- *Young* v. *Swaney*, No. 1:23-cv-37, U.S. District Court for the S.D. Ohio (April 25, 2024)
- *Young* v. *Swaney*, No. 24-3394, U.S. Court of Appeals for the Sixth Circuit (Sept. 24, 2024)

Ohio state courts:

- *State* v. *Young*, No. CA2020-04-052, Supreme Court of Ohio (Jan. 18, 2022)
- *State* v. *Young*, No. CA2020-04-052, Ohio Court of Appeals (July 26, 2021)
- *State* v. *Young*, No. CA2018-03-047, Ohio Court of Appeals (March 18, 2019)
- *State* v. *Young*, No. CR2017-04-0695, Court of Common Pleas (Feb. 27, 2018)

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INTRODUCTION

Before appealing the dismissal of a habeas petition, a habeas petitioner must obtain a certificate of appealability, or COA. See 28 U.S.C. § 2253(c). The habeas statute directs a "circuit justice or judge" to issue a COA when "the applicant has made a substantial showing of the denial of a constitutional right." *Ibid.* The Court held in *Slack* v. *McDaniel*, 529 U.S. 473 (2000), that this standard requires the petitioner to demonstrate that "jurists of reason would find it debatable" that the district court's decision was correct. *Id.* at 484.

Petitioner Dustin Young sought habeas relief below, asserting that his conviction—which requires him to register as a sex offender for 15 years—violated the Constitution given a clearcut *Brady* violation. He sought habeas review, asserting that his Ohio sex offender registration obligation renders him "in custody" within the meaning of 28 U.S.C. § 2254.

The custody issue has openly divided the courts of appeals. The Third Circuit has held that the restrictions imposed by typical state sex-offender registration laws *do* amount to "custody" for habeas purposes. See *Piasecki* v. *Court of Common Pleas*, 917 F.3d 161 (3d Cir. 2019). The Sixth Circuit has held that they do not. See *Hautzenroeder* v. *Dewine*, 887 F.3d 737 (6th Cir. 2018). The Eleventh Circuit recently sided with the Sixth Circuit, but it did so "admittedly with some hesitation" because the issue is such a close one. *Clements* v. *Florida*, 59 F.4th 1204, 1215 (11th Cir. 2023).

Young's case arose in the Sixth Circuit. The district court accordingly dismissed his habeas petition pursuant to *Hautzenroeder*, holding that his in-person registration obligations do not place him "in custody."

Young sought a COA. He asserted that the custody issue is debatable in light of the circuit split and that he should be allowed to appeal so that he could seek *en banc* review or this Court's review. The district court agreed that *Piasecki* was well reasoned and that a COA would be warranted in ordinary circumstances, but it denied a COA because *Hautzenroeder* foreclosed Young's claim as a matter of Sixth Circuit precedent.

Circuit Judge Raymond Kethledge likewise denied a COA, relying on *Mitchell* v. *United States*, 43 F.4th 608 (6th Cir. 2022). There, the Sixth Circuit held that when "[circuit] precedent bars [the petitioner's] claim," the petitioner categorically "is not eligible for a certificate of appealability." *Id.* at 616. "No COA should issue where the claim is foreclosed by binding circuit precedent because reasonable jurists will follow controlling law." *Ibid.* (quoting *Hamilton* v. *Secretary of the Florida Department of Corrections*, 793 F.3d 1261, 1266 (11th Cir. 2015)). Applying *Mitchell* here, Judge Kethledge concluded that, because *Hautzenroeder* forecloses Young's contention that he is "in custody" as a matter of binding Sixth Circuit precedent, Young is categorially ineligible for a COA. He thus denied a COA.

That decision conflicts squarely with the decisions and uniform practices of the Ninth and Tenth Circuits, and it warrants this Court's immediate review. As the Ninth Circuit has put it, "[t]he fact that another circuit [has] decided [an] issue in a different manner" from the reviewing court's own precedents generally makes the issue "debatable for purposes of meeting the [*Slack*] standard." *Lambright* v. *Stewart*, 220 F.3d 1022, 1026 (9th Cir. 2000). Thus, even when a petitioner's claim is foreclosed by circuit precedent, a court of appeals "should not deny [the] petitioner an opportunity to persuade [it] through full briefing and argument to reconsider circuit law that apparently forecloses relief." *Id.* at 1026.

That approach is surely correct. What matters for *Slack*'s "reasonable jurists" standard is whether the issue is debatable as a general matter, from *this* Court's perspective. To say otherwise would conflict with the plain text of the habeas statute. It also would mean that the right even to *attempt* an appeal would depend on the circuit in which the claim arises, depending on regionally binding lower-court precedents. Such a rule would interfere directly with this Court's ability to resolve a wide range of important legal issues over which the lower courts are divided. In circuits with precedent adverse to petitioners, appellate review of such issues would be effectively cut off.

Habeas cases account for more than 12% of the federal civil docket throughout the country, and they produce a disproportionately high number of circuit splits. The question presented is thus important and frequently recurring. At the same time, clean vehicles for review of the question presented are very rare. In the vast majority of cases, the lower courts do not issue opinions respecting the denial of a COA, making the grounds for denial less certain. And in a great many other cases, procedural complications like defaults and waivers foreclose relief on alternative grounds. This case has no such barriers to further review, offering an unusually suitable vehicle. The petition accordingly should be granted.

OPINIONS BELOW

Judge Kethledge's opinion denying a COA is unpublished. It is available in the Westlaw database at 2024 WL 4751643 and reproduced in the appendix at 1a-4a. The district court's opinion denying a COA also is unpublished. It is available in the Westlaw database at 2024 WL 1793003 and reproduced in the appendix at 5a-20a.

JURISDICTION

The court of appeals denied a certificate of appealability and entered judgment on September 24, 2024. The Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISION INVOLVED

Section 2253(c) of Title 28 of the U.S. Code states in relevant part:

> (1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from—
>
> (A) the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court; or
>
> (B) the final order in a proceeding under section 2255.
>
> (2) A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.

STATEMENT

A. Legal background

Before a habeas petitioner may appeal the dismissal of his section 2254 habeas petition, he must first obtain a certificate of appealability, or COA. 28 U.S.C. § 2253(c). "The COA statute establishes procedural rules and requires a threshold inquiry into whether the circuit court may entertain an appeal." *Miller-El* v. *Cockrell*, 537 U.S. 322, 336 (2003) (quoting *Slack* v. *McDonald*, 529 U.S. 473, 482, 482 (2000)).

The statute's language is spare. *Slack*, 529 U.S. at 480 ("The statute [does] not explain the standards for the issuance of a [COA]."). It specifies only that a judge or justice may issue a COA when "the applicant has made a

substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2).[1]

A habeas petitioner satisfies section 2253(c)'s "substantial showing" standard when he demonstrates "that reasonable jurists could debate whether * * * the petition should have been resolved in a different manner or that the issues presented [are] adequate to deserve encouragement to proceed further." *Slack*, 529 U.S. at 482 (quotation marks omitted) (quoting *Barefoot* v. *Estelle*, 463 U.S. 880, 893 n.4 (1983)). Accord, *e.g.*, *Miller-El*, 537 U.S. at 336; *Buck* v. *Davis*, 580 U.S. 100, 117 (2017).

The "reasonable jurists" standard asks whether the issue is debatable as a general matter. *E.g.*, *Tennard* v. *Dretke*, 542 U.S. 274, 289 (2004); *Lozada* v. *Deeds*, 498 U.S. 430, 432 (1991) (per curium). In other words, the question is whether *this* Court would conclude that the issue raised on appeal "could be resolved in a different manner from the one followed by the District Court." *Lozada*, 498 U.S. at 432. Because an issue may be debatable by this Court's lights regardless of binding lower-court precedent, the debatability inquiry does not turn on whether the lower court is bound by regional precedent to answer the question in a particular way. See *Tennard*, 542 U.S. at 289 (rejecting controlling Fifth Circuit precedent adverse to the petitioner and granting a COA on that basis). And when a circuit split exists on the issue raised by a habeas petition, the judge or court deciding whether to issue a COA must at least "cite [and] analyze this line of [conflicting] authority" in deciding whether an appeal is warranted. *Lozada*, 498 U.S. at 432.

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[1] Prior to AEDPA, section 2253 required habeas petitioners to obtain a certificate of probable cause, or CPC, before appealing. AEDPA changed the label from CPC to COA but retained the same standard for granting leave to appeal. *Slack*, 529 U.S. at 483-484.

B. Factual background

An Ohio state court convicted Young, then a public university employee, of sexual imposition and abduction based on alleged interactions with a female coworker. Dist. Dkt. 23-18 at 2, 7. The coworker was the sole witness against Young, and Young denied her accusations.

The prosecution, in *Brady* disclosures made one month before trial, disclosed "there was a pending complaint by [the coworker] with * * * [the] University." Dist. Dkt. 23-15 at 3. But it did not disclose evidence that the coworker had a financial interest in accusing Young.

When cross-examined about her financial interest, Young's coworker testified she did not intend to sue the university. Dist. Dkt. 23-5 at 84:24-85:9. When asked if she had consulted with an attorney about suing, she answered with a "no," adding "there's no lawsuit" and "[t]here's not going to be." *Id.* at 85:6-9.

In closing arguments, the prosecution asserted that Young's accuser lacked motivation to lie and would not have "made it all up" to "get some imagined possible money" because "[s]he's denied all of that." *Id.* at 304:1-2. Young ultimately was convicted.

Young later learned through public-record requests that his accuser had lied. She in fact had "made a demand on the university for settlement, exchanged offers and counteroffers for settlement, and when negotiations failed, filed a claim with the Equal Employment Opportunity Commission (EEOC) in order to preserve her ability to sue the university." Dist. Dkt. 23-18 at 13. Neither she nor the prosecution had disclosed these facts. *Id.*

Young's motion for a new trial was denied, and his conviction was affirmed. Dist. Dkt. 23-18. Young was sentenced to five years of community control and 15 years of registration under Ohio's sex offender registration law. See Ohio Rev. Code § 2950.01(E).

C. Procedural background

1. Young filed a section 2254 habeas petition, claiming that his due process and confrontation rights had been violated when the prosecution failed to disclose facts about his accuser and her financial conflict of interest. App., *infra*, 2a. Young named John Swaney, the sheriff of Madison County, Ohio, as respondent, asserting that Young's obligation to appear regularly before Swaney for periodic re-registration and other purposes placed him in "custody" under 28 U.S.C. § 2254(a). *Ibid.* [2]

Swaney moved to dismiss the petition, arguing that Young's sex-offender registration requirements did not render him "in custody." App., *infra*, 2a. Relying on *Hautzenroeder* v. *Dewine*, 887 F.3d 737 (6th Cir. 2018), the district court granted the motion over Young's opposition. See App., *infra*, 31a-33a.

2. Young moved for a COA. He argued that, despite *Hautzenroeder*, the question whether his Ohio sex-offender registration requirements render him "in custody" is debatable and deserving of further development; in particular, he expressed an intent to seek discretionary review of the custody question before the *en banc* Sixth Circuit or this Court. Young noted that there is a circuit split on the question whether SORNA registrants facing restrictions similar to those imposed on him are "in custody" for section 2254 purposes.

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[2] Young subsequently added the Butler County Court of Common Pleas as a respondent at the district court's direction, "given that he was still on community control when he filed his petition." App., *infra*, 2a-3a. The district court later granted an unopposed motion to dismiss the Court of Common Pleas because it was added as a respondent after Young had completed his community control. App., *infra*, 3a. The dismissal of the Court of Common Pleas has not been appealed and is not at issue here.

The magistrate judge recommended denying Young's motion for a COA (App., *infra*, 21a-24a), and the district court adopted the recommendation in a written opinion (App., *infra*, 5a-20a). The district court quoted from the report and recommendation at length, acknowledging that the Third Circuit's decision in "*Piasecki* is a well-reasoned opinion relying on relevant Supreme Court decisions interpreting the 'custody' requirement for habeas corpus." App. *infra*, 11a. But the magistrate judge, and by extension district court, concluded that "*Piasecki* is irrelevant to the issue of a certificate of appealability in this case" because no "reasonable jurist would conclude that sex offender registration is sufficient custody in the Sixth Circuit so long as *Hautzenroeder* is controlling law here." *Ibid.* (bold and underline emphases omitted).

The court continued: "If *Hautzenroeder* did not exist and there were other district courts which had ruled as the [*Piasecki*] court did, the undersigned would have no hesitation in recommending a certificate." App., *infra*, 12a (quoting the R&R). "While reasonable jurists might debate the meaning of custody in general," however, "it is indisputable that sex offender registration is not custody in the Sixth Circuit" in light of *Hautzenroeder*. *Ibid.* (emphasis omitted).

3. Having been denied a COA by the district court, Young sought a COA from the Sixth Circuit. The motion was referred to Judge Kethledge, who denied a COA in a written opinion. App., *infra*, 1a-4a.

Like the district court, Judge Kethledge held that "reasonable jurists could not debate that Young's custody argument is foreclosed by *Hautzenroeder*." App., *infra*, 3a. "Despite Young's reliance on *Piasecki*," he explained, "this court is bound by *Hautzenroeder*." *Ibid.* And, he concluded, "no COA should issue where the claim is foreclosed by binding circuit precedent 'because reasonable jurists will follow controlling law.'" *Ibid.*

(quoting *Mitchell* v. *United States*, 43 F.4th 608, 616 (6th Cir. 2022), in turn quoting *Hamilton* v. *Secretary of the Florida Department of Corrections*, 793 F.3d 1261, 1266 (11th Cir. 2015)).

REASONS FOR GRANTING THE PETITION

This case presents the question whether a COA may issue when the petitioner's claim, although foreclosed by binding circuit precedent, implicates a split among the courts of appeals that has not yet been resolved by this Court. In conflict with the Ninth and Tenth Circuits, but in agreement with the Fifth and Eleventh Circuits, the court below has held that a COA may not issue in such circumstances. Judge Kethledge thus denied petitioner a COA in this case.

That decision should not stand. Aside from deepening a clear conflict among the lower courts, it departs from this Court's settled precedents and will choke off this Court's ability to resolve circuit splits in habeas cases. The issue is a matter of great importance. Habeas cases are among the most common on the federal civil docket, and it is not unusual for the courts of appeals to reach conflicting opinions in the habeas context. Because this case presents an ideal vehicle with which to resolve the conflict, the Court should grant certiorari.

A. The courts of appeals are crisply split on the question presented

The lower courts are deeply divided on the question presented. Three courts of appeals, including the Sixth Circuit, have held that an issue can never be debatable if the petitioner's position is foreclosed by local circuit precedent, no matter whether other courts have resolved the issue contrariwise. Two other circuits—the Ninth and Tenth—disagree. In those jurisdictions, a divergent opinion from another circuit makes controlling circuit precedent debatable for purposes of granting a COA.

1. As Judge Kethledge noted (App., *infra*, 4a), the **Sixth Circuit** has held that "no COA should issue where the claim is foreclosed by binding circuit precedent 'because reasonable jurists will follow controlling law.'" *Mitchell*, 43 F.4th at 616 (quoting *Hamilton*, 793 F.3d at 1266). That is so even when the petitioner demonstrates that the controlling law *itself* is debatable, such as when there is a circuit conflict on the issue presented. *Ibid.*

As the Sixth Circuit explained in *Mitchell*, "[controlling circuit] precedent [is] the proper reference point" for determining whether a question is debatable for purposes of deciding a COA under *Slack*. 43 F.4th at 616. Thus, when "[circuit] precedent bars [the petitioner's] claim," the petitioner categorically "is not eligible for a certificate of appealability." *Ibid.*

Two other courts have reached the same conclusion. In *Hamilton*, the **Eleventh Circuit** held that controlling precedent bars a COA, even when the issue is the subject of a circuit split. There, the court held that on-point circuit precedent "ends any debate among reasonable jurists about the correctness of the district court's decision under binding precedent." 793 F.3d at 1266. That is so even when other circuit courts "ha[ve] disagreed" with that binding precedent. *Ibid.*

Relying on *Hamilton*, the Eleventh Circuit and its district courts routinely deny COAs as barred by circuit precedent, notwithstanding a circuit split. For example, the court denied a COA in *Lambrix* v. *Secretary of the Florida Department of Corrections*, 851 F.3d 1158 (11th Cir. 2017). In doing so, it explained:

> Lambrix points to an alleged circuit split, but we need not evaluate that circuit split because Lambrix's * * * argument is foreclosed by our binding decision in *Arthur*, and his attempted appeal does

> not present a debatable question because reasonable jurists would follow controlling law.

Id. at 1171.[3]

The **Fifth Circuit** applies the same rule. In *Allen* v. *Stephens*, 805 F.3d 617 (5th Cir. 2015), for example, that court denied "a COA on this claim" because, although the petitioner "cites [conflicting] precedent from the Sixth and Seventh Circuits, we must follow our own precedent." *Id.* at 633. See also *Jordan* v. *Epps*, 756 F.3d 395, 411 n.5 (5th Cir. 2014) (denying a COA because "[w]hile the Ninth Circuit may have taken a different approach to this question, we are bound by our own prior precedent on this issue"). *Cf. Cardenas* v. *Stephens*, 820 F.3d 197, 204 (5th Cir. 2016) ("we will not issue a COA in anticipation of *en banc* rehearing of a past decision").

2. The Ninth and Tenth Circuits stand in square conflict with the decisions of Fifth, Sixth, and Eleventh Circuits on the question presented here.

The lead decision on this side of the split is the **Ninth Circuit's** opinion in *Lambright* v. *Stewart*, 220 F.3d 1022 (9th Cir. 2000). There, the court held that although the petitioner's claim was foreclosed by circuit precedent, "the fact that another circuit opposes" the Ninth Circuit's position "satisfies the standard for obtaining a COA." *Id.* at 1027-28.

Pointing to this Court's decision in *Lozada*, the Ninth Circuit explained "[t]he fact that another circuit [has] decided the issue in a different manner" from the

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[3] See also *Aviles* v. *United States*, 2022 WL 1439333, at *2 (11th Cir.) (denying a COA because "our binding precedent holds that a COA shall not issue if the claim is foreclosed by [circuit] precedent" regardless of whether the "circuits are split on the issue"); *Ortiz* v. *United States*, 2023 WL 2854427, at *9 (S.D. Fla.) (same); *De Jesus Blanco* v. *Florida*, 2018 WL 11256059, at *3 (S.D. Fla.) (same), report and recommendation adopted, 2019 WL 11544470 (S.D. Fla.).

court's own precedents makes an issue "debatable for purposes of meeting the [*Slack*] standard." *Id.* at 1026. The court recognized that, in such circumstances, it "should not deny a petitioner an opportunity to persuade [it] through full briefing and argument to reconsider circuit law that apparently forecloses relief." *Id.* at 1026.

Noting that its sister circuits had reached conflicting decisions on the underlying issue in that case, the court accordingly granted a COA. *Id.* at 1028.

The Ninth Circuit recently reaffirmed the *Lambright* rule in *Payton* v. *Davis*, 906 F.3d 812 (2018), where it held that "a constitutional claim is debatable if another circuit has issued a conflicting ruling," no matter that the question "is well-settled in our circuit" adversely to the petitioner. *Id.* at 821. See also *Allen* v. *Ornoski*, 435 F.3d 946, 951 (9th Cir. 2006) ("Even if a question is well settled in our circuit, a constitutional claim is debatable if another circuit has issued a conflicting ruling.").[4]

The **Tenth Circuit,** and the district courts within it, uniformly follow the *Lambright* rule. In *United States* v. *Crooks*, 769 Fed. Appx. 569 (2019), the Tenth Circuit held that, in light of a circuit split on the issue presented and despite binding circuit precedent adverse to the petitioner, a COA nonetheless was warranted. A "contrary decision" from "another circuit" was sufficient, the court concluded, to "demonstrate[] that reasonable jurists could debate the merits of the procedural ruling that barred relief in this case." *Id.* at 571-572.

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[4] District courts in the Ninth Circuit routinely apply the *Lambright* rule. *See, e.g.*, *Safford* v. *Lothrop*, 2018 U.S. Dist. LEXIS 202753, at *50 (D. Ariz.); *Urquijo* v. *United States*, 2017 U.S. Dist. LEXIS 89922, at *24-25 (D. Ariz.); *Kamana'o* v. *Frank*, 2010 WL 1783560, at *10 (D. Haw.); *Tillman* v. *Hubbard*, 2007 WL 9752024, at *1 (E.D. Cal.); *Scott* v. *Schriro*, 2007 WL 1576006, at *1 (D. Ariz.); *Washington* v. *Schriro*, 2007 WL 756906, at *1 (D. Ariz.).

Crooks did not announce a new rule for the Tenth Circuit. Earlier, in *United States* v. *Gomez-Sotelo*, 18 Fed. Appx. 690 (10th Cir. 2001), the court had held that "the existence of a split among the circuits persuades us that 'reasonable jurists could debate'" the issue presented notwithstanding binding circuit precedent resolving it against the petitioner. *Id.* at 629. And more recently in *Franklin* v. *Lucero*, 2021 WL 4595175 (10th Cir.), the court reaffirmed the *Crooks* rule, holding that "the existence of a circuit split requires us to grant * * * a COA," despite that binding circuit "precedent unquestionably resolves the issue against" the petitioner. *Id.* at *5.

To be sure, *Cooks*, *Franklin*, and *Gomez-Sotelo* are unpublished decisions. But they stand uniformly for a single proposition—that a COA is appropriately granted to review issues on which the circuits are split, even when circuit precedent forecloses the petitioner's position.

Given this uniformity, district courts within the Tenth Circuit have treated *Cooks* as effectively binding. The district court for the District of New Mexico, for example, recently held that it "faithfully will follow the Tenth Circuit's decision[]" in *Crooks*. *Rodella* v. *United States*, 467 F. Supp. 3d 1116, 1125-1126 (2020). Citing *Crooks* and *Lambright*, it concluded that "because there is a Courts of Appeals split" on the proper burden on proof in that case, it would "grant a certificate of appealability" on that issue notwithstanding its view that Tenth Circuit precedent resolved the question against the petitioner. *Id.* at 1126-1127. We are not aware of any decision from a district court in the Tenth Circuit answering the question presented here any differently.[5]

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[5] For additional examples of district courts within the Tenth Circuit following *Crooks* and *Lambright*, see, *e.g.*, *United States* v. *McElhiney*, 2018 WL 2087142, at *2 (D. Kan.), and *United States* v. *Paris*, 2018 WL 2087187, at *2 (D. Kan.).

* * *

Against this background, the Court should grant review without delay. The conflict is clear and undeniable. Habeas petitioners whose cases arise in the Fifth, Sixth, or Eleventh Circuits (like Young's) are being denied COAs when the issues presented by their petitions have been decided against them in binding circuit precedent, despite that the issues are the subject of circuit splits and thus plainly debatable. In the Ninth and Tenth Circuits, identically situated petitioners are granted COAs and thus allowed to pursue appeals, including *en banc* reconsideration of the adverse circuit precedent or, failing that, this Court's review.

The availability of appellate review should not turn on the randomness of geography, least of all in cases involving weighty legal questions that have divided the courts of appeals. Only this Court's intervention can restore uniformity on this important question.

B. The question presented is important

The petition should be granted for the additional reason that the question presented is a matter of tremendous practical importance. Requests for COAs are filed multiple times *every day* in federal courts across the country, and proper resolution of the question presented will affect a great number of them—including an outsized share that present questions likely to be of interest to this Court and as to which appellate review is imperative.

1. The answer to the question presented determines the outcomes of countless habeas appeals every year. Tens of thousands of habeas petitions are filed in federal district courts annually, representing more than 12% of the total federal civil docket. *See* Administrative Office of the Courts, *Judicial Business of the U.S. Courts 2023*, Table C-3 (Sept. 30, 2023), https://perma.cc/SW6E-YXB4. In 2023 alone, there were nearly 2,500 appeals to

the federal circuit courts in habeas cases—a number that includes appellate denials of COAs. *Id.* at Table B-1, https://perma.cc/DL33-XAAN. The question whether a COA should issue is a threshold issue in every such appeal.

The question presented thus arises with great frequency. AEDPA is a complex and challenging statute; so too are many of the substantive claims that habeas petitioners present. The lower courts often struggle to administer AEDPA consistently, and the statute is highly "generative of circuit splits." Aziz Z. Huq, *Habeas and the Roberts Court*, 81 U. Chi. L. Rev. 519, 531 (2014). Every time a new circuit split develops among the courts of appeals—either with respect to AEDPA itself or the underlying constitutional claims that habeas petitioners may bring—it is a chance for the disparate approaches to the question presented to proliferate.

We have cited two dozen recent cases turning on the question presented. *See supra* pp. 9-13 & nn. 4-6. That demonstrates frequency all on its own. But those cases are just the tip of the iceberg. Across the circuits, the practice is rarely (or never) to issue opinions respecting COA decisions. Research demonstrates that the low publication rates for non-death penalty habeas corpus cases are driven, in large part, by COA opinions. See Rachel Brown, *et al.*, *Is Published Unequal? An Empirical Examination of the 87% Nonpublication Rate in Federal Appeals*, 107 Cornell L. Rev. 1, 62-63 (2021) (noting that 4.7% of habeas cases are published, but that the publication rate rises to 12.3% when COA decisions are excluded).

Thus, the decisions of the Fifth, Sixth, Ninth, Tenth, and Eleventh Circuits on the question presented here are certain to be driving the outcomes in far more COA decisions than meets the eye. See, *e.g.*, *Lozada*, 498 U.S. at 431 ("the Ninth Circuit also denied a certificate of probable cause in a one-sentence order").

2. The question presented is also important because it has direct and substantial implications for the Court's management of its certiorari docket. The practical result of the Sixth Circuit's rule is that once a court of appeals has issued a precedential decision on a question that has divided the circuits in the habeas context, all further appellate consideration of the issue within that circuit cease if the issue is resolved against petitioners. Once "[circuit] precedent bars [a petitioner's] claim," every petitioner becomes categorically "not eligible for a certificate of appealability" on that issue moving forward. *Mitchell*, 43 F.4th at 616. As the Fifth Circuit has said, courts on this side of the split "will not issue a COA in anticipation of *en banc* rehearing" or this Court's review (*Cardenas*, 820 F.3d at 204), even when the issue is manifestly debatable on its merits.

To be sure, the Sixth Circuit's rule is only a one-way ratchet. If the Sixth Circuit authoritatively resolves in petitioners' *favor* a question over which there is a circuit conflict, government respondents will still may raise the issue on appeal. But a rule that limits appellate review to just one side of a question is troubling in its own right. And it is doubly so in this context, given how infrequently district courts grant relief to habeas petitioners (and thus how infrequently government officials appeal)—about 0.35% in noncapital cases, and 12% in capital cases. See Nicholas Beekhuizen, *Post-AEDPA Compromise: Increased Habeas Corpus Relief for Capital Cases and Tighter Restrictions for Noncapital Cases*, 10 Ind. J.L. & Soc. Equal. 321, 332 (2022).

At bottom, under the Sixth Circuit's rule, this Court will almost never be presented with opportunities to resolve circuit conflicts in habeas cases when the issue previously has been resolved in binding circuit precedent. The underlying question posed in a case like *Tennard*, for example, would never reach this Court on its merits,

despite the practical importance of the issue and the presence of a circuit split. This would cut off the Court's review of some of the most important questions that may arise concerning AEDPA and the fair administration of criminal justice.

C. This is an unusually clean vehicle

Although the question presented arises often, suitable vehicles with which to address it are rare. This case offers a perfect vehicle.

To start, there is no question that the outcome here was driven solely by the rule announced in *Mitchell* and the Sixth Circuit's prior resolution of the custody issue in *Hautzenroeder*. Judge Kethledge was clear about this: "Despite Young's reliance on *Piasecki*," he explained, "this court is bound by *Hautzenroeder*," and "reasonable jurists will follow controlling law." App., *infra*, 4a.

But the district court was equally clear that, absent the *Mitchell* rule, the outcome would have been different. It agreed that "*Piasecki* is a well-reasoned opinion" and stated that, in the absence of *Hautzenroeder* and *Mitchell*, it "would have no hesitation" granting a COA. App., *infra*, 12a (quoting the R&R). But "[w]hile reasonable jurists might debate the meaning of custody in general," *Hautzenroeder* is controlling circuit precedent and thus ends the debate in the Sixth Circuit. *Ibid.*

In this respect, it is also notable that this case involves expressly reasoned opinions on the COA question at each stage of review. As we noted earlier (at 15), it is far more common for district courts and courts of appeals to deny COAs without opinion, making the basis for decision less certain.

This case is, moreover, free from the complicating factors that often interfere with this Court's review of important questions in habeas cases. In many habeas cases that reach this Court, there are evident alternative

grounds for denying relief, apart from the question on which the petitioner seeks review. It is common, for example, for habeas cases to involve procedural defaults in the original state-court proceedings. Other cases involve the filing of a successive petition without leave of court to do so. Still other petitions involve plainly unmeritorious underlying claims or multiple questions not easily teased apart and not all deserving of the Court's attention.

This case suffers from none of these common obstacles to review. On the underlying merits, it involves a single, clearly preserved constitutional claim with a solid factual and legal basis. And there are no procedural obstacles to relief apart from the threshold "custody" question, which is precisely the matter on which Young seeks a COA. In short, this is an ideal vehicle for resolution of the question presented.

D. The Sixth Circuit's rule is wrong, and Young is entitled to a COA

The clean presentation of a question that is practically important and has divided the circuits is plenty reason to grant the petition. The fact that the Sixth Circuit's rule is unquestionably wrong counsels further in favor of certiorari review.

1. The Sixth Circuit is wrong that "[controlling circuit] precedent [is] the proper reference point" for determining whether a question is debatable for purposes of a COA *Slack*. *Mitchell*, 43 F.4th at 616. The "reference point" for determining whether a COA should issue is *this* Court's precedents only.

The text of the habeas statute makes this clear. In cases challenging state court convictions under section 2254, habeas relief is warranted when the state court decision "was contrary to, or involved an unreasonable application of, clearly established Federal law, *as determined by the Supreme Court of the United States*." 28

U.S.C. § 2254(d)(1) (emphasis added). Section 2253, in turn, specifies that a "circuit justice or judge" must issue a COA when the district court has denied relief, but the petitioner has made "a substantial showing of the denial of a constitutional right." *Id.* § 2253(c)(2).

These two provisions are interrelated and must be read together. See *Dolan* v. *U.S. Postal Service*, 546 U.S. 481, 486 (2006) (statutory interpretation "depends upon reading the whole statutory text, considering the purpose and context of the statute"). If the question whether habeas relief should be granted turns solely on this Court's precedents, so too should the question whether the district court's denial of relief is debatable.

This Court's COA cases prove the point. In *Tennard*, for example, the question presented had been resolved clearly and authoritatively by Fifth Circuit precedent. From that "reference point" (*Mitchell*, 43 F.4th at 616), the issue was not debatable. But this Court, on later review of the question whether a COA should have issued, made clear that the Fifth Circuit's precedent was *not* the correct reference point: "Despite paying lipservice to the principles guiding issuance of a COA," the Court explained, the Fifth Circuit had denied a certificate based only on "its own restrictive gloss" on this Court's cases. 542 U.S. at 283. The Court rejected "[t]he Fifth Circuit's test [as having] no foundation in the decisions of *this* Court." *Id.* at 284 (emphasis added). Subsequently evaluating the issue from its own perspective, this Court concluded that the petitioner in that case was "entitled to a COA." *Id.* at 289.

Circumstances were similar in *Lynce* v. *Mathis*, 519 U.S. 433 (1997). There, the Eleventh Circuit had "denied a certificate of probable cause in an unpublished order," concluding that the petitioner's claim was foreclosed by "Eleventh Circuit and Florida precedent." *Id.* at 436 (citations omitted). But this Court noted that "the Tenth

Circuit [had] reached a different conclusion on similar facts." *Ibid.* The Court thus granted a certificate of probable cause *sub silencio* and reversed on the merits.

Tennard and *Lynce* both demonstrate that the test is not whether a reasonable district or circuit judge would *defy* binding circuit precedent (obviously none would), but whether a reasonable jurist could *debate* whether that precedent was rightly decided (as is the case here). If the Sixth Circuit were right that controlling circuit precedent alone is "the proper reference point" for evaluating whether a question is debatable (*Mitchell*, 43 F.4th at 616), neither *Tennard* nor *Lynce* could not have come out the way that it did.

The error in the Sixth Circuit's rule is confirmed further by *Lozada*, which involved an ineffective assistance claim. The Court there faulted the Ninth Circuit, in denying a COA, for failing to consider and address the fact that "at least two Courts of Appeals have [come to a different conclusion] in this situation." 498 U.S. at 432. In this Court's view, the Ninth Circuit's denial of a COA was erroneous because it "did not cite or analyze this line of [conflicting] authority." *Ibid.* No less was required here, wholly apart from any controlling circuit precedent.

2. Denying a COA based solely on controlling adverse circuit precedent is wrong for another reason: It is, in effect, a decision on the merits rather than a more limited decision concerning debatability.

This Court has "emphasized" the COA inquiry "is not coextensive with a merits analysis." *Buck*, 580 U.S. at 115. It is an accepted feature of the statute that "a COA will issue in some instances where * * * ultimate relief" is unlikely. *Miller-El*, 537 U.S. at 337. Indeed, that is the rule by design. "After all, when a COA is sought, the whole premise is that the prisoner has already failed in" convincing a judge he or she will prevail. *Ibid.* (quoting

Barefoot, 463 U.S. at 893 n.4). A COA does not ask the court to determine whether relief is likely based on circuit precedent or any other factor—the question is only whether "that the issues presented [are] adequate to deserve encouragement to proceed further." *Miller-El*, 537 U.S. at 327.

As the Ninth Circuit rightly held in *Lambright*, "[t]he Supreme Court has made clear that the application of an apparently controlling rule can nevertheless be debatable for purposes of" obtaining appellate review. 220 F.3d at 1025-1026. That conclusion is plainly correct and, properly applied here, would have resulted in the issuance of a COA.

CONCLUSION

The Court should grant the petition. Following either summary reversal or plenary review, it should remand with instructions to the court of appeals to grant a COA and resolve the merits of the "custody" question.

Respectfully submitted.

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