No. 24-686

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

PETITIONER'S REPLY

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PETITIONER'S REPLY

The question presented is whether a habeas petitioner like Dustin Young is eligible for a certificate of appealability under 28 U.S.C. § 2253(c) to review an issue on which the circuits are split, notwithstanding that the circuit within which the petition arises has already weighed in on the split and resolved it against him.

We demonstrated that all of the conditions for this Court's review of that question of statutory interpretation are met here: There is a clear division of authority over its proper resolution, it is profoundly important as a practical matter, this is an ideal vehicle for resolving it, and the Sixth Circuit's decision below is manifestly wrong.

The opposition does not event attempt to refute most of these points. It does not dispute either that Young was deemed ineligible for a COA because his case arose in the Sixth Circuit or that, if his case had arisen in the Ninth or Tenth Circuits instead, a COA would have been granted. It does not disagree that the issue is frequently recurring or that the rule applied below will prevent this Court's review of a great many habeas cases worthy of the Court's attention. It does not deny that this is a flawless vehicle for resolving the question presented. And it does not devote a word to defending the Sixth Circuit's rule, which treats regional circuit precedent as the sole determinant of debatability under the standard of *Slack* v. *McDaniel*, 529 U.S. 473 (2000).

Rather than addressing the COA question, the opposition focuses principally to the merits of the question presented by the underlying habeas petition: whether the liberty restrictions imposed by the Ohio sex-offender registration law render Young "in custody" under 28 U.S.C. § 2254. It suggests (at 8-14) that the Third and Sixth Circuits are not truly in conflict on that question and thus asserts (at 14-16) that the petition was correctly dismissed for lack of jurisdiction.

Whatever the merit to those arguments—and there is none—they are the issues as to which Young was denied any right to appeal. The whole point is that he should be afforded the chance to develop his counterarguments in full briefing and argument before the Sixth Circuit. And if he does not persuade the Sixth Circuit to distinguish or overrule *Hautzenroeder* v. *Dewine*, 887 F.3d 737 (6th Cir. 2018), he should have an opportunity to seek this Court's review in light of the conflict with *Piasecki* v. *Court of Common Pleas*, 917 F.3d 161 (3d Cir. 2019).

Young was denied these opportunities because his case arose in the Sixth Circuit, which wrongly holds that petitioners like Young are inelgibile for a COA. The Court thus should grant review of the COA question, reverse the Sixth Circuit's denial of a COA, and remand for that court to resolve the custody issue in the first instance.

A. The Court's criteria for review are satisfied

1. As we demonstrated in the petition (at 9-14), the lower courts are intractably divided on the COA question. In the Fifth, Sixth, and Eleventh Circuits, habeas petitioners are categorically "not eligible for a certificate of appealability" (*Mitchell* v. *United States*, 43 F.4th 608, 616 (6th Cir. 2022)) when their underlying claims are foreclosed by regional circuit precedent, even when other circuits have issued conflicting decisions. The Ninth and Tenth Circuits have adopted the opposite view.

Respondent's only response is to say (at 7) that "[t]he Sixth Circuit has determined when binding precedent exists, reasonable jurists will follow controlling law." So it has. But our point is that the Ninth and Tenth Circuits disagree that circuit precedent alone is enough to make an issue wholly uncontestable for purposes of the *Slack* standard. On that topic, respondent says nothing at all.

2. The question presented is a matter of great practical importance. Pet. 14-17. Requests for COAs are daily

occurrences. And habeas law is complex and produces a steady supply of circuit splits. Every time a split develops, the conflicting approaches to the question presented will arise, and the split will produce opposite outcomes based on no more than geography.

We explained (Pet. 16-17) that the issue is important also because of its implications for this Court's docket. Under the Sixth Circuit's rule, this Court will never have opportunities to resolve circuit splits in habeas cases arising out of any circuit that has resolved the issue against petitioners. As we noted (Pet. 16), a rule that limits this Court's review to just one side of a question will choke off a major supply of vehicles for resolving important circuit conflicts. If the Sixth Circuit's rule is allowed to stand, this case will prove the point—Young will be unable to present the custody issue, which has divided the circuits, in a petition to this Court. That is not a tolerable state of affairs.

3. We showed (Pet. 18-21) that the Sixth Circuit is wrong that regional circuit precedent is "the proper reference point" for determining whether a question is debatable under the *Slack* standard. See *Mitchell*, 43 F.4th at 616. In fact, the proper reference point for determining whether a COA should issue is *this* Court's precedents.

That follows from the text of 28 U.S.C. § 2254(d)(1), which makes clear that the North Star for habeas cases is federal law "as determined by the Supreme Court of the United States." It follows also from the commonsense notion that the debatability of an issue does not vary depending on the level of the judiciary at which the case is being litigated. If an issue is debatable under *Slack* for purposes of *this* Court's review, it necessarily is debatable under *Slack* for purposes of circuit court review, as well. Else, cases presenting regionally settled issues would never reach this Court to begin with. Here again, respondent gives no answer.

B. The custody issue must be resolved on remand

The bulk of the opposition is devoted not to the COA issue, but to the underlying custody issue. Those arguments are for the Sixth Circuit to resolve in the first instance. And on their own terms, they do not persuade.

1. Respondent notes (at 8) that unlike Piasecki, Young was still on "community control" when he filed his petition; it thus asserts that "Young named the wrong respondent." That is incorrect. At the time Young filed his petition, he was required to register as a sex offender under Ohio law. His theory is that the applicable registration requirements then rendered him—and now continue to render him—in custody, just as in *Piasecki*.

It makes no difference that he was also in the custody of the Court of Common Pleas while on community control. See BIO 8-9. No one disputes that he is no longer on community control and thus no longer in the custody of the Court of Common Pleas. Whether he once was, and whether he could have earlier named the court as a respondent, is beside the point—any case against the Court of Common Pleas is now moot. But if Young is right that the Ohio sex-offender registration scheme is sufficiently restrictive of his liberty for custody, then he was right to name Swaney from the beginning, and his petition naming Swaney remains live now.

The timing of Young's amendment adding the Court of Common Pleas as a respondent—which he did only at the district court's insistence (Pet. 7 n.2)—is therefore also immaterial. See BIO 15-16. The original petition naming Swaney was timely. BIO 16. And Young's position is that he was and remains in Swaney's custody. He is entitled to appellate review of that contention.

2. Respondent asserts (at 8-11) that the details of the Ohio and Pennsylvania registration schemes are sufficiently different that *Piasecki* and *Hautzenroeder* do not

truly conflict. That is not how the Sixth Circuit saw it in *Corridore* v. *Washington*, 71 F.4th 491 (6th Cir. 2023), where it rejected *Piasecki* not because of differences in facts, but because the court applied a different legal standard. *Id.* at 499 n.5. Even respondent ultimately admits (at 13) that *Piasecki* reached a "contrary conclusion" as *Hautzenroeder*. Other courts have recognized the same. See, *e.g.*, *Clements* v. *Florida*, 59 F.4th 1204, 1212 (11th Cir.) (listing cases including *Hautzenroeder*, and noting that "the Third Circuit has come to a contrary conclusion"), certiorari denied, 144 S. Ct. 488 (2023).

Nor would it matter if the Third Circuit were an "outlier" in the circuit split. BIO 11-14. The Third Circuit's reasoning was methodical and deliberate. In light of it, the Eleventh Circuit in *Clements* concluded that "the question is difficult" and resolved it in favor of the state only with "hesitation."59 F.4th at 1206, 1215. Moreover, the courts below refused to take *Piasecki* into account in the *Slack* debatability analysis, not because they denied the conflict with *Hautzenroeder* or concluded the *Piasecki* is unpersuasive, but because out-of-circuit precedents are (in their view) simply "irrelevant to the issue of a certificate of appealability * * * so long as *Hautzenroeder* is controlling law here." Pet. App. 22a. Indeed, the magistrate judge's report and recommendation openly acknowledged that "*Piasecki* * * * shows * * * that reasonable jurists can disagree about the meaning of 'custody' in habeas corpus jurisprudence generally," if *Hautzenroeder* does not bind. *Ibid.* There is thus no disputing that the Sixth Circuit's resolution of the question presented alone drove the outcome below.

All of the criteria for certiorari are thus satisfied: The petition cleanly presents an important and recurring issue of habeas law over which the lower courts are deeply divided. And the lower court's decision is plainly wrong. The petition accordingly should be granted.

Respectfully submitted.

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