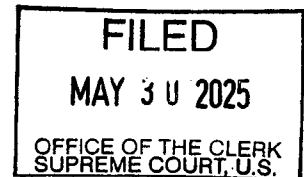


No. 24-7338

ORIGINAL

\_\_\_\_\_  
IN THE  
SUPREME COURT OF THE UNITED STATES  
\_\_\_\_\_



JUSTIN PANUS — PETITIONER  
(Your Name)

vs.

STATE OF TEXAS — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Fifth Circuit Court of Appeals  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Justin Panus #02167693  
(Your Name)

Robertson Unit, 12071 F.M. 3522  
(Address)

Abilene, Tx 79601  
(City, State, Zip Code)

NA  
(Phone Number)

### QUESTION(S) PRESENTED

1. Whether Petitioner was entitled to a Certificate of Appealability on the grounds that the lower court failed to conduct an "Unreasonable Determination" analysis on Petitioner's claims.
2. Whether a petitioner must "reprise" in his COA pleadings the substantive claims that he raised in his 2254 application at risk that those claims be abandoned; and if so, did Petitioner satisfy this requirement.
3. Whether Petitioner was entitled to a Certificate of Appealability on the question of whether the State's findings were entitled to deference or a presumption of correctness when there is no state-level mechanism that provides a meaningful opportunity to respond to counsel's affidavit.
4. Whether Petitioner was entitled to a certificate of Appealability on the question of whether the AEDPA entitled the State Court's findings to double deference when the State Court fails to engage with critical evidence in rendering its factual findings.

## LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

## RELATED CASES

## TABLE OF CONTENTS

OPINIONS BELOW .....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED .....	3
STATEMENT OF THE CASE .....	4
REASONS FOR GRANTING THE WRIT .....	5
CONCLUSION.....	10

## INDEX TO APPENDICES

- APPENDIX A - Opinion of the US Court of Appeals
- APPENDIX B - Opinion of the US District Court
- APPENDIX C - Denial of Petition for Rehearing
- APPENDIX D - Affidavit of Counsel making factual correction  
that was not considered by State Court  
-with Certificate of Service showing Petitioner  
APPENDIX E did not receive a copy of said Affidavit
- APPENDIX F

## TABLE OF AUTHORITIES CITED

### CASES

### PAGE NUMBER

Brumfield v .Cain , 576 U S . 305 (2015)	9
Buck v. Davis, 137 S.Ct. 759 (2017)	6
King v. Emmons , 2024 U.S . LEXIS 2920	9
Slack v. McDaniel , 529 U.S 473 (2000)	7

### STATUTES AND RULES

### OTHER

IN THE  
SUPREME COURT OF THE UNITED STATES  
  
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

**OPINIONS BELOW**

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☒ is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☒ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix \_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

The opinion of the \_\_\_\_\_ court appears at Appendix \_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

## JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was 14<sup>th</sup> February 2025.

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: 28<sup>th</sup> March 2025, and a copy of the order denying rehearing appears at Appendix C.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was \_\_\_\_\_.  
A copy of that decision appears at Appendix \_\_\_\_\_.

☐ A timely petition for rehearing was thereafter denied on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fourteenth Amendment - Due Process and Equal Protection

28 U.S.C. 2254



## STATEMENT OF THE CASE

On 14th December 2022, the Texas Court of Criminal Appeals denied Petitioners State Habeas Corpus application without written order on the findings of the trial court without a hearing .

Petitioner timely executed his Federal Habeas Corpus petition on 15th August 2023 and argued that the State Court's denial was an "unreasonable determination" of the facts .

The US District Court denied relief on 25th June 2024 after only conducting an "unreasonable application" analysis .

Petitioner filed a Motion for Certificate of Appealability to the Fifth Circuit which was denied on 14th February 2025 . Petitioner subsequently submitted a Motion for Reconsideration pointing out that the Court had overlooked or misapprehended the fact the Petitioner's Motion for COA presented the issue that an "unreasonable determination" analysis was never conducted . The Motion for Rehearing was denied on 28th March 2025 .

Petitioner now seeks a Writ of Certiorari from this Court to settle the questions presented herein .

## REASONS FOR GRANTING THE PETITION

1. Whether Petitioner was entitled to a Certificate of Appealability on the grounds that the lower court failed to conduct an "Unreasonable Determination" analysis on Petitioner's claims.

The United States court of appeals has entered a decision that has so far departed from the usual and accepted course of judicial proceedings, and subsequently sanctioned such a departure by the lower court, as to call for an exercise of this Court's supervisory power [Rule 10(a)].

In Petitioner's 2254 petition, he unequivocally asserted that the State Court's adjudication on the merits was based on an Unreasonable Determination of the facts.

However, the US District Court did NOT conduct an "Unreasonable Determination" analysis, and instead denied relief based solely upon the "unreasonable application" standard - a standard Petitioner did not assert.

Specifically, the district court did not expend any ink on the matter of whether the State Courts denial was based upon an "unreasonable determination" of the evidence in the habeas record because counsel's affidavit addressing his trial strategy in defense of the ineffective assistance claims contained material statements that counsel later admitted were erroneous. This correction to his statements was after the trial court already made their Findings of Fact and Conclusions of Law. See Appendix D.

The actual issue presented to the US Court of Appeals as to why COA review was warranted was that:

"Jurists of Reason could find it debatable whether the district court failed to conduct the asserted 'unreasonable determination' analysis"

Petitioner's COA essentially asserts that Jurists of Reason would find it debatable whether the district court erred by failing to conduct an "unreasonable determination" analysis since this was the only basis upon which Petitioner asserted federal jurisdiction.

Petitioner avers that a failure to conduct an "unreasonable determination" analysis is tantamount to the claim not being reviewed at all.

The US Court of Appeals, however, construed this issue as:

"the district court erred in denying his §2254 application because the State habeas court's denial of his claim was based on an unreasonable determination of the facts in light of the evidence, which demonstrated that his counsel made false statements in counsel's postconviction affidavit".

This does not address the question of whether a failure of the district court to conduct an "unreasonable determination" analysis would be something jurists of reason would find debatable.

2. Whether a petitioner must "reprise" in his COA pleadings the substantive claims that he raised in his 2254 application at risk that those claims be abandoned; and if so, did Petitioner satisfy this requirement.

The United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court [Rule 10(c)] and that such conflicts with relevant decisions of this Court - namely, Buck v. Davis, 137 S.Ct. 759 (2017).

In denying COA, the US Court of Appeals states that:

"As a preliminary matter, Panus fails to reprise in his COA pleadings any of the substantive claims that he raised in his §2254 application. Accordingly, those claims are abandoned".

Using the common use of the word, Petitioner interprets the requirement to "reprise" his claims as a requirement to repeat or repitulate his earlier asserted claims to show their underlying merits.

The "reprise" requirement appears to be exclusive to the Fifth Circuit as Petitioner can find no COA opinions from other Circuits that use the word "reprise" in this respect.

This Court's opinion in Buck made it very clear that the COA inquiry is not coextensive with a merits analysis. At the COA stage, the only question is whether the petitioner has shown that jurists of reason could disagree with the district courts resolution of his constitutional claims or that jurists of reason could conclude the issues presented are adequate to deserve encouragement to proceed further. This threshold question should be decided without full consideration of the factual or legal basis adduced in support of the claims.

Petitioner asserts that a requirement that he "reprise" his claims exceeds the scope of the COA inquiry.

Regardless, if such is in fact a requirement, Petitioner asserts that he has sufficiently "reprised" his claims in his COA petition to meet the threshold of a substantial showing of a denial of a constitutional right.

A "substantial showing" is defined by this Court in Slack v. McDaniel, 529 U.S. 473, 483-84 (2000) as a demonstration that "includes showing 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".

Petitioner avers that even a preliminary review of his COA shows that this is exactly what he has done. He has shown that jurists of reason would find the resolution of his 2254 debatable because the district court did not conduct an unreasonable determination analysis; the State court's findings were not entitled to deference and did not engage with critical evidence. In support of these grounds Petitioner has explained how this affects the resolution of his habeas claims presented to the district court - Thus making the issue at the center of collateral attack debatable.

3. Whether Petitioner was entitled to a Certificate of Appealability on the question of whether the State's findings were entitled to deference or a presumption of correctness when there is no state-level mechanism that provides a meaningful opportunity to respond to counsel's affidavit.

The United States court of appeals has entered a decision on an important question of federal law that has not been, but should be, settled by this Court (Rule 10(c)).

In Petitioner's federal memorandum of law he makes an argument that the State Court's findings are not entitled to a presumption of correctness because there is a fundamental flaw in the Texas habeas corpus process that results in a Petitioner's inability to dispute statements made in an attorney's affidavit.

Although the State habeas corpus process pursuant to Tex. Code Crim. Proc., Art. 11.07 is technically an "Ex parte" proceeding, the Pro Se prisoner is completely left out of the process once they filed the initial application. This is because there is no procedural mechanism that provides an opportunity to respond to counsels affidavit.

So unless a Petitioner can accurately anticipate exactly what counsel will state in their adverse affidavit, a Petitioner is unable to dispute counsel's assertions of fact or arguments that are erroneous or misleading.

Unfortunately for a Petitioner, most are not clairvoyant and thus cannot see beyond the range of ordinary perception - so it is necessary for a Petitioner to be provided an opportunity to dispute counsel's statements. The Texas habeas corpus process does not provide this opportunity.

In the case at hand, Petitioner Panus diligently attempted to bring material conflicting facts to the State Court's attention, but was impeded by the lack of procedure that allows such an opportunity. As such, Petitioner's arguments were not properly considered prior to the Court's findings.

For example, after the trial court made its 'Findings of Fact and Conclusions of Law' counsel filed a second affidavit admitting that Petitioner's Wisconsin kidnapping case which he relied upon to reject Petitioner's mens rea defense had actually been dismissed - contrary to numerous false assertions in the affidavit considered by the Trial Court.

But Petitioner never received a copy of this affidavit and had absolutely no knowledge of such until he read the District Court's footnote on page 14 of the Court opinion.

Petitioner strongly avers that such procedural impediment does not adequately afford a full and fair hearing that is entitled to a presumption of correctness pursuant to 28 U.S.C. 2254(e)(1) and clearly does not honor the Due Process and Equal Protection Clause of the Fifth and Fourteenth Amendment.

The District court did not address this issue. Petitioner asserts that this is a fundamental flaw and is pertinent to whether a presumption of correctness should apply as it was a clear decisive relevance to the matter at hand.

Petitioner asserts that this is a question that is adequate to deserve encouragement to proceed further since it is important to the jurisprudence of the federal courts and invokes issues that are fundamental to due process of law.

4. Whether Petitioner was entitled to a Certificate of Appealability on the question of whether the AEDPA entitled the State Court's findings to double deference when the State Court fails to engage with critical evidence in rendering its factual findings.

The United States court of appeals has entered a decision on an important question of federal law that has not been, but should be, settled by this Court [Rule 10(c)].

As Justice Jackson explains in her dissent in King v. Emmons, 2024 U.S. LEXIS 2920, "The deference that AEDPA requires is not boundless, and when a State court fails to engage with critical evidence in rendering its factual findings, a federal habeas court should not hesitate to deem those findings unreasonable... Even in the context of federal habeas, deference does not imply abandonment or abdication of judicial review, and does by definition preclude relief" *Id.* See also, Brunfield v. Cain, 576 U.S. 305, 314 (2015).

She further explained that the Supreme Court "has not hesitated to find AEDPA's standard satisfied when a State Court's factfinding process disregards information that is highly relevant to a court's factual determination" *Id.*

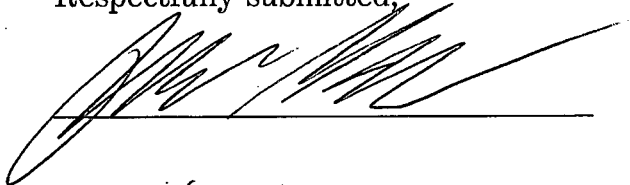
In the case at hand, the district court failed to faithfully apply AEDPA's review standard given that the State Court did not address, or even mention, the fact the Wisconsin Court documents and counsel's own statements in the trial transcript directly conflicted with counsel's affidavit - especially in light of counsel's second affidavit AFTER the state court's findings admitting that Petitioner's Wisconsin kidnapping case was in fact dismissed - contrary to numerous false statements justifying counsel's trial strategy.

Petitioner asserts that this is a question that is adequate to deserve encouragement to proceed further since it is important to the jurisprudence of the federal courts and invokes issues that are fundamental to due process of law.

### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in dark ink, consisting of several loops and strokes, positioned above a horizontal line.

Date: 16th of May, 2025