No. 24-7038
(CAPITAL CASE)

IN THE

Supreme Court of the United States

CEDRIC RICKS,

Petitioner,

v.

ERIC GUERRERO, DIRECTOR, TEXAS DEPT. OF CRIMINAL JUSTICE,
CORRECTIONAL INSTITUTIONS DIVISION

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

REPLY IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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I. The Fifth Circuit's new rule that a certificate of appealability may be denied for any reason, regardless of whether that reason was assessed by the district court, flouts 28 U.S.C. § 2253(c) and this Court's precedent.

Respondent would have this Court believe that where a district court denies a claim for federal habeas relief on the merits, *Slack v. McDaniel*, 529 U.S. 473 (2000) requires a petitioner to demonstrate that there are no procedural bars to merits relief to obtain a Certificate of Appealability ("COA"). *See* Br. in Opp'n ("BIO") at 10–12. That contention, however, is contradicted by the plain language of *Slack* quoted by Respondent in his introduction: "When the district court rejects a claim on the merits, '[t]he petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong.'" *Id.* at 9 (quoting *Slack,* 529 U.S. at 484). Petitioner's argument that he was therefore required to show only that reasonable jurists could debate the district court's merits adjudication of his shackling claim is not "an over-simplified reading of *Slack*," as Respondent contends. Instead, it is the verbatim language of *Slack* quoted by Respondent. *Id.* at 10.

As Respondent himself explains, "[t]he issue in *Slack* was whether a COA could ever be granted when the district court denied the petition based on procedural grounds." BIO at 12 (citing *Slack*, 529 U.S. at 483). This Court has interpreted 28 U.S.C. § 2253(c) as requiring a petitioner to show that reasonable jurists would debate both whether he stated a valid claim of the denial of a constitutional right *and* whether the district court was correct in its procedural ruling. *See Slack*, 529 U.S. at 484–85 ("Determining whether a COA should issue where the petition was dismissed on procedural grounds has two components: one directed at the underlying constitutional claims and one directed at the district court's procedural holding."). But Respondent's argument that it therefore follows that where a district court denies a claim on the merits only, the petitioner must also show that he would prevail on procedural grounds does not follow from *Slack*. *See* BIO at 12 ("*Slack*'s thrust was to require that both merits and procedural grounds must be debatable where

either could support a denial."). The two-step showing outlined by this Court where a claim is denied on procedural grounds is necessitated by the language of 28 U.S.C. § 2253(c), which expressly requires a "substantial showing of the denial of a constitutional right."

Likewise, Respondent's block quote from this Court's discussion in *Slack* of how to process a COA where the claim was denied on procedural grounds does not support Respondent's contention that it is always the petitioner's burden to overcome procedural bars at that stage. *See* BIO at 12 (quoting *Slack*, 529 U.S. at 485). Had this Court intended for that section of its discussion also to apply to claims denied on the merits, it would have said so. Instead, this Court distinguished between § 2253(c)'s application to claims denied on the merits from its application to claims denied on procedural grounds—and indeed Respondent recites that distinction in the opening paragraphs of his argument. BIO at 9–10.

Moreover, none of the three cases cited by the Respondent support his argument that circuit courts ignore *Slack*'s plain language and decide cases on grounds not relied on by the district court. First, in *Miller v. Sec'y, Florida Dept. of Corr.*, the district court denied petitioner's claims on timeliness grounds and COA was likewise denied on that basis. No. 22-10657, 2022 WL 1692946, at *1 (11th Cir. May 10, 2022). Indeed, that court emphasized that the appellate court's role in deciding whether a COA should issue depends on the district court's *resolution* of the claim. *See id.* (emphasis in original). Second, in *Szuchon v. Lehman*, the district court denied the claim on the ground that it relied on a rule of law that was not retroactive to the case and COA was denied based on the merits of the claim. 273 F.3d 299, 318 n.8 (3d Cir. 2001). In other words, the Third Circuit disagreed with a legal ruling made by the district court and instead decided the claim on the merits. It did not concern a situation where, as here, the reviewing court imposed a procedural bar never discussed or relied on by the district court. Finally, the "plain procedural bar" to which the Tenth

Circuit referred in *United States v. Springer* was the district court's lack of subject matter jurisdiction to issue an order granting or denying the requested relief. 875 F.3d 968, 981, 983 (10th Cir. 2017). The court did not examine the debatability of any procedural bar relied on by the district court. Indeed, the Tenth Circuit noted that because the district court denied the claim on the merits, its "COA inquiry would typically focus on 'whether reasonable jurists would find the district court's assessment of the constitutional claim debatable or wrong.'" *Id.* at 981 (quoting *Slack*, 529 U.S. at 484).

Respondent's contention that the Fifth Circuit's contravention of *Slack* was further acceptable because Petitioner's "subsequent appeal would be doomed to fail because of his procedural default" ignores this Court's well-established rule that success on appeal is not a prerequisite to obtaining a COA. *Buck v. Davis*, 580 U.S. 100, 116 (2017) ("That a prisoner has failed to make the ultimate showing that his claim is meritorious does not logically mean he failed to make a preliminary showing that his claim was debatable."); *Miller-El v. Cockrell*, 537 U.S. 322, 338 (2003) ("[A] claim can be debatable even though every jurist of reason might agree, after the COA has been granted and the case has received full consideration, that petitioner will not prevail."). The text of § 2253(c)(2) itself makes this clear: it requires only "a substantial showing." Nor is the district court's denial of Ricks's shackling claim on the merits and not on procedural grounds "a windfall." BIO at 11. In district court, in the Circuit Court, and in this Court, Ricks acknowledged the state court procedural default and demonstrated in the district court why the procedural rule invoked by the state court was inadequate as a matter of federal law. *See* BIO at 15 n.4.

Finally, Respondent's contention that "the district court's merits ruling was indisputable," BIO at 16, is contradicted by Judge Higginson's dissent that that adjudication was debatable

amongst reasonable jurists and COA should therefore be granted, App. A at 8. Notably, the Fifth Circuit did not address the merits of the shackling claim to deny COA.

II. The circuit split on whether a certificate of appealability can be denied notwithstanding a circuit judge's vote to grant it should be resolved to conform with 28 U.S.C. § 2253(c).

Respondent does not contest Petitioner's argument that the Fifth Circuit and other circuits' practices of denying COA notwithstanding a circuit judge's vote to grant COA cannot be squared with the plain language of 28 U.S.C. § 2253(c) and as interpreted by this Court. Petitioner accordingly stands on his briefing on this issue. Instead, Respondent argues that certiorari should be denied on this issue because there is only a "small circuit split[.]" BIO at 17. Setting aside the fact that there is no minimum "size" for a circuit split to warrant certiorari, Respondent incorrectly excludes the Third, Fourth, and Ninth circuits from this split because "Ricks . . . invoked only local rules[.]" BIO at 17 n.5. But it is those circuits' local rules that establish that COA can be granted by a single judge, as in the Seventh Circuit, thus putting them at odds with the Fifth, Sixth, Eighth, Tenth, and Eleventh circuits.

Finally, Respondent's argument that this case is "a poor vehicle" for resolving this circuit split likewise lacks merit. Respondent merely repeats his arguments that the Fifth Circuit did not depart from 28 U.S.C. § 2253(c) and this Court's jurisprudence by denying COA on Petitioner's shackling claim based on its assessment in the first instance that there was another independent ground on which the district court could have (but did not) denied the claim. But in doing so, Respondent sidesteps the reality that had Petitioner's case been adjudicated in any circuit on the other side of the split, he would have been granted COA. *See* App. A at 8 (Higginson, J., dissenting).

CONCLUSION

The Court should grant the petition. Following either summary reversal or plenary review, it should remand with instructions to the Fifth Circuit to grant a certificate of appealability on the shackling claim.

Respectfully submitted,

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