No. 24-7473
(CAPITAL CASE)

IN THE

Supreme Court of the United States

OBEL CRUZ-GARCIA,

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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REPLY IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

The Director ignores the key issue underpinning the Fifth Circuit's denial of a Certificate of Appealability ("COA"): could reasonable jurists debate whether a jury has been exposed to an external influence as a matter of clearly established federal law where there is evidence that the jury foreman read Bible passages concerning the imposition of the death penalty to his fellow jurors during deliberations? Instead, the Director parses what the Texas Court of Criminal Appeals ("TCCA") described as an "ambiguous" record, ROA.7580, to engage in a factual dispute. The Fifth Circuit, however, pretermitted the Director's arguments about what the facts do or do not establish by resoundingly rejecting that reasonable jurists could debate whether the Bible may have been an external influence upon the jury under the circumstances alleged by Cruz-Garcia. The Director also asserts that there is no evidence supporting Cruz-Garcia's allegations. But, as set out in the Petition and below, there is significant evidence that the jury was exposed to an external influence. The Director's further argument that the Fifth Circuit was required to ignore its precedent on clearly established federal law finds no support in this Court's caselaw. This argument only emphasizes the Fifth Circuit's improper practice of using the COA stage to create new precedent to deny permission to appeal in capital cases—a practice not followed by any other circuit. It is no coincidence that, unlike in other circuits, most death-sentenced petitioners in the Fifth Circuit are denied an opportunity to appeal the denial of federal habeas relief.

I. Reasonable jurists could debate whether the Bible is an external influence under clearly established federal law.

A. The Fifth Circuit did not base its decision on the Director's version of the facts.

The Director dedicates most of his opposition to arguing that a variety of factual disputes, which were heavily contested below, should be resolved in the Director's favor. But the Fifth Circuit did not purport to resolve those factual questions. Instead, it sidestepped them. *See* App. A at 7 (acknowledging that "[t]here is some dispute as to when the Bible was referenced and whether

any verses were read aloud" and noting that according to Bowman's affidavit, the foreman "read from the Bible in the jury room, which changed the vote of another juror"). Instead, the Fifth Circuit held that because Cruz-Garcia purportedly had not alleged "that the jurors compared the facts of Cruz-Garcia's case to any specific Bible passage," no reasonable jurist would debate whether the jury foreman's Bible reading constituted an external influence under clearly established federal law. *Id.* at 8–9.

The Director makes little effort to defend the Fifth Circuit's actual holding, which was delivered in a published, precedential opinion. The Fifth Circuit drew an unprincipled and unexplained line between when Bible reading in the jury room constitutes an external influence under clearly established federal law (when a juror reads passages that include facts comparable to those of the case) and when it does not (when, as in Cruz-Garcia's case, the jury foreman reads passages commanding the death penalty for the defendant's crimes and other bad acts), and held that no reasonable jurists would debate that line. The Director does not point to any caselaw from this Court supporting this line-drawing, nor offer any explanation for it whatsoever.

B. There is evidence in the record that the jury foreman read from the Bible to the jurors during their deliberations and that this influenced jurors.

The Director also rests his opposition to certiorari on the incorrect assertion that "there is no proof the jury looked at any specific Bible passage to determine their verdict." Br. in Opposition ("BIO") at 16; *see also id.* ("Where there is no evidence any Bible reference related to the facts of the case or impacted the verdict, a COA was not warranted[.]"), 21 ("[T]he jurors' statements did not cast serious doubt on the deliberations and verdict or show the Bible was a significant motivating factor in their vote because there is no proof any jury [sic] changed their vote based on the Bible."). But the Director entirely omits the jury foreman's recorded statements that on "Friday morning" the jury was split three ways on how to answer the future dangerousness question (and

the foreman himself was "definitely undecided"), he retrieved his Bible from his overnight bag because he knew that "scripture is important" to at least one of the jurors, and he "read" passages from *Romans*, *Genesis,* and "a lot of places in *Deuteronomy*" that he had "research[ed]" ahead of deliberations. ROA.7459–60, 7470–71. These were "the key passages [he] used" and they "made a difference" to both the jury foreman and at least one other juror. ROA.7472–73. After he read from the Bible, the jury was able to "move on" and return unanimous answers to the Texas sentencing issues that afternoon. ROA.7471. The jury foreman's recorded statements were corroborated by another juror in a declaration.[1] ROA.7412–13.

In addition to entirely omitting the jury foreman's recorded statements, the Director also ignores the contradictions within the State's own evidence, *see* Pet. at 4–5, the TCCA's acknowledgment of an "ambiguous" record, ROA.7580, and the state habeas court's clearly erroneous factual recitation without holding a hearing, *see* COA Brief at 49–53. On the basis of this record, the Director nevertheless urges this Court to defer to piecemeal facts in the state court record, BIO at 13–17—something which the Fifth Circuit declined to do, App. A. at 7. There is therefore no reason for the Court to do so here.

C. There has never been a hearing on this claim.

The Director also argues that Cruz-Garcia "fails to show the state court hearing he received violated any clearly established law." BIO at 17. Tellingly, however, the Director does not point to any proceeding at which any court "determine[d] the circumstances, the impact thereof upon the juror, and whether or not it was prejudicial, in a hearing with all interested parties permitted to

[1] After Cruz-Garcia moved for a new trial, however, the State obtained a declaration from the jury foreman in which he stated that he retrieved his Bible from his overnight bag but only "acknowledged" it. ROA.7435–37. The State also obtained a declaration from the juror the foreman thought had been influenced stating that while the foreman had read from the Bible, it was only to himself. ROA.7433. Whatever version occurred, there is no dispute that the jury foreman relied on the Bible in some way before the jury had returned its verdict to the court.

participate." *Remmer v. United States*, 347 U.S. 227, 230 (1954); *see also Smith v. Phillips*, 455 U.S. 209, 215 (1982). Nor could Cruz-Garcia have received such a hearing (not even a paper hearing, as alleged by the Director, BIO at 17): the TCCA held that such a proceeding was prohibited. ROA.7582. The TCCA reasoned that because the Bible was not an external influence as a matter of law, any adjudication of what occurred in the jury room would violate Texas Rule of Evidence 606(b). *Id.* Thus, while the Director is correct that the trial court admitted some of Cruz-Garcia's evidence on these allegations, BIO at 17, it expressly declined to adjudicate any facts, ROA.12575.[2] And on direct appeal, the TCCA held that any such adjudication was indeed prohibited. ROA.7582, 7584.

The Director cannot otherwise escape this Court's clearly established law in *Remmer* and *Philipps* that where an *external* influence upon the jury is alleged, a hearing must be held. *See* Petition for Certiorari ("Pet.") at 15–16. And that this clearly established law addresses exceptions to the common law rule against jury impeachment and not Rule 606(b) is not a meaningful distinction. BIO at 17, 21. Rule 606(b) codifies the common law rule. *Tanner v. United States*, 483 U.S. 107, 121 (1987); *see also* ROA.7582 n.101. The cases identified by Cruz-Garcia therefore do establish the clearly established federal law applicable to his allegations. *See Williams v. Taylor*, 529 U.S. 362, 407 (2000) ("[A] state-court decision also involves an unreasonable application of

[2] The Director also points to direct appeal cases across various circuits for the proposition that clearly established federal law does not prescribe a hearing as required by *Remmer* and *Philipps*. BIO at 17–18. But as this Court has made clear, courts "may not canvass circuit decisions to determine whether a particular rule of law is so widely accepted among the Federal Circuits that it would, if presented to this Court, be accepted as correct." *Marshall v. Rodgers*, 569 U.S. 58, 64 (2013). And in any event, the TCCA declared the declarations submitted by both sides inadmissible under Texas Rule of Evidence 606(b). The Director's reliance on *Pena-Rodriguez v. Colorado*, 580 U.S. 363 (2017) is likewise a red herring. BIO at 19. As the Director's quoted language makes clear, there this Court confronted "juror testimony of racial bias," which this Court categorized as an internal influence. *Id.* (quoting *Pena-Rodriguez*, 580 U.S. at 225).

this Court's precedent if the state court either unreasonably extends a legal principle from our precedent to a new context where it should not apply or unreasonably refuses to extend that principle to a new context where it should apply.").

Particularly in the absence of any hearing, the Director's further argument that "[Cruz-Garcia's] claim still fails because he has not shown the reference to the Bible had a substantial and injurious effect on the verdict" holds no water. BIO at 23. As set forth above, Cruz-Garcia did present evidence on this point: Both the jury foreman's recorded interview and juror Bowman's affidavit state that the Bible reading *did* influence at least one juror to change her vote. *See, supra,* Section I.B. Moreover, a definitive showing cannot be made absent a hearing, hence *Remmer*'s requirement that a hearing be held to determine "the impact thereof upon the juror, and whether or not it was prejudicial, in a hearing with all interested parties permitted to participate."[3] *Remmer*, 347 U.S. at 230. Cruz-Garcia acknowledged as much and accordingly sought such a hearing at every available opportunity in the state and federal courts, to no avail. *See* ROA.7416–18, 6096.

D. This case is a good vehicle to answer whether the Bible is an external influence under clearly established federal law.

Whether the Bible constitutes an external influence such that juror testimony must be heard is squarely before this Court. Cruz-Garcia raised the issue in a motion for new trial, on direct appeal, and in state habeas, and then in the federal district court and before the Fifth Circuit in the form of whether 28 U.S.C. § 2254(d) was met. *See* Pet. at 4–8; *compare with Humphreys v. Emmons*, 607 U.S. __, 2025 WL 2906475, at *3 (Oct. 14, 2025) (Mem.) (Sotomayor, J., dissenting from denial of certiorari) ("The proper application of the no-impeachment rule to Humphreys's

[3] Thus the Director's reliance on the Fifth Circuit's discussion of harm in *Oliver* is inapposite. BIO at 23–24 (citing *Oliver v. Quarterman*, 541 F.3d 329, 340–44 (5th Cir. 2008)). Unlike in this case, Oliver received a hearing in state court in accordance with the process mandated where an external influence upon the jury is alleged.

underlying juror-misconduct claim, however, is not directly presented in Humphreys's petition to this Court."). But every court to have considered this claim—whether on the merits or in the context of determining whether that merits adjudication was contrary to clearly established federal law—has slammed the courthouse doors shut on the ground that the Bible did not act as an external influence. "Applying the no-impeachment rule too reflexively and restrictively risks a 'systemic loss of confidence in jury verdicts, a confidence that is a central premise of the Sixth Amendment trial right,' and that is all the more imperative when the difference between life and death is at stake." *Id.* at *4 (quoting *Pena-Rodriguez*, 580 U.S. at 225).

II. The Fifth Circuit created new precedent to deny COA.

A. Contrary to the Director's assertion, the Fifth Circuit cannot ignore its own precedent concerning clearly established federal law when applying the COA standard.

The Fifth Circuit's misapplication of the COA standard was especially egregious in this case given its previous decision in *Oliver v. Quarterman*, 541 F.3d 329, 339–40 (5th Cir. 2008), which held that the Bible *was* an external influence under clearly established federal law. To justify its denial of a COA, the Fifth Circuit seized on the narrowest of factual distinctions between *Oliver* and this case—that the jurors in *Oliver* read bible passages concerning how the defendant may have committed the murder as opposed to the fact that he committed murder and other specific acts for which the Bible calls for the death penalty. App. A at 7–9 & n.3. The Fifth Circuit's published, precedential opinion holding that no reasonable jurists would debate this distinction does exactly what this Court has repeatedly warned the Fifth Circuit not to do—"paying lipservice to the principles guiding issuance of a COA" while actually reaching the merits of the case. *Tennard v. Dretke*, 542 U.S. 274, 283 (2004); *see also Buck v. Davis*, 580 U.S. 100, 115–16 (2017) (reversing the Fifth Circuit because although it "phrased its determination in proper terms—that

jurists of reason would not debate that Buck should be denied relief," it "reached that conclusion only after essentially deciding the case on the merits").

Rather than defend the Fifth Circuit's unprincipled distinction between this case and *Oliver*, the Director asserts that in determining whether reasonable jurists would debate the district court's decision, the Fifth Circuit was free to ignore *Oliver* because it was circuit precedent, and not a decision of this Court. BIO at 13, 16. In support, the Director cites to a passage of the Fifth Circuit's decision quoting *Marshall v. Rodgers*, 569 U.S. 58, 64 (2013) for the proposition that "the Supreme Court has rejected the idea that 'circuit precedent may be used to refine or sharpen a general principle of Supreme Court jurisprudence into a specific legal rule that th[e] Court has not announced' itself for the purpose of identifying 'clearly established Federal Law.'" App. A at 8 (quoting *Marshall*, 569 U.S. at 64). The Director appears to assert that even if a circuit's previous precedent reaches one conclusion concerning clearly established federal law, that precedent can be disregarded when determining whether reasonable jurists could debate a decision reaching the opposite conclusion. In other words, regardless of what prior precedent identifies as clearly established federal law, a Circuit court can ignore that binding precedent when determining the clearly established federal law applicable to the same context in another case.

Unsurprisingly, this Court's case law does not sanction such a practice. To be sure, this Court had held that *direct review* circuit precedent, in which the court considers legal questions de novo and not under the framework of the Antiterrorism and Effective Death Penalty Act ("AEDPA"), do not constitute clearly established federal law. *Marshall*, 569 U.S. at 64; *see also Parker v. Matthews*, 567 U.S. 37, 48–49 (2012). But, as *Marshall* itself makes clear, the prohibition on using circuit-level authority to determine clearly established federal law does *not* apply to cases like *Oliver* that arise in the AEDPA context and apply § 2254(d)(1)'s clearly-established-federal-

law standard. *See Marshall*, 569 U.S. at 64 ("[A]n appellate panel may, in accordance with its usual law-of-the-circuit procedures, look to circuit precedent to ascertain whether it has already held that the particular point in issue is clearly established by Supreme Court precedent . . . .").

That this case came to the Fifth Circuit on federal habeas review did not, therefore, permit the Fifth Circuit to disregard *Oliver* in applying the reasonably debatable standard. In addition to being contrary to this Court's case law concerning the use of circuit precedent in the AEDPA context, the approach advocated by the Director—and seemingly employed by the Fifth Circuit here—is irreconcilable with the COA standard set forth in this Court's jurisprudence. If petitioners could not rely on a circuit's own AEDPA case law in seeking permission to appeal but were instead required to reinvent the wheel and convince the court of the correctness of its own precedent, that would hardly be consistent with the "threshold" and "limited nature of the [COA] inquiry." *Buck*, 580 U.S. at 116–17 (internal quotations omitted).

B. In other circuits, COAs are nearly always granted in capital cases.

The Director does not dispute that the Fifth Circuit stands virtually alone in issuing published, precedential decisions denying COAs, particularly in cases where the petitioner seeks a COA after the denial of his initial federal habeas petition. *See* Pet. at 23–24. The Director offers no explanation for why the Fifth Circuit should deviate from the other circuits in this practice. He likewise does not dispute that, due to the Fifth Circuit's COA practice, the overwhelming majority of death-sentenced petitioners in the Fifth Circuit are not permitted to appeal the denial of their federal habeas petitions. *See id.* at 24–26.

Instead, the Director questions whether the Fifth Circuit "is an outlier among other appellate courts" in how rarely it allows death-sentenced petitioners to appeal the denial of their petitions. BIO at 27. It is. Since *Buck* was decided, capital habeas petitioners in the Tenth Circuit

have been granted COAs from the denial of their initial habeas petitions in 15[4] out of 16 cases. The only such case in which a COA was not granted involved a retrial after the Tenth Circuit previously vacated the judgment on habeas review.[5] In 14 death penalty cases that have reached the Fourth Circuit on the denial of an initial federal habeas petition since *Buck*, a COA appears to have been granted in each one.[6]

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[4] *Fuston v. Quick*, No. 24-6166, Docket No. 35 (10th Cir. Apr. 22, 2025) (order granting COA); *Martinez v. Quick*, 134 F.4th 1046, 1055 (10th Cir. 2025); *Martinez v. Quick*, No. 23-6001, Docket No. 73 (June 29, 2023) (order granting COA); *Tyron v. Quick*, 81 F.4th 1110, 1138 (10th Cir. 2023); *Tyron v. Quick*, No. 21-6097, Docket No. 43 (10th Cir. Feb. 3, 2022) (order granting COA); *Frederick v. Quick*, 79 F.4th 1090, 1098-1099 (10th Cir. 2023); *Frederick v. Farris*, No. 20-6131, Docket No. 35 (10th Cir. Feb. 4, 2021) (order granting COA); *Honie v. Powell*, 58 F.4th 1173, 1182 (10th Cir. 2023); *Honie v. Powell*, No. 19-4158, Docket No. 46 (10th Cir. July 14, 2020) (order granting COA); *Menzies v. Powell*, 52 F.4th 1178, 1193 (10th Cir. 2022); *Menzies v. Powell*, No. 19-4042, Docket No. 61 (10th Cir. Jan. 24, 2020) (ordering granting COA); *Coddington v. Sharp*, 959 F.3d 947, 952 (10th Cir. 2020); *Coddington v. Royal*, No. 16-6295, Docket No. 34 (10th Cir. Apr. 13, 2017) (order granting COA); *Davis v. Sharp*, 943 F.3d 1290 (10th Cir. 2019); *Davis v. Royal*, No. 17-6225, Docket No. 40 (10th Cir. Mar. 28, 2018) (order granting COA); *Harris v. Sharp*, 941 F.3d 962, 972 (10th Cir. 2019); *Harris v. Royal*, No. 17-6109, Docket No. 40 (10th Cir. Jan. 5, 2018) (order granting COA); *Harmon v. Sharp*, 936 F.3d 1044, 1055 (10th Cir. 2019); *Harmon v. Royal*, No. 16-6360, Docket No. 40 (10th Cir. June 22, 2017) (order granting COA); *Smith v. Sharp*, 935 F.3d 1064 (10th Cir. 2019); *Smtih v. Royal*, No. 17-6184, Docket No. 35 (10th Cir. Feb. 28, 2018) (order granting COA); *Bush v. Carpenter*, 926 F.3d 644, 650 (10th Cir. 2019); *Bush v. Royal*, No. 16-6318, Docket No. 70 (10th Cir. Feb. 9, 2018) (order granting COA); *Johnson v. Carpenter*, 918 F.3d 895, 897 (10th Cir. 2019); *Johnson v. Royal*, No. 16-5165, Docket No. 32 (10th Cir. May 2, 2017) (order granting COA); *Cuesta-Rodriguez v. Carpenter*, 916 F.3d 885, 898 (10th Cir. 2019); *Cuesta-Rodriguez v. Royal*, No. 16-6315, Docket No. 31 (10th Cir. Apr. 10, 2017) (order granting COA); *Malone v. Carpenter*, 911 F.3d 1022, 1025-1026 (10th Cir. 2018); *Malone v. Royal*, No. 17-6027, Docket No. 31 (10th Cir. June 23, 2017) (order granting COA).

[5] *Lafferty v. Benzon*, 933 F.3d 1237, 1242 (10th Cir. 2019).

[6] *Bryant v. Stirling*, 126 F.4th 991, 995 (4th Cir. 2025) (COA granted by district court); *Stanko v. Stirling*, 109 F.4th 681, 689-90 (4th Cir. 2024); *Stanko v. Stirling*, No. 22-3, Docket No. 56 (4th Cir. July 5, 2023) (order granting COA); *Bowman v. Stirling*, 45 F.4th 740, 751 (4th Cir. 2022); *Bowman v. Stirling*, No. 20-12, Docket No. 34 (4th Cir. Mar. 26 2021) (order granting COA); *Allen v. Stephan*, 42 F.4th 223, 245 (4th Cir. 2022) (COA issued by district court); *Wood v. Stirling*, 27 F.4th 269, 271 (4th Cir. 2022); *Wood v. Stirling*, No. 20-11, Docket No. 21 (4th Cir. Apr. 16, 2021) (order granting COA); *Mahdi v. Stirling*, 20 F.4th 846, 854 (4th Cir. 2021); *Mahdi v. Stirling*, No. 19-3, Docket No. 33 (4th Cir. Sept. 14, 2020) (order granting COA); *Burr v. Jackson*, 19 F.4th 395, 403 (4th Cir. 2021); *Burr v. Jackson*, No. 20-5, Docket No. 13 (4th Cir. Aug. 12, 2020) (order granting COA); *Stokes v. Stirling*, 10 F.4th 236 (4th Cir. 2021), *vact'd*, 142 S. Ct. 2751 (2022); *Stokes v. Stirling*, No. 18-6, Docket No. 25 (4th Cir. Aug. 24, 2020) (order granting COA); *Terry v. Stirling*, 854 F. App'x 475, 476 (4th Cir. 2021); *Terry v. Stirling*, No. 20-3, Docket No. 21 (4th Cir. June 25, 2020) (order granting COA); *Owens v. Stirling*, 967 F.3d 396, 403 (4th Cir. 2020); *Owens v. Sterling*, No. 18-8, Docket No. 32 (4th Cir. June 17, 2019) (order granting COA); *Sigmon v. Stirling*, 956 F.3d 183, 190 (4th Cir. 2020); *Sigmon v. Sterling*, No. 18-7, Docket No. 34 (4th Cir. Apr. 24, 2019) (order granting COA); *Moore v. Stirling*, 952 F.3d 174, 181 (4th Cir. 2020); *Moore v. Stirling*, No. 18-4, Docket No. 21 (4th Cir. Jan. 7, 2019) (order granting COA); *Lawlor v. Zook*, 909 F.3d 614, 618, 625 (4th Cir. 2018); *Lawlor v. Zook*, No. 17-6, Docket No. 35 (4th Cir. Feb. 22, 2018) (order granting COA); *Warren v. Thomas*, 894 F.3d 609, 613 (4th Cir. 2018); *Warren v. Polk*, No. 17-4, Docket No. 25 (4th Cir. December 18, 2017) (order granting COA).

The Fifth Circuit's well-documented and continual misapplication of the COA standard and the resulting low number of capital cases in which the Fifth Circuit grants COAs are not a coincidence. The Fifth Circuit's denial of COA in this case represents a particularly extreme example of that trend and should be reversed.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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