

No. 25-5876

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In the  
Supreme Court of the United States

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WILLIAM HOUSMAN,

*Petitioner,*

v.

LAUREL HARRY, SECRETARY,  
PENNSYLVANIA DEPARTMENT OF CORRECTIONS, ET AL.,

*Respondents.*

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

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BRIEF IN OPPOSITION

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BOSTON, MASSACHUSETTS

**\*\*\* CAPITAL CASE \*\*\***

**COUNTER STATEMENT OF  
THE QUESTIONS PRESENTED**

Whether the Third Circuit Court of Appeals properly exercised its statutory authority and discretion when it denied Petitioner's request for a Certificate of Appealability where Petitioner was not able to show that a reasonable jurist would debate whether his underlying claim had merit and was procedurally defaulted?

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## COUNTER STATEMENT OF THE CASE

William Housman (Petitioner) and co-defendant Beth Ann Markman were tried in a joint jury trial for the vicious, premeditated murder of Leslie White. The testimony and evidence presented at trial established that Housman had been cheating on Markman with Leslie White, a recent high school graduate who worked at the local Walmart. (*Commonwealth v. Housman*, 986 A.2d 822 (Pa. 2009).) Markman discovered the affair and told various people that she wanted to “kick [White’s] ass.” *Id.*; *Commonwealth v. Markman*, 916 A.2d 586, 593 (Pa. 2007). Markman also threatened to kill White. *Housman*, 986 A.2d 822. Despite Markman’s violent reaction to the affair, Housman continued to see White. *Id.* Markman ultimately drove Housman to use a payphone, at which time he called White at work as claimed his father died and she needed to come console him. *Id.*

After luring White to his home, Housman attacked White with a hammer while Markman hid. *Id.* at 826. After hearing White’s screams, Markman assisted Housman with subduing White; they tied her up with speaker wires, shoved a red cloth in her mouth, and Housman strangled her to death. *Id.*

Housman and Markman then placed White’s body in her own vehicle and drove it to Virginia. *Id.* at 827. Housman concealed White’s corpse in an abandoned car and continued to drive White’s vehicle around to see friends and family in Virginia, claiming he had bought the vehicle from a friend. *Id.* Markman told a friend that she had caught Housman cheating, but did not have to worry about “the damn bitch

anymore” because she had taken care of it. *Id.* The pair also used White’s camera to take photographs, including a photo where Housman was strangling Markman while they laughed. *Id.*

After White’s parents filed a missing persons report, her vehicle was recovered, which ultimately lead to an investigation into Housman and Markman, and the discovery of White’s body. *Id.* at 827-28. Both Housman and Markman provided confessions to the police; at trial the redacted confessions were played for the jury. *Id.* at 828. Housman detailed how he got on the couch, had White sitting on the floor up against it, then he placed speaker wire around her neck and strangled her. (N.T. II, 438, Ex. 83B, Housman Typed Transcript (hereinafter “TR. \_\_”). (TR. 30). He did not want Markman to hit him with a hammer. (TR. 30). During this attack, White was “jumpin’ and screamin’,” so Markman held her arms and legs. (TR. 31). White was trying to get the wire around her neck away with her hands. (TR. 31). Markman checked White with a stethoscope. (TR. 32-33). Housman knew he just committed “murder one” and that it is “a death row sentence.” (TR. 33). They decided to dispose of White’s body in Virginia. (TR. 34-35).

Ultimately, after physical evidence was presented that corroborated the confessions of Housman and Markman, the jury convicted them both of first-degree murder. *Housman*, 986 A.2d at 830. They were both sentenced to death; both filed direct appeals to the Pennsylvania Supreme Court. *Id.* Among the issues raised on appeal by Housman was a pretrial motion for severance that had been denied. *Id.* at 828-29. Housman alleged on appeal that Markman’s duress defense at trial

prejudiced him and allowed in evidence that would not have otherwise been admissible in a separate trial. *Id.* at 833. The Pennsylvania Supreme Court denied the request for relief on this claim, noting that the evidence was offset by his own duress evidence and the jury, after hearing his confession, could have concluded that he had a violent nature without relying on the evidence presented by Markman. *Id.* at 835. The Pennsylvania Supreme Court affirmed the trial court’s decision to deny the severance motion and found that there was no abuse of discretion. *Id.* at 835.<sup>1</sup> The Pennsylvania Supreme Court affirmed the judgment of guilt on all counts and affirmed the sentence of death. *Id.* at 844. Housman then filed a writ of certiorari to the United States Supreme Court, which was denied. *Housman v. Pennsylvania*, 562 U.S. 881, 131 S. Ct. 199 (2010).

Housman filed a Petition for Post Conviction Collateral Relief on June 17, 2011, which alleged, among other things, that trial counsel was ineffective for failing to properly raise and litigate the severance claim. *Commonwealth v. Housman*, 226 A.3d 1249, 1265 (Pa. 2020). The Pennsylvania Supreme Court, including Justice Baer, found that “Housman’s federal due process claim was substantively rejected by this Court on direct appeal.” *Id.* The Court again found that the claim lacked merit and denied Housman’s request for relief on the severance issue. *Id.* at 1266.

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<sup>1</sup> Justice Baer filed a dissenting opinion, which Petitioner relies on in the instant appeal. Notably, Justice Baer later joined the majority when Petitioner relitigated this issue in a Post Conviction Relief Act petition. Justice Baer, in his dissent, cited the extensive evidence of abuse by Housman that Markman presented as part of her duress defense. *Housman*, 986 A.2d at 851 (dissent).



Housman was granted a new penalty phase; ultimately the Commonwealth agreed to forgo the death penalty and Housman was resentenced to life in prison without parole. On January 21, 2022, Housman filed a renewed Memorandum of Law in support of his request for federal habeas relief. (*Housman v. Wetzel*, 3:20-CV-1198, 2024 WL 3625862 (Bloom, D., United States Magistrate Judge, January 11, 2024) at 12.) Housman raised five issues in support of his request for federal habeas relief, including an allegation that his trial counsel failed to effectively raise and litigate the severance issue. *Id.* Ultimately the United States Magistrate Judge denied the request for relief, noting that Housman had previously litigated the severance issue on direct appeal, unsuccessfully, and that the PCRA court again denied the claim on collateral appeal. *Id.* at 24. United State Magistrate Judge Bloom denied the request for a Certificate of Appealability because Housman was not able to demonstrate that a reasonable jurist would find the district court's assessment of the constitutional claims were debatable or wrong. *Id.* at 37.

United States District Judge Mannion overruled Housman's objections to Judge Bloom's report and recommendations and adopted his decision in its entirety, including the denial of a certificate of appealability. (*Housman v. Wetzel*, 2024 WL 365209, M.D. PA. August 1, 2024 (Mannion, M., United States District Judge). Housman applied for a certificate of appealability from the Third Circuit Court of Appeals, which was also denied. (*Housman v. Secretary of PA Dep't of Corr.*, 2025 WL 2613239, 3rd. Cir. (Pa.), June 10, 2025). Housman filed this Petition for Writ of Certiorari; the Commonwealth objects to the request.



## SUMMARY OF THE ARGUMENT

There is not a circuit split as alleged by Petitioner in this case. The Circuit Courts of Appeals have the statutory authority to grant or deny a Certificate of Appealability by a panel of judges or one judge. The Third Circuit Court of Appeals acted within its discretion when it denied Housman's request for a Certificate of Appealability where he could not demonstrate that a jurist of reason would debate that his claim had merit. The underlying claim was previously litigated on direct appeal, which this Court declined to review; the same issue was raised again under the guise of an ineffective assistance of counsel claim and deemed meritless on collateral appeal by the Pennsylvania Supreme Court.



## REASONS FOR DENYING THE PETITION

### **I. The Third Circuit Court of Appeals Properly Exercised its Discretion to Deny the Certificate of Appealability and there is No Circuit Split Regarding this Issue.**

Housman alleges that there is a circuit split regarding whether a certificate of appealability should be issued where a state court is divided on an issue of federal constitutional claims. Housman's argument fails for two reasons: (1) there is no circuit split because whether a circuit court issues a certificate of appealability is a procedural matter left to the discretion of the courts and (2) the state court was not

divided on the issue that is currently the subject of the request for a certificate of appealability.

This Honorable Court has recognized that the Courts of Appeals are acting within the discretion granted under 28 U.S.C. § 2253, when they determine whether a certificate of appealability should be issued and whether that determination should be made by a panel of judges or one judge. *In Re Burwell*, 350 U.S. 521, 522 (1956). In 1925, Congress expanded the federal circuit courts' jurisdiction to authorize appeals in habeas cases from a district court to a circuit court; the statute was amended accordingly to provide that a circuit judge, like a district judge, could issue a Certificate of Probable Cause: "[N]o appeal to the circuit court of appeals shall be allowed unless the United States court by which the final decision was rendered or a judge of the circuit court of appeals shall be of opinion that there exists probable cause for an appeal . . . ." *Schenk v. Plummer*, 113 F.2d 726, 727 (9th Cir.1940) (quoting 28 U.S.C. § 466 (1925)) (emphasis added).

"In 1948, the CPC statute was recodified as 28 U.S.C. § 2253 and provided that no appeal could be taken from a final order in a habeas proceeding, "unless the justice or judge who rendered the order or a circuit justice or judge issue[d] a certificate of probable cause." *See Slack v. McDaniel*, 529 U.S. 473, 480 (2000) (quoting Act of June 25, 1948, 62 Stat. 967) (emphasis added). *See also, United States ex rel. Sullivan v. Heinze*, 250 F.2d 427 (9th Cir.1957) (post-*Burwell* decision denying CPC via one-judge order); *Burgess v. Warden*, 284 F.2d 486, 488 (4th Cir.1960) (post-*Burwell* decision

holding CPC may be ruled upon by one or three judges depending on whether court is in session).” *Santiago Salgado v. Garcia*, 384 F.3d 769, 772 (9th Cir. 2004)

“In 1996, as part of the Antiterrorism and Effective Death Penalty Act (AEDPA), Congress amended section 2253 and made sweeping changes in the federal habeas statutory scheme. Pub. L. No. 104–132, § 102, 110 Stat. 1214, 1217 (1996). Congress renamed the CPC a certificate of appealability and for the first time extended the [Certificate of Appealability] requirement to federal prisoners who file post-conviction motions under 28 U.S.C. § 2255. See 28 U.S.C. § 2253(c)(1)(B). Congress, however, left intact the provision authorizing a “circuit justice or judge” to issue the certificate of appealability. See 28 U.S.C. § 2253(c)(1) (emphasis added). The Federal Rules of Appellate Procedure continue to reflect this discretion by providing that a “[COA] request addressed to the court of appeals may be considered by a circuit judge or judges, as the court prescribes.” Fed. R. App. P. 22(b)(2) (emphasis added).” *Santiago Salgado v. Garcia*, 384 F.3d 769, 772 (9th Cir. 2004)

Because Congress has prescribed statutory authority that allows the circuit courts to determine whether a certificate of appealability will be issued, and how that is done, there is no “circuit split” on this procedure or the issue as presented by Housman. The Third Circuit Court of Appeals properly exercised its discretion when it reviewed the issue and denied Housman’s request for a certificate of appealability.

Second, Housman’s allegation that there is an issue debatable among a jurist of reason fails because the current allegations before this Honorable Court arose in the context of the Petition for Post Conviction Collateral Relief. Housman cites to Justice

Baer's dissenting opinion in support of his claim; however Justice Baer authored a dissenting opinion in Housman's direct appeal, which was already denied review by this Honorable Court. On collateral review, Justice Baer agreed with the majority and denied relief on the severance issue, which had already been litigated and determined to be without merit.

To obtain a certificate of appealability, a petitioner must "sho[w] 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.'" *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003) citing *Slack*, 529 U.S., at 484. "Where a district court has rejected the constitutional claims on the merits, the showing required to satisfy § 2253(c) is straightforward: The petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Miller-El v. Cockrell*, 537 U.S. 322, 338, 123 S. Ct. 1029, 1040, 154 L. Ed. 2d 931 (2003) citing *Slack*, 529 U.S., at 484, 120 S.Ct. 1595.

Here, the United States District Court reviewed the claim on its merits and denied relief. The underlying claim relevant to the instant appeal, was related to Housman's Petition for Post Conviction Collateral Relief and the allegation that trial counsel did not properly raise or litigate the severance issue. The Pennsylvania Supreme Court majority, including Justice Baer, determined that the claim was without merit and had been litigated on direct appeal. The United States District Court and the Third Circuit Court of Appeals denied the request for habeas relief and

denied the request for a certificate of appealability. The United States Court of Appeals for the Third Circuit specifically noted that not only had Housman failed to show that a jurist of reason would debate that issue, but it was also procedurally defaulted. The denial of the certificate of appealability was within the discretion of the Circuit Court and within the law.

## **II. This Case is a Poor Vehicle to Review this Issue.**

There is not a split among the courts of appeal and this Court has denied certiorari under the same alleged theory as recently as March 2025. *See Shockley v. Vandergriff*, 145 S. Ct. 894 (U.S. 2025). In the instant matter, there has not been any dissenting or contrary opinions issued related to Housman's request for a certificate of appealability. There have not been any contrary opinions regarding his request for federal habeas relief. The underlying issue involves a state court claim that was adjudicated on direct appeal and is now procedurally defaulted. This case does not provide a good vehicle to review the alleged issue as stated by Housman in his petition.



## CONCLUSION

Wherefore, the Commonwealth respectfully submits that the Third Circuit Court of Appeals properly exercised its statutory authority to deny the request for a Certificate of Appealability, there is no circuit split on that authority, and the Petitioner's underlying claim is meritless and subject to procedural default. The Commonwealth respectfully requests that this Honorable Court dismiss the request for certiorari in this case.

Respectfully submitted,

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