

No. _____

IN THE
Supreme Court of the United States

COREY DURAN BERRY,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

HECTOR A. DOPICO
FEDERAL PUBLIC DEFENDER
ANDREW L. ADLER
Counsel of Record
JANICE L. BERGMANN
ASS'T FED. PUBLIC DEFENDERS
1 E. Broward Blvd., Ste. 1100
Ft. Lauderdale, FL 33301
(954) 356-7436
Andrew_Adler@fd.org

Counsel for Petitioner

March 10th, 2026

QUESTION PRESENTED

Under the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), an appeal may not be taken from a final order in a federal habeas proceeding unless a circuit judge or justice issues a “certificate of appealability” (COA). 28 U.S.C. § 2253(c)(1). A COA may issue only if the prisoner makes a “substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). To do so, the prisoner must show that “reasonable jurists could debate” whether the petition should have been resolved in a different manner. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

The question presented is:

Whether a certificate of appealability under 28 U.S.C. § 2253 should be granted where the issue that the petitioner seeks to raise on appeal has been resolved against him by binding circuit precedent but has been resolved in his favor by another circuit.

RELATED PROCEEDINGS

The following proceedings are related under this Court's Rule 14.1(b)(iii):

- *Berry v. United States*, No. 24-11704 (11th Cir. Feb. 18, 2026) (order denying certificate of appealability vis-à-vis second 28 U.S.C. § 2255 motion to vacate);
- *Berry v. United States*, No. 23-cv-24416 (S.D. Fla. Apr. 17, 2025) (order denying second 28 U.S.C. § 2255 motion to vacate);
- *In re Berry*, No. 23-13310 (11th Cir. Oct. 31, 2023) (order granting authorization to file second 28 U.S.C. § 2255 motion to vacate);
- *Berry v. United States*, No. 17-12473 (11th Cir. Nov. 27, 2017) (order denying certificate of appealability vis-à-vis first 28 U.S.C. § 2255 motion to vacate);
- *Berry v. United States*, No. 16-cv-22411 (S.D. Fla. Feb. 28, 2017) (order denying first 28 U.S.C. § 2255 motion to vacate);
- *United States v. Berry*, No. 14-12116 (11th Cir. Jan. 21, 2015) (order granting appellant's motion to voluntarily dismiss appeal with prejudice);
- *United States v. Berry*, No. 13-cr-20857 (S.D. Fla. Apr. 30, 2014) (judgment in a criminal case entered on three counts for a total sentence of 218 months).

TABLE OF CONTENTS

QUESTION PRESENTED i

RELATED PROCEEDINGS..... ii

TABLE OF AUTHORITIES v

PETITION FOR A WRIT OF CERTIORARI 1

OPINIONS BELOW 1

JURISDICTION..... 1

STATUTORY PROVISION INVOLVED 2

INTRODUCTION 3

STATEMENT..... 5

 A. Legal Background 5

 B. Proceedings Below 6

REASONS FOR GRANTING THE PETITION 12

 I. The circuits are squarely divided on the question presented 12

 A. Three circuits have held that a COA may not be granted if there
 is adverse circuit precedent, notwithstanding a circuit conflict..... 12

 B. Two circuits have held that a COA must be granted if there is a
 circuit conflict, notwithstanding adverse circuit precedent 14

 II. The question presented is recurring and important 17

 III. This case is an ideal vehicle 27

 IV. The decision below conflicts with this Court’s precedents 29

CONCLUSION..... 36

TABLE OF APPENDICES

Appendix A: Order by the U.S. Court of Appeals for the Eleventh Circuit
Denying a Certificate of Appealability (Feb. 18, 2026)..... 1a

Appendix B: Motion for a Certificate of Appealability in the U.S. Court of
Appeals for the Eleventh Circuit (July 14, 2025)..... 4a

Appendix C: Order by the U.S. District Court for the Southern District of
Florida Denying Second 28 U.S.C. § 2255 Motion (Apr. 17, 2025)..... 41a

TABLE OF AUTHORITIES

Cases

<i>Allen v. Ornoski</i> , 435 F.3d 946 (9th Cir. 2006)	15–17, 19
<i>Allen v. Stephens</i> , 805 F.3d 617 (5th Cir. 2015)	13, 19
<i>Allensworth v. Roe</i> , 2007 WL 9770695 (C.D. Cal. Feb. 23, 2007).....	15
<i>Anderson v. United States</i> , 2018 WL 11242965 (M.D. Ga. July 20, 2018).....	13
<i>Aviles v. United States</i> , 2022 WL 1439333 (11th Cir. Feb. 2, 2022).....	13
<i>Bageron v. United States</i> , 2021 WL 1250744 (M.D. Fla. Apr. 5, 2021).....	13
<i>Barefoot v. Estelle</i> , 463 U.S. 880 (1983)	5–6, 31–32
<i>Beeman v. United States</i> , 81 F.3d 1215 (11th Cir. 2017)	9–11, 27–29
<i>Berry v. United States</i> , 585 U.S. 1009, 138 S. Ct. 2665 (2018) (mem).....	8
<i>Bowe v. United States</i> , 146 S. Ct. 447 (2026)	19, 26
<i>Bradway v. Tilton</i> , 2008 WL 447509 (S.D. Cal. Feb. 15, 2008).....	15
<i>Brown v. Davenport</i> , 596 U.S. 118 (2022)	19

<i>Buck v. Davis</i> , 580 U.S. 100 (2017)	5, 21, 25, 29, 32–33
<i>Castro v. United States</i> , 540 U.S. 375 (2003)	26
<i>De Jesus Blanco v. Florida</i> , 2018 WL 11256059 (S.D. Fla. Oct. 23, 2018).....	13
<i>Dickinson v. Shinn</i> , 2020 WL 587850 (D. Ariz. Feb. 6, 2020).....	15
<i>Dupree v. Younger</i> , 598 U.S. 729 (2023)	21
<i>Felker v. Turpin</i> , 518 U.S. 651 (1996)	26
<i>Fernandez v. United States</i> , 114 F.4th 1170 (11th Cir. 2024).....	9–11, 27–29
<i>Franklin v. Lucero</i> , 2021 WL 4595175 (10th Cir. 2021).....	16, 19
<i>Gonzalez v. Crosby</i> , 545 U.S. 524 (2005)	25
<i>Gonzalez v. Thaler</i> , 565 U.S. 134 (2012)	5–6, 20–21
<i>Hamilton v. Sec’y, Fla. Dep’t of Corrs.</i> , 793 F.3d 1261 (11th Cir. 2015)	10–14, 19, 22, 27–28, 31–36
<i>Harbison v. Bell</i> , 556 U.S. 180 (2009)	21
<i>Hohn v. United States</i> , 524 U.S. 236 (1998)	1, 21, 25–26

<i>House v. Mayo</i> , 324 U.S. 42 (1945)	26
<i>Hunter v. United States</i> , 146 S. Ct. 288 (2025) (U.S. No. 24-1063)	21
<i>In re Hammoud</i> , 931 F.3d 1032 (11th Cir. 2019)	8
<i>Jennings v. Stephens</i> , 574 U.S. 271 (2015)	21
<i>Johnson v. United States</i> , 576 U.S. 591 (2015)	7, 9, 25
<i>Johnson v. Vandergriff</i> , 143 S. Ct. 2551 (2023)	22–23, 30
<i>Jones v. Hendrix</i> , 599 U.S. 465 (2023)	19
<i>Jordan v. Epps</i> , 756 F.3d 395 (5th Cir. 2014)	13, 19, 22
<i>Jordan v. Stephens</i> , 576 U.S. 1071, 135 S. Ct. 2647 (2015)	22–23, 30
<i>Kamana’o v. Frank</i> , 2010 WL 1783560 (D. Haw. Apr. 30, 2010)	15
<i>Lambright v. Stewart</i> , 220 F.3d 1022 (9th Cir. 2000)	14–17, 19, 35
<i>Lambrix v. Sec’y, Fla. Dep’t of Corrs.</i> , 851 F.3d 1158 (11th Cir. 2017)	13
<i>Lozada v. Deeds</i> , 498 U.S. 430 (1991)	14, 17–18, 30–32, 34

<i>Lozada v. Deeds</i> , 964 F.2d 956 (9th Cir. 1992)	30
<i>Lynce v. Mathis</i> , 519 U.S. 433 (1997)	31–32, 34
<i>McGee v. McFadden</i> , 588 U.S. 923 (2019)	18, 21
<i>Miller-El v. Cockrell</i> , 537 U.S. 322 (2003)	6, 21, 29, 32–33
<i>Mitchell v. United States</i> , 43 F.4th 608 (6th Cir. 2022).....	13–14, 19, 34
<i>Ortiz v. United States</i> , 2023 WL 2854427 (S.D. Fla. Apr. 10, 2023)	13
<i>Parrish v. United States</i> , 605 U.S. 376 (2025)	21
<i>Payton v. Davis</i> , 906 F.3d 812 (9th Cir. 2018)	15, 19
<i>Rivers v. Guerrero</i> , 605 U.S. 443 (2025)	19, 26
<i>Savoca v. United States</i> , 21 F.4th 225 (2d Cir. 2021)	28–29
<i>Shockley v. Vandergriff</i> , 145 S. Ct. 894 (2025)	23
<i>Slack v. McDaniel</i> , 529 U.S. 473 (2000)	i, 6, 14, 21, 29, 31, 35
<i>Stewart v. Martinez-Villareal</i> , 523 U.S. 637 (1998)	26

<i>Tennard v. Dretke</i> , 542 U.S. 274 (2004)	34–35
<i>Tillman v. Hubbard</i> , 2007 WL 9752024 (E.D. Cal. May 24, 2007).....	15
<i>United States Gomez-Sotelo</i> , 18 F. App’x 690 (10th Cir. 2001)	16, 19
<i>United States v. Crooks</i> , 769 F. App’x 569 (10th Cir. 2019)	15–17, 19
<i>United States v. Davis</i> , 588 U.S. 445 (2019)	8–9
<i>United States v. McElhiney</i> , 2018 WL 2087142 (D. Kan. May 4, 2018).....	16
<i>United States v. Rith</i> , 778 F. App’x 612 (10th Cir. 2019)	24
<i>United States v. Rodella</i> , 852 F. App’x 323 (10th Cir. 2021)	16
<i>United States v. Taylor</i> , 596 U.S. 845 (2022)	8–9
<i>Waagner v. United States</i> , 971 F.3d 647 (7th Cir. 2020)	29
<i>Welch v. United States</i> , 578 U.S. 120 (2016)	25
<i>Wilson v. Sec’y, Pa. Dep’t of Corrs.</i> , 782 F.3d 110 (3d Cir. 2015).....	17
<i>Young v. Swaney</i> , 2024 WL 4751643 (6th Cir. Sept. 24, 2024).....	14, 19

Statutes

18 U.S.C.
 § 924(c) 7–9, 11
 § 2119 7

28 U.S.C.
 § 1254(1)..... 1
 § 2253 i, 2, 6, 25, 31–32
 § 2253(c) 6, 32
 § 2253(c)(1)..... i, 5, 17, 34
 § 2253(c)(2)..... i, 6
 § 2255 ii, iv, 1–2, 5, 7–11, 17–18, 25, 28, 30

Rules

11th Cir. R. 22-1(c)..... 11, 24

Fed. R. App. P.
 22(b)(3) 18
 40(b)(2)(C) 24

Other Authorities

Aziz Z. Huq,
 Habeas and the Roberts Court,
 81 U. Chi. L. Rev. 519 (2014) 19

U.S. Courts, Caseload Statistics Data Tables (Sept. 30, 2025),
 tbl. B-1A (Sept. 30, 2025) 18
 tbl. C-3 (Sept. 30, 2025)..... 18

IN THE
Supreme Court of the United States

COREY DURAN BERRY,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

Petitioner Corey Duran Berry respectfully seeks a writ of certiorari to review an order issued by the United States Court of Appeals for the Eleventh Circuit.

OPINIONS BELOW

The Eleventh Circuit’s single-judge order denying petitioner a certificate of appealability is unreported and is reproduced here as Appendix (“App.”) A, 1a–3a.

The district court’s order denying petitioner’s underlying 28 U.S.C. § 2255 motion to vacate is unreported and is reproduced here as App. C, 41a–52a.

JURISDICTION

This Court has jurisdiction under 28 U.S.C. § 1254(1). *See Hohn v. United States*, 524 U.S. 236, 238–39, 253 (1998) (holding that this Court has certiorari jurisdiction to review the denial of certificates of appealability by courts of appeals).

STATUTORY PROVISION INVOLVED

Section 2253 of Title 28 of the U.S. Code provides, in full:

(a) In a habeas corpus proceeding or a proceeding under section 2255 before a district judge, the final order shall be subject to review, on appeal, by the court of appeals for the circuit in which the proceeding is held.

(b) There shall be no right of appeal from a final order in a proceeding to test the validity of a warrant to remove to another district or place for commitment or trial a person charged with a criminal offense against the United States, or to test the validity of such person's detention pending removal proceedings.

(c)

(1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from—

(A) the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court; or

(B) the final order in a proceeding under section 2255.

(2) A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.

(3) The certificate of appealability under paragraph (1) shall indicate which specific issue or issues satisfy the showing required by paragraph (2).

INTRODUCTION

Must a COA issue when the circuits are split? That question itself has split the circuits. And it otherwise satisfies all of the traditional criteria for this Court's review.

First, the courts of appeals are squarely divided on the question presented. The Fifth, Sixth, and Eleventh Circuits have determined that a COA must be denied where the issue a habeas petitioner seeks to raise on appeal is foreclosed by binding precedent in his home circuit—even if that issue has been resolved in his favor by another circuit. Meanwhile, the Ninth and Tenth Circuits have reached the exact opposite conclusion: a COA must be granted where the issue has been resolved in the petitioner's favor by another circuit—even if that issue is foreclosed by precedent in his home circuit. This circuit conflict emerged over a decade ago; it is intractable.

Second, the circuit conflict should be resolved at long last because the question presented recurs with great frequency. District courts and courts of appeals decide whether to grant COAs every day. And federal habeas law is replete with circuit conflicts. As a result, the question presented arises consistently, as reflected by numerous COA decisions over the past few decades (even though the vast majority of COA rulings go unreported). Yet the ability of habeas petitioners, including those under sentence of death, to appeal issues dividing the circuits—the most difficult and weighty issues of all—currently depends entirely on the happenstance of geography.

Eliminating that arbitrary disparity is necessary to ensure the fair administration of justice. This Court has never tolerated such disparity in other contexts. To the contrary, the Court regularly grants review in civil and criminal

cases to ensure that the appellate rights of litigants do not depend on geography. Such uniformity is needed no less in the habeas context given the heightened stakes.

Confirming the importance of the question presented, ever since AEDPA's enactment this Court has repeatedly superintended the COA process and standard to ensure their proper and uniform application. In addition, a total of four different Justices of this Court have joined three separate opinions over the past decade urging review where a COA denial was issued in the face of contrary decisions by other judges. And the need for such intervention is most pressing here, because the current COA practice adopted in three circuits impedes the development of federal habeas law by limiting the ability of those circuits and this Court to resolve circuit conflicts.

Third, this is an uncommonly good vehicle. In the decision below, the court of appeals relied exclusively on its longstanding precedent forbidding COAs where the prisoner's argument is foreclosed by circuit precedent, even where other circuits have disagreed. And both the district court and the court of appeals rejected petitioner's claim based exclusively on circuit precedent with which other circuits have disagreed. Petitioner emphasized all of this below, arguing that this underlying circuit conflict warranted a COA. Thus, this case cleanly presents the question dividing the circuits.

Finally, the court of appeals erroneously denied petitioner a COA. Where, as here, the circuits have divided on a legal issue, that issue is by very definition one that "reasonable jurists could debate." After all, they have in fact already debated it. That common-sense conclusion is compelled by numerous precedents of this Court, and the contrary approach adopted by three circuits conflicts with those precedents.

STATEMENT

A. Legal Background

When a federal district court denies a prisoner's habeas petition, the prisoner "does not enjoy an absolute right to appeal." *Buck v. Davis*, 580 U.S. 100, 115 (2017).

In 1908, "Congress established the requirement that a prisoner obtain a certificate of probable cause [CPC] to appeal in order to prevent frivolous appeals from delaying the States' ability to impose sentences, including death sentences." *Barefoot v. Estelle*, 463 U.S. 880, 892 & n.3 (1983). In habeas cases, the CPC served as the "primary means of separating meritorious from frivolous appeals." *Id.* at 893.

In *Barefoot*, this Court articulated the legal standard to obtain a CPC: the prisoner must "make a substantial showing of the denial of a federal right." *Id.* at 893 (quotation omitted). In making that showing, "obviously the petitioner need not show that he should prevail on the merits. He has already failed in that endeavor. Rather, he must demonstrate that the issues are debatable among jurists of reason; that a court could resolve the issues in a different manner; or that the questions are adequate to deserve encouragement to proceed further." *Id.* at 893 n.4 (cleaned up).

In AEDPA, Congress renamed the CPC a "certificate of appealability" (COA). The statute provides that, "[u]nless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals" from the final order in a state-prisoner habeas proceeding or a federal-prisoner proceeding under 28 U.S.C. § 2255. 28 U.S.C. § 2253(c)(1). This Court has since clarified that AEDPA's COA requirement is jurisdictional in nature. *Gonzalez v. Thaler*, 565 U.S. 134, 142

(2012). Thus, “federal courts of appeals lack jurisdiction to rule on the merits of appeals from habeas petitions” unless and until a circuit justice or judge grants the habeas petitioner a COA. *Id.* (quoting *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003)).

The statute further provides that a COA may issue “only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). Interpreting this key provision, the Court has explained that, “[e]xcept for substituting the word ‘constitutional’ for the word ‘federal,’ § 2253 is a codification of the CPC standard announced in *Barefoot v. Estelle*.” *Slack v. McDaniel*, 529 U.S. 473, 483 (2000). The Court continued: “Congress had before it the meaning *Barefoot* had given to the words it selected; and we give the language found in § 2253(c) the meaning ascribed it in *Barefoot*, with due note for the substitution of the word ‘constitutional.’” *Id.* Thus, in order to obtain a COA, the prisoner must “show[] 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 adequate to deserve encouragement to proceed further.” *Id.* at 484 (cleaned up).

While the COA standard is well-settled, the circuits have divided on how to apply that standard to the common scenario where an issue is foreclosed by precedent in the prisoner’s home circuit but has been favorably resolved by another circuit. As explained below, this case squarely presents that question for this Court’s review.

B. Proceedings Below

1. In 2013, a federal grand jury in the Southern District of Florida returned an indictment charging petitioner with the following four federal offenses: attempted

carjacking, in violation of 18 U.S.C. § 2119 (Count One); brandishing a firearm during and in relation to a “crime of violence”—namely, the attempted carjacking offense in Count One—in violation of 18 U.S.C. § 924(c) (Count Two); completed carjacking, in violation of § 2119 (Count Three); and brandishing a firearm during and in relation to a “crime of violence”—namely, the completed carjacking offense in Count Three—in violation of § 924(c) (Count Four). (Case No. 13-cr-20857, Dist. Ct. ECF No. 1).

Pursuant to a written plea agreement, petitioner pleaded guilty to Counts One through Three, and the government dismissed Count Four. (Dist. Ct. ECF Nos. 26–27; Dist. Ct. ECF No. 52 at 18–19). The district court ultimately sentenced petitioner to 218 months in prison: 134 months for Counts One and Three, to run concurrently; and a mandatory, consecutive sentence of 84 months for the § 924(c) offense in Count Two. (Dist. Ct. ECF No. 49 at 2; Dist. Ct. ECF No. 53 at 28). Petitioner noticed an appeal but voluntarily dismissed it with prejudice. (Dist. Ct. ECF Nos. 41, 54).

2. In 2016, petitioner moved to vacate his § 924(c) conviction, pursuant to 28 U.S.C. § 2255. (Case No. 16-cv-22411). He argued that his conviction was invalid in light of *Johnson v. United States*, 576 U.S. 591 (2015), which had declared unconstitutionally vague the residual clause definition of a “violent felony” in the Armed Career Criminal Act. Petitioner argued that *Johnson* invalidated the similar residual clause definition of a “crime of violence” in § 924(c). The district court denied the motion because, even assuming *Johnson* invalidated § 924(c)’s residual clause, petitioner’s predicate offense of attempted carjacking still qualified as a “crime of violence” under the § 924(c)’s elements clause. (Dist. Ct. ECF No. 11 at 3–6). The

Eleventh Circuit denied a COA. (Case No. 17-12473, C.A. ECF No. 16). And this Court denied certiorari. *Berry v. United States*, 585 U.S. 1009, 138 S. Ct. 2665 (2018) (mem).

3. In *United States v. Davis*, 588 U.S. 445 (2019), this Court declared unconstitutionally vague § 924(c)'s residual clause. Shortly thereafter, the Eleventh Circuit held that *Davis* announced a new rule of constitutional law made retroactive by this Court, satisfying the standard for filing a second or successive § 2255 motion. *In re Hammoud*, 931 F.3d 1032, 1037–39 (11th Cir. 2019). Petitioner did not seek to file such a motion at that time because *Davis* did not disturb the conclusion that attempted carjacking was a “crime of violence” under § 924(c)'s elements clause. But that changed after *United States v. Taylor*, 596 U.S. 845 (2022), which held that attempted Hobbs Act robbery was not a “crime of violence” under the elements clause.

Petitioner thereafter sought authorization from the Eleventh Circuit to file a second § 2255 motion based on *Davis*. He argued that *Davis* invalidated § 924(c)'s residual clause, and that his attempted carjacking offense no longer qualified as a “crime of violence” under the elements clause based on the reasoning in *Taylor*. (Case No. 23-13310, C.A. ECF No. 2 at 3–4). The Eleventh Circuit granted petitioner authorization. The court concluded that petitioner made the requisite *prima facie* showing that his § 924(c) offense was invalid because, although the Eleventh Circuit had previously held that attempted carjacking qualified as a “crime of violence” under the elements clause, the court had not yet addressed whether that circuit precedent remained valid after this Court's intervening decision in *Taylor*. (*See id.* at 11–13).

4. Having obtained authorization, petitioner filed a second § 2255 motion to vacate his § 924(c) conviction. Although a magistrate judge recommended that the district court deny the motion based in part on the conclusion that attempted carjacking continued to qualify as a “crime of violence” under the elements clause, the district court expressly declined to “reach” or “resolve” that question, noting that “even the government stop[ped] short” of making that argument. App. C, 47a–48a. In fact, and as petitioner observed in his § 2255 motion, the government had been conceding that issue post-*Taylor*. Case No. 23-cv-24416, Dist. Ct. ECF No. 1 at 9–10.

Instead, the district court denied the § 2255 motion on the sole ground that petitioner could not meet his burden to prove, more likely than not, that his § 924(c) offense was based solely on the residual clause rather than the elements clause, as required by a pair of circuit precedents: *Beeman v. United States*, 81 F.3d 1215 (11th Cir. 2017) and *Fernandez v. United States*, 114 F.4th 1170 (11th Cir. 2024). App. 48a–49a. Rather than argue that he could meet his burden under *Beeman* and *Fernandez*, petitioner instead “challenge[d] the validity of that framework.” App. 49a. The district court, however, deemed itself bound by that circuit precedent. *See* App. 49a–51a. In addition to denying the § 2255 motion, the court denied a COA. App. 51a–52a & n.5.

5. Petitioner accordingly requested a COA from the court of appeals. App. B. In his COA motion, petitioner emphasized that, “[a]s Judge Rosenbaum’s concurrence [in *Fernandez*] noted, the courts of appeals are now divided 7–3” on the burden of proof that movants must meet in *Johnson* and *Davis* cases. App. 14a. He explained that, while the Eleventh Circuit and six others required movants to prove

that the district court relied solely on the residual clause, three circuits instead required movants to prove only that the district court *may have* relied on the residual clause. App. 14a–15a. And several circuits had also “noted th[is] conflict.” App. 15a.

In light of that circuit conflict, petitioner argued that he satisfied the standard for a COA. He explained that “reasonable jurists could debate” whether the district court erroneously denied his § 2255 motion by applying the stricter burden of proof required by Eleventh Circuit precedent. App. 23a–24a (explaining that “the Third, Fourth, and Ninth Circuits disagree with *Beeman* and *Fernandez*,” and “[t]he jurists in those circuits are certainly ‘reasonable,’ and also would certainly debate whether the district court should have resolved Mr. Berry’s motion in a different manner”); *see* App. 24a–31a (detailing Third, Fourth, and Ninth Circuit precedent). Thus, he would have prevailed had he been convicted in one of those circuits. App. 31a–32a & n.1.

Petitioner continued that, although his claim was foreclosed by Eleventh Circuit precedent, that should not preclude a COA. App. 33a. In that regard, however, petitioner acknowledged that the Eleventh Circuit had already adopted a contrary understanding in *Hamilton v. Sec’y, Fla. Dep’t of Corrs.*, 793 F.3d 1261, 1266 (11th Cir. 2015), which held that a COA may not issue where a claim is foreclosed by binding circuit precedent, even if other circuits disagreed with Eleventh Circuit precedent. App. 34a–35a. Petitioner disagreed with *Hamilton*, arguing that it conflicted with this Court’s COA precedents. *See* App. 35a–37a. And petitioner maintained that a COA was warranted because “reasonable jurists in other circuits would have disagreed with the [District] Court’s resolution” of his case. App. 37a.

In a single-judge order, the court of appeals denied petitioner a COA. App. A (Abudu, J.). After reciting the COA standard, the court invoked *Hamilton*'s holding that “[t]his Court will not issue a COA when a claim is foreclosed by binding circuit precedent, as reasonable jurists will follow controlling law.” App. 2a (citing *Hamilton*, 793 F.3d at 1266). The court then explained that, under its circuit precedents in *Beeman* and *Fernandez*, “a § 2255 movant bears the burden to show that, more likely than not, his § 924(c) conviction resulted solely from the application of the residual clause. A movant cannot succeed if all he can show it that the district court *could* have relied on the residual clause.” *Id.* (citations to *Beeman* and *Fernandez* omitted). As petitioner had explained, that tracked the standard used by three other circuits.

The court then applied *Hamilton*, concluding that “reasonable jurists would not debate” the district court’s application of *Beeman/Fernandez*. App. 3a. The court rejected petitioner’s argument that “denying a COA when circuit precedent forecloses a claim is inconsistent with Supreme Court precedent,” finding no “on point Supreme Court cases.” *Id.* Finally, the court also petitioner denied a COA on “whether courts must grant a COA if the issue is debatable among reasonable jurists, even if there is controlling circuit authority to the contrary.” App. 3a n.1 (quotation marks omitted).

The Eleventh Circuit’s local rules provide that a COA denial may not be the subject of a petition for rehearing en banc. 11th Cir. R. 22-1(c). Thus, petitioner could not request the full court to reconsider its COA precedent in *Hamilton*, much less the underlying circuit precedents in *Beeman/Fernandez*—even though other circuits have disagreed with both sets of precedents. Petitioner’s only recourse is certiorari review.

REASONS FOR GRANTING THE PETITION

The circuits are squarely divided 3–2 on the COA question presented. That question is frequently recurring and important to the fair administration of justice. This case provides an unusually good vehicle to resolve it. And the decision below conflicts with several of this Court’s COA precedents. Certiorari should be granted.

I. The circuits are squarely divided on the question presented.

The circuits are split on whether a COA should be granted where the issue on appeal is foreclosed by precedent in the prisoner’s home circuit but has been favorably resolved by another circuit. Three circuits have said no; two circuits have said yes.

A. Three circuits have held that a COA may not be granted if there is adverse circuit precedent, notwithstanding a circuit conflict.

Three circuits have squarely held that, where an issue is foreclosed by binding circuit precedent, no COA may be granted—not even if other circuits have disagreed.

1. The Eleventh Circuit has led the charge. In *Hamilton v. Sec’y, Fla. Dep’t of Corrs.*, 793 F.3d 1261 (11th Cir. 2015), the court held that “no COA should issue where the claim is foreclosed by binding circuit precedent because reasonable jurists will follow controlling law.” *Id.* at 1266 (quotation omitted). Although the “Third Circuit ha[d] disagreed” with the Eleventh Circuit’s binding precedent, the court emphasized that “we are bound by our precedent, not by Third Circuit precedent.” *Id.* And because the former was “controlling on us,” that “ends any debate among reasonable jurists about the correctness of the decision under binding precedent.” *Id.*

The Eleventh Circuit has repeatedly reaffirmed and applied this rule. Indeed, although COA orders are seldom reported, there are dozens of reported district court

and Eleventh Circuit orders denying COAs based on *Hamilton*, including in cases alleging a circuit split.¹ That is exactly what happened in this case. App. 2a–3a & n.1.

2. The Fifth Circuit applied the same approach in *Jordan v. Epps*, 756 F.3d 395 (5th Cir. 2014). There, the panel denied a COA (over a dissent) because, although another circuit had “taken a different approach” to the same issue, “we are bound by our own prior precedent on this issue,” so his claim “would fail under our precedent.” *Id.* at 411 n.5. The Fifth Circuit followed that approach again in *Allen v. Stephens*, 805 F.3d 617 (5th Cir. 2015). There too, the court denied a COA because the prisoner’s “argument is foreclosed by binding circuit precedent.” *Id.* at 633. The court continued: “although *Allen* cites precedents from the Sixth and Seventh Circuits, we must follow our own precedent. Therefore, we deny a COA on this claim.” *Id.* (footnote omitted).

3. Relying on the Eleventh Circuit’s decision *Hamilton*, the Sixth Circuit applied the same approach in *Mitchell v. United States*, 43 F.4th 608 (6th Cir. 2022). The court explained that “our precedent [i]s the proper reference point” for the COA analysis. *Id.* at 616. “And that precedent bars Mitchell’s claim.” *Id.* “It follows,” the court explained, “that he is not eligible for a certificate of appealability.” *Id.* (citing *Hamilton* for the proposition that “no COA should issue where the claim is foreclosed by binding precedent because reasonable jurists will follow controlling law”) (brackets

¹ See, e.g., *Ortiz v. United States*, 2023 WL 2854427, at *8–9 (S.D. Fla. Apr. 10, 2023); *Aviles v. United States*, 2022 WL 1439333, at *2, *4 (11th Cir. Feb. 2, 2022); *Bageron v. United States*, 2021 WL 1250744, at *7 (M.D. Fla. Apr. 5, 2021); *De Jesus Blanco v. Florida*, 2018 WL 11256059, at *3 (S.D. Fla. Oct. 23, 2018); *Anderson v. United States*, 2018 WL 11242965, at *3 (M.D. Ga. July 20, 2018); *Lambrix v. Sec’y, Fla. Dep’t of Corrs.*, 851 F.3d 1158, 1171 (11th Cir. 2017).

and quotation marks omitted). The Sixth Circuit has since applied *Mitchell* to deny a COA on an issue that was foreclosed by circuit precedent, notwithstanding the prisoner’s reliance on a contrary sister circuit opinion. See *Young v. Swaney*, 2024 WL 4751643, at *2 (6th Cir. Sept. 24, 2024) (citing *Mitchell* and its quotation of *Hamilton*).

B. Two circuits have held that a COA must be granted if there is a circuit conflict, notwithstanding adverse circuit precedent.

In stark contrast, two circuits have squarely adopted the exact opposite rule: notwithstanding binding precedent foreclosing an issue in the prisoner’s home circuit, a COA must be granted where the issue has been favorably resolved by another court.

1. The Ninth Circuit was the first circuit to address the question presented.

In *Lambright v. Stewart*, 220 F.3d 1022 (9th Cir. 2000), the court of appeals concluded that “[t]he Supreme Court has made clear that the application of an apparently controlling rule [in a circuit] can nevertheless be debatable for purposes” of a COA. *Id.* at 1025. The Ninth Circuit read this Court’s decision in *Lozada v. Deeds*, 498 U.S. 430 (1991) (per curiam), to support this proposition: “[t]he fact that another circuit had decided the issue in a different manner . . . rendered a seemingly well-established issue in [the] circuit debatable for purposes of” a COA. *Id.* at 1026; *see id.* at 1027–28 (“Under *Lozada*, the fact that another circuit opposes our view satisfies the standard for obtaining a COA.”). The Ninth Circuit also read this Court’s decision in *Slack* to support the same proposition: “Similarly, in *Slack*, the Supreme Court recently held that an issue apparently settled by the law of our circuit remained debatable for purposes of issuing a COA” because that circuit precedent “conflicted with cases from other circuits.” *Id.* at 1026; *see id.* (“Under *Slack*, it is thus clear that

we should not deny a petitioner an opportunity to persuade us through full briefing and argument to reconsider circuit law that apparently forecloses relief.”). The Ninth Circuit proceeded to apply that proposition in *Lambright* itself, granting a COA on an issue because, although Ninth Circuit precedent foreclosed the prisoner’s argument, other circuits had accepted it. *See id.* at 1027–28 & n.6 (citing cases).

The Ninth Circuit has since reaffirmed *Lambright*’s holding in additional published opinions. In *Payton v. Davis*, 906 F.3d 812 (9th Cir. 2018), the court recognized that an issue was debatable due to “the Sixth Circuit’s contrary holding.” *Id.* at 821. For support, the court cited *Allen v. Ornoski*, 435 F.3d 946 (9th Cir. 2006), where the Ninth Circuit had expressly and succinctly reaffirmed *Lambright*’s rule: “Even if a question is well settled in our circuit, a constitutional claim is debatable if another circuit has issued a conflicting ruling.” *Id.* at 951 (citing *Lambright*).²

2. The Tenth Circuit has also consistently applied the same rule for the last two decades, granting prisoners a COA whenever there is a conflict of authority.

In *United States v. Crooks*, 769 F. App’x 569 (10th Cir. 2019), the Tenth Circuit granted a COA because, although the issue was foreclosed by circuit precedent, “another circuit has reached a contrary decision on this issue.” *Id.* at 571. Citing

² Given these published opinions, it is unsurprising that district courts in the Ninth Circuit regularly cite and apply *Lambright*’s rule to grant COAs, including in cases where there is an alleged conflict of authority. *See, e.g., Dickinson v. Shinn*, 2020 WL 587850, at *6–8, *12 (D. Ariz. Feb. 6, 2020); *Kamana’o v. Frank*, 2010 WL 1783560, at *10 (D. Haw. Apr. 30, 2010); *Bradway v. Tilton*, 2008 WL 447509, at *4, *16 (S.D. Cal. Feb. 15, 2008); *Tillman v. Hubbard*, 2007 WL 9752024, at *1 (E.D. Cal. May 24, 2007); *Allensworth v. Roe*, 2007 WL 9770695, at *1 (C.D. Cal. Feb. 23, 2007).

Lambright and Allen v. Ornoski, the Tenth Circuit explained that this sister “circuit opinion demonstrates that reasonable jurists could debate” the issue. *Id.*

The Tenth Circuit has applied that rule for over two decades. It first did so in *United States v. Gomez-Sotelo*, 18 F. App’x 690 (10th Cir. 2001): “Although this issue has been settled in this circuit and not overturned by the Supreme Court, the existence of a split among the circuits persuades us that reasonable jurists could debate” it. *Id.* at 692 (quotation omitted). And the court did so again more recently in *Franklin v. Lucero*, 2021 WL 4595175 (10th Cir. 2021), granting a COA because, although circuit “precedent unquestionably resolves the issue against Mr. Franklin,” “the existence of a circuit split” sufficed. *Id.* at *5 (citing *Crooks*, 769 F. App’x at 572).

To be sure, the Tenth Circuit’s opinions are unpublished. Nonetheless, they have functioned as precedent as a practical matter. Indeed, district courts in that circuit have treated them as binding. *See, e.g., United States v. Rodella*, 852 F. App’x 323, 326–27 (10th Cir. 2021) (recounting how “the district court felt obligated to grant a COA” based on a circuit conflict because, although it “voiced its disagreement with [*Crooks*]’ holding, it noted that it faithfully will follow the Tenth Circuit’s decisions, and, as the court understood its duty, that meant that it must follow *Crooks*’s lead”) (quotation marks and citation omitted); *United States v. McElhiney*, 2018 WL 2087142, at *2 (D. Kan. May 4, 2018) (applying *Gomez-Sotelo*). Petitioner is unaware of any indication that the Tenth Circuit, or any district court within that Circuit, has denied or would deny a COA were a prisoner to identify contrary circuit authority.

3. Adding to the confusion, the Third Circuit has also adopted a similar position. Like the Ninth Circuit, the Third Circuit cited this Court’s decision in *Lozada* to grant a COA because, “as Wilson argues, the Sixth Circuit’s decision in [a particular case]—which conflicts with the District Court’s decision in this case—demonstrates that the issue Wilson presents is ‘debatable among jurists of reason.’” *Wilson v. Sec’y, Pa. Dep’t of Corrs.*, 782 F.3d 110, 115 (3d Cir. 2015) (Hardiman, J.).

Although the Third Circuit did not state in its opinion that there was circuit precedent foreclosing the issue, the court’s reasoning was not qualified in any way, indicating that the existence of any contrary authority would always suffice for a COA. Indeed, that is how the Tenth Circuit in *Crooks* understood it. *See Crooks*, 769 F. App’x at 572 (citing the Third Circuit’s decision in *Wilson*—alongside the Ninth Circuit’s decisions in *Lambright* and *Allen v. Ornoski*—as support for its position).

II. The question presented is recurring and important.

The Court should not allow this entrenched circuit split to persist. The question presented will continue to arise. The appellate rights of habeas petitioners should not turn on geography. And the circuit split impedes the uniform development of the law.

1. To begin, the question presented is one that recurs with great frequency.

Under AEDPA, a COA is required to appeal the denial of *any* habeas corpus petition brought by a state prisoner and *any* § 2255 motion to vacate brought by a federal prisoner. 28 U.S.C. § 2253(c)(1). Notably, that includes capital cases. These filings represent a sizable portion of the federal judicial docket. Between September 2024 and September 2025 alone, there were over 10,000 habeas corpus petitions filed

by state prisoners and over 3,000 § 2255 motions filed by federal prisoners. *See* U.S. Courts, Caseload Statistics Data Tables, tbl. C-3 at 1–2 (Sept. 30, 2025).³

The overwhelming majority of those petitions are denied. *See McGee v. McFadden*, 588 U.S. 923, 927 (2019) (Sotomayor, J., dissenting from denial of certiorari) (citing study reporting over 99% denial rate for habeas petitions). And those denials generate appeals. Between September 2024 and September 2025, there were over 2,000 appeals filed in state-prisoner habeas cases and over 1,000 filed in federal-prisoner § 2255 cases. *See* U.S. Courts, Caseload Statistics Data Tables, tbl. B-1A at 1–2 (Sept. 30, 2025).⁴ In nearly all such cases, the district court and/or the court of appeals must decide whether to issue a COA. (The rare exception is when the petitioner prevails, as the government does not need a COA. Fed. R. App. P. 22(b)(3)).

To be sure, the question presented here will not arise in *every* habeas case. It will arise in habeas cases where the prisoner identifies a circuit conflict in the face of adverse circuit precedent. Unfortunately, it is impossible to quantify exactly how frequently that issue arises because the vast majority of COA rulings come in orders that are not reported to legal databases. Exacerbating the problem, many of these COA orders are unexplained summary denials. *See, e.g., Lozada*, 498 U.S. at 431 (“the Ninth Circuit denied a certificate of probable cause in a one-sentence order”).

Despite the dearth of reported and reasoned appellate COA rulings, the issue has nonetheless arisen consistently since AEDPA’s inception. In the Ninth Circuit,

³ https://www.uscourts.gov/sites/default/files/document/jb_c3_0930.2025.pdf.

⁴ https://www.uscourts.gov/sites/default/files/document/jb_b1a_0930.2025.pdf.

there are decisions from *Lambright* (2000) to *Allen v. Ornoski* (2006) to *Payton* (2018). In the Tenth Circuit, there are decisions from *Gomez-Sotelo* (2001) to *Crooks* (2019) to *Franklin* (2021). On the other side of the split, there is the Eleventh Circuit's decision in *Hamilton* (2015) and the dozens of cases applying it. The Fifth Circuit charted the same course in *Jordan* (2014) and *Allen v. Stephens* (2015). And the Sixth Circuit has applied its precedent in *Mitchell* (2022) recently in *Young* (2024). Needless to say, these reported COA decisions—spanning the last 25 years—are merely illustrative and substantially underinclusive, for they exclude the dozens if not hundreds of unreported trial and appellate COA orders applying these precedents.

In addition to the volume of habeas filings and appeals, the question presented recurs with great consistency because federal habeas law is an area rife with circuit conflicts. As the Court is undoubtedly aware, AEDPA has produced more circuit splits than arguably any other federal statute (including ACCA). Indeed, since AEDPA's enactment in 1996, the Court has routinely granted certiorari to resolve dozens of circuit splits over that statute's meaning. *See Aziz Z. Huq, Habeas and the Roberts Court*, 81 U. Chi. L. Rev. 519, 531 (2014) (opining—over a decade ago—that AEDPA's “text is so ambiguous, and so generative of circuit splits, that it might as well have been drafted as a delegation to the Court”). That practice continues in earnest today.⁵

The upshot is that the question presented here will continue to arise. Habeas petitions will continue to be filed. Lower courts will continue to rule on COAs. And

⁵ For a handful of examples over the past few Terms, see *Bowe v. United States*, 146 S. Ct. 447, 454 (2026); *Rivers v. Guerrero*, 605 U.S. 443, 459 (2025); *Jones v. Hendrix*, 599 U.S. 465, 477 (2023); and *Brown v. Davenport*, 596 U.S. 118, 126–27 (2022).

circuit conflicts over AEDPA will continue to proliferate faster than this Court can resolve them. This very petition illustrates the point: the circuit split here—over the proper application of the COA standard itself—has been extant since 2014. This circuit conflict is now firmly entrenched. It is past time for the Court to resolve it.

2. Indeed, resolution is needed to ensure the fair administration of justice.

As this Court has held, a COA is a prerequisite to appellate jurisdiction. *Gonzalez*, 565 U.S. at 649. Thus, it serves a “gatekeeping function” with respect to whether state and federal prisoners, including those under sentences of death, may appeal the denial of their habeas petitions. *Id.* at 650. Needless to say, a habeas petitioner’s ability to appeal should not turn on the arbitrariness of geography, especially when their appeal implicates an issue that has already divided the circuits.

Yet that is the current state of affairs. When a petitioner’s argument is foreclosed by precedent in their home circuit, but would be accepted by another circuit, state and federal prisoners are entitled to COAs (and thus full appeals) only if they were convicted out West in the Ninth and Tenth Circuits—but not if they were convicted in, say, Florida, Texas, or Ohio. This case illustrates the disparity: had petitioner been convicted in Los Angeles rather than Miami, he would have received a COA. (And not only that, he would have prevailed on appeal, as the Ninth Circuit has disagreed with the Eleventh Circuit on the underlying burden-of-proof issue). The right to appeal such weighty issues of life and liberty cannot depend on geography.

This Court has always behaved accordingly. The Court regularly grants review to ensure that the law is uniform when it comes to appellate rights so that similarly-

situated litigants will not be treated differently based solely on where they happen to be located. The Court has done so in civil and criminal appeals alike, as recent cases reflect. *See, e.g., Hunter v. United States*, 146 S. Ct. 288 (2025) (U.S. No. 24-1063) (granting review to resolve two circuit splits relating to criminal sentence appeal waivers); *Parrish v. United States*, 605 U.S. 376, 381 & n.1 (2025) (resolving circuit split over “whether a litigant who files a notice of appeal after the ordinary appeal period expires must file a second notice of appeal after the appeal period is reopened”); *Dupree v. Younger*, 598 U.S. 729, 733 & n.2 (2023) (resolving circuit split over “whether a purely legal challenge resolved at summary judgment must be renewed in a post-trial motion in order to preserve that challenge for appellate review”).

Such uniformity is no less essential in the habeas context. This Court’s past practice reflects that understanding. Since AEDPA’s inception, the Court has repeatedly granted review to superintend the COA process, addressing: this Court’s ability to review COA rulings by the courts of appeals, *Hohn*, 524 U.S. at 238–39; the jurisdictional nature of the statutory requirements for COAs, *Gonzalez*, 529 U.S. at 137, 140–48; the category of cases and orders subject to them, *see Jennings v. Stephens*, 574 U.S. 271, 282–83 (2015); *Harbison v. Bell*, 556 U.S. 180, 183 (2009); *Slack*, 529 U.S. at 480–82; the COA standard itself, *Slack*, 529 U.S. at 483–85; and the application of that standard to different fact patterns, *see, e.g., Buck*, 580 U.S. at 115–18, 122–23, 128; *Miller-El*, 537 U.S. at 335–38, 341–48; *see also McGee*, 588 U.S. at 928 (Sotomayor, J., dissenting from denial of certiorari) (“We have periodically had to remind lower courts not to unduly restrict this pathway to appellate review.”).

This Court’s sound practice of resolving recurring issues about the COA process and standard reflects the Court’s understanding that COAs are important to the administration of justice. The law governing COAs must be clear cut, and its application to habeas petitioners must be uniform. Nonetheless, the Court has not yet had occasion to resolve the longstanding confusion about how to apply the COA standard to the very common fact pattern at issue here—where there is adverse precedent in the prisoner’s home circuit but favorable precedent in another circuit.

Confirming that issue’s importance, four different members of this Court, led by Justice Sotomayor, have previously urged the Court to intervene. Over a decade ago, three Justices dissented from the denial of certiorari in *Jordan v. Epps*, the Fifth Circuit case applying the *Hamilton* approach. *Jordan v. Stephens*, 576 U.S. 1071, 135 S. Ct. 2647 (2015) (Sotomayor, J., joined by Ginsburg and Kagan, JJ., dissenting from the denial of certiorari). These Justices opined that the Fifth Circuit “contravened our precedents” by denying a COA, even though two of that Circuit’s judges had found the claim debatable, and the en banc Ninth Circuit had granted relief on a similar claim. *Id.* at 2651–52. “Those facts alone might be thought to indicate that reasonable minds could differ—*had differed*—on the resolution of Jordan’s claim.” *Id.* at 2651.

Reinforcing the issue’s importance, three Justices more recently dissented again from the denial of certiorari on similar grounds in *Johnson v. Vandergriff*, 143 S. Ct. 2551 (2023) (Sotomayor, J., joined by Kagan and Jackson, JJ, dissenting from the denial of application of stay and denial of certiorari). The Justices opined that the “Eighth Circuit was too demanding in assessing whether reasonable jurists could

debate the merits of Johnson’s habeas petition,” emphasizing that “[t]he Missouri Supreme Court, with a dissent, denied Johnson’s claim,” and “three judges” on the Eighth Circuit dissented as to rehearing. *Id.* at 2553. Thus, just as in *Jordan*, “[r]easonable jurists have already disagreed on Johnson’s entitlement to habeas relief.” *Id.* at 2556. But like the Fifth Circuit, the Eighth Circuit denied a COA by improperly engaging in an “extensive[]” merits analysis of the claim. *Id.* at 2553–54.

Most recently, two members of this Court yet again dissented from the denial of certiorari on a similar basis in *Shockley v. Vandergriff*, 145 S. Ct. 894 (2025) (Sotomayor, J., joined by Jackson, J., dissenting from the denial of certiorari). They would have granted review to resolve a circuit split on “an important question” that is nearly identical to the one here: whether a COA may be denied where one member of the panel votes to grant it. *Id.* at 894–95, 897. Unlike the split here, the split there could be resolved by the circuits “reconsider[ing] their operating rules.” *See id.* at 895, 897–98. Still, the Justices opined that a COA should issue in that scenario. And they opined that resolving the split in that manner would have “significant consequences” by facilitating “the opportunity for a counseled appeal,” “promot[ing] efficiency,” and “maintain[ing] the public perception of fairness and integrity in the justice system.” *Id.* at 895–96 (quotation omitted). Those same considerations apply equally here.

3. The question presented here also involves an even more fundamental consideration, for it has major structural implications for the development of federal habeas law. The COA approach adopted by the Fifth, Sixth, and Eleventh Circuits makes it exceedingly difficult for those courts to revisit their own habeas precedents

when other circuits disagree. Worse, it limits *this Court's* ability to ensure uniformity in this area, where circuit conflicts are all too common and have grave implications.

a. Where circuit precedent forecloses a prisoner's claim, and other circuits disagree, issuing a COA affords the prisoner the opportunity to seek en banc review. After all, a circuit conflict is one of the enumerated bases for such review. Fed. R. App. P. 40(b)(2)(C). And that is the only way for the prisoner's home circuit to reconsider its own precedent. But, without a COA, there is no appellate jurisdiction to review the merits. Thus, absent a COA, prisoners cannot obtain en banc review on any of the underlying issues, even when there is a circuit conflict. *See United States v. Rith*, 778 F. App'x 612, 614 n.2 (10th Cir. 2019) (Bacharach, J., dissenting from the denial of a COA because it prevented the prisoner from seeking rehearing en banc to challenge circuit precedent he believed to be wrong). The Eleventh Circuit has gone further by forbidding any en banc review of COA denials at all. 11th Cir. R. 22-1(c).

The upshot is that the Fifth, Sixth, and Eleventh Circuits may be able to reconsider their habeas precedents only if they do so in the precedent-setting case itself. Once that precedent is established, no COAs would be granted on that issue moving forward. And that is true even if other circuits subsequently create a conflict. This dynamic substantially limits the opportunities for those circuits to reconsider their own habeas precedents when such reconsideration is needed most. And because that approach ossifies circuit conflicts in this area, it puts even more pressure on this Court to resolve them. So this Court should be the one to decide if that is appropriate.

b. That is especially true because, at the same time, that COA approach also limits this Court’s ability resolve those circuit conflicts. To be sure, this Court has certiorari jurisdiction to review COA denials. *Hohn*, 524 U.S. at 238–39, 253. And “§ 2253 does not limit the scope of [this Court’s] consideration of the underlying merits.” *Buck*, 580 U.S. at 118. Nonetheless, it is not this Court’s ordinary practice to grant review of COA denials in order to resolve circuit conflicts lurking beneath them.

That is for good reason. As discussed, many COA denials are unreasoned or conclusory, making them poor candidates for this Court’s review. In addition, the procedural posture makes those cases poor vehicles for review because the underlying issue would be analyzed through the lens of the COA standard. *See Gonzalez v. Crosby*, 545 U.S. 524, 544 n.7 (2005) (Stevens, J., dissenting) (“A petition for certiorari seeking review of a denial of a COA has an objectively low chance of being granted. Such a decision is not thought to present a good vehicle for resolving legal issues”).

That dynamic explains petitioner’s modest request here, seeking this Court’s review only on the COA circuit conflict (though he would certainly welcome this Court adding *sua sponte* the underlying circuit conflict for review as well). Only in unusual circumstances has the Court bypassed the COA standard to resolve a circuit conflict. Illustrating the point well is *Welch v. United States*, 578 U.S. 120 (2016), where the Court acknowledged the “unusual procedural posture” of the case, *id.* at 127–28, yet nonetheless granted review of a *pro se* COA denial in order to resolve a circuit conflict over *Johnson*’s retroactivity before the one-year § 2255 statute of limitations expired.

c. The bottom line is that, while the Fifth, Sixth, and Eleventh Circuit's approach to COAs does not completely insulate circuit conflicts in federal habeas law from this Court's review, it does make such review far less likely. And, at the same time, it also sharply limits the ability of those circuits to resolve splits on their own through en banc review. Thus, the COA approach in those circuits *both* solidifies circuit splits *and* restricts this Court's ability to resolve them—all to the detriment of prisoners in those circuits who find themselves on the wrong side of a circuit conflict.

That dynamic conflicts with this Court's practice of zealously safeguarding its own authority to ensure the uniformity of federal habeas law. This Court has done so by: retaining certiorari jurisdiction over COA denials, which required overruling *House v. Mayo*, 324 U.S. 42 (1945), *see Hohn*, 524 U.S. at 238–39, 251–53 (“Our rule permits us to carry out our normal function of reviewing possible misapplications of law by the courts of appeals without having to resort to extraordinary remedies.”); narrowly construing a statute barring certiorari review of orders denying leave to file successive petitions, *see Bowe*, 146 S. Ct. at 454–62; *Castro v. United States*, 540 U.S. 375, 379–81 (2003); *Stewart v. Martinez-Villareal*, 523 U.S. 637, 641–42 (1998); *Felker v. Turpin*, 518 U.S. 651, 660–62 (1996); and even favorably applying jurisdictional standing and custody requirements, *see Rivers*, 605 U.S. at 451–52.

In short, allowing lower courts to deny COAs in the face of a circuit conflict is incompatible with this Court's past practice in the habeas context and its general obligation to ensure the uniformity of federal law. This Court should permit that COA practice only if the government can justify it after full briefing and oral argument.

III. This case is an ideal vehicle.

This case offers an excellent and rare vehicle to resolve the circuit conflict.

1. The order below squarely tees up the question presented. The court of appeals expressly denied a COA based on its precedent in *Hamilton*. The court explained that “[t]his Court will not issue a COA when a claim is foreclosed by binding circuit precedent, as reasonable jurists will follow controlling law.” App. 2a (citing *Hamilton*, 793 F.3d at 1266). The court then applied *Hamilton* by applying the underlying circuit precedents in *Beeman* and *Fernandez*. App. 2a–3a. Finally, the court rejected petitioner’s argument that *Hamilton*’s approach conflicts with this Court’s COA precedents, refusing to grant a COA even on that issue. App. 3a & n.1.

The Eleventh Circuit’s order represents an unusually good vehicle. Because many COA denials contain little or no reasoning, their basis is often unclear. But that is not the case here. There is no doubt that the court denied petitioner a COA under its precedent in *Hamilton*, which (as explained above) conflicts with the law in other circuits. And there is no doubt that, in applying *Hamilton*’s rule to petitioner, the court relied on its precedents in *Beeman* and *Fernandez*, which (as explained below) conflict with the law in other circuits. Thus, the order below provides an uncommonly clean vehicle to resolve the circuit conflict over the application of the COA standard.

2. Not only did the Eleventh Circuit expressly reaffirm and apply its COA precedent in *Hamilton*; it did so in the face of petitioner’s extensive argument that a COA was required precisely because the underlying circuit precedents in *Beeman* and *Fernandez* conflicted with precedents in three other circuits. He explained that this

conflict demonstrated that reasonable jurists could debate the issue. Indeed, he made that argument and laid out the underlying circuit conflict in great detail. *See* App. 14a–15a, 21a–33a & n.1. He also argued that *Hamilton’s* application of the COA standard was itself incorrect and conflicted with this Court’s COA precedents. App. 33a–37a. Thus, petitioner fully preserved and developed the argument he renews here: notwithstanding circuit precedent foreclosing the issue that he sought to appeal, a COA was nonetheless required because other circuits had resolved it in his favor.

3. Finally, it is clear that the circuits are indeed divided on the underlying burden-of-proof issue upon which the lower courts exclusively relied to deny relief.

Judge Rosenbaum most recently summarized the legal landscape in her *Fernandez* concurrence. She wrote separately because she believed that the Eleventh Circuit’s precedents in *Beeman* and *Fernandez* were “wrong,” in that they were “unmoored from” and “at odds with § 2255’s plain text.” *Fernandez*, 114 F.4th at 1183, 1186. She acknowledged that the First, Fifth, Sixth, Eighth, Tenth, and D.C. Circuits had all “adopted *Beeman’s* rule,” though she observed that they did so without “consult[ing] the text of § 2255(b).” *Id.* at 1186 n.3 (citing cases). Most critically here, she further observed that “[t]he First, Fourth, and Ninth Circuits have adopted a more permissive rule, holding that a petitioner meets his burden if his sentence *may* have been predicated on application of the now-void residual clause.” *Id.* (quotation omitted; citing cases). Other circuits have also noted this conflict, which goes back several years. *See, e.g., Savoca v. United States*, 21 F.4th 225, 234 n.7 (2d Cir. 2021)

(“there is currently a circuit split as to a petitioner’s burden of proof”); *Waagner v. United States*, 971 F.3d 647, 654 (7th Cir. 2020) (“The courts of appeals are divided”).

Because there is no doubt that the circuits are split on the issue upon which the lower courts exclusively relied to deny relief—with some circuits adopting a “more permissive rule” than the Eleventh Circuit’s—this case provides the perfect vehicle to resolve the question presented: does circuit precedent foreclosing a prisoner’s claim preclude a COA, even when other circuits have adopted a more favorable legal rule?

IV. The decision below conflicts with this Court’s precedents.

The Eleventh Circuit erred by denying petitioner a COA. Despite the adverse circuit precedents in *Beeman* and *Fernandez*, other circuits have disagreed with those precedents. As a result, “reasonable jurists” could at least “debate” the issue. The Eleventh Circuit’s contrary position conflicts with several of this Court’s precedents.

1. The COA standard itself is settled. That standard requires a prisoner to “show that reasonable jurists could debate whether . . . the petition should have been resolved in a different manner.” *Miller-El*, 537 U.S. at 336 (quoting *Slack*, 529 U.S. at 484) (brackets omitted). “The only question is whether the applicant has shown that ‘jurists of reason could disagree with the district court’s resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further.’” *Buck*, 580 U.S. at 115 (quoting *Miller-El*, 537 U.S. at 327). Put simply, the question at the COA stage is whether the district court’s resolution was “debatable among jurists of reason.” *Miller-El*, 537 U.S. at 336.

a. Merely restating the COA standard goes a long way towards answering the question presented. After all, where federal courts have already disagreed in their resolution of a particular legal issue, then that issue is debatable by very definition. Indeed, not only *could* reasonable jurists debate that issue; they have in fact done so. “Th[at] fact[] alone might be thought to indicate that reasonable minds could differ—*had differed*—on the resolution of [the] claim.” *Jordan*, 135 S. Ct. at 2651 (Sotomayor, J., joined by Ginsburg and Kagan, JJ., dissenting from the denial of certiorari).

That describes petitioner’s case: the district court denied his § 2255 motion based solely on circuit precedents that other circuits have rejected. “To nevertheless maintain that [petitioner] should be denied a COA because no reasonable jurist could debate the District Court’s denial of his habeas petition defies common sense.” *Johnson*, 143 S. Ct. at 2556 (Sotomayor, J., joined by Kagan and Jackson, JJ., dissenting from the denial of application for stay and denial of certiorari).

b. This Court’s precedents confirm that straightforward conclusion.

In *Lozada*, this Court summarily reversed the Ninth Circuit, holding that it had “erred in denying Lozada a certificate of probable cause.” 498 U.S. at 432. The district court had denied petitioner’s ineffective assistance of counsel claim for failure to show prejudice, and the Ninth Circuit denied a CPC. *Id.* at 431. As the Ninth Circuit would later observe on remand, its earlier CPC denial was “consistent with [its] previous cases” assessing prejudice. *Lozada v. Deeds*, 964 F.2d 956, 956–57 (9th Cir. 1992). Nonetheless, this Court concluded that petitioner had satisfied the standard for a CPC because “at least two Courts of Appeals have presumed prejudice”

in the same situation. 498 U.S. at 432 (citing cases). And, most notably, the Court faulted the Ninth Circuit’s CPC order for failing to “cite or analyze this line of authority . . . , which had been decided before the Ninth Circuit issued its ruling.” *Id.*

A similar dynamic existed in *Lynce v. Mathis*, 519 U.S. 433 (1997). There, the district court and the Eleventh Circuit denied a CPC on the basis of controlling “Eleventh Circuit and Florida precedent.” *Id.* at 436 & nn.2–3. Nonetheless, the Tenth Circuit had “reached a different conclusion based on similar facts.” *Id.* This Court granted review and reversed on the merits. *Id.* at 449. But this Court could not have reviewed the merits unless it determined that a CPC was warranted. And it tacitly did so notwithstanding the court of appeals’ reliance on controlling precedent.

Lozada and *Lynce* establish that, even where there is adverse precedent in the prisoner’s home circuit, a COA is warranted where other circuits disagree. These cases confirm the common-sense conclusion that, where circuits have divided over an issue, “reasonable jurists could debate” it. Again, they already *have* debated it. And *Lozada* in particular makes clear that it is error for a court of appeals not to consider contrary out-of-circuit decisions. That is what happened here: the Eleventh Circuit’s precedent in *Hamilton* forbade it from even considering conflicting circuit decisions.

To be sure, *Lozada* and *Lynce* involved a CPC rather than a COA, but that distinction is immaterial. This Court has explained that, “[e]xcept for substituting the word ‘constitutional’ for the word ‘federal,’ § 2253 is a codification of the CPC standard announced in *Barefoot*,” including the “reasonable jurists could debate”

formulation. *Slack*, 529 U.S. at 483–84 (“we give the language found in § 2253(c) the meaning ascribed in *Barefoot*”). Thus, *Lozada* and *Lynce* govern this COA case.

2. Neither the Eleventh Circuit in *Hamilton* nor the Fifth and Sixth Circuit decisions following *Hamilton*’s approach even considered *Lozada* or *Lynce*. And their approach otherwise conflicts with two additional lines of this Court’s COA precedent.

a. As the order below illustrates (App. 2a–3a), *Hamilton* precludes a COA whenever binding circuit precedent forecloses an argument. 793 F.3d at 1266. But by focusing on whether the argument would prevail on appeal, the Eleventh Circuit transforms the COA inquiry into a merits inquiry. Such review is plainly improper.

Indeed, “[t]he COA inquiry, as [this Court] ha[s] emphasized, is not coextensive with a merits analysis.” *Buck*, 580 U.S. at 115. In *Miller-El*, the Court explained that “the threshold [COA] inquiry does not require full consideration of the factual or legal bases adduced in support of the claims. In fact, the statute forbids it. When a court of appeals sidesteps this process by first deciding the merits of an appeal, and then justifying its denial of a COA based on its adjudication of the actual merits, it is in essence deciding an appeal without jurisdiction.” 537 U.S. at 336–37. The Court continued: “a COA does not require a showing that the appeal will succeed. Accordingly, a court of appeals should not decline the application for a COA merely because it believes the applicant will not demonstrate an entitlement to relief.” *Id.* at 337. In fact, “[i]t is consistent with § 2253 that a COA will issue in some instances where there is no certainty of ultimate relief,” *id.*, because “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,” *id.* at 338.

In both *Miller-El* and *Buck*, this Court reversed COA denials precisely because the court of appeals violated these basic principles. Specifically, the court of appeals had effectively adjudicated and rejected petitioner’s claim on the merits rather than merely asking whether reasonable jurists could debate it. *See, e.g., Buck*, 580 U.S. at 116–17 (“The court below phrased its determination in proper terms . . . but reached [its] conclusion only after essentially deciding the case on the merits.”); *Miller-El*, 537 U.S. at 342 (“The Court of Appeals . . . was incorrect for an even more fundamental reason. Before the issuance of a COA, the Court of Appeals had no jurisdiction to resolve the merits of petitioner’s constitutional claims. . . . As we have said, a COA determination is a separate proceeding, one distinct from the underlying merits.”).

The order below commits the same fundamental error. By focusing entirely on whether petitioner would prevail under binding circuit precedent, the court of appeals conducted a quintessential merits analysis rather than asking whether reasonable jurists could debate his argument. No less than in *Buck* and *Miller-El*, the *Hamilton* approach improperly “inverts the statutory order of operations and first decides the merits of an appeal, then justifies [the] denial of a COA based on [an] adjudication of the actual merits.” *Buck*, 580 U.S. at 116–17 (cleaned up). In doing so here, the court of appeals “placed too heavy a burden on the prisoner *at the COA stage*,” *id.* at 117, and “in essence decid[ed] [his] appeal without jurisdiction” to do so, *id.* at 115.

b. In addition to conducting an improper merits analysis, the *Hamilton* approach subtly but materially rewrites the COA standard—in two separate ways.

First, it limits “reasonable jurists” to judges within the prisoner’s home circuit. In *Hamilton*, the Eleventh Circuit reasoned that no COA is warranted where there is adverse circuit precedent because “reasonable jurists will follow controlling law.” 793 F.3d at 1266 (quotation omitted). Of course, the law is “controlling” only for jurists within that circuit. Likewise, the Sixth Circuit has assumed that “the proper reference point” for a COA is that circuit’s own precedent. *Mitchell*, 43 F.4th at 616.

But that unexplained assumption is incorrect: the objective “reasonable jurist” standard used for the COA determination does not refer to the judges serving in the prisoner’s home circuit. That much is apparent from the plain text of the statute, which provides that a COA may be granted by a “circuit justice or judge.” 28 U.S.C. § 2253(c)(1). Because a “circuit justice” may issue COAs, and Justices of this Court are not bound by circuit precedent, it cannot be that the “reasonable jurist” for COA purposes is limited only to judges who are serving in the prisoner’s home circuit.

That conclusion is again confirmed by this Court’s precedents. In addition to *Lozada* and *Lynce*, where this Court granted a CPC notwithstanding controlling precedent in the prisoner’s home circuit, there is *Tennard v. Dretke*, 542 U.S. 274 (2004). In that case, the Fifth Circuit denied a COA on the basis of circuit precedent that “invoked its own restrictive gloss” on the controlling Supreme Court decision. *Id.* at 283–84. Reviewing that COA denial, this Court held that “[t]he Fifth Circuit’s test has no foundation in decisions of this Court,” *id.* at 284, and it was “inconsistent with

the[] principles” articulated in those decisions, *id.* at 285. Reiterating that the Fifth Circuit’s “test has no basis in our precedents, and, indeed, is inconsistent with the standard we have adopted,” this Court purported to apply the correct legal standard for itself and concluded that petitioner was “entitled to a COA.” *Id.* at 287–89.

This Court’s analysis and conclusion in *Tennard* is irreconcilable with the *Hamilton* approach. Under *Hamilton*, a COA should be denied whenever there is adverse precedent in the prisoner’s home circuit. But were that view correct, *Tennard* would have come out differently. This Court in *Tennard* would have been required to affirm the COA denial because the prisoner’s claim was foreclosed by Fifth Circuit precedent. It would not matter that this precedent was inconsistent with this Court’s.

A similar dynamic also existed in *Slack*. As in *Tennard*, the lower courts had denied a CPC on the basis of Ninth Circuit precedent. *Slack*, 529 U.S. at 479–80. On review, this Court determined that this circuit precedent was wrong under this Court’s precedents. *See id.* at 485–88. This Court remanded the case to the Ninth Circuit to determine whether a COA should otherwise issue. *Id.* at 489–90. Again, however, the Court would have been required to affirm the COA denial were the home circuit precedent dispositive. *See Lambright*, 220 F.3d at 1026 (“[I]n *Slack*, the Supreme Court recently held that an issue apparently settled by the law of our circuit remained debatable for purposes of issuing a COA. . . . Under *Slack*, it is thus clear that we should not deny a prisoner an opportunity to persuade us through full briefing and argument to reconsider circuit law that apparently forecloses relief.”).

Second, the *Hamilton* approach is wrong even if the COA standard somehow referred to the subjective practices of jurists located within the prisoner’s home circuit. *Hamilton* asks whether a reasonable jurist would “follow” binding circuit precedent; of course, all would. But that question improperly reformulates the COA standard. The correct question instead is whether a reasonable jurist could “debate” the correctness of binding circuit precedent. And when other circuits have reached a contrary conclusion, then by very definition the issue is one that reasonable jurists could debate. Again, the disagreement itself reflects that they have already done so.

* * *

In sum, because other circuits have disagreed with the circuit precedent upon which the lower courts relied to deny petitioner relief, he was entitled to a COA.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

HECTOR A. DOPICO
FEDERAL PUBLIC DEFENDER

/s/ Andrew L. Adler
ANDREW L. ADLER
JANICE L. BERMANN
ASS’T FED. PUBLIC DEFENDERS
1 E. Broward Blvd., Ste. 1100
Ft. Lauderdale, FL 33301
(954) 356-7436
Andrew_Adler@fd.org