

No. 25-7026

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**

**BRIEF OF THE NATIONAL ASSOCIATION OF
CRIMINAL DEFENSE LAWYERS AS AMICUS
CURIAE IN SUPPORT OF PETITIONER**

Jeffery T. Green
*Co-Chair, Amicus
Committee,*

NATIONAL ASSOCIATION
OF CRIMINAL DEFENSE
LAWYERS (NACDL)
1660 L St. NW
Washington DC 20036

Daniel E. Jones

Counsel of Record

SKADDEN, ARPS, SLATE,
MEAGHER & FLOM LLP
1440 New York Ave. NW
Washington, DC 20005
202-371-7000
daniel.jones@skadden.com

Adeel M. Bashir
*11th Circuit Vice-Chair,
NACDL Amicus Comm.*
400 N. Tampa Street
Suite 2660
Tampa, FL 33602

Counsel for Amicus Curiae

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INTEREST OF AMICUS CURIAE

Founded in 1958, the National Association of Criminal Defense Lawyers (NACDL) is a nonprofit voluntary professional bar association that works on behalf of criminal defense attorneys to ensure justice and due process for those accused of crime or misconduct. It has a nationwide membership of many thousands of direct members, up to 40,000 with affiliate members. NACDL's members include private criminal defense lawyers, public defenders, military defense counsel, law professors, and judges. NACDL is the only nationwide professional bar association for public defenders and private criminal defense lawyers. NACDL is dedicated to advancing the proper, efficient, and just administration of justice. NACDL files numerous amicus briefs each year in this Court, and other federal and state courts, seeking to provide amicus assistance in cases that present issues of broad importance to criminal defendants, criminal defense lawyers, and the criminal justice system.¹

This is just such a case. It presents a critically important and frequently recurring question of federal habeas law: whether a certificate of appealability (COA) under 28 U.S.C. § 2253 should be granted where the legal issue that the petitioner seeks to raise on appeal has been resolved against him by binding circuit precedent, but resolved in his favor by another circuit.

¹ No persons or entities other than *amicus*, its members, or its counsel authored this brief, in whole or in part, or made a monetary contribution to this brief's preparation or submission. Under Supreme Court Rule 37.2, *amicus* provided timely notice to counsel of record for all parties of its intent to file this brief.

That issue has itself divided the circuits. As the Petition persuasively explains, this Court should grant review to resolve the entrenched circuit split about whether a COA will issue under these circumstances. See Pet. 3-36. NACDL further agrees with Petitioner that this Court should reverse the decision below and open the gateway to appellate review for federal habeas petitioners who raise debatable legal issues. *Ibid.*

NACDL's brief focuses on the practical importance of the question presented and the need for this Court's intervention. A COA is the gateway to both appointment of counsel and an appeal on the merits—and by extension to a meaningful appellate process that can develop well-reasoned circuit splits on difficult legal questions. That process, in turn, facilitates en banc review of circuit precedent and resolution of circuit splits by this Court.

But the restrictive approach to issuing COAs adopted by the Eleventh Circuit and similar circuits frustrates this process at the outset and stifles further development of federal habeas law. NACDL thus has a strong interest in this case, given its members' daily experience litigating federal habeas cases across circuits with divergent standards for issuing COAs, and its members' firsthand exposure to the adverse systemic consequences that follow when a threshold rule forecloses appellate review precisely where circuits disagree on important legal questions.

INTRODUCTION AND SUMMARY OF ARGUMENT

Federal habeas doctrine is complex, and it routinely produces disagreement among the courts of

appeals on a variety of important legal issues. This Court, in turn, ensures uniform application of federal law in the habeas context by stepping in to resolve those disagreements.

This case presents an antecedent, but no less important, question about the rule that controls *access* to federal habeas appeals. Under 28 U.S.C. § 2253(c)—part of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA)—no appeal may be taken from the denial of federal habeas relief unless a circuit justice or judge issues a certificate of appealability.

AEDPA seeks “to advance the finality of criminal convictions.” *Mayle v. Felix*, 545 U.S. 644, 662 (2005). But Congress did not pursue finality at all costs. Rather, it did so “without losing sight of the fact that the ‘writ of habeas corpus plays a vital role in protecting constitutional rights.’” *Holland v. Florida*, 560 U.S. 631, 649 (2010) (quoting *Slack v. McDaniel*, 529 U.S. 473, 483 (2000)).

The COA requirement implements that balance. It screens out frivolous appeals, *Barefoot v. Estelle*, 463 U.S. 880, 892-93 (1983), while preserving appellate review for constitutional claims that present genuine legal issues.

Specifically, a COA is warranted when “reasonable jurists could debate whether * * * 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) (citation omitted). That inquiry is “not coextensive with a merits analysis.” *Buck v. Davis*, 580 U.S. 100, 115

(2017). Rather, “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.” *Miller-El*, 537 U.S. at 338.

As the Petition details, this Court’s review is needed to resolve the entrenched disagreement among the courts of appeals over whether a COA should issue when a federal habeas petitioner’s claim is foreclosed by binding precedent in his home circuit but has been accepted by another circuit. See Pet. 12. The Eleventh Circuit, along with the Fifth and Sixth Circuits, categorically deny a COA in that circumstance. See *id.* at 12-14. The Ninth and Tenth Circuits grant one. See *id.* at 14-17.

The Petition further correctly explains why the Eleventh Circuit’s approach is wrong. When courts of appeals have *already disagreed* on an issue of federal habeas law, the issue is, by definition, debatable among reasonable jurists. The standard for issuing a COA does not—and should not—depend on the happenstance of geography or local precedent. Rather, it does and should depend on whether the underlying legal issue is a debatable one.

NACDL writes separately to underscore the practical importance of the question presented. Adhering to an appropriate standard for when a COA will issue does far more than affect individual habeas petitioners. It is also critical to the orderly development of federal habeas law and the process by which this Court and en banc courts of appeals resolve legal issues that have divided lower courts.

A COA is the gateway to the entire appellate process. It triggers appointment of counsel, briefing on the merits, counseled review of the panel decision, and, where appropriate, en banc review. See, *e.g.*, *Shockley v. Vandergriff*, 145 S. Ct. 894, 895 (2025) (Sotomayor, J., joined by Jackson, J., dissenting from denial of certiorari). That process produces the reasoned decisions and developed records on which this Court relies in deciding whether to grant certiorari.

The approach below, however, shuts that process down at the threshold. No counsel is appointed. No briefing occurs. No opportunity arises to test or distinguish precedents, to sharpen a conflict, or to generate cert-worthy vehicles. One side of a circuit split is locked out before the appellate process begins.

Petitioner's modest proposed rule—allowing for a COA when a constitutional claim raises a legal issue that has divided the circuits—avoids these serious concerns. The costs of that rule are minimal. Courts of appeals retain tools to dispose of cases controlled by precedent. But the benefits are substantial. Allowing COAs in this narrow set of cases preserves the pipeline through which legal questions are tested, conflicts are refined, and certiorari vehicles are developed.

The contrary rule reflected in the decision below does the opposite. It entrenches local precedent, suppresses percolation, and makes it more difficult for this Court to resolve acknowledged splits. In an area defined by recurring disagreement on legal questions affecting physical liberty, that result is untenable.

The Court should grant the Petition and reverse.

ARGUMENT

I. Institutional concerns and preservation of a meaningful appellate process weigh heavily in favor of Petitioner's rule.

Circuit conflicts on legal issues in the federal habeas context do not resolve themselves. And without a COA, the restrictive circuits' precedent remains untested, the opposing circuits' precedent remains unreconciled, and this Court loses the vehicles it needs to intervene.

The COA requirement should not be applied in a manner that produces such a result. The requirement was designed to separate frivolous claims from debatable ones, not to insulate circuit conflicts on important habeas questions from this Court's review.

Petitioner's rule not only correctly interprets and applies the standard for issuing a COA, but it advances two institutional interests this Court has long safeguarded.²

First, his rule preserves this Court's supervisory role over federal habeas law. Federal habeas law is rife with lower court disagreement requiring this

² Notably, the rule Petitioner urges this Court to adopt does not bypass any of AEDPA's existing barriers for both state and federal prisoners. The rule applies only after those hurdles have been cleared and after a federal district court has denied habeas relief. It also applies only in a defined set of cases: those in which the constitutional claim presents a legal question on which the circuits have already divided. Indeed, because counsel is typically appointed *after* a COA issues, see *Shockley*, 145 S. Ct. at 895, for practical purposes a COA would issue only when the split has already been expressly recognized in prior opinions or is sufficiently evident from the face of the COA application and relevant precedent.

Court's intervention. And the issues do not stop at AEDPA's procedural standards. The conflicts extend to a variety of legal questions underlying constitutional claims.

Second, his rule preserves this Court's ability to resolve those splits. If the COA gate remains closed whenever a circuit has already spoken on the legal issue—no matter how old or thinly reasoned the opinion—the very cases needed to resolve those splits never reach full appellate development. This Court is in turn deprived of opportunities to resolve entrenched conflicts simply because one side of the split was locked out at the threshold. A rule that limits appellate access to the prevailing circuit view thus risks choking off a principal source of the vehicles this Court relies on to maintain uniformity of federal habeas law.

Defense counsel is the engine of the process that advances both of these institutional interests. On contested questions of federal habeas law where the circuits have divided, counsel's appointment matters most. The conflict is already identified. What remains is the work of refining the conflict and developing the case for en banc or certiorari review.

NACDL's members do this work every day. The process operates in three stages.

A. A COA allows counsel to test and distinguish circuit precedent.

A COA grant “often marks the appointment of counsel, so its denial generally deprives indigent litigants of the opportunity for a counseled appeal.” *Shockley*, 145 S. Ct. at 895. Once appointed, counsel develops arguments that a single-judge review of a *pro*

se filing cannot meaningfully produce at the COA stage. Counsel can parse the controlling decision's scope, determine whether the prisoner's case falls within or outside its reasoning, and engage with and advocate for the contrary authority from other circuits.

If the circuit's prior precedent indeed controls, the cost of allowing a COA remains minimal. Merits panels can resolve the appeal through summary procedures, which this Court expressly recognized as compatible with COA practice. See *Barefoot*, 463 U.S. at 889 (explaining that the requirement of a decision on the merits "does not prevent the courts of appeals from adopting appropriate summary procedures for final disposition of such cases").

Those mechanisms already exist across circuits on both sides of the split. For instance, the Ninth Circuit authorizes summary disposition where issues are "so insubstantial as not to justify further proceedings." 9th Cir. R. 3-6(a)(2). Likewise, the Eleventh Circuit permits summary disposition where "the position of one of the parties is clearly right as a matter of law so that there can be no substantial question as to the outcome of the case, or where, as is more frequently the case, the appeal is frivolous." *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969), adopted by 11th Cir. in *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc). Even so, a summary affirmance clarifies the scope of circuit precedent and aids the opportunity for further appellate review, as discussed in the next sections.

Moreover, if counsel identifies a factual or legal distinction in the circuit's prior precedent that permits a different result on the current habeas claim,

the cost-benefit upside of Petitioner’s modest rule is perhaps at its greatest. The prisoner obtains the counseled review that the COA was designed to trigger and secures a decision that could be the difference between liberty and imprisonment.

B. A COA allows counsel to preserve debatable constitutional issues for en banc review.

If the panel adheres to adverse controlling precedent, counsel may invoke the circuit conflict as a basis for rehearing en banc. Fed. R. App. P. 40. En banc review is the only mechanism by which most circuits can overturn a prior panel’s holding.

In ordinary appellate litigation, it is routine for the losing party in the district court to preserve arguments for review by an en banc court or this Court—even when the argument is foreclosed by a prior panel opinion. In Petitioner’s home circuit, for example, a litigant is “never precluded from raising an issue simply because a previous appeal has been decided that rejects a particular argument.” *United States v. Levy*, 391 F.3d 1327, 1333 (11th Cir. 2004) (Hull, J., concurring); cf. *Engle v. Isaac*, 456 U.S. 107, 130 (1982) (“Even a state court that has previously rejected a constitutional argument may decide, upon reflection, that the contention is valid.”).

The COA process should permit no less. Indeed, issue preservation with an eye towards further appellate review is all the *more* important in the federal habeas context, where answers to disputed legal questions implicate physical liberty.

What’s more, the value of participation in the en banc process extends beyond the prospect of actual

rehearing. Even when the court denies rehearing, the process often generates opinions in which judges identify problems with stale precedent, engage the contrary authority from other circuits, and express views that sharpen the conflict for this Court.

In other words, participation in the en banc process is one way defense counsel confronted with a split of authority moves the law forward: not only by winning rehearing and reconsideration of prior circuit precedent, but by persuading individual judges to write, to flag error, and to set the stage for an effective cert petition.

This Court's own docket reflects this dynamic. The Court's habeas decisions virtually always come in cases with full appellate development in the lower court, which itself depends on the initial grant of a COA.

Consider *Brown v. Davenport*, 596 U.S. 118 (2022). In *Brown*, a federal habeas petitioner obtained a COA, and a divided Sixth Circuit panel reversed the denial of habeas relief. *Davenport v. MacLaren*, 964 F.3d 448 (6th Cir. 2020). The Sixth Circuit then denied rehearing en banc by a vote of 8-to-7, with Judges Griffin and Thapar issuing dissenting opinions that sharpened the question this Court resolved (in favor of the dissenters' approach). See *Davenport v. MacLaren*, 975 F.3d 537, 544-55 (6th Cir. 2020).

Shinn v. Ramirez, 596 U.S. 366 (2022), was the product of a similar process in the Ninth Circuit. After the habeas petitioner obtained a COA and a Ninth Circuit panel decided the merits after full briefing, Arizona petitioned for rehearing en banc. The Ninth

Circuit denied rehearing over an eight-judge dissent by Judge Collins that teed up the issue for certiorari. *Jones v. Shinn*, 971 F.3d 1133 (9th Cir. 2020).

The pattern holds across other foundational habeas decisions. *Cullen v. Pinholster*, 563 U.S. 170 (2011), addressed a contested question about review under 28 U.S.C. § 2254(d). The issue arrived in this Court after a COA was granted and the case moved through panel review, en banc consideration, and competing opinions over whether new evidence introduced in federal court could be considered in evaluating a state court's decision. See *Pinholster v. Ayers*, 525 F.3d 742 (9th Cir. 2008) (panel reversing grant of habeas relief); *Pinholster v. Ayers*, 590 F.3d 651 (9th Cir. 2009) (en banc, affirming grant of relief over three-judge dissent). That fulsome appellate record, and the competing approaches it crystallized, set the stage for an informed resolution of the debate by this Court. See *Cullen*, 563 U.S. at 179-81.

Martinez v. Ryan, 566 U.S. 1 (2012), followed a similar path. After a COA was granted and the lower courts applied existing procedural-default rules to bar review of trial-ineffectiveness claims, the Ninth Circuit affirmed the denial of habeas relief. See *Martinez v. Ryan*, 623 F.3d 731 (9th Cir. 2010). This Court granted certiorari and ultimately recognized a narrow equitable exception: where state collateral review is the first opportunity to raise such a claim, the absence or ineffectiveness of counsel at that stage may constitute cause to excuse default. See *Martinez*, 566 U.S. at 9-14. The decision reflected the accumulated experience of lower courts applying rigid rules in a way that risked foreclosing review of substantial constitutional claims.

And in *Trevino v. Thaler*, 569 U.S. 413 (2013), the Court extended the rule in *Martinez* to state systems that make collateral proceedings the first meaningful opportunity to raise ineffective-assistance claims, even if not formally required. As in *Martinez*, the Court's intervention followed sustained lower-court engagement with how the procedural rules at issue operated in practice. See *id.* at 419-20.

Each of these decisions reflects the ordinary appellate process at work: reasoned decisions, adversarial testing, and doctrinal refinement over time. That process began with a COA.

C. A COA allows counsel to build a suitable vehicle for this Court's review.

As just discussed, the en banc process, whether it results in a grant or a denial of rehearing, can produce reasoned opinions and developed records that form the basis of certiorari review.

When a COA is denied, by contrast, this Court's review and intervention is far less likely. A COA denial is often an unreasoned order on an undeveloped record—a vehicle that is ordinarily ill-suited to certiorari review. See *Gonzalez v. Crosby*, 545 U.S. 524, 544 n.7 (2005) (Stevens, J., dissenting).

Instead, this Court almost always grants review to resolve a circuit split in the federal habeas context when there is a merits decision below that engages the competing positions, the government's briefed response, and a record that gives the conflict concrete shape. Counsel aids in developing all three once the COA is granted. And the payoff is self-evident.

Take *Brecht v. Abrahamson*, 507 U.S. 619 (1993) (pre-AEDPA). There, this Court noted it was the sixth

federal appellate court to address the question presented. See *id.* at 627. That multiplicity of lower court views was not noise. It was the percolation that aided this Court's development of federal habeas doctrine. Similarly, in *Williams v. Taylor*, 529 U.S. 362 (2000), this Court settled the § 2254(d)(1) standard after full appellate development that gave the competing interpretations concrete shape. And in *Jones v. Hendrix*, 599 U.S. 465 (2023), the Eighth Circuit's reasoned decision deepening an existing circuit conflict supplied the vehicle this Court used to resolve the split.

Each case followed the same path: appellate review permitted, counsel appointed, record developed, vehicle built.

Experience confirms both the benefits of this system and its relatively limited burden on courts. The Ninth and Tenth Circuits have applied Petitioner's rule for over two decades without any apparent difficulty. See Pet. 14-16. That is no surprise: If binding precedent is ultimately correct, the appeal is resolved efficiently (and often summarily). But if it is wrong, the process allows revisitation and correction.

The marginal cost of, at most, a short merits disposition or denial of en banc rehearing is minimal. But the benefit is substantial: preserving the appellate pipeline through which this Court maintains uniformity in federal habeas law and fulfills its supervisory role over an area of law that repeatedly generates circuit conflict.

II. The restrictive approach to issuing a COA adopted below undermines the appellate process and this Court’s supervisory role.

The merits-foreclosure approach adopted by the Fifth, Sixth, and Eleventh Circuits inverts the design and function of the COA requirement. Those courts reason that no COA should issue where the claim is foreclosed by binding circuit precedent because reasonable jurists will follow controlling law. See *Hamilton v. Sec’y, Fla. Dep’t of Corr.*, 793 F.3d 1261, 1266 (11th Cir. 2015); see also *Jordan v. Epps*, 756 F.3d 395 (5th Cir. 2014); *Mitchell v. United States*, 43 F.4th 608 (6th Cir. 2022).

As Petitioner explains, that formulation answers the wrong question. No one disputes that lower court judges must follow binding precedent. But the question is whether the legal issue is debatable—and by definition an issue is debatable when there is already a circuit split on it.

The practical consequences of denying a COA under those circumstances are significant. Because a COA is jurisdictional, see *Gonzalez v. Thaler*, 565 U.S. 134, 142 (2012), its denial forecloses appellate authority to reach the merits at all. No counsel is appointed. No briefing occurs. No opportunity arises to distinguish precedent or develop the record. And there is no vehicle for further percolation of the issue through en banc review or review by this Court.

Without such a vehicle, this Court is unlikely to resolve the split. The restrictive approach to issuing a COA adopted below thus breaks the links in the chain of events that normally carries a federal habeas question from initial presentation to this Court’s review.

To be sure, this Court has afforded courts of appeals substantial discretion to manage their dockets and procedures, and rightly so. But that discretion does not extend to insulating entrenched circuit precedent from this Court's supervisory authority where acknowledged splits persist on legal questions affecting liberty.

A. Without a COA, the appellate process withers.

Without a COA, there is typically no appointment of counsel under 18 U.S.C. § 3006A. And without counsel, the process that normally tests precedent, frames the issues, and identifies the existence and scope of a circuit conflict never occurs.

That disruption of ordinary appellate review is especially problematic because counsel's role is critical in effectively presenting federal habeas claims. The systemic reality is that COA requests are overwhelmingly filed *pro se*. One study found that nearly 38,000 of more than 42,000 COA dispositions involved self-represented litigants. *See Rachel Brown et al., Is Unpublished Unequal?*, 107 Cornell L. Rev. 1, 51-52 (2021). In that setting, a single judge often applies ostensibly controlling circuit precedent without the benefit of adversarial testing, and without counsel to argue that the precedent is distinguishable, undermined, or part of a recognized circuit split.

The result is not meaningful review, but reflexive disposition on questions implicating the denial of substantial constitutional rights. A COA, however, is supposed to open the door to adversarial testing of debatable legal questions—not slam it shut.

“Sifting through the haystack of often uncounseled filings is an unglamorous but vitally important task,” and “[u]nless judges take care to carry out the limited COA review with the requisite open mind, the process breaks down.” *McGee v. McFadden*, 588 U.S. 923, 927-28 (2019) (Sotomayor, J., dissenting from denial of certiorari). And where COA requests are “sufficiently weighty to engender split opinions,” “judicial resources are better spent simply considering the merits in the regular course.” *Shockley*, 145 S. Ct. at 896.

That is especially true here. The question in this case is limited to whether a COA will issue where there is already a circuit split on a legal issue. That conflict cries out for adversarial testing. But the approach adopted below forecloses that possibility: it assumes resolution of the merits before counsel can be appointed, before briefing can occur, and before the split can be fully developed or tested.

B. Without a COA, the en banc pathway is blocked.

Because a COA denial is jurisdictional, a petitioner cannot seek rehearing of the underlying merits of the proposed appeal—only of the COA determination itself. In the Fifth and Sixth Circuits, rehearing is theoretically available, but there is no evidence that it has served as a mechanism for revisiting COA denials. The Eleventh Circuit goes further still: its local rules bar panel or en banc rehearing of COA denials altogether. See 11th Cir. R. 22-1(c).

The practical result, then, in the circuits that take a restrictive approach to granting a COA is that a

federal habeas petitioner has no opportunity to revisit binding panel precedent that may be wrong, outdated, or in conflict with other circuits. No litigant can press for en banc reconsideration to correct course within the circuit. And no panel can be asked to engage competing authority in light of a recognized split. A decision like *Hamilton* becomes effectively frozen in place—not because it is correct, but because there is no procedure by which to test it.

The ordinary evolution and refinement of federal law depends on precisely the opposite dynamic. Even where “bad” precedent initially controls, time, briefing, and adversarial litigation often expose its limits. Courts reconsider, distinguish, or refine earlier holdings. Conflicts sharpen. Different panels take different approaches. And through that friction, a mature split develops that this Court can ultimately resolve on a full record. None of that is possible under the approach adopted below.

Instead, once a circuit like the Eleventh Circuit has issued a single published opinion addressing a federal habeas issue, the en banc mechanism—the principal internal check for correcting circuit law—is effectively foreclosed in all future cases. Adverse precedent cannot be self-corrected by the home circuit because there is never a new appeal that could serve as a vehicle for review.

C. Without a COA, the road to certiorari is all but foreclosed, and defense counsel disengage.

The only remaining path to this Court is certiorari from a COA denial: an unreasoned order issued on an undeveloped record, which this Court has recognized

is “not thought to present a good vehicle for resolving legal issues.” *Gonzalez*, 545 U.S. at 544 n.7 (Stevens, J., dissenting). To be sure, this Court’s review remains possible, as demonstrated by outlier cases like *Welch v. United States*, 578 U.S. 120 (2016). But the “unusual procedural posture” of that case underscores the broader point—certiorari review of a COA denial is the exception, not the norm. *Id.* at 127-28.

Practicing defense lawyers understand this dynamic. They know that a COA denial is a procedurally poor vehicle because the record will be thin, the reasoning absent, and the government will characterize the case as ill-suited for resolving a circuit conflict. So counsel’s investment drops off. In many cases there is no investment by counsel at all because COA applications are filed *pro se* and never reach counsel in the first place.

NACDL’s members see this dynamic play out across their practices. Federal defenders and appointed counsel triage cases within finite budgets and caseloads. When a circuit’s COA rule forecloses threshold review, counsel cannot justify the hours needed to build a challenge that will never reach briefing, and private counsel weighing pro bono work reaches the same conclusion. The predictable result is that the same legal issue receives serious development in one circuit and cursory treatment in another.

The rule also reshapes client counseling. When a prisoner with a plausible claim asks whether to pursue habeas relief in a circuit like the Eleventh, counsel must explain that the circuit’s COA rule will likely block threshold review even where a sister circuit would grant relief. Some prisoners decline to

litigate. Others litigate *pro se* and see their claims denied without counsel or briefing. Either result denies the prisoner the appellate process Congress contemplated and denies this Court the reasoned decisions it needs to grant review and ensure uniformity.

That has a downstream effect on this Court's docket too. Even when counsel in the circuits that take a more permissive approach to issuing a COA builds a robust record presenting the same split, the government can respond by emphasizing the supposed shallowness of the conflict and the absence of reasoned opinions from the circuits that take a more restrictive approach. And when those restrictive circuits produce only summary COA denials without analysis, the government can characterize the issue as underdeveloped in the lower courts and the vehicle as inadequate. The result is that both sides of the split on the underlying legal issue generate weaker vehicles, leaving this Court with less, not more, to work with on the questions that matter most.

D. Without a COA, the one-way appellate ratchet stifles the development of the law.

Compounding these structural flaws, the COA regime operates as a one-way ratchet. It locks in precedent adverse to habeas claimants while leaving precedent favorable to habeas claimants open to revisitation. The asymmetry is structural. The government does not need a COA to appeal when it loses in the district court. See Fed. R. App. P. 22(b)(3). But under the restrictive approach to issuing a COA adopted below, prisoners are denied appellate review

at the threshold whenever there is binding circuit precedent.

Empirical evidence confirms this asymmetry. The same dataset documenting the prevalence of *pro se* COA litigation concludes that “certain areas of the law may be developing more slowly and less broadly because they are deprived of precedential, reasoned opinions,” particularly in areas that “correlate with claims brought by disempowered litigants.” Brown et al., *supra*, 107 Cornell L. Rev. at 37-38. Experienced defense counsel know that COA applications will be denied in courts like the Eleventh Circuit, so they often do not file at all.

By contrast, in circuits where COAs issue and counsel is appointed, the same legal questions are fully briefed, splits are sharpened, and the law develops. The result is that whether a state or federal prisoner receives meaningful appellate litigation of a legal issue that has divided the circuits often depends not on the merits of the claim, but on the happenstance of geography.

Over time, that asymmetry distorts the ordinary evolution of circuit law. A restrictive circuit’s early, and potentially erroneous, interpretation can become entrenched through repeated COA denials, even as other circuits reach the opposite conclusion. The split widens, but the restrictive position remains frozen in place.

These are cases involving constitutional claims that go directly to physical liberty. Nothing in the structure of habeas review suggests they warrant less—not more—appellate scrutiny.

Finality cannot justify the approach adopted below. Congress balanced finality against the writ's historic role as a safeguard of liberty. *Holland*, 560 U.S. at 649. And the premise of this Court's certiorari jurisdiction is that no single circuit has the last word on federal law.

The approach below thus undermines this Court's institutional role in ensuring uniformity in federal habeas law. And it does so in the very area where circuit conflict is most persistent and the constitutional stakes are at their highest.

CONCLUSION

The Court should grant the Petition.

Respectfully submitted.

Daniel E. Jones
Counsel of Record
SKADDEN, ARPS, SLATE,
MEAGHER & FLOM LLP
1440 New York Ave. NW
Washington, DC 20005
202-371-7000
daniel.jones@skadden.com

Jeffery T. Green
Co-Chair, Amicus
Committee,
NATIONAL ASSOCIATION OF
CRIMINAL DEFENSE
LAWYERS
1660 L St. NW
Washington DC 20036

Adeel Bashir
11th Circuit Vice Chair,
NACDL Amicus Comm.
400 N. Tampa Street
Suite 2660
Tampa, FL 33602
adeel_bashir@fd.org

Counsel for Amicus Curiae

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