

SOUTER, J., concurring

SUPREME COURT OF THE UNITED STATES

No. 96–8986

ARNOLD F. HOHN, PETITIONER v. UNITED STATES

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE EIGHTH CIRCUIT

[June 15, 1998]

JUSTICE SOUTER, concurring.

I would be content to decide this case on the authority of *House v. Mayo*, 324 U. S. 42 (1945) (*per curiam*), that common-law certiorari is available to review the denial of the certificate, leaving *House*’s precarious future for another day when its precedential value might have to be faced squarely. But that course would command no more than a minority of one, and there is good reason to deny it even that support. *House*’s holding on what may be “in’ the court of appeals,” *id.*, at 44, was virtually unreasoned, and the Court correctly notes our subsequent practice of honoring this rule in the breach. Given the weakness of the precedent, the advantage of having a clear majority for a rule governing our jurisdiction to reverse erroneous denials of certificates of appealability persuades me to join the others in overruling *House* insofar as it would bear on issuance of a statutory writ of certiorari under 28 U. S. C. §1254(1).