

IN THE SUPREME COURT OF THE UNITED STATES

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No. 18-6943

GREGORY DEAN BANISTER, PETITIONER

v.

LORIE DAVIS, DIRECTOR,  
TEXAS DEPARTMENT OF CRIMINAL JUSTICE,  
CORRECTIONAL INSTITUTIONS DIVISION

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

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MOTION OF THE UNITED STATES FOR LEAVE TO  
PARTICIPATE IN ORAL ARGUMENT AS AMICUS CURIAE  
AND FOR DIVIDED ARGUMENT

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Pursuant to Rules 28.4 and 28.7 of the Rules of this Court, the Solicitor General, on behalf of the United States, respectfully moves for leave to participate in the oral argument in this case as amicus curiae and requests that the United States be allowed ten minutes of argument time. The United States has filed a brief as amicus curiae supporting respondent. Respondent has consented to an allocation of ten minutes of argument time to the United States.

This case concerns whether and under what circumstances a court may treat a state prisoner's postjudgment submission, presented as a motion to alter or amend a judgment under Federal Rule of Civil Procedure 59(e), as an unauthorized second or successive application for a writ of habeas corpus under 28 U.S.C. 2244(b). Similar limitations on second or successive collateral attacks generally apply in the context of postconviction review of federal judgments under 28 U.S.C. 2255. See 28 U.S.C. 2255(h). Because this Court's resolution of the question presented may therefore affect postconviction proceedings for federal prisoners, the United States has a substantial interest in this case.

The United States has participated in oral argument as amicus curiae in other cases concerning statutory limits on applications for federal habeas corpus relief by state prisoners. In particular, the government participated in oral argument as amicus curiae in Gonzalez v. Thaler, 565 U.S. 134 (2012), and Gonzalez v. Crosby, 545 U.S. 524 (2005). The United States' participation in oral argument in this case would provide the Court with the federal perspective on the question presented here, and a division of argument is likely to be of material assistance to the Court.

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Respectfully submitted.

NOEL J. FRANCISCO  
Solicitor General  
Counsel of Record

OCTOBER 2019