No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

In re TODD BRITTON-HARR,

Petitioner.

PETITION FOR AN EXTRAORDINARY WRIT OF HABEAS CORPUS

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A. QUESTION PRESENTED FOR REVIEW

Whether 28 U.S.C. section 2244(b)(1) ("[a] claim presented in a second or successive habeas corpus application under section 2254 that was presented in a prior application shall be dismissed") applies to federal prisoners seeking relief under 28 U.S.C. section 2255.

B. PARTIES INVOLVED

The Petitioner is a criminal defendant currently serving the supervised release portion of his federal sentence.

C. TABLE OF CONTENTS AND TABLE OF AUTHORITIES

1. TABLE OF CONTENTS

2. TABLE OF CITED AUTHORITIES

a. Cases

b. Statutes

c. Other Authority

The Petitioner, TODD BRITTON-HARR, respectfully requests the Court to grant this petition for a writ of habeas corpus.

D. BASIS FOR JURISDICTION

This Court's jurisdiction is invoked pursuant to 28 U.S.C. §§ 2241 & 1651(a) and Article III of the Constitution. *See also Felker v. Turpin*, 518 U.S. 651 (1996).

E. STATUTORY PROVISION INVOLVED

28 U.S.C. section 2244(b)(1) states:

> A claim presented in a second or successive habeas corpus application under section 2254 that was presented in a prior application shall be dismissed

F. STATEMENT OF THE CASE

The instant case concerns the dismissal of the Petitioner's renewed application to file a second or successive motion pursuant to 28 U.S.C. section 2255. The underlying facts of the case were recited by the Eleventh Circuit Court of Appeals in its opinion below:

> In March 2018, Britton-Harr filed an application to file a second or successive § 2255 motion, seeking to raise one claim based on newly discovered evidence. He alleged the following. The government had presented evidence at his criminal trial that he, acting as the real estate agent and power of attorney for his stepmother, Karyn J. Britton ("Karyn"), made a false statement on Karyn's loan application for a condominium unit. When he was released from prison in February 2017, he began investigating his case and contacted Gary Owens, whose signature appeared on the loan application that the government presented at trial. He showed Owens the application, and Owens stated that the signature on the loan application was not his and had been forged.
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> Britton-Harr argued that Owens's

> statement that the loan application had been forged was newly discovered evidence, because the government had relied on a false document to obtain his conviction. We denied his application, finding that he had not explained how the forged loan application would demonstrate his factual innocence of making a false statement, as he did not allege that the entire loan application was forged or that his signature on behalf of Karyn was forged.
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> In his instant application, Britton-Harr indicates that he wishes to raise one claim in a second or successive § 2255 motion. He alleges the same facts that he alleged in his prior application. He states that he presumes that his prior application was denied because Owens had not signed an affidavit swearing that the signature on Karyn's application was not his. He states that Owens has now signed such an affidavit. He argues that, in light of Owens's affidavit, no reasonable factfinder would have found him guilty because the government presented evidence that Owens had signed the application.

(A-5-7).[1]

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[1] References to the documents included in the appendix to this petition will be made by the designation

On October 25, 2019, the Eleventh Circuit dismissed the Petitioner's renewed application, concluding that it did not have jurisdiction to consider the application. In its order, the Eleventh Circuit cited its previous decision in *In re Baptiste*, 828 F.3d 1337, 1339 (11th Cir. 2016), and held that "[b]ecause we are bound by circuit precedent, we must dismiss a claim that has been presented in a prior application to file a second or successive § 2255 motion." (A-7-8). However, the panel stated that it believed that *Baptiste* was wrongly decided:

> We believe *Baptiste*, however, has no basis in the text of the habeas statute. First:
>
> > Baptiste was construing 28 U.S.C. § 2244(b)(1), which says any "claim presented in a second or successive habeas corpus application

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"A" followed by the appropriate page number.

> under section 2254 that was presented in a prior application shall be dismissed." Of course, [] § 2255 motions . . . are filed by federal prisoners [and] § 2255 motions are certainly not brought "under section 2254," which governs petitions filed by state prisoners. But the *Baptiste* panel ruled that even though § 2244(b)(1) does not mention § 2255 motions, it applies to them anyway, since "it would be odd [] if Congress had intended to allow federal prisoners" to do something state prisoners can't do.

In re Clayton, 829 F.3d 1254, 1266 (11th Cir. 2016) (Martin, J., concurring). Beyond that,

> *Baptiste* is inconsistent with the statute in a second way. The text of the habeas statute shows that it requires courts to dismiss only claims that were already presented in an actual § 2255 motion, as

> opposed to a mere request for certification of a successive § 2255 motion. Both § 2244 and § 2254 distinguish between "applications" (which are the § 2254 petitions and § 2255 motions filed in district courts) and "motions" (which are the earlier request for certification filed in a court of appeals). *Baptiste* assumes that "motion" and "application" mean the same thing, even though Congress carefully distinguished the two. When Congress uses different words in this way, courts must presume those words mean different things.

In re Anderson, 829 F.3d 1290, 1296 (11th Cir. 2016) (Martin, J., dissenting).

Baptiste's problems do not end there. *See In re Jones*, 830 F.3d 1295, 1297 (11th Cir. 2016) (Rosenbaum and Jill Pryor, J.J., concurring) (raising concerns about *Baptiste's* policy implications and its interpretation of the law-of-the-case doctrine).

For all these reasons, we are

> concerned that *Baptiste* is blocking relief to prisoners who ask us to take a second look at their case after we got it wrong the first time. Nevertheless *Baptiste* is binding precedent in this circuit, so we must conclude that Britton-Harr will not be allowed to present his case to a district court for an examination of whether his sentence is legal.
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> Bound by *Baptiste*, we lack jurisdiction to consider the merits of Britton-Harr's claim, because it is the same claim that was raised and denied in his March 2018 application to file a second or successive § 2255 motion. *See Baptiste*, 828 F.3d at 1339.

(A-8-11).[2]

[2] As required by Rule 20.4 and 28 U.S.C. §§ 2241 and 2242, the Petitioner states that he cannot present this petition in the district court because the court of appeals denied his application.

G. REASONS FOR GRANTING THE WRIT

1. There is a circuit split over whether 28 U.S.C. section 2244(b)(1) applies to federal prisoners seeking relief under 28 U.S.C. section 2255.

28 U.S.C. section 2244(b)(1) states that "[a] claim presented in a second or successive habeas corpus application *under [28 U.S.C.] section 2254* that was presented in a prior application shall be dismissed." (emphasis added). Despite this plain language limiting the provision to applications filed pursuant to section 2254, the Eleventh Circuit has concluded that section 2244(b)(1) also applies to applications filed pursuant to section 2255 (i.e., the application filed by the Petitioner in the instant case). *See In re Baptiste*, 828 F.3d 1337, 1339 (11th Cir. 2016). In *Baptiste*, the Eleventh Circuit held:

> First, as we see it, the federal habeas statute requires us to dismiss a claim

> that has been presented in a prior application. The statute directs that a "second or successive motion [for habeas relief] must be certified as provided in section 2244." 28 U.S.C. § 2255(h). Section 2244 commands that "[a] claim presented in a second or successive habeas corpus application under section 2254 that was presented in a prior application shall be dismissed." 28 U.S.C. § 2244(b)(1). Although § 2244(b)(1) explicitly applies to petitions filed under § 2254, which applies to state prisoners, it would be odd indeed if Congress had intended to allow federal prisoners to refile precisely the same non-meritorious motions over and over again while denying that right to state prisoners.

Baptiste, 828 F.3d at 1339 (alteration in the original).

Last year, however, in *Williams v. United States*, 927 F.3d 427 (6th Cir. 2019), the Sixth Circuit Court of Appeals explicitly disagreed with the Eleventh Circuit's conclusion that section 2244(b)(1) applies to applications filed pursuant to section 2255:

> With regard to § 2244(b)(1), we start and end with the text. Section §

2244(b)(1) reads: "A claim presented in a second or successive habeas corpus application *under section 2254* that was presented in a prior application shall be dismissed." 28 U.S.C. § 2244(b)(1) (emphasis added). In other words, "[t]he limitations imposed by § 2244(b) apply only to a 'habeas corpus application under § 2254,' that is, an 'application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment *of a State court*.' " *Magwood v. Patterson*, 561 U.S. 320, 332 (2010) (quoting § 2254(b)(1) (emphasis shifted)). As the Government concedes, and as Williams points out, this statutory language makes clear that it does not apply to federal prisoners like Williams who are seeking relief under § 2255 – a reading that is underscored by the fact that Congress clearly knew how to refer to federal prisoners (or all applicants) when it wanted to do so. *See* 28 U.S.C. § 2244(a); *id*. § 2244(b)(3)(A); *see also Henson v. Santander Consumer*. The Government and Williams are not alone in their joint reading: other circuit courts have at least gestured in this direction too. *See Moore v. United States*, 871 F.3d 72, 78 (1st Cir. 2017); *United States v. Winestock*, 340 F.3d 200, 204-205, 208 (4th Cir. 2003); *Stanko v. Davis*, 617 F.3d 1262, 1269 n.5 (10th Cir. 2010).

The main argument against this

reading of § 2244(b)(1)'s plain text is that § 2255(h) refers to § 2244 when it states that "[a] second or successive motion must be certified as provided in section 2244 by a panel of the appropriate court of appeals to contain" one of the two threshold conditions. 28 U.S.C. § 2255(h); *see Taylor v. Gilkey*, 314 F.3d 832, 836 (7th Cir. 2002) ("Although § 2244 refers to § 2254 rather than § 2255, we have held that the cross-reference to § 2244 in § 2255[(h)] means that it is equally applicable to § 2255 motions." (citing *Bennett v. United States*, 119 F.3d 468 (7th Cir. 1997))). But as Williams observes, § 2255(h)'s reference to § 2244's certification requirement is much more sensibly read as referring to the portions of § 2244 that actually concern the certification procedures, *see* 28 U.S.C. § 2244(b)(3) – the provisions, in other words, that "provide[]" for how such a "motion [is to] be certified," *see id.* § 2255(h). By contrast, it makes no linguistic sense to direct a court to "certif[y] as provided in section 2244[(b)(1)]" that a motion contains the threshold conditions discussed in § 2255(h); what makes linguistic sense is to direct a court to certify that those preconditions are met in accordance with the procedures laid out in § 2244(b)(3). There is, accordingly, "no reason to doubt

> that in" including the restrictive clause referring exclusively to state prisoners in § 2244(b)(1), "Congress said what it meant and meant what it said." *Loughrin v. United States*, 573 U.S. 351, 360 (2014).
>
> . . . .
>
> Meanwhile, although at least one other circuit has found § 2244(b)(1) to be applicable to § 2255 movants on policy grounds, *see In re Baptiste*, 828 F.3d 1337, 1339 (11th Cir. 2016) ("Although § 2244(b)(1) explicitly applies to petitions filed under § 2254, which applies to state prisoners, it would be odd indeed if Congress had intended to allow federal prisoners to refile precisely the same non-meritorious motions over and over again while denying that right to state prisoners."), the Government is correct that such a reading is an unjustifiable contravention of plain statutory text. *See, e.g., Mohamad v. Palestinian Auth.*, 566 U.S. 449, 460 (2012) ("[N]o legislation pursues its purposes at all costs, and petitioners' purposive argument simply cannot overcome the force of the plain text." (citation and internal quotation marks omitted)). We therefore hold that § 2244(b)(1) does not apply to federal prisoners like Williams seeking relief under § 2255.

(Footnotes and some citations omitted).

By granting the petition in the instant case, the Court will have the opportunity to resolve this circuit split and clarify whether section 2244(b)(1) applies to federal prisoners seeking relief under section 2255. Notably, as explained by the Sixth Circuit in *Williams*, the Government has now conceded that the plain language of section 2244(b)(1) makes clear that it does not apply to federal prisoners like the Petitioner who are seeking relief under section 2255.

Accordingly, the Petitioner requests the Court to grant his petition.

2. The exceptional circumstances of this case warrant the exercise of this Court's jurisdiction.[3]

This Court's power to grant an extraordinary writ is very broad but reserved for exceptional cases in which "appeal is a clearly inadequate remedy." *Ex parte Fahey*, 332 U.S. 258, 260 (1947). The Court has the authority to entertain original habeas petitions. *See Felker v. Turpin*, 518 U.S. 651, 660 (1996).

The Petitioner's last hope for review lies with this Court. His case presents exceptional circumstances that warrant the exercise of this Court's discretionary powers – especially in light of the circuit split regarding the proper application of section

[3] Rule 20 requires a petitioner seeking a writ of habeas corpus to demonstrate that (1) "adequate relief cannot be obtained in any other form or in any other court;" (2) "exceptional circumstances warrant the exercise of this power;" and (3) "the writ will be in aid of the Court's appellate jurisdiction."

2241(b)(1).

"The great writ of habeas corpus has been for centuries esteemed the best and only sufficient defence of personal freedom." *Ex parte Yerger*, 8 Wall. 85, 95, 75 U.S. 85, 95 (1868). "[F]undamental fairness is the central concern of the writ of habeas corpus." *Strickland v. Washington*, 466 U.S. 668, 697 (1984). In *Harris v. Nelson*, 394 U.S. 286, 292 (1969), the Court stated the following regarding the "Great Writ":

> There is no higher duty of a court, under our constitutional system, than the careful processing and adjudication of petitions for writs of habeas corpus, for it is in such proceedings that a person in custody charges that error, neglect, or evil purpose has resulted in his unlawful confinement and that he is deprived of his freedom contrary to law. This Court has insistently said that the power of the federal courts to conduct inquiry in habeas corpus is equal to the responsibility which the writ involves: The language of Congress, the history of the writ, the decisions of this Court, all

> make clear that the power of inquiry on federal habeas corpus is plenary.

(Citation omitted). The Petitioner's case presents the exceptional circumstances for which the "Great Writ" was intended to apply.

H. CONCLUSION

The Petitioner respectfully requests the Court to grant his petition for a writ of habeas corpus. The Petitioner submits that he has shown exceptional circumstances that warrant relief/review in this case (i.e., a circuit split as to whether section 2244(b)(1) applies to federal prisoners seeking relief under section 2255). Adequate relief cannot be obtained in any other form or from any other court.

Respectfully Submitted,

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