No. 20-_____

IN THE
Supreme Court of the United States

DAMIEN FREEMAN,

Petitioner,

v.

LYNEAL WAINWRIGHT,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

A state prisoner has one year from the time that "the judgment" becomes final to file a habeas petition. 28 U.S.C. § 2244(d)(1)(A). Applying this statute of limitations is straightforward when a prisoner is still in custody pursuant to an original state-court judgment. But the provision has generated much confusion when a state court enters a new judgment following a prisoner's resentencing. In this common situation, does the limitations period run from the original judgment, the new judgment, or some combination of the two depending on the claims asserted? Eight courts of appeals have faced this question and have arrived at four different conclusions. Under two approaches (adopted by six circuits), petitioner's challenge to his conviction would be timely. But, under the other two approaches (including the Sixth Circuit's approach here), his challenge is barred by the statute of limitations. The question presented is:

Whether the statute of limitations for filing a habeas petition begins when the new judgment entered following resentencing becomes final.

PARTIES TO THE PROCEEDING

All parties appear in the caption of the case on the cover page.

RULE 29.6 STATEMENT

There are no corporations involved in this proceeding and thus no ownership to disclose.

RELATED PROCEEDINGS

A list of directly related proceedings is provided below:

- *State v. Freeman*, No. CR 01-413757, Ohio Court of Common Pleas. Judgments entered December 14, 2001; January 25, 2005; October 6, 2015; and January 3, 2017.

- *State v. Freeman*, No. 81626, Court of Appeals of Ohio. Judgments entered September 3, 2002 and April 8, 2005.

- *State v. Freeman*, No. 103660, Court of Appeals of Ohio. Judgment entered December 15, 2016.

- *State v. Freeman*, No. 2017-0144, Supreme Court of Ohio. Judgment entered May 31, 2017.

- *Freeman v. Wainwright*, No. 1:17-cv-1368, U.S. District Court for the Northern District of Ohio. Judgment entered September 10, 2018.

- *Freeman v. Wainwright*, No. 18-3913, U.S. Court of Appeals for the Sixth Circuit. Judgment entered May 12, 2020.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Damien Freeman respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit.

OPINIONS & ORDERS BELOW

The published opinion of the Sixth Circuit is *Freeman v. Wainwright*, 959 F.3d 226 (6th Cir. 2020) and is reproduced in the appendix. Pet. App. 1a–19a. The appendix also includes the district court's September 10, 2018 unpublished opinion and order denying the petition for a writ of habeas corpus. Pet. App. 20a–28a.

JURISDICTION

The Sixth Circuit issued its decision on May 12, 2020. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") provides in relevant part:

> A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of—
> (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such a review . . . .

28 U.S.C. § 2244(d)(1).

INTRODUCTION

This case presents the Court with an opportunity to provide much needed guidance on how to apply the statute of limitations to habeas petitions filed by state prisoners after they have been resentenced. Federal courts routinely see habeas petitions filed in these circumstances, as evidenced by the fact that eight courts of appeals have addressed the timeliness of petitions filed by resentenced prisoners in the last decade. But those courts are deeply divided on when the limitations period begins in these circumstances.

Four different approaches have emerged. The Fourth, Fifth, Ninth and Eleventh Circuits hold that, because a resentencing results in a new judgment, the statute of limitations for all claims challenging a judgment begins when the new judgment becomes final. The Third and Seventh Circuits treat each count of conviction as a separate judgment, and thus the statute of limitations for challenges to the convictions and sentences affected by the resentencing runs from the new (post-resentencing) judgments, while the limitations period for challenges to the undisturbed counts run from the date of the original judgment. The Tenth Circuit has held that the statute of limitations for challenges to the sentence runs from the new judgment, but the limitations period for challenging the underlying conviction is based on the date of the original judgment.

In this case, a divided panel of the Sixth Circuit added to the confusion by adopting its own approach.

The majority focused on the nature of the resentencing proceeding and of the change in the sentence. If the resentencing was a "full resentencing" (a term the court did not define)—or a "limited resentencing" (also undefined) that resulted in a "worse-than-before" sentence—then the resentencing resulted in a new judgment. But, if a limited resentencing resulted in a "better-than-before" sentence, the resentencing is treated as a legal nullity for limitations purposes, and the limitations period runs from the original judgment.

This circuit split should be resolved even if the issue has no impact beyond determining the appropriate limitations period because that issue is important in its own right. But review is particularly warranted here because the statute-of-limitations issue is necessarily bound up with the "second or successive" issue that the Court has frequently had to address. *See, e.g.*, *Magwood v. Patterson*, 561 U.S. 320, 342 (2010). In *Magwood*, the Court held that the second-or-successive bar applies only to the second challenge to the same judgment and, because a resentencing results in a new judgment, the bar does not apply to the first petition challenging that new judgment. *Id.* But that holding would be rendered largely meaningless if the statute of limitations for a resentenced petitioner runs from the original judgment. Because the proceedings that lead to resentencing will virtually always take more than one year, a resentenced petitioner may avoid the second-or-successive bar under *Magwood*, only to have his claims dismissed as untimely.

This case provides an excellent vehicle to resolve the split because the Sixth Circuit's novel standard determined the outcome of the appeal. After a successful state-court suit resulted in his resentencing, petitioner filed a habeas petition challenging the legality of his guilty plea. In six courts of appeal—the Third, Fourth, Fifth, Seventh, Ninth and Eleventh Circuits—this petition would be timely. But in two courts of appeal—the Sixth and Tenth Circuits—the petition is considered untimely.

This Court has repudiated procedural anomalies that "would 'close [the Court's] doors to a class of habeas petitioners seeking review without any clear indication that such was Congress' intent.'" *Id.* at 341 (quoting *Castro v. United States*, 540 U.S. 375, 381 (2003)). The Sixth Circuit's decision erects precisely that type of barrier. The petition should be granted.

STATEMENT OF THE CASE

A. Background

Under AEDPA, "an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court" is subject to a "1-year period of limitation." 28 U.S.C. § 2244(d)(1). As relevant here, this period runs from "the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such a review." *Id.* § 2244(d)(1)(A).

Courts have little difficulty applying this provision for a state prisoner in custody pursuant to the state court's original judgment. But much confusion has

arisen when, as here, the prisoner successfully challenges the original judgment through direct appeal, state post-conviction proceedings, or federal habeas. When the original judgment is no longer operative, a court applying § 2244(d)(1)(A)'s limitations period must decide whether the statutory term "the judgment" refers to the original judgment, the new (and operative) judgment, or some combination of the two.

This Court's prior decisions have not definitively resolved that question, but they do provide substantial guidance. For example, in *Burton v. Stewart*, 549 U.S. 147 (2007), a state prisoner was originally convicted and sentenced in 1994. In 1998, his conviction was upheld on appeal but his case was remanded for resentencing, which resulted in an amended judgment in March 1998. *Id.* at 151. The petitioner appealed the new sentence, and in December 1998—while the resentencing appeal was pending—he filed his first habeas petition, which challenged his conviction. Then, in 2002, soon after his resentencing appeal was denied, petitioner filed a second habeas petition challenging the 1998 resentencing. *Id.*

The petitioner in *Burton* sought to avoid the bar on second-or-successive petitions by contending that the two habeas petitions challenged different judgments. According to Burton, the first petition challenged the original 1994 judgment because it challenged the original conviction, whereas the second petition challenged the 1998 judgment because it challenged the later resentencing. *Id.* at 155–56. This Court rejected the argument. Regardless of the claims presented in each petition, both were challenging the 1998 judgment because that was the judgment in effect when both petitions were filed. *Id.* In so holding,

the Court dismissed Burton's concern that his claims challenging the underlying convictions would have been barred by the statute of limitations if he had brought them in 2002, when state review of his sentencing claims was complete. The Court explained that "'[f]inal judgment in a criminal case means sentence. The sentence is the judgment.' Accordingly, Burton's limitations period did not begin until both his conviction *and* sentence" became final. *Id.* (quoting *Berman v. United States*, 302 U.S. 211, 212 (1937)).

The Court revisited the effect of a resentencing on a judgment in *Magwood v. Patterson*, 561 U.S. 320 (2010). There, the petitioner had filed two habeas petitions, but his sentence had been modified—and therefore a new judgment had been entered—between the filing of the two petitions. *See id.* at 326. The Court concluded that AEDPA's reference to "'second or successive' must be interpreted with respect to the judgment challenged." *Id.* at 332–33. Because of the intervening resentencing, petitioner's two habeas petitions each challenged a different judgment, and thus the latter petition was not second or successive. *Id.* at 323–24, 342.

In holding that the second-or-successive bar did not apply, the Court deemed it irrelevant that the claim that Magwood presented in his more recent petition could have been raised in the earlier petition. *Id.* at 334–35, 339. Because the new sentence resulted in a new judgment, the errors in that judgment "are *new*." *Id.* at 339 ("An error made a second time is still a new error."). *Magwood*, however, left open the question whether its "reading of § 2244(b) would allow a

petitioner who obtains a conditional writ as to his sentence to file a subsequent application challenging not only his resulting, *new* sentence, but also his original, *undisturbed* conviction," given that the petitioner did not "challenge his underlying conviction." *Id.* at 342.

B. Procedural History

Following his indictment in 2001, petitioner pleaded guilty to one count of murder in violation of Ohio law. Pet. App. 20a, 34a. The state trial court sentenced petitioner to fifteen years to life imprisonment and post-release control for the maximum period allowed. Pet. App. 34a. The judgment was entered on December 14, 2001. Pet. App. 40a–41a.

On September 15, 2015, petitioner moved to vacate his conviction on the grounds that he pleaded guilty to a non-cognizable offense, and to vacate his sentence on the grounds that the post-release control was not authorized under the applicable statute. Pet. App. 35a. The state appellate court affirmed petitioner's conviction, but it agreed that state law did not authorize post-release control for felony murder. Pet. App. 37a, 39a. The court remanded for resentencing to remove the imposition of post-release control. Pet. App. 39a.

On remand, the trial court "vacat[ed]" petitioner's "12/14/2001" judgment; accepted, again, petitioner's "plea of guilty to [felony] murder"; and "impos[ed] a prison term . . . of 15 years to life." Pet. App. 30a–31a. Petitioner appealed from the trial court's new judgment entered pursuant to his resentencing. Pet. App. 22a–23a. Ultimately, on May 31, 2017, the state supreme court declined to accept jurisdiction of the

appeal, thereby rendering petitioner's judgment final. Pet. App. 29a.

A month later, on June 28, 2017, petitioner filed a *pro se* petition for writ of habeas corpus. Pet. App. 20a. He raised four claims, including a challenge to his underlying conviction. *See* Pet. App. 20a–25a. The district court denied the claim as untimely. Pet. App. 20a–26a. In the district court's view, the limitations period began in December 2001 upon entry of the original judgment. Pet. App. 23a–24a. The new judgment entered in 2017 was irrelevant because, under Sixth Circuit precedent, "resentencings which benefit the petitioner do not disturb the final underlying initial judgment, which continues to constitute[] a final judgment." Pet. App. 24a (quoting *Crangle v. Kelly*, 838 F.3d 673, 678 (6th Cir. 2016)) (internal quotation marks omitted).

A divided Sixth Circuit panel affirmed. After distinguishing between so-called "full resentencings" and "limited resentencings," the majority held that a resentencing does not produce a new judgment when a petitioner receives "a limited resentencing that results in a better-than-before sentence." Pet. App. 2a. The court reasoned that "[w]hen courts engage in a full resentencing, the resulting sentence is a new 'judgment' that restarts § 2244(d)(1)'s timeclock," meaning that "the petitioner can challenge both his new sentence and his underlying conviction." Pet. App. 5a (quoting *King v. Morgan*, 807 F.3d 154, 156 (6th Cir. 2015)). The court extended that principle "to some limited resentencings"—specifically, those that result in a "new, worse-than-before sentence." Pet. App. 5a–7a. Noting that petitioner did not receive a

hearing in connection with his resentencing, the court concluded that petitioner's resentencing was limited and resulted in a better-than-before sentence. Pet. App. 6a–7a. Accordingly, the judgment entered following resentencing was irrelevant to applying AEDPA's statute of limitations, and petitioner's challenge to his conviction was time barred.

Judge Donald dissented. Pet. App. 12a–18a. In her view, "the majority's decision conflicts with Supreme Court precedent." Pet. App. 12a. Judge Donald discussed at length this Court's decision in *Burton*, emphasizing that the petitioner there had received a "better-than-before" sentence. Pet. App. 16a. This Court's determination that Burton could wait to challenge his underlying conviction until the new, post-resentencing judgment became final—notwithstanding that the new sentence was better than the original—meant that petitioner should be allowed to do the same. Pet. App. 16a–17a. Judge Donald noted that this result was "also consistent with the precedent of several of our sister circuits." Pet. App. 17a. Citing decisions from the Fourth, Ninth, and Eleventh Circuits, Judge Donald observed that those courts have treated resentencing as producing a new judgment, even when the petitioner received a better-than-before sentence. Pet. App. 17a.

REASONS FOR GRANTING THE PETITION

I. The Circuits Are Deeply Divided on How to Apply AEDPA's Statute of Limitations Following a Resentencing.

As relevant here, AEDPA's "1-year period of limitation" begins on "the date on which the judgment

became final by the conclusion of direct review or the expiration of the time for seeking such a review." 28 U.S.C. § 2244(d)(1)(A). Eight circuits have considered how resentencing affects the limitations period and have arrived at four different conclusions, leaving significant uncertainty as to the proper interpretation of the phrase "the judgment" in § 2244(d)(1)(A). This case demonstrates the importance of the differences in approaches—under two of the tests, petitioner's challenge to his conviction was timely, and under the other two tests, it was not.

A. In the Fourth, Fifth, Ninth, and Eleventh Circuits, the Limitations Period Runs from the New, Post-Resentencing Judgment.

Four courts of appeals have held that a resentencing results in a new judgment that entirely replaces the original judgment. These courts thus hold that a habeas petition is timely if filed within a year of the new judgment becoming final, and they apply this same limitations analysis to all claims asserted in the petition, regardless of whether they challenge the underlying conviction or the new sentence.

The Ninth Circuit's decision in *Smith v. Williams*, 871 F.3d 684 (9th Cir. 2017) provides a good example. Even though the petitioner was initially convicted in 1997, the Ninth Circuit held that the petition was timely because the limitations period ran from the judgment reinstating the conviction and sentence. *Id.* at 685–88. Relying on *Magwood* and the "text of § 2244," the court concluded that "'[t]he judgment' can only refer to the state judgment pursuant to which the

petitioner is being held." *Id.* at 686–87 (citing *Magwood*, 561 U.S. at 332–33). It therefore rejected the "argument that the statute of limitations runs from the *original* judgment rather than the new judgment" as "contrary to the language of § 2244(d)(1)," and further determined that this argument would render "cases interpreting AEDPA's 'second or successive' bar irrelevant." *Id.* at 687–88.

The Eleventh Circuit has reached the same conclusion. *See, e.g.*, *Ferreira v. Sec'y, Dep't of Corr.*, 494 F.3d 1286 (11th Cir. 2007). Relying on this Court's decision in *Burton*, the court reasoned that "AEDPA's statute of limitations begins to run from the date both the conviction *and* sentence the petitioner is serving at the time he files his application become final because judgment is based on both the conviction and the sentence." *Id.* at 1293. The petition was not time barred because the limitations period began when the petitioner's corrected sentence became final, even where the petitioner raised claims "concerning only his original conviction and not his subsequent resentencing." *Id.* at 1288.[1]

The Fourth Circuit also has held that, "when a state court defendant has been granted a resentencing, the limitations period under § 2244(d)(1)(A) runs from the judgment entered upon resentencing—even if . . . the defendant's habeas petition challenges the underlying conviction." *Woodfolk v. Maynard*, 857

[1] Following this Court's decision in *Magwood*, the Eleventh Circuit has relied on *Ferreira* and *Magwood* to hold that the statute of limitations for all claims related to the petitioner's convictions and sentences begins when a new judgment following resentencing becomes final. *Thompson v. Fla. Dep't of Corr.*, 606 F. App'x 495, 506 (11th Cir. 2015).

F.3d 531, 542 (4th Cir. 2017). There, a petition that challenged the underlying conviction was timely based on a new judgment entered following resentencing. *See id.* at 540, 543. The Fourth Circuit explained that its holding is consistent with *Burton* and § 2244(b)'s bar on second-or-successive habeas applications. *Id.* at 542–43.[2]

Likewise, the Fifth Circuit has held that a petition challenging a state aggravated-burglary conviction was timely because the statute of limitations began only after the petitioner's new sentence became final. *Scott v. Hubert*, 635 F.3d 659, 664 (5th Cir. 2011). In that case, the state appellate court affirmed petitioner's conviction but vacated the sentence, ultimately leading to a resentencing. *Id.* at 661–62. Although the petition did not raise claims related to the new sentence, the Fifth Circuit refused to recognize two different judgments—a conviction judgment and a sentencing judgment—for statute of limitations purposes. *Id.* at 665. Instead, the court held "that when a state prisoner's conviction is affirmed on direct appeal but the sentence is vacated and the case is remanded for resentencing, the judgment of conviction does not become final within the meaning of 28 U.S.C. § 2244(d)(1)(A) until both the conviction and the sentence have become final." *Id.* at 666.

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[2] The Fourth Circuit also cited its own precedent, which had relied on *Magwood*. *See In re Gray*, 850 F.3d 139, 143–44 (4th Cir. 2017) ("The *Magwood* Court made clear that it is the newness of the intervening judgment as a whole that resets the habeas counter to zero [for the second-or-successive bar].").

The Fifth Circuit explained the problem with recognizing two distinct judgments for statute of limitations purposes as follows:

> [A]llowing a conviction to ripen into a final judgment before the sentence attached to that conviction became final would mean that a petitioner whose conviction was affirmed but whose sentence was vacated might have to file two separate habeas petitions to avoid dismissal on limitations grounds. This cannot be the law because the second of those petitions would be presumptively subject to dismissal. AEDPA is not a Hobson's choice. A petitioner who wishes to challenge his conviction is not required to do so immediately and forfeit his right to later challenge his sentence. Nor must a petitioner who wishes to preserve his ability to challenge his sentence forfeit his right to challenge his conviction.

Id. at 666–67 (footnote omitted).

These four courts of appeals have thus adopted a clear rule, based on the statutory text and this Court's decisions, that resentencing resulting in a new judgment and AEDPA's statute of limitations runs from that new judgment. Had the Sixth Circuit adopted this approach, petitioner's challenge to his conviction would have been timely.

B. In the Third and Seventh Circuits, Resentencing Affects the Limitations Period Only for the Counts of Conviction Subject to Resentencing.

Two courts of appeals treat each count of conviction as a separate judgment, and thus resentencing creates new judgments only for the counts subject to resentencing. On this view, the limitations period for claims challenging convictions and sentences affected by the resentencing runs from the new (post-resentencing) judgments, but the period for other challenges runs from the date of the original judgment.

The Seventh Circuit, for instance, considered the effect that a resentencing on a robbery conviction had on the limitations period for challenging the petitioner's conviction in the same case on a count of murder. *Turner v. Brown*, 845 F.3d 294, 297–98 (7th Cir. 2017). The court of appeals reasoned that each conviction and sentence together form a separate judgment. *See id.* at 298. As a result, a challenge to the robbery count would be considered timely given the resentencing on that count. But a challenge to his murder count would not. *Id.* Rather than meaningfully confront *Magwood*, the Seventh Circuit held that binding pre- and post-*Magwood* circuit precedent compelled its holding. *See id.*

Similarly, the Third Circuit held that a petitioner's challenge to his conspiracy conviction was untimely because his recent resentencing involved only the non-conspiracy counts. *See Romansky v. Superintendent Greene SCI*, 933 F.3d 293, 299 (3d Cir. 2019). The court acknowledged that the circuits had split on the

question expressly left open under *Magwood*—whether a resentencing allows a petitioner to challenge the underlying conviction—but distinguished the issue on appeal as asking whether a "resentencing is a new judgment as to the undisturbed counts of conviction" where "some but not all counts of conviction are disturbed on appeal or in post-conviction proceedings." *Id.* at 300–301. In answering this question, the Third Circuit concluded that the "resentencing did not impose a new judgment as to the undisturbed counts of conviction (including the conspiracy charge)." *Id.*

Under the approach taken by the Third and Seventh Circuits, petitioner's challenge to his conviction would be timely because he is challenging the underlying conviction on which he was resentenced.

C. In the Tenth Circuit, Resentencing Affects the Limitations Period for Challenges to the New Sentence, But Not the Underlying Conviction.

Taking a third approach, the Tenth Circuit has held that the statute of limitations for challenges to a petitioner's sentence runs from the new (post-resentencing) judgment, but the limitations period for challenging the underlying conviction is based on the date of the original judgment.

In *Prendergast v. Clements*, 699 F.3d 1182, 1186 (10th Cir. 2012), the Tenth Circuit held that habeas claims challenging the petitioner's original conviction were untimely, while the claims challenging the constitutionality of petitioner's resentencing were timely. The court did not acknowledge *Burton*'s treatment of the judgment as consisting of both the conviction and the sentence. Nor did it address *Magwood*'s holding

that, for the second-or-successive bar, the relevant judgment is the new, post-resentencing judgment. Instead, the Tenth Circuit relied on a Third Circuit decision that applied a *different* statute-of-limitations provision under AEDPA. *See id.* at 1186–87 (citing *Fielder v. Varner*, 379 F.3d 113 (3d Cir. 2004)).[3] Based on that decision, the court of appeals rejected petitioner's argument that "timely raised claims on his 2009 resentencing . . . somehow resurrected" the "attacks on his conviction." *Id.* at 1186.

The petition here would be untimely under the Tenth Circuit's approach, even though it challenges the same underlying conviction at issue during his resentencing.

D. In the Sixth Circuit, the Effect of Resentencing Depends on the Nature of the Resentencing Proceeding and Its Impact on the Original Sentence.

Despite seven other circuits having considered the issue by the time it rendered its decision, the Sixth Circuit blazed its own trail in this case. Departing from the approaches taken by every other court, the Sixth Circuit held that a limited resentencing resulting in a better-than-before sentence does not create a new judgment. Pet. App. 2a. The Sixth Circuit

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[3] In *Fielder*, the petitioner argued that his petition was timely under § 2244(d)(1)(D) because it was filed within a year of his discovery of new evidence to support of his claims. 379 F.3d at 116–17. The Third Circuit held that newly discovered evidence started the limitations period only for the claims affected by such evidence. *Id.* But that decision does not support the rule the Tenth Circuit adopted for the different limitations period provided under § 2244(d)(1)(A).

reached this conclusion despite acknowledging that other types of resentencings, such as full resentencings and limited resentencings that result in a worse-than-before sentence, result in new judgments. Pet. App. 5a.

The Sixth Circuit determined that, following the state appellate court's remand, the state trial court's order "vacating and replacing the original sentencing" was a "limited" resentencing. Pet. App. 6a (cleaned up). Looking to Ohio law, the Sixth Circuit concluded that correction of an improperly imposed post-release control does not render the entire sentence void. Pet. App. 6a–7a. According to the Sixth Circuit, "limited resentencings that benefit the prisoner 'do not disturb the underlying initial judgment, which continues to constitute[] a final judgment.'" Pet. App. 7a (quoting *Crangle*, 838 F.3d at 678).

Because the state trial court removed post-release control from petitioner's original sentence related to his conviction for felony murder, the Sixth Circuit concluded the resentencing benefitted petitioner and therefore was not a new judgment for purposes of AEDPA's statute of limitations. Pet. App. 7a–11a. The Sixth Circuit concluded that its own binding precedent necessitated this result and distinguished *Burton* and *Magwood* on the basis that the petitioners there received full resentencings. Pet. App. 7a–10a (citing *Crangle*, 838 F.3d at 678–79).

Under the Sixth Circuit's approach, the statute of limitations runs from the judgment entered following resentencing if (i) the petitioner had a full resentencing, or (ii) the petitioner had a limited resentencing and received a worse-than-before sentence. Pet. App.

5a, 9a. But, if the petitioner had a limited resentencing and received a better-than-before sentence, the limitations period runs from the original judgment. Pet. App. 7a. That approach cannot be reconciled with any of the decisions of the other circuits, further intensifies the split between circuits, and highlights the need for this Court's intervention.

II. The Sixth Circuit's Decision Is Incorrect.

The Sixth Circuit's approach finds no support in the text of AEDPA or this Court's decisions. To the contrary, both statutory text and precedent support the view taken by four circuits that, when a petitioner is resentenced, the limitations period for all claims begins when the new judgment becomes final.

A. The plain statutory language demonstrates that there is a single "judgment" triggering the applicable statute of limitations. The statute expressly provides that the limitations period runs from the date on which "*the* judgment" became final. 28 U.S.C. § 2244(d)(1) (emphasis added). The language mirrors the general grant of authority to file a habeas petition, which authorizes federal courts to "entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to *the judgment* of a State." *Id.* § 2254(a) (emphasis added). Congress's use of the definite article "the" shows that it contemplated only a single judgment. *Cf. Rumsfeld v. Padilla*, 542 U.S. 426, 434 (2004) (interpreting AEDPA's use of "the person" as referring to a single person because "use of the definite article in reference to the custodian indicates that there is generally only one proper respondent to a given prisoner's habeas petition").

This Court has already recognized that § 2244(d)(1)—the limitations provision at issue here—creates a single triggering event, whereas the other limitations provisions in the same subsection can have multiple triggers. *See Pace v. DiGuglielmo*, 544 U.S. 408, 415 n.6 (2005). As the Court explained, AEDPA "provides one means of calculating the limitation with regard to the 'application' as a whole, § 2244(d)(1)(A) (date of final judgment), but three others that require claim-by-claim consideration, § 2244(d)(1)(B) (governmental interference); § 2244(d)(1)(C) (new right made retroactive); § 2244(d)(1)(D) (new factual predicate)." *Id.*

The statutory text also establishes which judgment is controlling. Section 2254 expressly identifies the relevant judgment as the one "pursuant to" which the petitioner is "in custody." 28 U.S.C. § 2254(a). AEDPA's reference to "the judgment" in § 2244 should be given the same meaning as its reference to the same term in § 2254. *See Ratzlaf v. United States,* 510 U.S. 135, 143 (1994) ("A term appearing in several places in a statutory text is generally read the same way each time it appears."). Accordingly, § 2244(d)(1)(A)'s statement that the limitations period begins when "the judgment" becomes final should be interpreted as referring to the judgment pursuant to which the petitioner is in custody. For a resentenced petitioner, that is the new, post-resentencing judgment, not the original, no-longer-operative judgment. *See Smith*, 871 F.3d at 687–88 ("If the Second Amended Judgment is the judgment pursuant to which the petitioner is being held, and the petitioner is entitled to file a federal habeas petition challenging that judgment, then it follows as the night the day

that the federal habeas petition must be filed within one year from the entry of that judgment.").

The Court's decision in *Magwood* further confirms that the relevant judgment is the current, operative one. There, the Court held that the bar on "second or successive" petitions did not apply, even though the petitioner had filed two habeas petitions, because his sentence had been modified—and therefore a new judgment had been entered—between the filing of the two petitions. *See Magwood*, 561 U.S. at 326. The Court explained that AEDPA's reference to "'second or successive' must be interpreted with respect to the judgment challenged." *Id.* at 332–33. That reasoning should apply with full force to determining which judgment triggers the statute of limitations. It would make no sense to apply the second-or-successive bar based on the new judgment, while applying the statute of limitations based on the original judgment.

Finally, this Court's decisions foreclose any attempt to interpret "judgment" as distinguishing between the conviction and sentence. Long before Congress passed AEDPA, this Court explained that a criminal judgment includes the sentence. *See Miller v. Aderhold*, 288 U.S. 206, 210 (1933) ("In a criminal case final judgment means sentence."); *see also Berman*, 302 U.S. at 212 ("Final judgment in a criminal case means sentence. The sentence is the judgment."); *Hill v. Wampler*, 298 U.S. 460, 464 (1936) ("[T]he sentence is the judgment."). Congress effectively endorsed that understanding by using "judgment" without attempting to redefine it. *See Midlantic Nat'l Bank v. N.J. Dep't of Envtl. Prot.*, 474 U.S. 494, 501 (1986) ("[I]f

Congress intends for legislation to change the interpretation of a judicially created concept, it makes that intent specific."). And the Court has applied this same understanding of "judgment" in interpreting AEDPA. *See, e.g.*, *Burton*, 549 U.S. at 156 ("Final judgment in a criminal case means sentence. The sentence is the judgment." (quoting *Berman*, 302 U.S. at 212)).

B. The Sixth Circuit's approach cannot be reconciled with the statutory text or this Court's decisions. Nothing in the statutory text addresses whether a resentenced petitioner received a "full" or "partial" resentencing, or whether a new sentence is better or worse than the original sentence. The Sixth Circuit majority did not dispute that point. Indeed, the court made no attempt to explain how the statutory text supports its rule.[4]

Furthermore, neither AEDPA nor this Court's precedent differentiate between better-than-before and worse-than-before sentences. To the contrary, the petitioner in *Burton* received a better-than-before sentence, and the Court made clear that the statute of limitations for the petitioner's challenges to both his conviction and sentence did not begin until after the new, post-resentencing judgment was final. *See Burton*, 549 U.S. at 156; Pet. App. 16a–17a (Donald, J., dissenting) (discussing *Burton*).

The Sixth Circuit justified its approach by citing cases holding that a new judgment does not result

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[4] The Sixth Circuit majority considered itself bound by circuit precedent to treat full and partial resentencing differently. Pet. App. 10a. The dissent disagreed. Pet. App. 12a–14a.

from federal sentencing reductions under 18 U.S.C. § 3582 and federal sentencing modifications under Federal Rule of Criminal Procedure 35(b). Pet. App. 5a. Those provisions are inapplicable here because they address sentencing modifications for *federal* prisoners, not state prisoners seeking habeas relief under § 2254. *See, e.g.*, *Murphy v. United States*, 634 F.3d 1303, 1312 (11th Cir. 2011) (recognizing that Congress, through § 3582 and Rule 35(b), has created a different standard in the § 2255 context for federal prisoners).

In any event, far from supporting the Sixth Circuit's view, those cases undermine it. Resentencing for federal prisoners in the limited circumstances provided by § 3582(b) and Rule 35(b) does not disturb the finality of the original judgment because Congress has expressly provided that it does not. 18 U.S.C. § 3582(b). If there were a general rule that sentence reductions do not affect the finality of a judgment, then § 3582(b) would be superfluous. Rather than treating the provision as unnecessary, the Court should view it as further proof that Congress understands that "the sentence is the judgment," *Burton*, 549 U.S. at 156, and thus Congress viewed § 3582(b) as necessary to direct a departure from that general rule.

In short, read together, the statutory text and this Court's precedent establish that: (i) the statute of limitations is triggered by a single judgment, (ii) the relevant judgment is the new judgment entered following resentencing, and (iii) the judgment does not distinguish between the underlying conviction and the sentence. That is the most common view in the courts

of appeals—specifically, the Fourth, Fifth, Ninth, and Eleventh Circuits, *see supra* Part I.A.—and it is the view the Court should adopt here.

III. This Case Presents an Ideal Vehicle to Decide This Important and Recurring Issue.

The question presented warrants this Court's review, and this case presents an ideal vehicle to decide it. The statute-of-limitations issue is squarely presented and the Sixth Circuit's novel approach to applying the statute was dispositive here. Had petitioner's case been filed in six other circuits, his challenge to his guilty plea would have been timely. Rather than permitting circuits to continue applying different interpretations of this limitations provision, the Court should grant the petition and decide how the provision applies when a state prisoner has been resentenced.

Habeas petitioners face significant challenges in ensuring that they file within the limitations period. They typically must proceed *pro se* and their incarceration presents logistical challenges to making court filings. Habeas rules are complex and confusing, even when courts do not adopt different interpretations of them. As a result, a recent study found that 22% of habeas petitions in non-capital state habeas cases were dismissed as time barred.[5] That percentage will only increase if the Court does not decide the question

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[5] Nancy King et al., *Final Technical Report: Habeas Litigation in U.S. District Courts: An Empirical Study of Habeas Corpus Cases Filed by State Prisoners Under the Antiterrorism and Effective Death Penalty Act of 1996*, at 6 (2007), https://www.ncjrs.gov/pdffiles1/nij/grants/219558.pdf.

presented in this case, and the increase will disproportionately affect petitioners that must seek habeas relief in circuits other than the Fourth, Fifth, Ninth, and Eleventh Circuits.

Resolving this circuit split is necessary to reduce the confusion over when a habeas petition must be filed. Consider a state prisoner who wants to raise constitutional challenges to robbery and gun-possession charges, but currently has an appeal pending related to a reduction of the sentence on the gun-possession charge. The prisoner must decide whether his challenges to the underlying convictions can wait until his resentencing appeal is complete, or whether he must file them now and thus presumptively forgo filing a second habeas petition following the conclusion of his sentencing appeal. *See Scott*, 635 F.3d at 666–67.

The answer depends entirely on which circuit's law applies. In the Fourth, Fifth, Ninth, or Eleventh Circuit, the prisoner may wait until the resentencing is final. In the Third and Seventh Circuits, the prisoner may wait to bring the challenge to his gun-possession charge, but he must immediately challenge the robbery conviction. In the Tenth Circuit, the prisoner must immediately challenge both the gun-possession and robbery convictions. And, in the Sixth Circuit, it depends. The prisoner can wait to challenge both convictions if he received a "full" resentencing, but he must immediately challenge the convictions if he had a "limited" resentencing. This confusion is likely to lead to more missed deadlines, and more protective filings in an attempt to avoid missing those uncertain deadlines.

For prisoners in Sixth Circuit states, the confusion will be compounded by the uncertainty of that court's test. Whether a new sentence is better or worse than the original sentence is not always obvious. For example, in *Crangle*, the prisoner was placed on parole instead of post-release control, and the parties disputed (and thus litigated) whether parole was better than post-release control. 838 F.3d at 678–80. The Sixth Circuit's rule also has the potential to create perverse incentives. For a prisoner who wants to challenge his underlying conviction, that claim may be time barred if his sentence were reduced, but could be timely if he convinced the court to increase his sentence. That cannot be what Congress intended.

Finally, the question presented is important because of the effect it has on this Court's "second or successive" rulings. As the Ninth Circuit observed, the "argument that the statute of limitations runs from the *original* judgment rather than the new judgment" would "make cases interpreting AEDPA's 'second or successive' bar irrelevant." *Smith*, 871 F.3d at 687–88. Cases like *Magwood* would become irrelevant because "it is realistically most unlikely that a habeas petitioner would be able to file and litigate a first federal petition, have the judgment or sentence amended in state court, and file a new federal petition regarding the amended judgment all within one year of the original conviction." *Id.* Rather than rendering the Court's second-or-successive decisions meaningless, the Court should grant the petition and hold that the limitations period to challenge the underlying and undisturbed conviction runs from the date that the new judgment becomes final.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be granted.

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