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 basis for the Petitioner's application was an affidavit from Gary Owens (A-22),[1] who states that information presented by the Government during the Petitioner's trial was false.[2] The underlying facts of the case were recited by the Eleventh Circuit Court of Appeals in its opinion below:

> In 2012, Britton-Harr was convicted of making a false statement on a loan application to a federally insured financial institution, in violation of 18

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[1] References to the documents included in the appendix to this petition will be made by the designation "A" followed by the appropriate page number.

[2] In his application, the Petitioner was not asking the appellate court to vacate his conviction; rather, he was simply seeking leave to pursue a second or successive § 2255 motion in the district court based on the newly discovered evidence in this case (i.e., Mr. Owens' affidavit).

U.S.C. § 1014, and sentenced to 48 months of imprisonment, followed by 5 years of supervised release. In 2013, he filed his original § 2255 motion, which the district court denied on the merits.

In March 2018, Britton-Harr sought leave to file a second or successive § 2255 motion 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. According to the presentence investigation report, the false statements included misrepresentations about prior mortgage debts. He presented a defense at trial that Karyn was solely responsible for the false information made to Wells Fargo Bank and that all of the documents that he had signed were correct. 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. Owens was not called as a witness at trial. Britton-Harr showed Owens the application, and Owens stated, in a text message, that the signature on the loan

application was not his own and had been forged.

In his March 2018 application, 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. He asserted that he was entitled to a new trial. He attached the text message from Owens, in which Owens stated that his signature did not appear on Britton-Harr's loan application; two loan applications; and a credit report from Wells Fargo.

This Court denied Britton-Harr's 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.

In October 2019, Britton-Harr again sought leave to file a second or successive § 2255 motion based on newly discovered evidence. He alleged the same facts as he had alleged in his March 2018 application. He asserted that he had obtained a signed affidavit from Owens in which Owens swore that the signature on the loan application was not his own. He argued that, in light of the affidavit, no

reasonable factfinder would have found him guilty because the government presented evidence that Owens had signed the application.

Britton-Harr attached Owens's affidavit, dated July 11, 2019, in which Owens stated that (1) he was employed by Wells Fargo in July 2006; (2) the government's evidence showed that he interviewed Karyn over the phone in connection with a mortgage application; and (3) his name was handwritten on Karyn's loan application, but the signature was not his. Britton-Harr also attached two loan applications: one that was dated July 25, 2006, and appeared to have been signed by Owens but not by the borrower; and one that was dated August 14, 2006, and indicated that Britton-Harr signed it on behalf of Karyn as the borrower, but included only a typed version of Owens's name with no signature. He also attached a credit report generated by Wells Fargo for Karyn.

This Court dismissed Britton-Harr's application based on *In re Baptiste*, 828 F.3d 1337 (11th Cir. 2016), because he had already raised his newly discovered evidence claim in his 2018 application. The dismissal order reasoned that the claims were the same because they both argued that Owens's

signature on the loan application was forged.

In his present counseled application, Britton-Harr alleges the same facts that appeared in his two prior applications, about his trial, his communications with Owens, and Owens's July 2019 affidavit. Britton-Harr asserts that Owens recently signed a new affidavit that elaborated upon his statements in his prior affidavit. He argues that, in light of the newly discovered evidence of Owens's new affidavit, no reasonable factfinder would have found him guilty. Specifically, he asserts that the affidavit provided evidence, for the first time, that the "ALT A NO DOC" program was solely dependent on a credit report, which refuted the government's position at trial that he had deceived Wells Fargo by altering the mortgage application. He contends that the fact that there are two versions or parts of the signed mortgage application shows that Wells Fargo was negligent or reckless, which he had not argued during his trial because Owens was unavailable to testify. Further, he contends that the affidavit shows that the application was not valid because it was forged and the two versions contained materially different information. Thus, he reasons that his signature on the application could not have formed the

basis for his conviction because the application was invalid. Britton-Harr also asserts that his present claim is distinct from the claims that he raised in his prior applications because Owens included new details in his new affidavit. Further, he asserts that he filed his present application within one year of when Owens first expressed a willingness to sign an affidavit.

In addition, Britton-Harr argues that recent settlements between Wells Fargo and the government demonstrate that one of the government's witnesses had provided false testimony at trial because she was receiving financial compensation and was being protected by Wells Fargo. Further, he contends that the settlements support his argument that his loan application did not require verification, which contradicts the government's position and the witness's testimony.

Britton-Harr attaches an affidavit signed by Owens on June 25, 2020. In it, Owens repeated his statements from his prior affidavit and added that (1) the "ALT A NO DOC" loan and mortgage application process were solely dependent on a credit report that he generated during a phone interview and (2) he did not have any contact with Britton-Harr until Britton-Harr was released from

> prison. Britton-Harr also attaches the same two loan applications from July and August 2006 that he attached to his prior application. In addition, he attaches two settlement statements from the U.S. Department of Housing and Urban Development ("HUD") dated August 14, 2006, that involved Karyn and Wells Fargo. The statements were associated with the loan applications, and one statement included a signature page that contained the initials of an individual who was acting with Karyn's power of attorney.

(A-5-13).[3]

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[3] As explained in the Petitioner's application to the appellate court, Mr. Owens' new affidavit is the first time the Petitioner has had evidence/testimony to support the fact that the "ALT A NO DOC" program was solely dependent upon the credit report pulled at the time the phone application was taken. This new information refutes the Government's argument that the Petitioner worked to alter the mortgage application to deceive the bank. The fact that there are two parts/versions of the mortgage application signed reinforces the negligence/recklessness by Wells Fargo; however, this argument has never been made in court because Mr. Owens was not available for testimony to refute the testimony presented by the Government at trial. For this reason, Mr. Owens' new affidavit amounts to new evidence (i.e., the mortgage application is not a valid document because not only was it forged, but the document contains different information that is integral to the

On July 27, 2020, the Eleventh Circuit dismissed the Petitioner's renewed application, concluding that it did not have jurisdiction to consider the application:

> Our Court has held that a claim that was presented in a prior application for leave to file a second or successive § 2255 motion must be dismissed. *In re Baptiste*, 828 F.3d 1337, 1338-1341 (11th Cir. 2016) (holding that the bar under § 2244(b)(1) applies to claims raised in a prior application to file a second or successive § 2255 motion). We have clarified that this bar is jurisdictional. *In re Bradford*, 830 F.3d 1273, 1277-1278 (11th Cir. 2016) (interpreting § 2244(b)(1) in the context of a second or successive § 2255 motion).

(A-13-14). In her concurring opinion, Judge Martin

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document's purpose). The Petitioner's signature on the mortgage application document (i.e., the document that formed the basis for the Government's allegations in this case) – that was allegedly so integral to Wells Fargo making the loan (according to testimony at trial) – is not a valid argument because the validity of the document itself fails to serve as a binding contract. The binding contract was the whole purpose for Petitioner's indictment and subsequent conviction.

opined that *Baptiste* was wrongly decided:

> I have stated my view that *Baptiste* has no basis in the text of the habeas statute:
>
> > *Baptiste* was construing 28 U.S.C. § 2244(b)(1), which says any "claim presented in a second or successive habeas corpus application 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). And

> *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). My colleagues have articulated other problems with *Baptiste*. *See In re Jones*, 830 F.3d 1295, 1297 (11th Cir. 2016) (Rosenbaum and Jill Pryor, J.J., concurring).
>
> I am 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 Mr. Britton-Harr, once again, will not be allowed to present his case to a District Court for an examination of whether his sentence is legal

(A-18-21).[4]

[4] 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.[5]

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

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[5] 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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