**APPENDIX**

**A**

**ORDER FROM SUPREME COURT**

**October 4, 2021**

**1 PAGE**

**In re Smith, 2021 U.S. LEXIS 4657**

Copy Citation

Supreme Court of the United States

October 4, 2021, Decided

No. 21-5138.

**Reporter**
**2021 U.S. LEXIS 4657** * | __ S.Ct. __ | 2021 WL 4509103

**In Re Willie S. Smith**, Petitioner.

**Judges:** **[*1]** Roberts, Thomas, Breyer, Alito, Sotomayor, Kagan, Gorsuch, Kavanaugh, Barrett.

Opinion

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The petition for a writ of habeas corpus is denied.

# APPENDIX

# B

# (PRESIDENT WILLIAM J. CLINTON'S ''AEDPA'' SPEECH)

# 3 PAGES

THE WHITE HOUSE
Office of the Press Secretary

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For Immediate Release April 24, 1996

**STATEMENT BY THE PRESIDENT**

I have today signed into law S. 735, the "Antiterrorism and Effective Death Penalty Act of 1996." This legislation is an important step forward in the Federal Government's continuing efforts to combat terrorism.

I first transmitted antiterrorism legislation to the Congress in February 1995. Most of the proposals in that legislation, the "Omnibus Counterterrorism Act of 1995," were aimed at fighting international terrorism. After the tragedy in Oklahoma City, I asked Federal law enforcement agencies to reassess their needs and determine which tools would help them meet the new challenge of domestic terrorism. They produced, and I transmitted to the Congress, the "Antiterrorism Amendments Act of 1995" in May 1995.

Together, these two proposals took a comprehensive approach to fighting terrorism both at home and abroad. I am pleased that the Congress included most of the provisions of these proposals in this legislation. As a result, our law enforcement officials will have tough new tools to stop terrorists before they strike and to bring them to justice if they do. In particular, this legislation will:

- —provide broad new Federal jurisdiction to prosecute anyone who commits a terrorist attack in the United States or who uses the United States as a planning ground for attacks overseas;
- —ban fund raising in the United States that supports terrorist organizations;
- —allow U.S. officials to deport terrorists from American soil without being compelled by the terrorist to divulge classified information, and to bar terrorists from entering the United States in the first place;
- —require plastic explosives to contain chemical markers so that criminals who use them—like the ones that blew up Pam Am Flight 103—can be tracked down and prosecuted;
- —enable the Government to issue regulations requiring that chemical taggants be added to some other types of explosives so that police can better trace bombs to the criminals who make them;
- —increase our controls over biological and chemical weapons;
- —toughen penalties over a range of terrorist crimes;
- —ban the sale of defense goods and services to countries that I determine are not "cooperating fully" with U.S. antiterrorism efforts. Such a determination will require a review of country's overall level of cooperation in our efforts to fight terrorism, taking into account our counterterrorism objectives with that country and a realistic assessment of its capabilities.

By enacting this legislation, the United States remains in the forefront of the inter-national effort to fight terrorism through tougher laws and resolute enforcement.

Nevertheless, as strong as this bill is, it should have been stronger. For example, I asked the Congress to give U.S. law enforcement increased wiretap authority in terrorism cases, including the power to seek multi-point wiretaps, enabling police to follow a suspected terrorist from phone to phone, and authority for the kind of emergency wiretaps available in organized crime cases. But the Congress refused.

After I proposed that the Secretary of the Treasury consider the inclusion of taggants in explosive materials, so that bombs can be traced more easily to the bomb makers, the Congress exempted black and smokeless powder—two of the most commonly used substances in improvised explosive devices.

I asked that law enforcement be given increased access to hotel, phone and other records in terrorism cases. I asked for a mandatory penalty for those who knowingly transfer a firearm for use in a violent felony. I asked for a longer statute of limitations to allow law enforcement more time to prosecute terrorists who use weapons such as machine guns, sawed-off shotguns, and explosive devices. But the Congress stripped each of these provisions out of the bill. And when I asked for a ban on cop-killer bullets, the Congress delivered only a study which will delay real action to protect our Nation's police officers.

I intend to keep urging the Congress to give our law enforcement officials all the tools they need and deserve to carry on the fight against international and domestic terrorism. This is no time to give the criminals a break.

There are three other portions of this bill that warrant comment. First, I have long sought to streamline Federal appeals for convicted criminals sentenced to the death penalty. For too long, and in too many cases, endless death row appeals have stood in the way of justice being served. Some have expressed the concern that two provisions of this important bill could be interpreted in a manner that would undercut meaningful Federal habeas corpus review. I have signed this bill because I am confident that the Federal courts will interpret these provisions to preserve independent review of Federal legal claims and the bedrock constitutional principle of an independent judiciary.

Section 104(3) provides that a Federal district court may not issue a writ of habeas corpus with respect to any claim adjudicated on the merits in State court unless the decision reached was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court. Some have suggested that this provision will limit the authority of the Federal courts to bring their own independent judgment to bear on questions of law and mixed question of law and fact that come before them on habeas corpus.

In the great 1803 case of *Marbury v. Madison*, Chief Justice John Marshall explained for the Supreme Court that "(i)t is emphatically the province and duty of the judicial department to say what the law is." Section 104(3) would be subject to serious constitutional challenge if it were read to preclude the Federal courts from making and independent determination about "what the law is" in cases within their jurisdiction. I expect that the courts, following their usual practice of construing ambiguous statutes to avoid constitutional problems, will read section 104 to permit

independent Federal court review of constitutional claims based on the Supreme Court's interpretation of the Constitution and Federal laws.

Section 104(4) limits evidentiary hearings in Federal habeas corpus cases when "the applicant has failed to develop the factual basis of a claim in State court proceedings." If this provision were read to deny litigants a meaningful opportunity to prove the facts necessary to vindicate Federal rights, it would raise serious constitutional questions. I do not read it that way. The provision applies to situations in which "the applicant has failed to develop the factual basis" of his or her claim. Therefore, section 104(4) is not triggered when some factor that is not fairly attributable to the applicant prevented evidence from being developed in State court.

Preserving the Federal courts' authority to hear evidence and decide questions of law has implications that go far beyond the issue of prisoners' rights. Our constitutional ideal of a limited government that must respect individual freedom has been a practical reality because independent Federal courts have the power "to say what the law is" and to apply the law to the cases before them. I have signed this bill on the understanding that the courts can and will interpret these provisions of section 104 in accordance with this ideal.

This bill also makes a number of major, ill-advised changes in our immigration laws having nothing to do with fighting terrorism. These provisions eliminate most remedial relief for long-term legal residents and restrict a key protection for battered spouses and children. The provisions will produce extraordinary administrative burdens on the Immigration and Naturalization Service. The Administration will urge the Congress to correct them in the pending immigration reform legislation.

I also regret that the Congress included in this legislation a commission to study Federal law enforcement that was inspired by special interests who are no friends of our Nation's law enforcement officers. The Congress has responsibility to oversee the operation of Federal law enforcement; to cede this power to an unelected and unaccountable commission is a mistake. Our Nation's resources would be better spent supporting the men and women in law enforcement, not creating a commission that will only get in their way.

I hope that there will be an opportunity to revisit these and other issues, as well as some of the other proposals this Administration has made, but upon which the Congress refused to act.

This legislation is a real step in the right direction. Although it does not contain everything we need to combat terrorism, it provides valuable tools for stopping and punishing terrorists. It stands as a tribute to the victims of terrorism and to the men and women in law enforcement who dedicated their lives to protecting all of us from the scourge of terrorist activity.

WILLIAM J. CLINTON
THE WHITE HOUSE

April 24, 1996.
Federal Habeas Corpus Practice and Procedure

**APPENDIX**

**C**

**SUPREME COURT RULE 44.2 FOR REHEARING**

**1 PAGE**

**USCS Supreme Ct R 44**

Current through changes received September 9, 2021

Rule 44. Rehearing

**1.** Any petition for the rehearing of any judgment or decision of the Court on the merits shall be filed within 25 days after entry of the judgment or decision, unless the Court or a Justice shortens or extends the time. The petitioner shall file 40 copies of the rehearing petition and shall pay the filing fee prescribed by Rule 38(b), except that a petitioner proceeding *in forma pauperis* under Rule 39, including an inmate of an institution, shall file the number of copies required for a petition by such a person under Rule 12.2. The petition shall state its grounds briefly and distinctly and shall be served as required by Rule 29. The petition shall be presented together with certification of counsel (or of a party unrepresented by counsel) that it is presented in good faith and not for delay; one copy of the certificate shall bear the signature of counsel (or of a party unrepresented by counsel). A copy of the certificate shall follow and be attached to each copy of the petition. A petition for rehearing is not subject to oral argument and will not be granted except by a majority of the Court, at the instance of a Justice who concurred in the judgment or decision.

**2.** Any petition for the rehearing of an order denying a petition for a writ of certiorari or extraordinary writ shall be filed within 25 days after the date of the order of denial and shall comply with all the form and filing requirements of paragraph 1 of this Rule, including the payment of the filing fee if required, but its grounds shall be limited to intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented. The time for filing a petition for the rehearing of an order denying a petition for a writ of certiorari or extraordinary writ will not be extended. The petition shall be presented together with certification of counsel (or of a party unrepresented by counsel) that it is restricted to the grounds specified in this paragraph and that it is presented in good faith and not for delay; one copy of the certificate shall bear the signature of counsel (or of a party unrepresented by counsel). The certificate shall be bound with each copy of the petition. The Clerk will not file a petition without a certificate. The petition is not subject to oral argument.

**APPENDIX**

**D**

**SUPREME COURT PROCEDURE FOR EXTRAORDINARY WRIT**

**RULE 20.4(a)**

**1 PAGE**

**USCS Supreme Ct R 20**

Current through changes received September 9, 2021

Rule 20. Procedure on a Petition for an Extraordinary Writ

**1.** Issuance by the Court of an extraordinary writ authorized by 28 U.S.C. § 1651(a) is not a matter of right, but of discretion sparingly exercised. To justify the granting of any such writ, the petition must show that the writ will be in aid of the Court's appellate jurisdiction, that exceptional circumstances warrant the exercise of the Court's discretionary powers, and that adequate relief cannot be obtained in any other form or from any other court.
**2.** A petition seeking a writ authorized by 28 U.S.C. § 1651(a), § 2241, or § 2254(a) shall be prepared in all respects as required by Rules 33 and 34. The petition shall be captioned "*In re* [name of petitioner]" and shall follow, insofar as applicable, the form of a petition for a writ of certiorari prescribed by Rule 14. All contentions in support of the petition shall be included in the petition. The case will be placed on the docket when 40 copies of the petition are filed with the Clerk and the docket fee is paid, except that a petitioner proceeding *in forma pauperis* under Rule 39, including an inmate of an institution, shall file the number of copies required for a petition by such a person under Rule 12.2, together with a motion for leave to proceed *in forma pauperis*, a copy of which shall precede and be attached to each copy of the petition. The petition shall be served as required by Rule 29 (subject to subparagraph 4(b) of this Rule).
**3.**
**(a)** A petition seeking a writ of prohibition, a writ of mandamus, or both in the alternative shall state the name and office or function of every person against whom relief is sought and shall set out with particularity why the relief sought is not available in any other court. A copy of the judgment with respect to which the writ is sought, including any related opinion, shall be appended to the petition together with any other document essential to understanding the petition.
**(b)** The petition shall be served on every party to the proceeding with respect to which relief is sought. Within 30 days after the petition is placed on the docket, a party shall file 40 copies of any brief or briefs in opposition thereto, which shall comply fully with Rule 15. If a party named as a respondent does not wish to respond to the petition, that party may so advise the Clerk and all other parties by letter. All persons served are deemed respondents for all purposes in the proceedings in this Court.
**4.**
**(a)** A petition seeking a writ of habeas corpus shall comply with the requirements of 28 U.S.C. §§ 2241 and 2242, and in particular with the provision in the last paragraph of § 2242, which requires a statement of the "reasons for not making application to the district court of the district in which the applicant is held." If the relief sought is from the judgment of a state court, the petition shall set out specifically how and where the petitioner has exhausted available remedies in the state courts or otherwise comes within the provisions of 28 U.S.C. § 2254(b). To justify the granting of a writ of habeas corpus, the petitioner must show that exceptional circumstances warrant the exercise of the Court's discretionary powers, and that adequate relief cannot be obtained in any other form or from any other court. This writ is rarely granted.
**(b)** Habeas corpus proceedings, except in capital cases, are *ex parte*, unless the Court requires the respondent to show cause why the petition for a writ of habeas corpus should not be granted. A response, if ordered, or in a capital case, shall comply fully with Rule 15. Neither the denial of the petition, without more, nor an order of transfer to a district court under the authority of 28 U.S.C. § 2241(b), is an adjudication on the merits, and therefore does not preclude further application to another court for the relief sought.