No. 22-_____

IN THE

SUPREME COURT OF THE UNITED STATES

GARY WALL,

Petitioner,

v.

WARDEN JEFFREY KISER,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Under *Teague v. Lane*, "new constitutional rules of criminal procedure will not be applicable to those cases which have become final before the new rules are announced." 489 U.S. 288, 310 (1989). Below, the United States Court of Appeals for the Fourth Circuit announced that it would extend *Teague*'s nonretroactivity principle to procedures resulting in extrajudicial detentions—detentions that no court has ever examined, let alone endorsed. No other circuit court has reached this extreme conclusion. With good reason. The Fourth Circuit's decision is contrary to both *Teague* and this Court's consistent recognition that extrajudicial detentions are different from detentions resulting from final criminal judgments and are subject to different rules. The question presented is:

Does the Fourth Circuit's holding that new procedural rules cannot apply to any federal habeas proceeding, even where federal habeas is a petitioner's first and only opportunity for judicial review, conflict with this Court's precedents?

PARTIES TO THE PROCEEDING

Petitioner Gary Wall was the plaintiff in the United States District Court for the Western District of Virginia and the plaintiff-appellant in the United States Court of Appeals for the Fourth Circuit.

Respondent Jeffrey Kiser, Warden of Red Onion State Prison, was the defendant in the United States District Court for the Western District of Virginia and defendant-appellee in the United States Court of Appeals for the Fourth Circuit.

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INTRODUCTION

The Fourth Circuit held that *Teague*'s retroactivity restriction applies to every federal habeas claim, even if federal habeas is a petitioner's first and only opportunity to have any court—state or federal—review his detention. That holding not only runs contrary to this Court's description of its non-retroactivity rule in *Teague*, but also is inconsistent with this Court's insistence that habeas treats extrajudicial detention decisions—which cannot otherwise be reviewed—differently from cases involving post-conviction review.

This Court should review that decision for two reasons.

First, it conflicts with this Court's opinions. *Teague v. Lane* bars retroactive application of new rules of criminal procedure after a criminal judgment becomes final through direct judicial review. It has nothing to say about administrative decisions—like the decision of prison administrators to impose an additional term of incarceration here—that no court has ever reviewed. Interpreting *Teague*'s rule as prohibiting application of new procedural rules in any habeas case, regardless whether the decision has ever been considered by a court, ignores the careful balance *Teague* struck between state courts' interest in finality of

criminal convictions and petitioners' interests in vindicating their rights. It is also at odds with this Court's consistent recognition that extrajudicial detention cases—where there is no opportunity for judicial review other than habeas—are simply different from post-conviction habeas claims.

Second, if left to stand, the Fourth Circuit's opinion will have a catastrophic effect on the availability of habeas relief. The holding that states "*ma[k]e judicial relief available*" to a habeas petitioner even when no state court has jurisdiction to review the petition means that, as long as a state court determines—even if in error—that it lacks jurisdiction to review a state habeas petitioner's claims, grievous constitutional violations cannot be reviewed by any court. Imagine, for example, a governor who institutes a novel virus-abatement policy that empowers state administrators to unilaterally indefinitely detain citizens they suspect to be infected. As long as she convinces a state legislature to write a provision stripping habeas jurisdiction from state courts—or if a state court determines on its own that it lacks jurisdiction (even erroneously)—those detained individuals would have no opportunity whatsoever to challenge their detentions. *See Lambrix v. Singletary*, 520

U.S. 518, 538 (1997) (holding that federal courts cannot grant relief for a due process violation under *Teague* unless the result is "dictated" by precedent, i.e., unless "no other interpretation of that precedent is reasonable" (emphasis omitted)).

Beyond the erosion of state detainees' fundamental liberties, this result also makes no sense under *Teague*. *Teague*'s rule was predicated on deference to state courts' decisions for comity reasons. But where a state court has concluded that it has no jurisdictional authority to review an administrative decision, there is no state court decision to review. A federal habeas court is instead reviewing the decision of prison administrators. Those decisions are not entitled to the comity this Court afforded in *Teague* because no court has ever considered them.

And the situation will be even worse for federal detainees seeking to challenge extrajudicial detention. The Fourth Circuit's holding that habeas is always a collateral remedy and that new procedural rules cannot apply retroactively on collateral review means that the opinion freezes in place the existing body of federal procedural law that applies to challenges to extrajudicial detention of federal prisoners as of the date of the opinion. This Court should take this opportunity to preserve the

vitality of the great writ and grant certiorari. At a minimum, this Court should summarily reverse the decision below to head off at the pass the Fourth Circuit's unlawful expansion of nonretroactivity doctrine.

OPINIONS BELOW

The Fourth Circuit's decision (App. 1–32a) is reported at 21 F.4th 266. The opinion and order of the U.S. District Court for the Western District of Virginia is unreported and available at App. 33–45a.

JURISDICTION

The Fourth Circuit, exercising jurisdiction under 28 U.S.C. § 1331, entered judgment on December 27, 2021, and denied Petitioner Gary Wall's timely petition for panel rehearing or en banc review on January 24, 2022. This Court has jurisdiction under 28 U.S.C. § 1254.

RELEVANT CONSTITUTIONAL PROVISIONS

The Fourteenth Amendment to the U.S. Constitution provides, in part: "nor shall any State deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, § 1.

STATEMENT OF THE CASE

1. The Virginia Department of Corrections initiated administrative disciplinary proceedings against Petitioner-Appellant Gary Wall after he

was involved in a physical altercation at Red Onion State Prison with two corrections officers. App. 70–73a. Mr. Wall repeatedly asked the two hearing officers tasked with adjudicating the charges to review video of the underlying events—video he attested "clearly" demonstrates that, contrary to the correctional officers' accounts, he "never threw any punches" at either of them. App. 110–11a, 116a, 130a, 149a, 163a, 167a. The hearing officers refused to view the video and stripped Mr. Wall of 270 days of accrued good time credits. App. 70–73a.

2. Mr. Wall appealed both hearing officers' decisions to the Warden on the basis that the hearing officers' refusal to view the video violated due process. App. 54–69a. The Warden denied those appeals, reasoning that the decision to review security footage was solely in the hearing officers' discretion. App. 54–69a. Mr. Wall appealed to the Virginia Department of Corrections Regional Administrator, who affirmed the denials of relief. App. 51–53a.

3. Mr. Wall then sought judicial review of his due process claim by filing a pro se habeas petition in the Virginia Supreme Court. That court dismissed Mr. Wall's petition, holding that state law afforded it no jurisdiction over challenges to "institutional proceeding[s] resulting in

loss of good conduct . . . credit" because they do not "as a matter of law . . . directly impact the duration of a petitioner's confinement." App. 50a.

4. Having been denied a forum for judicial review in the state courts, Mr. Wall sought relief through a Section 2254 petition in federal court. App. 75–173a. The Commonwealth moved to dismiss his petition, arguing that the Virginia Supreme Court addressed the merits of Wall's claim, and 28 U.S.C. § 2254(d) barred him from attaining habeas relief in federal court. *See* App. 47a. The district court denied that motion because the Virginia Supreme Court's jurisdictional determination "did not adjudicate the merits of [Mr. Wall's] claims." App. 47–48a.

The Commonwealth then filed an amended motion to dismiss, arguing that its disciplinary proceedings satisfied due process. *See* App. 33a, 41–42a. The district court granted that motion. App. 33–45a. It reasoned that while inmates have a qualified due process right to present documentary evidence at disciplinary proceedings where loss of good time credits is at issue, surveillance footage was "clearly outside the definition of 'documentary evidence.'" App. 41a (quoting *Wallace v. Watford-Brown*, No. 1:13-cv-319, 2015 WL 5827622, at *4 (E.D. Va. Oct. 5, 2015)).

5. Mr. Wall appealed. While his appeal was pending, the Fourth Circuit held that prisoners have a qualified due process right to obtain and present surveillance video evidence in disciplinary proceedings. *Lennear v. Wilson*, 937 F.3d 257 (4th Cir. 2019). The Fourth Circuit appointed undersigned counsel to represent Mr. Wall and granted a certificate of appealability with instructions to address the availability of relief under *Lennear* and "whether the retroactivity analysis announced in *Teague v. Lane*, 489 U.S. 288 (1989), and its progeny, applies in this case." Dkt. Nos. 14-1, 16, *Wall v. Kiser*, 21 F.4th 266 (4th Cir. 2021) (No. 19-6524).

On December 27, 2021, the Fourth Circuit issued an opinion affirming the district court. App. 1–32a. The panel majority held that, though the Virginia Supreme Court "apparently mis[read] the decision on which it relied" in concluding that it lacked jurisdiction to hear Mr. Wall's state habeas petition, the Commonwealth nevertheless "*made judicial relief available*[,]" so his petition "invoked a collateral procedure" that was outside the process of "direct review of [a] state administrative proceeding." App. 10–12a. And even independent of the theoretical availability of state-court review, the opinion held, habeas corpus is "a

writ providing relief independent of all other process" and so is inherently "a form of collateral review." App. 11a. It went on to observe that *Teague* stands for the proposition that "new procedural rule[s]" do not apply "retroactively on federal collateral review," App. 14a, and concluded that Mr. Wall was not entitled to the due process protections it had announced in *Lennear*, App. 15a–17a.

The dissent concluded otherwise, determining that *Lennear* governed Mr. Wall's claim. App. 29a. It observed first that "Fourth Circuit precedent casts doubt on whether *Teague* is a natural fit in the prison disciplinary context since prison administrators' unreviewed decisions are not those of courts and do not implicate comity concerns." App. 23–24a. The panel majority "fail[ed] to establish that *Teague* applies outside the conviction context; it cites no cases holding that *Teague* applies beyond habeas cases challenging final criminal convictions and judicially-imposed sentences." App. 25a. And, in the dissent's view, the majority "created its own standard without supporting authority" when it concluded that the Commonwealth had "made judicial relief available." App. 26a. To the contrary, when the Commonwealth's Supreme Court made its jurisdictional determination, it foreclosed

judicial review of good-time credit revocations. App. 26a. And thus, because "federal habeas corpus provides the only judicial means to challenge an administrative decision," the federal courts act as though they are "reviewing the issue on direct appeal." App. 27a (quoting *Alvarenga-Villalobos v. Ashcroft*, 271 F.3d 1169, 1172 (9th Cir. 2001)).

Mr. Wall filed a petition for rehearing and rehearing en banc. The Fourth Circuit denied that petition on January 24, 2022. App. 74a.

REASONS FOR GRANTING THE WRIT

The Fourth Circuit extended *Teague*'s holding that "new constitutional rules of criminal procedure will not be applicable to those cases which have become final before the new rules are announced," 489 U.S. at 310, to habeas cases that challenge executive or administrative detentions. *See* App. 14a. That conclusion is wrong, and it is in direct conflict not only with this Court's careful reasoning in *Teague* but also with its consistent recognition that challenges to unlawful administrative and executive detentions are categorically different from post-conviction habeas claims.

I. The Fourth Circuit's Opinion Conflicts with *Teague v. Lane*.

The Fourth Circuit's holding that habeas is inherently a form of "collateral review" and that *Teague* stands for the proposition that new procedural rules can never apply on collateral review misreads *Teague*. This Court carefully struck a balance in *Teague* between state courts' vital and important interest in finality on the one hand and the importance of vindicating constitutional rights on the other. But a state court's interest in finality applies only where a petitioner challenges a final criminal judgment that has been entered by those courts. That is why *Teague* speaks in the language of the finality of criminal "conviction[s]" and the comity federal courts afford to those final state court judgments. *See, e.g.*, 489 U.S. at 309 ("These underlying considerations of finality find significant and compelling parallels in the *criminal* context.") (emphasis added); *see also Danforth v. Minnesota*, 552 U.S. 264, 266 (2008) (describing the "substance of the '*Teague* rule'" as follows: "new rules of *criminal* procedure. . . may not provide the basis for a federal collateral attack on a state-court *conviction*" (emphasis

added)). It has nothing to say about administrative decisions that no court has ever reviewed.

In supplanting *Teague*'s rule with a broad rule prohibiting the retroactive application of new procedural rules in *all* habeas cases, the Fourth Circuit runs afoul not only of *Teague* but also of this Court's broader habeas jurisprudence. This Court has explicitly recognized that there is a difference between "criminal conviction[s]," which occur "after a judicial hearing before a tribunal disinterested in the outcome and committed to procedures designed to ensure its own independence," and detention by the executive, in which such dynamics are "not inherent" and the "need for habeas corpus" is therefore "more urgent." *Boumediene v. Bush*, 553 U.S. 723, 783 (2008). The Fourth Circuit's opinion flips this principle on its head, depriving executive and administrative detainees of the opportunity to challenge their detentions, so long as the executive or administrator does so in a novel way.

This Court's review is therefore warranted to reject the Fourth Circuit's misreading of *Teague* and to maintain uniformity in federal courts' application of nonretroactivity rules.

II. The Fourth Circuit Ignores this Court's Precedents Establishing Heightened Need for Judicial Review of Executive and Administrative Detentions.

Certiorari is also warranted because the opinion's misapplication of *Teague* will result in substantial curtailment of federal courts' habeas powers. The court's opinion offers two potential reasons for its holding. At one point, the opinion concludes that *Teague* bars application of newly-announced protections whenever a state administrative proceeding becomes final—even if no judicial review is ever available. *See* App. 15a ("[T]he decision . . . became final when Wall exhausted his administrative appeals.") At another point, it concludes that *Teague*'s retroactivity framework applies whenever a state habeas case challenging a prison's administrative decision becomes final—even when the state court decided it lacked jurisdiction. *See* App. 10–13a (reasoning that because "Virginia *made judicial relief available*," Mr. Wall's subsequent federal petition "invoked a collateral procedure"). Either of these conclusions has dramatic implications for federal courts' power to grant habeas relief.

The first holding means that federal courts "lack the power" to extend new due process protections to any habeas petitioner who challenges administrative or executive detention decisions imposed

outside the judicial process. App. 16–17a. That is flatly inconsistent with a principle this Court has described as "uncontroversial": "the privilege of habeas corpus entitles the prisoner to a meaningful opportunity to demonstrate that he is being held pursuant to 'the erroneous application or interpretation' of relevant law." *Boumediene*, 533 U.S. at 779 (quoting *INS v. St. Cyr*, 533 U.S. 289, 302 (2001)). Doctrines that circumscribe that opportunity—such as those that require deference "to the court that ordered confinement"—are justified on the basis that the sentencing court "in the usual course . . . provides defendants with a fair, adversary proceeding." *Id.* at 782. Not so in cases like this one where an administrator has decided to detain an individual. In those cases, "the need for collateral review is most pressing." *Id.* at 783. The Fourth Circuit ignored that need, instead applying a doctrine justified by the existence of a "fair, adversary proceeding" to circumstances where no such proceeding took place. Because this Court's precedent requires "judicious balancing" between the specific interest asserted by the government and the private interest affected, that is an error that requires correction. *See Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004); *see also id.* at 538 (observing that case law applicable to detention

decisions reached through adversarial proceedings is "ill suited to the situation in which a habeas petitioner has received no prior proceedings before any tribunal and had no prior opportunity to rebut the [government's] factual assertions before a neutral decisionmaker"). Given the magnitude of the rights at stake and the certainty that this issue will present itself in other circuits, this Court should take the opportunity to address this important issue before other circuit courts follow suit.

To begin, the rationale of the opinion violates basic separation of powers principles with ramifications extending well beyond the prison disciplinary context. It mandates that where state courts' doors are closed to their claims, civilly-committed individuals, prisoners, and other state detainees may vindicate their due process rights only if federal courts have already considered the precise claim they seek to raise. *See Lambrix*, 520 U.S. at 538 (holding that federal courts cannot grant relief for a due process violation under *Teague* unless the result is "*dictated*" by precedent, i.e., unless "*no other* interpretation" of that precedent is "reasonable"). The constitutional structure does not tolerate this result: "If the Executive could bypass courts and detain individuals without

judicial inquiry, government under law would exist only at the sufferance of the executive branch." Richard H. Fallon, Jr. & Daniel J. Meltzer, *Habeas Corpus Jurisdiction, Substantive Rights, and the War on Terror*, 120 HARV. L. REV. 2029, 2039 (2007).

The opinion has even more troubling implications for federal detainees, including prisoners, immigration detainees, and military detainees. Under its reasoning, no habeas petitioner may *ever* receive the benefit of a newly-announced due process protection because habeas is a collateral remedy. *See* B. Means, Federal Habeas Manual §7:3 (2021) (noting general consensus that "*Teague* applies to federal prisoners"). Thus, whatever process a federal detainee received when the executive revoked his liberty is the only process he will ever receive, unless a result to the contrary is "dictated" by precedent. *See Lambrix*, 520 U.S. at 538. The effect of this holding is not only to deprive habeas petitioners of constitutional protections, but also to freeze the development of federal law in habeas proceedings as of the date of the majority opinion. That conclusion runs contrary to this Court's holding that habeas courts "must have sufficient authority to conduct a meaningful review of both the cause for detention and the Executive's power to detain." *Boumediene*,

553 U.S. at 783. It also thwarts the "chief function" of the writ: "to protect from executive detention in violation of civil rights." Amy Coney Barrett, *Suspension and Delegation*, 99 CORNELL L. REV. 251, 253 (2014).

By contrast, the position embraced by the dissent—namely, that *Teague* does not apply where federal habeas is a prisoner's first and only opportunity to seek judicial review of an administrative or executive detention decision—simply preserves the status quo. Federal courts post-*Teague*, including this Court, have *always* understood that, when considering unconstitutional extrajudicial detentions, they simply apply the law as it exists when they consider the case. *See*, *e.g.*, *Hamdi* , 542 U.S. at 533, 539 (announcing a new due process protection in the executive detention context and remanding); *Hernandez-Lara v. Lyons*, 10 F.4th 19 (1st Cir. 2021) (announcing new due process protections in the immigration detention context and remanding); *Howard v. U.S. Bureau of Prisons*, 487 F.3d 808, 815 (10th Cir. 2007) (announcing new due process protections in the prison disciplinary context and remanding). Indeed, prior to the opinion below, the Fourth Circuit proceeded under exactly the same understanding. *See Lennear*, 937 F.3d at 279 (announcing and retroactively applying new due process

protection on federal habeas on facts analogous to this case); *see also McWilliams v. Saad*, 794 F. App'x 288 (4th Cir. 2020) (retroactively applying *Lennear* on habeas); *Hawkins v. Coakley*, 779 F. App'x 183, 184 (4th Cir. 2019) (same).

The opinion's alternative holding—that the Commonwealth "*made judicial relief available*" to Mr. Wall even though everyone agrees that the Virginia Supreme Court determined it lacked jurisdiction and that "no Virginia court addressed" his habeas claim, App. at 11a—is not supportable. Judicial relief is not "available" to a litigant where a court determines that it lacks authority to entertain his claim. *See Kontrick v. Ryan*, 540 U.S. 443 (2004) (explaining that jurisdiction relates to the "adjudicatory authority" of the court). As the dissent rightly recognized: "'making judicial review available' is simply not the procedural equivalent of 'opportunity for judicial review,' particularly where that opportunity was improperly denied," and in concluding otherwise the opinion "created its own standard without supporting authority." App. at 26a.

CONCLUSION

This Court should grant certiorari and either set this case for briefing and argument or, in the alternative, summarily reverse the erroneous decision below.

Respectfully submitted,

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