No. 22-7871

IN THE
Supreme Court of the United States

In re MICHAEL BOWE,
Petitioner.

REPLY BRIEF FOR PETITIONER

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REPLY BRIEF FOR PETITIONER

The Government concedes that the circuits are divided 6–3 on whether the procedural bar in 28 U.S.C. § 2244(b)(1) applies to federal prisoners. The Government agrees with Petitioner that it does *not* based on the plain text. The Government does not dispute that this important and recurring question warrants the Court's review. And the Government does not dispute that the erroneous application of Section 2244(b)(1) was the sole basis for denying relief here. The standard criteria are all met.

Nonetheless, the Government reflexively opposes review because this case is an extraordinary writ. But the situation here is truly *sui generis*. Due to an perfect storm of structural factors that have never before coalesced, no certiorari petition presenting the Section 2244(b)(1) question will reach this Court. The Government turns a blind eye to this unique conundrum. But the stakes are too high for the Court to wait for a certiorari petition that will never arrive. The Government also asserts that the Eleventh Circuit would have reached the same result even without Section 2244(b)(1). But that argument is not presented here, and it is legally unsupported.

I. The standard criteria for review are undisputed.

The parties do not dispute *any* of the standard criteria for this Court's review. The Government concedes that the circuits are deeply divided. The Government concedes that the majority view, applied in the decision below, is wrong. The Government does not dispute that the question presented is important, recurring, and warrants review. And the Government does not dispute that the Eleventh Circuit's erroneous application Section 2244(b)(1) was the only reason it denied relief.

A. The Government acknowledges a 6–3 circuit conflict.

The Government expressly concedes "that the courts of appeals are divided" on the question presented. BIO 9. Specifically, the Government agrees with Petitioner that, in accordance with the Eleventh Circuit's ruling below, the Second, Third, Fifth, Seventh, and Eighth Circuits have all held that Section 2244(b)(1)'s procedural bar *does* apply to federal-prisoner Section 2255 motions to vacate. BIO 12; *see* Pet. 12–13 (citing cases). And the Government agrees with Petitioner that the Fourth, Sixth, and Ninth Circuits have taken the contrary view that Section 2244(b)(1) applies *only* to state-prisoner Section 2254 habeas corpus applications. BIO 12–13 (citing cases).

As Petitioner explained, all three of those latter circuits expressly considered and rejected the contrary position taken by the former six circuits. *See* Pet. 13–15. After the Sixth Circuit was the first to do so, Justice Kavanaugh acknowledged the resulting circuit conflict and observed that the plain text supported the Sixth Circuit's minority view. *See Avery v. United States*, 140 S. Ct. 1080, 1080 (2020) (Kavanaugh, J., respecting the denial of certiorari) ("The text of that second-or-successive statute [*i.e.*, Section 2244(b)(1)] covers only applications filed by state prisoners under § 2254."). The Government itself agreed with that position. And, following Justice Kavanaugh's opinion, the Fourth and Ninth Circuits have joined the Sixth Circuit.

Attempting to minimize this undisputed conflict, the Government asserts that it is "still nascent and developing as courts of appeals have considered the question after *Avery* . . . and Justice Kavanaugh's opinion in that case, and held that Section 2244(b)(1) does not apply to federal prisoners." BIO 13. But a 6–3 circuit split is deep,

not "developing." And the Government identifies no basis to believe that *any*—much less all—of the six circuits in the majority camp will reverse course. Indeed, in the nearly four years since Justice Kavanaugh's opinion in *Avery*, there has been no sign that any of the six circuits (or any of their judges) is interested in reconsidering their precedent. To the contrary, Petitioner in this very case urged the Eleventh Circuit to convene en banc to reconsider its precedent in light of Justice Kavanaugh's opinion, the Government's concession, and three circuits adopting the opposite approach. Yet the Eleventh Circuit summarily declined to do so. *See* Pet. 20; Pet. App. 3a–4a, 15a, 23a–24a. Thus, notwithstanding Justice Kavanaugh's opinion, the circuit conflict is entrenched and intractable. It will not be resolved without this Court's intervention.

B. The Government agrees that the decision below is wrong.

Cementing the need for review, the Government now reaffirms its agreement with the minority view. Although there has been a change in Administrations since the Government's initial concession in *Avery*, it continues to "agree[ ] that Section 2244(b)(1) does not apply to Section 2255 motions, [and] that the court of appeals erred in holding otherwise." BIO 9. After all, Section 2244(b)(1) refers *only* to "claim[s] presented in a second or successive habeas corpus application under section 2254." The text could not be more plain. And the surrounding statutory structure confirms that express limitation. *See* Pet. 15–18. The statutory text and structure cannot be reconciled with the Eleventh Circuit's extension of Section 2244(b)(1) to Section 2255 motions. The Government agrees that, "[b]y its terms," Congress "limited Section

2244(b)(1) to successive habeas applications by state prisoners," and it therefore does not "apply to federal prisoners who file successive Section 2255 motions." BIO 11–12.

C. The Government does not dispute that the Section 2244(b)(1) question is important, recurring, and squarely presented.

1. The Government does not dispute that the question is important. In light of the circuit conflict, geography alone now determines whether federal prisoners can raise claims based on new constitutional rules that this Court has made retroactive. These are the weightiest of claims; by definition, these substantive rules render federal convictions invalid and sentences unlawful. Yet the happenstance of geography now determines whether federal prisoners can bring these claims at all. That arbitrariness is exacerbated by the fact that six circuits—half the circuits with criminal jurisdiction—are barring these claims based on an a-textual interpretation of Section 2244(b)(1) that not even the Government can defend. *See* Pet. 18–19.

Moreover, Section 2244(b)(1) is an important feature of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA). AEDPA strikes a delicate balance between finality on the hand and justice on the other. Thus, this Court takes pains to safeguard that congressional judgment, acting swiftly to correct lower courts that engage in judicial policymaking to *grant* habeas relief that the statute forbids. The Government does not dispute that the Court should show the same solicitude where, as here, lower courts depart from AEDPA's text to *deny* habeas relief. *See* Pet. 6, 24.

2. The Government also does not dispute that the Section 2244(b)(1) question is a recurring question of federal habeas law. After all, nine circuits have issued precedential opinions addressing that question since AEDPA's enactment.

And those opinions span from 2002 through this year. *See* Pet. 12–15, 18. As long as this Court continues to announce new rules of constitutional law that satisfy the gatekeeping criteria for successive Section 2255 motions, the Section 2244(b)(1) issue will continue to recur. And the Court should resolve that issue *now*—before the Court issues its next retroactive constitutional decision—to avoid the geographic disparities that would inevitably ensue in the next of round of successive Section 2255 litigation.

3. Finally, the Government does not dispute that the Section 2244(b)(1) question is squarely presented here. *See* Pet. 19. As the Government itself recounts (BIO 8), the Eleventh Circuit—applying its precedent in *In re Baptiste*, 828 F.3d 1337, 1339–40 (11th Cir. 2016)—denied relief below on the *exclusive* ground that Section 2244(b)(1) barred Petitioner's proposed successive Section 2255 motion seeking to raising a claim under *United States v. Davis*, 139 S. Ct. 2319 (2019). Pet. App. 3a–4a.

II. The Government identifies no sound basis for declining review.

Although the standard criteria for review are all undisputed, the Government argues that the Court should deny review because the question is presented by way of an extraordinary writ. But the Government does not dispute that Petitioner cannot seek relief in the district of confinement, or that "adequate relief cannot be obtained in any other form or from any other court." S. Ct. R. 20.1, 20.4(a); *see* Pet. 3, 11. Thus, the only question here is whether "exceptional circumstances warrant the exercise of the Court's discretionary powers." S. Ct. R. 20.1, 20.4(a). This is the rare case where that requirement is met, because the exercise of the Court's discretionary powers is the only way to ensure uniformity on an important question of federal law.

A. The question presented will not otherwise reach this Court.

As Petitioner has explained, exceptional circumstances exist because the Section 2244(b)(1) question will not be presented—and thus the circuit conflict will not be resolved—via traditional certiorari review. *See* Pet. 5–6, 22–24. The Government has previously told this Court that "exceptional circumstances" exist under Rule 20.4(a) where the Court would be "unlikely to have the occasion" to resolve an important question via certiorari. *See In re Gregory Smith*, Br. for U.S. as Amicus Curiae 8–11 (U.S. No. 98-5804) (May 1999). This scenario far exceeds that standard.

1. The Government does not seriously argue otherwise. In the six circuits applying Section 2244(b)(1) to Section 2255 motions, the court of appeals will simply apply the bar to deny authorization to file the successive Section 2255 motion. The Government concedes that such rulings cannot be challenged via certiorari due to 28 U.S.C. § 2244(b)(3)(E). BIO 16–17. Thus, that avenue is closed. *See* Pet. 5–6, 22–23.

Meanwhile, in the three circuits holding that Section 2244(b)(1) does *not* apply to Section 2255 motions, district courts will be bound by that circuit precedent where authorization is granted. *See* Pet. 6, 22. Thus, district courts in circuits taking the minority view will not apply the bar. (And any outlier rulings to the contrary would be reversed on appeal). Thus, no certiorari petitions will arrive that way either.

As for the three circuits still without precedent (and which also have the fewest criminal cases), a certiorari petition would be possible *only* if: (1) the court of appeals does *not* apply Section 2244(b)(1) at the authorization stage; (2) the district court *does* apply it *sua sponte* in the Section 2255 proceeding (the Government would not invoke

it); and (3) the same court of appeals then affirms that ruling on appeal (over both parties' objections and despite the consensus following Justice Kavanaugh's opinion).

Not even the first step in that quixotic chain of events will occur. That is so because courts of appeals taking the majority view of Section 2244(b)(1) *do* apply the bar at the authorization stage. The Eleventh Circuit, for example, invariably applies that bar at the authorization stage, as this very case illustrates.[1] The reason for that practice is obvious: it would be pointless for a court of appeals to authorize a Section 2255 motion that the district court would be immediately bound to dismiss (and that the court of appeals itself would later be bound to dismiss in any subsequent appeal).

This dynamic explains why, in the last four years, not a single certiorari petition presenting the Section 2244(b)(1) question has been filed. The Government does not dispute that fact. *See* Pet. 23. That omission is particularly striking because Justice Kavanaugh shined a spotlight on the circuit split in March 2020. Had there been any appellate decision from which a certiorari petition could have been filed during that time, it surely would have been. And the Government would know, for it would have been on the receiving end. There is only one conclusion to draw: certiorari petitions presenting the Section 2244(b)(1) question are not coming to this Court.

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[1] The overwhelming majority of authorization-stage orders are unreported. But even reported orders out of the Eleventh Circuit illustrate that, from AEDPA's inception, Section 2244(b)(1)'s procedural bar has been carefully scrutinized and enforced at the authorization stage. *See, e.g.*, *In re Dailey*, 949 F.3d 553, 558–59 (11th Cir. 2020); *In re Garrett*, 908 F.3d 686, 689–90 (11th Cir. 2018); *In re Cannon*, 931 F.3d 1236, 1241 n.3 (11th Cir. 2019); *In re Hernandez*, 857 F.3d 1162, 1163–64 (11th Cir. 2017); *In re Parker*, 832 F.3d 1250, 1250 (11th Cir. 2016); *In re Jones*, 830 F.3d 1295, 1297 (11th Cir. 2016); *In re Bradford*, 830 F.3d 1273 (11th Cir. 2016); *In re Hill*, 715 F.3d 284, 291–95 (11th Cir. 2013); *In re Mills*, 101 F.3d 1369, 1371 (11th Cir. 1996).

The only petition that the Government identifies is *Avery* itself, but that case predated both the Government's concession and binding circuit precedent. It was also the byproduct of Government confusion. In response to the request for authorization, the Government advised the court of appeals that the same claim had been presented in a first Section 2255 motion. But the Government was "unsure of the applicability of the doctrine of res judicata," apparently overlooking Section 2244(b)(1). Adding to the confusion, the Government thought the solution was to construe the authorization request as a motion for a COA from the first Section 2255 proceeding. *In re Avery*, No. 16-3566, ECF No. 4 at 2 (6th Cir. June 13, 2016). Presumably flummoxed by this, and without binding precedent, the court simply granted authorization in a two-page order, making no mention Section 2244(b)(1). *Id.*, ECF No. 5 (6th Cir. Sept. 29, 2016).[2]

Nothing like that will happen again given the legal landscape today. The Government's position is settled. Justice Kavanaugh's opinion is well publicized. *See, e.g.*, Wright & Miller, 3 Fed. Practice & Proc. § 637 n.3 (5th ed. 2023). And nine circuits have precedential decisions on the books. There is no basis to expect the courts of appeals to overlook Section 2244(b)(1) at the authorization stage—where it is routinely and properly enforced—only to apply it in a later appeal in the same case. Indeed, the Government does not identify a *single case* in AEDPA's 27-year history where that has happened other than *Avery*. And it certainly does not identify any

[2] Despite this fluke scenario in *Avery*, there was *still* no viable certiorari petition that emerged because: the same court of appeals soon thereafter formally adopted the minority view of Section 2244(b)(1); the district court correctly dismissed the Section 2255 motion on a different gound; and the claim lacked merit. *See Avery*, BIO 10, 13–17 (Jan. 29, 2020) (No. 19-633), 2020 WL 504785 (identifying these vehicle problems).

such case post-Government concession—*i.e.*, one where the court of appeals did *not* apply Section 2244(b)(1) at the authorization stage, but then *did* apply it over both parties' objections in a later appeal from the district court's *sua sponte* application.

All of those stars would need to align in one of only three circuits just for there to be an appellate decision from which certiorari could be taken. The odds of that are beyond remote. Thus, these are precisely the sort of "exceptional circumstances [that] warrant the exercise of the Court's discretionary powers." S. Ct. R. 20.1, 20.4(a). The Government has previously told this Court that "exceptional circumstances" existed where the Court's "ordinary practice of granting certiorari" to resolve circuit conflicts made certiorari review "unlikely." *In re Smith*, *supra* at 6, U.S. Br. 9. Here, such review is not just "unlikely"; it is a pipe dream. And the barrier to review is not the Court's own practice; it is that the Court will not even receive a certiorari petition that it could grant. (And that is putting aside vehicle problems). In short, if the Court does not exercise its discretionary powers, the split will go unresolved *ad infinitum*.

2. Unable to dispute the barriers to certiorari, the Governments refers to certified-question jurisdiction under 28 U.S.C. § 1254(2). BIO 17. That the Government feels compelled to hedge—and with certified questions of all things—reinforces just how fanciful certiorari is. This Court has explained that certified questions should be issued "rare[ly]" because it is "the task of a Court of Appeals to decide all properly presented cases coming before it." *Wisniewski v. United States*, 353 U.S. 901, 902 (1957). This Court "has accepted certified questions only four times" in the last 75 years—most recently in 1981. *In re Hill*, 777 F.3d 1214, 1225 (11th Cir.

2015) (citing cases). Lower courts have received the message. The last time a circuit even dared to try was in 2009, and this Court summarily dismissed the certificate. *United States v. Seale*, 558 U.S. 985 (2009). And "no court of appeals . . . has ever certified a question arising from proceedings on an application to file a successive" habeas petition. *Hill*, 777 F.3d at 1225. In short, when it comes to Section 2244(b)(1), the Court will receive the same number of certificates as certiorari petitions: zero.

B. The merits are not presented but are unassailable in any event.

The Government's sole remaining argument is that the Eleventh Circuit would have denied Petitioner authorization to file the successive Section 2255 motion regardless of Section 2244(b)(1)'s procedural bar. However, as explained below, that argument is not properly presented here. And it is legally unsupported in any event.

1. The petition here presents just one question for the Court's review: "Whether the bar in 28 U.S.C. § 2244(b)(1) applies to claims presented by federal prisoners in a second or successive motion to vacate under 28 U.S.C. § 2255." Pet. i. This is a pure question of law. And, as explained, Section 2244(b)(1) was the sole basis of the Eleventh Circuit's decision below. The court of appeals denied Petitioner authorization to file a second Section 2255 motion based on *Davis* because the court concluded that Section 2244(b)(1) barred such a motion. Pet. App. 3a–4a. The court of appeals did not supply or suggest any alternative basis for denying authorization.

The Government now argues that, apart from Section 2244(b)(1), the court of appeals would have denied authorization under 28 U.S.C. § 2255(h). *See* BIO 13–16. But, again, the court of appeals never addressed that issue, relying solely on Section

2244(b)(1). And it is well settled that this Court is a "court of review, not of first view." *Cutter v. Wilkinson*, 544 U.S. 709, 718 n.7 (2005). Accordingly, this Court routinely rejects similar arguments by the Government at the petition stage, granting review to resolve threshold legal issues notwithstanding unresolved issues that would need to be addressed on remand.[3] The Court should follow that familiar practice here by correcting the Eleventh Circuit's erroneous (and dispositive) application of Section 2244(b)(1), allowing that court to then reconsider Petitioner's authorization request.

2. In any event, the Government's argument is dead wrong on the merits.

To obtain authorization to file a second Section 2255 motion, a federal prisoner must make a "prima facie showing" that, as relevant here, the motion will "contain . . . a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable." 28 U.S.C. §§ 2244(b)(3)(C), 2255(h)(2). The Eleventh Circuit has squarely held, and the Government does not dispute, that this Court's decision in *Davis* satisfies the criteria in § 2255(h)(2) for authorization. *See In re Hammoud*, 931 F.3d 1032, 1039–40 (11th Cir. 2019). Critically too, the Government does not dispute that Petitioner's Section 924(c) conviction is now *invalid* because, after *Davis* and *United States v. Taylor*, 142 S. Ct. 2015 (2022), attempted Hobbs Act robbery and Hobbs Act conspiracy are not

[3] *See, e.g.*, BIO 11, 27–30, *Kemp v. United States*, 596 U.S. 528 (2022) (No. 21-5726), 2021 WL 6338387; BIO 9–10, 28–29, *Terry v. United States*, 141 S. Ct. 1858 (2021) (No. 20-5904), 2020 WL 9909508; BIO 9, 17–19, *Niz-Chavez v. Garland*, 141 S. Ct. 1474 (2021) (No. 19-863), 2020 WL 1972213; BIO 9, 19–20, *Pereira v. Sessions*, 138 S. Ct. 2105 (2018) (No. 17-459), 2017 WL 6399165; BIO 4, 13–14, *Byrd v. United States*, 138 S. Ct. 1518 (2018) (No. 16-1371), 2017 WL 3053629.

predicate "crimes of violence." Nonetheless, it argues that Petitioner would not have even obtained authorization to file a successive Section 2255 motion based on *Davis*.

a. Legally, this argument is foreclosed by this Court's decision in *Taylor* given the procedural posture of that case. The federal prisoner obtained authorization to file a *successive* Section 2255 motion based on *Davis*, arguing that his Section 924(c) conviction predicated on attempted Hobbs Act robbery was invalid. The Fourth Circuit agreed, concluding that attempted Hobbs Act robbery did not satisfy the remaining elements-clause "crime of violence" definition. On review, this Court not only agreed with that conclusion; it affirmed the Fourth Circuit's judgment directing the district court to vacate the Section 924(c) conviction. *See Taylor*, 142 S. Ct. at 2019–21, 2025–26; *id*. at 2027 (Thomas, J., dissenting); *United States v. Taylor*, 979 F.3d 203, 205, 210 (4th Cir. 2020). In other words, this Court held that Mr. Taylor was entitled to vacatur of his Section 924(c) conviction in a successive Section 2255 motion based on *Davis*. Yet the Government now suggests that Petitioner cannot obtain authorization to even *file* a Section 2255 motion based on *Davis*—a motion that would be indistinguishable from the one that actually *prevailed* in *Taylor*.

b. The Eleventh Circuit's own practice post-*Taylor* leaves no doubt that, but for Section 2244(b)(1), Petitioner would have obtained authorization. Indeed, the Eleventh Circuit itself has consistently granted authorization in situations otherwise identical (and inferior) to this one. It has done so as recently as Halloween. *See, e.g.*, *In re Berry*, No. 23-13310, ECF No. 2 at 11–12 (11th Cir. Oct. 31, 2023) ("Berry has made a *prima facie* showing that his proposed *Davis* claim challenging his § 924(c)

conviction . . . satisfies the statutory criteria when analyzed alongside *Taylor*'s interpretation of § 924(c)(3)(A)'s elements clause," even though the Section 924(c) conviction was predicated on attempted carjacking, and it remained an open question whether that offense was a "crime of violence" under the elements clause).[4] The Government cites no contrary example from the Eleventh Circuit (or any circuit) to support its baseless suggestion that Petitioner would have been denied authorization.

c. Unable to support that suggestion, the Government actually advances a full-blown merits argument, going beyond the lesser "prima facie" showing needed for authorization. But this is pure makeweight. Indeed, as far as counsel is aware, the Government has never even *tried* to make this argument in any *Davis*/*Taylor* case before. It argues that the language of the indictment (and repeated in the plea agreement) shows that Petitioner's Section 924(c) conviction was predicated on the elements clause, not the residual clause. But the language upon which the Government relies merely tracked the language of the Hobbs Act. It was included for the Hobbs Act attempt/conspiracy counts, not the Section 924(c) count. No. 08-cr-80089, ECF No. 18 at 1–2 (S.D. Fla. Aug. 14, 2008). And nothing in the indictment (or anything else in the record here) referred to the elements clause in Section 924(c).

[4] *Accord In re Corn*, No. 23-11623, ECF No. 2 at 6 (11th Cir. June 2, 2023) (granting authorization where Section 924(c) conviction was predicated on attempted Hobbs Act robbery); *In re Barriera-Vera*, No. 23-11517, ECF No. 2 at 8–9 (11th Cir. May 22, 2023) (same, where predicated on attempted bank robbery, even though it was an open question whether that was a "crime of violence" post-*Taylor*); *In re Ragland*, No. 22-1326, ECF No. 2 at 6 (11th Cir. Oct. 12, 2022) (same, where predicated on attempted Hobbs Act robbery); *In re Brown*, No. 22-12838, ECF No. 2 at 9 (11th Cir. Sept. 22, 2022) (same, where predicated on attempted *armed* bank robbery).

If standard Hobbs Act language in an indictment meant that a related Section 924(c) conviction was based on the elements clause, that would preclude *Davis* relief for virtually *every* Section 924(c) conviction predicated on a Hobbs Act violation, even Hobbs Act attempt and conspiracy. There is no authority supporting that extreme position. Quite the contrary, the Government *itself* has regularly conceded *Davis* relief in Section 2255 proceedings where, as here, the Section 924(c) conviction was predicated on Hobbs Act attempt and/or conspiracy. And the courts of appeals have routinely accepted such concessions,[5] including the Eleventh Circuit.[6] Yet the Government now inconsistently and incredibly argues that the same court would not even authorize Petitioner to file a successive Section 22555 motion based on *Davis*.

In yet another effort to forestall review, the Government obliquely references in one sentence a burden-of-proof issue that first arose (and generated a circuit split) in the context of the Armed Career Criminal Act. BIO 16. But in the Section 924(c) context, that issue arises only where the Section 924(c) conviction rests on multiple predicates—some of which are valid, and some of which are not. It does not arise where, as is undisputed here, the Section 924(c) conviction rests *solely* on invalid

[5] *See, e.g.*, *United States v. Green*, 67 F.4th 657, 662 (4th Cir. 2023); *Hall v. United States*, 58 F.4th 55, 64 (2d Cir. 2023) (Kearse, J., concurring) (noting Government concession post-*Taylor*); *Burleson v. United States*, 2022 WL 17490534, at *1–2 (6th Cir. 2022); *Francies v. United States*, 2022 WL 2763385, at *2 (7th Cir. 2022).

[6] *See, e.g.*, *Mathurin v. United States*, 2023 WL 4703299, at *7 (11th Cir. 2023); *Madison v. United States*, 2022 WL 3042848 (11th Cir. 2022); *Brown v. United States*, 942 F.3d 1069, 1070, 1075–76 & n.6 (11th Cir. 2019).

predicates. *See, e.g.*, *Hartsfield v. United States*, 629 F.Supp.3d 1240, 1244–48 (S.D. Fla. 2022) (explaining distinction under circuit precedent and granting *Davis* relief).

In a last-ditch effort, the Government refers to the facts of Petitioner's case, but it fails to explain how they are legally relevant. BIO 18. Whether a Section 924(c) conviction is predicated on a "crime of violence" is a categorical inquiry. Indeed, this Court in *Taylor* granted *Davis* relief on successive Section 2255 motion even though the facts there involved shooting and killing a victim. *See* 142 S. Ct. at 2026 (Thomas, J., dissenting); *id*. at 2036 (Alito, J., dissenting). The Government also provides no record support for its passing speculation that the district court would (or even could) re-impose the same sentence without the Section 924(c) conviction. BIO 18. After all, that conviction mandated *ten consecutive years*. And Petitioner has already served half of that indisputably illegal sentence. If anything, then, the circumstances here underscore that the Section 2244(b)(1) question implicates weighty liberty interests, and that no better vehicle presenting that question will ever come to this Court.

CONCLUSION

The Court should set this case for briefing and argument.

Respectfully submitted,

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