

No. 22-7871

IN THE
Supreme Court of the United States

In re MICHAEL BOWE,
Petitioner.

PETITION FOR REHEARING

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TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
PETITION FOR REHEARING	1
CONCLUSION.....	2
CERTIFICATE OF COMPLIANCE.....	3

TABLE OF AUTHORITIES

Cases

<i>In re Bowe</i> ,	
__ S. Ct. __, 2024 WL 674656 (Feb. 20, 2024) (mem).....	1–2
<i>In re Chance</i> ,	
(11th Cir. No. 23-13875) (Dec. 18, 2023)	2
<i>In re Dwight Carter</i> ,	
(U.S. No. 23-6167) (pet. filed Nov. 29, 2023).....	1–2

Statutes

28 U.S.C.	
§ 2244(b)(1)	1–2
§ 2254	1
§ 2255	1–2

Rule

Sup. Ct. R. 44(2).....	1, 3
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PETITION FOR REHEARING

Pursuant to Rule 44(2) of this Court, Petitioner Michael Bowe respectfully seeks rehearing of the Court’s order of February 20, 2024, denying his petition for a writ of habeas corpus. Justice Sotomayor, joined by Justice Jackson, issued a statement respecting the denial of that petition. *In re Bowe*, __ S. Ct. __, 2024 WL 674656 (2024) (mem). Petitioner requests that the Court hold this case so that it can be reconsidered at a future conference alongside *In re Dwight Carter*, No. 23-6167.

* * *

This case and *Carter* are both original habeas petitions presenting the same question: whether the procedural bar in 28 U.S.C. § 2244(b)(1) applies only to state-prisoner habeas corpus applications under § 2254, as the plain text of the statute states, or whether it also applies to federal-prisoner motions to vacate under § 2255.

The counseled petition in this case was filed in June 2023, the Court called for a response in August 2023, and the case was first distributed for the conference of January 5, 2024. The *pro se* petition in *Carter* was filed in November 2023 and was distributed for that same conference—without a government response. Shortly before that conference, the Court rescheduled both cases and later re-distributed them for the next conference of January 12, 2024. Thus, the cases were proceeding together.

But then they diverged. Undersigned counsel filed an appearance in *Carter*, and the Court called for a response. After two extensions, the government’s response in *Carter* is now due on April 12, 2024. Rather than wait for *Carter* to be fully briefed, the Court rescheduled this case several times and denied it on February 20, 2024.

In her statement, Justice Sotomayor agreed with Petitioner’s main arguments. The only reason she supported a denial was because, in her view, it was “not clear that, absent § 2244(b)(1)’s bar, the Eleventh Circuit would have certified his § 2255 motion.” 2024 WL 674656, at *2. However, Petitioner had cited five cases where the Eleventh Circuit certified identical (or inferior) § 2255 motions. *See* Pet. Reply Br. 12–13 & n.4. And after Petitioner filed his Reply Brief, the Eleventh Circuit did so again. *See In re Chance*, 11th Cir. No. 23-13875, ECF No. 2, at 5–6 (Dec. 18, 2023).

The forthcoming filings in *Carter* may help further clarify the sole vehicle issue raised in Justice Sotomayor’s statement. And this Court, when possible, typically considers related petitions at the same time in order to scrutinize vehicle issues. That course is particularly warranted here given the unusual procedural posture of these cases, as well as the fact that both petitioners are represented by the same counsel.

CONCLUSION

Petitioner Bowe respectfully requests that the Court hold this case and then reconsider it at a future conference alongside *Carter* after that case is fully briefed.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Undersigned counsel certifies that this petition is restricted to the grounds specified in Rule 44(2), and that it is presented in good faith and not for delay.

Respectfully submitted,

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