

September 24, 2024

*VIA ELECTRONIC FILING AND EMAIL*

Mr. Scott S. Harris, Clerk  
Supreme Court of the United States  
1 First Street, N.E.  
Washington, D.C. 20543

Re: Notice of Supplemental Authority  
Binday v United States  
No. 23-1290

Dear Mr. Harris:

Petitioner Michael Binday submits this notice of supplemental authority in support of the second question presented in his petition for a writ of certiorari in the above-captioned case.

In support of his second question presented, Petitioner argues that the Second Circuit's construction of the "second or successive" standard in section 2255(h) of Title 28, United States Code, conflicts with this Court's construction of that phrase. In addition to the precedents discussed in Binday's petition, in *Gonzalez v. Crosby*, 545 U.S. 524, 530 (2005), this Court indicated that "second or successive" refers to claims "not previously raised" by the petitioner. "Using Rule 60(b) to present new claims for relief from a state court's judgment of conviction—even claims couched in the language of a true Rule 60(b) motion—circumvents AEDPA's requirement that ***a new claim be dismissed*** unless it relies on either a new rule of constitutional law or newly discovered facts." *Id.* at 531 (emphasis added).

Thus, consistent with Petitioner's argument in his petition, this Court does not consider a claim previously raised on direct appeal or in a first habeas motion that lower courts improperly rejected as "second or successive."

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Very truly yours,



David W. Shapiro  
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