No. 23-___

IN THE

Supreme Court of the United States

LEANDER MANN,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

PETITION FOR A WRIT OF CERTIORARI

NOEL J. FRANCISCO
JONES DAY
51 Louisiana Avenue, N.W.
Washington, D.C. 20001

KELLY C. HOLT
Counsel of Record
JONES DAY
250 Vesey Street
New York, NY 10281
(212) 326-3939
kholt@jonesday.com

Counsel for Petitioner

QUESTIONS PRESENTED

1. Whether equitable tolling stops the clock on the AEDPA statute of limitations during periods of extraordinary circumstances, as the Second and Eleventh Circuits have held, or whether AEDPA petitioners who face extraordinary circumstances may be required to file in far less than the one year granted to them by statute, as the Fifth, Sixth, and Ninth Circuits have held.

PARTIES TO THE PROCEEDING

Petitioner Leander Mann was Petitioner in the district court and Petitioner-Appellant in the court of appeals.

Respondent United States of America, was Respondent in the district court and Respondent-Appellee in the court of appeals.

RELATED CASES

United States of America v. Leander Mann, No. 2:17-cr-20644-PDB-DRG-1, U.S. District Court for the Eastern District of Michigan. Judgment entered November 6, 2019.

Leander Mann v. United States of America, No. 2:21-cv-10161-PDB, U.S. District Court for the Eastern District of Michigan. Judgment entered October 25, 2021.

Leander Mann v. United States of America, No. 21-1747, U.S. Court of Appeals for the Sixth Circuit. Judgment entered May 16, 2023.

TABLE OF CONTENTS

TABLE OF CONTENTS
(continued)

Page

TABLE OF CONTENTS
(continued)

Page

TABLE OF AUTHORITIES

Page(s)

CASES

TABLE OF AUTHORITIES
(continued)

Page(s)

STATUTES

INTRODUCTION

Within months of Leander Mann's federal conviction in late 2019, the Covid-19 pandemic struck the United States. Severe flu-like symptoms swept through the facility where Mr. Mann was being held, and prison officials responded by placing onerous restrictions on prisoner movement. But those restrictions did not prevent Mr. Mann from contracting Covid. His bout with the disease led to debilitating symptoms that persisted for a month, including a week spent bedridden. And even after Mr. Mann recovered, the pandemic continued to disrupt Mr. Mann's ability to pursue his rights: his prison remained on full lockdown for months, with prisoners permitted no access to the law library. Later that fall, following transfers to other prison facilities, Mr. Mann was placed in lengthy quarantines without access to even his personal legal materials. He was finally released from quarantine in October 2020, the month before his Section 2255 motion was due. Even setting aside the prison-wide lockdowns and other Covid-related challenges, Mr. Mann's period of debilitating illness and his post-transfer quarantines rendered him wholly unable to work on his Section 2255 motion for nearly two months of the one-year AEDPA limitations period.

Nonetheless, Mr. Mann filed a 28 U.S.C. § 2255 motion in early January 2021, just a month and a half past the statutory one-year filing deadline. Although a magistrate judge recommended that Mr. Mann's motion be deemed timely based on equitable tolling given the extraordinary circumstances he had faced, the district court dismissed Mr. Mann's motion as untimely. The Sixth Circuit affirmed, reasoning that

despite the fact that indisputably extraordinary circumstances had reduced Mr. Mann's time to work on his petition to no more than 10 months—and that evidence suggested that as a practical matter his actual time to work on the motion was as little as 5 or 6 months—equitable tolling was precluded because Mr. Mann's time to file had merely been reduced, rather than eliminated.

That decision reflects the Sixth Circuit's position on the wrong side of an entrenched circuit split regarding the application of equitable tolling in the context of AEDPA claims. In the Second and Eleventh Circuits, which adopt a stop-clock approach to equitable tolling, Mr. Mann's filing would have been deemed timely. But in the Sixth Circuit—as in the Fifth and Ninth Circuits—the fact that extraordinary circumstances more than accounted for the time that Mr. Mann's petition was late was not enough to allow his claims to be heard on the merits. This Court should grant certiorari to resolve this important and persistent split.

OPINIONS BELOW

The decision of the U.S. Court of Appeals for the Sixth Circuit affirming the dismissal of petitioner's 28 U.S.C. § 2255 petition (Pet.App.2a) is unreported but is available at 2023 WL 3479402. The opinion of the district court (Pet.App.11a) is unreported. The report and recommendation of the magistrate judge (Pet.App.14a) is unreported.

JURISDICTION

The Sixth Circuit issued its opinion and entered judgment on May 16, 2023. Pet.App.2a. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

28 U.S.C. § 2255(f) provides:

A 1-year period of limitation shall apply to a motion under this section. The limitation shall run from the latest of—

(1) the date on which judgment of conviction becomes final;

(2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making a motion by such governmental action;

(3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(4) the date on which facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

STATEMENT

A. Federal Charges and Guilty Plea

In June 2017, while Mr. Mann was on parole for a prior conviction, the Michigan Department of Corrections and the Wayne State University Police

Department conducted a Parole Home Compliance Check. Pet.App.15a. During the search of the home where Mr. Mann was living with several others, officers found controlled substances, ammunition, and weapons. *Id*.

Based on the results of the search, Mr. Mann was indicted by a federal grand jury as a felon in possession of a firearm, felon in possession of ammunition, felon in possession of a firearm in furtherance of a drug trafficking crime, and possession with intent to distribute a controlled substance. Pet.App.15a-16a. Mr. Mann pleaded not guilty, contending that the material found during the search belonged to others who lived at the house, not him. Mr. Mann also sought to suppress the evidence obtained during the search, arguing that the search was unconstitutional under the Fourth Amendment because he had not voluntarily consented to it. Case No. 2:17-cr-20644, ECF No. 29 at PageID.78-81 (E.D. Mich. Jan. 25, 2018). That motion was denied, and the case was set for trial. Case No. 2:17-cr-20644, ECF No. 41 at PageID.290-91 (E.D. Mich. June 19, 2018).

In the run-up to trial, the defense understood that the Government planned to rely almost entirely on the circumstantial evidence that the weapons and ammunition were found in the house where Mr. Mann lived. *See* Case No. 2:17-cr-20644, ECF No. 62 at PageID.469-70 (E.D. Mich. Sept. 25, 2018). Less than three weeks prior to the scheduled start date of the trial, however, the Government belatedly provided the defense approximately 6600 pages of discovery and a DVD containing over 400 phone calls. *Id*. at PageID.466. At the same time, the Government provided notice of a new expert witness. *Id*. A week

later, the Government notified the defense of yet another expert witness. *Id.* at PageID.467. Although Mr. Mann sought to have all of this evidence excluded for failure to timely disclose it under Rule 16, the district court held portions of the belatedly disclosed evidence admissible.

After voir dire had commenced, Mr. Mann entered into a plea agreement with the Government, agreeing to plead guilty to possession with intent to distribute a controlled substance with a sentence of 180 months' imprisonment. Pet.App.16a.

Shortly after the guilty plea, however, Mr. Mann's counsel moved to withdraw, explaining that he had incorrectly advised Mr. Mann that as a career offender he faced a guideline range on the drug offenses of 151-188 months after accepting responsibility, and an even higher sentence if he was convicted after trial. *Id.* In fact, Mr. Mann was later determined not to be a career offender, and his guideline range was only 92-115 months. *Id.*

After Mr. Mann's initial counsel was permitted to withdraw, Mr. Mann was appointed new counsel, who filed a motion to withdraw Mr. Mann's guilty plea. *Id.* The Court denied the motion, concluding that Mr. Mann's plea was "fully knowing and voluntary," despite the fact that Mr. Mann had been misinformed about his guidelines sentencing range. *Id.* On November 1, 2019, Mr. Mann was sentenced to 167 months' imprisonment, reflecting the originally agreed-to 180-month sentence minus credit for the 13 months Mr. Mann served in State prison based on the same conduct underlying the federal conviction.

Pet.App.16a-17a. Judgment was entered on November 6, 2019. Pet.App.17a.

Because Mr. Mann did not appeal from his conviction and sentence, it became final fourteen days after it was entered, on November 20, 2019.

B. Covid-19 Pandemic and Effects on Mr. Mann.

In early 2020, "widespread and severe flu like symptoms" appeared at Macomb Correctional Facility, where Mr. Mann was in custody. Case No. 2:17-cr-20644, ECF No. 154 at PageID.1665 (E.D. Mich. Aug. 13, 2021). In response, the prison implemented a "modified movement / shelter in place schedule," with inmates confined to interact only with certain other designated inmates within their "peer group." *Id.* That status lasted until March 2020, preventing Mr. Mann from having regular access to the prison law library and hindering his ability to perform legal research. *Id.*

Around this time, Mr. Mann contracted Covid-19. *Id.* The worst of his symptoms left him bed ridden and unable to eat for over a week, and he experienced "severe flu like symptoms around late February and through the month of March." Case No. 2:17-cr-20644, ECF No. 115-2 at PageID.1318-19 (E.D. Mich. Oct. 27, 2020). His severe symptoms included fever and chills, heavy coughing, and an inability to stand up or walk without becoming dizzy and short of breath. *Id.* Those symptoms directly prevented Mr. Mann from pursuing his Section 2255 motion. Case No. 2:17-cr-20644, ECF No. 154 at PageID.1665 (E.D. Mich. Aug. 13, 2021).

Moreover, Mr. Mann was under the impression at the time that the entire federal court system was shut

down for over 90 days "while it was deduced how the courts could proceed safely and effectively for all parties involved." Case No. 2:17-cr-20644, ECF No. 150 at PageID.1636 (E.D. Mich. Apr. 10, 2021). Mr. Mann believed that filing deadlines were "suspended or extended" during this closure. *Id.*

That impression was likely reinforced by the closures Mr. Mann experienced at his prison. The "modified movement" restrictions of early 2020 were upgraded to "shutdown status" in March. Case No. 2:17-cr-20644, ECF No. 154 at PageID.1665 (E.D. Mich. Aug. 13, 2021). That status meant that no prisoners were permitted any law library access—a condition that lasted until late June or early July. *Id.* at PageID.1665-66. Shortly after the shutdown status was lifted, on July 15, 2020, Mr. Mann filed a motion for compassionate release in light of the pandemic, emphasizing his own personal risk factors for severe disease. Case No. 2:17-cr-20644, ECF No. 113 at PageID.1251-70 (E.D. Mich. July 15, 2020). He was appointed an attorney for the limited purpose of assisting him with further developing the motion for compassionate release. Case No. 2:17-cr-20644, ECF No. 114 at PageID.1284 (E.D. Mich. July 31, 2020).

In September and October 2020, in the run-up to his November 2020 deadline for filing a Section 2255 Motion, Mr. Mann faced a new barrier to pursuing that motion: transfers to federal facilities and resulting lengthy quarantines. Case No. 2:17-cr-20644, ECF No. 154 at PageID.1666 (E.D. Mich. Aug. 13, 2021). He was first placed at St. Clair County Jail, where he spent eight days "separated completely from [his] legal property and placed on quarantine status." *Id.* He was then transferred to the Milan Detention

Center, where he was quarantined with no access to his legal materials for an additional sixteen days. *Id.* While in quarantine, he made several requests to the staff for access to his legal materials and to the law library and filed grievances when he was denied access. *Id.* In his requests and grievances, Mr. Mann referenced his status as a pro se litigant and complained that separating him from his legal materials was effectively denying him access to the courts. *Id.* Mr. Mann was finally introduced to the general population and gained access to his legal materials on October 2, 2020, although the pandemic continued to affect prison operations. *Id.*

C. Section 2255 Motion

On or about January 6, 2021, Mr. Mann filed a pro se motion to vacate, set aside, or correct his sentence under 28 U.S.C. § 2255.[1] Pet.App.4a. His motion raised four issues: First, his guilty plea "was unlawfully induced or not made voluntarily or with

[1] The precise filing date of Mr. Mann's motion is unclear. Under the "prison mailbox rule," a document submitted for filing by a pro se prisoner "is deemed filed when it is handed over to prison officials for mailing to the court." *Brand v. Motley*, 526 F.3d 921, 925 (6th Cir. 2008) (internal quotation omitted). In the Sixth Circuit, this rule is accompanied "with an assumption that, absent contrary evidence, a prisoner [hands a document over to prison officials] on the date he or she signed" the document at issue. *Id.* Because Mr. Mann's motion was signed on January 6 (Pet.App.4a), the Sixth Circuit deemed it filed on that date. In the district court, Mr. Mann's motion was marked filed on January 13, 2021 (Pet.App.4a), but the record does not reflect any basis for assigning this filing date. Ultimately, though, nothing in turns on whether Mr. Mann's motion is deemed filed on January 6 or January 13—properly understood, equitable tolling would render the motion timely on any of these dates.

understanding of the nature of the charge and consequences of the plea," given that his counsel had misinformed him regarding the applicable guideline range. Pet.App.17a. Second, the Government withheld evidence from the defense that was improperly allowed to be admitted. *Id.* Third, the parole compliance check was an unconstitutional search because Mr. Mann had not knowingly and voluntarily agreed to the conditions of his parole, so the resulting evidence should have been suppressed. *Id.* Fourth and finally, Mr. Mann was denied the effective assistance of counsel both due to the Government's failure to timely disclose evidence and due to his counsel's inaccurate guidance regarding Mr. Mann's status as a career offender and its associated guideline range. *Id.*

The Government filed a motion to dismiss, arguing that the Section 2255 motion was untimely. *Id.* Mr. Mann responded, acknowledging that his motion had been filed more than a year after his conviction became final on direct review, but arguing that it should nonetheless be "received as timely . . . due to the circumstances that impeded its submission that were beyond the Government's, the Court's, and/or Mr. Mann's control (Covid-19)." Case No. 2:17-cr-20644, ECF No. 150 at PageID.1636 (E.D. Mich. Apr. 10, 2021). Mr. Mann asserted in part "that the entire federal court system, including that of the Southeastern District of Michigan was shut down due to [the] Covid-19 pandemic for a period of approximately 90 plus days." *Id.* He also noted that, "[q]uite naturally, deadlines or 'periods of limitations' were understandably 'suspended or extended' during this time of closure." *Id.* Beyond the general court

shutdown Mr. Mann perceived, Mr. Mann also explained that impediments more specific to him had limited his ability to file his 2255 motion, given "Covid related lockdowns [at his facility], quarantines, law library shutdowns, as well as Mr. Mann catching Covid-19 himself." *Id.* at PageID.1636-1637. For additional support, he referenced the evidence he had submitted in connection with his motion for compassionate release, which included further details regarding the severity and duration of his Covid symptoms. *Id.* The Government did not file a reply. Pet.App.19a.

The magistrate judge construed Mr. Mann's pro se submission as a request for equitable tolling, and then recommended that the Government's motion to dismiss be denied and Mr. Mann's Section 2255 motion evaluated on the merits. Pet.App.19a-23a. The magistrate judge concluded that "the timing in question"—namely that Mr. Mann filed his Section 2255 motion less than two months late despite all the Covid-related delays he had experienced—"suggests Mann acted reasonably diligently." Pet.App.22a. The magistrate judge further noted that Mr. Mann's evidence showed "that the Covid-19 pandemic resulted in the extended closure of his prison's law library, lockdowns, and quarantines," and that Mr. Mann had personally "battled Covid-19, experiencing serious symptoms that left him completely bed-ridden for a week, and suffering debilitating symptoms for over [a] month." *Id.* As the magistrate judge pointed out, the Government did not dispute any of these facts or "contend that they were not 'extraordinary.'" *Id.* Thus, the magistrate judge concluded, Mr. Mann was entitled to equitable tolling. *Id.*

Although the Government objected to the magistrate judge's recommendation, it did not argue that the district court should dismiss the case in light of the record as it stood. Case No. 2:17-cr-20644, ECF No. 153 at PageID.1657 (E.D. Mich. June 28, 2021). Instead, the Government conceded that "the Covid-19 pandemic is a unique circumstance that has affected many incarcerate[d] peoples' ability to litigate their cases" and that "[i]t might have prevented Mann from having a fair opportunity to file his § 2255 motion on time." *Id.* at PageID.1661. The Government suggested only that it was "unclear on the current record whether Mann diligently pursued his rights and was stopped by an extraordinary circumstance," and thus asked the court to "order Mann to show cause as to why equitable tolling should apply to his § 2255 motion, permit the Government to respond to Mann's filing, and order an evidentiary hearing" to resolve any disputes. *Id.* at PageID.1661-62.

Mr. Mann received the Government's objections before receiving a copy of the magistrate judge's report and recommendation, and attempted to respond to them without the benefit of the underlying decision. Case No. 2:17-cr-20644, ECF No. 156 at PageID.1672 (E.D. Mich. Aug. 16, 2021). In his response, Mr. Mann provided additional explanation regarding how the Covid-19 pandemic had impaired his ability to pursue his Section 2255 motion. *Id.* at PageID.1673-75. He emphasized that he had "diligently pursued his 2255 only to be foiled at every turn by Covid-19 or its impediments." *Id.* at PageID.1673. And he identified additional evidence that he believed would support his claims of diligence, including prison records that would "show that Mann was doing all he could do to

get . . . his legal materials and access to the law library." *Id*. at PageID.1673-74. Finally, Mr. Mann submitted a sworn declaration to support his claim for equitable tolling. Case No. 2:17-cr-20644, ECF No. 154 at PageID.1664-67 (E.D. Mich. Aug. 13, 2021).

Rather than taking the approach recommended by the magistrate judge or the approach urged by the Government, the district court responded to the Government's objections by dismissing Mr. Mann's motion outright. Pet.App.11a-13a. In a terse order, the Court reasoned that Mr. Mann should not be granted equitable tolling because he "did not explicitly detail how he pursued his rights" and because, contrary to Mr. Mann's understanding, the "Court was always open to receive 28 U.S.C. § 2255 petitions" throughout the pandemic. Pet.App.12a. The Court also concluded that Mr. Mann's pro se motion for compassionate release and the related motion filed by his court-appointed attorney precluded equitable tolling for Mr. Mann: "Defendant chose to expend his time-relevant efforts on seeking compassionate release from this Court, and ignored his timely opportunity to file a petition pursuant to 28 U.S.C. § 2255 to vacate his sentence." *Id*.

Mr. Mann timely filed a notice of appeal, which the Sixth Circuit construed as a request for a Certificate of Appealability. Case No. 21-1747, ECF No. 4 (6th Cir. May 10, 2022). In an order written by Judge Moore, the Sixth Circuit granted the Certificate of Appealability, explaining that "[r]easonable jurists could debate whether the district court was correct in its decision that Mann was not entitled to equitable tolling." *Id*. That was so for two reasons: "First, jurists of reason could conclude that Mann did explain

how he diligently pursued his rights," given Mr. Mann's requests for access to his legal materials "coupled with the fact that Mann's habeas petition was less than two months late." *Id.* "Second, jurists of reason could disagree with the district court's reasoning that Mann's ability to file for compassionate release undermines his claim that he pursued his rights diligently." *Id.* As the Court explained, "[a] habeas petition and a compassionate release motion involve different factual and legal inquiries, and Mann would likely need access to different resources for these two separate submissions." *Id.* Thus, "[j]urists of reason could conclude that Mann's ability to file a compassionate release motion does not provide grounds to deny him equitable tolling in his habeas case." *Id.* After granting a COA on these grounds, the Court appointed counsel to assist Mr. Mann with his appeal. Case No. 21-1747, ECF No. 7 (6th Cir. July 20, 2022).

On appeal, Mr. Mann argued that he was entitled to equitable tolling, and that his Section 2255 motion therefore should have been deemed timely and evaluated on the merits. Pet.App.5a. Mr. Mann also argued that alternatively, and at a minimum, the case should be remanded for an evidentiary hearing on the question of equitable tolling, to allow him to introduce additional evidence regarding his diligence throughout the limitations period. Pet.App.9a.

The Sixth Circuit affirmed the district court's dismissal of Mr. Mann's motion, reasoning that Mr. Mann had not shown either "extraordinary circumstances that kept him from filing nor that he diligently pursued his rights." *Mann v. United States*, No. 21-1747, 2023 WL 3479402, at *2 (6th Cir. May 16,

2023). Specifically, the court concluded that even if extraordinary circumstances prevented Mr. Mann from pursuing his Section 2255 motion for two months, that would not be enough unless Mr. Mann further "explain[ed] why ten months was insufficient to permit him to meet the filing deadline." *Id.* Mr. Mann's explanations regarding prison lockdowns and other Covid limitations did not satisfy this requirement, the court concluded, because even subtracting periods in which he faced those restrictions "still left Mann with five to six months" over the course of the year on which to work on his motion. *Id.* "If that period was insufficient," the court reasoned, "Mann does not explain why." *Id.* Thus, according to the court, Mr. Mann had not established that extraordinary circumstances had caused him to miss the filing deadline, regardless of how those circumstances had affected his ability to work on his Section 2255 motion.

The court's analysis of Mr. Mann's diligence similarly focused on the fact that Mr. Mann had at least several months during his limitations period outside the period of extraordinary circumstances. *Id.* at *3. Thus, although the court acknowledged that Mr. Mann was wholly prevented from litigating while he was ill, that Mr. Mann exercised diligence in attempting to regain access to his legal materials while he was in quarantine, and that Mr. Mann's filing would have been timely had these two periods been removed from the limitations period, the court concluded that Mr. Mann failed to show reasonable diligence in pursuing his rights. *Id.*

REASONS FOR GRANTING THE WRIT

In at least two circuits, Mr. Mann's Section 2255 motion would have been deemed timely based on the application of ordinary principles of equitable tolling as stopping the clock during periods of impairment. Because Mr. Mann's Section 2255 motion was considered in the Sixth Circuit, however, that common-law concept of equitable tolling was disregarded in favor of an amorphous test based on how long judges, rather than legislators, think a filing should have taken. This Court should grant certiorari to resolve a split among the circuits regarding application of equitable tolling in the AEDPA context and to clarify that habeas petitioners are entitled to a full year in which to prepare and file their petitions.

I. CIRCUITS ARE SPLIT ABOUT THE APPLICATION OF EQUITABLE TOLLING IN THE AEDPA CONTEXT.

This Court has established that equitable tolling is available to overcome AEDPA's one-year limitations period. *Holland v. Florida*, 560 U.S. 631, 653 (2010). As explained in *Holland*, equitable tolling is appropriate where a petitioner shows both "reasonable diligence" in pursuing his rights and "that some extraordinary circumstance stood in his way and prevented timely filing." *Id.* (internal citation and quotation omitted). In the years since *Holland* was decided, though, the lower courts have divided on how these principles should be applied to determine the timeliness of a petition once extraordinary circumstances have been established, with two circuits adopting a stop-clock approach and three circuits expressly rejecting that approach.

A. The Second and Eleventh Circuits have adopted a stop-clock approach to equitable tolling in the AEDPA context.

The Second and Eleventh Circuits have held that, as in other equitable tolling contexts, extraordinary circumstances that prevent reasonably diligent habeas petitioners from pursuing their rights stop the clock on AEDPA's one-year statute of limitations. In other words, as the Second Circuit explained, if a habeas petitioner is able to demonstrate extraordinary circumstances that merit tolling, "the statute of limitations is suspended for the duration" of those circumstances, and "filing is timely if made before the total untolled time exceeds the limitations period." *Harper v. Ercole*, 648 F.3d 132, 136 (2d Cir. 2011). That approach, the court explained, ensures that petitioners are provided "a full year of untolled time" in which to pursue their petitions. *Id*. at 140. By suspending the running of the statute of limitations during the extraordinary circumstances and then "restart[ing] the limitations clock" once those circumstances are lifted, the court can "assur[e] habeas petitioners 'the full year allowed them by Congress.'" *Id*. at 141 (quoting *Zarvela v. Artuz*, 254 F.3d 374, (2d Cir. 2001)). Further, this approach is "consistent with the general rule of equitable tolling articulated by the Supreme Court." *Id*. at 139. "Thus, while equity will only rarely intervene to toll AEDPA's limitations period, when it does so, a petition should be deemed timely if it is filed within one year of the total untolled time." *Id*. at 140.

The Eleventh Circuit takes a similar approach. As that court has explained, "Tolling means just what it says—the clock is stopped while tolling is in effect."

Knight v. Schofield, 292 F.3d 709, 712 (11th Cir. 2002) (per curiam). Where equitable tolling applies, then, the new deadline is determined by considering the original one-year deadline plus "the addition of [the] period of equitable tolling." *Spottsville v. Terry*, 476 F.3d 1241, 1246 (11th Cir. 2007). Applying this rule in *Knight*, the Eleventh Circuit rejected the district court's view that four and a half months should have been sufficient to prepare the petition at issue and that the petition was therefore untimely where the petitioner "took over five months to file his federal motion." *Knight*, 292 F.3d at 711. Instead, the court concluded that there is "no reason" that the "reasonable time [to prepare and file a petition] should be less than one year." *Id*. Filing in only five months of untolled time, then, made the petition timely.

Notably, the stop-clock approach does not mean that every petitioner who faces extraordinary circumstances at some point during the limitations period will be permitted to file an untimely petition. To the contrary, a petitioner still must demonstrate that he "acted with reasonable diligence throughout the period he seeks to toll," and that there is a "causal relationship between the extraordinary circumstances on which the claim for equitable tolling rests and the lateness of [the] filing." *Harper*, 648 F.3d at 137-38. Thus, for example, a petitioner whose filing is untimely even after accounting for periods of tolling would still have the petition dismissed, as would a petitioner who points to extraordinary circumstances unrelated to his ability to work on his filing—such as a petitioner who was denied access to his legal files for some portion of the limitations period but who never reviewed those files even after gaining access to them.

Similarly, tolling may be unavailable "where the identified extraordinary circumstances arose and concluded early within the limitations period," if there is no reason to believe the petitioner could or would have filed earlier had those circumstances never existed. *Id.* But the stop-clock approach is designed to ensure, in part, that the causation requirement is not "used to fault a party 'for failing to file early or to take other extraordinary precautions early in the limitations period against what are, by definition, rare and exceptional circumstances.'" *Id.* That is, it ensures that petitioners are actually allowed a full year to work on their petitions.

The stop-clock approach thus gives force to this Court's instruction that what is required of AEDPA petitioners is "reasonable diligence, not maximum feasible diligence." *Holland*, 560 U.S. at 653 (internal citation and quotation omitted). After all, under this approach, a petitioner who faces extraordinary circumstances need not be *more* diligent than a petitioner who faces ordinary circumstances—the reasonable diligence required to file within a year of unencumbered time is sufficient for either petitioner.

B. The Sixth Circuit joins the Fifth and Ninth Circuits in refusing to guarantee petitioners who face extraordinary circumstances a full year to file.

By contrast, in at least three circuits, petitioners may in effect be required to file their habeas petitions in far less than the one year promised by AEDPA. In each of these circuits, the standard of ordinary diligence established by Congress—the diligence required to file a petition within one year—is

disregarded, and judges are instead empowered to impose a heightened diligence standard based on how long *they* believe a particular petition should have taken. Unsurprisingly, given the amorphous nature of this standard, these circuits are inconsistent in evaluating how much time is enough.

1. In this case, the Sixth Circuit expressly rejected the idea that "for each day that [a petitioner] was prevented from filing, he is entitled to have another day added to the clock"—that is, the stop-clock approach. *Mann*, 2023 WL 3479402, at *3. On the Sixth Circuit's view, there is no basis for equitable tolling where extraordinary circumstances "reduce a petitioner's time to comply," no matter how substantially, so long as those circumstances did not make timely filing "impossible." *Id*. Based on that reasoning, the court concluded it was of no moment if Mr. Mann was limited to just ten months, or even to just five or six months, in which to file his petition. *Id*. at *2. Because Mr. Mann could not establish that he was incapacitated for the entirety of the limitations period or on the very day his limitations period ran out, he was not entitled to any amount of equitable tolling "even if [he] was physically unable to file for two months" and faced significant limitations for many more months. *Id*. at *3.

There is no clear limiting principle to this rule, and no obvious lower bound to the amount of time that would make it "impossible" to file a habeas petition. Indeed, the government argued below that Mr. Mann's motion should have taken just "hours or (at most) a few days, not months or a year" to prepare and file. Case No. 21-1747, ECF No. 17 (6th Cir. Oct. 26, 2022). By that logic, then, an AEDPA petitioner who was

entirely prevented from working on his petition for almost the entire duration of his limitations period would nonetheless be unable to obtain equitable tolling if he had even just a few days (or hours) of unencumbered time to work on the petition immediately before the deadline ran out. Under such circumstances, after all, it would be theoretically *possible* for a petitioner to have filed a petition.

The Sixth Circuit's approach below thus cannot be squared with the stop-clock approach taken in the Second or Eleventh Circuits.

2. The Fifth Circuit, too, has rejected the stop-clock approach in favor of judicial evaluation of how long a filing supposedly should have taken. As that Court has explained, petitioners could obtain equitable tolling where they "filed in federal court one week, three weeks, and one month" after extraordinary circumstances were lifted. *Jackson v. Davis*, 933 F.3d 408, 411 (5th Cir. 2019) (citing *Hardy v. Quarterman*, 577 F.3d 596, 597 (5th Cir. 2009); *Williams v. Thaler*, 400 F. App'x 886, 891 (5th Cir. 2010); *Phillips v. Donnelly*, 216 F.3d 508, 511 (5th Cir. 2000)). But "a petitioner who waited seven weeks to file in federal court" had his petition dismissed as untimely—without regard to the one-year period granted to such petitioners by Congress. *Id.* (citing *Stroman v. Thaler*, 603 F.3d 299, 302 (5th Cir. 2010)). The court justified this seemingly arbitrary line-drawing exercise based on whether the judges of the Fifth Circuit "deemed" the petitioners at issue to be diligent or non-diligent. *Id.* This approach, too, cannot be squared with the views of the Second or Eleventh Circuits, each of which would guarantee petitioners a full year—not mere weeks—of untolled time.

3. For years, the Ninth Circuit applied the same approach to AEDPA equitable tolling as the Second and Eleventh Circuits. In 2020, though, a sharply divided en banc Ninth Circuit reversed course and "reject[ed] the stop-clock approach." *Smith v. Davis*, 953 F.3d 582, 599 (9th Cir. 2020).

Five judges dissented, concluding that Congress had "determined that 365 days is the number of days reasonably required for habeas petitioners to prepare their petitions" and that this rule "required habeas petitioners to exercise a certain level of diligence: the diligence required to file within 365 days." *Id.* at 602 (Berzon, J. dissenting, joined by Thomas, C.J., and Murguia, Watford, and Hurwitz). The dissenters thus could not agree with the majority's approach, under which a "petitioner may have less than 365 days to complete the petition, based on a free-floating judicial determination of whether, notwithstanding the impediment," the petitioner could have filed earlier. *Id.*

Notably, even the majority's approach in the Ninth Circuit does not align with the rule applied by the Sixth Circuit here or with the strict approach taken by the Fifth Circuit. Although the Ninth Circuit rejected the stop-clock approach in favor of a rule requiring courts to determine whether a diligent petitioner could have filed more quickly, the court also emphasized that it did not intend to "impose a rigid 'impossibility' standard on litigants, and especially not on pro se prisoner litigants," *id.* at 600, in stark contrast to the impossibility rule applied by the Sixth Circuit in this case. And the majority insisted that it "ha[d] no trouble imagining a circumstance" where a petitioner

could be granted a full year after extraordinary circumstances were lifted in which to file. *Id*. at 601.

Under the Ninth Circuit's rule, then, Mr. Mann need not have shown that filing was "impossible" within the limited time he had, as the Sixth Circuit required, or that his time was effectively limited to just a few weeks, as the Fifth Circuit would require. Instead, the Ninth Circuit would require only evidence that Mr. Mann worked on his Section 2255 motion "with some regularity." *Id*. Mr. Mann may well have been able to satisfy that standard in this case, despite the Ninth Circuit's rejection of the stop-clock approach.

II. THE DECISION BELOW IS WRONG.

The Sixth Circuit's decision below falls on the wrong side of the circuit split. Traditional principles of equitable tolling prescribe that tolling suspends the running of the limitations clock during periods where a claimant is prevented from pursuing his rights. And equitable tolling is permitted under AEDPA precisely because Congress is presumed to have intended a traditional role for equitable tolling in the statute. Thus, adopting the traditional stop-clock approach not only reflects traditional equitable principles, but also respects the congressional determination that AEDPA petitioners should be granted a full year in which to pursue their claims.

A. The stop-clock approach comports with traditional principles of equitable tolling as articulated by this Court.

Outside the AEDPA context, courts routinely understand equitable tolling to "stop the clock" on an otherwise-applicable limitations period. Indeed, this

Court has repeatedly and consistently described equitable tolling in just those terms: "Principles of equitable tolling usually dictate that when a time bar has been suspended and then begins to run again upon a later event, the time remaining on the clock is calculated by subtracting from the full limitations period whatever time ran before the clock was stopped." *United States v. Ibarra*, 502 U.S. 1, 4 n.2 (1991) (per curiam); s*ee also, e.g.*, *Lozano v. Montoya Alvarez*, 572 U.S. 1, 10 (2014) ("[E]quitable tolling pauses the running of, or 'tolls,' a statute of limitations."); *CTS Corp. v. Waldburger*, 573 U.S. 1, 9 (2014) (same).

That approach to equitable tolling is consistent with how the concept of "tolling" is ordinarily understood more generally—as this Court recently explained, it would be "atypical" to use the word tolling "to mean something other than stopping the clock on a limitations period." *Artis v. District of Columbia*, 138 S. Ct. 594, 603 (2018). Thus, this Court has long "employ[ed] the terms 'toll' and 'suspend' interchangeably." *Id.* at 601-02 (citing *American Pipe & Constr. Co. v. Utah*, 414 U.S. 538, 554 (1974)). Indeed, even the dissenters in *Artis*—who read the statute at issue to provide only for a 30-day grace period rather than adding 30 days to the time remaining after applying stop-clock tolling—agreed that "stop clock tolling" is the "standard and off-the-shelf" approach to tolling in "other contexts," including in the context of "equitable tolling." *Id.* at 617 n.10 (Gorsuch, J. dissenting). After all, as the dissenters explained, "the stop clock approach was often used at common law to *suspend* a plaintiff's duty to bring a timely lawsuit if, and *for the period*, the plaintiff was

prevented from coming to court due to some disability." *Id.* at 609 (emphasis added) (citing Developments in the Law: Statutes of Limitations, 63 Harv. L. Rev. 1177, 1220 (1950) ("[C]ircumstances which—despite the existence of a right to sue—hinder or prevent suit have been recognized by courts and legislatures as cause for postponing the start of the statutory period until the occurrence of some additional fact, or for interrupting the running of limitations while some condition exists."); 13 American and English Encyclopaedia of Law 739–745 (1890) (discussing "disabilities which postpone the running of the statute," such as infancy, absence of the defendant, insanity, and imprisonment)).

Moreover, this Court has expressly rejected the "reasonable time" approach to tolling embraced by the Sixth Circuit below. In *Burnett v. New York Central Railroad Co.*, 380 U.S. 424 (1965), the Court relied on equitable principles to hold that "when a plaintiff begins a timely FELA action in a state court having jurisdiction . . . and [the] case is dismissed for improper venue, the FELA limitation is tolled during the pendency of the state suit." *Id.* at 434-35. In deciding how to operationalize this rule, the Court considered the possibility of granting plaintiffs a "reasonable time" to refile suit. *Id.* But that possibility was rejected as soon as it was raised: as the Court explained, "to toll the federal statute for a 'reasonable time' after the state court orders the plaintiff's action dismissed would create uncertainty as to exactly when the limitation period again begins to run." *Id.* To avoid this uncertainty, the Court instead held that the statute of limitations would

"begin[] to run" again when the dismissal became final on appeal. *Id*.

Consistent with *Burnett*, this Court has not suggested that tolling—whether equitable or otherwise—can be used to create some indefinite period of time after the expiration of the limitations period in which the claim remains viable. To the contrary, when discussing other ways in which tolling can be implemented, this Court has maintained that the alternative to stop-clock tolling is "to establish *a fixed period* such as six months or one year during which the plaintiff may file suit." *Chardon v. Fumero Soto*, 462 U.S. 650, 652 n.1 (1983) (emphasis added). That approach, though, has been embraced only when the "fixed period" was established by statute. *See, e.g.*, *id*. at 660 n.13. Here, of course, Congress has established no such "fixed period" for equitable tolling under AEDPA. The only viable option consistent with traditional equitable principles, then, is the stop-clock approach.

B. Only the stop-clock approach respects the congressional determination that AEDPA petitioners should have one year to prepare and file petitions.

Equitable tolling is available under AEDPA based on the general presumption that all "nonjurisdictional federal statute[s] of limitations" are subject to equitable tolling. *Holland*, 560 U.S. at 645-46. That presumption is "reinforced" in the AEDPA context "by the fact that equitable principles have traditionally governed the substantive law of habeas corpus." *Id*. at 646 (internal quotations omitted). And it is "yet further reinforced by the fact that Congress enacted

AEDPA" after the Supreme Court held in *Irwin v. Dep't of Veterans Affairs*, 498 U.S. 89, 94 (1990), that courts will apply the traditional doctrine of equitable tolling to statutes of limitations for claims against the government absent statutory language to the contrary. *Holland*, 560 U.S. at 645-46. Notably, under *Irwin*, equitable tolling is applied using a stop-clock approach for veterans' appeals, *Checo v. Shinseki*, 748 F.3d 1373, 1379 (Fed. Cir. 2014)—an unsurprising result, given that the stop-clock approach is the traditional approach to equitable tolling, as explained above.

Because equitable tolling in the AEDPA context is imported from general background principles, there is no basis for applying an approach in the AEDPA context that differs from the stop-clock approach that applies elsewhere. That is, equitable tolling under AEDPA must be understood to be garden-variety equitable tolling applied according to the traditional rules of equity. Only that approach "is likely to be a realistic assessment of legislative intent." *Irwin*, 498 U.S. at 95.

This view is further reinforced by the fact that AEDPA allows Section 2255 petitioners a full year in which to file following "the latest of" four different triggering events. 28 U.S.C. § 2255(f). The first, "the date on which the judgment of conviction becomes final," is the most common. *Id*. at § 2255(f)(1). The remaining three triggering events, however, are effectively the dates on which certain "extraordinary circumstances" are lifted, newly allowing a petitioner to bring a claim that he otherwise could not have brought due to circumstances beyond his control. Specifically, the statute allows a petitioner a full year

from "the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making a motion by such governmental action," "the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review," or "the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence." *Id.* at § 2255(f)(2)-(4). Thus, when Congress expressly addressed the impact of unusual circumstances on a petitioner's ability to file, it consistently opted to afford petitioners a full year to prepare and file the petition. Under no circumstance did Congress suggest that petitioners should be permitted only some lesser time.

The stark conflict between the congressional determination that prisoners should be given a full year in which to prepare and file an AEDPA petition and the Sixth Circuit's decision below is highlighted by that court's approach to the "diligence" inquiry. According to the decision below, only work on a Section 2255 petition—as opposed to other avenues for relief from the prisoner's sentence—is relevant to the possibility of equitable tolling. *Mann*, 2023 WL 3479402, at *3. Thus, the Sixth Circuit declined to consider whether it was "possible" for Mr. Mann to have timely filed both his Section 2255 petition *and* the compassionate release motion he filed within the same timeframe. According to that court, if Mr. Mann had time to complete only one in light of the extraordinary circumstances he faced, that is no

reason for equity to intervene; Mr. Mann simply has to "live with [his] choice" of which route to relief he "prioritize[d]." *Id.* That result, the court suggested, was appropriate because "[b]y imposing a deadline, Section 2255(f) asks prisoners to prioritize their petitions." *Id.*

Of course, Congress did *not* ask prisoners to apply a single-minded focus to their AEDPA petitions, completing them as soon as possible regardless of their other circumstances. Instead, Congress asked petitioners to exercise such diligence as required to file their AEDPA petitions within one year. Such diligence would not ordinarily require petitioners to abandon other promising avenues of relief, and the Sixth Circuit offers no justification for its view that prisoners who face extraordinary circumstances during the limitations period should be afforded less opportunity to pursue their rights than those who face no extraordinary circumstances. This consequence of abandoning the stop-clock approach, then, provides still further support for applying the traditional rule.

III. THIS CASE PRESENTS AN IDEAL VEHICLE TO RESOLVE AN IMPORTANT QUESTION.

This case is an ideal vehicle to resolve the split. Here, there is no dispute regarding any of the central facts: the Government has never disputed that Mr. Mann was physically incapacitated for a month when he caught Covid-19 or that he was separated not only from resources for legal research but also from his own legal materials for weeks on end while he was quarantined following prison transfers. Courts have also agreed that each of these constitute extraordinary circumstances. Nor is there any dispute that Mr.

Mann filed grievances regarding his separation from his legal materials during the quarantines, demonstrating diligence.

Most importantly, there is no dispute that, taken together, the time Mr. Mann spent suffering a debilitating illness and the time he spent in quarantine account for two months of his limitations period—longer than the month-and-and-half delay in filing his petition. Thus, the question presented is dispositive: if equitable tolling stopped the clock during these periods, then Mr. Mann's filing was timely. And that is so even without regard to the other COVID-related impediments Mr. Mann faced, including extended prison lockdowns and severe restrictions on law library access.

And resolving the split is important. The "writ of habeas corpus plays a vital role in protecting constitutional rights." *Slack v. McDaniel*, 529 U.S. 473, 483 (2000). Moreover, the "Great Writ" is "the only writ explicitly protected by the Constitution," which itself "counsels hesitancy before interpreting [AEDPA] as indicating a congressional intent to close courthouse doors that a strong equitable claim would ordinarily keep open." *Holland*, 560 U.S. at 649. The split implicates the circumstances under which AEDPA petitioners with otherwise viable claims will nonetheless be turned away. Such an important question should not turn on the happenstance of the prisoner's location.

CONCLUSION

This Court should grant the petition for certiorari.

AUGUST 14, 2023

Respectfully submitted,

NOEL J. FRANCISCO
JONES DAY
51 Louisiana Avenue, N.W.
Washington, D.C. 20001

KELLY C. HOLT
Counsel of Record
JONES DAY
250 Vesey Street
New York, NY 10281
(212) 326-3939
kholt@jonesday.com

Counsel for Petitioner