

No. 23-6709

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IN THE SUPREME COURT OF THE UNITED STATES

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MARTIN AKERMAN, PRO SE,  
APPLICANT

v.

UNITED STATES OF AMERICA,  
RESPONDENT

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SUPPLEMENTAL BRIEF FOR THE PRO SE PETITIONER

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## TABLE OF CONTENTS

<b>TABLE OF CONTENTS.....</b>	<b>1</b>
<b>INTEREST OF THE PETITIONER.....</b>	<b>1</b>
<b>STATEMENT OF THE CASE.....</b>	<b>2</b>
Initial Claims and Denials.....	2
Remaining Habeas Corpus Cases.....	2
United States' Waiver of Response.....	3
Circuit Split on AEDPA Application.....	3
<b>ARGUMENT.....</b>	<b>4</b>
I. The Need for Supreme Court Intervention in Light of the United States' Waiver of Response.....	4
II. The Supreme Court's Role in Resolving the Circuit Split on AEDPA's Application.....	5
III. The Imperative for Judicial Oversight Following the Judicial Insight of 2/20/2024.....	6
<b>CONCLUSION.....</b>	<b>6</b>

### INTEREST OF THE PETITIONER

This supplemental brief is filed by Martin Akerman, petitioner, proceeding in forma pauperis, to bring to the Court's attention new intervening matter not available at the time of the party's last filing. This includes the pivotal judicial insight from *In Re Michael Bowe*, 601 U.S. \_\_\_\_ (2024), hereby included as Appendix A, and the United States' strategic waiver of the right to respond, underscoring the need for this Court's intervention.

## **STATEMENT OF THE CASE**

This case presents critical questions regarding the interpretation of §2244(b)(1) of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), especially its applicability to federal prisoners under §2255. The recent judicial insight from *In Re Michael Bowe*, as well as the respondent's waiver, brings to light the urgent need for Supreme Court review to resolve the conflicting interpretations of AEDPA that significantly impact the petitioner's and similarly situated individuals' rights to federal postconviction relief.

### Initial Claims and Denials

My habeas and replevin claims, particularly noted in stay application 23A489 (associated with 23A536), were not considered, leaving the substantive issues unaddressed. Similarly, cases 23-623 and 23M52, stemming from Nevada state military jurisdiction and the Federal Circuit respectively, were denied on February 20, 2024. Case 23M53, addressing a federal military court conviction, was also denied on the same date.

### Remaining Habeas Corpus Cases

Among the ongoing legal challenges, case 23-6710 presents a successive state habeas corpus case from the District of Columbia, raising complex jurisdictional questions.

Conversely, the instant case, 23-6709, delineates a distinct appeal against a federal conviction, marking a

continuation of the issues first raised in case 23A489 during its tenure in the Fourth Circuit.

Additionally, case No. 23-01268 in the United States Court of Appeals for the District of Columbia introduces a related challenge under 28 U.S. Code § 2241(e).

#### United States' Waiver of Response

The respondent's decision to waive its right to respond as of February 15, 2024, underscores the tactical legal postures that hinder the thorough examination and resolution of these cases. This maneuver necessitates heightened judicial oversight to ensure access to justice and the accountability of the courts in addressing grievances of such fundamental nature.

#### Circuit Split on AEDPA Application

The interpretive divide among the Circuit Courts concerning §2244(b)(1) of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) starkly illustrates a fragmented judicial landscape, undermining the uniform application of justice across the United States. Specifically, the Ninth, Fourth, and Sixth Circuits have narrowly interpreted §2244(b)(1) as applicable solely to state prisoners. In contrast, the Eighth, Fifth, Eleventh, Third, Second, and Seventh Circuits have adopted a broader application, extending this statutory bar to encompass both state and federal prisoners. This inconsistency not only impedes the ability of individuals to seek effective postconviction relief but also signifies a troubling erosion of fundamental constitutional rights.

## **ARGUMENT**

This supplemental brief underscores the imperative for the Supreme Court's intervention to address the critical issues raised by the petitioner, Martin Akerman. These issues, highlighted by new intervening matters and the judicial insight from *In Re Michael Bowe*, present a unique opportunity for the Court to clarify significant legal uncertainties within the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) and to safeguard fundamental constitutional rights.

### I. The Need for Supreme Court Intervention in Light of the United States'

#### Waiver of Response

The United States' strategic waiver of the right to respond, executed on February 15, 2024, serves not merely as a procedural maneuver but as a bellwether for the necessity of this Court's review. This waiver leaves critical questions unanswered, particularly regarding the application of AEDPA's §2244(b)(1) to federal prisoners, and the broader implications for justice and due process. The absence of a response from the United States underscores the urgent need for the Supreme Court to fill the void left by this waiver, ensuring that the petitioner's constitutional claims receive the consideration they warrant.

II. The Supreme Court's Role  
in Resolving the Circuit Split  
on AEDPA's Application

The judicial insights provided by Justice Sotomayor, joined by Justice Jackson, in *In Re Michael Bowe*, 601 U.S. \_\_\_\_ (2024), underscore the critical need for Supreme Court intervention to address the circuit split on the application of §2244(b)(1) of AEDPA. This statement, issued on February 20, 2024, after the filing of the current case, highlights the Supreme Court's awareness and concern over a matter directly impacting the petitioner's and similarly situated individuals' rights to seek postconviction relief. The explicit acknowledgment of the structural barriers that have prevented a resolution of this issue at the Supreme Court level emphasizes the unique and timely opportunity for this Court to clarify the scope of §2244(b)(1). Such clarification is imperative not only for ensuring uniform application of the law but also for safeguarding the procedural rights of federal prisoners across the United States.

III. The Imperative  
for Judicial Oversight

Following the Judicial Insight of 2/20/2024

The insights from *In Re Michael Bowe*, articulated after the filing of this case and the respondent's strategic waiver, illuminate the ongoing erosion of fundamental constitutional rights due to the existing interpretive divide among the Circuit Courts. The statement from February 20, 2024, serves as a critical juncture for the Supreme Court to exercise its oversight, ensuring that the procedural and substantive rights guaranteed by the Constitution are not undermined by judicial inconsistency. The timing of this statement underscores the urgency for the Court's intervention to address the disparities in how AEDPA is applied to federal versus state prisoners, affirming the Court's role in protecting individual liberties against the backdrop of evolving legal interpretations.

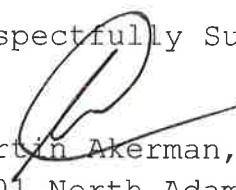
**CONCLUSION**

The petitioner's odyssey through the legal system, marked by denials, overlooked claims, and the strategic waiver by the United States, paints a vivid portrait of the obstacles that stand between individuals and their constitutional rights to due process and habeas corpus relief. This narrative, set against the backdrop of a divided judicial landscape as illuminated by *In Re Michael Bowe*, serves as a stark reminder of the risks posed by an inconsistent application of the law. Such disparities not only undermine the integrity of our legal system but also embolden the specters of arbitrariness and unchecked authority.

As this Court contemplates the merits of the petitioner's request, it is imperative to consider the broader implications of its decision. Granting this petition would not merely address the grievances of a single individual but would also reinforce the foundational principles that underpin our legal system. It would affirm the Court's commitment to ensuring that the writ of habeas corpus remains a robust safeguard against wrongful detention and a beacon of hope for those who, like the petitioner, seek to challenge the legality of their confinement under the most challenging circumstances.

Therefore, in the spirit of justice and in alignment with the constitutional safeguards that define our nation, the petitioner urges the Court to grant the petition under the escape hatch provision of 28 USC §2255 and 28 USC §2241. Such an action would not only rectify the wrongs endured by the petitioner but would also serve as a testament to the Court's unwavering dedication to upholding the rights and liberties enshrined in our Constitution. It is through such measures that the Court can ensure the statute's reach and limitations are applied fairly and uniformly, guarding against the erosion of fundamental rights and affirming the principle that the law must serve as a protector of all individuals, regardless of their circumstances.

Respectfully Submitted,



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## APPENDIX A

**In Re Michael Bowe, 601 U.S. \_\_\_\_ (2024)**

The attached statement by Justice Sotomayor, joined by Justice Jackson, brings to light the significant circuit split regarding the interpretation of §2244(b)(1) of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA). Issued on February 20, 2024, the justices drew attention to the challenges and structural barriers faced in resolving the applicability of this statutory bar to successive habeas corpus petitions. This judicial insight not only reinforces the complexity of the legal issue at hand but also the Supreme Court's recognition of the need for a resolution that aligns with the principles of justice and equity. The call for the Supreme Court to grant certiorari to resolve the conflicting interpretations of §2244(b)(1) highlights the case's significance as a pivotal moment for the Court to ensure that AEDPA's reach and limitations are clearly defined and uniformly applied, safeguarding the rights of individuals seeking federal postconviction relief.

This appendix and the arguments presented within the supplemental brief underscore the pressing need for the Supreme Court's review and resolution of the legal uncertainties surrounding AEDPA, particularly in light of the new judicial insights and the United States' waiver of response.

Statement of SOTOMAYOR, J.

**SUPREME COURT OF THE UNITED STATES**

**IN RE MICHAEL BOWE**

**ON PETITION FOR WRIT OF HABEAS CORPUS**

No. 22–7871. Decided February 20, 2024

The petition for a writ of habeas corpus is denied.

Statement of JUSTICE SOTOMAYOR, with whom JUSTICE JACKSON joins, respecting the denial of the petition for a writ of habeas corpus.

Under §2244(b)(1) of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), a federal court must dismiss a “claim presented in a second or successive habeas corpus application under section 2254 that was presented in a prior application.” 28 U. S. C. §2244(b)(1). State prisoners seek federal postconviction relief under §2254. Federal prisoners seek postconviction relief under §2255. This petition raises the question whether §2244(b)(1)’s bar, which explicitly references only §2254, also applies to a claim by a *federal* prisoner who brings a successive challenge to his conviction under §2255.

The Government agrees with Bowe that §2244(b)(1)’s plain language covers only challenges by state prisoners under §2254. Three Circuits now agree with that interpretation. See *Jones v. United States*, 36 F. 4th 974, 982 (CA9 2022) (“The plain text of §2244(b)(1) by its terms applies only to state prisoners’ applications”); *In re Graham*, 61 F. 4th 433, 438 (CA4 2023); *Williams v. United States*, 927 F. 3d 427, 434 (CA6 2019). But six Circuits disagree. See *Winarske v. United States*, 913 F. 3d 765, 768–769 (CA8 2019); *In re Bourgeois*, 902 F. 3d 446, 447 (CA5 2018); *In re Baptiste*, 828 F. 3d 1337, 1339–1340 (CA11 2016); *United States v. Winkelman*, 746 F. 3d 134, 135–136 (CA3 2014); *Gallagher v. United States*, 711 F. 3d 315 (CA2 2013); *Taylor v. Gilkey*, 314 F. 3d 832, 836 (CA7 2002).

## Statement of SOTOMAYOR, J.

JUSTICE KAVANAUGH has previously expressed his desire for this Court to resolve this split. *Avery v. United States*, 589 U. S. \_\_\_, \_\_\_ (2020) (statement respecting denial of certiorari) (slip op., at 2). I now join him. There is a reason, however, that this is the first case to reach the Court presenting this question since he welcomed petitions on the split in *Avery*. There are considerable structural barriers to this Court’s ordinary review via certiorari petition.

A petition cannot reach this Court from the three Circuits that read §2244(b)(1) to apply only to state prisoners. Before a federal prisoner can file a second or successive habeas §2255 motion, a court of appeals must certify it. See 28 U. S. C. §2255(h). When a federal prisoner files a second or successive §2255 motion that raises an issue he has raised previously, neither the court of appeals nor the district court will apply §2244(b)(1)’s bar. If the court of appeals certifies the motion, the district court will decide it on the merits. The Government, because it agrees that §2244(b)(1) applies only to state prisoners, will not seek certiorari and the question will be left behind.

A petition cannot reach this Court from the six Circuits that apply §2244(b)(1) to both state and federal prisoners either. In those Circuits, the court of appeals will apply §2244(b)(1)’s bar and deny certification to any second or successive §2255 motion that raises an issue the prisoner has previously raised. Neither the Government nor the prisoner can seek review of that interpretation of §2244(b)(1) from this Court, however, because AEDPA separately bars petitions for certiorari stemming from “[t]he grant or denial of an authorization by a court of appeals to file a second or successive application.” §2244(b)(3)(E).

Here, the Eleventh Circuit denied Bowe authorization to file his successive §2255 motion based on §2244(b)(1). Faced with §2244(b)(3)(E)’s bar on petitioning for review of that denial in this Court, Bowe instead invokes this Court’s jurisdiction to entertain original habeas petitions under

## Statement of SOTOMAYOR, J.

§2241(a). The standard for this Court’s consideration of an original habeas petition is a demanding one. A petitioner must show both that “adequate relief cannot be obtained in any other form or from any other court” and “exceptional circumstances warrant the exercise of the Court’s discretionary powers.” Rule 20.4(a). Whether Bowe has met that demanding standard here is questionable, because it is not clear that, absent §2244(b)(1)’s bar, the Eleventh Circuit would have certified his §2255 motion.

The Circuit split, however, is still an important issue for this Court to consider in a more appropriate case. I would welcome the invocation of this Court’s original habeas jurisdiction in a future case where the petitioner may have meritorious §2255 claims. The Government also suggests that a court of appeals seeking clarity could certify the question to this Court. In the meantime, in light of the demanding standard for this Court’s jurisdiction over original habeas petitions, I encourage the courts of appeals to reconsider this question en banc, where appropriate.\*

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\*For instance, it may be unnecessary to revisit the question en banc where statements from prior cases examining §2244(b)(1)’s bar are dicta, rather than holdings. See, e.g., *Williams v. United States*, 927 F. 3d 427, 435–436 (CA6 2019) (revisiting the §2244(b)(1) analysis after concluding that statements from two published prior cases were unreasoned dicta); *King v. Brownback*, 601 U. S. \_\_\_, \_\_\_ (2023) (statement of SOTOMAYOR, J., respecting denial of certiorari) (noting different avenues for lower courts to reconsider the application of a statutory bar).