No. 25-_____

IN THE
SUPREME COURT OF THE UNITED STATES

DAMAR D. RUFFIN

***Petitioner*,**

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for Writ of Certiorari
to the U.S. Court of Appeals
for the Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

Jeffrey M. Brandt, Esq.
ROBINSON & BRANDT, P.S.C.
629 Main Street
Suite B
Covington, KY 41011
(859) 581-7777 voice
jmbrandt@robinsonbrandt.com
Counsel of Record for Petitioner

30 June 2025

QUESTIONS PRESENTED FOR REVIEW

Petitioner was sentenced to serve a mandatory term of life in prison because the law of the time required a mandatory life sentence when defendants had two or more felony drug offense convictions. 21 U.S.C. § 841(b)(1)(A); 21 U.S.C. § 851. Within a month of obtaining the orders expunging prior state convictions—orders that meant that if Petitioner were sentenced today, he would no longer be subject to a mandatory life sentence and would face a mandatory as low as 15 years—Petitioner filed a second-in-time § 2255 motion in the district court seeking a reduction in sentence as a result of the orders of expungement. He acknowledged that he had filed and lost a first § 2255 motion but cited this Court's case law establishing that a second or successive actions based on new facts should be heard in the district court. See *Panetti v. Quarterman*, 551 U.S. 930, 943 (2007). The district court transferred the case to the Sixth Circuit as a § 2244 application. Petitioner appealed that order.

Two separate actions proceeded in the circuit court. The applicable standards for those separate actions were vastly different. For the second or successive application, Petitioner needed to make a showing including that "no reasonable factfinder would have found the movant guilty of the offense." 28 U.S.C. § 2255(h)(1). For the separate matter, Petitioner needed to show that, under this Court's case law, he had filed an action that was properly brought in the district court and did not require pre-certification from the circuit court. The Sixth Circuit dismissed the second matter, noting that the circuit had held that transfer orders were not appealable and that it would address the appropriateness of transfer orders as a part of the second or successive application proceeding. See *Howard v. United States*, 533 F.3d 472, 474 (6th Cir. 2008).

The Court has held that 28 U.S.C. § 2244(b)(3)(E)'s limitation on petitioning the Court for writ to certiorari did not apply to the district court's finding that a filing was a second § 2255 rather than a first. *Castro v. United States*, 540 U.S. 375, 380-81 (2003). But case law is unclear on whether a related or similar questions, such as whether the district court erred in transferring the case on a finding that the law did not allow a second § 2255 motion requesting a reduction of sentence following an expungement order that could not have been entered any earlier.

The question presented is whether a circuit court errs in finding that a transfer order is not appealable, dismisses a petitioner's appeal of the district court's decision that the petitioner's filing was not a legitimate second-in-time § 2255 motion based on new facts, and fold the issue of the appropriateness of the transfer order into the § 2244 application proceeding. The circuit court may wait beyond the 90 days to petition this Court for review of the dismissal of the appeal of the transfer order, deny the § 2244 application and affirm the district court's transfer. If 28 U.S.C. § 2244(b)(3)(E) applies, the Court is precluded from hearing Petitioner's appeal of the district court's transfer order. Petitioner notes that the Court has accepted review of a similar question whether "28 U.S.C. § 2244(b)(3)(E) deprives this Court of certiorari jurisdiction over the grant or denial of an authorization by a court of appeals to file a second or successive motion to vacate under 28 U.S.C. § 2255." *Bowe v. United States*, No. 24-5438.

TABLE OF CONTENTS

Appendix Contents

TABLE OF AUTHORITIES

Case Law:

Other Authorities:

PETITION FOR WRIT OF CERTIORARI

Petitioner Damar D. Ruffin respectfully petitions the Court for a writ of certiorari to review the judgment of the U.S. Court of Appeals for the Sixth Circuit dismissing his appeal of a district court order transferring his case on a ruling that orders for transfer are non-appealable.

OPINION BELOW

The opinion of the U.S. Court of Appeals for the Sixth Circuit, dismissing Petitioner's appeal of the district court's ruling that Petitioner's second-in-time § 2255 motion was a filing requiring circuit preauthorization, is unpublished. *Damar D. Ruffin v. United States*, No. 25-3026 (6th Cir., Mar. 31, 2025). Petitioner's Appendix ("Pet.") 1a. The Sixth Circuit's opinion denying Petitioner's timely petition for rehearing is also unpublished. *Damar D. Ruffin v. United States*, No. 25-3026 (6th Cir. April 22, 2025). Pet. 4a.

STATEMENT OF THE BASIS FOR JURISDICTION

Jurisdiction is contested and is the subject of this petition. Petitioner asserts that the district court had jurisdiction over his chronologically second § 2255 motion. While Petitioner had filed and lost an earlier § 2255 motion, his second-in-time § 2255 motion sought a reduction of sentence under the Court's case law. See *Johnson v. United States*, 544 U.S. 295, 303 (2005), *Daniels v. United States*, 532 U.S. 374, 382 (2001); *Custis v. United States*, 511 U.S. 485 (1994). Petitioner was diligent in seeking the orders of expungement, he filed the second § 2255 motion within a month of obtaining the orders, and the orders were "facts" that could not have been presented in his earlier § 2255 motion. See *Panetti v. Quarterman*, 551 U.S. 930, 943 (2007). The district court ordered transfer of the filing to the Sixth Circuit, leading to an original action in the court of appeals. Pet. 5a. That matter remains pending as of the date of this filing.

Separate from the transferred matter, Petitioner filed a timely notice of appeal, seeking to appeal the district court's finding that the § 2255 motion was not a second-in-time § 2255 motion properly brought in the district court. The Sixth Circuit dismissed that appeal, citing its holding that transfer orders cannot be appealed and that the circuit court addresses the appropriateness of the transfer order as a part of the § 2244 application proceeding. Pet. 1a. Petitioner moved for reconsideration, noting that this holding meant that if the Sixth Circuit denied the § 2244 application and affirmed the district court, uncertainty on the limitations of 28 U.S.C. § 2244(b)(3)(E) could prevent Petitioner from seeking this Court's review of the district court's decision to transfer to the Sixth Circuit. The Sixth Circuit denied the motion for reconsideration. Pet. 4a.

This Court has jurisdiction under 28 U.S.C. § 1254(1), as Petitioner is filing this petition within 90 days of the Sixth Circuit's ruling denying the timely-filed motion for reconsideration. See Sup. Ct. R. 13.1, 13.3., 29.2.

RELEVANT STATUTORY PROVISIONS

> The grant or denial of an authorization by a court of appeals to file a second or successive application shall not be appealable and shall not be the subject of a petition for rehearing or for a writ of certiorari.

28 U.S.C. § 2244(b)(3)(E).

> A 1-year period of limitation shall apply to a motion under this section [28 U.S.C. § 2255]. The limitation period shall run from the latest of—
>
> * * * *
>
> (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

28 U.S.C. § 2255(f)(4).

> A second or successive motion must be certified as provided in section 2244 by a panel of the appropriate court of appeals to contain—
>
> > newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense; * * *.

28 U.S.C. § 2255(h)(1).

STATEMENT OF THE CASE

This case presents a question that, when addressed and resolved, determines whether this Court will be able to review conclusions of lower courts that conflict with the Court's precedent concerning when a second or successive action is directly filed in the district court without pre-authorization from the circuit court.

Petitioner sought to appeal the district court's ruling that this Court's precedent did not allow a second § 2255 motion to be filed in the district court requesting a reduction of sentence following an expungement order that could not have been entered any earlier. The Sixth Circuit dismissal has, for the moment, prevented that question from being heard on appeal.

The Court has held that 28 U.S.C. § 2244(b)(3)(E)'s limitation on petitioning the Court for writ to certiorari did not apply to the district court's finding that a filing was a second § 2255 motion rather than a first § 2255 motion. *Castro v. United States*, 540 U.S. 375, 380-81 (2003). The Court has not expanded that holding in the interim, and the case law is unclear on whether the related, similar question presented here would be likewise excluded from § 2244(b)(3)(E)'s limitations on appeals to this Court. If the Sixth Circuit waits more than 90 days after dismissing Petitioner's attempted appeal of the transfer order before ruling on Petitioner's pending § 2244 application, if the Sixth Circuit denies that application and affirms the district court's transfer

order, and if Petitioner's argument is not exempted from § 2244(b)(3)(E), the Court would be prevented from hearing his argument, and he would be beyond the 90 days to seek review of the question presented here.[1]

1. The district court sentenced Petitioner to serve a mandatory term of life in prison because the law of the time required a mandatory life sentence when defendants had two or more felony drug offense convictions. 28 U.S.C. § 841(b)(1)(A); 28 U.S.C. § 851.

2. Petitioner's first § 2255 motion only raised sentencing issues. These included whether the drug quantity finding supported the mandatory life sentence and whether his offense of conviction (conspiracy) allowed a finding that he was a career offender.

3. Recognizing that his life sentence was the result of prior convictions, Petitioner diligently sought orders of expungement in the state courts. The state courts eventually ordered expungement. As a result of the orders, if sentenced today, Petitioner would not be subject to a mandatory life sentence. Under new law, the mandatory minimum sentence would be 15 years at most.

4. Within a month of receiving the orders of expungement that meant he would no longer subject to a mandatory life sentence if re-sentenced, Petitioner filed a second-in-time § 2255 motion seeking a reduction of sentence. The request for reduction of sentence through § 2255

---

[1] The Court accepted review of a related question of whether "28 U.S.C. § 2244(b)(3)(E) deprives this Court of certiorari jurisdiction over the grant or denial of an authorization by a court of appeals to file a second or successive motion to vacate under 28 U.S.C. § 2255." See *Bowe v. United States*, No. 24-5438 (granted from Eleventh Circuit order dated Jun. 27, 2024). Petitioner recognizes that, if the Court rules in *Bowe* that § 2244(b)(3)(E) does not apply to § 2255 proceedings, it would appear that he would not be prejudiced by the Sixth Circuit dismissal at issue here. For these reasons, in the event that the Court is not included to grant certiorari on the question presented here, Petitioner would ask the Court in the alternative to stay this matter until the ruling in *Bowe*.

and following the orders of expungement was supported by this Court's decisions including *Johnson v. United States*, 544 U.S. 295, 303 (2005), *Daniels v. United States*, 532 U.S. 374, 382 (2001); *Custis v. United States*, 511 U.S. 485 (1994). The assertion that he was properly filing in the district court was supported by *Panetti v. Quarterman*, 551 U.S. 930 (2007). Although *Panetti* addressed a chronologically second § 2254 petition, rather than § 2255 motion to vacate, the Court made clear that "second of successive" is not self-defining and when claims cannot be raised in an earlier filing, the chronologically second filing can be filed in the district court outside of the § 2244 application requirements. *Id*. at 943.

5. The district court ruled that *Panetti* was distinguishable and immaterial, that there were no new facts justifying avoiding § 2255(h) and seeking authorization from the Sixth Circuit, and ordered transfer. Pet. 5a. The transfer resulted in an original action in the Sixth Circuit. It remains pending and is not a subject of this petition.

6. Petitioner filed a motion for reconsideration in the district court. When the district court denied it, Petitioner appealed from that order to make clear on the record that he intended to appeal to the Sixth Circuit—and litigate separately from the § 2255(h)(1) standard that required making a prima facie showing of newly discovered evidence that no reasonable factfinder would have found him guilty—whether the district court had erred in ruling that circuit preauthorization was necessary.

7. In the separate appeal, Petitioner pointed out the reasons for treating the appeal of the district court's ruling separate from the transferred matter. This included that if the Sixth Circuit folded all legal issues together in the § 2244 application proceeding, and if it denied Petitioner's § 2244 application, the district court and Sixth Circuit could escape the potential for accepting

review of those decisions. He noted that § 2244(b)(3)(E) could prevent him from appealing the district court's error in finding that the second-in-time § 2255 motion needed to be presented to the Sixth Circuit first.

8. The Sixth Circuit dismissed Petitioner's separate appeal. Pet. 1a. It cited its holding that transfer orders are not appealable. See *Howard v. United States*, 533 F.3d 472, 474 (6th Cir. 2008). It reported that it would address the question of the appropriateness of the district court's decision that Petitioner could not file a second-in-time § 2255 motion in the district court in the second or successive authorization proceeding.

9. The Sixth Circuit has not ruled on the § 2244 application. While the statute calls for circuit courts to rule on § 2244 applications within 30 days, the Sixth Circuit does not follow that requirement. See *In re McDonald*, 514 F.3d 539, 543 (6th Cir. 2008). It is possible, if not exceedingly likely, that the Sixth Circuit will rule on that matter well beyond the 90 days Petitioner has presented this petition, asking the Court to accept review of the Sixth Circuit's dismissal under its holding in *Howard*.

10. If the Sixth Circuit denies Petitioner's § 2244 application and affirms the district court's transfer order, if the question Petitioner wishes to bring is not exempted from the limitations of § 2244(b)(3)(E) like the question presented in *Castro*, and if the Court does not rule that § 2244(b)(3)(E) is inapplicable to § 2255 cases (or a favorable ruling comes too late for Petitioner to take advantage of it), the Court will not have the opportunity to accept the question Petitioner brings.

Petitioner remains in the custody of the U.S. Bureau of Prisons at USP Hazelton in Bruceton Mills, West Virginia under an order to serve his entire life in prison.

REASONS FOR GRANTING THE PETITION FOR WRIT

This case presents an important question that could determine whether the Court has the ability to review lower court rulings that conflict with the Court's precedent concerning what qualifies as "second or successive" under the Anti-terrorism and Effective Death Penalty Act ("AEDPA").

I. The Court Should Grant Certiorari to Address and Resolve whether a Circuit Court Errs by, as a Matter of Policy, Dismissing Appeals of a District Court's Decision to Transfer a Second or Successive § 2255 Motion and Addressing the Appropriateness of that Classification in the § 2244 Application Proceeding, as Case Law does not Yet Clearly Provide that this Court Can be Petitioned to Review Denial of that Application under 28 U.S.C. § 2244(b)(3)(E).

A. The Court's Precedent Allows § 2255 Motions Seeking a Reduction of Sentence after Orders Vacating, Reversing or Expunging Prior Convictions.

The Court has held that a person incarcerated as a result of a federal conviction may seek a reduction of sentence, through 28 U.S.C. § 2255, following a state court order vacating, expunging or reversing a conviction. *Johnson v. United States*, 544 U.S. 295, 302, 125 S. Ct. 1571, 1577 (2005). In *Johnson*, the government had argued that the facts supporting that petitioner's claim were those on which he challenged the validity of his state convictions, so they did not fit into the § 2255(f)(4) rubric. *Id.* at 305-06. The Court disagreed, explaining that though the "circumstances rendering the underlying predicate conviction invalid are ultimate subjects of fact supporting the § 2255 claim," a petitioner cannot obtain relief under § 2255 before the state vacatur. *Id*. at 305, 125 S. Ct. at 1578-79.

The *Johnson* Court held that a state court order vacating, expunging or reversing a conviction is a new "fact" that forms the basis of the challenge under § 2255 and triggers a fresh one-year statute of limitations under § 2255(f) so long as the petitioner exercised due diligence in

seeking that order. *Id*. at 305-07. Only after an underlying conviction is successfully challenged may a defendant seek relief in federal courts. See *Daniels v. United States*, 532 U.S. 374, 382, 121 S. Ct. 1578 (2001); *Custis v. United States*, 511 U.S. 485, 114 S. Ct. 1732 (1994).

B. In Some Circumstances, Circuit Preauthorization is Required to Proceed with a Second or Successive Petition or Motion; but "Second or Successive" is Not Self-defining, and the Court has Found that Some Second or Successive § 2254 Petitions do not Require Circuit Preauthorization.

Persons incarcerated as a result of a federal conviction who have already lost a first motion under 28 U.S.C. § 2255 can apply to the circuit court for leave to file a "second or successive" § 2255 motion. 28 U.S.C. § 2255(h). AEDPA's restrictions on second or successive motions are meant to forestall abuse of the writ of habeas corpus, see *Felker v. Turpin*, 518 U.S. 651, 664, 116 S. Ct. 2333, 2340 (1996), by, for instance, barring successive motions raising habeas claims that could have been raised in earlier motions where there was no legitimate excuse for failure to do so. See *McCleskey v. Zant*, 499 U.S. 467, 493-95, 111 S. Ct. 1454, 1469-71 (1991). But the Court has noted that "[t]he phrase 'second or successive' is not self-defining." *Panetti v. Quarterman*, 551 U.S. 930, 943 (2007). "The phrase 'second or successive,' the Court has held, is a 'term of art' that draws meaning from the history of federal habeas corpus and the objectives of AEDPA." *Banister v. Davis*, 509 U.S. 504, 511-12 (2020). The Court has "often made clear that it does not 'simply "refer"' to all habeas filings made 'second or successively in time,' following an initial application." *Magwood v. Petterson*, 561 U.S. 320, 332 (2010) (quoting *Panetti*, 551 U.S. at 944).

In *Panetti*, the petitioner raised a *Ford* incompetency claim was filed as soon as that claim was ripe.[2] The state argued that the claim was barred because it had not been foreseen, raised and preserved in the petitioner's first § 2255. *Id*. at 943. The Court rejected that argument, explaining that if this interpretation of "second or successive correct," "'the implications for habeas practice would be far reaching and seemingly perverse.'" *Id*. at 943 (quoting *Stewart v. Martinez-Villareal*, 523 U.S. 637, 644 (1998)). "A prisoner would be faced with two options: forgo the opportunity to raise a *Ford* claim in federal court; or raise the claim in a first federal habeas application (which generally must be filed within one year of the relevant state-court ruling), even though it is premature." *Id*.

The *Panetti* Court determined "that Congress did not intend the provisions of AEDPA addressing "second or successive' petitions to govern a filing in the unusual posture presented here: a § 2254 application raising a *Ford*-based incompetency claim filed as soon as that claim is ripe." *Id*. at 945. The Court ultimately determined that the petitioner's *Ford* claim was not "second or successive," thereby refusing to construe AEDPA "in a manner that would require unripe (and, often, factually unsupported) claims to be raised as a mere formality, to the benefit of no party." *Id*. at 947.

In this case, like in *Panetti*, the phrase "second or successive" must not be interpreted "in a manner that would require unripe (and, often, factually unsupported) claims to be raised as a mere formality, to the benefit of no party." *Panetti*, 551 U.S. at 947. The *Ford* claim in *Panetti* is analogous to Petitioner's expungement orders. The *Ford* claim in *Panetti* could not have been

---

[2] See *Ford v. Wainwright*, 477 U.S. 399, 409-410, 106 S. Ct. 2595 (1986) ("[T]he Eighth Amendment prohibits a State from carrying out a sentence of death upon a prisoner who is insane.").

raised in that petitioner's first § 2254 petition. Similarly, Petitioner could not have raised his *Johnson*-based request for a reduction in sentence in his first § 2255 motion because his state orders of expungement did not exist at that time (and could not have existed under Ohio law).

C. The Reasoning Applied to Second § 2254 Applies to Second § 2255 Motions.

The logic the Court has applied to facts giving rise to second § 2254 applies with equal force to § 2255 motions to allow petitioners to seek relief directly from the district courts even though the filing is a second or subsequent motion. This is precisely how circuits have interpreted *Panetti* and *Stewart*.

In *Leal Garcia v. Quarterman*, 573 F.3d 214 (5th Cir. 2009), the Fifth Circuit addressed the balance of precluding re-litigation of issues and the importance of permitting petitioners to raise previously unavailable claims. The *Leal Garcia* court concluded that a subsequent § 2254 petition that was based upon a defendant that did not arise until after the proceedings on the previous petition were completed was not successive. *Id*. at 224. If "the purported defect did not arise, or the claim did not ripen, until after the conclusion of the previous petition, the later petition of that defect may be non-successive." *Id*. at 222. The basis for the claim in *Leal Garcia* was a state court decision refusing to conduct a review of a conviction and did not occur until well after proceedings on his first § 2254 petition were concluded. *Id*. at 224. Thus, the second-in-time petition was not "second or successive" under AEDPA. *Id*.

In *United States v. Orozco-Ramirez*, 211 F.3d 862, 869 (5th Cir. 2000), the Fifth Circuit applied this approach in the context of a § 2255 motion. The circuit court held that a defendant's claim of ineffective assistance of counsel during his out-of-time appeal "could not have been raised in [his] prior proceeding and, thus, is not 'second or successive.'" *Id*. at 869, 871.

The Eleventh Circuit has noted that "[t]he posture in *Panetti* was 'unusual,' but it was not *unique*." *Stewart v. United States*, 646 F.3d 856, 852 (11th Cir. 2011) (emphasis sic). "[W]hen a claim could not have been been raised in a prior habeas petition, courts have interpreted *Panetti* to permit that claim to be raised in a subsequent petition." Id. (citing *United States v. Buenrostro*, 638 F.3d 720, 725 (9th Cir. 2011) (per curiam) ("*Panetti* do[es] not apply only to *Ford* claims. Prisoners may file second-in-time petitions based on events that do not occur until a first petition is concluded."); *Johnson v. Wynder*, 408 Fed. Appx. 616, 619 (3d Cir. 2010) ("We see no reason to avoid applying *Panetti* in the context of other types of claims that ripen only after an initial federal habeas petition has been filed."); *United States v. Lopez*, 577 F.3d 1053, 1064 (9th Cir. 2009) ("The considerations the [Supreme] Court identified in support of its holding are not specifically limited to *Ford* claims, and therefore must be considered in deciding whether other types of claims that do not survive a literal reading of AEDPA's gatekeeping requirements may nonetheless be addressed on the merits."(citation omitted)).

The Sixth Circuit, too, has ruled in line with these circuits following *Panetti* to apply the logic to second-in-time § 2255 motions, even though it failed to do so in this case. "One might think that 'second or successive' means what it says—that federal prisoners get 'one shot' to attack a judgment that confines them." *In re Jones*, 54 F.4th 947, 949 (6th Cir. 2022) (quoting *Potter v. United States*, 887 F.3d 785, 787 (6th Cir. 2018)). "But the Supreme Court has instructed us otherwise." *Id*. "As a result, some second-try § 2255 motions are not 'second or successive' within the meaning of § 2255(h)." *Id.*

In *Jones*, for example, the petitioner had filed a "second or successive" § 2255 motion in the Sixth Circuit under the procedures of § 2244, asking the circuit court to authorize the district

court to consider his claim. *Jones*, 54 F.4th at 949. This was filed after California dismissed and vacated the petitioner's prior conviction for a narcotics offense. *Id*. The Sixth Circuit ruled that he had not filed a second or successive § 2255 motion, that he did not need authority to file a second-in-time § 2255 motion, because "the events giving rise" to his claim came about when California dismissed and vacated the prior California conviction. *Id*. "In 2016, when [the petitioner] filed his first § 2255 motion, those events 'had not yet occurred.'" *Id*. (quoting *In re Jones*, 652 F.3d 603, 605 (6th Cir. 2010)). Accordingly, the Sixth Circuit dismissed the application for leave "as unnecessary" and transferred the matter to the district court. *Id*. at 950.

D. Title 28 U.S.C. § 2244(b)(3)(E) has been Interpreted to Apply to § 2255 Motions and, thus, to Preclude Petitions for Writ of Certiorari from Denied Applications to File Second or Successive § 2255 Motions.

The "grant or denial of an authorization by a court of appeals to file a second or successive application * * * shall not be the subject of a petition for * * * a writ of certiorari." 28 U.S.C. § 2244(b)(3)(E). The Sixth Circuit has held that "[a] denial of a motion to authorize a successive petition is unreviewable—not by the en banc court, not by the Supreme Court." *In re Embry*, 831 F.3d 377, 382 (6th Cir. 2016). *Embry* involved a request to file a second or successive § 2255 motion.

This Court has held that § 2244(b)(3)(E) does not bar a petition of writ of certiorari that seek review of a district court's decision that a certain filing qualified as a second § 2255 motion, rather than a first, when the incarcerated person had not labeled an earlier filing as a § 2255 motion. *Castro v. United States*, 540 U.S. 375, 379-80 (2003). The *Castro* Court held that it had the power to review the question of whether the lower court had erred in refusing "to recognize

that this § 2255 motion is his first, not his second," which was "a very different question." *Id*. at 380.

The Court *may* at sometime in the future view Petitioner's request for writ of certiorari as functionally equivalent to the petition in *Castro*. Petitioner would be asking the Court to find that he was seeking to appeal the district court's order transferring the case rather than the Sixth Circuit's decision to deny authorization to proceed in the district court with a chronologically-second § 2255 motion. But because the case law does not currently and clearly provide that this question would necessarily fall outside the limitations of § 2244(b)(3)(E), petitioner seeks certiorari of the question of whether the circuit court errs in dismissing transfer orders as a matter of policy.[3]

E. The Sixth Circuit Dismisses Appeals of District Court Transfer Orders and Requires Applicants to Brief those Errors in the Second and Successive Application Proceedings.

The Sixth Circuit has determined, without a statutory basis, that a district court order transferring a second or successive is not appealable. "Our court's practice in the case of second-or-successive transfer orders to this court is to treat the transfer order as non-appealable, and to consider in the transferred case whether such a transfer was necessary or appropriate." *Howard v. United States*, 533 F.3d 472, 474 (6th Cir. 2008). See *Miller v. Toyota Motor Corp*., 554 F.3d 653, 655 (6th Cir. 2009). Neither *Howard* nor *Miller* provide any statutory authority supporting

[3] Petitioner does not in this petition present the question of whether the district court erred in transferring the case to the Sixth Circuit because that issue is not yet ripe. The Sixth Circuit dismissed that appeal and reported that it would address that question in the § 2244 proceeding, which remains pending. Likewise, Petitioner does not in this petition present the question of whether the Court's holding in *Castro* extends to show that the district court's ruling in this case is outside the limitations of § 2244(b)(3)(E) because, again, the Sixth Circuit has stated that it will answer the question of whether the district court erred in the pending § 2244 proceeding.

the ruling that the transfer order is not appealable. The ruling appears premised on the idea that a transfer of a second or successive § 2255 motion is interlocutory, as the lineage of cases can be traced back to *Lemon v. Druffel*, 253 F.2d 680 (6th Cir. 1958), a case predating AEDPA and holding that an order that grants or denies a transfer is interlocutory and not appealable. *Id*. at 683.

A judicial efficiency may exist as a result of this court-invented rule that orders transferring jurisdiction are not appealable.[4] But regardless of any judicial efficiency, the end result is that can prevent the Court from ever being in a position to decide whether it wishes to review a district court decision that the petitioner did not file a legitimate second-in-time § 2255 that should not be subject to circuit preauthorization. The policy means that, if the Sixth Circuit denies Petitioner's application and affirms the district court, under current interpretation of § 2244(b)(3)(E), Petitioner could not appeal, and this Court would not have a chance to determine whether to accept review of whether the district court erred.

//

---

[4] Any judicial efficiency would come from the fact that the circuit court would have one matter pending, under one case number, rather than two. Combining the unrelated legal issues may not create efficiency, however. The application for leave to file a second or successive petition was designed to be a quick, rather ministerial action, resolving whether a prima facie showing had been made, a standard that was not meant to be difficult to meet. Congress "asked the courts to make these decisions [in response to § 2244 applications] quickly, ideally within 30 days of a motion's filing and often with little if any briefing." *In re Embry*, 831 F.3d 377, 382 (6th Cir. 2016). The quick turnaround makes sense for the question of whether to authorize the second or successive petition. After all, the applicant "needs only to make a 'prima facie showing' that his claim relies on a new rule of constitutional law made retroactive to cases on collateral review by the Supreme Court." *Id*. at 381-82 (citing 28 U.S.C. § 2244(b)(3)(C)). "That is 'not a difficult standard to meet.'" *Id*. (quoting *In re Lott*, 366 F.3d 431, 432 (6th Cir. 2004)). But one would be reasonable in questioning if Congress intended for circuit courts to review the *appropriateness of the transfer* in a mere 30 days.

F. Unless and Until the Court Expressly Extends *Castro* to Circumstances Presented Here or the Court Finds that § 2244(b)(3)(E) does not Apply to Court of Appeals Rulings to File a Second or Successive Motion to Vacate under 28 U.S.C. § 2255, the Sixth Circuit's Judicially-created Rule that Transfer Orders Are Not Appealable will Prevent the Court from the Opportunity to Review and Correct Lower Court Errors as to what Qualifies as Second or Successive.

In *Castro*, the Court held that a petition for writ of certiorari seeking review of a district court's decision on whether a § 2255 motion was a first or second motion was outside the limitations of § 2244(b)(3)(E). *Castro*, 540 U.S. at 581. In the decision, the *Castro* Court noted that the limitation did not apply because the petitioner in that case "asked the court to reverse the District Court's dismissal of [his § 2255] motion." *Id*. at 380. "He nowhere asked the Court of Appeals to grant, and it nowhere denied, any 'authorization * * * to file a second or successive application.'" *Id*.

A defendant might be tempted to assume that this holding means that any petition for writ of certiorari that does not make the "subject" of the petition the "denial of an authorization" to file a second or successive motion or petition would not be limited by § 2244(b)(3)(E). While that reasoning is present in *Castro*, that is not what the Court held in *Castro*. The language of the decision appears to limit it to the question presented regarding a district court's determination of whether the filing was a first or second § 2255 motion—"whether Castro's § 2255 motion was his first such motion or his second." *Id*. at 380. "After receiving the parties' responses, we conclude that [§ 2244(b)(3)(E)] does not bar *our review here*." *Id*. at 379 (emphasis added).

In *Castro*, the procedural lines were clearer. The district court certified the question of whether the petitioner's filing was a first or second § 2255, and the Eleventh Circuit allowed the petitioner in that case to appeal without forcing that question to be shoe-horned into a § 2244

application proceeding. See *id*. at 379-80. When the Eleventh Circuit affirmed, it was not making a ruling on a § 2244 application, and the petition was not filed within 90 days of a ruling on a § 2244 application.

That same series of events could not happen in the Sixth Circuit. The district court's order deciding that the filing is something that requires transfer is a part of the order that transfers the matter. The Sixth Circuit then dismisses appeals of the transfer orders as a matter of practice. The only matter pending in the Sixth Circuit is the § 2244 application. In the event the Sixth Circuit denies the application, the petition is filed with this Court in 90 days from that decision, giving an impression that the petitioner is seeking to appeal the denial of the application.

At this time, despite what Petitioner hopes will be the eventual ruling of this Court that his question of the appropriateness of the transfer order is not subject to § 2244(b)(3)(E), no case law provides him a safe haven to assume this to be an accurate interpretation of *Castro*. Had the Sixth Circuit allowed the matters to be separated, and had the Sixth Circuit ruled on the issue of the transfer order and affirmed the district court, this petition would be making a different argument. With the Sixth Circuit's decision to combine the transfer order and the § 2244 application, without knowing how long the Sixth Circuit will take to rule on those issues, and without knowing how the Court will rule on the question it certified in *Bowe v. United States*, No. 24-5438, Petitioner's only way to preserve his argument that the Sixth Circuit erred in dismissing his appeal of the district court's transfer order, is to file this petition and ask the Court to grant certiorari.

CONCLUSION

Petitioner Damar D. Ruffin submits that his petition for writ of certiorari should be granted for the compelling reasons noted above. He asks the Court to grant his petition and grant full briefing in this important matter to address and resolve whether circuit courts err by dismissing appeals of district court orders transferring second or successive § 2255 motion. In the event the Court is not inclined to certify that question, he asks the Court to stay this matter pending the Court's decision in *Bowe v. United States*, No. 24-5438 (granted from Eleventh Circuit order dated Jun. 27, 2024).

Respectfully submitted,

ROBINSON & BRANDT, P.S.C.

Dated: 30 June 2025

by: /s/ Jeffrey M. Brandt

Jeffrey M. Brandt, Esq.
629 Main Street
Suite B
Covington, KY 41011
(859) 581-7777 voice
jmbrandt@robinsonbrandt.com
Counsel of Record for Petitioner

CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the foregoing petition for writ of certiorari and the following appendix were served by U.S. Priority Mail on the date I reported below upon the Solicitor General's Office, Room 5614, Department of Justice, 950 Pennsylvania Avenue, NW, Washington, DC 20530-0001; and Assistant U.S. Attorney, Matthew B. Kall, Office of the U.S. Attorney, 801 W. Superior Avenue, Suite 400, Cleveland, OH 44113.

Dated: 30 June 2025

/s/ Jeffrey M. Brandt
Jeffrey M. Brandt

APPENDIX