No.

IN THE
Supreme Court of the United States

RONRICO SIMMONS, JR.,
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

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QUESTION PRESENTED

To promote the finality of criminal judgments, the Antiterrorism and Effective Death Penalty Act (AEDPA) generally imposes a one-year limitations period on habeas petitions. Recognizing the fundamental importance of the habeas writ to our constitutional freedoms, however, AEDPA also provides several exceptions to that limit, including when a government impediment "in violation of the Constitution or laws of the United States" "prevent[s]" prisoners from timely filing their petitions. 28 U.S.C. § 2255(f)(2). AEDPA also provides that, when a court cannot decide a habeas motion on the pleadings, it must conduct an evidentiary hearing "[u]nless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief." 28 U.S.C. § 2255(b).

The question presented is: whether a court can summarily dismiss a pro se habeas petition as untimely for failure to adequately allege a causal connection when petitioner explains how a government impediment "prevented" him from filing timely, but does not allege with specificity how he discovered and attempted to remedy that impediment.

PARTIES TO THE PROCEEDING

RonRico Simmons, Jr., petitioner on review, was the petitioner-appellant below.

United States of America, respondent on review, was the respondent-appellee below.

RELATED PROCEEDINGS

Counsel is not aware of any related proceedings according to Supreme Court Rule 14.1(b)(iii).

TABLE OF CONTENTS

TABLE OF CONTENTS—Continued

TABLE OF CONTENTS—Continued

TABLE OF AUTHORITIES

Page(s)

CASES:

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

Page(s)

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RonRico Simmons, Jr. respectfully petitions for a writ of certiorari to review the judgment of the Sixth Circuit in this case.

INTRODUCTION

Before 1996, time limits did not restrict when a prisoner could seek habeas relief. The prisoner could "wait a decade" or more, so long as the delay did not prejudice the government's ability to respond. *Lindh* v. *Murphy*, 96 F.3d 856, 866 (7th Cir. 1996) (en banc), *rev'd on other grounds*, 521 U.S. 320 (1997). In 1996, Congress passed the Antiterrorism and Effective Death Penalty Act (AEDPA) imposing a one-year limitations period on habeas petitions. But Congress understood that such a cookie-cutter approach would, in some circumstances, sacrifice habeas protections on

the altar of finality. And so it created three exceptions for when the one-year period can be tolled. This case concerns the first: when the government itself creates an impediment "in violation of the Constitution or laws of the United States" that "prevent[s]" a prisoner from making a timely filing. 28 U.S.C. § 2255(f)(2).

In the case below, Mr. Simmons sought to vacate his sentence because his counsel failed to file certain pretrial motions, explain the full consequences of pleading guilty, and pursue an appeal. But after sentencing, Mr. Simmons was remanded to *state* custody, where he had no access to any federal statute books, forms, case law, or legal assistance. Without these resources, Mr. Simmons could not "determine whether [he had] a colorable claim" "at all," *Bounds* v. *Smith*, 430 U.S. 817, 825, 826 n.14 (1977), never mind understand the "technical requirement[s]" for filing a habeas petition, such as the statute of limitations, *Lewis* v. *Casey*, 518 U.S. 343, 351 (1996). Mr. Simmons spelled all of this out for the court. Over three briefs and as many affidavits—including one from a prison law clerk—Mr. Simmons explained that he knew "nothing at all about federal law," that he "needed" federal materials to prepare his motion, and that their absence "prevented" him from filing timely. Pet. App. 61a, 124a, 135a.

The Sixth Circuit held that Mr. Simmons's allegations were so lacking, they did not even warrant an evidentiary hearing. Mr. Simmons, the court insisted, did not adequately allege that the lack of federal materials "prevented him" from filing his motion while he was still in state custody because he did not attest that he "tr[ied] to go to the state library and get

materials" or "seek out a legal assistant to help." *Id.* at 11a–12a.

Unsurprisingly, the Sixth Circuit's decision splits with other federal courts of appeals. Four circuits—the Fifth, Seventh, Ninth, and Eleventh—have reached the opposite conclusion on nearly identical facts, requiring district courts to fully develop the record before deciding whether a habeas motion is timely. They have sensibly recognized that any doubt as to whether "unconstitutional state action" in fact "prevented [a prisoner from] filing his habeas petition within the limitations period" is a reason *to conduct* a hearing, not summarily dismiss the prisoner's only chance at habeas review. *Whalem/Hunt* v. *Early*, 233 F.3d 1146, 1147–48 (9th Cir. 2000) (en banc) (per curiam); *see* 28 U.S.C. § 2255(h) (generally prohibiting successive § 2255 motions). And at least three other circuits—the Third, Fourth, and Eighth—require an evidentiary hearing where, as here, § 2255 allegations are not "palpably incredible" but cannot be assessed on the present record—including allegations going to causation. *United States* v. *White*, 366 F.3d 291, 297 (4th Cir. 2004) (internal quotation marks omitted).

Before the decision below, only the outlier Tenth Circuit embraced a heightened pleading standard, dismissing habeas petitions without a hearing whenever they did not offer "specificity regarding the alleged lack of access" to federal legal materials and "the steps [a petitioner] took to diligently pursue his federal claims." *Miller* v. *Marr*, 141 F.3d 976, 978 (10th Cir. 1998). The Sixth Circuit now joins in this minority, exacerbating the conflict.

Yet the Sixth Circuit's holding suffers from two fatal flaws. First, by requiring litigants to show *how* they

discovered the government-created impediment and what steps they took to overcome it, the decision below transforms § 2255(f)(2) into a diligence inquiry. But nothing in the statutory text justifies such alchemy. Quite the contrary, AEDPA's text precludes such interpretation by including a "diligence" requirement into § 2255(f)(4) but omitting it from § 2255(f)(2).

Second, the Sixth Circuit's rule flouts AEDPA's requirement to conduct an evidentiary hearing "[u]nless the motion and the files and records of the case conclusively show that the prisoner is *entitled to no relief*." 28 U.S.C. § 2255(b) (emphasis added). The court's holding below—that a hearing is not required unless a prisoner's allegations conclusively establish he is *entitled to relief*—gets the matters exactly backwards. And it all but neuters Congress's deliberate inclusion of § 2255(f)(2) to safeguard "basic habeas corpus principles." *Holland* v. *Florida*, 560 U.S. 631, 648 (2010).

The Sixth Circuit's heightened pleading requirement is not only doctrinally flawed, it also denies habeas protections to individuals who need them most: pro se prisoners who lack formal education and familiarity with federal pleading standards and may thus "reasonably suppose that a heartfelt avowal of * * * veracity, however generalized, is sufficient to secure an evidentiary hearing." *Pham* v. *United States*, 317 F.3d 178, 186–187 (2d Cir. 2003) (Sotomayor, J., concurring). The Court should seize this opportunity to resolve this important, well-aired, and frequently recurring issue. It should grant certiorari.

OPINIONS BELOW

The Sixth Circuit's opinion (Pet. App. 1a–14a) is reported at 974 F.3d 791. The District Court's final

order (Pet. App. 15a–22a) is available at 2019 WL 2205849. The District Court's initial order (Pet. App. 23a–31a) is unreported. The Sixth Circuit's order denying rehearing (Pet. App. 55a–56a) is unreported.

JURISDICTION

The Sixth Circuit entered judgment on September 11, 2020. Pet. App. 1a. Petitioner timely sought rehearing, which was denied on January 5, 2021. *Id.* at 55a. Pursuant to this Court's order of March 19, 2020, the deadline for filing a petition for certiorari was extended to June 4, 2021. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISION INVOLVED

28 U.S.C. § 2255 provides in pertinent part:

> * * *
>
> (b) Unless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief, the court shall cause notice thereof to be served upon the United States attorney, grant a prompt hearing thereon, determine the issues and make findings of fact and conclusions of law with respect thereto.
> * * *
>
> (f) A 1-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of—
>
> > * * *
> >
> > (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 * * * .

STATEMENT

A. The Antiterrorism And Effective Death Penalty Act

Congress passed AEDPA in 1996 to "to curb the abuse of the statutory writ of habeas corpus, and to address the acute problems of unnecessary delay and abuse in capital cases." H.R. Rep. No. 104-518, at 111 (1996). To that end, AEDPA established a one-year limitations period for most habeas petitions. *See* 28 U.S.C. § 2255(f). But it did so "without losing sight of the fact that the 'writ of habeas corpus plays a vital role in protecting constitutional rights.' " *Holland*, 560 U.S. at 649 (quoting *Slack* v. *McDaniel*, 529 U.S. 473, 483 (2000)).

AEDPA therefore does not "end every possible delay at all costs." *Id.* Quite the opposite. It tolls the statute of limitations in three circumstances where a strict one-year bar would otherwise lift finality above constitutional rights: where a governmental impediment prevents a prisoner from filing a timely petition, 28 U.S.C. § 2255(f)(2); where this Court recognizes a new right applicable to the prisoner, *id.* § 2255(f)(3); and where a prisoner discovers new facts that could not have been discovered previously through the exercise of due diligence, *id.* § 2255(f)(4). As this Court cautioned, courts must interpret these statutory exemptions so as not to "undermin[e] basic habeas corpus" protections. *Holland*, 560 U.S. at 648.

B. Factual And Procedural Background

1. In September 2016, Mr. Simmons pleaded guilty to two federal drug offenses and was sentenced to 190

months of imprisonment. Pet. App. 16a. Because he was already serving a sentence on state charges, he was remanded to state, not federal, custody. *Id.* at 3a. Mr. Simmons believed he received ineffective assistance of counsel, but he could not prepare a habeas petition while in state custody because the state facility offered absolutely no federal statute books, no federal forms, no federal case law, and no legal assistance from lawyers, librarians, or prisoner law clerks whatsoever. *See id.* at 3a–6a.

On August 29, 2017, Mr. Simmons was transferred to federal custody to begin serving out his federal sentence. There, for the first time, Mr. Simmons was able to consult federal law. *Id.* at 4a–5a. Also for the first time, Mr. Simmons had legal help. *Id.* He "quickly" took advantage of these resources, asking a prisoner law clerk to help him "navigate the federal [l]aw [l]ibrary," and request "legal forms." *Id.* at 132a. After conducting extensive legal research, Mr. Simmons determined that he had a viable claim. His counsel failed to file potentially meritorious pre-trial motions, failed to advise Mr. Simmons about the consequences of pleading guilty, failed to object to certain sentencing enhancements, and failed to consult Mr. Simmons before deciding to forgo the appeal. *Id.* at 72a–77a. Mr. Simmons filed his petition on August 13, 2018—just under one year after entering federal custody. *Id.* at 2a–3a.

Mr. Simmons argued that his petition was timely under 28 U.S.C. § 2255(f)(2), which tolls AEDPA's one-year limitations period for as long as "governmental action in violation of the Constitution or laws of the United States" "prevent[s]" a prisoner from petitioning to vacate his sentence. Mr. Simmons argued that

prisoners have a "constitutional right of access to the courts" that "requires prison authorities to assist inmates in the preparation and filing of meaningful legal papers by providing prisoners with adequate law libraries or adequate assistance from persons trained in the law." Pet. App. 121a (quoting *Bounds*, 430 U.S. at 828). Mr. Simmons then explained that the government violated that constitutional right because the state facilities gave him "no access to federal law library; legal materials; * * * the Rules Governing 2255 Proceedings [or] AE[DP]A statute of limitations." *Id.* at 61a. He also received no "assistance by prison authorities." *Id.* Those violations "imped[ed]" his "preparation and filing of meaningful legal papers" and "prevented him from having the ability to timely pursue and know the timeliness for filing a 2255 Motion." *Id.* at 61a–62a. The AEDPA limitations period, Mr. Simmons concluded, did not begin to run until he was transferred to federal custody. *Id.* at 62a.

2. The District Court referred Mr. Simmons's petition to a magistrate judge, who recommended that it be denied as untimely because lack of access to legal resources is not an "impediment" for purposes of § 2255(f)(2). *Id.* at 16a–17a. Mr. Simmons objected, explaining that the magistrate judge relied on *equitable*-tolling case law, which sets forth an entirely different standard than § 2255(f)(2) tolling. The District Court agreed, ordering supplemental briefing because "[n]either the government's briefing nor the report and recommendation appear to have identified any controlling authority rejecting" Mr. Simmons's claim that "library access is the type of impediment contemplated by 2255(f)(2)." *Id.* at 17a.

Responding to the District Court's concerns, Mr. Simmons focused his next brief on explaining why the lack of library resources and legal assistance constituted a governmental impediment, citing extensive case law. *See id.* at 123a–124a. Although the District Court did not request any additional factual allegations, Mr. Simmons nonetheless reiterated that he "needed the * * * statute of limitation[s]; Rules Governing 2255 Proceedings; Legal Materials[;] * * * a computer that accesses federal law cases[; and] also the guidance of a[n] experienced Law Clerk" to "fil[e] his 2255 Petition." *Id.* at 124a. He then attached two sworn affidavits. One, from Mr. Simmons himself, attested that the state libraries lacked all federal legal materials; that he could not "begin legal research" without those materials "not having 'any idea' where to start"; and that, upon his transfer to the federal prison, he "quickly" visited the library and sought out the law clerk's help. *Id.* at 132a. The other, from the law clerk, explained that "very few" of the hundreds of prisoners who came through the library could navigate it without his help. *Id.* at 134a. And that Mr. Simmons in particular knew "nothing at all about federal law" or "how to research [and] identify errors" in his counsel's conduct. *Id.* at 135a.

The government, for its part, did not submit a single affidavit from the state prison authorities. Nor did it contest Mr. Simmons's claims that he had no access to federal legal materials or legal assistance while in state custody—or Mr. Simmons's assertions that he "needed" those resources to prepare a meaningful habeas petition.

Undeterred, the magistrate judge again recommended dismissing Mr. Simmons's petition as time-

barred. In a striking about-face, he set aside the question of whether absence of legal materials is an impediment for purposes of § 2255(f)(2) and instead took issue with Mr. Simmons's "broad and generalized" pleadings that did not "sufficiently allege[ ] what specific legal materials he was missing and how the lack of those materials prejudiced his ability to pursue his rights under section 2255." *Id.* at 20a. The District Court adopted that recommendation without much discussion and dismissed Mr. Simmons's petition without a hearing. *Id.* But it issued a certificate of appealability on two questions: "whether the lack of access to legal materials can support relief under 2255(f)(2)" and "how specific a petitioner must be in alleging which legal materials he lacked access to and how that impacted his ability to pursue his rights." *Id.* at 21a.

3. After briefing and oral argument, the Sixth Circuit affirmed in a published opinion. The panel correctly observed that several other circuits have held that "a lack of federal materials * * * , combined with a lack of a legal assistance program, constituted an unconstitutional impediment under Section 2255(f)(2)" and that no "authority from" the Sixth Circuit has "rejected that view." *Id.* at 7a–9a. It thus "assume[d]" that Mr. Simmons faced a government-created impediment while in state custody. *Id.* at 9a.

In the court's view, however, Mr. Simmons "failed to adequately allege or explain how the supposedly inadequate state law libraries or lack of legal assistance had any bearing on his failure to file while in state custody." Pet. App. 11a. Instead, "[h]e only provided the bare conclusory statement that the lack of access 'prevented him' from filing earlier." *Id.* That left the

panel with questions like: "did Simmons try to go to the state library and get materials even once?" and "[d]id he seek out a legal assistant to help?" *Id.* at 11a–12a. Rather than remand to explore those questions in an evidentiary hearing, however, the court held—in a one-sentence footnote—that an evidentiary hearing is "unnecessary" because "Simmons failed to adequately allege a causal connection." *See id.* at 14a n.2.

The Sixth Circuit denied rehearing and rehearing en banc. This petition followed.

REASONS FOR GRANTING THE PETITION

I. THE SIXTH CIRCUIT'S DECISION EXACERBATES AN IMPORTANT AND ENTRENCHED CIRCUIT CONFLICT OVER WHAT A § 2255 PETITIONER MUST ALLEGE TO SECURE AN EVIDENTIARY HEARING.

The Sixth Circuit's opinion directly implicates a deep divide among the federal courts of appeals as to what a habeas petitioner must allege to avoid summary dismissal. That divide calls out for this Court's review.

1. Mr. Simmons explained to the courts below that he "had no access to [a] federal law library; legal materials; assistance by prison authorities in the preparation and filing of meaningful legal papers; and no access to the Rules Governing 2255 Proceedings and AE[DP]A statute of limitations" while in state custody. Pet. App. 61a. He "needed" those resources to prepare his petition. *Id.* at 124a. And their absence "prevented him from having the ability to timely

pursue and know the timeliness for filing a 2255 Motion." *Id.* at 4a.

The Sixth Circuit fixated on the open questions the existing record could not answer: whether "Simmons tr[ied] to go to the state library and get materials" and whether he "s[ought] out a legal assistant to help" while in state custody. *Id.* at 11a–12a. It ultimately held that those questions made the hearing "unnecessary." *Id.* at 14a n.2.

2. Facing identical questions, four circuits have reached the opposite conclusion, requiring district courts to fully develop the record before deciding whether a habeas petition is timely. The Ninth Circuit adopted this position, en banc, in *Whalem/Hunt*. The petitioner claimed that § 2244(d)(1)(B) statutorily tolled the limitations period because the prison law library lacked a copy of AEDPA.[1] A Ninth Circuit panel dismissed the petition because it "made no showing that unconstitutional state action prevented [the prisoner] from * * * filing his habeas petition within the limitations period." 233 F.3d at 1147–48. But the en banc court reversed. True, the court could not conclusively determine, "[o]n the present record," that the absence of AEDPA in fact impeded the petitioner's ability to timely file his petition, but neither could it determine that "there [we]re *no* circumstances consistent with petitioner's" position. *Id.* at 1148 (emphasis added). The court accordingly remanded for

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[1] *Whalem/Hunt* concerned the statute of limitations for motions filed by state prisoners, 28 U.S.C. § 2244(d)(1)(B). As this Court has recognized, that statute is identical to the statute of limitations for federal prisoners at issue here, 28 U.S.C. § 2255(f)(2). *Clay* v. *United States*, 537 U.S. 522, 528 (2003); *see also* Pet. App. 7a (acknowledging the same).

"appropriate development of the record." *Id.*; *see also id.* at 1149 (Tashima, Trott, and Berzon, JJ., concurring) (explaining that remand is appropriate when the court "cannot tell * * * precisely what the factual circumstances" are and thus cannot "determine the connection" between late-filing of the "petition and any legal research difficulties" affecting that filing).

The Ninth Circuit has repeatedly reaffirmed this rule. *See, e.g.*, *Johnson* v. *Chavez*, 585 F. App'x 448, 449 (9th Cir. 2014) (remanding for "further factual development" because it was "unclear from the existing record whether, during the several-month period of administrative segregation, Petitioner expressly sought to obtain his legal files or access the library and, if so, whether he was denied access"); *Alarcon* v. *Marshall*, 188 F. App'x 608, 610 (9th Cir. 2006) (holding that petitioner is "entitled to an evidentiary hearing" when he has "alleged facts that might warrant" tolling AEDPA).

Invoking *Whalem/Hunt*, the Seventh Circuit followed the same tack. In *Estremera* v. *United States*, a petitioner argued that the government impeded his access to courts when it placed him in a special management unit without access to a law library. 724 F.3d 773 (7th Cir. 2013). The government protested that Estremera failed to show that the lockdown actually prevented his filing because, among other things, Estremera "did not even ask for library access until * * * more than a year after his conviction became final." *Id.* at 777. Judge Easterbrook agreed that an " 'impediment' in principle" is not necessarily "an impediment for a given prisoner," and so the court would need to determine, for example, "what access Estremera" actually had to a library while in the special

unit; whether he would have "jeopardized a good claim—or advanced a bad one, closing the door to a good claim later—if he had filed without consulting a library"; and whether Estremera in fact "consult[ed] one before filing this petition." *Id.* That those questions could not be answered on the existing record, however, did not mean "that the petition was untimely." *Id.* Instead, an "evidentiary hearing" was "require[d]" to resolve them. *Id.*;[2] *see also Moore* v. *Battaglia*, 476 F.3d 504, 508 (7th Cir. 2007) ("remand[ing] for further proceedings" *because* the "limited factual record" did not establish "that the library lacked the statute of limitations," much less that the prisoner inquired about the statute (capitalization in first quotation removed)).

The Eleventh and Fifth Circuits have similarly required further development of the record where a habeas petitioner did not conclusively demonstrate that a governmental impediment prevented timely filing. In *Stephen* v. *United States*, for example, the district court accepted a magistrate's recommendation to dismiss a § 2255 petition as time-barred because the petitioner "made no proffer" whatsoever "as to why he did not file this motion in a timely manner." Nos. CV211-006 & CR209-1, 2011 WL 1705598, at *2 (S.D. Ga. Mar. 30, 2011), *report and recommendation adopted*, Nos. CV211-006 & CR209-1, 2011 WL

[2] Remarkably, the court below reasoned that *Estremera* supports its decision. *See* Pet. App. 12a ("If he didn't want or need a law library during the year after his conviction became final, its unavailability * * * would not have been an impediment." (quoting *Estremera*, 724 F.3d at 777)). But the Seventh Circuit identified that as a question *to be answered* at an evidentiary hearing. The Sixth Circuit's outright dismissal of Mr. Simmons's motion in the face of this same question is the problem—and the split.

1705575 (S.D. Ga. May 4, 2011), *vacated*, 519 F. App'x 682 (11th Cir. 2013). The Eleventh Circuit reversed. It acknowledged that "[t]he inmate must show" that the governmental impediment "caused an actual harm, or in other words, unconstitutionally prevented him from exercising that fundamental right of access to the courts," but it "liberally construed" the pro se petition and remanded for further development of the record. *Stephen* v. *United States*, 519 F. App'x 682, 684 (11th Cir. 2013) (per curiam) (internal quotation marks and citation omitted); *see also Egerton* v. *Cockrell*, 334 F.3d 433, 438 (5th Cir. 2003) (remanding to the district court where the record did not reveal—one way or the other—whether petitioner was "aware of the existence of AEDPA prior to the expiration of the limitations period").

3. At least three other circuits require an evidentiary hearing where, as here, a petitioner's § 2255 allegations are not patently frivolous but cannot be assessed on the existing record—including allegations regarding causation.

Take, for example, the Fourth Circuit's decision in *White*, 366 F.3d 291. The district court dismissed a § 2255 petition without a hearing because the prisoner did not allege sufficient facts to establish that he conditioned his plea on being able to appeal his suppression motion. But the Fourth Circuit reversed, holding that "[a] court cannot *summarily* dismiss a petitioner's allegations simply because the petitioner has yet to prove them by a preponderance of the evidence." *Id.* at 297. Instead, the "proper inquiry" is whether a petitioner's allegations are " 'palpably incredible' or 'patently frivolous or false' " when viewed against the record. *Id.* (quoting *Blackledge* v. *Allison*,

431 U.S. 63, 76 (1977)). Because nothing in the record contravened White's allegations, and because the government "has steadfastly refused to introduce any affidavit or other direct evidence attesting that no Government agent promised White he could appeal his suppression motion," an evidentiary hearing was required. *Id.* at 297–298; *see also United States* v. *Blondeau*, 480 F. App'x 241, 242–243 (4th Cir. 2012) (per curiam) (remanding for an evidentiary hearing where a habeas petitioner's claims could not be assessed without "receipt of evidence outside the present record").

The Third Circuit, like the Fourth, requires an evidentiary hearing "when the files and records of the case are inconclusive on the issue of whether movant is entitled to relief." *United States* v. *McCoy*, 410 F.3d 124, 131 (3d Cir. 2005). As *McCoy* illustrates, that is a "reasonably low threshold." *Id.* at 134 (quoting *Phillips* v. *Woodford*, 267 F.3d 966, 973 (9th Cir. 2001)). There, a petitioner alleged that he received ineffective assistance of counsel but left unanswered several questions about the extent of prejudice he suffered—a causation requirement in essence. The district court dismissed without a hearing, opining that "McCoy has not established a *reasonable probability* that, but for the alleged errors of his trial counsel, he would have been acquitted." *Id.* at 132. But the Third Circuit reversed because the district court "misstate[d] the appropriate standard"; it should have asked whether the record "conclusively show[ed]" that a petitioner "was *not* prejudiced" by counsel's conduct. *Id.* (emphasis added); *see also United States* v. *Scripps*, 961 F.3d 626, 634–635 (3d Cir. 2020) (remanding for an evidentiary hearing where "the record does not conclusively show that [petitioner] is not entitled to habeas relief");

United States v. *Padilla-Castro*, 426 F. App'x 60, 64 (3d Cir. 2011) (explaining that denial of evidentiary hearing is appropriate only where the record is "conclusive" that petitioner "did not lack necessary information").

The Eighth Circuit follows suit and requires district courts to "convene a hearing" so long as the record "lends some support" to a petitioner's argument and "does not conclusively refute" his claim. *Mayfield* v. *United States*, 955 F.3d 707, 710, 711 (8th Cir. 2020) (citing 28 U.S.C. § 2255(b)); *see also Engelen* v. *United States*, 68 F.3d 238, 240 (8th Cir. 1995) (holding that "a petition can be dismissed without a hearing if (1) the petitioner's allegations, accepted as true, would not entitle the petitioner to relief, or (2) the allegations cannot be accepted as true because they are contradicted by the record, inherently incredible, or conclusions rather than statements of fact").

All of these courts correctly put the thumb on the hearing-side of the scale, heeding this Court's warning that the "importance of the Great Writ" "counsels hesitancy" before dismissing what in all likelihood is petitioner's "single opportunity for federal habeas review." *Holland*, 560 U.S. at 649, 653.

4. The only circuit to agree with the Sixth Circuit's heightened pleading requirement is the Tenth. In *Williams* v. *Estep*, a prisoner alleged that the absence of a copy of AEDPA from the library "prevented him from learning of the one-year time limitation" and thus "prevent[ed] [him] from filing his petition in a timely manner." 259 F. App'x 69, 71 (10th Cir. 2007). He sensibly believed that those allegations adequately established causation: He could not have known about the statute of limitations without consulting

AEDPA; the library did not have a copy of AEDPA; its absence thus "prevented" him from learning about the limitations period. But the Tenth Circuit held otherwise. Williams failed to "identify a causal link between the library's failure to stock a copy of AEDPA and his inability to file a habeas petition within the appropriate time period," the court reasoned, because he did "not allege that he sought to obtain a copy of AEDPA from the library." *Id.* at 71–72. The court dismissed without a hearing.

That was not a one-off decision. The Tenth Circuit's heightened pleading requirement traces at least as far back as *Miller* (1998), where the court refused to consider a petitioner's claim that an inadequate prison library prevented him from filing on time because the petitioner did not allege, with "specificity," "the steps he took to diligently pursue his federal claims." 141 F.3d at 978 (summarily dismissing the petition); *see also, e.g.*, *Sherratt* v. *Friel*, 275 F. App'x 763, 765–766 (10th Cir. 2008) (citing *Miller* to dismiss a habeas petition because the "allegation of an impediment lacks the specificity we require"); *Freeman* v. *Zavaras*, 467 F. App'x 770, 775 (10th Cir. 2012) (similar); *Maxsween* v. *Miller*, No. 14-CV-00166-BNB, 2014 WL 5443621, at *5 (D. Colo. Oct. 27, 2014) (citing *Williams* to summarily dismiss a habeas petition for failure to demonstrate that ineffective assistance of counsel "actually prevented [the prisoner] from filing the instant action").

This entrenched split warrants this Court's review.

II. THE SIXTH CIRCUIT RESOLVED THE QUESTION INCORRECTLY.

The Sixth Circuit cursorily denied Mr. Simmons an evidentiary hearing because Mr. "Simmons failed to

adequately allege a causal connection." Pet. App. 14a n.2. The problem, the court explained, was that Mr. Simmons did not allege that he "tr[ied] to go to the state library and get materials" or that he "s[ought] out a legal assistant to help." *Id.* at 11a–12a. The court was wrong twice over.

For one, it impermissibly read a diligence requirement into § 2255(f)(2) when it required Mr. Simmons to explain *how* he discovered that the state facilities had inadequate legal resources.

For another, it flatly contradicted AEDPA's direction to hold "a prompt hearing" unless the record "conclusively show[s] that the prisoner is entitled to no relief." 28 U.S.C. § 2255(b). Indeed, this Court has admonished courts not to dismiss habeas motions unless allegations " 'conclusively show' that under no circumstances could the petitioner establish facts warranting relief under § 2255." *Fontaine* v. *United States*, 411 U.S. 213, 215 (1973) (per curiam). Yet that is now the rule in the Sixth Circuit. This Court should correct these grievous errors.

A. The Sixth Circuit Erroneously Injected A Diligence Requirement Into § 2255(f)(2).

Section 2255(f)(2) tolls the limitations period whenever a government-created impediment "prevent[s]" a prisoner from timely filing his petition. AEDPA does not define "prevent," but its ordinary meaning is to "stop from happening," to "hinder," or to "impede." *Prevent*, Black's Law Dictionary (11th ed. 2019). Section 2255(f)(2) thus requires only a showing that a habeas petitioner could not file on time due to the government-created impediment.

The Sixth Circuit required something more: an explanation of how a petitioner discovered the

governmental impediment and what steps he took to remedy that impediment. *See* Pet. App. 11a–12a (insisting that Mr. Simmons should have explained whether he tried to obtain federal materials or legal assistance while in state custody); *id.* at 20a (faulting Mr. Simmons for failing to describe "his attempts to obtain the necessary legal resources or help"). That type of evidence goes to diligence—the province of § 2255(f)(4), which starts the one-year clock on "the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence." The familiar maxim dictates that when "Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely." *Clay*, 537 U.S. at 528 (interpreting 28 U.S.C. § 2255(f)(1)) (quoting *Russello* v. *United States*, 464 U.S. 16, 23 (1983)). AEDPA's text, then, squarely forecloses the Sixth Circuit's attempt to insert a "hidden diligence requirement" into § 2255(f)(2). *Wood* v. *Spencer*, 487 F.3d 1, 8 (1st Cir. 2007).

Nor would a diligence requirement for § 2255(f)(2) make sense. Unlike § 2255(f)(4), which focuses on *petitioner's* conduct, § 2255(f)(2) tolls the limitations period for as long as the *government* unlawfully impedes the filing. Requiring petitioners to show diligence to obtain § 2255(f)(2) relief would impermissibly shift the statute's focus. *See Earl* v. *Fabian*, 556 F.3d 717, 728 (8th Cir. 2009) (underscoring "notable difference in focus and wording between the two statutory sections").

Diligence is also a requirement in equitable tolling, which, as its name suggests, appeals to equity. *Holland*, 560 U.S. at 649–650. In *that* context,

considerations of diligence make sense: courts often look to what is and is not fair, who is and is not to blame, and how to avoid granting relief too often. But statutory tolling is of "a different kind." *Id.* at 647–648. Equity is not involved, blameworthiness is not relevant, and Congress has already decided exactly when relief must be granted.[3]

The operative question under § 2255(f)(2), therefore, is simply whether the alleged governmental impediment stopped a prisoner from filing a habeas petition. Here, the answer is straightforward. A pro se prisoner "must know what the law is in order to determine whether a colorable claim exists." *Bounds*, 430 U.S. at 825. Mr. Simmons lacked all access to federal case law. No lawyer—let alone a pro se prisoner—would have known whether Mr. Simmons "ha[d] claims at all" under those circumstances. *Id.* at 826 n.14. Nor could a pro se prisoner be expected to know the applicable statute of limitations without reading AEDPA or consulting with a law clerk. There is thus no question that the lack of federal legal materials made it so Mr. Simmons had no "capability of bringing contemplated challenges" to his sentence. *Lewis*, 518 U.S. at 356; *see also id.* at 351 (reasoning that deficiencies in a prison library "hinder[ ] efforts to pursue a legal claim" when a filing fails "to satisfy some technical requirement"—such as the statute of limitations—which the prisoner "could not have known" because of the deficiencies).

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[3] Indeed, even when it comes to equitable tolling, the Ninth Circuit holds that a petitioner need not "allege specific dates and times of library visits" "*before* * * * an evidentiary hearing." *Roy* v. *Lampert*, 465 F.3d 964, 973 (9th Cir. 2006) (emphasis added).

B. The Sixth Circuit's Refusal To Conduct An Evidentiary Hearing Ignored AEDPA's Plain Text And This Court's Precedent.

In addition to misconstruing *what* Mr. Simmons had to show to obtain § 2255(f)(2) tolling, the Sixth Circuit also erred as to *how much* Mr. Simmons had to allege ahead of the evidentiary hearing. The court concluded that Mr. Simmons had to "initially allege" detailed facts establishing a "causal relationship between the impediment and not filing the motion"—such as, for example, that he "tr[ied] to go to the state library and get materials"—before he would even be entitled to an evidentiary hearing. Pet. App. 10a, 14a n.2.

That is not the standard. AEDPA requires a "prompt hearing" "*[u]nless* the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief." 28 U.S.C. § 2255(b) (emphasis added). That language could not be clearer, and the Sixth Circuit had an obligation to "enforce it according to its terms." *Jimenez* v. *Quarterman*, 555 U.S. 113, 118 (2009) (interpreting 28 U.S.C. § 2244(d)(1)(A)).

It also could not be clearer that Mr. Simmons's pro se petition passed that bar. Mr. Simmons alleged that he had no access to any federal materials and no legal assistance. The government—given six chances to respond[4]—never contradicted those factual assertions. Nor did it resist Mr. Simmons's claim that he could not have submitted a timely and meaningful petition

[4] The government had an opportunity to submit two filings before the magistrate judge, two corresponding objections to the magistrate judge's conclusions, a brief on the merits in the Sixth Circuit, and a response to Mr. Simmons's petition for rehearing.

without federal resources. Whatever unresolved questions remained, they did not "conclusively show" that Mr. Simmons was "entitled to no relief." 28 U.S.C. § 2255(b). If anything, they showed that Mr. Simmons may well be entitled to that relief, provided he offered satisfactory answers at the hearing.

Allegations that flunk the § 2255(b) test look quite different. They involve claims where no set of facts—"no circumstances"—exist that could connect the governmental impediment to the petitioner's inability to file on time. *Fontaine*, 411 U.S. at 215. Consider, for example, *Winkfield* v. *Bagley*, where a petitioner alleged that ineffective assistance of counsel precluded him from filing a timely *appeal*, but could not show how it affected his ability to file a timely *habeas petition*. 66 F. App'x 578, 582–583 (6th Cir. 2003). Or *Balawajder* v. *Johnson*, where a petitioner in fact "knew" of AEDPA, and so its absence from the library could not have possibly prevented him from filing a timely petition. 252 F.3d 1357, 1357 (5th Cir. 2001) (per curiam); *see also Lloyd* v. *Van Natta*, 296 F.3d 630, 633 (7th Cir. 2002) (per curiam) (holding that a State's failure to provide prisoner with a complete transcript could not have prevented him from filing a timely habeas petition because he ultimately filed the petition without the complete transcript). None of these cases turn on how specific pro se allegations must be before the hearing; they fail the causation requirement because the impediment could not have hindered timely filing under any circumstances.

In the end, the Sixth Circuit's heightened pleading requirement flips § 2255(b) on its head. Instead of *mandating* a hearing "[u]nless the motion and the files and records of the case conclusively show that the

prisoner *is entitled to no relief*," 28 U.S.C. § 2255(b) (emphasis added), the Sixth Circuit *denies* the hearing unless the motion and the files and records conclusively show he *is entitled to relief*. It is difficult to imagine a clearer inversion of a statutory test. And it allows courts to sandbag unsuspecting pro se litigants with questions they could not have anticipated. Tellingly, the opinion below does not cite either the § 2255(b) test or this Court's decision in *Fontaine*—despite detailed briefing on this issue. This Court should step in.

III. THE QUESTION PRESENTED IS IMPORTANT AND SHOULD BE DECIDED IN THIS CASE.

1. The metes and bounds of what a habeas petitioner must allege to secure an evidentiary hearing is a recurring issue of exceptional national importance. And this Court's review is needed to avoid erosion of "the only writ explicitly protected by the Constitution" that will result from the Sixth Circuit's rule. *Holland*, 560 U.S. at 649.

The writ to habeas corpus has always been considered one of the "greater securities to liberty than any [the Constitution] contains." The Federalist No. 84, at 443–444 (Alexander Hamilton) (Gideon ed., 2001). This Court has accordingly produced an entire body of case law safeguarding prisoners' access to courts. *See Burns* v. *Ohio*, 360 U.S. 252, 257–258 (1959) (eliminating docketing fees for indigent prisoners); *Johnson* v. *Avery*, 393 U.S. 483, 490 (1969) (permitting inmates to assist one another with habeas petitions); *Younger* v. *Gilmore*, 404 U.S. 15, 15 (1971) (per curiam) (invalidating an overly restrictive prison regulation that

limited prisoners' access to law books); *Bounds*, 430 U.S. at 828; *Lewis*, 518 U.S. at 356.

The Sixth Circuit now gives courts a green light to dismiss habeas petitions without so much as a hearing when pro se prisoners fail to anticipate any number of the court's questions. The practical significance of that rule cannot be overstated. Just 2% of prisoners show proficient levels of "document" and "quantitative" literacy and 3% test proficient in "prose" literacy. Inst. of Educ. Scis. & U.S. Dep't of Educ., Literacy Behind Bars: Results from the 2003 National Assessment of Adult Literacy Prison Survey 13 fig.2-2 (May 2007);[5] *see also* Thomas C. O'Bryant, *The Great Unobtainable Writ: Indigent Pro Se Litigation After the Antiterrorism and Effective Death Penalty Act of 1996*, 41 Harv. C.R.-C.L. L. Rev. 299, 301–333 (2006) (listing functional illiteracy as one of the myriad of barriers to filing pro se prisoners face).

Yet 92% of non-capital habeas cases are filed by pro se litigants. Emily Garcia Uhrig, *The Sacrifice of Unarmed Prisoners to Gladiators: The Post-AEDPA Access-to-the-Courts Demand for a Constitutional Right to Counsel in Federal Habeas Corpus*, 14 U. Pa. J. Const. L. 1219, 1254 (2012). A prisoner with such slight educational attainments "might not infer" from § 2255 "that more is required for obtaining a hearing than the 'short and plain statement of the claim showing that the pleader is entitled to relief' that is required for initial pleadings under Fed. R. Civ. P. 8." *Pham*, 317 F.3d at 186–187 (Sotomayor, J., concurring). Instead, "a *pro se* movant in the § 2255 context might conclude that he or she need only identify

[5] *Available at* http://nces.ed.gov/pubs2007/2007473.pdf.

witnesses, affidavits, or other categories of evidence that could be made available at an evidentiary hearing, rather than submit particularized factual allegations in the motion or affidavit itself." *Id.* at 187. The Sixth Circuit's outright dismissal of such filings accordingly creates a "fundamental procedural problem." *Id.* at 185.[6]

This case well illustrates just how high that bar is. In his petition, Mr. Simmons clearly identified the unlawful impediment: "failure to provide an adequate law library." Pet. App. 61a. He then explained the causal relationship between the impediment and his inability to timely file the petition: "the lack of access" to a "federal law library; legal materials; [and] assistance by prison authorities" "prevented him from having the ability to timely pursue" habeas relief. *Id.* And the lack of "AE[DP]A statute of limitations" "prevented him from * * * know[ing] the timeliness for filing a 2255 motion." *Id.* at 62a. Mr. Simmons also attached a series of affidavits from himself and the jailhouse law clerk explaining that the lack of legal materials and guidance in the state facility made it impossible for him to even "*begin* legal research not having 'any idea' where to start." *Id.* at 5a (emphasis added); *see supra* pp. 8–9. It is hard to imagine a pro se filing that more clearly addresses the elements of § 2255(f)(2). And if this level of specificity is insufficient to even secure an evidentiary hearing, as a

[6] A Vanderbilt study bears out this grim reality. While 22% of habeas petitions *overall* are dismissed as untimely, only 4% of capital cases—where habeas petitioners have the right to counsel—are determined to be time-barred. Uhrig, *supra*, at 1254. The Sixth Circuit's rule will only widen that gap.

practical matter § 2255(f)(2) no longer applies in the Sixth Circuit.

Worse, nothing in the decision below limits the court's analysis to questions of timeliness; rather, the decision sets the standard for any claim that requires allegations of a "causal connection." *Id.* at 11a. But that requirement permeates nearly every claim a habeas petitioner may wish bring. *See, e.g.*, *Strickland* v. *Washington*, 466 U.S. 668, 691 (1984) (holding that a habeas petitioner seeking to vacate his sentence due to ineffective assistance of counsel must show that the counsel's deficient performance had an "effect on the judgment"). The Sixth Circuit's heightened pleading requirement could therefore bar wide swaths of meritorious habeas petitions.

The Sixth Circuit's rule, though rigid, is also unadministrable. The court purports to "address what the prisoner must allege for Section 2255(f)(2) to apply," Pet. App. 9a, but it offers little actual guidance beyond repeated conclusory assertions that the prisoner must "allege facts that will establish that the impediment actually prevented [him] from filing the motion." *See id.* at 10a; *see also id.* at 12a (insisting on "factual allegations that the supposed impediment prevented [petitioner] from filing"). The court nowhere defines what it means to "prevent" a filing. Nor does it explain what would be sufficient to show a causal connection. Quite the contrary, it concedes that a petitioner does not "need to answer any particular question in his allegations." *Id.* At bottom, the decision below amounts to a carte blanche the courts can waive anytime they wish to avoid an evidentiary hearing—such as to clear COVID-related backlogs. *E.g.*, *Coleman* v. *United States*, Nos. 3:15-cr-00075-2 & 3:20-cv-

00939, 2021 WL 817652, at *3 (M.D. Tenn. Mar. 3, 2021) (invoking *Simmons* to deny an evidentiary hearing because petitioner did not allege with requisite specificity why frequent transfers between prisons "prevented him from filing this motion within a year of his appeal").

2. This petition is an excellent vehicle to address these important issues. The question presented was raised and passed on below by the district and the appellate courts. And the Sixth Circuit denied rehearing en banc, making the decision below the final word in that circuit on when courts can summarily dismiss habeas petitions.

Rejecting the Sixth Circuit's heightened pleading requirement is also outcome-determinative here. At minimum, the judgment below would need to be vacated and Mr. Simmons would be allowed to resolve any lingering questions at the evidentiary hearing. And if this Court rules that the Sixth Circuit conducted an impermissible, extra-statutory diligence analysis, Mr. Simmons's petition would almost certainly be judged timely on the existing record: Despite six chances, the government has never challenged Mr. Simmons's factual assertions that the state facility contained no federal legal materials; and Mr. Simmons's filings and affidavits unequivocally show that he could not have prepared a habeas petition without consulting those critical materials. *See supra* pp. 8–9. This Court should grant certiorari.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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