No. 20-1704

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

REPLY IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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INTRODUCTION

The Government's brief is most notable for what it does not say. It spots no vehicle problems. It does not deny the importance or frequent recurrence of the question presented. Nor does it suggest that further percolation is warranted.

Instead, the Government leads with—and devotes half of its argument section to—asserting that the decision below is correct. Opp. 8–13. Then, as a secondary argument, the Government denies the circuit split. *Id.* at 13–18. According to the Government, there is nothing to see here because the decision below was correct, and in any event, there is authority in each of the courts of appeals for the general

proposition that a petitioner must make factual allegations about causation in order to avoid summary dismissal.

But the Government's observation that the courts of appeals agree on the existence of a causation standard does not reconcile the courts of appeals' conflicting interpretations of that causation standard. The courts of appeals are split over whether 28 U.S.C. §§ 2255(f)(2) and 2255(b) permit a court to summarily dismiss a habeas petition as untimely for failure to adequately allege a causal connection when a petitioner explains how a government impediment prevented him from timely filing, but does not allege how he discovered and attempted to remedy that impediment.

And the Government's agreement with the Sixth Circuit's approach is not a reason to deny certiorari. Nor is it surprising. The diligence requirement embraced by the courts of appeals on the short side of the three-way split favors the Government by making it more difficult for prisoners to demonstrate that their habeas petitions are timely. Worse, because the vast majority of such petitioners are pro se, they are unlikely to recognize that they must allege more than Congress required in 28 U.S.C. §§ 2255(f)(2) and 2255(b) in order to avoid summary dismissal.

This Court should grant review to resolve this undisputedly important, and often-recurring, question of statutory interpretation.

ARGUMENT

I. THE SPLIT IS REAL.

A. The Consensus Among The Courts Of Appeals Regarding The Existence Of A Causation Requirement In § 2255(f)(2) Does Not Resolve The Split Over The Causation Standard.

The Government devotes the first half of its argument section to shoring up the Sixth Circuit's reasoning. Opp. 8–11. However, in its review of the decision below, the Government foreshadows its argument in the latter half of the brief that the circuits are not split. First, the Government observes (at 8–9) that the Sixth Circuit, like each of its sister circuits, requires petitioners to allege a causal connection in order to avoid summary dismissal. And second, the Government notes (at 10–11) that the Sixth Circuit, like each of its sister circuits, permits summary dismissal if the movant's allegations regarding causation are legal conclusions rather than statements of fact.

But the agreement on those general principles does not reconcile the circuits' deeply divergent views on what type of factual allegations a movant must make in order to satisfy that causation standard. Some courts require a petitioner to explain how he discovered and attempted to remedy the alleged impediment. *See, e.g.*, *Miller* v. *Marr*, 141 F.3d 976, 978 (10th Cir. 1998). Others do not. *See, e.g.*, *Whalem/Hunt* v. *Early*, 233 F.3d 1146, 1147–48 (9th Cir. 2000) (en banc) (per curiam).

This Court routinely grants certiorari to resolve disagreement among the courts of appeals regarding the appropriate standard for causation in a statute, even

when the courts of appeals agree that causation is an element of the statute. *See, e.g.*, *Bostock* v. *Clayton County*, 140 S. Ct. 1731 (2020); *Babb* v. *Wilkie*, 140 S. Ct. 1168 (2020); *Comcast Corp.* v. *Nat'l Ass'n of Afr. Am.-Owned Media*, 140 S. Ct. 1009 (2020). The Court should do the same here.

B. The Courts Of Appeals Are Split Over What A Petitioner Making A Timeliness Claim Under § 2255(f)(2) Must Allege To Secure An Evidentiary Hearing.

The Government relegates the division of authorities that led off the petition (Pet. 11–18) to the end of its brief. Opp. 13–18. That arrangement is telling. When the Government finally addresses the split, it cannot explain it away.

1. *The minority view*. The Government concedes (at 10, 12) that the Sixth and the Tenth Circuits summarily dismiss petitions whenever the causation allegations do not explain how the petitioner discovered and attempted to remedy the impediment. *See, e.g.*, Pet. App. 11a–13a; *see also, e.g.*, *Miller*, 141 F.3d at 978 (affirming the summary dismissal of a petition because it 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").

2. *The majority view*. The Government argues (at 13–16) that the court of appeals decisions articulating the majority view do not "specifically address[ ] the sufficiency of a prisoner's allegations." The Government is wrong. The Fifth, Seventh, Ninth, and Eleventh Circuits have each squarely held that a petitioner is entitled to an evidentiary hearing even where his factual allegations regarding causation do not

address how the petitioner discovered and attempted to remedy the impediment. *See Egerton* v. *Cockrell*, 334 F.3d 433, 438 (5th Cir. 2003); *Estremera* v. *United States*, 724 F.3d 773, 777 (7th Cir. 2013); *Whalem/Hunt*, 233 F.3d at 1147–48; *Stephen* v. *United States*, 519 F. App'x 682, 684 (11th Cir. 2013) (per curiam).

The Government begins with the misleading statement that the Ninth Circuit's decision in *Whalem/Hunt* "addressed the separate question whether a habeas petitioner's lack of knowledge about the existence of the one-year statute of limitations in the [AEDPA] could constitute an 'impediment,' " and "did not discuss, let alone resolve, whether the habeas petitioner sufficiently alleged a causal link between the asserted impediment and his failure to timely file." Opp. 13–14. The Ninth Circuit in that case saw the alleged impediment (a "law library" that "did not have legal materials describing AEDPA") and the alleged causal connection between the impediment and the untimely filing (petitioner "had no knowledge of any limitations period") as related, and therefore analyzed them together. *Whalem/Hunt*, 233 F.3d at 1147. The district court had summarily dismissed the petition because it found that "the failure of the prison officials to stock legal materials * * * *did not constitute an impediment* to the filing of the Petition," or "*[p]ut another way*, petitioner has made *no showing that unconstitutional state action prevented him* from * * * filing his habeas petition within the limitations period." *Id*. 1147–48 (emphases added). The Ninth Circuit reversed because it concluded that the district court should have held a hearing. *Id*. at 1148. As the concurrence explained, a court should hold an evidentiary hearing when it cannot "determine the connection"

between late-filing of the "petition and any legal research difficulties" affecting that filing. *Id.* at 1149 (Tashima, Trott, and Berzon, JJ., concurring). In other words, the Ninth Circuit specifically addressed—and articulated a standard to govern—the sufficiency of a prisoner's allegations regarding causation.

The Government next makes the contorted claim that, although the Seventh Circuit's decision in *Estremera* "indicated that questions related to causation would be assessed at an evidentiary hearing," the Seventh Circuit "did not address the specificity of the movant's allegations." Opp. 14–15. That makes no sense. The Government cannot explain away a split of authority regarding the causation allegations required for a hearing by pointing out that the court of appeals ordered a hearing on causation. The Seventh Circuit ordered that questions related to causation would be assessed at a hearing precisely because it concluded that the movant's allegations were sufficient to warrant a hearing. *Estremera*, 724 F.3d at 776.

Indeed, the specificity of the movant's allegations are at the heart of the *Estremera* decision, which devotes an entire paragraph to reciting the petitioner's allegations. *Id*. The petitioner asserted only that the government prevented him from timely filing because "he was in his prison's 'special management unit' and could not use its law library." *Id*. The government argued that the petitioner failed to adequately allege causation because he did not say more. *Id*. ("[T]here was no obstacle," because "Estremera's prison offered electronic access to persons in the special management unit."). And the Seventh Circuit concluded that

the specifics of the causation analysis—including the "questions" regarding whether he "need[ed] a law library" or "consult[ed] one before filing this petition" or whether "electronic access was an adequate substitute"—"would require an evidentiary hearing to explore." *Id*. at 776–777. Thus, the Government's contention that the Seventh Circuit did not address the specificity of the movant's allegations is unsupported.

The Government's discussion (at 15) of the Seventh Circuit's decision in *Moore* v. *Battaglia*, 476 F.3d 504 (7th Cir. 2007), is similarly flawed. The Government asserts that *Moore* "does not address the sufficiency of allegations or the causal connection between an alleged impediment and the failure to file a timely motion." Opp. 15. But that assertion is wrong. *See Moore*, 476 F.3d at 508. The Seventh Circuit noted at the outset that the movant "claimed that the library in his prison was inadequate and impeded his pursuit of his claims." *Id.* at 506. Specifically, with respect to causation, the court recounts the movant's assertion "that there are 'no lawbooks in [his] cell nor are they letting us go to the maximum Law Library for Federal Habeas Corpus for State Prisoner's [sic],' " and "the books that are available are 'real old,' irrelevant to his needs, and * * * the law has changed from that available in the library." *Id*. at 508. Based on those allegations, the Seventh Circuit reversed the summary dismissal and directed the district court to develop the "limited factual record," on whether "the library contained a copy of the statute of limitations," and whether "the state * * * prevent[ed] [the petitioner] from accessing the statute." *Id*.

Finally, the Government dismisses (at 15–16) the Eleventh Circuit's decision in *Stephen* and the Fifth

Circuit's discussion of its earlier decision to remand in *Egerton* as non-precedential. However, this Court has granted certiorari to resolve a circuit split even where one of the decisions forming the split was an unpublished opinion. *See, e.g.*, *Hall St. Assocs., L.L.C.* v. *Mattel, Inc.*, 552 U.S. 576, 583 n.5 (2008) (noting there was an unpublished opinion on one side of the split); *Johnson* v. *United States*, 529 U.S. 694, 699 n.3 (2000) (same). And in any event, the split would exist even without *Stephen* and *Egerton*.

3. *The third approach*. The Government observes (at 16–18) that the Third, Fourth, and Eighth Circuit decisions cited in Mr. Simmons' petition "are simply examples of cases in which a claimant has made adequate allegations of an entitlement to relief that could not be assessed on the existing record." That's true, as far as it goes. It's also true that the Ninth Circuit's decision in *Whalem/Hunt*, the Seventh Circuit's decision in *Estremera*, the Eleventh Circuit's decision in *Stephen*, and the Fifth Circuit's decision in *Egerton*, are likewise examples of cases in which the court of appeals concluded that a claimant had made adequate allegations of an entitlement to relief that could not be assessed on the existing record. And it's true that the Sixth Circuit's decision below and the Tenth Circuit's decision in *Williams* v. *Estep*, 259 F. App'x 69 (10th Cir. 2007), are examples of cases in which the court of appeals concluded that a claimant had *not* made adequate allegations of an entitlement to relief. The point is that the allegations in all of these cases were the same—each petitioner explained how a government impediment "prevented" him from filing timely, but did not explain how he discovered and attempted to remedy that impediment—and yet, the courts of appeals reached different conclusions

regarding whether summary dismissal was appropriate. The Government's observation is therefore unresponsive.

In sum, the Government has failed to refute the entrenched circuit conflict on the question presented by Mr. Simmons' petition: whether a court can summarily dismiss a habeas petition as untimely for failure to allege a causal connection when petitioner explains how a government impediment prevented him from timely filing, but does not allege how he discovered and attempted to remedy that impediment. The question presented warrants this Court's review.

II. THIS PETITION IS AN EXCELLENT VEHICLE TO RESOLVE THE SPLIT.

In an attempt to dissuade this Court from granting the petition, the Government repeatedly asserts that the court of appeals' decision is "fact-bound." Opp. 8. According to the Government, Mr. Simmons' "assertion that an impediment prevented him from filing earlier," was "unaccompanied by any alleged facts or explanation connecting that impediment to his failure to timely file." *Id.* at I (question presented); *see also id*. at 10 (similar).

That is wrong. Mr. Simmons offered specific allegations on causation. Mr. Simmons explained that the government violated his right of access to the courts because the state facilities in which he was housed immediately following his federal conviction gave him "no access to [a] federal law library; [or] legal materials," and he received no "assistance by prison authorities." Pet. App. 60a. That unconstitutional government action caused his late-filing in two ways. First, his inability to access a federal law library "prevented him from having the ability to timely

pursue * * * a 2255 Motion." *Id*. at 60a–61a. Without federal law, he could not "begin legal research" or "prepar[e] and fil[e] * * * meaningful legal papers." *Id*. at 60a, 131a. Second, his inability to access a federal law library "prevented him from having the ability to * * * know the timeliness for filing a 2255 Motion." *Id*. at 60a–61a. He "needed the [AEDPA] statute of limitation[s]." *Id*. at 123a.

Mr. Simmons' causation allegations would have entitled him to an evidentiary hearing in other circuits. *See, e.g.*, *Estremera*, 724 F.3d at 776 (remanding for a hearing on allegation that "he was in his prison's 'special management unit' and could not use its law library"); *Moore*, 476 F.3d at 508 (remanding for a hearing on allegation "that there are 'no lawbooks in [his] cell nor are they letting us go to the maximum Law Library for Federal Habeas Corpus' "); *Whalem/Hunt*, 233 F.3d 1146–47 (remanding for a hearing on allegation that the "law library" that "did not have legal materials describing AEDPA" and the petitioner "had no knowledge of any limitations period").

Moreover, the published decision below is not tied to the facts of Mr. Simmons' case. The Sixth Circuit interpreted the text of two statutes, *see* Pet. App. 9a–10a, 13a–14a, reviewed the reasoning of its sister circuits in similar cases, *see id.* at 10a–12a, and articulated a legal standard to govern future decisions: summary dismissal is appropriate where a petitioner's causation allegations do not address the petitioner's discovery of, and attempts to remedy, the alleged impediment. *See id.* at 14a & n.2. The decision below is a classic example of statutory interpretation, not a rote application of settled law to facts.

In any event, the facts of Mr. Simmons' case are not unique. As demonstrated by the cases that form the circuit split, lower courts regularly decide timeliness claims under 28 U.S.C. §§ 2255(f)(2) and 2255(b). Indeed, lower courts regularly decide such claims *on the precise facts here*: a petitioner's claim that the government unlawfully prevented the petitioner from accessing legal materials that he needed to prepare his collateral-relief motion. *See* Pet. 11–18 (collecting cases). There is nothing "fact-bound" about the decision below.

The Government does not even attempt to identify other barriers to this Court's review. Mr. Simmons' petition is the ideal vehicle for this Court to resolve the split.

III. THE GOVERNMENT'S ARGUMENTS ON THE MERITS OF THE QUESTION PRESENTED ARE PREMATURE AND WRONG.

The Government spends the bulk of its opposition previewing its merits arguments. *See* Opp. 8–13. They are not relevant to whether this Court's review is appropriate. In any event, they are wrong.

The Government argues (at 8–13) that "the uncontested timing of petitioner's motion more than a year after his conviction became final, and the absence of adequate allegations on an essential requirement to invoke Section 2255(f)(2) would conclusively show that petitioner is entitled to no relief." Opp. 12 (internal quotation marks and citation omitted). The Government notes that "Section 2255(f)(2) requires a causal relationship." *Id.* at 8. And the Government observes that Mr. Simmons "did not allege that he

ever went to the library at the state facility or attempted to get legal assistance." *Id.* at 9–10.

These observations only beg the question presented; they do not answer it. Nobody disputes that the statute of limitations includes a causation requirement. The question presented is whether a petitioner must explain how he discovered and attempted to remedy that impediment in order to adequately allege causation. *See* Pet. i. The Government's insistence that Mr. Simmons was not entitled to an evidentiary hearing because he did not describe his trip to the state prison's law library is a position on the merits, not a position on the split.

Moreover, the Government fails to engage with the text of the statute. As Mr. Simmons explained in the petition, and as the Government concedes (at 12), the type of allegations that the Government demands go to diligence. The word "diligence" *does not* appear in § 2255(f)(2), but *does* appear in § 2255(f)(4), which starts AEDPA's 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 Government has no answer for why Congress would explicitly include a diligence requirement in § 2255(f)(4) when diligence is implicit throughout § 2255(f). That's because there isn't one. The Sixth Circuit imposed below—and the Government advocates for now—an atextual requirement.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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