No. 24-5438

IN THE

Supreme Court of the United States

MICHAEL BOWE,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

BRIEF OF *AMICI CURIAE* HABEAS SCHOLARS IN SUPPORT OF PETITIONER

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

TABLE OF AUTHORITIES—continued

CONSTITUTION AND STATUTES

TABLE OF AUTHORITIES—continued

TABLE OF AUTHORITIES—continued

INTEREST OF *AMICI CURIAE*[1]

Amici curiae are law professors who research, study, teach, and write about the writ of habeas corpus and federal postconviction relief. They share an interest in seeing habeas law applied in a way that ensures the just adjudication of claims.

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[1] Pursuant to Supreme Court Rule 37, *amici* state that no counsel for any party authored this brief in whole or in part, and that no entity or person other than *amici* and their counsel made any monetary contribution toward the preparation and submission of this brief.

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INTRODUCTION AND SUMMARY OF ARGUMENT

Federal postconviction law creates different paths for different prisoners, depending on whether they are seeking relief from a state or federal conviction.

A prisoner asking a federal court to grant relief from a state conviction must proceed through a habeas application brought under 28 U.S.C. § 2254. In the statute's terms, a federal court "shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States." *Id.* § 2254(a). Section 2254 further provides that such an application "shall not be granted" unless the requirements of that section are met, including, generally, that "the applicant has exhausted the remedies available in the courts of the State." *Id.* § 2254(b)(1)(A).

In contrast, "[a] prisoner in custody under sentence of a court established by Act of Congress" must seek postconviction relief by traveling a single consolidated path, via a motion to vacate. *Id.* § 2255(a). Section 2255 contains its own procedural requirements, distinct from those applicable under section 2254, including with respect to the statute of limitations. See *id.* § 2255(f).

As most relevant here, these contemporary statutory schemes reflect a longstanding federal law tradition: Postconviction relief runs on different tracks, subject to different procedural rules, depending on whether relief is sought against a state or federal sovereign.

Indeed, even more than prior legislation, the Antiterrorism and Effective Death Penalty Act of 1996

(AEDPA) codified different restrictions for those seeking relief against a state ("Section 2254 Applicants") and those seeking relief against the federal government ("Section 2255 Movants"). See Pub. L. No. 104-132, 110 Stat. 1214 (codified at 28 U.S.C. §§ 1441–1455).

One of those statutory differences is directly at issue here. If a claim "that was presented in a prior application" is subsequently "presented in a second or successive habeas corpus application," and is brought "under section 2254," then Section 2244(b)(1) directs that the claim "shall be dismissed." By its terms, Section 2244(b)(1) restricts only the "same-claim litigation" of Section 2254 Applicants. In other words, the dismissal command of Section 2244(b)(1) applies only to those who are seeking relief against a state sovereign, and whose habeas applications thus must proceed "under" Section 2254.

The court of appeals held, based on its prior precedent, that Section 2244(b)(1) also restricts relief for Section 2255 Movants, who are seeking relief from a sentence imposed by a federal court. See *In re Bowe*, No, 24-11704, 2024 WL 4038107, at *3 (11th Cir. June 27, 2024). That decision conflicts with the statutory text and relevant context, and it should be reversed.

I. Section 2244(b)(1)'s plain text demonstrates that it does not apply to postconviction claims raised by convicted federal prisoners. Section 2244(b)(1), by its terms, applies only to second or successive habeas applications "under section 2254." Convicted federal prisoners may not seek relief "under section 2254"—Section 2254(a) states that only "a person in custody pursuant to the judgment of a State court" may do so.

Section 2244(a) confirms the point. It makes clear that if a person detained pursuant to a federal

judgment has already received one determination as to "the legality of such detention" through a "prior application for a writ of habeas corpus," Section 2255 governs the proceeding. In turn, Section 2255(h) explicitly governs the procedure for addressing a "second or successive motion" brought by a Section 2255 Movant. Nowhere does Section 2255(h) mention or incorporate Section 2244(b)(1). Applying Section 2244(b)(1) as the governing provision anyway would violate multiple rules of statutory interpretation.

II. This plain-text reading of Sections 2244 and 2255 keeps with a long legislative tradition of treating state and federal prisoners who seek federal relief differently. And that plain-text reading is also consistent with this Court's recognition that Congress passed AEDPA to further interests in comity and federalism—the salience of which depend on whether the federal court is reviewing a state or federal conviction. Leaving Section 2255 beyond the scope of Section 2244(b)(1) is consistent with longstanding legislative distinctions between process under Section 2254 and process under Section 2255. Those distinctions are also more consistent with AEDPA's animating purposes than is unitary treatment.

A. Congress has repeatedly drafted different postconviction rules for state and federal prisoners. And it has extended that differential treatment to second or successive requests for relief. The text applying Section 2244(b)(1) only to Section 2254 applications fits with a longstanding legislative approach to postconviction law.

B. The plain-text interpretation is also consistent with the purposes that AEDPA embraced. Congress wanted to ensure that postconviction review of state convictions would not undermine interests in comity

and federalism. AEDPA thus sought to limit federal court review of state convictions by statutorily enhancing the deference that state convictions are due. In keeping with that logic, Section 2244(b)(1) furthers federal-state comity by heavily restricting serial challenges to state criminal sentences. That comity-based logic does not apply when federal courts review federal convictions—no separate sovereign is involved.

Section 2244(b)(1)'s limitation on the same-claim litigation of state prisoners also reflects differences in the way that AEDPA's interest in finality applies across litigation categories. Section 2255(h)'s gatekeeping protocol is already robust and secures that finality interest during Section 2255 litigation. Moreover, Section 2255 Movants, unlike Section 2254 Applicants, do not receive a full round of state postconviction review prior to federal collateral proceedings. Finally, because a Section 2255 motion is generally presented to the same federal judge who presided at the trial, less prophylactic protection against same-claim litigation is necessary.

ARGUMENT

I. SECTION 2244(B)(1), BY ITS TERMS, DOES NOT BAR FEDERAL PRISONERS FROM FILING A SECOND OR SUCCESSIVE MOTION TO VACATE UNDER SECTION 2255.

Petitioner and the government are correct as a matter of statutory interpretation: Section 2255(h) does not incorporate Section 2244(b)(1). Thus, Section 2244(b)(1) does not preclude federal courts from reviewing second or successive Section 2255 motions

to vacate the criminal sentences of convicted federal prisoners.

A. Under AEDPA, prisoners collaterally attacking their convictions in federal court must travel different paths depending on whether they are serving a state or federal sentence. A person "in custody pursuant to the judgment of a State court" must file "an application for a writ of habeas corpus" under 28 U.S.C. § 2254(a); a "prisoner in custody under sentence of a court established by Act of Congress" may "move the court which imposed the sentence to vacate, set aside or correct the sentence" under 28 U.S.C. § 2255. See Randy Hertz & James Liebman, *Federal Habeas Corpus Practice and Procedure* § 41.2, (7th ed. 2024); see also *In re Bowe*, 601 U.S. —, 144 S. Ct. 1170, 1170 (2024) (Sotomayor, J., joined by Jackson, J., respecting the denial of petition for writ of habeas corpus); *Avery* v. *United States*, 140 S. Ct. 1080, 1080 (2020) (Kavanaugh, J., respecting the denial of certiorari).

Both the Section 2254 and Section 2255 avenues narrow when the prisoner files a second or successive request for postconviction relief—that is, an application for relief that follows an earlier application concerning the same judgment. See *Magwood* v. *Patterson*, 561 U.S. 320, 331–32 (2010). Or as this Court has framed a different street-related metaphor, "[t]he road gets rockier" for "second or successive habeas petitions." *Banister* v. *Davis*, 590 U.S. 504, 509 (2020).

For convicted state prisoners, Section 2244(b)(1) directs federal courts to dismiss "[a] claim presented in a second or successive habeas corpus application under section 2254 that was presented in a prior application." If a Section 2254 Applicant seeks to present a new claim in a second or successive

application, stringent gatekeeping requirements must be satisfied. Such a claim "under section 2254" can proceed only if it "relies on a new rule of constitutional law" or on a "factual predicate" that "could not have been discovered previously" or that establishes "by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense." *Id.* § 2244(b)(2). And it is not sufficient for the Section 2254 Applicant to assert that these requirements are met. A three-judge panel of the court of appeals must agree. See *id.* § 2244(b)(3)(B).

For convicted federal prisoners, Section 2244(a) provides that "[n]o circuit or district judge shall be required to entertain an application for a writ of habeas corpus" from them "if it appears that the legality of [their] detention has been determined" by a federal judge in "a prior application," "except as provided in section 2255." Section 2255 states, in turn, that "[a] second or successive motion must be certified as provided in section 2244 by a panel of the appropriate court of appeals to contain—(1) newly discovered evidence …; or (2) a new rule of constitutional law … that was previously unavailable." *Id.* § 2255(h).

B. Section 2244(b)(1) does not apply when a Section 2255 Movant seeks relief from a federal conviction. "The limitations imposed by § 2244(b)[(1)]" on their face "apply only to a 'habeas corpus application *under section 2254*,' that is, an 'application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court.'" *Magwood*, 561 U.S. at 332 (quoting 28 U.S.C. § 2254(b)(1)) (emphasis added; cleaned up). Federal prisoners cannot challenge their federal convictions by

submitting a habeas petition under Section 2254 because only "a person in custody pursuant to the judgment of a State court" may invoke that Section. 28 U.S.C. § 2254(a). Thus, by its plain terms, Section 2244(b)(1) does not purport to govern federal prisoners' efforts to obtain postconviction relief.

Rather, "[a] prisoner in custody under sentence of a court established by Act of Congress," *id.* § 2255(a), must proceed under Section 2255, including the procedural requirements of that rule that govern second or successive claims. *Id.* § 2255(h). The better reasoned decisions of the lower courts follow this logic. See *Williams* v. *United States*, 927 F.3d 427, 435 (6th Cir. 2019) ("[Section 2241(b)(1)'s] language makes clear that it does not apply to federal prisoners … who are seeking relief *under § 2255*." (emphasis added)); *accord In re Graham*, 61 F.4th 433, 438 (4th Cir. 2023); *Jones* v. *United States*, 36 F.4th 974, 983 (9th Cir. 2022).

It is true that Section 2255(h) refers to a requirement that a "second or successive motion must be *certified* as provided in Section 2244" (emphasis added). But contrary to the Eleventh Circuit's view in this case, that language is best and most naturally read to incorporate only Section 2244(b)(3)'s procedures for obtaining "certifi[cation]" from "a panel of the appropriate court of appeals" that the "second or successive motion" satisfied Section 2255(h)(1)–(2). See *Williams*, 927 F.3d at 435 ("[Section] 2255(h)'s reference to § 2244's certification requirement is much more sensibly read as referring to the portions of § 2244 that actually concern the certification procedures." (citing 28 U.S.C. § 2244(b)(3)); *In re Graham*, 61 F.4th at 438 (similar).

C. Reading Section 2255(h) to incorporate all of Section 2244's limitations, including those in subsection (b)(1), conflicts with fundamental statutory-interpretation principles.

First, extending Section 2244(b)(1) to cover Section 2255 motions ignores the legislative direction that the statutory text explicitly provides—the provision applies only to a claim in a habeas petition brought "under section 2254." Congress could have specified that Section 2244(b)(1) also applies to Section 2255 motions or omitted the reference to Section 2254 applications altogether. It did not. And "[t]hat drafting decision indicates that Congress did not in fact want" Section 2244(b)(1) to apply to Section 2255 motions. *Advoc. Health Care Network* v. *Stapleton*, 581 U.S. 468, 477 (2017).

Second, and relatedly, Congress's specification of "application[s] *under section 2254*" in Section 2244(b)(1) would be superfluous if, as some courts of appeals have suggested, see, *e.g.*, *In re Baptiste*, 828 F.3d 1337, 1339 (11th Cir. 2016); *Taylor* v. *Gilkey*, 314 F.3d 832, 836 (7th Cir. 2002), those provisions also governed federal prisoners' motions for postconviction relief. Ordinarily, courts construe a statute "so that effect is given to all its provisions." *Jones*, 36 F.4th at 983 (quoting *Hibbs* v. *Winn*, 542 U.S. 88, 101 (2004)). Adopting the Eleventh Circuit's position would deprive the phrase "under section 2254" in Section 2244(b)(1) of any meaning and "make[] no linguistic sense." *Williams*, 927 F.3d at 435.

Third, reading the phrase "under section 2254" out of Section 2244(b)(1) would create other textual conflicts. That is because the same phrase, "under section 2254," appears in Section 2244(b)(2). Section 2244(b)(2) specifies, for successive applications, the

three kinds of *new* Section 2254 claims that a federal court may consider. That new-claim provision differs considerably from its Section 2255 counterpart. See 28 U.S.C. § 2255(h)(1)–(2). If the Court essentially eliminates the textual limitation in Section 2244(b)(1), then "under section 2254" would mean different things in subsections (b)(1) and (b)(2)—contrary to the "[t]he normal rule of statutory construction that identical words used in different parts of the same Act are intended to have the same meaning." *Gustafson* v. *Alloyd Co., Inc.*, 513 U.S. 561, 562 (1995).

The only evident alternative would be to do additional violence to the text of the statute and read "under section 2254" out of subsection (b)(2) as well. But to do so would subject Section 2255 Movants to the requirements of both Section 2244(b)(2)(A)–(B) and Section 2255(h)(1)–(2), which are not coextensive. Contra *Jones*, 36 F.4th at 983 & n.6; *Williams*, 927 F.3d at 434. Even the courts of appeals that have extended Section 2244(b)(1) to Section 2255 Movants' claims recognize that Section 2255(h) cannot sensibly incorporate Section 2244(b)(2). See, *e.g.*, *In re Bradford*, 830 F.3d 1273, 1276 n.1 (11th Cir. 2016); see also Pet'r Br. at 20.

The far better approach is the usual one. Follow the text. The text is clear that Section 2244(b)(1) applies only to those seeking relief "under section 2254," a provision that by its terms does not apply to Section 2255 Movants, who definitionally are seeking relief from federal rather than state convictions.

II. THE INTERPRETATION URGED BY PETITIONER AND THE UNITED STATES IS CONSISTENT WITH LONGSTANDING STATUTORY DISTINCTIONS BETWEEN SECTION 2254 APPLICANTS AND SECTION 2255 MOVANTS, AND WITH AEDPA'S PURPOSES.

In addition to text, this Court has previously consulted "historical precedents" and "AEDPA's own purposes" when interpreting Section 2244(b). *Banister*, 590 U.S. at 512. Here, history is consistent with text: Congress has consistently differentiated between the postconviction review rules applicable to state and federal prisoners and, in doing so, has consistently placed greater burdens on state prisoners seeking postconviction review. That pattern is reflected in AEDPA as well, where Congress sought "to further the principles of comity, finality, and federalism." *Williams* v. *Taylor*, 529 U.S. 420, 436 (2000).

A. Congress's More Lenient Treatment Of Second Or Successive Motions To Vacate Conforms With Statutory History.

1. Federal habeas law has distinguished between state and federal prisoners since the Founding era. Even though the "writ of habeas corpus" was "the most celebrated writ" in England, *United States* v. *Hayman*, 342 U.S. 205, 210 (1952), and the Constitution precludes its suspension except "in Cases of Rebellion or Invasion." U.S. Const. art. I, § 9 cl. 2, the Judiciary Act of 1789 authorized the federal courts to issue the writ only to "inquir[e] into the cause of commitment" for prisoners who "[we]re in custody, under or by colour of the authority *of the United States*." 1 Stat. 73, 82 (1789) (emphasis added). Congress did not grant

federal courts general habeas authority to review state custody until after the Civil War. See 14 Stat. 385 (1867).

2. Following "these developments in the law," there was "a great increase in the number of applications for habeas corpus filed in the federal courts by state and federal prisoners, *Hayman*, 342 U.S. at 212, and review of federal prisoners' applications, in particular, "resulted in 'serious administrative problems,'" *Jones* v. *Hendrix*, 599 U.S. 465, 474 (2023). Because the existing habeas law required a federal prisoner to challenge his confinement in the district where he was held, see *Hayman*, 342 U.S. at 212, the handful of district courts with jurisdiction over the major federal prisons received a disproportionate share of federal-prisoner petitions, see *id.* at 214 n.18 (observing that 63% of habeas applications at the time were filed in just five districts); see also *Jones*, 599 U.S. at 473–74 (describing administrative burdens). Deciding these petitions consumed significant judicial resources. See *Hayman*, 342 U.S. at 214 n.18.

To ameliorate the localized burdens created by the place-of-confinement rule, Congress enacted Section 2255, which established a pathway for federal prisoners to seek relief in the court of sentencing rather than in the court of confinement. See Pub. L. No. 80-773, 62 Stat. 869 at 967–68 (1948) (codified as amended at 28 U.S.C. §2255); *Jones*, 599 U.S. at 473. This Court explained early on that the "sole purpose" of Section 2255 "was to minimize the difficulties encountered in habeas corpus hearings by affording the same rights in another and more convenient forum." *Hayman*, 342 U.S. at 219; see *Hill* v. *United States*, 368 U.S. 424, 427 (1962) (Congress intended "to provide in the sentencing court a remedy exactly

commensurate with that which had previously been available by habeas corpus in the court of the district where the [federal] prisoner was confined.").

At the same time, Congress enacted Section 2254 to govern state-prisoner habeas applications. See 62 Stat. at 967 (codified as amended at 28 U.S.C. §2254); H. R. Rep. No. 80-308 at A180 (describing Section 2254 as "declaratory of existing law as affirmed by the Supreme Court"). But to address the increase in state-prisoner habeas applications, Congress codified and made mandatory what had been a discretionary, judge-made exhaustion requirement. See 62 Stat. at 967; see also Lee B. Kovarsky, *AEDPA's Wrecks: Comity, Finality, and Federalism*, 82 Tul. L. Rev. 443, 452 (2007) (describing evolution of exhaustion requirement). Federal prisoners faced no such substantive exhaustion requirement on their initial postconviction claims for relief. Compare 62 Stat. at 697 (codified at 28 U.S.C. § 2254) with 62 Stat. at 697–98 (codified at 28 U.S.C. § 2255); see *Pratt* v. *United States*, 129 F.3d 54, 60 (1st Cir. 1997).

3. In 1996, AEDPA further bifurcated postconviction procedure based on whether a prisoner seeks review of a sentence imposed by a state or federal court.

For instance, Congress barred state prisoners from relitigating claims decided on the merits in state court unless they can establish that the underlying state decision "was contrary to, or involved an unreasonable application, of clearly established Federal law, as determined by the Supreme Court" or "was based on an unreasonable determination of the facts." 110 Stat. at 1219 (codified at 28 U.S.C. § 2254(d)(1)). This provision requires federal courts to show greater deference to state-court decisions, and this Court has held that: the federal habeas record is limited to what

was before the state court, see *Cullen* v. *Pinholster*, 563 U.S. 170, 180–81 (2011), a decision is not "unreasonable" unless every fairminded jurist would say so, *id.* at 188, and the state court's decision is judged against the law as it existed when the last state court acted, see *Greene* v. *Fisher*, 565 U.S. 34, 40 (2011). Federal courts deciding Section 2255 motions to vacate, in contrast, assess directly whether the federal prisoner's sentence is contrary to the Constitution, laws, or treaties of the United States. See 28 U.S.C. § 2255(a).[3]

AEDPA also imposes a greater burden on state prisoners with respect to fact development. Specifically, federal courts must presume a state court's factual findings are correct when evaluating a convicted state prisoner's habeas application. *Id.* § 2254(e)(1). Such a prisoner bears "the burden of rebutting the presumption … by clear and convincing evidence." *Id*. And if a state prisoner "failed to develop the factual basis of [his] claim in State court," AEDPA precludes the federal court from "hold[ing] an evidentiary hearing on the claim" except in limited circumstances. *Id.* § 2254(e)(2). None of these restrictions apply to federal prisoners' motions to vacate under Section 2255.

Congress's different treatment of convicted state and federal prisoners does not stop there either. Section 2255 Movants may seek to vacate their sentences within one year of the Supreme Court announcing a

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[3] This Court's decision in *Teague v. Lane*, 489 U.S. 288, 310 (1989) (plurality op.), applies equally to Section 2255 Movants and Section 2254 Applicants: "new constitutional rules of criminal procedure" will not be applied "to those cases which have become final before the new rules are announced" unless "they fall within an exception."

new statutory or constitutional right, see 28 U.S.C. § 2255(f)(3), whereas state prisoners can do so only when the Supreme Court recognizes a new constitutional right, see *id.* § 2244(d)(1).

4. When it comes to second or successive requests for postconviction relief, this pattern repeats. Congress has historically treated state and federal prisoners differently.

In 1948, Congress codified in Section 2244 various doctrines that the courts had developed to limit seemingly "endless successive petitions." *McCleskey* v. *Zant*, 499 U.S. 467, 480 (1991). These doctrines originally applied to state and federal prisoners equally. See 62 Stat. at 965–66 (providing that no federal judge "shall be required to entertain an application for a writ of habeas corpus" challenging detention "pursuant to a judgment of a court of the United States," or of any State, if a federal court previously assessed "the legality of such detention" and "the petition presents no new ground not theretofore presented and determined").

Eighteen years later, however, Congress enacted further restrictions on state prisoners' ability to obtain relief on second or successive petitions when it amended Section 2244. Pub. L. 89-711, § 1, 80 Stat. 1104, 1105 (1966). This iteration of the statute required convicted state prisoners—and only state prisoners—to establish that their second or successive petitions were "predicated on a factual or other ground not adjudicated on the hearing of the earlier application for the writ." 80 Stat. at 1104; see S. Rep. No. 89-1797, 1966 U.S.C.C.A.N. 3663, 3664. The Administrative Office of the U.S. Courts endorsed this change "to prevent the abuse of the writ of habeas corpus by persons in custody under judgments of State

courts in habeas corpus proceeds in Federal courts, and to expedite the disposition of nonmeritorious and repetitious applications for the writ in Federal court by State court prisoners." Letter from William E. Foley, Deputy Director of the Administrative Office of the U.S. Courts to Senator Jospeh D. Tydings, Sept. 28, 1966, attached to S. Rep. No. 89-1797.

In fact, it is AEDPA's further amendment of Section 2244 that makes this differentiated approach most plain. Of course, Section 2244 contains language that restricts same-claim litigation, whereas Section 2255 does not. But AEDPA further differentiated the approach to *new-claim* litigation too. Specifically, Section 2254 applicants making new claims absent from prior applications are expressly subject to more stringent restrictions than are Section 2255 movants making new claims absent from prior motions. Compare 28 U.S.C. § 2244(b)(2)(A)–(B) with *id.* § 2255(h)(1)–(2).

Since at least 1948, Congress has imposed greater restrictions on state prisoners generally and with respect to second and successive requests for relief specifically. The straightforward reading of Sections 2241(b)(1) and 2255(h)—that federal courts are required to dismiss only state prisoners' second or successive applications that present a claim previously raised—is thus consistent with the historical record showing Congress can and frequently does create different rules for state and federal prisoners. See *Williams*, 927 F.3d at 435 ("Congress clearly knew how to refer to federal prisoners (or all applicants) when it wanted to do so.").

B. Congress's Stricter Treatment Of State Prisoners' Same-Claim Litigations Aligns With AEDPA's Animating Purposes.

"Congress enacted AEDPA 'to reduce delays in the execution of state and federal criminal sentences, particularly in capital cases,' and to advance 'the principles of comity, finality, and federalism.'" *Shoop* v. *Twyford*, 596 U.S. 811, 818 (2022) (quoting *Woodford* v. *Garceau*, 538 U.S. 202, 206 (2003); *Williams*, 529 U.S. at 436). The Court has returned to this animating purpose over and over when interpreting AEDPA's various provisions. See*, e.g.*, *Pinholster*, 563 U.S. at 185; *Jimenez* v. *Quaterman*, 555 U.S. 113, 120 (2009); *Panetti* v. *Quarterman*, 551 U.S. 930, 945 (2007); see *also* Kovarsky, supra, 82 Tul. L. Rev. at 445 n.5 (collecting cases). Here, the adoption of stricter restrictions for state prisoners' same-claim litigation serves Congress's goals; the Court need not expand Section 2244(b)(1) to Section 2255 Movants to do so.

1. AEDPA's interests in comity and federalism counsel in favor of stricter rules for Section 2254 Applicants.

In the habeas context, comity and federalism principles merge into a common concern with affording state procedures and decisions appropriate deference. See *Ramirez*, 596 U.S. at 378 (discussing "federal-state comity"). State prisoners' applications for relief, at bottom, ask the courts of one sovereign to review another sovereign's actions. AEDPA's limitations on federal postconviction review of state convictions therefore promote federal-state comity. However, the same is not true for federal prisoners, "whose cases implicate no separate sovereign." *Williams*, 927 F.3d at 436 n.6. As such, there is no policy-based reason to

think Congress would have wanted parallel successive litigation rules for Section 2254 Applicants and Section 2255 Movants.

Section 2244(b)(1)'s text reflects Congress's concern with federal-state comity by distinguishing between federal review of federal convictions, which does not implicate comity or federalism interests, and federal review of state convictions, which does. By requiring federal courts to dismiss claims in second or successive applications brought "under section 2254" if they were presented in a prior application, Congress curbed federal review of state decisions, thereby reducing the burden experienced by state governments. See *Ramirez*, 596 U.S. at 377 (noting that "federal intervention imposes significant costs on state criminal justice systems").

Such comity concerns, however, do not arise when a federal court reviews the federal conviction and federal sentence it entered, *Jones*, 36 F.4th at 977. Therefore, imposing further restrictions on federal prisoners would not serve the same federal-state comity interest. See *In re Graham*, 61 F.4th at 441; *Williams*, 927 F.3d at 436 n.6. Viewed from this vantage point, the "more lenient" rule for federal prisoners—the one reflected in Section 2244(b)(1)'s text—"makes sense." *Case* v. *Hatch*, 731 F.3d 1015, 1035 (10th Cir. 2013).

2. AEDPA's interest in finality counsels in favor of stricter rules for Section 2254 Applicants.

In enacting AEDPA, Congress recognized that "[s]erial relitigation of final convictions undermines the finality that 'is essential to both the retributive and deterrent functions of criminal law." *Ramirez*, 596 U.S. at 391. To that end, AEDPA imposed certain restrictions, such as Section 2254(b)'s exhaustion

requirement and Section 2254(e)'s evidentiary gatekeeping protocol, that seek to "promote the finality of *state convictions*." *Ramirez*, 596 U.S. at 390 (emphasis added).

This Court has held that Section 2244(b)(1)'s same-claim litigation bar also serves Congress's interest in promoting state-conviction finality. It "reduces the potential for delay on the road to finality by restricting" the opportunities that a state prisoner has "in which to seek … habeas review." *Duncan* v. *Walker*, 533 U.S. 167, 179 (2001).

Extending the plain language of Section 2244(b)(1) to cover federal prisoners' same-claim litigation is not necessary to address serial relitigation. Section 2255(h)'s gatekeeping requirements, which already limit federal prisoners' ability to bring same-claim litigation by requiring court of appeals' certifications, have real teeth. For that reason, the Fourth and Ninth Circuits have concluded that "it is doubtful" that "a wave of new district-court postconviction proceedings" would arise if Section 2244(b)(1) is given its natural reading. See *In re Graham*, 61 F.4th at 441 (citing *Jones*, 36 F.4th at 984).

The finality interests attendant to Section 2255 motions are also different from those implicated by state prisoners' petitions for federal review. By design, state prisoners must first exhaust all state remedies. See 28 U.S.C. § 2254(b)(1)(A). That means, by the time a state prisoner files a Section 2254 petition subject to Section 2244(b)(1)'s bar, he will have exercised his direct appeal rights, gone through an initial round of state postconviction review, litigated his first habeas application, and had additional state review in conjunction with the second round of litigation. See *id.*

at § 2254(b).[4] A successive Section 2255 motion, on the other hand, is comparable to a state prisoner's first federal habeas petition.

Further, resolving Section 2255 motions is generally more straightforward than adjudicating Section 2254 applications. Federal prisoners file their motion in "the court which imposed the sentence," 28 U.S.C. § 2255(a), and in many cases, the very same judge who originally sentenced the prisoner conducts the collateral review, see Rule 4, *Rules Governing Section 2255 Proceedings For The United States District Courts* at 19 (2019) (requiring assignment of the motion to "the judge who conducted the proceedings being challenged"). This judge will likely be familiar with the case, will understand the context of the constitutional challenge, and will be in the best position to assess the effect of any new evidence. The finality interest can be protected with less prophylactic gatekeeping.

Section 2254 petitions, by contrast, involve a judge who "lacks any familiarity with the case," and must examine a higher volume of information: "the original state proceeding . . . along with the subsequent appeal and any state collateral review proceedings and

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[4] States have instituted procedures that parallel or may even exceed those found in federal collateral review to avoid federal intervention into their criminal matters. *See* Brian R. Means, *Postconviction Remedies* § 1:1 (2024) (analyzing state adoption of postconviction procedure similar to the writs of habeas corpus and coram nobis). It can take significant time to complete this review for state prisoners under a death sentence. *See* Carol S. Steiker & Jordan M. Steiker, *Costs and Capital Punishment: A New Consideration Transforms an Old Debate*, 2010 U. Chi. Legal F. 117, 139–44 (2010) (detailing extensive pre-trial and trial procedures, distinct appellate procedures, and prolonged state and federal habeas review).

appeals." Sarah French Russell, *Reluctance to Resentence: Courts, Congress, and Collateral Review*, 91 N.C. L. Rev. 79, 147 (2012). Given these considerations, it also "makes sense" why Congress would not have believed it necessary to extend Section 2244(b)(1) to federal prisoners' motions to vacate. See *Case*, 731 F.3d at 1035.

CONCLUSION

AEDPA's text indicates that Section 2244(b)(1)'s bar applies only to second or successive applications submitted by state prisoners. Historical precedent and statutory purposes are in accord.

The Court should therefore hold that Section 2244(b)(1) does not apply to Petitioner's motion to vacate under 28 U.S.C. § 2255, and it should reverse the decision below.

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