No. 24-5438

In the
Supreme Court of the United States

MICHAEL BOWE,

Petitioner,

v.

UNITED STATES,

Respondent.

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

BRIEF OF COURT-APPOINTED AMICUS CURIAE IN SUPPORT OF JUDGMENT BELOW ON FIRST QUESTION PRESENTED

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QUESTIONS PRESENTED

(1) Whether 28 U.S.C. §2244(b)(1) applies to a claim presented in a second or successive motion to vacate under 28 U.S.C. §2255.

(2) Whether 28 U.S.C. §2244(b)(3)(E) deprives this Court of certiorari jurisdiction over the grant or denial of an authorization by a court of appeals to file a second or successive motion to vacate under 28 U.S.C. §2255.

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INTEREST OF AMICUS CURIAE

On February 20, 2025, this Court invited Kasdin M. Mitchell to brief and argue in support of the judgment below as to the first question presented by the petition for a writ of certiorari.

OPINION BELOW

The Eleventh Circuit's order is reported at 2024 WL 4038107 and reproduced in the Joint Appendix (J.A.) at 72-79. The district court did not issue an opinion.

JURISDICTION

Amicus Curiae takes no position on jurisdiction, which is addressed by the parties in the second question presented.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Sections 2244 and 2255 of Title 28 of the U.S. Code are reproduced in the Addendum (Add.) to this brief.

INTRODUCTION

A federal prisoner generally receives two opportunities to raise in federal court a claim that his sentence is unlawful: his original criminal proceedings, and a postconviction motion under 28 U.S.C. §2255. The first question presented in this case asks whether a federal prisoner, having failed to prevail in an earlier round of §2255 litigation, may reassert the same claim.

The answer is no, as the majority of circuits have held. The lodestar of the Antiterrorism and Effective Death Penalty Act (AEDPA) is finality, and AEDPA's text prohibits prisoners from raising the same claim in a second or successive §2255 motion. Petitioner agrees that the strict bar on do-over claims in §2244(b)(1) applies to state prisoners whom, unlike federal prisoners, receive only one opportunity for federal-court review of their claims. A simple set of textual cross-references applies the same rule to do-over §2255 claims by federal prisoners. Section 2255(h) requires an appellate court to certify a serial §2255 motion "as provided in [§]2244." Section 2244, in turn, requires a prisoner to "satisf[y] the requirements of *this subsection*"—*i.e.*, subsection (b). §2244(b)(3)(C) (emphasis added). First and foremost among subsection (b)'s requirements is the command that a do-over claim "shall be dismissed." §2244(b)(1).

It does not get much clearer than that, which is why everyone agrees that the majority of subsection (b)'s "requirements" apply to §2255 movants—even though §2244(b) speaks only of habeas corpus "applications," which a §2255 *motion* is not. Indeed, Petitioner concedes that "section 2255(h)

incorporates … [§2244](b)(3)(C)," Petr. 32, which is the *very* provision that commands a court to apply "the requirements of this subsection." Petitioner simply would pick-and-choose among various paragraphs and subparagraphs *within* subsection (b), contrary to the settled rule that "when Congress wants to refer only to a particular subsection or paragraph, it says so." *Cyan, Inc. v. Beaver Cnty. Emps. Ret. Fund*, 583 U.S. 416, 441 (2018).

Although AEDPA's text should end the inquiry, its structure and statutory history yield the same conclusion that Congress wanted to treat federal and state prisoners alike to the extent possible when it comes to serial filings. As to structure, Congress specifically exempted §2255 motions from a *different* subsection (b) requirement by including trumping language in §2255 (to align with other AEDPA provisions), but left untouched (b)(1)'s threshold bar on do-over claims. Congress also imposed a 30-day clock on appellate screening, and then gave appellate courts the tools to meet that quick deadline by barring all do-over claims. As to history, AEDPA's choice to route §2255 motions through subsection (b) is striking because, before AEDPA, this subsection exclusively addressed state prisoners, with other statutory provisions addressing federal prisoners. Now, second or successive filings by federal prisoners run through subsection (b), reinforcing Congress's desire for a common rule.

Against this text, structure, and history, Petitioner, the Government, and certain amici overread snippets of §2244 and make policy arguments. They place much weight on (b)(1)'s

reference to a "habeas corpus application under section 2254," ignoring that *all* of subsection (b)—which everyone agrees largely applies to federal prisoners—uses language that facially excludes §2255 *motions*. Congress clearly understood that §2244(b)'s procedural language referring to postconviction habeas applications by state prisoners is no barrier to applying the same rules to the §2255 postconviction motions that AEDPA channels through subsection (b). Also unavailing is the emphasis on the phrase "under §2254," which merely limits the second or successive bar to *postconviction prisoners* and carves out other types of detainees whom—*unlike* §2254 applicants and §2255 movants—are not "in custody pursuant to [a] judgment." §2254 (state); *see also* §2255 (federal). And no fairness arguments hold water given that AEDPA indisputably bars do-over claims by state prisoners who receive just one federal-court audience, as well as because this Court has long recognized that AEDPA's structure imposes the "harsh result[]" that a federal prisoner "who files a second or successive motion seeking to take advantage of a new rule of constitutional law will be … barred except in [a] rare case." *Dodd v. United States*, 545 U.S. 353, 359 (2005).

AEDPA exists "to advance the finality of criminal convictions." *Mayle v. Felix*, 545 U.S. 644, 662 (2005). Federal prisoners receive one postconviction bite at the apple, after which AEDPA strictly curtails all further litigation, even if based on a retroactive rule. If this Court exercises jurisdiction, it should affirm.

STATEMENT OF THE CASE

A. Statutory Background

One year after Timothy McVeigh bombed a federal building in Oklahoma City, Congress passed AEDPA. Congress was distressed by "a total lack of finality" in the "criminal justice system" and the "thousands of dollars after thousands of dollars going into the endless delays in the execution of sentences." 142 Cong. Rec. S3365, at 3376 (Apr. 16, 1996) (statement of Sen. Gorton). Lack of finality—"more than any other single factor"—"ha[d] caused the people of the United States to lose an important degree of faith in their criminal justice system." *Id.*

This was not just a state-prisoner problem. Although Congress was troubled by evasion of "State laws and State convictions," it also believed that "reforming habeas corpus is vitally important … with respect to *all* of the … serious crimes principally contained in our State and *Federal* criminal codes." *Id.* at 3376-77 (emphases added); *see also* 142 Cong. Rec. H3605, at 3612 (Apr. 18, 1996) (statement of Rep. McCollum) ("This bill … will be meaningful to the victims of Oklahoma City, especially in the habeas corpus provisions that … will end the seemingly endless appeals of death row inmates and carry out with swiftness and certainty the sentence of justice in this country.").

The centerpiece of this finality-restoring scheme was subsection 2244(b) of Title 28, which Congress had enacted decades earlier to address serial litigation by state prisoners. *See* Pub. L. No. 89-711 (Nov. 2, 1966). Following AEDPA's 1996 overhaul, the first command of subsection (b) became an absolute bar on

do-over claims: "A claim presented in a second or successive habeas corpus application under section 2254 that was presented in a prior application shall be dismissed." §2244(b)(1). And this was just the "[f]irst" of "[s]everal … barriers." *Rivers v. Guerrero*, 605 U.S. 443, 450 (2025). "[E]ven if the subsequent petition presents a new claim" and can leap the first hurdle, AEDPA still requires dismissal unless the new claim relies on a new rule of constitutional law made retroactive by this Court or clear and convincing evidence of actual innocence. *Id.*

AEDPA enforced these barriers with two layers of judicial screening. *First*, because Congress was skeptical that all district courts would promptly dispose of repetitive lawsuits, Congress tasked the "court[s] of appeals" with taking the first look at a proposed "second or successive application." §2244(b)(3)(A); *cf.* 142 Cong. Rec. at 3376 (Statement of Sen. Gorton) (decrying that "a single Federal district court judge can interrupt the process"). And to ensure that the backlog did not simply move to the courts of appeals, AEDPA imposed a mandatory deadline of "30 days" in which the "court of appeals shall grant or deny the authorization." §2244(b)(3)(D).

Congress gave the courts of appeals all the tools necessary to make this quick determination. Under AEDPA, a "court of appeals may authorize the filing of a successive application only if it determines that the application makes a prima facie showing that the application satisfies the requirements of *this subsection*." §2244(b)(3)(C) (emphasis added). Those requirements are the easy-to-apply "barriers" in subsection (b) that require dismissal of *all* do-over

claims, along with the vast majority of new claims unsupported by an on-point directive from this Court or clear and convincing evidence of actual innocence. *Rivers*, 605 U.S. at 450.

Second, a habeas corpus application that the court of appeals authorizes still must survive district court scrutiny; not just of the merits, but for compliance with the even broader "requirements of *this section*" beyond subsection (b)'s dictates for pre-screening claims. §2244(b)(4) (emphasis added).

Congress's multifront approach to enable courts to quickly dispose of serial litigation was clear and aggressive—likely because Congress did not write on a fully blank slate or have complete faith in the judiciary to implement its commands. Perhaps most troublesome were the rules for serial litigation by federal prisoners. Since 1948, Congress had generally barred federal prisoners from filing habeas "application[s]," instead requiring them to "apply for relief[] by motion" under §2255. 28 U.S.C. §2255 (1948). Prior iterations of §2255 also included a cut-and-dry rebuke of serial motions by federal prisoners: "The sentencing court shall not be required to entertain a second or successive motion for similar relief on behalf of the same prisoner." *Id.*

This Court, however, was unwilling to enforce this "much stricter" language disposing of repeat motions by federal prisoners. *McCleskey v. Zant*, 499 U.S. 467, 484 (1991) (discussing *Sanders v. United States*, 373 U.S. 1, 13 (1963) (Brennan, J.)). Mid-century caselaw declared that §2255's rule "'cannot be taken literally,' and construed it to be the 'material equivalent' of the abuse standard in §2244," *id.*, which

then addressed habeas corpus "application[s]"—not §2255 motions. 28 U.S.C. §2244 (1948).

With Timothy McVeigh's trial looming, Congress took another run at curtailing serial litigation by federal prisoners. Having now added a categorical bar on do-over claims by state prisoners in §2244(b), Congress explicitly routed federal prisoners through that very subsection. AEDPA jettisoned §2255's self-contained (and long-marginalized) rule and in its place added §2255(h), which commands that a "second or successive motion must be certified as provided in section 2244." As everyone here agrees, that language "incorporates" §2244(b)(3)(C). Petr. 32; Resp. 45. And §2244(b)(3)(C), in turn, directs the court of appeals to ask whether "the application satisfies the requirements of *this subsection*," (emphasis added)—the very "[f]irst" of which imposes a categorical bar on do-over claims. *Rivers*, 605 U.S. at 450; *see* §2244(b)(1).

Of course, Congress understood that federal and state prisoners are not entirely similar. Unlike *do-over* claims that waste the time of the federal courts and disrupt finality no matter who brings them, *new* claims by state prisoners raise additional comity concerns by threatening to stray beyond the state-court issues and record. AEDPA squarely addressed that problem in §2254(e)(2), which prohibits evidentiary hearings on undeveloped claims by state prisoners absent a new retroactive rule of constitutional law or new evidence "that could not have been previously discovered through the exercise of due diligence" and that would "establish by clear and convincing evidence that but for constitutional

error, no reasonable factfinder would have found the applicant guilty."

Given that high bar for state prisoners, Congress included in §2244(b)(2) mirror-image language that requires *new* claims by state prisoners to satisfy the same lofty standards—in particular, "due diligence" and "constitutional error." And, given these state-prisoner-specific nuances, Congress opted to exempt federal prisoners from this articulation of the new-claim bar by including in §2255(h) a similar (but gentler) set of rules for new claims that do not require the same showings of "due diligence" and "constitutional error." *Compare* §2244(b)(2), *with* §2255(h). But despite expressly displacing (b)(2)'s requirements for *new* claims from the otherwise-applicable "requirements of this subsection," §2244(b)(3)(C), Congress included no such language displacing subsection (b)'s bar on *do-over* claims.

B. Factual Background

Petitioner shot two guards during a botched robbery of an armored car, inflicting "permanent or life threatening bodily injury." J.A. 29, 50-51; Add. 10. On July 30, 2008, Petitioner and his accomplices "pulled up in a van that they stole and stopped about 4 feet from" where one of the guards was servicing an ATM. Add. 9, 23. "Just as fast as they stopped, the doors of the van opened, criminals with masks on jumped out of the van, two of which were holding black assault rifles." Add. 9, 23, 26.

Petitioner was one of them, and he "immediately began shooting" without giving his targets a chance to surrender. J.A. 50; Add. 9, 23-24, 26. Petitioner shot the guard at the ATM, blowing a "large hole in [his]

leg" and knocking him to the ground. Add. 10, 24, 26. During the ensuing gunfight, the guard managed to work his way back to the armored car, where he "found that [the] driver had been shot" too. Add. 10.

The robbers fled the scene, allowing the guards to speed to the hospital. Add. 10, 24. There, one guard underwent emergency surgery. Add. 10. His severe injuries required a long and painful rehabilitation process of "learning how to walk again, as if [he were a] toddler learning how to walk for the first time." Add. 11.

Petitioner pleaded guilty to three counts: conspiracy to commit Hobbs Act robbery, attempt to commit Hobbs Act robbery, and using, carrying, brandishing, or discharging a firearm during and in relation to these "crime[s] of violence." 18 U.S.C. §924(c); *see also* Petr. 6; J.A. 1-3, 10-18. The district court for the Southern District of Florida sentenced him to 168 months in prison on the first two counts and 120 months in prison on the third count. Petr. 6; J.A. 20. The district court also imposed joint-and-several restitution in the amount of $202,518.86, which Petitioner does not claim to have discharged. J.A. 24.[1]

During his direct criminal proceedings, Petitioner does not appear to have pressed his current claim that

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[1] Petitioner's codefendants received somewhat shorter sentences. However, all three have violated the terms of their supervised releases, resulting in several revocations. *See United States v. Bowe*, No. 08-cr-80089, Dkt. Nos. 144, 172, 187, 194, 213 (S.D. Fla.).

he is innocent of committing a "crime of violence." Indeed, he did not even appeal. J.A. 29.

Rather, Petitioner waited several years after his conviction became final to make this claim. In 2016, he filed a §2255 motion arguing that his §924(c) conviction was unlawful, J.A. 74, and, after losing on this motion, attempted to file several more §2255 motions and §2241 applications. J.A. 49, 55, 61, 66, 72. On June 27, 2024, the Eleventh Circuit rebuffed his most recent effort to argue that he is innocent of his §924(c) conviction by applying its longstanding precedent barring second or successive motions asserting do-over claims. J.A. 72-79.[2]

SUMMARY OF THE ARGUMENT

I. AEDPA's plain text applies §2241(b)(1)'s bar on do-over claims to §2255 motions. Everyone agrees that §2255 incorporates §2244(b)(3)(C)'s command that an appellate court screen second or successive filings for compliance with "the requirements of *this*

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[2] In a brief filed after the Government's response brief, Amicus Stephanie O'Banion suggests that an appellate court's prior denial of authorization to pursue a claim does not alone trigger §2244(b)(1), which instead requires that the claim have been presented in a substantive application for postconviction relief. Br. 4, 17. But the parties agree that §2244(b)(1) is dispositive here if it applies to §2255 movants, so this Court need "not address arguments *amicus* advances questioning that premise." *Iowa v. Tovar*, 541 U.S. 77, 88 n.10 (2004). Regardless, Petitioner claimed in his first §2255 motion that his §924(c) conviction was unlawful, *see* J.A. 74, so his current claim that his §924(c) conviction is unlawful is second or successive by any measure. *See Brannigan v. United States*, 249 F.3d 584, 587-88 (7th Cir. 2001) (Easterbrook, J.) (explaining that a "'claim' [is] a challenge to a particular step in the case") (emphasis omitted).

subsection." (Emphasis added.) Subsection (b)'s first requirement is that a do-over claim "shall be dismissed." §2244(b)(1). Petitioner's theory thus relies on rewriting §2244(b)(3)(C) to allow piecemeal application of various subparagraphs within subsection (b), contrary to the rule that "when Congress wants to refer only to a particular subsection or paragraph, it says so." *Cyan*, 583 U.S. at 428 (brackets omitted). Petitioner's rewrite is especially improper because Congress was precise in AEDPA's terminology, with nearby provisions referring to "sections," "subsections," "paragraphs," and "subparagraphs."

II. Two key features of AEDPA's structure confirm that (b)(1) is an applicable "requirement[]" of subsection (b).

A. When Congress wanted to exempt federal §2255 movants from *another* subsection (b) requirement—*i.e.*, paragraph (b)(2), which Congress phrased to align with other AEDPA rules addressing state prisoners—Congress did so by including specific language in §2255(h) departing from §2244(b)(2). Congress included no such language departing from §2244(b)(1)'s threshold rule barring do-over claims, thus underscoring that (b)(1) remains an unavoidable "requirement[] of this subsection." §2244(b)(3)(C).

B. The bar on do-over claims is central to AEDPA's strict "30 day[]" deadline for appellate screening. §2244(b)(3)(D). Tellingly, every court of appeals that has declined to apply the bar to §2255 motions has decided that it is entitled to flout AEDPA's timeline. Worse still, many courts of appeals have also disregarded AEDPA's other screening

requirements for successive litigation (such as the need for *this Court* to declare a new rule retroactive), meaning there will be little left of Congress's tools for meeting the 30-day deadline should Petitioner prevail in eliminating the bar on do-over claims.

III. AEDPA's history yields the same conclusion that Congress wanted to treat successive filings by federal and state prisoners alike whenever possible. Before AEDPA, §2244(b) exclusively addressed serial claims by state prisoners. AEDPA made a deliberate choice to route §2255 motions through that subsection.

IV. The contrary arguments of Petitioner, the Government, and amici cannot overcome the full text, structure, and history. They place much weight on (b)(1)'s reference to a "habeas corpus application under section 2254" (which, of course, is a device unavailable to federal prisoners), but *all of §2244(b)* uses language that is facially inapplicable to federal prisoners. Every provision speaks of an "application"—which a §2255 motion is not—yet Congress saw that as no barrier when it routed §2255 motions through subsection (b). If anything, the at-issue terminology shows the ease of applying §2244(b)'s restrictions to §2255 motions, because the language merely confirms that the restrictions apply to postconviction *prisoners*—not to other detainees who might file habeas applications—making the restrictions a natural fit for §2255 movants who are postconviction prisoners too. And any fairness or policy arguments founder on the reality that AEDPA not only applies this supposedly "harsh rule[]" to state prisoners, but operates such that, regardless, federal prisoners will "rare[ly]" be able "to take advantage of

a new rule of constitutional law." *Dodd*, 545 U.S. at 359. AEDPA seeks finality, not fairness—much less fairness for prisoners who have received multiple layers of federal review.

ARGUMENT

Text, structure, and history require applying §2244(b)(1) to federal §2255 movants as part of the appellate screening process. Petitioner, the Government, and amici's contrary arguments just confirm what the text says and the wisdom of the mechanisms Congress provided so that courts of appeals can filter serial litigation within 30 days.

I. AEDPA's Text Applies §2241(b)(1)'s Bar On Do-Over Claims To §2255 Motions.

The majority rule follows directly from the statutory text. Section 2255(h) states that a "second or successive motion must be certified as provided in section 2244 by a panel of the appropriate court of appeals." The certification provision in §2244—*i.e.*, §2244(b)(3)(C)—provides that "[t]he court of appeals may authorize the filing of a second or successive application only if it determines that the application makes a prima facie showing that the application satisfies the requirements of *this subsection*." *Id.* §2244(b)(3)(C) (emphasis added); *accord* Petr. 32. First and foremost among the requirements of subsection (b) is that "[a] claim presented in a second or successive habeas corpus application under section 2254 that was presented in a prior application shall be dismissed." *Id.* §2244(b)(1).

The consequences of these cross-references are unavoidable. A second or successive postconviction filing does not get off the ground unless certified by a

court of appeals. In making that certification, the court of appeals must examine whether the "application makes a prima facie showing that [it] satisfies the requirements" of §2244(b). And §2244(b)(1) says that do-over claims are nonstarters.

Sure enough, Petitioner, the Government, and Members of this Court all recognize that a serial §2255 motion must overcome at least *some* of §2244(b)'s "requirements." Petitioner admits that subparagraphs (b)(3)(A), (b)(3)(B), (b)(3)(C), and (b)(3)(D) apply. Petr. 32. The Government would add "subparagraph[]" (b)(3)(E) into the mix as well. Resp. 20. And Members of this Court have invoked §2244(b)(3) and its "prima facie" standard in addressing second or successive §2255 motions. *E.g.*, *St. Hubert v. United States*, 140 S. Ct. 1727, 1727 (2020) (Sotomayor, J., statement respecting denial of certiorari) (discussing "§2244(b)(2), (3); §2255(h)").

Petitioner's desire to avoid the requirements of §2244(b)(1) while incorporating other portions of subsection (b) violates basic principles of statutory construction. Despite AEDPA's command to apply "the requirements of this *subsection*," §2244(b)(3)(C) (emphasis added), Petitioner contends that only certain *subparagraphs*—which he vaguely calls "provisions"—should be included. Petr. 32 ("(b)(3)(A) …, (b)(3)(B) … (b)(3)(C) … (b)(3)(D)"). But Congress "drafts statutes with hierarchical schemes—section, subsection, paragraph, and on down the line"—meaning that when "Congress want[s] to refer only to a particular subsection or paragraph, it sa[ys] so." *Cyan*, 583 U.S. at 428.

Here Congress referred to the larger subsection (b) by imposing "the requirements of this subsection." §2244(b)(3)(C). If Congress agreed with Petitioner's more granular approach, it "would have written as set forth in [the relevant] [sub]paragraphs." *Cyan*, 583 U.S. at 428, 441. But "Congress did not enact that formulation," so this Court "will not read" language pointing to "subsection (b)" as merely incorporating cherry-picked portions of that subsection. *Id.* at 443. Yet that is exactly what Petitioner's position would have this Court do—as confirmed by Amicus Stephanie O'Banion, who candidly argues that the Court should adopt Petitioner's view because it "makes eminently more sense," even though it would rewrite "the phrase 'this subsection'" to "refer[] only to §2244(b)(3), not to all of Section 2244(b)." Br. 24.[3]

That rewrite would be especially improper because nearby provisions addressing serial litigation are precise in using the appropriate terminology with respect to Congress's "hierarchical scheme[.]" *Cyan*, 583 U.S. at 428. Take §2244(b)(4), which explains how

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[3] Also telling is the complaint of Amicus National Association of Criminal Defense Lawyers that the Eleventh Circuit supposedly goes beyond a "'prima facie' review" to "dig[] deeply into the merits of claims." Br. 12. The only reason a "prima facie" approach would apply to a §2255 motion is because of §2244(b)(3)(C)'s instruction to look for "a prima facie showing that the *application* satisfies the requirements *of this subsection*." (Emphases added.) As explained above and below, "this subsection" means subsection (b), *supra* 14-16, and an "application" is not technically a §2255 "motion," *infra* 32. Amicus's confidence that §2244(b)(3)(C) most certainly applies to a §2255 motion confirms the textual ease of applying §2244(b) despite variances in terminology.

a district court should handle a successive application that the court of appeals has authorized. Unlike the court of appeals' "prima facie" consideration of the requirements of *subsection* (b)—*i.e.*, whether the prisoner is making a new claim based on a rule this Court has made retroactive or clear evidence of actual innocence—a district court must conduct a deeper look at the merits. Thus, §2244(b)(4) tells the district court to dismiss a claim that does not "satisf[y] the requirements of this *section*" (emphasis added)—*i.e.*, a broader set of requirements including §2244(d)'s statute of limitations and §2244(c)'s judgment-bar. Congress plainly understands the difference between the "subsection" 2244(b) requirements for appellate-court gatekeeping and the larger "section" 2244 requirements for further district-court consideration.

Countless other AEDPA provisions reveal Congress's precision in using the correct labels for the statutory hierarchy. Section 2253(c) includes narrower references to "paragraph (1)" and "paragraph (2)," whereas §2255(e) refers to the larger "section" and §2244(d)(2) compels adherence to "this subsection." Other related statutes are similarly exact. *See, e.g.*, §2264 (referring "to subsections (a), (d), and (e) of section 2254"); §2265(a)(1)(B) (referring to "subparagraph (A)"); §2265(b) (referring to "subsection (a)"); §2265(c)(2) (referring to "paragraph (1)"). When it came to appellate gatekeeping of serial filings in §2244, Congress knew exactly what it was doing when it directed appellate courts to apply the requirements of "subsection" (b).

Finally, Petitioner's efforts to incorporate portions of §2244(b) while excising §2244(b)(1) simply cannot

be reconciled with his other statements about the text. Petitioner contends that for state prisoners, "[s]ection 2244(b)(3)(C) provides that the court of appeals may authorize the filing only if it determines that the applicant makes 'a prima facie showing that the application satisfies requirements of this subsection'—*i.e.*, the gatekeeping requirements *in sections 2244(b)(1)* and (b)(2)." Petr. 3-4 [sic] (emphasis added). That is a concession that, once §2244(b)(3)(C) is triggered, so is §2244(b)(1). And when Petitioner turns to discussing federal prisoners, he concedes that "section 2255(h) incorporates … *(b)(3)(C)*," Petr. 32 (emphasis added). By simple transitive operation, if a §2255 motion "incorporates … (b)(3)(C)" and "2244(b)(3)(C) … [triggers] the gatekeeping requirements in section[] 2244(b)(1)," then §2244(b)(1) applies to §2255. Petr. 4, 32. This Court should reject Petitioner's effort "to cherry pick from the material covered by the statutory cross-reference" and simply apply the text Congress wrote. *Cyan*, 583 U.S. at 428.

II. AEDPA's Structure Confirms That The Bar On Do-Over Claims Applies To §2255 Motions.

Two key features of AEDPA underscore that "the requirements of this subsection" include §2244(b)(1)'s threshold bar on do-over claims: Congress's precise exclusion of another subsection (b) requirement from the otherwise sweeping cross-reference, and the 30-day clock for appellate screening.

A. Congress Narrowly Exempted §2255 Movants From *Other* §2244(b) Requirements.

Application of (b)(1) is unavoidable because when Congress wanted to exclude a *different* subsection (b) "requirement" from §2255 motions, Congress wrote on-point language in §2255 trumping the otherwise-applicable provisions of §2244(b). *See Balt. Nat'l Bank v. State Tax Comm'n of Md.*, 297 U.S. 209, 215 (1936) ("[S]pecific terms covering the given subject-matter will prevail over general language of the same or another statute which might otherwise prove controlling."). The trumped requirement is §2244(b)*(2)*, which states that a *new* claim "shall be dismissed" absent a new retroactive rule of constitutional law or evidence of actual innocence that "could not have been discovered previously through the exercise of due diligence" and that would have changed the result "but for constitutional error." Unlike (b)(1)'s bar on *do-over* claims, this (b)(2) restriction on *new* claims does not apply to §2255 motions because §2255(h) explicitly crafts a parallel rule for new claims that diverges from §2244(b)(2) by not requiring the same showing of due diligence or the impact of constitutional error.[4] When it comes to do-

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[4] *Compare* §2244(b)(2) (emphases added):

> A claim presented in a second or successive habeas corpus application under section 2254 that was not presented in a prior application shall be dismissed unless—
>
> (A) the applicant shows that the claim relies on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or

over claims, however, §2255 contains no language displacing §2244(b)(1)'s threshold bar, thus confirming Congress's choice not to disrupt §2244(b)(3)(C)'s overarching command to otherwise apply the "requirements" of subsection (b).

AEDPA's approach of displacing (b)(2) for new claims, but not (b)(1) for do-over claims, thus inverts the takeaway from Petitioner's argument that Congress would have written a global rule for all second or successive filings if Congress wanted to apply the same rules to state and federal prisoners in all cases. Petr. 18-19. Congress in fact did *not* want to make a blanket rule—*but only for new claims.*

> (B)(i) the factual predicate for the claim *could not have been discovered previously through the exercise of due diligence*; and
>
> (ii) the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, *but for constitutional error*, no reasonable factfinder would have found the applicant guilty of the underlying offense.

with §2255(h):

> 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 that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense; or
>
> (2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.

Congress thus wrote diverging language for new claims in §2244(b)(2) and §2255(h)(1), but included nothing in §2255(h) to displace the backdrop "requirement[]" for do-over claims. And, to eliminate any doubt that the displacing power of §2255(h)'s language for new claims extends only as far as it conflicts with §2244(b)(2)'s language for new claims, Congress split off §2244(b)(1)'s new-claim rule into its own paragraph—distinct from *paragraph* (b)(2), but still under the umbrella of the "requirements" of *subsection* (b). *Rivers*, 605 U.S. at 450 (noting "several" barriers to second or successive claims).

The underlying rationale for the differing treatment of new and do-over claims also favors reading §2255(h) to displace §2244(b) only with respect to new claims by state prisoners. AEDPA elsewhere imposes heightened barriers on state prisoners seeking to expand the scope of federal review, including §2254(e)(2)'s command that a prisoner who wishes to develop new evidence must show reliance on a "new" retroactive rule or that the evidence "could not have been previously discovered through the exercise of due diligence" and would establish innocence "but for constitutional error." Those state-prisoner predicates are the *mirror image* of §2244(b)(2)'s requirements for raising new claims. *Compare* §2244(b)(2)(A)-(B), *with* §2254(e)(2)(A)-(B).

Given that context, Congress's decision to write separate rules for new claims by state and federal prisoners while retaining a uniform backdrop bar for do-over claims makes perfect sense. Congress wanted a common rule wherever possible, but tweaked the rule for new claims by federal prisoners to be slightly

more lenient, as the state-prisoner rule was tailored to align with AEDPA's other provisions governing state prisoners and protecting the integrity of state courts.

Congress's careful structuring of §2244 to create two different paragraphs within §2244(b) addressing do-over and new claims separately—and then displacing only the latter for federal prisoners—also dispenses with Petitioner's theory that §2255(h)'s "enumerat[ion]" of "two" grounds means that meeting either ground is *sufficient*. Petr. 4. As shown by the structure of §2244(b)'s requirements, paragraph (b)(1) creates a *freestanding and threshold* "barrier[]" that only a new claim can overcome. *Rivers*, 605 U.S. at 450 ("AEDPA contains *several* significant procedural barriers that strictly limit a court's ability to hear 'claims' …." (emphasis added)). Thus, "[e]ven if the subsequent petition presents a new claim" and leaps the "[f]irst" hurdle, it "can only proceed if it" *also* demonstrates that it "falls within one of two narrow categories" of "rely[ing] on a new and retroactive rule of constitutional law" or new evidence of actual "innocence." *Id.* Only on the "[s]econd" inquiry does §2255 part ways from §2244(b), thus leaving the first "barrier[]" intact as a necessary condition to relief. *Id.*

Finally, how Congress actually phrased this parting of ways confirms that Petitioner is wrong that satisfying one of the "two" §2255(h) provisions is always sufficient for authorization. Petr. 4. Section 2255(h) does not say that the court of appeals "must certify a second or successive motion if it contains the showings contemplated in paragraphs (h)(1) and (h)(2)." Instead, it says that "[a] second or successive motion *must be certified as provided in*

§2244 … to contain" these second-order criteria. *Id.* (emphasis added). Because §2244 includes a threshold and undisplaced bar on do-over claims, a serial claim in a §2255 motion does not even make it to the differing rules for new claims, but simply fails at the "[f]irst" step. *Rivers*, 605 U.S. at 450.

B. The 30-Day Clock For Appellate Review Confirms That The Bar On Do-Over Claims Applies To Federal Prisoners.

The absolute bar on do-over claims is an essential element of Congress's appellate screening mechanism for promptly culling serial litigation. The timeline for appellate gatekeeping is short and mandatory: "The court of appeals *shall* grant or deny the authorization … not later than 30 days after the filing of the motion." §2244(b)(3)(D) (emphasis added); *see also Miller v. French*, 530 U.S. 327, 337 (2000) ("The mandatory 'shall' normally creates an obligation impervious to judicial discretion.") (cleaned up).

Congress gave appellate courts the tools for meeting this strict deadline. Most obvious is the absolute bar on do-over claims, which allows prompt disposal based on a quick review of prior litigation. And, for new claims that clear this threshold barrier, the appellate court need only ask whether this Court has held retroactive a new rule of constitutional law (which should be obvious from this Court's recent decisions) or whether there is, at minimum, "clear and convincing evidence" of actual innocence (which will be rarer still). §2244(b)(2); §2255(h); *see also Tyler v. Cain*, 533 U.S. 656, 663 (2001) ("[A] new rule is not 'made retroactive to cases on collateral review' unless the Supreme Court holds it to be retroactive.").

Those basic inquiries are achievable in 30 days. "The stringent time limit thus suggests that the courts of appeals do not have to engage in [a] difficult legal analysis," *Tyler*, 533 U.S. at 664, but can simply deny do-over claims from the start. AEDPA demands "the finality of criminal convictions," and Congress gave the appellate courts the ability to shut down serial litigation in short order. *Mayle*, 545 U.S. at 662.

The contention of Amicus National Association of Criminal Defense Lawyers that the majority rule results from "rushed procedures" is therefore *completely backward* and proves the statutory coherence of the majority rule. Br. 2. In Amicus's view, Congress's directive that "[t]he court of appeals *shall* grant or deny the authorization to file a second or successive application not later than 30 days after the filing of the motion" is merely "aspirational." *Compare* §2244(b)(3)(D) (emphasis added), *with* Br. 11. But AEDPA imposes that short time limit with a "mandatory" command: "shall." *Miller*, 530 U.S. at 337. In seeking to avoid AEDPA's actual dictates, Amicus only illustrates the importance of the mechanisms Congress chose to help the courts of appeals meet those dictates—chief among them, the absolute bar on do-over claims.

The brief of Amicus National Association of Federal Defenders further shows why a categorical bar on do-over claims makes sense given the 30-day clock. According to Amicus, the minority of circuits to adopt Petitioner's view have not experienced disastrous consequences in handing "repetitious §2255 claims." Br. 2. But *all three of those circuits have flouted Congress's 30-day command* such that "it

frequently takes [them] longer—sometimes much longer—than 30 days to rule on such applications." *Orona v. United States*, 826 F.3d 1196, 1199 (9th Cir. 2016); *see also Jones v. United States*, 36 F.4th 974, 981 n.4 (9th Cir. 2022) (disregarding the "thirty-day time limit" in declining to apply (b)(1) to a federal prisoner); *In re Vial*, 115 F.3d 1192, 1194 n.3 (4th Cir. 1997) (en banc) (presuming "that the importance of the issue justified the delay"); *In re Siggers*, 132 F.3d 333, 336 (6th Cir. 1997) ("Due to the press of other judicial work, it will not always be possible to rule within thirty days."). That the circuits which have decided to ignore Congress's deadline in an effort to manage their workloads have also decided to ignore Congress's statutory method for managing their workloads is hardly an endorsement of their atextual approach.

Finally, should this Court dispense with the (b)(1) tool for quickly disposing of do-over claims, there will not be much left of Congress's mechanisms for achieving its 30-day command. That is because several courts of appeals have taken it upon themselves to decide whether "a new rule" presented in a second or successive motion has been "made retroactive to cases on collateral review"—and thus potentially capable of justifying another bite—notwithstanding AEDPA's directive that a new rule cannot support a second or successive motion unless "'*the Supreme Court'* has made the new rule retroactive." *In re Harris*, 988 F.3d 239, 239-40 (5th Cir. 2021) (Oldham, J., concurring) (quoting §2255(h)(2)); *see also In re Hall*, 979 F.3d 339, 346 (5th Cir. 2020) (collecting cases). Congress designed the second or successive regime to allow rapid disposition of the vast majority of serial filings: A

claim gets through only if it is new, and even then only if this Court has clearly held that the asserted rule is retroactive or (rarer still) there is clear evidence of actual innocence. If Petitioner prevails here, however, Congress's safeguards are largely for naught, and indeed will have the perverse effect of multiplying the burdens on the federal courts by requiring appellate courts to conduct needless inquiries into claims that Congress provided should be rejected at the outset.

III. Statutory History Requires Similar Treatment Of Second Or Successive Claims By Federal And State Prisoners.

The meaning of Congress's choice to channel §2255 motions through §2244(b) becomes even clearer when examined against pre-AEDPA law, where "a page of history is worth a volume of logic." *Jones v. Hendrix*, 599 U.S. 465, 472 (2023). The history of §2244 and §2255 underscores that Congress knew full well that it was imposing common rules on do-over claims by state and federal prisoners.

Immediately before AEDPA, *separate* statutory provisions established different rules for second or successive filings by federal and state prisoners. Subsection 2244(b) exclusively addressed claims by state prisoners: "a person in custody pursuant to the judgment of a State court." 28 U.S.C. §2244(b) (1966). Under that state-prisoner-specific rule, an application "need not be entertained … unless [it] alleges and is predicated on a factual or other ground not adjudicated on the hearing of the earlier application for the writ, and unless the court … is satisfied that the applicant has not on the earlier application

deliberately withheld the newly asserted ground or otherwise abused the writ." *Id.*

Federal prisoners' claims were governed by different provisions. Most relevant here, §2255 had a to-the-point rule for serial motions: "The sentencing court shall not be required to entertain a second or successive motion for similar relief on behalf of the same prisoner." 28 U.S.C. §2255 (1948). And, to the extent a federal prisoner might be able to assert a traditional "application for a writ of habeas corpus"—despite §2255's command that federal prisoners generally proceed "by motion" instead of by "application," *id.*—the text of §2244(a) explained that a court was not "required to entertain an application" if "the legality of such detention has been determined … on a prior application … and the petition presents no new ground" and the "court is satisfied that the ends of justice will not be served by such inquiry." 28 U.S.C. §2244(a) (1966).

AEDPA largely abandoned this tripartite structure to run everything through §2244(b), which previously had covered only state prisoners. Congress rewrote §2244(a) to channel federal "habeas corpus" "application[s]" through the "section 2255 motion" process. And it eliminated §2255's freestanding rule governing second or successive motions, replacing it with the new language incorporating §2244.

Congress's decision to route federal claims through the state-prisoner pathway is especially telling because Congress had an alternative for enforcing separate pathways: update the §2255 provision that contained a freestanding rule for the disposal of "second or successive motion[s]." 28 U.S.C.

§2255 (1948). Congress might have amended that provision to enumerate the handful of §2244(b) subparagraphs that Petitioner argues should carry over—*e.g.*, the three-judge panel, time limitation, and prima facie standard—thus eliminating the need for any cross-reference whatsoever. Petr. 32. But Congress did not do so. Instead, Congress directed federal courts to §2244(b) and "the requirements of this subsection," §2244(b)(3)(C), and then within §2255(h) included an express deviation from those requirements for new claims only. *Supra* 19-23.[5]

AEDPA's simultaneous change to §2244(a)—which previously set out a rule for serial habeas corpus applications by federal prisoners—underscores this shift to a common rule against do-over claims. Before AEDPA, the text of §2244(a) potentially cracked the door open to do-over claims if "the ends of justice w[ould] be served by such inquiry." 28 U.S.C. §2244(a) (1966). But AEDPA eliminated that amorphous language in favor of barring successive filings "except as provided in section 2255." §2244(a). Section 2255, in turn, points to §2244(b). Thus, no matter how a federal prisoner might try to proceed, his

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[5] Amicus Stephanie O'Banion suggests it would have been odd for Congress to delete §2255's strict language had Congress wanted to maintain a bar on do-over claims. Br. 20. But Congress's choice makes sense because this Court had refused to give effect to that "much stricter" language, insisting that it "cannot be taken literally." *McCleskey*, 499 U.S. at 484 (discussing mid-century precedent). Congress's dam-clearing approach of creating a new, unambiguous prohibition on do-over claims in *§2244(b)*—and then routing §2255 motions through that prohibition—was sensible given this Court's refusal to give effect to §2255's earlier terms.

claim is channeled through §2244(b) and its post-AEDPA categorical bar on serial claims.

Finally, a deeper review of pre-pre-AEDPA iterations of the habeas statutes confirms that there is nothing unusual about a uniform approach to federal and state prisoners. Amici Habeas Scholars contend that Congress "has consistently placed greater burdens on state prisoners seeking postconviction review," but that is wrong. Br. 11. For example, the 1948 version of the law tried to impose *stricter* rules for serial filings by most federal prisoners and equal rules on serial filings by other federal prisoners and state prisoners. Under §2255, "[t]he sentencing court" could simply refuse "to entertain a second or successive motion for similar relief on behalf of the same prisoner"—full stop. 28 U.S.C. §2255 (1948). In contrast, §2244 set out a more lenient rule for state prisoners (as well as federal prisoners that might be able to avoid §2255 and file a habeas application). Under the latter §2244 test for state (and certain federal) prisoners, a court could deny relief if (1) "it appears that the legality of such detention has been determined by a judge or court of the United States on a prior application for a writ of habeas corpus," (2) "the petition presents no new ground not theretofore presented and determined," *and* (3) "the judge or court is satisfied that the ends of justice will not be served by such inquiry." 28 U.S.C. §2244 (1948). In other words, state prisoners might bring second or successive petitions by showing a "new ground" or appealing to "the ends of justice," *id.*, which was a textually more lenient rule than §2255's categorical permission to deny "a second or successive motion for similar relief." 28 U.S.C. §2255 (1948).

Regardless, that is all water under the bridge. When Congress passed AEDPA in 1996, it did so against the backdrop of the then-current legislative scheme that set out distinct rules for state prisoners in §2244(b). *See* 28 U.S.C. §2244 (1966). AEDPA's amended scheme channeled federal prisoners through that subsection, which AEDPA simultaneously updated to impose an unambiguous bar on do-over claims to enable a strict 30-day time limit for appellate certification.

IV. The Remaining Arguments Of Petitioner, The Government, And Various Amici Cannot Overcome AEDPA's Text, Structure, And History.

No one denies that §2255(h) incorporates most of §2244(b)'s rules for second or successive applications. Petitioner simply contends that subparagraphs (b)(1), (b)(2), and (b)(3)(E) are piecemeal excluded from §2255(h)'s cross-reference. *E.g.*, Petr. 32. Several amici and the Government take similar views. But their arguments only confirm that §2244(b)(1) is an unavoidable component of "the requirements of this subsection." §2244(b)(3)(C).

A. Petitioner stresses that §2244(b)(1) refers to "a claim presented in a second or successive *habeas corpus application under section 2254*," which can "be filed only by a person in custody pursuant to the judgment of a State court." Petr. 17. But the reference to §2254 is entirely unsurprising given the statutory history and Congress's explicit approach here of legislating by cross-reference. As noted, §2244(b) previously applied only to state prisoners, with §2244(a) and §2255 setting out the rules for federal

habeas applications and motions, respectively. Moreover, Congress knows that state prisoners are the vast majority of postconviction filers,[6] so there is nothing notable about the default application of §2244(b) retaining its longstanding focus on state prisoners. Indeed, the very reason for the cross-reference in §2255 is that §2244(b) by default would cover only state prisoners—thus necessitating a cross-reference importing §2244(b)'s rules to cover federal movants as well. It is unremarkable that the backdrop language of §2244(b) speaks in terms of state prisoners.

In other words, the at-issue phrase—"habeas corpus application under section 2244"—refers to the presumptive *procedural device* being used to assert a postconviction challenge in a mine-run case. *Cf. Magwood v. Patterson*, 561 U.S. 320, 324 n.1 (2010) ("Although 28 U.S.C. §2244(b) refers to a habeas 'application,' we use the word 'petition' interchangeably …."). So when, as here, the relevant procedural device is instead a less-common §2255 motion that passes through §2244(b) via the express statutory cross-reference, it is unsurprising that §2244(b)(1)'s language applies to the §2255 motion.

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6 *See* Petr. 23 (citing sources that "[m]ost capital cases [we]re State cases" and "noting 3,046 state prisoners on death row, as compared to 8 federal prisoners on death row"); U.S. Dep't of Justice, Bureau of Justice Statistics (Oct. 15, 2024), *available at* https://bjs.ojp.gov/document/p22st.pdf ("State correctional authorities had jurisdiction over 1,039,500 persons sentenced to at least 1 year in prison in 2022, while the BOP had legal authority over 146,100 persons with similar sentences.").

Could there be any doubt that procedural language is no barrier, *all* of §2244(b) uses procedural language that facially excludes §2255 motions. For example, each of the subparagraphs that Petitioner says "section 2255(h) incorporates"—"(b)(3)(A)," "(b)(3)(B)," "(b)(3)(C)," and "(b)(3)(D)"—refers to "a second or successive *application*." Petr. 32; §2244(b) (emphasis added). That is not the same thing as a §2255 "motion." An "application" refers to a traditional "application for a writ of habeas corpus," *e.g.*, §2244(a), but §2255(e) is explicit that federal prisoners typically *cannot* file "[a]n application for a writ of habeas corpus" but instead must proceed "*by motion*" under §2255. (Emphasis added.)

Obviously, Congress did not mean to exclude §2255 motions from §2244; that would render the cross-reference nonsensical in violation of the presumption that Congress "does not enact useless laws." *United States v. Castleman*, 572 U.S. 157, 178 (2014) (Scalia, J., concurring in part and concurring in the judgment). To the contrary, §2255(h) tells a federal court to apply §2244 to federal prisoners. It just so happens that the default (and historical) focus of §2244(b) is habeas applications by state prisoners, who are the vast majority of prisoners nationwide. *Supra* 31 n.6. Congress plainly knows that the language in §2244(b) does not align with the terminology of §2255 motions, so this Court should not assume that §2244(b)'s references to state-prisoner mechanisms is a substantive barrier to applying subsection (b)'s "requirements" to §2255 motions.

B. Similarly flawed is the argument that "Congress's specification of 'application[s] *under*

section 2254" in Section 2244(b)(1) would be superfluous if … those provisions also governed federal prisoners' motions for postconviction relief." Amici Habeas Scholars at 9; *see also* Resp. 44. There is no superfluity, and the emphasized language actually underscores the logic and ease of applying §2244(b)(1) to §2255 motions.

The emphasized language merely serves the limited but important purpose of clarifying that §2244(b)(1) applies to litigation by *postconviction prisoners*, and not the broader universe of habeas corpus applications filed by other types of detainees. Although in today's age the phrase "habeas corpus application" is largely synonymous with postconviction prisoner litigation, in reality habeas corpus serves "a number of different functions," including providing relief to individuals detained "summarily and indefinitely" *without* "a final judgment of conviction issued by a court of competent jurisdiction." *Brown v. Davenport*, 596 U.S. 118, 128 (2022); *see also, e.g.*, §2241(c) (discussing broader grounds for a "writ of habeas corpus" that merely require "custody," and not a judgment of conviction).[7] Thus, the phrase "under section 2254" simply gears paragraph (b)(1) to postconviction *prisoners* because

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[7] *See also, e.g.*, *Jones v. Cunningham*, 371 U.S. 236, 239 (1963) ("This Court itself has repeatedly held that habeas corpus is available to an alien seeking entry into the United States."); *United States v. Castor*, 937 F.2d 293, 296 (7th Cir. 1991) ("Criminal defendants incarcerated by a state awaiting trial may seek a writ of habeas corpus from federal courts.") (collecting cases); *cf.* §2252 (generally recognizing "habeas corpus proceeding[s] in behalf of a person in custody of State officers *or* by virtue of State laws" (emphasis added)).

§2254 addresses "an application for a writ of habeas corpus in behalf of a person in custody pursuant to the *judgment* of a State court." §2254(a) (emphasis added); *see also Baldwin v. Lewis*, 442 F.2d 29, 32 (7th Cir. 1971) (recognizing "that 28 U.S.C. §2254 is applicable only to post conviction proceedings"); *United States ex rel. Scranton v. New York*, 532 F.2d 292, 294 (2d Cir. 1976) ("Section 2241 contains no requirement, as does 28 U.S.C. [§]2254, that a petitioner be 'in custody' pursuant to a judgment as a prerequisite to habeas relief.").

Given the phrase's limited purpose of clarifying that (b)(1) is about postconviction prisoner litigation, applying (b)(1) to §2255 motions is all the easier. Just like §2254 covers postconviction litigation by state prisoners "in custody pursuant to the judgment of a State court," §2255 covers postconviction litigation by federal prisoners "in custody under a sentence of a court established by Act of Congress." §2255. There is nothing strange about applying the same rule to all postconviction prisoners while exempting other types of detainees who have not received a trial and conviction—especially because such detainees fall in the heartland of the Great Writ. *See Davenport*, 596 U.S. at 128 ("Usually, a prisoner could not use [habeas] to challenge a final judgment of conviction issued by a court of competent jurisdiction.").

C. Petitioner suggests that concerns of "comity, finality, and federalism" support a more lenient rule for federal prisoners than state prisoners, but this argument cuts against him. Petr. 25.

Regarding finality, there is greater reason to apply a categorical bar on do-over claims by federal

prisoners. A federal prisoner's second §2255 motion will typically be his *third* opportunity to raise the claim in federal court, following his direct criminal proceeding (which also may have included one or more appeals) and initial §2255 motion. In contrast, a state prisoner's second habeas corpus application will be only his *second* round of review in federal court (barring the rare circumstance of this Court granting certiorari in the state-court proceedings).

Moving to comity and federalism, there is far less daylight between federal and state prisoners when it comes to do-over second or successive claims, specifically. By definition, a federal court will have already inspected the handiwork of the court of conviction in the second or successive context, so most of the comity damage is already done. Moreover, unlike AEDPA's core comity provisions that protect the substantive authority of *state* courts—such as §2254(d)'s deferential-review standard or §2254(b)'s exhaustion requirement—the second or successive bar also protects the resources of *federal* courts by limiting do-over claims. There is good reason to apply a common rule against serial claims within the same overburdened federal court system.

D. Petitioner suggests it is unfair to bar second or successive claims because doing so punishes prisoners who "diligent[ly]" tried to raise claims in their first collateral attack. Petr. 8. But any fairness argument fails because Petitioner agrees that this rule applies to state prisoners, Petr. 3-4, who were (and are) the vast majority of the nation's prisoners. *Supra* 31 n.6. The undisputed reality that AEDPA imposes a strict bar on do-over claims for the overwhelming majority of

prisoners makes it completely unsurprising—and perfectly fair—that the same rule applies to the remaining subset of cases.

AEDPA's statute of limitations confirms there is nothing unfair or unusual about a federal prisoner, however diligent he may be, not benefiting from legal changes. The one-year statute of limitations begins running on "the date on which the right asserted was *initially recognized* by the Supreme Court," even if that right has not yet been deemed retroactive. §2255(f)(3) (emphasis added). Thus, because "this Court rarely decides that a new rule is retroactively applicable within one year of initially recognizing that right," a prisoner "who files a second or successive motion seeking to take advantage of a new rule of constitutional law will be time barred except in the *rare case* in which this Court announces a new rule of constitutional law and makes it retroactive within one year." *Dodd*, 545 U.S. at 359 (emphasis added). That is ostensibly a "harsh result[]," but Congress wrote AEDPA to promote finality, not fairness to prisoners who have already attempted at least one motion. *Id.*

Moreover, fairness arguments by *federal* prisoners ring especially hollow. As explained above, these prisoners typically will be on their third opportunity to raise a claim by the time §2244(b)(1) comes into play. *Supra* 34-35. What Petitioner describes as the diligent pursuit of his current claim—which he does not purport to have raised on direct review—is serial postconviction litigation that contravenes AEDPA's desire "to advance the finality of criminal convictions." *Mayle*, 545 U.S. at 662. Federal prisoners are best served waiting until this

Court clears a straightforward path to relief before filing their first-and-best §2255 motion, instead of asserting a series of postconviction attacks in the hopes that one will eventually stick.

E. The Government argues that §2244(b)(1) *never* applies to a court of appeals' decision to authorize a second or successive filing by *any* prisoner—state or federal—but that is clearly wrong and only confirms that everyone is trying to dodge the plain-text application of (b)(1). Resp. 44. The Government's contention that "[a] prisoner's request to a court of appeals *for authorization* to file an additional application in district court is procedurally distinct from the additional application that he would file if he received such authorization" may be true enough. *Id.* But then the Government proceeds to suggest that this rule means the court of appeals can ignore whether the underlying application the prisoner seeks to file satisfies the gatekeeping requirements. *Id.* That is wrong. In fact, the Government's effort to avoid the consequences of §2244(b)(1) for state prisoners—and thus its cross-referenced consequences for federal prisoners—defies Petitioner's own view of the case, which concedes "that the court of appeals may authorize the filing only if it determines that the applicant makes 'a prima facie showing that the *application* satisfies requirements of this subsection'—*i.e., the gatekeeping requirements in sections 2244(b)(1) and (b)(2).*" Petr. 3-4 [sic] (emphases added).

It also defies text, precedent, and logic. As for the text, AEDPA unambiguously ties appellate "authoriz[ation]" to "a prima facie showing that the

application satisfies the requirements of this subsection." §2244(b)(3)(A), (C). Paragraph (b)(1) is a "requirement[]" of subsection (b)—indeed, the Government identifies no other "requirements" to which §2244(b)(3)(A) might be referring, even as the Government stresses (b)(3)(C)'s demand for appellate "'authorization' to file an additional application for collateral review." Resp. 45-46. That is because, other than (b)(1) and (b)(2), subsection (b) is silent as to what standards the court of appeals should use to evaluate whether a second or successive application deserves authorization. There is no denying that (b)(1) is a textually compelled requirement for the "authorization" under (b)(3)(C), which everyone agrees §2255(h) "incorporate[s]." Petr. 32; Resp. 45.

The text also clarifies that the object of the court of appeals' review is the underlying application for postconviction relief, and not the so-called "request to a court of appeals for authorization to file [the] application." Resp. 44 (emphasis omitted). A prisoner submits "[a] *motion* in the court of appeals for an order authorizing the district court to consider a second or successive *application*," §2244(b)(3)(B) (emphases added), and the court of appeals decides that motion by making a "determin[ation] that the *application* makes a prima facie showing that the *application* satisfies the requirements of this subsection." §2244(b)(3)(C) (emphases added). The viability of the underlying application is the question.

Precedent confirms that the appellate inquiry asks whether a second or successive postconviction filing has legs. According to *Banister v. Davis*, "leave from the court of appeals" is available only if the

"petition satisfies the statute's gatekeeping requirements," which include the bar on "reassert[ing] any claims 'presented in a prior application.'" 590 U.S. 504, 509 (2020); *see also, e.g.*, *St. Hubert*, 140 S. Ct. at 1728.

And, on top of those problems, the Government's theory is illogical. AEDPA's appellate-authorization scheme would make zero sense if courts of appeals had to rubber-stamp postconviction filings that (b)(1) bars. Far from advancing AEDPA's goals of speed and efficiency, the Government's approach would create pointless make-work for appellate courts.

6. The Government's observation that "[§]2244(b)(1) applies only to certain 'claims presented in' a state prisoner's actual 'habeas corpus application,'" and thus is not "directed … [at] the 'application' as a whole," is a non-sequitur. Resp. 44-45. Regardless of whether there is daylight between the words "claim" and "application" when it comes to state prisoners, *id.*, there is the same amount of daylight between the words "claim" and "§2255 motion" when it comes to federal prisoners.

Additionally, the Government is wrong to the extent it believes that the word "claim" lessens the appellate inquiry—perhaps by allowing an application to sneak through in its entirety if it contains a mix of do-over and new claims. Resp. 45. "[T]he 'requirements' of … subsection [(b)] … require inquiry into specific 'claims,'" meaning that an improper do-over claim cannot avoid scrutiny by "the court of appeals." *Pace v. DiGuglielmo*, 544 U.S. 408, 415-16 (2005). The "'application' is 'a filing that seeks an adjudication of one of those claims on the merits,'" so

there is no escaping the defects in the claim(s) that compose the application. *Rivers*, 605 U.S. at 452. The Government's concerns are unfounded.

* * *

AEDPA's text, structure, and history impose a uniform bar on do-over claims by postconviction prisoners to advance AEDPA's goal of finality and facilitate its 30-day clock for appellate screening. There is nothing unfair about applying that rule to federal prisoners, who receive multiple opportunities for federal inspection of their sentences.

CONCLUSION

If this Court finds jurisdiction and reaches the first question presented, it should affirm.

Respectfully submitted,

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August 22, 2025

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28 U.S.C. § 2244

Finality of Determination

(a) No circuit or district judge shall be required to entertain an application for a writ of habeas corpus to inquire into the detention of a person pursuant to a judgment of a court of the United States if it appears that the legality of such detention has been determined by a judge or court of the United States on a prior application for a writ of habeas corpus, except as provided in section 2255.

(b)(1) A claim presented in a second or successive habeas corpus application under section 2254 that was presented in a prior application shall be dismissed.

(2) A claim presented in a second or successive habeas corpus application under section 2254 that was not presented in a prior application shall be dismissed unless—

(A) the applicant shows that the claim relies on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or

(B)(i) the factual predicate for the claim could not have been discovered previously through the exercise of due diligence; and

(ii) the facts underlying the claim, if proven and viewed in light of the evidence as a whole,

would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

(3)(A) Before a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.

(B) A motion in the court of appeals for an order authorizing the district court to consider a second or successive application shall be determined by a three-judge panel of the court of appeals.

(C) The court of appeals may authorize the filing of a second or successive application only if it determines that the application makes a prima facie showing that the application satisfies the requirements of this subsection.

(D) The court of appeals shall grant or deny the authorization to file a second or successive application not later than 30 days after the filing of the motion.

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

> **(4)** A district court shall dismiss any claim presented in a second or successive application that the court of appeals has authorized to be filed unless the applicant shows that the claim satisfies the requirements of this section.

(c) In a habeas corpus proceeding brought in behalf of a person in custody pursuant to the judgment of a State court, a prior judgment of the Supreme Court of the United States on an appeal or review by a writ of certiorari at the instance of the prisoner of the decision of such State court, shall be conclusive as to all issues of fact or law with respect to an asserted denial of a Federal right which constitutes ground for discharge in a habeas corpus proceeding, actually adjudicated by the Supreme Court therein, unless the applicant for the writ of habeas corpus shall plead and the court shall find the existence of a material and controlling fact which did not appear in the record of the proceeding in the Supreme Court and the court shall further find that the applicant for the writ of habeas corpus could not have caused such fact to appear in such record by the exercise of reasonable diligence.

(d)(1) A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of—

> **(A)** the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;

(B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action;

(C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

(2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

28 U.S.C. § 2255

Federal Custody; remedies on motion attacking sentence

(a) A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.

(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. If the court finds that the judgment was rendered without jurisdiction, or that the sentence imposed was not authorized by law or otherwise open to collateral attack, or that there has been such a denial or infringement of the constitutional rights of the prisoner as to render the judgment vulnerable to collateral attack, the court shall vacate and set the judgment aside and shall discharge the prisoner or resentence him or grant a new trial or correct the sentence as may appear appropriate.

(c) A court may entertain and determine such motion without requiring the production of the prisoner at the hearing.

(d) An appeal may be taken to the court of appeals from the order entered on the motion as from a final judgment on application for a writ of habeas corpus.

(e) An application for a writ of habeas corpus in behalf of a prisoner who is authorized to apply for relief by motion pursuant to this section, shall not be entertained if it appears that the applicant has failed to apply for relief, by motion, to the court which sentenced him, or that such court has denied him relief, unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of his detention.

(f) A 1-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of—

(1) the date on which the judgment of conviction becomes final;

(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;

(3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme

Court and made retroactively applicable to cases on collateral review; or

(4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

(g) Except as provided in section 408 of the Controlled Substances Act, in all proceedings brought under this section, and any subsequent proceedings on review, the court may appoint counsel, except as provided by a rule promulgated by the Supreme Court pursuant to statutory authority. Appointment of counsel under this section shall be governed by section 3006A of title 18.

(h) 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 that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense; or

(2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.

January 14, 2009 [08 CR 80089]

Dear Judge and all other parties involved:

I, Jasper L. Grant am writing this letter due to I am not able to attend the hearing for the suspects who shot me or were involved with the attempt to rob me or kill me on July 30, 2008 around 9:45am. My life has been truly destroyed since the morning of July 30, 2008. I am very disturbed and I am not ready to meet the suspects who changed my life and my family life in few minutes. I do not know who the suspects are and don't really care because I am very angry and frustrated because they felt they have the rights to destroy my goals, my family, and my job out of ignorance.

I do not see how I can begin getting back on my feet. I can not stop thinking about the incident. The shooting continues to rewind in my mind continuously. Even when I hear gun shots in the neighborhood, I get scared and I do not trust anyone. I have no hope in my heart because in my mind I had my day planned. Once I finish my shift I was going to Palm Beach Community College to take the last part of the shield test, so I could put my request and application in to the Palm Beach County Sheriff Office to become a Deputy Sheriff.

I am having a hard time expressing myself because I begin to cry and wonder why someone would do this to me or anyone. I really want you to know that I do not have any pity for the criminals who are being

charged with this crime. The reason I feel this way is because I get up every morning when I was scheduled to go to work or when my boss needed me to do special details. I was making sure my family was financial secured and the suspects decided not to work but to use guns to take what they want.

On July 30, 2008 and around 9:45am I was carrying on my work duties when these suspects changed the way I look at life within minutes. They pulled up in a van that they stole and stopped about 4 feet from me. Just as fast as they stopped, the doors of the van opened, criminals with masks on jumped out of the van, two of which were holding black assault rifles. They immediately began shooting at me, which gave me no time to think, no words came from these individuals, only the sounds of the rifles going off. Then, I turned as fast as I could, not knowing that I was hit falling on the north rear side of the ATM, landing on my back. As I was falling, the gun shots continued to fire. By the time I hit the ground, I had my weapon out and pointed in the direction the gun shots were coming from. I returned fire thinking that my life was over. For the few minutes this incident lasted, all I could think was I would never see my family and friends again. It was very hard for me to continue to fight back even though I felt like I was dead.

I would like for you all to imagine lying on the ground, wounded and being shot at continuously. What would go through your mind? How would you feel? Those few minutes that seemed like an eternity, were the worst few minutes of my life.

As I prepared myself to meet my maker, while praying that I did not run out of bullets, these suspects continued to fire at me. Finally, after it all was over, I stood up and realized my leg was injured, still not knowing that I was shot, I hopped to the armor truck, praying that I would not be shot as I moved to safety. By the time I entered the armor truck, I found that my driver had been shot and I was shot in the leg. Looking at the large hole in my leg and knowing that I was injuried badly, I told my driver to turn the siren on and drive to the hospital I immediately called my wife because if I was not going to make it, I wanted to here her voice and let her know I love her. When I spoke to my wife on the phone informing her that I was shot, the screams that came from her voice drowned me with emotions. All could say was “baby calm down” and the phone went dead.

When I arrived at the hospital I was taken back in a stretcher, not knowing how close I was to death, but I tried to stay in good spirits. As the nurses came in to work on my leg, the expression on their face put fear in my heart leaving me to wonder if would ever see my family again. My wife and parents came in the emergency room. I was overwhelmed knowing that I was able to see them one more time. Shortly after that, I was rushed to the OR with doctors telling me I had lost too much blood and needed a blood transfusion. This scared me more than ever because the doctors were not telling me how badly I was injuried. When I woke up from surgery, the long struggle of rehab began. The pains I went through and the sleepless nights left me with a sense of

hopeless about my life.

As I close this statement, I am wondering everyday if I will ever be able to walk normal, swim, lift weights or workout as I did before this incident; most of all, I am wondering if my dreams of becoming a sheriff deputy will ever come true. I am suffering everyday and am not able to do the things that I would normally do. My wife, family and friends have to come and assist with the yard, housekeeping, and making sure I am comfortable as I recover from this tragedy. My wife has messed up her back, changed her schedule at work several times, and is carrying my anger. My love life is a mess and I get frustrated that every time I want to do something but I have to have others to assist me. I am learning how to walk again, as if I was toddler learning how to walk for the first time. I recently heard from my doctor that within the next 5 years I will have to have a total knee replacement because the one I have will likely not last long. I do not see why these suspects felt that they had the right to change my life for money. I am not pleased with having my family alter their lives to take care of me. I am dealing with anger, handicap issues, nightmares, trusting of others, paying bills, going to all types of doctors, etc. I will never be 100% recovered from this injury and I have a dream and a goal to reach but I do not know if that dream will occur. These criminals need to know what they did to me was wrong and they deserve the maximum sentence because they need to understand how this has impacted me, my family, and friends. When I am frustrated, my family carries the same burdens as I do because they are helping me in every way they

can. This is very hard and difficult to have someone assist me with everything I do. My independence is gone. I would like for you all to feel what I feel.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 08-80089-CR-MIDDLEBROOKS

UNITED STATES OF AMERICA,
Plaintiff,
-v-
MICHAEL S. BOWE,
Defendant.

West Palm Beach, Florida
October 30, 2008
9:16 a.m.

TRANSCRIPT OF PLEA PROCEEDINGS

BEFORE THE HONORABLE DONALD M. MIDDLEBROOKS

U.S. DISTRICT JUDGE

Appearances:

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(Call to Order of the Court.)

THE COURT: Good morning. Please be seated.

This is the case of the United States versus Michael Bowe. The Case Number is 08-80089.

Let's start with appearances.

MS. VORPE-QUINLAN: Good morning, Your Honor. Nancy Vorpe-Quinlan on behalf of the United States. Seated with me at counsel table is Special Agent John MacVeigh of the FBI. He is the case agent in this matter.

THE COURT: Good morning.

MR. GARLAND: Good morning, Your Honor. Thomas Garland on behalf of Michael Bowe who is present in the courtroom.

THE COURT: Good morning.

MR. GARLAND: Your Honor, I would like to apologize for being late. There was a bad accident near Hope Sound coming down from Stuart.

THE COURT: That happens a lot.

MR. GARLAND: Yes, sir.

THE COURT: This is a change of plea?

MR. GARLAND: It is.

THE COURT: And I've been given a plea agreement. Are we ready then to proceed?

MR. GARLAND: We are, sir.

THE COURT: Please administer the oath to Mr. Bowe.

(The Defendant was duly sworn.)

THE COURT: Go ahead and have a seat. Be seated and just make sure there is a microphone over near Mr. Bowe.

Mr. Bowe, you're now under oath. If you answer falsely to any of my questions, your answer could later be used against you in another prosecution for perjury or for making a false statement.

Do you understand?

THE DEFENDANT: Yes, sir.

THE COURT: I'm going to ask you several questions. The purpose of the questions is to make sure you've carefully considered your decision to plead guilty in this case, determine that you're competent to make the decision, that you're aware of your rights, and that there is a reason for you to plead guilty, that you did what the Government says you did.

If you don't understand any of my questions, tell me. If you want to stop at any point and speak with Mr. Garland, you may do that.

Do you understand?

THE DEFENDANT: Yes, sir.

THE COURT: How far did you go in school?

THE DEFENDANT: I made it to the 10th grade.

THE COURT: Have you ever been treated for any mental illness?

THE DEFENDANT: No, sir.

THE COURT: Have you been treated for addiction to narcotics or alcohol?

THE DEFENDANT: No, sir.

THE COURT: Are you currently under the influence of any drug or alcohol?

THE DEFENDANT: No, sir.

THE COURT: Are you taking any type of medication?

THE DEFENDANT: No, sir.

THE COURT: Have you reviewed the indictment, the charges filed against you in this case, and have you discussed the charges with your lawyer?

THE DEFENDANT: Yes, sir.

THE COURT: Are you satisfied with the representation Mr. Garland had provided to you?

THE DEFENDANT: Yes, sir.

THE COURT: I've been given a plea agreement between yourself and the Government. Let me first ask to you confirm, this is your signature on the agreement?

THE DEFENDANT: Yes, sir.

THE COURT: And before signing it did you review it and discuss it with your lawyer?

THE DEFENDANT: Yes, sir.

THE COURT: Do you believe you understand it?

THE DEFENDANT: Yes, sir.

THE COURT: I'm going to review aspects of it with you

and if you have any question about any part of it, please tell me.

In Paragraph 1 you're agreeing to plead guilty to Counts 1, 2, and 3 of the indictment.

Count 1 charges that you knowingly and willfully conspired with others to commit robbery. The robbery would delay the movement of an article or commodity in commerce in that you planned to unlawfully take United States currency from a Loomis armored car against the employee's will by means of actual or threatened force, violence, or fear of injury to the person in violation of federal law.

Count 2 charges that you knowingly and willfully attempted to commit a robbery of an employee of the Loomis company by means of actual or threatened violence or fear of injury to said person.

And Count 3 charges that you and others did knowingly use, carry, brandished, or discharge one or more firearms during and in relation to a crime of violence for which you may be prosecuted in a court of the United States.

All of these crimes are in violation of federal law.

Do you understand you're agreeing to plead guilty to these three counts?

THE DEFENDANT: Yes, sir.

THE COURT: The sentence in this case will be imposed after consideration of the Federal Sentencing Guidelines. I'm

obligated to calculate a sentencing guideline range, and usually a sentence falls within the guideline range. The Supreme Court has ruled I have some discretion to vary from the guidelines up or down, but I must take the guidelines into account as well as other laws passed by Congress related to sentencing.

Also, I note that in your plea agreement you've agreed with the Government to recommend that I sentence you within the advisory guidelines and that I not depart upward or downward except for the possible departure based on cooperation, and we'll talk about that in a minute.

The Court has legal authority to sentence you up to the maximum authorized by law for the offense to which you're pleading guilty and you won't be able to withdraw your plea as a result of the sentence imposed.

Do you understand?

THE DEFENDANT: Yes, sir.

THE COURT: The possible penalties are in Paragraph 3 of the agreement which indicates that with respect to Counts 1 and 2 you could be sentenced to a maximum term of imprisonment of up to 20 years, followed by supervised release of up to three years. In addition to imprisonment and supervised release, a fine of up to $1 million could be ordered, and restitution must be.

With respect to Count 3 I must impose a minimum

mandatory sentence of ten years and it could extend as much as life, and the sentence as to Count 3 must run consecutively to the sentence received on Counts 1 or 2. That means basically the Count 3 sentence has to follow the sentence imposed on Counts 1 and 2. In addition to imprisonment, a fine of -- a term of supervised release of up to five years and a fine of up to $250,000 could be ordered, as well as restitution.

Do you understand these are the possible penalties for these crimes?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Additionally, a special assessment of $100 per count, a total of $300, will be imposed payable at sentencing.

Paragraph 6 contains the agreement I referenced earlier where you and the Government have agreed to recommend that you be sentenced within the advisory guidelines and except for cooperation they've agreed not to ask me to go above the guidelines, you've agreed not to ask me to go below them.

Do you understand?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Paragraph 7, the Government agrees to recommend your guidelines be reduced by three levels for acceptance of responsibility. The Government won't be required to make that recommendation, however, if you fail to make a full disclosure to the probation office of the circumstances

surrounding the offense, if you're found to have misrepresented facts to the Government before entering into this agreement, or if you commit any misconduct after entering into the agreement.

Do you understand?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Paragraphs 8 and 9 and 10 deal with cooperation with the Government. You've expressed a willingness to cooperate with them by providing truthful information and assisting them in the investigation of unlawful activity. The Government will evaluate any assistance you might provide them, and they may file a motion under the guidelines or Rule 35 of the Rules of Criminal Procedure asking me to depart downward from what would otherwise be your sentence because of your cooperation.

There are two things to make sure you understand about that. First, it's up to the Government whether to file that motion. If they don't file it, I have no authority to act on that basis. Second, even if they do file it, I'm not obligated to grant it.

Do you understand?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Paragraph 11 is a very important part of your plea agreement because under federal law you have a right to appeal the sentence imposed; however, as part of your plea agreement you're giving up your rights to appeal the sentence

or to appeal the manner in which sentence is imposed unless it exceeds the maximum permitted by statute or is a result of an upward departure or variance from the guideline range established at sentencing.

Do you understand you're giving up your rights to appeal the sentence in this case?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Have you talked about that with your lawyer and are you satisfied with your decision in that regard?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Okay. We've reviewed this written plea agreement. Beyond this agreement has the Government made any promises to you in connection with this case?

THE DEFENDANT: No, Your Honor.

THE COURT: Has anyone attempted to force you to plead guilty?

THE DEFENDANT: No, Your Honor.

THE COURT: Are you pleading guilty of your own free will because you are guilty?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Do you understand you have a right to plead not guilty? If you plead not guilty, you have the right to a trial by jury. The Government would have to prove your guilt beyond a reasonable doubt. You would have the right to the assistance of counsel. Your lawyer could cross-examine the

witnesses called by the Government, present witnesses on your behalf, you could either testify or choose not to testify. And if you decided not to testify, that fact couldn't be used against you in the trial.

Do you understand you have those rights?

THE DEFENDANT: Yes, Your Honor.

THE COURT: By pleading guilty you're giving up those rights. There will be no trial.

Do you understand?

THE DEFENDANT: Yes, Your Honor.

THE COURT: This crime is a felony. If your plea is accepted, you will be adjudged guilty of a felony and may lose valuable civil rights such as the right to vote, the right to hold office, the right to own a firearm.

Do you understand?

THE DEFENDANT: Yes, Your Honor.

THE COURT: I'm going to ask the prosecutor to describe what she would have proven at trial had the case gone to trial. Please listen carefully because when she finishes, I'm going to ask you whether you did what the Government says you did.

Ms. Quinlan.

MS. VORPE-QUINLAN: Your Honor, had this case gone to trial the Government would have proved all of the elements of the charge of 1951, a robbery in interstate commerce, the

conspiracy to do so, and the attempt, as well as the 924(c) charge with the following evidence.

The Government would prove that on July 30th, 2008, at approximately 9:56 in the morning at the Wachovia Bank located at 4900 Okeechobee Boulevard where an armed robbery was reported of a Loomis armed vehicle to the Palm Beach County Sheriff's Office.

The Loomis company is a business headquartered in Irving, Texas. The Loomis company does business in interstate commerce. It collects, transports, and distributes money and provides other services to businesses like banks that also engage in interstate commerce. And we have to prove that these crimes affected interstate commerce as one of the elements of our charge.

The Loomis armed security guard who's called a messenger was servicing the automated teller machine, an ATM, located in the drive-through of the Wachovia Bank at approximately 10 o'clock in the morning. One armed security guard waited inside the armored vehicle in the driver's seat. The messenger was standing in front of the ATM when a green van pulled up along the west side of the armored vehicle. The messenger saw the driver's side open along with the rear driver's side sliding door open. A male robber then exited the sliding door holding an assault-type rifle. And this is Mr. Bowe.

The messenger observed another male inside the green van with another assault rifle. The messenger said that the robber who jumped out of the van began to fire his assault rifle at him, which was Mr. Bowe.

The messenger was shot in the leg, and he will testify that he fell to the ground. He then would testify he removed his firearm and began to return fire at the robbers. The messenger would testify that the robber who shot him used the armored vehicle as a cover to peek around the vehicle at the messenger. The messenger could not walk, but he crawled back to the armored vehicle. The green van then fled from the scene.

The Loomis employees fled from the bank parking lot in their armored vehicle and they activated their alarm system. The Loomis employees drove to the hospital.

The Loomis driver was also struck with a bullet. And I reviewed the van out at the Sheriff's office lot, and it was the van itself, the Loomis truck, had bullet holes in it.

As a result of this attempted robbery, commerce and items moving in commerce were delayed, obstructed, and affected, and the bank which was doing business in interstate commerce was also delayed, obstructed, and affected in its business while the investigation and the robbery took place.

A Wachovia Bank employee assigned to the drive-through teller was waiting on a customer when she saw the Loomis

armored van pull up to the ATM. She would testify the van was parked at the ATM for several minutes. The teller had an intercom system and she heard the messenger say "get back." She said she's heard this statement before by Loomis employees when they're servicing the ATM and someone begins to approach them.

The teller would testify that she looked up and observed a black male, skinny built, consistent with Mr. Bowe's built, wearing a long-sleeve white T-shirt, dark pants, and a blue baseball cap. The teller described the cap as sitting high on the male's head. The teller said the male approached the messenger from the south end of the parking lot. The teller heard the gunshots, saw the male begin to fire the gun at the messenger. The messenger fell backward to the ground after being shot. The teller would testify she did not see anything more because she ran to get help from other employees.

A business owner located on Military Trail in West Palm Beach, Florida, contacted the Sheriff's Office regarding a black male who had come into his business to use the telephone. The owner of the business stated that the black male came into the store and began to use the phone and tell the other party on the phone to come and pick him up and that cops were all over the place. The owner then stated that the male left the business.

The Sheriff's Office responded and a K-9 Unit began a

track from that business owner's front door. The K-9 Unit located Cornelius A. Williams, a codefendant in this case, hiding in the bushes approximately one block from the business. Williams refused to come out of the bushes and was bitten by the Sheriff's Office K-9. He ultimately did come out. He was taken into custody and provided his Miranda rights by a detective from the Sheriff's Office.

He provided a post-Miranda statement which I believe was taped, and he said that he was picked up around 6:30 a.m. July 30, 2008, by Randy Lee Sampson, another codefendant, known to him as Flip. He said that Williams, Sampson, and Sampson's brother and Courtney Griffin drove around that morning looking for a Brinks armored truck to rob. He advised that two other unknown persons drove a Ford pickup truck and assisted with the search for an armored vehicle to rob.

They located a Loomis white armored vehicle parked at the ATM in the Wachovia Bank parking lot. They pulled up alongside the white armored van when Mr. Bowe opened the driver's side door and exited carrying an assault-type rifle and began firing at the messenger.

The codefendant Williams said that Sampson drove off leaving Bowe in the parking lot at the bank.

We also have a witness, Your Honor, who would testify that he was working a few doors down and he saw -- he heard the shots and he saw an individual running down the canal bank,

which is right behind the Wachovia Bank, and as he was running down the canal bank he was taking his clothes off and discarding his shoes and other items which crime scene later recovered.

Mr. Sampson, the codefendant, was located in an apartment complex named Stonybrook in Rivera Beach, Florida, and he was provided with his Miranda rights at the time of the arrest. Mr. Sampson provided a post-arrest Miranda statement. Sampson stated that he participated in the armored car robbery along with Williams, Bowe, and two other individuals. He said that -- at first he said he and Bowe were not in the stolen green van but were instead driving the stolen Ford pickup truck. He has since corrected that statement.

Courtney Griffin later turned himself in and he gave a statement about his involvement in the armored car robbery. Griffin said he committed the armored car robbery with Williams, Sampson, Sampson's brother Bowe, and other persons yet to be indicted.

These defendants stated that there was a stolen Ford F50 pickup truck registered to a female living in West Palm Beach, Florida, that was used in the robbery. That pickup truck had been reported stolen to the Palm Beach Gardens Police Department.

Based on the statements, the cooperation of these defendants, there was a search warrant executed at 1541 West

15th Street, and the stolen pickup truck was parked in front of it.

Mr. Bowe later gave a statement to Agent MacVeigh in which he said that they had planned the robbery from that apartment. He said that he had rented that apartment but it was in the name of another person. He said he would use the local person to rent the apartment for him. Mr. Bowe said that he and the others went to the apartment on Tuesday morning to group together before the robbery. They discussed whether they should rob a bank, but they decided that armored vehicles would have more money. And I'm summarizing his statement.

Bowe said the plan was for Flip or Sampson to drive the van, Bowe and Flip's brother would jump out and get the money bags, then Williams and another as-of-yet uncharged defendant would hold the assault guns, and then Griffin and another person would stay away from the area in the pickup truck. So they parted their ways and then they met up at 7:00 a.m. the morning of the robbery.

Bowe wore gray work pants and a work shirt that had no name on the chest pocket, white Reebok sneakers, and black gloves which are consistent with the items that were found along the canal bank. He said he first wore the white hairy beared mask but later switched with another uncharged person. He assisted the agents by describing the other subjects' clothing.

He said that Williams wore a gray work suit and a skully hat. He said they all met at the 15th Street apartment on Wednesday morning. They wanted to go to a spot near Village and wait for an armored car, but instead they began driving around Rivera Beach looking for one. The spotted an armored car near 45th Street and Australian Avenue. They then drove over to Palm Beach Lakes Boulevard. They spotted an armored car at the Wachovia Bank off Spencer Boulevard which was right near the Sports Authority, but they said that they decided not to rob that one. They then -- or rob it at that time. They then followed the van to the next Wachovia Bank where the robbery occurred. And he gave all of the details concerning the robbery.

So the Government would use that evidence and other evidence to prove that these defendants were involved in a conspiracy to commit a Hobbs Act robbery, that they attempted to commit the Hobbs Act robbery, and that they fired weapons during and in the course of a violent crime under a violation of 924(c).

THE COURT: All right. Thank you.

Mr. Bowe, you heard the prosecutor describe what she would prove at trial. Did you do that?

THE DEFENDANT: Yes, Your Honor.

THE COURT: How do you plead to the charge: Guilty or not guilty?

THE DEFENDANT: Guilty.

THE COURT: Anything further, Ms. Quinlan?

MS. VORPE-QUINLAN: No, sir.

THE COURT: Mr. Garland?

MR. GARLAND: No, Your Honor.

THE COURT: It's then the finding of the Court in the case of the United States versus Michael Bowe that the defendant is fully competent and capable of entering an informed plea, that he is aware of the nature of the charges and the consequences of the plea, and that the plea of guilty is a knowing and voluntary plea supported by an independent basis in fact containing each of the essential elements of the offense. The plea is therefore accepted and the defendant is adjudged guilty of these offenses.

It's also the finding of the Court that the defendant has discussed with counsel the appellate waivers contained within the plea agreement and that waiver is also knowing and voluntary.

Mr. Bowe, the probation office will do an investigation. They'll ask to speak to you. You have a right to have your lawyer present when you talk to them. They will prepare a written report which will describe these crimes and recommend how the advisory sentencing guidelines ought to be applied.

If there's anything you believe to be incorrect in the

report, you and your lawyer can file written objections. If those are not worked out with the Government, we will decide those at the sentencing hearing, and you will have a right to address the Court with respect to sentence.

Do you understand?

THE DEFENDANT: Yes, Your Honor.

THE COURT: When can we have sentencing?

THE COURTROOM DEPUTY: January 8th at 10:00.

THE COURT: January 8th at 10:00. Is that time acceptable?

MS. VORPE-QUINLAN: Yes, that's acceptable with the Government.

Can I have just a moment, please, Your Honor?

Your Honor, I was taking some notes and I may have missed this because I was reading Mr. Bowe's confession report, but did you advise him of all of his rights to trial?

THE COURT: I think so. Didn't I? Didn't I cover everything, Mr. Garland?

MS. VORPE-QUINLAN: If he has a right to call witnesses and he is giving up all of those rights.

MR. GARLAND: I certainly discussed that with him, but I'm not sure --

THE COURT: I'm pretty sure I did. And defense counsel in the back of the courtroom are nodding yes.

MS. VORPE-QUINLAN: Okay. Thank you very much. I'm

sorry.

THE COURT: You may have forgotten about it in the lengthy rendition of the facts you were going to prove at trial.

MS. VORPE-QUINLAN: Yes. I was more concerned about that. You're right. Thank you, Judge.

THE COURT: Okay. Anything else today, Mr. Garland?

MR. GARLAND: No, Your Honor. The 8th would be fine. I know I've got some trials coming up, but if there is something I will certainly --

THE COURT: Let us know as soon as you can if it turns out that doesn't work.

MR. GARLAND: Yes, sir. Thank you.

THE COURT: Okay. Thank you.

(Proceedings concluded at 9:38 a.m.)

C E R T I F I C A T E

I, Karl Shires, Registered Professional Reporter and Federal Certified Realtime Reporter, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Dated this 25th day of October, 2016.

Karl Shires, RMR FCRR