

IN THE SUPREME COURT OF THE UNITED STATES

No. 24-5438

MICHAEL BOWE, PETITIONER

v.

UNITED STATES

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

MOTION OF THE UNITED STATES
FOR ENLARGMENT OF THE TIME FOR ORAL ARGUMENT AND
FOR DIVIDED ORAL ARGUMENT

Pursuant to Rules 21, 28.3, and 28.4 of the Rules of this Court, the Solicitor General, on behalf of the United States, respectfully moves for a five-minute enlargement of the argument time and for divided argument in this case. The United States requests that petitioner and the United States each be allowed 25 minutes for argument, and that the appointed amicus curiae be allotted 15 minutes of argument. Counsel for petitioner and the court-appointed amicus curiae both consent to this motion.

This case presents two questions: First, whether this Court has certiorari jurisdiction to review the court of appeals' order

declining to authorize an additional collateral attack on one of petitioner's convictions under 28 U.S.C. 2255, in light of 28 U.S.C. 2244(b)(3)(E). And second, whether 28 U.S.C. 2244(b)(1) -- which provides 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," ibid. -- applies to a request for authorization to file a second or successive collateral attack by a federal prisoner under Section 2255.

The United States and petitioner dispute whether Section 2244(b)(3)(E) deprives the Court of certiorari jurisdiction to review the court of appeals' order. But if this Court has jurisdiction to review that order, the United States agrees with petitioner that the court of appeals erred in applying Section 2244(b)(1) to dismiss petitioner's request for authorization. The Court has accordingly appointed the amicus curiae to defend the judgment of the court of appeals as to the latter issue.

The United States has regularly participated in oral argument in federal criminal cases in which the Court appointed an amicus to defend the judgment below. See, e.g., Hewitt v. United States, 145 S. Ct. 2165 (2025); Erlinger v. United States, 602 U.S. 821 (2024); Jones v. Hendrix, 599 U.S. 465 (2023); Holguin-Hernandez v. United States, 589 U.S. 169 (2020); Beckles v. United States, 580 U.S. 256 (2017); Welch v. United States, 578 U.S. 120 (2016).

The United States respectfully submits that the same course is warranted here.

The United States is a party to the criminal proceedings in this case and is the only litigant arguing that the Court lacks certiorari jurisdiction. The United States also has a significant stake in the correct interpretation of the statutes defining the scope of collateral review available to federal prisoners under Section 2255. Participation by the United States would therefore materially assist the Court's consideration of the case.

Because the parties agree that the court of appeals erred in its application of Section 2244(b)(1) to this case, the court-appointed amicus would participate at oral argument only on that issue, to defend the merits of the court of appeals' decision. In order to provide a sufficient opportunity for amicus curiae to participate in oral argument on the second question and for the parties to present argument on both questions, the United States respectfully requests that oral argument be enlarged by five minutes and that argument time be allocated as follows and in the following order (subject to petitioner's reservation of time for rebuttal): 25 minutes for petitioner, 25 minutes for the government, and 15 minutes for amicus curiae.

The proposed division of oral argument among petitioner, the United States, and the appointed amicus reflects the respective scope of the arguments of each and is likely to be of material

assistance to the Court. In an analogous circumstance, the Court adopted a similar time arrangement. See Beckles v. United States, 580 U.S. 986 (2016) (No. 15-8544) (adopting same 25-25-15 division of oral argument where the Court appointed the amicus curiae to defend the court of appeals' judgment on only one of the questions presented). That arrangement would also be best here.

Respectfully submitted.

D. JOHN SAUER
Solicitor General
Counsel of Record

AUGUST 2025