

No.

In the Supreme Court of the United States

LUCIOUS BOYD,
PETITIONER

V.

RICKY DIXON, SECRETARY,
FLORIDA DEPARTMENT OF CORRECTIONS,
RESPONDENT

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Capital Case

The question presented is:

Whether § 2244(b)(2) applies (i) to habeas filings made after a prisoner has exhausted appellate review of his first petition, (ii) to all second-in-time habeas filings after final judgement, or (iii) to some second-in-time filings, depending on a prisoner's success on appeal or ability to satisfy a seven-factor test.

RELATED PROCEEDINGS

Boyd v. State, No. SC02-1590 (Fla. Feb. 10, 2005) (affirming convictions and sentence of death on direct appeal).

Boyd v. Florida, No. 05-7787 (U.S. Feb. 21, 2006) (denying petition for writ of certiorari).

State v. Boyd, No. 99-005809CF10A (Fla. 17th Ct. Jan. 2, 2013) (denying initial motion for postconviction relief).

Boyd v. State, No. SC12-244 & SC13-1959 (Fla. Dec. 17, 2015) (affirming denial of postconviction relief entered on Jan. 2, 2013).

Boyd v. Jones, No. 16-cv-62555-DPG (S.D. Fla. July 3, 2018) (granting federal evidentiary hearing).

Boyd v. Inch, No. 16-cv-62555-DPG (S.D. Fla. July 10, 2019) (denying petition for writ of habeas corpus).

Boyd v. Sec'y, Dept. Corr., No. 19-13051 (11th Cir. Oct. 25, 2019) (staying appellate proceedings).

Boyd v. State, No. SC20-108, 324 So. 3d 908 (Fla. May 13, 2021) (affirming summary denial of successive motion for postconviction relief entered Dec. 17, 2019).

Boyd v. State, No. SC20-108, 324 So. 3d 919 (Fla. Sept. 2, 2021) (denying rehearing).

Boyd v. Sec'y, Fla. Dept. Corr., No. 19-13051 (11th Cir. Sept. 28, 2021) (denying Petitioner's Motion to Remand to District Court for Indicative Ruling, or, in the Alternative, to Relinquish Jurisdiction).

Boyd v. Sec'y, Fla. Dept. Corr., No. 16-cv-62555-GAYLES, 2021 WL 12300713 (S.D. Fla. Dec. 23, 2021) (denying Petitioner's Motion for Leave to Amend Habeas, or Alternatively, for Relief from Judgement).

Boyd v. Sec'y, Fla. Dept. Corr., No. 22-10299, 114 F.4th 1232 (11th Cir. Aug. 28, 2024) (affirming denial entered Dec. 23, 2021).

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INTRODUCTION

This case is about the Federal Judiciary’s authority to hear a state prisoner’s entire case the first time around. After that, Congress severely restricts federal habeas courts’ review of claims raised in “second or successive” habeas applications. The issue here is whether these restrictions trigger before or after the entire Federal Judiciary has its say. If before, then the Judiciary must blind itself to new constitutional claims that ripen during the pendency of initial habeas actions. If after, then the Judiciary may incorporate such claims into pending habeas actions as permitted by 28 U.S.C. § 2242 and the Federal Rules of Civil Procedure.

The Eleventh Circuit used this capital case to adopt the former approach, “holding that a ‘motion to amend’ a federal habeas petition filed after the district court entered its final judgement and while an appeal remains pending should be treated as a ‘second or successive’ habeas application under [28 U.S.C.] § 2244(b).” *Boyd v. Sec’y, Dept. Corr.*, 114 F.4th 1232, 1238 n.3 (11th Cir. 2024) (citing *Rivers v. Lumpkin*, 99 F.4th 216, 220-21 (5th Cir. 2024)). This holding solidified the Eleventh Circuit’s position among ten circuits that have splintered into roughly four camps over an important jurisdictional question: Whether a habeas petitioner can seek leave to amend his application while an appeal from final judgement is pending, or whether such a motion is properly characterized as a second or successive application pursuant to § 2244(b).

The Court already granted certiorari this term in a parallel, non-capital case out of the Fifth Circuit. *Rivers v. Lumpkin*, 99 F.4th 216 (5th Cir. 2024), *cert. granted*,

No. 23-1345 (U.S. Dec. 6, 2024). Both cases involve petitioners who were denied material information until after they applied for federal habeas relief—Mr. Rivers by his trial counsel’s failure to turn over casefiles and Mr. Boyd by Florida’s refusal to permit juror interviews. In both, federal courts found themselves without authority to consider claims predicated on this new information. And both rest on the same error—neither the Fifth nor the Eleventh Circuit conducted a proper analysis under *Banister v. Davis*, 590 U.S. 504 (2020). Instead, they expanded *Gonzalez v. Crosby*, 545 U.S. 524 (2005), far beyond its scope, such that 28 U.S.C. § 2244(b) subsumes 28 U.S.C. § 2242.

Undoubtedly, this Court’s grant of certiorari in *Rivers* was warranted in light of the mature circuit split it presents. Because Mr. Rivers and Mr. Boyd ask this Court to resolve the same question, certiorari is warranted here, too.

OPINIONS BELOW

The court of appeals’ opinion is reported at 114 F.4th 1232 and is reproduced in the appendix to this petition at Pet. App. 1a. The court of appeals’ order denying rehearing is reproduced at 28a. The district court’s order is reproduced at Pet. App. 16a.

JURISDICTION

The Eleventh Circuit issued its judgement on August 28, 2024, and denied Petitioner’s timely motion for rehearing on November 5, 2024. Pet. App. 1a, 28a. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Sections 2242 and 2244(b) of U.S. Code Title 28 and Federal Rules of Civil Procedure 15, 60, and 62.1 are reproduced in the appendix to this petition.

STATEMENT OF THE CASE

a. Legal Background

“A state prisoner is entitled to one fair opportunity to seek federal habeas relief from his conviction.” *Banister*, 590 U.S. at 507. “But after that, the road gets rockier.” *Id.* at 509. The Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”) “creates a ‘gatekeeping’ mechanism for the consideration of second or successive applications in district court.” *Felkner v. Turpin*, 518 U.S. 651, 657 (1996). Under 28 U.S.C. § 2244(b), district courts cannot consider new claims raised in a second or successive habeas corpus applications unless a panel of three circuit court judges grants prior authorization. What’s more, such a claim is cognizable only “if it relies on a new and retroactive rule of constitutional law or if it alleges previously undiscoverable facts that would establish [the petitioner’s] innocence.” *Banister*, 590 U.S. at 509 (citing 28 U.S.C § 2244(b)(2)).

This gatekeeping mechanism applies only if two conditions obtain: First, the filing is “an application for habeas relief,” meaning it contains an “asserted federal basis for relief.” *Gonzalez*, 545 U.S. at 530. This condition is strictly necessary, not sufficient, to trigger 28 U.S.C. § 2244(b). Then, the filing must also qualify as second or successive. *Banister*, 590 U.S. at 512. The question presented here relates to the second condition.

Time and again, this Court has said that second or successive is a “term of art” that does not encompass every later-in-time application. *Id.* at 511 (citing *Magwood v. Patterson*, 561 U.S. 320, 332 (2010)). Rather, second or successive draws meaning from historical habeas practice and Congress’s intent underlying AEDPA. 590 U.S. at 512. *Banister* sharpened this definition into a two-step test: “If a type of later-in-time filing would have ‘constituted an abuse of the writ,’ . . . it is successive.” *Id.* at 512. If not, then “consider[] ‘the implications for habeas practice’ of allowing a type of filing, to assess whether Congress would have viewed it as successive.” *Id.* at 512-13. The latter turns on whether exercising jurisdiction over the filing is consistent with “AEDPA’s own purposes,” namely, “to ‘conserve judicial resources, reduce piecemeal litigation,’ and ‘lend finality to state court judgements within a reasonable time.’” *Id.* at 512.

b. Factual and Procedural Background

Tonja Striggles, a four-time convicted felon, sat on the jury that found Mr. Boyd guilty of first-degree murder, sexual battery, and armed kidnapping. These felony convictions disqualified Juror Striggles from jury service. But when the trial court asked about her criminal record during *voir dire*, she omitted their mention. Thus, Juror Striggles avoided a cause strike and, ultimately, cast her vote to have Mr. Boyd executed. Before these facts were discovered, the Florida Supreme Court affirmed Mr. Boyd’s convictions and sentence of death. *Boyd v. State*, 910 So. 2d 167 (Fla. 2005).

Mr. Boyd’s counsel discovered Juror Striggles’ nondisclosure in postconviction. Postconviction counsel moved for permission to interview her, arguing her testimony was necessary to prove state and federal juror misconduct claims. The latter asserted

that Mr. Boyd was deprived of a fair and impartial jury in violation of the Sixth and Fourteenth Amendments because Juror Striggles dishonestly answered material questions on *voir dire*. Nonetheless, the state postconviction court denied leave to interview Juror Striggles on state procedural grounds and, subsequently, denied relief. Again, the Florida Supreme Court affirmed. *Boyd v. State*, 200 So. 3d 685 (Fla. 2015).

On October 28, 2016, Mr. Boyd applied for the writ of habeas corpus in the United States District Court for the Southern District of Florida. The district court held an evidentiary hearing for Juror Striggles to testify about her nondisclosures on *voir dire*. Specifically, to conduct a proper analysis under *McDonough Power Equip. Corp. v. Greenwood*, 464 U.S. 548 (1984), the district court needed to ascertain whether Juror Striggles' answers were actually dishonest or simply mistaken.

When Juror Striggles took the stand on September 20, 2018, her testimony transcended Mr. Boyd's claim about her felony convictions. Juror Striggles revealed that her first cousin was married to Mr. Boyd's brother—a fact she learned during a break in jury selection when she called her mother to discuss the case. Although Juror Striggles claimed to have “pitched a fit” about this in the courtroom, the record reflects no such disclosure. Continuing, Juror Striggles testified that she was under the influence of “heavy medication” that made her feel “stoned” during the trial. And, ultimately, she admitted to having more extensive prior knowledge than she disclosed on *voir dire*, as to the case and to Mr. Boyd himself.

On July 10, 2019, the District Court denied Mr. Boyd’s habeas application but issued a certificate of appealability as to his juror misconduct claim. Mr. Boyd filed notice of appeal in the Eleventh Circuit on August 9, 2019. He then filed a successive motion for postconviction relief in state court, raising new claims of juror misconduct predicated on Juror Striggles’ testimony at the federal evidentiary hearing. The Eleventh Circuit stayed proceedings while Mr. Boyd litigated these claims, which the Florida Supreme Court ultimately denied. *Boyd v. State*, 324 So. 3d 908 (Fla. 2021), *reh’g denied*, 324 So. 3d 919 (Fla. Sept. 2, 2021).

On September 7, 2021—five days after the Florida Supreme Court denied rehearing—Mr. Boyd brought his freshly exhausted claims to federal court. He moved the district court for leave to amend his habeas application pursuant to Federal Rule of Civil Procedure 15(a)(2) or, alternately, for relief from judgement pursuant to Rule 60(b)(6). Because Mr. Boyd’s appeal remained pending before the Eleventh Circuit, he also moved the district court for an indicative ruling under Rule 62.1. On the same day, Mr. Boyd moved the Eleventh Circuit to remand his case to the district court under Federal Rule of Appellate Procedure 12.1.

The district court denied Mr. Boyd’s motion, treating it as a second or successive habeas application subject to § 2244(b)’s gatekeeping provisions. To reach this conclusion, the district court relied on *Gonzalez* for the proposition “that a Rule 60(b) motion in a § 2254 habeas case is properly characterized as a second or successive petition pursuant to 28 U.S.C. § 2244(b) if it ‘seeks to add a new ground for relief.’” Order on Pending Motions at 4, *Boyd v. Sec’y, Dept. Corr.*, No. 16-cv-62555-

DPG (S.D. Fla. Dec. 23, 2021). Having so decided, the district court found Mr. Boyd’s motion for an indicative ruling moot but issued a certificate of appealability as to the question presented here: “Whether a habeas petitioner can seek leave to amend his petition while an appeal from a final judgment is pending, or whether such a motion is properly characterized as a second or successive petition pursuant to 28 U.S.C § 2244(b).” *Id.* at 11.

The Eleventh Circuit affirmed, “holding that a ‘motion to amend’ a federal habeas petition filed after the district court entered its final judgement and while an appeal remains pending should be treated as a ‘second or successive’ habeas application under § 2244(b).” *Boyd*, 114 F.4th at 1238 n.3. In so holding, the Eleventh Circuit focused almost exclusively on *Gonzalez* and mentioned *Banister* only in passing. Mr. Boyd moved for panel rehearing or rehearing *en banc*, which the Eleventh Circuit denied on November 5, 2024.

Mr. Boyd now asks the Court to grant certiorari, vacate the Eleventh Circuit’s decision, and remand for further proceedings.

REASONS FOR GRANTING CERTIORARI

a. The Court Granted Certiorari This Term on the Question Presented.

The Court granted certiorari this term in *Rivers v. Lumpkin*, 99 F.4th 216 (5th Cir. 2024), *cert. granted*, No. 23-1345 (U.S. Dec. 6, 2024). *Rivers* and this case present the same question: “Whether § 2244(b)(2) applies (i) to habeas filings made after a prisoner has exhausted appellate review of his first petition, (ii) to all second-in-time habeas filings after final judgement, or (iii) to some second-in-time filings, depending

on a prisoner’s success on appeal or ability to satisfy a seven-factor test.” Petition for A Writ of Certiorari at i, *Rivers*, No. 23-1345 (U.S. June 24, 2024).

The cases stand in materially identical postures. In *Rivers*, while his first-in-time application was pending on appeal, Mr. Rivers filed a second application, raising new claims to challenge the same state conviction. *Rivers*, 99 F.4th at 218. Here, Mr. Boyd sought to amend his first-in-time application while his appeal was pending. In both cases, the second-in-time filings were treated as second or successive applications subject to § 2244(b)’s gatekeeping mechanism. To reach their conclusions, the Fifth and Eleventh Circuits committed the same error—treating notice of appeal from final judgment as a sufficient condition that triggers second or successive treatment for any subsequent filing that contains a claim—based on a misapplication of *Gonzalez*. Compare *Rivers*, 99 F.4th at 222 (citing *Gonzalez* for the proposition “that filings introduced after a final judgement that raise habeas claims, no matter how titled, are deemed successive”) with *Boyd*, 114 F.4th at 1239 (citing *Gonzalez* for “any filing that ‘seeks to revisit the federal court’s denial *on the merits*’ of a habeas claim . . . presented in an earlier habeas petition is a ‘second or successive’ application . . . no matter what the prisoner labels it”).

Unlike *Rivers*, however, this is a capital case. “The penalty of death is qualitatively different from a sentence of imprisonment, however long.” *Woodson v. North Carolina*, 428 U.S. 280, 305 (1976). Death’s unparalleled finality necessitates “stricter adherence to procedural safeguards in a capital case than in other cases.” See *Strickland v. Washington*, 466 U.S. 668, 715 (1984) (Marshall, J., dissenting).

Capital punishment unavoidably risks wrongful execution and sovereign debasement. *See Callins v. Collins*, 510 U.S. 1141, 1145 (1994) (Blackmun, J., dissenting) (noting “that no combination of procedural rules or substantive regulations ever can save the death penalty from its inherent constitutional deficiencies”). These risks are particularly pronounced when technical niceties prevent “meaningful judicial oversight to the administration of death by the States.” *See Id.* Thus, capital sentences must be assayed at every opportunity to ensure compliance with “the Court’s insistence that capital punishment be imposed fairly, and with reasonable consistency, or not at all.” *Eddings v. Oklahoma*, 455 U.S. 104, 112 (1982).

The Court should do as it did in *Rivers* and grant certiorari. The decision therein will determine Mr. Rivers’ ability to plead his entire case and challenge his sentence of years. It will also determine whether it was error to deny Mr. Boyd the same chance to challenge his sentence of death. The only question is whether redressable error in *Rivers* will be redressable error here. In light of the Constitution’s heightened safeguards for capital defendants, the answer is clear. Certiorari is warranted.

b. The Question Presented is the Subject of a Circuit Split.

The question presented has divided ten circuits into roughly four groups. Correctly, the Second Circuit treats later-in-time habeas filings as second or successive only if a district court has denied the original application on the merits and the petitioner has exhausted appellate remedies. *Whab v. United States*, 408 F.3d 116 (2d Cir. 2005); *Ching v. United States*, 298 F.3d 174 (2d Cir. 2002) (Sotomayor,

J.). The Third Circuit agrees with the Second insofar as a habeas petitioner’s “one full opportunity to seek collateral review” in federal court ends only after the exhaustion of appellate remedies but requires district courts to hold later-in-time filings in abeyance pending the appeal’s disposition. *United States v. Santarelli*, 929 F.3d 95, 105 (3d Cir. 2019); *Ross v. Adm’r E. Jersey State Prison*, No. 23-1240, 2024 WL 4341335, at *6 (3d Cir. Sept. 30, 2024).

The Fifth, Sixth, Seventh, Eighth, and Ninth Circuits all apply second or successive treatment to later-in-time filings after the district court enters final judgement on the merits, but differ on the exact procedural trigger. *Rivers*, 99 F.4th 216; *Moreland v. Robinson*, 813 F.3d 315 (6th Cir. 2016); *Williams v. Norris*, 461 F.3d 999 (8th Cir. 2006); *Balbuena v. Sullivan*, 980 F.3d 619 (9th Cir. 2020); *cf. Philips v. United States*, 668 F.3d 433 (7th Cir. 2012) (interpreting “second or successive” in the 28 U.S.C. § 2255 context). The Fourth and Tenth Circuits have suggested even more capacious rules. The Fourth says, “applicants may *file* one timely § 2254 petition without seeking prior authorization, but after having done so, they are barred from bringing additional claims in a ‘second or successive habeas application under section 2254.’” *Bixby v. Stirling*, 90 F.4th 140, 146 (4th Cir. 2024). Likewise, the Tenth Circuit treats as “second or successive” some later-in-time filings “even while it [the habeas action] is still pending *in the district court*.” *Ochoa v. Sirmons*, 485 F.3d 538, 541 n.3 (10th Cir. 2007).

The Court should grant certiorari and resolve this circuit split because, without clear guidance, the circuits will continue to struggle to “mark the bounds of a ‘court’s

adjudicatory authority.” *See Boechler, P.C. v. Comm’r of Internal Revenue*, 596 U.S. 199, 203 (2022). AEDPA’s restrictions on second or successive applications are treated as jurisdictional. As such, they “cannot be waived or forfeited, must be raised by courts *sua sponte*, and . . . do not allow for equitable exceptions.” *Id.* Recognizing that “the consequences that attach to the jurisdictional label may be so drastic,” this Court has “tried in recent cases to bring some discipline to the use of this term.” *Henderson ex rel. Henderson v. Shinseki*, 562 U.S. 428, 435 (2011); *Boechler*, 596 U.S. at 203. This effort to lend predictability to jurisdictional rules reflects the principle that “courts and litigants are best served by [a] bright-line rule.” *Budinich v. Becton Dickinson and Co.*, 486 U.S. 196, 202 (1988). Indeed, “the chief and often the only virtue of a jurisdictional rule is clarity.” *Matter of Kilgus*, 811 F.2d 1112, 1117 (7th Cir. 1987) (Easterbrook, J.).

Predictability and clarity are especially important in the rules governing federal habeas actions. “The vast majority of federal habeas petitions are brought without legal representation.” *Duncan v. Walker*, 533 U.S. 167, 191 (2001) (Breyer, J., dissenting) (citing U.S. Dept. of Justice, Office of Justice Programs, Bureau of Justice Statistics, *Federal Habeas Corpus Review: Challenging State Court Criminal Convictions* 17 (1995)). If even the learned judges occupying the courts of appeals cannot agree on § 2244(b)’s jurisdictional import, *pro se* litigants have little chance.

Resultantly, § 2244(b) is not an effective “procedural safeguard” whose observance might reduce habeas filings to a “manageable proportion so that it would be possible to examine the cases with some care and to hear those that show merit.”

Brown v. Allen, 344 U.S. 443, 544 (1953) (Jackson, J. concurring). Such “procedural safeguards” operate in the first instance by guiding prospective litigants’ decisions to file at all. Thereby, they reduce the “haystacks’ of new habeas petitions” and the burden of “struggl[ing] to identify the meritorious ‘needles’ among them.” *See Brown v. Davenport*, 596 U.S. 118, 130 (2022) (quoting *Brown v. Allen*, 344 U.S. at 537 (Jackson, J. concurring)). Where the applicability of a rule is unclear or dependent on geography, many *pro se* habeas petitioners may file, unaware the rule applies or undeterred because they hope it might not.

Certiorari is warranted to resolve the circuit split, thereby standardizing and clarifying the jurisdictional rules applicable to habeas actions.

c. The Eleventh Circuit’s Decision is Wrong.

28 U.S.C. § 2242 provides that an “application for a writ of habeas corpus . . . may be amended or supplemented as provided in the rules of procedure applicable to civil actions.” Correspondingly, the Federal Rules of Civil Procedure “apply to proceedings for habeas corpus . . . to the extent that the practice in those proceedings: (A) is not specified in a federal statute [or habeas-specific rule]; and (B) has previously conformed to the practice in civil actions.” FED. R. CIV. PRO. 81(a)(4). In other words, the Rules “generally govern habeas proceedings,” but they “give way . . . if and to the extent ‘inconsistent with any statutory provisions or [habeas-specific rules].” *Banister*, 590 U.S. at 511.

The Rules establish the procedure for amending pleadings after entry of judgement. Any time after the opportunity to amend as of right lapses, “a party may

amend its pleading only with the opposing party's written consent or the court's leave," which "the court should freely give . . . when justice so requires." FED. R. CIV. PRO. 15(a)(2). This Rule contains no applicable time limit. However, after entry of judgement and notice of appeal, "amendment cannot be allowed until the judgement is set aside or vacated under Rule 59 or Rule 60." Wright, Miller & Kane, Federal Practice and Procedure, § 1489; *see U.S. ex rel. Atkins v. McInteer*, 470 F.3d 1350, 1361 n.22 (11th Cir. 2006). This is so, because notice of appeal "confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal." *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982). Thus, a district court ordinarily lacks jurisdiction to *grant* a Rule 60 motion for relief from judgement after a party files notice of appeal from that judgement. But a district court can issue an indicative ruling "if a timely motion is made for relief that the court lacks authority to grant because of an appeal that has been docketed and is pending." Fed. R. Civ. Pro. 62.1(a). After the district court issues its indicative ruling, the court of appeals "may remand for further proceedings." Fed. R. App. Pro. 12.1(b).

When interpreting AEDPA, the Court resists "interpretations of the statute that would produce troublesome results, create procedural anomalies, and close [its] doors to a class of habeas petitioners seeking review without any clear indication that such was Congress' intent." *Panetti v. Quarterman*, 551 U.S. 930, 946 (2007). Nevertheless, the Eleventh Circuit tacitly decided that 28 U.S.C. § 2244(b) abrogated

§ 2242, insofar as the latter governs post-judgement amendments. Neither the text of § 2244(b) nor this Court’s caselaw compelled this result.

Rather than apply *Banister*, which expressly defined the phrase “second or successive,” the Eleventh Circuit extended *Gonzalez*, which did not. By the plain text of 28 U.S.C. § 2244(b), “second or successive” modifies “habeas corpus application.” *Gonzalez* only addressed the meaning of the latter term. There, the Court held, “a habeas petitioner’s filing that seeks vindication of . . . a claim is, if not in substance a ‘habeas corpus application,’ at least similar enough that failing to subject it to the same requirements would be ‘inconsistent with’ [28 U.S.C. § 2244(b)].” 545 U.S. at 531. Because the Rule 60(b) motion at issue in *Gonzalez* challenged only “a nonmerits aspect of the first federal habeas proceeding,” it was not a “habeas corpus application” at all, let alone a second or successive one. *Id.* at 534. Thus, *Gonzalez* provides very little guidance on the question presented.

The Eleventh Circuit should have applied *Banister*, which addressed the question presented much more directly. “The phrase ‘second or successive application,’ on which all this rides, is a ‘term of art,’ which ‘is not self-defining.’” *Banister*, 590 U.S. at 511 (quoting *Slack v. McDaniel*, 529 U.S. 473, 486 (2000)). Rather, a bifurcated inquiry into “historical habeas doctrine and practice” and “AEDPA’s own purposes” dictates whether any given type of filing is “second or successive.” *Banister*, 590 U.S. at 512. First, a federal habeas court must determine “whether a type of later-in-time filing would have ‘constituted an abuse of the writ, as that concept is explained in [the Court’s] pre-AEDPA cases.’” *Id.* The inquiry ends

there only if the filing would have been an abuse of the writ; otherwise, the federal habeas court must look to the congressional intent behind § 2244(b) “to assess whether Congress would have viewed [a type of filing] as successive.” *Id.* at 512-13. If not, then the filing is not “second or successive,” meaning § 2244(b) does not apply. *See Id.*

“At common law, the denial by a court or judge of an application for habeas corpus was not *res judicata*,” which allowed “a person detained in custody [to] proceed from court to court until he obtained his liberty.” *Sanders v. United States*, 373 U.S. 1, 7 (1963) . The courts developed the abuse of the writ doctrine to abate the risk of prisoners endlessly seeking relief on grounds “extraneous to the prisoner’s case.” *Id.* at 8; *see McCleskey v. Zant*, 499 U.S. 467 (1991). When applying this doctrine, “*among the matters which may be considered*, and even given controlling weight, [were] the existence of another remedy . . . and a prior refusal to discharge on a like application.” *Salinger v. Loisel*, 265 U.S. 224, 231 (1924) (emphasis added) (citing *Ex parte Cuddy*, 40 F. 62 (C.C.S.D. Cal. 1889) (Field, J.)). In other words, the prior denial of habeas relief did not render subsequent applications an abuse of the writ.

Because historical habeas doctrine would not consider every filing after final judgement an abuse of the writ, the Eleventh Circuit should have examined the congressional intent underlying § 2244(b). *See Banister*, 590 U.S. at 512-13. In general, AEDPA’s “design is to ‘further the principles of comity, finality, and federalism.’” *Panetti*, 551 U.S. at 945 (quoting *Miller-El v. Cockrell*, 537 U.S. 322, 337 (2003)). But more granularly, “the point of § 2244(b)’s restrictions . . . is to ‘conserve

judicial resources, reduce piecemeal litigation,’ and ‘lend finality to state court judgements within a reasonable time.” *Banister*, 590 U.S. at 512 (quoting *Panetti*, 551 U.S. at 945-46). “These purposes, and the practical effect of [the Court’s] holdings, should be considered when interpreting AEDPA,” especially “when petitioners ‘run the risk’ under the proposed interpretation of ‘forever losing their opportunity for any federal review of their unexhausted claims.” 551 U.S. at 945-46 (quoting *Rhines v. Weber*, 544 U.S. 269, 275 (2005)).

Mr. Boyd acknowledges that habeas relief is difficult to obtain under AEDPA. AEDPA, however, does not render relief impossible. The Constitution guaranteed Mr. Boyd a fair and impartial jury. The state courts denied him any meaningful opportunity to vindicate this right by interviewing Juror Striggles and proving his claim. When the federal courts finally removed this barrier, Mr. Boyd did what he was supposed to do—he gave the state courts a chance to correct their error before resorting to federal habeas. When again the state courts refused, Mr. Boyd rushed back to federal court to incorporate his freshly exhausted claims into his pending habeas application, but found himself barred.

The Federal Judiciary should not blind itself to a death-sentenced defendant’s constitutional claims by adopting novel and unsettled jurisdictional rules. Neither Congress nor the Court’s decisions command this unjust result.

CONCLUSION

The Court should grant certiorari.

Respectfully Submitted,

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