

IN THE SUPREME COURT OF THE UNITED STATES

No. 25-1003

ERIC GUERRERO, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE,
CORRECTIONAL INSTITUTIONS DIVISION, PETITIONER

v.

DEXTER JOHNSON

(CAPITAL CASE)

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

MOTION OF THE UNITED STATES FOR LEAVE TO
PARTICIPATE IN ORAL ARGUMENT AS AMICUS CURIAE
AND FOR DIVIDED ARGUMENT

Pursuant to Rules 28.4 and 28.7 of the Rules of this Court, the Solicitor General, on behalf of the United States, respectfully moves for leave to participate in the oral argument in this case as amicus curiae supporting petitioner and requests that the United States be allowed ten minutes of argument time. Petitioner consents to this motion and has agreed to cede ten minutes of argument time to the United States. Accordingly, if this motion is granted, the argument time would be divided as follows: 20 minutes for petitioner, 10 minutes for the United States, and 30 minutes for respondent.

This case concerns the circumstances in which a state prisoner may file a second or successive application for a writ of habeas corpus based on "a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable." 28 U.S.C. 2244(b)(2)(A). The United States has filed a brief supporting petitioner, contending that respondent cannot employ Section 2244(b)(2)(A) to assert a claim that relies on a decision of this Court that predates his conviction and prior collateral review. The United States has a substantial interest in the resolution of this question, because federal prisoners may similarly be permitted to file a successive collateral attack under 28 U.S.C. 2255 if the motion is certified to "contain * * * a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable." 28 U.S.C. 2255(h)(2).

The United States has previously presented oral argument as amicus curiae in cases concerning other provisions of the Antiterrorism and Effective Death Penalty Act, 28 U.S.C. 2241 et seq. See, e.g., Shoop v. Twyford, 596 U.S. 811 (2022); Banister v. Davis, 590 U.S. 504 (2020). The government accordingly believes that participation by the United States in oral argument would be of material assistance to the Court in this case.

Respectfully submitted.

D. JOHN SAUER
Solicitor General
Counsel of Record

SEPTEMBER 2026