

No. 25-_____

In the Supreme Court of the United States

DEXTER PAYNE, DIRECTOR, ARKANSAS DIVISION OF
CORRECTION

Petitioner,

v.

HARL A. GARRETT,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

TIM GRIFFIN

Arkansas Attorney General
AUTUMN HAMIT PATTERSON
Solicitor General

Counsel of Record

JOSEPH NELSON

Assistant Solicitor General
OFFICE OF THE ARKANSAS
ATTORNEY GENERAL

101 West Capitol Avenue

Little Rock, Arkansas 72201

(501) 682-6302

autumn.patterson@arkansasag.gov

Counsel for Petitioner

QUESTION PRESENTED

The Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) contains a one-year statute of limitations in 28 U.S.C. § 2244(d)(1) that begins when the judgment becomes final at “the conclusion of direct review or the expiration of the time for seeking such review.” That limitations period is tolled when “a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending.” 28 U.S.C. § 2244(d)(2).

In *Jimenez v. Quarterman*, this Court held that “where a state court *grants* a criminal defendant the right to file an out-of-time direct appeal,” the limitations period is reset when that *direct* appeal proceeding ends (or the time to seek review expires). 555 U.S. 113, 121 (2009) (emphasis added). But *Jimenez* did not address what happens when a state court *denies* a prisoner’s request to file an out-of-time direct appeal—or whether such a request counts as an application for *collateral* review that triggers tolling under § 2244(d)(2). *Id.* at 120 n.4. This Court later elaborated on § 2244(d)(2) in *Wall v. Kholi*, explaining that “‘collateral review’ of a judgment or claim means a judicial reexamination of a judgment or claim in a proceeding outside of the direct review process.” 562 U.S. 545, 553 (2011). Since *Kholi*, circuit courts have split on the question left open in *Jimenez* about how to categorize a motion for a belated appeal.

The question presented is:

Whether a state-court motion asking to file a belated direct appeal is an “application . . . for other collateral review” under 28 U.S.C. § 2244(d)(2), that tolls AEDPA’s one-year statute of limitations.

PARTIES TO THE PROCEEDING

Petitioner is Dexter Payne, Director of the Arkansas Division of Correction, who was the respondent in the district court and appellee in the Eighth Circuit.

Respondent Harl A. Garrett, who is serving a sentence for sexual assault in an Arkansas prison, was the petitioner in the district court and appellant in the Eighth Circuit.

RELATED PROCEEDINGS

Garrett v. Payne, No. 23-3553 (8th Cir. Oct. 7, 2025)

Garrett v. Payne, No. 4:20-cv-01252-LPR (E.D. Ark. Nov. 2, 2023)

State of Arkansas v. Garrett, No. 26CR-18-670-IV (Ark. Cir. Ct. Sept. 19, 2020) (denying Rule 37 petition)

Garrett v. State of Arkansas, No. CR-20-191 (Ark. Ct. App. Apr. 15, 2020)

State of Arkansas v. Garrett, No. 26CR-18-670-IV (Ark. Cir. Ct. Aug. 28, 2019) (sentencing order)

TABLE OF CONTENTS

	Page(s)
Question Presented	i
Parties to the Proceeding	ii
Related Proceedings	iii
Table of Contents	iv
Table of Authorities.....	vi
Opinions Below.....	1
Jurisdictional Statement	1
Relevant Statutory Provision and Rule.....	1
Introduction.....	2
Statement of the Case	4
A. Legal Framework.....	4
B. Factual and Procedural Background.....	7
1. <i>State Court Proceedings</i>	7
2. <i>Federal Court Proceedings</i>	9

Reasons for Granting the Petition.....	12
I. The Question Presented Is an Important and Recurring One that Has Divided Circuit Courts	12
A. One circuit has concluded that motions for a belated direct appeal do not toll AEDPA's statute of limitations.....	13
B. At least two circuits have concluded that motions for a belated direct appeal toll AEDPA's statute of limitations.....	15
C. The question presented is an important one that this Court anticipated in <i>Jimenez</i>	17
II. The Decision Below Is Wrong and Conflicts with this Court's Precedent.....	19
III. This Case Is an Ideal Vehicle for Resolving the Question Presented.....	25
Conclusion	25

TABLE OF AUTHORITIES

Cases	Page(s)
<i>Beard v. Banks</i> , 542 U.S. 406 (2004).....	23
<i>Board v. Bradshaw</i> , 805 F.3d 769 (6th Cir. 2015).....	15
<i>Brown v. Davenport</i> , 596 U.S. 118 (2022).....	18
<i>Calderon v. Thompson</i> , 523 U.S. 538 (1998).....	4, 18
<i>Carey v. Saffold</i> , 536 U.S. 214 (2002).....	5, 14
<i>Davila v. Davis</i> , 582 U.S. 521 (2017).....	6
<i>Day v. McDonough</i> , 547 U.S. 198 (2006).....	5
<i>DiCenzi v. Rose</i> , 452 F.3d 465 (6th Cir. 2006).....	15
<i>Dodson v. Norris</i> , 288 S.W.3d 662 (Ark. 2008).....	10-11, 16, 22
<i>Espinosa v. Sec’y, Fla. Dep’t of Corr.</i> , 804 F.3d 1137 (11th Cir. 2015).....	14, 20, 24
<i>Evitts v. Lucey</i> , 469 U.S. 387 (1985).....	18

<i>Garrett v. Payne</i> , No. 23-3553 (8th Cir. Oct. 7, 2025).....	ii
<i>Garrett v. Payne</i> , No. 4:20-cv-01252-LPR (E.D. Ark. Nov. 2, 2023).....	ii
<i>Garrett v. State of Arkansas</i> , No. CR-20-191 (Ark. Ct. App. Apr. 15, 2020).....	ii
<i>Harrington v. Richter</i> , 562 U.S. 86 (2011).....	4, 18
<i>Jimenez v. Quarterman</i> , 555 U.S. 113 (2009).....	i, 3, 6, 12, 15-19, 21-23
<i>Mayle v. Felix</i> , 545 U.S. 644 (2005).....	5, 18, 23
<i>O’Sullivan v. Boerckel</i> , 526 U.S. 838 (1999).....	5, 22
<i>Patel v. Garland</i> , 596 U.S. 328 (2022).....	24
<i>Polson v. Bowersox</i> , 595 F.3d 873 (8th Cir. 2010).....	23
<i>Shinn v. Ramirez</i> , 596 U.S. 366 (2022).....	4-6, 18, 24
<i>Shoemate v. State</i> , 5 S.W.3d 446 (Ark. 1999).....	24

<i>State of Arkansas v. Garrett</i> , No. 26CR-18-670-IV (Ark. Cir. Ct. Aug. 28, 2019).....	ii
<i>Wall v. Kholi</i> , 562 U.S. 545 (2011).....	i, 3, 6, 11, 13-15, 19-22
<i>Washington v. Dowling</i> , 793 F. App'x 667 (10th Cir. 2019).....	16
<i>Williams v. Taylor</i> , 529 U.S. 420 (2000).....	5, 19
<i>Woodford v. Garceau</i> , 538 U.S. 202 (2003).....	5
Rules & Statutes	
28 U.S.C. § 1254	1
28 U.S.C. § 2244	i, 1-6, 10-14, 16-25
28 U.S.C. § 2254	8-9, 25
Ark. Code Ann. § 16-91-105	7
Ark. R. App. P.—Crim. 2.....	1, 8, 10, 22, 24
Ark. R. Crim. P. 37.....	1, 9-10, 24
Fla. R. App. P. 9.141.....	14
Ohio R. App. P. 5	15

OPINIONS BELOW

The order of the Eighth Circuit denying the petitions for panel rehearing and rehearing en banc is unpublished but is reproduced at App. 1a. The opinion of the Eighth Circuit (App. 2a-22a) is reported at 154 F.4th 599. The federal district court's opinion dismissing Respondent Harl A. Garrett's habeas petition is unpublished but is reproduced at App. 23a-25a, and the magistrate judge's related report and recommendation recommending dismissal is unpublished but is reproduced at App. 26a-52a. The Garland County Circuit Court's order denying Garrett's Rule 37 petition as untimely is unpublished but is reproduced at App. 53a-54a. The Arkansas Court of Appeals' order denying Garrett's Rule 2(e) belated-appeal motion is unpublished but is reproduced at App. 55a-56a. The Garland County Circuit Court's sentencing order is unpublished but is reproduced at App. 57a-61a.

JURISDICTIONAL STATEMENT

The Eighth Circuit issued its opinion on October 3, 2025, and a corrected opinion on October 7, 2025. App. 2a. Petitioner's timely petition for panel and en banc rehearing was denied on February 9, 2026. This Court has jurisdiction under 28 U.S.C. § 1254(1).

RELEVANT STATUTORY PROVISION AND RULE

28 U.S.C. § 2244(d)(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.

Ark. R. App. P.—Crim. 2(e): Failure of the appellant to take any further steps to secure the review of the appealed conviction shall not affect the validity of the appeal but shall be ground only for such action as the Supreme Court deems appropriate, which may include dismissal of the appeal. The Supreme Court may act upon and decide a case in which the notice of appeal was not given or the transcript of the trial record was not filed in the time prescribed, when a good reason for the omission is shown by affidavit. However, no motion for belated appeal shall be entertained by the Supreme Court unless application has been made to the Supreme Court within eighteen (18) months of the date of entry of judgment or entry of the order denying postconviction relief from which the appeal is taken

INTRODUCTION

Harl Garrett sexually assaulted a ten-year-old girl. An Arkansas jury unanimously convicted him and sentenced him to twenty years' imprisonment. Garrett missed the deadline to appeal and later filed a motion for a belated appeal. The Arkansas Court of Appeals, however, denied Garrett's request, and Garrett eventually filed a habeas petition in federal court. The district court dismissed Garrett's petition as untimely under AEDPA's one-year statute of limitations. But over a dissent by Judge Stras, the Eighth Circuit reversed, holding that a motion for a belated direct appeal like Garrett's constitutes an "application" for "collateral review" that tolls the statute of limitations under 28 U.S.C. § 2244(d)(2).

As the Eighth Circuit acknowledged, that conclusion deepened a circuit split on the important question of whether such belated-appeal motions

trigger tolling under AEDPA. That question is the flip side of the question this Court considered in *Jimenez v. Quarterman*, 555 U.S. 113 (2009). *Jimenez* held that, when a state court *grants* a petitioner’s request for a belated direct appeal, that resets AEDPA’s statute of limitations entirely. It did not, however, address what happens when the state court *denies* the petitioner’s request—and whether that request tolls AEDPA’s statute of limitations. That is the question presented here, which has divided circuit courts. Intervention by this Court is needed to resolve the split.

The question presented is also important, as reflected by this Court’s consideration of the closely related one in *Jimenez*. Indeed, as this Court has repeatedly recognized, federal habeas review represents a profound intrusion on state sovereignty and state criminal proceedings. And AEDPA’s statute of limitations is a crucial mechanism reducing that intrusion by preventing state prisoners from seeking federal habeas relief years after their convictions became final. Properly enforcing it is therefore essential to finality, comity, and federalism principles.

The Eighth Circuit’s conclusion not only departs from these federalism principles but also flouts AEDPA’s text and this Court’s precedent. As this Court held in *Wall v. Kholi*, a motion must entail “a judicial reexamination of a judgment or claim in a proceeding outside of the direct review process” to count as an “application” for “collateral review” under § 2244(d)(2) that tolls the statute of limitations. 562 U.S. 545, 553 (2011). And as Judge Stras explained in his Eighth Circuit dissent, a request to file an out-

of-time appeal does not entail such review, so it does not toll AEDPA’s statute of limitations. The Eleventh Circuit reached the same conclusion in an opinion by Chief Judge Pryor. Yet the Eighth Circuit majority decided to reject the well-reasoned opinions of Chief Judge Pryor and Judge Stras to join the Sixth Circuit side of the split.

This Court should therefore grant certiorari to resolve the circuit split and correct the Eighth Circuit’s misinterpretation of § 2244(d)(2).

STATEMENT OF THE CASE

A. Legal Framework

As this Court has repeatedly explained, “federal habeas review . . . ‘intrudes on state sovereignty to a degree matched by few exercises of federal judicial authority.’” *Shinn v. Ramirez*, 596 U.S. 366, 376 (2022) (quoting *Harrington v. Richter*, 562 U.S. 86, 103 (2011)). After all, “a federal order to retry or release a state prisoner overrides the State’s sovereign power to enforce ‘societal norms through criminal law.’” *Id.* at 367 (quoting *Calderon v. Thompson*, 523 U.S. 538, 556 (1998)). And “federal intervention imposes significant costs on the state criminal justice systems, ‘disturb[ing] the State’s significant interest in repose for concluded litigation,’ and undermin[ing] the States’ investment in their criminal trials.” *Id.* (quoting *Harrington*, 562 U.S. at 103).

Recognizing the serious federalism concerns and the problems inherent in delaying justice for victims, Congress enacted the Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”). AEDPA aims “to reduce delays in the execution of state and federal criminal sentences” and to “further the principles of

comity, finality, and federalism.” *Woodford v. Garceau*, 538 U.S. 202, 206 (2003) (quoting *Williams v. Taylor*, 529 U.S. 420, 436 (2000)). “To that end, [AEDPA] adopted a tight time line” for petitioners seeking federal relief from state convictions: “a one-year limitation period, ordinarily running from the ‘date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review.’” *Mayle v. Felix*, 545 U.S. 644, 662 (2005) (quoting 28 U.S.C. § 2244(d)(1)(A)). Before AEDPA’s passage, “no statute of limitations applied to [federal] habeas petitions,” with federal courts only screening out those they deemed “unreasonably late.” *Day v. McDonough*, 547 U.S. 198, 202 n.1 (2006).

In addition to establishing this one-year limitations period, AEDPA requires state prisoners to exhaust available state-court remedies before seeking federal habeas relief. *See* 28 U.S.C. § 2254(b)(1)(A). To do so, state prisoners must generally “invok[e] one complete round of the State’s established appellate review process.” *O’Sullivan v. Boerckel*, 526 U.S. 838, 845 (1999). The exhaustion requirement promotes federalism and comity “by giving state courts ‘the first opportunity to review [the] claim,’ and to ‘correct’ any constitutional violation in the first instance.” *Carey v. Saffold*, 536 U.S. 214, 220 (2002) (quoting *Boerckel*, 526 U.S. at 845).

“State prisoners, however, often fail to raise their federal claims in compliance with state procedures, or even raise those claims in state court at all.” *Shinn*, 596 U.S. at 378. Because state courts “would dismiss these claims for their procedural failures, such claims are technically exhausted” because no

state-court remedies remain available. *Ibid.*; see 28 U.S.C. § 2254(b)(1)(A). “But to allow a state prisoner simply to ignore state procedure on the way to federal court would defeat the evident goal of the exhaustion rule.” *Shinn*, 596 U.S. at 378. Therefore, under “[t]he procedural default doctrine,” “a federal court may not review” such claims. *Davila v. Davis*, 582 U.S. 521, 527-28 (2017). “Together, exhaustion and procedural default promote federal-state comity.” *Shinn*, 596 U.S. at 378.

To provide state prisoners an opportunity to satisfy AEDPA’s exhaustion requirements, its statute of limitations generally begins to run only when “direct review” of the conviction in state court has ended. 28 U.S.C. § 2244(d)(1)(A). The limitations period is tolled while a “properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending.” *Id.* § 2244(d)(2). In *Kholi*, this Court explained that “collateral review” as used in § 2244(d)(2) “means judicial review of a judgment in a proceeding that is not part of direct review.” 562 U.S. at 548. And in *Jimenez*, this Court held that when a state court permits a prisoner who did not timely appeal his conviction to proceed with a belated *direct* appeal, that resets AEDPA’s statute of limitations because the judgment only becomes “final” at the conclusion of that reinstated direct review. 555 U.S. at 121 (quoting 28 U.S.C. § 2244(d)(1)(A)). *Jimenez* did not address what happens when a state court *denies* a prisoner’s request for a belated direct appeal, nor did it address whether such a request counts as an “application” for “collateral review” that triggers tolling under § 2244(d)(2).

B. Factual and Procedural Background

1. State Court Proceedings

In 2019, an Arkansas jury found Harl Garrett guilty of sexually assaulting a ten-year-old girl he was babysitting. App. 3a, 57a; Tr. 210-15. The jury then sentenced Garrett to twenty years' imprisonment for sexually assaulting a child. App. 3a, 57a. At his sentencing, the trial court advised Garrett of his right to an appeal, and explained that, under Arkansas law, a notice of appeal needed to be filed within thirty days from the date of judgment. App. 28a; *see* Ark. Code Ann. § 16-91-105. The trial court's sentencing order was entered on August 28, 2019, App. 28a, 57a, which meant that Garrett needed to file a notice of appeal by September 27 for it to be timely.

At trial, Garrett was represented by counsel that he retained, Ben Hooten. App. 27a. After Garrett was sentenced, he told Hooten that he wanted to appeal. App. 28a. Hooten, however, did not believe he was well-suited to handle the appeal—particularly insofar as it might require him to make arguments against his own “self interest.” App. 3a. So, on September 11, Hooten filed a motion to withdraw as counsel. App. 28a. The motion specifically noted that Hooten had not filed a notice of appeal. R. Doc. 11-7. Hooten hand-delivered the motion to Garrett that same day, along with copies of the various Arkansas procedural rules governing criminal appeals. App. 28-29a. And on the same day, the trial court granted Hooten's motion to withdraw. App. 29a.

Garrett, however, did not retain new counsel, nor did he file a notice of appeal despite being told the

deadline to appeal, knowing that Hooten had filed a motion to withdraw, and having copies of the relevant procedural rules provided to him. App. 28a-29a. Garrett claims he did not know that Hooten's withdrawal motion was granted until he received a letter from Hooten "on or about" October 8. App. 29a. By that time, the September 27 deadline to file a notice of appeal had passed.

On October 15, Garrett filled out a pro se notice of appeal and an in forma pauperis form, which he then mailed to Hooten. App. 4a. Hooten returned these documents to Garrett, explaining that he would need to file them himself through the prison mail system. *Ibid.* Hooten further noted that the notice of appeal was untimely and would likely be rejected. *Ibid.*

Two months later, on December 16, Garrett filed a motion with the Arkansas Supreme Court seeking a belated appeal under Arkansas Rule of Appellate Procedure-Criminal 2(e). *Ibid.* Rule 2(e) permits an untimely appeal if the movant shows a "good reason" why he did not file a notice of appeal "in the time prescribed." App. 8a.¹ The Arkansas Supreme Court returned Garrett's motion as deficient the very next week. App. 4a, 30a. It advised Garrett that he needed to include documents such as the sentencing order and the order granting Hooten's motion to withdraw to support his motion. App. 4a.

Four more months passed before Garrett filed a new motion for a belated appeal on March 25, 2020.

¹ The same day, Garrett also filed a belated-appeal motion with the state trial court, which was denied because such motions must be directed to the appellate court. App. 4a.

Ibid. This time, Garrett included the required documents. *Ibid.* The Arkansas Court of Appeals summarily denied Garrett's motion on April 15. *Ibid.*; App. 55a.

Later that year, on August 3, Garrett filed a petition in the state trial court seeking post-conviction relief under Arkansas Rule of Criminal Procedure 37.1. App. 30a. Garrett claimed he was entitled to relief for three reasons: First, Hooten "did not follow through with contract to defend"; second, the prosecution did not properly investigate his case; and third, the public address system had malfunctioned during his trial. App. 5a. On September 17, the trial court denied Garrett's Rule 37 petition as untimely. *Ibid.* Garrett did not appeal this decision. *Ibid.*

2. Federal Court Proceedings

Having failed to timely seek relief in state court, Garrett turned to federal court. He filed a pro se federal habeas petition in the Federal District Court for the Eastern District of Arkansas on October 19. App. 5a. As in his state-court Rule 37 petition, Garrett contended that Hooten had broken his contract to defend Garrett and that the prosecution did not properly investigate the case. App. 27a. He also asserted that the prosecution engaged in misconduct by allowing the victim to testify at trial. *Ibid.* The district court appointed counsel for Garrett. Appointed counsel filed an amended habeas petition, claiming only that Garrett had been denied his right to a direct appeal. *Ibid.*

The magistrate judge recommended that this amended habeas petition be dismissed as untimely under AEDPA's one-year statute of limitations, App.

51a, and the district court agreed, App. 23a. Finding that AEDPA’s statute of limitations began to run on the date Garrett purportedly learned that Hooten’s motion to withdraw had been granted (October 8, 2019), the district court reasoned that, absent tolling, Garrett’s October 19 federal habeas petition was late. App. 32a-33a. And as relevant here, the district court reasoned that Garrett’s Rule 2(e) motion for a belated direct appeal did not toll the limitations period because such a motion is not “an application for State post-conviction or other collateral review” under 28 U.S.C. § 2244(d)(2). App. 24a; 34a-45a. Accordingly, the district court concluded Garrett’s habeas petition was untimely. App. 24a-25a.² The district court, however, also flagged a circuit split on whether such belated-appeal motions trigger tolling under AEDPA and issued a certificate of appealability. App. 9a-10a.

A divided Eighth Circuit panel reversed. Acknowledging the circuit split, the majority concluded that a belated-appeal motion counts as “an application for State post-conviction or other collateral review” under § 2244(d)(2). App. 9a-10a. It reasoned that a belated-appeal motion under Rule 2(e) must be “collateral” based on a case from the Arkansas Supreme Court noting that such a motion is “not part of the *ordinary* appellate review process.” App. 10a (quoting *Dodson v. Norris*, 288 S.W.3d 662, 665 (Ark. 2008)) (emphasis added). And while it recognized that a belated-appeal motion does not “entail review of the merits of the underlying conviction” and does

² Because Garrett’s state-court Rule 37 motion for post-conviction relief was untimely and therefore not “properly filed,” 28 U.S.C. § 2244(d)(2), it did not toll AEDPA’s statute of limitations either. App. 35a.

not authorize a court to “immediately bring about relief” from it, the majority still concluded that “a belated-appeal motion invites ‘review’ under § 2244(d)(2).” App. 10a-12a. This was because, “[i]f meritorious, such a motion mandates review of the underlying conviction.” App. 16a. Accordingly, the majority concluded that Garrett’s belated-appeal motion tolled AEDPA’s statute of limitations, making his federal habeas petition timely.

Judge Stras dissented. In his view, the question of whether a request to file a “direct appeal late” and have the court “consider it anyway” is “an application . . . for collateral review” under § 2244(d)(2) is a question that answers itself: no. App. 16a. He noted, as a preliminary matter, that a belated-appeal motion is not “collateral.” App. 19a. It is, “[a]t most,” “an ‘application’ for reinstatement of ‘direct review’” when the movant “fail[s] to follow” the rules governing direct review. App. 19a, 21a (quoting *Dodson*, 288 S.W.3d at 665). He reasoned that a belated-appeal motion also does not entail “review” of a “pertinent judgment or claim,” 28 U.S.C. § 2244(d)(2), because “granting a belated-appeal motion does not ‘order relief from a judgment,’” App. 20a (quoting *Kholi*, 562 U.S. at 556 n.4). Instead, a belated-appeal motion is only “a step in that direction,” and the applicant must “show good reason for [its] delay before the actual review can begin.” *Ibid.* Judge Stras thus concluded that “the district court made the right call by dismissing” the habeas petition that did not get “across the line before the buzzer.” App. 17a, 22a.

Judge Stras also stressed the importance of the issue presented in the case, noting that “[g]etting the distinction right has implications beyond this case.”

App. 18a n.8. He pointed out that federal habeas statutes are “[l]ittered” with “references to both direct and collateral review,” so it is “critical” to not “blur[] the line between the two.” App. 18a.

Director Payne sought panel rehearing and rehearing en banc, but its petition was denied. App. 1a. Judges Smith, Grasz, Stras, and Kobes would have granted the petition for rehearing en banc. *Ibid.* Director Payne now seeks this Court’s review.

REASONS FOR GRANTING THE PETITION

The Court should grant this petition to resolve whether a state-court motion asking to file an out-of-time direct appeal is an “application . . . for other collateral review” that tolls AEDPA’s one-year statute of limitations. 28 U.S.C. § 2244(d)(2). This question is an important one for this Court to resolve, as evidenced by the preexisting circuit split on it and this Court’s consideration of the closely related question in *Jimenez*. And the Eighth Circuit’s decision to join the wrong side of the split makes this Court’s review all the more important here. What’s more, there are no obstacles to this Court’s review, and this Court’s resolution of the question would be outcome determinative. This makes this case the ideal vehicle to resolve the question. The Court should grant the petition.

I. THE QUESTION PRESENTED IS AN IMPORTANT AND RECURRING ONE THAT HAS DIVIDED CIRCUIT COURTS.

Ensuring that AEDPA is interpreted consistently with its text and consistently across circuits is important, not just for litigants in particular cases but

also for our federalist system. Yet consistent interpretation and application is not happening as it relates to whether pending motions asking to file an out-of-time direct appeal qualify as an “application[s] . . . for other collateral review” that toll AEDPA’s one-year statute of limitations. 28 U.S.C. § 2244(d)(2). And the decision below deepens the preexisting circuit split on that issue. The Eighth Circuit has joined the Sixth Circuit in holding that a belated-appeal motion tolls the limitations period, while the Eleventh Circuit reached the opposite conclusion in a well-reasoned opinion by Chief Judge Pryor. This Court should grant certiorari to resolve that conflict on the important question presented.

A. One circuit has concluded that motions for a belated direct appeal do not toll AEDPA’s statute of limitations.

In *Danny v. Secretary, Florida Department of Corrections*, the Eleventh Circuit held that a motion for a belated direct appeal is not an “application” for “collateral review” that tolls AEDPA’s statute of limitations under § 2244(d)(2). 811 F.3d 1301 (2016).³ Looking to this Court’s opinion in *Kholi*, the Eleventh Circuit concluded that such motions do not qualify because they “d[o] not invite ‘a judicial reexamination of a judgment or claim.’” *Id.* at 1304 (quoting *Kholi*, 562 U.S. at 553). Nor do they “provide a state court with authority to order relief from a judgement.” *Id.*

³ Under the Florida law at issue in *Danny* the procedural vehicle for seeking a belated appeal is called a “petition.” *See Danny*, 811 F.3d at 1303. But to avoid unnecessary confusion, Director Payne refers to it (and analogous vehicles in other states, *see infra* at 15–17) as a belated-appeal motion or motion to file an out-of-time appeal.

(quoting *Kholi*, 562 U.S. at 556 n.4). Rather, “if successful, [a belated-appeal motion] only revives a petitioner’s right to prosecute a direct appeal.” *Ibid.*; see *Espinosa v. Sec’y, Fla. Dep’t of Corr.*, 804 F.3d 1137, 1141 (11th Cir. 2015) (concluding for the same reasons that a belated-appeal motion in a state post-conviction proceeding did not trigger tolling). Accordingly, a belated-appeal motion is not an “application” for “collateral review” under § 2244(d)(2).

The Eleventh Circuit also rejected the petitioner’s argument that the belated-appeal motion must be treated as an application for collateral review because the Florida law that governed the motion was titled “Review Proceedings in Collateral or Post-Conviction Criminal Cases.” *Danny*, 811 F.3d at 1304. See Fla. R. App. P. 9.141(c). Such state-specific terminology, the Eleventh Circuit reasoned, is “of no moment” for § 2244(d)(2)’s purposes. *Danny*, 811 F.3d at 1304. Rather, “[f]or purposes of applying a federal statute that interacts with state procedural rules, [courts] look to how a state procedure functions, rather than the particular name that it bears.” *Id.* at 1304-05 (quoting *Carey*, 536 U.S. at 223). Cf., e.g., *Kholi*, 562 U.S. at 559-60 (explaining that, while “the methods of filing for post-conviction or collateral review vary among the States,” “the application of AEDPA’s tolling provision should not turn on such formalities”). Because a state prisoner’s request to pursue an out-of-time appeal does not entail a “judicial reexamination” or authorize the court to “order relief from a judgment,” the Eleventh Circuit concluded it does not trigger tolling under § 2244(d)(2). *Danny*, 811 F.3d at 1304 (quoting *Kholi*, 562 U.S. at 555, 556 n.4).

B. At least two circuits have concluded that motions for a belated direct appeal toll AEDPA’s statute of limitations.

Although Judge Stras agreed with the Eleventh Circuit and built on its reasoning in his dissent, *see* App. 20a, the Eighth Circuit panel majority disagreed and joined the Sixth Circuit’s side of the split.

Before this Court decided *Jimenez*, the Sixth Circuit had concluded that “a motion for delayed appeal, even if granted, does not restart the statute of limitations” and, as a corollary, reasoned that such a motion tolls the limitations period “during the time the motion was pending.” *DiCenzi v. Rose*, 452 F.3d 465, 468 (6th Cir. 2006). *Jimenez* clarified that the first conclusion was wrong: a granted motion to file an out-of-time appeal *does* reset the statute-of-limitations clock. 555 U.S. at 686–87. But after *Jimenez* (and *Kholi*), the Sixth Circuit again concluded that a belated-appeal motion “is considered part of the collateral review process for purposes of tolling AEDPA’s statute of limitations.” *Board v. Bradshaw*, 805 F.3d 769, 771 (6th Cir. 2015). And in *Bradshaw*, that conclusion was outcome determinative. Because the Sixth Circuit held that the petitioner’s belated-appeal motion under Ohio Appellate Rule 5(A) had paused the limitations period, it concluded that the petitioner’s subsequent federal habeas petition was timely. *Id.* at 769.

The Eighth Circuit has now sided with the Sixth Circuit. In the decision below, the panel majority concluded that belated-appeal motions count as “application[s]” for “collateral review” that toll § 2244(d)(2)’s statute of limitations for two reasons.

First, the panel reasoned that it “falls outside the direct appeal process” because the Arkansas Supreme Court said, in a different context, that such a motion is “not part of the ordinary appellate review process.” App. 10a (quoting *Dodson*, 288 S.W.3d at 665). *Second*, the panel reasoned “that a belated-appeal motion invites ‘review’ under § 2244(d)(2)” because if “the Arkansas Supreme Court determines that good cause exists” for the failure to timely appeal, the court will then “reopen[] the appeal.” App. 10a-11a. And the panel expressly rejected the Eleventh Circuit’s contrary reasoning that a belated-appeal motion is not “‘collateral review’ because it does not” immediately provide “relief from the defendant’s underlying judgment and does not entail review of the merits of the underlying conviction.” App. 12a.

The Tenth Circuit is also arguably on the Sixth Circuit side of split. In *Orange v. Calbone*, the Tenth Circuit anticipated this Court’s decision in *Jimenez* and concluded that “a direct appeal which was untimely but allowed under Oklahoma law” was “part of the ‘direct review’ process for purposes of § 2244(d)(1)(A).” 318 F.3d 1167, 1173 (10th Cir. 2003). It further reasoned that where a motion for an untimely appeal was denied, it would not “‘reset’ the one-year period of limitations under § 2244(d)(1)(A)” and, “at most,” would “only toll the AEDPA statute of limitations.” *Ibid.* Later the Tenth Circuit concluded, in an unpublished opinion without analysis, that an Oklahoma prisoner’s unsuccessful motion to file an untimely appeal tolled AEDPA’s limitations period. *Washington v. Dowling*, 793 F. App’x 667, 670 (10th Cir. 2019). The prisoner’s federal habeas petition, however, was still untimely. *Id.* at 670–71.

Therefore, at least two circuits (the Sixth and the Eighth) have squarely split from the Eleventh Circuit on the question presented and one (the Tenth) likely has. This Court should grant the petition to resolve the question and provide needed uniformity.

C. The question presented is an important one that this Court anticipated in *Jimenez*.

The Court should also grant the petition because the question dividing the circuits is an important and recurring one. Indeed, it is the flip side of the question this Court considered in *Jimenez*. *Jimenez* held that when a petitioner seeks a belated direct appeal and the state court *grants* him one, that entirely resets AEDPA’s statute of limitations, as the judgment only becomes “final” at the conclusion of that reinstated direct review. 555 U.S. at 121 (quoting 28 U.S.C. § 2244(d)(1)(A)). Thus, had the Arkansas courts granted Garrett’s belated-appeal motion here, that would have unquestionably restarted § 2244(d)(1)’s clock under *Jimenez*. See App. 43 (explaining that, “[h]ad [Garrett] succeeded in his motion for belated appeal, *Jimenez* dictates his appeal would have been restored and the date on which his conviction became final would have been re-calculated”); App. 19a (Stras, J., dissenting) (explaining that the “Texas procedure for authorizing an ‘out-of-time’ appeal” in *Jimenez* was “nearly identical” to the Arkansas procedure at issue here).

But *Jimenez* did not address what happens when, as here, the state court *denies* the petitioner’s request for an untimely direct appeal—and whether the belated-appeal motion triggers tolling under § 2244(d)(2) before it is denied. See *Jimenez*, 555 U.S.

at 120 n.4 (leaving open the question of whether the petitioner’s federal habeas petition could have been timely before the belated appeal was granted). That is the question this case presents. Review by this Court would therefore pick up where *Jimenez* left off and provide much needed clarity.

As reflected by this Court’s review in *Jimenez*, the question presented in this case is important. States have a “powerful and legitimate interest in punishing the guilty.” *Brown v. Davenport*, 596 U.S. 118, 132 (2022). And “federal habeas review . . . ‘intrudes on state sovereignty to a degree matched by few exercises of federal judicial authority.’” *Shinn*, 596 U.S. at 376 (quoting *Harrington*, 562 U.S. at 103). That is particularly true when federal review occurs years after the conviction became final in state court. *See, e.g., id.* at 391 (“Serial relitigation of final convictions undermines the finality that ‘is essential to both the retributive and deterrent functions of criminal law.’” (quoting *Calderon*, 523 U.S. at 555)). The “tight time line” AEDPA’s statute of limitations sets for federal habeas review of state-court convictions promotes finality, federalism, and comity by barring the claims of petitioners who fail to comply with it. *Mayle*, 545 U.S. at 662. And it helps mitigate the “undesirable” consequences of an earlier decision pre-dating AEDPA that “undermine[d] the ability of both the state and federal courts to enforce procedural rules on appeal” by allowing “lawfully convicted criminals who have no meritorious bases for attacking the conduct of their trials . . . to tie up the courts with habeas petitions alleging defective performance by appellate counsel.” *Evitts v. Lucey*, 469 U.S. 387, 411 (1985) (Rehnquist, J., dissenting). AEDPA’s tolling provision, meanwhile, serves as a counterweight

that provides state prisoners an opportunity to seek relief in federal court after first invoking the state's own collateral review process. *See* 28 U.S.C. § 2244(d)(1)(A).

Like AEDPA in general, the statute of limitations and tolling provisions strike a “delicate balance” between States’ interest in the finality of convictions, and petitioners’ interest in a federal forum for their constitutional claims. *Williams*, 529 U.S. at 436. Intervention by this Court is necessary to ensure the balance prescribed by Congress is faithfully maintained, just as was the case in *Jimenez*.

II. THE DECISION BELOW IS WRONG AND CONFLICTS WITH THIS COURT’S PRECEDENT.

The Court should also grant certiorari because the decision below falls on the wrong side of the circuit split. In holding that a belated-appeal motion constitutes an “application” for “collateral review” that triggers tolling under § 2244(d)(2), the Eighth Circuit misapplied *Kholi*.

In *Kholi*, this Court considered whether a sentence-reduction motion counts as an “application” for “collateral review” that tolls AEDPA’s statute of limitations. 562 U.S. at 547. It held that, as used in § 2244(d)(2), “‘collateral review of a judgment or claim’ means a judicial reexamination of a judgment or claim in a proceeding outside of the direct review process.” *Id.* at 553. *Kholi* concluded that sentence-reduction motions fit within this definition, because they are both separate from direct review and call for ‘review’ of the sentence” that was imposed.” *Id.* at 555–56. And *Kholi* distinguished such sentence-reduction motions from motions that “are not direct

requests for judicial review of a judgment and do not provide a state court with authority to order relief from a judgment.” *Id.* at 556 n.4. As an example of such non-collateral review motions, the Court listed “a motion for post-conviction discovery” and “a motion for appointment of counsel.” *Ibid.*

As both the Eleventh Circuit and Judge Stras correctly concluded, belated-appeal motions do not fit within the definition of an “application” for “collateral review” articulated in *Kholi*. That’s true for two reasons.

First, belated-appeal motions “are not direct requests for judicial review of a judgment and do not provide a state court with authority to order relief from a judgment.” *Ibid.* To be sure, they are sometimes “a step in that direction.” App. 20a (Stras, J., dissenting). If, unlike here, they are successful, they *lead to* such review by “reviv[ing] a petitioner’s right to prosecute a direct appeal.” *Danny*, 811 F.3d at 1304. But belated-appeal motions do not *themselves* entail “a judicial reexamination of a judgment or claim.” *Kholi*, 562 U.S. at 553. And that means they do not trigger tolling under § 2244(d)(2). *Ibid.* See *Danny*, 811 F.3d at 1304; *Espinosa*, 804 F.3d at 1441-42.

Indeed, the Eighth Circuit majority itself recognized that “a belated-appeal motion is unlike the sentencing-reduction motion at issue in [*Kholi*] because it fails to put an Arkansas court in a position to immediately alter the underlying judgment in resolving the motion.” App. 9a. Nevertheless, the majority concluded that a belated-appeal motion counts as an “application” for “collateral review” under § 2244(d)(2). To reach this conclusion, it

dismissed as “dicta” *Kholi*’s indication that motions do not count under § 2244(d)(2) unless they are “direct requests for judicial review of a judgment” and authorize state courts to “order relief from a judgment.” App. 12a-13 (quoting *Kholi*, 562 U.S. at 556 n.4). The majority reasoned the fact that a successful belated-appeal motion “*result[s]*” in such review was good enough to trigger tolling. App. 11a (emphasis added). But this contravenes the plain meaning of § 2244(d)(2), which requires that the relevant motion *itself* must entail “collateral review”—not just potentially lead to it. *See Jimenez*, 555 U.S. at 118 (“It is well established that, when the statutory language is plain, we must enforce it according to its terms.”).

As Judge Stras put it in dissent, “habeas is not horseshoes,” and “[c]lose doesn’t count” under § 2244(d)(2) or *Kholi*. App. 20a. Indeed, by the majority’s logic, motions for post-conviction discovery and appointment of counsel would trigger tolling too, because “both are a step toward getting review,” just like a belated-appeal motion. *Ibid.* But *Kholi* took care to distinguish those motions from sentence-reduction motions, implicitly recognizing that such motions would fall outside of the plain language of what constitutes an “application for . . . collateral review.” 28 U.S.C. § 2244(d)(2); *see Kholi*, 562 U.S. at 556 n.4.

Attempting to avoid this inconsistency with *Kholi*, the majority insisted that belated-appeal motions are less “attenuated from an attack on the judgment or sentence” than “motion[s] for [appointment of] counsel or discovery,” because a successful belated-appeal motion leads directly to such review. App. 9a. But there is no basis in AEDPA’s text for

this purported distinction between motions that are one step away from actual review, and those that may be a few more. To the contrary, § 2244(d)(2) provides for tolling while a motion for “collateral review” is *actually* “pending”—not for tolling when such a motion *will be* pending if a separate motion is granted. The majority’s conclusion thus cannot be squared with *Kholi* or § 2244(d)(2).

Second, even if the majority were correct that a motion that may result in review in the future can trigger tolling under § 2244(d)(2), belated-appeal motions would still not count. This is because the review they can lead to is reinstated *direct* review. See *Jimenez*, 555 U.S. at 686. And only motions for “*collateral* review” toll the statute of limitations. 28 U.S.C. § 2244(d)(2) (emphasis added).

To be sure, belated-appeal motions under Arkansas Rule 2(e) are not part of the “*ordinary* appellate review process—as the Arkansas Supreme Court explained in considering a certified question related to whether a state prisoner must seek a belated appeal to exhaust state-court remedies under 28 U.S.C. § 2254(b)(1)(A). *Dodson*, 288 S.W.3d at 665 (emphasis added); see *Boerckel*, 526 U.S. at 844–45. But whatever the significance of this conclusion for exhaustion purposes, it does not mean, contrary to the Eighth Circuit majority’s view, that belated-appeal motions are “collateral” within the meaning of § 2244(d)(2). See App. 10a. While belated-appeal motions result from a criminal defendant’s “failure to follow” the proscribed direct review process, *Dodson*, 288 S.W.3d at 665 (emphasis added), they are nevertheless firmly on the direct review “track[]”. App.

17a, 21a (Stras, J., dissenting).⁴ Indeed, all they provide is a reinstated direct appeal if the movant can show “good reason” for his failure to appeal on time. Ark. Rule of App. Pro.-Criminal 2(e). And when successful, belated-appeal motions do not toll AEDPA’s statute of limitations. Instead, as this Court held in *Jimenez*, they reset the statute of limitations entirely because direct review of the underlying judgment has started over. *See* 555 U.S. at 686. “Given that what is direct cannot be collateral, the same motion cannot [] both” “reset” AEDPA’s clock and stop it. App. 19a (Stras, J., dissenting).

A belated-appeal motion is therefore not an “application” for “collateral review” and does not trigger tolling under § 2244(d)(2). And while the Eighth Circuit majority believed that its contrary conclusion promoted “comity” by “encourag[ing] petitioners to seek relief from state courts” before going to federal court, it was mistaken on that front too. App. 13a (quoting *Polson v. Bowersox*, 595 F.3d 873, 875 (8th Cir. 2010)). The “tight time line” AEDPA imposes for seeking federal habeas relief *itself* promotes finality, comity and federalism. *Mayle*, 545 U.S. at 662. By barring the claims of state prisoners who fail to comply with it, AEDPA’s statute of limitations prevents the profound “intru[sion] on state sovereignty” that

⁴ This does not mean, of course, that filing a belated-appeal motion makes the judgment non-final for purposes of starting AEDPA’s statute of limitations in the first place. *See* 28 U.S.C. § 2244(d)(1)(A). To the contrary, “the possibility that a state court may reopen direct review ‘does not render convictions and sentences that are no longer subject to direct review nonfinal.’” *Jimenez*, 555 U.S. at 120 n.4 (quoting *Beard v. Banks*, 542 U.S. 406, 412 (2004)).

federal habeas review represents from occurring in the first place. *Shinn*, 596 U.S. at 376. On the flip side, when federal courts dispense with AEDPA’s requirements, that allows state prisoners to mount federal challenges to state-court judgments they could not otherwise bring.

Indeed, the Eighth Circuit’s conclusion that Garrett’s Rule 2(e) belated-appeal motion triggers tolling under § 2244(d)(2) is particularly problematic here. That’s because Arkansas courts require that state collateral proceedings under Rule 37 must be filed “within ninety days of [a] judgment of conviction despite the possibility [of] a motion for belated appeal.” *Shoemate v. State*, 5 S.W.3d 446, 448 (Ark. 1999). As Judge Stras put it, “it is hard to see how comity favors cutting Garrett more slack for his federal petition than he would have received in state court.” App. 21a n.9; see *Danny*, 811 F.3d at 1305 (noting that the Eleventh Circuit’s conclusion that a belated-appeal motion does not toll AEDPA’s limitation period “mirrors how a Florida court would treat” a belated-appeal motion, because such a motion “does not toll the limitation period for state collateral review” (quoting *Espinosa*, 804 F.3d at 1141)).

But in any event, even if the Eighth Circuit majority were correct that comity and federalism weighed in favor of its outcome, such “policy concerns cannot trump the best interpretation of the statutory text.” *Patel v. Garland*, 596 U.S. 328, 346 (2022). And the statutory text promulgated by Congress requires that motions must entail “collateral review” to toll AEDPA’s statute of limitations. Because a belated-appeal motion does not involve such review, it does not trigger tolling. The Court should correct the

error on the important question presented here that has divided the circuits.

III. THIS CASE IS AN IDEAL VEHICLE FOR RESOLVING THE QUESTION PRESENTED.

Because there are no obstacles that would prevent this Court from reaching the important question presented here, this case presents the ideal vehicle for resolving it. The Eighth Circuit’s opinion not only squarely addressed the question presented, but it also expressly recognized that its sister circuits are divided on it. App. 9a. What’s more, the opinion is published and the question presented was outcome determinative. If the Eighth Circuit majority is right that a belated-appeal motion is an “application” for “collateral review” under § 2244(d)(2), then Garrett’s federal habeas petition was timely. But if a belated-appeal motion is not such an “application,” then AEDPA’s statute of limitations bars Garrett’s petition. Accordingly, this case cleanly tees up the question presented for this Court’s resolution.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

TIM GRIFFIN

Arkansas Attorney General

AUTUMN HAMIT PATTERSON

Solicitor General

Counsel of Record

JOSEPH NELSON

Assistant Solicitor General

OFFICE OF THE ARKANSAS

ATTORNEY GENERAL

101 West Capitol Ave.

Little Rock, AR 72201

(501) 682-6302

autumn.patterson@arkansasag.gov

Counsel for Petitioner

May 11, 2026