

No. 25-1312

In the Supreme Court of the United States

DEXTER PAYNE, DIRECTOR,
ARKANSAS DIVISION OF CORRECTION,

Petitioner,

v.

HARL A. GARRETT,

Respondent.

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

**BRIEF OF *AMICI CURIAE* STATE
OF OHIO AND 18 OTHER STATES IN
SUPPORT OF PETITIONER**

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INTRODUCTION AND *AMICUS* INTEREST*

Prisoners convicted and sentenced by a state court may ask a federal court to review their state-court convictions under the Antiterrorism and Effective Death Penalty Act—a federal statute that allows federal courts to interfere in state-court judgments only in circumstances involving the most egregious constitutional errors. But that statute does not give prisoners a federal rerun of a state criminal appeal to challenge state-court rulings. To the contrary, AEDPA imposes hurdle after hurdle to weed out even close-call claims. Prisoners must exhaust all available state remedies before coming to federal court. State courts get the first stab at correcting errors in their judgments. Prisoners must observe state procedures correctly or they default their claims. Federal courts can revive those claims only in the narrowest of cases. And, relevant here, prisoners have only a year to file a federal habeas claim after the state procedure concludes.

These strict rules serve foundational constitutional principles. They uphold the finality of state-court judgments. They respect federalism. They recognize that in our system of dual sovereignty, state judgments demand respect. And they force federal courts to hesitate before second-guessing the validity of a state-court judgment.

Generally, a state prisoner must file a federal habeas petition within one year after their conviction becomes final in state-court “direct review.” 28 U.S.C. §2244(d)(1)(A). But prisoners usually must exhaust

* The *amici* States provided all parties with the notice required by Rule 37.2.

claims in state postconviction proceedings before coming to federal court. During that “collateral review” period the habeas filing clock stops—it is tolled. §2244(d)(2). Sometimes, though, prisoners just miss their time to file a direct appeal. If they ask a state court to reopen that appeal by filing a belated-appeal motion, and the state court grants it, the habeas clock resets in full to allow the direct appeal process to complete. *Jimenez v. Quarterman*, 555 U.S. 113, 120 (2009).

But what happens to the habeas clock if the belated-appeal motion is denied? The court below concluded that the habeas clock pauses between the time the belated-appeal motion is filed and the time the state court denies it. That is wrong, both as a matter of text, and also because it undermines the goals of finality and federalism promoted by AEDPA. In effect, the decision below turned the belated-appeal process into a unilateral extension for prisoners to abuse.

Amici States have a sovereign interest in the finality of their criminal judgments and the administration of their criminal-justice systems. Through AEDPA, Congress sought to protect these interests by imposing meaningful limits on federal habeas petitions. And without this Court’s intervention, state prisoners who have dragged their feet, ignored AEDPA’s requirements, and failed to comply with state procedural rules will benefit from all of their wrong turns. Under AEDPA, federal courts must respect state-court determinations rather than reward prisoners with more time to file.

This Court should grant the petition to resolve the circuit split over the meaning of “collateral review” in AEDPA’s tolling provision and hold that meritless

belated-appeal motions do not toll AEDPA’s one-year statute of limitations.

STATEMENT

1. A prisoner convicted in state court can petition for a federal court to review his conviction. To do so, the prisoner must navigate AEDPA, a statute that demands respect for state-court judgments. *See* 28 U.S.C. §2254. The statute allows federal courts to grant habeas relief to prisoners under a state-court judgment in two narrow circumstances: because the state-court judgment contravenes clearly established precedent of this Court or because it was based on an unreasonable determination of the facts. §2254(d)(1), (2).

AEDPA also imposes time limits on prisoners seeking federal habeas relief. Under §2244(d), a petitioner has one year after his state conviction becomes final to file a federal habeas petition. §2244(d)(1). But that clock stops—the time is tolled—while a prisoner seeks “post-conviction or other collateral review” in State court. §2244(d)(2). Stopping the habeas clock to wait for a state court to correct any constitutional errors in the first instance promotes federal-state comity. *See Shinn v. Ramirez*, 596 U.S. 366, 378 (2022).

Sometimes, prisoners miss the deadline to appeal state-court convictions. In that case, many States allow prisoners to ask the state court for permission to appeal despite missing that deadline. *See, e.g.* Ohio App.R.5(A). This case asks whether such belated-appeal motions count as “collateral review” that pauses the clock for filing a federal habeas petition—even when they are denied.

2. Harl Garrett was convicted of sexual assault in Arkansas state court and sentenced to 20 years in prison. Pet.App.2a-3a. After his trial-court conviction, Garrett missed an opportunity to file a direct appeal when his 30-day time to appeal his conviction had run. Pet.App.4a; *see* Ark. R. App. P.-Crim. 2(a). So he filed a belated-appeal motion, something Arkansas allows up to 18 months after the missed deadline. Pet.App.4a, 8a; *see* Ark. R. App. P.-Crim. 2(e). Finding no merit to Garrett’s belated-appeal motion, the Arkansas Supreme Court denied it. Pet.App.4a.

Garrett then filed for postconviction relief in state court, arguing, among other things, that the prosecution failed to properly investigate his case. Pet.App.4a-5a. The state court denied his petition as (again) untimely, and Garrett did not appeal. Pet.App.5a.

After twice missing filing deadlines and never moving through the state appellate process, Garrett filed a federal habeas petition under 28 U.S.C. §2254, arguing he had been denied his constitutional right to a direct appeal. Pet.App.5a. Noting the one-year statute of limitations under 28 U.S.C. §2244(d)(1), the district court denied Garrett’s petition. Pet.App.5a.

The Eighth Circuit reversed. It held that Garrett’s belated-appeal motion to reopen direct review qualified as a “properly filed application for State ... collateral review with respect to the pertinent judgment or claim.” 28 U.S.C. §2244(d)(2). For that reason, the majority held that Garrett’s one-year deadline to file a federal habeas petition had been tolled during the time that Garrett’s belated-appeal motion remained pending. Pet.App.10a–11a. And so his federal habeas petition was timely.

Judge Stras dissented. In his view, a motion to reopen direct appeal is just that—a request to return to direct review, not collateral review. Pet.App.16a, 19a. And because such a motion does not seek to attack the criminal judgment, it cannot be “collateral” review under AEDPA and toll the statute of limitations. Pet.App.20a–22a. Thus, Judge Stras would have held that Garrett’s petition was untimely under AEDPA’s statute of limitations. Pet.App.22a.

The Eighth Circuit denied a motion for review *en banc*, but Judge Smith, Judge Gras, Judge Stras, and Judge Kobes would have granted the *en banc* petition. Pet.App.1a. Payne, the director of the Arkansas Division of Corrections, has now filed his petition for writ of *certiorari*.

SUMMARY OF ARGUMENT

Throughout the country’s two-and-a-half centuries, States have stood as the vanguard of criminal law. As this Court has long understood, criminal law enforcement sits at the core of the States’ sovereign powers. Recognizing as much, Congress in AEDPA demanded that federal courts respect state-court judgments. Doing so ensures finality of judgments, protects States, and serves federalism principles.

By reading AEDPA’s tolling provision to delay the statute of limitations, the court below imposed a direct harm to the States’ sovereignty and interests in finality. The *Amici* States write to explain those interests and why the decision below runs afoul of AEDPA’s text and purpose.

The *Amici* States further explain why the decision below violates this Court’s precedents requiring federal courts to interpret AEDPA in a manner that

meshes with AEDPA's federalism promise. Both the statute's text and this Court's case law foreclose the holding below. And because the ruling below directly disregarded the States' sovereign interests, this Court should grant the petition.

ARGUMENT

This case tees up a question in need of review from this Court. As explained in the petition for writ of *certiorari*, the decision below creates a clean circuit split. Pet.12–17. That alone makes this case worthy of review. Prisoners in the Eighth and Sixth (and the Tenth by implication) Circuits can file repeat belated-appeal motions just to extend time on their habeas-filing clock. Pet.15–17. Prisoners in the Eleventh Circuit cannot. Pet.13–15. That asymmetry should be resolved by this Court.

Amici States write additionally to emphasize why this question is one of exceptional importance. The decision below impugns state sovereignty, implicates federalism concerns, upsets finality interests, and contravenes this Court's precedents. It allows duly convicted state prisoners to kick the habeas can down the road, extending their AEDPA filing timeline by simply *moving* for a belated appeal even if it is ultimately denied. That rule leaves state judgments in limbo, thus producing direct and real harm on the States' criminal-justice systems. AEDPA exists to protect just the opposite—to guard the States' sovereign interest by ensuring finality in their state-court convictions. This Court has long explained that issues intruding on State sovereign interests are among the most important grounds for review. And little could be more vital to States than their criminal judgments.

This case checks off all the *certiorari* review boxes. The Court should grant the petition.

I. AEDPA’s strict time limits and other conditions for applying for federal habeas relief protect federalism and finality in state-court judgments.

A. “The power to convict and punish criminals lies at the heart of the States’ ‘residuary and inviolable sovereignty.’” *Shinn*, 596 U.S. at 376 (quoting The Federalist No. 39, p.245 (C. Rossiter ed. 1961) (J. Madison)); *see also United States v. Lopez*, 514 U.S. 549, 564 (1995). States have always “posess[ed] primary authority for defining and enforcing the criminal law.” *Brecht v. Abrahamson*, 507 U.S. 619, 635 (1993) (quotation omitted). And this “Court has uniformly held that the States are separate sovereigns” with the “power to prosecute [] derived from [their] own ‘inherent sovereignty.’” *Heath v. Alabama*, 474 U.S. 82, 89 (1985) (quotation omitted).

Critical to the States’ “powerful and legitimate interest in punishing the guilty,” is the finality of their convictions. *Brown v. Davenport*, 596 U.S. 118, 132 (2022) (quotation omitted). That is because federal court “intervention” into a state judgment is “an affront to the State and its citizens who returned a verdict of guilt after considering the evidence before them.” *Shinn*, 596 U.S. at 390. Recognizing the weighty sovereign concerns raised when federal courts exhume final state-court convictions, Congress set “demanding” “conditions” for petitioners to obtain relief in AEDPA. *Brown*, 596 U.S. at 134. Under that statute, federal courts may “disturb a final state-court conviction in only narrow circumstances.” *Id.* at 125.

The strict confines around federal-court intervention into state-court convictions imposed by AEDPA are numerous. Under AEDPA, federal judges may second-guess a state-court judgment in the rare case where the judgment either contravenes clearly established precedent of this Court or was based on an unreasonable determination of the facts. 28 U.S.C. §2254(d). This deferential “standard is difficult to meet.” *Harrington v. Richter*, 562 U.S. 86, 102 (2011). Review under AEDPA is also governed by two “strict rules” compelling “prisoners to raise all of their federal claims in state court before seeking federal relief.” *Shinn*, 596 U.S. at 377.

The first rule—exhaustion—requires that prisoners exhaust all remedies available in the state courts (in accordance with state procedures) before coming to federal court. 28 U.S.C. §2254(b)(1)(A). The second rule—procedural default—punishes any failure to properly raise claims in state court by directing federal courts to “decline to hear any federal claim that was not presented to the state courts.” *Shinn*, 596 U.S. at 378. Prisoners may obtain federal-court review of procedurally defaulted claims under even narrower circumstances: only when they can show “cause” and “prejudice” to revive defaulted claims in federal proceedings. *Id.* at 378–79. And finally, if a prisoner files one federal habeas petition, he usually cannot file another petition that attacks the same judgment. 28 U.S.C. §2244(b).

These limits ensure that federal courts hesitate before unwinding state-court convictions. Otherwise, federal courts would easily set free duly convicted prisoners in conflict with the “considerations of comity, finality, and the expeditious handling of habeas proceedings ... [that] motivated AEDPA.” *Day v.*

McDonough, 547 U.S. 198, 208 (2006). Cautious federal intervention in turn promotes federalism and finality. Doctrines like exhaustion and procedural default promote federal-state comity by giving States the first pass at correcting constitutional errors in their judgments. *Shinn*, 596 U.S. at 378. And the statute’s exacting restrictions—including the time limits discussed next at 9–12—promote finality by guarding against the never-ending criminal case. Indeed, even if a prisoner overcomes all of the limits imposed by AEDPA, he is still “never *entitled* to habeas relief.” *Id.* at 377 (emphasis added). The prisoner “must still persuade a federal habeas court that law and justice require it.” *Id.* (quotation and alteration omitted). Thus these and other AEDPA-imposed limits on federal-court review of final state-court convictions “reflect our enduring respect for ‘the State’s interest in the finality of convictions that have survived direct review within the state court system.’” *Calderon v. Thompson*, 523 U.S. 538, 555 (1998) (quoting *Brecht*, 507 U.S. at 635).

B. In addition to the just-discussed conditions for federal habeas relief, AEDPA also imposes time limits for filing a federal habeas petition that are designed to protect the States’ sovereign interest in the finality of their state-court judgments. Relevant here, prisoners have a year under AEDPA’s statute of limitations to file a federal habeas petition. §2244(d)(1). The statute-of-limitations clock “runs ‘from the latest of’ four specified dates, including,” as relevant here “the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review.” *Wall v. Kholi*, 562 U.S. 545, 550 (2011) (quoting §2244(d)(1)(A)).

Under §2244(d)(1), a state judgment of conviction becomes “final” when the time for direct appeal has run out. The expiration on time for direct appeal in state courts is governed by state law. For example, in Ohio, a defendant has 30 days to appeal, Ohio App.R.4(A), and once he fails to do so, the judgment becomes final. *See* 28 U.S.C. §2244(d)(1). And when the judgment becomes final, direct review ends, and the AEDPA clock begins to run. §2244(d)(1).

But prisoners must exhaust available state remedies before seeking federal habeas review. Most States employ their own postconviction review schemes. *See, e.g.,* Ohio Rev. Code §2953.21. And if States do so, prisoners can pursue their claims in such proceedings. In some cases, prisoners must do so to exhaust their claims in state court as AEDPA requires. 28 U.S.C. §2254(b)(1). While a prisoner pursues state postconviction relief, the one-year statute of limitations to file a habeas petition in federal court stops running. §2244(d)(2); *Kholi*, 562 U.S. at 550–51. That time is “tolled” to give the state courts a first chance to correct any constitutional errors. This system—allowing the state court to proceed while the federal court waits—enhances respect for state-court judgments because it allows state courts to fix any initial problems with their judgments. *See Shinn*, 596 U.S. at 378; *Rhines v. Weber*, 544 U.S. 269, 273, 276–77 (2005). But once state collateral proceedings end, the one-year statute-of-limitations clock resumes.

Tolling applies only in limited circumstances. A prisoner must “properly file[]” an “application” for “post-conviction or other collateral review” that is presently “pending” for the time to stop. 28 U.S.C. §2244(d)(2). Courts frequently reject workarounds to AEDPA’s stringent timing rules. For example, this

Court has indicated that so-called “mixed” petitions—those including both exhausted and unexhausted claims—usually do “not toll the statute of limitations.” *Rhines*, 544 U.S. at 275. And the Court added that federal courts should hesitate before issuing “stay-and-abeyance” orders to save the unexhausted claims. *Id.* at 277. Instead, petitioners who brought “mixed” habeas requests “run the risk of *forever losing* the opportunity for any federal review” because the statute of limitations will run. *Id.* at 275 (emphasis added).

Tolling also does not apply under §2244(d)(2) “[w]hen a postconviction petition is untimely under state law.” *Pace v. DiGuglielmo*, 544 U.S. 408, 414 (2005). So when a prisoner files a state postconviction petition after the time to file has run, the prisoner receives no tolling benefit. *Id.* Nor does AEDPA tolling trigger when the “prisoner’s filing of a [postconviction] notice of appeal ... is [un]timely under state law.” *Evans v. Chavis*, 546 U.S. 189, 191 (2006). These rules share a common theme: when a prisoner files late, he usually is out of time.

Section 2244, in other words, can be unforgiving for those who fail to heed the statute’s text because anything a federal court does “must ... be compatible with AEDPA’s purposes” to “reduce delays in execution of state ... sentences.” *Rhines*, 544 U.S. at 276 (quotation omitted). Courts reject theories that allow a state prisoner to “toll the statute of limitations at will simply by filing untimely state postconviction petitions.” *Pace*, 544 U.S. at 413; *see also Espinosa v. Sec’y, Dep’t of Corr.*, 804 F.3d 1137, 1142 (11th Cir. 2015). That “would turn §2244(d)(2) into a *de facto* extension mechanism, quite contrary to the purpose of AEDPA, and open the door to abusive delay.” *Pace*, 544 U.S. at 413.

These timing rules foster finality and federalism. Time and again, this Court has emphasized that AEDPA’s “one-year limitation period” is “tight” to “advance the finality of criminal convictions.” *Mayle v. Felix*, 545 U.S. 644, 662 (2005). The text “quite plainly serves the well-recognized interest in the finality of state court judgments.” *Rhines*, 544 U.S. at 276 (quoting *Woodford v. Garceau*, 538 U.S. 202, 206 (2003)). And “[o]ne of the statute’s purposes is to ‘reduce delays in the execution of state and federal criminal sentences.’” *Id.* (quoting *Woodford*, 538 U.S. at 206).

In doing so, the statute “promotes judicial efficiency and conservation of judicial resources, safeguards the accuracy of state court judgments by requiring resolution of constitutional questions while the record is fresh, and lends finality to state court judgments within a reasonable time.” *Day*, 547 U.S. at 205–06 (quoting *Acosta v. Artuz*, 221 F.3d 117, 123 (2d Cir. 2000)). And it “reduces the potential for delay on the road to finality by restricting the time that a prospective federal habeas petition has in which to seek federal habeas review.” *Rhines*, 544 U.S. at 276 (quotation omitted). After all, if claims could be routinely brought “after the one-year period,” then “AEDPA’s limitation period would have slim significance.” *Mayle*, 545 U.S. at 662. Instead, though, courts hew closely to the statute’s “tight time line.” *Id.*

In short, when the statute-of-limitations clock starts, prisoners must “file their federal habeas petitions as soon as possible”—not stall or delay. *Duncan v. Walker*, 533 U.S. 167, 179 (2001). “Without time limits, petitioners could frustrate AEDPA’s goal of finality by dragging out indefinitely their federal habeas review.” *Rhines*, 544 U.S. at 278. Indeed, timeliness is so important under AEDPA that courts may

sua sponte consider whether a petitioner has satisfied §2244(d). *Day*, 547 U.S. at 209. In other words, deadlines in AEDPA, matter for a reason—they promote federalism and protect State sovereignty by ensuring finality in the States’ convictions.

II. The rule adopted by the decision below tramples on the States’ sovereignty enshrined in AEDPA.

The decision below embraced an interpretation of AEDPA that undermines the States’ sovereignty and creates perverse incentives for prisoners to endlessly seek federal court intervention on final state-court judgments. That decision allowed a prisoner to extend the federal habeas filing deadline by seeking a belated appeal in state court. *Above* at 4. Keeping the habeas door open when Congress demanded it be shut means States will have their criminal judgments subject to ongoing federal oversight despite AEDPA’s text and purpose to the contrary. That, in turn, does violence to the States’ sovereign interest in the finality of their convictions.

A. To see how, recall the belated-appeal process. Sometimes, criminal defendants file appeals late—maybe by a day, maybe by several months. In those cases, prisoners might (depending on the relevant State’s rules) file a belated-appeal motion, or an “out-of-time-appeal motion.” A state court can either grant or deny the motion. If granted, the one-year habeas statute of limitations restarts. *Jimenez*, 555 U.S. at 119–20. That makes sense. A belated-appeal motion simply asks a court to *restore* the direct appeal. *Jimenez*, 555 U.S. at 120. And when direct review restarts, so too does the statute of limitations. *Id.*

This case is about the other scenario—when a belated-appeal motion is ultimately denied, preventing the reopening of the direct-appeal process. Did the *filing* of the motion to reopen the judgment directly (by reopening the direct-appeal process) or indirectly (by initiating collateral review of the judgment) restart or pause the habeas clock? The answer must be “no.”

For one thing, this Court has already indicated that merely *filing* a belated-appeal motion does not change the judgment’s finality. *See Jimenez*, 555 U.S. at 120 n.4. “Everyone accepts that” criminal judgments become final once an appeal is over. *Edwards v. Vannoy*, 593 U.S. 255, 287 (2020) (Gorsuch, J., concurring). Section 2244(d)(1) embraces that rule. It says that if the time to appeal is over, so is the case. 28 U.S.C. §2244(d)(1). And “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 (quotation omitted). As explained at length in the petition, a belated-appeal motion is not “collateral review” under §2244(d)(2), so tolling does not apply. Pet.19–25. *Amici* States agree and will not belabor those points here. So, the mere filing of a belated-appeal motion does nothing to alter the ticking habeas clock.

Treating a belated-appeal motion as “collateral” would result in statutory ping-pong between direct and collateral review. After all, everyone in this case agrees that both *before* a belated-appeal motion is filed and *after* such a motion is granted, a case sits in “direct review.” *Jimenez*, 555 U.S. at 115. But under the ruling of the court below, the time *between* the filing of and ruling on the belated-appeal motion moves the case into “collateral” review.

AEDPA does not sanction that statutory zig-zag. As Judge Stras noted, “[f]ailing to follow the direct-review process ... does not somehow transform a motion to reinstate it into an application for ... collateral review.” Pet.App.21a (Stras, J., dissenting) (quotation omitted; second ellipsis in original). And this Court does not lightly endorse rules that extend AEDPA’s limitations period. *See Evans*, 546 U.S. at 197. Yet, tolling the habeas clock during the pendency of a belated-appeal motion would allow prisoners to move between direct review and collateral review despite AEDPA’s delineation between the two. And it would reward prisoners with extra time even *after* state courts—by denying the belated-appeal motion—have ruled the prisoner has failed to justify the delayed appeal. AEDPA review involves a “tight time line” for a reason. *Mayle*, 545 U.S. at 662. And the Eighth Circuit’s holding fails to enforce those limits. This Court should do so.

B. Rejecting the Eighth Circuit’s approach would comport with the principles of federalism and finality enshrined in AEDPA, and a consistent line of precedent from this Court.

As explained above (at 7–13), AEDPA’s federalism-and-finality focus demands that courts do not expand the statute to reopen state-court judgments. Yet, tolling the habeas clock for a belated-appeal motion that is ultimately denied—as the court below did here—wrecks AEDPA’s commitment to both. A majority of the panel below concluded that the habeas clock remained paused *even though* the judgment remained “final” in the time between filing the belated-appeal motion and the court’s denial of the same. The consequence of that is a prisoner can pause the habeas clock by filing a motion—regardless of how frivolous or

baseless—over and over, each time capturing more days (or weeks or months) to file a habeas petition. *See Pace*, 544 U.S. at 413. But AEDPA treats most untimely filings in the opposite way. If a prisoner misses an appeal deadline, that should “be the end of the matter.” *Pace*, 544 U.S. at 414 (quotation omitted). Even when a prisoner files a late notice of appeal in state postconviction proceedings, tolling does not apply to the time before the filing. *Evans*, 546 U.S. at 197. It would make little sense, then, to apply tolling to a belated-appeal motion seeking to reopen *direct* review in state court.

And the logic runs counter to this Court’s precedents. This Court has long interpreted AEDPA’s timing provisions to respect finality of state-court judgments. This Court has maintained that AEDPA’s timelines must be strictly read to be consistent with the statute’s finality and federalism goals. *Duncan*, 533 U.S. at 178; *above* at 9–12. And it has explained that §2244(d)(2) should not be interpreted in a way that “would hold greater potential to hinder finality.” *Duncan*, 533 U.S. at 178. Doing so would put the statute “out of step with th[e] design” of Congress. *Id.* at 180. Any reading that “would further undermine the interest in finality by creating more potential for delay in the adjudication of the federal law claims,” like the decision below, is likely wrong. *Id.* Consider the various other contexts in which this Court has analyzed AEDPA’s timing rules. It has held that petitioners cannot “toll the statute of limitations by filing untimely state petitions” under §2244(d)(2). *Pace*, 544 U.S. at 413. It has said that §2244(d)(2) tolling remains unavailable when a petitioner files an untimely notice of appeal in state postconviction review. *Evans*, 546 U.S. at 191–92. It has explained that federal

courts can *sua sponte* dismiss untimely habeas petitions. *Day*, 547 U.S. at 209. And it has held that even a petition for a writ of *certiorari* from state postconviction proceedings fails to toll AEDPA’s statute of limitations. *Lawrence v. Florida*, 549 U.S. 327, 337 (2007). The rationale for these rules has been plain: time limits respect “AEDPA’s goal of finality” of state-court judgments. *See Rhines*, 544 U.S. at 278. And the statute rejects “dilatory tactics” used by prisoners to override finality concerns. *See id.* at 277–78. Yet, allowing petitioners to circumvent the one-year limitations period by making late filings over and over “would turn §2244(d)(2) into a *de facto* extension mechanism, quite contrary to the purpose of AEDPA, and open the door to abusive delay.” *Pace*, 544 U.S. at 413.

AEDPA adopted a careful balance between timeliness and exhaustion to guard against any such abuse. As explained above (at 10–11), AEDPA’s tolling rules serve both the statute’s exhaustion requirement and timeliness provisions. The statute of limitations generally mandates a quick filing in federal court. 28 U.S.C. §2244(d)(1). But tolling gives more time while claims are exhausted to give state courts the first chance to review constitutional claims. That design both serves finality and respects state courts. Yet, when a state court *denies* a belated-appeal motion, the underlying claim may be procedurally defaulted. *Woodford v. Ngo*, 548 U.S. 81, 93 (2006). Allowing the underlying claim to proceed without a procedural-default rule would damage AEDPA’s carefully chosen review scheme. In short, this Court has been clear about the importance of AEDPA’s timing provisions: “only a *timely* appeal tolls AEDPA’s 1-year limitations period for the time between the lower court’s adverse

decision and the filing of a notice of appeal in the higher court.” *Evans*, 546 U.S. at 197. But if a petitioner files his notice late in state court, he cannot get the benefits of AEDPA’s tolling. Late filings come with consequences, and one of the main ones is losing §2244(d)(2)’s tolling benefit.

As noted by the Third Circuit, pausing the habeas clock for late-filed appeals would “give Frankenstein-like characteristics to §2244(d)(2)’s tolling mechanism that threatens to write §2244(d)(1)’s limitations period out of AEDPA.” *Martin v. Admin N.J. State Prison*, 24 F.4th 261, 269 (3d Cir. 2022). That is because when the time to appeal has run, the case “is not dormant, it is not latent, and it is not hibernating.” *Id.* at 271. It “is done.” *Id.*

C. By ignoring the limits of AEDPA’s tolling provision, the majority’s holding below unleashes real consequences on the States. Without clear finality, state prisoners could continuously attack valid judgments, leading to more frivolous filings and fewer administrable rules. In Ohio, for example, there is no bar against multiple belated-appeal motions. And if all it takes is *filing* such a motion to toll AEDPA’s statute of limitations, state prisoners will be encouraged to file multiple meritless motions. Prisoners could then unilaterally extend their deadline and “open the door to abusive delay” that this Court has warned against. *Pace*, 544 U.S. at 413. The rule encourages prisoners to prolong their state proceedings, file baseless motions to clog state dockets, and undermine the finality of their convictions.

Ohio knows this all too well. It has direct experience with the rule treating belated-appeal motions as collateral review tolling the statute of limitations.

The Sixth Circuit has interpreted Ohio’s rule, Ohio App.R.5(A), as “part of the collateral review process for purposes of tolling AEDPA’s statute of limitations.” *Board v. Bradshaw*, 805 F.3d 769, 771–72 (6th Cir. 2015). As that court acknowledged, “[t]here is no time limit for filing motions under Rule 5(A).” *Id.* at 773. And because “there is no time limit for filing a motion for leave to file a delayed appeal” in Ohio, such a motion is always “timely under state law,” thus entitling a prisoner to tolling—even if the motion is denied. *Id.* at 774. That means that Ohio prisoners can seek a delayed appeal anytime, needlessly prolong litigation, and toll the AEDPA statute of limitations.

Other States will bear similar costs under the Eighth Circuit’s rule. States will face more cases that take longer to reach conclusion thus undermining the sovereign prerogative to punish criminals according to their laws. And it turns AEDPA’s timing rules upside down: AEDPA promotes finality of judgments by imposing a strict statute of limitations—just as this Court has said time and again. *E.g.*, *Day*, 547 U.S. at 205–06. All of that is threatened by the decision below.

At bottom, allowing prisoners to stop the clock for filing a federal habeas petition by filing a belated-appeal motion would upset the entire purpose of AEDPA’s timing provisions. *Cf. Shinn*, 596 U.S. at 378 (“[T]o allow a state prisoner simply to ignore state procedure on the way to federal court would defeat the evident goal of the exhaustion rule.”). Such “relitigation of final convictions undermines the finality that is essential to both the retributive and deterrent functions of criminal law” in the States. *Shinn*, 596 U.S. at 391 (quotation omitted). AEDPA’s timing

provisions protect the States' sovereign interest in the finality of their criminal judgments.

CONCLUSION

The Court should grant the petition for *certiorari*.

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