

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

REPLY BRIEF FOR PETITIONER

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

TABLE OF CONTENTS

Table of Contents	i
Table of Authorities	ii
Reply Brief.....	1
I. The Circuits Are Divided on the Important Question Presented	2
A. The decision below deepened a pre-existing circuit split	2
B. The question presented is important to States, victims, habeas petitioners, and our federalist system	4
II. The Decision Below Is Incorrect	7
III. This Case Is an Ideal Vehicle.....	10
Conclusion	12

TABLE OF AUTHORITIES

Cases	Page(s)
<i>Braxton v. United States</i> , 500 U.S. 344 (1991).....	2
<i>Calderon v. Thompson</i> , 523 U.S. 538 (1998).....	2, 5, 10
<i>Carey v. Saffold</i> , 536 U.S. 214 (2002).....	1, 3-4, 9
<i>Danny v. Sec’y, Fla. Dep’t of Corr.</i> , 811 F.3d 1301 (11th Cir. 2016).....	3-4, 6, 8
<i>Dodson v. Butler</i> , 142 S.W. 503 (Ark. 1912).....	7
<i>Dodson v. Norris</i> , 288 S.W.3d 662 (Ark. 2008).....	4, 9
<i>Gonzalez v. Crosby</i> , 545 U.S. 524 (2005).....	8
<i>Halfacre v. State</i> , 731 S.W.2d 179 (Ark. 1987).....	7
<i>In re James</i> , 940 F.2d 46 (3d Cir. 1991)	7
<i>Jimenez v. Quarterman</i> , 555 U.S. 113 (2009).....	3-7
<i>Kholi v. Wall</i> , 582 F.3d 147 (1st Cir. 2009)	11

<i>Mayle v. Felix</i> , 545 U.S. 644 (2005).....	9
<i>Patel v. Garland</i> , 596 U.S. 328 (2022).....	10
<i>Shinn v. Ramirez</i> , 596 U.S. 366 (2022).....	1, 5
<i>Shoop v. Twyford</i> , 596 U.S. 811 (2022).....	11
<i>Wall v. Kholi</i> , 562 U.S. 545 (2011).....	3-4, 6-8, 11
Rules & Statutes	
28 U.S.C. § 2244.....	7-10
28 U.S.C. § 2254.....	9
Sup. Ct. R. 10	2
Other Authorities	
17 Wright & Miller, Fed. Prac. & Proc. Juris. § 4036 (3d ed.) (Apr. 2026 Update).....	11

REPLY BRIEF

Garrett does not dispute that circuits are divided on whether belated-appeal motions toll AEDPA's statute of limitations. Nor does he deny this case tees up that issue. Instead, Garrett attempts to discount the circuit split's significance, suggesting resolving it will only impact States like Arkansas that label the procedural vehicles through which they channel belated-appeal motions a certain way. But that argument finds no support in this Court's precedent or the decision below. This Court has explained that tolling depends on "how a state procedure functions, rather than the particular name that it bears." *Carey v. Saffold*, 536 U.S. 214, 223 (2002). The function of belated-appeal requests is the same across States, meaning a decision by this Court would apply uniformly in each.

Garrett also claims that the question presented is unimportant because it only arises under certain circumstances. But Garrett ignores that the issue has significance to States—as reflected by a bipartisan amicus brief filed by 19 States—and would-be habeas petitioners alike because it determines whether the federal courthouse doors are open for challenges to state-court convictions like Garrett's. The question presented is also important to States and our federalist structure because "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) (quotation omitted). Accordingly, this Court should grant review both to resolve the circuit split and to ensure federal intrusion does not occur when barred by AEDPA's plain text.

**I. THE CIRCUITS ARE DIVIDED ON THE
IMPORTANT QUESTION PRESENTED.**

A. The decision below deepened a pre-existing circuit split.

As the Eighth Circuit recognized, its decision deepened a preexisting circuit split on the question presented. App. 9(a)–10(a). The Sixth, Eighth, and (arguably) Tenth Circuits have held that belated-appeal motions toll AEDPA’s statute of limitations; the Eleventh Circuit has held that they do not, in a well-reasoned opinion by Chief Judge Pryor. Pet. 13–17. This Court should therefore grant review to provide much-needed uniformity. *See* Sup. Ct. R. 10(a). A habeas petitioner’s ability to challenge his state-law conviction in federal court should not depend on geographic happenstance. Nor should States in the Sixth and Eighth Circuits enjoy less finality in criminal convictions than States in the Eleventh Circuit. *See Calderon v. Thompson*, 523 U.S. 538, 554 (1998) (“Finality is essential to both the retributive and the deterrent functions of criminal law.”). Those are precisely the sort of disparities that this Court “use[s] [its] certiorari jurisdiction” to correct. *Braxton v. United States*, 500 U.S. 344, 347 (1991).

Garrett acknowledges that the circuits are divided on the question presented. *E.g.*, BIO 20–22. Nevertheless, he attempts to wave away the split’s significance. Garrett insists the issue is primarily one of state procedure that “can never arise” in States where belated-appeal motions are made through “ordinary post-conviction review.” BIO 7. But that argument fails. For starters, even assuming Garrett were correct that the question presented is unlikely to arise in some States, this Court’s review is still

necessary to resolve the circuit split and provide uniformity in the States where it *does* arise. And there would arguably be even more reason for this Court to resolve the split now, because additional time would not lead to more circuits weighing in on the question presented. So certiorari would be warranted even if Garrett were correct.

But Garrett is wrong, because he places dispositive weight on the titles States give their procedural vehicles for seeking belated appeals. “[T]he application of AEDPA’s tolling provision should not turn on such formalities.” *Wall v. Kholi*, 562 U.S. 545, 560 (2011). To the contrary, whether tolling applies depends on “how a state procedure *functions*, rather than the particular name that it bears.” *Carey*, 536 U.S. at 223 (emphasis added). That’s why the Eleventh Circuit concluded tolling did not apply even though Florida’s law governing belated-appeal motions is titled “Review Proceedings in Collateral or Post-Conviction Criminal Cases.” *Danny v. Sec’y, Fla. Dep’t of Corr.*, 811 F.3d 1301, 1304 (11th Cir. 2016). Similarly, the Eighth Circuit majority explained that belated-appeal motions like Garrett’s are “materially indistinguishable” from “motion[s] for postconviction relief predicated on the denial of a direct appeal,” and there is “no principled reason” for treating them differently under AEDPA’s tolling provision. App. 10a n.4. Likewise, Judge Stras recognized Texas’s procedural vehicle in *Jimenez* as “nearly identical” to Arkansas’s here, App. 19(a) (Stras, J., dissenting)—notwithstanding that it was a state habeas petition, *see Jimenez v. Quarterman*, 555 U.S. 113, 116 (2009).

Put simply, such “label[s] [are] of no moment” to the question presented. *Danny*, 811 F.3d at 1304. See *Kholi*, 562 U.S. at 559–60 (explaining that whether the State technically considers the relevant motion to be “part of the original case” is irrelevant to tolling). Function is what matters. *Carey*, 536 U.S. at 223. And the function of belated-appeal motions—whatever the label—is to seek a *direct* appeal, see *Jimenez*, 555 U.S. at 120, and does not entail “judicial reexamination of a judgment or claim,” *Kholi*, 562 U.S. at 553. See *infra* at 7–9. Review by this Court would thus provide guidance regarding the relationship between AEDPA’s tolling provision and *all* State vehicles for seeking belated appeals, no matter their name.¹

Garrett’s failure to rebut the circuit split or its significance thus underscores why certiorari is warranted. This Court should grant certiorari to provide much-needed guidance and uniformity that is undisputedly lacking.

B. The question presented is important to States, victims, habeas petitioners, and our federalist system.

Garrett next attempts to downplay the importance of the question presented, arguing that the question does not arise in the typical habeas case. See BIO 11. That argument, however, ignores that this issue arises frequently enough that the circuit

¹ For these reasons, Garrett’s emphasis on the Arkansas Supreme Court’s characterization of belated-appeal motions in *Dodson v. Norris*, 288 S.W.3d 662, 665 (Ark. 2008), is misplaced. See BIO 9. And regardless, if anything, *Dodson* helps Payne, not Garrett. See *infra* at 8–9.

split has arisen and deepened since *Jimenez*. And while this issue admittedly does not come up in every case, when it does arise, it matters immensely to the would-be habeas petitioner, the State, and the victims and their families alike. The answer to the question presented will determine whether habeas petitioners like Garrett can seek federal correction of alleged constitutional errors they believe tainted their trials, or whether AEDPA's statute of limitations bars their challenges—in which case there would be finality, increased comity shown towards state courts, and justice for States and crime victims. See *Calderon*, 523 U.S. at 554; *Shinn*, 596 U.S. at 376. In short, Garrett is wrong that the question is of “no national importance.” BIO 11. That is why States across the Nation—from Alaska to Virginia, Michigan to Mississippi, and many more in between—have urged the Court to grant certiorari. See Br. of Ohio, et al.

Garrett next disputes that *Jimenez* underscores the importance of the question presented. But that argument betrays Garrett's misunderstanding of *Jimenez*. In *Jimenez*, the Court answered the flip side of the question presented here, holding that “where a state court grants a criminal defendant the right to file an out-of-time direct appeal,” the limitation period restarts entirely. 555 U.S. at 121. And the Court expressly noted that it was not resolving whether the habeas petition there could have been timely if it was filed while the belated-appeal motion was pending. *Id.* at 120 n.4.

Attempting to minimize this case's connection with *Jimenez*, Garrett rehashes his mistaken argument that the issue boils down to state procedural

differences. He insists that if this case had arisen in Texas, there “would be no question” that AEDPA’s tolling provision would apply, because petitioners there must seek belated appeals via state habeas. BIO 13. But Garrett once again ignores that labels for the vehicles through which States channel belated-appeal requests are of “no moment.” *Danny*, 811 F.3d at 1304. *See supra* at 3–4. So the answer to the question presented here would apply equally in Arkansas and Texas. *See* App. 19(a) (Stras, J., dissenting) (explaining that belated-appeal procedure in *Jimenez* was “nearly identical” to Arkansas’s). Regardless, even if such state-law “formalities” mattered, *Kholi*, 562 U.S. at 560, the question in *Jimenez* is still related to the question presented here. Indeed, had Garrett’s belated-appeal motion been granted, then *Jimenez* would have squarely controlled, and AEDPA’s statute of limitations would unquestionably have restarted. But Garrett’s belated-appeal motion was denied, so *Jimenez* does not answer (and the circuits are divided on) whether Garrett’s federal habeas petition was still timely because of tolling. Review here would therefore answer an important question *Jimenez* expressly left open.

Finally, Garrett ignores that this Court’s review would do more than simply resolve the circuit split on the important question presented. It would also provide guidance on the application of AEDPA’s tolling provision in general—just as *Kholi* provided such guidance beyond “whether a motion to reduce sentence under Rhode Island law” triggered tolling. 562 U.S. at 547. Thus, the question presented not only merits this Court’s review in its own right, but it would also allow the Court to provide guidance on important related questions.

II. THE DECISION BELOW IS INCORRECT.

As explained, the Court should also grant certiorari because the Eighth Circuit majority is wrong, and the Eleventh Circuit and Judge Stras are right: A belated-appeal motion is not an “application” for “collateral review” that triggers tolling under § 2244(d)(2). Pet. 19–25. Garrett’s arguments to the contrary are unpersuasive.

First, belated-appeal motions do not entail “review” of the underlying judgment. 28 U.S.C. § 2244(d)(2). Garrett contends that belated-appeal motions trigger tolling because, if granted, the underlying judgment is no longer deemed “final” under § 2244(d)(1)(A), because the statute of limitations resets, *see Jiminez*, 555 U.S. at 121. Based on that, Garrett reasons that “[a] motion whose grant dissolves the finality of the judgment of conviction is a request for review ‘with respect to’ that judgment” that triggers tolling. BIO 16, 18–19. But this reasoning conflates a judgment’s finality for purposes of AEDPA’s statute of limitations with a judgment’s validity; the mere grant of a belated appeal does not “dissolve” the underlying conviction. To the contrary, the trial court’s judgment “is valid until it is reversed.” *Dodson v. Butler*, 142 S.W. 503, 505 (Ark. 1912). *See, e.g., Halfacre v. State*, 731 S.W.2d 179, 181 (Ark. 1987); *In re James*, 940 F.2d 46, 52 (3d Cir. 1991) (“once validly entered ... a judgment is considered valid until overturned or vacated by that court or an appellate court”). And a belated-appeal motion is not a “direct request[]” for reversal or vacatur of that judgment. *Kholi*, 562 U.S. at 556 n.4. Instead, a belated-appeal motion is, at most, a “step in that direction,” App. 20a (Stras, J., dissenting), because a

successful motion “only revives a petitioner’s right to prosecute a direct appeal,” *Danny*, 811 F.3d at 1304. That’s not enough to trigger tolling. *Id.*; Pet. 20–22.

Garrett also insists that his belated-appeal motion entailed collateral review because it was related to the ineffective-assistance-of-counsel claim that he later brought in his federal habeas petition. BIO 16–17, 18–19. But again, all the belated-appeal motion sought was a direct appeal. The belated-appeal motion therefore was not a “direct request[] for judicial review” of, *Kholi*, 562 U.S. at 556 n.4, and “relief from [the] [trial] court’s judgment of conviction,” *Gonzalez v. Crosby*, 545 U.S. 524, 530 (2005). Indeed, there was *no* underlying adjudication of Garrett’s claim predicated on counsel’s failure to appeal, specifically, so Garrett’s belated-appeal motion could not entail any “judicial *reexamination*” of it. *Kholi*, 562 U.S. at 553 (emphasis added). See App. 17a (Stras, J., dissenting). Rather, the belated-appeal motion asked the state appellate courts to consider, in the first instance, whether Garrett’s failure to timely appeal was excused, and whether his underlying conviction should subsequently be reviewed in a direct appeal. It therefore did not trigger tolling. *Danny*, 811 F.3d at 1304; Pet. 20–22.

Second, even if the possibility of future review of the underlying judgment could suffice, a belated-appeal motion still would not trigger tolling, because the review to which it may lead is not “collateral.” 28 U.S.C. § 2244(d)(2). To the contrary, any resulting review would be in a *direct* appeal. Pet. 22–23. Garrett has no meaningful answer to this point, instead emphasizing the Arkansas Supreme Court’s explanation that belated-appeal motions are “not part of the

ordinary appellate review process.” BIO 17 (quoting *Dodson*, 288 S.W.3d at 665). But as explained, *Dodson* only addressed whether belated-appeal motions were required to exhaust state-court remedies for purposes of 28 U.S.C. § 2254(b)(1)(A). *See* Pet. 22–23. If anything, *Dodson* suggests that belated-appeal motions *are* part of the direct appellate review process: They are just extraordinary rather than “ordinary,” because they only arise when the would-be appellant fails to timely appeal. *Dodson*, 288 S.W.3d at 665. *See* App. 21a (Stras, J., dissenting).² Regardless, what ultimately matters for § 2244(d)(2) is “how a state procedure functions,” not how States or their courts characterize it. *Carey* 536 U.S. at 223. *See supra* at 3–4. And the sole function of belated-appeal motions is to seek a direct appeal, *id.*, so they involve no “collateral review,” 28 U.S.C. § 2244(d)(2).

In sum, under this Court’s precedent and the plain text of § 2244(d)(2), a belated-appeal motion does not toll AEDPA’s statute of limitations. Nevertheless, like the Eighth Circuit majority, Garrett insists that federal-state comity favors tolling because it affords petitioners greater opportunity to exhaust their claims in state courts. BIO 19–20. But Garrett ignores that the “tight time line” AEDPA’s one-year limitations period sets promotes comity and federalism by “advan[cing] the finality of criminal convictions.” *Mayle v. Felix*, 545 U.S. 644, 662 (2005).

² Garrett also claims that Payne would place belated-appeal motions in a “mythic third category of state-court review ... that is neither ‘collateral’ nor ‘direct.’” BIO 18. But Payne explained that belated-appeal motions are “firmly on the direct review ‘track[.]’” Pet. 22 (quoting App. 17a, 21a (Stras, J., dissenting)).

See Calderon, 523 U.S. at 554. Federal courts creating new tolling periods to that tight timeline tramples federal-state comity, rather than advances it. In any event, Garrett does not dispute that such “policy concerns”—no matter which way they cut—cannot override AEDPA’s text. *Patel v. Garland*, 596 U.S. 328, 346 (2022). And text and precedent indicate that the Eleventh Circuit’s and Judge Stras’s interpretation is the correct one.

III. THIS CASE IS AN IDEAL VEHICLE.

Because nothing in this case would prevent the Court from answering the question presented, this case presents the perfect opportunity for this Court to resolve it. Indeed, Garrett does not dispute this case tees up the question presented. *See* Pet. 25. Garrett instead seeks to reframe what he views as the Petition’s “principal[]” question—“whether § 2244(d)(2) applies to motions that are geared toward a review of judgment only by taking a step in that direction”—and insists that question was unanswered below because “[t]he Eighth Circuit majority did not hold that the belated-appeal motion was a mere step towards review.” BIO 20–21 (quotation omitted). This effort to distract from this case’s fitness for review fails.

Notwithstanding Garrett’s attempted reframing, Payne “principally seeks resolution” of the actual question presented, BIO 20, which speaks for itself, *see* Pet. i. And to the extent the question presented includes the subsidiary question of whether a belated-appeal motion is merely a step towards review of a judgment, the majority opinion weighed in on it. It acknowledged that a belated-appeal motion only “leads to new proceedings” that can provide relief

from the underlying judgment and does not “put an Arkansas court in a position to immediately alter” it. App. 8a–9a (cleaned up). Rightly so. A belated appeal motion is at most “a step toward getting review” of the underlying conviction or sentence. App. 20a (Stras, J., dissenting). So Garrett’s argument is both irrelevant and wrong.

Garrett also suggests the Court should deny certiorari because the Eighth Circuit’s decision led to a remand, without finally resolving Garrett’s habeas petition. BIO 24. But “[i]n a wide range of cases,” this Court has granted certiorari “after a court of appeals has disposed of an appeal from a final judgment on terms that require further action in the district court, so that there is no longer any final judgment.” 17 Wright & Miller, Fed. Prac. & Proc. Juris. § 4036 (3d ed.) (Apr. 2026 Update). *Kholi* itself is one such example. There, after the district court dismissed the habeas petition as untimely, the First Circuit reversed and remanded. *See Kholi v. Wall*, 582 F.3d 147, 149 (1st Cir. 2009), *aff’d*, 562 U.S. 545. This Court nevertheless granted certiorari. So the fact that the decision below resulted in remand rather than final judgment is no obstacle to this Court’s review. To the contrary, as this Court has instructed, “federal court[s] may *never* needlessly prolong a habeas case, particularly given the essential need to promote the finality of state convictions.” *Shoop v. Twyford*, 596 U.S. 811, 820 (2022) (quotation omitted). And further litigation in the courts below would “needlessly prolong” this case because Garrett’s petition was untimely. *Id.* Review by this Court now would thus promote finality and comity.

Finally, Garrett contends that this Court should deny certiorari to allow for further percolation of the question presented. BIO 20–23. But the Eleventh Circuit and Judge Stras both issued well-reasoned and thorough opinions, while the Eighth Circuit majority joined the Sixth Circuit in a thoughtful (albeit mistaken) opinion. Thus, the arguments on both sides of the split are well developed, and nothing stands in the way of this Court’s review of this important issue.

CONCLUSION

The Court should grant certiorari.

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

September 9, 2026