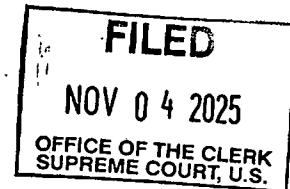


No. \_\_\_\_\_

ORIGINAL

25-6286

IN THE



SUPREME COURT OF THE UNITED STATES

WILFREDO FELICIANO-RODRIGUEZ — PETITIONER

(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the First Circuit

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Wilfredo Feliciano-Rodriguez

(Your Name)

P.O. Box 5000

(Address)

Yazoo City, MS 39194

(City, State, Zip Code)

N/A

(Phone Number)

QUESTION(S) PRESENTED

Is the Appellate Court able to violate 28 U.S.C. §2244(b)(3)(D) arguing that this statute is not mandatory but a simple guideline?

It is incontrovertible that 28 U.S.C. §2244(b)(3)(D) 30 days time limit is mandatory when it provides: "Shall grant or deny" ... "not later" than 30 days.

What are the legal consequences of violating 28 U.S.C. §2244(b)(3)(D) exceeding the maximum 30 days limit?

How does a misinterpretation of 28 U.S.C. §2244(b)(3)(D) affect petitioners seeking to file second or successive 28 U.S.C. §2255 motions?

This Court has jurisdiction under 28 U.S.C. §1254(1) to review, a petition for a writ of certiorari, the Court of Appeals has not decided on the application for authorizing to file a second or successive motion under §2255. In light of a statute providing that "[t]he grant or denial authorization by a court of appeals to file a second or successive application \*\*\* shall 'grant or deny'" ... "not later than 30-days."

## LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

**OPINIONS BELOW**

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

reported at \_\_\_\_\_; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

The opinion of the United States district court appears at Appendix \_\_\_\_\_ to the petition and is

reported at \_\_\_\_\_; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix \_\_\_\_\_ to the petition and is

reported at \_\_\_\_\_; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

The opinion of the \_\_\_\_\_ court appears at Appendix \_\_\_\_\_ to the petition and is

reported at \_\_\_\_\_; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

## JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was 08/07/2025.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. A \_\_\_\_\_.

The jurisdiction of this Court is invoked under 28 U. S. C. §1254(1).

For cases from **state courts**:

The date on which the highest state court decided my case was \_\_\_\_\_. A copy of that decision appears at Appendix \_\_\_\_\_.

A timely petition for rehearing was thereafter denied on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. A \_\_\_\_\_.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

### U.S. Constitution Article I -Section 8

"... To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof."

### U.S. Const. Amend. V

"... nor be deprived of life, liberty or property, without due process of law..."

### U.S. Const. Amend. XIV

"... nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

### Statute Involved

#### 18 U.S.C. §3231

"Nothing in this title shall be held to take away or impair the jurisdiction of the Courts of the several States under the laws thereof."

#### 28 U.S.C. §2244(b)(3)(D)

"The court of appeals shall grant or deny the authorization to file a second or successive application not later than 30 days after the filing of the motion."

## STATEMENT OF THE CASE

On June 21, 2025, the Petitioner filed a Petition for Writ Certioriari, invoking Rule 11 and it was placed on the Docket on July 7, 2025 as No. 25-5036.

The reason which caused the Petitioner to move is because the First Circuit had not judged an Appeal No. 23-1405; 23-1520 & 23-1706 after more than two years waiting for judgement. Then the Petitioner considered that it was proper to invoke Rule 11, but this Court was in recess from July, 2025 to September, 2025. When this Court returned from the recess there was a conference scheduled for September 29, 2025 under Case No. 25-5036, and at said conference, this Court found that the Appeals Court for the First Circuit had judged on the Appeal on August 7, 2025. See "Appendix A". This Court on October 6, 2025, finding that the First Circuit had judged the Appeal, denied the Petition for Writ of Certioriari which was invoking Rule 11. See "Appendix B".

The Petitioner, knowing the reason of the Court of Appeal's denial on August 7, 2025, then proceeded, on August 20, 2025, to submit a Motion for Authorization to File a Second or Successive Motion to Vacate, Set Aside or Correct Sentence Under 28 U.S.C. §2244(b)(3)(A) & 2255(h). See "Appendix C". The Petitioner had recently discovered new evidence of federal lack of subject matter jurisdiction which established Petitioner's innocence of violating any federal law. He was judged in violation of the due process of law contained in Const. Amend. V & XIV. The Respondent took away jurisdiction from the Commonwealth of Puerto Rico in violation of 18 U.S.C. §3231 that provides: "Nothing in this title shall be held to take away or impair the jurisdiction of the courts of the several States under the laws thereof.", which is impairing an equal justice under law.

The Petitioner is once again looking for justice after more than twenty years of incarceration in violation of his constitutional rights that has been proven in light of evidence contained in the record.

But the Court of Appeals for the First Circuit has not yet granted or denied the Petition filed on August 20, 2025 in violation of 28 U.S.C. §2244 (b)(3)(D).

## REASONS FOR GRANTING THE PETITION

This case presents a pure question of statutory interpretation under 28 U.S.C. §2244(b)(3)(D) on which the Courts of Appeals are divided, and on which this Court has not spoken.

The Petitioner is invoking the supervisory authority of this Court for the following reasons:

- 1) To correct a grave and systematic deviation of Courts of Appeals.
- 2) The Appeals Courts are ignoring an express congressional mandate: The 30 days mandatory limit provided by 28 U.S.C. §2244(b)(3)(D).

This issue does not refer to the personal petition filed by the Petitioner before the Court of Appeals, but instead, to that of an urgent and structural federal question, which affects all habeas petitions and powers separation between Congress and the judiciary.

### POWERFUL SUPREME COURT-LEVEL ARGUMENTS

#### 1. Direct Defiance of Congress

The First Circuit - in line with multiple circuits - has openly treated a Congressionally mandated deadline as optional, in direct conflict with the statutory text.

Congress did not use permissive or discretionary language in 28 U.S.C. §2244(b)(3)(D); it unequivocally commanded that the Court of Appeals "shall grant or deny" authorization to file a successive habeas petition "not later

than 30 days". The First Circuit's refusal to comply transforms a mandatory deadline into an advisory suggestion - an interpretation that finds no support in the text, structure, or legislative purpose of AEDPA.

## **2. Separation of Power Crisis**

Allowing the Court of Appeals to disregard 28 U.S.C. §2244(b)(3)(D) undermines Congress' constitutional authority and violates separation of powers.

Congress alone holds the Article I power to set jurisdictional limits and procedural mandates governing federal habeas review. When a federal court ignores an explicit statutory deadline enacted by Congress, it does not merely interpret the law - it overrides it. This Court has long recognized that the judiciary may not "rewrite clear congressional commands." Yet that is exactly what has occurred here. By refusing to comply with the 30-days mandate, the Courts of Appeals have effectively rewritten federal law, undermining Congress' authority and eroding public trust in the judicial process. This judicial usurpation of power requires this Court's intervention to restore the constitutional balance.

## **3. This Court has Never Ruled on This and Must**

The question presented is purely legal, outcome - affecting nation wide, and this Court has never addressed it - making this case an ideal vehicle for review, for this Court to restore uniformity, enforce Congress' words, and prevent further erosion of constitutional boundaries.

This Court's intervention is necessary to resolve this important question and ensure that the judiciary does not continue to undermine Congress' authority.

The statutory question concerns no factual dispute and requires development. It recurs across multiple circuits and affecting the foundational administration of federal habeas corpus. And critically, this Court has never once interpreted 28 U.S.C. §2244(b)(3)(D)'s 30-day command without consequences. Only this Court can restore uniformity and enforce the statute as written.

As an example of 28 U.S.C. §2244(b)(3)(D) violation for the following Courts of Appeals:

First Circuit's Position: "First, '[t]he court [2017 U.S. App. LEXIS 10] of appeals shall grant or deny the authorization to file a second or successive application not later than 30 days after the filing of the motion.' Id. §2244(b)(3)(D). Although we have exceeded this time limitation here, we have previously concluded that it 'operates as a guideline, not as an imperative.' Rodriguez v. Superintendent, Bay State Corr. Ctr., 139 F. 3d 270, 272-73 (1st Cir. 1998), abrogated in part by Bousley v. United States, 523 U.S. 614, 118 S. Ct. 1604, 140 L. Ed. 2d [871 F. 3d 78] 828 (1998). Nevertheless, the existence of this thirty-day guideline suggests that a request for certification that can only be denied by working through complex issues is a certification request that should likely be granted. See Evans-Garcia v. United States, 744 F. 3d 235, 238 (1st Cir. 2014)('[I]n ruling on certification requests, we often must strive to move more quickly than a full consideration of the merits might reasonably require.')", "28 U.S.C. §2244(b)(3)(D) is horatory or advisory rather than mandatory. Before operating as a mandate, a statutory time limitation addressed to a public official generally must contain both an express command that the official act within a given temporal period and a consequence attached to noncompliance. Although §2244(b)(3)(D) invokes the vocabulary of obligation -- it states that a court of appeals 'shall' grant or deny a request to file a second or successive petition within 30 days -- it specifies no consequence for the court's failure to honor this obligation."

Daniel A. Moore v. United States of America, 871 F. 3d 72; 2017 U.S. App. LEXIS 17709.

"Section 2255(h). The court of appeals must make this determination within thirty days, usually with only the defendant's application (and no response from the government) before it. 28 U.S.C. §2244(b)(3)(D). In light of these limitations, the court of appeals' grant of authorization is only a preliminary determination indicating the claim has possible merit to warrant a fuller exploration by the district court."

...

Hector Santiago Rodriguez v. Superintendent, Bay State Correctional Center, 139 F. 3d 270; 1998 U.S. App. LEXIS 5709.

Second Circuit's Position: "A court may exceed the 30-day time limit under 28 U.S.C. §2244(b)(3)(D) where an issue requires a published opinion that cannot reasonably be prepared in 30 days."

Ruddy Quezada v. Joseph Smith, 624 F. 3d 514; 2010 U.S. App. LEXIS 21655.

"It is true that Congress has directed courts of appeals to act on second or successive applications within 30 days. 28 U.S.C. §2244(b)(3)(D). But even if that time limit were mandatory, absent a rule tolling the limitations period while the application remained pending, a petitioner in fact would have only 11 months in which to file a second or successive 28 U.S.C.S. §2255 motion. The United States Court of Appeals for the Ninth Circuit does not think such a regime can be squared with Congress' clearly stated intent to impose a uniform one-year limitations period with respect to all §2255 motions."

Orona v. United States, 826 F. 3d 1196, June 14, 2016.

Third Circuit's Position: "The Eighth Circuit's approach is inconsistent with the text of Section 2255(h)(2), which contains only 'three prerequisites,' Tyler, 533 U.S. at 662, and no requirement that we scrutinize a motion to see if it would produce a 'second new rule.' Nor does the context of Section 2244(b) support such a position. As stated above, we ordinarily rule on a Section 2255 (h)(2) motion within thirty days, 28 U.S.C. §2244(b)(3)(D), and without the possibility of a 'petition for rehearing or for a writ of certiorari,' 28 U.S.C. §2244(b)(3)(E). As the Supreme Court has observed, we do not 'have to engage in ... difficultly legal analysis' under such cramped conditions. Tyler, 533 U.S. at 644."

Thomas F. Hoffner, Jr., 870 F. 3d 301; 2017 U.S. App. LEXIS 17284

"28 U.S.C.S. §2244, a provision of the Antiterrorism and Effective Death Penalty Act of 1996, establishes the procedural and substantive requirements which govern second or successive habeas petitions. As a procedural matter, 28 U.S.C.S §2244(b)(3)(A) establishes a gatekeeping mechanism that requires a prospective applicant to file in the court of appeals a motion for leave to file a second or successive habeas application in the district court. Once a petitioner moves for authorization to file a second or successive petition, a three-judge panel of the court of appeals must decide within 30 days whether there is a *prima facie* showing that the application satisfies 28 U.S.C.S. §2244's substantive requirements. 28 U.S.C.S. §2244(b)(3)(D).

Robert Benchoff v. Raymond Colleran, 404 F. 3d 812; 2005 U.S. App. LEXIS 6838

Fourth Circuit's Position: "The 28 U.S.C.S. §2244(b)(3)(D) deadline is precatory, not mandatory. A statutory time period is not mandatory unless it

both expressly requires action within a particular time period and specifies a consequence for failure to comply with the provision. Because Congress prescribed no consequence for noncompliance with §2244(b)(3)(D), the provision is merely horatory or advisory.", "The court may consider a pre-filing authorization motion for longer than 30 days if the importance and complexity of the issues presented justify such extended consideration."

"Williams initially maintains that the 30-day deadline established by §2244(b)(3)(D) may not be extended and that the appropriate remedy for a violation of this deadline is to grant the PFA motion. This argument founders on circuit precedent. In *In re Vial*, 115 F. 3d 1192 (4th Cir. 1997)(en banc), the deadline passed before the court ruled on a PFA motion, but we indicated that extended consideration was appropriate because [2003 U.S. App. LEXIS 6] 'the importance of the issue presented justified delay.' *Id.* at 1194 n. 3. This statement defeats Williams' claim that this court may not extend the 30-day deadline."

"The other courts of appeals to consider this question have likewise concluded that the §2244(b)(3)(D) deadline is 'precatory, not mandatory.' *United States v. Barrett*, 178 F. 3d 34, 42 n. 2 (1st Cir. 1999)(internal quotation marks omitted); accord *Browning v. United States*, 241 F. 3d 1262, 1263 (10th Cir. 2001)(en banc); *Gray-Bey v. United States*, 201 F.3d 866, 867 (7th Cir. 2000); *In re Siggers*, 132 F. 3d 333, 336 (6th Cir. 1997); *Galtieri v. United States*, 128 F. 3d 33, 36-37 (2d Cir. 1997). But cf. *Gray-Bey*, 201 F. 3d at 871-75 (Eastbrook, J., dissenting)(criticizing decisions--including *Vial*-- that allow courts of appeals to extend the 30-day deadline). The Sixth Circuit has offered a particularly persuasive explanation for this position, premised on the general rule that a 'statutory time period is not mandatory unless it both expressly require [action] within a particular time period [2003 U.S. App. LEXIS 7] and specifies a consequence for failure to comply with the provision.' *Siggers*, 132 F. 3d at 336 (internal quotation marks omitted); accord *Holland v. Pardee Coal Co.*, 269 F. 3d 424, 432 (4th Cir. 2001)(noting, with citation to *Siggers*, the 'recognized canon of construction which instructs against treating statutory timing provisions as jurisdictional unless such a consequence is clearly indicated'), cert. denied, 537 U.S. 1159, 154 L. Ed. 2d 892, 123 S. Ct. 986 (2003). The Sixth Circuit concluded that because Congress presecribed no consequence for noncompliance with §2244(b)(3)(D), the provision is merely 'horatory or advisory.' *Siggers*, 132 F. 3d at 336."

"In *Tyler*, the Supreme Court held that a PFA motion may be granted under §2244(b)(2)(A) only if the Supreme Court has held that a particular rule of constitutional law applies retroactively to cases on collateral review. See *id.* at 663. In reaching this holding, the Court relied in part on [2003 U.S. App. LEXIS 8] §2244(b)(3)(D):

'The court of appeals must make a decision on [a PFA motion] within 30 days... It is unlikely that a court of appeals could make [the necessary] determination in the allotted time if it had to do more than simply rely on Supreme Court holdings on retroactivity. The stringent time limit thus suggests that the courts of appeals do not have to engage in the difficult legal analysis that can be required to determine questions of retroactivity in the first instance. *Id.* at 664.'

'Nothing in *Tyler* suggests that §2244(b)(3)(D) is mandatory (let alone that the remedy for failure to comply with the 30-day deadline is to grant pre-filing authorization). In *Tyler*, the Supreme Court fashioned a rule that would enable courts of appeals to comply with §2244(b)(3)(D) in the vast majority of [330 F. 3d 281] cases. This is not inconsistent, however, with our prior deter-

mination that we may exceed the 30-day limitation in the exceptional cases that cannot be resolved more quickly. Cf. Galtieri, 128 F. 3d at 37 (stating that PFA motions usually present relatively simple questions but, when they do not, "we do not think that Congress [2003 U.S. App. LEXIS 9] wanted courts to forgo reasoned adjudication"). Accordingly, we adhere to our determination in Vial that we may consider a PFA motion for longer than 30 days if the importance and complexity of the issues presented justify such extended consideration."

Billy Williams, 330 F. 3d 277; 2003 U.S. App. LEXIS 10448.

Sixth Circuit's Position: "The habeas statute permits the district court to determine for itself whether the petitioner has met the gatekeeping requirements of 28 U.S.C.S. §2255(h). 28 U.S.C.S. §2244(b)(4). Congress has also asked courts to make these decisions quickly, ideally within 30 days of a motion's filing and often with little if any briefing. 28 U.S.C.S. §2244(b)(3)(D)."

Alford D. Embry, 831 F. 3d 377; 2016 U.S. App. LEXIS 13798; 2016 FED App. 0177p

Seventh Circuit's Position: "An application for leave to file a successive collateral attack must be certified as provided in the Antiterrorism and Effective Death Penalty Act (Act), 28 U.S.C.S. §2244. The Act, 28 U.S.C.S. §2244(b)(3)(D) states that the court of appeals must act within 30 days. This time limit governs petitions under 28 U.S.C.S. §2255. If deferral cannot exceed 30 days, the ability to collect a sanction is diminished."

Anthony Alexander v. United States of America, 121 F. 3d 312; 1997 U.S. App. LEXIS 21120.

Ninth Circuit's Position: "When a 28 U.S.C.S. §2255(h) motion presents a complex issue, the court may exceed 28 U.S.C.S. §2244(b)(3)(D)'s thirty-day limit. A statutory time period providing a directive to an agency or public official is not ordinarily mandatory unless it both expressly requires the agency or public official to act within a particular time period and specifies a consequence for failure to comply with the provision. And because Congress has failed to specify a consequence for noncompliance with the thirty-day time limit imposed by §2244(b)(3)(D), failure to comply with that time limit does not deprive the court of the power to grant or deny a motion to file a second or successive petition."

Selso Randy Orona v. United States of America, 826 F. 3d 1196; 2016 U.S. App. LEXIS 11314

Tenth Circuit's Position: "While 28 U.S.C.S. §2244(b)(3)(D) provides that a motion for authorization of a second or successive petition should be resolved within thirty days, this time limit is horatory or advisory rather than mandatory."

United States of America v. Cory Devon Washington, 890 F. 3d 891, 2018 U.S. App. LEXIS 12557.

Eleventh Circuit's Posistion: "The language of 28 U.S.C.S. §2244(b)(3)(D) does not make its 30-day timeframe mandatory. It is true that the statute says a court 'shall grant or deny' applications 'not later than 30 days' after filing. But the statute makes no provision for what happens when compliance with that timeline is not practical. The law is well-established that a statutory time period is not mandatory unless it both expressly requires an agency or public official to act within a particular time period and specifies a consequence for failure to comply with the provision.",

"The court of appeals shall grant or deny the authorization to file a second or successive application for a writ of habeas corpus not later than 30 days after the filing of the motion. 28 U.S.C.S. §2244(b)(3)(D). The appellate court necessarily must apply 28 U.S.C.S. §2244(b)(2) under a tight time limit in all cases, since the statute expressly requires the appellate court to resolve the application within 30 days, no matter the case. The 30-day time limit may be exceeded only in exceptional circumstances, where the issue is particularly complex, or the appellate court's schedule is congested."

Anthony Johnson, 810 F. 3d 1247; 2016 U.S. App. LEXIS 970.

This Court actually has under review the case Michel Bowe, Petitioner v. United States, Respondent with No. 24-11704 docketed on September 3, 2024. The Respondent agrees that the courts of appeals shall grant or deny, not later than 30-days, the application to file a second or successive §2255. See Respondent's brief pag. 14 line 1-10. But, until now, the shown courts of appeals courts of appeals have not enforced 28 U.S.C.S. §2244(b)(3)(D).

## **CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Wilfredo Feliciano Rodriguez

Date: October 27, 2025