25-7038

No.

In the Supreme Court of the United States

SCOTT EDWARD PALMER,
Petitioner,

vs.

ERIC GUERRERO,
Respondent.

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

BRIEF FOR THE PETITIONER

SCOTT EDWARD PALMER
No. 660844
Alfred D. Hughes Unit
3201 FM 929
Gatesville, TX 76597

QUESTIONS PRESENTED FOR REVIEW

1. Does the Fifth Circuit's erroneous denial of petitioner's certificate of appealability significantly depart from the accepted and usual course of judicial proceedings undermining Miller-El v. Cockrell, 537 U.S. 322 (2003). And, is the Court of Appeals complaint that petitioner's Rule 59(e) notice of appeal ineffective erroneous.

2. Is 28 U.S.C. §2241 available by a state prisoner to challenge the manner in which a sentence is executed without the restrictions of the AEDPA. This issue has not been decided by this Court.

LIST OF PARTIES

1. Petitioner:

   Scott Edward Palmer

2. Respondent:

   Eric Guerrero, Director, Texas Department of Criminal Justice, Correctional Institutions Division

3. Counsel for Respondent:

   Ken Paxton, Cara Hanna/Office of the Texas Attorney General

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OPINIONS BELOW

The decision of the state habeas court denying the underlying post-conviction relief was not reported. The Findings of Fact and Conclusions of Law, dated July 25, 2023 is at Appendix p. 1.

A Memorandum Opinion of the District Court of the Southern District of Texas Houston Division dismissing petitioner's underlying federal petition is unpublished. The decision may be found at Palmer v. Lumpkin, 2024 U.S. Dist. LEXIS 221416 (S.D. Tex. Dec. 6, 2024). It has been appended at Appendix p. 6.

The Memorandum Opinion denying petitioner Rule 59(e) relief is not reported. The decision dated April 23, 2025, is at Appendix p. 13.

An unpublishied opinion dated December 3, 2025 by the Fifth Circuit Court of Appeals denying a COA may be found at Palmer v. Guerrero, 2025 U.S. App. LEXIS 31476 (5th Cir. Dec. 3, 2025). It is appended at Appendix at 24.

JURISDICTIONAL STATEMENT

The judgment of the United States Court of Appeals for the Fifth Circuit was entered on December 3, 2025. Rehearing was not sought. The Jurisidiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

The principal factual issue in this case is whether the guarantees of the Fourteenth Amendment apply to the petitioner. The lower court's have answered in the negative.

The Fourteenth Amendment to the United States Constitution provides, in part:

No state shall deprive any person of life, liberty, or property without due process of law. U.S. Const., amend. XIV, § 1.

Texas Government Code § 508.154 provides, in pertinent part:

> "Contract on Release.
>
> (a) An inamte to be released on parole shall be furnished a contract stating in clear and intelligible language the conditions and rules of parole.
>
> (b) Acceptance, signing, and execution of the contract by the inmate to be paroled is a precondition to release on parole.
>
> * * * * *
>
> (d) A releasee while on parole or mandatory supervision must be amenable to the conditions of supervision ordered by a parole panel."

28 U.S.C. § 2241(c) provides in relevant part:

> (3) He is in custody in violation of the Constitution or laws or treaties of the United States[.]

STATEMENT OF THE CASE

The facts necessary to place in their setting the questions now raised are outlined below:

I. COURSE OF PROCEEDINGS IN THE POST-CONVICTION CASE NOW BEFORE THIS COURT.

On January 27, 2023 Mr. Palmer instigated his state post-conviction application. A procedural thicket of impediments by prison officials and the state courts interfered with its timely processing. (See generally App. at 32 - 35 and supporting documents). The state habeas trial court denied relief on July 25, 2023. (App. at 5). The Texas Court of Criminal Appeals denied relief on August 23, 2023 without written order based on the findings of the trial court. (App. at 58).

With no notice from the state courts of the disposition of his post-conviction application, (App. at 34 & 35), Palmer filed his federal petition on November 3, 2023. (Id. at 34). Respondent filed an Answer on February 15, 2024. (App. at 54).

Mr. Palmer filed a timely response and amendment pursuant to 28 U.S.C. § 2241. (App. at 70 - 87). The district court denied his right to proceed pursuant to § 2241. (App. at 89 - 90). A timely notice of appeal was filed. An additional amendment containing verified avoidance defenses to the AEDPA statute of limitations was filed on July 15, 2024. (App. at 27 - 54). This

was denied. (App. at 92).

On December 6, 2024, the District Court entered an opinion dismissing all claims with prejudice. (App. at 6).

A timely Rule 59(e) motion was filed on the denial of Palmer's amendment containing verified avoidance defenses to the statute of limitations barring his claim. (App. at 93 - 100). Respondent was ordered to respond within 30 days and Palmer to reply thereafter within 15 days. (App. at 101). Without any requested extension of time, Respondent's Response was 48 days tardy. (App. at 102). The court sua sponte accepted Respondent's untimely Response and denied 59(e) relief without allowing a reply from Palmer. (App. at 13). A timely notice of appeal followed. (App. at 116 - 117).

Mr. Palmer filed his Motion for COA and Brief in Support with the Fifth Circuit. (App. at 118 - 148). The Fifth Circuit denied a COA on December 3, 2025. (App. at 24).

II. RELEVANT FACTS CONCERNING THE UNLAWFUL RECESSION OF MR. PALMER'S GOOD TIME CREDITS.

The Texas Board of Pardons and Paroles failed to comply with the constitutional guarantee of the Fourteenth Amendment governing his supervised release. The contractual conditions of release were memorialized in a document titled Certificate of Parole. (App. at 67 - 69). Critically, the omission involved

his right to notice of proscribed conduct in connection with the loss of his good time credits which he possessed a liberty interest in.

The district court in disposing of this constitutional claim conceded the lack of notice, but concluded nonetheless that the mere existence of state forfeiture laws was all the notice required. (App. at 22).

Importantly, the only actual notice Mr. Palmer had was that his good time credits were intact by the plain and unambigious contractual conditions presented to him by the Texas Board of Pardons and Paroles and agreed to by both parties. To hold otherwise is to trivialize constitutional process.

Absent the unlawful recession of the 15 years, 5 months, and approximately 23 days of accrued good time credits, Mr. Palmer would have been released to his nondiscretionary mandatory supervision on December 15, 2024. He has no detainers barring his unconditional release.

III. The Fifth Circuit Has Departed Significantly From the Accepted and Usual Course of Judicial Proceedings in Denying Petitioner a COA.

Palmer deems it unnecessary to outline in this petition the entire thrust of this Court's decisions concerning the standard of review for COA's. It is sufficient to say that a petitioner satisfies this standard by demonstrating that "jurists of reason

could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." Miller-El v. Cockrell, 537 U.S. 322, 327 (2003)(citing Slack v. McDaniel, 529 U.S. 473, 484 (2000). For issues dismissed on procedural grounds, a COA should be issued if "jurists of reason would find it debatable whether the district court was correct in its procedural ruling." Slack, 529 U.S. at 484.

Yet, here, the Fifth Circuit in issuing a blanket denial of Palmer's well-pled COA, (App. at 121 - 151), as to all claims presented did not provide any reasoned assessment justifying the dismissal. (App. at 24). Compare: "While a COA ruling is not the occasion for a ruling on the merit of petitioner's claim," Miller-El, 537 U.S. at 331, it would seem some assessment of Palmer's well-pled and substantively meritorious arguments was necessary to explain the denial. Miller-El, 537 U.S. at 336 (emphasizing that "[t]he COA determination ... requires an overview of the claims in the habeas petition and a general assessment of their merits.").

Troubling as well, the district court failed to offer any reasoned assessment other than a mere ipse dixit. But to deny a COA, a court must necessarily conclude that the claim is indisputably meritless. A reviewing court cannot determine that

a claim is indisputably meritless (that is, nondebatable) without first deciding that it is meritless. See Weeks v. Angelone, 528 U.S. 225, 231 (2000)(affirming denial of COA after determining that petitioner's claim was meritless).

Again, Mr. Palmer's claims are well-pled and substantively meritorious. To avoid repetition and for the sake of brevity, Mr. Palmer would respectfully refer this Court to Section I at pp. 10 - 34 where the issues are briefed.

By comparison, the district court's resolution of Palmer's claims were not merely debatable, but patently erroneous in result and reasoning. As such, it blinks reality to conclude that the lower court's have done anything less than surreptiously undermined the gate keeping function of the certificate of appealability process to achieve a predetermined outcome.

Certiorari should be granted to review the Fifth Circuit's radical departure of the review standard of Mr. Palmer's COA. See Hollingsworth v. Perry, 558 U.S. 183, 196 (2010)(per curiam) (citing this Court's Rule 10(a)).

SUMMARY OF ARGUMENT

This writ of certiorari follows on the heels of Mr. Palmer's pending Application For Emergency Injunctive Relief of Respondent's illegal imprisonment of him currently before this Court.

Mr. Palmer's initial brief to this Court was belatedly postmarked December 1, 2025 and received by this Court on December 8th due to processing errors within the institution. However, the Fifth Circuit was alerted to the petition and hastily cleared the case off its docket.

The conclusory and erroneous inattention of the opinion is the functional equivalent of the failure to decide. Thus, the answers to the crucial questions presented are anyone's guess.

The Fifth Circuit's position is strong evidence of insincerity and displays a lamentable lack of appreciation for this Court's time constraints and precedents.

Ultimately, it is this Court's duty to say what the law is. The lower court's rulings cannot be made to vanish the protection of clearly established federal law so easily.

ARGUMENT FOR ALLOWANCE OF WRIT

I. WHETHER THE LOWER COURTS DENIAL OF A COA WAS NOT ONLY DEBATABLE; IT WAS ERRONEOUS.

(a) Whether reasonable jurists would agree that the District Court's decision that revocation of petitioner's good time credits was not a violation of due process distorts Swarthout v. Cooke, 562 U.S. 216 (2011).

A. Clearly Established Federal Law.

The right that a prisoner cannot be deprived of a protected liberty interest in good time credits without procedural due process has undoubtedly been fully established by this Court. Wolff v. McDonnell, 418 U.S. 539, 557 (1974). Critical to the instant case is notice. In Wilkinson v. Austin, this Court emphasized: "For more than a century the central meaning of procedural due process has been clear: 'Parties whose rights are to be affected are entitled to be heard; and in order that they enjoy that right they must first be notified.'" 545 U.S. 209, 226 (2005)(quoting Fuentes v. Shevin, 407 U.S. 67, 80 (1972)). "These essential constitutional promises may not be eroded." Hamdi v. Rumsfeld, 542 U.S. 507, 533 (2004)(plurality opinion). And, this Court has been clear that the Constitution requires that "a person of ordinary intelligence [must be given] fair

notice that his contemplated conduct is forbidden." Palmer v. City of Euclid, 402 U.S. 544, 545 (1971)(per curiam). This Court has further established that inquiry notice does not relieve the State of its constitutional obligation to provide adequate notice. Jones v. Flowers, 547 U.S. 220, 232 (2006).

B. Mr. Palmer's Liberty Interest.

Palmer acknowledges that generally violation of state law does not constitute a basis for federal habeas relief. Wansley v. Miss. Dep't of Corr., 769 F.3d 309, 312 (5th Cir. 2014). However, "[w]hen a state has a system of mandatory parole, such a liberty interest exists that implicates the procedural guarantees of the Due Process Clause." Id. (citing Bd. of Pardons v. Allen, 482 U.S. 369, 373-74 (1987).

In Texas, it is settled that a constitutional expectancy of early release existed in Texas' mandatory supervision scheme in place for crimes committed before September 1, 1996. Teauge v. Quarterman, 482 F.3d 769, 774 (5th Cir. 2007).

Palmer's offense of Theft by Check was committed in June 1990, and he does not have any offenses rendering him ineligible for mandatory supervision. Tex. Gov't Code § 508.149(a). Thus, he has a liberty interest in his good time credits. Teauge, 482 F.3d at 777.

C. Texas Government Code § 508.154.

The statute provides the framework for this claim. It provides, in relevant part:

> "Contract on Release
>
> (a) An inmate to be released on parole shall be furnished a contract stating in clear and intelligible language the conditions and rules of parole.
>
> (b) Acceptance, signing, and execution of the contract by the inmate to be paroled is a precondition to release on parole.
>
> (d) A releasee while on parole ... must be amenable to the conditions of supervision ordered by a parole panel."

1. Standard of Review for State-Created Liberty Interests.

"[A] state creates a protected liberty interest by placing substantive limitations on official discretion." Kentucky Dep't of Corrections v. Thompson, 490 U.S. 454, 462 (1989)(citing Olim v. Wakinekona, 461 U.S. 238, 249 (1983). The Court observed "that the most common manner in which a State creates a liberty interest is by establishing 'substantive predicates' to govern official decision-making, [citation omitted], and, further by mandating the outcome to be reached upon a finding that the relevant criteria have been met." Thompson, 490 U.S. at 462.

2. Definitions.

Applying the above standards, Subsection (a) provides that

the Texas Board of Pardons and Paroles ("TBPP") "shall [1] [mandatory action] ... furnish[] [2] a contract in clear [3] and intelligible language the conditions [4] and rules of parole." (substantive predicate eliminating official discretion). This section is also subject to particularized critera. I.e., the "contract [shall state] in clear and intelligible language the conditions and rules of parole."

Section (b) reads: "Acceptance, signing and execution of the contract by the inmate to be paroled is a precondition to release on parole." The term precondition or condition precedent are functionally synomous. EEOC v. Temps Co., 679 F.3d 323, 331 n. 13 (5th Cir. 2012). A condition precedent is an event that must be performed before a right can accrue to enforce an obligation. See Crest Ridge Constr. Group v. Newcourt Inc., 78 F.3d 146, 150 (5th Cir. 1996).

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[1] "Shall does not merely suggest or recommend that a thing be done — it commands it done. Shall imposes a duty." Timmins v. State, 601 S.W. 3d 345, 352 (Tex. Crim. App. 2020).

[2] In the dictionary the verb "furnish" is defined as "provide with what is needed" or "supply; give." Furnish, Merriam-Webster Collegiate Dictionary (10th ed. 2001). The plain meaning of the words are not defined in the statute so resort to dictionary definitions is appropriate. Timmins, 601 S.W. 3d at 351-52.

[3] "Clear" means "unambiguous," or "free from doubt." Black's Law Dictionary 268 (8th ed. 2004).

Section (d) of the statute then concludes: "A releasee while on parole ... must[5] be amenable to the conditions of supervision ordered by a parole panel." This provision mandates a particular substantive outcome — release to parole when the relevant mandatory language and substantive predicates are met. See Clifford v. Beto, 464 F.2d 1191, 1195 (5th Cir. 1972).

3. § 508.154 is Legally Considered a Contract.

The title of § 508.154 reads: "Contract on Release." Although, a statutory title or caption does not limit or expand a statute's meaning, the title can inform the object to be attained by the Legislature. Watkins v. State, 619 S.W. 3d 265, 273 (Tex. Crim. App. 2021). The fact is that the Texas Legislature considers what is generically referred to as a Certificate of Parole, (App. at 67 - 69), to legally be a contract. This conclusion is buttressed by the exclusive use of the word "contract" in both subsection (a) and (b). Id. at 271 - 272 (Texas courts focus on the statutes literal text). And, each word, phrase, clause, and sentence should be given effect. Id. at

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[4] A "condition" is defined by Black's Law Dictionary as "[a] future and uncertain event upon the happening of which is made to depend the existence of liability under a contract to a certain future event." Black's law Dictionary (6th ed. 1990).

[5] Texas's Code Construction Act instructs that the term "must" reflects a condition precedent. Tex. Gov't Code § 311.016(3).

272.

Relatedly, "[n]onprosecution agreements, like plea bargains, are conctrual in nature, and therefore interpreted in accordance with general principles of contract law." United States v. Perry, 35 F. 4th 293, 348 (5th Cir. 2022)(citation omitted). Accordingly, general principles of contract interpretation sensibly apply here too.

4. **Statutory Purpose of § 508.154.**

The substantive limitations that the Texas Legislature impose on the TBPP as applied to Mr. Palmer were to guarantee that the notification process of any condition of his release would not result in "substantially unfair or mistaken deprivations" of protected interests. Fuentes, 407 U.S. at 81; Wolff, 418 U.S. at 558 ("The touchstone of due process is protection of the indiviual against arbitrary action of government.").

5. **Was § 508.154 Violated?**

Respondent's production of Mr. Palmer's Certificate of Parole (hereafter contract) provides the uncontested evidence of this constitutional violation. (App. at 67 - 69). This offical state signed document is "entitled to a presumption of regularity and are accorded great evidentary weight." United States v. McDaniels, 907 F.3d 366, 371 (5th Cir. 2018)(citation omitted).

Independent research reveals that the TBPP was aware of their minimum due process obligations for furnishing notice of the condition of the possible loss of good time credits. See Reynolds v. Johnson, 2001 U.S. Dist. LEXIS 25102, * 22 (N.D. Tex. Feb. 20, 2001)(applying § 508.154 to Reynolds contract states that "all good time credits will be forfeited if a parolee violates the conditions of his parole."); Graham v. Johnson, 2000 U.S. Dist. LEXIS 20272, * 14 - 15 (N.D. Tex. Dec. 26, 2000)(applying § 508.154 to Graham's contract states that "all good time credits will be forfeited if a parolee violates the conditions of his parole.").

"Parol evidence is always admissible to show the non-existence of a contract or the conditions upon which it may become effective." Baker v. Baker, 143 Tex. 191, 183 S.W. 2d 724, 728 (1944). Mr. Palmer was not furnished the condition that proscribed conduct would result in the forfeiture of his good time credits. (App. at 67 - 69).

Here, we have the Texas Legislature's clear, direct, and unambiguous language in § 508.154. As explained, the statute contains: (1) specific substantive predicates eliminating official decision-making, and (2) explicitly mandatory language specifying the outcome that must be reached if the substantive predicates have been met.

To put a finer point on it, compare the sorts of criteria set out above with what was required in the quintessential example of a ministeral duty: the delivery of the commission in Marbury v. Madison, 5 U.S. 137 (1803). There, Marbury's commission had been signed and sealed, but not delivered. The Secretary of State was required by law to just hand over the parchment, a function that required no judgment and where nothing was left to discretion. Id. at 158. The same ministeral duty in Marbury inures to Palmer's lack of notice here by the TBPP regarding the loss of his liberty interest in his good time credits under § 508.154.

D. Supreme Court Precedent Addressing the Violation.

First and principally, the TBPP's failure to comply with § 508.154 as applied to Mr. Palmer above is prohibited. See French's Lessee v. Spencer, 62 U.S. (21 How.) 228, 238 (1858) ("[W]here the legislature makes a plain provision, without making any exception, the courts can make none."). Texas law provides for the same protection. Cobra Oil & Gas Corp. v. Sadler, 447 S.W. 2d 887, 892 (Tex. 1968)(citing Foster v. City of Waco, 113 Tex. 352, 255 S.W. 1104 (1923).

Under Texas law, the TBPP had no authority to suspend or alter § 508.154. Brown Cracker & Candy Co. v. City of Dallas, 104 Tex. 290, 137 S.W. 342, 343 (1911). Palmer further urges

that the TBPP's failure to comply with its ministeral duty in § 508.154 as applied to Palmer renders the contract void. See Foster, 255 S.W. 2d at 1106 ("All acts beyond the scope of the powers granted are void.").

Mr. Palmer's liberty interest in his good time credits required that he be furnished notice off all the conditions of his supervised release. Wilkinson, 545 U.S. at 226. That notice was required to provide "a person of ordinary intelligence fair notice that his contemplated conduct is forbidden." Palmer, 402 U.S. at 545.

Then, too, the Constitution allows a state to revoke good time credits only when "some evidence" supports the decision. Superintendent, Mass. Corr. Inst., Walpole v. Hill, 472 U.S. 445, 455 (1985). That's not a high standard: this Court observed that it entails less than the "substantial evidence" standard commonly used in administrative law, and materially less than the "beyond a reasonable doubt" standard used in criminal proceedings. Id. at 456. But there must be some evidence. Here, there is none that Palmer was furnished notice in the contract by the TBPP that any proscribed conduct would result in the loss of his good time credits. (App. at 67 - 69).

1. **District Court's Opinion Fails to Comport with Due Process.**

The District Court's theory for alleging no constitutional

violation of Mr. Palmer's good time credits is weakly grounded in:

> "[F]orfeiture was required under Texas Government Code § 498.004(b). Because the credit was forfeited pursuant to state law, petitioner had fair notice that it would be forfeited if his parole were revoked. Petitioner cites no authority holding that § 498.004(b) is unenforceable, or violates federal due process ... if its provisions do not appear within the parole contract itself."

(App. at 22). The lower court's perfunctory argument appears to be claiming an inquiry notice theory. The reliance is misplaced.

Significantly, in Jones v. Flowers, the state argued that an owner has "inquiry" notice that her property may be subject to forfeiture if she fails to receive a property tax bill and fails to pay property taxes. 547 U.S. at 231 - 32. Recognizing that it is "common knowledge that property may become subject to government taking when taxes are not paid," this Court nevertheless held that "inquiry" notice "does not excuse the government from complying with its constitutional obligation of notice." Id. at 232. Jones is equally applicable here too.

Given the analysis above, it strains reason to understand how reasonable jurists would agree that no due process violation occured in the unlawful loss of Palmer's good time credits. See Swarthout v. Cooke, 562 U.S. 216, 219 (2011)(per curiam)("whether the procedures followed by the State were constitutionally sufficient.").

(b) Whether reasonable jurists could debate the District Court's procedural holding that the state habeas proceedings were an adjudication on the merits and that exhaustion was not satisfied is erroneous.

The lower court asserted without explanation that the state habeas court's decision was an adjudication on the merits. (E.g., App. at 7 n. 1). Precedent counsels otherwise.

A. Texas Court of Criminal Appeals Holdings on State Law.

The Texas Court of Criminal Appeals ("TCCA") has refused to entertain the loss of good time credits or displinary proceedings. Ex parte Palomo, 759 S.W. 2d 671, 674 (Tex. Crim. App. 1988)(en banc).

It was not within the province of the district court to reexamine Texas state-court determinations on state-law questions. Bradshaw v. Richey, 546 U.S. 74, 76 (2005)(per curiam)("a state court's interpretation of state law ... binds a federal court sitting in habeas corpus"); see West v. AT&T, 311 U.S. 223, 236 (1940)("[T]he highest court of the state is the final arbiter of what is state law when it has spoken, its pronouncement is to be accepted by federal courts as defining state law[.]"). Out of an abundance of caution, because Palmer did submit his claim to the state court he will address those findings.

The TCCA's disposition was denied relief without written order based on the findings of the trial court. (App. at 58). The state habeas court's ultimate decision was "denied". (App. at 1 & 4). Under Texas jurisprudence a denial often signifies that the court addressed and rejected the merits of a particular claim. Ex parte Thomas, 953 S.W. 2d 286, 288 (Tex. Crim. App. 1997)(en banc). However, the Court issued a caveat explaining that "[i]n determining the nature of a disposition, ... we look beyond mere labels to the substance of the action taken. Id. at 289 (citations omitted).

Here, the state habeas court's Findings of Fact and Conclusions of Law held in pertinent part:

> "13. Claims regarding good conduct time are not cognizable in a writ of habeas corpus. Ex parte Paloma, 759 S.W. 2d 671 (Tex. Crim. App. 1988).
>
> 16. The applicant fails to show his good time credit claim is cognizable in the instant proceeding."

(App. at 2). Therefore, the label of "denied" was not dispositive. Ex parte Thomas, 953 S.W. 2d at 289. The state habeas court's decision was resolved based on the holding in Ex parte Paloma – unrelated to the merits. The TCCA's affirmance supports that decision. See Ylst v. Nunnemaker, 501 U.S. 797, 804 (1991) ("silence implies consent" and courts affirm "without further

discussion when they agree; not when they disagree, with the reasons given below.").

Because the Texas state court's did not reach the merits of Palmer's due process claim, it is reviewed de novo. Cone v. Bell, 536 U.S. 449, 472 (2009).

B. **Exhaustion.**

The district court has repetitively complained that Palmer's claim was not exhausted in the state courts. (App. at 19, 148 n. 1 and 149 - 150). This argument is meritless.

As established above, the TCCA does not entertain the loss of good time credits. Ex parte Paloma, 759 S.W. 2d at 674. And, as further established above because there was no adjudication on the merits, there was no failure to exhaust state court remedies. See Ortega v. Stephens, 784 F.3d 250, 251 n. 1 (5th Cir. 2015).

The lower court did acknowledge that Palmer exhausted his adminstrative remedies. (App. at 11).

It merits mentioning, that Mr. Palmer concedes that his initial assertion of the amount of good time credits were lost was flawed. (App. at 8 n. 3). The lower court seized on Palmer's error. (E.g., App. at 14 & 15). After further analysis of TDCJ's policy of good time credits applicable to Palmer and repeated review of the math, it was ascertained that the loss equaled

15 years, 5 months, and approximately 23 days. (e.g., App. at 19).

The district court continued to deny petitioner's calculation; however, the court conspiciously refused to have the official records entered into evidence. (App. at 151, 152 - 153). Sowing needless confusion and doubt into the record appeared to be a much more strategically desirable outcome for the district court in this case.

Circling back to the above claims, it cannot be genuinely debated that reasonable jurists would debate that there was an adjudication on the merits or that exhaustion was required as a matter of law.

(c) Is the Court of Appeals proffered reason that petitioner's Rule 59(e) notice of appeal is ineffective erroneous. And whether reasonable jurists could debate the district court's procedural ruling denying petitioner's Rule 59(e) motion.

A. Petitioner's Rule 59(e) Notice of Appeal was Effective.

The mistake that the Fifth Circuit ascribes to Mr. Palmer is not the whole story. (App. at 24 - 25). The incorrect date that the Court seizes on is not dispositive. The inadverent oversight of the correct date on page 1, (App. at 116), was appropriately corrected on page 2, (App. at 117), under the Certificate of Service made under penalty of perjury. See Rule 3(d) of the Rules Governing Section 2254 Cases ("Timely filing

may be shown by a declaration in compliance with 28 U.S.C. § 1746 ... which must set forth the date of deposit and state that first-class postage has been prepaid."). The Court of Appeals desire to ignore this fact makes its decision erroneous.

B. **Petitioner's Rule 59(e) Motion did Establish Grounds for Relief.**

The district court ordered Palmer's amendment stricken from the record on August 13, 2024 on the legal fiction that leave of court was not sought. (App. at 92). This is incorrect. See United States ex rel. Willard v. Humana Health Plan of Tex., Inc., 336 F.3d 375, 387 (5th Cir. 2003)("A formal motion [to amend is not always required, so long as the requesting party has set forth with particularity the grounds for the amendment and the relief sought[.]"). Mr. Palmer substantially complied. (App. at 27 - 28). The district court's erroneous legal conclusion was a "manifest error." Guy v. Crown Equip. Corp., 394 F.3d 320, 325 (5th Cir. 2004)("Manifest error' is one that 'is plain and indisputable, and that amounts to a complete disregard of the controlling law.'"); Martin v. Franklin Capital Corp., 546 U.S. 132, 139 (2005)("[A] motion to [a court's] discretion is a motion, not to its inclination, but to its judgment; and its judgment is to be guided by sound legal principles."). A manifest error of law or fact is a proper ground for Rule 59(e) relief. Demahy v. Schwarz Pharma, Inc., 702 F.3d 177, 182 (5th Cir. 2012)(per

curiam).

1. The District Court's 59(e) Focus.

The district court primarly focused on "futility," (App. at 22), but suggests that "undue delay" may be a factor in justifying denial of amendment. (App. at 21). As established in this Brief in Section I (a) [pp. 10 - 19] the district court's futility theory has no legal basis under this Court's well-settled precedents.

The lower court's reasoning is further complicated under Fifth Circuit precedent. In Mayeaux v. La. Health Serv. & Indem. Co., 376 F.3d 420, 427 (5th Cir. 2004) the panel explicitly held that "delay alone is an insufficient basis for denial of leave to amend: The delay must be undue, i.e., it must prejudice the nonmoving party or impose unwarranted burdens on the court." (emphasis in the original). Prejudice to respondent or unwarranted burdens on the court are not part of the record. This argument fails.

2. Petitioner's Verified Facts Overcoming District Court's Statute of Limitations Dismissal Presented in Rule 59(e) Motion.

Mr. Palmer's amendment, (App. at 27), presented in his Rule 59(e) motion, (App. at 95 - 97), confirmed that prison officials impeded his ability to swiftly pursue his administrative remedies

by thwarting access to a time dispute resolution form. (App. at 32 citing pg. 41 at ¶ 18 citing pg. 47 & 49). This resulted in a delay of 132 days. (id. at 32). Prison officials were presented with Palmer's state writ application on January 27, 2023 for mailing to the Harris County District Clerk ("HCDC"). (App. at 32 - 33 citing pg. 43 ¶¶ 24 - 26 citing pp. 51 - 53).

Under the AEDPA limitations one-year period the district court claimed Palmer had until Februar 15, 2023 to file to be timely. (App. at 11).

Palmer was led to beleive that his state writ was properly sent by prison officials. (App. at 33 citing pg. 43 ¶ 26 citing pg. 51). After the passage of only 76 days and no notice from the state court, Palmer sent correspondence to the HCDC inquiring as to the status. (App. at 34 citing pg. 44 ¶ 31). An inquiry was also sent to the Unit Mailroom too. (Id. at ¶ 30). It was discovered no legal mail of his had been logged as outgoing on or around January 27th. (Id.).

Mr. Palmer had an unqualified right to have his state post-conviction document mailed by prison officials. See Lewis v. Casey, 518 U.S. 343, 350 (1996)(recognizing right "prohibiting state prison officials from actively interfering with inmates' attempts to prepare legal documents or file them.").

Palmer sent another state writ to the HCDC on May 16, 2023.

(App. at 33 citing pg. 44 ¶ 28).

On August 14, 2023 with no notice from the state courts of a decision Palmer in diligent pursuit to prosecute his claim filed for mandamus relief in the TCCA. (App. at 34 citing pg. 44 ¶ 32).

It was subsequently determined that the TCCA denied relief on August 23, 2023. (App. at 58). At no time prior to filing his federal petition on November 3, 2023, (App. at 34 citing pg. 45 ¶ 34), did Palmer receive notice of the denial of his state post-conviction application. (Id.). However, the TCCA was legally obligated to notify Palmer of their disposition of his claim. Stroman v. Thaler, 603 F.3d 299, 302 (5th Cir. 2010)(per curiam) Statutory tolling would be available for the hiatus between August 23rd and November 3, 2023. Id.

3. **Mr. Palmer's Entitlement to Equitable Tolling.**

Given the impediments erected by prison officials and Palmer's over all diligent pursuit of his rights outlined above, he should be entitle to equitable tolling for the AEDPA limitations period as the district court claimed he was subject to. See Menominee Indian Tribe v. United States, 577 U.S. 250, 255 (2016)("a litigant is entitled to equitable tolling of a statute of limitations only if the litigant establishes two elements '(1) that he has been pursuing his rights diligently, and (2) that some

extraordinary circumstance stood in his way and prevented timely filing.'")(citation omitted). Mr. Palmer's initial amendment should have been allowed. Foman v. Davis, 371 U.S. 178, 182 (1962)("If the underlying facts or circumstances relied upon by a plaintiff may be a proper subject of relief, he ought to be afforded an opportunity to test his claim on the merits.").

4. **Respondent's 59(e) Artful-Pleading Response.**

Respondent erroneously alleged: "Palmer made no mention of seeking leave in his amended reply to the Director's answer, ECF No. 38, let alone, 'expressly request[]' to amend[.]" (App. at 107). Respondent's argument is a weakly asserted semantics based challenge. Compare Mr. Palmer's actual pleading. (App. at 27 - 28). Respondent's complaint that merely because Palmer did not use the magical words "seeks leave to amend" or some similar incantation of words is not a valid reason to deny amendment. See Erickson v. Pardus, 551 U.S. 89, 94 (2007)(per curiam) (affording pro se litigants the benefit of liberal construction).

Respondent further grieved: "Palmer fails to cite any authority in his 59(e) motion that allows the Court to consider an amended response filed outside the circumstances described in R. 15(a)(1)" or "15(a)(2)." (App. at 108). Respondent misstates the record. Mr. Palmer urged that because his amendment contained

avoidance defenses under the AEDPA limitations period barring his federal petition, that it was to be reviewed pursuant to Rule 15(a) citing Rosenblatt v. United Way of Greater Houston, 607 F.3d 413, 419 (5th Cir. 2010). (App. at 95).

5. **Respondent's Dilatory Motive Theory is Meritless.**

Respondent claimed without citation to authority, that Mr. Palmer's amendment contained a "dilatory motive." (App. at 109). The Fifth Circuit has equated "dilatory motive" as showing that the movant is "engaging in tactical maneuvers to force the court to consider various theories seriatim." Dussouy v. Gulf Coast Inv. Corp., 660 F.2d 594, 599 (5th Cir. 1981).

Respondent's complaint is troublesome and collapses after further discussion of the facts. First, when Palmer filed his amendment and response on March 1, 2024 to Respondent's Answer, (App. at 70), he relied on Galbraith v. Hooper, 85 F.4th 273, (5th Cir. 2023). Galbraith made clear two crucial factors applicable to his case: (1) "when [a party] [i]s not contesting the legality or validity of the sentence ... a petition must be construed under Section 2241[.]" Id. at 281. (2) where a claim "is properly brought under Section 2241 ... [t]here is no statute of limitations on that claim, so it cannot be dismissed as untimely." Id. at 284. Given these circumstances, Palmer

earnestly beleived that the later asserted avoidance defenses were unnecessary to his initial reply.

To be sure, it is unreasonable to expect Mr. Palmer to have omniscience regarding the lower court's subsequent flawed reliance on Kimbrell v. Cockrell and Malchi v. Thaler to deny his claim under § 2241. (App. at 89 - 90). Neither was it reasonable to predict the subsequent withdrawl of Galbraith on March 19th.

The lower court having taken this fatal detour, is what compelled Palmer to file his Amended Response to Respondent's Answer. (App. at 27 - 28). Respondent's argument fails. See Dussouy, 660 F.2d at 599 ("where the failure to include in the complaint a known theory of the case arises not from an attempt to gain tactical advantages but from a reasonable belief that the theory is unnecessary to the case, denial of leave to amend is inappropriate.").

There is no reason to beleive that reasonable jurists would not find the district court's assessment of this procedural ruling debatable or wrong.

(d) Whether reasonable jurists could debate the district court's procedural ruling that petitioner's loss of good time credits was cognizable under § 2241.

The district court complained that Palmer's loss of good time

credits was not cognizable under § 2241 citing Kimbrell v. Cockrell, 311 F.3d 361, 362 (5th Cir. 2002) and Malchi v. Thaler, 211 F.3d 953, 956 (5th Cir. 2000). (App. at 89 - 90). Palmer argues that the lower court's opinion ignores the Fifth Circuit Rule of Orderliness and further draws on inapposite authority.

The Fifth Circuit holds that when confronted by inconsistent precedent it applies the rule of orderliness. Adams v. City of Harahan, 95 F.4th 908, 913 n. 6 (5th Cir. 2024)(holding that one panel of our court may not overturn another panel's decision, absent certain changes in the law).

Circuit precedent provided that Palmer's loss of good time credits was properly brought under 2241 not 2254. Spaulding v. Scott, 1994 U.S. App. LEXIS 43033, * 4 (5th Cir. 1994)(per curiam) (unpublished); [6] Johnson v. Scott, 1995 U.S. App. LEXIS 42764, * 2, 3 (5th Cir. 1995)(per curiam)(collecting cases).

In Spaulding, he was contesting the loss of good time credits. Id. at * 2. The panel reasoned that because he was not challenging the legality of his conviction or the validity of his sentence, but instead focused on the manner in which his sentence is being executed relief was appropriate under § 2241 not § 2254. Id. at * 4 (citing United States v. Gabor, 905 F.2d 76, 77, 78 (5th Cir. 1990).

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[6] Unpublished opinions issued prior to January 1, 1996 are precedential. United States v. Guerrero, 768 F.3d 351, 365 n. 12 (5th Cir. 2014).

In addition, the panel observed that a certificate of probable cause was not required because the loss of good time credits did not arise out of process issued by a state court. Id. at *3 (citing 28 U.S.C. § 2253).

The district court's theory that Kimbrell bars Palmer's claims under § 2241 is without foundation. Kimbrell never takes on the question of whether § 2241 versus § 2254 is the proper vehicle for his displinary claim. He filed his petition under 2254 and only argued that the limitations applicable to his 2254 petition, 2244(d)(1), should not apply. 311 F.3d at 362. Never is § 2241 raised. Kimbrell could not have overruled Spaulding, Johnson or the other authorities relied upon (sub silento or otherwise) on a point that Kimbrell did not decide. Webster v. Fall, 266 U.S. 507, 511 (1925)("Questions which merely lurk in the record, neither brought to the attention of the court nor ruled upon, are not to be considered as having been so decided as to constitute precedents."); Ochoa-Salgado v. Garland, 5 F.4th 615, 619 (5th Cir. 2021)("[T]he rule of orderliness applies where (1) a party raises an issue and (2) a panel gives that issue reasoned consideration.").

Kimbrell's further citation to Preiser v. Rodriguez, 411 U.S. 507, 511 (1973) is unhelpful in this case. The Court did not grapple with the correctness of § 2241 versus § 2254.

The issue was the correct application of § 2254 as opposed to 42 U.S.C. § 1983. Id.

Malchi is a dud for the proposition for the district court cites it for. Malchi's reliance on Preiser as previously explained is totally inapposite. The opinion further attempts to draw support from McGary v. Scott, 27 F.3d 181, 183 (5th Cir. 1994) and Story v. Collins, 920 F.2d 1247, 1251 (5th Cir. 1991). Malchi, 211 F.3d at 956.

McGary, was decided on the basis of a subsequent writ. Id. at 183, 185. Never is § 2241 argued in opposition to § 2254. Then, too, Malchi's reliance on Story for the proposition cited would fail under the Fifth Circuit's rule of orderliness, United States v. Traxler, 764 F.3d 486, 489 (5th Cir. 2014)(collecting cases), as earlier opinions have rejected Malchi's interpretation of Story. Johnson v. Scott, 1995 U.S. App. LEXIS 42764, at * 2-3; Johnson v. Scott, 1995 U.S. App. LEXIS 44123, * 1 (5th Cir. 1995); Stewart v. Cain, 1995 U.S. App. LEXIS 41730, * 1 (5th Cir. 1995) (per curiam). Again, the cases above are not precedent. Webster, 266 U.S. at 511; Garland, 5 F.4th at 619.

The district court's patently erroneous legal conclusion further denied Palmer his avoidance defense to the statute of limitations under § 2241. Section 2241 does not include (1) the one-year limitations period of § 2244(d)(1), which applies to

§ 2254; (2) the extremely deferential review standards of §§2254 (d)(1), (2); or (3) the limitation on successive petitions in § 2244(b)(2). See Martinez v. Caldewll, 644 F.3d 238, 242 (5th Cir. 2011)("[Section] 2254(d) was designed to impose additional burdens on post-conviction habeas petitioners and to effect the gatekeeping function of the [AEDPA]."). The panel expliclity held that there is no "evidence that AEDPA or § 2254 were intended to impact pre-trial detainess or § 2241." Id. (emphasis added).

Reasonable jurists could undoubtedly debate that the district court's procedural ruling that petitioner's loss of good time credits claim was not cognizable under § 2241 and that petitioner was further denied his statute of limitations defense under § 2241.

II. IS 28 U.S.C. § 2241 AVAILABLE BY A STATE PRISONER TO CHALLENGE THE MANNER IN WHICH A SENTENCE IS EXECUTED WITHOUT THE RESTRICTIONS OF THE AEDPA.

(a) Is § 2241 an available remedy for relief when a state prisoner is only challenging the execution or duration of the sentence.

A. Background on the Issue.

Recently, the Fifth Circuit has extended the erroneous holding asserted by the district court in Kimbrell, 311 F.3d at 362 that "when a favorable outcome would affect the amount of

time a state prisoner served, [AEDPA] literally applies." As explained, Kimbrell does not remotely stand for the proposition that the Fifth Circuit has now shoehorned it into.

B. **Tenth Circuit Holding on § 2241.**

The Tenth Circuit appears to be the only circuit post AEDPA to decide the precise issue presented here. See Montez v. McKinna, 208 F.3d 862, 865 (10th Cir. 2000)(challenges to the validity of a conviction or sentence are properly brought under § 2254 while attacks on the execution of a sentence, such as the duration of a sentence, are properly construed as § 2241 actions).

C. **Analysis of Precedent in Gabor.**

Circling back to the Fifth Circuit precedent that extended this precise issue to state prisoners was: Gabor, 905 F.2d at 77. (ruling that "Gabor 'does not question the legality of his conviction or the validity of the five-year federal prison term imposed by the sentencing court. His attack instead focuses on the extent to which his sentence has been executed ... [and] must be addressed as a habeas corpus petition under ... § 2241."). Id. at 78 (citation omitted).

The Gabor panel further relied upon the Third Circuit's explanation that "if [the prisoner] were to prevail on the merits, the credits would apply against the sentence as imposed — they

cannot be implemented by tampering with or correcting the sentence itself." Id. (citing Soyka v. Alldredge, 481 F.2d 303, 304 (3rd Cir. 1973)("a motion for credit of time calls for the computation of the service of a legally rendered sentence and is not directed toward the sentence itself"). Id. at 305. The logic of that conclusion is no less true in 2026.

Moreover, the decisions make clear that § 2241 relief was not solely dependent upon the district court's jurisdiction over the prisoner or custodian.

The Fifth Circuit has ruled that TDCJ "is not a 'state court' and that its disciplinary decisions are not judgments." Propes v. Quarterman, 573 F.3d 225, 230 (5th Cir. 2009)(citation omitted). The Propes Court recognized (in harmony with Soyka) that "[t]here is one judgment that has placed Propes in prison. Included within the results of that judgment are disciplinary proceedings that occur while he is subject to the conviction." Id.

D. Statutory Construction.

In interpreting AEDPA, a court's task is to construe what Congress has enacted, beginning with the language of the statute. Duncan v. Walker, 533 U.S. 167, 172 (2001). The plain language of the statute clearly demonstrates that § 2254 is textually distinct from § 2241: one explicitly mandates deference, the other does not.

In addition, Congress enacted AEDPA, as it related to habeas reform, to "curb the abuse of the statutory writ of habeas corpus " and to "address problems of unnecessary delay." H.R. CONF. REP. NO. 104-518 at 111 (1996). Nothing in § 2241, or its legislative history, indicates that Congress perceived a problem, or a need to address similar habeas abuses under § 2241.

It is settled that "where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." Duncan, 533 U.S. at 173 (citations omitted). That principle provides strong evidence that the AEDPA's review standards should govern habeas petitions **brought only** under 2254.

Given this clear language, it would be improper to conclude that what Congress omitted from § 2241 is nevertheless within its scope. Gardner v. Collins, 27 U.S. 58, 93 (1829)("What the legislative intention was, can be derived only from the words they have used; and we cannot speculate beyond the reasonable import of these words.").

Congress has demonstrated that it knows how to amend a statute when circumstances deem it necessary. See Boumediene v. Bush, 553 U.S. 723, 735 (2008)(amending § 2241 not once, but twice). As discussed, just as Congress' choice of words is

presumed to be deliberate, so too are its structural choices. See Gross v. FBL Fin. Servs., 557 U.S. 167, 177 n. 3 (2009). And, "[w]e assume that Congress is aware of existing law when it passes legislation." Miles v. Apex Marine Corp., 498 U.S. 19, 32 (1990). Thus, where "the statutory language provides a clear answer," the inquiry "ends there." Hughes Aircraft Co. v. Jacobsen, 525 U.S. 432, 438 (1991).

Mr. Palmer urges that the text of § 2241 and precedent does not push this Court in the direction that the gatekeeping provisions of the AEDPA apply to § 2241 petitions that do not challenge the underlying conviction or sentence. See United States v. Reese, 92 U.S. 214, 221 (1876)("This would, to some extent, substitute the judicial for the legislative department of the government.").

CONCLUSION

For the foregoing reasons, petitioner Scott Palmer respectfully moves that this Court reverse the decision of the United States Court of Appeals for the Fifth Circuit, and provide such other relief as he may show himself entitled to in law and equity.

Dated: February 22, 2026

Respectfully submitted,

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