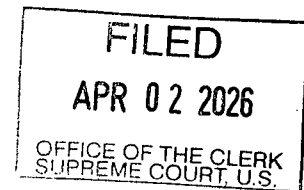


25-7531

ORIGINAL

No:

In the
Supreme Court of the United States



RONALD JOHNSON,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

This case concerns the narrow gatekeeping role Congress assigned to the courts of appeals under 28 U.S.C. § 2244(b)(3)(C). At that stage, the question is not whether the applicant has already won on the merits, but whether he has made the required prima facie showing to permit district-court review. The court below departed from that limited function. It denied authorization by treating the cited authorities as “previously available” or “non constitutional,” even though the application alleged a serious constitutional defect going to the validity of the conviction itself.

The application did not raise a minor pleading dispute or a purely statutory disagreement. It alleged a Fifth and Sixth Amendment violation at the point where federal criminal liability attached: the jury was permitted to convict without deciding the facts necessary to determine whether petitioner’s conduct fell within federal drug law, and the instructions allowed conviction on a theory broader than the one charged by the grand jury. Those allegations were more than sufficient to satisfy the threshold screening standard and required the court of appeals to allow the claim to proceed. With this introduction, the following question is presented:

Whether the court of appeals exceeded the limited prima facie screening function prescribed by 28 U.S.C. § 2244(b)(3)(c) when it denied authorization for a second or successive 28 U.S.C. § 2255 motion after labeling the cited authorities “previously available” or “non constitutional,” even though the application alleged a substantial fifth and sixth amendment defect: that the jury was allowed to convict without finding the facts necessary to place petitioner’s conduct within federal drug law and on a theory broader than the one returned by the grand jury.

PARTIES TO THE PROCEEDING

Petitioner is Ronald Johnson, who was the defendant in the United States District Court for the Middle District of Florida and the applicant/petitioner in the United States Court of Appeals for the Eleventh Circuit.

Respondent is the United States of America.

RULE 29.6 STATEMENT

Petitioner Ronald Johnson is an individual. Respondent United States of America is not a corporation.

Neither party has a parent corporation. Neither party has stock, and no publicly held company owns any percentage of either party. Neither party holds any publicly held stock of any percentage. Neither party has a stock ticker symbol to disclose under Supreme Court Rules 14.1(b) and 29.6.

RELATED PROCEEDINGS

The proceedings directly related to this petition are:

United States v. Johnson, No. 3:18-cr-00006-WWB-JBT, United States District Court for the Middle District of Florida. Judgment entered January 25, 2019. The docket reflects that Mr. Johnson was sentenced on January 24, 2019, and that judgment was entered on January 25, 2019.

United States v. Johnson, No. 19-10340-HH, United States Court of Appeals for the Eleventh Circuit. The notice of appeal was filed January 28, 2019. The Eleventh Circuit affirmed on May 28, 2020, and the mandate issued September 1, 2020.

Johnson v. United States, No. 3:21-cv-1068-WWB-JBT, United States District Court for the Middle District of Florida. The docket reflects that Mr. Johnson filed a motion under 28 U.S.C. § 2255 on October 24, 2021, and an amended § 2255 motion on November 9, 2021. The criminal docket also reflects that judgment was entered in the civil § 2255 case on May 17, 2024.

In re Johnson, No. 26-10426-B, United States Court of Appeals for the Eleventh Circuit. Mr. Johnson filed an emergency application for leave to file a

second or successive motion to vacate sentence on February 6, 2026. The Eleventh Circuit denied the application on February 17, 2026.

There are no other directly related proceedings known to petitioner.

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PETITION FOR WRIT OF CERTIORARI

Ronald Johnson, ("Johnson") the Petitioner herein, respectfully prays that a writ of certiorari is issued to review the judgment of the United States Court of Appeals for the Eleventh Circuit, entered in the above-entitled cause.

OPINION BELOW

The opinion of the Court of Appeals for the Eleventh Circuit, whose judgment is herein sought to be reviewed, was entered on *February 17, 2026, In re Johnson*,

2026 U.S. App. LEXIS 4711 and is reprinted in the separate Appendix A to this Petition.

STATEMENT OF JURISDICTION

The Judgment of the Court of Appeals was entered on February 17, 2026. The Jurisdiction of this Court is invoked under Title 28 U.S.C. § 1654(a) and 28 U.S.C. § 1254(1) and *Bowe v. United States*, 146 S. Ct. 447 (2026).

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES AND RULES INVOLVED

The Fifth Amendment to the Constitution of the United States provides in relevant parts:

No person shall be held to answer for a capital, or otherwise, infamous crime, unless on a presentment or indictment of a Grand Jury... nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law.

Id. Fifth Amendment

The Sixth Amendment to the Constitution of the United States provides:

In all criminal prosecutions, the accused shall enjoy the right to speedy and public trial, by an impartial jury of the State and District wherein the crime shall have been committed, which District shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation, to be confronted with the witness against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

Id. Sixth Amendment

STATEMENT OF THE CASE AND FACTS

This petition arises from the Eleventh Circuit's February 17, 2026 order denying Johnson's authorization to file a second or successive motion under 28 U.S.C. § 2255(h). The order under review was entered in *In re Johnson*, No. 26-10426 (11th Cir. Feb. 17, 2026). In that order, the court acknowledged that Mr. Johnson sought to present six claims attacking the validity of his federal convictions and sentence, but it held that he had failed to make a prima facie showing under § 2255(h).

The prosecution arose from a federal investigation into alleged drug-distribution activity and related firearm conduct. A federal grand jury returned an indictment on January 11, 2018. Mr. Johnson was arrested on January 12, 2018, made his initial appearance the same day, and counsel was appointed. He was arraigned on January 17, 2018, and entered a plea of not guilty. After further pretrial proceedings, including substitution of counsel in June 2018, the grand jury returned a superseding indictment on September 19, 2018, and Mr. Johnson was arraigned on that superseding indictment on September 20, 2018, again pleading not guilty. Jury selection began on October 1, 2018, and after a multi-day trial the jury returned a mixed verdict on October 4, 2018. The jury found Mr. Johnson guilty on the drug-distribution count alleging that death resulted, guilty on a firearm-related count arising from an undercover drug transaction, and guilty on

additional counts, while acquitting him on two counts that were later dismissed with prejudice. On January 24, 2019, the district court imposed a total sentence that included life imprisonment.

On direct appeal, Mr. Johnson challenged the sufficiency of the evidence supporting the conviction on the drug-distribution-resulting-in-death count and the firearm-related count. He argued that the evidence did not permit a rational jury to find beyond a reasonable doubt that the victim purchased from him the drug that caused the victim's death, and also did not permit a rational jury to find beyond a reasonable doubt that he possessed a firearm during the undercover drug transaction. The Eleventh Circuit affirmed the judgment on May 28, 2020. Mr. Johnson then pursued collateral review under 28 U.S.C. § 2255. He filed his original § 2255 motion on October 25, 2021, and an amended motion on November 9, 2021. The district court later set an evidentiary hearing on one ground, but on May 16, 2024, denied the amended § 2255 motion and denied a certificate of appealability, with judgment entered on May 17, 2024. After judgment, Mr. Johnson filed motions under Fed. R. Civ. P. 60(b). On October 9, 2025, the district court dismissed the Fed. R. Civ. P. 60(b) filing as an unauthorized second or successive § 2255 motion and advised that any further collateral attack would require authorization from the Eleventh Circuit.

Mr. Johnson's successive application presented six proposed claims. The first challenged the "death results" element under 21 U.S.C. § 841(b)(1)(C), arguing that the jury was required to find but-for causation and that the toxicology evidence, which reflected a mixture of potentially lethal contributors, could not establish that methoxyacetyl fentanyl was the but-for cause of death. The Eleventh Circuit summarized that claim as relying on *Burrage v. United States*, 571 U.S. 204 (2014), *Apprendi v. New Jersey*, 530 U.S. 466 (2000), and *Alleyne v. United States*, 570 U.S. 99 (2013).

The second and fourth claims concerned the legal status of methoxyacetyl fentanyl and the jury instructions given at trial. Mr. Johnson asserted that the jury was not informed that methoxyacetyl fentanyl was listed as a Schedule I controlled substance only after the date of his charged offense, and that the jury was not told whether the Government was proceeding on a scheduled-substance theory or a controlled-substance-analogue theory. He further argued that the failure to instruct the jury properly on the scheduling date allowed conviction without a finding that the substance was federally controlled when the charged conduct occurred, and allowed conviction on a basis that exceeded the scope of the indictment. The successive-motion draft states that the DEA's temporary scheduling order placing methoxyacetyl fentanyl into Schedule I became effective on October 26, 2017, and argues that if the charged conduct occurred on September 29, 2017, the jury could

not lawfully have been permitted to treat the substance as already scheduled on that date.

The third claim asserted that scienter must attach to the statutory elements separating innocent from criminal conduct, relying on *Morissette v. United States*, 342 U.S. 246 (1952), *United States v. X-Citement Video*, 513 U.S. 64 (1994) and *Staples v. United States*, 511 U.S. 600 (1994).

The fourth claim relied in part on *Xiulu Ruan v. United States*, 597 U.S. 450 (2022), to argue that the Controlled Substances Act's criminal boundary could not be treated as a matter of strict liability when the question was whether methoxyacetyl fentanyl was federally controlled at the time of the charged offense. The fifth claim asserted constructive amendment, contending that the jury instruction describing methoxyacetyl fentanyl as a Schedule I controlled substance "treating the relevant disease" broadened the theory of conviction beyond the indictment. The sixth claim alleged ineffective assistance of trial and appellate counsel for failing to object to the disputed instructions and for failing to present the strongest available arguments. The Eleventh Circuit denied authorization.

It recognized that the applicable standard at the gatekeeping stage is whether the applicant has made a prima facie showing under § 2255(h), and it cited *Jordan v. Sec'y, Dep't of Corr.*, 485 F.3d 1351, 1357–58 (11th Cir. 2007), for the proposition that this is only a threshold inquiry. It nevertheless concluded that Mr.

Johnson's first, second, third, fifth, and sixth claims failed because the cases on which he relied were available during his prior § 2255 proceedings, and that his fourth claim also failed because *Ruan* did not announce a new rule of constitutional law and had not been made retroactive by this Court. The court then denied the application in full.

At bottom, this case concerns whether a federal prisoner may obtain threshold authorization to present claims that his conviction and life sentence rest on a legally defective theory of liability. Mr. Johnson's proposed claims contend that the jury was permitted to convict him of distributing methoxyacetyl fentanyl as a federally controlled substance during a period when, according to his application, that substance had not yet been temporarily scheduled; that the jury was not required to determine whether the Government was proceeding under a scheduled-substance theory or an analogue theory; that the required scienter findings were not made; and that the "death results" enhancement was sustained without the but-for causation showing required by *Burrage*. The Eleventh Circuit refused authorization without permitting those claims to proceed to district-court review.

REASONS FOR GRANTING THE WRIT

THIS COURT SHOULD ISSUE A WRIT OF CERTIORARI BECAUSE THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT COURT OF APPEALS HAS DECIDED A FEDERAL QUESTION IN A WAY THAT CONFLICTS WITH THE APPLICABLE DECISIONS OF THIS COURT

Supreme Court Rule 10 provides relevant parts as follows:

Rule 10

CONSIDERATIONS GOVERNING REVIEW ON WRIT OF CERTIORARI

(1) A review of writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only when there are special and important reasons, therefore. The following, while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons that will be considered:

(a) When a United States Court of Appeals has rendered a decision in conflict with the decision of another United States Court of Appeals on the same matter; or has decided a federal question in a way in conflict with a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.

(b) When a ... United States court of appeals has decided an important question of federal law which has not been but should be, settled by this Court, or has decided a federal question in a way that conflicts with applicable decision of this Court.

Supreme Court Rule 10.1(a), (c).

ARGUMENT

I. WHETHER THE COURT OF APPEALS EXCEEDED THE LIMITED PRIMA FACIE SCREENING FUNCTION PRESCRIBED BY 28 U.S.C. § 2244(B)(3)(C) WHEN IT DENIED AUTHORIZATION FOR A SECOND OR SUCCESSIVE § 2255 MOTION AFTER LABELING THE CITED AUTHORITIES “PREVIOUSLY AVAILABLE” OR “NON CONSTITUTIONAL,” EVEN THOUGH THE APPLICATION ALLEGED A SUBSTANTIAL FIFTH AND SIXTH AMENDMENT DEFECT: THAT THE JURY WAS ALLOWED TO CONVICT WITHOUT FINDING THE FACTS NECESSARY TO PLACE PETITIONER’S CONDUCT WITHIN FEDERAL DRUG LAW AND ON A THEORY BROADER THAN THE ONE RETURNED BY THE GRAND JURY.

The Eleventh Circuit’s denial was incorrect because the panel announced the right gatekeeping rule and then resolved Mr. Johnson’s application under a narrower, unauthorized standard. The panel correctly began with 28 U.S.C. § 2244(b)(3)(C), recognizing that the court of appeals’ task at this stage is limited to deciding whether the applicant has made a prima facie showing, not whether he has already proven that he must prevail once the motion is filed. *In re Johnson*, 2026 U.S. App. LEXIS 4711, at *1–2. The panel also cited *Jordan v. Secretary, Department of Corrections* for the settled proposition that this gatekeeping inquiry is “simply a threshold determination.” *Id.* at *2 (citing *Jordan v. Sec’y, Dep’t of Corr.*, 485 F.3d 1351, 1357–58 (11th Cir. 2007)). That formulation matters.

A threshold determination asks whether the application is sufficient to pass through the statutory gate for fuller consideration in the district court. It does not authorize the court of appeals to compress retroactivity, constitutional

characterization, procedural default, prejudice, harmlessness, and ultimate merits into a single summary denial before the proposed § 2255 motion is even docketed. Yet that is effectively what occurred here. After reciting the limited prima facie standard, the panel did not examine whether Johnson's six proposed claims, taken as presented, made a sufficient preliminary showing to warrant district-court review. It did not assess whether the application plausibly alleged that the jury instructions, the treatment of methoxyacetyl fentanyl, the asserted scienter defect, the claimed constructive amendment, the *Burrage* causation issue, and counsel's failures together stated a substantial constitutional problem deserving fuller judicial examination. It instead disposed of the application on two categorical grounds: that most of the cited authorities "were previously available," and that *Ruan v. United States*, 597 U.S. 450 (2022), "does not set a new rule of law that is constitutional in nature." *In re Johnson*, 2026 U.S. App. LEXIS 4711, at *6.

That analysis is materially different from the one the statute requires. Whether an authority predated an earlier filing is not, by itself, the same question as whether a petitioner has made a prima facie showing under § 2244(b)(3)(C) and § 2255(h). Nor does labeling *Ruan* "statutory" resolve whether Johnson's fourth, fifth, and sixth claims, as framed, raise Fifth Amendment, Sixth Amendment, and indictment-based constitutional defects that merit district-court consideration. The panel's reasoning thus collapsed the distinction between a preliminary screening function and an

ultimate merits determination. Section 2244(b)(3)(C) does not permit that collapse. At the authorization stage, the court of appeals is supposed to determine whether the applicant has crossed the threshold, not whether every issue embedded in the proposed motion can already be rejected with finality. By denying authorization without performing the threshold inquiry it said governed the case, the Eleventh Circuit applied a stricter gatekeeping test than Congress enacted.

The panel's treatment of the fourth claim shows the error in its clearest form because the claim, as the Eleventh Circuit itself described it, was constitutional in operation even if one of the authorities Johnson cited arose from statutory interpretation. The panel summarized the fourth claim as alleging that the jury was not properly instructed on the scheduling of methoxyacetyl fentanyl, that the jury was permitted to convict without finding that the substance was federally controlled when the offense was committed, and that the instruction allowed conviction on a theory exceeding the indictment's scope. *In re Johnson*, 2026 U.S. App. LEXIS 4711, at *4–5. That description matters because it shows the claim was not a free-standing effort to relitigate the meaning of 21 U.S.C. § 841 in the abstract. It was a claim that the jury was allowed to convict without making a necessary finding at the point where federal criminal liability is attached and that the court's instructions altered the charging theory returned by the grand jury.

Those are classic constitutional concerns. If the jury was not required to determine whether methoxyacetyl fentanyl was federally controlled at the time charged, then the jury was relieved of deciding a fact necessary to place Johnson's conduct within the reach of federal criminal law. If, in addition, the instruction permitted conviction on a broader "controlled substance" theory untethered to the indictment's actual allegations, then the Fifth Amendment grand-jury guarantee was implicated as well. See *Stirone v. United States*, 361 U.S. 212, 215–17 (1960). The application's reliance on *Xiulu Ruan*, 597 U.S. 450, was directed to that constitutional problem. As the Eleventh Circuit recounted, Johnson argued that § 841's *mens rea* element, "knowingly or intentionally," extended to whether he knew the controlled status of methoxyacetyl fentanyl, yet the jury made no finding concerning when the substance was scheduled. *In re Johnson*, 2026 U.S. App. LEXIS 4711, at *4–5. The point was not that *Ruan*, by itself, automatically opened the successive gate. The point was that *Ruan* confirmed the importance of *mens rea* at the boundary between lawful and unlawful conduct under § 841 and thereby exposed the constitutional defect in instructions that allowed the jury to assume away the very timing and legal-status question that determined whether federal criminal liability existed at all. Johnson's successive draft pressed exactly that theory, arguing that a jury instruction treating methoxyacetyl fentanyl as Schedule I "during the relevant period," without requiring the jury to decide whether the

substance was federally controlled on the charged date, created an impermissible strict-liability path to conviction and removed from the jury the temporal boundary condition that separated innocent from criminal conduct.

The Eleventh Circuit did not answer that constitutional argument. It disposed of the claim in one sentence by stating that Ruan “does not set a new rule of law that is constitutional in nature” and has not been made retroactive. *In re Johnson*, 2026 U.S. App. LEXIS 4711, at *6. That response was too cramped because it substituted a label for analysis. A court of appeals cannot evade the constitutional character of a claim merely by describing the Supreme Court decision illuminating the defect as “statutory,” where the application itself alleges that the jury never found the facts necessary to establish that the charged conduct fell within federal law and that the indictment was effectively broadened in the process. The issue was not whether Ruan announced a constitutional holding in the abstract. The issue was whether Johnson’s fourth claim, as presented, made a prima facie showing of a constitutional defect in the jury instructions and charging theory. On the Eleventh Circuit’s own description of the claim, it did. The same flaw infected the panel’s treatment of claims five and six because those claims were not independent efforts to smuggle nonqualifying circuit precedent through § 2255(h), but derivative constitutional claims built on the same defect the panel had already mischaracterized in claim four.

The Eleventh Circuit summarized the fifth claim as alleging that the instruction describing methoxyacetyl fentanyl as a Schedule I controlled substance “during the relevant period” improperly broadened the offense theory beyond the indictment, and it summarized the sixth claim as alleging ineffective assistance of trial and appellate counsel for failing to object to or litigate those instruction-based defects. *In re Johnson*, 2026 U.S. App. LEXIS 4711, at *5–6. Those descriptions show that both claims rose or fell with the same core premise: Johnson contended that the jury was permitted to convict on a theory that the grand jury did not charge and without the findings necessary to establish criminal liability under the Controlled Substances Act as of the charged date. Once that premise is understood, the role of the cited authorities becomes straightforward. Claim five invoked constructive-amendment doctrine because the Fifth Amendment forbids a federal defendant from being convicted on charges broader than those returned by the grand jury. *Stirone*, 361 U.S. at 217; *see also United States v. Keller*, 916 F.2d 628, 633–34 (11th Cir. 1990); *United States v. Narog*, 372 F.3d 1243, 1247 (11th Cir. 2004). Johnson’s successive draft tied those authorities to the specific instruction at issue, arguing that by telling the jury methoxyacetyl fentanyl was a Schedule I substance “defines the relevant inquiry” while omitting the effective-date limitation that determined whether the substance was federally controlled at the time charged, the court expanded the basis for conviction beyond the grand jury’s theory. Claim six, in turn, invoked *Strickland*

v. Washington, 466 U.S. 668, 687–88, 694 (1984), because if the underlying instructional and indictment defects were substantial, then trial counsel’s failure to object and appellate counsel’s failure to raise the strongest available arguments presented a familiar Sixth Amendment ineffectiveness claim. The Eleventh Circuit nonetheless rejected claims five and six because they relied on “non-qualifying Eleventh Circuit decisions.” *In re Johnson*, 2026 U.S. App. LEXIS 4711, at *6.

That reasoning confused supporting authority with the constitutional rule being asserted. A petitioner does not lose a successive claim merely because he cites lower-court precedent to explain how a constitutional principle applies to the facts of his case. Circuit decisions often provide the doctrinal vocabulary for identifying the nature of a constructive amendment, the mechanics of a broadened indictment theory, or the way prejudice operates under Strickland, but the constitutional source of the claim remains the Fifth or Sixth Amendment and the Supreme Court cases that define those guarantees. Here, the Eleventh Circuit’s own summary confirms that Johnson cited *Stirone* for the grand-jury violation and Strickland for ineffective assistance. *In re Johnson*, 2026 U.S. App. LEXIS 4711, at *4–6. The additional Eleventh Circuit authorities were explanatory, not jurisdictional. By treating the presence of supporting circuit precedent as a reason to deny authorization, the panel sidestepped the actual constitutional substance of claims five and six just as it had done with claim four. That was error because those claims were not freestanding

appeals to nonqualifying authority; they were constitutional consequences flowing directly from the same alleged instructional defect that the panel had already reduced, incorrectly, to a merely statutory dispute.

The panel also treated “previous availability” at an impermissibly high level of abstraction. It reasoned that claims one, two, and three failed because the Supreme Court authorities cited in support of those claims were available before Mr. Johnson litigated his first § 2255 motion. *In re Johnson*, 2026 U.S. App. LEXIS 4711, at *6. That reasoning did not engage the application as it was actually presented. The panel itself summarized claim one as a *Burrage-Apprendi-Alleyne* challenge to the “death results” element, grounded in the contention that the toxicology evidence reflected multiple “potentially lethal contributors” and did not establish that methoxyacetyl fentanyl was a but-for cause of death. Claim two, as the panel described it, was not merely a generic due-process citation exercise. It asserted that the jury was never told methoxyacetyl fentanyl became a Schedule I substance only after the charged date and was never instructed whether the government was proceeding on a scheduled-substance theory or an analogue theory, with *McFadden* supplying the scienter component for that distinction. Claim three then carried that argument forward by invoking *Staples*, *X-Citement Video*, and *Morissette* for the proposition that a culpable mental state must attach to the elements that separate lawful from unlawful conduct. When those claims are read together, as the application framed

them, they do not amount to a simple effort to recycle old cases. They form a single theory that the jury instructions and proof allowed conviction and enhancement without the findings federal law requires at the point where criminal liability is attached.

That structure is evident from the successive application itself. The draft did not cite *Burrage*, *Apprendi*, *Alleyne*, *McFadden*, *Morissette*, *Staples*, and *X-Citement Video* as disconnected authorities. It tied *Burrage*, *Apprendi*, and *Alleyne* to the contention that the “death results” issue had to be submitted to the jury and proved through but-for causation, not through a generalized mixed-intoxication theory. It tied *McFadden* to the argument that, if the government’s path was the Analogue Act rather than a scheduled-substance theory, the jury had to be told what legal route the government was pursuing and what knowledge it had to prove. It tied *Morissette*, *Staples*, and *X-Citement Video* to the further proposition that a strict-liability reading of the relevant boundary elements was impermissible because those were the elements separating innocent conduct from criminal conduct. And it expressly presented all of that against the Eleventh Circuit’s own authorization standard, which the application quoted as requiring only “a sufficient showing of possible merit to warrant a fuller exploration by the district court.” The panel’s “previously available” rationale ignored that integrated presentation and treated each cited

authority as though it had been offered in isolation. That was error at the authorization stage.

The question was not whether each Supreme Court case in the application could have been named earlier. The question was whether Johnson had made a *prima facie* showing that his proposed motion fit within § 2255(h), given the way the cited authorities were combined to attack the charged drug theory, the death-results enhancement, and the indictment-based limits of the prosecution. The Eleventh Circuit's own summary shows that Johnson was not simply attempting to relitigate an old sufficiency issue or repackage prior collateral claims. He was presenting a unified constitutional attack on whether the jury was required to decide the timing of federal control, the legal theory under which methoxyacetyl fentanyl was treated as prohibited, the scienter attached to that theory, and the but-for causal basis for the death-results enhancement. By reducing that presentation to the observation that the cited Supreme Court decisions predated the first § 2255 proceeding, the panel replaced the statutory *prima facie* inquiry with a categorical screening rule that the statute does not contain. Section 28 U.S.C. § 2244(b)(3)(C) required the court to decide whether Johnson's application, as structured, made a sufficient threshold showing to warrant district-court review. It did not permit the court to defeat the application simply by sorting the authorities into "old" and "new" without confronting the integrated constitutional theory they were offered to support.

That error matters here because Johnson's application, as the panel itself described it and as the underlying filing developed it, challenged the very point at which federal criminal liability attached. The proposed motion did not complain about a marginal ambiguity in phrasing or a technical defect divorced from guilt. It alleged that the jury was permitted to treat methoxyacetyl fentanyl as a federally controlled substance without being instructed on the time-sensitive scheduling question; that the jury was never told whether the Government was proceeding on a scheduled-substance theory or on an analogue theory; that the *mens rea* issue tied to that criminal boundary was not properly submitted; and that the same instructional defect broadened the indictment and undermined counsel's performance. The Eleventh Circuit's own summary reflects that Johnson argued the jury was not properly instructed on the scheduling of methoxyacetyl fentanyl, that the jury could convict without finding that the substance was federally controlled when the offense occurred, and that the instruction permitted conviction on a theory exceeding the indictment's scope. Johnson's successive filing framed the same point in concrete terms: the DEA temporary scheduling order placing methoxyacetyl fentanyl into Schedule I became effective on October 26, 2017, and before that date the agency stated the substance was "not currently listed" under the Controlled Substances Act, yet the jury was allegedly allowed to convict without being told that this timing issue

mattered to whether the charged conduct was federally criminal at all. That is a substantial claim.

A. The Conviction Cannot Stand Because the Jury Never Found the Predicate Fact Necessary to Establish Federal Criminal Liability Under 21 U.S.C. § 841

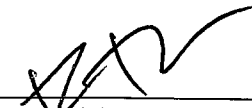
A conviction under 21 U.S.C. § 841 cannot rest on the assumption of a predicate fact that places the conduct within federal law if the jury was never required to decide that predicate fact. *See Apprendi*, 530 U.S. at 490; *Alleyne*, 570 U.S. at 103. And if, as Johnson alleged, the instruction allowed conviction on a broader basis than that charged by the grand jury, the defect implicated the Fifth Amendment as well. *See Stirone*, 361 U.S. at 217. The same is true of Johnson's scienter position. The application did not invoke *mens rea* in the abstract; it asserted that the jury was not properly instructed on the mental-state component tied to the legal status of the substance and the theory under which the Government sought conviction. That argument drew on *McFadden v. United States*, 576 U.S. 186, 188–89 (2015), and on the longstanding rule that criminal statutes are ordinarily read to require a culpable mental state as to the elements separating wrongful from innocent conduct. *See Morissette*, 342 U.S. at 250–63; *Staples*, 511 U.S. at 605–06, 610–19; *X-Citement Video*, 513 U.S. at 68–78. The application also tied the instructional defect to the death-results theory, arguing that the proof on causation did not satisfy Burrage's

court of appeals must apply the prima facie standard as written and permit district-court review once that threshold showing is made.

CONCLUSION

Based on the foregoing, this Court should grant this request for a Writ of Certiorari and remand to the Court of Appeals for the Eleventh Circuit.

Done this 2, day of April 2026.



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