

No. _____

IN THE
Supreme Court of the United States

CARLOS DEMOND ROBINSON,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Is the 28 U.S.C. § 2255(h) requirement that “[a] second or successive motion must be certified . . . by a panel of the appropriate court of appeals” a jurisdictional prerequisite or a claims-processing rule?

LIST OF ALL DIRECTLY RELATED PROCEEDINGS

United States Court of Appeals for the Fourth Circuit:
United States v. Robinson, No. 22-7200

United States District Court for the District of South Carolina:
United States v. Robinson, No. 6:03-CR-616

LIST OF PARTIES TO THE PROCEEDINGS

United States of America
 Carlos Demond Robinson

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PETITION FOR WRIT OF CERTIORARI

Petitioner Carlos Robinson respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit.

OPINIONS BELOW

The Fourth Circuit's decision dismissing Mr. Robinson's appeal as moot is reported at 159 F.4th 277 (4th Cir. 2025) and produced in the appendix to this petition. The Fourth Circuit's order denying rehearing en banc is unreported and produced in the appendix to this petition.

JURISDICTION

The district court granted a motion under Section 404 of the First Step Act reducing Mr. Robinson's sentence and entered an amended judgment. Mr. Robinson then filed a motion in the district court under 28 U.S.C. § 2255 attacking that judgment. The district court dismissed the motion, holding that it was a second or successive motion filed without authorization from the Fourth Circuit as required

by 28 U.S.C. § 2255(h). It denied a Certificate of Appealability. Mr. Robinson timely appealed that order.

The Fourth Circuit granted a Certificate of Appealability on the question “Whether an amended judgment entered after a First Step Act sentence reduction qualifies as a ‘new judgment’ for purposes of the AEDPA.” If so, then the district court had jurisdiction over the motion as a first motion. 28 U.S.C. § 2255(a). If not, then it lacked jurisdiction under 28 U.S.C. § 2255(h). Thus, the district court’s jurisdiction presented the primary issue in the appeal to the Fourth Circuit.

The Fourth Circuit had jurisdiction over that question because it granted a Certificate of Appealability. *Id.* §§ 2253(a), (c)(1)(B). The Fourth Circuit ultimately held that it lacked jurisdiction because the case was moot. The question of whether the case was moot is the question presented by this petition.

The Fourth Circuit issued its opinion on November 20, 2025. It denied a timely petition for rehearing on January 16, 2026. On April 6, 2026, the Chief Justice granted Mr. Robinson’s application to extend the time to file a petition for certiorari until June 15, 2026.

This Court’s jurisdiction rests on 28 U.S.C. § 1254(1).

STATUTORY PROVISION INVOLVED

A second or successive motion must be certified as provided in [28 U.S.C.] section 2244 by a panel of the appropriate court of appeals to contain—

- (1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense; or
- (2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.

28 U.S.C. § 2255(h)

STATEMENT OF THE CASE

The Indictment, Jury Instructions, and Conviction

In February 2004, a grand jury sitting in the District of South Carolina indicted Mr. Carlos Robinson on seven counts related to drug and firearm offenses, including two counts alleging possessing of a firearm in furtherance of a drug trafficking crime in violation of 18 U.S.C. § 924(c).

At trial, the judge instructed the jury as to the findings it needed to make for the two Section 924(c) counts (Counts 3 and 6):

And these charges are the same in counts three and six. They're just alleged to have occurred at different times. The first elements of count three and six require that the defendant committed the crime -- committed the crime alleged in count one, two or five. And I charge you that conspiracy to distribute and to possess with intent to distribute cocaine or crack cocaine and possession with intent to distribute cocaine or crack cocaine are drug trafficking crimes.

The jury convicted Mr. Robinson on all seven counts. The jury verdict form did not indicate which drug count it found as the predicate crime for the Section 924(c) convictions in counts 3 and 6.

The district court sentenced him to 360 months each on Counts 1, 2, and 5 and 120 months each on Counts 4 and 7, all to be served concurrently to each other. It sentenced him to 300 months on Count 3 and 300 months on Count 6 to be served consecutively to the other counts and to each other. The total sentence was 960 months.

Section 2255 Motions

After Mr. Robinson's sentence became final, he filed a motion to vacate it under 28 U.S.C. § 2255, which the district court denied.

Then, in 2010, Congress promulgated the Fair Sentencing Act of 2010, which reduced the statutory imprisonment range for Mr. Robinson's crack cocaine offenses but did not make those changes retroactive. *See* Fair Sentencing Act of 2010, Pub. L. No. 111-220, 124 Stat. 2372. In 2018, Congress passed the First Step Act, which made the Fair Sentencing Act changes retroactive and allowed eligible criminal defendants to move for resentencing. *See* First Step Act, Pub. L. No. 115-391, 132 Stat. 5194 (2018) at § 404. Mr. Robinson moved under Section 404 of the Fair Sentencing Act for a reduction in his term of imprisonment.

On June 10, 2020, the district court granted the First Step Act Section 404 motion. It reduced Mr. Robinson's sentence to "1 month on each of counts 1, 2, and 5 to be served concurrently to each other; 1 month on each of counts 4 and 7 to be served concurrently to each other and to the term imposed on counts 1, 2, and 5; 300 months on count 3 to be served consecutively to the term imposed on counts 1, 2, 4, 5, and 7; and 300 months on count 6 to be served consecutively to the imprisonment

term imposed on counts 1, 2, 3, 4, 5, and 7” for a total sentence of 601 months of imprisonment. The court noted that it lacked the power under the First Step Act to reduce the sentence for the Section 924(c) counts, so the 601-month sentence was the lowest reduction it could impose. The district court issued an amended judgment reflecting its decision.

On August 21, 2022, Mr. Robinson moved under Section 2255 to vacate his sentence, arguing the district court erred in convicting him of two Section 924(c) counts. The district court dismissed the motion. It held that the motion was a “second or successive” motion filed without authorization from the Fourth Circuit. Specifically, it acknowledged that the first Section 2255 Motion to attack a new judgment is not “second or successive” for dismissal purposes. But, it continued, the amended judgment entered after the Section 404 motion was not a new judgment, so the Section 2255 motion was second or successive.

The court purported to hold, in the alternative, that even if the motion were not second or successive, it would still fail as untimely because Mr. Robinson waited over one year from the issuance of the amended judgment to file the Section 2255 motion. The court then refused to consider (or even allow Mr. Robinson to make) any equitable tolling arguments because it held that his “claim fails on the merits.”

Because, the district court held, Mr. Robinson was guilty of two specific instances of drug distribution in addition to the conspiracy conviction, each Section 924(c) conviction could have relied on those specific instances, so it was not improper to find him guilty of both counts. The district court’s order did not address

either the jury instructions that allowed the jury to base each 924(c) conviction on the same conspiracy or the jury verdict form that did not indicate which predicate drug crime the jury found.

Fourth Circuit Holding that Section 2255(h) is Non-Jurisdictional

The Fourth Circuit granted a Certificate of Appealability on the question of whether the district court erred in classifying the first Section 2255 motion to challenge a sentence after a district court enters an amended Section 404 judgment as “second or successive.” After briefing, the Fourth Circuit asked whether the appeal was moot because even if it agreed with Mr. Robinson, it would still need to affirm on the alternative grounds raised by the district court (and on which it had not granted a Certificate of Appealability).

Mr. Robinson argued that the case was not moot because the district court’s purported alternative holding was a legal nullity. Once the district court held that the motion was an unauthorized second or successive motion, it lacked jurisdiction over the case and thus lacked the power to issue an advisory alternative holding. As he argued, federal courts lack the power to “assum[e] jurisdiction for the purpose of deciding the merits” of a case. *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 94 (1998). “[S]uch an approach . . . carries the courts beyond the bounds of authorized judicial action and thus offends fundamental principles of separation of powers.” *Id.* “Without jurisdiction the court cannot proceed *at all* in any cause. Jurisdiction is power to declare the law, and when it ceases to exist, the *only*

function remaining to the court is that of announcing the fact and dismissing the cause." *Ex parte McCardle*, 74 U.S. 506, 514 (1869) (emphasis added).

The Fourth Circuit disagreed and held that the case was moot because Section 2255(h) does not constitute a jurisdictional requirement but instead operates as a claims processing rule. Thus, it concluded, the district court had the power to issue the alternative holding that mooted the case.

This petition follows.

REASONS FOR GRANTING THE PETITION

A. The Fourth Circuit's Opinion Conflicts with the Third and Fifth Circuits, creating a 2-2 circuit split.

The Fourth Circuit "has entered a decision in conflict with the decision of [other] United States court[s] of appeals on the same important matter" Sup. Ct. R. 10(a).

Under the Antiterrorism and Effective Death Penalty Act ("AEDPA"), a federal district court may not adjudicate a "second or successive" habeas motion from a federal prisoner unless a federal court of appeals grants the prisoner's application to file that motion. 28 U.S.C. §§ 2255(h), 2244(b)(3).

The Fourth Circuit holds that this application requirement is a non-jurisdictional claims processing rule. Pet. App. at 14a-15a. This decision conflicts with two other Courts of Appeals to address this question, creating a 2-2 circuit split: *See Holland v. Warden Canaan USP*, 998 F.3d 70, 74 (3rd Cir. 2021); *Blystone v. Horn*, 664 F.3d 397, 411-412 (3rd Cir. 2011); *United States v. Key*, 205

F.3d 773, 774 (5th Cir. 2000). *But see Williams v. United States*, 927 F.3d 427, 436 (6th Cir. 2019) (holding that Section 2255(h) is non-jurisdictional).

The Sixth Circuit, in *Williams v. United States*, agrees with the panel decision here. 927 F.3d at 437. It notes that Congress does not use the term “jurisdiction” in Section 2255(h) or 2244 and holds that Congress must therefore not have intended to create a jurisdictional bar. *Id.*

Other circuits, looking at AEDPA’s structure and purpose in conjunction with its plain language, reach the opposite conclusion. In *Holland v. Warden Canaan USP*, **the Third Circuit** addressed whether a different statute—28 U.S.C. § 2241—created a jurisdictional bar on second or successive petitions. 998 F.3d at 74. In holding that Section 2241 contained no such bar, the court expressly compared it to the provisions of Section 2255 at issue here: “AEDPA’s structure confirms our jurisdiction. Compare § 2241 with §§ 2254 and 2255’s processes for filing successive petitions or motions. When a prisoner tries to file again under the latter two sections, the district court does not instantly have *jurisdiction* to hear it. That is because AEDPA’s gatekeeping provisions require prisoners to first seek leave from the court of appeals. But § 2241 has no gatekeeping provision, and we cannot graft those other sections’ limitations onto successive § 2241 petitions.” *Id.* (emphasis added) (internal citations omitted).

Thus, in the Third Circuit, “[a] petitioner’s failure to seek such authorization from the appropriate appellate court before filing a second or successive habeas petition *acts as a jurisdictional bar*,” so neither the district nor the appellate courts

can “properly entertain it” because they are “*without jurisdiction*” to do so. *Blystone v. Horn*, 664 F.3d 397, 411-412 (3rd Cir. 2011) (emphasis added) (internal quotation omitted).

Finally, in **the Fifth Circuit**, the second or successive requirement “*acts as a jurisdictional bar* to the district court's asserting jurisdiction over any successive habeas petition until this court has granted the petitioner permission to file one.” *Key*, 205 F.3d at 774 (emphasis added). There, a district court lacks jurisdiction to “even consider” a petitioner’s “motion for the appointment of counsel” to file a second or successive motion without first obtaining authorization from the appellate court. *Id.*

This question thus presents an active and ongoing circuit split worthy of this Court’s review.

B. The Fourth Circuit’s Decision is Wrong and Will Lead to Undesirable Results.

This Court’s review will also allow this Court to implement the approach taken by the Third and Fifth Circuits, both of which reach results that accord with AEDPA’s purpose and structure.

The Fourth Circuit’s decision relies on this Court’s recent trend away from holding that statutory prerequisites are jurisdictional requirements. Appx. at 11a-12a. But courts have an obligation to review each statutory scheme on its own merits, and reviewing AEDPA on its own merits reveals that Congress intended to create a jurisdictional requirement—regardless of current trends from this Court.

In support of its holding, the Fourth Circuit cites *Riley v. Bondi*, 145 S. Ct. 2190 (2025) and *Arbaugh v. Y & H Corp.*, 546 U.S. 500, 511 (2006) as recent cases in which this Court has shied away from finding jurisdictional bars. Appx at 12a. But these cases actually reveal just how different AEDPA's requirements are from typical statutory prerequisites.

In *Riley*, this Court addressed an immigration statute that required a movant to file a petition for review of a final order of removal within 30 days of the issuance of that order. 606 U.S. at 267. In *Arbaugh*, this Court reviewed an employment law statute that applied only to employers with fifteen or more employees. 546 U.S. at 509. This Court held that each of these requirements were non-jurisdictional.

In both cases, the statutory prerequisite at issue did not require any sort of preauthorization. The litigant filed in the district court, and that court determined whether the filing was timely or how many people worked for the employer. District courts make these sorts of factual findings every day, and this Court rightly held that nothing in those statutes indicated Congress's intent to elevate the routine findings in those cases to jurisdictional requirements.

AEDPA, in contrast, does not present such a typical structure. Critically, a petitioner wishing to file a second or successive Section 2255 motion *cannot* file that motion in the district court in the first instance. No matter how meritorious his claim that he is entitled to file such a second motion—and even if the United States does not object—a potential movant *must* go to another court to receive authorization before he can file in the district court. That structure, as the Third

and Fifth Circuits correctly hold, creates a jurisdictional—not merely claims processing—requirement.

Finally, review is warranted because the Fourth Circuit’s approach will lead to undesirable consequences at odds with AEDPA’s purpose. Congress enacted AEDPA with the “goal of streamlining habeas cases.” *Banister v. Davis*, 590 U.S. 504, 517 (2020). Easily enforced jurisdictional bars effectuate that goal by allowing district courts to quickly and efficiently dismiss improperly filed cases. A claims-processing rule, in contrast, forces district courts to address issues of waiver, forfeiture, equitable exceptions, and other exemptions from the requirement.

While this approach may benefit habeas litigants in the long run by giving them more opportunities to litigate unauthorized second or successive motions, it will create additional burdens on the government and on district courts—exactly the outcome that Congress enacted AEDPA to avoid.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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