

No. 25-821

In the Supreme Court of the United States

MICHAEL DEWAYNE LAIRY, PETITIONER

v.

UNITED STATES OF AMERICA

*ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT*

BRIEF FOR THE UNITED STATES IN OPPOSITION

D. JOHN SAUER
*Solicitor General
Counsel of Record*

A. TYSEN DUVA
Assistant Attorney General

ALLAYA LLOYD
Attorney

*Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217*

QUESTION PRESENTED

Whether a federal prisoner's claim in postconviction proceedings that his noncapital sentence exceeds the correct statutory maximum for his offense is a claim of "actual innocence" that can overcome a statute of limitations bar.

PARTIES TO THE PROCEEDING

Petitioner is Michael Dewayne Lairy.

Respondent is the United States of America.

TABLE OF CONTENTS

	Page
Opinions below	1
Jurisdiction	1
Statement.....	2
Argument.....	5
Conclusion.....	8

TABLE OF AUTHORITIES

Cases:

<i>Brown v. United States</i> , 602 U.S. 101 (2024).....	4, 7
<i>Day v. McDonough</i> ., 547 U.S. 198 (2006).....	6
<i>Hamilton-Brown Shoe Co. v. Wolf Brothers & Co.</i> , 240 U.S. 251 (1916)	6
<i>Major League Baseball Players Association v.</i> <i>Garvey</i> , 532 U.S. 504 (2001)	7
<i>Mathis v. United States</i> , 579 U.S. 500 (2016).....	3
<i>McQuiggin v. Perkins</i> , 569 U.S. 383 (2013).....	5
<i>Rehaif v. United States</i> , 588 U.S. 255 (2019).....	3
<i>United States v. Nulf</i> , 978 F.3d 504 (7th Cir. 2020).....	8
<i>Wood v. Milyard</i> , 566 U.S. 463 (2012)	6, 7

Statutes:

Armed Career Criminal Act of 1984, 18 U.S.C. 924(e).....	2, 3
18 U.S.C. 924(e)(1)	2, 3
18 U.S.C. 922(g)	2, 3
18 U.S.C. 922(g)(1).....	2
18 U.S.C. 924(a)(2) (2012).....	2
28 U.S.C. 2255(g)	2-6
28 U.S.C. 2255(f)(1)	4

IV

Miscellaneous:	Page
Stephen M. Shapiro et al., <i>Supreme Court Practice</i> (11th ed. 2019)	6

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-18a) is reported at 142 F.4th 907. The order of the district court (Pet. App. 19a-35a) is available at 2023 WL 12107952.

JURISDICTION

The judgment of the court of appeals was entered on July 7, 2025. A petition for rehearing was denied on September 10, 2025 (Pet. App. 39a). On December 5, 2025, Justice Barrett extended the time within which to file a petition for a writ of certiorari to and including February 7, 2026. The petition for a writ of certiorari was filed on January 8, 2026. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a guilty plea in the United States District Court for the Southern District of Indiana, petitioner was convicted of possessing a firearm following a felony conviction, in violation of 18 U.S.C. 922(g)(1) and 924(e)(1). Judgment 1. He was sentenced to 180 months of imprisonment, to be followed by three years of supervised release. Judgment 2-3.

Petitioner subsequently moved to vacate, set aside, or correct his sentence under 28 U.S.C. 2255. The district court denied the motion as untimely. Pet. App. 19a-35a. The court of appeals vacated the denial and remanded for an evidentiary hearing on petitioner's request for equitable tolling. *Id.* at 1a-18a.

1. In August 2016, a confidential informant alerted law-enforcement officials in Evansville, Indiana, about where they could find petitioner, who had outstanding arrest warrants. Presentence Investigation Report (PSR) ¶ 6. Officers found and arrested petitioner. PSR ¶ 7. A subsequent search of his residence revealed a nearly full box of .380 caliber ammunition and a loaded .380 caliber pistol. PSR ¶ 9.

A federal grand jury charged petitioner with possessing a firearm and ammunition following a felony conviction, in violation of 18 U.S.C. 922(g)(1) and 924(e). Indictment 1. The indictment alleged that petitioner had multiple prior felony convictions, including three prior convictions for "Dealing in Cocaine in Vanderburgh County, Indiana," in June 2000. *Ibid.*

Petitioner pleaded guilty pursuant to a plea agreement. See Pet. App. 21a-22a. Although at the time a Section 922(g) offense ordinarily carried a ten-year maximum term of imprisonment, see 18 U.S.C. 924(a)(2) (2012), the parties agreed that petitioner's prior cocaine

convictions qualified as “serious drug offense[s],” 18 U.S.C. 924(e)(1), and thus subjected petitioner to a statutory-minimum sentence of 15 years of imprisonment under the Armed Career Criminal Act of 1984 (ACCA), 18 U.S.C. 924(e). See Pet. App. 22a; see also 18 U.S.C. 924(e)(1) (providing that a person with “three previous convictions” for “a serious drug offense” shall be “imprisoned not less than fifteen years” for a Section 922(g) offense). The district court accepted the plea and sentenced petitioner to the mandatory minimum of 180 months of imprisonment. Judgment 2.

2. In June 2020, petitioner filed a pro se motion under 28 U.S.C. 2255 to vacate, set aside, or correct his sentence, relying on this Court’s decision in *Rehaif v. United States*, 588 U.S. 225 (2019), which held that knowledge of the prior felony conviction is an element of a criminal violation of Section 922(g). See 20-cv-144 D. Ct. Doc. 1 (June 23, 2020). In March 2021, petitioner filed an amended pro se motion largely focused on his *Rehaif* claim, but which also briefly asserted that his prior convictions “may not qualify” as ACCA predicates, and in particular that his cocaine offenses “may also be in question as more research may be needed.” 20-cv-144 D. Ct. Doc. 12, at 6 (Mar. 8, 2021) (capitalization omitted). The district court appointed counsel to further develop that claim. See 20-cv-144 D. Ct. Doc. 23 (Oct. 28, 2022).

In a supplemental brief, petitioner argued that his Indiana cocaine offenses did not qualify as “serious drug offense[s]” under the ACCA, 18 U.S.C. 924(e)(1), because the definition of cocaine under Indiana law was broader than the definition under federal law at the time. 20-cv-144 D. Ct. Doc. 27, at 5-8 (Jan. 19, 2023); see *Mathis v. United States*, 579 U.S. 500, 504 (2016) (ex-

plaining the “categorical approach”); see also *Brown v. United States*, 602 U.S. 101, 111 (2024) (relevant time for comparison is the time of the state offense). Petitioner further argued that his trial counsel was constitutionally ineffective for failing to object to the ACCA-enhanced sentence. 20-cv-144 D. Ct. Doc. 27, at 12-15. The government did not challenge the merits of petitioner’s sentencing claim, but instead argued that the claim was untimely because it was raised more than one year after petitioner’s conviction became final. See 28 U.S.C. 2255(f)(1).

3. The district court denied petitioner’s Section 2255 motion. Pet. App. 19a-35a. The court rejected the *Rehailf* claim on the merits, *id.* at 23a-26a, and determined that the sentencing claim was untimely, *id.* at 26a-34a.

On timeliness, the district court rejected petitioner’s argument that the government had waived or forfeited a statute of limitations defense. Pet. App. 30a-31a. The court also rejected petitioner’s argument that he was entitled to equitable tolling because of the time he allegedly spent in lockdown, thereby limiting his access to the prison law library. *Id.* at 31a-32a. The court then acknowledged that a claim of actual innocence may allow a prisoner to overcome a procedural bar, including a statute of limitations, in postconviction review. *Id.* at 33a. But the court explained that petitioner could not take advantage of the actual-innocence gateway because he “ha[d] not identified a case in which the actual innocence exception was applied to allow a [prisoner] to present an otherwise time-barred claim that his counsel rendered ineffective assistance by failing to dispute the propriety of a sentence enhancement under the ACCA.” *Id.* at 34a.

4. The court of appeals vacated the denial of petitioner’s Section 2255 motion and remanded for an evidentiary hearing on whether petitioner is entitled to equitable tolling. Pet. App. 1a-18a. The court agreed that the government had not waived or forfeited a limitations defense, *id.* at 6a-9a, and that the actual-innocence gateway does not extend to claims alleging “the misclassification of a predicate offense for a sentencing enhancement,” *id.* at 13a-14a; see *id.* at 9a-15a. The court nevertheless found that if petitioner’s allegations about lockdown and his access to the law library were true, they “may very well result in a meritorious equitable tolling argument.” *Id.* at 17a; see *id.* at 15a-17a. The court explained that the district court therefore should have conducted an evidentiary hearing “to fill in factual gaps” in the record. *Id.* at 17a.

ARGUMENT

Petitioner renews his contention (Pet. 19-26) that the actual-innocence gateway to overcome a procedural bar in postconviction proceedings, including a statute of limitations, extends to claims of noncapital sentencing error. This Court’s review is unwarranted because the decision below is interlocutory and, on remand, the United States will waive its limitations defense. Resolution of the question presented would accordingly make no difference to petitioner’s request for relief, making this case an unsuitable vehicle in which to address that question.

In *McQuiggin v. Perkins*, 569 U.S. 383 (2013), this Court held that a state prisoner’s “actual innocence, if proved,” can excuse a procedural bar or statutory time bar on a state prisoner’s claim for federal habeas relief. *Id.* at 386. The government has viewed undisputed legal ineligibility for an enhanced noncapital sentence—that

is, a sentence above the applicable statutory maximum—as at least a policy-based reason for excusing a federal prisoner’s noncompliance with a procedural bar or statutory time limit on a claim for postconviction relief under 28 U.S.C. 2255. In such cases, the government has waived the procedural bar. It inadvertently did not do so here.

But because the decision is interlocutory—the court of appeals having vacated the denial of petitioner’s Section 2255 motion and ordered a remand for an evidentiary hearing on equitable tolling, Pet. App. 18a—the government will correct its oversight by waiving the limitations defense in district court. See *Wood v. Milyard*, 566 U.S. 463, 466 (2012) (“A court is not at liberty, we have cautioned, to bypass, override, or excuse a State’s deliberate waiver of a limitations defense.”); *Day v. McDonough*, 547 U.S. 198, 202 (2006) (“[W]e would count it an abuse of discretion to override a State’s deliberate waiver of a limitations defense.”). Resolution of the question presented—the potential application of the actual-innocence exception to the limitations defense—thus would ultimately make no difference to petitioner’s case.

The interlocutory posture of this case “alone furnishe[s] sufficient ground for the denial of” the petition for a writ of certiorari. *Hamilton-Brown Shoe Co. v. Wolf Brothers & Co.*, 240 U.S. 251, 258 (1916); see Stephen M. Shapiro et al., *Supreme Court Practice* § 4.18 & n.72, at 4-55 (11th ed. 2019) (observing that this Court generally denies review of criminal cases in an interlocutory posture). In any event, given that the government will waive the limitations defense on remand, petitioner will be entitled to have his claim heard on the merits, thus rendering the question presented irrelevant to his

case. See *Wood*, 566 U.S. at 474. And the government agrees that the Indiana offenses were categorically broader than the federal definition of a “serious drug offense,” and thus were misclassified as ACCA predicates in petitioner’s case. See Pet. App. 27a; cf. *Brown v. United States*, 602 U.S. 101, 107-108 (2024).

Accordingly, if petitioner succeeds in establishing ineffective assistance of counsel, he would be entitled to be resentenced to a term of imprisonment not exceeding ten years, rather than the fifteen he received. That would eliminate the need for any further appellate review in this case. And in the unlikely event that petitioner does not secure sentencing relief on remand, he can raise all of the issues (including the question presented here) in a petition for a writ of certiorari from a final judgment. See *Major League Baseball Players Association v. Garvey*, 532 U.S. 504, 508 n.1 (2001) (per curiam) (explaining that the Court “ha[s] authority to consider questions determined in earlier stages of the litigation where certiorari is sought from the most recent of the judgments of the Court of Appeals”). Petitioner does not identify any reason for this Court to depart from its usual practice of awaiting a final judgment in these circumstances.*

* Petitioner’s plea agreement waived the right to seek appellate or postconviction review of his conviction or sentence, except for claims of ineffective assistance of counsel. See Pet. App. 3a-4a. This Court is currently addressing the enforceability of such waivers in *Hunter v. United States*, No. 24-1063 (argued Mar. 3, 2026). But there is no need to hold this case pending the resolution of *Hunter*. Petitioner has not challenged the enforceability of his waiver. And the waiver poses no bar to petitioner’s claims for relief. The district court addressed and rejected petitioner’s *Rehaif* claim on the merits notwithstanding the waiver. Pet. App. 23a. And petitioner’s ineffective-assistance claim, if successful, would be suffi-

CONCLUSION

The petition for a writ of certiorari should be denied.
Respectfully submitted.

D. JOHN SAUER
Solicitor General
A. TYSEN DUVA
Assistant Attorney General
ALLAYA LLOYD
Attorney

APRIL 2026

cient to grant him full relief on his sentencing challenge. Moreover, the Seventh Circuit currently holds that plea waivers may not be enforced “when the sentence exceeds the statutory maximum.” *United States v. Nulf*, 978 F.3d 504, 506 (2020) (citation omitted). The ultimate resolution of *Hunter* thus is unlikely to make any difference to this case. If anything, holding the petition for *Hunter* would merely delay petitioner’s ability to obtain relief in the district court.