

No. 26-165

In the Supreme Court of the United States

MICHAEL SHANE RAGLAND, PETITIONER,

v.

UNITED STATES OF AMERICA

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

**BRIEF OF *AMICI CURIAE* FLORIDA
ASSOCIATION OF CRIMINAL DEFENSE
LAWYERS AND NATIONAL ASSOCIATION OF
CRIMINAL DEFENSE LAWYERS
SUPPORTING PETITIONER**

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INTERESTS OF *AMICI CURIAE*¹

The Florida Association of Criminal Defense Lawyers (FACDL) is a Florida statewide organization of criminal defense practitioners whose purpose is to assist in the fair administration of the criminal justice system across Florida.

FACDL's members frequently enter federal postconviction proceedings only after a prisoner has initially proceeded *pro se*. In those cases, counsel may discover a potentially meritorious claim that the authorization order does not mention. Under the rule below, counsel must then tell the client that the claim can never be heard—not because any court considered and rejected it, but because an order issued under a thirty-day deadline, without briefing, omitted it.

Founded in 1958, the National Association of Criminal Defense Lawyers (NACDL) is a nonprofit voluntary professional bar association that works on behalf of criminal defense attorneys to ensure justice and due process for those accused of crime or misconduct. It has a nationwide membership of many thousands of direct members, up to 40,000 with affiliate members. NACDL's members include private criminal defense lawyers, public defenders, military defense counsel, law professors, and judges. NACDL is the only nationwide professional bar association for public defenders and private criminal defense lawyers.

NACDL's members litigate federal postconviction cases in every circuit, and the rule below decides whether a claim is heard or lost according to nothing but the place of conviction. NACDL files *amicus* briefs in this Court in

¹ No counsel for a party authored this brief in whole or in part. No person other than *Amici* or their counsel made a monetary contribution to its preparation or submission. *Amici* gave the parties timely notice of their intent to file this brief.

cases presenting issues of broad importance to criminal defendants, criminal defense lawyers, and the criminal justice system. This is such a case.

SUMMARY OF ARGUMENT

This case presents a question of critical importance to the administration of federal habeas review nationwide: when a court of appeals issues “an order authorizing the district court to consider the application,” does that order authorize the district court to consider the application, or only the particular claims the court of appeals expressly identifies?

As the petition establishes, the courts of appeals are divided over that question. Five circuits hold that once an application satisfies the statutory threshold, the application returns to the district court, which then determines claim by claim whether relief is available. The Fifth and Eleventh Circuits take a different view: the district court has power to consider only the claims expressly identified in the authorization order. The petition explains why that rule is wrong. *Amici* submit this brief to emphasize three additional reasons why the question warrants this Court’s review.

First, applications for leave to file second or successive habeas applications are a substantial and recurring part of the federal appellate docket. Between fiscal years 2008 and 2025, the courts of appeals terminated 56,699 such proceedings—more than six percent of all appeals terminated during that period—and granted 4,791 applications. That averages about 3,150 proceedings terminated per year, with about 266 applications granted per year. Among applications resolved by grant or denial, roughly one in ten was granted. The question presented determines the legal effect of every one of those authorization orders.

Second, for many federal prisoners, a second or successive application is the only avenue through which a meritorious claim can ever be heard. A prisoner whose first § 2255 motion has been denied cannot simply file another one. And the consequences are substantial: prisoners have obtained relief on claims that the court of appeals did not expressly authorize. One prisoner serving twenty-five years as an armed career criminal was resentenced to time served. Another, serving two concurrent life sentences, was resentenced on both, one of them on a claim the court of appeals had declined to screen. A third, serving forty-five years, had all three of his firearm convictions vacated—one of them on a claim that did not exist when the court of appeals ruled—and was ordered released on bail pending resentencing. In each case, at least one ground of relief was a claim the court of appeals' authorization order had never named. Under the rule below, the district court would have lacked power even to consider those claims.

Third, the rule of lenity points to the same answer. The text is best read to reach the entire application, and the petition shows why. Lenity matters because the Eleventh Circuit says the text compels the opposite. It does not. Seven courts of appeals have construed these provisions and arrived at two answers, which is enough to show that the narrower reading is not the only one the words will bear. And when a penal law will bear a reading that keeps a prisoner's claim alive, courts do not choose the one that buries it.

The petition for a writ of certiorari should be granted.

ARGUMENT

I. CERTIORARI SHOULD BE GRANTED BECAUSE SECOND OR SUCCESSIVE APPLICATIONS ARE A SIGNIFICANT PART OF THE FEDERAL APPELLATE DOCKET

The question presented concerns the legal effect of thousands of orders entered through a deliberately abbreviated screening process. Given both the frequency of these proceedings and the dispositive consequences the rule below attaches to a court of appeals' failure to mention a claim, this Court's review is warranted.

Applications for leave to file second or successive habeas applications occupy a substantial share of the federal appellate docket. From 2021 to 2025, they constituted a majority of all original proceedings in the regional courts of appeals—between 53 and 67 percent.² Applications accounted for 56,699 of the 933,370 appeals terminated between fiscal years 2008 and 2025—just over six percent of the entire docket.³ These proceedings thus

² Administrative Office of the U.S. Courts, *Federal Judicial Caseload Statistics* (2021-2025), <https://www.uscourts.gov/data-news/reports/statistical-reports/federal-judicial-caseload-statistics>. Second or successive motions for writs of habeas corpus accounted for 67, 60, 63, 59, and 53 percent of the original proceedings filed in the 12-month periods ending March 31, 2021 through March 31, 2025, respectively.

³ Federal Judicial Center, *Federal Court Cases: Integrated Data Base—Appeals, Fiscal Year 2008 to Present*, <https://www.fjc.gov/sites/default/files/idb/textfiles/ap08on.zip> (data file downloaded Aug. 18, 2026). *Amici* calculated the figures reported in the text from appellate termination records for fiscal years 2008 through 2025, identifying original proceedings coded as second or successive habeas filings. The database records terminations rather than unique applications, and the relevant coding combines applications under 28 U.S.C. §§ 2244(b)(3) and 2255(h).

compete heavily for judicial attention with the ordinary run of civil and criminal appeals.

Applications are not merely filed and denied. From fiscal year 2008 through fiscal year 2025, the courts of appeals granted 4,791 of them. Among applications resolved by grant or denial, roughly *one in ten* was granted. Each of those 4,791 grants reflected a court of appeals' determination that the application had made the threshold showing Congress required to proceed on the basis of newly discovered evidence or a new rule of constitutional law made retroactive by this Court. *See* 28 U.S.C. §§ 2244(b)(2), (b)(3)(C), 2255(h).

The procedure Congress prescribed for issuing those orders confirms that it intended the courts of appeals to perform a circumscribed gatekeeping role. Most obviously, Congress assigned initial review to the courts of appeals—courts that ordinarily act through three-judge panels and are neither structured nor equipped to undertake exhaustive, first-instance review of voluminous habeas records. Consistent with that limited institutional role, Congress did not direct the court of appeals to adjudicate every claim in the application. Instead, it directed the panel to determine whether “the application makes a prima facie showing that the application satisfies the requirements” for successive review, and required the court to grant or deny authorization within thirty days. §§ 2244(b)(3)(B)-(D). Congress thus assigned the courts of appeals a preliminary screening function wherein they need only make a determination as to one potentially meritorious claim—it did not assign plenary claim-by-claim review.

The conditions under which the court of appeals screens these applications underscore the point. The application arrives on a form on which “[f]ew prisoners manage to squeeze more than 100 words into the permitted space,” and in a proceeding in which “[t]he

government never files a responsive pleading, and we never grant oral argument.” *United States v. St. Hubert*, 918 F.3d 1174, 1198 (11th Cir. 2019) (Wilson, J., dissenting from the denial of rehearing en banc). Judges of the Eleventh Circuit have described themselves as “combing through sealed records from the prisoner’s original sentence hearing” to decide these applications “without briefing or argument from a lawyer.” *In re Clayton*, 829 F.3d 1254, 1257 (11th Cir. 2016) (Martin, J., concurring in result) (quoting *In re McCall*, 826 F.3d 1308, 1311 (11th Cir. 2016) (Martin, J., concurring)).

That is the stuff of threshold preliminary review, not plenary claim-by-claim adjudication. Congress cannot sensibly have intended appellate judges, operating under a thirty-day deadline and ordinarily without adversarial briefing, to scour the underlying record for every potentially qualifying claim—and then to treat every claim they fail to identify as conclusively barred. The statutory design points in the opposite direction. The court of appeals decides whether “the application” makes the required *prima facie* showing and, if it does, issues “an order authorizing the district court to consider the application.” §§ 2244(b)(3)(A), (C). The fuller examination of the application belongs in the district court, where the record can be examined and the claims tested through ordinary adversarial procedures.

II. CERTIORARI SHOULD BE GRANTED BECAUSE A SECOND OR SUCCESSIVE APPLICATION IS THE ONLY WAY SOME PLAINLY MERITORIOUS CLAIMS CAN EVER BE HEARD

The stakes of the question presented are especially substantial because, for many federal prisoners, the successive-application process is the only available path to judicial consideration of a later-arising claim. After a prisoner’s first § 2255 motion has been denied, he cannot simply file another. Nor may he circumvent AEDPA’s

restrictions through § 2241 when his claim rests on an intervening change in statutory interpretation. *Jones v. Hendrix*, 599 U.S. 465, 471 (2023). Thus, when a potentially meritorious claim emerges after the first collateral attack has ended, the successive-application process may be the only door left open.

Whether an authorization order extends to the application or only to the particular claims the court of appeals identifies can therefore determine whether a claim is ever heard at all. The experience of circuits that permit district courts to consider the full application shows that the difference is not hypothetical. Prisoners have obtained substantial relief on claims the authorizing panel never addressed.

Akil Dorsey was serving twenty-five years as an armed career criminal when the Fourth Circuit authorized a successive motion on the ground that *Johnson v. United States*, 576 U.S. 591 (2015), “may apply to his case.” *United States v. Dorsey*, No. 07-cr-0404-ABA, 2026 WL 2069857, at *1 (D. Md. July 17, 2026) (forthcoming in F. Supp. 3d). Once counsel was appointed, however, counsel identified a different defect: Dorsey’s 1999 Virginia conviction for distributing cocaine could not qualify as a “serious drug offense” under the Armed Career Criminal Act (ACCA) because Virginia defined cocaine more broadly than federal law. *Id.* at *2. The Government argued that the district court lacked jurisdiction because that claim “falls outside the Fourth Circuit’s May 2016 order authorizing a successive § 2255 motion.” *Id.* at *3. The district court disagreed, *id.* at *5, held that the conviction did not qualify under current law, and reduced Dorsey’s sentence to time served, *id.* at *1, *18. The claim that produced Dorsey’s rightful release was thus a claim the authorization order never mentioned.

The same thing happened in *Goodridge*. Goodridge was serving two concurrent life sentences, one under the

ACCA and another under the federal three-strikes statute, 18 U.S.C. § 3559(c). *United States v. Goodridge*, 392 F. Supp. 3d 159, 163-64 (D. Mass. 2019). His pro se application challenged only the first; after counsel was appointed, Goodridge moved to expand it to reach the second. *Id.* at 164. The First Circuit granted the motion to amend and authorized the successive motion, but rested on the ACCA claim alone: it “need not reach the question whether *Johnson* applies to invalidate the residual clause of 18 U.S.C. § 3559(c),” and it took “no position on whether [Goodridge] may raise additional *Johnson* claims . . . in the district court.” *Id.* The district court considered the claim anyway and held Goodridge “entitled to be resentenced on Count One because he is no longer subject to a mandatory minimum life sentence.” *Id.* at 176. Under the rule below, the First Circuit’s express decision not to decide that claim at the threshold stage would instead have prevented any court from deciding it at all.

Acosta makes the point still more starkly. Sylvestre Acosta was serving an aggregate forty-five years on three convictions for using a firearm during a crime of violence. *Acosta v. United States*, No. 1:16-cv-00401-MAT, 2019 WL 4140943, at *1 (W.D.N.Y. Sept. 2, 2019). The Second Circuit found a prima facie showing on his *Johnson* claim, which it said “warrants fuller exploration by the district court,” stated that “[f]or present purposes, we have not examined Petitioner’s other proposed claims,” and transferred the entire proceeding. *Acosta v. United States*, No. 16-1492, Doc. 55, at 1-2 (2d Cir. June 8, 2018). A year later, this Court decided *United States v. Davis*, 588 U.S. 445 (2019), and Acosta filed a supplemental motion in the district court raising a claim the panel had never seen. 2019 WL 4140943, at *3. The district court granted both motions and vacated all three convictions—including the one that rested on the supplemental *Davis* ground the Government conceded. *Id.* at *4. It remanded

for a plenary resentencing and, finding that Acosta had by then served more than fourteen and a half years, granted bail and directed the Bureau of Prisons to release him from custody. *Id.* at *9. The claim that produced that vacatur did not exist when the court of appeals ruled on his application.

Those cases expose the practical consequence of the rule below. In each, the court of appeals determined that the application had crossed AEDPA's threshold on one claim and said nothing about the rest. In each, the district court went on to decide a claim the authorization order did not name. And in each, that claim produced relief. Under the rule below, Dorsey would not have received a time-served sentence, Goodridge's second life sentence would have remained intact, and Acosta's *Davis* claim could not have been considered at all—not because any court had considered and rejected those claims, but because an appellate panel conducting expedited threshold review had not named them.

That is an extraordinary consequence to attach to silence in an abbreviated screening order. Congress required the courts of appeals to decide only whether “the application makes a prima facie showing” and to do so within thirty days. §§ 2244(b)(3)(C)-(D). Nothing about that process suggests that a claim the panel does not mention has thereby been adjudicated and rejected. Yet the rule below gives omission substantially that effect: a claim may become forever unreviewable even though no court has ever considered it. The cases above show that the claims lost that way can mean the difference between continued imprisonment and release.

III. CERTIORARI SHOULD BE GRANTED BECAUSE ANY AMBIGUITY IN THE GOVERNING PROVISIONS SHOULD BE RESOLVED IN FAVOR OF LIBERTY

This case warrants review for an additional reason: it squarely presents an important and unresolved question

about the role of the rule of lenity in construing statutes that determine whether a prisoner may obtain review of the legality of his continued confinement. *Amici* take the petition’s position on the text: these provisions are best read to authorize the district court to consider the entire application, not merely the claims a court of appeals happens to name. Lenity is an independent route to the same place. Seven courts of appeals have construed these provisions and arrived at two answers, so whatever else is true, the Eleventh Circuit’s restrictive reading is not the one the statute compels. And a penal law that will bear a reading preserving a prisoner’s access to review should be given that reading rather than the one that forecloses it.

This case is a paradigmatic candidate for application of that rule. When a penal statute will bear two reasonable readings, lenity “requires courts to interpret ambiguous ‘penal laws,’ including those concerning sentencing, in favor of liberty, not punishment.” *Pulsifer v. United States*, 601 U.S. 124, 185 (2024) (Gorsuch, J., dissenting). As Justice Gorsuch put the principle in *Wooden*, “any reasonable doubt about the application of a penal law must be resolved in favor of liberty.” *Wooden v. United States*, 595 U.S. 360, 388 (2022) (Gorsuch, J., concurring in the judgment). Courts apply lenity “because a free nation operates against a background presumption of individual liberty.” *Pulsifer*, 601 U.S. at 185. It also protects fair-notice interests and guards against judges imposing punishment based on their own views of policy or “no more than a guess as to what Congress intended.” *Id.*

The fact that §§ 2255(h) and 2244(b)(3) regulate collateral review rather than define an offense does not make those concerns abstract. Lenity rests in part on “the tenderness of the law for the rights of individuals” and “the plain principle that the power of punishment is vested in the legislative, not in the judicial department.” *United States v. Davis*, 588 U.S. 445, 464-65 (2019)

(quotation marks omitted). Those principles bear directly on statutes that determine whether a prisoner may obtain judicial consideration of a claim that his continued confinement is unlawful. Once a first § 2255 motion has been resolved, §§ 2255(h) and 2244(b)(3) govern the circumstances in which “federal prisoners seeking to bring second or successive collateral attacks” may proceed at all. *Bowe v. United States*, 607 U.S. 13, 48 (2026) (Gorsuch, J., dissenting). Their construction can therefore determine not merely how a claim is processed, but whether any court may ever hear it.

This case makes that consequence concrete. As the cases discussed above show, district courts have granted substantial relief on claims that the authorizing court of appeals did not identify—reducing a twenty-five-year sentence to time served, eliminating a mandatory life sentence, and vacating a firearm conviction carrying a consecutive mandatory term. Under the rule below, none of those claims could have been considered. The competing interpretations thus have an unusually direct consequence for individual liberty: one permits a district court to determine whether continued imprisonment is lawful; the other can prevent that determination from occurring at all.

Yet nothing in the statutory text clearly commands the liberty-restricting rule. Congress instructed the court of appeals to decide whether “the application makes a prima facie showing” and, if so, to issue “an order authorizing the district court to consider the application.” §§ 2244(b)(3)(A), (C). It did not say that the panel must separately authorize every claim, much less that silence about a claim in an expedited screening order permanently deprives the district court of power to consider it. The rule below supplies that additional restriction by inference and resolves the resulting uncertainty in the direction of continued imprisonment.

That is precisely the circumstance in which the traditional presumption in favor of liberty matters. Congress may restrict successive collateral review, and AEDPA unquestionably does so. But where Congress has not clearly imposed a further restriction, courts should hesitate before creating one that can foreclose the only forum in which a prisoner may establish that his confinement is unlawful. The point of lenity is that courts do not resolve reasonable statutory doubt by enlarging the reach of penal consequences. They require Congress to speak clearly.

* * * * *

The question presented warrants this Court's review. It governs thousands of orders issued each year through an abbreviated screening process; the courts of appeals are divided over what those orders mean; and the rule below can make a potentially meritorious claim forever unreviewable merely because a three-judge panel did not mention it. Congress authorized courts of appeals to decide whether an application may proceed. It did not clearly make silence in that preliminary order the final word on the lawfulness of a prisoner's confinement. Where the consequence may be years—or a lifetime—of unlawful imprisonment, that question should not depend on geography, inference, or accident. This Court should grant the petition and resolve it.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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