

No. 25-1437

IN THE

Supreme Court of the United States

CLARENCE BORNS,

Petitioner,

v.

TROY CHRISMAN, WARDEN,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

MATTHEW A. MONAHAN

Counsel of Record

FEDERAL COMMUNITY DEFENDER

613 Abbott Street, Suite 500

Detroit, Michigan 48226

(313) 978-7633

matthew_monahan@fd.org

Counsel for Petitioner

Question Presented

AEDPA imposes a one-year statute of limitations on federal habeas petitions filed by state prisoners. 28 U.S.C. § 2244(d)(1). That period is tolled, however, while a “properly filed application for State post-conviction or other collateral review” is pending. § 2244(d)(2). For pro se prisoners, whose ability to deposit court papers depends on the prison mail system, the date a state postconviction motion is “filed” is often dispositive of whether the federal habeas petition will be heard at all.

In *Houston v. Lack*, 487 U.S. 266 (1988), this Court held that a pro se prisoner’s federal court papers are deemed filed when delivered to prison authorities for mailing. But that straightforward rule has split the circuits over a variation on the theme. Different circuits come to different conclusions about whether *Houston* governs when a state postconviction motion is “filed” under § 2244(d)(2), or whether—as the Sixth Circuit held below—only state filing rules govern, leaving federal habeas timeliness to depend entirely on the procedural choices each State has made.

The question presented is:

Does state or federal law govern the date a pro se prisoner’s state postconviction motion is “filed” for purposes of tolling AEDPA’s one-year limitations period under 28 U.S.C. § 2244(d)(2)?

Parties to the Proceeding

Petitioner Clarence Borns was the appellee below. Respondent Troy Chrisman, Warden, was the appellant below.

Table of Contents

Question Presented	1
Parties to the Proceeding	2
Table of Contents	3
Table of Authorities.....	4
Related Opinions	5
Petition for a Writ of Certiorari	6
A. Jurisdiction.....	6
B. Opinions Below.....	6
C. Statutory Provisions Involved.....	6
Introduction.....	7
Statement of the Case	10
Reasons for Granting the Petition	14
I. The circuits are split over whether <i>Houston v. Lack</i> determines when a state postconviction motion is “filed” for purposes of § 2244(d)(2).	14
A. The Seventh, Ninth, and Second Circuits apply <i>Houston</i>	14
B. The Sixth and Tenth Circuits hold that only state filing rules govern.	15
C. The split is acknowledged, and outcome-determinative.	16
II. The question presented is important and recurring.	17
Conclusion	18

Table of Authorities

Cases

<i>Adams v. LeMaster</i> , 223 F.3d 1177 (10th Cir. 2000).....	19
<i>Artuz v. Bennett</i> , 531 U.S. 4 (2000).....	18
<i>Ata v. Scutt</i> , 662 F.3d 736 (6th Cir. 2011).....	17
<i>Borns v. Chrisman</i> , 167 F.4th (6th Cir. 2026)	Passim
<i>Campbell v. Henry</i> , 614 F.3d 1056 (9th Cir. 2010).....	19
<i>Davis v. Bradshaw</i> , 900 F.3d 315 (6th Cir. 2018).....	16
<i>Fernandez v. Artuz</i> , 402 F.3d 111 (2d Cir. 2005)	19, 20
<i>Houston v. Lack</i> , 487 U.S. 266 (1988).....	Passim
<i>Lawrence v. Florida</i> , 549 U.S. 327 (2007).....	14
<i>People v. Borns</i> , 911 N.W.2d 715 (Mich. 2018)	7, 15
<i>People v. Borns</i> , No. 318376, 2014 WL 7442251 (Mich. Ct. App. Dec. 30, 2014).....	7, 14
<i>Ray v. Clements</i> , 700 F.3d 993 (7th Cir. 2012).....	11, 18, 19, 20
<i>Stillman v. LaMarque</i> , 319 F.3d 1199 (9th Cir. 2003).....	19
<i>Strickland v. Washington</i> , 466 U.S. 668 (1984).....	16
<i>Vroman v. Brigano</i> , 346 F.3d 598 (6th Cir. 2003).....	11, 16, 19, 21

Statutes

28 U.S.C. § 1254(1)	9
28 U.S.C. § 2244(d)	Passim
28 U.S.C. § 2254.....	15
28 U.S.C. § 2244(d)(2)	Passim

Rules

Mich. Ct. R. 1.112	16
Michigan Court Rule 6.500.....	15

Related Opinions

The proceedings directly related to this petition are:

- *Borns v. Chrisman*, 167 F.4th 365 (6th Cir. 2026), reversing the conditional grant of habeas relief.
- *Borns v. Chrisman*, No. 2:17-cv-13694 (E.D. Mich.), conditionally granting the writ of habeas corpus.
- *People v. Borns*, No. 318376, 2014 WL 7442251 (Mich. Ct. App. Dec. 30, 2014) (per curiam), affirming on direct appeal; leave denied, 866 N.W.2d 454 (Mich. 2015) (mem.).
- *People v. Borns*, 911 N.W.2d 715 (Mich. 2018) (mem.), denying leave to appeal denial of motion for relief from judgment.

Petition for a Writ of Certiorari

Clarence Borns respectfully petitions this Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit.

A. Jurisdiction

The Sixth Circuit entered judgment on February 11, 2026. The court of appeals has not yet issued the mandate; petitioner has moved to stay the mandate pending the disposition of this petition. This Court's jurisdiction rests on 28 U.S.C. § 1254(1).

B. Opinions Below

The opinion of the United States Court of Appeals for the Sixth Circuit is reported at 167 F.4th 135 (6th Cir. 2026). The opinion of the United States District Court for the Eastern District of Michigan conditionally granting the writ of habeas corpus is unreported, available at 2025 WL 2092520.

C. Statutory Provisions Involved

The relevant provisions of the Antiterrorism and Effective Death Penalty Act of 1996, 28 U.S.C. § 2244(d), provide:

(1) A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of —

(A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review[.]

(2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

Introduction

This case presents a recurring question of federal habeas procedure on which the courts of appeals are deeply divided: when a pro se state prisoner deposits a state postconviction motion in the prison mail system within AEDPA’s one-year period, but the motion does not reach the state-court clerk until after that year has expired, does the federal mailbox rule of *Houston v. Lack*, 487 U.S. 266 (1988), determine the date of “filing” for purposes of statutory tolling under 28 U.S.C. § 2244(d)(2) — or does the answer turn entirely on whether the State has chosen to adopt a mailbox rule of its own?

The Seventh Circuit, joined in substance by the Ninth and Second Circuits, applies *Houston* as a federal default rule: a pro se prisoner’s state postconviction motion is “filed” when delivered to prison authorities for mailing, unless the State has clearly rejected that rule. *Ray v. Clements*, 700 F.3d 993 (7th Cir. 2012). In contrast, the Sixth Circuit—in the published decision below and in its earlier decision in *Vroman v. Brigano*, 346 F.3d 598 (6th Cir. 2003)—holds that *only* state filing rules govern, with no federal floor.

What’s more, both sides of the split think they have the weight of the authority on their side. Compare *Vroman*, 346 F.3d at 604 (“the majority of federal circuits to consider the issue have declined to extend the mailbox rule to the determination of filing dates for state post-conviction applications”) with *Ray*, 700 F.3d at 1004 (“We agree with the majority of our sister circuits and hold that the mailbox rule applies to a state pro se prisoner’s post-conviction filings . . .”). The result is a nearly state-by-

state split, across the country, over how a federal district court must apply an issue of federal law: the timeliness of a federal habeas corpus petition.

And as this case illustrates, whether a federal habeas petition can be heard at all depends not on the prisoner's diligence, but on the happenstance of which State holds him in custody. Petitioner Clarence Borns deposited his Michigan motion for relief from judgment in the prison mailbox before AEDPA's one-year clock expired. The state-court clerk did not docket the motion until nine days after the limitations period ran. In the Seventh, Ninth, or Second Circuit, that timing likely would have tolled the federal clock and Borns' habeas petition—granted by the district court on an ineffective-assistance-of-counsel claim—would have been heard on the merits. In the Sixth Circuit, not so.

This split is acknowledged and entrenched. The Sixth Circuit, for its part, has now reaffirmed its contrary view in a published opinion that pointedly characterizes any federal-default approach as foreclosed by its prior precedent. *Borns*, 167 F.4th at 343 n.4 (“To the extent that the district court applied a federal prison-mailbox rule . . . it erred.”). Lower courts, prisoners, and the States need this Court's guidance on a question that has divided the courts of appeals for more than two decades and determines whether federal habeas review is even available for thousands of state prisoners every year.

The question is also a clean question of federal law arising under *Houston* and AEDPA. It is squarely presented on a developed record—petitioner has documentary proof of timely deposit in the prison mailbox in the form of a certificate of mailing in

the district court record—and is dispositive of whether petitioner can obtain federal review of his ineffective-assistance claim. The petition should be granted.

Statement of the Case

Following a 2013 trial, a Michigan jury convicted petitioner Clarence Borns of assault with intent to murder and firearms offenses arising out of a street confrontation between members of two extended families. The prosecution's case rested entirely on eyewitness identifications by the alleged victim and three of his relatives; no physical evidence connected Borns to the shooting. *Id.* Borns' defense leaned on misidentification: another family member—his brother Carl—committed the shooting. *Id.* Borns insisted he remained inside the house when the gunfire began. *Id.*

On direct appeal, Borns challenged the sufficiency of the evidence and raised a Confrontation Clause claim. He also tried to submit a pro se supplemental brief raising ineffective assistance of trial counsel and attaching affidavits from four uncalled witnesses who would have either placed Borns inside the house or identified Carl as the shooter. However, the Michigan Court of Appeals refused to consider the pro se brief on procedural grounds and affirmed. *People v. Borns*, 2014 WL 7442251 (Mich. Ct. App. Dec. 30, 2014). The Michigan Supreme Court denied leave to appeal on July 28, 2015. 866 N.W.2d 454 (mem.).

The 90-day window for petitioning this Court for certiorari on direct review expired on October 26, 2015. AEDPA's one-year limitations period therefore began running the next day and would expire on October 26, 2016. 28 U.S.C. § 2244(d)(1)(A); *Lawrence v. Florida*, 549 U.S. 327, 332 (2007). Those dates are undisputed.

Borns, acting pro se while incarcerated, prepared a state postconviction pleading. In Michigan, such pleadings are styled as motions for relief from judgment and governed by Michigan Court Rule 6.500 et seq. Importantly, Michigan's court rules don't place a time limit on motions for relief from judgment.

Borns' state postconviction motion raised the same ineffective-assistance claims he had attempted to advance on direct appeal. Borns signed the motion on October 24, 2016—two days before the AEDPA deadline. And he deposited the motion, with prepaid postage, in the prison's outgoing legal mail prior to October 26, 2016. The prison's certificate of mailing reflects the deposit date; that certificate appears in the district court record (in partially redacted form).

The state trial court did not docket Borns' motion until November 4, 2016—nine days after AEDPA's one-year clock had expired under the Sixth Circuit's clerk-receipt rule. The state trial court denied the motion on the merits, the Michigan Court of Appeals denied leave, and the Michigan Supreme Court denied leave on March 27, 2018. *People v. Borns*, 911 N.W.2d 715 (Mich. 2018) (mem.).

Borns filed his federal habeas petition under 28 U.S.C. § 2254 in the Eastern District of Michigan on November 2, 2017, calculated from the assumption that his state postconviction motion had tolled the AEDPA clock as of October 24, 2016. The State moved to dismiss as untimely. The district court (Berg, J.) denied that motion and ordered briefing on the merits. After full briefing, the district court conditionally granted the writ on Borns' ineffective-assistance claim, concluding that the Michigan courts had unreasonably applied *Strickland v. Washington*, 466 U.S. 668 (1984), in

rejecting it. The court ordered the State either to release Borns or to retry him within 120 days. The State appealed.

The Sixth Circuit reversed in a published opinion. The court held that the petition was untimely under § 2244(d)(1) and reversed on that ground alone. *Borns*, 167 F.4th at 345. Judge Thapar, joined by Judge McKeague also concluded that the petition would fail on the merits even if timely. *Id.* at 347. Judge Griffin would not have gone that far. *Id.* at 339.

On the timeliness question, the panel acknowledged the dispositive issue: whether Borns’ state postconviction motion was “filed” within AEDPA’s one-year window so as to toll the federal clock under § 2244(d)(2). *Id.* at 343. The panel held that the answer depends entirely on Michigan law. Citing *Vroman v. Brigano*, 346 F.3d 598 (6th Cir. 2003), and *Davis v. Bradshaw*, 900 F.3d 315 (6th Cir. 2018), the panel reasoned that “[t]o the extent that the district court applied a federal prison-mailbox rule to find Borns’ motion timely, it erred,” because “the timeliness of [a state] prisoner’s post-conviction petition is governed by state statute.” *Id.* at 343 n.4 (quoting *Vroman*, 346 F.3d at 603).

Applying Michigan law, the panel concluded that the motion was “filed” only when received by the clerk on November 4, 2016. *Id.* at 345-46. Michigan’s 2021 universal prison-mailbox rule, Mich. Ct. R. 1.112, did not apply retroactively; the older appellate prison-mailbox rule did not extend to postconviction motions; and absent any applicable mailbox rule, Michigan’s default rule treats a paper as filed only on receipt by the clerk. *Id.* at 344-46. The panel therefore concluded that §

2244(d)(2) tolling did not begin until nine days after the one-year period had already expired. *Id.* at 345.

The panel denied equitable tolling on three independent grounds: lack of diligence, no extraordinary circumstance, and no causal link under *Ata v. Scutt*, 662 F.3d 736 (6th Cir. 2011). *Id.* at 346-47. The Sixth Circuit has not issued the mandate. Petitioner has moved to stay the mandate pending disposition of this petition.

Reasons for Granting the Petition

I. The circuits are split over whether *Houston v. Lack* determines when a state postconviction motion is “filed” for purposes of § 2244(d)(2).

Section 2244(d)(2) tolls AEDPA’s one-year limitations period while a “properly filed application for State post-conviction or other collateral review” is “pending.” 28 U.S.C. § 2244(d)(2). This Court has explained that a pleading is “properly filed” when its “delivery and acceptance are in compliance with the applicable laws and rules governing filings.” *Artuz v. Bennett*, 531 U.S. 4, 8 (2000). But *Artuz* did not determine when a pro se prisoner’s state filing is delivered. That question is acutely important because, for an incarcerated litigant, the time between handing a document to a prison official and its arrival at the courthouse may, as here, stretch days or weeks. And the circuits can’t agree on an answer.

A. The Seventh, Ninth, and Second Circuits apply *Houston*.

In *Ray v. Clements*, 700 F.3d 993 (7th Cir. 2012), the Seventh Circuit confronted precisely this question—whether *Houston* backstops the date a state postconviction motion is “filed” for purposes of § 2244(d)(2) tolling. The Seventh Circuit said yes. *Ray*, 700 F.3d at 1004.

Houston was grounded in the unique disadvantages faced by a pro se prisoner who cannot follow up on his pleading once it hits the mail. 487 U.S. at 271. Because that disadvantage likewise appears when a prisoner files a state postconviction motion, the Seventh Circuit agreed “with the majority of our sister circuits” and applied the federal prisoner mailbox rule to the filing of a state post-conviction document “unless

the state where the petitioner was convicted has clearly rejected it.” *Ray*, 700 F.3d at 1004. The Ninth Circuit has long done the same. *Campbell v. Henry*, 614 F.3d 1056, 1059 (9th Cir. 2010); *Stillman v. LaMarque*, 319 F.3d 1199, 1201 (9th Cir. 2003). So too does the Second Circuit. *Fernandez v. Artuz*, 402 F.3d 111, 116 (2d Cir. 2005).

These circuits proceed from a common foundation. AEDPA’s reference in § 2244(d)(2) to a “properly filed” state postconviction motion borrows from state law the rules governing what makes a filing proper. But it does not displace the federal procedural rule of *Houston v. Lack*, which governs when a pro se prisoner’s filing is delivered for federal purposes. And the Second Circuit in *Fernandez* decided that *Houston* best fits cases, like this one, where the state puts no time limit on a postconviction pleading. *Fernandez*, 402 F.3d at 116.

Put simply, these federal courts apply a federal rule to determine when AEDPA’s federal limitations period was tolled.

B. The Sixth and Tenth Circuits hold that only state filing rules govern.

But that’s not true everywhere. The Sixth Circuit, joined by the Tenth, takes precisely the opposite position. *Vroman v. Brigano*, 346 F.3d 598, 603-04 (6th Cir. 2003) (declining to extend federal mailbox rule to state postconviction filing); *Adams v. LeMaster*, 223 F.3d 1177, 1181 (10th Cir. 2000) (refusing to apply the federal mailbox rule to determine when state postconviction filing tolled AEDPA’s limitations period). The Sixth Circuit reaffirmed that approach in the published decision below. *Borns*, 167 F.4th at 343, n.4.

The Sixth Circuit’s position is unmistakable. Where the State has not adopted a mailbox rule for the document type at issue, the prisoner’s motion is “filed” only when physically received by the state clerk, even if the state imposes no deadline on the postconviction pleading. *Borns*, 167 F.4th at 344-45. The federal mailbox rule is no backstop. *But see, Fernandez*, 402 F.3d at 116 (applying federal mailbox rule because the state rule imposed no time limit on the state pleading, so no risk of federal/state conflict). The result is that whether AEDPA’s clock continues to run—a question of federal law that determines federal-court access—is entirely outsourced to the procedural choices of fifty different States.

That position is hard to square with the rationale of *Houston*, which rested not on the peculiarities of any state procedural system but on the unique federal interest in providing pro se prisoners equal access to the courts. 487 U.S. at 270-72.

C. The split is acknowledged, and outcome-determinative.

This is not a nascent or theoretical division. The Seventh Circuit expressly noted in *Ray* that it was joining “the majority of our sister circuits.” 700 F.3d at 1004, 1006. The Sixth Circuit’s contrary view dates from at least 2003, and the Sixth Circuit also thinks it’s in the majority camp. *Vroman*, 346 F.3d at 603. The split has now persisted for more than two decades, has been the subject of repeated commentary, and has been entrenched in published precedent on both sides.

The split is so often outcome-determinative for petitioners like *Borns*. In Wisconsin, Arizona, California, Oregon, Washington, New Mexico, Oklahoma, and the other States within the Seventh, Ninth, and Tenth Circuits, a pro se prisoner who

deposits a state postconviction motion in the prison mailbox before AEDPA's one-year clock runs is entitled to tolling from the date of deposit. In Michigan, Ohio, Kentucky, and Tennessee — the four States within the Sixth Circuit — that same prisoner forfeits federal habeas review. The disparity is not a matter of differing state procedural choices alone (although those choices contribute to the disparity); it is a matter of federal law: whether the federal mailbox rule of *Houston* governs. This Court alone can resolve that question.

II. The question presented is important and recurring.

AEDPA's one-year limitations period is the most consequential procedural rule in modern federal habeas practice. State prisoners file roughly thousands of habeas petitions each year, and the timeliness analysis under § 2244(d) is among the most-litigated issues at the threshold of those cases. The question whether § 2244(d)(2)'s tolling provision turns on a federal mailbox rule or on each State's procedural choices is therefore a recurring question of significant practical consequence.

The question is also one of equal access to federal courts. *Houston* recognized that prisoners have no choice but to entrust their pleadings to prison authorities and have no way of taking a belt-and-suspenders approach to their filings, they simply cannot follow up to ensure proper receipt. 487 U.S. at 271. Those concerns apply with full force to AEDPA tolling. Indeed, they apply with greater force because the prisoner's federal court access hangs on the question.

The current split creates results that are impossible to defend on principle. A pro se prisoner in Cleveland (Sixth Circuit) and a pro se prisoner in Cincinnati (Sixth Circuit) lose federal review for putting a postconviction motion in the prison mailbox three days before AEDPA's deadline. The same prisoner doing the same thing in Indianapolis (Seventh Circuit), Phoenix (Ninth Circuit), or California (Ninth Circuit) gets his case heard. There is no plausible federal interest in that disparity—only the absence of this Court's guidance.

Conclusion

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

Respectfully submitted,

/s/Matthew A. Monahan

Matthew Adornetto Monahan
Federal Community Defender

613 Abbott Street, Suite 500

Detroit, MI 48226

(313) 967-5832

matthew_monahan@fd.org

Date: July 6, 2026

No:

IN THE
SUPREME COURT OF THE UNITED STATES

CLARENCE BORNS,
Petitioner,

v.

TROY CHRISMAN,
Respondent.

CERTIFICATE OF SERVICE

I certify that on July 6, 2026 in accordance with SUP. CT. R. 29, copies of the (1) Petition for Writ of Certiorari, (2) Motion for Leave to Proceed In Forma Pauperis, (3) Certificate of Service, and (4) Declaration Verifying Timely Filing, were served by mail within three days upon the Department of Attorney General for the State of Michigan, 525 Ottawa Street, P.O. Box 30212, Lansing, MI 48909.

FEDERAL PUBLIC DEFENDER

By: /s/ Matthew A. Monahan
Matthew A. Monahan
Assistant Federal Defender
Counsel for Petitioner Clarence Borns

No:

IN THE
SUPREME COURT OF THE UNITED STATES

CLARENCE BORNS,
Petitioner,

v.

TROY CHRISMAN,
Respondent.

DECLARATION VERIFYING TIMELY FILING

Petitioner Clarence Borns, through undersigned counsel, and under SUP. CT. R. 29.2 and 28 U.S.C. § 1746, declares that the **Petition for Writ of Certiorari** filed in the above-styled matter was sent through the United States Postal Service by first-class mail, postage prepaid, and bears a postmark showing that the document was mailed on or before the last day for filing, addressed to the Clerk of the Supreme Court of the United States, on July 6, 2026, which is timely pursuant to the rules of this Court.

By: /s/ Matthew A. Monahan
Matthew A. Monahan
Assistant Federal Defender
Counsel for Petitioner Clarence Borns