

No. 26-5499

ORIGINAL

Supreme Court, U.S.
FILED

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IN THE

SUPREME COURT OF THE UNITED STATES

ADAM SHANE SWINDLE — PETITIONER
(Your Name)

vs.

BARRY WINGFIELD, et al. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THE FIFTH CIRCUIT COURT OF APPEALS
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Adam Shane Swindle, RN#32320-001
(Your Name)

P.O. Box 5000, FCC Yazoo City Low
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Yazoo City, Mississippi 39194
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

1. Whether the Suspension Clause and the Due Process Clause are violated when a federal prisoner's evidence-based claim of factual innocence, grounded in forensic evidence bearing on the offense's mens rea element, is categorically denied any forum for merits review under either § 2255 or § 2241's Saving clause.
2. Whether *Jones v. Hendrix*, 599 U.S. 465 (2023), which addressed a claim based on an intervening change in statutory interpretation under 2255(h)(2), forecloses an evidence-based claim of factual innocence under 2255(h)(1), where lower courts have extended *Jones* by analogy to reach a question the Court did not decide.

LIST OF PARTIES

A list of all parties to the proceeding in the court whose judgment is the subject of this petition is provided below. If a party is a corporation with a stock ticker symbol, that symbol is also included.

ADAM SHANE SWINDLE
UNITED STATES OF AMERICA
BARRY WINGFIELD

RELATED CASES

United States v. Swindle, No. 7:15-cr-247-LSC-SGC (N.D. Ala. judgment entered Mar. 1, 2016).

Swindle v. United States (motion to vacate under 28 U.S.C. § 2255 denied Nov. 11, 2017; appeal denied), 2018 U.S. App. LEXIS 12490 (11th Cir. 2018).

In re Swindle, No. 23-12587 (11th Cir. Aug. 24, 2023) (denying authorization to file second or successive § 2255 motion).

Swindle v. Wingfield, No. 3:24-cv-831-DPJ-ASH (S.D. Miss. dismissed Oct. 7, 2025).

Swindle v. Wingfield, No. 25-60577 (5th Cir. June 23, 2026) (denying appeal, rehearing and rehearing en banc).

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CASES	PAGE NUMBER
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<i>Schlup v. Delo</i> , 513 U.S. 298 (1995) _____	8
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STATUTES AND RULES

28 U.S.C. § 1254 (1)
28 U.S.C. § 1746
28 U.S.C. § 2241 (c)(1)
28 U.S.C. § 2241 (c)(3)
28 U.S.C. § 2244 (b)(1)
28 U.S.C. § 2244 (b)(3)(C)
28 U.S.C. § 2244 (b)(3)(E)
28 U.S.C. § 2255 (e)
28 U.S.C. § 2255 (h)
28 U.S.C. § 2255 (h)(1)
28 U.S.C. § 2255 (h)(2)

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix B to the petition and is

☒ reported at Pet. App. No. 25-60577 at 2; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the United States district court appears at Appendix C to the petition and is

☒ reported at 3:24-cv-831 at 7-8; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was May 2026.

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: June 23, 2026, and a copy of the order denying rehearing appears at Appendix A.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. art. I, § 9, cl. 2 (Suspension Clause) provides:

"The Privilege of the Writ of Habeas Corpus shall not be suspended, unless in Cases of Rebellion or Invasion the public Safety may require it."

28 U.S.C. § 2255(e) (saving clause) provides:

"An application for a writ of habeas corpus in behalf of a prisoner who is authorized to apply for relief by motion pursuant to this section, shall not be entertained if it appears that the applicant has failed to apply for relief, by motion, to the court which sentenced him, or that such court has denied him relief, unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of his detention."

28 U.S.C. § 2255(h) provides:

"A second or successive motion must be certified as provided in 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. § 2244(b)(3)(C), (E) provides, in relevant part:

"(C) The court of appeals may authorize the filing of a second or successive application only if it determines that the application makes a prima facie showing that the application satisfies the requirements of this subsection.

(E) The grant or denial of an authorization by a court of appeals to file a second or successive application shall not be appealable and shall not be the subject of a petition for rehearing or for a writ of certiorari."

28 U.S.C. § 2241(c)(1), (c)(3) provides, in relevant part:

"The writ of habeas corpus shall not extend to a prisoner unless

(1) He is in custody under or by color of the authority of the United States...

(3) He is in custody in violation of the Constitution or laws or treaties of the United States..."

STATEMENT OF THE CASE

A. Petitioner Adam Shane Swindle pleaded guilty in the United States District Court for the Northern District of Alabama, Western Division on October 20, 2015 and was sentenced on March 1, 2016 to a term of 168 months, followed by a lifetime term of supervised release. Petitioner did not raise a claim of actual innocence at the time of his plea or sentencing.

B. Post-Conviction Discovery of Forensic Evidence

Following sentencing, Petitioner obtained and conducted his own review of a metadata spreadsheet and forensic report relating to the digital evidence underlying his conviction. Through that independent review, Petitioner identified forensic indicators including the absence of active files, the absence of evidence that any files were viewed, organized, or collected, and questions concerning volume shadow copies, unallocated space, and orphan files, that he contends demonstrate he did not knowingly receive or knowingly possess the files forming the basis of his conviction. Trial counsel did not cross-examine the government's forensic witness or independently test the government's characterization of this evidence at trial. Petitioner's analysis of discovery was completed in July 2023, the same month Petitioner filed his second or successive 2255 to the Eleventh Circuit Court of Appeals.

C. Eleventh Circuit Gatekeeping Denial

The Eleventh Circuit denied authorization on August 24, 2023, on two grounds: (1) that the evidence was not "newly discovered" because Petitioner already possessed the underlying metadata spreadsheet and forensic report; and (2) that Petitioner's guilty plea foreclosed any showing that no reasonable juror would have convicted him. Petitioner did not rely solely on the settled understanding that the Eleventh Circuit's denial was unreviewable. Petitioner submitted to this Court a petition for a Writ of Certiorari seeking review of the Eleventh Circuit's August 24, 2023 denial. The Clerk's Office returned the submission stamped "received" without docketing it. Petitioner resubmitted the petition along with a letter addressing 28 U.S.C. 2244(b)(3)(E) and its application to federal petitioners under 2255, as distinct from state prisoners under 2254. The Clerk's Office returned the letter stamped "received" with a date stamp of April 24, 2024, without the petition. The petition was never docketed. Appendix F; Appendix E

At that time, the denial was unavailable for further review. 28 U.S.C. 2244(b)(3)(E) was then uniformly understood to bar any subsequent review of a court of appeals' authorization decision, and no federal prisoner had obtained certiorari review of such a denial. See *In re Bowe*, No. 22-7871, 601 U.S. ___, 144 S.Ct. 1170 (2024) (Statement of Sotomayor, J., respecting denial of an original habeas petition, flagging an unresolved circuit split on a related question).

D. The 2241 Petition and District Court Denial

On December 23, 2024, Petitioner filed a petition under 28 U.S.C. 2241(c)(1)&(c)(3), invoking the saving clause of 2255(e), in the United States Court for the Southern District of Mississippi, Northern Division, where he is confined. Petitioner asserted that 2255 was inadequate or ineffective to test the legality of his detention because the Eleventh Circuit's gatekeeping denial left him with no forum in which to test his evidence-based innocence claim. See Appendix D; Appendix C. On October 7, 2025, the district court (Jordan, J.) dismissed the petition with prejudice as to the jurisdictional issues, relying on *Jones v. Hendrix*, 599 U.S. 465 (2023), and on Fifth Circuit decisions applying *Jones*, including *Moore v. United States*, No. 23-30822, 2024 WL 5244553 (5th Cir. Dec. 30, 2024), and *Hart v. Daniels*, No. 23-40639, 2024 WL 391253 (5th Cir. Aug. 23, 2024), cert. denied, 145 S.Ct. 1476 (2025). Petitioner timely noticed his appeal on October 12, 2025.

E. The Fifth Circuit's Decision

The Court of Appeals for the Fifth Circuit (Stewart, Willett, and Wilson, JJ.) affirmed in an unpublished per curiam opinion. The panel had held that Petitioner had abandoned any challenge to his Separate Eighth Amendment prison-conditions claim by not contesting the district court's determination that it belonged in a 42 U.S.C. 1983 action rather than the 2241 petition. Appeal No. 25-60577 at 2. On the innocence claim, the panel acknowledge that Petitioner challenged the district court's reliance on *Jones* "because it did not involve a claim of actual innocence," but concluded that "the Supreme Court in *Jones* considered the issue analogously and rejected an argument that the saving clause was subject to an equitable exception for actual innocence." Pet. App. at 7. Appendix B

F. Denial and Rehearing

Petitioner timely petitioned for panel rehearing and rehearing en banc, arguing

that the panel had misapprehended the nature of his claim, conflating a factual-innocence claim concerning the offense's mens rea element with the Statutory-interpretation claim Jones addressed, and that the panel's opinion never engaged with the forensic evidence Petitioner had presented. On June 23, 2026, the panel denied rehearing, and, no judge having requested a poll, the court denied rehearing en banc. Pet. App. at 1. Appendix A

This petition follows.

REASONS FOR GRANTING THE PETITION

I. The Decision Below Extends *Jones v. Hendrix* Beyond What This Court Held, Foreclosing a Category of Claim Jones Did Not Decide

This Court's holding in *Jones v. Hendrix*, 599 U.S. 465 (2023), was narrow and specific: the saving clause of 28 U.S.C. 2255(e) does not permit a prisoner to use 2241 to raise a claim based on an intervening change in statutory interpretation, a claim that fits within neither of the two exceptions Congress wrote into 2255(h). *Id.* at 477-80. The Court repeatedly anchored its reasoning to that category of claim, contrasting it with two claims, Congress did except from the successive motion bar: newly discovered evidence of factual innocence, 2255(h)(1), and new rules of constitutional law, 2255(h)(2). *Id.* at 471.

Petitioner's claim is not a *Jones*-style statutory interpretation claim. Petitioner contends that forensic evidence [metadata analysis, hash-value comparison, and volume shadow copies/unallocated-space findings] establishes that he did not knowingly receive or possess the files underlying his conviction. This is precisely the category of claim 2255(h)(1) was written to accommodate: newly discovered evidence bearing on factual innocence.

Despite this distinction, the Fifth Circuit affirmed dismissal by reasoning that "the Supreme Court in *Jones* considered the issue analogously and reject an argument that the saving clause was subject to an equitable exception for actual innocence." Pet. App. at 7. (quoting district court). That is an extension of *Jones* by analogy, not an application of anything *Jones* actually held. *Jones* had no occasion to decide whether an evidence-based evidence claim falling within 2255(h)(1)'s own express terms can be foreclosed entirely where a prior gatekeeping court found the evidence insufficiently "newly discovered". The panel's unpublished disposition acknowledges as much, framing its holding at a low bar of nonfrivolousness rather than as a considered merits ruling. Pet. App. at 7. Appendix C

II. No Court Has Reached the Merits of Petitioner's Factual Innocence Claim

Neither the Eleventh Circuit, in denying authorization for a second or successive 2255 motion, nor the district court, nor the Fifth Circuit, in

dismissing Petitioner's 2241 petition, has ever evaluated the forensic evidence underlying Petitioner's innocence claim against the Schlup/Bousley standard, whether, in light of all the evidence, it is more likely than not that no reasonable juror would have convicted him. *Schlup v. Delo*, 513 U.S. 298, 327 (1995); *Bousley v. United States*, 532 U.S. 614, 623 (1998). Each court instead resolved the case at a threshold, gatekeeping level:

The Eleventh Circuit concluded that evidence was not "newly discovered" because Petitioner already possessed the underlying data files and forensic report, without addressing whether the exculpatory significance of that evidence, only established through subsequent independent analysis, was discoverable earlier through due diligence.

The Eleventh Circuit further concluded that Petitioner's guilty plea foreclosed any showing that no reasonable juror would have convicted him, a categorical rule this Court has never adopted. See *Bousley*, 523 U.S. 623-24 (permitting actual-innocence review notwithstanding a guilty plea.)

The Fifth Circuit dismissed Petitioner's appeal as frivolous and under the nonfrivolousness standard for IFP review, without addressing the forensic evidence at all.

The result is that Petitioner, who has consistently pursued relief through every available channel, has never had a single court test the merits of his innocence claim.

III. The Question Presented Is Recurring and Important

AEDPA's structure presupposes that a federal prisoner will have some forum in which an evidence-based innocence claim, meeting 2255(b)(1)'s own terms, can be tested. If gatekeeping denials under 2244(b)(3) can foreclose that claim on grounds untethered to Bousley's framework, and if 2241's saving clause is then read, by analogy to a case that did not decide the question, to foreclose it a second time, the result is a class of prisoners for whom no habeas forum exist to test a claim Congress itself preserved. That outcome implicates the Suspension Clause, U.S. Const. art. I, § 9, cl. 2, and Warrants review.

IV. Total Foreclosure of an Evidence-Based Claim Violates the Suspension Clause

A. The Historical Clause guarantees that "[t]he Privilege of the Writ of Habeas Corpus shall not be suspended," U.S. Const. art. I, § 9, cl. 2, and this Court has

long held that the Clause protects, at minimum, the substance of the writ as it existed at common law and requires that any substitute remedy be an "adequate and effective" alternative. *Boumediene v. Bush*, 553 U.S. 723, 771 (2008); *Swain v. Pressly*, 430 U.S. 372, 381 (1977). A substitute remedy is not adequate and effective if it forecloses that claim that habeas has traditionally reached. This Court has repeatedly recognized that a claim of actual, factual innocence occupies a distinct and privileged place within that tradition. See *Herrera v. Collins*, 506 U.S. 390, 404 (1993) (treating the actual-innocence gateway as embedded in the Court's federal habeas jurisprudence); *Schlup v. Delo*, 513 U.S. 298, 321 (1995) (actual innocence is a gateway "to have [and] otherwise barred Constitutional claim considered on the merits"); *McQuiggin v. Perkins*, 569 U.S. 383, 392 (2013) (a credible showing of actual innocence overcomes even AEDPA's one-year statute of limitations, because "a fundamental miscarriage of justice exception" survives any procedural bar Congress has erected).

- B. Jones Rejected a Different Suspension Clause Claim on Different Grounds
In *Jones v. Hendrix*, this Court rejected a Suspension Clause challenge, but only as applied to a claim of legal innocence grounded in an intervening statutory-interpretation decision. The Court reasoned that at the time of the Founding, a claim resting on a later-discovered misapplication of substantive law would not have been cognizable on habeas, because habeas traditionally tested the authority of the committing court, not claims of legal error corrections on direct appeal. 599 U.S. at 481-84.
That reasoning does not extend to an evidence-based claim of factual innocence. Unlike a claim that the law was misapplied, a claim that the petitioner did not commit the act at all, supported by evidence never presented to any factfinder, sits within the traditional core the Suspension Clause protects, and within the very category Congress itself preserved 2255(h)(1).
Jones did not hold, and could not have held, that this category of claim may be foreclosed entirely; the Court's own opinion assumed such claims retain a forum, since 2255(h)(1) exist precisely to allow them. 599 U.S. at 471.

Although Petitioner's briefing below framed this argument in terms of the inadequacy of 2255 as a vehicle to test the legality of his detention, rather than invoking the Suspension Clause by name, the Constitutional concern

was fairly included in that argument. The inadequate-or-ineffective inquiry under the Saving Clause and the Suspension Clause inquiry ask the same underlying question, whether a prisoner has a meaningful opportunity to have a claim of unlawful detention actually adjudicated. See *Jones v. Hendrix*, 599 U.S. 465, 481-84 (2023) (framing the Saving Clause and Suspension Clause concerns together). Petitioner's argument that no court has ever reached the merits of his actual innocence claims is the same argument in substance, whether captioned as a Saving-Clause claim or Constitutional one. Petitioner does not contend that failing to satisfy 2255(h)(1)'s gatekeeping standard, standing alone, renders 2255 inadequate. Such rule would indeed allow any unsuccessful gatekeeping applicant to relitigate a denied claim through 2241, collapsing AEDPA's restrictions on successive motions. Petitioner's claim is narrower and different in kind: the gatekeeping determination, under 2255(h)(1) is, by the Eleventh Circuit's own description, quoting *Jordan v. Sec'y Dep't of Corr.*, 485 F.3d 1351, 1357-58 (11th Cir. 2007), "Simply a threshold determination," [See *In re ADAM SHAVE SWINDLE* App. No. 23-12587 at Pg. 2] not a merits adjudication of actual innocence. No court, nor the gatekeeping panel, not any court under 2241, and not any court on direct or collateral review, has ever reached the merits of Petitioner's factual innocence claim. The defect is structural and procedural, not a disagreement with the outcome of gatekeeping review.

C. Petitioner Has Been Left With No Forum

Petitioner's case presents the mismatch *Jones* did not resolve. The Eleventh Circuit denied authorization to bring Petitioner's evidence-based innocence claim in a second or successive 2255 motion, a denial that is by statute unreviewable. 28 U.S.C. 2244(b)(3)(E). This unavailability was not an oversight or forfeiture on Petitioner's part; it reflected the settled understanding of the law at the time. The Supreme Court has since held, in *Bowe v. United States*, 601 U.S. at — (slip op. at 8) (Gorsuch, J., dissenting), that 2244(b)(3)(E) does not categorically bar certiorari review of a court of appeals' denial of authorization to file a successive 2255 motion. But that holding issued more than two years after Petitioner's ninety-day window to seek certiorari from the Eleventh Circuit's August 24, 2023, denial had closed. See Sup. Ct. R. 13.1.

At the time that window was open, every court to consider the question and, per Justice Gorsuch's dissent in *Bowe*, three decades of uniform practice, treated such denials as unreviewable. Indeed, the author of the Court's opinion in *Bowe* had herself written, only months after Petitioner's certiorari window closed, that 2244(b)(3)(E)'s bar on petitioning for review "would preclude a similarly situated federal prisoner from invoking this Court's certiorari jurisdiction." *In re Bowe*, 602 U.S. —, 144 S.Ct. 1170, — (2024) (Sotomayor, J., Statement respecting denial of habeas corpus).

This sequence illustrates precisely why the substitute remedy Petitioner has been offered fails the Suspension Clause's adequate-and-effective requirements. The inquiry is not whether some avenue for review can be identified in hindsight, but whether an adequate and effective remedy exist in practice when Petitioner needed to invoke it. *Swain v. Pressley*, 430 U.S. 372, 381 (1977); *Boumediene v. Bush*, 553 U.S. 723, 779 (2008). A remedy the Supreme Court itself did not recognize until years after the relevant deadline had passed was not, in any meaningful sense, available to Petitioner at all.

Petitioner's experience confirms this was not merely a theoretical unavailability. Petitioner in fact attempted to invoke certiorari review of the Eleventh Circuit's August 24, 2023 denial, submitting a petition that the Clerk's Office twice stamped "received", without docketing. See *Supra* Statement of the Case, Part C. Whatever reason for that return, the remedy in *Bowe* would later recognize was not, in practice, one Petitioner was able to obtain.

The Eleventh Circuit denied authorization on August 24, 2023, on two grounds: (1) that the evidence was not "newly discovered", because Petitioner already possessed the underlying metadata spreadsheet and forensic report, and (2) that Petitioner's guilty plea foreclosed any showing that any reasonable juror would have convicted him, that denial was not at the time, subject to further review. 28 U.S.C. 2244(b)(3)(E).

And under 2244(b)(3)(E), that denial was not, at the time, subject to further review, foreclosing any avenue to a full merits adjudication. When the 2241 route is added, closed by *Jones v. Hendrix*, the result is an evidence-based innocence claim with no forum for full adjudication anywhere in the federal system.

This is precisely the circumstance the Suspension Clause was designed to prevent: a category of claim, traditionally cognizable at common-law habeas and expressly preserved by Congress in 2255(h)(1), rendered practically unreviewable by the interaction of a gatekeeping denial and an analogical extension of a

decision addressing a different kind of claim.

Where the process is inadequate to test the legality of the petitioner's detention, the substitute remedy fails to satisfy the Suspension Clause, then the traditional writ under 2241 must remain available. *Boumediene*, 553 U.S. at 799; *INS v. St. Cyr*, 553 U.S. 289, 302 (2001).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Adam Shane Swindle, Pro Se

Date: *July 5, 2026*