

23-1345 RIVERS V. GUERRERO

DECISION BELOW: 99 F.4th 216

LOWER COURT CASE NUMBER: 21-11031

QUESTION PRESENTED:

Under the federal habeas statute, a prisoner "always gets one chance to bring a federal habeas challenge to his conviction," *Banister v. Davis*, 590 U.S. 504, 509 (2020). After that, the stringent gatekeeping requirements of 28 U.S.C. § 2244(b)(2) bar nearly all attempts to file a "second or successive habeas corpus application." Here, petitioner sought to amend his initial habeas application while it was pending on appeal. The Fifth Circuit applied § 2244(b)(2) and rejected the amended filing.

The circuits are intractably split on whether § 2244(b)(2) applies to such filings. The Fifth, Sixth, Seventh, Eighth, Ninth, and Eleventh Circuits hold that § 2244(b)(2) categorically applies to all second-in-time habeas filings made after the district court enters final judgment. The Second Circuit disagrees, applying § 2244(b)(2) only after a petitioner exhausts appellate review of his initial petition. And the Third and Tenth Circuits exempt *some* second-in-time filings from § 2244(b)(2), depending on whether a prisoner prevails on his initial appeal (Third Circuit) or satisfies a seven-factor test (Tenth Circuit).

The question presented is:

Whether § 2244(b)(2) applies (i) only to habeas filings made after a prisoner has exhausted appellate review of his first petition, (ii) to all second-in-time habeas filings after final judgment, or (iii) to some second-in-time filings, depending on a prisoner's success on appeal or ability to satisfy a seven-factor test.

CERT. GRANTED 12/6/2024