

25-1003 GUERRERO V. JOHNSON

DECISION BELOW: 23-70002

LOWER COURT CASE NUMBER: 23-70002

QUESTION PRESENTED:

The Anti-Terrorism and Effective Death Penalty Act of 1996 (AEDPA) prohibits successive habeas applications by state prisoners with only narrow exceptions, including for claims that "rel[y] on 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)(2)(A). Near-identical language allows federal prisoners to file a successive habeas motion that contains "a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable." *Id.* § 2255(h)(2).

The courts of appeals are divided over whether claims rely on "a new rule ... that was previously unavailable" when a claim based on the rule could have been raised in an earlier federal habeas petition but would not have succeeded. The Eleventh and Fourth Circuits hold that whether a claim would have been meritorious does not affect whether the rule was previously available. In the decision below, the Fifth Circuit adhered to its view (and that of the Ninth Circuit) that a claim was previously available only if it had "some possibility of merit" based on the evidence available to the petitioner at the time of an earlier petition.

The question presented is:

Whether a claim relies on a "a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable" when the habeas petitioner could have asserted a claim based on the rule in a prior federal habeas petition.

CERT. GRANTED 6/15/2026