

IN THE SUPREME COURT OF THE UNITED STATES

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No. 23-1345

DANNY RICHARD RIVERS, PETITIONER

v.

ERIC GUERRERO, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE,  
CORRECTIONAL INSTITUTIONS DIVISION

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ON WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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MOTION OF THE UNITED STATES  
FOR LEAVE TO PARTICIPATE IN ORAL ARGUMENT AS AMICUS CURIAE  
AND FOR DIVIDED ARGUMENT

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Pursuant to Rules 21 and 28 of the Rules of this Court, the Acting Solicitor General, on behalf of the United States, respectfully moves for leave to participate in the oral argument in this case as amicus curiae supporting respondent and requests that the United States be allowed ten minutes of argument time. Respondent has consented to this motion and agrees to cede ten minutes of argument time to the United States. Accordingly, if this motion were granted, the argument time would be divided as

follows: 30 minutes for petitioner, 20 minutes for respondent, and 10 minutes for the United States.

This case concerns whether a state prisoner's filing of motion to amend an application for a writ of habeas corpus under 28 U.S.C. 2254, while appeal from final judgment of his original application is pending, should be treated as a second or successive application under 28 U.S.C. 2244(b). The limitations on second or successive collateral attacks in the context of postconviction review of federal judgments under 28 U.S.C. 2255 are similar to, and cross-reference, the limitations on habeas applications by state prisoners. See 28 U.S.C. 2255(h). Because this Court's resolution of the question presented may therefore affect postconviction proceedings for federal prisoners, the United States has a substantial interest in this case.

The United States has participated in oral argument as amicus curiae in prior cases involving the statutory limitations and procedures for state prisoners seeking postconviction relief in federal court. See, e.g., Banister v. Davis, 590 U.S. 504 (2020) (No. 18-6943); Gonzalez v. Thaler, 565 U.S. 134 (2012) (No. 10-895); Gonzalez v. Crosby, 545 U.S. 524 (2005) (No. 04-6432). The United States' participation in oral argument could materially assist the Court in its consideration of this case.

Respectfully submitted.

SARAH M. HARRIS  
Acting Solicitor General  
Counsel of Record

FEBRUARY 2025