

Saving Habeas: Section 2255's Safety Valve

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Federal inmates looking to challenge their convictions and/or sentences after the conclusion of the trial and direct appeals process usually must file a motion to vacate under [28 U.S.C. § 2255](#). That statute's saving clause, [28 U.S.C. § 2255\(e\)](#), creates a safety valve that allows movants to challenge their convictions and/or sentences under a different statute, [28 U.S.C. § 2241](#), which codified the traditional habeas corpus remedy that existed at the time of the nation's founding. That safety valve is available in limited circumstance—when the remedy under Section 2255 is inadequate or ineffective to test the legality of their detention. Federal appellate courts disagree as to how limited those circumstances are, and the U.S. Supreme Court has agreed to review one of those disagreements in *Jones v. Hendrix*.

This Sidebar offers an overview of Section 2255(e)'s saving clause and explains how it operates within the greater framework of federal habeas corpus law. The Sidebar then details the history of the saving clause in Section 2255(e) and how courts have interpreted its scope. It concludes by previewing the Court's upcoming decision in *Jones* and some considerations for Congress.

In the interest of preventing confusion while discussing two different provisions of habeas corpus law, this Sidebar adopts the following terminology. A motion to vacate one's conviction and/or sentence under Section 2255 will be referred to as a "motion to vacate" or "Section 2255." A petition under Section 2241 will be referred to as a "habeas corpus petition."

Historical Federal Habeas Corpus

Habeas corpus, Latin for "bring forth the body," is a process by which courts review the legality of criminal convictions or sentences. Under federal law, this remedy is only available after a defendant has been convicted of and sentenced for a criminal offense and has exhausted all avenues for directly appealing that conviction and/or sentence, or the time for exhausting those avenues has expired. The doctrine of habeas corpus has roots [in common law](#) and English statutory law.

In the United States, the [Constitution forbids suspending](#) the writ of habeas corpus. The doctrine, as it pertains to federal prisoners, has also appeared in federal statutes in various forms since the nation's founding. [Section 14](#) of the Judiciary Act of 1789 provided federal courts with a limited power to grant writs of habeas corpus to federal prisoners "for the purpose of an inquiry into the cause of commitment."

At multiple points in the second half of the 18th century, Congress amended the [habeas corpus statute](#). Amendments in 1867 authorized courts to grant the writ to any prisoner [held in violation](#) of the

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Constitution, laws, or treaties of the United States. Also appearing for the first time in this version of the statute was a limitation that courts could only issue the writ “[within their respective jurisdictions](#).” This limitation [forced most habeas petitions](#) into a court with jurisdiction over the prison housing the prisoner seeking habeas relief, thus often requiring the habeas court to review and apply the law of a distant jurisdiction in which a prisoner was tried, convicted, and sentenced. Congress re-codified the habeas statute in the 1874 [Revised Statutes of the United States](#).

A significant change to the habeas regime occurred in 1948. Congress again re-codified the habeas statute in [its current location](#) of 28 U.S.C. § 2241. Congress also added to the U.S. Code a separate process for a federal inmate to file a motion to vacate the inmate’s conviction and/or sentence under [28 U.S.C. § 2255](#). The addition of Section 2255 resolved practical difficulties created by the “within the respective jurisdictions” limitation of the 1867 statute. Section 2255 placed habeas jurisdiction in the sentencing court, allowing federal prisoners as well as courts a more convenient forum for seeking post-conviction relief.

The Saving Clause in Federal Courts

The [saving clause text](#) precludes a federal prisoner from utilizing Section 2255 if the prisoner does not apply for relief in the sentencing court, or if that court has denied the prisoner relief. It preserves habeas review via a petition under Section 2241, however, if “it also appears that the remedy by [Section 2255] motion is inadequate or ineffective to test the legality of [a federal prisoner’s] detention.” Since the creation of Section 2255, the Supreme Court has regarded Section 2255 and traditional habeas corpus as operating on distinct but parallel tracks, with the saving clause acting as a go-between.

The Court affirmed this relationship in two mid-20th century cases. In [Sanders v. United States](#), the Court considered the creation of Section 2255 as a means to give a sentencing court “a remedy exactly commensurate” with that of habeas corpus in a court of confinement. In [United States v. Hayman](#), decided four years after Section 2255’s enactment, the Court referenced the saving clause in observing that the habeas remedy remains open when Section 2255’s procedure is inadequate or ineffective, in some cases. Put differently, courts applying this analysis could withhold the traditional habeas remedy where the Section 2255 procedures are available. This position continued into the 21st century. In [Boumediene v. Bush](#), the Court commented that the “writ of habeas corpus would be available” if Section 2255 proved inadequate or ineffective, thus underscoring the constitutionality of the more demanding Section 2255.

The Saving Clause and Recent Changes to Habeas Law

Congress intended Section 2255 motions to replace Section 2241 petitions for federal prisoners [in most instances](#). The saving clause, codified at Section 2255(e), provides the exception. It [sets forth](#) that a motion to vacate is the exclusive means for a federal prisoner to raise a collateral challenge, unless “the remedy by motion is inadequate or ineffective to test the legality of his detention.”

The most recent major change to the habeas corpus system came in 1996 with the passage of the [Antiterrorism and Effective Death Penalty Act of 1996](#) (AEDPA). AEDPA imposed a [one-year statute of limitations](#) for pursuing post-conviction relief, which is codified at 28 U.S.C. § 2255(f). AEDPA further imposed limitations, [in Section 2255\(h\)](#), on filing second or successive motions to vacate. There are two exceptions that allow prisoners to file second or successive motions. The first, under Section 2255(h)(1), applies when there is newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense. The second, under Section 2255(h)(2), applies when the Supreme Court establishes a new interpretation of constitutional law that was previously unavailable and makes that interpretation retroactive to cases on collateral review.

While AEDPA imposed these and other new restrictions on Section 2255, it [did not alter](#) Section 2255(e)'s saving clause. Courts have debated the utility of the saving clause both before and after AEDPA, as discussed in the following section.

Background of *Jones v. Hendrix*

The *Jones* case tees up for resolution a split among the federal courts of appeals on when the saving clause is available, or what constitutes an “inadequate” and “ineffective” Section 2255 remedy. In 2000, a jury convicted Marcus DeAngelo Jones of, as relevant here, two counts of possessing a firearm as a felon, in violation of [18 U.S.C. § 922\(g\)](#). Jones raised multiple unsuccessful Section 2255 challenges to his conviction, the last of which resulted in the [Supreme Court restricting](#) him from filing future post-conviction motions.

In 2019, the Supreme Court decided [Rehaif v. United States](#). In *Rehaif*, the Court held that to convict someone under Section 922(g), the government must prove that a defendant knew both that he had a prohibited status and that he possessed a firearm. *Rehaif* overturned [Eighth Circuit precedent](#) on Section 922(g), which held that the government did not need to prove that a defendant knew of his prohibited status. Appellate [courts disagree](#) as to whether the Supreme Court made *Rehaif* retroactive.

Jones sought to challenge his conviction under *Rehaif*. He could not do so through Section 2255, because a new rule of statutory interpretation is not one of the two exceptions to Section 2255's bar on second or successive applications, codified at Sections 2255(h)(1) and (2). Jones accordingly filed a habeas corpus petition under Section 2241. He contended that he was “actually innocent” of his conviction for being a felon in possession of a firearm because he did not know of his prohibited status. The U.S. District Court for the Eastern District of Arkansas dismissed Jones's petition.

The Eighth Circuit [affirmed the dismissal](#), ruling that being precluded from filing a Section 2255 motion does not make the Section 2255 remedy inadequate or ineffective; thus, Jones could not access Section 2241 via the saving clause. The court reasoned that the pertinent question under the saving clause is whether a prisoner could have previously raised an argument under Section 2255, not whether the argument would have succeeded. Applied to the facts of Jones's case, the court held that Jones could have raised a *Rehaif*-like argument in his initial Section 2255 motion, even though circuit precedent was against him. Upon having his motion denied, Jones could have further sought en banc or Supreme Court review of his claim. The court also held that Section 2255(h)'s narrow exceptions to the bar on successive Section 2255 motions did not allow for claims based on changes in statutory interpretation. The court also ruled that denying Jones relief did not violate the Constitution's Suspension Clause because a *Rehaif*-like claim was not within the “core purpose of habeas” as it existed in 1789.

Arguments Before the Supreme Court

The Supreme Court granted Jones's petition for a writ of certiorari to resolve the split among the federal appellate courts and to address “whether federal inmates who did not[—]because established circuit precedent stood firmly against them[—]challenge their convictions on the ground that the statute of conviction did not criminalize their activity may apply for habeas relief under § 2241 after this Court later makes clear in a retroactively applicable decision that the circuit precedent was wrong and that they are legally innocent of the crime of conviction.” At least one source describes the arguments before the Supreme Court in *Jones* as coming [from three directions](#). First, [Jones contends](#) that the Eighth Circuit's reading of Section 2255 rendered the saving clause superfluous, and that the decision violated the Suspension Clause, the Due Process Clause, and the Eighth Amendment.

Second, the United States Solicitor General appears on behalf of the respondent, the warden of Jones's prison. While not supporting Jones's habeas application, the Solicitor General [agrees with Jones](#) that the

Eighth Circuit erred in its interpretation of Section 2255. The Solicitor General contends that the saving clause, written in the present tense, is triggered if Section 2255's remedy is inadequate or ineffective at the time a prisoner seeks habeas relief under Section 2241, not at the time the prisoner first moved under Section 2255, as the Eighth Circuit held. The saving clause thus allows consideration of second or successive habeas petitions raising a limited set of statutory claims of actual innocence based on intervening decisions of the Supreme Court. The Solicitor General also argues, however, that this interpretation cannot help Jones because [the record reflects](#) that he actually knew he had a prohibited status at the time of his arrest. Thus, under the Supreme Court's decision in *Rehaif*, Jones's conviction would have to be affirmed even if he were permitted to seek habeas relief under Section 2241.

Third, and arguing in support of the Eighth Circuit's decision, is [Court-appointed amicus counsel](#). Amicus counsel argues that the parameters of the saving clause are [tied to the original purpose](#) for which Congress enacted Section 2255 in general; to allow a petitioner to seek habeas relief in the court of confinement if the sentencing court is unavailable. Only in such a scenario, amicus counsel argues, is Section 2255 inadequate or ineffective.

Takeaways in Advance of the Supreme Court's Decision

When the United States joined Jones in challenging the Eighth Circuit's statutory interpretation, the focus of this case shifted from one prisoner's efforts to obtain post-conviction relief to the scope of the saving clause in a post-AEDPA world. On one hand, the saving clause predates AEDPA by half a century and AEDPA left the saving clause untouched. On the other, Congress passed AEDPA with language that imposes time frames and other conditions on prisoners' access to second or successive petitions. Congress might revisit this issue to determine whether the law reflects its intent.

The Supreme Court's decision in *Jones* could resolve a split among the federal courts of appeals involving disparate interpretations of the saving clause as it is currently drafted. Along with the Eighth Circuit, the [Tenth Circuit](#), in an opinion written by then-Judge Gorsuch, and the [Eleventh Circuit](#) also hold that a change in case law on a matter of statutory interpretation does not trigger the saving clause. [Most of the other federal appellate courts hold to the contrary.](#)

Whether or not Jones prevails before the Supreme Court, this case reveals differing interpretations of Section 2255. Congress could consider whether to clarify the bounds of the saving clause. In the alternative, Congress could modify the limitations on second or successive petitions in Section 2255(h)(1) and (2) to clarify whether a prisoner may seek Section 2255 relief on the basis of a change in statutory interpretation.

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