

Supreme Court Narrows Access to Habeas Corpus Relief for Federal Inmates

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In *Jones v. Hendrix*, decided on June 22, 2023, the Supreme Court resolved a circuit split over a provision of 28 U.S.C. § 2255, the statutory habeas corpus alternative permitting federal prisoners to raise post-conviction challenges to their convictions or sentences. Successive motions are not permitted under the statute unless based on newly discovered evidence or a new rule of constitutional law. However, a saving clause, § 2255(e), allows a federal prisoner to bring a habeas corpus petition under 28 U.S.C. § 2241 if the § 2255 remedy is “inadequate or ineffective to contest the legality of [their] detention.”

In a 6-3 decision, the Supreme Court sided with the minority of circuits in ruling that the § 2255 remedy is not rendered inadequate or ineffective when a petitioner brings a claim based on a change in statutory interpretation. The Court reasoned that the § 2255(e) saving clause applies only to procedural inadequacies with either (1) challenging one’s conviction or sentence or (2) challenging one’s detention on grounds that do not implicate one’s sentence. The Court paired this interpretation of the saving clause with a narrow reading of the Constitution’s [Suspension Clause](#), which states that “[t]he Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.” The Court implied that constitutional safeguards for habeas corpus protect the right only as it existed at the time of the nation’s founding.

A prior [Legal Sidebar](#) that previewed *Jones* provides a historical background of habeas corpus and the § 2255(e) saving clause. This Sidebar summarizes the factual and procedural history of *Jones*. Next, it discusses the *Jones* opinion and considers how it may signal a shift in the Court’s interpretation of the Suspension Clause. Finally, the Sidebar discusses ramifications of the decision for Congress. For purposes of clarity, the Sidebar refers to a motion filed under § 2255 as a “§ 2255 motion,” and a petition filed under § 2241 as a “§ 2241 habeas corpus petition.”

Factual and Procedural History of *Jones*

In 2000, Jones was convicted on two counts of unlawful possession of a firearm by a felon under 18 U.S.C. § 922(g)(1), and one count of making false statements to acquire a firearm under 18 U.S.C. § 922(a)(6). On direct appeal, the U.S. Court of Appeals for the [Eighth Circuit](#) affirmed Jones’s convictions and 327-month sentence. At the time, Eighth Circuit precedent provided that to convict under

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§ 922(g) the government needed only to prove the defendant was a felon at the time of possessing a weapon.

Jones then sought post-conviction relief. By § 2255 motion, Jones successfully [obtained the vacatur](#) of one of his concurrent § 922(g) sentences. After Jones filed multiple other unsuccessful § 2255 motions, the Supreme Court in 2014 [restricted 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 § 922(g) the government must prove that the defendant both possessed a firearm and knew [his status](#) prohibited him from possessing a firearm. This holding nullified the standard of proof for the § 922(g) offense applied in the Eighth Circuit at the time of Jones's conviction and appeal.

After *Rehaif*, Jones filed a § 2241 habeas corpus petition in federal district court. Jones contended that the § 2255(e) saving clause authorized his § 2241 petition because he lacked a remedy under § 2255, which did not permit a successive § 2255 petition based only on a new interpretation of a statute, such as that given to § 922(g) by the Supreme Court in *Rehaif*. The district court dismissed the petition for lack of [subject matter jurisdiction](#), ruling that the bar on second or successive motions did not render § 2255 inadequate or ineffective. The [Eighth Circuit affirmed](#) the dismissal, holding that the § 2255 remedy was [not inadequate or ineffective](#) because Jones could have tried to raise a *Rehaif*-type argument on direct appeal or in his initial § 2255 motion, even though there was no *Rehaif* precedent at those times. The court found support for its holding in the saving clause's limited applicability to situations when the § 2255 remedy is "inadequate or ineffective to test the legality of [a prisoner's] detention." The court reasoned that "to test" means that the key inquiry under the saving clause is whether the prisoner had the opportunity to raise a claim, regardless of whether that claim would have been meritorious. In so holding, the court widened a circuit split over this issue, and acknowledged it was [taking the minority](#) position.

The Eighth Circuit also held that Jones's inability to seek habeas relief did not violate the Suspension Clause. It reasoned that, although the Supreme Court had yet to rule on this issue, Court [precedent suggested](#) that the Suspension Clause protected the right to habeas corpus only as it existed in 1789, and not as it exists today. The Court held that denying Jones habeas relief did not violate the Suspension Clause because the right to habeas corpus in 1789 did not include claims based on changes in statutory interpretation.

The Supreme Court's Decision in *Jones*

The Supreme Court granted Jones's petition for certiorari on the [saving clause issue](#). In a split decision, a six-Justice majority [affirmed the Eighth Circuit's judgment](#) on both the interpretation of the § 2255(e) saving clause and the Constitution's Suspension Clause.

Writing for the majority, Justice Thomas examined the history and development of U.S. habeas corpus law. The First Judiciary Act authorized federal courts to "grant writs of *habeas corpus* for the purpose of an inquiry into the cause of commitment." In 1948, Congress [reorganized](#) the Judiciary Code, recodifying federal courts' preexisting habeas authority at [28 U.S.C. § 2241](#). Congress also enacted [§ 2255](#), a statute Justice Thomas characterized as "a separate remedial vehicle specifically designed for federal prisoners' collateral attacks on their sentences." Unlike § 2241 habeas corpus petitions, which a prisoner must file in the judicial district of the prisoner's confinement, § 2255 directed a prisoner to file a motion in their sentencing court. According to the Supreme Court, this innovation cleared [an administrative hurdle](#) that often arose when a prisoner was confined in a district "far removed" from the sentencing court that housed the records needed to resolve the habeas corpus petition. Section 2255(e) barred federal prisoners from bringing § 2241 habeas corpus petitions in the district of their confinement unless the § 2255 remedy was "inadequate or ineffective," as Jones argued it was in his case. The Court cited numerous examples of lower courts' traditional treatment of this saving clause as covering [unusual procedural situations](#) where it was impossible for the prisoner to seek relief from the sentencing court; for example,

the sentencing court's dissolution. The Court also said that the saving clause allowed for habeas corpus petitions where the prisoner wished to raise detention-related [challenges](#) that were separate and apart from collateral challenges to their sentence, such as being detained in a place or manner not authorized by the sentence, or the unlawful denial of parole.

The Court continued by [explaining the effect](#) of the [Antiterrorism and Effective Death Penalty Act of 1996](#) (AEDPA) on § 2255. The AEDPA added § 2255(h), imposing limitations on second or successive § 2255 motions, with exceptions for motions based on newly discovered evidence and new rules of constitutional law. The AEDPA did not alter the saving clause in § 2255(e). After enactment of the AEDPA, most federal courts of appeals interpreted the saving clause as permitting § 2241 habeas corpus petitions based on an intervening change in statutory interpretation, which is not one of the two exceptions in § 2255(h) that allow successive § 2255 motions.

Concerning the saving clause, the Court held that intervening changes in statutory interpretation [do not permit](#) a prisoner to evade the AEDPA's restrictions on second or successive § 2255 motions by way of a § 2241 habeas corpus petition. The Court reasoned that § 2255(h) provides only two narrow exceptions to the bar on second or successive petitions, which prompts a "straightforward negative inference" that § 2255(h) prohibits second or successive motions relying on alternative grounds. The Court further held that the saving clause does not undermine that negative inference because it has a finite application. The Court explained that the saving clause speaks to the relationship between § 2241 and § 2255, and it provides only for recourse to § 2241 in limited circumstances where it would be impossible or impracticable to seek relief in the sentencing court or where the prisoner's claim does not raise a collateral attack on their sentence. The Court noted that Congress [did not amend](#) the saving clause when it enacted the AEDPA, suggesting that Congress did not intend for a change in the saving clause's traditional, procedural purposes.

The Court also [found no violation](#) of the Suspension Clause. Again, referring to the history of habeas corpus law, the Court noted that a *Rehaif*-type claim, based on substantive error of statutory law, would not have been cognizable in habeas at the time of the Suspension Clause's drafting. Such a development [did not occur](#) until 1974. According to the Court, the "Suspension Clause does not constitutionalize that innovation of nearly two centuries later." In dissent, Justice Jackson wrote to "[reject the majority's suggestion](#) that the Suspension Clause protects *only* the scope of the great writ as it existed in the founding era."

Constitutional Implications

The Court implied, but did not explicitly say, that the Suspension Clause protects only the right to habeas corpus as it existed in 1789. Such an interpretation would provide limited constitutional protections to prisoners seeking post-conviction relief in the present day. Congress did not authorize courts to hear habeas corpus challenges based on constitutional claims [until 1867](#). The Supreme Court did not recognize habeas claims based on errors of substantive law until 1974.

The Court's seemingly implicit holding in *Jones* on the limited reach of the Suspension Clause departs from other of the Court's recent comments on the Clause's scope. In a 5-4 opinion in the 2008 case of [Boumediene v. Bush](#), the majority said it had "been careful not to foreclose the possibility that the protections of the Suspension Clause have expanded along with post-1789 developments that define the present scope of the writ." In *INS v. St. Cyr*, another closely divided case from 2001 the Court said that the Suspension Clause protects the writ of habeas corpus as it existed at the time of the founding "at the absolute minimum." The composition of the Court has changed significantly since those cases. No member of the majority in either case remains an active member of the Court. Three Justices who dissented in *Boumediene*, however, are still on the Court—Justice Thomas, who authored the majority

opinion in *Jones*, and Chief Justice Roberts and Justice Alito, who joined that opinion. Thus, *Jones* may signal a change in the Court's interpretation of the Suspension Clause.

Considerations for Congress

The Court highlighted two parts of § 2255 that Congress could adjust to change the result in *Jones*. The first is § 2255(h). The Court said that, in broadly restricting second or successive habeas motions and then listing two specific exceptions, Congress expressed an intent that courts read no other exceptions into the statute. Congress could respond to that holding in three ways. It could maintain the status quo.

Alternatively, it could remove the restrictions on second or successive motions in their entirety, which might precipitate a surge in § 2255 motions. Another, more limited, solution would be to add to § 2255(h) a provision permitting *Rehaif*-type claims based on errors of substantive law.

Such a change would require an accompanying alteration to the one-year limitations period for bringing a § 2255 motion established in § 2255(f). That section lists four starting points to the one-year period: (1) the date a prisoner's conviction becomes final; (2) the date on which the impediment to filing the motion created by governmental action in violation of the Constitution (if applicable) was removed; (3) the date on which the Supreme Court issued a new rule of constitutional law; and (4) the date on which the facts supporting the claim could have been discovered through the exercise of due diligence. Paragraphs (3) and (4) of § 2255(f) mirror the § 2255(h) exceptions, so any change to § 2255(h)'s exceptions also would have to be reflected in § 2255(f).

The second part of the statute that Congress could change is the saving clause itself, § 2255(e). A factor in the Court's holding in *Jones* was that Congress did not alter § 2255(e) when it passed the AEDPA, purportedly reflecting Congress's intent to preserve the historical understanding of the saving clause. Congress could expand the saving clause to expressly allow for habeas corpus petitions based on intervening changes in statutory interpretation.

Should it choose only to expand the saving clause, Congress likely would need to consider the implications for the application of the AEDPA. Allowing a habeas petition by what otherwise would have been a second or successive § 2255 movant would permit certain prisoners to bypass the step that other second or successive applicants must take under § 2255(h), seeking leave to file from a federal court of appeals. Altering the saving clause to require prisoners to seek leave from courts of appeals before bringing a § 2241 petition would bring the saving clause into accord with the AEDPA's procedures.

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