No. 20-940

IN THE
Supreme Court of the United States

STATE OF ALASKA,
Petitioner,
v.
SEAN WRIGHT,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF INDIANA, LOUISIANA, AND 18 OTHER STATES AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

JEFF LANDRY
Attorney General
ELIZABETH B. MURRILL
Solicitor General
SHAE G. MCPHEE
Deputy Solicitor General
Louisiana Department of Justice
1885 N. Third St.
Baton Rouge, LA 70802
(225) 326-6766

THEODORE E. ROKITA
Attorney General
THOMAS M. FISHER*
Solicitor General
KIAN HUDSON
Deputy Solicitor General
JULIA C. PAYNE
Deputy Attorney General
Office of the Indiana Attorney General
302 W. Washington St.
Indianapolis, IN 46204
(317) 232-6255
Tom.Fisher@atg.in.gov

**Counsel of Record*

Counsel for Amici *States*
Additional counsel with signature block

QUESTION PRESENTED

When an offender has fully served the sentence imposed pursuant to a state conviction, does a federal habeas court have jurisdiction to consider a § 2254 challenge to that conviction merely because it served as a predicate for an independent *federal* conviction under which the offender is now in custody?

TABLE OF CONTENTS

QUESTION PRESENTED i

TABLE OF AUTHORITIES iii

INTEREST OF THE AMICI STATES 1

REASONS FOR GRANTING THE PETITION 2

I. The Decision Below Disregards a Fundamental Limit on the Jurisdiction of Federal Habeas Courts 4

II. The Decision Below Harms States Across the Country.. 10

CONCLUSION.. 14

TABLE OF AUTHORITIES

CASES

Allen v. Hardy,
478 U.S. 225 (1986).. 13

Bowling v. White,
694 Fed. Appx. 1008 (6th Cir. 2017) 9

Calaff v. Capra,
714 Fed. Appx. 47 (2nd Cir. 2017)...................... 9

Calderon v. Thompson,
523 U.S. 538 (1998)..................................... 12, 14

Custis v. United States,
511 U.S. 485 (1994)... 1

Daniels v. United States,
532 U.S. 374 (2001)....................................... 7, 12

Green v. Georgia,
882 F.3d 978 (11th Cir. 2018)............................. 9

Lackawanna Cnty. Dist. Attorney v. Coss,
532 U.S. 394 (2001)....................................*passim*

Magwood v. Patterson,
561 U.S. 320 (2010)... 4

Maleng v. Cook,
490 U.S. 488 (1989)....................................*passim*

CASES [CONT'D]

Zichko v. Idaho,
247 F.3d 1015 (9th Cir. 2001) 3, 8

STATUTES

18 U.S.C. § 2250 .... 3, 11

28 U.S.C. § 2254 .... *passim*

28 U.S.C. § 2255 4

28 U.S.C. § 2263 13

OTHER AUTHORITIES

Molly McDonough, *Picking Up the Pieces*
(Feb. 2, 2006), https://bit.ly/3hMe7FU 13

Supreme Court Rule 37.2(a) 1

INTEREST OF THE *AMICI* STATES[*]

The States of Indiana, Louisiana, Alabama, Arizona, Connecticut, Idaho, Kansas, Kentucky, Michigan, Mississippi, Montana, Nebraska, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, and Utah respectfully submit this brief as *amici curiae* in support of Petitioner.

The decision below held that a federal habeas court has jurisdiction to consider a Section 2254 challenge to a *state* conviction the sentence for which the offender has fully served merely because the conviction served as a predicate for an independent *federal* conviction under which the offender is now in custody. *Amici* States have a strong interest in seeing the Court correct that decision: It threatens to cast uncertainty into federal habeas law, "inevitably delay and impair the orderly administration of justice," and "deprive . . . state-court judgment[s] of [their] normal force and effect." *Custis v. United States*, 511 U.S. 485, 497 (1994). And the decision threatens to have nationwide effect, for it would allow habeas petitioners to challenge a prior, predicate conviction in the Ninth Circuit even where, as here, the subsequent conviction was issued outside the Ninth Circuit.

Amici States file this brief to urge the Court to grant the petition and reverse the decision below.

---

[*] Pursuant to Supreme Court Rule 37.2(a), counsel of record for all parties received notice of *Amici* States' intention to file this brief at least ten days prior to the due date of this brief.

REASONS FOR GRANTING THE PETITION

28 U.S.C. § 2254 authorizes federal courts to "entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court." Sean Wright, the habeas petitioner here, is no longer "in custody pursuant to the judgment of a State court," and Section 2254 thus does not give federal courts subject matter jurisdiction over his habeas petition.

Rather than accept this straightforward conclusion, in its decision below the Ninth Circuit held that the district court *does* have jurisdiction over Wright's petition: It concluded that because Wright is in custody under a *federal* conviction for which now-expired state convictions served as a predicate, Wright can use Section 2254 to challenge his state convictions—even though "[i]t is undisputed that Wright served the entirety of" his state sentence. Pet. App. 2.

The state convictions at issue in this case are Wright's 2009 convictions in Alaska state court for multiple counts of sexual abuse of a minor. *Id.* at 84. For these convictions Wright was sentenced to fourteen years' imprisonment with two years suspended. *Id.* at 84. He finished serving this sentence in 2016, including all probation and parole supervision; at that point his only remaining obligation under Alaska law was to register as a sex offender if he remained in the State. *Id.* at 14–15. He chose not to do so, however, and moved to Tennessee. *Id.* at 2. And in Tennessee, Wright failed to register as a sex offender as required

by federal law. *See* 18 U.S.C. § 2250(a). As a result, he was incarcerated in Tennessee in 2017, released following a guilty plea in February 2018, and ultimately sentenced to time served and five years' supervised release in March 2019. Pet. App. 15–16.

In February 2018, Wright filed a habeas petition under Section 2254 in Alaska, challenging his Alaska state-court convictions on Sixth Amendment speedy trial grounds. *Id.* at 7. The district court dismissed for lack of jurisdiction, concluding that Wright was not in custody pursuant to his Alaska convictions because he had already fully served his sentence. *Id.* at 16. The Ninth Circuit reversed. Relying on its prior decision in *Zichko v. Idaho*, 247 F.3d 1015 (9th Cir. 2001), it held that the supervised release Wright was serving pursuant to his *federal* failure-to-register conviction rendered him in custody pursuant to his *Alaska* sex-offense convictions. *See* Pet. App. 3 ("[A] habeas petitioner is in custody for the purposes of challenging an earlier, expired rape conviction, when he is incarcerated for failing to comply with a state sex offender registration law . . . ." (quoting *Zichko*, 247 F.3d at 1019)).

The consequence of the Ninth Circuit's decision is to allow an offender to challenge under Section 2254 a state conviction that imposed a sentence the offender has fully served simply because the conviction served as a predicate for a subsequent federal status offense—such as felon in possession of a firearm or failure to register as a sex offender. This result directly contradicts the plain text of Section 2254 as well as

this Court's decisions in *Maleng v. Cook*, 490 U.S. 488 (1989), and *Lackawanna County District Attorney v. Coss*, 532 U.S. 394 (2001). And it threatens to confuse habeas practice nationwide, leading to petitions naming the wrong respondents pursuant to the wrong provisions of the U.S. Code. Accordingly, the Court should grant the petition, correct the Ninth Circuit's error, and reiterate that a federal court lacks subject-matter jurisdiction under Section 2254 to entertain a petition by a person no longer "in custody pursuant to the judgment of a State court." 28 U.S.C. § 2254.

I. The Decision Below Disregards a Fundamental Limit on the Jurisdiction of Federal Habeas Courts

1. Congress has authorized federal courts to consider habeas claims brought by a "person in custody pursuant to the judgment of a State court," 28 U.S.C. § 2254, and by a "prisoner in custody under sentence of a court established by Act of Congress," *id.* § 2255; *see also Magwood v. Patterson*, 561 U.S. 320, 333 (2010) ("The requirement of custody *pursuant to a state-court judgment* distinguishes § 2254 from other statutory provisions authorizing relief from constitutional violations—such as § 2255, which allows challenges to the judgments of federal courts . . . .").

The requirement that a habeas petitioner be in custody—pursuant to a state conviction for a 2254 petition or pursuant to a federal conviction for a 2255 petition—is fundamental and jurisdictional. As this

Court explained in *Maleng v. Cook*, "[t]he federal habeas statute gives the United States district courts jurisdiction to entertain petitions for habeas relief only from persons who are '*in custody* in violation of the Constitution or laws or treaties of the United States.'" 490 U.S. 488, 490 (1989) (per curiam) (quoting 28 U.S.C. § 2241(c)(3)) (emphasis in original); *see also id.* at 494 (noting that the "issue of 'custody'" goes to the "subject-matter jurisdiction of the habeas court").

Maleng further confirms that Section 2254 means what it says: A habeas petitioner does not remain "'in custody' under a conviction after the sentence imposed for it has fully expired." *Id.* at 492. There the petitioner had been convicted of robbery in Washington state court in 1958 and sentenced to twenty years' imprisonment, a sentence which by its terms expired in 1978. *Id.* at 489. While on parole from that sentence, he was convicted of additional crimes in Washington state court and was sentenced on those subsequent convictions in 1978. *Id.* In 1985, he filed a habeas petition under Section 2254, "listed the 1958 Washington conviction as the 'conviction under attack,'" and "alleged that the 1958 conviction had been used illegally to enhance his 1978 state sentences." *Id.* at 490.

The Court easily concluded that the petitioner was "not presently 'in custody' under the 1958 sentence." *Id.* It observed that it had "never held . . . that a habeas petitioner may be 'in custody' under a conviction when the sentence imposed for that conviction has *fully expired* at the time his petition is filed." *Id.*

at 491 (emphasis in original). Noting that a contrary rule "would read the 'in custody' requirement out of the statute," the Court held that "once the sentence imposed for a conviction has completely expired, the collateral consequences of that conviction are not themselves sufficient to render an individual 'in custody' for the purposes of a habeas attack upon it." *Id.* at 491–92. Nor was it relevant that the petitioner was in fact in custody pursuant to the subsequent 1978 sentences, for it was pursuant to *that* "second conviction that the petitioner [was] incarcerated and [was] therefore 'in custody.'" *Id.* at 492–93. Accordingly, the Court held that the petitioner could not challenge his fully-served 1958 sentence, though he could challenge his still-unexpired 1978 sentences. *Id.* at 493.

In *Maleng* the Court expressly left open the separate *merits* question of "the extent to which the [prior] 1958 conviction itself may be subject to challenge in the attack upon the 1978 sentences which it was used to enhance." *Id.* at 494. It answered that question several years later in *Lackawanna County District Attorney v. Coss*, where, once again, a habeas petitioner challenged an expired state conviction used to enhance a later, unexpired state sentence. 532 U.S. 394, 397–98 (2001). Reiterating its jurisdictional holding in *Maleng,* the Court observed in *Lackawanna County* that the petitioner was "no longer serving the sentences imposed pursuant to his [earlier] convictions," and thus could *not* "bring a federal habeas petition directed solely at those convictions." *Id.* at 401. As for the merits of challenging a later, unexpired sentence

by attacking the validity of an earlier conviction, even there the Court "h[e]ld that once a state conviction is no longer open to direct or collateral attack in its own right . . . the conviction may be regarded as conclusively valid." *Id.* at 403; *see also Daniels v. United States*, 532 U.S. 374, 382 (2001) (adopting the same rule for challenges to federal sentences under Section 2255). The Court did, however, suggest the possibility of narrow exceptions to this "general rule," such as where a predicate conviction used to enhance a sentence was obtained in a proceeding "where there was a failure to appoint counsel in violation of the Sixth Amendment." *Lackawanna Cty.*, 532 U.S. at 404.

In sum, *Maleng* and *Lackawanna County* confirm that under Section 2254 it is not enough that a petitioner be "in custody" under *some* criminal judgment. In each of these cases the petitioner was in custody pursuant to a later conviction but was seeking to challenge an earlier, expired conviction, and each time the Court barred on jurisdictional grounds a freestanding challenge to the expired conviction. *See Maleng*, 490 U.S. at 492–93 ("When the second sentence is imposed, it is pursuant to the second conviction that the petitioner is incarcerated and is therefore 'in custody.'"); *Lackawanna Cty.*, 532 U.S. at 401 ("[The petitioner] is no longer serving the sentences imposed pursuant to his 1986 convictions, and therefore cannot bring a federal habeas petition directed solely at those convictions."). A federal court thus has no jurisdiction

to consider a habeas petition challenging a state conviction if the petitioner is no longer "in custody pursuant to" *that* conviction. 28 U.S.C. § 2254(a).

2. The decision below cited only *Zichko v. Idaho*, 247 F.3d 1015, 1019–20 (9th Cir. 2001)—where the Ninth Circuit similarly permitted a failure-to-register offender to challenge his underlying sex-offense conviction—in support of its departure from Section 2254's plain text. *See* Pet. App. 3. *Zichko*, however, reached this conclusion because it skipped the *jurisdictional* question concerning whether a petitioner is "in custody" pursuant to the conviction being challenged and proceeded straight to the *merits* question concerning which arguments a petitioner may make in challenging a particular conviction. Before a federal habeas court may consider a habeas petitioner's argument that an "earlier, unconstitutional conviction had enhanced his later sentence," *Zichko*, 247 F.3d at 1020, however, it must first ensure its jurisdiction to do so.

Under the habeas statutes, *Maleng*, and *Lackawanna County*, the jurisdictional rule is straightforward: Federal courts have jurisdiction to consider a habeas petitioner's challenge to a conviction pursuant to which the petitioner is currently in custody, but *not* to consider a challenge to a conviction for which the petitioner has fully served the sentence. For example, while a district court *would* have jurisdiction to consider a petition under Section 2255 challenging the federal failure-to-register conviction pursuant to

which Wright is currently in custody, the district court did *not* have jurisdiction to consider Wright's challenge to his now-expired state convictions under Section 2254. Wright thus filed his petition under the wrong statute naming the wrong respondents.

If Wright had secured federal-court jurisdiction over his habeas petition by challenging his federal failure-to-register conviction under Section 2255, he would then have needed to establish his success on the merits. On this score Wright presumably would argue—much like the petitioner in *Lackawanna County*—that his failure-to-register conviction is unlawful because it rests on "an allegedly unconstitutional prior conviction." *Lackawanna Cty.*, 532 U.S. at 402. As noted, however, *Lackawanna County* generally prohibits challenging a subsequent conviction on the ground that a predicate conviction was unconstitutionally obtained but allows the possibility of exceptions in some extreme circumstances. *Id.*. at 404. The precise contours of any such exceptions continue to be ironed out by the lower courts. *See, e.g.*, *Green v. Georgia*, 882 F.3d 978, 986–87 (11th Cir. 2018); *Calaff v. Capra*, 714 Fed. Appx. 47, 50–51 (2nd Cir. 2017); *Bowling v. White*, 694 Fed. Appx. 1008, 1016–17 (6th Cir. 2017). But that merits question does not arise here because Wright cannot establish federal jurisdiction over his petition: He is simply not in custody pursuant to the criminal judgment he seeks to attack.

Wright finished serving his state-court sentence in September 2016 and filed his habeas petition under

Section 2254 a year-and-a-half later. Pet. App. 14. He was thus not "in custody pursuant to the judgment of a State court" when he filed his petition, and the district court had no jurisdiction over it. The Ninth Circuit erred in concluding otherwise.

II. The Decision Below Harms States Across the Country

The Ninth Circuit's decision below raises a curious and troubling possibility: Alaska may find itself haled into federal court in Tennessee to defend the integrity of a conviction of a person who has fully served his sentence and discharged his parole obligations. Notably, after erroneously concluding that Wright is "in custody" for the purposes of Section 2254, the Ninth Circuit remanded the case to the district court to determine how the case should proceed. Pet. App. 4 n.1. And in a concurrence, a member of the panel opined that "both the District of Alaska and the Eastern District of Tennessee have jurisdiction over Wright's § 2254 petition," which means the district court must decide whether to transfer "Wright's § 2254 petition against the State of Alaska to the Eastern District of Tennessee." *Id.* at 6. The concurring opinion advised the district court to consider whether Tennessee "is the most convenient venue for the parties—including the State of Alaska—to litigate" Wright's Section 2254 petition. *Id.*

This case thus illustrates that if the Ninth Circuit's misinterpretation of Section 2254 is allowed to

stand—or, worse, adopted by other circuit courts—States may be forced to defend expired state convictions in far-away district courts around the country. The Court should grant the petition and forestall this unnecessary and wasteful result.

1. The mistaken decision below will of course lead habeas practice astray in the district courts of the largest circuit in the country, but the consequences of the decision extend even beyond the States in the Ninth Circuit. For example, the federal sex-offender-registry statutes permit federal failure-to-register convictions for a convicted state sex offender who crosses interstate lines and then fails to register as a sex offender in his new State of residence. *See* § 2250(a). If—in the inverse of the situation here—an offender were convicted of a sex crime in Tennessee and then, after serving any applicable prison time, moved to Alaska, he could be charged with a federal crime and sentenced to prison if he failed to register. And under the Ninth Circuit's decision below, Tennessee—which is of course outside the Ninth Circuit—could then find itself defending a Tennessee conviction in federal court in Alaska even though the offender fully served the sentence for that conviction.

Of course, if other jurisdictions were to adopt the Ninth Circuit's view, States would face even more unwarranted challenges to long-final state-court convictions. It could become commonplace for state lawyers to find themselves defending expired convictions in

federal courts around the country. The federal habeas statutes properly foreclose such absurd results.

This Court has often observed "the profound societal costs that attend the exercise of habeas jurisdiction." *Calderon v. Thompson*, 523 U.S. 538, 554 (1998) (quoting *Smith v. Murray*, 477 U.S. 527, 539 (1986)). Those costs are sure to grow substantially if States must continually defend convictions with fully-served sentences in federal courts around the country.

2. Furthermore, beyond wasting state resources defending now-expired state convictions, the decision below threatens to introduce confusion and litigation concerning whether habeas petitioners may evade the limitations periods set out in the federal habeas statutes simply by committing a new offense. As the Court recognized in *Daniels v. United States*, broadening Section 2254's "in custody" language may "effectively permit [habeas] challenges far too stale to be brought in their own right, and sanction an end run around statutes of limitations and other procedural barriers that would preclude the movant from attacking the prior conviction directly." 532 U.S. 374, 383 (2001).

Under the Ninth Circuit's reading of Section 2254's "in custody" requirement, federal habeas courts have jurisdiction to consider a prisoner's challenge to his state-court conviction even if he has served his sentence and discharged his parole obligations. The decision thus functions as an "end run around" an important procedural bar that helps ensure the finality of state-court convictions. *Id.* at 383; *see also Maleng*

v. Cook, 490 U.S. 488, 492–93 (1989); *Lackawanna Cty. Dist. Attorney v. Coss*, 532 U.S. 394, 401 (2001).

Indeed, under the decision below, States are left to wonder whether they will be able to continue to rely on other statutory procedural safeguards. For example, it is not clear how other jurisdictional requirements, such as the 180-day deadline for filing habeas petitions, will be affected by the ruling. *See* 28 U.S.C. § 2263. Unless this Court intervenes, only time—and more litigation—will tell.

The federal habeas statutes limit petitioners' ability to challenge long-final sentences for good reason: Practical problems can arise when prisoners who have finished serving their sentences are allowed to bring habeas challenges to their convictions. Over time, witnesses die or become unavailable and the memories of even available witnesses begin to fade. *See, e.g.*, *Allen v. Hardy*, 478 U.S. 225, 260–61 (1986) (observing that relitigation of old cases can be "hampered by problems of lost evidence, faulty memory, and missing witnesses" (internal quotations marks omitted)). Evidence decays or is destroyed in natural disasters. *See, e.g.*, Molly McDonough, *Picking Up the Pieces*, ABA-journal.com (Feb. 2, 2006), https://bit.ly/3hMe7FU (noting that "at least some, possibly a large portion, of the records and evidence may not survive" the devastation wrought by Hurricane Katrina).

This petition presents an opportunity for the Court once again to emphasize its "enduring respect for 'the State's interest in the finality of convictions that have

survived direct review within the state court system.'" *Calderon*, 523 U.S. at 554 (quoting *Brecht v. Abrahamson*, 507 U.S. 619, 635 (1993)). "To unsettle [finality] expectations is to inflict a profound injury" on States and the victims of crime. *Id.* at 556. That is precisely what the decision below does. The Court should grant the petition and reverse that decision.

CONCLUSION

The Petition for Writ of Certiorari should be granted.

Respectfully submitted,

JEFF LANDRY
Attorney General
ELIZABETH B. MURRILL
Solicitor General
SHAE G. MCPHEE
Deputy Solicitor General
Louisiana Department of Justice
1885 N. Third St.
Baton Rouge, LA 70802
(225) 326-6766

THEODORE E. ROKITA
Attorney General
THOMAS M. FISHER*
Solicitor General
KIAN HUDSON
Deputy Solicitor General
JULIA C. PAYNE
Deputy Attorney General
Office of the Indiana Attorney General
302 W. Washington St.
Indianapolis, IN 46204
(317) 232-6255
Tom.Fisher@atg.in.gov

**Counsel of Record*

Counsel for Amici *States*

Dated: February 12, 2021

ADDITIONAL COUNSEL

STEVE MARSHALL
Attorney General
State of Alabama

MARK BRNOVICH
Attorney General
State of Arizona

RICHARD COLANGELO, JR.
Chief State's Attorney
State of Connecticut

LAWRENCE G. WASDEN
Attorney General
State of Idaho

DEREK SCHMIDT
Attorney General
State of Kansas

DANIEL CAMERON
Attorney General
Commonwealth of
Kentucky

DANA NESSEL
Attorney General
State of Michigan

LYNN FITCH
Attorney General
State of Mississippi

AUSTIN KNUDSEN
Attorney General
State of Montana

DOUG PETERSON
Attorney General
State of Nebraska

DAVE YOST
Attorney General
State of Ohio

MIKE HUNTER
Attorney General
State of Oklahoma

JOSH SHAPIRO
Attorney General
Commonwealth of
Pennsylvania

ALAN WILSON
Attorney General
State of South
Carolina

JASON R. RAVNSBORG
Attorney General
State of South Dakota

KEN PAXTON
Attorney General
State of Texas

HERBERT H. SLATERY III
Attorney General
State of Tennessee

SEAN D. REYES
Attorney General
State of Utah