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Text Me: A Text-Based Interpretation of 28 U.S.C. § 2255(e)

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INTRODUCTION

A federal prisoner seeking to collaterally attack his convictions and sentences faces a “complex journey”. He must make it past temporal and procedural hurdles: Is his claim timely? Was the claim properly preserved? Is this the first opportunity to raise the claim? If not, is this one of the few cases in which a second or successive claim is allowed? Regardless of the merits of the prisoner’s claim, such threshold requirements must be met. Then, and only then, will a court reach the prisoner’s substantive argument.

But, the prisoner’s journey does not end with these temporal and procedural hurdles; the prisoner must wrap his claim in the correct legal clothing—that is, he must decide whether his claim is a collateral attack on his sentence or a challenge to the conditions of his confinement. The former is presented to the courts through a motion, brought pursuant to 28 U.S.C. § 2255; the latter is presented in a petition for a writ of habeas corpus, brought pursuant to 28 U.S.C. § 2241. But, there is one exception—one instance where a § 2241 claim can be cloaked in the clothing created for § 2255 motions: Rarely, and only rarely, a prisoner can collaterally attack the imposition of his sentence in a § 2241 petition even though such a claim should otherwise be brought in a § 2255 motion.

This Article explores that exception. That is, this Article examines the critical link that allows a prisoner to bring an otherwise unauthorized § 2241 petition to collaterally attack the imposition of his sentence. That link is codified in § 2255, subsection (e).

1 University of Georgia School of Law, J.D.; Duke University, B.S.E. © 2014, Jennifer L. Case.
3 Id.
Although it is critical to understand the contours and connections of § 2255(e), the circuit courts have struggled mightily to interpret that statutory provision. In their struggle, the courts have developed no less than twelve tests—one for each circuit—for determining how and when a prisoner can avoid restrictions on filing a § 2255 motion by presenting his claim in a § 2241 petition.4

The plethora of circuit court tests is well-documented,5 but the courts' near complete failure to anchor their many tests to the text of § 2255(e) is not. This Article fills that gap. It examines the text of § 2255 and proposes a text-based reading of subsection (e). By providing a textual foothold, this Article aims to help courts and litigants regain traction by offering a way to remain faithful to the congressionally-enacted words of § 2255(e) without producing court-created tests that are unmoored from the statute's text.

Part I provides a brief history of the writ of habeas corpus at common law and as codified in § 2241. Part II describes how Congress attempted to relieve § 2241's venue limitations by enacting § 2255. Part II also describes how Congress has modified § 2255 since its 1948 enactment.6 Part III explains the interplay between the current codification of the statutory writ (i.e., § 2241) and its venue-shifting sister (e.g., § 2255). Part IV highlights the circuit courts' struggle to interpret § 2255(e) and its Savings Clause. And, Part V outlines a way to end that struggle by providing a text-based interpretation of § 2255(e) that is anchored in the statute's text and consistent with its purpose.

I. BRIEF HISTORY OF THE WRIT OF HABEAS CORPUS

Before delving into the statutory text of § 2255, we begin with a bit of history. This history will allow us to anchor our interpretative undertaking in the overall habeas corpus scheme and, ultimately, will illustrate that this Article's proposed text-based reading of § 2255(e) is consistent with the Constitution, habeas corpus principles, and congressional intent.

Borrowed from English common law, the writ of habeas corpus has played a central role in our system of justice. It is known as the "Great Writ" and "protect[s] . . . individuals against erosion of their right to be free from wrongful restraints."7 The rhetoric surrounding the writ is high-spirited: "one of the most, if not the single most, important part of the Constitution which protects individual rights,"8 "[t]he most celebrated writ in the English law,"9 and a "great constitutional

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5 See generally id.
6 Unless otherwise specified, references in this article to U.S. Code are to the Code's current codification.
9 3 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 129 (4th ed. 1770).
privilege.”10 “At least some of [our] romance [with the writ] is due to the ancient roots of the remedy.”11 Although its roots are planted in a distant past, its meaning, purpose, and scope have evolved for centuries.

A. English Common Law12

The writ of habeas corpus began—sometime before the thirteenth century13—as a process by which a court compelled the attendance of parties whose presence would facilitate its proceedings.14 The writ was a judicial order directing that a person be brought before a tribunal at a certain time and place.15 Thus, in its infancy, the writ protected the King’s jurisdiction over his subjects and ensured compliance with royal law.16

Over time, the writ’s purpose transformed, and it became an important tool to ensure the legality of detention by the sovereign.17 By the mid-fourteenth century, it was an independent proceeding to challenge illegal detention18 and eventually became known as the Great Writ of Liberty.19 This version of the writ allegedly provided the “procedural underpinning of the guarantees of the Magna Carta—an effective remedy for imprisonment by the Crown without judicial authorization.”20

In 1641, England gave every arrested person immediate access to the writ.21 The writ was intended to ensure access to “a judicial determination of the legality

10 Ex parte Bollman, 8 U.S. (1 Cranch) 75, 95 (1807).
11 Hack, supra note 2.
12 “The history of the writ has been the subject of a great deal of scholarly debate and criticism.” WAYNE R. LAFAVE ET AL., CRIMINAL PROCEDURE § 28.1(b) n.21 (3d ed. 2013).
13 The first known use of the writ of habeas corpus was in 1305. Lee Kovarsky, AEDPA’s Wrecks: Comity, Finality, and Federalism, 82 TUL. L. REV. 443, 446 n.9 (2007) (citing Paul M. Bator, Finality in Criminal Law and Federal Habeas Corpus for State Prisoners, 76 HARV. L. REV. 441, 445 n.6 (1963)).
14 LAFAVE ET AL., supra note 12, § 28.1(b).
15 DANIEL JOHN MEADOR, HABEAS CORPUS AND MAGNA CARTA: DUALISM OF POWER AND LIBERTY 7 (1966). The writ takes its name from the Latin phrasing of its directive: that the court would “have the body.” Id.
17 Id.
18 LAFAVE ET AL., supra note 12, § 28.1(b).
19 See 3 BLACKSTONE, supra note 9, at 131–38 (“[T]he great and efficacious writ, in all manner of illegal confinement, is that of habeas corpus . . . .”); A. V. DICEY, INTRODUCTION TO THE STUDY OF THE LAW OF THE CONSTITUTION 212–17 (8th ed. 1926) (discussing the historical background and effects of the writ); see also Prigg v. Com. of Pennsylvania, 41 U.S. 539, 619 (1842).
20 LAFAVE ET AL., supra note 12, § 28.1(b); see also 3 BLACKSTONE, supra note 9, at 133; DICEY supra note 19, at 214–16; 9 W. S. HOLDSWORTH, A HISTORY OF ENGLISH LAW 112–14 (3d ed. 1926).
21 WILLIAM F. DUKER, A CONSTITUTIONAL HISTORY OF HABEAS CORPUS 47 (1980) (stating that the Habeas Corpus of Act of 1641 (Eng.) “provided that if anyone were imprisoned by any court . . . or by command or warrant of the King . . . , he was to have a writ of habeas corpus upon demand to the judges . . . ‘without Delay’”).
of [a prisoner's] detention."\(^{22}\) However, procedural difficulties undermined that access and, as a result, England passed the Habeas Corpus Act of 1679.\(^{23}\) That Act "reinforced judicial authority to use the writ to release persons illegally detainted by the Crown[]."\(^{24}\) However, the Act's effect on the writ's availability—at common law—to persons convicted of crimes is hotly debated.\(^{25}\)

Some argue that one could use the writ "at common law to challenge her imprisonment based on a conviction obtained in violation of due process."\(^{26}\) Others argue that the common law writ only provided an avenue for challenging the convicting court's jurisdiction or the Crown's illegal detention.\(^{27}\) Regardless of the proper interpretation, it is fair to say that the common law writ had limited usefulness as a remedy for a person detained after she had been convicted.\(^{28}\)

**B. Post-Colonial Era**

Our founders valued the writ to such an extent that they brought it to post-colonial America.\(^{29}\) The writ is expressly mentioned in the U.S. Constitution.\(^{30}\) At the Constitutional Convention, the Framers debated whether and how to include a constitutional provision addressing the writ.\(^{31}\) Eventually, the Framers decided not to include an affirmative guarantee of the writ; instead, they included a provision prohibiting the writ's suspension.\(^{32}\) That provision, known as the Suspension Clause, provides: "The 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."\(^{33}\)

\(^{22}\) LAFAVE ET AL., supra note 12, § 28.1(b); see also DUKER, supra note 21.

\(^{23}\) LAFAVE ET AL., supra note 12, § 28.1(b) n.11 (referencing 31 Car. 2, c.2 (1679) (Eng.)); see generally HOLDSWORTH, supra note 20, at 117–18 (discussing the Act's legislative history); Clarke D. Forsythe, The Historical Origins of Broad Federal Habeas Review Reconsidered, 70 NOTRE DAME L. REV. 1079, 1095–1101 (1995) (discussing the 1679 Act as well as its history).

\(^{24}\) LAFAVE ET AL., supra note 12, § 28.1(b) (emphasis added).

\(^{25}\) Id.

\(^{26}\) Id. (citing Fay v. Noia, 372 U.S. 391, 402 (1963)).

\(^{27}\) Id. § 28.1(b).

\(^{28}\) Id.


\(^{30}\) U.S. CONST. art. I, § 9, cl. 2.


\(^{32}\) Rosenn, supra note 31, at 338; see also Hack, supra note 2, at 174 (explaining how the Framers decided to adopt the current text of the Suspension Clause).

\(^{33}\) U.S. CONST. art. I, § 9, cl. 2.
The first Congress—in its first session—expressly gave federal courts the power
to grant writs of habeas corpus to prisoners in federal custody. That act did not
permit federal courts to grant writs to prisoners in state custody. The reach of
habeas at the time of the founding is still debated. However, at the very least, “the
writ was subject to restrictions developed in the common law.”

C. Nineteenth Century

Throughout the early nineteenth century, Congress gradually expanded
statutory access to the writ. For example, in 1833, Congress allowed state prisoners
held for an act that they committed pursuant to federal law to seek a writ. After
the Civil War, Congress again expanded the reach of the writ when it enacted the
Habeas Corpus Act of 1867. For the first time, federal courts had the power to
grant writs of habeas corpus when “any person [is] . . . restrained of his or her
liberty in violation of the [C]onstitution, or of any treaty or law of the United
States.” Thus, the 1867 Act broadened federal judicial authority and allowed
federal courts to review state court judgments imposed in violation of federal (not
state) law.

In the 1870s and 1880s, the U.S. Supreme Court interpreted the 1867 Act in
several cases, ultimately concluding that the 1867 Act provided a fairly broad scope
of review of criminal convictions and sentences. For example, the Supreme Court
held that the 1867 Act permitted habeas relief where the Double Jeopardy Clause was violated, where the defendant was charged with violating an unconstitutional statute, and where the petitioner was convicted without an indictment from a grand jury.

D. Twentieth Century

Congress's objectives in adopting the Habeas Corpus Act of 1867 were (and still are) hotly debated. In the 1960s, the U.S. Supreme Court adopted a broad interpretation of the 1867 Act's purposes. In so doing, the Court noted that the writ was capable of growth to meet "changed conceptions of the kind of criminal proceedings so fundamentally defective as to make imprisonment pursuant to them constitutionally intolerable."

But—as seems to be the only constant with habeas jurisprudence—the tide turned. And, by the mid-1970s, the Court began to narrow its interpretation of the habeas statute. This trend continued throughout the 1970s, 1980s, and 1990s. Interestingly, Congress did not help the Court in its endeavor to uncover

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43 See Ex parte Lange, 85 U.S. (1 Wall.) 163, 164 (1873) (taking the position that habeas corpus can be used in double jeopardy cases).
44 See Ex parte Siebold, 100 U.S. 371, 376 (1879) ("An unconstitutional law is void, and is as no law. An offence created by it is not a crime.")
45 See Ex parte Wilson, 114 U.S. 417, 429 (1885) (granting habeas relief when petitioner was sentenced for violation of an "infamous crime, within the meaning of the fifth amendment . . . without indictment or presentment by a grand jury . . .").
47 See Fay v. Noia, 372 U.S. 391, 398-99 (1963) (holding that federal courts have authority to review claims that were procedurally defaulted in state court); Townsend v. Sain, 372 U.S. 293, 314 (1963) (holding that federal courts can hold evidentiary hearings if the state court's fact-finding process was defective); Sanders v. United States, 373 U.S. 1, 12 (1963) (holding that a petitioner can, under a variety of circumstances, file more than one habeas petition); Brown v. Allen, 344 U.S. 443, 458 (1953) (rejecting the notion that the state court's decision on the merits of a federal constitutional claim was res judicata); Daniels v. Allen, 344 U.S. 443, 500 (1953) (stating that the scope of the federal court's review was de novo); see also John H. Blume, AEDPA: The "Hype" and the "Bite," 91 CORNELL L. REV. 259, 262-63 (2006) (noting that these four cases establish the "highwater mark" in liberal interpretation of the federal courts' habeas power).
48 Noia, 372 U.S. at 414.
50 See Sawyer v. Whitley, 505 U.S. 333, 336 (1992) (introducing rigid definitions of "actual innocence" for reviewing errors in the guilt phase of criminal trials and capital cases); McCleskey v.
the 1867 Act's scope. Although it added various provisions to the habeas statute, Congress never clarified the core statutory authorization provided in the 1867 Act.\textsuperscript{51}

II. BRIEF HISTORY OF 28 U.S.C. § 2255

"For over a century, the Habeas Corpus Act of 1867 [codified in relevant part, and as amended, at 28 U.S.C. § 2241] provided the basic statutory framework for federal habeas relief for state prisoners."\textsuperscript{52} And, despite significant changes since the Act's enactment,\textsuperscript{53} the history of a prisoner's access to the writ via the Act (and the Act's use in federal courts) "continue[s] to inform the [Supreme] Court's application of the contemporary commands of Congress."\textsuperscript{54} Now that we have reviewed that history and understand some of the key components of the 1867 Act (i.e., § 2241), we are equipped to understand its statutory sister (and the heart of this article): 28 U.S.C. § 2255.

A. Section 2255's Purpose: Relieve the Statutory Writ's Venue Limitations

The 1867 Act required a prisoner to file her writ of habeas corpus in the federal district court having jurisdiction over her place of confinement.\textsuperscript{55} Though seemingly innocuous, this venue requirement created problems. First, it resulted in a work-allocation imbalance: federal habeas petitions inundated the dockets of those few federal courts whose divisions had federal prisons.\textsuperscript{56} Second, it created a
physical-proximity problem: given that federal prisons—and, thus, habeas courts—were often far from the sentencing court, habeas petitioners had limited access to relevant records, witnesses, and evidence.\(^5\)

To disperse the workload associated with collateral attacks more evenly and to ensure that the proceedings would be conducted in closer proximity to the relevant records and witnesses, the Judicial Conference Committee on Habeas Corpus Procedure\(^6\) proposed a bill to Congress that would require that federal prisoners first challenge their convictions and sentences in the court that sentenced them.\(^7\) In 1948, Congress took up and passed that bill, which was codified (and remains codified) at 28 U.S.C. § 2255.\(^8\)

Once enacted, § 2255 provided an alternative to the statutory writ of habeas corpus by allowing federal prisoners to attack their convictions and sentences through a motion "to vacate, set aside or correct the sentence."\(^9\) This motion applied (and still applies) to any situation in which a federal prisoner may raise a collateral attack.\(^10\)

Section 2255 is a practical alternative to the statutory writ's venue limitations.\(^11\) It does not alter the scope of review of the traditional habeas procedure;\(^12\) it simply modifies the venue. The scope of review provided by § 2255 is identical to the scope of review for a federal writ of habeas corpus.\(^13\)

But, as a practical matter, the statutory interplay between § 2241 (the federal statutory habeas corpus provision) and § 2255 (the venue-modifying provision) had

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\(^{57}\) See id. at 213–14.

\(^{58}\) The Judicial Conference Committee on Habeas Corpus Procedure was established to assess the procedural difficulties in habeas corpus litigation, particularly with respect to federal prisoners. Id. at 214.

\(^{59}\) See id. at 214–19 (discussing recommendations made by the Judicial Conference Committee).


\(^{62}\) Hayman, 342 U.S. at 216–17. When the committee submitted its findings, it recommended the enactment of the precursor to § 2255. See id. at 214–18. The committee issued a statement in support of its recommendation, explaining that the proposed legislation "creates a statutory remedy consisting of a motion before the court where the movant has been convicted. . . . The motion remedy broadly covers all situations where the sentence is 'open to collateral attack.' As a remedy, it is intended to be as broad as habeas corpus." Id. at 217–18. Additionally, the Reviser's Note on the 1948 version of § 2255 states that the statute "provides an expeditious remedy for correcting erroneous sentences without resort to habeas corpus." Id. at 218 (citing H.R. Rep. No. 79-2646, at 7 (2d Sess. 1946)).

\(^{63}\) See id. at 219 ("[T]he sole purpose [of enacting § 2255] was to minimize the difficulties encountered in habeas corpus hearings by affording the same rights in another and more convenient forum.").

\(^{64}\) See Kaufman v. United States, 394 U.S. 217, 221–22 (1969) (examining the scope of the writ).

\(^{65}\) See Hayman, 342 U.S. at 217, 219 ("Nowhere in the history of Section 2255 do we find any purpose to impinge upon prisoners' rights of collateral attack upon their convictions."); see also Kaufman, 394 U.S. at 221 (noting that the history of the statute suggests that the legislation was not meant to restrict the scope of review).
an obvious and intended result: "[T]he $§2255$ motion . . . displaced the writ of habeas corpus under $§2241$ as the basic collateral remedy for persons confined pursuant to a federal criminal conviction."66

B. Overview of $§2255$

Section $2255$ provides a procedure whereby a prisoner in custody under the sentence of a federal court may move the court to "vacate, set aside or correct [a] sentence."67 Unlike a habeas petition, a $§2255$ motion is filed in the court that sentenced the prisoner, not the district of detention.68 Section $2255$ also requires that federal prisoners use it as a vehicle to challenge their convictions or sentences "by explicitly prohibiting federal district courts from hearing habeas corpus petitions filed by such prisoners."69

Although $§2255$'s statutory language suggests that a $§2255$ motion can only challenge the sentence itself, the portion of $§2255$ that governs the granting of relief indicates otherwise. It allows the court to "set the judgment aside and . . . discharge the prisoner."70 Given this language—and in light of the legislative history surrounding $§2255$—the term "sentence" is treated as a generic term that includes all of the proceedings leading up to the sentence.71 Therefore, using a $§2255$ motion, a prisoner can attack the conviction underlying her sentence and the proceedings that resulted in that conviction.72 A prisoner can also use a $§2255$ motion to assert that (1) "the sentence was imposed in violation of the Constitution or laws of the United States," (2) "the court was without jurisdiction to impose [the] sentence," (3) "the sentence was in excess of the maximum authorized by law," or (4) the sentence "is otherwise subject to collateral attack."73

Section $2255$ restricts a federal prisoner’s access to the writ of habeas corpus codified in $§2241$.74 This prohibition, however, contains one exception that has

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66 LAFAVE ET AL., supra note 12, § 28.9(a).
68 See id. § 2255(e).
69 Nicolas Matteson, Note, Feeling Inadequate?: The Struggle to Define the Savings Clause in 28 U.S.C. § 2255, 54 B.C. L. REV. 353, 359 (2013); see § 2255(a) (providing that "[a]n application for a writ of habeas corpus . . . shall not be entertained if it appears that the [prisoner] has failed to apply for relief . . . to the court which sentenced him").
70 § 2255(b).
71 See Davis v. United States, 417 U.S. 333, 343 (1974) (noting that legislative intent was that § 2255 provide a remedy “identical in scope” to that previously provided under habeas provisions codified in §§ 2254 and 2241). For a detailed treatment of relief under § 2255, see 3 CHARLES ALAN WRIGHT & SARAH N. WELLING, FEDERAL PRACTICE AND PROCEDURE: CRIMINAL §§ 621–637 (4th ed. 2011).
72 See United States v. Payne, 644 F.3d 1111, 1113 n.2 (10th Cir. 2011) ("[T]his court has repeatedly and consistently applied § 2255 to challenges to convictions."); see also WRIGHT & WELLING, supra note 71, § 625 (noting that the Supreme Court has read the term "sentence" in § 2255 "as a generic term including all of the proceedings leading up to the sentence").
74 See In re Davenport, 147 F.3d 605, 608 (7th Cir. 1998) (noting that, if the remedy under § 2255 is "ineffective to test the legality of his detention," a "prisoner can seek habeas corpus under 2241").
existed since § 2255 was enacted in 1948 and that is highly relevant to this article: § 2255(e) and its so-called “Savings Clause.”75

The Savings Clause was proposed by the Judicial Conference Committee on Habeas Corpus Procedure.76 However, Congress selected different language than the committee had proposed.77 Concerned with practical considerations, the committee proposed prohibiting a prisoner from filing a § 2241 habeas petition unless it was not “practicable to determine his rights to discharge from custody on [a § 2255] motion because of his inability to be present at the hearing on such motion, or for other reasons.”78 But, as enacted, the Savings Clause contains much broader language: a federal prisoner cannot bring a federal habeas corpus petition “unless . . . the remedy by [§ 2255] motion is inadequate or ineffective to test the legality of his detention.”79

Courts have taken Congress’s enactment of this more expansive Savings Clause language as an indication that Congress rejected the narrow formulation of the Savings Clause presented by the Judicial Conference Committee.80 In so doing, courts have concluded that Congress intended for the Savings Clause to apply to situations beyond practical difficulty.81

Beyond Congress’s rejection of the Judicial Conference Committee’s proposed savings-clause language, the legislative history sheds no additional light on the scope of § 2255(e) or its Savings Clause.82

C. AEDPA’s Amendments to § 2255

Section 2255 remained unchanged for decades.83 “Between 1986 and 1995, members of Congress introduced [scores of] bills proposing habeas [corpus] reform...
The principal focus of those bills was to impose a statute of limitations for federal habeas relief. None of those bills became law.

During this same time period—and in the face of growing concern and criticism regarding the ineffectiveness of habeas procedure—Chief Justice William Rehnquist created the Ad Hoc Committee on Federal Habeas Corpus in Capital Cases. The committee explored the "the necessity and desirability of legislation directed toward avoiding delay and the lack of finality in capital cases." After its review, the committee issued a report noting several problems with the then-existing federal habeas system. Problems highlighted by the committee included delay, repetition, and lack of finality. Despite a thorough review, the committee’s report did not spark congressional action. But, as is often the case, a national tragedy did.

In 1996, one year after the terrorist attack on the Alfred P. Murrah Federal Building in Oklahoma City, Congress enacted the Antiterrorism and Effective Death Penalty Act (AEDPA). According to Congress, AEDPA was intended to "curb the abuse of the statutory writ of habeas corpus, and to address the acute problems of unnecessary delay and abuse in capital cases."

"Among other things, [AEDPA] amended both 28 U.S.C. § 2255 (which governs [motions] for collateral relief by federal prisoners) and 28 U.S.C. § 2244 (which governs second and successive habeas corpus petitions)."

D. Overview of AEDPA’s Amendments

AEDPA narrowed the basic provisions of the Habeas Corpus Act of 1867 by significantly altering the rules governing collateral relief for state and federal

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84 See Scott R. Grubman, What A Relief? The Availability of Habeas Relief under the Savings Clause of Section 2255 of the AEDPA, 64 S.C. L. REV. 369, 378 (2012) (stating that congressmen proposed more than eighty bills).
86 Bellamy, supra note 85, at 10 n.70 (citing Lonchar, 517 U.S. at 333).
88 Habeas Report, supra note 87.
89 Id. at 3,239–41.
90 Lay, supra note 87, at 1063.
93 Triestman v. United States, 124 F.3d 361, 365 (2d Cir. 1997).
prisoners in capital and non-capital cases.\textsuperscript{94} In particular, AEDPA "imposed significant new constraints on proceedings under §2255."\textsuperscript{95} Among other things,\textsuperscript{96} AEDPA barred late petitions;\textsuperscript{97} narrowed relief for claims raised in second petitions;\textsuperscript{98} made the courts of appeal, rather than the district courts, the gatekeepers of determining whether a second petition can be filed;\textsuperscript{99} required that prisoners obtain a "certificate of appealability" prior to appealing a district court's denial of a §2255 motion;\textsuperscript{100} limited state prisoners' access to federal evidentiary hearings;\textsuperscript{101} and required federal courts to defer to reasonable state court interpretations and applications of established federal law.\textsuperscript{102}

Notwithstanding AEDPA's comprehensive amendments to §2255 and its significant restrictions on post-conviction relief, AEDPA did not alter any part of §2255(e), including its Savings Clause.\textsuperscript{103} Other than providing alphabetical designations to each paragraph, Congress has not changed §2255 since it enacted AEDPA in 1996.\textsuperscript{104}

III. THE CONTEMPORARY STATUTORY §2241 WRIT AND §2255 MOTION

In their current forms, §2241 and §2255 "each create mechanisms for a federal prisoner to challenge his detention."\textsuperscript{105} But, "the two sections offer relief for different kinds of perceived wrongs."\textsuperscript{106} Section 2255 provides an avenue for a federal prisoner to "challenge the imposition of his [conviction and] sentence" (i.e.,

\textsuperscript{94} Antiterrorism and Effective Death Penalty Act of 1996 § 107; see also Lyn S. Entzereth, Struggling for Federal Judicial Review of Successive Claims of Innocence: A Study of How Federal Courts Wrestled with the AEDPA to Provide Individuals Convicted of Non-Existent Crimes with Habeas Corpus Review, 60 U. MIAMI L. REV. 75, 87 (2005) (stating that AEDPA "created significant restrictions on a federal prisoner's ability to actually move a federal court for [§2255] relief").

\textsuperscript{95} Trenkler v. United States, 536 F.3d 85, 96 (1st Cir. 2008) ("Some of these constraints were temporal; for example, AEDPA established a one-year statute of limitations for filing a section 2255 petition. 28 U.S.C. § 2255(f). Some of these constraints were numerical; for example, AEDPA required a federal prisoner who sought to prosecute a second or successive section 2255 petition to obtain pre-clearance, in the form of a certificate, from the court of appeals. Id. § 2255(h).").

\textsuperscript{96} For a more exhaustive list of AEDPA's effect on habeas proceedings, see generally Blume, supra note 47.


\textsuperscript{98} See id. §§ 101–105 (codified as amended at §§ 2244(b)(1), 2255(h)).

\textsuperscript{99} See id. § 102 (codified as amended at § 2244(a)).

\textsuperscript{100} See id. (codified as amended at § 2253(a), (c)(1)(b)).

\textsuperscript{101} See id. § 104 (codified as amended at § 2254(e)(2)).

\textsuperscript{102} See id. (codified as amended at § 2254(d)(1)).

\textsuperscript{103} See Trenkler v. United States, 536 F.3d 85, 96–97 (1st Cir. 2008) ("Although section 2255, as amended, provides a comprehensive remedial scheme for post-conviction relief, that scheme perpetuates the savings clause contained in section 2255(e).")


\textsuperscript{105} Adams v. United States, 372 F.3d 132, 134 (2d Cir. 2004).

\textsuperscript{106} Id.
the fact of confinement). By contrast, § 2241 provides an avenue for a federal prisoner to challenge the execution of his sentence (i.e., the conditions of confinement). For example, a prisoner can use a § 2241 petition to seek relief from things like prison conditions, disciplinary actions imposed by the prison warden, or decisions to deny parole.

In addition, § 2241 grants federal courts authority to entertain habeas petitions from prisoners “in custody in violation of the Constitution or laws or treaties of the United States.” This language creates an apparent overlap between § 2255 and § 2241. Nevertheless, courts have consistently ruled that a federal prisoner “generally must invoke § 2255 instead of § 2241 to challenge a sentence as violating the U.S. Constitution or laws.”

The remainder of this Article explores what happens in the non-standard situation; that is, when does § 2255(e) allow a federal prisoner to challenge his sentence in a § 2241 petition?

IV. CIRCUIT COURTS’ STRUGGLES TO INTERPRET § 2255(e)

For nearly two decades, circuit courts have fumbled with the meaning of the twenty simple words at the end of § 2255(e), the so-called Savings Clause:

An application for a writ of habeas corpus in behalf of a prisoner who is authorized to apply for relief by motion pursuant to this section, shall not be entertained if it appears that the applicant has failed to apply for relief, by motion, to the court which sentenced him, or that such court has denied him relief, unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of his detention.

But, much of this struggle was self-induced. When courts first endeavored to interpret the Savings Clause, they bypassed the statutory text in and around the clause and headed straight to § 2255’s legislative history. Unsurprisingly, Congress provided no historical breadcrumbs, leading the courts to frustratingly conclude: “[T]he statute says precious little about what it means . . . to have been ‘inadequate’ or ‘ineffective.’”

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107 Id.; accord Chambers v. United States, 106 F.3d 472, 474 (2d Cir. 1997) (citation omitted) (“A petitioner seeking to challenge the legality of the imposition of a sentence by a court may therefore make a claim pursuant to Section 2255.”).
108 See Adams, 372 F.3d at 134–35 (contrasting the effects of pursuing relief under § 2255 (imposition of a sentence) vs. § 2241 (execution of a sentence)).
109 Id. at 135 (citing Jiminian v. Nash, 245 F.3d 144, 146 (2d Cir. 2001)).
111 See, e.g., Adams, 372 F.3d at 135 (emphasis added).
112 See generally Case, supra note 4 (describing the hodgepodge of rules developed by the circuit courts).
113 28 U.S.C. § 2255(e) (emphasis added to highlight the Savings Clause).
114 See, e.g., Wofford v. Scott, 177 F.3d 1236, 1238–42 (11th Cir. 1999) (reprinting the statutory text but jumping immediately into a lengthy discussion of the history of the statute’s enactment).
115 Williams v. Warden, 713 F.3d 1332, 1341 (11th Cir. 2013).
A dearth of useful statutory definitions or precise and trustable legislative history is par for the course. It is not unique to § 2255 or the Savings Clause itself. Courts often rely on their own wits and the tools of statutory construction to divine the meaning of statutory provisions. Yet, somehow, when it came to understanding § 2255(e) and its Savings Clause, the circuit courts consistently set dependable statutory interpretation tools aside and crafted their own obstacle courses of requirements and threshold tests. They required circuit foreclosure, "fundamental defect[s]," "busting" circuit precedent, and "serious constitutional questions,"—all terms and concepts completely missing from § 2255 in general or the Savings Clause in particular. The courts' sustained efforts to give meaning to the Savings Clause without reviewing the plain text of § 2255 produced a fascinating display of doctrinal drift—an object lesson in what can happen when supposed statutory interpreters lose sight of the statute's letter and spirit.

And, unsurprisingly, when left to their own devices, the circuit courts failed to agree on the Savings Clause's meaning. By charting paths shaped more by the peculiar contingencies of prior precedents than by the first principles of statutory construction, court developed "tests" and interpretations unique to each circuit, leaving federal prisoners geographically stratified—with some prisoners virtually unable to access § 2241 through § 2255's Savings Clause and other prisoners more easily reaching § 2241 by way of § 2255(e).

116 Accord United States v. Pub. Utils. Comm'n, 345 U.S. 295, 319-20 (1953) (Jackson, J., concurring) ("I should concur in this result more readily if the Court could reach it by analysis of the statute instead of by psychoanalysis of Congress. . . . Legislative history here as usual is more vague than the statute we are called upon to interpret.").

117 See, e.g., Reyes-Requena v. United States, 243 F.3d 893, 904 (5th Cir. 2001) (holding that the "savings clause of § 2255 applies to a claim . . . that was foreclosed by circuit law at the time when the claim should have been raised in the petitioner's trial, appeal, or first § 2255 motion."); In re Davenport, 147 F.3d 605, 610 (7th Cir. 1998) ("It would just clog the judicial pipes to require defendants, on pain of forfeiting all right to benefit from future changes in the law, to include challenges to settled law in their briefs on appeal and in postconviction filings."); see also, e.g., Wofford, 177 F.3d at 1244 (adopting the Davenport court approach, but noting that "[w]e adopt it insofar as . . . [t]he savings clause of § 2255 applies to a claim when . . . circuit law squarely foreclosed such a claim at the time it otherwise should have been raised in the petitioner's trial, appeal, or first § 2255 motion.").

118 See, e.g., Davenport, 147 F.3d at 611 ("A federal prisoner should be permitted to seek habeas corpus only if he had no reasonable opportunity to obtain earlier judicial correction of a fundamental defect in his conviction or sentence because the law changed after his first 2255 motion.").

119 See, e.g., Wofford, 177 F.3d at 1245 (holding "that the only sentencing claims that may conceivably be covered by the savings clause are those based upon a retroactively applicable Supreme Court decision overturning circuit precedent.").

120 See, e.g., Triestman v. United States, 124 F.3d 361, 377 (2d Cir. 1997) (stating that the Savings Clause may be triggered where "the failure to allow for collateral review would raise serious constitutional questions"); see also, e.g., In re Dorsainvil, 119 F.3d 245, 248 (3d Cir. 1997) ("Were no other avenue of judicial review available for a party who claims that s/he is factually or legally innocent as a result of a previously unavailable statutory interpretation, we would be faced with a thorny constitutional issue.").

121 See generally Case, supra note 4 (providing several hypotheticals highlighting these disparities).
Quite possibly—if the circuit courts had interpreted the Savings Clause by examining (1) the clause's text, (2) the text of the surrounding provision (i.e., § 2255(e)), and (3) the overall framework of § 2255—the courts would have reached similar conclusions (rather than irreconcilable tests) that applied to all federal prisoners, regardless of the physical location where the prisoners were sentenced or confined.122

The remainder of this Article attempts to do what the circuit courts repeatedly have not: consider the ordinary meaning of § 2255(e)'s text. Circuit courts have not made a full-throated attempt at interpreting the ordinary meaning of the provision's key terms, such as “inadequate,” “ineffective,” “test,” and “detention.” Believing such a task is possible—and necessary—let us begin.

V. TEXT-BASED INTERPRETATION OF § 2255(e)

A. Section 2255 Then and Now

Any good statutory interpretation journey begins by, well, reading the statute.123 In this case, the key first step is to examine both the text and structure of § 2255 as originally enacted and the textual and structural changes imposed thereafter.

Section 2255 originally had seven (7) unnumbered paragraphs.124 With one minor exception not relevant to this article,125 the first, third, fourth, sixth, and seventh paragraphs remain in the current version of § 2255. As enacted, § 2255 stated:

A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.

A motion for such relief may be made at any time.

Unless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief, the court shall cause notice thereof to be served upon the United States attorney, grant a prompt hearing thereon, determine the issues and make findings of fact and conclusions of law with respect thereto. If

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122 See generally id. (explaining the geographic stratification in the availability of access to § 2241 through § 2255(e)'s Savings Clause).
123 See United States v. Ron Pair Enters., Inc., 489 U.S. 235, 241 (1989) (“The task of resolving the dispute over the meaning of [the statute] begins where all such inquiries must begin: with the language of the statute itself.” (citation omitted)).
the court finds that the judgment was rendered without jurisdiction, or that the sentence imposed was not authorized by law or otherwise open to collateral attack, or that there has been such a denial or infringement of the constitutional rights of the prisoner as to render the judgment vulnerable to collateral attack, the court shall vacate and set the judgment aside and shall discharge the prisoner or resentence him or grant a new trial or correct the sentence as may appear appropriate.

A court may entertain and determine such motion without requiring the production of the prisoner at the hearing.

The sentencing court shall not be required to entertain a second or successive motion for similar relief on behalf of the same prisoner.

An appeal may be taken to the court of appeals from the order entered on the motion as from a final judgment on application for a writ of habeas corpus.

An application for a writ of habeas corpus in behalf of a prisoner who is authorized to apply for relief by motion pursuant to this section, shall not be entertained if it appears that the applicant has failed to apply for relief, by motion, to the court which sentenced him, or that such court has denied him relief, unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of his detention.

Until it was modified by AEDPA in 1996, § 2255 remained unchanged. AEDPA removed the second and fifth paragraphs of § 2255 and added three (3) new paragraphs. Specifically, AEDPA replaced a prisoner’s ability to file a § 2255 motion for relief at “any time” with a limited timeframe for filing such motions. AEDPA also replaced the provision that a court “not be required to entertain a second or successive motion for similar relief on behalf of the same prisoner” with strict limits on when a court can entertain second or successive petitions. Finally, AEDPA added a provision to permit the appointment of counsel.

In its current form, § 2255 provides:

(a) A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.

129 See Antiterrorism and Effective Death Penalty Act of 1996 § 105.
131 See Antiterrorism and Effective Death Penalty Act of 1996 § 105.
132 See id.
(b) Unless the motion and the files and records of the case conclusively show that
the prisoner is entitled to no relief, the court shall cause notice thereof to be
served upon the United States attorney, grant a prompt hearing thereon,
determine the issues and make findings of fact and conclusions of law with
respect thereto. If the court finds that the judgment was rendered without
jurisdiction, or that the sentence imposed was not authorized by law or otherwise
open to collateral attack, or that there has been such a denial or infringement of
the constitutional rights of the prisoner as to render the judgment vulnerable to
collateral attack, the court shall vacate and set the judgment aside and shall
discharge the prisoner or resentence him or grant a new trial or correct the
sentence as may appear appropriate.

(c) A court may entertain and determine such motion without requiring the
production of the prisoner at the hearing.

(d) An appeal may be taken to the court of appeals from the order entered on the
motion as from a final judgment on application for a writ of habeas corpus.

(e) An application for a writ of habeas corpus in behalf of a prisoner who is
authorized to apply for relief by motion pursuant to this section, shall not be
entertained if it appears that the applicant has failed to apply for relief, by motion,
to the court which sentenced him, or that such court has denied him relief, unless
it also appears that the remedy by motion is inadequate or ineffective to test the
legality of his detention.

(f) A 1-year period of limitation shall apply to a motion under this section. The
limitation period shall run from the latest of—

(1) the date on which the judgment of conviction becomes final;

(2) the date on which the impediment to making a motion created by
governmental action in violation of the Constitution or laws of the United
States is removed, if the movant was prevented from making a motion by
such governmental action;

(3) the date on which the right asserted was initially recognized by the
Supreme Court, if that right has been newly recognized by the Supreme
Court and made retroactively applicable to cases on collateral review, or

(4) the date on which the facts supporting the claim or claims presented could
have been discovered through the exercise of due diligence.

(g) [Appointed-counsel provision. Omitted as unnecessary to this
article.]

(h) A second or successive motion must be certified as provided in section
2244 by a panel of the appropriate court of appeals to contain—

(1) newly discovered evidence that, if proven and viewed in light of
the evidence as a whole, would be sufficient to establish by clear and
convincing evidence that no reasonable factfinder would have found
the movant guilty of the offense; or
(2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.\textsuperscript{133}

Other than labeling the paragraphs (a) through (h) for ease of reference,\textsuperscript{134} Congress has not changed the provisions of § 2255 since AEDPA was enacted.

This Article provides the full text of § 2255 because one must appreciate the statute's structure and its various provisions to properly interpret the meaning of subsection (e).

B. Section 2255(e)

Section 2255(e) provides—as it always has:

An application for a writ of habeas corpus in behalf of a prisoner who is authorized to apply for relief by motion pursuant to this section, shall not be entertained if it appears that the applicant has failed to apply for relief, by motion, to the court which sentenced him, or that such court has denied him relief, unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of his detention.\textsuperscript{135}

This language has not changed since it was originally enacted in 1948.\textsuperscript{136} However, since Congress added subsections (g) and (h) in 1996, the meaning of subsection (e) has perplexed federal courts.\textsuperscript{137}

If one skips the statute's text and enters directly into the kaleidoscopic morass of meanings given to § 2255(e) by the circuit courts, it is easy to think that the statute's language is inherently ambiguous and amenable to an unlimited line of reasonable interpretations.\textsuperscript{138} It is not.

1. Subsection (e)'s Authorization Clause.—The first portion of subsection (e) states that “[a]n application for a writ of habeas corpus . . . shall not be entertained” if (1) a prisoner failed to move the sentencing court for relief or (2) the sentencing court denied such relief.\textsuperscript{139} This is simple enough. A habeas court need only look at the sentencing court's docket to determine whether the petitioner filed a § 2255 motion and, if so, whether relief was denied.

However, there is more to this first portion of subsection (e)—cleverly hidden by the ellipses in the quoted portion above and often overlooked by circuit courts. Specifically, the ellipses cloak the fact that courts determine whether they can

\textsuperscript{137} See generally Case, supra note 4 (discussing the wide array of tests developed by the circuit courts for interpreting the Savings Clause in § 2255(e)).
\textsuperscript{138} See generally id.
\textsuperscript{139} 28 U.S.C. § 2255(e) (2012).
entertain a habeas petition only if a prisoner "is authorized to apply for relief by motion pursuant to this section" (hereinafter "Authorization Clause"). That is, subsection (e) operates to bar a § 2241 habeas petition only if § 2255 authorizes the prisoner to bring a § 2255 motion. Importantly, if the Authorization Clause is not satisfied, subsection (e) plays no role in determining whether a prisoner can bring his habeas petition.\footnote{141}

2. Subsection (a): Scope of the Motion.—To determine whether a prisoner is authorized to apply for relief pursuant to § 2255, one must look to the remainder of the statute. Subsection (a) allows any "prisoner in custody under sentence of a [federal] court" to bring a motion to "vacate, set aside, or correct" a sentence if (1) the "sentence was imposed in violation of [federal law]," (2) the sentencing court lacked "jurisdiction to impose the sentence," (3) the sentence exceeds "the maximum authorized by law," or (4) the sentence "is otherwise subject to collateral attack." \footnote{142} In short, a prisoner can bring a § 2255 motion to collaterally attack his sentence or the proceedings leading to that sentence. \footnote{143}

Looking only at subsection (a), it is clear that subsection (e)'s Authorization Clause is satisfied by almost any challenge to a conviction or sentence because subsection (a) authorizes a prisoner to bring a § 2255 motion for a generously broad range of collateral attacks. Subsection (a) has existed since § 2255's inception. \footnote{144} So, until Congress added temporal and numerical limitations to subsection (a) in 1996, \footnote{145} the Authorization Clause inquiry was fairly straightforward: subsection (e)'s Authorization Clause was almost always satisfied by the expansive reach of subsection (a). But this is no longer the case.

3. Subsequent Amendments to § 2255.—Under the original version of § 2255, a prisoner could bring a motion at "any time," \footnote{146} and nothing restricted a court from "entertain[ing] a second or successive motion for similar relief." \footnote{147} Consequently, unless the sentencing court elected not to entertain a second or successive § 2255 motion, a prisoner was "authorized" to bring such motion, \footnote{148} so subsection (e)

\footnote{140}{See id.}
\footnote{141}{See id.}
\footnote{142}{Id. § 2255(a).}
\footnote{143}{See Davis v. United States, 417 U.S. 333, 340, 346-47 (1974) (holding that the defendant's collateral attack in a § 2255 motion was appropriate).}
\footnote{145}{See Trenkler v. United States, 536 F.3d 85, 96 (1st Cir. 2008) (discussing constraints imposed by AEDPA).}
\footnote{146}{28 U.S.C. § 2255 ¶ 2 (Supp. II 1948).}
\footnote{147}{Id. § 2255 ¶ 5. To see how the language in the original version aligns with the modern version, compare § 2255 ¶ 5, with 28 U.S.C. § 2255(h) (2013).}
\footnote{148}{See id. § 2255 ¶ 7.
almost always operated to block a prisoner’s § 2241 petition. The only exception occurring when the remedy from that authorized motion was “inadequate or ineffective to test the legality of his detention.”

This all ended in 1996 when Congress enacted AEDPA, dramatically changed § 2255’s framework, and, by extension, altered how one must read subsection (e). Post-AEDPA, multiple provisions of § 2255 (i.e., subsections (f) and (h)) limit the otherwise broadly permissive language of subsection (a).

i. Subsection (f): Limitations Period.—First, there is now a one-year limitations period: Subsection (f) requires that a prisoner bring his § 2255 motion within one year of several triggering events. The most common triggering event is the date of the final judgment of conviction. But, other triggering events can extend the limitations period. For example, the limitations period extends one year from the date that (1) a government-imposed impediment to bringing a § 2255 motion is removed; (2) a newly recognized, retroactively applicable right is first recognized by the U.S. Supreme Court; or (3) facts supporting the claim are diligently discovered.

Thus, in a post-AEDPA world, subsection (e)’s Authorization Clause is not satisfied “any time” that a § 2255 motion is filed. Instead, a prisoner’s § 2255 motion must be timely. If the motion is timely (and other requirements, such as the limit on successive motions, are met), a prisoner is “authorized” to bring his motion pursuant to § 2255. In such a case, subsection (e) would plainly prohibit a prisoner from bringing a § 2241 habeas petition.

ii. Subsection (h): Limit on Second or Successive Motions.—Second, subsection (h) dictates when a prisoner can bring a “second or successive” § 2255 motion. A prisoner can only bring a second or successive § 2255 motion if a circuit court certifies that the motion contains (1) “newly discovered evidence” that would prevent all reasonable factfinders from finding the prisoner guilty or (2) a new,

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149 Id.
150 See Trenkler, 536 F.3d at 96 (discussing constraints imposed by AEDPA via subsections (f) and (h)).
152 Id. § 2255(f)(1) (requiring that the judgment of conviction be “final” before the limitations period begins to run). There are several things that determine finality; however, they are irrelevant for the purposes of this analysis.
153 Id. § 2255(f)(2) (requiring that the government’s action be “in violation of the Constitution or laws of the United States” and that the government’s action have prevented filing the 2255 motion).
154 Id. § 2255(f)(3) (requiring the right to be made retroactively applicable to cases on collateral review).
155 Id. § 2255(f)(4).
156 Id. § 2255(e). But see 28 U.S.C. § 2255 ¶ 2 (Supp. II 1948) (allowing motion at “any time”).
158 See generally id. § 2255.
159 Id. § 2255(h).
previously unavailable “rule of constitutional law” made retroactive to cases on collateral review by the U.S. Supreme Court.\textsuperscript{160}

If a prisoner secures certification from the appropriate appellate court (and other requirements, such as timeliness requirements, are met), subsection (e)’s Authorization Clause would be satisfied.\textsuperscript{161} In such case, a prisoner would be “authorized” to bring his motion pursuant to § 2255, and subsection (e) would plainly prohibit a prisoner from bringing his § 2241 habeas petition.

In short, after AEDPA, a prisoner only makes his way past subsection (e)’s Authorization Clause to reach the remainder of that statutory provision if she makes a timely initial motion or if she makes a timely second or successive motion that is predicated on either newly discovered evidence or a new rule of constitutional law. In all other circumstances where a prisoner seeks to bring a § 2241 habeas petition, subsection (e)—by the plain language of its Authorization Clause—prohibits the prisoner from bringing that petition.

If that is true, how is it that the circuit courts reach such wildly different outcomes regarding the meaning of § 2255(e)? Quite simply, the courts skipped right past the Authorization Clause and jumped straight to the last twenty words of § 2255(e)—the so-called “Savings Clause.” That is, the courts consistently and collectively assume that subsection (e) forbids all § 2241 petitions \textit{unless and until} the Savings Clause applies.\textsuperscript{162}

This is an incorrect interpretation of § 2255(e). Or, more precisely, it is a failure to even consider—much less interpret—critical statutory text.

4. **Subsection (e)’s Savings Clause.**—The Savings Clause that the circuit courts have so desperately tried to parse contains these twenty words of subsection (e): “unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of his detention.”\textsuperscript{163} But, a reader who looks at subsection (e) in total reaches the Savings Clause only after reading almost sixty other relevant words and only if she first determines that the Authorization Clause is satisfied.

In its simplest form, subsection (e) bars a § 2241 habeas petition if the prisoner is authorized to bring that claim in a § 2255 motion “unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of his detention.”\textsuperscript{164} Thus, there is \textit{at least} a two-step inquiry: (1) Is the prisoner \textit{authorized} to bring a § 2255 motion? Is so, she cannot bring a § 2241 habeas petition. (2) And, if the prisoner is so authorized, is the Savings Clause satisfied? If so, the prisoner may bring her § 2241 petition; if not, the prisoner remains

\textsuperscript{160} See generally id.

\textsuperscript{161} See id.

\textsuperscript{162} See, e.g., Reyes-Requena v. United States, 243 F.3d 893, 900-03 (5th Cir. 2001) (jumping straight to § 2255(e)’s Savings Clause without examining the remainder of § 2255(e)); In re Dorsainvil, 119 F.3d 245, 248-49 (3d Cir. 1997) (same); Triestman v. United States, 124 F.3d 361, 371-74 (2d Cir. 1997) (same).

\textsuperscript{163} 28 U.S.C. § 2255(e).

\textsuperscript{164} See id.
barred from bringing the petition. Thus, a court reaches the Savings Clause only after it has first concluded that the Authorization Clause is satisfied.\textsuperscript{165}

With that framework in mind, interpreting the Savings Clause is fairly straight-forward: either a prisoner’s authorized § 2255 motion is adequate and effective to test the legality of his detention—in which case the prisoner must bring his claim in a § 2255 motion—or it is not—in which case a prisoner is not precluded from bringing his § 2241 habeas petition.

Given this textual reading, the wrenching and wrestling that the circuit courts have done with the Savings Clause is simply unnecessary. And, lest the reader wonder when in the world a § 2255 motion could be “inadequate or ineffective,” at least one circuit court has provided examples of the rare instances where an authorized § 2255 motion is truly inadequate to test the legality of one’s detention.\textsuperscript{166}

\textbf{C. Other Textual Support}

There are other textual clues that support this text-based interpretation of § 2255(e)—many of which the circuit courts have overlooked.

1. \textit{“Sentence” versus “Detention.”}—On its face, § 2255 is a tool for challenging a sentence:

A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.\textsuperscript{167}

But, courts have interpreted § 2255(a)’s use of the term “sentence” to include all proceedings leading to a sentence, including the actual conviction and the proceedings leading to that conviction.\textsuperscript{168}

In contrast to the broad conviction-and-sentence-based scope of § 2255(a), § 2255(e) provides that a federal prisoner can file a habeas petition only where § 2255 is available but inadequate to challenge the legality of her detention:

\textsuperscript{165} See supra Part V.B.1.

\textsuperscript{166} See Prost v. Anderson, 636 F.3d 578, 588 (10th Cir. 2011) (describing instances where “the defendant’s sentencing court had been abolished by the time the prisoner sought to bring his initial collateral attack” and where the sentencing court in a court martial proceeding “dissolve[d] after sentencing and [was] no longer available to test a prisoner’s collateral attack” (citations omitted)).

\textsuperscript{167} 28 U.S.C. § 2255(a) (emphasis added).

\textsuperscript{168} See United States v. Payne, 644 F.3d 1111, 1113 n.2 (10th Cir. 2011) (noting that courts “repeatedly and consistently appl[y] § 2255 to challenges to convictions”).
An application for a writ of habeas corpus in behalf of a prisoner who is authorized to apply for relief by [§ 2255] motion . . . shall not be entertained if [certain conditions are met] . . . unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of his detention.169

When “Congress includes particular language in one section of a statute but omits it in another . . . [courts presume] that Congress act[ed] intentionally.”170 Since § 2255's inception, Congress has used “sentence” in one part of the statute and “detention” in another.171 Thus, the statute should be read with the presumption that Congress was distinguishing between two different types of challenges—the broad conviction-and-sentence-based challenge described in subsection (a) and the narrow detention-based challenge described in subsection (e)'s Savings Clause.

A federal prisoner attacking his sentence may challenge the validity of the proceedings that resulted in his sentence, but a prisoner attacking his detention may only challenge the execution of that sentence.172 “Detention” differs from a criminal “sentence.” When Congress enacted § 2255 in 1948, “detention” meant “[k]eeping in custody or confinement”173 or “[t]he act of keeping back or withholding, either accidentally or by design, a person or thing.”174 Thus, for example, a pretrial detainee can challenge his detention because he is in “custody or confinement” even though he has not been tried.175 Or, a federal prisoner can challenge his detention by raising claims about his good-time credits or the revocation of his parole, both of which involve the Executive’s “act of keeping back or withholding” the prisoner.176

172 Cf. Antonelli v. Warden, 542 F.3d 1348, 1351 n.1 (11th Cir. 2008) (“It is well-settled that a § 2255 motion to vacate is a separate and distinct remedy from habeas corpus proper. . . . A prisoner in custody pursuant to a federal court judgment may proceed under § 2241 only when he raises claims outside the scope of § 2255(a), that is, claims concerning the execution of his sentence.”).
175 See, e.g., Braden v. 30th Jud. Circ. Ct., 410 U.S. 484, 488–90, 498 (1973) (holding that an Alabama prisoner under a Kentucky indictment could file a habeas action under § 2241 seeking to enforce his constitutional right to a speedy trial); Santamaria v. Horsley, 133 F.3d 1242, 1243 (9th Cir. 1998) (reviewing pretrial habeas petition under § 2241(c)(3)), amended by 138 F.3d 1280 (9th Cir. 1998).
176 See Jiminian v. Nash, 245 F.3d 144, 146 (2d Cir. 2001) (noting that a prisoner can use § 2241 to challenge “such matters as the administration of parole, computation of [his] sentence by prison officials, prison disciplinary actions, prison transfers, type of detention and prison conditions”).
This understanding of the term "detention" comports with the separation of labor that Congress created between the court that sentenced a prisoner and the court in the district where the prisoner is confined (i.e., the habeas court). Congress's 1948 adoption of § 2255 did not impinge a prisoner's right to collaterally attack her sentence; it simply provided a new venue for the collateral attack.\textsuperscript{177} Thus, it makes sense that—through § 2255(e)—the only types of challenges that Congress allows to be brought (in the court whose only connection to the prisoner is its geographic proximity to the prison where the prisoner is confined) are challenges to that prisoner's "detention"—that is, challenges related to the very act of confinement itself. And, it makes sense that Congress requires that a prisoner bring all other attacks on her conviction or sentence in the court where the prisoner was actually adjudged guilty and sentenced to a term of imprisonment.

2. "To Test" the Detention's Legality.—A prisoner may file a habeas petition in the court geographically proximate to the place of his confinement if a remedy from an authorized § 2255 motion "is inadequate or ineffective to test the legality of his detention."\textsuperscript{178} This phrase is quite limited: "To test" means "to try"\textsuperscript{179} or "to ascertain the truth or the quality or fitness of a thing."\textsuperscript{180}

Applying these definitions to the § 2255 context, it becomes clear that whether a prisoner may "test" a claim about the legality of his detention is separate from whether he wins or loses that claim. A prisoner can test his claim if he has an opportunity to raise that claim for examination. Thus, in the context of § 2255, "to test" the legality of one's detention means only that a prisoner needs the opportunity to raise an argument about the legality of his detention.\textsuperscript{181} It does not mean that he is entitled to re-raise—or, more precisely, re-test—his argument if he loses his first challenge.

Returning to our text-based reading of § 2255(e): If a prisoner is authorized to file a § 2255 motion but somehow is unable to file that motion because, for example, the sentencing court has dissolved, the prisoner would be unable "to test"
the legality of his detention in a § 2255 motion. In such case, § 2255(e) permits the prisoner to file a § 2241 petition to raise his claim.

One example of the inability to use § 2255 “to test” the legality of detention could occur when a claim is not cognizable in a § 2255 motion. If the claim is not cognizable, a prisoner cannot “test” it or obtain a “remedy,” as stated in § 2255(e). For example, a prisoner cannot “test” a claim about the revocation of his parole in a § 2255 motion. Nor can a prisoner “test” a claim about his prison conditions. Those claims—and others that relate to the execution of a prisoner’s sentence—do not contest that the sentence itself “was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence.” So, a prisoner cannot use § 2255 “to test” such claims. Instead, he must raise such claims in a § 2241 petition for a writ of habeas corpus. And, quite appropriately, § 2255(e) allows the prisoner to bring such claims in a § 2241 petition.

Several circuit courts have conflated the prepositional phrase “to test” with the words “to win” or “likely to win.” But, § 2255(e) says nothing about what result may manifest from a § 2255 proceeding; it simply mandates that a remedy by an authorized § 2255 motion be adequate and effective “to test” the legality of a prisoner’s detention.

Surely Congress did not intend to allow a federal prisoner to first challenge the legality of her sentence in the court that sentenced her (via § 2255) and then—if she was dissatisfied with the result of the § 2255 proceeding—to again challenge the legality of her sentence by petitioning for a writ of habeas corpus in the districts that confined her (via § 2241). It is unlikely that § 2255(e)—whose text has been present and unaltered since § 2255’s enactment—was intended to allow a prisoner dual opportunities to test her detention’s legality (the so-called second bite at the apple). Such result would undermine the very purposes of § 2255—to disperse the workload of district courts evenly and to ensure that challenges to convictions and sentences occur in a venue that is most likely to have the best access to records, witnesses, and evidence. Transforming the words “to test” to “to win” (or “likely

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182 See id. at 588 (providing two examples in the Tenth Circuit for which § 2255 was inadequate or ineffective “to test” the legality of a sentence because the sentencing courts no longer existed).

183 But see Jiminian v. Nash, 245 F.3d 144, 146 (2d Cir. 2001) (noting that such challenge is permitted in a § 2241 petition).

184 See id. (same).


186 See, e.g., Hajduk v. United States, 764 F.2d 795, 796 (11th Cir. 1985) (dismissing a § 2255 motion to vacate a prisoner’s sentence and requiring that the prisoner file a § 2241 petition for a writ of habeas corpus to raise his challenge to the lawfulness of the parole commission’s actions).


188 See, e.g., Wofford v. Scott, 177 F.3d 1236, 1239, 1244 (11th Cir. 1999) (deciding that, if “settled circuit precedent” goes against a petitioner’s claim, then that circuit precedent “deprived that petitioner of any reasonable opportunity to obtain a reliable judicial determination” of his claim).


190 See United States v. Hayman, 342 U.S. 205, 212–14 (1952) (noting that judges in districts containing “major federal penal institutions . . . were required to handle an inordinate number of habeas
to win") would increase the federal workload by allowing the same challenge in two separate federal courts. That would indeed be an odd result.

3. The Linking Verb: "Is."—Another textual mistake that the circuit courts often make when interpreting § 2255(e)'s Savings Clause is to replace the verb "is" with the word "was." As a reminder, the Savings Clause states: "unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of his detention." Changing the operative verb from present to past tense necessarily changes the meaning of the clause.

When the linking verb is read (as Congress wrote it) in the present tense, the prisoner cannot access § 2241 unless § 2255 is—at the moment her § 2241 petition is filed in federal court—inadequate and ineffective to test the detention's legality. And, § 2241 is only inadequate and ineffective in the rare instances already indicated in this Article.

But, when the linking verb is read (as the courts often read it) in the past tense, the prisoner can access § 2241 if § 2255 was—at any point in time—inadequate or ineffective to test her detention's legality. When read in the past-tense, the linking verb "is" allows the courts to create unwritten requirements for accessing § 2241. For example, the Seventh Circuit allows a prisoner to access § 2241 via § 2255(e)'s Savings Clause where, inter alia, "binding precedent" foreclosed the claim at the time of the prisoner’s first § 2255 proceeding. That is, the Seventh Circuit looks to the past and asks whether § 2255—in the first instance—was flawed in some

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191 See, e.g., Bryant v. Warden, 738 F.3d 1253, 1256 (11th Cir. 2013) ("[T]he savings clause in § 2255(e) permits the prisoner to file a § 2241 habeas petition when a § 2255 motion was 'inadequate or ineffective to test the legality of his detention.'" (emphasis added)); Alaimalo v. United States, 645 F.3d 1042, 1052 (9th Cir. 2011) (Section 2255(e) "compels a federal prisoner to file a collateral attack on his conviction pursuant to § 2255, unless the remedy there provided was 'inadequate or ineffective to test the legality of his detention' " (emphasis added)); Prost v. Anderson, 636 F.3d 578, 587 (10th Cir. 2011) ("[T]he plain language of § 2255 means what it says and says what it means: a prisoner can proceed to § 2241 only if his initial § 2255 motion was itself inadequate or ineffective to the task of providing the petitioner with a chance to test his sentence or conviction." (original emphases omitted) (emphasis added) (footnote omitted)); Morales v. Bezy, 499 F.3d 668, 672 (7th Cir. 2007) ("[T]he prisoner] cannot show that his section 2255 remedy was inadequate or ineffective." (emphasis added)); Hill v. Morrison, 349 F.3d 1089, 1091 (8th Cir. 2003) ("[T]he issue before this court is whether § 2255 was inadequate or ineffective to test the legality of [the prisoner’s] conviction." (emphasis added)); Christopher v. Miles, 342 F.3d 378, 385 (5th Cir. 2003) (concluding that a prisoner could not "use the savings clause of § 2255 to challenge his underlying conviction by petitioning under § 2241" because he “failed to demonstrate that § 2255 was inadequate or ineffective to test the legality of his detention" (emphasis added)).


193 See Prost, 636 F.3d at 588 (describing instances where § 2255 is "inadequate or ineffective").

194 See Brown v. Caraway, 719 F.3d 583, 586-87 (7th Cir. 2013) (citing Brown v. Rios, 696 F.3d 638, 640 (7th Cir. 2012)).
The Seventh Circuit (and other circuits) can only have this retrospective view because they assume that the linking verb in § 2255(e)'s Savings Clause is written in the past tense. If the circuit courts treat the verb as it is codified in the statute, they would have no statutory basis for their judicially-created rules that allow a prisoner to bring a second challenge to the legality of his sentence where a change in the law since the resolution of the earlier challenge may benefit the prisoner. For this reason, the textual distinction between “is” and “was” is extremely important.

D. Other Support for the Text-Based Interpretation

There are also several non-textual clues that support this article’s proposed text-based interpretation of § 2255(e).

1. Proper Defendant.—The proposed text-based reading of § 2255(e) is supported by the clear distinctions between the proper parties to § 2255 motions and § 2241 habeas petitions. The proper defendant in a § 2255 motion to vacate or correct a sentence is the U.S. government, and the motion is served on the U.S. Attorney.

195 See id. at 587 (allowing a prisoner to bring a § 2241 motion via § 2255(e)'s Savings Clause because the prisoner “could not have raised his current argument in his first section 2255 motion because it was foreclosed by binding precedent at that time” (emphasis added)).

196 See id.; see also Bryant, 738 F.3d at 1274 (allowing access to § 2241 via § 2255(e) where, inter alia, the Eleventh Circuit’s binding precedent specifically addressed and squarely foreclosed the prisoner’s claim that he was sentenced above the statutory maximum penalty); Stephens v. Herrera, 464 F.3d 895, 898 (9th Cir. 2006) (stating that a § 2241 petition is permissible when a prisoner, inter alia, “has not had an ‘unobstructed procedural shot’ at presenting that claim” (emphasis added) (citation omitted)).

197 Interestingly, some courts also conflate “was” and “is” on the form templates that pro se prisoners use to raise § 2241-based challenges. See, e.g., U.S. DIST. COURT FOR THE N. DIST. OF FLA., § 2241 HABEAS CORPUS PETITION FORM 3 (Jan. 2013), available at http://www.flnd.uscourts.gov/forms/Pro%20Se/2241-form.pdf (asking a prisoner to “[e]xplain why the remedy under § 2255 was or is inadequate or ineffective” (emphasis added)).

198 Of course, there is a valid argument that the present-tense “is” gives a polar opposite meaning to the Savings Clause. That alternative reading is: If, at any time, § 2255 is inadequate or ineffective to test the legality of the detention (e.g., because the motion is untimely filed, impermissibly successive, or was denied on the merits), a prisoner is entitled to bring a § 2241 petition. This reading of the verb “is” would permit a second bite at the apple any time a prisoner wanted it. But, that cannot be what Congress intended. Such a reading would run completely counter to the very purpose of § 2255: to shift the venue of post-conviction attacks to balance court workload. If a prisoner was allowed two collateral attacks—one in the sentencing court and one in the court in the district where the prisoner is confined—the entire purpose of § 2255 would be undermined. Thus, this alternative reading of “is” is most assuredly wrong.

199 See 28 U.S.C. § 2255(b) (2012) (“[T]he court shall cause notice thereof to be served upon the United States attorney . . . .”).
The proper defendant in a § 2241 petition, which challenges the execution of a sentence, is the warden who confines the prisoner.200 Thus, a prisoner who raises sentencing challenges in a § 2241 petition not only sues in the wrong court (i.e., by filing in the place of confinement rather than the place of sentencing), but she also sues the wrong defendant. The warden does not impose a prisoner's sentence or participate in any proceeding leading up to that sentence's imposition; the U.S. Attorney does. Reading § 2255(e) to allow a conviction-or-sentence-based challenge to pass through the Savings Clause in § 2255(e) and reach § 2241 puts the warden in the precarious position of defending the prisoner's conviction and sentence even though the warden did not participate in any proceeding leading up to the imposition of that sentence. This cannot be a result that Congress intended, and this Article's proposed reading of § 2255(e) largely avoids such a result.

2. AEDPA's Limitations.—Circuit courts attempting to harmonize their interpretation of § 2255(e) with the remainder of § 2255 have consistently faced a dilemma (whether they acknowledge it or not): the varied tests for allowing certain sentence-based claims to pass through § 2255(e)’s Savings Clause circumvent the bars to such motions that Congress explicitly imposed when it enacted AEDPA in 1996. In particular, Congress imposed a statute of limitations, replacing the old provision that allowed a motion to be filed at “any time.”201 And Congress imposed a bar on second or successive motions,202 which was intended “to place limits on federal collateral review.”203

The proposed text-based interpretation of § 2255(e) avoids the problems that the circuit courts' interpretations have introduced.204 Under this Article's reading of § 2255, the Savings Clause comes into play if and only if § 2255(e)’s Authorization Clause is first satisfied—that is, only when all requirements for such a motion, including the bars to untimely motions and second (or successive) motions, have been met.205 This reading of § 2255(e) harmonizes all sections of § 2255 and is consistent with AEDPA's purposes to “curb the abuse of the statutory writ of habeas corpus, and to address the acute problems of unnecessary delay and abuse in capital cases.”206

200 See id. § 2242 (stating that the prisoner must allege “the name of the person who has custody over him” (i.e., the warden)).
203 Triestman v. United States, 124 F.3d 361, 376 (2d Cir. 1997).
204 Accord Prost v. Anderson, 636 F.3d 578, 588–94 (10th Cir. 2011) (discussing faults with other circuits' non-textual interpretations of § 2255(e)).
205 See supra Part V.B.
3. Avoiding Constitutional Issues.—Some courts have stated that § 2255(e)'s Savings Clause is necessary to avoid “a thorny constitutional issue” about the suspension of habeas corpus.\textsuperscript{207} Taking this as true, the proposed text-based reading of § 2255(e) avoids such constitutional problems.

A prisoner challenging the execution of his sentence must have a forum where he may bring that challenge, even though such a challenge could be raised long after his sentence is imposed.\textsuperscript{208} Because § 2255 clearly permits challenges to convictions and sentences, § 2255 would impose a constitutional problem only if it prevented a prisoner from challenging the execution of his sentence. But that is something § 2255 does not do.

Challenges regarding good-time credits, parole revocation, or other prison disciplinary proceedings affecting a prisoner’s confinement are challenges about executive detention.\textsuperscript{209} These challenges mirror challenges brought by pretrial detainees, who are the quintessential habeas petitioners because they have been detained by the Executive branch before courts have determined their guilt.\textsuperscript{210} Such challenges to executive detention were the very kinds of challenges that the Framers anticipated when they adopted the Suspension Clause more than 200 years ago.\textsuperscript{211} And none of these challenges are barred by § 2255.\textsuperscript{212}

Section 2255(e)'s Authorization Clause is not satisfied if a prisoner seeks to challenge the execution of his sentence because § 2255 is not the authorized mechanism to raise such challenges.\textsuperscript{213} In such a case, the prisoner should file a

\textsuperscript{207} See, e.g., In re Dorsainvil, 119 F.3d 245, 248 (3d Cir. 1997) (“Were no other avenue of judicial review available for a party who claims that s/he is factually or legally innocent as a result of a previously unavailable statutory interpretation, we would be faced with a thorny constitutional issue.”); see also, e.g., Triestman, 124 F.3d at 377 (stating that the Savings Clause may be triggered where “the failure to allow for collateral review would raise serious constitutional questions”).

\textsuperscript{208} See U.S. CONST. art. I, § 9, cl. 2.

\textsuperscript{209} See Jiminian v. Nash, 245 F.3d 144, 146 (2d Cir. 2001) (noting that a prisoner can use § 2241 to challenge such matters); United States v. Furman, 112 F.3d 435, 438–39 (10th Cir. 1997) (stating that challenges to good-time credit and parole procedure should be brought under § 2241).

\textsuperscript{210} See THE FEDERALIST NO. 84, at 533 (Alexander Hamilton) (Benjamin Fletcher Wright ed., 1961) (“To bereave a man of life . . . or by violence to confiscate his estate, without accusation or trial, would be so gross and notorious an act of despotism, as must at once convey the alarm of tyranny . . . but confinement of the person, by secretly hurrying him to jail . . . is a less public, a less striking, and therefore a more dangerous engine of arbitrary government.” (quoting another source)); see also Schall v. Martin, 467 U.S. 233, 253–55, 263, 280 (1984) (discussing a habeas corpus action challenging a New York state statute authorizing pretrial detention); Bell v. Wolfish, 441 U.S. 520, 520, 526 (1979) (“Pretrial detainees brought suit challenging the constitutionally of numerous conditions of confinement and practices in a federally operated short-term custodial facility.”).

\textsuperscript{211} See Boumediene v. Bush, 553 U.S. 723, 739–46 (2008) (providing a brief account and discussion of the history of habeas challenges and holding that the “[S]uspension] Clause is designed to protect against cyclical abuses”); Preiser v. Rodriguez, 411 U.S. 475, 484 (1973) (“[T]he essence of habeas corpus is an attack by a person in custody upon the legality of that custody . . . .”).

\textsuperscript{212} See supra Part V.B.

\textsuperscript{213} See Furman, 112 F.3d at 438–39 (stating that challenges to “good-time credit and parole procedure, go to the execution of [a] sentence” and should be brought under § 2241 (citations omitted)); Falcon v. U.S. Bureau of Prisons, 52 F.3d 137, 139 (7th Cir. 1995) (“A petitioner who seeks a ‘quantum change’ in the level of confinement must use the writ.”).
Thus, the Constitution does not require courts to read new, non-text-based, escape hatches into § 2255(e). To the contrary, § 2255(e) permits challenges to the execution of one's sentence precisely because such challenges do not satisfy § 2255(e)'s Authorization Clause, and § 2255(e) permits challenges to the imposition of that sentence either through a § 2255 motion (or through a § 2241 petition if § 2255(e)'s Savings Clause is satisfied). That is all the Constitution requires.215

CONCLUSION

Courts have a “duty to give effect, if possible, to every clause and word of a statute.”216 Yet when it comes to interpreting § 2255(e), circuit courts have repeatedly shirked that duty and imposed their own, individualized, multi-step, Rube Goldbergian rules to connect § 2255 motions and § 2241 petitions.217

This Article proposes that we begin at the beginning, assume that Congress meant what it wrote, and impose the rules limiting access to § 2241 that Congress drafted into § 2255. If the circuit courts return to the basics of statutory interpretation, they will—in all likelihood—reach the same or similar results in their interpretive endeavors. That would benefit the judicial system because it would ensure similar access to justice regardless of the district of sentencing or the place of confinement.

Should Congress find that the effects of its own enacted words are contrary to its vision and too limiting in practice, Congress can amend § 2255 to create greater access to § 2241 when successive or untimely § 2255 motions are otherwise barred. Such statutory re-writing is beyond the role of the courts. Courts should stick to their mandate to interpret and apply the law that Congress enacted. Only then will we escape the kaleidoscopic chaos that was the inevitable result of establishing rules and requirements for access to § 2241 that were completely foreign to, and found nowhere in, the statutory text of § 2255.

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214 See Cardona v. Bledsoe, 681 F.3d 533, 535 (3d Cir. 2012) (stating that § 2241 “confers habeas jurisdiction to hear the petition of a federal prisoner who is challenging not the validity but the execution of his sentence” (emphasis added) (citation omitted) (internal quotation marks omitted)).
215 And, in case more is required, nothing in § 2255 strangles the power of the U.S. Supreme Court to exercise its original jurisdiction to grant a writ of habeas corpus. Accord Felker v. Turpin, 518 U.S. 651, 658–61 (1996) (rejecting the argument that AEDPA’s restriction on second or successive § 2255 motions unconstitutionally infringes on its appellate jurisdiction because AEDPA “makes no mention of [the Supreme Court’s] authority to hear habeas petitions filed as original matters in this Court”).
217 See generally Case, supra note 4 (explaining the various tests used in each circuit court).