DUE PROCESS
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Due Process Institute's Guide to What Really Matters at the Supreme Court a.k.a. *Sifting Through the Minutiae for Busy Criminal Defense Lawyers & Those Who Otherwise Care About Improving our Criminal Law in Order to Highlight the Most Significant SCOTUS Criminal Law Stuff*

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TOP 3 PENDING CERTIORARI PETITIONS IMPACTING CRIMINAL LAW[1]

CONSPIRACY / GUILT BY ASSOCIATION / *PINKERTON* ON TRIAL: In *Reese v. United States*, No. 23-2291, Erin E. Murphy and Paul Clement ask SCOTUS to overrule *Pinkerton v. United States*—the 79-year-old doctrine that lets prosecutors nail someone for any and all crimes committed by co-conspirators. *Pinkerton* liability is a prosecutor's cudgel. It creates long sometimes even life-time sentences for people who didn't pull the trigger or even know about the trigger. It has been especially harsh in drug and racketeering cases—sweeping in peripheral players for the worst acts of co-defendants. Its impact has expanded over the decades, extending into white collar cases where the only "overt act" committed by the defendant might have been simply attending a legal business meeting. As the inestimable John Cline wrote in his *amicus* brief for Due Process Institute: "The Pinkerton theory, rarely used when the Court first created it, has spread like kudzu through the federal criminal system." If SCOTUS takes Reese's case and scales back or ends *Pinkerton*, it would restore the concept of individual culpability in federal criminal law. If not, the doctrine will continue to punish people unfairly for crimes they didn't commit, or even imagine participating in.

[1] By "Top 3," I certainly do not mean to indicate my assessment on the likelihood of whether the Court will take up the case—merely whether I think it is morally imperative that they do so.

Attorney-Client Privilege / Prosecutorial Wiretap / Seriously, Bruh?: *Hohn v. United States*, No. 24-1084, asks whether there shouldn't be a burden-shifting framework when prosecutors intentionally and unjustifiably intercept the defense's confidential attorney-client communications—or whether such defendants have to prove actual prejudice under an impossibly high standard. In this case, prosecutors in the Kansas City U.S. Attorney's Office secretly recorded phone calls between Mr. Hohn and his lawyer—calls that discussed defense strategy, evidence, and potential weak spots. The Tenth Circuit required him to not only show the intrusion, but also *discrete, trial-specific prejudice*—an impossible burden in most cases, since only the prosecutors have access to what they learned or how they used it. This kind of standard turns prosecutorial misconduct into a risk-free gamble. When prosecutors invade privileged defense communications (something that *should* trigger strong constitutional alarm) requiring defendants to prove exactly what harm was caused is like asking someone to see in the dark without turning on a light. Our gratitude goes to Doug Litvack and his team at Jenner & Block for their *amicus* support on our behalf. Let's see if the Court takes this one up, or in other words, whether there is any fair play left in the game.

Appeal Waivers in Plea Deals / Sign Here, Lose Your Rights: *Hunter v. United States*, No. 24-1063, asks whether a boilerplate appeal waiver in a plea deal can be enforced when the sentencing judge explicitly told the defendant, "you have the right to appeal," and the government was silent—and under circumstances in which a condition of supervised release imposed (mental health medication) arguably violates due process. In this case, Mr. Hunter pled guilty to aiding and abetting wire fraud under a plea agreement that waived almost all of his appellate rights. He objected to a supervised release requirement that he take prescribed mental health medication, but despite the forced medication and the judge's oral statement that he had the right to appeal, his appeal was dismissed by the Fifth Circuit based solely on the boilerplate plea deal paperwork he signed. These plea waivers are contracts of adhesion that plague thousands of cases every year. Forcing defendants to forgo appeals even when constitutional violations are baked in (like involuntary medication) is especially dangerous, and frankly, the broader practice of forcing defendants to waive appellate

rights as the "price" of pleading guilty has been a problem for years. As our friends at Cato Institute succinctly put it: "The Fifth Circuit's decision welcomes prosecutors to bargain for sentences that courts cannot constitutionally impose." Fingers crossed the Court is intrigued enough to take a look at this situation.

Our Designation for MOST DISAPPOINTING DENIALS OF *CERTIORARI* (So Far)

Generally, the award for most disappointing denial of *certiorari* goes to an acquitted conduct case. That's still a grave concern for us, but this year we're branching out with two other disappointments:

FEDERAL JUDGE DISQUALIFICATION / PROSECUTORIAL OVERREACH / RECUSAL IS A UNICORN: *Bahlul v. United States*, No. 23-1072, asked whether the federal disqualification statute (28 U.S.C. § 455(b)(3)) requires recusal when a federal judge is assigned to a case involving the same parties, the same facts, and the same issues as a case in which they previously appeared as counsel for the government, among other questions. You'd think this was a no-brainer. Instead, SCOTUS denied cert, leaving intact the D.C. Circuit's view that a judge who had been government counsel on pretrial collateral attacks could later preside over the post-trial appeal. The Court's refusal to take the case means lower courts can keep greenlighting judges who, from a defendant's perspective, look like referees calling balls and strikes for their own team. Recusal is starting to look like a unicorn.

HABEAS / AEDPA / DANTE'S 10TH CIRCLE OF HELL: *Mendoza v. Lumpkin*, No. 23-1004, involved Dante's 10th Circle of Hell—a.k.a. interpreting how certain AEDPA provisions apply. Behind the nightmare of the procedural questions in this case lay this chilling question: whether a defendant facing a death sentence gets to litigate the question of whether his defense counsel was competent when counsel put on an expert psychologist witness to testify that the defendant lacked any human moral compass, was dangerous in and out of prison, and lacked any mitigation factors. In sum: the

defense attorney succinctly made the prosecution's case for death. SCOTUS denied cert—yet another example of AEDPA's "finality over fairness" stranglehold.

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A PREVIEW OF THE MOST INTERESTING CRIMINAL(ISH) LAW CASES OF THE OCTOBER + NOVEMBER 2025 TERMS

COMPASSIONATE RELEASE / FIRST STEP ACT / STACKED § 924(C) PENALTIES / SENTENCING GEOGRAPHY LOTTERY: *Rutherford v. United States* (No. 24-820) + *Carter v. United States* (No. 24-860) (set for argument Nov. 12, 2025), have been consolidated so SCOTUS can decide whether old sentences imposed under harsh § 924(c) stacking rules—rules changed by the First Step Act, but not legislatively made retroactive—can now count as "extraordinary and compelling reasons" for reducing a person's sentence under 18 U.S.C. § 3582(c)(1)(A)(i). Mr. Rutherford is serving 42½ years and Mr. Carter is serving a 70-year sentence. Each is stuck serving significantly more time than what Congress now considers acceptable. But because those changes weren't made retroactive by the First Step Act, some judges and circuits say they can't be part of the compassionate release conversation. Some courts say yes. (As does the U.S. Sentencing Commission guidance.) Mercy shouldn't depend on your ZIP code. 👀

DOUBLE JEOPARDY / FIREARM STACKING / ONE BULLET, TWO SENTENCES: *Barrett v. United States*, No. 24-5774 (set for argument Oct. 7, 2025), asks whether it violates the Fifth Amendment's Double Jeopardy Clause to punish someone under both § 924(c) (using a gun during a Hobbs Act robbery) *and* § 924(j) (causing death with a gun during a Hobbs Act robbery) for the same act. Mr. Barrett received consecutive sentences under both § 924(c) and § 924(j). The Second Circuit upheld it, holding that § 924(c) and § 924(j) are not lesser-/greater-included offenses of one another and that Congress clearly authorized cumulative punishment. Will SCOTUS bless prosecutors piling on multiple life-altering punishments for a single act—creating draconian cumulative sentencing and adding even heavier plea-deal pressure—when prosecutors already wield plenty of sharp tools to seek punishment?

COMPASSIONATE RELEASE / EXTRAORDINARY + COMPELLING (UNLESS YOU WENT TO TRIAL) / *HABEAS* HELL: *Fernandez v. United States*, No. 24-556 (set for argument Nov. 12, 2025), asks whether a motion to reduce a sentence under § 3582(c)(1)(A)—the "extraordinary and compelling reasons" compassionate release provision—can include reasons that also could be used to vacate a sentence under § 2255, like possible innocence or large disparities between co-defendants who pled guilty. Mr. Fernandez received consecutive life sentences. Years later, one of his convictions was vacated, but the rest of his life sentence remained. In 2021, he filed a compassionate release motion under § 3582(c)(1)(A), arguing that his possible innocence and the fact his co-defendants got much lower sentences were "extraordinary and compelling reasons" to reduce his sentence. The district court agreed and reduced his sentence to time served. The Second Circuit reversed, saying those kinds of reasons belong in a § 2255 motion, not under compassionate release. Here the Court will decide whether factors like potential innocence or gross sentencing disparities—which might also be raised via collateral review—can qualify as "extraordinary and compelling reasons" for compassionate release? As defense lawyers know, § 2255 motions are full of procedural traps, whereas compassionate release operates more broadly. Denying relief when a case screams inequity (innocence, co-defendant disparity, stacked gun charges) keeps people locked up under sentences everyone knows are unfair and punishes people for going to trial. If possible innocence isn't extraordinary, what is? Rare blood types? Winning the lottery?

NEW PRECEDENT? TOO BAD / MORE *HABEAS* HELL: *Bowe v. United States*, No. 24-5438 (set for argument Oct. 14, 2025), asks whether federal prisoners can bring a second or successive motion to vacate under § 2255 when a conviction (or predicate for a § 924(c) sentence) is invalidated by new precedent, even though they'd previously tried similar arguments—and whether courts can block Supreme Court review of a court of appeals' decision granting or denying them permission to file such motions. Bear with me on this one: Mr. Bowe pled guilty in 2009 to conspiracy to commit Hobbs Act robbery, attempted Hobbs Act robbery, and a § 924(c) firearm enhancement. He got a 288-month sentence, including a mandatory consecutive 120 months for the firearm charge. After *United States v. Davis* (2019) invalidated the residual clause in § 924(c), Bowe filed a § 2255 motion to vacate his § 924(c) conviction. The Eleventh Circuit said no, because attempted

Hobbs Act robbery still qualified under the "elements clause." Then *United States v. Taylor* (2022) held that attempted Hobbs Act robbery doesn't qualify under the elements clause either. Bowe tried again based on the new *Taylor* rule. The Eleventh Circuit again refused, invoking statutory bars on "second or successive" challenges. The questions: (1) Does § 2244(b)(1), which applies to state habeas petitions, also apply to federal § 2255 motions? (2) Does § 2244(b)(3)(E), which bars *certiorari* review of court-of-appeals authorization decisions, deprive the Supreme Court of jurisdiction to review denials of permission to file second or successive motions? Why this sucks: New precedent made clear Bowe's § 924(c) predicate was invalid, but procedural rules still trap him in a mandatory sentence for an offense that's no longer a crime of violence. Using § 2244 (meant for state habeas) to block federal § 2255 motions is using a fence Congress never built to keep federal prisoners out of court. And denying Supreme Court review of appellate authorizations means even clear errors can forever be locked in. As our *amicus* brief, led by UVA School of Law's Civil Rights Clinic, points out: "Mr. Bowe is being punished for his diligence." He did everything right: he challenged his conviction as soon as the law changed, then tried again when new precedent knocked out the government's last fallback, yet he's still trapped by a bar Congress never created for federal prisoners. Worse, § 2244's no-review rule means the Supreme Court may not ever get to fix the Eleventh Circuit's mistake. A new precedent means nothing if you can't ask for correction.

THE EVER-ERODING 4TH AMENDMENT / WARRANTLESS HOME ENTRY / EMERGENCY AID EXCEPTION: *Case v. Montana*, No. 24-624 (set for argument Oct. 15, 2025), asks whether cops can break into a home without a warrant based on less than probable cause that an emergency is happening. Mr. Case's ex-girlfriend called police worried he might kill himself. Officers showed up, got no answer, waited about 40 minutes, then entered through an unlocked door without a warrant. They found Case hiding, shot him, *then* found a gun in a laundry basket, and … what else? Charged him with assault on an officer with the gun they found. The question: Is "objectively reasonable belief" enough for emergency-aid entries into homes, or does the Constitution require probable cause? Courts go both ways. Essentially this case will decide whether mental-health welfare checks are on their way to becoming blanket excuses for warrantless home invasions. If

SCOTUS lets "reasonable belief" replace probable cause, you hand law enforcement a get-in-anywhere card, especially in communities already over-policed or in crisis.

RIGHT TO COUNSEL / GAGGING THE DEFENSE: *Villarreal v. Texas*, No. 24-557 (set for argument Oct. 6, 2025), asks whether it violates the Sixth Amendment for a trial court to ban a defendant and his lawyer from discussing his testimony during an overnight recess, while still allowing discussion of other trial matters. Mr. Villarreal was on trial in Texas for murder. Midway through his direct examination, the judge suspended the trial overnight and ordered that Villarreal and his counsel could not talk about his testimony during the break (though they could talk about other trial issues). The Texas courts have decided this restriction doesn't violate the Sixth Amendment. Some other courts treat any overnight gag on testimony discussions as unconstitutional. Villarreal and *amici* argue that the line between "testimony-related" and "non-testimony" advice is meaningless and chills vital communication. Forcing a defendant to go overnight without guidance about what he's just said, what's coming, or how to adjust, makes for unfair trials and one-sided preparation. It's a gag on the defense team right when they need to talk the most.

FUGITIVE TOLLING / SUPERVISED RELEASE / TIME AFTER TIME (LITERALLY): The fugitive-tolling doctrine states that no one should get credit towards a prison sentence for time when they are not actually imprisoned (i.e. they have escaped). *Rico v. United States*, No. 24-1056 (set for argument Nov. 3, 2025), asks whether the fugitive-tolling doctrine applies to supervised release—i.e. if someone disappears before their supervised release ends, then commits new offenses *after* the original end date of superversion, can the government penalize them as if they were still under supervision even though the calendar says no? This doesn't only apply to purposeful absconders but also to people who simply fail to properly notify their probation office of a change of address or who may miss terms of their supervised release for reasons beyond their control. The government's theory turns supervision into a never-ending trap, extending punishment well beyond what was originally imposed. Will SCOTUS stop the clock or green-light perpetual supervision? Our thanks to the tireless staff at the Federal Defenders of San Diego who crafted our *amicus* brief in this case, arguing that fugitive tolling in this context would permit courts to exceed the limitations on their jurisdiction.

Ex Post Facto / Restitution / Debt that Never Dies?: *Ellingburg v. United States*, No. 24-482 (set for argument Oct. 14, 2025), asks whether restitution under the Mandatory Victims Restitution Act (MVRA) counts as punishment for purposes of the Ex Post Facto Clause—meaning, can Congress retroactively extend how long someone remains liable for restitution (plus interest) beyond what the older law allowed, without violating the Constitution's bar on retroactive punishment? Mr. Ellingburg robbed a bank in 1995 and was sentenced in 1996 to 322 months in prison plus $7,567 restitution under the Victim and Witness Protection Act (VWPA). Under VWPA, restitution obligations expire 20 years after judgment (about 2016 in his case). But after the MVRA took effect, the government claimed his liability continued until 20 years after release from prison and began imposing mandatory interest. Ellingburg argues those retroactive extensions violate Ex Post Facto protections. The Eighth Circuit rejected his challenge, holding MVRA restitution is not "punishment" for Ex Post Facto purposes, but a civil obligation. Treating restitution as "civil" lets the government stretch debts out and add interest decades after sentencing, chaining people to financial obligations long after they've served their time. It's punishment under another name, with surprise extensions that crush reentry efforts and burden those least able to pay. Especially for older cases, in which defendants may have believed their liability expired under old rules, it means decades later getting hit with demands (and possibly accrual of interest) because of a law enacted *after* their sentence.

The Most Useful, Interesting, and/or Infuriating Criminal(ish) Published Opinions

Let's start with the wins!

First Step Act / Resentencing / Fundamental Fairness: *Hewitt v. U.S.*, No. 23-1002 (June 26, 2025), asked whether the First Step Act's sentencing reduction provisions apply to a defendant who was sentenced before the law's enactment, but then has that original sentence judicially vacated, and now faces resentencing after the FSA's

enactment. Our joint *amicus* brief, filed with allies at Cato Institute, ACLU, and ACLU of Texas, illustrated how this was a no-brainer, but after the Court's bizarre and bleak work in *Pulsifer*, we didn't want to count our chickens before they hatched. Thankfully, the Court saw it our way, holding 5-4 (*phew*) that if your prior sentence has been vacated, the First Step Act's shorter §924(c) penalties apply—even if the original sentence was imposed before the law passed. When a sentence is vacated, it shouldn't live forever in the shadows. Congress fixed this; SCOTUS said, "use the fix." *Now wasn't that simple?*

§ 1983 Excessive Force / Moment-of-Threat Doctrine / Context Matters: *Barnes v. Felix*, No. 23-1239 (May 15, 2025), represents a rare unanimous Fourth Amendment win for victims of police violence. The Supreme Court threw out the Fifth Circuit's restrictive "moment-of-threat" doctrine, holding that excessive-force claims must be judged under the totality of the circumstances, not just the split second when an officer claims to perceive danger. In this case, Mr. Barnes was pulled over for unpaid tolls. An officer stepped onto the car's sill, the car moved forward, and in response the officer immediately shot and killed an unarmed Mr. Barnes. Under the Fifth Circuit's rule, a court need only analyze the instant when the officer was on the sill and the car was moving, ignoring everything else. This "moment-of-threat" doctrine instructed courts to ignore reckless, escalatory, or unconstitutional decisions that lead to a deadly encounter. It gave officers a free pass for bad choices made seconds earlier. SCOTUS has brought an end to this. This ruling now forces lower courts to look at the whole picture—something our *amicus* brief (thoughtfully drafted by the good folks at Jenner & Block and joined by NACDL) argued is essential for police accountability. Sadly, the doctrine of qualified immunity still exists, but at least this ill-conceived bar to § 1983 is gone.

***Brady* / Prosecutorial Misconduct / Lying Snitches / (Not) Executing Innocent People:** *Glossip v. Oklahoma*, No. 22-7466 (February 25, 2025), involved the state's suppression of super freaking important information relating to the credibility of the only important prosecution witness (whose credibility was already nonexistent to anyone paying attention). The Court was asked to weigh in on whether this matters and, if so, how much it matters, or slightly more specifically, whether the state violated due process under *Brady v. Maryland* and *Napue v. Illinois* and, if so, whether it meant a

capital conviction must be reversed. As the Innocent Project's *amicus* brief pointed out: "Prosecutorial misconduct of the sort the State has acknowledged in this case is a distressingly common factor in wrongful convictions. Careful, systematic reviews of post-conviction exonerations reveal that they are overwhelmingly the product of official misconduct. Violations of the *Brady* right in particular have frequently led to the conviction of innocent people. And the misconduct at issue here is particularly significant because it relates to the credibility of highly dubious informant testimony—itself a frequent contributor to wrongful convictions." Shockingly, courts in Oklahoma had continuously refused to stop the execution of a very likely innocent man who never had a fair trial. Thankfully, the Supreme Court reversed and ordered a new trial. A good result, but a harrowing reminder of how much justice rides on the fair disclosure of evidence.

POSTCONVICTION DNA TESTING / PROCEDURAL CATCH-22: *Gutierrez v. Saenz*, No. 23-7809 (June 26, 2025), finally removed a brick from one of Texas's nastier procedural walls. Ruben Gutierrez—on death row since 1998—had spent years trying to get DNA testing of untested evidence (blood, hair, scrapings) that he said would show he wasn't in the victim's home that night. Texas courts repeatedly denied him under their "prove-innocence-before-testing" rule. When Mr. Gutierrez filed a federal § 1983 suit, the Fifth Circuit dismissed for lack of standing: "Even if you win, you probably won't get the evidence." In a 6-3 decision, the Supreme Court reversed. Justice Sotomayor's majority opinion held that Gutierrez *does* have standing—if a declaratory judgment removes even one barrier to DNA testing, that's enough to get into federal court. You don't need to guarantee you'll get the evidence, only that the challenged obstacle is one the law forces you to confront. Our take: This is a rare and welcome pro-defendant decision in the DNA-testing arena. Texas's statute still sets up a nasty catch-22 (prove innocence to get testing; need testing to prove innocence), but at least the Court removed one procedural roadblock. This ruling will hopefully make it harder for states to evade federal review of unfair DNA-testing schemes.

FALSE STATEMENTS / LITERALLY TRUE ≠ CRIME / PROSECUTORIAL OVERREACH CHECKED: *Thompson v. United States*, No. 23-1095 (Mar. 21, 2025), is a clean win for fairness: § 1014 (false statements to banks/FDIC) covers only "false statements"—not

statements that are literally true but arguably misleading. In a unanimous decision, the Court said: when Congress wants to criminalize misleading statements, it knows how to say so and… § 1014 says false, so that means … false. Prosecutors love elastic theories. This snaps one back to size. Don't worry; there are plenty of other tools (e.g., statutes that expressly cover "false or misleading" or "fraudulent schemes"). Just not this one. *See, SCOTUS. Wasn't that easy?*

SUPERVISED RELEASE / REVOCATION HEARING / RETRIBUTION OUT OF BOUNDS: *Esteras v. United States*, No. 23-7483 (June 20, 2025), is a win for people on supervised release. The Supreme Court held 7-2 that courts may not consider § 3553(a)(2)(A) factors—which includes "just punishment," "seriousness of the offense," and "promoting respect for the law"—when revoking supervised release under § 3583(e). The Court found that Congress expressly omitted those punitive factors from the statute governing revocation. Another win for "words mean what they say (or don't say)" at the Court!

UNDUE PREJUDICE / TRIAL BY SMEAR: *Andrew v. White*, No. 23-6573 (Jan. 21, 2025) dropped quietly and didn't get a lot of attention. In it, the Court reminded us that the Constitution *might* actually limit how much irrelevant prejudicial garbage prosecutors can dump into a jury's lap. At trial, the State relied upon a smear campaign to prosecute Mrs. Andrews for her husband's murder: salacious testimony about her sex life, her "provocative" clothing, what kind of underwear she packed for vacation, how often she had sex in a car, how she "behaved as a wife," and other misogynistic nonsense. Much of it was later conceded to be irrelevant. The Tenth Circuit refused relief under AEDPA, saying no controlling case had held unduly prejudicial evidence could violate due process outside victim-impact statements in capital sentencing. SCOTUS disagreed and remanded with instructions to examine whether all that irrelevant misogynistic evidence actually "infected" the trial enough to deny fairness.

And now for the bad news:

MAIL + WIRE FRAUD / CUE PROSECUTORIAL ~~OVERREACHING~~ CREATIVITY: *Kousisis v. United States*, No. 23-909 (May 22, 2025), addressed the 6-5 circuit split on the validity

of the fraudulent inducement theory of mail and wire fraud. As John Cline succinctly explained in our *amicus* brief: "Mail and wire fraud are property crimes. A mail or wire fraud scheme must contemplate harm to someone's property. Federal prosecutors find that tie to property frustrating. If the property requirement were removed, they realize, mail and wire fraud could strike at all forms of 'deception, corruption, [and] abuse of power.' [Citation omitted.] So prosecutors have devised creative theories to circumvent the property requirement. Complaisant lower courts have too often endorsed those theories. In case after case, this Court has rejected them." But this case did not go as we predicted. The Court held 9-0 that a defendant can be convicted of wire fraud under the fraudulent-inducement theory even if they never sought to cause the victim economic loss. So yes—even if the "victim" got the benefit of the bargain, the fraud charge sticks. Justice Barrett wrote the opinion; various Justices wrote concurrences disagreeing about how far this doctrine might stretch. This decision appears to expand the wire fraud statute so far that virtually any false statement about qualification in a government contract now becomes a federal crime—even if it didn't cause any net loss. Please hold for a whole new series of creative fraud charges.

STATUTORY INTERPRETATION / § 924 (C)(3)(A): *Delligatti v. United States*, No. 23-825 (March 21, 2025), asked the Court to determine whether a crime that requires proof of bodily injury or death, but can be committed by failing to take action (like failing to perform a legal duty), qualifies as a "crime of violence" under 18 U.S.C. § 924(c)(3)(A)'s sentencing enhancement. There had been a circuit split on the issue. As we predicted in last year's *Brief Guide*, the Court rarely makes good law in a mob case. The Court held 7-2 that intentional causing of serious bodily injury or death, even by omission, *does* involve "use of physical force" and therefore qualifies.

AEDPA SECOND-OR-SUCCESSIVE *HABEAS* / FINALITY OVER FAIRNESS: *Rivers v. Guerrero*, No. 23-1345 (June 12, 2025), slammed shut the idea that you can avoid AEDPA's strict second-or-successive *habeas* rules by filing a new petition while the first is still on appeal. The Court held unanimously that once a district court enters judgment on your first *habeas* petition, any later petition is "successive" under § 2244(b)—even if the first is being appealed. Why this sucks: Because it slams the door on justice for people

who discover new evidence *after* their first *habeas* petition—evidence that might not have been accessible earlier—and who try to raise it while waiting for appellate resolution. The idea that "if it's still on appeal, you can slip in new claims" was always a longshot; now it's off the table. It's AEDPA's chokehold reasserted. The system remains stacked heavily in favor of finality over truth.

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That's it for this edition of *Due Process Institute's Brief Guide to SCOTUS's . . . Criminal Law Stuff*. If you find our work useful to you or are interested in learning more about our work, you can access our *amicus* briefs, read about our legislative and policy work, and check out our blog at www.idueprocess.org. While you're at it, you should also check out our sister organization's criminal law blog and amicus work at www.clause40.org. Please reach out if you're interested in writing an *amicus* brief for either organization on fascinating and profound issues of national importance. Seriously. Call (202-558-6683) or email (shana@idueprocess.org or shana@clause40.org). We get way more requests than we can ever say yes to and there is important work to be done.