

# Defining “Second or Successive” Habeas Petitions after *Magwood*

Megan Volin†

*The Antiterrorism and Effective Death Penalty Act (AEDPA) precludes the filing of “second or successive” federal habeas corpus petitions—when a petitioner files a habeas petition for the second time, it will generally be dismissed. In Magwood v Patterson, the Supreme Court held that this prohibition did not bar the filing of a technically “second” habeas petition challenging aspects of a resentencing that resulted from the partial grant of the petitioner’s prior habeas petition. Because this resentencing led to the entry of a new judgment, the Court explained, the petition was not barred by AEDPA as, while it was the petitioner’s second filing overall, it was his first petition challenging this new judgment. This Comment addresses a question explicitly reserved by the Court in Magwood: whether its holding extends to petitioners who, rather than challenging an aspect of their resentencing, challenge an aspect of their conviction or sentence that predates and remains unaltered by the resentencing and resulting new judgment. The circuit courts are split as to this issue.*

*Based on principles of statutory interpretation, this Comment concludes that Magwood should extend to cases in which a habeas petitioner challenges an undisturbed component of his conviction or sentence. This is first because of the principle that the statutory language of AEDPA must be interpreted the same way in all cases implicating the statute—the Supreme Court’s holding turned on its interpretation of this language, and this language applies regardless of what claims are brought in a habeas petition. As the split among the lower courts stems in part from the courts’ differing conceptions of what constitutes a new judgment, this Comment next turns to defining a judgment, concluding that the conviction and sentence comprise a single criminal judgment and each conviction and sentence does not have its own distinct judgment. Because there is only one judgment, a resentencing creates a new judgment with respect to all aspects of the case and, under Magwood, a habeas petition challenging any aspect of this new judgment is not second or successive. In addition, this extension of Magwood aligns with the purposes of AEDPA and better enables petitioners to bring meritorious challenges to the legality of their imprisonment.*

INTRODUCTION.....	1546
I. AEDPA AND ITS LIMITATIONS ON “SECOND OR SUCCESSIVE” HABEAS PETITIONS.....	1551

---

† BA and BS 2016, Northern Arizona University; JD Candidate 2019, The University of Chicago Law School.

A.	Statutory Limitations on “Second or Successive” Habeas Petitions .....	1551
B.	The Supreme Court’s Interpretation of “Second or Successive” .....	1552
II.	POST- <i>MAGWOOD</i> APPLICATIONS OF THE “SECOND OR SUCCESSIVE” LIMITATIONS TO CHALLENGES TO UNDERLYING CONVICTIONS.....	1555
A.	The <i>Johnson</i> Approach.....	1556
1.	The Second Circuit’s holding in <i>Johnson</i> .....	1556
2.	Courts adopting <i>Johnson</i> .....	1557
3.	The Sixth Circuit’s limited approach to <i>Johnson</i> .....	1560
B.	The Seventh and Tenth Circuits’ Approach .....	1562
C.	Summary of the Circuit Split and the Categories of Cases It Encompasses .....	1566
III.	THE <i>JOHNSON</i> APPROACH IS CORRECT AS A MATTER OF STATUTORY INTERPRETATION AND COMPORTS WITH AEDPA’S PURPOSES .....	1569
A.	<i>Magwood</i> ’s Interpretation of Statutory Provisions Must Apply to All Cases Arising under the Statute.....	1569
1.	The Supreme Court’s holdings in <i>Zadvydas</i> and <i>Clark</i> .....	1570
2.	Courts should apply <i>Clark</i> ’s reasoning in extending <i>Magwood</i> .....	1573
B.	Defining a “New Judgment”.....	1577
1.	Defining a “judgment” in related areas of law .....	1578
2.	Applying the common definition of “judgment” to the “second or successive” provisions of AEDPA .....	1579
3.	Applying the common definition of “judgment” in the Sixth Circuit .....	1582
C.	The <i>Johnson</i> Approach Is Both Pragmatic and Consistent with AEDPA’s Purposes.....	1582
	CONCLUSION .....	1586

## INTRODUCTION

The Antiterrorism and Effective Death Penalty Act of 1996<sup>1</sup> (AEDPA) governs the filing and adjudication of federal habeas corpus petitions.<sup>2</sup> A federal habeas petition may be filed by a person in state or federal custody who wishes to challenge his criminal conviction and sentence.<sup>3</sup> The petition alleges that he

<sup>1</sup> Pub L No 104-132, 110 Stat 1214, codified as amended in various sections of Title 28.

<sup>2</sup> The words “petition” and “application” are often used interchangeably when describing these filings, as the relevant statutes refer to these filings as “applications.” See, for example, 28 USC § 2254(a) (using the term “application”). See also generally *Magwood v Patterson*, 561 US 320 (2010) (using the terms “petition” and “application” interchangeably).

<sup>3</sup> See 28 USC §§ 2254(a), 2255(a) (describing federal remedies available to persons in state and federal custody, respectively).

must be released from custody on the ground that he is unlawfully detained.<sup>4</sup> Only persons currently serving custodial sentences may file a habeas petition; habeas relief is unavailable to those who have already completed their sentence. Note that 28 USC § 2254 governs habeas petitions filed by persons held in state custody, while 28 USC § 2255 governs petitions filed by federal prisoners. However, for purposes of this Comment, whether a petitioner is in state or federal custody is immaterial.

Habeas petitions often raise multiple claims, which may challenge the conviction, sentence, or both.<sup>5</sup> These petitions are complex, and the result may be that the court grants habeas relief only as to one conviction or sentence, leaving the rest of the petitioner's judgment undisturbed. For example, the court may vacate only the single unlawful conviction in a multi-offense case and leave the remaining convictions intact; alternatively, it may find that a sentence is unlawful but leave the underlying conviction undisturbed. In other words, a petitioner may win only partial habeas relief—his conviction or sentence may be vacated, but he remains incarcerated.

There are several strict procedural requirements for the filing of a federal habeas petition,<sup>6</sup> including that a habeas petitioner may not file a "second or successive" petition.<sup>7</sup> As Part I explains in detail, a court must dismiss a second or successive habeas petition unless one of the few stringent statutory exceptions applies.<sup>8</sup>

When a petitioner wins partial relief after litigating a habeas petition, any petition filed after that grant of relief is technically second. However, in *Magwood v Patterson*,<sup>9</sup> the Supreme Court held that, when a habeas petitioner has been granted partial relief in the form of a resentencing, a

---

<sup>4</sup> See 28 USC §§ 2254(a), 2255(a).

<sup>5</sup> See, for example, *King v Morgan*, 807 F3d 154, 156 (6th Cir 2015) (explaining that the petitioner raised seven claims—two related to his sentence and five related to his conviction).

<sup>6</sup> These requirements include, for example, a one-year statute of limitations that applies to the filing of federal habeas petitions and a requirement that state prisoners fully adjudicate their claims through the state's postconviction procedures prior to filing a federal habeas petition. See 28 USC §§ 2244(d)(1), 2255(f), 2254(b)(1).

<sup>7</sup> See 28 USC § 2244(b).

<sup>8</sup> These exceptions are: (1) the existence of a new, retroactive rule of constitutional law that was previously unavailable or (2) newly discovered evidence that establishes by clear and convincing evidence that the petitioner would not have been found guilty. See 28 USC §§ 2244(b), 2255(h).

<sup>9</sup> 561 US 320 (2010).

subsequently filed habeas petition is not subject to the limitations on second or successive petitions imposed by AEDPA.<sup>10</sup> The Court explained that a habeas petition can be second or successive only when it challenges the same criminal judgment that has previously been challenged and that resentencing constitutes what the Court called a “new judgment” pursuant to which the petitioner is imprisoned.<sup>11</sup> Since the *Magwood* decision, circuit courts have split as to whether its holding applies to habeas petitions that do not challenge any aspect of the resentencing but instead challenge elements of the original conviction or sentence that were unaffected by the resentencing.<sup>12</sup> In *Magwood*, the petitioner challenged only errors that arose from his resentencing proceedings, and the Court explicitly declined to address this broader question.<sup>13</sup>

Courts have reached differing results based on their definitions of what constitutes a new judgment. Some circuits find that the petitioner’s conviction(s) and sentence(s) are components of a single judgment.<sup>14</sup> Accordingly, any change to this single judgment creates a new judgment. This interpretation means that, following a grant of partial relief and the entry of a new judgment, a petitioner may challenge any and all components of that judgment, as it is all new under *Magwood*. This includes components of the petitioner’s conviction(s) and sentence(s) that were left unaltered by the new judgment. By contrast, other circuits consider each individual sentence and conviction a distinct judgment.<sup>15</sup> When, for example, a court grants partial relief by resentencing a petitioner but leaving his conviction undisturbed, a new judgment arises with respect to the petitioner’s sentence, but the distinct judgment for his conviction is unaltered. Under this view, the petitioner can bring only a challenge alleging that errors occurred in his resentencing, as *Magwood* did, but he cannot bring a new challenge to his conviction because the distinct judgment for his conviction is unaltered.

---

<sup>10</sup> *Id.* at 331.

<sup>11</sup> *Id.*

<sup>12</sup> Compare generally *Johnson v United States*, 623 F3d 41 (2d Cir 2010), with *Suggs v United States*, 705 F3d 279 (7th Cir 2013).

<sup>13</sup> *Magwood*, 561 US at 342.

<sup>14</sup> See, for example, *Johnson*, 623 F3d at 46 (holding that subsequent habeas challenges must be interpreted “with respect to the judgment challenged and not with respect to particular components of that judgment”).

<sup>15</sup> See, for example, *Turner v Brown*, 845 F3d 294, 297 (7th Cir 2017).

Resolution of this circuit split is highly important considering the frequency with which the issue arises and the nature of the interests at stake. Significantly, the premise of a habeas petition is that the petitioner is unlawfully detained.<sup>16</sup> Each habeas petition filed represents a person who alleges that he is being unlawfully imprisoned by his state or by the United States. Accordingly, the consequences of a court's finding that a habeas petition is second or successive are potentially severe for a petitioner with meritorious claims. For example, Benjamin Kramer, whose case is discussed in detail in Part II.B, was sentenced to two concurrent terms: one for forty years' imprisonment and one for life without parole for drug-related offenses.<sup>17</sup> Kramer's first habeas petition resulted in the vacatur of his forty-year sentence and the corresponding conviction, but he remained imprisoned for life based on his other conviction.<sup>18</sup> Kramer filed a subsequent habeas petition following the Supreme Court's decision in *Richardson v United States*,<sup>19</sup> in which the Court reversed a conviction in factual circumstances identical to those present in Kramer's trial.<sup>20</sup> However, the Seventh Circuit found that this petition was barred as second or successive despite recognizing that, "on the merits, *Richardson* speaks to the very issue Kramer has raised throughout his confinement."<sup>21</sup> This means that Kramer now cannot file a habeas petition unless it meets one of the two narrow statutory exceptions.<sup>22</sup> Kramer is a federal prisoner,<sup>23</sup> meaning he has no state postconviction procedure to turn to and filing a federal habeas petition under § 2255 is his only avenue for relief. Because the Seventh Circuit determined that his petition was procedurally

---

<sup>16</sup> See 28 USC § 2255(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.

<sup>17</sup> *Kramer v United States*, 797 F3d 493, 496 (7th Cir 2015).

<sup>18</sup> *Id.* at 497.

<sup>19</sup> 526 US 813 (1999).

<sup>20</sup> Compare *Richardson*, 526 US at 816, with *Kramer*, 797 F3d at 497.

<sup>21</sup> *Kramer*, 797 F3d at 501.

<sup>22</sup> A second or successive petition may be filed if it implicates newly discovered evidence or a new, retroactive rule of constitutional law established by the Supreme Court. 28 USC § 2255(h).

<sup>23</sup> *Kramer*, 797 F3d at 494.

barred by the second or successive provisions, Kramer will most likely spend the rest of his life in prison for a drug offense—even though the Supreme Court reversed the conviction in an identical case on the same grounds that Kramer raised in his procedurally barred petition.<sup>24</sup>

In addition, the frequency with which federal habeas petitions arise makes the resolution of this circuit split a significant issue. In recent years, more than eighteen thousand federal habeas petitions have been filed annually in the district courts.<sup>25</sup> More than thirty-seven hundred applications seeking leave to file a second or successive habeas petition were filed in the courts of appeals in 2016, making up 67 percent of their original jurisdiction cases.<sup>26</sup> The prevalence of this issue in the federal judicial system necessitates a resolution—it is important that prisoners in all jurisdictions be able to properly bring their claims related to unlawful detention in court.

This Comment assesses the circuit split and determines that habeas petitions challenging an undisturbed component of a judgment are not second or successive. *Magwood* held that a habeas petition is not second or successive if it challenges a new judgment, so it is important to define a new judgment in assessing the scope of *Magwood*. This Comment concludes that a judgment should be defined to encompass both a petitioner's conviction(s) and sentence(s). Part I describes AEDPA's limitations on second or successive habeas petitions and the Supreme Court's interpretation of these limitations, including its holding in *Magwood*. Part II details the circuit split that has developed regarding whether *Magwood* applies to habeas petitions challenging a component of the judgment that was undisturbed by a resentencing. Part III concludes that *Magwood's* holding extends to the circuit court cases at issue in Part II.B, focusing on principles of statutory interpretation and on a definition of the term "judgment" that is in line with Supreme Court precedent and the use of the term in the criminal law context.

---

<sup>24</sup> See *id.* at 501–02.

<sup>25</sup> *US District Courts—Civil Cases Commenced, by Basis of Jurisdiction and Nature of Suit, During the 12-Month Periods Ending March 31, 2015 and 2016* \*3 (United States Courts, 2016), archived at <http://perma.cc/K6VV-V82F>.

<sup>26</sup> *Federal Judicial Caseload Statistics 2016* (United States Courts, 2016), archived at <http://perma.cc/7HBV-RYZS>.

## I. AEDPA AND ITS LIMITATIONS ON "SECOND OR SUCCESSIVE" HABEAS PETITIONS

AEDPA "dramatically altered the landscape for federal habeas corpus petitions."<sup>27</sup> It imposed a one-year statute of limitations on the filing of habeas petitions<sup>28</sup> and codified the requirement that a petitioner exhaust all available state court remedies before filing a federal habeas petition.<sup>29</sup> Moreover, AEDPA "established a stringent set of procedures that a prisoner . . . must follow if he wishes to file a 'second or successive' habeas corpus application."<sup>30</sup> This Part outlines the statutory limitations on second or successive habeas petitions and explains the Supreme Court's interpretation of these limitations and the phrase "second or successive."

### A. Statutory Limitations on "Second or Successive" Habeas Petitions

The federal courts of appeals serve a "gatekeeping" function for the consideration of second or successive petitions.<sup>31</sup> Before filing a second or successive petition in the district court, a petitioner must seek authorization to do so from the relevant court of appeals.<sup>32</sup> Under 28 USC § 2244(b), the provision of AEDPA establishing limitations on second or successive petitions, a court of appeals may authorize the filing of a second or successive petition only if it determines that the petitioner's claims were not presented in a prior habeas petition and either a new and retroactive constitutional rule applies or newly discovered evidence exists.<sup>33</sup> These are narrow exceptions to dismissal, and the appellate courts' decisions are not appealable.<sup>34</sup>

---

<sup>27</sup> *Rhines v Weber*, 544 US 269, 274 (2005).

<sup>28</sup> A one-year limitations period for the filing of a habeas petition runs from the latest of four dates: (1) "the date on which the judgment became final"; (2) "the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed"; (3) "the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the 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 factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence." 28 USC § 2244(d)(1).

<sup>29</sup> See *Rose v Lundy*, 455 US 509, 522 (1982); 28 USC § 2254(b)(1)(A).

<sup>30</sup> *Burton v Stewart*, 549 US 147, 152 (2007), citing 28 USC § 2244(b)(1).

<sup>31</sup> *Felker v Turpin*, 518 US 651, 657 (1996).

<sup>32</sup> 28 USC § 2244(b)(3)(A).

<sup>33</sup> 28 USC § 2244(b)(2). See also 28 USC § 2255(h).

<sup>34</sup> 28 USC § 2244(b)(3)(E).

The provision governing habeas petitions that challenge federal convictions, § 2255, incorporates the second or successive limitations of § 2244: “A second or successive motion must be certified as provided in section 2244 by a panel of the appropriate court of appeals.”<sup>35</sup> Courts interpret the limitations on second or successive habeas petitions in the same way with respect to both § 2254 petitions filed by state prisoners and § 2255 petitions filed by federal prisoners.<sup>36</sup> Accordingly, there is no distinction between habeas petitions filed under § 2254 and § 2255 for purposes of this Comment.

The next Section lays out the Supreme Court’s interpretation of the statutory second or successive doctrine described above. In particular, *Magwood* addressed the application of AEDPA’s second or successive limitations when a petitioner has been granted partial relief prior to the filing of his technically second petition and prompted a circuit split regarding the scope of its holding.

#### B. The Supreme Court’s Interpretation of “Second or Successive”

The Supreme Court has repeatedly declined to hold that “second or successive” merely refers to all habeas petitions filed “second or successively in time.”<sup>37</sup> Instead, second or successive is a “term of art.”<sup>38</sup> The Court has also explained that “pre-AEDPA cases cannot affirmatively define the phrase ‘second or successive’ as it appears in AEDPA.”<sup>39</sup> Accordingly, it relies on AEDPA’s text rather than pre-AEDPA precedent.<sup>40</sup>

---

<sup>35</sup> 28 USC § 2255(h).

<sup>36</sup> See *Suggs v United States*, 705 F3d 279, 283 n 1 (7th Cir 2013) (“[T]he bar on second or successive challenges under section 2254 is parallel to the bar under section 2255.”); *Johnson v United States*, 623 F3d at 45 (“[N]othing in [ ] AEDPA indicates that Congress intended the ‘second or successive’ rules to operate differently with regard to state and federal prisoners.”).

<sup>37</sup> See *Panetti v Quarterman*, 551 US 930, 947 (2007) (holding that § 2244’s bar on second or successive applications does not apply to applications raising claims of incompetency to be executed under *Ford v Wainwright*, 477 US 399 (1986), which are filed as soon as these claims become ripe); *Slack v McDaniel*, 529 US 473, 485–86 (2000) (holding that a habeas petition filed after an initial petition was dismissed without adjudication on the merits was not second or successive); *Stewart v Martinez-Villareal*, 523 US 637, 644 (1998) (“[N]one of our cases . . . have ever suggested that a prisoner whose habeas petition was dismissed for failure to exhaust state remedies, and who then did exhaust those remedies and returned to federal court, was by such action filing a successive petition.”).

<sup>38</sup> *Magwood*, 561 US at 332.

<sup>39</sup> *Id.* at 337.

<sup>40</sup> *Id.* at 337–38.

In *Magwood*, the petitioner filed a habeas corpus petition after being sentenced to death for the murder of a sheriff.<sup>41</sup> The district court upheld the conviction but vacated the sentence upon finding that the trial court had failed to consider mitigating circumstances during sentencing. However, following a resentencing proceeding, the petitioner was again sentenced to death.<sup>42</sup> The petitioner filed a second habeas petition—challenging his new death sentence on the grounds that he had not had fair warning at the time of the offense that his conduct could warrant a death sentence—which the district court granted.<sup>43</sup> The Eleventh Circuit reversed, finding the habeas petition to be second or successive because the claim raised could have been raised in his initial petition, as the same error had previously occurred.<sup>44</sup>

In the Supreme Court, the petitioner argued that the second or successive limitation bars only subsequent habeas applications that challenge the same *judgment*, and because his resentencing created a new judgment, his habeas application challenging that new judgment could not be second or successive.<sup>45</sup> The state, by contrast, argued that AEDPA bars individual claims, rather than entire habeas petitions, as second or successive.<sup>46</sup> Accordingly, the claim the petitioner raised was successive because he had the opportunity to make the same argument in his initial habeas application but declined to do so.<sup>47</sup> The state's reasoning was in line with the Eleventh Circuit's approach below, which was to "separate the new claims challenging the resentencing from the old claims that were or should have been presented in the prior application."<sup>48</sup>

The Court agreed with the petitioner. Writing for the majority, Justice Clarence Thomas explained that AEDPA's second or successive limitations apply only to "an 'application for a writ of habeas corpus on behalf of a person in custody pursuant

---

<sup>41</sup> *Id.* at 324–26.

<sup>42</sup> *Magwood*, 561 US at 326.

<sup>43</sup> *Id.* at 327–28.

<sup>44</sup> *Magwood v Culliver*, 555 F3d 968, 975–76 (11th Cir. 2009). Because the petitioner's claim "challenged the trial court's reliance on the same (allegedly improper) aggravating factor that the trial court had relied upon for [the petitioner's] original sentence, his claim was governed by § 2244(b)'s restrictions on 'second or successive' habeas applications." *Magwood*, 561 US at 329, quoting *Magwood v Culliver*, 555 F3d at 975–76.

<sup>45</sup> *Magwood*, 561 US at 331.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Magwood v Culliver*, 555 F3d at 975.

to *the judgment* of a [ ] court.”<sup>49</sup> Indeed, *Magwood* emphasized AEDPA’s reference to a “judgment,” concluding that “the phrase ‘second or successive’ must be interpreted with respect to the judgment challenged.”<sup>50</sup> Accordingly, the Court reversed the Eleventh Circuit, holding that “where . . . there is a new judgment intervening between the two habeas petitions, . . . an application challenging the resulting new judgment is not ‘second or successive’ at all.”<sup>51</sup> That holding rested on the Court’s interpretation of the phrase “second or successive”: a habeas petition cannot be second or successive unless it challenges the same judgment that was previously challenged.

In rejecting the Eleventh Circuit’s claims-based approach, the Court noted that “[a]n error made a second time is still a new error.”<sup>52</sup> The Court also rejected the state’s purposivist argument that barring the petition “better reflects AEDPA’s purpose of preventing piecemeal litigation and gamesmanship.”<sup>53</sup> Over the dissent’s objection, the Court explained: “We cannot replace the actual text with speculation as to Congress’ intent.”<sup>54</sup>

The Court, however, explicitly declined to address the question raised in this Comment, explaining:

The State objects that our reading of § 2244(b) would allow a petitioner who obtains a conditional writ as to his sentence to file a subsequent application challenging not only his resulting, *new* sentence, but also his original, *undisturbed* conviction. The State believes this result follows because a sentence and conviction form a single “judgment” for purposes of habeas review. This case gives us no occasion to address that question, because *Magwood* has not attempted to challenge his underlying conviction.<sup>55</sup>

Prior to *Magwood*, many circuits held that a petitioner who is resentenced “may challenge only the ‘portion of a judgment that arose as a result of’” the resentencing.<sup>56</sup> However, since the Supreme Court decided *Magwood*, courts have extended its

---

<sup>49</sup> *Magwood*, 561 US at 332, quoting 28 USC § 2254(b)(1).

<sup>50</sup> *Id.* at 332–33.

<sup>51</sup> *Id.* at 341–42 (quotation marks omitted).

<sup>52</sup> *Id.* at 339.

<sup>53</sup> *Magwood*, 561 US at 334.

<sup>54</sup> *Id.* See also *id.* at 350–51 (Kennedy dissenting).

<sup>55</sup> *Id.* at 342.

<sup>56</sup> *Id.* at 342 n 16, quoting *Lang v United States*, 474 F3d 348, 351–52 (6th Cir 2007) (collecting cases).

holding to cases involving challenges to resentenced petitioners' underlying convictions. This has led to a circuit split, with the circuits' positions on the issue turning on how they interpret AEDPA's bar on second or successive petitions and how they define a new judgment. *Magwood* held that a habeas petition is not second or successive when it challenges a new judgment, but the circuits disagree on what constitutes this new judgment. Part II describes and analyzes this circuit split.

## II. POST-MAGWOOD APPLICATIONS OF THE "SECOND OR SUCCESSIVE" LIMITATIONS TO CHALLENGES TO UNDERLYING CONVICTIONS

The circuits have applied *Magwood* in varying ways with respect to petitioners who challenge an unamended component of their judgment in a second-in-time habeas petition. Some courts hold that *Magwood's* reasoning applies to these cases because, instead of considering each component of a judgment separately, courts must look to the judgment as a whole. Because the judgment comprises each of the petitioner's conviction(s) and sentence(s), a change to any one conviction or sentence creates an entirely new judgment. This means that a petitioner may then challenge an undisturbed conviction or sentence, as the entirety of the judgment is "new," so such a challenge is not "second or successive" under *Magwood*. Other courts rely on pre-*Magwood* precedent to hold that *Magwood* does not apply to these cases. These courts hold that each conviction and sentence bears its own distinct judgment. The result of this is that a change to one conviction or sentence does not enable the petitioner to challenge an original undisturbed conviction or sentence, as the distinct judgment for the original conviction or sentence is not new. Because the Court explicitly declined to address the question, this issue remains open for debate. The courts that extend *Magwood* to these cases must grapple with the fact that AEDPA does not draw any distinction between the two classes of cases involved—those in which the petitioner challenges an error arising from his resentencing and those in which he challenges an undisturbed component of his judgment.

### A. The *Johnson* Approach

Prior to *Magwood*, several circuits held that, following a resentencing, a habeas petitioner could challenge only an error that arose from that resentencing.<sup>57</sup> After *Magwood*, however, the Second Circuit reversed course, finding that *Magwood* applies when a habeas petitioner challenges an unamended component of his sentence and overruling its prior precedent to the contrary.<sup>58</sup> The Third, Fourth, Ninth, and Eleventh Circuits—and to a lesser extent, the Sixth Circuit—all followed the Second Circuit’s lead in finding that *Magwood* applies to these cases.<sup>59</sup>

#### 1. The Second Circuit’s holding in *Johnson*.

In *Johnson v United States*,<sup>60</sup> the first court of appeals case to apply *Magwood*, the Second Circuit extended *Magwood*’s holding to a case in which the petitioner sought to challenge components of his convictions and sentences that were unmodified by the outcome of his prior habeas petition.<sup>61</sup> In *Johnson*, the petitioner was convicted of bank robbery, armed bank robbery, and the use of a firearm in connection with a crime of violence.<sup>62</sup> The petitioner filed a federal habeas petition, which resulted in the Second Circuit vacating his conviction and sentence for bank robbery on double jeopardy grounds.<sup>63</sup> Later, the petitioner sought leave from the court of appeals to file a second or successive petition, alleging that the court instead should have vacated his other convictions and sentences, which carried longer terms of imprisonment.<sup>64</sup>

The court noted that “[a] judgment of conviction includes both the adjudication of guilt and the sentence”<sup>65</sup> and relied on *Magwood*’s holding that, when “there is a new judgment intervening between the two habeas petitions, . . . an application challenging the resulting new judgment is not ‘second or successive’ at all.”<sup>66</sup> So “where a first habeas petition results in an

---

<sup>57</sup> See, for example, *Lang*, 474 F3d at 351–52 (collecting cases).

<sup>58</sup> *Johnson v United States*, 623 F3d 41, 44–46 (2d Cir 2010) (overruling *Galtieri v United States*, 128 F3d 33 (2d Cir 1997)).

<sup>59</sup> See Part II.A.2–3.

<sup>60</sup> 623 F3d 41 (2d Cir 2010).

<sup>61</sup> *Id.* at 42–43.

<sup>62</sup> *Id.* at 42.

<sup>63</sup> *Id.* at 42–43.

<sup>64</sup> *Johnson*, 623 F3d at 43.

<sup>65</sup> *Id.* at 46, quoting *Deal v United States*, 508 US 129, 132 (1993).

<sup>66</sup> *Johnson*, 623 F3d at 46, quoting *Magwood*, 561 US at 341–42.

amended judgment, a subsequent petition is not successive regardless of whether it challenges the conviction, the sentence, or both.”<sup>67</sup> As a result, the Second Circuit found that, under *Magwood*, neither the fact that the petitioner’s claims could have been raised previously nor that the petitioner challenged an unamended component of the judgment warranted dismissing his habeas petition.<sup>68</sup> It reached this conclusion because subsequent habeas applications must be interpreted “with respect to the judgment challenged and not with respect to particular components of that judgment.”<sup>69</sup>

Because the court concluded that the habeas application would not be “second or successive” under *Magwood*, the court found that it did not need to grant the petitioner permission to file. Accordingly, the court denied the petitioner’s application for leave to file a second or successive petition as unnecessary, allowing the petitioner to file a “first” petition in the district court. In reaching this conclusion, the court overruled circuit precedent that had applied a claims-based approach.<sup>70</sup> Though it recognized that the *Magwood* court had declined to address the question at issue, the Second Circuit nevertheless concluded that its circuit precedent was irreconcilable with *Magwood* because the latter emphasized the presence of a new, intervening judgment.<sup>71</sup> The Second Circuit’s definition of a “new judgment” as comprising both the sentence and the conviction meant that *Magwood* must apply to these cases despite the Supreme Court’s reservation.

## 2. Courts adopting *Johnson*.

Several circuits subsequently adopted the Second Circuit’s holding that, under *Magwood*, “where a first habeas petition results in an amended judgment, a subsequent petition is not successive regardless of whether it challenges the conviction, the

---

<sup>67</sup> *Johnson*, 623 F3d at 46.

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> Prior to *Johnson*, the Second Circuit held that a subsequent petition

will be regarded as a ‘first’ petition only to the extent that it seeks to vacate the new, amended component of the sentence, and will be regarded as a ‘second’ petition to the extent that it challenges the underlying conviction or seeks to vacate any component of the original sentence that was not amended.

*Id.* at 44, quoting *Galtieri*, 128 F3d at 37–38.

<sup>71</sup> *Johnson*, 623 F3d at 44–45.

sentence, or both.”<sup>72</sup> Indeed, since *Johnson*, the Second Circuit has been joined by four of its sister circuits.

The Ninth Circuit adopted the Second Circuit’s reasoning in *Wentzell v Neven*.<sup>73</sup> In *Wentzell*, the petitioner was convicted of solicitation to commit murder, attempted murder, and theft.<sup>74</sup> He filed a habeas petition, which was dismissed on the ground that it was filed outside AEDPA’s one-year statute of limitations.<sup>75</sup> He then filed a state habeas petition, which resulted in the dismissal of his conviction and sentence for solicitation to commit murder.<sup>76</sup> He later filed a second federal petition challenging the remaining counts, which the district court dismissed sua sponte as “second or successive.”<sup>77</sup> On appeal, the Ninth Circuit agreed with *Johnson*’s conclusion that a habeas petition filed after an intervening judgment has been entered is not second or successive even when it challenges an unamended component of the judgment.<sup>78</sup> The court explained that it “treat[s] the judgment of conviction as one unit, rather than separately considering the judgment’s components, *i.e.*, treating the conviction and sentence for each count separately.”<sup>79</sup> Accordingly, the petitioner’s second-in-time federal habeas petition was not second or successive because the state court had entered a new judgment.<sup>80</sup>

The Eleventh Circuit was next to follow suit in *Insignares v Secretary, Florida Department of Corrections*.<sup>81</sup> In that case, the petitioner was convicted of attempted first-degree murder with a firearm, criminal mischief, and discharging a firearm in public.<sup>82</sup> After his first 28 USC § 2254 petition was dismissed, the petitioner filed a state motion to correct his sentence, which resulted in the entry of a new judgment that reduced his attempted murder sentence but otherwise left his convictions and sentences for criminal mischief and discharging a firearm undisturbed.<sup>83</sup> The

---

<sup>72</sup> Id at 46.

<sup>73</sup> 674 F3d 1124 (9th Cir 2012).

<sup>74</sup> Id at 1125.

<sup>75</sup> Id.

<sup>76</sup> Id.

<sup>77</sup> *Wentzell*, 674 F3d at 1126.

<sup>78</sup> Id at 1127 (treating *Johnson* as “persuasive”).

<sup>79</sup> Id at 1127–28.

<sup>80</sup> Id at 1128.

<sup>81</sup> 755 F3d 1273 (11th Cir 2014).

<sup>82</sup> Id at 1276. The petitioner’s criminal mischief conviction was vacated in a state court proceeding not relevant to the *Magwood* issue. Id at 1277.

<sup>83</sup> Id at 1276.

petitioner then filed a second habeas petition, which the district court found was not second or successive under *Magwood* because it was the first to challenge the new judgment entered at the resentencing. The Eleventh Circuit affirmed, explaining that "there is only one judgment, and it is comprised of both the sentence and the conviction."<sup>84</sup> Because "the 'existence of a new judgment is dispositive,'"<sup>85</sup> the court concluded that a habeas petition is not second or successive when it is the first to challenge a new judgment regardless of whether it challenges the sentence or the underlying conviction.<sup>86</sup>

The Third Circuit also adopted *Johnson's* reasoning in an unpublished opinion, *In re Brown*.<sup>87</sup> In *Brown*, the petitioner was convicted of first degree murder, arson, and a violation of the Pennsylvania Corrupt Organizations Act<sup>88</sup> (PACOA).<sup>89</sup> He filed a habeas petition that resulted in his PACOA conviction and sentence being vacated.<sup>90</sup> After resentencing, the petitioner filed a second petition, challenging his remaining convictions and sentences. Like the Second Circuit, the *Brown* court held that, "where a first habeas petition results in an amended judgment, a subsequent petition is not successive regardless of whether it challenges the conviction, the sentence, or both."<sup>91</sup>

Most recently, the Fourth Circuit adopted *Johnson's* logic in *In re Gray*.<sup>92</sup> In *Gray*, the petitioner was convicted of first-degree murder and sentenced to death.<sup>93</sup> His first habeas petition resulted in a resentencing to life imprisonment.<sup>94</sup> The petitioner then sought leave to file a second or successive petition, challenging his underlying conviction.<sup>95</sup> The Fourth Circuit recognized that, "when a defendant is resentenced, he or she is confined pursuant to a new judgment even if the adjudication of guilt is undisturbed."<sup>96</sup> Accordingly, the court held that, "when a prisoner's successful habeas petition results in a new,

---

<sup>84</sup> Id at 1281.

<sup>85</sup> *Insignares*, 755 F3d at 1281, quoting *Magwood*, 561 US at 338.

<sup>86</sup> *Insignares*, 755 F3d at 1281.

<sup>87</sup> 594 Fed Appx 726 (3d Cir 2014).

<sup>88</sup> 18 Pa Cons Stat Ann § 911.

<sup>89</sup> *Brown*, 594 Fed Appx at 726.

<sup>90</sup> Id at 727.

<sup>91</sup> Id at 729, quoting *Johnson*, 623 F3d at 46.

<sup>92</sup> 850 F3d 139 (4th Cir 2017).

<sup>93</sup> Id at 140.

<sup>94</sup> Id.

<sup>95</sup> Id.

<sup>96</sup> *Gray*, 850 F3d at 142.

intervening judgment, the prisoner's first habeas petition to challenge that new judgment is not second or successive within the meaning of § 2244(b), regardless of whether the petition challenges the prisoner's sentence or underlying conviction."<sup>97</sup>

Each of the courts discussed above adopted *Johnson's* reasoning in its entirety. However, as explained in the following Section, the Sixth Circuit took a more limited approach to *Johnson*. Although it accepts *Johnson's* conception of AEDPA's second or successive limitations, it takes a distinct approach to defining a "judgment."

### 3. The Sixth Circuit's limited approach to *Johnson*.

The Sixth Circuit adopted some of *Johnson's* reasoning in *King v Morgan*.<sup>98</sup> In *King*, the petitioner was convicted of two counts of murder and one count of felonious assault and was sentenced to twenty-one years to life in prison.<sup>99</sup> After his first federal habeas petition was dismissed, the petitioner filed a motion to vacate his sentence in state court. The state trial court granted King a resentencing, but the new judgment it entered imposed a greater sentence than before—thirty-three years to life.<sup>100</sup> King then filed a second federal habeas petition, and the district court dismissed the claims challenging his underlying conviction as second or successive.<sup>101</sup> On appeal, the Sixth Circuit reversed, explaining that *Magwood's* judgment-based approach "naturally applies to all new judgments, whether they capture new sentences or new convictions or merely reinstate one or the other."<sup>102</sup> The court also explained that a "judgment" includes both the conviction and the sentence.<sup>103</sup> Therefore, the Sixth Circuit agreed with the *Johnson* court that, following a resentencing, a petition challenging the underlying conviction is not second or successive.<sup>104</sup>

---

<sup>97</sup> Id at 144.

<sup>98</sup> 807 F3d 154 (6th Cir 2015).

<sup>99</sup> Id at 156.

<sup>100</sup> Id. The increase in the petitioner's sentence was due to the fact that the court imposed consecutive sentences following the resentencing, while it had previously imposed concurrent sentences. Id.

<sup>101</sup> Id. The district court also dismissed claims challenging the resentencing on other procedural grounds. Id.

<sup>102</sup> *King*, 807 F3d at 157.

<sup>103</sup> Id at 157–58, quoting *Deal*, 508 US at 132 ("As a matter of custom and usage, . . . a judgment in a criminal case 'includes both the adjudication of guilt and the sentence.'").

<sup>104</sup> *King*, 807 F3d at 159.

However, in a subsequent case, the Sixth Circuit limited its interpretation of *Magwood* to cases involving “a new, worse-than-before sentence.”<sup>105</sup> The court in *Crangle v Kelly*<sup>106</sup> found that, in “cases in which a limited resentencing *benefits* the prisoner,” the original judgment is undisturbed and continues to constitute a final judgment.<sup>107</sup> The court concluded that “a reduced sentence is not a new one,” while “[a] new, worse-than-before sentence, by contrast, amounts to a new judgment.”<sup>108</sup>

While the Sixth Circuit still follows the *Johnson* approach when determining whether habeas petitions filed after the entry of a new judgment are second or successive,<sup>109</sup> its definition of a “new judgment” differs drastically from that applied by the other circuits. This choice is significant, as it seems that the majority of the cases implicating *Magwood* (across all circuits) involve resentencing proceedings that have benefitted the petitioner—often through the vacatur of a sentence and conviction or the reduction of a sentence.<sup>110</sup> It does not appear that the Sixth Circuit has had the occasion to decide a case involving a sentence that is not “worse-than-before.” However, *Crangle’s*

---

<sup>105</sup> *Crangle v Kelly*, 838 F3d 673, 678 (6th Cir 2016). See also *Burks v Raemisch*, 680 Fed Appx 686, 691 (10th Cir 2017) (observing that “the Sixth Circuit limited its holding” to “resentencings that constitute a ‘new, worse-than-before sentence’”).

<sup>106</sup> 838 F3d 673 (6th Cir 2016).

<sup>107</sup> *Id.* at 678.

<sup>108</sup> *Id.* It is not entirely clear why the Sixth Circuit reached this conclusion. It seeks to justify its “worse-than-before” rule by drawing an analogy to a line of cases involving sentence modifications entered under 18 USC § 3582(c)(2). *Id.* These sentence modifications benefit the prisoner and, pursuant to the statute, they do not require a full resentencing proceeding and do not result in the entry of a new judgment. Section 3582 simply allows a court to adjust a sentence in order to comply with changes to the United States Sentencing Guidelines. However, § 3582(c)(2) was not the basis for the change to the petitioner’s sentence in *Crangle*. In fact, Thomas Crangle was a *state* prisoner to whom this federal sentencing statute does not apply. *Id.* at 675. Thus, the Sixth Circuit’s “worse-than-before” standard is only consistent with, not based on, § 3582 and does not apply only in cases that implicate that statute.

<sup>109</sup> See *King*, 807 F3d at 159. Because it allows a petitioner to challenge an underlying conviction after a new judgment is entered, the Sixth Circuit technically follows *Johnson*. However, it is worth noting that, because of its definition of a new judgment, the Sixth Circuit would likely decide *Johnson* and many of the cases that follow it differently than other circuits, as the resentencings in these cases benefitted the petitioners. See, for example *In re Gray*, 850 F3d at 140 (explaining that the petitioner’s first habeas petition resulted in a resentencing at which his sentence was reduced).

<sup>110</sup> See, for example, *Wentzell*, 674 F3d at 1125 (explaining that the petitioner’s state habeas proceeding resulted in the vacatur of one of three consecutive sentences).

definition of a new judgment has been applied by district courts within the Sixth Circuit.<sup>111</sup>

### B. The Seventh and Tenth Circuits' Approach

Diverging from *Johnson* and its progeny, the Seventh and Tenth Circuits hold that a habeas petition is “second or successive” when it is filed after partial relief has been granted in the form of a resentencing and it challenges an original, undisturbed conviction or sentence. This finding that a petition is second or successive bars habeas petitioners from having their claims related to unlawful detention heard unless they meet one of the two narrow statutory exceptions—a new and retroactive rule of constitutional law or newly discovered evidence.<sup>112</sup>

In *Suggs v United States*,<sup>113</sup> the Seventh Circuit noted that *Magwood* explicitly declined to address this situation and therefore relied on pre-*Magwood* circuit precedent to hold that a petition challenging an underlying condition was barred as second or successive.<sup>114</sup> In *Suggs*, the petitioner was convicted of conspiracy to possess cocaine with the intent to distribute and subsequently filed a habeas petition challenging his conviction and sentence.<sup>115</sup> This resulted in a resentencing by the district court. Subsequently, the petitioner sought authorization to file a second or successive petition, which the Seventh Circuit denied.<sup>116</sup> The petitioner filed a new habeas petition anyway, arguing that it should not be barred as second or successive because his resentencing imposed a new judgment.<sup>117</sup> *Magwood* was decided shortly thereafter, and the petitioner argued that it applied to his case. However, the district court dismissed his petition as second or successive, and the petitioner appealed to the Seventh Circuit.

---

<sup>111</sup> See, for example, *Camara v Haviland*, 2016 WL 7407540, \*6 (ND Ohio) (“The Sixth Circuit noted . . . the distinction between a limited resentencing that benefits a defendant (such as a sentence reduction) and a ‘new, worse-than-before-sentence.’ [sic] . . . Only the latter, the Court suggested, ‘amounts to a new judgment’ for statute of limitations purposes.”), citing *Crangle*, 838 F3d at 678; *Brown v Harris*, 2018 WL 1629103, \*9 (SD Ohio) (finding that “Brown’s present sentence is not ‘worse than before’”).

<sup>112</sup> See notes 32–33 and accompanying text.

<sup>113</sup> 705 F3d 279 (7th Cir 2013).

<sup>114</sup> *Id.* at 280–81.

<sup>115</sup> *Id.* at 281.

<sup>116</sup> *Id.*

<sup>117</sup> *Suggs*, 705 F3d at 281.

In reaching its result, the *Suggs* court relied on *Dahler v United States*,<sup>118</sup> pre-*Magwood* Seventh Circuit precedent, to hold that the petitioner's application was second or successive.<sup>119</sup> *Dahler* distinguished between "challenges to events that are novel to the resentencing (and will be treated as initial collateral attacks) and events that predated the resentencing (and will be treated as successive collateral attacks)."<sup>120</sup> In *Dahler*, the court found that "a belated challenge to events that precede a resentencing must be treated as a collateral attack on the original conviction and sentence, rather than as an initial challenge to the latest sentence."<sup>121</sup> *Dahler* "looked to what the motion actually challenged to determine whether a motion following a resentencing was 'second or successive.'"<sup>122</sup> Essentially, if the errors alleged arose prior to the resentencing, the petition was second or successive.<sup>123</sup>

The Seventh Circuit later applied *Suggs* in *Kramer v United States*.<sup>124</sup> There, the petitioner was convicted of conspiring to distribute marijuana and of engaging in a continuing criminal enterprise.<sup>125</sup> His initial habeas petition resulted in his marijuana conviction and sentence being vacated and the remaining conviction and sentence being affirmed.<sup>126</sup> The petitioner then filed another petition challenging the criminal enterprise conviction, which the district court dismissed as second or successive.<sup>127</sup> The petitioner argued that *Suggs* was distinguishable because it involved only the vacatur of a sentence, not a conviction.<sup>128</sup> The court did not find this distinction meaningful, as both cases involved challenges to convictions left undisturbed by the result of the petitioners' initial habeas petitions. In fact, the court found that *Suggs* likely had a stronger claim than *Kramer* had: "The conviction that *Suggs* sought to challenge was the very one that *resulted in* both the vacated and new sentences. In *Kramer's* case, he is seeking to challenge an *entirely separate* conviction."<sup>129</sup>

---

<sup>118</sup> 259 F3d 763 (7th Cir 2001).

<sup>119</sup> See *Suggs*, 705 F3d at 280–81.

<sup>120</sup> *Dahler*, 259 F3d at 765.

<sup>121</sup> *Id.*

<sup>122</sup> *Suggs*, 705 F3d at 283.

<sup>123</sup> *Id.*

<sup>124</sup> 797 F3d 493 (7th Cir 2015).

<sup>125</sup> *Id.* at 494.

<sup>126</sup> *Id.*

<sup>127</sup> *Id.*

<sup>128</sup> *Kramer*, 797 F3d at 501.

<sup>129</sup> *Id.*

The Seventh Circuit's approach also differs from *Johnson* in the way that the court defines a "new judgment." In *Dahler*, the court explained that the petitioner "had one collateral attack . . . but is entitled to another to the extent he attacks a different conviction or sentence. One substantive chance *per judgment* is the norm."<sup>130</sup> The court seems to construe each individual conviction and sentence as a separate "judgment," contrary to the way judgment is defined by the courts that follow the *Johnson* approach.<sup>131</sup>

Recently, in *Turner v Brown*,<sup>132</sup> the Seventh Circuit clarified its definition of a judgment in a case involving AEDPA's one-year statute of limitations, not its second or successive limitations. In 1995, the petitioner was convicted of murder, criminal confinement, and attempted robbery.<sup>133</sup> A state postconviction proceeding in 2013 resulted in the reduction of the robbery conviction from a Class A to a Class B felony and a resentencing on the robbery conviction.<sup>134</sup> After the state court granted this resentencing, the petitioner filed a federal habeas petition challenging his sentence for murder. The district court dismissed the petition, holding that it was barred by AEDPA's one-year statute of limitations. The petitioner argued that "the date on which the judgment became final"—the relevant date from which AEDPA's statute of limitations runs—was the date of his resentencing in 2013 because this resentencing imposed a new judgment under *Magwood*.<sup>135</sup>

The court found that the relief granted in 2013 did not reset the statute of limitations. Because "the relief he was granted in 2013 was limited to his *robbery* conviction, whereas his habeas petition challenge[d] his conviction and life sentence for *murder*," the court found the relevant judgment for purposes of

---

<sup>130</sup> *Dahler*, 259 F3d at 764.

<sup>131</sup> See, for example, *Insignares*, 755 F3d at 1281 ("[T]here is only one judgment, and it is comprised of both the sentence and the conviction."). It is worth noting that Judge Diane Sykes, dissenting in *Suggs*, echoed the *Johnson* approach. See *Suggs*, 705 F3d at 287–88 (Sykes dissenting):

[A] habeas petition is deemed initial or successive by reference to the *judgment* it attacks—not which *component* of the judgment it attacks or the nature or genesis of the *claims* it raises. It is well understood that "a judgment of conviction includes *both* the adjudication of guilt and the sentence."

<sup>132</sup> 845 F3d 294 (7th Cir 2017).

<sup>133</sup> *Id.* at 295.

<sup>134</sup> *Id.*

<sup>135</sup> *Id.* at 296, citing 28 USC § 2244(d)(1)(A).

timeliness to be the 1995 judgment for murder.<sup>136</sup> The court expanded on its definition of judgment, rejecting the idea that there is only one judgment and explaining:

[T]he state may pursue convictions on as many crimes as it likes, and it may then seek as many judgments as it likes. AEDPA's one-year time limit will then run from each judgment. Turner's 2013 resentencing led the state to enter another judgment, but the timeliness of his habeas petition is calculated based on the date of the final judgment that his petition challenges—that is, his 1995 judgment for murder.<sup>137</sup>

Essentially, the Seventh Circuit holds that each individual sentence and conviction yields a separate judgment. Each of these distinct judgments affects AEDPA's statute of limitations and second or successive bar only with respect to claims that challenge that distinct judgment. Claims challenging a separate, undisturbed judgment remain subject to AEDPA's procedural bars. The court went on to apply *Suggs* to the case, explaining that the "murder conviction and life sentence were unaffected by the 2013 resentencing and thus remained final."<sup>138</sup> Although *Turner* involved the application of AEDPA's one-year statute of limitations, rather than its second or successive limitations, it is still helpful to consider as the Seventh Circuit expands on its holding in *Suggs* and its interpretation of *Magwood*.

Like the Seventh Circuit, the Tenth Circuit has shown reluctance to adopt a broad interpretation of *Magwood*. In the statute of limitations context, the Tenth Circuit adopted the Seventh Circuit's position in *Turner*, indicating it is likely to take the same approach in second or successive cases. In *Burks v Raemisch*,<sup>139</sup> the petitioner was convicted of sexual assault on a child and enticement of a child.<sup>140</sup> Years later, the trial court, sua sponte, instigated proceedings that resulted in a reduction in the petitioner's sentences and a resentencing.<sup>141</sup> The

---

<sup>136</sup> *Turner*, 845 F3d at 297.

<sup>137</sup> *Id.*

<sup>138</sup> *Id.* at 298.

<sup>139</sup> 680 Fed Appx 686 (10th Cir 2017).

<sup>140</sup> *Id.* at 687.

<sup>141</sup> See *id.* at 688. Though it was not clear from the record, the Tenth Circuit assumed that the trial judge took this action because he found that the petitioner's original sentence violated the Colorado Sex Offender Lifetime Supervision Act of 1998. *Id.* at 688 n 3. This statute provides that a convicted sex offender's minimum sentence be no more than twice the presumptive maximum sentence for the class of felony for which he was convicted when there are "extraordinary aggravating . . . circumstances" found. *Id.*, citing

petitioner then filed a habeas petition, which the district court dismissed as barred by AEDPA's one-year statute of limitations.<sup>142</sup> Like in *Turner*, the petitioner argued that the statute of limitations began to run when he was resentenced rather than when his original convictions and sentences became final.<sup>143</sup>

The court was emphatically against allowing the petitioner to file a habeas petition in this situation, asking: "Are long-settled matters, untouched by the resentencing, somehow resurrected, Lazarus like, for reconsideration? More particularly, is a new breath of habeas life constitutionally required in such cases? An emphatic and tautological answer—NO—might, logically, seem to be the order of the day."<sup>144</sup>

The *Burks* court, like the Seventh Circuit, applied its pre-*Magwood* circuit precedent to conclude that, because the petitioner's claims did not arise from the resentencing, "it did not renew the limitations clock as to those claims."<sup>145</sup> Relying on *Prendergast v Clements*,<sup>146</sup> the court explained that § 2244's statute of limitations should be applied on a "claim-by-claim basis," instead of looking at the habeas application as a whole.<sup>147</sup> The court noted that *Magwood* rejected a "claim-by-claim" approach but declined to extend *Magwood* because "Burks challenges only his original, undisturbed conviction and maximum sentence, not his newly reduced minimum sentence," a situation that *Magwood* expressly declined to address.<sup>148</sup>

### C. Summary of the Circuit Split and the Categories of Cases It Encompasses

Because the cases have varying procedural postures, it is helpful to divide them into two categories in assessing this circuit split. The first category comprises cases involving convictions for multiple offenses, in which the conviction and sentence

---

*Vensor v People*, 151 P3d 1274, 1275 (Colo 2007) and Colo Rev Stat § 18-1.3-401(6). Each of the felonies for which the petitioner was convicted were class-four felonies, with a presumptive maximum sentence of six years. *Burks*, 680 Fed Appx at 688. He was originally sentenced to eight years for each count, which, because it exceeded the presumptive maximum, was impermissible due to the lack of aggravating circumstances. *Id.*

<sup>142</sup> *Burks*, 680 Fed Appx at 688.

<sup>143</sup> *Id.* at 689.

<sup>144</sup> *Id.* at 687.

<sup>145</sup> *Id.* at 690.

<sup>146</sup> 699 F3d 1182 (10th Cir 2012).

<sup>147</sup> *Burks*, 680 Fed Appx at 690 (explaining that "[t]he point of *Prendergast* is that we apply § 2244(d)(1) on a claim-by-claim basis").

<sup>148</sup> *Id.* at 691.

for one or more offenses have been vacated while the conviction and sentence for the remaining offense(s) are left undisturbed. These vacatur cases encompass *Johnson*, *Wentzell*, *Brown*, and *Kramer*.<sup>149</sup> The second category, the resentencing cases, encompasses *Gray*, *King*, *Insignares*, *Suggs*, and *Burks*.<sup>150</sup> The second category includes cases involving convictions for either one or multiple offenses in which a resentencing has occurred but no conviction has been altered.

The cases that permit challenges to an underlying conviction do so based on the courts' capacious conception of what constitutes a judgment. As the Second Circuit explained in *Johnson*, "a judgment of conviction includes both the adjudication of guilt and the sentence. . . . [W]here a first habeas petition results in an amended judgment, a subsequent petition is not successive regardless of whether it challenges the conviction, the sentence, or both."<sup>151</sup> The courts that followed *Johnson* adopted this broad understanding. For instance, the Ninth Circuit found that it should not "separately consider[ ] the judgment's components, *i.e.*, treating the conviction and sentence for each count separately."<sup>152</sup> In addition, some courts extended *Magwood* to these cases despite conflicting circuit precedent. The Second Circuit, for example, found that it could not reconcile *Magwood's* judgment-based approach with prior circuit precedent, which dictated that whether a subsequently filed habeas petition was "second or successive" depended on whether its claims challenged an amended or an unamended *component* of the judgment.<sup>153</sup>

By contrast, the Seventh Circuit in *Kramer* declined to apply *Magwood* in part because the petitioner was "seeking to

---

<sup>149</sup> These cases come from the Second, Ninth, Third, and Seventh Circuits, respectively. The Second, Ninth, and Third Circuits held that the petitions at issue were not second or successive and allowed them to proceed, while the Seventh Circuit held that the petition was barred as second or successive.

<sup>150</sup> These cases come from the Fourth, Sixth, Eleventh, Seventh, and Tenth Circuits, respectively. The Fourth, Sixth, and Eleventh Circuits held that the petitions at issue were not second or successive and allowed them to proceed, while the Seventh Circuit held that the petition was barred as second or successive. *Burks*, the Tenth Circuit case, concerned AEDPA's statute of limitations rather than its limitations on second or successive petitions, but the court applied similar reasoning to that of the Seventh Circuit in *Suggs* to hold that *Magwood* did not apply because a new judgment had not been entered.

<sup>151</sup> *Johnson*, 623 F3d at 46 (quotation marks and citation omitted).

<sup>152</sup> *Wentzell*, 674 F3d at 1127–28.

<sup>153</sup> *Johnson*, 623 F3d at 44, citing *Galtieri*, 128 F3d 33. The court concluded: "In light of *Magwood*, we must interpret successive applications with respect to the judgment challenged and not with respect to particular components of that judgment." *Johnson*, 623 F3d at 46.

challenge an *entirely separate* conviction” from the one that had previously been vacated.<sup>154</sup> Clearly, the court did not view the convictions and sentences imposed for separate offenses as part of the same “judgment.” The court expanded on its conception of a judgment in *Turner*, in which it expressly bifurcated the petitioner’s judgment by offense in concluding that *Magwood* did not apply.<sup>155</sup>

The courts are divided when it comes to both categories of cases. It is true that several circuits have not yet heard cases coming from both categories. However, there is no reason to think that courts following the *Johnson* approach in the vacatur cases would deviate from that approach when deciding resentencing cases. There is a clear connection between the conviction and sentence stemming from a single offense, and these courts rely on the idea that “there is only one judgment, and it is comprised of both the sentence and the conviction.”<sup>156</sup> It is, however, less clear that courts that follow the *Johnson* approach when deciding resentencing cases would continue to do so when facing vacatur cases. With vacatur cases, the connection between the components of the judgment that have been vacated and the components of the judgment subsequently challenged in a habeas petition is more attenuated. The Seventh Circuit opined that there is an “arguably stronger” argument that petitions in resentencing cases are not second or successive than there is for petitions in vacatur cases,<sup>157</sup> as in vacatur cases, the petitioner is challenging “an *entirely separate* conviction” than the one implicated by the resentencing.<sup>158</sup>

Part III seeks to resolve this circuit split, focusing on principles of statutory interpretation to conclude that, in all cases,

---

<sup>154</sup> *Kramer*, 797 F3d at 501.

<sup>155</sup> The court explained:

Turner contends that his 2013 resentencing reset the clock for calculating AEDPA’s statute of limitations. The problem with Turner’s position, however, is that the relief he was granted in 2013 was limited to his *robbery* conviction, whereas his habeas petition challenges his conviction and life sentence for *murder*. Thus, the judgment that is relevant for purposes of his present petition is the one from 1995.

*Turner*, 845 F3d at 297. This illustrates the court’s belief that there is a distinct judgment attached to each conviction in a multi-offense case.

<sup>156</sup> *Insignares*, 755 F3d at 1281.

<sup>157</sup> See *Kramer*, 797 F3d at 501 (“Suggs had an arguably stronger claim than *Kramer* that, under *Magwood*, his motion should be considered non-successive.”).

<sup>158</sup> *Id.*

*Magwood* permits a habeas petitioner to challenge the undisturbed components of his judgment following a resentencing.

### III. THE *JOHNSON* APPROACH IS CORRECT AS A MATTER OF STATUTORY INTERPRETATION AND COMPORTS WITH AEDPA'S PURPOSES

Under *Magwood*, a second-in-time petition filed by a resentenced habeas petitioner challenging an undisturbed component of his judgment (such as an underlying conviction) is not "second or successive" under AEDPA. This conclusion follows first from *Magwood's* interpretation of the statutory phrase "second or successive."<sup>159</sup> Because of the well-recognized principle that statutory terms cannot be given different interpretations in different cases, this holding must also apply to petitions challenging an undisturbed component of a judgment.<sup>160</sup> Part III.A addresses this canon of construction.

Since the application of *Magwood* depends on whether a new judgment has been entered, it is also necessary to determine how a "judgment" should be defined. As Part III.B explains, the *Johnson* interpretation that both a conviction and a sentence constitute a single judgment comports with both Supreme Court precedent under AEDPA and the common definition of judgment found in other contexts. Finally, applying *Magwood* to habeas petitions that challenge an undisturbed component of the judgment results in a more streamlined and practical approach that does not unfairly prejudice petitioners and that is in line with the purposes of AEDPA. Part III.C addresses these practical considerations.

#### A. *Magwood's* Interpretation of Statutory Provisions Must Apply to All Cases Arising under the Statute

Importantly, *Magwood's* holding depends on statutory interpretation. As the Court explained: "This case turns on the meaning of the phrase 'second or successive' in § 2244(b). More specifically, it turns on when a claim should be deemed to arise in a 'second or successive habeas corpus application.'"<sup>161</sup> The Court found that § 2244(b) "appl[ies] only to a 'second or successive' application challenging the same state-court

---

<sup>159</sup> *Magwood*, 561 US at 342.

<sup>160</sup> See generally *Clark v Martinez*, 543 US 371 (2005).

<sup>161</sup> *Magwood*, 561 US at 330, quoting 28 USC § 2244(b)(1), (2).

*judgment.*<sup>162</sup> The Court reached its conclusion by looking to the “statutory context,” finding “the phrase ‘second or successive’ must be interpreted with respect to the judgment challenged.”<sup>163</sup> The Court grounded its holding fully in its interpretation of the statute when it found that “AEDPA uses the phrase ‘second or successive’ to modify ‘application,’” rather than “claim,” stating: “We cannot replace the actual text with speculation as to Congress’ intent. We have previously found Congress’ use of the word ‘application’ significant, and have refused to adopt an interpretation of § 2244(b) that would elide the difference between an ‘application’ and a ‘claim.’”<sup>164</sup>

Accordingly, *Magwood* is, at its core, premised on statutory interpretation. Its discussion of the meaning of “second or successive” in § 2244(b) turns entirely on the statutory text and does not depend on the fact that *Magwood*’s claims challenged only his resentencing.<sup>165</sup> This same statutory text applies to all federal habeas petitions—including both those that challenge an aspect of the petitioner’s resentencing and those that challenge an undisturbed component of his judgment. The words of the statute cannot be given different meanings dependent on the content of the habeas petition and the claims that are raised. The Supreme Court has applied this canon of statutory interpretation before in cases analogous to *Magwood*.<sup>166</sup> This Section discusses these cases and apply their holdings to *Magwood*. This discussion leads to the conclusion that courts should apply *Magwood*’s definition of “second or successive” to all cases arising under AEDPA, including those that challenge an undisturbed component of the petitioner’s judgment.

#### 1. The Supreme Court’s holdings in *Zadvydas* and *Clark*.

It is a well-established principle that statutory text must be given the same meaning in all cases arising under a statute. The Supreme Court has applied this principle in cases involving 8 USC § 1231(a)(6), an immigration statute analogous to AEDPA. Just like in *Magwood*, the Court in *Zadvydas v Davis*<sup>167</sup> interpreted a statute in the context of only one class of cases that

---

<sup>162</sup> *Magwood*, 561 US at 331.

<sup>163</sup> *Id.* at 333.

<sup>164</sup> *Id.* at 334.

<sup>165</sup> See *Magwood*, 561 US at 331–33.

<sup>166</sup> See generally, for example, *Clark*, 543 US 371.

<sup>167</sup> 533 US 678 (2001).

may arise and explicitly declined to extend its holding to the other classes of cases governed by the statute. Later, in *Clark v Martinez*,<sup>168</sup> the Court extended its holding in *Zadvydas* to the remaining classes of cases, concluding that the statutory text must be applied in the same way to all cases arising under the statute and that its prior reservation of the issue with respect to other classes of cases did not warrant a different result.<sup>169</sup>

*Clark* and *Zadvydas* both concerned § 1231(a)(6), a statute authorizing the detention of three classes of immigrants ordered removed from the United States.<sup>170</sup> The three classes of immigrants covered by the statute are those who have been ordered removed from the United States and are inadmissible to the United States, those who have been ordered removed because of criminal activity, and those who have been ordered removed and who the Secretary of Homeland Security deems to be a risk to the community or a flight risk.<sup>171</sup> The statutory text does not distinguish between these classes, merely providing that they all “may be detained beyond the removal period.”<sup>172</sup> *Zadvydas* involved the second of the three classes of immigrants—those who have been ordered removed from the United States because of criminal activity.<sup>173</sup> In *Zadvydas*, the Court held that the statutory provision that the government “may” detain removable immigrants did not confer unlimited discretion to detain, but only authorized detention for a “reasonably necessary” duration, which is presumptively set at six months.<sup>174</sup> The Court explicitly declined to extend its holding to another class of cases implicated by the statute—those involving immigrants who have not yet been admitted to the United States at all.<sup>175</sup> It explained that these immigrants “would present a very different question,”<sup>176</sup> highlighting the “well established” distinction immigration law draws between immigrants present in the United States and those who have never entered and the fact that

---

<sup>168</sup> 543 US 371 (2005).

<sup>169</sup> *Id.* at 378.

<sup>170</sup> *Id.* at 377; *Zadvydas*, 533 US at 682.

<sup>171</sup> *Clark*, 543 US at 377, citing 8 USC § 1231(a)(6).

<sup>172</sup> *Clark*, 543 US at 377, quoting 8 USC § 1231(a)(6).

<sup>173</sup> *Zadvydas*, 533 US at 682.

<sup>174</sup> *Id.* at 697, 699, 701.

<sup>175</sup> *Id.* at 682.

<sup>176</sup> *Id.*

certain constitutional protections do not apply to prospective immigrants who have not yet entered the country.<sup>177</sup>

Despite the substantive differences between the classes of immigrants subject to § 1231(a)(6), the Supreme Court ultimately extended its interpretation of the statute to all classes. In *Clark*, the Court held that the statutory construction adopted in *Zadvydas* must apply to the other classes of cases arising under the statute because “[t]o give these same words a different meaning for each category would be to invent a statute, rather than interpret one.”<sup>178</sup> *Clark* concerned immigrants who are inadmissible to the United States—the class of immigrants to which the *Zadvydas* court had explicitly declined to extend its holding. It may have been reasonable for the Court to distinguish between the two classes of immigrants given the differences between them. The Court addressed the fact that the constitutional concerns underlying *Zadvydas* are not implicated in cases of inadmissible immigrants<sup>179</sup> and made note of the argument that inadmissible immigrants may present border security concerns.<sup>180</sup> However, the Court found that the statutory text overrides any differences between the classes of immigrants, highlighting the “dangerous principle that judges can give the same statutory text different meanings in different cases.”<sup>181</sup> *Clark* made it clear that the text of the statute and the Court’s prior interpretation of that text control in all cases implicating § 1231(a)(6) even in the face of countervailing policy considerations.

In addition, the *Clark* Court was not persuaded by the argument that, because *Zadvydas* had expressly reserved the question of whether its holding applied to the other classes of cases, it must not apply. The Court responded to that argument by observing that “[t]his mistakes the reservation of a question with its answer.”<sup>182</sup> The Court went on to conclude that, although it had previously refused to decide the question at issue, “because the statutory text provides for no distinction

---

<sup>177</sup> *Zadvydas*, 533 US at 693–94 (“But once an alien enters the country, the legal circumstance changes, for the Due Process Clause applies to all ‘persons’ within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.”).

<sup>178</sup> *Clark*, 543 US at 378.

<sup>179</sup> *Id.* at 380.

<sup>180</sup> *Id.* at 386.

<sup>181</sup> *Id.*

<sup>182</sup> *Clark*, 543 US at 378.

between admitted and nonadmitted aliens, we find that [each case] results in the same answer.”<sup>183</sup>

Importantly, the *Clark* court adhered to its previous interpretation of § 1231(a)(6) despite substantive differences between the classes of cases to which it applies. This suggests that the same statutory text should not be interpreted in different ways across different classes of cases even when there may be rational policy justifications for treating the classes differently.

2. Courts should apply *Clark*'s reasoning in extending *Magwood*.

In *Magwood*, just like in *Zadvydas*, the Court interpreted a statutory provision in the context of just one class of cases that can arise under the statute: habeas petitions that challenge new errors arising from a resentencing.<sup>184</sup> Also, like in *Zadvydas*, the Court declined to extend its holding to the other class of cases that can arise under the statute: those challenging an undisturbed component of a petitioner's judgment.<sup>185</sup> In *Magwood*, the Court held that “the phrase ‘second or successive’ must be interpreted with respect to the judgment challenged” and that “second or successive” applies to entire habeas applications rather than claims.<sup>186</sup> This interpretation of § 2244(b) applies no matter what the content of a habeas petition is or what the claims it raises are, as the Court did not impose any limitations on its construction of the statute. Based on *Clark*'s principle that statutory language must be given the same meaning in all classes of cases, *Magwood*'s construction of the phrase “second or successive”—that a petition is not second or successive if filed after the entry of a new judgment—must apply to all such petitions regardless of the claims they raise or which components of the judgment they challenge.

One counterargument is that a habeas petition challenging an undisturbed component of the petitioner's judgment raises greater concerns for the finality of criminal judgments and is more likely to contain abusive claims,<sup>187</sup> thus warranting a stricter application of AEDPA's second or successive limitations.

---

<sup>183</sup> Id at 379.

<sup>184</sup> See *Magwood*, 561 US at 339.

<sup>185</sup> Id at 342 (“This case gives us no occasion to address that question, because *Magwood* has not attempted to challenge his underlying conviction.”).

<sup>186</sup> Id at 333.

<sup>187</sup> See id at 352–54 (Kennedy dissenting).

However, as explained above, similar arguments were made in *Clark*,<sup>188</sup> and the Court still determined that the statutory text must be applied in the same way in all classes of cases regardless of the distinct constitutional and public safety concerns implicated by each class of cases. As explained above, *Clark*'s principle of interpreting statutory terms consistently applies despite the existence of contrary policy concerns. Since *Clark* was decided, the Supreme Court has made this principle even clearer, rejecting the idea of "giving the same word, *in the same statutory provision*, different meanings *in different factual contexts*."<sup>189</sup> In *United States v Santos*,<sup>190</sup> the Court explained that *Clark* had "forcefully rejected" this concept.<sup>191</sup>

The *Johnson* approach correctly applies § 2244(b)'s second or successive limitations uniformly by extending *Magwood*'s holding to cases in which a petitioner challenges an undisturbed component of his judgment. By contrast, the *Suggs* approach leads to the anomalous result that courts interpret the statutory phrase "second or successive" differently in different classes of cases, contrary to *Clark*. The *Suggs* courts apply their pre-*Magwood* claims-based approaches to interpreting the phrase "second or successive" in cases in which a habeas petitioner challenges his underlying conviction while at the same time considering themselves bound to *Magwood*'s interpretation of the phrase when an error arising from a resentencing is challenged. The result is that *Magwood*'s definition of second or successive applies only in the latter class of cases, while, in the former, habeas petitions are dismissed based on a different conception of second or successive. These circuits' claims-based approaches are in conflict with the rule announced in *Magwood*. The Seventh Circuit "look[s] to what the motion actually challenged to determine whether a motion following a resentencing was 'second or successive.'"<sup>192</sup> *Magwood*, by contrast, requires courts to look only to whether a new judgment has been entered when determining whether a habeas petition is second or successive and not to the substance of the habeas petition or the claims it raises.

---

<sup>188</sup> See *Clark*, 543 US at 386 (noting the government's argument that border security concerns justified a harsher interpretation of § 1231(a)(6) with respect to inadmissible immigrants).

<sup>189</sup> *United States v Santos*, 553 US 507, 522 (2008).

<sup>190</sup> 533 US 507 (2008).

<sup>191</sup> *Id.* at 522.

<sup>192</sup> *Suggs*, 705 F3d 279, 283 (7th Cir 2013).

The Seventh and Tenth Circuits state that *Magwood's* construction of § 2244(b) does not apply to cases in which a habeas petitioner challenges his underlying conviction in large part because there must be a distinction if *Magwood* reserved the question of whether its holding applies to these cases.<sup>193</sup> Accordingly, the courts apply pre-*Magwood* circuit precedent. However, this reasoning is unpersuasive. The *Clark* defendants offered a parallel argument, contending that the *Zadvydas* Court's express reservation of the question of whether its holding applied to other classes of cases was an indication that these different classes of cases warranted a different approach.<sup>194</sup> The *Clark* Court rejected this argument, explaining that it would "mistake[ ] the reservation of a question with its answer."<sup>195</sup> However, this is essentially the argument the Seventh Circuit adopted in *Suggs* by adhering to its circuit precedent based primarily on *Magwood's* reservation. The Seventh Circuit inferred from the Supreme Court's reservation that there must be some distinction between the two classes of cases at issue.

Courts should not mistake *Magwood's* reservation of the question of whether its holding applies to petitions that challenge an undisturbed conviction with its answer.<sup>196</sup> AEDPA's bar on second or successive habeas petitions does not distinguish between these classes of cases. It applies to all classes of habeas petitioners—including those who challenge their underlying convictions—just like the statute at issue in *Zadvydas* and *Clark* applies to multiple classes of immigrants. Nothing in the text of § 2244(b) distinguishes between habeas petitioners who challenge errors arising from a resentencing and those who challenge errors introduced prior to a resentencing. Because of § 2244(b)'s lack of distinction between classes of cases, there

---

<sup>193</sup> See *id.* at 284:

Because the question before us is settled in our circuit and the Supreme Court considered the question but expressly declined to answer it, we follow our circuit's precedents and hold that *Suggs'* motion is second or successive. . . . [W]e believe it would be premature to depart from our precedent where the Court has not asked us to.

See also *Burks*, 680 Fed Appx at 690–91 (noting that, absent an on-point Supreme Court decision, pre-*Magwood* circuit precedent is binding).

<sup>194</sup> *Clark*, 543 US at 378.

<sup>195</sup> *Id.*

<sup>196</sup> See *id.*

should not be a distinction in how its text is applied across these classes of cases.<sup>197</sup>

There is, however, one important difference between AEDPA and 8 USC § 1231(a)(6), the statute at issue in *Clark* and *Zadvydas*. Section 1231(a)(6) explicitly lists the classes of cases to which it applies,<sup>198</sup> while 28 USC § 2244(b), containing AEDPA's second or successive limitations, does not. Arguably, because the statute does not expressly provide for habeas petitions that challenge an unamended component of a petitioner's judgment, courts may have more discretion to treat these petitions differently and exempt them from *Magwood's* interpretation of the statute. However, this is not persuasive. The provisions of each statute must be applied in the same way to all cases to which the statute applies—in the immigration context, the set includes only three classes of cases, but in the AEDPA context, the set contains all prisoners, including those whose habeas petitions challenge their underlying convictions. Section 1231(a)(6) enumerates the classes of immigrants to which it applies in order to limit its scope—it does not apply to all immigrants who have been ordered removed from the United States.<sup>199</sup> While § 1231(a)(6) applies only to a subset of immigrants, § 2244(b) applies to all prisoners, not merely a subset of prisoners. Section 2244(b)'s limitations on second or successive habeas petitions are incorporated into both § 2254 (governing all people in state custody) and § 2255 (governing all people in federal custody).<sup>200</sup> Therefore, § 2244(b) applies to all state and federal prisoners—categories which certainly encompass petitioners challenging their underlying convictions. That § 2244(b) does not expressly provide for these habeas petitioners does not mean the Court's interpretation of the statute does not apply to them—it just means that the statute is not limited to *only* them.

Accordingly, the *Johnson* approach is proper as a matter of statutory interpretation. Any time courts are faced with a second-in-time federal habeas petition, they should determine if it is second or successive by looking to whether a new

---

<sup>197</sup> See *id.* at 379.

<sup>198</sup> 8 USC § 1231(a)(6) (“An alien ordered removed who is inadmissible . . . , removable [for criminal activity,] . . . or who has been determined by the Attorney General to be a risk to the community or unlikely to comply with the order of removal.”).

<sup>199</sup> For example, § 1231(a)(6) does not apply to immigrants who have been ordered removed for “failure to register or falsification of documents” under 8 USC § 1227(a)(3). See 8 USC § 1231(a)(6).

<sup>200</sup> See 28 USC § 2244(b)(1)–(2); 28 USC § 2254(a); 28 USC § 2255(a), 2255(h).

intervening judgment has been entered, as this is the definition given to the phrase “second or successive” by the Supreme Court in *Magwood*. It remains important to determine how “new judgment” should be defined because *Magwood’s* interpretation of second or successive turns on the existence of a new judgment, and the Court does not precisely define this term.

#### B. Defining a “New Judgment”

*Magwood’s* holding also turns on how a “new judgment” is defined. The Court held that a habeas petition is not second or successive when it challenges a new judgment but did not provide an explicit definition of what constitutes a new judgment, and there remains a dispute as to how this term is defined.<sup>201</sup> There are two main definitions courts use to determine whether a new judgment has been entered such that a petitioner may file a second-in-time habeas petition that is not second or successive. Courts that follow *Johnson* hold that “there is only one judgment”<sup>202</sup> comprised of both the sentence(s) and the conviction(s). When a petitioner has been convicted of multiple offenses, these courts still “treat the judgment of conviction as one unit” and do not “treat[] the conviction and sentence for each count separately.”<sup>203</sup> By contrast, the courts following *Suggs* treat each conviction and sentence as its own judgment for purposes of AEDPA.<sup>204</sup> The Sixth Circuit takes a unique approach to defining a judgment—it holds that only “[a] new, worse-than-before sentence . . . amounts to a new judgment.”<sup>205</sup>

These courts do not take a methodical approach to defining what constitutes a judgment. For example, the Ninth Circuit in *Wentzell* explained its definition of a new judgment in one sentence, briefly taking note of circuit precedent pertaining to the finality of judgments,<sup>206</sup> and the Seventh Circuit in *Turner* relied

---

<sup>201</sup> See notes 45–51 and accompanying text (describing the *Magwood* decision) and notes 149–53 and accompanying text (describing the ensuing dispute among the circuits).

<sup>202</sup> *Insignares*, 755 F3d at 1281.

<sup>203</sup> *Wentzell*, 674 F3d at 1124, 1127–28. See also *Johnson*, 623 F3d at 46 (finding, in a multi-offense case, that the court “must interpret successive applications with respect to the judgment challenged and not with respect to particular components of that judgment”).

<sup>204</sup> See *Turner*, 845 F3d at 297.

<sup>205</sup> *Crangle*, 838 F3d at 678.

<sup>206</sup> *Wentzell*, 674 F3d at 1127–28, citing *United States v Colvin*, 204 F3d 1221, 1226 (9th Cir 2000) (holding that, when any conviction or sentence is remanded to the district court following direct appeal, the judgment does not become final for purposes of AEDPA’s statute of limitations until the district court has acted on the remand and the time has passed for the defendant to appeal).

on the idea that each sentence and conviction has a separate judgment without citing any support for that contention.<sup>207</sup> Other courts have also addressed the issue quite briefly.<sup>208</sup>

This Section begins by addressing definitions of “judgment” that exist in other contexts of criminal and habeas law, concluding that the common definition of a judgment includes both the sentence and the conviction. Next, this Section argues that this common definition of judgment should apply in the second or successive context, primarily due to *Clark*’s principle that the same statutory term cannot be given different meanings in different contexts. Finally, this Section turns to the Sixth Circuit’s unique definition of judgment, concluding that the Sixth Circuit should likewise adopt the more common definition of a judgment.

### 1. Defining a “judgment” in related areas of law.

There is substantial support from both the Federal Rules of Criminal Procedure and Supreme Court precedent for the proposition that a criminal “judgment” constitutes both the conviction and the sentence. First, Rule 32(k)(1) of the Federal Rules of Criminal Procedure defines a judgment in federal criminal proceedings.<sup>209</sup> That rule provides that “[i]n the judgment of conviction, the court must set forth the plea, the jury verdict or the court’s findings, the adjudication, and the sentence.”<sup>210</sup> This indicates that, at least in federal criminal cases, when a trial court enters its judgment, that judgment must include both the sentence and the conviction (or “adjudication”).

Also, federal courts recognize that both the conviction and sentence must be entered before the judgment is reviewable on appeal. Courts of appeals “ordinarily lack jurisdiction to review decisions made before sentencing is complete and a judgment of conviction has been entered” unless the collateral order doctrine applies.<sup>211</sup>

In addition, the Supreme Court has recognized that the adjudication of a criminal case results in only one judgment, which

---

<sup>207</sup> *Turner*, 845 F3d at 297.

<sup>208</sup> See *King*, 807 F3d at 157–58 (6th Cir 2015) (finding that the judgment includes both the adjudication of guilt and the sentence), citing FRCrP 32(k)(1); *In re Gray*, 850 F3d 139, 141–42 (4th Cir 2017), citing *Deal v United States*, 508 US 129, 132 (1993) (noting that the combination of the conviction and the sentence constitutes the judgment).

<sup>209</sup> FRCrP 32(k)(1).

<sup>210</sup> FRCrP 32(k)(1).

<sup>211</sup> See, for example, *United States v Robinson*, 473 F3d 487, 490 (2d Cir 2007).

encompasses both the conviction and the sentence. In *Deal v United States*,<sup>212</sup> the Court explained that, while “conviction” refers to the finding of guilt by a judge or jury that necessarily precedes the entry of a final judgment,” a judgment “includes both the adjudication of guilt and the sentence.”<sup>213</sup> Although *Deal* was decided prior to the passage of AEDPA, the Court has continued to apply this definition of a judgment in the context of AEDPA. Relying on the same logic as *Deal*, in *Burton v Stewart*,<sup>214</sup> the Court explained that AEDPA’s one-year statute of limitations, which runs from “the date on which the judgment became final,”<sup>215</sup> “did not begin until both [the petitioner’s] conviction *and* sentence became final.”<sup>216</sup> Also, *Johnson* and several of the cases following its approach recognize that *Deal*’s definition of a judgment applies.<sup>217</sup>

It appears as though courts commonly recognize that a judgment is one unit, comprised of both the sentence and the conviction, in related areas of law. Courts use this definition when applying AEDPA’s statute of limitations which, like its “second or successive” limitations, depends on the existence of a judgment. They also use it to determine when a case becomes reviewable on appeal, and it is the definition adopted by the Federal Rules of Criminal Procedure. This Section next argues that this common definition of judgment should be applied in the context of AEDPA’s second or successive limitations, particularly because it also applies in the context of AEDPA’s statute of limitations.

## 2. Applying the common definition of “judgment” to the “second or successive” provisions of AEDPA.

The common definition of a judgment described above should apply in the context of AEDPA’s limitations on second or successive habeas petitions. This is, most importantly, because it is the definition applied to the term “judgment” in the context of AEDPA’s statute of limitations under § 2244(d). The *Clark* principle provides that the same statutory term cannot be given a different meaning in different contexts. It follows that the

---

<sup>212</sup> 508 US 129 (1993).

<sup>213</sup> *Id.* at 132, citing FRCrP 32(b)(1) (1996).

<sup>214</sup> 549 US 147 (2007).

<sup>215</sup> *Id.* at 156, citing 28 USC § 2244(d)(1)(A).

<sup>216</sup> *Burton*, 549 US at 156 (quotation marks omitted).

<sup>217</sup> See *Johnson*, 623 F3d at 46; *Gray*, 850 F3d at 141; *King*, 807 F3d at 157–58.

term “judgment,” which is used in the same way in the context of both the statute of limitations and the second or successive bar, should be given the same definition in both of these contexts.

Although *Burton* involved the statute of limitations imposed by § 2244, rather than its second or successive limitations, the term judgment cannot mean something different in the context of second or successive petitions. As Part III.A.1 explains, the same statutory term cannot be construed to mean something different in different factual circumstances. *Magwood* derived its judgment-based approach from § 2254, the provision governing habeas petitions filed by state court prisoners, because the § 2244 bar on second or successive petitions references § 2254. Section 2254(b)(1) describes “an ‘application for a writ of habeas corpus on behalf of a person in custody pursuant to *the judgment* of a State court.’”<sup>218</sup> Significantly, the same statutory text that the Court relied on in *Magwood*—which is found in § 2254(b)(1)—also appears in § 2244(d)(1), the provision establishing the one-year statute of limitations.<sup>219</sup> Section 2244(d)(1) applies AEDPA’s statute of limitations to “an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court.”<sup>220</sup> Therefore, based on *Clark*’s principle that the same statutory language cannot be given different meanings in different contexts, the *Deal* and *Burton* definition of a judgment that applies in the context of AEDPA’s statute of limitations must also apply in the context of second or successive habeas petitions.

Arguably, *Clark* is not controlling when it comes to the definition of a judgment. *Clark* involved the application of a single statutory provision to different cases, while *Burton* and *Magwood* involve two separate provisions that happen to contain the same language—§ 2244(d)(1), governing the statute of limitations, and § 2254(a). Perhaps *Clark*’s reasoning applies

---

<sup>218</sup> *Magwood*, 561 US at 332, quoting 28 USC § 2254(b)(1). Similarly, § 2254(a) refers to a person in custody “pursuant to the judgment” of a state court. Recall that, although *Magwood* involved a state prisoner, AEDPA’s limitations on second or successive habeas petitions are interpreted the same way with respect to both § 2254 petitions brought by state prisoners and § 2255 petitions brought by federal prisoners.

<sup>219</sup> 28 USC § 2244(d)(1) provides that the statute of limitations applies to “an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court” and runs from the date that the judgment became final. 28 USC § 2244(d)(1)(A). This text is nearly identical to the text of § 2254(b)(1) quoted by the *Magwood* court.

<sup>220</sup> 28 USC § 2244(d)(1).

only to the interpretation of the same statutory provision and not to the interpretation of the same language located in different parts of the statute. However, this argument is not persuasive. Courts often use the same reasoning in statute of limitations cases and second or successive cases. For example, in *Crangle*, the Sixth Circuit found that the petitioner's "worse-than-before" sentence constituted a "new judgment" under *Magwood* and, therefore, that it reset AEDPA's one-year statute of limitations.<sup>221</sup> Also, in *Insignares*, the Eleventh Circuit relied in part on *Burton*'s definition of a judgment to decide a second or successive case.<sup>222</sup> *Turner* and *Burks* also apply *Magwood* to AEDPA's statute of limitations, rather than its second or successive limitations. Perhaps the argument against applying *Clark* would carry more weight if this were an attempt to define two unrelated statutory provisions uniformly. However, § 2244(d)(1) and § 2254(a) are two closely related provisions of the same statute, and courts use similar reasoning in interpreting both provisions and the same cases to support holdings related to both provisions. Given these factors and the identical nature of the statutory language, it would seem unreasonable to conclude that the term "judgment" means something different in each provision.

Concluding that the definition of a judgment imposed by *Deal* and *Burton* should apply in cases involving AEDPA's statute of limitations but not in cases involving its second or successive limitations would invoke "the dangerous principle that judges can give the same statutory text different meanings in different cases."<sup>223</sup> *Burton* holds that a judgment is comprised of both the sentence and the conviction in statute of limitations cases, and courts should adopt this same definition in second or successive cases. Accordingly, the *Johnson* approach to defining a judgment as comprised of both the sentence and the conviction is correct—it comports with both the Federal Rules of Criminal Procedure and the Supreme Court's definition of a judgment in a criminal case.

---

<sup>221</sup> *Crangle*, 838 F3d at 679–80. See also *Turner*, 845 F3d at 297 (responding to the petitioner's argument that *Magwood* applies not only to AEDPA's second or successive limitations but also to its statute of limitations by contending that the problem with this argument is not that different statutory provisions are implicated but that the petitioner sought to challenge a different judgment than the one previously challenged); *Burks*, 680 Fed Appx at 691.

<sup>222</sup> *Insignares*, 755 F3d at 1280–81.

<sup>223</sup> *Clark*, 543 US at 386.

### 3. Applying the common definition of “judgment” in the Sixth Circuit.

If the Sixth Circuit’s unique definition of a “new judgment”<sup>224</sup> were correct, *Magwood* would almost never apply. When a habeas petitioner is granted partial relief, he either wins the vacatur of a conviction and its corresponding sentence, or he wins a resentencing due to a problem with his original sentence. Cases in which these positive outcomes for the petitioner could produce a “worse-than-before” sentence should be rare. Also, it is significant that none of the sources of the definition of judgment discussed above mentions the length of the sentence.<sup>225</sup> Whether a judgment exists does not depend on the characteristics of the sentence it imposes but simply on whether it imposes a sentence at all. By requiring an increased sentence to be imposed in order for a new judgment to be entered, the Sixth Circuit rejects the common definition of a judgment applied by the Supreme Court. The Sixth Circuit should adopt the common definition of a judgment as being comprised of both the conviction and the sentence without the heightened requirement that the new sentence be worse than before in order for the judgment to be new.

### C. The *Johnson* Approach Is Both Pragmatic and Consistent with AEDPA’s Purposes

By applying *Magwood*’s holding to habeas petitions that challenge an undisturbed component of a judgment and by defining a “judgment” to be comprised of both a sentence and a conviction, the *Johnson* approach is correct as a matter of statutory interpretation and in line with the well-accepted definition of a criminal judgment. Following *Johnson* is also the normatively correct approach. It is both practical and streamlined, and it comports with the purposes of AEDPA that have been recognized by the Supreme Court. The Court is generally concerned with promoting efficiency while also protecting a petitioner’s ability to seek relief.<sup>226</sup>

First, habeas petitioners often raise multiple claims in the same petition. A claim might be related to the conviction(s), the

---

<sup>224</sup> See Part II.A.3.

<sup>225</sup> See notes 204–13 and accompanying text.

<sup>226</sup> See *Panetti v Quarterman*, 551 US 930, 945 (2007) (“The statute’s design is to further the principles of comity, finality, and federalism.”) (quotation marks omitted); *Duncan v Walker*, 533 US 167, 179 (2001).

sentence(s), or both. When a petitioner raises multiple claims in a technically second habeas petition, the Seventh and Tenth Circuits would allow the district court to adjudicate claims related only to the resentencing while requiring the petitioner to seek authorization from the court of appeals to file a “second or successive” habeas petition with respect to the remaining claims. By essentially splitting the petition in two, this approach requires the involvement of two courts at the same time rather than one and also requires both the petitioner and the government to litigate in multiple courts at the same time. AEDPA requires that petitioners seek permission from the court of appeals to file a second or successive habeas petition—the district court may only adjudicate petitions that are not second or successive or that have received authorization from the court of appeals.

A crucial problem with this approach arises when the same claim relates to both the resentencing and the underlying conviction. The parties would then be involved in litigation related to the exact same issue in multiple courts, wasting judicial resources and potentially leading to delay or inconsistent results within the same case. Consider, for example, a Sixth Amendment claim of ineffective assistance of counsel. Assume, for simplicity’s sake, that a petitioner has had the same attorney for the duration of his case, that this attorney made the same error during both the trial and a later resentencing proceeding, and that the petitioner had filed an initial habeas petition prior to this resentencing. In a subsequent habeas petition, the Seventh and Tenth Circuits would allow the petitioner to bring the claim of error at the resentencing, as it arose during the resentencing. However, the claim of error at the trial stage would be second or successive, as the error could have been raised in an initial petition prior to the resentencing. Although both claims implicate the same constitutional error of ineffective assistance of counsel, the petitioner would have to bring the claim of error arising at the trial stage to the court of appeals in order to get authorization to litigate it in the district court, while the claim of error arising from the resentencing could be brought in the district court with no authorization needed. This outcome is not only inefficient, but also may lead to inconsistent and unjust results. The petitioner may be correct that his counsel acted unconstitutionally at both the trial stage and the resentencing stage. But if the court of appeals denies authorization to attack his conviction on this ground, the best the petitioner can do is

win another resentencing—he cannot challenge his conviction, so his conviction cannot be vacated.

The *Johnson* approach to determining what constitutes a judgment is also more practical. In multi-offense cases, defendants are tried and convicted at the same time, before the same judge and jury, for multiple offenses. Often, these offenses arise from the same alleged course of conduct.<sup>227</sup> It is logical to think of these closely interrelated convictions and sentences as components of the same judgment, rather than as each bearing its own judgment. By bifurcating judgments by each offense and conviction, the Seventh and Tenth Circuits separate things that are logically related and arose from the same events. For example, in *Indiana v Turner*,<sup>228</sup> the petitioner was convicted of murder, criminal confinement, and attempted robbery resulting in serious bodily injury. These charges all stemmed from an alleged incident in which the petitioner and two friends enticed a man into their car, attempted to rob him, and, upon learning he had no money, shot and killed him.<sup>229</sup> After Turner received a new sentence on a reduced charge for the robbery conviction,<sup>230</sup> the Seventh Circuit found that a new judgment had been entered for his robbery conviction.<sup>231</sup> However, his murder conviction was governed by his original, distinct judgment, which was entered eight years earlier at the time of his trial.<sup>232</sup> According to the Seventh Circuit, even though Turner's convictions all stemmed from the same conduct, they each had a separate judgment, and therefore AEDPA's statute of limitations and second or successive provisions applied differently to each of them. AEDPA's procedural limitations, when applied to each distinct judgment, might often produce a different result even though each of these judgments are so closely related to each other. This creates unnecessarily complex results that may be prejudicial to the petitioner. For example, in a case like *Turner* when each offense is so closely related, the same constitutional error may have affected each conviction. As an example, say that the police

---

<sup>227</sup> See, for example, *Wentzell*, 674 F3d at 1125 (noting that the defendant was found guilty for both solicitation to commit murder and attempted murder). See also Jeffery M. Chemerinsky, Note, *Counting Offenses*, 58 Duke L J 709, 711–25 (2009) (collecting cases involving multiple offenses related to the same course of conduct).

<sup>228</sup> 2011 WL 9523125 (Ind Super).

<sup>229</sup> *Id.* at \*1–6.

<sup>230</sup> *Turner*, 845 F3d at 295.

<sup>231</sup> *Id.* at 297.

<sup>232</sup> *Id.*

used unlawfully obtained evidence in *Turner*. If this evidence underlies his original convictions as well as his separate, "new" robbery conviction, he can challenge it only with respect to the robbery conviction under the *Suggs* approach. He is precluded from raising such a claim with respect to his original, undisturbed convictions even though they may just as likely be unlawful. Following the *Johnson* approach streamlines habeas proceedings by allowing petitioners to bring all of their interrelated claims together, at the same time, in one court.

In addition, although *Magwood* explicitly rejected arguments based on legislative intent,<sup>233</sup> it is worth noting that the *Johnson* approach is nevertheless in line with many of the commonly cited purposes of AEDPA. The Supreme Court resists interpretations of AEDPA "that would 'produce troublesome results,' 'create procedural anomalies,' and 'close [its] doors to a class of habeas petitioners seeking review without any clear indication that such was Congress' intent.'"<sup>234</sup> This is the exact result of the *Suggs* approach, as explained above.<sup>235</sup> And the *Suggs* approach certainly does not serve "AEDPA's goal of streamlining federal habeas proceedings"<sup>236</sup> or AEDPA's aim to "promote[ ] judicial efficiency and conservation of judicial resources."<sup>237</sup> It also does not serve the goal of reducing piecemeal litigation,<sup>238</sup> as bifurcating judgments into distinct pieces, each with their own procedural timelines, certainly seems piecemeal. The Supreme Court has also cautioned against "clos[ing] [the] doors to a class of habeas petitioners seeking review without any clear indication that such was Congress' intent," particularly when petitioners risk losing the opportunity for federal review of their claims.<sup>239</sup> By splitting the components of a case into multiple judgments and then barring petitions as second or successive based on which manufactured judgment they challenge, the court is closing the doors to the claims being raised. The *Magwood* Court recognized the lack of clear congressional intent to close these doors, referring to appeals to Congress's intent as "speculation."<sup>240</sup>

---

<sup>233</sup> *Magwood*, 561 US at 334.

<sup>234</sup> *Panetti*, 551 US at 946.

<sup>235</sup> See Part III.A.3.

<sup>236</sup> *Rhines v Weber*, 544 US 269, 277 (2005).

<sup>237</sup> *Panetti*, 551 US at 945.

<sup>238</sup> *Duncan*, 533 US at 180.

<sup>239</sup> *Panetti*, 551 US at 945–46.

<sup>240</sup> *Magwood*, 561 US at 334.

Critics of the *Johnson* approach allege that it undermines the finality of trial court judgments, a result AEDPA is often cited as aiming to prevent.<sup>241</sup> However, as the *Johnson* line of cases recognizes, this is a supposed purpose of AEDPA that the *Magwood* Court explicitly rejected<sup>242</sup> although it was heavily emphasized in the state's pleadings.<sup>243</sup> The Court dismissed the state's finality-based argument by stating: "We cannot replace the actual text with speculation as to Congress' intent."<sup>244</sup> In addition, applying *Magwood* to petitions challenging an undisturbed component of a judgment would not destroy the finality of this judgment in such a significant way that it would undermine AEDPA. As the Court in *Magwood* noted, even when a habeas petition is not barred as second or successive, the other provisions of AEDPA create high procedural hurdles that a petitioner must clear, which are aimed at preventing "abusive claims."<sup>245</sup> Because the other procedural requirements of AEDPA remain in effect when a petition is deemed not to be second or successive, courts should not be concerned that extending *Magwood* as the *Johnson* courts do would allow petitioners to bring countless abusive claims. Following *Johnson* simply removes the limitation that, after a judgment has been amended, petitioners may challenge only the amended component of that judgment—*Johnson* permits petitioners to challenge their amended judgments in their entirety.

#### CONCLUSION

*Magwood's* construction of the meaning of "second or successive" must be applied to cases in which a habeas petitioner challenges an undisturbed component of his judgment. The well-recognized principle, advanced in *Clark*, that the same statutory language must be given the same meaning in all cases arising under the relevant statute dictates this result. AEDPA's limitations on the filing of second or successive petitions apply to all subsequent-in-time habeas petitions regardless of what they

---

<sup>241</sup> See, for example, *Suggs*, 705 F3d at 285, quoting *Duncan*, 533 US at 178 ("AEDPA was intended more broadly to further the principles of comity, finality, and federalism.") (quotation marks omitted).

<sup>242</sup> *Magwood*, 561 US at 331 (dismissing the state's argument that AEDPA was intended to afford petitioners only "one opportunity" to bring a federal habeas challenge).

<sup>243</sup> See Brief of Respondents, *Magwood v Patterson*, No 09-158, \*46-48 (US filed Feb 3, 2010).

<sup>244</sup> *Magwood*, 561 US at 334.

<sup>245</sup> *Id* at 340.

challenge, as the statute does not contain any such restrictions or qualifications. Therefore, the Supreme Court's interpretation of the statute must apply to all cases arising under it, including those in which a habeas petitioner challenges his underlying conviction. Equally important to the extension of *Magwood* to these cases is the definition of a judgment. Under *Magwood*, whether a habeas petition is second or successive turns on whether a new judgment exists: "[W]here . . . there is a 'new judgment intervening between the two habeas petitions,' an application challenging the resulting new judgment is not 'second or successive.'"<sup>246</sup> A judgment is comprised of both the conviction(s) and sentence(s). This definition is reflected in the Federal Rules of Criminal Procedure and has been repeatedly upheld by the Supreme Court—both in the context of AEDPA and in other cases in the context of criminal law. The Supreme Court has adhered to this definition of judgment in cases involving AEDPA's statute of limitations, and the *Clark* principle dictates that this definition must also apply to the term "judgment" as used in the context of the statute's second or successive provisions.

In addition, the *Johnson* approach aligns with AEDPA's purposes of maintaining efficiency while preserving petitioners' opportunity to have their claims heard. The contrary approach produces many complexities and procedural anomalies that AEDPA was intended to avoid, and it severely impedes petitioners' ability to seek freedom from unlawful imprisonment. Consider Benjamin Kramer's case. Kramer has a legitimate claim that his detention is unlawful—the Supreme Court has vacated a conviction in identical factual circumstances.<sup>247</sup> However, because of the Seventh Circuit's approach to *Magwood*, he cannot challenge the conviction for which he is imprisoned. This conviction was not altered by the result of his initial habeas petition, so, according to the court, no new judgment has been entered with respect to this conviction. The Seventh Circuit held that a challenge to his conviction would be second or successive despite his genuine claim for relief, and he remains sentenced to life imprisonment for a drug offense. However, under the *Johnson* approach, Kramer would be able to challenge his likely unlawful imprisonment. When a new judgment is entered, *Johnson* permits a petitioner to challenge the entirety of that judgment,

---

<sup>246</sup> *Magwood*, 561 US at 341–42.

<sup>247</sup> See text accompanying notes 124–29.

rather than unjustly barring legitimate challenges to an unamended component of the petitioner's judgment.

In a broader sense, resolution of this circuit split is essential to ensure that habeas petitioners everywhere have a fair opportunity to seek release from allegedly unlawful imprisonment. As this Comment has explained, the Seventh and Tenth Circuits preclude petitioners' claims in a prejudicial manner that can prevent legitimate claims from being adjudicated. People should not be barred from bringing legitimate claims that they are unlawfully detained simply because their cases happen to arise in jurisdictions that have declined to apply the Supreme Court's judgment-based approach to certain classes of federal habeas cases. AEDPA must be applied consistently to ensure that each person to whom it applies has a chance to seek a just resolution of his case, which implicates serious concerns regarding his freedom from unlawful imprisonment.