Negative: 2255 Motions

By “Coach Vance” Trefethen

***The United States Federal Government should significantly reform its policies regarding convicted prisoners under federal jurisdiction***

Case Summary: The AFF plan repeals the 1-year time limit for a prisoner to file a “2255 Motion,” named after section 2255 of Title 28 of the United States Code. This would have the effect of making it easier for prisoners to file more appeals after conviction. The 1-year time limit was enacted in 1996 as part of the Anti-terrorism and Effective Death Penalty Act (AEDPA). Definition:  
“After a judge hands down a decision, the defendant may still be able to challenge their conviction or prison sentence. Through filing a 2255 motion, a defendant can move to have their sentence vacated, conviction vacated, or request a resentencing. Under federal code [28 U.S.C. § 2255](https://www.law.cornell.edu/uscode/text/28/2255), a prisoner who claims the right to be released on the grounds that their prison sentence was imposed in violation of the Constitution, the court did not have the authority to impose such a sentence, or the sentence was unlawfully excessive, may file a motion to set aside or correct the sentence.” <https://www.carmichaellegal.com/2255-motions>  
  
“Habeas Corpus” is a constitutional protection in Article I Section 9 that says the government cannot imprison someone without proper legal proceedings (and doing it would be “suspending” Habeas Corpus) except in cases of invasion or rebellion. Federal prisoners in this case would be filing an appeal claiming that the criminal trial or plea bargain they were given was illegal or unconstitutional in some sense, and therefore their continued imprisonment is wrong. A “suspension” of Habeas Corpus would be (according to the Affirmative) the 1 year time limit, after which the prisoner no longer has a right to file a Habeas Corpus to claim that his imprisonment is wrong. After 1 year, his Habeas Corpus rights have been suspended or lost.  
  
NEG will argue that the 2255 time limit doesn’t constitute a suspension of Habeas Corpus and isn’t a problem. There are plenty of exceptions to the time limit for 2255, and they can also use Section 2241 if 2255 isn’t sufficient.  
  
“Statute of limitations” is a time limit on when a legal proceeding can be initiated. That’s the 1-year limit that Congress enacted in 1996. “Equitable Tolling”: “Tolling” means counting the time elapsed toward the statute of limitations time limit. Time may start “tolling” for example, the day the prisoner is convicted, or the day he is sentenced. “Equitable Tolling” means the court will adjust its enforcement of the “tolling” of time in order to achieve “equity” (fairness) for special circumstances. They’ll suspend enforcement of the time and give the prisoner a break if there were good reasons he couldn’t file his claim within 1 year.

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INHERENCY

1. Section 2241 is available if 2255 fails

If Section 2255 is inadequate to appeal a prisoner’s detention, he can file under Section 2241 instead

Judge Jerome A. Holmes 2013 (federal appellate judge for the 10th Circuit Court of Appeals) 713 F3d 538 Decision of the Court in the case of Abernathy v. Wandes 8 Apr 2013 <https://casetext.com/case/abernathy-v-wandes> (accessed 29 Jan 2022) (first brackets added, second and third brackets in original)

Following AEDPA's [Anti-terrorism & Effective Death Penalty Act of 1996] enactment, federal prisoners who are barred from bringing second or successive [§ 2255](https://casetext.com/statute/united-states-code/title-28-judiciary-and-judicial-procedure/part-vi-particular-proceedings/chapter-153-habeas-corpus/section-2255-federal-custody-remedies-on-motion-attacking-sentence) motions may still be able to petition for habeas relief under [§ 2241](https://casetext.com/statute/united-states-code/title-28-judiciary-and-judicial-procedure/part-vi-particular-proceedings/chapter-153-habeas-corpus/section-2241-power-to-grant-writ) through the mechanism of [§ 2255(e)](https://casetext.com/statute/united-states-code/title-28-judiciary-and-judicial-procedure/part-vi-particular-proceedings/chapter-153-habeas-corpus/section-2255-federal-custody-remedies-on-motion-attacking-sentence)'s savings clause. “To fall within the ambit of [the] savings clause and so proceed to [§ 2241](https://casetext.com/statute/united-states-code/title-28-judiciary-and-judicial-procedure/part-vi-particular-proceedings/chapter-153-habeas-corpus/section-2241-power-to-grant-writ), a prisoner must show that ‘the remedy by motion [under [§ 2255](https://casetext.com/statute/united-states-code/title-28-judiciary-and-judicial-procedure/part-vi-particular-proceedings/chapter-153-habeas-corpus/section-2255-federal-custody-remedies-on-motion-attacking-sentence)] is inadequate or ineffective to test the legality of his detention.’ ” Prost, [636 F.3d at 581](https://casetext.com/case/prost-v-anderson#p581) (second alteration in original) (quoting [28 U.S.C. § 2255(e)](https://casetext.com/statute/united-states-code/title-28-judiciary-and-judicial-procedure/part-vi-particular-proceedings/chapter-153-habeas-corpus/section-2255-federal-custody-remedies-on-motion-attacking-sentence)).

2. The “Equitable Tolling” exception

Courts have discretion to grant exceptions to the 2255 time limit if there’s good cause and prisoner made an honest effort

Judge Matthew F. Kennelly 2020 (federal judge for the UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS WESTERN DIVISION) decision of the Court in U.S. v. Hayes 4 May 2020 <https://www.govinfo.gov/content/pkg/USCOURTS-ilnd-3_19-cv-50104/pdf/USCOURTS-ilnd-3_19-cv-50104-0.pdf> (accessed 29 Jan 2022)

Equitable tolling is a basis on which a movant under section 2255 can "avoid the bar of the statute of limitations." Clarke, 703 F.3d at 1101. It is an extraordinary remedy available to a habeas corpus petitioner or movant under section 2255 who shows: "(1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way and prevented timely filing." Holland v. Florida, 560 U.S. 631, 649 (2010)) (discussing equitable tolling as applied to a section 2254 petition); see also Boulb, 818 F.3d at 339 (equitable tolling analysis articulated by the Supreme Court in Holland applies to section 2255 petitions).

“Equitable Tolling” extends the 1-year limit for circumstances beyond the prisoner’s control and he was making a diligent effort, if injustice would otherwise result

Judge Roger L. Gregory 2014 (Senior Circuit Judge, 4th Circuit Court of Appeals) 8 Apr 2014 decision of the court in the case of Whiteside v. U.S. <https://www.govinfo.gov/content/pkg/USCOURTS-ca4-13-07152/pdf/USCOURTS-ca4-13-07152-0.pdf> (accessed 29 Jan 2022)

A § 2255 petitioner ordinarily has one year from the date on which his conviction becomes final in order to file a motion to vacate. 28 U.S.C. § 2255(f(1). Whiteside’s conviction became final on August 17, 2010, but he did not file his motion until May 18, 2012, well beyond the one-year period. However, the statute of limitations in § 2255(f)(1) may be equitably tolled in certain circumstances. Specifically, equitable tolling applies if the petitioner can show “‘(1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way’ and prevented timely filing.” Holland v. Florida, 560 U.S. 631, 649 (2010) (quoting Pace v. DiGuglielmo, 544 U.S. 408, 418 (2005)). Relief is limited to cases “where – due to circumstances external to the party’s own conduct – it would be unconscionable to enforce the limitation period against the party and gross injustice Appeal: 13-7152 Doc: 43 Filed: 04/08/2014 Pg: 8 of 69 9 would result.” United States v. Sosa, 364 F.3d 507, 512 (4th Cir. 2004).

3. The “Law Library” exception

A prisoner denied access to an adequate prison law library can claim an exception to the 2255 time limit

Judge Matthew F. Kennelly 2020 (federal judge for the UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS WESTERN DIVISION) decision of the Court in U.S. v. Hayes 4 May 2020 <https://www.govinfo.gov/content/pkg/USCOURTS-ilnd-3_19-cv-50104/pdf/USCOURTS-ilnd-3_19-cv-50104-0.pdf> (accessed 29 Jan 2022)

A movant's lack of legal knowledge or training by itself does not justify equitable tolling. Socha, 763 F.3d at 685. Lack of access to a prison law library may, however, amount to an government-created impediment to the filing of a 2255 motion that could entitle a movant to a later start date for the one-year limitation period under section 2255(f)(2), Estremera v. United States, 724 F.3d 773, 776–77 (7th Cir. 2013), or could be a viable basis for equitable tolling, see Socha, 763 F.3d at 686–88.

4. Lots of other exceptions to the 2255 time limit

Courts can and do grant exceptions to the 2255 time limit for lots of reasons

Morgan Suder 2012 (J.D. Candidate, University of San Diego School of Law) Harmonizing Equitable Exceptions: Why Courts Should Recognize an “Actual Innocence” Exception to the AEDPA’s Statute of Limitations, SAN DIEGO LAW REVIEW <https://digital.sandiego.edu/cgi/viewcontent.cgi?article=1284&context=sdlr> (accessed 29 Jan 2022)

Courts generally will equitably toll a statute of limitations when the defendant presents “extraordinary circumstances” beyond the defendant’s control or external to the defendant’s own conduct that make it impossible to file a petition on time. Federal courts have exercised their power to apply equitable tolling to extend the AEDPA’s statute of limitations period for numerous reasons, including improper dismissal of a defendant’s habeas petition, the defendant’s mental incompetence or incapacity, the defendant’s showing of actual innocence, and misconduct or concealment of evidence by state officials.

HARMS / SIGNIFICANCE

1. No Constitutional harm.

Section 2255 with its 1-year time limit does not violate the Constitution’s rule against “Suspension of Habeas Corpus”

Judge Jerome A. Holmes 2013 (federal appellate judge for the 10th Circuit Court of Appeals) 713 F3d 538 Decision of the Court in the case of Abernathy v. Wandes 8 Apr 2013 <https://casetext.com/case/abernathy-v-wandes> (accessed 29 Jan 2022) (brackets in original)

Nevertheless, even if it were settled that the Suspension Clause protects the writ as it exists today, it is still unclear whether precluding Mr. Abernathy from proceeding under [§ 2241](https://casetext.com/statute/united-states-code/title-28-judiciary-and-judicial-procedure/part-vi-particular-proceedings/chapter-153-habeas-corpus/section-2241-power-to-grant-writ) would implicate the Suspension Clause. It is well-established that the Suspension Clause does not prohibit the “substitution of a collateral remedy which is neither inadequate nor ineffective to test the legality of a person's detention.” Swain, [430 U.S. at 381](https://casetext.com/case/swain-v-pressley#p381), [97 S.Ct. 1224](https://casetext.com/case/swain-v-pressley) (emphasis added); cf. Miller v. Marr, [141 F.3d 976, 977](https://casetext.com/case/miller-v-marr#p977) (10th Cir.1998) (“Whether [AEDPA's] one-year limitation period violates the Suspension Clause depends upon whether the limitation period renders the habeas remedy ‘inadequate or ineffective’ to test the legality of detention.” (quoting Swain, [430 U.S. at 381](https://casetext.com/case/swain-v-pressley#p381), [97 S.Ct. 1224](https://casetext.com/case/swain-v-pressley))). And at least as a matter of statutory interpretation—i.e., interpreting the “ineffective or inadequate” language in [§ 2255(e)](https://casetext.com/statute/united-states-code/title-28-judiciary-and-judicial-procedure/part-vi-particular-proceedings/chapter-153-habeas-corpus/section-2255-federal-custody-remedies-on-motion-attacking-sentence)—we have held that [§ 2255](https://casetext.com/statute/united-states-code/title-28-judiciary-and-judicial-procedure/part-vi-particular-proceedings/chapter-153-habeas-corpus/section-2255-federal-custody-remedies-on-motion-attacking-sentence)'s remedy is neither inadequate nor ineffective to test the legality of Mr. Abernathy's detention. See Prost, [636 F.3d at 580](https://casetext.com/case/prost-v-anderson#p580) (holding that the petitioner's “initial [§ 2255](https://casetext.com/statute/united-states-code/title-28-judiciary-and-judicial-procedure/part-vi-particular-proceedings/chapter-153-habeas-corpus/section-2255-federal-custody-remedies-on-motion-attacking-sentence) motion offered him an adequate and effective means for testing [his statutory interpretation] argument”). Thus, for purposes of the Suspension Clause, it would hardly seem clear or obvious that [§ 2255](https://casetext.com/statute/united-states-code/title-28-judiciary-and-judicial-procedure/part-vi-particular-proceedings/chapter-153-habeas-corpus/section-2255-federal-custody-remedies-on-motion-attacking-sentence) would not be an adequate and effective substitute for the writ.

2. No innocent falsely-convicted prisoners harmed

Supreme Court created an exception to the 1-year limit if new evidence of innocence is discovered

Susan Bagdasarova 2013. (attorney) “U.S. Supreme Court Recognizes Actual Innocence Exception to AEDPA” 1 June 2013 (accessed 29 Jan 2022) https://www.americanbar.org/groups/committees/death\_penalty\_representation/project\_press/2013/summer/u-s--supreme-court-recognizes-actual-innocence-exception-to-aedp/#:~:text=Under%20AEDPA%2C%20a%20prisoner%20must,the%20exercise%20of%20due%20diligence.

On May 28, 2013, the U.S. Supreme Court ruled that the Anti-Terrorism and Effective Death Penalty Act (AEDPA), which restricts prisoners’ habeas corpus rights, contains an “actual innocence” exception for petitions filed outside of the law’s strict statute of limitations. Under AEDPA, a prisoner must file a habeas petition within one year of the loss of a direct appeal or within one year of discovering new evidence through the exercise of due diligence. In *McQuiggen v. Perkins*, a 5-4 decision written by Justice Ginsburg, the Court held that “actual innocence, if proved, serves as a gateway through which a petitioner may pass,” meaning that a prisoner who can show proof of innocence may file a petition outside of the statute of limitations and a court may consider the merits of the claims.

Example: McQuiggen. Court of Appeals allowed a 2255 innocence claim with new evidence 8 years after conviction

Susan Bagdasarova 2013. (attorney) “U.S. Supreme Court Recognizes Actual Innocence Exception to AEDPA” 1 June 2013 (accessed 29 Jan 2022) https://www.americanbar.org/groups/committees/death\_penalty\_representation/project\_press/2013/summer/u-s--supreme-court-recognizes-actual-innocence-exception-to-aedp/#:~:text=Under%20AEDPA%2C%20a%20prisoner%20must,the%20exercise%20of%20due%20diligence.

In *McQuiggen*, the Court addressed whether federal courts could consider the habeas petition of Floyd Perkins, who was sentenced to life in prison for murder, when that petition was filed well outside the statute of limitations. While in prison, Mr. Perkins gathered affidavits from three witnesses to support his claim of innocence, but he did not present the evidence to a court until nearly eight years later. A federal district court rejected his petition, stating that Mr. Perkins failed to show diligence in presenting the newly found evidence. His attorneys argued that imposing a filing deadline on a prisoner who seeks to prove innocence would be a fundamental miscarriage of justice. The U.S. Court of Appeals for the Sixth Circuit reversed the ruling, holding that the nature of the actual innocence claim allowed him to present his claim as if it were filed on time.

3. Equitable Tolling preserves fairness

Equitable Tolling allows exceptions to the time limit if needed to uphold fundamental fairness

Morgan Suder 2012 (J.D. Candidate, University of San Diego School of Law) Harmonizing Equitable Exceptions: Why Courts Should Recognize an “Actual Innocence” Exception to the AEDPA’s Statute of Limitations, SAN DIEGO LAW REVIEW (in context, author is talking about statute of limitations under 2255) <https://digital.sandiego.edu/cgi/viewcontent.cgi?article=1284&context=sdlr> (accessed 29 Jan 2022)

Once the statute of limitations on a cause of action expires, a petitioner may no longer initiate a legal proceeding. However, the doctrine of equitable tolling permits a court to exclude a certain period of time that would otherwise count against the limitations period when, for reasons of fundamental fairness, it would be unjust to strictly apply the statute of limitations. Courts may equitably toll a statute of limitations when, despite due diligence, some external factor prevents a party from meeting the strict statutory deadline.

DISADVANTAGES

1. Injustice #1: Unfairness to the defendant

**The defendant is the one accused of wrongdoing, which in this case is the government. It’s unjust to the government, or any defendant, to leave the legal process open indefinitely, where they have to always be expending staff and resources to defend against legal claims. At some point enough is enough and there has to be finality, certainty and closure to ensure justice.**

Endless litigation without closure is unjust

Morgan Suder 2012 (J.D. Candidate, University of San Diego School of Law) Harmonizing Equitable Exceptions: Why Courts Should Recognize an “Actual Innocence” Exception to the AEDPA’s Statute of Limitations, SAN DIEGO LAW REVIEW (in context, author is talking about statute of limitations under 2255) <https://digital.sandiego.edu/cgi/viewcontent.cgi?article=1284&context=sdlr> (accessed 29 Jan 2022)

Statutes of limitations create a bright-line rule that prohibits claims after a certain date, which provides certainty to the parties and ensures structure for the courts. Generally, federal courts have justified statutes of limitations as serving three main purposes—“providing fairness to the defendant, promoting efficiency, and ensuring institutional legitimacy.” First, a petitioner’s claims, even those that are meritorious, must be cut off at some point to provide repose for the defendant.

2. Injustice #2: Unreliable evidence

Statute of limitations ensures credible, accessible evidence, not trying to revisit cases long after memories fade or witnesses are dead

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Additionally, statutes of limitations promote accuracy of the evidence, as plaintiffs must bring forth their claims within a reasonable time frame so as to ensure that evidence is accessible, memories are not forgotten, and witnesses are available.

3. Injustice #3: Court clog

Link: Statute of limitations reduces frivolous claims and reduces court clog

Morgan Suder 2012 (J.D. Candidate, University of San Diego School of Law) Harmonizing Equitable Exceptions: Why Courts Should Recognize an “Actual Innocence” Exception to the AEDPA’s Statute of Limitations, SAN DIEGO LAW REVIEW (in context, author is talking about statute of limitations under 2255) <https://digital.sandiego.edu/cgi/viewcontent.cgi?article=1284&context=sdlr> (accessed 29 Jan 2022)

Furthermore, statutes of limitations reduce the number of frivolous or meritless claims. In turn, by reducing the number of undesirable filings in the court system, a statutory deadline helps alleviate the growing dockets of federal courts.

Link: Clogged courts. Federal appellate court caseloads have doubled since 1971

Prof. Peter S. Menell & Prof. Ryan Vacca 2020. (Menell - Professor of Law and Director, Berkeley Center for Law & Technology, University of California. Vacca - Professor of Law, Univ of New Hampshire School of Law) Revisiting and Confronting the Federal Judiciary Capacity “Crisis”: Charting a Path for Federal Judiciary Reform 1 Jully 2020 CALIFORNIA LAW REVIEW https://scholars.unh.edu/cgi/viewcontent.cgi?article=1438&context=law\_facpub

The number of filed cases per year grew 292% between 1971 and 2017, from 14,761 to 57,872. The number of cases terminated on the merits grew from 13,015 in 1971 to 36,851 in 2017, a 183% increase. As previously discussed, Congress authorized additional circuit court judgeships during this time. The number of appellate judges is based on data from Habel and Scott. These data show how many active and senior circuit court judgeships are actually filled and, as with district judges, treat senior circuit court judges as one quarter of an active-duty circuit court judge. Figure 14 illustrates how many cases were filed, on average, per appellate judge from 1971 through 2017. The average number of cases filed per judge increased from 148 (active judges only) or 142 (active and senior judges) in 1971 to 324 (active judges only) or 278 (active and senior judges) in 2017. Counting only active circuit court judges, this is a 119% increase in filings per judge. Counting active and senior judges results in a 96% increase in filings per judge. Thus, the caseload per judge has roughly doubled since 1971.

Impact: Justice Denied. Court clog leads to judges making decisions in inconsistent ways that deny justice

Dr. Cristoph Engel and Prof. Keren Weinshall 2020. (Engel - Chair of the Advisory Board, Amsterdam Center for Law and Economics; Director of Max Planck Institute for Research on Collective Goods.. Weinshall is Edward S. Silver Chair in Civil Procedure, Hebrew University, Jerusalem) 24 Nov 2020 “Manna from Heaven for Judges: Judges’ Reaction to a Quasi-Random Reduction in Caseload” JOURNAL OF EMPIRICAL LEGAL STUDIES <https://onlinelibrary.wiley.com/doi/full/10.1111/jels.12265> (“heuristics” – in this context, it refers to deciding things based on past personal experience rather than looking independently at the facts of the present case)

Judges are not only rational actors striving to optimize their use of time. Although most of the aforementioned studies focus on judges’ strategic choices of the less time-consuming legal outcome, their decisions may also be affected by the physical and emotional fatigue, decline in cognitive performance, and elevated stress levels associated with high workloads.  Research has shown that under time pressure, judges are more vulnerable to heuristics and biases. For example, rulings were found to be more inconsistent when judges face a high caseload (Norris [2018](https://onlinelibrary.wiley.com/doi/full/10.1111/jels.12265#jels12265-bib-0055)) and busy judges were found to expend less effort by according higher weight to non-legal cues, such as litigants’ race or gender, to determine case outcomes (Guthrie et al. [2000](https://onlinelibrary.wiley.com/doi/full/10.1111/jels.12265#jels12265-bib-0030), [2007](https://onlinelibrary.wiley.com/doi/full/10.1111/jels.12265#jels12265-bib-0031); Rachlinski et al. [2008](https://onlinelibrary.wiley.com/doi/full/10.1111/jels.12265#jels12265-bib-0061)).

4. Injustice #4: Last minute shenanigans

Before the 2255 time limit, prisoners could try to escape or postpone their punishment by filing a claim on the day of their execution

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Prior to the AEDPA, habeas corpus statutes required only that petitioners file their applications for habeas corpus relief without prejudicial delay. Shortly before the AEDPA’s enactment in 1996, the Supreme Court held that a petitioner could even file his initial habeas corpus petition on the day of his scheduled execution.