

No. 09-5327

In The
Supreme Court of the United States

ALBERT HOLLAND, PETITIONER

v.

STATE OF FLORIDA

*ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT*

**BRIEF OF TEXAS, ALABAMA, COLORADO, DELAWARE,
HAWAII, IDAHO, ILLINOIS, INDIANA, IOWA, KANSAS,
KENTUCKY, LOUISIANA, MISSOURI, NEBRASKA, NEVADA,
NEW MEXICO, PENNSYLVANIA, SOUTH DAKOTA,
TENNESSEE, UTAH, WASHINGTON, AND WYOMING
AS AMICI CURIAE IN SUPPORT OF RESPONDENT**

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INTEREST OF AMICI CURIAE

The Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) imposes a one-year statute of limitations for state prisoners filing federal habeas petitions, and dictates how this limitations period is started, restarted, and tolled. See 28 U.S.C. 2244(d). Petitioner Albert Holland argues that federal courts can modify AEDPA's detailed timing rules through the exercise of equitable power. Judicial interference with this legislative scheme deprives amici States of benefits AEDPA was intended to bestow: reduction of delay, protection of finality of state court convictions, and conservation of criminal-justice resources. Seeking to preserve benefits conferred upon them by Congress, 22 amici States respectfully submit this brief in support of respondent Florida.

SUMMARY OF ARGUMENT

Statutes of limitations are customarily subject to equitable tolling, but this Court respects the role of Congress in deciding whether a given limitations period is subject to judicially crafted exceptions. Where there is good reason to believe Congress did not want equitable tolling to apply, courts must honor that wish. AEDPA evinces such an intent to exclude judicial participation, as demonstrated by its detailed rules governing the timing of federal habeas petitions by state prisoners. Accordingly, AEDPA's statute of limitations is not subject to equitable tolling. To hold otherwise denies benefits to the States that Congress intended to confer.

ARGUMENT

The AEDPA Statute Of Limitations Is Not Subject To Equitable Tolling

Petitioner's question presented does not directly inquire whether equitable tolling is compatible with the statute of limitations in 28 U.S.C. 2244(d). See Pet. i; cf. *Lawrence v. Florida*, 549 U.S. 327, 336 (2007) (noting open question); *Pace v. DiGuglielmo*, 544 U.S. 408, 418 n.8 (2005) (same). To grant petitioner's desired relief, however, the Court would have to answer that antecedent question in the affirmative. If the Court reaches the issue, which is fairly included within the question presented, Sup. Ct. R. 14.1(a), it should hold that AEDPA's statute of limitations is not subject to equitable tolling.

A. Statutes Of Limitations Are Not Subject To Equitable Tolling Where There Is Reason To Believe Congress Did Not Want Equitable Tolling To Apply

Any inquiry into equitable tolling must be guided by the statute of limitations Congress has enacted. See, e.g., *John R. Sand & Gravel Co. v. United States*, 552 U.S. 130, 137 (2008); *Bowen v. City of New York*, 476 U.S. 467, 480 (1986); *Am. Pipe & Constr. Co. v. Utah*, 414 U.S. 538, 559 (1974); *Honda v. Clark*, 386 U.S. 484, 500 (1967); *Burnett v. N.Y. Cent. R.R.*, 380 U.S. 424, 426 (1965). This is not to contradict the “hornbook law that limitations periods are customarily subject to equitable tolling,” but rather to acknowledge that courts cannot rewrite limitations periods in a manner “inconsistent with the text of the relevant statute.” *Young v. United States*, 535 U.S. 43, 49 (2002) (internal quotation marks omitted).

In interpreting a statute of limitations, courts apply a “rebuttable presumption of equitable tolling,” *Irwin v. Dep’t of Veterans Affairs*, 498 U.S. 89, 95-96 (1990), so long as the limit is not jurisdictional, see *Bowles v. Russell*, 551 U.S. 205, 214 (2007). Rebuttal of this presumption depends on a sensible question: “Is there good reason to believe that Congress did *not* want the equitable tolling doctrine to apply?” *United States v. Brockamp*, 519 U.S. 347, 350 (1997) (referring to this as “*Irwin’s* question”).

This Court asks *Irwin’s* question when a party asserts that a particular statute of limitations is subject to equitable tolling. In *Brockamp*, 519 U.S. at 348, the Court rejected a request for equitable tolling of a three-year limitations period under 26

U.S.C. 6511 for filing tax-refund claims. In contrast to typical statutes of limitations, which “use fairly simple language” that “can often plausibly [be] read as containing an implied ‘equitable tolling’ exception,” Section 6511 “set[] forth its limitations in a highly detailed technical manner.” *Brockamp*, 519 U.S. at 350. The Court’s examination of the statute demonstrated that equitable tolling could not apply:

Section 6511’s detail, its technical language, the iteration of the limitations in both procedural and substantive forms, and the explicit listing of exceptions, taken together, indicate to us that Congress did not intend courts to read other unmentioned, open-ended, “equitable” exceptions into the statute that it wrote. There are no counter-indications.

Id. at 352. Concluding that “Congress did not intend the ‘equitable tolling’ doctrine to apply to § 6511’s time limitations,” the Court reversed decisions that had tolled that statute of limitations on account of taxpayers’ senility and alcoholism. *Id.* at 354.

Similarly, the Court held in *United States v. Beggerly*, 524 U.S. 38, 48-49 (1998), that a twelve-year statute of limitations in the Quiet Title Act (QTA), 28 U.S.C. 2409a(g), was not subject to equitable tolling. This limitations period did not begin to run until the plaintiff knew or should have known of her claim, leading the Court to conclude that the QTA “already effectively allowed for equitable tolling.” *Beggerly*, 524 U.S. at 48. “Given this fact, and the unusually generous nature of the QTA’s limitations time period, extension of the statutory period by additional equitable tolling would be unwarranted.” *Id.* at 48-49.

These decisions establish that Congress can rebut the presumption of equitable tolling by enacting timing rules that displace judicial participation. In *Brockamp*, a statute’s detailed rules and exceptions did not admit of supplementation by courts. In *Beggerly*, equitable tolling was largely duplicative of what the statute of limitations provided. In both cases, equitable tolling was at odds with the statute of limitations, and therefore disallowed.

B. There Is Reason To Believe Congress Did Not Want Equitable Tolling To Apply To AEDPA’s Detailed Statute Of Limitations

AEDPA imposed a novel limitations period for federal habeas petitions filed by state prisoners. *Mayle v. Felix*, 545 U.S. 644, 654 (2005); Richard H. Fallon, Jr. et al., *Hart and Wechsler’s The Federal Courts and The Federal System* 1215 (6th ed. 2009). From 1867, when Congress gave the first general grant of federal habeas jurisdiction to inquire into detentions pursuant to state law, see Act of Feb. 5, 1867, ch. 28, § 1, 14 Stat. 385, until AEDPA was signed into law in 1996, there was no statute of limitations for collateral attacks on state court convictions. Former Federal Habeas Rule 9(a), which embodied the equitable doctrine of laches, constituted the only pre-AEDPA time limit.¹ See

¹ See Rule 9(a), Rules Governing Section 2254 Cases in the United States District Courts, Act of Sept. 28, 1976, Pub. L. No. 94-426, 90 Stat. 1334, reprinted in 28 U.S.C. 2254 (2000). Rule 9(a) was “deleted as unnecessary in light of the applicable one-year statute of limitations” added by AEDPA. See Committee Notes on Rules—2004 Amendment, 28 U.S.C. 2254 (2006).

Day v. McDonough, 547 U.S. 198, 214-215 (2006) (Scalia, J., dissenting); *Lonchar v. Thomas*, 517 U.S. 314, 322-332 (1996).

AEDPA replaced this permissive, unstructured, judicially driven approach with a detailed set of timing rules, featuring a “1-year period of limitation [for] an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court.” 28 U.S.C. 2244(d)(1). AEDPA’s one-year clock starts to run on “the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review.” 28 U.S.C. 2244(d)(1)(A). Certain enumerated circumstances serve to restart the AEDPA clock, providing a fresh year in which to file a federal habeas petition. The clock restarts where a State creates an impediment to filing a federal habeas petition in violation of federal law, 28 U.S.C. 2244(d)(1)(B); where this Court recognizes a new constitutional right that applies retroactively to cases on collateral review, 28 U.S.C. 2244(d)(1)(C); or where a diligent petitioner discovers the factual predicate of a new claim, 28 U.S.C. 2244(d)(1)(D). In addition, the AEDPA clock is statutorily tolled while a properly filed state habeas petition is pending. 28 U.S.C. 2244(d)(2).

Petitioner and his amici contend that courts should not consider themselves bound by these timing rules, but should instead extend the time for filing federal habeas petitions when equity so requires. Pet’r Br. 36-39; ACLU Amicus Br. 5-32; Legal Historians Amicus Br. 13-14. But cf. *Baldwin County Welcome Ctr. v. Brown*, 466 U.S. 147, 152 (1984) (per curiam) (“Procedural requirements

established by Congress for gaining access to the federal courts are not to be disregarded by courts out of a vague sympathy for particular litigants.”). Under the equitable tolling precedent described in Part A, *supra*, the Court should ask whether there is good reason to believe Congress did not want AEDPA’s statute of limitations subjected to equitable tolling. The statute’s text and purpose reveal that AEDPA does not admit of equitable tolling.²

The AEDPA clock operates according to a detailed set of statutorily enumerated rules. See 28 U.S.C. 2244(d)(1)(A)-(D), 2244(d)(2). One wonders why Congress would bother drafting such rules if it intended judges to set them aside on an ad hoc basis. As Judge Boudin has noted:

[S]ection 2244(d) comprises six paragraphs defining its one-year limitations period in detail and adopting very specific exceptions. Congress likely did not conceive that the courts would add new exceptions and it is even more doubtful that it would have approved of such an effort. AEDPA reflects Congress’ view that the courts were being

² In holding to the contrary, some courts of appeals have ignored this Court’s equitable tolling decisions, relying instead on the following logical fallacy: If a limitations period is jurisdictional, then it cannot be equitably tolled. AEDPA’s limitations period is not jurisdictional. Therefore, AEDPA’s limitations period can be tolled. See, *e.g.*, *Smith v. McGinnis*, 208 F.3d 13, 17 (2d Cir. 2000) (per curiam); *Davis v. Johnson*, 158 F.3d 806, 810-811 (5th Cir. 1998); *Miller v. N.J. State Dep’t of Corrs.*, 145 F.3d 616, 617-618 (3d Cir. 1998); *Miller v. Marr*, 141 F.3d 976, 978 (10th Cir. 1998).

too generous with habeas relief and that the whole system needed to be tightened up.

David v. Hall, 318 F.3d 343, 346 (1st Cir. 2003) (citation omitted). AEDPA thus stands in contrast to the relatively simple statutes of limitations in petitioner's appendix. Pet'r Br. App. 1-16.³ The level of detail used to define AEDPA's limitations period suggests that Congress rejected the background principle of equitable tolling when it enacted the statute. See *Brockamp*, 519 U.S. at 350-353. See also *Who is on Trial? Conflicts Between the Federal and State Judicial Systems in Criminal Cases: Hearing on H.R. 3777 Before the Gov't Info., Justice, and Agric. Subcomm. of the H. Comm. on Gov't Operations*, 100th Cong. 51-53 (1988) (statement of Paul G. Cassell, Associate Deputy Att'y Gen.) (explaining that AEDPA-like habeas reform legislation proposed by the Department of Justice, which imposed detailed timing rules very similar to

³ See, e.g., Clayton Act, 15 U.S.C. 15b ("Any action to enforce any cause of action under . . . this title shall be forever barred unless commenced within four years after the cause of action accrued."); Torture Victim Protection Act, § 2(c), 28 U.S.C. 1350 note (2006) ("No action shall be maintained under this section unless it is commenced within 10 years after the cause of action arose."); Railway Labor Act, 45 U.S.C. 153(r) ("All actions at law based upon the provisions of this section shall be begun within two years from the time the cause of action accrues under the award of the division of the Adjustment Board, and not after."); Jones Act, 46 U.S.C. 30106 ("Except as otherwise provided by law, a civil action for damages for personal injury or death arising out of a maritime tort must be brought within 3 years after the cause of action arose.").

those later codified in 28 U.S.C. 2244(d), “covered every exception which we feel is necessary”).

AEDPA’s comprehensive rules for restarting and tolling the one-year limitations period cover much of the space that equitable tolling might otherwise occupy. As Judge Posner has noted:

[S]ection 2244(d)(1) already contains an equitable-tolling provision, subsection (D), which postpones the running of the one-year limitation for the filing of a petition for habeas corpus to “the [earliest] date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.” Given this and other express tolling provisions (28 U.S.C. §§ 2244(d)(1)(B), (C), (2)), it is unclear what room remains for importing the judge-made doctrine of equitable tolling * * * .

Taliani v. Chrans, 189 F.3d 597, 598 (7th Cir. 1999). It is difficult to imagine why Congress would go to the trouble of codifying timing rules that a court could just as easily apply by way of standard equitable tolling practice — unless that codification was intended to take the place of a more expansive and open-ended doctrine grounded in equity. See *Beggerly*, 524 U.S. at 48-49.

Amicus curiae ACLU disputes the assertion that Sections 2244(d)(1)(B) and 2244(d)(1)(D) are statutory substitutes for equitable tolling. According to ACLU, these provisions are statutes of repose that impose a one-year cap on petitioners who seek equitable tolling due to a state-created impediment or newly discovered evidence. See ACLU Amicus Br. 13-18. This interpretation does not withstand

scrutiny. A one-year statutory cap would be redundant, because a petitioner who sits on his claim for an entire year after escaping a filing impediment or discovering new evidence will be denied equitable tolling for want of diligence. Moreover, ACLU fails to explain why Congress would cap the most egregious equitable tolling scenarios — those involving victims of unconstitutional state impediments — but allow all other petitioners unfettered access to the courts, including those whose tardiness was caused by negligence.

That Congress would object to equitable tolling of AEDPA's limitations period is also apparent from the purpose of that provision. From 1867 to 1996, legislative silence left the judiciary to guard against dilatory filing of federal habeas petitions by state prisoners. See *Lonchar*, 517 U.S. at 323. The courts did nothing in that regard, aside from applying equitable laches principles under former Federal Habeas Rule 9(a), and delay was the natural consequence. See, e.g., *Day*, 547 U.S. at 215 (Scalia, J., dissenting) (noting that “lower courts regularly entertained petitions filed after even extraordinary delays,” and recounting delays of 24, 36, and 40 years); *Heflin v. United States*, 358 U.S. 415, 420 (1959) (Stewart, J., concurring) (“[I]n habeas corpus, there is no statute of limitations [and] the doctrine of laches is inapplicable.”); *United States v. Smith*, 331 U.S. 469, 475 (1947) (“[H]abeas corpus provides a remedy * * * without limit of time.”).

The long delays during this period of judicial oversight elicited an implicit repudiation from Congress, in the form of AEDPA. See *Mayle*, 545 U.S. at 662 (noting that Congress “adopted a tight

time line” in Section 2244(d) “to advance the finality of criminal convictions”); *Duncan v. Walker*, 533 U.S. 167, 179 (2001) (noting that Section 2244(d)(1) “reduces the potential for delay on the road to finality”). To read AEDPA as an invitation to inter-branch collaboration, whereby the judiciary supplements the legislature’s timing rules through equitable tolling, is to ignore the historical context from which the statute emerged. Congress appropriately displaced judge-made timing rules by enacting AEDPA, and the federal courts should abide by that decision. Cf. *Felker v. Turpin*, 518 U.S. 651, 664 (1996) (“[J]udgments about the proper scope of the writ are ‘normally for Congress to make.’” (quoting *Lonchar*, 517 U.S. at 323)).⁴

There consequently is good reason to believe Congress did not want AEDPA’s statute of limitations subjected to equitable tolling. In line with its precedent, this Court should therefore hold that 28 U.S.C. 2244(d) cannot be equitably tolled.

⁴ ACLU suggests in a footnote that the proposed interpretation of 28 U.S.C. 2244(d)(1) may violate the Suspension Clause, U.S. Const. art. I, § 9, cl. 2. See ACLU Br. 10 n.8. Constitutional avoidance is not a serious concern here, because the statute of limitations in question applies only to state prisoners seeking postconviction review. See Richard H. Fallon, Jr. et al., *Hart and Wechsler’s The Federal Courts and The Federal System* 1238-1239 (6th ed. 2009) (explaining why a petitioner complaining of state custody pursuant to a criminal conviction lacks a constitutional right to federal habeas review).

**C. Equitable Tolling Of AEDPA's Statute Of
Limitations Frustrates Congress's Intent
To Relieve States Of Significant Burdens**

Congress enacted AEDPA to limit delays, expedite the finality of state court judgments, and conserve limited state criminal-justice resources. See, e.g., *Day*, 547 U.S. at 205-206; *Duncan*, 533 U.S. at 179. Equitable tolling of the limitations period in 28 U.S.C. 2244(d) impedes these worthwhile goals.

Equitable tolling, which by definition prolongs habeas proceedings beyond the bounds defined by AEDPA, inappropriately delays resolution of a petitioner's claims. Litigation concerning equitable tolling is fact-intensive and case-specific, and therefore takes a great deal of time. See, e.g., *Alexander v. Cockrell*, 294 F.3d 626, 629 (5th Cir. 2002) (per curiam) ("Courts must consider the individual facts and circumstances of each case in determining whether equitable tolling is appropriate."). If AEDPA is subject to equitable tolling, a petitioner has only to allege facts that would entitle him to such relief to receive an evidentiary hearing. See *Laws v. Lamarque*, 351 F.3d 919, 922-923 (9th Cir. 2003). Such hearings, which take place after the AEDPA clock has expired, add delay of the sort Congress sought to remove.

Equitable tolling also undermines Congress's intent to protect the States' "well-recognized interest in the finality of state court judgments." *Duncan*, 533 U.S. at 179. "Finality is essential to both the retributive and the deterrent functions of criminal law." *Calderon v. Thompson*, 523 U.S. 538, 555 (1998). Equitable tolling not only prolongs uncertainty concerning the finality of state court

judgments, but it also subjects those judgments to greater risk of unwarranted reversal. The longer collateral review lasts, the greater the risk that “[p]assage of time, erosion of memory, and dispersion of witnesses” will preclude retrial and “reward the accused with complete freedom from prosecution.” *Engle v. Isaac*, 456 U.S. 107, 127-128 (1982); see also *David*, 318 F.3d at 347 (“There is a strong public interest in the prompt assertion of habeas claims. Normally, the grant of habeas relief leaves the state free to retry the petitioner, but this becomes increasingly hard to do as memories fade, evidence disperses and witnesses disappear.”).

Finally, equitable tolling has predictably yielded a great deal of side litigation, thereby taxing the resources of the States. Approximately 20% of the federal habeas petitions filed by state prisoners are dismissed as time-barred under 28 U.S.C. 2244(d). See Richard H. Fallon, Jr. et al., *Hart and Wechsler’s The Federal Courts and The Federal System* 1215 (6th ed. 2009). When these untimely petitioners assert an entitlement to equitable tolling, they impose a burden on the States against whom they litigate, and on the federal courts that must resolve their fact-specific claims. To take one rough statistic, a January 29, 2010 search of the Westlaw DCT database for [AEDPA & “equitable tolling”] returned 8820 documents, while the same query yielded 1138 documents from the Westlaw CTA database. Even after the AEDPA clock has run out, petitioners use equitable tolling to fight about their time having ended, at great expense to the States.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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