Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

MAGWOOD *v.* PATTERSON, WARDEN, ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

No. 09–158. Argued March 24, 2010—Decided June 24, 2010

Petitioner Magwood was sentenced to death for murder. After the Alabama courts denied relief on direct appeal and in postconviction proceedings, he sought federal habeas relief. The District Court conditionally granted the writ as to his sentence, mandating that he be released or resentenced. The state trial court sentenced him to death a second time. He filed another federal habeas application, challenging this new sentence on the grounds that he did not have fair warning at the time of his offense that his conduct would permit a death sentence under Alabama law, and that his attorney rendered ineffective assistance during the resentencing proceeding. The District Court once again conditionally granted the writ. The Eleventh Circuit reversed, holding in relevant part that Magwood's challenge to his new death sentence was an unreviewable "second or successive" challenge under 28 U. S. C. §2244(b) because he could have raised his fair-warning claim in his earlier habeas application.

Held: The judgment is reversed and the case is remanded.

555 F. 3d 968, reversed and remanded.

JUSTICE THOMAS delivered the opinion of the Court, except as to Part IV–B, concluding that because Magwood's habeas application challenges a new judgment for the first time, it is not "second or successive" under §2244(b). Pp. 8–15, 17–22.

(a) This case turns on when a claim should be deemed to arise in a "second or successive habeas corpus application." §§2244(b)(1), (2). The State contends that §2244(b), as amended by the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), should be read to bar claims that a prisoner had a prior opportunity to present. Under this "one opportunity" rule, Magwood's fair-warning claim was "sec-

ond and successive" because he had an opportunity to raise it in his first application but did not. Magwood counters that §2244(b) should not apply to a first application challenging a new judgment intervening between habeas applications. This Court agrees. The phrase "second or successive" is not defined by AEDPA and it is a "term of art." *Slack* v. *McDaniel*, 529 U. S. 473, 486. To determine its meaning, the Court looks first to the statutory context. Section 2244(b)'s limitations apply only to a "habeas corpus application under §2254," *i.e.,* an application on "behalf of a person in custody pursuant to the judgment of a State court," §2254(b)(1). Both §2254(b)'s text and the relief it provides indicate that "second or successive" must be interpreted with respect to the judgment challenged. A §2254 petitioner "seeks invalidation . . . of the judgment authorizing [his] confinement," *Wilkinson* v. *Dotson*, 544 U. S. 74, 83. If a conditional writ is granted, "the State may seek a *new* judgment (through a new trial or a new sentencing proceeding)." *Ibid.* The State errs in contending that, if §2254 is relevant at all, "custody" and not "judgment," is the proper reference because unlawful "custody" is the "substance" requirement for habeas relief. This argument is unpersuasive. Section 2254 articulates the kind of custody that may be challenged under §2254. Because §2254 applies only to custody pursuant to a state-court judgment, that "judgment" is inextricable and essential to relief. It is a requirement that distinguishes §2254 from other statutes permitting constitutional relief. See, *e.g.,* §§2255, 2241. The State's "custody"-based rule is also difficult to justify because applying "second or successive" to any subsequent application filed before a prisoner's release would require a prisoner who remains in continuous custody for an unrelated conviction to satisfy §2244(b)'s strict rules to challenge the unrelated conviction *for the first time.* Nothing in the statutory text or context supports such an anomalous result. Pp. 8–13.

(b) This Court is also not convinced by the State's argument that a "one opportunity" rule would be consistent with the statute and should be adopted because it better reflects AEDPA's purpose of preventing piecemeal litigation and gamesmanship. AEDPA uses "second or successive" to modify "application," not "claim" as the State contends, and this Court has refused to adopt an interpretation of §2244(b) that would "elid[e] the difference between an 'application' and a 'claim,' " *Artuz* v. *Bennett*, 531 U. S. 4, 9. The State's reading also reflects a more fundamental error. It would undermine or render superfluous much of §2244(b)(2). In some circumstances, it would increase the restrictions on review by applying pre-AEDPA abuse-of-the-writ rules where §2244(b)(2) imposes no restrictions. In others, it would decrease the restrictions on review by applying more lenient

Syllabus

pre-AEDPA abuse-of-the-writ rules where §2244(b) mandates stricter requirements. Pp. 13–15.

(c) This Court's interpretation of §2244(b) is consistent with its precedents. Because none of the pre-AEDPA cases that the State invokes, *e.g., Wong Doo* v. *United States*, 265 U. S. 239, applies "second or successive" to an application challenging a new judgment, these cases shed no light on the question presented here. Nor do post-AEDPA cases contradict the approach adopted here. Only *Burton* v. *Stewart*, 549 U. S. 147, comes close to addressing the threshold question whether an application is "second or successive" if it challenges a new judgment, and that decision confirms that the existence of a new judgment is dispositive. In holding that both of the petitioner's habeas petitions had challenged the same judgment, this Court in *Burton* expressly recognized that had there been a new judgment intervening between the habeas petitions, the result might have been different. Here, there is such an intervening judgment. This is Magwood's first application challenging that intervening judgment. Magwood challenges not the trial court's error in his first sentencing, but the court's new error when it conducted a full resentencing and reviewed the aggravating evidence afresh. Pp. 15, 17–21.

(d) Because Magwood has not attempted to challenge his underlying conviction, the Court has no occasion to address the State's objection that this reading of §2244(b) allows 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. Nor does the Court address whether Magwood's fair-warning claim is procedurally defaulted or whether the Eleventh Circuit erred in rejecting his ineffective-assistance-of-counsel claim. Pp. 21–22.

THOMAS, J., delivered the opinion of the Court, except as to Part IV–B. SCALIA, J., joined in full, and STEVENS, BREYER, and SOTOMAYOR, JJ., joined, except as to Part IV–B. BREYER, J., filed an opinion concurring in part and concurring in the judgment, in which STEVENS and SOTOMAYOR, JJ., joined. KENNEDY, J., filed a dissenting opinion, in which ROBERTS, C. J., and GINSBURG and ALITO, JJ., joined.