

Gonzalez Vs. Thaler

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Appellant : Gonzalez

Respondent : Thaler

Judgement :

Gonzalez v. Thaler

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SUPREME COURT OF THE UNITED STATES

SYLLABUS

GONZALEZ v. THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION

certiorari to the united states court of appeals for the fifth circuit

No. 10-895. Argued November 2, 2011-Decided January 10, 2012

After the intermediate state appellate court affirmed his state-court conviction, petitioner Gonzalez allowed his time for seeking discretionary review with the States highest court for criminal appeals to expire. Roughly six weeks later, the intermediate state appellate court issued its mandate. When Gonzalez subsequently sought federal habeas relief, the District Court dismissed Gonzalezs petition as time barred by the 1-year statute of limitations in the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA). Under 28 U. S. C. 2244(d)(1)(A), state prisoners have one year to file federal habeas petitions running from the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review. The District Court held that Gonzalezs judgment had become final when his time for seeking discretionary review in the States highest court expired, and that running the limitations period from that date, his petition was untimely.

Under AEDPA, a habeas petitioner must obtain a certificate of appealability (COA) to appeal a district courts final order in a habeas proceeding. 28 U. S. C. 2253(c)(1). The COA may issue only if the petitioner has made a substantial showing of the denial of a constitutional right, 2253(c)(2), and shall indicate which specific issue satisfies that showing, 2253(c)(3). A Fifth Circuit judge granted Gonzalez a COA on the question whether his petition was timely. The issued COA, however, failed to indicate a constitutional issue.

The Fifth Circuit affirmed, holding that Gonzalezs petition was untimely because the limitations period begins to run for petitioners who fail to appeal to a States highest court when the time for seeking further direct review in the state court expires. The Fifth Circuit did not mention, and the State did not raise, the 2253(c)(3) defect. When Gonzalez petitioned this Court for review, the State argued for the first time that the Fifth Circuit lacked jurisdiction to adjudicate Gonzalezs appeal based on the 2253(c)(3) defect.

HELD

1. Section 2253(c)(3) is a mandatory but nonjurisdictional rule. A COAs failure to indicate a constitutional issue does not deprive a Court of Appeals of jurisdiction to adjudicate the appeal. Pp. 413.

(a) A rule is jurisdictional [i]f the Legislature clearly states that a threshold limitation on a statutes scope shall count as jurisdictional, *Arbaugh v. Y & H Corp.*, 546 U. S. 500. Here, the only clear jurisdictional language in 2253(c) appears in 2253(c)(1). The parties agree that 2253(c)(1)s plain terms make the issuance of a COA a jurisdictional prerequisite. The parties also agree that 2253(c)(2), which speaks only to when a COA may issue and does not contain 2253(c)(1)s jurisdictional terms, is nonjurisdictional. It follows that 2253(c)(3) is also nonjurisdictional. Like 2253(c)(2), it reflects a threshold condition for issuing a COA, and does not speak in jurisdictional terms or refer . . . to the jurisdiction of the [appeals] courts. *Arbaugh*, 546 U. S., at 515. Jurisdictional treatment also would thwart Congresss intent in AEDPA to eliminate delays in the federal habeas review process. *Holland v. Florida*, 560 U. S. ___, ___. Once a judge has determined that a COA is warranted and resources are deployed in briefing and argument, the COA has fulfilled its gatekeeping function. Pp. 49.

(b) The States contrary arguments are unpersuasive. Section 2253(c)(3)s cross-reference to 2253(c)(1) does not mean 2253(c)(3) can be read as part of 2253(c)(1), as Congress set off the requirements in distinct paragraphs with distinct terms. The word shall in 2253(c)(3), meanwhile, underscores the rules mandatory nature, but not all mandatory rules are jurisdictional. Nor does 2253(c)(3)s mere proximity to other jurisdictional provisions turn a rule that speaks in nonjurisdictional terms into a jurisdictional hurdle. Finally, the Court rejects the States attempt to analogize a COA to a notice of appeal. Pp. 1013.

2. For a state prisoner who does not seek review in a States highest court, the judgment becomes final for purposes of 2244(d)(1)(A) on the date that the time for seeking such review expires. Pp. 1319.

(a) In *Clay v. United States*, 537 U. S. 522, the Court held that a federal conviction becomes final when this Court affirms a conviction on the merits on direct review or denies a petition for a writ of certiorari, or, if a petitioner does not

seek certiorari, when the time for filing a certiorari petition expires. *Id.*, at 527. In *Jimenez v. Quarterman*, 555 U. S. 113, the Court adopted Clays most natural reading of the statutory text in construing the similar language of 2244(d)(1)(A). *Id.*, at 119. The Court made no mention of when Jimenezs appeal concluded and held that his judgment became final when his time for seeking certiorari expired. Section 2244(d)(1)(A) thus consists of two prongs corresponding to two categories of petitioners. For petitioners pursuing direct review all the way to this Court, the judgment becomes final at the conclusion of direct review, when this Court affirms a conviction on the merits or denies certiorari. For all other petitioners, the judgment becomes final at the expiration of the time for seeking such review, when the time for pursuing direct review in this Court, or in state court, expires. Because Gonzalez did not appeal to the States highest court, his judgment became final when his time for seeking review with that court expired. Pp. 13-15.

(b) Gonzalez argues that courts should determine both prongs for every petitioner who does not seek certiorari, then start the 1-year clock from the latest of the two dates. Gonzalez further contends that when a petitioner does not seek certiorari, state law should define the conclusion of direct review. The words latest of, however, appear in 2244(d)(1), not 2244(d)(1)(A). Nothing in 2244(d)(1)(A) contemplates any conflict between the two prongs or instructs that the later of the two shall prevail. Gonzalezs approach of scouring each States laws and cases to determine how the State defines finality, moreover, would contradict the uniform meaning of conclusion of direct review that Clay and Jimenez accepted. It will be a rare situation in which a delay in the mandates issuance is so severe as to prevent a petitioner from filing a federal habeas petition within a year or requesting a stay and abeyance. Finally, the Court rejects Gonzalezs alternative argument that his petition is timely because it was filed within a year of when his time for seeking certiorari review expired. Pp. 1519.

623 F. 3d 222, affirmed.

Sotomayor, J., delivered the opinion of the Court, in which Roberts, C. J., and Kennedy, Thomas, Ginsburg, Breyer, Alito, and Kagan, JJ., joined. Scalia, J., filed a dissenting opinion.

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SUPREME COURT OF THE UNITED STATES

No. 10-895

RAFAEL ARRIAZA GONZALEZ, PETITIONER v. RICK THALER, DIRECTOR,
TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL
INSTITUTIONS DIVISION

on writ of certiorari to the united states court of appeals for the fifth circuit

[January 10, 2012]

Justice Sotomayor delivered the opinion of the Court.

This case interprets two provisions of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA). The first, 28 U. S. C. 2253(c), provides that a habeas petitioner must obtain a certificate of appealability (COA) to appeal a federal district courts final order in a habeas proceeding. 2253(c)(1). The COA may issue only if the petitioner has made a substantial showing of the denial of a constitutional right, 2253(c)(2), and shall indicate which specific issue satisfies that showing. 2253(c)(3). We hold that 2253(c)(3) is not a jurisdictional requirement. Accordingly, a judges failure to indicate the requisite constitutional issue in a COA does not deprive a court of appeals of subject-matter jurisdiction to adjudicate the habeas petitioners appeal.

The second provision, 28 U. S. C. 2244(d)(1)(A), establishes a 1-year limitations period for state prisoners to file federal habeas petitions, running from the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review. We hold that, for a state prisoner who does not seek review in a States highest court, the judgment becomes final on the date that the time for seeking such review expires.

I

Petitioner Rafael Gonzalez was convicted of murder in Texas state court. The intermediate state appellate court, the Texas Court of Appeals, affirmed Gonzalezs conviction on July 12, 2006. Gonzalez then allowed his time for seeking discretionary review with the Texas Court of Criminal Appeals (Texas CCA)-the States highest court for criminal appeals-to expire on August 11, 2006. Tex. Rule App. Proc. 68.2(a) (2011). The Texas Court of Appeals issued its mandate on September 26, 2006.

After Gonzalez, proceeding pro se, petitioned unsuccessfully for state habeas relief, he filed a federal habeas petition under 28 U. S. C. 2254 on January 24, 2008, in the U. S. District Court for the Northern District of Texas. His petition alleged, inter alia, that the nearly 10-year delay between his indictment and trial violated his Sixth Amendment right to a speedy trial. The District Court, without discussing Gonzalezs constitutional claims, dismissed Gonzalezs petition as time barred by the 1-year statute of limitations in 2244(d)(1)(A). Although Gonzalez argued that his judgment had not become final until the Texas Court of Appeals issued its mandate, the District Court held that Gonzalezs judgment had become final when his time for seeking discretionary review in the Texas CCA expired on August 11, 2006. Counting from that date, and tolling the limitations period for the time during which Gonzalezs state habeas petition was pending, Gonzalezs limitations period elapsed on December 17, 2007-over a month before he filed his federal habeas petition. The District Court denied a COA.

Gonzalez applied to the U. S. Court of Appeals for the Fifth Circuit for a COA on two grounds: (1) his habeas petition was timely, and (2) his Sixth Amendment speedy-trial right was violated. A Court of Appeals judge granted a COA on the

question whether the habeas application was timely filed because Gonzalezs conviction became final, and thus the limitations period commenced, on the date the intermediate state appellate court issued its mandate. App. 347. The COA did not mention the Sixth Amendment question.

The Court of Appeals affirmed. 623 F. 3d 222 (2010). Acknowledging that a sister Circuit had run the limitations period from the date of a state courts issuance of a mandate, the Court of Appeals deemed the mandates issuance irrelevant to determining finality under 2244(d)(1)(A). *Id.*, at 224, 226 (disagreeing with *Riddle v. Kemna*, 523 F. 3d 850 (CA8 2008) (en banc)). The Court of Appeals held that because a judgment becomes final at the conclusion of direct review or the expiration of the time for seeking such review, 2244(d)(1)(A), the limitations period begins to run for petitioners who fail to appeal to a States highest court when the time for seeking further direct review in the state court expires. The Court of Appeals therefore concluded that Gonzalezs conviction became final on August 11, 2006, and his habeas petition was time barred.

The Court of Appeals did not address Gonzalezs Sixth Amendment claim or discuss whether the COA had been improperly issued. Nor did the State allege any defect in the COA or move to dismiss for lack of jurisdiction.

Gonzalez petitioned this Court for a writ of certiorari. In its brief in opposition, the State argued for the first time that the Court of Appeals lacked jurisdiction to adjudicate Gonzalezs appeal because the COA identified only a procedural issue, without also indicat[ing] a constitutional issue as required by 2253(c)(3). We granted certiorari to decide two questions, both of which implicate splits in authority: (1) whether the Court of Appeals had jurisdiction to adjudicate Gonzalezs appeal, notwithstanding the 2253(c)(3) defect;[[1](#)] and (2) whether Gonzalezs habeas petition was time barred under 2244(d)(1) due to the date on which his judgment became final.[[2](#)] 564 U. S. ____ (2011).

II

We first consider whether the Court of Appeals had juris- diction to adjudicate Gonzalezs appeal.

A

Section 2253, as amended by AEDPA, governs appeals in habeas corpus proceedings. The first subsection, 2253(a), is a general grant of jurisdiction, providing that district courts final orders in habeas proceedings shall be subject to review, on appeal, by the court of appeals. 28 U. S. C. 2253(a). The second, 2253(b), limits jurisdiction over a particular type of final order. See 2253(b) (There shall be no right of appeal from a final order in a proceeding to test the validity of a warrant [of] remov[al] . . .). This case concerns the third, 2253(c), which provides:

(1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals . . .

.....

(2) A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.

(3) The certificate of appealability under paragraph (1) shall indicate which specific issue or issues satisfy the showing required by paragraph (2).

When, as here, the district court denies relief on procedural grounds, the petitioner seeking a COA must show both that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling. *Slack v. McDaniel*, 529 U. S. 473, 484 (2000).

In this case, the Court of Appeals judge granted a COA that identified a debatable procedural ruling, but did not indicate the issue on which Gonzalez had made a substantial showing of the denial of a constitutional right, as required by 2253(c)(3). The question before us is whether that defect deprived the Court of Appeals of the power to adjudicate Gonzalezs appeal. We hold that it did not.

This Court has endeavored in recent years to bring some discipline to the use of the term jurisdictional. *Henderson v. Shinseki*, 562 U. S. ____, ____ (2011) (slip op., at 5). Recognizing our less than meticulous use of the term in the past, we have

pressed a stricter distinction between truly jurisdictional rules, which govern a courts adjudicatory authority, and nonjurisdictional claim-processing rules, which do not. *Kontrick v. Ryan*, 540 U. S. 443-455 (2004). When a requirement goes to subject-matter jurisdiction, courts are obligated to consider sua sponte issues that the parties have disclaimed or have not presented. See *United States v. Cotton*, 535 U. S. 625, 630 (2002). Subject-matter jurisdiction can never be waived or forfeited. The objections may be resurrected at any point in the litigation, and a valid objection may lead a court midway through briefing to dismiss a complaint in its entirety. [M]any months of work on the part of the attorneys and the court may be wasted. *Henderson*, 562 U. S., at ____ (slip op., at 5). Courts, we have said, should not lightly attach those drastic consequences to limits Congress has enacted. *Ibid.*

We accordingly have applied the following principle: A rule is jurisdictional [i]f the Legislature clearly states that a threshold limitation on a statutes scope shall count as jurisdictional. *Arbaugh v. Y & H Corp.*, 546 U. S. 500, 515 (2006). But if Congress does not rank a statutory limitation on coverage as jurisdictional, courts should treat the restriction as nonjurisdictional. *Id.*, at 516.[[3](#)] That clear-statement principle makes particular sense in this statute, as we consider-against the backdrop of 2253(a)s clear jurisdictional grant to the courts of appeals and 2253(b)s clear limit on that grant-the extent to which Congress intended the COA process outlined in 2253(c) to further limit the courts of appeals jurisdiction over habeas appeals.

Here, the only clear jurisdictional language in 2253(c) appears in 2253(c)(1). As we explained in *Miller-El v. Cockrell*, 537 U. S. 322 (2003), 2253(c)(1)s plain terms-Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals-establish that until a COA has been issued federal courts of appeals lack jurisdiction to rule on the merits of appeals from habeas petitioners. *Id.*, at 336. The parties thus agree that 2253(c)(1) is jurisdictional.

The parties also agree that 2253(c)(2) is nonjurisdictional.[[4](#)] That is for good reason. Section 2253(c)(2) speaks only to when a COA may issue-upon a

substantial showing of the denial of a constitutional right. It does not contain 2253(c)(1)s jurisdictional terms. See *Russello v. United States*, 464 U. S. 16, 23 (1983) ([W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally . . .). And it would be passing strange if, after a COA has issued, each court of appeals adjudicating an appeal were dutybound to revisit the threshold showing and gauge its substantial[ity] to verify its jurisdiction. That inquiry would be largely duplicative of the merits question before the court.

It follows that 2253(c)(3) is nonjurisdictional as well. Like 2253(c)(2), it too reflects a threshold condition for the issuance of a COA-the COAs indication of which specific issue or issues satisfy the showing required by paragraph (2). It too does not speak in jurisdictional terms or refer in any way to the jurisdiction of the [appeals] courts. *Arbaugh*, 546 U. S., at 515 (internal quotation marks omitted). The unambiguous jurisdictional terms of 2253(a), (b), and (c)(1) show that Congress would have spoken in clearer terms if it intended 2253(c)(3) to have similar jurisdictional force. Instead, the contrast underscores that the failure to obtain a COA is jurisdictional, while a COAs failure to indicate an issue is not. A defective COA is not equivalent to the lack of any COA.

It is telling, moreover, that Congress placed the power to issue COAs in the hands of a circuit justice or judge.[[5](#)] It would seem somewhat counterintuitive to render a panel of court of appeals judges powerless to act on appeals based on COAs that Congress specifically empowered one court of appeals judge to grant. Indeed, whereas 2253(c)(2)s substantial-showing requirement at least describes a burden that the applicant seeking a COA bears, 2253(c)(3)s indication requirement binds only the judge issuing the COA. Notably, *Gonzalez* advanced both the timeliness and Sixth Amendment issues in his application for a COA. A petitioner, having successfully obtained a COA, has no control over how the judge drafts the COA and, as in *Gonzalez*s case, may have done everything required of him by law. That fact would only compound the unfai[r] prejudice resulting from the sua sponte dismissals and remands that jurisdictional treatment would entail. *Henderson*, 562 U. S., at ____ (slip op., at 5).[[6](#)]

Treating 2253(c)(3) as jurisdictional also would thwart Congress intent in AEDPA to eliminate delays in the federal habeas review process. *Holland v. Florida*, 560 U. S. ___, ___ (2010) (slip op., at 16). The COA process screens out issues unworthy of judicial time and attention and ensures that frivolous claims are not assigned to merits panels. Once a judge has made the determination that a COA is warranted and resources are deployed in briefing and argument, however, the COA has fulfilled that gatekeeping function. Even if additional screening of already-issued COAs for 2253(c)(3) defects could further winnow the cases before the courts of appeals, that would not outweigh the costs of further delay from the extra layer of review. This case, in which the alleged defect would be dispositive, exemplifies those inefficiencies; the State requests that we vacate and remand with instructions to dismiss the appeal based on a 2253(c)(3) defect that it raised for the first time in response to a petition for certiorari. And delay would be particularly fruitless in the numerous cases where, as here, the district court dismissed the petition on procedural grounds and the court of appeals affirms, without having to address the omitted constitutional issue at all.

B

The State, aided by the United States as *amicus curiae*, makes several arguments in support of jurisdictional treatment of 2253(c)(3). None is persuasive.

First, the State notes that although 2253(c)(3) does not speak in jurisdictional terms, it refers back to 2253(c)(1), which does. The State argues that it is as if 2253(c)(1) provided: Unless a circuit justice or judge issues a certificate of appealability that shall indicate the specific issue or issues that satisfy the showing required by paragraph (2), an appeal may not be taken to the court of appeals. The problem is that the statute provides no such thing. Instead, Congress set off the requirements in distinct paragraphs and, rather than mirroring their terms, excluded the jurisdictional terms in one from the other. Notably, the State concedes that 2253(c)(2) is nonjurisdictional, even though it too cross-references 2253(c)(1) and is cross-referenced by 2253(c)(3).

Second, the State seizes on the word shall in 2253(c)(3), arguing that an omitted indication renders the COA no COA at all. But calling a rule

nonjurisdictional does not mean that it is not mandatory or that a timely objection can be ignored. If a party timely raises the COAs failure to indicate a constitutional issue, the court of appeals panel must address the defect by considering an amendment to the COA or remanding to the district judge for specification of the issues.[[7](#)] This Court, moreover, has long rejected the notion that all mandatory prescriptions, however emphatic, are . . . properly typed jurisdictional. *Henderson*, 562 U. S., at ___ (slip op., at 9); see also *Dolan v. United States*, 560 U. S. ___, ___ (2010) (slip op., at 5) (statutes reference to shall alone does not render statutory deadline jurisdictional). Nothing in 2253(c)(3)s prescription establishes that an omitted indication should remain an open issue throughout the case.

Third, the United States argues that the placement of 2253(c)(3) in a section containing jurisdictional provisions signals that it too is jurisdictional. In characterizing certain requirements as nonjurisdictional, we have on occasion observed their separat[ion] from jurisdictional provisions. E.g., *Reed Elsevier, Inc. v. Muchnick*, 559 U. S. ___, ___ (2010) (slip op., at 7); *Arbaugh*, 546 U. S., at 515. The converse, however, is not necessarily true: Mere proximity will not turn a rule that speaks in nonjurisdictional terms into a jurisdictional hurdle. In fact, 2253(c)(3)s proximity to 2253(a), (b), and (c)(1) highlights the absence of clear jurisdictional terms in 2253(c)(3).

Finally, the State analogizes a COA to a notice of appeal, pointing out that both a notice and its contents are jurisdictional prerequisites. Federal Rule of Appellate Procedure 3(c)(1) provides that a notice of appeal must: (A) specify the party or parties taking the appeal; (B) designate the judgment, order, or part thereof being appealed; and (C) name the court to which the appeal is taken. We have held that Rule 3s dictates are jurisdictional in nature. *Smith v. Barry*, 502 U. S. 244, 248 (1992).

We reject this analogy. We construed the content requirements for notices of appeal as jurisdictional because we were convinced that the harshness of our construction [wa]s imposed by the legislature. *Torres v. Oakland Scavenger Co.*, 487 U. S. 312, 318 (1988). Rule 4, we noted, establishes mandatory time limits for filing a notice of appeal. Excusing a failure to name a party in a notice of appeal, in

violation of Rule 3, would be equivalent to permitting courts to extend the time for filing a notice of appeal, in violation of Rule 4. *Id.*, at 315. And time limits for filing a notice of appeal have been treated as jurisdictional in American law for well over a century. *Bowles v. Russell*, 551 U. S. 205, n. 2 (2007). Accordingly, the Advisory Committee Note makes no distinction among the various requirements of Rule 3 and Rule 4, treating them as a single jurisdictional threshold. *Torres*, 487 U. S., at 315; see also *id.*, at 316 (the Advisory Committee viewed the requirements of Rule 3 as jurisdictional in nature). Here, we find no similar basis for treating the paragraphs of 2253(c) as a single jurisdictional threshold.

Moreover, in explaining why the naming requirement was jurisdictional in *Torres*, we reasoned that an unnamed party leaves the notices intended recipient[s]-the appellee and court-unable to determine with certitude whether [that party] should be bound by an adverse judgment or held liable for costs or sanctions. *Id.*, at 318. The party could sit on the fence, await the outcome, and opt to participate only if it was favorable. That possibility of gamesmanship is not present here. Unlike the party who fails to submit a compliant notice of appeal, the habeas petitioner who obtains a COA cannot control how that COA is drafted.[[8](#)] And whereas a party's failure to be named in a notice of appeal gives absolutely no notice of [his or her] appeal, a judge's issuance of a COA reflects his or her judgment that the appeal should proceed and supplies the State with notice that the habeas litigation will continue.

Because we conclude that 2253(c)(3) is a nonjurisdictional rule, the Court of Appeals had jurisdiction to adjudicate Gonzalez's appeal.

III

We next consider whether Gonzalez's habeas petition was time barred. AEDPA establishes a 1-year limitations period for state prisoners to file for federal habeas relief, which run[s] from the latest of four specified dates.[[9](#)] 2244(d)(1). This case concerns the first of those dates: the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review. 2244(d)(1)(A). The question before us is when the judgment becomes final if a petitioner does not appeal to a State's highest court.

A

In construing the language of 2244(d)(1)(A), we do not write on a blank slate. In *Clay v. United States*, 537 U. S. 522 (2003), we addressed AEDPA's statute of limitations for federal prisoners seeking postconviction relief. See 2255(f)(1) (2006 ed., Supp. III) (beginning 1-year period of limitations from the date on which the judgment of conviction becomes final). We held that the federal judgment becomes final when this Court affirms a conviction on the merits on direct review or denies a petition for a writ of certiorari, or, if a petitioner does not seek certiorari, when the time for filing a certiorari petition expires. *Id.*, at 527. In so holding, we rejected the argument that, if a petitioner declines to seek certiorari, the limitations period starts to run on the date the court of appeals issues its mandate. *Id.*, at 529.

In *Jimenez v. Quarterman*, 555 U. S. 113 (2009), we described *Clay*'s interpretation as comporting with the most natural reading of the statutory text and saw no reason to depart from it in construing the similar language of 2244(d)(1)(A). 555 U. S., at 119. The state court had permitted *Jimenez* to file an out-of-time direct appeal. We held that this reset the limitations period; *Jimenez*'s judgment would now become final at the conclusion of the out-of-time direct appeal, or the expiration of the time for seeking review of that [out-of-time] appeal. *Id.*, at 120-121. Because *Jimenez* did not seek certiorari, we made no mention of when the out-of-time appeal conclu[ded]. Rather, we held that his judgment became final when his time for seeking certiorari review in this Court expired. *Id.*, at 120. Nor did we mention the date on which the state court issued its mandate. Both *Clay* and *Jimenez* thus suggested that the direct review process either concludes or expires, depending on whether the petitioner pursues or forgoes direct appeal to this Court.

We now make clear what we suggested in those cases: The text of 2244(d)(1)(A), which marks finality as of the conclusion of direct review or the expiration of the time for seeking such review, consists of two prongs. Each prong—the conclusion of direct review and the expiration of the time for seeking such review—relates to a distinct category of petitioners. For petitioners who pursue direct review all the way to this Court, the judgment becomes final at the

conclusion of direct review-when this Court affirms a conviction on the merits or denies a petition for certiorari. For all other petitioners, the judgment becomes final at the expiration of the time for seeking such review-when the time for pursuing direct review in this Court, or in state court, expires. We thus agree with the Court of Appeals that because Gonzalez did not appeal to the States highest court, his judgment became final when his time for seeking review with the States highest court expired.

B

Gonzalez offers an alternative reading of 2244(d)(1)(A): Courts should determine both the conclusion of direct review and the expiration of the time for seeking such review for every petitioner who does not seek certiorari, then start the 1-year clock from the latest of the two dates. Gonzalez rejects our uniform definition of the conclusion of direct review as the date on which this Court affirms a conviction on the merits or denies a petition for certiorari. In his view, whenever a petitioner does not seek certiorari, the conclusion of direct review is the date on which state law marks finality-in Texas, the date on which the mandate issues. *Ex parte Johnson*, 12 S. W. 3d 472, 473 (Crim. App. 2000) (per curiam). Applying this approach, Gonzalez contends that his habeas petition was timely because his direct review concluded when the mandate issued (on September 26, 2006), later than the date on which his time for seeking Texas CCA review expired (August 11, 2006). We find his construction of the statute unpersuasive.

First, Gonzalez lacks a textual anchor for his later- in-time approach. The words latest of do not appear anywhere in 2244(d)(1)(A). Rather, they appear in 2244(d)(1) and refer to the latest of the dates in subparagraphs (A), (B), (C), and (D)-the latter three of which are inapplicable here. Nothing in 2244(d)(1)(A) contemplates any conflict between the conclusion of direct review and the expiration of the time for seeking such review, much less instructs that the later of the two shall prevail.

Nor is Gonzalezs later-in-time reading necessary to give both prongs of 2244(d)(1)(A) full effect. Our reading does so by applying one or the other, depending on whether the direct review process concludes or expires. Treating the

judgment as final on one date or the other is consistent with the disjunctive language of the provision.

Second, Gonzalez misreads our precedents. Gonzalez asserts that in *Jimenez*, we made a later-in-time choice between the two prongs. That is mistaken. Rather, we chose between two expiration dates corresponding to different appeals: *Jimenez* initially failed to appeal to the Texas Court of Appeals and that appeal became final when his time for seeking discretionary review . . . expired. 555 U. S., at 117, 119. When *Jimenez* was later allowed to file an out-of-time appeal, he pursued appeals with both the Texas Court of Appeals and Texas CCA; the out-of-time appeal thus became final when his [t]ime for seeking certiorari review . . . with this Court expired. *Id.*, at 116, 120. We adopted the out-of-time appeals date of finality over the initial appeals date of finality. *Id.*, at 119-121. Critically, by deeming the initial appeal final at the expiration of time for seeking review in state court, and the out-of-time appeal final at the expiration of time for seeking certiorari in this Court, we reinforced *Clay*'s suggestion that the expiration prong governs all petitioners who do not pursue direct review all the way to this Court.[[10](#)]

Third, Gonzalez argues that AEDPA's federalism concerns and respect for state-law procedures mean that we should not read 2244(d)(1)(A) to disregard state law. We agree. That is why a state court's reopening of direct review will reset the limitations period. 555 U. S., at 121. That is also why, just as we determine the expiration of the time for seeking [direct] review from this Court's filing deadlines when petitioners forgo certiorari, we look to state-court filing deadlines when petitioners forgo state-court appeals. Referring to state-law procedures in that context makes sense because such deadlines are inherently court specific. There is no risk of relying on state-law rules that may differ from the general federal rule. *Clay*, 537 U. S., at 531.

By contrast, Gonzalez urges us to scour each State's laws and cases to determine how it defines finality for every petitioner who forgoes a state-court appeal. That approach would usher in state-by-state definitions of the conclusion of direct review. It would be at odds with the uniform definition we adopted in *Clay* and accepted in the 2244(d)(1)(A) context in *Jimenez*. And it would pose

serious administrability concerns. Even if roughly half of the States define the conclusion of direct review as the issuance of the mandate or similar process, Brief for Petitioner 40, that still leaves half with either different rules or no settled rules at all.[[11](#)]

Fourth, Gonzalez speculates that our reading will rob some habeas petitioners of the full 1-year limitations period. Gonzalez asserts that our reading starts the clock running from the date that his time for seeking Texas CCA review expired, even though, under Texas law, he could not file for state habeas relief until six weeks later, on the date the Texas Court of Appeals issued its mandate. Tex. Code Crim. Proc. Ann., Art. 11.07, 3(a) (Vernon Supp. 2011). His inability to initiate state habeas proceedings during those six weeks, he argues, reduced his 1-year federal habeas filing period by six weeks. We expect, however, that it will be a rare situation where a petitioner confronting similar state laws faces a delay in the mandates issuance so excessive that it prevents him or her from filing a federal habeas petition within a year.[[12](#)] A petitioner who has exhausted his or her claims in state court need not await state habeas proceedings to seek federal habeas relief on those claims. To the extent a petitioner has had his or her federal filing period severely truncated by a delay in the mandates issuance and has unexhausted claims that must be raised on state habeas review, such a petitioner could file a request for a stay and abeyance from the federal district court. See *Rhines v. Weber*, 544 U. S. 269, 277 (2005).

Finally, Gonzalez argues, as an alternative to his later-in-time construction, that his petition should be considered timely because it was filed within a year of when his time for seeking this Courts review-as opposed to the Texas CCAs review-expired. We can review, however, only judgments of a state court of last resort or of a lower state court if the state court of last resort has denied discretionary review. This Courts Rule 13.1; see also 28 U. S. C. 1257(a) (2006 ed.). Because Gonzalez did not appeal to the Texas CCA, this Court would have lacked jurisdiction over a petition for certiorari from the Texas Court of Appeals decision affirming Gonzalezs conviction. We therefore decline to incorporate the 90-day period for seeking certiorari in determining when Gonzalezs judgment became final.

In sum, we hold that 2253(c)(3) is a mandatory but nonjurisdictional rule. Here, the COAs failure to indicate a constitutional issue did not deprive the Court of Appeals of jurisdiction to adjudicate Gonzalezs appeal. We further hold that, with respect to a state prisoner who does not seek review in a States highest court, the judgment becomes final under 2244(d)(1)(A) when the time for seeking such review expires-here, August 11, 2006. We thus agree with the Court of Appeals that Gonzalezs federal habeas petition was time barred.

For the reasons stated, the judgment of the Court of Appeals for the Fifth Circuit is

Affirmed.

Notes

1 The Circuits have divided over whether a defect in a COA is a jurisdictional bar. Compare, e.g., *Phelps v. Alameda*, 366 F. 3d 722, 726 (CA9 2004) (no); *Porterfield v. Bell*, 258 F. 3d 484, 485 (CA6 2001) (no); *Young v. United States*, 124 F. 3d 794, 798-799 (CA7 1997) (no), with *United States v. Cepero*, 224 F. 3d 256, 259-262 (CA3 2000) (en banc) (yes).

2 The Circuits have divided over when a judgment becomes final if a petitioner forgoes review in a States highest court. Compare, e.g., 623 F. 3d 222, 226 (CA5 2010) (case below) (date when time for seeking such review expires); *Hemmerle v. Schriro*, 495 F. 3d 1069, 1073-1074 (CA9 2007) (same), with *Riddle v. Kemna*, 523 F. 3d 850, 855-856 (CA8 2008) (en banc) (date when state court issues its mandate).

3 We have also held that context, including this Courts interpretation of similar provisions in many years past, is relevant to whether a statute ranks a requirement as jurisdictional. *Reed Elsevier, Inc. v. Muchnick*, 559 U. S. ___, ___ (2010) (slip op., at 13). Here, however, even though the requirement of a COA (or its predecessor, the certificate of probable cause (CPC)) dates back to 1908, Congress did not enact the indication requirement until 1996. There is thus no long line of this Courts decisions left undisturbed by Congress on which to rely. *Union Pacific R. Co. v. Locomotive Engineers and Trainmen Gen. Comm. of Adjustment*,

Central Region, 558 U. S. ____, ____ (2009) (slip op., at 13). The issuance of a CPC, like the issuance of a COA, was jurisdictional. Contrary to the dissents assertions, post, at 8-10 (opinion of Scalia, J.), that fact does not suggest that the indication requirement is jurisdictional as well. If anything, the inference runs the other way. For nearly a century, a judges granting or withholding of a CPC, absent any indication of issues, was the fully effective expression of opinion, post, at 8, required for an appeal to proceed. AEDPAs new requirement that judges indicate the specific issues to be raised on appeal has no predecessor provision-indeed, it is the primary difference between a CPC and COA.

4 The United States as amicus curiae contends that 2253(c)(2) is jurisdictional, but the State concedes that it is not. Tr. of Oral Arg. 31.

5 The courts of appeals uniformly interpret circuit justice or judge to encompass district judges. See *United States v. Mitchell*, 216 F. 3d 1126, 1129 (CADC 2000) (collecting cases); Fed. Rule App. Proc. 22(b). Habeas Corpus Rule 11(a) requires district judges to decide whether to grant or deny a COA in the first instance.

6 That fact also distinguishes the indication requirement from every similar provisio[n] that the dissent claims we have deemed jurisdictional. Post, at 5-6. None of our cases addressing those provisions, moreover, recognized or relied on the sweeping rule that the dissent now invokes, whereby this Court should enforce as jurisdictional all procedural conditions for appealing a case from one Article III court to another. *Ibid.*; but see, e.g., post, at 6-7, n. 2 (conceding that the rule does not apply to criminal appeals); *Becker v. Montgomery*, (failure to sign notice of appeal is a nonjurisdictional omission). All the cases, meanwhile, involved time limits (save one involving Federal Rule of Appellate Procedure 3(c)(1), which we address *infra*). In *Bowles v. Russell*, , we emphasized our centurys worth of precedent for treating statutory time limits on appeals as jurisdictional, *id.*, at 209, n. 2, but even *Bowles* did not hold . . . that all statutory conditions imposing a time limit should be con-sidered jurisdictional, *Reed Elsevier*, 559 U. S., at ____ (slip op.,at 12). This case, in any event, involves a different type of procedural condition.

7 The dissents insistence that there is no practical, real-world effect to treating this rule as mandatory, post, at 4, ignores the real world. Courts of appeals regularly amend COAs or remand for specification of issues, notwithstanding the supposed potential to embarras[s] a colleague. Post, at 5; see, e.g., *Saunders v.*

Senkowski, 587 F. 3d 543, 545 (CA2 2009) (per curiam) (amending COA to add issue); United States v. Weaver, 195 F. 3d 52, 53 (CADC 1999) (remanding for specification of issues). The government frequently alleges COA defects as grounds for dismissal (as the State did here, at this late stage), apparently not sharing the dissents concern that such efforts yield nothing but additional litigation expenses. Post, at 5; see, e.g., Porterfield, 258 F. 3d, at 485; Cepero, 224 F. 3d, at 257. Habeas petitioners, too, have every incentive to request that defects be resolved, not only to defuse potential problems later in the litigation, but also to ensure that the issue on which they sought appeal is certified and will receive full briefing and consideration.

8 The dissent claims that we fail to give stare decisis effect to Torres. Post, at 10. Setting aside the fact that Torres involved an unrelated Federal Rule featuring a different textual, contextual, and historical backdrop, the dissent notably fails to grapple with—indeed, its opinion is bereft of quotation to—any supporting reasoning in that opinion. That reasoning is simply not applicable here.

9 Title provides: A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of—(A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review; (B) 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, if the applicant was prevented from filing by such State action; (C) 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 (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

10 Gonzalez also argues that Lawrence v. Florida, , supports his focus on the state courts issuance of the mandate because it referred to a mandate in determining when state postconviction proceedings were no longer pending. Lawrence, however, is inapposite. The case involved a different provision, , which by its terms refers to State procedures.

11 Compare, e.g., PSL Realty Co. v. Granite Inv. Co., 86 Ill. 2d 291, 304, 427 N. E. 2d 563, 569 (1981) (judgment is final when entered); Gillis v. F & A Enterprises,

934 P. 2d 1253, 1256 (Wyo. 1997) (judgment is final when opinion is filed with the clerk), with *Ex parte Johnson*, 12 S. W. 3d 472, 473 (Texas CCA 2000) (per curiam) (judgment is final at issuance of the mandate).

[12](#) We note that Gonzalez waited four months from the date of the mandates issuance before filing a state habeas petition. See 623 F. 3d, at 223. When that petition was dismissed as improperly filed, Gonzalez waited another three months before refiling. *Ibid.* Even then, his state habeas proceedings concluded several weeks before his 1-year federal deadline elapsed. *Id.*, at 225.

Gonzalez v. Thaler - 10-895 (2012)

SUPREME COURT OF THE UNITED STATES

No. 10-895

RAFAEL ARRIAZA GONZALEZ, PETITIONER v. RICK THALER, DIRECTOR,
TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL
INSTITUTIONS DIVISION

on writ of certiorari to the united states court of appeals for the fifth circuit

[January 10, 2012]

Justice Scalia, dissenting.

The obvious, undeniable, purpose of 28 U. S. C. 2253(c) is to spare three-judge courts of appeals the trouble of entertaining (and the prosecution the trouble of defending against) appeals from the denials of relief in habeas and 2255 proceedings, unless a district or circuit judge has identified an issue on which the applicant has made a substantial showing of a constitutional violation. Where no

such constitutional issue has been identified, an appeal on other, nonconstitutional, issues (such as the statute of limitations issue that the Court decides today) will not lie.

Today's opinion transforms this into a provision that allows appeal so long as a district or circuit judge, for whatever reason or for no reason at all, approves it. This makes a hash of the statute. The opinion thinks this alchemy required by the Courts previously expressed desire to bring some discipline to the use of the term jurisdictional, ante, at 5 (quoting *Henderson v. Shinseki*, 562 U. S. ____, ____ (2011) (slip op., at 5)). If that is true, discipline has become a code word for eliminating inconvenient statutory limits on our jurisdiction. I would reverse the judgment below for want of jurisdiction.

I

Fair Meaning of the Text

Congress amended 2253 to its current form in the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA). In its entirety, the section reads as follows:

(a) In a habeas corpus proceeding or a proceeding under section 2255 before a district judge, the final order shall be subject to review, on appeal, by the court of appeals for the circuit in which the proceeding is held.

(b) There shall be no right of appeal from a final order in a proceeding to test the validity of a warrant to remove to another district or place for commitment or trial a person charged with a criminal offense against the United States, or to test the validity of such persons detention pending removal proceedings.

(c)(1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from-

(A) the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court; or

(B) the final order in a proceeding under section 2255.

(2) A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.

(3) The certificate of appealability under paragraph (1) shall indicate which specific issue or issues satisfy the showing required by paragraph (2).

As the Court acknowledges, *ante*, at 6-7, all three subsections-(a), (b), and (c)-clearly speak to the jurisdiction of the courts of appeals. Subsection (a) gives appellate jurisdiction to the court of appeals for the circuit in which the proceeding is held; subsection (b) carves out certain classes of cases from that appellate jurisdiction; and subsection (c) imposes a procedural hurdle to the exercise of that appellate jurisdiction-a judges issuance of a certificate of appealability, see *Miller-El v. Cockrell*, 537 U. S. 322, 336 (2003).

Paragraph 2253(c)(3) says that a certificate of appeal-ability must indicate which issue or issues in the case involve a substantial showing of a constitutional violation. Everyone agrees that the certificate issued below contains no such indication. See *ante*, at 5. It appears, in fact, that the issuing judge never considered whether any of Gonzalezs constitutional claims satisfied paragraph (2). As far as we know, no federal judge has ever determined that Gonzalez has made a substantial showing of the denial of a constitutional right. 2253(c)(2). The Court does not even suggest that he has-but it goes on to decide the statute-of-limitations issue in the case.

Its basis for proceeding in this fashion is the remarkable statement that [a] defective COA is not equivalent to the lack of any COA. *Ante*, at 8. That is simply not true with respect to a significant defect in a legal document. Would one say that a deed which lacks the words of conveyance is not equivalent to the lack of a deed? Or that a passport which lacks the Secretary of States affirmance of the bearers citizenship is not equivalent to the lack of a passport? Minor technical defects are one thing, but a defect that goes to the whole purpose of the instrument is something else. And the whole purpose of the certificate-of-appealability procedure is to make sure that, before a case can proceed to the court of appeals, a judge has made the determination that it presents a substantial

showing of the denial of a constitutional right. To call something a valid certificate of appealability which does not contain the central finding that is the whole purpose of a certificate of appealability is quite absurd.

The Court says that [o]nce a judge has made the determination that a COA is warranted and resources are deployed in briefing and argument, . . . the COA has fulfilled [its] gatekeeping function. Ante, at 10. But of course it has not done so-it has performed no gatekeeping function whatever-if the determination that a COA is warranted has not been accompanied by the issuing judges opinion required to support the determination: that there is an issue as to which the applicant has made a substantial showing of the denial of a constitutional right, 2253(c)(2). As the very next sentence of todays opinion discloses, what the Court means by has fulfilled [its] gatekeeping function is simply that it will not be worth the trouble of going back, since that would not outweigh the costs of further delay, ante, at 9.

That is doubtless true, and it demonstrates the hollowness of the Courts assurance that calling a rule nonjurisdictional does not mean that it is not mandatory or that a timely objection can be ignored, ante, at 10. That statement is true enough as a general proposition: Calling the numerosity requirement in *Arbaugh v. Y & H Corp.*, 546 U. S. 500 (2006), nonjurisdictional, for example, did not eliminate it, where protest was made, as a continuing mandatory requirement for relief on the merits, *id.*, at 516. Even the time-of-filing requirement in *Eberhart v. United States*, 546 U. S. 12 (2005) (per curiam), continued to have bite even though it was held nonjurisdictional: It prevented relief when the failure to observe it was prop-erly challenged, *id.*, at 19. But the Court has managed to create today a mandatory requirement which-precisely because it will not be worth the trouble of going back-has no practical, real-world effect.[[1](#)] What is the consequence when the issuing judge, over properly preserved objection, produces a COA like the one here, which does not contain the required opinion? None whatever. The habeas petitioner already has what he wants, argument before the court of appeals. The government, for its part, is either confident in its view that there has been no substantial showing of denial of a constitutional right-in which case it is just as easy (if not easier) to win before three judges as it is before one; or else it

is not-in which case a crusade to enforce 2253(c) is likely to yield nothing but additional litigation expenses. As for the three-judge panel of the court of appeals, it remains free, as always, to choose whichever mandatory-but-not-jurisdictional basis it wishes for resolving the case. Cf. *Steel Co. v. Citizens for Better Environment*, 523 U. S. 83-94 (1998). Why not choose the one that is sure to be final and that might avoid embarrassing a colleague? No one has any interest in enforcing the mandatory requirement. Which is perhaps why, as I proceed to discuss, mandatory requirements for court-to-court appeal are always made jurisdictional.

Past Treatment of Similar Provisions

As the Court acknowledges, context, including this Courts interpretation of similar provisions in many years past, is relevant to whether a statute ranks a requirement as jurisdictional. *Ante*, at 6, n. 3 (quoting *Reed Elsevier, Inc. v. Muchnick*, 559 U. S. ___, ___ (2010) (slip op., at 13)). Thus, we have said that a requirement prescribed as a condition to obtaining judicial review of agency action is quite different (nonjurisdictional) from a requirement prescribed as a condition to appeal from one court to another (jurisdictional). See *Henderson*, 562 U. S., at ___ - ___ (slip op., at 7-8). We have always-always, without exception-held that procedural conditions for appealing a case from one Article III court to another are jurisdictional. When an appeal is not taken within the time prescribed by law, the Court of Appeals [is] without jurisdiction. *George v. Victor Talking Machine Co.*, 293 U. S. 377, 379 (1934) (per curiam); see also *United States v. Robinson*, 361 U. S. 220-230 (1960). When a partys name is not listed in the notice of appeal, as the Federal Rules of Appellate Procedure require, the court has no jurisdiction over that partys appeal. *Torres v. Oakland Scavenger Co.*, 487 U. S. 312-315 (1988).

When this Court reviewed cases by writ of error, the law required that the lower-court record be filed with the Court before the end of the term next succeeding the issue of the writ. *Edmonson v. Bloomshire*, 7 Wall. 306, 309 (1869). The Court routinely dismissed cases that did not comply with that requirement. See, e.g., *Mesa v. United States*, 2 Black 721, 721-722 (1863) (per

curiam); Edmonson, *supra*, at 309-310; *Steamer Virginia v. West*, 19 How. 182, 183 (1857). The same jurisdictional treatment was accorded to failure to serve notice on the defendant in error within the succeeding term, see, e.g., *United States v. Curry*, 6 How. 106, 112-113 (1848); *Villabolas v. United States*, 6 How. 81, 88, 91 (1848), and to failure to file the writ of error with the clerk of the lower court, see, e.g., *Credit Co. v. Arkansas Central R. Co.*, 128 U. S. 258, 261 (1888); *Scarborough v. Pargoud*, 108 U. S. 567 (1883). Today, when a petition for certiorari in a civil case is not filed within the time prescribed by 28 U. S. C. 2101(c), this Court lacks jurisdiction. *Federal Election Commn v. NRA Political Victory Fund*, 513 U. S. 88, 90 (1994) (citing *Missouri v. Jenkins*, 495 U. S. 33, 45 (1990)); see also *Matton S. S. Co. v. Murphy*, 319 U. S. 412, 415 (1943) (*per curiam*).[[2](#)]

So strict has been the rule enforcing as jurisdictional those requirements attached to court-from-court appeals, that we have applied it to a requirement contained in a statute not even addressed to the courts. Section 518(a) of Title 28 charges the Solicitor General with conduct[ing] and argu[ing] suits and appeals in the Supreme Court . . . in which the United States is interested. We held that, absent independent statutory authority, an agency's petition for certiorari filed without authorization from the Solicitor General does not suffice to invoke our jurisdiction. *NRA Political Victory Fund*, *supra*, at 98-99.[[3](#)]

Jurisdictional enforcement of procedural requirements for appeal has deep roots in our jurisprudence. Chief Justice Taney dismissed an appeal in which the citation was not issued and served in time, because we have no power to receive an appeal in any other mode than that provided by law. *Villabolas*, *supra*, at 90. And Chief Justice Chase wrote, in a case dismissing an appeal for failure to file in time:

In the Judiciary Act of 1789, and in many acts since, Congress has provided for [appellate courts] exercise [of jurisdiction] in such cases and classes of cases, and under such regulations as seemed to the legislative wisdom convenient and appropriate. The court has always regarded appeals in other cases as excepted from the grant of appellate power, and has always felt itself bound to give effect to the regulations by which Congress has prescribed the manner of its exercise.

Castro v. United States, 3 Wall. 46, 49 (1866).

Jurisdictional Nature of Predecessor Provision

But similarity to a general type of provision that has always been held jurisdictional is not all that supports the jurisdictional character of 2253(c)(3). Its very predecessor statute made a judge's expression of opinion a condition of appellate jurisdiction. The certificate of probable cause, of which the COA was born, arrived on the scene over 100 years ago in An Act Restricting in certain cases the right of appeal to the Supreme Court in habeas corpus proceedings, Act of Mar. 10, 1908, ch. 76, 35Stat.40:

[F]rom a final decision by a court of the United States in a proceeding in habeas corpus where the detention complained of is by virtue of process issued out of a State court no appeal to the Supreme Court shall be allowed unless the United States court by which the final decision was rendered or a justice of the Supreme Court shall be of opinion that there exists probable cause for an appeal, in which event, on allowing the same, the said court or justice shall certify that there is probable cause for such allowance.

The last version of this statute, before it was amended to its current form in AEDPA, provided for issuance of the certificate of probable cause by a circuit judge instead of a justice. See 2253, 62Stat.967 (codified at 28 U. S. C. 2253). Even applying the Courts' simplistic rule that the jurisdictional restriction must be contained in the very same paragraph as the procedural requirement, there is no doubt that under this statute a judge's certification that there was probable cause for an appeal was jurisdictional. See, e.g., *Ex parte Patrick*, 212 U. S. 555 (1908) (per curiam); *Bilik v. Strassheim*, 212 U. S. 551 (1908) (per curiam). There is no reason whatever to think that Congress rendered the statement of opinion unnecessary for jurisdiction by (1) extending the requirement for it to 2255 proceedings; (2) requiring the opinion to address a more specific point (not just probable cause for an appeal but presence of an issue presenting a substantial showing of the denial of a constitutional right)[[4](#)]; and (3) giving the document in which the judge is required to express the opinion a name (certificate of

appealability)-so that now a certificate of appealability without opinion will suffice. Neither any one of these steps, nor all of them combined, suggest elimination of jurisdictional status for the required expression of opinion.[[5](#)] It would be an entirely strange way of achieving that result. It was not a strange way, however, of dividing the now more complex and lengthy provision into manageable subsections.

Stare Decisis Effect of Torres

In addition to the fact that conditions attached to court-to-court appeal have always been held jurisdictional, and the fact that this statute's predecessor was held to be so, we have considered, and found to be jurisdictional, a statute presenting precisely what is at issue here: a provision governing court-to-court appeals which made particular content a required element of a document that the statute said was necessary for jurisdiction; and which did that in a separate section that excluded the jurisdictional terms, *ante*, at 10. That case flatly contradicts today's holding. In *Torres v. Oakland Scavenger Co.*, 487 U. S. 312, we dealt with Rule 3(c)(1) of the Federal Rules of Appellate Procedure. Rule 3(a) of those Rules makes a notice of appeal necessary to appellate jurisdiction-just as 2253(c)(1) makes a certificate of appealability necessary. And Rule 3(c)(1), which, like 2253(c)(3), does not contain jurisdictional language, says what the requisite notice of appeal must contain-just as 2253(c)(3) says what the requisite certificate of appealability must contain:

The notice of appeal must:

(A) specify the party or parties taking the appeal by naming each one in the caption or body of the notice . . . ;

(B) designate the judgment, order, or part thereof being appealed; and

(C) name the court to which the appeal is taken.

In *Torres* we held that the Court of Appeals lacked jurisdiction over the appeal of a party not properly named in the notice of appeal. 487 U. S., at 314-315. The

parallel is perfect.

The Court claims that the jurisdictional consequences of Rule 3(c) were imposed by the legislature, ante, at 12 (quoting Torres, supra, at 318), which according to the Courts analysis clearly state[d], ante, at 6 (quoting Arbaugh, 546 U. S., at 515), that Rule 3(c) is jurisdictional. But the legislature there did precisely what it did here: made a particular document necessary to jurisdiction and then specified what that document must contain.[[6](#)] I certainly agree that that is a clear statement that a document with the requisite content is necessary to jurisdiction. But the Court does not. So to distinguish Torres it has to find something else in Rule 3(c) that provided a clear statement of what Congress intended, ante, at 6-7. The best it can come up with, ante, at 12, is an unclear statement, and that not from Congress but from Advisory Committee Notes referred to in the Torres opinion. Such Notes are (of course) the product of the Advisory Committee, and not Congress, and they are transmitted to Congress before the rule is enacted into law. *United States v. Vonn*, 535 U. S. 55, n. 6 (2002). They are, in other words, a species of legislative history. I know of no precedent for the proposition that legislative history can satisfy a clear-statement requirement imposed by this Courts opinions. Does todays distinguishing of Torres mean that legislative history can waive the sovereign immunity of the United States? See *United States v. Nordic Village, Inc.*, 503 U. S. 30-34 (1992). Or abrogate the sovereign immunity of the States? See *Atascadero State Hospital v. Scanlon*, 473 U. S. 234, 242 (1985). Or give retroactive effect to new legislation? See *Greene v. United States*, 376 U. S. 149, 160 (1964). Or foreclose review of agency actions? See *Abbott Laboratories v. Gardner*, 387 U. S. 136, 141 (1967). Todays opinion is in this respect a time-bomb.

To make matters worse, the Advisory Committee Note considered by the Torres Court-as support for [its] view, 487 U. S., at 315-did not clearly say that Rule 3(c)s requirements were jurisdictional. It said this:

Rule 3 and Rule 4 combine to require that a notice of appeal be filed with the clerk of the district court within the time prescribed for taking an appeal. Because the timely filing of a notice of appeal is mandatory and jurisdictional, United States

v. Robinson, 361 U. S. 220, 224 (1960), compliance with the provisions of those rules is of the utmost importance. 487 U. S., at 315 (quoting 28 U. S. C. App., p. 467; alteration omitted and emphasis added).

To say that timely filing of a notice of appeal is jurisdictional, and that placing within the notice of appeal what Rule 3 says it must contain is of the utmost importance, does not remotely add up to a clear statement that placing within the notice of appeal what Rule 3 says it must contain is jurisdictional. There is simply no principled basis for saying that Torres satisfies the clear-statement principle, ante, at 6, except the commonsense notion that when a document is made jurisdictional, and the required contents of that document specified, a document that does not contain those contents cannot confer jurisdiction.[[7](#)]

The Court is not willing to say that Torres is no longer good law, but I doubt whether future litigants will be so coy. They know that in the past, to avoid the uncongenial rigidity of the rule that procedures attending court-to-court appeals are jurisdictional, we have performed wondrous contortions to find compliance with those rules. For example, in *Smith v. Barry*, 502 U. S. 244, 248 (1992), we held that an informal brief filed after a defective notice of appeal counted as a valid notice of appeal. In *Foman v. Davis*, 371 U. S. 178, 181 (1962), we held that a notice of appeal from the denial of a motion to vacate the judgment was also a notice of appeal from the underlying judgment. And in *Houston v. Lack*, 487 U. S. 266, 270 (1988), we held that a prisoners notice of appeal was filed when it was delivered to prison authorities for forwarding to the district court. These (shall we say) creative interpretations of the procedural requirements were made necessary by the background principle that is centuries old: [I]f the mode prescribed for removing cases by writ of error or appeal be too strict and technical, and likely to produce inconvenience or injustice, it is for Congress to provide a remedy by altering the existing laws; not for the court. *United States v. Curry*, 6 How. 106, 113 (1848). But if we have been willing to expose ourselves to ridicule in order to approve implausible compliance with procedural prerequisites to appeal, surely we may be willing to continue and expand the process of simply converting those obnoxious prerequisites into the now favored claims processing rules, enabling us

to avoid unseemly contortions by simply invoking the ever-judge-friendly principles of equity.

What began as an effort to bring some discipline to the use of the term jurisdictional, ante, at 5 (quoting Henderson, 562 U. S., at ___ (slip op., at 5)), shows signs of becoming a libertine, liberating romp through our established jurisprudence.

II

A few remaining points raised by the Courts opinion warrant response.

The Court holds that the requirement imposed by paragraph (c)(2) (that a COA may issue only if the applicant has made a substantial showing of the denial of a constitution-al right) is not jurisdictional, and says that [i]t follows that 2253(c)(3) is nonjurisdictional as well. Ante, at 7. I need not reach the issue whether (c)(2) is jurisdictional-though it seems to me that the Court disposes rather summarily of the Solicitor Generals view that it is. And I need not confront the Court with the back-at-you argument that if (c)(3) is jurisdictional (as I think) then (c)(2) is as well. For whether one runs it backwards or forwards, the argument is a bad one. Assuming that (c)(2) is nonjurisdictional, it does not at all follow that (c)(3) is nonjurisdictional as well. Paragraph (c)(3) is jurisdictional not because it is located in subsection (c), but because it describes the required content of a COA. Paragraph (c)(2) does not; it sets forth the criterion for a COAs issuance. A judge may apply that criterion erroneously but still produce a COA that (as paragraph (c)(3) requires) indicate[s] which specific issue or issues satisfy the showing required by paragraph (2). It no more follows that the erroneousness of the judges indication must destroy the jurisdiction that the COA creates, than it followed under the predecessor statute that the erroneousness of the certification of probable cause for an appeal destroyed the jurisdiction that the certification created.[[8](#)] The two issues are quite separate: what the judge must find, and what the COA (or certification) must contain.

The Court points out that Gonzalez raised the Sixth Amendment issue in his application for a COA, that [a] petitioner, having successfully obtained a COA, has no control over how the judge drafts the COA, and that the petitioner, as in Gonzalezs case, may have done everything required of him by law. Ante, at 8. Perhaps it is true that the defective COA was not at all Gonzalezs fault-though he could have promptly moved to amend it. But no-fault elimination of jurisdiction is not forbidden. In *Bowles v. Russell*, 551 U. S. 205 (2007), we enforced a time limit on notice of appeal where the district court had purported to extend the time to file and the appellant had complied with the courts order. *Id.*, at 207, 213-214. It did not matter that the fault lay with the court.

Finally, the Court points out that treating 2253(c)(3) as jurisdictional would waste a lot of time. Even if additional screening of already-issued COAs for 2253(c)(3) defects could further winnow the cases before the courts of appeals, that would not outweigh the costs of further delay from the extra layer of review. Ante, at 9. But that is not an argument directed to the statute before us; it is an argument directed against enforcement of all jurisdictional requirements (all of which, I suspect, are the object of the Courts mounting disfavor). And the argument may not even be true, except in the (presumably rare) case where the jurisdictional prescription is disregarded. Over the long term, the time saved to judges and lawyers by an enforceable requirement that appeals be screened by a single judge may vastly outweigh the time wasted by the occasional need for enforcement. That, it seems to me, is what Congress believed.

Terminology is destiny. Todays holding, and the erosion of our prior jurisprudence that will perhaps follow upon it, is foreshadowed and facilitated by the unfortunate terminology with which we have chosen to accompany our campaign to bring some discipline to determinations of jurisdiction. We have said that the universe of rules placing limitations upon the courts is divided into (1) claims processing rules, and (2) jurisdiction-removing rules. Unless our prior jurisprudence is to be repudiated, that is a false dichotomy. The requirement that the unsuccessful litigant file a timely notice of appeal, for example, is (if the term is

to have any meaning) a claims-processing rule, ordering the process by which claims are adjudicated. Yet as discussed above, that, and all procedures that must be followed to proceed from one court to another, have always been deemed jurisdictional. The proper dichotomy is between claims processing rules that are jurisdictional, and those that are not. To put it otherwise suggests a test for jurisdiction that is not to be found in our cases.[[9](#)]

At the end of the day, the indication requirement in 2253(c)(3) is imposed by the legislature and not by the judicial process. *Torres*, 487 U. S., at 318 (quoting *Schiavone v. Fortune*, 477 U. S., 21, 31 (1986)). Whether or not its enforcement leads to a harsh result, wastes time in this particular case, or (though the Court does not give this as a reason) prevents us from reaching a circuit conflict we are dying to resolve, we are obliged to enforce it. I respectfully dissent.

Notes

[1](#) The Court suggests that I ignor[e] the real world, *ante*, at 11, n. 7, in which litigants and courts have taken steps to correct a defective COA. But these actions are unsurprising in a world in which there was the possibility that this Court would treat 2253(c)(3) as a jurisdictional requirement and a court of appeals had already done so. The New World of the Courts making, in which it is certain that an issuing judges failure to identify any issue justifying a COA will not have jurisdictional consequences, is yet unexplored.

[2](#) Since the time limits for filing petitions for certiorari in criminal cases are not enacted by Congress but [are] promulgated by this Court under authority of Congress to prescribe rules, we have held that they may be relaxed by the Court in the exercise of its discretion when the ends of justice so require. *Schacht v. United States*, . The indication requirement of 2253(c)(3), of course, has been imposed by the legislature and not by the judicial process. *Schiavone v. Fortune*, .

[3](#) The Court cites *Becker v. Montgomery*, , as a counter-example. *Ante*, at 9, n. 6. We held there that an appellants failure to sign his notice of appeal, see Fed. Rule Civ. Proc. 11(a), within the time prescribed for filing a notice of appeal, see Fed. Rule App. Proc. 4(a)(1), did not require dismissal where the notice itself was timely filed. 532 U. S., at 762-763. We did not hold, however, that the signing requirement was nonjurisdictional; we had no occasion to do so. We held that

Becker had complied with Civil Rule 11(a) because the error was corrected promptly after being called to [his] attention, *id.*, at 764 (quoting Fed. Rule Civ. Proc. 11(a)).

4 The Court believes that the fact that this new requirement . . . has no predecessor provision suggests that it is nonjurisdictional. *Ante*, at 6, n. 3. To begin with, it is not that new, and it has a predecessor provision; it merely adds detail to the jurisdictional opinion that was previously required. But even if the requirement were entirely unprecedented, when it appears within a textual structure that makes it jurisdictional (as our opinion in *Torres v. Oakland Scavenger Co.*, , held, *see infra*, at 10-12), it would be an entirely unprecedented jurisdictional provision.

5 The Courts opinion suggests that [i]t would seem somewhat counterintuitive to render a panel of court of appeals judges powerless to act on appeals based on COAs that Congress specifically empowered one court of appeals judge to grant. *Ante*, at 8. To begin with, we do not think that an anomaly. It makes entire sense to enable a single circuit judge to nip improper appeals in the bud, sparing parties the trouble of an appeal, and courts the expenditure of three times as much judicial energy. But if it were an anomaly, it would be one that existed as well under the prior statute, which was held to be jurisdictional.

6 The Courts claim that *Torres* involved . . . a different textual, contextual, and historical backdrop, *ante*, at 13, n. 8, does not withstand scrutiny. First, consider the textual backdrop. The Court cannot really believe that Rule 3(c)(1)s statement that a notice of appeal must . . . specify the appealing party is clear jurisdictional language, *ante*, at 7, while 2253(c)(3)s shall indicate the issue or issues is not. If it did, it would say as much, since that would readily distinguish *Torres*. And then consider the contextual (whatever that means) and historical backdrop. Each provision, in mandatory-but-not-jurisdictional language, specifies what another document, itself jurisdictional in light of statutory text and history, must contain. The two cases are, of course, literally different, *ante*, at 13, n. 8, but not in any legally relevant way.

7 The Court also tries to distinguish *Torres* on the ground that failure to comply with Rule 3 presented a different possibility of gamesmanship, *ante*, at 13, from that presented here. I fail to see the relevance of that happenstance. The premise

of the Courts opinion is that the question of jurisdiction *vel non* is governed by a clear-statement principle, *ante*, at 6. The statement here is precisely as clear as the statement in *Torres*. Do we enforce clear statements only when there is a possibility of gamesmanship? The Courts free-wheeling purposivism defies textual analysis.

8 We held in *Nowakowski v. Maroney*, (*per curiam*), that when a district judge grants [a certificate of probable cause], the court of appeals must grant an appeal . . . and proceed to a disposition of the appeal in accord with its ordinary procedure. See also *Carafas v. LaVallee*, (*Nowakowski* requires that the appeal [be] considered on its merits . . . in cases where a certificate of probable cause has been granted).

9 It may well be that what I have called a false dichotomy was indeed meant to revise our jurisprudence. In *Kontrick v. Ryan*, , we said by way of dictum the following: Clarity would be facilitated if courts and litigants used the label jurisdictional not for claim-processing rules, but only for prescriptions delineating the classes of cases (subject-matter jurisdiction) and the persons (personal jurisdiction) falling within a courts adjudicatory authority. Unless an appeal lacking a timely filing of a notice of appeal can be considered one that falls outside the appellate courts subject-matter jurisdiction (which would be an odd usage), *Kontrick's* dictum effectively announced today's decision, the overruling of *Torres* and *Browder v. Director, Dept. of Corrections of Ill.*, , and the elimination of jurisdictional treatment for all procedural requirements for appeal. That the announcement has not been heeded is demonstrated by *Bowles v. Russell*, (decided after *Kontrick*), which (over the dissent of the author of *Kontrick*) reaffirmed *Browder*. I confess error in joining the quoted portion of *Kontrick*.