IN THE SUPREME COURT OF THE UNITED STATES

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DENEICE A. MAYLE, WARDEN, :

Petitioner, :

v. : No. 04-563

JACOBY LEE FELIX. :

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Washington, D.C.

Tuesday, April 19, 2005

The above-entitled matter came on for oral argument before the Supreme Court of the United States at 11:05 a.m.

APPEARANCES:

MATHEW K.M. CHAN, ESQ., Deputy Attorney General, Sacramento, California; on behalf of the Petitioner.

LISA S. BLATT, ESQ., Assistant to the Solicitor General, Department of Justice, Washington, D.C.; for the United States, as amicus curiae, supporting the Petitioner.

DAVID M. PORTER, ESQ., Assistant Federal Defender, Sacramento, California; on behalf of the Respondent.

P R O C E E D I In G S

[11:05 a.m.]

CHIEF JUSTICE REHNQUIST: We'll hear argument next in Deneice A. Mayle v. Jacoby Lee Felix.

Mr. Chan.

ORAL ARGUMENT OF MATHEW K.M. CHAN

ON BEHALF OF PETITIONER

MR. CHAN: Mr. Chief Justice, and may it please the Court:

In 1996, Congress made an important change to the habeas corpus proceedings by enacting a one-year statute-of-limitations period. This Court is now asked to consider, for the first time, how the relation back doctrine under Federal Rule of Civil Procedure 15(c)(2) is to be applied in the habeas context.

The Warden advocates a rule for relation back is that the conduct transaction occurrence set forth in the initial petition is the core of operative facts to support the constitutional violations alleged. This rule is far superior to the Ninth Circuit's rule, which a majority of Circuits have determined effectively nullifies AEDPA's one-year statute of limitations.

JUSTICE KENNEDY: Well, of course, I take it the issue doesn't even arise unless the amendment is accepted under 15(a).

MR. CHAN: That's correct, Your Honor.

JUSTICE KENNEDY: And if there's been lack of diligence, et cetera, and -- or some prejudice to the State in the delay of the amendment, the Court just won't accept the amendment.

MR. CHAN: I should clarify that --

JUSTICE KENNEDY: Or am I wrong about that?

MR. CHAN: -- that in Civil Rule 15(a), the Court has discretion and grants -- needs to grant leave to amend after a responsive pleading has been filed. However, a Petitioner gets to file a responsive pleading -- excuse me, an amended petition, as a matter of right, before a responsive pleading is filed.

JUSTICE O'CONNOR: Well, it was filed before a responsive pleading --

MR. CHAN: In this case --

JUSTICE O'CONNOR: -- was filed --

MR. CHAN: -- it was Your Honor.

JUSTICE O'CONNOR: -- in this case.

JUSTICE KENNEDY: How long does it usually take to file a responsive pleading?

MR. CHAN: It depends, Your Honor. It varies with -- case to case. In a lot of pro se --

JUSTICE O'CONNOR: But the State has a certain amount of flexibility in deciding when to respond, does it

not?

MR. CHAN: Well, Your Honor, the rule does not require the State to respond to petitions until ordered by the District Court. And to get back to the question of Rule 15(a), even after a responsive pleading has been filed, Rule 15(a) does not serve the same purposes as Rule 15(c). The statute of limitations is strict defense, which is meant to apply whether the filing is a day late or a year late, whether there is prejudice, or whether there is dilatory motive. To ameliorate the harsh effects of the statute of limitations, Rule 15(c)(2) provides an exception to the statute of limitations, but that exception is limited to the parameters of Rule 15(c)(2), itself. So when the Court is provided with a untimely claim, it determines whether or not that claim is time-barred, pursuant to 15(c)(2).

JUSTICE KENNEDY: Well, just before we leave 15(a), let's assume that we do not accept your position in this case and there's potential for a gaping hole in AEDPA. Does the State have some ability to protect itself by filing a responsive pleading and cutting off the amendments, or must it do so only if it is ordered by the Court to file a response?

MR. CHAN: For pro- --

JUSTICE KENNEDY: Do you see what I'm --

MR. CHAN: I do understand, Your Honor. And for pro se petitions, without counsel, the State is not even aware of the existence of the petition until it is served by the Court. And that occurs after the Court has made a determination as to whether or not a responsive pleading is required. It can happen that a Petitioner will be able to amend his petition after the statute of limitations has already expired, and we would not even know of that until after everything had been done.

JUSTICE SOUTER: But you -- you have --

JUSTICE SCALIA: No, please, go ahead.

JUSTICE SOUTER: I was going to say, if -- on the scenario that you have raised, in which you don't even know that the petition has been filed, because the -- you don't -- the Court hasn't called for a response, the whole rationale behind the narrow reading is absent, as I understand it, because you point out that the rationale for the narrow reading is that the first pleadings put you on notice as to the case that you have to meet. And you shouldn't then have to be given an entirely new case to meet after you've been put on notice and taken whatever preliminary steps you've taken. But in the scenario that you're talking about, you have not been put on notice, because you don't even know there is a petition there yet. You have not been led to prepare a case which has now

changed. So it seems to me that your rationale does not apply in the case in which you do not yet have notice, and, hence, have not filed a response, for that reason.

MR. CHAN: But even in that scenario, we are still prejudiced by the fact that now we have to address additional claims that would otherwise be time-barred. We do not get a chance to --

JUSTICE SOUTER: No, but that -- the problem with that is that a -- the whole point of a relation-back rule is to get around a time bar. That's why you have them. And I thought your argument was, "Well, you shouldn't allow them to get around this time bar, because we have been put on notice, we have begun to prepare our case, and we should not then be presented with an entirely new case." And so, that's why, it seems to me, your preparation point, in effect, is trying to limit a rule, the whole purpose of which is to get around the time bar. If you don't have the preparation point, you don't have an argument.

MR. CHAN: Well, I was addressing the situation in which we -- in which we can answer first. And I think that I responded, in the reply brief, that that would be an onerous burden on the State.

JUSTICE SOUTER: Oh, it would be. But, again, in the case that you're talking about, the very value that

you're arguing for -- i.e., "We ought to be able to rely on the notice that we have given" -- is an argument which hasn't arisen yet, because there's no factual basis to make.

MR. CHAN: Well, that situation would occur not as frequently as the situation in which we face an amendment after we have notice, Your Honor.

JUSTICE SCALIA: Mr. Chan, there is really no way for the State entirely to protect itself by -- even by filing an answer immediately. That would protect it against the automatic acceptance of an amendment, but it wouldn't protect it against the District Judge's ability to grant an amendment after the response.

MR. CHAN: That's right, Your Honor.

JUSTICE SCALIA: There's no way to get any protection against that, no matter how promptly you respond.

MR. CHAN: That's absolutely correct. And Congress could not have intended its statute-of-limitations rule to be -- to have its effectiveness dependent upon the Court exercise of discretion under Rule 15(a).

JUSTICE GINSBURG: The discretion --

JUSTICE SCALIA: Why --

MR. CHAN: Which has liberally granted amendments.

JUSTICE GINSBURG: The discretion under 15(a), at least in the general run of civil proceedings, that is to be liberally exercised in favor of the pleaders that are so -- so it's a different -- the 15(c) relation-back test is quite different from the general attitude to pleading amendments, "Well, we'll let the Plaintiff," or, here, the Petitioner, "make the pleading alteration, and then it will be there, and the Court will make a determination of whether the pleading is good or not." But, at the 15(a) threshold, it's not much -- it's not much of a screening device, is it?

MR. CHAN: No, Your Honor. The better screening device is in Rule 15(c)(2). As mentioned, Rule 15(c)(2) is the provision that determines whether or not a claim is time-barred. And 15(a), then, can determine whether or not the claim can be amended if it is not time-barred.

CHIEF JUSTICE REHNQUIST: Mr. Chan, do you think the Rules of Civil Procedure should be applied in habeas cases after AEDPA the same way they are in civil -- other civil litigation?

MR. CHAN: If the Court is referring to Rule 15(c)(2), our argument is that Rule 15(c)(2) is not a rule of automatic relation back, in civil terms, in civil cases; and, therefore, should not be applied as a rule of automatic relation back in habeas cases.

CHIEF JUSTICE REHNQUIST: But what if we were to determine that in regular civil litigation it is relatively automatic? What would your position be with respect to habeas cases after AEDPA?

MR. CHAN: Well, my argument would be that the habeas Rule 11 provides that, to the -- to the extent that the civil rules are not inconsistent with the federal habeas provisions and rules, that they may be applied. And I think that Rule 11 compels a reading that if you have one application that is inconsistent with AEDPA's provisions and the framework of habeas corpus, and another interpretation that is not inconsistent, then you must go with the interpretation that is consistent with AEDPA.

JUSTICE SCALIA: But you have more than Rule 11; you have Section 2244, which says that an application for habeas corpus, quote, "may be amended as provided in the rules of procedure applicable to civil actions."

MR. CHAN: And that --

JUSTICE SCALIA: So, I don't think it's even a close question whether the rules of procedure for amendment in civil actions apply.

MR. CHAN: There's no question that -- we are not questioning that Rule 15(c)(2) applied to habeas corpus, but Section 2242 does not give any guidance as to how 15(c)(2) should be interpreted. And I believe that

guidance comes from Rule 11.

JUSTICE STEVENS: Mr. Chan, can I ask you a question, based on your experience? I'm sure you've had a lot of experience in this area. This particular claim was about six months beyond the statute of limitations when he asked to relate back. It would seem to me that that would normally be the case, something about that amount of time would be an issue, because it takes time to process these, and they had to get counsel appointed. And counsel comes in and wants to amend the petition, usually, I suppose, in a pro se petition. Is it -- would I be correct in assuming that normally in cases of this kind we're talking about a delay of only a few months?

MR. CHAN: For pro se petitions who have been assigned counsel, Your Honor?

JUSTICE STEVENS: Well, no, normally -- the issue of whether or not there should be -- the petition may have the benefit of the relation back normally is -- involves a delay of not more than, say, five or six months, in a normal case.

MR. CHAN: I don't have any statistics on that, Your Honor. But even if it were only five or six months, that would --

JUSTICE STEVENS: You still lose the benefit of the statute. You lose an important right. But I'm just

wondering about how serious a problem it is.

MR. CHAN: It can be a more serious problem in capital litigation, where you're dealing with many more claims, which could be more complex, which could require exhaustion for the -- before the federal review. It just depends on the nature of the claim and the nature of the issues involved. I think that the statistics that were cited in the Justice Department study have different dates for how long cases pend, depending on the nature of the claim, whether it be for prosecutorial misconduct, ineffective assistance, and so forth.

JUSTICE SOUTER: But in the capital case, you've got a specific provision in there. I mean, for the capital case, which is the one, I agree, you worry about most, because there's reason to delay there, Congress provided specifically for states to opt in; and when they opt in, they get the benefit of pretty rigorous time bars.

MR. CHAN: That's true, Your Honor.

JUSTICE SOUTER: And so, why -- I mean, isn't the answer to the capital-case problem exactly the answer that Congress gave, and, if a state does not want to opt in, then the normal amendment rules apply?

MR. CHAN: The Chapter 154 provisions do set forth a fast track for capital cases if the State can establish certain appointment procedures for counsel.

However, it did not speak to the interpretation of Rule 15(c)(2), and Congress could not have intended that the statute of limitations not apply to Chapter 153 simply because of Chapter 154.

JUSTICE GINSBURG: What is your definition of the test under 15(c)(2)? I mean, on the one side, the argument is -- Felix's argument is, it's the entire trial episode, right?

MR. CHAN: That's correct, Your Honor.

JUSTICE GINSBURG: And is yours that every single objection that might be made in this entire trial record, every one, is a separate transaction or occurrence, for purposes of 15(c)?

MR. CHAN: For purpose of 15(c)(2), our interpretation is that the kind of transaction occurrence is that core of operative facts that support the constitutional claims. That means that the objections -- it is not necessarily true that one objection claim would not relate back to a second objection claim. It just depends upon whether they're closely related.

In this case, the claims are not closely related. You have a claim made of confrontation -- excuse me -- confrontation clause, by the admission of Williams' videotaped evidence; and then you have the admission of evidence of a coerced confession statement. However, it

takes an entirely different set of facts to establish that new claim.

JUSTICE KENNEDY: The successive petition rules, or the rules prohibiting successive petition, seem to treat the entire attack as one -- as one legal theory, as one case. And it seems to me to be in -- somewhat intentioned for that, for you to break it down the way you want to under Rule 15(c).

MR. CHAN: I think that the Respondent made a similar argument, based on a res judicata claim, and it was noted in the treatises that were cited that you have different intents behind res judicata and the relation-back doctrine, and they just do not apply that way.

I'd like to reserve the remainder of my time.

CHIEF JUSTICE REHNQUIST: Very well, Mr. Chan.

Ms. Blatt, we'll hear from you.

ORAL ARGUMENT OF LISA S. BLATT

FOR THE UNITED STATES, AS AMICUS CURIAE,

SUPPORTING THE PETITIONER

MS. BLATT: Thank you, Mr. Chief Justice, and may it please the Court:

The relevant conduct, transaction or occurrence in the habeas context is the set of facts that are asserted in support of the particular grounds for relief under habeas Rule 2. That reference point best preserves

Congress' intent under AEDPA to accelerate the filing and disposition of habeas proceedings.

JUSTICE GINSBURG: Are you, Ms. Blatt, taking the position that that is a tighter test than would apply ordinarily to the mine run of civil cases under 15(c)?

MS. BLATT: I think, Justice Ginsburg, our fundamental point is, there is no counterpart to tort or contract action, with habeas. There is just no analog. And that is because there's not only Rule 2, which imposes this heightened across-the-board fact pleading requirement, but it's also because those pleading rules work in tandem with all the other unique habeas rules that apply only to habeas that serve to narrow the timing and scope of habeas review.

JUSTICE KENNEDY: It's a -- it's a little odd for the statute to say that the rules apply; and then we look to the rules, but we interpret it differently. I certainly see the common sense of your position, but I'm just having a problem with 15(c)(2).

MS. BLATT: Yes, I just don't think it's different, both -- regardless, you've got to come the case and figure out what is the relevant-conduct transaction or occurrence in a habeas petition. And there's the extreme view of viewing it as the entire trial or conviction, or there's another view as -- look at it as what the habeas

rules require, and that is the prisoner to identify a particular unconstitutional conduct or occurrence that gives rise to a basis for relief.

Now, under the Ninth Circuit's view, a prisoner can timely file one claim and then add any number of completely different claims after the one-year period. For instance, a timely Batson challenge could then -- after the one year, the claim could add claims of ineffective assistance of counsel, Brady violations, or coerced confession. And to have to resolve those claims would significantly extend the limitations period beyond the one-year period.

JUSTICE O'CONNOR: Well, this case isn't as extreme as that, is it? It has to do with evidence admitted at trial.

MS. BLATT: It's -- well, that's true, it takes in trial errors, but that's a lot. Ineffective assistance of counsel is a trial error. Coerced confession, confrontation clause, discriminatory selection in the jury -- I mean, I don't know if that's a trial, or maybe pretrial -- but it does take in a lot, and I don't think there's a close call that they relate to different actors, different time periods --

JUSTICE O'CONNOR: Well, certainly in the civil-case context, generally, the interpretation has been

pretty broad. And I suspect if we try to narrow it a lot, we're going to have a lot of litigation about this point.

MS. BLATT: I'm not sure about that. This has been the rule in the majority of Circuits for five or six years now, since 1999 or 2000, and it hasn't generated a lot of problems. And that's because, Justice O'Connor --

JUSTICE O'CONNOR: Can you articulate the rule that you want? Be as precise as you can, if you would.

MS. BLATT: It would be the set of facts that are asserted in support of the grounds for relief in the original habeas petition. And the reason why this hasn't generated a problem, Justice O'Connor, is that -- in the way the Courts of Appeals haven't really had to identify a test -- is because they're so disparate in time and type. You have an ineffective-assistance-of-counsel claim that's timely raised, and then there's discriminatory selection of the jury.

JUSTICE SOUTER: How about a case --

JUSTICE KENNEDY: If I sue for negligence or, in any civil action we might -- we might imagine, there might be three or four ways in which the Defendant has injured me, and the Tiller case, the railroad case, tells us that it's a single action. And do you concede this, that you're asking us to interpret this differently and more narrowly than in the civil context?

MS. BLATT: I --

JUSTICE KENNEDY: Or do you concede that?

MS. BLATT: I concede that -- it's hard to answer that, Justice Kennedy, because a habeas proceeding is not a train accident. And there is --

JUSTICE KENNEDY: Well, it's hard for me to figure it out, too, but it seems to me that what you're saying is that we have a different rule, because this is habeas.

MS. BLATT: In the civil context, you always have a question of, Do we let in other loan transactions in a breach of contract, or, Do we let in another pattern or practice or -- of similar products? I mean, there's line-drawing, when it comes up in the civil context, all the time, every day in District Courts. But, Justice Kennedy, in habeas there are more than ordinary principles of finality at stake that aren't -- that just aren't true in any tort or contract action. And this Court said that in the Calderon decision. And the reason is because of the interest in not just the prosecutor in having adequate notice --

JUSTICE KENNEDY: So to complete Justice O'Connor's -- the answer to Justice O'Connor's question, you say, "And we interpret this differently in habeas than in other cases, because of finality concerns."

MS. BLATT: I would be --

JUSTICE KENNEDY: You want us to interpret it differently.

MS. BLATT: That would be totally acceptable, because of the distinct interest in not only the finality in the interest of society, and repose --

JUSTICE KENNEDY: Well, I'm sure it would be acceptable, but what's the authority for interpreting the rule two different ways, depending on the case?

MS. BLATT: Well, it's not like there's a habeas civil proceeding that we're asking for a habeas -- habeas proceeding to be different. There is no counterpart to a tort action or a contract action where it's liberal pleading requirements under Rule 8, and every single grounds for relief in a habeas proceeding there is a requirement that the prisoner actually identify all the grounds and the particular facts in support of that, and those heightened pleading requirements focus the proceeding on that particular transaction.

JUSTICE SOUTER: Well, let me -- let me ask you how that would work in this case. The original claim is that there was a Fourth Amendment violation in admitting, you know, unlawfully seized evidence. Later, the Petitioner wants to amend to claim ineffective assistance of counsel, because counsel totally overlooked the leading

case, directly on point, on this particular evidence. Is that arising out of the same operative set of facts, or is -- or is that something different? Clearly, the facts are not exactly the same. Close enough?

MS. BLATT: Well, we'd look to the common core. And I think we would argue that one is focusing on counsel's performance, and the other is on police misconduct. But, Justice Souter --

JUSTICE SOUTER: Yes, but if that's -- if that's the line you're going to draw, then it seems to me that, in effect, what you are saying is, you can't amend. Because I can't imagine an operative set of facts that are going to be much close than -- in the real world, than the -- than the two sets that I gave you; and if they're not close enough, you're really arguing for a no-amendment rule.

MS. BLATT: There's amendment all the time in the majority of Circuits that have applied the Government's test, and it comes up in two scenarios --

JUSTICE SOUTER: Not if you were the judge.

MS. BLATT: No, that's not true, Justice Souter.

JUSTICE SOUTER: No, but, I mean, why --

MS. BLATT: Because --

JUSTICE SOUTER: -- why --

MS. BLATT: Let me just say, on the attorney-

ineffectiveness one, it's completely besides the point what the Government's view is, because the claims are completely derivative, and the prisoner gets no benefit whether he gets the amendment or not, because, in order to show procedural default, he's going to have to show attorney effectiveness, and he just doesn't get anything additional, one way or the other, and it really doesn't matter which claim he asserts first.

But the reason why amendment occurs all the time is because our rule allows the prisoner to amplify facts such that if he raises a Miranda claim or a Strickland claim, and doesn't allege custody or doesn't allege prejudice under Strickland, he can amend, after the one-year period. And also --

JUSTICE SOUTER: So you can amend -- you can amend your factual basis, as it were, but you can't amend your claims.

MS. BLATT: No, the way you get claims, which is really the -- the direct text on the rule says you can add a claim if it arises out of the same -- is if the transaction relates to the -- to give you an example, to an involuntary confession, you could have an amendment of a Miranda claim that arises out of that police -- alleged police misconduct that culminated in the admission of the confession. You could also have a Massiah violation that

related back to a Fifth Amendment claim. And you could have other types, too.

JUSTICE STEVENS: It seems to me that the reason for the -- for defining the relation back the way the rule does is interest in fairness to the Defendant you don't want to let him be surprised; whereas, your claim, as I understand, is really based entirely on the interest in finality and repose.

MS. BLATT: Well, I think the interest of notice is part of it. I mean, it doesn't always trigger when the State hasn't -- or the Federal Government hasn't answered. But statute of limitations are not only about fairness, in terms of preserving evidence, but the interest in repose --

JUSTICE STEVENS: No, but the definition --

MS. BLATT: -- and closure.

JUSTICE STEVENS: -- in the rule is really to protect the interest in fairness, because interest in repose is always the same.

MS. BLATT: Well, that -- it's to preserve the statute of limitations, but if the relevant transaction is something narrower than the conviction, then the interest of repose sets in. And, I mean, the other side has, you know, the same point -- it's if you draw it out broad enough --

JUSTICE STEVENS: Well, the interest in repose is always there. You'd always like to preserve the defense, whenever you can. That's really what's at stake here.

MS. BLATT: Well, I think what's at stake is Congress' intent in passing the one year. And it's fundamentally inconsistent with that to have a prisoner timely file one claim and then potentially add an unlimited number of claims, no matter how different and -- in time and type --

JUSTICE STEVENS: Even if they all come in just two or three months after the statute's run.

MS. BLATT: Well --

JUSTICE STEVENS: It's really not a big deal.

MS. BLATT: -- a six-month difference is a 50-percent extension of the limitations period, which is a big deal. And Congress wanted a --

JUSTICE GINSBURG: And here, it was five months.

MS. BLATT: I think it was five months.

JUSTICE GINSBURG: Here.

MS. BLATT: It was five months. And --

JUSTICE GINSBURG: Are you relying, Ms. Blatt, at all on the difference between the pleading rules for civil cases, generally, and habeas, where you do have a whole set of pleading rules, separate the habeas

rules?

MS. BLATT: May I answer? I think we're relying on both habeas Rule 2 and the principles under AEDPA on finality.

CHIEF JUSTICE REHNQUIST: Thank you, Ms. Blatt.

Mr. Porter, we'll hear from you.

ORAL ARGUMENT OF DAVID M. PORTER

ON BEHALF OF RESPONDENT

MR. PORTER: Thank you. Mr. Chief Justice, and may it please the Court:

I'd like to respond to the finality concern, because I think that really goes to the heart of this case.

Three weeks ago, this Court, in Rhines versus Weber, unanimously approved of the stay-and-abeyance procedure, because the Petitioner's interest in obtaining review of his federal claims outweighed the competing interests of finality and speedy resolution of the federal petition.

Now, Mr. Felix's case is even more compelling than Rhines, because, unlike the stay-and-abeyance procedure, which is just the power -- the inherent power of the Court to control its docket, here we're talking about the command of Congress.

In Section 2242, of the judicial code, Congress

provided, specifically, that the rules governing amendments of habeas petitions be controlled by the rules governing civil procedure. The only rule regarding --

JUSTICE O'CONNOR: Well, that's true. I mean, we can accept that, but we still have to interpret what's a transaction or occurrence, I assume. And is it open to us, in the habeas context, to take a narrow view of that?

MR. PORTER: Your Honor, I believe that under this Court's decisions about how you determine what Congress did, Congress operated against a backdrop of how Rule 15(c) was applied by this Court and the lower courts. And in 1948, when 2242 was adopted, Tiller was very recent; it was a 1945 case. It must have been -- and we assume that Congress, like normal citizens, know what the law is, and they developed the rule against that backdrop.

JUSTICE SCALIA: Well, that was -- that was a rule for tort cases; it wasn't a rule for habeas cases. And, as pointed out by the Government, habeas cases are fundamentally different, in that the notice that you give to the opposing party in tort cases, ordinary civil cases, is very vague. It's just, you know, what the event was, "I got hit by a train." You don't have to say, "Wherein, the train was negligent -- or the railroad was negligent," or anything else; just, "I got hit by a train." Whereas, with respect to habeas corpus, there are rules that

require specifying all the grounds for relief available to the Petitioner, state the facts supporting each ground. It seems to me that those different pleading requirements suggest that what is the relevant transaction or occurrence for the one is not the same as what is the relevant transaction or occurrence for the other.

MR. PORTER: That's a very good point I'd like to address, because I don't think we hit that -- upon that in our briefs.

Habeas 2 -- habeas Rule 2 does require fact pleading, but the purpose of that is not to give notice to the other party, as the Solicitor General and the Warden suggest. The petition is not served on the Warden in habeas cases, so they don't even get a copy of the petition; it is filed with the court.

The purpose of the fact-pleading requirement of Rule 2 is so that the District Court, under Rule 4 of habeas rules, can perform its screening function to determine whether the petition is facially valid or not. That requires some sort of facts to be plead. And that's in the Advisory Committee notes. It's also the requirement of 2243 of the Judicial Code, that the District Court review the petition so that wardens are not disturbed with every pro se litigant's Petitioner and have to respond.

CHIEF JUSTICE REHNQUIST: Whatever the reason for it is, certainly you can interpret the rules to say that the pleading requirement being different and much more specific, the amendment process should be different.

MR. PORTER: I think that that's -- Congress reasonably could have said that, and reasonably could have said that -- amended 2242, for example, when it passed the Antiterrorism Act, and said, "Generally, yes, the rules of civil procedure apply for amendments," but we're -- there should be a narrower rule.

CHIEF JUSTICE REHNQUIST: But you don't need an amendment, I don't think. If you're talking about a transaction, the question is, What is the transaction? And in habeas it may be quite different than in other civil things.

MR. PORTER: I think that the only basis for determining what "transaction" is, you have to look at the -- if you -- if you're right, that we should have some kind of different rule for habeas than all other civil proceedings, well, then it has to be grounded in the habeas statutes. And if -- when you look at the habeas statutes, it says, "Confinement must be in violation of the constitutional" --

JUSTICE BREYER: But then --

MR. PORTER: -- "laws which" --

JUSTICE BREYER: I mean, what's bothering me about this case is, I don't know that the Government needs to argue that there is a different rule. As I read the lower-court decisions, what they've done is used the words "core operative fact." Core operative facts in a tort case, where the engine of Train A runs into the caboose of Train B, is that collision. And the decision that the front -- the locomotive should have been lit, as well as the back of the caboose, seems, arguably at least, the same operative fact. Core operative facts. But to say that a witness, in the middle of the trial, was treated unconstitutionally seems, at least arguably, quite a different set of core operative facts from the fact that the Defendant was questioned before the trial.

Now, that seems to me related to the nature of habeas, but it still seems to me that those words, "core operative fact," the same words, work differently in the two situations. And to adopt your approach also strikes me as running around the one-year statute of limitations.

Now, those are my concerns, and I would appreciate your addressing them.

MR. PORTER: Well, I hope I can put those to rest.

On the first concern, I think that there are differences between a train wreck and habeas. Most of my

habeas cases are train wrecks, so I hope that's not -- but I think there is a logical difference between them. But I think when you look carefully at the case of Tiller, those really were very different facts about the head car not being lit and the rear of the locomotive not being lit. After all, those were two separate legal claims, as well.

JUSTICE GINSBURG: But, Mr. Porter --

MR. PORTER: The first one --

JUSTICE GINSBURG: -- all that would be required to allege, to take the four-line complaint -- all that the Plaintiff would have to say in that tort case is, "The train was negligently operated," with nothing more specific than that. And then the particulars could come out later. Under habeas, you can't do that. You must set out your grounds, and the -- Rule 2 is very specific about that. So, it's a very different approach to what you have to allege, going in.

MR. PORTER: I agree, Your Honor, but you -- I think you need to step back and look at the purpose for the difference in the pleading rules. The purpose is, if the -- if the reason was that you have to give specific facts to put the other side on notice, I would say that there is a compelling argument that that should be -- that should inform this Court's decision about how Rule 15(c) should be read. But it's very clear, from 2243 and from

habeas Rule 4, that the purpose for requiring the facts underlying the claims is not to give notice to the other side, but to allow the District Court to perform its screening function to determine whether the -- whether the petition is facially valid or not. If it's not valid, then the Warden is not even served with the petition. It just -- the petition is simply dismissed.

JUSTICE SCALIA: Can you file -- can you file a request for a more specific statement in habeas, as you can in a civil case?

MR. PORTER: Yes, under Rule 81 of the Federal Rules of Civil Procedure, and Rule 11, unless application of that rule is contrary to, or inconsistent with, the habeas statutes or rules, then it is applied.

JUSTICE BREYER: Could we go back? Because I'm still concerned with the fact that Claim 1, which is a claim on January 2 that police arrested the Defendant and didn't read him Miranda warnings properly; Claim 2 is a claim that, two and a half years later, the prosecutor, during the trial, made some prejudicial arguments. Now, I think, just common sense, Do those arise out of the same core operative facts? Absolutely not. The facts are totally different. The only thing that brings them together is that there was a single legal proceeding.

And, at the same time, if I adopt this approach

that doesn't seem to comport with the common sense, I'm running around Congress' effort with the one-year statute.

So what is your response?

MR. PORTER: First of all, the response is that the statute -- the rule does not use the term "core operative facts."

JUSTICE BREYER: No, but every lower court that has -- not every one; you know better than I -- but it seems like a commonly found expression when lower courts have interpreted the Rule 15 and have looked to Tiller. Is that true, or not true?

MR. PORTER: Not in the habeas context. None of those --

JUSTICE BREYER: No, of course not in the habeas context. I'm saying that if we're trying to apply, in the habeas context, the same test that's used elsewhere in the civil law, wouldn't we use the word "core operative fact"? Or would we? I'm not as familiar with this as you. What is the answer?

MR. PORTER: I don't believe so. I think that --

JUSTICE BREYER: No?

MR. PORTER: -- and Wright and Miller confirmed this, that actually courts have tried to develop different tests: Is it the same evidence that they're going to use?

Is it a core of operative facts? And, in the end, they say there's no better test than the one set forth in the rule, and that is conduct, transaction, or occurrence.

JUSTICE BREYER: But, of course, we're trying to decide what is the transaction.

MR. PORTER: Right, but the reason why is that there is a body of case law that determines -- that's told us what that means.

JUSTICE KENNEDY: Let's --

MR. PORTER: And Tiller tells us it means that it's the events leading up to the injury. And so, that's how, I think, that that phrase has been interpreted, and that's what Congress adopted --

JUSTICE KENNEDY: Let's take --

CHIEF JUSTICE REHNQUIST: What about -- what about the case law in the lower courts that Justice Breyer referred to, dealing with the core operative facts and adopting --

MR. PORTER: Mr. Chief Justice, I think -- they don't -- I'm not aware of those cases using --

CHIEF JUSTICE REHNQUIST: -- you say let's look at all the cases that have followed Tiller, and -- but apparently a lot of the courts adopting the core operative fact have developed that without full regard to Tiller.

MR. PORTER: No, the lower courts -- the most

usual interpretation of Tiller that we've cited in our brief that the lower courts perform is this idea of any events leading up to the ultimate injury --

JUSTICE O'CONNOR: But in the habeas context, haven't the majority of the Circuits had a more restrictive rule than the Seventh Circuit and the Ninth have espoused?

MR. PORTER: Yes, they have.

JUSTICE O'CONNOR: Yes. And so, I think the question is, Should we follow the majority of the Circuits?

MR. PORTER: And you should not, because what those courts fail to do is, they fail to appreciate that Congress has already spoken, in two different ways. First, Congress adopted 2242; and when it adopted AEDPA, it did not amend 2242, and it did not amend Rule 15(c). And, second, in death-penalty cases, which, after all, is really the only set of cases where there is an incentive to delay, Congress specifically spoke. And in 2266(b)(3)(B) Congress said, "Amendments to petitions shall not be permitted after answers are filed unless the Petitioner can make a showing for a second or successive petition."

Now, this is Lindh versus Murphy all over again. This is a case where Congress has spoken as to Chapter

154. In Lindh versus Murphy, it said, "That chapter will be -- the amendment will be applied retroactively to cases then pending." They did not do anything with Chapter 153 cases. The negative implication, when Congress so specifically addresses this issue for one limited, narrow set of cases -- and that really make sense in death-penalty cases, does it not? When the State gives the death-penalty Petitioner lawyers for State post-conviction review, then all of those claims are done in state habeas, they are brought together, it fulfills the claim-gathering function of the Antiterrorism Act; and then, very logically, Congress determined, "We should have a very, very strict restriction of amendments."

JUSTICE KENNEDY: Let me -- let me ask you. Take the two events in this case, and as explained by Justice Breyer, a Miranda violation in the questioning and then a problem with the confrontation clause in the trial, two years later. Let's assume that there was a 1983 civil action for those violations, and let's assume that both are actionable. Different cause of action. Is that -- how would -- how would an amendment be treated in a civil action? Based on most of the lower-court precedents you've been-- would the amendment related back?

MR. PORTER: I don't believe so. In civil-rights actions, there are -- the constitutional rights at

issue are the injury. So one -- if a person started out with saying their injury in the civil-rights action was the admission of the evidence --

JUSTICE KENNEDY: You would think no relation back, in the case I put --

MR. PORTER: Because there -- it does not relate to the same injury. In habeas, by contrast, the injury is the custody that's in violation of the Constitution laws and treaties --

JUSTICE STEVENS: The injury --

MR. PORTER: -- of the United States.

JUSTICE STEVENS: -- I suppose, in the -- in the Miranda violation, is introducing the evidence at the time of trial.

MR. PORTER: That's correct.

JUSTICE STEVENS: That's the point. You don't look two and a half years back just to -- you decide what happened at the trial.

MR. PORTER: That's correct. And in this --

JUSTICE BREYER: Right. So what about the injury? What about that? That the injury -- the trial's over, say, six weeks -- the injury takes place at the time of introduction? Or is the injury the whole time the -- the guilty verdict?

MR. PORTER: Well, that the that's the problem

with the -- with the Warden's proposed test. Are these, quote, "closely related claims"? That is not, I suggest, a -- nearly a bright-line rule that would help the District Courts in determining what is, and what is not, part of the same transaction. So, I don't think that that's a real viable alternative.

I -- again, I think it's important for the Court to go back -- if it's going to create a different rule in habeas, it has to have some grounding --

JUSTICE BREYER: Well, why doesn't the 1981 -- given -- maybe I don't -- haven't followed it correctly, but why doesn't the 1981 claim, then, relate back? I think the injury that took place from both violations took place at the time of trial.

MR. PORTER: Well, maybe I wasn't following the hypothetical closely enough.

JUSTICE BREYER: Okay, I --

MR. PORTER: If --

JUSTICE BREYER: Forget it.

MR. PORTER: Okay. Well, let -- if we can return to the facts of this case, I think these -- we fit comfortably within the definition of "transaction," because both of the rights that Mr. Felix is asserting in this habeas petition are trial rights. Under this Court's decision in Chavez versus Martinez, in this Court's

decision in Pennsylvania versus Ritchie, both the Fifth Amendment and the Sixth Amendment rights are trial rights. Those statements, independently, when they were taken by the same police officer, did not violate any rights. They only violated Mr. Felix's rights when they were introduced in the -- in the prosecution's case in chief.

CHIEF JUSTICE REHNQUIST: But the argument as to whether it was properly done, whether the ruling was proper, is going to go back to the time of the Miranda interrogation.

MR. PORTER: I agree that those facts are relevant, but it's the operative facts that are --

CHIEF JUSTICE REHNQUIST: Well, why isn't that an operative fact?

MR. PORTER: Well, it is -- the operative fact -- what makes it actionable is that the statements were introduced at trial.

CHIEF JUSTICE REHNQUIST: Yes, but --

MR. PORTER: If those statements weren't introduced at trial --

CHIEF JUSTICE REHNQUIST: Well, you've switched. We were talking about "operative fact," and now you said "actionable fact."

MR. PORTER: I believe those are the same principles, Your Honor.

JUSTICE GINSBURG: Mr. Porter, if I understand you right, you are saying that, in the habeas context, the counterpart to an injury in a tort case is the unlawful detention, itself. Am --

MR. PORTER: That's correct.

JUSTICE GINSBURG: -- I right?

MR. PORTER: Yes.

JUSTICE GINSBURG: Okay. So if that's the injury, could the habeas Petitioner come in with a complaint that says, "I am being detained in violation of the Constitution," period, "and I need a lawyer to spell out the details"?

MR. PORTER: The Petitioner could file such a petition. They have been called "placeholder petitions." But, clearly, under Rule 4 of the habeas rules, such a petition would be subject to immediate dismissal by the District Court, because it doesn't conform with habeas Rule 2, which requires that all of the claims be alleged and all of the facts be alleged.

JUSTICE BREYER: What about the other part of what's been bothering me? To be specific about it, it sounds like a very good system. The system is, "Habeas Petitioner, you file, within a year, your petition with one claim, and we'll look it over," says the judge, "and if it sounds like you need a lawyer, we'll give you a

lawyer, and then he'll come in with a whole lot more." And that's quite protective.

But suppose you said that to Congress. They passed this thing. And you say, "You know, your year here, it doesn't really mean a year. It means a year for this initial filing, and then what's going to happen is, they'll give him a lawyer, and he'll come back and say the interest of justice, but, really, it always, almost always, favors the Petitioner, and the State isn't that fooled, and, really, it's not a problem for them, and" -- what would that Congress have said? That's -- that is very much disturbing me.

MR. PORTER: I think the answer to that is that statutes of limitations are ubiquitous in civil proceedings. But just as ubiquitous is Rule 15(c) relation back. They go hand in glove. And Congress, in 1948, just three years after the Tiller case, when it enacts 2242, must have had on its mind that relation back goes along hand in glove with the statutes of limitation; and, not only that, but how relation back has been construed by the courts.

So I don't think it's any surprise to Congress now all of you -- now all of a sudden that we say, "Oh, you know, by the way, there's this relation back that's going to give us maybe four or five months longer than the

year." I don't think Congress is at all surprised by that. And Congress just adopted new rules of habeas proceedings, in 2004; didn't amend Rule 15(c), didn't provide another rule in habeas, didn't amend 2242.

And, as far as the potentials for abuse here, the Seventh Circuit's -- Judge Easterbrook's decision for the Seventh Circuit in the Ellzey case has been on the -- on the books for more than two years now. And I would suggest that if the parade of horribles that the Warden has suggested, about year-long delays and all of these potential abuses, in fact, are allowed by the rule that we seek here, that the Warden or the United States would have come to this Court and said, "Look, here are the abuses. They are happening right now." Well, in fact, Ellzey's been cited twice in all -- in these years, by the District Court, to allow relation back. Mr. Felix's case has not been cited at all in a published case. So, I think that the parade of horribles is theoretical and not practical.

As Justice Kennedy pointed out, you have Rule 15(a) as a backstop. And once the answer is filed, that really cuts off any right to file an amendment as a matter of right. Then --

JUSTICE GINSBURG: But I think that, first of all, the amendment may be made before there is a defensive plea. As Mr. Chan pointed out, that the Warden doesn't even

get the petition until it's been screened by the Court. The other is the understanding, on the civil side, of Rule 15(a). It's a very liberal pleading rule. The threshold for granting permission to amend a pleading under 15(a) is very easy to pass.

MR. PORTER: In Foman versus Davis, this Court responded to that concern and said that District Courts have ample authority under 15(a) to deny amendments to petitions -- or amendments to initial pleadings. It said, for bad-faith or dilatory tactics, but then said even undue delay -- so you don't even require a showing of bad faith -- for prejudice to the other side.

So all of the concerns that the Warden has raised are specifically identified by this Court to give the District Court the right to deny an amendment to the petition. And so, I believe that those powers in the District Court are very ample, indeed.

Plus, we have -- the states have their own ability to protect themselves. As one of Your Honors mentioned, we have 2266. If the -- if the states opt in, they get the protections of 2266. States have their own mechanisms. All but six states in the Union have statutes of limitations, or very firm laches doctrines, that will prevent the elongated delays that the Warden is worried about in this case.

And as far as the notice provision, Justice Breyer announced the unanimous opinion for the Court this morning, in Durachem, and said, "It doesn't take much to give the defendant fair notice."

Now, I'd like to leave the Court with the judicial aphorism that wisdom often never comes at all; it should not be rejected merely for coming late. We ask this Court to affirm the decision of the Circuit Court.

If there are no more questions --

CHIEF JUSTICE REHNQUIST: Thank you, Mr. Porter.

Mr. Chan, you have four minutes remaining.

REBUTTAL ARGUMENT OF MATHEW K.M. CHAN

ON BEHALF OF PETITIONER

MR. CHAN: Mr. Felix assumes that Congress knew about the Tiller case, and assumed that Congress would know that Tiller would be interpreted in a way as to allow relation back in a situation such as this. However, as pointed out, Tiller is not a habeas case. Rule 15(c)(2) did not even have any application to habeas cases at the time, until it was decided.

Also, I wanted to respond to Justice Souter's earlier question about examples of relation back in habeas corpus cases. And I've cited two examples on page 27 of the Warden's brief.

Unless there's any other questions, I have no

more rebuttal.

CHIEF JUSTICE REHNQUIST: Thank you, Mr. Chan. The case is submitted.

[Whereupon, at 11:57 a.m., the case in the above-entitled matter was submitted.]