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

SUPREME COURT OF THE UNITED STATES

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HOHN *v.* UNITED STATES

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

No. 96–8986. Argued March 3, 1998– Decided June 15, 1998

Petitioner Hohn filed a motion under 28 U. S. C. §2255 to vacate his conviction for "use" of a firearm during a drug trafficking offense, 18 U. S. C. §924(c)(1), claiming the evidence was insufficient to prove such "use" under this Court's intervening decision in *Bailey* v. *United States*, 516 U. S. 137. While the motion was pending, Congress enacted the Antiterrorism and Effective Death Penalty Act of 1996, §102 of which amends the statutory provision which had required state prisoners to obtain a certificate of probable cause before appealing the denial of a habeas petition. The amended provision specifies, *inter alia*, that an appeal may not be taken to a court of appeals from the final order in a §2255 proceeding, §2253(c)(1)(B), unless a circuit justice or judge issues a certificate of appealability, §2253(c)(1), upon a substantial showing of the denial of a constitutional right, §2253(c)(2). The District Court denied Hohn's motion, and he filed a notice of appeal, which the Eighth Circuit treated as an application for a certificate of appealability. A three-judge panel declined to issue a certificate, ruling that Hohn did not satisfy §2253(c)(2). In the panel's view, *Bailey* simply interpreted §924(c)(1), and a district court's incorrect application of a statute does not violate the Constitution. Hohn then petitioned for review of the certificate denial under 28 U. S. C. §1254(1), which provides in relevant part that "[c]ases in the courts of appeals may be reviewed by the Supreme Court" "[b]y writ of certiorari." The Government now says that Hohn's claim was, in fact, constitutional in nature and asks the Court to vacate the judgment and remand so the Eighth Circuit can reconsider in light of this concession. Since both parties argue that this Court has jurisdiction, an *amicus curiae* was appointed to argue the contrary position.

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Held: This Court has jurisdiction under §1254(1) to review denials of applications for certificates of appealability by a circuit judge or a court of appeals panel. Hohn's certificate application is a "case in" the Court of Appeals under §1254(1) because the word "case," as used in a statute, means a court proceeding, suit, or action, *Blyew* v. *United States*, 13 Wall. 581, 595; the dispute here is a proceeding seeking relief for an immediate and redressable injury, *i.e.*, wrongful detention in violation of the Constitution; and there is adversity as well as the other requisite qualities of a "case." That §2253(c)(1) permits the certificate to be issued by a "circuit justice or judge" does not mean the judge's denial of a certificate is his or her own action, rather than the court's. The fact that Hohn's application moved through the Eighth Circuit in the same manner as cases in general do, yielding a decision that has been regarded in that court as precedential, suggests the application was as much a case in the Court of Appeals as any other matter. This conclusion is also confirmed by the adoption by every Court of Appeals but one of rules governing the disposition of certificate applications; by the issuance of the order denying Hohn's certificate in the name of the court and under its seal; by Federal Rule of Appellate Procedure 22(b), which specifically provides for consideration of certificate applications by the entire court of appeals; by Federal Rule 27(c), which authorizes the court of appeals to review decisions that individual judges are authorized to make on their own; by Eighth Circuit Rule 27B(b)(2), which lists grants of probable cause certificates by individual judges as reviewable decisions under Rule 27(c); and by the uniform practice of the courts of appeals, see *In re Burwell*, 350 U. S. 521, 522. Early cases acknowledging that this Court may not review a federal judge's actions performed in an administrative, as opposed to a judicial, capacity, see, *e.g.*, *United States* v. *Ferreira*, 13 How. 40, 51–52, are inapposite because certificate application decisions are judicial in nature. The contention of the dissent and the Court-appointed *amicus* that the failure to satisfy a threshold prerequisite for court of appeals jurisdiction, such as the issuance of a certificate of appealability, prevents a case from ever being "in" that court under §1254(1) is foreclosed by precedent. See, *e.g.*, *Ex parte Quirin*, 317 U. S. 1, 24; *Nixon* v. *Fitzgerald*, 457 U. S. 731, 742–743, and n. 23; and *Automobile Workers* v. *Scofield*, 382 U. S 205, 208–209. The argument is also refuted by the recent amendment to §2244(b)(3)(E) barring certiorari review of court of appeals denials of motions to file second or successive habeas applications, which would have been superfluous were such a motion not a case in the court of appeals for §1254(1) purposes, see, *e.g.*, *Kawaauhau* v. *Geiger*, 523 U. S. ___, ___, and which contrasts tellingly with the absence of an analogous limitation on certiorari review of

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denials of appealability certificate applications, see, *e.g.*, *Bates* v. *United States*, 522 U. S. ___, ___. Today's holding conforms the Court's commonsense practice to the statutory scheme, making it unnecessary to invoke the Court's extraordinary jurisdiction in routine cases, which present important and meritorious claims such as Hohn's. Although the decision directly conflicts with the portion of *House* v. *Mayo*, 324 U. S. 42, 48 *(per curiam)*, holding this Court lacks statutory certiorari jurisdiction to review denials of certificates of probable cause, *stare decisis* does not require adherence to that erroneous conclusion, which is hereby overruled. The Eight Circuit's decision is vacated in light of the Solicitor General's position in this Court. Pp. 3–16.

99 F. 3d 892, vacated and remanded.

KENNEDY, J., delivered the opinion of the Court, in which STEVENS, SOUTER, GINSBURG, and BREYER, JJ., joined. SOUTER, J., filed a concurring opinion. SCALIA, J., filed a dissenting opinion, in which REHNQUIST, C. J., and O'CONNOR and THOMAS, JJ., joined.