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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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TYLER *v.* CAIN, WARDENCERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE FIFTH CIRCUIT

No. 00–5961. Argued April 16, 2001– Decided June 28, 2001

After petitioner Tyler was convicted of second-degree murder and his conviction was affirmed on appeal, he filed five state petitions for postconviction relief and a federal habeas petition, all of which were denied. After this Court decided *Cage v. Louisiana*, 498 U. S. 39—under which a jury instruction is unconstitutional if there is a reasonable likelihood that the jury understood it to allow conviction without proof beyond a reasonable doubt—Tyler filed a sixth state petition, claiming that a jury instruction in his trial was substantively identical to the one condemned in *Cage*. The State District Court denied relief, and the State Supreme Court affirmed. Seeking to pursue his *Cage* claim in federal court, Tyler moved the Fifth Circuit for permission to file a second habeas application, as required by the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA). The court granted the motion. The District Court then proceeded to the merits of Tyler’s claim and denied relief. Although the Fifth Circuit affirmed, it stated that the District Court had erred by failing first to determine whether Tyler had satisfied AEDPA’s successive habeas standard, which requires a district court to dismiss a claim in a second or successive application unless, as relevant here, the applicant “shows” that the “claim relies on a new rule of constitutional law, *made retroactive to cases on collateral review by the Supreme Court*, that was previously unavailable.” §2244(b)(2)(A) (emphasis added). Relying on Circuit precedent, the court concluded that Tyler did not meet this standard.

Held: The *Cage* rule was not “made retroactive to cases on collateral review by the Supreme Court,” within the meaning of §2244(b)(2)(A). Pp. 4–11.

(a) Based on §2244(b)(2)(A)’s plain meaning when read as a whole, “made” means “held.” Under the statute, this Court is the only entity

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that can “ma[k]e” a new rule retroactive. The new rule becomes retroactive, not by the decisions of the lower court or by the combined action of the Supreme Court and the lower courts, but simply by the action of the Supreme Court. The only way the Supreme Court can, by itself, lay out and construct a rule’s retroactive effect is through a holding. This Court does not “ma[k]e” a rule retroactive when it merely establishes principles of retroactivity and leaves their application to lower courts. In such an event, the lower court (or perhaps a combination of courts), not the Supreme Court, develops any legal conclusion derived from those principles. Although the statute uses the word “made,” not “held,” Congress is permitted to use synonyms in a statute, see *Williams v. Taylor*, 529 U. S. 362, and “made” and “held” are synonyms in the §2244(b)(2)(A) context. This interpretation is necessary for the proper implementation of AEDPA’s collateral review structure. The stringent 30-day time period that §2244(b)(3)(D) imposes on courts of appeals determining whether an application “makes a prima facie showing that [it] satisfies the [second habeas standard],” §2244(b)(3)(C), suggests that those courts do not have to engage in the difficult legal analysis that can be required to determine questions of retroactivity in the first instance, but need only rely on Supreme Court retroactivity holdings. Pp. 5–7.

(b) The *Cage* rule has not been “made retroactive . . . by the Supreme Court.” *Cage* did not make itself retroactive, and neither did *Sullivan v. Louisiana*, 508 U. S. 275, 279. Tyler contends that *Sullivan*’s reasoning makes it clear that retroactive application of *Cage* is warranted by the principles of *Teague v. Lane*, 489 U. S. 288, 311–313, in which the Court held that a new rule can be retroactive to cases on collateral review only if it falls within one of two narrow exceptions to the general rule of nonretroactivity. However, the most Tyler can claim is that, based on *Teague*’s principles, this Court *should* make *Cage* retroactive to cases on collateral review. It is clear, however, that the Court has not done so. Although the Court can make a rule retroactive over the course of two cases, it has not done so here. Pp. 7–10.

(c) This Court declines to make *Cage* retroactive today. Because Tyler’s habeas application was his second, the District Court was required to dismiss it unless Tyler showed that this Court already had made *Cage* retroactive. This Court cannot decide today whether *Cage* is retroactive to cases on collateral review, because that decision will not help Tyler in this case. Any statement on *Cage*’s retroactivity would be dictum, so this Court declines to comment further on the issue. Pp. 10–11.

218 F. 3d 744, affirmed.

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