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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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DUNCAN, SUPERINTENDENT, GREAT MEADOW CORRECTIONAL FACILITY *v.* WALKER

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

No. 00–121. Argued March 26, 2001– Decided June 18, 2001

The time during which an "application for State post-conviction or other collateral review" is pending tolls the limitation period for filing federal habeas petitions. 28 U. S. C. §2244(d)(2). Before the April 24, 1996, effective date of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), respondent's state robbery conviction became final. He filed, *inter alia,* a federal habeas petition under §2254. The District Court dismissed the petition without prejudice because it was not apparent that respondent had exhausted available state remedies. On May 20, 1997, without having returned to state court, respondent filed another federal habeas petition. The District Court dismissed that petition because respondent had not filed within a reasonable time from AEDPA's effective date. In reversing, the Second Circuit found that respondent's first federal habeas petition was an application for "other collateral review" that tolled the limitation period under §2244(d)(2) and made his current petition timely.

Held: A federal habeas petition is not an "application for State post-conviction or other collateral review" within the meaning of §2244(d)(2). As a result, §2244(d)(2) did not toll the limitation period during the pendency of respondent's first federal habeas petition. The Court begins with the language of the statute. See, *e.g., Williams* v. *Taylor,* 529 U. S. 420, 431. Petitioner's contention that "State" applies to the entire phrase "post-conviction or other collateral review" is correct. To begin with, Congress placed "State" before that phrase without specifically naming any kind of "Federal" review. The fact that other AEDPA provisions denominate expressly both "State" and "Federal" proceedings, see, *e.g.,* §2254(i), supplies strong evidence that Congress would have mentioned "Federal" review expressly had

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Congress intended to include federal review. See *Bates* v. *United States,* 522 U. S. 23, 29–30. Respondent's contrary construction would render the word "State" insignificant, if not wholly superfluous. This Court's duty to give effect, where possible, to every word of a statute, *United States* v. *Menasche,* 348 U. S. 528, 538–539, makes the Court reluctant to treat statutory terms as surplusage. This is especially so when the term occupies so pivotal a place in the statutory scheme as the word "State" in the federal habeas statute. But under respondent's rendition, "State" has no operative effect on the scope of §2244(d)(2). The clause would have precisely the same content were it to read "post-conviction or other collateral review." Contrary to the Second Circuit's characterization, petitioner's interpretation does not yield the linguistic oddity "State other collateral review," but more naturally yields the understanding "other State collateral review." Further, that court's reasoning that the phrase "other collateral review" would be rendered meaningless if it did not refer to federal habeas petitions depends on the incorrect premise that the only state "collateral" review is "post-conviction" review. "[O]ther collateral review" could include, *e.g.,* a state court civil commitment or civil contempt order. Congress also may have used "post-conviction or other collateral" in recognition of the diverse terminology that different States employ to represent the different forms of collateral review that are available after a conviction. Examination of the AEDPA provision establishing the limitation period for filing §2254 petitions in state capital cases, §2263(b)(2), shows that Congress used the disjunctive clause "post-conviction review or other collateral relief" where the latter term could not possibly include anything federal within its ambit. Petitioner's construction is also far more consistent than respondent's with AEDPA's purpose to further the principles of comity, finality, and federalism. Respondent contends that petitioner's interpretation creates the potential for unfairness to litigants who file timely federal petitions that are dismissed without prejudice after the limitation period has expired. But the Court's sole task here is one of statutory construction. And in light of the facts that respondent never cured the defects that led to the dismissal of his first federal petition during the remaining nine months of the limitation period, and that his 1996 and 1997 petitions contained different claims, this Court has no occasion to address alternative scenarios. Pp. 3–14.

208 F. 3d 357, reversed and remanded.

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