

SOUTER, J., dissenting

SUPREME COURT OF THE UNITED STATES

No. 01–1862

JEANNE WOODFORD, WARDEN, PETITIONER *v.*
ROBERT FREDERICK GARCEAU

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT

[March 25, 2003]

JUSTICE SOUTER, with whom JUSTICE GINSBURG and JUSTICE BREYER join, dissenting.

In modifying 28 U. S. C. §2254, the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), 110 Stat. 1214, did not specifically identify the state habeas cases that the amended statute would govern, except in certain capital cases subject to special rules not applicable here. *Lindh v. Murphy*, 521 U. S. 320, 326 (1997), held that in the statute’s general application, the amendments cover only cases filed after AEDPA’s effective date. Here we have to take the further step of deciding when a case is filed for purposes of the *Lindh* rule.

The majority focuses on 28 U. S. C. §2254 alone, which is fair enough where a habeas petitioner’s first encounter with the district court occurs in filing the petition for habeas relief itself. But this is not such a case. Garceau first entered the federal court to seek appointment of habeas counsel under 21 U. S. C. §848(b)(4)(B), and his subsequently appointed lawyer then petitioned under 28 U. S. C. §2251 for a stay of execution while preparing a habeas petition. I therefore think this case calls for the principle that related statutory provisions are to be read together, see, *e.g.*, *Coit Independence Joint Venture v. FSLIC*, 489 U. S. 561, 573 (1989) (citing *Brown v. Duchesne*, 19 How. 183, 194 (1857)). AEDPA’s amendment of §2254

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ought to be understood in light of §2251.

When counsel, appointed to prepare and litigate a habeas petition under §2254, seeks a stay of execution under §2251, the district court will at some point condition the continuation of any stay on its assessment of the substantiality of the issues counsel expects to raise in the petition yet to be filed, a judgment that will call for some consideration of standards for federal relief in cases governed by §2254. When a district court's exercise of jurisdiction for habeas purposes occurs during the transition from an earlier to a later version of §2254, it makes sense to hold that the version to be applied in a given case is the one in effect when the habeas court first takes account of §2254 standards for habeas relief. A case should thus be considered filed for purposes of the *Lindh* rule by the time the habeas court makes a determination that takes standards for federal relief into consideration.

When the District Court took its initial look at anticipated claims in this case, for example, it was clear that the habeas petition might well be filed before the effective date of the amendment to §2254; it was thus appropriate for the District Court to consider the possible merit of the claim in light of the earlier, existing law. As a consequence, it would be reasonable to apply that law throughout. There would not be much point, after all, in relying on existing law to judge the merits of a stay, if counsel could not rely on existing law in preparing the case. Otherwise the court could be staying a case that might be hopeless under the later, more restrictive, law; or conversely, would be forcing counsel to stint on responsible preparation, in order to assure that a petition subject to the earlier law be filed before AEDPA's general effective date. I would therefore hold that the earlier version of §2254 should apply throughout a habeas proceeding if the habeas court that issued a §2251 stay took its preliminary look at the prospects for habeas success prior to AEDPA's

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effective date.

In this case, that first look occurred six months before the amendment's effective date, and I would accordingly hold the pre-AEDPA law applicable here. I respectfully dissent.