SUPREME COURT OF THE UNITED STATES

No. 02–6683

HERNAN O'RYAN CASTRO, PETITIONER *v.* UNITED STATES

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

[December 15, 2003]

JUSTICE BREYER delivered the opinion of the Court.

Under a longstanding practice, a court sometimes treats as a request for habeas relief under 28 U. S. C. §2255 a motion that a *pro se* federal prisoner has labeled differently. Such recharacterization can have serious consequences for the prisoner, for it subjects any subsequent motion under §2255 to the restrictive conditions that federal law imposes upon a "second or successive" (but not upon a first) federal habeas motion. §2255, ¶8. In light of these consequences, we hold that the court cannot so recharacterize a *pro se* litigant's motion as the litigant's first §2255 motion *unless* the court informs the litigant of its intent to recharacterize, warns the litigant that the recharacterization will subject subsequent §2255 motions to the law's "second or successive" restrictions, and provides the litigant with an opportunity to withdraw, or to amend, the filing. Where these things are not done, a recharacterized motion will not count as a §2255 motion for purposes of applying §2255's "second or successive" provision.

I

This case focuses upon two motions that Hernan O'Ryan Castro, a federal prisoner acting *pro se*, filed in federal court. He filed the first motion in 1994, the second in 1997.

A

The relevant facts surrounding the 1994 motion are the following:

(1) On July 5, 1994, Castro filed a *pro se* motion attacking his federal drug conviction, a motion that he called a Rule 33 motion for a new trial. See Fed. Rule Crim. Proc. 33.

(2) The Government, in its response, said that Castro's claims were "more properly cognizable" as federal habeas corpus claims, *i.e.*, claims made under the authority of 28 U. S. C. §2255. But, the Government added, it did not object to the court's considering Castro's motion as having invoked both Rule 33 and §2255.

(3) The District Court denied Castro's motion on the merits. In its accompanying opinion, the court generally referred to Castro's motion as a Rule 33 motion; but the court twice referred to it as a §2255 motion as well. App. 137–144.

(4) Castro, still acting *pro se*, appealed, but he did not challenge the District Court's recharacterization of his motion.

(5) The Court of Appeals summarily affirmed. It said in its one-paragraph order that it was ruling on a motion based upon both Rule 33 and §2255. Judgt. order reported at 82 F. 3d 429 (CA11 1996); App. 147.

B

The relevant facts surrounding the 1997 motion are the following:

(1) On April 18, 1997, Castro, acting *pro se*, filed what

he called a §2255 motion. The motion included claims not raised in the 1994 motion, including a claim of ineffective assistance of counsel.

(2) The District Court denied the motion; Castro appealed; and the Court of Appeals remanded for further consideration of the ineffective-assistance-of-counsel claim. It also asked the District Court to consider whether, in light of the 1994 motion, Castro's motion was his second §2255 motion, rather than his first.

(3) On remand, the District Court appointed counsel for Castro. It then decided that the 1997 motion was indeed Castro's second §2255 motion (the 1994 motion being his first). And it dismissed the motion for failure to comply with one of §2255's restrictive "second or successive" conditions (namely, Castro's failure to obtain the Court of Appeals' permission to file a "second or successive" motion). §2255, ¶8. The District Court granted Castro a certificate to appeal its "second or successive" determination. §2253(c)(1).

(4) The Eleventh Circuit affirmed by a split (2-to-1) vote. 290 F. 3d 1270 (2002). The majority "suggested" and "urged" district courts in the future to "warn prisoners of the consequences of recharacterization and provide them with the opportunity to amend or dismiss their filings." *Id.*, at 1273, 1274. But it held that the 1994 court's failure to do so did not legally undermine its recharacterization. Hence, Castro's current §2255 motion was indeed his second habeas motion. *Id.*, at 1274.

Other Circuits have taken a different approach. *E.g.*, *United States* v. *Palmer*, 296 F. 3d 1135, 1145–1147 (CADC 2002) (announcing a rule *requiring* courts to notify *pro se* litigants prior to recharacterization and refusing to find the §2255 motion before it "second or successive" since such notice was lacking). We consequently granted Castro's petition for certiorari.

II

We begin with a jurisdictional matter. We asked the parties to consider the relevance of a provision in the federal habeas corpus statutes that says that the

> "grant or denial of an authorization by a court of appeals to file a second or successive application . . . shall not be the subject of a petition for . . . a writ of certiorari." 28 U. S. C. §2244(b)(3)(E).

After receiving the parties' responses, we conclude that this provision does not bar our review here.

Castro's appeal to the Eleventh Circuit did not concern an "authorization . . . to file a second or successive application." The District Court certified for appeal the question whether Castro's §2255 motion was his first such motion or his second. Castro then argued to the Eleventh Circuit that his §2255 motion was his first; and he asked the court to reverse the District Court's dismissal of that motion. He nowhere asked the Court of Appeals to grant, and it nowhere denied, any "authorization . . . to file a second or successive application."

The Government argues that the Eleventh Circuit's opinion had the *effect* of denying "authorization . . . to file a second . . . application" because the court said in its opinion that Castro's motion could not meet the requirements for second or successive motions. 290 F. 3d, at 1273. For that reason, the Government concludes, the court's decision falls within the scope of the jurisdictional provision. Brief for United States 16.

In our view, however, this argument stretches the words of the statute too far. Given the context, we cannot take these words in the opinion as a statutorily relevant "denial" of a request that was not made. Even if, for argument's sake, we were to accept the Government's characterization, the argument nonetheless would founder on the statute's requirement that the "denial" must be the "*sub-*

ject" of the certiorari petition. The "subject" of Castro's petition is not the Court of Appeals' "denial of an authorization." It is the lower courts' refusal to recognize that this §2255 motion is his first, not his second. That is a very different question. Cf. *Adamo Wrecking Co.* v. *United States*, 434 U. S. 275, 282–283 (1978) (statute barring court review of lawfulness of agency "emission standard" in criminal case does not bar court review of whether regulation *is* an "emission standard").

Moreover, reading the statute as the Government suggests would produce troublesome results. It would create procedural anomalies, allowing review where the lower court decision disfavors, but denying review where it favors, the Government. Cf. *Stewart* v. *Martinez-Villareal*, 523 U. S. 637, 641–642 (1998) (allowing the Government to obtain review of a decision that a habeas corpus application is *not* "second or successive"). It would close our doors to a class of habeas petitioners seeking review without any clear indication that such was Congress' intent. Cf. *Felker* v. *Turpin*, 518 U. S. 651, 660–661 (1996). And any such conclusion would prove difficult to reconcile with the basic principle that we "read limitations on our jurisdiction to review narrowly." *Utah* v. *Evans*, 536 U. S. 452, 463 (2002).

We conclude that we have the power to review Castro's claim, and we turn to the merits of that claim.

III

Federal courts sometimes will ignore the legal label that a *pro se* litigant attaches to a motion and recharacterize the motion in order to place it within a different legal category. See, *e.g.*, *Raineri* v. *United States*, 233 F. 3d 96, 100 (CA1 2000); *United States* v. *Detrich*, 940 F. 2d 37, 38 (CA2 1991); *United States* v. *Miller*, 197 F. 3d 644, 648 (CA3 1999); *Raines* v. *United States*, 423 F. 2d 526, 528,

n. 1 (CA4 1970); *United States* v. *Santora*, 711 F. 2d 41, 42 (CA5 1983); *United States* v. *McDowell*, 305 F. 2d 12, 14 (CA6 1962); *Henderson* v. *United States*, 264 F. 3d 709, 711 (CA7 2001); *McIntyre* v. *United States*, 508 F. 2d 403, n. 1 (CA8 1975) *(per curiam); United States* v. *Eatinger*, 902 F. 2d 1383, 1385 (CA9 1990) *(per curiam); United States* v. *Kelly*, 235 F. 3d 1238, 1242 (CA10 2000); *United States* v. *Jordan*, 915 F. 2d 622, 625 (CA11 1990); *United States* v. *Tindle*, 522 F. 2d 689, 693 (CADC 1975) *(per curiam)*. They may do so in order to avoid an unnecessary dismissal, *e.g.*, *id.*, at 692–693, to avoid inappropriately stringent application of formal labeling requirements, see *Haines* v. *Kerner*, 404 U. S. 519, 520 (1972) *(per curiam)*, or to create a better correspondence between the substance of a *pro se* motion's claim and its underlying legal basis. See *Hughes* v. *Rowe*, 449 U. S. 5, 10 (1980) *(per curiam); Andrews* v. *United States*, 373 U. S. 334 (1963).

We here address one aspect of this practice, namely, certain legal limits that nine Circuits have placed on recharacterization. Those Circuits recognize that, by recharacterizing as a first §2255 motion a *pro se* litigant's filing that did not previously bear that label, the court may make it significantly more difficult for that litigant to file another such motion. They have consequently concluded that a district court may not recharacterize a *pro se* litigant's motion as a request for relief under §2255—unless the court first warns the *pro se* litigant about the consequences of the recharacterization, thereby giving the litigant an opportunity to contest the recharacterization, or to withdraw or amend the motion. See *Adams* v. *United States*, 155 F. 3d 582, 583 (CA2 1998) *(per curiam); United States* v. *Miller*, *supra*, at 646–647 (CA3); *United States* v. *Emmanuel*, 288 F. 3d 644, 646–647 (CA4 2002); *In re Shelton*, 295 F. 3d 620, 622 (CA6 2002) *(per curiam); Henderson* v. *United States*, *supra*, at 710–711 (CA7); *Morales* v. *United States*, 304 F. 3d 764, 767 (CA8 2002);

United States v. *Seesing*, 234 F. 3d 456, 463 (CA9 2000); *United States* v. *Kelly*, *supra*, at 1240–1241 (CA10); *United States* v. *Palmer*, 296 F. 3d, at 1146 (CADC); see also 290 F. 3d, at 1273, 1274 (case below) (*suggesting* that courts provide such warnings).

No one here contests the lawfulness of this judicially created requirement. The Government suggests that Federal Rule of Appellate Procedure 47 provides adequate underlying legal authority for the procedural practice. Brief for United States 42. It suggests that this Court has the authority to regulate the practice through "the exercise" of our "supervisory powers" over the federal judiciary. *E.g.*, *McNabb* v. *United States,* 318 U. S. 332, 340–341 (1943). And it notes that limiting the courts' authority to recharacterize, approximately as the Courts of Appeals have done, "is likely to reduce and simplify litigation over questions of characterization, which are often quite difficult." Brief for United States 42.

We agree with these suggestions. We consequently hold, as almost every Court of Appeals has already held, that the lower courts' recharacterization powers are limited in the following way:

The limitation applies when a court recharacterizes a *pro se* litigant's motion as a first §2255 motion. In such circumstances the district court must notify the *pro se* litigant that it intends to recharacterize the pleading, warn the litigant that this recharacterization means that any subsequent §2255 motion will be subject to the restrictions on "second or successive" motions, and provide the litigant an opportunity to withdraw the motion or to amend it so that it contains all the §2255 claims he believes he has. If the court fails to do so, the motion cannot be considered to have become a §2255 motion for purposes of applying to later motions the law's "second or successive" restrictions. §2255, ¶8.

IV

The District Court that considered Castro's 1994 motion failed to give Castro warnings of the kind we have described. Moreover, this Court's "supervisory power" determinations normally apply, like other judicial decisions, retroactively, at least to the case in which the determination was made. *McNabb, supra*, at 347 (applying new supervisory rule to case before the Court). Hence, given our holding in Part III, *supra*, Castro's 1994 motion cannot be considered a first §2255 motion, and his 1997 motion cannot be considered a "second or successive" motion—unless there is something special about Castro's case.

The Government argues that there is something special: Castro failed to appeal the 1994 recharacterization. According to the Government, that fact makes the 1994 recharacterization valid as a matter of "law of the case." And, since the 1994 recharacterization is valid, the 1997 §2255 motion is Castro's second, not his first.

We do not agree. No Circuit that has considered whether to treat a §2255 motion as successive (based on a prior unwarned recharacterization) has found that the litigant's failure to challenge that recharacterization makes a difference. See *Palmer*, *supra*, at 1147; see also *Henderson*, *supra*, at 711–712; *Raineri*, 233 F. 3d, at 100; *In re Shelton*, *supra*, at 622. That is not surprising, for the very point of the warning is to help the *pro se* litigant understand not only (1) whether he should withdraw or amend his motion, but also (2) whether he should *contest* the recharacterization, say, on appeal. The "lack of warning" prevents his making an informed judgment in respect to the latter just as it does in respect to the former. Indeed, an unwarned *pro se* litigant's failure to appeal a recharacterization simply underscores the practical importance of providing the warning. Hence, an unwarned recharacterization cannot count as a §2255 motion for purposes of the "second or successive" provision, whether

the unwarned *pro se* litigant does, or does not, take an appeal.

The law of the case doctrine cannot pose an insurmountable obstacle to our reaching this conclusion. Assuming for argument's sake that the doctrine applies here, it simply "expresses" common judicial "practice"; it does not "limit" the courts' power. See *Messenger* v. *Anderson*, 225 U. S. 436, 444 (1912) (Holmes, J.). It cannot prohibit a court from disregarding an earlier holding in an appropriate case which, for the reasons set forth, we find this case to be.

The judgment of the Court of Appeals is vacated, and the case is remanded for further proceedings consistent with this opinion.

So ordered.