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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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HARBISON v. BELL, WARDEN**CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE SIXTH CIRCUIT**

No. 07–8521. Argued January 12, 2009—Decided April 1, 2009

After the Tennessee state courts rejected petitioner Harbison’s conviction and death sentence challenges, the Federal District Court appointed a federal public defender to represent him in filing a habeas petition under 28 U. S. C. §2254. That petition was denied. Harbison then sought appointment of counsel for state clemency proceedings. Because Tennessee law no longer authorizes the appointment of state public defenders as clemency counsel, his federal counsel moved to expand the scope of her representation to include the state proceedings. In denying the motion, the District Court relied on Circuit precedent construing 18 U. S. C. §3599, which provides for the appointment of federal counsel. The Sixth Circuit affirmed.

Held:

1. A certificate of appealability pursuant to 28 U. S. C. §2253(c)(1)(A) is not required to appeal an order denying a request for federally appointed counsel under §3599 because §2253(c)(1)(A) governs only final orders that dispose of a habeas corpus proceeding’s merits. Pp. 2–3.

2. Section 3599 authorizes federally appointed counsel to represent their clients in state clemency proceedings and entitles them to compensation for that representation. Pp. 3–14.

(a) Section 3599(a)(2), which refers to both §2254 and §2255 proceedings, triggers the appointment of counsel for both state and federal postconviction litigants, and §3599(e) governs the scope of appointed counsel’s duties. Thus, federally funded counsel appointed to represent a state prisoner in §2254 proceedings “shall also represent the defendant in such . . . proceedings for executive or other clemency as may be available to the defendant.” §3599(e). Because state clemency proceedings are “available” to state petitioners who obtain sub-

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section (a)(2) representation, the statute’s plain language indicates that appointed counsel’s authorized representation includes such proceedings. Moreover, subsection (e)’s reference to “proceedings for . . . other clemency” refers to state proceedings, as federal clemency is exclusively executive, while States administer clemency in various ways. The Government is correct that appointed counsel is not expected to provide each service enumerated in subsection (e) for every client. Rather, counsel’s representation includes only those judicial proceedings transpiring “subsequent” to her appointment, which under subsection (a)(2) begins with the §2254 or §2255 “post-conviction process.” Pp. 3–8.

(b) The Government’s attempts to overcome §3599’s plain language are not persuasive. First, our reading of the statute does not produce absurd results. Contrary to the Government’s contention, a lawyer is not required to represent her client during a state retrial following postconviction relief because the retrial marks the commencement of new judicial proceedings, not a subsequent stage of existing proceedings; state postconviction proceedings are also not “subsequent” to federal habeas proceedings. Second, the legislative history does not support the Government’s argument that Congress intended §3599 to apply only to federal defendants. Congress’ decision to furnish counsel for state clemency proceedings reflects both clemency’s role as the “fail safe” of our criminal justice system,” *Herrera v. Collins*, 506 U. S. 390, 415, and the fact that federal habeas counsel are well positioned to represent their clients in clemency proceedings. Pp. 8–14.

503 F. 3d 566, reversed.

STEVENS, J., delivered the opinion of the Court, in which KENNEDY, SOUTER, GINSBURG, and BREYER, JJ., joined. ROBERTS, C. J., and THOMAS, J., filed opinions concurring in the judgment. SCALIA, J., filed an opinion concurring in part and dissenting in part, in which ALITO, J., joined.