

103D CONGRESS  
1ST SESSION

# S. 38

To reform procedures for collateral review of criminal judgments, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

JANUARY 21 (legislative day, JANUARY 5), 1993

Mr. THURMOND introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To reform procedures for collateral review of criminal judgments, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*  
3       That this Act may be cited as the “Reform of Federal  
4       Intervention in State Proceedings Act of 1993”.

5       SEC. 2. Section 2244 of title 28, United States Code,  
6       is amended by adding at the end thereof the following new  
7       subsections:

8       “(d) When a person in custody pursuant to the judg-  
9       ment of a State court fails to raise a claim in State pro-  
10      ceedings at the time or in the manner required by State

1 rules of procedure, the claim shall not be entertained in  
2 an application for a writ of habeas corpus unless actual  
3 prejudice resulted to the applicant from the alleged denial  
4 of the Federal right asserted and—

5           “(1) the failure to raise the claim properly or  
6           to have it heard in State proceedings was the result  
7           of State action in violation of the Constitution or  
8           laws of the Unites States;

9           “(2) the Federal right asserted was newly rec-  
10          ognized by the Supreme Court subsequent to the  
11          procedural default and is retroactively applicable; or

12          “(3) the factual predicate of the claim could not  
13          have been discovered through the exercise of reason-  
14          able diligence prior to the procedural default.

15          “(e) A one-year period of limitation shall apply to an  
16          application for a writ of habeas corpus by a person in cus-  
17          tody pursuant to the judgment of a State court. The limi-  
18          tation period shall run from the latest of the following  
19          times:

20                 “(1) the time at which State remedies are ex-  
21                 hausted;

22                 “(2) the time at which the impediment to filing  
23                 an application created by State action in violation of  
24                 the Constitution or laws of the Untied States is re-

1 moved, where the applicant was prevented from fil-  
2 ing by such State action;

3 “(3) the time at which the Federal right as-  
4 serted was initially recognized by the Supreme  
5 Court, where the right has been newly recognized by  
6 the Court and is retroactively applicable; or

7 “(4) the time at which the factual predicate of  
8 the claim or claims presented could have been dis-  
9 covered through the exercise of reasonable dili-  
10 gence.”.

11 SEC. 3. Section 2253 of title 28, United States Code,  
12 is amended to read as follows:

13 **“§ 2253. Appeal**

14 “In a habeas corpus proceeding or a proceeding  
15 under section 2255 of this title before a circuit or district  
16 judge, the final order shall be subject to review, on appeal,  
17 by the court of appeals for the circuit where the proceed-  
18 ing is had.

19 “There shall be no right of appeal from such an order  
20 in a proceeding to test the validity of a warrant to remove,  
21 to another district or place for commitment or trial, a per-  
22 son charged with a criminal offense against the United  
23 States, or to test the validity of his detention pending re-  
24 moval proceedings.



1 applicant or movant may not proceed unless a circuit  
2 judge issues a certificate or probable cause. If a request  
3 for a certificate of probable cause is addressed to the court  
4 of appeals, it shall be deemed addressed to the judges  
5 thereof and shall be considered by a circuit judge or judges  
6 as the court deems appropriate. If no express request for  
7 a certificate is filed, the notice of appeal shall be deemed  
8 to constitute a request addressed to the judges of the court  
9 of appeals. If an appeal is taken by a State or the govern-  
10 ment or its representative, a certificate of probable cause  
11 is not required.”.

12 SEC. 5. Section 2254 of title 28, United States Code,  
13 is amended by redesignating subsections “(e)” and “(f)”  
14 as subsections “(f)” and “(g)”, respectively, and is further  
15 amended—

16 (a) by amending subsection (b) to read as fol-  
17 lows:

18 “(b) An application for a writ of habeas corpus in  
19 behalf of a person in custody pursuant to the judgment  
20 of a State court shall not be granted unless it appears  
21 that the applicant has exhausted the remedies available  
22 in the courts of the State, or that there is either an ab-  
23 sence of available State corrective process or the existence  
24 of circumstances rendering such process ineffective to pro-  
25 tect the rights of the applicant. An application may be

1 denied on the merits notwithstanding the failure of the  
2 applicant to exhaust the remedies available in the courts  
3 of the States.”;

4 (b) by redesignating subsection “(d)” as sub-  
5 section “(e)”, and amending it to read as follows:

6 “(e) In a proceeding instituted by an application for  
7 a writ of habeas corpus by a person in custody pursuant  
8 to the judgment of a State court, a full and fair deter-  
9 mination of a factual issue made in the case by a State  
10 court shall be presumed to be correct. The applicant shall  
11 have the burden of rebutting this presumption by clear  
12 and convincing evidence.”; and

13 (c) by adding a new subsection (d) reading as  
14 follows:

15 “(d) An application for a writ of habeas corpus in  
16 behalf of a person in custody pursuant to the judgment  
17 of a State court shall not be granted with respect to any  
18 claim that has been fully and fairly adjudicated in State  
19 proceedings.”.

20 SEC. 6. Section 2255 of title 28, United States Code,  
21 is amended by deleting the second paragraph and the pe-  
22 nultimate paragraph thereof, and by adding at the end  
23 thereof the following new paragraphs:

24 “When a person fails to raise a claim at the time  
25 or in the manner required by Federal rules of procedure,

1 the claim shall not be entertained in a motion under this  
2 section unless actual prejudice resulted to the movant  
3 from the alleged denial of the right asserted and—

4 “(1) the failure to raise the claim properly, or  
5 to have it heard, was the result of governmental ac-  
6 tion in violation of the Constitution or laws of the  
7 Unites States;

8 “(2) the right asserted was newly recognized by  
9 the Supreme Court subsequent to the procedural de-  
10 fault and is retroactively applicable; or

11 “(3) the factual predicate of the claim could not  
12 have been discovered through the exercise of reason-  
13 able diligence prior to the procedural default.

14 “A two-year period of limitation shall apply to a mo-  
15 tion under this section. The limitation period shall run  
16 from the latest of the following times;

17 “(1) the time at which the judgment of convic-  
18 tion becomes final;

19 “(2) the time at which the impediment to mak-  
20 ing a motion created by governmental action in vio-  
21 lation of the Constitution or laws of the United  
22 States is removed, where the movant was prevented  
23 from making a motion by such governmental action;

24 “(3) the time at which the right asserted was  
25 initially recognized by the Supreme Court, where the

1 right has been newly recognized by the Court and is  
2 retroactively applicable; or

3 “(4) the time at which the factual predicate of  
4 the claim or claims presented could have been dis-  
5 covered through the exercise of reasonable dili-  
6 gence.”.

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