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 Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

SCHLUP *v.* DELO, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER

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

No. 93–7901. Argued October 3, 1994—Decided January 23, 1995

Petitioner Schlup, a Missouri prisoner, was convicted of participating in the murder of a fellow inmate and sentenced to death. In this, his second federal habeas petition, he alleged that constitutional error at his trial deprived the jury of critical evidence that would have established his innocence. The District Court declined to reach the petition's merits, holding that Schlup could not satisfy the threshold showing of ``actual innocence'' required by *Sawyer* v. *Whitley,* 505 U. S. ___, ___, under which a petitioner must demonstrate ``by clear and convincing evidence that but for a constitutional error, no reasonable juror would have found'' him guilty.

Held: The standard of *Murray* v. *Carrier,* 477 U. S. 478—which requires a habeas petitioner to show that ``a constitutional violation has probably resulted in the conviction of one who is actually innocent,'' *id.,* at 496—rather than the more stringent *Sawyer* standard, governs the miscarriage of justice inquiry when a petitioner who has been sentenced to death raises a claim of actual innocence to avoid a procedural bar to the consideration of the merits of his constitutional claims. Pp. 14–34.

(a) In contrast to the actual innocence claim asserted in *Herrera* v. *Collins,* 506 U. S. ___—that the execution of an innocent person convicted in an error-free trial violates the Eighth Amendment— Schlup's claim is accompanied by an assertion of constitutional error at trial: the ineffectiveness of his counsel and the withholding of evidence by the prosecution. As such, his conviction may not be entitled to the same degree

of respect as one that is the product of an error-free trial, and his evidence of innocence need carry less of a burden. In *Herrera,* the evidence of innocence would have had to be strong enough to make the execution ``constitutionally intolerable'' *even if* the conviction was the product of a fair trial, while here the evidence must establish sufficient doubt about Schlup's guilt to justify the conclusion that his execution would be a miscarriage of justice *unless* his conviction was the product of a fair trial. Pp. 14–18.

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(b) The societal interests in finality, comity, and conservation of scarce judicial resources dictate that a habeas court may not ordinarily reach the merits of successive or abusive claims, absent a showing of cause and prejudice. However, since habeas corpus is, at its core, an equitable remedy, a court must adjudicate even successive claims when required to do so by the ends of justice. Thus, in a trio of cases, this Court firmly established an exception for fundamental miscarriages of justice. *Carrier,* 477 U. S., at 495; *Kuhlmann* v. *Wilson,* 477 U. S. 436; *Smith* v. *Murray,* 477 U. S. 527. To ensure that the fundamental miscarriage of justice exception would remain ``rare'' and be applied only in the ``extraordinary case,'' while at the same time ensuring that relief would be extended to those who are truly deserving, the Court has explicitly tied the exception to the petitioner's innocence. *Carrier* and *Kuhlmann* also expressed the standard of proof that should govern consideration of such claims: The petitioner must show that the constitutional error ``probably'' resulted in the conviction of one who was actually innocent. The *Sawyer* Court made no attempt to reconcile its more exacting standard of proof with *Carrier*'s use of ``probably.'' Pp. 18–24.

(c) *Carrier,* rather than *Sawyer,* properly strikes the balance between the societal interests and the individual interest in justice, when the claimed injustice is that constitutional error has resulted in the conviction of one who is actually innocent. Though challenges to the propriety of imposing a death sentence are routinely asserted in capital cases, a substantial claim that constitutional error has caused the conviction of an innocent person is extremely rare and must be supported by new reliable evidence that was not presented at trial, evidence obviously unavailable in the vast majority of cases. Thus, the threat to judicial resources, finality, and comity posed by actual innocence claims is significantly less than that posed by sentencing claims. More importantly, the individual interest in avoiding injustice is most compelling in the context of actual innocence, since the quintessential miscarriage of justice is the execution of an innocent person. The less exacting *Carrier* standard of proof reflects the relative importance attached to the ultimate decision. Application of the stricter *Sawyer* standard would give insufficient weight to the correspondingly greater injustice that is implicated by an actual innocence claim. Pp. 24–28.

(d) To satisfy *Carrier*'s ``actual innocence'' standard, a petitioner must show that, in light of the new evidence, it is more likely than not that no reasonable juror would have found him guilty beyond a reasonable doubt. The focus on actual innocence means that a district court is not bound by the

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admissibility rules that would govern at trial, but may consider the probative force of relevant evidence that was either wrongly excluded or unavailable at trial. The district court must make a probabilistic determination about what reasonable, properly instructed jurors would do, and it is presumed that a reasonable juror would consider fairly all of the evidence presented and would conscientiously obey the trial court's instructions requiring proof beyond a reasonable doubt. The *Carrier* standard, although requiring a substantial showing, is by no means equivalent to the standard governing review of insufficient evidence claims. *Jackson* v. *Virginia,* 443 U. S. 307, distinguished. In applying the *Carrier* standard to Schlup's request for an evidentiary hearing, the District Court must assess the probative force of the newly presented evidence in connection with the evidence of guilt adduced at trial. The court is not required to test the new evidence by a standard appropriate for deciding a motion for summary judgment, but may consider how the submission's timing and the affiants' likely credibility bear on the probable reliability of that evidence. Pp. 28–34.

11 F. 3d 738, vacated and remanded.

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