No. 20-5366

In the Supreme Court of the United States

ANTHONY BERNARD SMITH, JR.,

Petitioner,

v.

RON DAVIS,

Respondent.

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

BRIEF IN OPPOSITION

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October 19, 2020

QUESTION PRESENTED

Whether equitable tolling of the one-year statute of limitations in the Antiterrorism and Effective Death Penalty Act of 1996, 28 U.S.C. § 2244(d), requires a habeas petitioner to show that an extraordinary circumstance caused the untimely filing and that he exercised reasonable diligence until he filed the petition.

DIRECTLY RELATED PROCEEDINGS

U.S. Court of Appeals for the Ninth Circuit:

Smith v. Davis, No. 17-15874 (March 20, 2020) (this case below) (en banc judgment affirming dismissal of petition for writ of habeas corpus as untimely)

U.S. District Court for the Eastern District of California:

Smith v. Davis, No. 2:15-cv-01785-JAM-AC (Oct. 27, 2016) (this case below)

California Supreme Court

People v. Smith, No. S216174 (March 12, 2014) (denying petition for review on direct appeal)

California Court of Appeal

People v. Smith, No. C071696 (Dec. 16, 2013) (affirming conviction on direct appeal)

Sacramento County Superior Court

People v. Smith, No. 97F07219 (July 13, 2012) (underlying criminal conviction)

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STATEMENT

1. A jury convicted petitioner in 1998 of burglarizing the home of an aging couple, robbing them, and forcing oral copulation from the wife at gunpoint. Pet. App. 6a, 166a-168a; *see Smith v. Curry*, 580 F.3d 1071, 1073 (9th Cir. 2009), *cert. denied sub nom.*, *Wong v. Smith*, 562 U.S. 1021 (2010). After his convictions were affirmed on direct review, a federal district court granted petitioner's habeas petition, vacating his conviction on the oral copulation count based on instructional error. Pet. App. 6a, 100a. The court of appeals affirmed, *see Smith v. Curry*, 580 F.3d at 1073, and this Court denied certiorari with three Justices noting their dissent, *see Wong v. Smith*, 562 U.S. 1021.

The State re-tried petitioner on the oral copulation count, presenting new DNA evidence from the crime scene that disclosed a match to petitioner's DNA profile, with a random match probability of 1 in 640 quintillion. Pet. App. 169a. Petitioner was again convicted and sentenced to 25-years-to-life. *Id.* at 6a.[1] The state court of appeal affirmed the conviction, *id.* at 6a, 166a-178a, and the California Supreme Court denied a petition for review, *id.* at 6a. Petitioner did not seek review in this Court. *Id.* His conviction became final on June 10, 2014. *Id.*

2. More than fourteen months later, on August 14, 2015, petitioner filed a federal habeas petition. Pet. App. 7a, 111a-179a. As in his state appellate proceedings, petitioner alleged that his trial attorney was ineffective for failing to request jury instructions on

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[1] Petitioner is eligible for parole in September 2021. *See* CDCR Inmate Locator, Public Inmate Locator System, "Anthony Bernard Smith," https://inmatelocator.cdcr.ca.gov/Details.aspx?ID=P19045 (last visited Oct. 13, 2020).

third-party culpability, to object to an instruction on eyewitness identification, or to object to certain statements made by the prosecutor in the closing argument. *Id.* at 111a-179a. His 48-page petition consisted of arguments taken nearly verbatim from the brief that his attorney had prepared in the state appellate proceedings. *Id.* at 34a, 108a.

The district court dismissed the petition as untimely under 28 U.S.C. § 2244(d)(1)(A), AEDPA's one-year statute of limitations. Pet. App. 70a-71a. Adopting the magistrate judge's findings and recommendations in full, the district court rejected petitioner's claim that he was entitled to extend the statute of limitations beyond the one-year period by tolling the 66 days between when his conviction became final and when his appellate attorney sent him the record from the state appellate proceedings. *See id.*; *id.* at 99a-110a. The court reasoned that "[e]ven assuming" petitioner could establish that his attorney's delay in transmitting the appellate record qualified as an extraordinary circumstance, *id.* at 106a, "petitioner has offered no explanation as to why he was unable to file his federal petition during [the] ten month period" after he received the appellate record and before the one-year limitations period expired, *id.* at 108a. The court concluded that it was "petitioner's own lack of diligence during the ten months after he received the appellate record" that caused him to file after the limitations period expired. *Id.* at 109a.

3. A panel of the court of appeals affirmed. Pet. App. 67a-69a. The court subsequently granted rehearing en banc and again affirmed. *Id.* at 1a-36a. The en banc court explained that, under this Court's precedents, a habeas petitioner is eligible for equitable tolling of AEDPA's statute of limitations if he shows:

"'(1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way' and prevented timely filing." *Id.* at 10a (quoting *Holland v. Florida*, 560 U.S. 631, 649 (2010), and *Pace v. DiGuglielmo*, 544 U.S. 408, 418 (2005)). In light of those requirements, the court concluded that a petitioner seeking the benefit of equitable tolling to extend AEDPA's one-year limitations period must exercise reasonable diligence "not only while an impediment to filing caused by an extraordinary circumstance exist[s], but before and after as well, up to the time of filing his claim in federal court." *Id.* at 30a. In addition, an extraordinary circumstance must have caused the untimely filing, *see id.* at 33a, "[f]or if an extraordinary circumstance is not the cause of a litigant's untimely filing, then there is nothing for equity to address," *id.* at 15a. And the only way to assess whether an "extraordinary circumstance caused the untimely filing is to examine" whether the petitioner acted with reasonable diligence throughout the limitations period. *Id.* at 24a.

Applying these standards to petitioner's habeas petition, which was filed 65 days after the one-year statute of limitations expired, the court held that the petition was untimely. Pet. App. 6a, 36a. The court assumed without deciding that defense counsel's conduct and failure to promptly send the appellate record to petitioner qualified as an extraordinary circumstance. *Id.* at 33a. But petitioner "alleged no facts, argued no circumstances, and made no claim that he had been diligent" for the ten months after he received his files. *Id.* at 35a. Indeed, the petition consisted almost exclusively of language submitted in briefs to the state courts, and the legal argument section was taken nearly verbatim from the petition for review filed in

the California Supreme Court. *Id.* at 7a, 34a. Accordingly, petitioner could not show that counsel's 66-day delay in transmitting the appellate record at the start of the limitations period had caused petitioner's untimely filing or that he was unable to file a habeas petition before the limitations period expired. *Id.* at 36a.

The court had "no trouble imag[in]ing" a circumstance in which a diligent petitioner facing a similar impediment would be entitled to equitable tolling. Pet. App. 35a. For example, it described a scenario in which "a petitioner is impeded by extraordinary circumstances from working on a habeas petition for two months, but after those circumstances are dispelled, uses the next 364 days diligently, files his petition, and has the entire two months during which the extraordinary circumstances existed equitably tolled." *Id.* The court also made clear that the diligence required to obtain equitable tolling is "reasonable diligence," not "maximum feasible diligence." *Id.* at 31a. "What reasonable diligence" looks like "varies based on the specifics of the case." *Id.* at 35a.

Five judges dissented. Pet. App. 37a-66a. They would have adopted a "stop-clock" rule under which an extraordinary circumstance that "precludes a potential litigant from drafting or filing his lawsuit during part or all of the limitation period" suspends the statute of limitations while the extraordinary circumstance exists, and the limitations period begins to run again once the circumstance abates. *Id.* at 66a; *see id.* at 48a. And they would have remanded for the district court to apply that rule. *Id.* at 66a. The dissent recognized that the record here did not disclose whether petitioner had ever "opened the box containing" his records that he received from his attorney 66 days into the limitations period. *Id.* at 63a. It noted that, if he

had not opened the box, the "unavailability of that record" would not qualify as "an extraordinary circumstance that prevent[ed a] timely filing." *Id.*

ARGUMENT

The court of appeals correctly applied this Court's precedents governing equitable tolling of AEDPA's statute of limitations, which require a petitioner to show both that he exercised reasonable diligence throughout the limitations period until filing and that the claimed extraordinary circumstance actually caused his untimely filing. Petitioner does not identify any conflict warranting this Court's review. And this case would be a poor vehicle for addressing the question presented because petitioner is unlikely to benefit from the rule he proposes.

1. Petitioner contends that the standard adopted and applied by the court of appeals "cannot be reconciled with this Court's precedent." Pet. 14. He is incorrect.

a. The decision below accords with this Court's two decisions examining the requirements for equitable tolling of AEDPA's statute of limitations, which require that an inmate "has been pursuing his rights diligently" and that "some extraordinary circumstance stood in his way' and prevented timely filing." *Holland v. Florida*, 560 U.S. 631, 649 (2010) (quoting *Pace v. DiGuglielmo*, 544 U.S. 408, 418 (2005)).

In *Pace*, this Court considered whether a state post-conviction petition rejected by a state court as untimely was "properly filed" within the meaning of AEDPA's statutory tolling provision, 28 U.S.C. § 2244(d)(2). *Pace*, 544 U.S. at 410. After holding that it was not, the Court addressed the habeas petitioner's alternative claim for equitable tolling. *Id.* at 418. The

Court assumed that the doctrine applied, but held that Pace had not established the "requisite diligence" because he "sat on" his rights for years before the asserted extraordinary circumstance and "for five months *after*" it abated. *Id.* at 418 & n.8, 419. Based in part on the absence of diligence after the circumstance abated, the Court concluded "[u]nder long-established principles" that "petitioner's lack of diligence precludes equity's operation." *Id.* at 419. The petition downplays the significance of *Pace* because the defendant there had not exercised diligence during *any* timeframe. Pet. 15-17. But petitioner ignores that the Court emphasized the defendant's lack of diligence through the filing of his federal habeas petition—including after the purported extraordinary circumstance was no longer an obstacle—and did not truncate its diligence analysis as petitioner proposes. *See* Pet. App. 19a-23a.

In *Holland*, this Court held that AEDPA's limitations period is subject to equitable tolling only when (i) the petitioner has been pursuing his rights diligently and (ii) an extraordinary circumstance "prevent[s] timely filing." 560 U.S. at 649. As the court of appeals here recognized, the second requirement also "speaks to the diligence required by a petitioner seeking equitable tolling" because whether an extraordinary circumstance actually prevented the late filing depends on whether a defendant acted diligently throughout the limitations period. Pet. App. 24a. Petitioner acknowledges that *Holland* imposed a "causation element" (Pet. 18), but asserts that it "implicates diligence simply to the extent it requires diligence to file within the remaining time on the limitations

clock." Pet. 18 & n.2.[2] But *Holland* did not limit the diligence inquiry in that way. As the court of appeals below observed, *Holland* makes clear that equitable tolling does not apply "whenever there is an extraordinary circumstance"; it applies only "when an extraordinary circumstance prevented a petitioner from filing before the deadline expired." Pet. App. 24a.

b. Petitioner contends that the decision below cannot be reconciled with other precedents of this Court, which he describes as establishing that "tolling 'stop[s] the limitations clock'" while an extraordinary circumstance persists. Pet. 14. Unlike *Pace* and *Holland*, however, the other cases petitioner cites did not involve equitable tolling of AEDPA's limitations period. *Id.* at 14-15. And this Court has "never held" that the "equitable-tolling test" established in *Holland* "necessarily applies outside the habeas context," nor examined whether "a more generous test" or a "stricter test might apply to a nonhabeas case." *Menominee Indian Tribe of Wis. v. United States*, 136 S. Ct. 750, 756 n.2 (2016).

In any event, the cases on which petitioner relies do not help him. Pet. 14-15. Three of the cases did not even involve equitable tolling of a statute of limitations. In *Artis v. District of Columbia*, 138 S. Ct. 594,

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[2] Petitioner suggests *Holland* implicitly endorsed a limited diligence analysis by citing to two lower court decisions. Pet. 17-18. But those cases (and a third that they cited) examined statutory "due diligence" requirements and did not address the diligence required for equitable tolling. *See Starns v. Andrews*, 524 F.3d 612, 618 (5th Cir. 2008) (examining "due diligence" requirement of 28 U.S.C. § 2244(d)(1)(D)); *Moore v. Knight*, 368 F.3d 936, 940 (7th Cir. 2004) (same); *Wims v. United States*, 225 F.3d 186, 190 (2d Cir. 2000) (examining "due diligence" requirement in 28 U.S.C. § 2255(4)).

603 (2018), the Court decided the meaning of "tolled" in the supplemental jurisdiction statute. In *CTS Corp. v. Waldburger*, 573 U.S. 1, 18 (2014), the Court held that state statutes of repose are not preempted by the Comprehensive Environmental Response, Compensation, and Liability Act. And in *United States v. Ibarra*, 502 U.S. 1, 4 n.2 (1991), the Court stated that tolling was not at issue; that case turned instead on the date on which a limitations period began to run.

Two of the cases cited by petitioner ruled that another pending court action suspended the running of a federal limitations period. *See Burnett v. New York Cent. R.R. Co.*, 380 U.S. 424, 428-429, 435-436 (1965); *Am. Pipe & Constr. Co. v. Utah*, 414 U.S. 538, 554 (1974). A similar statutory rule tolls AEDPA's limitations period while state post-conviction actions are pending. 28 U.S.C. § 2244(d)(2) (the time that a properly filed state court petition is pending is "not counted toward" AEDPA's limitations period). But that provision is not at issue here.

And in the final case cited by petitioner, *Chardon v. Fumero Soto*, 462 U.S. 650, 662 (1983), the Court rejected the suggestion that it had "establish[ed] a uniform federal rule of decision that mandates suspension" of statutes of limitations in all cases involving tolling—the very argument that petitioner advances here, *see* Pet. 14.

Nor does the decision below "conflict[] with AEDPA's one-year statute of limitations" (Pet. 11-14) or with general principles of equity (*id.* at 18-20). As the court below explained, its decision "does not ignore congressional intent—it furthers it." Pet. App. 16a. Requiring federal habeas petitioners to show that they were reasonably diligent up to the time of filing and

that an extraordinary circumstance caused the filing to be untimely promotes AEDPA's "basic policies" of repose and finality, conservation of judicial resources, and elimination of stale claims. *Id.*; *see also Day v. McDonough*, 547 U.S. 198, 205-206 (2006). It also ensures that petitioners may file claims after the limitations period has expired where circumstances warrant. *Id.* at 17a. The exercise of equitable powers is necessarily "made on a case-by-case basis," and the "'flexibility' inherent in 'equitable procedure' enables courts 'to meet new situations [that] demand equitable intervention, and to accord all the relief necessary to correct . . . particular injustices.'" *Holland*, 560 U.S. at 650. The decision below preserves flexibility for lower courts to address the facts and circumstances of individual cases. *See* Pet. App. 32a, 35a.[3]

2. Although petitioner urges the Court to resolve a "2-3 conflict over the stop-clock approach," Pet. 6, this case does not actually implicate any square conflict of authority warranting this Court's review. As petitioner acknowledges (*id.* at 6-7), the decision below is

[3] Petitioner contends that the court of appeals' approach is less administrable than the stop-clock approach because defendants cannot calculate with certainty the date on which the limitations period would run if tolling is applied. Pet. 19-20. But whether petitioner is correct about the relative administrability of the two approaches is "ultimately of no consequence" (Pet. App. 31a), since equity commands a case-by-case assessment anyway. Moreover, both the rule adopted by the decision below and the approach favored by the dissent require a flexible inquiry into the specific circumstances of each case; the difference "is that one requires an evaluation of petitioner's diligence across the whole time involved, and the other conducts the same inquiry but for just part of that time." *Id.* at 33a.

consistent with the approach adopted by the Fifth Circuit and the Eighth Circuit. *See, e.g.*, *Jackson v. Davis*, 933 F.3d 408, 411 (5th Cir. 2019); *Williams v. Kelley*, 830 F.3d 770, 773 (8th Cir. 2016).[4] Decisions from at least three other federal circuits have taken a similar approach.[5]

And petitioner substantially overstates the degree of any tension between the decision below and the approaches of the Second and Eleventh Circuits. As petitioner observes (at 7-8), the Second Circuit has concluded that a habeas petitioner in certain circumstances is required to "demonstrate diligence" only "for a period warranting tolling," and not "thereafter through the date of filing." *Harper v. Ercole*, 648 F.3d 132, 136 (2d Cir. 2011).[6] But it also explained—consistent with the decision below—that "it is not enough

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[4] Petitioner cites (at 7) the Eighth Circuit's decision in *Coulter v. Kelly*; as petitioner acknowledges, however, that decision was vacated when the case became moot. *Coulter v. Kelly*, 871 F.3d 612 (8th Cir. 2017), *judgment vacated, appeal dismissed as moot*, 876 F.3d 1112 (8th Cir. 2017).

[5] *See, e.g.*, *Blue v. Medeiros*, 913 F.3d 1, 8 (1st Cir. 2019); *Keeling v. Warden, Lebanon Corr. Inst.*, 673 F.3d 452, 464 (6th Cir. 2012); *Hall v. Warden, Lebanon Corr. Inst.*, 662 F.3d 745, 752 (6th Cir. 2011); *Mayberry v. Dittmann*, 904 F.3d 525, 531 (7th Cir. 2018).

[6] *Harper* distinguished a prior Second Circuit decision that held (like the decision below) that a habeas petitioner is not entitled to equitable tolling if he "has not exercised reasonable diligence in attempting to file after the extraordinary circumstances began," because "the link of causation between the extraordinary circumstances and the failure to file is broken, and the extraordinary circumstances therefore did not prevent timely filing." *Valverde v. Stinson*, 224 F.3d 129, 134 (2d Cir. 2000). *Harper* reasoned that *Valverde* applied only to cases where the extraordinary circumstances "had no discernable end date." *Harper*, 648 F.3d at 140.

for a party to show that he experienced extraordinary circumstances." *Id.* at 137; *see* Pet. App. 24a. "He must further demonstrate that those circumstances caused him to miss the original filing deadline." *Harper*, 648 F.3d at 137. Thus, a habeas petitioner in the Second Circuit would not be automatically entitled to extend the statutory limitations period where the "extraordinary circumstances arose and concluded early within the limitations period." *Id.*; *cf. id.* at 136 ("courts do not apply [the] requirements" of equitable tolling "mechanistically"). "In such circumstances, a diligent petitioner would likely have no need for equity to intervene to file within the time remaining to him." *Id.* at 137.

Indeed, for exactly those reasons, the Second Circuit has denied equitable tolling to a habeas petitioner rather than suspending the limitations period under a stop-clock approach. *See Hizbullahankhamon v. Walker*, 255 F.3d 65, 76 (2d Cir. 2001), *cert. denied*, 536 U.S. 925 (2002). Writing for the unanimous panel, then-Judge Sotomayor explained that "even assuming . . . an 'extraordinary circumstance' warranting equitable tolling, petitioner cannot show that this extraordinary circumstance *prevented* him from filing a timely habeas petition." *Id.* Petitioner's filing in this case thus would not "have been timely" in the Second Circuit (Pet. 2), but would have been barred by the statute of limitations—just as the decision below held.[7]

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[7] *See also Harper*, 648 F.3d at 142 (observing that the Second Circuit had also "summarily affirmed a district court's denial of equitable tolling in the first six months of a limitations period because the demonstrated extraordinary circumstances did not *cause* the ultimate late filing," citing *Adkins v. Warden*, 364 F. App'x 564, 566 (2d Cir. 2009)).

Nor does the decision below conflict with the approach of the Eleventh Circuit. Pet. 8-9. Petitioner describes *Spottsville v. Terry*, 476 F.3d 1241 (11th Cir. 2007), and *Knight v. Schofield*, 292 F.3d 709 (11th Cir. 2002) (per curiam), as adopting a stop-clock approach that would ignore the diligence of the petitioner after the extraordinary circumstance ends. Pet. 9. But *Spottsville* observed that the petitioner there "diligently filed his federal petition fewer than two months after the dismissal of his state appeal," when the extraordinary circumstance abated. *Spottsville*, 476 F.3d at 1245-1246.

In *Knight*, the Eleventh Circuit addressed the amount of "reasonable time" owed a petitioner whose conviction became final well before AEDPA took effect, when subsequent events unquestionably interfered with his ability to file a federal petition within a year of AEDPA's passage. 292 F.3d at 712. Under those unique circumstances, the court concluded that the defendant was entitled to the same "reasonable time" (a full year) that other inmates had to file a federal habeas petition once AEDPA took effect. *Id*. This conclusion "sheds no light on the underlying question"—answered by the decision below—"of which litigants are eligible for such extended deadlines." Pet. App. 30a.

In any event, three years after *Knight*, this Court held in *Pace* that a petitioner must establish "requisite diligence" to merit equitable tolling. *Pace*, 544 U.S. at 418. As noted above, *Pace* considered the habeas petitioner's "lack of diligence in all time frames, right up to . . . filing his federal habeas petition." Pet. App. 20a. Since then, the Eleventh Circuit has followed *Pace*'s approach, examining evidence of an inmate's diligence even after an extraordinary circumstance

ends. *See, e.g.*, *San Martin v. McNeil*, 633 F.3d 1257, 1270 (11th Cir. 2011) (petitioner had not "made even the barest allegation of diligence after he received notice of the Supreme Court's order" or explained "why he waited another fifteen days after the Florida courts disposed of his post-conviction motion to file his federal habeas petition").

Petitioner also quotes a vacated decision of the D.C. Circuit to suggest an "intercircuit inconsistency" in the way courts have applied equitable tolling. Pet. 2 (quoting *Simon v. Republic of Iraq*, 529 F.3d 1187, 1195 (D.C. Cir. 2008), *rev'd sub nom.*, *Republic of Iraq v. Beaty*, 556 U.S. 848 (2009), and *vacated*, 330 F. App'x 3 (D.C. Cir. 2009)). But the inconsistency perceived by the D.C. Circuit was between a non-AEDPA decision from the Seventh Circuit that takes an approach in line with the decision below (*see Simon*, 529 F.3d at 1195), and the Ninth Circuit's decision in *Socop-Gonzalez v. I.N.S.*, 272 F.3d 1176 (9th Cir. 2001) (en banc)—which was overruled by the decision below (*see* Pet. App. 30a). In other words, the "inconsistency" no longer exists.

Finally, petitioner argues that other circuit courts are "internally inconsistent" in their application of equitable tolling doctrines. Pet. 10-11. Of course, an intra-circuit conflict is not something that would ordinarily warrant a grant of certiorari. And petitioner's argument is incorrect in any event. As petitioner acknowledges, the Sixth and Seventh Circuits have assessed evidence of diligence up to the time of filing in evaluating whether to equitably toll AEDPA's limitations period. Pet. 11 (citing *Keeling v. Warden, Lebanon Corr. Inst.*, 673 F.3d 452, 464 (6th Cir. 2012); *Hall v. Warden, Lebanon Corr. Inst.*, 662 F.3d 745, 752 (6th Cir. 2011); *Mayberry v. Dittmann*, 904 F.3d 525,

531 (7th Cir. 2018)). Neither the unpublished decision in *Colwell v. Tanner*, 79 F. App'x 89, 91-92 (6th Cir. 2003), nor *Socha v. Boughton*, 763 F.3d 674, 688 (7th Cir. 2014), are inconsistent with that approach: *Colwell* concluded that the petition was untimely despite any claim to tolling, 79 F. App'x at 92; and *Socha* observed that the petitioner "diligently pursued his rights" from the beginning of the limitations period through "when he filed," 763 F.3d at 687. The case petitioner cites (at 10) as evidence of intra-circuit confusion in the D.C. Circuit assumed (without deciding) that the stop-clock approach could apply to the AEDPA limitations period. *See United States v. Saro*, 252 F.3d 449, 454 (D.C. Cir. 2001). But it concluded that the petitioner had not filed within the limits of the extended period in any event. *Id.* at 454-455.

3. Petitioner's remaining arguments do not identify any persuasive reason for the Court to grant review. Petitioner asserts (at 23) that this is an "ideal vehicle" to consider the issue presented. That is wrong, however, because the petitioner is unlikely to benefit from the rule he asks this Court to adopt. The dissenting judges acknowledged that the record is inadequate to establish that the asserted extraordinary circumstance in fact hindered timely filing. *See* Pet. App. 63a, 66a (recognizing "factual ambiguity" about whether petitioner established causation).[8] And both lower courts assumed that petitioner had suffered an "extraordinary circumstance," but did not actually decide the issue. *See* Pet. App. 33a, 38a, 68a, 106a. As the State argued in the proceedings below, petitioner cannot show on the facts here that his attorney's con-

[8] Petitioner now claims he "made use of his file" (Pet. 24) but cites no support in the record for that assertion.

duct or the delay in receiving the files from the attorney was an "extraordinary circumstance" warranting tolling for the first 66 days of the limitations period. C.A. Dkt. 18 at 18-21; *see also Holland*, 560 U.S. at 655 (it is "abundantly clear that attorney negligence is not an extraordinary circumstance warranting equitable tolling"). This Court's resolution of the issue presented would not have any effect on that conclusion.

Petitioner also asserts that the case is important because it would apply "in a wide variety of statutory contexts." Pet. 20. But this Court has never required a "uniform" (*id.* at 21) or "general rule" (*id.* at 22) to govern tolling in all contexts. *See supra* at 8. Indeed, it has held the opposite. *See Chardon*, 462 U.S. at 662.

Finally, petitioner's concerns about inmates' ability to pursue habeas relief, including during the current public health crisis, are misplaced. *See* Pet. 22. The decision below allows district courts to address extraordinary circumstances that prevent prisoners from filing their petitions within the one-year statutory limitations period. *See, e.g*, *id.* (citing *Fitzgerald v. Shinn*, 2020 WL 3414700, at *5 (D. Ariz. June 22, 2020) (directing the defendant to file a "protective petition" and granting an additional 90 days to file an amended petition)). And under the court of appeals' approach, state inmates maintain the full year under AEDPA to file a federal habeas petition. They may also secure additional time "after the limitations period has expired and still have their claims evaluated on the merits—provided they were reasonably diligent in using their available time and showed that the extraordinary circumstance prevented them from filing within the one-year limitations period." Pet. App. 17a.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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