No. 21-442

IN THE

Supreme Court of the United States

RODNEY REED,

Petitioner,

v.

BRYAN GOERTZ,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF OF CONSTITUTIONAL ACCOUNTABILITY CENTER AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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INTEREST OF *AMICUS CURIAE*[1]

Constitutional Accountability Center (CAC) is a think tank, public interest law firm, and action center dedicated to fulfilling the progressive promise of the Constitution's text and history. CAC works in our courts, through our government, and with legal scholars to improve understanding of the Constitution and preserve the rights and freedoms it guarantees. CAC accordingly has a strong interest in the proper interpretation of 42 U.S.C. § 1983, which was passed to protect the uniquely federal rights guaranteed by the Constitution, and in this case.

INTRODUCTION AND SUMMARY OF ARGUMENT

Time and again, this Court has admonished that analysis of when a Section 1983 claim accrues "begins with identifying 'the specific constitutional right' alleged to have been infringed." *McDonough v. Smith*, 139 S. Ct. 2149, 2155 (2019) (quoting *Manuel v. City of Joliet*, 137 S. Ct. 911, 920 (2017)). Yet in a decision that never even mentioned the constitutional right at stake, much less engaged in any meaningful analysis of the nature of that right, the court below dismissed as untimely Petitioner Rodney Reed's Section 1983 claim for the deprivation of his right to procedural due process. This Court should reverse.

Reed has been on death row since 1998 for a crime he claims he did not commit. "Strenuously

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[1] The parties have consented to the filing of this brief. Under Rule 37.6 of the Rules of this Court, *amicus* states that no counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amicus* or its counsel made a monetary contribution to its preparation or submission.

maintaining his innocence, Reed has repeatedly sought . . . relief in Texas state courts over the last two decades." *Reed v. Texas*, 140 S. Ct. 686, 687 (2020) (statement of Sotomayor, J., respecting the denial of certiorari). As part of that effort, Reed filed a motion under Texas Article 64, which permits a convicted person to obtain post-conviction DNA testing of biological evidence if certain conditions are met. *See* Tex. Code Crim. Proc. Art. 64.03(a). Reed litigated that motion all the way up to the Texas Court of Criminal Appeals, which ultimately denied his request for relief and his petition for rehearing nearly three years after the Texas trial court had initially denied his DNA-testing motion.

Reed then filed this federal lawsuit pursuant to 42 U.S.C. § 1983, alleging, as relevant here, that Article 64, both facially and as applied by the Texas Court of Criminal Appeals, violates his Fourteenth Amendment right to procedural due process. *See Skinner v. Switzer*, 562 U.S. 521, 524-25 (2011) (holding that state prisoners may pursue procedural due process claims seeking DNA testing in Section 1983 actions). The court below held that Reed's claim was time-barred under Texas's statute of limitations for Section 1983 actions because his claim accrued when the trial court first denied his Article 64 motion, not when the state high court affirmed the trial court's ruling and denied rehearing, thus authoritatively construing Article 64. Pet. App. 9a. According to the court below, "Reed had the necessary information to know that his rights were allegedly being violated as soon as the trial court denied his motion for post-conviction relief." *Id.*

That statement is inaccurate as a matter of fact and mistaken as a matter of law. And it prevents Section 1983 from serving its purpose in cases like this one: Section 1983 cannot be used to enforce federal

rights if, by the time plaintiffs like Reed know their rights have been violated, it is too late for them to go to federal court.

Section 1983 was passed to create a new remedy to vindicate the uniquely federal rights guaranteed by the Constitution against infringement by state officials. Enacted during Reconstruction as part of "extraordinary legislation," Cong. Globe, 42nd Cong., 1st Sess. 322 (1871) [hereinafter "Globe"] (Rep. Stoughton), that "alter[ed] the relationship between the States and the Nation with respect to the protection of federally created rights," *Mitchum v. Foster*, 407 U.S. 225, 242 (1972), Section 1983 was passed to provide "further safeguards" to "life, liberty, and property," Globe 374 (Rep. Lowe). To that end, it enabled individuals to seek relief in the federal courts for deprivations of rights "secured by the Constitution of the United States." Civil Rights Act of 1871, ch. 22, § 1, 17 Stat. 13.

Consistent with that history, this Court has long held that "[i]n order to further the purpose of § 1983, the rules governing compensation for injuries caused by the deprivation of constitutional rights should be tailored to the interests protected by the particular right in question." *Carey v. Piphus*, 435 U.S. 247, 258-59 (1978). That includes rules of accrual: this Court has specifically instructed that in "defining the contours and prerequisites of a § 1983 claim, including its rule of accrual," courts must "closely attend to the values and purposes of the constitutional right at issue," *Manuel*, 137 S. Ct. at 920-21. Thus, in case after case, this Court has begun its analysis of Section 1983 claims by "first . . . identify[ing] the specific constitutional right allegedly infringed." *Albright v. Oliver*, 510 U.S. 266, 271 (1994); *see, e.g.*, *Carey*, 435 U.S. at 259; *Wallace v. Kato*, 549 U.S. 384, 387 n.1 (2007);

Nieves v. Bartlett, 139 S. Ct. 1715, 1721-22 (2019); *McDonough*, 139 S. Ct. at 2155; *Thompson v. Clark*, 142 S. Ct. 1332, 1337 (2022).

The court below ignored all this precedent. It wholly failed to tailor its accrual analysis to the specific constitutional right at stake—the right to procedural due process. That was error.

"In procedural due process claims, the deprivation by state action of a constitutionally protected interest in 'life, liberty, or property' is not in itself unconstitutional; what is unconstitutional is the deprivation of such an interest *without due process of law*." *Zinermon v. Burch*, 494 U.S. 113, 125 (1990). Although Reed's initial denial *of DNA testing* happened with the trial court's first order, the deprivation *of his right to due process* was not complete or legally actionable until the state high court authoritatively construed Article 64 and denied Reed's request for rehearing. In fact, prior to that point, there was every possibility that the Court of Criminal Appeals would reverse the trial court's ruling and actually *grant* Reed the DNA testing he sought or at least grant him a sufficient opportunity to be heard about why he was entitled to that testing.

Under the lower court's logic, plaintiffs like Reed have to rush to federal court to preserve their right to sue *in case* their due process rights are violated. If they wait and see the state process through—pressing on in an attempt to vindicate their liberty interests, as state law entitles them to do—they will lose their opportunity to seek relief in federal court if the state process ultimately fails them. After all, by that point, it will almost always be too late to file within the statute of limitations, thus denying individuals whose constitutional rights have been violated the ability to hold state officials liable, as Section 1983 promises.

Thus, the rule created by the court below does not just frustrate the ability to vindicate constitutional rights under Section 1983; it also "run[s] counter to core principles of federalism, comity, consistency, and judicial economy." *McDonough*, 139 S. Ct. at 2158. By forcing plaintiffs to file wasteful federal lawsuits in order to preserve their rights, the decision below places federal courts on a collision course with state courts that have not even finished their own processes, while threatening to mire the federal courts in unripe cases. Remarkably, therefore, the decision below manages to increase tension between federal and state courts while hindering, rather than promoting, the vindication of constitutional rights under Section 1983.

ARGUMENT

I. Section 1983 Was Written to Vindicate the Unique Rights Guaranteed by the Federal Constitution.

A. The Forty-Second Congress passed Section 1983, originally Section 1 of the Civil Rights Act of 1871, to create "a private right of action to vindicate violations of rights, privileges, or immunities secured by the Constitution." *Rehberg v. Paulk*, 566 U.S. 356, 361 (2012) (quotation marks omitted). The title of the 1871 legislation made its purpose clear: "An Act to enforce the Provisions of the Fourteenth Amendment to the Constitution of the United States, and for other Purposes." 17 Stat. 13. This Act, "along with the Fourteenth Amendment it was enacted to enforce, were crucial ingredients in the basic alteration of our federal system accomplished during the Reconstruction Era," *Patsy v. Bd. of Regents*, 457 U.S. 496, 503 (1982), which established "the role of the Federal Government as a guarantor of basic federal rights against state power," *Mitchum*, 407 U.S. at 239; *see* Globe 577 (Sen. Carpenter) ("one of the fundamental . . . revolutions

effected in our Government" by the Fourteenth Amendment was to "give Congress affirmative power . . . to save the citizen from the violation of any of his rights by State Legislatures").

The text of what is now Section 1983 left no doubt about the new primacy of "federally secured rights," *Smith v. Wade*, 461 U.S. 30, 34 (1983), over state laws and practices that denied or frustrated those rights. The statute gave any person who was deprived of "any rights, privileges, or immunities secured by the Constitution of the United States" the ability to hold the perpetrator liable, "any . . . law, statute, ordinance, regulation, custom, or usage of the State to the contrary notwithstanding." 17 Stat. 13; *see* Globe 692 (Sen. Edmunds) (declaring it the "solemn duty of Congress . . . to secure to the individual, in spite of the State, or with its aid, as the case might be, precisely the rights that the Constitution gave him").

The "specific historical catalyst" for the passage of this legislation "was the campaign of violence and deception in the South, fomented by the Ku Klux Klan, which was denying decent citizens their civil and political rights." *Wilson v. Garcia*, 471 U.S. 261, 276 (1985). This campaign was possible "because Klan members and sympathizers controlled or influenced the administration of state criminal justice," *Briscoe v. LaHue*, 460 U.S. 325, 337 (1983), making the law "a dead letter," Globe 158 (Sen. Sherman). Klan incidents were not "cases of ordinary crime" but rather "political offenses," *id.*, aimed at "'the overthrow of the reconstruction policy'" through "intimidation" and "violence," *id.* at 320 (Rep. Stoughton) (quoting committee testimony of former Klan member).

Section 1983, therefore, "'was not a remedy against the Klan or its members but against those who representing a State in some capacity were unable or

unwilling to enforce a state law.'" *District of Columbia v. Carter*, 409 U.S. 418, 426 (1973) (quoting *Monroe v. Pape*, 365 U.S. 167, 175-76 (1961) (brackets omitted)). Congress recognized that laws were being applied selectively across the South to punish disfavored groups and deprive them of their most basic rights without due process. While "outrages committed upon loyal people through the agency of this Ku Klux organization" went unpunished, as Senator Pratt noted, "[v]igorously enough are the laws enforced against Union people. They only fail in efficiency when a man of known Union sentiments, white or black, invokes their aid." Globe 505; *Adickes v. S. H. Kress & Co.*, 398 U.S. 144, 167 (1970) (noting "the persistent and widespread discriminatory practices of state officials").

The fundamental problem, therefore, was not isolated acts of violence but the Southern states' selective and discriminatory tolerance of this violence. *Wilson*, 471 U.S. at 276; Globe 375 (Rep. Lowe) (Southern states were "permit[ing] the rights of citizens to be systematically trampled upon"). And that denial merited a remedy. *Id.* at 333 (Rep. Hoar) ("Suppose that . . . every person who dared to lift his voice in opposition to the sentiment of this conspiracy found his life and his property insecure. . . . In that case I claim that the power of Congress to intervene is complete and ample.").

B. To address this problem, Section 1983 "interpose[d] the federal courts between the States and the people, as guardians of the people's federal rights." *Patsy*, 457 U.S. at 503 (quoting *Mitchum*, 407 U.S. at 242). Previously, "Congress relied on the state courts to vindicate essential rights arising under the Constitution." *Carter*, 409 U.S. at 427-28 (quoting *Zwickler v. Koota*, 389 U.S. 241, 245 (1967)). But "[w]ith the growing awareness that this reliance had been

misplaced," lawmakers enacted Section 1983 to provide "indirect federal control over the unconstitutional actions of state officials." *Id.* at 428. Thus, while the violence inflicted on freedmen and their sympathizers was repugnant to the principles embedded in the Fourteenth Amendment, "§ 1983 was not directed at the perpetrators of these deeds as much as at the state officials who tolerated and condoned them." *Owens v. Okure*, 488 U.S. 235, 249 n.11 (1989).

Section 1983 thus broke new ground. First, it made available a federal forum based on the belief that federal courts would be able to "act with more independence" and "rise above prejudices or bad passions or terror." Globe 460 (Rep. Coburn).

Second, "Section 1983 impose[d] liability for violations of rights protected by *the Constitution*," not rights created under state law. *Baker v. McCollan*, 443 U.S. 137, 146 (1979) (emphasis added); *see Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 686 n.45 (1978) (Representative Bingham, the Fourteenth Amendment's principal architect, "declared the bill's purpose to be 'the enforcement . . . of the Constitution on behalf of every individual citizen of the Republic.'" (quoting Globe App. 81)). The statute "was designed to expose state and local officials to a new form of liability," *City of Newport v. Fact Concerts, Inc.*, 453 U.S. 247, 259 (1981), by providing a remedy for "federally secured rights," *Smith*, 461 U.S. at 34, that would be "supplementary to any remedy any State might have," *McNeese v. Bd. of Educ.*, 373 U.S. 668, 672 (1963); *see* Globe 370 (Rep. Monroe) ("[O]ccasions arise in which life, liberty, and property require new guarantees for their security.").

II. This Court Has Long Required the Tailoring of Procedural Rules in Section 1983 Cases to the Particular Federal Constitutional Right at Stake.

Although the architects of Section 1983 wrote the statute to create a powerful tool for the protection of federal constitutional rights, "§ 1983 'is not itself a source of substantive rights,' but merely provides 'a method for vindicating federal rights elsewhere conferred.'" *Graham v. Connor*, 490 U.S. 386, 393-94 (1989) (quoting *Baker,* 443 U.S. at 144 n.3). Thus, "[t]he first step in any [Section 1983] claim is to identify the specific constitutional right allegedly infringed." *Albright*, 510 U.S. at 271.

Once that right has been identified, the rules governing the procedural requirements for vindicating it "should be tailored to the interests protected by the particular right in question." *Carey*, 435 U.S. at 258-59; *see Manuel*, 137 S. Ct. at 920-21 (in "defining the contours and prerequisites of a § 1983 claim, including its rule of accrual," courts must "closely attend to the values and purposes of the constitutional right at issue"). By tailoring procedural rules to the nature of the substantive constitutional right at stake, courts ensure that those rules further the chief purpose of Section 1983: to provide "a uniquely federal remedy against incursions under the claimed authority of state law upon rights secured by the Constitution." *Wilson*, 471 U.S. at 271-72 (quoting *Mitchum*, 407 U.S. at 239).

This Court has consistently followed that approach. In *Carey v. Piphus*, for example, this Court addressed "the elements and prerequisites for recovery of damages" by students who were allegedly suspended from public schools without procedural due process. 435 U.S. at 248. "In order to further the purpose of

§ 1983," this Court noted, "the rules governing compensation for injuries caused by the deprivation of constitutional rights should be tailored to the interests protected by the particular right in question." *Id.* at 258-59. Applying that principle, this Court held that "injury cannot be presumed to occur" from a denial of procedural due process, and so plaintiffs must show proof of actual injury resulting from the denial—in that case, proof that the students' suspensions were unjustified—in order to recover substantial damages. *Id.* at 262-63. Moreover, again looking to the nature of the right at issue—"the right to procedural due process is 'absolute' in the sense that it does not depend upon the merits of a claimant's substantive assertions," *id.* at 266—the Court also held that even absent proof of actual injury, "the denial of procedural due process should be actionable for nominal damages." *Id.*

In *Wallace v. Kato*, this Court addressed the accrual rules for Fourth Amendment claims alleging an unconstitutional arrest without a warrant. 549 U.S. at 386-88. Analogizing these claims to the common law tort of false arrest—because the gist of both claims is "detention without legal process," *id.* at 389—the Court borrowed that tort's "distinctive rule" of accrual, which delays onset of the statute of limitations until the false imprisonment ends. *Id.* Postponing accrual, this Court explained, responds to "the reality that the victim may not be able to sue while he is still imprisoned." *Id.* Thus, even though the plaintiff in *Wallace* "could have filed suit as soon as the allegedly wrongful arrest occurred, subjecting him to the harm of involuntary detention," this Court declined to impose "the standard rule" for accrual, *id.* at 388 (quotation marks omitted), substituting instead "a refinement" that was tailored "'to claims of the type considered here,'" *id.* (quoting *Heck v. Humphrey*, 512 U.S. 477, 484 (1994)).

Over the past several years, this Court has decided three cases that affirm the need to focus on the nature of the constitutional right at stake when determining the elements and rules of a Section 1983 claim.

First, in *Nieves v. Bartlett*, this Court addressed the elements of a First Amendment claim for retaliatory arrest. Such claims, this Court said, pose a difficult "causal inquiry" because "protected speech is often a legitimate consideration when deciding whether to make an arrest," and because retaliatory motives are "easy to allege and hard to disprove." 139 S. Ct. at 1723-24, 1725 (quotation marks omitted). To shield police officers from dubious retaliatory arrest claims, this Court held that plaintiffs must allege and prove the absence of probable cause to arrest them or must provide evidence that they were arrested when "otherwise similarly situated individuals" had not been. *Id.* at 1727. That requirement was directly tied to the nature of the constitutional claim at issue and the unique "problem of causation" it entails. *Id.* at 1723 (quotation marks omitted).

In *McDonough v. Smith*, this Court again addressed a question of accrual dates, this time for claims that prosecutors used fabricated evidence against a person in criminal proceedings. 139 S. Ct. at 2154-55. Noting that "[a]n accrual analysis begins with identifying the specific constitutional right alleged to have been infringed," this Court assumed without deciding that, as the lower court had held, the Fourteenth Amendment's Due Process Clause includes a "right not to be deprived of liberty as a result of the fabrication of evidence by a government officer." *Id.* at 2155 (quotation marks and citations omitted). Based in part on the practical implications of forcing criminal defendants to sue their prosecutors while criminal proceedings were still ongoing, this Court

held that "a fabricated-evidence challenge to criminal proceedings" accrues only once those proceedings have "ended in the defendant's favor." *Id.* at 2158. Otherwise, criminal defendants would face "an untenable choice between (1) letting their claims expire and (2) filing a civil suit against the very person who is in the midst of prosecuting them," *id.*, with the latter option inevitably risking "parallel litigation and conflicting judgments," *id.* at 2160. Citing those claim-specific considerations, this Court rejected a rule that the statute of limitations begins to run on a plaintiff's fabricated-evidence claim "as soon as he can show that the [prosecutor]'s knowing use of the fabricated evidence caused him some deprivation of liberty." *Id.* at 2154.

And in *Thompson v. Clark*, this Court again emphasized the need to tailor analysis of a Section 1983 claim to "the values and purposes of the constitutional right at issue." 142 S. Ct. at 1337 (quoting *Manuel*, 580 U.S. at 370). *Thompson* held that a Fourth Amendment claim for malicious prosecution requires the plaintiff to show only that the criminal prosecution ended without a conviction—not an affirmative indication of innocence. *Id.* at 1341. That conclusion was based in part on its consistency "with the values and purposes of the Fourth Amendment." *Id.* at 1340 (quotation marks omitted). As this Court explained, the question of whether a person alleging malicious prosecution was unreasonably seized pursuant to legal process "does not logically depend on whether the prosecutor or court explained why the prosecution was dismissed." *Id.* And so "the individual's ability to seek redress for a wrongful prosecution cannot reasonably turn on th[is] fortuity." *Id.*

In conflict with these precedents, the court below did not even mention the constitutional right underlying Reed's Section 1983 claim for post-conviction DNA

testing, much less analyze that right in any meaningful way. As described below, this failure was critical to its decision that Reed's claim was time-barred and frustrates the ability of plaintiffs like Reed to vindicate their right to procedural due process in federal court.

III. The Court Below Failed to Grapple with the Nature of the Right to Procedural Due Process Underlying Reed's Section 1983 Claim.

"An accrual analysis begins with identifying 'the specific constitutional right' alleged to have been infringed." *McDonough*, 139 S. Ct. at 2155 (quoting *Manuel*, 137 S. Ct. at 920). Taking account of the nature of that right, a Section 1983 claim accrues "presumptively 'when the plaintiff has 'a complete and present cause of action.'" *Id.* (quoting *Wallace*, 549 U.S. at 388).

The court below entirely skipped that first step and concluded that "Reed had the necessary information to know that his rights were allegedly being violated as soon as the trial court denied his motion for post-conviction relief." Pet. App. 9a. That statement is simply wrong, which the court below would have recognized had it conducted the required inquiry into the nature of Reed's claimed constitutional right.

A. Consistent with this Court's decisions in *District Attorney's Office for Third Judicial District v. Osborne* and *Skinner v. Switzer*, Reed's claim for a non-arbitrary construction and application of Article 64 is a claim that he has been denied his right to procedural due process. *See Dist. Attorney's Off. for Third Jud. Dist. v. Osborne*, 557 U.S. 52, 67-70 (2009) (holding that a prisoner seeking DNA testing had "a liberty interest in demonstrating his innocence with new evidence under state law," but that the process provided

by state law was sufficient to protect that interest); *Skinner*, 562 U.S. at 524 (holding that Section 1983 may be used to vindicate a right to DNA testing sounding in procedural due process). As the district court correctly noted, Reed asserted in his complaint that "a due-process violation resulted from the [Court of Criminal Appeals'] imposition of 'arbitrary' conditions on Chapter 64, which effectively precludes DNA testing in most cases and eviscerates the relief Chapter 64 was designed to provide." Pet. App. 20a.

The right to procedural due process is guaranteed by the Fourteenth Amendment, which provides that "[n]o State shall . . . deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, § 1. Initially included in the Fifth Amendment, the Due Process Clause has roots in the Magna Carta, *Murray v. Hoboken Land & Improvement Co.*, 59 U.S. 272, 276 (1855), one provision of which stated that "[n]o Freeman shall be taken, or any otherwise imprisoned, or be disseized of his Freehold, or Liberties, or free Customs, or be outlawed, or exiled, or destroyed . . . but by lawful Judgment of his Peers, or by the Law of the Land." Edward J. Eberle, *Procedural Due Process: The Original Understanding*, 4 Const. Comment. 339, 340 (1987) (translation quoting original Latin of Magna Carta, 9 Hen. 3, ch. 29 (1225)); *see Murray*, 59 U.S. at 276. Its inclusion in the Fourteenth Amendment—restraining the states and not just the federal government—was part of the transformation wrought by the Reconstruction amendments, which "fundamentally altered our country's federal system," *McDonald v. City of Chicago*, 561 U.S. 742, 754 (2010) (plurality opinion), requiring states for the first time to protect fundamental rights, including the right of all people to procedural due process.

Indeed, the text of the Fourteenth Amendment makes clear that its broad due process guarantee was enacted to "disable a State from depriving . . . any person, whoever he may be, of life, liberty, or property without due process of law." Cong. Globe, 39th Cong., 1st Sess. 2766 (1866) (Sen. Jacob Howard); *id.* at 1094 (Rep. John Bingham) ("[N]o man, no matter what his color, no matter beneath what sky he may have been born, . . . no matter how poor, no matter how friendless, no matter how ignorant, shall be deprived of life or liberty or property without due process of law—law . . . which is impartial, equal, exact justice."). By ensuring an adequate level of legal process before an individual is deprived of "life, liberty, or property," the Due Process Clause "expresses the requirement of 'fundamental fairness.'" *Lassiter v. Dep't of Soc. Servs.*, 452 U.S. 18, 24 (1981).

This requirement extends to people who have been convicted of crimes. *Wolff v. McDonnell*, 418 U.S. 539, 555 (1974). And specifically, as this Court explained in *Osborne*, where state law provides a post-conviction procedure for introducing new evidence, individuals who seek to invoke that process "have a liberty interest in demonstrating [their] innocence with new evidence under [the state's] law," 557 U.S. at 68, through a process that does not "transgress[] any recognized principle of fundamental fairness in operation," *id.* at 69 (quoting *Medina v. California*, 505 U.S. 437, 448 (1992)). The stakes in the fair operation of that process for Rodney Reed and others like him—individuals who have been sitting on death row for years while consistently maintaining their innocence—could not be higher. After all, vindication of their "liberty interest in demonstrating [their] innocence with new evidence," *id.* at 68, could literally be the difference between life and death.

B. Yet as critically important as that liberty interest is, procedural due process does not aim to protect that interest from any deprivation whatsoever. Rather, this Court has repeatedly explained that "[p]rocedural due process rules are meant to protect persons not from the deprivation, but from the *mistaken or unjustified* deprivation of life, liberty, or property." *Carey*, 435 U.S. at 259 (emphasis added). Thus, the "fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)).

In considering what constitutes a "meaningful time" and "meaningful manner"—*i.e.*, a fair process—this Court has recognized that the "establishment of prompt efficacious procedures to achieve legitimate state ends is a proper state interest worthy of cognizance in constitutional adjudication[, but] the Constitution recognizes higher values than speed and efficiency." *Fuentes v. Shevin*, 407 U.S. 67, 92 n.22 (1972) (quoting *Stanley v. Illinois*, 405 U.S. 645, 656 (1972)). To implement that principle across a range of different scenarios, this Court established a balancing test in *Mathews v. Eldridge*. Due process, this Court explained, requires consideration of: (1) "the private interest that will be affected by the official action," (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards," and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." 424 U.S. at 335.

As this test makes clear, procedural due process does not prevent the government from taking away a

person's property or liberty through a proceeding that is fundamentally fair. Indeed, in *Mathews* itself, the respondent was deprived of his recognized property interest in the continued receipt of social security benefits, but this Court concluded that there was no procedural due process violation. *Id.* at 332-33, 349. So too in countless other cases decided by this Court. *See, e.g.*, *Wilkinson v. Austin*, 545 U.S. 209 (2005) (respondents deprived of liberty interest in avoiding assignment to state's supermax prison but no violation of procedural due process); *FDIC v. Mallen*, 486 U.S. 230, 240-45 (1988) (respondent deprived of property interest in continuing to serve as president of federally regulated bank but no violation of procedural due process). As these cases illustrate, the deprivation of a property or liberty interest is a necessary but insufficient condition to give rise to a cognizable procedural due process claim that may be vindicated through Section 1983.

C. Naturally flowing from these precedents is the principle that, to ascertain whether a state has provided the process to which an individual is entitled, courts must take account of the *entire* process provided by the state. Without doing so, it is impossible to ascertain "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards." *Mathews*, 424 U.S. at 335. As applied to this case, that means that there is no way to assess the constitutional adequacy of a state's process for adjudicating a motion for DNA testing if that process has not yet been completed.

In *Osborne*, this Court essentially stated as much. There, a Section 1983 plaintiff complained that Alaska's process for seeking DNA testing was constitutionally inadequate. This Court rejected Osborne's

claim, identifying no constitutional deficiencies in Alaska's process and finding it "difficult to criticize the State's procedures when Osborne has not invoked them." *Osborne*, 557 U.S. at 71. Indeed, this Court chastised Osborne for attempting to "sidestep state process through a new federal lawsuit," noting that "[i]f he simply seeks the DNA through the state's discovery process, he might well get it." *Id.*

Applying that logic here compels the conclusion that although the Texas trial court ruled against Reed on his Article 64 motion in November 2014, he did not yet have a "complete and present cause of action," *Wallace*, 549 U.S. at 388, for a procedural due process claim. Although the initial denial by the trial court frustrated Reed's request for DNA evidence, that denial might have turned out to be merely a temporary roadblock: Reed could not definitively assert that the process for seeking DNA evidence under state law was constitutionally inadequate until his request was fully adjudicated by the state courts—that is, until the Texas Court of Criminal Appeals authoritatively construed Article 64 in a manner that resulted in the statute violating his right to due process. Indeed, on appeal, the Texas Court of Criminal Appeals might have recognized that the trial court had *misconstrued* Article 64, adopted the interpretation of the statute that Reed advanced, and actually *granted* his request for DNA testing. In other words, Reed did exactly what this Court instructed in *Osborne*: he waited to "criticize the State's procedures" until after he had "invoked them." *Osborne*, 557 U.S. at 71.

By failing to tailor its accrual analysis to Reed's specific constitutional claim, the court below erroneously focused on the initial denial of Reed's asserted right to DNA testing instead of focusing on the point at which the finality of that denial definitively

deprived him of liberty without due process of law. In the context of procedural due process claims, "[t]he constitutional violation actionable under § 1983 is not complete when the deprivation occurs; it is not complete unless and until the State fails to provide due process." *Zinermon*, 494 U.S. at 126. In this case, that process was complete only when the Court of Criminal Appeals issued its final decision construing Article 64 and denied Reed's request for rehearing.

IV. The Decision of the Court Below Frustrates the Ability to Vindicate a Procedural Due Process Right Through Section 1983 and Disrespects Principles of Comity and Federalism.

The rule adopted by the court below—that the statute of limitations begins running on a claim for DNA testing as soon as a state trial court denies a request for testing—impedes the ability of plaintiffs like Reed to vindicate their right to procedural due process in federal court.

This case demonstrates why: by forcing individuals like Reed to file suit in federal court for a due process violation before the state courts finish providing them with the entire process to which they claim they are due, the rule of the court below at best forces plaintiffs to file suit while state proceedings are still ongoing, diverting litigation resources away from the state court process itself. At worst, the rule encourages plaintiffs to let the time to appeal denial of an Article 64 motion lapse in order to have a ripe claim in federal court—that is, it encourages them not to see the state court process through to its completion, as state law entitles them to do. Perversely, this means that plaintiffs may end up forgoing crucial aspects of the state process in order to preserve their ability to vindicate their right to procedural due process in federal court. *See*

Osborne, 557 U.S. at 71 ("[W]ithout trying [the state post-conviction DNA testing procedures], Osborne can hardly complain that they do not work in practice.").

And by crafting a procedural rule that effectively prevents plaintiffs who claim harm arising out of state law as construed by state authorities from filing Section 1983 actions, the court below also undermines Section 1983 itself. As discussed above, Section 1983 was enacted to ensure the primacy of "federally secured rights," *Smith*, 461 U.S. at 34, and give plaintiffs "a private right of action to vindicate violations of rights, privileges, or immunities secured by the Constitution," *Rehberg*, 566 U.S. at 361 (quotation marks omitted). That statute is rendered a hollow promise for plaintiffs like Reed if, by the time they know their rights have been violated, it is too late to go to federal court.

At the same time, the decision of the court below also manages to tread upon the principles of federalism and comity that are designed to protect the interests of *states* and their courts. As this Court has explained, "the notion of 'comity,' that is, a proper respect for state functions," recognizes the importance of "a system in which there is sensitivity to the legitimate interests of both State and National Governments, and in which the National Government, anxious though it may be to vindicate and protect federal rights and federal interests, always endeavors to do so in ways that will not unduly interfere with the legitimate activities of the States." *Younger v. Harris*, 401 U.S. 37, 44 (1971).

The rule of the court below "unduly interfere[s] with the legitimate activities of the States" in multiple ways. *Id.* Under the lower court's interpretation of Reed's Section 1983 claim, he would have had to run to federal court by November 2016—"just a few

months after the Court of Criminal Appeals remanded for further fact-finding and nearly a year before it would finally resolve Reed's motion," Pet. 24, resulting in the sort of "parallel litigation in civil and criminal proceedings" that this Court strives to "avoid[]" in Section 1983 proceedings. *Thompson*, 142 S. Ct. at 1338; *see McDonough*, 139 S. Ct. at 2158 ("[T]he parallel civil litigation that would result [from forcing Section 1983 plaintiffs to rush to federal court] would run counter to core principles of federalism, comity, consistency, and judicial economy."). Thus, not only does the ruling below create a danger that "civil suits [will be] improperly used as collateral attacks on criminal proceedings," *Thompson*, 142 S. Ct. at 1338, but such parallel proceedings could burden the state criminal process itself. For instance, if Texas court officials were forced to respond to potentially burdensome evidentiary requests about the nature of the Article 64 adjudication process *while that process was still ongoing*, the result could be delays, disruptions, and other inefficiencies that would further postpone Reed's access to the DNA testing that he had yet to be conclusively denied.

The rule of the court below also infringes on principles of comity and federalism by treating the state trial court's construction of Article 64 as the state's final say on the matter, even though under Texas's constitution, the Court of Criminal Appeals is the court of last resort. Tex. Const. art. V, § 5(a) ("The Court of Criminal Appeals shall have final appellate jurisdiction coextensive with the limits of the state, and its determinations shall be final, in all criminal cases of whatever grade . . . ."); *see Brown v. Ohio*, 432 U.S. 161, 167 (1977) (a state's highest court has "the final authority to interpret that State's legislation" (alteration omitted) (quoting *Garner v. Louisiana*, 368 U.S. 157, 169 (1961))). Certainly, in our federalist system, it is not

the role of a lower federal court to alter this established state judiciary scheme. As this Court has explained, the rule "that federal law takes the state courts as it finds them" is "bottomed deeply in belief in the importance of state control of state judicial procedure." *Howlett By & Through Howlett v. Rose*, 496 U.S. 356, 372 (1990) (quoting Henry M. Hart, Jr., *The Relations Between State and Federal Law*, 54 Colum. L. Rev. 489, 508 (1954)).

Finally, just as "stays and ad hoc abstention" were not sufficient in *McDonough* to justify an accrual rule that would have required state criminal defendants to sue their prosecutors while criminal proceedings were still ongoing, 139 S. Ct. at 2158, so too here. Under the rule of the court below, such devices will likely be invoked—and need to be adjudicated—in *every* Section 1983 case challenging Article 64 that is filed while Article 64 proceedings are still ongoing in the state appellate process. Not only will that unduly burden federal district courts, *see McDonough*, 139 S. Ct. at 2158 ("there is no reason to put the onus to safeguard comity on district courts exercising case-by-case discretion—particularly at the foreseeable expense of potentially prejudicing litigants and cluttering dockets with dormant, unripe cases"), but the creation of a rule that will almost always result in abstention or other mechanisms to stall or even dismiss potentially meritorious litigation also runs counter to the core principle that "[i]n the main, federal courts are obliged to decide cases within the scope of federal jurisdiction," *Sprint Commc'ns, Inc. v. Jacobs*, 571 U.S. 69, 72 (2013).

In sum, the failure of the court below to follow this Court's precedents and take account of the particular constitutional right at stake in Reed's case led it down an illogical path, resulting in a decision that frustrates core constitutional principles, as well as the plan of the

Forty-Second Congress that enacted Section 1983. It should not be permitted to stand.

CONCLUSION

For the foregoing reasons, the decision of the court below should be reversed.

Respectfully submitted,

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