No. 23-5549

In the Supreme Court of the United States

HOPE WHITE,

Petitioner,

v.

COMMONWEALTH OF KENTUCKY,

Respondent.

On Petition for Writ of Certiorari
to the Court of Appeals of Kentucky

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

This case presents three questions. First, does the Court have jurisdiction under 28 U.S.C. § 1257 to review a claim not presented in state court?

Second, if it has jurisdiction, is there good reason here for the Court to decide the claim not presented in state court?

And third, did the state court's application of the state postconviction DNA statute violate the petitioner's federal procedural-due-process rights?

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INTRODUCTION

A jury twice convicted Hope White of murdering Julie Burchett. It gave her 25 years after the second go-round. White then sought postconviction DNA testing under Kentucky law. The trial court denied that testing. Kentucky's Court of Appeals affirmed. And Kentucky's Supreme Court denied discretionary review (but de-published the lower court's decision). Now White asks this Court to review whether the state court's decision applying state law violated her federal procedural-due-process rights. As she tells it, this is a case of wrongful conviction. White suggests that there was minimal evidence for a jury to find her guilty of murder. And she claims that the postconviction DNA testing she seeks will exonerate her.

Neither is true. First, there was substantial evidence against White. She had a motive to kill Burchett. Three eyewitnesses testified to seeing White attack Burchett. Police found White covered in blood that night with no apparent wounds. White knew details of the murder before they were made public. She made multiple incriminating statements, including asking the arresting officers, "Am I the only one going to jail for this, although Johnny held her?" and suggesting to her cellmate that family members had helped her move Burchett's body. And that's not even all of it. The evidence against White was strong.

Second, none of the DNA testing White seeks would exonerate her. She wants to test three hairs, scrapings from Burchett's fingernails, a lighter from the parking

lot near where Burchett was found dead in her car, and a sweatshirt found around that area almost two weeks after the murder. But testing the hairs could not show that White did not murder Burchett. Even if they were from a third party, that would not suggest that person was the murderer. Same for the lighter. That leaves the fingernail scrapings and the sweatshirt. But the scrapings were already tested. And at most the sweatshirt could show that someone else may have helped move Burchett's body (like White later suggested). All told, none of the items for which White seeks testing could show that she did not murder Burchett.

Of course, none of that should matter for deciding whether to grant review. The question before the Court is not whether White qualifies for testing under Kentucky's postconviction DNA statute. This case does not involve whether the test results would have made a difference. Nor does it even include deciding whether the statute facially violates procedural due process. All the merits are about is whether the lower court's application of the statute in this case violates due process—whether the lower court's decision was fundamentally unfair. And justifying review of that question is not easy. There is "slim room" for White to show that the state law governing DNA testing denied her procedural due process. *Skinner v. Switzer*, 562 U.S. 521, 525 (2011). And slimmer room still to show that a state-court decision applying that state law on these facts justifies this Court's review.

White doesn't come close. To start, she failed to present her procedural-due-process claim in state court. Whether for jurisdictional or prudential reasons, this Court has long declined to consider such unpresented claims. And rightly so. Either way, Kentucky's high court never got a chance to decide White's constitutional claim. So even if this Court could decide it, doing so would disrespect our dual system of sovereignty unless something justifies an exception. But nothing does.

On top of that, this case affects only White. Her challenge is to the lower court's application of the postconviction DNA statute *in her case*. There is no broader claim about the statute itself or about how Kentucky's Supreme Court has interpreted it. Plus, the decision below is not even precedential. It is an intermediate appellate decision—that the state high court de-published. That means any merits decision by this Court would go only to whether White can get DNA testing to collaterally attack her 25-year sentence. Such a one-off decision hardly resembles the usual compelling reasons that justify this Court's review.

Finally, White's claim has no chance of succeeding. She cannot win by just showing that the lower court erred in applying Kentucky's DNA statute. She must show that the lower court's application of the statute was fundamentally unfair. So the lower court had to do something egregious, like altogether failing to apply the law to the facts. But the lower court did nothing of the sort. Its decision was entirely reasonable. This is not "one of those rare cases" in which White can "credibly claim"

that the state court's interpretation of state law was a federal procedural-due-process violation. *Johnson v. Missouri*, 143 S. Ct. 417, 417 (2022) (Jackson, J., dissenting).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Due Process Clause of the Fourteenth Amendment provides that "nor shall any State deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, § 1

Kentucky's postconviction DNA statute is provided in the appendix to this brief. *See* Opp'n App. 5–28; Ky. Rev. Stat. Ann. § 422.285.

STATEMENT OF THE CASE

1. One night in July 2008, officers discovered Burchett's body in the passenger seat of her car near an abandoned pallet mill. Pet. App. 14. She had died from multiple stab wounds—nine of them. *Id.*; Video R. 3/6/13 at 12:59:05–1:12:50. And based on the position of her body and location of her blood, it was clear that Burchett had been killed and her body then placed in the car. Video R. 3/6/13 at 9:29:00–30:30.

In August 2009, a grand jury indicted White for Burchett's murder. Pet. App. 15. After trial, a jury found White guilty and sentenced her to 30 years. *Id.* On appeal, Kentucky's Supreme Court reversed for an instructional error and remanded for a new trial. *Id.* After the new trial, a jury again found White guilty and sentenced her to 25 years. *Id.* This time on appeal, Kentucky's Supreme Court affirmed. *Id.*

2. Before moving to White's request for postconviction DNA testing, it's worth focusing on the evidence presented against her at trial. On the one hand, that evidence has little bearing on why the Court should deny review. But then again, White paints herself as wrongfully convicted and plays up the chance that DNA testing could exonerate her. So on the other hand, the evidence against White is important.

And there was a lot of it. First, White had a motive. Her boyfriend was allegedly cheating on her with Burchett. Video R. 3/7/13 at 10:44:40–45:05. White even admitted to confronting Burchett about that. Video R. 3/8/13 at 9:26:10–30. And a witness testified to overhearing White and her boyfriend arguing about Burchett on the night of the murder before seeing White confront Burchett. Video R. 3/7/13 at 10:44:10–45:05, 10:57:10–58:20.

Second, three eyewitnesses testified to seeing White attack Burchett on the night of the murder. True, their testimony varied on some of the surrounding details. But they all agreed on the key fact: White attacked Burchett. Jason Miller testified that he was at a party at White's mother's house and that White, her boyfriend, and Burchett were there too. *Id.* at 10:37:00–20, 10:43:00–10:44:00. He heard White and her boyfriend arguing about the alleged affair with Burchett and then saw White confront Burchett about it. *Id.* at 10:44:10–45:05, 10:57:10–58:20. And Miller testified to seeing White corner Burchett in a hallway before stabbing her with a knife. *Id.* at 10:58:15–45. Adam Manning also testified to being at a house party and seeing White

stab Burchett in a hallway. Video R. 3/6/13 at 2:27:00–28:30, 2:36:30–42:30. Likewise, Scotty Stanton testified to being at the party and seeing two women fighting near the hallway. Video R. 3/7/13 at 3:43:20–46:30.

Third, White's actions and statements after the murder were incriminating. The night of the murder, officers responded to a domestic-violence call at White's apartment. They found her with blood covering the front of her shirt yet with no apparent injury. Video R. 3/4/13 at 12:52:50–55:00. Then, after officers found Burchett's body at the pallet mill and roped off the area, White went and stood by the perimeter—at least 40 feet from Burchett's car and too far to see the scene in detail. *Id.* at 1:22:00–23:10, 1:27:30–29:00. Yet somehow the next morning White told others details that she could not have seen from the perimeter. For example, she told one person that officers pulled Burchett's body from the car and another that Burchett had died from stabbing—before officers had made either detail public. *Id.* at 3:09:00–13:45, 4:08:30–10:00. On top of that, White was acting strangely the day after officers found Burchett's body. *Id.* at 3:49:00–50:00, 4:07:45–08:10. And she told multiple people that she had Burchett's car keys and cellphone. *Id.* at 3:49:30–50:00, 4:05:15–07:45. (Officers never recovered those items.)

Fourth, White made incriminating statements to her arresting officers and to her prison cellmate. During her arrest, she asked, "Am I the only one going to jail for this, although Johnny held her?" Video R. 3/5/13 at 2:08:15–50. And while sharing a

cell with Nellie Barnes, White told Barnes that she and her boyfriend had argued about Burchett the day she was murdered. Video R. 3/8/13 at 9:26:10–30. White admitted that she had gotten into a fight with Burchett at her mother's house. *Id.* White asked Barnes several times whether she knew what it felt like to stab someone. *Id.* at 9:22:00–23:20. White suggested repeatedly that other people were involved and that her family members had helped her move Burchett's body. *Id.* at 9:23:30–24:40. White said that she was nervous her uncle Johnny White (the Johnny from "although Johnny held her") would testify against her. *Id.* at 9:25:10–30. White claimed that she had burned her bloody clothes from the night Burchett was killed. *Id.* at 9:16:50–18:00. And White told Barnes that she and her family had cleaned up her mother's house and replaced the flooring to hide any physical evidence. *Id.* at 9:29:00–50.

Fifth, despite those efforts, officers recovered some physical evidence from White's mother's house. The hallway area where the witnesses saw the attack had recently been redone with new flooring. Video R. 3/5/13 at 10:10:15–30. (Remember, White was indicted more than a year after Burchett's murder so there was plenty of time to redo the area.) Yet the area still returned a presumptive-positive hit for tests done on the baseboard and floor. *Id.* at 10:09:00–11:00. Further testing revealed human DNA, just not enough to tell whose DNA. Video R. 3/7/13 at 9:43:20–35. The testing, however, did not reveal blood. Still, given the human DNA's unusual location

and the fact that blood breaks down more easily over time and when exposed to cleaning agents, the physical evidence was consistent with the eyewitness testimony. *See id.* at 9:42:30–45:05.

All told, there was a lot of evidence for the jury to find White guilty of murder.

3. And that brings us back to Kentucky's Supreme Court's affirmance on direct appeal. After her appeal, White requested postconviction DNA testing for six items. She wanted to test scrapings from Burchett's fingernails, a lighter found near Burchett's car, a cut hair found in one of Burchett's stab wounds, a hair found on Burchett's shirt, a sweatshirt found at the pallet mill almost two weeks after officers found Burchett's body, and a hair found on that sweatshirt. Pet. App. 15. Except for the fingernail scrapings, none of those items were tested previously.

The trial court denied White's motion. *Id.* at 24–29. And the Court of Appeals affirmed. It considered the postconviction DNA statute, the applicable caselaw, and White's arguments about each item. *Id.* at 15–18. First, the court determined that there was nothing connecting the lighter to the case. *Id.* at 16. Nothing showed how long the lighter had been at the pallet mill. *Id.* So no matter what testing might show, the results would not help White. *Id.*

Second, the court agreed with the factual determination that the fingernail scrapings were already tested. And the results showed no DNA other than Burchett's.

Id. The final report was conclusive on that. *Id.* at 17. The court considered and rejected White's argument about one of the results having a stutter—a mistake in the testing—that justified retesting. *Id.* Only one in 15 of the tests showed the stutter, it could not be reproduced on further testing, and the final report was clear. *Id.*

Third, the court reasoned that testing the cut hair in the stab wound could not help White. Even if it belonged to a third party, there was no way to tell when the hair got on Burchett's shirt before the stabbing. *Id.* So a jury could not infer that it was the killer's hair rather than someone else's. *Id.*

Fourth, the court reasoned the same for the hair found on Burchett's shirt. *Id.* Even if it were a third party's hair, that would not help White.

The only hesitation the court had was for the fifth and sixth items—the sweatshirt found at the pallet mill and the hair found on it. The court reasoned that because the sweatshirt tested presumptively positive for blood, there was a chance that it could have something to do with the crime (despite being found in a public area almost two weeks after police found Burchett's body). *Id.* Even so, the court reasoned that would not exonerate White. Assuming that the blood was Burchett's and that DNA testing on the sweatshirt and hair implicated a third party, at most that could show that someone else was connected to the murder. *Id.* But it would not show White

was innocent. Indeed, it would fit with exactly what White's own statements suggested: that others had helped her move Burchett's body. *Id.* And that meant the trial court did not err in denying her request for testing. So the Court of Appeals affirmed.

Next White moved for discretionary review from Kentucky's Supreme Court. Opp'n App. 5. In her motion, White argued that the court should grant review because the lower court misapplied state law and precedent. *Id.* at 6–27. But she never argued that the lower court's application of the statute violated her federal procedural-due-process rights. *See id.* She never cited the Constitution nor any caselaw interpreting it. Her claim focused just on state law.

The Supreme Court of Kentucky denied her motion for discretionary review. Pet. App. 20. But the court ordered the Court of Appeals' opinion to be de-published.

White then petitioned this Court for certiorari.

ARGUMENT

White's primary argument is that the state-court decisions violate her federal procedural-due-process rights in applying state law. Her other arguments are variations of the same. But that is a tough argument to make—and an even tougher one to show that this Court should review. Consider again her ask. White wants this Court to say that a *state court's* application of *state law* was so unfair that it violates the *federal* Due Process Clause. To be sure, that's hypothetically possible under the caselaw. A court could apply state law so unfairly that it amounts to a federal due-

process violation. But it is a rare case that should even tempt the Court to review such a claim filled with federalism concerns. And this is not that case.

The Court should deny review for at least four reasons. First, White did not present her claim in state court. Second, the case-specific nature of White's claim cuts against review. Third, the claim has no chance of succeeding. And fourth, White's tag-along claims are all foreclosed by precedent.

I. White did not present her federal claim in state court.

Almost without exception, this Court has declined to review a federal claim about a state-court decision not first presented in state court. *Hemphill v. New York*, 595 U.S. 140, 148 (2022). There are two reasons for that. First, there is a good argument that the Court lacks jurisdiction to consider such claims. *See id.* at 164–67 (Thomas, J., dissenting); *see also* Stephen M. Shapiro et al., *Supreme Court Practice* 3.16 at 3-46 (11th ed. 2019) ("It is essential to the jurisdiction of the Supreme Court under §1257(a) that a substantial federal question has been properly raised in state court proceedings."). Early on, the Court routinely dismissed unpresented claims for lack of jurisdiction, and the text of § 1257 suggests the presentation requirement. *Hemphill*, 595 U.S. at 165–67 (Thomas, J., dissenting).

Second, even assuming jurisdiction, there are strong prudential reasons not to review an unpresented claim. Of course, state courts—the same as federal courts—must enforce federal law. *O'Sullivan v. Boerckel*, 526 U.S. 838, 844 (1999). So if there

is a federal claim about a state-court decision, then the state court should get the first say on it. Comity demands as much. *Id.* It is "'unseemly in our dual system of government' to disturb the finality of state judgments on a federal ground that the state court did not have occasion to consider." *Adams v. Robertson*, 520 U.S. 83, 90 (1997) (citation omitted). And all the more so when a state-court decision itself is the purported cause of the federal claim. No doubt, the state high court should get the chance to review and correct any constitutional violation caused by its lower court.

Whether the practice of not reviewing unpresented claims is rooted in jurisdiction or prudence, the result here is the same: the Court should deny review. White never presented her claim in state court. For starters, White did not make any procedural-due-process claim in the Court of Appeals. Keep in mind, her claim here is not just that the Court of Appeals' decision violated her federal due-process rights. She thinks the trial court's decision did too. *See* Pet. 9–10.[1] So White could have made her due-process argument about the trial court's decision in the Court of Appeals. But she did not do so. Nor did White argue in the Court of Appeals that if that court followed the trial court's lead, it would also violate her procedural-due-process rights.

[1] White says that "[t]he courts" violated her procedural-due-process rights after discussing what the trial court and Court of Appeals did. Besides, the only other court—the Supreme Court of Kentucky—never applied the DNA statute in her case. Ky. R. App. P. 44(J) ("The denial of a motion for discretionary review does not indicate approval of the opinion or order sought to be reviewed . . . ."). And that court's discretionary-review denial is not what this Court would review under § 1257. *See, e.g.*, *Murr v. Wisconsin*, 582 U.S. 383, 392, 406 (2017) (reviewing a court of appeals' decision after the state supreme court denied discretionary review); *Virginian Ry. Co. v. Mullens*, 271 U.S. 220, 222 (1926). So a procedural-due-process claim about Kentucky's high court would make no sense.

And more importantly, White never argued to Kentucky's Supreme Court that the Court of Appeals' decision violated her procedural-due-process rights. Her motion for discretionary review never made that claim. *See* Opp'n App. 5–27. The only arguments in it were that the lower court misapplied the DNA statute. White cited only Kentucky cases and Kentucky law. She never so much as hinted at a federal claim. She cited neither the Constitution nor any caselaw interpreting it. *See Howell v. Mississippi*, 543 U.S. 440, 443 (2005) (per curiam) ("[H]e did not cite the Constitution or even any cases directly construing it, much less any of this Court's cases.").

And White's motion for discretionary review was the time to do so. Kentucky rules require a party to state the "specific reasons" why the state high court should grant review and are clear that such review is granted only for "special reasons." Ky. R. App. P. 44(A), (C)(5). Plus, Kentucky's Supreme Court will not address issues not raised in a motion for discretionary review. *Smith v. Doe*, 627 S.W.3d 903, 916 (Ky. 2021). So White not raising her federal claim in that motion means she failed to present it to the state high court. *Cf. O'Sullivan*, 526 U.S. at 848 (finding a habeas claim not exhausted when not presented in a discretionary-review motion). She failed to bring her claim "to the attention of the state court with fair precision and in due time." *Hemphill*, 595 U.S. at 148 (citation omitted).

If the presentment requirement is jurisdictional, then no doubt that failure means this Court should deny review. And the same goes for if the requirement is

just prudential. In that case, the circumstances would have to justify an exception. *Howell*, 543 U.S. at 446. And they don't. The comity interests in Kentucky's Supreme Court getting the first say on the federal claim about the lower courts' decisions applying state law could not be higher. Plus, nothing justifies White's failure to raise her federal claim in her motion for discretionary review. Either way, this Court should deny review because White failed to present her claim in state court.

II. The case-specific nature of White's claim cuts against review.

Even if White had presented her claim in state court, it still would not warrant review. Just compare her claim to the usual criteria guiding the Court's discretion in granting review. *See* Sup. Ct. R. 10. White's claim does not raise a circuit or state-high-court split. Resolving it would not avoid conflict in the lower courts. *See Camreta v. Greene*, 563 U.S. 692, 709 (2011). Her claim does not meaningfully suggest any tension between the decision below and this Court's cases. And at bottom, the claim does not raise an exceptionally important question that this Court should answer. Answering it would not clarify "some matter affecting the interests of this nation." *Id.* (citation omitted). Nor would doing so have a "significant future effect on the conduct of public officials." *Id.* at 704.

True, White's claim is important to her, especially given that she is serving a 25-year sentence. But resolving her claim would largely affect only White. The claim is about the Kentucky courts' application of Kentucky's statute in her case—and

that's it. The claim is not about the statute generally or even how Kentucky's Supreme Court has "authoritatively construed" it. *Skinner*, 562 U.S. at 531. And the Court of Appeals' decision is not even precedential. Kentucky's Supreme Court depublished it. Pet. App. 20; *see* Ky. R. App. P. 40(D). So resolving the merits here would say only whether an intermediate appellate court's non-precedential application of state law was fundamentally unfair.

To be sure, that constitutional question—like all such questions—matters. But that does not mean it calls for this Court's review. The question is case specific. It matters almost exclusively to White. For example, there is no suggestion that Kentucky courts need guidance because they keep applying the postconviction DNA statute in a fundamentally unfair way. At bottom, White simply does not present a compelling reason for review.

III. White's claim has no chance of succeeding.

There is another reason why the Court should deny review: White is not going to win on her constitutional claim. And it's not particularly close. Consider what the Court has said about procedural-due-process claims related to postconviction DNA statutes. In *District Attorney's Office for the Third Judicial District v. Osborne*, the Court made clear that if a State creates a liberty interest in testing DNA evidence, then the procedure for securing that interest must comply with procedural due process. 557 U.S. 52, 68–69 (2009). That means the procedure cannot be "fundamentally

inadequate to vindicate the substantive rights provided." *Id.* at 69. It cannot be fundamentally unfair. Yet that is a hard showing to make. *Osborne* "left slim room for [a] prisoner to show that the governing state law denies him procedural due process." *Skinner*, 562 U.S. at 525.

True, he can try to fit his claim "within the 'slim room' left." *Reed v. Goertz*, 598 U.S. 230, 235 (2023). He can bring a § 1983 case challenging a state statute itself as violating procedural due process. *Id.* Or he can challenge a state court's application of a statute as doing so on direct review in this Court. *See id.* at 246 (Thomas, J., dissenting). White chose the latter route. But what would direct review of her claim even look like?

The Court has "defined the category of infractions that violate 'fundamental fairness' very narrowly." *Medina v. California*, 505 U.S. 437, 443 (1992) (citation omitted). So only something egregious could be fundamentally unfair. For example, the state-court decision could be wholly arbitrary. Or it could outright fail to apply the state law or to consider the specific facts of the case. Doing one of those things might make a decision so unfair that it violates due process. But short of something like that, there is no due-process violation. For instance, simply applying state DNA law differently than this Court would have does not pose a due-process problem. Indeed, that type of review would raise serious federalism concerns. It would entail this Court supplanting its interpretation of state law over a state court's. Of course, that

is not how our system of dual sovereignty works. It is Kentucky's Supreme Court that gets the final say on interpreting Kentucky law, not this Court. *See United States v. Taylor*, 142 S. Ct. 2015, 2025 (2022).

So here the Court of Appeals' decision needs to have done something egregious for White's claim to have a chance.[2] White needs to show that the decision was beyond the pale. But she does not meet that high bar. The lower court carefully considered White's arguments on each item she wants tested and applied the statute and on-point caselaw. Pet. App. 15–18. It did nothing arbitrary. It explained each holding in detail, giving thoughtful reasons to uphold the trial court. That should end the matter. Nothing about the lower court's decision was fundamentally unfair.

But if there's any doubt, look closer at the court's holdings. Each applied the law. Each considered the facts. And each made sense. Recall, the statute required the trial court to order testing only if two relevant conditions were met. First, the evidence was not tested before. Ky. Rev. Stat. Ann. § 422.285(5). And second, assuming testing would show exculpatory results, there was a reasonable probability that White would not have been convicted. *Id.*[3]

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[2] Of course, as the higher court, it is the Court of Appeals' decision that matters here, not the trial court's. In other words, if the Court of Appeals' decision did not violate due process in denying White testing, then White cannot complain about the trial court's decision.

[3] The statute also has a section under which the trial court "may" order testing. *Id.* § 422.285(6). But White makes no argument about that section here. *See* Pet. 10–11. For good reason—she would have an even harder time showing a procedural-due-process violation under it.

The first requirement forecloses White's request to retest Burchett's fingernail scrapings. And the second requirement does away with the rest. For the scrapings, the lower court reasonably upheld the factual determinations that the final report was conclusive and not undermined by the unreproducible stutter in one of 15 tests. *See* Pet. App. 16–17. That holding was not arbitrary. It was considered and made sense. So too for the court's holding that testing the lighter would not have exonerated White. *Id.* at 16. There was no way to show when the lighter was dropped at the pallet mill. So it would not matter what testing on the lighter would show. It could not help White. And the same is true for the hairs found on Burchett. There was no way to show when they got there. So whatever the DNA results revealed could not exonerate White. *Id.* at 17.

That leaves just the sweatshirt and the hair found on it—the only items that could possibly help White. But the lower court's holding as to those items was also thought through and reasonable. *See id.* In fact, it was spot on. Drawing all inferences in White's favor, even if the sweatshirt and hair on it showed a third party's DNA, and even if Burchett's blood were found on the sweatshirt, that still would not exonerate White. At best, it would merely implicate a third party, not show White was not the murderer. And that's because such results could easily be explained by the third party having helped White move Burchett's body—exactly what White suggested had happened. *See* Video R. 3/8/13 at 9:23:30–24:40.

In short, White has no chance of showing that the lower court's application of the statute was fundamentally unfair. And she hardly even tries. White repeatedly labels the decision as arbitrary but offers no explanation why. *See, e.g.*, Pet. 12, 16. She claims that the evidence would have helped her at trial. Pet. 12. But that is not the standard under the statute. And White argues that the lower court's interpretation of the statute conflicts with *Osborne* because it does not contain a failsafe. Pet. 16. But that makes no sense. *Osborne*'s discussion of the failsafe in Alaska law to show its procedures were fair has no bearing on the lower court's application of Kentucky's procedures to White. In the end, White's main due-process claim is not going anywhere.[4]

IV. White's other claims are foreclosed by precedent.

Neither are White's secondary claims. She suggests several that are just variations of her main one. White argues that her right to access the courts was violated, including her ability to seek other postconviction relief like collaterally attacking her sentence, bringing a habeas claim, or petitioning for executive clemency. Pet. 12, 17–18. And she suggests an actual-innocence claim. Pet. 18–20.

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[4] One final point here. White repeatedly brings up that Kentucky will not have to pay for testing. *See, e.g.*, Pet. 3, 20. Yet that is irrelevant under the statute. Besides, it's not as if there are no costs associated with additional testing. For example, a State has an interest in finality and in sparing victims added uncertainty and pain. *Shinn v. Ramirez*, 596 U.S. 366, 376–77 (2022). Similarly, it has an interest in "in maintaining the integrity of its evidence." *Osborne*, 557 U.S. at 82 (Alito, J., concurring).

None of those claims come close to warranting review—for three reasons. First, each is dependent on her main claim. So if that claim does not warrant review, then neither do the tag-along ones.

Second, the only question presented in White's petition is whether, given Kentucky's postconviction DNA statute, not letting her test the items violated her procedural-due-process rights. Pet. ii. So to the extent that her other claims go beyond procedural due process, the Court should disregard them. *See* Sup. Ct. R. 14.1(a); *Yee v. City of Escondido*, 503 U.S. 519, 535 (1992).

And third, precedent forecloses each. The Court has already said that an access-to-court claim does not include enabling an inmate "to *discover* grievances, and to *litigate effectively* once in court." *Lewis v Casey*, 518 U.S. 343, 354 (1996). Yet that is exactly what White is asking for. The lower court's denial of her DNA-testing request does not prevent her from collaterally attacking her sentence or filing a habeas petition. Likewise, the Court has rejected any substantive-due-process claim in this area. *Osborne*, 557 U.S. at 72. It has made clear that an actual-innocence claim should be brought in habeas. *Id.* And it has held that there is no liberty interest in receiving executive clemency. *Id.* at 67–68. That means all of White's secondary claims are foreclosed by precedent. Her only shot is her main claim. And as explained, that claim does not warrant review.

* * *

Perhaps a case will come before the Court with a federal procedural-due-process claim about a state court's application of a state postconviction DNA law that is worthy of review. Perhaps there is a case out there in which the claim was presented in state court, affects more than just one defendant's sentence, and has a chance of succeeding. But White's claim checks none of those boxes.

CONCLUSION

The Court should deny the petition for a writ of certiorari.

Respectfully submitted,

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