THIS IS A CAPITAL CASE

EXECUTION SET FOR November 26, 2026

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

MELVIN BONNELL, Petitioner,

v.

BILL COOL,

Warden, Ross Correctional Institution, Respondent.

On Petition for Writ of Certiorari
to the Sixth Circuit Court of Appeals

PETITION FOR A WRIT OF CERTIORARI

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CAPITAL CASE

QUESTIONS PRESENTED FOR REVIEW

In a case where the jury sentenced petitioner to death only after an *Allen* charge, the State—in bad faith—withheld and then destroyed evidence with obvious exculpatory value. In 2020, petitioner discovered what the district court described as "previously unavailable evidence of the State's bad faith" and timely presented a due process claim under *Arizona v. Youngblood*, 488 U.S. 51 (1988).

The district court and the Sixth Circuit also found that, at all times, Mr. Bonnell acted with due diligence pursuant to § 2244(b). But for the State's bad faith, Mr. Bonnell would have uncovered and perhaps saved evidence (that no longer exists) with obvious exculpatory value.

The questions presented are:

1. When bad faith is uncovered years after the petitioner fully litigated his initial habeas petition, should a *Youngblood* claim be considered newly ripened and therefore not subject to the second-or-successive petition requirements of § 2244, consistent with *Panetti v. Quarterman,* 551 U.S. 930 (2007)?

2. Where a petitioner acted with due diligence and there has been no abuse of the writ, may § 2244(b) be construed to categorically exclude consideration of a meritorious *Youngblood* claim because the "actual innocence" standard can never be met when the government in bad faith destroyed the "potentially useful" exculpatory evidence?

PROCEEDINGS DIRECTLY RELATED TO THIS CASE

1. Cuyahoga Common Pleas Court Opinion Sentencing Bonnell to death: *State v. Bonnell*, No. CR-87-223820-ZA, Journal Entry (Ohio Ct. Com. Pl. May 25, 1988);

2. Eighth District Court of Appeals Opinion Affirming Conviction: *State v. Bonnell*, No. 55927, 1989 Ohio App. LEXIS 4982 (Ohio Ct. App. Oct. 5, 1989);

3. Ohio Supreme Court Direct Appeal Opinion: *State v. Bonnell*, No. 89-2136, 573 N.E.2d 1082 (Ohio May 21, 1991);

4. United States Supreme Court denial of certiorari: *State v. Bonnell*, No. 91-6740, 502 U.S. 1107 (Feb. 24, 1992);

5. Cuyahoga Common Pleas Court Decision Denying Bonnell's Motion to Vacate or Set aside Judgement: *State v. Bonnell*, No. CR-87-223820-ZA, Journal Entry (Ohio Ct. Com. Pl. Oct. 16, 1995);

6. Eighth District Court of Appeals Opinion Affirming Denial of Bonnell's Motion to Vacate: *State v. Bonnell*, No. 69835, 1998 Ohio App. LEXIS 3943 (Ohio Ct. App. Aug. 27, 1998);

7. Ohio Supreme Court Decision Dismissing Appeal: *State v. Bonnell*, No. 98-2113, 704 N.E.2d 578 (Ohio Jan. 20, 1999);

8. District Court First Federal Habeas Decision: *Bonnell v. Mitchell*, No. 00CV250, 301 F.Supp.2d 698 (N.D. Ohio Feb. 04, 2004);

9. Sixth Circuit Court of Appeals First Federal Habeas Decision: *Bonnell v. Mitchell*, No. 04-3301, 212 F. App'x 517 (6th Cir. Jan. 8, 2007);

10. Cuyahoga Common Pleas Court Finding of Facts and Conclusions of Law Denying Defendant's Application for DNA testing: *State v. Bonnell*, No. CR-87-223820-ZA, Journal Entry (Ohio Ct. Com. Pl. Oct. 21, 2005);

11. Eighth District Court of Appeals Opinion Dismissing Bonnell's Appeal and Affirming the Denial of his DNA Application: *State v. Bonnell*, No. 15-102630, 2015 WL 6797870 (Ohio Ct. App. Nov. 5, 2014);

12. Ohio Supreme Court Decision Affirming Denial of DNA Application: *State v. Bonnell*, No. 2013–0167, 119 N.E.3d 1285 (Ohio Jan. 7, 2014);

13. Cuyahoga Common Pleas Court Finding of Facts and Conclusions of Law Denying Defendant's Application for DNA testing: *State v. Bonnell*, No. CR-87-223820-ZA, Journal Entry (Ohio Ct. Com. Pl. Aug. 14, 2017);

14. United States Supreme Court denial of certiorari: *State v. Bonnell*, No. 18–8569, 139 S. Ct. 2644 (May 28, 2019);

15. District Court Federal Habeas Decision: *Bonnell v. Mitchell*, No. 1:21CV1604, 2023 U.S. Dist. LEXIS 47913 (N.D. Ohio, Mar. 21, 2023); and

16. Sixth Circuit Court of Appeals Federal Habeas Decision: *In re Bonnell*, No. 23-3235, 2023 U.S. App. LEXIS 20467 (6th Cir. Aug. 7, 2023).

LIST OF PARTIES AND CORPORATE DISCLOSURE STATEMENT

Mr. Melvin Bonnell is the petitioner in this case and was represented in the Court below by the Capital Habeas Unit of the Federal Defender's Office for the Western District of Missouri and the Capital Habeas Unit of the Federal Defender's Office for the Northern District of Ohio.

Mr. Tim Shoop, Warden of Chillicothe Correctional Institution, was the Respondent below. Mr. Bill Cool, Warden of Ross Correctional Institution, is the current Respondent. Both are represented by Assistant Ohio Attorney General Mr. Charles Wille.

Pursuant to Rule 29.6, no parties are corporations.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

OTHER AUTHORITIES

CONSTITUTIONAL PROVISIONS

TABLE OF APPENDIX

PETITION FOR WRIT OF CERTIORARI

Petitioner Melvin Bonnell respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit denying leave to file a successor after a transfer from the District Court.

OPINION BELOW

The August 7, 2023, opinion of the Sixth Circuit Court of Appeals denying leave under § 2244 to file a habeas corpus petition is unpublished, *In re Bonnell*, 2023 U.S. App. LEXIS 20467 (6th Cir. 2023), and appears in the Appendix at App. 1a through App. 9a. The district court's decision transferring the habeas petition to the Sixth Circuit is unpublished, *Bonnell v. Mitchell*, 2023 U.S. Dist. LEXIS 47913 (N.D. Ohio, Mar. 21, 2023), and appears in the Appendix at App. 11a through App. 18a. The Sixth Circuit's January 3, 2024 order denying rehearing and rehearing en banc is unpublished and appears in the Appendix as App. 10a.

JURISDICTION

The Sixth Circuit issued its judgment on August 7, 2023, and subsequently denied rehearing *en banc* on January 4, 2024. Under 28 U.S.C. § 2201(c) and Rule 13.1, the present petition was required to be filed within ninety (90) days. Upon application of Petitioner under Rule 13 in Case No. 23A852, Associate Justice and Eighth Circuit Justice Brett M. Kavanaugh extended the time for filing a petition for writ of certiorari in this cause up to and including June 1, 2024. App. 19a. This

petition is timely under Rule 13.1. This Court has jurisdiction under 28 U.S.C. § 1254(1). *See Castro v. United States*, 540 U.S. 375, 380–81 (2003).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment of the United States Constitution states in relevant part: "nor be deprived of life, liberty, or property, without due process of law."

The Fourteenth Amendment of the United States Constitution states in relevant part, "nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

This case also involves 28 U.S.C. § 2244 (b), which provides, in pertinent part:

> (b) (1) A claim presented in a second or successive habeas corpus application under section 2254 that was presented in a prior application shall be dismissed.
>
> (2) A claim presented in a second or successive habeas corpus application under section 2254 that was not presented in a prior application shall be dismissed unless—
>
> (A) the applicant shows that the claim relies on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or
>
> (B) (i) the factual predicate for the claim could not have been discovered previously through the exercise of due diligence; and
>
> (ii) the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

(3) (A) Before a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.

(B) A motion in the court of appeals for an order authorizing the district court to consider a second or successive application shall be determined by a three-judge panel of the court of appeals.

(C) The court of appeals may authorize the filing of a second or successive application only if it determines that the application makes a prima facie showing that the application satisfies the requirements of this subsection.

(D) The court of appeals shall grant or deny the authorization to file a second or successive application not later than 30 days after the filing of the motion.

(E) The grant or denial of an authorization by a court of appeals to file a second or successive application shall not be appealable and shall not be the subject of a petition for rehearing or for a writ of certiorari.

(4) A district court shall dismiss any claim presented in a second or successive application that the court of appeals has authorized to be filed unless the applicant shows that the claim satisfies the requirements of this section.

STATEMENT OF THE CASE

A. Introductory Statement.

A *Youngblood* claim alleges that the State has lost or destroyed potentially exculpatory evidence in bad faith. Because they concern the bad faith destruction of evidence, *Youngblood* claims often are not discovered until many years later. To prevail on a *Youngblood* claim, a petitioner need not (and cannot) demonstrate that the evidence would have affected the outcome of a trial, because the evidence is by definition unavailable and unexaminable. 488 U.S. at 57 (*Youngblood* claims involve only "evidentiary material of which no more can be said than it *could* have been subjected to tests, the results of which *might* have exonerated the defendant.") (emphasis added).

State county-level actors have acted in bad faith throughout this case, exhibiting on different occasions either willful ignorance, intentional dissonance, or outright misrepresentation. Over time, they lost, misplaced, or destroyed the majority of the evidence which could prove at least potentially exculpatory in this capital case. As found by the district court and recognized by the Sixth Circuit, Mr. Bonnell has satisfied the bad faith component of *Youngblood*. Dt. Ct. R. Doc. 10 App. 18a; Sixth Circuit R. 15-1 App. 5a, App. 7a.

The State actors covered up their bad faith for close to 30 years. Alarmingly, the bad faith was only discovered thirty days ***after*** Mr. Bonnell was due to be executed—but for a reprieve. Thus, the county-level actors were intent upon allowing an execution to proceed in bad faith.

The undeniable truth is that almost all evidence from Mr. Bonnell's capital case was lost or destroyed by the State. Some of this evidence had apparent exculpatory value, while the rest held potential exculpatory value at the time of its loss.

Here, the potential exculpatory value of any physical evidence is only magnified because Mr. Bonnell's conviction relied on two highly questionable eyewitnesses. The State propped up the eyewitnesses by withholding exculpatory evidence contradicting its theory of the case and inconsistent statements made by State witnesses, which prevented Mr. Bonnell from meaningfully challenging their testimony. Throughout thirty years of post-conviction litigation, Mr. Bonnell has been denied meaningful opportunities to challenge the State's case, despite maintaining his innocence.

All Mr. Bonnell desires is a single, *first*, opportunity to receive a full adjudication of his claim that the State—acting in bad faith—destroyed potentially useful evidence. Here, the heightened requirements of § 2244(b)—which themselves exist to discourage bad-faith litigation tactics by petitioners—cannot be construed to foreclose even one opportunity to receive an adjudication of a potentially meritorious *Youngblood* claim and to reward the State's bad faith and misconduct.

B. State's Theory of Guilt.

According to the State's theory of the case, Shirley Hatch, Edward Birmingham, and the victim, Robert Eugene Bunner, shared an apartment on Bridge Avenue in Cleveland, Ohio. *State v. Bonnell*, 61 Ohio St. 3d 179, 179 (1991).

On November 28, 1987, at approximately 3:00 a.m., Ms. Hatch heard a knock at the kitchen door of the apartment. *Id*. When Mr. Bunner opened the door, testimony asserted Mr. Bonnell entered the apartment, uttered an expletive, and fired two gunshots at Mr. Bunner at close range. *Id.* Ms. Hatch woke Mr. Birmingham, asleep in the next room in a drunken slumber. *Id.* Mr. Birmingham testified that he saw Mr. Bonnell laying on top of the bloodied victim punching him repeatedly, and then Mr. Birmingham ejected the shooter from the apartment. *Id.* Mr. Bunner subsequently succumbed to his injuries. *Id.* at 180.

At the time of trial, the State suppressed the fact that the only purported eyewitnesses, Ms. Hatch and Mr. Birmingham, were too intoxicated to give a written statement at the scene when police arrived. At the time of trial, the State also suppressed that Ms. Hatch informed the police that the shooter was a man with blond hair who wore a reddish-maroon jacket. Even though both Ms. Hatch and Mr. Birmingham knew Mr. Bonnell, neither identified Mr. Bonnell by name until Ms. Hatch pled to a pending felonious assault almost a month later.

Earlier in the night, Mr. Bonnell and Mr. "Joey" Popil, met up and hit several local bars throughout the night, drinking at each. Between bars, the pair stopped at Ms. Marlene Roberts's house to borrow money. After borrowing money from Ms. Roberts, Mr. Bonnell and Mr. Popil continued drinking. By the time he attempted to drive home, Mr. Bonnell was exceedingly intoxicated. *Id.* at 180. His impaired driving attracted the attention of officers patrolling the area. *Id.* When they

signaled him to pull over, Mr. Bonnell attempted to drive off. *Id.* A chase ensued but quickly ended in an accident. *Id.*

While hospitalized in the intensive care unit, police arrested Mr. Bonnell for Mr. Bunner's death after an officer linked his face—though badly bruised and bloody from the car crash and under an oxygen mask—to that of the description of the shooter. Following his arrest, police collected evidence from Mr. Bonnell's person (his clothing, including his white pants and white socks) and trace evidence from his car. From the car, police also retrieved a maroon and tan corduroy jacket that belonged to Mr. Bonnell. There was no writing on the jacket. Police also bagged Mr. Bonnell's hands for testing at the hospital.

At trial, the State presented serologist Ms. Linda Luke. Ms. Luke testified that she checked Mr. Bonnell's jacket for any stains that could be blood and tested all the spots she found. In 1987, only Mr. Bonnell's own blood type was found on the jacket; the victim's blood was not. Tr. 903-907. At the time of trial, a gunpowder residue test found no residue on Mr. Bonnell's jacket, but the jury never heard that because the State suppressed that critical information.

C. Close Case Where Evidence That Would Have Exonerated Mr. Bonnell Has Been Lost or Destroyed by the State.[1]

The State had no physical or scientific evidence demonstrating Mr. Bonnell's guilt to the jury. As noted above, the State relegated itself to relying upon

[1] A chart documenting the physical evidence lost, presumptively destroyed, is attached in the appendix at App. 20a.

compromised eyewitnesses. However, a plethora of physical evidence possessed obvious exculpatory impact and the State successfully (and wrongly) prohibited the jury from considering it.

1. No blood on Mr. Bonnell's white clothes.

Following his arrest, police collected evidence from Mr. Bonnell's person. This included his clothing: white pants and white socks. *See* Tr. 1215, 1219. On December 4, 1987, these items were signed out to Officer Reed. Doc. No. 1-13 (C.S. Affidavit 1) p. 20. There is no indication in the record or in the prosecutor's 2017 affidavit where these items were located or stored after December 1987, just months before Mr. Bonnell's capital trial. Because there was a bloody scene and an eyewitness describing repeated punching by an assailant while sitting atop the victim, the white clothes that are now missing or destroyed had obvious exculpatory value. There must have been no blood on the clothes, or the prosecution would have tested, presented, and preserved them. Thus, the lack of blood on white clothing from a bloody crime scene has obvious exculpatory impact.

2. Apparent blood on Mr. Popil's jacket.

At trial, Ms. Roberts testified that she saw Mr. Popil wearing a red jacket. Tr. 1287. Consistent with her trial testimony, a police report taken just days after the crime documented that this witness informed the police that she saw Mr. Bonnell and Mr. Popil when they visited her house earlier on the night of the homicide. *See* Ex. 6 to Bonnell's Motion for New Trial. Mr. Bonnell came inside to borrow money.

Id. She saw Mr. Popil waiting outside in the driver's seat of Mr. Bonnell's car and wearing a red jacket. *Id.*

In response to Ms. Roberts' report, the police interviewed Mr. Popil[2] at the police station on December 2, 1987. He showed up to the station wearing a red jacket. *See* Ex. 5 to Bonnell's Motion for New Trial. Police seized Mr. Popil's shiny red jacket, with the writing "Devil's Den" across the back, and photographed it on the same date. *See* Exs. 4, 5 to Bonnell's Motion for New Trial.

Presumably due to the obvious potentially inculpatory evidence it represented, the State seized Mr. Popil's jacket. It is now missing and the jacket was lost at some undetermined time. They did, however, take photographs of the jacket and the reddish-brown stain on its front.

The maroon and tan jacket Mr. Bonnell wore on the night of the murder did not feature any writing, nor did it have a massive blood-like stain on the front

[2] Mr. Popil was the nephew of a police detective. That detective conveniently served as his alibi witness for the murder.

pocket like Mr. Popil's jacket had. At trial, testimony indicated all visible blood on Mr. Bonnell's jacket was **not** Mr. Bunner's blood-type. Tr. 903-907. Mr. Popil's jacket, like the rest of the evidence in Mr. Bonnell's case, has mysteriously disappeared. However, Ms. Hatch recently saw a picture of Mr. Popil's jacket and stated, "[t]he shiny jacket, which has been shown to me, with the writing 'Devil's Den' on the back resembles the jacket that the murderer wore." Dt. Ct. R. Doc. 1-14 (Hatch Affidavit) p. 1, ¶7. Mr. Popil's missing jacket and the untested blood-like stain are on their own potentially exculpatory, and even more so when linked to Ms. Hatch's recent statement.

3. No gun powder or blood on Mr. Bonnell's hands.

Following his arrest, the police bagged Mr. Bonnell's hands to maintain the integrity of any physical, biological, or scientific evidence they may have possessed. However, neither the results of those examinations nor the evidence collected from the bags has ever been disclosed. Given the bloody nature of the crime scene and reported brutal beating of the victim, Mr. Bonnell's hands would have been bloodied. They must not have been – otherwise such evidence would have been presented by the State.

Further, Mr. Bonnell's hands would have tested positive for gun powder residue if he had been the shooter, but testing did not reveal gun powder residue. This exculpatory result would have been consistent with the other exculpatory evidence suppressed by the State. At the time of trial, the county prosecutors also suppressed a negative gun powder result performed on Mr. Bonnell's jacket, which

would have necessarily been positive if he had been the shooter. Test results showing the lack of gun powder and blood on Mr. Bonnell's bagged hands would have been exculpatory, but the prosecution failed to furnish or maintain either.

4. Car processed yields no inculpatory evidence.

Mr. Bonnell was chased by police, involved in an accident,[3] arrested, and the car was immediately seized. It was processed. There has never been an accounting of what was seized or the results of the trace evidence secured from the car. If it had been inculpatory, undoubtedly it would have been presented against Mr. Bonnell at trial. Thus, the processing records related to the car are potentially exculpatory.

Mr. Bonnell is forced to speculate about the exculpatory nature of nearly every piece of physical evidence in his case because the State, in bad faith, lost or destroyed the vast majority of it. Because of the State's malfeasance, it has no physical evidence linking Mr. Bonnell to the murder; the physical evidence the State failed to maintain is *at least* "potentially useful" and, in many instances, has obvious exculpatory value. In light of this, Mr. Bonnell's conviction and death sentence are completely without support and *Youngblood* is satisfied.

[3] The State's theory was that the chase started in front of the crime scene. Mr. Bonnell does not concede this to be true. Officers testified they prepared no police reports, but they did. And those police reports placed the start of the police chase blocks from the house where the killing occurred. If the State's version is true, the processing of the car would yield inculpatory evidence, but it did not.

D. Bad Faith Discovered – "*Youngblood* claim is predicated on newly discovered and previously unavailable facts [evidence was found] in the State's possession despite its repeated representations to the contrary." App. 17a

Mr. Bonnell exercised diligence at all times and throughout the decades since his trial, only to be met with the State's dull denials that evidence was available and exculpatory. Mr. Bonnell only uncovered that the State's repeated denials were not accurate in 2020.

Prior to 2020, the State consistently maintained that no additional physical evidence existed in Mr. Bonnell's file:

> I informed [the defense investigator] that my office had four boxes of material related to the Melvin Bonnell case in our possession, but ***that those four boxes contained only paper documents.***

See Dt. Ct. R. Doc. No. 1-13 (C.S. Affidavit #1) p. 27, ¶5 (emphasis added).

> [The defense investigator] indicated that she was looking for physical exhibits. . . ***I stated that my office had no physical exhibits in our possession.***

Id. at pp. 27-28, ¶5 (emphasis added).

> On December 6, 2016, I asked two employees of my office's Case Management Unit if our office had any additional items in storage from Bonnell's case. I specified that I was looking "for physical exhibits - a handgun, two jackets, and a pillow." They later informed me that they had checked our office's file storage areas and ***that the only items we had related to Bonnell's case were the four boxes of paper documents I had already both reviewed and informed [the defense investigator] about.***

Id. at p. 28, ¶10 (emphasis added).

> I then emailed [the defense investigator] stating that I had confirmed ***there were no physical exhibits related to Bonnell's case in my office's possession***.

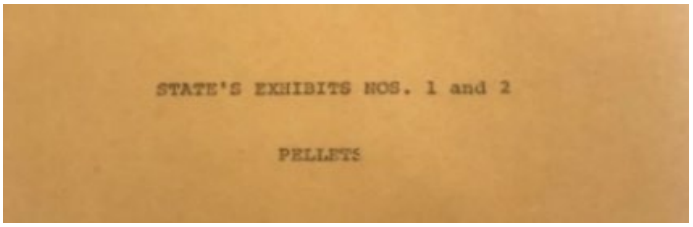
Id. at p. 29, ¶16 (emphasis added).

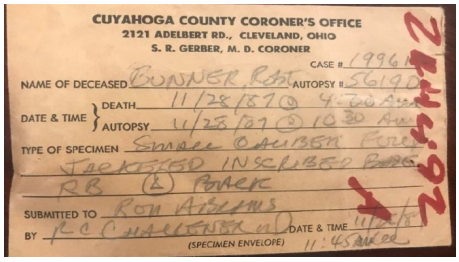
> ***I reiterated that my office had no evidence in its possession from Bonnell's case***.

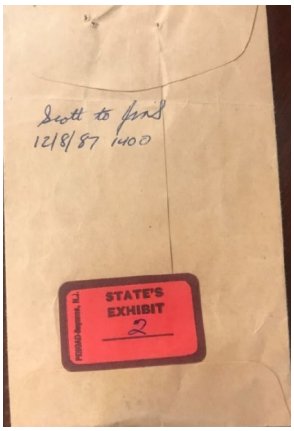
Id. at p. 34, ¶43 (emphasis added).

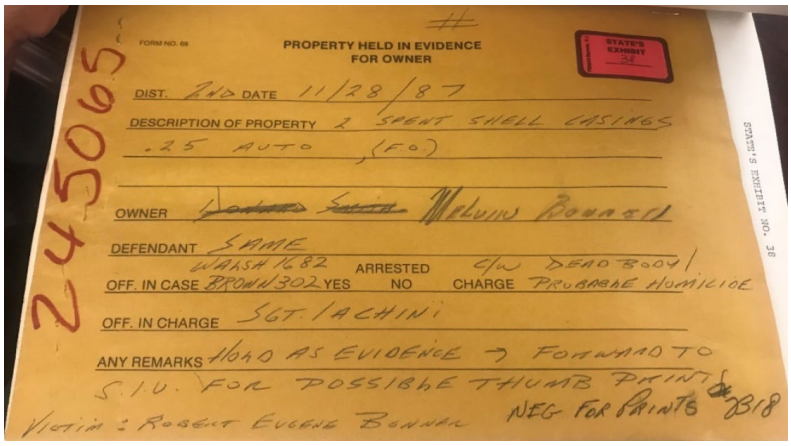
Mr. Bonnell was scheduled to be executed on February 12, 2020. However, he received a reprieve from Ohio Governor Mike DeWine.

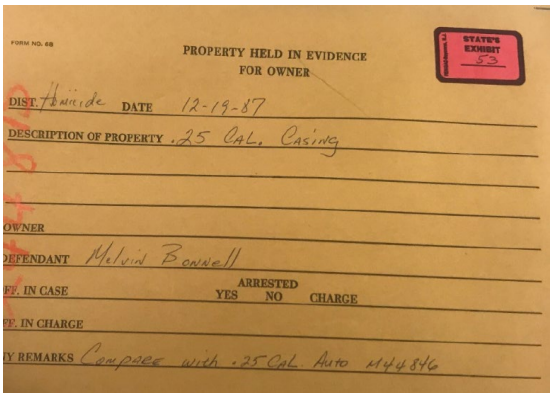
On February 26, 2020, Mr. Bonnell's attorneys, under the supervision of a county prosecutor, viewed the prosecution's file and reviewed the contents of the prosecutor's boxes. Contrary to the above repeated "lost" or "destroyed" assertions by the prosecutor, the defense team discovered physical trial exhibits.










PROPERTY HELD IN EVIDENCE
FOR OWNER

STATE'S EXHIBIT 53

DIST. Homicide DATE 12-19-87

DESCRIPTION OF PROPERTY .25 CAL. Casing

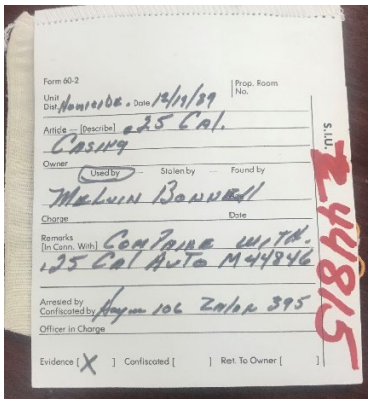
OWNER

DEFENDANT Melvin Bonnell

OFF. IN CASE ARRESTED YES NO CHARGE

OFF. IN CHARGE

BY REMARKS Compares with .25 Cal Auto M44846


Form 60-2

Unit Dist. Homicide Date 12/19/87 Prop. Room No.

Article — [Describe] .25 Cal. Casing

Owner Used by Stolen by Found by

Melvin Bonnell

Charge Date

Remarks [In Conn. With] Compare with .25 Cal Auto M44846

Arrested by Hayes 106 Zalar 395

Confiscated by Officer in Charge

Evidence [X] Confiscated [ ] Ret. To Owner [ ]

S.I.U. 2418

See R. Doc. No. 1-4 – 1-8, 1-11.

After opening the envelope labeled "State's Exhibit Nos. 1 and 2," Mr. Bonnell's attorneys confirmed the morgue pellets were inside. Inside the envelope labeled "State's Exhibit 38" was a smaller, unmarked envelope. Within the smaller envelope were two shell casings. Inside the envelope labeled "State's Exhibit 53" appeared to be a shell casing.

The discovery of the items led to the State's manufacturing of additional affidavits from the county level actors. Both State prosecutors provided self-serving affidavits Mr. Bonnell has not yet had the opportunity to challenge. The C.S. Affidavit #1 was executed in 2017 and consisted of 80 paragraphs. Years later (and after apparent reflection, discovery of the materials in the prosecutor's files, and litigation), C.S. Affidavit #2 was executed in 2020. The newly minted C.S. Affidavit #2 omitted 36 paragraphs from the 2017 affidavit, and added new information and paragraphs not previously included in 2017. Mr. Bonnell has never had the opportunity to challenge the self-serving hearsay contained in either affidavit.

E. Bad Faith Found by The District Court and Acknowledged by The Sixth Circuit.

Even after the State's bad faith was uncovered, the State continued to argue, "The State **continuously, at every point in the last 24 years, has acknowledged that evidence was not preserved.** This has never been a secret." State's Ohio Supreme Court's Response to Jurisdiction, p. 1. This is verifiably untrue; rather, the State's argument demonstrates that bad faith occurred by the public denial that no physical evidence remained while secreting such evidence in the State's file for decades.

The district court found, "the morgue bullets and shell casings were in the State's possession despite its repeated representations to the contrary." App. 17a. "The fact that Bonnell only now has found this **additional, previously unavailable evidence of the State's bad faith** – which he contends strengthens and broadens his new *Youngblood* claim… ." App. 18a (emphasis added).

The Sixth Circuit did not dispute, and indeed acknowledged, the finding regarding the State's bad faith and agreed that Mr. Bonnell had satisfied the diligence requirement of § 2244(b)(2)(B)(i). Specifically, the court found Mr. Bonnell had made a prima facie showing of diligence. App. 7a. Further, the court recognized without disputing the district court's finding that Mr. Bonnell had shown bad faith on the part of the prosecutor's office when prosecutors destroyed, lost, or mishandled nearly every piece of evidence collected for trial. App. 5a.

The Sixth Circuit held that Mr. Bonnell's petition was second or successive and must therefore meet the requirements of § 2244(b)(2). The Sixth Circuit

acknowledged that Mr. Bonnell diligently only became aware of facts establishing the State's bad faith in destroying the potentially useful evidence in 2020. But, because the State had acted in bad faith in destroying the evidence prior to his initial habeas petition, the facts underlying his claim may have existed at the time he litigated his first habeas petition. In the court's view, that rendered Mr. Bonnell's current petition second or successive.

REASONS FOR GRANTING THE WRIT

I. The *Panetti* ripeness doctrine applies to *Youngblood* claims.

Not all subsequent-in-time habeas petitions are considered "second or successive" under § 2244(b). *Magwood v. Patterson,* 561 U.S. 320 (2010). "Although Congress did not define the phrase 'second or successive,' as used to modify 'habeas corpus application under section 2254,' §§ 2244(b)(1)-(2), it is well settled that the phrase does not simply refe[r] to all § 2254 applications filed second or successively in time." *Magwood*, 561 U.S. at 332 (internal citations omitted). Mr. Bonnell has already fully litigated his first federal habeas petition under § 2254, but that does not make this petition automatically successive and subject to the standard under 28 U.S.C. § 2244(b)(2).

This Court has rejected the argument that a habeas petition is second or successive just because it was filed second-in-time. *Panetti v. Quarterman,* 551 U.S. 930, 944 (2007) (citing *Stewart v. Martinez-Villareal,* 523 U.S. 637, 643 (1998) ("The State argued that because the prisoner 'already had one fully-litigated habeas petition, the plain meaning of § 2244(b) … requires his new petition to be treated as successive.' We rejected this contention.")). The statutory phrase "second or successive" is a term of art in the habeas context, not a mere mathematical computation.

As Senator Hatch noted, § 2244(b) was designed to confront the assertion of claims in a subsequent proceeding that could have been brought earlier in an effort to frustrate the imposition of the punishment. 141 Cong. Rec. S7658-01, S7659

(June 5, 1995). Section 2244 was therefore intended to reduce the ability to pursue successive petitions "*unless* there is some egregious action that is learned about after the petition is filed." 141 Cong. Rec. S7803-01, S7812 (2005) (Sen. Biden) (emphasis added). Section 2244 was an effort to "correct the obstructive and abusive manipulation of the writ." *Id.* at S7823. That § 2244 does not automatically apply to all second-in-time claims makes absolute sense – because the point of § 2244 was to capture the previous abuse of the writ doctrine, which looked to whether the petitioner had acted in an abusive way but permitted later-ripening or later-discovered claims where the petitioner had acted diligently.

In *Panetti*, this Court found an exception to the stringent standards in § 2244 because it was "hesitant to construe a statute, implemented to further the principles of comity, finality, and federalism, in a manner that would require unripe (and, often, factually unsupported) claims to be raised as a mere formality, to the benefit of no party." 551 U.S. at 947. This Court recognized that a person could not be deemed incompetent to be executed until execution was imminent, because the matter of incompetence to be executed was not ripe until the time of the execution — that is, when an execution date was set.

To come to its ultimate conclusions, *Panetti* considered three factors in examining ripeness of a *Ford* claim: (1) the implications for habeas practice if the Court found it lacked jurisdiction over Panetti's claim, (2) the purposes of AEDPA, and (3) the pre-AEDPA abuse-of-the-writ doctrine. 551 U.S. at 943-47. Ultimately, this Court found that raising an unripe *Ford* claim in a first-in-time habeas petition

just for the sake of preserving the issue for a subsequent petition "would add to the burden imposed on the courts, applicants, and the States, with no clear advantage to any." *Id.* at 943.

Filing unripe *Ford* claims conflicts with AEDPA's purpose of "comity, finality, and federalism" because the unripe claim "neither respects the limited legal resources available to the States nor encourages the exhaustion of state remedies." *Id.* at 946. Finally, *Panetti* found the traditional abuse-of-the-writ doctrine inapplicable because *Ford* claims cannot ripen until a petitioner's execution is imminent. *Id.* at 947.

Youngblood claims cannot be materially distinguished from *Ford* claims when determining whether they are "second or successive." First, as *Panetti* found to be true of *Ford* claims, precluding *Youngblood* claims a petitioner could not have discovered through due diligence would adversely affect habeas practice. A *Youngblood* claim alleges that the State has lost or destroyed potentially exculpatory evidence in bad faith, thereby depriving the defendant of a fair trial and the opportunity to obtain an acquittal. That is precisely the type of claim that habeas corpus exists to protect. And because the *Youngblood* violation necessarily involves bad faith on the State's part, such violations may not be discovered until years after trial.

If such claims were subject to second-or-successive treatment, petitioners would be forced to file a *Youngblood* claim that is either completely unripe or merely speculative in order to preserve the opportunity to raise it later. As with

second-in-time *Ford* claims, "conscientious defense attorneys would be obliged to file unripe (and in many cases, meritless) [*Youngblood*] claims in each and every [first § 2254] application," *Panetti*, 551 U.S. at 943, to preserve speculative claims on the chance that the government might commit—or might have already committed—a *Youngblood* violation. No useful purpose would be served by requiring a habeas petitioner to file a *Youngblood* claim in their initial petitions as a matter of course, in order to leave open the chance of reviving their challenge later should, at some indeterminate future time, they uncover State malfeasance in the destruction of potentially useful or exculpatory evidence.

Second, there can be no offense to the State's comity or finality concerns where the State alone holds the key to ensuring a *Youngblood* violation—and subsequent collateral review upon discovery thereof—does not occur. "Whatever finality interest Congress intended for AEDPA to promote, surely it did not aim to encourage prosecutors to withhold constitutionally required evidentiary disclosures long enough that verdicts obtained through government misconduct would be insulated from correction." *Scott v. United States*, 890 F.3d 1239, 1252 (11th Cir. 2018). As this Court noted in the *Brady* context, "the adversary system of prosecution [cannot] descend to a gladiatorial level unmitigated by any prosecutorial obligation for the sake of truth." *Kyles v. Whitley*, 514 U.S. 419, 437 (1995).

Congress could not possibly have intended AEDPA to incentivize states to—as the State did here—destroy evidence and hide their malfeasance until after a

petitioner has already litigated their initial habeas petition. Rather, Congress and the Court have long contemplated that when a petitioner pursues his claims diligently and establishes constitutional error, finality and federalism concerns must give way. *Hill v. Texas*, 316 U.S. 400, 406 (1942); *Herrera v. Collins*, 506 U.S. 390, 421 (1993) (O'Connor J., concurring).

Finally, allowing a *Youngblood* claim that could not have been discovered any earlier through exercising due diligence in a subsequent-in-time petition does not offend the abuse-of-the-writ doctrine. As this Court has noted, AEDPA "did not redefine what qualifies as a successive petition" in a manner inconsistent with the abuse of the writ doctrine. *Banister v. Davis*, 140 S. Ct. 1698, 1707 (2020). A petitioner abuses the writ "by raising a claim in a subsequent petition that he could have raised in his first." *McCleskey v. Zant*, 499 U.S. 467, 489 (1991).

Conversely, petitioners who raise claims that they could not have raised in a prior habeas petition through no fault of their own have not abused the writ. *Benchoff v. Colleran*, 404 F.3d 812, 817 (3d Cir. 2005); *Medberry v. Crosby*, 351 F.3d 1049, 1062 (11th Cir. 2003); *Crouch v. Norris*, 251 F.3d 720, 724 (8th Cir. 2001). And under the abuse-of-the-writ doctrine, habeas petitioners could not raise claims of constitutional error or prosecutorial misconduct until those errors were ripe for review. *See Strickler v. Greene*, 527 U.S. 263, 286 (1999). If a petitioner raises a claim that would have been an abuse of the writ under this Court's pre-AEDPA cases, "it is successive; if not, likely not." *Banister*, 140 S. Ct. at 1706. This Court's

acknowledgment and continued recognition of the abuse of writ doctrine is consistent with § 2244's legislative history mentioned above.

Youngblood claims—like *Ford* claims—often hinge on future events that have yet to occur, so while facts supporting the claim may already exist, the claim itself has yet to ripen. The necessity of bad faith and the presumption of regularity of proceedings distinguish *Youngblood* claims when discovery of the bad faith occurs after the completion of the federal courts' review of a petitioner's first-in-time habeas petition. A *Youngblood* claim cannot even be uncovered, let alone proven, without first finding evidence of bad faith on behalf of the police or prosecutor. *Youngblood*, 488 U.S. at 58.

The Sixth Circuit erred in holding that the claim ripened at the time the State destroyed the evidence in this case. A claim is only ripe when the "vital facts" necessary to bring a colorable, factually supported claim exist—i.e., "those without which the claim would necessarily be dismissed under Rule 4 of the Rules Governing § 2254 Cases in the United States District Courts . . . or Rule 12(b)(6) of the Federal Rules of Civil Procedure." *Rivas v. Fischer*, 687 F.3d 514, 534–35 (2d Cir. 2012) (citing *McAleese v. Brennan*, 483 F.3d 206, 214 (3d Cir. 2007) and *Flanagan v. Johnson*, 154 F.3d 196, 199 (5th Cir. 1998). Therefore, because bad faith is an element of the claim, the point at which a *Youngblood* claim is considered ripe must be at the time of the discovery of the bad faith, not the discovery that evidence is missing or destroyed.

Since ruling against Mr. Bonnell, the Sixth Circuit recognized the incongruity of requiring a petitioner to raise unripe claims in a first habeas petition or be subject to § 2244(b)(2). *In re Apanovitch*, 2024 U.S. App. LEXIS 9838 (6th Cir. 2024). There, the court found that a petitioner "cannot assert hypothetical or speculative claims on factual predicates yet to materialize" where, although Mr. Apanovitch was questioning evidence that existed at trial but was withheld for years due to prosecutorial misconduct, neither the misconduct nor the exculpatory value of the evidence was uncovered until after his first habeas petition. *Id.* at *12. The court refused to construe § 2244, "implemented to further the principles of comity, finality, and federalism, in a manner that would require unripe (and often factually unsupported) claims to be raised as a mere formality, to the benefit of no party." *Id.* at *15 (quoting *Panetti*, 551 U.S. at 947). The Sixth Circuit's reasoning in *Apanovitch* reflects how the ripeness of *Youngblood* claims should be treated. It also establishes that an intra-Circuit split has developed within the Sixth Circuit.

In many cases, including Mr. Bonnell's, there is no way to accurately pinpoint when evidence was destroyed. In terms of a *Youngblood* claim, the moment in time when evidence was lost or destroyed, while it may provide circumstantial evidence of bad faith, is not controlling as to the ripening of the claim. Rather, because *Youngblood* requires a showing of bad faith, the discovery of that bad faith should be the moment of ripening. To hold otherwise would be to reward the State for hiding evidence of its bad faith destruction of evidence. If the Sixth Circuit's interpretation of "second or successive" is correct, the State need only hide its

misconduct long enough for a petitioner to file his first habeas petition. There is no evidence, either in the text of § 2244, the legislative history, or the precedent of this Court, that State misconduct can be rewarded with the heightened standards of § 2244 when the State destroys potentially useful evidence in bad faith. As such, misdeeds by the prosecution should not be rewarded, especially when there is a more precise and fair moment at which to evaluate the claim.

The proceedings below are inconsistent with the foregoing firmly embedded principle from *Panetti* and this Court's abuse of writ precedent. Thus, the Sixth Circuit has decided an important federal question in a way that conflicts with relevant decisions of this Court. *See* Sup Ct. R. 10(c).

II. Under the Sixth Circuit's construction of second or successive, § 2244 forecloses later-discovered *Youngblood* claims because they can never satisfy the stringent standards of § 2244.

Section 2244 cannot be construed to apply to *Youngblood* claims because to do so would be to construe § 2244 to foreclose a category of otherwise meritorious constitutional claims. But in enacting § 2244 to codify the longstanding abuse of the writ doctrine, Congress did not intend to eliminate any substantive constitutional claims. Regardless of when *Youngblood* claims become ripe as a technical matter, therefore, § 2244 cannot be construed to apply to such claims where the petitioner has acted diligently and no abuse of the writ concerns are present.

A first habeas petition alleging a *Youngblood* violation faces a materially different standard of proof than that imposed by § 2244(b). Normally, a petitioner must show that the State acted in bad faith by failing to preserve—or by

destroying—"potentially useful" or "potentially exculpatory" evidence. *Youngblood*, 488 U.S. at 57. This standard is defined as one "of which no more can be said than that it *could have been* subjected to tests, the results of which *might have* exonerated the defendant." *Id.* (emphasis added). The bad faith prong was added to the analysis because "courts face the treacherous task of divining the import of materials whose contents are unknown and, very often, disputed." *Id.* at 58. Because the evidence is necessarily not obtainable, a defendant need only show that evidence was "potentially useful." *Id.*

The standard of proof required to meet the actual innocence gatekeeping provision in § 2244(b)(2)(B)(ii) is irreconcilable with the elements of a *Youngblood* claim, such that even a petitioner with a concededly meritorious *Youngblood* claim can never satisfy the standard. In a "second or successive" petition, claims a petitioner did not previously raise are subject to dismissal unless the petitioner can make a prima facie showing, as relevant here, that they rely new facts that could not have been discovered previously through the exercise of due diligence and *that tend to show actual innocence*. 28 U.S.C. § 2244(b)(2), (b)(3)(C). "If the petitioner asserts his actual innocence of the underlying crime, he must show 'it is more likely than not that no reasonable juror would have convicted him in light of the new evidence' presented in his habeas petition." *Calderon v. Thompson*, 523 U.S. 538, 559 (1998). (quoting *Schlup v. Delo*, 513 U.S. 298, 327 (1995)). A credible claim of actual innocence requires "new reliable evidence – whether it be exculpatory scientific evidence, trustworthy eyewitness accounts, or critical physical evidence—

that was not presented at trial." *Id*. at 324; *House v. Bell*, 547 U.S. 518, 538 (2006). The *Schlup* standard is "demanding and permits review only in the 'extraordinary' case." *House*, 547 U.S. at 538 (citing *Schlup*, 513 U.S. at 324).

One thing that is clear from the standard set by and explained in *Schlup* and its progeny is that the evidence needs to be examinable—and it needs to show actual innocence. The evidence must be considered with all the other evidence "old and new, incriminating and exculpatory, without regard to whether it would necessarily be admitted under rules of admissibility that would govern at trial." *Schlup*, 513 U.S at 327-28. A district court reviewing the habeas petition must assess the evidence to determine if a reasonable juror would have reasonable doubt. *House*, 547 U.S at 538.

Youngblood evidence can **never** satisfy these conditions. *Youngblood* evidence necessarily is ***not examinable*** due to the bad-faith misconduct of the State; to satisfy a *Youngblood* claim, evidence must have been destroyed or lost, or otherwise not preserved. 488 U.S. at 58. *Youngblood* evidence by definition has no verifiable, affirmative exculpatory value. The thrust of the claim is that a petitioner has been robbed of a meaningful review of evidence, so he must speculate at the possible usefulness of the destroyed evidence.

The gateway requirement of § 2244 "actual innocence" is therefore completely impossible to attain when bringing a *Youngblood* claim. Assessing a *Youngblood* claim under the requirements of § 2244 actual innocence effectively nullifies the constitutional protection *Youngblood* is meant to effectuate. Unlike other claims

presented in second-in-time habeas petitions—even those which may also involve State misconduct such as *Brady* or *Napue* claims—which may in some instances present new evidence which could overcome the gateway requirements, due to State misconduct, the evidence necessary for a petitioner alleging a *Youngblood* violation to meet the § 2244(b) gatekeeping standard will *never* be available. If the Court were to accept the Sixth Circuit's interpretation of "second or successive" and its definition of when a *Youngblood* claim ripens, that will, in effect, foreclose habeas relief for petitioners alleging *Youngblood* violations so long as the State conceals its misconduct until after the petitioner's first habeas petition has been adjudicated.

Congress could not have intended that result. In construing AEDPA, this Court "resisted an interpretation of the statute that would 'produce troublesome results,' 'create procedural anomalies,' and 'close our doors to a class of habeas petitioners seeking review without any clear indication that such was Congress' intent.'" *Panetti*, 551 U.S. at 946 (citing *Castro*, 540 U.S. at 380, 381; *see also Williams v. Taylor*, 529 U.S. 420, 437 (2000).; *Johnson v. United States*, 544 U.S. 295, 308-09 (2005); *Duncan v. Walker*, 533 U.S. 167, 178 (2001). There is nothing to suggest that Congress intended the statute to prevent a diligent petitioner from raising a claim where § 2244(b)'s gatekeeping standard categorically forecloses the type of claim raised by the petitioner because the petitioner's claim necessarily can never meet the requirements of § 2244(b).

As such, *Youngblood* claims must be considered an exception to the gateway limitations in § 2244(b). Congress did not intend to bar review of a claim premised

upon bad faith when the bad faith is only uncovered after the initial habeas. The abuse of the writ doctrine undergirding § 2244 exemplifies the point that § 2244 is supposed to be about the consideration of—not the barring of—meritorious claims that could not have been raised earlier.

Mr. Bonnell is in the untenable position of having to prove the destroyed or missing evidence was in fact exculpatory despite having been intentionally prevented, due to bad faith, from ever examining or testing the evidence. Section 2244 asks so much more of Mr. Bonnell than *Youngblood* requires, because Mr. Bonnell's *Youngblood* claim alleges that the State destroyed the very evidence that he alleges could have established his actual innocence.

Mr. Bonnell was intentionally prevented—due to the State's bad faith—from accessing physical evidence beginning before trial and extending throughout the procedural history of his case. Had Mr. Bonnell been able to test or examine the evidence and had he potentially derived even some exculpatory evidence—all that is required under *Youngblood*—taken as a whole and presented at trial, no reasonable factfinder could have found him guilty. Specifically, here, the destroyed evidence could have shown that (1) there was no blood on Mr. Bonnell's white clothes, (2) there was blood on Mr. Popil's jacket, (3) there was no gunshot residue or blood on Mr. Bonnell's hands, and (4) there was no trace evidence in Mr. Bonnell's vehicle connecting him to the crime. That is all the more persuasive where Mr. Bonnell was

only connected to the crime by intoxicated eyewitness testimony—one of whom has recanted her identification of Mr. Bonnell as the perpetrator.[4]

The federal judges who considered Mr. Bonnell's *Youngblood* claim found that he had exercised due diligence and had shown evidence of bad faith. App. 5a, 7a, 17a, 18a. Had Mr. Bonnell's counsel discovered the bad faith before filing his first habeas petition, the federal judges reviewing his claim would only have needed to find the myriad missing or lost evidence was "potentially useful" to grant relief. *Youngblood*, 488 U.S. at 58. Chief Judge Sutton and the Sixth Circuit panel recognized the position Mr. Bonnell is in, understanding that he had to "speculate that the missing evidence is exonerating precisely because it is missing. Unfortunately, the impact of that evidence cannot be known." App. 8a.

In codifying the longstanding abuse of the writ doctrine in § 2244, Congress did not intend to eliminate or categorically exclude from review any substantive constitutional claims. This Court should consider this important question.

III. It is perverse and illogical to reward a State actor's bad faith: everyone loses when prosecutors are rewarded for misconduct.

It is axiomatic that petitioners be given the opportunity to be heard. Due process requires that opportunity be granted "at a meaningful time and in a meaningful manner." *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965). As noted by Justice Sotomayor in her dissent in *Bernard v. United States*, "any other rule would

[4] Mr. Birmingham passed away a few years later, in 1991, at the age of 36 from acute mixed drug intoxication, caused by his continued addiction struggles.

have troubling consequences," as *Panetti* explained. 141 S.Ct. 504, 506 (2020) (Sotomayor, J., dissenting). Justice Sotomayor continued:

> Through no fault of their own, inmates would "'run the risk' . . . of 'forever losing their opportunity for any federal review of their unexhausted claims.'" *Id.*, at 945-946 (quoting *Rhines v. Weber*, 544 U. S. 269, 275 (2005)). Consequently, "conscientious defense attorneys would be obliged to file unripe (and, in many cases, meritless) . . . claims in each and every" case to preserve claims in case they later became ripe. 551 U. S., at 943.

Id. at 506 (Sotomayor, J., dissenting) (quoting *Panetti*).

This Court's precedent interpreting the phrase "second or successive," the *Panetti* factors, due process, and fairness compel the conclusion that subsequent-in-time *Youngblood* claims cannot be second or successive for purposes of § 2244 when a habeas petitioner has been diligent. Nothing in *Panetti's* reasoning implores courts to hold otherwise. Indeed, it "would produce troublesome results, create procedural anomalies, and close [the courthouse] doors to a class of habeas petitioners seeking review without any clear indication that such was Congress' intent." *Panetti*, 551 U. S., at 946 (quoting *Castro*, 540 U. S. at 380-81). Rather, this Court has sought to ensure that solutions to conflict between a petitioner's procedural posture and § 2244 requirements are "compatible with AEDPA's purposes." *Rhines v. Weber*, 544 U.S. 269, 276 (2005).

But the district court and Sixth Circuit's interpretation of § 2244's gatekeeping provision and its application to *Youngblood* creates the "troublesome results" and "procedural anomalies" *Castro* warned against. Mr. Bonnell is in the untenable, impossible position of either needing to "predict[] the future,"

Apanovitch, 2024 U.S. App. LEXIS 9838, *14, or make two diametrically opposing standards agree. This absolute barrier to relief for colorable *Youngblood* claims not only harms petitioners like Mr. Bonnell but handcuffs federal judges from exercising discretion and common sense, and implies the absurd proposition that Congress intended to "close [its] doors to a class of habeas petitioners seeking review." *Castro*, 540 U.S. at 381.

Mr. Bonnell presents a *Youngblood* claim and therefore must speculate about the exculpatory nature of the missing evidence. But because prosecutors effectively hid their misconduct until after the first habeas, the federal judges reviewing Mr. Bonnell's claims were forced to view his evidence through the successive petition lens of "actual innocence." *Gonzalez v. Crosby*, 545 U.S. 524, 530 (2005). Thus, the federal courts, in effect, rewarded the prosecution's cheating by raising the bar to relief to impossible heights.

The State should not through its own misconduct be allowed to force federal courts to evaluate habeas claims under the stringent standards of successive petitions—standards meant to prevent *abusive conduct by petitioners*—just because they are adept at misconduct and successfully hid their misdeeds until after a petitioner litigated a first habeas petition. "Prosecutors' dishonest conduct or unwarranted concealment should attract no judicial approbation." *Banks v. Dretke*, 540 U.S. 668, 696 (2004).

Further, allowing this particular type of prosecutorial misconduct to preclude the consideration of a constitutional claim raised diligently would force the absurd

interpretation that Congress *intended* to award State misconduct, thus encouraging it, when it drafted AEDPA, which is rebutted by the legislative history. As noted by Justice Sotomayor in *Bernard*, Mr. Bonnell's *Youngblood* "claim was rejected without fair consideration of its merits. [Mr. Bonnell] should not be executed before his claims have been tested under the correct standard. Nor should others like him find themselves procedurally barred by similarly perverse and illogical rules." *Bernard*, 141 S.Ct, at 507 (Sotomayor, J., dissenting).

For Mr. Bonnell, who acted with all required diligence, finding that a petition is not second or successive where the bad-faith necessary to properly plead and prove a *Youngblood* claim is not discovered due to State misconduct until after a petitioner has already adjudicated his first habeas petition, would allow for meaningful review of his claims of decades of constitutional violations. Noted and not disputed by the Sixth Circuit, the district court found that Mr. Bonnell presented credible evidence of bad faith when his counsel uncovered decades old shell casings and morgue pellets in the prosecution's file—a file the prosecution for decades claimed contained no physical evidence. The existence of the casings proves that the prosecution has for decades in bad faith mishandled the physical evidence in Mr. Bonnell's case and acted in bad faith when it destroyed other pieces of physical evidence that were potentially exculpatory.

Either the prosecution knew the shell casings existed and obfuscated to Mr. Bonnell about their existence, or at some point between the prosecution searching its files and finding nothing and counsel discovering the evidence, the shell casings

were returned to Mr. Bonnell's file. Either explanation satisfies the finding that the State had acted in bad faith in this case when the evidence was found in 2020. Because the discovery of the shell casings and morgue pellets is the evidence of bad faith Mr. Bonnell needs to prove his claim, the *Youngblood* violation did not ripen until his counsel uncovered the evidence in the prosecution's file.

IV. Important questions have been presented that merit this Court's plenary review.

Whether petitions like Mr. Bonnell's are "second or successive" presents important questions. The Sixth Circuit's decision has troubling implications for AEDPA, the courts, and habeas petitioners in the Sixth Circuit. By finding Mr. Bonnell's claim ripened prior to his first habeas petition instead of when he discovered the State's bad-faith misconduct, the court's decision will result in future newly-ripened claims being improperly dismissed or wrongly subjected to the gatekeeping provisions of § 2244(b)(2), in direct contradiction to this Court's precedent. *Panetti*, 551 U.S. at 947 (holding that § 2244(b)'s statutory bar does not apply to a "claim brought in an application filed when the claim is first ripe"). That will waste judicial resources, increase piecemeal litigation, and not lend any additional finality to state court judgments. *Banister*, 140 S. Ct. at 1706.

Moreover, Mr. Bonnell's case presents an ideal vehicle for this Court to settle this important issue. The sole issue before the Sixth Circuit was whether Mr. Bonnell's petition is "second or successive." Mr. Bonnell has consistently argued below that it is not, and no procedural or jurisdictional barriers exist that would prevent this Court from reaching the question presented. There are findings of bad

faith, and it is an undisputed fact that Mr. Bonnell diligently uncovered the bad faith only in 2020. Furthermore, execution is not imminent so no delay will occur. Thus, the questions presented, and Mr. Bonnell's petition for a writ of certiorari, merit this Court's review.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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