THIS IS A CAPITAL CASE

EXECUTION SET FOR November 26, 2026

No. 23-7614

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

REPLY IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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Introductory Statement

Respondent does not dispute that the decision below applies 28 U.S.C. § 2244(b)(2)'s second-or-successive petition standard in a manner that categorically forecloses habeas claims under *Youngblood* in a second-in-time petition. That result has no basis in the text of the statute. It is contrary to the longstanding equitable principles that § 2244 codifies. It cannot be what Congress intended in codifying equitable abuse-of-the-writ principles to govern habeas petitioners' *procedural*, not substantive, rights. It is contrary to this Court's recognition in *Panetti v. Quarterman*, 551 U.S. 930 (2007), that a habeas petitioner should have one full opportunity to raise claims that cannot be brought until years after the first habeas petition. And it is deeply unjust. This Court's review is warranted.

If left undisturbed, the court of appeals' decision will guarantee categorical exclusion of colorable claims under *Arizona v. Youngblood*, 488 U.S. 51 (1988) raised in subsequent-in-time habeas petitions because *Youngblood* claims can never satisfy the "actual innocence" standard of § 2244(b)(2). *Youngblood* claims allege a violation of the Due Process Clause arising from the State's bad-faith misconduct in failing to preserve evidence. But they do not allege innocence: *Youngblood* requires that evidence shown to be missing as a result of the government's bad faith need only meet a standard of "potentially useful" to satisfy the claim. Because "potentially useful" can by definition never amount to "actual innocence," *Youngblood* claims subject to the gatekeeping provisions in § 2244 necessarily automatically fail. Moreover, such claims often cannot be brought until years after a petitioner's first habeas petition, through no fault of the petitioner. For that

reason, such claim should be treated analogously to claims under *Panetti*: they should be considered ripe until the petitioner has possession of the evidence underlying the claim.

Respondent has virtually no response to those points. Instead, respondent focuses on meritless vehicle arguments. Contrary to the findings of the lower courts, Respondent asserts Mr. Bonnell is not raising a *Youngblood* claim because his claim involves recently rediscovered evidence, not missing evidence. Both the district court and the Sixth Circuit acknowledge Mr. Bonnell has raised a *Youngblood* claim directly and through its findings that Mr. Bonnell has satisfied different elements of such a claim. *See e.g.*, Pet. App. 1a ("Bonnell's current petition raises a broader *Youngblood* claim than the one he raised in his initial petition[.]"); Pet. App. 18a ("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[.]").

Respondent also asserts that this case is poor vehicle because even if Mr. Bonnell were permitted to file his third-in-time habeas petition, his claims would fail. Respondent believes Mr. Bonnell cannot show that "no reasonable factfinder" would have found him guilty because of the post-trial DNA testing that found three spots of the victim's DNA on Mr. Bonnell's jacket. Respondent omits that the author of that "fact-finding" accepted verbatim by the state court was the same prosecutor to engage in the bad faith found by the federal district court. Regardless, this

assessment is putting the cart before the horse. The merit of Mr. Bonnell's claims is not the issue before this Court, only the gatekeeping provisions of § 2244.

Finally, Respondent is incorrect that Mr. Bonnell's arguments find no support in precedent. In fact, The decision in Mr. Bonnell's case conflicts with the Sixth Circuit's remand of a subsequent-in-time habeas petition in a contemporaneous death penalty case where the Court's decision was based on strikingly similar conduct on the part of the State, the same county prosecutors to have engaged in bad faith as herein, in hiding its mishandling of evidence, the timing in which the misconduct was discovered, and the timing's effect on the ripening of the petitioner's claim. *See In re Apanovitch*, No. 23-3149, 2024 U.S. App. LEXIS 9838 (6th Cir. Apr. 23, 2024). Relying on the same precedent it used to classify Mr. Bonnell's petition as successive, the Sixth Circuit deemed Mr. Apanovitch's claims as not subject to the successor standard. *Id.* at *11 (referring to interpretation of *Brady* claims in *In re Wogenstahl,* 902 F.3d 621, 627-28 (6th Cir. 2018)). The Sixth Circuit recognized that the petitioner's awareness of the factual predicate of a claim bears on its ripeness, *not* whether the facts underlying the claim existed at the time of the first petition. *Id.* at 12 ("The factual predicates for some of his current habeas claims arose during the pendency of his first petition[…] But what is obvious is that none of the predicates for his present claims were known to him – much less ripe for assertion—in 1991, when he filed his first petition—so they cannot be second or successive[.]").

If *Youngblood* claims ripen at the moment of misconduct rather than the discovery of bad faith, § 2244's gatekeeping requirement of "actual innocence" would categorically bar an entire class of Constitutional claims from review.

Section 2244(b)(2) requires a petitioner make a *prima facie* showing that 1) the factual predicate underlying his claim could not have been discovered with due diligence and 2) the facts underlying the claim, taken as a whole, establish that no reasonable fact finder would have found petitioner guilty in order to have his second or successive habeas petition authorized for review. 28 U.S.C. (b)(2)(B)(i),(ii); 28 U.S.C. (b)(3)(C). This second requirement is the equivalent of "actual innocence," which requires "new reliable evidence—whether it be exculpatory scientific evidence, trustworthy eyewitness accounts, or critical physical evidence—that was not presented at trial." *Calderon v. Thompson*, 523 U.S. 538, 559 (1998).

Actual innocence requires this new evidence be examinable, it must exist. *Youngblood* claims, on the other hand, involve evidence that was destroyed or mishandled by the State such that the petitioner was robbed of any meaningful review of the evidence. Because the evidence is unavailable, to succeed on a *Youngblood* claim, a petitioner must only show that the missing evidence is "potentially useful" or "potentially exculpatory." 488 U.S. at 57.

These two requirements stand in direct opposition to each other. Because actual innocence requires evidence be examinable, and *Youngblood*'s "potentially

useful" requires evidence not be examinable, the corners can never be squared. Thus, a *Youngblood* claim can **never** satisfy the gatekeeping provision of § 2244.[1]

As noted in the petition, Congress could not possibly have intended to categorically exclude an entire class of Constitutional claims from habeas review. This Court "resist[s] an interpretation of the [AEDPA] 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 v. United States*, 540 U.S. 375, 380, 381). Subjecting *Youngblood* claims to the impossible actual innocence requirement of § 2244 would no doubt inflict the harms *Castro* cautioned this Court to avoid.

Because "potentially" can by definition never amount to "actual," a *Youngblood* claim can never satisfy the actual innocence required of a successor petition. To avoid this categorical bar, this Court should find that *Youngblood* claims may only be considered ripe when the evidence that permits assertion of the claim is discovered. This Court established this precedent in *Panetti*, where it recognized that whether a claim is second or successive should be considered in

[1] *Youngblood* and *Brady* claims differ in this regard. *Brady* claims involve material, exculpatory evidence, which in some cases can establish innocence. *Youngblood* necessarily requires evidence to be unexaminable, so whether it is exculpatory is not ascertainable. *Brady* evidence has the ability to satisfy § 2244; such claims are not categorically foreclosed by the gatekeeping provisions and can be raised in successive petitions. *Youngblood* cannot.

conjunction with the equitable principles § 2244 codifies. 551 U.S. at 947. There is no abuse of the writ when a *Youngblood* claim is discovered after the litigation of a first petition. Therefore, to ensure that this category of claims—which address serious due process violations involving bad faith misconduct by the State—is not categorically foreclosed by § 2244, this Court should treat these claims as analogous to *Panetti*.

Panetti ripeness doctrine applies to *Youngblood* claims.

This Court held in *Panetti* that claims unripe at the time of a first habeas petition are exempt from § 2244 second-or-successive requirements when raised in a subsequent petition. 551 U.S. at 947. In assessing *Ford* claims in first habeas petitions, *Panetti* found that that requiring a petitioner to file an unripe claim burdens habeas practice, conflicts with AEPDA's purpose of comity, finality, and federalism, and does not implicate of the abuse-of-the-writ doctrine. *Id.* at 943-47.

Youngblood claims are materially indistinguishable from *Ford* claims. Barring *Youngblood* claims a petitioner could not have discovered through due diligence would adversely affect habeas practice. Because *Youngblood* claims involve the bad faith actions of the State in preserving evidence, the violation may not be discovered until well after the bad faith conduct. If such petitioners were subject to second-or-successive requirements, they would be forced to file unripe, speculative, or even meritless *Youngblood* claims to preserve the opportunity to raise them later. Such conflict with the purposes of AEDPA.

This Court is "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." *Panetti*, 551 U.S. at 947. Further, where bad faith on the part of the State is involved, "[w]hatever finality interest Congress intended for AEDPA to promote surely 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 AEDPA's legislative history supports, Congress did not intend for AEPDA to encourage States to destroy evidence and create cover for such misconduct – but that insulation is the precise outcome for petitioners like Mr. Bonnell raising previously unripe *Youngblood* claims in subsequent-in-time habeas petitions.

Respondent does not dispute the multiple findings below regarding Mr. Bonnell's diligence. The courts below finding of Mr. Bonnell's diligence represents a salient fact. This Court concluded that AEDPA's definition of what constitutes a successive petition is consistent with abuse of the writ doctrine. *Banister v. Davis*, 140 S. Ct. 1698, 1701, 1706 (2020). A petitioner that raises a claim in a later petition that could have raised in his first abuses the writ. *McCleskey v. Zant*, 499 U.S. 467, 489 (1991). On the other hand, a petitioner does not abuse the writ when he raises a claim he could not have raised in a prior petition through no fault of his own. *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).

Because *Youngblood* claims involve the intentional concealment of the State's bad faith, evidence of the State's malfeasance may not come to light right away, or in Mr. Bonnell's case decades after his initial habeas petition. Fairness would indicate then that the petitioner's claim cannot be ripe until the vital facts—here, evidence of bad faith—are discoverable through due diligence. Certainly, then it would not be an abuse of the writ for a petitioner to file his colorable *Youngblood* claim once evidence of the State's misconduct has surfaced.

The factors the *Panetti* court applied when assessing *Ford* claims in the context of successive petitions apply in equal force for *Youngblood* claims. The appropriate time to file hinges on ripeness, when the factual predicate of the claim is discoverable. For *Ford*, the Court concluded a claim ripened when an execution was imminent, when a date was set. 551 U.S. at 947. For *Youngblood*, this Court should center ripeness in the same way, once the factual predicate of the claim is discoverable through due diligence, or more specifically, when evidence of the State's intentional misconduct is discoverable. To find ripeness occurs any earlier rewards the State for destroying evidence and hiding its misdeeds and requires a reading of § 2244 that completely forecloses an entire class of Constitutional claims from habeas review

Respondent's focus on the merits of Mr. Bonnell's *Youngblood* claim is misplaced.

Respondent argues that this case does not implicate the questions presented because Mr. Bonnell has not raised a valid *Youngblood* claim. Respondent's efforts to litigate the merits of Mr. Bonnell's *Youngblood* claim are beside the point at this stage. Mr. Bonnell seeks this Court's review in order to establish that he is entitled to the opportunity to litigate his *Youngblood* claim in a habeas petition, notwithstanding the gatekeeping requirements of § 2244. It is plain that Mr. Bonnell would benefit from a ruling by this Court in his favor: he would obtain the opportunity to pursue his *Youngblood* claim in district court on remand. There can be no question that that claim is colorable on the merits: neither court below suggested otherwise, and as the district court explained, Mr. Bonnell presents "additional, previously unavailable evidence of the State's bad faith – which he contends strengthens and broadens his new Youngblood claim." Pet. App. 15a.[2] No more is necessary at the certiorari stage. This Court routinely grants certiorari to consider the application of threshold procedural bars to raising a substantive claim without considering, or requiring a previous lower-court adjudication of, the

[2] Respondent's related assertion that Mr. Bonnell misstated the decision of the lower courts is incorrect. The lower courts did not adjudicate the *Youngblood* claim. But as noted in the text and in the petition, the district court referred to the new evidence as "additional, previously unavailable evidence of the State's bad faith," and the Sixth Circuit did not dispute that finding. *Accord* pet., p. 15 ("The Sixth Circuit did not dispute, and indeed acknowledged, the finding regarding the State's bad faith[.]").

meritoriousness of that substantive claim. *Ford v. Georgia*, 498 U.S. 411 (1991); *Lee v. Kemna*, 534 U.S. 362 (2002); *Trevino v. Thaler*, 569 U.S. 413 (2013); *Bannister v. Davis*, 590 U.S. 504 (2020).

In all events, Respondent is wrong that Mr. Bonnell does not allege bad faith. Respondent suggests that because the new evidence Mr. Bonnell relies on was found and not lost, he cannot possibly have a *Youngblood* claim. But this conflates what the new evidence—the shell casings and morgue pellets—are evidence of. They are evidence of the States years-long mishandling of most of the physical evidence in Mr. Bonnell's case. They are not the lost evidence, but the proof that the evidence that is missing was lost as result of the State's bad-faith handling of the evidence. It is undisputed that numerous critical pieces of evidence were lost, and some of that evidence — but not all — has now been discovered. *State v. Bonnell*, 119 N.E.3d 1285, 1290 (Ohio 2018). The State's insistence that it had no physical evidence when in reality it did strongly supports Mr. Bonnell's claim of misconduct.

Respondent does not raise a credible vehicle concern.

Respondent asserts that Mr. Bonnell's case is not the proper vehicle for this Court to address the questions presented because Mr. Bonnell could not succeed in satisfying § 2244(b)(2)(B)(ii) because he cannot overcome post-trial DNA testing that showed traces of the victim's blood on Mr. Bonnell's jacket. Once again, Respondent's efforts to litigate the facts of the *Youngblood* claim are not well taken. Mr. Bonnell he need not make any showing of being able to satisfy the gateway requirements of § 2244 if this Court finds that *Youngblood* claims raised in

subsequent-in-time habeas petitions are not second or successive under *Panetti*. Such determination would allow his *Youngblood* to be properly reviewed by the district court.

In all events, respondent fails to acknowledge that the myriad issues surrounding the DNA testing — issues best considered by the district court. The State's post-trial DNA testing of a jacket has been critically undermined by the State's own misconduct: the jacket was lost once, presumably around the time of trial; found in the prosecuting attorney's office closet two years after trial; subsequently lost again; and then found again right before the DNA testing. Also collected as evidence and then lost was a green pillow, presumed to belong to the killer, that had been stored in the police property room and sent to the coroner before trial. *Bonnell*, 119 N.E.3d at 1290. There is no provable chain of custody for the jacket, its improper/unknown storage establishes contamination cannot be discounted. Thus, the reliability accorded a DNA test done on alleged visible spots of blood decades after the jacket was collected (and lost and found and lost and found) is certainly questionable when the State's own trial expert tested all visible spots of blood and excluded Mr. Bonnell. Barring the highly questionable DNA evidence, there is no physical evidence to link Mr. Bonnell to the crime.

Mr. Bonnell recently uncovered evidence of the State's bad faith that supports his *Youngblood* claim. At all times, as found by the courts below, he acted with due diligence. Given his unchallenged diligence, the question whether §2244 categorically precludes adjudication of that due process claim solely because of the

State's years-long concealment of that evidence — concealment that is common in *Youngblood* cases — is of pressing importance. Because evidence of *Youngblood* claims is often not discovered for years after the State's mishandling of evidence—due to the State's concealment of its misconduct—such claims should not ripen until evidence of the bad faith is discoverable by the petitioner. This application of the *Panetti* ripeness doctrine to *Youngblood* claims avoids a reading of § 2244 that would categorically bar the entire class of Constitutional claims from habeas review when the petitioner has acted with diligence. Thus, this Court should grant certiorari to uphold § 2244 equitable principles and block this avoidable injustice.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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