No. 24-6727

IN THE

Supreme Court of the United States

DAVID WOOD
Petitioner,
V.
RACHEL PATTON,
IN HER OFFICIAL CAPACITY AS DISTRICT ATTORNEY PRO TEM,
Respondent.

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

REPLY IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

JASON D. HAWKINS
Federal Public Defender

Jeremy Schepers*
Supervisor, Capital Habeas Unit

Naomi Fenwick
Claire Davis
Assistant Federal Public Defenders

Northern District of Texas
525 S. Griffin Street, Suite 629
Dallas, TX 75202
214-767-2746
214-767-2286 (fax)
jeremy_schepers@fd.org

Gregory W. Wiercioch
Frank J. Remington Center
University of Wisconsin Law School
975 Bascom Mall
Madison, Wisconsin 53706
(832) 741-6203
wiercioch@wisc.edu

**Counsel of Record*

Attorneys for Petitioner

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David Wood's case presents an identical question to that which this Court is considering in *Gutierrez v. Saenz*, No. 23-7809. The Respondent's attempts to distinguish the two cases are unconvincing, as the Fifth Circuit plainly relied exclusively on its novel standing rule developed in *Gutierrez* to dismiss Wood's claim. Because Wood's case has no material difference to *Gutierrez*, granting certiorari is appropriate pending resolution of that case.

I. This case involves the identical issue that this Court will soon resolve in *Gutierrez v. Saenz*, and the Respondent's attempt to distinguish the two cases is unavailing.

Despite the Respondent's protestations otherwise, this case is on a parallel track with *Gutierrez*. The Fifth Circuit crafted a novel standing rule in *Gutierrez*, holding that a plaintiff lacks standing if, even after a favorable declaratory judgment, the federal court thinks that such a judgment "is not substantially likely" to "cause the state prosecutor to change course and agree to DNA testing." App.A.6. The Fifth Circuit relied exclusively on its *Gutierrez* standing rule in dismissing Wood's claim that Chapter 64 violates due process because the Texas Court of Criminal Appeals' (TCCA) authoritative construction of it renders it illusory in practice. It held that "[u]nder *Gutierrez*, Wood cannot establish standing because it is not 'substantially likely' that a favorable ruling from our court would cause the state prosecutor to change course and agree to DNA testing." App.A.6.

The Respondent claims that "the Fifth Circuit's statement that *Gutierrez* 'controls' means nothing more than that *Reed* [*v. Goertz*, 598 U.S. 230 (2023)] controls." BIO at 21. But relying on *Gutierrez* is not synonymous with relying on this

Court's precedent in *Reed*. Wood explained why *Gutierrez* broke from this Court's precedent in his petition for writ of certiorari, and this Court has at minimum doubts about that as evidenced by granting certiorari in *Gutierrez*. Further, the language used by the Fifth Circuit itself makes clear it relied on the *Gutierrez* rule, repeatedly emphasizing that as the operative case rather than *Reed*. App.A.6 ("Under *Gutierez* . . . ."); App.A.7 ("Thus, *Gutierrez* controls . . . ."); App.A.8 ("Although the Supreme Court has granted certiorari in *Gutierrez*, it remains binding under our rule of orderliness unless and until the Supreme Court holds differently."); App.A.8 ("Thus, we apply *Gutierrez* . . . .").

The Respondent attempts to distinguish Wood's case from *Gutierrez* but has no convincing argument why. First, the Respondent highlights a difference that, unlike in *Gutierrez*, where "the CCA had already spoken on the alleged defect in Chapter 64" and found independent reasons to deny testing, BIO at 16, that has not occurred in Wood's case. If anything, this simply shows that Wood's case presents a more egregious example of the Fifth Circuit's standing rule compared to *Gutierrez*. Rather than relying on a clear statement from the TCCA that its opinion on DNA testing would not be altered for other reasons even if the statute was found unconstitutional, the Fifth Circuit here simply speculated that the TCCA would still deny testing, untethered from any existing statement from that court.

Second, the Respondent attempts to distinguish Wood's case on the theory that he "failed even to identify any particular provision of Chapter 64 or authoritative

construction of it that violated procedural due process." BIO at 16.[1] This is wrong. Wood raised a facial challenge to Chapter 64, in its entirety, as authoritatively construed by the TCCA. App.C.13–17. A procedural due process violation, as Wood alleged below, occurs where the state procedure "'offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental,' or 'transgresses any recognized principle of fundamental fairness in operation.'" *District Attorney's Office v. Osborne*, 557 U.S. 52, 69 (2009) (quoting *Medina v. California*, 505 U.S. 437, 446, 448 (1992)). If a liberty interest, such as Chapter 64, is created by the State, but the State then makes that right impossible to access, due process is violated because it is a fundamentally unfair procedure. *See Medina*, 505 U.S. at 446, 448. As explained in more detail in his petition, the TCCA has done so with Chapter 64, because for the last fifteen years it has denied DNA testing in every appeal where it was requested, amounting to twenty-three consecutive denials. App.C.15–17.

This presents a facial challenge to Chapter 64 in its entirety—that while the provision exists on paper it is unavailable practically because the TCCA operates as an automatic barricade to testing in cases that come before it. If a declaratory judgment issues that this violates due process, the statute is facially unconstitutional. Once such a finding is entered, responsibility shifts back to the

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[1] Relatedly, the Respondent's contention that Wood did not rely on the controlling precedent from this Court regarding the legal standard is also wrong. Compare BIO at 25 (asserting that Wood relied on the wrong law), *with* App.C.13–17 (correctly identifying and applying relevant precedent from this Court).

TCCA to develop a constitutional interpretation of that statute that renders it facially valid. *See Steffel v. Thompson*, 415 U.S. 452, 474 (1974) (explaining that when a federal court finds a statute facially invalid, the state court must supply "a narrowing or clarifying construction" of that statute). Regardless of whether Wood eventually receives DNA testing or not, he has standing to bring this case. *See Department of Education v. Brown*, 600 U.S. 551, 561–62 (2023) ("[T]he fact that the defendant might well come to the same decision after abiding by the contested procedural requirement does not deprive a plaintiff of standing.").

There is no relevant distinction between this case and *Gutierrez*. Wood's petition should be granted pending this Court's disposition of *Gutierrez*.

II. Whether Wood's claim passes the Rule 12(b)(6) threshold is a question for the Fifth Circuit to resolve on remand.

The Fifth Circuit applied its *Gutierrez* standing rule and found that it lacked jurisdiction to consider the merits of Wood's claim. App.A.8. At various points, the Respondent opines that certiorari should not be granted because, in the Respondent's view, the Fifth Circuit will ultimately uphold the district court's dismissal under Rule 12(b)(6) for failure to state a claim on which relief can be granted. BIO at 14, 17–18. But the Fifth Circuit has not yet ruled on the Rule 12(b)(6) question, an argument that Wood raised in his appeal. The question of whether this claim is one on which relief may be granted under Rule 12(b)(6) is a question for the Fifth Circuit to resolve on remand in the first instance, with the benefit of this Court's forthcoming *Gutierrez* opinion. *See Zivotofsky v. Clinton*, 566 U.S. 189, 201 (2012) ("[W]hen we reverse on a

threshold question, we typically remand for resolution of any claims the lower courts' error prevented them from addressing."); *National Collegiate Athletic Assn.* v. *Smith*, 525 U.S. 459, 470 (1999) (This Court does "not decide in the first instance issues not decided below.").

Standing and Rule 12(b)(6) are distinct legal principles. Standing is a question of jurisdiction. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992). In contrast, whether Rule 12(b)(6) is satisfied relates to the potential merit of the claim. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). As such, the Fifth Circuit's ruling that Wood lacked standing under its unique *Gutierrez* rule does not establish that it will also find dismissal under Rule 12(b)(6) appropriate. The Fifth Circuit should have the opportunity to resolve the Rule 12(b)(6) question in the first instance.[2]

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[2] At the time Wood filed his petition for writ of certiorari he had a pending execution date. In light of that, he also requested a stay of execution from this Court. In the BIO, the Respondent spends significant time claiming that Wood has unreasonably delayed "his long overdue execution." BIO at 13.

The TCCA later stayed Wood's execution pending further order based on a subsequent habeas application raising challenges to Wood's conviction largely relating to his innocence. The Fifth Circuit also separately granted Wood authorization to file a second or successive habeas petition containing claims relating to his innocence. *In re Wood*, No. 25-10359 (5th Cir. March 11, 2025). Among other observations, that court explained that one declaration presented by Wood "would have destroyed the state's case so thoroughly that every reasonable juror would have had a reasonable doubt about Wood's guilt." Order at 8.

There is nothing unreasonable about Wood continuing to litigate to prove his innocence, and the only thing that is "long overdue" in this case is vacating his conviction.

CONCLUSION

This Court should grant *certiorari* and then hold Wood's case pending the resolution of *Gutierrez v. Saenz*. Depending on this Court's ruling in *Gutierrez*, it should then vacate the judgment of the Fifth Circuit and remand this case to that court for further consideration in light of the *Gutierrez* decision.

Respectfully submitted,

JASON D. HAWKINS
Federal Public Defender

Jeremy Schepers*
Supervisor, Capital Habeas Unit

Naomi Fenwick
Claire Davis
Assistant Federal Public Defenders

Office of the Federal Public Defender
Northern District of Texas
525 S. Griffin St., Ste. 629
Dallas, TX 75202
214-767-2746
214-767-2286 (fax)
jeremy_schepers@fd.org

Gregory W. Wiercioch
Frank J. Remington Center
University of Wisconsin Law School
975 Bascom Mall
Madison, Wisconsin 53706
(832) 741-6203
wiercioch@wisc.edu

**Counsel of Record*

Attorneys for Petitioner