No. 20-1197

In the Supreme Court of the United States

EUGENE MILTON CLEMONS II, PETITIONER,

v.

JEFFERSON S. DUNN, COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS, ET AL.

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

BRIEF OF *AMICUS CURIAE* THE R STREET INSTITUTE IN SUPPORT OF PETITIONER

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INTEREST OF *AMICUS CURIAE*

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SUMMARY OF ARGUMENT

This capital case involves serial mistakes by an arm of the state that materially misled petitioner's counsel and caused Eugene Clemons' Rule 32 petition to be docketed three days after expiration of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) one-year limitations period. A Kafkaesque series of misstatements and missteps by court officials led Mr. Clemons' counsel to believe that Mr. Clemons' petition had been properly and timely filed. In actuality, it had been lost behind a filing cabinet. Yet, Mr. Clemons, not the State, bore the cost of those errors, a fundamentally unjust result inconsistent with this Court's precedent, which the Eleventh Circuit misapplied.

This case presents "a veritable perfect storm of misfortune, a most unlikely combination of events" that constitute extraordinary circumstances and warrant habeas relief. *Maples v. Thomas*, 565 U.S. 266, 291-92 (2012) (Alito, J., concurring). Absent this Court's intervention, Mr. Clemons will face execution without the prospect of

[1] No counsel for a party authored this brief in whole or in part. No one other than *amici curiae*, their members, or *amici*'s counsel made a monetary contribution intended to fund the preparation or submission of this brief. All parties were given timely notice and have consented in writing to this filing.

any meaningful constitutional review of thirty-one of his habeas claims.

This case also presents an ideal vehicle to clarify the standard for what constitutes "extraordinary circumstances" justifying equitable tolling of AEDPA's one-year limitations period. *Amicus* highlights four grounds warranting this Court's review. First, the case presents an ideal opportunity to clarify what role external, intervening events beyond petitioner's control play in the Court's analysis of extraordinary events warranting equitable tolling. Second, this case presents an opportunity to align the Court's precedent on the treatment of misinformation that induces counsel to miss procedural deadlines, and provide a uniform standard for such information regardless of its source. Third, the Court can prevent the proliferation of an unworkable and untenable standard for attorney negligence that would burden attorneys and limit the resources available to meritorious habeas cases. And, last, the Court can correct an egregious misapplication of state power and restore confidence in our institutions.

ARGUMENT

I. Review Should Be Granted to Clarify the Role of External Factors Beyond a Petitioner's Control in Analyzing Extraordinary Circumstances

1. This case presents an opportunity to clarify the role of external factors in assessing attorney conduct for the purposes of tolling AEDPA's one-year statute of limitations. *Holland v. Florida*, 560 U.S. 631 (2010), confirmed that a court may toll AEDPA's limitations period if, among other elements, a petitioner establishes that "extraordinary circumstances stood in his way." *Id.* at 649. However, as Justice Alito there observed, the phrase extraordinary circumstances "does not provide much guidance to lower courts charged with reviewing the many habeas petitions filed every year." *Id.* at 655 (Alito, J.,

concurring in part). Thus far, this Court has not addressed how equitable tolling should be applied to correct the injustice that results when misinformation from court officials cause counsel to miss a filing deadline, especially when those officials offer themselves to the public as reliable sources of court information.

This Court's precedents demonstrate that courts must assess the role that external factors play in procedural errors that would warrant equitable tolling. In *Holland*, Justice Alito set out to explain the "right standard" for extraordinary circumstances, synthesizing "several broad principles … distilled from this Court's precedents." 560 U.S. at 655 (Alito, J., concurring in part). While that analysis examined the pre-AEDPA case law governing "cause" for procedural default, it nevertheless revealed principles undergirding habeas review that apply broadly. Rather than distinguishing ordinary negligence from "gross" negligence, pre-AEDPA precedents turned on whether an attorney's mistake resulted from some other, external factor not in the petitioner's control.

Key to the concurrence's analysis was this Court's decision in *Coleman v. Thompson*, which explained that "'cause' … must be something *external* to the petitioner, something that cannot fairly be attributed to him." 501 U.S. 722, 753 (1991) (emphasis in original); *Holland*, 560 U.S. at 656 (Alito, J., concurring in part) (citing same). *Coleman* relied on *Murray v. Carrier*, also noted by Justice Alito, which explained that the "existence of cause for a procedural default must ordinarily turn on whether the prisoner can show that some objective factor external to the defense impeded counsel's efforts to comply with the State's procedural rule." 477 U.S. 478, 488 (1986); *see also Holland*, 560 U.S. at 656 (Alito, J., concurring in part) (citing same). Justice Alito summarized these holdings succinctly: a petitioner must "establish extraordinary circumstances *beyond his control*" to warrant equitable tolling. *Holland*, 560 U.S. at 659 (Alito, J., concurring in part) (emphasis added).

Pre-AEDPA precedent provides examples of circumstances beyond a petitioner's control. *Carrier* explained that "some interference by officials" that made compliance impracticable would constitute cause. *See* 477 U.S. at 488 (citing *Brown v. Allen,* 344 U.S. 443, 486 (1953)). Although AEDPA incorporates a state-impediment standard into its statute of limitations, *see* 28 U.S.C. § 2244(d)(1)(B), *Carrier* integrates the question of whether state officials impeded the filing of a timely petition into the assessment of a petitioner's counsel's actions, even if the state's actions do not rise to the level of an "impediment" for purposes of Section 2244(d)(1)(B). *See also Holland*, 560 U.S. at 656 (Alito, J., concurring in part) (citing *Lawrence v. Florida*, 549 U.S. 327, 336-37 (2007)) (noting that *Carrier's* "analysis applies when a petitioner seeks equitable tolling based on attorney error in the postconviction context").

Notably, *Coleman* and *Carrier* analyzed attorney negligence in the framework of the Sixth Amendment right to counsel. Guiding that framework—and the justifications that would warrant "cause" under it—was the question of whether counsel was so ineffective that "the error [of counsel] must be seen as an external factor, *i.e.,* 'imputed to the State.'" *Coleman*, 501 U.S. at 754; *see also Carrier*, 447 U.S. at 488. Those decisions ultimately concluded that, if counsel is so ineffective to cause a constitutional error, an error imputed to the state, then the state "must bear the cost of any resulting default and the harm to state interests that federal habeas review entails." *Coleman*, 501 U.S. at 754. This principle—that the state must bear the cost of its errors—is not limited to the context of the Sixth Amendment. Rather, just as with the principles undergirding this Court's habeas precedents, it naturally extends to the analysis of extraordinary circumstances.

2. As petitioner explains, here, a series of errors by the clerk's office proximately caused the untimely filing of Mr. Clemons' petition. Pet. 13–14. The Eleventh Circuit's analysis of those errors runs counter to the principles articulated in this Court's precedents in at least two ways. First, the Eleventh Circuit did not give proper weight to the clerks' office providing incorrect filing fee information as an impediment to Mr. Clemons' counsel complying with the applicable procedural requirements. Second, the Eleventh Circuit failed to consider altogether the cumulative effect of subsequent errors that prevented Mr. Clemons and his counsel from timely correcting the original error. Under this Court's precedents, these errors should have been afforded the appropriate weight and consideration in the analysis of counsel's performance.

The Eleventh Circuit's first error was in giving insufficient weight to the clerks' office having informed Mr. Clemons' counsel that no filing fee was due. As petitioner explained, Alabama's Byzantine fee system made it nearly impossible for attorneys to determine the correct amount of the filing fee, necessitating reliance on the clerk's office for that information. Pet. 19–20 & n.4. Indeed, Alabama courts invited attorneys to rely on the clerks' office to obtain fee information. Pet. 18–19. Yet, the Eleventh Circuit did not consider how Alabama's fee structure and the clerk's office's actions combined to present an external impediment to compliance with the procedural requirement.

The Eleventh Circuit's second error was in disregarding how the clerks' subsequent errors prevented counsel from timely remedying the error. Specifically, the court clerk stamped Mr. Clemons' petition "RECEIVED AND FILED," indicating that the petition was indeed filed, and then subsequently lost the petition for several months, which prevented the court clerk from timely discovering the filing-fee error in contravention of the court's internal procedures. Given that the petition was stamped "RECEIVED AND FILED," Mr. Clemons' counsel had no reason to revisit whether the correct fee had been paid and the petition filed. Unsurprisingly, as Mr. Clemons' counsel has explained, Mr. Clemons and counsel relied on the plain meaning of the court clerk's representations and the implications of the court clerk's actions and believed that the petition had been timely filed. The clerk's actions thus prevented Mr. Clemons' counsel from discovering or correcting the procedural error, and timely filing the petition.

There can be no question that the court clerk's errors were beyond the control of Mr. Clemons or his counsel, and they "impeded [Mr. Clemons'] counsel's efforts to comply with the State's procedural rule," warranting relief. *Carrier,* 477 U.S. at 488. The predicate actions by the State of Alabama—Alabama courts establishing its fee system and inviting attorneys to rely on court clerks for fee information—laid the foundation for Mr. Clemons and his counsel to rely on the clerk's official representation that the Rule 32 petition was properly filed and deprived them of any mechanism that would alert them to any deficiencies. Neither Mr. Clemons nor his counsel played a role in the actions and omissions of the clerk that, in effect, hid the procedural fault that is now the basis of denying Mr. Clemons his substantive right to pursue Federal habeas relief.

The clerk's errors here, built on the foundation of the State's predicate actions, were far more egregious than the missteps by court officials that have been noted among other "unfortunate events" that Justice Alito has found to justify "cause" in the procedural-default context. For example in *Maples*, cause was found where the court clerk "fail[ed] … to take any action when the envelope containing [the order denying petitioner's postconviction relief] came back unopened" from petitioner's lawyer's law firm, thus indicating that the petitioner's counsel was unaware of a key case development. 565 U.S. at 290 (Alito, J., concurring). Any one of the misstatements or mistakes here represents a far more egregious error on the part of a clerk, and that is to say nothing of the serial errors' cumulative effect.

While the law does not require arms of the state to be flawless, where the state's error results in prejudice, the burden of that error should be borne by the state, not the individual. Habeas proceedings and, concordantly, AEDPA's statute of limitations, "carr[y] with it a presumption of regularity." *Johnson v. Zerbst*, 304 U.S. 458, 468 (1938). That is to say, the limitations period is premised on the assumption of a properly functioning court system that fairly and consistently applies its laws and procedures to all cases. The record demonstrates that this was not the case here.

When the state's errors erode the assumptions that underly statutes of limitations, courts must utilize their equitable authority to rectify the error. Indeed, that is precisely what this Court had in mind when it cautioned against employing a "too rigid approach" in evaluating equitable tolling, instead "emphasizing the need for flexibility" and "avoid[ing] mechanical rules" in determining whether equitable tolling applies. *Holland*, 560 U.S. at 650. The failure of the court system to abide by its most basic responsibilities undermines the justifications for the statute's time limits. The Eleventh Circuit's erred by doing just that.

The Court should grant the petition, vacate the judgment below, and remand with instructions that such factors must be weighed in determining whether extraordinary circumstances exist.

II. Misinformation from Neutral Arms of the State Should be Given No Greater Deference than Misinformation from Opposing Counsel

Although the Court has not yet ruled on how misinformation provided by a neutral arm of the state affects the analysis for equitable tolling, the Court has considered misinformation in other contexts. Specifically, the Court has recognized that equitable tolling ought to be afforded where a litigant "has been induced or tricked by his adversary's misconduct into allowing the filing deadline to pass." *Irwin v. Dep't of Veterans Affairs*, 498 U.S. 89, 96 (1990). Misinformation doled out by the state, even if by accident, is even more pernicious, as counsel should not be expected to be "on guard" against it. The Court should thus grant the petition in order to align the analysis of "extraordinary circumstances" to comport with the Court's precedents allowing for equitable tolling based on misrepresentations by opposing parties.

The Court's exception for misinformation provided by opposing parties is rooted in the fundamental principles of equity "that no man may take advantage of his own wrong," particularly when that wrong "lulled [an opponent] into a false security." *Glus v. Brooklyn E. Dist. Terminal*, 359 U.S. 231, 232–33 (1959). This principle has been recognized since the founding of America and is ubiquitous in our common law. *See Union Mut. Ins. Co. v. Wilkinson*, 13 Wall. (80 U.S.) 222, 233 (1871); *see also, e.g.*, Restatement of Contracts § 476(1) (1932); Restatement (Second) of Torts § 552C (1977). Courts applying the exception have recognized that the exception may apply "where the perpetrator has made misrepresentations in good faith." *Ott v. Midland-Ross Corp.*, 600 F.2d 24, 31 (6th Cir. 1979); *see also Theriot v. Captain James Sprinkle, Inc.*, 30 F.3d 136, 1994 WL 287392, at *3 (7th Cir. June 28, 1994) (unpublished table decision) ("[T]he misleading representation or conduct of a defendant need not be intentional or fraudulent, or even intended to induce delay, provided plaintiff's reliance on the defendant's words or actions in forbearing suit was reasonable, that is the plaintiff delayed filing suit in good faith because he did not know nor should have known that the defendant's conduct (innocent or not) was misleading.").[2]

The same equitable principles ought to apply to interactions between litigants and courts, particularly in criminal matters, where the courts are arms of the prosecuting state. Indeed, a court official's misrepresentation is more likely to lull a criminal defendant into a false sense of security than would that of a known adversary given the official's status as a representative of the neutral arbiter in the criminal process.

A holding to the contrary would drastically shift the nature of the relationship between counsel and the court. If misrepresentations from court officials do not warrant equitable tolling, then litigants would have no choice but to treat representations by court officials with greater skepticism than they treat representations by opposing counsel. That holding makes little sense given the nature of the respective relationships between these parties. Moreover, it would create an antagonistic, adversary relationship between court officials and litigants. Indeed, if a party could not rely on the veracity of an official stamp indicating filing, the party would have no choice but to repeatedly seek verification that the document was in fact filed, creating needless burden and inefficiency for courts and parties.

The general limitation on equitable estoppel of the government does not undermine this analysis. While "it

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[2] Relatedly, this Court has recognized that misrepresentations, misstatements, and misinformation provided by counsel to a defendant can warrant habeas relief. *See Hill v. Lockhart*, 474 U.S. 52, 52 (1985).

is well settled that the Government may not be estopped on the same terms as any other litigant," *Heckler v. Cmty. Health Servs. of Crawford Cnty., Inc.*, 467 U.S. 51, 60 (1984), this Court has rejected an absolute bar of equitable estoppel in instances of government misrepresentation. Indeed, in *Heckler*, this Court gave significant weight to the "interest of citizens in some minimum standard of decency, honor, and reliability in their dealings with their Government" in rejecting a categorical ban. The Court further acknowledged that when agents of the government act in ways giving rise to estoppel, "the interest of the citizenry as a whole in obedience to the rule of law is undermined." *Id.* at 60–61. Such considerations weigh heavily here in evaluating the parties' relative positions and relationships. Consequently, both as a matter of fairness to criminal defendants who have no choice but to rely on the integrity of information provided to them by court personnel, where the court holds those personnel out as sources of reliable information, and because the alternative would create needless expense, burden and inefficiency in the management of litigation, the rule articulated in *Irwin* should be applied to misrepresentations and errors by court personnel.

III. The Eleventh Circuit's Holding Creates an Unworkable Standard for Attorney Negligence that Would Undermine *Holland*

The Eleventh Circuit refused to apply equitable tolling based on its conclusion that missing the filing deadline resulted from the negligence of Mr. Clemons' attorneys alone. The court could reach that conclusion only by ignoring the court clerk's errors, and their context, which impeded Mr. Clemon's counsels' representation and caused Mr. Clemons significant prejudice. The Eleventh Circuit's decision effectively expands the scope of "garden variety negligence" to include failing to assume that an official file stamp is incorrect, and failing to foresee and mitigate an egregious series of unknown state errors. Taken to their logical conclusion, the Eleventh Circuit's articulated standards lead to unworkable and untenable results that would find attorneys negligent even when their decisions align with best practices.

Three errors by the clerk prejudiced Mr. Clemons and impeded timely filing: (1) a representative of the clerk's office informed counsel that no filing fee was required, (2) the court clerk provided Mr. Clemons' counsel a copy of his filing marked received and filed, and (3) the clerk lost the filing for several months, which prevented the discovery of any deficiency in the filing. By ignoring the prejudicial effect of these events, the Eleventh Circuit's decision imputes their outcome to the negligence of Mr. Clemons' attorneys. Such an outcome is untenable and must be reversed.

1. The Eleventh Circuit's holding that Mr. Clemons' attorneys were negligent for not paying a filing fee when they were informed no such fee was required creates an untenable standard for attorneys. Taken to its logical conclusion, the Eleventh Circuit puts Mr. Clemons' attorneys in a no-win, unworkable situation that undermines this Court's precedents.

The Eleventh Circuit reasoned that Mr. Clemons' counsel should have determined that a fee existed by referring to the Alabama code instead of a representative from the clerk's office. Pet. App. 12a–13a, 16a. However, as petitioner explains, the precise filing fee could not be readily discerned. At the time, the statute governing the general fee for civil actions was ambiguous as to whether it applied to Mr. Clemons petition. Pet. 19–20 & n.4. Moreover, the total fee amount due included local library fees that were not easily ascertained and varied by locality. Pet. 20. Indeed, the government and the courts could not definitively determine the requisite filing fees. Pet.

App. at 20a–21a. As a result, counsel necessarily requested information about the fee from the court clerk.

Mr. Clemons' attorneys' reliance on the clerk was justified under Alabama law. Petitioner explains that Alabama courts invite attorneys to rely on them for fee information, a practice that was undoubtedly more necessary before courts' rules and procedures were readily available online. *See* Pet. 18–19. Further, the Eleventh Circuit appears to have overlooked that determining and communicating court fees were within the statutory duties of the court clerk. *See* Ala. R. Jud. Admin. 4(II)(H) ("The clerk shall receive, issue receipts for, and account for, all funds coming into court, including fines, fees, costs, and restitution, and shall safeguard such funds and make disbursements as required by law."); *cf. Ex parte Thomas*, 215 So. 3d 536, 539 (Ala. 2015) ("Implicit in the duties of a circuit clerk is the duty to ascertain if the filing fee or a request to proceed in forma pauperis accompanied a petition filed pursuant to Rule 32, Ala. R. Crim. P.").[3]

Here, the Eleventh Circuit reasoned that Mr. Clemons' counsel was negligent for relying on the court clerk's representation that no filing fee was required. But the Eleventh Circuit never explained what an attorney should do if an attorney disagrees with a clerk stating that no fee is necessary. Applied literally here, an attorney would need to foist a filing fee upon a clerk despite the clerk saying no fee was needed, or otherwise face a finding that he is negligent.

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[3] That determining the proper fee amount is the responsibility of the clerk makes sense for reasons of judicial economy and efficiency. Determining the proper fee amount requires individual attorneys to calculate complex and in some cases unknowable amounts in order to ensure proper service. That amount could more easily be calculated by the clerk's office once and conveyed to attorneys rather than requiring attorneys to calculate that amount each time such an event occurs.

This is to say nothing of what happens where, as here, a court's rules are open to multiple interpretations and lack clear guidance. Even the most experienced attorneys cannot always correctly assess how state statutes, court rules, and historical-but-unwritten court practices interact to yield a specific court's filing and fee requirements, and many systems point counsel to court clerks for guidance. Any seasoned attorney would, in such settings, defer to a clerk's explanation of the court's practice, as the clerk is better situated to know the court's practice and judges' regular interpretation of those rules. Under the Eleventh Circuit's holding, however, doing so is negligence.

The unworkability of this ruling is exemplified by the Eleventh Circuit's observation that the filing fee was "<u>at minimum</u> $140." Pet. App. 21a. The court fails to explain how, if an attorney paid a partial but still insufficient fee, that result would be any less negligent, given that the court views strict adherence to Alabama's fee schedule as necessary for competent representation.

The Court does not require "maximum feasible diligence," but "reasonable diligence." *Holland*, 560 U.S. at 653. Courts have referred to this as a requirement, not for "petitioners to engage in such 'overzealous or extreme' conduct to show their diligence," *Fue v. Biter*, 842 F.3d 650, 655 (9th Cir. 2016) (citing *Doe v. Busby*, 661 F.3d 1001, 1015 (9th Cir. 2011)), but rather to demonstrate "the effort that a reasonable person might be expected to deliver under his . . . particular circumstances." *Busby*, 661 F. 3d at 1015. When resources are unavailable for attorneys to determine something as routine as the amount of a filing fee without the assistance of a court clerk, the state has effectively mandated that parties and their counsel rely on the representations of court officials for this information. In such circumstances, an attorney cannot be negligent or fail to exercise diligence on behalf of his client, for relying in good faith on such representations. To hold otherwise demands an unattainable level of diligence that would virtually require skepticism of court officials. Allowing the Eleventh Circuit's holding to stand would create an unworkable, adversarial relationship between attorneys and the court, and would dramatically shift the power of the government to avoid accountability for imprecise application of overbearing laws.

2. The clerk's office's misstatement regarding the filing fee was compounded by another: returning a copy of Mr. Clemon's petition to his counsel marked "received and filed." Relying on that representation, Mr. Clemon's counsel pursued a course of conduct that the Eleventh Circuit later held to be negligent, including (1) accepting that the court clerk had accurately represented that there was no filing fee, since the petition could not have been filed without one, (2) mailing, rather than filing in-person, Mr. Clemons *in forma pauperus* application, believing that he had already timely filed the petition, and (3) not suspecting that the clerk's office *lost the petition behind a filing cabinet*. The Eleventh Circuit's opinion overlooks the clerk's misstatement regarding the filing status—and the causal chain of events that resulted from it—entirely. That holding violates *Holland*'s requirement to consider all relevant facts and circumstances, and places an impractical and unrealistic burden on attorneys and courts.

Because the court clerk's misrepresentation had no mitigating effect in the Eleventh Circuit's analysis, the Circuit articulated no standard for counsel to follow when second-guessing official statements by court officials. By failing to account for these facts, the Eleventh Circuit suggests that an attorney may not rely on the representation of a file stamp, and should continue to ask the court for some additional, unspecified proof that a document was filed, rendering the file-stamp superfluous. Moreover, on the facts of this case, the Circuit's holding would require attorneys to exercise superhuman intuition to discern that a document was misplaced, rather than properly filed, by the clerk, and then take some unspecified steps to remedy that problem.

Such a rule, taken to its logical end, would likely bring the court system to a screaming halt, as counsel are forced to repeatedly seek to verify and re-verify routine filings and similar events. If a court clerk's representation as to filing status cannot be relied upon, attorneys would not be able to rely on information or notifications from electronically-available dockets today, through which much court business is conducted. By ignoring the egregious facts of this case, the Eleventh Circuit omits any guidance regarding whom attorneys may rely on without subjecting themselves and their clients to the potential (and often substantial in the habeas context) consequences.

Here, Mr. Clemons' counsel reasonably relied on the representations of the clerk. He received the stamped-as-received-and-filed counsel copy of the filing and had no reason to doubt that the stamped copy did not confirm that the Court in fact received and filed the petition. *See Lewis v. United States*, 279 U.S. 63, 73 (1929) ("It is the settled general rule that all necessary prerequisites to the validity of official action are presumed to have been complied with, and that where the contrary is asserted it must be affirmatively shown."). Such reliance cannot be unreasonable when the very purpose of a counsel copy is that it provides confirmation to the parties as to the status of the filings.

Attorneys must be able to rely on the representations of court employees as to the status of filings, as this Court's precedent suggests. *In Bell v. Thompson*, 545 U.S. 794 (2005), this Court addressed a related problem in a habeas case: the failure of the Sixth Circuit clerk to docket a stay of a mandate. This Court reiterated a fundamental maxim—"'Basic to the operation of the judicial system is the principle that a court speaks through its judgments and orders'"—and explained that such considerations extend to clerical representations like docket entries. *Id.* at 805 (quoting *Murdaugh Volkswagen, Inc. v. First Nat'l Bank of S.C.,* 741 F.2d 41, 44 (4th Cir. 1984)). It further rejected the argument that the lack of a docket entry was "due to a simple clerical error," explaining that it was nonsensical to apply the "presumption of regularity" afforded to governmental action "to the panel's actions but not to the Clerk's." *Id.*

Accordingly, reasonable diligence did not require Mr. Clemons or his attorneys to question the court marking on the receipt, as received and filed. Rather, it was reasonable to presume that the stamp accurately represented what it said—that the petition had been received and filed. Indeed, the stamp reinforced the clerk's prior representation that no filing fee was required. Allowing the Eleventh Circuit's holding to the contrary to stand would serve to undermine the "presumption of regularity" afforded to state actors that this Court has recognized, which in the long term would have far more deleterious effects for the legitimacy of state actions. *See, e.g.*, *INS v. Miranda*, 459 U.S. 14, 18 (1982); *United States v. Chemical Found*, 272 U.S. 1, 14–15 (1926).

Moreover, Mr. Clemons' attorneys' subsequent actions and decisions must be viewed in light of his counsel's reasonable reliance on the file-stamp. It was due to the "received and filed" stamp on the petition that counsel mailed the IFP application, rather than file in-person, one day before the AEDPA limitations period expired. *See* Pet. 7. Just as in *Bell*, these were "steps … taken in reliance on the mistaken impression" caused by the clerk's misrepresentation, a factor that courts must consider in evaluating habeas relief. 545 U.S. at 805. Allowing the Eleventh Circuit's holding to stand would mean that mistaken clerical *omissions* would warrant a court's scrutiny under *Bell* but mistaken affirmative *statements* would not.

Because the Eleventh Circuit did not consider the effects of this event when evaluating attorney conduct for the purposes of *Holland*, it tacitly concluded that an attorney's reliance on such a representation was negligent, imposing an unrealistic and unnecessary burden on attorneys to confirm the validity of a court's representations. A requirement for attorneys to engage in such duplicative efforts in ensuring that documents are properly filed serves no purpose; attorneys and the public ought to be able to rely on representations from court officials. Accordingly, misstatements by court officials that materially affect an attorney's decision-making must be taken into account when evaluating the actions of counsel for purposes of *Holland*.

3. The court clerk's third error—losing Mr. Clemons' filing behind a cabinet for several months—cemented the damage caused by the original errors. Losing the filing prevented the court from complying with its internal procedures, recognizing the error, and attempting to rectify the deficiency by timely contacting counsel. This error compounded the prejudicial effect of the clerk's next decision, to find the filing inadequate because no filing fee had been filed.

Upon discovery of its error and the lack of filing fee, the court back-dated Mr. Clemons' petition to the date of his *in forma pauperus* application, which had been docketed three days after the AEDPA limitations period. Pet. 8. However, the timing of that application resulted from the court's prior misrepresentations. As explained above, Mr. Clemon's counsel was unaware of—and could not have been aware of—any issue with the filing of Mr. Clemons' petition. Accordingly, he sent the application by mail rather than going to the courthouse that day or sending a courier. *See* Pet. 7. That application was not received and filed until three days after the one-year limitations period expired and thus served as the operative date for Mr. Clemons' petition. Pet. 7–8. The delay was entirely a function of the court clerk's misstatements and errors, on which Mr. Clemons' counsel reasonably relied. Mr. Clemons should not pay for those errors by losing his right to habeas review.

IV. Capital Cases Warrant Greater Application of Procedural and Equitable Protections

Finally, in capital cases, access to federal habeas review should not be eliminated because misrepresentations from court officials materially affected the course of defense counsel's representation. As this Court has noted, "[d]eath is a different kind of punishment from any other which may be imposed in this country. … It is of vital importance to the defendant and to the community that any decision to impose the death sentence be, and appear to be, based on reason rather than caprice or emotion." *Gardner v. Florida*, 430 U.S. 349, 357–58 (1977). Because "the consequences of error are terminal" in the death penalty context, courts should "pay particular attention to whether principles of 'equity would make the rigid application of a limitation period unfair' …." *Fahy v. Horn*, 240 F.3d 239, 244 (3d. Cir. 2001), *cert. denied* 534 U.S. 944 (2001). To deny Mr. Clemons review of a decision that will take away his most basic fundamental right to life based on procedural errors caused by court officials would condone a manifest injustice.

Indeed, upholding the Eleventh Circuit's decision would undermine "the vital state interest" in maintaining "public confidence in the integrity of [the judiciary]." *Williams-Yulee v. Fla. Bar*, 575 U.S. 433, 445–46 (2015) (quoting *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 889 (2009)). This state interest is only served if public confidence is maintained in not only the judges sitting on the bench but to all officials and administrators within the court system. Whether or not Mr. Clemons would ultimately prevail in his habeas claims would be of no moment if the Eleventh Circuit's decision is upheld. His execution, should it go forward, would be tainted by the government's lack of accountability. Allowing a series of mistakes of court officials to determine whether Mr. Clemons can seek Federal habeas relief from his execution would call into question whether the judiciary seeks justice or seeks to remedy its mistakes by placing the consequences on the individual.

Nor do the countervailing potential burdens justify withholding equitable relief, thereby stripping Mr. Clemons of his right to seek habeas review. Mr. Clemons faces a unique circumstance where court officers committed a series of errors that fall below our most minimal expectations of government officers. To grant equitable relief here would add only one case to the court's docket, which is a lesser evil than stripping Mr. Clemons of his rights due to multiple errors out of his control. If such errors are common and granting equitable relief here may significantly increase court case loads, the problem should not be addressed by forcing individuals to bear the consequences of such errors. The people, including Mr. Clemons, should expect that any pervasive carelessness in our institutions will be resolved not by absolving such institutions from responsibility but by relieving individuals from the significant consequences of such errors and demanding more of our government.

CONCLUSION

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

Respectfully submitted.

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