

In the Supreme Court of the United States

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LUCIOUS BOYD,  
PETITIONER

V.

RICKY DIXON, SECRETARY,  
FLORIDA DEPARTMENT OF CORRECTIONS,  
RESPONDENT

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

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**REPLY TO BRIEF IN OPPOSITION**

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## **QUESTION PRESENTED**

### **Capital Case**

The question presented is:

Whether 28 U.S.C. § 2244(b)(2) applies (i) to habeas filings made after a prisoner has exhausted appellate review of his first petition, (ii) to all second-in-time habeas filings after final judgement, or (iii) to some second-in-time filings, depending on a prisoner's success on appeal or ability to satisfy a seven-factor test.

## RELATED PROCEEDINGS

*Boyd v. State*, No. SC02-1590 (Fla. Feb. 10, 2005) (affirming convictions and sentence of death on direct appeal).

*Boyd v. Florida*, No. 05-7787 (U.S. Feb. 21, 2006) (denying petition for writ of certiorari).

*State v. Boyd*, No. 99-005809CF10A (Fla. 17th Ct. Jan. 2, 2013) (denying initial motion for postconviction relief).

*Boyd v. State*, No. SC12-244 & SC13-1959 (Fla. Dec. 17, 2015) (affirming denial of postconviction relief entered on Jan. 2, 2013).

*Boyd v. Jones*, No. 16-cv-62555-DPG (S.D. Fla. July 3, 2018) (granting federal evidentiary hearing).

*Boyd v. Inch*, No. 16-cv-62555-DPG (S.D. Fla. July 10, 2019) (denying petition for writ of habeas corpus).

*Boyd v. Sec’y, Dept. Corr.*, No. 19-13051 (11th Cir. Oct. 25, 2019) (staying appellate proceedings).

*Boyd v. State*, No. SC20-108, 324 So. 3d 908 (Fla. May 13, 2021) (affirming summary denial of successive motion for postconviction relief entered Dec. 17, 2019).

*Boyd v. State*, No. SC20-108, 324 So. 3d 919 (Fla. Sept. 2, 2021) (denying rehearing).

*Boyd v. Sec’y, Fla. Dept. Corr.*, No. 19-13051 (11th Cir. Sept. 28, 2021) (denying Petitioner’s Motion to Remand to District Court for Indicative Ruling, or, in the Alternative, to Relinquish Jurisdiction).

*Boyd v. Sec’y, Fla. Dept. Corr.*, No. 16-cv-62555-GAYLES, 2021 WL 12300713 (S.D. Fla. Dec. 23, 2021) (denying Petitioner’s Motion for Leave to Amend Habeas, or Alternatively, for Relief from Judgement).

*Boyd v. Sec’y, Fla. Dept. Corr.*, No. 22-10299, 114 F.4th 1232 (11th Cir. Aug. 28, 2024) (affirming denial entered Dec. 23, 2021).

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## REPLY

The sole issue presented here is whether a habeas petitioner can seek leave to amend his petition while an appeal from final judgement is pending, or whether such a motion is properly characterized as a second or successive petition pursuant to 28 U.S.C. § 2244(b). As the State acknowledges, the Court has already granted certiorari and heard oral argument in a parallel case, *Rivers v. Lumpkin*, 99 F.4th 216 (5th Cir. 2024), *cert. granted*, No. 23-1345 (U.S. Dec. 6, 2024), which presents that same question. *See* BIO, 9.<sup>1</sup> Nonetheless, the State focuses on extraneous issues and the merits of the claim on which Mr. Boyd was denied consideration. Because the courts below found Mr. Boyd’s amended application second or successive and refused to reach the merits, the State’s merits arguments are improperly raised here. The remainder of the State’s arguments, as addressed below, are insufficient to distinguish Mr. Boyd’s case from *Rivers* or to show that certiorari should not be granted.

### **1) Mr. Boyd Diligently Litigated His New Claim of Juror Misconduct and Was Not Dilatory In Seeking Relief From The District Court’s Judgement.**

The State argues, “this Court should deny certiorari because Boyd raised his Rule 60(b) motion for relief from judgement in a dilatory manner.” BIO, 10. In support of this argument, the State asserts that Mr. Boyd waited until three years after the federal evidentiary hearing to file his Rule 60(b) motion for relief from judgement. BIO, 12-13. This argument is specious.

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<sup>1</sup> References to the Respondent’s Brief in Opposition are: “BIO, [pg.]”

First, Mr. Boyd could not have moved for relief from a judgement that did not yet exist, so starting the clock on the date of the evidentiary hearing is misleading. The district court held the evidentiary hearing on September 20, 2018, and the parties filed post-hearing memoranda on November 5, 2018. Judgement was not entered until July 10, 2019. Thus, Mr. Boyd could not have moved for relief from judgement until July 10, 2019, at the earliest.

Further, Mr. Boyd did not simply “wait” to file his Rule 60(b) motion. Rather, he returned to state court to exhaust his new claim as required by 28 U.S.C. § 2254(b)(1). Mr. Boyd filed notice of appeal in the Eleventh Circuit on August 8, 2019, and a successive postconviction motion in state court under Florida Rule of Criminal Procedure 3.851 on September 18, 2019. Five days later, on September 23, 2019, Mr. Boyd moved in the Eleventh Circuit for a stay of appellate proceedings to allow him to litigate in the state courts. A stay was granted on October 25, 2019.

Thereafter, Mr. Boyd diligently pursued his claims in state court. This litigation was a prerequisite to raising his new claim in federal court, not a delay tactic. It gave the state courts an opportunity to correct their own error and exhausted Mr. Boyd’s new claim, making it cognizable in federal habeas. *See Harrington v. Richter*, 562 U.S. 86, 103 (2011) (noting “a habeas petitioner challenging a state conviction must first attempt to present his claim in state court”). If Mr. Boyd had not returned to state court before moving for relief from judgement and for leave to amend his application, his new claim would be unexhausted and dismissed as such.

*See Rose v. Lundy*, 455 U.S. 509, 510 (1982) (requiring district courts to dismiss habeas applications containing both exhausted and unexhausted claims).

The State’s subsidiary arguments as to dilatoriness are also unavailing. The State suggests that Mr. Boyd ought to have raised his new claim in federal court even while it was pending before the Florida Supreme Court. *See* BIO, 10-11. However, the claim was still unexhausted until the Florida Supreme Court ruled. Curiously, the State also suggests that Mr. Boyd’s Rule 15 motion to amend his application was not “accompanied by a Rule 60(b) motion,” the latter being necessary “because the final judgement had to be vacated before the Rule 15 motion could be granted.” BIO, 11-12. The State goes on to assert, “while Boyd did later file a Rule 60(b) motion, he was dilatory.” BIO, 12. It is unclear how this could be true—Mr. Boyd’s Rule 15 and 60(b) motions were filed in the same document.

In short, compliance with AEDPA’s exhaustion requirement explains the timing of Mr. Boyd’s motions, not intentional delay. The State’s general arguments about dilatoriness are, thus, unfounded. The same considerations defeat the State’s argument as to whether Mr. Boyd’s Rule 60(b)(6) motion was filed within a reasonable time under Rule 60(c). Mr. Boyd was not dilatory and certiorari is warranted.

**2) Mr. Boyd’s amended application relates back to his original application under *Mayle v. Felix*.**

The State argues that Mr. Boyd’s amended application is untimely under *Mayle v. Felix*, 545 U.S. 644 (2005), because it is supported by evidence that “is ‘not one-in-the same as the [original] claim of juror misconduct’ raised originally in federal



court.” BIO, 11 (alteration in original). This argument is incompatible with both the plain text of Federal Rule of Civil Procedure 15(c)(1)(B) and *Mayle*.

Rule 15(c)(1)(B) provides, “an amendment to a pleading relates back to the date of the original pleading when . . . the amendment asserts a claim or defense that arose out of the conduct, transaction, or occurrence set out—or *attempted to be set out*—in the original pleading.” Fed. R. Civ. P. 15(c)(1)(B) (emphasis added). The State’s reading would nullify the qualifier “or attempted to be set out” by requiring identity between the evidence supporting the original and amended claims. This qualifier plainly contemplates factual development after the filing of an original pleading and incorporation of newly developed facts through amended pleadings. *See Ross v. Williams*, 950 F.3d 1160, 1170 (9th Cir. 2020) (noting Rule 15(c)(1)(B) “contemplates that the original pleading may be inadequately pleaded yet still support relation back”).

Insofar as the State purports to rely on *Mayle*, it misstates the Court’s holding. Consistent with the text of Rule 15(c)(1)(B), *Mayle* did not condition the relation back of an amendment on whether the original and amended claims are supported by the same evidence. Rather, *Mayle* held that “relation back depends on the existence of a common ‘core of operative facts’ uniting the original and newly asserted claims.” *Mayle*, 545 U.S. at 659. The relevant “core” is the specific “episode-in-suit” during which “the essential predicate” for the claim arose. *Id.* at 660-61.

For example, in *Mayle*, Petitioner Felix sought to amend his habeas application to include a Fifth Amendment self-incrimination claim predicated on the introduction

of his pre-trial interrogation by police. The Court noted: “The dispositive question in an adjudication of that claim would be the character of Felix’s conduct, not in court, but at the police interrogation, specifically, did he answer voluntarily or were his statements coerced.” *Id.* at 661.

Here, Mr. Boyd’s original and amended juror misconduct claims arise out of the same core of operative facts, namely, Juror Striggles’s conduct, knowledge, and mental state during *voir dire*. Mr. Boyd’s original claim of juror misconduct is predicated on whether Juror Striggles answered a material question on *voir dire* dishonestly. Although proof Juror Striggles’s dishonesty necessarily depends on evidence beyond *voir dire*, the factual predicate for the constitutional violation itself is encapsulated in Juror Striggles’s conduct during *voir dire*. The amended juror misconduct claim arises out of precisely the same episode. The original and amended claims are distinct insofar as they raise different theories of dishonesty and materiality. But, notwithstanding these distinctions, both claims share a common core of operative facts such that the State has been on notice that Juror Striggles’s conduct during *voir dire* would be a focal point since the original petition was filed. Accordingly, Mr. Boyd’s amended claim relates back to his original petition and was, therefore, timely.

## CONCLUSION

Mr. Boyd pleaded what he could when he could. Because the state courts denied him a jury interview, the facts needed to plead the full extent of his denial of a fair and impartial jury could not be known until the district court held a hearing

and the full extent of Juror Striggles' failure to disclose became known. In light of her disclosures at the evidentiary hearing, Mr. Boyd learned the full scope of the constitutional violations he suffered. Now aware of the extent of these constitutional denials, Mr. Boyd did what AEDPA required him to do; he returned to state court to exhaust a claim that fully encompassed the denial of rights that he only became aware of after Juror Striggles finally was required to testify at the federal evidentiary hearing.

The Court should grant certiorari because, although AEDPA constricts the availability of habeas relief, even greater constriction undermines the statute's ultimate aim—a full and fair determination of all claims during the first round of litigation. The definition of second or successive that Mr. Boyd advances would limit the need for successive petitions while ensuring petitioners one full airing of their claims while in federal court.

Regardless of how the Court decides the question presented here, or indeed in *Rivers*, there was an obvious lack of clarity in how petitioners should proceed when faced with the dilemma Mr. Boyd faced in this case. While the Court may soon settle the limitations applicable to amended habeas applications filed after final judgement, it found certiorari was necessary to do so. Mr. Boyd should not suffer the consequences of following a procedure that the Court had yet to definitively disallow.

The Court should grant certiorari.

Respectfully Submitted,

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