No. 25-6213

In the Supreme Court of the United States

SAMUEL GALBRAITH,
Petitioner,
v.
TIM HOOPER, WARDEN,
Respondent.

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

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

Whether a state prisoner's failure to pursue an available state habeas corpus proceeding to challenge allegedly unlawful confinement requires dismissal of his federal habeas corpus petition.

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INTRODUCTION

Petitioner Samuel Galbraith kidnapped, raped, and murdered 21-year-old Karen Hill in 1988. For over a decade, however, Hill's widowed husband, her mother, and the entire community of Vernon Parish, Louisiana, were left without any recourse, answers, or justice. That lack of closure finally ended in February of 2000, when, following years of investigation, Petitioner was charged with first degree murder and attempted aggravated rape. Pleading to manslaughter instead, Petitioner was sentenced to 71 years in state prison.

Less than two decades into that sentence, Petitioner sought parole. Hill's surviving spouse, her mother, the Vernon Parish District Attorney, the Vernon Parish Sheriff's Office, and the Vernon Parish sentencing judge all—understandably—vehemently opposed parole. But the Parole Board initially granted parole to Petitioner. Following public outrage that a "prime suspect" in several other murders and thus a potential serial killer[1] might be released onto Louisiana streets, the Parole Board ultimately rescinded its prior parole decision. The Parole Board explained to Petitioner that, in rescinding his parole, they became aware that Hill's mother did not receive statutorily required notice of the first parole hearing, and that error served as grounds to reconsider the parole decision. Unwilling to wait for the subsequently scheduled parole hearing—and unwilling to invoke the state habeas process for prisoners who challenge allegedly unlawful confinement—Petitioner

[1] Chris Nakamoto, *Man Convicted in "Heinous" 1988 Murder Case is Up for Parole Again, Could Be Released from Prison*, WBRZ2 (Mar. 9, 2023), https://perma.cc/H42M-Y3QV.

immediately turned to federal court to claim a federal due process violation, first in a 42 U.S.C. § 1983 action and (years later) in a habeas petition.

As the Fifth Circuit correctly held below, Petitioner committed a classic exhaustion error: "[H]e should have raised his challenge in a state *habeas* application in the appropriate state district court" first. App.020 (*Galbraith v. Hooper (Galbraith II)*, 151 F.4th 795, 807 (5th Cir. 2025)). As the Antiterrorism and Effective Death Penalty Act (AEDPA) makes clear, a federal district court cannot grant habeas relief to a prisoner in state custody "unless" the petitioner establishes either: (A) the petitioner "has exhausted the remedies available in the courts of the State"; or (B) the petitioner shows "there is an absence of available State corrective process" or "circumstances exist that render such process ineffective to protect the rights of the" petitioner. 28 U.S.C.A. § 2254(b)(1). Petitioner here established neither.

It is undisputed that Petitioner did not exhaust state court remedies before turning to the federal courts. *See* Pet.23. And it is similarly plain that Louisiana law gives Petitioner a state process to challenge allegedly unlawful confinement. *See* La. C.Cr.P. art. 362(2) (state habeas "relief shall be granted" if one of seven enumerated grounds is satisfied, including "[t]he original custody was lawful, but by some act, omission, or event which has since occurred, the custody has become unlawful"); *Sinclair v. Stalder*, 2003-1568 (La. App. 1 Cir. 10/17/03), 867 So. 2d 743, 744, *writ denied*, 2003-3177 (La. 1/14/05), 889 So. 2d 253 ("A petition for a writ of habeas corpus is the proper mechanism for an inmate who claims his initially lawful custody became unlawful due to the parole board's actions in denying him release on parole.").

Petitioner was therefore required to try his hand at state habeas proceedings before asking the federal courts to invalidate the Louisiana's Parole Board's decision. He refused.

But this Court need not even consider the merits because this case implicates none of the traditional certiorari criteria—and it is a terrible vehicle. Petitioner himself claims that his case is "totally unique and no other case has its relevant facts," Pet.32—so there is no issue of exceptional importance, much less one on which the lower courts are divided. Moreover, Petitioner's claim is time-barred (as the Fifth Circuit determined below)—and although the Fifth Circuit did not decide whether Petitioner could qualify for tolling, he plainly cannot. Accordingly, any relief to Petitioner in this case would be useless since his petition is dead in the water anyway.

The Court should deny the petition.

STATEMENT OF THE CASE

A. Legal Background

1. Section 2254 requires exhaustion of state remedies.

Enacted in 1996, AEDPA "changed the standards governing [federal courts'] consideration of habeas petitions by imposing new requirements for the granting of relief to state prisoners." *Felker v. Turpin*, 518 U.S. 651, 662 (1996). As amended by AEDPA, 28 U.S.C. § 2254 bars a habeas petition from a state prisoner unless (A) "the applicant has exhausted the remedies available in the courts of the State," or (B) there is (i) "an absence of available State corrective process" or (ii) circumstances exist "that render such process ineffective to protect the rights of the applicant." § 2254(b)(1).

Petitioner concedes that he cannot invoke subclause (A) because he did not attempt to exhaust state court remedies before filing his federal habeas petition. *See* Pet.23 ("The issue ... centers around the second and third prong."). The only question is thus whether either (i) "there is an absence of available State corrective process" or (ii) "circumstances exist that render such process ineffective to protect" petitioner's rights. § 2254(b)(1)(B).

As this Court explained in *Preiser v. Rodriguez*, 411 U.S. 475 (1973), "the whole purpose of the exhaustion requirement ... is to give state courts the first chance at remedying their own mistakes, and thereby to avoid 'the unseemly spectacle of federal district courts trying the regularity of proceedings had in courts of coordinate jurisdiction.'" *Id.* at 490–91 (citation omitted). That "federal-state comity," the Court said, applies equally to actions of "state administrative concern as it does where state judicial action is being attacked." *Id.* at 491.

This respect for state processes existed long before *Preiser*, AEDPA, and their predecessors. *See, e.g.*, *Rose v. Lundy*, 455 U.S. 509, 515 (1982) ("The exhaustion doctrine existed long before its codification by Congress in 1948.") (collecting cases); *Braden v. 30th Jud. Cir. Ct. of Kentucky*, 410 U.S. 484, 490 (1973) ("The exhaustion doctrine is a judicially crafted instrument which reflects a careful balance between important interests of federalism and the need to preserve the writ of habeas corpus as a 'swift and imperative remedy in all cases of illegal restraint or confinement.'"); *Ex parte Hawk*, 321 U.S. 114, 117 (1944) ("[I]t is a principle controlling all habeas corpus petitions to the federal courts, that those courts will interfere with the

administration of justice in the state courts only 'in rare cases where exceptional circumstances of peculiar urgency are shown to exist.'"). And, as the Fifth Circuit has explained, the "doctrine is grounded upon several pragmatic considerations": (1) "federal courts have long recognized that state courts have concurrent jurisdiction and equivalent responsibility with federal courts to protect federal rights"; (2) if "an issue rests upon unresolved questions of fact or of state law, comity and judicial efficiency may require federal courts to insist on complete exhaustion to ensure that the court has a complete record to review"; and (3) "absent the exhaustion doctrine, state courts may become isolated from federal law, enervating their need to develop and enforce such law." *Deters v. Collins*, 985 F.2d 789, 794 (5th Cir. 1993).

"Ordinarily, a state prisoner satisfies this exhaustion requirement by raising his federal claim before the state courts in accordance with state procedures." *Shinn v. Ramirez*, 596 U.S. 366, 378 (2022). "Requiring exhaustion ... means, of course, that a prisoner's state remedy must be adequate and available, as indeed [section] 2254(b) provides." *Preiser*, 411 U.S. at 493. That a petitioner "might not be able to recover under these remedies the full amount which he might receive in a [federal] action," however, "is not, as [the Court has] said, determinative of the adequacy of the state remedies." *Hudson v. Palmer*, 468 U.S. 517, 535 (1984). Of course, "[i]f a state court would dismiss these claims for their procedural failures, such claims are technically exhausted because, in the habeas context, state-court remedies are exhausted when they are no longer available, regardless of the reason for their unavailability." *Shinn*, 596 U.S. at 378 (citation modified). "But to allow a state prisoner simply to ignore

state procedure on the way to federal court would defeat the evident goal of the exhaustion rule." *Id.* Thus, where a state court remedy is available to a petitioner, "[a] failure to use a state's available remedy, in the absence of some interference or incapacity ... bars federal habeas corpus." *Brown v. Allen*, 344 U.S. 443, 487 (1953).

2. Louisiana provides state habeas relief for prisoners.

Louisiana Code of Criminal Procedure article 362 provides for state habeas relief where, among other things, a prisoner's "original custody was lawful, but by some act, omission, or event which has since occurred, the custody has become unlawful." La. C.Cr.P. art. 362(2). Such a petition "is the proper mechanism for an inmate who claims his initially lawful custody became unlawful due to the parole board's actions in denying him release on parole." *Sinclair v. Stalder*, 2003-1568 (La. App. 1 Cir. 10/17/03), 867 So. 2d 743, 744, *writ denied*, 2003-3177 (La. 1/14/05), 889 So. 2d 253.

B. Factual Background

1. On November 21, 1988, 21-year-old Karen Hill was working alone in the early morning hours at a Circle K store in Vernon Parish, Louisiana. Dist. Ct. ECF 1-6 at 3. Petitioner was a soldier stationed at nearby Fort Polk. *Id.* That morning, he robbed the Circle K store and abducted Hill. *Id.* Petitioner then raped Hill, tied her to a tree, and fatally shot her in the eye. *Id.*

Hill's body was located about four hours later, but her killer was not identified for over several years. *Id.* In 1995, one of Petitioner's former roommates called the Leesville Police Department and claimed that Petitioner had "told him he robbed a

store, took the girl, and shot her in the head." *Id.* Following further investigation, DNA testing, and Petitioner's confession, on April 23, 1997, Petitioner was arrested by the Vernon Parish Sheriff's Office. *Id.*

Petitioner was ultimately charged with first degree murder and attempted aggravated rape. App.049 (*Galbraith v. Hooper*, No. CV 19-181-JWD-EWD, 2022 WL 943144 (M.D. La. Mar. 9, 2022), *report and recommendation adopted*, No. CV 19-181-JWD-EWD, 2022 WL 907142, at *1 (M.D. La. Mar. 28, 2022), *aff'd*, 85 F.4th 273 (5th Cir. 2023), *opinion withdrawn*, No. 22-30159, 2024 WL 1170026 (5th Cir. Mar. 19, 2024), *and on reh'g*, 151 F.4th 795 (5th Cir. 2025), *and rev'd*, 151 F.4th 795 (5th Cir. 2025)). A few days later, "Petitioner pled guilty to manslaughter and attempted aggravated rape, receiving a total sentence of seventy-one (71) years." *Id.* Those sentences "were to run consecutively and were subject to diminution for good behavior." *Id.*

2. "Sometime in the spring of 2016"—less than two decades into his sentence—Petitioner "filed an Application for Parole." App.050. In accordance with Louisiana law, on July 7, 2016, the Parole Board sent notification letters regarding the Board's upcoming October 13, 2016, parole hearing to individuals associated with the victim, Karen Hill. *Id.* One letter went to James Hill, Karen Hill's surviving spouse, who, on November 16, 2000, had "completed a *Louisiana Department of Public Safety and Corrections Victim/Witness Notification Request Form*, asking for notification by the [Parole Board] when a hearing is granted." *Id.* A second letter went to Jessie McWilliams, Karen Hill's mother—but to an incorrect address in Albany, *New York*.

Id. The October hearing was later reset for November 3, 2016. *Id.* As a result, new notification letters were sent to Hill and McWilliams, and "[t]his time, the letter to McWilliams went to her correct address" in Albany, *Illinois*. *Id.*

"The pre-parole investigation report, dated October 17, 2016, contains statements from Hill and McWilliams opposing parole." *Id.* Hill also provided "a detailed letter" describing "the impact of his wife's murder and his objection to parole." App.051. "The pre-parole investigation report also contains statements from the Vernon Parish District Attorney's Office, the Vernon Parish Sheriff's Office, and the Vernon Parish sentencing judge opposing parole." App.050-51. Despite the unanimous representation that parole should not be granted to Petitioner, the Parole Board voted otherwise, citing Petitioner's "good support," "good plan," "good conduct," "good programs," "emp[loyment] plan," and that he had "taken all programs" and "will be a tax-payer and not a tax burden." App.051.

Understandably, the District Attorney of Vernon Parish, Asa Skinner, "express[ed] his outrage at the decision to grant parole," sending a total of four letters to the Parole Board and requesting that it "reconsider its decision." *Id.* Among other factors counselling against Petitioner's release, Skinner noted in subsequent interviews that "Petitioner was responsible for the murders of two additional women in Vernon Parish, though Petitioner was never charged with either murder." App.053. Like Skinner, McWilliams also wrote to both the District Attorney and the Parole Board to request reconsideration. App.052. Despite the continuous, strong opposition

thereto, the Parole Board and Department of Corrections "made the final preparations for Petitioner's release" in early April 2017. *Id.*

Petitioner takes issue with what followed. "On April 10, 2017, Mary Fuentes of the Parole Board sent an email to Deputy Executive Counsel to [then-]Louisiana Governor John Bel Edwards expressing her concern regarding a news story that was set to air on April 13, 2017 regarding [petitioner's] parole." *Id.* Then, on April 21, "two days before Petitioner was set to be released" a lobbyist sent another email, this time to Governor Edwards's Special Counsel, citing a news article about Petitioner's impending release and questioning the "impact[]" the story might have on "the success of [then-pending] legislation." App.052-53. On the same day, Fuentes noted on the "Hearing Docket Record" that recission of Petitioner's parole was "pending." App.053. Thereafter, in a letter dated May 1, 2017, the Parole Board informed Petitioner that "the Parole Board has voted to rescind the parole granted at [the] original parole hearing" based on "technical irregularities notifying the victim's family." App.054. The parole hearing was then reset for August 3, 2017—this hearing was later "canceled" when Petitioner voluntarily withdrew. App.055.

3. On July 26, 2017, Petitioner filed a civil suit under 42 U.S.C. § 1983 in the Middle District of Louisiana, alleging violations of his Fourteenth Amendment rights to substantive and procedural due process arising out of the Parole Board's rescission of his anticipated parole. *Id.* One of the defendants to that suit, Chairperson of the Board of Pardons Sheryl Renatza, argued in a motion for summary judgment that the district court "lacked jurisdiction to grant restoration of parole and release from

custody because such relief is only properly sought in a writ of habeas corpus." *Id.* On March 27, 2019—nearly two years after he initiated his § 1983 action—Petitioner filed the instant petition for habeas corpus relief, alleging substantially the same facts as those alleged in the civil suit, and seeking release based on violations of his due process rights." App.055-56. In September of 2020, the district court stayed the § 1983 suit, "finding that the habeas petition involved the same legal issues." App.056.

C. Procedural Background

1. The sole claim in the habeas petition below alleges a violation of Petitioner's Fourteenth Amendment due process rights because, he argues, "the Parole Board rescinded his parole based on an admittedly false reason—lack of proper notification of the hearing to the victim's family." *Id.* His claim is based, in part, on Louisiana law in effect at the time, which stated that a decision to grant parole may be rescinded if the prisoner "has violated the terms of work release" or "has engaged in misconduct." App.066 (citation omitted); *see* La. R.S. 574.4.1(E) (subsequently amended Louisiana law providing that "the committee on parole shall have the authority and sole discretion to rescind, modify, reconsider, or otherwise alter any prior decision granting parole release, *for any reason deemed appropriate by the committee* before an offender's actual release from custody onto parole supervision" (emphasis added)). On Petitioner's theory, he suffered a due process violation when the Parole Board rescinded its grant decision without identifying a work-release violation or misconduct.

In a report and recommendation issued on March 9, 2022, the Magistrate Judge found that (1) Petitioner was not required to exhaust state remedies because any state-court challenge to rescission of his anticipated parole would have failed; (2) Petitioner's habeas petition arose only under section 2241—not section 2254—and so was not subject to the limitations period contained in section 2244(d)(1); and (3) the Board violated Petitioner's procedural due process rights by rescinding his anticipated parole for a reason purportedly not permitted by Louisiana's parole regulations. App.057-70.

The district court adopted the report and recommendation of the Magistrate Judge in full and granted Petitioner's application for writ of habeas corpus. App.047 (*Galbraith v. Hooper*, No. CV 19-181-JWD-EWD, 2022 WL 907142, at *1 (M.D. La. Mar. 28, 2022), *aff'd*, 85 F.4th 273 (5th Cir. 2023), *opinion withdrawn*, No. 22-30159, 2024 WL 1170026 (5th Cir. Mar. 19, 2024), *and on reh'g*, 151 F.4th 795 (5th Cir. 2025), *and rev'd*, 151 F.4th 795 (5th Cir. 2025)).

2. The Parole Board appealed the Middle District's decision to the United States Court of Appeals for the Fifth Circuit, which, in its first panel opinion, affirmed. App.032-46 (*Galbraith v. Hooper (Galbraith I)*, 85 F.4th 273, 275 (5th Cir. 2023), *opinion withdrawn*, No. 22-30159, 2024 WL 1170026 (5th Cir. Mar. 19, 2024), *and on reh'g*, 151 F.4th 795 (5th Cir. 2025)). The *Galbraith I* opinion contains three relevant parts. *First*, the panel held that the petition was not subject to section 2254's strictures because the petition challenges the *execution* of Petitioner's sentence, and such a sentence-execution challenge arises under section 2241 only. App.038-40.

Because the petition arises under section 2241, the panel held the petition was not subject to section 2244(d)(1)'s one-year limitations period. App.043. *Second*, the panel determined that Petitioner was not required to exhaust state remedies because none were available. App.040-43. This was so, the panel said, because a Louisiana state court (the panel assumed) would have dismissed any state habeas petition challenging the rescission of Petitioner's anticipated parole had such a petition been filed. *See id.*[2] *Third*, the panel held that the Board violated Petitioner's procedural due process rights by rescinding his anticipated parole for a reason not permitted by Louisiana's parole regulations. App.043-46. The State promptly filed a petition for rehearing en banc, highlighting several errors plaguing the panel opinion.

3. On March 19, 2024, the Fifth Circuit clerk's office informed the parties that the court's October 2023 opinion was withdrawn and a new opinion was forthcoming. App.031 (*Galbraith v. Hooper*, No. 22-30159, 2024 WL 1170026, at *1 (5th Cir. Mar. 19, 2024)). Thereafter, on August 20, 2025, the panel granted rehearing and reversed the Middle District's decision, over a dissent by Judge Dennis. App.001-30 (*Galbraith v. Hooper (Galbraith II)*, 151 F.4th 795 (5th Cir. 2025)). After discussing the interplay between sections 2241, 2244, and 2254, the panel first noted that section 2241(d)(1) applied to Petitioner's claim, because "[a]n outcome in [Petitioner's] favor would affect the time he will serve; indeed, it would end his confinement almost instantly." App.012. Thus, Petitioner's claim "is properly viewed under both Sections 2241 and

[2] This holding rested on La. R.S. 15:574.11(A), which states in relevant part that "[n]o prisoner or parolee shall have a right of appeal from a decision of the committee regarding release or deferment of release on parole ...." As that statutory text shows, it does not expressly address the availability of state habeas relief regarding any allegedly unlawful confinement.

2254." App.013. Next, the panel noted that section 2241(d)(1)'s one-year limitations period began to run on May 1, 2017—the date that Petitioner received the letter from the Parole Board notifying him that his parole was rescinded and "inform[ing] him of its reason for doing so." App.014. It follows that Petitioner's filing of a habeas application on March 27, 2019 fell "roughly 10 months *after* the one-year limitations period ended" and the "application is thus time-barred absent tolling." App.015 (emphasis added). The court, however, declined to address the tolling problem, and instead decided the matter on exhaustion grounds. *Id.*

Turning to exhaustion, the Fifth Circuit noted that "[a]n applicant has not exhausted his available remedies 'if he has the right under the law of the State to raise, by any available procedure, the question presented.'" App.016 (quoting 28 U.S.C. § 2254(c)). While the district court below "relied on the fact that 'Louisiana's parole statutes allow for appeal of parole board actions in only one circumstance,'" the Fifth Circuit explained that "[e]ven if that is so, exhaustion is still required if there is some other state procedure available." *Id.* The court looked to Louisiana law to hold that "[t]here are instances ... when state *habeas* does apply in a post-conviction setting in Louisiana when the applicant is not seeking to set aside his original sentence." App.018. "Louisiana Code of Criminal Procedure Article 362(2) governs these cases, and it states *habeas* 'relief shall be granted' if '[t]he original custody was lawful, but by some act, omission, or event which has since occurred, the custody has become unlawful.'" *Id.* (quoting *Sinclair v. Kennedy*, 701 So. 2d 457, 460 (La. Ct. App. 1st Cir. 1997)). Further, a Louisiana intermediate court, analyzing a similar (though

not identical) rescission-of-parole case, held that "a state habeas application 'is the proper mechanism' when 'an inmate ... claims his initially lawful custody became unlawful due to the parole board's actions in denying him release on parole.'" *Id.* (quoting *Sinclair v. Stalder*, 2003-1568 (La. App. 1 Cir. 10/17/03), 867 So. 2d 743, 744, *writ denied*, 2003-3177 (La. 1/14/05), 889 So. 2d 253). Considering that precedent, the Fifth Circuit held that Petitioner "failed to show there is no available state procedural remedy" and he "should have raised his challenge in a state *habeas* application in the appropriate state district court." App.019. In sum: "Under AEDPA, [Petitioner] was required to give state courts a chance before applying for federal habeas relief." App.020.

REASONS FOR DENYING THE PETITION

I. THE QUESTION PRESENTED DOES NOT MEET THE COURT'S CERTIORARI CRITERIA.

The Court should deny the petition because the question presented does not meet any of the Court's certiorari criteria. Two separate facts point that up: *first*, the petition does not present an issue of exceptional importance; and *second*, the petition fails to identify any split of authority warranting this Court's attention. There is thus no reason for this Court to intervene and alter the Fifth Circuit's sound decision.

First, this Court's review is unwarranted because this case is not important to anyone other than Petitioner. *Cf.* Sup. Ct. R. 10. As Petitioner himself readily admits, his "circumstances and case is [sic] totally unique and no other case has its relevant facts." Pet.32. Taking Petitioner's words at face value, there is no reason for this Court to take a case that is important only to Petitioner.

And Petitioner is right on this point: Louisiana Parole Board decisions, and the inherent exercise of discretion involved therein, affect only Louisiana prisoners—that is plain. Likewise, the availability of Louisiana's state habeas relief concerns only Louisiana prisoners. And both procedures affect only a small portion of Louisiana's prisoners: those who have committed crimes warranting a sentence with attendant parole consideration. Petitioner is therefore a member of one subset of citizens within just one State. The exhaustion question in this case is thus a classic example of a rare issue (regarding still-developing Louisiana law, no less, *see infra* Section II) that has no nationwide importance.

Second, perhaps because the Fifth Circuit's determination is so bound up in Louisiana law and related Parole Board procedures, Petitioner does not even try to suggest that the Fifth Circuit "has entered a decision in conflict with the decision of another United States court of appeals on the same important matter." Sup. Ct. R. 10. As detailed above (and explained more fully below, *infra* Section II), the Fifth Circuit's holding depended in large part upon an interpretation of Louisiana code articles and Louisiana case law. *See* App.015-20. Because that holding rests on Louisiana law, Petitioner, of course, cannot identify some split of authority outside Louisiana on that issue.

For these reasons, the question presented does not meet the Court's ordinary certiorari criteria, and the Court should deny the petition.

II. THE LOWER COURT'S DECISION IS CORRECT.

The Court also should summarily reject Petitioner's misleading argument that exhaustion of state court remedies is not required where "Louisiana's statutory law

clearly deprives a prisoner a right and cause of action against a Parole Board committees [sic] decision." Pet.21. As the Fifth Circuit demonstrated, Louisiana law does not, in fact, "clearly deprive[]" Petitioner of such a process—and Petitioner must have "give[n] state courts a chance before applying for federal *habeas* relief." App.020. Two points bear this out, demonstrating that this Court's review is unwarranted.

1. The Fifth Circuit correctly held that a state court process exists for Petitioner—and he simply refused to engage it. The starting principle here is plain: "An applicant has not exhausted his available remedies 'if he has the right under the law of the State to raise, by any available procedure, the question presented.'" App.016 (quoting 28 U.S.C. § 2254(c)). Under "the doctrine of procedural default," "federal courts generally decline to hear any federal claim that was not presented to the state courts 'consistent with [the State's] own procedural rules.'" *Shinn*, 596 U.S. at 378 (quoting *Edwards v. Carpenter*, 529 U.S. 446, 453 (2000)). "[A] habeas petitioner who has failed to meet the State's procedural requirements for presenting his federal claims has deprived the state courts of an opportunity to address those claims in the first instance." *Coleman v. Thompson*, 501 U.S. 722, 732 (1991), *holding modified by Martinez v. Ryan*, 566 U.S. 1 (2012).

As the Fifth Circuit recognized, Louisiana provides a procedure for prisoners who seek to challenge their continued confinement. That is the state habeas process. *See* App.017-19. Louisiana Code of Criminal Procedure article 362(2) provides that state habeas "relief shall be granted" if "[t]he original custody was lawful, but by some act, omission, or event which has since occurred, the custody has become unlawful."

App.018 (quoting La. C.Cr.P. art. 362(2)). That describes Petitioner's claim: He argues that his custody "has become unlawful" because the Parole Board improperly rescinded his parole. There is thus no question that the state habeas process is arguably applicable and available to petitioner—he simply refused to try it.

2. In light of the availability of the state habeas process, the Fifth Circuit correctly deemed Petitioner's claim foreclosed. Petitioner's primary argument otherwise is that, "while [state habeas] is a procedural mechanism in Louisiana for prisoners to use, it is a procedural mechanism that does not give [him] a right of action or cause of action against the Louisiana Parole Board." Pet.20. This argument, of course, turns on an interpretation of Louisiana's parole and habeas statutes. Recognizing as much, the Fifth Circuit turned to Louisiana courts' decisions to determine whether the state habeas proceeding was "available" to Petitioner. App.017-19. Finding only one Louisiana intermediate court opinion addressing a comparable scenario, the Fifth Circuit determined that "a state habeas application 'is the proper mechanism' when 'an inmate ... claims his initially lawful custody became unlawful due to the parole board's actions in denying him release on parole.'" App.018 (quoting *Sinclair*, 867 So. 2d at 744); *id.* ("That opinion is the most closely relevant authority cited to us.").

Petitioner complained below that *Sinclair*, while holding that state habeas is available to parole-eligible state prisoners, also determined that the prisoner there was not entitled to relief because he "failed to state a cause of action." *Sinclair*, 867 So. 2d at 744. This was so because "[t]he Louisiana Supreme Court has concluded

that Louisiana parole statutes do not create an expectancy of release or liberty interest" because "[t]he parole board has full discretion when passing on applications for early release." *Id.* (citing *Bosworth v. Whitley*, 627 So. 2d 629, 633 (La. 1993)).

To the extent Petitioner implies that this renders the state habeas process unavailable to him, the Fifth Circuit rightly rejected that argument. That is because of a key factual "distinction" between this case and *Sinclair*—"namely, that the inmate there was denied parole—which the court said was entirely discretionary—while [Petitioner's] parole was first granted but then rescinded before he was released." App.019. "Consequently, even if *Sinclair* expresses the manner in which *all* Louisiana courts would resolve a similar case, we do not see that reasoning to be clearly applicable *here*." *Id.* (emphases added).

To this point, the Fifth Circuit added another more-general point about the nature of "futility" in this context due to the clear unavailability of a state remedial process. *See id.* (citing *Morris v. Dretke*, 413 F.3d 484, 492 (5th Cir. 2005)). Such futility may arise "when the state's highest court ha[s] recently decided the same legal issue adversely to the *habeas* applicant." *Id.* But, of course, no such state high court decision exists here. And where, as here, there is lower state court precedent providing for a state process, a state prisoner cannot just skip to federal habeas court without first trying to press his claim within the strictures of that state process. *See, e.g.*, *Bufalino v. Reno*, 613 F.2d 568, 570 (5th Cir. 1980) ("Only if the state courts have had the first opportunity to hear the claim sought to be vindicated in a federal habeas proceeding does it make sense to speak of the exhaustion of state remedies."); *Earhart*

v. Johnson, 132 F.3d 1062, 1065–66 (5th Cir. 1998) ("[I]f the case presents an issue involving an unresolved question of fact or state law, the court may insist on complete exhaustion to ensure its ultimate review of the issue is fully informed."); *Deters*, 985 F.2d at 794; *U.S. ex rel. Bagley v. LaVallee*, 332 F.2d 890, 892 (2d Cir. 1964) ("[I]f there were some doubt as to the availability of relief in the New York courts, we still would give its courts the first chance to review their alleged errors so long as they have not authoritatively shown that no further relief is available."); *Garson v. Perlman*, 541 F. Supp. 2d 515, 519 (E.D.N.Y. 2008) ("[I]f there is doubt about the availability of a state review procedure, it should be resolved in favor of requiring exhaustion.").

Judge Dennis, dissenting from the panel's decision in *Galbraith II*, helps make the point: "[W]hether Louisiana law permits such a challenge is an unresolved and contested question. The Louisiana Supreme Court has never addressed the scope of the state district courts' *habeas* jurisdiction in this precise context, and the state's intermediate appellate courts have reached conflicting results." App.021. His proposed solution to this problem was to "either certify the question to the Louisiana Supreme Court, or, in the alternative, vacate ... and remand for consideration of the availability, adequacy, and futility of any state corrective process." *Id.* But the majority's solution was the better one: "[I]f the uncertainty concerns a matter of state procedure and not the merits of an applicant's claims, even more respect is potentially due to the requirement to exhaust." App.019-20 (citing *Berkley v. Quarterman*, 310 F. App'x 665, 671–72 (5th Cir. 2009)). Dismissal of the federal claim for failure to

exhaust, then, is the appropriate result where (a) a state high court has yet to decide the state-law procedural question underlying the claim and (b) there is lower state court precedent to justify requiring exhaustion.

As Petitioner concedes (at 32), he "could ... file a State Habeas Corpus." But he refused to do so before turning to the federal courts here. The Fifth Circuit therefore got it right in dismissing Petitioner's federal habeas petition for lack of exhaustion.

III. THE PETITION PRESENTS A POOR VEHICLE TO ADDRESS THE QUESTION PRESENTED.

The above considerations plainly demonstrate that this case is not suitable for the Court's review. More, the underlying habeas claim itself presents a poor vehicle for this Court to address Petitioner's arguments in the first instance. In particular, Petitioner's arguments regarding the lack of an adequate state court remedy are not suited for this Court because, as the Fifth Circuit all but decided below, Petitioner's federal habeas petition is time-barred.

The Fifth Circuit was correct to hold that section 2244(d)(1)'s one-year limitations period applies to Petitioner's habeas petition. As the court noted, Petitioner filed his habeas petition under section 2241, rather than section 2254. App.010. But "[t]hese 'two statutes do not represent an either/or dichotomy.'" *Id.* (quoting *Topletz v. Skinner*, 7 F.4th 284, 293 (5th Cir. 2021)). Rather, "all habeas petitions are brought under Section 2241, and Section 2254 places additional limits on a federal court's ability to grant habeas relief if the petitioner is being held in custody pursuant to the judgment of a State court." App.011 (citation modified). Because Petitioner "is in custody because of a state court judgment[,] his habeas

application must be viewed under both Sections 2241 and 2254." *Id.* Under section 2254, AEDPA's "new requirements," including section 2244's limitations, apply to all writs. *Id.*

Under section 2244(d)(1), the one-year period will "begin[] to run on one of four dates"—the latest of these for Petitioner's case is "the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence." App.013 (quoting 28 U.S.C. § 2244(d)(1)(D)). The "factual predicate" for Petitioner's claim is "the Parole Board's rescission of 'his Certificate of Parole based upon facts the Board [allegedly] knew to be false and a reason not enumerated in the [Louisiana] law that allows for rescission.'" *Id.* Rejecting Petitioner's argument that "he could not have discovered or verified the facts underlying his claim until after he received complete discovery in his Section 1983 action," *id.*, the Fifth Circuit explained that the May 1, 2017 letter notifying Petitioner of the rescission decision served as adequate notice because neither of the statutorily authorized rescission reasons—that the individual "violated the terms of work release" or "engaged in misconduct prior to [his] release," La. Admin. Code tit. 22, pt. XI, § 504(K) (eff. Jan. 2015 to Aug. 2019)—were included in that letter, App.014. "[S]o [Petitioner] would have known, upon receipt of the letter, of the argument that the rescission was not statutorily authorized" on the theory that he now presses. *Id.* Petitioner's assertions to the contrary "confus[ed] his knowledge of the factual predicate of his claim with the time permitted for gathering evidence to support that claim." App.015 (quoting *Flanagan v. Johnson*, 154 F.3d 196, 199 (5th

Cir. 1998)). Thus, the one-year period began to run on May 1, 2017, and was certainly expired by the time Petitioner filed his habeas petition on March 27, 2019.

The only way for Petitioner to avoid that clear expiration would be to qualify for tolling that permitted him to file his habeas petition out-of-time. *See id.* But Petitioner did not do so—nor could he. For the filing of a § 1983 claim is not a substitute for a properly filed habeas petition, and therefore does not toll the statute of limitations for such a habeas petition. *See, e.g.*, *Duncan v. Walker*, 533 U.S. 167, 180–81 (2001) (applications for collateral review do not toll limitation period); *Garner v. Thaler*, No. CA C-13-081, 2013 WL 1869988, at *3 (S.D. Tex. Apr. 8, 2013) ("There is no authority for the proposition that courts may add the good-faith, but mistaken, pursuit of a civil rights action to th[e] list [of tolling events], and ample authority to the contrary.") (collecting cases).

Petitioner asserts that the tolling issue is "not ripe" for this Court's review given that the Fifth Circuit opted not to resolve that piece of the analysis—but that misses the point. *See* Pet.21. Even if Petitioner had a viable excuse to avoid AEDPA's exhaustion requirement here, that relief would not do him any good because his habeas petition is dead in the water anyway. Certiorari is unwarranted.

CONCLUSION

The Court should deny the Petition.

Respectfully submitted,

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