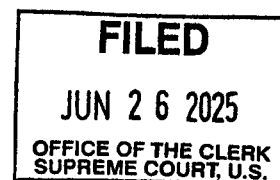


26-5060
No. _____



In The

Supreme Court of the United States

Tashon Earl Hurell-Pro Se Petitioner

Vs.

Brian Kendall-Respondent

On Petition for Writ of Certiorari to

United States District Court for the Fourth Circuit, District of South Carolina

Petition

Petition for Writ of Certiorari

Tashon Earl Hurell

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Ridgeville, SC 29472

QUESTIONS PRESENTED

Whether a federal appellate court may refuse merits review of substantial constitutional claims as untimely where the record reflects prolonged, State-caused denial of all meaningful law-library and mail access, in tension with *Bounds v. Smith*, 430 U.S. 817 (1977), and *Holland v. Florida*, 560 U.S. 631 (2010).

Whether the State's knowing use of fabricated evidence—including an affidavit explicitly contradicted by official FBI findings and unsupported forensic claims—violates the Fourth and Fourteenth Amendments even where the lower court deems the error harmless.

Whether trial counsel provided ineffective assistance under the Sixth Amendment by failing to challenge false evidence, present material exculpatory and alibi testimony, and request a Franks hearing, thereby depriving petitioner of a meaningful defense.

Whether persistent, documented State-imposed barriers preventing access to legal materials and to the courts constitute a “state-

created impediment” and “extraordinary circumstance” sufficient to require tolling or gateway review under 28 U.S.C. § 2244(d) and *Schlup v. Delo*, 513 U.S. 298 (1995).

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TABLE OF AUTHORITIES

Bounds v. Smith, 430 U.S. 817 (1977)

Franks v. Delaware, 438 U.S. 154 (1978)

Holland v. Florida, 560 U.S. 631 (2010)

Kyles v. Whitley, 514 U.S. 419 (1995)

Martinez v. Ryan, 566 U.S. 1 (2012)

Miller v. Pate, 386 U.S. 1 (1967)

Mooney v. Holohan, 294 U.S. 103 (1935)

Napue v. Illinois, 360 U.S. 264 (1959)

Schlup v. Delo, 513 U.S. 298 (1995)

Strickland v. Washington, 466 U.S. 668 (1984)

28 U.S.C. § 2244(d)

28 U.S.C. § 1254(1)

OPINIONS BELOW

The district court's order and the final ruling of the United States Court of Appeals dismissing petitioner's motion as untimely are unreported and are reproduced in the Appendix.

JURISDICTION

The final judgment of the United States Court of Appeals was entered on February 25, 2025.

Jurisdiction is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. amend. I

U.S. Const. amend. IV

U.S. Const. amend. VI

U.S. Const. amend. XIV

28 U.S.C. § 2244(d)

28 U.S.C. § 1254(1)

STATEMENT OF THE CASE

The State arrested, indicted, and convicted petitioner based on:

A warrant supported by Detective Weaver's affidavit, which is flatly contradicted by an FBI report confirming that no usable surveillance footage existed.

That FBI finding was omitted from all decision-making bodies, in violation of Franks and Napue.

Prosecution representations that blood found on a dollar bill belonged to the victim, despite the State's own DNA expert confirming that no testable DNA was identified. The State's characterization of this evidence conflicts with Miller and Mooney.

Defense counsel's failure to request a Franks hearing, cross-examine the DNA expert on the lack of testable DNA, present critical alibi witnesses, or introduce exculpatory FBI material. The testimony of alibi witnesses is documented and included in the Appendix.

Throughout the relevant period, petitioner was repeatedly denied access to the law library and the ability to send legal mail, rendering timely filing impossible. All attempts to exhaust remedies were thwarted by systemic restrictions wholly outside petitioner's control. Petitioner respectfully requests that this Court direct the

State to produce institutional access logs and records otherwise inaccessible to petitioner, documenting library access and legal mail availability.

REASONS FOR GRANTING THE PETITIONI.

Conflict in Authorities and National Importance

The courts of appeals are divided on how denial of meaningful court access—through law-library and legal-materials restrictions—interacts with AEDPA's limitation period and the "actual innocence" gateway, creating a recurring question of national importance that warrants this Court's review.

AEDPA's one-year limitation period recognizes both statutory tolling for a "state-created impediment" and equitable tolling in "extraordinary" circumstances. Yet the federal courts of appeals apply different standards when prison officials restrict access to legal materials and legal mail. In some decisions, courts have held that an inadequate or inaccessible prison law library is not a "rare and exceptional" circumstance and does not warrant equitable tolling, even where the inmate alleges lack of access to AEDPA materials. In other decisions, courts have treated prolonged or complete denial of legal materials or assistance as a basis for tolling where the prisoner demonstrates diligence and shows that the restrictions actually prevented timely filing.

These differing approaches mean that pro se inmates face fundamentally different outcomes depending on the jurisdiction. In certain circuits, systemic library and mail restrictions are effectively treated as routine and insufficient to justify tolling; in others, similar restrictions have been recognized as a sufficient impediment to toll

AEDPA's clock or excuse delay. That inconsistency sits uneasily with this Court's recognition in *Bounds v. Smith* that prisoners must have "meaningful access to the courts," and with *Holland v. Florida*'s flexible equitable-tolling standard that turns on both extraordinary circumstances and diligence.

The courts also vary in how rigorously they apply the *Schlup v. Delo* "actual innocence" gateway in the face of late filings. Some circuits construe *Schlup* narrowly and rarely permit gateway claims to excuse procedural bars; others have allowed late petitioners to pass through the gateway based on new exculpatory evidence, recantations, or undermined forensic evidence. Where newly revealed false evidence or withheld forensic information supports innocence, these differences mean that identically situated prisoners may or may not receive merits review solely because of geography.

Petitioner's case squarely presents this conflict. He alleges sustained, documented denial of law-library and mail access over which the State had exclusive control, combined with substantial new innocence evidence and serious constitutional violations.

Treating such a record as insufficient for any form of tolling or gateway review is irreconcilable with decisions that recognize similar impediments and innocence showings as bases to reach the merits. This Court's review is necessary to unify the standards governing how *Bounds*, *Holland*, *AEDPA*, and *Schlup* interact when state-created barriers prevent timely filings by pro se prisoners.

II. Fabricated Evidence Violates the Constitution

The State's case relied on materially false or misleading evidence: the warrant affidavit contradicted by the FBI's finding of no usable video, and the mischaracterized blood/DNA evidence on the dollar bill. Under *Mooney*, *Napue*, and *Miller*, the knowing use of false or misleading evidence, or the failure to correct it, violates due process. Lower courts differ in how readily they label such misconduct "harmless error" rather than viewing it as structural or presumptively prejudicial, and petitioner's case—which involves both documentary contradiction (affidavit vs. FBI report) and misrepresented forensic evidence—provides a strong vehicle to clarify that due process is violated when the State's theory hinges on evidence its own records undermine.

III. Ineffective Assistance Requires Supervisory Review

Trial counsel's omissions were not tactical; they left the jury without the FBI's exculpatory findings, without effective cross-examination of the DNA expert, and without live alibi witnesses. Under *Strickland*, these failures are objectively unreasonable and prejudicial in a case where the State's proof depended heavily on contested forensic and identification evidence. In addition, this case implicates *Martinez v. Ryan*, because post-conviction counsel was the only realistic avenue to raise trial-ineffectiveness claims, and the combination of trial and post-conviction failures presents a recurring problem for pro se prisoners whose only chance to vindicate their Sixth Amendment rights is through post-conviction review.

IV. State-Imposed Barriers and Access to Courts

Petitioner's inability to file timely stemmed from systemic, documented deprivation of law-library access and legal mail over which the State had exclusive control. Under *Bounds*, inmates must be afforded a meaningful opportunity to present their claims; under *Holland*, equitable tolling is appropriate where extraordinary circumstances beyond the prisoner's control and due diligence intersect. The lower courts' refusal to treat sustained denial of basic legal tools as either a state-created impediment or an extraordinary circumstance conflicts with the access-to-courts principles this Court has articulated.

V. Actual Innocence Exception Is Warranted

Petitioner satisfies the *Schlup* gateway standard: the combination of fabricated or misleading evidence, omitted exculpatory FBI material, and unrepresented alibi testimony means that, at a minimum, reasonable jurors would harbor reasonable doubt. Denying any merits review in the face of such a showing serves no legitimate

judicial interest and risks perpetuating a conviction built on
unreliable or incomplete evidence.

CONCLUSION

For the foregoing reasons, petitioner respectfully requests that this
Honorable Court:

Grant a writ of certiorari in this case to address the recurring
constitutional and statutory questions presented;

Alternatively, remand for an evidentiary hearing on equitable tolling,
access to courts, and ineffective assistance of counsel; and

Direct Respondent to produce institutional records regarding
law-library and legal-mail access relevant to petitioner's ability to
file.

Respectfully submitted,

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Dated: May 11, 2026