

No. _____

(Capital Case)

IN THE SUPREME COURT OF THE UNITED STATES

WILLIAM CLYDE GIBSON III,

Petitioner,

v.

RON NEAL,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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CAPITAL CASE

QUESTIONS PRESENTED

1. Whether *Shoop v. Twyford*, 596 U.S. 811 (2022), precludes developing evidence through an order entered pursuant to the All Writs Act solely to support a motion for equitable tolling and without regard to whether the evidence is admissible to support the merits of a claim for habeas relief.
2. If the first question presented is answered in the affirmative, whether it is the movant's burden under the All Writs Act to show that the evidence would be something more than relevant to whether equitable tolling is warranted.
3. Whether the collateral order doctrine applies to allow interlocutory appeals of All Writs Act transport orders whose sole purpose is to develop evidence to establish that equitable tolling is warranted.

LIST OF PARTIES

The petitioner is William Clyde Gibson III, a death-sentenced inmate housed at the Indiana State Prison.

The respondent is Ron Neal, the Warden of the Indiana State Prison.

LIST OF DIRECTLY RELATED PROCEEDINGS

Gibson v. Neal, 799 F.Supp.3d 788 (S.D. Ind. 2025) (transport order).

Gibson v. Neal, 171 F.4th 948 (7th Cir. 2026) (reversal).

Gibson v. Neal, No. 25-2779 (7th Cir. Mar. 31, 2026) (judgment).

Gibson v. Neal, No. 25-2779 (7th Cir. Apr. 16, 2026) (order denying rehearing).

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JURISDICTIONAL STATEMENT

This Court has jurisdiction to review this petition for writ of certiorari under 28 U.S.C. § 1254(1). The Seventh Circuit entered its decision sought to be reviewed and its judgment on March 31, 2026, and it denied rehearing in its April 16, 2026, order. Appendices A (opinion) & B (rehearing denial). On July 6, 2026, this Court granted Mr. Gibson’s motion to extend the time for filing his certiorari petition to September 14, 2026.

CONSTITUTIONAL AND STATUTORY PROVISIONS

28 U.S.C. § 1651(a) (“All Writs Act”) provides:

The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

STATEMENT OF THE CASE

This case stems from habeas proceedings challenging three state court judgments against Petitioner Mr. Gibson, two of which impose death sentences. Former habeas counsel intentionally failed to timely or otherwise file a habeas petition in federal court. In the District Court, Mr. Gibson is seeking equitable tolling of the AEDPA limitation period on several grounds, including that, during the limitation period, his untreated mental health challenges left him unable to manage his affairs, understand his legal rights, and act on them. Appendix E at 11-17, 32-35 (Response to Motion to Dismiss).

To help further develop and support his mental health ground for equitable tolling only, Mr. Gibson moved pursuant to the All Writs Act for a transport order to obtain brain imaging. He supported his motion with declarations from two experts, viz., a neuropsychologist and a neuroscientist. Appendices D at 7 (motion for transport order & accompanying neuropsychologist’s declaration) & E at 11 (reply to state’s objection to transport order motion &

accompanying neuroscientist’s declaration). In his declaration, neuropsychologist Dr. Dale Watson opined that the results of the testing he administered to Mr. Gibson at the prison show that “Mr. Gibson likely has white matter integrity problems” that “point to probable faulty transmission of information across white matter tracts in Mr. Gibson’s brain” and that “is associated with depression and cognitive decline.” Appendix D at 7 (Dr. Watson declaration).

Dr. Watson recommended the brain scans for which the district court granted the transport order, to “help further determine the nature and extent of Mr. Gibson’s deficits and the effects they have on his cognitive abilities and emotional state.” *Id.* at 10. Cognitive abilities encompass skills like reasoning, memory, and attention. Determining the nature and extent of Mr. Gibson’s probable white matter dysfunction could help show that it alone or in combination with other circumstances rendered him so impaired that he was without sufficient ability to reason, recall, and focus to manage his affairs, understand his legal rights, and act on them. *See* Appendices F at 25-28 (Response to Motion to Dismiss) & E at 3 (motion for transport order). Finding that “Mr. Gibson’s request for a transport order seeks to develop evidence that could be admitted to support equitable tolling of the statute of limitations,” the District Court granted the motion. Appendix C at 8 (order). Respondent appealed that order.

In reversing the District Court, the Seventh Circuit expressed uncertainty as to whether the holding of *Shoop v. Twyford*, 596 U.S. 811 (2022), is properly read broadly or, instead, narrowly. Reading *Twyford* broadly to “require that *any* evidence sought to be developed through an order entered pursuant to the All Writs Act ‘be admissible in connection with a particular claim for relief’ under § 2254,” the Seventh Circuit held that the district court’s order was an abuse of discretion because Mr. Gibson did not assert that “the brain scans would support

a particular claim for federal habeas relief[.]” *Gibson v. Neal*, 171 F.4th 948, 955-56 (7th Cir. 2026) (italics in original).

Alternatively, reading *Twyford* narrowly to allow the development of new evidence solely to support an equitable tolling request and without regard to whether the evidence would be admissible to support a claim for habeas relief, the Seventh Circuit held that the district court’s order was an abuse of discretion because Mr. Gibson supported his request for a transport order with only a showing that the evidence would be relevant to the court’s equitable tolling determination rather than establishing a “more particular and specific linkage to [his] pursuit of equitable tolling.” *Gibson*, 171 F.4th at 956. The Seventh Circuit also rejected Mr. Gibson’s argument that it was without jurisdiction over the appeal, finding jurisdiction because its “factual and procedural posture is akin to the one before the Court in *Twyford*.” *Id.* at 953.

REASONS TO GRANT WRIT

I.

The Courts of Appeal Are Split On An Important Federal Question: When Deciding Whether Equitable Tolling Is Warranted, May Evidence Beyond The State Court Record Be Considered Without Regard To Whether It Is Admissible To Support A Claim For Habeas Relief?

The District Court granted Mr. Gibson’s motion, pursuant to the All Writs Act, for an order to transport him to a hospital to gather evidence in support of his request for equitable tolling. Absent equitable tolling (or a showing of actual innocence, *McQuiggin v. Perkins*, 569 U.S. 383, 392-94 (2013)), the District Court would be unable to reach the merits of his claims for habeas relief. At no point did Mr. Gibson argue and at no point did the District Court order that the evidence to be developed could be relied to support the merits of any claim for habeas relief. Nevertheless, the Seventh Circuit held that on a broad reading of *Shoop v. Twyford*, the District Court order was an abuse of discretion. Every other Circuit Court of Appeal allows, for purposes

of determining whether equitable tolling is warranted, the development and consideration of evidence that came into existence after the completion of state court proceedings and, therefore, providing no support for any claim for habeas relief.¹ This Court should review this case to resolve the split and because, given that at least most evidence supporting equitable tolling is limited to facts or time periods that do not relate to the merits of any claim for habeas relief, the

¹ See, e.g., *Holmes v. Spencer*, 685 F.3d 51, 67 (1st Cir. 2012) (remanding for District Court “to consider whether there are grounds for equitable tolling” and “emphasiz[ing] that it is [Petitioner’s] burden to put forth evidence to show that equitable tolling is justified” and leaving it to District Court’s discretion to determine how best to further develop the record); *Martinez v. Superintendent of E. Corr. Facility*, 806 F.3d 27, 33-34 (2nd Cir. 2015) (holding that “letters . . . sent after the habeas deadline had passed . . . [were] relevant to the [equitable] tolling analysis”); *Wallace v. Mahanoy*, 2 F.4th 133, 150 (3d Cir. 2021) (“We also view the fact that no expert testimony would reasonably assist Wallace in overcoming his lack of diligence in pursuing habeas relief between 2013 and 2015 as reinforcing our determination that an evidentiary hearing on his equitable tolling claim is unnecessary.”); *Justus v. Clarke*, 78 F.4th 97, 117 (4th Cir. 2023) (remanding “with instructions to conduct an evidentiary hearing on whether Justus’s mental condition during the relevant [AEDPA] period constitutes an ‘extraordinary circumstances’ that . . . entitles him to equitable tolling of the statute of limitations governing his habeas petition”); *Cooper v. Fisher*, 676 F. App’x 355, 358 (5th Cir. Feb. 15, 2017) (remands “for an evidentiary hearing and findings of fact relevant to whether equitable tolling is warranted, including former habeas counsel’s “misrepresentations to [petitioner] regarding the status of his habeas proceedings); *Nassiri v. Mackie*, 967 F.3d 544, 548 (6th Cir. 2020) (in remanding, notes that “[w]hen faced with lingering questions of fact in confronting an equitable tolling argument, courts frequently remand for further factual development and legal argument.”, but see *Mammone v. Jenkins*, 49 F.4th 1026, 1050 (6th Cir. 2022) (declining to decide whether *Twyfard* and *Shinn v. Martinez Ramirez*, 596 U.S. 366 (2022), preclude the consideration of extra-record evidence to resolve whether a procedural default should be excused, skirting the question by noting that the evidence would not excuse the default even *if* it could be considered)); *Christeson v. Griffith*, 860 F.3d 585, 587-88 (8th Cir. 2017) (noting that the case is on return from remand after an “evidentiary hearing on the issue of abandonment” by former habeas counsel as ground for equitable tolling); *Chavez v. Gamboa*, 2025 WL 1500509, *1 (9th Cir. May 27, 2025) (because “the record is inadequate,” remands and directs district court to “‘order any discovery, expansion of the record, or evidentiary hearing’ necessary to determine whether [petitioner] is entitled to equitable tolling based on mental impairment”); *Fleming v. Evans*, 481 F.3d 1249, 1257 (10th Cir. 2007) (evidentiary hearing warranted to explore whether alleged misrepresentations by state post-conviction counsel constituted an extraordinary circumstance for equitable tolling purposes); *Brown v. Sec’y, Dep’t of Corr.*, 750 F. App’x 915, 936-37 (11th Cir. 2018) (remanding for an evidentiary hearing on whether attorney misconduct supported equitably tolling the AEDPA limitation period).

broad reading will severely limit evidence critical to a fair determination whether equitable tolling is warranted.

In *Shoop v. Twyford*, the habeas petitioner had moved in District Court, pursuant to 28 U.S.C. § 1651(a) (“All Writs Act”), for an order to transport him to a hospital for medical testing that “could reveal evidence helpful in his effort to obtain habeas relief.” 596 U.S. at 814. Specifically, Mr. Twyford had “argued it is ‘plausible that the testing to be administered is likely to reveal evidence in support of’ his claims of ineffective assistance of counsel and expert witness, lack of competency to stand trial, and the involuntariness of his confession.” *Id.* at 822 – 23 (citation omitted). He also “asserted in passing that the desired evidence could ‘plausibly’ bear on the question whether to excuse procedural default.” *Id.* at 823 (citation omitted). The District Court granted Mr. Twyford’s request pursuant to the All Writs Act, 28 U.S.C. § 1651(a), directing the State to transport him to a hospital for brain imaging. The question before this Court was whether that order was “‘necessary or appropriate in aid of’ the federal court’s resolution of the prisoner’s case.” *Twyford*, 596 U.S. at 814 (quoting the All Writs Act).

Preliminarily, the Court noted that “in deciding whether to grant an evidentiary hearing or ‘otherwise consider new evidence’ [federal courts] must first take into account” § 2254(e)(2)’s (AEDPA’s) restrictions. *Twyford*, 596 U.S. at 820 (quoting § 2254(e)(2)). That statute provides that where a petitioner has “failed to develop the factual basis of a claim in State court proceedings,” a federal court may consider new evidence only where “the claim [relies] on a ‘new’ and ‘previously unavailable’ ‘rule of constitutional law’ made retroactively applicable by this court, or . . . ‘a factual predicate that could not have been previously discovered through the exercise of due diligence.’” § 2254(e)(2)(A).” *Id.* at 819. Applying § 2254(e)(2), the Court held that the transport order should not have been granted for two reasons.

First, respecting the claims for habeas relief that he was seeking to support with the new evidence, Twyford had not explained how the brain imaging secured through the transport order could be admissible to support those claims which the state courts had adjudicated. As for those claims for relief that the state courts had not considered, “Twyford never argued that he could clear the bar in § 2254(e)(2) for expanding the state court record, or that the bar was somehow inapplicable.” *Twyford*, 596 U.S. at 823.

Second, respecting a potential excuse for procedural default which he was seeking to support with the new evidence, Twyford had not specified the particular defaulted claims on which the evidence might bear and, “in any event, this Court has already held that, if §2254(e)(2) applies and the prisoner cannot meet the statute’s standards for admitting new merits evidence, it serves no purpose to develop such evidence just to assess cause and prejudice.” *Id.* No purpose is served because the evidence would not implicate any merits claim. By contrast, admitting evidence here in support of equitable tolling implicates the merits of *all* the claims for relief because without equitable tolling the petition will be dismissed as untimely (absent a showing of actual innocence of any of the judgments from which relief is sought, *see McQuiggin v. Perkins*, 569 U.S. 383, 392-94 (2013)).

Mr. Gibson sought a transport order to gather evidence as support for neither a claim for habeas relief nor a basis for excusing a procedural default. Instead, he sought and was granted a transport order exclusively to gather evidence that would further demonstrate that his mental health challenges supported his request for equitable tolling. *See supra* at 1. Mr. Gibson’s motion is entirely consistent with all existing precedent regarding a habeas petitioner’s burden to support a request for equitable tolling. *See Holland v. Florida*, 560 U.S. 631, 654 (2010) (remanding for Court of Appeals to determine “whether further proceedings, including an

evidentiary hearing, might indicate that respondent should prevail” on request for equitable tolling). Nevertheless, the Seventh Circuit applied *Twyford* to reverse the District Court’s transport order. In ruling that *Twyford* is amenable to either a broad or narrow reading, the Seventh Circuit decision reflects that court’s uncertainty as to *Twyford*’s precise holding. *Gibson*, 171 F.4th at 955.

The Seventh Circuit’s broad reading of *Twyford* conflicts with every other Circuit Court of Appeals allowing, for resolving whether equitable tolling is warranted, the development and consideration of extra-record evidence that could not support a claim for habeas relief. *See supra* at 4 n.1. That no Circuit had imposed the merits-admissibility requirement before *Twyford* is consistent with the test for when equitable tolling is warranted. As this Court explained in *Holland*, it had earlier held that “a petitioner is entitled to equitable tolling only if he shows (1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstances stood in his way and prevented timely filing.” 560 U.S. at 649 (cleaned up).

This test contemplates considering evidence that did not exist before the limitation period started to run and, therefore, could not support a claim for relief. It is also consistent with this Court’s disposing *Holland* by remanding for an evidentiary hearing on whether equitable tolling was warranted --specifically contemplating the lower court’s considering new evidence in deciding the question without any mention of whether that new evidence would be admissible for deciding the merits of a claim for relief. *Id.* at 654 (“[W]e leave it to the Court of Appeals to determine whether the facts in this record entitle Holland to equitable tolling, or whether further proceedings, *including an evidentiary hearing*, might indicate that respondent should prevail.”) (emphasis added).

Nor is the lack of the merits-admissibility requirement surprising after *Twyford*. For *Twyford* merely applies settled law that “in deciding whether to grant an evidentiary hearing or ‘otherwise consider new evidence’ under § 2254(e)(2), [federal courts] must first take into account [that statute’s] restrictions.” *Twyford*, 596 U.S. at 822 (quoting *Shinn v. Martinez Ramirez*, 596 U.S. 366, 389 (2022), and citing to *Schriro v. Landrigan*, 550 U.S. 465, 474 (2007)). The Court applied this precedent to hold that Mr. Twyford was not entitled to be transported for medical testing because § 2254(e)(2) precluded consideration of that evidence for the very purposes for which it was sought, viz., to decide the merits of a claim for relief or to excuse a procedural default *and* support the defaulted claim with the new evidence. *Twyford*, 596 U.S. at 822.

Twyford and the precedent on which it relies may seem at tension with the Courts of Appeals’ decisions allowing evidentiary development for equitable tolling regardless of merits-consideration admissibility, *see supra* at 4 n. 1, but that apparent tension disappears in light of the different purposes served by the evidentiary development. Whereas the new evidence was sought to support merits claims in *Twyford*, in the Courts of Appeals decisions the new evidence was sought to support equitable tolling only. This distinction dissolves the apparent tension because § 2254(e)(2), in which *Twyford* is grounded, constrains the consideration of new evidence for deciding the merits of a claim for habeas relief rather than for deciding whether equitable tolling is warranted.

While Mr. Twyford did not advance any dispute the resolution of which could have properly been grounded in the new evidence, whether equitable tolling is warranted can be fairly resolved only by considering new evidence. The test for whether equitable tolling is warranted contemplates considering evidence explaining why the habeas petition was not timely filed,

which evidence typically comes into existence only after state court proceedings are complete, so are not part of the state court record. *See Holland, supra* at 7. This contrasts sharply with evidence supporting claims for relief. There, “little can be said for holding a habeas petitioner to one standard for failing to bring a claim in state court and excusing the petition under another, lower standard for failing to develop the claim in the same forum.” *Keeney v. Tamayo-Reyes*, 504 U.S. 1, 10 (1992).

The Court should review this case to resolve the split described above. Additionally, it should review this case because the split, left unresolved, will lead to further confusion over other, well-settled, areas of habeas litigation. For example, left unresolved, the split would allow lower courts to rely on the Seventh Circuit’s expansive reading of *Twyford* to find that merits-consideration admissibility is a prerequisite to developing and considering evidence to resolve whether actual innocence excepts a petition from the AEDPA limitations period. This further confusion will almost certainly occur because the question in the tolling and actual innocence contexts is identical: as a matter of equity, should a court reach the merits of a late-filed petition’s claims for relief? *Holland*, 560 U.S. at 645 (“AEDPA’s statutory limitations period may be tolled for equitable reasons.”); *McQuiggin*, 569 U.S. at 392-94 (relying on *Holland*, holds that actual innocence may serve as an equitable exception to the AEDPA’s limitation period). There is no principled reason why if merits-consideration admissibility is a prerequisite to considering new evidence in resolving an equitable tolling dispute that it would not be a prerequisite to considering new evidence in resolving whether actual innocence excuses a petition from the limitation period’s applicability.

The Court should grant certiorari review to resolve the split between the Seventh Circuit and the remaining Circuit Courts of Appeal and to prevent further disagreement between the Circuits on the above-described important federal questions.

II.

The Courts Of Appeal Are Split On An Important Federal Question: Whether, For A Court To Consider New Evidence In Support Of Equitable Tolling, The Petitioner Must Show That It Is Something More Than Relevant To The Question Of Equitable Tolling?

The Seventh Circuit reversed the District Court on an alternative “narrow” reading of *Twyford* allowing the development of new evidence solely to support an equitable tolling request but only where it satisfies a heightened relevance test found in neither *Twyford* nor any other Court of Appeals decision. *Gibson*, 171 F.4th at 956. The Seventh Circuit acknowledged that Mr. Gibson “contended that, during the period surrounding the deadline for his § 2254 petition, ‘his untreated mental health conditions left him unable to manage his legal affairs,’ and that Mr. Gibson’s expert neuropsychologist opined that the brain scan testing “‘would help further determine the nature and extent’ of Gibson’s deficits and [their] effects . . . on his ‘cognitive abilities and emotional state.’” *Id.* at 952, 956. Nevertheless, under the Court’s narrow reading of *Twyford*, “the All Writs Act requires [a] more particular and specific linkage to Gibson’s pursuit of equitable tolling through, for example, a theory of abandonment.” *Id.* at 956.

In *Twyford*, the Court did not address what minimal showing is required to obtain an All Writs Act transport order where § 2254(e)(2) does not apply. If this Court answers the first question presented in the affirmative—i.e., if it determines that new evidence may be considered in determining whether equitable tolling is warranted without regard to its admissibility for deciding the merits of claims for relief—then certiorari review should be granted to answer the

important federal question whether something beyond relevance must be shown before allowing evidentiary development for equitable tolling purposes.

More generally, what showing a petitioner must make to allow a habeas court to consider evidence beyond the state court record when § 2254(e)(2) does not apply is an important federal question. The burden that the Seventh Circuit has imposed on habeas petitioners is not required or even suggested by *Twyford*; no other Circuit requires it, *see supra* at 4, n.1; and it contradicts this Court's long-held rule that where § 2254(e)(2) does not apply, district courts may consider new evidence. *Williams v. Taylor*, 529 U.S. 420 (2000).

The Court should grant certiorari review to resolve the split between the Seventh Circuit and the remaining Circuit Courts of Appeals and to clarify whether the sought evidence must bear some heightened relevance to the question of equitable tolling to warrant an All Writs Act transport order.

III.

Whether The Collateral Order Doctrine Applies To Allow Interlocutory Appeals Of All Writs Act Transport Orders Whose Sole Purpose Is To Develop Evidence To Establish That Equitable Tolling Is Warranted Is An Important Federal Question.

In *Twyford*, the Court held that the Court of Appeals “had jurisdiction to review the District Court’s order [because] transportation orders issued under the All Writs Act (1) conclusively require transportation, (2) resolve an important question of state sovereignty conceptually distinct from the merits of the prisoner’s claims, . . . and (3) are entirely unreviewable by the time the case has gone to final judgment.” 596 U.S. at 817 n.1. The Court noted that the important question of state sovereignty at issue was whether the “public safety risks and burdens on the State” presented by transporting a “convicted felon outside the prison’s walls” was conceptually distinct from the merits of the prisoner’s claims. *Id.* While that

conceptual separation existed in *Twyford*—and, there, the respondent did not argue otherwise—here the risks and burdens question is not conceptually distinct from the merits of Mr. Gibson’s equitable tolling motion. Instead, Mr. Gibson sought a transport order to gather evidence to support his request for equitable tolling, and that request is based on a convergence of factors, including that his mental health severely impair his ability to focus on, create, and execute a plan. Those impairments are intricately intertwined with whether the risks and burdens should preclude a transport order because they reduce any risk and burden. Questions of appellate jurisdiction are important federal questions. Whether the Court should modify its facially sweeping language in *Twyford* to acknowledge transport orders granted under the All Writs Act do not necessarily meet the second requirement for an appealable interlocutory order is an important federal question.

CONCLUSION

For these reasons, this court should grant certiorari and reverse the Seventh Circuit Court of Appeals’ decision.

Dated: September 12, 2026

Respectfully submitted,

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