

APPENDIX A

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

171 F.4th 948

United States Court of Appeals, Seventh Circuit.

William Clyde GIBSON III, Petitioner-Appellee,

v.

Ron NEAL, Respondent-Appellant.

No. 25-2779

|

Argued February 12, 2026

|

Decided March 31, 2026

Synopsis

Background: State death-row inmate filed federal habeas petition challenging his Indiana convictions for two murders, and prison warden filed motion to dismiss as untimely. The United States District Court for the Southern District of Indiana, Jane Magnus-Stinson, J., 799 F.Supp.3d 788, granted inmate's motion for evidentiary hearing on equitable tolling, his motion for discovery, and his motion under All Writs Act to be transported to hospital for mental health testing pertinent to equitable tolling inquiry. Warden appealed from transportation order, invoking collateral order doctrine.

Holdings: The Court of Appeals, Scudder, Circuit Judge, held that:

nonfinal transportation order was immediately appealable under collateral order doctrine;

district court acted within its discretion in ordering evidentiary hearing on equitable tolling; but

transportation order was not warranted, in absence of showing of nexus between evidence sought to be developed from two brain scans and request for equitable tolling.

Reversed and remanded.

Procedural Posture(s): Appellate Review; Post-Conviction Review.

Appeal from the United States District Court for the Southern District of Indiana, Indianapolis Division. No. 1:23-cv-00330-JMS-MG — **Jane Magnus-Stinson, Judge**

Attorneys and Law Firms

Oliver W. Loewy, Attorney, Oliver W. Loewy, Esq., Portland, OR, Samuel J.B. Angell, Attorney, Office of the Federal Community Defender, Eastern District of Pennsylvania - Capital Habeas Unit, Philadelphia, PA, Edward J. Rymsza, Attorney, Miele & Rymsza, P.C., Williamsport, PA, for Petitioner-Appellee.

Tyler Banks, Courtney Leanne Staton, Attorneys, Office of the Attorney General, Indianapolis, IN, for Respondent-Appellant.

Before Scudder, Lee, and Pryor, Circuit Judges.

Opinion

Scudder, Circuit Judge.

***950** William Clyde Gibson III received two death sentences for two separate murders he committed in Indiana. Unsuccessful in challenging those convictions and sentences in Indiana courts on direct appeal and in post-conviction proceedings, Gibson sought relief in federal court under 28 U.S.C. § 2254. But the petition came two years after the filing deadline, prompting the State to move to dismiss.

This appeal comes amidst ongoing proceedings in the district court to determine whether Gibson can show entitlement to equitable tolling to excuse his untimely § 2254 petition. The district court ordered an evidentiary hearing on the question and, in connection with doing so, granted Gibson's request under the All Writs Act to be transported to an Indianapolis hospital for certain mental health testing he sees as pertinent to the equitable tolling inquiry. Believing the transportation order reflected an abuse of discretion, the State ***951** invoked the collateral order doctrine and sought our review.

Confident in our jurisdiction, we see the transportation order as substantially, if not irreconcilably, in tension with the Supreme Court's decision in *Shoop v. Twyford*, 596 U.S. 811, 142 S.Ct. 2037, 213 L.Ed.2d 318 (2022). And, even if we are mistaken on that point, Gibson fell short of establishing the required nexus of the requested mental health testing to his pursuit of equitable tolling. So we reverse.

I

A

In 2013 an Indiana jury found Gibson guilty of the murder of Christine Whitis and recommended a death sentence. The trial court imposed that sentence and the Indiana Supreme Court affirmed. About eight months later, in a separate proceeding, Gibson pleaded guilty to the murder of Stephanie Kirk, and the trial court again sentenced him to death. The Indiana Supreme Court again affirmed, and in both cases the United States Supreme Court denied review.

Gibson pursued relief in an Indiana post-conviction court, which that court denied. Then the Indiana Supreme Court, in a single opinion, denied relief from the capital sentences, rejecting Gibson's contentions that his trial counsel provided ineffective assistance in various ways. The Indiana Supreme Court denied rehearing on February 3, 2020.

In addition to his two capital convictions, Gibson pursued relief for a third murder conviction from 2014. He had pleaded guilty in that case, and an Indiana court sentenced him to 65 years' imprisonment. Before us the parties understandably and primarily devote their attention to Gibson's capital cases, which we too use to focus and frame our review of the challenged transportation order.

For Gibson's capital sentences, the one-year deadline for pursuing federal habeas relief, which tolled during his direct appeals and pursuit of state post-conviction relief, began to run when the Indiana Supreme Court declined to rehear Gibson's post-conviction challenge. See  28 U.S.C. § 2244(d). So Gibson had until February 3, 2021 to file a  § 2254 petition in federal court.

Prior to the conclusion of Gibson's state post-conviction matters, his attorney contacted Kenneth Murray to ask if he would represent Gibson in the federal habeas corpus proceedings. Murray agreed, leading the district court to appoint him and his co-counsel, Michael Benza, to represent Gibson on May 11, 2020 and June 8, 2020, respectively—when nearly eight months remained to file a  § 2254 petition.

Murray and Benza's representation of Gibson began during the COVID-19 pandemic and brought with it challenges. They were unable, for the most part, to visit Gibson in prison, but managed to communicate with him multiple times by phone and electronic messaging.

On January 21, 2021, less than two weeks prior to the statutory deadline, Murray and Benza filed what they styled as a preemptive motion for equitable tolling. The request focused not only on the communication challenges presented by the COVID-19 pandemic, but also on Gibson's mental health, which they believed warranted further investigation. The motion argued that Murray and Benza needed more time for a psychiatric evaluation, a review of Gibson's medical records, and interviews of various unidentified witnesses. The motion requested a one-year extension of the  § 2254 filing deadline, from February 3, 2021 to February 3, 2022.

***952** The district court declined to preemptively toll the limitations period. The motion was a procedural oddity, as it sought a one-year extension of time for a deadline that had not yet expired. So the district court denied it as premature, and the deadline remained February 3, 2021.

That deadline came and went without any  § 2254 filing. The case went mostly dormant for about eighteen months, with the next relevant event coming in August 2022, when Murray sought to withdraw as counsel for health reasons. Benza withdrew two months later.

On August 9, 2022, the district court appointed Oliver Loewy to represent Gibson in the federal habeas proceedings. Six months later, on February 23, 2023, Loewy filed a  § 2254 application on Gibson's behalf. Indiana, through Warden Ron Neal, responded by moving to dismiss the application as untimely, observing that the filing came two years too late. Gibson replied that he should be entitled to equitable tolling and moved for discovery and an evidentiary hearing to support this request. He pointed to the challenges wrought by the pandemic, allegations of misconduct and abandonment by his prior federal habeas counsel (Murray and Benza), and—as most relevant here—his mental health limitations.

B

Seeking to develop support for equitable tolling at a possible evidentiary hearing, Gibson also invoked the All Writs Act,

28 U.S.C. § 1651(a), and asked the district court for an order directing his transportation to an Indianapolis hospital for mental health testing. He sought two types of brain scans, “an MRI with Diffusion Tensor Imaging scan and a Positron Emission Tomography scan.”

Gibson explained the relevance of the brain scans without much elaboration. He 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.” He acknowledged and sought to distinguish the Supreme Court’s recent decision in *Shoop v. Twyford*, suggesting that the evidence he sought from the brain scans would be admissible in the forthcoming evidentiary hearing on the issue of equitable tolling. See 596 U.S. 811, 823, 142 S.Ct. 2037, 213 L.Ed.2d 318 (2022).

Gibson reinforced his request for a transportation order with declarations from mental health professionals. Dr. Dale Watson, a neuropsychologist who had visited Gibson in prison in February 2025 and conducted various psychological tests, represented that “Gibson likely has white matter integrity problems,” which result in deficient information processing and likewise are “associated with depression and cognitive decline.” Dr. Watson recommended additional testing, to include the requested brain scans which he stated “would help further determine the nature and extent of Mr. Gibson’s deficits and the effects they have on his cognitive abilities and emotional state.”

A second declaration from Dr. R. Andrew Chambers, a professor of psychiatry, explained (based on a review of medical records, a 2017 psychiatric assessment, and a 2025 psychiatric interview) that Gibson suffers “today” from “bipolar disorder, addictive disorders, and a history of significant traumatic brain injury (TBI).” Those conditions result in his “decision-making and emotional stability” being “significantly impaired,” with the TBI itself “significantly amplif[y]ing those impairments.” Dr. Chambers added that Indiana prison officials stopped providing Gibson certain (and perhaps all) psychiatric medication for all or part of 2018 to 2023—a decision *953 that “significantly undermined [Gibson’s] ability to manage his affairs, recognize and care [whether he was executed], about his legal rights, and act upon them.”

Gibson also submitted a declaration from Dr. Jeffrey Lewine, a professor of translational neuroscience. Dr. Lewine stated

that Gibson’s history of mental illness likely meant that he suffered from a “brain injury, including the disruption of white matter integrity.” The requested brain scan testing, Dr. Lewine continued, “often reveals the likely etiology of the brain abnormalities and their associated timeline.”

C

The district court granted Gibson’s requests for an evidentiary hearing and discovery. The requested discovery and ensuing hearing, the court reasoned, would flesh out facts relating to the impact of the pandemic, whether the conduct of prior counsel amounted to abandonment, and whether Gibson’s untreated mental health limitations contributed to the untimely § 2254 filing.

As for the transportation order, the district court determined that the requested brain scans were relevant and warranted, as they would allow Gibson “to develop evidence that could be admitted to support equitable tolling of the statute of limitations.” Without further elaboration, the court granted the requested transportation order under the All Writs Act.

The State then appealed the transportation order.

II

We begin with Gibson’s contention that we lack appellate jurisdiction. By his account, the transportation order is not a “final decision[] of the district court[],” leaving us without authority to hear Indiana’s appeal. See 28 U.S.C. § 1291.

We disagree. In *Twyford* the Supreme Court determined that transportation orders issued under the All Writs Act are immediately appealable under the collateral order doctrine. See 596 U.S. at 817 n.1, 142 S.Ct. 2037. Such orders, the Court explained, “(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.” *Id.* (cleaned up).

So, too, here, as the factual and procedural posture is akin to the one before the Court in *Twyford*. In short, our

jurisdiction is secure under the narrow confines of the collateral order doctrine. See *Mohawk Indus., Inc. v. Carpenter*, 558 U.S. 100, 113, 130 S.Ct. 599, 175 L.Ed.2d 458 (2009) (“[W]e reiterate that the class of collaterally appealable orders must remain ‘narrow and selective in its membership.’ ” (quoting *Will v. Hallock*, 546 U.S. 345, 350, 126 S.Ct. 952, 163 L.Ed.2d 836 (2006))); see also *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 545–47, 69 S.Ct. 1221, 93 L.Ed. 1528 (1949).

III

A

Congress imposed a one-year timeline for applying for federal habeas corpus relief under the Antiterrorism and Effective Death Penalty Act of 1996. See 28 U.S.C. § 2244(d) (1). But the timeline is not jurisdictional, see *Day v. McDonough*, 547 U.S. 198, 205, 126 S.Ct. 1675, 164 L.Ed.2d 376 (2006), and thus “is subject to equitable tolling in appropriate cases.” *Holland v. Florida*, 560 U.S. 631, 645, 130 S.Ct. 2549, 177 L.Ed.2d 130 (2010). Equitable tolling allows for untimely, delayed filings *954 in some circumstances. See *id.* at 649, 130 S.Ct. 2549; see also 4 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1056 (4th ed. 2025) (explaining that “the doctrine of equitable tolling ... halts the running of the limitations period” when certain conditions are met).

Gibson may only receive the benefit of equitable tolling upon showing “both that extraordinary circumstances prevented him from timely filing and that he has been diligently pursuing his rights.” *Conroy v. Thompson*, 929 F.3d 818, 820 (7th Cir. 2019) (citing *Holland*, 560 U.S. at 649, 130 S.Ct. 2549). The Supreme Court has recognized that professional abandonment by an attorney justifies equitable tolling. See *Holland*, 560 U.S. at 651, 130 S.Ct. 2549 (“[P]rofessional misconduct” may “amount to egregious behavior and create an extraordinary circumstance that warrants equitable tolling.”). Abandonment occurs when “an attorney no longer acts, or fails to act, as the client’s representative,” effectively leaving the represented party to fend for himself. *Maples v. Thomas*, 565 U.S. 266, 281,

132 S.Ct. 912, 181 L.Ed.2d 807 (2012); see also *id.* at 283, 132 S.Ct. 912 (reasoning, in the context of excusing a procedural default, that “a client cannot be charged with the acts or omissions of an attorney who has abandoned him”); *Schmid v. McCauley*, 825 F.3d 348, 350 (7th Cir. 2016) (citing *Maples* and acknowledging that “[a]bandonment by counsel is one potentially extenuating circumstance” warranting equitable tolling).

While a petitioner’s incompetency alone does not justify an indefinite stay of habeas proceedings, see *Ryan v. Gonzales*, 568 U.S. 57, 76–77, 133 S.Ct. 696, 184 L.Ed.2d 528 (2013), we have concluded that a proper assessment of abandonment may warrant consideration of the mental health of the petitioner at the relevant times of the representation. See *Schmid*, 825 F.3d at 350 (“[A] prisoner’s mental disability in conjunction with abandonment by counsel may justify ... toll[ing] the period of limitations.”); see also Brian R. Means, *Introduction to Habeas Corpus: A Primer on Federal Collateral Review* 297 (2022) (“Although the Supreme Court has not directly spoken to [using mental illness as a] basis for equitable relief, the legal theory has received considerable attention by lower courts.”).

Further, a district court may hold an evidentiary hearing to allow the parties to elicit facts to aid its determination on whether abandonment or other factors weigh in favor of granting equitable tolling. See *Lairy v. United States*, 142 F.4th 907, 917 (7th Cir. 2025) (“A petitioner’s burden for receiving an evidentiary hearing is therefore ‘relatively light.’ ” (quoting *Torres-Chavez v. United States*, 828 F.3d 582, 586 (7th Cir. 2016))).

In ordering an evidentiary hearing here, the district court acted well within its discretion. The remaining question is precise and narrow: whether the district court abused its discretion in granting Gibson’s request for a transportation order under the All Writs Act.

B

Answering the question requires returning to *Shoop v. Twyford*. Raymond Twyford received a death sentence for a murder he committed in Ohio. See 596 U.S. at 814–15, 142 S.Ct. 2037. In time he pursued federal habeas relief under §

2254 and, like Gibson, sought an order under the All Writs Act for transportation “to a hospital for medical testing” and brain scans that “could reveal evidence helpful in his effort to obtain habeas corpus relief.” *Id.* at 814, 142 S.Ct. 2037. The district court granted Twyford’s request and the *955 Sixth Circuit affirmed. See *id.* at 816, 142 S.Ct. 2037. But the Supreme Court reversed. See *id.* at 824, 142 S.Ct. 2037.

The Court determined that “[a] transportation order that allows a prisoner to search for new evidence is not [in the language of the All Writs Act] ‘necessary or appropriate in aid of’ a federal court’s adjudication of a habeas corpus action, 28 U.S.C. § 1651(a), when the prisoner has not shown that the desired evidence would be admissible in connection with a particular claim for relief.” *Id.* Even more, the Court focused on the relationship between the evidence sought to be developed through the transportation order and the limitations Congress imposed within the federal habeas statutory scheme, including the restrictions on evidentiary hearings in federal court. See *id.* at 819–20, 142 S.Ct. 2037 (first citing 28 U.S.C. § 2254(e)(2)(A) & (B); and then citing *Shinn v. Martinez Ramirez*, 596 U.S. 366, 389–90, 142 S.Ct. 1718, 212 L.Ed.2d 713 (2022)). In particular, where the habeas petitioner failed to develop the factual basis of a claim in state court, a district court “shall not hold an evidentiary hearing on the claim unless” it relies on either “a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court” or “a factual predicate that could not have been previously discovered through the exercise of due diligence.” 28 U.S.C. § 2254(e)(2)(A).

Even then, the Court further emphasized, the petitioner must show that “the desired evidence would demonstrate ‘by clear and convincing evidence’ that ‘no reasonable factfinder’ would have convicted him of the charged crime.” *Twyford*, 596 U.S. at 819, 142 S.Ct. 2037 (quoting 28 U.S.C. § 2254(e)(2)(B)). Those restrictions ensure that the All Writs Act cannot be used to allow a “prisoner to fish for unusable evidence, in the hope that it might undermine his conviction in some way.” *Id.* at 821, 142 S.Ct. 2037.

In addition to pursuing the brain scans to support the merits of certain (preserved) claims for habeas relief, Raymond Twyford contended it was “plausible” the testing could help

him respond to arguments that other claims were procedurally defaulted. *Id.* at 816, 142 S.Ct. 2037. But he did not identify any specific claims he sought to excuse from default, “nor did he explain how the testing would matter to his ability to do so.” *Id.* at 823, 142 S.Ct. 2037. And even if he had, the Court saw no purpose in developing evidence merely for the purpose of excusing procedural default if that same evidence was ultimately inadmissible under the stringent requirements of § 2254(e)(2). See *id.*

Twyford, in short, requires a nexus between the evidence sought to be developed through a transportation order entered under the All Writs Act and its relevance and proposed use and admissibility in the § 2254 proceeding. Stated another way, any authority conferred by the All Writs Act must be exercised within the limitations Congress imposed for habeas relief and the development of evidence to pursue such relief.

IV

A

While *Twyford* is amenable to either a broad or narrow reading, the transportation order challenged here falls short under either.

At a broad level, *Twyford* may 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. *Id.* at 824, 142 S.Ct. 2037. Gibson makes no such claim here. Much like Raymond Twyford, he does not attempt to *956 show that the results of any brain scans would support a particular claim for federal habeas relief or, at a more detailed level, satisfy the stringent criteria Congress established for admitting new evidence in a federal habeas proceeding. See 28 U.S.C. § 2254(e)(2)(A) & (B).

Even focusing more narrowly on the forthcoming evidentiary hearing the district court will hold on equitable tolling, Gibson’s position comes up short. He fails to connect the evidence sought to be developed from the two brain scans with his request for equitable tolling. Both in the district court and again on appeal Gibson tells us that the scans would

further support the argument that his untreated mental health conditions left him “unable to manage his affairs, understand his legal rights, and act upon them.” But he never explains to us how. Nowhere has he articulated how the specific mental health testing he seeks would contribute to his request for equitable tolling.

We pressed Gibson's counsel on the point at oral argument but came up empty. For example, counsel—undoubtedly mindful of adverse Supreme Court precedent—did not contend that the brain scans might show that Gibson was incompetent in the time leading up to the § 2254 filing deadline. See *Gonzales*, 568 U.S. at 76–77, 133 S.Ct. 696 (concluding that incompetence alone is not a basis for indefinitely staying federal habeas corpus deadlines).

Nor did counsel, either in his brief or in oral argument, persuade us that the brain scans were sought to position Gibson to contend that his mental limitations left him unable, upon learning that his former counsel (Kenneth Murray and Michael Benza) intended not to file a timely § 2254 petition, to take matters into his own hands by instructing them to do so or, alternatively, by firing counsel and then acting *pro se* to file a federal habeas application before the February 3, 2021 deadline. Any contention like this would require careful consideration along multiple dimensions, but Gibson has not advanced this position, at least not with sufficient clarity. So we can leave all consideration of it for another day.

Finally, we see no suggestion that Gibson seeks the brain scans to develop an anticipated claim under *Ford v. Wainwright*, 477 U.S. 399, 106 S.Ct. 2595, 91 L.Ed.2d 335 (1986).

No matter how many times we review the record, we return to the same observation: Gibson requested the brain scans to show, as he put it, “that his mental impairments left him unable to manage his affairs, understand his legal rights, and act upon them.” But we remain unable to give that statement any specific content. We recognize one of the experts Gibson offered in the district court, Dr. Lewine, explained that the requested brain scan testing “often reveals the likely etiology of the brain abnormalities and their associated timeline.” But, again, we do not see how knowing the etiology—the cause or origin—of his mental limitations informs his position on equitable tolling.

To be certain, we acknowledge that Dr. Watson stated that the additional brain scan testing “would help further determine the nature and extent” of Gibson's deficits and their effect on his “cognitive abilities and emotional state.” But we conclude that the All Writs Act requires more—either broadly in terms of the admissibility of such evidence to a claim for relief under § 2254, or narrowly in terms of more particular and specific linkage to Gibson's pursuit of equitable tolling through, for example, a theory of abandonment.

In the final analysis, Gibson remains unable to tie with sufficient particularity—with the directness demanded by the Supreme Court in *Twyford*—the etiology-focused brain scan testing to his claim of abandonment for purposes of equitable tolling or, more broadly, to a claim for ultimate relief under § 2254.

B

Today's decision is narrow and limited to our vacating the transportation order issued pursuant to the All Writs Act. We underscore this point because, when the case resumes in the district court, the next order of business will be the evidentiary hearing on Gibson's plea for equitable tolling. The filings in our court, as well as information we see in the broader record developed in the district court, leave us with the clear impression that Gibson has amassed considerable evidence bearing on the inquiry, including his contention of attorney abandonment. Some of that evidence relates to his mental functioning and indeed limitations in the period leading up to the § 2254 filing deadline, see *Schmid*, 825 F.3d at 350, which we do not see etiology-focused brain scans as contributing to in any clear or demonstrated way.

In no way do we intend these observations to put a thumb on one side or the other of the forthcoming proceedings in the district court. We leave those proceedings in the skilled and experienced hands of the district judge. With these closing observations, we REVERSE the district court's transportation order and REMAND for further proceedings.

All Citations

171 F.4th 948

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APPENDIX B

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

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

April 16, 2026

Before

MICHAEL Y. SCUDDER, *Circuit Judge*

JOHN Z. LEE, *Circuit Judge*

DORIS L. PRYOR, *Circuit Judge*

No. 25-2779

WILLIAM CLYDE GIBSON III,
Petitioner-Appellee,
v.

RON NEAL,
Respondent-Appellant.

Appeal from the United
States District Court for
the Southern District of Indiana,
Indianapolis Division.

No. 1:23-cv-00330-JMS-MG

Jane Magnus-Stinson,
Judge.

ORDER

On consideration of the petition for rehearing filed by the Petitioner-Appellee on April 14, 2026, all members of the original panel have voted to deny the petition for rehearing.

Accordingly, the petition for rehearing is hereby DENIED.

APPENDIX C

(District Court's Transport Order, pp. 6 - 8)

(District Court Doc. 94)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

WILLIAM CLYDE GIBSON III,	)	
	)	
Petitioner,	)	
	)	
v.	)	No. 1:23-cv-00330-JMS-MG
	)	
RON NEAL,	)	
	)	
Respondent.	)	

**ORDER ON MOTION FOR LEAVE TO FILE SURREPLY, MOTION FOR
TRANSPORT ORDER, MOTION FOR EVIDENTIARY HEARING, AND MOTION
FOR DISCOVERY**

Petitioner William Clyde Gibson brought this habeas corpus action challenging his Indiana state court convictions for the murders of Christine Whitis, Stephanie Kirk, and Karen Hodella.¹ Dkt. 1. Respondent has moved to dismiss the petition as untimely. Dkt. 33.

Now before the Court are three related discovery motions and a motion for leave to file sur-reply, all filed by Mr. Gibson and opposed by Respondent. For the reasons discussed in this Order, Mr. Gibson's motions are **granted**.

I. Background

Respondent argues that Mr. Gibson's petition was filed too late, and that he is not entitled to equitable tolling. "Under 28 U.S.C. § 2244(d)(1)(A), a state prisoner seeking federal habeas relief has just one year after his conviction becomes final in state court to file his federal petition." *Gladney v. Pollard*, 799 F.3d 889, 894 (7th Cir. 2015). Mr. Gibson's one year statute of limitations began running on February 3, 2020, when the Indiana Supreme Court denied rehearing of the

¹ Mr. Gibson was sentenced to death for the murders of Ms. Whitis and Ms. Kirk and was sentenced to 65 years of incarceration for the murder of Ms. Hodella. Dkt. 1 at 3.

denials of his petitions for post-conviction relief in the Whitis and Kirk cases.² His deadline to file a timely federal habeas petition was February 3, 2021.

Anticipating the need to hand off Mr. Gibson's case after state proceedings concluded, his state post-conviction counsel contacted Mr. Kenneth Murray in November of 2019 to represent Mr. Gibson in his federal habeas proceedings. Green Declaration, dkt. 62-29 at 3-4. Mr. Murray was appointed as counsel and appeared for Mr. Gibson in this Court in May of 2020, and his co-counsel Mr. Michael Benza appeared in June. *See Gibson III v. Neal*, 4:20-cv-00100-TWP-KMB, dkts. 3-7.

In between Mr. Murray first agreeing to represent Mr. Gibson in November of 2019, and his formal appointment in this Court in May of 2020, the COVID-19 pandemic emerged and began limiting in-person meetings as early as March 2020. In addition, Mr. Gibson had been diagnosed as bipolar, but had stopped receiving medication in 2018, leading his counsel to speculate that his lack of medication caused him to repeatedly block their attempts to contact him. Benza Declaration, dkt. 77-1 at 2.

On January 21, 2021, less than two weeks before Mr. Gibson's deadline to file his petition, his counsel filed a motion for prospective equitable tolling. *Gibson III v. Neal*, 4:20-cv-00100-TWP-KMB, dkt. 13. The Court denied the motion six days later. *Id.* at dkt. 14. In a phone call lasting less than five minutes on February 1, 2021, counsel explained to Mr. Gibson that his federal habeas petition was due in two days, that they could not prepare a petition by the deadline, and that they would instead prepare a petition later and seek equitable tolling at that time. Dkt. 62-44 at 2; dkt. 79-37 at 30.

² Mr. Gibson filed his state petition for post-conviction relief in the Hodella case more than a year after his conviction became final. Dkt. 33 at 3. Thus, his deadline to file a federal habeas petition arguably expired many years before his deadlines in the Whitis and Kirk cases.

Mr. Murray struggled with health issues throughout his representation of Mr. Gibson and filed a notice of withdrawal from the case in August of 2022. Murray Declaration, dkt. 62-30 at 6-7. Mr. Benza filed a notice of withdrawal in October of 2022. Benza Declaration, dkt. 77-1 at 3. Oliver Lowey was appointed to represent Mr. Gibson in August of 2022. *Gibson III v. Neal*, 4:20-cv-00100-TWP-KMB, dkt. 46. Mr. Lowey opened this new action by filing Mr. Gibson's habeas petition on February 23, 2023. Dkt. 1. The Court also granted the pro hac vice motions of a second qualified attorney to represent Mr. Gibson in October of 2023, and a Federal Community Defender Capital Habeas Unit attorney in August of 2024. Dkt. 20; dkt. 52.

Mr. Gibson has filed a motion for an evidentiary hearing on equitable tolling and two related discovery motions.

II. Motion for Evidentiary Hearing

Mr. Gibson requests an evidentiary hearing to present evidence in support of his equitable tolling claim. Such evidence would include testimony regarding the impacts of the COVID-19 pandemic, testimony regarding prior counsel's representation of Mr. Gibson, expert testimony regarding Mr. Gibson's mental health, and expert testimony regarding professional norms in representing capital defendants. Dkt. 86 at 10-18.

Respondent opposes the motion for evidentiary hearing, arguing that there are no evidentiary disputes and Mr. Gibson is not entitled to equitable tolling because his counsel made a strategic decision to not file a petition before his time to do so expired. Dkt. 92 at 1 ("Gibson's representation by counsel is dispositive and needs no further evidentiary development."); *id.* at 4 ("It was a considered strategy supported by legal research and professional experience.").

"[A]n evidentiary hearing is necessary when a petitioner alleges facts that, if true, would entitle him to relief. A petitioner's burden for receiving an evidentiary hearing is therefore

relatively light." *Lairy v. United States*, 142 F.4th 907, 917 (7th Cir. 2025) (remanding for evidentiary hearing on the issue of equitable tolling).

Mr. Gibson has satisfied his burden. He alleges that numerous circumstances combined to preclude him from being able to timely file his federal habeas petition. Those circumstances included the COVID-19 pandemic, his counsel's failure to timely file a habeas petition in violation of professional norms, and his untreated mental health challenges and lack of access to legal resources which left him unable to file a timely petition without the assistance of his counsel within the statutory period. These are precisely the kinds of circumstances that courts have found to entitle a petitioner to equitable tolling:

Abandonment by counsel is one potentially extenuating circumstance, see *Maples v. Thomas*, 565 U.S. 266 (2012), and inability to access vital papers is another, see *Socha v. Boughton*, 763 F.3d 674 (7th Cir. 2014); *Estremera v. United States*, 724 F.3d 773, 777 (7th Cir. 2013). The Supreme Court observed in *Christeson v. Roper*, 574 U.S. 373 (2015), that a prisoner's mental disability in conjunction with abandonment by counsel may justify the appointment of new counsel to explore the question whether the disability tolls the period of limitations.

Schmid v. McCauley, 825 F.3d 348, 350 (7th Cir. 2016). "The important thing is the full picture with which an inmate is contending." *Socha v. Boughton*, 763 F.3d 674, 685 (7th Cir. 2014). If Mr. Gibson is able to marshal evidence to support the factual allegations in his motion, he may be entitled to equitable tolling. For this reason, his motion for an evidentiary hearing, dkt. [86], is **granted**. A hearing and pre-hearing deadlines will be set by separate order.

III. Motion for Discovery

Mr. Gibson's motion for discovery seeks several categories of documents. Other than blanket opposition to any further evidentiary development, and opposition to one-sided discovery, Respondent makes no particularized objection to Mr. Gibson's motion.

First, he seeks leave to subpoena documents from the Indiana Department of Correction (IDOC) related to: 1) disruptions to attorney-client communications during the COVID-19 pandemic; and 2) communications between his counsel and IDOC regarding legal visits.

Second, Mr. Gibson seeks discovery of former counsel Murray and Benza's CJA payment vouchers for services and expenses related to their representation of Mr. Gibson to support his assertion that counsel effectively abandoned him. Dkt. 87 at 6-7. He asks that the Court order the clerk to provide copies of these vouchers to his counsel and not to Respondent. Respondent objects to this proposal. In the alternative, Mr. Gibson asks the Court to conduct an *in camera* review of the vouchers to determine if they should be redacted before being produced to counsel.

Third, Mr. Gibson seeks his complete mental health records from IDOC and the healthcare companies that have contracted with IDOC since Mr. Gibson's incarceration including Wexford Health Sources, Inc., and Centurion Health of Indiana, LLC. Dkt. 87 at 8-9. Mr. Gibson's motion points out that Respondent has relied on mental health records that were not previously provided to him or his counsel. *Id.* (referencing medical records at dkt. 79-20, dkt. 79-29, and dkt. 79-32).

Rule 6(a) of the Rules Governing § 2254 Cases allows a habeas corpus petitioner to conduct civil discovery "if, and to the extent that, the judge in the exercise of [her] discretion and for good cause shown grants leave to do so, but not otherwise." As with Mr. Gibson's motion for evidentiary hearing, his motion for discovery seeks documents that would support his equitable tolling claim. He cites several out of circuit cases that authorize discovery to support equitable tolling claims. Dkt. 87 at 4. It is clear the Seventh Circuit approves of holding evidentiary hearings when petitioners make plausible claims of equitable tolling. *Lairy*, 142 F.4th at 917 (remanding for evidentiary hearing on the issue of equitable tolling). And "[t]o hold an evidentiary hearing

requires evidence." *Edwards v. United States*, No. 3:19-CV-293-NJR, 2021 WL 673483, at *3 (S.D. Ill. Feb. 22, 2021).

The Court declines Mr. Gibson's request that the Court order the clerk to provide his counsel with copies of former counsel Murray and Benza's CJA payment vouchers, but not provide the same to Respondent. As noted in Mr. Gibson's motion, unredacted CJA payment vouchers are public record, subject to some limitations. 18 U.S.C. § 3006A(d)(4).

Mr. Gibson's motion for discovery, dkt. [87], is **granted**. His counsel may subpoena IDOC and its health contractors for the categories of documents discussed in his motion. In addition, Mr. Gibson's counsel shall have **14 days** to notify the Court whether it wishes for the clerk to provide copies of the CJA payment vouchers to counsel for Mr. Gibson and Respondent. Any vouchers provided will redact only the internal accounting notes associated with each voucher and will not include any attachments to the vouchers.

IV. Motion for Transport Order

Mr. Gibson's motion for transport order asks the Court to order IDOC to transport him to Community Hospital North in Indianapolis for medical testing and imaging to develop evidence in support of his claim for equitable tolling. Dkt. 84. He contends that such testing will support his claim that his cognitive abilities were negatively affected such that he was unable to manage his legal affairs. Respondent argues, among other things, that this testing would be cumulative to testing previously performed and that testing today would not assist Mr. Gibson in demonstrating his cognitive capacities between 2020 and 2023. Dkt. 85 at 3-5. Mr. Gibson replies that testing available today is capable of providing information that previous testing could not, and that the results of the testing, when interpreted by his expert alongside his other medical history, may show "the likely etiology of the brain abnormalities and their associated timeline." Dkt. 89 at 5, quoting

dkt. 89-1 at 3. His expert further states that, depending on the results of the testing, he will be able to opine on the question of whether any identified "brain abnormalities existed before February 2020." Dkt. 89-1 at 4.

Mr. Gibson's motion relies on the All Writs Act, 28 U.S.C. § 1651(a), which authorizes courts to issue "all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." Respondent argues that *Shoop v. Twyford*, 596 U.S. 811 (2022), "established that it is improper for a district court to grant a transportation order for medical testing when the evidence sought to be developed would be irrelevant to the resolution of the underlying habeas claims." Dkt. 85 at 5.

Mr. Gibson argues that this reading of *Twyford* is too expansive. Dkt. 89 at 5-6. Such a reading would certainly be at odds with the spirit of *Lairy* and other Seventh Circuit cases that expressly authorize district courts to hold hearings to develop evidence in support of an equitable tolling claim. The *Twyford* Court, however, was addressing the *claims* in a habeas petition, not equitable tolling. The Court stated: "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." 596 U.S. at 823. Unlike Mr. Twyford, Mr. Gibson is not seeking evidence to shore up the claims he pursued or failed to pursue in state post-conviction proceedings. Mr. Gibson is seeking evidence to support equitable tolling of the time he is allotted to bring the claims he developed in state court.

Finally, Respondent argues that transporting Mr. Gibson for testing would create a safety risk to the general public. Mr. Gibson counters that he is nearly 70 years old and has no history of physical violence during his incarceration. He has been transported in restraints by armed guards for medical care at outside facilities in the past without incident. Dkt. 89 at 8.

Respondent has not pointed to any incident in Mr. Gibson's decade in prison that would indicate that he cannot be safely transported for medical testing. Contrary to Respondent's assertion that Mr. Gibson would be let "loose in a public setting," dkt. 85 at 7, Mr. Gibson would be transported in restraints by correctional officers at a time selected to minimize any interaction with the general public. Dkt. 89 at 8.

Because the Court finds 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, his motion, dkt. [84], is **granted**. Mr. Gibson's counsel and IDOC shall schedule transportation of Petitioner William Clyde Gibson III, IDOC No. 169605, to Community Hospital North, Indianapolis, Indiana, at a mutually convenient date and time, for DTI and PET imaging to be performed on Mr. Gibson.

V. Motion for Leave to File Surreply in Opposition to Motion to Dismiss

Mr. Gibson seeks leave to file a surreply to Respondent's reply in support of the motion to dismiss Mr. Gibson's petition as untimely. He argues that he should be allowed to address hundreds of pages of exhibits attached to the reply and to address the possibility that Respondent acquired medical exhibits in violation of the Health Insurance Portability and Accountability Act (HIPAA). Dkt. 81 at 1.

The possibility that Respondent, Mr. Gibson's custodian, violated HIPPA by acquiring or maintaining Mr. Gibson's medical records is ancillary at best to his petition for habeas relief. Furthermore, Mr. Gibson has put those records at issue by raising his brain functioning and mental health status as a grounds for equitable tolling. On the other hand, Mr. Gibson should have an opportunity to respond to the substance of the medical records attached to Respondent's reply.

Thus, his motion for leave to file a surreply, dkt. [81], is **granted to the extent** he may file a surreply limited to the evidence and arguments raised in Respondent's reply.

Because Mr. Gibson's discovery requests and motion for transport order seek evidence related to the substance of Respondent's reply, it would be premature to set a deadline for filing the surreply. Instead, the **Magistrate Judge is requested** to set a telephonic status conference to discuss the scope of any additional discovery (potentially by Respondent) and discovery deadlines, a deadline for Mr. Gibson's surreply, and other deadlines to prepare for an evidentiary hearing on the question of equitable tolling.

VI. Conclusion

In summary, Mr. Gibson's motion for an evidentiary hearing, dkt. [86], is **granted**. A hearing and pre-hearing deadlines will be set by separate order at the conclusion of all pre-hearing discovery and briefing.

Mr. Gibson's motion for discovery, dkt. [87], is **granted**. His counsel may subpoena IDOC and its health contractors for the categories of documents discussed in his motion. In addition, Mr. Gibson's counsel shall have **14 days** to notify the Court whether it wishes for the clerk to provide copies of the CJA payment vouchers to counsel for Mr. Gibson and Respondent. Any vouchers provided will redact only the private accounting notes associated with each voucher and will not include any attachments to the vouchers.

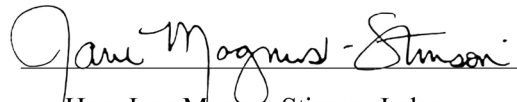
Mr. Gibson's motion for transport order, dkt. [84], is **granted**. Mr. Gibson's counsel and IDOC shall schedule transportation of Petitioner William Clyde Gibson III, IDOC No. 169605, to Community Hospital North, Indianapolis, Indiana, at a mutually convenient date and time, for DTI and PET imaging to be performed on Mr. Gibson.

Finally, Mr. Gibson's motion for leave to file a surreply, dkt. [81], is **granted to the extent** he may file a surreply limited to the evidence and arguments raised in Respondent's reply.

The **Magistrate Judge is requested** to set a telephonic status conference to discuss the scope of any additional discovery (potentially by Respondent) and discovery deadlines, a deadline for Mr. Gibson's surreply, and other deadlines, such as witness and exhibit lists, to prepare for an evidentiary hearing on the question of equitable tolling.

IT IS SO ORDERED.

Date: 9/11/2025


Hon. Jane Magnus-Stinson, Judge
United States District Court
Southern District of Indiana

Distribution:

Samuel J.B. Angell
Federal Community Defender Office for the Eastern District o
samuel_angell@fd.org

Tyler G. Banks
INDIANA ATTORNEY GENERAL
tyler.banks@atg.in.gov

Andrew A. Kobe
INDIANA ATTORNEY GENERAL
andrew.kobe@atg.in.gov

Oliver W. Loewy
Oliver W. Loewy, Esq.
oliverwloewy@gmail.com

Kelly A. Loy
OFFICE OF THE INDIANA ATTORNEY GENERAL
kelly.loy@atg.in.gov

Edward Rymsza
Miele and Rymsza, P.C.
rymsza@comcast.net

Courtney Leanne Staton
Office of Indiana Attorney General
courtney.staton@atg.in.gov

Magistrate Judge Mario Garcia

APPENDIX D

(Gibson's Motion For Transport Order in District Court)

(District Court Doc. 84)

Oliver W. Loewy, PHV (IL Bar # 619709)
1022 SE 30th Avenue
Portland, Oregon 97214
(208) 283-5381
oliverwloewy@gmail.com

Edward J. Rymsza, PHV (PA Bar # 82911)
125 East Third Street
Williamsport, PA 17701
(570) 322-2113
Rymsza@comcast.net

Shawn Nolan (PA Bar #56535)
Chief, Capital Habeas Unit
Federal Community Defender Office
601 Walnut Street, Suite 545-West
Philadelphia, PA 19106
(215) 928-0520
Shawn_Nolan@fd.org

Samuel J.B. Angell (PA Bar #61239)
Assistant Federal Defender
Federal Community Defender Office
601 Walnut Street, Suite 545-West
Philadelphia, PA 19106
(215) 928-0520
Samuel_Angell@fd.org

Attorneys for Petitioner
WILLIAM CLYDE GIBSON III

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

WILLIAM CLYDE GIBSON III,	)	
	)	
Petitioner,	)	No. 1:23-cv-00330-JMS-MG
	)	
v.	)	Judge Jane Magnus-Stinson
	)	
RON NEAL,	)	*CAPITAL CASE*
	)	
Respondent.	)	

**MOTION FOR ORDER DIRECTING THAT THE INDIANA DEPARTMENT
OF CORRECTIONS TRANSPORT MR. GIBSON TO COMMUNITY HOSPITAL
NORTH, INDIANAPOLIS, INDIANA, FOR PURPOSES OF CONDUCTING
AN MRI WITH DIFFUSION TENSOR IMAGING SCAN AND A POSITRON
EMISSION TOMOGRAPHY (PET) SCAN**

Petitioner William Clyde Gibson, III, by his attorneys, respectfully requests that the Court issue an order directing the Indiana Department of Corrections to transport him to Community Hospital North, Indianapolis, Indiana for the purposes of conducting an MRI with Diffusion Tensor Imaging scan and a Positron Emission Tomography scan.

1. In this habeas action, Mr. Gibson is challenging three state court judgments. Each impose a homicide conviction. Two impose separate death sentences, and the third imposes a prison term. Respondent moved that the Court dismiss this action as untimely. ECF 33. Mr. Gibson responded (ECF 66), and Respondent replied (ECF 79). Mr. Gibson's motion to file a sur-reply is pending. ECF 81.

2. In his response to the motion to dismiss, Mr. Gibson argues, among other things, his untreated mental health conditions left him unable to manage his legal affairs. While Petitioner has already presented evidence supporting this argument, he seeks additional evidence to further support the argument. *See* ECF 66 at 11-17, 32-35 (arguing that equitable tolling is warranted due to, among other things, Mr. Gibson's mental health deficits).

3. The Appendix filed with Mr. Gibson's response includes a declaration by Dr. Dale Watson, a neuropsychologist who evaluated Mr. Gibson earlier this year. *See* Exhibit 1 (ECF 62-25). Dr. Watson affirmed that, based on his extensive testing, Mr. Gibson's brain likely has white matter integrity problems. *Id.* at 4-5. Testing also yielded results showing that Mr. Gibson had difficulty identifying the source of information he receives, which is thought to be a problem with executive functioning. *Id.* at 5.

4. Dr. Watson recommends additional testing 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.* In particular, he recommends: (1) an MRI with Diffusion Tensor Imaging (DTI) capabilities to measure the integrity of the white matter in Mr. Gibson's brain, (2) a positron emission tomography (PET) scan to measure energy metabolism in the brain, and (3) a quantitative electroencephalogram (QEEG). Dr. Watson notes that Mr. Gibson will need to be transported to a hospital or medical facility for the first two tests. *Id.* at 5-6. The DTI and PET imaging requires specialized and non-portable equipment unavailable at the Indiana State Prison where Mr. Gibson is housed. An EEG can be conducted at the prison with portable equipment.

5. Undersigned counsel have arranged for Jeffrey Lewine, Ph.D., to oversee the administration of DTI and PET imaging and to evaluate the results. Dr. Lewine is a neuroscientist with over 25 years of experience in the neuroscientific evaluation of individuals

with multiple conditions, including traumatic brain injury, psychiatric dysfunction and substance abuse. His CV is being contemporaneously filed with this motion as an exhibit. *See* Exhibit 2.

6. Undersigned counsel have arranged for Community Hospital North, Indianapolis, Indiana, to administer the MRI and PET imaging. Counsel has communicated with an official in the warden's office at Indiana State Penitentiary, where Mr. Gibson is housed. She has provided information about the cost of transporting Mr. Gibson to the hospital for testing.

7. Mr. Gibson seeks the requested order pursuant to the Eighth and Fourteenth Amendments. A capital defendant has the right to the assistance of a mental health professional "who will conduct an appropriate examination." *Ake v. Oklahoma*, 470 U.S. 68, 83 (1985).

8. The All Writs Act, 28 U.S.C. § 1651(a) authorizes courts to issue "all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." Here, the requested order is in aid of the jurisdiction conferred by 18 U.S.C. §3599(f), which empowers the Court to authorize expert services needed by Petitioner. In order for Mr. Gibson to secure the necessary expert services, he must be transported to a facility having the required machinery and staff for the neuroimaging. The requested tests are material to Mr. Gibson's response to the pending motion to dismiss, specifically to his argument that his mental health challenges warrant equitable tolling. *See* ECF 66 at 11-17, 31-35. *Compare Shoop v. Twyford*, 596 U.S. 811, 823 (2022) (reversing transportation order for medical testing where petitioner sought the evidence for merits consideration but did not show that it would be admissible for that purpose).

9. Applicable guidelines require this testing for the defense of a capital habeas case. Guideline 10.7 of the American Bar Association Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases ("ABA Guidelines") requires defense

counsel “at every stage ... to conduct thorough and independent investigations relating to the issues of both guilt and penalty.” 31 Hofstra L. Rev. 913, 1015 (rev. ed. Feb. 2003). Here, Dr. Watson has recommended that Mr. Gibson undergo the requested testing. The ABA Guidelines anticipate that such testing is necessary. *See* ABA Guideline 10.7, Commentary at 956 (“[B]rain scans ... and consultation with additional mental health specialists may also be necessary.”); ABA Guideline 10.15.1(E)(4) (requiring that post-conviction counsel “continue an aggressive investigation of all aspects of the case”).

10. The Federal Community Defender Office for the Eastern District of Pennsylvania will cover the cost of the imaging, transportation and expert analysis.

11. Respondent’s counsel has stated that Respondent objects to this motion.

For all these reasons, Petitioner requests that the Court grant this motion and issue an order directing that Mr. Gibson be transported to Community Hospital North, Indianapolis, Indiana at a date and time to be arranged with the hospital and Indiana State Penitentiary for purposes of conducting DTI and PET imaging.

Dated: July 15, 2025

Respectfully submitted,

/s/ Oliver W. Loewy

OLIVER W. LOEWY
EDWARD J. RYMSZA
SHAWN NOLAN
SAMUEL J.B. ANGELL

Attorneys for Petitioner
WILLIAM CLYDE GIBSON III

EXHIBIT 1

**DECLARATION OF DALE G. WATSON, Ph.D.
PURSUANT TO 28 U.S.C. § 1746**

1. My name is Dale G. Watson, Ph.D., and I am a neuropsychologist in private practice.
2. I graduated with a Ph.D. in clinical psychology from the California School of Professional Psychology-Berkeley/Alameda in 1988. I received an M.A. in clinical psychology from John F. Kennedy University, Orinda, CA in 1980. I received a B.A. in psychology from the California State College, Sonoma, Rohnert Park, CA.
3. At the request of William Clyde Gibson's counsel, on February 19 and 20, 2025, I traveled to the Indiana State Prison in Michigan City, Indiana to conduct a neuropsychological evaluation of Mr. Gibson.
4. On February 19 and 20, 2025, I administered to Mr. Gibson multiple neuropsychological tests, including tests of performance validity and malingering. On both days, Mr. Gibson passed all the tests of performance validity and for malingering, including embedded performance validity tests, indicating his intent to do well.
5. In total, I administered the following procedures/tests:
 - Behavioral Observations (BEH)
 - Mental Status Examination (MSE);
 - Animal Naming (AN);
 - b-Test (bT);
 - Boston Naming Test (BNT);
 - Controlled Oral Word Association Test (COWA);
 - Delis – Rating of Executive Functions (D-REF) Adult;
 - Dichotic Word Listening Test (DWLT);
 - Dot Counting Test (DCT);
 - Finger Localization Test (FLT);
 - Finger Tapping Test (FTT);
 - Forced Choice Test (FCT);

- Halstead Category Test (HCT);
- Inventory of Problems – 29 (IOP-29);
- IOP Memory (IOP-M);
- Judgment of Line Orientation (JOLO);
- Neurobehavioral Symptom Inventory (NSI);
- Neuropsychological Assessment Battery (NAB) Screening Module;
- North American Adult Reading Test (NAART);
- Repeatable Battery for the Assessment of Neuropsychological Status (RBANS) Update;
- Rey Complex Figure Test (CFT);
- Rey Auditory Verbal Learning Test (AVLT);
- Sentence Repetition (SR);
- Test of Memory Malingering (TOMM);
- Test of Premorbid Functioning (TOPF);
- Token Test (TT);
- Trail Making A & B (TMT);
- Wechsler Adult Intelligence Scale – 5 (WAIS 5);
- Wechsler Adult Intelligence Scale – IV (WAIS-IV) Picture Completion;
- Wechsler Memory Scale – IV (WMS-IV) Flexible Approach;
- Wide Range Achievement Test 5th edition (WRAT 5).

6. At the start of the second day of testing, Mr. Gibson told me he had been unable to sleep much of the night because he was ill and that he continued to feel unwell. Medical staff took his temperature and told me that it was 99.0° F, which I do not consider to be a fever. He was willing to proceed, and we did. Both he and I wore masks that day. I had planned to give Mr. Gibson tests on February 21, 2025, as well. However, that morning his counsel informed me that Mr. Gibson called and told him he was feeling even worse. Out of concern that Mr. Gibson's illness and fatigue would produce invalid results, I did not return for the third day to complete the testing. Nevertheless, the results from the tests that I did administer show that while in some areas Mr. Gibson functions without impairment, in others his functioning is impaired and sometimes moderately to severely so.

7. For intellectual functioning, Mr. Gibson scored an 89 Full Scale IQ on the Wechsler Adult Intelligence Scale, Fifth Edition (WAIS 5), which is at the 23rd percentile and in

the Below Average range. His Verbal Comprehension Index (VCI) was 100, which is at the 50th percentile and Average. His Visual Spatial Index (VSI) was 111, which is at the 77th percentile and Above Average. His Fluid Reasoning Index (FRI) was 77, which is at the 6th percentile and in the Very Low range. His Working Memory Index (WMI) was 91, which is at the 27th percentile and Average. His Processing Speed Index (PSI) was 89, which is in the 23rd percentile and Below Average.

8. One of the tests I gave Mr. Gibson was the Dichotic Word Listening Test (“DWLT”). The test uses stereo headphones and assesses the connection between the two hemispheres of the brain through the auditory channels. The DWLT is sensitive to the integrity and functioning of the white matter in the brain. White matter is that part of the brain in which neurons are wrapped in myelin, a fatty sheathing that insulates neurons from one another, like the way that insulation on a wire prevents shorts when two wires of opposite polarity touch. Loss of integrity of white matter can slow processing speed.

9. In the practice portion of the DWLT, Mr. Gibson received a 9/10 correct, which is within normal limits, meaning he could hear sounds in both ears, i.e., he had no auditory problems related to the acuity of his hearing. However, when words were presented to both of Mr. Gibson’s ears at the same time, he scored at the 0.1st percentile for the left ear which is moderately to severely impaired and at the 12th percentile in the right ear which is mildly impaired. The combined score places him in the 2nd percentile which is moderately impaired. These scores indicate that Mr. Gibson likely has white matter integrity problems. In other words, these findings point to probable faulty transmission of information across white matter tracts in Mr. Gibson’s brain. Dysfunction within white matter is associated with depression and cognitive decline.

10. Mr. Gibson's scores on the administered executive functioning tests were:

- Halstead Category Test: 14th percentile – Mildly Impaired
- Trails B: 2nd percentile – Moderately Impaired
- Controlled Oral Word Association Test: 46th Percentile – Average
- Similarities: 50th Percentile – Average
- WAIS 5 Fluid Reasoning Index (FRI) 7th percentile – Mildly Impaired.

11. His scores on the Rey Auditory Verbal Learning Test ("AVLT") were:

- Trial 1: 10th Percentile – Mild Impairment
- Trial 5: 14th Percentile – Mild Impairment
- Total: 24th Percentile – Below Average
- Distractor 38th Percentile – Average
- Immediate – 16th Percentile – Below Average
- Delayed 24th Percentile – Below Average
- Recognition – 86th Percentile – Above Average
- Delayed Recall Index (MAVDRI) 0.2 Percentile – Moderate-Severe Impairment
- False Positives – 0.01 Percentile – Severe Impairment
- Memory Error Pattern – Normal.

Notably, on recognition testing for the AVLT, though Mr. Gibson correctly identified all the items from the list of words, he did so while also indicating he had heard most of the other words that were not on the list with 13 False Positive responses. This suggests difficulties in identifying the source of information – thought to be a problem of executive functioning.

12. The problem with source memory and the difficulty on Trails B and the WAIS 5 Fluid Reasoning Index (FRI) also point to likely executive functioning impairment.

13. Based on the testing where the scores indicate likely white matter dysfunction, I recommend that Mr. Gibson be given certain additional tests. These additional tests would help further determine the nature and extent of Mr. Gibson's deficits and the effects they have on his cognitive abilities and emotional state. Specifically, I recommend an MRI with Diffusion Tensor Imaging (DTI) capabilities which will measure the integrity of the white matter in his brain and compare it to a normed population. I also recommend a positron emission tomography (PET)

scan and a quantitative electroencephalogram (QEEG), both of which are studies of brain functioning.

14. The MRI with DTI ("MRI/DTI") is an advanced magnetic resonance imaging modality that uses the effect of magnetic fields on the motion of water molecules to provide data for images. This neuroimaging technique is used for studying the structures in the brain.

15. The PET scan measures energy metabolism in the brain.

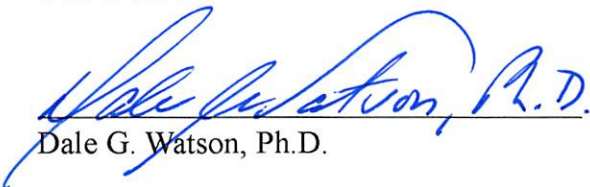
16. QEEG is a method for mapping brain activity using electrodes placed on the scalp.

17. The three assessment procedures I recommend are generally accepted in the medical field for evaluating brain disorders.

18. Mr. Gibson will need to be transported to a hospital or medical facility for the MRI and the PET scan. The EEG is portable and can be conducted in the prison itself.

19. My findings, opinions and conclusions stated in this declaration are stated to a reasonable degree of neuropsychological certainty. I reserve the right to supplement this declaration based on my review of additional information, including but not limited to MRI/DTI, PET, and QEEG results.

I hereby certify that the facts set forth above are true and correct to the best of my personal knowledge, information, and belief, subject to the penalty of perjury pursuant to 28 U.S.C. section 1746.


Dale G. Watson, Ph.D.

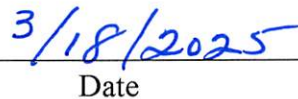

Date

EXHIBIT 2

JEFFREY DAVID LEWINE, B.S., M.S., PH.D.

CADET NM Inc. | 10439 4th St, NW | Albuquerque, NM 87114 | Cell: (505) 252-1153 | jlewine@cadetnm.com

CURRICULUM VITAE

Chief Executive Officer and President, Neuroscience Expert Consulting Services of America, LLC
Chief Executive Officer and Chief Scientific Officer, CADET NM Inc., The Center for Advanced Diagnostics, Evaluation, and Therapeutics
Adjunct Professor of Translational Neuroscience, Mind Research
Network Research Professor of Psychology, University of New Mexico
Adjunct Associate Professor of Neurology, University of New Mexico
Director of Research, Beyond Barriers Therapeutics
Principal Neuroscientific Consultant, MINDSET Integrated Co

I. EDUCATION

B.S.	Neuroscience	University of Rochester	1982
M.S.	Neuroscience	University of Rochester	1986
Ph.D.	Neuroscience	University of Rochester	1988
Director's Fellow	Biophysics	Los Alamos National Laboratory	1988-90

II. EMPLOYMENT

10/90-5/92	Scientific Staff Member, Biophysics Group, Los Alamos National Laboratory, Los Alamos, NM.
5/92-12/96	Scientific Director, Magnetic Source Imaging Facility, VA Medical Center, Alb, NM.
8/92-12/96	Research Assistant Professor of Psychology, University of New Mexico, Alb, NM.
8/92-12/96	Clinical Research Assistant Professor of Radiology, University of New Mexico, Alb, NM.
1/93-12/96	Research Health Scientist, Joint Imaging Service, VA Medical Center, Alb, NM
1/95-12/96	Director, Magnetic Source Imaging and Neuroscience Divisions, The New Mexico Institute of Neuroimaging, The New Mexico Regional Federal Medical Center, Alb, NM.
1/97-7/00	Associate Professor of Radiology, University of Utah Medical School, SLC, UT.
1/97-7/00	Director, Functional Brain Imaging Program, University of Utah Medical School, SLC, UT.
9/97-7/00	Scientific Director, Center for Advanced Medical Technologies (CAMT), SLC, UT.
7/99-7/00	Scientific Director, Learning Abilities and Resource Program, CAMT, SLC, UT.
7/00-9/02	Director, Center for Innovative Technologies, Corrales, NM.
9/00-9/03	Adjunct Professor of Electrical Engineering and Computer Science, Univ. of Illinois, Chicago, IL.
1/01-9/02	Visiting Associate Professor of Psychology, University of New Mexico, Alb, NM.
9/02-10/06	Director, MEG Program, Hoglund Brain Imaging Center, University of Kansas Medical Center, Kansas City, KS.
9/02-10/06	Associate Professor of Neurology, University of Kansas Medical Center, Kansas City, KS.
12/02-10/06	Associate Professor of Psychiatry and Behavioral Sciences, University of Kansas Medical Center, Kansas City, KS.
8/06-4/10	Director, Illinois Magnetoencephalography Center, Alexian Brothers Medical Center, Elk Grove Village, IL.
2/07-4/10	Director, Alexian Brothers Center for Brain Research, Alexian Brothers Hospital Network, Elk Grove Village, IL.
4/10-4/12	Associate Professor of Translational Neuroscience, MIND Research Network, Albuquerque, NM.
4/11-present	Adjunct Associate Professor of Neurology, University of New Mexico Health Sciences Center.
4/11-present	Adjunct Research Professor of Psychology, University of New Mexico.
11/11-10/18	Director of Business Development, Mind Research Network.
3/12-10/18	Director of Neuroscience, Lovelace Scientific Resources.
4/12-10/18	Professor of Translational Neuroscience, Mind Research Network
9/12-9/16	Director of Clinical Research, Cognionics, Inc.
10/12-present	Chief Executive Officer, Center for Advanced Diagnostics, Evaluation, and Therapeutics, Inc.
10/13-10/19	Principal Neuroscientist, Mindset consulting Group.
10/18-present	Adjunct Professor of Translational Neuroscience, Mind Research Network.
10/2019-present	Principal Neuroscientific Consultant, Mindset Integrated Co.
11/2020-present	Director of Research, Beyond Barriers Therapeutics.

III. GRANT SUPPORT HISTORY:

Current Funding:

"UNM MEG Clinical Services Contract", University of New Mexico, J Lewine, PI, \$150,000/year, 2016-2024
 "BBT-101: An Intranasal Treatment for Mild Traumatic Brain Injury", US Department of Defense, Special Operations Command (SOCOM). J Lewine, PI, \$1,900,000, 7/2023-7/2025
 "Development of Intranasal N-Acetyl Cysteine as a Neuroprotectant in Cases of EEEV and VEEV", US Defense Threat Reduction Agency and Battelle Inc., J Lewine and C Burke, co-PI, \$1,150,000, 12/24/8/26

JEFFREY DAVID LEWINE, B.S., M.S., PH.D.

CADET NM Inc. | 10439 4th St, NW | Albuquerque, NM 87114 | Cell: (505) 252-1153 | jlewine@cadetnm.com

Pending Funding:

- "Sound Sensitivities in Autism Spectrum Disorders: Neurobiology and Treatment", National Institutes of Health, NICHD, J Lewine, PI, \$2,900,000, 10/24-9/29
- "Tinnitus: Diagnosis, Neurobiology and Treatment", Medical Technology Enterprise Consortium, J Lewine, PI, \$3,000,000, 9/24-9/27.
- "Treatment of PTSD Through the Reconsolidation of Traumatic Memory Protocol", Medical Technology Enterprise Consortium, J Lewine, PI, \$3,000,000, 9/24-9/27
- "EZ-CAP, A Portable and Mobile EEG System for Patients with an Autism Spectrum Disorder", Synchrony Brain Foundation, J Lewine, PI, \$180,000, 4/2024-4/2026.
- "Personalized Repetitive TMS of Treatment of Autism Spectrum Disorders", Synchrony Brain Foundation, J Lewine, PI, \$180,000, 4/2024-2/2036.

Prior Funding:

- 'Integrative Systems in Biology', NIH Pre-Doctoral Fellowship, USPHS National Research Service Award 5-T32- GM07136-10, 7/83-12/84, direct costs - \$10,000/year.
- 'Hemispheric Asymmetries and Mnemonic Processing', USPHS Individual National Research Service Award 5-F31-MH09117, NIH Pre-Doctoral Fellowship, JD Lewine, PI, 1/85-6/88, direct costs - \$10,000/year.
- 'Hemispheric Specialization in Man and Chimpanzee', USPHS Individual National Research Service Award 1-F32-NS08458-01, NIH Post-Doctoral Fellowship, JD Lewine, PI, 5/88 (not used).
- 'Physiological Basis of MEG', Los Alamos National Laboratory Institutional Support For Research And Development Award, JD Lewine and CC Wood, Co-PIs, 7/90-7/92, direct costs - \$250,000/year.
- 'Magnetic Stimulation Techniques For The Analysis Of Neural Function', Los Alamos National Laboratory Institutional Support For Research And Development Award, DB Van Hulsteyn and JD Lewine, Co-PIs, 7/91-7/93, direct costs - \$250,000/year.
- 'The Neural Dynamics of Event- Memory', McDonnell-Pew Program in Cognitive Neuroscience, Individual Research Grant, JD Lewine, PI, 4/93-4/95, direct costs - \$30,000/year.
- 'Preoperative Localization of Functional Regions via MEG, EEG, MRI and TMS', Research Allocation Committee Award, University of New Mexico School of Medicine, JD Lewine, PI, 3/94-3/95, direct costs - \$25,000/year.
- 'Integration of MEG and MRS', NINDS CAP Award, J. Shih, PI, (JD Lewine collaborator), 1/95-1/00, direct costs - \$125,000/year.
- 'Anatomical and Functional MRI constraints on MEG', NIH RO1 Award, J George, PI, (JD Lewine collaborator), 6/95-6/98, direct costs - \$160,000/year.
- 'Clinical Evaluation of MSI', Picker Int, WW Orrison and JD Lewine, co-PIs, 1/95-1/97, \$150,000/year. 'Neuroimaging in Schizophrenia', Young Investigator Award, National Alliance for Research in Schizophrenia and Affective Disorders, JD Lewine, PI, 4/95-4/97, direct costs - \$30,000/year.
- 'Epileptic Patterns in LKS, PDD, and EIA', Primary Children's Medical Foundation, JD Lewine, PI, 6/97- 6/98, direct costs - \$24,000/year.
- 'Clinical MSI', Picker International, JD Lewine and WW Orrison, co-PIs, 7/98-7/00, direct costs - \$250,000/year, MSI portion of larger Picker award.
- 'Magnetoencephalographic Evaluation of Epileptiform Activity in LKS, PDD-NOS and EIA', March of Dimes Birth Defects Foundation, JD Lewine, PI, 9/98-9/00, direct costs - \$48,000/year.
- 'Patterns of Epileptiform Activity in Autism', Established Investigator Award, National Alliance for Research in Schizophrenia and Affective Disorders, JD Lewine, PI, 6/98-6/00, direct costs - \$40,000/year.
- 'Fetal Magnetocardiography and Magnetoencephalography Equipment Grant', Mariner-Eccles Foundation, WW Orrison and JD Lewine, co-PIs, 1998-1999, one time equipment grant, direct costs - \$75,000.
- 'Magnetocardiography', University of Utah Seed Grant, JD Lewine, PI, 9/99-9/00, direct costs - \$35,000.
- 'Magnetocardiography', Dumke Foundation, JD Lewine, PI, 1999, one time supplement, direct costs - \$5,000.
- 'Magnetic Source Imaging in the Evaluation of Epileptiform Activity in the Autism Spectrum Disorders', Private grant from D&S Spafford & S Kirk, JD Lewine and WW Orrison, Jr., co-PIs, 8/99-8/00, \$500,000.
- 'Efficacy of Drug Treatment Programs', State of Utah Department of Youth Corrections, JD Lewine, PI, 10/99-10/00, direct costs - \$50,000.
- 'Auditory processing in Autism', Cure Autism Now Foundation, JD Lewine, PI, 10/99 - 4/01, direct costs - \$30,000/year.
- 'Electro/Magnetoencephalography Signal Processing', National Science Foundation, JD Lewine, PI, 8/1/01-7/30/04, direct costs - \$45,000/year.
- 'Development of Clinical MEG', VSM-MedTech, J Lewine and W Brooks, co-PIs, 12/03-12/06, direct costs, \$150,000/year
- 'Visual Information Processing in Reading Disorders', Kansas Lions Sight Foundation, JD Lewine, PI, 7/1/03- present, direct costs - \$19,000.
- 'Functional MRI and MEG Investigation of Neural Reorganization in Primary Visual Cortex Following Central Visual Loss Due to Macular Disease', Kansas Lions Sight Foundation, G Timberlake, PI (JD Lewine co- investigator), 7/1/03-6/31/04, direct costs - \$18,000.
- 'Auditory Processing in Autism Spectrum Disorders', Leid Award, KU Research Institute, JD Lewine, PI, 7/1/04- 6/31/06, direct costs - \$35,000.
- 'MEG and MRS in Mild Head Trauma', Clinical Pilot Grant, KU Research Institute, JD Lewine, PI, 7/1/04-6/31/06, direct costs - \$25,000.
- 'Effects of Maternal Smoking of Fetal MCG and Fetal MEG', KBRIN Award, KUMC, K Gustafson PI, (JD Lewine co-investigator), 2/04-2/06, direct costs - \$25,000.
- 'Effects of Fast ForWord on Language Processing', 5R21DC007214, National Institute of Deafness and Other Communication Disorders, JD Lewine, PI, 2/04-2/06, direct costs - \$25,000.

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Disorders, M Fey and J Lewine, co-PI, 6/06-6/08, direct costs, \$125,000/year.
'Neurobiology of Sensory Processing Disorder', Wallace Foundation, J Lewine and W Dunn, co-PIs, 4/05-4/06, direct costs - \$35,000.
'Advanced Differential Diagnosis and Treatment of Veterans with Post-Traumatic Stress Disorder and Traumatic Brain Injury', Illinois Department of Veterans Affairs, J Lewine, PI, 10/08-10/10, direct costs: \$97,500.
'Neurobiology of Language Dysfunction in Autism Spectrum Disorders', 7R01HD051747, NICHD, J Lewine, PI, 7/08-7/13, total direct costs \$2,079,650
'Auditory Processing Training for Sound Sensitivities in Autism', 1 R41 DC013197, NICHD, J Lewine and N Bangera, co-PI, 9/12-9/13, total costs, \$170,000
Vagal nerve stimulation for combat related tinnitus, W81XWH-12-0258, USAMRMC/Geneva Foundation, total costs: \$324,500, J Lewine, PI
DALFAMEG, Acorda, \$100,000, C Ford and J Lewine, co-PI Neurophysiology and VNS, ElectroCore, \$56,000, J Lewine, PI
Secondary data analysis of trials using PR-6412562, Pfizer, J Lewine and V Calhoun, co-PIs, \$96,000, 2016-2017.
Testing the neuroprotective efficacy of ketamine in rats surviving a sub- or near lethal dose of organophosphate nerve agent, BARDA task order RTOR-Chem-0002, J McDonald and J Lewine, co-PI, \$1,620,000, 2015- 2017.
Cerebral perfusion changes after mild traumatic brain injury and treatment with hyperbaric oxygen, LBERI/USAMRMC: BIMA, W81XWH-15-D-0039-0003, sub-award PI, J Lewine., \$350,000, 2016-2017.
Secondary data analysis of USAMRMC HBOT EEG and MRI data, sub-award PI, J Lewine, \$50,000/year, 2017- 2019.
Beyond Barriers Therapeutics: Impact of intranasal NAC on brain glutathione as assessed by magnetic resonance spectroscopy. J Lewine, PI, \$30,000, 2020-2021.
Cures Within Reach Repurposing Award: Reducing Oxidative Stress – A major contributor to traumatic brain injury, J Lewine, PI, \$40,000, 2021-2023.

IV. CLINICAL TRIAL EXPERIENCE

Topamax Treatment of Autism Spectrum Disorders, Johnson and Johnson/Robert Wood Johnson Foundation, JD Lewine and William W. Orrison, co-PIs, 7/99-7/00, direct costs - \$150,000
Acute Effect of Three Neuroactive Drugs on Brain Activity Measured by MEG, EEG, and the Synchronous Neural Interaction Test, Orasi Medical Inc., C Forcetti and JD Lewine, Co-PIs, 9/09-12/09, direct costs - \$190,000.
Improved Diagnosis of Alzheimer's Disease Using Magnetoencephalography (MEG) and the Synchronous Neural Interaction Test: A One-month Study, Orasi Medical Inc, C Forcetti and JD Lewine, Co-PIs, 9/09- 3/10 direct costs - \$160,000.
Effects of Memantine on Social Skills in the Autism Spectrum Disorders, protocols mem-091, mem-067, mem-068, Forrest Research Institute, J Lewine, site PI
Ability for treatment of tics in Tourette's Syndrome, Archer Protocol 293/294, Otsuka, J Lewine site PI Lurasidone for Irritability in Autism, D1050325, Sunovion, J Lewine, site PI.
CM-AT for Treatment of Autism, P103, CureMark, J Lewine, site PI

V. HONORS

Scientific, Research and Teaching Awards & Honors

Finalist: Otto P. Burgdorff Science Competition, 'Primitive notions of plane Euclidean geometry', New York Academy of Science, 1978.
Honors Group: 37th Science Talent Search for the Westinghouse Science Scholarships, 'Primitive notions of plane Euclidean geometry', 1978.
B.S. in Neuroscience with Distinction in Research, Cum Laude, 'Tachistoscopic investigations of reading strategies', University of Rochester, 1982-88.
Edward Peck Curtis Award for Excellence in Teaching, University of Rochester, 1986.
Nominated for 1989 Donald Lindsley Prize in Behavioral Neuroscience, 'Two Brains, One Mind', Society for Neuroscience, 1989.
Young Investigator Award, McDonnell-Pew Program in Cognitive Neuroscience, 'Neural dynamics of event-memory', 1993-1996.
Summa Cum Laude Award for poster presentation, 'Electromagnetic evaluation of motor function by MEG, EEG, FMRI and TMS', American Society of Neuroradiology, 1994.
Second Place Prize For Research Poster 'Neuromagnetic Correlates of Post-Concussive Syndromes', 14th Annual meeting of the Brain Injury Association, 1995.
Young Investigator Award, National Alliance for Research in Schizophrenia and Depression, 'Neuroimaging in schizophrenia', 1995.
Cum Laude Award for Poster Presentation: 'Presurgical Planning Via MSI', American Society for Neuroradiology, 1996.
Established Investigator Award, National Alliance for Research in Schizophrenia and Depression, 'Patterns of epileptiform activity in autism', 1998.
Finalist, DANA Foundation Clinical Hypothesis in Neuroscience Program, 'Presurgical mapping of brain function', 1995.
Finalist, DANA Foundation Clinical Hypothesis in Neuroscience Program, 'Brain imaging in head trauma', 1996.
Finalist, DANA Foundation Clinical Hypothesis in Neuroscience Program, 'Brain imaging in scotopic sensitivity syndrome and dyslexia', 1997.
Finalist, DANA Foundation Clinical Hypothesis in Neuroscience Program, 'Epileptiform activity in the autism spectrum disorders', 1998.
Scientific Advisory Board, National Institute for Play, 2004-
Irlen International Scientific Advisory Board, 2006-
Executive Committee Member, International Society for the Advancement of Clinical Magnetoencephalography, 2009-2013
Board of Directors, American Clinical MEG Society, 2010-2013
Board of Directors, Lovelace Biomedical and Environmental Research Institute, 2012-2014

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Scholarships and Fellowships

New York State Regents Scholarships, 1978-82.
Rochester Prize Scholarship, University of Rochester, 1978-82.
Director's Fellowship, Los Alamos National Laboratory, 1988-90.

Editorial Board

Frontiers in Public Policy
Madridge Neuroscience
Applied Science
CPQ Neurology and Psychology

Ad Hoc Reviewer for:

Journal of Cognitive Neuroscience, 1989-91
Cerebral Cortex, 1994-1996
Journal of Neuroscience, 1994-
Journal of Clinical Neurophysiology, 1996-
Electroencephalography and Clinical Neurophysiology, 1996-
Journal of the International Neuropsychological Society, 1998-
Biological Psychiatry, 1998-
NeuroImage, 1998-
Brain Topography, 1998-
Human Brain Mapping, 2000-
Frontiers in Neuroscience 2010-

Scientific Review Boards

IRD/LDRD Reviewer, Los Alamos National Laboratory, 1991
NIH Diagnostic Radiology Study Section, temporary member, 1997-1998
NIDA Special Study Section, Human Brain Map Project, 1999
NINDS Small Business Electromagnetic Study Section, 2003, 2004
NIH BMIT Study Section, 2004, 2005
NIH LCOM Study Section, 2007, 2008, 2009, 2013
NIH ANIE Study Section, 2008-2018
NIH ZRG-1 Study Section, 2008-2017
NIH Autism ARA Study Section, 2009
NIH/CSR College of Scientific Reviewers, 2010-2012
NIH ZNS1 (BRAIN Initiative) Study Section, 2014, 2015
NIH ZRG1/PSE/HBCD Study Section, 2021
NIH AUD/IFCN Study Section, 2022

Organizer, Scientific Meetings

Member, Local Organizing Committee, 1996 International Biomagnetism Conference, Santa Fe, New Mexico.
Member, Scientific Organizing Committee, 1998 International Biomagnetism Conference, Sendai, Japan.
Member, Scientific Organizing Committee, 1999 Hans Berger International Workshop, Jena, FDRG.
Member, Scientific Organizing Committee, 2007, 6th International Meeting on Noninvasive Functional Source Imaging of the Human Brain and Heart and the International Conference on Functional Biomedical Imaging, Hangzhou, China.
Chair, Organizing Committee, ACMEGS 2010, New Orleans.
Member, Scientific Organizing Committee, ISACM 2011, Las Vegas.
Member, Organizing Committee, 5th International Conference on Brain Disorders and Therapeutics, 2017, Madrid.
Member, Scientific Organizing Committee for Biomag 2018, Philadelphia.

Invited Participant, Special Scientific Workshops

Selected Participant, James S. McDonnell Summer Institute in Cognitive Neuroscience, Dartmouth, 1989.
Selected Participant, Workshop on the Neurobiology of Disease - Neurosciences Institute, Rockefeller University, 1990.
Invited participant, Carmel Workshops in Cognitive Psychophysiology, 1992.
Invited participant, BrainMap '93 University of Texas Health Science Center, 1993.
Invited participant, Carmel Workshops in Cognitive Psychophysiology, 1994.
Special Presentation to the Scientific Advisory Board of the National Alliance for Autism Research, 1997.
Invited Participant, Cure Autism Now, Think Tank Meeting, 1997.
Invited Participant, NIH Conference on State-of-the-Science in Autism, Diagnosis and Screening, 1998.
Autism One, Seizure Think-Tank, 2009, 2010, 2011.

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VI. PUBLICATIONS

Books:

1. Orrison WW., Jr., Lewine JD, Sanders JA, Hartshorne MF, (1995), Functional Brain Imaging, Mosby Yearbook, Inc., St. Louis, 1995.

Peer-Reviewed (published)

1. Ringo JL, Lewine JD, Doty RW, (1986), Comparable performance by man and macaque on memory for pictures. Neuropsychologia, 24(5): 711-717.
2. Brumaghim JT, Klorman R, Strauss J, Lewine JD, Goldstein MG, (1987), Does methylphenidate affect information processing? Findings from two studies on performance and P3b latency. Psychophysiology, 24(3): 361-373.
3. Doty RW, Ringo JL, Lewine JD, (1988), Forebrain commissures and visual memory: A new approach. Behavioral Brain Research, 29: 267-280.
4. Bub D, Lewine JD, (1988), Different modes of word recognition in left and right visual fields. Brain and Language, 33(1): 161-188.
5. Lewine JD, (1989), The temporal dynamics of event memory: A stage analysis of mnemonic processing by man and macaque. Journal of Cognitive Neuroscience, 4: 356-371.
6. Lewine JD, (1990), Evaluation of single- and multi-source models for neuromagnetic data: Empirical and simulation studies. Brain Topography, 3(1): 298-299.
7. Orrison WW, Lewine JD, (1993) Magnetic source imaging in neurosurgical practice. Perspectives in Neurological Surgery, 4(2): 141-147.
8. Gallen CC, Sobel DF, Lewine JD, Sanders JA, Hart BL, Davis LE, Orrison WW, (1993), Neuromagnetic mapping of brain function, Radiology, 187:863-867.
9. Benzel EC, Lewine JD, Bucholz R, Orrison WW, (1993), Magnetic Source Imaging: A review of the Magnes system by Biomagnetic Technologies Incorporated. Neurosurgery, 33:252-259.
10. Spar JA, Lewine JD, Orrison WW, (1994), Neonatal hypoglycemia: CT and MR findings, AJNR, 15:1477-1478.
11. Doty RW, Ringo JL, Lewine JD, (1994), Interhemispheric sharing of visual memory in macaques, Behavioural Brain Research, 64: 79-84.
12. Lewine JD, Doty RW, Astur RS, Provencal SL, (1994) Role of the forebrain commissures in bihemispheric mnemonic integration in macaques. J. Neuroscience, 14:2515-2530.
13. Lewine JD, Astur RS, Davis LE, Knight JE, Maclin EL, Orrison WW, (1994), Cortical organization in adulthood is modified by neonatal infarct: A case study. Radiology, 190: 93-96.
14. Smith JR, Gallen C, Orrison W, Lewine JD, Murro AM, King DW, Gallagher BB, Role of multichannel magnetoencephalography in the evaluation of ablative seizure surgery candidates, Stereotactic Functional Neurosurgery, 62: 238-244.
15. Smith JR, Schwartz BJ, Gallen CC, Orrison WW, Lewine JD, Murro AM, King DW, Park YD (1995), Utilization of multichannel magnetoencephalography in the guidance of ablative seizure surgery, J Epilepsy, 8(2): 119-130.
16. Smith JR, Schwartz BJ, Gallen CC, Orrison WW, Lewine JD, Murro AM, King DW, Park YD (1995), Multichannel magnetoencephalography in ablative seizure surgery outside the anteromesial temporal lobe, Stereotactic Functional Neurosurgery, 65: 81-85.
17. Lewine JD, Morrell F, Orrison WW, (1995), Neuromagnetic evaluation of normal and abnormal brain function in epilepsy, International Journal of Neuroradiology, 1(2): 182-198.
18. George JS, Aine CJ, Mosher JC, Schmidt DM, Ranken DM, Schlitt HA, Wood CC, Lewine JD, Sanders JA, Belliveau JW, (1995), Mapping function in the human brain with magnetoencephalography, anatomical magnetic resonance imaging, and functional magnetic resonance imaging, J. Clin. Neurophysiol, 12(5): 406-431.
19. Baumann SB, Noll DC, Kondziolka DS, Schneider W, Nichols TE, Mintun MA, Lewine JD, Yonas H, Orrison WW, and Scabassi RJ, (1995), Comparison of functional magnetic resonance imaging with positron emission tomography and magnetoencephalography to identify motor cortex in a patient with an arteriovenous malformation, J. Image Guided Surgery, 1:191-197.
20. Sanders JA, Lewine JD, Orrison WW, (1996), Comparison of primary motor cortex localization using functional magnetic resonance imaging and magnetoencephalography. Human Brain Mapping, 4: 47-57.
21. Canive J, Lewine JD, Edgar JC, Davis JT, Torres F, Roberts B, Graeber D, Orrison WW, Tuason VT, (1996), Magnetoencephalographic assessment of spontaneous brain activity in schizophrenia. Psychopharmacology Bulletin, 32(4):104-110.
22. Aine CJ, Supek S, George JS, Ranken D, Lewine JD, Sanders J, Best E, Tiee W, Flynn ER, Wood CC, (1996), Retinotopic organization of human visual cortex: Departures from the classical model, Cerebral Cortex, 6(3): 354-361.
23. Lewine JD, Canive JM, Orrison WW Jr, Edgar JC, Provencal SL, Davis JT, Paulson K, Graeber D, Roberts B, Escalona PR, Gledhill K, Calais L, (1997), Electrophysiological abnormalities in PTSD, Annals, New York Acad Sci, 821: 508-511.
24. Canive JM, Lewine JD, Orrison WW Jr, Edgar JC, Provencal SL, Davis JT, Paulson K, Graeber D, Roberts B, Escalona PR, Gledhill K, Calais L, (1997), MRI abnormalities in PTSD, Annals, New York Acad Sci, 821: 512-515.
25. Canive JM, Lewine JD, Edgar JC, Davis JT, Miller GA, Torres F, Tuason VB, (1998), Spontaneous brain magnetic activity in schizophrenia patients treated with Aripiprazole, Psychopharmacology, 34(1): 101-105.

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26. Leahy RM, Mosher JC, Spencer ME, Huang MX, Lewine JD. (1998), A study of dipole localization accuracy for MEG and EEG using a human skull phantom, Electroenceph. Clin. Neurophysiol., 107: 159-173.
27. McDonald JD, Chong BW, Lewine JD, Jones G, Burr RB, McDonald PR, Koehler SB, Tsuruda J, Orrison WW, Heilbrun MP, (1999), Integration of preoperative and intraoperative functional brain mapping in a frameless stereotactic environment for lesions near eloquent cortex. Technical Note, J Neurosurgery, 90:591-598.
28. Lewine JD, Orrison WW, Sloan JH, Kodituwakku PW, Davis JT (1999), Neuromagnetic Assessment of pathophysiological brain activity induced by minor head trauma, AJNR, 20: 857-866.
29. Lewine JD, Andrews R, Chez M, Devinski O, Morrell F, Smith M, Patil A, Davis J, Provencal S, Weisend M, Kanner A, Lee R, Orrison WW, (1999), Magnetoencephalographic patterns of epileptiform activity in children with regressive autism spectrum disorders, Pediatrics, 104 (3): 405-418.
30. Hurley RA, Lewine JD, Jones GM, Orrison WW, Taber KH, (2000,) Application of magneto- encephalography to the study of autism, J Neuropsychiatry Clin Neurosci., 12:1-3.
31. Dale AM, Liu AK, Fischl BR, Buckner RL, Belliveau JW, Lewine JD, Halgren E, (2000), Dynamic statistical parametric mapping combining fMRI and MEG for high-resolution imaging of cortical activity, Neuron, 26:55-67.
32. Gross RE, Dean A, Lewine J, Chong B, Funke M, MacDonald P, (2000), The relationship of magnetic source imaging to ictal electroencephalography in a neuronavigational workspace, Stereotact Funct Neurosurg, 73:109-114.
33. Thoma R, Yeo RA, Gangestad SW, Davis JT, Lewine JD, (2002), Fluctuating asymmetry and the human brain, Laterality, 7:45-58.
34. Hughes SK, Nilsson DE, Boyer RS, Bolte RG, Hoffman RO, Lewine JD, Bigler ED. (2002) Neurodevelopmental outcome for extended cold water drowning: a longitudinal case study. J Int. Neuropsych Soc. 8:588-595.
35. Lewine JD, Thoma RJ, Provencal SL, Edgar CJ, Miller GA, Canive JM. (2002) Abnormal stimulus- response intensity function in post-traumatic stress disorder, Am J Psychiatry, 159:1689-1695.
36. Halgren E, Dhond RP, Christensen N, Van Petten C, Marinkovic K, Lewine JD, Dale AM. (2002) N400- like magnetoencephalography responses modulated by semantic context, word frequency, and lexical class in sentences, Neuroimage, 17:1101-1116. Moore KR, Funke ME, Constantino T, Katzman GL, Lewine JD. (2002) Magnetoencephalographically directed review of high-spatial-resolution surface-coil images improves lesion detection in patients with epilepsy, Radiology, 225:880-887.
37. Shih J, Weisend MP, Lewine JD, Sanders JA, Derman J, Lee R, (2004) Areas of interictal spiking are associated with metabolic dysfunction in MRI-negative temporal lobe epilepsy, Epilepsia, 45: 223-229.
38. Yetik S, Nehorai A, Lewine JD, Muravchick CH: (2005) Distinguishing between moving and stationary sources using EEG/MEG with an application to epilepsy, IEEE Transactions in Biomedical Engineering, 52: 471-479, 2005/.
39. Edgar JC, Yeo RA, Gangestad SW, Blake MB, Davis JT, Lewine JD, Canive JM: Reduced auditory M100 asymmetry in schizophrenia and dyslexia: Applying a developmental instability approach to assess atypical brain asymmetry, Neuropsychologia, 44: 289-2999, 2006.
40. Bartlett JR, DeYoe EA, Doty RW, Lee BB, Lewine JD, Negrao N, Overman WH: Psychophysics of electrical stimulation of striate cortex in macaques. J Neurophysiology, 94: 3430-3442, 2005.
41. DeYoe EA, Lewine JD, Doty RW: Laminar variations in threshold for detection of electrical excitation of striate cortex in macaques, J Neurophysiology, 94: 3443-3450, 2005.
42. Thoma RJ, Yeo RA, Gangestad SW, Halgren E, Sanchez NM, Lewine JD: Cortical volume and developmental instability are independent predictors of general intellectual ability, Intelligence, 2005.
43. Thoma R, Yeo R, Gangestad S, Davis J, Paulson K, Halgren E, Lewine JD: Neural dynamics of the speed- intelligence relationship and the effect of developmental instability, Neuroimage, 33: 1456-1464, 2006.
44. Popescu M, Popescu EA, Gustafson K, Drake W, Lewine JD: Reconstruction of fetal cardiac vectors from multichannel fMCG data using recursively applied and projected multiple signal classification, IEEE- TBME, 53: 2564-2576, 2006.
45. Lewine JD, Davis JT, Bigler E, Hartshorne M, Thoma R, Hill D, Funke M, Sloan JH, Orrison WW Jr., Multimodal brain imaging in mild head trauma: integration of MEG, SPECT, and MRI. J Head Trauma Rehab, 23:141-155, 2007
46. Popescu EA, Popescu M, Bennett TL, Lewine JD, Drake WB, Gustafson KM: Magnetographic assessment of fetal hiccups and their effect on fetal heart rhythm, Physiol Meas, 28: 665-676, 2007.
47. Popescu M, Popescu EA, Cahn T, Blunt SD, Lewine JD, Spatio-temporal reconstruction of bilateral auditory steady-state responses using MEG beamformers, IEEE Trans Biomed Eng, 1092-1102, 2008.
48. Lewine JD: Commentary of Lau et al., Systematic Review of MEG is Presurgical Planning for Epilepsy, Epilepsy Research 82(2-3): 235-6, 2008.
49. Parks LK, Hill DE, Thoma RJ, Euler MJ, Lewine JD, Yeo RA. Neural correlates of communication skill and symptom severity in autism: a voxel-based morphometry study, Research in Autism Spectrum Disorders, 3(2): 444-454, 2009.
50. Popescu M, Fey ME, Finestack L, Popescu EA, Lewine JD. N400 responses in children with primary language disorder: intervention effects. NeuroReport, 20(12): 1104-1108, 2009.
51. Fey ME, Finestack LH, Gajewski BJ, Popescu M, Lewine JD. Does Fast-ForWord Language enhance children's response to language intervention. Journal of Speech, Language, and Hearing, 53(2): 430-439, 2010.
52. Thoma RJ, Hill DE, Tonigan S, Kuny AV, Vermont LN, Lewine JD. Adolescent self-reported alcohol/other Drug use consequences: moderators of self- and parent agreement, Alcohol Treatment Quarterly, 28(2): 101-110, 2010.
53. Funke ME, Lewine JD, Moore K, Tsuruda J, Matsuo F, Constantino T, Orrison WW., MEG-guided identification of structural brain lesions in patients with neocortical epilepsy. Epilepsia, 52s4: 10-14, 2011.

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54. Burgess RC, Funke ME, Bowyer SM, Lewine JD, Kirsch HE, Bagic AI, ACMEGS Clinical Practice Guideline 2: Presurgical Functional Mapping Using Evoked Fields, *J Clin Neurophysiol*, 28(4): 355-361, 2011.
55. Frye RE, Rossignol D, Cassanova MF, Martin V, Brown G, Edelson S, Coben R, Lewine JD, Slattery JC, Lau C, Hardy P, Fatemi H, Folsom T, MacFabe D, Adams J, A review of traditional and novel treatments for seizures in autism spectrum disorders: Findings from a systematic review and expert panel, *Frontiers in Public Health*, 1: 31, 2013.
56. Thoma RJ, Cook JA, McGrew C, King JH, Mauer AR, Lewine JD, Yeo RA, Campbell R, The effect of days since last concussion and number of concussions on cognitive functioning in Division I athletes, *Brain Inj*, 29: 633-8, 2015.
57. Demopoulos C, Hopkins H, Kopald B, Paulson K, Doyle L, Andrews W, Lewine JD, Deficits in auditory processing contribute to impairments in vocal affect recognition in autism: A MEG study, *Neuropsychology*, 29: 895-908, 2015.
58. Demopoulos C, Lewine JD, Audiometric profiles in the autism spectrum disorders: does subclinical hearing loss impact communication? *Autism Research*, 9:107-120, 2016.
59. Demopoulos C, Hopkins J, Lewine JD., Relationships between nonverbal and verbal social cognitive skills and complex social behavior in children and adolescents with autism, *J Abnormal Child Psychol*, 44: 913- 21, 2016.
60. Thoma RJ, Chaze C, Lewine JD, Calhoun VD, Clark VP, Bustillo J, Houck J, Ford J, Bigelow R, Wihelmi C, Stephen JM, Turner JA. Functional MRI evaluation of multiple neuronal networks underlying auditory verbal hallucinations in schizophrenia spectrum disorders, *Front Psychiatry*, 7: 39, 2016.
61. Thoma RJ, Meier A, Houck J, Clark VP, Lewine JD, Turner J, Stephen J. Diminished auditory sensory gating during active auditory verbal hallucinations. *Schizophrenia Research*, 2017, epub.
62. Lewine JD, Weber W, Doyle-Eisler M, McDonald JD, Garcia E, Raulli R, Laney J. Addition of ketamine to the current standard-of-care for treatment of sarin exposure improves neurobiological and behavioral outcomes in a rodent model. *Neurotoxicology*, 69:37-46, 2018.
63. Lewine JD, Paulson K, Bangera N, Gill D, Simon BJ. Exploration of the impact of brief non-invasive vagal nerve stimulation on electrophysiological biomarkers of brain neurochemistry, *Neuromodulation*, 22(5): 564-572. 2019.
64. Lewine JD, Plis S, Ulloa A, Williams C, Spitz M, Foley J, Paulson K, Davis JT, Bangera N, Weaver L. Quantitative EEG biomarkers for mild traumatic brain injury. *J Clin Neurophysiol.*, 36(4): 298-305, 2019.
65. Huang MX, Lewine JD, Lee RR. Magnetoencephalography for mild traumatic brain injury and post- traumatic stress disorder. *Neuroimage Clin N Amer*, 30(2): 175-192, 2020.
66. Demopoulos C, Kopald BE, Bangera N, Paulson K, Lewine JD, Rapid auditory processing of pure tones is associated with basic components of language in individuals with autism spectrum disorders, *Brain and Language*, 238, 2023.
67. Frye RE, Nanda H, Pleasure SJ, Casanova MF, Boles RG, Lewine J, Gaitanis J, Adams JB. Synchrony 2022: Epilepsy and Seizures in Autism Spectrum Disorder Roundtable. *J Pers Med*. 2023 Mar 20;13(3):557.
68. Lewine JD, Gray R, Paulson K, Budden-Potts D, Murray W, Goodreau N, Davis JT, Bangera N, Bourke F: Quantitative EEG markers of post-traumatic stress disorder: baseline observations and impact of the reconsolidation of traumatic memories (RTM) treatment protocol. *Frontiers in Human Neuroscience*, submitted.
69. Lewine JD, Provencal S, Hill D, Davis J, Funke M, Thoma R, Orrison WW, Johnson M, Paulson K, Kopald B, Bangera N, Demopoulos C: Magnetic source imaging of epileptiform activity in autism: developmental delay versus regressive profiles, *Autism Research*, submitted.
70. Kim Y, Diggins MC, Davis JT, Paulson K, Demopoulos C, Kopald B, DePlonty K, Lewine JD. Amygdala volume and social impairment in youth with autism spectrum disorders. In preparation.
71. Lewine JD, Bangera N, Paulson K. Auditory Processing Training (APT) for alleviating sound sensitivity in autism spectrum disorders. In preparation.
72. Lewine JD, Chez M, Andrews R, Mott S, Riviello J, Funke M, Davis JT, Provencal S, Hill D, Paulson K. Patterns of epileptiform activity and the quality of response to high-dose steroid therapy in the treatment of regressive autism spectrum disorders: A magnetoencephalography investigation. In preparation.

Book Chapters:

1. Doty RW, Lewine JD, Ringo JL, (1985), Mnemonic interactions between and within cerebral hemispheres in macaques. In: Neural Mechanisms of Conditioning (DL Alkon and CD Woody, eds.) Plenum Publishing Co., New York.
2. Doty RW, Ringo JL, Lewine JD, (1986), Interhemispheric mnemonic transfer in macaques. In: Two Hemispheres, One Brain (F Lepore, M Ptito, and HH Jasper, eds.) Alan R. Liss, Inc., New York.
3. Klorman R, Brumaghim JT, Coons HW, Peloquin LJ, Strauss J, Lewine JD, Borgstedt A, Goldstein MG, (1988), The contribution of event related potentials to understanding effects of stimulants on information processing in Attention Deficit Disorder. In: Attention Deficit Disorder V, Pergamon Press, 200-218.
4. Doty RW, Ringo JL, Lewine JD, (1988), Human-like characteristics of visual mnemonic system in macaques. In: Cellular Mechanisms of Conditioning and Behavioral Plasticity (CD Woody, DL Alkon, and JL McGaugh, eds.) Plenum Publishing Co., New York.
5. Lewine JD, (1990), Neuromagnetic techniques for the noninvasive analysis of brain function. In: Noninvasive Techniques In Biology and Medicine (SE Freeman, E Fukushima, and ER Greene, eds.) San Francisco Press, 33-79.
6. George JS, Lewine JD, Flynn ER, Goggin A, Ranken D, Nix D, Dyer RB, (1993), IR thermal imaging of a monkey's head: Local temperature changes in response to somatosensory stimulation. In: Optical Imaging of Brain Function and Metabolism, Advances in Experimental Biology and Medicine, volume 333, (U Dirnagl, A Villringer and KM Einhaupl, eds), Plenum Press, New York, 125-136.

JEFFREY DAVID LEWINE, B.S., M.S., PH.D.

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7. Orrison WW, Lewine JD, (1995), Neuroimaging in closed head injury, In: Head Injury And Post- concussive Syndrome, (Rizzo M, and Tranel D, eds), Churchill Livingstone, Inc., New York, 71-88.
8. Lewine JD, Orrison WW (1995), Magnetoencephalography and Magnetic Source Imaging. In: Functional Brain Imaging (WW Orrison, JD Lewine, JA Sanders, MF Hartshorne), Mosby Year Book, Inc., St. Louis, 369-418.
9. Lewine JD, Orrison WW, (1995), Clinical Electroencephalography and Evoked Responses. In: Functional Brain Imaging (WW Orrison, JD Lewine, JA Sanders, MF Hartshorne), Mosby Year Book, Inc., St. Louis, 327-368.
10. Lewine JD, (1995), Introduction to functional neuroimaging: Functional neuroanatomy. In: Functional Brain Imaging (WW Orrison, JD Lewine, JA Sanders, MF Hartshorne), Mosby Year Book, Inc., St. Louis, 13-96.
11. Lewine JD, Sloan JH, Orrison WW, Kodituwakku PW, Davis JT, Hart BL, Spar JA, Hill D, Thoma R, Chang S, Waldorf VA, Shaw P, Edgar JC, (1996), Neuromagnetic evaluation of brain dysfunction in post-concussive syndromes associated with mild head trauma, In: Recovery After Traumatic Brain Injury, (B Uzzell, H Stonnington, J Doronzo, eds.), Lawrence Erlbaum Associates, Inc., Publishers.
12. Lewine JD, Orrison WW, Halliday A, Morrel F, Chang S, Hwang P, Sanders JA, (1996), MEG functional mapping in epilepsy surgery. In: Neuroimaging in Epilepsy: Principles and Practice, (GD Cascino and CR Jack, eds.), Butterworth and Heinemann, Elsevier, 193-208.
13. Lewine JD, Benzel EC, Orrison WW, Jr., (1996), Magnetoencephalography. In: Neurosurgery, 2nd Edition, (R. Wilkins and S. Rengachary, eds.), McGraw-Hill, New York, 253-258.
14. Lewine JD, Orrison WW, (1997), Magnetoencephalography, In: Advanced Imaging Techniques. In MR, (W Bradley and G Bydder, eds), Martin Dunitz Publishers, London, 333-354.
15. Lewine JD, Benzel EC, Baldwin NG, Orrison WW, Jr., (1998), Magnetoencephalography. In: Advanced Neurosurgical Navigation, E Alexander and RJ Maciunas, eds.), Thieme Medical Publishers, 1998.
16. Lewine JD, Orrison WW, (1998) Functional Brain Imaging. In: Clinical MR Spectroscopy, (R Mukherji, ed.), Wiley Press, New York, 1998.
17. Lewine JD, Orrison WW, Jr. (1999) Magnetic Source Imaging: Integration of magnetoencephalography and magnetic resonance imaging, In: Magnetic Resonance Imaging, 3rd Edition, (DD Stark and WG Bradley, Jr., eds.), Mosby, St Louis, 1999, 1575-1593.
18. Chong BW, Lewine JD. (2000) The normal brain, In: Neuroimaging, (WW Orrison Jr., ed), WB Saunders, New York, 2000.
19. Orrison WW Jr., Lewine JD. (2000) Magnetic source imaging, In: Neuroimaging, (WW Orrison Jr., ed), WB Saunders, New York, 2000.
20. Lewine JD. (2011) Brain imaging of injury caused by mild head trauma, in Management of Traumatic Brain Injury, F Zollman, ed.
21. Lewine JD, Fisch BJ, Bangera N. Magnetoencephalography, to appear in Neuroimaging of Sleep and Sleep Disorders, E Nofzinger, P Maquet and M Thorpy, eds., Cambridge University Press, 2013.
22. Lewine JD., Brain imaging in mild traumatic brain injury, In: Manual of Traumatic Brain Injury Management, 2nd edition, FS Zollman ed. Demos Medical, 2016.
23. Lewine JD., Structural and Functional Brain Imaging in Mild Traumatic Brain Injury, In: Manual of Traumatic Brain Injury Assessment and Management, 3rd edition, FS Zollman ed. Demos Medical, 2021, 97-107.

Conference Proceedings and Other Publications:

1. DeYoe EA, Lewine JD, Doty RW, (1989), Optimal stimuli for detection of intracortical currents applied to striate cortex of awake macaque monkeys. Proceedings of the IEEE Engineering in Medicine & Biology Society 11th Annual International Conference, 934-936.
2. Lewine JD, Roeder S, Oakley M, Arthur D, Aine C, George JS, Flynn E, (1990), A modality- specific neuromagnetic P3. In: Advances in Biomagnetism, proceedings of the 7th International Conference on Biomagnetism, Plenum Press, 229-232.
3. Mosher J, Lewis P, Lewine JD, George JS, Leahy R, Singh M, (1991), Electromagnetic imaging of dynamic brain activity. Proceedings, IEEE 1991 Medical Imaging Conference.
4. Orrison WW, Lewine JD, Sanders JA, (1993), Technological advances breathe new life into clinical magnetoencephalography. MR, March/April 1993, 41-44.
5. Orrison WW, Lewine JD, Espinosa MC, (1993), Magnetic Source Imaging: A new method of brain analysis. Administrative Radiology, March 1993, 44-47.
6. Lewine JD, Orrison WW (1995), Magnetic Source Imaging: Basic principles and applications in neuroradiology, Academic Radiology, 2:436-440.
7. Lewine JD, Orrison WW, Astur RS, Davis LE, Knight JD, MacIin EL, Reeve A, (1995), Explorations of pathophysiological spontaneous activity by magnetic source imaging, in: Biomagnetism: Fundamental Research and Clinical Applications (C Baumgartner, L Deecke, G Stroink, SJ Williamson, eds.), IOS Press, Netherlands, 55-59.
8. Lewine JD, George JS, Flynn ER, Sanders JA, Astur RS, Wood CC, (1995), Comparison of MEG, EEG and TEG responses to somatosensory stimulation in the monkey, in: Biomagnetism: Fundamental Research and Clinical Applications (C Baumgartner, L Deecke, G Stroink, SJ Williamson, eds.), IOS Press, Netherlands, 103-106.
9. Chuang SH, Otsubo H, Hwang P, Orrison WW, Lewine JD, (1995), Pediatric magnetic source imaging, Neuroimaging Clinics of North America, Functional Neuroimaging, 5:2, 289-304.
10. Lewine JD, Orrison WW, (1995), Spike and slow wave localization by magnetoencephalography. Neuroimaging Clinics of North America, Epilepsy, 5:4, 575-596.

JEFFREY DAVID LEWINE, B.S., M.S., PH.D.

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11. Lewine JD, Edgar JC, Repa K, Paulson K, Astur RS, Orrison WW, (1995), A physical phantom for simulating the impact of pathology on magnetic source imaging, in: Biomagnetism: Fundamental Research and Clinical Applications (C Baumgartner, L Deecke, G Stroink, SJ Williamson, eds.), IOS Press, Netherlands, 368-372.
12. Lewine JD, Bucholz RD, Baldwin NG, Orrison WW, Maclin EL, Sander JA, Astur RS, (1995) Event-related magnetic fields and neurosurgical practice, in: Biomagnetism: Fundamental Research and Clinical Applications (C Baumgartner, L Deecke, G Stroink, SJ Williamson, eds.), IOS Press, Netherlands, 120-124.
13. George JS, Sanders JA, Lewine JD, Caprihan A, Aine CJ, (1995) Comparative studies of brain activation with MEG and functional MRI, in: Biomagnetism: Fundamental Research and Clinical Applications (C Baumgartner, L Deecke, G Stroink, SJ Williamson, eds.), IOS Press, Netherlands, 60-65.
14. Ebersole J, Squires K, Gamelin J, Lewine J, Scherg M, (1995), Dipole models of temporal lobe spikes from simultaneous MEG and EEG, in Biomagnetism: Fundamental Research and Clinical Applications (C Baumgartner, L Deecke, G Stroink, SJ Williamson, eds.), IOS Press, Netherlands, 20-22.
15. Lewine JD, Davis JT, Orrison WW Jr., (1998) Clinical Magnetic Source Imaging: Integration of MEG, EEG and MRI in a hospital setting, in: Quantitative and Topological EEG and MEG Analysis, 3rd International Hans Berger Congress (H Witte and U Zweiner, eds.), Springer.
16. Davis JT, Jones GM, Thoma RJ, Parker NL, Lewine JD, (1999), MEG assessment of auditory working memory, in: Recent Advances in Biomagnetism, (T Yoshimoto, M Kotani, S Kuriki, H Karibe, and N Nakasato, eds.), Tohoku University Press, Sendai, 1999, 640-643.
17. Chong BW, MacDonald JD, Lewine JD, Davis JT, Jones GM, Funke M, Burr R, McDonld P, Tsuruda J, Heilbrun MP, Orrison WW, Jr., (1999), in: Recent Advances in Biomagnetism, (T Yoshimoto, M Kotani, S Kuriki, H Karibe, and N Nakasato, eds.), Tohoku University Press, Sendai, 1999, 837-840.
18. Jones GM, Tsuruda JS, Alexander AL, Chong BW, Burr RB, MacDonald JD, Davis JT, Paulson KM, Jones JE, Andelin CO, Buswell HR, Funke ME, Lewine JD, (1999), Multimodal localization of sensorimotor cortex, in Recent Advances in Biomagnetism, (T Yoshimoto, M Kotani, S Kuriki, H Karibe, and N Nakasato, eds.), Tohoku University Press, Sendai, 1999, 857-860.
19. Thoma RJ, Lewine JD, Davis JT, Orrison WW Jr., (2000), A cortical substrate for hand skill: An MEG evaluation, in: Biomag96: Advances in Biomagnetism Research, (CJ Aine, ER Flynn, Y Okada, G Stroink, SJ Swithenby and CC Wood, eds.), Springer-Verlag, New York, 2000.
20. Sannita WG, Lewine JD, Maclin EL, Orrison WW Jr, Robinson S, (2000) Effects of acute, oral administration of phenobarbital (1.6 mg/kg) to healthy subjects, in: Biomag96: Advances in Biomagnetism Research, (CJ Aine, ER Flynn, Y Okada, G Stroink, SJ Swithenby and CC Wood, eds.), Springer-Verlag, New York, 2000.
21. Lewine JD, Davis JT, Orrison WW Jr., (2000) Evaluation of abnormal low frequency magnetic activity in epilepsy, in: Biomag96: Advances in Biomagnetism Research, (CJ Aine, ER Flynn, Y Okada, G Stroink, SJ Swithenby and CC Wood, eds.), Springer-Verlag, New York, 2000.
22. Lewine JD, Davis JT, Davis LE, Canive J, Roberts B, Graeber D, Edgar JC, Provencal SL, Paulson K, Meyers J, Christner R, Silveri J, Rawcliffe N, Espinosa M, Depper M, Sanders JA, Orrison WW Jr., (2000), Clinical MEG I: Towards a standardized examination, in: Biomag96: Advances in Biomagnetism Research, (CJ Aine, ER Flynn, Y Okada, G Stroink, SJ Swithenby and CC Wood, eds.), Springer-Verlag, New York, 2000.
23. Lewine JD, Baldwin NG, Bucholz RD, Sanders JA, Halliday AL, Anson JA, Shih J, Stearley J, Davis JT, Astur RS, Paulson K, Orrison WW Jr., (2000), Preoperative localization of sensorimotor cortex: MRI versus MEG, in: Biomag96: Advances in Biomagnetism Research, (CJ Aine, ER Flynn, Y Okada, G Stroink, SJ Swithenby and CC Wood, eds.), Springer-Verlag, New York, 2000.
24. Hill D, Waldorf VA, Lewine JD, Provencal SL, Moyers T, Yeo R, (2000) Magnetic source imaging in the evaluation of chronic alcohol abuse, in: Biomag96: Advances in Biomagnetism Research, (CJ Aine, ER Flynn, Y Okada, G Stroink, SJ Swithenby and CC Wood, eds.), Springer-Verlag, New York, 2000.
25. Davis JT, Lewine JD, Orrison WW Jr., (2000), Clinical MEG II: Development of a Normative Database, in: Biomag96: Advances in Biomagnetism Research, (CJ Aine, ER Flynn, Y Okada, G Stroink, SJ Swithenby and CC Wood, eds.), Springer-Verlag, New York, 2000.

VII. INVITED SCIENTIFIC PRESENTATIONS:

Scientific papers presented at national and international meetings.

National Meetings:

1. Lovelace Medical Foundation Conference on Imaging, September 1989, Neuromagnetic techniques for the noninvasive analysis of brain function.
2. Optical Society of America, January 1990, Non-invasive assessment of the visual system by magnetic stimulation. Invited discussant, Noninvasive assessment of the visual system - Transcranial Magnetic Stimulation.
3. Society of Nuclear Medicine, Southwest Chapter, April 1994, Fundamentals of Magnetoencephalography and Magnetic Source Imaging.
4. Cleveland Clinic Symposium on Surgical Approaches to Epilepsy, May 1994, Magnetic Source Imaging of Brain Function in Epilepsy.
5. American Electroencephalographic Society, September 1994: MEG Mapping of Brain Function.
6. American Epilepsy Society, MEG Workshop, December 1994: MSI in Epilepsy.

JEFFREY DAVID LEWINE, B.S., M.S., PH.D.

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7. VA Workshop in Radiological Imaging, June 1995: MSI.
8. American Electroencephalographic Society, September 1995: Multimodal Imaging.
9. Food and Drug Administration, November 1995: Functional Brain Imaging.
10. Functional Imaging Workshop, University of Pennsylvania, December 1995: Biomagnetic Imaging.
11. Picker MR Workshop, Williamsburg, VA, June 1996, Magnetic Source Imaging.
12. American Association of Physicists in Medicine, July 1996: Introduction to clinical magnetic source imaging.
13. Cure Autism Now, Think Tank Meeting, March 1997, California, MEG evaluation of epileptic activity in LKS, PDD and autism.
14. American College of Forensic Psychiatry, 1997 Annual Meeting, April, 1997, Applications of Brain Imaging in Forensic Psychiatry.
15. American Society of Neuroradiology, May 1997, Workshop on Image Fusion, Advances in Clinical MSI.
16. Autism Society of America, National Meeting, July 1997, Epileptiform Activity in Pervasive Developmental Disorders.
17. Society for Cardiovascular and Interventional Radiology, Symposium on Brain Imaging, September 1997, Functional Brain Mapping by MEG.
18. National Alliance for Autism Research, Sept 1997, Epileptiform Activity in PDD and Autism.
19. John French Alzheimer's Association and Cure Autism Now joint meeting on the Social Brain, Oct, 1997, Epileptiform Activity in LKS, PDD-NOS, and Autism.
20. American Epilepsy Society, December 1997, Clinical MEG.
21. American Clinical Neurophysiology Society, October 1998: Source Modeling in a Clinical Setting.
22. American Neuropsychological Association, October 1998: Epileptiform Activity in Autism Spectrum Disorder.
23. American Epilepsy Society, December 1998: MEG evaluation of LKS.
24. Autism Society of America, National Meeting, July 1999, Epileptiform activity in the autism spectrum disorders.
25. National Foundation for Functional Brain Imaging, Dec 1999, Clinical MEG, Where's the beef.
26. IEEE SAM Workshop: August 2002, Magnetoencephalography.
27. ACMEGS Workshop, Oct 2007 -- Insurance Issues for MEG.
28. ACMEGS Workshop, Nov 2008 -- Clinical MEG.
29. ACMEGS Workshop, May 2009 -- Future Applications of MEG.
30. Autism One, May 2009 -- Epileptiform Activity in the Autistic Brain: Cause, Effect, or Co-Morbidity.
31. Autism One, May 2010 -- Epileptic activity, seizures, and autism.
32. ACMEGS 2011, Feb 2011, New Orleans, Slow waves in TBI.
33. Autism One Conference, May 2011, Chicago, Auditory Processing in Autism, Autism and Epilepsy.
34. Autism One Conference, May 2011, Chicago, Auditory Integration Training, the MRN Project.
35. IDGA Military Health Care Symposium, San Diego, Visualizing the invisible wounds of war, 11/2012.
36. Audiology Research Organization Symposium 2013, Animal models of hearing loss.
37. CNS Translational Summit, Boston, On the hunt for biomarkers: Imaging and electrophysiological approaches, 5/2013.
38. MHSRS/AAATAC, Florida, Neurophysiology for differential diagnosis of mTBI and PTSD, 8/2013.
39. MHSRS/AAATAC, Florida, tVNS as a force multiplier for treatment of the invisible wounds of war, 8/2013.
40. American Clinical Neurophysiology Society/Houston, "MEG Research", 2/7/2015.
41. American College of Forensic Psychology/San Diego, "The Role of Neuroscience in Clinical and Civil Cases", 3/28/2015.
42. American Psychology in Law Society/San Diego, "Using Advanced Methods to Evaluate Brain Abnormalities", 3/20/2015.
43. American Headache Society Annual Meeting, 11/9/2015, Impact of VNS on brain physiology and chemistry.
44. American Academy of Pediatric Neuropsychology, 4/13/2019, Advances in Behavioral Neuroimaging.
45. American Academy of Pediatric Neuropsychology, 4/25/2020, Advances Neuroimaging.
46. TBI Med-Legal, Sept 25, 2021, Multimodal assessment of traumatic brain injury.

International Meetings:

1. International Association of Traumatic Brain Injury, 4th Annual Meeting, June 1994: Neuromagnetic evaluation of mild traumatic brain injury in post-concussive syndromes.
2. European workshop on multimodal imaging and registration, Schiedam, The Netherlands, August 1994: Clinical magnetic source imaging and multimodal imaging.
3. South American workshop on multimodal integration, Mexico City, Mexico, March 1995: Multimodal brain imaging and clinical magnetoencephalography.
4. XII meeting of the Japanese Society of EMG and Clinical Neurophysiology, Kyoto, Japan, October 1995 Recent advances in clinical magnetoencephalography.
5. 1996 International Conference on Biomagnetism, Workshop on Clinical MEG, February 1996: MEG in Head Trauma and Stroke.
6. WHO International Congress on Epilepsy in a Developing World, Beijing China, April 1996: MEG in Epilepsy.
7. 3rd International Hans Berger Congress, Oct. 1996: Clinical Magnetic Source Imaging in a Hospital Setting.
8. 8th European Congress of Clinical Neurophysiology, Oct 1996: Clinical Magnetic Source Imaging.
9. Workshop on Magnetic Source Imaging Clinical Applications, University of Heidelberg, Oct 1996: Experience with the Neuromag-122 MEG system in Albuquerque.

JEFFREY DAVID LEWINE, B.S., M.S., PH.D.

CADET NM Inc. | 10439 4th St, NW | Albuquerque, NM 87114 | Cell: (505) 252-1153 | jlewine@cadetnm.com

10. 1st Heidelberg Conference on Dynamic and Functional Radiological Imaging of the Brain, Oct 1996: New Perspectives on Clinical MEG.
11. 14th Meeting of the Japanese EEG Society, November 1997, Clinical Advances in MSI
12. International Biomagnetism Conference, Sendai, Japan, September 1998: Clinical MSI.
13. Finnish Japanese Joint Symposium on Information Processing, Helsinki, Finland, November 1998: Magnetic Source Imaging in a Clinical Setting.
14. Asian-Oceanic Epilepsy Organization, Taipei, China, November 1998: Clinical MEG.
15. Asian-Oceanic Epilepsy Organization, Taipei China, November 1998: Basic Principles and Applications of MSI.
16. 9th Annual Meeting of the Leksell Gamma Knife Society, China, November 1998: MEG.
17. Annual Meeting of the Australian Institute of Learning Disorders, Perth, Australia, May 1999: Functional Brain Imaging.
18. Irlen Institute Director's Meeting - 1999, Sydney, Australia, May 1999, Neurobiological findings in scotopic sensitivity syndrome.
19. Lady Ann McClaran Lecture, London, England, July 2001, Patterns of epileptiform activity in LKS and autism spectrum disorders.
20. MEG Symposium, Centrum VUMC, Amsterdam, June 2004, Clinical Applications of MEG.
21. Biomag 2004, Memory Symposium, August 2004, Boston, Neuromagnetic Correlates of Memory Dysfunction: Lessons From the Clinic.
22. Third MEG Clinical Applications Conference, Xylocastro, Greece, Formation of a Clinical MEG Society, Sept 2005
23. Third MEG Clinical Applications Conference, Xylocastro, Greece, Strategies for MEG reimbursement, Sept 2005
24. Third MEG Clinical Applications Conference, Xylocastro, Greece, Developing new clinical applications for MEG, Sept 2005
25. Biomag 2006, Vancouver, On the development of new clinical applications for MEG: Mild head trauma, Aug 2006
26. Biomag 2006, Vancouver, Multimodal brain imaging for surgical planning, Aug 2006.
27. International Meeting for Autism Research, May 2009, Chicago, IL, Sound sensitivities in autism: Evaluation by MEG, treatment by AIT.
28. International Meeting for Autism Research, May 2009, Chicago, IL, Patterns of epileptiform activity in autism as revealed by MEG.
29. 6th Annual World Congress for Brain Mapping and Image Guided Therapy, Aug 2009, Boston, MA, Making the invisible wounds of war visible: Functional brain imaging of PTSD, mild TBI, and depression using magnetoencephalography.
30. International Meeting for Autism Research, May 2010, Philadelphia, Epilepsy in Autism Workshop.
31. ISACM 2011, Nov 2011, Las Vegas, Slow Waves
32. ISACM 2011, Nov 2011, Las Vegas, Sedation for MEG
33. ISACM 2011, Nov 2011, Las Vegas, Future Directions for MEG
34. Irlen International Meeting, July 2015, Houston, Reading, the Brain and Irlen Syndrome
35. International Brain Injury Research Network, Oct 2015, Raleigh-Durham, VNS for mTBI.
36. Synchrony International Autism Meeting, Dec 2022, Pleasanton CA, Magnetoencephalography, Epilepsy and Autism

Local and regional meetings:

1. Sigma Chi Society, Loma Linda, March 1993, Looking for dipoles in neural haystacks.
2. New Mexico Meeting of the Congressional Joint Economic Council, June 1994, Clinical MEG.
3. New Mexico Update in Internal Medicine, University of New Mexico, Albuquerque, NM, April, 1995: Magnetic Source Imaging.
4. New Mexico Autism Society, January 1996, Albuquerque, NM, Brain Imaging.
5. New Mexico Epilepsy Support Group, July 1996, Albuquerque, NM, MSI evaluation of epilepsy.
6. Cure Autism Now, Chicago Meeting, Oct 1997, Epileptiform Activity in LKS, PDD-NOS, and Autism.
7. Annual meeting of the Autism Society of America, Dallas Chapter, May 1998, Epileptiform activity in Autism.
8. Annual meeting of the Autism Society of America, St. Paul Chapter, May 1998, Brain Imaging in Autism.
9. Utah Autism Society, October 1998, Salt Lake City, UT, What every parent should know about epileptiform activity in autism.
10. Utah Autism Society, October 1998, Salt Lake City, UT, Brain imaging in Autism.
11. Intermountain Neuropsychology Group, Salt Lake City, UT, October 1998, MSI.
12. Primary Children's Medical Center Symposium on Medical, Neurodevelopmental and Educational Intervention for Medically Challenged Children, February 1999, Salt Lake City, UT, MEG, fMRI, SPECT: Diagnostic and treatment applications of functional scanning strategies.
13. Utah Trial Lawyers Association, February 1999, Salt Lake City, UT, Brain Imaging in Head Trauma.
14. Utah State Board of Education, March 1999 Spring Meeting of Speech and Language Coordinators, Salt Lake City, UT, Functional Brain Imaging.
15. Jordan School District Meeting of Speech and Language Teachers, April 1999, Salt Lake City, UT, Functional Brain Imaging.
16. Parents Helping Parents, Autism Support Group, San Jose, April, 1999, Functional brain imaging in autism.
17. Innovations in Education Conference, May 1999, Salt Lake City, UT, Brain Imaging in Education.
18. Families Together Inc, 2003 Annual Conference: Teaching the Brain New Tricks. Brain Imaging in Developmental and Learning Disabilities, Feb 2003.
19. Workshop on Play and Human Development, Institute for Play, Irvine, CA, Brain Imaging, Brain Plasticity, and the

JEFFREY DAVID LEWINE, B.S., M.S., PH.D.

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- Environment, July 2003.
20. KUMC Autism and Asperger Syndrome Resource Center Support Group, Brain Imaging in Autism Spectrum Disorders, August 2003.
21. Kansas Technical Schools, Annual Education Conference, August 2004. Brain imaging in special needs clients.
22. Alliance for Epilepsy Research, November 2004, Brain Imaging in Epilepsy.
23. New Generation Society of Lawrence, December 2004, Translational Research at the Hoglund Brain Imaging Center.
24. US School District 204 District Meeting, August 2005, Brain Imaging and Learning Disabilities.
25. Epilepsy Foundation of America, Chicago Chapter, Epilepsy Update, March 2009, Brain Imaging in Epilepsy.
26. Beyond the Yellow Ribbon: Diagnosing and treating anxiety, depression, and PTSD in returning veterans., June 2009, Chicago, IL, Invisible wounds of war: depression, PTSD, and traumatic brain injury.
27. Albuquerque VAMC, Oct 2012, Albuquerque, Imaging TBI and PTSD.
28. Albuquerque Lawyers Club, March 2016, Albuquerque, Brain imaging for TBI.
29. 24th Combat Stress Conference, May 2017, San Diego, The neurobiology of TBI and PTSD: From the laboratory bench to the clinical bedside and beyond.
30. Utah Association for Justice, February 2020, Salt Lake City, Utah, Brain imaging in mild TBI.
31. TCDLA, October 28, 2022, Brain Imaging in Capital Murder Cases and ASPD.

JEFFREY DAVID LEWINE, B.S., M.S., PH.D.

CADET NM Inc. | 10439 4th St, NW | Albuquerque, NM 87114 | Cell: (505) 252-1153 | jlewine@cadetnm.com

Universities and Medical Centers

1. Georgia State University, Language Research Center, June 1987: Perspectives on mnemonic processing and hemispheric specialization in man, macaque, and chimpanzee.
2. Los Alamos National Laboratory, Life Sciences Division, November 1987: Mnemonic processing by man and macaque.
3. New York University, Experimental Psychology Seminar Series, November 1988: A stage analysis of mnemonic processing within and between the cerebral hemispheres of the macaque brain.
4. University of Rochester, Department of Physiology, May 1989: Magnetoencephalography and the non-invasive analysis of brain function.
5. New York University, Department of Physics and Psychology, November 1990: Multiple Dipole Modeling Techniques For Neuromagnetic Data.
6. Carnegie Mellon University, Department of Psychology, March 1992: Interhemispheric Mnemonic Processing in Monkeys.
7. Carnegie Mellon University, Department of Psychology, March 1992: Neuromagnetic Techniques for Analysis of Brain Function.
8. Montreal Neurological Institute, January 1993: Magnetoencephalographic Evaluation of Cortical Plasticity.
9. Loma Linda University, March 1993: Things your mother never told you about neuroimaging.
10. Helsinki Central Hospital, February 1995: MEG.
11. Duke University, Department of Psychology, September 1995: Magnetic Source Imaging.
12. Duke Medical School, March 1996: Clinical MEG.
13. Duke University, Department of Psychology, March 1996: Biomagnetic Assessment of Cognition.
14. Duke University, Department of Psychology, March 1996: Interhemispheric Relationships in Man and Macaque.
15. University of Texas, El Paso, Department of Psychology, May 1996, MEG and multimodal imaging.
16. Hershey Medical Center, July 1996, MEG Up-date.
17. University of Utah, Department of Psychology, August 1996: Biomagnetic Evaluation of Brain Function.
18. University Clinic of Neurology, Vienna, Austria, Oct 1996: Clinical Magnetoencephalography.
19. Helsinki Central Hospital, Oct 1996: Progress in Clinical Magnetic Source Imaging.
20. Katayama University, February 1997, Clinical MSI.
21. Nagoya University, February 1997, Pediatric Applications of MEG.
22. The Neurological Institute, Veteran's General Hospital, Taipei, February 1997, Magnetic Source Imaging: Clinical Applications.
23. Hong Kong University Hospital, Hong Kong, February 1997, Applications of MSI in Neurology and Psychiatry.
24. Draper Royal Air Force Hospital, London, February 1997, New Advances in MEG.
25. Tokkoku University, Japan, November 1997, Clinical Advances in MSI.
26. Nagoya University, Japan, November 1997, Pediatric Brain Imaging with MSI.
27. National Rehabilitation Center, Tokyo, Japan, November 1997, Functional Brain Imaging.
28. Beijing Neurosurgical Institute, China, November 1997, Functional Brain Imaging.
29. University of Utah, Psychiatry Grand Rounds, November 1998, Applications of MSI in Psychiatry.
30. University of Nebraska, Neurology / Neurosurgery Grand Rounds, Omaha, February 1999: Magnetic Source Imaging.
31. University of Illinois Biomedical Engineering Seminar, Chicago, March 1999: Functional Brain Imaging.
32. Tokkoku University, Japan, April 1999, MSI in Epilepsy.
33. Rush Presbyterian Hospital, July 2000, Magnetic Source Imaging.
34. University of Kansas Medical Center, July 2002, Functional Brain Imaging.
35. University of Kansas Medical Center, Psychiatry Grand Rounds, Oct 2002, Functional Brain Imaging in Psychiatry.
36. KUMC Neurology Grand Rounds, Jan 2003, Functional Brain Imaging in Neurology and Neurosurgery, New Opportunities at the Hognlund Brain Imaging Center.
37. KUMC CDU Seminar, Jan 2003, Brain Imaging in Developmental Disabilities.
38. KU Department of Psychology Cognitive Science Seminar: Functional Brain Imaging in Psychology, March 2003.
39. KUMC, Presentation to Emeritus Faculty, Magnetoencephalography, April 2003.
40. KU, Edwards, Special Education Seminar, Brain Imaging in Learning Disabilities, April 2003.
41. KUMC Brain Imaging Class, Principles of MEG, April 2003.
42. Cotton-O'Neil Clinics, Grand Rounds, Magnetoencephalography, May 2003.
43. KUMC Department of Physiology Seminar Series, Functional Brain Imaging, Sept 2003.
44. Overland Park Regional Medical Center, Perinatology Seminar Series, Fetal Brain and Cardiac Imaging, Oct 2003.
45. Cotton-O'Neil Clinics, Grand Rounds, Functional Brain Imaging in Psychiatry, Oct 2003.
46. KUMC Neurology Grand Rounds, Magnetoencephalography, beyond epilepsy and surgical mapping, March 2004.
47. KU-Lawrence, Biophysics Seminar Series, Magnetoencephalography, August 2004.
48. Simon Fraser University, Dept of Psychology, Functional Brain Imaging, February 2005.
49. Simon Fraser University, Dept of Psychology, Childhood learning and developmental disabilities, February 2005.
50. Alexian Brothers Health Care System, Magnetoencephalography: From the lab to the clinic, October 2005.
51. University of California, Berkeley, Functional Brain Imaging of Normal and Impaired Language, Feb 2007.
52. Medical college of Wisconsin, Clinical Advances in MEG, Oct 2007.

JEFFREY DAVID LEWINE, B.S., M.S., PH.D.

CADET NM Inc. | 10439 4th St, NW | Albuquerque, NM 87114 | Cell: (505) 252-1153 | jlewine@cadetnm.com

53. Beaumont Hospital, MEG, July 2008.
54. Harper College, Brain Imaging, October 2008, March 2009.
55. Dominican University, Functional Brain Imaging, January 2009.
56. University of Iowa, MEG, July 2009.
57. MIND Research Network, Translational Brain Imaging, January 2010.
58. University of South Carolina, Traumatic Brain Injury, Oct 2013.
59. National Intrepid Center of Excellence, Visualizing and Treating the Invisible Wounds of War, March 2014.
60. University of New Mexico, Neuroradiology seminar series: Feb 2016, The Mind Research Network.
61. Morehouse School of Medicine, Oct 2016, Translational Neuroscience.

VIII. TEACHING and MENTORING ACTIVITIES:

Courses

Introductory Neurobiology, NS201, University of Rochester, 1985, 1986, 1987.
Laboratory in Neuroscience, NS203, University of Rochester, 1985, 1986.
Independent Research in Psychology, PSY395, 1986, 1987.
Left Brain-Right Brain, PSY395, University of Rochester, 1987.
Introduction to Neuroimaging, PSY505, University of New Mexico, 1993.
Laboratory in Neuroimaging, PSY506, University of New Mexico, 1993.
Functional Neuroimaging, PSY507, University of New Mexico, 1994.
Dissertation Research in Psychology, PSY595, University of New Mexico, 1994, 1995, 1996.
Physiology of Mind, PSY596, University of New Mexico, 1995.
Introduction to Functional Neuroanatomy, PSY560, University of Utah, 1997.
Introduction to Functional Neuroimaging, PSY561, University of Utah, 1998.
Additional lectures in Introduction to Biomedical Engineering, University of Utah, 1998, 1999.
Introductory Neuroscience, PSY 591, University of New Mexico, 2001
Imaging in Autism and Schizophrenia, PSY 396/596, University of New Mexico, 2001
Miscellaneous lectures at the University of Kansas Medical Center, University of Kansas Lawrence, Harper College, Dominican University, Elmhurst College, University of Illinois at Chicago, 2002-2009.

Supervised Direct Training in Brain Imaging - Fellows

Kent Gledhill, M.D., Radiology Fellow, University of New Mexico, 1995-1997.
Mark Depper, M.D., Radiology Fellow, University of New Mexico, 1994-1995.
John T. Davis, Ph.D., Post-Doctoral Fellow, New Mexico Institute of Neuroimaging, 1993-1995.
Greg Jones, Ph.D., Post-Doctoral Fellow, Center for Advanced Medical Technologies, 1998-1999
Michael Funke, M.D., Ph.D., Post-Doctoral Fellow, Center for Advanced Medical Technologies, 1998-2000 Mingquin Huang, M.D., Post-Doctoral Fellow, Center for Advanced Medical Technologies, 1998-2000
Robert Thoma, Ph.D., Post-Doctoral Fellow, Center for Advanced Medical Technologies, 1999-2000
Dina Hill, Ph.D., Post-Doctoral Fellow, Center for Advanced Medical Technologies, 1999-2000
Mihai Popescu, Ph.D., Post-Doctoral Fellow, Hoglund Brain Imaging Center, 2005-2008
Nitin Banger, Ph.D., Post-Doctoral Fellow, Alexian Brothers Medical Center, 2008-2015
Mona Stepansky, Ph.D., Post-Doctoral Fellow, Alexian Brothers Medical Center, 2008-2010
Lindsey Felix, Ph.D., Post-Doctoral Fellow, Alexian Brothers Medical Center, 2009-2010
Karen Cooper, Ph.D., Post-Doctoral Fellow, MRN, 2010-2012
Brandon Kopald, Ph.D., Post-Doctoral Fellow, MRN, 2011-2014
Brock Frost, Ph.D., Post-doctoral Fellow, UNM/MRN, 2014-2016

Supervised Direct Training in Brain Imaging - Medical and Graduate Students

Masood Prakash, Medical Student, University of New Mexico, 1993.
Jeff Salaand, Medical Student, University of New Mexico, 1994.
Janic Hosing, Ph.D., Experimental Psychology Program, University of New Mexico, 1994-1997.
Chris Edgar, Ph.D., Clinical Psychology Graduate Student, University of New Mexico, 1994-2000.
Robert Thoma, Ph.D., Clinical Psychology Graduate Student, University of New Mexico, 1994-1999.
Robert Astur, Ph.D., Experimental Psychology Graduate Student, University of New Mexico, 1992-1994.
Mike Weisend, Ph.D., Experimental Psychology Graduate Student, University of New Mexico, 1996-1998.
Sherri Provencal, M.A., Clinical Psychology Graduate Student, University of New Mexico and University of Utah, 1994-2000.
Mary Anderson, Ph.D., Clinical Psychology Graduate Student, University of Kansas Medical Center. 2004-2006.
Carly Demopolous, M.A., Clinical Psychology Graduate Student, Illinois Institute of Technology, 2008-2014.
Per Lynse, M.S., Quantitative Psychology Graduate Student, University of New Mexico, 2011-2014.
Danielle Rudder, M.A., Cognitive Psychology Graduate Student, University of New Mexico, 2011.
Patricia Hitz, M.A., Psychology, Graduate Student, University of Heidelberg, 2018.

JEFFREY DAVID LEWINE, B.S., M.S., PH.D.

CADET NM Inc. | 10439 4th St, NW | Albuquerque, NM 87114 | Cell: (505) 252-1153 | jlewine@cadetnm.com

Supervised Direct Training in Brain Imaging – Undergraduate Students

Chris Amick, Neuroscience major, Dominican University, Chicago, IL, 2008-2010
Tim Lazicki, Neuroscience major, Dominican University, Chicago, IL, 2008-2010
Brittany Agee, Psychology major, University of New Mexico, Albuquerque, NM, 2010
Kyle Nees, Psychology major, University of New Mexico, Albuquerque, NM, 2010
Jordan Riley, Psychology major, University of New Mexico, Albuquerque, NM, 2011
Sherri Miller, Psychology major, University of New Mexico, Albuquerque, NM, 2011
Tyler Mound, Psychology major, University of New Mexico, Albuquerque, NM, 2012
Andrea Brusich, Psychology major, University of New Mexico, Albuquerque, NM, 2012
Whitney Andrews, Psychology major, University of New Mexico, Albuquerque, NM, 2012
Lauren Doyle, Psychology major, University of New Mexico, Albuquerque, NM, 2012-2014
Joshua De Los Antos, Psychology major, University of New Mexico, Albuquerque, NM, 2013
Kelvn Kemper, Psychology major, University of New Mexico, Albuquerque, NM, 2014
Laura Vetsh, Psychology major, University of New Mexico, Albuquerque, NM, 2014
Arturo Carrilo, Psychology major, University of New Mexico, Albuquerque, NM, 2015
Doug Feierman, Psychology major, University of New Mexico, Albuquerque, NM, 2015
Ruth Brciaga, Psychology major, University of New Mexico, Albuquerque, NM, 2016
Ashlee Montoya, Psychology major, University of New Mexico, Albuquerque, NM, 2016
Samantha Montoya, Psychology major, Kenyan University, Ohio, 2017
Michelle Duggins, Psychology major, University of New Mexico, Albuquerque, NM, 2018-2019
Yesol Kim, Psychology major, University of New Mexico, Albuquerque, NM, 2018-2020
Erika Dunson, Psychology major, University of New Mexico, Albuquerque, NM, 2020-2022

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

WILLIAM CLYDE GIBSON III,

Petitioner,

V.

RON NEAL,

Respondent.

No. 1:23-cv-00330-JMS-MG

Judge Jane Magnus-Stinson

CAPITAL CASE

ORDER

Upon consideration of Petitioner’s Motion for Order Directing that the Indiana Department of Corrections Transport Mr. Gibson to Community Hospital North, Indianapolis, Indiana, for Purposes of Conducting a Magnetic Resonance Imaging Scan with Diffusion Tensor Imaging capabilities (“DTI”) and a Positron Emission Tomography (“PET”) Scan, it is hereby ORDERED that:

Petitioner’s counsel and the Indiana Department of Corrections shall schedule transportation of Petitioner William Clyde Gibson III, IDOC No. 169605, to Community Hospital North, Indianapolis, Indiana (“Hospital”), at a mutually convenient date and time, for DTI and PET imaging to be performed on Mr. Gibson.

Dated this of July 2025.

Hon. Jane Magnus-Stinson, Judge
United States District Court
Southern District of Indiana

APPENDIX E

(Gibson's Reply to Objection to Motion for Transport Order in District Court)

((District Court Doc. 89))

Oliver W. Loewy, PHV (IL Bar # 619709)
1022 SE 30th Avenue
Portland, Oregon 97214
(208) 283-5381
oliverwloewy@gmail.com

Edward J. Rymsza, PHV (PA Bar # 82911)
125 East Third Street
Williamsport, PA 17701
(570) 322-2113
Rymsza@comcast.net

Shawn Nolan (PA Bar #56535)
Chief, Capital Habeas Unit
Federal Community Defender Office
601 Walnut Street, Suite 545-West
Philadelphia, PA 19106
(215) 928-0520
Shawn_Nolan@fd.org

Samuel J.B. Angell (PA Bar #61239)
Assistant Federal Defender
Federal Community Defender Office
601 Walnut Street, Suite 545-West
Philadelphia, PA 19106
(215) 928-0520
Samuel_Angell@fd.org

Attorneys for Petitioner
WILLIAM CLYDE GIBSON III

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

WILLIAM CLYDE GIBSON III,	)	
	)	
Petitioner,	)	No. 1:23-cv-00330-JMS-MG
	)	
v.	)	Judge Jane Magnus-Stinson
	)	
RON NEAL,	)	*CAPITAL CASE*
	)	
Respondent.	)	

PETITIONER’S REPLY TO OBJECTION TO MOTION FOR TRANSPORT ORDER

Mr. Gibson seeks an order directing the Indiana Department of Corrections to transport him to Community Hospital North, Indianapolis, Indiana for the purposes of conducting MRI with Diffusion Tensor Imaging (“DTI”) and Positron Emission Tomography (“PET”) scans. ECF 84. He seeks these scans to further support his request for equitable tolling. ECF 66 (Response to Motion to Dismiss). *See* ECF 86 (Motion For Evidentiary Hearing On Equitable Tolling) & 87 (Motion For Discovery). In objecting to a transport order, Respondent deploys four arguments, each of which fails. ECF 85.

Respondent first argues that because the record “refutes the applicant’s factual allegations or otherwise precludes habeas relief,” it should not be expanded. ECF 85 at 1 (quoting *Schriro v. Landrigan*, 550 U.S. 465, 474 (2007)). Respondent asserts that the motion should be denied “because the briefing on Respondent’s motion to dismiss has concluded.” *Id.* at 1. Pending before the Court, though, is a request to file a sur-reply. ECF 81. While Respondent indicated he

objected, he filed no written objection. For a similar reason, Respondent's assertion that Mr. Gibson's "request . . . has already [been] made and has been fully briefed (Doc. 84 at 2-3)" fails. ECF 85 at 2. ECF 84 is the motion to which Respondent is objecting.

Next, Respondent argues that even if the DTI and PET scans show white matter dysfunction that helps establish Mr. Gibson's deficient cognitive abilities and emotional state, as Dr. Watson opines they likely would, ECF 62-25 at 5, these 2025 results "would do nothing [to show] that he suffered that condition during the limitations period[.]" ECF 85 at 3. However, Dr. Lewine, who will analyze the data, explains that Mr. Gibson's protracted history of drug and alcohol abuse as well as head injuries makes it likely that any disruption of white matter integrity had developed before the limitations period started. Exhibit 1 at 2 (Jeffrey Lewine, Ph.D., declaration). Further, "[d]epending on the details of the results, the recommended assessments will allow [Dr. Lewine] to opine on the etiology of identified injuries and whether these brain abnormalities existed before February 2020." *Id.* at 4.

Additionally, Respondent's contention that Mr. Gibson "has wholly failed to prove that this single diagnosis would itself constitute the extraordinary circumstance he is required to prove to receive tolling or drastically tip the scale from ordinary to extraordinary" is inconsistent with governing law. Far from being an inquiry into whether any single diagnosis is proved, in determining whether equitable tolling is warranted "a court looks at the entire hand that [the petitioner] was dealt and use[s] a flexible standard that encompasses all of those circumstances that he faced and the cumulative effect of those circumstances to determine whether they were extraordinary and truly prevent timely filing of his habeas petition." *Carpenter v. Douma*, 840 F.3d 867, 872 (7th Cir. 2016) (cleaned up). In determining whether extraordinary circumstances warranting equitable tolling exist, the Court should consider the numerous factual allegations Mr.

Gibson makes in support of his equitable tolling request. *See* ECF 66 (Response to Motion to Dismiss) at *passim*; *see also* ECF 86 (Motion For Evidentiary Hearing On Equitable Tolling) at *passim*. Respondent cites to *Moreland v. Eplett*, 18 F.4th 261, 271 (7th Cir. 2021), and to *Mayberry v. Dittman*, 904 F.3d 525 (7th Cir. 2018), for the proposition that the evidence supporting equitable tolling must concern the relevant time period. Yet Mr. Gibson seeks exactly that: evidence that, as set out in Dr. Lewine’s attached declaration, does concern the relevant time period. *See* Exhibit at 3-4.

Respondent argues, second, that “a writ seeking new evidence cannot fairly be considered ‘necessary or appropriate in aid of’ the Court’s adjudication of Gibson’s argument for equitable tolling because additional tolling would not entitle him to relief.” ECF 85 at 1 (citing *Shoop v. Twyford*, 596 U.S. 811, 821 (2022)). Respondent contends that additional tolling would not entitle him to relief because the new evidence would be “cumulative” of the 2013 MRI evidence that Mr. Gibson relied on at trial and in postconviction proceedings. *Id.* at 4. “Developing and presenting more of the same will make no difference in this Court and will not aid the Court in the exercise of its jurisdiction.” *Id.* Here, Respondent misapprehends the kind of testing that Mr. Gibson seeks. The 2013 MRI, as Dr. Lewine notes, “lacked advanced imaging protocols including now recommended SWI and DTI sequences, with quantitative analyses.” Exhibit at 3. This matters, Dr. Lewine explains, because “[t]he published peer-reviewed scientific literature demonstrates that standard imaging sequences like those used in 2013, are relatively insensitive to subtle, but functionally significant white matter compromise that has a significant negative impact on behavior.” *Id.*

Further, Mr. Gibson seeks the transport order to have a PET scan administered, a test not earlier performed. As Mr. Gibson notes in his motion, based on his neuropsychological testing

results, Dr. Watson recommends that the additional testing be performed 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.” ECF 84 at 3 (quoting Dr. Watson’s declaration, ECF 62-25, at 5-6). Similarly, Dr. Lewine notes that administering the combination of recommended tests—i.e., Advanced MRI (with SWI and DTI sequences), PET, and qEEG—“will provide a sensitive and comprehensive evaluation of Mr. Gibson’s brain that has high potential to reveal damage that was not identified by the 2013 MRI. In combination with historical information, the pattern of findings across advanced methods often reveals the likely etiology of the brain abnormalities and their associated timeline.” Exhibit at 3.

Moreover, Respondent’s reliance on *Twyford* is misplaced. There, the Supreme Court simply noted its recent holding 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*.” 596 U.S. at 823 (citing *Shinn v. Ramirez*, 596 U.S. 366, 388 (2022)) (emphasis added). This Court should decline to extend *Twyford* to the circumstances here. Because Mr. Gibson seeks to gather and have the Court consider evidence supporting his equitable tolling request and not for consideration in ruling on the merits of a claim for habeas relief, the Court should grant his motion for a transport order. This request is entirely consistent with Supreme Court and Seventh Circuit law authorizing factual development in support of equitable tolling. *See, e.g., Holland v. Florida*, 560 U.S. 631, 654 (2010) (rejecting denial of equitable tolling and remanding 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” was necessary); *Lairy v. United States*, No. 23-2957, 2025 WL 1860310, at *8 (7th Cir. July 7, 2025) (in considering request for equitable tolling, “district court should have

conducted an evidentiary hearing to fill in factual gaps rather than overlook the inquiry altogether or resolve the gaps against him”); *Perry v. Brown*, 950 F.3d 410, 413 (7th Cir. 2020) (reversing denial of equitable tolling and remanding for further evidentiary development related to impact of Petitioner’s mental health issues); *Davis v. Humphreys*, 747 F.3d 497, 500 (7th Cir. 2014) (remanding denial of equitable tolling and ordering district to “take evidence and determine just what Davis’s abilities are” in relation to his mental incompetence).

The Fifth Circuit has noted that the *Twyford* holding was made in response to “the defendant’s assertion that the [requested] testing would probe his *Martinez* claim[, which] appears to have been little more than a Hail Mary pass in his attempt to get the evidence admitted on his merits claims.” *Mullis v. Lumpkin*, 70 F.4th 906, 911 (5th Cir. 2023). Because the petitioner in *Mullis*, by contrast, was seeking to have the new evidence considered only to support his cause-and-prejudice argument and not to support any claim for merits relief, the Court applied established Fifth Circuit law that § 2254(e)(2) does not bar considering new evidence to determine whether a procedural default is excused. *Id.*; *id.* at 910 (because Fifth Circuit has construed (e)(2)’s ‘claim’ to refer “only to the underlying merits claim” and not, for example, to an allegation that a procedural bar should be lifted, the Circuit “has declined to apply (e)(2) to showings that a procedural default is excused”).

Thus, *Mullis* concluded that, despite *Twyford*, the new evidence was admissible but only “for the limited purpose of establishing an excuse for procedural default[.]” *Id.* at 911. *See Williams v. Superintendent Mahanoy SCI*, 45 F.4th 713, 723 (3d Cir. 2022) (“AEDPA’s text does not forbid federal courts from developing the facts needed to excuse a procedural default”); *Sapp v. Jenkins*, 2023 WL 3475412 at *3 (S.D. Ohio May 16, 2023) (“the plain language in §

2254(e)(2) . . . limits its restrictions to factual development on substantive claims for relief”); *cf.* *Mullis*, 70 F.4th at 911 (acknowledging a circuit split on this question).

Even were Respondent’s gloss on *Twyford* accurate—which it is not, because § 2254(e)(2) is inapplicable when determining whether equitable tolling is warranted—his conclusion that the Court must not grant the requested transport order “until Gibson can make the requisite showing to expand the record under § 2254(e)(2)” is wrong for another reason. Mr. Gibson cannot be said to have failed to act diligently in state court to develop the facts to support equitable tolling in federal court. *See* ECF 85 at 5. Section 2254(e)(2) only applies “[i]f the applicant has failed to develop the factual basis of a claim in State court proceedings[.]” *Id.* The Supreme Court has long held that “[i]f there has been no lack of diligence at the relevant stages in the state proceedings, the prisoner has not ‘failed to develop’ the facts under § 2254(e)(2)’s opening clause[.]” *Williams v. Taylor*, 529 U.S. 420, 437 (2000).

In the instant case, the limitation period had not yet started to run during the pendency of state court proceedings. Mr. Gibson cannot fairly be characterized as less than diligent for not developing facts in state court proceedings to support the subsequently developed and exclusively federal question whether equitable tolling should be granted. *See Williams* at 442 (petitioner had not failed to develop facts relating to a claim for which trial counsel was not reasonably on notice). Section 2254(e)(2) has no application to Mr. Gibson’s request for a transport order.

Respondent argues, third, that granting a transport order would illegitimately delay the execution of his death sentences because additional evidence would have no impact on his request for equitable tolling. This assertion fares no better. Because it is likely that Mr. Gibson’s white matter is compromised, it is also likely that the results of the testing for which Mr. Gibson

seeks a transport order would further explain how and why Mr. Gibson's mental health challenges left him unable to manage his affairs, understand his legal rights, and act upon them. Granting the requested transport order would likely yield evidence material to determining whether to grant equitable tolling. *See Moreland v. Eplett*, 18 F. 4th 261, 271-72 (7th Cir. 2021); *Conroy v. Thompson*, 929 F.3d 818, 820 (7th Cir. 2019); *Mayberry v. Dittman*, 904 F.3d 525 (7th Cir. 2018).

Respondent's fourth and final argument is that transporting Mr. Gibson outside the prison facility would create an undue risk to the general public. Mr. Gibson is nearly 70 years old, and his prison record reveals no history of actual, attempted, or contemplated physical violence during his incarceration. He would be transported for medical evaluation in chains while under armed guard. The Indiana Department of Corrections routinely transports prisoners in a variety of similar circumstances, for example, for medical purposes. Indeed, it has transported Mr. Gibson to local outside facilities for medical care. In this case, the hospital will schedule the testing at an early morning time that is the most likely to result in minimum, if any, contact with patients from the community. Any risk to the general public is attenuated, and the transport order is necessary to fairly adjudicate the equitable tolling question.

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For all these reasons, the Court should grant Mr. Gibson's Motion For Transport Order.

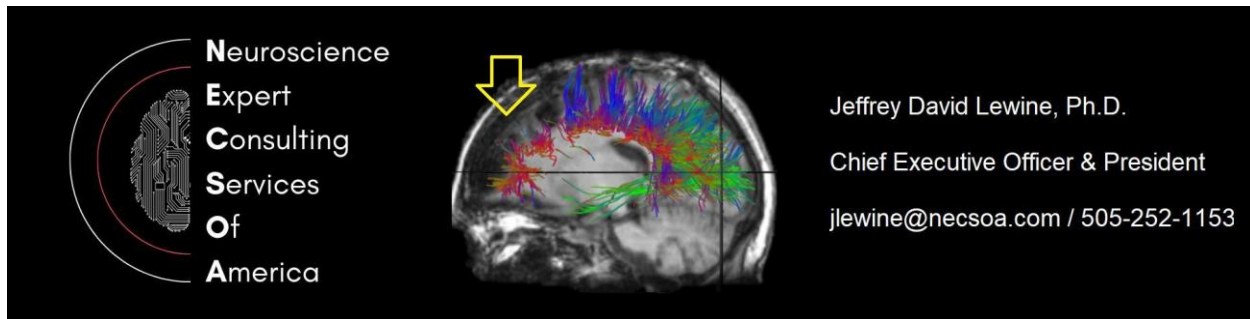
Dated: July 28, 2025.

Respectfully submitted,

/s/ Oliver W. Loewy

OLIVER W. LOEWY
EDWARD J. RYMSZA
SHAWN NOLAN
SAMUEL J.B. ANGELL

Attorneys for Petitioner
WILLIAM CLYDE GIBSON III



DECLARATION BY JEFFREY DAVID LEWINE, PH.D.,

BRAIN IMAGING FOR MR. WILLIAM CLYDE GIBSON

1. My name is Jeffrey David Lewine, Ph.D.
2. I am over the age of eighteen, mentally competent, and make this declaration freely, based on my own personal knowledge and experience.
3. I have BS, MS, and PhD degrees in Neuroscience from the University of Rochester, plus post-doctoral training in Biophysics and Neuroscience as a Director's Fellow at Los Alamos National Laboratory.
4. Over my career, I have had held academic appointments in multiple University departments, including appointments in Neurology (University of Kansas, University of New Mexico); Radiology (University of New Mexico, University of Utah), and Psychiatry and Behavioral Sciences (University of Kansas). Currently, I am an affiliate Professor of Translational Neuroscience at the Mind Research Network in Albuquerque, New Mexico, and I hold academic appointments in the Departments of Neurology and Psychology at the University of New Mexico.

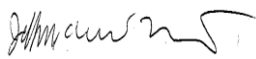
5. I am the CEO and President of NECSOA LLC (Neuroscience Expert Consulting Services of America), which provides data analysis, consulting, and expert services in civil and criminal medical-legal cases. I also hold executive positions in two small businesses dedicated to the development and evaluation of novel brain imaging methods and treatments for various neurological and psychiatric conditions; a small pharmaceutical company developing a treatment for traumatic brain injury; and a not-for-profit that has developed a novel treatment for PTSD.
6. I have co-authored more than 75 scientific articles and book chapters and I am internationally recognized for my work on structural and functional brain imaging and electrophysiology.
7. I have 30+ years of experience in the evaluation of the neurobiological status of clients with respect to a wide range of conditions including traumatic brain injury (TBI), substance abuse, and disruptions in white matter integrity.
8. On multiple occasions, I have testified in state and federal courts as an expert on brain injury and the disruption of grey and white matter integrity by head trauma, substance abuse, and neurological/psychiatric disease.
9. Mr. William Clyde Gibson's medical history reveals the presence of several factors, including head injuries and substance abuse, which have likely caused structural and functional brain abnormalities. This history, coupled with Mr. Gibson's neuropsychological test results as reported by Dr. Dale Watson, makes it likely that Mr. Gibson has brain injury, including the disruption of white matter integrity.
10. To clarify the kind and degree of white matter disruption and other possible brain injury, I have recommended to his defense team that Mr. Gibson undergo Advanced MRI (with SWI

and DTI sequences), PET, and qEEG examinations, which will evaluate his brain structure and function. MRI will provide information on potential gross structural lesions (e.g., white matter hyperintensities, encephalomalacia, hemosiderin deposits), with additional volumetric analyses providing information on focal brain atrophy that may be induced by traumatic injury, toxic exposures, or disease. DTI (diffusion tensor imaging) explicitly looks at the integrity of white matter axonal interconnections between brain regions. PET evaluates brain metabolism, while EEG directly examines information processing and the brain's neurofunctional electric activity. Whereas a standard clinical MRI examination was completed with Mr. Gibson in 2013, this evaluation lacked advanced imaging protocols including now recommended SWI and DTI sequences, with quantitative analyses. The published peer-reviewed scientific literature demonstrates that standard imaging sequences like those used in 2013, are relatively insensitive to subtle, but functionally significant white matter compromise that has a significant negative impact on behavior. The recommended MRI (with SWI and DTI sequences) will provide new information, and a more comprehensive view of Mr. Gibson's brain, especially in combination with the proposed additional PET and qEEG evaluations.

11. Administering now the recommended combination of tests will provide a sensitive and comprehensive evaluation of Mr. Gibson's brain that has high potential to reveal damage that was not identified by the 2013 MRI. In combination with historical information, the pattern of findings across advanced methods often reveals the likely etiology of the brain abnormalities and their associated timeline. I have conducted this kind of analysis and testified to my conclusions in more than ten capital cases.

12. Whereas I do not yet know what the brain evaluations will reveal for Mr. Gibson, his history and neuropsychological test results make it likely that he has brain injury, including specific regional disruptions in grey and white matter integrity. Depending on the details of the results, the recommended assessments will allow me to opine on the etiology of identified injuries and whether these brain abnormalities existed before February 2020.

I hereby certify that the facts set forth above are true and correct to the best of my personal knowledge, information, and belief, subject to the penalty of perjury pursuant to 28 U.S.C. section 1746.



Jeffrey David Lewine, Ph.D.

07/26/2025
Date

APPENDIX F

(Gibson's Response To Motion To Dismiss in District Court)

(District Court Doc. 66)

Oliver W. Loewy, PHV (IL Bar # 619709)
1022 SE 30th Avenue
Portland, Oregon 97214
(208) 283-5381
oliverwloewy@gmail.com

Edward J. Rymsza, PHV (PA Bar # 82911)
125 East Third Street
Williamsport, PA 17701
(570) 322-2113
Rymsza@comcast.net

Shawn Nolan (PA Bar #56535)
Chief, Capital Habeas Unit
Federal Community Defender Office
601 Walnut Street, Suite 545-West
Philadelphia, PA 19106
(215) 928-0520
Shawn_Nolan@fd.org

Attorneys for Petitioner
WILLIAM CLYDE GIBSON III

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

	)	
WILLIAM CLYDE GIBSON III,	)	
	)	No. 1:23-cv-00330-JMS-MG
Petitioner,	)	
	)	Judge Jane Magnus-Stinson
v.	)	
	)	*CAPITAL CASE*
RON NEAL,	)	
	)	
Respondent.	)	

RESPONSE TO MOTION TO DISMISS

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STATEMENT OF ISSUES

Whether the Court should deny Respondent's Motion to Dismiss on equitable tolling grounds or because Mr. Gibson's habeas petition was filed within the AEDPA limitation period.

INTRODUCTION

Mr. Gibson, through undersigned counsel, hereby responds to Respondent's Motion to Dismiss (ECF 33). Respondent contends that Mr. Gibson's petition should be dismissed because it "it is barred by the one-year statute of limitations in 28 U.S.C. § 2244(d)(1)." ECF 33 at 4. Respondent also contends that equitable tolling does not apply. *Id.* at 7-12. The Court should deny Respondent's motion for the reasons below.

In his two capital cases, a perfect storm of impediments prevented Mr. Gibson from timely filing his habeas petition during the 1-year limitation period that Respondent contends started on February 3, 2020: the COVID-19 pandemic; the prison's failure to treat his mental illness; and his then-attorneys' misconduct and abandonment.

The COVID-19 pandemic was raging during this time period. Courts were closed. Travel was unsafe and for a time prohibited by state authorities. It was difficult and sometimes impossible to visit incarcerated clients. Defense criminal investigations could not be conducted.

Mr. Gibson has long been diagnosed with bi-polar disorder. Without psychiatric evaluation, in September 2018 the prison stopped prescribing Zoloft to Mr. Gibson, an antidepressant which had been prescribed for years. Mr. Gibson vociferously protested and repeatedly asked that the medication be restored. He remained off Zoloft until January 2023. In the interim and despite Mr. Gibson's protests and requests, no further psychiatric evaluation was conducted until just before it was finally restored. During the unmedicated period, his behavior changed. He became hostile to his attorneys, which he had not been before, and he lost his

motivation to live. The startling decision to cease psychiatric medication without an explanation is a second extraordinary event that entitles Mr. Gibson to statutory tolling.

Additionally, Mr. Gibson's initial habeas attorneys abandoned him. The apparent plan all along was to see prospective equitable tolling, which the Seventh Circuit does not permit. They had the documents necessary to draft a petition in June 2020, based on what the state post-conviction Indiana State Public Defenders had pled and presented in state post-conviction. Instead, they filed a motion for prospective equitable tolling January 21, 2021, less than two weeks before the deadline they had determined, February 3, 2021. When the motion was denied, prior habeas counsel had no back-up plan. Indeed, they let the ball drop for the remainder of their time as counsel on the case.

It was undersigned counsel who opened and reviewed the files and documents that prior counsel had already received and advocated in support of Mr. Gibson in the prison so that his medication was resumed in January 2023. Shortly thereafter, current counsel filed, as an exhibit under seal on January 31, 2023, the habeas petition that is pending before the court which was filed under the current case number on February 23, 2023.

Finally, in Petitioner's non-capital case, the homicide of Karen Hodella, Mr. Gibson is entitled to equitable tolling because the state court judge who took his plea misled him into believing that he could not obtain post-conviction relief. This was incorrect as a matter of Indiana law and federal courts permit equitable tolling on account of judicial misdirection like this. This misdirection was not corrected until the Indiana State Public Defender Office filed a post-conviction challenge to all three of Mr. Gibson's convictions. In addition to the misdirection, there are a few facts that point to the conclusion that Mr. Gibson is actually

innocent of the murder of Ms. Hodella, a separate ground for equitable tolling that undersigned counsel continue to develop.

PROCEDURAL HISTORY

On April 19, 2012, Mr. Gibson was arrested and charged in Floyd County, Indiana, Superior Court, with resisting law enforcement and operating a vehicle while intoxicated. The next day Floyd County Chief Public Defender was appointed to represent Mr. Gibson.

On April 24, 2012, five days after his arrest, Mr. Gibson was charged with the murders of Christine Whitis and, separately, Karen Hodella. Shortly afterwards, Mr. Gibson was charged with the murder of Stephanie Kirk.

Mr. Gibson was tried in three separate proceedings. He was convicted at a jury trial and sentenced to death in the Whitis case. He then pleaded guilty in the Hodella case and was sentenced to 65 years imprisonment. Finally, he pleaded guilty in the Kirk case and received a second death sentence.

Mr. Gibson pursued direct appeals in the Whitis and Kirk cases. The Indiana Supreme Court denied relief. *Gibson v. State*, 43 N.E.3d 231 (Ind. 2015); *Gibson v. State*, 51 N.E.3d 204 (Ind. 2016).

Mr. Gibson then challenged each of his convictions in combined postconviction proceedings. On appeal, the Indiana Supreme Court separated the challenge to the Hodella conviction from the challenges to the Whitis and Kirk convictions, and affirmed the Superior Court's denial of relief. *See Gibson v. State*, 133 N.E.3d 673 (Ind. 2020); *Gibson v. State*, 107 LN.E.3d 1115 (Ind. 2018).

Mr. Gibson was unrepresented in federal court for over 100 days following the denial of his postconviction challenge. Mr. Kenneth F. Murray and Michael J. Benza were appointed on May 18, 2020 and June 8, 2020, respectively.

On January 21, 2021, Mr. Murray and Mr. Benza filed a motion for prospective equitable tolling, requesting an additional twelve months to file Mr. Gibson's habeas petition. This Court denied the motion on January 27, 2021.

On August 5, 2022, Mr. Murray moved to withdraw citing medical difficulties that prevented him from adequately representing capital habeas petitioners. On October 20, 2022 Mr. Benza moved to withdraw citing a potential conflict of interest with Mr. Gibson. This Court granted the motions to withdraw on November 4, 2022.

Undersigned counsel was appointed on August 9, 2022. Following Mr. Benza's withdrawal, undersigned counsel filed Mr. Gibson's habeas petition. Respondent then moved to dismiss the case based on untimely filing.

FACTUAL BACKGROUND

A. Mr. Gibson Struggles with Severe Mental Illness.

Mr. Gibson struggles with severe mental illness, including a long history of depression, bipolar disorder, addiction disorders, suicidality, and traumatic brain injury from multiple severe head injuries. For years, the Indiana Department of Corrections provided Mr. Gibson with anti-depressant medication, which partially alleviated some aspects of Mr. Gibson's mental illness. However, before the AEDPA statute of limitations began to run, the prison removed Mr. Gibson from all psychiatric medication without any discernible justification. Despite Mr. Gibson's repeated attempts to alert prison medical staff to his condition and to restore his medication, the prison left Mr. Gibson unmedicated throughout the pendency of his AEDPA statute of limitations

period. *See* Filing No. 62-1 at 3 (Chambers Dec.). The prison’s failure to treat Mr. Gibson’s mental health disorders exacerbated his symptoms and he spiraled between bouts of mania and suicidal ideation. *Id.* He experienced cognitive and motivational decline that significantly undermined his ability to manage his affairs, recognize and care about his legal rights, and act upon them. *Id.*

Underpinning Mr. Gibson’s mental health challenges is the lasting impact of his dysfunctional childhood, including witnessing and experiencing emotional abuse and neglect, and witnessing and likely experiencing physical abuse. *See, e.g.*, Filing No. 62-2 at 4 (Psychological Evaluation, Kim Allen, BSN, MS; Julie A. Barto, Psy.D., & Nancy A. Schrepft, PsyD., 7/18/1996) (Mr. Gibson “acknowledged that his father abused alcohol and would ‘come home looped’ and fight with his mother.”); Filing No. 62-3 at 2-3 (Initial Psychological Evaluation, Kamla Paul, Ph.D. & Anthony Ezra Lilly, M.A., 01/16/2002) (Mr. Gibson reported his father “drank quite a bit;” there were times when Mr. Gibson wished his father would stop drinking, especially when his father came home “hollering.”).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

As an adult, Mr. Gibson has been diagnosed with Bipolar Disorder. Filing No. 62-1 at 1 (Chambers Dec.). *See also* Filing No. 62- (Face Sheet/Admission Record, 12/27/2001); Filing No. 62-6 at 2 (Record of Admission Psychiatric Evaluation, Jeuti Wylde, M.D., 12/27/2001); Filing No. 62-8 , (Record of Separation Summary, Paul Lawler, M.D., 3/13/2002); Filing No. 62-9 (Competency Evaluation, Heather Henderson-Galligan, Ph.D., HSPP, 08/21/12); Filing No. 62-10 (Competency to Stand Trial Evaluation, Steven R. Shelton, M.D., 08/21/12); Filing No. 62-4 (Report of Neuropsychological Examination, Edmund Haskins, Ph.D., HSPP, 10/10/2013); Filing No. 62-11 (Expert Consultation Report Andrew Chambers, M.D., 05/26/2017) (recording bipolar diagnoses). Mr. Gibson has been diagnosed as suffering from Major Depressive Disorder or Depressive Disorder. *See* Filing No. 62-2 (Psychological Evaluation, Kim Allen, B.S.N., M.S., Julie Barto, Psy.D., Nancy Schrepf, Psy.D., 07/18/1996); Filing No. 62-12 (Discharge Evaluation Daniel Howerton, M.D., 03/22/2001); Filing No. 62-13 (Psychological Assessment, G. Roosevelt, L.S.W., 03/22/2001); Filing No. 62-10 (Competency to Stand Trial Evaluation, Steven R. Shelton, M.D., 08/21/12); Filing No. 62-4 (Report of Neuropsychological Examination, Edmund Haskins, Ph.D., HSPP, 10/10/2013). Between July 23, 2012, and July 7, 2017, IDOC physicians clinically assessed Mr. Gibson multiple times and, on each occasion, concluded that he suffered Major Depressive Affective Disorder. *See* Filing No. 62-14 (Compilation of IDOC Records). Although Mr. Gibson had been previously diagnosed with Bipolar Disorder in records available to IDOC staff, and although Mr. Gibson reported manic symptoms to IDOC mental health staff that should have alerted them to his Bipolar Disorder,

IDOC failed to diagnose and treat it. *See* Filing No. 62-2 at 2 (Chambers Dec.); Filing No. 62-21 at 74-81 (Chambers Depo. Transcript).

Mr. Gibson has a documented history of suicidality. He attempted suicide while in the military by cutting his wrists in 1978 and, again, in 2012 while in jail awaiting trial. *See* Filing No. 62-16 at 2 (Consultation Sheet, 07/10/1978) (“[S]uicide attempt early this am no response from [patient], refuses to state why he did it, just says ‘why not.’”); Filing No. 62-17 at 3, (Floyd County Corrections Incident Reports, 06/23/2012) (“[W]hen I turned the corner of the shower divider I seen a noose around his neck made from an orange t-shirt. While removing the noose, he made the comment ‘It didn't work’ referring to the shirt that he used to tie on to the pipes above shower.”). Reports document that between 1978 and 2012 he contemplated suicide or presented suicidal symptoms sufficient to be placed on suicide watch on numerous occasions.¹

¹ Filing No. 62-18 (Intervention Notes, Jefferson County Corrections Dept, 10/02/1991) (“Inmate referred [to therapist] for assessment by nursing. Was crying as he was standing on grill ready to enter the jail. On suicide risk scale scored a 17. . . . Throughout our conversation, he stated several times ‘I wish I were dead.’ & ‘I just want to be out of here, I just want to be out of everywhere.’ Stated he was thinking of suicide. As precautionary measure, placed Mr. Gibson on 10 minute suicide observation w/paper gown & mattress only.”); Filing No. 62-19 (Jefferson County Corrections Dept., 10/10/1991) (Mr. Gibson’s wife “expressed concern about Mr. Gibson due to statements he made to her over the phone on 10-9-91. He reportedly stated ‘I have been thinking about doing something stupid.’ . . . Due to the concerns expressed by his wife & previous expressions of suicidal ideation -placed Mr. Gibson on 15 minute observation w/no restrictions except sheets.”); Filing No. 62-2 at 3 (Psychological Evaluation, Kim Allen, B.S.N., M.S., Julie Barto, Psy.D., Nancy Schrepf, Psy.D., 07/18/1996) (“A recent referral for psychological evaluation was initiated after Mr. Gibson was placed in the Special Management Unit for possible drug use and suicidal ideation.”); Filing No. 62-20 at 2 (LifeSpring Progress Notes, 3/21/2001) (“Brought to Lifespring by his 2 sisters because of alcohol & cocaine dependence & suicidal ideation. . . . He reports suicidal ideation but denies any intention. ‘I could not hurt my family like that.’ Client’s brother committed suicide in 11/99. Client states, ‘I don’t want to die & I don’t want to live.’ . . . Client’s sister expresses concern about client’s suicide potential. Claim he wrote a vague suicide note this morning.”).

Mr. Gibson's brother committed suicide in 1999. *See* Filing No. 62-21 at 65-67 (Chambers Depo. Transcript) (brother's suicide indicated genetic predisposition to mental illness).

In addition, Mr. Gibson has a history of head injuries span from his childhood throughout his adulthood, resulting in traumatic brain injury ("TBI"). *See* Filing No. 62-1 at 2 (Chambers Dec.); Filing No. 62-22 (Army Medical Records, 04/30/1978); Filing No. 62-2 (Psychological Evaluation, Kim Allen, B.S.N., M.S., Julie Barto, Psy.D., Nancy Schrepf, Psy.D., 07/18/1996); Filing No. 62-23 (Sex Offender Risk Assessment, Dennis Wagner, Ed.D, 03/26/1999); Filing No. 62-8 (Record of Separation Summary, Paul Lawler, M.D., 3/13/2002); Filing No. 62-24 (Floyd County Sheriff's Office Inmate Medical History, 04/19/2012); Filing No. 62-11 (Expert Consultation Report, Andrew Chambers, M.D., 05/26/2017). Recent testing also demonstrates that Mr. Gibson suffers from white matter dysfunction. Filing No. 62-25 at 4-5 (Watson Dec.). This impairment is associated with depression and cognitive decline. *Id.* This same round of testing indicated that Mr. Gibson had impairment in his executive functioning. *Id.*

This history of significant TBI further compromises Mr. Gibson's mental and emotional state. On its own, bipolar disorder significantly undermines Mr. Gibson's "judgment, perception, decision-making and emotional stability." Filing No. 62-1 at 2 (Chambers Dec.). Mr. Gibson's traumatic brain injury "significantly amplifies" his other psychological impairments because it "disrupts the connection between brain centers that govern and interlink cognition, emotion, and motivational control. *Id.* This leads to even greater deficits in "impulse control, judgment, and emotional regulation that are impaired by bipolar disorder and substance intoxication." *Id.*

Mr. Gibson's psychiatric conditions have not been treated appropriately in IDOC custody. IDOC has intermittently treated Mr. Gibson with Zoloft, an antidepressant. Filing No. 62-1 at 3 (Chambers Dec.). While Zoloft can be helpful for treating symptoms of depression associated

with bipolar disorder, it can contribute to manic episodes when used alone without an accompanying mood stabilizer. *Id.* Prison records show spikes in Mr. Gibson's mania while on an inappropriately high dose of Zoloft. *Id.* ("For example, Clyde reported to one IDOC psychiatrist that he felt like his mind 'always races.' He said that 'at times he can feel 10 feet tall.' When he feels this way he 'needs little sleep' and the 'feelings can last for a month and then he gets very depressed.'").

In September 2018, IDOC stopped medicating Mr. Gibson with Zoloft. Though prison mental health records document that Mr. Gibson experienced a spike in mania in 2013, his psychiatric team did not conduct any psychiatric evaluation to reassess their diagnosis or treatment before or after removing his Zoloft in September 2018. *Id.* at 2. "There is no medical justification for removing psychiatric medication without first evaluating the patient. Nor is there any medical justification for failing to evaluate a patient after removing their psychiatric medication to assess its effect on the patient." *Id.* at 3. Although the treatment of Mr. Gibson's bipolar disorder only with Zoloft was "inadequate," the prison's "decision to remove all medication was significantly worse." *Id.*

Mr. Gibson made at least thirteen separate requests to prison staff to restore his medication. Filing No. 62-1 at 4 (Chambers Dec.); Filing No. 62-26 (Compilation of Medical Visit Reports) (recording Mr. Gibson's requests to restart medication during medical visits on 11/16/2018, 02/06/2019, 08/26/2021, 10/26/2021, 11/03/2021, and 01/04/2022); Filing No. 62-27 (Compilation of Requests for Healthcare) (recording Mr. Gibson's written requests to restart medication on 06/03/2021, 08/16/2021, 10/20/2021, 10/27/2021, 10/29/2021, and 11/08/2021); Filing No. 62-28 (Restrictive Housing Documentation, 02/27/2019) (recording Mr. Gibson's requests to restart medication during cell-side visits).

Mr. Gibson's mental health severely impeded his ability to prepare and file a habeas petition or otherwise participate in a habeas case. After Mr. Gibson was taken off his medication in September 2018, he experienced a "cognitive and motivational decline" that continued until the medication was resumed. Filing No. 62-1 at 4 (Chambers Dec.). Mr. Gibson suffered a "cognitive and motivational decline and sense of hopelessness" that, according to Dr. Chambers, "significantly undermined Clyde's ability to manage his affairs, recognize and care, about his legal rights, and act upon them." *Id.* For example, Mr. Gibson's state post-conviction counsel, Joanna Green, reported that her team had a positive relationship with Mr. Gibson until around the middle of 2018. Filing No. 62-29 at 2 (Green Dec.). After that point, Mr. Gibson started refusing visits and returning their mail. *Id.* at 2 (noting that Mr. Gibson accepted a visit in July 2018, but refused visits in August, November, and December of 2019). As a result, Mr. Gibson's state post-conviction counsel were unable to advise him of his federal habeas rights or the ramifications of waiving those rights.

Because he remained unmedicated, Mr. Gibson's enhanced mental health struggles continued throughout the AEDPA limitation period. As discussed below, the attorneys who were appointed to represent him in federal court were aware that he had a history of bipolar disorder, were aware that the prison was not treating him, and observed that his mental health struggles were contributing to manic and erratic behavior. *See* Filing No. 62-30 at 4-5 (Murray Dec.); Filing No. 62-31 at 3 (SAGE Dec.).

B. Kenneth Murray and Michael Benza are Appointed.

Mr. Gibson was unrepresented for over 100 days of his AEDPA tolling period. On February 3, 2020, the Supreme Court of Indiana denied rehearing on Mr. Gibson's petition for post-conviction, and the State contends that Mr. Gibson had one year from that date to file his

petition for a writ of habeas corpus. ECF 11. Mr. Gibson’s state post-conviction attorneys at the Indiana State Public Defender’s Office (“ISPD”) struggled for several months to identify qualified habeas counsel. Filing No. 62-29 at 3 (Green Dec.) (“It was particularly difficult to find counsel at this time, as Indiana had not seen death penalty prosecutions in many years. As a result, the former cohort of habeas practitioners had retired or moved on, and no new local practitioners had the relevant experience.”). Ms. Green and her colleagues reached out to several Federal Defender Capital Habeas Units and known habeas practitioners throughout the country, but none could take Mr. Gibson’s case. *Id.* Ms. Green first reached out to Mr. Murray in November, 2019. *Id.* at 3. Together, Ms. Green and Mr. Murray attempted to find a Capital Habeas Unit to sign on to the case, to no avail. *Id.*

On May 18, 2020, Hon. Tanya Walton Pratt appointed Mr. Murray as counsel with the directive to “timely file [Mr. Gibson’s] habeas petition in accordance with 28 U.S.C. Sec. 2244(d)(1).” *Gibson v. Neal*, 4:20-cv-00100-TWP-DML (S.D. Ind. May 11, 2020) ECF 3 (appointment effective on date motion to appear *pro hac vice* granted) & ECF 5 (May 18, 2020) (granting *pro hac vice* motion). The court appointed Mr. Benza on June 8, 2020. *Id.* at ECF 7 (June 8, 2020).

According to Ms. Green, the hand-off of the case to Mr. Murray was “smooth and quick and our files were fairly well organized.” Filing No. 62-29 at 4 (Green Dec.). Ms. Green was in constant communication with Mr. Murray in the months before and after his appointment. Ms. Green’s office provided Mr. Murray initial access to the state post-conviction counsel files via “SharePoint” on June 5, 2020 and, after some IT issues, via a thumb-drive not long after. Filing No. 62-32 at 5 (Email Correspondence, 05/05/2020 to 05/16/2020) (email from ISPD’s IT professional to Mr. Murray stating “all the files are up on the site for sharing;” email from Ms.

Green to IDOC's IT professional stating "I can get those thumb drives and send them to Ken [Murray]"). Those files included:

- a. Trial transcripts;
- b. Trial motions and orders;
- c. Direct appeal pleadings, briefs, and appendices;
- d. Investigative files;
- e. Expert work product;
- f. Attorney work product;
- g. Client correspondence;
- h. Post-conviction pleadings, briefs, and appendices; and
- i. Post-conviction hearing transcripts;
- j. Records documenting Mr. Gibson's mental health, incarceration, military service, and education history.

Filing No. 62-29 at 4 (Green Dec.). Undersigned counsel believes that state post-conviction counsel conveyed a substantially complete record of Mr. Gibson's proceedings to Mr. Murray around June, 2020.

Contrary to Ms. Green's recollection—and contrary to undersigned counsel Loewy's examination of the hard drive—Mr. Murray describes the files he received from the ISPDO as "extremely unorganized." Filing No. 62-30 at 4 (Murray Dec.). Ms. Green was "available and extremely willing" to help with any follow up questions the habeas attorneys had about the record, Filing No. 62-29 at 4 (Green Dec.), yet Mr. Murray did not reach out to Ms. Green to clarify files' organization, or to locate any files he was having trouble finding. *Id.* ("[N]either Mr. Murray nor anyone working with him contacted me about locating missing files.").

Mr. Murray began copying a paralegal, Michelle Rachmaninow, on emails in September 2020, after the Court appointed her to the case on August 17, 2020. *Gibson v. Neal*, 4:20-cv-00100-TWP-DML (S.D. Ind. Aug. 17, 2020) ECF 10. Ms. Rachmaninow was tasked with organizing the files received from state post-conviction counsel and tracking down any pieces of the files that may have been missing. Filing No. 62-30 at 4 (Murray Dec.). Ms. Rachmaninow

did not have much experience with capital cases or federal habeas. Filing No. 62-31 at 3 (SAGE Dec.). She did not know how to organize the files and received little guidance from the attorneys. *Id.* (the lawyers were not “paying much attention” to Rachmaninow’s work).

Messrs. Murray and Benza also failed to intervene to assist Mr. Gibson with his mental health medication. As discussed above, they were aware that Mr. Gibson had a history of serious mental illness and that the prison had removed his medication. Despite this awareness, they did not assist Mr. Gibson with obtaining psychiatric care. *See* Filing No. 62-30 at 4-5 (Murray Dec.); Filing No. 62-31 at 3 (SAGE Dec.).

C. The COVID-19 Pandemic Created Extraordinary Impediments.

The COVID-19 pandemic raged for the entirety of Mr. Gibson’s AEDPA limitation period, according to Respondent from February 3, 2020, to February 3, 2021. In an effort to keep individuals safe by minimizing or stopping the spread of the deadly COVID-19 virus,² federal, state, and local governments imposed emergency measures.

In Indiana, the governor issued a series of Executive Orders denying the general public access to “all state government buildings, offices and facilities” from March 23, 2020, to at least July 3, 2020, and from July 29, 2020, through August 31, 2020.³ This Court and the District Court for the Northern District of Indiana issued its own orders aimed at slowing the spread of

² The coronavirus was highly contagious and dangerous, shooting from causing 0% of United States deaths in early March to 20.8% by early May. *See* <https://www.nytimes.com/interactive/2023/us/covid-cases.html> (last visited 3/16/2025). While that rate decreased over the summer months, it soared in late 2020 and early 2021 to 28.9%. *Id.* In early February, COVID-19 deaths accounted for 26.6% of all deaths in the United States. *Id.*

³ Executive Order Nos. 9 (March 23, 2020), 22 (4/20/2020), 26 (5/1/30), 28 (5/21/2020), and 32 (7/3/2020). Indiana Governor executive orders are available at: www.in.gov/governorhistory/ [-] ericjholcomb/newsroom/executive-orders/ (last visited 3/19/2025).

the COVID-19 virus and keeping individuals safe. These included this Court's orders continuing all jury trials from March 13, 2020, through at least late June, 2020, then resuming their continuance from July 29, 2020, to March 1, 2021, and directing that the delay in criminal trials would be excluded under the Speedy Trial Act because "the Court specifically finds that the ends of justice served by ordering the continuance outweigh the best interests of the public and any defendant's right to a speedy trial."⁴

Messrs. Murray and Benza were appointed to represent Mr. Gibson in the midst of this unprecedented, highly fatal, unpredictable, and contagious virus developing into a years-long pandemic. As of January 2021, thirty-eight incarcerated people had died in Indiana State prisons across Indiana, including two at ISP. *See* Filing No. 62-33 (IDOC Facility COVID-19 Statistics).

The COVID-19 pandemic drastically impacted Mr. Gibson's representation. According to Mr. Murray, "[t]he pandemic impacted every single aspect of my representation, including but not limited to building a client relationship, assessing mental health needs, record collection, field investigation, mitigation, and more." Filing No. XX at 2 (Murray Dec.). *See also*, Filing No. 62-31 at 2-3 (SAGE Dec.) (discussing COVID's impact on mitigation investigation).

The Indiana State Prison ("ISP"), where Mr. Gibson was (and is) housed, was intermittently closed throughout the pandemic. Filing No. 62-34 (documents showing ISP openings/closures throughout pandemic). *See also supra* at 13 and n. 3. Even when ISP was open to visitors, Mr. Murray's health issues meant that he could not visit in person. Filing No. 62-30 at 2 (Murray Dec.). Mr. Gibson received only one visit from a member of this legal team during the entire course of their representation.

⁴ General Orders dated 03/13/2020, 03/20/2020, 04/13/2020, 05/12/2020, 07/29/2020, 08/24/2020, 12/16/2020, and 01/14/2021.

D. Murray and Benza Request Prospective Equitable Tolling, Despite Knowing it was Unavailable, then Fail to File a Habeas Petition.

Even in the context of the COVID-19 pandemic, Messrs. Murray and Benza did not take elementary, achievable steps required to file a timely habeas petition on Mr. Gibson's behalf. In the words of one team member, mitigation specialist Betsy Wilson, "Mr. Murray and Mr. Benza were disengaged and inattentive throughout the time that SAGE was involved in the case." Filing No. 62-31 at 4 (SAGE Dec.). Put more simply, "[t]he lawyers never seemed to have a basic understanding of the case, the record, or potential issues that they could raise." *Id.*

Ms. Wilson's observations align with the lawyers' own admissions. Despite having access to the complete record, Mr. Murray "did not read the complete direct appeal or postconviction appellate record" in the nearly ten months between his appointment in the case and the AEDPA deadline, or in the approximately twenty months between the AEDPA deadline and the day he withdrew from the case. Filing No. 62-30 at 4 (Murray Dec.). No one on Mr. Gibson's team interviewed Mr. Gibson's prior counsel, conducted mitigation investigation, or spoke with any other witness. Filing No. 62-30 at 5 (Murray Dec.).

Mr. Murray also admits that, after informing Mr. Gibson that he would represent him on his habeas petition, he "did not have substantive conversations with Mr. Gibson about his case." *Id.* at 2. This, despite the fact that as early as September 2020 Mr. Murray had recognized that Mr. Gibson was willing to work together on his legal case. *Id.* ("[Mr. Gibson stated that he] knew that we were trying to help him, that he trusted us, and that we could work things out."). Messrs. Murray and Benza knew that Mr. Gibson had a previous bipolar diagnosis and that the prison had stopped his medication, but they did not contact anyone at the prison to inquire whether the mental health providers would reassess whether Clyde's medication should be restored. Filing No. 62-31 at 3 (SAGE Dec.) ("The lawyers did not appear willing or able to

advocate for Clyde to receive improved mental health treatment. I am unaware of either of them taking any action at all to try to have the prison mental health providers reassess Mr. Gibson's need for medication.”).

Having failed to meaningfully focus on and take elementary, achievable steps toward preparing a habeas petition, finally in January 2021, Messrs. Murray and Benza prepared a motion for prospective equitable tolling. Indeed, Mr. Murray had considered a strategy focused on equitable tolling even before his appointment. *See* Filing No. 62-35 (Email from Ken Murray to Joanna Green, 04/03/2020) (“[T]here are no visits for now. Due to COVID-19. *That could work in our favor potentially as it could give us leverage to seek equitable tolling of the AEDPA statutes in the federal courts*, I think that would require making a paper trail of what we should and would do if the COVID-19 restrictions were not in place.”) (emphasis supplied). They were “aware that Seventh Circuit Court of Appeal precedent did not allow prospective equitable tolling,” yet they decided to pursue this strategy. Filing No. 62-30 at 5 (Murray Dec.).

Messrs. Murray and Benza filed a motion for prospective equitable tolling on January 21, 2021, just thirteen days before the AEDPA deadline. At this time, they seemingly had not drafted a petition, nor had they identified all the issues that were decided on either the direct or postconviction appeals. In a January 22, 2021 email to the team, Mr. Murray raised the question of whether they would file a habeas petition at all:

The immediate concern that Michael and I need to discuss in more detail is what to do if, as I anticipate, the Equitable Tolling motion is not ruled on by February 3, 2021. Do we file a shell petition that will come back to haunt us undoubtedly or do we wait? To even consider this we need the original and the amended petitions filed in the state courts which Michelle [Rachmaninow] has not been able to obtain yet. Michzael [sic], we need to discuss this soon.

Filing No. 62-36 (Email from Murray, 01/22/21).

Notably, Mr. Murray was incorrect that the team could not access the original and amended state post-conviction pleadings. Even if the original and amended petitions for post-conviction relief filed in state court were excluded from the files obtained from state post-conviction counsel, any team member could have reached out to Joanna Green to quickly obtain them. Filing No. 62-29 at 3 (Green Dec.) (“I was available and extremely willing to assist Mr. Murray with anything he needed. I retained access to Mr. Gibson’s files and still have access to them today.”). Moreover, when Ms. Rachmaninow emailed a Floyd County employee requesting the post-conviction record on February 2, 2021 (the day before the AEDPA deadline), she received a response with electronic copies of the relevant filings within an hour. Filing No. 62-37 (Email from Rachmaninow, 02/02/2021).

The Court denied the prospective equitable tolling motion on January 27, 2021. Mr. Murray recounts that he was “shocked” by the decision. Filing No. 62-30 at 5 (Murray Dec.). By the following day, he and Mr. Benza had agreed not to file a habeas petition on Mr. Gibson’s behalf. According to minutes of a January 28, 2021, meeting Mr. Benza thought that “filing petition puts us in a bad place” because “the days of filing a shell and a follow up are gone and there is stuff in this case that we don’t know about yet ... We may want to litigate procedure for 5 years rather than the merits.” Filing No. 62-38 (Meeting Minutes, 01/28/2021). Mr. Murray agreed that “if we file a shell then file something else we will lose claims.” *Id.*

Betsy Wilson from SAGE mitigation disagreed with the decision and pushed back in the meeting. *Id.* (What if “we [go] forward, and equitable tolling [is] denied, and it was all for nothing?”); Filing No. 62-31 at 3 (SAGE Dec.). Mr. Benza replied that, while trainings on habeas practice would always teach attorneys to never miss the AEDPA deadline without filing a shell petition, “our best option[] is to not file a shell.” Filing No. 62-38 (Meeting Minutes,

01/28/2021); *see* Filing No. 62-31 at 4 (SAGE Dec.) (“This is the only case I’ve worked on where the lawyers intentionally missed the filing deadline.”). The attorneys apparently decided to risk the Court’s reaching the merits on none of the issues to ensure that they would not have to file a successive petition for issues that they did not know existed. *See* Filing No. 62-30 at 6 (Murray Dec.) (“The team discussed and determined that the risk of not being able to add later-uncovered claims outweighed the risk of filing a late petition.”).

Mr. Murray and Mr. Benza did not obtain Mr. Gibson’s informed consent, nor did they communicate the consequences of this decision either before or after the AEDPA deadline. Filing No. 62-30 at 3 (Murray Dec.) (I “did not have substantive conversations with Mr. Gibson about his case.”). Mr. Murray informed Mr. Gibson of the deadline two days in advance and, during this conversation, told Mr. Gibson that they were not going to file. Filing No. 62-30 at 7 (Murray Dec.) (“I explained that his petition was due two days later and that we could not prepare it for filing in that time.”). Mr. Gibson was not given a choice in the matter, and did not understand the consequences of the failure to file.

E. Mr. Murray and Mr. Benza Stop Working on Mr. Gibson’s Case Entirely.

After missing the AEDPA deadline, Messrs. Murray and Benza made no material progress toward filing Mr. Gibson’s habeas petition. Filing No. 62-30 at 7 (Murray Dec.) (“In the months following the AEDPA deadline, the team did not make significant progress[.]”); Filing No. 62-31 at 4 (SAGE Dec.) (Mr. Murray and Mr. Benza were disengaged and inattentive throughout the time that SAGE was involved in the case.”).

Mr. Murray, who was “in charge of the legal team,” Filing No. 62-31 at 2 (SAGE Dec.), became extremely ill after contracting COVID-19 in August, 2021. Filing No. 62-30 at 7 (Murray Dec.); Filing No. 62-31 at 4 (SAGE Dec.). Mr. Murray had been living with serious

chronic medical conditions since at least 2015, but after contracting COVID, he experienced increased severe fatigue that “significantly impacted [his] quality of life and ability to work as habeas counsel.” Filing No. 62-30 at 7 (Murray Dec.). By early 2022, Mr. Murray “realized that [his] medical and psychological condition required [him] to withdraw from all three of the prepetition cases on which [he] was counsel,” including Mr. Gibson’s case, as he was “no longer physically and psychologically able to adequately represent prepetition clients.” *Id.* at 6-7. He withdrew from his other prepetition cases in April, 2022. Mr. Murray now admits that, “[i]n retrospect, [he] should have months earlier [than April 2022] concluded that [he] needed to withdraw and acted accordingly.” *Id.* at 7.

Mr. Murray sent a memo to Mr. Gibson’s whole legal team on April 12, 2022 informing them of his decision to withdraw. Filing No. 62-39 at 2-3 (Ken Murray Withdrawal Memo, 04/12/2022). In it, he stated:

I have had multiple health issues that have arisen or worsened over the last six months. Without going into the details, suffice it to say I am getting older and more broken each day. I need three surgeries, have heart problems, some health issues that cannot be cured by surgery or medications, and possible long-term COVID effects. I had previously talked to the team about the possibility that I might have to withdraw. While everyone was supportive, you encouraged me to continue. During these past few months, as my health deteriorated, I realized that I am unable to do the things I need to do to provide high-quality capital representation. ... My fatigue is overwhelming, my pain interferes with concentration, and the time it takes me to recover is embarrassing.

...

I made the decision to withdraw from my capital pre-petition cases, those that require a younger and healthier individual, because I can no longer meet the professional standards that are required. When informed, Michael indicated his desire to stay on the case.

...

I honestly believe that I am no longer capable of providing the high-quality representation that is required and that I am committed to providing.

Id. Yet Mr. Murray delayed two months before notifying Mr. Gibson of his decision to withdraw, and two more months before actually withdrawing. He first informed Mr. Gibson of his decision

in June, 2022. *See* Filing No. 62-40 (Murray Letter to Gibson, 06/05/2022). In this letter, Mr. Murray advised Mr. Gibson that Mr. Benza would replace him as lead counsel and continue representing him. *Id.* Mr. Murray moved to withdraw from the case in August, 2022. *Gibson v. Neal*, 4:20-cv-00100 Dkt. 38 (S.D. Ind. Aug. 5, 2022).

In the time period between when Mr. Murray was too ill to continue representing Mr. Gibson—at earliest, August 2021—and when he actually withdrew a year later, in August, 2022, Mr. Murray made no material progress toward filing Mr. Gibson’s habeas petition. Filing No. 62-30 at 7-8 (Murray Dec.). Mr. Murray admits that, “[i]n hindsight, I think that a factor contributing to my decision not to file a petition in Mr. Gibson’s case after the limitation period expired was that I knew that I would not be seeing his case through[.]” *Id.* at 8. He also stopped following up on the other team members’ work. *Id.*; Filing No. 62-31 at 3-4 (SAGE Dec.).

Beginning in April 2022, at the latest, Mr. Benza was on notice that he would take on the responsibility of lead counsel. Despite this, and the fact that he represented Mr. Gibson for over two years, he did not make any significant progress toward preparing Mr. Gibson’s habeas petition. Filing No. 62-31 at 4 (SAGE Dec.) (“The lawyers never seemed to have a basic understanding of the case, the record, or potential issues that they could raise.”). He did not communicate with Ms. Rachmaninow or SAGE mitigation about their next steps, and he took no action as their funding ran out. *Id.* at 2.

F. Oliver Loewy is Appointed, Requests that Mr. Benza Withdraw, Helps Mr. Gibson Access his Psychiatric Medication, and Files a Habeas Petition.

Mr. Loewy was appointed on August 23, 2022, as Mr. Benza’s second chair. A short time after his appointment, Mr. Loewy determined that, contrary to what Mr. Murray and Mr. Benza had represented to him, the Indiana State Public Defender’s and Indiana Attorney General’s files they possessed contained the state court record from each of the three trials, appeals, and

postconviction proceedings and appeals. Mr. Loewy looked further into the procedural history and determined that Mr. Benza had likely violated professional standards in this case and, as a result, may have had a reputational conflict. Mr. Benza acknowledged to this Court that he “may [have been] operating under a conflict of interest regarding the issues of equitable tolling.” *Gibson v. Neal*, 4:20-cv-00100-TWP-DML (S.D. Ind. Oct. 20, 2022) ECF 49. He further recognized that “it may be necessary to assert that Counsel Benza failed in his obligations and duties to Mr. Gibson resulting in the missing of the statute of limitations.” *Id.* Accordingly, Mr. Benza moved to withdraw. *Id.* Undersigned counsel became lead counsel on November 4, 2022, when the Court granted Mr. Benza’s motion to withdraw. *Id.*, ECF 52 (Nov. 4, 2022).

Additionally, it became apparent to Mr. Loewy that he had to address the fact that the prison was withholding medication that Mr. Gibson needed to cope with his serious mental illness, which took a significant amount of time to discuss with Mr. Gibson as well as administrators and health care providers at the Indiana State Prison. *See* Filing No. 62-41 (Loewy Prison Contact re: Medical Info, Dec. 23, 2022). The prison authorized Mr. Gibson to resume his medication in early January 2023. Filing No. 62-42 (Requests for Medication, 01/04/2023); Filing No. 62-43 (Zoloft Restart, 01/11/2023). At the same time, Mr. Loewy diligently read the record, had multiple and lengthy telephone calls with and met in-person with Mr. Gibson, and drafted the habeas petition, which he filed on January 31, 2023. Mr. Loewy did so solely based on the information that was available to Messrs. Murray and Mr. Benza.

ARGUMENT

I. MR. GIBSON IS ENTITLED TO EQUITABLE TOLLING.

A. Legal Standard

Should the Court determine that the limitation period ran from February 3, 2020, then Mr. Gibson asks that it grant equitable tolling and find his petition timely filed.⁵ The AEDPA provides that a “1-year period of limitation shall apply to an application for a writ of habeas corpus.” 28 U.S.C. § 2244(d)(1). The limitation period is triggered by the latest of four alternative events, one of which is “the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review.” 28 U.S.C. § 2244(d)(1)(A). Assuming the Court determines that this is the applicable alternative triggering event, then the petition was due February 3, 2021.

However, the one-year limitation period is not jurisdictional and may be statutorily or equitably tolled in an appropriate case. *Holland v. Florida*, 560 U.S. 631, 645 (2010); *Ademiju v. United States*, 999 F.3d 474, 477 (7th Cir. 2021). 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 circumstance stood in his way and prevented timely filing.” *Holland* at 649 (cleaned up). “The realm of equitable tolling is a ‘highly fact-dependent area’ in which courts

⁵ Mr. Gibson disputes this starting point of the limitation period for two reasons. First, he contends, *see infra* at 49, that the limitation period started to run on the date on which the Court appointed Mr. Murray to represent him in federal habeas proceedings, May 18, 2020. *Gibson v. Neal*, 4:20-cv-00100-TWP-DML (S.D. Ind. Apr. 11 & Apr. 18 2020) ECF 3 & 5. Second, Mr. Gibson argues that that his petition is timely under § 2244 (d)(1)(B). *See infra* at 49 *et seq* (alleging multiple State created impediments to filing).

are expected to employ ‘flexible standards on a case-by-case basis.’” *Socha v. Boughton*, 763 F.3d 674, 684 (7th Cir. 2014) (quoting *Holland* at 650-52).

The Seventh Circuit considers in the aggregate factors that may constitute extraordinary circumstances. Even if one adverse circumstance standing alone does not meet the threshold, multiple circumstances combined can rise to the level of “extraordinary.” *See, e.g., Socha*, 763 F.3d at 685 (“The mistake made by the district court and the state was to conceive of the equitable tolling inquiry as the search for a single trump card, rather than an evaluation of the entire hand that the petitioner was dealt.”); *Ademju* at 477 (considering whether “three factors, considered alone or together, demand equitable tolling”).

“The diligence required for equitable tolling purposes is reasonable diligence, not maximum feasible diligence.” *Holland*, 560 U.S. at 653 (internal quotation marks and citations omitted). Because the district court must consider “the entire hand that the petitioner was dealt rather than taking each fact in isolation,” *Gray v. Zatecky*, 865 F.3d 909, 912 (7th Cir. 2017) (citing *Holland*, 560 U.S. at 653; *Socha*, 763 F.3d at 686), “[t]he important thing is the full picture with which an inmate is contending.” *Socha*, 763 F.3d at 865.

In keeping with this and with *Holland*’s rejection of an “overly rigid *per se* approach,” 560 U.S. at 653, the Seventh Circuit does not limit the kinds of circumstances that may warrant equitable tolling. It does, though, recognize various specific factors that may contribute to extraordinary circumstances, including restrictions due to the COVID-19 pandemic, abandonment by counsel, mental disability, and the inability to access vital papers. *See, e.g., Schmid v. McCauley*, 825 F.3d 348, 350 (7th Cir. 2016) (abandonment, mental problems, inability to access vital papers); *Brown v. Unknown Party*, 2023 U.S. App. LEXIS 8283 at *2 - *3 (7th Cir. Apr. 5, 2023) (pandemic); *see also Pineda-Hernandez v. United States*, 2024 U.S.

Dist. LEXIS 74455 at *6 (S.D. Ind. Apr. 24, 2024) (“The petitioner must establish that he was pursuing his rights diligently and that the COVID-19 pandemic specifically prevents him from filing his [§ 2255] motion.”).

If the limitation period started to run on February 3, 2020, then Mr. Gibson was without counsel for its first 105 days, more than a quarter of the 1-year limitation period. The Court appointed Mr. Murray on May 18, 2020, and Mr. Benza on June 8, 2020. Mr. Murray filed his notice of withdrawal on August 5, 2022, Mr. Benza filed his on October 20, 2022, and on November 4, 2022, the Court construed their notices as motions to withdraw and granted each. By that time, undersigned counsel Mr. Loewy was appointed. On January 31, 2023, he filed Mr. Gibson’s habeas petition as an exhibit to a motion to file it under seal. *Gibson v. Neal*, 4:20-cv-00100-TWP-DML (S.D. Ind. Jan. 31, 2023) ECF 56-1. Thus, assuming the limitation period started to run on February 3, 2020, Mr. Gibson seeks equitable tolling for the time before counsel was appointed, for the time that Mr. Murray and Mr. Benza represented him, and for the time after they were relieved from their appointments and until the date the petition was filed.

B. Mr. Gibson Faced Extraordinary Circumstances that Justify Equitable Tolling.

Mr. Gibson faced obstacles that, considered together and separately, constitute extraordinary circumstance that stood in his way and prevented timely filing. First, Mr. Gibson suffers severe and—from September 2018 to January 2023 and despite Mr. Gibson’s pleas—untreated mental health issues and associated impairments that limited his ability to advocate for himself. Second, the COVID-19 pandemic hampered Messrs. Murray’s and Benza’s (Mr. Gibson’s “former habeas counsel”) ability to progress on his case. Third, Mr. Gibson’s former habeas counsel breached their ethical obligations to Mr. Gibson by failing to convey information critical to his making informed decisions and by leading him to believe that they were working

on his behalf. Fourth, former habeas counsel abandoned Mr. Gibson. Fifth, through no fault of his own, Mr. Gibson was without counsel for over 100 days of his 365-day statute of limitations period. Sixth, the prison did not provide adequate legal resources that were essential for an incarcerated person to file a habeas petition.

Moreover, courts may be more willing to grant equitable tolling in death penalty cases, particularly when the petitioner has been diligent in pursuing his rights. *See, e.g., Fahy v. Horn*, 240 F.3d 239, 244–45 (3d Cir. 2001); *cf. Gardner v. Florida*, 430 U.S. 349, 357 (1977) (“[D]eath is a different kind of punishment from any other which may be imposed in this country.”); *Woodson v. North Carolina*, 428 U.S. 280, 305 (1976) (opinion of Stewart, Powell, and Stevens, JJ.) (“[T]he penalty of death is qualitatively different from a sentence of imprisonment[.]”).

1. Mr. Gibson’s Untreated Mental Health Challenges Left Him Unable To Manage His Affairs, Understand His Legal Rights, And Act Upon Them.

Mental impairments may, in extreme circumstances, be sufficient to justify equitable tolling. *See Davis v. Humphreys*, 747 F.3d 497, 499-501 (7th Cir. 2014) (remanding to district court for an evidentiary hearing on whether the petitioner’s mental disabilities justified equitable tolling). Mental health challenges by themselves warrant equitable tolling where they “‘actually impaired [the petitioner’s] ability to pursue his claims’ throughout the limitation period.”

Conroy v. Thompson, 929 F.3d 818, 820 (7th Cir. 2019) (quoting *Mayberry v. Dittman*, 904 F.3d 525, 531 (7th Cir. 2018) (quoting *Obrieht v. Foster*, 727 F.3d 744, 751 (7th Cir. 2013))).

In Mr. Gibson’s case, as alleged above, he suffers from white matter dysfunction, which impairs his ability to regulate his emotions and is associated with depression. *See supra* at 8 (describing Dr. Watson’s opinions) and Filing No. 62-25 at 4 (Watson Dec.). It is also associated

with cognitive decline, consistent with Mr. Gibson's severe to moderate-severe impairment in his complex reasoning abilities. *Id.* at 4. Mr. Gibson also suffers bipolar disorder (including the associated depression), addictive disorders, and traumatic brain injury ("TBI"). *See supra* at 6-8. While bipolar disorder significantly impairs his judgment, perception, decision-making, and emotional stability, his TBI makes these already significant impairments even worse. *See supra* at 8 (describing Dr. Chambers' opinions) & Filing No. 62-1 at 2 (Chambers Dec.). *Cf. Perry v. Brown*, 950 F.3d 410, 413 (7th Cir. 2020) (where "a brain injury" leaves a petitioner "unable . . . to protect his interests," it may "support tolling"); *Justus v. Clarke*, 78 F.4th 97, 115 (4th Cir. 2023) (Bipolar Disorder "is a *lifelong* illness" and therefore "earlier and later medical records provide evidence of his mental functioning during the relevant period").

These already amplified symptoms were further aggravated by the prison's failure to properly treat Mr. Gibson's bipolar disorder and its improperly stopping, from September 2018 to January 2023, psychiatric medication that alleviated some of the depressive symptoms associated with his bipolar disorder. Relatedly, the prison's withholding psychiatric medication from 2018 to 2023 caused Mr. Gibson to experience throughout that span cognitive and motivational decline that significantly impaired his ability to pursue habeas relief. *See supra* at 10; Filing No. 62-1 at 4 (Chambers Dec.).

To warrant equitable tolling on mental health grounds, petitioners must do more than make "conclusory assertions regarding [their] difficulties in filing a timely habeas petition." *Mayberry* at 529. Further, they must not merely assert that they have mental health difficulties but also "show how [their mental health difficulties] actually impaired [their] ability to pursue claims." *Moreland v. Eplett*, 18 F. 4th 261, 271-72 (7th Cir. 2021).

Mr. Gibson's specific allegations are grounded in records and Drs. Chambers' and Watson's factually detailed declarations regarding his mental health. These reports show that Mr. Gibson's mental health challenges prevented him from managing his affairs, understanding his legal rights, and acting on them by pursuing habeas relief during the period that he was left unmedicated. *See supra* at 10. Notably, Mr. Gibson's mental health struggles prevented him from communicating with his attorneys. After Mr. Gibson was removed from medications, he stopped having legal visits with his state post-conviction counsel and refused their mail. Filing No. 62-29 at 3 (Green Dec.); Filing No. 62-31 at 3 (SAGE Dec.) ("Clyde seemed to be experiencing a mental health crisis during the period while we were involved in the case"). Further, the failure to properly medicate and treat Mr. Gibson prevented him from caring whether he was executed and, perhaps, made him want to die. *See, e.g., Davis v. Humphreys*, 747 F.3d 497, 500 (7th Cir. 2014) (mental impairment can qualify for equitable tolling if it impairs a petitioner's ability to "assist in one's own defense"); *Calderon v. U.S. Dist. Court*, 163 F.3d 530, 541 (9th Cir.1998) (holding that a petitioner's mental incompetency can constitute extraordinary circumstances warranting equitable tolling if it interferes with his ability to communicate with his attorney), overruled on other grounds by *Woodford v. Garceau*, 538 U.S. 202, 205–06 (2003).

Related to communication with counsel, mental impairments like the ones Mr. Gibson suffer may warrant equitable tolling where they undermine a petitioner's ability to engage with and monitor counsel. *Milam v. Harrington*, 953 F.3d 1128, 1132-33 (9th Cir. 2020) (district court erred in equitable tolling analysis for failing to consider interaction between petitioner's mental illness and counsel's misconduct); *Riva v. Ficco*, 615 F.3d 35, 43 (1st Cir. 2010) (district court erred in equitable tolling analysis where it failing to consider whether "petitioner's mental illness [] severely impaired his ability effectively to pursue legal relief, either on his own behalf

or through counsel”); *see also Stiltner v. Hart*, 657 F. App’x 513, 525-26 (6th Cir. 2016) (awarding equitable tolling to a petitioner whose mental impairments rendered him unable “to monitor the legal assistance provided for him by a fellow prisoner or an attorney to make sure that they met the relevant deadline”).

The disruption in Mr. Gibson’s ability to consult with and monitor counsel was critical, here, where counsel effectively abandoned him. *See infra* at 38 *et. seq.* Mr. Gibson’s untreated mental illness, amplified by organic brain damage, directly inhibited his ability to understand his rights, and to monitor “counsel’s filings to be sure that his federal habeas rights were preserved.” *Milam*, 953 F.3d 1128 (citing *Stoll v. Runyon*, 165 F.3d 1238, 1242 (9th Cir. 1999) (awarding equitable tolling to Title VII plaintiff whose “mental illness ... precluded her from exercising an agency relationship with the attorney who handled her EEOC case”).

For the reasons described above, equitable tolling is warranted due to Mr. Gibson’s untreated mental health challenges by themselves and in combination with the other factors supporting it.

2. The COVID-19 Pandemic Introduced Severe Restrictions.

The COVID-19 pandemic contributes to the extraordinary circumstances that warrant equitable tolling. “[J]udges have concluded that an incarcerated section 2255 movant or a habeas corpus petitioner is entitled to equitable tolling if he can show that disruptions and delays due to COVID-19 prevented him from filing a timely motion.” *United States v. Washington*, 2021 U.S. Dist. LEXIS 103403 at *3 (N.D. Ill. June 2, 2021); *accord United States v. Reeves*, 2022 U.S. Dist. LEXIS 229540 at *7 (N.D. Ill. Dec. 21, 2022); *Oats v. Hinthorne*, No. 3:23-CV-2832-NJR, 2024 U.S. Dist. LEXIS 155898, at *6-7 (S.D. Ill. Aug. 29, 2024).

According to Mr. Murray, the COVID pandemic prevented the defense team and Mr. Gibson from having confidential face-to-face meetings and phone or video calls, essential to building the trust necessary to an adequate attorney-client relationship; it prevented the defense team from assessing Mr. Gibson's mental health needs; it impeded record collection, field investigation, mitigation, and more. Filing No. 62-30 at 3 (Murray Dec.). *See also* Filing No. 62-31 at 2 (SAGE Dec.) (describing how the pandemic impeded mitigation work).

Merely citing to the pandemic does not satisfy the showing needed to prove an extraordinary circumstance warranting equitable tolling. *See, e.g., Pineda-Hernandez* at *6. As courts within the Seventh Circuit have held, the pandemic's "mere existence . . . does not warrant equitable tolling" without some explanation of how it prevented a § 2255 movant from timely filing his motion. *Coffey v. City of Freeport*, 2022 U.S. Dist. LEXIS 80843, 2022 WL 1404750, at *2 (N.D. Ill. May 4, 2022) (citations omitted); *Reeves*, 2022 U.S. Dist. LEXIS 229540 at *7.

Here, however, Mr. Gibson alleges precisely how the pandemic impeded his counsel's work. Where petitioners have made similar allegations that the pandemic impeded counsel's work, courts have granted equitable tolling. *See, e.g., McWhorter v. Broomfield*, 2023 WL 6539799 (E.D.Cal. 09/18/2023) (granting equitable tolling because the pandemic impeded counsel's ability to meet professional standards and norms, including regular in-person visitation) (*citing* SUPPLEMENTARY GUIDELINES FOR THE MITIGATION FUNCTION OF DEFENSE TEAMS IN DEATH PENALTY CASES, 36 Hofstra L. Rev. 677 (2008)); *Brown v. Davis*, 2020 WL 5069654 (E.D.Cal. 08/27/2020) (granting equitable tolling because pandemic impeded record assembly and review, lay and expert discovery, claim investigation and development, and preparation of complete federal habeas petition); *Cowan v. Davis*, 2021 WL 1388169 (E.D.Cal. 04/13/2021); *Contreras v. Broomfield*, 2023 U.S. LEXIS 14392 (E.D.Cal. 01/27/2023) (noting

multiple earlier orders granting equitable tolling based on pandemic-related impediments to completing a habeas petition); *Maury v. Davis*, 2020 U.S. Dist. LEXIS 217214 (E.D.Cal. 11/19/2020) (granting equitable tolling “based on the effects of the COVID-19 pandemic and the restrictions resulting from it”).

In *Pickens v. Shoop*, No. 19-cv-558, 2020 WL 3128536 (S.D. Ohio June 12, 2020), the district court acknowledged that it is an “understatement” to say that the COVID-19 pandemic was an extraordinary circumstance that justifies equitable tolling. There, a habeas petitioner sought prospective equitable tolling because of the COVID-19 pandemic. The court granted the petitioner’s unopposed request to file an amended habeas petition ninety-four days after Ohio’s state of emergency was lifted. The court gave every indication in its decision that it would grant equitable tolling, too, but put off the decision until after the amended petition was filed.

The court stated that it sympathized with the petitioner’s dilemma about filing during the pandemic observing, “he is compelled by a statutory deadline to file a petition that circumstances outside of his control prevent him from completing . . .” *Id.* at *2. The court held that it would have “little difficulty finding *Holland*’s ‘diligence’ and ‘extraordinary circumstances’ factors,” though the final decision on tolling depended on how the pandemic affected the writing of the claims. The court wrote:

It also seems obvious that “extraordinary circumstances” likely stand in the way of *Pickens* timely filing a complete petition. In fact, that is probably an understatement. As *Pickens* accurately recounts, since Governor DeWine’s March 9, 2020, declaration of a state of emergency stemming from the coronavirus pandemic and spread of COVID-19, both the United States District Courts for the Southern and Northern Districts of Ohio have issued numerous orders restricting or suspending normal operations, the Ohio Legislature has issued legislation and the Supreme Court of Ohio has issued an administrative order tolling statutes of limitations and other filing deadlines between March 9, 2020 and July 30, 2020 (or until the state of emergency is lifted), and the United States Supreme Court on March 19, 2020 issued a minimum 60-day extension of time for any petitions for *certiorari* due after that date. (ECF No. 17, at PageID 8489-91.) . . . The Warden

even concedes that the travel restrictions and stay at home orders attendant to the state of emergency have hindered his ability to acquire and file the complete state court record. . . . *The Court takes judicial notice that, save for meeting essential needs, nearly all of us are “locked down.”*

Id. at *3 (emphasis supplied).

Having taken judicial notice that nearly everyone was locked down during the pandemic, the Court granted the motion to extend the deadline for filing the amended petition and reserved until later a decision on equitable tolling. *See also Crook v. United States*, 2022 WL 566781 (N.D. Ala. Feb. 24, 2022) (granting pro se litigant equitable tolling because of the barriers, including lockdowns, to timely filing of a §2255 motion).

In addition to the impediments to counsel, COVID-19 impeded Mr. Gibson’s ability to access the law library. Mr. Gibson relies on the facts he alleges *infra* at 51. The lack of access to a prison law library may support equitable tolling. *Conner v. Reagle*, 82 F. 4th 542, 552 (7th Cir. 2023) (citing to *Socha* for proposition that limited access to prison law library may support equitable tolling of habeas filing deadline); *Socha*, 763 F.3d at 686-87 (limited law library access a factor in determining petitioner faced extraordinary circumstances and that district court’s finding to the contrary was an abuse of discretion).⁶ *Cf. United States v. Yoder*, 2022 U.S. Dist. LEXIS 204060, *2 (N.D. Ind. Nov. 9, 2022) (granting equitable tolling where, after conducting its own investigation into petitioner’s conditions of confinement, “the Government conceded that [petitioner] had no access to the law library and did not otherwise contest his equitable tolling

⁶ *But see Bradberry v. Warden*, 2021 U.S. Dist. LEXIS 10909, *6 (S.D. Ind. Jan. 19, 2021) (must be total lack of law library access, for insufficient access to constitute extraordinary circumstance). *Bradberry*’s holding contradicts *Socha*, relied on by the Seventh Circuit in *Conner*.

motion”). Mr. Gibson had no independent access to the prison law library during COVID, and could not have prepared his own petition.

3. Messrs. Murray and Benza Committed Egregious Attorney Misconduct.

Equitable tolling may be found when there is “egregious attorney misconduct” that rises above “a garden variety claim of excusable neglect.” *Lombardo v. United States*, 860 F.3d 546, 553 (7th Cir. 2017); *Holland v. Florida*, 560 U.S. 631, 651 (citing *Irwin v. Dep’t of Veterans Affairs*, 498 U.S. 89, 96 (1990)). Here, Mr. Gibson’s attorneys committed egregious violations of professional standards of care, and then ultimately abandoned him. *See Holland, Maples v. Thomas*, 565 U.S. 266 (2012); *Christeson v. Roper*, 574 U.S. 373 (2015). These circumstances alone justify equitable tolling.

An “attorney’s failure to satisfy professional standards of care” may constitute an extraordinary circumstance warranting equitable tolling of the limitation period even “absent bad faith, dishonesty, divided loyalty, mental impairment or so forth on the lawyer’s part.” *Holland v. Florida*, 560 U.S. 631, 649 (2010) (quotation marks and citation omitted). The Supreme Court held that the Eleventh Circuit’s requiring at least one of those qualifiers for an attorney’s misconduct to warrant equitable tolling was an “overly rigid *per se* approach.” 560 U.S. at 653. Instead, courts “must exercise judgment in light of prior precedent, but with awareness of that fact that specific circumstances, often hard to predict in advance, could warrant special treatment in an appropriate case.” *Id.* at 650.

Just as in *Holland*, here former habeas counsel’s “failures [to satisfy professional standard of care] seriously prejudiced a client who thereby lost what was likely his single opportunity for federal habeas review of the lawfulness of his imprisonment and of his death sentence.” *Id.* at 653. Specifically, former habeas counsel failed to communicate with Mr.

Gibson, intentionally failed to file a habeas petition in the face of the limitation period's expiration, and labored under a conflict, before abandoning his case.

i. Messrs. Murray and Benza Failed To Convey To Mr. Gibson Information Critical To His Decision-Making.

Indiana Professional Conduct Rule 1.4 mandates that: a lawyer “shall . . . reasonably consult with the client about the means by which the client’s objectives are to be accomplished [and] keep the client reasonably informed.” It also requires that a lawyer “shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.” Messrs. Murray and Benza fulfilled none of these obligations.⁷ See Filing No.

⁷ The Comment to Rule 1.4 explains that:

Communicating with Client

[3] Paragraph (a)(2) requires the lawyer to reasonably consult with the client about the means to be used to accomplish the client’s objectives. In some situations—depending on both the importance of the action under consideration and the feasibility of consulting with the client—this duty will require consultation prior to taking action. In other circumstances, such as during a trial when an immediate decision must be made, the exigency of the situation may require the lawyer to act without prior consultation. . . . Additionally, paragraph (a)(3) requires that the lawyer keep the client reasonably informed about the status of the matter, such as significant developments affecting the timing or the substance of the representation.

Explaining Matters

[5] The client should have sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued, to the extent the client is willing and able to do so. . . .

[6] Ordinarily, the information to be provided is that appropriate for a client who is a comprehending and responsible adult. However, fully informing the client according to this standard may be impractical, for example, where the client is a child or suffers from diminished capacity.

62-30 at 3 (Murray Dec.) (admitting that he “did not have substantive conversations with Mr. Gibson about his case” after informing Mr. Gibson that he would act as habeas counsel).

At no time, before or after February 3, 2021, did Murray or Benza communicate to Mr. Gibson that, if a habeas petition were filed late, the Court could not consider the merits of his claims without first equitably tolling the limitation period. *See* Filing No. 62-30 at 3 (Murray Dec) (“. . . I did not have substantive conversations with Mr. Gibson”). While Mr. Murray did have a telephone call with Mr. Gibson in late January, his letter to Mr. Gibson confirming their call nowhere mentions the need to seek equitable tolling. Instead, Mr. Murray grossly minimized the challenge:

Just as you recognized, the Court needs to extend that time-period. We asked the judge to do so but she basically told us to file it when we get it done and she will rule then on whether we were diligent and can file it late. As we also discussed, we don’t feel like we can file a petition yet because you and me and Michael have not had the opportunity to sit down and talk to you about what we see as possible claims and what you may or may not want to pursue. I appreciate your desire to talk it over before we file anything. That is only right and fair.

Filing No. 62-44 at 1 (Murray Letter 2/01/2021).

Nor, of course, did either ever explain the equitable tolling standard. *See* Filing No. 62-30 at 3 (Murray Dec). Rather, Messrs. Murray and Benza made a devastating decision, purportedly on Mr. Gibson’s behalf, without obtaining informed consent. These failures violated Indiana Professional Conduct Rule 1.4.

ii. Messrs. Murray and Benza Failed To Take Action To Preserve Mr. Gibson’s Right to Seek Habeas Relief.

Indiana Professional Conduct Rule 1.14 (Client with Diminished Capacity) mandates that, when a lawyer “reasonably believes that the client has diminished capacity[or] is at risk of

substantial physical . . . or other harm [and] cannot adequately act in the client's own interest, the *lawyer may take reasonably necessary protective action.*"⁸

Former habeas counsel were aware that Mr. Gibson struggled with significant mental impairments, that he was unmedicated, and that he was possibly experiencing a mental health crisis. *See* Filing No. 62-30 at 4 (Murray Dec.) ("I reviewed the relevant portions of the record I could identify for the purposes I needed at the time, primarily focused on Mr. Gibson's mental status, mental health history, and ongoing mental health issues"); Filing No. 62-31 at 3 (SAGE Dec.) ("Clyde seemed to be experiencing a mental health crisis during the period while we were involved in the case"). In fact, former habeas counsel were concerned that Mr. Gibson might have been incompetent to proceed. *See* Filing No. 62-30 at 6 (Murray Dec.) ("[W]e had been unable to meet in-person or otherwise confidentially communicate with Mr. Gibson [to] assess whether he might incompetent to proceed."). Despite their awareness of his history and his

⁸ The Comment to Rule 1.14 explains that:

[5] If a lawyer reasonably believes that a client is at risk of substantial physical, financial or other harm unless action is taken, and that a normal client-lawyer relationship cannot be maintained as provided in paragraph (a) because the client lack sufficient capacity to communicate or to make adequately considered decisions in connection with the representation, then paragraph (b) permits the lawyer to take protective measures deemed necessary.

. . . .

In an emergency where the health, safety or a financial interest of a person with seriously diminished capacity is threatened with imminent and irreparable harm, a lawyer may take legal action on behalf of such a person even though the person is unable to establish a client-lawyer relationship or to make or express considered judgments about the matter, when the person or another acting in good faith on that person's behalf has consulted with the lawyer.

mental state, and the implications these facts had for Mr. Gibson's ability to comprehend the proceedings, former counsel failed to take any reasonably necessary protective action as required by Rule 1.14 (b).

iii. Former Habeas Counsel Failed To Alert The Court And Failed To Communicate To Mr. Gibson When They Developed A Conflict.

Indiana Professional Conduct Rule 1.7 (Conflict of Interest: Current Clients) mandates that "a lawyer shall not represent a client if the representation involves a concurrent conflict of interest," which exists if "there is a significant risk that the representation of one or more clients will be materially limited . . . by a personal interest of the lawyer."⁹ Here, the attorneys representing Mr. Gibson developed a conflict of interest when they failed to perform the bare minimum of professional standards.

Mr. Murray was appointed on May 18, 2020, and Benza on June 8, 2020, to represent Mr. Gibson. *Gibson v. Neal*, 4:20-cv-00100-TWP-DML (S.D. Ind. May 18 & June 8, 2020) ECF 4 & 7. Yet it wasn't until August 13 that they moved ex parte to appoint a paralegal. *Id.* at Dkt. 8. One week later, on August 17, the Court granted that motion. *Id.* at Dkt. 10. Yet as of January 21, 2021, "[c]ounsel for Mr. Gibson [were still] gathering the record below from prior counsel." *Id.* at Dkt. 13 at 17 (Motion for Equitable Tolling). They represented that one reason they were still gathering the record seven months after Mr. Murray was appointed and only days before the

⁹ The Comment to Rule 1.7 explains:

If a conflict arises after representation has been undertaken, the lawyer ordinarily must withdraw from the representation, unless the lawyer has obtained the informed consent of the client[.]

limitation period expired was that state postconviction counsel's offices were closed due to the COVID-19 pandemic. *Id.* at 17. In fact, however, state postconviction counsel had already provided their files—on both a hard drive and by file sharing on the internet—months earlier. Filing No. 62-29 at 4 (Green Dec.). Those files contained in sensibly named and organized folders extensive documents, including but not limited to the direct appeal briefing and postconviction pleadings, transcripts, exhibits, appendices, appellate briefs, and court opinions as well as the direct appeal briefs and court opinions—all of which were easily identifiable. Further, the Indiana governor's last executive order closing state government buildings expired on July 23, 2020. *See supra* at 13.

On February 2, 2021, former counsel emailed Deputy Indiana Attorney General Tyler thanking him for agreeing to send their files on a flash drive and provided paralegal Rachmaninow's mailing address. Filing No. 62-37 (email). In mid-February, Ms. Rachmaninow received the flash drive, and it contained trial and postconviction transcripts, exhibits, and briefs, labeled as such. Filing No. 62-46 at 2 (email). Despite having access to postconviction counsel's complete file by summer 2020 and the complete state court record in February 2021, Mr. Murray never read the record. Instead, he "read many documents in the record but . . . opted to wait for the records we had obtained from postconviction counsel to be organized before undertaking a full review." Filing No. 62-30 at 4 (Murray Dec.).

According to Mr. Murray, for several months after February 3, 2021, former counsel and their "team did not make significant progress towards resolving the issues . . . that initially prevented us from filing a habeas petition." Filing No. 62-30 at 7 (Murray Dec.). Indeed, based on the files undersigned counsel has received from former counsel and their team, no further files were *ever* obtained from state postconviction counsel, trial counsel, or the Indiana appellate

courts. Further, based on the files undersigned counsel has received thus far from former counsel and their team as well as on information and belief, until they moved to withdraw in August (Murray) and October (Benza) 2022, former counsel continued to violate their professional responsibility to communicate with Mr. Gibson and to violate their duty to protect his rights by filing a habeas petition.

Here, Messrs. Murray and Benza were appointed to represent Mr. Gibson seven months before the limitation period expired. Their failure to review the record that they had in favor of representing to the Court that they did not have the record, their failure to communicate information critical to Mr. Gibson's making an informed decision whether to timely file a habeas petition, *see supra* at subsection i., placed their "professional and reputational interests" in conflict with Mr. Gibson's interests. *Christeson v. Roper*, 574 U.S. 373, 378 (2015). Their failures created this conflict because their seeking equitable tolling based on their own failures, *see infra* at 39 *et. seq.*, would have required them to "denigrate their own performance[, whereas] [c]ounsel cannot reasonably be expected to make such an argument, which threatens their professional reputation and livelihood." *Id.*

4. Messrs. Murray And Benza Abandoned Mr. Gibson.

In *Maples v. Thomas*, 565 U.S. 266, 283 (2012), the Supreme Court held that "under agency principles, a client cannot be charged with the acts or omissions of an attorney who abandoned him." 565 U.S. at 283. "Having severed the principal-agency relationship, an attorney no longer acts, or fails to act as the client's representative. . . . His acts or omissions therefore cannot fairly be attributed to the client." *Id.* at 281. Further, "a client [cannot] be faulted for failing to act on his own behalf when he lacks reason to believe that his attorneys of record, in fact, are not representing him." 565 U.S. at 283. *Holland's* extraordinary circumstance

requirement for equitable tolling is satisfied when attorneys of record abandon a petitioner who is unaware of this abandonment.

Here, the circumstances demonstrate that Murray and Benza abandoned Mr. Gibson:

- They first advised Mr. Gibson that there was a date by which his habeas petition was due only two days before that date.
- They never advised Mr. Gibson that the failure to timely file a habeas petition would mean that the Court would throw his petition out unless he managed to prove that equitable tolling was warranted, nor did they explain that it is very rare that courts grant equitable tolling.
- They misled Mr. Gibson that all they needed to show the Court to get an extension was that “we were diligent” and failed to advise him that they actually needed to prove an extraordinary circumstance had impeded their ability to timely file a petition. They also falsely represented to Mr. Gibson that they had been diligent in their efforts to draft a petition—that although they had obtained his state postconviction counsel’s files in August, they needed other information before drafting his habeas petition. They misled Mr. Gibson to think that they could not timely file the petition because they first needed “to sit down and talk to you about what we see as possible claims and what you may or may not want to pursue.”
- They did not advise Mr. Gibson that they could have filed a habeas petition and then reviewed it with him and either withdrawn particular claims or dismissed the petition entirely if Mr. Gibson did not wish to proceed. They did not advise Mr. Gibson that if, after timely filing a petition, they could seek equitable tolling to allow them to amend any new claims into it. *See infra* at 42 (discussing § 2244 (d)(1)(D) and associated cases).
- They did not seek funding from the Court to appoint a paralegal until August 2020, nearly three months after the Court appointed Murray. *Gibson v. Neal*, 4:20-cv-00100-TWP-DML (S.D. Ind. Aug. 13, 2020) ECF 8. Nor did they seek funding to appoint a mitigation specialist until October, six months after the Court appointed Murray. *Id.* at ECF 11 (Oct. 14, 2020).
- Though they had acquired from state postconviction counsel the lion’s share of the state court direct and postconviction records—transcripts, appendices, exhibits, and briefs—in June 2020, they did not review postconviction counsel’s files sufficiently to know that it contained those records before the limitation expired period or at any time during the subsequent approximately 20 months that they represented Mr. Gibson.

- Though they had planned no later than August 6, 2020, to seek the state court record from the Indiana Attorney General’s office, they did not make that request until February 2, 2021, only one day before they thought the petition was due. Filing No. 62 -47 (Murray notes from telephone call with Benza) (“KM – AG’s Record”) & Ex. 62-48 (Murray notes from telephone call with Deputy Attorney General) (“Records [-] has PCR & Appeal[,] will send Flash Drive to MAR”). After receiving it, they did not review it, thus did not know that it contained the complete state direct and postconviction appeals records.

- They decided not to file a habeas petition even though they had all the records necessary to do so.

- After missing the AEDPA deadline, they made no concrete plan to file a habeas petition.

- When Murray realized in April 2022 at latest that his health precluded him from competently representing Mr. Gibson, he did not communicate that to Mr. Gibson. Nor did he inform the Court at that time. See Filing No. 62-49 at 3 (Murray’s declaration supporting notice of withdrawal in *Contreras v. Broomfield & Allison*, No. 1:19-cv-01523-AWI-SAB, Dkt. 100-1 (E.D. Cal. Apr. 22, 2002) (“I am no longer physically or emotionally able to provide the high-quality representation that is required as lead counsel or second chair in capital state and federal habeas pre-petition cases.”). Instead, he waited until August 5, 2022, to seek to file his Notice of Withdrawal. In this regard, it is worth noting that in *Contreras v. Broomfield*, 2023 U.S. LEXIS 14392 (E.D.Cal. 01/27/2023), the Court granted further equitable tolling in part because Mr. Murray—the same Mr. Murray who represented Mr. Gibson—withdrew “at a time when the bulk of Mr. Murray’s assigned claim investigation and development remained undone and potentially colorable new claims remained undrafted.”

- Although Mr. Benza was aware of Mr. Murray’s health issues, he made no progress on the case.

- Murray and Benza made misrepresentations to the Court. In their application to appoint a paralegal, filed on August 13, 2020, they noted that postconviction counsel’s files “have not yet been organized to fit the needs of the federal defense team.” *Gibson v. Neal*, 4:20-cv-00100-TWP-DML (S.D. Ind. Aug. 13, 2020) ECF 8 at 4. They went on to represent that they had “not begun to inventory prior counsel’s records to determine if the records on appeal in each of Mr. Gibson’s cases are complete. Use of a paralegal to gather, organize, and inventory the records on appeal will [be] more cost effective than having appointed counsel do so.” *Id.* The Court granted the motion and appointed a paralegal. Five months later, on January 21, 2021, former counsel moved for prospective equitable tolling. In their supporting memorandum, they represented that the paralegal “has been seeking to collect and organize the records from prior counsel and from Indiana courts diligently” and that postconviction counsel’s

“records have not yet been organized to fit the needs of the federal defense team.”
Gibson v. Neal, 4:20-cv-00100-TWP-DML (S.D. Ind. Jan. 21, 2021) ECF 13 at 6 & 17.

- After the Court denied their prospective equitable tolling motion and for the subsequent 20 months that they represented Mr. Gibson, they made no material progress toward filing a petition.

Mr. Murray cites three factors that contributed to his and Mr. Benza’s decision not to file a timely habeas petition. None justifies the decision.

First, the team had been “unable to meet in-person or otherwise confidentially communicate with Mr. Gibson [to] assess whether he might be incompetent to proceed, to clarify whether he wanted to pursue habeas corpus relief, and to ensure that he would sign a habeas petition.” Filing No. 62-30 at 6 (Murray Dec.). Of course, they were able to communicate by confidential legal mail. And even if they believed in good faith that it was inadvisable to communicate by legal mail because they believed Mr. Gibson to suffer mental health challenges that necessitated their having in-person confidential visits with him, they could have filed a habeas petition without Mr. Gibson’s first clarifying that he wanted to pursue habeas relief and signing the petition. Given their obligation to protect Mr. Gibson’s interests, *see supra* at 34-36, they would have been “acting in his behalf” by signing the petition. *Rules Governing Section 2254 Cases In The United States District Courts*, Rule 2 (petition must be signed under penalty of perjury by petitioner *or* by a person authorized to sign it under 28 U.S.C. § 2242); 28 U.S.C. § 2242 (“Application for a writ of habeas corpus shall be in writing signed and verified by [the applicant] or by someone acting in his behalf.”).

Second, the team “feared that the relation-back requirement could or may preclude amending the petition with any claim we might later uncover.” Filing No. 62-30 at 6 (Murray Dec.). In acting on this fear, Messrs. Murray and Benza decided to risk the Court’s reaching the merits on none of the exhausted issues in favor of ensuring that they would not have to file a

successive petition to put before the court one or more issues that they speculated might exist. But they had not reviewed the record they possessed, nor collected additional records, nor conducted any witness interviews. In short, their purported fear was based in sheer speculation.

Further, because Section 2244(d)(1)(D) contemplates that the limitation period for a claim starts on the date that the claim's factual basis "could have been discovered through the exercise of due diligence," the relation-back requirement would have been at least generally inapplicable. *Pace v. DiGulielmo*, 544 U.S. 408, 416 n.6 (2005) (noting that § 2444(d)(1) "provides one means of calculating the limitation with regard to the 'application' as a whole, § 2244(d)(1)(A) [,] three others . . . require claim-by-claim consideration, § 2244(d)(1)(B) (governmental interference); § 2444(d)(1)(C) (new right made retroactive); § 2244(d)(1)(D) (new factual predicate)); *Zack v. Tucker*, 704 F.3d 917 (11th Cir. 2013) (noting that in *Fielder v. Varner*, 379 F.3d 113 (3rd Cir. 2004), then-Judge Alito held that § 2444 (d)(1) requires a claim-by-claim approach to determine timeliness, and that the Sixth, Ninth, and Tenth Circuits hold that § 2444(1)(d) should be applied on a claim-by-claim basis) (citing to, among others, *Bachman v. Bagley*, 487 F.3d 979 (6th Cir. 2007), *Mardesich v. Cate*, 668 F.3d 1164 (9th Cir. 2012), and *Prendergast v. Clements*, 699 F.3d 1182 (10th Cir. 2012)); *Capozzi v. United States*, 768 F.3d 32 (1st Cir. 2014) (§ 2255(f), federal conviction analogue to § 2244(d)(1), limitation period should be applied on a claim-by-claim basis).¹⁰

¹⁰ See also *Jefferson v. Duncan*, 2015 U.S. Dist. LEXIS (N.D. Ill. Jan. 16, 2015) (noting that though Seventh Circuit has not decided the question all Circuit that have addressed the issue hold that § 2244(d)(1) applies on a claim-by-claim basis). See also *Rhoades v. Henry*, 598 F.3d 511, 519 (9th Cir. 2010) (AEDPA limitation period applies "unless claims . . . relate back under Fed. R. Civ. P. 15(c) to the initial filing . . . , or the claims are based upon newly discovered evidence, in which case the one-year period begins to run from" the date on which the factual predicate of the claim could have been discovered with due diligence).

Third, the team “had been unable to gather the complete state court record and former counsel’s files, and those records we had obtained were highly unorganized and incomplete, at least to the extent we had reviewed them.” Dec. of Murray at 5. This explanation fails to justify the decision because counsel had a substantially complete record by June 2020. *See supra* at 11. To the extent counsel was missing specific documents, state post-conviction counsel was available to assist. *Id.* And, moreover, the team had a paralegal whose primary role was to organize the record. *Id.* Despite this, neither Mr. Murray nor Mr. Benza even read the record. *Id.*; see also Filing No. 62-31 at 4 (SAGE Dec.) (“The lawyers never seemed to have a basic understanding of the case, the record, or potential issues that they could raise. It was my impression that the only plan they formed on the case was to get the deadline moved.”).

Following the decision not to file a habeas petition within the AEDPA statute of limitations period, Mr. Gibson’s legal team abandoned him, ceasing all meaningful work on his case. While Mr. Murray attributes this to “the team . . . not mak[ing] significant progress towards resolving the issues listed above that initially prevented us from filing a habeas petition,” nothing stood in their way for a substantial time before the limitation period expired until they withdrew to filing a petition raising exhausted issues. *See* Filing No. 62-30 at 7 (Murray Dec.). They had the appellate briefing and opinions from direct and postconviction proceedings, so could have prepared and filed a petition raising all exhausted claims. *See supra* at 11-12.

These factors rise well above the “garden variety” case of attorney negligence. *Holland*, 560 U.S. at 652. At no point, before or after the deadline, were Messrs. Murray or Benza “serving as [Mr. Gibson’s] agent ‘in any meaningful sense of the word.’” *Maples* at 288 (citing *Holland*, 560 U.S. at 659). *See also Jackson v. United States*, No. 17-CR-40052-JPG, 2022 WL 17752135, at *5 (S.D. Ill. Dec. 19, 2022) (equitable tolling granted because the attorney

abandoned him when he failed to advise petitioner his appeal was denied and when he did not communicate about the status of the case); *United States ex rel. Boyce v. Hardy*, No. 11 C 1972, 2013 WL 5951578, at *2 (N.D. Ill. Nov. 7, 2013); *United States ex rel. Boyce v. Hardy*, No. 11 C 1972, 2013 WL 5951578, at *2 (N.D. Ill. Nov. 7, 2013) (attorney appeared to abandon petitioner by failing to offer timely advice to file a petition for leave to appeal).

Cases outside this circuit further confirm this point. For example, in *Baldayaque v. United States*, 338 F.3d 145 (2d Cir. 2003), the Second Circuit granted equitable tolling where the attorney failed to file a habeas petition despite being hired specifically to do so, which was considered sufficiently egregious to warrant tolling. *Id.* at 150–51. Likewise, in *Downs v. McNeil*, 520 F.3d 1311 (11th Cir. 2008), the 11th Circuit held that the serious misconduct of capital habeas counsel, including lying to the inmate and failing to file petitions as requested, constituted extraordinary circumstances warranting equitable tolling of the one-year limitations period under AEDPA. *Id.* And in *Spitsyn v. Moore*, 345 F.3d 796 (9th Cir. 2003), the Ninth Circuit found that equitable tolling was appropriate when the petitioner’s attorney ignored the statutory deadline for filing a habeas petition and refused, after having been terminated, to provide the petitioner with his case file, thereby causing him to miss the deadline for filing a petition. *Id.* at 798, 801.

5. Postconviction Counsel Encountered Difficulties In Identifying Habeas Counsel, But The Earliest Federal Counsel Could Be Appointed Was 105 Days Into The limitation Period.

Postconviction counsel “as [was] the regular practice of their office,” sought to identify federal habeas counsel for Mr. Gibson. It was difficult to find him counsel because “the former cohort of habeas practitioners had retired or moved on.” She sought the assistance of Federal Defender Capital Habeas Units, but none were available. Filing No. 62-29 at 3 (Green Dec.).

Ms. Green finally asked Mr. Murray who agreed to take Mr. Gibson's case. *Id.* at 2-3. Mr. Gibson should not be penalized for relying on counsel or for the difficulties they encountered in locating habeas counsel.

6. ISP Did Not Provide Legal Resources Adequate For An Inmate To Learn What Was Required (And When) To File A Habeas Petition And To Draft One.

Even had Mr. Gibson wanted to proceed pro se, on information and belief ISP did not provide legal resources adequate for an inmate to learn what was required (and when) to file a habeas petition and to draft one. *See infra* at 52.

C. Mr. Gibson Was Reasonably Diligent.

"The diligence required for equitable tolling purposes is reasonable diligence, not maximum feasible diligence." *Holland*, 560 U.S. at 653 (internal quotation marks and citations omitted). "The district court must evaluate the circumstances holistically, considering 'the entire hand that the petitioner was dealt' rather than taking each fact in isolation." *Gray v. Zatecky*, 865 F.3d 909, 912 (7th Cir. 2017) (quoting *Socha*, 763 F.3d at 686). Thus, "[t]he important thing is the full picture with which an inmate is contending." *Socha*, 763 F.3d at 865.

Additionally, courts routinely recognize that the question of diligence is intertwined with analyzing the impact of mental impairment on a petitioner's ability to understand and act on his rights. *See Conroy*, 929 F.3d at 820 ("[T]he petitioner must provide evidence establishing that his mental issues 'actually impaired his ability to pursue his claims' throughout the limitations period."); *Justus v. Clarke*, 78 F.4th 97, 116 n. 10 (4th Cir. 2023) ("Justus needed only to exercise reasonable diligence *given his mental illness*." (emphasis added); *Bills v. Clark*, 628 F.3d 1092, 1101 (9th Cir. 2010) (in the context of mental illness, a court must "consider whether the circumstances demonstrate the petitioner was *otherwise* diligent in attempting to comply with the

filing requirements”); *Stiltner*, 657 F. App’x at 521 (discussing interaction between mental impairment and diligence while “recognizing that a mentally incompetent petitioner can diligently pursue his rights only to the extent that he understands them.”)

Considering the hand dealt Mr. Gibson—including but not limited to his mental health challenges (bipolar disorder, addiction disorder, TBI, white matter dysfunction, impaired cognitive abilities, all described *supra* at 10 *et seq.*, the prison’s failure to adequately assess and treat his bipolar disorder and its amplifying his cognitive impairments (*see supra* at 16-10), the COVID pandemic (*see supra* at 13 *et seq.*), counsel’s failure to communicate information critical to Mr. Gibson’s understanding his legal position and the choices before him (*see supra* at, e.g., 18), and the prison’s inadequate legal resources (*see infra* at 52)—Mr. Gibson was reasonably diligent in light of his significant mental impairments.

Here, to the extent that Mr. Gibson was able to meaningfully consult with and monitor counsel, he reasonably relied on postconviction counsel to locate federal habeas counsel for him and had no resources—or no understanding as to how to use any resources that were available—to learn what was required and when to seek habeas relief. Further, the prison’s withdrawal of essential mental health medication undermined Mr. Gibson’s ability to consult with the counsel that were appointed. This impairment was exacerbated by former habeas counsel’s failure to communicate information critical to his making informed decisions, including whether to file a timely habeas petition. They also misled him to believe that they were working on his case to the extent possible in light of the pandemic and that their interests were fully aligned with his, providing him no reason to think that they had abandoned him. Consequently, Mr. Gibson was reasonably diligent when taking into account the interaction between his mental impairments and his abandonment by counsel. *See Justus*, 78 F.4th at 116 n. 10; *Bills*, 628 F.3d at 1101; *Stiltner*,

657 F. App'x at 521; *Milam*, 953 F.3d 1128, 1132-33 (9th Cir. 2020) (district court erred in failing to consider interaction between petitioner's mental illness and counsel's misconduct); *Riva*, 615 F.3d at 43 (remanding where district court failed to consider whether "petitioner's mental illness [] severely impaired his ability effectively to pursue legal relief, either on his own behalf or through counsel").

Once Mr. Gibson was appointed conflict-free counsel, and conflicted counsel was removed, the record demonstrates diligence. The circumstances that Mr. Loewy inherited when he became lead counsel for Mr. Gibson constitute extraordinary circumstances that impeded earlier filing a petition. On its own, the case was complex. Mr. Gibson was convicted of murder in three separate proceedings and received multiple death sentences. The procedural history was also convoluted, with the state court misadvising Mr. Gibson of his appellate rights in one matter, initially consolidating the three convictions in post-conviction, and then severing one of the three convictions on appeal.

Making matters worse, Mr. Loewy was appointed alongside conflicted counsel to represent a client who was being denied adequate treatment for severe mental health issues. Given the situation, Mr. Loewy acted as quickly as possible to remove conflicted counsel, assist his client with necessary medication, review the state court record, and draft a petition that raised all the claims he could identify based on that review as well as his consultations with Mr. Gibson. Mr. Loewy accomplished this in short order and did so simply by relying on the information he received from Messrs. Murray and Benza. *Holland*, 560 U.S. at 653; *Gray*, 865 F.3d at 912.

D. Mr. Gibson's Petition Was Timely Under a "Stop-Clock" Approach to Equitable Tolling.

As discussed above, there were extraordinary circumstances that support equitable tolling for the entire period between February 3, 2020, and January 31, 2023. However, in the event that this Court finds that equitable tolling is not appropriate for any portion of the period, the habeas petition should still be evaluated under the "stop clock" approach, which pauses the one-year AEDPA deadline during the periods where extraordinary circumstances exist. *Harper v. Ercole*, 648 F.3d 132, 139 (2d Cir. 2011) (defendant given one year of untolled time, excluding period that was equitably tolled, to file habeas petition); *Checo v. Shinseki*, 748 F.3d 1373, 1379 (Fed. Cir. 2014) (adopting the "stop clock" approach based on reasoning of *Harper v. Ercole*).

Under this method, Petitioner is only required to show due diligence during the period where he is requesting equitable tolling. *Harper*, 648 F.3d 132, 139-40. Petitioner is otherwise put in the same position as other litigants, providing one year of unimpeded time to meet the AEDPA deadline. *Id.* The stop-clock calculation is "consistent with the general rule of equitable tolling articulated by the Supreme Court." *Harper*, 648 F.3d at 139 (citing *United States v. Ibarra*, 502 U.S. 1, 4 n. 2 (1991) ("Principles of equitable tolling usually dictate that when a time bar has been suspended and then begins to run again upon a later event, the time remaining on the clock is calculated by subtracting from the full limitations period whatever time ran before the clock was stopped.")); *see also Holland v. Florida*, 560 U.S. 631, 653 (2010) (equitable tolling requires "reasonable diligence, not maximum feasible diligence.").

The Seventh Circuit has not adopted or rejected the "stop clock" approach. The caselaw in the circuit suggests that diligence is required throughout the entire period, with courts explaining a Petitioner requesting equitable tolling show "he was reasonably diligent in pursuing his rights throughout the limitations period and until he finally filed his untimely" motion.

Carpenter v. Douma, 840 F.3d 867, 870 (7th Cir. 2016); *see also Socha v. Boughton*, 763 F.3d 674, 687 (7th Cir. 2014) (considering whether petitioner “diligently pursued his rights during the period from . . . when his time to file began to run . . . to . . . when he filed”).

Despite the language in *Carpenter* and *Socha*, the Circuit did not consider or reject the “stop-clock” method. In both situations, the extraordinary circumstances complained of ran up until the ultimate filing, and therefore the diligence question was not analyzed separately.

Carpenter, 840 F.3d at 871-72 (rejecting equitable tolling in part because “circumstances, even when combined, are nothing but ordinary”); *Socha v. Boughton*, 763 F.3d at 684-85 (granting equitable tolling based on circumstances that existed until the point of Petitioner filing). The *Harper* Court found that it was not bound by similar Second Circuit precedent for the same reason. 648 F.3d at 140-41 (finding it was not bound by precedent that “demanded diligence through filing in the context of extraordinary circumstances that had no discernable end date”).

Accordingly, to the extent that this Court finds that any period of time is not covered by the unprecedented Covid 19 pandemic, the prison’s denial of treatment for Petitioner’s mental illness, Petitioner being abandoned by conflicted counsel, and the other extraordinary circumstances alleged, that period of time should be calculated under the “stop clock” method, giving Petitioner one year of untolled time to get his petition filed.

II. PURSUANT TO 28 U.S.C. § 2244 (D)(1)(B), MR. GIBSON’S PETITION WAS TIMELY FILED.

28 U.S.C. § 2244 (d)(1) provides that the 1-year period of limitation runs from the latest of four dates. Taking into account § 2244 (d)(2)’s statutory tolling provision, Respondent calculates that for the *Whitis* and *Kirk* judgments the limitation period’s last day was February 3, 2021, and that for the *Hodella* judgment it was April 18, 2015. Respondent’s calculations turn on his assumption that the limitation period trigger date for the *Whitis* and *Kirk* judgments was the

date on which they became final by the conclusion of direct review and, for the Hodella judgment, the date on which Mr. Gibson entered his guilty plea, the date on which he could have sought direct review, or the last day on which he could file with the United States Supreme Court a petition seeking certiorari review. Dkt. 33 at 5-6.

Respondent's assumption is wrong. Section 2244 (d)(1) provides that "the limitation period shall run from the latest of" four different possible dates, and Respondent wrongly assumes that the applicable alternative is § 2244 (d)(1)(A). However, § 2244 (d)(1)(B) provides an alternative date that triggers the limitation period if it is later than (A). In particular, this alternative is:

The date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State Action[.]

§ 2244 (d)(1)(B). Mr. Gibson contends that one of two state-imposed impediments prevented him from filing, and that applied here make his petition timely-filed.

A. Indiana Prevented Mr. Gibson From Filing An Application By Withholding Medication to Treat His Long-Standing And Well-Documented Depression.

Indiana Department of Correction physicians had since 2012 clinically assessed Mr. Gibson several times a year, diagnosed him each time as suffering Major Depressive Disorder, and prescribed Zoloft as treatment. However, without assessing him and with no explanation, Mr. Gibson's Zoloft was stopped in September 2018. Though he requested the medication on multiple occasions, it was denied until January 2023. Without the medication and with the clear message being conveyed that the prison would not reassess his need for it and would not restart it, Mr. Gibson's depression and associated historical suicidality (*see supra* at 6-7) reemerged in the form of his being unable to fight for his life. Filing No. 62-1 at 4 (Chambers Dec.).

Under these circumstances, the Indiana State Prison’s denial of medication through deliberate indifference violated Mr. Gibson’s Eighth Amendment right to adequate medical care. *Estelle v. Gamble*, 429 U.S. 97 (1976); *see Rasho v. Elya*, 850 F.3d 318 (7th 2017) (applying Eighth Amendment deliberate indifference standard to prisoner’s denial of mental health care claim). Thus, the denial of medication for Mr. Gibson’s depression was an “impediment to filing an application created by State action in violation of the Constitution or law of the United States.” 28 U.S.C. § 2244 (d)(1)(B). Because that impediment was not removed until January 2023, it was the latest of § 2244 (d)(1)’s four trigger dates and, therefore, the date from which the “limitation period shall run.” *Id.*

B. Alternatively, Indiana Prevented Mr. Gibson From Filing A Habeas Petition By Denying Him Access To An Adequate Law Library Or Some Other Means Of Obtaining The Legal Resources Necessary To Preparing And Filing A Habeas Petition.

However, by denying Mr. Gibson access to an adequate or any law library, allowing him the means to assess how and when to seek relief in federal court from any of the judgment, the State of Indiana created an “impediment to filing an application . . . in violation of the Constitution or laws of the United States, [which] prevented [Mr. Gibson] from filing[.]” Thus, the latest trigger date was the date on which this state-created impediment no longer prevented Mr. Gibson from filing an application for a writ of habeas corpus. 28 U.S.C. § 2244 (d)(1)(B).

The Seventh Circuit, holds that the lack of accessibility to a prison library and the inadequacy of a prison library may each “be an ‘impediment’ to the filing of a collateral attack.”. *Famous v. Fuchs*, 38 F.4th 625, 631 (7th Cir. 2022) (citing to *Estremera v. United States*, 724 F.3d 773 (7th Cir. 2013) (joining other circuits addressing the question); *see also Whalem/Hunt v. Early*, 233 F.3d 1146, (9th Cir. 2000) (en banc) (district court erred in categorically rejecting

argument that unavailability of AEDPA materials in prison law library, which prevented petitioner from learning of limitations period, constituted a § 2244 (d)(1)(B) impediment).

On information and belief, at no time since Mr. Gibson arrived at the Indiana State Prison (“ISP”) in 2013 did it provide him physical access to any law library containing—or otherwise provide him meaningful access to—a copy of the AEDPA or other federal statutes and court rules and/or forms needed to prepare and file an application seeking habeas corpus relief from a state judgment. Further, while at some point after Mr. Gibson arrived at ISP, the prison provided inmates access on their electronic tablets access to Lexis “law library” for prisoners, that “law library” did not and the ISP did not otherwise offer or provide any training, manual, or other means for Mr. Gibson to learn what the “law library” contained or how to access its materials. *See Estremera*, 724 F.3d at 776 (“Estremera is literate in English, but we don’t know whether he would be competent to use Westlaw or Lexis without assistance.”).

The Seventh Circuit holds that a lack of library access by itself does not constitute a § 2244 (d)(1)(B) impediment. Instead, as explained in *Famous*, for lack of library access to constitute a § 2244 (d)(1)(B) impediment, “the petitioner [must] demonstrate a need for access to the library” or, as the Court also put it, their “legal ignorance [must] result[] from” the lack of library access. *Famous* at 631. This qualifier cannot properly be seen as imposing a diligence requirement because the statutory text does not include it. § 2244 (d)(1)(B) reads:

(d)(1) . . . The limitation period shall run from the latest of –

(B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action[.]

By contrast, § 2244 (d)(1)(D) does include a diligence element:

(D) the date on which the factual predicate of the claim of claims presented could have been discovered through the exercise of due diligence.

Rules of statutory interpretation put beyond doubt that Congress did not intend that a state-created impediment warrants statutory tolling only when the petitioner was diligent. *See Dean v. United States*, 556 U.S. 568, 572 (2009) (“[W]e ordinarily resist reading words or elements into a statute that do not appear on its face.”) (quoting *Bates v. United States*, 522 U.S. 23, 29 (1997), and *Russello v. United States*, 464), and *Gallardo v. Marsteller*, 596 U.S. 420, 431 (2022) (“[W]e must give effect to, not nullify, Congress’ choice to include limiting language in some provisions but not others.”) (citing to *Russello v. United States*, 464 U.S. 16, 23 (1983)). The “prevented from filing” prerequisite does not impose any diligence requirement. *See Estremera*, 724 F.3d at 776 & 777 (in considering petitioner’s contention that diligence is not required, Court holds that lack of library access is an impediment so long as “he had . . . need of a library”); *United States ex rel. Strong v. Hulick*, 530 F. Supp. 2d 1034, 1042 (N.D. Ill. 2008) (state action constituted § 2241 (d)(1)(B) impediment, whereas equitable tolling required that he “also demonstrate that he exercised reasonable diligence in attempting to file his petition”) (emphasis added); *Egerton v. Cockrell*, 334 F.3d 433, 438 (5th Cir. 2003) (vacating dismissal and holding that “a state’s failure to provide the materials necessary to prisoners to challenge their convictions or confinement, in this case a copy of the very statute that is being used to render Egerton’s petition time-barred [i.e., the AEDPA], constitutes an ‘impediment’ for purposes of invoking § 2244 (d)(1)(B)); *see also Simmons v. United States*, 142 S.Ct. 23, 24 (2021) (statement respecting denial of certiorari) (Sotomayor joined by Kagan) (“To the extent the court was imposing a diligence requirement for invoking the § 2255 (f)(2) filing deadline, that requirement appears nowhere in the provision’s text.”).

Instead, § 2244 (d)(1)(B)’s “prevented from filing” requires only that the state-created impediment have caused the late filing. A petitioner may be prevented from filing even where he exercises no diligence in trying to file. *Egerton*, 334 F.3d at 438.

Mr. Gibson did not know how to commence habeas proceedings, or the deadline for commencing them, nor did ISP provide him the legal resources needed to learn these things. Thus, Mr. Gibson’s legal ignorance resulted from the lack of library access. *See Egerton*, 334 F.3d at 438–39 (“state’s failure to provide the materials necessary to prisoners to challenge their convictions or confinement, in this case a copy of the very statute that is being used to render *Egerton*’s petition time-barred, constitutes an “impediment” for purposes of invoking § 2244(d)(1)(B).”).

Further, the Seventh Circuit’s requirement that a petitioner’s legal ignorance result from the lack of library access has no support in the statutory text.

Famous noted that *Estremera* qualified its holding that lack of access to a law library can constitute a state-created “impediment to a petitioner’s acquiring necessary information can excuse, under extraordinary circumstances, legal ignorance that results from that impediment.” a § 2244 (d)(1)(B) impediment “demonstrate a need for access to the library.” *Famous* at 631.

The failure to provide access to these legal materials prevented Mr. Gibson from personally preparing and filing an application for habeas relief from each of the challenged judgments before counsel was appointed to represent him in habeas proceedings challenging those judgments. Because that state-created impediment seamlessly continues to present day, the § 2244 (d)(1) trigger date was whenever that state-created impediment no longer prevent Mr. Gibson from filing in federal court for habeas relief from each of the three judgments.

III. MR. GIBSON IS ENTITLED TO EQUITABLE TOLLING FOR HIS HABEAS CLAIMS ARISING OUT OF THE CONVICTION FOR THE HOMICIDE OF KAREN HODELLA FOR TWO REASONS: (1) JUDICIAL INTERFERENCE BY THE STATE COURT AND (2) ACTUAL INNOCENCE.

During Petitioner's guilty plea in the case arising from the homicide of Karen Hodella, the state trial court misled Mr. Gibson into believing that he did not have a right to post-conviction relief because he pled guilty. That was incorrect, as he could bring claims based on ineffective assistance of counsel in state court related to the plea (which he actually did later on, with no objection from the State). He could also file a federal habeas petition.

Mr. Gibson pled guilty to the homicide of Ms. Hodella on March 20, 2014 and was sentenced on April 17, 2014.

A note from 2014 referencing jury selection (apparently for the homicide of Stephanie Kirk) states that Mr. Gibson wanted to withdraw his plea. It stated:

___ 2/14 Clyde Gibson
omni [sp?]
Δ wants to back out of plea on Hodella – says he did it only because he was
told he was going back to Mich. City –

...
She lets Δ talk – He says the only reason he signed Hodella plea was to go
back –

Filing No. 62-50 (Note).

The misinformation from the state court misled Mr. Gibson into not filing before his state post-conviction attorneys started to challenge the death penalty convictions.

Because Mr. Gibson was misled, Respondent is incorrect when arguing that the time is not tolled between when Mr. Gibson was sentenced in the Hodella case and when his attorneys brought post-conviction proceedings in the case. Second Motion to Dismiss, at 6-7, Dkt. 33.

Not only was there judicial interference, but Petitioner's counsel are actively investigating Mr. Gibson's actual innocence of Ms. Hodella's homicide. In a recent declaration,

a witness, Jonnie Miller, furthers Petitioner's claim that he is innocent of the Karen Hodella murder. At the relevant time, Ms. Miller was a regular bartender at the River Falls Lounge, Jeffersonville, Indiana. She knew Ms. Hodella, Mr. Gibson and Mike Rhodes who was Ms. Hodella's boyfriend. The last time Ms. Miller saw Ms. Hodella was when Ms. Hodella left with a man who was not Mr. Gibson or Mr. Rhodes. She saw Ms. Hodella preparing to leave with a total stranger and warned Ms. Hodella not to leave with him. After that Ms. Miller never saw Ms. Hodella again. Filing No. 62-51 (Miller Dec.).

A. The State Court Incorrectly Informed Mr. Gibson That He Did Not Have a Right to Post-Conviction Review Following the Plea.

The state court that took the plea in this case consistently and unambiguously reiterated erroneous legal advice Mr. Gibson received from his trial counsel (supported by the prosecution), misleading him into believing that post-conviction relief was unavailable following his plea.

Under Indiana law, a defendant may waive the right to direct appeal of their conviction or sentence upon acceptance of a valid plea agreement. However, purported waivers of the "right to seek post-conviction relief [are] void and unenforceable." *Creech*, 887 N.E.2d at 74-76 (citing *Majors v. State*, 568 N.E.2d 1065, 1067-68 (Ind. Ct. App. 1991)); *see also Johnson v. State*, 145 N.E.3d 785, 786-87 (Ind. 2020) (recognizing that such waivers have been unenforceable in Indiana since 1991).

Petitioner's plea agreement in the homicide case of Ms. Hodella provided that by pleading guilty, he waived "his right to appeal and post conviction relief" and, if accepted by the trial court, the court would be "bound by [the agreement's] terms." Filing No. 62-52 at 5 (Mar. 20, 2014 Plea Agreement). As noted, this was incorrect.

During the plea colloquy, the court read this plea agreement provision verbatim, without correction:

THE COURT: All right. Paragraph twelve (12): “The Defendant acknowledges that he understands by pleading guilty pursuant to this plea agreement that he is waiving his right to appeal and post-conviction relief.”

THE COURT: And do you understand paragraph twelve (12)?

THE DEFENDANT: Yes, Ma’am.

THE COURT: And do you agree, uh, to the contents of that paragraph?

THE DEFENDANT: Yes, Ma’am.

Filing No. 62-53 at 11 (Tr. 3/20/14). The state court reiterated this error twice more. *See id.* at 13, 18 (Tr. 3/20/14).

At Mr. Gibson’s sentencing hearing the following month, the court referenced the agreement multiple times, Filing No. 62-54 at 25, 28 (Tr. 4/17/14), and asked Mr. Gibson if he had an opportunity to read and understand his presentence investigation report, *id.* at 25-26, which included a copy of his plea agreement. Filing No. 62-55 at 20-23 (Apr. 9, 2014 Present. Invest. Rep.). At no time in these proceedings did the court recognize or correct the incorrect statement that Mr. Gibson was waiving his right to post-conviction appeal. In its final written judgment, the court notated that Mr. Gibson waived his right to appeal and post-conviction relief. *See* Filing No. 62-56 at 3 (Apr. 17, 2014 Judgment of Conviction). As noted above, Filing No. 62-50 (Note), Petitioner wanted to withdraw his plea but was misled that he could not file a post-conviction petition.

Federal courts frequently grant equitable tolling in cases where the failure to meet a filing deadline is the result of judicial misdirection. *See Pliler v. Ford*, 542 U.S. 225, 234 (2004) (directing the Court of Appeals to consider whether equitable tolling would be appropriate in light of its concern that the petitioner was “affirmatively misled” by the district court); *see United States v. Bahena*, 524 F. Supp. 2d 1027, 1030-31 (N.D. Ill. 2007) (equitable tolling may

be appropriate where a judicial body is at fault, but not when the late filing is the result of counsel's errors); *U.S. ex rel. Willhite v. Walls*, 241 F. Supp. 2d 882, 888 (N.D. Ill. 2003) (granting equitable tolling where the state court failed to inform the petitioner of an order denying relief); *see also Holmes v. Spencer*, 685 F.3d 51, 65-67 (1st Cir. 2012) (recognizing equitable tolling may be appropriate where the petitioner is "actively misled" in a way that causes his late filing, including when misled by the state courts); *Munchinski v. Wilson*, 694 F.3d 308, 329-30 (3d Cir. 2012) ("One . . . potentially extraordinary situation is where a court has misled a party regarding the steps that the party needs to take to preserve a claim.") (quoting *Brinson v. Vaughn*, 398 F.3d 225, 230 (3d Cir. 2005) (alteration in original)); *Spottsville v. Terry*, 476 F.3d 1241, 1245-46 (11th Cir. 2007) (tolling appropriate where a state court affirmatively misled the petitioner to file in the wrong court as "[i]t is unreasonable to expect a *pro se* litigant to second-guess or disregard an instruction in a written order of a court"); *Curtiss v. Mount Pleasant Corr. Facility*, 338 F.3d 851, 855-56 (8th Cir. 2003) (potentially appropriate when state conduct, including that of a state court, "lulled the petitioner into inaction").

Here, Mr. Gibson was misled into believing that no avenue for relief was available to him. Accordingly, he failed to file a habeas petition or a state post-conviction petition to meet AEDPA's limitations period. He diligently pursued state appellate and post-conviction relief as to his convictions and sentences in the two capital cases. If he had filed a state post-conviction petition sooner, instead of being misled, the time during which it was pending and on appeal

would have tolled the AEDPA statute of limitations. 28 U.S.C. § 2244(d)(2).¹¹ He also could have filed a habeas petition. The state court took these off the table.

Mr. Gibson was actively misled by the trial court into believing he had waived any right to post-conviction review. This constituted an extraordinary circumstance preventing his timely filing of his habeas petition. He is entitled to equitable tolling in the case arising out of the homicide of Ms. Hodella.

B. Petitioner's Investigation Has Uncovered New Evidence of Actual Innocence in the Homicide of Ms. Hodella.

As set out in Petitioner's Opposition to Respondent's Motion to Dismiss habeas Challenges to Hodella Judgment, Dkt. 58 at 8-10, there was no independent investigation into whether Mr. Gibson murdered Ms. Hodella. There are a number of key inconsistencies with the evidence that the State claims implicated Petitioner in Karen Hodella's death. These include, without limitation:

- Mr. Gibson put together a story about Ms. Hodella with the help of officers. Mr. Gibson was wrong about the victim's name. It was the interviewing office who first supplied her last name on the record.
- Mr. Gibson gave graphic statements about the victim having bloody clothing. He told the officers that, after stabbing the victim, he stripped her naked and dumped her clothes. However, she was found clothed with blue jeans, boots a button-down short-sleeved shirt, and a hooded sweat jacket.
- Mr. Gibson said he threw out his own bloodied clothes in a dumpster in Corydon. However, after a DNA profile was run on the clothing, police determined that the blood on the clothes was not Ms. Hodella's. *See Gibson*, 2018 WL 3421721, at *9 n.6 (“[I]t was determined that the clothes were not connected to any of the murders that Gibson committed[.]”). Notably, the clothing

¹¹ 28 U.S.C. § 2244(d)(2) states: “The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.”

in the dumpster was also the subject of newspaper articles and local TV news reports.

- The Indiana Court of Appeals itself noted that Mr. Gibson made the point that he “‘confessed’ to murdering several other people, but it was determined that he had fabricated those confessions so that he could receive perks from the police like coffee and cigarettes or time out of general lock-up.” *Id.* at *7.

Petitioner seeks to establish actual innocence which will permit him to gain equitable tolling for the filing of the habeas petition claims regarding Ms. Hodella’s homicide. *McQuiggin v. Perkins*, 569 U.S. 383, 386 (2013) (actual innocence of a habeas petitioner may overcome a statute of limitations defense); *id.* at 399 (petitioners must show that “in light of . . . new evidence, no juror acting reasonably, would have voted to find [him] guilty beyond a reasonable doubt”) (quoting *Schlup v. Delo*, 513 U.S. 298, 329 (1995)). Mr. Gibson has been investigating the homicide of Ms. Hodella.

Jonnie Miller, a bartender at the River Falls Lounge, also known as Bill’s Lounge, Jeffersonville, IN, has provided Petitioner’s counsel with a statement. Ms. Miller was a bartender there from 1993 to 2008. She knew Mr. Gibson, Ms. Hodella and Mike Rhodes, a man who Ms. Hodella dated.

Ms. Miller remembers the night she last saw Ms. Hodella at the Lounge. She saw her with a man Ms. Miller had never seen before. He was not Petitioner and he was not Mike Rhodes. Ms. Hodella was getting ready to leave the bar with this man. Ms. Miller told Ms. Hodella she did not think it was a good idea to leave with this man since Ms. Hodella did not know him. Even so, Ms. Hodella left with him. Ms. Miller never saw the man again and never saw Ms. Hodella again. Filing No. 62-51 (Miller Dec.).

In his Reply, Respondent asserts that Petitioner confessed to murdering Ms. Hodella as recently as 2018. Dkt. 59 at 6-7 & n.3. But, to support this, the Reply refers to a brief response to a single leading question:

Trevor Lawrence [interviewer]: The first woman you killed was Karen Hodella, a 42 year old woman, who you had never met. Why did you kill her?

William Clyde Gibson: Just felt like it. I don't know. I mean I didn't have to have a reason.

Inside Death Row with Trevor McDonald 2018 – Five Years On,

<https://www.youtube.com/watch?v=JGT2pwNO0yk>, 42:20–42:40. Mr. Gibson's response to Trevor Lawrence is short, vague and lacks detail. The podcasts Respondent cites were recorded during period of time in 2020 and 2021 when the State had stopped Mr. Gibson's medication. Respondents' argument is not convincing.

Counsel's investigation is continuing in this case. As the homicide occurred over 22 years ago – which makes the investigation all the more difficult—Petitioner requests additional time for the investigation and discovery. Petitioner respectfully submits, as well, that the Court should enter judgment on all three cases at one time. The state court proceedings in the cases overlapped and, pursuant to Fed. R. Civ. P. 54(b), there is a preference to address all of the cases in one judgment. *See* Dkt. 58, at 11-12.

CONCLUSION

For all these reasons, Mr. Gibson respectfully asks that the Court deny Respondent's motion to dismiss this case, grant petitioner the right to discovery, the opportunity to file a sur-reply, and an evidentiary hearing.

Dated: March 20, 2025.

Respectfully submitted,

/s/ Oliver W. Loewy

/s/ Edward J. Rymsza

/s/ Shawn Nolan

OLIVER W. LOEWY

EDWARD J. RYMSZA

SHAWN NOLAN

Attorneys for Petitioner

WILLIAM CLYDE GIBSON III

Oliver W. Loewy, PHV (IL Bar # 619709)
1022 SE 30th Avenue
Portland, Oregon 97214
(208) 283-5381
oliverwloewy@gmail.com

Edward J. Rymysz, PHV (PA Bar # 82911)
125 East Third Street
Williamsport, PA 17701
(570) 322-2113
Rymysz@comcast.net

Shawn Nolan (PA Bar #56535)
Chief, Capital Habeas Unit
Federal Community Defender Office
601 Walnut Street, Suite 545-West
Philadelphia, PA 19106
(215) 928-0520
Shawn_Nolan@fd.org

Attorneys for Petitioner
WILLIAM CLYDE GIBSON III

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

WILLIAM CLYDE GIBSON III,	)	
	)	
Petitioner,	)	No. 1:23-cv-00330-JMS-MG
	)	
v.	)	Judge Jane Magnus-Stinson
	)	
RON NEAL,	)	*CAPITAL CASE*
	)	
Respondent.	)	

EXHIBITS TO RESPONSE TO MOTION TO DISMISS

Attached are the exhibits to Petitioner's Response to Respondent's Motion to Dismiss.

Respectfully submitted,

/s/ Oliver W. Loewy

/s/ Edward J. Rymsza

/s/ Shawn Nolan

OLIVER W. LOEWY
EDWARD J. RYMSZA
SHAWN NOLAN

Attorneys for Petitioner
WILLIAM CLYDE GIBSON III

Exhibits to Motion to Dismiss

- Exhibit 1 Declaration of Dr. Robert Andrew Chambers, March 19, 2025
- Exhibit 2 Drs. Kim Allen, Julie Barto, & Nancy Schrepf Report, July 18, 1996
- Exhibit 3 Dr. Kamla Paul Report, January 16, 2002
- Exhibit 4 Dr. Edmund C. Haskins Report, October 10, 2013
- Exhibit 5 Declaration of Sadie Kosaber, March 5, 2025
- Exhibit 6 Madison Hospital Admission Record, December 27, 2001
- Exhibit 7 Dr. Jeuti Wylde Report, December 27, 2001
- Exhibit 8 Dr. Paul Lawler Report, March 13, 2002
- Exhibit 9 Dr. Heather Henderson-Galligan Report, August 21, 2012
- Exhibit 10 Dr. Steven Shelton Report, August 21, 2012
- Exhibit 11 Dr. Robert Andrew Chambers Report, May 26, 2017
- Exhibit 12 Dr. Daniel Howerton Report, March 22, 2001
- Exhibit 13 Dr. G. Roosevelt Psychosocial Assessment, March 22, 2001
- Exhibit 14 Compilation of IDOC Records
- Exhibit 15 Excerpt of Dr. Robert Andrew Chambers Deposition Transcript, July 6, 2017
- Exhibit 16 Military Consultation Sheet, July 10, 1978
- Exhibit 17 Floyd County Corrections Incident Reports, June 23, 2012
- Exhibit 18 Jefferson County Corrections Intervention Notes, October 2, 1991
- Exhibit 19 Jefferson County Corrections Intervention Notes, October 10, 1991
- Exhibit 20 LifeSpring Progress Notes, March 21, 2001
- Exhibit 21 Excerpt of Dr. Robert Andrew Chambers Deposition Transcript, July 6, 2017
- Exhibit 22 Military Medical Record, April 30, 1978
- Exhibit 23 Dr. Dennis Wagner Sex Offender Risk Assessment, March 26, 1999
- Exhibit 24 Floyd County Sheriff's Office, Inmate Medical History, April 19, 2012
- Exhibit 25 Declaration of Dr. Dale Watson, March 18, 2025
- Exhibit 26 Indiana Department of Corrections Medical Visit Reports
- Exhibit 27 Indiana Department of Corrections Requests for Healthcare

Exhibits to Motion to Dismiss

Exhibit 28	Indiana Department of Corrections Restrictive Housing Documentation
Exhibit 29	Declaration of Joanna Green, March 18, 2025
Exhibit 30	Declaration of Kenneth Murray, February 10, 2025
Exhibit 31	Declaration of Betsy Wilson (“SAGE”), March 17, 2025
Exhibit 32	Email Correspondence, June, 2020
Exhibit 33	Indiana Department of Corrections Facility Covid-19 Statistics
Exhibit 34	Emails for Indiana State Prison Openings and Closures
Exhibit 35	Email from Kenneth Murray to Joanna Green, April 3, 2020
Exhibit 36	Email from Kenneth Murray to Team, January 22, 2021
Exhibit 37	Email from Michelle Rachmaninow, February 2, 2021
Exhibit 38	Meeting Minutes, January 28, 2021
Exhibit 39	Kenneth Murray Withdrawal Memo, April 12, 2022
Exhibit 40	Kenneth Murray Letter to Clyde Gibson, June 5, 2022
Exhibit 41	Oliver Loewy Prison Contact: Medical Info, December 23, 2022
Exhibit 42	Indiana Department of Corrections Medical Visit Report, January 4, 2023
Exhibit 43	Consent Form to Restart Zolof, January 11, 2023
Exhibit 44	Kenneth Murray Letter to Clyde Gibson, February 1, 2021
Exhibit 45	Email from Kenneth Murray to Tyler Banks, February 2, 2021
Exhibit 46	Email from Michelle Rachmaninow, February 15, 2021
Exhibit 47	Kenneth Murray Handwritten Notes, February 1, 2021
Exhibit 48	Kenneth Murray Handwritten Notes, February 2, 2021
Exhibit 49	Declaration of Kenneth Murray, April 22, 2022
Exhibit 50	Handwritten Note, 2014
Exhibit 51	Declaration of Jonnie Miller, March 18, 2025
Exhibit 52	Statement of Plea Agreement, March 20, 2014
Exhibit 53	Change of Plea Hearing Transcript, March 20, 2014
Exhibit 54	Sentencing Hearing Transcript, April 17, 2014

Exhibits to Motion to Dismiss

- Exhibit 55 Excerpt from Pre-Sentence Investigation Report, April 9, 2014
- Exhibit 56 Judgment of Conviction, April 17, 2014