

# SUPREME COURT OF THE UNITED STATES

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IN THE SUPREME COURT OF THE UNITED STATES

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RODNEY REED, )  
                  Petitioner, )  
                  v. ) No. 21-442  
BRYAN GOERTZ, )  
                  Respondent. )  
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Pages: 1 through 69  
Place: Washington, D.C.  
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Petitioner, )

v. ) No. 21-442

BRYAN GOERTZ, )

Respondent. )

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Washington, D.C.

Tuesday, October 11, 2022

The above-entitled matter came on for oral argument before the Supreme Court of the United States at 12:16 p.m.

APPEARANCES:

PARKER RIDER-LONGMAID, ESQUIRE, Washington, D.C.; on behalf of the Petitioner.

JUDD E. STONE, II, Solicitor General, Austin, Texas; on behalf of the Respondent.

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1 P R O C E E D I N G S

2 (12:16 p.m.)

3 CHIEF JUSTICE ROBERTS: We'll hear  
4 argument next in Case 21-442, Reed versus  
5 Goertz.

6 Mr. Rider-Longmaid.

7 ORAL ARGUMENT OF PARKER RIDER-LONGMAID

8 ON BEHALF OF THE PETITIONER

9 MR. RIDER-LONGMAID: Thank you, Mr.  
10 Chief Justice, and may it please the Court:

11 A claim modeled after Skinner accrues  
12 at the end of the state court litigation seeking  
13 DNA testing. There are two sets of reasons why,  
14 one doctrinal, the other practical.

15 First, doctrinally, a Skinner claim  
16 challenges the law, not a judgment. So it makes  
17 sense to challenge what the state court of last  
18 resort authoritatively says the law means after  
19 that construction becomes final on denial of  
20 rehearing. By analogy, appellate review does  
21 not proceed until a lower court denies  
22 rehearing, and traditional due process claims  
23 aren't complete until the state's full  
24 procedures deny due process.

25 The fact is rehearing can change

1 reasoning and results. And while a Section 1983  
2 prisoner need not exhaust, just as a litigant  
3 need not seek rehearing, the clock doesn't start  
4 ticking until the state court procedures have  
5 come to an end.

6 Second, as a practical matter, tying  
7 accrual to the end of state court litigation is  
8 simple, predictable, and sensible. Tying  
9 accrual to some earlier stage is not. Linking  
10 accrual to the trial court's judgment would  
11 disrespect the state court's appellate process  
12 and require a stay in almost every case. It  
13 would clutter dockets with protective  
14 complaints, motions, and amended complaints.  
15 And it raises more questions than it answers.

16 The Fifth Circuit said Reed's claim  
17 accrued in 2014, but now Goertz says 2016.  
18 Goertz's notice rule is unprincipled and  
19 unpredictable. It will burden courts and  
20 litigants alike with uncertain analyses  
21 comparing various state court opinions.

22 Accrual before denial of rehearing  
23 isn't much better. It treats the state's  
24 rehearing process as irrelevant. It likewise  
25 threatens parallel litigation, especially in

1 states with busy courts and short limitations  
2 periods.

3 Here's the straightforward answer: A  
4 Skinner claim accrues at the end of the state  
5 court litigation.

6 I welcome the Court's questions.

7 JUSTICE THOMAS: Counsel, could you  
8 spend a minute on precisely what liberty  
9 interests you've been deprived, that your --  
10 that your client have been -- has been deprived  
11 of and who deprived him of it?

12 MR. RIDER-LONGMAID: Your Honor, of  
13 course. As the Court recognized in Osborne, the  
14 liberty interest is proving one's innocence with  
15 newly discovered evidence. And so, as the Court  
16 said in Osborne, as a matter of procedural due  
17 process, the procedures need to be fair to  
18 vindicate that interest.

19 Here, the allegation in Mr. Reed's  
20 complaint is that there's a procedural due  
21 process violation based on the way the Court of  
22 Criminal Appeals in Texas interpreted Article  
23 64. And it is Goertz, the Respondent here,  
24 who's a district attorney, who is giving effect  
25 to that interpretation by continuing to deny DNA

1 testing without due process of law because --

2 JUSTICE THOMAS: You mean by complying  
3 with the court ruling?

4 MR. RIDER-LONGMAID: I think he's  
5 enforcing the court ruling, Your Honor, by -- he  
6 -- I would -- I would back up and say, as Texas  
7 recognizes on page 5 of the red brief, the --  
8 the district attorney, or Goertz, has authority  
9 to allow DNA testing. So he has a choice. He  
10 can either allow it, or he can say I've looked  
11 at the construction of Article 64, I've looked  
12 at the way the CCA has interpreted it, and I'm  
13 going to not allow Reed to conduct DNA testing  
14 on these items. And -- and, of course, he's  
15 enforcing Article 64 in that way.

16 If the Court were to say to him you  
17 must -- you must allow testing because Reed  
18 satisfies Article 64, then he would have to  
19 allow it. But, in this case, he's enforcing  
20 Article 64 by not permitting testing.

21 JUSTICE SOTOMAYOR: He's permitted  
22 testing on some items, correct?

23 MR. RIDER-LONGMAID: He has permitted  
24 testing --

25 JUSTICE SOTOMAYOR: Not by court order

1 but by agreement?

2 MR. RIDER-LONGMAID: That's right,  
3 Your Honor. I would -- I would -- and you can  
4 look at page 43a of the Petition Appendix for --  
5 for that detail. And, of course, as I said,  
6 page 5 of the red brief cites a case called  
7 Skinner versus State from 2016, where the CCA  
8 also makes clear that there is authority for  
9 district attorneys to permit testing.

10 JUSTICE SOTOMAYOR: I'm assuming you  
11 know our own finality rule, Court Rule 13.3 --

12 MR. RIDER-LONGMAID: That's right --

13 JUSTICE SOTOMAYOR: -- and the time to  
14 file a cert petition challenging a state court  
15 judgment runs, under our rules, on a -- from the  
16 time a decision is rendered on a timely filed  
17 position for rehearing, right?

18 MR. RIDER-LONGMAID: That's right,  
19 Your Honor.

20 JUSTICE SOTOMAYOR: And, in Hibbs, we  
21 explained the rationale behind that rule,  
22 correct?

23 MR. RIDER-LONGMAID: I think that's  
24 right, Your Honor. I -- I --

25 JUSTICE SOTOMAYOR: Because the Court,



1 on rehearing, could modify the judgment. The  
2 Texas court of appeals could do that here too?

3 MR. RIDER-LONGMAID: That's right --

4 JUSTICE SOTOMAYOR: Could have done  
5 that here?

6 MR. RIDER-LONGMAID: That's right,  
7 Your Honor.

8 JUSTICE SOTOMAYOR: All right. So --

9 JUSTICE ALITO: Could you have -- I'm  
10 sorry.

11 JUSTICE SOTOMAYOR: Yes. There is a  
12 difference before -- between enforceability of a  
13 judgment and finality of a judgment, correct?

14 MR. RIDER-LONGMAID: I -- I think  
15 that's right, Your Honor. I -- I think, here,  
16 we would point to the analogy exactly that Your  
17 Honor is making, and I think that rule goes far  
18 back in our tradition.

19 We have a -- I would cite to you Texas  
20 Pacific Railway versus Murphy, 111 U.S. 488 at  
21 489 to 90, which is an 1884 case which looks to  
22 older precedent and says there, "If a petition  
23 for rehearing is presented" -- ellipsis -- "the  
24 time for an appeal does not begin to run until  
25 the petition is disposed of."

1                   So this has long been the law, and you  
2 would -- we can also point to traditional due  
3 process analogies that we pointed to in the  
4 briefs to say what we want to do is allow the  
5 state court proceedings to come to rest before  
6 moving into federal court.

7                   JUSTICE ALITO: Could you have filed  
8 your 1983 complaint right after the -- the Court  
9 of Criminal Appeals' decision?

10                   MR. RIDER-LONGMAID: Your Honor, I  
11 think, yes, we could have. I -- I -- I -- but I  
12 want to take a step back and note that there's a  
13 difference between injury, when you can bring a  
14 cause of action, and accrual dates, and that's  
15 what this Court's decisions in McDonough and  
16 Manuel and Wallace versus Kato all make --

17                   JUSTICE ALITO: But can you bring --  
18 can you bring suit on a claim before the claim  
19 accrues?

20                   MR. RIDER-LONGMAID: I -- Your Honor,  
21 I think you can. I think Wallace versus Kato  
22 makes that clear. I'm using the definition of  
23 "accrual" from the Court's cases that accrual is  
24 when the statute of limitations begins to run.  
25 So take Wallace versus Kato as an example. The

1 Court makes clear that someone could file a  
2 false -- a Fourth Amendment false imprisonment  
3 action at the moment they're falsely arrested.  
4 But there is what the Court calls refinement  
5 from the common law, looking to the false  
6 imprisonment claim at common law and saying,  
7 based on practical considerations, those causes  
8 of action didn't accrue until the legal process  
9 began, probably because it's hard to bring --

10 JUSTICE KAGAN: So there are those  
11 cases, but why is it that this case should be  
12 held to fall within that set of, you know, cases  
13 where there's a delta between the two? I mean,  
14 why shouldn't we just -- isn't the -- the  
15 simplest thing just to say the person isn't  
16 harmed until the state process has come to an  
17 end and we know for a fact what the state  
18 judgment is?

19 MR. RIDER-LONGMAID: Well, Your Honor,  
20 I think you could look at it various ways. You  
21 could look at it conceptually and say, by  
22 analogy, traditional due process claims,  
23 someone -- those claims are not complete until  
24 the full process is over and you know that  
25 there's been a denial of due process.

1           You could look as Justice Sotomayor  
2 was asking about the traditional finality rule.  
3 Those are analogies you could look to. You  
4 could also look to the analogies in cases like  
5 Wallace versus Kato or -- or McDonough, where  
6 you're saying, okay, we have a favorable  
7 termination requirement because we're looking at  
8 the full process before -- before the state  
9 courts.

10           I think there are also the practical  
11 considerations, which are very important here.  
12 I think, if anyone went in --

13           JUSTICE KAGAN: But you're saying you  
14 don't care which -- which -- which method we  
15 adopt? Either Justice Alito's method, where  
16 there's a delta between when you can bring a  
17 claim and when the statute of limitations clock  
18 starts running, or, I was suggesting, maybe  
19 there ought not to be a delta, maybe you -- the  
20 -- the -- the cause of action is complete at the  
21 same time that the statute of limitations starts  
22 running, and both are when the -- the state  
23 process has come to an end, including the  
24 opportunity for rehearing.

25           MR. RIDER-LONGMAID: So I just want to

1 say a few things, Your Honor. It's not that I  
2 don't care what the rationale is. I think there  
3 are mutually supporting rationales. One thing I  
4 do want to point out is we don't think there's  
5 an exhaustion requirement or at least that this  
6 Court should say there's an exhaust requirement.  
7 So, if you were to say that the harm is not  
8 complete in such a way that someone could not  
9 bring a suit earlier, I think that that might --  
10 might be problematic down the road. So --

11 JUSTICE KAGAN: Well, an exhaustion  
12 requirement is just a requirement that says,  
13 even once you've suffered harm, you have to go  
14 through certain processes rather than bring  
15 suit.

16 But this would be a statement that the  
17 harm doesn't occur until -- until the time when  
18 the opportunity for rehearing has gone by.

19 MR. RIDER-LONGMAID: I -- I think I  
20 would say it this way, Your Honor. I think  
21 someone -- I think a prisoner could exit the  
22 state court procedures at any point and bring a  
23 Section 1983 action at that time and in -- in  
24 all likelihood would allow, as -- as -- as I  
25 think Your Honor posits, the time for rehearing

1 to lapse.

2 And I think that would be okay. There  
3 would be harm at that point. The -- the --  
4 there would be a cause of action at that point.  
5 And the procedures would be -- the state court  
6 proceedings would have come to an end. There  
7 would be finality because there was no request  
8 for rehearing, just as --

9 CHIEF JUSTICE ROBERTS: Well, that --  
10 so, I mean, you want to have your cake and eat  
11 it too. My -- my concern with your position  
12 would be that it's going to put off the time  
13 when people can bring claims for access to  
14 evidence because the claim is not going to be  
15 complete until you have final decision by the  
16 CCA under your view, which helps you because you  
17 want to put off, you know, the time at which  
18 this is -- because otherwise the statute of  
19 limitations problem would be -- would be  
20 clearer.

21 But, on the other hand, somebody who  
22 is there and is ready to go in federal court  
23 really won't be able to until the end of the CCA  
24 process, right, because, under your view, he has  
25 not finally been deprived of due process yet?

1                   MR. RIDER-LONGMAID: Your -- Your --  
2 Your Honor, I would -- I would answer it this  
3 way: I don't think there is an exhaustion  
4 requirement. I think someone can exit the state  
5 court proceedings earlier.

6                   I think that the challenge -- because  
7 the -- the analogy to a traditional due process  
8 claim, as I was discussing with Justice Kagan,  
9 is saying there's not a due process deprivation  
10 until the proceedings are complete.

11                   Of course, what we're actually  
12 challenging here and I think what litigants like  
13 Skinner would be challenging or Osborne would be  
14 challenging are the requirements under state law  
15 that they must meet to show that they're  
16 entitled to the evidence.

17                   So it's not about, like, necessarily  
18 the length of process but about what they  
19 actually must show.

20                   CHIEF JUSTICE ROBERTS: Well, I know.  
21 But the answer on the other side is, well,  
22 they're not going to know until they finally get  
23 -- got an authoritative determination from the  
24 CCA, right?

25                   MR. RIDER-LONGMAID: So -- so -- so,

1 Your Honor, I would say this: I think this is  
2 I'm -- I'm sure why the Court suggested in  
3 Osborne that it would be a good idea to continue  
4 pursuing these processes, and Skinner was, as  
5 the Court noted, better positioned than Osborne  
6 was to raise that challenge because he had gone  
7 all the way to the CCA.

8 I think that there are going to be  
9 practical concerns for litigants who try to  
10 challenge the state's procedures before they've  
11 actually tried to invoke them and see what  
12 result they get.

13 I think we could come up with  
14 hypotheticals where -- let's -- let's -- let's  
15 take the person who gets a ruling from the trial  
16 court and it said you're not entitled to the  
17 evidence, you failed these requirements. Okay.  
18 And this happens to be a state unlike Texas  
19 because it took a number of years in this case  
20 to come up with, for example, a  
21 non-contamination requirement.

22 Well, let's say this is five years  
23 from now and a state with plenty of appellate  
24 precedent on what Article 64 means, and they  
25 look at the trial court's ruling and they say,



1 well, I know what's going to happen if I appeal.  
2 I want to go straight to federal court. So I  
3 think -- I think that --

4 JUSTICE JACKSON: Well, what about a  
5 state in which there is no such process? I  
6 mean, we have a -- we have Texas here that has a  
7 process for appealing all the way through and  
8 getting a conclusive determination.

9 But I suppose Texas didn't have to  
10 have Rule 64 or Article 64. And so, if you have  
11 a state in which the DA says, I'm not giving you  
12 -- I'm not going to give you DNA testing because  
13 of how I understand the law, what -- what's your  
14 view as to whether or not a person could go  
15 directly to federal court at that point and  
16 maybe not even go to the state?

17 MR. RIDER-LONGMAID: Your Honor, I  
18 think in that -- of course, it's not before the  
19 court, but I think in that case the person could  
20 go directly to court. They would be able to  
21 say, I view the district attorney's action as  
22 enforcing this law and I think the law is  
23 unconstitutional in whatever the ways are that  
24 --

25 JUSTICE JACKSON: And so -- so it's

1 ripe at the point at which the person is denied,  
2 ripe for the point -- for the purpose of going  
3 to federal court. But I thought your answer to  
4 Justice Kagan was going to be we're not really  
5 in the injury discovery rule world.

6 In other words, she suggested that the  
7 person -- why don't we say that the person isn't  
8 harmed until he gets to the end of the state  
9 process, but that seems to me to assume that  
10 we're looking for an injury when we're talking  
11 about accrual in this context.

12 And I had understood, you know,  
13 Justice Scalia in the TRW case, for example, to  
14 say that in a 1983 case we're not really looking  
15 for injury in that same way. We're looking for  
16 the cause of action to be complete, which is, I  
17 guess, the determination that you don't have DNA  
18 testing in this situation.

19 MR. RIDER-LONGMAID: I think the  
20 injury, Your Honor, is the deprivation without  
21 due process of the liberty interests and proving  
22 your evidence -- proving your innocence with  
23 newly discovered evidence.

24 JUSTICE ALITO: Suppose this case is  
25 resolved without a determination of the merits

1 of your due process challenge to the Court of  
2 Criminal Appeals' interpretation of Texas law.

3 And now suppose another case arises  
4 that's similar to this involving a different  
5 prisoner and the prisoner asks the district  
6 attorney to allow DNA testing of certain  
7 evidence, and the district attorney says, no,  
8 it's been contaminated, and, therefore, under  
9 the authoritative interpretation of the CCA,  
10 it's not -- you don't have a right to have it  
11 tested.

12 Could you -- could that prisoner sue  
13 right away under 1983?

14 MR. RIDER-LONGMAID: I -- I think they  
15 -- that prisoner could, Your Honor, because I  
16 think there's no exhaustion requirement, and  
17 they would be able to allege under, I think,  
18 Your Honor's hypothetical that there is  
19 deprivation without due process of law because  
20 they would be pointing to the procedures  
21 challenged.

22 JUSTICE ALITO: All right. Now  
23 suppose the prisoner says but I am going to  
24 challenge this in court.

25 Now the -- it doesn't accrue. When

1 would the statute of limitations have arisen  
2 under the first scenario I gave you?

3 MR. RIDER-LONGMAID: I -- I think it  
4 would run from the refusal if the prisoner did  
5 not invoke any process. I think on, I think  
6 your next, Your Honor's next hypothetical, the  
7 prisoner invokes the next process.

8 JUSTICE ALITO: Right. And then it  
9 doesn't run until -- until the denial of  
10 rehearing by the Court of Criminal Appeals?

11 MR. RIDER-LONGMAID: Or whenever the  
12 prisoner exits the state court process.

13 JUSTICE BARRETT: Counsel, I have a  
14 question about Rooker-Feldman.

15 MR. RIDER-LONGMAID: Okay.

16 JUSTICE BARRETT: So I understand --  
17 let's say that I agree with you that your no  
18 contamination claim is not barred by  
19 Rooker-Feldman because I think you could say the  
20 CCA's decision, assume it's an accurate  
21 interpretation of state law, it's just as if the  
22 no contamination requirement was on the statute,  
23 it's in the statute itself, and so it's a  
24 different claim.

25 Is that true, though, of the delay

1 finding and the harmless error, like a jury  
2 would have reached the same verdict even if it  
3 had known about the exculpatory evidence  
4 findings, because those it seems to me you're --  
5 am I right that you're raising a procedural due  
6 process challenge to that as well, that that's  
7 part of the claim?

8 MR. RIDER-LONGMAID: That's right,  
9 Your Honor. So we're challenging those -- the  
10 three different aspects.

11 JUSTICE BARRETT: So why aren't the  
12 other two not barred by Rooker-Feldman? Because  
13 those seem to me about the application of the  
14 state standard to the facts of your case.

15 MR. RIDER-LONGMAID: Right. So I --  
16 we -- we set out some of the -- of course, we're  
17 not at the merits yet -- but we set out some of  
18 the merits theories on pages 40 and 41 of the  
19 blue brief.

20 What I would say is it's a -- it's a  
21 challenge actually to the rule that the Court of  
22 Criminal Appeals articulated there. So, for  
23 example, on what we might call the exculpatory  
24 evidence requirement, the -- the problem, as we  
25 have alleged it, or there are several problems,

1 but that the Court of Criminal Appeals says that  
2 the --

3 JUSTICE BARRETT: The inculpatory  
4 doesn't count?

5 MR. RIDER-LONGMAID: Discredited, so  
6 you can't show that the state's trial evidence  
7 has been discredited, which is something I  
8 think, you know, Justice Sotomayor's separate  
9 opinion in 2020 shows this is a problem.

10 You -- you can't point to other  
11 evidence inculcating, for example, Jimmy  
12 Fennell, and then the unreasonable delay bit, it  
13 -- it's not about the application. It's not the  
14 particular application and the judgment.

15 It's about the rule that you can use  
16 against the prisoner, these efforts to establish  
17 exculpatory evidence, the types of evidence we  
18 were just talking about on the exculpatory prong  
19 and hold them against the prisoner. So --

20 JUSTICE BARRETT: Okay. Thank you.  
21 That's very helpful.

22 A quick question on the Article III  
23 point. Why didn't you seek an injunction? Why  
24 did you do declaratory judgment instead?

25 MR. RIDER-LONGMAID: I -- I think a

1 few points, Your Honor. The first is that it's,  
2 of course, not necessary. We pointed in the  
3 briefing to Franklin versus Massachusetts --

4 JUSTICE BARRETT: Right.

5 MR. RIDER-LONGMAID: -- that this  
6 Court can expect executive officials to abide by  
7 the Court's rulings.

8 And -- and, really, I think as far as  
9 the Court would need to go to find  
10 redressability here is to say, if -- if the  
11 federal district court were to say these  
12 procedures are unconstitutional, you have to  
13 provide due process, you have to have a version  
14 of Article 64 that provides due process, even --  
15 even just that would remedy the injury because,  
16 again, the injury is deprivation of DNA testing  
17 without --

18 JUSTICE BARRETT: Oh, no, no, I -- I  
19 understand your argument. I was just wondering  
20 why you didn't, you know.

21 MR. RIDER-LONGMAID: I -- I -- I just  
22 didn't think it was necessary.

23 JUSTICE BARRETT: Okay.

24 MR. RIDER-LONGMAID: So I -- what --  
25 what I'd like to do is perhaps move to the

1 practical considerations and the problems with  
2 the Fifth Circuit's rule and Goertz's rule.

3 As -- as I stated in the opening, if  
4 -- on the Fifth Circuit's rule the injury, the  
5 only injury that the Fifth Circuit seemed to  
6 care about occurs when the trial court first  
7 denies testing.

8 But I think, if that's the rule, then  
9 every single time a prisoner continues to pursue  
10 relief in state court and seek that testing,  
11 there is -- there is a great risk of parallel  
12 proceedings because the prisoner is going to  
13 have to run to federal court, file a complaint  
14 that's protective. The judge may or may not  
15 require motions and responses to figure out what  
16 he or she is supposed to do with that protective  
17 complaint, and then there's going to have to be  
18 an amended complaint once the state appellate  
19 courts rule on the issue.

20 JUSTICE ALITO: Well, suppose the  
21 difference is between a rule that says the  
22 statute of limitations runs when the Court of  
23 Criminal Appeals renders its decision and a rule  
24 that says it doesn't begin to run until  
25 rehearing is denied. Then you're talking about



1 a -- a brief period of time, I would imagine, in  
2 most cases.

3 In this instance, it -- it seems to  
4 have dragged out. So part of your argument is  
5 that your rule is better because it serves  
6 interests of federalism and comity, but how  
7 weighty is that if you're just talking about a  
8 relatively short period of time?

9 MR. RIDER-LONGMAID: So I want to make  
10 two points as to the -- the additional time for  
11 rehearing, Your Honor. The first is that I  
12 think, symbolically, it just disrespects the --  
13 the state court's appellate process to say we're  
14 not going to -- the federal court doesn't care  
15 about what happens after -- during the rehearing  
16 process.

17 I think the second point is that, as  
18 the Court knows, Section 1983 statutes of  
19 limitations are borrowed from state law. And so  
20 not every state is going to have a two-year,  
21 three-year, four-year statute of limitations. I  
22 think Kentucky, Louisiana, and Tennessee we  
23 found have a one-year statute of limitations,  
24 for example. And I don't think it's all that  
25 out of the ordinary for a rehearing motion to be

1 pending, in this case it was six months, for a  
2 significant amount of time. And, of course, the  
3 -- we normally don't think that someone is  
4 dilatory unless they've actually filed beyond  
5 the statute of limitations.

6 I -- I think the other point that I  
7 would go to is it's not clear to me what purpose  
8 the statute of limitations is really serving  
9 here for Texas. The -- most states -- and I  
10 would point to the Retired Judges' amicus brief.  
11 Most states don't follow the same timeliness  
12 rules with these types of post-conviction DNA  
13 testing regimes as they do for their  
14 post-conviction habeas proceedings, for example,  
15 because they recognize, I think, as the Court  
16 said in Osborne, like, the power of DNA testing  
17 to exonerate as well as to inculcate.

18 And so we don't have the types of  
19 concerns normally that you would have to protect  
20 with a statute of -- statute of limitations,  
21 such as concerns about faded memories of  
22 witnesses or stale evidence. After all, if  
23 anything, those concerns are going to count  
24 against the -- the prisoner.

25 JUSTICE ALITO: Does the -- does the

1 CCA grant rehearing more frequently than this  
2 Court does?

3 MR. RIDER-LONGMAID: I am not certain  
4 how often the CCA grants rehearing. We did find  
5 some examples where they have granted rehearing  
6 where it can take a significant amount of time  
7 for the -- for the court to do so. But I would  
8 say, going back to the earlier point, Your  
9 Honor, it's -- it would be important for the  
10 federal courts to allow the state procedures to  
11 play out because, as Goertz concedes and I think  
12 it's page 25, of Footnote 5, rehearing can  
13 change the outcome.

14 So you would have potential -- you --  
15 you'd run the risk of having a prisoner run to  
16 -- to federal court to be timely, only to have  
17 pending rehearing proceedings or the suggestion  
18 that the prisoner had to hurry up to somehow get  
19 there.

20 JUSTICE KAVANAUGH: You were going to  
21 tick through a list of practical problems, and I  
22 just want to make sure you did that.

23 MR. RIDER-LONGMAID: I think -- thank  
24 you, Justice Kavanaugh. I think the other --  
25 the other point here is that the Court has

1 suggested to prisoners in Osborne and Skinner  
2 that they go pursue the state court procedures.  
3 And, of course, that's exactly what Mr. Reed did  
4 in this case.

5           And I think it would put prisoners in  
6 a tough position to be expected to pursue the  
7 state procedures, as Justice Alito was asking  
8 about, you know, in the interest of federalism  
9 and comity and then say, but we're going to  
10 start the clock at some early point.

11           The other problem I think with  
12 Goertz's rule, which I understand to be a notice  
13 rule -- so he's not looking at the 2014 initial  
14 trial court denial. Let me just step back and  
15 say what happened in 2014. He's looking at the  
16 2016 denial.

17           So what happened in this case was the  
18 trial court initially denied DNA testing in  
19 2014, didn't make any findings or holdings about  
20 non-contamination. It went up to the Court of  
21 Criminal Appeals. The Court of Criminal Appeals  
22 wanted further findings, and one of the things  
23 it wanted a finding on, it wanted several  
24 things, but one of them was the chain-of-custody  
25 requirement in which you eventually have the

1 non-contamination requirement that lives inside  
2 the chain-of-custody requirement. Sends it back  
3 down.

4           And my understanding is that Goertz  
5 thinks that it's only in 2016 when the trial  
6 court on remand is saying, okay, there's a  
7 non-contamination -- or making a finding of  
8 non-contamination, that now the prisoner has --  
9 that Mr. Reed has notice that this may be a  
10 requirement that is being used against him.

11           I'm not sure what that rule would do  
12 in the mine-run of cases, because I think that  
13 anytime you have multiple opinions, whether it's  
14 multiple trial court opinions or an opinion from  
15 a trial court, opinion from the Court of  
16 Criminal Appeals, the -- the litigants and the  
17 courts would be expected to compare the  
18 different opinions and say when was I supposed  
19 to know the way that the Court of Criminal  
20 Appeals or the way that the state high court was  
21 going to ultimately resolve this, either, you  
22 know, the first issuance of the opinion or on  
23 denial of rehearing?

24           And that seems like a very burdensome  
25 and unworkable regime. So I think the simplest

1 rule and that -- that everyone can understand,  
2 the courts can know how to administer, the  
3 litigants can know how to understand from the  
4 beginning, is as long they're invoking available  
5 state procedures, and just like the federal  
6 system the CCA makes a rehearing mechanism  
7 available, the cause of action has not accrued  
8 and the statute of limitations has not begun  
9 to run.

10 JUSTICE BARRETT: Can I ask you a  
11 question just about how this works? So, if you  
12 think about the process that you've been given,  
13 it's Article 64, which allows you to make the  
14 motion to the trial court, which you did, and am  
15 I understanding correctly that you didn't really  
16 know about the no-contamination requirement  
17 until the process started unfolding? So you  
18 couldn't have brought your challenge before you  
19 invoked Article 64, correct?

20 MR. RIDER-LONGMAID: That's right,  
21 Your Honor.

22 JUSTICE BARRETT: Okay. So I'm  
23 thinking, well, Article 64 sets out the process  
24 that you're due, it gives you the trial court  
25 and then the direct appeal to the CCA, and the

1 CCA has to take it, right? It's not  
2 discretionary?

3 MR. RIDER-LONGMAID: In capital cases  
4 like this one.

5 JUSTICE BARRETT: In capital cases  
6 like this one. So you got the appeal to the  
7 CCA, so it wouldn't have made sense for you to  
8 file your suit at the trial court because the  
9 process hadn't yet run, and part of the process  
10 that Texas is giving you is allowing for  
11 mistakes to be corrected, right?

12 MR. RIDER-LONGMAID: That's right.

13 JUSTICE BARRETT: So then I think it  
14 matters whether at that point -- all Article 64  
15 says, it stops after it says you get the direct  
16 appeal to the CCA. Now it's part of the CCA's  
17 other procedures, right, that you could file a  
18 petition for rehearing? But should we really  
19 think of that as part of the procedure given in  
20 Article 64 for the prisoner to run through?

21 MR. RIDER-LONGMAID: Well, I don't --  
22 I don't know that I would agree that it's not  
23 part of the procedure for Article 64 because I  
24 think, once you're put into the Court of  
25 Criminal Appeals, then, of course, the court's

1 procedures apply. It would be like any -- this  
2 Court's jurisdiction tends to be certiorari  
3 jurisdiction, but if you had any kind of  
4 jurisdiction that gets you to this Court, then  
5 you could invoke the Court's normal procedures.  
6 The same for the CCA.

7 And I think, in any event, the -- the  
8 practical considerations and the federalism and  
9 comity considerations are strong. I think that  
10 it would be this Court or the federal courts  
11 essentially saying to the state courts we don't  
12 care what other mechanisms you have that are  
13 available. We don't care how often you may or  
14 may not change your reasoning. Because that --  
15 that could also happen.

16 So I think the only distinction the  
17 court could draw between the issue -- between  
18 saying that the -- the cause of action should  
19 accrue at the trial court's opinion versus the  
20 CCA's opinion versus denial of rehearing is  
21 saying, well, we think it's a lesser chance that  
22 something is going to happen.

23 But, again, the procedure exists for a  
24 reason. And just as in the colloquy with  
25 Justice Sotomayor at the beginning, you wouldn't



1 expect -- I don't think anyone could come to  
2 this Court before they received the denial of  
3 rehearing or an amended opinion on rehearing  
4 before a federal court of appeals in much the  
5 same way.

6 JUSTICE BARRETT: Thank you.

7 CHIEF JUSTICE ROBERTS: Thank you,  
8 counsel.

9 Justice Thomas?

10 JUSTICE THOMAS: Did you file a cert  
11 petition in this before?

12 MR. RIDER-LONGMAID: We did, Your  
13 Honor.

14 JUSTICE THOMAS: If we had granted  
15 that cert petition, would that have been  
16 improperly granted?

17 MR. RIDER-LONGMAID: I don't think it  
18 would have been improperly granted, Your Honor.  
19 I think, as a practical matter, it was, going  
20 back to the colloquy with Justice Barrett, very  
21 difficult for Mr. Reed to make a due process  
22 challenge to the CCA's authoritative  
23 construction of Article 64 until that  
24 construction issued.

25 And so, after denial of rehearing,

1 that's when we -- we filed a cert petition with  
2 this Court, raising, among other things, due  
3 process challenges. And, of course, the Court  
4 denied review.

5 CHIEF JUSTICE ROBERTS: Justice Alito?

6 JUSTICE ALITO: This case can be  
7 viewed as having been drastically narrowed as a  
8 result of the briefing so that you have  
9 clarified that the particular claim you're --  
10 you're pressing is an authoritative construction  
11 claim. You're challenging the way the statute  
12 was interpreted by the Court of Criminal  
13 Appeals. And you couldn't know that that would  
14 be the interpretation until the Court of  
15 Criminal Appeals issued that decision, right?

16 MR. RIDER-LONGMAID: That's right,  
17 Your Honor.

18 JUSTICE ALITO: And so the -- the  
19 question then -- you have other arguments and  
20 they may -- they may be meritorious, but if we  
21 just look at that, the difference, what's at  
22 issue really is kind of case-specific and really  
23 quite narrow, whether in this particular type of  
24 case involving an authoritative construction due  
25 process claim, the statute begins to run when

1 that construction is announced by the CCA or  
2 whether it doesn't begin to run until the time  
3 for petition -- for a petition for rehearing has  
4 elapsed or the petition for rehearing has been  
5 denied, right?

6 MR. RIDER-LONGMAID: I think that's  
7 the only question the Court needs to answer,  
8 Your Honor.

9 JUSTICE ALITO: Okay. Thank you.

10 MR. RIDER-LONGMAID: I know that your  
11 colleagues have asked other questions that would  
12 go to when does the injury occur and what would  
13 happen in other cases. I don't think the Court  
14 needs to lay out a whole framework, but I think  
15 we've provided some answers as to how it could.

16 JUSTICE ALITO: Okay. Thank you.

17 CHIEF JUSTICE ROBERTS: Justice  
18 Sotomayor?

19 JUSTICE SOTOMAYOR: All the other  
20 issues, the Fifth Circuit decided just this  
21 jurisdictional issue, correct?

22 MR. RIDER-LONGMAID: The -- the Fifth  
23 Circuit decided that there was no Rooker-Feldman  
24 problem, there was no Ex parte Young problem.  
25 It -- there was no standing problem, I believe,

1 as well. It -- and then it just resolved on the  
2 statute of limitations grounds. That's right.

3 JUSTICE SOTOMAYOR: And it decided  
4 what, the trial court decision? The statute --

5 MR. RIDER-LONGMAID: 2014, the first  
6 trial court decision.

7 JUSTICE SOTOMAYOR: Okay.

8 CHIEF JUSTICE ROBERTS: Justice Kagan?  
9 Justice Gorsuch?  
10 Justice Barrett?  
11 Justice Jackson?

12 MR. RIDER-LONGMAID: Thank you.

13 CHIEF JUSTICE ROBERTS: Thank you,  
14 counsel.

15 General Stone.

16 ORAL ARGUMENT OF JUDD E. STONE, II

17 ON BEHALF OF THE RESPONDENT

18 MR. STONE: Thank you, Mr. Chief  
19 Justice, and may it please the Court:

20 Reed's claim is both jurisdictionally  
21 barred and untimely. On jurisdiction, the  
22 defendant Reed named, the claim he brought, and  
23 the relief he seeks don't line up.

24 Reed sued Goertz for a declaration  
25 regarding Chapter 64, but Chapter 64 governs

1 only access to testing through Texas courts. It  
2 does not control Goertz's common law authority  
3 to agree to testing.

4 A declaration regarding Chapter 64  
5 against Goertz would neither affect Goertz's  
6 common law authority nor bind Texas courts.  
7 That mismatch deprives Reed of standing and  
8 forecloses his reliance on Ex parte Young.

9 On the merits, everyone agrees that  
10 due process is the relevant constitutional  
11 right, and everyone agrees that Wallace supplies  
12 the presumptive rule. Reed's claim accrued when  
13 he had a complete and present cause of action.

14 Though he formulated it somewhat  
15 differently in his complaint and his petition,  
16 the gravamen of Reed's claim now is that the  
17 Court of Criminal Appeals' decision violated due  
18 process. If so, Reed had a cause of action,  
19 and, therefore, his claim accrued no later than  
20 when the Court of Criminal Appeals issued its  
21 opinion and judgment because that opinion and  
22 judgment imposed the legal consequences on Reed  
23 that he says violated due process.

24 The Wallace rule should apply here.  
25 It would respect comity by treating the CCA's

1 judgment on a matter of state law the same that  
2 this Court treats its judgments as immediately  
3 effective. It would work regardless of how a  
4 given state structures its DNA post-conviction  
5 testing regime. It would discourage prisoners  
6 from manipulating their accrual dates through  
7 motions practice in state courts. And, finally,  
8 it would supply an accrual date by which all  
9 litigants, including those serving non-capital  
10 sentences who have a strong interest in early --  
11 in early resort to a federal forum, could  
12 predictably measure limitations.

13 I welcome the Court's questions.

14 JUSTICE THOMAS: Just so I'm clear,  
15 because I'm not quite clear, exactly what is the  
16 deprivation of liberty here and who is the  
17 perpetrator?

18 MR. STONE: I understood, Your Honor,  
19 the deprivation was that Texas courts had  
20 prevented Mr. Reed from having fair access to  
21 Article 64 proceedings, and so they had imposed  
22 a condition that caused those proceedings to be  
23 fundamentally unfair.

24 If that's correct, then it's the Court  
25 of Criminal Appeals and its decision revealing

1 this component of Article 64 that inflicted that  
2 harm.

3 JUSTICE BARRETT: So, General Stone,  
4 you don't agree with the Fifth Circuit when it  
5 said that the injury was inflicted by the trial  
6 court?

7 MR. STONE: Yes and no, Your Honor.  
8 So this is part of -- part of the consequence  
9 of, as Justice Alito put it, this narrowing over  
10 time. Originally in his complaint, Mr. Reed  
11 brought both a facial and an as-applied claim.  
12 I think that facial claim accrued, the original  
13 facial claim, as soon as he was told no by the  
14 trial court.

15 I think his authoritative construction  
16 claim originally accrued as soon as a Texas  
17 court in its opinion and judgment included the  
18 violation of due process, which, as he most  
19 prominently includes, is the non-contamination  
20 requirement.

21 The Texas trial court on remand to the  
22 Court of Criminal Appeals in paragraphs 17 and  
23 18 of its opinion made explicitly clear that it  
24 said that Article 64 wasn't satisfied precisely  
25 because the evidence had been touched by a

1 number of jurors and court personnel and that,  
2 as a consequence, essentially, it was impossible  
3 to get useful DNA access.

4 JUSTICE JACKSON: Can you restate your  
5 argument about jurisdiction insofar as you  
6 suggested that Goertz retains common law  
7 authority despite any ruling of the court?

8 That sounds an awful lot like you're  
9 saying that if the federal court were to decide  
10 that Mr. Reed wins under Article 64 or otherwise  
11 his procedural due -- due process claim, Goertz  
12 could say, I don't care, I'm not going to give  
13 it to him.

14 So can you help me understand what you  
15 mean by this?

16 MR. STONE: Certainly, Your Honor. As  
17 Mr. Reed acknowledged at argument, Goertz has --  
18 there's essentially two different, entirely  
19 separate avenues by which a prisoner in Texas  
20 can seek DNA testing.

21 One is by agreement with a prosecutor.  
22 Article 64 does not bind that in any way. It  
23 does not cabin a prosecutor's discretion whether  
24 to issue DNA testing. It does not impose any  
25 requirements on a prosecutor. It's essentially



1 a plenary common law privilege that the Court of  
2 Criminal Appeals has recognized.

3 Chapter 64 governs how individuals  
4 seeking through a motion in Chapter 64 seek DNA  
5 through the court system. It's an elaborate  
6 procedure that once it's begun, an individual  
7 who has such relevant DNA evidence has to  
8 surrender it to the court.

9 JUSTICE JACKSON: All right. So what  
10 happens if the person seeks DNA testing under  
11 Chapter 64, through the courts, and the courts  
12 decide that the person wins, they get DNA  
13 testing? Are you suggesting that the  
14 prosecutor's independent common law authority  
15 could somehow override that and the prosecutor  
16 could say, I disagree with the court and I'm not  
17 going to give it to you?

18 MR. STONE: Absolutely not, Your  
19 Honor. Texas law, of course, provides that  
20 individuals who have brought Chapter 64 motions,  
21 individuals with relevant DNA, have to deposit  
22 that with the court.

23 The court would issue an order  
24 providing for DNA testing on its own, and that  
25 order would go off to whoever the custodian was

1 and that would be followed.

2 JUSTICE JACKSON: All right. So,  
3 if -- if your point is that we have a  
4 jurisdictional problem in this case because Mr.  
5 Reed has named Goertz and Goertz would only have  
6 authority over this under his common law  
7 principles, why isn't the answer just let him  
8 amend the complaint to sue the relevant person?

9 I mean, that's sort of what happens.  
10 It's not that we say no standing and we dismiss  
11 the case ordinarily. A child court would say,  
12 oh, you have a problem because you've named the  
13 wrong official, let's just allow for  
14 substitution.

15 So why -- why isn't that the answer?

16 MR. STONE: Certainly, Your Honor. In  
17 part because he'd ultimately no matter what have  
18 a problem under Ex parte Young.

19 As this Court put in Whole Woman's  
20 Health, the plurality joined by Justice Thomas,  
21 the requirements for Article III standing in Ex  
22 parte Young for getting around the sovereign  
23 immunity of, for example, the Court of Criminal  
24 Appeals requires something like an immediate or  
25 impending enforcement action.

1                   There is no such enforcement action --  
2                   JUSTICE JACKSON: Okay. But that's  
3 just an argument that Article 64 can't -- the  
4 right that is given can't be enforced because,  
5 to the extent that the court is the one that  
6 would hold the evidence and under Article 64  
7 you, as a prisoner, come to the court and you  
8 invoke that provision, but it's the court that  
9 holds it and under Ex parte Young you can't  
10 really sue the court, you're just saying that's  
11 a -- that's a null right. And I don't  
12 understand how the law would be constructed in  
13 that way.

14                   MR. STONE: Respectfully, I disagree,  
15 Your Honor, for two reasons, the more important  
16 one being that the petition that Mr. Reed sought  
17 under Section 1257 to this Court was a proper  
18 vehicle for alleging a due process problem in  
19 the Court of Criminal Appeals.

20                   He, as a matter of fact, in that  
21 petition raises substantively identical due  
22 process challenges as he raises in federal  
23 court --

24                   JUSTICE JACKSON: So you're saying  
25 there's no 1983 claim that could be brought to

1 enforce an Article 64 right?

2 MR. STONE: At least not like this,  
3 Your Honor. And -- and we agree that that's  
4 inconsistent with the exercise of jurisdiction  
5 this Court impliedly allowed in Skinner. As  
6 this Court has put in Steelco, though, those  
7 sorts of questions that are neither passed upon  
8 or briefed by the --

9 JUSTICE JACKSON: No, no, no, not  
10 impliedly right. That was the basis of the  
11 Skinner Rooker-Feldman analysis. I mean, isn't  
12 that what the Court said, and in Osborne, you  
13 could -- you can bring this kind of claim in  
14 federal court, says this Court in Osborne and  
15 Skinner, no?

16 MR. STONE: Two points, Your Honor.  
17 First, as this Court puts in -- in  
18 Steelco, essentially, implied exercises are  
19 blessings of jurisdiction that are not actually  
20 made holdings of the court don't bind the court  
21 going forward.

22 Now the Court did make a  
23 jurisdictional determination regarding  
24 Rooker-Feldman that I think actually is  
25 important in this case also because the Court

1 determined in its opinion specifically relying  
2 on a concession that's not been made by Mr.  
3 Reed, specifically that his claim was not  
4 challenging anything that either the prosecutor  
5 did or that the Court of Criminal Appeals did.

6 Mr. Reed has already indicated in his  
7 response to Justice Barrett that his claim does,  
8 in fact, challenge certain aspects of how the  
9 Court of Criminal Appeals reached its decision  
10 making, so even on the -- the narrow  
11 Rooker-Feldman point, Skinner doesn't apply.

12 JUSTICE JACKSON: All right. But what  
13 about the Osborne point that seemed to preserve  
14 the ability to bring a 1983 claim that raised  
15 procedural due process concerns, and you're  
16 saying here that there really is no way for Mr.  
17 Reed to bring such a claim in this circumstance.

18 So isn't that inconsistent with what I  
19 guess you're saying the Court implicitly held in  
20 Osborne, but that was sort of the basis of the  
21 court's constitutional analysis in this case.

22 MR. STONE: It -- it's certainly  
23 inconsistent, Your Honor. The reason why we're  
24 not calling for Skinner to be overruled on this  
25 point is because this Court has said

1 specifically it is not bound by those, as  
2 Justice Scalia colorfully put it, drive-by  
3 jurisdictional analyses. But we agree that this  
4 is inconsistent beforehand.

5           Nonetheless, even if this Court were  
6 to essentially bless the exercise of  
7 jurisdiction asserted in -- in -- in Skinner and  
8 to continue from the merits, Reed should  
9 nonetheless fail on the merits because -- for  
10 several reasons.

11           Mr. Chief Justice, one important  
12 concern you highlighted was the practical  
13 concerns about essentially everyone else. Mr.  
14 Reed's rule, which as far as we can discern  
15 today involves that his claim accrues as soon as  
16 he chooses to stop litigating in the state court  
17 system and neither a moment before, no -- nor a  
18 moment later, does a profound disservice to the  
19 typical DNA applicant, who is not fighting off a  
20 capital sentence, who has been accused and  
21 convicted of a crime, and who wants one of two  
22 things, either resort to a constitutionally  
23 sound system that does not violate due process,  
24 or resort to a federal forum as soon as  
25 possible.

1           Now, while he says now that his claim  
2 might have existed as soon as he exited the  
3 federal forum, of course, he claimed on page 17  
4 of his brief that his claim didn't even exist  
5 yet until he had exhausted going through the  
6 state appellate process at minimum. So that's  
7 the important shift that he's made.

8           I think, Justice Alito, when you  
9 pointed out inquiring whether or not a person  
10 would have a claim that, for example, the  
11 prosecutor said, well, I understand my right --  
12 my authority to run coterminously with Chapter  
13 64 and the Court of Criminal Appeals has said  
14 thus and such, certainly, the claim accrues then  
15 because he's been -- he suffered a denial based  
16 on that unconstitutional condition.

17           Another point, of course, is ours is  
18 an incredibly easy-to-administer rule. Because  
19 a Skinner claim arises essentially from a  
20 judicial decision in essentially all postures,  
21 every judicial decision has a file stamp date.  
22 Someone running a Skinner claim or making a  
23 Skinner claim is going to point to a condition  
24 that they say this is the thing that violates  
25 due process.

1 JUSTICE JACKSON: But easy to  
2 administer or no, what's the point? If he goes  
3 to federal court pursuant to your rule while  
4 he's in state court, the federal court will just  
5 stay the action until the state court action  
6 commence -- or -- or concludes.

7 So what difference does it make? I  
8 don't -- I thought the most compelling part of  
9 Mr. Reed's merits claim or argument was that  
10 none of the purposes of the statutes of  
11 limitations, the principles behind that  
12 doctrine, obtain in your rule, that it doesn't  
13 matter whether or not, other than just to keep a  
14 prisoner from ultimately being able to bring a  
15 federal claim.

16 MR. STONE: Quite the opposite, Your  
17 Honor. In the ordinary case, our rule serves  
18 most individuals who want to be able to bring  
19 those federal claims.

20 Recall that Mr. Reed's rule requires  
21 them to go through the state appellate system  
22 before, in fact -- or at least the rule he  
23 advocated for in his brief, before they have a  
24 claim accrue. Someone like that, a person who  
25 is suffering under a term of years since --



1 JUSTICE JACKSON: No, no, no. The  
2 state -- the statute of limitations is not about  
3 the person who's bringing the claim. It's about  
4 the defendant, right? So the -- the purposes  
5 that I'm trying to focus in on are the  
6 traditional purposes of a statute of  
7 limitations, which protects the defendant.

8 So why is the defendant in any  
9 different position, not the person who's  
10 bringing the claim, but the defendant, the  
11 state, if we run the rule your way versus Mr.  
12 Reed's way?

13 MR. STONE: Let me answer your  
14 question and let me explain why I believe that's  
15 tied to accrual even on the plaintiff's side.  
16 The answer to your question is, of course,  
17 states are best served by having defined dates  
18 that are not manipulable by individuals who are  
19 seeking to extend the length of their claims as  
20 long as possible.

21 Every statute of limitations is on  
22 some level a statute of repose that gives  
23 someone who is exposed to potential tort claims  
24 or other claims definition as to when they no  
25 longer have to be on -- essentially preparing

1 for litigation for those things.

2 Now the flip side of that is an  
3 accrual rule typically marks when an individual  
4 may first bring suit. There's -- I heard the --  
5 this Court discuss the possibility of there  
6 being a claim that could be brought but that has  
7 not yet accrued. That is a very strange  
8 possibility.

9 So, when we're talking about an  
10 accrual rule that is sooner in -- that happens  
11 sooner in time, it serves state interests by  
12 giving states defined, earlier, and faster  
13 knowledge about what kind of -- of essentially  
14 what claims are against it.

15 It also serves plaintiffs because,  
16 once their claims accrue, they have resort to a  
17 federal forum. So an individual who has to  
18 labor underneath Mr. Reed's rule, where claims  
19 do not accrue at least until the end of the  
20 appellate process --

21 JUSTICE JACKSON: But there's no  
22 exhaustion, so he's still fine. There's no  
23 exhaustion requirement, so he can -- do you  
24 disagree with the representation that he can go  
25 to federal court at any -- at any time in this

1 world?

2 MR. STONE: I agree that he may go to  
3 federal court as soon as he has suffered  
4 essentially the due process -- the due process  
5 violation. But I would point out that's  
6 inconsistent with what he briefed to this Court.

7 JUSTICE JACKSON: But no --

8 JUSTICE KAGAN: But did --

9 JUSTICE JACKSON: -- accrual date  
10 keeps him from going to federal court, right?

11 MR. STONE: If his claim hasn't  
12 accrued, Your Honor, at least as this Court  
13 suggested in McDonough, a claim that hasn't  
14 accrued can't be brought. An individual cannot  
15 bring a claim that has not yet accrued. An  
16 individual could say, well, your claim isn't  
17 ripe yet for one reason or another. It hasn't  
18 yet accrued. And that's -- that is the function  
19 of an accrual date from a plaintiff's side.

20 JUSTICE JACKSON: On a statute of  
21 limitations?

22 MR. STONE: Yes, Your Honor. If a  
23 claim has not yet accrued, ordinarily an  
24 individual can't bring it at all.

25 JUSTICE GORSUCH: Counsel, could I ask

1 you to focus your attention on the difference  
2 between the date of the court of appeals'  
3 decision versus the rehearing date? Why should  
4 we prefer your -- your view to your colleague's  
5 view on -- on the rehearing date?

6 MR. STONE: A couple of reasons, Your  
7 Honor, the first of course being for purposes of  
8 this Court's presumptive rule under Wallace, the  
9 thing -- the actual constitutional violation  
10 that happened, the thing that caused the change  
11 of legal rights and decisions was the judgment.

12 Rehearing changed nothing about the  
13 rights and obligations under Texas law or the  
14 U.S. Constitution to Mr. Reed.

15 JUSTICE KAGAN: That's just because  
16 rehearing was denied. If rehearing had been  
17 granted and the decision had been revised, then  
18 it would have changed something.

19 So why shouldn't we understand that  
20 this -- this claim of Mr. Reed's, which is  
21 focusing on the authoritative construction, is  
22 focusing on the final authoritative  
23 construction, which we don't know about until  
24 the end of the court of appeals' process?

25 MR. STONE: Two points, Your Honor.

1           First of all, our rule takes account  
2 of that. In the rare case -- and to answer  
3 Justice Alito's question, it's very rare that  
4 the Court of Criminal Appeals grants rehearing.

5           In the rare case where there's a --  
6 there is a rehearing and the rehearing leads to  
7 a different decision, which then imposes an  
8 unconstitutional condition of some kind, that  
9 will be the accrual date. Very uncommon, but at  
10 least that will be the defined order which will  
11 have changed the rights and obligations of Mr.  
12 Reed and any other litigant like him.

13           JUSTICE KAGAN: But that suggests that  
14 there's a sort of changing accrual date. First,  
15 we thought the accrual date was this, but now we  
16 think the accrual date is that. Why isn't the  
17 simpler rule just to say we don't know what the  
18 authoritative construction of the court of  
19 appeals is until the court of appeals' process  
20 has concluded, the end?

21           MR. STONE: Two points, Your Honor.

22           First of all, I think the -- the  
23 hypothetical you describe is just an ordinary  
24 application of mootness where, if something  
25 allegedly injured you and then that thing

1 changes in a fundamental way, your first claim  
2 may have gone moot, but your second claim is  
3 live.

4 To answer your question regarding  
5 what's sort of easiest, finality, why that just  
6 doesn't work as a matter of sort of  
7 administrability, it's simple. Mr. Reed has not  
8 articulated any principle that would sort out  
9 his petition for rehearing from any of a  
10 petition for certiorari, a petition for  
11 rehearing from denial of certiorari, a motion  
12 for essentially the state equivalent of a Rule  
13 60(b) motion, a motion to recall the mandate,  
14 all of which Texas courts entertain.

15 And if the only rule he's offering is,  
16 well, as soon as someone exits the state court  
17 system, then they have their accrual, we're left  
18 with exactly the system that this Court  
19 cautioned against in Wallace, where,  
20 essentially, a plaintiff can choose the accrual  
21 date that he finds most genial and then can  
22 bring lawsuit then. But that --

23 JUSTICE GORSUCH: Counsel, that's  
24 actually a question I wanted to ask you about,  
25 the mandate. You argue for the -- the date of

1 the judgment at the very latest. I know you  
2 have some arguments about it being earlier.  
3 Your colleague argues for the -- the rehearing  
4 date. Neither side argues for the issuance of  
5 the mandate. Why?

6 MR. STONE: Because, Your Honor, in  
7 Texas, much like, for example, with this Court,  
8 the mandate is a ministerial option, a  
9 ministerial document that instructs a lower  
10 court officially as to the nature of the  
11 judgment of the superior court. It does not  
12 affect the rights and duties of the parties.

13 A judgment is immediately appealable  
14 -- or is immediately effective from the Court of  
15 Criminal Appeals unless someone successfully  
16 seeks a stay or other sort of exceptional  
17 appellate remedy.

18 JUSTICE SOTOMAYOR: So let me give you  
19 a hypothetical. A state court denies testing on  
20 one ground. A party you're -- you -- you have  
21 taken the position in your brief that the  
22 accrual should be from that decision, correct?

23 MR. STONE: Assuming that that ground  
24 is a constitutional violation, yes, Your Honor.

25 JUSTICE SOTOMAYOR: All right. Now

1 they go up on appeal, and the -- there was no  
2 appeal there. They go up on appeal, and the  
3 appellate court in Texas says they were wrong on  
4 ground one, but they were wrong -- but they were  
5 right on an alternative ground.

6 And now you say the plaintiff should  
7 appeal from when? He should have appealed from  
8 the first decision, or now he should appeal from  
9 the second or both?

10 MR. STONE: If I understand correctly,  
11 Your Honor, so we've got a trial court that  
12 imposed one unconstitutional condition and a  
13 court --

14 JUSTICE SOTOMAYOR: He should have  
15 appealed then? That's what you're saying?

16 MR. STONE: Well, if there's -- I  
17 assume, because the appellate court's involved,  
18 that he appealed that first judgment. Or are  
19 you saying the 1983 --

20 JUSTICE SOTOMAYOR: No, let's say then  
21 he -- he does -- are you saying that him  
22 appealing stays the time he has to file a  
23 motion?

24 MR. STONE: No, Your Honor. He can go  
25 immediately to federal court on whatever the



1 unconstitutional breach is.

2 JUSTICE SOTOMAYOR: Let's -- let's  
3 assume he does what the state tells him, does a  
4 timely appeal. If he came to federal court in  
5 the middle of that appeal, would you argue that  
6 he doesn't have a viable claim yet?

7 MR. STONE: No, Your Honor.

8 JUSTICE SOTOMAYOR: Because the  
9 appellate court hasn't decided this issue,  
10 constitutional issue.

11 MR. STONE: Certainly not, Your Honor.  
12 On the assumption that his claim is that the  
13 trial court's decision included some condition  
14 that violates due process, let's say this non-  
15 --

16 JUSTICE SOTOMAYOR: No, no. The same  
17 as here. And so you're saying -- what should  
18 the federal court do? Should it stay and wait  
19 until the appellate court says yes or no?

20 MR. STONE: It need not, Your Honor.  
21 I might point out for practical purposes, for  
22 specifically Mr. Reed's claim, even had he  
23 waited past rehearing, even had he waited past  
24 certiorari being denied, he still had about ten  
25 months left on his two-year clock. So, the idea

1 --

2 JUSTICE SOTOMAYOR: I know. You're --  
3 you're claiming he was dilatory but putting all  
4 of that aside, your -- you still maintain that  
5 there's some practical importance to not letting  
6 him -- not exhaust, but go through a pending  
7 appellate process?

8 MR. STONE: He may, Your Honor, if he  
9 wishes. But if he's already suffered a --

10 JUSTICE SOTOMAYOR: And so --

11 MR. STONE: -- constitutional  
12 violation --

13 JUSTICE SOTOMAYOR: -- now the federal  
14 court should wait or not wait?

15 MR. STONE: It need not, Your Honor.  
16 It need --

17 JUSTICE SOTOMAYOR: But it can?

18 MR. STONE: If parties request that it  
19 wait --

20 JUSTICE SOTOMAYOR: That --

21 MR. STONE: -- that would be on --

22 JUSTICE SOTOMAYOR: -- seems like an  
23 --

24 MR. STONE: -- case-by-case basis.

25 JUSTICE SOTOMAYOR: -- awful waste of

1 time.

2 MR. STONE: But Your Honor, the idea  
3 that there would be a freestanding stay or  
4 freestanding -- essentially pause on the accrual  
5 of 1983 actions merely because they're similar  
6 topics in issue in state and federal court is  
7 exactly what this Court rejected in Wallace.

8 JUSTICE BARRETT: Mr. Stone, I have a  
9 question about this suggestion that he could  
10 exit after the trial court denied the evidence  
11 because I mean, maybe I'm thinking about this  
12 incorrectly, but in a procedural due process  
13 claim, the claim is that the procedures given by  
14 the state were not adequate to protect -- to  
15 ensure an unconstitutional deprivation of the  
16 liberty interest.

17 And in the case of Article 64, the  
18 full run of the procedure includes the trial  
19 court and then the direct appeal and, in capital  
20 case, the direct appeal to the CCA, and then we  
21 can have this dispute about whether the petition  
22 for rehearing is included or not.

23 But I don't understand why he could  
24 exit at the trial court stage because the way  
25 Article 64 is set up, to ensure that he's not

1 deprived of a constitutional right erroneously,  
2 is to give him the opportunity to appeal to the  
3 CCA and let the CCA correct any mistake that the  
4 trial court has made.

5 So am I understanding that correctly?  
6 I just don't understand how the cause of action  
7 exists until the procedures have failed him.

8 MR. STONE: Two points, Your Honor.  
9 The more direct one, and then the less. The  
10 more direct one is I think he makes a different  
11 kind of due process claim.

12 His claim is not that the processes  
13 were insufficient. His claim is the processes  
14 are basically unfair. And when an individual  
15 says the state has subjected me to a process  
16 that is basically unfair, it cannot possibly  
17 give me a fair shake, that person has a full and  
18 complete present cause of action at that moment  
19 regarding whatever the regime is that they say  
20 that they've been -- they've been tried to.

21 Which is probably partially why my  
22 friend on the other side specifically agreed he  
23 could in, for example, Justice Alito's hypo,  
24 exit the state court system and begin his suit  
25 in federal court whenever he like because --

1           JUSTICE KAGAN:  But that's not this  
2 case, is it?  I mean, maybe this case has been  
3 narrowed but the case before us is not that.  
4 The case before us is specifically conditioned  
5 on a court of appeals determination.

6           So he couldn't exit before he gets the  
7 court of appeals determination.

8           MR. STONE:  As he -- as he described  
9 the harm that befell him, that harm befelled him  
10 originally in the trial court.

11           Now, understandably as part of his --  
12 part of a tactic to narrow the claim and to push  
13 forward the potential accrual date, he now says  
14 in his reformulated question presented that it's  
15 only from -- it's only from the Court of  
16 Criminal Appeals.

17           In that circumstance where the  
18 original condition is unconstitutional,  
19 originated in the Court of Appeals the first  
20 time, that's the first possible time he has a  
21 claim that accrued.  And even accepting the  
22 narrowing of his case here, we still are left  
23 with these untimely by the order -- by the  
24 issuance of that opinion and judgment but,  
25 Justice Kagan, this is not a narrow case.

1                   This is about whether or not  
2 individuals seeking to press Skinner-style  
3 claims are allowed to essentially avail  
4 themselves of endless procedure in state courts,  
5 whether or not procedurally --

6                   JUSTICE BARRETT: Well, just the  
7 procedure that Article 64 gives, and I -- I  
8 guess I don't see how this particular claim  
9 would have accrued, been ripe to exit the suit  
10 at trial court after the trial court ruled  
11 because the claim is that the procedure, as you  
12 said, was fundamentally unfair but it's not  
13 fundamentally unfair if the CCA could have  
14 corrected any mistake that the trial court had  
15 made, right?

16                   These are about opportunities for the  
17 procedure to run its course in a way that would  
18 correct any unfairness or any mistake made  
19 below.

20                   MR. STONE: I think there's a -- I  
21 think there's a basic difference between  
22 insufficient procedures due process claims and  
23 unfair procedures due process claims.

24                   But even if I'm wrong and you're  
25 right, Your Honor, that still means Article 64

1 provides an appeal up to the Court of Criminal  
2 Appeals and nothing else.

3           It does not provide him in its own  
4 terms with petitions for rehearing, motions to  
5 recall the mandate, these other additional sort  
6 of miscellaneous potential motions that could  
7 extend the accrual date for purposes of candidly  
8 forestalling imposition of a capital sentence.

9           So at very worst, his claim is still  
10 untimely because he filed several months too  
11 late after two years from the issuance of the  
12 opinion and judgment which marks the end of the  
13 appellate process.

14           JUSTICE ALITO: It seems to me the  
15 question here involves tension between two --  
16 two principles. One is the principle that a  
17 state does not deny procedural due process until  
18 the state-provided procedures have ended.

19           And the other is that a person  
20 bringing a 1983 claim, including presumably a  
21 1983 due process claim, does not have to exhaust  
22 state remedies. So how do we -- how do we  
23 reconcile those two?

24           MR. STONE: I think, Your Honor, you  
25 go back to sort of the theory on which a Skinner

1 claim sits, which is that for Rooker-Feldman  
2 purposes, for sort of theoretical purposes, it's  
3 not the Court that's doing the harming. It's  
4 the statute.

5 What the Court does is it provides a  
6 binding authoritative construction. So for  
7 purposes of when Mr. Reed was authoritatively  
8 bound, when his rights and duties were  
9 liquidated by Article 64, that was the first  
10 trial court judgment that included the term he  
11 dislikes.

12 He was not required to appeal that.  
13 He certainly wasn't required to pursue a motion  
14 for rehearing as Mr. Reed conceded at the podium  
15 today before he brought a 1983 action.

16 If there are no further questions --

17 JUSTICE KAGAN: I --

18 CHIEF JUSTICE ROBERTS: Thank --

19 MR. STONE: Oh, I'm sorry.

20 JUSTICE JACKSON: Are we going to go

21 --

22 CHIEF JUSTICE ROBERTS: Yeah, yep.

23 Justice Thomas?

24 Justice Alito?

25 Justice Sotomayor?



1 Justice Kavanaugh, anything further?

2 No?

3 Justice Jackson?

4 JUSTICE JACKSON: Yes. So even if he  
5 has a full and complete cause of action after  
6 the trial court rules, which is what I  
7 understood you to say in response to Justice  
8 Barrett, do you dispute that in determining when  
9 the accrual date should be, when the statute of  
10 limitations runs, we look at all sorts of  
11 things, not just when "an injury occurs," let's  
12 say that was the injury at the time?

13 I guess what I'm worried about is the  
14 suggestion that the accrual date necessarily has  
15 to start from a moment in which you can identify  
16 an injury such as you have in this case when, in  
17 cases like McDonough and Manuel, the Court seems  
18 to suggest that the accrual date is set in light  
19 of other considerations, including the fact that  
20 in this case you would have parallel litigation  
21 if you set the accrual date early.

22 In this case, it doesn't seem to make  
23 any difference in terms of helping the state  
24 because the litigation in the state court is  
25 going on so it's not like they don't have notice

1 that the person is interested in litigating this  
2 claim. So all of the reasons why you would set  
3 it early don't seem, in my view, to be happening  
4 here.

5 So do you -- do you concede that we  
6 don't just look at when the injury occurred?

7 MR. STONE: I can agree with you with  
8 one caveat, which is that this Court, for  
9 example, in the McDonough starts out with what  
10 it calls its presumptive rule under Wallace and  
11 then turns to see whether there's either  
12 inspired common law analog or a particular  
13 practical reason to choose another date.

14 For the various reasons we discussed  
15 so far, we don't believe there is one and there  
16 are practical concerns with choosing rules other  
17 than the Wallace state. But I agree that  
18 McDonough makes clear that there is sometimes  
19 reasons even analogous to common law torts or  
20 otherwise to -- to speak very finely about  
21 the -- whether or not there's a state concern  
22 here.

23 There of course is a state concern  
24 with having the accrual period be sooner rather  
25 than later because ultimately my friend on the

1 other side commented he can't imagine how a Reed  
2 trial or how time could possibly harm the state.

3 In 2021, upon remand from the CCA, a  
4 trial court gave essentially a ten-day actual  
5 innocence hearing for Mr. Reed where Mr. Reed's  
6 theories of innocence were fully and fairly  
7 litigated.

8 And what you will see from that  
9 50-page opinion is frequently many of the  
10 original witnesses or individuals involved  
11 either have dementia or died.

12 So additional delay, aside from  
13 tending to have DNA evidence degrade as Justice  
14 Alito put his separate opinion of Osborne,  
15 additional delay harms the state's ability to be  
16 able to redress this if, for example, he's  
17 entitled to a new trial for one reason or  
18 another, which he most emphatically is not.

19 CHIEF JUSTICE ROBERTS: Thank you,  
20 counsel.

21 Rebuttal, Mr. Rider-Longmaid.

22 REBUTTAL ARGUMENT OF PARKER RIDER-LONGMAID

23 ON BEHALF OF THE PETITIONER

24 MR. RIDER-LONGMAID: Thank you, Mr.  
25 Chief Justice.

1                   Just three points. Justice Alito and  
2 Justice Barrett asked about I think the  
3 exhaustion question and whether exhaustion would  
4 be required.

5                   I don't think the Court has to address  
6 that here. I don't think it is required. I  
7 don't think the Court has to address it because,  
8 of course, Mr. Reed, if you look at it this way  
9 did exhaust all of the available procedures and  
10 therefore Mr. Reed must be correctly in this  
11 case if that is a requirement.

12                   But if it's not a requirement, then  
13 we're saying by analogy you look to traditional  
14 due process claims and they're all the practical  
15 reasons, of course, to wait until the state  
16 court proceedings are over.

17                   The second point is I didn't hear any  
18 practical concerns maybe until the end there  
19 about capital defendants as to why Goertz's rule  
20 is superior or why it's more administrable. I  
21 think Mr. Reed's rule is the clearest, most  
22 administrable simple rule here.

23                   And finally, as -- as to the delay  
24 question, many defendants are going to be  
25 non-capital defendants like Osborne. And those

1 people are going to be subject to the same  
2 regime.

3 And nothing is going to happen to  
4 them. They're not going to see -- see their  
5 freedom one day sooner if they don't prevail in  
6 these proceedings. So there's no reason not to  
7 allow the proceedings to fully play out.

8 And as to Mr. Reed, what I would say  
9 is that it's my understanding that you do not  
10 get a stay of execution just because you brought  
11 an Article 64 proceeding or just because you're  
12 in section 1983 proceedings before a federal  
13 court challenging the adequacy of the procedures  
14 available to you from the state.

15 Mr. Reed has a stay of execution from  
16 the Texas courts on his ninth subsequent habeas  
17 petition before the courts where he raised  
18 evidence that Fennell admitted to killing Stites  
19 because he discovered she was sleeping with a  
20 black man, that Fennell threatened to kill  
21 Stites if he caught her cheating, that Fennell  
22 made inculpatory statements at Stites' funeral  
23 and that Fennell and Stites' relationship was  
24 fraught. We have all the other evidence that  
25 Justice Sotomayor has pointed to and is in the

1 briefing and those are all serious things we  
2 think the Court should consider.

3 So I think when you look at the fact  
4 that no one's going to be able to get a stay of  
5 execution without some showing, there's really  
6 not a concern of delay in cases like these.

7 CHIEF JUSTICE ROBERTS: Thank you,  
8 counsel. The case is submitted.

9 (Whereupon, at 1:16 p.m., the case was  
10 submitted.)

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## Official - Subject to Final Review

<p><b>1</b></p> <p><b>1:16</b> <sup>[1]</sup> 69:9  <b>11</b> <sup>[1]</sup> 1:11  <b>111</b> <sup>[1]</sup> 8:20  <b>12:16</b> <sup>[2]</sup> 1:15 3:2  <b>1257</b> <sup>[1]</sup> 42:17  <b>13.3</b> <sup>[1]</sup> 7:11  <b>17</b> <sup>[2]</sup> 38:22 46:3  <b>18</b> <sup>[1]</sup> 38:23  <b>1884</b> <sup>[1]</sup> 8:21  <b>1983</b> <sup>[14]</sup> 4:1 9:8 12:23 17:14 18:13 24:18 42:25 44:14 55:19 58:5 62:20,21 63:15 68:12</p>	<p><b>account</b> <sup>[1]</sup> 52:1  <b>accrual</b> <sup>[30]</sup> 4:7,9,10,22 9:14,23,23 17:11 37:6,8 48:15 49:3,10 50:9,19 52:9,14,15,16 53:17,20 54:22 58:4 60:13 62:7 64:9,14,18,21 65:24  <b>accrue</b> <sup>[6]</sup> 10:8 18:25 31:19 47:24 49:16,19  <b>accrued</b> <sup>[14]</sup> 4:17 29:7 36:12,19 38:12,16 49:7 50:12,14,15,18,23 60:21 61:9  <b>accrues</b> <sup>[5]</sup> 3:11 5:4 9:19 45:15 46:14  <b>accurate</b> <sup>[1]</sup> 19:20  <b>accused</b> <sup>[1]</sup> 45:20  <b>acknowledged</b> <sup>[1]</sup> 39:17  <b>action</b> <sup>[20]</sup> 9:14 10:3,8 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