SUPREME COURT
OF THE UNITED STATES

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 70

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3 RODNEY REED,)
4 Petitioner,)
5 v.) No. 21-442
6 BRYAN GOERTZ,)
7 Respondent.)
8 - - - - - - - - - - - - - - - - - -
9
10 Washington, D.C.
11 Tuesday, October 11, 2022
12
13 The above-entitled matter came on for
14 oral argument before the Supreme Court of the
15 United States at 12:16 p.m.
16
17 APPEARANCES:
18 PARKER RIDER-LONGMAID, ESQUIRE, Washington, D.C.; on
19 behalf of the Petitioner.
20 JUDD E. STONE, II, Solicitor General, Austin, Texas;
21 on behalf of the Respondent.
22
23
24
25

1 C O N T E N T S

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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 your liberty
9 interests in -- you've been deprived, that your
10 -- that your client have been -- has been
11 deprived of and who deprived him of it?
12 MR. RIDER-LONGMAID: Your Honor, of --
13 of course. As the Court recognized in Osborne,
14 the -- the liberty interest is proving one's
15 innocence with newly discovered evidence. And
16 so, as the Court said in Osborne, as a matter of
17 procedural due process, the procedures need to
18 be fair to 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 -- I would -- I would back up and say, as
7 Texas recognizes on page 5 of the red brief, the
8 -- the district attorney, or Goertz, has
9 authority to allow DNA testing. So he has a
10 choice. He can either allow it, or he can say
11 I've looked at the construction of Article 64,
12 I've looked at the way the CCA has interpreted
13 it, and I'm going to not allow Reed to conduct
14 DNA testing on these items. And of -- and, of
15 course, he's -- he -- he's enforcing Article 64
16 in that way.
17 If the Court were to say to him you
18 must -- you must allow testing because Reed
19 satisfies Article 64, then he would have to
20 allow it. But, in this case, he's enforcing
21 Article 64 by not permitting testing.
22 JUSTICE SOTOMAYOR: He's permitted
23 testing on some items, correct?
24 MR. RIDER-LONGMAID: He has permitted
25 testing --

1 JUSTICE SOTOMAYOR: Not by court order
2 but by agreement?
3 MR. RIDER-LONGMAID: That -- that's
4 right, Your Honor. I would -- I would -- and
5 you can look at page 43a of the Petition
6 Appendix for -- for that detail. And, of
7 course, as I said, page 5 of the red brief cites
8 a case called Skinner versus State from 2016,
9 where the CCA also makes clear that there is
10 authority for district attorneys to permit
11 testing.
12 JUSTICE SOTOMAYOR: I'm assuming you
13 know our own finality rule, Court Rule 13.3 --
14 MR. RIDER-LONGMAID: That's right --
15 JUSTICE SOTOMAYOR: -- and the time to
16 file a cert petition challenging a state court
17 judgment runs, under our rules, on a -- from the
18 time a decision is rendered on a timely filed
19 petition for rehearing, right?
20 MR. RIDER-LONGMAID: That's right,
21 Your Honor.
22 JUSTICE SOTOMAYOR: And, in Hibbs, we
23 explained the rationale behind that rule,
24 correct?
25 MR. RIDER-LONGMAID: I think that's

1 right, Your Honor. I -- I --
2 JUSTICE SOTOMAYOR: Because the Court,
3 on rehearing, could modify the judgment. The
4 Texas court of appeals could do that here too?
5 MR. RIDER-LONGMAID: That's --
6 JUSTICE SOTOMAYOR: Could have done
7 that here?
8 MR. RIDER-LONGMAID: That's right,
9 Your Honor.
10 JUSTICE SOTOMAYOR: All right. So --
11 JUSTICE ALITO: Could you have -- I'm
12 sorry.
13 JUSTICE SOTOMAYOR: Yes. There is a
14 difference before -- between enforceability of a
15 judgment and finality of a judgment, correct?
16 MR. RIDER-LONGMAID: I -- I think
17 that's right, Your Honor. I -- I think, here,
18 we would point to the analogy exactly that Your
19 Honor is making, and I think that rule goes far
20 back in our tradition.
21 We have a -- I would cite to you Texas
22 Pacific Railway versus Murphy, 111 U.S. 488 at
23 489 to 90, which is an 1884 case which looks to
24 older precedent and says there, "If a petition
25 for rehearing is presented" -- ellipsis -- the

1 time for an appeal "does not begin to run until
2 the petition is disposed of."
3 So this has long been the law, and you
4 would -- we can also point to traditional due
5 process analogies that we pointed to in the
6 briefs to say what we want to do is allow the
7 state court proceedings to come to rest before
8 moving into federal court.
9 JUSTICE ALITO: Could you have filed
10 your 1983 complaint right after the -- the Court
11 of Criminal Appeals' decision?
12 MR. RIDER-LONGMAID: Your -- Your
13 Honor, I think, yes, we could have. I -- I -- I
14 -- but I want to take a step back and note that
15 there's a difference between injury, when you
16 can bring a cause of action, and accrual dates,
17 and that's what this Court's decisions in
18 McDonough and Manuel and Wallace versus Kato all
19 make --
20 JUSTICE ALITO: But can you bring --
21 can you bring suit on a claim before the claim
22 accrues?
23 MR. RIDER-LONGMAID: I -- Your Honor,
24 I think you can. I think Wallace versus Kato
25 makes that clear. I -- I'm using the definition

1 of "accrual" from the Court's cases that accrual
2 is when the statute of limitations begins to
3 run. So take Wallace versus Kato as an example.
4 The Court makes clear that someone could file a
5 false -- a Fourth Amendment false imprisonment
6 action at the moment they're falsely arrested.
7 But there is the Court -- what the Court calls
8 refinement from the common law, looking to the
9 false imprisonment claim at common law and
10 saying, based on practical considerations, those
11 causes of action didn't accrue until the legal
12 process began, probably because it's hard to
13 bring --
14 JUSTICE KAGAN: So there are those
15 cases, but why is it that this case should be
16 held to fall within that set of, you know, cases
17 where there's a delta between the two? I mean,
18 why shouldn't we just -- isn't it the -- the
19 simplest thing just to say the person isn't
20 harmed until the state process has come to an
21 end and we know for a fact what the state
22 judgment is?
23 MR. RIDER-LONGMAID: Well, Your Honor,
24 I think you could look at it various ways. You
25 could look at it conceptually and say, by

1 analogy, traditional due process claims,
2 someone -- those claims are not complete until
3 the full process is over and you know that
4 there's been a denial of due process.
5 You could look as Justice Sotomayor
6 was asking about the traditional finality rule.
7 Those are analogies you could look to. You
8 could also look to the analogies in cases like
9 Wallace versus Kato or -- or McDonough, where
10 you're saying, okay, we have a favorable
11 termination requirement because we're looking at
12 the full process before -- before the state
13 courts.
14 I think there are also the practical
15 considerations, which are very important here.
16 I think, if anyone went in --
17 JUSTICE KAGAN: But you're saying you
18 don't care which -- which -- which method we
19 adopt? Either Justice Alito's method, where
20 there's a delta between when you can bring a
21 claim and when the statute of limitations clock
22 starts running, or, I was suggesting, maybe
23 there ought not to be a delta, maybe you -- the
24 -- the -- the -- the cause of action is complete
25 at the same time that the statute of limitations

1 starts running, and both are when the -- the
2 state process has come to an end, including the
3 opportunity for rehearing.
4 MR. RIDER-LONGMAID: So I -- I just
5 want to say a -- a few things, Your Honor. It's
6 -- it's not that I don't care what the rationale
7 is. I think there are mutually supporting
8 rationales. One thing I do want to point out is
9 we don't think there's an exhaustion requirement
10 or at least that this Court should say there's
11 an exhaustion requirement. So, if you were to
12 say that the harm is not complete to the -- in
13 -- in -- in such a way that someone could not
14 bring a suit earlier, I think that that might --
15 might be problematic down the road. So --
16 JUSTICE KAGAN: Well, an exhaustion
17 requirement is just a requirement that says,
18 even once you've suffered harm, you have to go
19 through certain processes rather than bring
20 suit.
21 But this would be a statement that the
22 harm isn't -- doesn't occur until -- until the
23 time when the opportunity for rehearing has gone
24 by.
25 MR. RIDER-LONGMAID: I -- I think I

1 would say it this way, Your Honor. I think
2 someone -- I think a prisoner could exit the
3 state court procedures at any point and bring a
4 Section 1983 action at that time and in -- in
5 all likelihood would allow, as -- as -- as I
6 think Your Honor posits, the time for rehearing
7 to lapse.
8 And I think that would be okay. There
9 would be harm at that point. The -- the --
10 there would be a cause of action at that point.
11 And the procedures would be -- the state court
12 proceedings would have come to an end. There
13 would be finality because there was no request
14 for rehearing, just as --
15 CHIEF JUSTICE ROBERTS: Well, that --
16 JUSTICE JACKSON: So --
17 CHIEF JUSTICE ROBERTS: -- so, I mean,
18 you want to have your cake and eat it too. My
19 -- my concern with your position would be that
20 it's going to put off the time when people can
21 bring claims for access to evidence because the
22 claim is not going to be complete until you have
23 the final decision by the CCA under your view,
24 which helps you because you want to put off, you
25 know, the time at which this is -- because

1 otherwise the statute of limitations problem
2 would be -- would be clear.
3 But, on the other hand, somebody who's
4 there and is ready to go in federal court really
5 won't be able to until the end of the CCA
6 process, right, because, under your view, he has
7 not finally been deprived of due process yet?
8 MR. RIDER-LONGMAID: Your -- Your --
9 Your Honor, I would -- I would answer it this
10 way: I don't think there is an exhaustion
11 requirement. I think someone can exit the state
12 court proceedings earlier.
13 I think that the challenge -- because
14 the -- the analogy to traditional due process
15 claim, as I was discussing with Justice Kagan,
16 is saying there's not a due process deprivation
17 until the proceedings are complete.
18 Of course, what we're actually
19 challenging here and I think what litigants like
20 Skinner would be challenging or Osborne would be
21 challenging are the requirements under state law
22 that they must meet to show that they're
23 entitled to the evidence.
24 So it's not about, like, necessarily
25 the length of process but about what they

1 actually must show.
2 CHIEF JUSTICE ROBERTS: Well, I know.
3 But the answer on the other side is, well,
4 they're not going to know until they finally get
5 an -- got an authoritative determination from
6 the CCA, right?
7 MR. RIDER-LONGMAID: So -- so -- so,
8 Your Honor, I would say this. I think this is
9 I'm -- I'm sure why the Court suggested in
10 Osborne that it would be a good idea to continue
11 pursuing these processes, and Skinner was, as
12 the Court noted, better positioned than Osborne
13 was to raise that challenge because he had gone
14 all the way to the CCA.
15 I think that there are going to be
16 practical concerns for litigants who try to
17 challenge the state's procedures before they've
18 actually tried to invoke them and seen what
19 result they get.
20 I think we could come up with
21 hypotheticals where -- let's -- let's -- let's
22 take the person who gets a ruling from the trial
23 court and it says you're not entitled to the
24 evidence, you failed these requirements. Okay.
25 And this happens to be a state unlike Texas

1 because it took a number of years in this case
2 to come up with, for example, a
3 non-contamination requirement.
4 Well, let's say this is five years
5 from now in a state with plenty of appellate
6 precedent on what Article 64 means, and they
7 look at the trial court's ruling and they say,
8 well, I know what's going to happen if I appeal.
9 I want to go straight to federal court. So I
10 think -- I think that --
11 JUSTICE JACKSON: Well, what about a
12 state in which there is no such process? I
13 mean, we have a state -- we have Texas here that
14 has a process for appealing all the way through
15 and getting a conclusive determination.
16 But I suppose Texas didn't have to
17 have Rule 64 or Article 64. And so, if you have
18 a state in which the DA says, I'm not giving you
19 -- I'm not going to give you DNA testing because
20 of how I understand the law, what -- what's your
21 view as to whether or not a person could go
22 directly to federal court at that point and
23 maybe not even go to the state?
24 MR. RIDER-LONGMAID: Your Honor, I
25 think in that -- of course, it's not before the

1 Court, but I think in that case the person could
2 go directly to court. They would be able to
3 say, I view the district attorney's action as
4 enforcing this law and I think the law is
5 unconstitutional in whatever the ways are that
6 they want to --
7 JUSTICE JACKSON: And so -- so it's
8 ripe at the point at which the person is denied,
9 ripe for the point -- for the purpose of going
10 to federal court. But I thought your answer to
11 Justice Kagan was going to be we're not really
12 in the injury discovery rule world.
13 In other words, she suggested that the
14 person -- why don't we say that the person isn't
15 harmed until he gets to the end of the state
16 process, but that seems to me to assume that
17 we're looking for an injury when we're talking
18 about accrual in this context.
19 And I had understood, you know,
20 Justice Scalia in the TRW case, for example, to
21 say that in a 1983 case we're not really looking
22 for injury in that same way. We're looking for
23 the cause of action to be complete, which is, I
24 guess, the determination that you don't have DNA
25 testing in this situation.

1 MR. RIDER-LONGMAID: I think the
2 injury, Your Honor, is the deprivation without
3 due process of the liberty interest and proving
4 your evidence -- proving your innocence with
5 newly discovered evidence.
6 JUSTICE ALITO: Suppose this case is
7 resolved without a determination of the merits
8 of your due process challenge to the Court of
9 Criminal Appeals' interpretation of Texas law.
10 And now suppose another case arises
11 that's similar to this involving a different
12 prisoner and the prisoner asks the district
13 attorney to allow DNA testing of certain
14 evidence, and the district attorney says, no,
15 it's been contaminated, and, therefore, under
16 the authoritative interpretation of the CCA,
17 it's not -- you don't have a right to have it
18 tested.
19 Could you -- could that prisoner sue
20 right away under 1983?
21 MR. RIDER-LONGMAID: I -- I think they
22 -- that prisoner could, Your Honor, because I --
23 I think there's no exhaustion requirement, and
24 they would be able to allege under, I think,
25 Your Honor's hypothetical that there is

1 deprivation without due process of law because
2 they would be pointing to the procedure as a
3 challenge.
4 JUSTICE ALITO: All right. Now
5 suppose the prisoner says but I am going to
6 challenge this in court.
7 Now the -- it doesn't accrue. What
8 this -- when would the statute of limitations
9 have arisen under this -- the first scenario I
10 gave you?
11 MR. RIDER-LONGMAID: I -- I think it
12 would run from the refusal if the prisoner did
13 not invoke any process. I think on, I think
14 your next, Your Honor's next hypothetical, the
15 -- the prisoner invokes the next process.
16 JUSTICE ALITO: Right. And then it
17 doesn't run until -- until the denial of
18 rehearing by the Court of Criminal Appeals?
19 MR. RIDER-LONGMAID: Or whenever the
20 prisoner exits the state court process.
21 JUSTICE BARRETT: Counsel, I have a
22 question about Rooker-Feldman.
23 MR. RIDER-LONGMAID: Yes.
24 JUSTICE BARRETT: So I understand --
25 let's say that I agree with you that your no

1 contamination claim is not barred by
2 Rooker-Feldman because I think you could say the
3 CCA's decision, assume it's an accurate
4 interpretation of state law, it's just as if the
5 no contamination requirement was on the statute,
6 it's in the statute itself, and so it's a
7 different claim.
8 Is that true, though, of the delay
9 finding and the harmless error, the jury would
10 have reached the same verdict even if it had
11 known about the exculpatory evidence findings?
12 Because those it seems to me you're -- am I
13 right that you're raising a procedural due
14 process challenge to that as well, that that's
15 part of the claim?
16 MR. RIDER-LONGMAID: That's right,
17 Your Honor. So we're challenging those -- the
18 three different aspects of --
19 JUSTICE BARRETT: So why aren't the
20 other two not barred by Rooker-Feldman? Because
21 those seem to me about the application of the
22 state standard to the facts of your case.
23 MR. RIDER-LONGMAID: Right. So I -- I
24 -- we -- we set out some of the -- of course,
25 we're not at the merits yet -- but we set out

1 some of the merits theories on pages 40 and 41
2 of the blue brief.
3 What I would say is it's a -- it's a
4 challenge actually to the rule that the Court of
5 Criminal Appeals articulated there. So, for
6 example, on what we might call the exculpatory
7 evidence requirement, the -- the problem, as we
8 have alleged it, or there are several problems,
9 but that the Court of Criminal Appeals says that
10 the --
11 JUSTICE BARRETT: The inculpatory
12 doesn't count?
13 MR. RIDER-LONGMAID: Discredited, so
14 you can't show that the state's trial evidence
15 has been discredited, which is something I
16 think, you know, Justice Sotomayor's separate
17 opinion in 2020 shows this is a problem.
18 You -- you can't point to other
19 evidence inculpating, for example, Jimmy
20 Fennell, and then the unreasonable delay bit,
21 it's -- it -- it's not about the application.
22 It's not the particular application in the
23 judgment.
24 It's about the rule that you can use
25 against the prisoner these efforts to establish

1 exculpatory evidence, the types of evidence we
2 were just talking about on the exculpatory prong
3 and hold them against the prisoner. So --
4 JUSTICE BARRETT: Okay. Thank you.
5 That's very helpful.
6 A quick question on the Article III
7 point. Why didn't you seek an injunction? Why
8 did you do declaratory judgment instead?
9 MR. RIDER-LONGMAID: I -- I think a
10 few points, Your Honor. The first is that it's,
11 of course, not necessary. We pointed in the
12 briefing to Franklin versus Massachusetts --
13 JUSTICE BARRETT: Right.
14 MR. RIDER-LONGMAID: -- that this
15 Court can expect executive officials to abide by
16 the Court's rulings.
17 And -- and, really, I think as far as
18 the Court would need to go to find
19 redressability here is to say, if -- if the
20 federal district court were to say these
21 procedures are unconstitutional, you have to
22 provide due process, you have to have a version
23 of Article 64 that provides due process, even --
24 even just that would remedy the injury because,
25 again, the injury is deprivation of DNA testing

1 without due process.
2 JUSTICE BARRETT: Oh, no, no, I -- I
3 understand your argument. I was just wondering
4 why you didn't, you know.
5 MR. RIDER-LONGMAID: I -- I -- I -- I
6 just didn't think it was necessary.
7 JUSTICE BARRETT: Okay.
8 MR. RIDER-LONGMAID: So I -- what --
9 what I'd like to do is -- is perhaps move to the
10 practical considerations and the -- and the
11 problems with Fifth Circuit's rule on Goertz's
12 rule.
13 As -- as I stated in the opening, if
14 the -- on the Fifth Circuit's rule, the injury,
15 the only injury that the Fifth Circuit seemed to
16 care about occurs when the trial court first
17 denies testing.
18 But I think, if that's the rule, then
19 every single time a prisoner continues to pursue
20 relief in state court and seek that testing,
21 there is -- there is a great risk of parallel
22 proceedings because the prisoner is going to
23 have to run to federal court, file a complaint
24 that's protective. The judge may or may not
25 require motions and responses to figure out what

1 he or she is supposed to do with that protective
2 complaint, and then there's going to have to be
3 an amended complaint once the state appellate
4 courts rule on the issue.
5 JUSTICE ALITO: Well, suppose the
6 difference is between a rule that says the
7 statute of limitations runs when the Court of
8 Criminal Appeals renders its decision and a rule
9 that says it doesn't begin to run until
10 rehearing is denied. Then you're talking about
11 a -- a brief period of time, I would imagine, in
12 most cases.
13 In this instance, it -- it seems to
14 have dragged out. So part of your argument is
15 that your rule is better because it serves
16 interests of federalism and comity, but how
17 weighty is that if you're just talking about a
18 relatively short period of time?
19 MR. RIDER-LONGMAID: So I want to make
20 two points as to the -- the additional time for
21 rehearing, Your Honor.
22 The first is that I think,
23 symbolically, it just disrespects the -- the
24 state court's appellate process to say we're not
25 going to -- the federal court doesn't care about

1 what happens after it -- during the rehearing
2 process.
3 I think the second point is that, as
4 the Court knows, Section 1983 statutes of
5 limitations are borrowed from state law. And so
6 not every state is going to have a two-year,
7 three-year, four-year statute of limitations. I
8 think Kentucky, Louisiana, and Tennessee we
9 found have a one-year statute of limitations,
10 for example. And I don't think it's all that
11 out of the ordinary for a rehearing motion to be
12 pending -- in this case, it was six months --
13 for a significant amount of time. And, of
14 course, the -- the -- we normally don't think
15 that someone is dilatory unless they've actually
16 filed beyond the statute of limitations.
17 I -- I think the other point that I
18 would go to is it's -- it's not clear to me what
19 purpose the statute of limitations is really
20 serving here for Texas. The -- most states --
21 and I would point you to the Retired Judges'
22 amicus brief. Most states don't follow the same
23 timeliness rules with these types of
24 post-conviction DNA testing regimes as they do
25 for their post-conviction habeas proceedings,

1 for example, because they recognize, I think, as
2 the Court said in Osborne, like, the -- the
3 power of DNA testing to exonerate as well as to
4 inculpate.
5 And so we don't have the types of
6 concerns normally that you would have to protect
7 with a statute of -- statute of limitations,
8 such as concerns about faded memories of
9 witnesses or stale evidence. After all, if
10 anything, those concerns are going to count
11 against the -- the prisoner.
12 JUSTICE ALITO: Does the -- does the
13 CCA grant rehearing more frequently than this
14 Court does?
15 MR. RIDER-LONGMAID: I -- I am not
16 certain how often the CCA grants rehearing. We
17 did find some examples where they have granted
18 rehearing where it can take a significant amount
19 of time for the -- for the court to do so. But
20 I would say, going back to the earlier point,
21 Your Honor, it's -- it's -- it would be
22 important for the federal courts to allow the
23 state procedures to play out because, as Goertz
24 concedes on I think it's page 25, of Footnote 5,
25 rehearing can change the outcome.

1 So you would have -- you'd -- you --
2 you'd run the risk of having a prisoner run to
3 -- to federal court to be timely, only to have
4 pending rehearing proceedings or the suggestion
5 that the prisoner had to hurry up to somehow get
6 there.
7 JUSTICE KAVANAUGH: You were going to
8 tick through a list of practical problems, and I
9 just want to make sure you did that.
10 MR. RIDER-LONGMAID: I think -- thank
11 -- thank you, Justice Kavanaugh. I think the
12 other -- the other point here is that the Court
13 has suggested to prisoners in Osborne and
14 Skinner that they go pursue the state court
15 procedures. And, of course, that's exactly what
16 Mr. Reed did in this case.
17 And I think it would put prisoners in
18 a tough position to be expected to pursue the
19 state procedures, as Justice Alito was asking
20 about, you know, in the interest of federalism
21 and comity and then say, but we're going to
22 start the clock at some early point.
23 The other problem I think with
24 Goertz's rule, which I understand to be a notice
25 rule -- so he's not looking at the 2014 initial

1 trial court denial. Let me just step back and
2 say what happened in 2014. He's looking at the
3 2016 denial.
4 So what happened in this case was
5 trial court initially denied DNA testing in
6 2014, didn't make any findings or holdings about
7 non-contamination. It went up to the Court of
8 Criminal Appeals. The Court of Criminal Appeals
9 wanted further findings, and one of the things
10 it wanted a finding on, it wanted several
11 things, but one of them was the chain-of-custody
12 requirement in which you eventually have the
13 non-contamination requirement that lives inside
14 the chain-of-custody requirement. Sends it back
15 down.
16 And my understanding is that Goertz
17 thinks that it's -- it's only in 2016 when the
18 trial court on remand is saying, okay, there's a
19 non-contamination -- or making a finding of
20 non-contamination, that now the prisoner has no
21 -- that Mr. Reed has notice that this may be a
22 requirement that is being used against him.
23 I'm not sure what that rule would do
24 in the mine-run of cases, because I think that
25 anytime you have multiple opinions, whether it's

1 multiple trial court opinions or an opinion from
2 a trial court, opinion from the Court of
3 Criminal Appeals, the -- the litigants and the
4 courts would be expected to compare the
5 different opinions and say when was I supposed
6 to know the way that the Court of Criminal
7 Appeals or the way that the state high court was
8 going to ultimately resolve this, either, you
9 know, the first issuance of the opinion or on
10 denial of rehearing?
11 And that seems like a very burdensome
12 and unworkable regime. So I -- I think the
13 simplest rule and that -- that everyone can
14 understand, the courts can know how to
15 administer, the litigants can know how to
16 understand from the beginning, is as long as
17 they're invoking available state procedures, and
18 just like the federal system the CCA makes a
19 rehearing mechanism available, the -- the cause
20 of action has not accrued and the statute of
21 limitations has not begun to run.
22 JUSTICE BARRETT: May I ask you a
23 question just about how this works? So, if you
24 think about the process that you've been given,
25 it's Article 64, which allows you to make the

1 motion to the trial court, which you did, and am
2 I understanding correctly that you didn't really
3 know about the no-contamination requirement
4 until the process started unfolding? So you
5 couldn't have brought your challenge before you
6 invoked Article 64, correct?
7 MR. RIDER-LONGMAID: That's right,
8 Your Honor.
9 JUSTICE BARRETT: Okay. So I'm
10 thinking, well, Article 64 sets out the process
11 that you're due, it gives you the trial court
12 and then the direct appeal to the CCA, and the
13 CCA has to take it, right? It's not
14 discretionary?
15 MR. RIDER-LONGMAID: In capital cases
16 like this one, yes.
17 JUSTICE BARRETT: In capital cases
18 like this one. So you got the appeal to the
19 CCA, so it wouldn't have made sense for you to
20 file your suit at the trial court because the
21 process hadn't yet run, and part of the process
22 that Texas is giving you is allowing for
23 mistakes to be corrected, right?
24 MR. RIDER-LONGMAID: That's right.
25 JUSTICE BARRETT: So then I think it

1 matters whether at that point -- all Article 64
2 says, it stops after it says you get the direct
3 appeal to the CCA. Now it's part of the CCA's
4 other procedures, right, that you could file a
5 petition for rehearing? But should we really
6 think of that as part of the procedure given in
7 Article 64 for the prisoner to run through?
8 MR. RIDER-LONGMAID: Well, I -- I
9 don't -- I don't know that I would agree that
10 it's not part of the procedure for Article 64
11 because I think, once you're put into the Court
12 of Criminal Appeals, then, of course, the
13 court's procedures apply. It would be like any
14 -- this Court's jurisdiction tends to be
15 certiorari jurisdiction, but if you had any kind
16 of jurisdiction that gets you to this Court,
17 then you could invoke the Court's normal
18 procedures. The same for the CCA.
19 And I think, in any event, the -- the
20 practical considerations and the federalism and
21 comity considerations are strong. I think that
22 it would be this Court or the federal courts
23 essentially saying to the state courts we don't
24 care what other mechanisms you have that are
25 available, we don't care how often you may or

1 may not change your reasoning, because that --
2 that could also happen.
3 So I think the only distinction the
4 court could draw between the issue -- between
5 saying that the -- the cause of action should
6 accrue at the trial court's opinion versus the
7 CCA's opinion versus denial of rehearing is
8 saying, well, we think it's a lesser chance that
9 something is going to happen.
10 But, again, the procedure exists for a
11 reason. And just as the colloquy with Justice
12 Sotomayor at the beginning, you wouldn't
13 expect -- I don't think anyone could come to
14 this Court before they received the denial of
15 rehearing or an amended opinion on rehearing
16 before a federal court of appeals in much the
17 same way.
18 JUSTICE BARRETT: Thank you.
19 CHIEF JUSTICE ROBERTS: Thank you,
20 counsel.
21 Justice Thomas?
22 JUSTICE THOMAS: Did you file a cert
23 petition in this before?
24 MR. RIDER-LONGMAID: We did, Your
25 Honor.

1 JUSTICE THOMAS: If we had granted
2 that cert petition, would that have been
3 improperly granted?
4 MR. RIDER-LONGMAID: I don't think it
5 would have been improperly granted, Your Honor.
6 I think, as a practical matter, it was, going
7 back to the colloquy with Justice Barrett, very
8 difficult for Mr. Reed to make a due process
9 challenge to the CCA's authoritative
10 construction of Article 64 until that
11 construction issued.
12 And so, after denial of rehearing,
13 that's when we -- we filed a cert petition with
14 this Court, raising, among other things, due
15 process challenges. And, of course, the Court
16 denied review.
17 CHIEF JUSTICE ROBERTS: Justice Alito?
18 JUSTICE ALITO: This case can be
19 viewed as having been drastically narrowed as a
20 result of the briefing so that you have
21 clarified that the particular claim you're --
22 you're pressing is an authoritative construction
23 claim. You're challenging the way the statute
24 was interpreted by the Court of Criminal
25 Appeals. And you couldn't know that that would

1 be the interpretation until the Court of
2 Criminal Appeals issued that decision, right?
3 MR. RIDER-LONGMAID: That's right,
4 Your Honor.
5 JUSTICE ALITO: And -- and so the --
6 the question then -- if you have other arguments
7 and they may -- they may be meritorious, but if
8 we just look at that, the difference, what's at
9 issue really is kind of case-specific and really
10 quite narrow, whether in this particular type of
11 case involving an authoritative construction due
12 process claim the statute begins to run when
13 that construction is announced by the CCA or
14 whether it doesn't begin to run until the time
15 for petition -- for a petition for rehearing has
16 elapsed or the petition for rehearing has been
17 denied, right?
18 MR. RIDER-LONGMAID: I think that's
19 the only question the Court needs to answer,
20 Your Honor.
21 JUSTICE ALITO: Okay. Thank you.
22 MR. RIDER-LONGMAID: I know that your
23 colleagues have asked other questions that would
24 go to when does the injury occur and what would
25 happen in other cases. I don't think the Court

1 needs to lay out a whole framework, but I think
2 we've provided some answers as to how it could.
3 JUSTICE ALITO: Okay. Thank you.
4 CHIEF JUSTICE ROBERTS: Justice
5 Sotomayor?
6 JUSTICE SOTOMAYOR: All the other
7 issues, the Fifth Circuit decided just this
8 jurisdictional issue, correct?
9 MR. RIDER-LONGMAID: The -- the Fifth
10 Circuit decided that there was no Rooker-Feldman
11 problem, there is no Ex parte Young problem. It
12 -- there's no standing problem, I believe, as
13 well. It -- and then it just resolved the -- on
14 the statute of limitations grounds. That's
15 right.
16 JUSTICE SOTOMAYOR: And it decided
17 what, the trial court decision? The statute --
18 MR. RIDER-LONGMAID: 2014, the first
19 trial court decision.
20 JUSTICE SOTOMAYOR: Okay.
21 CHIEF JUSTICE ROBERTS: Justice Kagan?
22 Justice Gorsuch?
23 Justice Barrett?
24 Just -- okay.
25 MR. RIDER-LONGMAID: Thank you.

1 CHIEF JUSTICE ROBERTS: Thank you,
2 counsel.
3 General Stone.
4 ORAL ARGUMENT OF JUDD E. STONE, II
5 ON BEHALF OF THE RESPONDENT
6 MR. STONE: Thank you, Mr. Chief
7 Justice, and may it please the Court:
8 Reed's claim is both jurisdictionally
9 barred and untimely. On jurisdiction, the
10 defendant Reed named, the claim he brought, and
11 the relief he seeks don't line up.
12 Reed sued Goertz for a declaration
13 regarding Chapter 64, but Chapter 64 governs
14 only access to testing through Texas courts. It
15 does not control Goertz's common law authority
16 to agree to testing.
17 A declaration regarding Chapter 64
18 against Goertz would neither affect Goertz's
19 common law authority nor bind Texas courts.
20 That mismatch deprives Reed of standing and
21 forecloses his reliance on Ex parte Young.
22 On the merits, everyone agrees that
23 due process is the relevant constitutional
24 right, and everyone agrees that Wallace supplies
25 the presumptive rule. Reed's claim accrued when

1 he had a complete and present cause of action.
2 Though he formulated it somewhat
3 differently in his complaint and his petition,
4 the gravamen of Reed's claim now is that the
5 Court of Criminal Appeals' decision violated due
6 process. If so, Reed had a cause of action,
7 and, therefore, his claim accrued no later than
8 when the Court of Criminal Appeals issued its
9 opinion and judgment because that opinion and
10 judgment imposed the legal consequences on Reed
11 that he says violated due process.
12 The Wallace rule should apply here.
13 It would respect comity by treating the CCA's
14 judgment on a matter of state law the same that
15 this Court treats its judgments as immediately
16 effective. It would work regardless of how a
17 given state structures its DNA post-conviction
18 test -- testing regime. It would discourage
19 prisoners from manipulating their accrual dates
20 through motions practice in state courts. And,
21 finally, it would supply a -- an accrual date by
22 which all litigants, including those serving
23 non-capital sentences who have a strong interest
24 in early -- in early resort to a federal forum,
25 could predictably measure limitations.

1 I welcome the Court's questions.
2 JUSTICE THOMAS: Just so I'm clear,
3 because I'm not quite clear, exactly what is the
4 deprivation of liberty here and who is the
5 perpetrator?
6 MR. STONE: I understood, Your Honor,
7 the deprivation was that Texas courts had
8 prevented Mr. Reed from having fair access to
9 Article 64 proceedings, and so they had imposed
10 a condition that caused those proceedings to be
11 fundamentally unfair.
12 If that's correct, then it's the Court
13 of Criminal Appeals and its decision revealing
14 this component of Article 64 that inflicted that
15 harm.
16 JUSTICE BARRETT: So, General Stone,
17 you don't agree with the Fifth Circuit when it
18 said that the injury was inflicted by the trial
19 court?
20 MR. STONE: Yes and no, Your Honor.
21 So this is part of -- part of the consequence
22 of, as Justice Alito put it, this narrowing over
23 time. Originally in his complaint, Mr. Reed
24 brought both a facial and an as-applied claim.
25 I think that facial claim accrued, the original

1 facial claim, as soon as he was told no by the
2 trial court.
3 I think his authoritative construction
4 claim originally accrued as soon as a Texas
5 court in its opinion and judgment included the
6 violation of due process, which, as he most
7 prominently includes, is the non-contamination
8 requirement.
9 The Texas trial court on remand to the
10 Court of Criminal Appeals in paragraphs 17 and
11 18 of its opinion made explicitly clear that it
12 said that Article 64 wasn't satisfied precisely
13 because the evidence had been touched by a
14 number of jurors and court personnel and that,
15 as a consequence, essentially, it was impossible
16 to get useful DNA access.
17 JUSTICE JACKSON: Can you restate your
18 argument about jurisdiction insofar as you
19 suggested that Goertz retains common law
20 authority despite any ruling of the court?
21 That sound -- sounds an awful lot like
22 you're saying that if the federal court were to
23 decide that Mr. Reed wins under Article 64 or
24 otherwise his procedural due -- due process
25 claim, Goertz could say, I don't care, I'm not

1 going to give it to him.
2 So can you help me understand what you
3 mean by this?
4 MR. STONE: Certainly, Your Honor. As
5 Mr. Reed acknowledged at argument, Goertz has --
6 there's essentially two different, entirely
7 separate avenues by which a prisoner in Texas
8 can seek DNA testing.
9 One is by agreement with a prosecutor.
10 Article 64 does not bind that in any way. It
11 does not cabin a prosecutor's discretion whether
12 to issue DNA testing. It does not impose any
13 requirements on a prosecutor. It's essentially
14 a plenary common law privilege that the Court of
15 Criminal Appeals has recognized.
16 Chapter 64 governs how individuals
17 seeking through motions in Chapter 64 seek DNA
18 through the court system. It's an elaborate
19 procedure that once it's begun, an individual
20 who has such relevant DNA evidence has to
21 surrender it to the court.
22 JUSTICE JACKSON: All right. So what
23 happens if the person seeks DNA testing under
24 Chapter 64 through the courts, and the courts
25 decide that the person wins, they get DNA

1 testing? Are you suggesting that the
2 prosecutor's independent common law authority
3 could somehow override that and the prosecutor
4 could say, I disagree with the court and I'm not
5 going to give it to you?
6 MR. STONE: Absolutely not, Your
7 Honor. Texas law, of course, provides that
8 individuals who've have brought Chapter 64
9 motions, individuals with relevant DNA, have to
10 deposit that with the court.
11 The court would issue an order
12 providing for DNA testing on its own, and that
13 order would go off to whoever the custodian was
14 and that would be followed.
15 JUSTICE JACKSON: All right. So,
16 if -- if your point is that we have a
17 jurisdictional problem in this case because Mr.
18 Reed has named Goertz and Goertz would only have
19 authority over this under his common law
20 principles, why isn't the answer just let him
21 amend the complaint to sue the relevant person?
22 I mean, that's sort of what happens.
23 It's not that we say no standing and we dismiss
24 the case ordinarily. A child court would say,
25 oh, you have a problem because you've named the

1 wrong official, let's just allow for
2 substitution.
3 So why -- why isn't that the answer?
4 MR. STONE: Certainly, Your Honor. In
5 part because he'd ultimately no matter what have
6 a problem under Ex parte Young.
7 As this Court put in Whole Woman's
8 Health, the plurality joined by Justice Thomas,
9 the requirements for Article III standing in Ex
10 parte Young for getting around the sovereign
11 immunity of, for example, the Court of Criminal
12 Appeals requires something like an immediate or
13 impending enforcement action.
14 There is no such enforcement action --
15 JUSTICE JACKSON: Okay. But that's
16 just an argument that Article 64 can't -- the
17 right that is given can't be enforced because,
18 to the extent that the court is the one that
19 would hold the evidence and under Article 64
20 you, as a prisoner, come to the court and you
21 invoked that provision, but it's the court that
22 holds it and under Ex parte Young you can't
23 really sue the court, you're just saying that's
24 a -- that's a null right. And I don't
25 understand how the law would be constructed in

1 that way.

2 MR. STONE: Respectfully, I disagree,

3 Your Honor, for two reasons, the more important

4 one being that the petition that Mr. Reed sought

5 under Section 1257 to this Court was a proper

6 vehicle for alleging a due process problem in

7 the Court of Criminal Appeals.

8 He, as a matter of fact, in that

9 petition raises substantively identical due

10 process challenges as he raises in federal

11 court --

12 JUSTICE JACKSON: So you're saying

13 there's no 1983 claim that could be brought to

14 enforce an Article 64 right?

15 MR. STONE: At least not like this,

16 Your Honor. And -- and we agree that that's

17 inconsistent with the exercise of jurisdiction

18 this Court impliedly allowed in Skinner. As

19 this Court has put in Steel Co. though, those

20 sorts of questions that are neither passed upon

21 or briefed by the --

22 JUSTICE JACKSON: No, no, no, not

23 impliedly right. That was the basis of the

24 Skinner, Rooker-Feldman analysis. I mean, isn't

25 that what the Court said, and in Osborne, you

1 could -- you can bring this kind of claim in
2 federal court, says this Court in Osborne and
3 Skinner? No?
4 MR. STONE: Two points, Your Honor.
5 First, as this Court puts in -- in
6 Steel Co., essentially, implied exercises or
7 blessings of jurisdiction that are not actually
8 made holdings of the Court don't bind the Court
9 going forward.
10 Now the Court did make a
11 jurisdictional determination regarding
12 Rooker-Feldman that I think actually is
13 important in this case also because the Court
14 determined in its opinion specifically relying
15 on a concession that's not been made by Mr.
16 Reed, specifically that his claim was not
17 challenging anything that either the prosecutor
18 did or that the Court of Criminal Appeals did.
19 Mr. Reed has already indicated in his
20 response to Justice Barrett that his claim does,
21 in fact, challenge certain aspects of how the
22 Court of Criminal Appeals reached its decision
23 making, so even on the -- the narrow
24 Rooker-Feldman point, Skinner doesn't apply in
25 this --

1 JUSTICE JACKSON: All right. But what
2 about the Osborne point that seemed to preserve
3 the ability to bring a 1983 claim that raised
4 procedural due process concerns? And you're
5 saying here that there really is no way for Mr.
6 Reed to bring such a claim in this circumstance.
7 So isn't that inconsistent with what I
8 guess you're saying we -- the Court implicitly
9 held in Osborne, but that was sort of the basis
10 of the court's constitutional analysis in this
11 case.
12 MR. STONE: It -- it's certainly
13 inconsistent, Your Honor. The reason why we're
14 not calling for Skinner to be overruled on this
15 point is because this Court has said
16 specifically it is not bound by those, as
17 Justice Scalia colorfully put it, drive-by
18 jurisdictional analyses. But we agree that this
19 is inconsistent beforehand.
20 Nonetheless, even if this Court were
21 to essentially bless the exercise of
22 jurisdiction asserted in -- in -- in Skinner and
23 to continue from the merits, Reed should
24 nonetheless fail on the merits because -- for
25 several reasons.

1 Mr. Chief Justice, one important
2 concern you highlighted was the practical
3 concerns about essentially everyone else. Mr.
4 Reed's rule, which as far as we can discern
5 today involves that his claim accrues as soon as
6 he chooses to stop litigating in the state court
7 system and neither a moment before, no -- nor a
8 moment later, does a profound disservice to the
9 typical DNA applicant, who is not fighting off a
10 capital sentence, who has been accused and
11 convicted of a crime, and who wants one of two
12 things, either resort to a constitutionally
13 sound system that does not violate due process,
14 or resort to a federal forum as soon as
15 possible.
16 Now, while he says now that his claim
17 might have existed as soon as he exited the
18 federal forum, of course, he claimed on page 17
19 of his brief that his claim didn't even exist
20 yet until he had exhausted going through the
21 state appellate process at minimum. So that's
22 an important shift that he's made.
23 I think, Justice Alito, when you
24 pointed out inquiring whether or not a person
25 would have a claim if, for example, the

1 prosecutor said, well, I understand my right --
2 my authority to run coterminously with Chapter
3 64 and the Court of Criminal Appeals has said
4 thus and such, certainly, the claim accrues then
5 because he's been -- he's suffered a denial
6 based on that unconstitutional condition.
7 Another point, of course, is ours is
8 an incredibly easy-to-administer rule. Because
9 a Skinner claim arises essentially from a
10 judicial decision in essentially all postures,
11 every judicial decision has a file stamp date.
12 Someone running a Skinner claim or making a
13 Skinner claim is going to point to a condition
14 that they say this is the thing that violates
15 due process.
16 JUSTICE JACKSON: But easy to
17 administer or no, what's the point? If he goes
18 to federal court pursuant to your rule while
19 he's in state court, the federal court will just
20 stay the action until the state court action
21 commence -- or -- or concludes.
22 So what difference does it make? I
23 don't -- I -- I thought the most compelling part
24 of Mr. Reed's merits claim or argument was that
25 the -- none of the purposes of the statutes of

1 -- of limitations, the principles behind that
2 doctrine, obtain in your rule, that it doesn't
3 matter whether or not, other than just to keep a
4 prisoner from ultimately being able to bring a
5 federal claim.
6 MR. STONE: Quite the opposite, Your
7 Honor. In the ordinary case, our rule serves
8 most individuals who want to be able to bring
9 those federal claims.
10 Recall that Mr. Reed's rule requires
11 them to go through the state appellate system
12 before, in fact -- or at least the rule he
13 advocated for in his brief, before they have a
14 claim accrue. Someone like that, a person who
15 is suffering under a term of years since --
16 JUSTICE JACKSON: No, no, no. The
17 state -- the statute of limitations is not about
18 the person who's bringing the claim. It's about
19 the defendant, right? So the -- the purposes
20 that I'm trying to focus in on are the
21 traditional purposes of a statute of
22 limitations, which protects the defendant.
23 So why is the defendant in any
24 different position, not the person who's
25 bringing the claim, but the defendant, the

1 state, if we run the rule your way versus Mr.
2 Reed's way?
3 MR. STONE: Let me answer your
4 question and let me explain why I believe that's
5 tied to accrual even on the plaintiff's side.
6 The answer to your question is, of course,
7 states are best served by having defined dates
8 that are not manipulable by individuals who are
9 seeking to extend the length of their claims as
10 long as possible.
11 Every statute of limitations is on
12 some level a statute of repose that gives
13 someone who is exposed to potential tort claims
14 or other claims definition as to when they no
15 longer have to be on -- essentially preparing
16 for litigation for those things.
17 Now the flip side of that is an
18 accrual rule typically marks when an individual
19 may first bring suit. There's -- I -- I heard
20 though the -- though this Court discuss the
21 possibility of there being a claim that could be
22 brought but that has not yet accrued. That is a
23 very strange possibility.
24 So, when we're talking about an
25 accrual rule that is sooner in -- that happens

1 sooner in time, it serves state interests by
2 giving states defined, earlier, and faster
3 knowledge about what kind of -- of essentially
4 what claims are against it.
5 It also serves plaintiffs because,
6 once their claims accrue, they have resort to a
7 federal forum. So an individual who has to
8 labor underneath Mr. Reed's rule, where claims
9 do not accrue at least until the end of the
10 appellate process --
11 JUSTICE JACKSON: But there's no
12 exhaustion, so he's still fine. There's no
13 exhaustion requirement, so he can all -- do you
14 disagree with the representation that he can go
15 to federal court at any -- at any time in this
16 world?
17 MR. STONE: I agree that he may go to
18 federal courts as soon as he has suffered
19 essentially the due process -- the due process
20 violation. But I would point out that's
21 inconsistent with what he briefed to this Court.
22 JUSTICE JACKSON: But no --
23 JUSTICE KAGAN: But did --
24 JUSTICE JACKSON: -- accrual date
25 keeps him from going to federal court, right?

1 MR. STONE: If -- if his claim hasn't
2 accrued, Your Honor, at least as this Court
3 suggested in McDonough, a claim that hasn't
4 accrued can't be brought. An individual cannot
5 bring a claim that has not yet accrued. An
6 individual could say, well, your claim isn't
7 ripe yet for one reason or another. It hasn't
8 yet accrued. And that's -- that is the function
9 of an accrual date from a plaintiff's side.
10 JUSTICE JACKSON: On a statute of
11 limitations?
12 MR. STONE: Yes, Your Honor. If a
13 claim has not yet accrued, ordinarily an
14 individual can't bring it at all.
15 JUSTICE GORSUCH: Counsel, could I ask
16 you -- focus your attention on the difference
17 between the date of the court of appeals'
18 decision versus the rehearing date? Why should
19 we prefer your -- your view to your colleague's
20 view on -- on the rehearing date?
21 MR. STONE: A couple of reasons, Your
22 Honor, the first of course being for purposes of
23 this Court's presumptive rule under Wallace, the
24 thing -- the actual constitutional violation
25 that happened, the thing that caused the -- the

1 change of legal rights and decisions was the
2 judgment.
3 Rehearing changed nothing about the
4 rights and obligations under Texas law or the
5 U.S. Constitution to Mr. Reed.
6 JUSTICE KAGAN: That's just because
7 rehearing was denied. If rehearing had been
8 granted and the decision had been revised, then
9 it would have changed something.
10 So why shouldn't we understand that
11 this -- this claim of Mr. Reed's, which is
12 focusing on the authoritative construction, is
13 focusing on the final authoritative
14 construction, which we don't know about until
15 the end of the court of appeals' process?
16 MR. STONE: Two points, Your Honor.
17 First of all, our rule takes account
18 of that. In the rare case -- and to answer
19 Justice Alito's question, it's very rare that
20 the Court of Criminal Appeals grants rehearing.
21 In the rare case where there's a --
22 there is a rehearing and the rehearing leads to
23 a different decision, which then imposes an
24 unconstitutional condition of some kind, that
25 will be the accrual date. Very uncommon, but at

1 least that will be the defined order which will
2 have changed the rights and obligations of Mr.
3 Reed and any other litigant like him.
4 JUSTICE KAGAN: But that suggests that
5 there's a sort of changing accrual date. First,
6 we thought the accrual date was this, but now we
7 think the accrual date is that. Why isn't the
8 simpler rule just to say we don't know what the
9 authoritative construction of the court of
10 appeals is until the court of appeals' process
11 has concluded, the end?
12 MR. STONE: Two points, Your Honor.
13 First of all, I think the -- the
14 hypothetical you describe is just an ordinary
15 application of mootness where, if something
16 allegedly injured you and then that thing
17 changes in a fundamental way, your first claim
18 may have gone moot, but your second claim is
19 live.
20 To answer your question regarding
21 what's sort of easiest, finality, why that just
22 doesn't work as a matter of sort of
23 administrability, it's simple. Mr. Reed has not
24 articulated any principle that would sort out
25 his petition for rehearing from any of a

1 petition for certiorari, a petition for
2 rehearing from denial of certiorari, a motion
3 for essentially the state equivalent of a Rule
4 60(b) motion, a motion recall the mandate, all
5 of which Texas courts entertain.
6 And if the only rule he's offering is,
7 well, as soon as someone exit the state court
8 system, then they have their accrual, we're left
9 with exactly the system that this Court
10 cautioned against in Wallace, where,
11 essentially, a plaintiff can choose the accrual
12 date that he finds most genial and then can
13 bring lawsuit then. But that --
14 JUSTICE GORSUCH: Counsel, that's
15 actually a question I wanted to ask you about,
16 the man -- the mandate. You argue for the --
17 the date of the judgment at the very latest. I
18 know you have some arguments about it being
19 earlier. Your colleague argues for the -- the
20 rehearing date. Neither side argues for the
21 issuance of the mandate. Why?
22 MR. STONE: Because, Your Honor, in
23 Texas, much like, for example, with this Court,
24 the mandate is a ministerial option, a -- a
25 ministerial document that instructs a lower

1 court officially as to the nature of the
2 judgment of the superior court. It does not
3 affect the rights and duties of the parties.
4 A judgment is immediately appealable
5 -- or is immediately effective from the Court of
6 Criminal Appeals unless someone successfully
7 seeks a stay or other sort of exceptional
8 appellate remedy.
9 JUSTICE SOTOMAYOR: So let me give you
10 a hypothetical. A state court denies testing on
11 one ground. A party you're -- you -- you have
12 taken the position in your brief that the
13 accrual should be from that decision, correct?
14 MR. STONE: Assuming that that ground
15 is a constitutional violation, yes, Your Honor.
16 JUSTICE SOTOMAYOR: All right. Now
17 they go up on appeal, and the -- there was no
18 appeal there. They go up on appeal, and the
19 appellate court in Texas says they were wrong on
20 ground one, but they were wrong -- but they were
21 right on an alternative ground.
22 And now you say the plaintiff should
23 appeal from when? He should've have appealed
24 from the first decision, or now he should appeal
25 from the second or both?

1 MR. STONE: If I understand correctly,
2 Your Honor, so we've got a trial court that
3 imposed one unconstitutional condition and a
4 court --
5 JUSTICE SOTOMAYOR: He should have
6 appealed then? That's what you're saying?
7 MR. STONE: Well, if there's -- I
8 assume, because the appellate court's involved,
9 that he appealed that first judgment. Or are
10 you saying that the 1983 --
11 JUSTICE SOTOMAYOR: No, let's say then
12 it would -- I'm -- I -- he -- he does -- are you
13 saying that him appealing stays the time he has
14 to file a motion?
15 MR. STONE: No, Your Honor. He can go
16 immediately to federal court on whatever the
17 unconstitutional breach is.
18 JUSTICE SOTOMAYOR: Let's -- let's
19 assume he does what the state tells him, does a
20 timely appeal. If he came to federal court in
21 the middle of that appeal, would you argue that
22 he doesn't have a viable claim yet?
23 MR. STONE: No, Your Honor.
24 JUSTICE SOTOMAYOR: Because the
25 appellate court hasn't decided this issue,

1 constitutional issue.
2 MR. STONE: Certainly not, Your Honor.
3 On the assumption that his claim is that the
4 trial court's decision included some condition
5 that violates due process, let's say this
6 non-contamination --
7 JUSTICE SOTOMAYOR: No, no. The same
8 as here. And so you're saying -- what should
9 the federal court do? Should it stay and wait
10 until the appellate court says yes or no?
11 MR. STONE: It need not, Your Honor.
12 I might point out for practical purposes, for
13 specifically Mr. Reed's claim, even had he
14 waited past rehearing, even had he waited past
15 certiorari being denied, he still had about 10
16 months left on his two-year clock. So the idea
17 --
18 JUSTICE SOTOMAYOR: I know. You're --
19 you're -- you're claiming he's -- he was
20 dilatory, but putting all of that aside, your --
21 you still maintain that there's some practical
22 importance to not letting him -- not exhaust,
23 but go through a -- a pending appellate process?
24 MR. STONE: He may, Your Honor, if he
25 wishes. But if he's already suffered a --

1 JUSTICE SOTOMAYOR: And so --
2 MR. STONE: -- constitutional
3 violation --
4 JUSTICE SOTOMAYOR: -- now the federal
5 court should wait or not wait?
6 MR. STONE: It need not, Your Honor.
7 It need --
8 JUSTICE SOTOMAYOR: But it can?
9 MR. STONE: If parties request that it
10 wait, that would be --
11 JUSTICE SOTOMAYOR: That --
12 MR. STONE: -- that would be on a --
13 JUSTICE SOTOMAYOR: -- seems like an
14 --
15 MR. STONE: -- case-by-case basis.
16 JUSTICE SOTOMAYOR: -- awful waste of
17 time. Thank you.
18 MR. STONE: But, Your Honor, the idea
19 that there would be a freestanding stay or
20 freestanding essentially pause on the accrual of
21 1983 actions merely because they're similar
22 topics in issue in state and federal court is
23 exactly what this Court rejected in Wallace.
24 JUSTICE BARRETT: Mr. Stone, I have a
25 question about this suggestion that he could

1 exit after the trial court denied the evidence
2 because, I mean, maybe I'm thinking about this
3 incorrectly, but in a procedural due process
4 claim, the claim is that the procedures given by
5 the state were not adequate to protect -- to
6 ensure an unconstitutional deprivation of the
7 liberty interest.
8 And in the case of Article 64, the
9 full run of the procedure includes the trial
10 court and then the direct appeal, in a capital
11 case, the direct appeal to the CCA, and then we
12 can have this dispute about whether the petition
13 for rehearing is included or not.
14 But I don't understand why he could
15 exit at the trial court stage because the way
16 Article 64 is set up, to ensure that he's not
17 deprived of a constitutional right erroneously,
18 is to give him the opportunity to appeal to the
19 CCA and let the CCA correct any mistake that the
20 trial court has made.
21 So am I understanding that correctly?
22 I just don't understand how the cause of action
23 exists until the procedures have failed him.
24 MR. STONE: Two points, Your Honor,
25 the more direct one, then the less.

1 The more direct one is I think he
2 makes a different kind of due process claim.
3 His claim is not that the processes were
4 insufficient. His claim is the processes are
5 basically unfair. And when an individual says
6 the state has subjected me to a process that is
7 basically unfair, it cannot possibly give me a
8 fair shake, that person has a full and complete
9 present cause of action at that moment regarding
10 whatever the regime is that they say they've
11 been -- they've been tried to, which is probably
12 partially why my friend on the other side
13 specifically agreed he could in, for example,
14 Justice Alito's hypo, exit the state court
15 system and begin his suit in federal court
16 whenever he like.
17 JUSTICE KAGAN: But that's not this
18 case, is it? I mean, maybe this case has been
19 narrowed, but the case before us is not that.
20 The case before us is specifically conditioned
21 on a court of appeals determination.
22 He -- so he couldn't exit before he
23 gets the court of appeals determination.
24 MR. STONE: As he -- as he described
25 the harm that befell him, that harm befell him

1 originally in the trial court.

2 Now, understandably, as part of his --

3 part of a tactic to both narrow the claim and to

4 push forward the potential accrual date, he now

5 says in his reformulated question presented that

6 it's only from the -- it's only from the Court

7 of Criminal Appeals.

8 In that circumstance where the

9 original condition is unconstitutional,

10 originated in the Court of Appeals the first

11 time, that's the first possible time he has a

12 claim that accrued. And even accepting the

13 narrowing of his case here, we still are left

14 with these untimely by the order -- by the

15 issuance of that opinion and judgment, but,

16 Justice Kagan, this is not a narrow case.

17 This is about whether or not

18 individuals seeking to press Skinner-style

19 claims are allowed to essentially avail

20 themselves of endless procedure in state courts,

21 whether or not procedurally defaulted --

22 JUSTICE BARRETT: Well, just the

23 procedure that Article 64 gives, and I -- I

24 guess I don't see how this particular claim

25 would have accrued, been ripe to exit the suit

1 at trial court after the trial court ruled
2 because the claim is that the procedure, as you
3 said, was fundamentally unfair, but it's not
4 fundamentally unfair if the CCA could have
5 corrected any mistake that the trial court had
6 made, right?
7 These are about opportunities for the
8 procedure to run its course in a way that would
9 correct any unfairness or any mistake made
10 below.
11 MR. STONE: I -- I think there's a --
12 I think there's a basic difference between
13 insufficient procedures due process claims and
14 unfair procedures due process claims.
15 But even if I'm wrong and you're
16 right, Your Honor, that still means Article 64
17 provides an appeal up to the Court of Criminal
18 Appeals and nothing else.
19 It does not provide him in its own
20 terms with petitions for rehearing, motions to
21 recall the mandate, these other additional sort
22 of miscellaneous potential motions that could
23 extend the accrual date for purposes of candidly
24 forestalling imposition of a capital sentence.
25 And so, at very worst, his claim is

1 still untimely because he filed several months
2 too late after two years from the issuance of
3 the opinion and judgment, which marks the end of
4 the appellate process.
5 JUSTICE ALITO: It seems to me the
6 question here involves tension between two --
7 two principles. One is the principle that a
8 state does not deny procedural due process until
9 the state-provided procedures have ended, and
10 the other is that a person bringing a 1983
11 claim, including presumably a 1983 due process
12 claim, does not have to exhaust state remedies.
13 So how do we -- how do we reconcile
14 those two?
15 MR. STONE: I think, Your Honor, you
16 go back to sort of the theory on which a Skinner
17 claim sits, which is that for Rooker-Feldman
18 purposes, for sort of theoretical purposes, it's
19 not the Court that's doing the harming. It's
20 the statute.
21 What the Court does is it provides a
22 binding authoritative construction. So, for
23 purposes of when Mr. Reed was authoritatively
24 bound, when his rights and duties were
25 liquidated by Article 64, that was the first

1 trial court judgment that included the term he
2 dislikes.
3 He was not required to appeal that.
4 He certainly wasn't required to pursue a motion
5 for rehearing, as Mr. Reed conceded at the
6 podium today, before he brought a 1983 action.
7 If there are no further questions, I'm
8 --
9 JUSTICE JACKSON: I --
10 CHIEF JUSTICE ROBERTS: Thank --
11 MR. STONE: Oh, I'm sorry.
12 JUSTICE JACKSON: Are we going to go
13 --
14 CHIEF JUSTICE ROBERTS: Yeah, yep.
15 Justice Thomas?
16 Justice Alito?
17 Justice Sotomayor?
18 Justice Kavanaugh, anything further?
19 No?
20 Justice Jackson?
21 JUSTICE JACKSON: Yes. So even if he
22 has a full and complete cause of action after
23 the trial court rules, which is what I
24 understood you to say in response to Justice
25 Barrett, do you dispute that in determining when

1 the accrual date should be, when the statute of
2 limitations runs, we look at all sorts of
3 things, not just when "an injury occurs," let's
4 say that was the injury at the time?
5 I -- I -- I guess what I'm worried
6 about is the suggestion that the accrual date
7 necessarily has to start from a moment in which
8 you can identify an injury such as you have in
9 this case when, in cases like McDonough and
10 Manuel, the Court seems to suggest that the
11 accrual date is set in light of other
12 considerations, including the fact that in this
13 case you would have parallel litigation if you
14 set the accrual date early.
15 In this case, it doesn't seem to make
16 any difference in terms of helping the state
17 because the litigation in the state court is
18 going on, so it's not like they don't have
19 notice that the person is interested in
20 litigating this claim. So all of the reasons
21 why you would set it early don't seem, in my
22 view, to be happening here.
23 So do you -- do you concede that we
24 don't just look at when the injury occurred?
25 MR. STONE: I can agree with you with

1 one caveat, which is that this Court, for
2 example, in McDonough starts out with what it
3 would -- calls its presumptive rule under
4 Wallace and then turns to see whether there's
5 either an inspired common law analog or a
6 particular practical reason to choose another
7 date.
8 For the various reasons we discussed
9 so far, we don't believe there is one and there
10 are practical concerns with choosing rules other
11 than the Wallace date. But I agree that
12 McDonough makes clear that there is sometimes
13 reasons either analogous to common law torts or
14 otherwise to -- to speak very finely about
15 the -- whether or not there's a state concern
16 here.
17 There, of course, is a state concern
18 with having the accrual period be sooner rather
19 than later because, ultimately, my friend on the
20 other side commented he can't imagine how a Reed
21 trial or how time could possibly harm the state.
22 In 2021, upon remand from the CCA, a
23 trial court gave essentially a 10-day actual
24 innocence hearing for Mr. Reed where Mr. Reed's
25 theories of innocence were fully and fairly

1 litigated. And what you'll see from that
2 50-page opinion is frequently many of the
3 original witnesses or individuals involved
4 either have dementia or died.
5 So additional delay, aside from
6 tending to have DNA evidence degrade, as Justice
7 Alito put in his separate opinion of Osborne,
8 additional delay harms the state's ability to be
9 able to redress this if, for example, he's
10 entitled to a new trial for one reason or
11 another, which he most emphatically is not.
12 CHIEF JUSTICE ROBERTS: Thank you,
13 counsel.
14 Rebuttal, Mr. Rider-Longmaid.
15 REBUTTAL ARGUMENT OF PARKER RIDER-LONGMAID
16 ON BEHALF OF THE PETITIONER
17 MR. RIDER-LONGMAID: Thank you, Mr.
18 Chief Justice. Just three points.
19 Justice Alito and Justice Barrett
20 asked about I think the exhaustion question and
21 whether exhaustion would be required.
22 I don't think the Court has to address
23 that here. I don't think it is required. I
24 don't think the Court has to address it because,
25 of course, Mr. Reed, if you look at it this way,

1 did exhaust all of the available procedures and,
2 therefore, Mr. Reed must be correct in this case
3 if that is a requirement.
4 But, if it's not a requirement, then
5 we're saying by analogy you would look to
6 traditional due process claims and they're all
7 the practical reasons, of course, to wait until
8 the state court proceedings are over.
9 The second point is I didn't hear any
10 practical concerns maybe until the end there
11 about capital defendants as to why Goertz's rule
12 is superior or why it's more administrable. I
13 think Mr. Reed's rule is the clearest, most
14 administrable, simple rule here.
15 And, finally, as to -- as to the delay
16 question, many defendants are going to be
17 non-capital defendants like Osborne, and those
18 people are going to be subject to the same
19 regime. And nothing is going to happen to them.
20 They're not going to see -- see their freedom
21 one day sooner if they don't prevail in these
22 proceedings. So there's no reason not to allow
23 the proceedings to fully play out.
24 And as to Mr. Reed, what I would say
25 is that it's my understanding that you do not

1 get a stay of execution just because you brought
2 an Article 64 proceeding or just because you're
3 in Section 1983 proceedings before a federal
4 court challenging the adequacy of the procedures
5 available to you from the state.
6 Mr. Reed has a stay of execution from
7 the Texas courts on his ninth subsequent habeas
8 petition before the courts where he raised
9 evidence that Fennell admitted to killing Stites
10 because he discovered she was sleeping with a
11 black man, that Fennell threatened to kill
12 Stites if he caught her cheating, that Fennell
13 made inculpatory statements at Stites' funeral
14 and that Fennell and Stites' relationship was
15 fraught. We have all the other evidence that
16 Justice Sotomayor has pointed to and is in the
17 briefing, and those are all serious things we
18 think the Court should consider.
19 So I think, when you look at the fact
20 that no one's going to be able to get a stay of
21 execution without some showing, there's really
22 not a concern of delay in cases like these.
23 CHIEF JUSTICE ROBERTS: Thank you,
24 counsel. The case is submitted.
25

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