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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.)

- - - - -

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 petition 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 -- the cause of action is complete
21 at the same time that the statute of limitations
22 starts running, and both are when the -- the
23 state 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 JUSTICE JACKSON: So --

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

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

1 not finally been deprived of due process yet?

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

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

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

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

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

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

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

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

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

1 look at the trial court's ruling and they say,
2 well, I know what's going to happen if I appeal.
3 I want to go straight to federal court. So I
4 think -- I think that --

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

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

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

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

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

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

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

25 JUSTICE ALITO: Suppose this case is

1 resolved without a determination of the merits
2 of your due process challenge to the Court of
3 Criminal Appeals' interpretation of Texas law.

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

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

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

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

1 Now the -- it doesn't accrue. When
2 would the statute of limitations have arisen
3 under the first scenario I gave you?

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

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

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

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

16 MR. RIDER-LONGMAID: Okay.

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

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

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

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

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

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

1 have alleged it, or there are several problems,
2 but that the Court of Criminal Appeals says that
3 the --

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

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

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

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

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

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

1 MR. RIDER-LONGMAID: I -- I think a
2 few points, Your Honor. The first is that it's,
3 of course, not necessary. We pointed in the
4 briefing to Franklin versus Massachusetts --

5 JUSTICE BARRETT: Right.

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

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

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

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

24 JUSTICE BARRETT: Okay.

25 MR. RIDER-LONGMAID: So I -- what --

1 what I'd like to do is perhaps move to the
2 practical considerations and the problems with
3 the Fifth Circuit's rule and Goertz's rule.

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

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

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

1 rehearing is denied. Then you're talking about
2 a -- a brief period of time, I would imagine, in
3 most cases.

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

10 MR. RIDER-LONGMAID: So I want to make
11 two points as to the -- the additional time for
12 rehearing, Your Honor.

13 The first is that I think,
14 symbolically, it just disrespects the -- the
15 state court's appellate process to say we're not
16 going to -- the federal court doesn't care about
17 what happens after -- during the rehearing
18 process.

19 I think the second point is that, as
20 the Court knows, Section 1983 statutes of
21 limitations are borrowed from state law. And so
22 not every state is going to have a two-year,
23 three-year, four-year statute of limitations. I
24 think Kentucky, Louisiana, and Tennessee we
25 found have a one-year statute of limitations,

1 for example. And I don't think it's all that
2 out of the ordinary for a rehearing motion to be
3 pending -- in this case, it was six months --
4 for a significant amount of time. And, of
5 course, the -- we normally don't think that
6 someone is dilatory unless they've actually
7 filed beyond the statute of limitations.

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

21 And so we don't have the types of
22 concerns normally that you would have to protect
23 with a statute of -- statute of limitations,
24 such as concerns about faded memories of
25 witnesses or stale evidence. After all, if

1 anything, those concerns are going to count
2 against the -- the prisoner.

3 JUSTICE ALITO: Does the -- does the
4 CCA grant rehearing more frequently than this
5 Court does?

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

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

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

1 MR. RIDER-LONGMAID: I think -- thank
2 you, Justice Kavanaugh. I think the other --
3 the other point here is that the Court has
4 suggested to prisoners in Osborne and Skinner
5 that they go pursue the state court procedures.
6 And, of course, that's exactly what Mr. Reed did
7 in this case.

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

14 The other problem I think with
15 Goertz's rule, which I understand to be a notice
16 rule -- so he's not looking at the 2014 initial
17 trial court denial. Let me just step back and
18 say what happened in 2014. He's looking at the
19 2016 denial.

20 So what happened in this case was the
21 trial court initially denied DNA testing in
22 2014, didn't make any findings or holdings about
23 non-contamination. It went up to the Court of
24 Criminal Appeals. The Court of Criminal Appeals
25 wanted further findings, and one of the things

1 it wanted a finding on, it wanted several
2 things, but one of them was the chain-of-custody
3 requirement in which you eventually have the
4 non-contamination requirement that lives inside
5 the chain-of-custody requirement. Sends it back
6 down.

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

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

1 denial of rehearing?

2 And that seems like a very burdensome
3 and unworkable regime. So I think the simplest
4 rule and that -- that everyone can understand,
5 the courts can know how to administer, the
6 litigants can know how to understand from the
7 beginning, is as long they're invoking available
8 state procedures, and just like the federal
9 system the CCA makes a rehearing mechanism
10 available, the -- the cause of action has not
11 accrued and the statute of limitations has not
12 begun to run.

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

23 MR. RIDER-LONGMAID: That's right,
24 Your Honor.

25 JUSTICE BARRETT: Okay. So I'm

1 thinking, well, Article 64 sets out the process
2 that you're due, it gives you the trial court
3 and then the direct appeal to the CCA, and the
4 CCA has to take it, right? It's not
5 discretionary?

6 MR. RIDER-LONGMAID: In capital cases
7 like this one.

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

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

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

24 MR. RIDER-LONGMAID: Well, I don't --
25 I don't know that I would agree that it's not

1 part of the procedure for Article 64 because I
2 think, once you're put into the Court of
3 Criminal Appeals, then, of course, the court's
4 procedures apply. It would be like any -- this
5 Court's jurisdiction tends to be certiorari
6 jurisdiction, but if you had any kind of
7 jurisdiction that gets you to this Court, then
8 you could invoke the Court's normal procedures.
9 The same for the CCA.

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

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

1 But, again, the procedure exists for a
2 reason. And just as in the colloquy with
3 Justice Sotomayor at the beginning, you wouldn't
4 expect -- I don't think anyone could come to
5 this Court before they received the denial of
6 rehearing or an amended opinion on rehearing
7 before a federal court of appeals in much the
8 same way.

9 JUSTICE BARRETT: Thank you.

10 CHIEF JUSTICE ROBERTS: Thank you,
11 counsel.

12 Justice Thomas?

13 JUSTICE THOMAS: Did you file a cert
14 petition in this before?

15 MR. RIDER-LONGMAID: We did, Your
16 Honor.

17 JUSTICE THOMAS: If we had granted
18 that cert petition, would that have been
19 improperly granted?

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

1 construction of Article 64 until that
2 construction issued.

3 And so, after denial of rehearing,
4 that's when we -- we filed a cert petition with
5 this Court, raising, among other things, due
6 process challenges. And, of course, the Court
7 denied review.

8 CHIEF JUSTICE ROBERTS: Justice Alito?

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

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

21 JUSTICE ALITO: And so the -- the
22 question then -- you have other arguments and
23 they may -- they may be meritorious, but if we
24 just look at that, the difference, what's at
25 issue really is kind of case-specific and really

1 quite narrow, whether in this particular type of
2 case involving an authoritative construction due
3 process claim the statute begins to run when
4 that construction is announced by the CCA or
5 whether it doesn't begin to run until the time
6 for petition -- for a petition for rehearing has
7 elapsed or the petition for rehearing has been
8 denied, right?

9 MR. RIDER-LONGMAID: I think that's
10 the only question the Court needs to answer,
11 Your Honor.

12 JUSTICE ALITO: Okay. Thank you.

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

19 JUSTICE ALITO: Okay. Thank you.

20 CHIEF JUSTICE ROBERTS: Justice
21 Sotomayor?

22 JUSTICE SOTOMAYOR: All the other
23 issues, the Fifth Circuit decided just this
24 jurisdictional issue, correct?

25 MR. RIDER-LONGMAID: The -- the Fifth

1 Circuit decided that there was no Rooker-Feldman
2 problem, there was no Ex parte Young problem.
3 It -- there was no standing problem, I believe,
4 as well. It -- and then it just resolved on the
5 statute of limitations grounds. That's right.

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

8 MR. RIDER-LONGMAID: 2014, the first
9 trial court decision.

10 JUSTICE SOTOMAYOR: Okay.

11 CHIEF JUSTICE ROBERTS: Justice Kagan?

12 Justice Gorsuch?

13 Justice Barrett?

14 Justice Jackson?

15 MR. RIDER-LONGMAID: Thank you.

16 CHIEF JUSTICE ROBERTS: Thank you,
17 counsel.

18 General Stone.

19 ORAL ARGUMENT OF JUDD E. STONE, II

20 ON BEHALF OF THE RESPONDENT

21 MR. STONE: Thank you, Mr. Chief

22 Justice, and may it please the Court:

23 Reed's claim is both jurisdictionally
24 barred and untimely. On jurisdiction, the
25 defendant Reed named, the claim he brought, and

1 the relief he seeks don't line up.

2 Reed sued Goertz for a declaration
3 regarding Chapter 64, but Chapter 64 governs
4 only access to testing through Texas courts. It
5 does not control Goertz's common law authority
6 to agree to testing.

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

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

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

1 that he says violated due process.

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

16 I welcome the Court's questions.

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

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

1 fundamentally unfair.

2 If that's correct, then it's the Court
3 of Criminal Appeals and its decision revealing
4 this component of Article 64 that inflicted that
5 harm.

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

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

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

24 The Texas trial court on remand to the
25 Court of Criminal Appeals in paragraphs 17 and

1 18 of its opinion made explicitly clear that it
2 said that Article 64 wasn't satisfied precisely
3 because the evidence had been touched by a
4 number of jurors and court personnel and that,
5 as a consequence, essentially, it was impossible
6 to get useful DNA access.

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

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

17 So can you help me understand what you
18 mean by this?

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

24 One is by agreement with a prosecutor.
25 Article 64 does not bind that in any way. It

1 does not cabin a prosecutor's discretion whether
2 to issue DNA testing. It does not impose any
3 requirements on a prosecutor. It's essentially
4 a plenary common law privilege that the Court of
5 Criminal Appeals has recognized.

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

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

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

1 The court would issue an order
2 providing for DNA testing on its own, and that
3 order would go off to whoever the custodian was
4 and that would be followed.

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

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

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

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

22 As this Court put in Whole Woman's
23 Health, the plurality joined by Justice Thomas,
24 the requirements for Article III standing in Ex
25 parte Young for getting around the sovereign

1 immunity of, for example, the Court of Criminal
2 Appeals requires something like an immediate or
3 impending enforcement action.

4 There is no such enforcement action --

5 JUSTICE JACKSON: Okay. But that's
6 just an argument that Article 64 can't -- the
7 right that is given can't be enforced because,
8 to the extent that the court is the one that
9 would hold the evidence and under Article 64
10 you, as a prisoner, come to the court and you
11 invoke that provision, but it's the court that
12 holds it and under Ex parte Young you can't
13 really sue the court, you're just saying that's
14 a -- that's a null right. And I don't
15 understand how the law would be constructed in
16 that way.

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

23 He, as a matter of fact, in that
24 petition raises substantively identical due
25 process challenges as he raises in federal

1 court --

2 JUSTICE JACKSON: So you're saying
3 there's no 1983 claim that could be brought to
4 enforce an Article 64 right?

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

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

19 MR. STONE: Two points, Your Honor.

20 First, as this Court puts in -- in
21 Steelco, essentially, implied exercises or
22 blessings of jurisdiction that are not actually
23 made holdings of the court don't bind the court
24 going forward.

25 Now the Court did make a

1 jurisdictional determination regarding
2 Rooker-Feldman that I think actually is
3 important in this case also because the Court
4 determined in its opinion specifically relying
5 on a concession that's not been made by Mr.
6 Reed, specifically that his claim was not
7 challenging anything that either the prosecutor
8 did or that the Court of Criminal Appeals did.

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

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

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

25 MR. STONE: It -- it's certainly

1 inconsistent, Your Honor. The reason why we're
2 not calling for Skinner to be overruled on this
3 point is because this Court has said
4 specifically it is not bound by those, as
5 Justice Scalia colorfully put it, drive-by
6 jurisdictional analyses. But we agree that this
7 is inconsistent beforehand.

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

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

1 sound system that does not violate due process,
2 or resort to a federal forum as soon as
3 possible.

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

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

20 Another point, of course, is ours is
21 an incredibly easy-to-administer rule. Because
22 a Skinner claim arises essentially from a
23 judicial decision in essentially all postures,
24 every judicial decision has a file stamp date.
25 Someone running a Skinner claim or making a

1 Skinner claim is going to point to a condition
2 that they say this is the thing that violates
3 due process.

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

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

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

23 Recall that Mr. Reed's rule requires
24 them to go through the state appellate system
25 before, in fact -- or at least the rule he

1 advocated for in his brief, before they have a
2 claim accrue. Someone like that, a person who
3 is suffering under a term of years since --

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

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

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

24 Every statute of limitations is on
25 some level a statute of repose that gives

1 someone who is exposed to potential tort claims
2 or other claims definition as to when they no
3 longer have to be on -- essentially preparing
4 for litigation for those things.

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

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

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

24 JUSTICE JACKSON: But there's no
25 exhaustion, so he's still fine. There's no

1 exhaustion requirement, so he can -- do you
2 disagree with the representation that he can go
3 to federal court at any -- at any time in this
4 world?

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

10 JUSTICE JACKSON: But no --

11 JUSTICE KAGAN: But did --

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

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

23 JUSTICE JACKSON: On a statute of
24 limitations?

25 MR. STONE: Yes, Your Honor. If a

1 claim has not yet accrued, ordinarily an
2 individual can't bring it at all.

3 JUSTICE GORSUCH: Counsel, could I ask
4 you to focus your attention on the difference
5 between the date of the court of appeals'
6 decision versus the rehearing date? Why should
7 we prefer your -- your view to your colleague's
8 view on -- on the rehearing date?

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

15 Rehearing changed nothing about the
16 rights and obligations under Texas law or the
17 U.S. Constitution to Mr. Reed.

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

22 So why shouldn't we understand that
23 this -- this claim of Mr. Reed's, which is
24 focusing on the authoritative construction, is
25 focusing on the final authoritative

1 construction, which we don't know about until
2 the end of the court of appeals' process?

3 MR. STONE: Two points, Your Honor.

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

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

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

24 MR. STONE: Two points, Your Honor.

25 First of all, I think the -- the

1 hypothetical you describe is just an ordinary
2 application of mootness where, if something
3 allegedly injured you and then that thing
4 changes in a fundamental way, your first claim
5 may have gone moot, but your second claim is
6 live.

7 To answer your question regarding
8 what's sort of easiest, finality, why that just
9 doesn't work as a matter of sort of
10 administrability, it's simple. Mr. Reed has not
11 articulated any principle that would sort out
12 his petition for rehearing from any of a
13 petition for certiorari, a petition for
14 rehearing from denial of certiorari, a motion
15 for essentially the state equivalent of a Rule
16 60(b) motion, a motion to recall the mandate,
17 all of which Texas courts entertain.

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

1 JUSTICE GORSUCH: Counsel, that's
2 actually a question I wanted to ask you about,
3 the mandate. You argue for the -- the date of
4 the judgment at the very latest. I know you
5 have some arguments about it being earlier.
6 Your colleague argues for the -- the rehearing
7 date. Neither side argues for the issuance of
8 the mandate. Why?

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

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

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

1 MR. STONE: Assuming that that ground
2 is a constitutional violation, yes, Your Honor.

3 JUSTICE SOTOMAYOR: All right. Now
4 they go up on appeal, and the -- there was no
5 appeal there. They go up on appeal, and the
6 appellate court in Texas says they were wrong on
7 ground one, but they were wrong -- but they were
8 right on an alternative ground.

9 And now you say the plaintiff should
10 appeal from when? He should have appealed from
11 the first decision, or now he should appeal from
12 the second or both?

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

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

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

23 JUSTICE SOTOMAYOR: No, let's say then
24 he -- he does -- are you saying that him
25 appealing stays the time he has to file a

1 motion?

2 MR. STONE: No, Your Honor. He can go
3 immediately to federal court on whatever the
4 unconstitutional breach is.

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

10 MR. STONE: No, Your Honor.

11 JUSTICE SOTOMAYOR: Because the
12 appellate court hasn't decided this issue,
13 constitutional issue.

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

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

23 MR. STONE: It need not, Your Honor.
24 I might point out for practical purposes, for
25 specifically Mr. Reed's claim, even had he

1 waited past rehearing, even had he waited past
2 certiorari being denied, he still had about 10
3 months left on his two-year clock. So the idea
4 --

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

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

13 JUSTICE SOTOMAYOR: And so --

14 MR. STONE: -- constitutional
15 violation --

16 JUSTICE SOTOMAYOR: -- now the federal
17 court should wait or not wait?

18 MR. STONE: It need not, Your Honor.
19 It need --

20 JUSTICE SOTOMAYOR: But it can?

21 MR. STONE: If parties request that it
22 wait, that would be --

23 JUSTICE SOTOMAYOR: That --

24 MR. STONE: -- that would be on a --

25 JUSTICE SOTOMAYOR: -- seems like an

1 --

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

3 JUSTICE SOTOMAYOR: -- awful waste of
4 time.

5 MR. STONE: But, Your Honor, the idea
6 that there would be a freestanding stay or
7 freestanding essentially pause on the accrual of
8 1983 actions merely because they're similar
9 topics in issue in state and federal court is
10 exactly what this Court rejected in Wallace.

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

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

1 But I don't understand why he could
2 exit at the trial court stage because the way
3 Article 64 is set up, to ensure that he's not
4 deprived of a constitutional right erroneously,
5 is to give him the opportunity to appeal to the
6 CCA and let the CCA correct any mistake that the
7 trial court has made.

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

11 MR. STONE: Two points, Your Honor,
12 the more direct one, then the less.

13 The more direct one is I think he
14 makes a different kind of due process claim.
15 His claim is not that the processes were
16 insufficient. His claim is the processes are
17 basically unfair. And when an individual says
18 the state has subjected me to a process that is
19 basically unfair, it cannot possibly give me a
20 fair shake, that person has a full and complete
21 present cause of action at that moment regarding
22 whatever the regime is that they say they've
23 been -- they've been tried to, which is probably
24 partially why my friend on the other side
25 specifically agreed he could in, for example,

1 Justice Alito's hypo, exit the state court
2 system and begin his suit in federal court
3 whenever he like.

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

9 He -- so he couldn't exit before he
10 gets the court of appeals determination.

11 MR. STONE: As he -- as he described
12 the harm that befell him, that harm befell him
13 originally in the trial court.

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

20 In that circumstance where the
21 original condition is unconstitutional,
22 originated in the Court of Appeals the first
23 time, that's the first possible time he has a
24 claim that accrued. And even accepting the
25 narrowing of his case here, we still are left

1 with these untimely by the order -- by the
2 issuance of that opinion and judgment, but,
3 Justice Kagan, this is not a narrow case.

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

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

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

23 MR. STONE: I think there's a -- I
24 think there's a basic difference between
25 insufficient procedures due process claims and

1 unfair procedures due process claims.

2 But even if I'm wrong and you're
3 right, Your Honor, that still means Article 64
4 provides an appeal up to the Court of Criminal
5 Appeals and nothing else.

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

12 And so, at very worst, his claim is
13 still untimely because he filed several months
14 too late after two years from the issuance of
15 the opinion and judgment, which marks the end of
16 the appellate process.

17 JUSTICE ALITO: It seems to me the
18 question here involves tension between two --
19 two principles. One is the principle that a
20 state does not deny procedural due process until
21 the state-provided procedures have ended, and
22 the other is that a person bringing a 1983
23 claim, including presumably a 1983 due process
24 claim, does not have to exhaust state remedies.

25 So how do we -- how do we reconcile

1 those two?

2 MR. STONE: I think, Your Honor, you
3 go back to sort of the theory on which a Skinner
4 claim sits, which is that for Rooker-Feldman
5 purposes, for sort of theoretical purposes, it's
6 not the Court that's doing the harming. It's
7 the statute.

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

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

19 If there are no further questions, I'm
20 --

21 JUSTICE JACKSON: I --

22 CHIEF JUSTICE ROBERTS: Thank --

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

24 JUSTICE JACKSON: Are we going to go
25 --

1 CHIEF JUSTICE ROBERTS: Yeah, yep.
2 Justice Thomas?
3 Justice Alito?
4 Justice Sotomayor?
5 Justice Kavanaugh, anything further?

6 No?

7 Justice Jackson?

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

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

1 In this case, it doesn't seem to make
2 any difference in terms of helping the state
3 because the litigation in the state court is
4 going on, so it's not like they don't have
5 notice that the person is interested in
6 litigating this claim. So all of the reasons
7 why you would set it early don't seem, in my
8 view, to be happening here.

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

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

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

1 here.

2 There, of course, is a state concern
3 with having the accrual period be sooner rather
4 than later because, ultimately, my friend on the
5 other side commented he can't imagine how a Reed
6 trial or how time could possibly harm the state.

7 In 2021, upon remand from the CCA, a
8 trial court gave essentially a 10-day actual
9 innocence hearing for Mr. Reed where Mr. Reed's
10 theories of innocence were fully and fairly
11 litigated. And what you'll see from that
12 50-page opinion is frequently many of the
13 original witnesses or individuals involved
14 either have dementia or died.

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

22 CHIEF JUSTICE ROBERTS: Thank you,
23 counsel.

24 Rebuttal, Mr. Rider-Longmaid.

25

1 REBUTTAL ARGUMENT OF PARKER RIDER-LONGMAID

2 ON BEHALF OF THE PETITIONER

3 MR. RIDER-LONGMAID: Thank you, Mr.
4 Chief Justice. Just three points.

5 Justice Alito and Justice Barrett
6 asked about I think the exhaustion question and
7 whether exhaustion would be required.

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

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

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

1 And, finally, as to -- as to the delay
2 question, many defendants are going to be
3 non-capital defendants like Osborne, and those
4 people are going to be subject to the same
5 regime. And nothing is going to happen to them.
6 They're not going to see -- see their freedom
7 one day sooner if they don't prevail in these
8 proceedings. So there's no reason not to allow
9 the proceedings to fully play out.

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

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

1 fraught. We have all the other evidence that
2 Justice Sotomayor has pointed to and is in the
3 briefing, and those are all serious things we
4 think the Court should consider.

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

9 CHIEF JUSTICE ROBERTS: Thank you,
10 counsel. The case is submitted.

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

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Official - Subject to Final Review

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