Dismantling the Great Writ [Gage v. Chappell, 793 F.3d 1159 (9th Cir. 2015).]

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George Gage was convicted of sex crimes against a minor. Although evidence at his first trial was enough to hang the jury, he faced another trial. Ultimately, Gage was convicted and sentenced to 70 years of imprisonment. A close inspection of his case reveals a growing trend in the criminal justice system—federal legislation has created intensive barriers to claims of innocence. The Anti-Terrorism and Effective Death Penalty Act of 1996 ("AEDPA") has worked to dismantle citizens' ability to petition against their incarceration through habeas corpus. Before the AEDPA's introduction, prisoners had vast freedom to petition their sentences at a federal level. Now, states are largely left alone in their criminal adjudications. This deference and added barriers from the AEDPA create a startling framework of Americans' rights within the penal system.

I. INTRODUCTION

Most first-year law students are introduced to Blackstone's famous declaration: "[B]etter that ten guilty persons escape, than that one innocent suffer." However, with the reign of the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"),[1] it seems the system is allowing itself to uphold consistent rulings, rather than preserve the dearly held value of protecting those who are innocent. This is evident in the case of George Gage, who was convicted of sex crimes against a minor. Although evidence at his first trial was sufficient to hang the jury, he faced another trial. The *Gage* case reveals the lengths to which prosecutors may go to maintain a conviction, and the inclination of courts to stay consistent in rulings regarding the AEDPA's procedures.

Gage v. Chappell is an egregious example of the justice system preferring a process over merits. George Gage had ample evidence to present for proof of actual innocence; however, his petitions failed due to restrictions placed on the habeas corpus process through the AEDPA. As a result, Gage was found guilty of charges for sexual abuse of a child, nine counts

1. Antiterrorism and Effective Death Penalty Act (AEDPA) of 1996, Pub. L. No. 104-132, 110 Stat. 1214 (codified as amended in scattered titles of U.S.C.).

of forcible rape, and nine counts of lewd acts against a child. An examination of Gage's case reveals the greater picture applicable to every citizen: the justice system has aligned itself with process over merit.

II. BACKGROUND

A. Gage v. Chappell

In 1985, George Gage met a woman, presumably fell in love with and married her, and became a stepparent to her two children, both of whom were under the age of ten at the time.[2] The family unraveled eight years later, however, when his wife discovered Gage had a child during an extramarital affair.[3]

Although the family broke apart, his ex-wife reported Gage to Texas authorities in 1998 for sexually abusing his former stepdaughter.[4] Initially, the stepdaughter reported she was molested but that no intercourse occurred.[5] However, she changed her accounts throughout the course of police reports and trials.[6] Eventually, Gage was charged with one count of continuous sexual abuse of a child, nine counts of forcible rape, and nine counts of lewd acts against a child.[7] The stepdaughter recounted her alleged abuse from Gage during a period in her life when she attempted suicide several times and was institutionalized for mental health treatment.[8]

Gage's first trial ended in a hung jury.[9] However, the prosecution pursued another trial, this time placing Gage's accuser on the stand to testify.[10] This testimony made up the core of the trial.[11] During the second trial, Gage argued his stepdaughter's claims were manufactured for revenge against his affair.[12] Gage pursued this argument to the point of testifying.[13] Yet, the jury remained unconvinced, convicting him on all counts.[14]

At sentencing, the proceedings took a turn in favor of Gage. As the presiding judge worked to find an appropriate sentence, the prosecution was forced to provide the accusing stepdaughter's medical records.[15] The prosecution only provided these records *after* the judge threatened to overturn

2. Gage v. Chappell, 793 F.3d 1159, 1162 (9th Cir. 2015).
3. *Id.*
4. *Id.*
5. *Id.*
6. *Id.* at 1162.
7. *Id.*
8. *Id.*
9. *Id.*
10. *Id.* at 1162–63.
11. *Id.*
12. *Id.* at 1163.
13. *Id.*
14. *Id.*
15. *Id.*

the verdict.[16] The prosecution submitted the records for an *in camera* review.[17] The records not only proved to be troubling, but also showed "insufficient evidence to support the jury's verdict."[18] The court found the accuser had been assessed by medical professionals, who noted disturbing statements made by the accuser's mother.[19] For instance, Gage's ex-wife described her own daughter as a "pathological liar [who] lives her lies."[20] Another recorded note, which caused the court a great deal of reasonable doubt, stated the daughter's accusation followed an explosive fight between the mother and daughter.[21] Finally, perhaps giving the greatest pause, the daughter rarely provided details of the abuse to the professionals treating her, beyond "fleeting references."[22] Upon learning of these revelations, Gage moved for a new trial, which was granted, and his conviction was vacated.[23]

Yet, Gage's hope for an intensive review of potentially exonerating evidence in front of a jury was removed by the California Court of Appeal.[24] The prosecution sought an appeal to reinstate his conviction, arguing the jury never considered his stepdaughter's medical records during trial, so the court improperly relied on the records while granting a new trial and vacating the sentence.[25] Ultimately, Gage's conviction was reinstated.[26] A new judge was appointed to the case, who sentenced Gage to 70 years of imprisonment.[27]

As Gage moved through the post-conviction process of appeals and habeas petitions, he found himself before the Ninth Circuit Court of Appeals with a *pro se* petition.[28] For the purposes of this Comment, the focus will be on the *Brady* claim[29] raised.[30]

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16. *Id.*

17. *Id. In camera* review is a private examination of materials and/or evidence by a judge. Law Insider, *Definition of In Camera Review*, L. INSIDER, https://www.lawinsider.com/dictionary/in-camera-review [https://perma.cc/32EH-YC8F] (last visited Feb. 15, 2021). The judge may review the documents and make rulings on them, which may remain closed to the public. *Id.* This explains why the medical records were not put in front of the jury to consider.

18. *Gage*, 793 F.3d at 1163.

19. *Id.*

20. *Id.*

21. *Id.*

22. *Id.*

23. *Id.*

24. *See id.*

25. *Id.*

26. *Id.*

27. *Id.*

28. *Id.*

29. *Brady* established a pretrial discovery rule that requires that all exculpatory evidence possessed by the prosecution be turned over to the defense. *See* Brady v. Maryland, 373 U.S. 83, 87–88 (1963).

30. *See Gage*, 793 F.3d at 1163–64. The petition contained other issues; however, they will not be explored in this Comment. The *Brady* claim addressed Gage's access to his accuser's medical files in an earlier state court petition. *Id.*

B. Legal Background

Courts uphold the goal of ensuring justice when a citizen is provided the power to contest, and perhaps be remedied of, unjust incarceration. Accordingly, the United States Constitution includes the right to habeas corpus—the right to petition that one's detention is unlawful.[31]

The Constitution imposes strict limits on the power of Congress to restrict the right to habeas corpus.[32] Through the Framers' ratification of this right, the restriction became known as the "Suspension Clause": "[t]he privilege of the Writ of Habeas Corpus *shall not be suspended, unless* in Cases of Rebellion or Invasion the public Safety may require it."[33] Such care in protecting the right to habeas corpus was imperative to the Framers because the writ's history in England demonstrated that positions of power would disregard common law forms of the right.[34]

Over time, habeas corpus became a powerful tool over state and federal proceedings. It enabled a check on the treatment of individuals by both state and federal legal systems.[35] A habeas claim requires that a convict be "in custody pursuant to the judgment of a State court."[36] Thus, the defendant must be confined during the review of the writ.[37] In summary, a proper petition involves two elements: (1) an exhausted constitutional claim,[38] and

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31. U.S. CONST. art. I, § 9, cl. 2.

32. Casey C. Kannenberg, *Wading Through the Morass of Modern Federal Habeas Review of State Capital Prisoners' Claims*, 28 QUINNIPIAC L. REV. 107, 111 (2009). The spirit of protection from injustice is clear from the historical shaping of habeas corpus: the federal courts may intervene in state decisions to free a prisoner, and "the Suspension Clause applies as a matter of original intent to any attempt by Congress to limit that authority." ERIC M. FREEDMAN, HABEAS CORPUS: RETHINKING THE GREAT WRIT OF LIBERTY 46 (2001).

33. Kannenberg, *supra* note 32, at 111 (quoting U.S. CONST. art. I, § 9, cl. 2.) (emphasis added); *Magna Carta: Muse and Mentor: Writ of Habeas Corpus*, LIBR. OF CONG., https://www.loc.gov/exhibits/magna-carta-muse-and-mentor/writ-of-habeas-corpus.html [https://perma.cc/ZL6W-KSBY] (last visited Feb. 16, 2021).

34. Boumediene v. Bush, 553 U.S. 723, 739–40 (2008). "[H]istory counseled the necessity for specific language in the Constitution to secure the writ and ensure its place in our legal system." *Id.* at 740.

35. FREEDMAN, *supra* note 32, at 1. Habeas corpus creates a system of dual safeguards: state courts must protect the individual's right provided by the Constitution, and the writ ensures that state proceedings can be corrected when they have gone astray. *See id.* Two significant developments increased the protection of habeas corpus: (1) The Habeas Corpus Act of 1867, which enabled federal courts to monitor state treatment of constitutional rights and (2) a series of Supreme Court decisions during the 1960s that put a watchful eye over states' treatment of Constitutional procedural rights. Lynn Adelman, *Who Killed Habeas Corpus?*, DISSENT MAG. (Winter 2018), https://www.dissentmagazine.org/article/who-killed-habeas-corpus-bill-clinton-aedpa-states-rights [https://perma.cc/7KJ3-ZMXB].

36. 28 U.S.C. § 2254(a) (2018).

37. *Id.*

38. John B. Shumway, Comment, *The Claim-Forfeiture Proposition of* Rose v. Lundy*: An Appropriate Treatment of Mixed Habeas Corpus Petitions?*, 69 IOWA L. REV. 301, 301 (1983). "The exhaustion doctrine requires that a state prisoner's petition for habeas corpus be entertained by a federal court only after all available state remedies have been exhausted." *Id.* In other words, a petitioner must move through every remedy available at the state level before federal intervention can occur. *Id.*

(2) confinement on a state or federal level.[39] However, as will be explored, a proper petition does not necessarily guarantee a review of the claim(s), let alone relief.

In 1996, the Anti-Terrorism and Effective Death Penalty Act placed restrictions and limitations on the habeas process. The next Section addresses the evolution of the AEDPA, including how the AEDPA arose, its most pertinent limitations to *Gage* since its inception, and the precedent born from it that affected George Gage.

1. The Anti-Terrorism and Effective Death Penalty Act of 1996

Powerful Supreme Court decisions, combined with support from a popular president,[40] paved the way for the legislation that would constructively end most federal habeas review: the Anti-Terrorism and Effective Death Penalty Act of 1996.[41] The Supreme Court's subsequent decisions have been drastically affected by this legislation.[42] In essence, major constitutional and procedural errors are deemed permissible under the influence of the AEDPA.[43]

Congress's vigorous efforts to impede access to federal habeas was lauded by political perceptions of crime.[44] Crime is an eyesore to society; thus, it is to a politician's advantage, no matter the side of the aisle, to appear tough as nails in dismantling it.[45]

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39. This applies to collateral consequences experienced by a petitioner as a result of a conviction. Thus, a petitioner can contest the "constitutional validity of the conviction" through habeas relief to be rid of collateral consequences. Legal Info. Inst., *Habeas Corpus: The Process of the Writ*, CORNELL L. SCH., https://www.law.cornell.edu/constitution-conan/article-3/section-1/habeas-corpus-the-process-of-the-writ [https://perma.cc/G3VK-D4RU] (last visited Feb. 16, 2021).

40. Bill Clinton was President during the enactment of the statute. *See Presidential Approval Ratings – Bill Clinton*, GALLUP, https://news.gallup.com/poll/116584/presidential-approval-ratings-bill-clinton.aspx [https://perma.cc/W8Z5-BEBN] (last visited Mar. 22, 2021).

41. Lincoln Caplan, *The Destruction of Defendants' Rights*, NEW YORKER (June 21, 2015), https://www.newyorker.com/news/news-desk/the-destruction-of-defendants-rights [https://perma.cc/EH54-9WF3]; Adelman, *supra* note 35.

42. Adelman, *supra* note 35.

43. Caplan, *supra* note 41; Adelman, *supra* note 35.

44. Adelman, *supra* note 35.

45. *Id.* Notions such as the President of the United States (Bill Clinton) "want[ing] to be perceived as being 'tough on crime'" encouraged the spirit of vigorous and speedy legislation. *Id*.

2. Relevant Sections of the AEDPA

Perhaps the most egregious limitation placed on federal habeas petitions[46] was provided by the U.S. Supreme Court in 2011.[47] Through this ruling, the Court created precedent that nearly eliminated federal habeas relief, declaring "[s]ection 2254(d) [of the AEDPA] is designed to confirm that state courts are the principal forum for asserting constitutional challenges to state convictions."[48] This language bestows an incredible amount of power on the states, leaving very little consideration for federal habeas review.[49] Ultimately, the Supreme Court decided habeas relief only extended to "extreme malfunctions" by the states, and one could only demonstrate this level of malfunction by evidence showing "there is no possibility fairminded jurists could disagree."[50] Through this ruling, the door to federal habeas was virtually shut on petitioners since the opinion also "created a presumption that unexplained decisions were decisions on the merits entitled to AEDPA deference."[51] Frankly, state courts need not explain themselves to receive AEDPA deference.[52]

Aside from the extreme deference to state courts, precedent and legislation created barriers prohibiting the number of petitions a prisoner is able to file.[53] Under 28 U.S.C. § 2244(b) and § 2254(e)(2) of the AEDPA, if a claim appeared in a prior habeas petition, it must be dismissed.[54] However, the AEDPA does not actually define the meaning of "second" or

46. Before the AEDPA, federal habeas relief was available through petition at any point during an inmate's incarceration. With the enactment of the AEDPA, petitioners now must avail themselves of state remedies before petitioning for federal relief. This means all relief that could be granted at the state level, including state forms of habeas relief, must be decided before a petition can be sent to federal habeas courts for review. *Federal Habeas Corpus: A Brief Legal Overview*, EVERYCRSREPORT.COM (Jan. 8, 2010) [hereinafter *Legal Overview*], https://www.everycrsreport.com/reports/RL33391.html [https://perma.cc/FE8R-JZQU].

47. Emily Garcia Uhrig, *The Sacrifice of Unarmed Prisoners to Gladiators: The Post-AEDPA Access-to-the-Courts Demand for a Constitutional Right to Counsel in Federal Habeas Corpus*, 14 U. PA. J. CONST. L. 1219, 1229 (2012); *see* Harrington v. Richter, 562 U.S. 86 (2011).

48. *Harrington*, 562 U.S. at 88. Thus, most final adjudications remain within the state courts. The AEDPA was designed to keep the states in control of the decisions they have made, making federal interference much less likely to disrupt the decisions. As such, for George Gage (and many others), state examination of the claims is where the buck stops, unless a petitioner can figure out how to maneuver around the web of the AEDPA's restrictions. *Legal Overview*, *supra* note 46.

49. Adelman, *supra* note 35.

50. *Harrington*, 562 U.S. at 102.

51. Adelman, *supra* note 35.

52. *Id.* In short, "[a]fter a state invests time, effort, and money into a conviction, it feels disrespected when a federal court forces it to begin anew." Nathan Nasrallah, *The Wall that AEDPA Built: Revisiting the Suspension Clause Challenge to the Antiterrorism and Effective Death Penalty Act*, 66 CASE W. RSRV. L. REV. 1147, 1152 (2016).

53. Boyd v. Smith, No. 03 Civ. 5401, 2004 U.S. Dist. LEXIS 25324, at *16 (S.D.N.Y. Dec. 17, 2004).

54. *Id.*

"successive."[55] This lack of definition forces courts to determine what this limitation means, how it is applied, and what exceptions exist.[56]

The treatment of claims of actual innocence has highlighted how preoccupied courts are with the process of petitions rather than their merits.[57] Review of claims does not rest on an idea of equity.[58] Rather, to move past the hurdle of second or successive petitions, some courts require a "credible and compelling showing"[59] that the petitioner "relies on a new rule of constitutional law, or that no reasonable factfinder would have found" a petitioner guilty.[60] Additionally, petitioners must meet high standards in a timely manner or else their claims fall on deaf ears.[61]

In short, the picture emerging from these decisions should be startling: these restrictions produce a system in which most alleged constitutional violations will be adjudicated in state criminal justice systems.[62]

3. The Case Law Limitations

Gage's petition was impacted by a combination of the AEDPA, its limitations, and three cases: *United States v. Buenrostro*,[63] *Panetti v. Quarterman*,[64] and *Schlup v. Delo*.[65] In *Buenrostro*, the court barred a petitioner from raising a new habeas claim, because the court determined it was a second or successive petition.[66] The petitioner attempted to raise an ineffective assistance of counsel claim, arguing his trial attorney did not offer him a plea he would have taken for a significantly reduced sentence.[67]

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55. *Id.* at *29.

56. *Id.*; *see, e.g.*, *In re* Cabey, 429 F.3d 93 (4th Cir. 2005); Reed v. Texas, 140 S. Ct. 686 (2020); United States v. Buenrostro, 638 F.3d 720 (9th Cir. 2011); Panetti v. Quarterman, 551 U.S. 930, 934 (2007).

57. *See* Rivas v. Fischer, 687 F.3d 514, 541 n.36 (2d Cir. 2012).

> The issue in this appeal is whether petitioner . . . should be permitted to present in federal court his claim that constitutional error at his criminal trial renders his current confinement unlawful. *The merits of Rivas's constitutional claims are not before us*. Rather, we address only whether his petition for a writ of habeas corpus under 28 U.S.C. § 2254 was timely filed . . . .

Id. at 517 (emphasis added).

58. *Id.*

59. *Id.* at 518.

60. *Buenrostro*, 638 F.3d at 721–22 (internal citations and quotations omitted). Included in these exceptions is the showing of fraud—a petitioner can present evidence that, during a first petition, "something [had] happened . . . that rendered its outcome suspect . . . [which] must involve an unconscionable plan or scheme . . . designed to improperly influence the court in its decision." *Id.* at 722 (internal quotations omitted).

61. *Id.* at 724. "[A] petitioner abuse[s] the writ by raising a claim in a subsequent petition that he could have raised in the first, regardless of whether the failure to raise it earlier stemmed from a deliberate choice." *Id.* (internal quotations omitted).

62. Nasrallah, *supra* note 52, at 1151–52; Adelman, *supra* note 35.

63. *Buenrostro*, 638 F.3d 720.

64. Panetti v. Quarterman, 551 U.S. 930 (2007).

65. Schlup v. Delo, 513 U.S. 298 (1995).

66. *Buenrostro*, 638 F.3d at 721.

67. *Id.*

The court determined AEDPA restrictions would not allow his claim to proceed unless the petitioner relied "on a new rule of constitutional law, or that no reasonable factfinder would have found [him] guilty of the offense."[68]

In *Panetti*, the petitioner argued his mental condition should bar him from execution.[69] Here, the state court failed to provide proper process, neglected to hold a necessary hearing, and inadequately submitted expert evidence.[70] The petitioner's incompetency claim was enough to bypass the second or successive restrictions set in place by the AEDPA.[71]

Finally, in *Schlup*, the Supreme Court determined a less severe standard governed "the miscarriage of justice" standard when a petitioner is sentenced to death.[72] In such cases, claims of actual innocence can be reviewed on their merits due to the severity of punishment the petitioner faces.[73] This lower standard allows a petitioner's habeas petition to have a greater chance of an evidentiary hearing, allowing review of crucial evidence as the trier of fact would view it.[74]

III. COURT'S DECISION

Although George Gage's initial trial revealed compelling evidence of his innocence, AEDPA's web of restrictions and the prosecution's efforts defeated actual innocence interests. The court deemed Gage's second attempt to raise the *Brady* claim (and the others) as a failure to demonstrate equitable grounds that would allow for the filing of a second or successive habeas petition.[75] The court struck down his petition on various grounds: the requirements of AEDPA's § 2244(b)(2) and the precedents of *Buenrostro*[76] and *Panetti*.[77]

The court concluded Gage did not meet the *Schlup* miscarriage of justice exception, stating that he failed to exercise due diligence and that the exception does not abrogate § 2244(b)(2)(B).[78] To show his failure of due diligence, the court examined his first *pro se* petition, which "mentioned the possibility of a *Brady* claim."[79] However, Gage failed to argue extensively

68. *Id.* (internal citations and quotations omitted).
69. *Panetti*, 551 U.S. at 935.
70. *Id.*
71. *Id.*
72. Schlup v. Delo, 513 U.S. at 325.
73. *Id.* at 327.
74. *Id.* at 327–29.
75. Gage v. Chappell, 793 F.3d 1159, 1166 (9th Cir. 2015).
76. United States v. Buenrostro, 638 F.3d 720 (9th Cir. 2011).
77. Panetti v. Quarterman, 551 U.S. 930 (2007).
78. *Gage*, 793 F.3d at 1162.
79. *Id.* at 1163–64.

for the claim.[80] It was this petition that would ultimately be Gage's undoing before the court.[81]

The AEDPA requires that a second or successive habeas petition be dismissed unless there is a showing either that the claim satisfies a new constitutional law or that both (1) the facts underlying the claim could not have been discoverable through due diligence and (2) those facts establish that, "but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense."[82] To meet these requirements, a petitioner must make a prima facie showing.[83] As for *Buenrostro* and *Panetti*, the court interpreted their holdings to have the following effect: if a "factual predicate" was unripe at the time of a first habeas filing, a new petition will not be considered second or successive.[84] However, the issue matures when a filing has a comment or mention of the issue.[85]

Thus, Gage's failure to raise the *Brady* claim during the first habeas petition rendered him unable to meet the due diligence requirement of § 2244(b)(2)(B)(i).[86] The court reasoned that Gage was on notice for the factual predicate of the *Brady* claim during his first habeas petition because he successfully motioned for a new trial.[87] His argument for the actual innocence exception failed; if the argument had been successful, it would have allowed him to maneuver around these procedural defaults.[88]

IV. COMMENTARY

Past precedent, combined with restrictions set in place by the AEDPA, produced the seemingly insurmountable situation Gage faced. Consideration of how this AEDPA preference permitted state prosecutors to conduct their cases adds an even more frustrating layer. Here, Gage's case provides an example of egregious conduct that occurs within the state courts, which will likely continue unless the AEDPA is either reformed or repealed altogether.

A. The Prosecution's Efforts

The court in *Gage* spent a great deal of time propping up the AEDPA restrictions and prior precedent, yet it did very little to address the state's

80. *Id.* at 1164.
81. *Id.*
82. *Id.*; 28 U.S.C. § 2244(b)(2) (2018).
83. *Gage*, 793 F.3d at 1164.
84. *Id.* at 1164–65.
85. *Id.* at 1165.
86. *Id.* at 1166.
87. *Id.*
88. *Id.* at 1167.

egregious actions.[89] With all of the recorded actions of the state in front of it, one would think the court would have more to say. During the first trial, the prosecution argued doctor-patient privileges excluded the accuser's medical records from evidence.[90] When questioned by the trial judge about the contents of the records, the prosecution acknowledged that any statements contrary to the facts laid out against Gage would have been turned over, but the prosecution claimed there was nothing in the records "that would indicate that there were any inconsistencies that she had ever said."[91]

The prosecution attempted to maintain a tight hold on the records so the trial judge could not review them.[92] The prosecution even went so far as to protest turning the records over for review.[93] It was not until the court threatened the prosecution with an overturned verdict that the prosecution complied with the judge's request.[94] Upon reviewing the records, it became apparent why the prosecution fought to conceal them.[95] The prosecution's efforts to hide seemingly exculpatory evidence sent George Gage down the long and treacherous path of petitions, which was littered with procedural limitations.[96] Had the prosecution done what the principles of justice and ethics required (i.e., turned over the stepdaughter's medical records that tended to show exculpatory evidence), a jury would have assessed *all* of the relevant facts of the case and arrived at a fair verdict.[97]

B. The Limitations Now Set Through Precedent

Precedent under the AEDPA devastates access to federal habeas review. Now, it can be considered a harmless error to exclude defense counsel from private meetings between the judge and prosecutor regarding

89. *Id.* at 1164. "We acknowledge that Gage's argument for exempting his *Brady* claim from the § 2244(b)(2) requirements has some merit. Under our precedents as they currently stand, prosecutors may have an incentive to refrain from disclosing *Brady* violations related to prisoners who have not yet sought collateral review." *Id.* at 1165.

90. *Id.* at 1162.

91. *Id.*

92. *Id.* at 1163.

93. *Id.*

94. *Id.*

95. *Id.* at 1163.

> Several items in the medical records grounded this conclusion: (1) Wanda [accuser's mother] apparently described Marian [accuser] to a mental health professional as "a pathological liar who lives her lies"; (2) Marian's accusations followed a large fight with her mother after Wanda caused Marian's then-boyfriend to be sent to prison; and (3) Marian made only fleeting references to having been sexually abused during the course of her psychological treatment.

Id.

96. *Id.* Since his conviction, "the State has refused to turn over Marian's medical records to Gage, his counsel, or the court." *Id.*

97. *Id.* The prosecution was successful in its appeal, arguing "the trial court improperly relied on the medical records, which were never before the jury, in granting the new trial." *Id.*

jury selection.[98] Additionally, the Supreme Court's decision in *Williams v. Taylor* found that, even though a state court decision may be deemed erroneous, the state adjudication could stand.[99] Further, one of the most troubling precedents handed down has been the ruling "that even if a state court's resolution of an issue governed by Supreme Court precedent is clearly erroneous, that is not enough to warrant habeas relief."[100]

These stringent rulings now affect how inferior courts handle adjudication.[101] With the extreme deference to judgments of the state courts, inferior courts can keep verdicts in place that otherwise might have been overturned, remanded, or vacated.[102] The court in *Gage* acknowledged it had a strong interest in preserving "finality, comity, and conservation of scarce judicial resources," so much so that only the "truly deserving" petitions should be allotted the exception to avoid procedural barriers.[103] However, the precedent left in the wake of *Gage* raises the question: what is a truly deserving petition for actual innocence?

The prosecution denied George Gage review of the records during his initial trial; he met further denial of review by the California Court of Appeal.[104] When he petitioned for access to these records, he was denied, because the Court of Appeal found "nothing in the records which could be of assistance to defendant, and concluded that Gage failed to demonstrate that there is any merit to any of his constitutional contentions."[105] Yet, as noted above, these records were meritorious enough to warrant a new trial. It is maddening to know a potentially innocent man with strong claims was procedurally barred from review, given that he was expected to argue a *Brady* claim based on documents he was unable to access.

V. CONCLUSION

Although habeas corpus is supposed to be a revered right enshrined in the Constitution, the AEDPA and precedent produced by it have placed a constructive suspension on its access. The limitations and restrictions placed on access to habeas relief by the AEDPA are enormous. While the AEDPA does not call for an outright suspension of habeas corpus, its barriers have created a constructive suspension to its access. *Gage v.*

98. *See* Davis v. Ayala, 576 U.S. 257, 286 (2015).
99. *See* Williams v. Taylor, 529 U.S. 362, 412–16 (2000).
100. Adelman, *supra* note 35 (citing Lockyer v. Andrade, 538 U.S. 63 (2003)).
101. *See generally Gage*, 793 F.3d at 1159.
102. *Id.*
103. *Id.* at 1167.
104. *Id.* at 1163.
105. *Id.* (internal quotations omitted). "The Court of Appeal, however, did not explain why the contents of the medical records failed to meet the *Brady* standard and did not elaborate on the records' content." *Id.*

Chappell serves as a clear example of how extremely the courts have held in place the process of deliberation instituted by the doctrine.

Gage sets a bleak picture for petitioners. Section 2254(d) of the AEDPA creates a deference to states' adjudications, and section 2244(b) procedurally bars second or successive petitions. Increasingly, courts provide more elusive means to bypass the legislation, such as requiring "extreme malfunctions" or "truly deserving" claims. But the meaning of these terms remains unclear. The AEDPA creates a framework that maintains decisions within the states with little oversight or interruption from the federal level. It is horrifying to think of the innocence that will be sacrificed under these measures. Because the AEDPA is unlikely to be repealed, courts must veer from such severe rulings. Claims of actual innocence should be given an actual review of the merits.