No. 08-— 08-514

IN THE

Supreme Court of the United States

JOE CLARK MITCHELL,

Petitioner,

v.

JOHN REES,

Respondent.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Sixth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Federal Rule of Civil Procedure 60(b) allows a party to seek relief from a final judgment for "(1) mistake, inadvertence, surprise, or excusable neglect . . . or (6) any other reason justifying relief from the operation of judgment." Motions filed under subsection 1 must be made "no more than a year after the entry of the judgment or order or the date of the proceeding" from which relief is sought, while those filed under subsection 6 must instead be made "within a reasonable time." FED. R. CIV. P. 60(c)(1). In this case, the district court granted petitioner's Rule 60(b)(6) motion, reasoning that the facts of petitioner's case – including the court of appeals' explicit abrogation of the legal rule on which petitioner's conviction had been sustained and this Court's abrogation of the legal rule that prevented petitioner from seeking relief earlier – constituted extraordinary circumstances supporting relief under Rule 60(b)(6). The court of appeals reversed, holding that because petitioner alleged legal error as part of the basis for his Rule 60(b)(6) motion, he was instead required to bring his motion pursuant to Rule 60(b)(1) – under which petitioner's motion was untimely. The question presented is:

May a federal court ever grant a motion for relief from judgment under Federal Rule of Civil Procedure 60(b)(6) in a case involving legal error?

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

PETITION FOR A WRIT OF CERTIORARI

Petitioner Joe Clark Mitchell respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Sixth Circuit (Pet. App. 1a) is unpublished but is reported at 261 Fed. Appx. 825 (6th Cir. 2008). The district court's decision granting petitioner's motion for relief from judgment pursuant to Rule 60(b)(6) (Pet. App. 12a) appears at 430 F. Supp. 2d 717 (M.D. Tenn. 2006).

JURISDICTION

The judgment of the court of appeals was entered on January 9, 2008. Pet. App. 1a. A timely petition for rehearing and rehearing en banc was denied on July 17, 2008. Pet. App. 100a. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

RELEVANT FEDERAL RULES

Federal Rule of Civil Procedure 60 provides, in relevant part:

> (b) Grounds for Relief from a Final Judgment, Order, or Proceeding. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:
>
> (1) mistake, inadvertence, surprise, or excusable neglect;

(2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);

(3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;

(4) the judgment is void;

(5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or

(6) any other reason that justifies relief.

(c) Timing and Effect of the Motion.

(1) *Timing.* A motion under Rule 60(b) must be made within a reasonable time — and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding.

STATEMENT OF THE CASE

This case presents an important question of federal civil procedure over which the federal courts of appeals are intractably divided: whether a court may ever grant a motion for relief from judgment under Federal Rule of Civil Procedure 60(b)(6) that rests in part on a claim of legal error. The district court held below that petitioner's case presented precisely the kind of extraordinary circumstances justifying relief pursuant to Rule 60(b)(6): absent such relief and despite his diligence, petitioner would serve consecutive life sentences as a result of an

acknowledged legal error by the Sixth Circuit, even though his state trial was tainted by an undisputed *Batson* violation and petitioner had properly sought relief at every turn. But the Sixth Circuit reversed, holding that a motion for relief from judgment which is based in part on legal error may *only* be brought under Federal Rule of Civil Procedure 60(b)(1), no matter how extraordinary the circumstances of the case. The court's ruling is contrary to the text of Rule 60(b)(6) and perpetuates a recurring circuit split on the issue.

1. Federal Rule of Civil Procedure 60(b) provides relief from judgment in cases of "mistake, inadvertence, surprise, or excusable neglect" ((b)(1)), newly discovered evidence ((b)(2)), fraud ((b)(3)), when the judgment is void ((b)(4)), when the judgment has been satisfied or discharged ((b)(5)), and for "any other reason that justifies relief" ((b)(6)). Over fifty years ago, this Court made clear that relief is broadly available pursuant to Rule 60(b)(6) when justified by extraordinary circumstances, even if one element of such extraordinary circumstances is a ground specified in clauses (b)(1) through (b)(5) of the rule. In *Klapprott v. United States*, 335 U.S. 601 (1949), this Court granted a Rule 60(b)(6) motion for relief from a default denaturalization judgment based on extraordinary circumstances that included incarceration, illness, and poverty, *id.* at 613-16. In so doing, this Court explicitly rejected the Government's argument that the motion could be brought only under Rule 60(b)(1) (and was thus subject to that clause's one-year limitations period) because it alleged "excusable neglect." *Id.* at 613-14. While acknowledging that Rule 60(b)(1) might apply

if the motion rested solely on "neglect," the Court emphasized that the Rule 60(b)(6) motion in fact alleged far more than "mere neglect." *Id.* at 613 (internal quotation marks omitted). And less than four years ago, this Court in *Gonzalez v. Crosby*, 545 U.S. 524 (2005), once again confirmed that relief may be sought pursuant to Rule 60(b)(6) when a movant alleges legal error accompanied by extraordinary circumstances, *id.* at 536-38.

2. In 1982 and 1983, petitioner Joe Clark Mitchell was indicted in Tennessee state court on several charges – including arson, first-degree burglary, and two counts each of armed robbery, aggravated kidnapping, and aggravated rape – arising out of an alleged incident in rural Giles County, Tennessee. Pet. App. 64a-65a; C.A. J.A. 30.

Petitioner is African American; both of the victims were white women. Pet. App. 42a. At petitioner's trial, one of the two black potential jurors in the jury pool was excused by the court for cause. Pet. App. 95a n.5. The prosecutor exercised a peremptory challenge to dismiss the second, Hattie Alderson. Pet. App. 95a. As a result of Alderson's dismissal, the case against petitioner was tried to an all-white jury, which convicted him on all counts. Pet. App. 13a, 65a. Petitioner was sentenced to consecutive life sentences. C.A. J.A. 124. Petitioner's state court direct appeal and post-conviction application were unsuccessful.[1] C.A. J.A. 21-23.

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[1] The only exception, not relevant here, is that on direct appeal, the Court of Criminal Appeals of Tennessee reduced one of petitioner's convictions for aggravated rape to simple rape but

3. In 1993, petitioner filed a timely federal habeas petition in which he alleged, inter alia, that the prosecutor's exclusion of Alderson from the jury pool violated *Batson v. Kentucky*, 476 U.S. 79 (1986). Pet. App. 2a-3a. After conducting an evidentiary hearing on the *Batson* claim, the district court granted the petition. *See* Pet. App. 93a, 107a. Emphasizing that petitioner had "'the right to be tried by a jury whose members are selected pursuant to nondiscriminatory criteria,'" Pet. App. 94a (quoting *Batson*, 476 U.S. at 85-86), the district court reasoned that the prosecution's explanation for its exclusion of Ms. Alderson was "not worthy of belief": although the prosecutor "testified that he struck Ms. Alderson because of her elderly appearance, as he believed that she would be unable to follow the evidence in the case," in fact he "failed to strike white jurors who were older than Ms. Alderson," "did not identify any objective criteria upon which to base his conclusion that Ms. Alderson was unable to follow the evidence because of her elderly appearance," and "failed to ask her any questions to elicit her age or other information relevant to his concerns," Pet. App. 96a, 95a, 97a. Moreover, the court noted, not only were the prosecutor's "trial notes documenting his reasons for striking Ms. Alderson . . . nowhere to be found," but the State also "failed to call the other two prosecutors . . . in an effort to overcome the absence

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otherwise affirmed petitioner's convictions. *State v. Mitchell*, No. 87-152-III, 1988 WL 32362, at *1 (Tenn. Ct. App. Apr. 7, 1988).

of documentation and [the lead prosecutor's] failure to recall." Pet. App. 98a.

4. On appeal (*Mitchell I*), the Sixth Circuit did not question the district court's determination that the prosecution's exclusion of Alderson violated *Batson*. Pet. App. 64a. But the court nonetheless vacated the judgment, holding that the district court lacked authority to order an evidentiary hearing on petitioner's *Batson* claim because petitioner had not established cause and prejudice for his failure to develop the factual basis for his claim in the state courts. Pet. App. 76a-77a, 81a. The court of appeals remanded the case to the district court for consideration of, inter alia, whether petitioner could show the "cause and prejudice" needed for an evidentiary hearing. Pet. App. 79a, 80a, 81a & n.13.

Judge Keith dissented. Pet. App. 81a. Describing the majority's opinion as a "judicial travesty," in which the majority had "abdicate[d] its role as the protector of the guarantees embodied in our Constitution," he concluded that "the district court properly conducted an evidentiary hearing on Mitchell's *Batson* claim" because "the state court did not make any findings, much less findings of historical fact," regarding the *Batson* claim. Pet. App. 90a, 87a, 88a. Explaining that because "the state court was given an opportunity to pass upon the merits of Mitchell's claim . . . [but] declined to do so, . . . the district court felt that it was judicially obligated to protect Mitchell's constitutional rights" – a conclusion that, in Judge Keith's view, "should be commended, not reversed." Pet. App. 89a, 90a.

The Sixth Circuit denied rehearing and rehearing en banc, and this Court denied certiorari.

Mitchell v. Rees, 114 F.3d 571 (6th Cir. 1997) (*reh'g denied* Aug. 12, 1997), *cert. denied*, 522 U.S. 1120 (1998), *reh'g denied*, 523 U.S. 1090 (1998).

5. On remand, the district court again granted petitioner habeas relief. Pet. App. 105a. As an initial matter, the district court found that petitioner's trial counsel was ineffective. Pet. App. 42a. Moreover, the district court found, petitioner had established that he was entitled to an evidentiary hearing because he had demonstrated both that his trial counsel's "ineffective assistance was cause for the failure to develop the state court record" and that he was prejudiced by that ineffective assistance. Pet. App. 36a; *see* Pet. App. 41a. Taking into consideration the evidence adduced at petitioner's earlier evidentiary hearing, the district court again held that the prosecution's exclusion of juror Alderson violated *Batson*. Pet. App. 49a-50a.

6. On the State's appeal, the Sixth Circuit again reversed, once more without disputing the underlying merits of petitioner's *Batson* claim (*Mitchell II*). Pet. App. 34a. The court of appeals held that because petitioner had failed to show "that he had cause for his failure to develop [his] state post-conviction record," he could not demonstrate that he was entitled to an evidentiary hearing on federal habeas. Pet. App. 37a. Moreover, the court of appeals agreed with the State that "the district court's holding that the state court record demonstrates the ineffective assistance of Mitchell's trial counsel is directly contrary to this court's opinion in *Mitchell I*," and "[t]he district court was not free to overrule our conclusion." Pet. App. 36a, 37a. The court of appeals thus remanded the proceedings to the district court

"with instructions . . . to enter judgment denying the petition for a writ of habeas corpus." Pet. App. 37a. This Court denied certiorari. *Mitchell v. Rees*, 537 U.S. 830 (2002).

7. In December 2005, petitioner filed a motion for equitable relief from judgment under "[Federal Rule of Civil Procedure] 60(b), including 60(b)(6)." C.A. J.A. 80. Petitioner contended that relief was justified because – as the Sixth Circuit itself had explicitly confirmed – the Sixth Circuit's decision in *Mitchell I* was "patently erroneous"; even if it is not *required* to do so, a district court always has the inherent authority to hold an evidentiary hearing. C.A. J.A. 80; *see* Pet. App. 17a-18a, 23a (citing *Harries v. Bell*, 417 F.3d 631, 635 (2005) (expressly acknowledging that "*Mitchell [I]* conflicts with Sixth Circuit and Supreme Court precedent") and *Abdur'Rahman v. Bell*, 226 F.3d 696 (2000) (explaining that *Mitchell I* was "overbroad in that it fails to recognize the inherent authority that a district court always has in habeas cases to order evidentiary hearings")). Moreover, petitioner contended, the extraordinary circumstances of his case "cr[y] out for the exercise of that equitable power to do justice": absent such relief, petitioner will "remain imprisoned for the rest of his life" as a result of the Sixth Circuit's error, notwithstanding the undisputed *Batson* violation at his state trial. C.A. J.A. 93 (quoting *Nat'l Credit Union Admin. Bd. v. Gray*, 1 F.3d 262, 266 (4th Cir. 1993)) (internal quotation marks omitted).

The district court granted both Mitchell's motion for equitable relief from judgment under Rule 60(b)(6) and, subsequently, habeas relief. Pet. App. 102a. The district court determined that petitioner's

motion was a valid Rule 60(b) motion because – as this Court required in *Gonzalez v. Crosby*, 545 U.S. 524 (2005) – petitioner merely sought "to alter a district court judgment on a procedural issue that erroneously precluded a determination of the substantive merits of [his] habeas claim," Pet. App. 22a. And petitioner's motion was properly filed pursuant to Rule 60(b)(6), the district court found, because petitioner had both demonstrated extraordinary circumstances and filed the motion within a reasonable time following the decision in *Gonzalez*, which "effectively overruled" Sixth Circuit precedent that precluded habeas petitioners from filing Rule 60(b) motions on the erroneous theory that all such motions constitute successive habeas applications. Pet. App. 27a (discussing *McQueen v. Scroggy*, 99 F.3d 1302 (1996)).

Relief pursuant to Rule 60(b) was warranted, the district court continued, because petitioner had demonstrated precisely the kind of extraordinary circumstances justifying relief under Rule 60(b)(6). Pet. App. 23a-26a. Three factors underlay the court's "extraordinary circumstances" finding. *Id.*

First, the district court agreed with petitioner that the Sixth Circuit's decision in *Mitchell I* was erroneous, as demonstrated by subsequent Sixth Circuit precedent abrogating *Mitchell I*'s holding that the district court lacked authority to hold an evidentiary hearing. *See* Pet. App. 23a (citing *Harries*, 417 F.3d at 635; *Abdur'Rahman*, 226 F.3d at 706).

Second, the procedural posture of petitioner's case was such that petitioner *could not* have previously invoked that intervening Sixth Circuit

precedent to seek relief from the court of appeals' erroneous decision in *Mitchell I*. The district court explained that by the time the Sixth Circuit recognized the error of *Mitchell I*, petitioner "was before the Sixth Circuit [in *Mitchell II*] and could not advance a theory on appeal that was not presented to the district court." Pet. App. 27a. Moreover, the district court continued, "[p]etitioner could not have sought relief" from judgment under "[Rule] 60(b) until the Supreme Court's June 2005 decision in *Gonzalez*, . . . effectively overrul[ing]" the Sixth Circuit's decision in *McQueen v. Scroggy*, which had deemed all Rule 60(b) motions by habeas petitioners to be second or successive habeas petitions prohibited by AEDPA. Pet. App. 27a.

Third and finally, the district court recognized that, "if not corrected," the Sixth Circuit's acknowledged error "would result in a judicial travesty." Pet. App. 12a (internal quotation marks omitted). Because petitioner's underlying *Batson* claim had already been shown to have merit, "failure to renew the Court's judgment [granting habeas relief] would result in a miscarriage of justice in that Petitioner would be serving a life sentence based upon the verdict of a racially tainted jury." Pet. App. 13a.

8. On appeal, the Sixth Circuit reversed a third time, again without addressing the underlying merits of Mitchell's *Batson* claim (*Mitchell III*). Pet. App. 1a. The court of appeals agreed with petitioner that its decision in *Mitchell I* was erroneous, and the panel took no exception to the district court's finding of extraordinary circumstances. Pet. App. 5a. Concluding that *Mitchell I* "was an error when

decided and not a correct decision abrogated by a subsequent change in the law," Pet. App. 9a, the panel concluded that petitioner's Rule 60(b) motion therefore "allege[d] a mistake made by this court in *Mitchell I*," which could not be remedied under Rule 60(b)(6), but instead only under Rule 60(b)(1) – which governs motions premised on mistake, inadvertence, or excusable neglect. Pet. App. 10a. "Construing [petitioner's] motion pursuant to Rule 60(b)(1)," the court of appeals deemed his motion untimely because it was not filed within one year of the entry of the final judgment. *Id.* "Therefore, the district court abused its discretion by granting relief under Rule 60(b)(b)." *Id.* (citing *McCurry ex rel. Turner v. Adventist Health Sys./Sunbelt, Inc.*, 298 F.3d 586, 595-96 (6th Cir. 2002)).

In so doing, the court of appeals acknowledged that "enforcement of the time limit may seem unfair," but it reasoned that "the general purpose of Rule 60(b) is to strike a proper balance between the conflicting principles that litigation must be brought to an end and that justice must be done." Pet. App. 11a (internal quotation marks omitted). "Such balancing," the court continued, "creates situations in which an alleged injustice can no longer be remedied." *Id.*

On July 17, 2008, the Sixth Circuit denied Mitchell's timely petition for rehearing. Pet. App. 100a. This petition followed.

REASONS FOR GRANTING THE WRIT

The petition for writ of certiorari should be granted for two reasons.

First, this case directly implicates a split among the courts of appeals on the question whether claims of legal error are ever cognizable under Rule 60(b)(6). Petitioner would prevail in three circuits, while seven circuits would deny him relief based on two different rationales. Such a split undermines the purpose of the Federal Rules of Civil Procedure – *viz.*, to create uniformity in procedural rules.

Second, the ruling below is wrong on the merits. This Court's precedents make clear that, although relief is not available under Rule 60(b)(6) when the *only* basis asserted for such relief would be cognizable under another clause of Rule 60(b), relief *is* available under clause (b)(6) when the legal error is coupled with other facts that collectively create sufficiently extraordinary circumstances. By contrast, the Sixth Circuit categorically held that because petitioner's motion for relief from judgment was based in part on legal error, it was cognizable only under Rule 60(b)(1), notwithstanding that – as the district court held and the court of appeals did not dispute – (i) extraordinary circumstances had prevented petitioner from seeking relief under that provision; and (ii) the failure to grant relief would produce a great injustice.

I. The Federal Courts Are Intractably Divided Over Whether Federal Rule Of Civil Procedure 60(b)(6) Can Be Used To Correct Legal Error.

In holding that petitioner's motion for relief from judgment was "properly made pursuant to Rule 60(b)(1)," rather than Rule 60(b)(6), because petitioner's motion was premised in part on legal

error, Pet. App. 10a, the Sixth Circuit perpetuated an entrenched circuit split: two other circuits – the Second and Fifth – join the Sixth Circuit in prohibiting the use of Rule 60(b)(6) to correct legal error. Four additional circuits – the First, Fourth, Seventh, and Eighth – even more broadly prohibit the use of *any* provision of Rule 60(b) (even Rule 60(b)(1)) to correct legal error. By contrast, three circuits – the Third, Ninth, and Eleventh – would have granted petitioner relief because legal error was merely part of the extraordinary circumstances justifying relief in this case.

1. The Sixth Circuit held in this case that petitioner could not obtain relief under Rule 60(b)(6) because his allegation that the Sixth Circuit's decision in *Mitchell I* was erroneous alleged a legal "mistake" by the court of appeals that could only be remedied pursuant to Rule 60(b)(1). Pet. App. 10a. In so holding, the panel followed established Sixth Circuit precedent holding that claims may "be brought under Rule 60(b)(6) only if they cannot be brought under another clause of Rule 60(b)." *Harbison v. Bell*, 503 F.3d 566, 569 (6th Cir. 2007).[2]

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[2] *See also, e.g., McDowell v. Dynamics Corp. of Am.*, 931 F.2d 380, 384 (6th Cir. 1991) ("[B]ecause the appellee could have brought its motion for relief from judgment under Rule 60(b)(1), appellee's motion is precluded from being brought under Rule 60(b)(6)."); *McCurry ex rel. Turner v. Adventist Health Sys./Sunbelt, Inc.*, 298 F.3d 586, 596 (6th Cir. 2002) ("Given the precise fit between the circumstances presented here and those addressed in Rule 60(b)(1), and given our conclusion that subsection (b)(1) affords no basis for relief from the District Court's order of dismissal in this case, it clearly would be inappropriate to invoke subsection (b)(6) to grant relief that is

The Sixth Circuit's position leaves almost no role for Rule 60(b)(6). "Such situations [allowing Rule 60(b)(6) relief] are rare," the Sixth Circuit has explained, "'because almost every conceivable ground for relief is covered under the other subsections of Rule 60(b).'" *McCurry ex rel. Turner v. Adventist Health Sys./Sunbelt, Inc.*, 298 F.3d 586, 595 (6th Cir. 2002) (quoting *Blue Diamond Coal Co. v. Trustees of UMWA Combined Ben. Fund*, 249 F.3d 519, 524 (6th Cir. 2001)).

Both the Second and Fifth Circuits embrace the Sixth Circuit's interpretation of Rule 60(b).[3] *See, e.g.*, *Int'l Controls Corp. v. Vesco*, 556 F.2d 665, 670 (2d Cir. 1977) (holding that Rule 60(b)(1)'s "reference to

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foreclosed under subsection (b)(1). We have observed that these two clauses are mutually exclusive, with relief available under subsection (b)(6) only in the event that none of the grounds set forth in clauses (b)(1) through (b)(5) are applicable.").

[3] Although all three circuits hold that legal error is cognizable under Rule 60(b)(1), they are in turn divided with regard to how to determine the timeliness of the Rule 60(b)(1) motion: the Second and Sixth Circuits have indicated that "'60(b)(1) motion[s] based on legal error must be brought within the normal time for taking an appeal.'" *Townsend v. Soc. Sec. Admin.*, 486 F.3d 127, 133 (6th Cir. 2007) (quoting *Pierce v. United Mine Workers of Am. Welfare & Ret. Fund*, 770 F.2d 449, 451 (6th Cir. 1985)); *accord Schildhaus v. Moe*, 335 F.2d 529, 531 (2d Cir. 1964) (holding that a Rule 60(b)(1) motion to correct legal error must be brought "within the 30-day period allowed for appeal"), while the Fifth Circuit has declined to impose anything other than the Rule's ordinary one-year deadline, reasoning that "[Rule 60(b)(1)] makes no mention of the period for noticing appeal or of whether notice of appeal has been filed." *Lairsey v. Advance Abrasives Co.*, 542 F.2d 928, 929-30 (5th Cir. 1976).

'mistake' . . . include[s] mistakes by the district court"); *United States v. Erdoss*, 440 F.2d 1221, 1223 (2d Cir. 1971) (reasoning that Rule 60(b)(6) cannot be used to correct legal error because Rule "60(b)(1) and 60(b)(6) are mutually exclusive, so that any conduct which generally falls under the former cannot stand as a ground for relief under the latter"); *McMillan v. MBank Fort Worth, N.A.*, 4 F.3d 362, 367 (5th Cir. 1993) (agreeing with the Sixth Circuit that all "claims of legal error or mistake . . . are subsumed under subsection (1)" (citing *Pierce v. United Mine Workers of Am. Welfare & Ret. Fund*, 770 F.2d 449, 451 (6th Cir. 1985)). The D.C. Circuit has suggested that it agrees. *See, e.g.*, *Williamsburg Wax Museum, Inc. v. Historic Figures, Inc.*, 810 F.2d 243, 248-49 (D.C. Cir. 1987) (holding that because legal error resulting from judicial inadvertence could be cured through the use of Rule 60(b)(1), Rule 60(b)(6) was not the proper vehicle to challenge the error). *Cf. Kramer v. Gates*, 481 F.3d 788, 792 (D.C. Cir. 2007) ("Rule 60(b)(6)[] is mutually exclusive with the grounds for relief in the other provisions of Rule 60(b).").

2. Four other circuits would reach the same result in this case because they have adopted an approach to Rule 60(b) that is even more stringent than the Sixth Circuit's holding that Rule 60(b)(6) may not be used in cases involving legal error. These circuits hold that the only proper vehicle to challenge legal error is Federal Rule of Civil Procedure 59(e), which requires that "[a] motion to alter or amend a judgment . . . be filed no later than 10 days after the entry of the judgment."

Thus, in *Silk v. Sandoval*, 435 F.2d 1266 (1st Cir. 1971), the First Circuit held that Rule 60(b)(1) could not be used to correct ordinary legal error. Explaining that it saw "no purpose for this broad construction of Rule 60(b)(1) overlapping Rule 59(e)," that court held that motions to correct legal error are cognizable only under Rule 59(e). *Id.* at 1268. And in *Venegas-Hernandez v. Sonolux Records*, 370 F.3d 183 (1st Cir. 2004), the First Circuit concluded that "*Silk*'s reasoning would, for the same reasons, lead to the rejection of an argument that this type of error of law would be a valid ground for relief under Rule 60(b)(6)," *id.* at 189 n.4.

The Fourth, Seventh, and Eighth Circuits subsequently adopted the same rule, subject to narrow exceptions not applicable here. *See Gleash v. Yuswak*, 308 F.3d 758, 761 (7th Cir. 2002) (holding that a motion for relief under Rule 60(b)(6) was not proper "because legal error is not a proper ground for relief under Rule 60(b)"); *CNF Constructors, Inc. v. Donohoe Const. Co.*, 57 F.3d 395, 401 (4th Cir. 1995) (quoting *United States v. Williams*, 674 F.2d 310, 313 (4th Cir. 1982)) ("As we made clear in *Williams*, where a motion is for reconsideration of legal issues already addressed in an earlier ruling, the motion 'is not authorized by Rule 60(b).'"); *Spinar v. South Dakota Board of Regents*, 796 F.2d 1060, 1062 (8th Cir. 1986) ("[T]he motion asserts that the District Court made a legal error. So construed, the motion

does not set forth a ground for relief cognizable under Rule 60(b).").[4]

3. By contrast, petitioner would have prevailed in three other circuits, which expressly hold that courts may grant motions for relief pursuant to Rule 60(b)(6) in cases involving legal error that present sufficient extraordinary circumstances.

In *Zurich American Insurance Co. v. International Fibercom Inc.* (*In re Int'l Fibercom, Inc.*), 503 F.3d 933 (9th Cir. 2007), the Ninth Circuit held that the lower court had properly relied on Rule 60(b)(6) to clarify an order in a case on all fours with this one – *i.e.*, one presenting a clear legal error – after more than one year had passed since the entry of judgment, *id.* at 940 n.7. The Ninth Circuit specifically rejected the argument "that legal error is cognizable under Rule 60(b)(1) (mistake), not Rule 60(b)(6), and is therefore subject to the one-year time limitation." *Id.* While acknowledging that a claim asserting nothing more than legal error must be brought under Rule 60(b)(1), the court of appeals reasoned that when a claim of legal error also involves extraordinary circumstances, a party may obtain relief under Rule 60(b)(6). *Id.* at 940 n.7, 941.

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[4] Both the Fourth and Eighth Circuits have held that clear legal error may in some circumstances be addressed under Rule 60(b) – the Fourth Circuit in cases involving default judgments, *Compton v. Alton Steamship Co.*, 608 F.2d 96, 104, 106-07 (4th Cir. 1979), and the Eighth Circuit in cases involving errors resulting from judicial inadvertence, *Lowry v. McDonnell Douglas Corp.*, 211 F.3d 457, 460-61 (8th Cir. 2000).

Petitioner would also prevail in the Eleventh Circuit, which has held that claims alleging legal error are not "mistakes" cognizable under Rule 60(b)(1). *Rice v. Ford Motor Co.*, 88 F.3d 914, 918 & n.7 (11th Cir. 1996). Instead, and although "[a] mere error of law is not sufficient in and of itself to obtain relief under Rule 60(b)(6)," *Scott v. Singletary*, 38 F.3d 1547, 1557 (11th Cir. 1994), that circuit made clear in *Rice* – another case involving legal error – that relief is justified pursuant to Rule 60(b)(6) in cases involving sufficient extraordinary circumstances, including legal error. Indeed, in habeas proceedings in *Ritter v. Smith*, 811 F.2d 1398 (11th Cir. 1987), the Eleventh Circuit granted the state relief from judgment pursuant to Rule 60(b)(6), acknowledging that "Rule 60(b) can be used to remedy a mistake in the application of the law," the prior judgment was "erroneous," and "all the circumstances . . . are extraordinary [such] that relief pursuant to Rule 60(b)(6) is justified," *id.* at 1401, 1403.

Petitioner would similarly prevail in the Third Circuit, which has held that because "legal error can usually be corrected on appeal, that factor *without more* does not justify the granting of relief under Rule 60(b)(6)," *Martinez-McBean v. Government of Virgin Islands*, 562 F.2d 908, 912 (3d Cir. 1977) (emphasis added), but has recognized – in a case alleging legal error – that "'extraordinary, and special circumstances' [will nonetheless] justify relief under Rule 60(b)(6)," *Pridgen v. Shannon*, 380 F.3d 721, 728 (3d Cir. 2004) (quoting *Page v. Schweiker*, 786 F.2d

150, 158 (3d Cir. 1986)), a possibility that the Sixth Circuit refused to consider in petitioner's case.[5]

4. This Court's intervention is required to resolve this three-way split among the circuits, which – as demonstrated above – creates widespread inconsistencies between jurisdictions. Such a result is contrary to the purpose of the Federal Rules of Civil Procedure: "'to secure the just, speedy, and inexpensive determination of every action,'" by "prescrib[ing] identical procedure for all actions." *City of Morgantown v. Royal Ins. Co.*, 337 U.S. 254, 257 (1949).

As this case demonstrates, the question presented is of undeniable importance to Rule 60(b) movants such as petitioner, for whom relief pursuant to Rule 60(b) is literally the only option remaining to redress the acknowledged legal error committed by the Sixth Circuit and, thus, the undisputed *Batson* violation at his trial. The Sixth Circuit's ruling strips Rule 60(b) of this role as a "safety valve," *Balark v. City of Chicago*, 81 F.3d 658, 663 (7th Cir. 1996), of last resort for movants such as petitioner, who has proceeded correctly at every turn but has nonetheless

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[5] The Tenth Circuit also holds that "legal error" is cognizable under Rule 60(b)(6). *See Van Skiver v. United States*, 952 F.2d 1241, 1244-45 (10th Cir. 1991). But it appears that petitioner could not obtain relief in that circuit because, to the best of petitioner's knowledge, the Tenth Circuit has found "extraordinary circumstances" justifying relief only in the case of legal error stemming from "a post-judgment change in the law 'arising out of the same accident as that in which the plaintiffs . . . were injured.'" *Id.* (quoting *Pierce v. Cook & Co.*, 518 F.2d 720, 723 (10th Cir. 1975)).

been precluded from obtaining habeas relief by the erroneous decisions of the Sixth Circuit.

Moreover, although the adverse effects of such inconsistencies are particularly harsh in the habeas context, they are by no means limited to habeas petitioners. To the contrary, parties – including the government – frequently seek relief from judgment pursuant to Rule 60(b)(6) in cases involving a wide variety of subject matters. *See, e.g., Gonzalez v. Crosby*, 545 U.S. 524, 534 (2005) (recognizing that "[i]n some instances, . . . it is the State, not the habeas petitioner, that seeks to use Rule 60(b), to reopen a habeas judgment *granting* the writ") (citations omitted) (emphasis in original); *Zurich American Insurance Co.*, 503 F.3d 933 (private party seeking relief in bankruptcy case); *Rice*, 88 F.3d 914 (same in products liability class action); *McMillan*, 4 F.3d 362 (same regarding breach of contract); *Van Skiver*, 952 F.2d 1241 (tax); *Martinez-McBean*, 562 F.2d 908 (employment action).

5. This case is also an ideal vehicle for this Court to resolve the circuit split over whether federal courts may grant a motion for relief from judgment under Federal Rule of Civil Procedure 60(b)(6) due to legal error in cases that present extraordinary circumstances. That question is outcome determinative in this case, in which the sole issue decided by the court of appeals was whether petitioner's motion must be brought under Rule 60(b)(1) or may instead be brought under Rule 60(b)(6). Because the Sixth Circuit ruled that petitioner could only seek relief for legal error under Rule 60(b)(1), it dismissed petitioner's motion as untimely under that subsection's one-year limitations

period. Pet. App. 10a. The court of appeals left undisturbed the district court's finding that this case presents extraordinary circumstances and that "failure to renew the Court's judgment would result in a miscarriage of justice in that Petitioner would be serving a life sentence based upon the verdict of a racially tainted jury." Pet. App. 13a. The court of appeals also did not question the district court's holding that petitioner's Rule 60(b) motion was brought within a reasonable time. *See* Pet. App. 5a, 27a. Thus, there is no doubt that petitioner would prevail if his motion for relief from judgment were cognizable under Rule 60(b)(6).

II. The Sixth Circuit's Decision Conflicts With This Court's Precedents.

Certiorari is also warranted because the Sixth Circuit's decision is wrong on the merits. This Court's precedents confirm that Rule 60(b)(6) relief is available for claims of legal error accompanied by extraordinary circumstances, even if one element of the claim for relief is a ground specified in clauses (b)(1) through (b)(5). Yet the Sixth Circuit held that, because it was based in part on legal error, petitioner's motion for relief from judgment could only be brought under Federal Rule of Civil Procedure 60(b)(1), notwithstanding the district court's specific finding that petitioner's case presented precisely the kind of extraordinary circumstances justifying relief pursuant to Rule 60(b)(6).

1. As originally drafted, Rule 60(b) provided relief from judgment only in the case of "mistake, inadvertence, surprise, or excusable neglect" by "a

party or his legal representative." FED. R. CIV. PROC. 60(b) (1937). Since its amendment in 1946, however, the Rule has authorized relief on five specific grounds, as well as through a broad sixth clause covering "any other reason justifying relief." FED. R. CIV. PROC. 60(b) (1946). This Court immediately recognized that "the language of the 'other reason' clause . . . vests power in courts adequate to enable them to vacate judgments *whenever such action is appropriate to accomplish justice*." *Klapprott v. United States*, 335 U.S. 601, 614-15 (1949) (emphasis added).

This Court's precedents make clear that Rule 60(b)(6) relief is broadly available when justified by extraordinary circumstances, even if those extraordinary circumstances embrace as an element a ground specified in clauses (b)(1) through (b)(5). Thus, in *Klapprott*, this Court held that extraordinary circumstances – including incarceration, illness, an inability to afford counsel, and a preoccupation with serious criminal charges – warranted Rule 60(b)(6) relief from a default denaturalization judgment. 335 U.S. at 613-16. Notably, the Court rejected the Government's argument that the motion was properly brought only under Rule 60(b)(1) (and was thus subject to Rule 60(b)(1)'s one-year limitations period) because it alleged "excusable neglect":

> [O]f course, the one-year limitation would control if no more than "neglect" was disclosed by the petition. In that event the petitioner could not avail himself of the broad "any other reason" clause of 60(b). But petitioner's allegations set up an

> extraordinary situation which cannot fairly or logically be classified as mere "neglect" on his part. The undenied facts set out in the petition reveal far more than a failure to defend the denaturalization charges due to inadvertence, indifference, or careless disregard of consequences.

Id. at 613. Because the movant was not simply using Rule 60(b)(6) to circumvent the one-year limitations period, but instead alleging that extraordinary circumstances had prevented him from seeking relief in an earlier motion under subsection (b)(1) of the rule, relief pursuant to "the 'other reason' clause of 60(b)" was, this Court concluded, appropriate. *Id.* at 615.

And in *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847 (1988), this Court held that a district judge's mistake in failing to recuse himself from the litigation was cognizable under Rule 60(b)(6), *id.* at 862-70. Indeed, this Court flatly rejected the contention that relief under Rule 60(b)(6) was "categorically unavailable" simply because the claim alleged legal error. *Id.* at 864. This Court reasoned that clauses (b)(6) and (b)(1) through (b)(5) were "mutually exclusive," *id.* at 863 n.11, by which it meant *not* that anything containing an allegation cognizable under clauses (b)(1) through (b)(5) can never be brought under clause (b)(6), but instead merely that "extraordinary circumstances are required to bring the motion within the 'other reason' language and to prevent clause (6) from being used to circumvent the 1-year limitations period that applies to clause (1)." This Court ultimately found extraordinary circumstances present in the case. *Id.*

at 863 n.11, 865-67. "Of particular importance," this Court noted, "this is not a case involving neglect or lack of due diligence by respondent." *Id.* at 863 n.11; *see also Ackermann v. United States*, 340 U.S. 193, 195-97 (1950) (again confirming that when extraordinary circumstances are present, relief is not precluded under Rule 60(b)(6) merely because one element of those circumstances is cognizable under another clause of Rule 60(b); although Court acknowledged that facts alleged properly fell under "excusable neglect" ground for relief and were thus time-barred under Rule 60(b)(1), Court also considered whether extraordinary circumstances might justify relief pursuant to Rule 60(b)(6)).

Just a few years ago, in *Gonzalez v. Crosby*, 545 U.S. 524 (2005), this Court made clear that Rule 60(b)(6) relief is available for claims of legal error accompanied by extraordinary circumstances, even if the claim for relief includes as one element a ground specified in clauses (b)(1) through (b)(5). At issue in *Gonzalez* was a Rule 60(b)(6) motion by a habeas petitioner who sought relief on the ground that this Court's decision in *Artuz v. Bennett*, 531 U.S. 4 (2000), "showed the error of the District Court's statute-of-limitations ruling" in his case. *Gonzalez*, 545 U.S. at 536. Both the majority and dissenting opinions analyzed the legal error in *Gonzalez* under Rule 60(b)(6) and its "extraordinary circumstances" requirement, without any suggestion that relief could only be sought under Rule 60(b)(1). *Id.* at 536-38, 540-45. Instead, the Court considered whether extraordinary circumstances justified relief under Rule 60(b)(6) and concluded – based on the movant's "lack of diligence" – that they did not. *Id.* at 537-38.

2. The Sixth Circuit's decision cannot be reconciled with these precedents. Petitioner's motion for relief from judgment is cognizable under Rule 60(b)(6) because it alleges far more than mere legal error; it alleges that if relief is not granted, petitioner will serve consecutive life sentences as a result of the undisputed *Batson* violation that tainted his state trial and the Sixth Circuit's subsequent error in *Mitchell I* – notwithstanding that petitioner diligently sought relief at every turn as soon as he was able to do so.

a. The Sixth Circuit classified petitioner's motion under Rule 60(b)(1), and thus deemed it untimely, solely because it alleged what the Sixth Circuit characterized as "a mistake made by th[e] court." Pet. App. 10a. Interpreting Rule 60(b)(6) to categorically prohibit motions "premised on one of the grounds for relief enumerated in clauses (b)(1) through (b)(5)," the Sixth Circuit reversed the grant of Rule 60(b)(6) relief without addressing (much less disputing) the district court's explicit findings that petitioner's case presented extraordinary circumstances justifying such relief. Pet. App. 9a-11a. Yet, as the district court found, petitioner's case presents precisely the kind of extraordinary circumstances that warrant relief under Rule 60(b)(6). Pet. App. 23a-25a.

Petitioner's motion does not simply allege that the Sixth Circuit committed legal error when it held that the district court lacked the authority to hold an evidentiary hearing and thus vacated the district court's original grant of habeas relief. Rather, the motion makes clear that petitioner's case involves the confluence of (i) an acknowledged legal error, (ii) an

additional erroneous procedural hurdle – the Sixth Circuit's decision in *McQueen v. Scroggy*, 99 F.3d 1302, 1335 (6th Cir. 1996) – that prohibited petitioner from seeking Rule 60(b) relief sooner, (iii) the prospect that if relief is not granted, he will serve a life sentence notwithstanding the undisputed *Batson* violation at his trial, and (iv) the fact that petitioner has diligently pursued relief at every turn.

First, after the district court granted petitioner habeas relief on the basis of an evidentiary hearing that revealed a *Batson* violation, the Sixth Circuit reversed, claiming that the court had lacked authority to conduct the hearing. Pet. App. 72a. Subsequent Sixth Circuit panels held that the decision was erroneous. In *Abdur'Rahman v. Bell*, 226 F.3d 696 (6th Cir. 2000), a Sixth Circuit panel characterized the decision in *Mitchell I* as "overbroad in that it fails to recognize the inherent authority that a district court always has in habeas cases to order evidentiary hearings" and determined: "it seems that despite the holding in *Mitchell*, a district court does have the inherent authority to order an evidentiary hearing," *id.* at 705-06. In *Harries v. Bell*, 417 F.3d 631 (6th Cir. 2005), the Sixth Circuit elaborated plainly: "as we recognized in *Abdur'Rahman v. Bell*, *Mitchell* conflicts with Sixth Circuit and Supreme Court precedent," *id.* at 635.

Second, the Sixth Circuit's decision in *McQueen v. Scroggy*, 99 F.3d 1302, 1335 (6th Cir. 1996) – which categorically deemed *all* Rule 60(b) motions by habeas petitioners to be prohibited second or successive habeas petitions – precluded petitioner from invoking Rule 60(b) at all. It was only in 2005, when this Court's decision in *Gonzalez*, 545 U.S. at

535-36, rejected the holding of *McQueen*, that petitioner was able to file his Rule 60(b) motion, Pet. App. 27a.

Third, petitioner's underlying *Batson* claim was held meritorious by the only court to squarely address the issue in an evidentiary hearing. Pet. App. 98a-99a. Indeed, the district court's judgment that "[t]he prosecutor's wrongful conduct and petitioner's trial counsel's failure to challenge [it] . . . prejudiced the integrity of [petitioner's] trial" remains unchallenged. Pet. App. 62a. Failure by this Court to grant relief would thus "result in a miscarriage of justice in that Petitioner would be serving a life sentence based [on] the verdict of a racially tainted jury," Pet. App. 13a, and on an acknowledged legal error by the Sixth Circuit.

Fourth, petitioner's diligence in pursuing relief underscores the extraordinary circumstances at play in his case. Petitioner has continued to challenge the constitutionality of his conviction even though relief has been overturned by the Sixth Circuit on three separate occasions. Pet. App. 64a, 34a, 1a. Petitioner has also sought certiorari from this Court on two previous occasions. *Mitchell v. Rees*, 114 F.3d 571 (6th Cir. 1997), *cert. denied*, 522 U.S. 1120 (1998); *Mitchell v. Rees*, 36 Fed. Appx. 752 (6th Cir. 2002), *cert. denied*, 537 U.S. 830 (2002). And shortly after this Court issued its decision in *Gonzalez* in June 2005 effectively overruling *McQueen*, petitioner promptly filed the present motion.

b. In holding that petitioner's motion for relief from judgment was properly brought pursuant to Rule 60(b)(1) and was thus untimely, the Sixth Circuit acknowledged that enforcement of the one-

year time limit in petitioner's case "may seem unfair," but it reasoned that the need for "balance" between finality and justice "necessarily creates situations in which an alleged injustice can no longer be remedied." Pet. App. 11a. This too cannot be reconciled with this Court's precedents. In *Gonzalez*, this Court eschewed similar concerns, declaring that the "policy consideration [of finality], standing alone, is unpersuasive in the interpretation of a provision whose whole purpose is to make an exception to finality." 545 U.S. at 529. Similarly, in *Klapprott* this Court reasoned that "the language of the 'other reason' clause of 60(b) is broad enough to authorize the Court to set aside [a] default judgment and grant petitioner a fair hearing," noting that the movant was "entitled to a fair trial," "has not had it," and "[t]he Government makes no claim that he has." 335 U.S. at 615.

So too here the language of Rule 60(b)(6) is broad enough to authorize relief in a case in which an unconstitutional conviction remains in place based on a ruling that the Sixth Circuit admits was erroneous, coupled with additional extraordinary circumstances that prevented petitioner from obtaining relief earlier. As both the district court and a dissenting Sixth Circuit judge have acknowledged, this case presents a "judicial travesty" that should not stand. Pet. App. 12a, 90a.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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