

No. 19-8464

IN THE  
SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.  
FILED

JUN 16 2020

OFFICE OF THE CLERK

JAMAL MITCHELL,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for Rehearing of the Order  
Denying the Petition for Writ of Certiorari

**PETITION FOR REHEARING**

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## GROUNDS FOR REHEARING

The grounds for rehearing the order denying the petition for a writ of certiorari centers on a decision issued by this Court that was handed down days before the Court entered its order in this case. The aforementioned decision is of special note because its holding answers the question presented in the petition for writ of certiorari, that is, whether a motion under Rule 60(b) of the Rules of Civil Procedure can be used to challenge a judgment of forfeiture. The decision applies to the legal issues of this case given its proximity to the order denying the petition for a writ of certiorari and therefore amounts to an intervening circumstance.

## STATEMENT OF THE CASE

On January 2, 2019, the Petitioner moved the District Court for the Eastern District of Virginia pursuant to Rule 60(b)(4)-(6) of the Federal Rules of Civil Procedure for an order to amend a forfeiture judgment. The motion was based on an intervening change of law effected by the Fourth Circuit's decision in United States v. Chittenden, 896 F.3d 633 (4th Cir. 2018). The Chittenden decision was grounded on this Court's opinion in Honeycutt v. United States, 137 S. Ct. 1626 (2017).

The district court denied the motion to amend the judgment in an order issued on August 6, 2019. The court held in relevant part that Rule 60(b) cannot be used to challenge a judgment of forfeiture. (See Dist. Ct.'s Order at 2 attached as Appx. C.) A timely appeal of the district court's order was filed.

On appeal, the Petitioner argued that the district court abused its discretion under Rule 60(b). The Fourth Circuit found no reversible error in the district court's decision and affirmed on the grounds previously stated by the district court. (See Appx. A.) A petition for rehearing and/or rehearing en banc to the appellate court was subsequently denied. (See Appx. D.)

On May 14, 2020, Petitioner filed in this Court a petition for writ of certiorari. One of the questions presented in the petition was whether Rule 60(b) can be used to challenge a judgment of forfeiture. (See Pet. at i.) This Court denied the petition for a writ of certiorari in an order issued on June 8, 2020.

## INTERVENING CIRCUMSTANCES

The criteria of intervening circumstances for rehearing an order denying a petition for a writ of certiorari have been met in this case. The Court issued an opinion seven (7) days prior to rendering its decision denying the petition for a writ of certiorari that answered a question presented in the petition. To wit: Can Rule 60(b) be used to challenge a judgment of forfeiture.

On June 1, 2020, this Court decided *Banister v. Davis*, 140 S. Ct. 1698 (2020). In *Banister*, the majority held that Rule 60(b) may be used "to seek relief from a judgment at any time after the term's expiration—even after an appeal had long since concluded." *Supra* at 1709. "A Rule 60(b) motion—often distant in time and scope and always given rise to a separate appeal—attacks an already completed judgment." *Supra* at 1710.

As noted, the decision in *Banister* was handed down while the petition for a writ of certiorari was pending. The Petitioner should be able to benefit from the holding in *Banister*, especially since it is customary for this Court to remand cases that are pending in light of legal decisions that are issued in the interim.

Accordingly, it is requested that the Court grant the petition for rehearing based on intervening circumstances and thereafter issue a summary judgment in this case and ultimately remand the case to the Fourth Circuit in light of *Banister*.

Respectfully submitted,

*Jamal Mitchell*

Jamal Mitchell, pro se

April 9, 2021

PROOF OF SERVICE

This serves as proof that service of the foregoing Petition for Rehearing has been rendered on this 9th day of April 2021, and on the below-listed party:

Solicitor General of the United States  
Department of Justice  
950 Pennsylvania Avenue, NW, Room 5616  
Washington, DC 20530-0001

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CERTIFICATION OF GROUNDS

I hereby certify that the Petition for Rehearing is limited to the grounds of intervening circumstances and the petition is presented in good faith and not to cause delay.

Respectfully submitted,

Jamal Mitchell  
Jamal Mitchell, pro se