

No. _____

21-5608

IN THE
SUPREME COURT OF THE UNITED STATES

David Angel Sifuentes III
(Your Name)

PETITIONER

vs.

John Preleznik

— RESPONDENT(S)

ORIGINAL

ON PETITION FOR A WRIT OF CERTIORARI TO

FILED
AUG 26 2021

OFFICE OF THE CLERK
SUPREME COURT, U.S.

Sixth Circuit Court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

David Angel Sifuentes III
(Your Name)

224 Gold Ave. NW
(Address)

Grand Rapids, MI 49504
(City, State, Zip Code)

616-283-5215
(Phone Number)

QUESTION(S) PRESENTED

I. Is a Rule 60(b) motion untimely or tardy when a litigant seeks to reopen their case under Rule 60(b)(8) on an intervening change of habeas law within one year of ruling of case, and is the issue also eligible for a certificate of Appealability.

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

1103-cv-637

21-1201

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OTHER

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix B to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

The opinion of the United States district court appears at Appendix A to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

[] For cases from **state courts**: N/A

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was July 12, 2021.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: August 19, 2021, and a copy of the order denying rehearing appears at Appendix D.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

For cases from **state courts**:

N/A

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Federal Rules of Civil Procedure 60

Habeas Corpus 28 U.S.C. § 2254

14th Amendment

STATEMENT OF THE CASE

David Angel Oifuentes III, In Pro Se filed a Rule 60(b) motion in the District Court under a change of intervening law on this court's decision of Banister v. Davis, 140 F.4t, 1698 (2020). The Rule 60(b) motion was brought within 1 year of announcement of Banister. Oifuentes case was dismissed and the District Court informed the court to not allow any more habeas filings in the matter.

The District Court found the motion to be tardy and untimely. The 10th circuit agreed. The motion was brought under the new case of Banister because Oifuentes had been denied his right to amend his first habeas petition with a stand alone due process claim of prosecutorial misconduct.

After several attempts to alert the District Court and 10th circuit of his reason to file the Rule 60(b) motion, they were denied. Oifuentes now moves this court to allow him to amend his first habeas petition and seek Rule 60(b) relief and a certificate of appealability.

REASONS FOR GRANTING THE PETITION

Officiant's writ should be granted under Banister v. Davis, 140 S.Ct. 1698 (2020) which record a circuit split to allow state habeas applicants to amend their first habeas petition. Officiant seeks to have the court explain if Banister applies to motions to amend under Rule 15 as that is part of the original habeas proceeding. Officiant also ask the court to clarify if a Rule 60(b) is tardy or untimely when a habeas applicant seeks to reopen their case under "exceptional and or extraordinary circumstances" under Gonzalez v. Crosby, 545 U.S. 524 (2005), on an intervening change of habeas law. Prior to Banister there was a circuit split and there was no 9th Circuit precedent known of that would allow a state habeas applicant to amend their first habeas petition after divisional. Also Gonzalez ruling is to open up all final judgments if qualified. Officiant also ask that the court clarify if a certificate of appealability (COA) is required under Slack v. McDaniel, 529 U.S. 433 (2000) and if so for Officiant eligible to seek one under Rule 60(b) and is his case a substantial showing of both a denial of a procedural ruling and 14th Amendment due process claim.

Officiant ask that this Honorable Court liberally construe his pleading, and not fault him for citing the wrong law are cases. Officiant also apologizes for his messy writing.

Under Gonzalez the court ruled that a change of substantive law could be grounds for relief under Rule 60(b), like the case of Gonzalez Officiant is relying on the new case

...to reopen his and have an opportunity for his stand alone due process claim of prosecutorial misconduct that was raised be addressed on the merits for those reasons and discussed below. Gifuentes seeks to have his case remanded in to have his merits addressed. The motion should not be barred or stayed by the District Court's refusal to allow any more habeas filings should be reversed as that may place a roadblock to any new cases that are announced that may be applied retroactively on habeas petitions. Gifuentes also ask that this Honorable court consider any and all previous filed pleadings in this matter for granting the writ only limited to his stand alone due process claim not any new (constitutional) claims because Gonzalez would preclude Rule 66 (b) relief, Gifuentes is only seeking to amend his one claim under Banister.

CONCLUSION

Gifuentes PRAYS that this honorable court Grant vacate and remand to the District Court to determine if Banister applies in his case and if the intervening change of law is reasonable and timely under Rule 60(b)(6), plus any other relief he is entitled to. The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: August 26, 2021