

No. \_\_\_\_\_

**21 - 5608**

IN THE  
SUPREME COURT OF THE UNITED STATES

David Angel Sifuentes III  
(Your Name)

PETITIONER

vs.

John Prekonik

RESPONDENT(S)

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  
21-1207

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## TABLE OF AUTHORITIES CITED

### CASES

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Banioter v. Davis, 140 S.Ct. 1698 (2020)  
Gonzalez v. Crosby, 545 U.S. 524 (2005)  
Slack v. McDaniel, 529 U.S. 473 (2000)

### STATUTES AND RULES

Federal Rule Civil Procedure 15  
Federal Rule Civil Procedure 60

### 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☒ is unpublished.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☒ is unpublished.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☐ is unpublished.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

14<sup>th</sup> Amendment



## STATEMENT OF THE CASE

David Angel Sifuentes III, In Pro se filed a Rule 60(b) motion in the District Court under a change of intervening law on this court decision of Banioter v. Davis, 140 S.Ct. 1698 (2020). The Rule 60(b) motion was brought within 1 year of announcement of Banioter. Sifuentes 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 timely and untimely, The 8th Circuit agreed, The motion was brought under the new case of Banioter because Sifuentes 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 8th Circuit of his reason to file the Rule 60(b) motion they were denied. Sifuentes 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

Sifuentes writ should be granted under Banks v. Duro, 140 S.Ct. 1698 (2020) which resolved a circuit split to allow state habeas applicants to amend their first habeas petition. Sifuentes seeks to have the court explain if Banks applies to motions to amend under Rule 15 as that is part of the original habeas proceeding.

Sifuentes also ask the court to clarify if a Rule 60(b) is timely 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 Banks there was a circuit split and there was no 5th Circuit precedent known of that would allow a state habeas applicant to amend their first habeas petition after dismissal. Also Gonzalez ruling is to open up all final judgments, if qualified.

Sifuentes also ask that the court clarify if a certificate of appealability (COA) is required under Black v. McDaniel, 529 U.S. 473 (2000) and if so is Sifuentes 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.

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

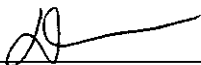
Under Gonzalez the court ruled that a change of substantive law could be grounds for relief under Rule 60(b). Like the case of Gonzalez Sifuentes is relying on the new case

... 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. Ofuentes seeks to have his case remanded on to have his merits addressed. The motion should not be barred or tardy - also the District Court's refusal to allow any more habeas filings should be reversed as this may place a roadblock to any new cases that are announced that may be applied retroactive on habeas petitioners. Ofuentes also asks 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 60(b) relief, Ofuentes is only seeking to amend his one claim under Banister.

#### CONCLUSION

Ofuentes 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), also any other relief he is entitled to. The petition for a writ of certiorari should be granted.

Respectfully submitted,

  
\_\_\_\_\_

Date: August 26, 2021