No. 22-5184

In the Supreme Court of the United States

DWAYNE STOUTAMIRE,

Petitioner,

v.

TIM SHOOP, Warden

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

About fifteen years ago, Dwayne Stoutamire was convicted in state court of various crimes and sentenced to thirty-four years in prison. Throughout federal habeas proceedings challenging his convictions and sentence, Stoutamire has alleged that he is actually innocent. And he has argued that, because of his alleged innocence, he should be able to litigate claims that he failed to adequately raise in state court. Stoutamire eventually lost his bid for habeas relief, but he has continued to litigate his claim of actual innocence. Last year, Stoutamire filed his fourth motion for relief from judgment under Federal Rule of Civil Procedure 60(b), once again raising his actual-innocence argument. The District Court denied that motion. Applying 28 U.S.C. §2253(c), the Sixth Circuit denied Stoutamire's request for a certificate of appealability. Against this backdrop, Stoutamire's petition presents three questions:

1. Does a habeas petitioner need to obtain a certificate of appealability under §2253(c) before appealing the denial of a Rule 60(b) motion?

2. Did the Sixth Circuit properly apply §2253(c) when it denied Stoutamire a certificate of appealability?

3. Should the Court craft a "more lenient" exception from procedural default, for those habeas petitioners who believe that they properly presented their claims in state court?

LIST OF PARTIES

The Petitioner is Dwayne Stoutamire, an inmate at the Chillicothe Correctional Institution.

The Respondent is Tim Shoop, the Warden of the Chillicothe Correctional Institution.

LIST OF DIRECTLY RELATED PROCEEDINGS

1. *State of Ohio v. Stoutamire*, No. 2007-CR-00148 (Ohio Ct. Comm. Pls. Trumbull Cnty.) (sentence entered on August 1, 2007)

2. *State v. Stoutamire*, No. 2007-T-0089, 2008 WL 2404739 (Ohio Ct. App. 11th Dist.) (convictions and sentence affirmed on June 13, 2008)

3. *State v. Stoutamire*, No. 2008-1501, 119 Ohio St. 3d 1505 (Ohio) (discretionary review declined on October 29, 2008)

4. *State of Ohio v. Stoutamire*, No. 2007-CR-00148 (Ohio Ct. Comm. Pls. Trumbull Cnty.) (petition for postconviction relief denied on September 23, 2008)

5. *State v. Stoutamire*, No. 2008-T-0108, 2009 WL 4161109 (Ohio Ct. App. 11th Dist. 2008) (denial of petition for postconviction relief affirmed on November 25, 2009)

6. *State v. Stoutamire*, No. 2010-0069, 124 Ohio St. 3d 1540 (Ohio) (discretionary review declined on April 14, 2010)

7. *State of Ohio v. Stoutamire*, No. 2007-CR-00148 (Ohio Ct. Comm. Pls. Trumbull Cnty.) (second petition for postconviction relief dismissed on June 24, 2009)

8. *State v. Stoutamire*, No. 2009-T-0073, 2010 WL 1056659 (Ohio Ct. App. 11th Dist.) (dismissal of second petition for postconviction relief affirmed on March 19, 2010)

9. *State v. Stoutamire*, No. 2010-0779, 126 Ohio St. 3d 1516 (Ohio) (discretionary review declined on July 21, 2010)

10. *Stoutamire v. Morgan*, No. 4:10CV2657, 2011 WL 6934807 (N.D. Ohio) (petition for writ of habeas corpus denied on December 30, 2011)

11. *Stoutamire v. Morgan*, Nos. 12-3099/3225, 2012 U.S. App. LEXIS 27496 (6th Cir.) (certificate of appealability denied in part on November 29, 2012)

12. *Stoutamire v. Morgan*, Nos. 12-3099/3225, 2013 WL 12462591 (6th Cir.) (denial of petitioner for writ of habeas corpus affirmed on October 10, 2013)

13. *Stoutamire v. Morgan*, No. 13-10051, 573 U.S. 936 (U.S.) (certiorari denied on June 23, 2014)

14. *Stoutamire v. Morgan*, No. 4:10CV2657 (N.D. Ohio) (first Rule 60(b) motion denied on July 23, 2012)

15. *Stoutamire v. Morgan*, No. 4:10CV2657 (N.D. Ohio) (second Rule 60(b) motion denied on January 7, 2015)

16. *Stoutamire v. Morgan*, No. 15-3141, 2015 U.S. App. LEXIS 23557 (6th Cir.) (certificate of appealability denied August 18, 2015)

17. *Stoutamire v. Morgan*, No. 15-9223, 579 U.S. 934 (U.S.) (certiorari denied on June 27, 2016)

18. *Stoutamire v. LaRose*, No. 4:10CV2657, 2018 WL 11303839 (N.D. Ohio) (third Rule 60(b) motion denied on February 14, 2018)

19. *Stoutamire v. La Rose*, No. 18-3216, 2018 WL 11303956 (6th Cir.) (certificate of appealability denied on July 27, 2018)

20. *Stoutamire v. La Rose*, No. 18-7236, 139 S. Ct. 1216 (U.S.) (certiorari denied on February 19, 2019)

21. *Stoutamire v. Morgan*, Nos. 12-3099/3225, 2018 WL 11299001 (6th Cir.) (motion to recall mandate denied on September 5, 2018)

22. *Stoutamire v. Morgan*, No. 18-8989, 140 S. Ct. 161 (U.S.) (certiorari denied on October 7, 2019)

23. *In re Stoutamire*, No. 21-5809, 142 S. Ct. 414 (U.S.) (original action dismissed on October 18, 2021)

24. *Stoutamire v. Shoop*, No. 21-3810 (6th Cir.) (appeal pending)

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INTRODUCTION

Federal Rule of Civil Procedure 60(b) permits litigants to seek relief from "an already completed judgment" in certain extraordinary situations. *Banister v. Davis*, 140 S. Ct. 1698, 1710 (2020). Whatever the rule's virtues in ordinary litigation, the "availability" of the rule in federal habeas cases raises unique concerns. *Id.* Federal habeas review has strict limits, so as to avoid unneeded disruption to the finality of state convictions. But Rule 60(b) "threatens serial habeas litigations," as "a prisoner could," in theory, "endlessly" file such motions. *Id.* The Court must therefore be careful to "suppress[] abuse" when it arises. *See id.*

This case proves the point. Dwayne Stoutamire's federal habeas case began in 2010. And it should have ended in 2014, when this Court decided not to hear an appeal arising from the denial of habeas relief. *Stoutamire v. Morgan*, 573 U.S. 936 (2014). But since then, Stoutamire, representing himself, has used Rule 60(b) motions and other filings to repetitively argue that he is innocent and that he should receive further review of his habeas claims. All of Stoutamire's earlier motions making this innocence argument have failed, and he is presently on his fourth Rule 60(b) motion. The District Court, unsurprisingly, denied that motion. Thus, under AEDPA, Stoutamire needed a certificate of appealability to proceed with an appeal. 28 U.S.C. §2253(c). The Sixth Circuit declined to issue a certificate. Now Stoutamire moves on to this Court, claiming that his case deserves further attention.

Stoutamire is wrong—none of the questions this case presents are worthy of the Court's sustained attention. For example, Stoutamire asks this Court to review whether habeas petitioner must seek certificates of appealability under §2253(c)

before appealing denials of Rule 60(b) motions. The Sixth Circuit's decision below—which required a certificate of appealability in this situation—matches both the text of §2253(c) and the "near-consensus" position among the circuits. *Bracey v. Superintendent Rockview SCI*, 986 F.3d 274, 281 (3d Cir. 2021). While some circuits do not require certificates of appealability in certain Rule 60(b) scenarios, this case does not implicate any of those scenarios. Alternatively, Stoutamire asks the Court for case-specific error correction. He says that the Sixth Circuit's certificate-of-appealability analysis is inconsistent with what the Court did in *Buck v. Davis*, 580 U.S. 100 (2017). But Stoutamire greatly overreads that narrow case. *Buck* addressed a circuit's extreme "departure from the procedure" that §2253(c) requires for certificates of appealability. *Id.* at 117. *Buck* is not an invitation for habeas petitioners to selectively critique every word choice in certificate-of-appealability orders, as Stoutamire attempts to do here.

But regardless of whether Stoutamire has raised an interesting question, the Court should deny review. Stoutamire's repetitive, meritless Rule 60(b) motions are abusive. He has nothing new to say about his claimed innocence and he has no legitimate claim to relief from judgment under Rule 60(b). Thus, to grant further review in this case would send the wrong message—both to Stoutamire himself and to the countless habeas petitioners who might copy his methods.

JURISDICTION

The District Court denied Stoutamire's fourth Rule 60(b) motion on July 2, 2021, Pet.App.A1–3, and it denied Stoutamire's request for a certificate of appealability on August 10, 2021, *Stoutamire v. La Rose*, No. 4:10CV2657, 2021 U.S. Dist.

LEXIS 260552 (N.D. Ohio Aug. 10, 2021). Stoutamire appealed, and the Sixth Circuit denied Stoutamire's application for a certificate of appealability on January 24, 2022. Pet.App.B1–5. The Sixth Circuit then denied Stoutamire's request for a rehearing on April 18, 2022. Pet.App.C1. Stoutamire filed his current petition for certiorari on July 14, 2022. This Court has jurisdiction to review the denial of a certificate of appealability. *Ayestas v. Davis*, 138 S. Ct. 1080, 1088 n.1 (2018).

STATEMENT

1. This case arises from a shooting and a domestic assault, both of which occurred over fifteen years ago. The shooting happened on a late night in January 2007. While in the parking lot of his girlfriend's apartment complex, Antonio Peterman was shot in the thigh and stomach. *State v. Stoutamire*, No. 2007-T-0089, 2008 WL 2404739 at *1 (Ohio Ct. App. 2008). As one would expect, the gunfire caused a commotion. Afterward, Peterman's girlfriend realized that money was missing from her apartment. *Id.* at *2. Several neighbors heard the shots. In the moments that followed, one neighbor saw two people in hooded sweatshirts run towards a red car. *Id.* Police recovered shell casings from the crime scene, which came from a .40 caliber weapon. *Id.* Peterman, who stopped breathing on his way to the hospital, suffered severe brain injury and went into a coma. *Id.*

The domestic assault occurred about a month later. Dwayne Stoutamire and his girlfriend—Jessica Gordon—were arguing at a friend's house. *Id.* at *2–3. (Gordon had been out late drinking and Stoutamire believed that she was cheating on him. *Id.*) After leaving the friend's house for a few minutes, Stoutamire came back and dragged Gordon out of the house towards his car. The couple began fist fighting

and Stoutamire hit Gordon in the face, "giving her a black eye and a swollen lip." *Id.* at *3. Gordon tried to escape, but Stoutamire threatened her with a gun in hand, saying, "Get in the car. You want to get shot?" *Id.* Police later responded to the disturbance, and Gordon "ran to them crying hysterically." *Id.* The police observed that Gordon looked "'beat up' with a bloody lip, red face, and a torn shirt." *Id.* They also saw a revolver in the front seat of Stoutamire's car. *Id.*

The police interviewed Gordon about the assault, but they soon learned that Gordon also knew details about the Peterman shooting. Gordon told police that she gave Stoutamire and his friend, Fred Brady, a ride on the night of the shooting. *Id.* According to Gordon, both Stoutamire and Brady appeared nervous, and Brady was "carrying a plastic bag of what appeared to be clothes." *Id.* Gordon also noticed what seemed to be blood on Stoutamire' s jeans. *Id.* Stoutamire later told Gordon that he and Brady had tried to rob someone and then had shot that person "in the leg and side." *Id.* Stoutamire also told Gordon that he thought "the guy was dead." *Id.* Gordon provided police with a paper bag of .40 caliber bullets and a plastic bag of clothes, both of which she said belonged to Brady. *See id.* at *4. From talking with Gordon, the police further discovered that Brady drove a maroon car. *Id.*

Armed with this new information, the police focused their investigation on Stoutamire and Brady. And other evidence soon shed further light on the pair's involvement in the shooting. Brady's cousin testified that Stoutamire and Brady came to his house the night of the shooting, shortly after the crime had occurred. By the cousin's account, Stoutamire and Brady were acting like someone was chasing

them—for example, both men removed their outer layer of clothing and put the clothes in a bag. *Id.* To explain their behavior, Stoutamire said, "I got into a confrontation but its all good though I only hit the dude twice in the leg and chest." *Id.* Another person recalled a conversation the night before the shooting, during which Stoutamire and Brady were discussing potential targets for a robbery. *Id.* Stoutamire said that he was "willing to hit anybody" and was "thirsty to do a lick." *Id.* Brady mentioned Peterman as one potential target. *Id.*

The State indicted Stoutamire for several offenses arising from the shooting of Peterman and the assault of Gordon. After trial, a jury convicted Stoutamire of felonious assault, abduction, and aggravated robbery with a firearm specification, among other crimes, and a judge sentenced him to thirty-four years in prison. *Id.* at *5. Stoutamire challenged his convictions and sentence in state courts, both through direct appeal and by seeking post-conviction relief. Those challenges failed. *See, e.g.*, *State v. Stoutamire*, 119 Ohio St. 3d 1505 (2008); *State v. Stoutamire*, 124 Ohio St. 3d 1540 (2010).

2. Stoutamire next turned to federal court, filing a habeas petition in 2010. Through that petition, he raised several claims that he failed to adequately present in state court during earlier proceedings. *Stoutamire v. Morgan*, No. 4:10CV2657, 2011 WL 6934807 at *3 (N.D. Ohio Dec. 30, 2011). His failure to present these claims in state court was a barrier, because federal courts reviewing habeas petitions may not normally consider "procedurally defaulted" claims that a petitioner failed to adequately present in state court. *Davila v. Davis*, 137 S. Ct. 2058, 2064 (2017). To

proceed on a procedurally defaulted claim, habeas petitioners must normally show "cause" for their failure to present the claim in state court along with "prejudice" resulting from the alleged constitutional violation. *Id.* at 2064–65 (quotations omitted). More relevant here, this Court has carved out a separate "actual innocence" exception for excusing procedural default in "rare" instances. *McQuiggin v. Perkins*, 569 U.S. 383, 386 (2013) (describing procedural-default exception). That exception avoids "miscarriages of justice," *Schlup v. Delo*, 513 U.S. 298, 321 (1995), by allowing habeas petitioners to proceed on procedurally defaulted claims when they make an "extraordinary" showing, in light of "new reliable evidence," that they are actually innocent, *House v. Bell*, 547 U.S. 518, 537–38 (2006) (quotations omitted).

Stoutamire claimed to meet this exception. More precisely, he argued that the District Court should hear his procedurally defaulted claims because there was new evidence of his actual innocence. *Stoutamire v. Morgan*, No. 4:10CV2657, 2011 WL 6934809 at *12 (N.D. Ohio Oct. 5, 2011) (report and recommendation). The new evidence, according to Stoutamire, was that Gordon had recanted her testimony. He provided the court with an unnotarized statement, with an "unintelligible signature," that he said came from Gordon. *Id.*

The District Court denied Stoutamire habeas relief. Among other things, it concluded that Stoutamire failed to make a sufficient showing of his actual innocence, so as to save his procedurally defaulted claims. *Stoutamire v. Morgan*, 2011 WL 6934807 at *3–*4. Because the District Court denied habeas relief, Stoutamire

needed a certificate of appealability to proceed with an appeal. 28 U.S.C. §2253(c). The District Court denied Stoutamire a certificate of appealability.

Stoutamire then requested a certificate of appealability from the Sixth Circuit. That court also denied the request, as to most of Stoutamire's claims. Of particular note, it concluded that Stoutamire' s claim of "actual innocence was unreliable," beyond any reasonable debate. *Stoutamire v. Morgan*, Nos. 12-3099/3225, 2012 U.S. App. LEXIS 27496 at *7 (6th Cir. Nov. 29, 2012). The Sixth Circuit did allow Stoutamire to appeal a separate claim relating to the severance of trial proceedings. *Id.* at *9, 11. But it later affirmed the District Court's denial of habeas relief on that claim. *Stoutamire v. Morgan*, Nos. 12-3099/3225, 2013 WL 12462591 at *2 (6th Cir. Oct. 10, 2013). This Court denied Stoutamire's petition for certiorari. *Stoutamire v. Morgan*, 573 U.S. 936 (2014).

3. Since the failure of his habeas petition in 2014, Stoutamire has repeatedly filed post-judgment motions rearguing his claimed innocence. For example, after the Sixth Circuit affirmed the denial of habeas relief, and this Court denied further review, Stoutamire moved the Sixth Circuit to recall its mandate based on his claim of innocence. The Sixth Circuit denied that motion. *Stoutamire v. Morgan*, Nos. 12-3099/3225, 2018 WL 11299001 (6th Cir. Sept. 5, 2018). This Court denied certiorari, *Stoutamire v. Morgan*, 140 S. Ct. 161 (2019), and also denied a rehearing petition, *Stoutamire v. Morgan*, 140 S. Ct. 949 (2020). Last year, Stoutamire separately filed an original action before this Court, asking the Court to entertain a freestanding

claim of innocence. Pet., No. 21-5809 (U.S. June 28, 2021). This Court dismissed that action. *In re Stoutamire*, 142 S. Ct. 414 (2021).

Most relevant here, Stoutamire has repeatedly moved the District Court for relief from judgment under Federal Rule of Civil Procedure 60(b). Under that rule, a court may grant a party relief from a final judgment for certain listed reasons, including when "newly discovered evidence" justifies such relief. Fed. R. Civ. P. 60(b)(1)-(5); *see* (b)(2). The rule also contains a catch-all provision that allows a court to grant relief from judgment for "any other reason that justifies relief." Fed. R. Civ. P. 60(b)(6). That provision, this Court has explained, requires a showing of "extraordinary circumstances." *Gonzalez v. Crosby*, 545 U.S. 524, 536 (2005).

Stoutamire filed his first Rule 60(b) motion in July 2012. 1st Mot., R.56, PageID#1472–73. He argued that evidence he was able to obtain from his trial counsel supported his claim of actual innocence. That meant, Stoutamire continued, that the District Court should review the merits of his procedurally defaulted claims. The District Court denied this first motion because Stoutamire's appeal in the Sixth Circuit was still pending. Or., R.58, PageID#1518.

Stoutamire's next Rule 60(b) motion came in December 2014. 2nd Mot., R.73, PageID#1627–84. Stoutamire again urged the District Court to consider all of his constitutional claims because he is innocent. *Id.*, PageID#1645–65. The District Court denied the motion and declined to issue a certificate of appealability. Op. & Or., R.74, PageID#1711–16. The Sixth Circuit also denied Stoutamire's request for a certificate of appealability: it explained that "[r]easonable jurists could not debate the

district court's resolution of Stoutamire's Rule 60(b) motion," as Stoutamire's motion "simply sought to relitigate issues that he had previously raised." *Stoutamire v. Morgan*, No. 15-3141, 2015 U.S. App. LEXIS 23557 at *4 (6th Cir. Aug. 18, 2015). This Court denied Stoutamire's petition for certiorari. *Stoutamire v. Morgan*, 579 U.S. 934 (2016).

In 2017, Stoutamire filed his third Rule 60(b) motion. 3rd Mot., R.82, PageID#1741. He argued, yet again, that the District Court should excuse his procedural default because he is innocent. *Id.*, PageID#1742, 1748–65. The District Court denied Stoutamire's motion and declined to issue a certificate of appealability. *Stoutamire v. LaRose*, No. 4:10CV2657, 2018 WL 11303839 (N.D. Ohio Feb. 14, 2018). It stressed that Stoutamire's third motion "merely rehashe[d] the same arguments and evidence already presented and rejected several times." *Id.* at *3. The Sixth Circuit similarly declined to issue a certificate of appealability. *Stoutamire v. La Rose*, No. 18-3216, 2018 WL 11303956 (6th Cir. July 27, 2018). Notably, at that point, Stoutamire argued "that he should not be required to obtain a certificate of appealability to appeal the denial of his Rule 60(b) motion," though he recognized that the Sixth Circuit had "held otherwise." *Id.* at *1.

Stoutamire again sought this Court's review in 2018, through a petition for certiorari that previews many of the arguments raised in his current petition. *See* Pet., No. 18-7236 (U.S. Dec. 14, 2018). In particular, Stoutamire asked this Court to resolve a circuit conflict over whether habeas petitioners must obtain certificates of appealability in order to appeal denials of Rule 60(b) motions. *Id.* at 7–9. He also

requested a summary reversal, arguing that the Sixth Circuit erred in its certificate-of-appealability analysis by considering factors beyond the District Court's rationale for denying his Rule 60(b) motion. *Id.* at 10–13. This Court denied Stoutamire's petition, *Stoutamire v. La Rose*, 139 S. Ct. 1216 (2019), and his later request for rehearing, *Stoutamire v. La Rose*, 139 S. Ct. 2047 (2019).

4. The latest round of proceedings in this case arises from Stoutamire's fourth Rule 60(b) motion. 4th Mot., R.96-1, PageID#1849–71. In that motion, Stoutamire once again argues that he is innocent and that his innocence serves as a gateway for reviewing his procedurally defaulted claims. *Id.*, PageID#1855–70. Stoutamire attached several exhibits in support of his fourth motion, all of which—besides Stoutamire's own affidavit—predate his 2010 habeas petition. For example, Stoutamire attached a 2008 letter from Gordon, in which she said that the State pressured her to testify against Stoutamire. *Id.*, Ex. F, R.96-7, PageID#1892–93.

The District Court denied Stoutamire's fourth motion. It briefly recapped Stoutamire's previous attempts—and failures—to win relief on his actual-innocence claim. Pet.App.A1–2. "Stoutamire's latest Rule 60(b) Motion," the District Court explained, likewise failed "to offer any new *reliable* evidence of his actual innocence." Pet.App.A2. Indeed, "the only new evidence" Stoutamire offered was "a single self-serving affidavit by Stoutamire himself." *Id.* Without any new reliable evidence, the District Court concluded that Stoutamire's motion failed to satisfy the actual-innocence exception for considering procedurally defaulted claims. *Id.* (citing *Schlup*, 513 U.S. at 324). Alternatively, the District Court posited that—given its repeated

rejections of Stoutamire's actual-innocence arguments—Stoutamire's fourth motion could be considered a successive habeas petition. *Id.* Taking that view, Stoutamire's motion would have fared no better—he had not satisfied AEDPA's demanding requirements for filing successive habeas petitions. *Id.*; *see also* 28 U.S.C. §2244(b).

Through a separate order, the District Court denied Stoutamire's request for a certificate to appeal the denial of his fourth Rule 60(b) motion. *Stoutamire v. La Rose*, No. 4:10CV2657, 2021 U.S. Dist. LEXIS 260552 (N.D. Ohio Aug. 10, 2021). The District Court explained that, considering both "old and new" evidence, Stoutamire "did not present a colorable claim of 'actual innocence.'" *Id.* at *3. It noted that such claims succeed only in "extraordinary circumstances" involving new "credible evidence." *Id.* at * 3–4 (citing *Schlup*, 513 U.S. at 324 and *McQuiggin*, 569 U.S. at 386). And Stoutamire's fourth motion, the District Court again stressed, relied primarily on "redundant evidence" that the court had "reviewed previously." *Id.* at *4–5.

(A quick aside. In addition to denying Stoutamire a certificate of appealability, the District Court instructed its clerk of courts "not to accept any additional filings in this closed case without prior approval from this Court." *Id.* at *5–6. That instruction is the subject of a separate, ongoing appeal in the Sixth Circuit. *See Stoutamire v. Shoop*, No. 21-3810, 2022 U.S. App. LEXIS 22557 (6th Cir. Aug. 12, 2022).)

6. Still hoping to prevail on his fourth Rule 60(b) motion, Stoutamire next applied to the Sixth Circuit for a certificate of appealability. The Sixth Circuit denied the request. Pet.App.B1–5. It noted that Stoutamire's motion read like a request under Rule 60(b)(6), Pet.B3–4, which again allows relief from judgment only in

"extraordinary circumstances," *Gonzalez*, 545 U.S. at 536. Thus, the Sixth Circuit explained, Stoutamire was in effect arguing that his claimed innocence was an extraordinary circumstance. Pet.App.B.3–4. Therefore, the Sixth Circuit reasoned, by finding no "new *reliable* evidence" of actual innocence, the District Court concluded that Stoutamire had failed to show extraordinary circumstances supporting his claim of actual innocence. Pet.App.A2; *see id.* at B.4; *accord Stoutamire*, 2021 U.S. Dist. LEXIS 260552 at *3–4.

The Sixth Circuit recognized that its role, when deciding whether to issue a certificate of appealability from the District Court's decision, was to assess "whether a reasonable jurist could conclude that the District Court abused its discretion in declining to reopen judgment." Pet.App.B3 (quoting *Buck v. Davis*, 580 U.S. 100, 123 (2017)). The Sixth Circuit thus focused on the District Court's principle reason for denying Stoutamire's motion: namely, the lack of any new reliable evidence of Stoutamire's actual innocence. Pet.App.B2–3. From there, the Sixth Circuit held that "[r]easonable jurists could not conclude that the district court abused its discretion in denying Stoutamire's Rule 60(b) motion." Pet.App.B4. Almost all of the exhibits Stoutamire had not previously submitted in earlier Rule 60(b) motions, the Sixth Circuit explained, "predate[d] Stoutamire's habeas petition by several years." Pet.App.B5. So, as the District Court had concluded, nearly all of Stoutamire's evidence was not "new." Pet.App.B5; *accord* Pet.App.A2. Further, during earlier rounds of litigation, both courts had already considered other exhibits Stoutamire was relying on; and they had concluded that those exhibits did not warrant relief under Rule

60(b) or further appellate proceedings. Pet.App.B4. It followed, especially accounting for normal law-of-the-case principles, that those exhibits did not amount to extraordinary circumstances. *Id.* Because Stoutamire failed to present any new compelling evidence, the Sixth Circuit reasoned, extraordinary circumstances were obviously lacking. *Id.* And that meant the District Court's decision to deny Stoutamire's Rule 60(b) motion was correct beyond reasonable debate. Pet.App.B4.

7. After a panel of the Sixth Circuit denied Stoutamire's petition for a rehearing, Pet.App.C1, Stoutamire timely filed his current petition for certiorari.

REASONS FOR DENYING THE WRIT

"Federal habeas review of state convictions … intrudes on state sovereignty to a degree matched by few exercises of federal judicial authority." *Harrington v. Richter*, 562 U.S. 86, 103 (2011) (quotations omitted). That is no doubt why this Court has cautioned federal courts against actions that "needlessly prolong a habeas case." *Shoop v. Twyford*, 142 S. Ct. 2037, 2045 (2022) (quotations omitted). The Court should heed that caution here. This matter involves a habeas petitioner who, ever since losing his habeas case, has flooded the federal courts with repetitive filings rehashing previously unsuccessful arguments. The Court should not reward such behavior by granting a petition for certiorari arising from that petitioner's *fourth* Rule 60(b) motion.

In any event, even setting aside Stoutamire's abusive filing practices, the Court should deny further review. None of the three questions Stoutamire presents are worthy of this Court's attention. The Warden will now explain why, taking those questions in order.

I. The Sixth Circuit was correct to require a certificate of appealability, and its decision does not implicate a circuit split.

A. Stoutamire's first question presented is whether habeas petitioners need to obtain a certificate of appealability under 28 U.S.C. §2253(c) before appealing the denial of a Rule 60(b) motion for relief from judgment. The Sixth Circuit says yes. And the Sixth Circuit's approach squares with the "near-consensus" position among the circuits. *Bracey v. Superintendent Rockview SCI*, 986 F.3d 274, 281 (3d Cir. 2021). There are, to be sure, a few subtle differences among the circuits in this area. But the differences are small and arise in scenarios distinct from this case.

Before unpacking those points, another point deserves immediate emphasis. Even if the Court wishes to address the first question presented, it should await a better case with a less complicated history. Recall, in particular, that this Court *already denied* a petition for certiorari from Stoutamire—stemming from his third Rule 60(b) motion—in which he sought review of this *same* question. *Stoutamire v. La Rose*, 139 S. Ct. 1216 (2019); Pet. 7–9, No. 18-7326 (U.S. Dec. 14, 2018). The Warden thus preserves the argument that this Court's denial of Stoutamire's earlier petition bars Stoutamire from relitigating his first question presented, whether as a matter of preclusion or abuse-of-writ principles. *Cf. Banister v. Davis*, 140 S. Ct. 1698, 1709 (2020). If nothing else, however, the Court's past denial of certiorari weighs heavily against discretionary review now. *See, e.g.*, *S. Park Indep. Sch. Dist. v. United States*, 453 U.S. 1301, 1303–04 (1981) (Powell, J., in chambers); *Pac. Tel. & Tel. Co. v. Pub. Utilities Comm'n of Ca.*, 443 U.S. 1301, 1305 (1979) (Rehnquist, J., in chambers). After all, if this Court grants Stoutamire's successive petition for certiorari, it will signal

to others that serial Rule 60(b) filings are a viable path for relitigating previously unsuccessful certiorari petitions.

With that vehicle problem in mind, turn to the relevant legal text. AEDPA requires that habeas petitioners obtain "a certificate of appealability" before they may appeal "the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court." 28 U.S.C. §2253(c)(1). Rule 60(b), for its part, allows parties to seek relief "from a final judgment" for certain enumerated reasons. Fed. R. Civ. P. 60(b). Because a Rule 60(b) motion seeks relief from an existing final judgment, the denial of a Rule 60(b) motion is itself "a separate final order." *Banister*, 140 S. Ct. at 1710. It follows that, when habeas petitioners appeal the denial of a Rule 60(b) motion, they are appealing from a "final order in a habeas corpus proceeding" and thus need to obtain "a certificate of appealability" to proceed. §2253(c)(1). Consistent with this straightforward reading of §2253(c)(1), there is general agreement among the circuits that habeas petitioners must obtain certificates of appealability before appealing the denial of a Rule 60(b) motion. *See United States v. Winkles*, 795 F.3d 1134, 1139 (9th Cir. 2015) (collecting authority).

B. It is true that a few circuits take slightly different approaches. *See Buck v. Davis*, 580 U.S. 100, 114 n.* (2017). But the differences are quite modest and do not matter to this case.

Begin with Fifth Circuit's decision in *Dunn v. Cockrell*, 302 F.3d 491 (5th Cir. 2002) (*per curiam*). The habeas petitioner there missed his window for appealing the denial of habeas relief, arguably because of the negligence of his attorneys. He thus

filed a Rule 60(b) motion, asking the district court to "vacate and re-enter the judgment" so that he could file a timely notice of appeal from the re-entered judgment. *Id.* at 492. Without substantive analysis, the Fifth Circuit said that the petitioner did not need a certificate of appealability to appeal "the denial of his 60(b) motion." *Id.* (The Court went on to affirm the denial of motion, reasoning that the petitioner had misused Rule 60(b) in an attempt to circumvent other procedural rules. *Id.* at 493–94.) *Dunn*'s statement about certificates of appealability caused confusion in the Fifth Circuit. Some read the statement as applying narrowly to *Dunn*'s fact pattern, while others read it as meaning that a certificate is "never required to appeal the denial of a Rule 60(b) motion in a habeas case." *Canales v. Quarterman*, 507 F.3d 884, 887–88 (5th Cir. 2007) (*per curiam*) (denying petition for en-banc rehearing). The narrower reading prevailed. The Fifth Circuit clarified in *Canales* that habeas petitioners *are* generally required to obtain certificates of appealability before appealing the denial of Rule 60(b) motions in habeas cases. *Id.* at 888. It cabined *Dunn* to a narrow exception, which "applies only when the purpose of the [Rule 60(b)] motion is to reinstate appellate jurisdiction over the original denial of habeas relief." *Id.*

Move, then, to the Fourth Circuit. Like other circuits, the Fourth Circuit normally requires habeas petitioners to obtain a certificate of appealability before they may appeal the denial of a Rule 60(b) motion. *See Reid v. Angelone*, 369 F.3d 363, 367–69 (4th Cir. 2004). The one exception to that rule is explained in *United States v. McRae*, 793 F.3d 392 (4th Cir. 2015). In *McRae*, a district court had dismissed a habeas petitioner's Rule 60(b) motion for lack of jurisdiction because it concluded that

the motion was "an impermissible successive habeas petition" under AEDPA. 793 F.3d at 394. The Fourth Circuit held that a certificate of appealability was unneeded in that "narrow[]" scenario. *Id.* at 399. It reasoned that a "jurisdictional dismissal" of a Rule 60(b) motion was "so far removed from the merits of the underlying habeas petition that" it did not count as a final order within the meaning of §2253(c)(1). *Id.* at 400. *McRae* refrained from revisiting whether "orders *denying* Rule 60(b) motions" are exempt from certificate-of-appealability requirements. *Id.* at 399 (emphasis added). And, since *McRae*, the Fourth Circuit has continued to require certificates of appealability when a petitioner seeks to appeal an order denying (rather than dismissing) a Rule 60(b) motion. *E.g.*, *United States v. Gibson*, 857 F. App'x 131, 131 (4th Cir. 2021).

Finally, the Eleventh Circuit follows the same approach as the Fourth Circuit. It requires habeas petitioners to obtain certificates of appealability before appealing denials of Rule 60(b) motions. *Gonzalez v. Sec'y for the Dep't of Corr.*, 366 F.3d 1253, 1263–67 (11th Cir. 2004) (*en banc*) *aff'd sub. nom. on other grounds*, *Gonzalez v. Crosby*, 545 U.S. 524 (2005). But when a petitioner appeals an order dismissing a Rule 60(b) motion for lack of jurisdiction as a successive habeas petition, no certificate of appealability is required. *Hubbard v. Campbell*, 379 F.3d 1245, 1247 (11th Cir. 2004) (*per curiam*).

C. This Court's cases, it is worth mention, do not disturb the general agreement among the circuits on this subject. Consider first *Gonzalez v. Crosby*, 545 U.S. 524 (2005). There, the Court distinguished between Rule 60(b) motions and second-

or-successive habeas petitions. That distinction matters because AEDPA generally bars habeas petitioners from filing second-or-successive habeas petitions, with only narrow exceptions. *See* 28 U.S.C. §2244(b). Even so, *Gonzalez* concluded that habeas petitioners may file "true" Rule 60(b) motions—those that raise "some defect in the integrity of the federal habeas proceedings" rather than attacking "the substance of the federal court's resolution"—without satisfying AEDPA's demanding requirements for second-or-successive habeas petitions. 545 U.S. at 531–32. In reaching that conclusion, the Court observed that many circuits separately require habeas petitioners to obtain a certificate of appealability under §2253(c) "as a prerequisite to appealing the denial of a Rule 60(b) motion." *Gonzalez*, 545 U.S. at 535. Though *Gonzalez* did not definitively resolve that issue, it hinted that the circuit's approach has a sound "basis in the statute." *Id.* at 535 n.7.

The Court's decision in *Harbison v. Bell*, 556 U.S. 180 (2009), does not alter the analysis. *Contra* Pet.5–6. *Harbison* held that a habeas petitioner did not have to satisfy §2253(c)(1)'s certificate-of-appealability requirements before appealing the denial of his request for counsel. 556 U.S. at 183. The Court reasoned that §2253(c)'s requirements apply to "final orders that dispose of the merits of a habeas corpus proceeding," as opposed to orders "merely" about the appointment of habeas counsel. *Id.* But the Court's limited analysis in *Harbison* "said nothing at all about Rule 60(b)." *Storey v. Lumpkin*, 8 F.4th 382, 387 (5th Cir. 2021). "And while *Harbison* excluded … orders that do *not* conclude habeas proceedings" from certificate-of-appealability requirements, "it made no further distinction among those orders that do conclude

proceedings based on whether the disposition was substantive or procedural in nature." *Bracey*, 986 F.3d at 282. Thus, there is little reason to think *Harbison* upended the circuits' approach of requiring certificates of appealability before allowing appeals from denials of Rule 60(b) motions.

In short, the "near-consensus" position of the circuits—that habeas petitioners must obtain a certificate of appealability before appealing the denial of a Rule 60(b) motion—aligns with this Court's precedent. *Bracey*, 986 F.3d at 281; *see also Winkles*, 795 F.3d at 1139; *accord* Pet.App.B3.

D. Putting all of this together, this case does not implicate any significant conflict of authority. More precisely, this case does not fit within the narrow certificate-of-appealability exceptions that the Fourth, Fifth, and Eleventh Circuits have recognized. Unlike the habeas petitioner in *Dunn*, Stoutamire appealed the original denial of habeas relief. Stoutamire, it follows, is not using Rule 60(b) solely as a means of reinstating appellate jurisdiction for an untaken direct appeal. Thus, in the Fifth Circuit, Stoutamire would still need a certificate of appealability. *See Storey*, 8 F.4th at 386–88; *Canales*, 507 F.3d at 887–88. Stoutamire would also need a certificate of appealability in the Fourth and Eleventh Circuits, notwithstanding decisions like *McRae*. Unlike the district court in *McRae*, the District Court here *denied* Stoutamire's motion rather than *dismissing* it for a lack of jurisdiction. *Compare* Pet.App.A3, *with McRae*, 793 F.3d at 394. True, the District Court here explained, alternatively, that Stoutamire's motion would fail if it were considered a successive petition. *See* Pet.App.A2. But the District Court's principle reason for denying

Stoutamire's Rule 60(b) motion was that Stoutamire had not submitted "new *reliable* evidence" for purposes of his actual-innocence argument. Pet.App.A2.

In sum, though some narrow differences exist among the circuits in this area, Stoutamire fails to identify any conflict that matters to *his* case. Thus, this is not a case where the court of appeals below "entered a decision in conflict with the decision of another" court of appeals. Sup. Ct. R. 10(a); *cf. Gamache v. California*, 562 U.S. 1083, 1085 (2010) (Sotomayor, J., respecting denial of certiorari) (review not warranted if answering the question presented will not change the outcome).

II. The Sixth Circuit correctly applied this Court's precedent when it denied Stoutamire a certificate of appealability.

A. Stoutamire second question asks whether the Sixth Circuit properly applied §2253(c) to the facts of his case. Pet.7. Put another way, Stoutamire requests factbound error correction. This request does not justify this Court's intervention. Regardless, the Sixth Circuit correctly analyzed and rejected Stoutamire's request for a certificate of appealability from the denial of his fourth Rule 60(b) motion.

"A petition for a writ of certiorari is rarely granted when the asserted error consists of … misapplication of a properly stated rule of law." Sup. Ct. R. 10. That is, "error correction is a disfavored basis for granting review, particularly in noncapital cases." *Gonzalez*, 545 U.S. at 544 n.7. Especially so when the alleged error is harmless. *See Alabama v. Pugh*, 438 U.S. 781, 782–83 (1978) (Stevens, J., dissenting). These principles weigh against further review here. Even assuming the Sixth Circuit erred in explaining precisely why Stoutamire was not entitled to a certificate of appealability, *see* Pet.8–9, Stoutamire's fourth Rule 60(b) motion is doomed

to fail. Like his past Rule 60(b) motions, Stoutamire's latest motion "merely rehashes the same arguments and evidence already presented and rejected several times." *Stoutamire v. LaRose*, No. 4:10CV2657, 2018 WL 11303839 at *3 (N.D. Ohio Feb. 14, 2018). That is no doubt why this Court previously rejected Stoutamire's strikingly similar request for error correction arising from his *third* Rule 60(b) motion. *See* Pet. 10–13, No. 18-7236 (U.S. Dec. 14, 2018). This Court should not grant review just to prolong the inevitable.

In any event, the Sixth Circuit did not err in its analysis. To obtain a certificate of appealability, a habeas petitioner must make "a substantial showing of the denial of a constitutional right." 28 U.S.C. §2253(c)(2). This language "requires" courts to perform "an overview of the claims" the habeas petitioner raises and make "a general assessment of their merits." *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003). At the same time, the certificate-of-appealability inquiry does not jump to "full consideration" of the merits; nor does it require "a showing that the appeal will succeed." *Id.* at 336–37. All said, the controlling question in reviewing denial of a Rule 60(b) motion is "whether a reasonable jurist could conclude that the District Court abused its discretion in declining to reopen the judgment." *Buck*, 580 U.S. at 123.

Because a certificate-of-appealability analysis requires "a general assessment of the merits," *Miller-El*, 537 U.S. at 336, the standards for Rule 60(b) motions are also relevant to determining what "a reasonable jurist could conclude" in this case, *see Buck*, 580 U.S. at 123. Under Rule 60(b), a party may obtain relief from judgment in five scenarios, such as when a party obtains "newly discovery evidence that, with

reasonable diligence, could not have been discovered" earlier. Fed. R. Civ. P. 60(b)(2). The rule also contains a sixth, catch-all provision that allows for relief from a judgment in other "extraordinary circumstances" not enumerated by the rule. *Gonzalez*, 545 U.S. at 535; *accord* Fed. R. Civ. P. 60(b)(6). Under federal habeas standards, petitioners may not generally proceed on "procedurally defaulted" claims that they failed to adequately present to state courts. *Davila v. Davis*, 137 S. Ct. 2058, 2064 (2017). A habeas petitioner may, however, save a procedurally defaulted claim by showing, in light of "new reliable evidence," that "more likely than not … no reasonable juror would have found petitioner guilty beyond a reasonable doubt." *House v. Bell*, 547 U.S. 518, 537–38 (2006). Given the "demanding" and "extraordinary" nature of the standard, *id.*, a "tenable actual-innocence" claim will be "rare," *McQuiggin v. Perkins*, 569 U.S. 383, 386 (2013).

In this case, the Sixth Circuit correctly determined that Stoutamire was not entitled to a certificate of appealability. First off, the Sixth Circuit identified the correct legal standard, quoting directly from *Buck*'s iteration of the "reasonable jurist" inquiry. Pet.App.B3 (quoting *Buck*, 580 U.S. at 123). Applying that standard, the Sixth Circuit focused on the District Court's principle reason for denying the Rule 60(b) motion—the lack of new reliable evidence in support of Stoutamire's actual-innocence argument. Pet.B2–3; *accord* Pet.App.A2. Given *the District Court's reasoning*, the Sixth Circuit reviewed the exhibits Stoutamire presented with his motion to see whether those exhibits arguably constituted the type of "new" evidence that the District Court found fell short of showing "extraordinary" circumstances. *See*

Pet.App.B4–5. Based on that review, the Sixth Circuit concluded, again echoing *Buck*'s language, that "[r]easonable jurists could not conclude that the district court abused its discretion in denying Stoutamire's Rule 60(b) motion." Pet.App.B4. That conclusion makes perfect sense—there was nothing *new* about Stoutamire's *fourth* Rule 60(b) motion.

B. Stoutamire sees things differently. He argues that the Sixth Circuit's certificate-of-appealability analysis broke from this Court's guidance in *Buck*, 580 U.S. 100, because the Sixth Circuit offered "independent reasoning," different from the District Court's analysis. Pet.8. Stoutamire, however, reads far too much into *Buck*.

To see the flaws of Stoutamire's reading, a deeper dive into *Buck* is helpful. That case involved a convicted murderer (Buck) who was sentenced to death. Buck's sentence was based in part on improper expert testimony—elicited by Buck's own attorney—stating that Buck's race made him "more likely to act violently." *Buck*, 580 U.S. at 104. After unsuccessfully challenging his death sentence in state court, Buck filed a federal habeas petition, arguing that his trial counsel performed ineffectively by eliciting the damaging testimony. *Id.* at 110. But the district court held that Buck's claim of ineffective assistance of counsel was "unreviewable" due to "procedural default." *Id.* at 111. And the Fifth Circuit denied Buck a certificate of appealability. *Id.*

Years later, Buck filed a motion to reopen his habeas case under Rule 60(b)(6). He argued that eleven factors—including intervening changes in law as to when federal courts may review procedurally defaulted claims—justified reopening his habeas

case. *Id.* at 114. The district court denied Buck's Rule 60(b)(6) motion. *Id.* The Fifth Circuit then denied Buck a certificate of appealability. *Id.* In doing so, the Fifth Circuit noted the correct legal standard for determining whether to issue a certificate of appealability. *Buck v. Stephens*, 623 F. App'x 668, 671–72 (5th Cir. 2015). But the bulk of the Fifth Circuit's analysis did not focus on whether reasonable jurists could debate the district court's ruling. Instead, the court rejected Buck's Rule 60(b)(6) motion on the merits. Immediately in its introduction, the Fifth Circuit stated that it was denying Buck a certificate of appealability "[b]ecause he has not shown extraordinary circumstances that would permit relief under" Rule 60(b)(6). *Id.* at 669. And the remainder of the Fifth Circuit's analysis conformed to that statement: the Fifth Circuit conducted a factor-by-factor analysis of the eleven factors Buck raised within his Rule 60(b)(6) motion, and it concluded that none of Buck's factors were "extraordinary" for purposes of Rule 60(b)(6). *Id.* at 672–74.

Faced with this style of certificate-of-appealability analysis, this Court held that the Fifth Circuit erred. The Court acknowledged that the Fifth Circuit had at times framed its determination in terms of the proper reasonable-jurist standard. *Buck*, 580 U.S. at 115. But the Fifth Circuit's introductory statement, along with "[t]he balance of" its analysis, demonstrated that the court "essentially decid[ed] the case on the merits." *Id.* at 115–16. Given "such a departure from the procedure prescribed by §2253," the Court found that the Fifth Circuit had lost sight of the "limited nature of" the certificate-of-appealability inquiry. *Id.* at 117.

Various aspects of *Buck* 's analysis signal that it was a narrow ruling based on extreme facts. *See id.* at 136–37 (Thomas, J., dissenting). The Court, for example, did not suggest it was altering or clarifying the established standard for reviewing certificates of appealability. *See id.* at 115 (majority op.). Under that standard, a certificate-of-appealability determination "*requires* an overview of the claims in the habeas petition and a general assessment of their merits." *Miller-El*, 537 U.S. at 336 (emphasis added). It follows that *Buck* did not set any strict rule forbidding courts of appeals from touching on the underlying merits when considering certificates of appealability. (Any such rule would be inexplicable since the "substantial showing" required for a certificate of appealability under §2253(c) "must have some footing in the law." *Ruiz v. Davis*, 850 F.3d 225, 228 (5th Cir. 2017).) Similarly, *Buck* acknowledged that the courts of appeals might take different approaches when reviewing requests for certificates of appealability, and *Buck* did not purport "to specify what procedures may be appropriate in every case." 580 U.S. at 117. Thus, read as a whole, *Buck* is limited to extreme "departure[s]" from statutory procedure that may occur when "[t]he balance of" a court's certificate-of-appealability analysis shows that the court performed a full merits review. *See id.* at 116–17.

In this case, no such problem occurred. Instead, "[t]he balance of" the Sixth Circuit's analysis shows that it appreciated "the limited nature" of the certificate-of-appealability inquiry. *See id.* at 116–17. As already discussed, the Sixth Circuit set forth the correct reasonable-jurist standard, Pet.App.B3; reiterated the District Court's rationale—a lack of new reliable evidence—for denying Stoutamire's motion,

Pet.App.B2–3; tested the District Court's rationale by reviewing the exhibits Stoutamire had submitted to support his Rule 60(b) motion, Pet.App.B4–5; and concluded that no reasonable jurist would hold that the District Court abused its discretion, Pet.App.B4.

Arguing otherwise, Stoutamire selectively attacks two aspects of the Sixth Circuit's analysis. Neither argument is persuasive.

First, Stoutamire says that the Sixth Circuit erred by mentioning the law-of-the-case doctrine during its analysis. Pet.9. Under that doctrine, an earlier legal decision generally continues "to govern the same issues in subsequent stages in the same case." *Musacchio v. United States*, 577 U.S. 237, 244–45 (2016). Here, when the Sixth Circuit discussed exhibits Stoutamire had already submitted during earlier (failed) Rule 60(b) motions, it noted that the law-of-the-case doctrine supported the District Court's refusal to revisit past rulings that Stoutamire had already tried (unsuccessfully) to appeal. Pet.App.B4. The Sixth Circuit's passing remark hardly signals a "departure" from §2253(c). *See Buck*, 580 U.S. at 117. To the contrary, Stoutamire's repetitive Rule 60(b) filings would undoubtedly have informed any "reasonable jurist" considering whether "the District Court abused its discretion" in rejecting a *fourth* Rule 60(b) motion. *See id.* at 123. And while the District Court did not expressly reference the law-of-the-case doctrine, it certainly engaged in law-of-the-case *reasoning* when it considered Stoutamire's past filings as part of its analysis. *See* Pet.A1–2.

Second, Stoutamire faults the Sixth Circuit for considering whether the exhibits he attached to his motion constituted "exceptional or extraordinary circumstances." Pet.10. Recall that, in *Buck*, the Fifth Circuit directly stated in its introduction that it was denying a certificate of appealability "[*b*]*ecause*" the petitioner had not shown the "extraordinary circumstances" required for relief under Rule 60(b)(6). *Buck*, 623 F. App'x at 669 (emphasis added). That statement was a strong signal to this Court, reinforced by "[t]he balance of" the Fifth Circuit's analysis, that the Fifth Circuit had improperly conducted a full merits analysis. *Buck*, 580 U.S. at 116. Stoutamire suggests that the Sixth Circuit committed the same error, but that stretches this Court's decision in *Buck* too far: again, *Buck* did not forbid courts from discussing the underlying merits as part of determining what a reasonable jurist could or could not conclude in a given situation.

That was all that happened here. By its own words, the Sixth Circuit denied Stoutamire a certificate of appealability *because* "[r]easonable jurists could not conclude that the district court abused its discretion" by finding that no new reliable evidence supported Stoutamire's motion. Pet.App.B4. And, unlike in *Buck*, nothing in the remainder of the Sixth Circuit's decision signals that the court crossed the line into "essentially deciding the case on the merits." *See* 580 U.S. at 115–16. For one thing, the Sixth Circuit did not make any introductory comment directly reaching a conclusion on the merits. *Compare* Pet.App.B1, *with Buck*, 623 F. App'x at 669. For another, one can easily link the Sixth Circuit's analysis to *the District Court's analysis*. Remember that Stoutamire sought relief from judgment under Rule 60(b) by

claiming his actual innocence. To succeed on such a motion by pointing to actual innocence, Stoutamire needed to show "extraordinary" circumstances, both procedurally and substantively. *See Gonzalez*, 545 U.S. at 536 (procedure); *House*, 547 U.S. at 538 (substance). Because the District Court found no new reliable evidence, it concluded that extraordinary circumstances were lacking. Pet.A2; *accord Stoutamire v. La Rose*, No. 4:10CV2657, 2021 U.S. Dist. LEXIS 260552 at *3–4 (N.D. Ohio Aug. 10, 2021). Under this scenario, it made sense for the Sixth Circuit—when explaining why no reasonable jurist would find an abuse of discretion, Pet.B4—to discuss why the exhibits Stoutamire attached to his motion were not "extraordinary." *See* Pet.App.B4–5. Indeed, it would have been difficult to conduct any sensible "general assessment" of Stouatmire's motion and the District Court's decision without using such language. *See Miller-El*, 537 U.S. at 336.

If anything, the Court should welcome the Sixth Circuit's engagement with Stoutamire's request. Faced with yet another request from Stoutamire to appeal the denial of yet another Rule 60(b) motion, the Sixth Circuit would have been justified in offering only a cursory explanation for why it was denying a certificate of appealability. The court instead went out of its way to educate Stoutamire—a frequent, pro-se filer—about why it was not allowing him to proceed with an appeal. Detailed explanations to pro-se filers are not something the Court should discourage.

C. Even if this Court were inclined to read *Buck* more aggressively, Stoutamire's petition still asks too much. In particular, Stoutamire argues that the Court should summarily reverse the Sixth Circuit without full review. Pet.11–12.

Alternatively, Stoutamire requests that this Court grant his petition, vacate the Sixth Circuit's judgment, and remand so that the Sixth Circuit may further consider this Court's decision in *Buck*. Pet.13–14. Stoutamire fails to justify either request.

Begin with Stoutamire's request for a summary reversal without full review. This Court generally reserves such action for errors that are obvious in light of its precedent. *See, e.g.*, *Gonzales v. Thomas*, 547 U.S. 183, 185 (2006) (*per curiam*); *Pavan v. Smith*, 137 S. Ct. 2075, 2079 (2017) (Gorsuch, J., dissenting). This is not such a case. As the Warden explained above, *Buck* is best read as a narrow decision limited to extreme facts. At the very least, however, *Buck*'s application to this case is not obvious. *See Buck*, 580 U.S. at 136–37 (Thomas, J., dissenting). If the Court is considering extending *Buck* to a case like this one, it should do so only after full review and argument. What is more, if the Court does grant certiorari as to Stoutamire's second question presented, the Warden preserves the argument that *Buck* was wrongly decided and should be overruled or confined to its facts. *See id.* at 129–31 (Thomas, J., dissenting).

Stoutamire's alternative request—that the Court grant, vacate, and remand—should fare no better. The "GVR" practice Stoutamire alludes to is an "appropriate" way to "conserve" the Court's resources when it appears that the court below did not "fully consider[]" some pertinent issue. *Lawrence v. Chater*, 516 U.S. 163, 167 (1996) (*per curiam*). That practice does not fit this case. The Sixth Circuit considered, and indeed quoted, *Buck* when it denied Stoutamire's request for a certificate of appealability. Pet.App.B3. Further, after the Sixth Circuit denied Stoutamire a certificate

of appealability, a panel of that court also denied Stoutamire's petition for a rehearing. Pet.App.C1. At that point, the Sixth Circuit stated that it "did not overlook or misapprehend any point of law or fact in Stoutamire's application for a certificate of appealability." *Id.* In short, nothing will come from sending this case back down for further review; such an approach would only *waste* judicial resources. *Contra Lawrence*, 516 U.S. at 167.

Thus, even if some facet of the second question presented intrigues the Court, the Court should at minimum decline Stoutamire's request for a summary ruling in his favor.

III. The Court should not craft a "more lenient" rule as to when federal courts may review a habeas petitioner's procedurally defaulted claims.

Stoutamire's third question presented warrants the least discussion. He asks the Court to create a "more lenient" standard—than the actual-innocence standard discussed in cases like *House* and *McQuiggin*—for excusing a habeas petitioner's procedural default. Pet.15–20. Stoutamire does not identify any circuit conflict on this issue. He does not even specify the precise standard he is asking for. But he wants some "more lenient" exception for reviewing procedurally defaulted claims so as to avoid "miscarriage of justice." Pet.18. This standard would, apparently, serve as a gateway for habeas petitioners to reargue that their claims were "properly presented" in the first place. *See* Pet.15–16.

The Court should refuse to review this final question presented. Some background principles of federal habeas review help illustrate why. Before AEDPA, this Court "had developed an array of doctrines … to limit the habeas practice that it had

radically expanded in the early or mid-20th century." *McQuiggin*, 569 U.S. at 402 (Scalia, J., dissenting) (citation omitted). For instance, "the doctrine of procedural default" prevented habeas petitioners from proceeding on claims that they had not adequately presented in state court. *Id.* AEDPA built on such doctrines, further restricting when federal courts may grant habeas relief. Among other things, AEDPA requires that habeas petitioners exhaust their claims in state court before they may receive habeas relief. 28 U.S.C. §2254(b)-(c). Since AEDPA, this Court has recognized that the doctrine of procedural default continues to operate as "an important corollary to the exhaustion requirement." *Davila*, 137 S. Ct. at 2064 (internal quotations omitted). Both exhaustion and procedural default "advance[] the same comity, finality, and federalism interests." *Id.*

It is true that procedural default, being a judge-made doctrine, comes with some judge-made exceptions. *McQuiggin*, 569 U.S. at 403 (Scalia, J., dissenting). Most notable here, this Court has said that habeas petitioners may proceed on procedurally defaulted claims if they make an "extraordinary" showing of their actual innocence "in light of new evidence." *House*, 547 U.S. at 538. Still, in allowing for this exception, the Court has recognized that a careful "balance" is needed between "the comity and respect that must be accorded to state-court judgments" and "the individual interest in justice that arises" in some extraordinary cases. *Id.* at 536. A "demanding" standard for actual-innocence claims is a critical part of that balance. *See id.* at 538.

Though Stoutamire does not explicitly ask this Court to overrule its precedent, that is what he wants the Court to do. He wants a new "justice" exception for procedural default—more forgiving to habeas petitioners—that would topple the careful balance this Court has struck in cases like *House*. *See* Pet.18. Stouatmire does not justify such an approach. He is no doubt right that federal courts must be vigilant in enforcing federal law. Pet.17. But a key part of enforcing federal law—given our federalist system—is recognizing the limits of federal habeas review. *See Harrington*, 562 U.S. at 103.

One final point as to the third question presented. Though Stoutamire frames his question as being about a further "exception" for hearing procedurally defaulted claims, Pet.18, he also bakes in an argument about whether he "properly presented" his claims in state court, Pet.15–16. The Court should not indulge this belated argument, which Stoutamire dresses up as a request for a new "exception."

CONCLUSION

This Court should deny Stoutamire's petition for a writ of certiorari.

Respectfully submitted,

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