

22-5415

No.

ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES

TERM: \_\_\_\_\_

Supreme Court, U.S.  
FILED

AUG 10 2022

OFFICE OF THE CLERK

DELANO MEDINA, Petitioner,

vs.

UNITED STATES OF AMERICA, Respondent,

ON PETITION FOR A WRIT OF CERTIORARI TO  
THE TENTH CIRCUIT COURT OF APPEALS

PETITION FOR A WRIT OF CERTIORARI

Delano Medina, Pro Se, # 129304  
Colorado Territorial Correctional Facility  
P.O. Box 1010  
Cañon City, CO 81215

## QUESTIONS PRESENTED

Mr. Medina alleged his counsel was ineffective for failing to call witnesses and present proof of lost alibi evidence. Medina entered a conditional plea to have his speedy trial claim of prejudice from lost evidence heard on appeal. The omitted witnesses' testimony would have established lost email and irretrievable cell site location information ("CSLI") from a phone carrier and a lost cell phone. Medina maintained the missing phone and data was prejudicial to an alibi defense with respect to the fourth-factor of a speedy trial claim.

In finding no prejudice, the Tenth Circuit found on appeal "just because evidence is irretrievable from one source doesn't mean it's irretrievable from all sources." Medina then presented the unheard testimony from affidavits that counsel failed to submit, yet the district court never addressed the claim and waited over two-years in denying the 28 U.S.C. 2255 motion. Medina had to file a writ of mandamus to get the court to finally answer the motion. Despite the Tenth Circuit granting mandamus relief, the district court still did not answer the claim. Medina then filed a civil Rule 60(b)(6) motion asking for his claim to be resolved. Thus, this case presents the following questions:

Did the Tenth Circuit err in not granting a COA and refusing to remand back to the district court or to properly consider Medina's Rule 60(b) motion? And is the Tenth Circuit correct in determining that: "Medina cites no authority—and we are aware of none—holding that refusal to consider evidence in support of a claim is the same as failing to rule on the claim." This case provides an opportunity for the high Court to provide supervision to the lower courts to resolve matters properly presented to them.

## PARTIES

Karl L. Schock, Assistant United States Attorney, for the Respondent. Delano Medina, for the Petitioner.

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## Table of Authorities

### Cases:

<i>Gonzalez v. Crosby</i> , 545 U.S. 524 (2005).....	5, 6, 7
<i>NLRB v. Pittsburgh S.S. Co.</i> , 340 U.S. 498, 71 S. Ct. 453 (1951).....	6-7
<i>Clisby v. Jones</i> , 960 F.2d 925 (11th Cir. Ala. May 4, 1992).....	6, 7
<i>Spitznas v. Boone</i> , 464 F.3d 1213, 1224-25 (10th Cir. 2006).....	5, 7, 8

## DECISIONS BELOW:

The decision of the United States Court of Appeals for the Tenth Circuit is published. It is *United States v. Medina*, 918 F.3d 774 (10<sup>th</sup> Cir. 2019). The order denying Medina's request for 60(b) relief is: *United States v. Medina*, 2022 U.S. App. LEXIS 15180, 2022 WL 1799754 (10th Cir. Colo. June 2, 2022).

## JURISDICTION

The Judgment of the United States Court of Appeals for the Tenth Circuit was entered on June 2, 2022. Jurisdiction is conferred by 28 U.S.C. §1254(1).

## CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED

This case encompasses the Sixth Amendment to the United States Constitution, which provides in pertinent part: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense."

Additionally, 28 U.S.C. 2255; Fed. R. Civ. P. 60(b)(6).

## STATEMENT OF THE CASE

This case involves a citizen's right to speedy trial and Sixth Amendment Constitutional guarantees. More specifically, the right to have lost evidence considered by the court in a speedy trial analysis. And when this irretrievable evidence is repeatedly overlooked by the courts, what is the proper remedy?

Medina brought the unresolved claim to the courts attention to no avail. With the integrity of the judicial system at stake, one must wonder why the courts have intentionally disregarded this claim. As the Supreme Court has recognized, Rule 60 applies in habeas corpus cases. See *Gonzalez v. Crosby*, 545 U.S. 524, 534 (2005) "Rule 60(b) has an unquestionably valid role to play in habeas cases."

If the motion "attacks, not the substance of the federal court's resolution of a claim on the merits, but some defect in the integrity of the federal habeas proceedings," the Court explained, the motion "is not to be treated as a successive habeas petition." *id.* at 538–39 (Breyer, J., concurring). See *id.* at 532 n.4 (majority opinion) (Rule 60(b) motion cannot be viewed as successive petition).

Here, Medina, a federal prisoner proceeding pro se, sought a certificate of appealability (COA) from the district court's denial of his Federal Rule of Civil Procedure 60(b) motion to address the unresolved claim in his 28 U.S.C. § 2255 proceedings. The district court construed the motion as an unauthorized second or successive § 2255 motion and dismissed it for lack of jurisdiction. The Tenth Circuit denied a COA and dismissed this matter. See *United States v. Medina*, 2022 U.S. App. LEXIS 15180, \*1, 2022 WL 1799754 (10th Cir. Colo. June 2, 2022). Medina argued that the district court had failed to address one of his arguments. (quoting *Spitznas v. Boone*, 464 F.3d 1213, 1224-25 (10th Cir. 2006), for the proposition that a Rule 60(b) motion remains appropriate in a habeas proceeding if the "district court failed to consider one of his habeas claims," because this represents "a defect in the integrity of the federal habeas proceedings") *id.* at 6.

The Tenth Circuit curiously stated:

"The district court did not specifically discuss any of Medina's affidavits" which means it failed to address the claim on the merits. The Court goes on to say: "The district court never considered the affidavits from his aunt and his brother, which he attached to his motion to expand the record. We presume this is true because the district court denied the motion to expand the record in the same order denying §

2255 relief. Even so, Medina cites no authority—and we are aware of none—holding that refusal to consider evidence in support of a claim is the same as failing to rule on the claim.” Id. at \*8-9.

The Tenth Circuits’ position is in direct conflict with *Gonzalez v. Crosby*, and other circuits regarding 60(b) relief in relation to habeas corpus.

## **BASIS FOR FEDERAL JURISDICTION**

This case raises questions of interpretation of the right to a speedy trial under the Sixth Amendment to the United States Constitution. And, Fed. R. Civ. P. 60(b)(6) as it applies to requesting the resolution of unresolved claims.

## **REASONS FOR GRANTING THE WRIT**

### **I. Importance of the Question Presented**

This case presents the fundamental question of what is the remedy for getting a court to address unresolved claims. There are compelling reasons for courts to address the merits of a claim. Failure to do so is willful blindness. Courts must not be allowed to turn a blind eye to citizens’ rights being violated.

By deliberately disregarding Medina’s claims, the courts have violated due process and compromised the integrity of the judicial system. The Tenth Circuit court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court. *United States Supreme Court Rule 10*.

“Certiorari is granted only in cases involving principles the settlement of which is of importance to public as distinguished from parties, and in cases where there is real and embarrassing conflict of opinion and authority between courts of appeals.”

*NLRB v. Pittsburgh S.S. Co.*, 340 U.S. 498, 71 S. Ct. 453 (1951). USCS Supreme Ct. R. 10.

Prior to the Supreme Court's 2005 decision in *Gonzalez v. Crosby*, a number of lower federal courts took the position that a Rule 60(b) motion filed in a federal habeas corpus case should be viewed as a "successive petition" and subjected to the highly restrictive procedures and standards that govern such petitions.

Applying this standard to the facts of the Gonzalez case, this Court concluded that petitioner's Rule 60(b) motion, which "challenge[d] only the District Court's previous ruling [denying the habeas corpus motion based] on [a failure to comply with] the AEDPA statute of limitations"—and which therefore "challenge[d] only the District Court's failure to reach the merits"—was not "subject to the additional restrictions that apply to 'second or successive' habeas corpus petitions under the provisions of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) codified at 28 U.S.C. § 2244(b)." 2 Federal Habeas Corpus Practice and Procedure § 34.3 (2021).

Here, Medina claim is not successive and is supported by *Clisby v. Jones*, 960 F.2d 925, 926 (11th Cir. Ala. May 4, 1992) (District courts are instructed to resolve all claims for relief raised in a petition for writ of habeas corpus regardless whether habeas relief is granted or denied.); *Spitznas v. Boone*, 464 F.3d 1213, 1225 (10th Cir. 2006) (successive petition provisions did not apply to Rule 60(b) motion contending that "district court failed to consider one of his habeas claims," which "asserts a defect in the integrity of the federal habeas proceedings ... [that] lies not in the district court's resolution of the merits of the competency standard claim (since it never reached those merits), but in its failure to make any ruling on a claim that was properly presented in Mr. Spitznas's habeas petition")

In this case, Medina has been ignored simply because he is a pro se litigator. It was not Medina choice to have to represent himself throughout these proceedings. If a Rule 60(b) movant argues that the district court erred by failing to consider a

claim he raised in his federal habeas petition and the movant actually raised that claim in his petition, then the motion is a true Rule 60(b) motion. *Spitznas v. Boone*, 464 F.3d 1213, 1224 (10th Cir. 2006).

Certainly, because special and important reasons which would justify grant of Writ of Certiorari by Supreme Court are applicable here, and because importance to the public and judicial proceedings, this case presents an excellent opportunity to grant review. Reasonable jurists would debate that the district court procedurally erred when it failed to address Medina's claim. *Clisby*, 960 F.2d at 936. This Court should condemn litigation through obfuscation. Game playing waste the courts time. Such obscurity leads to perpetual litigation unnecessary taxing the judicial department. Even so, Medina sheds light on the truth. But some truths are self-evident. In light of precedent, in keeping with this nation's commitment to justice, and in response to the principles embodied in the constitution, this Court should grant review.

There are Special and important reasons which justify grant of writ of certiorari by Supreme Court. This issue is likely to recur. Because it arises frequently, which underscores the importance and the need of this Courts supervision; granting certiorari will be valuable in developing the common law.

### CONCLUSION

For the foregoing reasons, Certiorari should be granted in this case.

Respectfully requested, August 10, 2022.

A handwritten signature in cursive script, appearing to read "Delano Medina", is written over a horizontal line.

Delano Medina, Petitioner

Colorado Territorial Correctional Facility

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Canon City, CO 81215



## PROOF OF SERVICE

I, Delano Medina, the Petitioner, declares under penalty of perjury pursuant to 28 U.S.C. §1746 and hereby certify that on this 10<sup>th</sup> day of August 2022, I placed within the United States Mail, original and/or copies of this PETITION FOR A WRIT OF CERTIORARI, to the following:

Karl L. Schock  
Assistant United States Attorney's Office for the District of Colorado  
1801 California Street, Suite 1600  
Denver, CO 80202

United States Court of Appeals for the Tenth Circuit  
Byron White United States Courthouse  
1823 Stout Street  
Denver, CO 80257

The office of the Clerk  
Supreme Court of the United States  
Washington, D.C. 20543

Solicitor General of the United States,  
Room 5614, Department of Justice,  
950 Pennsylvania Ave., N.W.,  
Washington, D. C. 20530-0001.

A handwritten signature in black ink, appearing to read "Delano Medina", is written over a horizontal line.

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