No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

RODERICK LAMAR WILLIAMS, a/k/a Rox,

***Petitioner*,**

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for Writ of Certiorari
to the U.S. Court of Appeals
for the Fourth Circuit

PETITION FOR WRIT OF CERTIORARI

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23 May 2023

QUESTIONS PRESENTED FOR REVIEW

Petitioner was convicted based on DNA evidence purportedly tying him to the crime—a test of a blood sample found at the scene. At trial, Petitioner's defense was that he was not present and that scientific evidence was incorrect. Petitioner's counsel did not have the evidence independently tested, however.

Proceeding timely under 28 U.S.C. § 2255, Petitioner presented claims including that his trial counsel had been ineffective in failing to obtain an independent expert to test the blood evidence and for failing to obtain documents to establish that the DNA analyst's testimony and her claimed test results were false. In support, he noted that an audit had revealed troubling cases at the lab where the blood was tested 1986 to 2002 where analysts withheld or distorted evidence, cases involving the particular DNA analyst in this case, including one case in which she "switched the known DNA sample profiles" during testing in another case the exact same week Petitioner's blood was tested in this case. The government's response included an affirmative (but false) statement that there were no reasons to question the DNA test results. The district court relied on that claim to deny Petitioner relief.

After years of diligent investigation, Petitioner finally obtained records that showed, among other things, the analyst that had tested the blood sample in this case had been disciplined, had switched blood samples in another case the same week she tested the blood sample in this case and had been forced to resign due to repeated errors. An attorney had risked her law license and violated a North Carolina statute that precluded sharing of state employee records with inmates by giving this information to Petitioner.

Petitioner filed a Rule 60(b)(3) motion asserting that the government had engaged in fraud and misconduct by misrepresenting to the district court that there was "no reason" to question the DNA test results. Although the Fourth Circuit noted that it was "concerned" with the government's conduct in the case, it ruled that Petitioner was barred from bringing the claim late, despite the record showing his diligence and how a state statute had prevented him from obtaining the evidence any earlier.

The first question for the Court is whether the lower courts, by refusing to apply equitable tolling to Fed. R. Civ. P. 60(b)(3) claims are wrongfully and unjustly protecting parties that have engaged in fraud on the court, misrepresentation and misconduct and then taken steps to prevent discovery of this evidence until the one-year deadline has expired. The second and more focused question for the Court is whether Fed. R. Civ. P. 60(b) is a mandatory claim-processing rule that is not subject to equitable tolling.

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PETITION FOR WRIT OF CERTIORARI

Petitioner Roderick Lamar Williams respectfully petitions the Court to grant a writ of certiorari to the U.S. Court of Appeals for the Fourth Circuit.

JUDGMENT FOR WHICH REVIEW IS SOUGHT

The district court entered a final appealable judgment order denying Petitioner's motions for relief, Appendix at 36a, finding that Petitioner's Fed. R. Civ. P. 60(b)(3) motion was filed late and that equitable tolling was not warranted. Appendix at 31a-32a. The district court declined to certify an issue for appeal. Appendix at 35a.

After Petitioner filed an informal brief requesting certificate of appealability, the U.S. Court of Appeals for the Fourth Circuit appointed counsel, set the matter for full briefing, and noting the legal issue the appellate court wanted briefed, an issue of first impression for that court. Appendix at 16a.[1] After full briefing, the Fourth Circuit denied relief. Despite being "concerned by the Government's representations during" the proceedings after Petitioner filed his motion under 28 U.S.C. § 2255, Appendix at 6a, the Fourth Circuit concluded that Rule 60(b)(3)'s "one-year time limit is a mandatory claim-processing rule that cannot be tolled." Appendix at 7a. Petitioner timely filed a petition for rehearing en banc. The Fourth Circuit denied the petition for rehearing, Appendix at 15a.

[1] The Fourth Circuit later clarified that while it had ordered full briefing, it had not yet granted a certificate of appealability and did not need to do so, as it was affirming the denial of Petitioner's Rule 60(b)(3) motion only on timeliness grounds. Appendix at 7a fn.3.

STATEMENT OF THE BASIS FOR JURISDICTION

The district court originally had jurisdiction, as Petitioner timely filed his § 2255 motion within a year the date that his conviction became final. 28 U.S.C. § 2255(f)(1); *Clay v. United States*, 537 U.S. 522, 525 (2003). Petitioner has argued below that, although he filed his Rule 60(b)(3) motion beyond the one-year deadline, because he was diligent and filed the Rule 60(b)(3) motion once he obtained evidence that the government misled the district court to deny his § 2255 motion, the district court regained jurisdiction under application of equitable tolling. This jurisdiction is the subject of this petition for writ of certiorari.

The Fourth Circuit had jurisdiction under 28 U.S.C. § 1291 and 18 U.S.C. § 3742(a) to determine whether equitable tolling applied, as the district court entered a final judgment, Appendix at 36a, Petitioner timely appealed from judgment, and the court of appeals appointed counsel for full briefing on the timeliness issue. See Appendix at 16a.

This Court has jurisdiction under 28 U.S.C. § 1254(1), as the Fourth Circuit has rendered a final decision, Petitioner timely filed a petition for rehearing en banc, the Fourth Circuit denied that petition, and Petitioner is filing this petition within 90 days of the ruling. See Sup. Ct. R. 13.1, 13.3, 29.2.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED IN THIS CASE

> No person * * * shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law * * *.

U.S. Const. Amend. V.

> 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, * * * and to be informed of the nature and cause of the accusation * * *.

U.S. Const. Amend. VI.

> On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:
>
> (1) mistake, inadvertence, surprise, or excusable neglect;
> (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);
> (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct of an adverse party;
> (4) the judgment is void;
> (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or
> (6) any other reason justifying relief from the operation of the judgment.

Fed. R. Civ. P. 60(b).

> A motion under Rule 60(b) must be made within a reasonable time—and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding.

Fed. R. Civ. P. 60(c)(1).

STATEMENT OF THE CASE

This case presents questions surrounding whether a government's misrepresentation of facts which directly lead the district court to deny a motion under 28 U.S.C. § 2255 can be raised as soon as a diligently-acting inmate obtains evidence proving the government's misconduct. The headline question for the Court is whether Rule 60(b)(3) is subject to equitable tolling. But the broader question is whether the lower courts are preventing injustices from coming to light and being corrected by finding that Rule 60(b)(3)'s one-year deadline for seeking relief as a result of "fraud * * * misrepresentation or misconduct by an opposing party" contains no exception for evidence of government misconduct that could not have been discovered earlier.

Petitioner was found guilty following trial of offenses including knowingly using and carrying a firearm on or about July 25, 2002 in furtherance of a drug trafficking crime in violation of 18 U.S.C. § 924(c)(1). Petitioner was not at the scene and has maintained his innocence since being arrested.

At trial, witness testimony conflicted on whether Petitioner was at the scene. The government attempted to resolve that conflict by introducing the North Carolina State Bureau of Investigation's ("SBI") DNA blood test results, and the testimony of the analyst who conducted the report, Brenda Bissette. The resulting lab report purported to tie Petitioner to the scene of the July 25, 2002 events.

Petitioner diligently sought evidence to demonstrate that, indeed, he was not at the scene. He timely filed a motion under 28 U.S.C. § 2255 and motions to supplement asserting claims including that his trial counsel was ineffective for failing to have a second, independent expert test the blood evidence, and for failing to obtain documents to establish that Bissette's testimony

and her claimed test results were false. In support, he noted that an audit had revealed troubling cases at SBI from 1986 to 2002 where analysts withheld or distorted evidence, including cases involving Bissette; that Bissette had swapped DNA profiles between a victim and a suspect in an unrelated case during the same time. Petitioner asserted that Bissette "switched the known DNA sample profiles" of a suspect and victim in July 2003. He identified the suspect in the case by name, Leslie Lincoln, as well as other factual details, such as how the mistake was discovered by court order and that Bissette had retired during a subsequent inquiry. Petitioner's expert also mentioned the DNA "switch" in his report.

The government's response to those particular claims was to assert that there was no reason to question Bissette's test results. To highlight, the government did not simply state that it was unaware of any reasons to question Bissette's accuracy. Instead, it strongly suggested—and all but affirmatively asserted—that it had done work to know as a matter of fact that there were no reasons to question Bissette's competency, accuracy, test results and testimony. In denying the motion, the district court relied on Bissette's DNA test results, her statistical value of the match, her expert opinion that the blood tested was Petitioner's blood, and the government's assurances that there were no reasons to question Bissette.

Petitioner continued to be diligent. He filed a Freedom of Information Act request with the Executive Office for the U.S. Attorneys, seeking all discoverable material associated with SBI's involvement with his case. That office released only three documents, those related to the SBI's examination of drugs seized in 1996 in a different case. Petitioner then reached out to the SBI several times, seeking documentation to support his claim that Bissette engaged in misconduct relating to DNA testing. An official with the SBI responded on December 22 and 28,

2010, refusing to release information, reporting that no information existed as to Bissette's misconduct, and denying any misconduct occurred.

In October 2015, Petitioner finally obtained physical evidence showing that the government had misrepresented to the district court that there were no reasons to question Bissette or her test results. The evidence included documents from SBI regarding Bissette that he had obtained from an attorney who had risked her law license to obtain the evidence.[2] At the time, a North Carolina statute precluded prisoners from having access to state employee records. N.C.G.S. § 126-23 (d) (2011).[3] The documents Petitioner finally obtained, despite this statute, revealed a number of errors Bissette had committed during her time with SBI: In 1999, she misread a DNA sequence on a proficiency test. In 2002 and 2003, she twice mistakenly returned evidence by packaging it for the wrong case. And in 2003, in the exact same week that she tested Petitioner's blood, she inadvertently switched tubes containing DNA standards from a victim and a suspect in another case, leading to an incorrect match. The documents showed that Bissette was forced to resign due to her repeated errors.

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[2] Attorney Mike Klinksom initially offered to help Petitioner. But he cited an unspecific "conflict" that he reported would prevent him from assisting Williams in his investigative efforts. Petitioner later learned the reason that Klinksom refused to help was the North Carolina statute that precluded prisoners from having access to state employee records, including disciplinary records, without a court order allowing it. Attorney Heather Rattelade agreed to help Petitioner by violating the statute and sharing with Williams that her investigation led to evidence showing that Bissette was fired or forced to resign from SBI due to her incompetence.

[3] Under the statute, "persons in the custody of, or under supervision of, the Division of Adult Correction * * * are not entitled to access to the records made public under this section and are prohibited from obtaining those records, absent a court order authorizing access to, or custody, or possession." N.C.G.S. § 126-23 (d) (2011). The North Carolina Supreme Court reversed the policy in March 2017, allowing disclosure of these records with inmates. See https://www.prisonlegalnews.org/news/2017/jul/28/ethics-rule-requiring-post-conviction-disclosure-exculpatory-evidence-adopted-north-carolina/ (accessed May 14, 2021).

Petitioner filed a Rule 60(b)(3) motion, with this new evidence attached, asserting that the government had defrauded and misled the district court and engaged in misconduct by claiming that there were no reasons to question Bissette's test results or testimony. The district court denied the Rule 60(b)(3) holding that Petitioner had filed an unauthorized, successive § 2255 motion, and he appealed to the Fourth Circuit. The court of appeals reversed, holding that Petitioner had filed a Rule 60(b)(3) motion, not an unauthorized § 2255 motion. *United States v. Williams*, 753 Fed. Appx. 176, 177 (4th Cir. 2019) (per curiam). Because Rule 60(b)'s one-year time limit was an affirmative defense, rather than a jurisdictional bar, the Fourth Circuit held that Petitioner should have the opportunity to argue for his motion's timely filing below. *Id*. at 178.

After remand, the district court again denied relief, finding that the Rule 60(b)(3) motion was untimely and that Petitioner was not legally entitled to equitable tolling. Petitioner again appealed. The Fourth Circuit reported that the question of whether a Rule 60(b)(3) motion was subject to equitable tolling was an issue of first impression. It concluded that a Rule 60(b)(3) motion's one-year time limitation is a claim-processing rule and not subject to equitable tolling. Appendix at 7a. Thus, while it expressed that it was "concerned" with the government's conduct in the case, Appendix at 6a, it found that it was precluded from reaching the question of whether equitable tolling applied on the circumstances of the case and reaching the merits of Petitioner's claim in light of the evidence of government misconduct.

Petitioner remains incarcerated at U.S.P. Pollock, wrongfully convicted of the offense of knowingly using and carrying a firearm in furtherance of a drug trafficking crime in violation of 18 U.S.C. § 924(c)(1), under a term of imprisonment of 360 months. He now timely presents this petition for writ of certiorari, asking the Court to accept jurisdiction, and address whether Rule

60(b)(3)'s one-year time limit for asserting fraud and misrepresentation by an opposing party is subject to equitable tolling. He would then ask the Court to find that justice requires the rule to be subject to equitable tolling, at least in circumstances such as this, in which government conduct and state rules prevented a diligent inmate from obtaining evidence of the misconduct within the one-year period.

REASONS FOR GRANTING THE PETITION

Fed. R. Civ. P. 60(b)(3) has a one-year deadline for bringing claims of fraud on the court, misrepresentation and misconduct by the opposing party. Evidence of fraud, misrepresentation and misconduct of a party do not always come to light within an arbitrarily-created deadlines. In fact, opposing parties occasionally create obstacles to the discovery of evidence of fraud and misrepresentation or take steps to delay that discovery. Accordingly, even if there are valid and important reasons for the rule's one-year deadline and even if the deadline is strictly enforced in most cases, justice is served if equitable tolling applies in rare cases in which the movant was prevented from obtaining the evidence needed to file within the one-year deadline.

In this case, Petitioner knew he was not present at the scene of the crimes and therefore that the scientific evidence on which the government relied was false. When he timely presented claims that the scientist conducting the tests needed to be questioned, the government falsely stated to the district court that there were no reasons to question that scientist.

The Fourth Circuit concluded that Rule 60(b)(3)'s one-year limitation period is not subject to equitable tolling by drawing analogy to other rules that are not at all comparable, either in function or purpose. The deadline for asserting fraud by the opposing party is not like the deadline for filing an appeal, and it should not be treated as such. If Rule 60(b)(3) motions are

not subject to equitable tolling, diligent people who overcome the odds and the efforts of opposing parties to cover up evidence and who (after more than a year) finally obtain evidence of opposing parties' fraud and misrepresentation obtain will have no recourse to present the injustice to the courts. The Court should grant this petition and accept jurisdiction both to address the improper Fourth Circuit conclusion that Rule 60(b)(3) is not subject to equitable tolling and to eventually find that equitable tolling applies on the record of this case and that Petitioner has been wrongfully convicted. See Sup. Ct. R. 10(c).

I. The Court should Grant the Petition, as the District Court Denied Petitioner's Rule 60(b)(3) Motion on the Erroneous Conclusion that Rule 60(b) Motions are Mandatory Claims Processing Rules and not Subject to Equitable Tolling.

A. Rule 60(b)(3) is Used to Address Fraud on the Court, Misrepresentation, and Misconduct of an Opposing Party, it has been Properly Viewed as Different from its Counterparts in Rule 60(b)(1) and (2).

Rule 60(b) allows a party to seek relief from a final judgment, and request reopening of his case, under a limited set of circumstances including fraud, mistake, and newly discovered evidence. Rule 60(b)(3) stands out from its counterparts, as shown in part by this Court's own case law, in that fraud on the court by an opposing party is a different animal.

The Court has recognized the difference of a claim on fraud on the court. In *Calderon v. Thompson*, 523 U.S. 538, 118 S. Ct. 1489 (1998), after reinforcing the importance of finality and the limited nature of habeas relief, the Court made special note of how the ruling was not in a case involving fraud upon the court, which would "call[] into question the very legitimacy of the judgment." *Id*. at 557 (citing *Hazel-Atlas Glass Co. v. Hartford-Empire Co*., 322 U.S. 238, 64 S. Ct. 997 (1944)).

Following this lead, when the en banc Eleventh Circuit ruled that any postjudgment motion under Rule 60(b) was, in substance, a second or successive habeas corpus petition, it specifically and carefully carved out an exception for Rule 60(b)(3) and fraud on the court, citing the *Calderon* opinion. *Gonzalez v. Sec'y for the Dep't of Corr.*, 366 F.3d 1253, 1278, 1281-1282 (11th Cir. 2004). The court of appeals noted that the government's (or a state's) interest in finality must take a back seat when evidence shows that judgment would not have been obtained but for the fraud perpetrated on the court:

> A State's interest in the finality of a judgment denying federal habeas corpus relief is not compelling if that judgment would not have been obtained but for fraud that its agents perpetrated upon the federal court. Rule 60(b)(3) permits a judgment to be reopened for fraud, and the savings clause of the rule specifies that it does not "limit the power of a court . . . to set aside a judgment for fraud upon the court." To that extent, Rule 60(b) has a field of operation in habeas cases. The exact parameters of the fraud exception may have to be worked out on a case-by-case basis, but the Supreme Court's citation to the *Hazel-Atlas* decision in its *Calderon* opinion, 523 U.S. at 557, 118 S. Ct. at 1501-02, is instructive.

Id. at 1278.

Of course, this Court corrected the Eleventh Circuit's reasoning (but affirmed on other grounds) through its opinion in *Gonzalez v. Crosby*, 545 U.S. 524, ** S. Ct. ** (2005), making clear that not every Rule 60(b) motion that does <u>not</u> allege fraud on the court is necessarily a successive § 2255 motion, and that "Rule 60(b) has an unquestionably valid role to play in habeas cases." *Id*. at 534.

Petitioner's case is one of those cases in which Rule 60(b) had a role to play and, indeed, a vital role. The role was to allow an inmate who had been barred from obtaining evidence needed to show government fraud on the court, misrepresentation and misconduct within the

one-year limitation period of Rule 60(b)(3) to finally proceed with the evidence and show that he was unjustly denied § 2255 through false government assurances to the district court.

B. To Conclude that Rule 60(b)(3) is Not Subject to Equitable Tolling, the Fourth Circuit Erred in Drawing Analogy to Fed. R. App. P. 4(b) and Fed. R. Civ. P. 23(f), which are Mandatory Appeal Deadlines based in Statute, while Rule 60(b) is a Court-promulgated Rule Granting District Courts Authority to Provide Relief from Extraordinary Circumstances Including Fraud and Misrepresentation.

The Fourth Circuit's decision addressed what it called an issue of first impression to hold that Rule 60(b)(3)'s time limit is a mandatory claim-processing rule that is not subject to equitable tolling. To do so, it drew analogy to two other federal rules. But the analogy fails, as the rules are completely different in origin and function. In short, Rule 60(b) is materially different from appeal deadlines and deserved to be treated differently.

The Fourth Circuit has held that Rule 60(b) is an affirmative defense and non-jurisdictional claim-processing rule. See *United States v. McRae*, 793 F.3d 392, 401 (4th Cir. 2015) (holding that Rule 60(b)'s time limit "is an affirmative defense, not a jurisdictional bar"); *Penney v. United States*, 870 F.3d 459, 462 (6th Cir. 2017) ("But we hold that [the Rule 60(b)] time limit is not a jurisdictional rule."). Accordingly, the question for the court of appeals was whether Rule 60(b) is a mandatory or non-mandatory claim-processing rule.

To answer the question, the Fourth Circuit likened Rule 60(b) to rules governing by when notices of appeals must be filed—Fed. R. App. P. 4(b) and Fed. R. Civ. P. 23(f). These rules have different origins. There are rules created by Congress, and there are rules created by the Courts. Through the Rules Enabling Act, Congress has granted federal judges power to promulgate rules of procedure in their courts. See 28 U.S.C. § 2072(a).

Rules 4 and 23 are based in statute. But Rule 60(b) is a court-promulgated rule. Court-promulgated "rules bring order to the process by which the [courts] resolve disputes. Such rules must be respected and enforced, but these rules, after all, are [the court's] rules and [the judges] feel a freer hand in the flexible application of those rules." *Washington v. Ryan*, 833 F.3d 1087, 1102 (11th Cir. 2016) (Bybee, J., dissenting). Like affirmative defenses that are subject to waiver, forfeiture and equitable tolling, court-promulgated "rules may be waived or forfeited." *Id*. (citing *Union Pac. R.R. Co. v. Locomotive Eng'rs & Trainmen Gen. Comm. of Adjustment, Cent. Region*, 558 U.S. 67, 81-82, 130 S. Ct. 584 (2009); *Kontrick v. Ryan*, 540 U.S. 443, 456, 124 S. Ct. 906 (2004)).

Rule 4(b) and 23(f) are also different because they contain appeal deadlines. This Court in *Bowles v. Russell*, 551 U.S. 205, 127 S. Ct. 2360 (2007), described as "long held" the principle that appeal deadlines are mandatory and—using language at a time before the Supreme Court clearly preferred the term "claim-processing"—"jurisdictional." *Id*. at 209. "Mandatory" and "jurisdictional" went hand-in-hand in the *Bowles* decision. The *Bowles* Court recognized the "mandatory and jurisdictional" nature of Rule 4(a) deadlines and concluded that the court of appeals lacked jurisdiction to hear an appeal filed before the expiration of the court-imposed deadline, but after the expiration of the period allowed by the rule. *Id*. at 209-10, 213-15. The *Bowles* Court reiterated that federal courts have "no authority to create equitable exceptions to jurisdictional requirements." *Id*. at 214.

To review, Rule 4(b) and Rule 23(f) are statute-based, mandatory, jurisdictional rules that impose appeal deadlines while Rule 60(b) is a court-promulgated rule created to allow courts to correct injustices, is non-jurisdictional, is an affirmative defense (which typically are subject to

equitable tolling), and does not contain appeal deadlines. Using the language of *Bowles* which wedded "mandatory" to "jurisdictional" at a time when "jurisdictional" likely meant "mandatory," while Rules 4(b) and 23(f) are mandatory, Rule 60(b) should not be considered mandatory. "Rule 60(b) is a claim-processing rule, while Rule 4(a) is largely jurisdictional." *Washington*, 833 F.3d at 1107 (Bybee, J., dissenting).

In conclusion, a finding that appeal deadlines found in Rule 4(b) and Rule 23(f) are mandatory claim-processing may make sense. And it may make sense not to allow equitable tolling principles to overcome a jurisdictional bar, such as when a Rule 60(b) motion is used to try to reopen a matter for which a jurisdictional deadline has already passed and strict satisfaction of a time limit is required as a precondition to jurisdiction over a matter. See, e.g., *Shah v. Hutto*, 722 F.2d 1167, 1167 (4th Cir. 1983) (en banc). But there is nothing "jurisdictional" about Rule 60, and in this case, the Rule 60(b) motion was used to seek to reopen an action that has a deadline that is subject to equitable tolling—a § 2255 motion.

The Fourth Circuit's decision to draw analogy from those statute-based, mandatory claims-processing appeal deadline establishing rules and to apply the same logic to Rule 60(b) does not hold water, however. Rule 4(b) and 23(f) are about setting deadlines to appeal. Quite differently, Rule 60(b)(3) is about correcting extraordinary, exceptional circumstances such as fraud on the court. By making 60(b)(3) mandatory claim-processing and not subject to equitable tolling, the Court insulates the government from late-discovered evidence that it (the government) defrauded a party or the district court, or as in this case, both. The Fourth Circuit's ruling is inconsistent without sufficient excusable grounds and manifestly unjust that equitable tolling applies to § 2255 proceedings but not when a defendant in a criminal case uncovers

evidence of government misconduct after the one-year period has passed. This does not support justice in the criminal justice system. It supports fraud and hiding evidence of fraud. For these reasons, the Fourth Circuit erred, and Petitioner asks the Court to grant this petition for writ of certiorai.

C. In Concluding that Rule 60(b)(3) is Not Subject to Equitable Tolling, the Fourth Circuit Erred in Focusing on a Rule Concerning "Extending Deadlines" of Jurisdictional Rules Rather than Case Law Concerning whether Equitable Tolling Applies to Non-jurisdictional Claim-Processing Rules.

Despite the many differences between Rules 4(b) and 23(f) on one hand and Rule 60(b) on the other, the Fourth Circuit compared how the rules setting appeal deadlines had been exempted, through other rules, from being "extended" by a court and how, too, Rule 60(b) was exempted by another rule from being "extended." But whether a deadline can be extended and whether equitable tolling applies are two completely different legal questions. The Fourth Circuit's "deadline extension" deadline analysis fails because Petitioner has not argued for the "extension" of any deadline, and case law about when a deadline can be extended is inapposite. This case is about whether equitable tolling applies.

The Fourth Circuit noted that Fed. R. Civ. P. 6 governs computing time periods of filings and provides a court discretion to extend those periods:

> Federal Rule of Civil Procedure 6 governs computing time periods for filings and provides a court discretion to extend those periods. See Fed. R. Civ. P. 6(b)(1). Although a court generally may extend time limits upon a showing of "good cause" under Rule 6, that Rule explicitly prohibits a court from extending the time to act under Rule 60(b): "A court must not extend the time to act under Rule[] . . . 60(b)." Fed. R. Civ. P. 6(b)(2).

Appendix at 12a.

But Rule 6 does not address equitable tolling or any matter of equity. It addresses "computing" time periods in the Federal Rules of Civil Procedure. See Rule 6(a). It addresses periods stated in days and in hours, what to do for holidays and what the words "last day" and "next day" mean. *Id*. at 6(a)(1)-(4). The rule goes on to address "extending time," as in when the court may move that due date back. *Id*. at 6(b). This includes an exception for certain time periods, including the limitations of Rule 60(b). But, again, the rule deals with whether the court may "extend" the time under the rule, not when equitable factors may exist to "set aside" the deadline, or any other equitable matters including waiver.

Rule 6 is focused on the technicalities of determining the due date—here, when the one-year deadline under Rule 60(b)(3) passed in Petitioner's case—and does not even remotely reference any equitable considerations. The Fourth Circuit's decision relying on a civil rule concerning extending deadlines is the improper approach in this case involving equitable tolling.

CONCLUSION

Petitioner Roderick Lamar Williams asks the Court to grant his petition and accept jurisdiction both to address the improper Fourth Circuit conclusion that Rule 60(b)(3) is not subject to equitable tolling and the effects of this ruling—and the similar rulings of other circuit courts—are having to prevent legitimate claims of fraud on the court, misrepresentation, and misconduct of the opposing party. Petitioner would eventually ask the Court to find that equitable tolling applies on the record of this case and that Petitioner has been wrongfully convicted. See Sup. Ct. R. 10(c).

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Respectfully submitted,

ROBINSON & BRANDT, P.S.C.

Dated: 23 May 2023

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CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the foregoing petition for writ of certiorari, motion for leave to proceed in forma pauperis, and the following appendix were served by U.S. Priority Mail on the date reported and signed below upon Assistant U.S. Attorney Amy E. Ray at usancw.appeals@usdoj.gov ; and the Solicitor General's Office, Room 5614, Department of Justice, 950 Pennsylvania Avenue, NW, Washington, DC 20530-0001.

Dated: 23 May 2023

/s/ Jeffrey M. Brandt
Jeffrey M. Brandt

APPENDIX