No.

In The
Supreme Court of the United States

ELITE IT PARTNERS, INC., AND JAMES MARTINOS,
Petitioners,

v.

FEDERAL TRADE COMMISSION,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

In 2019 the Federal Trade Commission filed a complaint under seal and obtained an *ex parte* temporary restraining order against Petitioners—a (now-shuttered) small IT company and its owner. Pursuant to the TRO, the company's operations were immediately halted, and Petitioners' business and personal assets were frozen in anticipation of a disgorgement award under Section 13(b) of the Federal Trade Commission Act, 15 U.S.C. § 53(b). Petitioners intended to vigorously defend their innocence, but their motion for release of some funds to pay counsel was denied. Thus cornered, Petitioners acceded to a judgment that included "equitable monetary relief" in the amount of $13,537,288.75.

Just over a year later, this Court unanimously held that §13(b) authorizes only "purely injunctive, not monetary, relief." *AMG Cap. Mgmt., LLC v. FTC*, 593 U.S. 67, 75 (2021).

Because §13(b) never allowed "the Commission to seek, and a court to award, equitable monetary relief such as restitution or disgorgement," *AMG*, 593 S. Ct. at 70, Petitioners moved to vacate the district court's order under Federal Rule of Civil Procedure 60(b)(6). The district court denied relief, and the Tenth Circuit affirmed because "a change in case law doesn't justify vacatur under Rule 60(b)(6)" and Petitioners "weren't involved in the events giving rise to *AMG*."

The question presented, on which the courts of appeals are openly and squarely divided, is:

Whether Rule-60(b)(6) relief based on a post-judgment change in decisional law is categorically unavailable.

PARTIES TO THE PROCEEDING

Petitioners Elite IT Partners, Inc., and James Martinos were the Defendants-Appellants in the proceedings below.

Respondent Federal Trade Commission was the Plaintiff-Appellee below.

CORPORATE DISCLOSURE STATEMENT

Petitioner Elite IT Partners, Inc., has no parent corporations, and no publicly held company owns 10% or more of the stock of the business.

STATEMENT OF RELATED PROCEEDINGS

The proceedings in federal district and appellate courts identified below are directly related to the above-captioned case in this Court.

Fed. Trade Comm'n v. Elite IT Partners, Inc., No. 2:19-CV-00125-RJS, 2023 WL 197300 (D. Utah Jan. 17, 2023);

Fed. Trade Comm'n v. Elite IT Partners, Inc., 653 F. Supp. 3d 1089 (D. Utah Jan. 23, 2023);

Fed. Trade Comm'n v. Elite It Partners, Inc., 91 F.4th 1042 (10th Cir. 2024), *petition for rehearing en banc denied* (March 21, 2024).

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PETITION FOR WRIT OF CERTIORARI

Petitioners Elite IT Partners, Inc., and James Martinos respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Tenth Circuit.

OPINIONS BELOW

The district court's Memorandum Decision and Order Denying Defendants' Motion to Vacate the court-approved settlement agreement can be found at *FTC v. Elite IT Partners, Inc.*, No. 2:19-CV-00125-RJS, 2023 WL 197300 (D. Utah Jan. 17, 2023). The Amended Memorandum Decision and Order Denying Defendants' Motion to Vacate can be found at *FTC v. Elite IT Partners, Inc.*, 653 F. Supp. 3d 1089 (D. Utah 2023) and is included at App. 37a–54a. The Tenth Circuit's opinion affirming the judgment is published at *FTC v. Elite IT Partners, Inc.*, 91 F.4th 1042 (10th Cir. 2024). The Tenth Circuit's published opinion and its unpublished order denying *en banc* review are included at App. 1a–18a and App. 55a–56a, respectively.

JURISDICTION

The district court entered judgment against Petitioners on January 23, 2023. After a timely appeal, the Tenth Circuit issued a decision affirming the judgment on January 23, 2024. The Tenth Circuit denied a timely petition for *en banc* rehearing on March 21, 2024. This Court has jurisdiction under 28 U.S.C. § 1254(1).

RULE PROVISION INVOLVED

Federal Rule of Civil Procedure 60(b)(6), which is reproduced at App. 57a, provides: "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: . . . (6) any other reason that justifies relief."

STATEMENT OF THE CASE

A. Background

In 2019, the FTC filed a complaint under seal alleging that Petitioner Elite IT had engaged in unfair or deceptive acts or practices in violation of the Federal Trade Commission Act and the Restoring Online Shoppers' Confidence Act. The FTC claimed that Elite IT misled consumers by falsely identifying dangers posed by, for example, "cookies" (text files placed on a user's computer by visited websites). But the district court gave Petitioners no opportunity to contest FTC's allegations, which Petitioners contend vastly underestimated if not ignored serious online threats.[1] Instead, the district court proceeded *ex parte*, accepted the Commission's allegations, and issued a temporary restraining order against Elite IT and its owner, Petitioner James Martinos. *See Ex Parte* TRO, *FTC v. Elite IT Partners, Inc.*, No. 2:19-CV-00125-RJS, (Feb. 27, 2019), Dkt. No. 15.[2]

Pursuant to the *ex parte* TRO, a court-appointed receiver arrived at Elite IT's office unannounced, immediately assumed control, placed a majority of its

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[1] *See, e.g.*, Mirza Silajdzic, *54 Billion Internet Cookies Leaked on the Dark Web: Report*, VPNOverview (April 4, 2024), https://vpnoverview.com/news/54-billion-internet-cookies-leaked-on-the-dark-web-report/ (last visited Apr. 29, 2024) (alert noting threats posed by active and inactive cookies).

[2] All citations to "Dkt. No." refer to docket entries in the district court case below.

employees on leave without pay, and halted the company's business. The TRO also froze Petitioners' business and private assets—an action demanded by the FTC, in part, to satisfy an eventual disgorgement award under §13(b). *See* Mtn. for *Ex Parte* TRO at 21 (Feb. 25, 2019), Dkt. No. 9.

Once made aware of the FTC's complaint, Petitioners vehemently denied the allegations and began mounting a defense. But circumstances conspired against them. The receiver's shuttering of Elite IT's business meant no income, and the asset freeze prevented Petitioners from accessing business or private funds. Worse yet, the district court denied Petitioners' request to release a portion of the frozen assets to pay their attorneys. Order (Apr. 15, 2019), Dkt. No. 70. Finally, according to then-existing Tenth Circuit precedent, relief under §13(b) could have required Elite IT to disgorge its total gross receipts for the life of the company, even without proof of actual harm to any customer. *See FTC v. Freecom Commc'ns, Inc.*, 401 F.3d 1192, 1207 (10th Cir. 2005).

Petitioners thus had no real option but to settle. In December 2019, the district court entered a Stipulated Order for Permanent Injunction and Monetary Judgment (Stipulated Order), in which Elite IT and Martinos admitted no wrongdoing. App. 19a–36a. Among other things, the Stipulated Order entered judgment in favor of the Commission against Petitioners in the amount of $13,537,288.75, as "equitable monetary relief" under §13(b). App. 25a; *see also id.* 2a.

Immediately after the Order was entered, the receiver wound up Elite IT's business, liquidated its assets, and paid more than $1,000,000 toward the judgment. Martinos himself liquidated his retirement accounts and, with all his savings, paid more than

$235,000 toward the judgment. Because no assets remain from the business, the judgment has never been fully satisfied, and Elite IT and Martinos remain subject to its terms.

B. This Court unanimously holds that the basis for the Stipulated Order's "equitable monetary relief" is unlawful.

Just over a year after the district court entered final judgment, this Court unanimously held that §13(b) authorizes only "purely injunctive, not monetary, relief." *AMG Cap. Mgmt., LLC v. FTC*, 593 U.S. 67, 75 (2021). As a result, §13(b) does not allow—and never did allow—"the Commission to seek, and a court to award, equitable monetary relief such as restitution or disgorgement." *Id*. at 70.

C. The lower courts denied relief under Rule 60(b)(6).

Less than a year after *AMG* was issued, Martinos and Elite IT filed a motion to vacate the judgment under, in part, Federal Rule of Civil Procedure 60(b)(6). Motion to Vacate Judgment (Mar. 17, 2022), Dkt. No. 169. They explained that *AMG* abolished the legal basis not just for the Stipulated Order's "equitable monetary relief," but also for FTC's actions leading up to that order—*i.e.*, obtaining an *ex parte* order to freeze assets to satisfy eventual §13(b) relief, arguing against a release of a portion of those funds for Petitioners' defense costs, and bullying Petitioners into a settlement with threats of an "equitable monetary award" equal to the company's lifetime gross receipts.

Indeed, with this Court's unanimous holding in *AMG*, the FTC was *never* entitled to seek, and the district court was *never* authorized to award, equitable monetary relief under §13(b). *See Rivers v. Roadway*

Exp., Inc., 511 U.S. 298, 312–13 (1994) ("A judicial construction of a statute is an authoritative statement of what the statute meant before as well as after the decision of the case giving rise to that construction.") (footnote omitted).

The district court, however, relied on Tenth Circuit caselaw and denied Petitioners' motion to vacate. App. 37a–54a. The court of appeals affirmed. App. 1a–18a.

In the Tenth Circuit, a "change in the law or in the judicial view of an established rule of law is not . . . an extraordinary circumstance which justifies [Rule 60(b)(6)] relief." *Collins v. City of Wichita*, 254 F.2d 837, 839 (10th Cir. 1958). And, the Tenth Circuit held, *Collins* still controls. App. 12a. The court explained, however, that a judgment may be reopened when two decisions arising out of the same transaction or occurrence reach different conclusions. In *Pierce v. Cook & Co.*, 518 F.2d 720 (10th Cir. 1975) (*en banc*), an independent contractor of Cook & Co. caused a traffic accident. Separate lawsuits were filed against Cook, and one was removed to federal court. The federal court held that, under an Oklahoma Supreme Court decision (*Marion Machine*), Cook was not liable for the actions of its independent contractor; the Tenth Circuit affirmed. *Id.* at 721–22. The other case against Cook eventually reached the Oklahoma Supreme Court, which overruled *Marion Machine*. *Id.* at 722. The Tenth Circuit then granted the federal plaintiffs-appellants relief from judgment "to ensure consistency in the treatment of cases 'arising out of the same transaction or occurrence.'" App. 13a (quoting *Pierce*, 518 F.2d at 732).

Here, the Tenth Circuit thus rejected Petitioners' argument that the change in law announced by this Court's decision in *AMG* provided adequate grounds

for relief from judgment—because, the Tenth Circuit explained, Petitioners "weren't involved in the events giving rise to *AMG*." App. 14a.

The Tenth Court also, *sua sponte*, pointed to the district court's Stipulated Order, which said that Petitioners "waive all rights to appeal or otherwise challenge or contest the validity of this Order." App. 2a–3a. Rather than considering whether it was equitable under Rule 60(b)(6) to uphold this term, the Tenth Circuit simply concluded that it "cover[ed]" Petitioners' arguments. App. 5a (heading).

Elite IT and Mr. Martinos timely petitioned for an *en banc* rehearing, which the Tenth Circuit denied. App. 55a–56a. They now petition this Court to issue a writ of certiorari.

REASONS TO GRANT THE PETITION

The Tenth Circuit's decision deepens a circuit split on an important and recurring question: whether Rule-60(b)(6) relief based on a post-judgment change in decisional law is categorically unavailable. The resolution of that question is critical to litigants facing extraordinary circumstances arising out of a post-judgment change in decisional law and is significant to the ultimate meaning of Rule 60(b)(6)—whether it remains a fundamentally equitable tool for courts to accomplish justice. With its decision, the Tenth Circuit joins at least five other circuits in unduly restricting Rule-60(b)(6) relief and, like all circuit splits, thus conditions remedies on the happenstance of geography.

The Tenth Circuit's analysis of Rule 60(b)(6) is incorrect and conflicts with this Court's jurisprudence. By categorically denying Rule-60(b)(6) relief for a post-judgment change in the law unless a common

transaction or occurrence exists, the Tenth Circuit failed to consider the equities of *this case*—a consideration mandated by this Court since at least *Ackermann v. United States*, 340 U.S. 193, 199 (1950).

This case presents an ideal vehicle for settling this important issue, as it raises pure questions of law free of factual disputes. The Court should use this case to clarify Rule-60(b)(6) jurisprudence.

To resolve a split among the circuits and to settle an important question of courts' equitable power, this Court should grant the petition and reverse the Tenth Circuit's decision.

I. THE DECISION BELOW DEEPENS A CIRCUIT SPLIT ON THE IMPORTANT AND RECURRING QUESTION WHETHER RULE-60(B)(6) RELIEF BASED ON A POST-JUDGMENT CHANGE IN DECISIONAL LAW IS CATEGORICALLY UNAVAILABLE.

Rule 60(b) allows courts to "relieve a party . . . from a final judgment" for certain specific reasons, *id.* (b)(1)–(5), and for "any other reason that justifies relief," *id.* (b)(6). According to this Court, Rule 60(b)(6) "grants federal courts broad authority to relieve a party from a final judgment 'upon such terms as are just.'" *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 863 (1988). A Rule-60(b)(6) movant must show "'extraordinary circumstances' justifying the reopening of a final judgment." *Gonzalez v. Crosby*, 545 U.S. 524, 535 (2005) (quoting *Ackermann*, 340 U.S. at 199). But courts "may consider a wide range of factors," including "in an appropriate case, 'the risk of injustice to the parties' and 'the risk of undermining the public's confidence in the judicial process.'" *Buck v. Davis*, 580 U.S. 100, 123 (2017) (quoting *Liljeberg*, 486 U.S. at 864); *see id.* (concluding that the district court

abused its discretion in denying Buck's 60(b)(6) motion "[i]n the circumstances of this case"). Ultimately, Rule 60(b)(6) "provides courts with authority 'adequate to enable them to vacate judgments whenever such action is appropriate to accomplish justice.'" *Liljeberg*, 486 U.S. at 863–64 (quoting *Klapprott v. United States*, 335 U.S. 601, 614–15 (1949)).

Critically, this Court has recognized a change in controlling law may provide extraordinary circumstances to justify the reopening of a judgment under Rule 60(b)(6). *See Buck*, 580 U.S. at 126, 128, 137; *Gonzalez*, 545 U.S. at 531 ("[A] motion might contend that a subsequent change in substantive law is a 'reason justifying relief,' . . . from the previous denial of a claim."); *see also id.* at 536 n.9 ("A change in the interpretation of a *substantive* statute may have consequences for cases that have already reached final judgment, particularly in the criminal context."); *cf. Agostini v. Felton*, 521 U.S. 203, 239 (1997) ("Intervening developments in the law by themselves *rarely* constitute the extraordinary circumstances required for relief under Rule 60(b)(6).") (emphasis added).

Nonetheless, the circuits are irrevocably divided on the question whether a post-judgment change in law may justify relief under Rule 60(b)(6). *See, e.g.*, *Crutsinger v. Davis*, 140 S. Ct. 2, 2–3 (2019) (Sotomayor, J.) (statement respecting denial of certiorari) (observing circuit split).

A. The Tenth Circuit and several other circuits hold that a change in decisional law may not serve as grounds for relief under Rule 60(b)(6).

In the Fourth Circuit, a "change in decisional law subsequent to a final judgment provides no basis for relief under Rule 60(b)(6)." *Moses v. Joyner*, 815 F.3d 163, 168 (4th Cir. 2016). Accordingly, the Fourth Circuit held that this Court's "novel position" in *AMG* was "not sufficiently extraordinary to justify vacatur under the Rule 60(b) catch-all" because the opposite approach—*i.e.*, that post-judgment decisional changes may suffice for Rule 60(b)(6) relief—"would effectively eviscerate finality interests and open the floodgates to newly meritorious 60(b)(6) motions each time the law changes." *FTC v. Ross*, 74 F.4th 186, 194 (4th Cir. 2023) (citation omitted), *cert. denied*, 144 S. Ct. 693 (2024). *But see Gonzalez*, 545 U.S. at 529 (explaining that the "policy consideration" of finality, "standing alone, is unpersuasive in the interpretation of a provision [Rule 60(b)(6)] whose whole purpose is to make an exception to finality").

The Fifth Circuit likewise holds that a "'change in decisional law after entry of judgment does not constitute exceptional circumstances and is not alone grounds for relief from a final judgment' under Rule 60(b)(6)." *Adams v. Thaler*, 679 F.3d 312, 319 (5th Cir. 2012) (citation omitted). In *Adams*, the district court held, based on this Court's decision in *Coleman v. Thompson,* 501 U.S. 722, 750 (1991), that a death-row inmate's ineffective assistance of counsel claims in a federal habeas petition had been procedurally defaulted because counsel failed to pursue them in the initial post-conviction proceeding in state court. *Adams*, 679 F.3d at 315–16. The district court's order

was affirmed. *Id.* at 316. But this Court later held that a habeas petitioner may avoid default when post-conviction counsel fails to raise claims of ineffective assistance of *trial*-counsel. *Martinez v. Ryan*, 566 U.S. 1, 17 (2012). Adams therefore filed a motion to vacate the denial of his federal habeas petition, arguing that *Martinez* constituted "extraordinary circumstances" justifying relief under Rule 60(b)(6). *Adams*, 679 F.3d at 316. The district court stayed Adams's execution pending resolution of the 60(b)(6) motion. *Id.* at 317.

The Fifth Circuit ruled that the district court abused its discretion granting the stay because, it held, Adams had not shown a likelihood of success on his 60(b)(6) motion. *Adams*, 679 F.3d at 318–19. The Fifth Circuit reiterated the command in that circuit, that a "'change in decisional law after entry of judgment does not constitute exceptional circumstances and is not alone grounds for relief from a final judgment' under Rule 60(b)(6)." *Id.* at 319 (quoting *Bailey v. Ryan Stevedoring Co.*, 894 F.2d 157, 160 (5th Cir. 1990); and citing *Batts v. Tow-Motor Forklift Co.*, 66 F.3d 743, 747–48 (5th Cir. 1995)). Because the district court had correctly applied then-prevailing Supreme Court precedent (*Coleman*), the change in law effected by *Martinez* did not "constitute an 'extraordinary circumstance'" "to warrant Rule 60(b)(6) relief." *Id.* at 320 (citations omitted).

The Sixth Circuit likewise holds that "changes in decisional law alone do not establish ground for Rule 60(b)(6) relief." *Zagorski v. Mays*, 907 F.3d 901, 905 (6th Cir. 2018); *see also Abdur'Rahman v. Carpenter*, 805 F.3d 710, 716 (6th Cir. 2015) ("As a change in decisional law, *Martinez* does not constitute an extraordinary circumstance meriting Rule 60(b)(6) relief.") (citation omitted).

Similarly, in the D.C. Circuit, "'extraordinary circumstances' are not present . . . when there has been an intervening change in case law." *Kramer v. Gates*, 481 F.3d 788, 792 (D.C. Cir. 2007) (citing *Gonzalez*, 545 U.S. at 536–38; *Agostini*, 521 U.S. at 239).

According to the Eleventh Circuit, a change in decisional law "is not an 'extraordinary circumstance' sufficient to invoke Rule 60(b)(6)." *Arthur v. Thomas*, 739 F.3d 611, 631 (11th Cir. 2014).

Finally, the Tenth Circuit holds that a "change in the law or in the judicial view of an established rule of law is not . . . an extraordinary circumstance which justifies [Rule 60(b)(6)] relief." *Collins*, 254 F.2d at 839. As noted above, the Tenth Circuit has approved of reopening a judgment only in the unique circumstance when two decisions arising out of the same transaction or occurrence reach different conclusions. *Pierce*, 518 F.2d at 721–23. *Pierce* thus does not establish a general approach for courts to apply when considering changes in legal decisions, but rather, merely identifies one precise scenario in which the Tenth Circuit's categorical rule is set aside.

B. In contrast, the First, Third, Seventh, Eighth, and Ninth Circuits hold that a change in decisional law may justify relief under Rule 60(b)(6).

The First Circuit has stated that a change in state common law could, on rare occasion, serve as grounds to reopen a final judgment under Rule 60(b)(6). *Biggins v. Hazen Paper Co.*, 111 F.3d 205, 212 (1st Cir. 1997).

The Third Circuit too, has "not foreclosed the possibility that a change in controlling precedent, even standing alone, might give reason for 60(b)(6) relief."

Cox v. Horn, 757 F.3d 113, 121 (3d Cir. 2014). In *Cox*, the Third Circuit faced the same question presented to the Fifth Circuit in *Adams v. Thaler*—whether the change in law announced in this Court's decision in *Martinez* justified Rule-60(b)(6) relief. *Id.* But, the Third Circuit said, *Martinez* may justify relief under Rule 60(b)(6), and "*Adams* does not square with our approach to Rule 60(b)(6)." *Id.* at 121–22. Indeed, later, in *Satterfield v. District Attorney Philadelphia*, the Third Circuit reversed an order denying relief under Rule 60(b)(6). 872 F.3d 152 (3d Cir. 2017). The court concluded that a Rule-60(b)(6) motion based on a change in decisional law requires an "analysis of the equitable circumstances at play," and it remanded the case for the lower court to "evaluate the nature of the change [to a statute of limitations for habeas petitioners] along with all of the equitable circumstances and clearly articulate the reasoning underlying its ultimate determination." *Id.* at 161–62.

The Seventh Circuit "agree[s] with the Third Circuit's approach in *Cox*, in which it rejected the absolute position . . . that intervening change in the law *never* can support relief under Rule 60(b)(6)." *Ramirez v. United States*, 799 F.3d 845, 850 (7th Cir. 2015) (referencing *Adams*); *see also Dolin v. GlaxoSmithKline LLC*, 951 F.3d 882, 891 (7th Cir. 2020) (citing *Agostini*, 521 U.S. at 239); *Crutsinger*, 140 S. Ct. at 3 (Sotomayor, J.) (noting consistent approaches in the Third Circuit (*Cox*) and the Seventh Circuit (*Ramirez*), in contrast to the Fifth Circuit's approach in *Adams*).

In the Eighth Circuit, "[a] change in the law could represent so significant an alteration in circumstances as to justify both prospective and retrospective relief from the obligations of a court order." *City*

of Duluth v. Fond du Lac Band of Lake Superior Chippewa, 785 F.3d 1207, 1210 (8th Cir. 2015) (quotations omitted). The court there twice reversed the denial of a Rule-60(b)(6) motion because the lower court repeatedly failed to consider whether a post-consent-decree change in law was an exceptional occurrence justifying 60(b)(6) relief. *Id*. at 1212; *City of Duluth v. Fond du Lac Band of Lake Superior Chippewa*, 702 F.3d 1147 (8th Cir. 2013).

Finally, the Ninth Circuit concluded that this Court's decision in *Gonzalez* "directly refuted" the "*per se* rule that Rule 60(b)(6) motions cannot be predicated on intervening changes in the law." *Phelps v. Alameida*, 569 F.3d 1120, 1132 (9th Cir. 2009); *see also FTC v. Hewitt*, 68 F.4th 461, 468 (9th Cir. 2023) (stating that an intervening change in law "may be adequate" to grant relief under Rule 60(b)(6)).

II. THE TENTH CIRCUIT'S DECISION CONFLICTS WITH THIS COURT'S PRECEDENTS.

A. This Court allows that post-judgment changes in law may suffice for relief under Rule 60(b)(6).

The Tenth Circuit's decision cannot be squared with this Court's jurisprudence. As noted above, this Court has said that courts may consider a change in controlling law to determine whether extraordinary circumstances are present in a particular case. *See Buck*, 580 U.S. at 126; *Gonzalez*, 545 U.S. at 531; *see also Kemp v. United States*, 596 U.S. 528, 540 (2022) (Sotomayor, J., concurring) (citing *Buck*, 580 U.S. at 126; *Gonzalez*, 545 U.S. at 531; and *Polites v. United States*, 364 U.S. 426, 433 (1960)); *Phelps*, 569 F.3d at 1132 ("The Supreme Court's central holding in *Gonzalez* was that a Rule 60(b)(6) motion is the *proper*

means of bringing" a challenge based on a change in decisional law.) (citing *Gonzalez*, 545 U.S. at 533) (citing, in footnote, *Agostini*, 521 U.S. at 239; *Polites*, 364 U.S. at 432). As this Court stated in *Gonzalez*, a "change in the interpretation of a *substantive* statute may have consequences for cases that have already reached final judgment . . . ." 545 U.S. at 536 n.9.

Indeed, aside from the specific reasons set forth in Rule 60(b)(1)–(5), Rule 60(b)(6)'s catch-all category exists precisely to reopen final orders when extraordinary circumstances exist "for '*any* . . . reason justifying relief from the operation of the judgment.'" *Gonzalez*, 545 U.S. at 529 (emphasis added) (quoting *Liljeberg*, 486 U.S. at 863 n.11).

Therefore, one reason justifying relief in a particular case may be a fundamental change in decisional law. The Tenth Circuit therefore erred by applying a categorical rule that effectively ignores post-judgment changes in law. Rather than "consider[ing] a wide range of factors," *Buck*, 580 U.S. at 123 (citation omitted), to determine whether "'extraordinary circumstances' justif[ied] the reopening" of the Stipulated Order *in this case*, *Gonzalez*, 545 U.S. at 535 (citation omitted), the Tenth Circuit simply declared that Petitioners—and all parties in similar circumstances—are precluded from relief under Rule 60(b)(6).

And the circumstances of this case demonstrate the error of this approach. First, there is no dispute that, under the Court's unanimous decision in *AMG*, the FTC was always precluded from seeking, and courts were always precluded from awarding, "equitable monetary relief" under §13(b). *See Rivers*, 511 U.S. at 312–13 ("A judicial construction of a statute is an authoritative statement of what the statute meant before as well as after the decision of the case giving rise

to that construction") (footnote omitted). Therefore, the legal foundation for the Stipulated Order's equitable monetary relief does not exist.

Further, because of this Court's holding in *AMG*, virtually all the FTC's actions in this case were taken without any lawful basis. The FTC's tactics were part of a well-worn plan based on the previous view of §13(b) that gave the FTC enormous leverage. As a former FTC general counsel explained, §13(b) (before *AMG*) armed the FTC with a "remedial arsenal," with which the FTC sought, *inter alia*, disgorgement, along with the freezing of assets or receiverships to ensure "equitable monetary relief"—orders that the courts did "not hesitate[] to grant." Robert D. Paul, *The FTC's Increased Reliance on Section 13(b) in Court Litigation*, 57 Antitrust L.J. 141, 143–45 (1988).

Therefore, had §13(b) been properly limited to "purely injunctive, not monetary, relief," *AMG*, 593 U.S. at 75, the FTC could never have obtained an *ex parte* TRO freezing Petitioners' assets or bullied Petitioners into a settlement by threatening "equitable monetary relief" equal to Elite IT's lifetime receipts. The FTC's "arsenal" here prevented Petitioners even from accessing a portion of the frozen funds to pay legal counsel, lest those funds be unavailable for, we now know, an unlawful monetary award under §13(b).

B. There is no exception for consent judgments.

The Tenth Circuit's categorical bar also led the court—*sua sponte*—to hold that Petitioners were precluded from even challenging the district court's Stipulated Order because, according to the Order, Petitioners "waive[d] all rights to appeal or otherwise challenge or contest the validity of this Order." App.

2a–3a. But, as this Court has repeatedly confirmed, Rule 60(b) applies to consent orders just as much as it does to litigated orders.

In *Rufo v. Inmates of Suffolk County Jail*, for example, this Court held that "rigidity" in applying either Rule 60(b)(5) or (b)(6) to consent decree was legal error. 502 U.S. 367, 382–83, 390 (1992). Rule 60(b) flows from a long tradition in equity allowing modification of a judgment entered "by consent" of the parties, "in adaptation to changed conditions." *United States v. Swift & Co.*, 286 U.S. 106, 114 (1932). This is a well-recognized tradition. *See, e.g.*, *Fond du Lac Band of Lake Superior Chippewa*, 785 F.3d at 1210 (reversing, for the second time, district court's failure to consider whether a change in law after entry of a consent decree justified Rule-60(b)(6) relief).

The Tenth Circuit itself understands that "[c]onsent judgments are indistinguishable from litigated judgments for purposes of Rule 60(b) analysis." *Zimmerman v. Quinn*, 744 F.2d 81, 82 n.1 (10th Cir. 1984). Indeed, Rule 60(b)(6) "implicitly contemplate[s] consideration of circumstances *beyond the terms* of the judgment." *Id.* at 82 n.1 (emphasis added). Thus, the Tenth Circuit's categorical rule against considering post-judgment changes in law prevented the court—contrary to this Court's jurisprudence—from considering whether it remained equitable to strictly enforce the Stipulated Order that was based on an invalid interpretation of §13(b).

Finally, by applying its constricted Rule-60(b)(6) approach, the Tenth Circuit ignored yet another well-established understanding about the nature of *judgments*. As this Court explained in *Rufo*, while a "consent decree no doubt embodies an agreement of the

parties and thus in some respects is contractual in nature[,]" it is an agreement "reflected in, and . . . enforceable as, a judicial decree that is subject to the rules generally applicable to other judgments and decrees." 502 U.S. at 378.

Therefore, as (again) the Tenth Circuit otherwise recognizes, "a settlement agreement or consent decree designed to enforce statutory directives is not merely a private contract. It implicates the courts, and *it is the statute*—and 'only incidentally the parties'—to which the courts owe their allegiance." *Biodiversity Assocs. v. Cables*, 357 F.3d 1152, 1169 (10th Cir. 2004) (emphasis added). Thus, the "primary" function of a consent decree, "like that of a litigated judgment, is to enforce the congressional will as reflected in the statute." *Id.* A consent decree does not, therefore, "freeze the provisions of the statute into place." *Id.* "If the statute changes, the parties' rights change, and enforcement of their agreement must also change." *Id.* at 1169–70.

* * *

Because the FTC's previous interpretation of §13(b) was invalidated by this Court in *AMG*, the Tenth Circuit was not free to disregard the proper interpretation of the statute simply because Petitioners "weren't involved in the events giving rise to *AMG*." App. 14a. That approach runs counter to the historical equitable lineage of Rule 60(b)(6) and this Court's jurisprudence. This Court should grant certiorari and hold that courts may consider post-judgment changes in law when ruling on motions under Rule 60(b)(6).

III. THIS CASE IS THE IDEAL VEHICLE FOR ADDRESSING THE IMPORTANT QUESTION PRESENTED.

This case presents an ideal vehicle for settling whether relief under Rule 60(b)(6) is available based on fundamental changes in law. This case raises pure questions of law and presents no disputed material facts. The Court should use this case as the vehicle to clarify Rule 60(b)(6).

The question presented raises a recurring problem, as described above. And the split is irreconcilable. Circuit courts have disputed the effect of the *same* post-judgment change in decisional law. *Compare Adams*, 679 F.3d at 319 (change in decisional law announced in *Martinez*, does not justify relief under Rule 60(b)(6)), and *Abdur'Rahman,* 805 F.3d at 714 (same), *with Cox*, 757 F.3d at 122 (noting that the "fundamental point of 60(b) is that it provides 'a grand reservoir of equitable power to do justice in a particular case'" and holding that *Martinez*'s change in law may constitute "extraordinary circumstances" justifying relief under Rule 60(b)(6)).

Indeed, the circuit courts take diametrically opposed views about this Court's relevant case law. *Compare Kramer*, 481 F.3d at 792 (The "Supreme Court has held that 'extraordinary circumstances' are not present . . . when there has been an intervening change in law.") (citing *Gonzalez*, 545 U.S. at 536–38; *Agostini*, 521 U.S. at 239); *with Phelps*, 569 F.3d at 1132 ("The Supreme Court's central holding in *Gonzalez* was that a Rule 60(b)(6) motion is the *proper* means of bringing" a challenge based on a change in decisional law.).

Finally, another pending petition for a writ of certiorari further demonstrates the need for this Court to

resolve the circuit split. *See* Pet. for a Writ of Cert. at i, *Hi-Tech Pharms., Inc. v. FTC*, No. 23-704 (Dec. 27, 2023). There, in addition to a question about sanctions available under §13(b) of the FTC Act, Petitioner Hi-Tech Pharmaceuticals presents the same question concerning the application of Rule 60(b)(6) raised by Petitioners here. The unresolved circuit split creates uncertainty and disparate outcomes across jurisdictions, undermining the consistency and predictability of legal proceedings. Clarification from this Court is crucial to ensure uniformity and fairness in the application of Rule 60(b)(6), particularly given the recent adverse ruling against Elite IT and James Martinos—a small business and its owner.

This split of authority has had more than enough time to percolate. Federal courts have been addressing these questions since at least the 1950s. *See, e.g.*, *Morse-Starrett Prod. Co. v. Steccone*, 205 F.2d 244, 249 (9th Cir. 1953). And circuit-court confusion has worsened since *Gonzalez*. Only this Court can resolve the discord arising from conflicting interpretations over the application of Rule 60(b)(6) following a change in decisional law.

* * *

CONCLUSION

This Court should grant the petition for a writ of certiorari.

DATED: May 2024.

Respectfully submitted,

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