

IN THE
Supreme Court of the United States

JOSEPH GAMBOA,
Petitioner,

v.

BOBBY LUMPKIN, DIRECTOR,
TEXAS DEPARTMENT OF CRIMINAL JUSTICE,
CORRECTIONAL INSTITUTIONS DIVISION,
Respondent.

**On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Fifth Circuit**

**BRIEF OF AMERICAN BAR ASSOCIATION
AS AMICUS CURIAE
IN SUPPORT OF PETITIONER**

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INTEREST OF AMICUS CURIAE¹

The American Bar Association is the world's largest voluntary professional membership organization and the leading organization of legal professionals in the United States. ABA members come from all fifty States and beyond. They include prosecutors, public defenders, and private defense counsel, as well as attorneys from law firms, corporations, nonprofits, and governmental agencies. They also include judges, legislators, professors, students, and non-lawyer associates in related fields.

This case concerns the conduct of counsel in capital habeas proceedings in federal court, a matter at the core of the ABA's mission and practical expertise. The ABA long has taken a leading role in advocating for the ethical and effective representation of all clients. In 1908, the ABA adopted Canons of Professional Ethics, setting out the duties lawyers owe to their clients. Those canons are now embodied in the ABA Model Rules of Professional Conduct, and the standards designed for sanctioning lawyers who violate those rules are in the ABA's Standards for Imposing Lawyer Sanctions. Standards for Imposing Lawyer Sanctions (Feb. 1992), https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/sanction_standards.pdf. The ABA also recommends

¹ No counsel for a party authored this brief in whole or in part. No person or entity other than the ABA, its members, or its counsel made a monetary contribution to the preparation or submission of this brief. Counsel of record for all parties received timely notice of the intention to file this brief.

Neither this brief nor the decision to file it reflects the views of any judicial member of the ABA. No member of the ABA Judicial Division Council prepared this brief or developed, adopted, or endorsed its positions.

standards for representing clients in the uniquely high-stakes context of capital litigation. In 2003, the ABA adopted Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases, which codified longstanding professional norms for effective representation at every stage of a capital case. Am. Bar Ass'n, *Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases*, 31 Hofstra L. Rev. 913 (2003).

This Court “long ha[s] referred” to the ABA’s Death Penalty Guidelines as “‘guides to determining what is reasonable” attorney behavior in capital defense work. *Wiggins v. Smith*, 539 U.S. 510, 524 (2003) (quoting *Strickland v. Washington*, 466 U.S. 668, 688 (1984)); see also, e.g., *Rompilla v. Beard*, 545 U.S. 374, 387 n.7 (2005). And this Court has drawn on the ABA’s Model Rules in cases like this one, where alleged attorney abandonment “seriously prejudiced a client who thereby lost what was likely his single opportunity for federal habeas review of the lawfulness of his imprisonment and of his death sentence.” *Holland v. Florida*, 560 U.S. 631, 653 (2010).

While the ABA takes no position on the death penalty itself, the ABA has a strong interest in this case because it asks this Court to consider what happens when appointed federal habeas counsel abandons a capital petitioner. When an attorney abdicates his ethical duties by abandoning his client in federal habeas proceedings, as petitioner alleges happened here, that abandonment undermines the fair and effective functioning of the justice system. This Court’s review is needed to ensure uniformity of federal habeas administration in the lower courts and to avoid unjust and unnecessary consequences when attorney misconduct rises to the level of abandonment.

INTRODUCTION AND SUMMARY OF ARGUMENT

This capital case raises an important question that has divided the courts of appeals: When counsel abandons a habeas petitioner, depriving him of the opportunity to have his claims heard in federal court, is Federal Rule of Civil Procedure 60(b) available to reopen the proceeding? In the Second, Seventh, and Ninth Circuits, the answer is yes. Those courts hold that a habeas proceeding may be defective when counsel abandons the petitioner and that Rule 60(b) may provide a remedy. In the Fifth Circuit, the answer is no. That court holds—as it held here—that Rule 60(b) relief always is unavailable to a petitioner whose attorney has abandoned him, even in a capital case.

The assistance of counsel is crucial in capital cases, where the punishment is death. Because death penalty cases have unusually high stakes and unusually complex requirements, the ABA has adopted Guidelines reflecting well-established national standards for capital representation. By describing what it takes to represent a client facing capital punishment, the Guidelines aim to ensure fair process and to minimize the risk of injustice, including the execution of innocent persons.

This case, and the recurrent issue it raises, strikes at the heart of that effort. Petitioner Joseph Gamboa raised what the court below described as “troubling” allegations that his lawyer abandoned him at a critical stage of habeas proceedings. If true, the attorney’s abandonment deprived Mr. Gamboa of any real federal review of his constitutional claims, including a *Brady* claim that the prosecutor withheld evidence that someone else committed the murders for which Mr. Gamboa received a death sentence. But as Judge

Dennis recognized below, the Fifth Circuit takes the absolute position that abandonment never can lead to reopening of habeas proceedings under Rule 60(b).

The Fifth Circuit's harsh rule poses a unique threat to the legitimacy of the capital system. Federal law gives capital habeas petitioners a right to counsel and a fair opportunity to challenge their conviction and sentencing in federal court. But when an attorney functionally abandons a petitioner—robbing him of both rights—the Fifth Circuit always will deny relief. Rule 60(b) may be a death row inmate's last means to correct a grave error before execution. Yet it is an option open in only part of the country.

This Court should grant certiorari to resolve the split in the lower courts, reject the Fifth Circuit's categorical rule, and give Mr. Gamboa a fair shot at federal habeas review.

ARGUMENT

I. ABANDONING A CAPITAL CLIENT IS AN EXTRAORDINARY ABDICATION OF PROFESSIONAL RESPONSIBILITY

This Court has held that courts may reopen habeas judgments in extraordinary circumstances, see *Gonzalez v. Crosby*, 545 U.S. 524, 535 (2005), and that “serious instances of attorney misconduct” may qualify, *Holland v. Florida*, 560 U.S. 631, 652 (2010). When assessing whether an attorney's misconduct creates extraordinary circumstances, this Court has consulted “professional standards of care” and “fundamental canons of professional responsibility.” *Id.* at 649, 652. In this capital habeas case, the ABA's Death Penalty Guidelines describe the relevant standard of care and show just how serious it is when an attorney abandons a capital client, as counsel allegedly did here.

A. High-Quality Legal Representation Is Vital In Capital Cases

“[D]eath is . . . different.” *Gardner v. Florida*, 430 U.S. 349, 357 (1977) (plurality opinion). It is both “extraordinary and irrevocable.” Commentary to Guideline 1.1, at 923. For that reason, federal law gives capital habeas petitioners a right to qualified and well-resourced counsel. 18 U.S.C. § 3599. And the ABA Guidelines support this mandate by codifying “a national standard of practice for the defense of capital cases.” Guideline 1.1(A).

1. Federal law grants capital habeas petitioners the right to qualified counsel

Congress gave each state prisoner a right “to one fair opportunity to seek federal habeas relief from his conviction.” *Banister v. Davis*, 140 S. Ct. 1698, 1702 (2020). That postconviction review functions as a fundamental “safeguard against injustice.” Commentary to Guideline 1.1, at 931. Especially in capital cases, habeas proceedings provide a “safety net” that “allow[s] the system to catch its mistakes.” Celestine Richards McConville, *Protecting the Right to Effective Assistance of Capital Postconviction Counsel: The Scope of the Constitutional Obligation to Monitor Counsel Performance*, 66 U. Pitt. L. Rev. 521, 522 (2005). But habeas proceedings cannot serve that quality-control function without help from “appropriately trained and experienced lawyers.” Commentary to Guideline 1.1, at 931.

For that reason, federal law grants capital habeas petitioners a right to counsel. 18 U.S.C. § 3599. And given “the seriousness of the possible penalty and . . . the unique and complex nature of the litigation,” § 3599(d), “Congress enacted a set of reforms” not just to guarantee counsel, but also “to improve the quality

of lawyering” in capital cases, *Martel v. Clair*, 565 U.S. 648, 659 (2012). Section 3599 thus requires capital counsel to have greater experience than other criminal defense counsel, § 3599(b)-(d), and at the same time permits them greater compensation, § 3599(g)(1), and more money for investigative and expert services, § 3599(g)(2). These measures “reflect[] a determination” by Congress “that quality legal representation is necessary” in capital proceedings to foster “fundamental fairness in the imposition of the death penalty.” *McFarland v. Scott*, 512 U.S. 849, 855, 859 (1994).

2. ABA Guidelines aim to ensure high-quality capital representation

The ABA’s Death Penalty Guidelines advance the same end. The Guidelines seek “to ensure high quality legal representation for all persons facing the possible imposition or execution of a death sentence by any jurisdiction.” Guideline 1.1(A). They do so by announcing standards that “are not aspirational” but instead “embody the current consensus about what is required to provide effective defense representation in capital cases.” History of Guideline 1.1, at 920. That is why death penalty counsel in the federal defender program “are expected to comply with Guidelines 1.1 and 10.2[-10.15.2],”² which are “the specific standards . . . intended to describe appropriate professional conduct,” Commentary to Guideline 10.1, at 992.

The Guidelines describe four duties of capital habeas counsel that are particularly relevant here. *First*, the Guidelines call for counsel to “continue an

² Jon B. Gould & Lisa Greenman, *Report to the Committee on Defender Services, Judicial Conference of the United States: Update on the Cost and Quality of Defense Representation in Federal Death Penalty Cases* 91 (Sept. 2010), <https://www.uscourts.gov/file/2945/download>.

aggressive investigation of all aspects of the case.” Guideline 10.15.1(E)(4). “[C]ollateral counsel cannot rely on the previously compiled record but must conduct a thorough, independent investigation.” Commentary to Guideline 10.15.1, at 1085-86. This investigation should cover prior counsel’s performance and the client’s background and life history “to identify mental-health claims which potentially reach beyond sentencing issues to fundamental questions of competency and mental-state defenses.” *Id.* at 1086; *see also McCleskey v. Zant*, 499 U.S. 467, 498 (1991) (federal habeas counsel “must conduct a reasonable and diligent investigation aimed at including all relevant claims and grounds for relief”). This independent investigation is crucial if habeas proceedings are to fulfill their safety-net function—“inadequate investigation by defense attorneys . . . ha[s] contributed to wrongful convictions in both capital and non-capital cases.” Commentary to Guideline 10.7, at 1017.

Second, the Guidelines urge counsel to litigate all “arguably meritorious” issues. Guideline 10.15.1(C). Counsel should “consider all legal claims potentially available” and “thoroughly investigate the basis for each potential claim before reaching a conclusion as to whether it should be asserted.” Guideline 10.8(A)(1)-(2). Then when presenting those claims, counsel should “tailor[] the presentation to the particular facts and circumstances in the client’s case.” Guideline 10.8(B)(1). All this should happen even when the “prospects of immediate success on the merits are at best modest.” Commentary to Guideline 10.8, at 1033-34. That is in part because “[w]innowing’ issues in a capital appeal can have fatal consequences.” Commentary to Guideline 10.15.1, at 1083; *see also id.* at 1086 (“Collateral counsel should assume that any meritorious issue not contained in the initial

application will be waived or procedurally defaulted in subsequent litigation, or barred by strict rules governing subsequent applications.”).

Third, the Guidelines advise counsel to “maintain close contact with the client regarding litigation developments.” Guideline 10.15.1(E)(1). Capital representation requires “a continuing interactive dialogue with the client.” Guideline 10.5(C). Counsel thus should consult the client on strategic matters. Commentary to Guideline 10.5, at 1008. Failing to keep a capital client reasonably informed and to comply with requests for information “is professionally irresponsible.” *Id.* at 1011 (citing ABA Model Rule of Prof’l Conduct 1.4(a) (2002)).

Fourth, the Guidelines call on counsel to form an appropriate defense team. Guideline 10.4(B)-(C). This Court has emphasized that “[t]he services of investigators and other experts may be critical in the pre-application phase of a habeas corpus proceeding, when possible claims and their factual bases are researched and identified.” *McFarland*, 512 U.S. at 855. Commentary to the Guidelines thus advises that the defense team should include at least two attorneys, a fact investigator, and a mitigation specialist. Commentary to Guideline 10.4, at 1003.

Capital habeas cases require “enormous amounts of time, energy, and knowledge.” Commentary to Guideline 10.15.1, at 1085. And there is no substitute for this investment; “extraordinary time and effort” is “necessary to ensure effective and zealous representation.” Commentary to Guideline 6.1, at 966.

B. Mr. Gamboa Alleges Abandonment

The standards for high-quality capital habeas representation put the problem of attorney abandonment into stark relief. Attorneys who fail to follow the

Guidelines may negligently represent their capital clients—but attorneys who *abandon* those clients create a “markedly different” situation. *Maples v. Thomas*, 565 U.S. 266, 281 (2012). An attorney who “abandons his client . . . sever[s] the principal-agent relationship” and “no longer acts, or fails to act, as the client’s representative.” *Id.*

Counsel’s alleged conduct here constituted abandonment, not just negligent representation. Assuming those allegations are true, counsel departed so completely from the prevailing standards for capital representation set out in the Guidelines that he failed to act as Mr. Gamboa’s representative.

First, under the Guidelines, “collateral counsel cannot rely on the previously compiled record but must conduct a thorough, independent investigation.” Commentary to Guideline 10.15.1, at 1085-86. Here, counsel limited his investigation to a ten-minute call with state habeas counsel. Pet. 9-10.

Second, the Guidelines direct counsel to consider all possible legal claims, preserve them for later review, and then tailor the presentation to the particular facts of the client’s case. Guidelines 10.8, 10.15.1(c). Here, counsel discarded case-specific claims developed by state appellate and habeas counsel, including a *Brady* claim about concealed evidence of his innocence. Pet. 8-9. Counsel instead filed a petition lifted—typos and all—from another case that raised only generic challenges to the Texas death penalty statutes. Pet. 11.

Third, the Guidelines recommend that counsel maintain close communication with the client and consult on strategic decisions. Guidelines 10.5, 10.15.1(E)(1). Here, counsel visited Mr. Gamboa only once and never told Mr. Gamboa that he would file an

untimely, two-paragraph reply brief conceding—and thus forfeiting—all his claims. Pet. 13.

Fourth, the Guidelines direct counsel to form a representation team that includes multiple attorneys, investigators, and experts. Guideline 10.4(B)-(C). Here, counsel formed no team and instead took on the representation alone despite significant health and family issues that occupied his time. Pet. 10.³

Any one of these alleged breaches of professional responsibility could support a finding that abandonment wrongfully deprived Mr. Gamboa of his habeas rights. Together, they compel that result.

Even in ordinary civil litigation, where the stakes are lower than in a capital habeas case like this one, courts confronting similar allegations have found abandonment. The Federal Circuit found “abandonment” when, as here, an attorney dropped a key claim “without client consultation or consent.” *DiMasi v. Secretary of Health & Human Servs.*, 2023 WL 4697122, at *9-10 (Fed. Cir. July 24, 2023). The Third Circuit found “abandonment” when, as here, an attorney’s pattern of delays, absenteeism, and inadequate filings were “flagrant and deserving of sanctions.” *Carter v. Albert Einstein Med. Ctr.*, 804 F.2d 805, 806, 807 (3d Cir. 1986). The Second Circuit found “constructive disappearance” when, as here, an

³ Counsel also expressed contempt for his client, allegedly telling Mr. Gamboa at their first—and only—meeting that counsel had concluded Mr. Gamboa was guilty. Pet. 9. An attorney who expresses open contempt for his client is not acting as his client’s advocate. See Commentary to Guideline 10.11, at 1068 n.312; *cf. Rickman v. Bell*, 131 F.3d 1150, 1157 (6th Cir. 1997) (describing counsel’s “repeated expressions of contempt for his client” as providing the defendant “not with a defense counsel, but with a second prosecutor[;] . . . creating a loathsome image . . . that would make a juror feel compelled to rid the world of him”).

attorney’s medical issues “led him to neglect almost completely his clients’ business.” *United States v. Cirami*, 563 F.2d 26, 34 (2d Cir. 1977); see *L.P. Steuart, Inc. v. Matthews*, 329 F.2d 234, 235 (D.C. Cir. 1964) (similar). And the Ninth Circuit found “virtual[] abandon[ment]” when, as here, the attorney “fail[ed] to proceed with his client’s defense” in any substantive way. *Community Dental Servs. v. Tani*, 282 F.3d 1164, 1170 (9th Cir. 2002). In all those cases, as here, the attorneys formally represented—but functionally abandoned—their clients. And in all those cases, *unlike* here, the court found that extraordinary circumstances warranted relief to the abandoned client.

C. Capital Petitioners Should Not Bear The Consequences Of Attorney Abandonment

The bar and courts treat abandonment as an extraordinary circumstance. For an attorney, abandoning a client may be grounds for disbarment. For a client—especially a capital client—abandonment warrants relief.

1. Abandonment is among the most serious failures of professional responsibility

Attorneys who abandon their clients fundamentally fail to fulfill their professional obligations, and so may be subject to strict disciplinary action. The Sanctions Standards suggest that disbarment should be the presumptive level of discipline when an abandoned client suffers serious or potentially serious injury. The Standards thus provide that “[d]isbarment is generally appropriate” in cases of abandonment (when a lawyer “abandons the practice”) and functional abandonment (when a lawyer “knowingly fails to perform services for a client” or “engages in a pattern of neglect with respect to client matters”). Sanctions Standard 4.41.

State supreme courts and disciplinary entities regularly put this guidance into practice. *See Annotated Standards for Imposing Lawyer Sanctions* 194-99 (Ellyn S. Rosen ed., 2d ed. 2019).⁴

Although abandoning a client is serious misconduct in any context, it is even more serious in criminal cases in general, and capital cases in particular, where the potential for harm to the client is immense. As the Seventh Circuit has observed, “[a]bandonment of one’s (imprisoned) client in a criminal case is one of the most serious offenses a lawyer can commit.” *In re Riggs*, 240 F.3d 668, 671 (7th Cir. 2001). Capital cases only amplify that conclusion, as counsel’s duties are “intensified . . . by the unique nature of the death penalty.” Commentary to Guideline 10.7, at 1016.

2. Courts confronting abandoned clients grant extraordinary relief

Given the extreme nature of abandonment, courts rightly recognize that an abandoning attorney’s “acts or omissions . . . ‘cannot fairly be attributed to [the client].’” *Maples*, 565 U.S. at 281 (quoting *Coleman v. Thompson*, 501 U.S. 722, 753 (1991)) (brackets in *Maples*). In such cases, “sanctions should be imposed on the lawyer, rather than on the faultless client.” *Tani*, 282 F.3d at 1169. And so courts offer a remedy to abandoned clients who would otherwise suffer harm. *See, e.g., Carter*, 804 F.2d at 808 (“[W]e do not favor dismissal of a case when the attorney’s delinquencies—not the client’s—necessitate sanctions.”).

In the non-criminal context, that remedy most often comes in the form of relief from a default judgment.

⁴ Counsel would be due a hearing before being subject to any sanction, including disbarment. The ABA takes no position on whether disbarment is warranted in this case at this stage.

Federal Rule of Civil Procedure 60(b)(6) allows a court to reopen a judgment in “extraordinary circumstances.” *Ackermann v. United States*, 340 U.S. 193, 199 (1950). In each of the civil cases discussed above, *see supra* pp. 10-11, the court held that functional abandonment creates an extraordinary circumstance for which Rule 60(b) relief is appropriate.⁵

The rule is the same in the habeas context, where the stakes of abandonment are even higher. As Justice Alito noted in *Holland*, “[c]ommon sense dictates that a litigant cannot be held constructively responsible for the conduct of an attorney who is not operating as his agent in any meaningful sense of that word.” 560 U.S. at 659 (Alito, J., concurring in part and concurring in the judgment). This Court therefore has held that an abandoned habeas petitioner presents “extraordinary circumstances” that justify equitable tolling⁶ and the lifting of state procedural bars to federal habeas petitions.⁷ Lower courts have extended that reasoning to reopening under Rule 60(b).⁸ The

⁵ *See DiMasi*, 2023 WL 4697122, at *10 (holding special master abused discretion by denying Rule 60(b) relief and remanding); *Tani*, 282 F.3d at 1172 (concluding “that the district court abused its discretion in refusing to grant Tani relief from the default judgment” under Rule 60(b)); *Carter*, 804 F.2d at 808 (reversing and remanding “with directions to reinstate the complaint” under Rule 60(b) and to “impose appropriate sanctions on the plaintiff’s counsel”); *Cirami*, 563 F.2d at 35 (reversing and remanding “for an evidentiary hearing on the allegations made in support of the [Rule 60(b)] motion”); *Matthews*, 329 F.2d at 235-36 (affirming district court grant of reinstatement under Rule 60(b)).

⁶ *See, e.g., Holland*, 560 U.S. at 636-37.

⁷ *See, e.g., Maples*, 565 U.S. at 283-89; *Martinez v. Ryan*, 566 U.S. 1, 7-9 (2012).

⁸ *See, e.g., Brooks v. Yates*, 818 F.3d 532, 534 (9th Cir. 2016) (per curiam) (“[G]ross negligence by counsel amounting to ‘virtual

Fifth Circuit expressly splits from those lower courts and holds that Rule 60(b) relief is unavailable to abandoned habeas petitioners.

II. THE CUSTOMARY CRITERIA FOR CERTIORARI ARE MET

A. The Circuits Are Expressly Divided

The circuits are split on whether an abandoned federal habeas petitioner like Mr. Gamboa ever has a Rule 60(b) remedy. The Fifth Circuit applies a categorical rule that treats every Rule 60(b) motion alleging abandonment in federal habeas proceedings as an unauthorized second or successive petition. *See In re Edwards*, 865 F.3d 197, 204-05 (5th Cir. 2017) (per curiam). Applying that rule, the court below held that, no matter how “[t]roubling . . . [Mr.] Gamboa’s allegations of attorney abandonment” may have been, even allegations of “wholesale abandonment” that “depriv[e]” a prisoner of “his statutory right to counsel under § 3599” are successive habeas claims. Pet. App. 16a-17a. The court therefore denied Mr. Gamboa a certificate of appealability. *Id.* at 17a.

The Second, Seventh, and Ninth Circuits have no such categorical rule. They hold that abandoned federal habeas petitioners have access to Rule 60(b) relief. *See supra* p. 13 n.8; Pet. 21-24. The Fifth Circuit has expressly rejected this rule. *See Perez v. Stephens*,

abandonment’ can be an ‘extraordinary circumstance’ that justifies [relief under] Rule 60(b)(6).” (alterations in original); *Ramirez v. United States*, 799 F.3d 845, 849-50, 856 (7th Cir. 2015) (ordering a Rule 60(b)(6) motion granted where petitioner’s habeas counsel “deserted him”); *Harris v. United States*, 367 F.3d 74, 81 (2d Cir. 2004) (explaining that relief under Rule 60(b)(6) is proper where a “lawyer agreed to prosecute a habeas petitioner’s case, abandoned it, and consequently deprived the petitioner of any opportunity to be heard at all”); *see also* Pet. 21-24 (collecting further cases).

745 F.3d 174, 181 (5th Cir. 2014); Pet. App. 19a-20a (Dennis, J., specially concurring). Only this Court can resolve that disagreement—by denying en banc rehearing, Pet. App. 126a, the Fifth Circuit has shown it will not change course. In capital cases, this entrenched conflict means that a petitioner’s life may ride not on the merits of his habeas claims, but on the forum in which they are filed.

The existence of such a direct circuit conflict is a quintessential reason to grant certiorari. *See* Sup. Ct. R. 10(a). And the conflict is particularly significant because the Fifth and Ninth Circuits account for almost half of the nation’s death row inmates. As of last year, States in those two circuits held 49.3% of all prisoners on death row in the United States.⁹

B. The Question Presented Is Exceptionally Important

Death penalty defendants—more than any others—require the assistance of counsel. “The quality of counsel’s ‘guiding hand’ in modern capital cases is crucial to ensuring a reliable determination of guilt and the imposition of an appropriate sentence.” Commentary to Guideline 1.1, at 923. And representation in capital habeas proceedings is particularly important because “[t]he complexity of [the] jurisprudence in this area . . . makes it unlikely that capital defendants will be able to file successful petitions for collateral relief without the assistance of persons learned in the law.” *Murray v. Giarratano*, 492 U.S. 1, 14 (1989) (Kennedy, J., concurring in the judgment, joined by O’Connor, J.); *see also id.* at 28 (Stevens, J., dissenting, joined by Brennan, Marshall, and Blackmun, JJ.).

⁹ *See* Death Penalty Info. Ctr., *Death Row Prisoners by State* (Oct. 2022), <https://deathpenaltyinfo.org/death-row/overview> (last visited Oct. 2023).

The stakes of death penalty representation mean that the practical effects of the Fifth Circuit's rule are dire. Attorneys who allegedly abandon their capital habeas clients deprive those petitioners of what may be their last chance to avoid execution. Yet in the Fifth Circuit, those abandoned clients are uniquely ineligible for a Rule 60(b) remedy. Courts grant such relief to abandoned non-criminal litigants. *See supra* pp. 12-13. But when the stakes are the highest, the Fifth Circuit always will deny relief. This Court should not tolerate such an arbitrary result, particularly in matters of life and death. *Cf. Gregg v. Georgia*, 428 U.S. 153, 195, 206 (1976) (plurality opinion) (“meaningful appellate review” is vital in capital cases because it “serves as a check against the random or arbitrary imposition of the death penalty”).

Without this Court's intervention, the integrity of federal habeas proceedings will suffer. Punishing any client for his counsel's abandonment undermines “public confidence in the administration of justice.” *Carter*, 804 F.2d at 808; *see also, e.g., Jackson v. Washington Monthly Co.*, 569 F.2d 119, 123-24 (D.C. Cir. 1977) (“Public confidence in the legal system is not enhanced when one component punishes blameless litigants for the misdoings of another component of the system; to laymen . . . , that can only convey the erroneous impression that lawyers protect other lawyers at the expense of everyone else.”). Punishing a *capital* client for abandonment is even worse. “[T]o protect the public and the administration of justice,” the consequences for abandonment should fall on attorneys who fail to “discharge their professional duties,” not on their blameless clients. Sanctions Standard 1.1.

The ABA urges this Court to grant review.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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