

23<sup>No.</sup> 24-6639  
IN THE

ORIGINAL

SUPREME COURT OF THE UNITED STATES

OMAR S. FOLK

Petitioner,

v.

UNITED STATES OF AMERICA

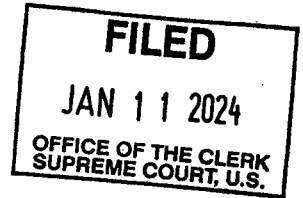
Respondent.

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

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PETITION FOR WRIT CERTIORARI

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QUESTION PRESENTED

1. Whether Lower Court Misapplied Cert. Denial On 10/5/15 Was A Judicial decision Rendered Erroneous By Subsequent Legal Or Factual Changes Also Qualifies As A Mistake Under Rule 60(b)(1) And Extraordinary Circumstances Under Rule 60(b)(6) When Cert. Denial On Direct Appeal Had Not Been Sent By Disposition Under Supreme Court Rule 16.
2. Whether Lower Court Erred In Affirming District Court Decision On Time-Barred, Was Correct In Its Procedural Ruling On Rule 59(e) And Rule 60(b)(1) Also Rule 60(b)(6) As Second or Successive Without Petitioner First Allowed To Withdraw or Recharacterize His Petition Under *Castro v. United States*.

## PARTIES TO PROCEEDING

The parties to the proceeding in the Court whose judgment is sought to be reviewed are as follow:

1. Omar S. Folk
2. United States of America

## RELATED CASES

Erlinger v. US, No. 23-370(Cert. granted 11-20-23)  
Brown v. US, Case No. 22-6389(Sup.Ct. argued Nov. 27, 2023)  
Jackson v. US, Case No. 22-6640(Sup. Ct. argued Nov. 27, 2023)  
Folk v. Warden Allenwood FCI, No. 23-2527(3d Cir. 11/28/23)

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No. 24-\_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES

JAN. TERM, 2024

OMAR S. FOLK

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI

Petitioner Omar S. Folk respectfully petitions for a writ of Certiorari to review the judgment of the United States Court of Appeals for the Third Circuit in this case.

DECISION BELOW

The United States Court of Appeals for the Third Circuit affirmed Petitioner's District Court Denial MDPA Doc. 284-285 and 294. For a Certificate of Appealability.(Pet. Appx. A").

JURISDICTION

The United States District Court For the Middle of Pennsylvania (MD. PA. No. 1;11-cr-292) exercised jurisdiction over the federal criminal case pursuant to 18 U.S.C. § 3231. The Third Circuit of Appeals(No. 23-2042) had jurisdiction pursuant to 28 U.S.C. § 1291 and § 3742(a). The United States Court of Appeals for the Third Circuit entered judgment on Oct. 18, 2023 Pet. Appx. A. This Court has Jurisdiction pursuant to 28 U.S.C. § 1254(1).

## RELEVANT STATUTORY PROVISIONS

The Sixth Amendment to the Constitution of the united States provides:

In all criminal prosecutions, the accused shall enjoy the right impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witness against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.



## STATEMENT OF THE CASE

### A. Background

On or about May 16, 2023, Folk denied petition by the Court MDPa Doc. 284-285. See(Exhibit A).

### B. Appeal

On Oct. 18, 2023, a panel of the United States Court of Appeals For the Third Circuit(Hardiman, Montgomery-Reeves, and Nygaard, J.). issued a opinion denying COA and affirming district court ruling by Circuit Judge Thomas M. Hardiman. Pet. Appx. A.

## REASON FOR GRANTING THE WRIT

Petitioner's follow in his reason why it has been long time coming when directing the Supreme Court back to MDPA Doc. 284-285 decision. See(Exhibit A).

### QUESTION PRESENTED I.

Whether Lower Court Misapplied Cert. Denial on 10/5/15 Was A Judicial decision Rendered Erroneous By Subsequent Legal or Factual Changes Also Qualifies As A Mistake Under Rule 60(b)(1) And Extraordinary Circumstances under Rule 60(b)(6) When Cert. Denial On Direct Appeal Had Not Been Sent By Disposition Under Supreme Court Rule 16?

Petitioner direction today is long struggle of up and down trying to get his point across. That lead to this very challenge directed in lower courts. See(Exhibit A). Upon this Petitioner bring forth his reason that Judicial decision rendered erroneous by subsequent legal or factual chnages also qualifies as a "Mistake" under 60(b)(1) and "Extraordinary Circumstances" under Rule 60(b)(6) when Cert. denial on Direct Appeal had not been sent by disposition under Supreme Court 16 by clerk of court. See(Kemp v. United States, 142 S.Ct. 1856, 213 L.Ed. 2d 90(2022)).

With this said it will be directed that in Petitioner initial challenge he was to file a timely 59(e) and 60(b)(1) MDPA Doc. 180 at 1-11 that was high-lighted to be filed timely within 28 days and One year toll. This further bring Petitioner to rectify previous Precedent by Third Circuit Ruling under this wrong constitutional of law that was clearly a violation of Mr. Folk Sixth Amendment Rights. See(US v. Folk, 954 F.3d 597, 601(3d Cir. 2020). Now under this ruling which stonewall any other way to challange Petitioner conviction and sentence not supported by Castro v. United States, 124 S.Ct. 786, 157 L.Ed. 2d

778(2003). But the record in most recent ruling by Third Circuit Judges point now finally to Petitioner direct appeal being final on 10-5-15. See(Folk v. Warden Allenwood FCI, No. 23-2527(3d Cir. Nov. 28, 2023))(page 2). This contention is to be directed back to Kemp v. United States when facts Justice Thomas, similarly, stated rule 60(b)(1)'s drafter could just as easily have excluded mistakes by judges from the rule's ambit. In fact, the rule used to read that way. When adopted in 1938, Rule 60(b) initially referred to "his"-i.e., a party's-"mistake", so judicial errors were not covered. Fed. Rule Civ. Proc. 60(b) (1938). In 1946, however, the Rule's amended and deleted the word "his" thereby removing any limitation on whose mistake could qualify. See Fed. Rule Civ. Proc. 60(b)(1) 1946). Thus as current it was a mistake under Supreme Court Rule 16. These new provision turn to include legal errors made by judges. Although the facts in Petitioner case at hand he receive a final publish ruling on direct appeal. See(Folk v. United States, 136 S.Ct. 161; No. 14-10453 Oct. 5, 2015).

This is Petitioner conclusion when turning to Justice Sotomayor, concurring I join the Court's opinion holding that the term "mistake" in Federal Rule of Civil Procedure 60(b)(1) encompasses a judge's mistake of law. The Court also high-light two points on availability of Rule 60(b)(6) to reopen a judgment in extraordinary circumstances, including a change in controlling law. See(Buck v. Davis, 580 U.S. 100, 126, 128, 137 S.Ct. 759, 197 L.Ed 2d 1(2017))(concluding that the petitioner was "entitled to relief under Rule 60(b)(6)" because of a change in law and intervening developments of fact); Gonzalez v. Crosby, 545 U.S. 524, 531, 125 S.Ct. 2641, 162 L.Ed. 2d 480(2005)("A motion might contend that a subsequent change in substantive law is a reason justify relief, Fed. Rule Civ. Proc. 60(b)(6), from the previous denial of claim

that establish mis-carriage of justice. Furthermore Petitioner turn to Justice Gorsuch, dissenting. The Court took this case to determine whether a district court's mistake of law is correctable under Federal Rule of Civil Procedure 60(b)(1) or 60(b)(6). That motion comes more than a year after judgment but-piling contingency on contingency-within what the court would otherwise deem a "reasonable time" Rule 60(c)(1). By petitioner's own (uncontested) count, this is first petition ever to present today's question for this Court's review. See Pet. for Cert. 24; Brief in Opposition 26. Beyond even that, an alternative route exists to resolve the question posed here. Congress has adopted the Rules Enabling Act. See 28 U.S.C. §§ 2071-2077. Then Justice Gorsuch also mention standard of review under Supreme Court Rule 10 presents a policy question about the proper balance between finality and error correction. Should a district court be able to clean up a legal error through a collateral proceeding on any reasonable timeline within a year of judgment? Or do Rule 59(e) and the appellate process provide the necessary corrective measures in ordinary cases, with Rule 60(b)(6) as a last, narrow avenue to relief? This approach was in Petitioner case at hand when District Court Judge Jones applied Rule 59(e) to correct his previous ruling MDPA Doc. 192. This theory by Justice Gorsuch would correct mistake in law by Circuit Judges Precedent. See(US v. Folk, 954 F.3d 597, 601, 609-610(3d Cir. 2020).

Petitioner further direct his challenge to MDPA Doc. 284-285 that further point to the mistake in law whether a judicial decision rendered erroneous by subsequent legal or factual changes as a "mistake" under Rule 60(b)(1) and "Extraordinary Circumstances" under both 60(b) or 60(b)(6).See(US v. Folk, No. 23-2042(3d Cir. Oct. 18, 2023).

Wherefore the Court should Grant Reverse and Remand or Grant Writ of Certiorari on Judicial Decision Rendered Erroneous By Subsequent Legal or Factual changes also qualifies as a Mistake under Rule 60(b)(1) and Extraordinary Circumstances under Rule 60(b)(6) when Cert. Denial on Direct Appeal had not been sent by Disposition under Supreme Court Rule 16.

QUESTION PRESENTED II.

Whether Lower Court Erred In Affirming District Court Decision on Time-Barred, Was Correct In Its Procedural Ruling On Rule 59(e) And Rule 60(b)(1) Also Rule 60(b)(6) As Second or Successive Without Petitioner First Allowed To Withdraw or Recharacterize His Petition Under Castro v. United States?

Petitioner move the court to rely on his contention that is directed by the court in this ruling in Castro v. United States, 540 U.S. 375, 381-383, 124 S.Ct. 786, 157 L.Ed. 2d 778(2003)(affirming courts' authority to recast pro se litigants' motions to "avoid an unnecessary dismissal" or "inappropriately stringent application of formal labeling requirements, or to create a better correspondence between the substance of a pro se motion's claim and its underlying legal basis"(citation omitted)). But as a general rule, our system "is designed around the premise that [parties represented by competent counsel] know what is best for them, and are responsible for advancing the facts and argument entitling them to relief." Id., at 386, 124 S.Ct. 786, 157 L.Ed. 2d 778(Scalia, J., concurring in part and concurring in judgment). See (US v. Sineneng-Smith, 140 S.Ct. 1575; No. 19-67(May 7, 2020)). Then turn to MDPA Doc. 284-285 also that will move to Circuit Judge Thomas M. Hardiman decision to deny "COA" upon two question. That rectify to precedent ruling by Supreme Court in Gonzalez v. Crosby, 545

U.S. 524, 530-32(2005). Which is not to be construed as second or successive under Rule 59(e), Rule 60(b)(1) and Rule 60(b)(6) without first allowed to withdraw or recharacterize his petition first.

Which will turn to pending Cert. decisions and grants under these caselaw's. See(Erlinger v. US, No. 23-370(Cert. granted 11-20-23); See(Brown v. US, Case No. 22-6389(Sup. Ct. argued Nov. 27, 2023); See(Jackson v. US, Case No. 22-6640(Sup. Ct. argued Nov. 27, 2023). Each of these pending Supreme Court cases will challenge Expost Facto Clause or Intervening Arrest, whether the constitution requires that a jury find (or the defendant admit) that a defendant's offenses were "committed on occasions different from one another". This will further support Petitioner direction in why either Hold in abeyance be stayed or writ of certiorari granted under Castro v. United States.


Wherefore the Court Should Grant Reverse and Remand or Grant Hold In Abeyance in light of pending Supreme Court decision Erlinger, Brown and Jackson. See(US v. Folk, U.S. App. Lexis 42449, 2020 WL 10056283(3d Cir. 2020)

#### CONCLUSION

Based on the foregoing, Petitioner Omar S. Folk respectfully request this Court to issue a writ of certiorari to the United States Court of Appeals For the Third Circuit. See(US v. Folk, 2023 U.S. Dist. Lexis 86004(M.D. PA. May 16, 2023).

Date: Jan. 12, 2024

Respectfully Submitted,

  
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