No. 23-6737

IN THE

Supreme Court of the United States

ANTHONY FLOYD WAINWRIGHT,

Petitioner,

v.

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,

Respondent.

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

REPLY BRIEF IN SUPPORT OF PETITION FOR CERTIORARI

CAPITAL CASE

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REPLY BRIEF IN SUPPORT OF PETITION FOR CERTIORARI

I. There is no threshold timeliness issue.

Respondent incorrectly asserts that a grant of certiorari review would require this Court to address the "threshold issue" that "the Rule 60(b)(6) motion is quite clearly untimely." BIO at 10-13. Although Respondent made this argument "at some length in both the district court and the Eleventh Circuit," *id.* at 11-12, *both courts rejected it and ruled solely on the underlying merits* of the motion's equitable tolling issue.[1] *See* Pet. at App. 53a-55a, App. 26a, App. 5a-9a (lower courts explicitly accepting the 60(b) motion as proper and reaching the merits of equitable tolling).[2] That the merits determination was a denial makes no difference—the ruling was procedurally pristine, and this Court's review is unencumbered.

Moreover, this Court need not determine timeliness because it is not necessary to resolve the issues presented. Mr. Wainwright is not asking this Court to affirmatively *grant* his Rule 60(b)(6) motion or to hold that he is *ultimately entitled to* equitable tolling. Instead, he asks this Court to: a) recognize the profound flaws in the lower courts' "some merits" analyses—both their reliance on Hobson's conflicted representations and their misapplication of *Maples v. Thomas*, 565 U.S. 266 (2012);

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[1] As the lower courts ruled on the merits, and as "[t]hreshold questions must be answered before the merits[,]" *see, e.g.*, *Perez v. Ledesma*, 401 U.S. 82, 98 (1971) (Brennan, J., concurring in part), the lower courts implicitly accepted the 60(b) motion as timely.

[2] Respondent's contention that the district court "conclud[ed] that the motion to reopen was actually an unauthorized successive habeas petition," BIO at 6, is misleading. That conclusion applied only to Part VI of the motion, which is unrelated to this petition. Only Part V is relevant to the issues presented in Mr. Wainwright's petition.

and b) remand with instructions to reanalyze, in a manner not inconsistent with this Court's opinion, whether Mr. Wainwright is entitled to an evidentiary hearing on the equitable tolling inquiry. Thus, any ancillary determinations that must be made regarding Mr. Wainwright's entitlement to relief are not appropriate at this juncture, but instead matters for a remand.[3]

And, as the lower courts tacitly accepted, Mr. Wainwright timely filed his motion. Rule 60(b) motions must be filed within "a reasonable time." *Gonzalez v. Crosby*, 545 U.S. 524, 535 (2005) (quoting Fed. R. Civ. Pro. 60(b)(c)). Of the six subsections of 60(b), only three enumerate a strict time limit—each of which is set at one year. Subsection 60(b)(6) contains no such limitation, presumably because it is a provision based in equity—a principle which this Court has found incompatible with rigid adherence to inflexible rules. *See Holland v. Florida*, 560 U.S. 631, 649 (2010). Thus, at its core, 60(b)(6) is more permissive than a strict one-year limitation, allowing for case-specific consideration of what constitutes "a reasonable time." *See, e.g.*, *Bucklon v. Sec'y, Fla. Dep't of Corr.*, 606 F. App'x 490, 494-95 (11th Cir. 2015) (finding eighteen months reasonable in 60(b)(6) context and citing *Thompson v. Bell*,

[3] The threshold question in *Izumi Seimitsu Kogyo Kabushiki Kaisha v. U.S. Philips Corp.* was whether the petitioner was even a "party" to the case within the meaning of 28 U.S.C. § 1254(1) such that the petitioner could appeal. 510 U.S. 27, 29-30 (1993). And as Respondent notes, the threshold questions that compelled Justice Kennedy to respect the denial of certiorari in *N.C.P. Marketing Group, Inc. v. BG Star Productions, Inc.*—a bankruptcy case—were "questions under state law and trademark-protection principles." 556 U.S. 1145, 1578 (2009). Doubts about a petitioner's capacity to appeal and constitutional concerns implicated by deciding questions of state law are true "threshold" inquires, and fundamentally different than the "reasonable time under 60(b)(6)" issue the lower courts already accepted.

580 F.3d 423, 443-44 (6th Cir. 2009), where a filing four years after the extraordinary circumstance was reasonable because the delay was "understandable").

In Mr. Wainwright's case, the "extraordinary circumstance" warranting Rule 60(b)(6) relief was attorney Hobson's conflict of interest against arguing his own misconduct as the basis for equitable tolling, not a change of law standing alone. Pet. at 12. Respondent's numerous citations to caselaw providing for shorter timelines in the 'change of law alone' context are therefore immaterial. It would be illogical to conclude, as Respondent's argument necessarily demands, that Mr. Wainwright's "reasonable time" to raise the extraordinary circumstance in his case—Hobson's conflict in litigating his own misconduct—expired *while still being represented by Hobson*, especially where Mr. Wainwright had unsuccessfully sought new federal counsel. *See* NDFL-ECF 52 at App. 73-88, 109-16, 117-18, 120, 137-41. Mr. Wainwright filed his 60(b) motion within one year after conflict-free counsel was appointed in his procedurally complicated case—quintessentially a "reasonable time."

II. Mr. Wainwright's petition does not address Rule 60(b) procedural issues precisely because the decisions below were exclusively merits-based.

Respondent's critique that Mr. Wainwright's petition "largely ignores the Rule 60(b)(6) aspect of this case" is nothing more than an unsuccessful effort to muddy the issues before this Court. *See* BIO at 13-15. Rule 60(b)(6) relief is warranted when a movant "show[s] 'extraordinary circumstances' justifying the reopening of a final judgment." *Gonzalez*, 545 U.S. at 535 (quoting *Ackermann v. United States*, 340 U.S.

193, 199 (1950)). "In determining whether extraordinary circumstances are present, a court 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 v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 864 (1988)). As the district court below recognized, one such extraordinary circumstance is where conflicted counsel "caused the petitioner to forfeit a claim that had 'some merit.'" Pet. at App. 55a (quoting *In re Johnson*, 935 F.3d 284, 290 (5th Cir. 2019) (analyzing whether habeas claims defaulted by conflicted counsel had "some merit" such that Rule 60(b)(6) relief was warranted)); *see also Buck*, 580 U.S. at 126 (quoting 11 CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 2857 (3d ed. 1998)) ("[S]howing 'a good claim or defense' is a precondition of Rule 60(b)(6) relief.").

The courts below, citing *Christeson v. Roper*, 574 U.S. 373 (2015), doubtlessly concluded that Hobson had a conflict of interest against arguing equitable tolling after he missed the filing deadline. *See* Pet. at App. 54a, App. 6a. Respondent does not dispute that finding here, BIO at 8, and did not dispute it in the court below, *see* CA11-ECF No. 47 at 24. Instead, he suggests that "a claim based on *Christeson* [may not be] properly raised in a Rule 60(b)(6) motion under this Court's decision in *Gonzalez*." BIO at 15.[4] But Respondent offers no reasons why that might be so besides

[4] Respondent, in alleging untimeliness, also argues that "the clock began ticking . . . once *Christeson* was decided in January 2015." BIO. at 11. Besides the fact that Mr. Wainwright does not argue that *Christeson* alone constitutes the extraordinary circumstance here, *see supra*, Respondent curiously implies that *Christeson* worked some major change in the law of conflicts of interest. *See* BIO at 11. Not so. Hobson

a vague appeal to the interest in finality of judgments, which, "standing alone, is unpersuasive in the interpretation of a provision whose whole purpose is to make an exception to finality." *Gonzalez*, 545 U.S. at 529 (Scalia, J.). Like *In re Johnson*, 935 F.3d at 290, *Christeson* considered the right to conflict-free counsel enshrined in 18 U.S.C. § 3599, *see* 574 U.S. at 378-79. Where conflicted counsel causes a petitioner to forfeit a "good claim" with "some merit," Rule 60(b)(6) relief is appropriate. *Gonzalez*, 545 U.S. at 535; *Buck*, 580 U.S. at 126; *In re Johnson*, 935 F.3d at 290.

Having concluded Hobson was conflicted, the lower courts considered whether there was "some merit" to Mr. Wainwright's equitable tolling claim. *See* Pet. at App. 55a, App. 6a-7a. Those courts' analyses were fundamentally flawed in two critical ways. First, they relied on Hobson's conflicted representations to conclusively rebut—without the benefit of an evidentiary hearing—Mr. Wainwright's allegations of severe misconduct that would warrant equitable tolling. Second, although the lower courts assumed Hobson had been grossly negligent, they relied on binding circuit precedent which precludes an attorney's gross negligence from warranting equitable tolling—despite that precedent's direct conflict with this Court's jurisprudence and other circuits' interpretation of *Maples*. Mr. Wainwright seeks certiorari review of these analytical flaws, not of the mechanics of a Rule 60(b)(6) motion.

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had a conflict of interest while he was litigating equitable tolling in the original federal proceedings under any ordinary conflict of interest analysis then applicable. Indeed, this Court in *Christeson*—a case which had more to do with the *Clair* standard for considering motions to substitute lawyers appointed under 18 U.S.C. § 3599 than it did for conflicts of interest law—described a tardy attorney's conflict of interest against arguing equitable tolling as "obvious." 574 U.S. at 379. Tellingly, this Court cited a 1998 treatise in support of that conclusion. *See id.* at 378.

III. The Eleventh Circuit's analysis conflicts with this Court's and other circuits' equitable tolling jurisprudence.

The courts below assumed Hobson was grossly negligent in missing Mr. Wainwright's filing deadline. Yet Hobson's gross negligence could not warrant equitable tolling in the Eleventh Circuit under *Cadet v. Florida Department of Corrections*, 853 F.3d 1216, 1236 (11th Cir. 2017) ("[W]e have before us . . . the question of whether negligence, even gross negligence, alone is enough to meet the extraordinary circumstance requirement . . . . We hold that it is not."),[5] even though it could in other circuits, *see Doe v. Busby*, 661 F.3d 1001, 1012 (9th Cir. 2011) ("[I]n cases where a petitioner claims his attorney was the cause of the untimeliness, courts must examine if the claimed failure was . . . a *sufficiently egregious* misdeed like malfeasance or failing to fulfill a basic duty of client representation." (emphasis in original)); *Luna v. Kernan*, 784 F.3d 640, 649 (9th Cir. 2015) (Even after *Maples*, "our cases holding that egregious attorney misconduct of all stripes may serve as a basis for equitable tolling remain good law."); *Nassiri v. Mackie*, 967 F.3d 544, 549-50 (6th Cir. 2020) (noting other circuit's conclusion that egregious attorney misconduct including negligence could warrant equitable tolling but declining to take a position because it was already remanding for further factual development on the equitable tolling issue).

[5] *Cadet*'s holding was not impacted by the Eleventh Circuit's more recent pronouncement in *Thomas v. Attorney General*, 992 F.3d 1162, 1184 (11th Cir. 2021), which held that the petitioner there was entitled to equitable tolling. In so concluding, the Eleventh Circuit relied on *Cadet* to hold that the petitioner's counsel had "effectively abandoned" her client. *Id.*

Cadet—similar to the Second Circuit in *Rivas v. Fischer*, 687 F.3d 514, 538 & n.33 (2d Cir. 2012)—erroneously read *Maples* as "constru[ing] and clarify[ying]" *Holland*, *see Cadet*, 853 F.3d at 1227, such that after *Maples*, in the Eleventh Circuit "[a]bandonment is an extraordinary circumstance that can, when coupled with reasonable diligence by the petitioner, justify equitable tolling, but attorney negligence or gross negligence, by themselves, are not." *Cadet*, 853 F.3d at 1236.

Whether *Maples* modified *Holland* in this way has split the circuits. *See Nassiri*, 967 F.3d at 549-50 ("Our sister circuits more closely dispute whether attorney negligence can ever ground a showing of extraordinary circumstance post-*Maples*.") (collecting cases). Even though both *Holland* and *Maples* applied traditional agency principles, they considered materially different questions. *Holland* reversed the Eleventh Circuit's holding that gross negligence "can never warrant tolling absent" additional factors as "too rigid." *Holland*, 560 U.S. at 649. In contrast, *Maples* held that attorney abandonment (but not negligence) can constitute "cause" for excusing a state procedural default that would otherwise bar federal habeas review. *See* 565 U.S. at 280, 289. That this Court would apply stricter standards in considering whether to excuse procedural default than whether to equitably toll AEDPA's statute of limitations is sensible because "[t]he tolling of a federal statute of limitations does not raise the same federalism concerns as does the excusing of a failure to comply with state procedural rules." *Rivas*, 687 F.3d at 538 n.33; *see also Holland*, 560 U.S. at 650-51 (equitable tolling warrants more flexibility than

procedural default, in part because it is a wholly federal inquiry, whereas procedural default implicates state court interpretations of state law).

Cadet concluded "that the difference does not matter," relying on a footnote in *Maples* stating that there is "no reason . . . why the distinction between attorney negligence and attorney abandonment should not hold in both contexts." *See* 853 F.3d at 1226 (quoting *Maples*, 565 U.S. at 282 n.7). *Maples*'s observation, however, is better read as confirming that its abandonment analysis *would also* establish "extraordinary circumstances" for equitable tolling, in addition to "cause" excusing procedural default—not as either abrogating *Holland* such that gross negligence must equate to effective abandonment to warranting equitable tolling, *Rivas*, 687 F.3d at 538, or as categorically precluding gross negligence alone from ever establishing extraordinary circumstances. *See Cadet*, 853 F.3d at 1236. In fact, *Maples* never explicitly discusses gross negligence.

And, nowhere did *Maples* overrule *Holland*'s holding that equitable tolling is governed by flexible, case-by-case standards rather than "rigid rules." This fact underpins the fatal flaw of *Cadet*'s holding regarding gross negligence. The *Cadet* court went to great pains to justify its holding as consistent with *Holland*, because: a) *Holland* specifically centered around attorney conduct that equated to abandonment, and b) the Eleventh Circuit had recognized a "range of extraordinary circumstances that . . . could justify equitable tolling[,]" so it had not "put in place a rigid or mechanical rule." *Cadet*, 853 F.3d at 1227-28. However, neither of those caveats saves the day, because *Holland* acknowledged the Eleventh Circuit's open-

ended range of potentially extraordinary circumstances, and still found a standard that precludes equitable tolling for gross negligence absent "bad faith, dishonesty, divided loyalty, mental impairment *or so forth*" to be "too rigid." *Holland*, 560 U.S. at 649 (emphasis added). In other words, even if the Eleventh Circuit allows equitable tolling for circumstances other than those it specifically enumerated, its insistence that gross negligence standing alone is insufficient for equitable tolling runs afoul of *Holland*.

Because *Maples* did not affect the *Holland* analysis in the way Respondent and the Eleventh Circuit believe, this Court can properly consider Mr. Wainwright's cited pre-*Maples* cases. *See* BIO at 17 (Respondent arguing the contrary). And, such consideration illuminates a significant circuit split: some misapply *Maples* in contravention of this Court's holding in *Holland*, and some do not. *Compare Cadet*, 853 F.3d at 1227, *and Rivas*, 687 F.3d at 538, *with Luna*, 784 F.3d at 648-49. Mr. Wainwright's case—in which Hobson's conduct was assumed to be grossly negligent and accordingly barred by *Cadet* from justifying equitable tolling—provides a pristine vehicle for this Court to clarify *Maples*' impact on *Holland* and to reaffirm *Holland*'s core holding that rigid rules, like the Eleventh Circuit's precluding gross negligence alone from ever constituting extraordinary circumstances, are inappropriate for equitable tolling.[6]

[6] Respondent's critique that "the opinion in this case was unpublished" is immaterial. BIO at 19. For one, the courts below relied on published Eleventh Circuit caselaw—*Cadet*—that *does* conflict with other circuits. Regardless, this Court frequently grants certiorari to review unpublished decisions. *See, e.g.*, *Thompson v. Keohane*, 516 U.S. 99, 106 (1995) (certiorari granted to review unpublished opinion that "relied on

IV. Regardless of what standard this Court requires to warrant equitable tolling, Mr. Wainwright is entitled to a remand and evidentiary hearing.

Mr. Wainwright's Rule 60(b) motion alleged numerous instances of egregious attorney misconduct that caused the untimely filing of his 2005 habeas petition and warrant equitable tolling. *See* Pet. at 20-21; *see also Luna*, 784 F.3d at 647 ("A number of circuits . . . have held that affirmatively misleading a petitioner to believe that a timely petition has been or will soon be filed can constitute egregious professional misconduct.") (collecting cases).[7] In finding that Mr. Wainwright's allegations were rebutted by the record extant, the lower courts relied on Hobson's conflicted statements.

Rather than arguing that the courts properly relied on Hobson's conflicted statements, Respondent's position rests on "two independent grounds" for denying the Rule 60(b) motion: (1) untimeliness and (2) the lack of a "causal connection between many of the allegations of attorney misconduct and the late filing of the first

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Circuit precedent" conflicting with other circuits "to end the division of authority"); *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 20 (1993) (reviewing unpublished circuit decision affirming district court decision that "follow[ed] Circuit precedent" reflecting "a conflict among the Circuits"); *see also E. Associated Coal Corp. v. United Mine Workers*, 531 U.S. 57, 61 (2000); *Lynce v. Mathis*, 519 U.S. 433, 436 (1997); *Old Chief v. United States*, 519 U.S. 172, 177 (1997); *Spectrum Sports, Inc. v. McQuillan*, 506 U.S. 447, 452–54 (1993).

[7] "[A] 'petitioner' is 'entitled to equitable tolling' only if he shows '(1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way' and prevented timely filing." *Holland*, 560 U.S. at 649 (quoting *Pace v. DiGuglielmo*, 544 U.S. 408, 418 (2005)). The lower courts did not dispute Mr. Wainwright's diligence, *see* Pet. at 15; nor does Respondent dispute his underlying diligence here, *see* BIO at 15-16. Mr. Wainwright seeks certiorari only to address the lower courts' flawed analyses and conflicting caselaw regarding extraordinary circumstances.

petition." BIO at 20. Respondent further asserts that, accordingly, the courts below properly denied an evidentiary hearing because "[t]here is no reason for a district court to conduct an evidentiary hearing when the claim . . . fails as a matter of law twice over." BIO at 22-23. However, for the reasons stated above, the Rule 60(b) motion was in fact timely. Moreover, the causal connection between Hobson's alleged misconduct and Mr. Wainwright's blown deadline is part of the precise factual dispute on which the record extant does not fairly speak. Specifically, Mr. Wainwright alleged—and the record absent Hobson's conflicted statements does not refute—that the blown habeas deadline was the direct result of such attorney misconduct as:

- Hobson's knowing acceptance of a case he was not qualified to handle, and failure to take any steps to ameliorate that lack of qualification;
- Hobson's refusal to conduct research that Mr. Wainwright explicitly directed, despite his knowledge that he did not know how federal habeas deadlines worked;
- Hobson's increasing uncommunicativeness and absence during critical periods of time leading up to the AEDPA deadline;
- Hobson's misrepresentation of the work he was doing; and
- Hobson's failure to do federal work prior to the federal deadline's expiration.[8]

Hobson's "court filings and . . . letters to Mr. Wainwright[,]" upon which the district court relied to conclude that "[t]he record shows that Mr. Hobson missed the AEDPA deadline because he misunderstood the federal statute of limitations," and

[8] Accordingly, Respondent's reliance on caselaw holding that no evidentiary hearing is necessary where the movant "could not develop a factual record that would entitle him to . . . relief", see BIO at 23-24 (discussing *Schriro v. Landrigan*, 550 U.S. 465, 469 (2007)), is misplaced because, for the reasons stated above, Mr. Wainwright can show the existence of an equitable tolling claim with some merit.

not due to more egregious misconduct, Pet. at App. 57a-58a, App. 9a-12a, were a response to "the State's motion for summary judgment" and "a letter to Petitioner, dated May 25, 2005," which was more than two months after Hobson blew Mr. Wainwright's deadline. Thus, Hobson made both of these representations *while he was conflicted*, and it was clearly erroneous for the lower courts to rely on them. The only other pieces of record evidence the district court purported to rely on were letters in which Hobson vaguely claimed he would prospectively work on Mr. Wainwright's petition; an agenda item from only one week before the petition's due date; and the fact that a petition was filed six days after the due date.

As to Hobson's letters prior to the blown deadline, none show that federal work was actually done. They are equally supportive of Mr. Wainwright's allegation that Hobson was affirmatively deceiving him about the work being done on his case.

As to the personal agenda item, this too is equally supportive of Mr. Wainwright's position that no work was being done. First, the entry—which merely states "Anthony Floyd Wainwright look at deadlines and 2 hours of Box review"—is sandwiched in the middle of a 26-item task list, between such exhaustive tasks as "Taxes"; "[Unrelated client] depos"; "Continue marketing efforts"; "letter to bar"; and work on multiple other cases. NDFL-ECF 52 at App. 58. Nothing suggests that Hobson actually did the work he put on his to-do list, let alone prior to the blown deadline; nothing suggests that the deadlines referenced included the AEDPA deadline (as opposed to state court or certiorari deadlines); and even if the agenda

referred to federal work, it fails to shed light on why—a mere week before the petition was due—Hobson had yet made an attempt to ascertain the relevant deadlines.[9]

Finally, the significance of the untimely-filed habeas petition is not what Respondent suggests. Respondent argues "that one indisputable fact definitively establishes that there are no extraordinary circumstances, both factually and legally": that a "habeas petition was, in fact, filed in the district court by Hobson, albeit six days late." BIO at 25-26. But the state of the petition cannot conclusively support a finding that it was begun before the blown deadline. The petition "was riddled with factual, typographical, and legal errors," Pet. at 6, and its state is more consistent with an attorney's rushed attempt to conceal misconduct than an attorney's mistaken but effortful work.[10] In other words, this purported "one indisputable fact" falls far short of establishing "that Hobson had been working on the petition [prior to the deadline], just as he had told [Mr.] Wainwright," rather than

[9] This is underscored by the proffered evidence from Mr. Wainwright that months before the federal deadline expired, he had explicitly instructed Hobson to conduct research on the AEDPA and its application to Mr. Wainwright's litigation. Yet, despite Hobson's letters assuring Mr. Wainwright that he was diligently preparing the federal litigation, the most favorable possible reading of his agenda shows that one week before the deadline, he had not yet taken the first step of federal preparation. *See* Petition at 24.

[10] As Mr. Wainwright explained in his petition, had Hobson genuinely believed the arguments he later advanced regarding timeliness of the petition, he would have thought he had several months left on the AEDPA clock at the time he filed the petition. This belief is incongruous with his filing of a petition that—although lengthy—was little more than a sloppily repackaged 'copy and paste job' from the work of prior attorneys; riddled with so many typographical errors that it appears it may have been dictated; contained significant substantive errors; cited only a single federal case; failed in many claims to address the underlying state-court judgment; and demonstrated no independent investigation had been done.

lying to Mr. Wainwright. BIO. at 25-26. That Respondent apparently relies on this one ambiguous fact alone only reinforces the necessity of an evidentiary hearing.

CONCLUSION

Hobson's conflict of interest prevented him from arguing the strongest basis for equitable tolling in the original habeas proceedings: his own misconduct. That defect caused Mr. Wainwright to forfeit a "good claim" of equitable tolling with "some merit," entitling him to Rule 60(b)(6) relief. But the lower courts here concluded otherwise for two reasons. First, the lower courts erroneously credited, without the benefit of an evidentiary hearing, Hobson's conflicted statements to conclusively rebut Mr. Wainwright's allegations of severe misconduct by Hobson that would establish "extraordinary circumstances" for equitable tolling. Second, still assuming Hobson had been grossly negligent, the lower courts relied on circuit law establishing the rigid rule that an attorney's gross negligence, without more, cannot establish extraordinary circumstances—caselaw in direct conflict with this Court's reversal in *Holland* of the same rule, as well as in conflict with other circuits.

Mr. Wainwright respectfully requests that this Court grant certiorari to address either or both of these fundamental flaws in the lower courts' analyses. Without this Court's intervention, Mr. Wainwright will be deprived of his "one fair opportunity to seek federal habeas relief" from his convictions and death sentence. *See Banister v. Davis*, 140 S. Ct. 1698, 1702 (2020).

The Court should grant the petition for a writ of certiorari and review the Eleventh Circuit's decision.

Respectfully submitted,

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