No. _____

IN THE
Supreme Court of the United States

TREMANE WOOD,
Petitioner,

vs.

CHRISTE QUICK, WARDEN, OKLAHOMA STATE PENITENTIARY,
Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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****CAPITAL CASE****

QUESTION PRESENTED

Tremane Wood was convicted of felony murder for participating in a robbery in which his older brother killed one of the robbery's victims and confessed to that fact. Represented by conflict counsel who received a $10,000 flat fee, did little to no work outside of court, and was impaired by drug addiction, Mr. Wood was sentenced to death while his brother was sentenced to life without parole in a separate trial.

In his federal habeas petition, Mr. Wood raised a claim under *Strickland v. Washington*, 466 U.S. 668 (1984), based on conflict counsel's penalty-phase ineffectiveness. When the district court adjudicated that claim, however, it failed to review the last reasoned state court decision adjudicating the claim's merits—a fact which the State of Oklahoma did not dispute in the proceedings below—as required by this Court's decisions in *Ylst v. Nunnemaker*, 501 U.S. 797 (1991), in *Wilson v. Sellers*, 584 U.S. 122 (2018), and by 28 U.S.C. § 2254(d). Based on that fundamental defect in the district court's methodology for adjudicating his *Strickland* claim, along with new and various extraordinary circumstances, Mr. Wood moved the district court to reopen the judgment in his habeas proceeding under Federal Rule of Civil Procedure 60(b)(6). Without reaching the Rule 60(b)(6) motion's merits, the district court decided that it was "not a true Rule 60(b) motion," rather it was an unauthorized second-or-successive habeas petition, and transferred it to the Tenth Circuit under 28 U.S.C § 1631 for authorization under 28 U.S.C. § 2244(b).

On transfer from the district court, the Tenth Circuit also construed Mr. Wood's Rule 60(b) Motion as an unauthorized second-or-successive petition and denied his request for remand in an order that conflicts with this Court's decisions in *Ylst*, *Wilson*, and *Gonzalez v. Crosby*, 545 U.S. 524 (2005); with the Tenth Circuit's own precedent in *Church v. Sullivan*, 942 F.2d 1501 (10th Cir. 1991); and with the decisions of every court of appeals interpreting and applying *Ylst*'s last-reasoned-decision rule as the methodology for reviewing state court decisions under § 2254(d).

This petition presents the following questions:

Does a federal habeas court's failure to review under 28 U.S.C. § 2254(d) the last reasoned state court decision adjudicating a federal claim's merits constitute a "defect" in the integrity of a habeas proceeding under Federal Rule of Civil Procedure 60(b) and *Gonzalez*?

Does 28 U.S.C. § 2244(b)(3)(E) remove this Court's jurisdiction to review the Tenth Circuit's denial of a motion to remand what it construed as an unauthorized second-or-successive habeas petition?

PARTIES TO THE PROCEEDING

In the proceedings below, Tremane Wood was the plaintiff/petitioner and Christe Quick was the defendant/respondent.

RELATED PROCEEDINGS

Oklahoma Court of Criminal Appeals:

Wood v. State, 158 P.3d 467 (Okla. Crim. App. Apr. 30, 2007) (No. D-2005-171) (order denying relief on direct appeal)

Wood v. State, No. PCD-2005-143 (Okla. Crim. App. June 30, 2010) (unreported) (denying initial postconviction application)

Wood v. State, No. PCD-2011-590 (Okla. Crim. App. Sept. 30, 2011) (unreported) (denying second postconviction application)

Wood v. State, No. PCD-2017-653 (Okla. Crim. App. Aug. 28, 2017) (unreported) (denying third postconviction application)

Wood v. State, No. PCD-2022-550 (Okla. Crim. App. Aug. 18, 2022) (unreported) (denying fourth postconviction application)

U.S. District Court for the Western District of Oklahoma:

Wood v. Trammell, No. CIV-10-0829-HE, 2015 WL 6621397 (W.D. Okla. Oct. 30, 2015) (order denying federal habeas petition)

Wood v. Quick, No. CIV-10-0829-HE (W.D. Okla. Sept. 13, 2023) (order determining that Rule 60(b)(6) motion is "not a true" Rule 60(b) motion, and transferring to Tenth Circuit for second-or-successive authorization)

U.S. Court of Appeals for the Tenth Circuit:

Wood v. Carpenter, 899 F.3d 867, *opinion modified and superseded on denial of rehearing*, 907 F.3d 1279 (10th Cir. Aug. 9, 2018) (No. 16-6001) (opinion affirming denial of federal habeas petition)

Wood v. Quick, No. 23-6134 (10th Cir. Nov. 6, 2023) (dismissing appeal of district court's Sept. 13, 2023 Rule 60(b)(6) decision for lack of jurisdiction)

In re: Tremane Wood, No. 23-6129 (10th Cir. Feb. 9, 2024) (denying petition for rehearing and request for en banc consideration of denial of motion for remand)

RELATED PROCEEDINGS CONTINUED

U.S. Supreme Court:

Tremane Wood v. Christe Quick, No. 23-7066 (U.S. Mar. 21, 2024) (petition for writ of certiorari to review the court of appeals' dismissal of Rule 60(b) appeal for lack of jurisdiction)

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PETITION FOR A WRIT OF CERTIORARI

Tremane Wood is on Oklahoma's death row and respectfully petitions this Court for a writ of certiorari to review the judgment of the Tenth Circuit Court of Appeals denying his request to remand his Motion for Relief from Judgment Pursuant to Federal Rule of Civil Procedure 60(b)(6) (hereafter "Rule 60(b) Motion") to the district court, first, by erroneously construing it as a second-or-successive habeas petition that failed to comply with 28 U.S.C. § 2244(b); and, second, by announcing a new rule that federal habeas courts applying § 2254(d)[1] only have a duty to review the last reasoned state court decision adjudicating a federal claim's merits when the last state court's decision is "unexplained[,]" in contravention of this Court's well-settled precedent. *Compare* Pet. App. 009a–010a (decision below limiting the application of *Ylst*'s[2] last-reasoned decision rule under § 2254(d) to only "unexplained state-court orders"), *with Ylst*, 501 U.S. at 803 (requiring federal habeas courts to apply § 2254(d) to the last reasoned state court decision adjudicating a federal claim), *and Wilson v. Sellers*, 584 U.S. 122, 125 (2018) (discussing federal habeas courts' obligation when applying § 2254(d) "to find the state court's reasons" for rendering a "decision on the merits[]" by looking for "the last related state-court decision that does provide a relevant rationale[]").

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[1] Unadorned statutory citations are to Title 28 of the United States Code.
[2] *Ylst v. Nunnemaker*, 501 U.S. 797 (1991).

INTRODUCTION

Mr. Wood's death sentence qualifies as extraordinary under any definition. He is the only one of his four codefendants who faces execution for participating in the robbery that led to Ronnie Wipf's tragic and senseless death on New Year's Eve 2001. Although Mr. Wood's older brother and co-defendant Zjaiton ("Jake") Wood admitted killing Wipf, in separate trials Jake was sentenced to life imprisonment while Tremane was sentenced to death following a penalty phase that began and ended in the same afternoon. That sentencing disparity is directly traceable to resources.

Whereas Jake was represented at his capital trial by three experienced capital defense attorneys employed by the state-funded Oklahoma Indigent Defense System, Mr. Wood was represented by court-appointed conflict counsel[3], John Albert, who

[3] The problems with the appointment of conflict counsel to represent indigent capital defendants in Oklahoma are well documented. According to the Report of the Oklahoma Death Penalty Review Commission, which undertook a careful review of Oklahoma's death penalty system, capital conflict counsel were often grossly underpaid, less-qualified, and more under resourced than public defenders which was identified as a leading contributor to wrongful convictions and unjust death sentences. *See* Okla. Death Penalty Review Comm'n, *The Report of the Oklahoma Death Penalty Review Commission* ("The Report"), 249 (Apr. 25, 2017), https://www.courthousenews.com/wp-content/uploads/2017/04/OklaDeathPenalty.pdf (". . . it can be difficult to find qualified lawyers willing to work for the meager compensation provided. The maximum compensation is $20,000 per case for first chair lawyers[] . . . Conflict counsel have to pay their own overhead, including any support staff, and pay for their own benefits."; *id.* at xii (recommending that "[a]dequate compensation should be provided to conflict counsel in capital cases and the existing compensation cap should be lifted.").

failed to use an investigator, received a $10,000 flat fee[4] to defend Mr. Wood in a death penalty case over a nearly two-year period, admittedly did little to no work on Mr. Wood's case outside of court; and was impaired by an addiction to alcohol, cocaine, and prescription pills during the period he was tasked with defending Mr. Wood's life. (*See* Dist. Ct. ECF No. 35-1, Ex. 3 ¶¶ 5, 8–9; *see also* Dist. Ct. ECF No. 127-2 at 161–65.)[5]

Around the same time that Albert represented Mr. Wood, he also represented two other Oklahoma capital defendants—Keary Littlejohn and James Fisher—whose cases he took to trial the year after Mr. Wood was sentenced to death.[6] Littlejohn and

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[4] By comparison, the Oklahoma Indigent Defense System spent an average amount of $73,568 on capital cases at the time the Oklahoma Death Penalty Review Commission studied the comparative costs. Okla. Death Penalty Review Comm'n, The Report at 207.

[5] Entries from the district court's docket are cited herein using "Dist. Ct. ECF No." followed by the docket number and page number corresponding to the CM/ECF file-stamped page numbering that appears in the heading of each document. Items from Mr. Wood's first state postconviction proceeding are cited using "PCR1" followed by the docket and page numbers. Items from Mr. Wood's successor state postconviction proceeding in 2022 are cited herein using "2022 PCR" followed by the docket and page numbers.

[6] Albert's representation of Mr. Wood overlapped with his representation of Littlejohn and Fisher by between two months to a year. Albert first appeared as counsel for Littlejohn on January 8, 2003, and as counsel for Fisher on January 23, 2004. *See* Docket Sheet, Oklahoma State Courts Network, *State v. Littlejohn et al.*, No. CF-2002-2384 (Okla. Cnty. Dist. Ct. May 1, 2002), https://www.oscn.net/dockets/GetCaseInformation.aspx?db=oklahoma&number=CF-2002-2384; Docket Sheet, Oklahoma State Courts Network, *State v. Fisher*, No. CF-1983-137 (Okla. Cnty. Dist. Ct. Feb. 23, 1983), https://www.oscn.net/dockets/GetCaseInformation.aspx?db=oklahoma&number=CF-1983-137.

Fisher, like Mr. Wood, were sentenced to death. Later uncovered evidence of Albert's substance impairment and neglect of his cases ultimately resulted in Littlejohn and Fisher obtaining relief from their death sentences because of Albert's ineffectiveness. *See Littlejohn v. State*, 181 P.3d 736, 745 (Okla. Crim. App. 2008) (vacating death sentence and remanding for resentencing after finding Albert "could have, and should have, focused his energies on developing a more extensive mitigation case"); *Fisher v. State*, 206 P.3d 607, 613 (Okla. Crim. App. 2009) (reversing conviction and death sentence and remanding for new trial after affirming district court's finding that Albert's "failure to conduct anything approaching an adequate second stage investigation cannot be labeled a reasonable trial strategy." (internal quotations omitted)). Of the three, only Mr. Wood has never obtained relief from his death sentence despite his diligent and decades-long attempts to vindicate his Sixth Amendment right to the effective assistance of counsel under *Strickland v. Washington*, 466 U.S. 668 (1984), in Oklahoma's courts.

In the district court Rule 60(b) proceedings below, Respondent acknowledged that Mr. Wood raised a penalty phase ineffective assistance of counsel claim (hereafter "IAC claim") supported by new evidence of Albert's non-strategic failures at his first available opportunity—that is, in his first state postconviction proceeding. Mr. Wood supported that IAC claim with evidence that Albert suffered from a substance abuse impairment around the same time he handled Mr. Wood's capital case. (*See* Dist. Ct. ECF No. 129 at 3–4.) Respondent also acknowledged in the

proceedings below that the Oklahoma Court of Criminal Appeals ("OCCA") denied Mr. Wood's IAC claim on the merits in that first state postconviction proceeding without affording him the discovery and evidentiary hearing that he requested (hereafter "OCCA's 2010 denial") and to which Oklahoma law entitled him. (*See* Dist. Ct. ECF No. 129 at 4–5 (Respondent discussing the OCCA's 2010 denial of Mr. Wood's IAC claim on the merits).) It was therefore undisputed between the parties in the Rule 60(b) proceedings below that the OCCA's 2010 denial of Mr. Wood's IAC claim was the last reasoned state court decision adjudicating that claim's merits.

Following the OCCA's 2010 denial of his IAC claim on the merits, Mr. Wood raised it again as Claim One in his petition for writ of habeas corpus. (Dist. Ct. ECF No. 35 at 23–81.) When the district court adjudicated that claim, however, rather than review the OCCA's 2010 denial of Mr. Wood's IAC claim—which the parties here agree is the last reasoned state court decision adjudicating the merits of that claim—the district court instead reviewed an *earlier* decision of the OCCA which had rejected an IAC claim raised by Mr. Wood on *direct appeal*[7] in 2007 (hereafter "OCCA's 2007 denial"). (Dist. Ct. ECF No. 100 at 8–31.) As a result of that oversight, the district court failed to discharge what it recognized was its independent obligation under this

[7] Oklahoma allows capital defendants to raise IAC claims on direct appeal and seek supplementation of the record. Okla. Stat. Ann. tit. 22, Ch. 18, App. (2023). It also allows defendants to raise in subsequent state postconviction proceedings IAC claims that could not have been discovered or raised on direct appeal through the exercise of reasonable diligence, which is what Mr. Wood did. *See* Okla. Stat. Ann. tit. 22, § 1089(D)(4)(b).

Court's habeas precedent to review the correct state court decision under § 2254(d). (*See* Dist. Ct. ECF No. 100 at 6 ("[A] federal habeas court must also examine the state court's resolution of the presented claim."). *See also Ylst*, 501 U.S. at 803 (federal habeas courts must apply § 2254(d) to the last reasoned state court decision rejecting a federal claim); *Church*, 942 F.2d at 1507 ("As instructed by the Supreme Court, we must focus on the last state court decision explaining its resolution of [the petitioner's] federal claims." (citing *Ylst*, 501 U.S. at 803–05)).

It is that fundamental defect in the integrity of Mr. Wood's habeas proceeding—which is neither a challenge to the district court's resolution of his IAC claim's merits, nor asserting a basis for relief from his conviction or sentence—that Mr. Wood's Rule 60(b) Motion challenged (Dist. Ct. ECF No. 127), and which the district court erroneously construed as a second-or-successive habeas petition before transferring it to the court of appeals for authorization under § 2244(b).[8] *Compare*

[8] Mr. Wood separately appealed the district court's determination that his Rule 60(b) Motion was "not a true" Rule 60(b) Motion and the court of appeals dismissed his appeal for lack of jurisdiction. Order, *Wood v. Quick*, No. 23-6134 (10th Cir. Nov. 6, 2023). On March 21, 2024, Mr. Wood timely petitioned this Court for a writ of certiorari to review the court of appeals' dismissal of his Rule 60(b) appeal. *Wood v. Quick*, No. 23-7066 (U.S. Mar. 21, 2024). The question presented there is whether § 1291 gives a federal court of appeals jurisdiction to review a district court's decision that a habeas petitioner's motion under Rule 60(b)(6) of the Federal Rules of Civil Procedure is not a true Rule 60(b) motion if, in the same order, the district court also transfers to the court of appeals under § 1631 what it construes as a second-or-successive habeas petition. Petition for Writ of Certiorari at i, *Wood v. Quick*, No. 23-7066 (U.S. Mar. 21, 2024). Because the question presented in that pending certiorari petition is related to the questions presented here, *see id.* at 2 n.2, Mr. Wood asks that the Court consider the questions presented by both petitions together.

Dist. Ct. ECF No. 131 at 6–7 (construing Mr. Wood's Rule 60(b) Motion as an unauthorized second-or-successive habeas petition), *with Gonzalez v. Crosby*, 545 U.S. 524, 538 (2005) ("We hold that a Rule 60(b)(6) motion in a § 2254 case is not to be treated as a successive habeas petition if it does not assert, or reassert, claims of error in the movant's state conviction.").

Replicating the district court's flawed analysis, the court of appeals denied Mr. Wood's request to remand his Rule 60(b) Motion to the district court for adjudication of its merits in an order predicated on grave misapprehensions of the record and this Court's well-settled decisional law which place the decision below in direct conflict with this Court's decisions in *Ylst*, *Wilson*, and *Gonzalez*; with the court of appeals' own decision in *Church*; and with the decisions of *every single* court of appeals interpreting and applying *Ylst*'s last-reasoned-decision rule as the methodology for federal habeas courts reviewing a state court's decision under § 2254(d).[9]

The decision below not only violates this Court's decision in *Gonzalez* by construing Mr. Wood's Rule 60(b) Motion as a second-or-successive habeas petition that fails to comply with § 2244(b); but it goes far beyond that threshold error by

[9] Those decisions, discussed *infra*, are *Mark v. Ault*, 498 F.3d 775, 783 (8th Cir. 2007); *Bond v. Beard*, 539 F.3d 256, 289–90 (3d Cir. 2008), *as amended* (Oct. 17, 2008); *McGahee v. Alabama Dep't of Corr.*, 560 F.3d 1252, 1261 n.12 (11th Cir. 2009); *Loza v. Mitchell*, 766 F.3d 466, 473 (6th Cir. 2014); *Amado v. Gonzalez*, 758 F.3d 1119, 1130 (9th Cir. 2014); *Lee v. Corsini*, 777 F.3d 46, 54 (1st Cir. 2015); *Jordan v. Hepp*, 831 F.3d 837, 843 (7th Cir. 2016); *Lucio v. Lumpkin*, 987 F.3d 451, 465 (5th Cir. 2021); *McCray v. Capra*, 45 F.4th 634, 640 (2d Cir. 2022); *Allen v. Stephen*, 42 F.4th 223, 247 (4th Cir. 2022).

announcing a new rule that federal habeas courts applying § 2254(d) only have a duty to review the last reasoned state court decision adjudicating a federal claim's merits when the last state court's decision is "unexplained[,]" in contravention of this Court's longstanding habeas jurisprudence. Pet. App. 009a–010a.

The gravity of the errors below in this truly extraordinary capital case warrant this Court's intervention, first, to clarify whether a federal habeas court's failure to follow *Ylst*'s last-reasoned-decision rule as the methodology for reviewing a state court's decision under § 2254(d) is a "defect" in the integrity of a habeas proceeding under *Gonzalez* and Federal Rule of Civil Procedure 60(b); and, second, to review the new rule announced by the court of appeals below which limits *Ylst*'s last-reasoned-decision rule as the methodology for habeas courts reviewing a state court decision under § 2254(d) to only those situations where the last state court decision is "unexplained." *See* Sup. Ct. R. 10(a), (c).

This Court should grant the petition.

OPINIONS BELOW

The court of appeals' order denying Mr. Wood's motion to remand his Rule 60(b) Motion to the district court is unreported. Pet. App. 001–012a. Its order denying Mr. Wood's timely petition for rehearing and request for en banc consideration is also unreported. Pet. App. 113a. The United States District Court for the Western District of Oklahoma's decision that Mr. Wood's Rule 60(b) Motion was not a "true" Rule 60(b) motion, but rather was an unauthorized second-or-successive habeas petition, is also unreported. Pet. App. 114a–120a.

JURISDICTION

The court of appeals denied Mr. Wood's motion to remand his Rule 60(b) Motion to the district court after construing it as an unauthorized second-or-successive habeas petition that failed to satisfy § 2244(b). Pet App. 009a–010a. Mr. Wood timely petitioned the court of appeals for rehearing and requested en banc consideration. Pet. App. 087a–119a. The court of appeals denied that request. Pet. App. 113a.

Mr. Wood now timely petitions for a writ of certiorari where among the questions presented is whether § 2244(b)(3)(E) removes this Court's jurisdiction under § 1254 to review the decision below.

CONSTITUTIONAL AND STATURORY PROVISIONS

U.S. Const. amend. VI:

> "In all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defence."

28 U.S.C. § 2244(b)(3)(E):

> The grant or denial of an authorization by a court of appeals to file a second or successive application shall not be appealable and shall not be the subject of a petition for rehearing or for a writ of certiorari.

STATEMENT OF THE CASE

I. Factual and procedural background

A. Mr. Wood's first state postconviction proceeding in 2010

After Mr. Wood's direct appeal proceedings concluded in 2007 but during the pendency of his first state postconviction proceeding, Mr. Wood discovered evidence that on March 9, 2006, just days after his trial lawyer John Albert testified at a Rule 3.11 hearing about his professional performance in Mr. Wood's case, a contempt hearing was held in state court related to Albert's grossly unprofessional conduct in another first-degree murder case. (PCR1 26 at 3–4.) Mr. Wood also discovered that Albert had been suspended from the practice of law on April 24, 2006—just months after his Rule 3.11 testimony in Mr. Wood's case—and had been under investigation by the Oklahoma State Bar for gross professional misconduct related to his problems with "alcohol and possibly even drugs[]" when he testified about representing Mr. Wood. *Id.*

Mr. Wood timely presented this new evidence to the Oklahoma Court of Criminal Appeals ("OCCA") in his first application for postconviction relief. (PCR1 26.) There, Mr. Wood argued that newly discovered evidence of Albert's alcohol and drug use around the same time he handled Mr. Wood's capital case demonstrated that Mr. Wood received ineffective assistance of counsel in violation of the Sixth Amendment. (PCR1 26 at 2–6.) In support, Mr. Wood offered two items of proof. First, he presented a transcript of direct contempt proceedings against Albert

pertaining to his conduct in three other cases. (PCR1 17-1, Ex. 4-A.) Second, he presented an affidavit from the General Counsel of the Oklahoma Bar Association which explained that Albert had been suspended from the practice of law in April 2006. (PCR1 17-1, Ex. 5.) Mr. Wood also submitted other materials from the 2006 Oklahoma Bar disciplinary proceedings against Albert, including grievances from several of Albert's clients filed with the Oklahoma State Bar between April 2005 and March 2006. (PCR1 32-1.) *See generally State ex rel. Okla. Bar Ass'n v. Albert*, 163 P.3d 527 (Okla. 2007) (confirming retroactive suspension and reinstatement to probation).

Additionally, Mr. Wood presented the findings of fact and conclusions of law from two capital cases that Albert handled at the time he also handled Mr. Wood's capital case. In those cases, the impact of Albert's substance abuse on his performance and the outcomes of those capital proceedings were at issue. (PCR1 36, 37.) And in both of those cases, the OCCA granted sentencing relief based on Albert's ineffectiveness. *See Littlejohn*, 181 P.3d at 744–45 (vacating death sentence and remanding for resentencing); *Fisher*, 206 P.3d at 607–13 (reversing conviction and death sentence and remanding for new trial).

Despite this new and compelling evidence showing that Mr. Wood's case was no different than *Littlejohn* and *Fisher* where death sentences were set aside based on Albert's ineffectiveness, the OCCA denied Mr. Wood's IAC claim on the merits under both *United States v. Cronic*, 466 U.S. 648 (1984), and *Strickland v.*

Washington, 466 U.S. 668 (1984); the court also denied his requests for discovery and a hearing. Dist. Ct. ECF No. 127-7 at 27–30. The OCCA determined that Albert's drug abuse onset in 2005 and that because Mr. Wood had failed to present "proof trial counsel was suffering from his addiction during Wood's trial" his IAC claim failed. Dist. Ct. ECF No. 127-7 at 28–31 & n.5. That is despite the fact that the onset of Albert's drug addiction, and whether Albert was impaired by that addiction when he handled Mr. Wood's capital case, was a material issue of fact that Oklahoma law required the OCCA to resolve at a hearing. *See* Okla. Stat. Ann. tit. 22, § 1089(D)(4)–(5) (2006) (mandating a hearing to resolve any "controverted, previously unresolved factual issues material to the legality of the applicant's confinement" based on grounds that could not have been raised previously on direct appeal).

B. Mr. Wood's successor state postconviction proceeding in 2022

Following Albert's death in 2018, Albert's former clients provided sworn statements attesting to their personal knowledge of Albert's alcohol and cocaine addiction during the period he handled Mr. Wood's capital case.

Benito Bowie, who met Albert in 1998, attested that "[d]uring the almost decade I knew John [Albert], he did cocaine every day. John also drank regularly, probably daily." Dist. Ct. ECF 127-2, Ex. 1, Attach. 5 ¶¶ 2, 4. In fact, starting between in 1999 or 2000, Albert represented all the members of the Playboy Gangsta Crips who regularly supplied him with drugs. Dist. Ct. ECF 127-2, Ex. 1, Attach. 5 ¶ 3. Michael Maytubby, who first met Albert in 2001, attests that Albert used alcohol,

painkillers, and anti-anxiety drugs—including in combination—during the period he knew Albert. Dist. Ct. ECF 127-2, Ex. 1, Attach. 6 ¶ 3. Maytubby is "sure Johnny was using cocaine in 2002 because [he] would give it to [Albert] as payment for legal fees." Dist. Ct. ECF 127-2, Ex. 1, Attach. 6 ¶ 4. Maytubby attests further that "[b]y 2004 to 2005, Johnny's drug and alcohol abuse had gotten so bad he looked like someone from the streets. I heard Johnny was using 'ice' (crystal meth) by that time." Dist. Ct. ECF 127-2, Ex. 1, Attach. 6 ¶ 7.

Within 60 days of discovering this new evidence, Mr. Wood filed a successor postconviction application in the OCCA reasserting his IAC claim. Dist. Ct. ECF No. 127-3. Mr. Wood argued that this new evidence constituted prima facie proof that Albert was impaired by an addiction to multiple substances during his handling of Mr. Wood's capital case. Dist. Ct. ECF No. 127-3 at 19. For the same reason Sixth Amendment relief was required in *Littlejohn* and *Fisher* based on evidence of Albert's addiction-related failures in those capital cases, Mr. Wood argued that this new evidence mandated relief in his case as well. Dist. Ct. ECF No. 127-3 at 33–34, 39–40. Mr. Wood also asked for discovery and a hearing to resolve any material factual disputes to which his new evidence and allegations gave rise. Dist. Ct. ECF No. 127-4; Dist. Ct. ECF No. 127-5.

In response to Mr. Wood's successor application, Respondent—to its credit—recognized "the seriousness of the issue" and that the new evidence of Albert's substance impairment rendered Mr. Wood's case indistinguishable from *Fisher* and

Littlejohn where the "implications [of Albert's substance abuse] warranted death-sentence relief[.]" Dist. Ct. ECF No. 127-7 at 18. It nevertheless maintained, without rebutting Mr. Wood's evidence demonstrating the timeliness of his application, that the IAC claim was barred from review on res judicata, waiver, and diligence grounds. Dist. Ct. ECF No. 127-7 at 13–14.

As in 2010, the OCCA denied Mr. Wood's requests for discovery and a hearing that would have allowed him to prove his entitlement to relief on the merits of his IAC claim. This time, however, the OCCA subjected Mr. Wood's successor application to the onerous requirements of Okla. Stat. Ann. tit. 22, § 1089(D)(8) (requirements Mr. Wood demonstrated he satisfied); failed to give him the benefit of *Valdez v. State*, 46 P.3d 703 (Okla. Crim. App. 2002), which established the OCCA's plenary power to grant a successive postconviction application "when an error complained of has resulted in a miscarriage of justice, or constitutes a substantial violation of a constitutional or statutory right[,]" *id.* at 710; and placed Mr. Wood in a catch-22 by deploying the doctrines of res judicata and waiver to hold against him his prior diligence in raising and seeking to factually develop his IAC claim in his first state postconviction proceeding in 2010. Dist. Ct. ECF No. 127-8 at 2–7.

Mr. Wood sought this Court's certiorari review of the OCCA's denial of his successor state postconviction application. *Wood v. State*, No. 22-6538 (U.S. Jan. 12, 2023). While that certiorari petition pended, this Court decided *Cruz v. Arizona*, 598 U.S. 17 (2023), where it held that states cannot insulate from federal review a

prisoner's diligently pursued federal claims to which the state opens its collateral review forum by "generat[ing]" a procedural "catch-22" that makes it "impossible for [a petitioner], and similarly situated capital defendants, to obtain relief." *Cruz*, 598 U.S. at 28–29. This Court ultimately declined to review the OCCA's denial of Mr. Wood's successor state postconviction application. *Wood v. State*, No. 22-6538 (U.S. Apr. 3, 2023).

C. District court Rule 60(b)(6) proceeding

A little over two weeks later, Mr. Wood moved the United States District Court for the Western District of Oklahoma to reopen the judgment in his federal habeas proceeding under Federal Rule of Civil Procedure 60(b)(6) based on extraordinary circumstances that warranted correcting the defect in the integrity of his habeas proceeding stemming from the district court's failure to review the OCCA's last reasoned decision in 2010 on the merits of his IAC claim when the district court adjudicated that claim in his habeas petition. Dist. Ct. ECF No. 127. Following full briefing, the district court determined that Mr. Wood's Rule 60(b) Motion was "not a true Rule 60(b) motion" and declined to reach its merits. Dist. Ct. ECF No. 131 at 6–7. The district court instead construed Mr. Wood's Rule 60(b) Motion as a second-or-successive habeas petition and transferred that reconstrued new civil action to the court of appeals for authorization under § 2244(b). Dist. Ct. ECF No. 131 at 6–7.

D. Court of appeals proceeding

On September 13, 2023, the court of appeals captioned the second-or-successive habeas action transferred from the district court as *In re: Tremane Wood* and docketed it under case number 23-6129. Letter from 10th Cir. Clerk of Court, *In re: Tremane Wood*, No. 23-6129 (10th Cir. Sept. 13, 2023). It subsequently ordered that, within 30 days of September 14, 2023, Mr. Wood should file either a Motion for Authorization to file a second-or-successive federal habeas petition or a Motion for Remand to the district court. Letter from 10th Cir. Clerk of Court at 1–2, *In re: Tremane Wood*, No. 23-6129 (10th Cir. Sept. 14, 2023).

On October 13, 2023, Mr. Wood moved the court of appeals to remand his Rule 60(b) Motion to the district court arguing that it erred by construing his Rule 60(b) Motion as a second-or-successive habeas petition rather than as a challenge to a defect in the integrity of his habeas proceedings. Pet. App. 021a–044a. Following full briefing, the court of appeals denied Mr. Wood's request in an order predicated on grave misapprehensions of the record and well-settled habeas principles which place the decision below in direct conflict with this Court's decisions in *Ylst*, *Wilson*, and *Gonzalez*, and with decisions of every federal court of appeals interpreting and applying *Ylst*'s last-reasoned-decision rule as the methodology for habeas courts reviewing state court decisions in case cases governed by the Anti-terrorism and Effective Death Penalty Act ("AEDPA"). *See* Pet. App 045a–071a; Pet. App. 072a–

086a; Pet. App. 001a–012a. The court of appeals denied Mr. Wood's timely request for rehearing. Pet. App. 087a–119a; Pet App. 113a.

This petition follows.

REASONS FOR GRANTING THE PETITION

I. A federal habeas court's failure to identify and review under 28 U.S.C. § 2254(d) the last reasoned state court decision adjudicating a federal claim's merits is a defect in the integrity of a habeas proceeding under Federal Rule of Civil Procedure 60(b) and *Gonzalez v. Crosby*, 545 U.S. 524 (2005).

"[A] Rule 60(b)(6) motion in a § 2254 case is not to be treated as a successive habeas petition if it does not assert, or reassert, claims of error in the movant's state conviction." *Gonzalez*, 545 U.S. at 538. A "claim[] of error," meanwhile, is "an asserted federal basis for relief from a state court's judgment of conviction." *Id.* at 530–31.

Determining whether a Rule 60(b) motion brought in a habeas case improperly asserts a claim of error rendering it a disguised second-or-successive habeas petition requires a court to examine the relief sought and "the factual predicate set forth in support of a particular motion." *See Gonzalez v. Sec'y for Dep't of Corr.*, 366 F.3d 1253, 1297 (11th Cir. 2004) (Tjoflat, J., concurring and dissenting in part) (citing *Rodwell v. Pepe*, 324 F.3d 66 (1st Cir. 2003)); *see also Gonzalez*, 545 U.S. at 538 (Breyer, J., concurring) (agreeing with "Judge Tjoflat's description" of the standard for differentiating a true Rule 60(b) motion from a second or successive petition in his partial concurrence).

Where a Rule 60(b) motion seeks either to add a new ground for relief that was previously omitted from a habeas petition due to "excusable neglect," "newly discovered evidence," or a "subsequent change in substantive law," or where it attacks the federal habeas court's resolution of a claim on the merits, it should be treated as a second-or-successive habeas petition subject to § 2244(b)'s gatekeeping requirements. *Gonzalez*, 545 U.S. at 530–32. In other words, *Gonzalez* requires successor-petition treatment for Rule 60(b) motions that either *bring a new claim* or *seek reconsideration of a previously asserted claim on the merits*.

By contrast, a Rule 60(b) motion does not assert a claim of error when it "attacks, not the substance of the federal court's resolution of a claim on the merits, but some defect in the integrity of the federal habeas proceeding." *Id.* at 532 (footnote omitted). Such motions "do[] not assert, or reassert, claims of error in the movant's state conviction" and are therefore "true" Rule 60(b) motions to which § 2244(b) does not apply. *Gonzalez*, 545 U.S. at 538.

A Rule 60(b) motion which challenges a federal habeas court's methodological failure to identify and review under § 2254(d) the last reasoned state court decision adjudicating a federal claim's merits neither asserts a claim of error nor challenges the denial of relief on the merits. Rather, such a motion attacks a federal habeas court's flawed methodology at the threshold for discharging its independent obligation to apply § 2254(d) in accordance with *Ylst*'s last-reasoned-decision rule. And because such a motion "deals primarily with some irregularity or procedural

defect in the procurement of the judgment denying habeas relief" that "is the classic function of a Rule 60(b) motion[.]" *See Gonzalez.*, 366 F.3d at 1297 (Tjoflat, J., concurring and dissenting in part); *see also Gonzalez*, 545 U.S. at 538 (Breyer, J., concurring).

Applying those principles here by examining the relief that Mr. Wood's Rule 60(b) Motion sought and the factual predicate for that relief demonstrates its true Rule 60(b) character. First, the defect which Mr. Wood's Rule 60(b) Motion challenged was the district court's methodological failure to identify and review under § 2254(d) the OCCA's last reasoned decision in 2010 denying his IAC claim on the merits when it adjudicated the IAC claim raised as Claim One in his habeas petition. Dist. Ct. ECF No. 127 at 11–12, 23–25, 30; Dist. Ct. ECF No. 130 at 1–3, 8. Nowhere did Mr. Wood's Rule 60(b) Motion argue that he is entitled to relief from his death sentence, that his death sentence is unconstitutional, or that the district court erred when it denied habeas relief on his IAC claim. *See generally* Dist. Ct. ECF Nos. 127, 130; *cf. Gonzalez*, 545 U.S. at 538 (disguised Rule 60(b) motion asserts claims of error in the movant's state conviction); *id.* at 530 (a Rule 60(b) motion asserts "a 'claim' as used in § 2244(b)" where it "assert[s] [a] federal basis for relief from a state court's judgment of conviction[]").

To the contrary, Mr. Wood's Rule 60(b) Motion attacked not "the substance of the federal court's resolution of [the IAC] claim on the merits," but attacked the methodological "defect in the integrity of the federal habeas proceedings" stemming

from the district court's failure to apply *Ylst*'s last-reasoned-decision rule. *See Gonzalez*, 545 U.S. at 532 (footnote omitted). In other words, Mr. Wood's Rule 60(b) Motion challenged the district court's failure at "[t]he first step . . . to determine which state court decision [to] review" under § 2254(d) when it adjudicated Mr. Wood's IAC claim. *Amado v. Gonzalez*, 758 F.3d 1119, 1130 (9th Cir. 2014). That is patently a non-merits-based attack on the integrity of Mr. Wood's habeas proceeding.

Second, the factual predicates for Mr. Wood's Rule 60(b) Motion consist of the procedural catch-22 in which the OCCA's 2022 decision placed him, which has rendered it impossible for him to vindicate his right under *Strickland* to effective counsel in Oklahoma's courts, and the extraordinary circumstances in his case that render enforcement of the judgment inequitable. *See* Dist. Ct. ECF No. 127 at 19–25 (Mr. Wood's Rule 60(b) Motion cataloguing the extraordinary circumstances present under Fed. R. Civ. P. 60(b)(6)). Because those factual predicates do not challenge the constitutionality of Mr. Wood's conviction or death sentence, his Rule 60(b) Motion necessarily does not assert a second-or-successive habeas claim. *See Gonzalez*, 545 U.S. at 538. The court of appeals contravened this Court's decision in *Gonzalez* when it concluded otherwise.

II. The decision below cannot be reconciled with the record, this Court's well-settled habeas and Rule 60(b) precedent, or with the decisions of every court of appeals interpreting and applying *Ylst*'s last-reasoned-decision rule as the methodology for habeas review of state court decisions.

A. The record is uncontroverted that the OCCA denied Mr. Wood's *Strickland* IAC claim on the merits in 2010, rendering that denial the last reasoned state court decision

The parties do not dispute, because the record here is crystal clear, that the OCCA's 2010 denial of Mr. Wood's IAC claim is the last reasoned state court decision on the merits of that claim. *See supra* at 4–5; Dist. Ct. ECF No. 129 at 4–5 (Respondent discussing the OCCA's 2010 denial of Mr. Wood's IAC claim on the merits). The record is also crystal clear that the OCCA in 2010 denied Mr. Wood's IAC claim on the merits *both* under *United States v. Cronic*, 466 U.S. 648 (1984), and under *Strickland*. Dist. Ct. ECF No. 35-4 at 67–69 (the OCCA ruling in 2010 that Mr. Wood's IAC claim failed under *Cronic*, that "[t]he aspects of counsel's performance challenged by Wood are plainly of the same sort as other specific attorney errors subject to the performance and prejudice test set forth in *Strickland v. Washington*[,]" and denying relief on the *Strickland* claim also).

Despite what should have been uncontroversial—because obvious from the record and undisputed between the parties—determination that the OCCA's 2010 decision was the last reasoned decision on the merits of Mr. Wood's IAC claim, the court of appeals held otherwise.

The court of appeals found, first, that during Mr. Wood's initial postconviction proceeding in 2010, the OCCA *only* adjudicated his IAC claim under *Cronic*. Pet. App. 004a. Reading no further than Page 4 of the OCCA's 2010 decision, the court of appeals overlooked the critical fact that after denying Mr. Wood's IAC claim under *Cronic*, on the very next pages of its decision, Pages 5 and 6, the OCCA also denied Mr. Wood's IAC claim under *Strickland*. *Compare* Pet. App. 004a (court of appeals examining only Page 4 of the OCCA's 2010 denial of Mr. Wood's IAC claim under *Cronic*); *with* Dist. Ct. ECF No. 35-4 at 68–69 (the OCCA finding on Pages 5 and 6 of its 2010 decision that Mr. Wood's IAC claim also failed under *Strickland*).

When, on federal habeas review, Mr. Wood raised the *Strickland* claim as Claim One in his habeas petition, *see* Dist. Ct. ECF No. 35 at 23, 53–81, the district court had an independent duty under *Ylst* and § 2254(d) to review the OCCA's last reasoned 2010 decision adjudicating that *Strickland* claim. *See Ylst*, 501 U.S. at 805 (explaining that the methodology for habeas review requires that ". . . we begin by asking which is the last *explained* state-court judgment on the [federal] claim"); *Wilson*, 548 U.S. at 133 (reaffirming *Ylst* and holding that federal habeas courts must "look through" even "silent decision[s]" of the state courts "for a specific and narrow purpose—to identify the grounds for the higher court's decision, as AEDPA directs us to do[]"); *see also id.* at 135–36 (Gorsuch, J., dissenting) ("As the text and our precedent make clear, a federal habeas court must focus its review on the final state

court decision on the merits, not any preceding decision by an inferior state court." (citing *Greene v. Fisher*, 565 U.S. 34, 40 (2011)).

The district court's failure to carry out that independent duty by examining the OCCA's 2010 denial of Mr. Wood's *Strickland* claim when it adjudicated Claim One in his habeas petition is what Mr. Wood's Rule 60(b) Motion argued constituted a non-merits-based "defect in the integrity of his habeas proceeding" under Rule 60(b). Dist. Ct. ECF No. 127 at 12, 21–22, 26–29 (Mr. Wood's Rule 60(b) Motion citing *Ylst* and arguing that the "defect" in his habeas proceeding was the district court's flawed methodology in adjudicating his IAC claim by failing to consider the "last-reasoned state court decision"); Pet. App. 027a–028a, 030a–033a (Mr. Wood's Motion for Remand citing *Ylst* and arguing that he "raised his penalty-phase IAC claim as Claim One in his petition for writ of habeas corpus . . . When the district court considered that claim, however, rather than subject the OCCA's last-reasoned 2010 denial to review under 28 U.S.C. § 2254(d), it instead reviewed an *earlier* decision of the OCCA which rejected Mr. Wood's penalty-phase IAC claim *on direct appeal*[,]" and arguing further that "[t]hat oversight prevented the district court from discharging what it recognized was its independent obligation to review the correct state court decision under § 2254(d)" (footnote omitted)).

In light of this uncontroverted fact, the only question before the court of appeals below was whether the district court's methodological failure to comply with *Ylst* when it adjudicated Mr. Wood's *Strickland* claim qualifies as a "defect" in the

habeas proceeding under Rule 60(b). However, because the court of appeals overlooked the uncontroverted record demonstrating that the OCCA did in fact adjudicate Mr. Wood's *Strickland* claim on postconviction review in 2010, *see supra* at 23–24, the court of appeals erroneously concluded that Mr. Wood's Rule 60(b) motion asserted "habeas claims the petitioner has not raised." Pet. App. 010a. The court of appeals' oversight thus resulted in it misconstruing the entire factual premise of Mr. Wood's Rule 60(b) Motion, placing relief under Rule 60(b) beyond Mr. Wood's reach as the result of that dispositive error.

B. The court of appeals recharacterized the "defect" in the habeas proceeding that Mr. Wood's Rule 60(b) Motion challenged in a manner that finds no support in the record

In a paragraph devoid of any citations to or quotes from Mr. Wood's Rule 60(b) Motion, Motion for Remand, or supporting replies, the court of appeals next recharacterized Mr. Wood's Rule 60(b) argument as follows:

> The alleged defect, according to Mr. Wood, was the district court's failure, in its 2015 order, to address the OCCA's 2010 postconviction disposition of his ineffective-assistance challenge against Mr. Albert based on his substance abuse. If the district court had addressed that issue, then, in Mr. Wood's view, the court would have seen that the OCCA made what was effectively an evidentiary ruling on the timing of Mr. Albert's impairment, despite an Oklahoma statute requiring an evidentiary hearing to resolve disputed factual issues arising in postconviction proceedings. And this, he argued, created a federal habeas claim, *i.e.*, a failure to permit him to develop a federal claim through procedure to which he was entitled under state law.

Pet. App. 007a. The court of appeals' recharacterization of Mr. Wood's Rule 60(b) argument in this manner is completely untethered from the facts and refuted by the record.

First, the record shows that the "defect" which Mr. Wood's Rule 60(b) Motion at all times challenged was the district court's methodological failure to carry out its independent obligation under *Ylst* and § 2254(d) to review the OCCA's last-reasoned decision in 2010 denying his *Strickland* claim when it adjudicated that same claim in his habeas petition. *See* Dist. Ct. ECF No. 127 at 12, 21–22, 26–29 (Mr. Wood's Rule 60(b) Motion citing *Ylst* and arguing that the "defect" in his habeas proceeding was the district court's adjudication of his IAC claim without considering the "last-reasoned state court decision"); Dist. Ct. ECF No. 130 at 2–11 (Mr. Wood's Reply in Support of his Rule 60(b) Motion arguing that his "Motion seeks to correct the [District] Court's failure to discharge its independent obligation to apply § 2254(d) to the OCCA's last-reasoned decision denying the penalty-phase IAC claim on initial postconviction review[]"); Pet. App. 027a–028a, 030a–033a (Mr. Wood's Motion for Remand arguing the same and citing *Ylst*); Pet. App. 076a–077a (Mr. Wood's Reply in Support of his Motion for Remand arguing that, in light of facts undisputed by Respondent, "the only contested question here is whether the district court's failure to review the OCCA's 2010 denial of Mr. Wood's penalty-phase IAC claim constitutes a 'defect' in the integrity of the habeas proceeding under Federal Rule of Civil Procedure 60(b)(6)" and citing *Ylst*).

Considering that the record plainly demonstrates what Mr. Wood did—and did not—argue in the proceedings below, the court of appeals' recasting of Mr. Wood's Rule 60(b) argument as one in which "he argued" that the OCCA's postconviction denial without a hearing "created a federal habeas claim, i.e., a failure to permit him to develop a federal claim through the procedure to which he was entitled under state law[,]" is simply unsupportable under any reading of the record. Pet. App. 007a. In fact, Mr. Wood's Rule 60(b) Motion and supporting reply made explicit that the OCCA's 2010 denial of his *Strickland* claim without a hearing, and again in 2022, is only relevant to the "extraordinary circumstances" analysis under Rule 60(b)(6) because of the procedural catch-22 to which the OCCA's actions gave rise. Dist. Ct. ECF No. 127 at 19–20 (Mr. Wood's Rule 60(b) Motion discussing the OCCA's actions under the heading "A. Extraordinary circumstances warrant reopening this Court's judgment"); Dist. Ct. ECF No. 130 at 11 (Mr. Wood's Reply in Support of his Rule 60(b) Motion discussing the OCCA's "procedural catch-22" as part of the "extraordinary circumstances" analysis under Rule 60(b)(6)).

That "extraordinary circumstances" analysis is wholly separate from and irrelevant to Rule 60(b)'s threshold "defect" question, which was the only question before the court of appeals: Whether the district court's failure to comply with this Court's last-reasoned-decision rule when it adjudicated Mr. Wood's *Strickland* claim is a "defect" under Rule 60(b). *See Gonzalez*, 545 U.S. at 532–38 (explaining that federal habeas courts confronted with a Rule 60(b) motion must determine, first,

whether "a Rule 60(b) motion attacks[] . . . some defect in the integrity of the federal habeas proceeding[]" and then, only if so, whether Rule 60(b)(6)'s "extraordinary circumstances" factor is satisfied) (footnote omitted). The court of appeals' below collapsed and conflated those distinct Rule 60(b) analyses.

Second, after the court of appeals recharacterized Mr. Wood's Rule 60(b) argument as a "claim" in a manner that finds no support in the record, it concluded that this necessarily meant that Mr. Wood had "[i]mportantly . . . conceded he had not brought this claim in his § 2254 petition." Pet. App. 007a–009a. But that conclusion is squarely contradicted by the record.

As already discussed *supra*, at 26–28, the record here is uncontroverted that Mr. Wood's Rule 60(b) Motion and Motion for Remand at all times argued that the district court's dereliction of its independent duty under this Court's habeas precedent to apply the last-reasoned-decision rule as the methodology for adjudicating exhausted habeas claims is a "defect" under Rule 60(b) and <u>not</u> a "claim." *See* Dist. Ct. ECF No. 127 at 27–30 (Mr. Wood's Rule 60(b) Motion arguing that it does not present a second-or-successive claim "because it challenges the Court's failure to apply § 2254 to the last-reasoned state court decision addressing Mr. Wood's Sixth Amendment claim"); Pet. App. 014a–017a (Mr. Wood's Motion for Remand explaining why his Rule 60(b) Motion does not advance a "claim" under *Gonzalez* and instead challenges a defect in the integrity of his habeas proceeding under Rule 60(b)).

In fact, the only thing that Mr. Wood ever "conceded" is that in the original habeas briefing before the district court on the *Strickland* claim, both he and Respondent inadvertently neglected to point out for the district court that the OCCA's 2010 decision was the last-reasoned state court decision on the merits of his *Strickland* claim. *See* Pet. App. 027a n.3 (Mr. Wood recognizing Respondent's and his own oversight but maintaining that the district court nevertheless has an independent duty under this Court's precedent to apply *Ylst*'s last-reasoned-decision rule when adjudicating exhausted habeas claims). The court of appeals' mischaracterization of Mr. Wood's Rule 60(b) arguments defies the record and this Court's decision in *Gonzalez* where it held that "a 'claim' as used in § 2244(b) is an asserted federal basis for relief from a state court's judgment of conviction." 545 U.S. at 530.

Even assuming for the sake of argument that the court of appeals was training its attention exclusively on Mr. Wood's *alternative argument* (Pet. App. 040a–043a), the court of appeals nevertheless disregarded basic rules of pleading by ignoring and mischaracterizing Mr. Wood's *primary* Rule 60(b) argument in a manner contradicted by the record as already discussed *supra*. *See* Fed. R. Civ. P. 8(a)(3) (permitting parties to seek "relief in the alternative or different types of relief"); Fed. R. Civ. P. 8(d)(2) (permitting parties to plead "alternatively or hypothetically"); Wright & Miller, 5 Fed. Prac. & Proc. Civ. § 1282 (4th ed.) (noting that Fed. R. Civ. P. 8(d)(2)

"should be read in conjunction with Rule 8(a)(3), which permits relief to be demanded in the alternative[] . . .").

C. The new rule announced by the court of appeals limiting *Ylst*'s last-reasoned-decision rule conflicts with this Court's precedent and the decisions of the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, and Eleventh Circuits interpreting and applying *Ylst*

The court of appeals' decision below upends what has been a longstanding and—until now—uncontroversial rule of federal habeas law: A federal habeas court must apply § 2254(d) to the last reasoned state court decision adjudicating a federal claim's merits. *Ylst*, 501 U.S. at 805 ("[W]e begin by asking which is the last explained state-court judgment on the [federal] claim.") (emphasis omitted); *Wilson*, 548 U.S. at 133 (reaffirming *Ylst* and holding that federal habeas courts must "look through" even silent decisions of the state courts "for a specific and narrow purpose—to identify the grounds for the higher court's decision as AEDPA directs us to do[]" (emphasis added); *id.* at 135–36 (Gorsuch, J., dissenting) ("As the text and our precedent make clear, a federal habeas court *must* focus its review on the final state court decision on the merits, not any preceding decision by an inferior state court." (citing *Greene*, 565 U.S. at 40) (emphasis added)).

So well-established is *Ylst*'s last-reasoned-decision rule that *every single federal* court of appeals recognizes and applies it as the methodology federal habeas courts must use when tasked with reviewing an exhausted federal claim. *See Church*, 942 F.2d at 1507 ("As instructed by the Supreme Court, we must focus on the last

state court decision explaining its resolution of [petitioner's] federal claims."); *Mark v. Ault*, 498 F.3d 775, 783 (8th Cir. 2007) ("[W]e apply the AEDPA standard to . . . the 'last reasoned' decision of the state courts."); *Bond v. Beard*, 539 F.3d 256, 289–90 (3d Cir. 2008), *as amended* (Oct. 17, 2008) (noting that its decision to review the last reasoned state court decision "accords with those of seven of our sister circuits that consider the 'last reasoned decision' of the state courts in the AEDPA context[]"); *McGahee v. Alabama Dep't of Corr.*, 560 F.3d 1252, 1261 n.12 (11th Cir. 2009) ("We focus here on . . . the 'last reasoned' decision of the state courts on this issue."); *Loza v. Mitchell*, 766 F.3d 466, 473 (6th Cir. 2014) ("We review the decision of 'the last state court to issue a reasoned opinion on the issue[s]' raised in the habeas petition." (emphasis omitted)); *Amado*, 758 F.3d 1119, 1130 (9th Cir. 2014) ("The first step in determining whether we give deference under § 2254(d) is to determine which state court decision we review. Under the Supreme Court's decision in *Ylst v. Nunnemaker*, we look 'to the last reasoned decision' that finally resolves the claim at issue in order to determine whether that claim was adjudicated on the merits."); *Lee v. Corsini*, 777 F.3d 46, 54 (1st Cir. 2015) ("[W]e look to the 'last reasoned opinion' of the state court to discern the grounds for its decision."); *Jordan v. Hepp*, 831 F.3d 837, 843 (7th Cir. 2016) ("We apply [§ 2254(d)'s] standard to the decision of the last state court to rule on the merits of the petitioner's claim."); *Lucio v. Lumpkin*, 987 F.3d 451, 465 (5th Cir. 2021) ("[T]he Supreme Court says that we must train our attention on the last related state-court decision that provides a relevant rationale to a particular claim."

(cleaned up)); *McCray v. Capra*, 45 F.4th 634, 640 (2d Cir. 2022) ("On a habeas petition under section 2254, we review the 'last reasoned decision' by the state court[] . . ."); *Allen v. Stephan*, 42 F.4th 223, 247 (4th Cir. 2022) ("In assessing a petitioner's habeas claims, we look to the last reasoned decision of the state court addressing the claim" (internal quotation marks omitted)).

Yet, in clear contravention of this Court's well-settled habeas precedent and the decisions of every other federal court of appeals interpreting and applying it, the decision below improperly limited the application of *Ylst*'s last-reasoned-decision rule in the habeas context to only "unexplained state-court orders," rejected that *Ylst* imposes an "independent duty" on federal habeas courts, and erroneously concluded that *Ylst* "has nothing to do with the present situation" including based on its grave misreading of the record as discussed *supra*. Pet. App. 009a–010a. The decision below "so far depart[s] from the accepted and usual course" of habeas methodology—as evidenced by the conflict it generates with the decisions of this Court and every other federal court of appeals—that it "call[s] for an exercise of this Court's supervisory power[.]" Sup. Ct. R. 10(a), (c).

III. Whether 28 U.S.C. § 2244(b)(3)(E) removes this Court's jurisdiction to review the court of appeals' denial of Mr. Wood's motion to remand what it construed as an unauthorized second-or-successive habeas petition is a question unanswered by *Castro v. United States*, 540 U.S. 375 (2003).

As discussed *supra* (at n.8), Mr. Wood separately appealed the district court's decision construing his Rule 60(b) Motion as a second-or-successive habeas petition

before transferring it to the court of appeals for authorization under § 2244(b). The court of appeals dismissed that appeal for lack of jurisdiction. Appendix to Petition for Writ of Certiorari at 001a–002a, *Wood v. Quick*, No. 23-7066 (U.S. Mar. 21, 2024). Mr. Wood petitioned this Court for a writ of certiorari to review that decision.[10] *Wood v. Quick*, No. 23-7066 (U.S. Mar. 21, 2024). The question presented there is:

> Whether 28 U.S.C. § 1291 gives a federal court of appeals jurisdiction to review a district court's decision that a habeas petitioner's motion under Rule 60(b)(6) of the Federal Rules of Civil Procedure is not a true Rule 60(b) motion if, in the same order, the district court also transfers to the court of appeals under 28 U.S.C. § 1631 what it construes as a second-or-successive habeas petition.

Petition for Writ of Certiorari at i, *Wood v. Quick*, No. 23-7066 (U.S. Mar. 21, 2024). If this Court either declines to review the jurisdictional question presented in *Wood v. Quick*, or grants review but answers that question with a "no" (i.e., the court of appeals had no jurisdiction under § 1291 to review the district court's Rule 60(b) decision), then unless this Court's answer to the jurisdictional question presented here is also "no" (i.e., § 2244(b)(3)(E) does not strip this Court of jurisdiction to review the decision below), the outlier procedure used by the courts below to adjudicate Mr. Wood's Rule 60(b) motion will have circumscribed the operation of Rule 60(b) contrary to AEDPA and *Gonzalez*; and it will have done so at the expense of Mr. Wood's

[10] On April 23, 2024, Respondent filed a Brief in Opposition to Mr. Wood's Petition for Writ of Certiorari. *See generally* Docket, *Wood v. Quick*, No. 23-7066 (U.S.). Mr. Wood filed his supporting Reply on May 7, 2024, which renders that pending matter fully briefed in this Court. *See* Sup. Ct. R. 15.5.

Fourteenth Amendment Due Process and Equal Protection rights. It will have achieved that result by effectively cutting off Mr. Wood's right to full appellate review—including by way of a petition for a writ of certiorari in this Court—of the district court's Rule 60(b) decision thus denying him "an adequate opportunity" to obtain relief under Rule 60(b). *See Ake v. Oklahoma*, 470 U.S. 68, 77 (1985) ("[F]undamental fairness entitles indigent defendants to 'an adequate opportunity to present their claims fairly within the adversary system[.]'" (quoting *Ross v. Moffitt*, 417 U.S. 600, 612 (1974))). That outlier procedure will have also singled out Mr. Wood and other indigent habeas litigants who seek relief under Rule 60(b) for unequal treatment that Congress neither authorized nor intended. *See Griffin v. Illinois*, 351 U.S. 12, 17 (1956) ("Both equal protection and due process emphasize the central aim of our entire judicial system—all people charged with a crime must, so far as the law is concerned, stand on an equality before the bar of justice in every American court." (internal quotations omitted)); *Ross*, 417 U.S. at 612 (equal protection prohibits the state from subjecting some defendants to "merely a meaningless ritual" while affording others "meaningful" process (internal quotations omitted)).

The perverse and unconstitutional consequences that would otherwise result from denying Mr. Wood the benefit of full appellate review of the district court's Rule 60(b) decision when Congress specifically elected *not* to remove Rule 60(b) relief from habeas litigants is a "compelling reason[]" for this Court to accept certiorari review over the jurisdictional questions presented here and in *Wood v. Quick*. *See Castro*,

540 U.S. at 381 (expressing concern about "clos[ing] our doors to a class of habeas petitioners seeking review without any clear indication that such was Congress' intent").

Presented with evidence of the catch-22 in which the court of appeals' outlier transfer procedure for adjudicating Rule 60(b) motions in habeas cases placed Mr. Wood by also refusing jurisdiction over his appeal of the district court's Rule 60(b) decision, the court of appeals in *Wood v. Quick* brushed aside Mr. Wood's statutory, rule-based, and constitutional concerns. It relied on *Castro* for the proposition that "[section] 2244(b)(3)(E)'s prohibition only applies where the subject of a petition for further review is the denial of authorization," and presumably would not prevent Mr. Wood from further appealing an adverse decision in the *In re: Tremane Wood* proceedings below. Appendix to Petition for Writ of Certiorari at 002a, *Wood v. Quick*, No. 23-7066 (U.S. Mar. 21, 2024). But the narrow question before this Court in *Castro* was whether the petitioner's motion to vacate under § 2255 was his first or second such motion. 540 U.S. at 380 (specifying that "[t]he 'subject' of Castro's petition [for certiorari] . . . is the lower courts' refusal to recognize that this § 2255 motion is his first, not his second."). In light of that narrow question, it was straightforward for this Court to conclude that the "subject" of Castro's certiorari petition was not the denial of authorization to file a second-or-successive § 2255 motion.

Here, by contrast, the decision below resulted from the district court transferring to the court of appeals by way of § 1631 what it explicitly construed as a

second-or-successive habeas petition requiring authorization under § 2244(b). That renders the facts here materially different from those in *Castro*, where this Court had no occasion to address whether § 2244(b)(3)(E) removes this Court's jurisdiction to review a certiorari petition where the "subject" is the court of appeals' denial of a motion to remand an unauthorized second-or-successive habeas petition transferred by the district court under § 1631.

This Court's certiorari review is needed to resolve the "important matter[s]" implicated in this procedurally unique death penalty case where the stakes couldn't be higher. Sup. Ct. R. 10(a).

CONCLUSION

This Court should grant the petition.

Respectfully submitted: May 9, 2024.

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