

ORIGINAL

U.S. No. 23A926
23-7747

IN THE SUPREME COURT OF THE UNITED STATES

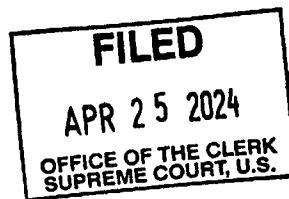
Keith Hager,

Petitioner.

Vs.

United States of America,

Respondent.



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

Mr. Keith Hager
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Terre Haute, IN 47802

Petitioner Keith Hager, pro-se.

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QUESTION PRESENTED

1. Does Federal Civil Rule 60(b)(6) empower the judiciary to correct a conviction and ensuing sentence for conduct not criminalized by the statute in question?

PARTIES TO THE PROCEEDING

The parties to the proceeding are listed in the caption.

RELATED PROCEEDINGS

- A. *United States v. Keith Hager*, 1:11-CR-00143-LRR-11, United States District Court, Northern District of Iowa.
- B. *United States v. Keith Hager*, 609 Fed. Appx. 355 (8th Cir. 2015), *cert. denied*, 136 S. Ct. 2031 (2016).
- C. *Keith Hager v. United States*, 1:17-cv-00060-LRR-MAR, United States District Court, Northern District of Iowa.

JURISDICTION

This Honorable Court's jurisdiction is invoked under United States Constitution, Article III, Title 28 U.S.C. § 1254, and Supreme Court Rule 10.

This petition seeks review of the October 23, 2023, order of the Eighth Circuit Court of Appeals in Case No. 23-2823. A timely petition for rehearing, with suggestion for rehearing *en banc* was filed, and denied on December 14, 2023. On March 3, 2024, Justice Kavanaugh granted Petitioner Hager an extension of time, until May 12, 2024, to file this petition. The petition was timely received; rendering this Court's jurisdiction proper.

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TABLE OF AUTHORITIES

A. Cases:

1. *Bittner v. United States*, 143 S. Ct. 713 (2023) 14
2. *Crosby v. United States*, 506 U.S. 255 (1993) 14
3. *Dubin v. United States*, 143 S. Ct. 1557 (2023) 14
4. *United States v. Beggerly*, 524 U.S. 38 (1998) 14

B. Statutes:

1. Title 21 U.S.C. 841(a)(1)
2. Title 21 U.S.C. 846
3. Title 21 U.S.C. 860
4. Title 28 U.S.C. § 2255
5. Title 28 U.S.C. § 2253

C. Rules:

Federal Rule of Civil Procedure 60 (b)

D. Constitutional Provision(s):

1. United States Constitution, Amendment V: "No person shall be ... deprived of life, liberty, or property, without due process of law ..."

STATEMENT OF THE CASE AND FACTS

1. Petitioner Hager was indicted by a federal grand jury for allegedly violating Title 21 U.S.C. §§ 846, 841(a)(1), (b)(1)(A), 860. *See* Appendix A.
2. Hager entered a guilty plea, thereby being convicted under Title 21 U.S.C. §§ 846, 841(a)(1), (b)(1)(B), 860, referenced in Appendix B.
3. Due to the provisions of Title 21 U.S.C. § 860, Hager received a sentence twice as severe as what would be imposed for a violation of section 846 alone. Appendix C.
4. Hager contested the legitimacy of his guilty plea via Title 28 U.S.C. § 2255 review, arguing it was not made knowingly, intelligently, and voluntarily due to ineffective legal representation, detailed as follows:
 - A. Hager was unaware at the time of his plea that guilt required an existing agreement to commit an offense within 1,000 feet of a school under Title 21 U.S.C. § 841(a)(1).
 - B. He was also unaware that the charges failed to present a legally recognizable offense, as they claimed a violation of Title 21 U.S.C. § 860, predicated on a violation of section 846. Appendix D.

5. The district court rejected Hager's appeal, stating the indictment did outline a legally valid offense under Title 21 U.S.C. § 860, based on a violation of section 841(a)(1). Appendix E.
6. Hager later sought to have his conviction overturned through a motion under Federal Civil Rule 60(b)(6), arguing that to serve an eighty-year sentence for an act not criminalized by the convicted statute—specifically, Title 21 U.S.C. § 860 based on section 846—would be unjust. Appendix F.
7. The district court dismissed this motion, concluding that it fell under the category of a legal mistake, thereby limiting its examination to the criteria set out in Federal Civil Rule 60(b)(1). Appendix G.
8. A certificate of appealability was not granted by the district court. *Id.*
9. The Eighth Circuit Court of Appeals also declined to issue a certificate of appealability, including Hager's prompt request for a rehearing and a suggestion for an en banc rehearing. Appendix H.
10. Following these decisions, Hager has promptly filed this petition for a writ of certiorari.

REASONS THIS WRIT SHOULD BE GRANTED

This petition for a writ of certiorari presents a case of exceptional importance that directly engages with the principles underpinning the Court's discretionary review criteria, as articulated in the Supreme Court's Rule 10.

At the heart of this petition lies a critical issue of constitutional significance and profound national concern: Does Federal Civil Rule 60(b)(6) empower the judiciary to correct a conviction and ensuing sentence based on conduct not criminalized by the statute in question? This pivotal question goes beyond mere procedural technicalities, touching the very essence of due process and the integrity of our legal system. It asks how our courts can rectify judicial errors that deeply impact individual freedom and the equitable administration of justice, while also exploring the limits of judicial authority in our constitutional framework.

Petitioner Hager has been subjected to indictment, conviction, and an excessive eighty-year sentence for conspiracy to distribute heroin, a charge predicated on proximity to a protected location, as per Title 21 U.S.C. §§ 846, 841(a)(1), (b)(1)(B), 860. Yet, the unequivocal language of section 860 restricts its application explicitly to offenses under sections 841(a)(1) or 856, excluding any mention of section 846. This omission, under the canon

of *expressio unius est exclusio alterius*, delineates a clear legislative boundary, affirming that Congress, had it intended otherwise, would have explicitly included section 846 within section 860's scope. Consequently, Petitioner Hager finds himself wrongfully convicted and incarcerated for an act not legislatively sanctioned as criminal. This grievous error was upheld by the district court on Title 28 U.S.C. § 2255 review, and further compounded by the denial of relief under Rule 60 (b)(6), and Title 28 U.S.C. § 2253 (c), with the court erroneously equating this miscarriage of justice to a mere mistake of law, thus failing to acknowledge the profound jurisdictional and constitutional violations at play.

This case presents this Honorable Court with an opportunity to affirm the judiciary's role as the guardian of justice, by recognizing Rule 60(b)(6) as a vital tool for correcting grave injustices that betray the core principles of fairness and due process.

The issue before this Court is not just about interpreting a rule of civil procedure but about affirming the judiciary's capacity to rectify errors that undermine the foundation of our legal system. If Rule 60(b)(6) does not offer recourse for unjust convictions, then we must ask ourselves, what legal safeguard does?

This case is a clarion call for the Court to reassert its commitment to justice, equity, and the rule of law, by granting review and rectifying a manifest injustice that challenges the very principles upon which our legal system is founded.

Further supporting review:

A. Profound National Importance and Federal Law Interpretation: This case raises a critical constitutional question that transcends the immediate parties involved. It challenges the judiciary's role in addressing miscarriages of justice where convictions are based on actions not delineated as criminal under the implicated statute. The interpretation of Federal Civil Rule 60(b) (6) in this context not only affects the fair administration of justice but also tests the boundaries of judicial authority and oversight. Such a matter, bearing on the fundamental rights of due process and the integrity of our legal system, undoubtedly constitutes an "important question of federal law" that merits this Court's review.

B. Consistency with Legislative Intent and Jurisdictional Authority: At the heart of this petition lies a question of statutory interpretation and application that impacts the foundational principles of our legal architecture—namely, the separation of powers and the judiciary's

capacity to correct errors that have profound implications for individual liberty. The district court's denial of relief under Rule 60(b) (6), grounded in a narrow and arguably misapplied understanding of law, underscores a broader issue of how courts interpret legislative intent and exercise their jurisdictional authority.

This issue is ripe for clarification by this Court, ensuring a uniform application of the law across all jurisdictions.

C. Rectification of a Manifest Injustice: The petition before the Court exemplifies a rare and compelling circumstance that warrants the exercise of this Court's supervisory power. Petitioner Hager's conviction for conduct not authorized by the governing statute represents a stark injustice that challenges the core values of our legal system. The district court's application of Rule 60(b) (6) fails to address the manifest injustice endured by the petitioner, thereby presenting an exemplary case for this Court's review to reaffirm the principles of equity, fairness, and the proper administration of justice.

D. Ensuring Uniformity and Stability in the Law: The divergent interpretations and applications of Rule 60(b) (6) across different jurisdictions highlight a significant disparity in the legal landscape, necessitating this Court's intervention. By granting certiorari, the

Court has the opportunity to resolve this discrepancy, ensuring that the judiciary acts as a unified guardian of justice, capable of rectifying errors that affect the very fabric of our democracy.

CONCLUSION

This petition embodies the very essence of the criteria established by the Supreme Court for granting certiorari. It presents an opportunity for this Court to address a fundamental issue of federal law that bears on the integrity of our legal system and the rights of individuals. By granting review, this Court can affirm its commitment to justice, equity, and the rule of law, providing necessary guidance to lower courts and ensuring a fair and consistent application of justice across our nation.

RELIEF SOUGHT

Petitioner Hager refreshes his request for a writ of certiorari. Petitioner Hager alternatively moves this Court to enter an order granting this petition, vacating the lower court order, and remanding the case for further consideration, and a decision not inconsistent with:

1. *United States v. Beggerly*, 524 U.S. 38, 47 (1998) (construing Federal Rule 60 (b) as “a coherent whole, [] reserved for those cases of ‘injustices which, in certain instances, are deemed sufficiently gross to demand a departure’ from rigid adherence to the doctrine of *res judicata*”);

2. *Bittner v. United States*, 143 S. Ct. 713 (2023) (applying common canons of statutory construction, including *expressio unius est exclusio alterius*, to limit application of a sentencing provision);
3. *Dubin v. United States*, 143 S. Ct. 1557, 1561 (2023) (holding plain language of statute controlling); *accord Crosby v. United States*, 506 U.S. 255 (1993).

Respectfully submitted,

Mr. Keith Hager, pro-se.

INDEX OF APPENDICES

- A. Appendix A, Indictment, *United States v. Hager*, 1:11-CR-00143-LRR, United States District Court, Northern District of Iowa.
- B. Appendix B, Plea Colloquy, *United States v. Hager*, 1:11-CR-00143-LRR, United States District Court, Northern District of Iowa.
- C. Appendix C, Title 28 U.S.C. § 2255, *Hager v. United States*, 1:17-cv-00060-LRR-MAR, United States District Court, Northern District of Iowa.
- D. Appendix D, Motion to Reopen Judgment, *Hager v. United States*, 1:17-cv-00060-LRR-MAR, United States District Court, Northern District of Iowa.
- E. Appendix E, Order denying Motion to Reopen Judgment, *Hager v. United States*, 1:17-cv-00060-LRR-MAR, United States District Court, Northern District of Iowa.
- F. Appendix F, Order of Eighth Circuit Court of Appeals, denying certificate of appealability, regarding Motion to Reopen Judgment, *Hager v. United States*, 1:17-cv-00060-LRR-MAR, United States District Court, Northern District of Iowa.