

23-7807

No:

ORIGINAL

In the  
Supreme Court of the United States

MARCUS ANTHONY BARNES,

*Petitioner,*

Supreme Court, U.S.  
FILED

JUN 14 2024

OFFICE OF THE CLERK

vs.

UNITED STATES OF AMERICA,

*Respondent.*

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

**PETITION FOR WRIT OF CERTIORARI**

Marcus Anthony Barnes  
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## **QUESTIONS PRESENTED FOR REVIEW**

1. Whether descriptions or summary of evidence, is sufficiently accurate enough to determine a Federal Rule of Civil Procedure 60(b)(1) motion alleging mistakes of factual evidence from a criminal trial record rather than reasonable inferences or direct evidence?
2. Whether the Court of Appeals violated Petitioner Fifth Amendment when it denied Petitioner's C.O.A

**PARTIES TO THE PROCEEDINGS  
IN THE COURT BELOW**

In addition to the parties named in the caption of the case, the following individuals were parties to the case in the United States Court of Appeals for the Eleventh Circuit and the United States District Court for the Northern District of Georgia.

None of the parties is a company, corporation, or subsidiary of any company or corporation.

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**In the  
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MARCUS ANTHONY BARNES,

*Petitioner,*

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**ON PETITION FOR WRIT OF CERTIORARI  
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**PETITION FOR WRIT OF CERTIORARI**

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Marcus Anthony Barnes, ("Barnes") the Petitioner herein, respectfully  
prays that a writ of certiorari is issued to review the judgment of the United  
States Court of Appeals for the Eleventh Circuit, entered in the above-  
entitled cause.

## **OPINION BELOW**

A timely filed Motion for Reconsideration from the Court of Appeals for the Eleventh Circuit, whose judgment is herein sought to be reviewed, *Barnes v. United States*, No. 23-13071 (11th Cir. March 19, 2024), was entered on March 19, 2024, and is reprinted in the separate Appendix A to this Petition.

The opinion of the Court of Appeals for the Eleventh Circuit, whose judgment is herein sought to be reviewed in *Barnes v. United States*, No. 23-13071 (11th Cir. January 29, 2024), was entered on January 29, 2024, and is reprinted in the separate Appendix B to this Petition.

The denial of the request for relief under Fed. R. Civ. Pro. R. 60(b) was denied in the United States District Court for the Northern District of Georgia in *Barnes v. United States*, No: 1:14-cr-0268-SCJ (USDC NDGA August 17, 2023), was entered on August 17, 2023, and is reprinted as Appendix C to this Petition.

## **STATEMENT OF JURISDICTION**

The Judgment of the Court of Appeals was entered on March 19, 2024. The Jurisdiction of this Court is invoked under Title 28 U.S.C. § 1654(a) and 28 U.S.C. § 1254(1).

## **CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES AND RULES INVOLVED**

The Fifth Amendment to the Constitution of the United States provides:

No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

*Id.* Fifth Amendment

Federal Rules of Civil Procedure, Rule 60(b)(1) provides in relevant part:

Federal Rule of Civil Procedure Rule 60. Relief from a Judgment or Order.

(b) Grounds for Relief from a Final Judgment, Order, or Proceeding. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect;

*Id.* Rules of Civil Procedure, Rule 60(b)(1)

Title 21 U.S.C. § 841 provides as follows:

(a) Unlawful acts

Except as authorized by this subchapter, it shall be unlawful for any person knowingly or intentionally –

- (1) to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance; or
- (2) to create, distribute, or dispense, or possess with intent to distribute or dispense, a counterfeit substance.

*Id.* 21 U.S.C. § 841.

Title 18 U.S.C. § 922(g)(1) provides as follows:

- (A) except a licensed importer, licensed manufacturer, or licensed dealer, to engage in the business of importing, manufacturing, or dealing in firearms, or in the course of such business to ship, transport, or receive any firearm in interstate or foreign commerce; or
- (B) except a licensed importer or licensed manufacturer, to engage in the business of importing or manufacturing ammunition, or in the course of such business, to ship, transport, or receive any ammunition in interstate or foreign commerce;

(g) (1) who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

*Id.* 18 U.S.C. § 922(g)(1).

Title 18 U.S.C. § 924(c)(1)(a) provides as follows:

- (A) Except to the extent that a greater minimum sentence is otherwise provided by this subsection or by any other provision of law, any person who, during and in relation to any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime that provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) for which the person may be prosecuted in a court of the United States, uses or carries a firearm, or who, in furtherance of any such crime, possesses a firearm, shall, in

addition to the punishment provided for such crime of violence or drug trafficking crime –

- (i) be sentenced to a term of imprisonment of not less than 5 years;

*Id.* Title 18 U.S.C. § 924(c)(1)(a).

Title 26 U.S.C. § 5861 provides as follows:

It shall be unlawful for any person –

- (a) to engage in business as a manufacturer or importer of, or dealer in, firearms without having paid the special (occupational) tax required by section 5801 for his business or having registered as required by section 5802; or
- (b) to receive or possess a firearm transferred to him in violation of the provisions of this chapter; or
- (c) to receive or possess a firearm made in violation of the provisions of this chapter; or
- (d) to receive or possess a firearm which is not registered to him in the National Firearms Registration and Transfer Record; or
- (e) to transfer a firearm in violation of the provisions of this chapter; or
- (f) to make a firearm in violation of the provisions of this chapter; or
- (g) to obliterate, remove, change, or alter the serial number or other identification of a firearm required by this chapter; or
- (h) to receive or possess a firearm having the serial number or other identification required by this chapter obliterated, removed, changed, or altered; or

- (i) to receive or possess a firearm which is not identified by a serial number as required by this chapter; or
- (j) to transport, deliver, or receive any firearm in interstate commerce which has not been registered as required by this chapter; or
- (k) to receive or possess a firearm which has been imported or brought into the United States in violation of section 5844; or
- (l) to make, or cause the making of, a false entry on any application, return, or record required by this chapter, knowing such entry to be false.

*Id.* Title 26 U.S.C. § 5861.

Title 28 U.S.C. § 2255 provides in relevant part:

- (a) A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.

*Id.* Title 28 U.S.C. § 2255.

## **STATEMENT OF THE CASE AND FACTS**

### **I. Course of Proceedings in the Rule 60(b) Motion Before the Lower Court**

On March 8, 2016, in the 11th Circuit District Court for the Northern District of Georgia, Case No. 1:14-cr-268, the petitioner was found guilty by a jury on an indictment of four counts charging violations of 18 U.S.C. §

922(g)(1), 18 U.S.C. § 924(c)(1)(A)(i), 21 U.S.C. § 841(a)(1), and 26 U.S.C. § 5861(d). On February 8, 2016, the District Court entered judgment, and the petitioner was sentenced to 360 months: 300 months for 21 U.S.C. § 841(a)(1), 60 months for 18 U.S.C. § 924(c) to run consecutive with the 300 months, and 120 months for both 18 U.S.C. § 922(g) and 26 U.S.C. § 5861(d) to run concurrent to the 360 months.

Shortly after, Barnes appealed to the Eleventh Circuit Court of Appeals, and the judgment was affirmed on October 30, 2018. See, *United States v. Barnes*, 740 Fed. Appx. 980 (11th Cir. 2018).

On October 3, 2019, Barnes filed a *pro se* Motion to Vacate the Sentence (Title 28 U.S.C. § 2255) alleging ineffective assistance of counsel. On April 30, 2020, that motion was denied in District Court. (App. K *Barnes v. United States*, 1:14cr0268 (NDGA 2020) 28 U.S.C. § 2255 Denial Order). Shortly after, Barnes applied for a Certificate of Appealability (“C.O.A.”) in the Eleventh Circuit Court of Appeals which was denied on September 15, 2020. A petition for a writ of certiorari was denied on June 1, 2021. See *United States v Barnes*, 141 S. Ct. 2584 (2021).

On April 8, 2021, Barnes filed a motion for relief from final judgment under Rule 60(b)(3) and 60(d)(3) alleging that the District Court fabricated

evidence from Barnes' trial record by adopting the Magistrate Judge's Report and Recommendation to deny Barnes' § 2255 motion to vacate. (App. L. *Barnes v. United States*, 1:14cr0268 (NDGA 2020) Dkt. 307 Federal Rule of Civil Procedure Rule 60(b)(1) Motion). On May 11, 2023, the District Court denied Barne's Rule 60(b)(3) and (d)(3) motions after liberally construing them specifically as a Rule 60(b)(1) motion in the context of mistake, inadvertence, or excusable neglect. (Appendix C *Barnes v. United States*, No: 1:14-cr-0268-SCJ (USDC NDGA August 17, 2023) at p. 9). After Barnes filed a motion for reconsideration that was denied, he then filed for a C.O.A. in the Eleventh Circuit Court of Appeals. (App. M. *Barnes v. United States*, No. 23-13071 Certificate of Appealability filed in the Eleventh Circuit). That request was denied on January 19, 2024. A motion for reconsideration was filed and denied on March 19, 2024. *Id.* (App. A. COA denial).

## **II. Relevant Facts Concerning the Rule 60 Motion and the Denial of the C.O.A. that are Necessary to Understand the Petition**

The relevant facts are contained in the petitioner's motion for C.O.A. During the District Court's ruling on Barnes' Rule 60(b)(3) and (d)(3) motion alleging fraud upon the court, the District Court liberally construed it as a Rule 60(b)(1) motion for mistake, inadvertence, surprise, or excusable

neglect. *Id.* (App. C, Rule 60(b) denial at p. 9). In that context, the mistakes of fact from Barnes' trial record were misstated in the Magistrate Judge's Report and Recommendation, which the District Court adopted:

- 1) That Barnes drove Nikeia Waters' car regularly;
- 2) It was omitted that the illegal items were found in a hidden compartment in Nikeia's car;
- 3) Barnes purchased a safe that was found in the attic of Nikeia's home with his debit card.

(See, App. N. *Barnes v. United States*, 1:14cr0268 (NDGA 2020) Magistrate's Report and Recommendation in Denial of Title 28 U.S.C. § 2255 pp. 6-7).

The District Court reasoned that the Magistrate Judge was accepting all reasonable inferences and credibility determinations made by the jury, citing *Amanzar*, 634 F.3d at 1221. *Id.* (App. C Rule 60(b) denial at p. 14). In regards to the court's finding that Barnes drove the car regularly, Barnes showed that neither the District Court nor Magistrate Judge pointed to any facts in the trial record that a jury could reasonably infer that Barnes drove the car regularly. Barnes submitted the trial transcript pages that the Magistrate Judge cited, where Nikeia Waters testified that Barnes only drove her car sometimes, which is different from "regularly." (App. O. *Barnes v. United*

*States, 1:14cr0268 (NDGA 2020) Doc. 206 Trial TR Testimony of Nikeia Waters at pp. 55, 57-58).*

In regards to the court's omission of the fact that the illegal items were found in a hidden compartment inside Nikeia's car, Barnes submitted trial transcript pages that show the contrary. (See App. P. *Barnes v. United States*, 1:14cr0268 (NDGA 2020) Doc. 205 p. 21 and 52 of 272). In regards to the court's finding that Barnes purchased a safe with his debit card, Barnes presented trial transcript pages showing that the government submitted bank statements and a sales receipt as Government Exhibits 102 and 103 that indicated Nikeia Waters purchased a safe with Barnes's debit card. (*Id.* pp. 189-194). During Barnes' trial, the government asked Nikeia Waters if she purchased a safe, and she denied it, but the government never confronted or asked her for the receipt showing her as the purchaser. Thus, the Government's Exhibits 102 and 103 are undisputed. *Id.* (App. , pp. 60-61 and App. P, pp. 189-194).

In Barnes' C.O.A., he explained that according to the Eleventh Circuit Court of Appeals, a reasonable inference is a suggested conclusion from the sum total of facts without resorting to guesswork or conjecture. To permit a jury to draw an inference of the ultimate fact under these circumstances is to

substitute the experience of logical probability for speculation. See, *United States v. Villegas*, 911 F.2d 623 (11th Cir. 1990). The government's failure to contest its evidence, and Nikeia Waters' denial, fall within guesswork and speculation. Barnes also argued that viewing the evidence in the light most favorable to the government means disbelieving the defense evidence. See, *Cosby v. Jones*, 682 F.2d 1373 (11th Cir. 1982). (*Id.* App. M., *Barnes v. United States*, No. 23-13071 Certificate of Appealability filed in the Eleventh Circuit).

The courts also never applied proper appellate procedural case law that explains the threshold requirements to uphold a conviction. (See *Id.* at pp. 6-8). The courts also overlooked the fact that the only *Clisby* issue that the petitioner raised was in his motion to suppress the claim. (See *Id.* at p. 10). In denying Barnes' C.O.A., the Court of Appeals characterized the District Court's view of the evidence as summaries and descriptions, stating they were substantively accurate. The Court of Appeals did not point to anything in the petitioner's trial record to support the District Court's findings, nor did it point to any case law that shows the petitioner was inaccurate in his argument. The main point to notice is that by calling the District Court's view of the evidence summaries or descriptions, the Court of Appeals is

admitting that the District Court failed to use reasonable inferences and direct evidence.

## **REASONS FOR GRANTING THE WRIT**

**THE COURT OF APPEALS HAS SO FAR DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS AS TO CALL FOR AN EXERCISE OF THIS COURT'S SUPERVISORY POWER.**

## **ARGUMENT**

**I. WHETHER DESCRIPTIONS OR SUMMARY OF EVIDENCE, IS SUFFICIENTLY ACCURATE ENOUGH TO DETERMINE A RULE FEDERAL RULE OF CIVIL PROCEDURE 60(B)(1) MOTION ALLEGING MISTAKES OF FACTUAL EVIDENCE FROM A CRIMINAL TRIAL RECORD RATHER THAN REASONABLE INFERENCES OR DIRECT EVIDENCE?**

The pivotal question in this matter is whether descriptions or summaries of evidence are sufficiently accurate to support a Rule 60(b)(1) motion, which alleges mistakes of factual evidence derived from a criminal trial record, rather than reasonable inferences or direct evidence. Rule 60(b)(1) permits relief from a final judgment or order due to mistakes, inadvertence, surprise, or excusable neglect. In the context of this case, the motion centers on alleged factual errors within the criminal trial record. To warrant relief under this rule, Barnes must demonstrate that the purported mistakes are indeed errors of fact. The distinction between factual errors and reasonable inferences is

crucial. Factual errors pertain to inaccuracies or misrepresentations in the record, such as incorrect data, misquoted testimony, or overlooked evidence. Conversely, reasonable inferences involve the logical conclusions or interpretations drawn from the sum of the total facts by the fact-finder. To establish that descriptions or summaries of evidence are sufficiently accurate to support a Rule 60(b)(1) motion, it must be shown that these summaries reliably and precisely reflect the factual evidence without distortion or omission. The integrity of these descriptions is essential in distinguishing factual errors from inferential reasoning.

In *Thompson v. Bell*, 545 U.S. 794 (2005), this court held that *factual* mistakes warrant relief under Rule 60(b)(1) if they constitute clear errors that affected the outcome of the trial. This case emphasizes the necessity of distinguishing between clear factual errors and mere disputes over the interpretation of evidence. See also, *Pioneer Investment Services Co. v. Brunswick Associates Ltd. Partnership*, 507 U.S. 380 (1993) (While this case principally addresses excusable neglect, it also provides valuable context for interpreting Rule 60(b)(1). It underscores the necessity for courts to exercise their discretion in determining the appropriateness of relief, considering the unique circumstances of each case, including the nature of the alleged mistake.) In

*Gonzalez v. Crosby*, 545 U.S. 524 (2005) the Court clarified that Rule 60(b)(1) motions must be distinguished from habeas corpus petitions, underscoring the importance of identifying genuine mistakes of fact rather than merely rearguing points of law or evidence that have already been considered.

*Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847 (1988) clarified that relief under Rule 60(b) is appropriate where there is a clear error affecting substantial rights. This case supports the argument that significant factual mistakes in the trial record warrant correction to uphold the integrity of the judicial process. Finally, in *United States v. Beggerly*, 524 U.S. 38 (1998) the Court noted that Rule 60(b) motions must be based on extraordinary circumstances that justify relief. This underscores the need for clear and indisputable evidence of factual mistakes, as opposed to subjective disagreements over the interpretation of evidence. The accuracy of descriptions or summaries of evidence is critical in ensuring that Rule 60(b)(1) motions are based on factual errors rather than reasonable inferences. This distinction impacts the administration of justice by preventing the misuse of Rule 60(b)(1) as a tool for re-litigating issues that have been decided based on reasonable inference of evidence.

Here, Barnes' error must be corrected. The evidentiary standards applied in determining the accuracy of evidence summaries play a vital role in maintaining judicial integrity. Courts must ensure that these summaries reflect the actual content of the trial record without embellishment or omission. The accuracy and fidelity of these descriptions are paramount in distinguishing factual errors from inferential reasoning.

**A. Framework for a C.O.A. - Whether the Court of Appeals violated Petitioner Fifth Amendment when it denied Petitioner's C.O.A**

The legal framework unequivocally requires a Certificate of Appealability (C.O.A.) for any appeal arising from the denial of a Rule 60(b) or 60(d) Motion for Relief from a Judgment under 28 U.S.C. § 2254 or § 2255. This mandate was firmly established by the Eleventh Circuit in *Gonzalez v. Secretary, Department of Corrections*, 366 F.3d 1253, 1263 (11th Cir. 2004), which held that post-judgment motions challenging the merits of federal habeas petitions necessitate a C.O.A. Furthermore, in *Perez v. Secretary, Department of Corrections*, 711 F.3d 1263, 1264 (11th Cir. 2013), the court extended this requirement to include appeals from the denial of a Motion for Reconsideration. These decisions underscore the essential nature of a Certificate of Appealability ("C.O.A.") for appeals in post-conviction

proceedings governed by these specific rules. Under 28 U.S.C. § 2253(c)(2), a COA may only be issued if the applicant has made a substantial showing of the denial of a constitutional right. This statutory requirement is critical in determining whether an appeal can move forward.

The Court, in *Buck v. Davis*, 580 U.S. \_\_\_, 137 S. Ct. 759, 197 L. Ed. July 2017 WL 685534, at \*11 (2017), clarified that at the C.O.A. stage, the central question is whether reasonable jurists could debate the district court's resolution of the constitutional claims or whether the issues presented warrant encouragement to proceed further. This principle, as further explained in *Miller-El v. Cockrell*, 537 U.S. 322, 327, 123 S. Ct. 1029, 1034; 154 L. Ed. 2d 931 (2003), ensuring that only claims with potential for legitimate legal debate advance in the appeals process. When addressing procedural rulings, the standard for obtaining a C.O.A. requires a showing that encompasses both the procedural and underlying constitutional issues. Barnes has shown both prongs. This dual requirement was articulated in *Slack v. McDaniel*, 529 U.S. 473, 484, 120 S. Ct. 1595, 1604, 146 L. Ed. 2d 542 (2000), where the Court determined that an applicant must demonstrate that reasonable jurists could debate both whether the petition states a valid claim of the denial of a constitutional right and whether the district court's procedural ruling was correct.

Specifically, in the context of a C.O.A. request following the denial of Rule 60(b) or Rule 60(d) motion, the inquiry centers on whether a reasonable jurist could conclude that the district court abused its discretion in refusing to reopen the judgment. See *Davis* at 777. This is crucial in ensuring that the denial of post-judgment relief undergoes meaningful appellate review, thereby safeguarding Barnes' constitutional rights against procedural and substantive errors made by the lower courts.

**B. Impact on Future Cases is of Utmost Importance to Create a National Standard**

A decision on this matter will not only impact Barnes' immediate case but will also influence countless future cases where parties seek relief under Rule 60(b)(1) due to alleged factual errors. By granting certiorari, the Supreme Court will underscore the importance of maintaining accurate trial records applying proper trial factual statements, and maintaining proper administration of justice, thereby fortifying the integrity of the judicial system nationwide.

In conclusion, the determination hinges on the accuracy and fidelity of the evidence descriptions. A Rule 60(b)(1) motion alleging mistakes of factual evidence should prevail if it is demonstrated that the evidence summaries are

indeed flawed, thus constituting mistakes of fact rather than legitimate inferences or direct evidence. Barnes met that threshold. Granting a writ of certiorari in this case will establish vital legal standards with far-reaching national implications, ensuring consistency and fairness in the application of Rule 60(b)(1) across all jurisdictions. This will reinforce the principle that judicial decisions must be based on accurate and reliable factual records, ultimately enhancing the credibility and fairness of the legal system nationwide.

## CONCLUSION

Based on the foregoing, this Court should grant this request for a Writ of Certiorari.

Done this 14, day of June 2024.



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Marcus Anthony Barnes  
Reg. 66185-019  
FCI Lompoc II  
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