

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

LINDSEY KENT SPRINGER,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Federal courts have historically held the equitable authority to remedy a judgment procured by fraud. This Court has stated that such an authority can only be displaced by a clear command of Congress. Does the Antiterrorism and Effective Death Penalty Act (AEDPA), which gives no mention of a court's inherent authority, clearly command a limitation on a court's traditional power to grant relief when a criminal judgment has been procured by fraud?

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PETITION FOR A WRIT OF CERTIORARI

Petitioner, Lindsey Kent Springer, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Tenth Circuit in this case.

DECISION BELOW

The opinion of the court of appeals (App. A) is available in electronic databases at *United States v. Springer*, 875 F.3d 968 (10th Cir. 2017). The order of the district court denying Mr. Springer's fraud-on-the-court motion is unreported and unavailable in electronic databases, but that order is attached as App. B.

JURISDICTION

The Tenth Circuit entered judgment in this case on November 13, 2017. No petition for rehearing was filed. Justice Sotomayor has extended the time in which to petition for certiorari to, and including, March 28, 2018, so this petition is timely.

The jurisdiction of this Court rest on 28 U.S.C. § 1254(1).

STATUTORY PROVISION INVOLVED

This petition concerns whether the Antiterrorism and Effective Death Penalty Act (AEDPA) limits a court's inherent equitable authority to remedy a criminal judgment procured by fraud. Specifically, the question is whether 28 U.S.C. § 2255(h)'s second or successive authorization requirements apply to claims of fraud on the court. Section 2255(h) reads as follows:

(h) A second or successive motion must be certified as provided in section 2244 by a panel of the appropriate court of appeals to contain--

(1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense; or

(2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.

28 U.S.C. § 2255(h).

STATEMENT OF THE CASE

Invoking a court's "inherent power...to investigate whether a judgment was obtained by fraud," Mr. Springer filed a motion in the district court seeking to enjoin enforcement of his judgment. Vol. 1 at 79 (citing *Universal Oil Products Co. v. Root Ref. Co.*, 328 U.S. 575, 580 (1946)).¹ The district court rejected Mr. Springer's motion on the merits. *Id.* at 184. Mr. Springer appealed. *Id.* at 185.

On appeal, Mr. Springer argued in his pro se opening brief that the district court erred when it rejected his fraud-on-the-court claim. Op. Br. 20, Jan. 1, 2016. In response, the Government argued that the district court "lacked jurisdiction to entertain the motion." Gov't Br. 2, March 23, 2016. That was so, the Government claimed, because Mr. Springer's motion was actually a second or successive 28 U.S.C. § 2255 motion and Mr. Springer failed to comply with the procedural requirements of § 2255(h). *Id.*

The Tenth Circuit Court of Appeals appointed the Office of the Federal Public Defender to file a supplemental brief addressing the Government's jurisdictional argument. In his supplemental brief, Mr. Springer argued that AEDPA did not limit a court's inherent authority to investigate whether a judgment was obtained by fraud.

¹ Citations to the record are to the one-volume record on appeal filed in the court below.

First, Mr. Springer noted that this Court has long recognized that courts traditionally held the equitable authority to grant relief when a judgment was obtained by fraud. Supp. Br. at 9 (citing *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238 (1944)). Second, Mr. Springer pointed out that this Court has made clear that a court's inherent authority is presumed to exist and can only be displaced by "the clearest command of Congress." Supp. Br. at 5; *McQuiggin v. Perkins*, 569 U.S. 383, 398 (2013). In conclusion, Mr. Springer argued that because § 2255(h) does not expressly limit a court's inherent authority regarding fraudulent judgments, AEDPA could not be said to displace the power. Supp. B. at 8. Accordingly, the district court had jurisdiction to consider his claim on the merits.

The Tenth Circuit rejected Mr. Springer's argument. The court recognized that courts have traditionally held the power to vacate a judgment procured by fraud. However, § 2255(h) limited that power. According to the court, "the authorization requirement for second or successive motions . . . are clear jurisdictional requirements of AEDPA and cannot be waived." *Springer*, 875 F.3d at 980. "Congress has therefore expressly limited the court's inherent power to hear second or successive petitions for collateral relief." *Id.* Under *Springer*, all collateral attacks on a sentence must comply with the requirements of § 2255(h). Claims of fraud on the court are no exception.

REASONS FOR GRANTING CERTIORARI

The Court should grant certiorari in this case for three reasons. First, this Court has stressed the importance of the inherent power of a court to grant relief when a judgment has been procured by fraud. Any potential erosion of this power is a matter of great significance. Second, the issue has divided the circuits creating a situation where district courts nationwide have different inherent equitable powers. This Court's review is warranted to provide uniformity and ensure that equitable relief is not dependent on an arbitrary factor such as a court's location. Finally, review is warranted because the decision of the Tenth Circuit Court of Appeals conflicts with this Court's previous decisions. This Court has made clear that an inherent power can only be displaced by a clear command of Congress and, contrary to the Tenth Circuit's finding, AEDPA does not contain such a command.

- 1. Any potential limitation on a court's ability to safeguard its own integrity is an important issue deserving of this Court's review.**

In *Springer*, the Tenth Circuit found that the Antiterrorism and Effective Death Penalty Act (AEDPA) limited a court's ability to remedy a judgment procured by fraud. *United States v. Springer*, 875 F.3d 968 (10th Cir. 2017). Specifically, the court held that AEDPA stripped a district court of jurisdiction to hear a fraud-on-the-court claim filed after an initial 28 U.S.C. § 2255 motion is filed. Jurisdiction can only be restored if the movant receives

authorization from the appropriate court of appeals as required under § 2255(h). *Id.* at 980. Section 2255(h) requires that a second or successive motion contain one of the following:

- (1) Newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense; or
- (2) A new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.

28 U.S.C. § 2255(h).

The decision in *Springer* represents an “important question of federal law that has not been, but should be, settled by this Court.” Sup. Ct. R. 10(c). This is so for at least three reasons. First, *Springer* critically erodes a historic equitable power. Federal courts have long possessed the power to grant relief when it is discovered that a judgment was obtained through fraud. *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 246 (1944). This equitable “power is necessary to preserve the integrity of the judicial process.” *Id.* The authority serves to safeguard more than the concerns of any single litigant, but exists to protect “an institution in which fraud cannot complacently be tolerated consistently with the good order of society.” *Id.* Congress can only displace such a historic power of equity by “the clearest command” and this Court does “not lightly assume that Congress has intended to depart from

established principles such as the scope of a court's inherent power." *McQuiggin v. Perkins*, 569 U.S. 383, 398 (2013) (internal citation omitted); *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 313 (1982). Any potential limitation on this inherent and "necessary" power is an important matter deserving of this Court's review.

Second, the issue has the potential to render a district court powerless in the face of egregious, fraudulent conduct. As pertains here, § 2255(h) limits second or successive authorization to motions that contain newly discovered evidence demonstrating innocence. 28 U.S.C. § 2255(h)(1). It is conceivable that in some instances a defendant may be able to demonstrate fraud but be unable to show that he is actually innocent. In such a case, a district court will be incapable of providing relief. The fraudulent judgment will stand. Deciding whether the judicial system can maintain its integrity in the face of such apparent inequity is a significant issue.

Finally, this Court has demonstrated the importance of this issue by granting certiorari in two similar cases. In *Gonzales v. Crosby*, 545 U.S. 524 (2005) this Court granted certiorari in order to decide whether a Fed. R. Civ. P. Rule 60(b) motion had to comply with the second or successive requirements of § 2255(h). Prior to *Crosby*, this Court had granted certiorari in *Abdur'Rahman v. Bell*, 535 U.S. 1016 (2002) to decide the same issue. The Court later denied the grant as improvidently granted. *Abdur'Rahman v. Bell*,

537 U.S. 88 (2002). In his dissent from the denial, Justice Stevens stated that the issue of whether a Rule 60(b) motion had to comply with the second or successive requirements of § 2255(h) was an “important issue that has generated confusion among the federal courts.” *Id.* at 89. For that reason he believed the grant of certiorari should stand.

Neither *Crosby* nor *Abdur’Rahman* is controlling in this case. The test for determining whether a component of the Federal Rules of Civil Procedure was displaced by AEDPA is different from whether an “inherent power” has been displaced by AEDPA.² But *Crosby*, in tandem with *Abdur’Rahman*, demonstrates the importance this Court attaches to question concerning the

² The Federal Rules of Civil Procedure apply in habeas corpus proceedings only “to the extent that [they are] not inconsistent with applicable federal statutory provisions and rules.” *Gonzales v. Crosby*, 545 U.S. 524, 529 (2005) (citing Fed. Rule Civ. Pro. 81(a)(2)). By contrast, a court’s traditional authority is presumed to exist, and that presumption is only overcome if “a statute in so many words, or by a necessary and inescapable inference, restricts the court’s authority in equity.” *Amoco Production Co. v. Village of Gambell, Alaska*, 480 U.S. 541, 542 (1987). As the Eighth Circuit Court of Appeals has succinctly detailed, different standards apply for motions claiming fraud under Fed. R. Civ. P. Rule 60(b) and motions invoking a district court’s inherent authority to provide relief for a judgment procured by fraud. *United States v. Smiley*, 553 F.3d 1137, 1144-45 (8th Cir. 2009). An exercise of a court’s inherent power “is justified only by the most egregious misconduct directed to the court itself, such as bribery of a judge or jury or fabrication of evidence by counsel....” *Id.* (citing *Greiner v. City of Champlin*, 152 F.3d 787, 789 (8th Cir.1998)).

limitations of a court's authority. There is no meaningful distinction between the importance of the issue presented in *Crosby* and *Abdur'Rahman* and the issue presented here. If anything, the issue here is more important in that it concerns a limitation on a court's inherent authority rather than a grant of authority provided by the Federal Rules of Civil Procedure. For these reasons, Mr. Springer respectfully requests that this Court grant his petition.

2. Federal courts of appeals are divided over the scope of a court's ability to remedy a judgment procured by fraud.

The decision in *Springer* solidifies the divide among circuits concerning AEDPA's impact on a court's inherent equitable authority. In *Springer* the Tenth Circuit reaffirmed its position that a claim of fraud on the court must comply with the requirements of 28 U.S.C. § 2255(h). *United States v. Springer*, 875 F.3d 968 (10th Cir. 2017) (upholding *United States v. Baker*, 718 F.3d 1204 (10th Cir. 2013)). Under Tenth Circuit case law a court lacks jurisdiction to act when presented with fraud unless second or successive authorization is first received. As detailed above, this will likely be an impossible task unless the petitioner can simultaneously prove actual innocence.

Notably, the Tenth Circuit has held that a court can exercise its inherent power to correct a judgment procured by fraud sua sponte. That inherent authority, according to the Tenth Circuit, continues after the passage of

AEDPA. *United States v. Williams*, 790 F.3d 1059, 1079 (10th Cir. 2015). This means that a court has jurisdiction to remedy a judgment procured by fraud but only if it does so without “considering claims or evidence” presented in a motion alleging fraud. *Id.* at 1075.

By direct contrast, the Sixth Circuit Court of Appeals has found unanimously en banc that “cases of fraud upon the court are excepted from the requirements of 28 U.S.C. § 2244.” *Workman v. Bell*, 227 F.3d 331, 335 (6th Cir. 2000). While the court was evenly split on whether the defendant had demonstrated actual fraud, both opinions agreed that the court had jurisdiction to consider a “fraud upon the court” claim despite the passage of AEDPA. *Id.* at 335, 342; *see also Crehore v. United States*, 253 F. App’x 547 (6th Cir. 2007) (unpublished) (considering a fraud-on-the-court claim on the merits after an initial § 2255 petition had been filed.). In reaching this decision the court reasoned that a judgment procured by fraud “is inherently unreliable, and therefore satisfies the requirements of [AEDPA] in spirit.” *Workman*, 227 F.3d at 335.

The Seventh Circuit Court of Appeal’s has adopted a similar position. The circuit recognized that the inherent power to cure a judgment obtained by fraud extends into the criminal context and is a vital tool of the courts. *United States v. Bishop*, 774 F.2d 771, 773 (7th Cir. 1985). To be sure, the decision was before the passage of AEDPA, but the court did hold that the inherent

power was in no way restricted by Fed. R. Crim. P. Rule 35(b) which limits the time a court can amend a judgment. *Id.* Indeed, the court reasoned that “it is the power of the court to correct the judgment gained through fraud which is determinative and not the nature of the proceeding in which the fraud was committed.” *Id.* at n. 4.

The Third Circuit Court of Appeals has a disparate take on the matter. In *United States v. Washington*, 549 F.3d 905 (3rd Cir. 2008), the court expressly rejected the holding in *Bishop. Washington*, 549 F.3d at 913. Instead, the court held that the power to remedy a judgment procured by fraud exists solely in the civil context. According to the Third Circuit, federal courts do not have any inherent power “to vacate a criminal sentence based on fraud.” *Id.* at 915. The court found no exceptions.

Finally, while not playing into the split, the Eighth and Fifth Circuit Courts of Appeals have all but asked for this Court’s guidance. Both courts have declined to decide whether “AEDPA has limited a district court’s inherent power to remedy a judgment procured by fraud,” *Fierro v. Johnson*, 197 F.3d 147, 152 (5th Cir. 1999); *United States v. Smiley*, 553 F.3d 1137 (8th Cir. 2009), with the Fifth Circuit noting that the issue is “exceedingly difficult to answer.” *Fierro*, 197 F.3d at 152 . In both *Fierro* and *Smiley* the courts attempted to divine this Court’s position but noted that support could be found for either side of the divide. *Smiley*, 553 F.3d at 1142; *Fierro*, 197 F.3d at 152.

This Court's guidance is needed to fix the circuit conflict and provide needed guidance. Currently, a court's inherent powers arbitrarily depend on geography. A federal court in Wyoming should not have different equitable powers than a court in New Jersey. Nor should defendants receive differing treatment depending on location. *See United States v. Johnson*, 457 U.S. 537, 555 (1982) (articulating the goal of "treating similarly situated defendants similarly."). This Court's review is needed to achieve uniformity.

3. The Tenth Circuit's decision in *Springer* conflicts with this Court's authority.

This Court's review is warranted because *Springer* represents an "important federal question decided in a way that conflicts with relevant decisions of this Court." Sup. Ct. R. 10 (c). This Court has made clear that there is a presumption that Congress acts cognizant of a court's traditional equitable authority and that authority continues to exist even in the face of statutory law. This presumption is only overcome if "a statute in so many words, or by a necessary and inescapable inference, restricts the court's authority in equity." *Amoco Production Co.*, 480 U.S. at 542. If the statute does not expressly limit the equitable authority, or if it is not clear by "a necessary and inescapable inference," "the full scope of that authority is to be recognized and applied." *Porter v. Warner Holding, Co.*, 66 S. Ct. 1086, 1089 (1946).

Moreover, this Court has “resolved ambiguities in the statute or rule at issue in favor of that interpretation which affords a full opportunity for...courts to act in accordance with their traditional practices.” *Hecht v. Bowles*, 321 U.S. 321, 330 (1944). Most recently, this Court reiterated that this Court “will not construe a statute to displace courts’ traditional equitable authority absent the clearest command.” *McQuiggin*, 569 U.S. at 397 (quoting *Holland v. Florida*, 130 S. Ct. 2549 (2010)). The court in *Springer* did not point to any express language limiting a court’s inherent authority nor did it adequately explain how an inescapable inference can be drawn from the language of AEDPA. To that end, this Court’s case law would require a finding in Mr. Springer’s favor.

Instead, the *Springer* court reasoned that because § 2255(h) lists the jurisdictional requirements for second or successive motions, the failure to mention fraud-on-the-court claims meant that such jurisdiction no longer remained. *Springer*, 875 F.3d at 980. This reasoning is problematic for two reasons.

First, it is logically flawed because it assumes what it sets out to prove. The court seems to begin its analysis by assuming that claims of fraud on the court are governed by AEDPA. The court then looked to the language of AEDPA to determine when a court has jurisdiction to consider a second or successive motion. According to the court, because AEDPA instructs that § 2255(h) requires authorization for second or successive motions this means

that “Congress has therefore expressly limited the court’s inherent power to hear second or successive petitions for collateral relief.” *Springer*, 875 F.3d at 980. The court’s conclusion is that AEDPA governs fraud-on-the-court claims.

But this Court has intimated that fraud-on-the-court claims are to be treated differently than other collateral attacks on a conviction. *Calderon v. Thompson*, 523 U.S. 538, 557 (1998). If the inherent equitable authority to remedy a judgment procured by fraud is distinct, and treated differently than other collateral attacks, it does not follow that AEDPA limited this power. In that case claims of fraud on the court would be expected to stand outside the grasp of the statute. AEDPA would only be limiting the jurisdiction of district courts to hear claims that were traditionally governed by habeas law. Without the initial assumption, the Tenth Circuit conclusion does not logically flow.

Second, it is not an inescapable inference that because Congress did not list claims of fraud on the court under § 2255(h) that it intended to deprive a court of jurisdiction over such claims. It can be inferred that the Congressional silence means that a court’s inherent power to set aside a judgment procured by fraud went un contemplated when § 2255 was passed. In other words, the silence supports the inference that Congress had no desire to impact the traditional authority one way or another. It was just not considered.

Equally likely is that the omission of an exception for fraud-on-the-court claims supports the inference that Congress recognized the power and desired

that it continue unencumbered by § 2255(h). By not expressly listing it as a claim that needs authorization from a court of appeals, Congress intended that such claims be remedied in the district court per tradition. All this is to say that it is not a “necessary and inescapable inference” that because such a claim was not mentioned as a basis for an authorization under § 2255(h) that Congress clearly intended to foreclose all claims of fraud on the court arising after an initial § 2255 has been filed. As such, no “clear command” can be found in AEDPA that supports the holding that fraud-on-the-court claims must comply with the authorization requirements of § 2255(h). Accordingly, the decision in *Springer* conflicts with this Court’s previous decisions.

CONCLUSION

For the reasons set forth above, the petition for writ of certiorari should be granted.

Respectfully submitted,

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