

No. _____

In The
Supreme Court of the United States

JAMES KING,

Petitioner,

v.

UNITED STATES OF AMERICA;
DOUGLAS BROWNBACK; TODD ALLEN,

Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

In an earlier decision in this case, *Brownback v. King*, 592 U.S. 209 (2021), the Court “forged a new interpretation” of the Federal Tort Claims Act’s judgment bar, 28 U.S.C. 2676. Pet. App. 21a (Clay, J., dissenting). *Brownback* held that, “despite the absence of subject matter jurisdiction,” a district court order can trigger the judgment bar to foreclose claims against individual federal employees. Pet. App. 21a (Clay, J., dissenting). On remand, the Sixth Circuit applied *Brownback*’s change in procedural law to “ruinous effect,” retroactively barring “King’s *separate* constitutional claims that were still pending on appeal, * * * leaving King with no legal recourse against the federal officers who brutalized him.” *Id.* at 25a (Clay, J., dissenting).

King moved for relief from judgment under Federal Rule of Civil Procedure 60(b)(6), citing the Ninth Circuit’s grant of such relief in the similar change-of-procedural-law case *Henson v. Fidelity National Financial, Inc.*, 943 F.3d 434 (9th Cir. 2019). But the Sixth Circuit ignored *Henson* and denied King relief. As Judge Clay observed in dissent, the decision below created an outcome-determinative split between the circuits. Pet. App. 26a–28a.

King now petitions this Court to hear his case again. This time the question presented is:

Whether a litigant can claim relief from judgment under Rule 60(b)(6) when a change in settled procedural law retroactively vitiates the litigant’s reasonable reliance on the law.

PARTIES TO THE PROCEEDING

Petitioner is plaintiff James King. Respondents are defendants the United States of America, Special Agent Douglas Brownback of the Federal Bureau of Investigation, and Detective Todd Allen of the Grand Rapids, Michigan, Police Department.

RELATED PROCEEDINGS

United States Supreme Court:

King v. Brownback,
No. 22-912 (Oct. 30, 2023);

Brownback v. King,
No. 19-546 (Feb. 25, 2021);

King v. Brownback,
No. 19-718 (Mar. 30, 2020).

United States Court of Appeals for the Sixth Circuit:

King v. United States,
No. 24-1900 (July 10, 2025),
petition for reh'g denied, Sept. 18, 2025;

King v. United States,
No. 17-2101 (Sept. 21, 2022),
petition for reh'g denied, Dec. 19, 2022;

King v. United States,
No. 17-2101 (Aug. 1, 2018),
petition for reh'g denied, May 28, 2019.

United States District Court for the Western District
of Michigan:

King v. United States,
No. 16-cv-343 (Sept. 16, 2024);

King v. United States,
No. 16-cv-343 (Aug. 24, 2017).

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James King petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit.

OPINIONS BELOW

The opinion of the circuit court, Pet. App. 1a, is reported as *King v. United States*, 143 F.4th 705 (6th Cir. 2025). The opinion of the district court, Pet. App 30a, is unreported but available as *King v. United States*, No. 1:16-cv-343, 2024 WL 4609079 (W.D. Mich. Sept. 16, 2024).

JURISDICTION

The Sixth Circuit entered its opinion below on July 10, 2025, and denied King's petition for rehearing on September 18. Petitioner timely files this petition and invokes this Court's jurisdiction under 28 U.S.C. 1254(1).

PROVISION INVOLVED

Federal Rule of Civil Procedure 60(b) provides:

(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;

(2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);

(3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;

(4) the judgment is void;

(5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or

(6) any other reason that justifies relief.

STATEMENT

The government has spent more than a decade evading accountability for the unconstitutional actions of two state-federal task force members: Grand Rapids Police Detective Todd Allen and FBI Special Agent Douglas Brownback. In 2014, these plainclothes officers misidentified, beat, and hospitalized innocent college student James King. Unless this Court steps in again to ensure that Rule 60(b)(6) can accomplish justice, King’s story will end in its miscarriage.

The important legal questions raised here have so confounded the Sixth Circuit that it has now issued three published and divided opinions over six years.¹ At the center of the confusion is the Federal Tort Claims Act’s judgment bar. 28 U.S.C. 2676.

King relied on Sixth Circuit law regarding the application of the judgment bar to waive his FTCA claims and narrow the issues on appeal. The Sixth Circuit blessed King’s understanding of the law, but this Court granted certiorari and changed the law. *Brownback v. King*, 592 U.S. 209 (2021). On remand, the Sixth Circuit retroactively applied *Brownback*’s change in procedural law to trigger the judgment bar and preclude King’s meritorious constitutional claims. This “produce[d] unfair and inefficient

¹ *King v. United States*, 917 F.3d 409 (6th Cir. 2019) (Clay, J., joined by Boggs, J.; Rogers, J., dissenting) (*King 1*); *King v. United States*, 49 F.4th 991 (6th Cir. 2022) (*King 2*) (Rogers, J., joined by Boggs, J.; Clay, J., dissenting); *King v. United States*, 143 F.4th 705 (6th Cir. 2025) (Rogers, J., joined by Boggs, J.; Clay, J., dissenting) (this appeal).

results.” See *King v. Brownback*, 144 S. Ct. 10, 11 (2023) (mem.) (Sotomayor, J., respecting the denial of certiorari).

So King moved for relief from judgment. “Under the Federal Rules of Civil Procedure, Rule 60(b)(6) is a procedural device designed to provide relief in exactly the kind of unjust circumstances that occurred in connection with King’s appeal.” Pet. App. 18a (Clay, J., dissenting). But the Sixth Circuit denied King relief and created a split between itself and the Ninth Circuit: If King had filed his action in a federal court in California, he would have been granted relief. See *Henson v. Fidelity Nat’l Fin., Inc.*, 943 F.3d 434 (9th Cir. 2019). But relief eludes King because he filed his action in a federal court in Michigan.

* * *

1. In 2014, while walking between his two summer jobs, college student King was misidentified as a fugitive by Allen and Brownback—plainclothes members of a state-federal police taskforce. Without identifying themselves, the men accosted King. Though he initially complied, when Allen removed King’s wallet, he believed he was being mugged. King attempted to flee, but the men tackled him to the ground. There, Allen choked King unconscious and savagely beat King’s head and face with his fists. Like King, onlookers believed that the men were violent criminals and called 911. Only once uniformed police arrived did it become clear to King, however, that the shabbily dressed men were, in fact, police. Pet. App. 19a–20a.

After being released from the hospital, where he was handcuffed to his bed, King was jailed, charged, and tried for several felonies. A jury acquitted King for the horrifying ordeal. Pet. App. 20a.

2. King filed this lawsuit in 2016, asserting constitutional claims against Allen and Brownback under Section 1983 and *Bivens*, as well as claims against the United States under the Federal Tort Claims Act. In 2017, the district court granted the officers qualified immunity and dismissed King’s FTCA claims for lack of subject-matter jurisdiction. Pet. App. 18a.

3. King appealed but narrowed the issues by waiving his FTCA claims to focus exclusively on his constitutional arguments. Based on this waiver, the government argued that the FTCA’s judgment bar² foreclosed King’s constitutional claims on appeal. Pet. App. 20a. But at the time King waived his FTCA claims, binding Sixth Circuit precedent confirmed that an FTCA “dismissal for lack of subject-matter jurisdiction does not trigger the * * * judgment bar.” *Himmelreich v. Fed. Bureau of Prisons*, 766 F.3d 576, 579 (6th Cir. 2014), *aff’d sub nom. Simmons v. Himmelreich*, 578 U.S. 621 (2016); Pet. App. 25a–26a. Indeed, multiple district courts had relied on *Himmelreich* for this rule.³

² 28 U.S.C. 2676 provides: “The judgment in an action under section 1346(b) of this title shall constitute a complete bar to any action by the claimant, by reason of the same subject matter, against the employee of the government whose act or omission gave rise to the claim.”

³ See, e.g., *Ramirez v. Reddish*, No. 2:18-cv-176, 2020 WL 9775788, at *3 (D. Utah Oct. 1, 2020) (“[T]hose claims * * * are

The Sixth Circuit (Clay, J., joined by Boggs, J.) confirmed King’s understanding of circuit law. *Himmelreich* meant what it said and was dispositive: “Because the district court did not reach the merits of Plaintiff’s FTCA claim, the FTCA’s judgment bar does not preclude Plaintiff from pursuing” his constitutional claims. *King 1*, 917 F.3d at 419. The court then held that Allen and Brownback were not entitled to qualified immunity because King had sufficiently alleged that their actions violated clearly established Fourth Amendment law in several ways. King’s constitutional claims could proceed. *Id.* at 422–432.

Judge Rogers dissented on the judgment-bar issue, distinguishing *Himmelreich*, though he acknowledged that its language “precludes the application of the judgment bar to § 1346(b) dismissals.” *King 1*, 917 F.3d at 434–437 (characterizing the language as

not cognizable under the FTCA and, therefore, do not fall within the United States’ limited waiver of sovereign immunity under the FTCA. Courts have consistently ruled that dismissing an FTCA claim for lack of subject matter jurisdiction does not trigger the FTCA’s judgment bar.”); *Lowe v. United States*, No. 5:13-ct-3323, 2017 WL 976930, at *6 (E.D.N.C. Mar. 13, 2017) (“[B]ecause the court dismissed plaintiff’s FTCA action for lack of subject matter jurisdiction on statute of limitations grounds, the court declines to apply the judgment bar to this action.”); *Stout v. United States*, No. 15-cv-379, 2016 WL 7324087, at *6 (W.D. Okla. Dec. 15, 2016) (“[T]he Court has no jurisdiction over Plaintiffs’ FTCA claim. The Court did not issue a judgment on the merits, so the judgment bar will not preclude Plaintiffs’ claims[.]”); *Wagner v. Jones*, No. 13-cv-771, 2014 WL 12783020, at *5–6 (D.N.M. Dec. 8, 2014) (“These courts hold that the dismissal of an FTCA claim for jurisdictional reasons cannot have a preclusive effect on any future constitutional claim because such a dismissal cannot constitute an FTCA judgment.”) (all citing *Himmelreich*, 766 F.3d at 579–580).

dictum). But see *supra* note 3 (listing district court decisions citing *Himmelreich* to preclude the application of the judgment bar to such dismissals).

4. Before King’s case could proceed on remand, this Court granted certiorari and decided *Brownback v. King*, 592 U.S. 209 (2021). Its decision “reversed [the Sixth Circuit’s] prior ruling and forged a new interpretation of the FTCA judgment bar, holding that despite the absence of subject matter jurisdiction, the District Court order was a judgment on the merits of King’s FTCA claims that can trigger the judgment bar.” Pet. App. 21a (Clay, J., dissenting) (cleaned up). Even so, the Court left open whether the judgment bar *did* apply to King’s constitutional claims since they were brought in the same action as his FTCA claims. *Brownback*, 592 U.S. at 215 n.4. And Justice Sotomayor wrote separately to note that the potential application of the judgment bar to constitutional claims pending in the same action was “seemingly unfair” and “merit[ed] far closer consideration than it has thus far received.” *Id.* at 219–223 (Sotomayor, J., concurring).

5. On remand, the divided panel (Rogers, J., joined by Boggs, J.) applied the judgment bar to King’s constitutional claims. *King 2*, 49 F.4th at 1000 (Clay, J., dissenting). While this Court had held in *Brownback* that the judgment bar “could” apply, the Sixth Circuit held that it did—“follow[ing] outdated law” from the two-decade-old decision in *Harris v. United States*, 422 F.3d 322 (6th Cir. 2005).⁴

⁴ Compare *King 2*, 49 F.4th at 993 (Rogers, J., joined by Boggs, J.) (“The three Supreme Court cases cited by plaintiff are

Judge Clay “strongly dissent[ed],” proclaiming the majority’s holding “a profound and frightening miscarriage of justice.” *King 2*, 49 F.4th at 1000. He argued:

That federal officers who refuse to identify themselves can spontaneously, and unprovoked, beat an individual nearly to death and be entirely free from civil liability simply because the individual chooses *not* to waste judicial resources on a frivolous appeal is not compatible with notions of an ordered and civilized society.

Ibid.

6. This Court declined to grant certiorari the second time around, though Justice Sotomayor wrote separately again. This time she observed the unfairness of the actual—not just potential—outcome. *King v. Brownback*, 144 S. Ct. 10, 11 (2023) (mem.) (Sotomayor, J., respecting the denial of certiorari). The Sixth Circuit applied the judgment bar to snuff out King’s meritorious constitutional claims “solely

Simmons v. Himmelreich, 578 U.S. 621 (2016), *Will v. Hallock*, 546 U.S. 345 (2006), and *Brownback*, but none of those cases can be considered as having overruled our decision in *Harris*.”), with *id.* at 999 (Clay, J., dissenting) (“Reading *Will*, *Simmons*, and *Brownback* together leads to the unmistakable conclusion that the FTCA’s judgment bar should be applied as would common law claim preclusion[.] * * * Because the holding in *Harris* is the opposite of what common law claim preclusion demands, the case is inconsistent with subsequent Supreme Court instruction[.]”).

because he brought them together with his FTCA claim, which was dismissed for unrelated reasons.” *Ibid.*

7. Responding to these extraordinary and unjust circumstances, King filed a motion for relief from judgment under Rule 60(b)(6). He sought to amend his complaint to strike the FTCA counts so he could proceed with his constitutional claims. Fed. R. Civ. P. 60(b)(6). The district court, however, construed King’s Rule 60(b)(6) motion as one under Rule 60(b)(1) for “mistake, inadvertence, surprise, or excusable neglect,” Fed. R. Civ. P. 60(b)(1), and dismissed it as untimely because, unlike a motion under Rule 60(b)(6), one under Rule 60(b)(1) must be brought within one year of the judgment.⁵ Pet. App. 22a, 40a–47a; Fed. R. Civ. P. 60(c)(1).

8. King appealed to the Sixth Circuit again. Citing the district court’s inconsistency with the Ninth Circuit’s decision in *Henson*, King argued that the district court was wrong to recharacterize his motion and that its ruling implicated a circuit split. But the divided panel (Rogers, J., joined by Boggs, J.) ignored *Henson* too and affirmed the district court’s

⁵ The district court entered its judgment in this case on August 24, 2017. See Pet. App. 182a. So, as a practical matter, King could not have brought a motion on the basis of “mistake, inadvertence, surprise, or excusable neglect,” Fed. R. Civ. P. 60(b)(1), within one year of the judgment because Sixth Circuit law supported his position at that time, as the Sixth Circuit held in this case. *King 1*, 917 F.3d at 419. Thus, there was no arguable mistake until the Sixth Circuit extended *Brownback* to bar King’s claims on September 21, 2022—more than five years after the district court’s judgment. *King 2*, 49 F.4th at 992.

recharacterization of King’s motion as one claiming “mistake” under Rule 60(b)(1) and, thus, untimely. Pet. App. 10a–17a.

The crux of the Sixth Circuit’s conclusion was based on the premise that “[t]here was no clearly established and well-settled law * * * with respect to cases like this one that would permit disregard of the judgment bar when a plaintiff failed in one way or another” to establish subject-matter jurisdiction under the FTCA. Pet. App. 14a. And even though the Sixth Circuit’s decision in *Himmelreich* included “broad language” “that facially provides some support for not applying the judgment bar where the judgment relied on the lack of an element of [the FTCA’s jurisdictional provision] 28 U.S.C. 1346(b)(1) (such as King’s case), *Himmelreich* was not enough to settle or clearly establish such a principle.” *Id.* at 15a–16a.⁶

Judge Clay dissented again. As he explained, “[a]t the time of King’s appeal, it was well-established that the FTCA’s judgment bar did not apply to his [constitutional] claims since his FTCA claims were dismissed for lack of subject matter jurisdiction.” Pet. App. 25a (citing *King 1*, 917 F.3d at 419; *Himmelreich*, 766 F.3d at 579). It was only when “*Brownback* * * * upended this rule” that the law changed. *Id.* at 23a. Judge Clay also noted that the panel decision conflicts with Ninth Circuit law, which “confronted a similar case of intervening law in *Henson*[.]” *Id.* at

⁶ But see, e.g., *King 1*, 917 F.3d at 419; *Stout*, 2016 WL 7324087, at *6 (both relying on *Himmelreich*, 766 F.3d at 579–580, to hold that the judgment bar does not apply when FTCA claims were dismissed for lack of subject-matter jurisdiction).

26a. In *Henson*, the Ninth Circuit “determined that the circumstances were sufficiently extraordinary that granting the plaintiffs’ Rule 60(b)(6) motion was appropriate to accomplish justice.” *Id.* at 27a (citing *Henson*, 943 F.3d at 455) (cleaned up). King, Judge Clay explained, is “[l]ike the plaintiffs in *Henson*[.]” *Id.* at 28a. Thus, the courts “should not fault King for his lack of clairvoyant abilities, especially after his attempt to narrow the scope of issues on appeal and conserve judicial resources.” *Ibid.*; see also *id.* at 29a (“[T]he balance of interests clearly favors granting King’s Rule 60(b)(6) motion[.]”).

King now petitions this Court to resolve the split between the Sixth and Ninth Circuits and restore uniformity to the law.

REASONS FOR GRANTING THE PETITION

Nearly 80 years ago, the Court explained that Rule 60(b)(6) “vests power in courts adequate to enable them to vacate judgments whenever such action is appropriate to accomplish justice.” *Klapprott v. United States*, 335 U.S. 601, 614–615 (1949). The Ninth Circuit holds that Rule 60(b)(6) can provide relief when—as in King’s case—a change in settled procedural law retroactively vitiates a party’s otherwise reasonable reliance on the law. See *Henson v. Fidelity Nat’l Fin., Inc.*, 943 F.3d 434, 448 (9th Cir. 2019); Pet. App. 26a (Clay, J., dissenting). But as explained by Judge Clay in dissent below, the Sixth Circuit holds that Rule 60(b)(6) does not provide relief for such changes in procedural law. Pet. App. 27a–28a.

The result of the split is dispositive here, Pet. App. 18a, 22a–28a (Clay, J., dissenting), and this is a good vehicle to resolve the split. The Court should grant the petition to address this important issue and restore uniformity and reliability to the law.

I. There is a circuit split over the application of Rule 60(b)(6) to changes in procedural law.

Federal Rule of Civil Procedure 60(b) provides courts the power to grant relief from final judgments under certain circumstances. These include “excusable neglect, newly discovered evidence, fraud, or the void or prospectively inequitable status of a judgment.” *BLOM Bank SAL v. Honickman*, 605 U.S. 204, 210 (2025) (citing Fed. R. Civ. P. 60(b)(1)–(5)). Rule 60(b)(6) then provides a catchall, permitting a court to reopen a case for “any other reason that justifies relief.” “This last option is only available when Rules 60(b)(1) through (b)(5) are inapplicable,” *Kemp v. United States*, 596 U.S. 528, 533 (2022), and it reserved for “extraordinary circumstances.” *BLOM*, 605 U.S. at 210; Fed. R. Civ. P. 60(b)(6). A change in the law can—but does not necessarily—satisfy these standards. See *Gonzalez v. Crosby*, 545 U.S. 524, 536–537 & n.9 (2005) (addressing unique issues created by applying Rule 60(b)(6) in the habeas context).

But the circuits are split over whether a change in law that retroactively upends a litigant’s reliance on procedural circuit law can support relief under Rule

60(b)(6). The Ninth Circuit holds that it can, but the Sixth Circuit holds it cannot.⁷

A. In the Ninth Circuit, Rule 60(b)(6) permits relief when a change in procedural law vitiates a litigant’s reliance on circuit precedent.

In *Henson v. Fidelity National Financial, Inc.*, the Ninth Circuit held that relief under Rule 60(b)(6) is appropriate when a change in the law upends a litigant’s reliance on circuit precedent establishing a procedural rule. 943 F.3d 434 (9th Cir. 2019).⁸

The plaintiffs in *Henson* attempted to bring a class action over alleged violations of a federal mortgage law, but the district court denied them class certification. 943 F.3d at 440. Settled law in the Ninth Circuit established that the plaintiffs could obtain immediate appellate review of the order denying class certification if they dismissed any active claims with prejudice. *Ibid.* Relying on this settled procedural law, the plaintiffs dismissed their claims on appeal; however, this Court’s ruling in *Microsoft Corp. v. Baker*, 582 U.S. 23 (2017), reversed the Ninth Circuit’s rule “that a stipulated voluntary dismissal of a class action” could create appellate jurisdiction to review an order

⁷ The Tenth Circuit has wrestled with the issue, too, but avoided it by determining that the circuit had never definitively adopted a view on the changed procedural rule at issue. See *Waetzig v. Halliburton Energy Servs., Inc.*, 145 F.4th 1279, 1284 (10th Cir. 2025) (“*Badgerow* resolved a circuit split on an issue on which we had never taken a position.”).

⁸ The following description of *Henson* is taken nearly verbatim from Judge Clay’s opinion below. Pet. App. 26a–27a.

denying class certification. 943 F.3d at 442. Due to this unfavorable, intervening change in the law, the plaintiffs sought relief from judgment under Rule 60(b)(6). *Id.* at 442–443.

The Ninth Circuit explained that assessing a Rule 60(b)(6) motion “predicated on an intervening change in the law” involves “evaluat[ing] the circumstances surrounding the specific motion before the court.” *Henson*, 943 F.3d at 444 (quoting *Phelps v. Alameida*, 569 F.3d 1120, 1133 (9th Cir. 2009)). After balancing several factors, such as the parties’ interest in finality as well as equitable concerns, the Ninth Circuit determined that the circumstances of the case were “sufficiently ‘extraordinary’” that granting the plaintiffs’ Rule 60(b)(6) motion was “appropriate to accomplish justice.” *Id.* at 455 (quoting *Phelps*, 569 F.3d at 1135). Moreover, the Ninth Circuit emphasized that “litigants are entitled to rely on well-established circuit law as to which, at the time of reliance, there was no case pending in the Supreme Court either on a petition for a writ of certiorari or on the merits.” *Id.* at 448. The court elaborated:

Although there is always the possibility that a well-established [law] will be abrogated by the Supreme Court, it is not in this Court’s institutional interest, or that of the litigants before it, to fault lawyers who proceed on the basis that an established procedural rule will remain intact, absent some tangible indication (such as a pending Supreme Court case) that it may not.

Ibid.

While *Henson* involved a “similar case of intervening law,” Pet. App. 26a (Clay, J., dissenting), the Sixth Circuit reached the opposite conclusion in its decision below.

B. In the Sixth Circuit, Rule 60(b)(6) does not permit relief when a change in procedural law vitiates a litigant’s reliance on circuit precedent.

In the decision below, the Sixth Circuit held that relief under Rule 60(b)(6) is inappropriate when a change in the law upends a litigant’s reliance on circuit precedent establishing a procedural rule.⁹

This Court decided *Brownback v. King*, 592 U.S. 209 (2021), in the midst of King’s appeal process, after he had already waived his FTCA claims. This outcome was not foreseeable such that King could have reasonably predicted that waiving his FTCA claims would later be fatal to his separate constitutional claims in the same lawsuit.

At the time of King’s appeal, it was well-established that the FTCA’s judgment bar did not apply to his constitutional claims since his FTCA claims were dismissed for lack of subject-matter jurisdiction. *King 1*, 917 F.3d at 419, rev’d *sub nom. Brownback*, 592 U.S. at 219; *Himmelreich*, 766 F.3d at 579 (“A dismissal for subject-matter jurisdiction does not trigger the § 2676 judgment bar. Put bluntly, in the absence

⁹ The following description of the decision below is also taken nearly verbatim from Judge Clay’s opinion below. Pet. App. 25a–26a.

of jurisdiction, the court lacks the power to enter judgment.”). This means it was perfectly logical for King to narrow the scope of his appeal by waiving his FTCA claims to focus on his constitutional claims, which at the time were incontrovertibly safe from the judgment bar. See *King 1*, 917 F.3d at 418–421.

Still, the decision below misreads King’s actions on appeal as “attorney error” or “strategic miscalculation.” Pet. App. 12a–17a. But this diminishes the effect of *Brownback*. This Court acknowledged the novelty of its decision in *Brownback*, noting that, “[o]rdinarily, a court cannot issue a ruling on the merits ‘when it has no jurisdiction’ because ‘to do so is, by very definition, for a court to act ultra vires.’” 592 U.S. at 218 (quoting *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 101–102 (1998)). Yet this Court held that in certain cases, “a ruling that the court lacks subject-matter jurisdiction may simultaneously be a judgment on the merits that triggers the judgment bar.” *Id.* at 218. This ruling tanked King’s separate constitutional claims. And the decision below effectively punished King for failing to predict that this Court would not only upend the Sixth Circuit’s longstanding interpretation of the judgment bar in the middle of his appeal, but do so by carving out an exception to the longstanding rule that “[o]rdinarily, a court cannot issue a ruling on the merits when it has no jurisdiction[.]” *Ibid.* (cleaned up)

The Sixth Circuit has, nevertheless, held *Brownback*’s novel change in procedural law against King by retroactively barring his meritorious constitutional claims.

II. The split between the Sixth and Ninth Circuits is outcome-determinative in this case, which provides a good vehicle for review.

“Like the plaintiffs in *Henson*, King could not have reasonably foreseen that an intervening decision by the Supreme Court would shatter his reliance on settled law and deprive him of litigating against the * * * officers who beat him nearly to death.” Pet. App. 28a (Clay, J., dissenting). But unlike the plaintiffs in *Henson*, King was denied relief under Rule 60(b)(6). Put simply, had King litigated in California, he would have been granted relief. Because he litigated in Michigan, he was not.

This case is a good vehicle for the Court to address this important issue. King’s case has already come before the Court, where it—not a lower court—changed the law by reversing the Sixth Circuit. There are no messy fact issues about King’s reliance on the settled procedural rule in the Sixth Circuit because it was clear, *Himmelreich*, 766 F.3d at 579–580, and, perhaps more importantly, the Sixth Circuit held that King’s understanding of circuit law was correct, *King 1*, 917 F.3d at 419.

Judge Clay’s dissent illustrates the problems created by the decision below. King’s case presents the same scenario as *Henson*. When he waived his FTCA claims to narrow the issues on appeal, a Sixth Circuit procedural rule provided that the district court’s dismissal of those claims was jurisdictional and therefore could not trigger the FTCA’s judgment bar. *King 1*, 917 F.3d at 418–21; *Himmelreich*, 766 F.3d at 579.

“Like the plaintiffs in *Henson*, King could not have reasonably foreseen that an intervening decision by the Supreme Court” would change the law. Pet. App. 28a (Clay, J., dissenting). And like in *Henson*, King seeks relief under Rule 60(b)(6) merely to allow him to continue litigating independently viable claims that are only barred because of the retroactive application of an unforeseeable change in procedural law.

As Justice Sotomayor explained when this case was last before the Court, the outcome of the Sixth Circuit’s decision is both “unfair and inefficient.” *King*, 144 S. Ct. at 11 (Sotomayor, J., respecting the denial of certiorari). Namely, “James King now cannot litigate his claims that officers unconstitutionally stopped, searched, assaulted, and hospitalized him, even though the Sixth Circuit previously concluded that these claims could proceed to a jury trial.” *Ibid.* (citing *King 1*, 917 F.3d at 421–432). And as Judge Clay warned in dissent, the outcome of this case “is profound and frightening.” *King 2*, 49 F.4th at 1000.

Whatever the outer boundaries of the circumstances that support relief under Rule 60(b)(6) may be, a change in procedural law by this Court that has the effect of retroactively barring otherwise meritorious claims must satisfy the standard. “It is procedure that spells much of the difference between rule by law and rule by whim or caprice.” *Joint Anti-Fascist Refugee Comm. v. McGrath*, 341 U.S. 123, 179 (1951) (Douglas, J., concurring). If litigants cannot rely on binding procedural rules to guide their decisions, they cannot rely on anything at all. The Court should grant certiorari and use this case as a vehicle to address the

proper interpretation of Rule 60(b)(6) to settle the split the Sixth Circuit created with the Ninth Circuit.

CONCLUSION

This Court should grant the petition for a writ of certiorari.

December 17, 2025

Respectfully submitted,

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