No. 25-729

In the Supreme Court of the United States

JAMES KING, PETITIONER

v.

UNITED STATES OF AMERICA, ET AL.

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

BRIEF FOR THE RESPONDENTS IN OPPOSITION

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QUESTION PRESENTED

The question presented in the petition for a writ of certiorari (Pet. i) is as follows:

"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."

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Statutes and rule:

Statutes and rule—Continued: Page

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-29a) is reported at 143 F.4th 705. The opinion of the district court (Pet. App. 30a-48a) is available at 2024 WL 4609079.

JURISDICTION

The judgment of the court of appeals was entered on July 10, 2025. A petition for rehearing was denied on September 18, 2025 (Pet. App. 183a-184a). The petition for a writ of certiorari was filed on December 17, 2025. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. "The United States enjoys sovereign immunity and cannot be sued without its consent." *United States Postal Serv.* v. *Konan*, 146 S. Ct. 736, 740 (2026). The Federal Tort Claims Act (FTCA or Act), 28 U.S.C. 1346(b), 2671 *et seq.*, sets forth a "'limited waiver'" of that immunity,

subject to "enumerated exceptions." *Konan*, 146 S. Ct. at 740 (citation omitted).

The FTCA's waiver of sovereign immunity appears in 28 U.S.C. 1346(b), which grants federal district courts jurisdiction over specified tort claims. A claim comes within that jurisdictional grant—and is "'actionable'" under the FTCA—"if it alleges the six elements of § 1346(b)." *Brownback* v. *King*, 592 U.S. 209, 212 (2021) (citation omitted). Those elements are that the claim be:

> [1] against the United States, [2] for money damages, * * * [3] for injury or loss of property, or personal injury or death [4] caused by the negligent or wrongful act or omission of any employee of the Government [5] while acting within the scope of his office or employment, [6] under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.

28 U.S.C. 1346(b)(1).

"While waiving sovereign immunity so parties can sue the United States directly for harms caused by its employees, the FTCA made it more difficult to sue the employees themselves by adding a judgment bar provision." *Brownback*, 592 U.S. at 212. That provision states: "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." 28 U.S.C. 2676. "'Once a plaintiff receives a judgment (favorable or not) in an FTCA suit,' the bar is triggered, and 'he generally cannot proceed with a suit against an individual employee based on the same underlying facts.'" *Brownback*, 592 U.S. at 212 (brackets and citation omitted).

2. In 2014, petitioner had a "violent encounter" with "officers Todd Allen and Douglas Brownback, members of a federal task force, who mistook [petitioner] for a fugitive." *Brownback*, 592 U.S. at 213; see Pet. App. 51a. Petitioner "sued the United States under the FTCA, alleging that the officers committed six torts under Michigan law." *Brownback*, 592 U.S. at 213. Petitioner also "sued the officers individually under the implied cause of action recognized by *Bivens* v. *Six Unknown Fed. Narcotics Agents*, 403 U.S. 388 (1971), alleging four violations of his Fourth Amendment rights." *Ibid.*

In 2017, the district court entered judgment for the United States and the officers. Pet. App. 143a-182a. The court ruled that petitioner's "FTCA claims failed under [Federal Rule of Civil Procedure] 12(b)(6) because his complaint did not present enough facts to state a plausible claim to relief for any of his six tort claims." *Brownback*, 592 U.S. at 213-214; see Pet. App. 181a. Specifically, the court determined that even if petitioner's allegations were accepted as true, the officers had probable cause to detain him, used "reasonable force" in "subduing" him, and otherwise "acted within their authority." Pet. App. 181a.[1] "The court dismissed [petitioner's] *Bivens* claims as well, ruling that the [officers] were entitled to federal qualified immunity." *Brownback*, 592 U.S. at 214; see Pet. App. 157a-169a.

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[1] The district court also granted summary judgment to the government on petitioner's FTCA claims on the ground that the officers "would have been entitled to state qualified immunity had the Michigan tort claims been brought against them." *Brownback*, 592 U.S. at 213; see *id.* at 219 n.9 (concluding that the district court "did not have the power to issue its summary judgment ruling because that decision was not necessary for the court to 'determine its own jurisdiction'") (citation omitted).

Petitioner "appealed only the dismissal of his *Bivens* claims," so the judgment on his FTCA claims became final. *Brownback*, 592 U.S. at 214. The officers argued that the judgment on his FTCA claims triggered the Act's judgment bar and thus blocked his *Bivens* claims, which concerned the same subject matter. The court of appeals disagreed. Pet. App. 98a-106a. The court characterized the judgment on petitioner's FTCA claims as a dismissal for lack of "subject-matter jurisdiction." *Id.* at 102a. And the court took the view that "[a] dismissal for lack of subject-matter jurisdiction does not trigger the [FTCA's] judgment bar." *Id.* at 100a (quoting *Himmelreich* v. *Federal Bureau of Prisons*, 766 F.3d 576, 579 (6th Cir. 2014) (per curiam), aff'd on other grounds *sub nom. Simmons* v. *Himmelreich*, 578 U.S. 621 (2016)). The court then reversed the dismissal of petitioner's *Bivens* claims, holding that the officers were not entitled to qualified immunity. *Id.* at 106a-130a.

In 2021, this Court reversed the judgment of the court of appeals. *Brownback*, 592 U.S. at 214. The Court agreed that a "judgment must have been a final judgment on the merits to trigger the [judgment] bar." *Ibid.* But the Court concluded that "a judgment is 'on the merits' if the underlying decision 'actually "passes directly on the substance of a particular claim" before the court.'" *Id.* at 215 (citation omitted). And the Court found that the district court "passed on the substance of [petitioner's] FTCA claims" when it "evaluated [those] claims under Rule 12(b)(6) and ruled that they failed for reasons of substantive law." *Id.* at 216-217.

The Court acknowledged that, in finding those claims "implausible," the district court "also determined that it lacked jurisdiction" because, "in the unique context of the FTCA," "a plaintiff must plausibly allege all six FTCA

elements not only to state a claim upon which relief can be granted but also for a court to have subject-matter jurisdiction over the claim." *Brownback*, 592 U.S. at 217-218. This Court nonetheless held that "an on-the-merits judgment can still trigger the judgment bar, even if that determination necessarily deprives the court of subject-matter jurisdiction." *Id.* at 217. The Court therefore concluded that the district court's order was the type of "judgment" that "can trigger the judgment bar." *Id.* at 219. The Court did not reach petitioner's contention that the district court's order nevertheless did not trigger the bar here, where both the FTCA claims and the *Bivens* claims were "raised in the same lawsuit." *Id.* at 215 n.4.

3. On remand, the court of appeals rejected the contention that this Court had not reached. Pet. App. 49a-70a. Relying on circuit precedent, the court held that the "judgment bar applies to other claims brought in the same action, including claims brought under *Bivens*." *Id.* at 50a (citing *Harris* v. *United States*, 422 F.3d 322 (6th Cir. 2005)). The court therefore affirmed the dismissal of petitioner's *Bivens* claims. *Ibid.* This Court denied review. 144 S. Ct. 10 (No. 22-912).

4. In 2023, after the denial of certiorari, petitioner filed a motion in the district court under Federal Rule of Civil Procedure 60(b). D. Ct. Doc. 126 (Nov. 29, 2023). Rule 60(b) provides:

> 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.

Fed. R. Civ. P. 60(b). "A motion under Rule 60(b) must be made within a reasonable time—and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding." Fed. R. Civ. P. 60(c)(1).

In his Rule 60(b) motion, petitioner asserted that he had decided not to appeal the judgment on his FTCA claims as part of a "litigation strategy" aimed at "narrowing his claims on appeal for the sake of judicial efficiency." D. Ct. Doc. 126, at 7. According to petitioner, he believed that the judgment on those claims would not trigger the judgment bar under existing precedent at the time. *Id.* at 13, 19. And he argued that because he could not have "predict[ed]" that this Court would reject that precedent in 2021, *id.* at 7, he should be relieved under Rule 60(b)(6) from the 2017 judgment on his FTCA claims, permitted to amend his complaint to remove those claims, and then allowed to proceed with his *Bivens* claims, *id.* at 25.

The district court denied petitioner's motion. Pet. App. 30a-48a. It relied on two independent grounds.

First, the district court held that the motion was untimely. Pet. App. 41a-43a. Although petitioner had characterized his motion as a Rule 60(b)(6) motion, the court reasoned that the motion was in fact a Rule 60(b)(1) motion because it was based on a "mistake[n]" interpretation of the judgment bar. *Id.* at 41a. The court thus deemed the motion untimely because it was filed more than one year after the court's 2017 order. *Id.* at 42a. The court alternatively reasoned that even if petitioner's motion were considered a Rule 60(b)(6) motion, it was still untimely because it was not filed within a "reasonable" time. *Ibid.* The district court noted that the officers raised the judgment bar in the court of appeals in 2018, this Court rejected petitioner's interpretation of the bar in 2021, and the court of appeals affirmed the dismissal of his *Bivens* claims in 2022. *Id.* at 42a-43a. Finding "[n]othing" that "precluded [petitioner] from concurrently seeking relief under Rule 60(b)" while those appellate proceedings were ongoing, the district court concluded that "[t]he lengthy delay in filing the present motion cannot plausibly be deemed a 'reasonable' amount of time." *Id.* at 43a.

Second, the district court held that even if petitioner had filed his motion "within a 'reasonable' time under [Rule] 60(b)(6)," he had "not established grounds for relief under that subsection." Pet. App. 43a. The court observed that "the reason for his motion under Rule 60(b)" was "a straightforward claim of either attorney error or strategic miscalculation, to wit: [He] decided not to appeal his FTCA claims based on his belief, mistaken or strategic, that the judgment bar would not preclude his *Bivens* claims after the judgment on his FTCA claims became final." *Id.* at 46a. The court explained that "[a]ttorney error and strategic miscalculation simply do not provide proper bases for post-Judgment relief." *Ibid.*

And it rejected petitioner's assertion that this Court's 2021 decision overturned "well-established" precedent that would have allowed his *Bivens* claims to proceed. *Ibid.* (citation omitted).

5. The court of appeals affirmed. Pet. App. 1a-29a. The court recognized that "Rule 60(b)(6) applies only in exceptional and extraordinary circumstances." *Id.* at 13a (citation omitted). It agreed with the district court that "[t]he grounds for relief identified in this case, involving straightforward claims of attorney error and strategic miscalculation, do not satisfy this rigorous standard." *Ibid.* (citation omitted). And it rejected petitioner's contention that, before this Court's 2021 decision in his case, "it was clearly established and well settled (not just arguable) that an adverse judgment for failure to meet the cause-of-action requirement of the FTCA in [Section] 1346(b)(1) does not trigger the judgment bar." *Id.* at 14a. The court of appeals explained that "the premise" of that argument was simply "wrong": "[T]here was no settled law in the circuits or in [this] Court to the effect that an FTCA dismissal on [Section] 1346(b) grounds * * * precluded application of the judgment bar." *Ibid.* The court of appeals therefore found no "abuse of discretion" in the denial of petitioner's Rule 60(b) motion, "without addressing the district court's alternative timeliness rulings." *Id.* at 10a.

Judge Clay dissented. Pet. App. 18a-29a. In his view, this Court's 2021 decision had "retroactively bar[red]" petitioner's *Bivens* claims, creating "the kind of unjust circumstances" that warrant relief under Rule 60(b)(6). *Id.* at 18a.

6. The court of appeals denied rehearing en banc, with only Judge Clay dissenting. Pet. App. 183a-184a.

ARGUMENT

The court of appeals in this case held that the district court did not abuse its discretion in denying petitioner's Rule 60(b)(6) motion, which sought relief from a judgment that petitioner decided not to appeal nine years ago as a matter of "litigation strategy." D. Ct. Doc. 126, at 7. The court of appeals' decision is correct, and it does not conflict with any decision of this Court or another court of appeals. Regardless, this case would be a poor vehicle for this Court's review. The question presented is not implicated here because it rests on the erroneous premise that the Court's 2021 decision in this case "change[d]" the law (Pet. i), when in fact there was no contrary precedent of the Sixth Circuit or this Court at the time petitioner chose not to appeal the FTCA judgment. Moreover, even if the question presented were implicated here, its resolution would not affect the outcome of this case because petitioner's Rule 60(b)(6) motion would be untimely in any event. The petition for a writ of certiorari should be denied.

1. The court of appeals correctly found no abuse of discretion in the denial of petitioner's Rule 60(b) motion. Pet. App. 10a-17a.

"Federal Rule of Civil Procedure 60(b) permits a district court to grant relief from a final judgment in limited circumstances." *BLOM Bank SAL* v. *Honickman*, 605 U.S. 204, 206 (2025). "The Rule includes five provisions setting out specific grounds upon which parties may seek such relief." *Ibid.*; see Fed. R. Civ. P. 60(b)(1)-(5). It "also includes a catchall provision"—Rule 60(b)(6)—"that allows a district court to relieve a party from a final judgment for 'any other reason that justifies relief.'" *BLOM Bank*, 605 U.S. at 206 (citation omitted). This Court has "consistently held that only 'extraordinary cir-

cumstances' can justify relief under the Rule 60(b)(6) catchall." *Ibid.*

The district court did not abuse its discretion in determining that petitioner has not shown extraordinary circumstances here. Pet. App. 43a-48a. As the court correctly observed, petitioner made the concededly "strategic" decision "not to appeal his FTCA claims based on his belief * * * that the judgment bar would not preclude his *Bivens* claims after the judgment on his FTCA claims became final." *Id.* at 46a. That belief proved incorrect: As this Court held in 2021, the district court's judgment on his FTCA claims was a "judgment on the merits" that could "trigger the judgment bar." *Brownback* v. *King*, 592 U.S. 209, 219 (2021). Petitioner's Rule 60(b)(6) motion thus rests on "a straightforward claim of either attorney error or strategic miscalculation." Pet. App. 46a. And such an error or miscalculation does not satisfy Rule 60(b)(6)'s "rigorous standard." *Id.* at 13a (citation omitted); see *Ackermann* v. *United States*, 340 U.S. 193, 198 (1950) (holding that Rule 60(b)(6) cannot be invoked to relieve a litigant of "a considered choice not to appeal" merely "because hindsight seems to indicate to him that his decision not to appeal was probably wrong").

Petitioner does not dispute that attorney error or strategic miscalculation usually does not warrant relief under Rule 60(b)(6). Instead, he argues (Pet. 15) that his case is different because this Court's 2021 decision was "a change in the law" that "upend[ed] [his] reliance on circuit precedent establishing" that "the FTCA's judgment bar did not apply to his [*Bivens*] claims." Specifically, he contends (Pet. 15-16) that the court of appeals' decision in *Himmelreich* v. *Federal Bureau of Prisons*, 766 F.3d 576, 579 (6th Cir. 2014) (per curiam), aff'd on other grounds *sub nom. Simmons* v. *Himmelreich*, 578

U.S. 621 (2016), made clear that the district court's judgment on his FTCA claims would not trigger the judgment bar.

But as the court of appeals correctly recognized, the "fundamental difficulty" with petitioner's argument is that its "premise is wrong." Pet. App. 14a. In *Himmelreich*, the plaintiff's FTCA claim was dismissed because it fell within the "discretionary-function exception," one of the enumerated *non-merits* exceptions to the FTCA set forth in 28 U.S.C. 2680. 766 F.3d at 578. The issue was whether that dismissal triggered the Act's judgment bar, and the court of appeals concluded that it did not. *Id.* at 579. In reaching that conclusion, the court stated that "[a] dismissal for subject-matter jurisdiction does not trigger the [FTCA's] judgment bar." *Ibid.* But the court did not address whether that proposition extended to the quite different type of jurisdictional dismissal at issue here—namely, where the failure to establish the elements of 28 U.S.C. 1346(b) is *also* a merits defect. See *Brownback*, 592 U.S. at 217-219. Rather, the court held only that a judgment based on the "discretionary-function exception" qualifies as the kind of dismissal that does not trigger the bar. *Himmelreich*, 766 F.3d at 578; see Pet. App. 15a ("*Himmelreich* involved the discretionary-function exception, and thus any application of that broad language to the § 1346(b)(1) elements was in a sense dictum."); *Reiter* v. *Sonotone Corp.*, 442 U.S. 330, 341 (1979) ("[T]he language of an opinion is not always to be parsed as though [one] were dealing with a statute.").[2]

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[2] Moreover, while this Court affirmed the court of appeals' judgment in *Himmelreich*, see *Simmons* v. *Himmelreich*, 578 U.S. 621, 627-631 (2016), it did not adopt the decision's reasoning that "district courts lack subject-matter jurisdiction over an FTCA claim when the

The court of appeals therefore correctly determined that, when petitioner decided not to appeal the judgment on his FTCA claims in 2017, "[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." Pet. App. 14a. Indeed, as this Court noted in *Brownback*, at least one circuit had held that the judgment bar applies in similar circumstances. 592 U.S. at 214. Petitioner thus errs in asserting (Pet. 15) that this Court's 2021 decision "change[d]" the law in holding that the judgment on his FTCA claims could trigger the judgment bar. And because there was "no settled law" on the issue when he decided not to appeal the judgment on his FTCA claims in 2017, Pet. App. 14a, his Rule 60(b) motion rests merely on a "straightforward claim of either attorney error or strategic miscalculation," *id.* at 46a, which is not enough to establish "extraordinary circumstances" warranting Rule 60(b)(6) relief, *BLOM Bank*, 605 U.S. at 206. The court of appeals therefore correctly upheld the denial of petitioner's Rule 60(b) motion.

2. Contrary to petitioner's contention (Pet. 12-16), the court of appeals' decision in this case does not conflict with the Ninth Circuit's decision in *Henson* v. *Fidelity National Financial, Inc.*, 943 F.3d 434 (2019). In *Henson*, the plaintiffs filed a putative class action against a defendant, alleging violations of a federal statute. *Id.* at 440. After the district court granted the defendant's mo-

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discretionary-function exception applies," let alone repeat the assertion that "[a] dismissal for subject-matter jurisdiction does not trigger the [FTCA's] judgment bar," 766 F.3d at 579. Instead, this Court affirmed on the ground—plainly inapposite here—that Section 2680 specifies that the "provisions" of Chapter 171 "shall not apply to" any claim that falls within the discretionary-function exception, *Himmelreich*, 578 U.S. at 627 (quoting 28 U.S.C. 2680(a)), and the "judgment bar is a provision of Chapter 171," *ibid.*

tion to dismiss some claims and denied the plaintiffs' motion for class certification on others, the plaintiffs "entered into a detailed, negotiated stipulation of dismissal with [the defendant]." *Ibid.* "Relying on Ninth Circuit precedent that permitted a plaintiff to obtain appellate review of certain interlocutory orders, including an order denying class certification, by dismissing any active claims with prejudice," the plaintiffs "agreed to voluntarily dismiss the case with prejudice so that they could appeal both the district court's denial of class certification and the partial grant of the motion to dismiss." *Ibid.* While the plaintiffs' appeal was still pending, however, this Court in a different case—*Microsoft Corp.* v. *Baker*, 582 U.S. 23 (2017)—"reversed the Ninth Circuit's rule" on which the plaintiffs had relied. *Henson*, 943 F.3d at 442.

After weighing "all the relevant circumstances," the Ninth Circuit in *Henson* held that the plaintiffs were entitled to relief under Rule 60(b)(6) from the stipulated dismissal. 943 F.3d at 455. In so holding, the Ninth Circuit emphasized that, in stipulating to the dismissal, the plaintiffs had "reasonably relied on well-established Ninth Circuit law" before this Court "change[d]" that law "in an unfavorable way." *Id.* at 447; see *ibid.* (observing that this Court had "overrul[ed] precedent, on which Plaintiffs had relied, that was settled in the Ninth Circuit"); *ibid.* (noting the existence of "clear Circuit precedent" at the time of the plaintiffs' stipulation); *id.* at 455 (emphasizing that the plaintiffs had "relied on well-established circuit law").

But as demonstrated above (pp. 10-12, *supra*), when petitioner here decided not to appeal the judgment on his FTCA claims in 2017, there was no "clearly established" or "well-settled" precedent of the Sixth Circuit

or this Court holding that a dismissal for failure to establish the elements of Section 1346(b) would not trigger the FTCA's judgment bar. Pet. App. 14a. This case, unlike *Henson*, therefore does not involve a change in "settled law." *Ibid.* Unlike in *Henson*, moreover, the decision that allegedly changed the law was made in petitioner's own case, not someone else's. Petitioner had the opportunity to present his arguments to this Court before it issued that decision, and he has not identified any case in which a party has been granted Rule 60(b)(6) relief based on an adverse appellate decision in the party's own case. Accordingly, the decision below does not conflict with the decision in *Henson*.

3. In any event, this case would be a poor vehicle for this Court's review. That is so for two separate reasons.

First, the petition for a writ of certiorari frames (at i) the question presented as "[w]hether 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." But the court of appeals in this case did not find that there had been a "change in settled procedural law"—let alone that petitioner had "reasonabl[y] reli[ed]" on such law. *Ibid.* Rather, the court of appeals determined that there was "no settled law" exempting the district court's judgment on his FTCA claims from triggering the judgment bar when petitioner decided not to appeal that judgment. Pet. App. 14a. The decision below therefore does not implicate the question presented in the petition.

Second, the outcome of this case would be the same regardless of this Court's resolution of the question presented. Under Rule 60(c)(1), a Rule 60(b)(6) motion "must be made within a reasonable time." Fed. R. Civ. P. 60(c)(1). The relevant judgment in this case is the dis-

trict court's judgment on petitioner's FTCA claims in 2017, Pet. App. 143a-182a, and the basis for the Rule 60(b)(6) motion is this Court's decision in this case in 2021. Nevertheless, petitioner waited until 2023 to file his motion. D. Ct. Doc. 126. The district court did not abuse its discretion in alternatively holding that petitioner's Rule 60(b)(6) motion is untimely because "[t]he lengthy delay in filing" the motion "cannot plausibly be deemed a 'reasonable' amount of time." Pet. App. 43a. Accordingly, this Court's resolution of the question presented would not be outcome-determinative.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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