No. 26-22

IN THE

Supreme Court of the United States

DOUGLAS B. MOYLAN, ATTORNEY GENERAL OF GUAM,
Petitioner,

—v.—

GUAM SOCIETY OF OBSTETRICIANS AND GYNECOLOGISTS, *et al.*,
Respondents.

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

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the court of appeals correctly dismissed as moot an appeal from the denial of a Rule 60(b)(5) motion seeking relief from an injunction when the enjoined law—a territorial statute—was held to have been repealed in its entirety by the territory's highest court.

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INTRODUCTION

Petitioner asks this Court to review the court of appeals' decision denying his Rule 60(b)(5) motion to vacate a decades-old order that enjoined the enforcement of a 1990 Guam statute that the Guam legislature later repealed through comprehensive statutes regulating abortion.

The petition should be denied because this case is moot. As the Ninth Circuit correctly held, the injunction at issue below has no practical effect as the statute no longer exists, according to the Guam legislature and Guam's high court. There is no Article III case or controversy for this Court to take up. Any merits decision would be purely theoretical. If Petitioner obtained an order vacating the injunction, there would be no statute for him to enforce, as a result of the legislature's repeal.

Even if the case were not moot, the petition does not present any issue worthy of this Court's review. Petitioner fails to point to any conflict between the Ninth Circuit's ruling and the decisions of any other court of appeals. Nor has he identified a conflict between the decision below and any decision of this Court. The lower courts are not divided on how Rule 60(b)(5) works. And even if there were an issue requiring this Court's intervention, this case would be a poor vehicle—not only because it is moot, but also because Petitioner has forfeited his claims.

STATEMENT OF THE CASE

I. THE INITIAL LEGAL CHALLENGE TO THE ACT IN 1990

In 1990, Guam enacted Public Law 20-134 ("the Act"). Subject to limited exceptions, the Act made it a crime for (1) any Guam-licensed physician to provide an abortion; (2) any patient to have an abortion; and (3) anyone to solicit another person to submit to an abortion (the "solicitation provision"). Guam Pub. L. No. 20-134 §§ 3–5. Shortly after the Act became law, a group of plaintiffs—comprised of medical and nursing associations and individuals—filed suit, alleging that the Act violated the First, Fourth, Fifth, Eighth, Ninth, Thirteenth, and Fourteenth Amendments to the United States Constitution; the Organic Act of Guam; and the Guam Equal Rights Statute. *Guam Soc'y of Obstetricians & Gynecologists v. Ada*, 776 F. Supp. 1422, 1426 (D. Guam 1990), *aff'd*, 962 F.2d 1366 (9th Cir. 1992), *as amended* (June 8, 1992).[1] On August 23, 1990, the district court entered summary judgment and permanently enjoined enforcement of the Act. *Guam Soc'y of Obstetricians & Gynecologists*, 776 F. Supp. at 1431. The district court held that the Act violated the Fourteenth Amendment under *Roe v. Wade*, 410 U.S. 113 (1973), as applied to Guam via the Organic Act and independently held that the Act's solicitation provision violated the First Amendment. 776 F. Supp. at 1428–29 & n.9.

Guam's governor appealed, challenging only the district court's Fourteenth Amendment ruling. The

[1] Dr. William Freeman is the sole Respondent in these proceedings as the other plaintiffs are deceased, no longer in existence, or out of contact with counsel.

Ninth Circuit affirmed and this Court denied certiorari. *Guam Soc'y of Obstetricians & Gynecologists v. Ada*, 962 F.2d 1366, 1369, 1374 (9th Cir. 1992), *cert. denied*, 506 U.S. 1011 (1992). In the decades following these decisions, successive Guam legislatures enacted a comprehensive statutory framework regulating abortion in the territory. *See, e.g.*, 9 Guam Code Ann. § 31.20; 10 Guam Code Ann. §§ 3218, 3218.1, 91A101–11; 19 Guam Code Ann. §§ 4A101–11.

II. POST-*DOBBS* RULE 60(B)(5) PROCEEDINGS IN THE DISTRICT COURT

On June 24, 2022, this Court decided *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215 (2022), overturning *Roe v. Wade*. Two sets of legal proceedings followed, one in the Guam Supreme Court and one in federal court.

On January 23, 2023, the Governor of Guam filed a declaratory judgment action in the Guam Supreme Court, seeking a declaration that, *inter alia*, the Act had been impliedly repealed by subsequent acts of the Guam Legislature. *See In re Leon Guerrero*, 2023 Guam 11, ¶ 18 (Guam Oct. 31, 2023).

A little over a week later, Petitioner, citing *Dobbs*, filed a motion pursuant to Federal Rule of Civil Procedure 60(b)(5) in the closed federal district court case to vacate the 1990 injunction and dismiss the case with prejudice. Mot. to Vacate Permanent Inj., *Guam Soc'y of Obstetricians & Gynecologists v. Ada*, No. 90-cv-13 (D. Guam Feb. 1, 2023), Dkt. No. 357; Pet. App. 4a.

Respondent as well as the Governor and Guam Memorial Hospital ("GMH")—Petitioner's co-defendants in the case—opposed dissolving the injunction. The Governor argued, as she had in the Guam Supreme Court, that the Guam Legislature had impliedly repealed the Act. Governor's Opp'n to Rule 60 (b)(5) Mot., *Guam Soc'y of Obstetricians & Gynecologists v. Ada*, No. 90-cv-13, 11–20 (D. Guam Feb. 22, 2023), Dkt. No. 382. She also argued that *Dobbs* did not undermine the district court's holding that the Act's solicitation provision violated the First Amendment. *Id.* at 22–25. GMH's brief focused almost exclusively on the district court's First Amendment holding and the solicitation provision. Def. Perez-Posadas's Opp'n to Rule 60(b)(5) Mot., *Guam Soc'y of Obstetricians & Gynecologists v. Ada*, No. 90-cv-13 (D. Guam Mar. 8, 2023), Dkt. No. 392.

Respondent argued that although *Dobbs* worked a "significant change" in the law, Fed. R. Civ. P. 60(b)(5), Petitioner had failed to show that this change "warrant[ed] revision" of the injunction, *Rufo v. Inmates of Suffolk Cnty. Jail*, 502 U.S. 367, 393 (1992), because the Act "exceeded the 20th Guam Legislature's authority under the Organic Act" when passed. Pl. & Proposed Intervenors' Opp'n to Rule 60(b)(5) Mot. 14, *Guam Soc'y of Obstetricians & Gynecologists v. Ada*, No. 90-cv-13 (D. Guam Mar. 8, 2023), Dkt. No. 391. As a result, the Act was *ultra vires* and "void *ab initio*," and therefore unenforceable notwithstanding the injunction. *Id.* at 17. Respondent also argued that the relief Petitioner sought—dissolution of the injunction—was not suitably tailored to the changed circumstances wrought by *Dobbs* because the Act suffered from numerous

constitutional infirmities, including intrusions on the First Amendment, that were unaffected by *Dobbs*. *Id.* at 24.

The district court then issued an order directing Petitioner to respond to all opposing parties. Order, *Guam Soc'y of Obstetricians & Gynecologists v. Ada*, No. 90-cv-13 (D. Guam Mar. 10, 2023), Dkt. No. 400. Petitioner thereafter filed an eight-page reply brief that responded to the arguments raised by the Governor and GMH. He did not, however, address Respondent's arguments, including Respondent's lead argument that the Act was void *ab initio*. His brief did not mention the phrase "void *ab initio*." Reply in Support of Mot. to Vacate Permanent Inj. 1, *Guam Soc'y of Obstetricians & Gynecologists v. Ada*, No. 90-cv-13 (D. Guam Mar. 22, 2023), Dkt. No. 409.

On March 24, 2023, the district court denied Petitioner's motion. Pet. App. 4a. While the court acknowledged that *Dobbs* was a significant change in law, it concluded that Petitioner had not sustained his burden of "establishing that [such] changed circumstances warrant relief." Pet. App. 7a (citing *Rufo*, 502 U.S. at 393). The court reasoned that, "[b]ased on Defendant AG's lack of response to Plaintiffs' arguments, especially those that did not overlap with the arguments raised by Defendants Governor and GMH Administrator, it is reasonable to presume that Defendant AG takes no position on their arguments or is not contesting them." Pet. App. 6a–7a (citing *Sabra v. Maricopa Cnty. Cmty. Coll. Dist.*, 44 F.4th 867, 881–882 (9th Cir. 2022); *Maciel v. Cate*, 731 F.3d 928, 932 n.4 (9th Cir. 2013)). Specifically, the court noted that Petitioner "ha[d] not refuted" Respondent's void *ab initio* argument. Pet. App. 7a.

The district court "reviewed the relevant statutes and the legal authority provided by [Respondent] in their opposition, to which [Moylan] did not respond," ultimately concluding that Petitioner failed to meet his burden under Rule 60(b)(5). *Id.*

Petitioner never sought leave to file an out-of-time response to Respondent's arguments. Nor did he move for reconsideration.

III. APPELLATE PROCEEDINGS

Petitioner appealed the denial of his motion to vacate the injunction to the Ninth Circuit on April 20, 2023. Notice of Appeal, *Guam Soc'y of Obstetricians & Gynecologists v. Ada*, No. 90-cv-13 (D. Guam Apr. 20, 2023), Dkt. No. 411. On October 31, 2023, before that appeal was fully briefed, the Guam Supreme Court issued its ruling in the Governor's declaratory judgment case, holding that the Act had been impliedly repealed by subsequent acts of the Guam Legislature and therefore "no longer possesses any force or effect in Guam." *In re Leon Guerrero*, 2023 Guam ¶¶ 55, 61. Petitioner sought this Court's review of the Guam Supreme Court's decision, which this Court denied. *Moylan v. Guerrero*, 145 S. Ct. 136 (2024) (mem).

Following this Court's denial of certiorari, the Ninth Circuit called for supplemental briefing to address whether the Guam Supreme Court's judgment that the Act had been repealed rendered Petitioner's appeal moot. Order, *Guam Soc'y of Obstetricians & Gynecologists v. Moylan*, No. 23-15602 (9th Cir. Nov. 7, 2024), Dkt. No. 61. The parties briefed this issue, and on April 28, 2025, the Ninth Circuit dismissed the appeal "as moot in light of *In re*

Leon Guerrero, 2023 Guam 11 (Guam Oct. 31, 2023)." Pet. App. 2a.

The Ninth Circuit thereafter denied Petitioner's request for panel rehearing and rehearing *en banc* with no noted dissents. *Guam Soc'y of Obstetricians & Gynecologists v. Moylan*, 166 F.4th 798, 800 (9th Cir. 2026).

In a separate opinion upon denial of the request for rehearing *en banc*, Judge VanDyke wrote separately to express his views on the "practical effect on the law and culture" that *Roe* continues to have and addressed the mootness issue at length. 166 F.4th at 800 (VanDyke, J., statement respecting denial of rehearing *en banc*) (emphasis omitted). He noted that the panel "correctly concluded" that the Guam Supreme Court's decision "moots Moylan's appeal." *Id.* at 802. "Where there is nothing left of a challenged law to enjoin or declare illegal, further judicial action would necessarily be advisory and in violation of the limitations of Article III." *Id.* (citation modified). Following the Guam Supreme Court's ruling, "even if Moylan prevailed on the merits (and our court instructed the district court to dissolve the permanent injunction), the declaratory judgment of *In re Leon Guerrero* would still completely eliminate Moylan's ability to enforce the now-repealed abortion ban." *Id.* "Thus, 'it is impossible for [our] court to grant any effectual relief whatever to [Moylan],'" making the application of standard mootness principles here "straightforward." *Id.* (alterations in original) (quoting *Decker v. Nw. Env't Def. Ctr.*, 568 U.S. 597, 609 (2013)).

Judge VanDyke further explained that the Ninth Circuit's decision mirrored the Fifth Circuit's approach to a similar case, in which the Fifth Circuit dismissed as moot an appeal from the denial of a Rule 60(b)(5) motion where the underlying statutes had similarly been repealed by implication. *Id.* at 802–03 (citing *McCorvey v. Hill*, 385 F.3d 846 (5th Cir. 2004)). Indeed, as Judge VanDyke reasoned, "[t]he case for mootness is, if anything, even stronger here than it was in *McCorvey*," because no state courts in *McCorvey* had concluded that the law there had been repealed by implication. *Id.* at 803. Here, by contrast, "the Guam Supreme Court unambiguously declared, under Guam law, that Public Law 20-134 'has been impliedly repealed by the Guam Legislature and no longer possesses any force or effect in Guam.'" *Id.* (quoting *In re Leon Guerrero*, 2023 Guam ¶ 61). Because the injunction applied to "a statute that, under Guam law, does not exist," *id.* at 804, the Ninth Circuit's dismissal of Petitioner's case as moot "was the right call," *id.* at 800.

REASONS FOR DENYING THE PETITION

Certiorari should be denied for two reasons.

First, the Ninth Circuit's decision is a routine and correct application of the mootness doctrine. When the Guam Supreme Court definitively held that the Act had been repealed by the legislature, this case ceased to present a justiciable case or controversy. Petitioner has identified no conflict between the Ninth Circuit's decision to dismiss his appeal and the decisions of any other court of appeals. Nor has he identified a conflict with any decision of this Court.

Second, to the extent Petitioner is requesting that this Court use a moot case to provide guidance as to Rule 60(b)(5)'s application generally, his request should of course be rejected. Setting aside the lack of an Article III controversy, Petitioner has not identified any need for such guidance. Again, he cites neither a circuit split, nor a conflict between *any* circuit court decision—let alone the decision on appeal—and this Court's Rule 60(b)(5) precedents. Indeed, since *Dobbs*, multiple lower courts have applied Rule 60(b)(5) in non-moot cases in the exact manner Petitioner advocates here: to grant relief from judgments premised on *Roe v. Wade*. Regardless, even if there *were* a need for guidance as to the proper application of Rule 60(b)(5), this case is a poor vehicle for providing it, because it is moot and because Petitioner's failure to obtain relief below is attributable to his own forfeiture.

I. THIS CASE IS MOOT AND THE NINTH CIRCUIT'S ORDER DISMISSING PETITIONER'S APPEAL WAS CORRECT.

1. The Ninth Circuit's decision to dismiss Petitioner's appeal based on the Guam legislature's repeal of the Act was a routine application of the mootness doctrine. It does not warrant this Court's review.

Article III of the Constitution limits federal-court jurisdiction to "Cases" and "Controversies." U.S. Const. art. III, § 2, cl. 1. "A case becomes moot—and therefore no longer a 'Case' or 'Controversy' for purposes of Article III—when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome." *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91 (2013) (citation modified). Absent a live controversy, it is "impossible for a court to grant any effectual relief whatever to the prevailing party." *Decker v. Nw. Env't Def. Ctr.*, 568 U.S. at 609 (quoting *Knox v. Serv. Emps. Int'l*, 567 U.S. 298, 307 (2012)).

A challenge to a law that has expired or been repealed is moot. If a law is no longer on the books, there can be no live controversy as to its continuing validity, and any order regarding its enforcement would be meaningless. *See, e.g.*, *Bd. of Flour Inspectors for Port of New Orleans v. Glover*, 160 U.S. 170 (1895) (dismissing appeal as moot given repeal of act); *Kremens v. Bartley*, 431 U.S. 119, 128–29 (1977) (repeal of challenged law mooted plaintiffs' claims); *Burke v. Barnes*, 479 U.S. 361, 363 (1987) (challenge to the validity of a statute that "expired by its own terms" was no different from a challenge to a repealed statute and thus moot).

That is exactly the case here. While Petitioner's appeal was pending before the Ninth Circuit, the Guam Supreme Court held that the statute at issue in the 1990 litigation—which Petitioner sought to enforce through his Rule 60(b)(5) motion—had been repealed. *In re Leon Guerrero*, 2023 Guam ¶¶ 60–61.

So the court of appeals straightforwardly—and correctly—determined that the appeal was moot. "[E]ven if Moylan prevailed on the merits . . . the declaratory judgment of *In re Leon Guerrero* would still completely eliminate Moylan's ability to enforce the now-repealed abortion ban," rendering it "'impossible . . . to grant any effectual relief whatever to [Moylan].'" *Guam Soc'y of Obstetricians & Gynecologists*, 166 F.4th at 802 (VanDyke, J., statement regarding denial of rehearing *en banc*) (alteration in original) (quoting *Decker*, 568 U.S. at 609).

Petitioner tries to resist the obvious mootness of his claim by dreaming up hypotheticals in which the misapplication of Rule 60(b)(5) risks leaving officials unjustly restrained from enforcing a law because of an injunction based on obsolete doctrine. But these dream scenarios have no bearing on the facts of this case. The injunction here merely prevents Petitioner from doing something that he *could not otherwise do* even if the injunction were lifted. His desired outcome—enforcement of the Act—is foreclosed not by *Roe*, or by the continued presence of an injunction based in part on that decision, but by virtue of the fact that *no statute exists to enforce*. So even if the injunction were vacated as he desires, he still could not enforce the Act because it has been repealed. Thus, no conceivable outcome in this Court could afford him

"any effectual relief." *Decker*, 568 U.S. at 609. No live case or controversy exists.[2]

Accordingly, the Ninth Circuit did not "decline" to address "whether an injunction remains valid after the constitutional precedent supporting it has been expressly overruled by this Court." Cert. Pet. 12. Instead, the lower court lost jurisdiction to do so when the Guam high court held the statute had been repealed, thereby eliminating any live case or controversy. The decision below thus properly dismissed Petitioner's appeal as moot. *See Uzuegbunam v. Preczewski*, 592 U.S. 279, 295 (2021) (Roberts, J., dissenting) ("To decide a moot case would be to give an advisory opinion, in violation of 'the oldest and most consistent thread in the federal law of justiciability.'" (quoting *Flast v. Cohen*, 392 U.S. 83, 96 (1968) (some internal quotation marks omitted))); *Acheson Hotels, LLC v. Laufer*, 601 U.S. 1, 14–15 (2023) (Jackson, J., concurring in the judgment) ("If a case becomes moot, 'the existence of a case or controversy' is at an end, and there is therefore no basis for 'the exercise of judicial power.'") (quoting *Liner v. Jafco, Inc.*, 375 U.S. 301, 306 n. 3 (1964)).

2. Petitioner points to no other court of appeals decision that conflicts with the Ninth Circuit's

[2] And while there is no indication that the Guam Supreme Court is going to revisit its decision that the statute has been impliedly repealed, Cert. Pet. 20, were it ever to do so, Petitioner would not be stuck without any recourse as a result of the Ninth Circuit's dismissal; to the contrary, Petitioner would then be free to renew his Rule 60(b)(5) motion in the district court. While he may face other barriers to obtaining relief—including his ability to satisfy his burden under Rule 60(b)(5)—mootness arising from the repeal of the statute would not be among them.

dismissal of the appeal in this context, and Respondent is aware of none. Indeed, the only other court of appeals decision Petitioner identifies arising in a near-identical setting—*McCorvey v. Hill*, 385 F.3d 846, 849–50 (5th Cir. 2004), Cert. Pet. 16—aligns with the Ninth Circuit's decision here. *See Guam Soc'y of Obstetricians & Gynecologists*, 166 F.4th at 803 (VanDyke, J., statement regarding denial of rehearing *en banc*).

3. The Ninth Circuit's decision is not "difficult to reconcile" with any of this Court's precedents. *Contra* Cert. Pet. 11–12, 14. To the contrary, it is fully consistent with relevant decisions on Rule 60(b)(5), vacatur, and remand in the event of mootness.

Petitioner repeatedly cites this Court's decisions regarding Rule 60(b)(5)'s application in *Horne v. Flores*, 557 U.S. 433, 447 (2009), *Agostini v. Felton*, 521 U.S. 203, 215 (1997), and *Rufo*, 502 U.S. at 384. But he does not explain whether and how the Ninth Circuit's decision departs from them. Nor could he, as none of those cases were moot when this Court granted certiorari to review them, let alone when it decided them.

Likewise, vacatur under *United States v. Munsingwear, Inc.*, 340 U.S. 36 (1950), cannot revive Petitioner's appeal. *Contra* Cert. Pet. 14. This Court's precedents make clear that the *Munsingwear* doctrine applies only to judgments that are *appealed from* and were unable to be reviewed due to mootness. *U.S. Bancorp Mortg. Co. v. Bonner Mall P'ship*, 513 U.S. 18, 22–23 (1994); *Arizonans for Off. Eng. v. Arizona*, 520 U.S. 43, 71 (1997) (purpose of *Munsingwear* vacatur is to "clear[] the path for future relitigation by

eliminating a judgment the loser was *stopped from opposing on direct review*") (internal quotation marks omitted) (emphasis added). But the judgment Petitioner wants vacated—the 1990 injunction—was not on appeal when the case became moot.[3] The only "unreviewed judgment" in this case, Cert. Pet. 14, is the district court's March 24, 2023 order denying Petitioner's Rule 60(b)(5) motion—that was the order on appeal when the case became moot, and therefore the only one that Petitioner was deprived review of due to mootness. And Petitioner waived any right to vacatur of that order because he never requested it. *See Munsingwear, Inc.*, 340 U.S. at 40–41 (holding that a party can waive its right to vacatur of a lower-court order that becomes moot on appeal).

Similarly, there is no conflict or tension with this Court's decision in *Lewis v. Continental Bank Corporation*, 494 U.S. 472 (1990), *contra* Cert. Pet. 14, where remand was appropriate based on the well-founded possibility that the plaintiff might have a non-moot, "residual claim . . . that was understandably not asserted previously," 494 U.S. at 482. Any such possibility is absent here. Unlike the *Lewis* plaintiff, Petitioner has made no attempt to supplement the record with evidence of any alternative "concrete interest," *id.*, that could revive his moot Rule 60(b)(5) motion. Nor is it possible for him to muster such an interest if he tried, given that

[3] The decision granting the 1990 injunction was already appealed and affirmed decades ago. *See Guam Soc'y of Obstetricians & Gynecologists v. Ada*, 962 F.2d 1366 (9th Cir. 1992), *cert denied*, 506 U.S. 1011 (1992).

the sole subject of the injunction from which he is seeking relief has been repealed.

The decision below does not "prevent[] federal courts from performing the function Rule 60(b)(5) was designed to serve," Cert. Pet. 8, any more than the mootness doctrine does in other cases where it compels dismissal. The court of appeals simply, and properly, declined to issue the sort of advisory opinion that Article III forbids, under the circumstances presented by this case: where a territorial high court independently held that the statute that had been enjoined was repealed, before the Rule 60(b)(5) motion could be resolved on appeal. And the court of appeals also properly declined to vacate an injunction that was not on appeal when the case became moot, or to remand absent any indication that Petitioner has an alternative interest that could serve to reignite a live controversy here.

II. THIS CASE DOES NOT PRESENT A CERTWORTHY QUESTION CONCERNING THE APPLICATION OF RULE 60(B)(5) TO INJUNCTIONS BASED ON OVERRULED PRECEDENT.

Because this case is moot due to the legislative repeal of the Guam statute, any question regarding "when prospective relief founded upon obsolete constitutional doctrine may be reconsidered" under Rule 60(b)(5), Cert. Pet. 18, is not properly before this Court. In any event, Petitioner has identified no question on which the lower courts are divided or confused. Even if he had, this case would be a poor vehicle for resolving it, not only because it is moot, but

also because Petitioner's failure to obtain Rule 60(b)(5) relief is the result of his own forfeiture.

1. Petitioner claims that the decision below "creates uncertainty regarding how [Rule 60(b)(5)] operates when the underlying constitutional precedent has been expressly overruled by this Court," and that lower courts "require clear guidance concerning the circumstances under which ongoing federal injunctions may be reconsidered after significant changes in governing law." Cert. Pet. 18. But the petition shows no uncertainty or need for guidance on this subject.

Petitioner has cited no conflict between lower courts on the application of Rule 60(b)(5), and no case misapplying the Rule or departing in any way from this Court's holdings in *Agostini*, *Rufo*, or *Horne*.

And his contrived fear that federal courts will be unable to determine "whether a permanent injunction entered solely because of *Roe* remains legally justified after *Dobbs*," Cert. Pet. 18, without further instruction from this Court is entirely unfounded. Indeed, in recent years multiple courts have entertained—and granted—Rule 60(b)(5) motions seeking relief from judgments in *non-moot* cases on the *exact basis* Petitioner asserts here; namely, that *Dobbs* eliminated the basis for prospective enforcement of injunctions premised on *Roe v. Wade* and its progeny. *See, e.g.*, *Planned Parenthood Monte Mar, Inc. v. Ford*, 349 F.R.D. 213 (D. Nev. 2025); *June Med. Servs. LLC v. Phillips*, 640 F. Supp. 3d 523 (M.D. La. 2022); *Bryant v. Woodall*, 622 F. Supp. 3d 147 (M.D.N.C. 2022); *Cincinnati Women's Servs., Inc. v. DeWine*, 343 F.R.D. 50 (S.D. Ohio 2022).

2. If there were any truth to Petitioner's contention that lower courts need guidance concerning the proper application of Rule 60(b)(5), *see* Cert. Pet. 18—and there is not—this case is a poor vehicle to address that issue for two reasons.

First, given that this case is moot, *see supra* at 10–15, any opinion from this Court would necessarily be advisory and—since the statute at issue "does not exist," *Guam Soc'y of Obstetricians & Gynecologists*, 166 F.4th at 804 (VanDyke, J., statement respecting denial of rehearing *en banc*)—without any practical consequence for Petitioner. *See DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 341 (2006) ("If a dispute is not a proper case or controversy, the courts have no business deciding it, or expounding the law in the course of doing so.").

Second, because the district court premised its denial of Petitioner's motion in substantial part on his unexplained forfeiture, *see supra* at 5–6, any decision in this case would be limited to these idiosyncratic circumstances. A ruling from this Court in this case could not reach the appropriate applications of Rule 60(b)(5) in mill-run cases not shaped by the movant's own default. *See, e.g.*, *Ret. Plans Comm. of IBM v. Jander*, 589 U.S. 49, 53 (2020) (Kagan, J., concurring) ("If the arguments were not properly preserved, sound judicial practice points toward declining to address them."); *Moore v. Illinois*, 408 U.S. 786, 799 (1972) (where an argument was not made below, "the issue is not one properly presented for review").

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully Submitted,

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