

26-5681

No. _____

ORIGINAL

FILED

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OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE SUPREME COURT OF THE UNITED STATES

JESSE JAMES GULLEY JR.,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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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QUESTIONS PRESENTED

This petition presents whether a judgment may stand when the factual premise underlying it—that a valid arrest warrant was filed and returned—is contradicted by the government's own certified records, and whether a fraud-on-the-court claim attacking that jurisdictional premise may be foreclosed by AEDPA's successive-petition bar without this Court ever deciding whether that bar was meant to reach claims of this kind.

The questions presented are:

1. Whether a claim that a federal conviction was obtained through fraud on the court directed at the jurisdictional facts of the arrest—rather than a claim relitigating the merits of guilt or a claim already resolved on habeas review—is subject to AEDPA's second-or-successive gatekeeping under 28 U.S.C. § 2244(b), or whether it falls outside the rule of *Gonzalez v. Crosby*, 545 U.S. 524 (2005).
2. Whether a court of appeals' inherent authority to recall its mandate for fraud on the court, recognized in *Demjanjuk v. Petrovsky*, 10 F.3d 338 (6th Cir. 1993), survives AEDPA's successive-petition bar when the fraud goes to jurisdictional facts rather than the merits of the conviction.
3. Whether *Tollett v. Henderson*, 411 U.S. 258 (1973), forecloses a fraud-on-the-court claim that was not and could not have been known at the time of a guilty plea,

where the defect was concealed by the government and discovered only years later through a FOIA disclosure.

4. Whether denying recall of the mandate without addressing a raised fraud-on-the-court claim supported by FOIA-certified evidence, and without applying the court's own controlling five-element framework in *Demjanjuk*, was an abuse of discretion.

LIST OF PARTIES

PETITIONER: Jesse James Gulley Jr.

RESPONDENT: UNITED STATES OF AMERICA

STATEMENT OF RELATED PROCEEDINGS

The following proceedings in federal trial and appellate courts are directly related to this case within the meaning of Rule 14.1(b)(iii):

United States v. Gulley, No. 18-3577 (6th Cir.) (direct appeal affirming conviction; mandate issued Aug. 2, 2019, reported at 780 F. App'x 275 (6th Cir. 2019)).

First motion to vacate under 28 U.S.C. § 2255, Doc. 122, Case No. 5:17-cr-00493 (N.D. Ohio) (opened as Case No. 5:20-cv-01539-JG); filed July 10, 2020; denied by Doc. 144, entered June 14, 2021.

Motion to vacate pursuant to Rule 60(d)(3), Doc. 149, Case No. 5:17-cr-00493 (N.D. Ohio); filed April 21, 2022; transferred to the Sixth Circuit for authorization as a second or successive § 2255 motion by Doc. 152, entered August 3, 2022.

Motion to vacate pursuant to Fed. Civ. R. 60(d)(3), Doc. 164, Case No. 5:17-cr-00493 (N.D. Ohio); filed December 8, 2022; denied as moot by Doc. 165, entered January 3, 2023.

Motions to vacate/void judgment pursuant to Fed. Crim. R. 60(d)(2)(3), Docs. 175, 177, and 182, Case No. 5:17-cr-00493 (N.D. Ohio); filed February 29, March 18, and April 4, 2024; all denied as time-barred by non-document order entered April 24, 2024, which also designated Petitioner a vexatious litigant.

Petitions for a writ of mandamus and/or prohibition, In re Gulley, Nos. 24-3973 and 24-3988 (6th Cir.); filed November 8 and 14, 2024; denied by Doc. 185, entered August 18, 2025 (motion to supplement the record granted in the same order).

Gulley v. United States of America et al., Case No. 5:25-cv-00615 (N.D. Ohio); complaint filed March 27–28, 2025; dismissed by Doc. 15-1, entered May 23, 2025.

Attempted motion to vacate, Case No. 5:17-cr-00493 (N.D. Ohio); submitted May 8, 2025; leave to file denied by non-document order entered the same day.

Emergency motion for leave to file a Rule 60(d)(3) motion, Doc. 186, Case No. 5:17-cr-00493 (N.D. Ohio); filed March 27, 2026; denied by Doc. 187, entered March 30, 2026. United States v. Gulley, No. 18-3577 (6th Cir.); motion to recall the mandate denied by Doc. 43-1, entered April 13, 2026 — the order under review in this petition.

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PETITION FOR WRIT OF CERTIORARI

Petitioner Jesse James Gulley Jr. petitions the Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit.

I. OPINIONS BELOW

The Sixth Circuit's order denying recall of the mandate is unreported and attached as Appendix A. The Sixth Circuit's order granting Petitioner's motion to supplement the appellate record and denying mandamus and prohibition (Doc. 185) is unreported and attached as Appendix B. The district court's order denying Petitioner's motion to dismiss (Doc. 144) is unreported and attached as Appendix C. The district court's order denying leave to file a Rule 60(d)(3) motion (Doc. 187) and its order dismissing Petitioner's related civil action (Doc. 15-1) are unreported and attached as Appendix E.

II. JURISDICTION

This Court has jurisdiction under 28 U.S.C. § 1254(1) to review the judgment of the United States Court of Appeals for the Sixth Circuit, entered April 13, 2026, denying recall of the mandate.

III. STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

This case involves Federal Rules of Criminal Procedure 4, 5, and 9, which govern the issuance, filing, execution, and return of arrest warrants and the required initial appearance following arrest with or without a warrant; Federal Rule of Civil Procedure 60(d)(3), which preserves the power to set aside a judgment for fraud on the court; 28 U.S.C. § 2244(b), which governs authorization for second or successive habeas applications; 18 U.S.C. § 3041, governing arrest and commitment by judicial officers; 18 U.S.C. § 3142, governing release or detention pending judicial proceedings; and 28 U.S.C. § 2072, the Rules Enabling Act and this Court's supervisory rulemaking authority.

This case also implicates the Fourth Amendment's prohibition on unreasonable seizure and the Fifth Amendment's guarantee of due process of law, because Petitioner contends that no arrest warrant was ever issued, executed, returned, or filed as to him in the underlying criminal case, yet the district court and court of appeals permitted the resulting judgment and all later proceedings to remain in force. The government's failure to comply with Rules 5 and 9 abridged Petitioner's substantive Fourth Amendment right to be free from unreasonable

seizure; 28 U.S.C. § 2072(b) provides that procedural rules shall not abridge substantive rights, and the Sixth Circuit's failure to examine whether that right was abridged is a central error below. A threshold

and equally central error, addressed in Part VIII, is the panel's failure to determine whether 28 U.S.C. § 2244(b) applies to a claim of this kind at all in light of *Gonzalez v. Crosby*, 545 U.S. 524 (2005).

IV. STATEMENT OF THE CASE

A. The Foundational Defect—No Warrant Issued, Filed, or Returned

The indictment in Case No. 5:17-cr-00493 was returned on December 5, 2017.

Under Fed. R. Crim. P. 9(b)(1), when an indictment is returned the clerk must immediately issue an arrest warrant. That warrant must be signed, filed with the clerk, and docketed. It was not. The FOIA-certified response from the United States Marshals Service—FOIA Request No. 2025-USMS-FOIA/PA-000196, admitted into the appellate record on August 18, 2025 (Appendix B)—produced a blank AO 442 return for Petitioner bearing no clerk's file stamp, no docket number, no execution date, and no return signature. By contrast, co-defendant Thomas Lorenz's completed AO 442 appears at Doc. 13 in the same case, issued by the same Magistrate Judge Baughman, executed by the same USMS officer L. Conyers, with all required indicia of a completed and returned warrant. The government followed the mandatory procedure for Lorenz. The certified record establishes it did not

follow that procedure for Petitioner. The government's public position that Petitioner had been lawfully arrested was fixed before the first court appearance, as reflected in a December 7, 2017 DOJ press release.

B. The Arraignment—Rule 5(b) Subverted by Detention Waiver

AUSA Bennett appeared at the December 7, 2017 arraignment on behalf of AUSA Aaron P.

Howell and proceeded through detention as though a valid warrant existed—without producing one. Under Rule 5(b), upon presentation of a person arrested without a warrant, the magistrate must (1) determine whether probable cause exists, and (2) issue a warrant if probable cause is found. Here, no complaint was filed establishing probable cause, and no warrant was presented. The detention waiver did not cure this defect—it circumvented the rule entirely. Co-defendants Lorenz and Clark had no detention waiver, confirming that the waiver was used only for Petitioner to bypass the Rule 5(b) inquiry. Without a warrant or a complaint, Petitioner was not lawfully before the court, there was no lawful basis for detention, and there was nothing to arraign. Rule 5(b) is not a procedural formality—it is the constitutional gateway through which the government must pass before any further proceeding may occur. The government never passed through it.

The detention waiver subverted that gateway. Of the three defendants in indictment No. 5:17-cr-00493, Petitioner was the only one for whom a detention waiver was presented. By presenting the waiver at the outset—before the magistrate could ask what lawful process authorized Petitioner's detention—Bennett redirected the proceeding past the Rule 5(b) gateway without ever opening it. Without the detention waiver, the magistrate would have been required to ask: where is the warrant, or where is the complaint? There was neither. The detention waiver ensured that question was never asked—and it has gone unanswered in every proceeding since.

C. The District Court—Relief Denied on Nonexistent Docket Citations

Petitioner raised the missing-warrant issue in Doc. 131, a pro se motion to dismiss filed September 11, 2020. The government was not ordered to respond. AUSA Howell subsequently

filed Doc. 141, an omnibus response addressing five separate motions, but said nothing about

Doc. 131—the one motion directly challenging the warrant's existence. The district court resolved the motion unilaterally and denied it at Doc. 144, PageID 1068, citing Doc. 2 and Doc. 2-1 as proof that a valid arrest warrant had been issued (Appendix C). Neither Doc. 2 nor Doc. 2-1 appears on the PACER docket. The docket proceeds

directly from Doc. 1 (Indictment) to Doc. 3 (Motion to Seal). The court's factual finding rested on citations that do not exist in the official record.

D. The Civil Proceeding—Case No. 5:25-cv-00615

On March 27–28, 2025, Petitioner filed a verified Complaint for Injunctive Relief and Declaratory Judgment, Doc. 1 in Case No. 5:25-cv-00615, brought under 28 U.S.C. §§ 2201–2202 and Federal Rules of Civil Procedure 57 and 65, naming AUSA Aaron P. Howell in his official capacity specifically to answer for the arrest warrant's validity. Judge Polster dismissed the action on May 23, 2025, without service on Howell or any other named defendant, citing Doc. 172 and Doc. 173 as the basis for dismissal (Appendix E). Neither entry exists; the PACER docket for the underlying criminal case proceeds directly from Doc. 169 to Doc. 174. Two federal judges, in two separate proceedings, each cited nonexistent docket entries to deny Petitioner relief on the identical warrant question—a documented pattern, not an isolated clerical error.

On March 27, 2026, Petitioner filed Doc. 186, an Emergency Motion for Leave to File under

Rule 60(d)(3), asking the district court to consider the FOIA-produced warrant now in the

official appellate record and determine whether any valid Rule 4 and Rule 9 warrant was ever issued, filed, and returned. On March 30, 2026, Judge Polster denied in Doc. 187 (Appendix E) without addressing the FOIA evidence, the warrant defect, or requiring the government to produce the warrant.

E. The Sixth Circuit—Denial of Mandate Recall Without Reaching Gonzalez, Demjanjuk, or the FOIA Contradiction

On August 18, 2025, the Sixth Circuit granted Petitioner's motion to supplement the appellate record with the FOIA-certified evidence. Thirty-nine days later, AUSA Ranke filed Doc. 39 acknowledging at Page 3 that the FOIA evidence was in the supplemented record, then citing PageID 1068 at Page 5 as proof a warrant existed, and characterizing the claim at Page 6 as a "perceived error" that had been "considered and rejected" by the district court. On April 13, 2026, the Sixth Circuit denied mandate recall (Appendix A). The order adopted Ranke's framing verbatim. It did not cite *Gonzalez v. Crosby* or explain why that decision's exception for claims attacking the integrity of the process, rather than the merits, does not apply. It did not cite *Demjanjuk v. Petrovsky*, 10 F.3d 338 (6th Cir. 1993), its own controlling five-element fraud-on-the-court framework. It did not use the words "fraud on the court." It did not reconcile the FOIA evidence with PageID 1068. The certified contradiction, and the legal question it raises, were placed before the court and left unaddressed.

V. THE GUILTY PLEA DID NOT WAIVE REVIEW OF THE FRAUD ON THE COURT

The guilty plea did not waive review because the warrant issue and the false docket entries were discovered only after the plea was entered. A guilty plea is valid only if it is made knowingly, voluntarily, and intelligently. *McCarthy v. United States*, 394 U.S. 459, 466 (1969). A defendant cannot knowingly waive a challenge to facts the government had not disclosed and the court had not revealed. *Tollett v. Henderson*, 411 U.S. 258 (1973), holds that a guilty plea forecloses collateral attack on antecedent constitutional violations that the defendant could have raised before pleading—but *Tollett* addresses defects a defendant knew or could have discovered at the time of the plea. It does not address, and this Court has never held that it forecloses, a claim of fraud on the court that was affirmatively concealed by the government and discovered only years later through a FOIA disclosure the government itself never volunteered. The later-discovered warrant problem and the false docket entries therefore do not fall within ordinary plea waiver under *Tollett*; they present a fraud-on-the-court issue that survived the plea because it could not have been raised before it. The government's waiver theory depends on treating a concealed and later-discovered record defect as if it had been known at the time of the plea. It was not. Nor can waiver be premised on the warrant itself, because there is nothing in the record to waive: the government's own FOIA-certified records establish that no arrest warrant was ever filed, entered on the docket, executed, or returned.

VI. A RECURRING PATTERN OF UNADDRESSED JURISDICTIONAL FRAUD IS CAUSING IRREPARABLE HARM

The Sixth Circuit denied mandamus on the ground that Petitioner had adequate alternative remedies—namely, a future appeal of a supervised-release revocation in which he could raise the warrant defect. Doc. 185. That reasoning cannot dispose of what this petition raises (Appendix B). Fraud on the court is not an ordinary claim of error subject to ordinary rules of procedural election; under *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238 (1944), and *Demjanjuk v. Petrovsky*, 10 F.3d 338 (6th Cir. 1993), it may be raised whenever and however it comes to light, because it corrupts the judicial process itself rather than merely the outcome of one proceeding. No court may decline to decide whether its own jurisdiction was obtained through fraud on the ground that the challenge arrived by the wrong procedural door.

Nor is this a single, isolated defect—it is a compounding one. The supervised-release violation warrants at issue are themselves downstream products of the original defect: an arrest warrant never properly filed or returned. The instrument the government has relied on since 2024 is not a new warrant at all. The docket entry for Doc. 176 (filed March 11, 2024) is captioned by the Clerk's own text as "Arrest Warrant Returned Executed (duplicate return of [Doc.] 161 on 11/16/2022 . . . U.S. Marshals submitted duplicate 11/16/2022 return"—an official acknowledgment that Doc. 176 is a duplicate filing of the identical 2022 warrant (Doc. 161), already executed on November 16, 2022, and already returned on

November 17, 2022, by the same USMS officer. The proceeding the district court actually used to reopen supervised-release matters in 2024 was a summons, not a new warrant: Doc. 169 (Jan. 17, 2024) set an initial appearance on revocation proceedings, following Doc. 168's order regarding the violation report. No new arrest warrant appears anywhere in the docket between the 2022 warrant and the present. That re-filing of an already-executed 2022 return under a 2024 docket date is not a curative act; it is an independent irregularity layered on the original one. And each time this defect has reached a tribunal—the district court, the Sixth Circuit on mandamus, the civil court in Doc. 15-1 (Appendix E)—the result has been the same: the forum finds a ground to avoid resolving whether the warrant lawfully exists, rather than requiring the government to prove that it does. Indeed, the civil dismissal order itself illustrates the pattern precisely: it states that Petitioner "is the subject of an active arrest warrant . . . for a supervised release violation," citing "ECF Doc. 172 and 173" as its sole support—but the docket's own sequence runs directly from Doc. 169 (Jan. 17, 2024) to Doc. 174 (Feb. 27, 2024), with no Doc. 172 or Doc. 173 appearing at all.

Under 18 U.S.C. § 3583(i), the district court's authority to act beyond the expiration of a supervised-release term depends on a warrant or summons validly issued before that expiration. In *Rico v. United States*, No. 24-1056, 607 U.S. ____ (2026), this Court held that "[t]he Sentencing Reform Act does not authorize a rule automatically extending a defendant's term of supervised release when the defendant absconds," and that § 3583(i) permits a court to adjudicate a violation

after a defendant's judicially ordered term has expired only for matters arising before that expiration and only if a warrant or summons issued during the term. Rico forecloses any theory that Petitioner's supervised-release term, or the government's authority to act on it, was automatically extended or revived by his absence; it directly supports Petitioner's position that the 2022 warrant (Doc. 161) could not be revived by re-filing it under a new docket date fifteen months later. *United States v. Vargas-Amaya*, 389 F.3d 901 (9th Cir. 2004), forecloses treating an unsworn or non-original warrant as sufficient to satisfy § 3583(i)'s requirement in any event. Doc. 176 satisfies neither.

The record reveals not one fabricated citation, but two independent instances of the same pattern, detailed further below: the district court relied on Doc. 2 and Doc. 2-1 to deny Petitioner's motion to dismiss, and a different judge of the same court relied on Doc. 172 and Doc. 173 to dismiss Petitioner's civil action and impose a permanent filing bar. Neither pair of docket entries exists.

The consequence is not abstract. A second, independent federal court has already relied on this same defective foundation to close its doors to Petitioner permanently: on May 23, 2025, the district court in Case No. 5:25-cv-00615 dismissed Petitioner's civil complaint and barred all future filings, on the stated ground that Petitioner is "the subject of an active arrest warrant"—citing docket entries that do not exist. Doc. 15-1. Every day this stands uncorrected, the harm compounds: continued exposure to arrest on a warrant that does not lawfully exist, continued application of a filing bar premised on it, and continued inability to obtain relief from any of the

courts that have already declined to reach the merits. Only this Court can resolve a defect that now runs through, and has been ratified by, multiple tribunals, twice, without ever being tested against competent proof.

VII. THE SIXTH CIRCUIT ABUSED ITS DISCRETION IN DENYING MANDATE RECALL

The abuse of discretion is established by facts drawn directly from the record, and by the panel's failure to resolve a threshold legal question this record squarely presents. Each factual point is anchored to a specific document, a specific date, and a specific page. None depends on inference or interpretation. Together they satisfy every element of fraud on the court under *Demjanjuk v. Petrovsky*, 10 F.3d 338 (6th Cir. 1993), and compel relief under *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238 (1944)—provided the claim is not foreclosed by AEDPA, a question addressed in Part VIII.C below.

A. The Three Key Misrepresentations

The record documents three material misrepresentations, each made by an officer of the court, each false, and each acted upon by a court without requiring the government to substantiate it.

Misrepresentation 1—AUSA Bennett at Arraignment (December 7, 2017). AUSA Bennett appeared at the arraignment on behalf of AUSA Howell and sought detention on the implied premise that Petitioner's arrest was supported by valid

lawful process. That premise was false if, as the certified record shows, no filed, executed, and returned warrant existed. The magistrate conducted the arraignment, accepted the pre-filed detention waiver, and bound the case over on that premise.

Misrepresentation 2—AUSA Howell's Silence on Doc. 131 (April 5, 2021). Howell filed Doc. 141, a single omnibus response addressing five separate motions. Doc. 131—Petitioner's motion directly challenging whether a valid arrest warrant had ever been filed—was not among them. The court resolved Doc. 131 without requiring any government response, by citing Doc. 2 and Doc. 2-1—entries that do not exist on the docket.

Misrepresentation 3—AUSA Ranke in Doc. 39 (September 26, 2025).

(a) The Representation

Thirty-nine days after the Sixth Circuit admitted the FOIA-certified contradiction into the record, Ranke filed Doc. 39. At Page 3, Ranke told the Sixth Circuit:

"Gulley also moved to supplement his petition in Case No. 24-3973 to include evidence that an arrest warrant was never filed with the clerk of the district court, and to expedite ruling on both matters." "On August 18, 2025, this Court granted Gulley's motion to supplement the record but denied his petitions for a writ of mandamus and/or prohibition."

Two pages later, at Page 5, Ranke represented to the same court:

"[A]s the district court found, 'Gulley was indicted and Judge Baughman issued an arrest warrant for him on December 5, 2017.'" (R. 144, PageID 1068).

Ranke did not reconcile these statements. He did not mention the FOIA evidence again after Page 3. He did not produce the warrant. At Page 6, Ranke characterized the claim as a "perceived error" already "considered and rejected." The contradiction is drawn from Ranke's own statements in the same nine-page filing.

(b) The Judicial Adoption

The April 13, 2026 order did not merely reach a similar conclusion—it adopted Ranke's framing verbatim. Ranke told the Sixth Circuit:

"Gulley's motion is based on his claim that the district court lacked jurisdiction over him, and it has already been considered and rejected by the district court when it denied Gulley's numerous motions to vacate his sentence under 28 U.S.C. § 2255."

Judge Bush's order states:

"Gulley's motion is based on perceived errors that have been considered and rejected by the district court, and recalling the mandate would permit him to evade the procedural bars in 28 U.S.C. § 2244(b)...."

The sentence structure, the "considered and rejected" phrase, and the procedural-bar-evasion framing are Ranke's own, restated as the court's finding; the only addition is the word "perceived."

Judge Bush accepted Ranke's characterization of what the district court had done without independently verifying it against the record—the same record in which Ranke, three pages earlier in the same filing, had acknowledged that FOIA-certified evidence showed no arrest warrant was ever filed with the clerk. The order never mentions that evidence. The judge acted on the representation; he did not check it.

B. Why the Contradiction Matters

Not one court in this record required the government to produce the warrant or explain the FOIA evidence. Each acted on an unverified representation instead. This is particularly true of the Sixth Circuit: a court does not grant a motion to supplement the appellate record without first determining the proffered evidence is relevant. By granting supplementation with certified proof that no arrest warrant was ever filed, the Sixth Circuit necessarily determined that evidence bore on the proceedings before it—which presupposes the panel understood what that evidence contradicted. Having made that determination, the panel could not deny mandate recall without addressing the contradiction it had just found relevant enough to admit.

This is not a harmless procedural irregularity. The warrant defect did not deprive the court of personal jurisdiction in the Ker-Frisbie sense—Petitioner was physically before the court, and Part VIII.C.3 below explains why that fact does not resolve this claim. Rather, the government's failure to comply with Rules 5 and 9 abridged Petitioner's substantive Fourth Amendment right to be free from unreasonable seizure. 28 U.S.C. § 2072(b) expressly provides that procedural rules shall not abridge substantive rights. In *Bank of Nova Scotia v. United States*, 487 U.S. 250, 255–56 (1988), this Court held that a Federal Rule of Criminal Procedure carries the binding force of a federal statute, but denied the dismissal remedy sought there because the defendant had not shown the grand jury violations at issue caused actual prejudice. Petitioner cites *Bank of Nova Scotia* for the former

proposition, not the latter outcome, and the two are distinguishable on the prejudice showing itself: unlike the grand jury irregularities in *Bank of Nova Scotia*, the absence of a valid warrant here did not merely risk prejudice to a procedural process—it abridged a substantive constitutional right, the precise harm § 2072(b) was designed to prevent, and the government's repeated misrepresentation of that absence compounds rather than mitigates the showing. Because Rule 9 carries the same binding force as a federal statute, see *Bank of Nova Scotia*, 487 U.S. at 255, a court has no more discretion to withhold the remedy once that prejudice is shown than it would to excuse a violation of the statute itself.

C. The Panel's Unaddressed Threshold Question: Does *Gonzalez v. Crosby* Bar This Claim?

1. This claim falls outside *Gonzalez's* rule because it does not seek relitigation of the merits of guilt.

In *Gonzalez v. Crosby*, this Court held that a Rule 60(b) motion filed in a habeas case must be treated as a second-or-successive habeas petition when it "seeks to add a new ground for relief" or "attacks the federal court's previous resolution of a claim on the merits." 545 U.S. at 532. But *Gonzalez* expressly preserved a category of motions that fall outside that rule: those attacking "some defect in the integrity of the federal habeas proceedings"—which the Court held are not successive petitions at all. *Id.* at 532 & n.4.

Petitioner's claim is neither of the categories Gonzalez treats as successive. It does not ask any court to revisit whether Petitioner committed the offense, and it does not reassert a claim previously denied on habeas review. It asks whether the judicial process itself—the issuance, filing, and return of the arrest warrant required by Rules 4 and 9 before any court may exercise custody over a defendant—was ever completed, a jurisdictional predicate independent of guilt or innocence. A claim that the court's own machinery was never properly invoked is closer to the category Gonzalez excludes from gatekeeping than to the category it includes. This Court has not resolved whether a fraud-on-the-court claim aimed at jurisdictional facts, rather than the merits of a conviction, triggers § 2244(b)—and the panel below treated the question as settled against Petitioner without engaging Gonzalez at all.

2. AEDPA did not displace the inherent authority recognized in Demjanjuk.

Demjanjuk was decided in 1993, three years before AEDPA's successive-petition gatekeeping took effect. Nothing in AEDPA's text mentions Rule 60(d)(3) or a court of appeals' inherent power to recall its own mandate for fraud on the court, and this Court does not lightly presume that Congress meant to eliminate a federal court's inherent equitable powers absent a clear statement of that intent. The panel's order treated § 2244(b) as though it categorically forecloses recall for fraud on the court, without ever addressing whether Demjanjuk's framework survives AEDPA in this context. That is the precise legal question left open, and precisely why the panel's

silence on Demjanjuk is not harmless—it is an unaddressed threshold question of law, not a debatable exercise of discretion.

3. This is a fraud-on-the-tribunal claim, not a challenge to the manner of arrest, and *Ker v. Illinois* and *Frisbie v. Collins* do not foreclose it.

Under *Ker v. Illinois*, 119 U.S. 436 (1886), and *Frisbie v. Collins*, 342 U.S. 519 (1952), the manner in which a defendant is brought before a court—even an unlawful one—does not by itself divest the court of jurisdiction to try him. If Petitioner's claim were simply that his arrest was illegal and that illegality alone deprived the court of jurisdiction, *Ker* and *Frisbie* would foreclose it regardless of any procedural bar this petition addresses. That is not the claim presented here.

Petitioner does not contend that an unlawful arrest, standing alone, deprived the court of jurisdiction over his person; he was physically before the court, and *Ker-Frisbie* forecloses any argument that the manner of securing that presence, by itself, voids jurisdiction. The claim instead is that officers of the court affirmatively represented to the tribunal—repeatedly, across nine years and multiple proceedings—that a specific jurisdictional predicate required by Rules 4 and 9 (a warrant issued, filed, and returned) existed, when the government's own certified records show it did not, and that courts relied on those representations rather than the actual record. That is a fraud-on-the-tribunal claim under *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238 (1944), and *Demjanjuk v. Petrovsky*, 10 F.3d 338 (6th Cir. 1993). It is addressed to what the court was told, not to whether the

underlying seizure was independently constitutionally reasonable. Ker and Frisbie hold that an illegal seizure, standing alone, does not deprive a court of the power to proceed; they do not hold, and have never been read to hold, that a court may not act when it has been deceived by an officer of the court about whether the process authorizing that seizure existed at all. The injury this petition presents is the deception of the tribunal, not the seizure itself—the injury Hazel-Atlas addresses and Ker-Frisbie does not.

4. The six-year delay does not bar relief because the delay was itself a product of the concealment.

The panel's order treated the six years between the mandate and the motion to recall as counseling against relief. Delay is relevant to the exercise of equitable discretion, but this Court's own fraud-on-the-court precedent forecloses treating elapsed time as dispositive when the delay is a product of the fraud itself. In *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238 (1944), this Court set aside a Third Circuit judgment roughly twelve years after it was entered, because the fraud that produced the judgment—a ghostwritten article presented to the courts as independent expert opinion—was not discovered until years later.

[VERIFY the precise dates of the underlying Third Circuit judgment and the discovery of the fraud before citing this timeline as fact.] A rule that punished Hazel-Atlas for the years during which it did not yet know of the fraud would have rewarded the party that concealed it. The same principle applies here.

Petitioner's challenge to the warrant's existence is not new and did not originate with the FOIA disclosure. Petitioner raised the identical defect in the district court in September 2020, years before that disclosure. Doc. 131. The district court did not rebut that challenge on the merits—it denied it by citing Doc. 2 and Doc. 2-1 as proof a valid warrant existed, entries that do not appear anywhere on the docket. Doc. 144, PageID 1068. Petitioner did not let the matter rest after that denial: in November 2024, Petitioner filed petitions for writs of mandamus and prohibition, Nos. 24-3973 and 24-3988, seeking to compel resolution of the same unanswered warrant question. By no later than March 2025, Petitioner had obtained the FOIA-certified evidence and, within weeks, filed a verified civil complaint on March 27–28, 2025, Case No. 5:25-cv-00615, naming AUSA Aaron P. Howell in his official capacity specifically to answer for the warrant's validity—acting on the evidence immediately rather than sitting on it. That action was itself dismissed on May 23, 2025, again by reliance on nonexistent docket citations (Doc. 172 and Doc. 173, discussed in Part V.D above), before the same FOIA evidence was carried forward and admitted into the appellate record on August 18, 2025. Doc. 185. The 2025 FOIA disclosure therefore did not raise a new claim; it confirmed the exact claim Petitioner had already made in 2020, continued to press through the 2024 mandamus petitions, and acted on immediately upon obtaining it in a civil action the moment it was in hand. It further revealed that the citations used to reject the claim the first time it was raised were themselves fictitious, and that the same pattern repeated when Petitioner tried to act on the new evidence directly. The

delay the panel counted against Petitioner is not a delay in raising the claim, nor a period of inaction—the claim was raised in 2020, actively pursued through 2024, and acted on within weeks of obtaining proof in 2025—but the time it took to obtain independent, government-certified proof after the courts had already rejected the claim once using sources that do not exist, and then to survive two further dismissals built on the identical pattern before that proof reached this Court. Delay attributable to the government's own concealment, compounded by the courts' repeated reliance on nonexistent citations, cannot be held against the party who was deceived.

D. The Government's Duty and Knowledge

AUSA Bennett and AUSA Ranke are officers of the court bound by the duty of candor to the tribunal. Ranke's own filing acknowledged that the FOIA evidence was in the supplemented record, yet he cited PageID 1068 anyway without producing the warrant or explaining the nonexistent docket citations. The government's knowledge of the mandatory warrant requirement is not a matter of inference: it complied with that requirement for nine other Operation Blackbeard defendants in the same prosecution, all issued by the same magistrate, all executed by the same USMS officer. Its failure to comply for Petitioner while representing that it had was not inadvertent.

E. The Legal Standard for Abuse of Discretion Is Met

An abuse of discretion is not limited to an arbitrary or unreasonable exercise of judgment. This Court has held that "[a] district court by definition abuses its discretion when it makes an error of law." *Koon v. United States*, 518 U.S. 81, 100 (1996) (quoting *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 405 (1990)). The same principle governs appellate discretion: a court of appeals abuses its discretion when its ruling rests on an error of law, an erroneous application of the correct legal standard, or a failure to apply controlling precedent to the facts before it.

Each of those failures is present here. The Sixth Circuit's April 13, 2026 order adopted, verbatim, the government's characterization of the district court's ruling without independently verifying that characterization against the record the panel had itself admitted eight months earlier. It never cited, distinguished, or applied *Gonzalez v. Crosby* to determine whether § 2244(b) even applies to a jurisdictional fraud-on-the-court claim of this kind. It never cited, distinguished, or applied *Demjanjuk v. Petrovsky*, its own controlling five-element framework for fraud on the court, despite a claim squarely invoking it. It never addressed the FOIA-certified contradiction between the record and the district court's citation to nonexistent docket entries. Failing to resolve a threshold legal question the claim squarely presents, failing to apply governing precedent to a claim expressly invoking it, and adopting a party's legal characterization of the record without testing it against the record itself, are errors of law. Under *Koon*, an error of law is, by definition, an abuse of discretion. The Sixth Circuit's order is not merely debatable on this record—it is an abuse of discretion as a matter of law.

VIII.

FRAUD ON THE COURT

Demjanjuk Elements Applied to the Record

Element 1 — Offense by an Officer of the Court: The challenged representation was made by government counsel in formal court proceedings. AUSA Bennett made the initial detention presentation before Magistrate Judge Burke, and AUSA Howell and AUSA Ranke later carried the same warrant premise forward in district-court and appellate filings.

Element 2 — Directed to the Judicial Machinery Itself. In compliance with Fed. R. Crim. P. 9(c)(2) and 18 U.S.C. §§ 3041–3142, a warrant must be executed and returned before the detention framework those statutes create may be invoked. Bennett invoked § 3142 at arraignment to obtain detention without producing a filed, signed, and returned AO 442, and later filings asked the district court and Sixth Circuit to act as though the lawful arrest process had already been completed.

Element 3 — Intentionally False or Reckless Disregard. The FOIA-certified response includes a blank AO 442 with no clerk's file stamp, no docket number, no execution date, and no return signature, yet the government continued to represent that a valid warrant existed. The district court relied on Doc. 144 at PageID 1068 to deny Doc. 131, and the Sixth Circuit later denied mandate recall on the same premise. At minimum, repeating that premise after the contrary certified record was known shows reckless disregard for the truth.

Element 4 — Concealment of a Material Fact Under a Duty to Disclose. The government concealed the absence of a completed warrant record while continuing to rely on the opposite assumption in court, never producing the warrant, explaining the missing docket entries, or disclosing the blank AO 442 in a way that required the courts to confront the contradiction.

Element 5 — Court Action on the False Premise. Judge Gwin denied Doc. 131 using docket citations that do not appear on the PACER docket, and the Sixth Circuit denied mandate recall without addressing the FOIA-certified contradiction.

Under *Demjanjuk v. Petrovsky*, 10 F.3d 338 (6th Cir. 1993), that sequence satisfies every element of fraud on the court. Each court was subjected to that fraud: improperly influenced by the government's false representations into believing authority existed where the record shows none did.

X. REASONS FOR GRANTING THE PETITION

Review is warranted under Rule 10(c) because this case presents an important, unresolved question of federal law: whether *Gonzalez v. Crosby*'s successive-petition rule extends to fraud-on-the-court claims that attack the jurisdictional facts of an arrest, as opposed to claims relitigating the merits of a conviction. Neither this Court nor, so far as Petitioner is aware, any court of appeals has squarely answered that question. The panel below assumed the answer without deciding it, adopting the government's characterization that Petitioner's claim was merely an attempt to "evade the procedural bars in 28 U.S.C. § 2244(b)" without ever testing that

characterization against Gonzalez's own carve-out for claims attacking the integrity of the process rather than the merits.

Review is also warranted under Rule 10(a) because the Sixth Circuit's order departed from the accepted and usual course of judicial proceedings: it resolved a claim invoking the court's own controlling fraud-on-the-court precedent without citing, distinguishing, or applying that precedent; it adopted the government's legal characterization of the record verbatim without independently verifying it against a record the same panel had admitted eight months earlier; and it denied a sanctions motion premised on that same record without separate analysis.

The factual record illustrates why the legal question matters and is not merely academic. Two federal district judges independently cited nonexistent docket entries to deny the identical warrant challenge in separate proceedings. Judge Gwin's citation to Doc. 2 and Doc. 2-1 was squarely before the Sixth Circuit when it denied mandate recall—the FOIA evidence had been in the record for nearly eight months. Had the Sixth Circuit resolved whether Gonzalez permits review of this claim, and examined Doc. 144 at PageID 1068 against the FOIA-certified record, it would have confronted the contradiction directly. Judge Polster's citation to Doc. 172 and Doc. 173 stands on different footing: Petitioner did not discover that second nonexistent citation until after mandate recall was already denied, so it could not have been presented to that panel. It is offered here not as something the Sixth Circuit overlooked, but as independent proof the first instance was not an isolated clerical error—and as further illustration of why a categorical, un-reasoned

application of § 2244(b) to jurisdictional fraud claims forecloses review of exactly the kind of error this record contains.

A. The Three-Level Departure Within the Criminal Case

First, Petitioner's motion to dismiss (Doc. 131; Appendix C) identified co-defendant Lorenz's completed AO 442 as direct proof the government knew and followed the mandatory procedure for every other defendant but not for Petitioner—a documented factual challenge demanding a government response the court never ordered. Second, the court's briefing order required Howell to address five pending motions; Doc. 131 was not among them, and Howell said nothing about it. Third, the court supplied its own factual citations—Doc. 2 and Doc. 2-1—that no party advanced and that did not exist on the docket. That is the kind of departure from the accepted and usual course of judicial proceedings Rule 10(a) contemplates.

B. Fraud Occurred in the District Court, and This Court's Supervisory Authority Under 28 U.S.C. § 2072 Is Uniquely Implicated

Rules promulgated under Congress's delegation of rulemaking authority are not advisory. Under the Rules Enabling Act, 28 U.S.C. § 2072, and as this Court held in *Bank of Nova Scotia v. United States*, 487 U.S. 250, 255 (1988), a rule validly promulgated pursuant to that authority is, "in every pertinent respect, as binding as any statute duly enacted by Congress," and a court has "no more discretion to disregard the Rule's mandate than [it does] to disregard constitutional or statutory provisions." Federal Rules of Criminal Procedure 4 and 9 are not aspirational

guidance the government may satisfy in substance or approximate. They are federal law, binding on the government with the same force as any statute Congress has enacted, and every court has a corresponding duty to enforce them. Judicial integrity is compromised each time the government disregards that law and a court declines to hold it to it.

Rule 9 imposes mandatory, sequential requirements once an indictment issues.

Rule 9(a) requires that "the court must issue a warrant... for each defendant named in an indictment," directed "to an officer authorized to execute it." Rule 9(b)(1) requires that the warrant "conform to Rule 4(b)(1)" and "be signed by the clerk."

Rule 9(c)(1) requires that the warrant "be executed... as provided in Rule 4(c)(1), (2), and (3)," with the executing officer proceeding "in accordance with Rule 5(a)(1)."

Rule 9(c)(2) requires that the warrant "be returned in accordance with Rule 4(c)(4)"—which in turn requires that "after executing a warrant, the officer must return it to the judge before whom the defendant is brought." Issuance, execution, and return are not discretionary formalities; they are the mandatory sequence Rule 9 commands, and 18 U.S.C. §§ 3041 and 3142 presuppose that sequence has been completed before a magistrate may order detention on it.

That sequence was never completed here, and the government represented otherwise. AUSA Bennett invoked § 3142 at arraignment to obtain Petitioner's detention on the premise that lawful arrest process existed. It did not. The magistrate detained Petitioner without a warrant that had been issued, executed, and returned as Rule 9 requires—the precise sequence the government falsely

represented had occurred. This is not a case where the government complied and a court merely erred in its analysis. It is a case where the government asserted compliance with Rules 4 and 9 and §§ 3041 and 3142 that the certified record shows never happened, and a rule with the binding force of a federal statute was disregarded without consequence.

What makes the district court's subsequent reliance on Doc. 2 and Doc. 2-1 especially troubling is that the same court, in the same indictment, had before it a working example of what actual compliance looks like: co-defendant Thomas Lorenz's warrant at Doc. 13, independently examinable, retrievable, and verifiable by its completed return under Rule 9(c)(2). The court that cited nonexistent docket entries as proof of Petitioner's warrant was fully capable of distinguishing a warrant that exists and can be verified from one that cannot be located in the record at all. That capability makes the reliance on fabricated citations not a matter of oversight, but a choice to look past an absence the court had every means to detect. The Sixth Circuit was on independent notice of this absence through its own order. Having granted Petitioner's motion to supplement the appellate record with the FOIA-certified evidence on August 18, 2025, the court itself placed the missing warrant in the record it was reviewing. Yet across two separate orders, addressing the identical warrant question, the panel each time found a reason to deny relief without reaching whether Rules 4, 5, and 9 had been satisfied:

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(a) In denying mandamus and prohibition (Doc. 185, Aug. 18, 2025), the panel gave these reasons:

1. Mandamus and prohibition are "drastic and extraordinary" remedies requiring a "clear and indisputable" right to relief;
2. Neither remedy is available when adequate alternative remedies exist;
3. Petitioner could have appealed the denial of his motion to vacate raising this same warrant claim, and his failure to do so forecloses mandamus;
4. Petitioner may appeal any future order revoking supervised release and raise the warrant arguments there;
5. Because adequate alternative remedies exist, mandamus and prohibition were denied—while, in the same order, the motion to supplement the record with the FOIA evidence was granted.

(b) In denying recall of the mandate (Doc. 43-1, Apr. 13, 2026), the panel gave these reasons:

1. Recalling a mandate requires "exceptional circumstances" that override the finality of judgments;
2. The six-year delay between the mandate and the motion to recall counsels against granting it;

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3. The claim is based on "perceived errors" already "considered and rejected" by the district court, and recalling the mandate would let Petitioner evade the procedural bars on successive habeas motions under 28 U.S.C. § 2244(b);

4. Regardless, Petitioner is "not entitled to relief" because the trial court had jurisdiction over his person.

In neither order did the panel require the government to produce the warrant, address the FOIA-certified contradiction it had itself admitted into the record, or examine whether Rules 4, 5, and 9—rules Congress has empowered to carry the force of federal law—had been satisfied. Each order supplied a procedural reason not to look—finality, delay, alternative remedy, habeas bar—while the underlying question Rule 9 makes mandatory went unanswered twice, and while the threshold question whether *Gonzalez v. Crosby* even permits application of that habeas bar to a claim of this kind went unasked.

Once the Sixth Circuit admitted FOIA-certified proof that these mandatory procedural rules were never satisfied, it bore an independent obligation under 28 U.S.C. § 2072(b) to examine whether that noncompliance abridged Petitioner's substantive Fourth and Fifth Amendment rights. It admitted the evidence. It denied the motion. It never examined whether § 2072(b) was violated, and it never examined whether § 2244(b) applies to a claim of this kind at all. No lower court is now positioned to correct the pattern. Nine years. Six forums. Two orders from the same appellate panel, each supplying a reason to avoid the merits. This Court's

intervention is necessary to resolve the unaddressed legal question and to vindicate the integrity of the judicial process.

XI. RELIEF REQUESTED

Petitioner respectfully requests that this Court:

1. Grant summary reversal without further briefing, because the factual error—reliance on docket entries that do not exist—is demonstrable on the face of the docket and requires no further factual development;
2. Alternatively, grant the petition for a writ of certiorari and order briefing on the merits, including on whether *Gonzalez v. Crosby* permits application of 28 U.S.C. § 2244(b)'s successive-petition bar to a fraud-on-the-court claim directed at jurisdictional facts;
3. In either case, vacate the judgment, because it rests on a judicial finding that is provably false on the face of the docket and directly contradicted by the government's own FOIA-certified records, and because the court of appeals never resolved whether AEDPA bars review of that finding at all;
4. Dismiss the underlying indictment with prejudice; remand is not appropriate where the false finding originated in the district court, was perpetuated at every subsequent level, and where the court has already been placed on notice of the FOIA-certified evidence and declined to act on it; and
5. Grant such other relief as this Court deems just and proper.

XII. CONCLUSION

This petition presents a documented failure of record integrity that no court has corrected in nine years, and an unresolved legal question that has never been squarely put to this Court: whether *Gonzalez v. Crosby*'s successive-petition bar reaches a fraud-on-the-court claim aimed at jurisdictional facts rather than the merits of a conviction. The district court denied Petitioner's motion to dismiss by citing docket entries that do not exist. The government never briefed the challenge. The court's finding was provably false on the face of its own docket.

The government had a duty to correct the record. It did not. Howell addressed five other motions and said nothing about Doc. 131—the one motion that directly challenged the warrant's existence. AUSA Ranke later repeated the false premise to the Sixth Circuit, citing PageID 1068 as proof a warrant existed, while the FOIA-certified evidence—a blank AO 442 Return with no clerk's stamp, no docket number, and no execution date—directly contradicted it.

The Sixth Circuit denied mandate recall without reconciling Doc. 144's false premise with the FOIA evidence, without engaging *Gonzalez v. Crosby*, and without citing, distinguishing, or applying its own *Demjanjuk* precedent. Nine years. Six forums. No court has ever corrected this factual error on the merits, and no court has ever decided whether AEDPA permits it to.

As set forth above, the government failed to comply with the Fed.R.Crim. P. 5(b) and 9 at the inception of the prosecution. Government officers made three material

misrepresentations to federal courts, and two independent district judges cited nonexistent docket entries to deny relief. The Sixth Circuit admitted the FOIA-certified evidence into the record on August 18, 2025 (Appendix B), but the mandate-recall panel did not apply *Gonzalez v. Crosby* or its own *Demjanjuk* precedent to it. The record is complete; no further factual development is needed—only a decision on the legal question this record squarely presents.

The question presented is narrow and answerable: whether a judgment may stand when it rests on a judicial finding that is provably false on the face of the court's own docket, where the court of appeals denied relief without ever deciding whether the applicable procedural bar reaches a claim of this kind. This Court's supervisory authority under *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238 (1944), exists precisely for this moment. Fraud on the court occurs when the judicial machinery itself is corrupted—when a court is deprived of the opportunity to perform its judicial function in the regular way. Here, the district court was deprived of its essential function at three critical moments:

At Rule 5(b) arraignment: The magistrate could not conduct the constitutionally mandatory Rule 5(b) hearing because counsel misrepresented that a warrant existed. The magistrate was deprived of the opportunity to examine the warrant, determine if probable cause was shown, and make an independent judgment about detention.

At the motion to dismiss: The district court could not perform its judicial duty to examine whether the government complied with Rule 9 because counsel—and later the court itself—cited nonexistent docket entries instead of the actual record.

At mandate recall: The appellate court admitted the FOIA evidence, then denied relief without examining whether it contradicted the district court's cited proof, and without deciding whether *Gonzalez v. Crosby* permitted it to reach that question at all. The court was deprived of the opportunity to perform its normal function: testing facts against the record.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Jesse J. Gulley Jr.", with a long horizontal flourish extending to the right.

Jesse James Gulley Jr.

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Date of Signature: September 19, 2024