

**04-6432 GONZALEZ V. CROSBY**

DECISION BELOW: 366 F3d 1253

LOWER COURT CASE NUMBER: 02-12054

**QUESTION PRESENTED:**

The courts of appeals are divided about the jurisdiction of district courts to entertain Fed. R. Civ. P. 60(b) motions in habeas corpus cases. Seven circuits address the continuing viability of Rule 60(b) on a flexible case-by-case basis, while three circuits, including the Eleventh Circuit below, hold that AEDP A erects a bright line jurisdictional bar to Rule 60(b) motions in habeas corpus proceedings. The conflict among the circuits has exacerbated since the Court dismissed as improvidently granted *Abdur'Rahman v. Bell*, 537 U.S. 88 (2002). The instant petition replicates for the Court's consideration the questions left unanswered in *Abdur'Rahman*, without the procedural and jurisdictional difficulties that caused it to be dismissed:

- I. Whether the court of appeals erred in holding that every Rule 60(b) motion (other than for fraud under (b)(3)) constitutes a prohibited "second or successive" petition as a matter of law, in square conflict with decisions of this Court and of other circuits.
- II. Whether a court of appeals abuses its discretion in refusing to permit consideration of a vital intervening legal development when the failure to do so precludes a habeas petitioner from ever receiving any adjudication on his claims on the merits.

**LIMITED TO QUESTION 1 PRESENTED BY THE PETITION.**

**CERT. GRANTED 1/14/2005**