No. 23-

In the Supreme Court of the United States

CHADWICK DOTSON,

Petitioner,

v.

BERMAN JUSTUS, JR.,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether a habeas petitioner can show that a mental illness constitutes an "extraordinary circumstance" that warrants reopening a final judgment under Federal Rule of Civil Procedure 60(b)(6), and equitably tolling the statute of limitations, without evidence that the mental illness rendered the petitioner incapable of filing during the limitations period?

PARTIES TO THE PROCEEDING

Petitioner is Chadwick Dotson, Director of the Virginia Department of Corrections, whose predecessor was the respondent in the district court and the appellee in the court of appeals.

Respondent Berman Justus, Jr., who is serving a sentence for murder in a Virginia prison, was the petitioner in the district court and appellant in the court of appeals.

STATEMENT OF RELATED PROCEEDINGS

The following proceedings are directly related to this case within the meaning of Rule 14.1(b)(iii):

- *Justus* v. *Clarke*, No. 20-6351 (4th Cir.), judgment entered on August 15, 2023;
- *Justus* v. *Clarke*, No. 7:13-cv-00461-NKM-JCH (W.D. Va.), judgment entered on February 28, 2020;
- *Justus* v. *Clarke*, Record No. 121985 (Va.), petition for appeal refused on June 20, 2013;
- *Justus* v. *Clarke*, No. CL12-60 (Greene Cnty. Cir. Ct.), judgment entered in September 2012;
- *Justus* v. *Watson*, No. CL10-000156 (Greene Cnty. Cir. Ct.), judgment entered on February 28, 2011;
- *Justus* v. *Commonwealth*, Record No. 0690-07-2 (Va. Ct. App.), judgment entered on November 30, 2007;
- *Commonwealth* v. *Justus*, Nos. CR04-125 and CR04-127 through CR04-130 (Greene Cnty. Cir. Ct.), judgment entered on January 23, 2007.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

PETITION FOR A WRIT OF CERTIORARI

Only with "real finality" can "the victims of crime move forward knowing the moral judgment will be carried out." *Calderon* v. *Thompson*, 523 U.S. 538, 556 (1998). "To unsettle these expectations is to inflict a profound injury to the powerful and legitimate interest in punishing the guilty, an interest shared by the State and crime victims alike." *Ibid.* (quotation marks and citation omitted). The Fourth Circuit has seriously undermined that powerful interest in finality by holding that a habeas petitioner's mental illness constitutes an "extraordinary circumstance" whenever it renders him "unable" to "understand the need to timely file," and that a petitioner may lack this ability even if he is not mentally incompetent, presented no evidence of his mental state during the limitations period, and made filing after filing in other courts during the limitations period. App. 32a.

That erroneous decision exacerbates a circuit split on a question of critical importance to the States and victims of crime: the showing that a federal habeas petitioner must make to reopen a judgment based on his mental illness. Because the petitioner had been diagnosed with what the Fourth Circuit characterized as a serious "lifelong illness," the court joined other circuits in holding that a habeas petitioner could show "extraordinary circumstances" despite presenting no evidence of his mental condition during the relevant limitations period, and despite engaging in extensive litigation in other courts during the same period. App. 33a. Other federal courts of appeals—including the Sixth, Seventh, and Tenth Circuits—have held that a habeas petitioner's ability to file other legal documents during the tolling period demonstrates that his mental illness was not an "extraordinary circumstance" that requires tolling the federal habeas

statute, and that a petitioner cannot obtain equitable tolling when he fails to produce evidence of the effect of his mental illness during the tolling period itself. This Court's intervention is required to resolve the split between the courts of appeals on the showing required to reopen final judgments and equitably toll habeas petitions due to mental illness.

This question of federal law is important. Significant percentages of habeas petitioners claim to have serious mental health conditions. Large numbers of them fail to file their habeas petitions within the statute of limitations. The ill-defined and overly lax standard adopted by the Fourth Circuit below thus creates an enormous loophole through which many untimely petitions may pour, leading to the reopening of untold numbers of final state convictions. This result flies in the face of this Court's repeated instruction that federal courts must respect the finality of state convictions and those circumstances justifying reopening a judgment "will rarely occur in the habeas context." *Gonzalez* v. *Crosby*, 545 U.S. 524, 535 (2005). Further, the Fourth Circuit's holding that district courts must have evidentiary hearings on such tolling questions will be highly burdensome both to the States and to the district courts. These problems are especially acute given that that they will require courts to hold evidentiary hearings and reopen cases that are exceedingly stale. Indeed, the ruling here requires the district court to hold an evidentiary hearing for a petition untimely filed several years ago that challenges a sixteen-year-old murder conviction.

The Fourth Circuit's ruling was also incorrect, joining the wrong side of the circuit split. This Court requires "extraordinary circumstances" before reopening a judgment and before equitably tolling the

statute of limitations under the Anti-Terrorism and Effective Death Penalty Act (AEDPA). But the Fourth Circuit applied an exceedingly lenient standard that would allow for a finding of "extraordinary circumstances" in all too ordinary situations. Without correction, any prisoner with a mental illness can attempt to reopen his judgment through equitable tolling, even if he is not profoundly incapacitated or incompetent.

This Court should grant the petition.

OPINIONS BELOW

The opinion of the court of appeals (App. 1a–50a) is reported at 78 F.4th 97. The district court's opinion dismissing Respondent Berman Justus, Jr.'s habeas corpus petition as untimely is unpublished but reproduced at App. 51a–55a. The district court's order denying Justus's Rule 60(b)(6) motion is unpublished but reproduced at App. 56a–61a.

JURISDICTION

The court of appeals entered its judgment on August 15, 2023. On October 25, 2023, the Chief Justice extended the time for filing a petition for a writ of certiorari to December 13, 2023. See No. 23A370. This Court has jurisdiction under 28 U.S.C. § 1254(1).

RULE OF PROCEDURE INVOLVED

Federal Rule of Civil Procedure 60 provides, in relevant part:

(b) On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect;

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

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

(4) the judgment is void;

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

(6) any other reason that justifies relief.

STATEMENT

In November 2003, Berman Justus, Jr. murdered his estranged wife, Amanda Justus, in the front seat of her car while their four-year-old son sat in the back seat. App. 2a. Justus also shot and killed Amanda's boyfriend, Joe White. *Ibid.* On the day he was arrested, Justus told the police that he shot his wife "because she was keeping their son from him." App. 5a.

Following his arrest for the murders, Justus was twice found incompetent to stand trial and was twice admitted to a hospital for treatment to restore his competency. App. 3a. During those stints, he was diagnosed with Bipolar Disorder (Most Recent Episode Mixed, with Psychosis). *Ibid.*

In January 2007, a Virginia trial court convicted Justus of crimes including first-degree murder. App. 3a–4a. Justus did not deny that he murdered both victims; instead, Justus argued at trial that he was acting on the delusion that God commanded him to kill his ex-wife and her boyfriend. App. 4a. Two experts

testified during trial about Justus's sanity at the time of the murders: one testified that Justus did not become psychotic until after the killings; the other (while stating that Justus had "features of psychosis") had no opinion about Justus's sanity during the murders. App. 5a. The state court thus concluded that Justus was not legally insane at the time of the murders, found him guilty of the offenses, and sentenced him to two life sentences plus eighteen years in prison. App. 4a.

Justus appealed his conviction to the Virginia Court of Appeals and argued that the trial court had erred by failing to find him not guilty by reason of insanity. App. 5a. In November 2007, the Virginia Court of Appeals denied Justus's claim, holding that the record did not show that he was insane at the time of the offenses based on his own testimony, as well as his statements to police on the night of the murders. *Ibid.* Justus's counsel failed to file a petition for appeal of the Court of Appeals' decision to the Virginia Supreme Court. App. 5a–6a.

Medical records show that Justus received mental health treatment from the Virginia Department of Corrections during this time, from May 2007 to August 2008. App. 4a. The record "includes no treatment records between September 2008 and April 2016," however. *Ibid.*

During that gap in his medical records, Justus continued actively to challenge his convictions. In May 2010, Justus filed a Virginia State Bar complaint against his trial counsel, complaining of his counsel's failure to perfect his direct appeal of his conviction. App. 6a. In the summer and early fall of 2010, after receiving his counsel's explanation as to why he had failed to perfect an appeal to the Virginia Supreme

Court, Justus sent two letters to his counsel asking for assistance in challenging his conviction. App. 47a (Niemeyer, J., dissenting). His counsel advised him to file a state habeas petition. *Ibid.*

Justus filed his first state habeas petition in November 2010, alleging ineffective assistance of counsel. *Ibid.* Justus filed an amended petition in January 2011, arguing that his counsel had been ineffective in "fail[ing] to perfect [his] appeal." *Ibid.* The state court denied the petition as untimely. App. 6a–7a. In early January 2012, Justus filed a second State Bar complaint against his trial counsel. App 47a–48a (Neimeyer, J., dissenting). He also wrote a letter following up on his second complaint, and wrote a note to the mailroom at his prison to request confirmation that it had not received mail from his trial counsel. App. 48a (Niemeyer, J., dissenting). Justus then filed a second state habeas petition in June 2012. App. 7a. The state court dismissed this claim as untimely, and Justus filed a petition for appeal with the Virginia Supreme Court. *Ibid.* The Virginia Supreme Court denied the petition in June 2013. *Ibid.*

Justus sought federal habeas relief for the first time on September 24, 2013, more than six years after his conviction and more than three years after he first complained to the Virginia State Bar that his attorney had failed to perfect his appeal. See *ibid.* The petition brought the same ineffective assistance of counsel claim he had raised in his first state habeas petition. *Ibid.* The district court noted that the petition appeared to be untimely, and ordered Justus to submit any additional information or argument regarding the timeliness of his petition. *Ibid.* Justus filed a submission in response to the district court's order but did not address the court's timeliness concern. *Ibid.* In

June 2014, the district court accordingly held that Justus's petition was untimely. Even after assuming that Justus had exercised due diligence in discovering his claim and had immediately filed in response to that discovery, the district court held that the petition was time-barred and dismissed it. See App. 51a–55a.

Over five years later, in August 2019, Justus filed a motion in the district court to reopen the court's judgment dismissing his federal habeas petition under Federal Rule of Civil Procedure 60(b)(6). App. 8a. In this motion, Justus argued for the first time that his mental health had affected his ability to file a timely federal habeas petition and that the one-year limitations period applicable to federal habeas petitions should have been equitably tolled. *Ibid.* None of the medical records and related documents that Justus attached to the motion provided information about his mental state from 2010 to 2013, when the federal limitations period had run. See App. 4a. Instead, the records covered the time period from 2007 to September 2008 and from April 2016 to August 2016. *Ibid.* And this evidence showed that the severity of Justus's symptoms fluctuated over time: for instance, in November 2007, medical staff reported no mental health issues for Justus, and in April 2016 Justus reported that he was "not having too many issues with" his disorder as long as he could keep his stress level in check. App. 45a–46a (Niemeyer, J., dissenting).

The district court denied the reconsideration motion. See App. 56a–61a. It held that, although Justus's medical records showed serious diagnoses, he had failed "to show that his mental problems were so profound that they prevented him from filing basically at any time from the date he discovered his attorney's

error (in May 2010) through some point in 2012." App. 60a. Justus had therefore failed to establish the sort of "extraordinary circumstances" that would entitle him to reopen his judgment and equitably toll the statute of limitations. App. 60a–61a.

A divided panel of the Court of Appeals for the Fourth Circuit reversed. See App. 1a–50a. First, the court concluded that Justus's Rule 60(b)(6) motion had been filed "within a reasonable time" as required by Rule 60(c)(1) "[g]iven the extensive evidence documenting [his] severe mental disabilities," notwithstanding that Justus waited more than five years after judgment was entered. App. 28a.

Second, the court held that a petitioner's "mental impairment" is an "extraordinary circumstance[ ]" justifying equitable tolling of the AEDPA statute of limitations if it is "sufficiently profound." App. 32a. A mental impairment is "sufficiently profound," the court held, "if it renders him unable to comply with the filing deadline," rejecting a higher standard that would require "institutionalization or adjudged mental incompetence." App. 31a–32a.

Third, the court "collapse[d] the Rule 60(b)(6) and equitable tolling 'extraordinary circumstances' inquiries for the purpose of this analysis." App. 30a. It accordingly held that if a mental illness would justify tolling the AEDPA statute of limitations, it would also qualify as an "extraordinary circumstance[ ]" justifying relief under Rule 60(b)(6). App. 30a. The court concluded that a "lifelong illness" qualified as an extraordinary circumstance justifying equitable tolling of the AEDPA statute of limitations. App. 33a. Therefore, the court held, Justus's failure to provide evidence of his inability to file during the tolling period was insignificant because "his earlier and later medical records

provide evidence of his mental functioning during the relevant period." *Ibid.* The court also held that Justus's copious litigation filings in other venues during the tolling period did "not preclude a finding that Justus's mental illness during that timeframe amounts to an 'extraordinary circumstance'" because "they do not speak to his ability 'rationally or factually to personally understand the need to timely file.'" App. 36a. It interpreted Rule 60(b)(6) to be "a grand reservoir of equitable power to do justice in a particular case," and that grand reservoir overcame the importance of finality. App. 37a. The court concluded that "the district court abused its discretion in failing to hold an evidentiary hearing," because "[g]iven Justus's evidence and allegations of his severe and continuing mental illness, this case strikes us as one that likely 'cries out for the exercise of that equitable power'" to toll the limitations period. *Ibid.*

Judge Niemeyer dissented. He explained that the majority had erred because it "completely overlook[ed] the Supreme Court's express admonition" in habeas cases that "lower courts should be especially demanding before finding that extraordinary circumstances justifying a reopening are present." App. 40a (Niemeyer, J., dissenting). The dissent explained that the majority had committed "legal error" by "collapsing" the "extraordinary circumstances" inquiry under Rule 60(b)(6) with the "distinctly different analysis" required for determining timeliness under AEDPA. App. 40a–41a (Niemeyer, J., dissenting) (cleaned up) (citing *Gonzalez* v. *Crosby*, 545 U.S. 524, 535 (2005)). And it explained that the majority had erred by "forswear[ing] the need for any medical records documenting Justus's mental illness *during the relevant period*," and, "perhaps most problematic," by "fail[ing] to account in any meaningful way for evidence in the

record demonstrating that during the relevant period, Justus was able to, and did, file relevant and complicated pleadings in court and conduct related correspondence." App. 42a (Niemeyer, J., dissenting). Thus, the dissent concluded that the record "simply does not show," and "indeed, is inconsistent with finding," that Justus's filing delay "can be justified on the ground that he was mentally incapable of timely filing that petition." *Ibid.*

This petition followed.

REASONS FOR GRANTING THE PETITION

The decision below widens a circuit split on the standard for a habeas petitioner to establish "extraordinary circumstances" to reopen a judgment on grounds of mental illness. The Fourth Circuit joined the First, Third, Ninth and Eleventh Circuits in holding that a federal habeas petitioner who has been diagnosed with a serious mental health condition can reopen the judgment through equitable tolling, even when he (1) lacks contemporaneous evidence of his mental condition during the tolling period, and (2) submits other filings during the tolling period but fails to file his federal habeas petition. Other circuits—including the Sixth, Seventh, and Tenth—have held that these circumstances demonstrate that equitable tolling on the grounds of mental incapacity to file a petition timely is inappropriate.

This question is unquestionably important because it impairs the finality of untold numbers of criminal sentences. A substantial percentage of federal habeas petitioners claim that they have serious mental health conditions. Many of them file untimely petitions and seek equitable tolling for their claims. The Fourth Circuit's unduly capacious standard for when a petitioner is "unable" to file timely due to

mental illness thus creates a large loophole in AEDPA's strict filing requirements through which countless untimely petitions will pour. It seriously undermines the finality of state convictions and will require the reopening and potential retrial of decades-old convictions. At the very least, it will likely require large numbers of evidentiary hearings which will be highly burdensome and resource-intensive for both States and district courts, particularly given the lengthy passage of time.

Further, the Fourth Circuit's ruling is deeply erroneous. The court's overly lax standard for tolling the AEDPA statute of limitations flouts this Court's repeated admonition that the "extraordinary circumstances" requirement for reopening final judgments in habeas cases should be especially demanding. The court also erroneously collapsed the "extraordinary circumstances" analyses of Rule 60(b)(6) and equitable tolling, and ignored this Court's holdings that "Rule 60(b) proceedings are subject to only limited and deferential appellate review." *Gonzalez*, 545 U.S. at 535.

I. Courts are divided over the standard for reopening final judgments for habeas petitioners on grounds of mental illness

The Fourth Circuit widened a circuit conflict on the proper standard for Rule 60(b)(6) motions when a habeas petitioner claims that his mental illness is an "extraordinary circumstance" justifying the reopening of a final judgment through equitable tolling. The Fourth Circuit held that "[i]n the habeas context . . . a petitioner's mental impairment is sufficiently profound [to toll the limitations period] if it renders him unable to comply with the filing deadline," rejecting a higher standard that would require a showing of

"mental incompetence." App. 31a–32a. Under this standard, it held that a petitioner could attempt to reopen a judgment on grounds of mental illness through equitable tolling even where he engaged in significant litigation practice during the limitations period and did not provide any medical records detailing his illness during the limitations period. Other federal courts of appeals have disagreed and adopted a more stringent standard. This conflict warrants this Court's review. See S. Ct. R. 10(a).

1. The Fourth Circuit joined the First Circuit in holding that a petitioner can demonstrate that his mental illness is an "extraordinary circumstance" rendering him "unable" to file a federal habeas petition despite engaging in significant litigation practice during the limitations period. The Fourth Circuit below held that Justus's numerous other filings during the limitations period did not "preclude a finding that Justus's mental illness during that timeframe amounts to an 'extraordinary circumstance'" for Rule 60(b)(6) relief. App. 36a. It held that Justus's other filings "do not speak to his ability . . . to understand the need to timely file" his federal habeas petition, and therefore his mental illness could constitute an "extraordinary circumstance" justifying tolling. *Ibid.*

The First Circuit similarly held that a district court erred when it ruled that a habeas petitioner's mental illness did not constitute extraordinary circumstances to toll the AEDPA statute of limitations because "the petitioner's prolific filings in both state and federal courts demonstrated a capacity to comply with the filing deadline." *Riva* v. *Ficco*, 615 F.3d 35, 39 (1st Cir. 2010) (citing *Riva* v. *Ficco*, No. 01-12061, 2007 WL 954771, at *5 (D. Mass. Mar. 28, 2007)). Specifically, the court held that the district court had

erred in its "heavy reliance on the fact of the petitioner's filings as opposed to either their content or their quality." *Id.* at 43.[1]

Several other courts of appeals, however, have come to the opposite conclusion, holding that a petitioner's mental illness does not constitute an "extraordinary circumstance" excusing untimely filing where the petitioner was capable of engaging in other litigation practice during the limitations period. The Seventh Circuit in *Obriecht* v. *Foster*, for example, denied equitable tolling for mental illness when, among other reasons, the petitioner filed direct and collateral appeals in state court during the period in which "he assert[ed] that his mental health prevent[ed] him from" filing, without offering any "explanation for how he was able to file in those cases but not in" his federal habeas case. 727 F.3d 744, 751 (7th Cir. 2013). In 2019, the Seventh Circuit again held that a petitioner's other filings during the limitations period—including a post-conviction petition and a request for counsel with the state court—"show that [the petitioner] had the capacity to engage in the legal process," and thus was not eligible for equitable tolling. *Conroy* v. *Thompson*, 929 F.3d 818, 821 (7th Cir. 2019) (Barrett, J.).

The Sixth Circuit has likewise come to a contrary conclusion from the Fourth Circuit. *Watkins* v. *Deangelo-Kipp* held that a habeas petitioner could not

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[1] The First Circuit's decision concerned whether equitable tolling of the AEDPA statute of limitations applied. See *Riva*, 615 F.3d at 37. The Fourth Circuit below held that equitable tolling and Rule 60(b)(6) were inextricably intertwined, deciding to "collapse the Rule 60(b)(6) and equitable tolling 'extraordinary circumstances' inquiries for the purpose of [its] analysis." App. 30a. Decisions concerning the "extraordinary circumstances" component of equitable tolling are thus directly relevant here.

establish that his mental impairments "*caused* his untimely filing" to warrant equitable tolling where he had timely raised ineffective assistance of counsel claims in state court and filed *pro se* pleadings during the limitations period. 854 F.3d 846, 851 (6th Cir. 2017). The court held that the fact "[t]hat he was able to make these timely filings indicates that his mental illness was not the cause of his untimely amended habeas petition." *Id.* at 852 (emphasis in original) (reversing the district court and dismissing the petition).

The Tenth Circuit also aligns with the Sixth and Seventh Circuits, in contrast to the First and Fourth. In *Biester* v. *Midwest Health Services, Inc.*, the plaintiff argued that his mental incapacity should toll the statute of limitations to file his Title VII claim. 77 F.3d 1264, 1267 (10th Cir. 1996). The court, however, held that "in spite of his mental condition, [the petitioner] was capable of pursuing his own claim" given that he corresponded with the EEOC and his attorney and delivered notice during the tolling period. *Id.* at 1268 (quotation marks omitted). Those actions demonstrated that "his mental condition simply does not rise to the level of the mental incapacity contemplated by the courts that have tolled the [] limitations period as a result of such incapacity." *Ibid.* The Tenth Circuit has applied the same standard in the habeas context. See *Smith* v. *Saffle*, 28 Fed. Appx. 759, 760 (10th Cir. 2001) ("This court has held that [exceptional] circumstances are not present where the party urging tolling has been able to pursue legal action during the period of his or her alleged incapacity." (citing *Biester*, 77 F.3d at 1268)).

The Fourth Circuit's holding also conflicts with unpublished decisions in the Second and Fifth Circuits. See *Rios* v. *Mazzuca*, 78 Fed. Appx. 742, 745 (2d Cir.

2003) (habeas petitioner was ineligible for equitable tolling when, during the tolling period, he filed a complaint against his state court judge, wrote requests for transcripts of his sentencing hearing, and filed Freedom of Information Law and Act requests, indicating "that he was, to some extent, capable of investigating and pursuing legal avenues"); *Jones* v. *Stephens*, 541 Fed. Appx. 499, 505 (5th Cir. 2013) (holding that "the record makes clear that regardless of any mental illness, [the petitioner] has pursued, without assistance of counsel, both state and federal habeas relief").

2. The Fourth Circuit also held that where a habeas petitioner has been diagnosed with a "lifelong illness," he need not provide evidence of the mental illness's effects during the limitations period itself to show that "extraordinary circumstances" warrant reopening the judgment and equitably tolling AEDPA's statute of limitations. App. 33a. In so doing, it widened a circuit conflict.

The Third, Ninth, and Eleventh Circuits have similarly held that evidence during the limitations period is unnecessary. The Third Circuit has held that a petitioner was entitled to an evidentiary hearing on equitable tolling even though "there was no evidence in the record that [the petitioner's] current mental status affected his ability to present his habeas petition." *Nara* v. *Frank*, 264 F.3d 310, 320 (3d Cir. 2001), overruled in part on other grounds by *Carey* v. *Saffold*, 536 U.S. 214 (2002). Rather, because the petitioner was *pro se*, "and because he has presented evidence of ongoing, if not consecutive, periods of mental incompetency," an evidentiary hearing was warranted on the issue. *Ibid.*

The Ninth Circuit has similarly held that, even when the statute of limitations ran during "a period

for which no medical records have been offered by either [the petitioner] or the respondent," an evidentiary hearing was required to determine "how much, if any, of the [limitations] period [] should be equitably tolled by virtue of [the petitioner's] mental incompetence." *Laws* v. *Lamarque*, 351 F.3d 919, 923–25 (9th Cir. 2003).

Likewise, the Eleventh Circuit held that the petitioner had provided sufficient evidence "to raise a factual issue as to whether a causal connection exists between his mental impairment and his ability to file a timely § 2254 petition" because a mental expert testified that his impairment was "significant and irreversible" and so an earlier-in-time expert report "remains probative of [the petitioner's] mental impairment as to the § 2254 petition during the limitations period and beyond." *Hunter* v. *Ferrell*, 587 F.3d 1304, 1309 (11th Cir. 2009).

These holdings conflict with the holdings of other circuits on the same question. For example, the Sixth Circuit has rejected the argument that evidence of mental illness prior to the limitations period is sufficient. In *Watkins*, the petitioner filed an untimely habeas petition after his limitations period ran, and sought equitable tolling on the basis of mental incompetence. 854 F.3d at 851. The petitioner cited as evidence his mental-illness diagnosis two years before the limitations period, among other points. But the Sixth Circuit rejected that argument because the petitioner "present[ed] no evidence of his mental health status during the limitations period." *Ibid.* And it rejected the argument that the petitioner's earlier mental health diagnosis carried over into the limitations period, observing that "mental illness is not the same as mental incompetence," and that the petitioner had

thus failed to show that "any alleged incompetency *caused* his untimely filing." *Id.* at 852.[2]

Similarly, the Seventh Circuit has held that petitioners with chronic mental illnesses cannot show "extraordinary circumstances" to justify equitable tolling absent "evidence of [their] mental disability" and how it affected their ability to meet the filing deadline for their federal habeas petition during "the relevant time period." *Mayberry* v. *Dittman*, 904 F.3d 525, 530–31 (7th Cir. 2018). In that case, the court rejected the petitioner's reliance on evidence of mental illness from outside the tolling period, holding that it failed to "shed[] light on the relevant time period for purposes of tolling," and that the petitioner had "fail[ed] to point to anything specific transpiring between the filing of his unexhausted petition" and the expiration of his tolling period that "interfered with his ability to understand or pursue his habeas claim." *Id.* at 530–31.

Likewise, the Tenth Circuit has held that a petitioner failed to present extraordinary circumstances warranting equitable tolling based on "mere allegations of incompetency at the time of his [guilty] pleas."

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[2] The Fourth Circuit below identified the Sixth Circuit as agreeing with its view on the propriety of "earlier and later medical records provid[ing] evidence of [the petitioner's] mental functioning during the relevant period." App. 33a (citing *Ata* v. *Scutt*, 662 F.3d 736, 743–44 (6th Cir. 2011)). But in *Ata*, the Sixth Circuit remanded for an evidentiary hearing because the petitioner presented concrete allegations that he was "incapacitated for the period in question" due to being hospitalized and medicated for paranoid schizophrenia, and the medical records were not inconsistent with these claims. 662 F.3d at 743. In *Watkins*, the Sixth Circuit cited *Ata* in holding that a "blanket assertion of mental incompetence is insufficient" for equitable tolling. *Watkins*, 854 F.3d at 852 (quoting *Ata*, 662 F.3d at 742).

Fisher v. *Gibson*, 262 F.3d 1135, 1145 (10th Cir. 2001). Because that alleged incompetency "significantly predate[d]" the limitations period, the petitioner was not entitled to an evidentiary hearing on equitable tolling. *Ibid.* The Fourth Circuit's holding also conflicts with an unpublished decision in the Eighth Circuit. See *Collins* v. *Scurr*, 230 F.3d 1362, at *1 (8th Cir. 2000) (table) (rejecting equitable tolling based on "bald and unsupported assertions" that related to "an instance of alleged mental incompetency that occurred at a time remote to [the petitioner's] § 2254 petition filing deadline" (cleaned up)).

This Court should grant the petition to resolve the split in authority among the circuits as to the correct standard for when mental illness constitutes an "extraordinary circumstance" that justifies reopening the judgment on a federal habeas petition under Rule 60(b)(6) or equitable tolling.

II. The question presented is important

The question of when a habeas petitioner's mental condition provides grounds to reopen a final judgment and toll the statute of limitations is an important question of federal law. Countless habeas petitioners have mental-health conditions and fail to comply with AEDPA's statute of limitations. The Fourth Circuit's lax standard for reopening thus creates a massive loophole to AEDPA's strict time limits, deeply undermining the finality of criminal convictions in state courts. The ruling below will also create enormous burdens for both States and district courts, by mandating evidentiary hearings to determine whether sometimes decades-old proceedings should be reopened, with little required showing from habeas petitioners.

It is indisputable that a significant percentage of habeas petitioners have mental health conditions. See, *e.g.*, U.S. Dept. of Justice, Community Oriented Policing Services Dispatch Volume 15, *Mental Health and Reentry: How Court Services Offender Agency Meets the Challenge of Mental Health Community Supervision* (May 2022), available at https://tinyurl.com/4xz9anss (noting that "64 percent of jail inmates, 54 percent of state prisoners, and 45 percent of federal prisoners have reported mental health concerns" (citation omitted)). Large numbers of habeas petitioners also fail to comply with AEDPA's statute of limitations and seek equitable tolling to excuse that noncompliance. See, *e.g.*, Mental incompetency and physical disabilities, Federal Habeas Manual § 9A:107 (collecting cases); see also Equitable tolling—Extraordinary circumstances—Mental and physical disabilities of the petitioner, Postconviction Remedies § 25:45 (collecting cases). The decision below thus creates a large loophole that will frequently render AEDPA's strict time limits effectively meaningless. And it will frequently require highly burdensome evidentiary hearings on reopening habeas petitions untimely filed several years earlier, and challenging convictions that are many years or even decades old.

This overly lax standard undermines States' fundamental interest in the finality of their criminal convictions. Indeed, as the dissent below noted, this Court has "required a movant seeking Rule 60(b)(6) relief to establish 'extraordinary circumstances' as a means of preserving *the finality of judgments*." App. 41a (Niemeyer, J., dissenting) (citing *Gonzalez* v. *Crosby*, 545 U.S. 524, 535 (2005)). Finality of state convictions is an "important value[]," *Stutson* v. *United States*, 516 U.S. 193, 197 (1996), that serves

"goals important to our system of criminal justice and to federalism," *Kuhlmann* v. *Wilson*, 477 U.S. 436, 453 n.16 (1986). By interpreting Rule 60(b)(6) to provide "a grand reservoir of equitable power to do justice in a particular case," App. 37a, rather than confining it to the exceedingly narrow circumstances in which Congress intended the rule to operate, the Fourth Circuit's holding here undermines the "finality that is essential to both the retributive and deterrent functions of criminal law," *Shinn* v. *Ramirez*, 596 U.S. 366, 391 (2022) (cleaned up). Notably, the ruling here "prolong[s] a habeas case" that was untimely filed almost ten years ago, and that challenges a state-court murder conviction entered sixteen years ago. *Id.* at 390 (cleaned up).

The Fourth Circuit's order, if left uncorrected, also tramples on the federal system carefully laid out in our Constitution. Federal habeas review "overrides the States' core power to enforce criminal law." *Id.* at 376. In so doing, it "intrudes on state sovereignty to a degree matched by few exercises of federal judicial authority," *Harrington* v. *Richter*, 562 U.S. 86, 103 (2011), and in a way that "imposes special costs on our federal system," *Engle* v. *Isaac*, 456 U.S. 107, 128 (1982). Most relevant here, "a federal order to retry or release a state prisoner overrides the State's sovereign power to enforce 'societal norms through criminal law.'" *Shinn*, 596 U.S. at 376 (quoting *Calderon* v. *Thompson*, 523 U.S. 538, 556 (1998)). Only with "real finality" can "the victims of crime move forward knowing the moral judgment will be carried out." *Calderon*, 532 U.S. at 556. "To unsettle these expectations is to inflict a profound injury to the powerful and legitimate interest in punishing the guilty, an interest shared by the State and the victims of crime alike." *Ibid.* (quotation marks and citation omitted).

Accordingly, this Court repeatedly has affirmed the importance of federal courts' "enduring respect for the State's interest in the finality of convictions that have survived direct review within the state court system." *Id.* at 554 (cleaned up) (citation omitted). In addition to being "essential to both the retributive and the deterrent functions of criminal law," finality "enhances the quality of judging," and serves "to preserve the federal balance." *Id.* at 555. Overturning state criminal decisions on federal habeas review undermines "both the States' sovereign power to punish offenders and their good-faith attempts to honor constitutional rights[.]" *Murray* v. *Carrier*, 477 U.S. 478, 487 (1986) (cleaned up) (citation omitted). AEDPA sets forth carefully limited time periods for federal habeas challenges to state convictions in order to constrain this federal intrusion into a core area of state sovereignty. *Shinn*, 596 U.S. at 377. By creating a large and ill-defined exception to those time limits, the ruling below deeply upsets the balance that AEDPA struck, and threatens the finality of untold numbers of convictions.

Further, while the import of the ruling below for habeas litigation is highly troubling, it may not be limited to that context. The Fourth Circuit's ruling sets the standard necessary to establish that mental illness constitutes "extraordinary circumstances" to justify Rule 60(b)(6) relief. Rule 60(b) motions are filed in every type of federal civil proceeding, including bankruptcy, admiralty, condemnation, and forfeiture, as well as habeas actions. 11 Wright & Miller, Federal Practice & Procedure § 2852. Thus, in the Fourth Circuit, *any* party can now attempt to reopen a judgment through a Rule 60(b)(6) motion based solely on a single diagnosis of a "lifelong" mental illness. Although the interest in finality is particularly acute for federal

habeas review of state criminal convictions, the Fourth Circuit's ruling threatens the finality of many other judgments as well.

The petition should be granted because it raises an "important question of federal law." S. Ct. R. 10.

III. The Fourth Circuit is incorrect

This Court should also grant review because the Fourth Circuit below joined the incorrect side of the circuit split. The Fourth Circuit held that "[i]n the habeas context . . . a petitioner's mental impairment is sufficiently profound [to toll the limitations period] if it renders him unable to comply with the filing deadline," rejecting the higher standard that would require "institutionalization or adjudged mental incompetence." App. 31a–32a. This capacious understanding of extraordinary circumstances to obtain Rule 60(b)(6) relief and equitable tolling flies in the face of this Court's precedents.

The writ of habeas corpus is an "extraordinary remedy" that guards only against "extreme malfunctions in the state criminal justice systems." *Harrington*, 562 U.S. at 102. "To ensure that federal habeas corpus retains its narrow role, AEDPA imposes several limits on habeas relief." *Shinn*, 596 U.S. at 377. One of these limits is AEDPA's strict one-year time limit for filing a federal habeas petition. 28 U.S.C. § 2244(d). Congress "enacted AEDPA to reduce delays in the execution of state and federal criminal sentences." *Woodford* v. *Garceau*, 538 U.S. 202, 206 (2003). Thus, this Court has held that the AEDPA statute of limitations may be equitably tolled—but only under quite extraordinary circumstances. See *Holland* v. *Florida*, 560 U.S. 631, 651–52 (2010). These extraordinary circumstances must have "stood

in [the petitioner's] way" and "prevented timely filing." *Id.* at 649 (quotation marks omitted).

On top of the "extraordinary circumstances" necessary to establish equitable tolling, Rule 60(b)(6) requires "extraordinary circumstances" of its own before reopening a final judgment. See *Gonzalez*, 545 U.S. at 535. Yet "strangely and without any statutory authority," the Fourth Circuit concluded that it was appropriate to "collapse" the "extraordinary circumstances" inquiry that must be conducted before a Rule 60(b)(6) motion can be granted "with the distinctly different analysis required for determining whether Justus's habeas petition was timely filed under" AEDPA. App. 40a (Niemeyer, J., dissenting). Although Rule 60(b)(6) and equitable tolling standards share the requirement of showing "extraordinary circumstances," see *Holland*, 560 U.S. at 631; *Gonzalez*, 545 U.S. at 535, "it is legal error to simply *conflate* them" as the Fourth Circuit did, App. 41a (Niemeyer, J., dissenting). Such collapsing "fails utterly to recognize that while the 'extraordinary circumstances' element required for showing equitable tolling focuses on the reason why a party failed to satisfy a particular filing deadline," this Court "has required a movant seeking Rule 60(b)(6) relief to establish 'extraordinary circumstances' as a means of preserving *the finality of judgments*." App. 41a (Niemeyer, J., dissenting) (citing *Gonzalez*, 545 U.S. at 535).

If habeas petitioners could use Rule 60(b)(6) to reopen a judgment and equitably toll the statute of limitations anytime their mental illnesses render them unable to comply with the filing deadline because they cannot "understand the need to timely file," App. 32a, even though a court would determine them to be mentally competent and even though they are not

institutionalized, then "extraordinary circumstances" would become ordinary indeed. But equitable tolling "is a rare remedy to be applied in unusual circumstances, not a cure-all for an entirely common state of affairs." *Wallace* v. *Kato*, 549 U.S. 384, 396 (2007). And extraordinary circumstances justifying a reopening of proceedings "will rarely occur in the habeas context." *Gonzalez*, 545 U.S. at 535. This "very strict interpretation of Rule 60(b) is essential if the finality of judgments is to be preserved." *Ibid.* (quoting *Liljeberg* v. *Health Servs. Acquisition Corp.*, 486 U.S. 847, 864 (1988) (Rehnquist. C.J., dissenting)).

The Fourth Circuit's adoption of this lenient standard was incredibly consequential. Despite the fact that this Court has made clear that "Rule 60(b) proceedings are subject to *only limited and deferential appellate review*," *ibid.* (emphasis added), the panel majority "r[ode] roughshod over the district court's findings," App. 40a (Niemeyer, J., dissenting), to hold that Justus was entitled to an evidentiary hearing on whether his judgment should be reopened through equitable tolling because he did not understand the need to file timely. It held that Justus's five year-delay in filing his Rule 60(b)(6) motion was "reasonable" because of the "extensive evidence documenting [his] severe mental disabilities." App. 28a. And it observed that Justus "has provided evidence strongly suggesting that he lacks the ability to timely file a habeas petition during periods of nontreatment." App. 35a. This "clearly tramples the notion of a 'limited and deferential appellate review.'" App. 42a (Niemeyer, J., dissenting) (quoting *Gonzalez*, 545 U.S. at 535). And it would have never happened through the application of the proper standard.

And, even under its own terms, the Fourth Circuit was incorrect. As the dissent noted, "[t]he record simply does not show—and, indeed, is inconsistent with finding—that Justus's substantial delay in filing his federal habeas petition can be justified on the ground that he was mentally incapable of timely filing that petition." App. 42a (Niemeyer, J., dissenting). Remarkably, the panel "totally overlook[ed] the gap in evidence by pointing to Justus's medical records from before 2009, projecting them forward without any basis for concluding that they were applicable to the [limitations] period." App. 42a–43a (Niemeyer, J., dissenting). The court did so "simply by emphasizing the severity of Justus's pre-2009 condition and hypothesizing that it debilitated Justus during the relevant period—despite the fact that, during the same period, Justus had pursued his ineffective assistance of counsel claim with multiple filings and letters, thus demonstrating that he was indeed also capable of filing a federal habeas petition but simply failed to do so." App. 45a (Niemeyer, J., dissenting).

CONCLUSION

This Court should grant the petition.

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