No. 23-652

IN THE
Supreme Court of the United States

CHADWICK DOTSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS

Petitioner,

v.

BERMAN JUSTUS, JR.,

Respondent.

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

BRIEF IN OPPOSITION FOR RESPONDENT

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QUESTION PRESENTED

Whether a habeas petitioner is entitled to an evidentiary hearing to determine whether he can demonstrate that his mental illness constitutes an "extraordinary circumstance" justifying relief under Federal Rule of Civil Procedure 60(b)(6) and equitable tolling of the statute of limitations when he presents allegations and evidence of ongoing, severe mental illness that prevented him from timely filing his petition and there is no evidence in the record refuting the petitioner's claim that his mental illness prevented him from timely filing.

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STATEMENT OF THE CASE

A. Factual Background and State Court Proceedings

1. In 2003, Respondent Berman Justus, Jr., shot and killed his estranged wife, Amanda Justus, and her boyfriend, Joe White. Joint Appendix, USCA Dkt. No. 36, at JA40, 205. Three years later, in October 2006, the Virginia trial court held a bench trial on Justus's charges of capital murder, use of a firearm in the commission of capital murder, first degree murder, use of a firearm in the commission of murder, and shooting into an occupied vehicle. JA40–41.

At trial, Justus's counsel did not contest his actions, but argued that Justus was legally insane at the time of the crimes. JA205. Both testifying experts agreed that Justus suffered from serious mental health problems and was afflicted with a disease that manifested with psychotic episodes. JA181, 205. Dr. Evan Nelson, a clinical psychologist, opined that Justus was clinically depressed at the time of the crimes. JA41. And Dr. William Stejskal testified that Justus exhibited features of psychosis that caused a global impairment in his ability to function. JA41–42. Dr. Nelson opined, however, that Justus did not become psychotic until after the killings. JA40, 183. And Dr. Stejskal was unable to offer an opinion to a reasonable degree of certainty about Justus's sanity at the time of the offenses. JA41–42.

The trial court found Justus was not insane at the time of the offenses and convicted him on all counts.

JA207. The court sentenced Justus to two life terms plus eighteen years. JA65. Judgment was entered on January 23, 2007. *Id.* The Court of Appeals of Virginia denied Justus's petition for appeal on November 30, 2007. JA40–43.

2. Following the state court of appeals' denial of Justus's petition, Justus's counsel, J. Lloyd Snook, III, prepared a petition to the Supreme Court of Virginia. JA208. Although Snook arranged for his paralegal to timely file the petition and believed it had been timely filed, he discovered in May 2008 that the petition was never filed. JA208–09. Snook sent Justus a letter explaining what happened with the appeal and suggesting Justus talk to another lawyer, but Justus never received Snook's letter. JA53–54, 105, 209.

Two years later, Justus filed a complaint against Snook with the Virginia State Bar based on Snook's failure to perfect his appeal to the state supreme court. JA145, 149. Snook responded to the complaint, alerting Justus to the May 2008 letter. JA24, 45–50. Justus asked Snook to point Justus to another lawyer who could assist Justus with pursuing the appeal. JA25. Snook informed Justus that, at that point, his only remedy was a petition for habeas corpus, and he explained that Justus did not have an automatic right to an attorney to assist with the habeas petition. JA55. Snook recommended that Justus file a petition in Virginia circuit court pro se and ask the judge to appoint him an attorney. *Id.*

In November 2010, Justus filed a pro se habeas petition in the circuit court asserting ineffective

assistance of counsel, followed by an amended habeas petition in January 2011. JA57–64, 66. The circuit court denied the petition in February 2011. JA65–68. Two years later, the Supreme Court of Virginia denied a subsequent petition for appeal in June 2013, but the record is unclear as to when this subsequent appeal was filed and by whom. JA112.

B. The Proceedings Below

1. The current proceedings began when Justus filed a federal habeas petition under 28 U.S.C. § 2254 in the U.S. District Court for the Western District of Virginia in September 2013, asserting ineffective assistance of counsel based on Snook's failure to perfect the appeal to the Supreme Court of Virginia. JA3–17, 113–14. The district court conditionally filed the petition, advised Justus that the petition appeared to be untimely, and directed Justus to submit any additional argument or evidence regarding the timeliness of the petition. JA115–18.

Justus filed a response to the district court's order, but failed to address the timeliness of the petition. JA122–48. In June 2014, the court thus denied the petition as untimely under the Antiterrorism and Effective Death Penalty Act's (AEDPA's) one-year statute of limitations. JA149–51. And the court denied a certificate of appealability on the same day. JA152.

2. Five years later, in August 2019, Justus filed a motion for reconsideration, arguing that his mental health disorders prevented him from timely filing his federal habeas petition. JA153–60. Although Justus

was technically proceeding pro se, the motion stated that Darrell Young, Justus's fellow inmate, had prepared it. JA160.

In support of the motion, Justus filed medical records and other evidence of his mental illness from 2003–08 and 2016. JA166–229. That evidence showed that Justus had long suffered from chronic mental illness.

Beginning as soon as Justus was taken into custody, it was quickly apparent that Justus was "seriously mentally ill." JA205. Three days after the killings, Justus indicated that he believed he could stare at objects and make them change color. JA175, 183. Justus's diagnosis at the time was adjustment disorder with mixed anxiety and depressive features. *Id.* Over the next several months, Justus revealed his hyper-religious delusions, including his belief that God had commanded him to kill Amanda Justus and Joe White and if he did not do so, then he would not go to heaven. JA205–06.

In December 2003, Justus completed a jail request form asking "to see mental health cause of stress, crying and mental problems [he is] having and can't control most of the time." JA176. His doctors promptly prescribed Seroquel, an antipsychotic medication. *Id.* The medicine reduced Justus's hallucinations, but he still occasionally heard voices and imagined seeing things out of the corner of his eye. *Id.* Justus reported being in a psychotic state in which he believed his son was with him. *Id.* And when Justus's hallucinations continued and began to

manifest as more disturbing and upsetting images, his doctors increased his Seroquel prescription. *Id.*

By February 2004, despite treatment with the antipsychotic medication, Justus was floridly psychotic and declared incompetent to stand trial. JA183. He was admitted to Central State Hospital (CSH) from April to October for treatment to restore his competency. JA169–70. During that period, he was diagnosed with schizoaffective disorder. JA170.

After being found competent and discharged from CSH in October 2004, Justus stopped complying with his medication in spring and summer 2005, resulting in his decompensation and return to a florid psychosis. JA184, 214. Justus was again declared incompetent to stand trial and again admitted to CSH from November 2005 through May 2006. JA169–70. During that period, CSH changed Justus's diagnosis to bipolar disorder, most recent episode mixed, with psychosis. JA170.[1]

Although Justus was eventually able to stand trial, following his conviction, his functionality soon continued to deteriorate due to his ongoing severe mental health disorders. For the first several months after his conviction, largely driven by his desire to see his son, Justus complied with his treatment by taking prescribed medications. JA187, 190–91, 204. But by late 2007, his son's psychiatrist declined to give Justus

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[1] Both diagnoses indicate problems with abnormal mood and psychotic thinking. JA170. The differences are clinical nuances related to diagnostic taxonomy and the class of medications for primary treatment. *Id.*

permission to see his son after talking to Justus's doctors, and around that same time, Justus began refusing his medication. JA192–94, 204.

Predictably, Justus's noncompliance was followed by depression, mood swings, and psychotic symptoms, including visual hallucinations. JA195. Mental health records from a February 2008 visit with psychiatrist Dr. Everette McDuffie reflect that Justus was hypervigilant, reporting that he had not been sleeping well but did not want to be vulnerable to being attacked while he was asleep. JA196. Dr. McDuffie noted Justus had symptoms of post-traumatic stress disorder that eclipsed symptoms of another mood disorder, antisocial personality disorder, and a history of thought disorder with manic symptoms. *Id.* Dr. McDuffie concluded that Justus would not improve his functioning without both medication and a period of single cell living, and he enrolled Justus in a trial of the drug Abilify. *Id.*

Shortly thereafter, however, Justus refused to continue taking Abilify. JA197. During a March 2008 session with Dr. McDuffie, Justus expressed concern about suffering sedation, stating "I just can't take the chance right now." *Id.* Justus acknowledged his past psychotic symptoms and delusions and expressed feeling vulnerable to hyper-religiosity. *Id.* Dr. McDuffie diagnosed Justus with chronic PTSD, antisocial personality disorder, and schizoaffective disorder in remission. *Id.* Dr. McDuffie reluctantly discontinued Abilify but noted that Justus's symptoms were unlikely to subside without medication. *Id.*

At the end of March 2008, Justus briefly expressed a willingness to again try medication, but by the following month, he was off again. JA198–99. In an April 2008 appointment with Dr. McDuffie, Justus recognized that his increased hypervigilance and increased suspicion and paranoia coupled with poor sleep would eventually exhaust him emotionally and physically, but he still refused medication. *Id.* Dr. McDuffie recorded that Justus minimized his symptoms. *Id.* He observed that Justus was not grossly psychotic at that time but appeared paranoid. *Id.* He diagnosed Justus with schizoaffective disorder with prominent mood impairment, PTSD, and antisocial personality disorder. *Id.* And he noted that as Justus's functioning deteriorated, his thought disorder with paranoia was eclipsing his previously manifested PTSD. *Id.* Dr. McDuffie further noted that the prognosis for a patient with untreated schizoaffective disorder is poor. *Id.*

In June 2008, Justus reported that he stayed angry and frustrated all the time and that he was not sleeping. JA200. He stated that he was ready to be back on his medication and felt that he needed to be back on medication to keep calm. *Id.* During a visit with Dr. McDuffie, she observed that Justus was suffering from a chronic mental illness and had been off all medication for several months. JA201. As expected, Justus's condition had deteriorated because of his discontinuation of treatment, and he was not well. *Id.* Justus appeared disoriented and continued to be sleepless, paranoid, irritable, and dysphoric. *Id.* Justus looked exhausted and often glanced around the

room as if he was looking for something. *Id.* Justus was willing to try the drug Risperdal. *Id.*

This pattern of alternating accepting and refusing treatment continued. In July 2008, Justus met with a new physician, Dr. Ahsan, who described Justus as guarded with paranoid ideation. JA202. Justus stated he still could not sleep, his medication was not doing anything for him, and he stayed nervous all the time. *Id.* In August, Justus met with a psychiatrist, Dr. Kelly Houck, after again refusing his medication. JA204. On that visit, Dr. Houck adjusted his Risperdal prescription. *Id.* But by September 2008, Justus reported to Dr. Houck that he was doing "fine" off his medication. JA203. Justus stated that he did not need medication and he was reluctant to admit that he ever needed medication. *Id.* Although he had been "stressed out and gone off," he did not want to talk about that and was not crazy. *Id.* Dr. Houck noted that Justus's insight was limited and impulse-centered and his judgment was likely poor. *Id.*

Collectively, Justus's mental health records show that, despite repeated chronic mental health diagnoses, Justus has been off medication much more than he has been on medication. JA225. Justus continued to refuse his medication in 2016, and Justus was still having "ins and outs" in 2019. JA185–86, 225–26, 228.

3. Notwithstanding the evidence of Justus's serious mental health issues, the district court denied the motion for reconsideration without an evidentiary hearing. Pet. App. 56a–61a. The court construed

Justus's motion as a motion under Federal Rule of Civil Procedure 60(b)(6), and considered whether Justus was entitled to equitable tolling of the statute of limitations as a result of his mental condition. Pet. App. 58a–59a. The court concluded he was not, reasoning that none of the evidence "indicates a period of hospitalization *after* he was sentenced or while incarcerated." Pet. App. 60a. "Certainly," the court continued, "he was not institutionalized or judged to be incompetent at any point after he was convicted." *Id.* The court thus concluded that Justus "had not made the kind of 'extraordinary' showing to entitle him to equitable tolling." Pet. App. 60a-61a.

4. a. The court of appeals vacated the district court's ruling, and remanded for an evidentiary hearing. Pet. App. 3a. As relevant here, the court explained that the "central issue in th[e] appeal" was "whether Justus has shown 'extraordinary circumstances' entitling him to Rule 60(b)(6) relief and equitable tolling of his federal habeas petition," which the court largely considered together. Pet. App. 29a. The court recognized that "an extraordinary circumstance must independently warrant each particular relief sought, and that each form of relief may serve a different purpose and present unique factual questions[,]" but it reasoned that "given the posture of this case, . . . if Justus's mental illness satisfies the equitable tolling 'extraordinary circumstances' standard, it should also demonstrate 'extraordinary circumstances' under Rule 60(b)(6)." Pet. App. 30a.

After reviewing the evidence, the court of appeals held that, "[a]t a minimum, this evidence warrants further exploration into Justus's mental state during the relevant time period." Pet. App. 35a. In the habeas context, the court explained that a petitioner's mental illness constitutes an extraordinary circumstance "if it renders him unable to comply with the filing deadline." Pet. App. 32a. It reasoned that "while a petitioner's institutionalization or adjudged incompetence is certainly relevant to an equitable tolling analysis, it is not required." Pet. App. 33a. Instead, "this case requires a more particularized investigation into Justus's mental illness at the relevant times to determine whether it rendered him unable to timely file his habeas petition." *Id.* Here, the court observed that "Justus has provided extensive evidence that he is severely mentally ill." Pet. App. 34a. And, in particular, he has shown that "a feature of [his] illness is that he will frequently reject treatment, and he has provided evidence strongly suggesting that he lacks the ability to timely file a habeas petition during periods of nontreatment." Pet. App. 34a–35a.

The court of appeals thus concluded that "the district court abused its discretion in failing to hold an evidentiary hearing." Pet. App. 37a. The court of appeals remanded the case to the district court "to determine whether Justus's mental illness constitutes an 'extraordinary circumstance' that warrants Rule 60(b)(6) and equitable tolling relief" and, if so, whether "any remaining factors in the Rule 60(b)(6) and equitable tolling analysis" are met. *Id.* & n.10.

b. Judge Niemeyer dissented. Pet. App. 39a–50a. Judge Niemeyer did not endorse the district court's apparent requirement of institutionalization or adjudged incompetence for equitable tolling. But he disagreed with the majority's conclusion that "if Justus's mental illness satisfies the equitable tolling 'extraordinary circumstances' standard, it should also demonstrate 'extraordinary circumstances' under Rule 60(b)(6)." Pet. App. 41a. And he explained that, in his view, the evidence was insufficient for the district court to conclude that Justus's mental illness prevented him from timely filing his petition. Pet. App. 42a.

REASONS FOR DENYING THE WRIT

Petitioner urges this Court to grant review to determine "the showing that a federal habeas petitioner must make to reopen a judgment based on mental illness." Pet. 1. But the court of appeals held only that Justus has made an evidentiary showing sufficient to warrant a hearing into whether his undisputed chronic mental illness constitutes an extraordinary circumstance for purposes of Rule 60(b)(6) relief and equitable tolling of AEDPA's statute of limitations. The court did not reach any conclusion on even those questions, much less determine whether any final judgment should ultimately be reopened.

The court of appeals' narrow, fact-bound decision does not warrant this Court's review. Petitioner's claim of a conflict among the courts of appeals is illusory. None of the cases on which petitioner relies

even addresses the standard for showing "extraordinary circumstances" under Rule 60(b)(6), and none adopts any categorical rules that suggest a different result here on the equitable tolling question either. Moreover, even if the question presented warranted this Court's attention, this case would be a poor vehicle for addressing it, among other reasons, because of the developing factual record. And, in any event, the court of appeals' decision was correct. The petition should be denied.

I. The Decision Below Does Not Implicate Any Conflict Among the Courts of Appeals.

Petitioner contends (Pet. 11–18) that the courts of appeals are split on the showing a habeas petitioner must make to warrant relief under Rule 60(b)(6) and equitable tolling relief based on mental illness. But petitioner does not cite a single court of appeals published decision applying the Rule 60(b)(6) standard, let alone decisions showing a conflict in the application of that standard. And the equitable tolling decisions on which petitioner relies likewise do not reflect a conflict on either the legal standard or the results reached.

On the contrary, the courts of appeals widely apply the same fact-intensive standard for deciding equitable tolling under AEDPA. And none gives talismanic significance to the two facts on which petitioner relies to argue that the equitable tolling standard cannot be satisfied here. Absent a showing that the courts of appeals are consistently applying the Rule 60(b)(6) or equitable tolling standard

differently to similarly situated habeas petitioners, this Court's intervention is unwarranted.

A. The Circuits Agree on the Legal Standard for Equitable Tolling under AEDPA.

The courts of appeals widely hold—including the Sixth, Seventh, and Tenth Circuits—that a habeas petitioner is entitled to equitable tolling of AEDPA's statute of limitations if he establishes (1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way and prevented timely filing. *See, e.g.*, *Jones v. Lumpkin*, 22 F.4th 486, 490 (5th Cir. 2022); *Watkins v. Deangelo-Kipp*, 854 F.3d 846, 851 (6th Cir. 2017); *Head v. Wilson*, 792 F.3d 102, 106 (D.C. Cir. 2015); *Rudin v. Myles*, 781 F.3d 1043, 1054 (9th Cir. 2015); *Obriecht v. Foster*, 727 F.3d 744, 748 (7th Cir. 2013); *Melson v. Comm'r*, 713 F.3d 1086, 1089 (11th Cir. 2013); *Johnson v. Hobbs*, 678 F.3d 607, 610 (8th Cir. 2012); *Harper v. Ercole*, 648 F.3d 132, 136 (2d Cir. 2011); *Pabon v. Mahanoy*, 654 F.3d 385, 399 (3d Cir. 2011); *Riva v. Ficco*, 615 F.3d 35, 39 (1st Cir. 2010); *Marsh v. Soares*, 223 F.3d 1217, 1220 (10th Cir. 2000).

The courts of appeals also widely hold, as the court below did, that a habeas petitioner's mental illness may constitute such an extraordinary circumstance when it caused the petitioner's failure to timely file his petition. *See Watkins*, 854 F.3d at 851 (stating a petitioner's mental incompetence can constitute an extraordinary circumstance that warrants equitable tolling when "(1) he is mentally incompetent and (2) his mental incompetence caused his failure to

comply with AEDPA's statute of limitations"); *Obriecht*, 727 F.3d at 750–51 (stating mental illness may support equitable tolling "if the illness *in fact* prevents the sufferer from managing his affairs and thus from understanding his legal rights and acting upon them"); *see also Smith v. Saffle*, 28 F. App'x 759, 760 (10th Cir. 2001) ("Equitable tolling based on mental incapacity is limited to 'exceptional circumstances.'").

Petitioner has failed to identify a single published decision of any court of appeals that adopted a different legal standard. That failure alone is sufficient grounds to deny the petition. "A petition for a writ of certiorari is rarely granted when the asserted error consists of . . . the misapplication of a properly stated rule of law." S. Ct. R. 10. Petitioner provides no sound reason for the Court to depart from that ordinary practice here.

B. Petitioner Fails to Show Any Conflict in the Circuits' Application of that Standard.

Petitioner nonetheless asserts that the decision below conflicts with decisions of several other circuits by arguing that those courts have given talismanic significance to two asserted facts: (1) the habeas petitioner's ability to file other litigation documents during the requested period of equitable tolling and (2) the habeas petitioner's inability (at least prior to an evidentiary hearing) of producing direct evidence of mental illness during the same period. Pet. 13–15, 15–18. Neither argument withstands scrutiny. As this Court has recognized, the determination of

whether a petitioner is entitled to equitable tolling is fact-intensive and must be made on a case-by-case basis. *Holland v. Florida*, 560 U.S. 631, 649–50, 654 (2010). And each of the decisions on which petitioner relies adopts that fact-intensive approach.

1. Petitioner first argues that the Sixth, Seventh, and Tenth Circuits hold that a habeas petitioner's ability to file other documents during the limitations period precludes a finding that the petitioner's mental illness was an extraordinary circumstance that prevented him from timely filing his habeas petition. None does.

a. In *Obriecht v. Foster*, 727 F.3d 744, 751 (7th Cir. 2013), the Seventh Circuit held that the petitioner failed to establish that an extraordinary circumstance prevented him from timely filing his petition. Although the petitioner claimed in the district court that both his attorney's conduct and his mental health constituted extraordinary circumstances, the court recognized that the petitioner only developed arguments with respect to his attorney's conduct and, therefore, the district court did not consider whether his mental health constituted an extraordinary circumstance. *Id.* at 748. "Because [the petitioner] failed to develop any argument concerning his mental health as an extraordinary circumstance in the district court, [the court of appeals] [did] not address it[.]" *Id.* at 748–49.

The court noted that the petitioner "offered only the conclusory statements that he suffered from mental health problems and was incarcerated in [a

mental health facility]" but "ha[d] not explained, or provided evidence to demonstrate, how these two facts actually impaired his ability to pursue his claims." *Id.* at 751. The court further reasoned that the record "casts doubt on [the petitioner's] claim that these two circumstances prevented him from filing" during the limitations period. *Id.* The court pointed to evidence in the record that the petitioner was adjudicated competent to represent himself in his probation revocation proceeding approximately eighteen months before he filed his federal habeas claims, the petitioner was "very occupied with two other criminal appeals" that prevented him from timely pursuing his federal claims, and the petitioner "filed briefs, motions and habeas petitions in at least five other state court actions, timely challenging other convictions" during the period that he asserted his mental health prevented him from timely pursuing his federal claims without explaining why he could timely file in those cases but not in the case before it. *Id.*

Importantly, the court did not conclude that the mere fact that the petitioner made other court filings casted doubt on or otherwise precluded a finding that his mental health prevented him from timely pursuing his claims. The court specifically requested copies of the papers that the petitioner filed in other cases during the limitations period and "[a]fter a review of these documents, [the court] [found] no prima facie evidence of incapacity." *Id.* at 751 n.13. The court held that equitable tolling was not warranted based on this evidence and the other record evidence discussed above.

Conroy v. Thompson, 929 F.3d 818 (7th Cir. 2019), is similar. There, the petitioner argued that he was entitled to equitable tolling due to his illiteracy, emotional issues, and schizoaffective disorder. *Id.* at 820. The court held that the petitioner failed to provide evidence showing that his mental issues actually prevented him from pursuing his claims during the limitations period. *Id.* at 821. The court reasoned that the petitioner was found competent to stand trial shortly before the limitations period began and he did "not provide[] evidence establishing that his mental issues drastically deteriorated" thereafter; in fact, "the record reveal[ed] that the opposite [was] true." *Id.* But, the court identified the evidence that showed the petitioner's mental condition did not deteriorate after he was adjudged competent, including psychiatry notes and "several" motions and petitions that the petitioner filed during the limitations period. *Id.* The court explained that "most damning of all, [the petitioner] originally attributed his failure to timely file his habeas petition not to mental limitation, but to the fact that he was unaware of time limits." *Id.*

In *Conroy*, the Seventh Circuit again did not hold that the mere fact that the petitioner made other court filings during the limitations period precluded equitable tolling relief. Instead, the petitioner's court filings were one of several pieces of evidence that the court relied on in concluding that the petitioner failed to show his mental illness was an extraordinary circumstance that prevented him from timely filing his petition. The petitioner in *Conroy* did not provide evidence showing, and the record refuted, that his

mental condition drastically deteriorated after he was adjudged competent to stand trial.

b. Petitioner relies on a single decision to argue that the Sixth Circuit has adopted a categorical rule that a petitioner's other court filings during the limitations period precludes equitable tolling based on mental illness. In *Watkins*, the district court equitably tolled the AEDPA limitations period due to the petitioner's mental illness, relying only on evidence that he was diagnosed with "Psychotic Disorder NOS" and given a treatment plan that included therapy and medication. 854 F.3d at 852. The Sixth Circuit held that the petitioner failed to show he was entitled to equitable tolling based on his mental illness. *Id.* But the court did not rest that conclusion on any single fact or piece of evidence. Instead, the court reasoned that there was *no* evidence that the petitioner's diagnosis altered the prior adjudication that the petitioner was competent or that his mental condition caused his untimely filing. *Id.*

To be sure, the court also noted that the evidence suggested that his mental condition did not cause his timely filing, pointing to three timely court filings the petitioner made during the limitations period and reasoning "[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.* But the court did not purport to announce a rule that such filings categorically preclude equitable tolling, only that they contributed to the court's conclusion. Indeed, the Sixth Circuit continues to recognize that "the propriety of equitable tolling must necessarily be

determined on a case-by-case basis[.]" *Zappone v. United States*, 870 F.3d 551, 557 (6th Cir. 2017).

c. Finally, petitioner relies on a nearly 30-year-old decision from the Tenth Circuit concerning the availability of equitable tolling not under AEDPA, but Title VII of the Civil Rights Act of 1964. *See Biester v. Midwest Health Serv. Inc.*, 77 F.3d 1264 (10th Cir. 1996). To the extent that case has any bearing at all on the question, it does not advance petitioner's cause.

In *Biester*, the court of appeals declined to equitable toll Title VII's 90-day period to file suit following receipt of a right-to-sue notice from the Equal Employment Opportunity Commission. *Id.* at 1265. The court expressly recognized that it had not previously determined whether "mental incapacity" could toll the limitations period and held that, "under the facts presented by th[at] case, it [wa]s unnecessary to reach that issue." *Id.* at 1268. The court relied not on any one fact, but emphasized that the evidence as a whole demonstrated that the plaintiff was capable of pursuing his own claim in spite of his mental condition and that he was represented by counsel throughout the entire limitations period who "knew well in advance of the 90-day time limit that plaintiff had received the right to sue notice." *Id.*[2]

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[2] Petitioner also argues that the decision below conflicts with unpublished decisions of the Second and Fifth Circuits. Pet. 14–15. Such nonprecedential decisions cannot create a conflict. Regardless, they also do not conflict with the decision below. In both cases, the Second and Fifth Circuits applied the same standard for equitable tolling as the court below but concluded that the particular facts of each case did not satisfy that

2. Petitioner fares no better in arguing that the Sixth, Seventh, and Tenth Circuits also hold that a habeas petitioner must present direct evidence of his mental illness during the limitations period to show that his illness constituted an extraordinary circumstance justifying equitable tolling. *See* Pet. 15–18 (citing *Watkins*, *supra*; *Mayberry v. Dittman*, 904 F.3d 525, 530–31 (7th Cir. 2018); *Fisher v. Gibson*, 262 F.3d 1135, 1145 (10th Cir. 2001)).

a. As already explained, in *Watkins*, the Sixth Circuit took a comprehensive view of the evidence in concluding that the habeas petitioner failed to show he was entitled to equitable tolling. To be sure, the court observed that, although the petitioner argued that his diagnosis with psychotic disorder two years before the limitations period "carried over into the limitations period," there was no evidence indicating that this diagnosis altered the previous evaluation deeming the petitioner competent. *Id.* at 852. But it further reasoned that the petitioner was given a treatment plan and "even assuming that failure to comply with the treatment plan would render him incompetent, [the petitioner] does not allege that he failed to comply with the plan." *Id.* The court also explained that, beyond those facts, there was simply

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standard. *See Rios v. Mazzuca*, 78 F. App'x 742, 743 (2d Cir. 2003); *Jones v. Stephens*, 541 F. App'x 499, 503 (5th Cir. 2013). Like their sister circuits, the Second and Fifth Circuits have both expressly recognized that "whether a person is sufficiently mentally disabled to justify tolling of a statute of limitations is . . . highly case-specific." *Rios*, 78 F. App'x at 744; *see Henderson v. Thaler*, 626 F.3d 773, 778–79 (5th Cir. 2010) (the equitable tolling analysis is a "fact-intensive inquiry" that must be decided "on a case-by-case basis").

no evidence that the petitioner's mental condition caused his untimely filing and the evidence in fact suggested the opposite conclusion. *Id.*

If there were any question whether the *Watkins* decision was specific to the record before it, the court's reliance on its previous decision in *Ata v. Scutt*, 662 F.3d 736 (6th Cir. 2011), would remove all doubt. There, the same court held that the district court had erred in failing to hold an evidentiary hearing to determine whether the petitioner was entitled to equitable tolling based on his mental incompetence. *Id.* at 738. The Sixth Circuit reasoned that the petitioner's allegations, if true, showed that the petitioner is mentally incompetent and that his incompetence prevented him from timely filing his petition. *Id.* at 743. But the only medical records presented in *Ata* were from prior to the limitations period. The court nonetheless reasoned that "the record corroborate[d] [the petitioner]'s allegations of mental incompetence preventing timely filing, as [the petitioner]'s diagnosis of paranoid schizophrenia presents a lifelong condition with an accompanying regimen of medication." *Id.* at 744. As the Fourth Circuit did here, it thus remanded the case to the district court for an evidentiary hearing on whether he was entitled to equitable tolling. *Id.* at 745.

b. Petitioner also incorrectly relies on *Mayberry v. Dittman*, 904 F.3d 525 (7th Cir. 2018), to assert that the Seventh Circuit holds that evidence of mental illness from outside the limitations period cannot support equitable tolling. In concluding that the petitioner failed to show his mental disability

prevented him from timely filing his habeas petition, the *Mayberry* court did reason that "[t]he problem with [the petitioner]'s claim is that so little of his evidence of his mental disability sheds light on the relevant time period for purposes of tolling." *Id.* But that conclusion was a function of the specific evidence that the petitioner relied on in that case, not any categorical rule. And it was correct. The petitioner had relied on evidence that he was in a car accident *three decades* prior to the limitations period, he was enrolled in special education classes prior to dropping out of school, and a psychological evaluation from *more than ten years* prior to the limitations period that concluded the petitioner had a low IQ. *Id.* at 530. That evidence bears no resemblance to the evidence in record here.

c. Finally, petitioner relies on *Fisher v. Gibson*, 262 F.3d 1135 (10th Cir. 2001), to assert that the Tenth Circuit has adopted a categorical rule against tolling without evidence of mental incapacity from within the limitations period. In *Fisher*, the petitioner filed a federal habeas petition alleging that he was incompetent at the time of each of his three guilty pleas. *Id.* at 1141. The court reasoned, however, that by pleading guilty, the petitioner conceded that he was legally competent and that in all three plea proceedings, the petitioner's lawyer represented that the petitioner was competent at the time of the plea and the trial judge made his own observations of the petitioner's competence. *Id.* at 1143–44. It was that record that the court described as containing "no basis to disregard these consistent indicia of competency"

because it only contained mere conclusory allegations that the petitioner was incompetent.[3] *Id.* at 1144–45.

3. None of these decisions suggests that this appeal would have been resolved differently in any other circuit.

In *Obriecht* and *Watkins*, the Seventh and Sixth Circuits concluded the petitioner was not entitled to equitable tolling in part because the petitioner *timely* filed other court documents during the limitations period. *See Obriecht*, 727 F.3d at 751; *Watkins*, 854 F.3d at 852. But here, all three of Justus's filings during the limitations period were deemed untimely. JA65–67; Pet. App. 51a–61a. There is nothing in these circuits' decisions that suggests they would have reached the same conclusion had the petitioners' filings during the limitations period been untimely—if anything, these decisions suggest that they would have reached a different conclusion. Indeed, the Sixth Circuit expressly recognized in *Watkins* that "the relevant inquiry is whether petitioner's mental incompetency prevented him from filing a *timely*

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[3] Petitioner also argues that the decision below conflicts with an unpublished decision in the Eighth Circuit, *Collins v. Scurr*, 2000 U.S. App. LEXIS 23550 (8th Cir. Sept. 19, 2000). The Eighth Circuit's nonprecedential, three-paragraph decision in *Collins* cannot and does not conflict with the decision below. The Eighth Circuit applied the same standard as the court below but concluded that the facts in that case did not satisfy that standard. *Id.* at *1–2. Indeed, the Eighth Circuit recognizes that "[w]hether equitable tolling is appropriate is a fact intensive inquiry that depends on the totality of the circumstances present in a particular case." *Martin v. Fayram*, 849 F.3d 691, 698 (8th Cir. 2017).

petition[.]" 854 F.3d at 852. And in *Obriecht*, the Seventh Circuit obtained and reviewed copies of the petitioner's extensive court filings and found no prima facie evidence of incapacity, supporting that its conclusion was not based on the mere fact of the filings. 727 F.3d at 751 n.13.

More broadly, the record evidence of the habeas petitioner's mental condition in the decisions on which petitioner relies was very different than the record evidence in this case. In *Obriecht* and *Fisher*, for example, the petitioner relied on mere conclusory assertions of incompetency. *See Obriecht*, 727 F.3d at 751; *Fisher*, 262 F.3d at 1145. Here, Justus submitted substantial evidence that he suffers from a severe mental illness that significantly impedes his functioning, going well beyond conclusory and speculative allegations. Similarly, the evidence presented in *Mayberry* merely showed the petitioner was in a car accident *three decades* prior to the limitations period, he was enrolled in special education classes prior to dropping out of school, and a psychological evaluation from *more than ten years* prior to the limitations period that concluded the petitioner had a low IQ—none of which suggests a mental disability so severe such that it may have prevented him from timely filing his petition during the limitations period. 904 F.3d at 530–31.

Moreover, it was critical to the courts' analyses in *Conroy*, *Watkins*, and *Fisher* that the petitioners had been adjudged competent and did not provide any evidence that their mental condition deteriorated after this adjudication. *See Conroy*, 929 F.3d at 821;

Watkins, 854 F.3d at 852; *Fisher*, 262 F.3d at 1144. Justus, however, presented significant evidence that his mental illness drastically deteriorated after he was declared competent to stand trial, diminishing the probative value of his competency adjudications from several years before the limitations period. And he bolstered this evidence with substantial evidence of the lifelong nature of his particular mental illness—a feature of which is frequent periods of medical noncompliance during which the illness greatly impedes his ability to function.

In short, each of petitioner's authorities are consistent with this Court's recognition in *Holland* that "[t]here are no bright lines in determining whether equitable tolling is warranted in a given case. Rather, the particular circumstances of each petitioner must be taken into account." *Pabon v. Mahanoy*, 654 F.3d 385, 399 (3d Cir. 2011) (citing *Holland*, 560 U.S. at 649–50); *see also, e.g.*, *Jones*, 22 F.4th at 490 (stating equitable tolling "turns on the facts and circumstances of a particular case"). "'[T]he exercise of a court's equity powers must be made on a case-by-case basis,' mindful 'that specific circumstances, often hard to predict in advance, could warrant special treatment in an appropriate case.'" *Harper*, 648 F.3d at 136 (quoting *Holland*, 560 U.S. at 649–50). "[W]hile prior decisions provide guidance, rigid reliance on precedent should be avoided." *Pabon*, 654 F.3d at 399 (citing *Holland*, 560 U.S. at 649–50). Petitioner has failed to show that any other circuit would have reached a different conclusion on these facts. On that basis too, this Court's review is unwarranted.

II. This Case Would Be a Poor Vehicle to Address the Question Presented.

Even if the Court were inclined to wade into the fact-bound analysis governing what circumstances are sufficiently "extraordinary" to warrant Rule 60(b)(6) and equitable tolling relief, this case is an unsuitable vehicle to address that question for several reasons.

First, even on petitioner's view of the law, this case does not even implicate the illusory split petitioner proffers. Although petitioner claims that the circuits are divided on the "proper standard for Rule 60(b)(6) motions," to demonstrate that conflict, petitioner relies exclusively on cases addressing the standard for equitable tolling.

To be sure, the Fourth Circuit equated the two standards in the circumstances of this case. Pet. App. 29a–30a. But petitioner faults the court for doing so. *See* Pet. 11 (criticizing the court of appeals for "collaps[ing] the 'extraordinary circumstances' analyses of Rule 60(b)(6) and equitable tolling").

If petitioner is right, the Court would be unlikely to reach the equitable tolling question at all. The Rule 60(b)(6) inquiry is logically antecedent to the equitable tolling question. A habeas petitioner like Justus—who is seeking reconsideration of a closed federal judgment denying his habeas petition—would be unable to raise an equitable tolling argument related to the underlying petition if his motion for reconsideration was not first deemed to satisfy Rule 60(b)(6)'s "extraordinary circumstances" standard.

If the Court is interested in providing guidance on the equitable tolling standard in these circumstances, it should wait for a vehicle where the question is squarely presented, not one where the petitioner's arguments suggest that the Court should not reach it at all.

Second, the interlocutory nature of the Fourth Circuit's order and the ongoing proceedings in the trial court make this case an unsuitable vehicle for review now. This Court's "general[]" practice is to "await final judgment in the lower courts before exercising [its] certiorari jurisdiction." *Virginia Mil. Inst. v. United States*, 508 U.S. 946, 946 (1993) (Scalia, J., statement respecting denial of certiorari); *see also Mount Soledad Mem'l Ass'n v. Trunk*, 567 U.S. 944, 945 (2012) (Alito, J., statement respecting denial of certiorari) (concurring in denial of petitions because "[t]he current petitions come to us in an interlocutory posture"). And that general practice makes particular sense here.

In the decision below, the Fourth Circuit did not hold that either Rule 60(b)(6) relief or equitable tolling relief should be granted here, much less habeas relief. It remanded for an evidentiary hearing to substantiate Justus's claims of mental illness and determine whether his "mental illness constitutes an 'extraordinary circumstance' that warrants Rule 60(b)(6) and equitable tolling relief." Pet. App. 37a. Those proceedings are ongoing, and an evidentiary hearing is scheduled for May 1, 2024—before merits briefing would be completed or argument would occur in this Court.

Even if the Court were inclined to address the question presented, it should allow the lower courts to actually resolve Justus's extraordinary circumstances claims in the first instance before granting review. At a minimum, these further proceedings would allow the Court to consider a more comprehensive factual record when and if it wishes to provide guidance to lower courts on the exceedingly fact-bound questions presented in this case. Moreover, permitting the proceedings to be completed before considering further review would also ensure that the appeal is not mooted before this Court could resolve the case.

Third, in all events, this case would be a particularly unhelpful vehicle for establishing broadly applicable principles of law because of the unique set of facts. The Fourth Circuit made clear that it was responding to the extraordinary evidence of mental illness in this case. It explained, for example, that the case "likely 'cries out for the exercise of that equitable power to do justice'" in light of the "evidence and allegations of [Justus's] severe and continuing mental illness." Pet. App. 37a (citation omitted). And it recognized that "Rule 60(b)(6) . . . 'provides the court with a grand reservoir of equitable power to do justice *in a particular case*.'" *Id.* (citation omitted) (emphasis added).

Indeed, it is undisputed that Justus himself has demonstrated he suffers from severe mental illness. As the Fourth Circuit noted, "Justus was twice found incompetent to stand trial, and was twice admitted to Central State Hospital for treatment to restore his competency." Pet. App. 3a. "There he was diagnosed

with Schizoaffective Disorder," and "this diagnosis was later changed to Bipolar Disorder (Most Recent Episode Mixed, with Psychosis)." *Id.* Contrary to petitioner's contention, the Fourth Circuit's ruling will thus not result in habeas petitioners' widespread use of "a large loophole" to leverage unsubstantiated claims of mental illness to "render AEDPA's strict time limits effectively meaningless." Pet. 19. And this would be a particularly odd vehicle to resolve the reach of Rule 60(b)(6) or equitable tolling.

III. The Court of Appeals' Decision Is Correct.

Finally, the Court should deny review because the decision below is correct. This Court has held that extraordinary circumstances may equitably toll the statute of limitations period when those circumstances stood in the petitioner's way and prevented timely filing. *See Holland*, 560 U.S. at 649. "A habeas petitioner . . . should receive an evidentiary hearing when he makes 'a good-faith allegation that would, if true, entitle him to equitable tolling.'" *Roy v. Lampert*, 465 F.3d 964, 969 (9th Cir. 2006) (citation omitted); *see Fleming v. Evans*, 481 F.3d 1249, 1256–57 (10th Cir. 2007); *Hunter v. Ferrell*, 587 F.3d 1304, 1309–10 (11th Cir. 2009).

The Fourth Circuit properly applied *Holland* when it concluded that Justus's allegations and evidence of profound mental incapacity that stood in the way of his timely filing were sufficient to warrant an evidentiary hearing to further develop the record. If Justus's allegations of mental incapacity are true, he would be entitled equitable tolling of his habeas

petition under that decision. Justus "provided evidence strongly suggesting that he lacks the ability to timely file a habeas petition during periods of nontreatment." Pet. App. 35a (summarizing evidence). This evidence of circumstances that would prevent Justus from filing on time is exactly what he needs to demonstrate entitlement to equitable tolling. *Holland*, 560 U.S. at 649. And this same evidence of chronic mental illness would also show the "extraordinary circumstances" that warrant Rule 60(b)(6) relief. *See Klapprott v. United States*, 335 U.S. 601, 607–14 (1949) (finding a four-year gap timely where the party was incarcerated, ill, and lacked the ability to hire counsel).

In arguing to the contrary, petitioner principally asserts that, in the case of mental illness, equitable tolling should require "institutionalization or adjudged mental incompetence." Pet. 22. But no court of appeals has adopted this standard. Instead, the courts of appeals agree that mental illness may constitute an extraordinary circumstance to warrant equitable tolling if it prevented the petitioner from timely filing his petition. *See Ata*, 662 F.3d at 741; *Riva v. Ficco*, 615 F.3d 35, 49 (1st Cir. 2010) (finding that mental illness can equitably toll the limitations period when the habeas petitioner "can show that, during the relevant time frame, he suffered from a mental illness or impairment that so severely impaired his ability . . . effectively to pursue legal relief"); *Hunter v. Ferrell*, 587 F.3d 1304, 1308 (11th Cir. 2009) (noting that a petitioner's mental impairment may warrant equitable tolling if it

"affected the petitioner's ability to file a timely habeas petition").

And numerous courts of appeals decisions are inconsistent with petitioner's unrealistic standard. *See, e.g., Perry v. Brown*, 950 F.3d 410, 414 (7th Cir. 2020) (remanding for an evidentiary hearing when habeas petitioner presented evidence of global aphasia, but no history of institutionalization); *Nara v. Frank*, 264 F.3d 310, 320 (3d Cir. 2001) (remanding for an evidentiary hearing when the habeas petitioner "presented evidence of ongoing, if not consecutive, periods of mental incompetency," but no history of institutionalization), *overruled in part on other grounds by Carey v. Saffold*, 536 U.S. 214 (2002); *Laws v. Lamarque*, 351 F.3d 919, 923–24 (9th Cir. 2003) (remanding for an evidentiary hearing even though the habeas petitioner did not present a history of institutionalization).

Petitioner's rigid rule is also the antithesis of the fact-intensive, case-by-case approach this Court requires. *Holland*, 560 U.S. at 649–51. It is unsupported by the decisions of any circuit. And it provides no basis for disturbing the court of appeals' decision here.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully Submitted,

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FEBRUARY 15, 2024