No. 23-652

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

REPLY BRIEF FOR PETITIONER

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INTRODUCTION

This Court's review is needed, and Respondent Berman Justus, Jr. provides no sound basis to deny the writ. Absent this Court's intervention, the federal courts of appeals will remain divided on an important question of federal habeas law. The result will be—as here—that federal courts will improperly reopen decades-old state convictions, harming both States and the victims of crimes. Justus's arguments to the contrary fail.

First, Justus's argument that the courts of appeals agree as to the relevant legal standard is incorrect. Justus defines the legal standard at far too high a level of generality, asserting that there is no conflict because courts recite the same generalized standard for equitable tolling. But the courts of appeals disagree as to the question presented: the standard for when mental illness warrants reopening a final judgment and equitably tolling the statute of limitations. Some courts of appeals—including the Sixth, Seventh and Tenth Circuits—hold that petitioners must demonstrate that they were mentally incompetent during the period at issue. The Fourth Circuit rejected that standard, holding that a petitioner could demonstrate "extraordinary circumstances" by showing that he had a "lifelong illness" that caused him not to "understand the need to timely file." App. 32a–33a. In particular, courts of appeals disagree as to whether a petitioner can show his mental illness constitutes an "extraordinary circumstance" even though he made other legal filings during the limitations period and presented no evidence as to his mental condition during the period. While the legal tests at issue are fact-intensive, different courts of appeals are also applying different fact-intensive tests. This Court should grant review to resolve this split in authority.

Second, this case is a proper vehicle for this Court to address the disparate standards. This case clearly implicates the circuit split, and the Fourth Circuit's ruling was incorrect. Third, Justus does not dispute that the question presented is highly important. A standard that is too lenient—like the one the Fourth Circuit applied below—will affect numerous cases and result in federal courts erroneously reopening state convictions.

The petition should be granted.

ARGUMENT

I. Courts remain divided over the question presented

As set forth in the Petition, courts of appeals are divided over the correct legal standard for reopening final judgments for habeas petitioners on grounds of mental illness. See Pet. 11–18. Justus argues that there is no actual conflict because courts apply the "same fact-intensive standard" to decide equitable tolling, which "must be made on a case-by-case basis." B.I.O. 12, 15. But Justus considers the standard at far too high a level of generality: the courts of appeals are in conflict regarding the question presented.

Justus primarily argues that no split in authority exists because the courts of appeals "widely hold" that a habeas petitioner is entitled to equitable tolling if he establishes (1) diligence and (2) extraordinary circumstances. *Id.* at 13. Of course they do. That has been this Court's standard for decades. See, *e.g.*, *Pace* v. *DiGuglielmo*, 544 U.S. 408, 418 (2005) ("a litigant seeking equitable tolling bears the burden of establishing two elements: (1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way"). But the question

presented is not the generalized standard for equitable tolling—it is the standard for determining when mental illness in particular qualifies as an extraordinary circumstance. This Court granted the petition in *Holland* v. *Florida*, for example, to resolve a circuit conflict on the "application of the equitable tolling doctrine to instances of professional misconduct," 560 U.S. 631, 644 (2010), even though the two-part standard had long been the law. A similar conflict has now arisen concerning equitable tolling and mental illness.

As detailed in the Petition, courts are divided on the legal standard, not just the application of the standard. Pet. 11–18. The Fourth Circuit now allows equitable tolling in the habeas context whenever a "petitioner's mental impairment . . . renders him unable to comply with the filing deadline," App. 31a–32a, including because he did not "personally understand the need to timely file," App. 36a. The court rejected a higher standard that would require a showing of "mental incompetence," widening a circuit split.[1] *Ibid.*

In contrast to the Fourth Circuit and other courts (see Pet. 12–13, 15–16), several courts of appeals hold instead that the relevant question is whether a petitioner's mental illness was profound enough to render him mentally *incompetent* during the limitations period. For example, in *Watkins* v. *Deangelo-Kipp*, the

[1] Justus contends that the Petition argued that "equitable tolling should require 'institutionalization or adjudged mental incompetence.'" B.I.O. 30 (quoting Pet. 22). The Petition noted that the Fourth Circuit "reject[ed] the higher standard that would require 'institutionalization or adjudged mental incompetence.'" Pet. 22 (quoting App. 31a–32a). The Petition contends that equitable tolling on grounds of mental illness requires a showing that the petitioner is "profoundly incapacitated or incompetent." Pet. 3. The Petition does not contend that a prior court adjudication of mental incompetence is always required.

Sixth Circuit differentiated mental illness from mental incompetence, holding that the petitioner could not "demonstrate extraordinary circumstances" because, first and foremost, he alleged "he was diagnosed with a mental illness in 2007, not deemed incompetent." 854 F.3d 846, 851 (6th Cir. 2017). And despite Justus's protestations, see B.I.O. 21, the Sixth Circuit's earlier decision in *Ata* v. *Scutt*, 662 F.3d 736 (6th Cir. 2011), is not to the contrary. There, as in *Watkins*, the Sixth Circuit analyzed whether the petitioner had shown that "(1) he is mentally incompetent and (2) his mental incompetence caused his failure to comply with AEDPA's statute of limitations." *Id.* at 742. In *Watkins*, the petitioner failed to show that he was incompetent due to a lack of evidence of his mental condition, and his serial filings in other courts, during the relevant time period. See 854 F.3d at 851–52. In *Ata*, by contrast, the petitioner was "represented by counsel at the time" he was challenging his conviction, so "the fact that [he] sought direct review of his conviction does not support an inference that his mental incompetence was cured." 662 F.3d at 744–45.

The difference between courts of appeals on the standard for when mental illness constitutes extraordinary circumstances is most evident in the treatment of contemporaneous filings in other cases during the tolling period, and the failure to present evidence of mental incompetence during the tolling period itself. See Pet. 11–18. Thus, for instance, the Eleventh Circuit held that a decade-old competency 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), whereas the Seventh Circuit held that a decade-old psychological evaluation failed to "shed[] light on the relevant time period for

purposes of tolling," *Mayberry* v. *Dittman*, 904 F.3d 525, 530–31 (7th Cir. 2018). These contradictory holdings were caused by conflicting standards: the Eleventh Circuit was evaluating whether the petitioner's "mental impairment [] affected the petitioner's ability to file a timely habeas petition," whereas the Seventh Circuit evaluates whether the petitioner's "[m]ental incompetency . . . in fact prevents the sufferer from managing his affairs and thus from understanding his legal rights and acting on them," *Conroy* v. *Thompson*, 929 F.3d 818, 820 (7th Cir. 2019) (Barrett. J.) (quotation marks and emphasis omitted). In other words, the courts reached different results because they were applying a different legal standard.

Justus's attempts to distinguish away the facts of these cases fall flat. First, he argues that the Sixth and Seventh Circuits reached their decisions in *Watkins* and *Obreicht* v. *Foster*, 727 F.3d 744 (7th Cir. 2013), based on the *timeliness* of the petitioners' contemporaneous filings during the tolling period, rather than based on the mere fact of contemporaneous filings. B.I.O. 23–24. But those cases held no such thing. *Obreicht* noted that the petitioner had filed appeals in other courts during the relevant time—and held that this fact was sufficient to deny equitable tolling—without mentioning whether the contemporaneous filings were timely. 727 F.3d at 750–51. *Watkins* noted that the filings were timely, but it did not suggest that the result would have been different had the contemporaneous filings been untimely. 854 F.3d at 852.

Second, Justus contends that it was "critical" to the courts' rejection of equitable tolling in *Watkins*, *Conroy*, and *Fisher* v. *Gibson*, 262 F.3d 1135 (10th Cir. 2001), that the petitioners "had been adjudged competent and did not provide any evidence that their

mental condition deteriorated after this adjudication." B.I.O. 24–25. But this argument simply highlights the conflict, as the exact same factors are present here: Justus was adjudged competent to stand trial in 2006, and failed to present evidence that his mental condition had deteriorated during the tolling period. App. 4a, 45a–46a. Thus, Justus's own description demonstrates that the Fourth Circuit has adopted a different standard than the Seventh and Tenth Circuits. Those circuits are also in conflict with the Ninth Circuit's holding in *Laws* v. *Lamarque*, 351 F.3d 919 (9th Cir. 2003). There, the court ordered an evidentiary hearing even though the petitioner had provided no medical records during the relevant period and had been adjudged competent to stand trial before the relevant time period. *Id.* at 921, 923.

Justus's argument that the Petition should be denied because the question is "fact-intensive" likewise fails. B.I.O. 15. What explains the differing outcomes in the cases cited in the Petition is not, as Justus contends, "the specific evidence that the petitioner relied on." B.I.O. 22. Rather, these cases illuminate a sharp split in the *standard* for evaluating tolling claims on grounds of mental illness. Courts that utilize a standard akin to the Fourth Circuit's standard have allowed cases to proceed to evidentiary hearings even when the petitioner did not present any evidence about his mental state during the relevant period, or even when the petitioner engaged in litigation practice during the relevant period. See Pet. 15–16. Courts with a more rigorous standard, however, reject similar claims. See *id.* at 16–18. Justus's contention that none of the decisions in the Petition "suggest[] that this appeal would have been resolved differently in any other circuit," B.I.O. 23, is thus incorrect. The Sixth, Seventh, and Tenth Circuits would have denied

tolling based on Justus's contemporaneous filings during the tolling period alone. See Pet. 13–15. And the nearly eight-year gap in Justus's medical records, including the entirety of the tolling period, would also have led those same circuits to deny equitable tolling. See Pet. 16–18.

That the legal standard requires a "fact-intensive" analysis does not shield the question presented from this Court's review. For example, qualified immunity determinations often require substantial factual analysis. See, *e.g.*, *Kisela* v. *Hughes*, 138 S. Ct. 1148, 1154 (2018) ("Use of excessive force is an area of law in which the result depends very much on the facts of each case, and thus police officers are entitled to qualified immunity unless existing precedent squarely governs the specific facts at issue." (quotation marks omitted)). And courts agree on the generalized two-pronged test for qualified immunity. See *Ashcroft* v. *al-Kidd*, 563 U.S. 731, 735 (2011) (overcoming qualified immunity requires showing "(1) that the official violated a statutory or constitutional right, and (2) that the right was 'clearly established' at the time of the challenged conduct"). Yet this Court has frequently intervened in recent terms to correct lower courts' erroneous understanding of when qualified immunity is warranted. See, *e.g.*, *Rivas-Villegas* v. *Cortesluna*, 595 U.S. 1 (2021) (per curiam); *District of Columbia* v. *Wesby*, 583 U.S. 48 (2018). Similarly, the Court's review is needed here because the courts of appeals disagree as to the standard for when mental illness constitutes an extraordinary circumstance. The Petition should be granted.

II. This case is a good vehicle to resolve the question presented

This case is a good vehicle to resolve the question presented. Justus identifies three reasons that he believes make this case unsuitable for the Court's review. See B.I.O. 26–29. None withstands scrutiny.

First, Justus contends that, "even on petitioner's view of the law," this case does not implicate the circuit split. See B.I.O. 26–27. The circuit split outlined in the Petition concerns the "standard for reopening final judgments for habeas petitioners on grounds of mental illness" and equitably tolling the statute of limitations. See Pet. 11–18. The decision below is a particularly egregious example of the issue: the Fourth Circuit "collapse[d] the Rule 60(b)(6) and equitable tolling 'extraordinary circumstances' inquiries," such that a finding of mental impairment during the ordered evidentiary hearing would pierce through the limitations period for both Rule 60(b)(6) and AEDPA. Pet. 8–9. That the Petition does not include other "published decision[s] applying the Rule 60(b)(6) standard," B.I.O. 12, is of no moment. Both reopening the final judgment under Rule 60(b)(6) and equitably tolling AEDPA's statute of limitations are at issue in this case; indeed, the Fourth Circuit expressly equated the two standards. App. 30a. Under the Fourth Circuit's holding, no decades-old conviction is safe from reopening, whether it be through a Rule 60(b)(6) motion or equitable tolling. And because the Court could rule on both Rule 60(b)(6) and equitable tolling, or consider those grounds in either order, the presence of both rulings provides no barrier to review. Cf. *al-Kidd*, 563 U.S. at 735 (explaining that when a federal court of appeals addresses both prongs of a qualified-immunity analysis, this Court has

"discretion to correct its errors at each step," even though it is "not necessary to reverse an erroneous judgment").

Second, Justus argues that certiorari is inappropriate due to the "interlocutory nature of the Fourth Circuit's order," which sent the case back to the district court for an evidentiary hearing. B.I.O. 27–28. But this holding serves only to emphasize the need for this Court's immediate intervention. Justus was convicted in 2007 of murders that there is no dispute he committed; yet now, nearly two decades later, the Fourth Circuit has reopened the case and ordered an evidentiary hearing for which he would have been ineligible in other courts of appeals. Absent this Court's intervention, the Commonwealth of Virginia will be forced to undergo burdensome proceedings concerning Justus's mental condition over a decade ago from witnesses who may no longer be available. The ordered proceedings also risk leading to the release of a convicted murderer, who killed his estranged wife in front of their young son. App. 2a. The reopening of the case is precisely the problem this Court should address.

Finally, Justus contends that this case would be a "particularly unhelpful vehicle for establishing broadly applicable principles of law because of the unique set of facts"—namely, "the extraordinary evidence of mental illness in this case." B.I.O. 28–29. But this case is marked by a complete *lack* of evidence of mental illness during the tolling period. The record includes no treatment records whatsoever during the relevant period—indeed, no records from an *over seven year period* from September 2008 to April 2016. App. 4a. And the evidence that *was* in the record (from outside the relevant time period) showed that the severity of Justus's symptoms fluctuated over time,

including periods when his disorder was well controlled. See Pet. 7. Far from being extraordinary, Justus's evidence shows that application of the Fourth Circuit's lenient standard allows for a finding of "extraordinary circumstances" in exceedingly ordinary situations.

The question of what showing a habeas petitioner with a mental illness must make to reopen his habeas proceedings is squarely presented here. Indeed, Justus's motion would have plainly failed in other courts of appeals, based both on his filings during the tolling period, and the lack of contemporaneous medical evidence of his incapacity during the tolling period. See Pet. 13–18. This case clearly highlights the different standards that different courts of appeals apply, and therefore serves as a good vehicle to settle the issue.

III. Justus does not contest that the question presented is important

Despite the Petition explaining at length the importance of the question presented, Justus fails to address that issue. Pet. 18–22. He does not contest that the question presented is one of substantial importance.

Indeed, the question presented plainly is highly important for the States. Many habeas petitioners have mental health conditions, and many of them fail to comply with AEDPA's statute of limitations; thus, many inmates seek equitable tolling to excuse that noncompliance based on alleged mental disabilities. Pet. 19. If courts of appeals continue to apply a lenient standard, States will be forced to reopen criminal cases that have long been closed, and to gather

evidence for and participate in hearings centered on events that happened years or even decades ago.

This question is thus important because both States and crime victims have a strong interest in the finality of criminal convictions. Finality of criminal judgments is "essential to both the retributive and deterrent functions of criminal law." *Shinn* v. *Ramirez*, 596 U.S. 366, 391 (2022) (cleaned up). Courts seriously undermine finality when they "prolong federal habeas proceedings," *id.* at 390, with an evidentiary hearing on decade-old events to open a path towards challenging a conviction for a brutal double murder the defendant undoubtedly committed. Victims of crime, and their families, need "real finality" to move forward in such a heinous situation; when a court "unsettle[s] these expectations" as the Fourth Circuit did, it "inflict[s] a profound injury to the powerful and legitimate interest in punishing the guilty, an interest shared by the State and crime victims alike." *Calderon* v. *Thompson*, 523 U.S. 538, 556 (1998) (cleaned up).

CONCLUSION

This Court should grant the petition.

March 4, 2024

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