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Dumplings Instead of Flowers: The Need for a Case-By-Case Approach to FRCP 60(b)(6) Motions Predicated on a Change in Habeas Corpus Law

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COMMENT

DUMPLINGS INSTEAD OF FLOWERS: THE NEED FOR A CASE-BY-CASE APPROACH TO FRCP 60(b)(6) MOTIONS PREDICATED ON A CHANGE IN HABEAS CORPUS LAW

Andrew P. Lopiano[†]

I. INTRODUCTION

When the Supreme Court resolves a circuit split, half of the circuit courts have a change in the law. Thus, every time the Supreme Court hands down an opinion resolving a circuit split concerning habeas corpus procedural law, it creates an opportunity for Federal Rules of Civil Procedure 60(b)(6) ("Federal Rules" or "Rules") motions to arise predicated on a change in the law. This species of Rule 60(b)(6) motions claim that there has been a change in the law but that the benefit of this change was not available to a movant when a court rendered a final judgment against her. Accordingly, the movant insists that this benefit would have produced a fairer and more equitable outcome in her previous proceeding. Upon this theory, the movant argues that the court should grant her relief from the final judgment in order for the movant to pursue that equitable and fair outcome. However, this argument presents the federal district courts with a puzzling inquiry: whether a change in procedure concerning habeas corpus law, paired with other equitable factors, constitutes an extraordinary circumstance that justifies relief under Rule 60(b)(6).

In recent years, answering this question has been a subtle squabble fought between the Third Circuit and the Fifth Circuit, as the two circuits grapple with Rule 60(b)(6) motions predicated on changes in habeas law created by Supreme Court cases. In the Fifth Circuit, courts deny any Rule 60(b)(6) motion founded on a change in habeas law on its face. Pragmatically, this means that courts in the Fifth Circuit apply a per se, bright-line rule, which demands that a change in the law will never meet the Rule 60(b)(6) standard. Au contraire, a court in the Third Circuit, facing a Rule 60(b)(6) motion grounded on a change in habeas law, consults the full panoply of circumstances in a case before ruling on the motion. The Third Circuit does not blindly throw these Rule 60(b)(6) motions out of court, but rather, if the

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motion shows that other equitable factors, along with the change in the law, justify relief, then the court will grant the motion. However, only rarely will courts in the Third Circuit grant this species of Rule 60(b)(6) motion. This discrepancy in the antithetical treatment of these motions by the Third Circuit and the Fifth Circuit, creates inconsistency for persons living in different parts of the country. In the habeas context, innocent individuals on death row may benefit from recent changes in the law and escape an unjust killing at the hands of the government—but that all depends on where one lives in the country.

Practically then, one could frame the issue simply as whether courts should allow procedure or substance to control when they face a Rule 60(b)(6) motion predicated on a change in the law. In response to this problem, the Supreme Court should clarify its precedent regarding Rule 60(b)(6) motions based on a change in the law. The catalyst for these conflicting approaches to Rule 60(b)(6) motions can be traced back to conflicting interpretations of one Supreme Court case. Thus, spelling out what rule the district courts should apply will alleviate the contrariety between the circuit courts.

The overall question this comment addresses is whether a procedural change in habeas corpus law constitutes an extraordinary circumstance that justifies relief under Rule 60(b)(6). Section II of this article discusses the background to the Federal Rules, as well as the adoption of Rule 60. Section II briefly discusses the history of legal procedure in the American civil legal system and the evolution of procedure into its modern form. Since Rule 60's adoption was an attempt to dispel a particular evil, this section delves into the reason behind the adoption of Rule 60. Most importantly, this section lays out the standard for granting a Rule 60(b)(6) motion, as this article will explore the legal standard applied to these motions predicated on a change in the law.

Section III of this article analyzes Supreme Court precedent concerning changes in habeas law and Rule 60(b)(6) motions. Section III also posits whether courts should use the bright-line rule followed by the Fifth Circuit or the case-by-case analysis followed by the Third Circuit when faced with a Rule 60(b)(6) motion predicated on a change in the law. This section also untangles the Fifth Circuit's misunderstanding of Supreme Court precedent on this issue and present reasons for why the Supreme Court should clarify its precedent.

Section IV of this article explains the necessity for the Supreme Court to clarify its past precedent, giving clear direction for district courts facing these Rule 60(b)(6) motions. In clearing up the Court's prior precedent, this section establishes an argument for case-by-case analysis for each Rule

60(b)(6) motion predicated on a change in habeas law.

II. BACKGROUND

A. *The Federal Rules of Civil Procedure: A Brief History*

Codified in the annals of the American legal system are the Federal Rules of Civil Procedure. Nearly 150 years after the Judiciary Act of 1789[1] facilitated the creation of the federal judicial system, the Supreme Court promulgated the original edition of the Federal Rules of Civil Procedure.[2] When the Federal Rules became effective in 1938,[3] they revolutionized civil procedure in the United States because they supplanted the then-existing hodgepodge system of procedural practice in favor of the universal orthodoxy facilitated by the Federal Rules.[4] As all American first-year law students can mournfully articulate, the Federal Rules govern the procedure and practice of all civil cases at the federal district and appellate levels.[5] However, this was not always the case.

The conformity principle long dictated civil procedure for courts sitting in law.[6] When Congress passed the Rules Enabling Act[7] in 1934, Congress gave the Supreme Court the power to "prescribe general rules of practice and procedure and rules of evidence for cases in the United States district courts . . . and courts of appeals."[8] The Rules Enabling Act paved the road for the Supreme Court to establish the Federal Rules. In doing so, the Federal Rules created uniformity amongst the federal courts and ushered in new avenues of justice and fairness, like those found in the application of Rule 60(b)(6).

1. American Civil Procedure and the Adoption of the Federal Rules of Civil Procedure

In 1789, Congress passed the Judiciary Act.[9] Ergo, the power and clout

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[1] Judiciary Act of 1789, ch. 20, 1 Stat. 73, *superseded in part by* Rules Enabling Act, Pub. L. No. 73–415, 48 Stat. 1064 (1934) (current version at 28 U.S.C. § 2702).

[2] 46 DONALD J. SAVERY, ET AL., FEDERAL CIVIL PRACTICE § 2:4 (Mass. Prac. Series, 2d ed. 2019), Westlaw (database updated Nov. 2019).

[3] 4 CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 1004 (Adam Steinman ed., 4th ed. 2019), Westlaw (database updated July 2020).

[4] *Id.* at § 1002.

[5] *See* 28 U.S.C. § 2072(a).

[6] WRIGHT & MILLER, *supra* note 3, at § 1002.

[7] Rules Enabling Act, Pub. L. No. 73–415, 48 Stat. 1064 (1934) (current version at 28 U.S.C. § 2702).

[8] 28 U.S.C. § 2072(a).

[9] Judiciary Act of 1789 ch. 20, 1 Stat. 73, *amended by* 48 Stat. at 1064.

required to conceive "all necessary rules for the orderly conducting of business in the . . . courts" vested in the federal court system.[10] However, this was not absolute power in the hands of the court. While the Process Act of 1792[11] gave the Supreme Court the prerogative to promulgate procedural rules for actions in admiralty and equity,[12] a series of other acts—known as the Conformity Acts—required state procedural rules to be applied in all federal courts for actions at law.[13] This barred federal courts from implementing any consistent form of procedure in the federal court system. The application of state procedural rules to federal courts in actions at law was known as the conformity principle.[14] The second Conformity Act expanded the conformity principle's application to include all new states admitted into the United States.[15] Unfortunately, while the conformity principle created conformity between the state courts and the federal courts sitting in those states, any dream that this would create uniformity amongst the federal district courts went up in smoke.[16]

Then, in 1872, Congress undertook the task of alleviating this problem by passing another Conformity Act—the Conformity Act of 1872[17]—which sought to approach procedure for actions in law with a higher degree of flexibility.[18] Despite the valiant effort, this Act did not diminish the assemblage of procedure applied by federal courts, as state practice still bound procedure in federal courts—and state practice and procedure fell across a broad spectrum with little sameness.[19] Some states applied old common law approaches to court procedure;[20] some states invoked common law procedure with statutory modifications;[21] and yet other states used a procedural code to dictate the state's procedure.[22] The procedural world generated by the Conformity Act of 1872 stayed in effect until the Federal

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[10] *Id.* at 83.

[11] Process Act of 1792, ch. 36, 1 Stat. 275, *amended by* 48 Stat. at 1064.

[12] *Id.* at 276.

[13] Conformity Act of 1789, ch. 21, 1 Stat. 93, 93 *amended by* 48 Stat. at 1064.

[14] *See* WRIGHT & MILLER, *supra* note 3, at § 1002.

[15] Conformity Act of 1828, ch. 68, 4 Stat. 278, 279–81, *amended by* 48 Stat. at 1064.

[16] SAVERY, ET AL., *supra* note 2, at § 2:4.

[17] Conformity Act of 1872, ch. 255, 17 Stat. 196, 197, *superseded in part by* 48 Stat. at 1064.

[18] WRIGHT & MILLER, *supra* note 3, at § 1002.

[19] *Id.*

[20] *Id.*

[21] *Id.*

[22] *Id.*

Rules went into effect in 1938.[23]

During this period between the Conformity Act of 1872 and the Federal Rules, procedure for courts sitting in equity did not experience the same disarray felt by her cousin courts handling actions at law. In 1912, the Supreme Court promulgated the Equity Rules of 1912, which gave federal courts sitting in equity across the country procedural uniformity.[24] While the equity rules were praised by most, but not all,[25] a wide array of contemporaneous judges saw the rules to be of great value.[26] Modern commentators have praised the Equity Rules as being "simple [and] efficient," while "greatly improv[ing] equity practice by appropriately freeing judges from procedural technicalities."[27] As the Equity Rules created homogeneity, a movement within the legal community began to gain steam, pushing for the creation of similarly uniform procedural rules to govern actions at law.[28] This movement did not originally call for actions in law and in equity to be merged into one;[29] however, by 1935, the movement, led by former Attorney General Charles E. Clark, former Dean of the Yale School of Law Charles E. Clark, and former Chief Justice of the United States Supreme Court Chief Justice Charles E. Hughes, called for an end to the great divide and the disparity between procedure in law and equity.[30]

When Congress passed the Rules Enabling Act, it essentially merged the procedural rules for actions in equity and in law.[31] Ultimately, the fruit borne out of this movement would be the Federal Rules, which created procedural continuity, but abrogated the Equity Rules in favor of merging procedure for both law and equity.[32]

2. The History and Evolution of Obtaining Relief from a Final Judgment

After law and equity merged, the Federal Rules existed in their original form for nearly ten years. The Supreme Court promulgated the first series of

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[23] *Id.*

[24] WRIGHT & MILLER, *supra* note 3, at § 1002.

[25] *See* Wallace R. Lane, *Twenty Years Under the Federal Equity Rules*, 46 HARV. L. REV. 638, 659 (1933).

[26] Wallace R. Lane, *Federal Equity Rules*, 35 HARV. L. REV. 276, 277 (1922).

[27] Stephen N. Subrin, *How Equity Conquered Common Law: The Federal Rules of Civil Procedure in Historical Perspective*, 135 UNIV. PA. L. REV. 909, 953 (1987).

[28] WRIGHT & MILLER, *supra* note 3, at § 1003.

[29] *Id.*

[30] *Id.* at § 1004.

[31] SAVERY, ET AL., *supra* note 2, at § 2:4.

[32] *Id.*

amendments to the Federal Rules of Civil Procedure in 1948.[33] Amongst the changes made to the Rules, the Court radically changed Rule 60.[34] More specifically, the Supreme Court added Clause (6) to Rule 60(b).[35] In its current form, Rule 60(b)(6) states that: "On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for . . . (6) any other reason that justifies relief."[36] This catchall provision to Rule 60(b) was a radical departure from how the courts had previously treated motions requesting relief from a final judgment.[37]

Before the adoption of Rule 60, courts relied on the term of court to determine whether it had the power to issue relief from a final judgment.[38] Courts had plenary power[39] to grant relief from final judgments rendered during the same term that a court issued that judgment. However, courts only had the power to review prior judgments after the expiration of the term if the proceedings to review the judgment had begun during the previous term, or if the court reserved the power to review a judgment in a later term.[40] This rule gave courts little elasticity to grant relief from a final judgment.[41] Exceptions to this rule did exist, although they were ineffective in generating the flexibility courts needed.[42] The exceptions took the form of old common law writs,[43] including writs of *coram nobis*,[44] writs of *coram vobis*,[45] writs of

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[33] 11 WRIGHT & MILLER, FEDERAL PRACTICE AND PROCEDURE § 2864 (Mary Kay Kane ed., 3d ed. 2019), Westlaw (database updated April 2020).

[34] *Id.*

[35] *See* FED. R. CIV. P. 60, advisory committee's note to 1946 amendment.

[36] FED. R. CIV. P. 60(b)(6).

[37] WRIGHT & MILLER, *supra* note 33, at § 2864.

[38] James William Moore & Elizabeth B. A. Rogers, *Federal Relief from Civil Judgments*, 55 YALE L.J. 623, 627 (1946).

[39] Plenary power is "a court's power to dispose of any matter properly before it." *Power*, BLACK'S LAW DICTIONARY (11th ed. 2019).

[40] Moore & Rogers, *supra* note 38, at 627. The term rule was utterly inflexible. *Id.*; *see, e.g.*, United States v. Mayer, 235 U.S. 55 (1914).

[41] Moore & Rogers, *supra* note 38, at 627.

[42] *Id.*

[43] *Id.*

[44] A writ of *coram nobis* is "[a] writ of error directed to a court for review of its own judgment and predicated on alleged errors of fact." *Coram nobis*, BLACK'S LAW DICTIONARY (11th ed. 2019).

[45] A writ of *coram vobis* is "[a] writ of error sent by an appellate court to a trial court to review the trial court's judgment based on an error of fact." *Coram vobis*, BLACK'S LAW DICTIONARY (11th ed. 2019).

audita querela,[46] bills of review,[47] and bills in the nature of bills in review.[48] The 1948 amendment to the Federal Rules codified the Court's abolition of these common law writs.[49] In abolishing these common law writs, the Notes of the Advisory Committee on Rules stated that it was: "obvious that the [Federal Rules] should be complete in this respect and define the practice with respect to any existing rights or remedies to obtain relief from final judgments."[50]

In all, Rule 60(b) empowers the federal district courts to grant relief from civil judgments for a variety of reasons.[51] The reasons enumerated in Rule 60(b)(1)–(5) are not garden-variety, but rather clear-cut and enumerated scenarios in which a court may grant relief. Clauses (1)–(5) catalog five specific instances when a federal district court may grant relief, ranging from "surprise"[52] and "fraud"[53] to the fact that a judgment has already been "satisfied, released, or discharged."[54] This is not the case for Rule 60(b)(6). Under Rule 60(b)(6), the Federal Rules allow a federal district court to reopen a matter when the moving party shows "any . . . reason justifying relief from the operation of the judgment,"[55] "other than the more specific circumstances set out in Rules 60(b)(1)–(5)."[56] This addition was radical because it greatly expanded the scope of relief a court could grant from a final judgment.[57] In this glimpse, Rule 60(b)(6) is a tincture that gives ample judicial discretion to the district courts in granting relief from a final judgment when justice so requires, as "any other reason that justifies relief" is a malleable criterion.[58]

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[46] A writ of *audita querela* is "[a] writ available to a judgment debtor who seeks a rehearing of a matter on grounds of newly discovered evidence or newly existing legal defenses." *Audita querela*, BLACK'S LAW DICTIONARY (11th ed. 2019).

[47] A bill of review is "[a] bill in equity requesting that a court reverse or revise a prior decree." *Bill*, BLACK'S LAW DICTIONARY (11th ed. 2019).

[48] A bill in the nature of bills in review is "[a] postjudgment bill of review filed by someone who was neither a party to the original suit nor bound by the decree sought to be reversed." *Id.*

[49] FED. R. CIV. P. 60, advisory committee's note to 1946 amendment; *see also* FED. R. CIV. P. 60(e).

[50] FED. R. CIV. P. 60, advisory committee's note to 1946 amendment.

[51] *See* FED. R. CIV. P. 60(b).

[52] FED. R. CIV. P. 60(b)(1).

[53] FED. R. CIV. P. 60(b)(3).

[54] FED. R. CIV. P. 60(b)(5).

[55] Liljeberg v. Health Servs. Acquisition Corp., 486 U.S. 847, 863 n.10 (1988).

[56] Gonzalez v. Crosby, 545 U.S. 524, 528–29 (2005); *see also* Cmty. Dental Servs. v. Tami, 282 F.3d 1164, 1168 (9th Cir. 2002).

[57] WRIGHT & MILLER, *supra* note 33, at § 2864.

[58] WRIGHT & MILLER, *supra* note 33, at § 2864; FED. R. CIV. P. 60(b)(6).

B. *The Standard for Granting a Rule 60(b)(6) Motion*

Given the broad nature of Rule 60(b)(6), a considerable threat looms nearby: Rule 60(b)(6) has the potential to envelop all final judgments. Therefore, judges could abuse Rule 60(b)(6) to justify relief from practically any final judgment. This threat was known as the "problem of finality," and it was something initially considered before adopting the Federal Rules.[59] However, the Supreme Court sufficiently restricted the application of Rule 60(b)(6) by articulating a limited standard: federal district courts may only grant Rule 60(b)(6) motions where an "extraordinary circumstance" exists.[60] This standard is quite challenging to meet, and such circumstances are rare in habeas corpus actions.[61] In *Ackermann v. United States*, the Supreme Court developed the extraordinary circumstances standard from Justice Black's opinion in *Klapprott v. United States.*[62] The Supreme Court decided these cases a year apart, and both dealt with German immigrants who became naturalized citizens but lost their citizenship due to allegations of fraud.[63] Despite these eerie similarities, an extraordinary circumstance existed in *Klapprott*,[64] while one did not exist in *Ackermann*.[65] With *Ackermann* and *Klapprott*, the Court marked the outermost bounds for which a district court may grant a Rule 60(b)(6) motion.[66]

1. *Ackermann*, *Klapprott*, and Extraordinary Circumstances

The Supreme Court recognized and implemented the extraordinary circumstances standard in *Ackermann v. United States*.[67] In *Ackermann*, the petitioner, Hans Ackermann, filed a motion under Rule 60(b)(6)—six days

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[59] Moore & Rogers, *supra* note 38, at 627.

[60] *See* Ackermann v. United States, 340 U.S. 193, 199, 202 (1950); *Gonzalez*, 545 U.S. at 535 ("Our cases have required movant seeking relief under Rule 60(b)(6) to show 'extraordinary circumstances' justifying the reopening of a final judgment."); *see also* Klapprott v. United States, 335 U.S. 601 (1949). While the *Ackermann* Court first used the "extraordinary circumstance" nomenclature, the Supreme Court distilled the idea from the *Klapprott* Court's opinion. *Ackermann*, 340 U.S. at 199–202 (citing *Klapprott v. United States*, 335 U.S. 601 (1949)).

[61] *Gonzalez*, 545 U.S. at 535.

[62] *See* cases cited *supra* note 60.

[63] *See* Jean F. Rydstrom, Annotation, *Construction and Application of Rule 60(b)(6) of Federal Rules of Civil Procedure Authorizing Relief from Final Judgment or Order for "Any Other Reason,"* 15 A.L.R. Fed. 193 § 5 (2020). *Compare Klapprott*, 335 U.S. at 602, *with Ackermann*, 340 U.S. at 195.

[64] *See Klapprott*, 335 U.S. at 613.

[65] *See Ackermann*, 340 U.S. at 202.

[66] Rydstrom, *supra* note 63, at § 5.

[67] *Ackermann*, 340 U.S. at 199–202.

after the 1948 Federal Rules amendments came into effect—to obtain relief from a judgment that canceled his certificate of naturalization.[68] The petitioner and his wife, Frieda, both originally native to Germany, became naturalized in 1938.[69] In the United States, the petitioner operated a German-language newspaper with Frieda's brother, Max Keilbar, who immigrated from Germany in 1933.[70] However, in 1942, the United States brought charges against the petitioner, his wife, and Keilbar, alleging that all three obtained their naturalization certificates through fraud.[71] The court consolidated the three cases into one case, and legal counsel represented all three defendants; however, the three lost, and the court entered a judgment nixing each defendant's citizenship.[72] Keilbar appealed to the appellate court, which reversed the trial court's judgment against him and dismissed the United States' complaint.[73]

The Ackermanns chose not to appeal in light of their financial status.[74] The estimated cost of preparing the record and the briefs for appeal was at least $5,000, and the only asset the couple owned was their home, worth $2,500.[75] Caught in a jam, the couple consulted the Assistant Commissioner for Alien Control, W.F. Kelley, who advised them to "hang on to their home" rather than sell the house to raise funds necessary to finance an appeal on the adverse judgment.[76] Kelley informed the Ackermanns that they were "stateless" since they lost their American citizenship, but that he would release the couple from custody at the end of World War II.[77] Both Hans and Frieda saw Kelley as a "person in whom they had great confidence."[78] In reliance on this promise, the Ackermanns did not file an appeal, but contrary to Kelley's word, authorities did not release the Ackermanns from custody at the end of the war.[79] Instead, the Attorney General ordered them to leave the United States or face deportation.[80]

Ackermann filed his Rule 60(b)(6) motion in the District Court for the

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[68] *Id.* at 194.

[69] *Id.* at 195.

[70] *Id.*

[71] *Id.*

[72] *Id.* at 195–96, 199.

[73] *Ackermann*, 340 U.S. at 195.

[74] *Id.* at 195–96.

[75] *Id.*

[76] *Id.* at 196.

[77] *Id.*

[78] *Id.*

[79] *Ackermann*, 340 U.S. at 196.

[80] *Id.*

Western District of Texas,[81] which summarily denied his motion to vacate the 1943 judgment terminating his naturalization as "there [was] no merit to [the] motion."[82] When the case reached the Supreme Court, the Court agreed and denied Ackermann relief under his Rule 60(b)(6) motion, finding that the facts did not constitute anything extraordinary.[83] In coming to this conclusion, the Court looked to Justice Black's words in *Klapprott v. United States* to determine that relief under Rule 60(b)(6) should be granted only if an extraordinary circumstance exists.[84] The Court compared the facts of *Ackermann* to *Klapprott* to determine that an extraordinary circumstance did not exist in *Ackermann*,[85] since "the voluntary, deliberate, free, untrammeled choice of petitioner not to appeal"[86] could "[b]y no stretch of [the] imagination"[87] be compared to the situation in *Klapprott*—where the petitioner had no choice.[88]

In *Klapprott*, the petitioner, August Klapprott, attained U.S. Citizenship in 1933 after taking an oath of allegiance to the United States, renouncing any loyalty to Germany—his country of birth.[89] Klapprott married an American citizen in 1936 and had one child through this marriage.[90] However, in 1942, the United States Attorney filed a complaint against the petitioner, alleging that he secured naturalization through fraud.[91] Specifically, the U.S. attorney alleged that Klapprott remained loyal to Germany, evinced through his writings and his participation in the German American Bund—which subscribed to the ideology propagated by Adolf Hitler.[92] Unlike the Ackermanns, who answered the complaint against them and found counsel to represent them,[93] Klapprott did not answer the complaint against him, and consequently, the court entered a default judgment against him.[94] The petitioner attempted to draft an answer to the complaint, but he did not have

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[81] *Id.* at 194.

[82] *Id.* at 195–96.

[83] *Id.* at 202.

[84] *Id.* at 199–200, 202.

[85] *Ackermann*, 340 U.S. at 200–02.

[86] *Id.* at 200.

[87] *Id.*

[88] *Id.* at 200, 202.

[89] Klapprott v. United States, 335 U.S. 601, 602 (1949).

[90] *Id.* at 604.

[91] *Id.* at 602–04.

[92] *Id.* at 603.

[93] *Ackermann*, 340 U.S. at 195.

[94] *Klapprott*, 335 U.S. at 603.

the funds necessary to hire a lawyer.[95] After his arrest, FBI agents took him and imprisoned him in New York.[96] The petitioner wrote a letter to the American Civil Liberties Union requesting representation without a fee, but FBI agents confiscated this letter from Klapprott and never mailed it.[97]

This default judgment against Klapprott rescinded his naturalization by obviating the judgment that granted his United States citizenship.[98] Four years after this, Klapprott filed a petition asking the court to set aside the judgment removing his citizenship, but both the District Court for the District of New Jersey and the Court of Appeals for the Third Circuit dismissed the petitioner's motion[99] because Klapprott was guilty of "willful and inexcusable neglect"[100] and "because of the defendant's laches."[101] The Supreme Court in *Klapprott* disagreed with both lower courts.[102]

The *Klapprott* Court reasoned that the petitioner's allegations created "an extraordinary situation which [could not be] fairly or logically . . . classified as mere 'neglect' on [Klapprott's] part."[103] On its face, the petitioner's failure to answer the complaint did not arise out of any "inadvertence, indifference, or careless disregard of consequences" on the part of Klapprott.[104] Instead, this failure arose out of the petitioner's financial situation; he was unable to hire a lawyer, and thus, unable to answer the complaint appropriately.[105] However, a more appalling situation underlay *Klapprott*: the U.S. Government stripped a citizen of his citizenship "without evidence, a hearing, or the benefit of counsel, at a time when his Government was then holding the citizen in jail with no reasonable opportunity for him effectively to defend his right to citizenship."[106] Like lemmings, the U.S. government divested Klapprott's citizenship on procedural grounds, and Klapprott's prior proceedings were devoid of any meritorious review at a time when the

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[95] *Id.* at 604.

[96] *Id.* at 603–04.

[97] *Id.* at 604–05.

[98] *Id.* at 603.

[99] *Id.* at 601, 603, 607.

[100] *United States v. Klapprott*, 6 F.R.D. 450, 451 (D.N.J. 1947).

[101] *Id.* at 453.

[102] *Klapprott*, 335 U.S. at 615–16.

[103] *Id.* at 613.

[104] *Id.*

[105] *Id.* at 614.

[106] *Id.* at 615.

United States was at war with the country of Klapprott's birth.[107] Upon these facial and hidden problems, the Court vacated the default judgment against Klapprott and granted a hearing to consider the merits of the denaturalization complaint.[108]

In comparing *Ackermann* to *Klapprott*, the Supreme Court noted that the two cases "bore only the slightest resemblance to each other," even though on paper they appear to be nearly identical in circumstance.[109] The Court's comparison showed that Ackermann had a choice, while Klapprott, did not.[110] Klapprott faced imprisonment, while Ackermann "suffered" from the luxury of having to choose a course of action.[111] Moreover, while Ackermann faced a trial, which resolved the claims against him, Klapprott never had the *mere opportunity* to defend the claims against him on the merits.[112] Still, the most shocking fact remains that the U.S. government stripped Klapprott of his American citizenship without a trial, or any other legal proceeding.[113] Thus, the Supreme Court concluded: "Neither the circumstances of [Ackermann] nor his excuse for not appealing is so extraordinary as to bring [Ackermann] within *Klapprott* or Rule 60(b)(6)."[114]

It is within the context of these two cases that the Supreme Court has established the standard by which a court should grant a Rule 60(b)(6) motion. It is only in those situations in which an extraordinary circumstance exists that a judge may utilize Rule 60(b)(6) to grant relief from a final judgment.

III. PROBLEM

A. *Introduction*

Since *Ackermann* and *Klapprott*, the federal district courts only grant Rule

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[107] Klapprott lost his American citizenship on a default judgment. *Id.* at 603. It is important to note that Klapprott did not ignore the complaint or avoid it. *Id.* at 604. Rather, he attempted to draft an answer and solicit pro bono aid from the ACLU. *Id.* Thus, one cannot argue that the Court's ruling in *Klapprott* could allow similarly situated plaintiffs to maintain their citizenship by merely turning a blind eye to a complaint against them. The Court in *Klapprott* merely granted relief from the final judgment that stripped Klapprott of his American citizenship, and the Court remanded the case to the lower court for "a hearing on the merits of the issues raised by the denaturalization complaint." *Id.* at 616.

[108] *Klapprott*, 335 U.S. at 616.

[109] Ackermann v. United States, 340 U.S. 193, 202 (1950).

[110] *Id.*

[111] *Id.*

[112] *Id.*; *see also Klapprott*, 335 U.S. at 615.

[113] *Klapprott*, 335 U.S. at 615.

[114] *Ackermann*, 340 U.S. at 202.

60(b)(6) motions where an extraordinary circumstance exists for the movant. In recent years, persons subject to adverse judgments have filed Rule 60(b)(6) motions in an attempt to vacate prior final judgments against them because the law has changed in some way.[115] In the past two decades, there have been no shortage of instances in which the Supreme Court has changed procedural law in the habeas corpus context,[116] leaving the circuits to answer whether each one of these changes in the law constitutes an extraordinary circumstance that justifies relief. In some jurisdictions, courts rule on these Rule 60(b)(6) motions using a case-by-case approach, looking at the alleged change in the law in conjunction with other factors surrounding a movant's case to determine if an extraordinary circumstance exists.[117] In these jurisdictions, only *rarely* will a change in the law constitute an extraordinary circumstance.[118] However, other jurisdictions use a bright-line rule and refuse to look at the merits of Rule 60(b)(6) motions predicated on a change in the law; these courts outright find that there is *never* an extraordinary circumstance justifying relief in these motions.[119] These two rules produce very different outcomes, and the depth of analysis that a court engages in depends markedly on which rule a circuit follows.[120]

Alarmingly, this disparity produces different treatment for prisoners in different parts of the country. A prisoner, falsely convicted and sentenced to death, may be denied the chance to argue that his or her circumstances are extraordinary and will have no rights under new precedent depending, almost exclusively, on within which circuit the prisoner resides. In this context, this means that the difference between life and death depends on

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[115] *E.g.,* United States v. Sutton, No. 1:15-CR-42-2-TLS, 2020 U.S. Dist. LEXIS 3502, at *2 (N.D. Ind. Jan. 9, 2020); Lindsay v. United States, No. 16-3281, 2018 U.S. Dist. LEXIS 114186, at *2 (D.N.J. July 10, 2018); Abdur'Rahman v. Carpenter, 805 F.3d 710, 712 (6th Cir. 2015).

[116] *See, e.g.*, Trevino v. Thaler, 569 U.S. 413 (2013); McQuiggin v. Perkins, 569 U.S. 383 (2013); Maples v. Thomas, 565 U.S. 266 (2012); Martinez v. Ryan, 566 U.S. 1 (2012); Holland v. Florida, 560 U.S. 631 (2010); Artuz v. Bennett, 531 U.S. 4 (2000).

[117] *E.g.*, Satterfield v. Dist. Att'y Phila., 872 F.3d 152, 161 (3d Cir. 2017); Ramirez v. United States, 799 F.3d 845, 850–51 (7th Cir. 2015); *In re* Terrorist Attacks on Sept. 11, 2001, 741 F.3d 353, 356 (2d Cir. 2013); Phelps v. Alameida, 569 F.3d 1120, 1133 (9th Cir. 2009).

[118] *E.g.*, *Ramirez*, 799 F.3d at 850. ("We agree with the Third Circuit's approach in *Cox* . . . . that 'intervening changes in the law *rarely* justify relief from final judgments under 60(b)(6).'") (emphasis in original) (quoting Cox v. Horn, 757 F.3d 113, 121 (3d Cir. 2014)).

[119] *E.g.*, *Abdur'Rahman*, 805 F.3d 710 (6th Cir. 2015); Tamayo v. Stephens, 740 F.3d 986 (5th Cir. 2014) (per curiam); Salazar v. D.C., 729 F. Supp. 2d 257 (D.D.C. 2010).

[120] *Compare Satterfield*, 872 F.3d 152 (3d Cir. 2017), *with Tamayo*, 740 F.3d 986 (5th Cir. 2014); *see infra* Sections III.B.3.b–c for this article's discussion on the divergent outcomes and disparate levels of analysis in *Satterfield* and *Tamayo*.

whether a person resides in a jurisdiction that follows a case-by-case approach or a jurisdiction that applies a bright-line rule. These two types of courts can be summarized as courts that allow substance to determine if an extraordinary circumstance exists and courts that allow procedure to determine if an extraordinary circumstance exists.[121] Unfortunately, determining what is just, based on technicalities, can sometimes produce no justice at all. In fact, arbitrarily limiting a judge's power to grant relief from a final judgment when justice calls for such relief strikes at the heart of why the propagators of the Federal Rules crafted Rule 60 the way they did.[122]

In light of this, another way to categorize this circuit split is by dividing the circuits into "never" camps and "rarely" camps. Either this species of Rule 60(b)(6) motion will *never* prevail, or it will *rarely* prevail. With the circuit courts dividing themselves into these two camps, it is necessary to analyze the differences in reasoning to adequately show the injustice pervaded by courts following a bright-line approach to ruling on Rule 60(b)(6) motions.

B. *The Third Circuit v. The Fifth Circuit: A Skirmish on Interpreting Changes in the Law Generated by Supreme Court Opinions*

One can find a clear example of two circuits promulgating the "never" rule and the "rarely" rule in the Third Circuit's and Fifth Circuit's differing responses to Rule 60(b)(6) motions predicated on a change in habeas law. In the last decade, the two circuits have consistently sung a different tune and ruled in opposite ways concerning these Rule 60 motions. For the most part, the differences between the two circuits trace back to inconsistent readings of *Gonzalez v. Crosby*, where the Supreme Court ruled on whether a prior decision by the Supreme Court constituted an extraordinary circumstance.[123] The Third Circuit read *Gonzalez* to say that changes in the law in the habeas context will *rarely* constitute an extraordinary circumstance for which relief can be granted.[124] On the other hand, the Fifth Circuit read *Gonzalez* with a very different interpretation. The Fifth Circuit took *Gonzalez* to stand for the proposition that a change in the law will *never* constitute an extraordinary

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[121] In cases where the court applies a bright-line rule, the rule, in effect, acts like a procedural fault or bar, which prevents the movants from arguing their claims on the merits. *See, e.g.*, *Tamayo*, 740 F.3d at 990 (The merits of movants' claims are not analyzed by the Fifth Circuit; rather, the court articulates the bright-line rule and quickly moves on).

[122] *See supra* Section II.A.2.

[123] *See* Gonzalez v. Crosby, 545 U.S. 524, 536 (2005).

[124] *Satterfield*, 872 F.3d at 161 ("But *Gonzalez* does not mean that a change in law may never serve as the basis for Rule 60(b)(6) relief.").

circumstance.[125] A closer look at this discrepancy shows that Justice Scalia's analysis in *Gonzalez* supports the Third Circuit's position that a multi-factored, case-by-case approach should apply when a district court rules on a Rule 60(b)(6) motion based on a change in the law.

1. *Gonzalez v. Crosby*: The Supreme Court's Say on Changes in the Law in the Habeas Corpus Context

In *Gonzalez v. Crosby*, the Supreme Court squarely addressed whether a change in the law constitutes an extraordinary circumstance for purposes of a Rule 60(b)(6) motion predicated on a change in habeas law.[126] In *Gonzalez*, the Court found that its decision in *Artuz v. Bennet*[127] did not constitute an extraordinary circumstance,[128] stating that in the habeas context, *rarely* will a situation arise constituting an extraordinary circumstance.[129] The Court also treated the change in the law as if, alone, it could not be considered an extraordinary circumstance.[130] However, impliedly then, there must be something more that occurs in those *rare* instances when a change in the law would constitute an extraordinary circumstance. The Court did acknowledge that *rarely* an extraordinary circumstance could exist, meaning that, theoretically, this species of Rule 60(b)(6) motions could be granted. Thus, *Gonzalez* became ground zero for the contrary opinions issued by the Third Circuit and the Fifth Circuit as the two circuits took drastically different views on interpreting *Gonzalez*. In a broader context, *Gonzalez* has fueled the larger circuit split that has developed in this area of the law.

In *Gonzalez*, the petitioner, Aurelio Gonzalez, pled guilty to one count of robbery with a firearm, and the Florida Circuit Court sentenced him to ninety-nine years in prison.[131] Gonzalez did not appeal this conviction, but twelve years later began seeking postconviction relief.[132] In 1997, Gonzalez filed a federal habeas corpus petition, claiming he did not enter into his guilty

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[125] Adams v. Thaler, 679 F.3d 312, 320 (5th Cir. 2012) (emphasis added) ("The Supreme Court's later decision in *Martinez*, which creates [a change in the law], does not constitute an 'extraordinary circumstance' under *Supreme Court . . . precedent*"); *Tamayo*, 740 F.3d at 990 (emphasis added) ("[W]e have held, *following Supreme Court precedent*, that a 'change in . . . law' does not constitute [an] 'extraordinary circumstance.'").

[126] *Gonzalez*, 545 U.S. at 536.

[127] 531 U.S. 4 (2000).

[128] *Gonzalez*, 545 U.S. at 536–37.

[129] *Id.* at 535.

[130] *Id.* at 536. ("It is hardly extraordinary that subsequently, after petitioner's case was no longer pending, [the Supreme Court] arrived at a different interpretation.").

[131] *Id.* at 526.

[132] *Id.*

plea knowingly and voluntarily.[133] The District Court for the Southern District of Florida ruled that the Gonzales did not "properly file" his habeas petition,[134] as the statute of limitations of the Antiterrorism and Effective Death Penalty Act[135] ("AEDPA") barred Gonzalez's habeas claim.[136] Nonetheless, in *Artuz*, the Court held that state postconviction relief applications could still be "properly filed" even though the application for relief may be procedurally barred—for example, barred by a statute of limitations.[137] Thus, nine months after *Artuz*, Gonzalez filed a Rule 60(b)(6) motion predicated on *Artuz*'s change in the law with claims that the district court improperly read AEDPA's statute of limitations provisions.[138]

Gonzalez argued that the Court's decision in *Artuz* constituted a change in the law that created an extraordinary circumstance because the Supreme Court changed its ruling on AEDPA's statute of limitations. The Court disagreed, stating that "it is hardly extraordinary that subsequently, after petitioner's case was no longer pending, this Court arrived at a different interpretation."[139] In effect, the Supreme Court applied a longstanding rule that a change in the law, by itself, will never constitute an extraordinary circumstance.[140] However, what is most thought-provoking about Justice Scalia's opinion is that after determining that the change in law, itself, did not constitute an extraordinary circumstance, he went on to consider Gonzalez's actions,[141] much like how the Court looked to Ackermann's actions.[142] For Gonzalez's motion, the change in the law articulated by *Artuz* was "less

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[133] *Id.* at 526–27.

[134] *Gonzalez*, 545 U.S. at 527.

[135] Antiterrorism and Effective Death Penalty Act, 28 U.S.C §§ 2241–66.

[136] *Gonzalez*, 545 U.S. at 527.

[137] *Id.* (citing Artuz v. Bennett, 531 U.S. 4 (2000)).

[138] *Id.*

[139] *Id.* at 536.

[140] Rydstrom, *supra* note 63, at *17 ("The lower federal courts are fairly agreed that Rule 60(b)(6) does not encompass relief based on a change in the judicial view of the law following entry of a final judgment or order."); *see* Stokes v. Williams, 475 F.3d 732, 734–35 (6th Cir. 2007) ("[I]t is well established that a change in . . . law is usually not, *by itself*, an 'extraordinary circumstance' meriting Rule 60(b)(6) relief.") (emphasis added) (citing Blue Diamond Coal Co. v. Trs. of UMWA Combined Benefits Fund, 249 F.3d 519, 524 (6th Cir. 2001)); Picco v. Global Marine Drilling Co., 900 F.2d 846, 851 (5th Cir. 1990) ("[A] change in . . . law after entry of judgment . . . is *not alone* grounds for relief from a final judgment." (emphasis added) (quoting Bailey v. Stevedoring Co., 894 F.2d 157, 160 (5th Cir. 1990)). *But see* Agostini v. Felton, 521 U.S. 203, 239 (1997) ("[Changes] in the law by themselves rarely constitute the extraordinary circumstances required for relief under Rule 60(b)(6).").

[141] *See Gonzalez*, 545 U.S. at 537.

[142] *See* Ackermann v. United States, 340 U.S. 193, 200–01 (1950).

extraordinary in [Gonzalez's] case, because of his lack of diligence in pursuing review of the statute-of-limitations issue."[143] When the Supreme Court decided *Artuz*, Gonzalez had long abandoned review of his case at the district court level, and thus, showed a lack of diligence to Justice Scalia.[144] Justice Scalia summed up his position by stating that

> Although the District Court relied on Eleventh Circuit precedent holding that a state postconviction application is not "properly filed" if it is procedurally defaulted, and although that precedent was at odds with the rule in several other Circuits, petitioner neither raised that issue in his application for a [certificate of appealability], nor filed a petition for rehearing of the Eleventh Circuit's denial of a [certificate of appealability], nor sought certiorari review of that denial.[145]

In this fashion, Gonzalez's lack of diligence—in not arguing against the application of the Eleventh Circuit's precedent—killed Gonzalez's chances that the change of law in *Artuz* constituted an extraordinary circumstance. In comparison, Ackermann voluntarily and freely chose not to appeal an adverse judgment, even though a companion case to Ackermann won the same appeal.[146] Only in hindsight was Ackermann's mistake apparent, and likewise, Justice Scalia categorized Gonzalez's decisions with that of Ackermann's.[147]

Regardless, Justice Scalia's analysis of Rule 60(b)(6) motions predicated on a change in the law exhibits precisely how the lower courts should treat these motions. By the same token, Justice Scalia's analysis rebukes the Fifth Circuit's brash use of the phrase "Supreme Court precedent" when ruling on Rule 60(b)(6) motions predicated on a change in the law.[148] While Justice Scalia did not find that *Artuz* constituted an extraordinary circumstance, he continued his analysis to look at the full circumstances of the case.[149] In doing so, he provided the framework for how courts are to handle these motions. An extraordinary circumstance will rarely arise in the habeas context, and never will a change in the law alone constitute an extraordinary

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[143] *Gonzalez*, 545 U.S. at 537.

[144] *Id.*

[145] *Id.*

[146] *Ackermann*, 340 U.S. at 201–02.

[147] *Gonzalez*, 545 U.S. at 537–38.

[148] *See supra* note 125.

[149] *See Gonzalez*, 545 U.S. at 537–38. As the Third Circuit puts it, courts regard the "full panoply" of a case. *See* Satterfield v. Dist. Att'y Phila., 872 F.3d 152, 155 (3d Cir. 2017).

circumstance. For this reason, the actions and equitable circumstances surrounding a case will be crucial for analyzing Rule 60(b)(6) motions predicated on a change in the law.

The Supreme Court did not say that a change in the law, paired with other equitable factors, can *never* constitute an extraordinary circumstance; the Court said *rarely* will a court find an extraordinary circumstance in the habeas context.[150] Thus, the Supreme Court impliedly acknowledged that in "rare" circumstances, movants might predicate Rule 60(b)(6) motions on a change in the law and succeed. Most notably, Justice Scalia signified this when he contrasted Gonzalez's actions with those of Ackermann and Klapprott.[151] Had Gonzalez acted with diligence, which Ackermann did not, the Court may have been more willing to find an extraordinary circumstance. If a change in the law, paired with equitable facts rarely constitutes extraordinary circumstances, then there does exist a set of facts that constitutes extraordinary circumstances, which arises out of a change in the law.[152] The Third Circuit acknowledged that "there is not much daylight between the 'never' position of the Fifth Circuit and the 'rarely' position."[153] However, this implies that there is some amount of "daylight" where the sun shines favorably on Rule 60(b)(6) motions predicated on a change in the law.

Despite the Supreme Court plainly looking beyond the purported change in the law and to the facts and circumstances in *Gonzalez*, the Fifth Circuit applies a bright-line rule barring Rule 60(b)(6) motions predicated on a change in the law, often citing that the circuit is following Supreme Court precedent.[154] Perplexingly, the Fifth Circuit cuts off all discussion of the issue and does not look to the facts and circumstances surrounding a case.[155] Nevertheless, with *Gonzalez* decided, it set the stage for the skirmish between the Third Circuit and the Fifth Circuit in the years that followed.

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[150] *Gonzalez*, 545 U.S. at 535.

[151] *Id.* at 537–38.

[152] Thus, this set of facts must be more akin to the U.S. government stripping away a citizen's citizenship on a default judgment, and less like a more favorable change in procedure. However, this speaks to the substance of granting a Rule 60(b)(6) motion predicated on a change in the law, and not necessarily to whether court should rule on these motions with a bright-line approach or a case-by-case approach.

[153] Cox v. Horn, 757 F.3d 113, 121 (3d Cir. 2014).

[154] *See, e.g.*, Adams v. Thaler, 679 F.3d 312, 319 (5th Cir. 2012) (citing *Gonzalez*, 545 U.S. at 535).

[155] *Cox*, 757 F.3d at 121–22 (citing *Adams*, 679 F.3d at 317–18).

2. The Battlegrounds of *Martinez v. Ryan*: The First Phase of Ideological Differences Between the Third and the Fifth Circuit

Seven years after *Gonzalez*, petitioners in the Third Circuit and the Fifth Circuit tasked the two courts with answering whether the Supreme Court's 2012 decision in *Martinez v. Ryan* constituted an extraordinary circumstance. Petitioners in both circuits filed Rule 60(b)(6) motions arguing that *Martinez* constituted an extraordinary circumstance justifying relief from a prior judgment that barred each petitioner habeas relief. This question, and its answer, served as the first instance of conflict between the two circuits as the Fifth Circuit found that *Martinez* did not constitute an extraordinary circumstance.[156] Shortly after, the Third Circuit refused to adopt the Fifth Circuit's reasoning and its per se, bright-line rule.[157]

a. *Martinez v. Ryan*: the exception to a hard and fast, bright-line rule

In *Martinez*, authorities charged Luis Mariano Martinez with two counts of sexual conduct with a minor under the age of fifteen.[158] At trial, the prosecution presented evidence that included a videotaped forensic interview with the victim and a nightgown worn by the victim that contained traces of Martinez's DNA.[159] With this evidence, the jury convicted him on both counts.[160] Martinez's defense to the charges included testimony from the victim's grandmother and mother, denying that any sexual abuse occurred.[161] On top of this, when the victim testified at trial, she recanted and denied that any abuse occurred.[162] Martinez was convicted and sentenced to serve two consecutive life terms with no possibility of parole for 35 years.[163]

Contemporaneously, the State of Arizona required petitioners to bring any ineffective assistance of counsel claims in a collateral proceeding on appeal, rather than on a direct appeal to the appellate level.[164] After his conviction, the court assigned Martinez a new attorney, who began a collateral proceeding for postconviction relief based on a variety of claims;

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156 *Adams*, 679 F.3d at 317–18.

157 *Cox*, 757 F.3d at 121, 124.

158 Martinez v. Ryan, 566 U.S. 1, 5 (2012).

159 *Id.*

160 *Id.*

161 *Id.*

162 *Id.*

163 *Id.* at 5–6.

164 *Martinez*, 566 U.S. at 4.

but, after further consideration, she told the court that there was no "colorable" claim of any sort that Martinez could bring in that proceeding.[165] After this, the state trial court gave Martinez forty-five days to file a pro se petition supporting postconviction relief.[166] Martinez failed to respond and later stated that he was unaware that he needed to file a petition.[167] Around a year and a half later, Martinez started fighting his conviction with new counsel; but, the Arizona Court of Appeals denied him relief, and the Arizona Supreme Court did not grant his appeal to Arizona's court of last resort.[168]

Martinez then filed a writ of habeas corpus in the United States District Court for the District of Arizona.[169] The district court denied this petition because an attorney's error in postconviction proceedings does not constitute justification to excuse a default judgment under *Coleman v. Thompson*,[170] which was the direct cause for Martinez's default.[171] This rule under *Coleman* was absolute and without exception, even though the *Coleman* Court reserved ruling on any exceptions.[172] The Ninth Circuit affirmed the lower court's ruling, relying "on general statements from *Coleman* that, absent a right to counsel in a collateral proceeding, an attorney's errors in the proceeding do not establish cause for a procedural default."[173] However, *Coleman* did leave open the possibility that states were required to provide effective assistance in an "initial-review collateral proceeding," as this may be a person's "one and only appeal" where a prisoner may raise a claim of ineffective assistance of counsel.[174] Thus, there may be reason to create an exception to the hard and fast rule established by *Coleman*.[175]

The Court in *Martinez* did just that, holding that "[t]o protect prisoners with a potentially legitimate claim of ineffective assistance of trial counsel, it is necessary to modify the unqualified statement in *Coleman* that an attorney's ignorance or inadvertence in a postconviction proceeding does not qualify as cause to excuse a procedural default."[176] On this basis, the court

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[165] *Id.* at 6.

[166] *Id.*

[167] *Id.*

[168] *Id. at* 6–7.

[169] *Id.* at 7.

[170] Coleman v. Thompson, 501 U.S. 722, 753–54 (1991).

[171] *Martinez*, 566 U.S. at 7–8.

[172] *See Coleman*, 501 U.S. at 755.

[173] *Martinez*, 566 U.S. at 8.

[174] *Id.*; *see also Coleman*, 501 U.S. at 755.

[175] *Martinez*, 566 U.S. at 8; *see also Coleman*, 501 U.S. at 755.

[176] *Martinez*, 566 U.S. at 9.

recognized a very narrow exception to *Coleman*: "Inadequate assistance of counsel at initial-review collateral proceedings may establish cause for a prisoner's procedural default of a claim of ineffective assistance at trial."[177] This exception supplied the fuel necessary for the Rule 60(b)(6) motions at issue in *Adams v. Thaler* and *Cox v. Horn*. In these cases, the two circuits answered whether the change in the law in *Martinez* constituted an extraordinary circumstance justifying relief from a previous final judgment.

b. *Adams v. Thaler*

In the ideological skirmish between the Fifth and the Third Circuit, the Fifth Circuit took the first swing at determining whether *Martinez* constituted an extraordinary circumstance. In *Adams*, a jury convicted Beunka Adams of capital murder and sentenced him to death.[178] On September 2, 2002, Candace Driver and Nikki Dement worked at a convenience store in Rusk, Texas.[179] Kenneth Vandever, a mentally disabled man who often "hung around" the convenience store and helped the two girls with small tasks, was there with the two girls on this particular night.[180] Two masked men, later identified as Adams and his cohort, Richard Cobb, entered the convenience store that night, pointed a shotgun at the women, and demanded money from the register.[181]

After robbing the convenience store, the two men drove Candace, Nikki, and Kenneth to a remote pea patch, where Cobb demanded the three captives to exit the vehicle.[182] Adams took Nikki to a secluded place away from the car and sexually assaulted her before returning her to the others.[183] Nikki and Candace were tied up, with Adams and Cobb intending for Kenneth, who was not bound, to untie the two girls once the criminals had escaped.[184] However, Kenneth began to untie the girls too early, which Cobb did not like, and, as a result, Cobb executed Kenneth and also shot the two girls.[185] Candace and Nikki survived after Candace ran to a nearby home, asking for help.[186]

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[177] *Id.*

[178] Adams v. Thaler, 679 F.3d 312, 314 (5th Cir. 2012).

[179] Adams v. State, No. AP-75,023, 2007 Tex. Crim. App. LEXIS 1851, at *1 (June 27, 2007).

[180] *Id.*

[181] *Id.*

[182] *Id.*

[183] *Id.*

[184] *Id.*

[185] Adams v. State, 2007 Tex. Crim. App. LEXIS 1851, at *2–3.

[186] *Id.* at *4.

Like many others, Adams filed several habeas petitions and had a long and unsuccessful appeals process.[187] Most importantly, the district court, in reviewing Adams' claims, determined that he had procedurally defaulted his ineffective assistance of counsel claim per the rule established in *Coleman*.[188] However, on April 13, 2012, Adams sought relief from the previous denials of his habeas petitions by filing a Rule 60(b)(6) motion.[189] In this motion, he argued that *Martinez* created an exception to the rule established by *Coleman*, which was not available to him at the time of his appeals, and constituted an extraordinary circumstance justifying extraordinary relief.[190] In effect, he argued that had *Martinez* been the law at the time of his appeals, the federal district court would not have dismissed his ineffective assistance of counsel claims as being procedurally defaulted. Thus, Adams argued that *Martinez* ushered a "jurisprudential sea change" with the narrow exception it created.[191]

However, in the Fifth Circuit, changes in the law do not constitute an extraordinary circumstance and cannot be the grounds upon which a court may grant relief.[192] Additionally, for the Fifth Circuit, there is no exception to this rule in cases concerning AEDPA.[193] In Adams' case, the district court, under the then-correct bright-line rule of *Coleman*, accurately determined that Adams procedurally defaulted on his claims.[194] The Fifth Circuit held that since "the *Martinez* decision is simply a change in . . . law and is 'not the kind of extraordinary circumstance that warrants relief under Rule 60(b)(6),' Adams' motion is without merit."[195]

Thus, per *Adams*, courts in the Fifth Circuit merely look to the articulated change in the law itself, and courts do not look to the full scope or picture of the case. Since *Martinez* does not constitute an extraordinary circumstance, and, to the Fifth Circuit, *Gonzalez* instructs the lower courts that a change in the law cannot underly Rule 60(b)(6) relief,[196] the Fifth Circuit dismissed Adams' motion.[197] The Fifth Circuit did not apply any equitable factors or

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[187] *See* Adams v. Thaler, 679 F.3d 312, 314–16 (5th Cir. 2012).

[188] *Id.* at 315.

[189] *Id.* at 316.

[190] *Id.*

[191] *Id.* at 319.

[192] *Id.*

[193] *Adams*, 679 F.3d at 320 (quoting Hernandez v. Thaler, 630 F.3d 420, 430 (5th Cir. 2011)).

[194] *Id.*

[195] *Id.* (quoting *Hernandez*, 630 F.3d at 429).

[196] *See id.* at 320.

[197] *Id.* at 323.

consider the other circumstances in *Adams*—for instance, that it was a capital murder case. While Adams' actions were deplorable, heartless, and downright inhumane, the Fifth Circuit denied him the opportunity to argue his ineffective assistance of counsel claim on its merits. This decision was delusory towards the Supreme Court decision in *Gonzalez* and established a perverted precedent in the Fifth Circuit. Nevertheless, the Fifth Circuit should have given deference to Justice Scalia's path of analysis in *Gonzalez*, insofar as Justice Scalia analyzed Gonzalez's Rule 60(b)(6) motion beyond the mere change in the law.

In a melodramatic sense, procedure reigned supreme in *Adams*. The Fifth Circuit quietly buried any substance to Adams' claim, and the Fifth Circuit chose flowers over dumplings. The per se, bright-line rule, adopted by the Fifth Circuit, echoes other similarly haunted procedural rules that, when strictly applied, produce unfair outcomes.[198] The Fifth Circuit's rule is a formulaic and wooden bar to relief, rather than a flexible standard for relief. In a less dramatic sense, the Fifth Circuit applied a misunderstanding of *Gonzalez*, which had the practical effect of being a procedural bar to relief. This bright-line rule gave deference to procedure, and it sidelined substance—echoing the archaic writs and procedural rules that bedeviled relief-from-judgment motions before the adoption of Rule 60(b).[199] In stark contrast, this is not the treatment "substance" received by the Third Circuit in *Cox v. Horn*.

c. *Cox v. Horn*

On October 28, 1993, a trial judge convicted Jermont Cox, after a bench trial, of first-degree murder, criminal conspiracy, and possession of an instrument of crime after Cox fatally shot Lawrence Davis on July 19, 1992.[200] Cox did not deny shooting Davis.[201] However, Cox claimed that this shooting occurred accidentally, and Cox specifically claimed that he did not have the requisite intent to be charged with first-degree murder in connection with the shooting.[202]

Cox appealed this conviction.[203] Then in 2000, a federal defender began representing Cox and filed a petition with eight grounds for relief, six of

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[198] *See, e.g.*, Molnar v. Hedden, 649 A.2d 71, 74 (N.J. 1994) ("A statute of limitations represents an 'arbitrary line' drawn by the Legislature.").

[199] *See supra* Section II.A.2.

[200] Cox v. Horn, 757 F.3d 113, 116 (3d Cir. 2014).

[201] *Id.*

[202] *Id.*

[203] *Id.* at 116–17.

which were claims of ineffective assistance of trial counsel.[204] The federal district court ruled on this motion in 2004, dismissing Cox's habeas petition since Cox procedurally defaulted on these claims as they were not brought forth in Cox's initial-review postconviction proceeding.[205] On June 20, 2012, three months after the Supreme Court decided *Martinez*, Cox filed a Rule 60(b)(6) motion seeking relief from the 2004 judgment denying his habeas petition.[206]

The district court denied this motion for two primary reasons.[207] First, the lower court "noted that neither the Supreme Court nor [the Third Circuit] had decided whether . . . *Martinez* constituted an 'extraordinary circumstance.'"[208] Second, the lower court also relied on the reasoning from *Adams*, where the Fifth Circuit stated: "a change in law, including the change in *Martinez*, can never be the basis of [Rule] 60(b) relief."[209] However, the Court of Appeals for the Third Circuit could not endorse the reasoning that the Fifth Circuit applied in *Adams* and thus, rejected it.[210] *Adams* did not align with Third Circuit precedent, and the Third Circuit, here, could not determine if the lower court looked to any factors in dismissing Cox's motion, or if the lower court solely looked at whether *Martinez*, in and of itself, constituted an extraordinary circumstance.[211] The lower court merely adopted the Fifth Circuit's reasoning in *Adams*, which was insufficient to what is required by the Third Circuit in analyzing a Rule 60(b)(6) motion.[212]

In rejecting *Adams*, the Third Circuit refused to adopt a categorical rule that would dismiss any and all Rule 60(b)(6) motions predicated on a change in the law. Instead, the court noted that the Third Circuit approaches these motions with nuance, stating that only in *rare* circumstances will a change in the law suffice as an extraordinary circumstance to satisfy relief under Rule 60(b)(6).[213] The Third Circuit also acknowledged that "there is not much daylight between the 'never' position of the Fifth Circuit and the 'rarely' position [taken by the Third Circuit]," but the court further distinguished

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[204] *Id.* at 117.

[205] *Id.* at 115.

[206] *Cox*, 757 F.3d at 118.

[207] *Id.* at 120.

[208] *Id.*

[209] *Id.* (quoting Adams v. Thaler, 679 F.3d 312, 320 (5th Cir. 2012)).

[210] *Id.* at 120–21.

[211] *Id.* at 120.

[212] *Cox*, 757 F.3d at 120.

[213] *Id.* at 121; *see* Agostini v. Felton, 521 U.S. 203, 239 (1997); *see also* Reform Party of Allegheny Cnty. v. Allegheny Cnty. Dep't of Elections, 174 F.3d 305, 311 (3d Cir. 1999) (en banc).

Adams, as *Adams* did not consider the alleged change in the law within the proper context since the lower court failed to analyze the full set of facts and circumstances.[214] In other words, *Adams* does not require the court to look to the "full panoply," as the Third Circuit would later articulate it in *Satterfield v. District Attorney Philadelphia*,[215] and therefore, the lower court erred in applying the Fifth's Circuit's reasoning in *Adams*. For example, in *Adams*, the Fifth Circuit failed to consider that the underlying case was a capital case.[216]

However, this is not the only factor to consider. The court looked to Third Circuit precedent to determine that, in its approach to Rule 60(b)(6) motions, it applies a "flexible, multifactor approach," which takes into account "all the particulars of a movant's case."[217] Specifically in *Lasky v. Cont'l Prods. Corp.*, the Third Circuit laid out many factors a district court *may* consider:

> [1] the general desirability that a final judgment should not be lightly disturbed; [2] the procedure provided by Rule 60(b) is not a substitute for an appeal; [3] the Rule should be liberally construed for the purpose of doing substantial justice; [4] whether, although the motion is made within the maximum time, if any, provided by the Rule, the motion is made within a reasonable time; . . . [5] whether there are any intervening equities which make it inequitable to grant relief; [6] any other factor that is relevant to the justice of the [order] under attack.[218]

These factors aim to achieve the "fundamental point" of Rule 60(b), which is to provide a "grand reservoir of equitable power to do justice in a particular case."[219]

With this rule laid out, the Third Circuit gave guidance to the lower court on how to rule on the Rule 60(b)(6) motion, as the district court had the right to rule on the motion in the first instance.[220] First, *Martinez* as a jurisprudential change is not enough, by itself, to justify Rule 60(b)(6)

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[214] *Cox*, 757 F.3d at 121–22.

[215] *See* Satterfield v. Dist. Att'y Phila., 872 F.3d 152, 155 (3d Cir. 2017).

[216] *Cox*, 757 F.3d at 122.

[217] *Id.*

[218] Lasky v. Cont'l Prods. Corp., 804 F.2d 250, 256 (3d Cir. 1986) (alteration in original) (quoting 7 J. MOORE & J. LUCAS, MOORE'S FEDERAL PRACTICE ¶¶ 60.19, 60.164, 60.165 (2d ed. 1983)).

[219] *Cox*, 757 F.3d at 122 (quoting Hall v. Cmty. Mental Health Ctr., 772 F.2d 42, 46 (3d Cir. 1985)).

[220] *Id.* at 124.

relief.[221] While it did not mark a new constitutional law, it did strikingly change the well-established rule in *Coleman*.[222] Second, the district court should consider whether Cox was entitled to the exception to *Coleman* created in *Martinez* by considering the underlying merits of the ineffective assistance of counsel claim.[223] This consideration is of the utmost significance, owing to the fact that the lower courts never considered the ineffective assistance of counsel claim on the merits.[224]

Third, the district court was told to remember that in *Gonzalez v. Crosby*, the Supreme Court said that a change in the law within the habeas context would rarely constitute an extraordinary circumstance justifying relief under Rule 60(b)(6).[225] At this level, "[p]rinciples of finality and comity . . . dictate that federal courts pay ample respect to states' criminal judgments and weigh against disturbing those judgments via [Rule] 60(b) motions."[226] However, the Third Circuit opined that "[c]onsiderations of repose and finality become stronger the longer a decision has been settled."[227]

The Third Circuit declined to state an opinion on the merits of Cox's motion and did not foreclose the possibility of the lower court reaching the same conclusion as it had before.[228] The important point that the Third Circuit made in closing was that the lower court must consider the full set of facts and circumstances surrounding Cox's Rule 60(b)(6) motion.[229]

The treatment Cox's Rule 60(b)(6) motion received is a drastically different departure from the approach taken by the Fifth Circuit. Boiled down to a simple rule: it is merely not enough for a court in the Third Circuit to consider the change in the law isolated from the facts and circumstances in the case at bar. The Third Circuit carefully places the court's interest in protecting final judgments in contrast to society's interest in preventing innocent persons from serving punishments for crimes they did not commit.

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[221] *Id.*

[222] *Id.*

[223] *Id.*

[224] *Id.*; *see* Lasky v. Cont'l Prods. Corp., 804 F.2d 250, 256 n.10 (3d Cir. 1986).

[225] *Cox*, 757 F.3d at 125 (citing Gonzalez v. Crosby, 545 U.S. 524, 535–36 & n.9 (2005)).

[226] *Id.*

[227] *Id.*

[228] *Id.* at 126.

[229] *Id.*

3. The Battlegrounds of *McQuiggin v. Perkins*: The Third Circuit and the Fifth Circuit Further Entrench Their Diverging Ideologies

The second major installation in the skirmish between the Third Circuit and the Fifth Circuit came after the Supreme Court's decision in *McQuiggin v. Perkins*. In *McQuiggin*, the Supreme Court softened the one-year statute of limitations on first-time habeas corpus petitions under the AEDPA.[230] In doing so, the Court placed procedure aside so that substance could prevail.

a. *McQuiggin v. Perkins*: the softening of a hard statute of limitations

On March 4, 1993, Floyd Perkins went to a party in Flint, Michigan, with his friend, Rodney Henderson.[231] Perkins and Henderson left the party with one of Henderson's acquaintances, Damarr Jones.[232] After leaving the party, someone killed Henderson by stabbing him in the head on a wooded trail.[233]

Authorities charged Perkins with Henderson's murder based on the testimony of Jones and two other friends who knew Perkins and Henderson.[234] Jones testified that he watched as Perkins murdered Henderson, while the other two friends testified that Perkins discussed and confessed the murder with them.[235] Perkins offered a differing account that implicated Jones as the murderer.[236] Perkins stated that after they left the party, he went to purchase cigarettes, and Henderson and Jones disappeared; however, Perkins saw Jones an hour later covered in blood under a streetlight.[237]

The jury did not believe Perkins' testimony, which implicated Jones, and instead, the jury found Perkins guilty of first-degree murder.[238] The Michigan Court of Appeals affirmed Perkins' jury conviction and sentenced him to life imprisonment with zero chance of parole.[239] On January 31, 1997, the Michigan Supreme Court declined to hear Perkins' appeal.[240] Over eleven

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230 McQuiggin v. Perkins, 569 U.S. 383, 386–87 (2013).

231 *Id.* at 387.

232 *Id.*

233 *Id.*

234 *Id.* at 388.

235 *Id.*

236 *McQuiggin*, 569 U.S. at 388.

237 *Id.*

238 *Id.*

239 *Id.*

240 *Id.*

years later, on June 13, 2008, Perkins filed his habeas corpus petition. [241] Under AEDPA, a state prisoner has a hard, one-year statute of limitations on filing a federal petition for habeas corpus.[242]

To overcome this statute of limitations, Perkins alleged that ineffective counsel deprived him of his Sixth Amendment right to "competent counsel" and newly discovered evidence pointed to his actual innocence.[243] The District Court for the Western District of Michigan rejected Perkins' claim, categorizing the newly discovered evidence as "dubious" at best.[244] Perkins presented three affidavits showing evidence that Jones bragged and confessed about killing Henderson and that a man entered a Pro-Clean Cleaners shop on March 4, 1993, matching Jones' description.[245]

However, the district court noted that aside from the quality of Perkins' affidavits, his habeas petition would still be barred by the one-year statute of limitations on habeas petitions.[246] The Sixth Circuit reversed the district court and held that allegations of actual innocence allowed Perkins to argue his claims as if the habeas petition had been filed on time.[247] The Supreme Court accepted the issue on certiorari to resolve the circuit split concerning whether a showing of actual innocence can overcome AEDPA's statute of limitations.[248]

Justice Ginsburg, writing for the majority, held that the hard, one-year statute of limitations was not absolute when there is a showing of actual innocence, in that, filing after the statute of limitations had run was not an "absolute barrier to relief."[249] The Court took the "miscarriage of justice" exception and applied it to a first time—albeit time-barred—habeas petitions [250] The miscarriage of justice exception allows otherwise impermissible abusive or successive habeas petitions to be considered if there is an actual showing of innocence.[251] In the context of procedural defaults, a court applies the miscarriage of justice exception with an actual showing of innocence when: a petitioner files "'successive' petition[s] asserting previously rejected

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[241] *Id.* at 389.

[242] *McQuiggin*, 569 U.S. at 388.

[243] *Id.* at 389.

[244] *Id.*

[245] *Id.*

[246] *Id.* at 390.

[247] *Id.* at 390–91.

[248] *McQuiggin*, 569 U.S. at 391.

[249] *Id.* at 387.

[250] *Id.* at 392.

[251] *Id.*

claims,[252] . . . 'abusive' petitions asserting a second petition claims that could have been raised in a first petition,[253] . . . and failure to observe state procedural rules, including filing deadlines[254]."[255] In reviewing this list, Justice Ginsburg made a logical observation concerning the nature of the application of the miscarriage of justice standard:

> A federal court may invoke the miscarriage of justice exception to justify consideration of claims defaulted in state court under state timeliness rules. . . . It would be passing strange to interpret a statute seeking to promote federalism and comity as requiring stricter enforcement of federal procedural rules than procedural rules established and enforced by the *States*.[256]

In other words, Justice Ginsburg hypothesized that it would be odd for a federal court to apply the exception to overcome a state procedural bar, but for the Supreme Court to deny a federal court the ability to apply the exception to overcome a federal procedural bar. Thus, the Court held that a showing of actual innocence could overcome the one-year statute of limitations placed by AEDPA on habeas petitions.[257]

So, what happens if a district court denied a habeas petition, in light of claims of actual innocence, before the Court handed down *McQuiggin*? The answer depends on which court answered that cumbersome question.

b. *Tamayo v. Stephens*

The Fifth Circuit doubled down on its bright-line stance in *Tamayo v. Stephens*. The Fifth Circuit again had an opportunity to create a framework of analysis that fell within the language of *Gonzalez*, finding the daylight between *never* and *rarely*. However, the court did not do so.

In *Tamayo*, Officer Guy Gaddis arrested Edgar Arias Tamayo and Jesus Mendoza outside of a bar in Harris County, Texas, for robbing a bar patron.[258] Officer Gaddis handcuffed the men and placed both men in the back seat of his police car, sitting Tamayo directly behind the driver's seat.[259] Unbeknownst to Officer Gaddis, Tamayo had a handgun in the waistband of

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[252] *See* Kuhlmann v. Wilson, 477 U.S. 436, 454 (1986) (plurality opinion).

[253] *See* McCleskey v. Zant, 499 U.S. 467, 494–95 (1991).

[254] *See* Coleman v. Thompson, 501 U.S. 722, 750 (1991).

[255] *McQuiggin*, 569 U.S. at 392–93.

[256] *Id.* at 394 (emphasis in original).

[257] *Id.* at 386.

[258] Tamayo v. Stephens, 740 F.3d 986, 987 (5th Cir. 2014) (per curiam).

[259] *Id.*

his pants.[260] Although officers handcuffed Tamayo, Tamayo managed to pull the gun out of his waistband and shoot Officer Gaddis three times in the back of the head.[261] The car crashed as a result, and Tamayo managed to escape through a window broken in the crash.[262] Emergency personnel immediately rushed Officer Gaddis to the hospital, but he was pronounced dead upon arrival.[263] Near the accident scene, officers arrested Tamayo, who had been running down the street in handcuffs.[264]

In the trial that followed, the jury convicted him of capital murder and his sentence was that of death.[265] Although Tamayo was a Mexican national and not a U.S. citizen, the Mexican consulate did not learn of Tamayo's case until a week before his trial.[266] Tamayo filed several successive habeas petitions in the decades that followed his death sentence that included ineffective assistance of counsel, violation of the Vienna Convention on Consular Relations of Tamayo's consular notification rights, and claims that Tamayo was mentally disabled; however, each claim was unsuccessful.[267] Tamayo's consular notification rights were of some political interest, as then-Secretary of State John Kerry saw the case as an international issue that could affect the strained relations between Mexico and the United States.[268]

On January 20, 2014, Tamayo filed a Rule 60(b)(6) action asking for relief from the district court's prior rulings on his habeas petitions.[269] The federal district court denied his motion as untimely, because his first habeas petition was in February of 1998.[270] Tamayo challenged the validity of this ruling under *McQuiggin*, arguing that the ruling of *McQuiggin* "excuses the previously found procedural default and untimeliness."[271]

The Fifth Circuit did not see *McQuiggin* this way and stated that a change in the law cannot be an extraordinary circumstance for purposes of a Rule

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[260] *Id.*

[261] *Id.* at 987–88.

[262] *Id.* at 987.

[263] *Id.*

[264] *Tamayo*, 740 F.3d at 987.

[265] *Id.* at 988.

[266] *Id.* at 987–88.

[267] *Id.* at 988–90.

[268] Manny Fernandez, *Texas Executes Mexican Man for Murder*, N.Y. TIMES (Jan. 22, 2014), https://www.nytimes.com/2014/01/23/us/texas-executes-mexican-for-murder.html.

[269] *Tamayo*, 740 F.3d at 990.

[270] *Id.* at 988, 990; *see also* FED. R. CIV. P. 60(c)(1) ("A motion under Rule 60(b) must be made within a reasonable time.").

[271] *Tamayo*, 740 F.3d at 990.

60(b)(6) motions.[272] Since the change in law in *McQuiggin* does not constitute an extraordinary circumstance, Tamayo's Rule 60(b)(6) motion failed, and the Fifth Circuit agreed with the lower court that Tamayo's motion was untimely.[273] Tamayo filed his Rule 60(b)(6) motion two days before the state scheduled his execution.[274] The court denied his appeal and affirmed the lower court's denial of his Rule 60(b)(6) motion.[275] The state of Texas executed Tamayo on January 22, 2014, by lethal injection.[276]

Tamayo is a relatively short opinion because of this bright-line rule, but it demonstrates the philosophical difference that the Third and the Fifth Circuit take when approaching this issue. Unfortunately, circuits, like the Fifth Circuit, merely "recite that [changes in the law borne by Supreme Court cases are] not an extraordinary circumstance warranting relief and deny the motion."[277] While Tamayo was guilty of his crimes, if the Fifth Circuit had to answer the dilemma Satterfield faced, Satterfield would not have had the opportunity to argue his actual innocence before the court.

c. *Satterfield v. District Attorney Philadelphia*

In *Satterfield v. District Attorney Philadelphia*, the Third Circuit recognized the change in the law that *McQuiggin* brought about.[278] Judge Vanaskie began his opinion by articulating the change that occurred in *McQuiggin*, in that *McQuiggin* extended the application of the miscarriage of justice exception—in the context of habeas petitions—to a procedural bar concerning the AEDPA statute of limitations.[279] The Supreme Court recognized that those who can "adequately demonstrate [their] actual innocence" should not be barred from pursuing this claim because of an untimely motion.[280] Judge Vanaskie summarized the Court's decision to completion by stating that *McQuiggin* "reflects society's value judgment that procedure should yield to substance when actual innocence is at stake."[281] One of the most egregious mistakes a judicial system can make is finding guilt

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[272] *Id.* (citing Adams v. Thaler, 679 F.3d 312, 319–20 (5th Cir. 2012)).

[273] *Id.* at 991.

[274] *Id.*

[275] *Id.*

[276] Fernandez, *supra* note 268.

[277] Brief for Former Federal District Judges at 7, Johnson v. Carpenter, 137 S. Ct. 1201 (2017) (No. 15-1193).

[278] Satterfield v. Dist. Att'y Phila., 872 F.3d 152, 154 (3d Cir. 2017).

[279] *Id.*

[280] *Id.*

[281] *Id.*

in an innocent person.[282] Thus, it is no wonder that the Court finds it appropriate for procedure to step aside.[283]

In *Satterfield*, Paul Satterfield repaired TVs and went to Azzizah Abdullah's home to repair her television in 1983.[284] He fixed the television set, and Abdullah paid him for his services, but shortly after Satterfield left, the TV stopped working properly.[285] Abdullah summoned Satterfield back to her home several times, and Satterfield made several attempts to fix the defiant television but to no avail.[286] The TV would not work.[287] Satterfield's final visit to Abdullah's home was at the request of her husband, William Bryant, who was irritated at Satterfield for failing to fix the television set.[288] A fight ensued during Satterfield's last visit, which resulted in Satterfield returning the money Abdullah paid him after Bryant flaunted a knife and a baseball bat.[289] Satterfield never reported this encounter to the police; however, a week later, someone shot and killed Bryant early one morning just outside his home.[290]

There were two eyewitnesses to the murder, both of whom lived across the street from Bryant.[291] After hearing gunshots, the eyewitnesses looked outside their front window and saw a man who "looked like he was white," with blonde hair and stood around five feet and nine inches.[292] Satterfield was a six-foot-tall black man with brown hair.[293]

Then, in 1984, a man named Wayne Edwards contacted the police, alleging that Satterfield confessed to killing Bryant.[294] Edwards played tennis with Satterfield after Satterfield had met Edwards' wife at a racquet club.[295] The two only played together a few times before Edwards alleged that Satterfield confessed to the murder.[296] Edwards testified at trial about his conversations with Satterfield, even purporting to have evidence not made

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[282] *Id.*

[283] *Id.*

[284] *Satterfield*, 872 F.3d at 155.

[285] *Id.*

[286] *Id.*

[287] *Id.*

[288] *Id.*

[289] *Id.*

[290] *Satterfield*, 872 F.3d at 155.

[291] *Id.*

[292] *Id.*

[293] *Id.* at 156.

[294] *Id.*

[295] *Id.*

[296] *Satterfield*, 872 F.3d at 156.

known to the public.[297] This turned out to be false, as the information Edwards gave at trial was public in a search warrant indicating the number of bullets removed from Bryant's body.[298] Satterfield testified that Edwards fabricated the story to get revenge for the romantic relationship beginning between Satterfield and Edwards' wife.[299] Despite this, Satterfield admitted to purchasing the same caliber of ammunition that the killer used to kill Bryant, on the same day as Bryant's killing; nevertheless, over the course of the trial, Satterfield's counsel did not call the two eyewitnesses to the murder to testify about the appearance of the murderer.[300] In June 1985, the jury convicted Satterfield of first-degree murder, and the trial court sentenced him to life in prison.[301]

Satterfield went through a long, although unsuccessful, process of protesting his conviction.[302] The last of these attempts found its way to the Third Circuit in Satterfield's Rule 60(b)(6) motion.[303] Satterfield filed the motion arguing that *McQuiggin* was a change in the law that created an extraordinary circumstance for Satterfield which justified him relief from the denial of his habeas petition under Rule 60(b)(6).[304] The district court denied Satterfield's motion, holding that *McQuiggin* did not constitute an extraordinary circumstance.[305] The Third Circuit disagreed.[306]

The Third Circuit stated that "a district court addressing a Rule 60(b)(6) motion premised on a change in . . . law must examine the full panoply of equitable circumstances . . . before rendering a decision."[307] A court ruling on a Rule 60(b)(6) motion uses the "extraordinary circumstances" standard; however, Third Circuit precedent also requires the court to ask whether an "extreme and unexpected hardship would occur" if the Rule 60(b)(6) motion were not to be granted.[308] Yet still, the Third Circuit remarked that "the nature of the change in decisional law must be weighted appropriately in the

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[297] *Id.*

[298] *Id.* at 156 n.4.

[299] *Id.* at 156.

[300] *Id.*

[301] *Id.* at 157.

[302] *Satterfield*, 872 F.3d at 157–58.

[303] *Id.* at 158.

[304] *Id.*

[305] *Id.*

[306] *Id.* at 158–59.

[307] *Id.* at 155.

[308] *Satterfield*, 872 F.3d at 158 (quoting Cox v. Horn 757 F.3d 113, 120 (3d Cir. 2014); Sawka v. Healtheast, Inc., 989 F.2d 138, 140 (3d Cir. 1993); Boughner v. Sec'y of Health, Educ. & Welfare, 572 F.2d 976, 978 (3d Cir. 1978)).

analysis of pertinent equitable factors."[309] The court summed up the path of analysis a court must take when ruling on this species of Rule 60(b)(6) motion:

> If Satterfield can make the required credible showing of actual innocence to avail himself of the fundamental miscarriage of justice exception had *McQuiggin* been decided when his petition was dismissed, equitable analysis would weigh heavily in favor of deeming *McQuiggin*'s change in law, as applied to Satterfield's case, an exceptional circumstance justifying Rule 60(b)(6) relief.[310]

Ultimately, the Third Circuit held that *McQuiggin* was indeed a change in the law,[311] and it vacated the lower court's dismissal of Satterfield's Rule 60(b)(6) motion so that the lower court could apply the correct standard for whether this change in the law constituted an extraordinary circumstance.[312]

For the Third Circuit, *McQuiggin* was a change in the law, as the Third Circuit had never decided the actual innocence issue before *McQuiggin*, while many other circuits had.[313] Before *McQuiggin*, the circuits had divided themselves into two camps on whether a credible showing of actual innocence could overcome an untimely petition. The first camp held that showings of actual innocence could overcome a habeas petition that would otherwise be barred under AEDPA's statute of limitations.[314] The second camp found the exact opposite, holding that actual innocence would never excuse an untimely petition.[315] The Third Circuit occupied neither camp.[316] The Third Circuit had multiple opportunities to answer this question, but declined to answer it on each occasion.[317] Thus, the Third Circuit reasoned that since it declined to rule on the issue, *McQuiggin* served as a change in

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[309] *Satterfield*, 872 F.3d at 155.

[310] *Id.*

[311] *Id.* at 159.

[312] *Id.* at 162.

[313] *Id.* at 159.

[314] *See* Rivas v. Fischer, 687 F.3d 514, 548 (2d Cir. 2012); Lee v. Lampert, 653 F.3d 929, 934 (9th Cir. 2011); San Martin v. McNeil, 633 F.3d 1257, 1267–68 (11th Cir. 2011); Lopez v. Trani, 628 F.3d 1228, 1230–31 (10th Cir. 2010); Souter v. Jones, 395 F.3d 577, 601–02 (6th Cir. 2005).

[315] *See* Escamilla v. Jungwirth, 426 F.3d 868, 871–72 (7th Cir. 2005); David v. Hall, 318 F.3d 343, 347 (1st Cir. 2003); Cousin v. Lensing, 310 F.3d 843, 849 (5th Cir. 2002).

[316] *Satterfield*, 872 F.3d at 159.

[317] *See* Munchinski v. Wilson, 694 F.3d 308, 329 & n.16 (3d Cir. 2012); Scott v. Lavan, 190 F. App'x 196, 199 (3d Cir. 2006); Hussmann v. Vaughn, 67 F. App'x 667, 669 (3d Cir. 2003).

the Third Circuit's law.[318]

With this in mind, the Third Circuit overturned the lower court's ruling because it failed to look to the "full panoply of equitable circumstances" when ruling on Satterfield's motion; instead, the lower court focused on the change in law in *McQuiggin*, divorced from the facts of *Satterfield*, in reaching its decision.[319] While precedent made it clear that it is rare for changes in the law to constitute an extraordinary circumstance, the Third Circuit's decision in *Cox* wholeheartedly rejected the notion that there is a categorial approach to Rule 60(b)(6) motions predicated on changes in the law.[320] In *Satterfield*, the Third Circuit reinforced the stance it took in *Cox* and, again, it rejected taking a bright-line or per se approach to changes in the law.[321] Instead, courts in the Third Circuit apply a case-by-case analysis in order to have a "flexible, multifactor[ed] approach to Rule 60(b)(6) motions."[322] Under the rule applied in the Third Circuit, the lower court failed to look at the "full panoply of equitable circumstances" by looking at the change in law in *McQuiggin* in isolation.[323]

The Third Circuit did not grant or deny the Rule 60(b)(6) motion, as this is "left, in the first instance, to the discretion of a district court;"[324] rather it gave the lower district court instructions on how to rule on Satterfield's motion. The Third Circuit stated that if Satterfield can show actual innocence, then relief under Rule 60(b)(6) should be granted, unless the "totality of equitable circumstance[s] . . . weigh heavily" in denying Satterfield's motion.[325] Thus, the lower court's efforts should focus on whether a Rule 60(b)(6) movant makes a credible showing of actual innocence,[326] as *McQuiggin* only allows time-barred petitions to be heard when the movant makes a credible showing of actual innocence—which is a showing that no reasonable juror would have found him guilty beyond a

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[318] *Satterfield*, 872 F.3d at 159.

[319] *Id.* at 162. This is the path of analysis the Fifth Circuit took in *Adams*, which the Third Circuit rejected in *Cox*. Cox v. Horn, 757 F.3d 113, 120–21 (2014). Additionally, the lower court in *Satterfield* made the same mistake as the lower court in *Cox*. *Compare Cox*, 757 F.3d at 120, *with Satterfield*, 872 F.3d at 162.

[320] *See supra* Section III.B.2.c.

[321] *Satterfield*, 872 F.3d at 161.

[322] *Id.*

[323] *Id.* at 162.

[324] *Id.* (quoting *Cox*, 757 F.3d at 124).

[325] *Id.* at 163.

[326] *Id.*

reasonable doubt.[327] The court's interest in protecting the life and freedom of innocent persons from being falsely or incorrectly convicted of crimes weighed so heavily on the Third Circuit that the court "fail[ed] to see a set of circumstances under which this change in the law, paired with a petitioner's adequate showing of actual innocence, would not be sufficient to support Rule 60(b)(6) relief in [Satterfield's case]."[328]

Why the Fifth Circuit per se denies Rule 60(b)(6) motions predicated on a change in the law is as clear as dumpling broth—that is, it is unclear. Perhaps the Fifth Circuit does recognize those rare instances where a change in the law, with other equitable factors, constitutes an extraordinary circumstance. However, the Fifth Circuit's analysis is suspicious if this is the case. The Fifth Circuit appears to be applying its own reading and interpretation of *Gonzalez* to maintain its bright-line rule. In doing so, the circuit merely applies a binary test and then immediately dismisses the Rule 60(b)(6) motion if the motion is in any way predicated on a change in the law. *Tamayo* shows this as the court's opinion is short, succinct, and considers no merits of Tamayo's motion. Notwithstanding the fact that the Fifth Circuit rightly decided Tamayo's motion, the court failed to engage in any meaningful analysis that would provide helpful guidance to a court faced with a situation similar to Satterfield in the Third Circuit.

While this is just the tip of the iceberg, the skirmish between the Third Circuit and the Fifth Circuit reveals the nature and notions of justice in various circuits around the country.[329] In the Third Circuit, procedure steps

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[327] *Satterfield*, 872 F.3d at 163; *see also* McQuiggin v. Perkins, 569 U.S. 383, 399 (2013); Schlup v. Delo, 513 U.S. 298, 327 (1995).

[328] *Satterfield*, 872 F.3d at 163.

[329] *See* Ramirez v. United States, 799 F.3d 845 (7th Cir. 2015) (granting Rule 60(b)(6) motions predicated on the change in the law brought about by the *Martinez-Trevino* exception); *In re* Terrorist Attacks on Sept. 11, 2001, 741 F.3d 353 (2d Cir. 2013) (granting a Rule 60(b)(6) motion predicated on a change in the law concerning private causes of action a private citizen may have to sue a foreign sovereign state); Stokes v. Williams, 475 F.3d 732, 736 (6th Cir. 2007) (denying a Rule 60(b)(6) motion predicated on a change in the law) ("[T]he decision to grant Rule 60(b)(6) relief is a *case-by-case* inquiry that requires the trial court to intensively balance numerous factors.") (emphasis added) (quoting Blue Diamond Coal Co. v. Trs. of United Mine Workers of Am. Combined Benefit Fund, 249 F.3d 519, 529 (6th Cir. 2001)). *But see* Moses v. Joyner, 815 F.3d 163, 168–69 (4th Cir. 2016) (denying a Rule 60(b)(6) motion predicated on the change in the law brought about by the *Martinez-Trevino* exception) ("[A] change in . . . law subsequent to a final judgment provides *no basis* for relief under Rule 60(b)(6).") (emphasis added) (quoting Dowell v. State Farm Fire & Cas. Auto. Ins. Co., 993 F.2d 46, 48 (4th Cir. 1993)); Arthur v. Thomas, 739 F.3d 611, 631 (11th Cir. 2014) (denying a Rule 60(b)(6) motion predicated on the change in the law brought about by the *Martinez-Trevino* exception) ("The U.S. Supreme Court has already told us that

aside to justice when actual innocence is at stake, whereas in the Fifth Circuit, procedure produces justice. But, justice cannot be produced merely because one does not follow the punctilio or etiquette of predefined procedure. In spite of this, several circuit courts in the United States take this position.

IV. PROPOSAL

To resolve the two different approaches to Rule 60(b)(6) motions predicated on a change in the law, the Supreme Court should eliminate any categorical or bright-line rules against hearing these motions on the merits. While a change in the law, by itself, should not be an extraordinary circumstance for purposes of Rule 60(b)(6), out of respect to finality and judicial economy, a federal district court should consider a change in the law, paired with other equitable factors.

This problem is already receiving some attention from the Supreme Court as Justice Sotomayor noted the circuit split discussed above in *Crutsinger v. Davis*.[330] In *Crutsinger*, the Court denied the petitioner's motion for stay of an execution; however, Justice Sotomayor wrote individually "to note [the] potential tension between [the Supreme Court's] decision in *Gonzalez* and the Fifth Circuit's approach to Rule 60(b)(6)."[331] She recognized that *Gonzalez* did not merely slam the door on all Rule 60(b)(6) motions predicated on a change in the law, especially in a criminal context.[332] Alternatively, she acknowledged that through implication, *Gonzalez* stands for the notion that Rule 60(b)(6) motions could be predicated on a change in the law alone and succeed.[333]

However, Justice Sotomayor distinguished the circuit split differently than how this article has. She predicated her differentiation upon whether a change in the law *alone* could justify an extraordinary circumstance. In *Crutsinger*, Justice Sotomayor listed the Third Circuit's approach as one that has "not foreclosed the possibility that a change in controlling precedent, *even standing alone*, might give reason for 60(b)(6) relief."[334] She described the Fifth Circuit's approach as "announc[ing] a contrary, categorical rule: [a] change in . . . law after entry of judgment does not constitute extraordinary

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a change in . . . law is insufficient to create the 'extraordinary circumstance' necessary to invoke Rule 60(b)(6).") (citing Gonzalez v. Crosby, 545 U.S. 524, 535–38 (2005)).

[330] 140 S. Ct. 2 (2019).

[331] *Id.* at 2 (Sotomayor, J., concurring).

[332] *Id.* at 2–3.

[333] *Id.* For this article's discussion on the proper interpretation of *Gonzalez*, *see supra* Section III.B.1.

[334] *Crutsinger*, 140 S. Ct. at 3 (emphasis added) (citing Cox v. Horn, 757 F.3d 113, 121 (3d Cir. 2014)).

circumstances and is *not alone* grounds for relief from a final judgment."[335] She finished her statement saying, "In an appropriate case, this issue could warrant the Court's review."[336] Indeed, this issue warrants the Court's review, and Justice Sotomayor is apt to note this for several reasons.

First, the Fifth Circuit has misread *Gonzalez*.[337] Therefore, this circuit split predicates itself upon an erroneous and unsoundly ersatz application of Supreme Court precedent. Justice Scalia illustrated the path of analysis that a court is to follow when faced with a Rule 60(b)(6) motion predicated on a change in the law.[338] Justice Scalia did not merely recite that a change in the law cannot constitute an extraordinary circumstance.[339] No, Justice Scalia went beyond finding that *Artuz* did not constitute an extraordinary circumstance, and, instead, he looked towards the "full panoply" of the case to determine no extraordinary circumstance existed in *Gonzalez*.[340] Contrary to the Fifth Circuit's view, *Gonzalez* did not foreclose upon the idea that a Rule 60(b)(6) motion could *never* be predicated on a change in the law. As a matter of choice, Justice Scalia employed a path of analysis akin to the Third Circuit's analysis when he juxtaposed Gonzalez's actions to those of the petitioner in *Ackermann*, and by implication, *Klapprott*.[341]

Second, the Fifth Circuit's approach arbitrarily limits a federal judge's ability to craft relief. This stricture critically appeared in an amicus brief written by several former federal judges to the Supreme Court concerning the Court granting certiorari for *Johnson v. Carpenter*.[342] In the brief's introduction, they stated that "[i]t is a disservice to habeas petitioners, the justice system, and acting federal judges to supplant [a judge's] discretion with a *per se* rule that places certain extraordinary cases beyond the reach of . . . Rule 60(b)(6)."[343] Federal judges are already entrusted with a wide range of discretion which requires them to "regularly use their judgment in

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[335] *Id.* (emphasis added) (internal quotation marks omitted) (quoting Raby v. Davis, 907 F.3d 880, 884 (5th Cir. 2018)).

[336] *Id.*, 140 S. Ct. at 3.

[337] *See supra* Sections III.B.1, III.B.2.b, III.B.3.b.

[338] *See supra* Section III.B.1.

[339] *Id.*

[340] *Id.*

[341] Gonzalez v. Crosby, 545 U.S. 524, 537–38 (2005) (citing Ackermann v. United States, 340 U.S. 193, 195 (1950)).

[342] Brief for Former Federal District Judges at 1, Johnson v. Carpenter, 137 S. Ct. 1201 (2017) (No. 15-1193).

[343] *Id.*

diverse factual and legal contexts."[344] Hence, Rule 60(b)(6) places the same discretionary requirements on judges that regularly appear in the course of litigation.[345] For a broader understanding of these discretionary requirements, it is also essential to remember that the Court adopted Rule 60(b)(6) in order to abolish the old common law writs that procedurally hampered a judge's ability to craft relief.[346] A per se, bright-line rule—like that employed by the Fifth Circuit—takes a step back towards the draconian era of granting relief from a final judgment; thus, a per se, bright-line rule frustrates the purpose of Rule 60(b)(6).

In practice, it may be true that denying these Rule 60(b)(6) motions produces a just outcome in most circumstances, as an extraordinary circumstance will rarely arise in the habeas context. However, this disregards the very purpose of Rule 60's adoption into the Federal Rules of Civil Procedure. The old writs and motions did not give judges the ability to vacate prior judgments when justice so required. As a remedy to that evil, Rule 60(b) gives judges far more discretion than their historical counterparts had. With the adoption of the Federal Rules, procedure stepped aside for substance, thus ensuring that substance would have its day in court. The Federal Rules did this like no other system before it had. If the Supreme Court were to place a bright-line restriction on these motions, the bright-line rule would allow for procedure to dictate what justice is.

Third, the different approaches taken by the Third Circuit and the Fifth Circuit create disproportionate treatment for different prisoners living in different parts of the country. If an innocent prisoner on death row, who is being held in a Third Circuit jurisdiction, were to file a Rule 60(b)(6) motion, he may find success in fighting a wrongful conviction. But if that same prisoner were being held in the Fifth Circuit jurisdiction, his Rule 60(b)(6) motion would be categorically thrown out, no matter how compelling his case is. As shown in *Satterfield*, a wrongful conviction may result from your attorney failing to call the appropriate eyewitnesses, or a jealous husband claiming you confessed to a murder.[347] It is one of society's greatest fear that an innocent man should pay for the crimes of a guilty man. This fear is a reality for some individuals in light of a recent study that estimated 4.1% of

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[344] *Id.* at 11. The judges' brief listed several contexts in which judges use their discretion, including the "interest of justice" factor in forum transferring and the "first line discretion" in granting interlocutory appeals. *See id.* at 11–13.

[345] *Id.* at 14.

[346] *See supra* Section II.A.2.

[347] *See supra* Section III.B.3.c; *see also* Satterfield v. Dist. Att'y Phila., 872 F.3d 152, 155–56 (3d Cir. 2017).

those on death row are, in fact, innocent.[348] Bringing together a team of legal and statistics experts, University of Michigan law professor Samuel Gross and Michigan State University College of Law professor Barbara O'Brien published the first major study calculating innocent individuals on death row in *Proceedings of the National Academy of Sciences*,[349] and they estimated that at least 4%, or 1 in 25, death row inmates are likely innocent.[350] Thus, these motions could epitomize the difference between life and death for prisoners on death row. Jarringly, how a court rules on these life or death motions depends on whether a person resides in a jurisdiction that follows a case-by-case approach or a jurisdiction that applies a bright-line rule. Undoubtedly, the Supreme Court does not wish to leave a circuit split alone that denies a prisoner the chance to argue whether their circumstances are extraordinary almost exclusively on which part of the country that prisoner resides.

Now, considering the changes in habeas law borne by *Martinez* and *Trevino*, "[s]imilarly situated petitioners in the Third, Seventh, and Ninth Circuits . . . have the opportunity to argue that a case implicating *Martinez* or *Trevino* present the rare circumstances that warrant relief."[351] This is not true for petitioners in the Fourth, Fifth, Sixth, and Eleventh Circuits.[352] This means that in half of the country, habeas petitioners, under Rule 60(b)(6), are unable to present the substance and merits of an ineffective assistance of counsel claim.[353] This logic may be extended to *McQuiggin* as well. Thus, courts may wrongfully rebuff a petitioner's ability to argue the *substance* and *merits* of any claims of actual innocence if a petitioner resides in the Fourth, Fifth, Sixth, or Eleventh Circuit—which is inane. A petitioner having an actual claim of innocence is, therefore, procedurally barred from presenting the merits of their claim under Rule 60(b)(6), because of a bright-line rule. No court should deny the merits of an actual innocence claim upon procedural grounds. Echoing the words of Judge Vanaskie, "procedure should yield to substance when actual innocence is at stake."[354] A more appropriate way of articulating this may be to say that procedure should yield to substance when justice is at stake.

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[348] Jan Hoffman, *4.1% Are Said to Face Death on Convictions that are False*, N.Y. TIMES (May 1, 2014), https://www.nytimes.com/2014/05/02/science/convictions-of-4-1-percent-facing-death-said-to-be-false.html.

[349] *Id.*

[350] *Id.*

[351] Brief for Former Federal District Judges at 1, Johnson v. Carpenter, 137 S. Ct. 1201 (2017) (No. 15-1193).

[352] *Id.* at 7.

[353] *Id.*

[354] Satterfield v. Dist. Att'y Phila., 872 F.3d 152, 154 (3d Cir. 2017).

Finally, no matter how wonderfully crafted a bright-line rule is, it will fail to secure justice in all situations. This drawback percolates throughout the very nature of bright-line rules, as bright-line rules prosper in a majority of situations, but not all. While the two camps of this circuit split can be boiled down into the "never" approach and the "rarely" approach, there is ample daylight in between the words "never" and "rarely" when justice is at stake. The light between "never" and "rarely" allowing a change in the law to constitute an extraordinary circumstance shines brightly on those cases like *Satterfield*, where an innocent man's life may be at stake. No law can fully capture justice, because the English language is a limited construct, and situations will arise where following the rules will produce a more inequitable outcome. Exceptions abound solely to fill in the holes left by bright-line rules. Insofar as gaps do exist in this context, those chasms have incredibly high stakes for the individual and society. This should leave the Court wanting to adopt a case-by-case approach for Rule 60(b)(6) motions predicated on a change in habeas law, rather than endorsing the Fifth Circuit's bright-line rule that is with want of an exception.

Practically, Oregon and Louisiana face a potential flood of Rule 60(b)(6) motions predicated on a change in the law borne by the recent 2020 Supreme Court case of *Ramos v. Louisiana.* In *Ramos*, Justice Gorsuch, writing for the majority, underscored how *Apodaca v. Oregon* never had precedential value[355] and the Supreme Court determined that the Sixth Amendment to the U.S. Constitution requires unanimous jury verdicts to convict in both state and federal courts.[356] However, one of the concerns brought up in the dissent in *Ramos* was that by changing 48 years of precedent, the Supreme Court opened up the floodgates of litigation for the states of Oregon and Louisiana.[357] The majority recognized the dissents concern by referring to potential litigation borne out of *Ramos* as collateral reviews, such as habeas actions.[358]

Ramos could very easily lead to Rule 60(b)(6) motions filed on grounds that the change in the law borne by *Ramos* constitutes an extraordinary circumstance. In conjunction with the right equitable factors, *Ramos* could lead to relief from a conviction—but only if the courts in Oregon and Louisiana give deference to the merits of the motion, rather than procedure. Louisiana is a state situated in the Fifth Circuit, meaning that any review to Rule 60(b)(6) motions originating out of Louisiana in this matter will be

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[355] Ramos v. Louisiana, 140 S.Ct. 1390, 1402–04 (2020).

[356] *Id.* at 1397.

[357] *Id.* at 1436 (Alito, J., dissenting).

[358] *Id.* at 1407.

denied without considering the merits. The Fifth Circuit's lack of analysis on these motions should be alarming since Louisiana allowed nonunanimous jury verdicts. In the face of these Rule 60(b)(6) motions, astute counsel may argue that *Ramos* never changed the law because the majority does not believe that *Apodaca v. Oregon* ever had precedential value.[359] However, the Third Circuit in *Satterfield v. Dist. Att'y Phila.* determined that *McQuiggin v. Perkins* was a change in the law for the Third Circuit—despite the circuit never having answered the issue in *McQuiggin*.[360]

With landmark cases coming down from the Supreme Court every year and each one potentially containing unique or novel change in the law, the Court should take this issue on certiorari when the next opportunity presents itself. While Justice Sotomayor has already acknowledged this disparate circuit split, it will be crucial for the Supreme Court to resolve this circuit split in favor of the Third Circuit for all of the reasons already stated.

With this in mind, holding that a change in the law, alone, is sufficient to constitute an extraordinary circumstance may be a misstep. Third Circuit courts consult the full panoply of circumstances before ruling on Rule 60(b)(6) motions grounded on a change in habeas law.[361] In Satterfield's case, viewing the "full panoply" of equitable factors *in conjunction with* the change borne by *McQuiggin* showed why a court should grant Rule 60(b)(6) relief.[362] Satterfield did not match eyewitness descriptions of the murder, Satterfield's attorney failed to call upon those eyewitnesses to enter their testimony into evidence, and Satterfield's accuser had a vindictive motive to contrive a false confession.[363]

Conversely, in *Tamayo*, if the Fifth Circuit applied a rule that a change in habeas law, by itself, was enough to constitute an extraordinary circumstance, then Tamayo could have been granted relief from his final judgment.[364] There is a stark contrast between Satterfield and Tamayo when one compares the equitable circumstances the two men had in their cases. To reiterate, Satterfield had a plethora of equitable circumstances at his disposal, but Tamayo lacked caliber in this department.[365] It is hard to see an extraordinary circumstance existing for Tamayo when he killed a police officer, fled the

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[359] *Id.* at 1402–04.

[360] Satterfield v. Dist. Att'y Phila., 872 F.3d 152, 159 (3d Cir. 2017).

[361] *See Satterfield*, 872 F.3d at 155.

[362] *See supra* Section III.B.3.c.

[363] *Id.*

[364] *See supra* Section III.B.3.b.

[365] *See id.*

scene of the murder on foot,[366] and the change borne by *McQuiggin* dealt with showings of actual innocence.[367] By requiring lower courts to consider a change in the law within the context of the other equitable circumstances of a case, the Court can safeguard against prisoners, like Tamayo, receiving relief that is not warranted.

V. CONCLUSION

The Supreme Court designed the Federal Rules to ensure fairness by creating a uniform procedure for all parties to a suit within the justice system. With the Federal Rules, the Court did not fashion procedure to be a bar to substantive justice. If the Supreme Court allows the circuit courts to maintain this split, half of the circuits will be dominated by procedure in this arena, and the other half will be dominated by substance. Procedure alone is not enough to effect justice, and if there are equitable factors showing reasons for relief, then a Rule 60(b)(6) motion grounded on a change in the law should be considered on its merits as to whether it constitutes an extraordinary circumstance. Therefore, in conjunction with the full panoply of a case, a change in procedure concerning habeas corpus law should constitute an extraordinary circumstance that justifies relief under Rule 60(b)(6).

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[366] Tamayo v. Stephens, 740 F.3d 986, 987 (5th Cir. 2014) (per curiam).

[367] McQuiggin v. Perkins, 569 U.S. 383, 386 (2013).