No. 23-405

# In the Supreme Court of the United States

KRISTY ROSS, PETITIONER

*v.*

FEDERAL TRADE COMMISSION

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT*

**BRIEF FOR THE RESPONDENT IN OPPOSITION**

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## QUESTIONS PRESENTED

In 2012, after a bench trial, a federal district court entered judgment in favor of the Federal Trade Commission, finding that petitioner had perpetrated a nationwide scam that tricked computer users into paying for unnecessary security software to fix non-existent vulnerabilities in their devices. Invoking Section 13(b) of the Federal Trade Commission Act, 15 U.S.C. 53(b), the court permanently enjoined petitioner from engaging in that deceptive conduct and entered an equitable monetary judgment against petitioner for consumer redress. In 2021, this Court held in *AMG Capital Management, LLC* v. *FTC*, 141 S. Ct. 1341, that Section 13(b) does not authorize equitable monetary relief. Pursuant to Rules 60(b)(4) and (6) of the Federal Rules of Civil Procedure, petitioner then sought relief from the monetary component of the 2012 final judgment. The district court denied petitioner's motion, and the court of appeals affirmed. The questions presented are as follows:

1. Whether the 2012 money judgment against petitioner is "void" within the meaning of Rule 60(b)(4) of the Federal Rules of Civil Procedure.

2. Whether this Court's decision in *AMG* constitutes an extraordinary circumstance warranting relief under Rule 60(b)(6) of the Federal Rules of Civil Procedure.

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## OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-19) is reported at 74 F.4th 186. The opinion of the district court (Pet. App. 21-31) is not published in the Federal Supplement but is available at 2022 WL 4236339.

## JURISDICTION

The judgment of the court of appeals was entered on July 19, 2023. The petition for a writ of certiorari was filed on October 16, 2023. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

## STATEMENT

1. Petitioner Kristy Ross, along with her codefendants, operated a "scareware" scam that tricked more than a million American consumers into buying unnecessary security software to fix nonexistent vulnerabilities that purportedly were affecting their computers.

Pet. App. 2-3. The Federal Trade Commission (FTC or Commission) sued petitioner in 2008, seeking to shut down the scheme and secure redress for petitioner's victims. *Id*. at 3. The Commission alleged that petitioner had violated and was continuing to violate Section 5(a) of the FTC Act, which prohibits "unfair or deceptive acts or practices in or affecting commerce." 15 U.S.C. 45(a); see Compl. ¶ 1. The Commission sought injunctive and equitable monetary relief, including restitution and disgorgement, under Section 13(b) of the FTC Act, 15 U.S.C. 53(b). Pet. App. 3-4.

In 2012, after a bench trial at which petitioner refused to appear, the district court entered judgment in favor of the FTC, permanently enjoining and restraining petitioner from participating in any "marketing [or] sale of computer security software and software that interferes with consumers' computer use as well as from engaging in any form of deceptive marketing." Pet. App. 4, 86 (citation omitted; brackets in original). The court also found, based on the evidentiary record, that petitioner and her codefendants had caused $163,167,539.95 in consumer harm, and it held petitioner and her defaulting codefendants jointly and severally liable for monetary redress in that amount. *Id.* at 84-86.

The court of appeals affirmed. Pet. App. 33-49. Among other things, the court rejected petitioner's argument that "the district court did not have the authority to award consumer redress," *i.e.*, "a money judgment," under Section 13(b). *Id.* at 37. The court explained that Section 13(b) authorizes the FTC to obtain, "in proper cases," a "permanent injunction" in federal district court. *Ibid.* (quoting 15 U.S.C. 53(b)). "[B]y authorizing the district court to issue a permanent

injunction," the court concluded, "Congress presumably authorized the district court to exercise the full measure of its equitable jurisdiction," "including monetary consumer redress." *Id.* at 38. The court of appeals also stated that petitioner's contrary argument had "been rejected by every other federal appellate court that has considered this issue," and was inconsistent with "powerful Supreme Court authority pointing in the other direction." *Id.* at 40.

This Court denied a petition for a writ of certiorari. *Ross* v. *FTC*, 574 U.S. 819 (2014).

Petitioner's current "whereabouts are unknown," but "she is believed to have fled the United States." Pet. App. 5. In the decade since the district court entered the money judgment against her, petitioner "has not paid a penny toward satisfying the monetary judgment for consumer redress." *Ibid.*; see *id.* at 2 (noting that petitioner is an "apparent fugitive" who has "sought for years to evade paying even a cent" in required restitution).

2. In 2021, this Court held that Section 13(b) does not authorize equitable monetary relief. *AMG Capital Mgmt., LLC* v. *FTC*, 141 S. Ct. 1341, 1352 (2021). The Court acknowledged that it had "sometimes interpreted similar language as authorizing judges to order equitable monetary relief." *Id.* at 1347. The Court concluded, however, that "[s]everal considerations, taken together, convince [the Court] that § 13(b)'s 'permanent injunction' language does not authorize the Commission directly to obtain court-ordered monetary relief." *Ibid.* Among other things, the Court observed that "[t]he language and structure of § 13(b), taken as a whole, indicate that the words 'permanent injunction' have a limited purpose": "purely injunctive, not monetary, relief."

*Id.* at 1348. The Court also noted that other provisions of the FTC Act expressly gave "district courts the authority to impose limited monetary penalties and to award monetary relief," and it inferred from those provisions that Congress "likely did not intend for § 13(b)'s more cabined 'permanent injunction' language to have similarly broad scope." *Id.* at 1348-1349.

3. a. After this Court issued its decision in *AMG*, petitioner filed a motion in the district court under Rules 60(b)(4) and (6) of the Federal Rules of Civil Procedure, seeking relief from the monetary component of the earlier judgment.

The district court denied the motion. The court explained that a judgment is "void" under Rule 60(b)(4) if " 'the court rendering the decision lacked personal or subject matter jurisdiction.' " Pet. App. 26 (citation omitted). The court held that its earlier award of monetary relief under Section 13(b) was not a "jurisdictional error" that rendered the judgment "void," *id.* at 27 (citation omitted); rather, the court had "exercised subject matter jurisdiction over the case based on the United States' status as a plaintiff under 28 U.S.C. § 1345 and federal question jurisdiction under 28[] U.S.C. § 1331," *id.* at 28. The court explained that this Court's subsequent interpretation of Section 13(b) as not authorizing equitable monetary remedies "does not strip [the district court] of subject matter jurisdiction" over the FTC's enforcement action against petitioner. *Id.* at 28-29.

In any event, the district court continued, "[f]ederal courts considering Rule 60(b)(4) motions that assert a judgment is void because of a jurisdictional defect generally have reserved relief only for the exceptional case in which the court that rendered judgment lacked even

an 'arguable basis' for jurisdiction." Pet. App. 27 (quoting *United Student Aid Funds, Inc.* v. *Espinosa*, 559 U.S. 260, 271 (2010)). The court explained that "even if [Section 13(b)] is jurisdictional, this Court had an arguable basis for rendering a monetary judgment in 2012"—namely, the "overwhelming precedent that guided [the district court's] decision in 2012." *Id.* at 29-30.

As to Rule 60(b)(6), the district court held that a change in decisional law after entry of a final judgment is not an extraordinary circumstance justifying relief. Pet. App. 30. It further found that "the amount of time that has passed since the judgment was entered—almost ten years—weighs unfavorable to a finding of extraordinary circumstance." *Id.* at 31.

b. The court of appeals affirmed. Pet. App. 1-19.

With respect to Rule 60(b)(4), the court of appeals found it "beyond reasonable dispute" that the district court had "subject matter jurisdiction" over the action, given that the Commission's allegations under Section 5(a) of the FTC Act presented a "federal question." Pet. App. 10-11. The court explained that "the question whether a court has jurisdiction to grant a particular remedy is different from the question whether it has subject matter jurisdiction over a particular class of claims." *Id.* at 10 (quoting *Biden* v. *Texas*, 142 S. Ct. 2528, 2540 (2022)). The court added that, even "[a]ssuming, *arguendo*, that *AMG* would undermine the FTC's standing to pursue restitution in a similar case today, this Court applies the arguable-basis test, and an arguable basis clearly supported the FTC's standing when the court below decided [petitioner's] case." *Id.* at 11. The court noted that, "[a]t the time of judgment in [petitioner]'s case, *every* circuit to consider whether

Section 13(b) impliedly permitted a district court to impose equitable monetary redress answered that question in the affirmative." *Id.* at 11-12.

The court of appeals also held that the district court had not abused its discretion in denying relief under Rule 60(b)(6). Pet. App. 15-19. The court explained that the interpretation of Section 13(b) announced in *AMG* was "not sufficiently extraordinary to justify vacatur under the Rule 60(b) catch-all." *Id.* at 16. A contrary conclusion, the court observed, would "effectively eviscerate finality interests and open the floodgate to newly meritorious 60(b)(6) motions each time the law changes." *Ibid.* The court further observed that, even if petitioner's diligence in challenging the availability of monetary relief on direct appeal "warranted some favorable treatment"—as petitioner argued—"the district court did not abuse its broad discretion given the totality of the circumstances," including the FTC's authority to pursue materially similar relief under alternative remedial pathways; the severity of petitioner's unlawful conduct (actively defrauding consumers out of $163 million); and her decision to flee the United States rather than abide by the money judgment. *Id.* at 17. The court concluded that granting petitioner relief "would promote the conscious avoidance of judgments with which litigants disagree * * * in hopes of realizing some distant, future benefit." *Id.* at 18.

## ARGUMENT

Petitioner seeks to vacate a final monetary judgment that was entered more than a decade ago—a judgment that she has since flagrantly disregarded—based on this Court's holding in *AMG* that Section 13(b) of the FTC Act does not authorize equitable monetary remedies. In denying petitioner's request for relief under

Rules 60(b)(4) and (6), the district court faithfully applied this Court's precedents, and the decision below does not conflict with any decision of this Court or another court of appeals. Further review is not warranted.

1. The court of appeals correctly rejected petitioner's claim for relief under Rule 60(b)(4). That holding does not conflict with any decision of this Court or another court of appeals.

a. In determining whether new rules of law should be applied retroactively, this Court has drawn a sharp line between open and closed cases. "When this Court applies a rule of federal law to the parties before it, that rule is the controlling interpretation of federal law and must be given full retroactive effect *in all cases still open on direct review*." *Harper* v. *Virginia Dep't of Taxation*, 509 U.S. 86, 97 (1993) (emphasis added). In "cases already closed," by contrast, "[n]ew legal principles" ordinarily do "not apply." *Reynoldsville Casket Co.* v. *Hyde*, 514 U.S. 749, 758 (1995); see *George* v. *McDonough*, 142 S. Ct. 1953, 1962 (2022) (the "general rule" is that a " 'new interpretation of a statute can only retroactively affect decisions still open on direct review' ") (citation omitted). That difference reflects the Court's longstanding recognition that "retroactivity in civil cases must be limited by the need for finality." *James B. Beam Distilling Co.* v. *Georgia*, 501 U.S. 529, 541 (1991). "[P]ublic policy dictates that there be an end of litigation; that those who have contested an issue shall be bound by the result of the contest, and that matters once tried shall be considered forever settled as between the parties." *Federated Dep't Stores, Inc.* v. *Moitie*, 452 U.S. 394, 401 (1981) (citation omitted).

Rule 60(b) "provides an 'exception to finality' that 'allows a party to seek relief from a final judgment, and request reopening of his case, under a limited set of circumstances,'" even after the time for direct appeal has run. *United Student Aid Funds, Inc.* v. *Espinosa*, 559 U.S. 260, 269-270 (2010) (quoting *Gonzalez* v. *Crosby*, 545 U.S. 524, 528-529 (2005)). One such circumstance is when "the judgment is void." Fed. R. Civ. P. 60(b)(4). A judgment is not void "simply because it is or may have been erroneous"; rather, "a void judgment is one so affected by a fundamental infirmity that the infirmity may be raised even after the judgment becomes final." *Espinosa*, 559 U.S. at 270. The "list of * * * infirmities" that can render a judgment void under the Rule is "exceedingly short; otherwise Rule 60(b)(4)'s exception to finality would swallow the rule." *Ibid.* Rule 60(b)(4) thus "applies only in the rare instance where a judgment is premised either on a certain type of jurisdictional error or on a violation of due process that deprives a party of notice or the opportunity to be heard." *Id.* at 271.

Petitioner does not assert that any due process violation occurred here. And as the court of appeals observed, it is "beyond reasonable dispute that the district court possessed subject matter jurisdiction" over "the FTC's allegations" in the Commission's enforcement suit. Pet. App. 10. The FTC's complaint alleged that petitioner had violated, and was continuing to violate, Section 5(a) of the FTC Act, 15 U.S.C. 45(a), by engaging in deceptive and unfair acts. Compl. ¶ 2. As the complaint states, the district court thus possessed subject-matter jurisdiction over the suit by virtue of 28 U.S.C. 1331, 1337(a), and 1345. Compl. ¶ 2; see Pet. App. 10. This Court's subsequent decision in *AMG*—

which held only that the term "permanent injunction" as used in Section 13(b) does not encompass monetary relief, 141 S. Ct. at 1344, 1347-1349—does not cast on the district court's jurisdiction to resolve the Commission's original suit.

Petitioner reads *AMG* to establish that the Commission lacked Article III standing to pursue monetary relief, so that the money judgment was "void" within the meaning of Rule 60(b)(4). Pet. 22. In holding that Section 13(b) does not authorize monetary relief, however, the *AMG* Court did not invoke standing or jurisdictional considerations. And the Court's determination that the monetary award in that case was unauthorized does not logically suggest that the Commission lacked standing to seek it.

"[T]he question whether a court has jurisdiction to grant a particular remedy is different from the question whether it has subject matter jurisdiction over a particular class of claims." *Biden* v. *Texas*, 142 S. Ct. 2528, 2540 (2022); see *Steel Co.* v. *Citizens for a Better Env't*, 523 U.S. 83, 90 (1998) ("Jurisdiction" is "a word of many, too many, meanings.") (citation omitted). That is because "a court's authority to impose certain remedies" is "fundamentally different from a court's subject matter jurisdiction over a case and from its personal jurisdiction over the parties, both of which concern the power to proceed with a case at all." *United States* v. *Philip Morris USA Inc.*, 840 F.3d 844, 850 (D.C. Cir. 2016).

For purposes of Rule 60(b)(4)—which allows relief only for "a certain type of jurisdictional error," *Espinosa*, 559 U.S. at 271, rather than for any error that could conceivably be described as jurisdictional—that distinction is critical. Extending Rule 60(b)(4) beyond

those "fundamental infirmities" that go to a court's "power to proceed with a case at all" would raise "serious finality concerns"; indeed, "challenges to allegedly unauthorized remedies could produce an endless series of interlocutory appeals, especially in complex, long-running cases." *Philip Morris*, 840 F.3d at 850-851. For that reason, "Rule 60(b)(4) does not permit relief where a court has exceeded its remedial authority"; "[s]uch errors are simply not the type of fundamental defects the Court had in mind in *Espinosa*." *Id.* at 851; see *NewGen, LLC* v. *Safe Cig, LLC*, 840 F.3d 606, 612 (9th Cir. 2016) ("A judgment is only void where there is a total want of jurisdiction as opposed to an error in the exercise of jurisdiction.") (citation and internal quotation marks omitted). Accordingly, the remedial error petitioner asserts here is not a basis for relief under Rule 60(b)(4).

b. Petitioner would not be entitled to relief under Rule 60(b)(4) even if a district court's unauthorized entry of a monetary award constituted a "jurisdictional" error. "Federal courts considering Rule 60(b)(4) motions that assert a judgment is void because of a jurisdictional defect generally have reserved relief only for the exceptional case in which the court that rendered judgment lacked even an 'arguable basis' for jurisdiction." *Espinosa*, 559 U.S. at 270 (collecting cases) (citation omitted). Here, the district court plainly had an "arguable basis" for awarding monetary relief when it entered judgment in 2012. Pet. App. 11. For decades, every court of appeals to address the question had held that Section 13(b) authorized courts to award such equitable monetary relief for the benefit of consumers. *Id.* at 11-12. Although this Court ultimately reached a different conclusion, the district court's 2012 judgment

cannot reasonably be described as lacking an "arguable basis."

Petitioner further argues that the court of appeals erred in applying the arguable-basis test by considering the law at the time the judgment was entered rather than "the law as it exists today." Pet. 27. The court correctly rejected that argument, Pet. App. 14 n.3, which would substantially undermine the principle that new decisions ordinarily are given retroactive effect only in cases still open on direct review, see p. 7, *supra*; *Reynoldsville Casket*, 514 U.S. at 758; *Harper*, 509 U.S. at 97. *Rivers* v. *Roadway Express, Inc.*, 511 U.S. 298 (1994), is not to the contrary. The Court there held that "[a] judicial construction of a statute is an authoritative statement of what the statute meant before as well as after the decision of the case giving rise to that construction." *Id.* at 312-313. But as *Harper* and *Reynoldsville Casket* make clear, such a construction, while authoritative, does not ordinarily provide a basis for reopening a final judgment.

c. Contrary to petitioner's contentions (Pet. 14-30), the decision below does not conflict with any decision of another court of appeals.

Only one other court of appeals has addressed the precise question presented in this case, holding—like the Fourth Circuit here—that *AMG* does not provide a basis for relief from a prior final judgment that awarded monetary relief under Section 13(b). See *FTC* v. *Hewitt*, 68 F.4th 461, 466 (9th Cir. 2023). The Ninth Circuit noted that the party seeking relief from judgment in that case did "not challenge the court's subject-matter or personal jurisdiction over the case; instead, he challenge[d] the 'court's authority to impose certain remedies.'" *Ibid.* (quoting *Philip Morris*, 840 F.3d at

850). The court further explained that, "[e]ven if such a 'remedial error' were 'jurisdictional,'" the party seeking relief there could not show that "the equitable monetary judgment * * * rested on a 'total want of jurisdiction,' * * * or lacked 'even a colorable basis.'" *Ibid.* (citations omitted).

Petitioner asserts that the courts of appeals are divided on the broader question of the "applicability of the 'arguable basis' standard for purposes of assessing 'voidness' under Rule 60(b)(4)." Pet. 14 (capitalization altered; emphasis omitted). That is incorrect. As petitioner acknowledges (Pet. 14-16), at least six circuits in addition to the Fourth—the First, Second, Third, Sixth, Ninth, and Tenth—have expressly adopted the "arguable basis" standard in determining whether relief is warranted under Rule 60(b)(4).[1] The Eleventh Circuit has likewise observed that "Rule 60(b)(4) relief is reserved 'only for the exceptional case in which the court that rendered judgment lacked even an arguable basis for jurisdiction.'" *Bainbridge* v. *Governor of Florida*, 75 F.4th 1326, 1335 n.4 (2023) (citation omitted). And while the D.C. Circuit chose not to apply the "arguable basis" standard in a case involving a foreign sovereign that had declined to appear in the original proceeding, it has since applied the standard in a case that lacked those unusual features. See *Lee Mem'l Hosp.* v. *Becerra*, 10 F.4th 859, 864 (2021).

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[1] See Pet. 14-16 (citing *Baella-Silva* v. *Hulsey*, 454 F.3d 5, 9-10 (1st Cir. 2006); *Nemaizer* v. *Baker*, 793 F.2d 58, 65 (2d Cir. 1986); *Metropolitan Edison Co.* v. *Pennsylvania Pub. Util. Comm'n*, 767 F.3d 335, 364 (3d Cir. 2014); *Eglington* v. *Loyer (In re GAO, Inc.)*, 340 F.3d 331, 336 (6th Cir. 2003); *Hunter* v. *Underwood*, 362 F.3d 468, 476 (8th Cir. 2004); *FTC* v. *Hewitt*, 68 F.4th 461, 466 (9th Cir. 2023); *Johnson* v. *Spencer*, 950 F.3d 680, 695 (10th Cir. 2020)).

Petitioner identifies no case in which a court of appeals has rejected the "arguable basis" standard. Instead, she cites a handful of decisions that found particular judgments void based on jurisdictional errors without using the term "arguable basis." Each of those cases, however, involved circumstances where no arguable basis for jurisdiction could have existed; none stands for the proposition that a judgment can be void even where such a basis exists. *Mitchell Law Firm, L.P.* v. *Bessie Jeanne Worthy Revocable Trust*, 8 F.4th 417 (5th Cir. 2021), for example, involved a "paradigmatic void judgment" where the district court "obviously" lacked jurisdiction under 28 U.S.C. 1332 because the parties were nondiverse. 8 F.4th at 420. *Hill* v. *Baxter Healthcare Corp.*, 405 F.3d 572 (7th Cir. 2005), involved an order issued after the complaint was dismissed with prejudice, terminating the action and the district court's jurisdiction. *Id.* at 576. And in *Architectural Ingenieria Siglo XXI, LLC* v. *Dominican Republic*, 788 F.3d 1329 (11th Cir. 2015), the court held that the allegations in a complaint were not legally sufficient to overcome a foreign state's sovereign immunity. *Id.* at 1338-1341.

Petitioner asserts that the Fifth, Seventh, and Eleventh Circuits have not applied the "arguable basis" test in any "reported decision."[2] Pet. 14, 16. In fact, the Eleventh Circuit has endorsed the "arguable basis" standard in a precedential decision. See *Bainbridge*, 75 F.4th at 1335; p. 12, *supra*. And the Fifth and Seventh Circuits have both applied the "arguable basis"

[2] Petitioner also mentions the Federal Circuit (Pet. 16), but that court applies "the law of the regional circuit" in reviewing a Rule 60(b) motion. *Garber* v. *Chicago Mercantile Exch.*, 570 F.3d 1361, 1363 (2009).

standard in unreported decisions.[3] In any event, the absence of any court of appeals decision *rejecting* the "arguable basis" standard is a sufficient reason for this Court to deny review, regardless of precisely how many circuits have embraced the standard.

Petitioner also argues that review is warranted to resolve a conflict among the circuits as to whether the arguable-basis inquiry looks to the law at the time the judgment was entered or only to "the law as it exists today." Pet. 27; see *id.* at 26-30. But in the sole case she cites (Pet. 26) as purportedly adopting the latter view, *Lee Memorial Hospital*, the D.C. Circuit *denied* Rule 60(b)(4) relief, holding that a judgment was not void because there was an arguable basis for it at the time it was rendered. 10 F.4th at 865. In particular, the D.C. Circuit explained that the district court's jurisdiction was consistent with this Court's decades-earlier holding that a statutory obligation to exhaust administrative remedies can be waived. *Ibid*. (citing *Mathews* v. *Eldridge*, 424 U.S. 319, 328 (1976)). The D.C. Circuit also observed that an intervening decision of this Court—which reiterated the holding in *Eldridge*—further "support[ed] the notion that the district court here had jurisdiction to reach the merits of appellants' claims." *Lee Mem'l Hosp.*, 10 F.4th at 866. But the court in *Lee Memorial Hospital* did not suggest that a

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[3] See, *e.g.*, *Perret* v. *Handshoe*, 708 Fed. Appx. 187, 188 (5th Cir. 2018) (per curiam) ("[T]he district court must have 'lacked even an 'arguable basis' for exercising jurisdiction over the case.'") (citation omitted); *Lee* v. *Christenson*, 558 Fed. Appx. 674, 676 (7th Cir. 2014) ("[W]hen a party uses Rule 60(b)(4) to collaterally attack a judgment as void because of a jurisdictional defect, relief is available 'only for the exceptional case in which the court that rendered judgment lacked even an "arguable basis" for jurisdiction.'") (citation omitted).

court conducting an "arguable basis" inquiry could have looked to the intervening decision alone—or that Rule 60(b)(4) relief can be *granted* where an arguable basis for jurisdiction existed at the time judgment was entered.

Finally, even if petitioner could establish that the Fourth Circuit misapplied the "arguable basis" test here, she could obtain relief under Rule 60(b)(4) only if she could further show that the district court committed the sort of "jurisdictional" error that can render a judgment "void" within the meaning of the Rule. See *Espinosa*, 559 U.S. at 270-271. Petitioner cannot make the latter showing, since the district court had subject-matter jurisdiction over the case and personal jurisdiction over petitioner. See pp. 8-9, *supra*. This case therefore would be a poor vehicle for deciding any issue concerning the proper application of the "arguable basis" test.

2. The court of appeals also correctly held that the district court did not abuse its discretion in denying petitioner's claim for relief under Rule 60(b)(6). That holding likewise does not conflict with any decision of this Court or any other court of appeals.

a. Rule 60(b)(6) authorizes a district court to grant relief from a final judgment based on "any * * * reason that justifi[es] relief" other than the more specific circumstances set out in clauses (1) through (5). See *Gonzalez* v. *Crosby*, 545 U.S. 524, 528 n.2, 529 (2005); *Liljeberg* v. *Health Servs. Acquisition Corp.*, 486 U.S. 847, 863 n.11 (1988) (explaining that "clause (6) and clauses (1) through (5) are mutually exclusive"). To justify relief under Rule 60(b)(6)'s "catchall category," *Buck* v. *Davis*, 580 U.S. 100, 112 (2017), a movant must "show 'extraordinary circumstances' justifying the

reopening of a final judgment," *Gonzalez*, 545 U.S. at 535 (citation omitted).

In *Gonzalez*, this Court affirmed the denial of a request for Rule 60(b)(6) relief that was based on a change in decisional law, explaining that "[t]he District Court's interpretation was by all appearances correct under the Eleventh Circuit's then-prevailing interpretation" of the relevant statute. 545 U.S. at 536. The Court found it "hardly extraordinary that subsequently, after petitioner's case was no longer pending, this Court arrived at a different interpretation." *Ibid.*; see *Agostini* v. *Felton*, 521 U.S. 203, 239 (1997) ("Intervening developments in the law by themselves rarely constitute the extraordinary circumstances required for relief under Rule 60(b)(6).").

Here, the court of appeals faithfully applied the principles set forth in *Gonzalez* and concluded that the change in law announced in *AMG* was "not sufficiently extraordinary to justify vacatur under the Rule 60(b) catch-all." Pet. App. 16. As the court explained, "[a] conclusion that such a circumstance justifies vacatur would effectively eviscerate finality interests and open the floodgates to newly meritorious 60(b)(6) motions each time the law changes." *Ibid.*

Petitioner emphasizes (Pet. 35) her "diligence" in raising the Section 13(b) issue on direct appeal. But the court of appeals correctly held that, even if petitioner's "advocacy on direct appeal warranted some favorable treatment for purposes of the Rule 60(b)(6) analysis, the district court did not abuse its broad discretion given the totality of the circumstances." Pet. App. 17 & n.6. The court explained that other factors weighed heavily against Rule 60(b)(6) relief, including the Commission's ability to obtain similar monetary remedies through

other statutory pathways, see, *e.g.*, 15 U.S.C. 57b; the "severity of [petitioner's] unlawful conduct and her culpability"; petitioner's "failure to abide by the monetary judgment"; and her apparent "flight from the United States" in "defiance" of the judgment, Pet. App. 17-18.

b. The court of appeals' resolution of this issue does not conflict with any decision of this Court or another court of appeals.

Contrary to petitioner's assertion (Pet. 34), the Court in *Buck*, *supra*, did not hold that a change in decisional law standing alone justified Rule 60(b)(6) relief. Rather, the Court treated the relevant change in law as a "precondition" to relief, emphasizing that *other* factors made the case "extraordinary." *Buck*, 580 U.S. at 123-127. In *Buck*, the defendant was sentenced to death after his attorney called an expert witness who testified that the defendant was statistically more likely to act violently because of his race. *Id.* at 104, 107-108. The Court explained that disparate punishments based on race are a "disturbing departure from a basic premise of our criminal justice system" and "especially pernicious." *Id.* at 123-124 (citation omitted). "Relying on race to impose a criminal sanction," the Court explained "injures not just the defendant, but 'the law as an institution, . . . the community at large, and . . . the democratic ideal reflected in the processes of our courts' "— "precisely" the sort of "concerns" this Court has "identified as supporting relief under Rule 60(b)(6)." *Id.* at 124 (citation omitted). Petitioner identifies nothing remotely comparable here.

Petitioner is likewise incorrect in asserting (Pet. 31-33) that the courts of appeals are divided on the effect of a change in decisional law on the Rule 60(b)(6) analysis. First, the Fourth Circuit in this case did not

"categorical[ly] refus[e] to consider a change in decisional law as grounds for Rule 60(b)(6) relief." Pet. 31. It simply held, consistent with *Gonzalez*, that this Court's decision in *AMG* was not itself a sufficient ground to justify reopening of the judgment against petitioner. Pet. App. 16. The court then explained that other factors weighed decisively against Rule 60(b)(6) relief. *Id*. at 17-18; see pp. 16-17, *supra*.

In any event, the conflict petitioner alleges is illusory. The only other court of appeals to address the precise question presented here—the Ninth Circuit in *Hewitt*—likewise held that *AMG* did not warrant Rule 60(b)(6) relief from a Section 13(b) monetary judgment. 68 F.4th at 468-470. Petitioner suggests (Pet. 32) that the reasoning of the decision below is inconsistent with an Eleventh Circuit decision, *Ritter* v. *Smith*, 811 F.2d 1398, cert. denied 483 U.S. 1010 (1987), and an earlier Ninth Circuit decision, *Phelps* v. *Alameida*, 569 F.3d 1120 (2009), cert. denied, 558 U.S. 1137 (2010). But in *Ritter*, the Eleventh Circuit held that "something more than a 'mere' change in the law is necessary to provide the grounds for Rule 60(b)(6) relief," and it concluded that "[s]everal factors * * * in addition to the fact of a change in the law" collectively amounted to extraordinary circumstances. 811 F.2d at 1401. In *Phelps*, the Ninth Circuit quoted that language from *Ritter* and considered the same factors discussed by the Eleventh Circuit. 569 F.3d at 1133-1134. Neither court suggested—let alone held—that a change in decisional law *per se* establishes an extraordinary circumstance.[4]

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[4] Petitioner also asserts (Pet. 33-35) that the Fourth Circuit has issued inconsistent decisions on this issue. Petitioner did not seek en banc review, however, and this Court ordinarily does not grant certiorari to resolve intracircuit conflicts. See *Wisniewski* v. *United*

c. This case would be a poor vehicle to provide further "guidance" (Pet. 37) as to what circumstances might justify relief under Rule 60(b)(6). Under any reasonable view of the applicable test, petitioner would not be entitled to relief, given the gravity of her misconduct and her decade-long effort to avoid the judgment against her—including by fleeing the United States. See Pet. App. 18. A contrary decision would "reward [petitioner]'s defiance with a windfall." *Ibid.*

**CONCLUSION**

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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*States*, 353 U.S. 901, 902 (1957) (per curiam) ("It is primarily the task of a Court of Appeals to reconcile its internal difficulties.").