No. 01-1519

In the Supreme Court of the United States

LOIS E. ADAMS, ET AL., PETITIONERS

v.

GEORGE W. BUSH, PRESIDENT OF THE UNITED STATES OF AMERICA, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE PRESIDENT OF THE UNITED STATES IN OPPOSITION

THEODORE B. OLSON
Solicitor General
Counsel of Record

ROBERT D. MCCALLUM, JR.
Assistant Attorney General

MARK B. STERN
MICHAEL S. RAAB
JONATHAN H. LEVY
Attorneys

Department of Justice
Washington, D.C. 20530-0001
(202) 514-2217

QUESTIONS PRESENTED

This Court previously affirmed the judgment of a three-judge district court dismissing petitioners' claims that Congress is required either to grant statehood to the District of Columbia or to retrocede the District to Maryland. *Adams* v. *Clinton*, 531 U.S. 941 (2000). The questions presented are:

1. Whether this Court has exclusive jurisdiction to review the denial of petitioners' motion for relief from the judgment of the three-judge district court.

2. Whether the court of appeals abused its discretion in declining to transfer the case to this Court under 28 U.S.C. 1631.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

In the Supreme Court of the United States

No. 01-1519

LOIS E. ADAMS, ET AL., PETITIONERS

v.

GEORGE W. BUSH, PRESIDENT OF THE UNITED STATES OF AMERICA, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE PRESIDENT OF THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The order of the court of appeals (Pet. App. A1-A2) is unreported. The memorandum and order of the three-judge district court denying the motion under Federal Rule of Civil Procedure 60(b) (Pet. App. B1-B4) are unreported.

JURISDICTION

The judgment of the court of appeals was entered on October 18, 2001. A petition for rehearing was denied on January 10, 2002 (Pet. App. C1-C2). The petition for a writ of certiorari was filed on April 10, 2002. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. In June 1998, petitioners—a group of residents of the District of Columbia—commenced this action against the President of the United States, the Clerk and Sergeant-at-Arms of the House of Representatives, and the District of Columbia Financial Responsibility and Management Assistance Authority (Control Board). See Pet. App. E3-E4. Petitioners alleged that the equal protection component of the Fifth Amendment requires Congress either to grant statehood to the District of Columbia or to retrocede it to an existing State. See *id.* at E22, E24-E28. Petitioners also alleged that their lack of congressional representation and the absence of "a state government, insulated from Congressional interference in matters" of local concern, violates the Guarantee Clause of Article IV, Section 4. See Pet. App. E17.

Petitioners requested a judgment declaring that: (1) they have the right to congressional representation and to be included within a congressional apportionment; (2) they have a right to a state government insulated from congressional interference; (3) Congress's failure to ensure that the District is apportioned Representatives is unconstitutional; and (4) the imposition by Congress of the Control Board and all other actions uniquely applicable to the District are unconstitutional. See Pet. App. E22-E24. Petitioners also requested injunctions that would remain in effect until the portion of the District that falls outside the "National Capital Service Area" is admitted as a State or becomes part of an existing State.[1] The requested injunctions would: (1) prohibit

[1] The National Capital Service Area includes "the principal Federal monuments, the White House, the Capitol Building, the United States Supreme Court Building, and the Federal executive,

the President from approving, implementing, or enforcing any congressional action applicable solely to the District (unless that action had been ratified by the citizens of the District or their elected representatives); (2) require the President to transmit to Congress an apportionment of one Representative for each State (or no apportionment at all); (3) require the defendant House Officers to certify, enroll, and admit to the House floor at most one Representative for each State; and (4) require the Control Board to cease operations. See *id.* at E24-E28.

2. The district court consolidated this case with *Alexander* v. *Daley*, No. 98-CV-2187 (D.D.C. filed Sept. 14, 1998), a separate suit by the District of Columbia and various District residents alleging, *inter alia*, that the District should be treated as a "State" under Article I of the Constitution and that its residents are therefore entitled to representation in both the House of Representatives and the Senate. Order of Nov. 3, 1998 (Dist. Ct. Docket Entry 42). The district court determined that the consolidated cases should be heard by a three-judge district court under 28 U.S.C. 2284(a), which requires that a three-judge court pass on claims "challenging the constitutionality of the apportionment of congressional districts." 26 F. Supp. 2d 156, 157 (D.D.C. 1998).

On March 20, 2000, the three-judge court dismissed petitioners' claims insofar as they relate to the apportionment of Representatives. 90 F. Supp. 2d 35 (D.D.C.) (three-judge court), aff'd, 531 U.S. 941 (2000). The court held that petitioners have presented a justici-

---

legislative, and judicial office buildings located adjacent to the Mall and the Capitol Building," and the immediately surrounding streets. See 40 U.S.C. 136(a), (f), and (g).

able case or controversy and that they have standing to pursue their claims. 90 F. Supp. 2d at 40-45. However, the court, with Judge Oberdorfer dissenting, rejected petitioners' claims on the merits. *Id.* at 45-107.

The three-judge court remanded to the single-judge court all issues not relating to apportionment—*i.e.*, all claims in the case relating to the governance of the District, rather than the right to vote for Members of the House of Representatives. 90 F. Supp. 2d at 38-39, 68 n.63. The single-judge court rejected all of those remaining claims. 90 F. Supp. 2d 27 (D.D.C. 2000). Petitioners appealed that ruling to the United States Court of Appeals for the District of Columbia Circuit (No. 00-5239, filed June 30, 2000), and that appeal remains pending.

3. Petitioners appealed the three-judge district court's dismissal of their apportionment-related claims to this Court. In their jurisdictional statement, petitioners argued, among other things, that their "rights to the due process of law were violated when the court below entered judgment on their case without addressing their unique claims, arguments, and evidence, instead basing its judgment on analysis of claims and arguments presented in" the consolidated *Alexander* case. 00-97 J.S. at i; see *id.* at 14-19, 30.

The Solicitor General filed a motion to dismiss or affirm on behalf of the President, in which the Solicitor General argued that the appeal should be dismissed for lack of jurisdiction because (1) the three-judge district court lacked jurisdiction under 28 U.S.C. 2284(a), and (2) petitioners lacked standing. See 00-97 Mot. to Dismiss or Affirm at 9-17. Alternatively, the Solicitor General argued that the judgment of the three-judge district court should be affirmed on the merits. See *id.* at 17-25.

This Court summarily affirmed the district court's judgment. *Adams* v. *Clinton*, 531 U.S. 941 (2000). Justice Stevens would have dismissed the appeal. *Ibid.*

4. Petitioners filed a petition for rehearing in which they again argued that they had been denied due process of law by the three-judge district court because the consolidation of their case with *Alexander* led the district court to ignore their claims. See 00-97 Appellants' Pet. to Rehear at 1-10. This Court denied the petition for rehearing. *Adams* v. *Clinton*, 531 U.S. 1045 (2000).

5. Petitioners then returned to the three-judge district court and filed a motion under Federal Rule of Civil Procedure 60(b) in which they sought reconsideration of that court's dismissal of their claims. As the basis for that motion, petitioners advanced the same due process argument that they had raised in both their jurisdictional statement and their petition for rehearing by this Court. See Pet. App. I2 (arguing that the three-judge "Court's analysis does not address the claims actually made in *Adams*").

6. The three-judge district court denied the Rule 60(b) motion, Pet. App. B3, and petitioners appealed that denial to the court of appeals. The court of appeals dismissed the appeal for lack of jurisdiction in a brief unpublished order. *Id.* at A1-A2.

ARGUMENT

The unpublished decision of the court of appeals is correct and does not conflict with any decision of this Court or another court of appeals. This Court's review is therefore not warranted.

1. Petitioners' contention (Pet. 9-19) that the court of appeals had jurisdiction under 28 U.S.C. 1291 lacks merit. Section 1291 withholds jurisdiction from the

courts of appeals over appeals from "final decisions * * * where a direct review may be had in the Supreme Court." 28 U.S.C. 1291. Direct review of the denial by the three-judge court of petitioners' motion under Federal Rule of Civil Procedure 60(b) was available in this Court under 28 U.S.C. 1253. That statute authorizes an appeal to this Court "from an order granting or denying, after notice and hearing, an interlocutory or permanent injunction in any civil action, suit or proceeding required by any Act of Congress to be heard and determined by a district court of three judges." 28 U.S.C. 1253. The denial of petitioners' Rule 60(b) motion was such an order because it reaffirmed the three-judge court's earlier denial of all relief to petitioners, including the injunctive relief that petitioners had requested in their complaint.

Petitioners do not dispute that this case is a civil action required by Act of Congress (28 U.S.C. 2284(a)) to be heard and determined by a three-judge district court. See Pet. 9, 10.[2] Nonetheless, petitioners contend

---

[2] In its motion to dismiss or affirm petitioners' prior direct appeal, the government argued that petitioners' direct appeal should be dismissed because 28 U.S.C. 2284(a) did not give the district court jurisdiction over petitioners' equal protection claim. Instead of dismissing the appeal for lack of jurisdiction, however, this Court affirmed the judgment of the three-judge court on the merits. See *Adams* v. *Clinton*, 531 U.S. 941 (2000). That determination by this Court that the three-judge district court was properly convened under Section 2284(a) "settles the issue[] for the parties." *Mandel* v. *Bradley*, 432 U.S. 173, 176 (1977) (per curiam) (quoting *Fusari* v. *Steinberg*, 419 U.S. 379, 391-392 (1975) (Burger, C.J. concurring)). See *ibid.* ("Summary affirmances * * * without doubt reject the specific challenges presented in the statement of jurisdiction and * * * prevent lower courts from coming to opposite conclusions on the precise issues presented and necessarily decided by those actions.").

(Pet. 10-12) that the order denying their Rule 60(b) motion did not "deny[] an interlocutory or permanent injunction" (28 U.S.C. 1253) and that direct review of the order in this Court was therefore not available.[3]

This Court has already rejected similar arguments. In *Lynch* v. *Household Finance Corp.*, 405 U.S. 538 (1972), the Court exercised jurisdiction under Section 1253 over a direct appeal from the order of a three-judge district court dismissing (on jurisdictional grounds) a complaint that sought injunctive relief. The appellees in *Lynch* argued that "since the three-judge court never considered whether an injunction should be granted an appeal should lie to the Court of Appeals." *Id.* at 541 n.5. This Court rejected that argument and held that this Court had jurisdiction because the three-judge court "entered a judgment 'denying all relief sought by plaintiffs.'" *Ibid.*

Consistent with *Lynch*, the Court has repeatedly exercised jurisdiction under Section 1253 to review orders of three-judge district courts that terminate

---

[3] Petitioners also contend (Pet. 10) that this Court lacks jurisdiction under Section 1253 over their appeal from the denial of the Rule 60(b) motion because there was no "hearing" in the district court. 28 U.S.C. 1253. Although there was no evidentiary hearing or oral argument on petitioners' motion, petitioners received a "hearing" from the district court based on their written submissions. Cf. *United States* v. *Florida E. Coast Ry.*, 410 U.S. 224, 240 (1973) (the term "hearing" need not encompass an evidentiary hearing or the right to present oral argument). Petitioners cite no authority for the counter-intuitive proposition that this Court's jurisdiction under Section 1253 turns on whether a district court conducts an oral hearing in the course of granting or denying injunctive relief. Furthermore, the district court did conduct an oral hearing before entering the judgment from which petitioners sought relief and which the district court reaffirmed in its order denying petitioners' motion under Rule 60(b).

litigation in which injunctive relief was requested. See, *e.g.*, *Shaw* v. *Reno*, 509 U.S. 630 (1993); *Brown* v. *Thompson*, 462 U.S. 835 (1983); *Nixon* v. *Administrator of Gen. Servs.*, 433 U.S. 425 (1977); *Carter* v. *Stanton*, 405 U.S. 669, 670-671 (1972).[4] Indeed, that is precisely what the Court did earlier in this case when it affirmed the three-judge district court's dismissal of petitioners' apportionment-related claims. See *Adams* v. *Clinton*, 531 U.S. 941 (2000). Petitioners agree that this Court properly exercised jurisdiction over that appeal. See Pet. 4, 9, 10, 16. For the same reasons that this Court had jurisdiction over that appeal, this Court—and not the court of appeals—also had jurisdiction over the appeal from the denial of petitioners' Rule 60(b) motion.

Like the initial judgment of the three-judge court dismissing petitioners' claims, the denial of petitioners' Rule 60(b) motion constitutes the denial of an injunction for purposes of Section 1253. The denial of the Rule 60(b) motion, like the original dismissal itself, is a final order that prevents any further adjudication of petitioners' claims for injunctive relief.

Moreover, petitioners' Rule 60(b) motion is directly tied to the merits of the claims presented in their direct

---

[4] See also *Lefkovits* v. *State Bd. of Elections*, 424 U.S. 901 (1976), aff'g 400 F. Supp. 1005 (N.D. Ill. 1975) (three-judge court); *Fincher* v. *Scott*, 411 U.S. 961 (1973), aff'g 352 F. Supp. 117 (M.D. N.C. 1972) (three-judge court); *Beacham* v. *Braterman*, 396 U.S. 12 (1969), aff'g 300 F. Supp. 182 (S.D. Fla. 1969) (three-judge court); *Sullivan* v. *Alabama State Bar*, 394 U.S. 812 (1969), aff'g 295 F. Supp. 1216 (M.D. Ala. 1969) (three-judge court); *Oldroyd* v. *Kugler*, 461 F.2d 535, 539 (3d Cir. 1972) (dismissal of suit seeking injunctive relief by three-judge district court is appealable to the Supreme Court under 28 U.S.C. 1253); *Shames* v. *Nebraska*, 323 F. Supp. 1321, 1336 & n.22 (D. Neb. 1971) (three- judge court), aff'd, 408 U.S. 901 (1972).

appeal. The essential contention of the Rule 60(b) motion is that the three-judge court erred in entering its original judgment dismissing petitioners' claims for injunctive relief. There is no indication that Congress intended to confer jurisdiction over such interrelated appeals on different courts. Cf. *Wilson* v. *Edelman*, 542 F.2d 1260, 1281 (7th Cir. 1976) (allowing simultaneous appeals to court of appeals and Supreme Court for the purpose of adjudicating identical constitutional issues would "defy all notions of judicial economy and render the three-judge court statutory scheme unmanageable").

Petitioners contend (Pet. 12-19) that the issue in their Rule 60(b) motion (whether the district court violated their due process rights by dismissing their claims without addressing or analyzing them) is different from the question raised by their underlying claims (whether the fact that District of Columbia residents are not represented in Congress is a denial of equal protection). The argument made in the Rule 60(b) motion, however, was expressly presented to this Court on the prior appeal in both petitioners' jurisdictional statement and their petition for rehearing. See 00-97 J.S. at i, 14-19, 30; 00-97 Pet. to Rehear at 1-10.

2. Petitioners' contention (Pet. 19-20) that the court of appeals erred in refusing to transfer their appeal from the denial of their Rule 60(b) motion to this Court also lacks merit. A transfer is appropriate only if it is "in the interest of justice." 28 U.S.C. 1631. As noted above, petitioners have already twice presented to this Court the argument made in their Rule 60(b) motion—once in their jurisdictional statement and again as the exclusive argument in their petition for rehearing. It would not be in the interest of justice to provide peti-

tioners a third opportunity to present that argument to this Court.[5]

As the Seventh Circuit has explained:

> A court is authorized to consider the consequences of transfer before deciding whether to transfer; that is implicit in the statute's grant of authority to make such a decision * * * and implies in turn that the court can take a peek at the merits, since whether or not the suit has any possible merit bears significantly on whether the court should transfer or dismiss it.

Phillips v. *Seiter*, 173 F.3d 609, 610-611 (7th Cir. 1999) (Posner, C.J.) (citation omitted); accord *Campbell* v. *Office of Pers. Mgmt.*, 694 F.2d 305, 309 n.6 (3d Cir. 1982) (refusing to transfer appeal where the petitioner "could not prevail" on the merits). As the government explained in its motion to dismiss or affirm petitioners' direct appeal, petitioners lack standing to seek the relief that they have requested (see 00-97 Mot. to Dismiss or Affirm at 13-17)[6] and their equal protection and Guarantee Clause claims plainly lack merit (see *id.* at 9 n.4, 17-25). This case does not warrant this Court's further attention.

---

[5] Cf. *In re Dep't of Energy Stripper Well Litig.*, 206 F.3d 1345, 1354 (10th Cir.) (transfer to Federal Circuit not in the interest of justice where Federal Circuit had referred disapprovingly to such a transfer in dismissing with prejudice earlier appeals filed by appellants in the same case), cert. denied, 531 U.S. 924 (2000).

[6] For the reasons stated in footnote 11 of the government's motion to dismiss or affirm, the injunction that petitioners seek against the President is beyond the power of the courts to issue because the courts cannot enjoin the President to perform a non-ministerial task.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

THEODORE B. OLSON
Solicitor General

ROBERT D. MCCALLUM, JR.
Assistant Attorney General

MARK B. STERN
MICHAEL S. RAAB
JONATHAN H. LEVY
Attorneys

JUNE 2002