No. 21-5726

IN THE

Supreme Court of the United States

DEXTER EARL KEMP,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

REPLY BRIEF FOR PETITIONER

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REPLY BRIEF FOR PETITIONER

The government concedes that, for the last *fifty* years, the circuits have divided three ways over whether Federal Rule of Civil Procedure 60(b)(1) authorizes relief from judgment based on a court's error of law. *See* BIO 19–21. The government agrees that: four circuits hold that it does; four circuits hold that it does only sometimes; and one circuit holds that it does not. At minimum, then, the split is 4-4-1. But contrary to the government's argument (BIO 21–23), three more circuits agree with the latter approach. So the split is actually 4-4-4. It is mature and intractable.

Unable to deny this half-century old split, the government asks the Court to let it persist, speculating that the split will not affect the outcome in a substantial number of cases. *See* BIO 24–27. But the government admits that the split *will* affect the outcome in cases where the movant can essentially show a miscarriage of justice. *See* BIO 24–25. Courts should regard that class of cases with solicitude, not indifference. Indeed, those high-stakes cases are where uniformity is needed most. But geography now determines whether Rule 60(b) can remedy the injustice.

Meanwhile, the government's sole vehicle objection is makeweight. It does not dispute that this case squarely implicates the question dividing the circuits. It argues only that Petitioner might not obtain relief in the end. *See* BIO 27–30. But the lower courts did not address the government's arguments. So they are not before this Court.

Finally, the government devotes much space to merits. *See* BIO 11–19. But, given the circuit conflict, review is warranted whichever camp is correct. And, in any event, the law in *eight* circuits is contrary to text, history, and this Court's precedents.

I. The Government Concedes that There Is a Fifty-Year Old Split

As the Petition explained (at 3, 12–19), the circuits have been divided on the question presented since 1971. In response, the government expressly concedes that this "[d]isagreement" among the circuits "has existed for decades." BIO 19. The most the government can do is quibble about the extent of the disagreement. But that effort to minimize the depth of the split misreads the case law in three circuits.

The government agrees with Petitioner that, on one end of the spectrum, the Second, Sixth, Seventh, and Eleventh Circuits have held, without qualification, that Rule 60(b)(1) encompasses legal errors by district courts. BIO 19–20; *see* Pet. 13–14. The government further agrees that, taking an intermediate position, the Fifth, Ninth, Tenth, and D.C. Circuits have held that Rule 60(b)(1) encompasses only certain types of legal errors. BIO 20, *see* Pet. 14–15. Finally, the government agrees that, on the other end of the spectrum, the First Circuit "has long taken a different position, adopting the view that Rule 60(b)(1) does not include errors of law." BIO 20 (quotation omitted); *see* Pet. 3, 12–13, 15–16. Thus, at the very least, there is a three-way split—with four circuits holding that Rule 60(b)(1) encompasses legal errors, four circuits holding that Rule 60(b)(1) encompasses only some legal errors, and one circuit holding that Rule 60(b)(1) encompasses no legal errors at all. That fractured 4-4-1 landscape is entirely undisputed, and it alone warrants this Court's intervention.

But the division is even deeper than that. Contrary to the government's assertion (BIO 21), the Third, Fourth, and Eighth Circuits share the First Circuit's view. In those three circuits too, legal errors are not cognizable under Rule 60(b)(1).

1. To begin, the government expressly concedes that "the Eighth Circuit does not construe the term 'mistake' in Rule 60(b)(1) to reach legal errors by the district court." BIO 23. That concession is dispositive and well taken. In *Spinar v. South Dakota Bd. of Regents*, 796 F.2d 1060, 1063 (8th Cir. 1986), that court held that, because the Rule 60(b) "motion simply asserts that the court erred as a matter of law," it "did not set forth a proper ground under Rule 60(b)(1) for relief from judgment." Consistent with *Spinar*, that court later upheld the denial of a Rule 60(b)(1) motion because it did no more than "assert[ ] that the district court erred as a matter of law in ruling that [a] statute of limitations barred his claims." *Sanders v. Clemco Indus.*, 862 F.2d 161, 169–70 & n.16. (8th Cir. 1988). Although *Sanders* involved the same type of legal error here (an erroneous statute-of-limitations ruling), and although the Petition cited *Sanders* (at 17), the government fails to address it.

Instead, the government emphasizes that the Eighth Circuit has indicated that Rule 60(b)(1) encompasses some "judicial inadvertence." BIO 23. But while the precise contours of that category may be unclear, *Spinar* and *Sanders* make clear that it does *not* include a court's legal errors. *See Lowry v. McDonnell Douglas Corp.*, 211 F.3d 457, 460–61 (8th Cir. 2000) ("It remains the law in this Circuit that 'relief under Rule 60(b)(1) for judicial error other than for judicial inadvertence' is not available.'") (quoting *Fox v. Brewer*, 620 F.2d 177, 180 (8th Cir. 1980)). Thus, had Petitioner been convicted in the Eighth Circuit, his Rule 60(b)(6) motion based on the district court's legal error would not have been re-characterized as a Rule 60(b)(1) motion, and it therefore would not have been subject to Rule 60(c)(1)'s inflexible one-year deadline.

2. The same would have been true in the Third Circuit. In two precedential opinions, both cited in the Petition (at 16), that court held that a post-judgment motion had to be construed as a Rule 59(e) motion, not a Rule 60(b)(1) motion, because the motion "alleges no more than legal error." *Smith v. Evans*, 853 F.2d 155, 158–59 (3d Cir. 1988); *see United States v. Fiorelli*, 337 F.3d 282, 287–88 (3d Cir. 2003) (same, where the motion "argues that the District Court committed an error of law"). Notably, in *Smith*, Judge Becker disagreed with an older case that had "considered a motion alleging mistake of law . . . as a Rule 60(b)(1) motion," explaining that "such a use of [Rule] 60(b) is bound to breed confusion," and the court "would be ill-advised to provide a loophole [around Rule 59(e)] via Rule 60(b)." 853 F.2d at 158 n.2.

The government fails to explain why those decisions would not control this case had Petitioner filed his Rule 60(b) motion in the Third Circuit. In one sentence, the government asserts that those decisions "addressed only whether post-judgment motions for reconsideration were properly characterized as arising under Rule 59(e), or instead Rule 60(b), for purposes of determining the timeliness of appeals." BIO 21. But, as explained, the court concluded that the motions were not cognizable under Rule 60(b)(1) because they alleged legal errors. And because the Rule 59(e) motions were filed after the deadline to file such a motion, they did not toll the time to appeal. Thus, to the extent the government suggests that the Rule 60(b)(1) discussion in those cases was dicta, it was not; it was essential to the court's timeliness analysis.

Confirming the weakness of its position, the government itself relies on dicta in a non-precedential (and *pro se*) opinion. BIO 21–22. In *Sanders v. Downs*, 622 F.

App'x 127 (3d Cir. 2015), the court noted the split but held that, "even assuming" that "a claim of legal error can be raised under Rule 60(b)(1)," the motion was filed too late. *Id*. at 129–30. Because the motion failed either way, the court had no occasion to address the question presented here. And that explains why the court overlooked *Smith* and *Fiorelli*. But passing dicta in a non-precedential, *pro se* opinion does not call into doubt the holdings of two precedential opinions issued fifteen years apart.

3. Petitioner would have fared better in the Fourth Circuit too. This is the most recent statement of that circuit's law: "we held in *United States v. Williams*, 674 F.2d 310, 313 (4th Cir. 1982), that Rule 60[(b)(1)] does not authorize motions for correction of a mistake of law." *In re GNC Corp.*, 789 F.3d 505, 511 (4th Cir. 2015). The government asserts that *Williams* held only that Rule 60(b)(1) does not encompass requests to reconsider a legal ruling (BIO 22–23), but the Fourth Circuit itself did not characterize *Williams* that way in *GNC*. Regardless, even under the government's preferred characterization, Petitioner's motion still would not have been re-characterized under Rule 60(b)(1) in that circuit, as it sought "reconsideration of [a] legal issue[ ] already addressed in an earlier ruling." *CNF Constructors, Inc. v. Donohoe Const. Co.*, 57 F.3d 395, 401 (4th Cir. 1995). Finally, the government references the pre-*Williams* decision in *Compton v. Alton S.S. Co.*, 608 F.2d 96 (4th Cir. 1979), but it expressly did "not determine" whether Rule 60(b)(1) encompassed errors of law, and it noted that Rule 60(b)(6) likely would. *Id*. at 104 & n.15.

In short, once the case law in the Third, Fourth, and Eighth Circuits is properly analyzed, the three-way circuit conflict is properly characterized as 4-4-4.

II. The Circuit Split Should Be Resolved

The government asks the Court to allow this undisputed, ancient circuit split to fester because, in its view, the issue is not "important." But that view is myopic.

1. As an initial matter, the government does not dispute any of the arguments in the Petition (at 19–21): the question presented is recurring; the split means that the balance between finality and equity varies based on geography; that disparity frustrates the very purpose of Rule 60(b) to replace old uncertainty with uniformity; that disparity is particularly problematic in the habeas context given the weighty interests on both sides and the prevalence of *pro se* litigants; and, given the focus on legal errors, the question presented implicates the proper allocation of authority between trial and appellate courts, as well as the relationship between Rule 59(e), Rule 60(b), and Rule 4(a) of the Federal Rules of Appellate Procedure.

2. Unable to dispute the importance of those structural interests, the government argues that the question presented lacks practical importance because it is "unlikely" to affect the outcome in a "substantial number of cases." BIO 10–11, 24–26. But that cannot be the sole metric of importance. After all, Rule 60(b) motions are seldom granted. On the government's logic, then, this Court would *never* grant review in *any* Rule 60(b) case. Yet this Court has repeatedly done so, including in the habeas context, where merits relief is also rare. For example, it granted review in *Gonzalez v. Crosby*, 545 U.S. 254 (2005) to resolve whether Rule 60(b) motions were "second or successive" petitions, even though the Court recognized that Rule 60(b)(6) motions "will rarely [prevail] in the habeas context." *Id.* at 335. And the Court

granted review in *Banister v. Davis*, 140 S. Ct. 1698 (2020) to resolve whether Rule 59(e) motions were "second or successive" petitions, even though the Court recognized that such motions are "[m]ostly" denied. *Id*. at 1707. The Court nonetheless granted review in those cases because lower courts should analyze those motions uniformly.

Uniformity is needed no less here. As the government acknowledges (BIO 24–25), the question presented will indeed matter where a movant first identifies a legal error over one year after the judgment, *and* can show "extraordinary circumstances" excusing the failure to appeal that erroneous judgment. That combination of legal error and "extraordinary circumstances" amounts to a miscarriage of justice. That class of cases thus warrant careful and uniform consideration by the courts. Yet, in light of the circuit split, geography now determines whether Rule 60(b)(6) can be used to remedy the injustice, or whether finality will foreclose relief, as it did in this case.

The government offers no sound reason to allow that untenable disparity to endure any longer. It emphasizes that few Rule 60(b)(6) movants will be able to show "extraordinary circumstances." But few is not none. And the government cannot deny that such cases actually exist because this Court itself has found Rule 60(b)(6) relief proper, including in cases where the motion was filed well over one year after the judgment. *See, e.g.*, *Buck v. Davis*, 137 S. Ct. 759, 767, 777–80 (2017) (eight years; capital habeas); *Klapprott v. United States*, 335 U.S. 601, 613–15 (1949) (four years).

This Court's plain-error cases are also instructive. Rule 60(b) "provides courts with authority 'adequate to enable them to vacate judgments whenever such action is appropriate to accomplish justice.'" *Liljeberg v. Health Services Acquisition Corp.*,

486 U.S. 847, 864 (1988) (quoting *Klapprott*, 335 U.S. at 614–15). Plain-error review is analogous. Codified in Federal Rule of Criminal Procedure 52(b), the "plain-error exception to the contemporaneous-objection rule is to be used sparingly, solely in those circumstances in which a miscarriage of justice would otherwise result." *United States v. Young*, 470 U.S. 1, 15 (1985) (quotation omitted). Although plain-error relief is therefore uncommon, this Court frequently grants review to resolve issues about its application.[1] That practice reflects that the law must be uniform when it comes to adjudicating potential miscarriages of justice, even if that uniformity will not ultimately be "outcome-determinative in a[ ] substantial number of cases." BIO 24.

In sum, the government's lone argument for inaction is inconsistent with this Court's practice of granting review in habeas and plain-error cases. And, here, there is a fifty-year old split that determines whether Rule 60(b)(6) can remedy injustice. Non-intervention would continue to prejudice movants in several circuits who can show "extraordinary circumstances" warranting relief from an erroneous judgment.

III. This Case Is an Excellent Vehicle

1. As explained in the Petition (at 21–22), this case is an ideal vehicle: Petitioner sought relief from judgment under Rule 60(b)(6) based on a legal error; the

[1] *See, e.g.*, *Greer v. United States*, 141 S. Ct. 2090 (2020) (deciding jointly two separate plain-error cases); *Davis v. United States*, 140 S. Ct. 1060 (2020); *Henderson v. United States*, 568 U.S. 266 (2013); *United States v. Marcus*, 560 U.S. 258 (2010); *Puckett v. United States*, 556 U.S. 129 (2009); *United States v. Dominguez Benitez*, 542 U.S. 74 (2004); *United States v. Cotton*, 535 U.S. 625 (2002); *Johnson v. United States*, 520 U.S. 461 (1997); *United States v. Olano*, 507 U.S. 725 (1993). The Court also frequently addresses the stringent "miscarriage of justice" exception to procedural bars. *See McQuiggin v. Perkins*, 569 U.S. 383, 392–93 (2013) (citing habeas cases).

government below conceded, and the Eleventh Circuit agreed, that there was a dispositive legal error; the lower courts denied relief on the ground that, because the motion alleged legal error, it was cognizable under Rule 60(b)(1) and so was subject to Rule 60(c)(1)'s one-year deadline; and neither the district court nor the Eleventh Circuit denied relief on any alternative ground. Thus, this case squarely presents and implicates the question dividing the circuits. Notably, the government does not argue otherwise. Nor does it dispute that, had Petitioner been convicted in (at least) the First Circuit, his motion would not have been subject to the one-year deadline.

2. Instead, the government lodges only a superficial vehicle objection. It argues that Petitioner would be unlikely to prevail on his Rule 60(b)(6) and 28 U.S.C. § 2255 motions were this Court to resolve the question presented in his favor. BIO 11, 27–30. But, as the government acknowledges (*see* BIO 7–10), the lower courts did not address those merits arguments, and so they are not before this Court. *See Cutter v. Wilkinson*, 544 U.S. 709, 718 n.7 (2005) ("we are a court of review, not of first view"). Because they would be addressed in the first instance on remand (Pet. 22), they do not risk obstructing this Court's review of the question presented. And this Court routinely overrules similar vehicle objections, granting review to resolve threshold issues notwithstanding unresolved issues that would need to be addressed on remand.[2] Even more telling, this Court granted review in *Gonzalez* to resolve the

[2] *See, e.g.*, BIO 9–10, 28–29, *Terry v. United States*, 141 S. Ct. 1858 (2021) (No. 20-5904), 2020 WL 9909508; BIO 9, 17–19, *Niz-Chavez v. Garland*, 141 S. Ct. 1474 (2021) (No. 19-863), 2020 WL 1972213; BIO 9, 19–20, *Pereira v. Sessions*, 138 S. Ct. 2105 (2018) (No. 17-459), 2017 WL 6399165; BIO 4, 13–14, *Byrd v. United States*, 138 S. Ct. 1518 (2018) (No. 16-1371), 2017 WL 3053629.

threshold procedural issue there, even though the Court ultimately held that Rule 60(b)(6) relief was not warranted in that very case. 545 U.S. at 526, 536–38.

In any event, Petitioner would have strong arguments to make on remand. As explained in the Petition (at 22–23), he alleged a troubling sequence of events to excuse his failure to appeal the court's order erroneously dismissing his § 2255 motion as untimely. Although neither the district court nor the court of appeals addressed those circumstances, the government argues that they are insufficient. BIO 27–28. But it incorrectly asserts that the legal error was "apparent from the face" of the § 2255 dismissal order; in fact, the order made no mention of this Court's Rule 13.3. And Petitioner had no way of reviewing that obscure yet pivotal provision because he lacked access to legal materials after his transfer to state custody to defend unrelated charges. During that time, moreover, his former counsel misadvised him that his § 2255 motion was timely based on his co-defendants' certiorari (not rehearing) petitions. And while the government's response to the § 2255 motion briefly referenced a different aspect of Rule 13.3, it overlooked the aspect that rendered the motion timely. *See* BIO 5–6. Petitioner first discovered that aspect shortly after returning to federal custody, and he quickly filed his Rule 60(b) motion. Under that unique set of facts, the lower courts could well find "extraordinary circumstances."

As to Petitioner's underlying § 2255 motion, the government relies on passing dictum by the Magistrate Judge that his claims "appear[ed]" to lack merit. BIO 7, 29. But although that same Magistrate Judge recommended denying a COA, a two-judge Eleventh Circuit panel disagreed, finding his claims "facially valid."

Pet. App. 9a. At minimum, then, they are not "frivolous." *Gonzalez v. Thaler*, 565 U.S. 134, 145 (2012). That determination should suffice for present purposes. There is no space here to re-litigate his nine claims, which stem from a 21-day trial and complex sentencing, and which have no bearing on the Rule 60(b) question here.[3]

3. Finally, the government concedes that certiorari petitions presenting the Rule 60(b) question are rare. BIO 26–27. While the government suggests that this means litigants are being treated consistently, this case belies that suggestion. Again, there is no dispute that, had Petitioner been convicted in (at least) the First Circuit, his Rule 60(b)(6) motion would not have been shoehorned under Rule 60(b)(1) and subjected to Rule 60(c)(1)'s one-year deadline. Instead, the lack of petitions is more likely due to the fact that most Rule 60(b) motions are denied on the merits. As explained above, that fact has not dissuaded the Court from granting review before.

Put simply, the question presented warrants review, this case is a pristine vehicle, and suitable vehicles presenting the question seldom come along. Thus, the Court should seize this unique opportunity to resolve the fifty-year old circuit conflict.

IV. The Majority View Is Wrong

In light of the circuit split, this Court's review is warranted whichever side of the split is correct. But the need for review is bolstered by the fact that eight circuits have incorrectly held that a court's legal errors can be remedied under Rule 60(b)(1).

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[3] Notably, though, even the claims that the government selectively impugns are hardly cut-and-dried. For example, Petitioner's "lead claim" that his attorney failed to convey the terms of a 17-year plea offer before it expired—recall he ultimately got 35 years—is the type of "he-said she-said" claim that typically requires an evidentiary hearing. *See Carmichael v. United States*, 966 F.3d 1250, 1252–53 (11th Cir. 2020).

1. As originally promulgated, Rule 60 authorized relief from judgment on two distinct grounds: "clerical mistakes" under Rule 60(a); and more "substantive" grounds under Rule 60(b). Moore & Rogers, Federal Relief from Civil Judgments, 55 Yale L.J. 623, 630 (1946). Rule 60(a) codified the inherent judicial authority to "correct judgments . . . which have issued due to inadvertence or mistake." *Am. Trucking Ass'ns v. Frisco Transp. Co.*, 358 U.S. 133, 145 (1958) (citing *Gagnon v. United States*, 193 U.S. 451, 456 (1904)); *see* Theodore A. Donohue, Jr., A History and Interpretation of Rule 60(a) of the Federal Rules of Civil Procedure, 42 Drake L. Rev. 461, 464–66 (1993) (tracing authority to English common law). That authority, however, "only can be used to make the judgment or record speak the truth and cannot be used to make it say something other than what originally was pronounced." 11 Wright & Miller, Federal Practice & Procedure § 2854 & n.7 (Apr. 2021). Thus, while that authority is broad in scope and includes mistakes by judges, it does not include a judge's "mistaken interpretation of the law." Donohue, *supra*, at 473–74.

Significantly, neither did Rule 60(b) as promulgated, and that original version was nearly identical to what became Rule 60(b)(1). It authorized a party to seek relief from a judgment "taken against him through his mistake, inadvertence, surprise, or inexcusable neglect." Fed. R. Civ. P. 60(b) (1940). That language was "based upon Calif. Code Civ. P. § 473." *Id.*, adv. cmte. notes (1937); *see* Moore & Rogers, *supra*, at 631 ("the Committee substantially adopted the California practice"). And, under California law, while a court's legal error could be remedied in other ways, "modification of judgments to correct errors of law [wa]s not authorized by section

473." *Bowman v. Bowman*, 178 P.2d 751, 754–55 (Cal. 1947) (citing cases); *see* Moore & Rogers, *supra*, at 646 & n.73 (citing *Glougie v. Glougie*, 162 P. 118, 130 (Cal. 1916)).

2. That history reveals the flaws in the government's textual arguments. The government relies on legal dictionaries defining the word "mistake" (BIO 12–13), but that word cannot be interpreted in isolation. It is part of an integrated clause that was lifted verbatim from Section 473, and California law was clear that the "mistake" clause did not reach a court's legal errors. *See* Moore & Rogers, *supra*, at 633–34 & n.28 (explaining that cases interpreting Section 473 are "persuasive" in interpreting what is now Rule 60(b)(1)). Nor does the government dispute that, when read alongside the words accompanying it (*i.e.*, inadvertence, surprise, and excusable neglect), "mistake" does not refer to a court's legal errors. *See* Pet. 24–25; *Silk v. Sandoval*, 435 F.2d 1266, 1267–68 (1st Cir. 1971). Instead, the government dismisses *noscitur a sociis* itself (*see* BIO 15–16), even though it is a well-established canon.

Despite ignoring the text accompanying "mistake," the government claims that "context" supports its position because Rule 60(a) includes mistakes by judges. BIO 13. But its argument does not follow. As explained, although Rule 60(a) reaches certain mistakes by judges, it has never reached a judge's legal errors. If anything, then, the fact that Rule 60(a) and Rule 60(b)(1) both use the term "mistake" supports Petitioner's view that Rule 60(b)(1) likewise does not include a court's legal errors.

The government next observes that the 1946 amendment to Rule 60(b) removed the pronoun "his" from what would become Rule 60(b)(1). But it is far from clear that this was designed to capture mistakes attributable to judges rather than

to the movant's agents, the opposing party, and external forces. Indeed, some early post-amendment cases continued to read Rule 60(b)(1) to exclude judicial mistakes. *See United States v. Failla*, 164 F. Supp. 307, 312 (D.N.J. 1957) (citing *Nachod v. U.S. Signal Co. v. Automatic Signal Corp.*, 32 F. Supp. 588, 589 (D. Conn. 1940)).

In any event, the key question here is whether the term "mistake" includes a court's error of law. And even if Rule 60(b)(1) includes some judicial mistakes that are not already covered by Rule 60(a), it still would not include judicial errors of law. Indeed, while the 1946 amendment removed the male pronoun, it did not otherwise amend the integrated "mistake" clause. Thus, it did not broaden the original scope of "mistake" to include legal errors, which had been regarded as a distinct category. Instead, the salient amendment in 1946 was the addition of the "catchall" provision in Rule 60(b)(6). That change is what finally brought legal errors under Rule 60(b).

3. It is therefore unsurprising that this Court has consistently analyzed claims of legal error under Rule 60(b)(6). *See* Pet. 28–30. Unable to dispute that fact, the government emphasizes that the movants did not invoke Rule 60(b)(1)'s "mistake" prong. BIO 17–18. But their failure to do so only underscores that Rule 60(b)(1) does not encompass legal errors. In *Klapprott* and *Ackermann v. United States*, 340 U.S. 193 (1950)—both decided soon after the 1946 amendment took effect—the movants tellingly *did* invoke Rule 60(b)(1)'s "excusable neglect" prong but *not* its "mistake" prong. Similarly, and despite filing within one year, the movant in *Gonzalez* invoked Rule 60(b)(6), not Rule 60(b)(1), to remedy a statute-of-limitations error, the same legal error here; that the error in *Gonzalez* was validated by a subsequent decision

does not make it "different in kind." BIO 18. And *Liljeberg* held that Rule 60(b)(6), not Rule 60(b)(1), was "proper," 486 U.S. at 863 n.11; again, it never occurred to the movant or this Court that the judge's erroneous failure to recuse was a "mistake."

4. Finally, the government makes the a-textual policy argument that its position would avoid unnecessary appeals. BIO 16. But Rule 59(e) already serves that function. And the government does not deny that allowing Rule 60(b)(1) to remedy legal errors risks circumventing the time limits governing Rule 59(e) motions and appeals. *See* Pet. 25–27, 30. To avoid that result, the government endorses the requirement imposed by lower courts that Rule 60(b)(1) motions be filed within the time to appeal. BIO 17. But the government makes no attempt to reconcile that judge-made deadline with Rule 60(c)(1)'s longer one-year deadline. *See* Pet. 26 (citing Wright & Miller, *supra* § 2858.1). That (additional) departure from the Rule's text would be obviated by a clear rule that a court's legal errors are not cognizable under Rule 60(b)(1). The Court should grant review and resolve the circuit split accordingly.

CONCLUSION

The petition for a writ of certiorari should be granted.

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