No. 21-5726

In the Supreme Court of the United States

DEXTER EARL KEMP,
PETITIONER,

v.

UNITED STATES OF AMERICA,
RESPONDENT.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

BRIEF FOR PETITIONER

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QUESTION PRESENTED

Federal Rule of Civil Procedure 60(b)(1) authorizes relief from final judgment based on "mistake," as well as "inadvertence, surprise, or excusable neglect."

The question presented is:

Whether Rule 60(b)(1) authorizes relief based on a district court's error of law.

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OPINIONS BELOW

The opinion of the court of appeals (Pet.App.1a-7a) is unreported but available at 857 F. App'x 573. The court of appeals' order granting a certificate of appealability (Pet.App.8a-9a) and the district court's opinion (Pet.App.10a-19a) are unreported.

JURISDICTION

The judgment of the court of appeals was entered on May 25, 2021. The petition for certiorari was filed on September 16, 2021, and granted on January 10, 2022. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS AND RULES INVOLVED

Pertinent statutory provisions and rules are reprinted in the appendix to this brief, App.1a-12a.

STATEMENT

No one is perfect—not even judges. On rare occasions, courts fail to apply dispositive precedent. Or they render their judgment unaware that the legislature repealed the statute at issue. Or they interpret the Constitution to prohibit certain conduct, and this Court confirms years later that the Constitution allowed that conduct all along. Federal Rule of Civil Procedure 60(b) undisputedly authorizes litigants to seek relief from final judgments based on these kinds of legal errors and many others.

The question here is which part of Rule 60(b) applies when a district court fails to follow the operative rule for calculating a filing deadline, and erroneously deems a critical filing untimely. The answer is Rule 60(b)(6), a catch-all provision that encompasses "any other reason that justifies relief" that does not fit within Rules 60(b)(1)-(5). All agree that Rules 60(b)(2)-(5) do not apply; those subsections cover newly discovered evidence, fraud, void judgments, and intervening developments that render the original judgment a nullity.

That leaves Rule 60(b)(1)—which covers "mistake[s]"—as the only option besides Rule 60(b)(6). The two subsections are exclusive. Rule 60(b)(1) has a one-year time limit; Rule 60(b)(6) does not. Mr. Kemp filed his motion 21 months after the judgment he seeks to reopen, so if Rule 60(b)(1) governs, as the government claims, the motion was untimely. But Rule 60(b)(1) is limited to "mistake, inadvertence, surprise, or excusable neglect," a family of defects that excludes legal errors.

The phrase "mistake, inadvertence, surprise, or excusable neglect" is a term of art that harks back to the mid-19th century, when States were beginning to codify civil procedure. Seventeen state codes used that exact phrase as grounds for reopening, and they uniformly understood that "mistake, inadvertence, surprise, or excusable neglect" did not encompass legal errors. Instead, litigants relied on common-law writs and equitable forms to raise legal errors—including the bill of review, the traditional equitable remedy for legal errors (like the one here) that are apparent from the face of the court's opinion or the pleadings.

In 1937, the drafters of Federal Rule of Civil Procedure 60 repotted that old soil, carrying the same meaning forward. Rule 60(b) originally authorized relief only for "mistake, inadvertence, surprise, or excusable neglect," while preserving common-law and equitable remedies for all other errors—including legal errors apparent from the face of the record. An overwhelming contemporaneous consensus of commentators and courts agreed that the new Federal Rules replicated what state codes had done, and that "mistake" under Rule 60 did not include legal errors. Modern-day Rule 60(b)(1) retains the same "mistake, inadvertence, surprise, or excusable neglect" language. The rest of modern-day Rule 60(b), including Rule 60(b)(6), simply codifies all the old remedies. So legal errors that are apparent from the face of the court's opinion or pleadings now fit within Rule 60(b)(6).

Many other textual and contextual clues confirm that a "mistake" under Rule 60(b)(1) is not a legal error. An adjacent provision, Rule 60(a), uses "mistake" to refer to non-legal errors. The three defects accompanying "mistake" in Rule 60(b)(1)—"inadvertence, surprise, or excusable neglect"—undisputedly exclude legal errors. And Rule 60(b) groups 60(b)(1) with two other provisions

(60(b)(2) and (3)) by setting a one-year filing deadline for all three. Rules 60(b)(2) and (3) are also limited to fact-bound, non-legal errors. It would defy credulity for Rule 60's drafters to have made Rule 60(b)(1)'s "mistake" the one word that does not belong with the others.

The government and the Eleventh Circuit below instead interpret "mistake" in Rule 60(b)(1) to mean all sorts of legal errors. Indeed, the government's cited dictionaries define "mistake" as any error under the sun. Under that broad interpretation, Rule 60(b)(1) would cannibalize much of the rest of Rule 60. Some legal errors plainly go in other subsections, like jurisdictional defects, which make a judgment void under Rule 60(b)(4), or intervening legislation, which makes a judgment inequitable under Rule 60(b)(5). Compounding the problem, those Rules have different filing deadlines. Rule 60(b)(1) motions must be filed within a year, whereas motions under those other subsections can be filed at any "reasonable time." It is anyone's guess under the government's interpretation which Rule 60(b) provision would ultimately cover particular legal errors, let alone which deadline would govern.

Shoehorning legal errors into Rule 60(b)(1) would also perversely give parties a year to raise legal errors without making the heightened showing required under Rule 60(b)(6). The normal tools for raising legal errors, a Rule 59(e) motion for reconsideration or a notice of appeal, typically give only a month. If Rule 60(b)(1) motions covered legal errors, dilatory parties could simply file de facto motions for reconsideration within a year without having to clear the "extraordinary circumstances" hurdle that Rule 60(b)(6) requires. The Federal Rules of Civil Procedure exist to provide clarity and efficiency. The government's interpretation would defeat those aims and sow needless confusion.

A. Federal Rule of Civil Procedure 60

First promulgated in 1937, Rule 60 of the Federal Rules of Civil Procedure authorizes relief from final judgments for a wide variety of reasons.

Rule 60(a) authorizes district courts to "correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record."

For example, district courts can grant Rule 60(a) relief when they accidentally swap two digits awarding damages on the verdict form or make a math error. *Esquire Radio & Elecs., Inc. v. Montgomery Ward & Co.*, 804 F.2d 787, 795-96 (2d Cir. 1986); 11 Charles Allen Wright et al., *Federal Practice and Procedure* § 2854 & n.12 (3d ed. updated Apr. 2021) (Wright & Miller). The court may correct such mistakes "on its own, with or without notice," or the parties can file a motion. Fed. R. Civ. P. 60(a). Timing is flexible: the court can provide relief "whenever" the mistake is found, although leave from the court of appeals is required if an appeal is pending. *Id.*

Rule 60(b), in turn, lets a party "seek relief from a final judgment, and request reopening of his case, under a limited set of circumstances." *Gonzalez v. Crosby*, 545 U.S. 524, 528 (2005). Parties must file a motion, which courts will grant "on just terms" for the following reasons:

60(b)(1) covers "mistake, inadvertence, surprise, or excusable neglect." For example, if parties no-show because their lawyer misunderstood what day the judge said the trial would begin, that "mistake or excusable neglect" warrants relief. *Ellingsworth v. Chrysler*, 665 F.2d 180, 184 & n.3 (7th Cir. 1981).

60(b)(2) authorizes relief for "newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule

59(b)." For example, where a prison warden originally prevailed against a failure-to-train claim, Rule 60(b)(2) provided relief when new evidence of inadequate training emerged months after judgment. *Luna v. Bell*, 887 F.3d 290, 292-93 (6th Cir. 2018).

60(b)(3) authorizes relief in cases of "fraud . . . , misrepresentation, or misconduct by an opposing party," for instance when a plaintiff testified at trial that he was wrongfully terminated based on his back injury, but the injury was fictitious. *Hernandez v. Results Staffing, Inc.*, 907 F.3d 354, 364 (5th Cir. 2018).

60(b)(4) permits relief if "the judgment is void," for instance because the court lacked personal jurisdiction. *Durukan Am., LLC v. Rain Trading, Inc.*, 787 F.3d 1161, 1163 (7th Cir. 2015).

60(b)(5) provides for relief if "the judgment has been satisfied, released, or discharged," if the judgment "is based on an earlier judgment that has been reversed or vacated," or if "applying [the judgment] prospectively is no longer equitable." Thus, if parties reach separate settlements, courts may apply Rule 60(b)(5) to reduce the total damages awarded because the judgment is partially "satisfied." *BUC Int'l Corp. v. Int'l Yacht Council Ltd.*, 517 F.3d 1271, 1275 (11th Cir. 2008). This provision likewise justifies relief if, for instance, a court enters a consent decree restructuring a prison system and "changed factual conditions" or "unforeseen obstacles" render the terms impracticable. *Rufo v. Inmates of Suffolk Cnty. Jail*, 502 U.S. 367, 384 (1992).

60(b)(6) is a catch-all provision, authorizing relief for "any other reason that justifies relief." But Rule 60(b)(6) demands an additional step: the movant must also show "'extraordinary circumstances' justifying the reopening

of a final judgment." *Gonzalez*, 545 U.S. at 535 (quoting *Ackermann v. United States*, 340 U.S. 193, 199 (1950)).

Timing. Rule 60(b) sets different deadlines for different motions. Movants have a non-extendable one-year deadline to file motions under 60(b)(1) for "mistake, inadvertence, surprise, or excusable neglect," motions under 60(b)(2) for newly discovered evidence, and motions under 60(b)(3) identifying fraud. Fed. R. Civ. P. 6(b)(2), 60(c)(1). By contrast, movants can file all other Rule 60(b) motions "within a reasonable time." Fed. R. Civ. P. 60(c)(1).

Other bases for relief. Finally, Rule 60 "abolished" various common-law and equitable forms for seeking relief from final judgments, *i.e.*, "bills of review, bills in the nature of bills of review, and writs of coram nobis, coram vobis, and audita querela." Fed. R. Civ. P. 60(e). There was no need to preserve these separate writs, because Rule 60(b) incorporated all of the grounds these writs covered. Fed. R. Civ. P. 60(b) advisory committee's note to 1946 amendment. Conversely, Rule 60 does not affect courts' authority to grant certain other forms of relief, such as "an independent action to relieve a party from a judgment" to prevent grave injustice. Fed. R. Civ. P. 60(d)(1); *United States v. Beggerly*, 524 U.S. 38, 47 (1998).

B. Procedural History

1. Petitioner Dexter Earl Kemp was convicted of federal drug and firearm charges in the Southern District of Florida. Pet.App.2a. The Eleventh Circuit affirmed his conviction on November 15, 2013. *United States v. Gray*, 544 F. App'x 870 (11th Cir. 2013). While Mr. Kemp did not seek further review, his co-defendants sought rehearing and certiorari, which the Eleventh Circuit and this Court denied. Pet.App.2a.

On April 29, 2015, Mr. Kemp filed a pro se motion in the Southern District of Florida under 28 U.S.C. § 2255

seeking relief for ineffective assistance of counsel. Pet.App.2a. As relevant here, section 2255 requires such motions to be filed within one year of "the date on which the judgment of conviction becomes final." 28 U.S.C. § 2255(f)(1). "Finality attaches . . . when the time for filing a certiorari petition expires." *Clay v. United States*, 537 U.S. 522, 527 (2003). And the time for petitioning for certiorari expires 90 days after the denial of a timely petition for rehearing made "by *any party*." Sup. Ct. R. 13.3 (emphasis added).

The Eleventh Circuit denied Mr. Kemp's co-defendants' petition for rehearing on May 22, 2014. Pet.App.2a. Thus, Mr. Kemp's deadline for filing a petition for certiorari expired on August 20, 2014. Pet.App.6a. Because he did not petition, his conviction became final then. Mr. Kemp's section 2255 motion was due on August 20, 2015, *i.e.*, one year later. Pet.App.6a. Mr. Kemp filed that motion on April 29, 2015, four months before the due date. *See* Pet.App.2a.

2. In September 2016, the district court dismissed Mr. Kemp's section 2255 motion as untimely. *Kemp v. United States*, No. 15-cv-21702, slip op. at 6 (S.D. Fla. Sept. 30, 2016), ECF No. 32. The court did not apply the legal rule that en banc petitions by co-defendants extend the deadline for seeking certiorari. Instead, the court reasoned that Mr. Kemp's conviction became final on February 13, 2014, 90 days after the Eleventh Circuit affirmed his conviction, because Mr. Kemp did not petition for certiorari within those 90 days. *Id.* at 5-6. The government has since conceded that this ruling was legally erroneous, and that Mr. Kemp timely filed his section 2255 motion. U.S. C.A. Br. 11; *see* Br. in Opp. 12.

By the time the district court dismissed Mr. Kemp's section 2255 motion, he had been transferred from federal to state prison to face trial in an unrelated matter. Objs.

to Mag. J. Rep. 3, *Kemp*, No. 15-cv-21702 (Jan. 22, 2020), ECF No. 56. Prison officials did not let Mr. Kemp bring legal materials or research with him to state prison. *Id.* at 4. In February 2018, when Mr. Kemp returned to federal custody, he promptly sought advice from a legal-services firm about the district court's decision denying his section 2255 motion. *Id.*

3. Four months later, on June 22, 2018, Mr. Kemp filed a pro se Rule 60(b) motion in the Southern District of Florida. He requested relief under Rule 60(b)(6) based on the district court's legal error in dismissing his section 2255 motion as untimely. Pet.App.12a, 14a.

The district court denied the motion. Pet.App.19a. The court held that claims that the court misapplied the law fall under Rule 60(b)(1), not (b)(6), because the Eleventh Circuit has classified legal errors as "mistakes" under Rule 60(b)(1). Pet.App.15a-16a. The court thus deemed Mr. Kemp's motion untimely given Rule 60(b)(1)'s one-year deadline. Pet.App.17a. The district court alternatively defended its earlier ruling that Mr. Kemp's section 2255 motion was untimely. The court erroneously reasoned that because Mr. Kemp did not join his co-defendants' en banc petition, that petition did not affect the date when his conviction became final. Pet.App.18a. The court did not reach whether Mr. Kemp presented "extraordinary circumstances" warranting relief under Rule 60(b)(6).

The Eleventh Circuit granted a certificate of appealability as to whether the district court erred in denying Mr. Kemp's Rule 60(b) motion, and affirmed. Pet.App.7a-8a. The Eleventh Circuit recognized that the district court had committed legal error in dismissing Mr. Kemp's section 2255 motion as untimely. Pet.App.6a. But, bound by circuit precedent, the Eleventh Circuit classified the district court's error as a "mistake" under Rule 60(b)(1),

and thus deemed Mr. Kemp's motion untimely. Pet.App.6a-7a (citing *Parks v. U.S. Life & Credit Corp.*, 677 F.2d 838, 839-40 (11th Cir. 1982)). Like the district court, the Eleventh Circuit did not reach whether Mr. Kemp satisfied Rule 60(b)(6)'s "extraordinary circumstances" requirement.

SUMMARY OF ARGUMENT

I. Rule 60(b)(1), encompassing "mistake, inadvertence, surprise, or excusable neglect," does not cover legal errors, full stop. And Rules 60(b)(2)-(5) undisputedly do not reach the legal error in this case—a court overlooking the operative rule governing filing deadlines. Instead, Rule 60(b)'s catch-all provision, Rule 60(b)(6), provides an opportunity for relief here because that provision allows courts to reopen a judgment for "any other reason that justifies relief."

A. The phrase "mistake, inadvertence, surprise, or excusable neglect" in Rule 60(b)(1) is a term of art that unambiguously excludes all legal errors.

The drafters patterned Rule 60(b)(1) on 17 state laws that provided relief for "mistake, inadvertence, surprise, or excusable neglect." None of those statutes permitted relief for legal errors. Instead, litigants in these States sought relief based on legal errors via common-law and equitable remedies like the bill of review.

Like these state laws, Rule 60(b) originally provided relief only from adverse judgments resulting from a litigant's "mistake, inadvertence, surprise, or excusable neglect." At the same time, Rule 60(b) explicitly preserved common-law and equitable remedies. Thus, under the original version of Rule 60(b), as in the States, litigants sought relief from legal errors apparent on the face of the record via the bill of review, not as "mistakes."

In 1946, Rule 60(b) was amended. Rule 60(b)(1) retained "mistake, inadvertence, surprise, or excusable neglect" as a ground for relief, but made clear that other actors besides the moving party could be responsible for such defects. Rule 60(b) also abolished the traditional writs and parceled out their grounds for relief across the new Rules 60(b)(2)-(6). Legal errors apparent from the court's opinion or the pleadings—including the legal error at issue here—fell in Rule 60(b)(6) where they remain today. The 1946 amendment did not change the meaning of "mistake" to include legal errors.

B. The *noscitur a sociis* canon confirms that "mistake" under Rule 60(b)(1) excludes legal errors. The rest of that subsection—"inadvertence, surprise, or excusable neglect"—does not reach legal errors. Nor can courts commit those types of errors. That common meaning carries over into "mistake." This is not a case where one of these words is not like the others and does not belong.

C. Rule 60's structure reinforces that "mistake" does not reach legal errors. The word "mistake" also appears in Rule 60(a), which provides relief from "a clerical mistake or a mistake arising from oversight or omission." "[M]istake" in Rule 60(a) reaches only non-legal, ministerial errors. So Rule 60(b)(1) likewise does not reach legal errors.

Rule 60(b) also groups 60(b)(1) with other non-legal errors. Rule 60(b) splits up grounds for relief into two buckets with a non-extendable, one-year-max deadline for 60(b)(1)-(3) and a "reasonable time" standard for 60(b)(4)-(6). Fed. R. Civ. P. 60(c)(1). That dual deadline reflects a substantive divide in the Rule. Rules 60(b)(1)-(3) target fact-intensive, non-legal errors like new evidence and fraud that require prompt correction. Rules 60(b)(4)-(6) target all sorts of legal errors and later developments that negate the judgment. Those errors are not entwined with

litigation conduct or trial evidence, and thus warrant a lengthier, more flexible timeline for correction.

II. The government's contrary interpretation makes a mess of Rule 60.

A. The government (at Br. in Opp. 12-13) equates "mistakes" with any and all "errors." That expansive definition gobbles up much of Rule 60. Many legal errors, like judgments void for lack of jurisdiction, indisputably fall in Rule 60(b)(4)-(6). Yet under the government's definition, those errors also fall in Rule 60(b)(1). Likewise, if mistake includes legal errors, any "obvious" legal errors also fall under 60(a), which has no deadline for correction. This Court should not open a new frontier of civil procedure devoted to fights over which legal errors go in which part of Rule 60.

Even if Rule 60(b)(1) reaches legal errors made by the parties or their lawyers, Rule 60(b)(1) does not reach legal errors made by *courts*. The rest of Rule 60(b)(1), "inadvertence, surprise, or excusable neglect," plainly does not reach errors by courts. And textual differences between Rules 60(a) and (b)(1) illustrate why the former reaches courts and the latter does not. The 1946 amendment permitting parties to seek relief for "mistake" instead of "his mistake" does not change that result. That amendment merely clarified that mistakes committed by opposing and third parties count too; the amendment did not sweep in different-in-kind judicial errors, as this Court has strongly implied.

B. The government's interpretation also jumbles post-trial practice. The Federal Rules provide firm deadlines for parties to raise legal errors in a Rule 59(e) motion for reconsideration or on appeal. If Rule 60(b)(1) reaches legal errors, parties can blow past those deadlines and raise legal errors at any time up to one year. To avoid this

anomaly, the government grafts an atextual 30- to 60-day time limit on Rule 60(b)(1) motions. But that invention negates the government's supposed policy benefit of letting district courts correct their own errors by forcing parties to appeal before the district court resolves the Rule 60(b)(1) motion. Instead, that interpretation leads to messy, bifurcated appeals, as parties would appeal both the original judgment and the denial of the Rule 60(b)(1) motion. In short, the government's position creates anomalous inefficiencies without any practical benefits.

ARGUMENT

I. Rule 60(b)(1) Does Not Cover Legal Errors

Rule 60's text, history, and structure demonstrate that Rule 60(b)(6), not (b)(1), is the proper channel for seeking relief for legal errors that appear on the face of the record.

A. "Mistake" Is a Term of Art in Rule 60(b)(1) that Excludes Legal Errors

Like statutes, the meaning of the Federal Rules of Civil Procedure begins with the text. *Bus. Guides, Inc. v. Chromatic Comm'cns Enters.*, 498 U.S. 533, 540-41 (1991). And here, the term "mistake" in Rule 60(b)(1) unambiguously excludes legal errors.

1. When "a word is obviously transplanted from another legal source, . . . it brings the old soil with it." *Hall v. Hall*, 138 S. Ct. 1118, 1128 (2018) (citation omitted). When drafters borrow such "term[s] of art," they "presumably know[] and adopt[] the cluster of ideas that were attached to each borrowed word in the body of learning from which it was taken." *T-Mobile S., LLC v. City of Roswell*, 574 U.S. 293, 301 (2015) (citation omitted).

That interpretive principle fits Rule 60(b)(1) to a T. Since its inception in 1937, Rule 60(b) has always offered

relief from judgments based on "mistake, inadvertence, surprise, or excusable neglect." Fed. R. Civ. P. 60(b) (1938). That phrase is no accident: at the time the Federal Rules were adopted, 17 States (plus Alaska Territory) had statutes authorizing relief from final civil judgments in cases of a party's "mistake, inadvertence, surprise, or excusable neglect."[1] By copying that language exactly, Rule 60(b) conveys the same meaning.

All 17 States with such laws uniformly used "mistake, inadvertence, surprise, or excusable neglect" to describe *non-legal* party errors. For example, California courts granted relief when an "invariably accurate" newspaper misprinted the date a jilted lobbyist sued his former client, leading the client to file its answer out of time. *Watson v. S.F. & Humboldt Bay R.R. Co.*, 41 Cal. 17, 21 (1871). North Carolina recognized that relief might be appropriate where a defendant was "so ignorant and confused, his surroundings so wretched, his knowledge of men and things, and of his duty so poor" that he did not know where and when to attend his court hearing. *Winborne v. Johnson*, 95 N.C. 46, 49 (1886). And Wisconsin granted relief where a party "was engaged [so] extensively in the manufacture of lumber" that he mistook his filing deadline. *Johnson v. Eldred*, 13 Wis. 539, 543-44 (1861).

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[1] Alaska Comp. Laws § 3457 (1933); Ariz. Rev. Code § 3859 (1928); Cal. Civ. Proc. Code § 473 (Deering 1937); Colo. Stat. Ann. § 81 (1935); Idaho Code § 5-905 (1932); Ind. Code Ann. § 405 (Burns 1914); Minn. Stat. § 9283 (1927); Mont. Rev. Code § 9187 (1935); Nev. Comp. Laws § 9289 (1929); N.Y. C.P.L.R. § 108 (1937); N.C. Code § 600 (1927); N.D. Comp. Laws § 7483 (1913); Or. Code § 1-907 (1930); S.C. Code § 495 (1932); S.D. Comp. Laws § 2152 (1929); Utah Rev. Stat. § 104-73-11 (1933); Wash. Comp. Stat. § 303 (Remington 1922); Wis. Stat. § 269.46(1) (1937); *see* 1 Henry Campbell Black, *A Treatise on the Law of Judgments* § 334, at 511 n.272 (2d ed. 1902) (counting 15 of 18).

State supreme courts were explicit that "mistake, inadvertence, surprise, or excusable neglect" excluded legal errors. As the South Carolina Supreme Court put it: "The overwhelming weight of authority" holds that these statutes apply "only to mistakes of fact, not to mistakes of law." *Lucas v. N.C. Mut. Life Ins. Co.*, 191 S.E. 711, 712 (S.C. 1937) (collecting cases), *overruled on other grounds by Murray v. Sovereign Camp, W.O.W.*, 5 S.E.2d 560 (S.C. 1939). Numerous treatises agreed: An "[e]rror of law is no ground for relief under these statutes." A.C. Freeman, *A Treatise on the Law of Judgments* § 105, at 98 (3d ed. 1886). As Henry Campbell Black (of eponymous dictionary fame) explained: "When statutes authorize the vacation of a judgment entered against a party through his 'mistake,' it is to be understood that they mean a mistake of fact. Mistake of law—that is, the party's ignorance of the law, or mistake as to his legal rights or duties in the premises—will not warrant the setting aside of the judgment." Black, *supra*, § 335, at 512.[2]

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[2] *Accord* 34 *Corpus Juris* § 516, at 296-97 (1924) (When a statute "authorize[s] the opening or vacation of a judgment taken against a defendant by mistake, . . . this applies only to mistakes of fact, not to mistakes of law, unless otherwise provided."); *e.g.*, *Domer v. Stone*, 149 P. 505, 507 (Idaho 1915) ("[T]he defendant must show that his mistake was one of fact and not of law."); *Thompson v. Harlow*, 50 N.E. 474, 476 (Ind. 1898) ("The only mistake possible, under the complaint, is one of law, and not one of fact, and affords no relief."); *Mantle v. Casey*, 78 P. 591, 594 (Mont. 1904) ("A mistake in the law is not such excusable neglect, inadvertence, or surprise as will be sufficient to set aside a default."); *Skinner v. Terry*, 12 S.E. 118, 119 (N.C. 1890) ("The statutory provision does not extend to mistakes as to the law applicable."); *Plano Mfg. Co. v. Murphy*, 92 N.W. 1072, 1073 (S.D. 1902) ("The only mistake for which relief will be granted is a mistake of fact."); *In re Jones' Estate*, 199 P. 734, 735 (Wash. 1921) ("This court has, however, in so many cases decided that judgments will not be vacated for errors of law that it has become the fixed and settled

California Code of Civil Procedure § 473—which Rule 60's drafters cited as a model—further confirms that "mistake" in Rule 60(b)(1) does not include legal errors. *See* Fed. R. Civ. P. 60(b) advisory committee's note to 1937 draft. In decades of decisions before Rule 60's enactment, the California Supreme Court explained that California's analogue covered many types of factual errors—but not courts' legal errors. When a movant attempted to assert "ignorance of the law," the court recognized that was "no ground for relief." *Chase v. Swain*, 9 Cal. 130, 134 (1858). And, when a movant tried to invoke section 473 to allege that "the court committed legal error," the California Supreme Court held: "[A] judicial error such as this is *not correctible* under section 473, Code of Civil Procedure." *Glougie v. Glougie*, 162 P. 118, 120 (Cal. 1916) (emphasis added). Driving the point home, the California Supreme Court reiterated shortly after Rule 60's adoption: "[T]he summary modification of judgments to correct errors of law is not authorized by section 473." *Bowman v. Bowman*, 178 P.2d 751, 754-55 (Cal. 1947) (Traynor, J.) (collecting California cases).[3]

New York Civil Practice Act § 108 and Minnesota Statutes § 9283—the two other models that Rule 60's

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rule of this state."); *Main v. McLaughlin*, 47 N.W. 938, 938 (Wis. 1891) ("It must be a mistake of fact and not of law."); *see also U.S. Fid. & Guar. Co. of Balt. v. Davis*, 223 S.W. 700, 701 (Tex. Civ. App. 1920) (finding "so well and so generally supported" that "when a statute authorizes the correction of judgments on the ground of 'mistake,' it means mistake of fact and not of law" (citation omitted)).

[3] *Accord Lankton v. Superior Court*, 55 P.2d 1170, 1170 (Cal. 1936) (refusing to correct "a judicial error" under section 473 because such errors "could only be corrected by the court upon a motion for a new trial, or by an appellate court upon an appeal."); *Shearman v. Jorgenson*, 39 P. 863, 864 (Cal. 1895) ("[M]istake as to the law bearing upon the question of notice cannot be urged by [the movant] with any hope of success.").

drafters highlighted—provide further support. *See* Fed. R. Civ. P. 60(b) advisory committee's note to 1937 draft. In New York, courts consistently held that a judgment "contrary to law" did not amount to the movant's "mistake, inadvertence, surprise, or excusable neglect." *J.J. Spurr & Sons v. Empire State Sur. Co.*, 106 N.Y.S. 1009, 1010 (App. Div. 1907); *Lackner v. Am. Clothing Co.*, 98 N.Y.S. 376, 378 (App. Div. 1906). And Minnesota recognized that where a movant's request for relief "rested upon considerations of legal right wholly," "mistake, inadvertence, surprise, or excusable neglect . . . were clearly not the grounds of the application." *Gallagher v. Irish-Am. Bank*, 81 N.W. 1057, 1058 (Minn. 1900).

To be sure, California and a few other States adopted an exception to the rule that mistakes exclude legal errors in cases involving default judgments. *See* 3 James Wm. Moore et al., *Moore's Federal Practice* § 60.05 & n.28, at 3280 (1st ed. 1938) (Moore) (citing only default cases). For instance, California courts reopened default judgments to allow merits proceedings if a legal misunderstanding led a party to default (*e.g.*, where non-English-speaking defendants did not know they needed to swear to their answer, *Berri v. Rogero*, 145 P. 95, 96-97 (Cal. 1914)). But that exception was strictly limited to default judgments and reflected California's "well established . . . policy of the law to bring about a trial on the merits wherever possible." *See Waite v. S. Pac. Co.*, 221 P. 204, 206 (Cal. 1923). There is no evidence that Rule 60 adopted this atextual gloss. And even if a "mistake" included legal errors giving rise to default judgments, that exception would not apply here.

2. States had good reason to exclude legal errors from the scope of statutes covering "mistake, inadvertence, surprise, or excusable neglect." Those provisions codified elements of courts' inherent powers to modify

judgments as part of a broader move among States to merge law and equity and provide simple pleading rules. But those provisions did not cover legal errors, because States chose to retain traditional common-law and equitable remedies, which had long provided authority for reopening judgments based on such errors. These States thus relied on those preexisting bases, not their new civil-procedure codes, to continue allowing litigants to redress legal errors in judgments.

New York pioneered the "mistake, inadvertence, surprise, or excusable neglect" language in the 1849 version of its legendary Code of Procedure, commonly called the Field Code (for lead drafter David Dudley Field). N.Y. Code of Procedure § 173 (Weed, Parsons & Co. 1849). The Field Code revolutionized civil procedure by fusing law and equity and codifying some causes of action and procedural rules for the first time. Kellen Funk, *Equity Without Chancery*, 36 J. Legal Hist. 152, 155 (2015). Courts of equity had an "inherent and discretionary power" to reopen judgements "whose enforcement would work inequity." *Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211, 234 (1995). The "mistake, inadvertence, surprise, or excusable neglect" provision thus codified part of this inherent power. *See In re Ralph's Estate*, 67 P.2d 230, 231 (Ariz. 1937).

The Field Code took the country by storm, with at least 23 other States soon following New York's lead. Robert G. Bone, *Mapping the Boundaries of a Dispute*, 89 Colum. L. Rev. 1, 10-11 & n.14 (1989). California—where Field's brother, future Justice Stephen J. Field, became a state legislator—quickly adopted the Field Code. Act of Apr. 22, 1850, ch. 142, § 68, 1850 Cal. Stat. 428, 434; *see* Funk, *supra*, at 167 & n.98. New York, California, and 15 other States ultimately included provisions permitting

reopening for "mistake, inadvertence, surprise, or excusable neglect" in their codes. *Supra* p. 14 n.1.

But the Field Codes only partially codified various forms of actions. The "mistake, inadvertence, surprise, or excusable neglect" provisions in particular did not "prevent the courts from acting on other causes, just and reasonable in themselves and good at common law." Black, *supra*, § 334, at 512.

One such longstanding remedy was the bill of review, which permitted relief for an "error of law apparent on the face of the record"—the type of error at issue here. *Fraser v. Doing*, 130 F.2d 617, 620 (D.C. Cir. 1942) (quoting *Scotten v. Littlefield*, 235 U.S. 407, 411 (1914)); *see* Moore, *supra*, § 60.02 n.12, at 3257 (tracing bills of review to Lord Bacon's first ordinance). That remedy allowed courts to correct legal errors "apparent upon the bill, answer, and other pleadings, and decree," without considering "the evidence at large." *Whiting v. Bank of the U.S.*, 13 Pet. 6, 14 (1839) (Story, J.). The bill of review also encompassed "new facts discovered since the decree" or "fraud in procuring the decree." *Fraser*, 130 F.2d at 620. Another similar remedy was an "original proceeding[] to enjoin enforcement of a judgment." *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 245 (1944).

Some States with "mistake" provisions accordingly continued to recognize the bill of review as a viable form of relief. *E.g.*, *San Joaquin & Kings River Canal & Irrigation Co. v. Stevinson*, 166 P. 338, 340 (Cal. 1917); *Ball v. Clothier*, 75 P. 1099, 1102 (Wash. 1904); *see* James Wm. Moore & Elizabeth B.A. Rogers, *Federal Relief from Civil Judgments*, 55 Yale L.J. 623, 644-48 (1946). Other States continued to invoke courts' inherent authority over judgments "to relieve from . . . mistake of law" without the bill of review label. *E.g.*, *Truesdale v. Sidle*, 67 N.W. 1004, 1005 (Minn. 1896); *Mack v. Hines*, 184 N.Y.S. 152,

154 (Sup. Ct. 1920); *see Ladd v. Stevenson*, 19 N.E. 842, 844 (N.Y. 1889) (permitting non-statutory reopening "for sufficient reason in the furtherance of justice").

Whatever the label, litigants in these States relied on the Field Codes to seek relief for a discrete class of non-legal errors—"mistake, inadvertence, surprise, or excusable neglect." But, when it came to legal errors apparent on the face of the record or many other grounds for relief, litigants kept relying on the bill of review and other common-law and equitable remedies. For example, litigants could use a common-law writ of audita querela to set aside a judgment that had been discharged. Moore & Rogers, *supra*, at 670. Or litigants could use an equitable bill of review to raise newly discovered evidence. *Id.* at 676. The States' "mistake, inadvertence, surprise, or excusable neglect" provisions did not need to enumerate every conceivable ground that might justify vacating a judgment because litigants had other means of relief.

3. The history of Rule 60's text and amendments make pellucid that Rule 60 transplanted these States' rules for reopening judgments into federal law. Modern-day Rule 60(b)(1) uses "mistake, inadvertence, surprise, or excusable neglect" the same way nineteenth-century state codes did, to exclude legal errors. Meanwhile, modern-day Rule 60(b)(6) assimilates the old bill of review for legal errors apparent from the face of the record.

a. When Rule 60 was adopted in 1937, its text replicated States' multi-track approach to reopening exactly. Rule 60(b) provided one explicit ground for relief: a court could "relieve a party or his legal representative from a judgment, order, or proceeding taken against him through his mistake, inadvertence, surprise, or excusable neglect." Rule 60(b) then preserved "the power of a court . . . to entertain an action to relieve a party from a judgment, order, or proceeding." Fed. R. Civ. P. 60(b)

(1938). In other words: Rule 60 was the device for relief from judgments based on "mistake, inadvertence, surprise, or excusable neglect." For all other types of errors—including legal errors apparent from the face of the court's opinion, like the one here—litigants could continue relying on existing common-law and equitable forms. No surprise, then, that the Advisory Committee drafting Rule 60 acknowledged modeling Rule 60 on these state provisions. *See* Fed. R. Civ. P. 60 advisory committee's note to 1937 draft.

Given Rule 60(b)'s state antecedents, courts and commentators considered it self-evident that the same reopening rules would apply in state and federal courts. Like those state laws, Rule 60's "mistake, inadvertence, surprise, or excusable neglect" clause was limited to non-legal errors. Parties in federal court, like their state-court counterparts, needed to invoke traditional remedies to raise errors of law.

As Professor Moore explained, "the bill of review for error of law apparent on the record" was "unaccounted for" by Rule 60(b), except for in "the saving clause" that preserved traditional common-law and equitable remedies. Moore, *supra*, § 60.04, at 3273-74; *accord Wallace v. United States*, 142 F.2d 240, 244 (2d Cir. 1944); *Fraser*, 130 F.2d at 620. While the "mistake" clause reached "mistake[s] of fact," the "wording of" the clause did not cover the bill of review; only the saving clause did. Moore, *supra*, § 60.04, at 3273. One district court used a bill of review, not Rule 60(b)'s "mistake" clause, to vacate a 22-year-old injunction forbidding customs inspectors from demanding overtime pay for closing the Niagara Falls Bridge at night—a legal holding the court deemed at odds with subsequent legislation. *Int'l Ry. Co. v. Davidson*, 65

F. Supp. 58, 61 (W.D.N.Y. 1945); *see* Moore & Rogers, *supra*, at 644 & n.65 (lauding this decision). Thus, under the original Rule 60(b), "mistake" did not include legal errors.

b. In 1946, Rule 60(b) was amended to essentially its present form, but those amendments did not change the meaning of the "mistake, inadvertence, surprise, or excusable neglect" clause, which became Rule 60(b)(1). The 1946 amendments made clear that actors besides the moving party could cause those defects, by removing the pronoun "his," but that change did not alter the substance of these errors. *Infra* pp. 35-36.

Instead, the key change was that the amendment "abolished" the bill of review and other common-law and equitable remedies, Fed. R. Civ. P. 60(e), and parceled those grounds for relief into Rules 60(b)(2)-(6). In doing so, the Advisory Committee sought to make Rule 60(b) "complete" and "define the practice with respect to any existing rights or remedies to obtain relief from final judgments." Fed. R. Civ. P. 60(b) advisory committee's note to 1946 amendment; *see* Wright & Miller, *supra*, § 2867; Mary Kay Kane, *Relief from Federal Judgments*, 30 Hastings L.J. 41, 43 (1978).

Thus, whereas litigants under the old regime would pursue an equitable bill of review for newly discovered evidence, litigants now raise "newly discovered evidence" in a Rule 60(b)(2) motion. *See* Fed. R. Civ. P. 60(b) advisory committee's note to 1946 amendment. Likewise, whereas litigants under the old regime could file a bill of review for fraud, Rule 60(b)(3) authorized a specific motion on that basis. *See Hazel-Atlas*, 322 U.S. at 244-45 & n.2 (old regime). Litigants under the old regime would use a writ of audita querela "to challenge the validity of a judgment for lack of jurisdiction over the defendant's person." Moore & Rogers, *supra*, at 664-65. Now, Rule 60(b)(4) supplies a specific motion for challenging judgments as "void."

And litigants under the old regime could wield bills of review or writs of audita querela to challenge judgments that were reversed or satisfied, respectively. *Id.* at 666-67, 676. Now, Rule 60(b)(5) motions cover those grounds.

But these revisions to Rule 60(b) did not cover the waterfront of relief that historical common-law and equitable remedies afforded. Most obviously, Rules 60(b)(2)-(5) did not cover the bill of review's well-established mechanism for raising legal errors apparent from the record. Nor did they cover "extraordinary case[s]" like the use of coram nobis to correct a proceeding rendered "a sham because of mob violence." *Sanders v. State*, 85 Ind. 318, 319, 333 (1882); Moore & Rogers, *supra*, at 671.

Enter Rule 60(b)(6): the phrase "any other reason that justifies relief" covers all the old ancillary bills and writs that the rest of Rule 60(b) did not specifically enumerate. *See* Theodore R. Mann, Note, *History and Interpretation of Federal Rule 60(b) of the Federal Rules of Civil Procedure*, 25 Temp. L.Q. 77, 83 (1951). Thus, the 1946 amendment retained the original Rule's basic structure. Specific non-legal errors could be corrected under the "mistake" clause while legal errors apparent on the face of the record fell elsewhere. Parceling out the common-law and equitable writs did not change the meaning of "mistake, inadvertence, surprise, or excusable neglect."

B. Neighboring Words in Rule 60(b)(1) Confirm that "Mistakes" Are Not Legal Errors

Interpreting "mistake" in tandem with its neighbors in Rule 60(b)(1)—"inadvertence, surprise, or excusable neglect"—reinforces why "mistake" excludes legal errors. The *noscitur a sociis* canon "counsels that a word is given more precise content by the neighboring words with which it is associated." *United States v. Williams*, 553

U.S. 285, 294 (2008). This is a quintessential case for applying that canon. Rule 60(b)(1) contains a compact list of four nouns, one of which—"mistake"—could succumb to overbreadth if read in isolation. This Court routinely applies the *noscitur* canon to statutory phrases with just this structure. *E.g.*, *Freeman v. Quicken Loans, Inc.*, 566 U.S. 624, 634-35 (2012) ("portion, split, or percentage"); *Gustafson v. Alloyd Co.*, 513 U.S. 561, 575 (1995) ("prospectus, notice, circular, advertisement, [or] letter"); *Jarecki v. G.D. Searle & Co.*, 367 U.S. 303, 307 (1961) ("exploration, discovery, or prospecting").

Here, Rule 60(b)(1)'s enumerated grounds for relief "invoke the words' common 'core of meaning.'" *See Freeman*, 566 U.S. at 635 (citation omitted). Read alongside its neighbors "inadvertence, surprise, or excusable neglect," the word "mistake" does not refer to every error under the sun. Rather, like its compatriots in the clause, "mistake" refers to non-legal errors.

The settled meaning of these neighboring terms in 1937, when Rule 60(b) was first adopted, makes that limitation clear. "[I]nadvertence" meant "[h]elplessness; lack of attention; failure of a person to pay careful and prudent attention to the progress of a negotiation or a proceeding in court by which his rights may be affected." *Black's Law Dictionary* 940 (3d ed. 1933). "Surprise" was "[a]nything which happens without the agency or fault of the party affected by it, tending to disturb and confuse the judgment, or to mislead him, of which the opposite party takes an undue advantage." *Id.* at 1687. And "excusable neglect" meant "a failure to take the proper steps at the proper time" due either to "some unexpected or unavoidable hindrance or accident, or reliance on the care and vigilance of his counsel or on promises made by the adverse party." *Id.* at 715.

"Inadvertence," "surprise," and "excusable neglect" share a common theme: these defects are not legal errors. If someone fails "to pay careful and prudent attention" to court proceedings, say by falling asleep in court, that person commits inadvertence, not legal error. Similarly, a legal error is not a "surprise" that might "tend[] to mislead" a litigant or prompt the other side to take "undue advantage." A litigant is not "disturb[ed] and confuse[d]" when his lawyer erroneously relies on overturned precedent. Nor do legal errors create "excusable neglect." And a legal error is not an "unexpected or unavoidable hindrance or accident"; meningitis is. *E.g.*, *Rooks v. Am. Brass Co.*, 263 F.2d 166, 168 (6th Cir. 1959).

Further, *courts* cannot cause judgments to go awry due to "inadvertence," "surprise," and "excusable neglect"—suggesting that courts do not make "mistake[s]" for Rule 60(b)(1) purposes, either. "Inadvertence" is a problem arising from a *party*'s inattention to proceedings where that party's "rights" could be affected. "Surprise," too, involves circumstances that befuddle or mislead a *party*, prompting the other side to take advantage. To say a judge was "surprised" into committing legal error is a non sequitur. Nor could judges create "excusable neglect." Putting aside the awkwardness of such an accusation, judges have no "counsel" or "adverse party" to rely upon—those are attributes of parties.

C. Rule 60's Structure Confirms that Rule 60(b)(1) Does Not Cover Legal Errors

When viewed "as a whole," the "broader context" of Rule 60 demonstrates that Rule 60(b)(1) does not cover legal errors. *See Yates v. United States*, 574 U.S. 528, 537 (2015) (citation omitted). Rule 60(a) uses "mistake" but does not cover legal errors—so Rule 60(b)(1) "mistake[s]" should not cover legal errors either. None of the other provisions in Rules 60(b)(1), (2), and (3) cover legal errors,

so it would be incongruous for 60(b)(1) "mistakes" to be the one dissonant note. Rather, Rules 60(b)(4), (5), and (6) cover various legal errors—with legal errors apparent from the record falling in 60(b)(6). That placement makes sense. Motions under those subsections must be filed within a reasonable time, not one year, because those subsections cover errors that do not rely on fact-finding from a cold record or witness testimony that might grow stale.

1. **Rule 60(a).** The word "mistake" appears in both Rules 60(b)(1) and 60(a). Ordinarily, "identical words used in different parts of the same act are intended to have the same meaning." *Pereira v. Sessions*, 138 S. Ct. 2105, 2115 (2018) (citation omitted). So the word "mistake" should have a consistent definition across Rules 60(a) and 60(b). Because a "mistake" under Rule 60(a) does not cover legal errors, neither should a "mistake" under Rule 60(b)(1).

Rule 60(a) allows courts to "correct a clerical mistake or a mistake arising from oversight or omission." Obviously, "clerical mistake[s]" are not legal errors; they are typos and the like. *E.g., Esquire Radio*, 804 F.2d at 795-96 (court put $269,689.89, not $296,686.89 on verdict form). "[M]istake[s] arising from oversight or omission" reflect similar insubstantial slip-ups, like neglecting to date-stamp a document. *E.g.*, *Pattiz v. Schwartz*, 386 F.2d 300, 303 (8th Cir. 1968); *see* Wright & Miller, *supra*, § 2854. Bottom line: Rule 60(a) is a mechanism for courts to conform a judgment to "the original intent of the court." *Garamendi v. Henin*, 683 F.3d 1069, 1079 (9th Cir. 2012). Rule 60(a) is not "a guise for changing previous decisions." *Am. Trucking Ass'ns v. Frisco Transp. Co.*, 358 U.S. 133, 146 (1958).

Thus, Rule 60(a) does not reach legal errors, a classic type of error that strikes at the heart of a court's decisionmaking. *See* 12 James Wm. Moore et al., *Moore's*

Federal Practice § 60.11[3] (3d ed. updated Dec. 2021). Legal errors inherently "affect[] substantive rights of the parties" and therefore fall "beyond the scope of Rule 60(a)." *See In re W. Tex. Mktg. Co.*, 12 F.3d 497, 504 (5th Cir. 1994). When district courts make such a "deliberate choice," Rule 60(a) cannot provide relief "even where that deliberate choice is based on a mistake of law." *Rivera v. PNS Stores, Inc.*, 647 F.3d 188, 196 (5th Cir. 2011). In sum, a "mistake" under Rule 60(a) cannot include legal errors. It would be nonsensical for Congress to have employed a diametrically different definition of "mistake" in the very next provision, Rule 60(b)(1).

2. **Rule 60(b).** Limiting "mistake" to factual errors also makes sense of Rule 60(b)'s structure, which subdivides grounds for relief into two categories. Motions under Rules 60(b)(1)-(3) must be filed no later than one year after entry of judgment. Fed. R. Civ. P. 60(c)(1). Motions under Rules 60(b)(4)-(6) have no firm deadline; the only constraint is to file within a "reasonable time." *Id.*

That disparity in deadlines tracks substantive differences between these two sets of Rules. Rules 60(b)(1)-(3) provide relief for *non-legal* errors. Rule 60(b)(1)'s other grounds for relief—"inadvertence, surprise, or excusable neglect"—do not reach legal errors. *Supra* p. 25. Nor does Rule 60(b)(2), which allows relief for "newly discovered evidence" that the party could not have discovered before the 28-day deadline for filing Rule 59(b) motions. Nor does Rule 60(b)(3), which allows relief for "fraud . . . , misrepresentation, or misconduct by an opposing party," such as witness tampering. *E.g.*, *Ty Inc. v. Softbelly's Inc.*, 353 F.3d 528, 536 (7th Cir. 2003).

All of these grounds target non-legal missteps. And all involve factual determinations where fresh recollections are particularly important. Determining whether a party neglected a deadline because he excusably fell ill or

inexcusably spent too long editing his brief requires examining litigation conduct. Likewise, courts must weigh newly discovered evidence against existing evidence and balance the probity of that new evidence against the possible staleness of old evidence. Fraud by an opposing party also calls for untangling the facts of litigation conduct. So it makes sense for Rule 60(b) to group these fact-intensive errors together and impose a non-extendable one-year deadline for correction. In short, not only does "mistake" in Rule 60(b)(1) kick off a unified phrase ("inadvertence, surprise, or excusable neglect") that otherwise excludes legal errors. Rule 60(b)(1) is also part of a cluster of provisions that all reach similarly fact-laden errors, and thus face the same one-year filing deadline.

By contrast, Rules 60(b)(4)-(6) provide relief for legal errors and post-judgment developments that invalidate the judgment. None of these errors require courts to reassess a cold record or trigger other concerns about stale fact-finding that would justify a strict, one-year deadline.

Rule 60(b)(4) offers relief for serious legal errors that render a judgment "void," namely jurisdictional errors or certain due-process violations. *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 271 (2010).

Rule 60(b)(5) covers developments that nullify the legal effect or validity of the judgment, for instance if "the judgment has been satisfied, released, or discharged" and thus no longer has legal effect. *See Conte v. Gen. Housewares Corp.*, 215 F.3d 628, 639-40 (6th Cir. 2000). Rule 60(b)(5) is also available if the judgment "is based on an earlier judgment that has been reversed or vacated," *i.e.*, where the later judgment relies on an earlier one for res judicata or claim preclusion and the earlier judgment loses effect. *Gillispie v. Warden*, 771 F.3d 323, 327 (6th Cir. 2014); *see* Wright & Miller, *supra*, § 2863. In both cases, the upshot is the judgment no longer has force.

Rule 60(b)(5) includes additional relief for prospective judgments. If "applying [the judgment] prospectively is no longer equitable" based on significant changed circumstances, movants can seek modification or rescission. *See Rufo*, 502 U.S. at 384-85. That clause traces to courts of equity's power to modify a judgment when "changing circumstances" turn the judgment "into an instrument of wrong." *United States v. Swift & Co.*, 286 U.S. 106, 114-15 (1932); *see* Wright & Miller, *supra*, § 2863. Like voidness, inequitable prospective relief reflects a fundamental defect.

Rule 60(b)(6)'s catch-all clause, which covers "any other reason that justifies relief," similarly reaches legal errors and later developments that impugn a judgment. And, like Rules 60(b)(4) and (b)(5), Rule 60(b)(6) only reaches the most serious defects by requiring "extraordinary circumstances." *Gonzalez*, 545 U.S. at 536.

This Court's cases illustrate Rule 60(b)(6)'s breadth. This Court has relied on Rule 60(b)(6) as a vehicle for addressing both legal errors apparent at the time of the judgment and those based on intervening legal developments. For instance, Rule 60(b)(6) was the "proper" subsection for relief where a trial judge erroneously failed to follow a federal statute requiring recusal at the time of trial. *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 850-51, 863 n.11 (1988). So too, Rule 60(b)(6) governed a motion raising a Sixth Amendment violation at trial (as well as intervening legal developments). *Buck v. Davis*, 137 S. Ct. 759, 772 (2017). Rule 60(b)(6) was the vehicle for a movant to argue that a denaturalization judgment against him "was unlawful and erroneous," based on the dismissal of his co-defendant's case for insufficient evidence. *Ackermann*, 340 U.S. at 196; *see Polites v. United States*, 364 U.S. 426, 431 (1960). This Court also entertains arguments under Rule 60(b)(6) that intervening

legal decisions show that the original judgment was legally erroneous. *See Polites*, 364 U.S. at 431; *Gonzalez*, 545 U.S. at 536; *Tharpe v. Sellers*, 138 S. Ct. 545, 545 (2018) (per curiam); *id.* at 549 (Thomas, J., dissenting).

Rule 60(b) thus strikes a balance between justice and finality. For errors that routinely require factual parsing, the Rule imposes a firm one-year time limit to avoid the costs of fading memories and stale records. For legal errors and later developments that negate the judgment, the Rule imposes a flexible "reasonable" time limit. But, to protect finality, only the most serious errors get this flexibility.

II. The Government's Contrary Interpretation Is Untenable

The government instead contends that legal errors are "mistakes" falling under Rule 60(b)(1) because a "mistake" purportedly means *any* error or mistaken view. But slotting all legal errors into Rule 60(b)(1) makes a mess of Rule 60. And, far from reducing unnecessary appeals, the government's interpretation threatens to breed litigation by gutting fixed deadlines for reconsideration and appeal.

A. The Government's Textual Interpretation of Rule 60(b)(1) Is at War with the Rest of Rule 60

1. **"Mistake."** Citing one modern and one contemporaneous dictionary, the government (at Br. in Opp. 13) equates "mistake" with *any* "error[]" or "misunderstanding[]." Br. in Opp. 12 (citing *Black's Law Dictionary* (11th ed. 2019); *Cyclopedic Law Dictionary* 721 (3d ed. 1940)). Under that definition, any error by anyone—factual, legal, clerical, or metaphysical—qualifies. But the government obscures the shades of "mistakes" in these dictionaries, both of which separately define "mistake of fact" and "mistake of law" (among other variants). The dictionaries just beg the question of which type of mistake

Rule 60 means: all mistakes? Factual ones? Legal ones? Mutual ones? Good-faith ones?

The government's interpretation of "mistake" as any error cannot be the answer, because that interpretation would cause Rule 60(b)(1) to swallow much of the rest of Rule 60.

Rule 60(a). Under the government's mistake-is-error interpretation, Rule 60(b)(1) would subsume Rule 60(a), producing serious anomalies. Like Rule 60(b)(1), Rule 60(a) refers to "mistake[s]"—specifically, "a clerical mistake or a mistake arising from oversight or omission." Given that back-to-back usage, the strong presumption is that a "mistake" means the same thing throughout. *See Pereira*, 138 S. Ct. at 2115. But under the government's broad reading of "mistake" as any "error," Rule 60(a) would cover all sorts of legal errors, too. Adding to the breadth, the government reads Rule 60(a) to encompass "errors whether committed by the court itself, court personnel, or the parties." Br. in Opp. 13.

So long as the court committed legal errors due to "oversight or omission," those errors would apparently fall within Rule 60(a). If the judge overlooks that the operative statute is superseded or the law clerk misses a red flag on Westlaw, Rule 60(a) would seemingly apply under the government's definition. Indeed, under the government's definition of "mistake," this very case fits under Rule 60(a). The government describes the error here as an "obvious misapplication of a timing provision under the facts as recited in the district court's own opinions." Br. in Opp. 14-15. The government's interpretation of "mistake" would thus provoke a sea change in the way Rule 60(a) has always operated: solely "to correct inadvertent ministerial errors." *Am. Trucking Ass'ns*, 358 U.S. at 146; *supra* pp. 26-27.

Further, by broadening Rule 60(a) to encompass any legal errors that could "aris[e] from oversight or omission," the government's interpretation would inject unpredictability into which part of Rule 60 litigants should invoke to seek relief from a judgment based on legal errors, and when to file. Unlike Rule 60(b)(1), Rule 60(a) has no deadline; the only constraint is that courts of appeals must sign off if the decision has already been appealed. Rule 60(a) relief does not even require a motion—a court can act sua sponte. Fed. R. Civ. P. 60(a).

It would be nonsensical for legal errors arising from a judge's "oversight or omission" to fall under *both* Rule 60(a), with no filing deadline or procedural guardrails, *and* Rule 60(b)(1), with a non-extendable one-year deadline plus a "motion and just terms" requirement. Fed. R. Civ. P. 60(b). Courts would have to sort out which provision should govern, with no clear solution. At a minimum, the government's interpretation creates the kind of "redundancy within the Rule" that the government itself says should be avoided. *See* Br. in Opp. 14.

Rules 60(b)(4) and (5). Under the government's definition, a Rule 60(b)(1) "mistake" would include every type of legal error. But Rules 60(b)(4) and (5) already cover many types of legal error. Rule 60(b)(4) offers relief from "void" judgments, *i.e.*, where the court lacked jurisdiction or allowed due-process violations to infect the proceedings. *Espinosa*, 559 U.S. at 271; *supra* p. 28. And Rule 60(b)(5) affords relief if (for instance) the judgment is based on a prior judgment that no longer has legal effect, or if later legal changes render a consent decree inequitable. *Supra* pp. 28-29. Again: legal errors. So under the government's reading of "mistake," Rule 60(b)(1) should absorb them too, creating further redundancy.

Rule 60(b)(6). The government's any-error-is-a-mistake reading wreaks similar havoc for Rule 60(b)(6), which

this Court has already interpreted to cover some legal errors. This Court has recognized that "a subsequent change in substantive law is a 'reason justifying relief'" under Rule 60(b)(6); such changes show that the original decision rested on legal error. *See Gonzalez*, 545 U.S. at 531 (quoting Fed. R. Civ. P. 60(b)(6)); *accord* Br. in Opp. 18. But under the government's interpretation, intervening legal changes should go in Rule 60(b)(1). And 60(b)(1) and (b)(6) could not simultaneously cover these sorts of legal errors, because Rule 60(b)(6) is "mutually exclusive" with the other grounds in Rule 60(b). *Liljeberg*, 486 U.S. at 863 n.11. This Court should reject a reading of Rule 60(b)(1) that calls multiple 60(b)(6) precedents into question. *E.g.*, *Polites*, 364 U.S. at 431; *Gonzalez*, 545 U.S. at 536; *Tharpe*, 138 S. Ct. at 545.

The government (at Br. in Opp. 18-19) tries to sidestep the problem by confining Rule 60(b)(6) to intervening legal developments. But if, as the government (at 12) says, a "mistake" is any "error" or "erroneous belief," a court's failure to anticipate intervening law fits the bill. The court's original decision was legally erroneous from the start. When this Court articulates a legal rule, "the underlying right necessarily pre-exists [the Court's] articulation of the new rule." *Danforth v. Minnesota*, 552 U.S. 264, 271 (2008); *accord Harper v. Va. Dep't of Tax'n*, 509 U.S. 86, 107 (1993) (Scalia, J., concurring).

In all events, this Court's precedents refute the notion that Rule 60(b)(6) reaches only intervening legal developments. In *Liljeberg*, the legal error—a financial conflict requiring recusal under 28 U.S.C. § 455(a)—existed at trial. 486 U.S. at 850-51. The movant just did not discover the error for 17 months. *See Health Servs. Acquisition Corp. v. Liljeberg*, 796 F.2d 796, 798 (5th Cir. 1986).

The ensuing overlap between Rules 60(b)(1) and (b)(4), (5), and (6) would create a litigation muddle and

needless uncertainty over when to file. This Court seeks "harmony over conflict in . . . interpretation" and avoids "internal inconsistencies." *Epic Sys. Corp. v. Lewis*, 138 S. Ct. 1612, 1624 (2018); *United States v. Turkette*, 452 U.S. 576, 580 (1981). But under the government's interpretation, the same "error" could simultaneously be subject to Rule 60(b)(1)'s one-year time limit and the flexible "reasonable" timeline for Rule 60(b)(4), (5), or (6), with no clear winner. Should Rule 60(b)(1) prevail, on the theory that Rule 60 prizes finality? Or should the more generous "reasonable" time limit prevail in the interests of justice? Should courts treat motions like chimeras, blending together different parts of Rule 60 and decide which creature predominates? Only the government's interpretation creates these quandaries, which is reason enough to reject it.

2. **Errors by Courts.** Even if Rule 60(b)(1) "mistake[s]" included legal errors, the government is incorrect that the Rule covers errors by *courts*. The government has not disputed that the other types of defects in Rule 60(b)(1)—"inadvertence, surprise, or excusable neglect"—are not problems that courts can introduce. *See* Br. in Opp. 15. So the most natural inference is that "mistake[s]" under Rule 60(b)(1) are not court committed either. *Supra* p. 25.

The government (at Br. in Opp. 13) reasons that because Rule 60(a) encompasses courts' errors, Rule 60(b)(1) should too. But textual differences demonstrate that while Rules 60(a) and (b)(1) use the word "mistake" the same way, they do not cover the exact same actors making those mistakes. Rule 60(a) provides relief from "clerical mistake[s]," and thus reaches mistakes by judicial clerks. *Jones v. Anderson-Tully Co.*, 722 F.2d 211, 212 (5th Cir. 1984). Rule 60(a) also covers "mistake[s]

arising from oversight or omission," another type of mistake that courts could certainly make. *E.g.*, *Robi v. Five Platters, Inc.*, 918 F.2d 1439, 1444-45 (9th Cir. 1990). Rule 60(a) also allows the court to correct mistakes "on its own" and "without notice," contemplating some self-correction. *E.g.*, *Chavez v. Balesh*, 704 F.2d 774, 776 (5th Cir. 1983). Rule 60(a), in short, contains none of the contextual clues that exclude courts as relevant actors in Rule 60(b)(1). *Supra* p. 25. And reading Rules 60(a) and (b)(1) to both cover courts' "mistakes" creates unnecessary superfluity and discord given these provisions' disparate deadlines. *Supra* p. 32.

The government (at Br. in Opp. 14) also seizes upon a red herring in Rule 60(b)(1)'s drafting history: Rule 60(b) lost a pronoun over the years. The Rule originally authorized a party to obtain relief from "his mistake, inadvertence, surprise, or excusable neglect." Fed. R. Civ. P. 60(b) (1938). In 1946, the drafters removed "his," so Rule 60(b)(1) today offers relief based on "mistake, inadvertence, surprise, or excusable neglect" without specifying which actor originates the mistake. Based on this change, the government surmises, Rule 60's drafters roped in courts' legal errors.

That inference is faulty. First, deleting a pronoun does not change the scope of the terms "mistake, inadvertence, surprise, or excusable neglect," let alone transform a "mistake" into a legal error. If "his mistake" did not include the movant's legal errors, "mistake" does not include anyone's legal errors, period.

Further, while deleting "his" expanded the range of actors who might commit "mistake[s]" beyond the moving party, the deletion did not open the doors to *courts'* "mistake[s]." In *Liljeberg*, this Court applied the current, hisless version of the Rule and deemed a motion raising a court's legal error—the judge's failure to recuse under a

federal statute—"proper" under Rule 60(b)(6), not (b)(1). 486 U.S. at 863 n.11. The Court found it "particular[ly] importan[t]" that any fault lay with the judge. *Id.* That strongly suggests that courts' errors do not fall under modern-day Rule 60(b)(1).

The history of the 1946 amendment supports that reading. Before 1946, district courts split over whether opposing or third-party mistakes qualified as "mistake[s]," or if relief was limited to mistakes by the *moving* party. *Compare, e.g.*, *Fleming v. Miller*, 47 F. Supp. 1004, 1009 (D. Minn. 1942), *with Huntington Cab Co. v. Am. Fid. & Cas. Co.*, 4 F.R.D. 496, 498 (S.D.W. Va. 1945). The 1946 amendment made clear that yes, opposing and third-party errors also qualify.

The Advisory Committee intended to "include the mistake or neglect of others which may be just as material and call just as much for supervisory jurisdiction as where the judgment is taken against the party through *his* mistake, inadvertence, etc." Fed. R. Civ. P. 60(b) advisory committee's note to 1946 amendment. Thus, the mistakes of counsel, summer associates, process servers, and postal workers could all warrant correction. But it does not follow that *judicial* errors got swept in. Courts exercise "supervisory jurisdiction" over other people's errors, not their own. *E.g.*, *Taylor v. Voss*, 271 U.S. 176, 180 (1926).

B. The Government's Interpretation Creates Structural Anomalies and Inefficiencies

1. By shoehorning legal errors into Rule 60(b)(1), the government's interpretation would also upset time limits in other Federal Rules. Rule 60(b)(6) requires "extraordinary circumstances" for relief. *Gonzalez*, 545 U.S. at 536. Because that bar is high, parties have every incentive to raise legal errors on reconsideration (within 28 days) or on appeal (within 30 to 60 days). Rule 60(b)(1) imposes an

inflexible one-year-max deadline from judgment, but excludes any comparable heightened standard for relief. Thus, by shunting mine-run legal errors into Rule 60(b)(1), the government's interpretation perversely rewards litigants who bypass deadlines for reconsideration or appeal but file essentially the same motion months later under Rule 60(b)(1).

Start with Federal Rule of Civil Procedure 59(e), which allows parties to move "to alter or amend a judgment." That provision permits relief for any "matters properly encompassed in a decision on the merits," including legal errors. *White v. N.H. Dep't of Emp. Sec.*, 455 U.S. 445, 451 (1982). That breadth comes at a price: courts "must not extend" Rule 59(e)'s 28-day deadline. Fed. R. Civ. P. 6(b)(2). Classifying legal errors under Rule 60(b)(6) respects that deadline. Parties cannot just rehash arguments in a Rule 60(b)(6) motion that would or could have appeared in a Rule 59(e) motion for reconsideration; they must also show "extraordinary circumstances." *See Gonzalez*, 545 U.S. at 536.

The government's equation of "mistake" with legal error removes that limitation. Under the government's approach, a party could repackage a Rule 59(e) motion for reconsideration as a Rule 60(b)(1) motion. Or a party could miss Rule 59(e)'s 28-day deadline, but file the same motion months later claiming legal error under Rule 60(b)(1). Putting legal errors into Rule 60(b)(1) would thus let parties circumvent the fixed 28-day deadline and explode the overlap with Rule 59(e). *See Silk v. Sandoval*, 435 F.2d 1266, 1268 (1st Cir. 1971) (rejecting the government's reading on this basis). Of course, under either view, parties could raise non-legal mistakes or "inadvertence, surprise, or excusable neglect" in Rule 59(e) and Rule 60(b)(1) motions. But those grounds are narrow; motions for reconsideration routinely target legal errors.

The government's interpretation creates similar problems for the deadlines for appeal in Federal Rule of Appellate Procedure 4(a) and 28 U.S.C. § 2107. Those provisions require filing civil notices of appeal within 30 days of entry of judgment (or 60 days if there is a federal party). Fed. R. App. P. 4(a)(1); 28 U.S.C. § 2107(a)-(b). While district courts have "limited authority" to extend the deadline, 180 days after final judgment is the absolute cutoff. *Bowles v. Russell*, 551 U.S. 205, 208 (2007); Fed. R. App. P. 4(a)(5)-(6); 28 U.S.C. § 2107(c). Yet, under the government's interpretation of Rule 60(b)(1), a party could blow past the deadline for noticing an appeal, then raise all the same legal grounds in a Rule 60(b)(1) motion without any heightened showing.

The government responds to these incongruities by transforming Rule 60(b)(1)'s one-*year*-max deadline into a de facto one-*month* deadline. In the government's view, Rule 60(b)(1) should "generally (though not inflexibly) requir[e] that the [Rule 60(b)(1)] motion be filed within the time for noticing an appeal," *i.e.*, 30 days (or 60 days, if federal parties are involved). Br. in Opp. 17. But this deadline appears nowhere in Rule 60's text. Other Federal Rules of Civil Procedure explicitly cross-reference Federal Rule of Appellate Procedure 4(a), incorporating its tolling or notice rules. *E.g.*, Fed. R. Civ. P. 58(e), 77(d)(2). Rule 60 could have cross-referenced Rule 4(a) too, but instead permits relief at "a reasonable time"—a standard that inherently "depends on the facts of each case." *See Days Inns Worldwide, Inc. v. Patel*, 445 F.3d 899, 906 (6th Cir. 2006); Wright & Miller, *supra*, § 2866.

2. The government contends that giving parties multiple avenues for correcting courts' legal errors under Rules 59(e) and 60(b)(1) would prevent unnecessary appeals. In the government's view, courts would maximize their opportunities to "recognize[] a clear legal or factual

error before a pending appeal has been briefed." Br. in Opp. 16 (quoting *Mendez v. Republic Bank*, 725 F.3d 651, 660 (7th Cir. 2013)).

But it is hard to see what corrective value Rule 60(b)(1) adds to Rule 59(e). Rule 59(e) already allows a district court 28 days "to fix any mistakes and thereby perfect its judgment before a possible appeal." *Banister v. Davis*, 140 S. Ct. 1698, 1708 (2020). Thus, under the government's position, parties who miss the 28-day deadline for a Rule 59(e) motion generally will have only two days to seek and obtain Rule 60(b)(1) relief before having to notice an appeal (since notices of appeal are generally due 30 days after judgment, 28 U.S.C. § 2107(a)). So even if Rule 60(b)(1) implicitly incorporated the notice-of-appeal deadline, it is doubtful that the government's position would accomplish any "salutary efficiency ends." Br. in Opp. 16.

If anything, the government's position risks exacerbating inefficiencies. A timely Rule 59(e) motion suspends the deadline for appealing until the court resolves the motion. *Banister*, 140 S. Ct. at 1703. But if the court denies the Rule 59(e) motion, parties could file simultaneous Rule 60(b)(1) motions and appeals raising the same legal error. If the district court denies the Rule 60(b)(1) motion, the movant could then notice a second appeal from that ruling, since that ruling would not merge with the underlying judgment already on appeal. *Id.* at 1710; *see Stone v. INS*, 514 U.S. 386, 401 (1995). These messy procedural complications are all the more reason to reject the government's reading of Rule 60(b)(1) in favor of a bright-line rule: Rule 60(b)(1) does not reach legal errors.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted,

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STATUTORY APPENDIX

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28 U.S.C. § 2107. Time for appeal to courts of appeals

(a) Except as otherwise provided in this section, no appeal shall bring any judgment, order or decree in an action, suit or proceeding of a civil nature before a court of appeals for review unless notice of appeal is filed, within thirty days after the entry of such judgment, order or decree.

(b) In any such action, suit, or proceeding, the time as to all parties shall be 60 days from such entry if one of the parties is—

(1) the United States;

(2) a United States agency;

(3) a United States officer or employee sued in an official capacity; or

(4) a current or former United States officer or employee sued in an individual capacity for an act or omission occurring in connection with duties performed on behalf of the United States, including all instances in which the United States represents that officer or employee when the judgment, order, or decree is entered or files the appeal for that officer or employee.

(c) The district court may, upon motion filed not later than 30 days after the expiration of the time otherwise set for bringing appeal, extend the time for appeal upon a showing of excusable neglect or good cause. In addition, if the district court finds—

(1) that a party entitled to notice of the entry of a judgment or order did not receive such notice from the clerk or any party within 21 days of its entry, and

(2) that no party would be prejudiced, the district court may, upon motion filed within 180 days after entry of the judgment or order or within 14 days after receipt of such notice, whichever is earlier, reopen the time for appeal for a period of 14 days from the date of entry of the order reopening the time for appeal.

(d) This section shall not apply to bankruptcy matters or other proceedings under Title 11.

Federal Rule of Appellate Procedure 4: Appeal as of Right—When Taken

(a) Appeal in a Civil Case.

(1) Time for Filing a Notice of Appeal.

(A) In a civil case, except as provided in Rules 4(a)(1)(B), 4(a)(4), and 4(c), the notice of appeal required by Rule 3 must be filed with the district clerk within 30 days after entry of the judgment or order appealed from.

(B) The notice of appeal may be filed by any party within 60 days after entry of the judgment or order appealed from if one of the parties is:

(i) the United States;

(ii) a United States agency;

(iii) a United States officer or employee sued in an official capacity; or

(iv) a current or former United States officer or employee sued in an individual capacity for an act or omission occurring in connection with duties performed on the United States' behalf—including all instances in which the United States represents that person when the judgment or order is entered or files the appeal for that person.

(C) An appeal from an order granting or denying an application for a writ of error coram nobis is an appeal in a civil case for purposes of Rule 4(a).

(2) Filing Before Entry of Judgment. A notice of appeal filed after the court announces a decision or order—but before the entry of the judgment or order—is treated as filed on the date of and after the entry.

(3) Multiple Appeals. If one party timely files a notice of appeal, any other party may file a notice of appeal within 14 days after the date when the first notice was filed, or within the time otherwise prescribed by this Rule 4(a), whichever period ends later.

(4) Effect of a Motion on a Notice of Appeal.

(A) If a party files in the district court any of the following motions under the Federal Rules of Civil Procedure—and does so within the time allowed by those rules—the time to file an appeal runs for all parties from the entry of the order disposing of the last such remaining motion:

(i) for judgment under Rule 50(b);

(ii) to amend or make additional factual findings under Rule 52(b), whether or not granting the motion would alter the judgment;

(iii) for attorney's fees under Rule 54 if the district court extends the time to appeal under Rule 58;

(iv) to alter or amend the judgment under Rule 59;

(v) for a new trial under Rule 59; or

(vi) for relief under Rule 60 if the motion is filed no later than 28 days after the judgment is entered.

(B)(i) If a party files a notice of appeal after the court announces or enters a judgment—but before it disposes of any motion listed in Rule 4(a)(4)(A)—the notice becomes effective to appeal a judgment or order, in whole or in part, when the order disposing of the last such remaining motion is entered.

(ii) A party intending to challenge an order disposing of any motion listed in Rule 4(a)(4)(A), or a judgment's alteration or amendment upon such a motion, must file

a notice of appeal, or an amended notice of appeal—in compliance with Rule 3(c)—within the time prescribed by this Rule measured from the entry of the order disposing of the last such remaining motion.

(iii) No additional fee is required to file an amended notice.

(5) Motion for Extension of Time.

(A) The district court may extend the time to file a notice of appeal if:

(i) a party so moves no later than 30 days after the time prescribed by this Rule 4(a) expires; and

(ii) regardless of whether its motion is filed before or during the 30 days after the time prescribed by this Rule 4(a) expires, that party shows excusable neglect or good cause.

(B) A motion filed before the expiration of the time prescribed in Rule 4(a)(1) or (3) may be ex parte unless the court requires otherwise. If the motion is filed after the expiration of the prescribed time, notice must be given to the other parties in accordance with local rules.

(C) No extension under this Rule 4(a)(5) may exceed 30 days after the prescribed time or 14 days after the date when the order granting the motion is entered, whichever is later.

(6) Reopening the Time to File an Appeal. The district court may reopen the time to file an appeal for a period of 14 days after the date when its order to reopen is entered, but only if all the following conditions are satisfied:

(A) the court finds that the moving party did not receive notice under Federal Rule of Civil Procedure 77(d) of

the entry of the judgment or order sought to be appealed within 21 days after entry;

(B) the motion is filed within 180 days after the judgment or order is entered or within 14 days after the moving party receives notice under Federal Rule of Civil Procedure 77(d) of the entry, whichever is earlier; and

(C) the court finds that no party would be prejudiced.

(7) Entry Defined.

(A) A judgment or order is entered for purposes of this Rule 4(a):

(i) if Federal Rule of Civil Procedure 58(a) does not require a separate document, when the judgment or order is entered in the civil docket under Federal Rule of Civil Procedure 79(a); or

(ii) if Federal Rule of Civil Procedure 58(a) requires a separate document, when the judgment or order is entered in the civil docket under Federal Rule of Civil Procedure 79(a) and when the earlier of these events occurs:

- the judgment or order is set forth on a separate document, or
- 150 days have run from entry of the judgment or order in the civil docket under Federal Rule of Civil Procedure 79(a).

(B) A failure to set forth a judgment or order on a separate document when required by Federal Rule of Civil Procedure 58(a) does not affect the validity of an appeal from that judgment or order.

* * * * *

Federal Rule of Civil Procedure 59: New Trial; Altering or Amending a Judgment

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(e) Motion to Alter or Amend a Judgment. A motion to alter or amend a judgment must be filed no later than 28 days after the entry of judgment.

* * * * *

Federal Rule of Civil Procedure 60: Relief from a Judgment or Order

(a) Corrections Based on Clerical Mistakes; Oversights and Omissions. The court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record. The court may do so on motion or on its own, with or without notice. But after an appeal has been docketed in the appellate court and while it is pending, such a mistake may be corrected only with the appellate court's leave.

(b) Grounds for Relief from a Final Judgment, Order, or Proceeding. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect;

(2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);

(3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;

(4) the judgment is void;

(5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or

(6) any other reason that justifies relief.

(c) Timing and Effect of the Motion.

(1) ***Timing.*** A motion under Rule 60(b) must be made within a reasonable time—and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding.

(2) ***Effect on Finality.*** The motion does not affect the judgment's finality or suspend its operation.

(d) Other Powers to Grant Relief. This rule does not limit a court's power to:

(1) entertain an independent action to relieve a party from a judgment, order, or proceeding;

(2) grant relief under 28 U.S.C. § 1655 to a defendant who was not personally notified of the action; or

(3) set aside a judgment for fraud on the court.

(e) Bills and Writs Abolished. The following are abolished: bills of review, bills in the nature of bills of review, and writs of coram nobis, coram vobis, and audita querela.

Federal Rule of Civil Procedure 60: Relief from Judgment or Order (1938)

(a) Clerical mistakes. Clerical mistakes in judgments, orders, or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders.

(b) Mistake; Inadvertence; Surprise; Excusable Neglect. On motion the court, upon such terms as are just, may relieve a party or his legal representative from a judgment, order, or proceeding, taken against him through his mistake, inadvertence, surprise, or excusable neglect. The motion shall be made within a reasonable time, but in no case exceeding six months after such judgment, order, or proceeding was taken. A motion under this subdivision does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court (1) to entertain an action to relieve a party from a judgment, order, or proceeding, or (2) to set aside within one year, as provided in Section 57 of the Judicial Code, U.S.C., Title 28, § 118, a judgment obtained against a defendant not actually personally notified.

Federal Rule of Civil Procedure 60: Relief from Judgment or Order (1946)

(a) Clerical mistakes. Clerical mistakes in judgments, orders or other parts of the record and errors herein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal, such mistakes may be so corrected before the appeal is docketed in the appellate court, and thereafter while the appeal is pending may be so corrected with leave of the appellate court.

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, Etc. On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a

judgment, order, or proceeding, or to grant relief to a defendant not actually personally notified as provided in Section 57 of the Judicial Code, U.S.C., Title 28, § 118, or to set aside a judgment for fraud upon the court. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review, are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.