No. 21-5726

In the Supreme Court of the United States

DEXTER EARL KEMP, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES

ELIZABETH B. PRELOGAR
Solicitor General
Counsel of Record
KENNETH A. POLITE, JR.
Assistant Attorney General
ERIC J. FEIGIN
Deputy Solicitor General
BENJAMIN W. SNYDER
Assistant to the Solicitor General
DANIEL J. KANE
Attorney

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

QUESTION PRESENTED

Whether the set of "mistake[s]" cognizable as grounds for post-judgment relief under Federal Rule of Civil Procedure 60(b)(1) excludes a court's legal mistakes.

TABLE OF CONTENTS

Table of Contents—Continued: Page

TABLE OF AUTHORITIES

Cases:

Cases—Continued: Page

Cases—Continued: Page

Cases—Continued: Page

Statutes, regulations, and rules:

Statutes, regulations, and rules—Continued: Page

Miscellaneous—Continued: Page

Miscellaneous—Continued: Page

In the Supreme Court of the United States

No. 21-5726

DEXTER EARL KEMP, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-7a) is not published in the Federal Reporter but is reprinted at 857 Fed. Appx. 573. An earlier opinion of the court of appeals is not published in the Federal Reporter but is reprinted at 544 Fed. Appx. 870. The order of the district court (Pet. App. 10a-19a) is unreported. Additional orders of the district court are not published in the Federal Supplement but are available at 2011 WL 1457390 and 2011 WL 3844044. The reports and recommendations of the magistrate judge are not published in the Federal Supplement but are available at 2010 WL 6475131 and 2011 WL 3844076.

JURISDICTION

The judgment of the court of appeals was entered on May 25, 2021. The petition for a writ of certiorari was filed on September 16, 2021, and was granted on

January 10, 2022. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

RULES INVOLVED

Rule 60(b) of the Federal Rules of Civil Procedure provides:

> (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.

Fed. R. Civ. P. 60(b). That Rule and other pertinent portions of current and previous versions of the Federal Rules of Civil Procedure are reproduced in the appendix to this brief. App., *infra*, 1a-7a.

STATEMENT

Following a jury trial in the United States District Court for the Southern District of Florida, petitioner

was convicted of conspiring to possess cocaine base, cocaine, marijuana, and MDMA (ecstasy) with intent to distribute, in violation of 21 U.S.C. 841(a)(1) and 846; possessing up to 50 kilograms of marijuana with intent to distribute, in violation of 21 U.S.C. 841(a)(1); possessing a firearm in furtherance of a drug trafficking crime, in violation of 18 U.S.C. 924(c)(1)(A)(i); and possessing ammunition as a felon, in violation of 18 U.S.C. 922(g)(1) and 924(a). 10-cr-20410 Judgment 1 (Judgment); Pet. App. 11a. The district court sentenced petitioner to 420 months of imprisonment, to be followed by eight years of supervised release, Judgment 2-3, and the court of appeals affirmed, 544 Fed. Appx. 870. Petitioner subsequently filed a motion to vacate, set aside, or correct his sentence under 28 U.S.C. 2255, which the district court dismissed as untimely. Pet. App. 12a. More than a year later, petitioner filed a motion under Federal Rule of Civil Procedure 60(b) seeking relief from the order dismissing his Section 2255 motion. Pet. App. 12a-13a. The district court dismissed the Rule 60(b) motion, *id.* at 10a-19a, and the court of appeals affirmed, *id.* at 1a-7a.

A. Legal Background

Under 28 U.S.C. 2255, a federal prisoner may file a motion for postconviction relief "claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States." 28 U.S.C. 2255(a). Such a motion is subject to a one-year time limit that generally runs from "the date on which the judgment of conviction becomes final." 28 U.S.C. 2255(f)(1).

Proceedings under Section 2255 are governed by the Federal Rules of Civil Procedure, to the extent those rules are not inconsistent with applicable statutory

provisions. See Rules Governing Section 2255 Proceedings for the United States District Courts R. 12; Fed. R. Civ. P. 81(a)(4)(A). One such rule is Rule 60(b), which "allows a party to 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).

Rule 60(b)(1) applies to motions seeking relief based on "mistake, inadvertence, surprise, or excusable neglect," and Rules 60(b)(2) through (b)(5) apply to other specific grounds. Rule 60(b)(6), in turn, permits reopening based on "any * * * reason that justifies relief" other than the more specific circumstances set out in clauses (1) through (5). See *Gonzalez*, 545 U.S. at 528 n.2, 529; *Liljeberg* v. *Health Services Acquisition Corp.*, 486 U.S. 847, 863 n.11 (1988) (motions under "clause (6) and clauses (1) through (5) are mutually exclusive"). Relief is available under the "catchall category" of Rule 60(b)(6) "only in 'extraordinary circumstances,' and the Court has explained that '[s]uch circumstances will rarely occur in the habeas context.'" *Buck* v. *Davis*, 137 S. Ct. 759, 772 (2017) (quoting *Gonzalez*, 545 U.S. at 535) (brackets in original).

Any motion under Rule 60(b), including a motion under Rule 60(b)(6), must "be made within a reasonable time." Fed. R. Civ. P. 60(c)(1). A Rule 60(b)(1) motion is also subject to the further and more specific limitation that it may be brought "no more than a year after the entry of the judgment or order or the date of the proceeding." *Ibid.*

B. Petitioner's Conviction And Sentence

1. In 2009, police in Miami Gardens, Florida, identified petitioner as a dealer of crack cocaine, cocaine, marijuana, and MDMA. 544 Fed. Appx. at 874-875. In a

series of wiretapped calls, police heard petitioner discussing drug transactions with a co-conspirator. *Id.* at 878. They also learned from the girlfriend of another drug dealer that petitioner had supplied her boyfriend with drugs and carried a semiautomatic gun equipped with a laser sight. *Ibid.*

Searches of petitioner's car further linked him to the drug trade. 544 Fed. Appx. at 878. After petitioner consented to a search during a traffic stop, police found MDMA pills and marijuana in a compartment behind the door handle of the car that he had been driving. *Ibid.* During another traffic stop two months later, a drug-sniffing dog alerted to marijuana in the trunk of petitioner's car, and police found a box containing 9mm ammunition in a pocket on the back of the front passenger seat. *Ibid.*

Later, during a protective sweep of petitioner's residence in connection with his arrest, law-enforcement agents found 48 baggies of marijuana hidden behind the television in his bedroom, a small digital scale, a metal sifter, a gun holster, and a gun box for a 9mm pistol containing an empty magazine and magazine holder. 544 Fed. Appx. at 878. Petitioner subsequently admitted that he had bought ammunition at a store that did not conduct criminal background checks. *Id.* at 879.

2. A grand jury returned a multi-defendant indictment charging petitioner on one count of conspiring to possess cocaine base, cocaine, marijuana, and MDMA with intent to distribute, in violation of 21 U.S.C. 841(a)(1) and 846; one count of possessing up to 50 kilograms of marijuana with intent to distribute, in violation of 21 U.S.C. 841(a)(1); two counts of possessing a firearm in furtherance of a drug trafficking crime, in violation of 18 U.S.C. 924(c)(1)(A)(i); and one count of

possessing ammunition as a felon, in violation of 18 U.S.C. 922(g)(1) and 924(a). See 10-cr-20410 Superseding Indictment 2-4, 6-8; Pet. App. 11a. A 21-day trial ensued, during which one of the firearm-possession counts was dismissed, and the jury found petitioner guilty on all of the remaining charges. Pet. App. 11a. The district court sentenced petitioner to 420 months of imprisonment, to be followed by eight years of supervised release. Judgment 2-3.

The court of appeals consolidated petitioner's appeal with the appeals of seven of his co-defendants. Pet. App. 11a-12a. On November 15, 2013, the court affirmed their convictions and sentences. *Id.* at 2a, 12a; 544 Fed. Appx. at 874. Two of petitioner's co-defendants filed timely rehearing petitions, which were denied on May 22, 2014. Pet. App. 2a, 12a. Petitioner did not file a rehearing petition in the court of appeals or a petition for a writ of certiorari in this Court. *Id.* at 12a.

3. On April 29, 2015, petitioner filed a pro se motion to vacate his sentence under 28 U.S.C. 2255, alleging nine grounds of ineffective assistance of counsel. Pet. App. 2a; 15-cv-21702 D. Ct. Doc. (D. Ct. Doc.) 1 (May 5, 2015); D. Ct. Doc. 4 (May 5, 2015). The government argued that petitioner's motion should be dismissed as untimely or, in the alternative, summarily denied on the merits.

On timeliness, the government observed that the one-year filing period under 28 U.S.C. 2255(f) in cases where a defendant does not file a petition for a writ of certiorari runs from "when the time for filing a certiorari petition expires." D. Ct. Doc. 16, at 12 (July 6, 2015) (quoting *Clay* v. *United States*, 537 U.S. 522, 527 (2003)). "Under Supreme Court Rule 13(3)," the government stated, "the 90-day period to petition for

certiorari runs from the date of entry of judgment, not the date the [court of appeals'] mandate issues." *Ibid.* The government asserted that petitioner's conviction became final on February 13, 2014—90 days after the court of appeals' judgment—and that his Section 2255 motion was untimely because it was not dated and tendered to prison officials until April 29, 2015, which was more than a year later. *Id.* at 12-13; see 28 U.S.C. 2255(f)(1).

Petitioner sought and obtained two extensions of the deadline to file a reply in support of his Section 2255 motion, claiming that he had been separated from his legal materials following transfer to state custody on separate criminal charges and that he was seeking information from the attorney who had represented him on direct appeal. D. Ct. Doc. 19 (Aug. 14, 2015); D. Ct. Doc. 21 (Aug. 21, 2015). Petitioner then filed a reply, to which he appended an e-mail from that attorney, arguing that his Section 2255 motion was timely because the attorney had filed a petition for a writ of certiorari on his behalf and this Court had not denied the petition "until May 28, 2014." D. Ct. Doc. 22, at 2 (Sept. 16, 2015); *id.* at Ex. A.

A magistrate judge recommended that petitioner's motion be dismissed as untimely. D. Ct. Doc. 27, at 21 (Feb. 19, 2016). The magistrate judge observed that petitioner's timeliness argument turned on his assertion that he had filed a petition for a writ of certiorari. *Id.* at 9. But after conducting a "full and careful review" of the district court and appellate dockets, the magistrate judge determined "that no petition for [a] writ of certiorari was ever filed by [petitioner]." *Ibid.* The magistrate judge explained that the correspondence from appellate counsel referred to petitions for writs of

certiorari filed by petitioner's co-defendants, which had been denied in May 2014. *Id.* at 8-9. Having recommended dismissal on timeliness grounds, the magistrate judge did not reach the merits of petitioner's ineffective-assistance-of-counsel claims, but noted that the government's response to those claims "appears meritorious." *Id.* at 7; see *id.* at 6-7.

The district court adopted the magistrate judge's report and recommendation over petitioner's objection. D. Ct. Doc. 32, at 5-6 (Sept. 30, 2016). The court explained that petitioner had challenged only the magistrate judge's determination that he "filed no petition for [a] writ of certiorari"; that petitioner supported his position with "the same email from [appellate] counsel" available to the magistrate judge; and that de novo review of the record—including "the appellate docket"—revealed no error in the magistrate judge's determination. *Id.* at 5. The court dismissed the Section 2255 motion and denied a certificate of appealability. *Id.* at 6. Petitioner did not file a notice of appeal or seek a certificate of appealability from the court of appeals.

4. Almost two years later, petitioner filed a pro se motion under Rule 60(b), seeking relief from the district court's order dismissing his Section 2255 motion as untimely. D. Ct. Doc. 36, at 1 (June 22, 2018). In his Rule 60(b) motion, petitioner argued for the first time that his Section 2255 motion had been timely based on the rehearing petitions that two of his co-defendants had filed on direct appeal, which had been denied on May 22, 2014. *Id.* at 10-14. Petitioner observed that, under this Court's Rule 13.3, "if a petition for re-hearing is timely filed in the lower court by any party, the time to file the [p]etition for a [w]rit of [c]ertiorari for all parties (*whether or not they requested rehearing or joined in*

the petition for rehearing) runs from the date of the denial of the petition for rehearing." *Id.* at 13 (emphasis added); see Sup. Ct. R. 13.3.

A magistrate judge recommended that petitioner's Rule 60(b) motion be dismissed. D. Ct. Doc. 55 (Jan. 2, 2020). The magistrate judge observed that petitioner's Rule 60(b) motion had itself been filed out of time. See *id.* at 5. The magistrate judge explained that petitioner's claim of "a legal error in the denial of his [Section] 2255 motion as untimely" was a claim of "mistake" under Rule 60(b)(1). *Id.* at 4. Such a motion is subject to the requirement that it "be made within a reasonable time—and * * * no more than a year after the entry of the judgment or order or the date of the proceeding." Fed. R. Civ. P. 60(c)(1). And the magistrate judge observed that here, petitioner had "waited nearly two years to seek [the requested] relief." D. Ct. Doc. 55, at 4.

Petitioner objected to the report and recommendation. D. Ct. Doc. 56 (Jan. 21, 2020); D. Ct. Doc. 57 (Jan. 23, 2020). He argued that his motion should be construed as seeking "extraordinary circumstances" relief under Rule 60(b)(6); was accordingly not subject to the one-year time limit on motions under Rule 60(b)(1); and satisfied the general "reasonable time" requirement applicable to all Rule 60(b) motions, including Rule 60(b)(6) motions. D. Ct. Doc. 56, at 3-4; see *id.* at 3-5. The district court overruled petitioner's objection on two independent grounds. Pet. App. 10a-19a. The court agreed with the magistrate judge that petitioner's challenge to the dismissal of the original Section 2255 motion was "cognizable under Rule 60(b)(1)" and was therefore untimely "because it was filed more than a year after" the court had dismissed his Section 2255 motion. *Id.* at 17a. In the alternative, the court reaffirmed

its prior determination that the Section 2255 motion had been filed too late. *Id.* at 17a-18a.

The district court subsequently denied petitioner's motion for reconsideration of the denial of the Rule 60(b) motion. Pet. App. 4a.

5. After a two-judge panel granted petitioner a certificate of appealability, Pet. App. 8a, the court of appeals affirmed. *Id.* at 1a-7a.

The court of appeals recognized, as had the government in its appellate brief, that petitioner's original Section 2255 motion "appears to have been timely." Pet. App. 6a; see Gov't C.A. Br. 11-13. The court explained that, in light of this Court's Rule 13.3, the one-year limitations period applicable to petitioner under 28 U.S.C. 2255(f)(1) did not begin to run until 90 days after the court of appeals "denied his co-appellants' petitions for rehearing" in May 2014, and did not expire until August 2015, several months after petitioner filed his Section 2255 motion. Pet. App. 6a.

The court of appeals observed, however, that petitioner had not timely filed his Rule 60(b) motion challenging the dismissal of his Section 2255 motion. Pet. App. 5a-7a. Pointing to established circuit precedent, the court explained that Rule 60(b)(1) "encompasses mistakes in the application of the law and the mistakes of judges"; that petitioner's arguments raised "precisely the sort of judicial mistakes" that Rule 60(b)(1) covers; and that his motion was therefore subject to—and failed to meet—the one-year time limit. *Id.* at 6a; see *id.* at 5a-7a. The court did not reach the government's alternative argument (C.A. Br. 15-17) that the motion would have failed even if construed as one seeking relief under Rule 60(b)(6).

SUMMARY OF ARGUMENT

The court of appeals' decision was correct and should be affirmed. Rule 60(b)(1) of the Federal Rules of Civil Procedure permits a motion for relief from a judgment based on, among other things, a "mistake." The ordinary meaning of that word encompasses errors like the one here—a judge's unintentional failure to apply unambiguous law to record facts. Petitioner asks this Court to ignore the word's plain meaning, which he does not materially dispute, and construe Rule 60(b)(1)'s reference to "mistake[s]" to carry two extratextual limitations: an exclusion of mistakes of law, and an exclusion of any mistakes made by a judge. That crabbed and counterintuitive construction is inconsistent with the text, history, structure, and purpose of the Rule.

For more than a century, lay and legal dictionaries have recognized that the word "mistake" refers to unintentional errors arising from misapprehension or misconception. Nonlawyers and lawyers alike would readily describe the district court's erroneous dismissal of petitioner's Section 2255 motion, which rested on a misreading of an unambiguous provision of this Court's rules and the record in petitioner's case, as a "mistake." And that ordinary meaning of "mistake" fits perfectly in the context of Rule 60(b)(1). It harmonizes Rule 60(b) with Rule 60(a), which imposes express limits on the otherwise-broader scope of the word "mistake"—limits that have no counterparts in Rule 60(b)(1). It also aligns "mistake" with its neighbors ("inadvertence," "surprise," and "excusable neglect"), which likewise connote inattention or accident but contain no carveout for obvious legal errors by a judge.

Petitioner's gerrymandered definition of "mistake" eschews plain meaning and finds no basis in the Rule's

history. To the contrary, the Rule's drafters embraced the plain meaning of "mistake" when they modeled Rule 60(b)(1) on a California provision that had been applied to both errors of fact and errors of law. Thus, as the leading treatise confirmed at the time, "[t]he mistake upon which relief may be grounded may be mistake of law as well as of fact." 3 James Wm. Moore & Joseph Friedman, *Moore's Federal Practice* § 60.05, at 3280 (1938) (footnote omitted). And the drafters later deliberately eliminated any constraint on the source of the "mistake" by removing the modifier "his," which had limited the scope of the provision to a movant's own mistakes.

The Rules' structure and purpose support giving "mistake" its plain meaning. Rule 60(c)(1) sensibly applies a one-year time limit to obvious, indisputable errors that can and should be identified promptly. And allowing courts to correct that class of errors under Rule 60(b)(1) allows for substantive modifications unavailable in motions under Rule 60(a), while also backstopping reconsideration motions under Rule 59(e) by obviating appeals in a broader class of cases. The plain meaning has been applied in numerous circuits for decades without evident problem, and it avoids the pitfalls of fuzzy line-drawing between factual and legal errors, or party and judicial errors, that petitioner's position would require in this case and others.

Without petitioner's atextual and ahistorical limits on the scope of Rule 60(b)(1), affirmance of the judgment below is straightforward. The district court dismissed petitioner's Section 2255 motion because the court failed to apply an unambiguous provision of law, cited by a party, to facts of record. That was a mistake,

and petitioner's post-judgment challenge to it was therefore an untimely Rule 60(b)(1) motion.

ARGUMENT

I. A CLAIM THAT A DISTRICT COURT FAILED TO APPLY UNAMBIGIOUS LAW TO RECORD FACTS IS A CLAIM OF "MISTAKE" UNDER FEDERAL RULE OF CIVIL PROCEDURE 60(b)(1)

Rule 60(b)(1) of the Federal Rules of Civil Procedure allows a court to relieve a party from a final judgment or order for "reasons" of "mistake, inadvertence, surprise, or excusable neglect." In both ordinary English and legal usage, a "mistake" is an unintentional error arising from misapprehension or misconception. Thus, consistent with longstanding federal practice, mistakes like the one at issue here—an unintentional failure to apply unambiguous law to incontestable facts—are covered by Rule 60(b)(1). Petitioner, however, looks past plain English and common practice to assert (Br. 13-30) that Rule 60(b)(1) contains two additional, unstated limitations—namely, that it applies only to mistakes of fact, and applies only to mistakes made by people other than judges. Those atextual limitations are inconsistent with the text, history, structure, and purpose of the Rules, and this Court should reject them.

A. The Plain Meaning Of "Mistake" Encompasses Unintentional Errors Resulting From Misapprehension Or Misconception

In interpreting the Federal Rules of Civil Procedure, the Court begins with the text, giving the Rules their "'plain meaning'" and declining to venture beyond the text when it is "clear and unambiguous." *Business Guides, Inc.* v. *Chromatic Communications Enterprises, Inc.*, 498 U.S. 533, 540-541 (1991) (quoting

Pavelic & LeFlore v. *Marvel Entertainment Group*, 493 U.S. 120, 123 (1989)). Here, the plain meaning of "mistake" is clear and unambiguous: mistakes are unintentional errors resulting from misconception or misapprehension.

1. As a matter of ordinary English, that has been true across decades and dictionaries. See, *e.g.*, *Oxford English Dictionary* (2022) (defining "mistake," "[i]n generalized use," as a "misapprehension, misunderstanding; error, misjudgment"), https://www.oed.com/view/Entry/120072; *Webster's Third New International Dictionary of the English Language* 1446 (2002) (*Webster's Third*) (defining "mistake" as, *inter alia*, "a wrong action or statement proceeding from faulty judgment, inadequate knowledge, or inattention: an unintentional error") (emphasis omitted); *Webster's New International Dictionary of the English Language* 1571 (2d ed. 1958) (defining "mistake" as "[a]n apprehending wrongly; a misconception; a misunderstanding" or "[a] fault in opinion or judgment; an unintentional error") (emphasis omitted); *Funk & Wagnalls New Standard Dictionary of the English Language* 1588 (1946) (defining "mistake" as, *inter alia*, "a wrong apprehension or opinion; an unintentional wrong act or step; a blunder or fault; an inaccuracy") (emphasis omitted); *Webster's New International Dictionary of the English Language* 1383 (1917) (defining "mistake" as "[a]n apprehending wrongly; a misconception; a misunderstanding; a fault in opinion or judgment; an unintentional error"). Any English speaker would readily describe the district court overlooking the significance of petitioner's co-defendants' rehearing petitions in its timeliness inquiry as a "mistake."

Legal usage is no different. Since before Rule 60's enactment, legal dictionaries have defined "mistake" as an unintentional misconception or misapprehension resulting in error. See, *e.g.*, *Black's Law Dictionary* 1195 (3d ed. 1933) (defining "mistake" as "[s]ome unintentional act, omission, or error arising from ignorance, surprise, imposition, or misplaced confidence") (capitalization and emphasis omitted); 2 *Bouvier's Law Dictionary and Concise Encyclopedia* 2229 (3d rev. ed. 1914) (same); see also *Ballentine's Law Dictionary* 808 (3d ed. 1969) (defining "mistake," "[f]rom the standpoint of relief in equity," as "some unintentional act, omission, or error, arising from ignorance, surprise, imposition, or misplaced confidence") (emphasis omitted). This is therefore not a circumstance in which legal meaning counterintuitively diverges from plain language. A lawyer, no less than any other English speaker, would use the word "mistake" to describe what happened in the district court here.

Not every error is a "mistake." Both commonly and legally, the term "mistake" carries a connotation of "inattention," *Webster's Third* 1446, or "carelessness," *American Heritage Dictionary* 1128 (5th ed. 2016) (emphasis omitted). The word "implies misconception or inadvertence," *Merriam-Webster.com Dictionary*, https://www.merriam-webster.com/dictionary/mistake, rather than a reasonable choice between competing alternatives; an error that becomes apparent only in retrospect, for example, is not as easily described as a "mistake." In common parlance, boarding the wrong train is a "mistake"; calling tails before a coin-flip is not, even if the coin comes up heads. Likewise in legal jargon, the failure to properly understand and apply an

unambiguous rule to undisputed facts is plainly a "mistake"; an erroneous resolution of an unclear issue is not.

2. The ordinary and legal understanding of "mistake" makes just as much sense in the context of Rule 60(b)(1) as it does more generally. See, *e.g.*, *Freeman* v. *Quicken Loans, Inc.*, 566 U.S. 624, 634-635 (2012) ("[A] word is given more precise content by the neighboring words with which it is associated.") (citation omitted). Whereas Rule 60(b)(1) lists "mistake" in unadorned form, without any qualifier, the immediately preceding Rule 60(a) explicitly limits the term to only certain defined categories of "mistake[s]": "clerical mistake[s]" and "mistake[s] arising from oversight or omission." Fed. R. Civ. P. 60(a) and (b)(1). That limiting language in Rule 60(a) shows that when the Rule's drafters intended to cover only a subset of mistakes, they said so expressly.

Similarly, none of the term's direct neighbors in Rule 60(b)(1)—"inadvertence," "surprise," and "excusable neglect"—suggests an uncommonly narrow meaning of "mistake." Fed. R. Civ. P. 60(b)(1). Instead, all of them, like the word "mistake," have historically described an unintentional happening that results from inattention or accident. See *Black's Law Dictionary* 940 (3d ed. 1933) (defining "inadvertence" as "[h]eedlessness; 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") (capitalization and emphasis omitted); *id.* at 1687 (defining "surprise," in "[e]quity [p]ractice," as "[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") (capitalization and

emphasis omitted); *id.* at 715 (defining "excusable neglect" as "a failure to take the proper steps at the proper time, not in consequence of the party's own carelessness, inattention, or willful disregard of the process of the court, but in consequence of 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") (capitalization and emphasis omitted).

3. In accord with common, legal, and contextual usage, courts applying Rule 60(b)(1) have frequently explained that an error like the one here (an unintentional misapplication of law resulting from an oversight) is a "mistake," while an error in legal judgment (a deliberate, if improvident, choice between plausible alternatives) is not. See, *e.g.*, *Cashner* v. *Freedom Stores, Inc.*, 98 F.3d 572, 576-578 (10th Cir. 1996) (explaining that although "certain substantive mistakes in a district court's rulings may be challenged by a Rule 60(b)(1) motion," such relief is unavailable to rectify a "deliberate and counseled decision" or a misunderstanding of its legal consequences); *In re Ta Chi Navigation (Panama) Corp. S.A.*, 728 F.2d 699, 703 (5th Cir. 1984) (explaining that Rule 60(b) may be used "to correct [district courts'] obvious errors of law, such as overlooking controlling statutes or case law," but not merely "arguable" errors) (internal quotation marks omitted).

Courts of appeals have accordingly treated as Rule 60(b)(1) "mistake[s]," for example, a district court's inadvertent failure to review a report and recommendation, resulting in a plainly incorrect decision, *Mendez* v. *Republic Bank*, 725 F.3d 651, 658 (7th Cir. 2013), and a district court's failure to recognize that a remittitur it had approved was inconsistent with its own prior order,

Gila River Ranch, Inc. v. *United States*, 368 F.2d 354, 357 (9th Cir. 1966). At the same time, even courts that recognize "obvious errors of law, apparent on the record," as "mistake[s]" under Rule 60(b)(1) have rejected claims based on "issues [that] are arguable." *Van Skiver* v. *United States*, 952 F.2d 1241, 1244 (10th Cir. 1991), cert. denied, 506 U.S. 828 (1992); see *Hill* v. *McDermott, Inc.*, 827 F.2d 1040, 1043 (5th Cir. 1987) (same), cert. denied, 484 U.S. 1075 (1988).

That "very sensible distinction" between "inadvertent judicial oversight" (which is a "mistake") and a "fundamental error of law, which in many cases would not be as clear" (and thus is not), 11 Charles Alan Wright et al., *Federal Practice and Procedure* § 2858.1, at 379 (2012) (citation and internal quotation marks omitted), flows directly from the text and produces clear and practical results. It also has historical roots. As this Court has explained, courts of equity could grant relief from legal errors, but only "in the most unquestionable and flagrant cases." *Snell* v. *Insurance Co.*, 98 U.S. 85, 91 (1878) (quoting 1 Joseph Story, *Commentaries on Equity Jurisprudence, as Administered in England and America* § 138e, at 136 (10th ed. 1870) (Story)). Differentiating between "unquestionable" errors, *ibid.*, and other types of errors was necessary to balance important competing interests. On one hand, "it would be strange" to deny relief based on an undisputed mistake of law that gave one party "an unconscionable advantage." Story § 138*c*, at 135. On the other hand, "courts of equity, in assuming to correct alleged mistakes, must of necessity require the very clearest proof, lest they create errors, in attempting to correct them." *Id.* § 138a, at 134.

Those same considerations, and the same sensible and administrable way of addressing them, have carried forward to the modern day through provisions like Rule 60(b)(1). Surveying the practices of the many jurisdictions that have such provisions, the Restatement of Judgments cautions that "choices in the face of uncertainty that turn out unfortunately"—though "'mistakes' in some sense"—"are not mistakes under which relief from a judgment may be granted." Restatement (Second) of Judgments § 71 cmt. b (1982). But a "mistake of law or fact" by the court, of the sort that "is certain to result in reversal" if considered on appeal, can be corrected. *Id.* § 71; see *id.* § 71 cmt. a.

4. Petitioner does not dispute that the ordinary definition of "mistake" covers unintentional misapprehensions by judges that result in obvious legal error. Although petitioner relies (Br. 24) on dictionary definitions of nearly every other word in Rule 60(b)(1), he never offers a dictionary definition of "mistake" in support of his own proposed interpretation. And he appears to recognize (Br. 30) that as a matter of plain meaning, "mistake of fact" and "mistake of law" are simply different "shades of 'mistake.'" Petitioner nonetheless urges (*e.g.*, Br. 10, 12) this Court to impose two unmentioned limitations on the types of "mistake" that can be addressed under Rule 60(b)(1), which would exclude (1) mistakes of law and (2) mistakes by judges. The Rule's text provides no basis for either carveout.

Petitioner asserts (Br. 25) that "inadvertence," "surprise," and "excusable neglect" "are not legal errors," and that "mistake" must not be, either. As a threshold matter, each of those terms is an independent basis for relief, with an independent scope. Their different meanings—*e.g.*, that a "mistake," as petitioner puts it,

does not "create 'excusable neglect,'" *ibid.*—are simply good drafting, in that "every clause and word" of the rule has its own "effect." *Loughrin* v. *United States*, 573 U.S. 351, 358 (2014) (quoting *Williams* v. *Taylor*, 529 U.S. 362, 404 (2000)). Even if the other terms referred exclusively to factual errors, the same need not be true of "mistake," which necessarily covers additional ground.

But in any event, petitioner's premise is unsound. Courts have recognized, for example, that a claim of "excusable neglect," like "mistake," may be premised on legal error. See, *e.g.*, *Lenaghan* v. *Pepsico, Inc.*, 961 F.2d 1250, 1254-1255 (6th Cir. 1992) (per curiam) (attorney's "understandable, albeit mistaken, reading of" a local rule governing time limits for filing was a "mistake or excusable neglect"); *A. F. Dormeyer Co.* v. *M. J. Sales & Distribution Co.*, 461 F.2d 40, 42-43 (7th Cir. 1972) (attorney's failure to file an answer was "attributable to 'mistake' and 'excusable neglect'" where the attorney was confused by the summons, governing rules, and local practice); *Provident Security Life Insurance Co.* v. *Gorsuch*, 323 F.2d 839, 843 (9th Cir. 1963) (defendant's failure to file an answer due to an erroneous understanding of Federal Rule of Civil Procedure 12 was "excusable neglect"), cert. denied, 376 U.S. 950 (1964).

Nor are inadvertent errors by judges excluded from the scope of Rule 60(b)(1). Courts have recognized that judges, like litigants, may "cause judgments to go awry due to 'inadvertence.'" Pet. Br. 25; see, *e.g.*, *Larson* v. *Heritage Square Associates*, 952 F.2d 1533, 1536 (8th Cir. 1992) (considering under Rule 60(b)(1), and rejecting on the merits, a claim of "judicial inadvertence" based on a district court's "mistaken assumption" about

the effect of a previous settlement agreement). Indeed, petitioner himself opens his brief by acknowledging that "[n]o one is perfect—not even judges." Br. 2; cf. *Alejandre-Gallegos* v. *Holder*, 598 Fed. Appx. 604, 605 (10th Cir. 2015) (Gorsuch, J.) (observing, in another context, that "[e]veryone makes mistakes, and surely judges no less than lawyers"). And petitioner offers examples of judicial error—such as "render[ing] * * * judgment unaware that the legislature [has] repealed the statute at issue," Br. 2—that any lawyer or nonlawyer would describe as "mistakes." Rule 60(b)(1) uses the term "mistake" the same way.

B. The History Of Rule 60(b)(1) Supports Its Plain Meaning

The history of Rule 60(b)(1), like its text, supports the inclusion of obvious, inadvertent legal errors by courts. When first adopted in 1938, the language of Rule 60(b) was modeled on a specific California rule that applied to both factual errors and legal errors. And in 1946, the drafters deliberately removed a textual limitation in the Rule so that it would reach errors committed by courts. Petitioner's contrary reading of the history, which he advances as a substitute for a textual argument, is misconceived.

1. The drafters deliberately modeled Rule 60(b)(1) on a California provision that authorized relief from mistakes of law

Rule 60(b)(1) was designed to cover legal mistakes as well as mistakes of other sorts. In its original form, Rule 60(b) stated, in relevant part, that 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." Fed. R. Civ. P. 60(b) (1938). The Advisory

Committee on Rules explained that "[t]his section [wa]s based upon Calif. Code Civ. Proc. (Deering, 1937) § 473," which contained nearly identical wording. Fed. R. Civ. P. 60 advisory committee's note (1937); see Cal. Civ. Proc. Code § 473 (Deering 1937) (authorizing a court to "relieve a party or his legal representative from a judgment, order, or other proceeding taken against him through his mistake, inadvertence, surprise or excusable neglect"). And contrary to petitioner's assertion (Br. 3), "[t]he mistake upon which relief may be grounded" under both the California and the federal rule "may be mistake of law as well as of fact." 3 James Wm. Moore & Joseph Friedman, *Moore's Federal Practice* § 60.05, at 3280 (1938) (describing practice under Section 473 in explaining the meaning of Rule 60(b)) (footnote omitted).

a. Because the original federal provision was "substantial[l]y adopted from the California code," early commentators recognized that it "carr[ied] with [it] the construction placed thereon." 3 James Wm. Moore & Joseph Friedman, *Moore's Federal Practice* § 60.01, at 3255 (1938). And early commentators likewise understood California's Section 473 to permit relief based on "mistake of law as well as of fact." *Id.* § 60.05, at 3280 (providing an "exposition of decisions" by the California courts that "may prove helpful" in interpreting federal Rule 60(b)); see 14 William M. McKinney, *California Jurisprudence: A Complete Statement of the Law and Practice of the State of California* § 95, at 1035 (1924) (stating, in connection with Section 473, that "[m]istakes of fact are, of course, covered by the section, but mistakes of law are likewise ground for relief from a judgment or default") (footnote omitted); 34 Corpus Juris § 516, at 298 n.11[a] (William Mack & Donald J.

Kiser eds., 1924) ("In California * * * the 'mistake' which will authorize the courts to relieve a party against a judgment may be either a mistake of fact or of law") (citing, *inter alia*, Cal. Civ. Proc. Code § 473 (Deering 1937)) (emphasis omitted).

As the Supreme Court of California observed, "it would seem clear that in using the word 'mistake' in section 473 * * * without any qualification, it was intended not to restrict the court in granting relief in furtherance of justice to that kind of mistake which involves only facts." *Douglass* v. *Todd*, 31 P. 623, 624 (1892). The court cautioned that not "all mistakes of law are to be relieved against," identifying an attorney's inexcusable negligence as one example. *Ibid.* And because Section 473 (unlike the updated version of Rule 60(b)(1), see pp. 26-32, *infra*) permitted relief based only on a *party's* mistake, a bare "judicial error" was "not correctible." *Glougie* v. *Glougie*, 162 P. 118, 120 (Cal. 1916); see Pet. Br. 16 (citing *Glougie* and other decisions refusing to correct "courts' legal errors"). But the decisions of the Supreme Court of California and lower California courts, which frequently vacated default judgments where the defendant reasonably relied on an attorney's inadvertent legal errors, made clear that "[t]he language of [Section 473] d[id] not limit the relief to mistakes of fact." *Mitchell* v. *California & Oregon Coast Steamship Co.*, 105 P. 590, 592 (Cal. 1909) (quoting *Douglas*, 31 P. at 624); see, *e.g.*, *John A. Vaughan Corp.* v. *Title Insurance & Trust Co.*, 12 P.2d 117, 118 (Cal. Dist. Ct. App. 1932) ("The statement in the attorneys' affidavit that they did not intend by such acts to enter a general appearance sufficiently shows their mistake of law from the effect of which the trial court properly relieved their clients.").

b. Petitioner correctly acknowledges (Br. 16) that Rule 60(b)(1) was modeled on California's Section 473—but his denial (*ibid.*) of Section 473's general application to legal errors is insupportable. He recognizes (Br. 17) that Section 473 at least provided a remedy for legal errors in default judgments, but incorrectly asserts (*ibid.*) that California courts "strictly limited" consideration of legal error to that context.

Neither text, nor judicial gloss, nor actual practice limited the application of Section 473 to default judgments. Such a limitation did at one time appear in a *different* provision of the California Code of Civil Procedure, see Cal. Civ. Proc. Code § 859 (Deering 1931), but that provision was repealed before the adoption of Rule 60(b) because California lawmakers saw "no good reason * * * why the power to relieve from judgments should not be broadened." *Id.* § 473 note (Deering 1937). Section 473 itself never contained such a limitation, and courts accordingly did not understand it to be limited to default judgments. See, *e.g.*, *Mitchell*, 105 P. at 592 (noting that "the court will, in a proper case, grant relief against a mistake of law" in the context of post-trial motions practice); *Bruskey* v. *Bruskey*, 41 P.2d 203, 206 (Cal. Dist. Ct. App. 1935) (noting that a "mistake either of fact or law" might support relief under Section 473 in a case involving a plaintiff's allegedly mistaken consent to a voluntary dismissal based on erroneous advice of counsel).

c. In arguing that "mistake" was a "term[] of art" that "unambiguously exclude[d] legal errors," petitioner relies heavily on decisions of States outside of California. Br. 13 (citation omitted); see Br. 14-17. But as a threshold matter, even if other States—like New York and Minnesota, referenced in a "[s]ee also"

notation in the Advisory Committee notes, see Fed. R. Civ. P. 60 advisory committee's note (1937)—had consistently understood "mistake" as a term of art that excluded all legal errors, the specific replication and deliberate endorsement of California's Section 473 shows that the drafters of federal Rule 60(b)(1) did not use "mistake" in that manner.

In any event, petitioner's historical account of other jurisdictions is overstated. Although some state courts did construe provisions about the correction of a party's "'mistake'" to apply "'only to mistakes of fact, not to mistakes of law,'" Pet. Br. 15 (citation omitted), that was not the "uniform[]" (*id.* at 3) interpretation. See, *e.g.*, *Cowperthwait* v. *Critchley*, 243 A.D. 70, 71 (N.Y. App. Div. 1934) (reversing denial of a motion based in part on the defendant's "grave mistake" in believing that the summons and complaint with which she was served "had no effect or validity" because she was not a resident of New York); *Chittenden & Eastman Co.* v. *Sell*, 227 N.W. 188, 189 (N.D. 1929) (affirming grant of relief from default judgment based on attorney's mistaken view that a special appearance to challenge a complaint tolled the defendant's time to answer); *Flannery* v. *Kusha*, 179 N.W. 902, 904 (Minn. 1920) (explaining that "a mistake of law * * * may afford ground for relief, as well as a mistake of fact" under Minn. Stat. § 7786 (1913)); *Coos Bay, Roseburg & Eastern Railroad & Navigation Co.* v. *Endicott*, 57 P. 61, 61-62 (Or. 1899) (affirming grant of relief from default based in part on defendants' mistaken understanding of the circumstances in which a case would be held over until the following term of court).

Disunity in States' interpretation of the term "mistake" in their own laws provides no basis for engrafting

artificial limitations onto the plain language of the federal Rules. Cf. *Jama* v. *Immigration & Customs Enforcement*, 543 U.S. 335, 349 (2005) (stating that the Court will understand Congress to have "incorporated [an idiosyncratic] construction" of a statutory term where there is a "judicial consensus" as to that construction "so broad and unquestioned that we must presume Congress knew of and endorsed it"). To the extent that the Rule's drafters were aware of some courts' atextual gloss on the term "mistake," the drafters declined to incorporate that gloss by instead explicitly adopting California's language and its clear application to mistakes of law. See Fed. R. Civ. P. 60 advisory committee's note (1937).

2. The 1946 amendments ensured that Rule 60(b)(1) would reach mistakes made by courts

The drafters designed Rule 60(b)(1) not only to cover mistakes of law, but also to cover mistakes by judges. Whereas the original version of Rule 60(b) authorized relief for a movant only by reason of "his"—*i.e.*, the movant's—own mistake, Fed. R. Civ. P. 60(b) (1938), the 1946 amendments removed that textual limitation with the specific purpose of authorizing relief when judges had made mistakes.

a. When originally adopted, Rule 60(b)—like Section 473 of the California Code of Civil Procedure and nearly all of the other state statutes that petitioner identifies—expressly authorized relief only to correct a party's own mistake, inadvertence, surprise, or neglect. At that time, Rule 60(b) limited a court's authority to "relieve a party or his legal representative from a judgment, order, or proceeding taken against him" to cases where the error had occurred "through *his* mistake, inadvertence, surprise, or excusable neglect." Fed. R.

Civ. P. 60(b) (1938) (emphasis added); see Cal. Civ. Proc. Code § 473 (Deering 1937) (same); see also Alaska Comp. Laws Ann. § 3457 (1933) (same); Ariz. Rev. Code Ann. § 3859 (1928); Idaho Code Ann. § 5-905 (1932); Ind. Code Ann. § 405 (Burns 1914); Minn. Stat. § 9283 (1927); Mont. Rev. Code Ann. § 9187 (1935); Nev. Comp. Laws Ann. § 9289 (1929); N.Y. C.P.L.R. 108 (1937); N.C. Code Ann. § 600 (1927); N.D. Comp. Laws Ann. § 7483 (1913); Or. Code Ann. § 1-907 (1930); S.C. Code Ann. § 495 (1932); S.D. Comp. Laws § 2152 (1929); Utah Rev. Stat. § 104-73-11 (1933); Wash. Comp. Stat. Ann. § 303 (Remington 1922); Wis. Stat. Ann. § 269.46(1) (1937); cf. Colo. Stat. Ann. § 81 (1935) (containing no such limitation).

In 1946, however, the Advisory Committee on Rules proposed, and this Court approved, a substantial set of changes. It was during that process that the Advisory Committee moved what were then the only grounds for relief into clause 60(b)(1) and added new clauses to Rule 60(b) with additional grounds. See Fed. R. Civ. P. 60(b)(2)-(6) (1946) (permitting relief based on (2) "newly discovered evidence"; (3) "fraud"; (4) a "void" judgment; (5) a "satisfied, released, or discharged," or similarly undermined, judgment; or (6) "any other reason justifying relief from the operation of the judgment"). The Advisory Committee also extended the maximum time in which to file a motion alleging mistake, inadvertence, surprise, or excusable neglect from six months to one year. See Fed. R. Civ. P. 60(b) (1946) (applying same limitation to clauses (2) and (3)). And the Advisory Committee clarified that the rule operated to the exclusion of various common law writs and equitable remedies, which were expressly abolished. See *ibid.*

In addition, and particularly relevant here, the Advisory Committee amended the "mistake, inadvertence, surprise, or excusable neglect" provision, now located in Rule 60(b)(1), by removing the word "his" and allowing relief to be granted for "mistake, inadvertence, surprise, or excusable neglect" without qualification. Fed. R. Civ. P. 60(b)(1) (1946). The Committee explained that it had eliminated "[t]he qualifying pronoun 'his' * * * on the basis that it is too restrictive, and that the subdivision should 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 (1946 Amendment). Both the amended text and the explanation for the amendment foreclose any carveout from Rule 60(b)(1) for judicial mistakes.

b. Petitioner acknowledges (Br. 35) that the 1946 amendment "expanded the range of actors who might commit "mistake[s]." But he asserts (Br. 12) that the Advisory Committee intended only to reach mistakes by "opposing and third parties." See Br. 36. In fact, however, the amendment "was specifically intended to make it clear that the moving party could have relief from a judgment on account of the mistake * * * of any party, any party's attorney, the clerk, or the court." 12 James Wm. Moore, *Moore's Federal Practice* § 60.41[3], at 60-108.3 (Daniel R. Coquillette et al. eds., 3d ed. 2021).

In discussing the proposed amendment, members of the Advisory Committee made clear that the revision was designed to reach mistakes of courts. For example, in 1944, the Acting Chairman (Judge Charles E. Clark) posited that the existing Rule 60(b) might have been used to correct another judge's failure to specify, in

dismissing a complaint, whether the plaintiff was granted leave to amend, but another member doubted that the rule previously would have covered the judge's mistake. 5 Advisory Comm. on Rules for Civil Procedure, *Proceedings* 582-583 (Apr. 5, 1944) (*1944 Proceedings*). The member then added, however, that "[y]ou have covered that now by taking out 'his,'" and the Acting Chairman agreed. *Id.* at 583. And in 1945, when a Committee member asked for the argument in favor of deleting the word "his," the Chairman (former Attorney General William D. Mitchell) responded that "the clerk may make an error *or the judge may make a mistake*; that if he makes an inadvertent mistake or is surprised or if there is excusable neglect, and the fellow suffers by it, he ought to get relief." 4 Advisory Comm. on Rules for Civil Procedure, *Proceedings* 514 (May 1, 1945) (*1945 Proceedings*) (emphasis added).

Without addressing that more specific history, petitioner rests his narrow interpretation of the 1946 amendment's effect chiefly on two district court decisions, which he claims (Br. 36) reveal a pre-1946 "split over whether opposing or third-party mistakes qualify as 'mistake[s]'" under Rule 60(b). But petitioner identifies no evidence that the Committee was focused on that asserted conflict, and neither of the decisions that he cites expressly held that an opposing or third-party mistake was grounds for relief under the pre-1946 version of Rule 60(b). See *Fleming* v. *Miller*, 47 F. Supp. 1004 (D. Minn. 1942) (holding relief unavailable under Rule 60(b) for an opposing party's mistake), modified, 138 F.2d 629 (8th Cir. 1943), cert. denied, 321 U.S. 784 (1944); *Huntington Cab Co.* v. *American Fidelity & Casualty Co.*, 4 F.R.D. 496, 498 (S.D. W. Va. 1945) (granting relief where defendant was surprised by

default judgment after never receiving notice of suit because its "statutory attorney in fact" mailed the complaint to the wrong address). And in any event, the text and history of the 1946 amendment make clear that it was not limited to that scenario, but instead permitted relief based on anyone's mistake. At bottom, the Rule is directed at "material" mistakes, Fed. R. Civ. P. 60(b) advisory committee's note (1946 Amendment), and a court's mistaken repetition of a litigant's error makes it even more material.

c. In reviewing the 1946 amendments, petitioner focuses mainly (Br. 19-23) on the fact that they abolished bills of review and other equitable remedies, which had previously provided a mechanism for post-judgment relief based on new facts materially affecting the judgment, fraud in procuring the judgment, and certain legal errors apparent from the record. Petitioner suggests (Br. 22) that the Advisory Committee "parceled" the first two categories into newly added subdivisions—Rule 60(b)(2) for "newly discovered evidence" and Rule 60(b)(3) for "fraud." And because Rules 60(b)(2) and (3) did not address legal errors, petitioner supposes (Br. 22-23) that the Advisory Committee intended Rule 60(b)(6) to absorb the entire third category. That supposition is unsupported.

Petitioner provides no basis for concluding that the Advisory Committee understood Rule 60(b)(6) to cover the waterfront of apparent legal errors, and the Committee itself had no such understanding. Rule 60(b)(6) was a late addition to the drafting process. As late as 1945, the Committee was proposing to abolish bills of review but add only two new subdivisions, Rules 60(b)(2) and (b)(3). Advisory Comm. on Rules for Civil Procedure, *Second Preliminary Draft of Proposed*

Amendments to Rules of Civil Procedure for the District Courts of the United States 69-70 (May 1945). Even at that stage, however, the ongoing discussions already reflected the Committee's intent to cover judicial errors, see, *e.g.*, *1944 Proceedings* 582-583 (discussed above), and the Committee understood the more limited proposal to cover legal errors even before the introduction of what became Rule 60(b)(6).

In discussing the proposal to abolish bills of review, the Committee made clear its view that adding proposed Rules 60(b)(2) and (3) alone would "preserve[] the substance of the * * * bill of review." 4 Advisory Comm. on Rules for Civil Procedure, *Proceedings* 923 (May 20, 1943); see, *e.g.*, *1945 Proceedings* 551-552 (Chairman Mitchell noting that he had "great difficulty in finding any kinds of relief that you could get under any one of these old procedures that we haven't in one form or another prescribed in these rules"). Accordingly, when Professor James William Moore (author of *Moore's Federal Practice* and by then a member of the Committee) reviewed a draft of the more limited proposal, he explained that the only circumstances even potentially covered by bills of review that were not addressed in the proposed rule were those covered by what would soon become Rule 60(b)(5). See 3 Advisory Comm. on Rules for Civil Procedure, *Proceedings* 554-555 (Mar. 27, 1946) (*1946 Proceedings*).

When the Committee first discussed the possibility of a "grab-all clause," it did not discuss legal errors at all. *1946 Proceedings* 612-613. Instead, a Committee member raised the concern that a party to a decades-old lawsuit might have no mechanism to vacate a judgment on the ground that a lien it had established against real property had expired. See *id.* at 607, 620-621

(citing discussion at 558-560). Petitioner's suggestion (Br. 23) that the Committee adopted Rule 60(b)(6) in order to address legal mistakes like the one the district court committed here thus lacks grounding in either the Committee's deliberations or the text of the Rule that it adopted.

C. Applying The Plain Meaning Of "Mistake" Follows The Structure And Purpose Of The Federal Rules

Construing Rule 60(b)(1) to reach the kind of mistake at issue here—a court's unintentional failure to apply unambiguous controlling law to record facts—respects the structure of the rules and promotes both justice and efficiency. Petitioner's efforts to show otherwise lack merit.

1. Surrounding provisions support a plain-language interpretation of "mistake" that includes obvious judicial errors in the application of law

a. It makes good sense to include obvious errors, judicial or otherwise, within the categories of error that Rule 60(b) requires parties to raise within one year. See Fed. R. Civ. P. 60(c)(1). Such obvious legal errors are, by definition, errors that can and should be remedied promptly, thereby saving parties and courts unnecessary burden. See, *e.g.*, *Benson* v. *St. Joseph Regional Health Center*, 575 F.3d 542, 547-548 (5th Cir. 2009) (explaining that addressing a readily apparent error, unlike addressing an alleged error of unsettled state law, "saves the parties and the court time and expense of a needless appeal") (citation omitted), cert. denied, 559 U.S. 937 (2010).

Allowing correction of obvious legal errors under Rule 60(b)(1) leaves room for courts to correct other legal errors under other provisions of Rule 60(b) that are

not subject to the same one-year limitation. Rule 60(b)(4), for example, authorizes relief from certain jurisdictional errors or a violation of due process that deprives a party of notice or the opportunity to be heard. *United Student Aid Funds, Inc.* v. *Espinosa*, 559 U.S. 260, 272 (2010). Claims raising those "fundamental infirmit[ies]," *id.* at 270, need only be filed within "a reasonable time," Fed. R. Civ. P. 60(c)(1). And in the event that a legal error could qualify as a "mistake" under Rule 60(b)(1) because it arose from unintentional oversight and also "void[s]" the judgment for purposes of Rule 60(b)(4), the latter, more specific provision would control, tailored as it is to that particular kind of error. See *RadLAX Gateway Hotel, LLC* v. *Amalgamated Bank*, 566 U.S. 639, 645 (2012) (citing the "commonplace of statutory construction that the specific governs the general," particularly with respect to provisions that are "interrelated and closely positioned") (citations and internal quotation marks omitted).

Similarly, where litigants have claims of legal error that are not covered by clauses (1) through (5), they may attempt to raise them in a motion under Rule 60(b)(6), which permits reopening based on "any other reason that justifies relief," Fed. R. Civ. P. 60(b)(6), that is raised "within a reasonable time," Fed. R. Civ. P. 60(c)(1). But if the motion raises only the kind of mistake cognizable under Rule 60(b)(1), the "one-year limitation would control," and the movant "could not avail himself of the broad 'any other reason' clause." *Klapprott* v. *United States*, 335 U.S. 601, 613 (1949) (opinion of Black, J.); see *Pioneer Investor Services* v. *Brunswick Associates Ltd.*, 507 U.S. 380, 393 (1993) ("[A] party who failed to take timely action due to 'excusable neglect' may not seek relief more than a year after the

judgment by resorting to subsection (6)."); 11 Charles Alan Wright et al., *Federal Practice and Procedure* § 2864, at 502 (2012) ("For the most part, cases brought under clause (6) are attempts to avoid either the one-year limit in other clauses of Rule 60(b) or time restrictions for other types of post-trial review imposed in other rules."); *Stevens* v. *Miller*, 676 F.3d 62, 67 (2d Cir. 2012) (noting "particular concern" that "parties may attempt to use Rule 60(b)(6) to circumvent the one-year time limitation in other subsections of Rule 60(b)").

Accordingly, when this Court has addressed claims of legal error raised under Rule 60(b)(6), those claims have not been based on the limited type of legal error cognizable under Rule 60(b)(1), but instead have generally involved errors apparent only in light of intervening legal developments. See, *e.g.*, *Buck* v. *Davis*, 137 S. Ct. 759, 772 (2017) (intervening decisions of this Court); *Gonzalez* v. *Crosby*, 545 U.S. 524, 536 (2005) (intervening decision of this Court); *Polites* v. *United States*, 364 U.S. 426, 431 (1960) (intervening decisions of this Court); *Ackermann* v. *United States*, 340 U.S. 193, 196-197 (1950) (appellate decision reversing the denaturalization judgment against the movant's co-defendant); see also *Tharpe* v. *Sellers*, 138 S. Ct. 545, 545-546 (2018) (per curiam) (intervening decisions of this Court); *id.* at 549 (Thomas, J., dissenting). Because the alleged errors were not a matter of oversight but of changed circumstances, they would not have qualified as a "mistake" under Rule 60(b)(1). And the one case that petitioner describes (Br. 29, 33) as involving a legal error at the time of trial likewise involved changed circumstances—namely, that the key information for uncovering the error had been outside the public record and unavailable to the parties before the challenged

judgment issued, and had only come to light thereafter. See *Liljeberg* v. *Health Services Acquisition Corp.*, 486 U.S. 847, 850-851, 863 n.11 (1988) (explaining that necessary information about judge's conflict of interest "was not a matter of public record at the time the case was tried and decided").

In any event, as petitioner has previously acknowledged (Pet. 6), this Court has not squarely addressed the term "mistake" in its Rule 60(b)(6) decisions or elsewhere, much less held that no legal errors are cognizable under Rule 60(b)(1). Those decisions therefore do not preclude a determination that some legal errors—*i.e.*, legal mistakes, which can and should be identified within one year—are cognizable only under Rule 60(b)(1). Petitioner moreover errs in suggesting (Br. 33-34) that "[o]nly the government's interpretation" would require courts to determine which clause of Rule 60(b) governs a motion nominally claiming a "mistake." Even in the First Circuit, which embraces petitioner's interpretation of Rule 60(b)(1), litigants often seek relief under multiple clauses of Rule 60(b), requiring courts to determine which clause controls. See, *e.g.*, *Dávila-Álvarez* v. *Escuela de Medicina Universidad Central del Caribe*, 257 F.3d 58, 67 (2001) (explaining that although plaintiffs sought relief under clauses (1) and (6), their claim of "excusable neglect" was cognizable only under Rule 60(b)(1)). And specifically as to "mistake[s]," the "quandaries" that petitioner describes (Br. 34) are unavoidable: a mistake of fact, no less than a mistake of law, may give rise to a judgment that is void under Rule 60(b)(4) or prospectively inequitable under Rule 60(b)(5).

b. Giving "mistake" its plain meaning also respects the difference between Rule 60(b) and Rule 60(a), which

permits a court 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." Fed. R. Civ. P. 60(a). Unlike Rule 60(b), Rule 60(a) specifies the kinds of "mistake[s]" to which it applies, namely, "clerical mistake[s]" and "mistake[s] arising from oversight or omission." *Ibid.* Consistent with that limitation, Rule 60(a) authorizes a court only to "*correct*" a "judgment, order, or other part of the record." *Ibid.* (emphasis added). Rule 60(b), in contrast, authorizes a court to "*relieve* a party" from a "judgment, order, or proceeding." Fed. R. Civ. P. 60(b) (emphasis added).

Thus, while Rule 60(a) "may not be used as a guise for changing previous decisions," *American Trucking Ass'ns* v. *Frisco Transportation Co.*, 358 U.S. 133, 146 (1958), Rule 60(b) allows such modifications in appropriate circumstances. See *In re West Texas Marketing Corp.*, 12 F.3d 497, 502, 504 (5th Cir. 1994) (distinguishing between "a clerical error, a copying or computational mistake, which is correctable under" Rule 60(a), and "substantive error[s]" correctable under Rule 60(b)); *Blanton* v. *Anzalone*, 813 F.2d 1574, 1577 & n.2 (9th Cir. 1987) (distinguishing between a district court's "blunders in execution," correctable under Rule 60(a), and a substantive error based on a "legal or factual mistake in * * * its original determination") (citation omitted); see also 11 Charles Alan Wright et al., *Federal Practice and Procedure* § 2854 (2012) ("Subdivision (a) deals solely with the correction of errors that properly may be described as clerical or as arising from oversight or omission. Errors of a more substantial nature are to be corrected by a motion under Rules 59(e) or 60(b).").

Petitioner is therefore wrong to suggest (Br. 31-32) that a plain-meaning application of "mistake" to legal as well as factual errors would create a redundancy within Rule 60. Although Rules 60(a) and 60(b)(1) may each encompass some mistakes arising from oversight or omission, courts have for decades applied a simple analysis to categorize Rule 60 motions based on claims of mistake as falling within one provision or the other. See, *e.g.*, *United States* v. *Griffin*, 782 F.2d 1393, 1396-1397 (7th Cir. 1986). If the requested remedy would "implement the original meaning" of a judicial order or action, the motion falls within Rule 60(a). *Id.* at 1397. If the requested change would "alter the original meaning," it arises under Rule 60(b) (or, as relevant, Rule 59(e)). *Ibid.*

That form of sorting is unavoidable even under petitioner's view of "mistake" as implicitly limited to "factual mistake." On that view as well, in order to determine whether Rule 60(a) authorizes it to address a claim of factual mistake, a court must ask whether the requested remedy would "chang[e] previous decisions" in a substantive fashion. *American Trucking Ass'ns*, 358 U.S. at 146. Applying the same type of analysis to legal errors is neither anomalous nor inappropriate. Instead, it is necessary to implement the Rules as they are written.

c. The plain-meaning approach similarly does nothing to disrupt the relationship between Rule 60(b) and Rule 59(e), which allows a court "'to rectify its own mistakes in the period immediately following' its decision" by authorizing a motion to "'alter or amend a judgment'" within 28 days of its entry. *Banister* v. *Davis*, 140 S. Ct. 1698, 1703 (2020) (quoting *White* v. *New Hampshire Department of Employment Security*, 455

U.S. 445, 450 (1982) and Fed. R. Civ. P. 59(e)). Rule 59(e) inherently overlaps to some extent with Rule 60(b): each authorizes substantive relief from a judgment, see *id.* at 1708, and the "courts of appeals have long treated Rule 60(b) motions filed within 28 days as * * * Rule 59(e) motions," *id.* at 1710 n.9; see Fed. R. App. P. 4(a)(4)(A)(vi) (codifying that approach). But that overlap is not unique to Rule 60(b)(1); a Rule 59(e) motion could just as easily raise a claim that would, if filed later, fall under Rule 60(b)(3) or (b)(4).

Rule 59(e) and Rule 60(b) nonetheless differ in important ways. See 12 James Wm. Moore, *Moore's Federal Practice* § 59.05[7][b], at 59-20 to 59-23 (Daniel R. Coquillette et al. eds., 3d ed. 2021). Rule 59(e) provides for relief only on a motion filed within 28 days. See Fed. R. Civ. P. 6(b)(2) (foreclosing extensions of either Rule's deadline). Furthermore, unlike a Rule 60(b) motion, which can be used to collaterally attack a final judgment and does not affect the judgment's finality or suspend its operation, a Rule 59(e) motion suspends the finality of the judgment, offering a movant the opportunity to "aid the trial court to get its decision right in the first instance." *Banister*, 140 S. Ct. at 1709-1710. And whereas a decision on a Rule 59(e) motion merges into the prior judgment for purposes of appeal, an appeal from the denial of a Rule 60(b) motion "does not bring up the underlying judgment for review." *Id.* at 1710 (quoting *Browder* v. *Director*, 434 U.S. 257, 263 n.7 (1978)).

Those distinctions all remain intact if some legal errors are cognizable under Rule 60(b)(1). Petitioner does not suggest otherwise. Instead, he asserts (Br. 37-38) that permitting claims of legal error under Rule 60(b)(1) undermines Rule 59(e)'s 28-day deadline—and the

statutory deadlines to file a notice of appeal in civil cases, see Fed. R. App. 4(a)(1); 28 U.S.C. 2107(a) and (b)—by giving parties up to a year to "repackage" arguments that should have been raised under Rule 59(e) or in an appeal. But as petitioner recognizes (Br. 37), that possibility exists irrespective of the Court's resolution of the question presented in this case.

Whether or not the Court carves out legal or judicial error from the definition of "mistake," Rule 60(b) will still encompass motions raising arguments that could have been raised under Rule 59(e) or in an appeal. A motion arguing that a legal error renders a judgment "void," for example, would be cognizable in a motion under Rule 59(e), in an appeal, or in a Rule 60(b)(4) motion. See 12 James Wm. Moore, *Moore's Federal Practice* § 60.44[1][b], at 60-152 (Daniel R. Coquillette et al. eds., 3d ed. 2021). The courts of appeals have long recognized the overlap, see *id.* § 60.41[4], at 60-109, and have largely ameliorated its effect "through careful enforcement of the requirement that Rule 60(b) relief be sought within a 'reasonable time,'" including by generally (though not inflexibly) requiring that the motion be filed within the time for noticing an appeal, *Mendez*, 725 F.3d at 660 (quoting Fed. R. Civ. P. 60(c)(1)).

Contrary to petitioner's contention (Br. 13), that approach is a direct application of Rule 60 itself, not an "atextual * * * time limit" born of inconvenient necessity. The one-year outer limit for Rule 60(b)(1) motions does not displace the overarching requirement that all Rule 60(b) motions be filed "within a reasonable time." Fed. R. Civ. P. 60(c)(1). And lower courts have recognized that the "reasonable time" in which to identify an obvious legal error is ordinarily no longer than the time for filing a notice of appeal—though that presumption

has been "flexibly applied" in accord with the general purposes of Rule 60(b)(1) and the specific circumstances of the case, *Bank of California, N.A.* v. *Arthur Andersen & Co.*, 709 F.2d 1174, 1177 (7th Cir. 1983). Application of that requirement in addressing the interaction between Rules 59(e) and 60(b) would remain both necessary and appropriate regardless of the outcome here.

2. Applying the plain meaning of "mistake" promotes justice and efficiency

A plain-meaning interpretation of "mistake," to include legal and judicial mistakes, furthers the underlying purposes of the Federal Rules. It is petitioner's atextual interpretation that would introduce unwarranted impediments.

a. The civil rules are designed to promote—and "should be construed * * * to secure"—"the just, speedy, and inexpensive determination of every action and proceeding." Fed. R. Civ. P. 1. And as early as 1964, Judge Friendly explained why treating a promptly raised claim of legal error as cognizable under Rule 60(b)(1) effectuates that purpose. "Under such circumstances," he explained, "there is indeed good sense in permitting the trial court to correct its own error," while "no good purpose is served by requiring the parties to appeal to a higher court." *Schildhaus* v. *Moe*, 335 F.2d 529, 531 (2d Cir. 1964).

If a party identifies a mistake of law in a trial court's judgment and raises it within a reasonable time, allowing the court to correct the mistake without appeal promotes both accuracy and efficiency. See *Barrier* v. *Beaver*, 712 F.2d 231, 234-235 (6th Cir. 1983) ("This view serves the best interest of the judicial system by avoiding unnecessary appeals and allowing correction of legal error if and when made and the trial court has been

satisfied that an error was committed."); *Oliver* v. *Home Indemnity Co.*, 470 F.2d 329, 330-331 (5th Cir. 1972) ("The policy favoring such a construction is, of course, one aimed at preventing the unnecessary wasting of energies by both appellate courts and litigants."). Although petitioner suggests (Br. 38-39) that only Rule 59(e) serves that function, that suggestion is anachronistic. When Rule 60(b)(1) took effect, motions under Rule 59(e) were subject to a short ten-day deadline, see Fed. R. Civ. P. 59(e) (1946), meaning that Rule 60(b)(1) motions were the only way to identify a mistake for the district court during the additional 20 days before expiration of the default window for filing a notice of appeal.

Rule 60(b)(1) continues to fill substantial gaps today. Rule 59(e)'s current 28-day deadline does not align with the 60-day window for appealing in cases (like this one) where the government is a party; the 60-day (or longer, and possibly discontinuous) window in cases where the district court extends (or reopens) the time to file a notice of appeal; or even the 30-day window for appeal in non-governmental cases. See Fed. R. App. P. 4(a)(1)(A) and (B) and (5); see also 28 U.S.C. 2107. In all of those circumstances, a plain-text reading of Rule 60(b)(1) gives district courts a straightforward way of remedying obvious legal errors of their own making that would otherwise require intervention by the courts of appeals.

b. Notwithstanding petitioner's warnings (Br. 39) of "messy procedural complications" with the plain-meaning approach, he identifies no unique administrability challenges that have arisen in the decades of practice across the six federal circuits that have explicitly endorsed that understanding of Rule 60(b)(1). See *In re 310 Associates*, 346 F.3d 31, 35 (2d Cir. 2003) (per curiam); *Benson*, 575 F.3d at 547 (5th Cir.); *United States* v.

Reyes, 307 F.3d 451, 455 (6th Cir. 2002); *Mendez*, 725 F.3d at 658-660 (7th Cir.); *Cashner*, 98 F.3d at 578 (10th Cir.); *Parks* v. *U. S. Life & Credit Corp.*, 677 F.2d 838, 839-840 (11th Cir. 1982) (per curiam).

Moreover, petitioner's approach itself creates substantial practical difficulties. Under his view, courts are tasked with policing the line between mistakes of fact and mistakes of law. That line, however, is often a difficult one to draw. See, *e.g.*, *Pullman-Standard* v. *Swint*, 456 U.S. 273, 288 (1982) ("The Court has previously noted the vexing nature of the distinction between questions of fact and questions of law."); 27 Samuel Williston & Richard A. Long, *A Treatise on the Law of Contracts* § 70:125, at 602 (4th ed. 2020) ("Historically, the distinction between a mistake of law and one of fact has often been metaphysical."). The same is true of the line between an error attributable to a party (*e.g.*, an erroneous assertion in a brief) and an error attributable to a court (*e.g.*, an erroneous adoption of an easily falsifiable assertion).

This case illustrates both types of line-drawing problems. The district court's mistake of law—deeming petitioner's Section 2255 motion untimely—reflected its failure to apply unambiguous, controlling law to a fact of record. But the relevant error might also be described as a mistake of fact by petitioner, or by both parties. Petitioner mistakenly believed that his attorney had filed a petition for a writ of certiorari, and neither petitioner nor the government appeared to recognize that some of petitioner's co-defendants had filed petitions for rehearing in the court of appeals. See D. Ct. Doc. 4, at 3; D. Ct. Doc. 16, at 11-13; D. Ct. Doc. 22, at 2; D. Ct. Doc. 30, at 1-2 (Apr. 11, 2016). The magistrate judge and district court then repeated that

mistake, failing to note the petitions for rehearing even after reviewing the appellate docket, see D. Ct. Doc. 27, at 1-10; D. Ct. Doc. 32, at 1-6, and failing to account for those petitions in their judicial pronouncements.

Petitioner presumably would agree that a motion seeking relief based only on the parties' mistakes of fact here would be cognizable under Rule 60(b)(1). Yet petitioner's approach permits a party to evade Rule 60(b)(1)'s time limit by recharacterizing those mistakes as the court's own mistake of law. Rather than demanding such eye-of-the-beholder distinctions between fact and law, or arbitrary allocations of blame between a party and a judge, the more manageable "bright-line rule," Pet. Br. 39, is the one set out in the text: "mistake[s]" are mistakes.

II. THE JUDGMENT BELOW SHOULD BE AFFIRMED

If the term "mistake" in Rule 60(b)(1) simply carries its ordinary meaning, without petitioner's extratextual and ahistorical limitations, applying that term in this case is straightforward. In denying petitioner's Section 2255 motion, the district court failed to apply a controlling provision of law, cited by a party, to an undisputed fact of record. It is clear, and both parties acknowledge, that a timely petition for rehearing filed by "any party" tolls the time to file a petition for a writ of certiorari until rehearing is denied. Sup. Ct. R. 13.3. And the appellate docket in this case—which both the magistrate judge and the district court "review[ed]," D. Ct. Doc. 27, at 9; D. Ct. Doc. 32, at 5—shows that petitioner's co-defendants filed petitions for rehearing. See 12-10990 Docket entry (11th Cir. Dec. 5, 2013); 12-10990 Docket entry (11th Cir. Dec. 23, 2013). Petitioner's Section 2255 motion was therefore timely, and the district court's contrary ruling was incorrect.

That ruling was a mistake. It was not an error of deliberate legal judgment, but an unintentional failure to apply apparent and unambiguous law to apparent and unambiguous facts. See Pet. Br. 21 (acknowledging that the mistake was "apparent from the face of the court's opinion"). Petitioner's challenge to that ruling therefore falls under Rule 60(b)(1). And because his motion was filed more than one year after his Section 2255 motion was denied, it was untimely.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

ELIZABETH B. PRELOGAR
Solicitor General
KENNETH A. POLITE, JR.
Assistant Attorney General
ERIC J. FEIGIN
Deputy Solicitor General
BENJAMIN W. SNYDER
Assistant to the Solicitor General
DANIEL J. KANE
Attorney

MARCH 2022

APPENDIX

1. Fed. R. Civ. P. 60 (1938) provides:

Relief from a Judgment or Order

(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.

2. Fed. R. Civ. P. 59 (1946) provides:

NEW TRIALS; AMENDMENT OF JUDGMENTS

(a) Grounds.

A new trial may be granted to all or any of the parties and on all or part of the issues (1) in an action in which there has been a trial by jury, for any of the reasons for which new trials have heretofore been granted in actions at law in the courts of the United States; and (2) in an action tried without a jury, for any of the reasons for which rehearings have heretofore been granted in suits in equity in the courts of the United States. On a motion for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new Judgment.

(b) Time for motion.

A motion for a new trial shall be served not later than 10 days after the entry of the judgment.

(c) Time for serving affidavits.

When a motion for new trial is based upon affidavits they shall be served with the motion. The opposing party has 10 days after such service within which to serve opposing affidavits, which period may be extended for an additional period not exceeding 20 days either by the court for good cause shown or by the parties by written stipulation. The court may permit reply affidavits.

(d) On initiative of court.

Not later than 10 days after entry of judgment the court of its own initiative may order a new trial for any reason for which it might have granted a new trial on

motion of a party, and in the order shall specify the grounds therefor.

(e) Motion to alter or amend a judgment.

A motion to alter or amend the judgment shall be served not later than 10 days after entry of the judgment.

3. Fed. R. Civ. P. 60 (1946) provides:

RELIEF FROM JUDGMENT OR ORDER

(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. 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.

4. Fed. R. Civ. P. 59 provides:

New Trial; Altering or Amending a Judgment

(a) IN GENERAL.

(1) *Grounds for New Trial.* The court may, on motion, grant a new trial on all or some of the issues—and to any party—as follows:

(A) after a jury trial, for any reason for which a new trial has heretofore been granted in an action at law in federal court; or

(B) after a nonjury trial, for any reason for which a rehearing has heretofore been granted in a suit in equity in federal court.

(2) *Further Action After a Nonjury Trial.* After a nonjury trial, the court may, on motion for a new trial, open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new ones, and direct the entry of a new judgment.

(b) TIME TO FILE A MOTION FOR A NEW TRIAL. A motion for a new trial must be filed no later than 28 days after the entry of judgment.

(c) TIME TO SERVE AFFIDAVITS. When a motion for a new trial is based on affidavits, they must be filed with the motion. The opposing party has 14 days after being served to file opposing affidavits. The court may permit reply affidavits.

(d) NEW TRIAL ON THE COURT'S INITIATIVE OR FOR REASONS NOT IN THE MOTION. No later than 28 days after the entry of judgment, the court, on its own, may order a new trial for any reason that would justify granting one on a party's motion. After giving the parties notice and an opportunity to be heard, the court may grant a timely motion for a new trial for a reason not stated in the motion. In either event, the court must specify the reasons in its order.

(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 the judgment.

5. Fed. R. Civ. P. 60 provides:

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.