No. 23-971

IN THE
Supreme Court of the United States

GARY WAETZIG,

Petitioner,

v.

HALLIBURTON ENERGY SERVICES, INC.,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Tenth Circuit

BRIEF IN OPPOSITION

HEATHER F. CROW
THE KULLMAN FIRM, P.L.C.
2915 Kerry Forest Pkwy
Suite 101
Tallahassee, FL 32309
(850) 296-1953
hfc@kullmanlaw.com

MATTHEW D. MCGILL
Counsel of Record
JONATHAN C. BOND
LOCHLAN F. SHELFER
JOSHUA R. ZUCKERMAN
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Ave., N.W.
Washington, D.C. 20036
(202) 955-8500
MMcgill@gibsondunn.com

Counsel for Respondent

QUESTION PRESENTED

Whether a plaintiff's voluntary dismissal of his suit without prejudice under Federal Rule of Civil Procedure 41(a)(1)(A)(i) is a "final judgment, order, or proceeding" that the district court may reopen under Federal Rule of Civil Procedure 60(b).

RULE 29.6 STATEMENT

Pursuant to this Court's Rule 29.6, undersigned counsel states that respondent Halliburton Energy Services, Inc., is a wholly owned subsidiary of Halliburton Holdings, LLC, which is a wholly owned subsidiary of Halliburton Company, a publicly traded corporation.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

TABLE OF AUTHORITIES
(*continued*)

Page(s)

Statutes

Rules

Treatises

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INTRODUCTION

This case presents an exceedingly narrow procedural question that arises infrequently and arose here due to unusual circumstances unlikely to recur. Petitioner sued respondent under the Age Discrimination in Employment Act (ADEA), 29 U.S.C. § 623, *et seq.*, but then voluntarily dismissed his suit under Federal Rule of Civil Procedure 41(a)(1)(A)(i) without prejudice in favor of arbitration. After losing in arbitration, petitioner sought to reopen his suit under Rule 60(b). But, as the court of appeals correctly held, Rule 60(b) allows relief only from a "final judgment, order, or proceeding," Fed. R. Civ. P. 60(b), and a voluntary dismissal without prejudice is none of those things.

Petitioner asks this Court to grant certiorari to review that holding, but the arcane question whether a plaintiff who voluntarily dismisses his own suit without prejudice can invoke Rule 60(b) to revive the suit rarely matters. Such a plaintiff typically has no need for Rule 60(b) relief because the defining feature of a voluntary dismissal without prejudice is that (absent some other, independent bar) the plaintiff can simply refile his lawsuit (once). Fed. R. Civ. P. 41(a)(1)(B).

Petitioner here could not pursue that typical path only because of the idiosyncratic intersection of two later developments. First, the limitations period on his ADEA claim against respondent expired while the arbitration proceeded. Pet. App. 52a. Second, after petitioner dismissed his suit, this Court ruled that a party cannot ask a federal court to vacate an arbitral award under Sections 9 and 10 of the Federal Arbitration Act (FAA), 9 U.S.C. §§ 9-10, unless some other statute confers federal jurisdiction. *Badgerow* v. *Walters*, 596 U.S. 1, 5 (2022). A district court cannot assert jurisdiction by "look[ing] through" the request to vacate an arbitral award to the underlying controversy that the arbitration resolved. *Ibid.* Because petitioner had dismissed (rather than stayed) his prior suit, the limitations period and *Badgerow* prevented petitioner from filing a new suit in federal court.

Those developments do not demonstrate any important or recurring problem in need of plenary review. They simply show that petitioner's decision to *dismiss* his suit in favor of arbitration—perhaps based on a mistaken belief that he could file a new suit under the FAA to vacate an unfavorable award—was, in retrospect, unwise in the happenstance circumstances of this case. Had he instead *stayed* his suit pending arbitration, he could have moved to lift the stay.

Other litigants are on notice of *Badgerow* and are very unlikely to find themselves in petitioner's situation. It is now plain that a stay, rather than a Rule 41(a)(1)(A)(i) dismissal without prejudice, is the prudent course for a party in petitioner's position. And this Court confirmed only last month that, when a district court finds a dispute is arbitrable, a party is entitled to a stay (instead of dismissal) upon request. *Smith* v. *Spizzirri*, 144 S. Ct. 1173, 1176-1178 (2024). This Court's decisions provide other plaintiffs the incentive and ability to avoid petitioner's predicament.

Petitioner does not attempt to show that similar scenarios have arisen with any regularity. His pitch for plenary review is premised instead on a purported conflict between the decision below and other circuits' decisions on the interplay of Rules 41(a)(1)(A)(i) and 60(b) in the abstract. But any inconsistency on that issue is shallow at best. All but one of the precedential decisions petitioner cites did not even address the question the petition presents: whether a voluntary dismissal without prejudice under Rule 41(a)(1)(A)(i) is a "final * * * proceeding" that can be reopened under Rule 60(b). The only arguable exception he identifies is the Fifth Circuit's divided decision in *Yesh Music* v. *Lakewood Church*, 727 F.3d 356 (2013), which involved starkly different—yet equally unusual—circumstances in which the plaintiff had voluntarily dismissed its own claims without prejudice *twice*. Any tension between the Fifth Circuit's approach to that isolated, uncommon scenario and the decision below does not warrant review.

The Court should deny the petition.

STATEMENT

1. This case concerns two Federal Rules of Civil Procedure. First, Rule 41(a) allows a plaintiff to dismiss his own action unilaterally "without a court order" by filing a "notice of dismissal" before the defendant answers or seeks summary judgment. Fed. R. Civ. P. 41(a)(1)(A)(i). Such a dismissal is "without prejudice" unless the plaintiff's notice of dismissal states otherwise, and it does not "operat[e] as an adjudication on the merits" unless the "the plaintiff previously dismissed any federal- or state-court action based on or including the same claim." Fed. R. Civ. P. 41(a)(1)(B). "No action need be taken by the court" to effect the voluntary dismissal. 9 Charles A. Wright & Arthur R. Miller, *Federal Practice & Procedure* § 2362 (4th ed. 2023). Rule 41(a)(1)(A)(i)'s automatic, self-help approach promotes "certainty and efficiency." *Wellfount, Corp.* v. *Hennis Care Centre of Bolivar, Inc.*, 951 F.3d 769, 774 (6th Cir. 2020).

Second, Rule 60(b) recognizes that the interests of finality sometimes should give way to other considerations. Rule 60(b)(1) allows a court to "relieve a party * * * from a final judgment, order, or proceeding" in certain circumstances. Fed. R. Civ. P. 60(b). As relevant here, Rule 60(b)(1) authorizes such relief due to a party's "mistake, inadvertence, surprise, or excusable neglect." Fed. R. Civ. P. 60(b)(1). Courts have recognized, for example, "that a party should not be deprived of the opportunity to present the merits of the claim because of a technical error or slight mistake by the party's attorney." 11 Charles A. Wright & Arthur R. Miller, *Federal Practice & Procedure* § 2858 (3d ed. 2024). And following a list of several other grounds for relief, Rule 60(b)(6) authorizes a court to relieve a party from a "final judgment, order, or proceeding" for

"any other reason that justifies relief." Fed. R. Civ. P. 60(b)(6).

2. In 2020, petitioner brought suit against respondent, his former employer, alleging that his termination violated the ADEA. Pet. App. 2a. But "[b]ecause he was contractually obligated to arbitrate any dispute with [respondent], [petitioner] voluntarily dismissed his suit without prejudice under [Rule] 41(a)(1)(A)(i)." *Ibid.* The parties proceeded to arbitration, and the arbitrator granted summary judgment to respondent. *Id.* at 3a.

3. In 2021, "[d]issatisfied with the outcome" in arbitration, petitioner "returned to federal court." Pet. App. 2a. But "instead of filing a new lawsuit challenging arbitration, he moved to reopen his age discrimination case and vacate the arbitration award" under Rule 60(b). *Ibid.* The district court issued an order to show cause, questioning whether it had jurisdiction to grant relief under Rule 60(b). *Id.* at 51a.

After briefing on that question, the district court (per a magistrate judge hearing the case by consent) granted petitioner's Rule 60(b) motion and reopened the case. Pet. App. 49a-64a & n.1. The court first addressed respondent's contention that "the case cannot be reopened" under Rule 60(b) "because there is no valid court order to set aside." *Id.* at 53a. The court acknowledged that such a "dismissal is effective at the moment the notice of dismissal is filed" without further order of the court—indeed, it noted that a subsequent "order granting dismissal is superfluous, a nullity, and without procedural effect," and "the court has no role to play." *Ibid.* (brackets and internal quotation marks omitted). The court further acknowledged that "the effect of the filing of a notice of dismissal" under Rule 41(a)(1)(A)(i) "is to leave the parties as though no

action had been brought." *Ibid.* (brackets omitted) (quoting *Janssen* v. *Harris*, 321 F.3d 998, 1000 (10th Cir. 2003)).

The district court reasoned, however, that lower courts had recognized an "exception" to that general rule "when a plaintiff seeks to reopen a case dismissed *with* prejudice" under Rule 41(a)(1)(A)(i). Pet. App. 54a (emphasis added). The court explained that a "dismissal with prejudice operates as a final adjudication on the merits, and is thus a final judgment." *Ibid.* And the court predicted that the Tenth Circuit would "apply that rationale to a notice of dismissal without prejudice." *Ibid.*; see *id.* at 54a-58a.

The district court then concluded that Rule 60(b) relief was warranted for two reasons. Pet. App. 58a-64a. First, the court deemed relief appropriate under Rule 60(b)(1) because it found that petitioner had made a "careless mistake" by dismissing his original case instead of staying it. *Id.* at 59a. In the alternative, the court held that Rule 60(b)(6) authorized relief based on an "intervening change in law": Petitioner could not file a new federal-court action to vacate the arbitral award under the FAA because, under this Court's recent decision in *Badgerow* v. *Walters*, 596 U.S. 1 (2022), a court asked to vacate or confirm an award must have an independent source of subject-matter jurisdiction over the case and cannot "look through" to the parties' underlying controversy that was the subject of arbitration. Pet. App. 61a (citation omitted). The district court further noted that petitioner "cannot refile in state court due to the statute of limitations" on his ADEA claim, which had expired while the arbitration was ongoing. *Id.* at 62a.

The district court accordingly granted petitioner's Rule 60(b) motion and reopened his case. Pet. App.

64a. After further proceedings, the court vacated the arbitral award and remanded to the arbitrator. *Id.* at 29a-48a.

4. The court of appeals reversed.

a. Petitioner's lead argument on appeal was that his Rule 60(b) motion should be treated "as a 'new case,' rather than part of an existing case." Pet. App. 4a-5a. The court of appeals found that petitioner forfeited that argument and declined to consider it. *Ibid.*

The court of appeals then rejected petitioner's contention that Rule 60(b) authorized reopening his original case. Pet. App. 5a-21a. It explained that a "plaintiff can only obtain relief under Rule 60(b) if his voluntary dismissal without prejudice under Rule 41(a) qualifies as 'a final judgment, order, or proceeding.'" Pet. App. 7a (quoting Fed. R. Civ. P. 60(b)). Petitioner's voluntary dismissal undisputedly was not a "final judgment." *Ibid.* And the court found that the dismissal did not result in any "final order" because petitioner's notice of voluntary dismissal "was effective upon filing." *Ibid.* The only question was "whether a voluntary dismissal without prejudice is a 'final proceeding' that can save it for Rule 60(b) consideration." *Ibid.*

After examining Rule 60(b)'s text, structure, and precedent, the court of appeals held that a voluntary dismissal is not a final proceeding. Pet. App. 7a-21a. The court focused on the word "final" and reasoned that a final proceeding must involve "a judicial determination with *finality*." *Id.* at 10a-11a. Thus, the court explained, "a voluntary dismissal *with prejudice* qualifies as a final judgment because there has been a judicial determination ending the case." *Id.* at 12a. By contrast, the Tenth Circuit observed that a volun-

tary dismissal *without* prejudice does not entail any judicial determination and instead is "automatic upon filing the necessary notice." *Id.* at 18a. "Although there was an administrative closing by the clerk's office, no judicial officer was involved in any way." *Ibid.*

The court of appeals further reasoned that finality is lacking because the "plaintiff can usually refile after a dismissal without prejudice, even doing so the next day." Pet. App. 18a. "Although the dismissal may have brought a particular lawsuit with its own unique case number to a close," the court observed, "the overarching dispute between the parties has not been resolved." *Id.* at 18a-19a. "No rights have been determined," and "no one has been *burdened* by court action, a requirement for Rule 60(b) *relief*." *Id.* at 19a.

The court of appeals held that nothing about petitioner's voluntary dismissal without prejudice itself precluded him from reasserting his claims against respondent. Pet. App. 19a & n.11. Any obstacle, it explained, stemmed instead from the expiration of the limitations period, the arbitration ruling, and this Court's intervening decision in *Badgerow*. *Id.* at 19a n.11. But those "future occurrence[s] * * * cannot boomerang back" and transform a nonfinal "voluntary dismissal without prejudice into a final judgment, order, or proceeding." *Id.* at 19a. The court reserved judgment on "what *would* be a final proceeding that does not culminate in a final judgment or order," concluding that petitioner's "voluntary dismissal without prejudice is not it." *Id.* at 19a-20a (emphasis added).

b. Judge Matheson dissented. Pet. App. 22a-28a. In his view, the finality of a Rule 41(a)(1)(A)(i) voluntary dismissal should be assessed not at the time the dismissal occurs, but when a Rule 60(b) motion is filed. *Id.* at 28a. Judge Matheson concluded that petitioner's

voluntary dismissal without prejudice had become final by the time petitioner filed his Rule 60(b) motion due to the arbitral award and *Badgerow*. *Ibid.*

5. The court of appeals denied rehearing en banc, with no judge requesting a poll. Pet. App. 65a.

REASONS FOR DENYING THE PETITION

I. NO CERTWORTHY CONFLICT EXISTS ON THE QUESTION PRESENTED

Petitioner contends that the decision below creates a broad, lopsided conflict with five other circuits on the interplay of Federal Rules 41(a)(1)(A)(i) and 60(b). But petitioner substantially overstates the extent of any disagreement. Only one of the other published decisions he cites even addressed that issue. Any tension in the courts of appeals' decisions would not warrant review in this case.

A. The court of appeals here held that petitioner's voluntary dismissal without prejudice of his own ADEA suit was not a "'a final judgment, order, or proceeding'" that Rule 60(b) authorized the district court to reopen. Pet. App. 7a (quoting Fed. R. Civ. P. 60(b)); see *id.* at 7a-21a. Petitioner did not assert that his voluntary dismissal was a "final judgment." *Id.* at 7a. And the court explained that it was not a "final order" because his notice of dismissal "was effective upon filing," and no "*order* of dismissal" was necessary. *Ibid.*

The court of appeals held that petitioner's voluntary dismissal also was not a "final proceeding" under Rule 60(b). Pet. App. 8a-21a. After carefully examining Rule 60(b)'s text and structure—including "[t]he preceding terms 'final judgment' and 'final order'"—and judicial precedent, the court reasoned that "a final proceeding must involve, at a minimum, a judicial de-

termination with *finality*." *Id.* at 11a; see also *id.* at 8a-18a. The court concluded that a voluntary dismissal without prejudice "does not qualify" because both predicates are missing. *Id.* at 18a; see *id.* at 18a-21a. No "judicial determination" occurred because "a judicial officer never did anything, let alone determined anything." *Id.* at 18a. Indeed, "no judicial officer was involved in any way." *Ibid.* And petitioner's voluntary dismissal was not final because that *dismissal* did not preclude petitioner from pursuing his claims again by refiling his suit. *Id.* at 19a & n.11. Any obstacle he confronted stemmed instead from other, later developments: the expiration of the limitations period and this Court's decision in *Badgerow* v. *Walters*, 596 U.S. 1, 5 (2022). *Ibid.*

The court of appeals contrasted petitioner's voluntary dismissal without prejudice from a voluntary "dismissal *with* prejudice." Pet. App. 18a (emphasis added). It explained that a dismissal with prejudice does "qualif[y] as a final judgment because there has been a judicial determination ending a case, even if only a constructive determination." *Id.* at 12a. And it is final because a plaintiff who dismisses his suit with prejudice may "not refile his suit." *Id.* at 18a.

B. Contrary to petitioner's contention (Pet. 12-15), the Tenth Circuit's conclusion on that narrow procedural question does not conflict with any consensus of the other circuits. All but one of the published circuit decisions he cites did not address whether a voluntary dismissal without prejudice under Rule 41(a)(1)(A)(i) can be the basis for Rule 60(b) relief.

White v. *National Football League*, 756 F.3d 585 (8th Cir. 2014), involved a stipulated dismissal "*with prejudice*" under Rule 41(a)(1)(a)(ii). *Id.* at 590 (emphasis added). The Eighth Circuit held that such a dis-

missal is a final judgment under Rule 60(b). *Id.* at 594-596. That holding accords with the Tenth Circuit's recognition here that a voluntary dismissal with prejudice "qualifies as a final judgment" under a Rule 60(b) motion. Pet. App. 12a. *White* had no occasion to address the question presented concerning voluntary dismissals without prejudice.

Nelson v. *Napolitano*, 657 F.3d 586 (7th Cir. 2011), also did not reach any holding regarding the question whether a voluntary dismissal without prejudice under Rule 41(a)(1)(A)(i) can be reopened under Rule 60(b). Rather, the Seventh Circuit held that the district court did not abuse its discretion in denying a Rule 60(b) motion where the plaintiff did not "make a cogent argument" for relief. *Id.* at 590. It simply speculated in dictum that "there may be instances where a district court may grant relief under Rule 60(b) to a plaintiff who has voluntarily dismissed the action." *Id.* at 589.

Nor did *In re Hunter*, 66 F.3d 1002 (9th Cir. 1995), decide whether Rule 60(b) reaches voluntary dismissals without prejudice. That bankruptcy appeal presented a distinct question: "whether an action to set aside an acknowledgment of satisfaction of judgment qualifies as an action seeking to 'relieve a party from a final judgment, order or proceeding.'" *Id.* at 1004 (quoting Fed. R. Civ. P. 60(b)). The Ninth Circuit determined that the acknowledgment was "functionally equivalent to filing a voluntary dismissal." *Ibid.* But the court did not specify whether that constructive "dismissal" was with or without prejudice, and it thus never addressed the question petitioner poses here concerning a voluntary dismissal without prejudice.

Petitioner's reliance on *Williams* v. *Frey*, 551 F.2d 932 (3d Cir. 1977), is misplaced for similar reasons.

The Third Circuit there held that the "dismissal of the suit" was a final proceeding, *id.* at 935, but as in *In re Hunter*, the *Williams* court did not specify whether the dismissal was with or without prejudice, *id.* at 933-935. *Williams* thus never squarely confronted the question presented concerning a voluntary dismissal without prejudice. Petitioner cites a more recent, unpublished Third Circuit decision stating that a district court "retains the authority" following a dismissal without prejudice "to reinstate the voluntarily dismissed complaint under Federal Rule of Civil Procedure 60(b)." *Redman* v. *United States*, 2023 WL 8519210, at *2. (Dec. 8, 2023). But that unpublished per curiam disposition is not precedential, see 3d Cir. I.O.P. 5.7, and contained little reasoned analysis. Neither the Third Circuit's 47-year-old decision in *Williams* nor its non-binding disposition in *Redman* creates a conflict with the decision below warranting this Court's review.

The sole precedential decision petitioner cites that arguably conflicts with the decision below is the Fifth Circuit's divided decision in *Yesh Music* v. *Lakewood Church*, 727 F.3d 356 (2013). But any tension between *Yesh Music* and this case does not warrant review.

Although the *Yesh Music* majority (over a forceful dissent) reached a contrary conclusion from the panel here, *Yesh Music*, too, arose in highly unusual circumstances. The plaintiff there sought Rule 60(b) vacatur of its voluntary dismissal without prejudice of a suit that it had *twice* voluntarily dismissed. 727 F.3d at 358. The plaintiff originally brought suit in Texas federal court, but soon thereafter voluntarily dismissed that suit and refiled in New York federal court. *Ibid.* The parties then reached an agreement that the case should proceed in Texas, not New York, and the plain-

tiff voluntarily dismissed the New York suit. *Ibid.* Under Rule 41(a)(1)(B), that second voluntary dismissal was with prejudice, meaning that the plaintiff could not file a new case in Texas federal court. *Ibid.* The plaintiff instead sought to reopen the original, voluntarily dismissed Texas case. *Ibid.* The Fifth Circuit held that the voluntary dismissal was a "final proceeding." *Id.* at 361.

As Judge Jolly noted in his dissent, "[n]o other case has addressed a similar factual circumstance." 727 F.3d at 364. Indeed, Judge Jolly observed that "[n]one of the cases cited by the majority are remotely comparable to the situation" presented in *Yesh Music* in which "a plaintiff voluntarily dismisses its case with prejudice, but then attempts to overcome this legal consequence by reopening the same case, earlier voluntarily dismissed, but in a different federal district court from the court where the prejudicial dismissal occurred." *Ibid.* The Tenth Circuit here did not confront that convoluted and apparently unique procedural posture. And the decision below and *Yesh Music* illustrate that the interplay between Rules 41(a)(1)(A)(i) and 60(b) surfaces under only the rarest and most unusual of circumstances.

II. THE DECISION BELOW IS CORRECT

Petitioner does not contend that the decision below conflicts with any decision of this Court or attempt to show that the Tenth Circuit misread Rule 60(b). For good reason: The panel faithfully construed Rule 60(b)'s text and structure in holding that a voluntary dismissal without prejudice is not a "final judgment, order, or proceeding" from which a party can obtain Rule 60(b) relief.

Petitioner did not dispute below that a voluntary dismissal without prejudice is not a "final judgment." Pet. App. 7a. And in this Court he does not—and cannot plausibly—contest the Tenth Circuit's conclusion that such a dismissal is not a "final order." *Ibid*. No order was needed because "[t]he dismissal was automatic upon filing the necessary notice," and "no judicial officer was involved in any way." *Id.* at 18a.

The court of appeals correctly held that a voluntary dismissal without prejudice also is not a "final proceeding." Pet. App. 18a. It properly started with Rule 60(b)'s "text" by examining the "ordinary meaning" of its key "term[s]," *Kemp* v. *United States*, 596 U.S. 528, 533-534 (2022) (construing Rule 60(b))—here, the words "final" and "proceeding" themselves, Pet. App. 8a-9a. The court also appropriately took account of the rule's "structure," *Kemp*, 596 U.S. at 533—namely, that "proceeding" is last in a list that includes "[t]he preceding terms 'final judgment' and 'final order,'" which "illuminate (and narrow) the meaning of 'final proceeding,'" Pet. App. 11a. Applying those tools, the Tenth Circuit rightly recognized that a "final proceeding" "must involve, at a minimum, a *judicial determination* with *finality*." *Ibid.* (first emphasis added).

The court of appeals correctly found that petitioner's voluntary dismissal with prejudice fails on both fronts. No "judicial determination" was required or rendered for it to take effect. Pet. App. 20a. "[A] judicial officer never did anything, let alone determined anything." *Id.* at 18a. And a voluntary dismissal without prejudice is not "final" because it does not definitively resolve anything. *Ibid.* The plaintiff is free (absent some other, independent obstacle) to refile the same suit "the next day." *Ibid.*; see *Semtek International Inc.* v. *Lockheed Martin Corp.*, 531 U.S.

497, 505 (2001). Such dismissals thus lack the defining attribute of finality this Court and others have recognized in related contexts. Cf., *e.g.*, *Jefferson* v. *City of Tarrant*, 522 U.S. 75, 81 (1997) ("final" judgment under 28 U.S.C. § 1257(a) must be "an effective determination of the litigation" (citation omitted)); *Treasurer of State of Michigan* v. *Barry*, 168 F.3d 8, 13 (11th Cir. 1999) ("voluntary dismissals, granted without prejudice, are not final decisions" for purposes of 28 U.S.C. § 1291 because "it is possible that the claim dismissed without prejudice will be re-filed").

As the court of appeals also correctly determined, the happenstance that petitioner here no longer has a viable avenue to pursue his claims against respondent as a result of subsequent events does not transform his voluntary dismissal without prejudice into a final proceeding. Pet. App. 19a & n.11. Petitioner's inability to press those claims stemmed not from his voluntary dismissal, but from later developments: the expiration of the limitations period and this Court's decision in *Badgerow* barring suits under the FAA to vacate arbitral awards where the only asserted basis for federal-court jurisdiction requires "look[ing] through" to the parties' underlying controversy, 596 U.S. at 5. But those later developments did not convert petitioner's non-final voluntary dismissal without prejudice into a barrier that the dismissal itself never imposed.

The Tenth Circuit sensibly rejected an approach that would allow "[a] future occurrence—like a change in the law after dismissal—[to] boomerang back" and "tur[n] a voluntary dismissal without prejudice into a final judgment, order, or proceeding." Pet. App. 19a. As the court observed, "[t]he instant and automatic effect of a Rule 41(a)(1)(A)(i) voluntary dismissal without prejudice counsels toward evaluating finality under

Rule 60(b) at the moment the plaintiff filed the requisite notice." *Id.* at 19a n.11. It would be confusing and destabilizing for litigants and lower courts alike to permit a particular voluntary dismissal's status as a "final proceeding" *vel non* to toggle on or off years later based on unforeseeable future changes in law or facts. The court of appeals correctly held that petitioner's voluntary dismissal without prejudice never was and is not now a final proceeding under Rule 60(b).

III. THE QUESTION PRESENTED IS UNIMPORTANT

Petitioner does not and cannot demonstrate that the question presented holds any practical importance worthy of this Court's review. Petitioner again points (Pet. 15) to a purportedly pervasive circuit conflict, which is illusory for the reasons shown above, see pp. 9-13, *supra*. To the extent he suggests (Pet. 15-16) that a supposed circuit split concerning a Federal Rule rather than a statute more readily warrants review, that is backwards: If this Court perceives confusion about the procedural rules it has prescribed, it can amend them (subject to congressional review), 28 U.S.C. §§ 2072-2074, as it has done previously, see Fed. R. Civ. P. 41, Notes of Advisory Committee on Rules—1946 Amendment (explaining that language added to Rule 41(b) resolved a circuit conflict by "incorporat[ing] the view of" one side of the divide); Fed. R. Civ. P. 52, Notes of Advisory Committee on Rules—1985 Amendment (explaining that amendment to Rule 52(a) was designed "to avoid continued confusion and conflicts among the circuits"); Fed. R. Civ. P. 54, Notes of Advisory Committee on Rules—1961 Amendment (amending Rule 54 to address a "serious difficulty" and to overrule "[a] line of cases [that] has developed in the circuits"); cf. *Braxton* v. *United States*, 500 U.S. 344, 348 (1991) (Sentencing Commission's

responsibility to review Sentencing Guidelines periodically and make "whatever clarifying revisions to the Guidelines conflicting judicial decisions might suggest" may warrant more "restrained" exercise of this Court's "certiorari power").

The particular issue petitioner raises here concerning a plaintiff's ability to invoke Rule 60(b) to unwind his own voluntary dismissal without prejudice lacks practical importance. Plaintiffs seldom have any need to resort to Rule 60(b) for that purpose because a plaintiff who voluntarily dismisses a suit without prejudice can simply refile it. See p. 14, *supra*. Unsurprisingly, the issue rarely arises.

The question presented arose here only because of an unusual, idiosyncratic confluence of circumstances that is surpassingly unlikely to arise again, let alone with any frequency. Petitioner cannot pursue his claims today because he voluntarily dismissed (rather than stayed) his original suit. While the arbitration was ongoing, the limitations period ran, and under *Badgerow* he cannot seek to vacate the arbitral award.

There is no realistic prospect of that pattern often repeating. Plaintiffs in petitioner's position are now on notice from this Court that suits under the FAA to vacate an arbitral award are not an option (absent an independent basis for federal jurisdiction) and so are well advised to stay their suits pending arbitration rather than request (or acquiesce to) dismissal. And this Court confirmed last month that a plaintiff in petitioner's position is entitled to a stay (rather than dismissal) upon request. *Smith* v. *Spizzirri*, 144 S. Ct. 1173, 1176-1178 (2024). Going forward, other parties have a powerful incentive and the ability to avoid what the district court described as petitioner's "careless mistake." Pet. App. 59a. This Court should not

grant review merely to save petitioner from the consequences of his case-specific litigation choices.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

HEATHER F. CROW
THE KULLMAN FIRM, P.L.C.
2915 Kerry Forest Pkwy
Suite 101
Tallahassee, FL 32309
(850) 296-1953
hfc@kullmanlaw.com

MATTHEW D. MCGILL
Counsel of Record
JONATHAN C. BOND
LOCHLAN F. SHELFER
JOSHUA R. ZUCKERMAN
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Ave., N.W.
Washington, D.C. 20036
(202) 955-8500
MMcgill@gibsondunn.com

Counsel for Respondent

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