No. 23-971

In the
Supreme Court of the United States

GARY WAETZIG,
Petitioner,
v.
HALLIBURTON ENERGY SERVICES, INC.,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

BRIEF OF *AMICUS CURIAE* THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA IN SUPPORT OF RESPONDENT

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INTEREST OF *AMICUS CURIAE*[1]

The Chamber of Commerce of the United States of America is the world's largest business federation. It represents approximately 300,000 members and indirectly represents the interests of more than three million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files *amicus curiae* briefs in cases, like this one, that raise issues of concern to the Nation's business community.

The Chamber has a strong interest in the proper disposition of this case. Its members are frequently defendants in federal court, and that litigation is often fraught with procedural abuse by plaintiffs and their attorneys. This case provides a prime example. Petitioner voluntarily dismissed his suit without prejudice because he was contractually obligated to arbitrate the matter. He lost in that arbitration. But then, dissatisfied with the outcome of the arbitration, he returned to federal court and moved to vacate his notice of voluntary dismissal more than a year after its filing—and after the limitations period on his claim had expired. That maneuver finds no support in the Federal Rules of Civil Procedure. And permitting it would only thwart the policies of expedience, peace,

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[1] No counsel for any party authored this brief in whole or in part, and no party or counsel made a monetary contribution to the preparation or submission of this brief. No person other than *amicus curiae*, its members, or its counsel made a monetary contribution to the preparation or submission of this brief.

and repose that the Federal Rules of Civil Procedure and statutes of limitations are designed to protect. The Chamber has a significant interest in avoiding that abusive and inefficient procedural regime. It thus submits this brief in support of Respondent and affirmance of the judgment below.

INTRODUCTION AND SUMMARY OF ARGUMENT

Rule 41(a)(1) codifies a common-law procedure that affords plaintiffs a one-time opportunity to voluntarily abandon their lawsuit free from repercussions. No judicial involvement is needed to carry out that action. Rather, the plaintiff simply files a piece of paper with the district court known as a notice of voluntary dismissal. Where, as here, the plaintiff dismisses without prejudice, that filing returns the parties to the status quo. The plaintiff then has the opportunity to refile the same cause of action against the same defendant in the same (or another) court. Indeed, he could do so the very next day.

The issue in this case is whether Rule 60(b) authorizes a plaintiff to unwind that voluntary and unilateral action. It does not. This Court interprets the Federal Rules of Civil Procedure as it would any statute. *See Bus. Guides, Inc. v. Chromatic Commc'ns Enters., Inc.*, 498 U.S. 533, 540-41 (1991). And that means its task, as always, "is to interpret the words consistent with their ordinary meaning at the time" of enactment. *Wis. Cent. Ltd. v. United States*, 585 U.S. 274, 277 (2018) (alteration adopted; quotation marks omitted). By its plain terms, Rule 60(b) authorizes relief only "from a final judgment, order, or proceeding." Fed. R. Civ. P. 60(b). A notice of dismissal

without prejudice is not "final" because it allows the plaintiff to refile his action. At the same time, the notice is neither an "order," nor a "judgment," nor a "proceeding." When the Federal Rules were adopted in 1938, those three terms were ordinarily understood to refer to the actions of a judge or a court. But Petitioner's notice here effectuated the dismissal at his own behest, "Without a Court Order." Fed. R. Civ. P. 41(a)(1)(A).

And even if the Court could view Petitioner's filing as a "final judgment, order, or proceeding," Rule 60(b) would still provide no "Grounds for Relief." Fed. R. Civ. P. 60(b). Petitioner moved to vacate his voluntary dismissal under Rule 60(b)(1) and Rule 60(b)(6). But his motion came "more than a year" after the notice of dismissal, so Rule 60(b)(1) cannot possibly apply. Fed. R. Civ. P. 60(c)(1). Nor can Rule 60(b)(6). Relief under that provision "requires a showing of 'extraordinary circumstances'" not covered by any of the other provisions of Rule 60(b). *Gonzalez v. Crosby*, 545 U.S. 524, 536 (2005). The circumstances alleged here (dissatisfaction with the outcome of binding arbitration) are far from extraordinary. And Petitioner cannot avail himself of Rule 60(b)(6)'s "other reason" language at any rate, because his motion sounds in reasons that are specifically covered by Rule 60(b)(1)—namely, his own "mistake, inadvertence, surprise, or excusable neglect." To hold otherwise would disregard the plain language of Rule 60(b)(6) and enable Petitioner "to circumvent the 1-year limitations period that applies to clause (1)." *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 863 n.11 (1988). Moreover, it would expose parties and courts to nuisance litigation following the

routine disposition of lawsuits, driving up attorney fees and costs. That is not the sort of "just, speedy, and inexpensive" resolution of claims that the Federal Rules promise litigants. Fed. R. Civ. P. 1.

For all these reasons, the judgment below should be affirmed.

ARGUMENT

I. A Rule 41(a)(1) Voluntary Dismissal Is Not a "Final Judgment, Order, or Proceeding."

The decision below correctly held that "a court cannot set aside a voluntary dismissal without prejudice" under Rule 60(b) "because it is not a final judgment, order, or proceeding." Pet.App.2. That straightforward conclusion follows from the text and history of Rules 41 and 60. Petitioner's contrary position would thwart the overarching aims of the Federal Rules and the important policies served by statutes of limitations.

A. A Rule 41(a)(1) Voluntary Dismissal Leaves the Parties as if No Action Has Been Brought.

Prior to the adoption of the Federal Rules of Civil Procedure in 1938, the "general rule" had become "settled for the federal tribunals that a plaintiff possesse[d] the unqualified right" to voluntarily "dismiss his complaint at law or his bill in equity." *Jones v. SEC*, 298 U.S. 1, 19 (1936). That right to dismiss shortly after filing was "absolute," and it did "not depend on the reasons which the plaintiff offer[ed] for his action." *Ex parte Skinner & Eddy Corp.*, 265 U.S. 86, 93 (1924). The plaintiff could simply "take a nonsuit in order to file a new action

after further preparation." *Cone v. W. Va. Pulp & Paper Co.*, 330 U.S. 212, 217 (1947).

Historically, not all nonsuits were treated equally. A "nonsuit at the early common law where the plaintiff was inadvertently absent" from court "when demanded was called an involuntary nonsuit." Neal C. Head, *The History and Development of Nonsuit*, 27 W. Va. L.Q. 20, 23 (1920). These dismissals were entered by the court without the plaintiff's consent. *See id.* A nonsuit could also occur "when the judge expressed an opinion" that he would eventually rule against the plaintiff via directed verdict. *Id.* When a plaintiff submitted to that type of nonsuit "on the advice of the judge, the cases [were] in conflict as to his further rights." *Id.* Some cases allowed him to "set aside the nonsuit," while others did not. *Id.*

A true voluntary nonsuit was different. "When the plaintiff took a nonsuit of his own motion he was out of court," and he "*could not move to set aside the nonsuit*." *Id.* (emphasis added). The matter became a nullity. The plaintiff could of course file a new action, for "[u]nless a final judgment or decree is rendered in a suit," it is "never regarded as a bar to a subsequent action." *City of Aurora v. West*, 74 U.S. (7 Wall.) 82, 93 (1868). But, as to the original action, it was "not conclusive" of anything. *Id.* The "voluntary dismissal of [the] suit" thus "le[ft] the situation as if the suit had never been filed." *Md. Cas. Co. v. Latham*, 41 F.2d 312, 313 (5th Cir. 1930).

In the early twentieth century, plaintiffs frequently exploited the lax common-law deadlines for invoking this procedural mechanism. Voluntary dismissal without prejudice was typically permitted all the way

up "until the entry of the verdict." *Cooter & Gell v. Martmarx Corp.*, 496 U.S. 384, 397 (1990). As a result, plaintiffs could and "would put defendants to the expense of a lengthy trial, only to dismiss when an adverse judgment seemed imminent, with the obvious purpose of trying their chances again with a different judge or jury." Note, *Absolute Dismissal Under Federal Rule 41(a): The Disappearing Right of Voluntary Nonsuit*, 63 Yale L.J. 738, 738 (1954). "And the process might be repeated time after time." *McCann v. Bentley Stores Corp.*, 34 F. Supp. 234, 234 (W.D. Mo. 1940).

The Federal Rules responded by striking a balance in Rule 41. On one hand, Rule 41(a)(1) "allow[s] a plaintiff to dismiss an action without the permission of the adverse party or the court only during the brief period before the defendant ha[s] made a significant commitment of time and money"—that is, by the time the defendant files its answer or motion for summary judgment. *Cooter*, 496 U.S. at 397; *see* Fed. R. Civ. P. 41(a)(1)(A)(i). Further, under Rule 41's two-dismissal rule, "a notice of dismissal operates as an adjudication on the merits" and thereby bars future actions if "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). Hence, a plaintiff can voluntarily dismiss without prejudice only once.

But, short of that, "Rule 41(a)(1) preserves th[e] unqualified right of the plaintiff to a dismissal without prejudice." *Cone*, 330 U.S. at 217. And the filing of a notice of voluntary dismissal by the plaintiff operates automatically, "Without a Court Order." Fed. R. Civ. P. 41(a)(1)(A). In these ways, Rule 41(a) is designed

"to preserve a plaintiff's right to dismiss an action unilaterally, but to limit that right to an early stage of the litigation." 8 James Wm. Moore et al., *Moore's Federal Practice* § 41.33[1] (3d ed. 2024).

Where a plaintiff timely exercises that right, as here, Rule 41(a)(1) operates like a voluntary nonsuit at common law. Indeed, it continues to be "hornbook law that 'a voluntary dismissal without prejudice under Rule 41(a) leaves the situation as if the action never had been filed.'" *Erie Ins. Exch. ex rel. Stephenson v. Erie Indem. Co.*, 68 F.4th 815, 821 (3d Cir. 2023) (citation omitted); *see* 9 Charles A. Wright & Arthur R. Miller, *Federal Practice & Procedure* § 2367 (4th ed. 2024) (collecting cases). The "case is a nullity." *Williams v. Clarke*, 82 F.3d 270, 273 (8th Cir. 1996). And there is nothing "final" about the notice of dismissal because "it is possible that the claim dismissed without prejudice will be re-filed." *State Treasurer of Mich. v. Barry*, 168 F.3d 8, 13 (11th Cir. 1999); *see also Semtek Int'l Inc. v. Lockheed Martin Corp.*, 531 U.S. 497, 505-06 (2001) (citing *Black's Law Dictionary* 482 (7th ed. 1999)). There is accordingly no basis for a plaintiff to "move to set aside the nonsuit." Head, *supra*, at 23. His recourse is to file a new lawsuit within the applicable limitations period.

B. A Rule 41(a)(1) Voluntary Dismissal Is Not a "Final" "Judgment" or "Order."

Rule 60(b) does nothing to alter that historical understanding. It authorizes a court to "relieve a party or its legal representative" only "from a final judgment, order, or proceeding." Fed. R. Civ. P. 60(b). A notice of voluntary dismissal without prejudice under Rule 41(a)(1) does not fit the bill.

Start with the term "order." Plainly, an "order" presupposes a relationship whereby one party has the authority to direct another. *See* Order, *Webster's New Collegiate Dictionary* 591 (6th ed. 1949) ("A rule or regulation made by competent authority"). Thus, in legal parlance, an order is "[a] written direction or comment *by . . . a court or judge*." Order, *Black's Law Dictionary* (12th ed. 2024) (emphasis added). And that understanding traces back to before the adoption of the Federal Rules of Civil Procedure. *See BP P.L.C. v. Mayor & City Council of Balt.*, 593 U.S. 230, 237 n.1 (2021) (collecting historical definitions); Order, *Black's Law Dictionary* 1298 (3d ed. 1933) ("Every direction *of a court or judge* made or entered in writing, and not included in a judgment, is denominated an 'order.'" (emphasis added)).

The requirement that a court or judge issue an order is therefore essential. But that is not what happens with a Rule 41(a)(1) dismissal. On the contrary, Rule 41(a)(1) explicitly states that a notice of dismissal is effectuated "Without a Court Order." The plaintiff files his notice and, in turn, "[t]he dismissal is effective on filing and no court order is required." *Wilson v. City of San Jose*, 111 F.3d 688, 692 (9th Cir. 1997). Because the plaintiff's filing "automatically terminates the action" without judicial intervention and "leaves the parties as though no action had been brought," it cannot qualify as an "order." *Id.*

A notice of dismissal likewise does not qualify as a "judgment." As ordinarily understood, a judgment is "[a] court or other tribunal's final determination of the rights and obligations of the parties in a case," or "the act or action of making such a determination."

Judgment, *Black's Law Dictionary* (12th ed. 2024); *accord Brownback v. King*, 592 U.S. 209, 220 (2021) (Sotomayor, J., concurring). The Federal Rules similarly define a judgment to "include[] a decree and any order"—both of which are judicial actions—"from which an appeal lies." Fed. R. Civ. P. 54(a). And authorities contemporaneous with the Federal Rules' adoption spoke in the same voice: They described a judgment as "[t]he official and authentic *decision of a court of justice* upon the respective rights and claims of the parties to an action or suit therein litigated and submitted to its determination." Judgment, *Black's Law Dictionary* (3d ed. 1933) (emphasis added); *see also G. Amsinck & Co. v. Springfield Grocer Co.*, 7 F.2d 855, 859 (8th Cir. 1925) ("[T]he decision of a court constitutes its judgment[.]"). Like an order, then, a judgment in this context presumes some action by the court to reach a determination in the case, not unilateral conduct by a party.

Rule 60(b)'s use of the modifier "final" confirms this understanding. The word "final" characterizes a judgment "not requiring any further judicial action by the court that rendered judgment to determine the matter litigated." Final, *Black's Law Dictionary* (12th ed. 2024); *see also* Final, *Black's Law Dictionary* 779 (3d ed. 1933) ("Definitive; terminating; completed; conclusive; last."). In other words, the judgment must "final[ly] determin[e]" the "rights of the parties in an action or proceeding." Judgment, *Black's Law Dictionary* 1024 (3d ed. 1933). A notice of voluntary dismissal without prejudice, as already explained, does not do that. It instead leaves the plaintiff free to file the same cause the next day in either the same or a different court.

In addition, courts have long interpreted "final" for purposes of Rule 60(b) consistent with the meaning of "final" for appellate jurisdiction purposes in 28 U.S.C. § 1291. *See, e.g.*, *Nat'l Wildlife Fed'n v. Nat'l Marine Fisheries Serv.*, 886 F.3d 803, 816 (9th Cir. 2018); *Kapco Mfg. Co. v. C & O Enters., Inc.*, 773 F.2d 151, 154 (7th Cir. 1985); *see also Torres v. Chater*, 125 F.3d 166, 168 (3d Cir. 1997) ("There is an interdependence between the 'finality' required for Rule 60(b) and section 1291.").

There is simply no reason to construe the same word differently in those two provisions. And the law is well-settled that the Courts of Appeals lack jurisdiction to review a voluntary dismissal without prejudice. After all, a decision "is not final, ordinarily, unless it ends the litigation on the merits and leaves nothing for the court to do but execute the judgment." *Cunningham v. Hamilton County*, 527 U.S. 198, 204 (1999) (quotation marks omitted); *accord Catlin v. United States*, 324 U.S. 229, 233 (1945). A voluntary dismissal without prejudice "does not constitute an appealable final judgment because the plaintiff could re-file the case against the dismissed party." *Gaddis v. DeMattei*, 30 F.4th 625, 629-30 (7th Cir. 2022); *see Galaza v. Wolf*, 954 F.3d 1267, 1270 (9th Cir. 2020) ("[A] voluntary dismissal *without prejudice* is ordinarily *not* a final judgment from which the plaintiff may appeal." (quotation marks omitted)); *Blue v. D.C. Pub. Schs.*, 764 F.3d 11, 17 (D.C. Cir. 2014) (collecting cases for the proposition that "[e]very circuit" "[a]ppears to acknowledge a presumption against" treating voluntary dismissals without prejudice being final for appellate review).

At bottom, the plain text of Rule 60(b) shows that a notice of voluntary dismissal without prejudice is neither a "judgment" nor an "order." Nor is it "final." A plaintiff thus cannot move to set it aside under Rule 60(b).

C. A Rule 41(a)(1) Voluntary Dismissal Is Not a "Final" "Proceeding."

That leaves Petitioner to argue that a notice of dismissal qualifies as a "final" "proceeding." Pet.Br.16-25. But that effort similarly falls flat.

At the time of Rule 60(b)'s promulgation, the word "proceeding" had a variety of meanings. It was sometimes "used synonymously with 'action' or 'suit.'" Proceeding, *Black's Law Dictionary* 1430 (3d ed. 1933). In that sense, the term "describe[d] the entire course of an action at law or suit in equity from the issuance of the writ or filing of the bill until the entry of a final judgment." *Id.*

Yet the word "proceeding" also referred "[i]n a more particular sense" to an application "for aid in the enforcement of rights, for relief, for redress of injuries, for damages, or for any remedial object." *Id.* at 1431. Put another way: A "proceeding" denoted "[s]ome act, or acts, done in furtherance of the enforcement of an existing right." *Coca-Cola Co. v. City of Atlanta*, 110 S.E. 730, 733 (Ga. 1922). And that included the issuance of "a summary remedy prescribed by statute." *Id.*; *see also El Reno Wholesale Grocery Co. v. Taylor*, 209 P. 749, 753 (Okla. 1922) (collecting cases describing the "distinction between 'actions' and 'special proceedings'"); *Ruch v. State*, 146 N.E. 67, 71 (Ohio 1924) ("'Proceeding' is a term of much broader signification than either suit or action. It has been

broadly defined as any act done by the authority or direction of the court."). Regardless, the word "proceeding" was commonly understood to be "applicable, in a legal sense, *only to judicial acts* before some judicial tribunal." Proceeding, *Black's Law Dictionary* 1431 (3d ed. 1933) (emphasis added). So, too, in Rule 60(b).

Moreover, "[t]he addition of the qualifying word 'final'" in 1946 "emphasizes the character of the judgments, orders or proceedings from which Rule 60(b) affords relief." Fed. R. Civ. P. 60(b) advisory committee's note to 1946 amendment. Not just any "proceeding" will qualify. It must be a "final" one—and as already explained, a notice of voluntary dismissal without prejudice is anything but "final." By design, it leaves a plaintiff free "to commence another action for the same cause against the same defendants." *Wilson*, 111 F.3d at 692. And because such a filing "effectively erases the dismissed action" to "permit[] the initiation of a second action," it "is neither final nor appealable." Wright & Miller, *supra*, § 2367. It is not a "final proceeding."

This interpretation best comports with Rule 60(b)'s design. A "final" "judgment" or "order" is issued by the court in a typical lawsuit, while a "final" "proceeding" is the result of some other court action. The drafters thus employed the word "proceeding" as a catchall to address other judicial acts not covered by the first two terms. "And of course, because Rule 60(b) speaks to *relief*, the proceeding must have ended in a way that burdened the party invoking the rule." Pet.App.12 (emphasis added). That is not the case for a voluntary

dismissal without prejudice. It neither burdens the filing party nor results from any "final" judicial act.

This understanding of a "final proceeding" is further buttressed by the principle of "*noscitur a sociis*, the well-worn Latin phrase that tells us that statutory words are often known by the company they keep." *Lagos v. United States*, 584 U.S. 577, 582 (2018). Here, that canon counsels in favor of restricting the word "proceeding" to concepts similar or related to its linguistic neighbors—"judgment" and "order." The decision below respects that "commonsense" interpretive principle by recognizing that a "proceeding" involves some sort of judicial action, *United States v. Williams*, 553 U.S. 285, 294 (2008), just as when a court issues an order or enters a judgment, *see supra* Section I.B.

Rule 60's title points in the same direction. *See* Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 221 (2012) (noting that a title is a "permissible indicator[] of meaning"). It speaks only of "Relief from a Judgment or Order," omitting reference to relief from a "proceeding." That title supplies yet another clue that Rule 60's drafters intended the term "final proceeding" to be construed in a way that is "closely associated" with a "final judgment" or "final order." *Yates v. United States*, 574 U.S. 528, 540 (2015). As detailed above, the common thread between those three terms is the presence of a "judicial determination." Pet.App.11.

A notice of voluntary dismissal without prejudice therefore does not qualify as a "final proceeding" either.

D. Adopting Petitioner's Contrary Position Would Undermine the Basic Policies of the Federal Rules and Statutes of Limitations.

Accepting Petitioner's contrary reading would not only be inconsistent with the text and history of the Federal Rules; it would also encourage litigation gamesmanship that is "inconsistent with the overriding interest in the 'just, speedy, and inexpensive determination' of litigation in our courts." *Societe Nationale Industrielle Aerospatiale v. U.S. Dist. Ct. for the S. Dist. of Iowa*, 482 U.S. 522, 543 (1987) (quoting Fed. R. Civ. P. 1). Lawsuits that left the federal courts by the plaintiff's own volition could be strategically resurrected years later—after the statute of limitations has expired.

That would undermine "the basic policies of all limitations provisions: repose, elimination of stale claims, and certainty about a plaintiff's opportunity for recovery and a defendant's potential liabilities." *Rotella v. Wood*, 528 U.S. 549, 555 (2000) (collecting cases). As described above, a voluntary dismissal without prejudice nullifies the action and returns the parties to the status quo prior to the action's filing. *See supra* Section I.A. Thus, it allows for future litigation of the voluntarily dismissed claim only if refiled "within the applicable limitations period." *Semtek*, 531 U.S. at 506 (quoting *Black's Law Dictionary* for the definition of "dismissal without prejudice"). If a new case is not filed by that point, the limitations period expires. Defendants should be able to rely on that lapse without the ever-looming threat of a Rule 60(b) motion that is "often distant in time and scope." *Banister v. Davis*, 590 U.S. 504, 520 (2020).

Petitioner's tortured reading of the Federal Rules flips these policies on their head. "Rule 41(a)(1) was not designed to give a plaintiff any benefit other than the right to take one . . . dismissal without prejudice." *Cooter*, 496 U.S. at 397. Nor should it. Rule 41(a)(1) is "aimed at curbing abuses of the judicial system," *id.* at 398, and promoting "certainty and efficiency," *Wellfount, Corp. v. Hennis Care Centre of Bolivar, Inc.*, 951 F.3d 769, 774 (6th Cir. 2020). Petitioner's approach, by contrast, encourages the type of unpredictable exploitation that existed prior to the adoption of the Federal Rules.

Consider, for example, a plaintiff who brings a putative class action against a corporation for millions of dollars in damages. The plaintiff voluntarily dismisses without prejudice under Rule 41(a)(1), and then, years later, a new plaintiff's lawyer steps in to represent the plaintiff after the statute of limitations expires. Realizing in retrospect the potential damages or settlement they could extract, they move to set aside the voluntary dismissal. The decision below correctly holds that avenue is unavailable through Rule 60(b). But under Petitioner's perverse interpretation of the Federal Rules, this plaintiff could continue the litigation—which the defendant justifiably believed was well and done—for years into the future. And the plaintiff could do so despite abandoning his claims and letting them expire. This Court should reject a reading that would allow plaintiffs to manipulate the rules to reopen a stale action that they voluntarily *chose* to dismiss. That is not consistent with the language or design of the Federal Rules of Civil Procedure.

* * *

In sum, text, history, and context all make clear that a notice of voluntary dismissal under Rule 41(a)(1) is not a "final judgment, order, or proceeding." Fed. R. Civ. P. 60(b). Accordingly, Petitioner cannot deploy Rule 60(b) to set aside his notice of dismissal. The judgment below should be affirmed.

II. Even If a Rule 41(a)(1) Dismissal Is a Final Proceeding, This Court Should Make Clear that Rule 60(b) Provides No Avenue for Relief Here.

The judgment below should also be affirmed because—even if Petitioner's notice of dismissal were a final proceeding—Rule 60(b) provides no "Grounds for Relief." Fed. R. Civ. P. 60(b).

Rule 60(b) allows for the reopening of a final judgment, order, or proceeding only "under a limited set of circumstances." *Gonzalez*, 545 U.S. at 528. Rule 60(b)(1), for instance, provides for relief based on "mistake, inadvertence, surprise, or excusable neglect." Fed. R. Civ. P. 60(b)(1). But a party must bring a motion premised on these reasons "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). Rules 60(b)(2) through 60(b)(5) then specify other grounds for vacatur, and Rule 60(b)(6) contains a catchall for "any other reason that justifies relief." Fed. R. Civ. P. 60(b)(6). "This last option is available only when Rules 60(b)(1) through (b)(5) are inapplicable." *Kemp v. United States*, 596 U.S. 528, 533 (2022). Even then, truly "'extraordinary circumstances' must justify reopening." *Id.* (quoting *Liljeberg*, 486 U.S. at 863 n.11); *see also Gonzalez*, 545

U.S. at 536; *Ackermann v. United States*, 340 U.S. 193, 199 (1950).

Here, Petitioner purported to file his motion under Rule 60(b)(1) and Rule 60(b)(6). Pet.App.52. Neither of those subsections apply.

Petitioner's request under Rule 60(b)(1) is plainly time barred. Petitioner filed his notice of voluntary dismissal without prejudice in April 2020, "so that the parties could pursue arbitration." Pet.App.30. When the arbitration did not go his way, he decided to return to federal court, alleging that his voluntary dismissal was a "mistake." Pet.App.59. Yet, as Petitioner concedes, he did not file his Rule 60(b) motion to set aside the notice of voluntary dismissal until *September 2021*. Pet.Br.5; *see* Pet.App.50-51. That was more than a year after the notice was filed. As a result, Rule 60(b)(1) is categorically unavailable for relief from this alleged mistake. *See* Fed. R. Civ. P. 60(c)(1); *Liljeberg*, 486 U.S. at 863 n.11; *Kemp*, 596 U.S. at 533.

Petitioner fares no better under Rule 60(b)(6). That subsection, again, "requires a showing of 'extraordinary circumstances.'" *Gonzalez*, 545 U.S. at 536. There is nothing extraordinary here. Petitioner merely wants a second bite at the apple after losing in arbitration.

The District Court cited an "intervening change in law" occasioned by this Court's decision in *Badgerow v. Walters*, 596 U.S. 1 (2022). Pet.App.60. But a "change in the law" worked by this Court's precedent is "hardly extraordinary." *Gonzalez*, 545 U.S. at 536-37; *see also Agostini v. Felton*, 521 U.S. 203, 239 (1997). Nor did *Badgerow* even change the law in the

Tenth Circuit, where this case arose. As the District Court acknowledged, "the Tenth Circuit had not decided the issue." Pet.App.60 n.4. And Petitioner should have known of the possible consequences of his action, given that multiple Courts of Appeals had already resolved the issue in a way that would preclude the re-filing of his action in federal court—just as this Court later held. *See Badgerow*, 596 U.S. at 7 n.1 (collecting cases on each side of the split).

At most, then, Petitioner's allegedly extraordinary circumstances are that he made a tactical "mistake," "excusabl[y] neglected" contrary circuit authority, or was "surprise[d]" by how *Badgerow* came out. Fed. R. Civ. P. 60(b)(1). All those claims, however, sound in Rule 60(b)(1). That forecloses relief, as "a party may 'not avail himself'" of Rule 60(b)(6) where "his motion is based on grounds specified in clause (1)." *Liljeberg*, 486 U.S. at 863 n.11 (quoting *Klapprott v. United States*, 335 U.S. 601, 613 (1949)). "Rather, 'extraordinary circumstances'" not covered by any other provision of Rule 60(b) "are required to bring the motion within the 'other reason' language and to prevent clause (6) from being used to circumvent the 1-year limitations period that applies to clause (1)." *Id.*; *see also Kemp*, 596 U.S. at 533.

Moreover, this Court has long held that the "'extraordinary circumstances'" alleged must "suggest[] that the party is faultless in the delay." *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 393 (1993) (quoting *Liljeberg*, 486 U.S. at 863 & n.1); *see also Ackermann*, 340 U.S. at 197-200. Relief is not available under Rule 60(b)(6) if the movant "is partly to blame" for the situation.

Pioneer Inv. Servs., 507 U.S. at 393. He must instead be "completely without fault for his or her predicament" and "unable to have taken any steps that would have resulted in preventing the judgment [or proceeding] from which relief is sought." 12 James Wm. Moore et al., *Moore's Federal Practice* § 60.48[3][b] (3d ed. 2024).

That principle is equally fatal to Petitioner's motion. "By no stretch of imagination can [Petitioner's] voluntary, deliberate, free, untrammeled choice" to unilaterally dismiss his case be considered a proper basis for relief. *Ackermann*, 340 U.S. at 200. Given that voluntary decision, Rule 60(b)(6) "has no application." *Id.* at 202.

CONCLUSION

The Court should affirm the judgment below.

Respectfully submitted,

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