No. ____

IN THE

Supreme Court of the United States

DEXTER EARL KEMP,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

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

The question presented is:

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

RELATED CASES

28 U.S.C. § 2255 Proceedings Below:

- *Kemp v. United States*, No. 20-10958 (11th Cir. May 25, 2021) (opinion affirming dismissal of Rule 60(b) motion for relief from final judgment in the 28 U.S.C. § 2255 proceeding)

- *Kemp v. United States*, No. 15-cv-21702 (S.D. Fla. Feb. 5, 2020) (order dismissing and denying Rule 60(b) motion for relief from final judgment on the 28 U.S.C. § 2255 motion)

- *Kemp v. United States*, No. 18-cv-23173 (S.D. Fla. Nov. 15, 2018) (order closing case after mistakenly docketing the Rule 60(b) motion as a second or successive 28 U.S.C. § 2255 motion)

Underlying Criminal Proceedings:

- *United States v. Kemp*, et al., No. 12-10990 (11th Cir. Nov. 15, 2013) (opinion affirming convictions and sentences on direct appeal)

- *United States v. Kemp*, et al., No. 10-cr-20410 (S.D. Fla. Feb. 17, 2012) (judgment of conviction imposing 420-month sentence)

- *United States v. Kemp*, No. 10-cr-20224 (S.D. Fla. July 9, 2010) (order dismissing indictment without prejudice)

TABLE OF CONTENTS

TABLE OF APPENDICES

TABLE OF AUTHORITIES

Cases

Statutes

Rules

Other Authorities

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Petitioner respectfully seeks a writ of certiorari to review a judgment of the United States Court of Appeals for the Eleventh Circuit.

OPINIONS BELOW

The Eleventh Circuit's opinion is reported at 857 F. App'x 573 and reproduced as Appendix ("App.") A, 1a–7a. The Eleventh Circuit's order granting a certificate of appealability and leave to proceed *in forma pauperis* on appeal is unreported and reproduced as App. B, 8a–9a. The district court's opinion and order is unreported and reproduced as App. C, 10a–19a.

JURISDICTION

The Eleventh Circuit issued its decision on May 25, 2021. This Court has jurisdiction under 28 U.S.C. § 1254(1).

RULES OF PROCEDURE INVOLVED

Federal Rule of Civil Procedure 59(e) provides:

> 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.
>
> * * *

Federal Rule of Civil Procedure 60 provides, in relevant part:

> (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.

INTRODUCTION

Federal Rule of Civil Procedure 60(b) authorizes relief from final judgment. Rule 60(b)(1) authorizes such relief based on "mistake, inadvertence, surprise, or excusable neglect." The question presented is whether the "mistake" prong of Rule 60(b)(1) authorizes relief based on a district court's legal error. The courts of appeals have been divided on that question for the last *fifty* years. This case provides a perfect and rare opportunity to resolve that conflict. The Court should seize it.

The circuits first split on that question in 1971, when First Circuit Chief Judge Aldrich persuasively rejected Judge Friendly's view that Rule 60(b)(1) authorized relief based on a court's legal error. The conflict has only gotten deeper and more fractured since then. Standing firm, the First Circuit has repeatedly reaffirmed Chief Judge Aldrich's minority view. During each of the last five decades, the courts of appeals have noted the conflict. And the leading treatise, along with other commentators, have noted it too. If any conflict is open and intractable, it's this one.

The time has come to resolve the confusion. Rule 60(b) itself was designed to provide a uniform procedure that would eliminate uncertainty that old common-law writs had created. And Rule 60(b) strikes the balance between finality on the one hand and equity on the other. That delicate balance should not fluctuate based solely on geography, especially where a district court's judgment contains a legal error. Only this Court can restore the elusive uniformity that Rule 60(b) sought to foster.

This case affords an ideal opportunity to do so. The government conceded below, and the Eleventh Circuit held, that the district court committed legal error by

dismissing Petitioner's post-conviction petition as untimely. Although Petitioner sought relief from that judgment under the "catchall" provision in Rule 60(b)(6), the courts below held that, because he alleged legal error, his motion was cognizable only under Rule 60(b)(1). And because he filed his motion more than one year after the judgment, it was untimely. But had the courts below held instead that Rule 60(b)(1) did not permit relief based on legal error, they would have analyzed his motion under Rule 60(b)(6), and his motion would not have been subject to a one-year deadline. The lower courts also did not alternatively rule that his motion would fail if analyzed under Rule 60(b)(6). Thus, this case squarely presents the question on which the circuits have divided. And despite the well-publicized fifty-year old conflict, certiorari petitions seeking resolution of that conflict appear to be exceedingly rare.

Finally, the decision below, which applied the majority view, is contrary to the text of Rule 60(b)(1), related Rules of Procedure, and this Court's Rule 60(b) precedents. When read alongside "inadvertence, surprise, and excusable neglect," Rule 60(b)(1)'s "mistake" prong refers to carelessness by litigants, not legal errors by courts. The contrary reading would permit litigants to circumvent the strict time limitations governing Rule 59(e) reconsideration motions and appeals. Where a legal error in the judgment is not identified within those time limits, Rule 60(b)(6)'s catchall provision serves as a failsafe avenue for relief, but only if the movant can show "extraordinary circumstances" justifying the delay. That is why this Court's precedents have consistently analyzed claims of legal error under Rule 60(b)(6), not Rule 60(b)(1). The Court should grant review here and reaffirm that understanding.

STATEMENT

A. Legal Background

The question presented is whether Federal Rule of Civil Procedure 60(b)(1) authorizes relief from judgment based on a district court's legal error. The answer to that question is informed by the relationship between Rules 59(e), 60(b), and 60(c).

1. Federal Rule of Civil Procedure 59(e) provides that "[a] motion to alter or amend a judgment must be filed no later than 28 days after the entry of the judgment." Rule 59(e) "gives a district court the chance 'to correct its own mistakes in the period immediately following' its decision." *Banister v. Davis*, 140 S. Ct. 1698, 1703 (2020) (quoting *White v. New Hampshire Dep't of Employment Sec.*, 455 U.S. 445, 450 (1982)). "In keeping with that corrective function," *id*., a "Rule 59(e) motion briefly suspends finality [of the judgment] to enable a district court to fix any mistakes and thereby perfect its judgment before a possible appeal," *id*. at 1708.

By contrast, "Federal Rule of Civil Procedure 60(b) provides a procedure whereby, in appropriate cases, a party may be relieved of a final judgment." *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847, 863 (1988). Unlike a Rule 59(e) motion, a Rule 60(b) motion collaterally "attacks an already completed judgment," it is "often distant in time and scope" from that judgment, and it gives rise to its own separate appeal. *Banister*, 140 S. Ct. at 1709–10.

2. "On motion and just terms," Rule 60(b) authorizes a court to "relieve a party from a final judgment" for certain reasons. Codified in Rule 60(b)(1), the first of five specified reasons is "mistake, inadvertence, surprise, or excusable neglect."

This Court has never interpreted Rule 60(b)(1)'s "mistake" prong. Nor has it squarely addressed whether Rule 60(b)(1) authorizes relief based on a court's legal error.

After the five enumerated reasons for relief in Rule 60(b)(1)–(5), the catchall provision in Rule 60(b)(6) authorizes relief for "any other reason that justifies relief." The Court has "consistently recognized that Rule 60(b)(6) 'provides courts with authority adequate to enable them to vacate judgments whenever such action is appropriate to accomplish justice.'" *Gonzalez v. Crosby*, 545 U.S. 524, 542 (2005) (quoting *Liljeberg*, 486 U.S. at 864) (quoting *Klapprott v. United States*, 335 U.S. 601, 614–15 (1949) (op. of Black, J.)). But while that Rule "vests wide discretion in courts," the Court has also "held that relief under Rule 60(b)(6) is available only in 'extraordinary circumstances.'" *Buck v. Davis*, 137 S. Ct. 759, 778 (2017) (quoting *Gonzalez*, 545 U.S. at 535). "In determining whether extraordinary circumstances exist, a court may consider a wide range of factors," including "'the risk of injustice to the parties' and 'the risk of undermining the public's confidence in the judicial process.'" *Id*. (quoting *Liljeberg*, 486 U.S. at 863–64).

Because Rule 60(b)(6) authorizes relief for "any other reason" than those in Rules 60(b)(1)–(5), the Court has said that Rule 60(b)(6) is "mutually exclusive" with Rules 60(b)(1)–(5). *Pioneer Inv. Services Co. v. Brunswick Associates Ltd. Partnership*, 507 U.S. 380, 393 (1993) (citing *Liljeberg*, 486 U.S. at 863 & n.11); *see Gonzalez*, 545 U.S. at 529; *Klapprott*, 335 U.S. at 613–15 (op. of Black, J.). Thus, Rule 60(b)(6) is unavailable where the reason for relief is "premised on one of the grounds for relief enumerated in clauses (b)(1) through (b)(5)." *Liljeberg*, 486 U.S. at 864.

3. The respective scope of Rules 60(b)(1) through (6) matters for two reasons. First, unlike Rule 60(b)(1)–(5) motions, Rule 60(b)(6) motions may be granted only after a showing of "extraordinary circumstances." Second, the time limitations are different. Under Rule 60(c)(1), all "motion[s] under Rule 60(b) must be made within a reasonable time." But "for reasons (1), (2), and (3)," Rule 60(b) motions must also be made "no more than one year after the entry of the judgment." Thus, a Rule 60(b)(6) motion must be made within a "reasonable time." A Rule 60(b)(1) motion, however, must be made not only within a "reasonable time" but also within one year of the judgment. As this case reflects, if Rule 60(b) motions based on legal errors are cognizable under Rule 60(b)(1), and not Rule 60(b)(6), then they must be brought within one year. No exceptions—not even for manifest injustice.

B. Proceedings Below

Petitioner was convicted in the Southern District of Florida for federal drug and firearms offenses, and he was sentenced to 35 years in prison. The Eleventh Circuit affirmed his (and his co-defendants') convictions and sentences in an opinion dated November 15, 2013. *United States v. Gray, et al.*, 544 F. App'x 870 (11th Cir. 2013). While some his co-defendants sought further review, Petitioner did not.

On April 29, 2015, Petitioner moved *pro se* to vacate his convictions and sentence under 28 U.S.C. § 2255, raising nine claims of ineffective assistance of counsel. In September 2016, the district court dismissed the § 2255 motion as untimely on the ground that it was not filed within one year of the date that Petitioner's conviction became final. *See* 28 U.S.C. § 2255(f)(1). The district court

determined that his conviction became final on February 13, 2014, 90 days after the Eleventh Circuit's decision affirming his convictions and sentence. That was the date, the court mistakenly believed, his time to seek certiorari expired. Pet. App. 2a–3a, 12a; *see Clay v. United States*, 537 U.S. 522, 525 (2003) (holding that, for purposes of § 2255(f)(1), a conviction becomes final upon expiration of time to seek certiorari).

In June 2018, more than one year later, Petitioner sought relief from the district court's judgment under Rule 60(b), arguing that the court erroneously dismissed his § 2255 motion as untimely. Citing Rule 13.3 of this Court,[*] he explained that his conviction did not become final until 90 days after the Eleventh Circuit denied his co-defendants' rehearing petitions on May 22, 2014. And because Petitioner filed his § 2255 motion within one year of that date, it was timely. Pet. App. 3a, 12a–13a; Dist. Ct. Dkt. No. 36 at 12–13, 16; Dist. Ct. Dkt. No. 45 at 2–5. He was right. Citing this Court's decisions in *Klapprott* and *Gonzalez*, he further argued that "relief may be sought pursuant to Rule 60(b)(6) when a movant alleges legal error," and so his motion was not subject to Rule 60(c)(1)'s one-year deadline governing motions brought under Rules 60(b)(1)–(3). Dist. Ct. Dkt. Entry 45 at 7–8.

A Magistrate Judge issued a Report, recommending that the Rule 60(b) motion be dismissed as untimely. The Magistrate Judge reasoned that Petitioner's Rule 60(b) motion alleged legal error, which fell under Rule 60(b)(1). And because his

[*] In relevant part, Rule 13.3 provides that, "if a petition for rehearing is timely filed in the lower court by any party . . . the time to file the petition for a writ of certiorari for all parties (whether or not they requested rehearing or joined in the petition for rehearing) runs from the date of the denial of rehearing."

Rule 60(b)(1) motion was filed after Rule 60(c)(1)'s one-year deadline, and it was not filed within a reasonable time, it was untimely. Dist. Ct. Dkt. Entry 55.

Petitioner objected to the Magistrate's Report. He argued that his motion had been brought under Rule 60(b)(6), not Rule 60(b)(1), and so it was not subject to Rule 60(c)(1)'s one-year deadline. He further argued that, although his Rule 60(b) was filed more than one year after the judgment, his motion was nonetheless filed within a reasonable time. He attached documentation showing that, shortly after filing his § 2255 motion, he was transferred to state custody to defend unrelated charges; he had no access to legal materials while in state custody, where he remained until February 2018; upon returning to federal custody, he engaged a legal services firm that identified this Court's Rule 13.3; and his former attorney had incorrectly advised him that his § 2255 motion would be timely based on his co-defendants' certiorari petitions (not their rehearing petitions or Rule 13.3). *See* Dist. Ct. Dkt. Entry 56.

Overruling Petitioner's objection, the district court dismissed his Rule 60(b) motion as untimely. Applying Eleventh Circuit precedent, the district court concluded that, because Petitioner alleged a legal error, his motion fell under Rule 60(b)(1), not Rule 60(b)(6), and it was therefore untimely under Rule 60(c)(1) because it was filed more than one year after entry of the § 2255 judgment. Pet. App. 15a–17a, 19a. With the benefit of Petitioner's explanation for the delay, the district court did not alternatively find that his Rule 60(b) was not filed within a reasonable time. Again overlooking Rule 13.3, however, the district court did alternatively find that the rehearing petitions filed by Petitioner's co-defendants did not extend the time for

him to seek certiorari review, and therefore the district court had properly dismissed Petitioner's § 2255 motion as untimely. Pet. App. 17a–19a. Petitioner subsequently moved for reconsideration under Rule 59(e), which the district court denied. Dist. Ct. Dkt. Entries 63, 65. Petitioner appealed, again proceeding *pro se*.

A two-judge panel of the Eleventh Circuit granted Petitioner a certificate of appealability on the following issue: "Whether the district court erred in denying Kemp's Fed. R. Civ. P. 59(e) and 60(b) motions, where his § 2255 motion may have been timely in light of Sup. Ct. R. 13.3, which begins the time in which a party may file a petition for writ of *certiorari* upon the conclusion of a petition for rehearing filed by any party in the lower court." Pet. App. 8a. The panel further determined that "[r]easonable jurists would find debatable whether Kemp's § 2255 motion, in which he raised nine claims of ineffective assistance of counsel and appellate counsel, stated facially valid claims of a denial of a constitutional right." Pet. App. 9a.

On appeal, the government conceded that the district court erroneously dismissed Petitioner's § 2255 motion as untimely. It acknowledged that, under Rule 13.3, his conviction became final 90 days after the denial of his co-defendants' rehearing petitions, and he filed his § 2255 motion within one year of that date. U.S. C.A. Br. 11–13. Nonetheless, the government argued that the district court properly dismissed Petitioner's Rule 60(b) motion because, having alleged a legal error, his motion fell under Rule 60(b)(1) and was therefore subject to Rule 60(c)(1)'s one-year deadline. *Id*. at 13–16. The government alternatively argued that, even if Rule 60(b)(6) applied, he did not file his motion within a reasonable time. *Id*. at 16–17.

In reply, Petitioner emphasized that, had the district court properly recognized from the outset that his § 2255 motion was timely filed, he never would have needed to file a Rule 60(b) motion in the first place. Pet. C.A. Reply Br. 3. He added that he discovered Rule 13.3 in May 2018, the month before filing his Rule 60(b) motion. Before then, he reiterated, he was in state custody without access to legal materials and did not know how to demonstrate that his § 2255 motion was timely. *Id*. at 3–4.

The Eleventh Circuit affirmed. It acknowledged that, in light of Rule 13.3, Petitioner's § 2255 motion was indeed timely. Pet. App. 5a–7a. However, the court of appeals held that the district court did not err by "treating Kemp's Rule 60(b) motion . . . as filed under Rule 60(b)(1) and dismissing it as untimely under Rule 60(c)(1)." *Id*. at 6a. Applying circuit precedent, the court of appeals explained that, by alleging legal error in the § 2255 ruling, Petitioner's "arguments are precisely the sort of judicial mistakes in applying the relevant law that Rule 60(b)(1) encompasses." *Id*. at 5a–7a (citing *Parks v. U.S. Life & Credit Corp.*, 677 F.2d 838, 839–40 (11th Cir. 1982)). The court of appeals continued that, because the "district court properly construed Kemp's motion as one under Rule 60(b)(1)," and because Rules 60(b)(1) and (b)(6) are "mutually exclusive," the district court properly dismissed Petitioner's Rule 60(b) motion as untimely "because he filed it more than one year after entry of the judgment from which he sought relief." *Id*. at 5a, 7a (citing Fed. R. Civ. P. 60(c)(1)). Like the district court, the Eleventh Circuit made no alternative holding that Petitioner's motion would fail even if it was analyzed under Rule 60(b)(6).

REASONS FOR GRANTING THE PETITION

For the last fifty years, the courts of appeals have been openly divided on whether Rule 60(b)(1) authorizes relief from judgment based on a court's legal error. That intractable conflict means that the balance between finality and equity varies based solely on geography. This case provides a rare opportunity to bring about uniformity. And the majority view—permitting Rule 60(b)(1) relief based on a court's legal error—is contrary to the text of that Rule, its relationship to related Rules of Procedure, and this Court's Rule 60(b) precedents. The Court should grant certiorari.

I. The Circuits Have Been Divided for the Last Fifty Years

Early cases from the 1960s interpreted Rule 60(b)(1) to allow relief based on a court's legal error. But concerned about Rule 60(b)(1) being used as a substitute for appeal, courts took it upon themselves to require that the motion be filed within the time to appeal. Driven by policy concerns rather than the text of Rule 60(b)(1), that regime was thought to prevent circumvention of the time to appeal and to eliminate unnecessary appeals. *See, e.g.*, *Hoffman v. Celebrezze*, 405 F.2d 833, 835–36 (8th Cir. 1969); *Gila River Ranch, Inc. v. United States*, 368 F.2d 354, 356–57 (9th Cir. 1966); *McDowell v. Celebrezze*, 310 F.2d 43, 44 (5th Cir. 1962); *Sleek v. J.C. Penney Co.*, 292 F.2d 256, 258 (3d Cir. 1961). While admitting that the question was "not altogether clear," Judge Friendly embraced that view in *Schildhaus v. Moe*, 335 F.2d 529, 530–31 (2d Cir. 1964). So did Professor Moore in his leading treatise of the era.

But that view quickly came under fire. In *Silk v. Sandoval*, 435 F.2d 1266 (1st Cir. 1971), Chief Judge Aldrich acknowledged that Professor Moore and other circuits

had taken the view that Rule 60(b)(1) permitted "reconsideration of a point of law." *Id*. at 1267. But he "neither underst[ood] the basis for this interpretation, nor sympathize[d] with it. If the court merely wrongly decides a point of law, that is not 'inadvertence, surprise, or excusable neglect.'" *Id*. And, focusing on that text, he opined that, "under the principle of noscitur a sociis," "mistake" should bear a similar meaning to those terms. *Id*. at 1267–68. He further opined that a contrary, broad construction of Rule 60(b)(1) would overlap with Rule 59(e), which permitted reconsideration of legal errors. Thus, permitting Rule 60(b)(1) motions on that basis would circumvent Rule 59(e)'s 10-day (now 28-day) time limit. *Id*. at 1268.

Fifty years later, that fundamental conflict endures. It has only grown more open, deep, and fractured. Below is the current breakdown of the legal landscape.

1. At one end of the spectrum, four circuits have held that Rule 60(b)(1) authorizes relief from judgment based on legal error, provided that the Rule 60(b)(1) motion is filed within the time to appeal or does not seek to circumvent that limit.

"In two early cases," one being *Schildhaus*, the Second Circuit "established [the] principle that Rule 60(b)(1) was available for a district court to correct legal errors by the court." *In re 310 Assocs.*, 346 F.3d 31, 35 (2d Cir. 2003) (citing *Schildhaus* and *Tarkington v. United States Lines Co.*, 222 F.2d 358 (2d Cir. 1955)). Since then, that court has maintained that, while "some circuits have resisted an expansive use of Rule 60(b) to correct the court's mistakes of law, Judge Friendly's approach has remained the law of this circuit." *Id*. (internal citation omitted); *see*

United Airlines, Inc. v. Brien, 588 F.3d 158, 175 (2d Cir. 2009) ("Rule 60(b)(1) is available for a district court to correct legal errors by the court.") (quotation omitted).

The Sixth, Seventh, and Eleventh Circuits now share that view. *See Penney v. United States*, 870 F.3d 459, 461 (6th Cir. 2017) ("We have held that 'a Rule 60(b)(1) motion is intended to provide relief when the judge has made a substantive mistake of law . . . in the final judgment.'") (quoting *United States v. Reyes*, 307 F.3d 451, 456 (6th Cir. 2002)); *Mendez v. Republic Bank*, 725 F.3d 651, 657–61 & n.4 (7th Cir. 2013) ("agree[ing] with the significant majority of the circuits that subsection (1) of Rule 60(b) allows a district court to correct its own errors that could be corrected on appeal, at least if the motion is not a device to avoid expired appellate time limits") (synthesizing earlier precedents); *Parks*, 677 F.2d at 839–40 (CA11 1982) ("[t]he 'mistakes' of judges may be remedied under" Rule 60(b)(1), which "encompasses mistakes in the application of the law") (applied below, Pet. App. 5a–7a, 16a–17a).

2. Taking an intermediate approach, four circuits have held that at least certain types of legal errors fall under Rule 60(b)(1)'s "mistake" prong.

a. The Fifth and Tenth Circuits have held that Rule 60(b)(1) encompasses "obvious" legal errors. *See Benson v. St. Joseph Regional Health Ctr.*, 575 F.3d 542, 547 (5th Cir. 2009) ("Our rule is that a Rule 60(b)[1] motion may be used 'to rectify an obvious error of law, apparent on the record.'") (quoting *Hill v. McDermott, Inc.*, 827 F.2d 1040, 1043 (5th Cir. 1987)); *Cashner v. Freedom Stores, Inc.*, 98 F.3d 572, 578 (10th Cir. 1996) ("The Tenth Circuit has made it clear that certain substantive mistakes in a district court's rulings may be challenged by a Rule 60(b)(1) motion.");

Van Skiver v. United States, 952 F.2d 1241, 1244 (10th Cir. 1991) ("However, such relief is available only for obvious errors of law, apparent on the record.").

b. Adding to the confusion, the Ninth and D.C. Circuits have held that particular substantive legal errors are cognizable under Rule 60(b)(1). *See Liberty Mutual Ins. Co. v. EEOC*, 691 F.2d 438, 441 & n.5 (9th Cir. 1982) (Ninth Circuit law "clearly states . . . that errors of law may be corrected under Rule 60(b) motions"); *In re Int'l Fibercom, Inc.*, 503 F.3d 933, 940 n.7 (9th Cir. 2007) (clarifying that Rule 60(b)(1) was proper in *Liberty Mutual* because that case involved "a *mistake* under the law of the case doctrine," but stating that Rule 60(b)(6) was proper for procedural and statutory violations); *D.C. Fed. of Civic Assocs. v. Volpe*, 520 F.2d 451, 453 (D.C. Cir. 1975) (holding that the district court erred by failing to grant a Rule 60(b)(1) motion based on an intervening change in the law); *Ctr. for Nuclear Responsibility, Inc. v. U.S. Nuclear Regulatory Comm'n*, 781 F.2d 935, 940 (D.C. Cir. 1986) (clarifying that "*Volpe* could be read as adopting the more liberal interpretation of Rule 60(b)(1), allowing correction of substantive legal errors during the appeal period," but declining to say whether it "would extend this rule to allow corrections of substantive legal errors where no such change in the law of the circuit has occurred").

3. At the other end of the spectrum, the First, Third, Fourth, and Eighth Circuits have held that Rule 60(b)(1) relief is unavailable for a court's legal error.

The First Circuit has repeatedly reaffirmed its 1971 decision in *Silk*. *See, e.g.*, *Fontanillas-Lopez v. Morell Bauzá*, 832 F.3d 50, 64 (1st Cir. 2016) ("this circuit does not understand Rule 60(b)(1)'s reference to 'mistake' to include a district court's

mistaken ruling on a point of law"); *Venegas-Hernandez v. Sonolux Records*, 370 F.3d 183, 189 (1st Cir. 2004) ("We have cited *Silk* favorably since 1971, and it has never been overruled.") (internal citation omitted); *Ahmed v. Rosenblatt*, 118 F.3d 886, 891 (1st Cir. 1997) ("in this circuit, wrongly deciding a point of law is not a 'mistake' as we have defined that term under Rule 60(b)(1)"); *Hoult v. Hoult*, 57 F.3d 1, 5 (1st Cir. 1995) (concluding that the district court's ruling, "even if error," "was not a 'mistake,' as we have defined that term under Rule 60(b)(1)"); *Elias v. Ford Motor Co.*, 734 F.2d 463, 467 (1st Cir. 1984) ("this Court has consistently held that 'mistake, inadvertence, surprise, or excusable neglect' does not include errors of law"); *Scola v. Boat Frances, R., Inc.*, 618 F.2d 147, 153–54 (1st Cir. 1980) (same, reaffirming *Silk*).

The Third Circuit now shares that view. An early case from 1961 "considered a motion alleging mistake of law . . . as a Rule 60(b)(1) motion." *Smith v. Evans*, 853 F.2d 155, 158 n.3 (3d Cir. 1988) (citing *Sleek*). But the Third Circuit has since limited that case "to [its] unusual facts involving a default judgment." *Id*. In a subsequent case involving a Rule 60(b)(1) motion alleging an "error of law," that court has broadly held that "legal error, without more does not warrant relief under that provision." *United States v. Fiorelli*, 337 F.3d 282, 288 (3d Cir. 2003) (quotation omitted).

The same is true in the Fourth Circuit. *See In re GNC Corp.*, 789 F.3d 505, 511 (4th Cir. 2015) ("we held in *United States v. Williams*, 674 F.2d 310, 313 (4th Cir. 1982), that Rule 60 does not authorize motions for correction of a mistake of law"); *Williams*, 674 F.2d at 313 ("Where the motion is nothing more than a request that the district court change its mind . . . , it is not authorized by Rule 60(b).").

In the Eighth Circuit too, it is "the law . . . that 'relief under Rule 60(b)(1) for judicial error other than judicial inadvertence' is not available." *Lowry v. McDonnell Douglas Corp.*, 211 F.3d 457, 460–61 (8th Cir. 2000) (quoting *Fox v. Brewer*, 620 F.2d 177, 180 (8th Cir. 1980)). And judicial inadvertence does not include a court's legal error. *See Sanders v. Clemco Indus.*, 862 F.2d 161, 169–70 & n.16 (8th Cir. 1988) (holding that the district court properly denied a Rule 60(b)(1) motion asserting an erroneous statute-of-limitations ruling); *CRI, Inc. v. Watson*, 608 F.2d 1137, 1143 (8th Cir. 1979) (citing earlier precedent, *Hoffman*, 405 F.2d at 835–37, for the proposition that "inadvertence [was] not shown in allegedly erroneous award of interest").

* * *

Extant since 1971, it is unsurprising that many courts and commentators have recognized the circuit conflict over the scope of Rule 60(b)(1)'s "mistake" prong.

The federal appellate decisions identifying the conflict are too numerous to cite exhaustively. But the following are examples spanning five different decades. *See, e.g.*, *Mendez*, 725 F.3d at 659 n.4 (CA7 2013) (noting that, with certain "exceptions, all of the circuits that have considered this question have concluded that Rule 60(b)(1) may appropriately be used to grant relief from judgment for legal errors"); *Fisher v. Kadant, Inc.*, 589 F.3d 505, 513 n.5 (1st Cir. 2009) ("The courts of appeals do not agree on what circumstances entitle a party to Rule 60(b)(1) relief based on an error of the court. Some courts hold that the term 'mistake,' as used in Rule 60(b)(1), applies to errors of the court, including errors of law. Conversely, this court has held that an error of law cannot be regarded as a 'mistake' within the purview of Rule 60(b)(1).")

(citations omitted); *Benson*, 575 F.3d at 547 (CA5 2009) ("The circuits are split concerning whether courts may reconsider, pursuant to Rule 60(b)(1), legal errors they may have made in a judgment.") (quotation omitted); *Venegas-Hernandez*, 370 F.3d at 189 (CA1 2004) ("One might, and some courts do, think that Rule 60(b)(1)'s reference to 'mistake' as a grounds for relief from judgment includes this type of error of law. But this circuit decided that question the other way in 1971."); *Malagrida v. Holland*, 19 F.3d 1429, 1994 WL 89336, at *4 (4th Cir. 1994) ("Our sister circuits disagree on whether Rule 60(b)(1) motions allow a district court to review allegedly erroneous conclusions of law."); *Ctr. for Nuclear Responsibility*, 781 F.2d at 939–40 (CADC 1986) ("Courts have split over whether errors in legal reasoning may be corrected by Rule 60(b)(1) motions."); *Steinhoff v. Harris*, 698 F.2d 270, 274–75 (6th Cir. 1983) (observing that, while "the majority of courts have interpreted 'mistake' in Rule 60(b)(1) to include legal error," "[t]here is, however, a contrary view expressed by" other circuits); *Volpe*, 520 F.2d at 453 n.4 (CADC 1975) ("We note that at least two circuits have decided not to permit such use to be made of Rule 60(b)(1).").

The leading treatise on the subject also recognizes the circuit conflict. It reports that "[t]he cases are not consistent," and "it is charitable to say that it is not altogether clear under what circumstances relief can be sought under the present rule [Rule 60(b)(1)] for an error of the court." 11 Wright & Miller, Federal Practice & Procedure § 2858.1 (Apr. 2021) (quotation marks omitted). It traces the conflict back to *Silk*'s 1971 "reject[ion]" of Judge Friendly's opinion in *Schildhaus*. *Id*. And it observes that there have since been "broad statements from other courts" supporting

both camps. *Id*. Given the confusion, the treatise devotes an entire sub-chapter just to this one issue. Other commentators have similarly noted that "[t]here is significant disagreement among the federal circuit courts as to whether rule 60(b)(1) should be applicable to judicial errors of law." Kevin Parker, Note, Relief From Final Judgment Under Rule 60(b)(1) Due to Judicial Errors of Law, 83 Mich. L. Rev. 1571, 1571 (1985).

In sum, the circuits have divided for the last fifty years on whether Rule 60(b)(1) authorizes relief from judgment based on a court's legal error. Courts and commentators have noted that disagreement since it first arose in 1971. And the conflict has only grown more intractable, acknowledged, and fractured over time. Uniformity has been elusive for too long. The Court should restore it at long last.

II. The Question Presented Is Recurring and Important

Resolving a fifty-year old circuit split alone warrants review. But the question presented is also recurring and important. The many appellate decisions cited above demonstrate that the question has recurred for the last five decades. It will continue to do so. After all, district courts make legal errors. And Rule 60(b) is routinely invoked to challenge final judgments. Indeed, Rule 60(b) motions are ubiquitous. The Administrative Office of the U.S. Courts does not even keep statistics on Rule 60(b) motions; there are too many to track. Illustrating the point, a recent Westlaw search revealed nearly 200 district court decisions adjudicating Rule 60(b) motions in just the last six months. And only a fraction of such rulings are reported.

It is also important that Rule 60(b) be applied evenly. The Federal Rules of Civil Procedure sought to "prescribe[ ] identical procedure for all actions." *City of*

Morgantown v. Royal Ins. Co., 337 U.S. 254, 257 (1949). And Rule 60(b) "attempts to strike a proper balance between the conflicting principles that litigation must be brought to an end and that justice should be done." Wright & Miller, *supra* § 2851; *see Gonzalez*, 545 U.S. at 529 (stating that Rule 60(b)'s "whole purpose is to make an exception to finality"). That delicate balance is too important to fluctuate based on geography. That is especially true when it comes to the fundamental question about the availability of relief from final judgments that are plagued by a court's legal error.

Confusion about the scope of Rule 60(b) also undermines the very purpose of that Rule, which was "designed to remove the uncertainties . . . of ancient [common law] remedies while preserving all of the various kinds of relief that they afforded." Wright & Miller, *supra* § 2851; *see* Fed. R. Civ. P. 60, adv. cmte. notes (1946) ("The reconstruction of Rule 60(b) has for one of its purposes a clarification of this situation."); *Klapprott*, 335 U.S. at 614 (op. of Black, J.) (rejecting an interpretation that would "introduce needless confusion in the administration of 60(b) and would also circumscribe it within needless and uncertain boundaries"). Those old uncertainties have now been replaced by new uncertainties about Rule 60(b)(1).

Finally, Rule 60(b) motions are filed in every type of federal civil proceeding, including bankruptcy, admiralty, condemnation, forfeiture, denaturalization, and habeas actions. Wright & Miller, *supra* § 2582. Such motions are frequently filed by *pro se* litigants, including prisoners, who are least able to navigate thorny procedural questions, including which subsection of Rule 60(b) to invoke. And Rule 60(b) motions are particularly common in habeas proceedings, including capital cases, where life

and liberty are at stake and finality interests are weighty. *See, e.g.*, *Buck*, 137 S. Ct. at 777–80 (vacating denial of Rule 60(b) motion in capital habeas case); *Gonzalez*, 545 U.S. at 534 ("Rule 60(b) has an unquestionably valid role to play in habeas cases."). In that context most of all, the balance between finality and justice should be uniform.

III. This Case Is an Ideal and Rare Vehicle

This case offers the Court a rare opportunity to resolve the confusion.

1. To begin, this case is a clean vehicle. There is no dispute that the final judgment in the § 2255 proceeding was legally erroneous. The government conceded below, and the Eleventh Circuit agreed, that the district court erred by dismissing Petitioner's § 2255 motion as untimely. *See* Pet. App. 5a–7a; U.S. C.A. Br. 11–13.

Petitioner then sought relief from the judgment under Rule 60(b) based on that legal error. Although he relied on Rule 60(b)(6), both the district court and the Eleventh Circuit determined that, because Petitioner alleged legal error in the § 2255 judgment, his motion "was a classic Rule 60(b)(1) claim." Pet. App. 4a; *see id*. at 6a–7a ("Kemp's arguments are precisely the sort of judicial mistakes in applying the relevant law that Rule 60(b)(1) encompasses."); *id*. at 15a–17a ("Movant's argument that the Court erroneously determined that his 2255 Motion was untimely is cognizable under Rule 60(b)(1)."). That ruling squarely implicates the circuit split.

2. And that ruling was dispositive below. Because Petitioner's Rule 60(b) motion fell under Rule 60(b)(1), the courts below held that his motion could not fall under the "mutually exclusive" catchall provision in Rule 60(b)(6). As a result,

Petitioner's Rule 60(b)(1) motion was untimely under Rule 60(c)(1), since it was filed more than one year after the § 2255 judgment. *See* Pet. App. 3a–7a, 16a–17a.

Moreover, neither the Eleventh Circuit nor the district court alternatively ruled that Petitioner's Rule 60(b) motion would fail even if it was analyzed under Rule 60(b)(6). Neither court said that Petitioner's Rule 60(b)(6) motion was not filed within a "reasonable time." And neither said that "extraordinary circumstances" did not exist. While the district court alternatively held that the § 2255 motion was untimely, the Eleventh Circuit disagreed on appeal. Thus, the only question presented here is whether Rule 60(b)(1) encompasses legal errors. If not, this Court would vacate and remand for resolution of Petitioner's motion under Rule 60(b)(6).

3. In that regard, and although not presented for decision here, Petitioner would have strong arguments on remand for showing "extraordinary circumstances" justifying his delay in seeking relief. Despite proceeding *pro se* at all times below, Petitioner submitted documentation showing that: shortly after filing his § 2255 motion, he was transported to state custody to defend unrelated criminal charges; he had no access to legal materials while in state custody; his then-former attorney had incorrectly advised that his § 2255 motion would be timely based on his co-defendants' certiorari petitions, making no mention of Rule 13.3; shortly after being returned to federal custody, he engaged a legal services firm that discovered Rule 13.3; and, upon learning of that obscure Rule—which the district court itself overlooked twice, including after Petitioner brought that Rule to the court's attention—he diligently filed his Rule 60(b) motion. *See* Dist. Ct. Dkt. Entry 56; Pet. C.A. Reply 2–4.

Moreover, the stakes for Petitioner are high. He is serving a 35-year sentence in federal prison. In his § 2255 motion, he alleged nine claims of ineffective assistance of counsel. A two-judge panel of the Eleventh Circuit has determined that reasonable jurists could debate whether they stated valid constitutional claims. Pet. App. 9a. And the § 2255 motion was Petitioner's "one full opportunity to seek collateral review." *Ching v. United States*, 298 F.3d 174, 177 (2d Cir. 2002) (Sotomayor, J.) (quotations omitted). Because Congress has strictly circumscribed the ability of prisoners to file second or successive habeas petitions, *see* 28 U.S.C. §§ 2244(b), 2255(h), the Court has recognized that a non-merits based "[d]ismissal of a *first* federal habeas petition is a particularly serious matter, for that dismissal denies the petitioner the protections of the Great Writ entirely, risking injury to an important interest in human liberty." *Lonchar v. Thomas*, 517 U.S. 314, 324 (1996).

It would therefore risk great injustice, and undermine public confidence in the judicial process, to permit the district court's legal error to bar the merits-based adjudication of facially-valid claims challenging Petitioner's convictions and 35-year sentence. *See Buck*, 137 S. Ct. at 778. Meanwhile, permitting the court merely to undertake a merits-based adjudication would risk no injustice to the government. *See Gonzalez*, 545 U.S. at 541 (Stevens, J., dissenting) ("When a habeas petition has been dismissed on a clearly defective procedural ground, the State can hardly claim a legitimate interest in the finality of that judgment. Indeed, the State has experienced a windfall, while the state prisoner has been deprived—contrary to congressional intent—of his valuable right to one full round of federal habeas review.").

4. Not only is this case an excellent vehicle; it is a rare vehicle. The enduring existence of the circuit conflict confirms that reality. Although that conflict has been well publicized for the last fifty years, the Court has not yet resolved it. If suitable vehicles presenting the question were commonplace, the Court would have received many requests to do so. Yet Petitioner has identified only two prior petitions that even mentioned the circuit conflict over Rule 60(b)(1). *See Mitchell v. Rees*, No. 08-514 (cert. denied Mar. 2, 2009); *Barnes v. City of Houston*, No. 99-1605 (cert. denied. May 30, 2000). But both are from well over a decade ago. And neither petition actually purported to present the Rule 60(b)(1) question for review. This one does.

In sum, this case provides an excellent opportunity to resolve the fifty-year old circuit conflict. And there is no telling when another suitable vehicle will come along. The Court should not risk allowing yet another decade of confusion to pass.

IV. The Decision Below Is Wrong

Finally, review is warranted for the additional reason that the decision below, which applied the majority view among the circuits, is wrong as a matter of text, structure, and precedent. Rule 60(b)(1) does *not* permit relief based on a court's legal error. Instead, such claims are cognizable under Rule 59(e), on appeal, and, as a last resort, under Rule 60(b)(6) where "extraordinary circumstances" exist.

1. Textually, Rule 60(b)(1)'s reference to "mistake" does not mean a court's legal error. As the First Circuit recognized in *Silk*, 435 F.2d at 1268, that conclusion stems from the "principle of *noscitur a sociis*—a word is known by the company it keeps—to avoid ascribing to one word a meaning so broad that it is inconsistent with

its accompanying words." *Yates v. United States*, 574 U.S. 528, 543 (2015) (quotation omitted); *see* Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts 195 (2012). Here, the word "mistake" in Rule 60(b)(1) is "given more precise content by the neighboring words with which it is associated," *United States v. Williams*, 553 U.S. 285, 294 (2008): "inadvertence, surprise, or excusable neglect."

Those words contemplate relief where some oversight or carelessness by the litigants—not the court—contributed to the judgment. After all, courts do not "inadvertently" enter judgments. Nor are they "surprised" by their own judgments. And the ordinary meaning of the word "neglect" in the phrase "excusable neglect" refers to "inadvertence, mistake, or carelessness" by litigants. *See Pioneer*, 507 U.S. at 388. Accordingly, lower courts have granted Rule 60(b)(1) relief due to: a party's failure to appear at trial; a misunderstanding about the appearance or representation of counsel; confusion over the trial date; miscalculation of a filing deadline; lack of actual knowledge of service of process; preoccupation with other litigation; inaccurate representations made to the court; and mutual mistake underlying a settlement. Wright & Miller, *supra* § 2858 (collecting cases). Read in context, "mistake" refers to oversights by litigants that led to the judgment, not to a court's own legal errors.

2. Interpreting Rule 60(b)(1) to permit relief based on a court's legal error is also structurally incompatible with related Rules of Procedure. To begin, Rule 59(e) permits reconsideration based on legal error. But such a motion must be filed within 28 days, with no extensions available. *See Banister*, 140 S. Ct. at 1703, 1708; Fed. R. Civ. P. 6(b)(2). As Chief Judge Aldrich explained in *Silk*, allowing Rule

60(b)(1) motions based on legal error would render that Rule co-extensive with Rule 59(e), effectively elongating Rule 59(e)'s strict (and non-extendable) time limit. 435 F.2d at 1268. Thus, the leading treatise agrees that *Silk*'s "position seems to fit better the structure of the rules" because it "makes more sense of the relation between Rule 59(e) and Rule 60(b)(1)." Wright & Miller, *supra* § 2858.1. Lower courts have expressed concern that, to avoid unnecessary appeals, there must be a mechanism for district courts to correct legal errors in their judgments. *E.g.*, *Schildhaus*, 335 F.2d at 531. But Rule 59(e), not Rule 60(b)(1), is what provides that mechanism. Again, it allows district courts to correct legal errors in the weeks after judgment and before the deadline to appeal. If the Rule 59(e) motion is denied, then the movant can simply reiterate the claim of legal error on appeal from the final judgment.

Allowing Rule 60(b)(1) to play that role would also permit circumvention of the time limits to appeal in 28 U.S.C. § 2107 and Fed. R. App. P. 4(a), which are "mandatory and jurisdictional." *Bowles v. Russell*, 551 U.S. 205, 209 (2007) (quotation omitted). After all, Rule 60(b)(1) motions may be filed within a reasonable time up to one year after the judgment. Fed. R. Civ. P. 60(c)(1). Concerned about Rule 60(b)(1) motions being used as substitutes for appeal, lower courts have "superimposed an additional limit on parties seeking relief from judicial errors of law under Rule 60(b); such a motion must be brought within the time allowed to perfect an appeal." *U.S. v. Real Prop. & Residence Located at Route 1, Box 111, Firetower Road*, 920 F.2d 788, 792 (11th Cir. 1991). But if Rule 60(b)(1) motions had to be filed within the time to appeal, Rule 60(c)(1) would have prescribed *that* time period—not

one year—as the outer limit. *See* Wright & Miller, *supra* § 2858.1 ("the limitation . . . that the motion must be made before the time for appeal has expired seems at odds with the one-year limit on motions under Rule 60(b)(1)."). It did not because Rule 60(b)(1) does not encompass legal errors cognizable under Rule 59(e) and on appeal.

The structure of the Rules thus reveals the following framework. If the movant identifies a legal error within 28 days of judgment, he can seek reconsideration under Rule 59(e). If that motion is denied, he can appeal. (Of course, he can also appeal without seeking reconsideration under Rule 59(e)). But where the movant identifies the legal error *after* the time period to appeal, the proper vehicle for relief is a motion under the catchall provision in Rule 60(b)(6). Unlike Rule 60(b)(1), the movant must show "extraordinary circumstances" to obtain relief under Rule 60(b)(6).

That strict limitation on relief prevents movants from using Rule 60(b) to circumvent the time limits governing both Rule 59(e) reconsideration motions and appeals. But Rule 60(b)(6) still provides a failsafe avenue for relief where extraordinary circumstances prevented the movant from remedying the legal error within those time limits. That exception to finality accords with Rule 60(b)(6)'s core purpose: "to enable [courts] to vacate judgments whenever such action is appropriate to accomplish justice." *Klapprott*, 335 U.S. at 614–15 (op. of Black, J.); *see also Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211, 233–34 (1995) (recognizing that Rule 60(b) "reflects and confirms the courts' own inherent and discretionary power, firmly established in English practice long before the foundation of our Republic, to set aside a judgment whose enforcement would work inequity.") (quotation omitted).

3. That framework neatly aligns with this Court's precedents, which have consistently analyzed claims of legal error under Rule 60(b)(6), not Rule 60(b)(1).

This Court's decision in *Gonzalez* is on point. There, the petitioner's "only ground for reopening the judgment denying his first federal habeas petition" was that a subsequent decision of this Court "showed the error of the District Court's statute-of-limitations ruling." *Gonzalez*, 545 U.S. at 536; *see id*. at 527 (recounting that the petitioner's Rule 60(b) motion argued "that the District Court's time-bar ruling was incorrect" as a matter of law). Despite alleging that claim of legal error, and despite filing the motion within one year, this Court analyzed his motion under Rule 60(b)(6), not Rule 60(b)(1). And the Court affirmed the denial of that motion due to a lack of "extraordinary circumstances." *Id*. at 528–29, 536–38. If a claim of legal error was cognizable under Rule 60(b)(1), "extraordinary circumstances" would not have been required. Yet the Court never doubted that Rule 60(b)(6) was the appropriate vehicle.

Similarly, in *Ackermann v. United States*, 340 U.S. 193 (1950), the petitioner's Rule 60(b) motion was based on his claim "that the denaturalization judgment was erroneous" as a matter of law. *Id*. at 197; *see id*. at 196 (recounting petitioner's argument that the judgment "was unlawful and erroneous" in light of an appellate ruling in his co-defendant's case). The Court rejected the petitioner's attempt to invoke the "excusable neglect" prong of Rule 60(b)(1), and instead analyzed his claim under Rule 60(b)(6). *Id*. at 197. In that case, the petitioner filed his motion more than four years after the judgment; so if his motion alleging legal error was cognizable under Rule 60(b)(1), it would have simply been dismissed as untimely. However, as

in *Gonzalez*, the Court analyzed the motion under Rule 60(b)(6), and it affirmed the denial of the motion based on a failure to show "extraordinary circumstances" justifying the petitioner's failure to appeal the judgment. *See id*. at 197–202.

Conversely, the Court in *Klapprott* held that Rule 60(b)(6) relief *was* warranted from a four-year old default denaturalization judgment. The Court determined that "extraordinary circumstances" justified the petitioner's failure to seek relief earlier. *Klapprott*, 335 U.S. at 613–15 (op. of Black, J.). But the substantive claim there was that the denaturalization allegations were legally insufficient. *See id*. at 615 ("if the Government had been able on a trial to prove no more than the particular facts it alleged in its denaturalization complaint, it is doubtful if its proof could have been held sufficient to revoke petitioner's citizenship under our holdings" and Rule 9(b)). The Court rejected the argument that the motion was cognizable under Rule 60(b)(1)'s "excusable neglect" prong and was thus untimely. *Id*. at 613–14 (explaining that allegations involved more than "mere neglect"). At no time did the Court suggest that the motion might be cognizable under Rule 60(b)(1)'s "mistake" prong.

Finally, in *Liljeberg*, the Court affirmed the grant of a Rule 60(b)(6) motion where the trial judge erroneously failed to recuse himself, as required by federal statute. 486 U.S. at 862–70. Despite stating that Rules 60(b)(1) and (6) were "mutually exclusive," the Court "conclude[d] that the basis for relief in this case is extraordinary and that the motion was thus proper under clause (6)." *Id*. at 863 & n.11. In so concluding, the Court emphasized that "this is not a case involving neglect or lack of due diligence by respondent. Any such neglect is rather chargeable

to the" judge. *Id*. at 863 n.11. That reasoning confirms that Rule 60(b)(1) authorizes relief based on oversights by litigants, not legal errors by courts. And, once again, at no time did the Court in *Liljeberg* suggest that the motion might have been cognizable under Rule 60(b)(1) due to the judge's "mistaken" failure to recuse himself, which would have obviated the need to show "extraordinary circumstances."

* * *

In sum, this Court's precedents confirm that, where a Rule 60(b) motion alleges that the district court made a legal error in its judgment, that motion is cognizable under Rule 60(b)(6), not Rule 60(b)(1). And relief may be granted if the movant demonstrates "extraordinary circumstances" justifying the failure to seek relief on appeal. Rule 60(b)(6) thus provides a critical failsafe mechanism, permitting courts to do justice where "extraordinary circumstances" exist. That understanding respects finality, while also retaining the necessary flexibility to avert miscarriages of justice.

However, the decision below renders Rule 60(b)(6) categorically unavailable for all claims of legal error brought over one year after the judgment. That will leave courts powerless to remedy injustice. At the same time, Rule 60(b)(1) motions filed on day 364 need not show "extraordinary circumstances" at all. That does not respect finality. It is also a-textual: to prevent those motions from circumventing the strict time limits governing Rule 59(e) motions and appeals, lower courts have been forced to invent time limits that are not found in the text of Rule 60(c) or any other Rule. The Court should grant review, resolve the fifty-year old circuit conflict, and hold that Rule 60(b)(1) does not authorize relief based on a court's legal error.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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