

No. 25-720

IN THE
SUPREME COURT OF THE UNITED STATES

LOUEMMA CROMITY,

Petitioner,

v.

CITY OF ORLANDO, -

Respondent.

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

SUPPLEMENTAL BRIEF FOR THE PETITIONER

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SUPPLEMENTAL BRIEF FOR PETITIONER

(Supreme Court Rule 15.8)

Intervening Supreme Court Authority

Argument

The Intervening Decision in *Coney Island Auto Parts Unlimited, Inc. v. Burton*, No. 24-808 (Jan. 20, 2026)

Pursuant to Supreme Court Rule 15.8, Petitioner respectfully submits this Supplemental Brief to advise the Court of a controlling, intervening decision issued after the filing of the petition for certiorari: *Coney Island Auto Parts Unlimited, Inc. v. Burton*, No. 24-808 (Jan. 20, 2026).

Burton Reaffirms That the Plain Text of the Federal Rules Is Mandatory

In *Burton*, this Court reaffirmed that the Federal Rules of Civil Procedure must be applied according to their **plain text**, and that lower courts lack discretion to displace a Rule's textual command in favor of equitable balancing or historical practice. The Court held that where a Rule prescribes a specific standard or limitation, that standard is **mandatory**, not optional, lower courts do not have the "discretion" to ignore.

The Court's reasoning emphasized that judicial discretion cannot be used to recharacterize or avoid

the operation of an applicable Rule. Where the text governs, courts must apply it as written.

Direct Impact on the Question Presented in This Case

The decision below conflicts directly with *Burton*'s reaffirmation of textual primacy.

This case concerns the proper application of **Federal Rule of Civil Procedure 60(b)(1)**, which authorizes relief from judgment based on "mistake." In **Kemp v. United States, 596 U.S. 528 (2022)**, this Court held that the term "mistake" in Rule 60(b)(1) includes **mistakes made by the court itself**, whether legal or factual.

Here, Petitioner identified one of many documented factual error in the district court's order. Rather than applying Rule 60(b)(1) as required by *Kemp*, the Eleventh Circuit reclassified the claim under **Rule 60(b)(6)** and imposed the more demanding "extraordinary circumstances" standard. That reclassification was justified solely by an appeal to judicial discretion.

Under *Burton*, that approach is impermissible. When a specific Rule applies, a court may not bypass it by invoking discretion or equity. The Eleventh Circuit's decision thus conflicts with both **Kemp** and **Burton** by substituting a discretionary framework for a mandatory, textually prescribed rule.

The decision in *Coney Island Auto Parts Unlimited, Inc. v. Burton, No. 24-808 (Jan. 20, 2026)*, directly impacts the Eleventh Circuit's handling of

Petitioner's case. In *Burton*, this Court resolved an 11-1 circuit split, ruling that the plain text of Rule 60(c) must be followed over historical equitable practices. Notably, the Eleventh Circuit was a leading member of the majority group whose interpretation was expressly rejected by this Court.

The Eleventh Circuit held that it had the discretion to ignore a "**documented factual impossibility**" in the record (specifically Petitioner's deposition, Respondent's Exhibit I, and the District Court Order Page 27) that Petitioner "did not respond" to Count II, despite **Exhibit I** proving otherwise.

However, *Burton* (applying the logic of *Kemp v. United States*, 596 U.S. 528 (2022)) clarifies that when a specific Rule applies—here, **Rule 60(b)(1)** for "mistake"—a court does not have the "discretion" to ignore the plain text and apply a harder, discretionary standard. The lower court's reliance on "discretion" to bypass a documented mistake contradicts the mandatory textual approach this Court just reinforced in *Burton*. Just as this Court in *Burton* rejected the Eleventh Circuit's "outlier" interpretation of Rule 60(c), this Court should grant certiorari to reject the Eleventh Circuit's failure to apply the mandatory "mistake" standard of Rule 60(b)(1).

This Case is the Ideal Vehicle for Enforcing Burton and Kemp

This case squarely presents a recurring procedural issue: whether lower courts may avoid Rule 60(b)(1)'s mandatory application by recharacterizing

judicial mistakes as matters governed by Rule 60(b)(6). *Burton* confirms that such discretionary bypasses are inconsistent with the Federal Rules' text.

The conflict is not fact-bound. It concerns **rule classification**, not the weight of evidence. The question is whether a court may decline to apply Rule 60(b)(1) when its elements are satisfied. *Burton* answers that question in the negative.

Absent this Court's intervention, lower courts may continue to dilute *Kemp* by imposing discretionary barriers that the Rule's text does not authorize. Granting certiorari would ensure uniform adherence to the textualist framework this Court has now reaffirmed.

This recent reversal in *Burton* underscores a systemic issue within the Eleventh Circuit's Rule 60 jurisprudence: a tendency to favor "judicial discretion" over the "plain text" mandates of this Federal Rules and this Court's precedents.

Petitioner's case provides the ideal vehicle to resolve the ongoing conflict between the Circuits regarding Rule 60(b)(1). Just as the Eleventh Circuit erred in its interpretation of Rule 60(c) prior to *Burton*, it erred here by failing to apply *Kemp v. United States*, 596 U.S. 528 (2022). Here, the Petitioner identified a 'factual impossibility' on page 27 of the District Court's order. The Mandate: Under the plain text of Rule 60(b)(1) and this Court's holding in *Kemp*, a judge's own factual mistake is a "mistake" that warrants relief. The Departure: Rather than applying the mandatory standard of *Kemp*, the Eleventh Circuit's refusal to apply the *Kemp*

standard—it instead viewed the error through the discretionary lens of Rule 60(b)(6)—creates a procedural hurdle that this Court’s jurisprudence expressly sought to remove. If “plain text” is the standard, as *Burton* mandates, then a documented factual mistake (Order at 27) must be corrected under Rule 60(b)(1), not shielded by a discretionary “procedural ambush.” This Court should grant the writ to ensure the Eleventh Circuit aligns its Rule 60(b) analysis with the textualist approach reaffirmed in *Burton*.

The decision below further conflicts with this Court’s holding in *Kemp v. United States*, 596 U.S. 528 (2022). In *Kemp*, this Court clarified that ‘mistake’ under Rule 60(b)(1) encompasses errors made by the court itself. Here, the Petitioner identified a ‘factual impossibility’ on page 27 of the District Court’s order. Under *Kemp*, this constitutes a ‘mistake’ that must be corrected.

The Eleventh Circuit is creating a double standard. If a represented party makes a mistake, they might get a pass, but here, the Court made the mistake, and the Eleventh Circuit is punishing the Petitioner (the pro se litigant) by requiring “extraordinary circumstances” to fix it.

REASONS FOR GRANTING THE WRIT

I. The Decision in *Burton* Reaffirms that the Plain Text of Rule 60 is Mandatory and Not Subject to Judicial Discretion.

The primary reason to grant certiorari is that the Eleventh Circuit’s “discretionary” approach to Rule

60(b) is now in direct conflict with this Court's intervening decision in *Coney Island Auto Parts Unlimited, Inc. v. Burton*, No. 24-808 (Jan. 20, 2026). In *Burton*, this Court held that the "reasonable time" requirement of Rule 60(c)(1) is a mandatory textual limit that lower courts are not free to ignore. This Court emphasized that the Federal Rules must be interpreted according to their plain text, even when historical practice or equitable concerns suggest a different outcome. As Justice Alito noted, the Court will not "depart from the text" to accommodate "policy concerns" or "historical consensus."

II. The Eleventh Circuit's Refusal to Apply the *Kemp* "Plain Text" Standard.

In Petitioner's case, the Eleventh Circuit sanctioned a departure from the "plain text" of Rule 60(b)(1) by allowing a documented factual impossibility—the District Court's finding on Page 27—to stand uncorrected. The lower court reasoned it had the "discretion" to bypass the mandatory "mistake" standard of *Kemp v. United States*, 596 U.S. 528 (2022). Just as the Eleventh Circuit was the "lone outlier" whose interpretation was rejected in *Burton*, it is once again using "judicial discretion" to override the mandatory requirements of the Federal Rules. Under the textualist mandate reaffirmed in *Burton*, if a motion identifies a "mistake" of law or fact, the court must apply Rule 60(b)(1). It cannot use the "extraordinary circumstances" of Rule 60(b)(6) as a procedural shield to hide a clear factual error. The need for this Court's intervention is heightened by the fact that the Eleventh Circuit's 'discretionary' approach creates an insurmountable barrier for pro

se litigants. By recharacterizing a clear judicial mistake as an issue of 'equity' under Rule 60(b)(6) rather than a 'mistake' under Rule 60(b)(1), the lower court has ignored the clear mandate of *Kemp*. This allows a demonstrably false factual premise—specifically “per the Judge’s Order Page 27, the “Plaintiff did not respond to this argument, so she has failed to meet her burden of presenting evidence of a comparator, and Defendant has met its burden to be entitled to summary judgment on Count II,—to remain the law of the case, despite being a factual impossibility.

III. Certiorari is Necessary to Resolve the Conflict Between the Eleventh Circuit’s Discretionary Standards and This Court’s Textualist Jurisprudence.

The *Burton* decision proves that the Eleventh Circuit’s “equitable” bypass of Rule 60 is a systemic error. Granting the Writ will ensure that the “plain text” priority established in *Burton* and *Kemp* is applied equally to all litigants, including those proceeding *pro se*. Without this Court’s intervention, the Eleventh Circuit will continue to treat the Federal Rules as “suggestions” rather than the mandatory standards this Court just reinforced.

CONCLUSION

The decision in *Burton* reinforces that the Eleventh Circuit’s “discretionary” disregarding the plain record was a departure from the proper interpretation of the Federal Rules of Civil Procedure. Because the lower court’s ruling conflicts with the textualist mandate of this Court, the

petition for a writ of certiorari should be granted. The Eleventh Circuit has a "Discretionary" Habit. Since the Eleventh Circuit was just corrected in *Coney Island v. Burton* for trying to use "equitable discretion" to bypass the rules and their refusal to apply Kemp in this case is part of that same pattern of error. The Eleventh Circuit continues to substitute its own discretionary preferences for the mandatory textual requirements of the Federal Rules, a practice this Court rebuked just days ago in *Burton*.

Respectfully submitted,

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