

SUPREME COURT OF THE UNITED STATES

IN THE SUPREME COURT OF THE UNITED STATES

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DEXTER EARL KEMP,)
)
 Petitioner,)
)
 v.) No. 21-5726
)
UNITED STATES,)
)
 Respondent.)
- - - - -

Pages: 1 through 48
Place: Washington, D.C.
Date: April 19, 2022

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DEXTER EARL KEMP,)

Petitioner,)

v.) No. 21-5726

UNITED STATES,)

Respondent.)

- - - - -

Washington, D.C.

Tuesday, April 19, 2022

The above-entitled matter came on for oral argument before the Supreme Court of the United States at 11:18 a.m.

APPEARANCES:

ANDREW L. ADLER, Assistant Federal Public Defender, Fort Lauderdale, Florida; on behalf of the Petitioner.

BENJAMIN W. SNYDER, Assistant to the Solicitor General, Department of Justice, Washington, D.C.; on behalf of the Respondent.

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P R O C E E D I N G S

(11:18 a.m.)

CHIEF JUSTICE ROBERTS: We will hear argument next in Case 21-5726, Kemp versus United States.

Mr. Adler.

ORAL ARGUMENT OF ANDREW L. ADLER

ON BEHALF OF THE PETITIONER

MR. ADLER: Mr. Chief Justice, and may it please the Court:

Rule 60(b)(6) governs this case because Rule 60(b)(1) does not. That is so for two independent reasons. First, Rule 60(b)(1) does not cover legal errors. Second, it does not cover judicial errors. It does not cover legal errors because the word "mistake" means mistake of fact. (b)(1) copied 17 state laws, and they overwhelmingly excluded legal errors.

That makes perfect sense in this context. The three words accompanying "mistake" are all terms of art describing factual mishaps. 60(a) uses the word "mistake" to mean mistake of fact. And 60(b)(1) through (3) have a one-year deadline precisely because they are factual defects. Meanwhile, (b)(4) through (6) do not

1 have such a deadline, and we already know that
2 they cover legal errors.

3 If (b)(1) covered legal errors as
4 well, that would contravene the structure of the
5 rule. (b)(1) does not cover judicial errors
6 either. Those errors should be corrected under
7 Rule 59(e) or on appeal, which have strict
8 deadlines. Where a party fails to do so, they
9 should -- I'm sorry, where a party fails to do
10 so, they should pay the price by having to show
11 extraordinary circumstances under (b)(6).

12 (b)(1), however, requires no
13 heightened showing at all. So, if (b)(1)
14 covered judicial errors, (b) -- people could use
15 (b)(1) to get around the deadlines, and that
16 regime is not sound.

17 Neither is the government's definition
18 of "mistake." Originally, the government said
19 that "mistake" meant any and all errors. Now
20 they say that "mistake" means only unintentional
21 and obvious errors.

22 Slicing and dicing errors in that
23 manner is unsupported and unworkable. No
24 circuit has adopted that approach, and this
25 Court should not impose an untested, subjective

1 standard on lower courts and litigants.

2 I welcome the Court's questions.

3 JUSTICE THOMAS: Mr. Adler, are you
4 conceding that your -- that the plain meaning of
5 the word "mistake" doesn't work for you?

6 MR. ADLER: Justice Thomas, it depends
7 what you mean by "the plain meaning of the word
8 'mistake.'" If you mean any --

9 JUSTICE THOMAS: Well, the judge made
10 a mistake here.

11 MR. ADLER: Sure, Your Honor, but it
12 can't mean that in this context, and I'd like to
13 give three reasons why, based on the text,
14 structure, and precedent.

15 Starting with precedent, this Court
16 has about a handful of cases analyzing legal
17 errors under (b)(6). If (b)(1) included all
18 legal errors, that would conflict with the
19 (b)(6) precedents because those two subdivisions
20 are mutually exclusive.

21 Relatedly, as to the structure, if
22 (b)(4) -- (b)(4) through (6) already cover legal
23 errors, and so that would mean that any errors
24 under those subdivisions would simultaneously be
25 covered under (b)(1). That would create

1 substantial redundancy within the rule.

2 And, thirdly, as for -- it would
3 create troubling implications for Rule 60(a).
4 If "mistake" meant any and all legal errors,
5 then that would mean legal errors arising from
6 oversight or omission would be covered by 60(a),
7 and that would eviscerate finality because 60(a)
8 has no deadline at all. And judges could come
9 in decades later and start correcting legal
10 errors. They can do it sua sponte and without
11 notice to the parties. So it cannot mean any
12 and all errors.

13 That is why the government has
14 expressly disavowed that position on page 15 of
15 its brief in this case. The problem is the
16 government's position is no better. They have
17 some of the exact same problems here, but you've
18 added on top of it major workability problems as
19 well with this unintentional and obvious
20 limitation.

21 We -- those -- those words are just
22 entirely subjective, and how is a litigant
23 supposed to know whether the judge's error was
24 intentional or not? Is the government
25 suggesting we put them on the stand? That would

1 be a fraught enterprise.

2 And as for "obvious," that also is
3 inherently subjective. What's obvious to the
4 litigant may not be obvious to the judge. And
5 people need to know what subdivision applies on
6 the front end because we have to know if there's
7 a one-year deadline or if they have to make a
8 heightened showing, like extraordinary
9 circumstances.

10 And so our position is really the only
11 viable position here. And -- and our position
12 reads the rules as a coherent whole. It
13 respects precedent, and it's entirely --
14 entirely workable.

15 If you take (b)(1) off the table for
16 legal errors, then there's just no question
17 where they go. They all go in (b)(6) --

18 JUSTICE BARRETT: But you have the
19 difficulty of distinguishing between fact and
20 law, and then you also have the difficulty in
21 identifying whose error was it. I mean, I think
22 the government makes a good point, that it can
23 be difficult to figure out if a legal error was
24 by the litigant or by the court. You know,
25 here, you could say, well, the lawyer failed to

1 point out that the cert deadline ran differently
2 when his co-defendants had sought cert. Lawyer
3 made a mistake, and then the judge didn't catch
4 it and find that authority on his own.

5 So is it really as clear as you say?
6 And -- and, plus, I'll just throw out for good
7 measure too that when you point out that the
8 other provisions in 60(b) are also referencing
9 legal errors and so there would be a lack of
10 clarity about whether they fell -- where they
11 fell, the specific controls the general, right?
12 And those are all specific kinds of errors, you
13 know, void, et cetera.

14 So could you address that?

15 MR. ADLER: Sure. So I guess I'll
16 start with the second part of that first.

17 The only other rules that we know,
18 putting aside (b)(1), that cover legal errors
19 are (b)(4) for void judgments and (b)(5). Those
20 are pretty narrow categories, and they're also
21 mutually exclusive with (b)(6). So, if they
22 don't fall in (b)(4) and (b)(5), we know they go
23 in (b)(6). If you open up (b)(1), then we're
24 going to have a lot of confusion about where
25 they go.

1 As for the first part of your
2 question, the fact/law distinction is a very
3 familiar distinction that courts around the
4 country apply every day. We do it in standards
5 of review. And we do this specific mistake of
6 law/mistake of fact distinction all the time
7 across various areas of the law. And, most
8 importantly, it's an objective distinction. We
9 don't have to get into somebody's mind to know
10 whether it's, you know, obvious or intentional
11 or not.

12 So, while I grant you that there may
13 be some hard cases on the margins about
14 fact/law, as a whole, it's going to be much
15 easier and much more workable than the
16 government's standard of --

17 JUSTICE BARRETT: Well, we apply clear
18 error standards in courts every day too.

19 MR. ADLER: For -- for findings of
20 fact.

21 JUSTICE BARRETT: For appeal.

22 MR. ADLER: Correct. And so that's
23 what I mean. When appellate courts --

24 JUSTICE BARRETT: Well, for forfeited
25 -- in cases of forfeiture too, right?

1 MR. ADLER: So plain error.

2 JUSTICE BARRETT: Plain error.

3 MR. ADLER: Plain error, sure. So
4 that analogy, I don't think, quite holds up here
5 because that's an appellate court doing it after
6 the fact and looking at the state of the law at
7 the time and the record.

8 And, here, we really should be looking
9 at this from the perspective of the litigant
10 because it's the litigant that has to know what
11 subdivision to file the motion under. And so
12 it's going to -- we need an objective
13 distinction here. Fact/law is -- is an easy
14 one.

15 As for the facts of this case, I mean,
16 I think, if anything, they show the problems
17 with the government's position here because the
18 error in this case was overlooked by the
19 government and the district court twice,
20 including after Mr. Kemp brought it to their
21 attention in the 60(b) motion.

22 And yet the government is here saying
23 that this was an obvious and unintentional
24 error? Well, if that's true, I'm not really
25 sure what -- what wouldn't be.

1 So -- so I grant you that there may be
2 some hard cases fact/law-wise, but they're just
3 going to pale in comparison to the problems that
4 we're going to see with the government's
5 position.

6 JUSTICE KAVANAUGH: Well, the
7 government's position is -- is not the same, as
8 you know, as the Judge Friendly position, which
9 is, to Justice Thomas's question, more the
10 ordinary meaning of "mistake." "Mistake" can
11 mean a mistake of law. Professor Moore, Judge
12 Friendly, it's been applied in the Second
13 Circuit and a bunch of other circuits. It seems
14 workable enough there.

15 They put in a deadline for filing it.
16 Why not just -- why is that not a simple route?
17 It's not the government's position as I
18 understand it. But why is that not a simple --

19 MR. ADLER: So, you know, I don't want
20 to say anything disparaging about Judge
21 Friendly, but I think that opinion was wrong.
22 And it didn't conduct a textual analysis. It
23 didn't conduct a structural analysis of the
24 rule. It was part of a line of 1960s opinions
25 by the courts of appeals that basically said,

1 well, we need a mechanism for district courts to
2 correct their own errors.

3 But what they overlooked was that
4 59(e) provides that exact mechanism.

5 JUSTICE KAVANAUGH: Right. There's
6 definitely overlap then. I grant you that. But
7 it's been the way it's been interpreted, and
8 there's going to be redundancies here, a lot of
9 our usual canons are not going to be able to
10 solve all the problems that are going to be
11 created no matter which interpretation we adopt,
12 but it's been workable in the Second Circuit and
13 several other circuits for a long time.

14 CHIEF JUSTICE ROBERTS: And it's not
15 surprising that Judge Friendly may not be very
16 familiar with mistakes of law.

17 (Laughter.)

18 MR. ADLER: Very well, Your Honor.
19 Well --

20 JUSTICE BREYER: I can think of at
21 least three decisions we've written, one in a
22 patent case that I think a footnote which was
23 pretty interesting, and Justice Kagan wrote a
24 decision, I wrote it.

25 Why do we have to keep writing these

1 decisions if it's so clear? Maybe we just make
2 it worse, but, I mean, the -- the -- the
3 decision between fact and law, it seems to me
4 they're always coming up, and it's actually not
5 so easy. Sometimes it is.

6 And then the argument the other way
7 would be we're going to have that problem, and,
8 you know, I'm sitting there as a trial judge and
9 I actually got confused between shifting and
10 springing uses. And at the end of the case, I
11 think, oh, my God, I should have said shifting
12 use. It was not a shifting use, it was a
13 springing use. Oh, my goodness, and -- and I
14 can't say it's major, but I'd like to correct it
15 right now. All right? Matter of law.

16 So -- so what they're saying, look,
17 the judges do make mistakes. Give them a quick
18 chance to do it, even if it's one of law. Call
19 it to their attention. Six of one, half a dozen
20 of the other because we have problems both ways.

21 MR. ADLER: Justice Breyer, judges
22 have that authority under Rule 59(e). That's
23 what Rule 59(e) is for.

24 JUSTICE BREYER: But they might not
25 know it until actually three months later,

1 because they do not read every night the
2 shifting/springing new section of the American
3 Law of Property. And -- and then they realize
4 it.

5 JUSTICE BARRETT: Well, and let me
6 just add one thing to Justice Breyer's
7 hypothetical. Let's say that the
8 shifting/springing thing comes to light after
9 the Rule 59 deadline has passed.

10 What's the extraordinary circumstance
11 that justifies fixing it? I mean, maybe it's
12 just a regular old error and we'd like to fix it
13 without having to show a heightened standard.

14 MR. ADLER: Well, I really think the
15 onus is going to be on the parties there to --
16 to file the motion under 59(e) or to file an
17 appeal. That's how legal errors get corrected
18 in our system.

19 And our position respects those
20 primary mechanisms for doing that and their
21 deadlines. If you miss those deadlines, if you
22 miss the 59(e) deadline, if you miss the appeal
23 deadline, then you've got to show extraordinary
24 circumstances. Otherwise, those deadlines
25 really don't mean anything. And --

1 JUSTICE KAVANAUGH: What about the --
2 I don't want to interrupt. You have more?

3 MR. ADLER: Yeah. Please, Your Honor.

4 JUSTICE KAVANAUGH: What about the
5 60(b)(1) that the courts have imposed a deadline
6 saying reasonable time means within 30 days or
7 60 days or what have you?

8 MR. ADLER: Sure, Your Honor. So,
9 number one, that doesn't --

10 JUSTICE KAVANAUGH: That solves that
11 problem.

12 MR. ADLER: Well, it doesn't solve the
13 59(e) problem because --

14 JUSTICE KAVANAUGH: No, there's, I
15 agree, total overlap.

16 MR. ADLER: So you come in on day 50
17 -- you come in on day --

18 JUSTICE KAVANAUGH: But is there a
19 problem from that? I mean, this is a rules
20 committee question more than a judicial
21 question, but I'll just ask you, is there -- you
22 know, is there a real-world problem from the
23 Second Circuit's approach with the overlap plus
24 the time limit on filing the 60(b)(1)?

25 MR. ADLER: So I -- I just think it

1 doesn't make sense with the rules as a whole
2 because, first of all, now that the 59(e)
3 deadline is 28 days and most appeals, the
4 deadline is 30 days --

5 JUSTICE KAVANAUGH: Right.

6 MR. ADLER: -- it's not really
7 accomplishing anything.

8 JUSTICE KAVANAUGH: It's a weird
9 two-day --

10 MR. ADLER: Yeah. It's not doing
11 anything. So the -- the other thing is that,
12 you know, it just doesn't make sense to have a
13 non-extendable 28-day deadline for 59(e). If
14 you can just come in on day 29 using another
15 rule to do the exact same thing, that's just not
16 a coherent system. That's not reading the rules
17 in harmony.

18 JUSTICE SOTOMAYOR: Counsel, the rules
19 are in harmony because it's not that you have a
20 year to bring a 60(b)(1) motion. You have to
21 bring it within a reasonable time, up to one
22 year. And so, if you could have brought it
23 under 59(e), a court is going to ask or on a
24 direct appeal, a court is going to ask bringing
25 it after that time passed, is there a reason for

1 that.

2 If there's not a reason for that,
3 here, the reason would be my attorney, the
4 government, the court, we're all incompetent and
5 I'm the only one who did it and I'm pro se and
6 didn't have time. I believe most judges would
7 say, you're right, I made a mistake and grant it
8 to you.

9 But I want to go to the more important
10 question. The circuits are all over the place.
11 Only the Fifth and Tenth go the government's way
12 with an obvious legal error. As Justice
13 Kavanaugh pointed out, the Second, Sixth,
14 Seventh, and Eleventh call it any legal error.
15 I'm really not sure what the difference means or
16 why.

17 What I am concerned about is those
18 circuits that permit 60(b)(6) motions when
19 there's been a change in law or an intervening
20 change in the law that renders the initial
21 judgment based on overruled or changed laws.

22 We've even done it in Buck under
23 60(b)(6). How do we write this opinion to avoid
24 barring that, meaning do we have to write it the
25 Second, Sixth, Seventh, and Eleventh way or the

1 Fifth and Tenth way? But how do we avoid
2 opining on that inadvertently? Because it can't
3 be all legal errors where the government
4 suggests that are obvious or not obvious.

5 MR. ADLER: I think --

6 JUSTICE SOTOMAYOR: So how do we write
7 this if we were to rule --

8 MR. ADLER: I think --

9 JUSTICE SOTOMAYOR: I know we're
10 asking you to rule against yourself, but I think
11 it's important to --

12 MR. ADLER: Well, that's what I was
13 going to say. I was going to say that I think
14 that's a question for the government because the
15 whole reason they've come up, I think, with this
16 unintentional and obvious definition is to get
17 around as many of this Court's (b)(6) precedents
18 as they can which concern subsequent changes in
19 the law.

20 There's at least four of --

21 JUSTICE SOTOMAYOR: But that's
22 logical, isn't it? You can't anticipate
23 subsequent changes in law. And that's what
24 60(b)(6) is about.

25 So I'm asking you -- yes, I'm asking

1 you to take a position contrary to your
2 interests but to save something that makes
3 sense. So how do we write it?

4 MR. ADLER: I -- I think the only way
5 to write it is based on the government's
6 definition of unintentional and obvious is the
7 -- is what mistake means. And I don't see how
8 the Court can write that opinion without --
9 without throwing the lower courts and litigants
10 into complete chaos. While the Fifth and Tenth
11 Circuits have written this -- have this obvious
12 limitation, no circuit has this
13 unintentional/intentional limitation, and that's
14 the really big problem here.

15 And in addition to the
16 administrability problems, it's contrary to this
17 Court's decision in *Liljeberg*, which was a
18 classic unintentional oversight, yet this Court
19 analyzed it under (b)(6). And it would also
20 render language in 60(a) superfluous. If
21 "mistake" by definition included unintentional
22 oversights, then the oversight or omission
23 language in 60(a) would be unnecessary.

24 So I think that's the only way to
25 write the opinion to preserve those other 60(b)

1 cases --

2 JUSTICE KAVANAUGH: Well --

3 MR. ADLER: -- but I don't think it's
4 a viable option for the Court here.

5 JUSTICE KAVANAUGH: -- can -- I -- I
6 share Justice Sotomayor's concern about the
7 60(b)(6) being preserved for subsequent changes,
8 but, in the Second Circuit, presumably, but
9 correct me if I'm wrong, and in those other
10 circuits that follow the Second Circuit's rule,
11 presumably, 60(b)(1) is available for mistakes
12 of law, but 60(b)(6) is still available for
13 intervening changes in the law that come after
14 that deadline, but correct me if I'm wrong about
15 that.

16 MR. ADLER: I -- I believe that is
17 correct, Your Honor, but those 60(b)(6) cases,
18 they're going to have to show extraordinary
19 circumstances.

20 JUSTICE KAVANAUGH: Well, a change in
21 the law often -- well, tell me -- tell me what
22 you think "extraordinary circumstance" means in
23 relation to changes in the law. You know,
24 you're a district court judge and a circuit
25 decision comes out two months later. What --

1 what -- what do you say to that?

2 MR. ADLER: So, in -- in this Court's
3 decision in Gonzalez, I think the Court was
4 pretty clear that a subsequent change in the law
5 by itself is not going to be an extraordinary
6 circumstance because that's just going to
7 disrupt finality too much.

8 So you've got to show something else
9 along with that. And so I think this Court's
10 decision in Buck versus Davis is a good example
11 of that. It was a subsequent change in law and
12 procedural default coupled with, you know, very
13 unusual and troubling circumstances about the
14 use of race in a capital sentencing. And so I
15 think, you know, that's how we deal with
16 subsequent changes to the law.

17 Now this situation, we have a legal
18 error that existed at the time of the judgment,
19 and the question there under extraordinary
20 circumstances is going to be, why didn't you
21 appeal this? Why didn't you correct this on
22 appeal?

23 And that's the question that this
24 Court asked in Ackermann and in Liljeberg. And
25 in Ackermann, the Court said, well, you can't

1 show extraordinary circumstances because you
2 made a cost/benefit decision not to appeal this.
3 And in Liljeberg, the Court said, oh, well,
4 we're going to grant -- we think (b)(6) relief
5 is appropriate there because there was no way
6 for you to know about the legal error in time to
7 appeal.

8 And that's exactly the situation here.
9 Mr. Kemp, through no fault of his own, could not
10 have ascertained the basis of the legal error in
11 the district court's judgment in time to appeal
12 it. And the reason why is that he was
13 transferred from federal prison to Miami-Dade
14 County jail in pretrial detention, and he was
15 not allowed to bring his legal materials and he
16 was not allowed to conduct any legal research
17 there.

18 He had no access to this Court's
19 rules, and so he could not have just opened to
20 Rule 13.3 and discovered the legal error in the
21 district court's ruling. And this is precisely
22 why we have (b)(6), to serve as a catch-all in
23 cases to remedy gross injustice. That's why we
24 have it. It's not going to come up very often,
25 but we need to preserve it.

1 And if you expand (b)(1), what you're
2 going to do is contract (b)(6) because they're
3 mutually exclusive provisions. And I think the
4 Court needs to be very careful before it does
5 something like that.

6 CHIEF JUSTICE ROBERTS: You can
7 proceed with your argument.

8 MR. ADLER: Thank you, Your Honor.
9 I'm trying to think about where to go from here.

10 So I guess one thing we haven't talked
11 about is the judicial error. So we have a
12 second theory in this case, which is that even
13 if legal errors are -- are not covered by
14 (b)(1), judicial errors are not either.

15 And the government places the entire
16 weight of its argument on the removal of a
17 pronoun in 1946. And, basically, what the
18 government is saying is that when the committee
19 removed a pronoun, it transformed 60(b)(1) into
20 essentially a substitute for an appeal.

21 And I just don't think that is a
22 plausible take on the history here.

23 CHIEF JUSTICE ROBERTS: Why do you
24 think they did it?

25 MR. ADLER: To capture mistakes by

1 third parties like process servers, notaries,
2 postal workers, and -- and that's why they did
3 it. And we know that from several sources, not
4 just this Court's precedent in Liljeberg but
5 also the official explanation in the advisory
6 committee note, which explains that they did it
7 to capture mistakes that warranted the
8 supervisory jurisdiction of the courts.

9 And courts don't exercise supervisory
10 jurisdiction over their own mistakes but,
11 rather, the mistakes of others. And the
12 government --

13 JUSTICE BARRETT: But the statute --
14 not the statute, sorry -- the rule doesn't --
15 nothing on the face of the rule excludes courts.
16 And what about the point I made before, which
17 was a repetition of the government's point, that
18 it can be difficult to figure out whose error it
19 was? It could be categorized as the counsel's
20 error. It could be categorized as the court's
21 error.

22 MR. ADLER: So, Your Honor, I don't
23 think that's a difficult distinction when we're
24 talking about legal errors because the district
25 court has an independent obligation to ascertain

1 and apply the law in every case regardless of
2 what the parties say. And so, when there's a
3 legal error, the only question is, well, did the
4 district court commit an error? It doesn't
5 matter what the parties say.

6 As for the text, we rely on the
7 noscitur a sociis canon for this, the
8 accompanying words all involve things that do --
9 that judges don't do or they don't commit.
10 Surprise, excusable neglect, those aren't
11 judicial actions here.

12 And -- and then, of course, we have
13 our structural argument about respecting the
14 deadlines for 59(e) and appeal. And so, you
15 know, if (b)(1) did the exact same thing and
16 covered legal errors, then that regime just
17 doesn't work. It doesn't make sense.

18 And there's not going to be any repose
19 in the system when someone fails to appeal. If
20 someone doesn't appeal, then, you know,
21 typically, we should require extraordinary
22 circumstances in order to reopen a final
23 judgment. People need to be able to rely on
24 that judgment.

25 But, on the government's view, there's

1 not going to be any repose for an entire year,
2 so -- because all you have to do is come in on a
3 reasonable time and show a legal error and you
4 can reopen the judgment. I just don't think
5 that is consistent with our conception of
6 finality and repose that we typically think of
7 in litigation.

8 CHIEF JUSTICE ROBERTS: Thank you,
9 counsel.

10 Justice Thomas, anything further?

11 JUSTICE THOMAS: Nothing, Chief.

12 CHIEF JUSTICE ROBERTS: Justice
13 Breyer? No?

14 Justice Barrett?

15 Thank you very much.

16 Mr. Snyder?

17 ORAL ARGUMENT OF BENJAMIN W. SNYDER

18 ON BEHALF OF THE RESPONDENT

19 MR. SNYDER: Mr. Chief Justice, and
20 may it please the Court:

21 Rule 60(b)(1) gives courts discretion
22 to grant relief based on mistakes. In ordinary
23 usage, that word sometimes refers
24 indiscriminately to all errors. Other times,
25 the word is used in a narrower sense that covers

1 only inadvertent errors. But, under either of
2 those definitions, the district court's error
3 here clearly qualifies as a mistake that the
4 court could have addressed through a timely Rule
5 60(b)(1) motion.

6 In arguing otherwise, my friend
7 proposes two limitations on Rule 60(b)(1). He
8 says that it excludes all legal mistakes and all
9 mistakes by judges. There is no possible way to
10 reconcile either of those limitations with the
11 ordinary meaning of "mistake." And my friend
12 does not even try. Instead, he stakes his case
13 on the idea that the drafters of Rule 60(b)
14 understood "mistake" as a term of art that
15 carried his proposed limitations.

16 But that argument is dead wrong. All
17 agree that Rule 60(b) was based on Section 473
18 of the California Code of Civil Procedure, and
19 it was well settled that Section 473 covered
20 mistakes of law as well as mistakes of fact, as
21 Professor Moore explained in his treatise just a
22 year after helping to draft the first version of
23 the Federal Rules.

24 My friend dismisses that understanding
25 as limited to default judgment cases. But

1 nothing in Section 473 distinguished between
2 default cases and other cases, and the
3 California Supreme Court squarely recognized
4 that Section 473 covered mistakes of law made
5 outside the default judgment context.

6 As to the distinction between mistakes
7 by parties and mistakes by courts, it's true
8 that the original version of Rule 60(b) covered
9 only mistakes by the movant himself. But, in
10 1946, the rule was amended to remove any textual
11 limitation on whose mistakes could provide a
12 basis for relief.

13 My friend speculates that the advisory
14 committee still silently intended to exclude
15 judicial mistakes. But that speculation has no
16 grounding in the text of the rule. If the
17 committee had wanted to exclude judicial
18 mistakes as a basis for relief from judicial
19 orders, it would surely have said so expressly.

20 I welcome the Court's questions.

21 JUSTICE THOMAS: Mr. Snyder, you argue
22 in your brief, I think, that not every error is
23 a mistake. I don't know what the difference is.
24 I don't know why an error is not a mistake.

25 MR. SNYDER: So, Justice Thomas, there

1 are two categories of -- of dictionary
2 definitions of the word "mistake." Some
3 categories do include all miss -- or all errors.
4 And, if forced, we would choose that
5 interpretation over Petitioner's interpretation.

6 But there's another understanding of
7 "error" that dictionaries define as -- in a way
8 that focuses on inadvertent or unintentional
9 errors. And we think that context suggests that
10 "mistake" is used in that latter sense here.

11 Most specifically, the -- the words
12 surrounding "mistake" in 60(b)(1) all carry a
13 connotation of inadvertence. And so we think it
14 makes sense to read "mistake" in that
15 inadvertence-focused way as well.

16 Now my friend has said that that would
17 provide a subjective standard that would be
18 incredibly difficult to administer. I think the
19 key thing to remember in thinking through how
20 you would administer that test is that it's the
21 district courts themselves that are applying
22 Rule 60(b) in the first instance.

23 And no one is better positioned than
24 the district court to say whether the error in
25 the decision that he or she just entered was

1 just an oversight, just something that they
2 completely missed, like the error here, or
3 instead was something that they thought through
4 and just resolved in a way differently than the
5 one the movant would have preferred.

6 JUSTICE KAVANAUGH: Why would we do
7 that? It just seems like asking for a whole lot
8 of litigation about the difference between an
9 obvious mistake -- suppose you interpret the
10 statute one way and then you read some more in
11 response to the 60(b) motion and you say, you
12 know, I think I got it wrong. Does that qualify
13 as a mistake or not?

14 MR. SNYDER: So, if -- if on the -- if
15 in your first judgment you thought through it,
16 you thought through the issue and just resolved
17 it a particular way, you -- you later have
18 second thoughts, that is something you could
19 address in 59(e), but we don't think that that
20 comes within 60(b)(1).

21 JUSTICE KAVANAUGH: But, if you just
22 missed the relevant subsection of the statute
23 the first time you read it or it wasn't cited to
24 you and you -- you didn't see it yourself, that
25 would qualify?

1 MR. SNYDER: That's right, Your Honor.
2 We think that makes sense in light of the role
3 that 60(b)(1) plays in this broader scheme.
4 There are other ways that you can raise errors
5 where you just disagree with the decision-maker.
6 And so the -- the key --

7 JUSTICE KAVANAUGH: Why -- why is this
8 inquiry worth it, I -- I guess, as opposed to
9 the Second Circuit and other circuit approach?
10 I just don't understand this collateral inquiry
11 into, well, it wasn't an inadvertent -- it was
12 -- you know, why not just say mistakes are
13 mistakes, as Justice Thomas indicated, and --
14 what -- what problems are created?

15 You changed your position from the --
16 well, shifted a little bit your position from
17 the BIO to the -- the brief here. Why? And --

18 MR. SNYDER: So -- so I don't think we
19 understood ourselves to be changing our position
20 at all. If you look at the -- at page 12 of our
21 opp, which is where my friend focuses, our
22 argument was just that the error here is a
23 mistake under any conceivable understanding of
24 that word.

25 And we think that is correct. We

1 didn't say in the opp that every possible error
2 would be covered.

3 JUSTICE KAVANAUGH: Okay. But what --
4 on the broader question, why is it worth doing
5 this rather than just the Second Circuit
6 approach? What --

7 MR. SNYDER: So --

8 JUSTICE KAVANAUGH: -- what problems
9 would be created?

10 MR. SNYDER: -- so I -- I don't want
11 to suggest that we think there's some huge
12 problem with the -- what you're calling the
13 Second Circuit approach, the approach of
14 treating all legal errors as mistakes.

15 The primary reason that we have argued
16 for an interpretation that focuses only on
17 inadvertent mistakes is that we think that makes
18 the most sense in light of the surrounding words
19 in (b)(1).

20 There's also to some extent the
21 concern that Justice Sotomayor was identifying
22 about instances in which a decision is correct
23 as a -- as a matter of law when it's entered,
24 and then some subsequent decision comes along
25 from a higher court and results in a -- a change

1 in the law that we don't think is appropriate in
2 that circumstance to say that the original
3 decision was a mistake, the district court did
4 exactly what it was supposed to.

5 Justice Sotomayor, you were asking
6 about how to address that. Our distinction
7 between inadvertent mistakes and -- and all
8 other mistakes would address that.

9 The other way to do it, if you were
10 going to go with a broader understanding of
11 "mistake" that Justice Kavanaugh has asked
12 about, would be to -- to say that the focus of
13 that inquiry is on whether it was a mistake at
14 the time the decision was made.

15 And so this Court has said time and
16 again that when there is binding precedent of a
17 higher court, the lower courts are required to
18 apply that precedent unless and until it's
19 overturned.

20 So a district court that enters a
21 decision that is correct on the day it's entered
22 has not made a mistake in the sense that we
23 think is relevant here. That would be better
24 addressed under (b)(6).

25 JUSTICE BREYER: Why not -- but, look,

1 there are four circuits, it's the same question.
2 From what we can tell, my law clerks looked this
3 up, the Second, Sixth, Seventh, and Eleventh say
4 that basically, 60(b)(1) authorizes, based on
5 relief, based on a legal mistake, as long as the
6 time to appeal hasn't run.

7 And then my memo says that, looking at
8 this, that the Fifth, Ninth, Tenth, and D.C.
9 Circuits have said that some of the legal errors
10 fall under 60(b)(1), fundamental misconceptions
11 or obvious error of law, and you seem to be
12 leaning in the second direction, and so you say
13 it doesn't matter, you win regardless. But --
14 but it seems as if there is a difference of
15 opinion among the circuits, and part of our job
16 is to try to create a harmony, and that's why I
17 have the same question here.

18 You're very -- you want to do this in
19 a -- why? I mean, just say, yeah, you have
20 extra time. If you think you can convince this
21 judge, you know, you appeal. Hey, you know, at
22 least you have three judges who haven't
23 considered this yet. Do you want to do that, or
24 do you want to make this judge try to change his
25 mind? Well, good luck.

1 But, if you want to, go ahead.

2 MR. SNYDER: So -- so we think that
3 part of the concern about the broader reading of
4 60(b)(1), and I don't want to overstate this
5 concern, but part of the concern is that
6 60(b)(1) should not be treated as just a second
7 round of relitigation so that the district court
8 rules against you, you file a 59(e) motion. The
9 district court rules against you again, you file
10 a Rule 60(b)(1) motion.

11 We don't think that's the way the --

12 JUSTICE BREYER: Will there be any
13 lawyers who will do that in the absence of
14 inadvertence, et cetera? But, if they want to
15 do it, I mean, a judge has twice decided against
16 them, and now he's going to try to get him to
17 change or her to change his mind?

18 MR. SNYDER: So we don't think that
19 the drafters would have structured this in a way
20 that incentivized that. That sort of filing is
21 just going to slow the process down.

22 If the judge has really resolved the
23 question in a way that you just disagree with,
24 then the -- the correct course is onward and
25 upward, seek -- seek review from a new group of

1 -- of three judges, but don't force everyone to
2 sort of go back through the same exercise.

3 JUSTICE KAVANAUGH: Isn't the time
4 limit designed to deal with that, that some
5 courts have put in on filing 60(b)(1) motions
6 interpreting what a reasonable time is? I
7 thought that accomplished your concern or
8 satisfied your concern there.

9 MR. SNYDER: So it does -- it does in
10 significant part address that concern. A party
11 could still file a 60(b)(1) motion in the
12 circumstances I've described while also filing a
13 notice of appeal, and those things could proceed
14 on separate tracks.

15 So we think that reading 60(b)(1) in
16 that broader way might create some unnecessary
17 procedural messiness. We understand 60(b)(1) as
18 existing --

19 JUSTICE KAVANAUGH: Has that happened
20 often in the Second and in other circuits?

21 MR. SNYDER: I -- I can't point to any
22 significant disruption here. I mean, we -- we
23 noted at the certiorari stage that there has
24 never been a petition as far as we can tell
25 about this issue before.

1 We do not think that the modest
2 disagreement between the courts of appeals on
3 whether it's all errors or only obvious errors
4 that -- that are correctable under this
5 particular provision is really a significant
6 issue. So I -- I don't want to claim that there
7 has been a problem.

8 But it's here now. And as you're
9 thinking about how best to resolve it, we think
10 that 60(b)(1) serves the function of allowing
11 district courts to address the kind of mistakes
12 that they would want to address, a mistake like
13 this one, where the district court just never
14 sort of grappled with the fact that there is
15 this exception in Rule 13.3 that deals with
16 situations where a petition for rehearing has
17 been filed by one of the co-defendants.

18 JUSTICE KAGAN: But could you describe
19 a little bit more -- I mean, if we're supposed
20 to be giving guidance to courts, what is the
21 category of mistakes, you know, assuming we go
22 the narrower route that you suggested? How do
23 we describe the compartment that's appropriate
24 to think of in -- in this rule?

25 MR. SNYDER: So we would describe that

1 test as whether the issue is one that the
2 district court just overlooked in entering its
3 original judgment or if instead it's an issue
4 that the district court considered and just
5 resolved in a way that the movant disagrees
6 with. And -- and that test will then be
7 evaluated under an abuse of discretion standard
8 because relief under 60(b) is discretionary.

9 If a litigant has doubt about whether
10 the district court really grappled with the
11 issue and thinks maybe the district court just
12 missed this or maybe the district court just
13 disagreed with me, file a notice of appeal.

14 If you want to file a 60(b)(1) motion
15 and the district court can sort of resolve it by
16 just looking at it and say no, I -- I really
17 meant it, you can.

18 But we think that that sort of
19 preserves litigants' rights while still allowing
20 for district courts to deal with oversights in
21 an expeditious fashion.

22 This is the point -- this is the part
23 of Judge Friendly's opinion that we especially
24 like. In that case, there was what he viewed as
25 a mistake that occurred because of a subsequent

1 decision 11 days after the original judgment has
2 been entered.

3 And so, on the majority interpretation
4 in which Rule 60(b)(1) extends to mistakes of
5 law by judges, the district court could say it
6 is now clear on day 11 that this judgment I
7 entered 11 days ago is going to be reversed on
8 appeal.

9 And rather than requiring the parties
10 to file notice of -- notices of appeal and brief
11 the issue and have the court of appeals get up
12 to speed on what this case is about and send it
13 back and we've got all this delay, I can just
14 enter the decision today under 60(b)(1).

15 And we think the rule serves a
16 valuable function in that context. We're not
17 here to say that it serves some huge function or
18 that it replaces appeal, but we think it's
19 valuable in that function.

20 Justice Kavanaugh, you were asking
21 about sort of the two-day interval. We agree
22 that the rule has less utility after the 2009
23 amendment to 59(e) that extended the deadline
24 from 10 days to 28 days.

25 Of course, at the time that the --

1 that 60(b)(1) was adopted in 1946, there was a
2 larger window. And even today, the rule
3 continues to be relevant in cases in which the
4 government is a party or in cases in which it
5 would be appropriate to grant an extension of
6 the notice of appeal deadline or in cases where
7 there is some showing why the petitioner really
8 was unable to file within the time for filing a
9 notice of appeal.

10 So it does preserve some flexibility,
11 but we acknowledge that it serves less of a role
12 today than it did when it was first adopted in
13 1946.

14 I'd like to turn briefly if I could --
15 this didn't really come up in the -- the opening
16 part of the argument -- but to the state law
17 decisions that -- that Petitioner relies on as
18 the only possible way of reconciling his rule or
19 his interpretation with the text of Rule
20 60(b)(1).

21 So he has a lot of structural
22 arguments, but I don't think those arguments --
23 I'm happy to address them, but I don't think
24 they even get him anywhere unless he has some
25 account of how "mistake" can possibly exclude

1 mistakes of law and mistakes by judges. Justice
2 Thomas, I think he acknowledged that his
3 interpretation is not a plain meaning
4 interpretation.

5 And so what he said is that when Rule
6 60(b) was adopted in 1938, 1937, the drafters of
7 Rule 60(b) would have understood "mistake" as a
8 term of art that applied only to mistakes of
9 fact, not mistakes of law.

10 That is just completely wrong. The --
11 the advisory committee note to the original
12 version of the Federal Rules explained that Rule
13 60(b) was based on California Code of Civil
14 Procedure Section 473, and the California courts
15 had repeatedly recognized that Section 473
16 applied to both mistakes of law and mistakes of
17 fact. So they did not read it in the term of
18 art way that Petitioner proposes.

19 There were two other states that were
20 also mentioned in the advisory committee note,
21 New York and Minnesota. At page 6 of his reply,
22 my friend acknowledges that those states also
23 treated "mistake" as applying to both mistakes
24 of law and mistakes of fact.

25 So this idea that it had a narrow

1 idiosyncratic meaning that departed from its
2 ordinary meaning and applied only to mistakes of
3 fact just isn't consistent with any of the --
4 the three states that the advisory committee
5 specifically pointed to.

6 And -- and my friend has made two
7 other distinctions that I'll just sort of
8 briefly address. One is he says that those
9 cases applied Section 473 to mistakes of law
10 only in the context of default judgments.

11 That's not true, as he eventually
12 acknowledges in the reply brief. The Mitchell
13 decision from the California Supreme Court in
14 1909 applied Section 473 to a mistake of law in
15 a case involving post-trial motions. So that
16 limitation doesn't get him anywhere.

17 And even if you thought that there was
18 some uncertainty about the California cases or
19 don't want to go read them, Professor Moore in
20 1938 explained how people would have understood
21 that California practice in his treatise, and at
22 page 3,280, he said that it clearly -- that the
23 California provision clearly covered mistakes of
24 law and mistakes of fact.

25 The other distinction that my friend

1 has drawn is between mistakes by judges and
2 mistakes by litigants. We think that by
3 deleting the word "his," the only textual
4 limitation in Rule 60(b)(1), the advisory
5 committee made clear that the rule would apply
6 to mistakes by anyone. There's no textual basis
7 in the rule after that amendment for
8 understanding it to be limited to only mistakes
9 by other parties or by third parties. And it's
10 hard to see how mistakes by third parties, for
11 example, would require relief from judgment
12 unless they're adopted by the court.

13 Unless the Court has further
14 questions, I'm happy to rest on our brief.

15 CHIEF JUSTICE ROBERTS: Justice
16 Thomas?

17 Justice Breyer?

18 Justice Alito?

19 Justice Barrett?

20 Thank you, counsel.

21 Mr. Adler, rebuttal?

22 REBUTTAL ARGUMENT OF ANDREW L. ADLER

23 ON BEHALF OF THE PETITIONER

24 MR. ADLER: Thank you, Mr. Chief

25 Justice.

1 I guess I'll start with the state law
2 cases. So my friend -- my friend talks a lot
3 about the advisory committee notes' reference to
4 the California statute. But we don't start with
5 advisory committee notes; we start with the text
6 of the rule. And the text of the rule uses the
7 exact same language as 17 states, and there's no
8 dispute that at least 12 of the 17 categorically
9 excluded legal errors. They said "mistake"
10 meant mistake of law. That was the predominant
11 view. That was captured by the leading
12 treatises of the era.

13 My friend -- my friend talks a lot
14 about -- so, as for the California cases, you
15 know, he refers to only one case that did not
16 involve a default judgment. But that was dicta.
17 That case actually involved a mistake of fact,
18 the Mitchael case, not a mistake of law.

19 And the main point on the California
20 cases is they had the general rule that we are
21 saying, that "mistake" means mistake of fact,
22 not law. The only exception was limited to
23 default judgments based on a liberal policy in
24 California favoring resolution on the merits.

25 So it's a limited exception in a

1 minority of the states, where we have the
2 predominant view in all of the other states
3 categorically saying "mistake" means mistake of
4 fact. That is the meaning that got picked up in
5 the text of the rule. That's the old soil that
6 got carried forward.

7 As for the Professor Moore treatise in
8 1938, my friend referred to page 3280
9 characterizing the California cases. The
10 footnote there, Footnote 28, refers only to the
11 dicta in this Mitchael case, and all the others
12 are default cases. That's it. So, again, a
13 very limited exception there.

14 If you actually scroll back seven
15 pages earlier in the same treatise to page 3273,
16 Professor Moore says that the bill of review for
17 -- for errors of law was not covered by the
18 wording of 60(b) because it was limited to
19 mistakes of fact. So we think that suggests
20 that 60(b) did not incorporate the default cases
21 from California, and at the very least, it's a
22 wash. At least they negate each other at the
23 very least.

24 Justice Kavanaugh, you were asking
25 about what's wrong with the Second Circuit's

1 approach of sort of imposing this appeal
2 deadline. The problem is it's inconsistent with
3 the text of the rule. Rule 60(c) does not
4 incorporate Rule 4(a)'s deadlines. It talks
5 about a reasonable time. That's a totality of
6 the circumstances test.

7 You don't just import a categorical
8 rule based on the totality of the circumstances.
9 And that's, I think, what the government is now
10 suggesting. In their brief, they were talking
11 about a presumptive -- a presumption and a
12 flexible presumption. I don't know what that
13 means. I don't know where that comes from, but
14 litigants aren't going to know what it means.

15 And litigants need to know what the
16 deadlines are on the front end. Do they have to
17 file within 30 days, 60 days, what? It doesn't
18 make sense to have a one-year outer deadline and
19 then a flexible presumptive 30-day deadline on
20 the inside. That's just inconsistent with Rule
21 60(c)(1).

22 And the final point is, because it's a
23 presumption as the government frames it, it
24 still contemplates people blowing by the appeal
25 deadline. That cannot be right. That does not

1 respect the deadlines of the other rules.

2 And the final point is I think it's
3 important to state -- take a step back and
4 remember what the purpose of (b)(1) is. (b)(1)
5 is not a substitute for an appeal. That's how
6 the government is treating here.

7 (b)(1) is about mistakes of fact made
8 by a party or someone in the litigation process.
9 You make a mistake about what the trial date is.
10 You make a mistake about whether you had been
11 served with process. You make a mistake about
12 whether the lawyer agreed to represent you. And
13 then a judgment gets entered against you. The
14 only recourse you have there is to reopen the
15 judgment based on this mistake of fact. You
16 can't appeal it.

17 It's a fundamentally different
18 situation where the judgment itself contains a
19 legal error. The -- we have appeals for that
20 purpose. And the government is essentially
21 treating 59(e) appeals as optional. You can
22 blow right by the deadlines. I don't think that
23 is correct.

24 So, under our position, the -- the
25 only viable option here is that (b)(1) does not

1 cover legal errors. It doesn't cover judicial
2 errors. Those are covered in other ways.

3 So whichever way you slice it, (b)(1)
4 doesn't cover this case. This case is governed
5 by (b)(6). Mr. Kemp must show extraordinary
6 circumstances on remand to reopen an erroneous
7 final judgment, and that's a very high bar for a
8 reason, because it protects finality.

9 Mr. Kemp asks only that he be -- be a
10 afforded the opportunity to make that showing on
11 remand.

12 The judgment below should be reversed.

13 CHIEF JUSTICE ROBERTS: Thank you,
14 counsel. The case is submitted.

15 (Whereupon, at 12:01 p.m., the case
16 was submitted.)

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Official - Subject to Final Review

<p style="text-align: center;">1</p> <p>10 [1] 39:24 11 [3] 39:1,6,7 11:18 [2] 1:15 3:2 12 [2] 31:20 44:8 12:01 [1] 48:15 13.3 [2] 22:20 37:15 15 [1] 6:14 17 [3] 3:17 44:7,8 19 [1] 1:11 1909 [1] 42:14 1937 [1] 41:6 1938 [3] 41:6 42:20 45:8 1946 [4] 23:17 28:10 40:1,13 1960s [1] 11:24</p>	<p>able [2] 12:9 25:23 above-entitled [1] 1:13 absence [1] 35:13 abuse [1] 38:7 access [1] 22:18 accompanying [2] 3:20 25:8 accomplished [1] 36:7 accomplishing [1] 16:7 account [1] 40:25 Ackermann [2] 21:24,25 acknowledge [1] 40:11 acknowledged [1] 41:2 acknowledges [2] 41:22 42:12 across [1] 9:7 actions [1] 23:11 actually [5] 13:4,9,25 44:17 45:14 add [1] 14:6 added [1] 6:18 addition [1] 19:15 address [9] 8:14 30:19 33:6,8 36:10 37:11,12 40:23 42:8 addressed [2] 27:4 33:24 ADLER [38] 1:18 2:3,9 3:6,7,9 5:3,6,11 8:15 9:19,22 10:1,3 11:19 12:18 13:21 14:14 15:3,8,12,16,25 16:6,10 18:5,8,12 19:4 20:3,16 21:2 23:8,25 24:22 43:21,22,24 administer [2] 29:18,20 administrability [1] 19:16 adopt [1] 12:11 adopted [5] 4:24 40:1,12 41:6 43:12 advisory [8] 24:5 28:13 41:11,20 42:4 43:4 44:3,5 afforded [1] 48:10 ago [1] 39:7 agree [3] 15:15 27:17 39:21 agreed [1] 47:12 ahead [1] 35:1 Alito [1] 43:18 allowed [2] 22:15,16 allowing [2] 37:10 38:19 already [2] 4:1 5:22 amended [1] 28:10 amendment [2] 39:23 43:7 American [1] 14:2 among [1] 34:15 analogy [1] 10:4 analysis [2] 11:22,23 analyzed [1] 19:19 analyzing [1] 5:16 ANDREW [5] 1:18 2:3,9 3:7 43:22 another [2] 16:14 29:6 anticipate [1] 18:22 appeal [27] 4:7 9:21 14:17,22 16:24 21:21,22 22:2,7,11 23:20 25:14,19,20 34:6,21 36:13 38:13 39:8,10,18 40:6,9 46:1,24 47:5,16 appeals [6] 11:25 16:3 37:2 39:11 47:19,21 APPEARANCES [1] 1:17 appellate [2] 9:23 10:5 applied [6] 11:12 41:8,16 42:2,9,14</p>	<p>applies [1] 7:5 apply [5] 9:4,17 25:1 33:18 43:5 applying [2] 29:21 41:23 approach [7] 4:24 15:23 31:9 32:6,13,13 46:1 appropriate [4] 22:5 33:1 37:23 40:5 April [1] 1:11 areas [1] 9:7 aren't [2] 25:10 46:14 argue [1] 28:21 argued [1] 32:15 arguing [1] 27:6 argument [15] 1:14 2:2,5,8 3:4,7 13:6 23:7,16 25:13 26:17 27:16 31:22 40:16 43:22 arguments [2] 40:22,22 arising [1] 6:5 around [3] 4:15 9:3 18:17 art [4] 3:21 27:14 41:8,18 ascertain [1] 24:25 ascertained [1] 22:10 aside [1] 8:18 asks [1] 48:9 Assistant [2] 1:18,21 assuming [1] 37:21 attention [2] 10:21 13:19 attorney [1] 17:3 authority [2] 8:4 13:22 authorizes [1] 34:4 available [2] 20:11,12 avoid [2] 17:23 18:1</p>	<p>BIO [1] 31:17 bit [2] 31:16 37:19 blow [1] 47:22 blowing [1] 46:24 both [3] 13:20 41:16,23 BREYER [7] 12:20 13:21,24 26:13 33:25 35:12 43:17 Breyer's [1] 14:6 brief [7] 6:15 28:22 31:17 39:10 42:12 43:14 46:10 briefly [2] 40:14 42:8 bring [3] 16:20,21 22:15 bringing [1] 16:24 broader [5] 31:3 32:4 33:10 35:3 36:16 brought [2] 10:20 16:22 Buck [2] 17:22 21:10 bunch [1] 11:13</p>
<p style="text-align: center;">2</p> <p>2009 [1] 39:22 2022 [1] 1:11 21-5726 [1] 3:4 26 [1] 2:7 28 [3] 16:3 39:24 45:10 28-day [1] 16:13 29 [1] 16:14</p>			
<p style="text-align: center;">3</p> <p>3 [2] 2:4 3:23 3,280 [1] 42:22 30 [3] 15:6 16:4 46:17 30-day [1] 46:19 3273 [1] 45:15 3280 [1] 45:8</p>			
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