No. 23-1259

In the
Supreme Court of the United States

BLOM BANK SAL,
Petitioner,

v.

MICHAL HONICKMAN, *et al.*,
Respondents.

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

BRIEF FOR PETITIONER

JONATHAN R. STREETER
TAMER MALLAT
DECHERT LLP
Three Bryant Park
1095 Avenue of the Americas
New York, NY 10036

BRIAN A. KULP
CHRISTOPHER J. MERKEN
DECHERT LLP
Cira Centre
2929 Arch Street
Philadelphia, PA 19104

MICHAEL H. MCGINLEY
Counsel of Record
STEVEN A. ENGEL
DECHERT LLP
1900 K Street, NW
Washington, DC 20006
(202) 261-3378
michael.mcginley@dechert.com

Counsel for Petitioner

December 9, 2024

QUESTION PRESENTED

For more than 70 years, this Court has "required a movant seeking relief under Rule 60(b)(6)" of the Federal Rules of Civil Procedure "to show 'extraordinary circumstances' justifying the reopening of a final judgment." *Gonzalez v. Crosby*, 545 U.S. 524, 535 (2005) (quoting *Ackermann v. United States*, 340 U.S. 193, 199 (1950)). This Court has also stressed that a movant must be "faultless" to obtain relief. *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 393 (1993). "This very strict interpretation of Rule 60(b) is essential if the finality of judgments is to be preserved." *Gonzalez*, 545 U.S. at 535 (citation omitted). In this case, Respondents declined multiple invitations and opportunities to amend their complaint. The District Court then dismissed their complaint with prejudice, and the Second Circuit affirmed. Only then did Respondents ask the District Court to vacate the judgment so they could file an amended complaint that would include previously available facts. The District Court denied the motion under Rule 60(b)(6)'s well-settled standard. But the Second Circuit reversed, based on an anomalous "balanc[ing]" test that requires district courts to heed Rule 15(a)'s "liberal pleading principles" when addressing a Rule 60(b)(6) motion to reopen a final judgment for the purpose of filing an amended complaint.

The question presented is:

Whether Rule 60(b)(6)'s stringent standard applies to a post-judgment request to vacate for the purpose of filing an amended complaint.

PARTIES TO THE PROCEEDING

Petitioner BLOM Bank SAL was defendant in the United States District Court for the Eastern District of New York and appellee in the United States Court of Appeals for the Second Circuit.

Respondents Michal Honickman, Individually and for the Estate of Howard Goldstein, Eugene Goldstein, Lorraine Goldstein, Richard Goldstein, Barbara Goldstein Ingardia, Michael Goldstein, Chana Freedman, David Goldstein, Moses Strauss, Philip Strauss, Bluma Strauss, Ahron Strauss, Roisie Engelman, Joseph Strauss, Tzvi Weiss, Leib Weiss, Individually and for the Estate of Malka Weiss, Yitzchak Weiss, Yeruchaim Weiss, Esther Deutsch, Matanya Nathansen, Individually and for the Estate of Tehilla Nathansen, Chana Nathansen, Individually and for the Estate of Tehilla Nathansen, Yehudit Nathansen, S.N., a minor, Hezekial Toporowitch, Pearl B. Toporowitch, Yehuda Toporowitch, David Toporowitch, Shaina Chava Nadel, Blumy Rom, Rivka Pollack, Rachel Potolski, Ovadia Toporowitch, Tehilla Greiniman, Yisrael Toporowitch, Yitzchak Toporowitch, Harry Leonard Beer, Individually and as the Executor of the Estate of Alan Beer and Anna Beer, Phyllis Maisel, Estelle Caroll, Sarri Anne Singer, Judith Singer, Eric M. Singer, Robert Singer, Julie Averbach, Individually and for the Estate of Steven Averbach, Tamir Averbach, Devir Averbach, Sean Averbach, Adam Averbach, Maida Averbach, Individually and for the Estate of David Averbach, Michael Averbach, Eileen Sapadin, Daniel Rozenstein, Julia Rozenstein Schon, Alexander Rozenstein, Esther Rozenstein, Jacob Steinmetz, Individually and for the

Estate of Amichai Steinmetz, Deborah Steinmetz, Individually and for the Estate of Amichai Steinmetz, Nava Steinmetz, Orit Mayerson, Netanel Steinmetz, Ann Coulter, for the Estate of Robert L. Coulter, Sr., Dianne Coulter Miller, Individually and for the Estate of Janis Ruth Coulter, Robert L. Coulter, Jr., Individually and for the Estate of Janis Ruth Coulter, Larry Carter, Individually and as the Administrator of the Estate of Diane Leslie Carter, Shaun Choffel, Richard Blutstein, Individually and for the Estate of Benjamin Blutstein, Katherine Baker, Individually and for the Estate of Benjamin Blutstein, Rebekah Blutstein, Nevenka Gritz, Individually and for the Estate of David Gritz and Norman Gritz, Jacqueline Chambers, Individually and as the Administrator of the Estate of Esther Bablar, Levana Cohen, Individually as the Administrator of the Estate of Esther Bablar, Eli Cohen, Sarah Elyakim, Joseph Cohen, Greta Geller, as the Administrator of the Estate of Hannah Rogen, Ilana Dorfman, as the Administrator of the Estate of Hannah Rogen, Rephael Kitsis, as the Administrator of the Estate of Hannah Rogen, Tova Guttman, as the Administrator of the Estate of Hannah Rogen, Temina Spetner, Jason Kirschenbaum, Isabelle Kirschenbaum, Individually and for the Estate of Martin Kirschenbaum, Joshua Kirschenbaum, Shoshana Burgett, David Kirschenbaum, Danielle Teitelbaum, Netanel Miller, Chaya Miller, Aharon Miller, Shani Miller, Adiya Miller, Altea Steinherz, Jonathan Steinherz, Temima Steinherz, Joseph Ginzberg, Peter Steinherz, Laurel Steinherz, Gila Aluf, Yitzhak Zahavy, Julie Zahavy, Tzvee Zahavy, and Bernice Zahavy were plaintiffs in the United States District Court for the Eastern

District of New York and appellants in the United States Court of Appeals for the Second Circuit.

CORPORATE DISCLOSURE STATEMENT

BLOM Bank SAL is a Lebanese corporation. It has no parent corporation, and no public corporation owns 10% or more of its stock.

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INTRODUCTION

The decision below and the Second Circuit rulings that led to it find no support in Rule 60(b)(6)'s text or context, and they flatly contradict this Court's precedents. As those precedents make clear, obtaining relief from a final judgment under Rule 60(b)(6) "requires a showing of 'extraordinary circumstances.'" *Gonzalez v. Crosby*, 545 U.S. 524, 536 (2005). And those circumstances must demonstrate "that the [moving] party is faultless." *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 393 (1993). After all, "[t]here must be an end to litigation someday, and free, calculated, deliberate choices are not to be relieved from." *Ackermann v. United States*, 340 U.S. 193, 198 (1950).

It could hardly be otherwise. Our adversarial system of civil justice could not function without a scrupulous regard for the conclusiveness of judgments professing to settle the parties' rights. Courts have recognized that fundamental precept since the Founding. Consistent with that history and tradition, the Federal Rules of Civil Procedure afford district courts the power to revisit a final judgment through Rule 60(b) only in "a limited set of circumstances." *Gonzalez*, 545 U.S. at 528. And they strictly prohibit a party from moving for such relief more than a year after judgment if that party is even "partly to blame for the delay." *Pioneer Inv. Servs.*, 507 U.S. at 393; *see* Fed. R. Civ. P. 60(b)(1), (c)(1).

For decades, lower courts have faithfully applied these well-settled principles of judgment finality. And they have uniformly rejected attempts by plaintiffs to avoid Rule 60(b)(6)'s stringent requirements by

appealing to Rule 15(a)'s liberal amendment policy. Indeed, the two inquiries are entirely separate. Rule 15(a) applies *before* trial and judgment, while Rule 60 applies *after* a final judgment. Accordingly, "if a plaintiff seeks to reopen a case under Rule 60(b) in order to file an amended complaint, she must satisfy one of the Rule 60(b) grounds" and have the judgment set aside "*before* a court may consider her motion to amend." *Daulatzai v. Maryland*, 97 F.4th 166, 178 (4th Cir. 2024). As the Fourth Circuit aptly put it earlier this year, adopting a contrary rule would have placed it "alone in the Nation in collapsing the Rule 60(b) standard with the standard for Rule 15(a)." *Id.* at 177.

But the decision below did just that—in a case where Respondents repeatedly declined to amend their complaint in the normal course. By rejecting the District Court's multiple invitations to amend their complaint, Respondents deliberately chose to proceed on that complaint as pled and take their chances on a motion to dismiss. The District Court eventually dismissed the complaint with prejudice, and the Second Circuit affirmed the dismissal after full merits briefing, oral argument, and supplemental briefing. At no time during those proceedings did Respondents seek leave to amend.

Then, more than 18 months after the dismissal with prejudice—and after that dismissal was affirmed on appeal—Respondents filed a Rule 60(b)(6) motion to vacate the judgment so they could restart the process and try again with an amended complaint. The District Court rejected that effort by properly applying Rule 60(b)(6)'s stringent standard. It

emphasized that Respondents had "not demonstrated any extraordinary circumstances" and had engaged in a "series of deliberate choices not to cure the deficiencies identified in their pleading by [Petitioner] and th[e] Court." Pet.App.14, 19. The District Court therefore permissibly exercised its discretion to deny Respondents' motion.

The Second Circuit nevertheless reversed. Applying an atextual balancing test adopted by a split panel in *Mandala v. NTT Data, Inc.*, 88 F.4th 353 (2d Cir. 2023), the Second Circuit held that the District Court abused its discretion by failing to "give 'due regard' to '*both* the philosophy favoring finality of judgments . . . and the liberal amendment policy of Rule 15(a).'" Pet.App.7 (alteration in original) (quoting *Mandala*, 88 F.4th at 361). In the Second Circuit's view, district courts are "required to consider Rule 60(b) finality and Rule 15(a) liberality in tandem" when plaintiffs seek to reopen a judgment in order to file an amended complaint. *Id.* It thus faulted the District Court for analyzing Respondents' Rule 60(b) motion "under only Rule 60(b)'s standard." *Id.*

That reasoning is indefensible. The Second Circuit's outlier balancing test effectively rewrites the Federal Rules of Civil Procedure. It destroys the finality principles embodied in Rule 60(b). It encourages wasteful and pernicious litigation tactics. It imbues uncertainty. And it contravenes this Court's precedents at every turn. This Court should reverse.

OPINIONS BELOW

The District Court's opinion dismissing the case with prejudice on January 14, 2020 is reported at 432 F. Supp. 3d 253 and reproduced at Pet.App.54-87. The

Second Circuit's July 29, 2021 opinion affirming the District Court's dismissal is reported at 6 F.4th 487 and reproduced at Pet.App.20-53. The District Court's April 8, 2022 opinion denying Respondents' motion to vacate the judgment is available at 2022 WL 1062315 and reproduced at Pet.App.9-19. The Second Circuit's February 29, 2024 opinion vacating the lower court's order and remanding for further proceedings is available at 2024 WL 852265 and reproduced at Pet.App.1-8.

JURISDICTION

The Second Circuit issued its decision on February 29, 2024. The petition for writ of certiorari was timely filed on May 29, 2024, and granted on October 4, 2024. This Court has jurisdiction under 28 U.S.C. § 1254(1).

FEDERAL RULES INVOLVED

Federal Rule of Civil Procedure 60(b) governs motions for "Relief from a Final Judgment." It provides five specific grounds for relief. *See* Fed. R. Civ. P. 60(b)(1)-(5). Rule 60(b)(6) then states that "the court may relieve a party or its legal representative from a final judgment, order, or proceeding for . . . any other reason that justifies relief."

Federal Rule of Civil Procedure 15(a) governs "Amendments Before Trial." Rule 15(a)(2) provides that "a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires."

STATEMENT OF THE CASE

A. The Initial District Court Proceedings

Respondents filed this lawsuit on January 1, 2019, a day before the statute of limitations expired and nearly sixteen years after the latest of the events in question. JA.1; *see* Pub. L. No. 112-239, § 1251(c), 126 Stat. 1632, 2017-18 (2013) (extending the ordinary limitations period for certain Anti-Terrorism Act claims to January 2, 2019). Respondents are victims and the families of victims of terrorist attacks carried out by Hamas between December 1, 2001, and August 19, 2003. JA.7-81. As Petitioner explained in the proceedings below, it categorically abhors terrorism, it has no connection to Hamas, and it is not legally or factually responsible for Respondents' injuries. JA.160-62, 168-72.[1]

The complaint accuses Petitioner of aiding and abetting those attacks through a daisy chain of speculation. In particular, Respondents allege that

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[1] Respondents have filed almost a dozen more lawsuits against other defendants in the nearly sixteen years following the attacks, all seeking damages for the same injuries alleged here. *See Kirschenbaum v. Islamic Repub. of Iran*, No. 1:03-cv-01708-RCL (D.D.C.); *Sokolow v. Palestine Liberation Org.*, No. 1:04-cv-00397-GBD-RLE (S.D.N.Y); *Linde v. Arab Bank, PLC*, No. 1:04-cv-02799-BMC-PK (E.D.N.Y.); *Wolf v. Credit Lyonnais, S.A.*, No. 07-cv-00914 (E.D.N.Y.); *Applebaum v. Nat'l Westminster Bank, PLC*, No. 1:07-cv-00916-DLI-RML (E.D.N.Y.); *Beer v. ASSA Corp.*, No. 1:13-cv-01848-LAP (S.D.N.Y.); *Singer v. Bank of Palestine*, No. 1:19-cv-00006-ENV-RML (E.D.N.Y.); *Averbach v. Cairo Amman Bank*, No. 1:19-cv-00004-GHW-KHP (S.D.N.Y.); *Miller v. Credit Lyonnais, S.A.*, No. 1:19-cv-00002-DLI-RML (E.D.N.Y.); *Miller v. Nat'l Westminster Bank, PLC*, 1:19-cv-00001-DLI-RML (E.D.N.Y.); *Spetner v. Palestine Inv. Bank*, No. 1:19-cv-00005-EK-JAM (E.D.N.Y.).

Petitioner provided routine financial services to three customers: Sanabil, Subul al-Khair, and Union of Good (together, the "Three Customers"). JA.106, 116, 120. Though the Complaint spans 645 paragraphs, it says relatively little about the Three Customers (or Petitioner). *See generally* JA.1-122. In fact, none of the Three Customers was itself alleged to have engaged in acts of terrorism. Instead, "the Three Customers were alleged only to have supported orphans in Palestinian refugee camps." Pet.App.52 n.21.

Respondents pled their claim under the Anti-Terrorism Act ("ATA"), as amended by the Justice Against Sponsors of Terrorism Act ("JASTA"). JA.121-22. Under the ATA, a United States national "injured in his or her person, property, or business by reason of an act of international terrorism, or his or her estate, survivors, or heirs, may sue therefor in any appropriate district court of the United States." 18 U.S.C. § 2333(a). JASTA provides for secondary liability against "any person who aids and abets, by knowingly providing substantial assistance, or who conspires with the person who committed such an act of international terrorism." *Id.* § 2333(d)(2).

To impose secondary liability, JASTA requires "that the defendant consciously and culpably 'participated' in a wrongful act so as to help 'make it succeed.'" *Twitter, Inc. v. Taamneh*, 598 U.S. 471, 493 (2023) (alteration adopted) (quoting *Nye & Nissen v. United States*, 326 U.S. 613, 619 (1949)). And "JASTA further restricts secondary liability by requiring that the 'act of international terrorism' be 'committed, planned, or authorized by' a foreign terrorist organization

designated as such 'as of the date on which such act of international terrorism was committed, planned, or authorized.'" *Id.* at 495 (quoting 18 U.S.C. § 2333(d)(2)). Thus, "it is not enough" that a defendant has "given substantial assistance to a transcendent 'enterprise' separate from and floating above all the actionable wrongs that constitute it." *Id.* "Rather, a defendant must have aided and abetted (by knowingly providing substantial assistance) another person in the commission of the actionable wrong—here, an act of international terrorism." *Id.*

Under JASTA, one of the three elements for aiding-and-abetting liability is that "the defendant must be generally aware of his role as part of an overall illegal or tortious activity *at the time* that he provides the assistance." *Id.* at 486 (emphasis added) (quoting *Halberstam v. Welch*, 705 F.2d 472, 477 (D.C. Cir. 1983)). Accordingly, to state a claim, Respondents needed to plausibly allege that Petitioner was aware of a link between the Three Customers and Hamas "at the time" Petitioner allegedly provided services to them. *Id.* (citation omitted). But they failed to do so, even though their complaint was filed more than fifteen years after the latest of the attacks.

Petitioner made this point clearly and repeatedly throughout the proceedings below. Before moving to dismiss, Petitioner submitted a three-page letter summarizing the grounds for its contemplated motion, as required by the District Court's Individual Practices. JA.142-47. Petitioner's lead argument was that the complaint did not plausibly allege the general awareness element necessary to state their JASTA

claim. JA.144.[2] This argument, in turn, relied on the complaint's failure to allege that Petitioner was aware of any connection between the Three Customers and Hamas before the attacks—that is, by August 19, 2003. JA.145. The complaint acknowledged that the Three Customers "engaged in actual charitable work." JA.143. They were only "later linked to Hamas." *Id.*

In response to this letter, Respondents chose not to amend. *See* JA.148-55. They instead stood on the allegations in their complaint. *See id.*

At a pre-motion conference, the District Court asked Respondents' counsel: "Are there *any additional facts* you could add to the allegations that the defendant is challenging here or are you comfortable standing on your complaint as it is?" Pet.App.93 (emphasis added). Respondents' counsel declined the Court's invitation: "No, I think we are prepared to brief it based on the arguments presented in the pre-motion letter." *Id.* The Court then asked whether Respondents would seek leave to amend if the Court granted Petitioner's motion to dismiss. *Id.* Respondents' counsel unequivocally stated that they "would not seek leave to amend." Pet.App.94.

After the conference, the District Court issued an order memorializing the fact that the court "offered [Respondents] an opportunity to amend their

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[2] Petitioner also argued that Respondents failed to plausibly allege the knowing provision of substantial assistance to the alleged terrorist activities or any facts suggesting that Petitioner's routine banking services directly assisted the acts that caused Respondents' injuries. JA.145-47; *see also Twitter*, 598 U.S. at 506 (summarizing principles of aiding-and-abetting liability under JASTA).

complaint" to "add additional information in response to the arguments raised by [Petitioner]," but they "declined to do so and represented that they would not be seeking to amend their Complaint in this regard." JA.156. Respondents stuck to that position, and they did not seek leave to amend their complaint.

A few weeks later, Petitioner moved to dismiss consistent with its pre-motion letter. JA.159. Among other arguments, it reiterated that the complaint failed to plausibly allege that Petitioner knew of the Three Customers' purported affiliation with Hamas before the alleged attacks. JA.160-61, 174-85. Respondents opposed that motion and, in doing so, once again stood on their papers. JA.197-241. They did not move to amend or ask for an opportunity to replead should the District Court find their allegations lacking.

The District Court then held oral argument. Pet.App.100. There, Petitioner's counsel again emphasized the complaint's failure to connect the Three Customers to Hamas "at the time of any of the attacks." Pet.App.109. "At the very most, what the complaint alleges is that BLOM provided financial services to three entities, two of which were *later* determined by the [U.S.] government to have provided financial support to [Hamas]." Pet.App.108 (emphasis added).

The District Court pressed Respondents' counsel on this pleading deficiency, asking "[w]here do you allege in your complaint that BLOM Bank knew that these account holders are alter egos or are a part of, or the same as [Hamas]?" Pet.App.121. The District Court then offered Respondents' counsel yet another

opportunity to amend the complaint, specifically with respect to Petitioner's alleged "knowledge":

> The Court: I do recall that you did not want an opportunity to try to replead . . . . And I think the Second Circuit may not encourage district courts to allow another round of pleading if there's been a declination of an opportunity to replead . . . . So everything I need to consider in terms of sufficiency of your pleading is going to be found in the complaint that's filed in this case, correct?
>
> Mr. Radine: Yes, Your Honor. The—
>
> The Court: *There are no facts that you would have to offer to address some of the contentions of the defendants regarding knowledge, especially?*
>
> Mr. Radine: I think *we could always add allegations*, but the—we believe the complaint goes far enough in saying that BLOM . . . was generally aware of its role in th[e] [il]licit conduct . . . .

Pet.App.124-25 (emphasis added).

The District Court granted Petitioner's motion to dismiss, holding in relevant part that Respondents had not "plausibly allege[d] that [Petitioner] was generally aware of any connection between the Three Customers and Hamas" "at the time it provided financial services to the Three Customers." Pet.App.73-75.

The court noted that it "typically grants plaintiffs an opportunity to amend their complaints following dismissal, to address any deficiencies raised by the

Court's order." Pet.App.85. However, Respondents here "[did] not request leave to amend, and specifically declined the Court's offer to do so." *Id.* Accordingly, "[i]n light of [Respondents'] rejection of the opportunity to amend their pleading at the pre-motion conference, and the fact that they ha[d] not identified any additional facts they could allege which would address the deficiencies in their complaint," the District Court dismissed the complaint with prejudice. Pet.App.86.

B. Respondents' Initial Appeal to the Second Circuit

Rather than request leave to amend or file a Rule 59(e) motion for reconsideration, Respondents appealed. In that appeal, they did not challenge the District Court's decision to dismiss without leave to amend. Pet.App.16 n.4. They instead doubled down on their argument that their existing allegations were enough to "state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citation omitted).

After oral argument, the Second Circuit held the appeal in abeyance pending its decision in *Kaplan v. Lebanese Canadian Bank, SAL*, 999 F.3d 842 (2d Cir. 2021). It also ordered the parties to submit supplemental briefs addressing the significance of that decision. JA.257-58. At this point, Respondents had yet another opportunity to ask the appellate court to remand or grant them leave to amend in light of the *Kaplan* decision. Once again, though, they did neither. They instead relied on their complaint as pled and insisted that the allegations therein stated a claim. JA.259-81.

The Second Circuit affirmed the District Court's dismissal because the complaint's "allegations [did] not support an inference that [Petitioner] was aware of the Three Customers' ties with Hamas prior to the relevant attacks." Pet.App.49. Respondents did not seek rehearing. Nor did they belatedly request that the Second Circuit modify its decision to remand and permit Respondents leave to amend the complaint.

C. The Post-Judgment Proceedings

Respondents instead returned to the District Court and moved to vacate the District Court's now-affirmed judgment under Rule 60(b)(6) so they could amend their complaint and return to square one. JA.315-22. The District Court held a pre-motion conference, at which it ordered briefing "only as to the issue of *vacatur*." JA.509.

After briefing, the District Court held that "[Respondents] have not demonstrated any extraordinary circumstances warranting relief under Rule 60(b)(6)." Pet.App.14. It also explained that Respondents had not demonstrated that they would suffer an "extreme and undue hardship" from letting the judgment stand because they "have had ample opportunity to pursue all legal avenues available to them for relief." Pet.App.15-16 (quotation marks omitted). "Fundamentally, [Respondents] seek to amend their complaint after declining two prior opportunities to do so, and after unsuccessfully appealing the dismissal of that complaint with prejudice." Pet.App.16. And they sought to start the process all over again on the sole basis that they wished to plead new facts that were previously available. Pet.App.15. The District Court thus

decided, in its discretion, to leave the final judgment in place given Respondents' "documented series of deliberate choices not to cure the deficiencies identified in their pleading by [Petitioner] and [the District] Court." Pet.App.19.

Respondents appealed again. Petitioner defended the District Court's ruling by arguing that Rule 60(b)(6)'s stringent standards governed Respondents' motion, that Rule 15(a) had no role to play in that analysis, and that Respondents fell far short of demonstrating "extraordinary circumstances" given their many earlier refusals to seek leave to amend. *See* 2d Cir. Dkt. No. 42, at 37-49, 55-59. After oral argument, the Second Circuit issued its decision in *Mandala*, 88 F.4th 353.

In *Mandala*, a split panel held that, when a losing party seeks post-judgment relief under Rule 60(b)(6) to amend its complaint, a district court must balance Rule 60(b)(6)'s finality principles with Rule 15(a)(2)'s "liberal amendment policy." *Id.* at 361 (quoting *Williams v. Citigroup Inc.*, 659 F.3d 208, 213 (2d Cir. 2011) (per curiam)). And, where a losing party has not yet filed an amended complaint, the Second Circuit held that it is an abuse of discretion for a district court to deny a Rule 60(b)(6) motion based solely on the movant's "failure to demonstrate adequate grounds for relief under Rule 60." *Id.* at 362 & n.5. In doing so, the court flipped the burden from Rule 60 movants (who normally must prove extraordinary circumstances) to their opponent (to show that the movant should *not* receive another bite at the apple). As Judge Sullivan explained in dissent, that defies "the principle that Rule 60(b)(6) affords litigants an

extraordinary remedy and effectively holds that such relief is available in the ordinary course." *Id.* at 368 (Sullivan, J., dissenting). Judge Sullivan also explained that the Second Circuit's approach "erode[s] the finality of judgments," "significantly undermine[s] the important purposes served by Rule 60(b)," and "increase[s] the workload of busy district court judges who carry the heaviest burden in our system of civil justice." *Id.* at 369.

The Second Circuit then applied and reaffirmed *Mandala*'s balancing test in the decision below. It held that "the district court exceeded its discretion by basing its ruling on an erroneous view of the law because it failed to balance Rule 60(b)'s finality principles and Rule 15(a)'s liberal pleading principles." Pet.App.7-8. When presented with a motion to vacate for the purposes of amendment, the Second Circuit said, "the district court is required to consider Rule 60(b) finality and Rule 15(a) liberality in tandem." Pet.App.7. Thus, the Second Circuit held that the District Court abused its discretion because it analyzed the Rule 60(b) motion here "under only Rule 60(b)'s standard." *Id.*

SUMMARY OF ARGUMENT

The Second Circuit's outlier approach contradicts the text, structure, and history of the Federal Rules, and it violates decades of this Court's precedents. It jettisons Rule 60(b)(6)'s well-settled and exacting "extraordinary circumstances" standard for a nebulous balancing test that wrongly smuggles Rule 15(a)'s "liberal pleading principles" into the calculus for vacating a final judgment. The decision below should therefore be reversed, and the District Court's

denial of Respondents' Rule 60(b)(6) motion should be reinstated so this case can finally come to an end.

I. A party seeking to set aside an affirmed judgment for the purpose of filing an amended complaint must first satisfy Rule 60(b)'s stringent standards for vacating the judgment. That common-sense position has been adopted by every other Court of Appeals. And the Second Circuit's contrary balancing approach is fundamentally mistaken.

A. Rule 60(b) imposes an intentionally high hurdle for relief—and understandably so. This Court has long underscored the profound importance of finality to our civil justice system. After all, litigants, courts, and the public alike all share an interest in the conclusiveness of judgments and the peace and repose that such finality brings. Courts since the Founding have thus consistently refused to reopen matters that have been litigated to final judgment—except in the most compelling circumstances.

Rule 60(b) is rooted in that tradition. It codified many of the narrow, common-law exceptions for relief from a final judgment, along with a catchall in Rule 60(b)(6) for similarly extraordinary circumstances that are not explicitly covered by subsections (1) through (5). Rule 60(b) therefore demands a scrupulous regard for finality. Indeed, this Court has repeatedly emphasized that Rule 60(b)(6) requires "extraordinary circumstances" to justify vacating a final judgment. *See, e.g.*, *Gonzalez*, 545 U.S. at 536.

That is the standard that applies here. Rule 60(b) provides the exclusive mechanism for "Relief from a Final Judgment" more than 28 days after entry. And Rule 15(a) has no place in that inquiry. Instead, Rule

15(a) is limited to "Amendments Before Trial." There is not even a pending complaint to amend when an action has been finally dismissed with prejudice. The suit is over, and the claim is extinguished by the doctrine of res judicata.

Accordingly, plaintiffs cannot reopen a final judgment by invoking Rule 15(a)'s policies without first meeting Rule 60(b)'s restrictive standards. And where, as here, plaintiffs seek relief under Rule 60(b)(6), they must show "extraordinary circumstances" not covered by any other provision of Rule 60(b). To hold otherwise would enable plaintiffs to sidestep Rule 60(b)'s deliberately narrow grounds for post-judgment relief and thwart the Rule's respect for finality.

B. Moreover, this Court has long held that a party must be "faultless" to obtain relief under Rule 60(b)(6). *Pioneer Inv. Servs.*, 507 U.S. at 393; *see Ackermann*, 340 U.S. at 197-202. That is because Rule 60(b)(1) specifically authorizes motions for relief premised on "mistake, inadvertence, surprise, or excusable neglect," while strictly limiting the window for bringing such a motion to one year after judgment. Rule 60(b)(6) cannot be used to circumvent those limitations. If it could, then Rule 60(b)'s provision for "excusable neglect" would become superfluous.

Nor can Rule 60(b)(6) be used to circumvent basic principles of waiver. That has been firmly settled by this Court for decades. *See Ackermann*, 340 U.S. at 197-98. Accordingly, where a plaintiff deliberately waives the right to amend its complaint in the ordinary course, it cannot seek a mulligan post-

judgment after that considered choice has led to a dismissal with prejudice.

The Second Circuit's outlier approach nullifies these foundational principles. Rather than requiring the moving party to be faultless, the Second Circuit has crafted a muddled balancing test that saves plaintiffs from their own litigation choices. And the court has eschewed finality even where—as here—the moving parties repeatedly and explicitly declined to amend their complaint before judgment.

C. The Second Circuit provided no persuasive justification for its balancing test.

1. It never even attempted to ground its analysis in the text of the Federal Rules. In fact, as noted above, its approach is at odds with the text and context of both Rule 15(a) and Rule 60(b).

2. Moreover, by diluting Rule 60(b)(6)'s standard with Rule 15(a)'s liberal repleading policy, the Second Circuit rendered Rule 60(b) internally inconsistent in at least three ways. *First*, its balancing test enables plaintiffs to evade the one-year limitations period for Rule 60(b) motions premised on "excusable neglect," by compelling district courts to reopen final judgments outside that timeframe based on previously omitted allegations. *Second*, it thwarts the time limits for Rule 60(b) motions premised on "mistake" of law or fact that occurred in the initial proceedings. *Third*, it allows parties to reopen proceedings based on factual allegations they could have made pre-judgment—even though Rule 60(b)(2) specifically limits relief based on new facts to those that could *not* have been previously discovered through due diligence.

3. The Second Circuit's test finds no support in precedent either. The decision below relied on *Foman v. Davis*, 371 U.S. 178 (1962). But *Foman* is inapposite. That case involved a Rule 59(e) motion, while this case concerns a Rule 60(b) motion. There is no reason to conflate the standards for those two rules. Rules 59(e) and 60(b) differ in material ways and impose different standards for relief by their own terms. So this Court has refused to treat Rule 59(e) and Rule 60(b) motions as fungible. *See Banister v. Davis*, 590 U.S. 504, 517-21 (2020).

4. Finally, even if any interpretive doubt remained, this Court must "construe[]" the Rules to "secure the just, speedy, and inexpensive determination of every action." Fed. R. Civ. P. 1. Far from advancing these overarching objectives, the Second Circuit's test destroys them. It allows the reopening of final judgments after plaintiffs have willingly induced the judiciary to render a final judgment (and here an appellate ruling) based on their operative pleadings. It thus invites a wasteful feedback loop of relitigation. As this case shows, that approach is neither just nor speedy nor inexpensive.

At bottom, the Second Circuit erred in collapsing the Rule 15(a) and Rule 60(b) inquiries. The two rules pose distinct hurdles. The former applies *before* final judgment, and the latter applies *after* final judgment. As a result, Respondents could not seek leave to amend unless they first proved "extraordinary circumstances" beyond their control that would justify the reopening of the final judgment dismissing their case, which had already been affirmed on appeal.

II. Respondents came nowhere close to meeting that stringent standard—and the District Court certainly did not abuse its discretion in so finding.

A. There are no extraordinary circumstances here. Respondents do not dispute that their late-breaking allegations were previously available to them. They merely argue that the Second Circuit "clarified" the pleading standard for JASTA claims in their appeal. But the Second Circuit affirmed the dismissal with prejudice because—as the District Court recognized—Respondents failed to plausibly allege that Petitioner knew of the Three Customers' supposed connection to Hamas at the time it allegedly provided routine banking services to them. And, in all events, mere clarification of the law is not extraordinary. It is what appellate courts do day in and day out. Indeed, this Court has held that even an outright *change* in the law does not warrant relief under Rule 60(b)(6). *See Gonzalez*, 545 U.S. at 537. The District Court thus did not abuse its discretion in finding a lack of extraordinary circumstances.

B. On the contrary, the District Court would have necessarily abused its discretion had it granted Respondents' motion. This Court has made clear that it is an abuse of discretion to override a party's deliberate waiver. Here, Respondents waived or forfeited multiple opportunities to amend their complaint. They first explicitly rejected the District Court's invitation to amend at the pre-motion conference, after Petitioner had already pointed out the deficiencies in Respondents' pleadings. Respondents again rebuffed the District Court's invitation to amend at oral argument. They declined

to file a Rule 59(e) motion to ask the District Court for a chance to replead after they lost. They chose not to appeal the "with prejudice" component of the District Court's dismissal. And they never asked the Second Circuit for leave to replead if the court found their allegations lacking—not in their opening brief, not in their reply brief, not at oral argument, and not in their supplemental brief.

Respondents were thus far from faultless in the delay. Their own deliberate choices created the circumstances from which they now seek relief. Rule 60(b)(6) does not save them from those strategic and "voluntary" decisions. *Ackermann*, 340 U.S. at 200. Given their repeated waivers of the chance to amend, Respondents could not even satisfy the more forgiving standard for relief under Rule 59(e).

For all these reasons, this Court should reverse the decision below and render judgment for Petitioner.

ARGUMENT

I. A Party Seeking To Vacate A Final Judgment For Purposes Of Amendment Must First Satisfy Rule 60(b).

Relying on a series of Second Circuit precedents, the decision below held that the District Court abused its discretion by "requiring Plaintiffs to successfully navigate Rule 60(b)'s finality gauntlet before they could invoke Rule 15(a)'s liberal repleading policy." Pet.App.8. That, however, is precisely what the District Court was obligated to do. The Second Circuit's contrary position cannot be squared with Rule 60(b)'s text, its broader context, or this Court's precedents. It has thus been unanimously rejected by

every other Court of Appeals.[3] That overwhelming majority view is correct, and the Second Circuit's outlier balancing test is wrong.

A. Rule 60(b)(6) Requires a Movant to Show "Extraordinary Circumstances."

This Court has long extolled the importance of finality to our system of justice. Indeed, "the very object for which civil courts have been established" is "to secure the peace and repose of society by the settlement of matters capable of judicial determination." *Southern Pac. R.R. Co. v. United States*, 168 U.S. 1, 49 (1897). "[T]he aid of judicial tribunals would not be invoked" if "conclusiveness did not attend the judgments of such tribunals." *Id.* For that reason, courts since the Founding have recognized that only "a very strong case" may justify disturbing "the public interest and policy to make an end to litigation." *Ocean Ins. Co. v. Fields*, 18 F. Cas. 532, 539 (C.C.D. Mass. 1841) (Story, J.); *see also, e.g.*, *United States v. Mayer*, 235 U.S. 55, 67-69 (1914)

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[3] *See, e.g.*, *James v. Watt*, 716 F.2d 71, 77-78 (1st Cir. 1983) (Breyer, J.); *Garrett v. Wexford Health*, 938 F.3d 69, 86 (3d Cir. 2019); *Daulatzai v. Maryland*, 97 F.4th 166, 178-79 (4th Cir. 2024); *Rosenzweig v. Azurix Corp.*, 332 F.3d 854, 864 (5th Cir. 2003); *In re Ferro Corp. Deriv. Litig.*, 511 F.3d 611, 624 (6th Cir. 2008); *Helm v. Resolution Tr. Corp.*, 84 F.3d 874, 879 (7th Cir. 1996); *UMB Bank, N.A. v. Guerin*, 89 F.4th 1047, 1057 (8th Cir. 2024); *Navajo Nation v. Dep't of the Interior*, 876 F.3d 1144, 1173 (9th Cir. 2017); *Tool Box, Inc. v. Ogden City Corp.*, 419 F.3d 1084, 1087-88 (10th Cir. 2005); *MacPhee v. MiMedx Grp., Inc.*, 73 F.4th 1220, 1249-51 (11th Cir. 2023); *Bldg. Indus. Ass'n of Superior Cal. v. Norton*, 247 F.3d 1241, 1245 (D.C. Cir. 2001); *see also Gen. Protecht Grp., Inc. v. Leviton Mfg. Co.*, 651 F.3d 1355, 1359 (Fed. Cir. 2011) (explaining that the Federal Circuit "applies the law of the respective regional circuit on questions of procedure").

(collecting cases); *United States v. Throckmorton*, 98 U.S. (8 Otto) 61, 65-69 (1878) (same); 2 William Tidd, *Practice of the Court of King's Bench in Personal Actions* 1056-57 (William P. Farrand ed., 1807).

That understanding persisted up through the adoption of the Federal Rules of Civil Procedure in 1938. By that time, a patchwork of methods had developed for litigants seeking relief after a court's entry of final judgment and the expiration of the term. *See* Comment, *Temporal Aspects of the Finality of Judgments—The Significance of Federal Rule 60(b)*, 17 U. Chi. L. Rev. 664, 664-65 (1950). But courts always remained "cautious in exercising their power" to reopen settled matters. *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 244 (1944). Relief continued to be reserved only for "certain limited situations." James Wm. Moore & Elizabeth B. A. Rogers, *Federal Relief from Civil Judgments*, 55 Yale L.J. 623, 627 (1946).

Rule 60(b) codifies many of these "well-recognized and concrete exceptions to the finality principle." Mary Kay Kane, *Relief from Federal Judgments: A Morass Unrelieved by a Rule*, 30 Hastings L.J. 41, 43 (1978); *see Banister*, 590 U.S. at 518. These specific exceptions include (1) "mistake, inadvertence, surprise, or excusable neglect," (2) "newly discovered evidence," (3) "fraud," (4) a "void" judgment, or (5) situations where "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." Fed. R. Civ. P. 60(b)(1)-(5). Rule 60(b) also includes a

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

That final subsection's berth has been tightly circumscribed. "When faced with a catchall phrase like [Rule 60(b)(6)], courts do not necessarily afford it the broadest possible construction it can bear." *Harrington v. Purdue Pharma L.P.*, 144 S. Ct. 2071, 2082 (2024). That is because readers "generally appreciate that the catchall must be interpreted in light of its surrounding context and read to 'embrace only objects similar in nature' to the specific examples preceding it." *Id.* (quoting *Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 512 (2018)); *accord Hall St. Assocs., L.L.C. v. Mattel, Inc.*, 552 U.S. 576, 586 (2008). Consistent with that "ancient interpretive principle" of *ejusdem generis*, *Harrington*, 144 S. Ct. at 2082, this Court has long construed Rule 60(b)(6) to authorize relief from a final judgment only in similarly "extraordinary circumstances" that are not otherwise specifically covered by the Rule, *Ackermann*, 340 U.S. at 199. The Court has emphasized that stringent requirement time and again in an unbroken line of decisions. *See Kemp v. United States*, 596 U.S. 528, 533 (2022); *Tharpe v. Sellers*, 583 U.S. 33, 35 (2018) (per curiam); *Buck v. Davis*, 580 U.S. 100, 123 (2017); *Christeson v. Roper*, 574 U.S. 373, 380 (2015) (per curiam); *Gonzalez*, 545 U.S. at 535; *Agostini v. Felton*, 521 U.S. 203, 239 (1997); *Pioneer Inv. Servs.*, 507 U.S. at 393; *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 863 n.11, 864 (1988); *Ackermann*, 340 U.S. at 199; *Klapprott v. United States*, 335 U.S. 601, 613-14 (1949).

"This very strict interpretation of Rule 60(b) is essential if the finality of judgments is to be preserved." *Gonzalez*, 545 U.S. at 535 (quoting *Liljeberg*, 486 U.S. at 873 (Rehnquist, C.J., dissenting)). And this Court has left no room for Rule 15's liberal amendment policy to creep into the equation. For good reason: Rule 60(b) is carefully crafted to provide a mechanism only for those rare "situations in which relief must be obtained after judgment," and "the broad amendment policy of Rule 15(a) should not be construed in a manner that would render [that] provision[] meaningless." 6 Wright & Miller, *Federal Practice & Procedure* § 1489 (3d ed. 2024). "To hold otherwise would enable the liberal amendment policy of Rule 15(a) to be employed in a way that is contrary to the philosophy favoring finality of judgments and the expeditious termination of litigation" that the Rules were designed to promote. *Tool Box, Inc. v. Ogden City Corp.*, 419 F.3d 1084, 1087 (10th Cir. 2005) (quoting 6 Wright & Miller, *Federal Practice & Procedure* § 1489 (2d ed. 1990)); *see* Fed. R. Civ. P. 1.

This understanding is also consistent with Rule 15(a)'s text, history, and structure. By its terms, Rule 15(a) provides a liberal repleading policy only "before trial." Fed. R. Civ. P. 15(a) (capitalization altered). Up until that point in the litigation, courts "should freely give leave" to amend a complaint "when justice so requires." Fed. R. Civ. P. 15(a)(2). This policy facilitates having claims "decided on [their] merits rather than on procedural technicalities." 6 Wright & Miller, *supra*, § 1471 (3d ed.).

But that liberal pre-trial policy evaporates post-judgment. After all, "a trial court's final judgment 'resolves conclusively the substance of all claims, rights, and liabilities of all parties to an action' and 'ends the litigation on the merits' in the district court." *Boyd v. Sec'y, Dep't of Corrs.*, 114 F.4th 1232, 1237 (11th Cir. 2024) (citation omitted). "So once the court has entered final judgment, Rule 15(a) no longer applies and no amendment is possible unless the judgment is first set aside." *Id.* And, where the plaintiff seeks vacatur through Rule 60(b)(6), "extraordinary circumstances must justify reopening." *Kemp*, 596 U.S. at 533 (quotation marks omitted). Only after making that threshold showing to vacate the judgment may the plaintiff seek leave to amend under Rule 15(a)'s standard.

The Second Circuit's contrary rule breaks from this Court's precedents, the history and structure of the Federal Rules, and every one of its sister Circuits. It abandons the "extraordinary circumstances" standard in favor of a nebulous "balanc[ing]" inquiry that pits Rule 60(b)(6)'s protection of "finality" against "Rule 15(a)'s liberal amendment policies." Pet.App.8. And it loads the dice in that balancing test against finality, providing that district courts necessarily abuse their discretion by "denying post-judgment relief" based on the movant's "failure to demonstrate adequate grounds for relief under Rule 60." *Mandala*, 88 F.4th at 362 & n.5.

Not only does that defy this Court's precedent, but it also violates the cardinal principle that "[c]ourts are required to give effect to Congress' express inclusions and exclusions, not disregard them." *Nat'l Ass'n of*

Mfrs. v. Dep't of Def., 583 U.S. 109, 126 (2018). In Rule 15(a)(2), Congress adopted this Court's instruction to "freely give leave" to amend *before* trial. Fed. R. Civ. P. 15(a)(2). But Congress and this Court conspicuously chose not to do the same in Rule 60(b) when delineating the "grounds for relief from a final judgment." Fed. R. Civ. P. 60(b) (capitalization altered). The implication from that differing language is thus straightforward. When a plaintiff seeks to "reopen a final judgment," as here, "the policy favoring the finality of judgments [is] implicated," and "[t]he permissive policy favoring amendment under Rule 15 [is] *simply not relevant*." *Garrett v. Wexford Health*, 938 F.3d 69, 86 (3d Cir. 2019) (emphasis added). Indeed, "there is no pending complaint to amend" once "the action has been dismissed" with prejudice. *Calvary Christian Ctr. v. City of Fredericksburg*, 710 F.3d 536, 540 (4th Cir. 2013); *see also, e.g.*, *Peña v. Mattox*, 84 F.3d 894, 903 (7th Cir. 1996); *Fisher v. Kadant, Inc.*, 589 F.3d 505, 509 (1st Cir. 2009). The matter is closed, the claim is "extinguishe[d]," and res judicata generally "bar[s] a subsequent action on that claim." *Cooper v. Fed. Rsrv. Bank of Richmond*, 467 U.S. 867, 874 (1984).

As a result, the "more restrictive standard" for granting a Rule 60(b) motion "must be satisfied *before* consideration can be given to a motion to amend." *Daulatzai*, 97 F.4th at 179 (emphasis added). Otherwise, as now-Chief Judge Sutton has explained, plaintiffs could "sidestep the narrow grounds for obtaining post-judgment relief" under Rule 60(b), "make the finality of judgments an interim concept," and risk turning Rule 60(b) into a "nullit[y]." *Leisure Caviar, LLC v. U.S. Fish & Wildlife Serv.*, 616 F.3d

612, 616 (6th Cir. 2010). There is no good reason for "judgment finality" to be so "lightly cast aside." *United States v. Denedo*, 556 U.S. 904, 916 (2009).

B. Rule 60(b)(6) Provides No Basis for Relief from a Party's Free, Calculated Choices.

The Second Circuit's rebuke of the "extraordinary circumstances" test suffers from another shortcoming. It defies the requirement that the alleged "'extraordinary circumstances'" be such "that the [moving] party is faultless in the delay." *Pioneer Inv. Servs.*, 507 U.S. at 393 (citation omitted); *see Ackermann*, 340 U.S. at 198. Put another way: The movant must be "completely without fault for his or her predicament" and "unable to have taken any steps that would have resulted in preventing the judgment from which relief is sought." 12 James Wm. Moore et al., *Moore's Federal Practice* § 60.48[3][b] (3d ed. 2024). A party that is even "partly to blame for the delay" cannot obtain relief under Rule 60(b)(6). *Pioneer Inv. Servs.*, 507 U.S. at 393.

That requirement fits neatly within the broader context of Rule 60(b). After all, Rule 60(b)(6) "is available only when Rules 60(b)(1) through (b)(5) are inapplicable." *Kemp*, 596 U.S. at 533. That narrow, residual role for the catchall clause respects the plain meaning of its "'other reason' language" and "prevent[s] clause (6) from being used to circumvent the 1-year limitations period" that applies to clauses (1) through (3). *Liljeberg*, 486 U.S. at 863 n.11; *see* Fed. R. Civ. P. 60(c)(1). One of those time-limited circumstances is for "excusable neglect." Fed. R. Civ. P. 60(b)(1). Thus, "a party who failed to take timely action due to 'excusable neglect' may not seek relief

more than a year after the judgment by resorting to subsection (6)." *Pioneer Inv. Servs.*, 507 U.S. at 393. If it could, then the "excusable neglect" provision and its limitations would become "superfluous" and "insignificant." *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001) (citation omitted). Such an interpretation "is of course to be avoided." *Dastar Corp. v. Twentieth Century Fox Film Corp.*, 539 U.S. 23, 35 (2003).

So too is any interpretation that would excuse a party's voluntary waiver of a court's invitation to amend. The "usual federal rule of waiver" applies regardless of "prejudice" to the party that "knowingly relinquish[ed]" his rights. *Morgan v. Sundance, Inc.*, 596 U.S. 411, 417-19 (2022). And this Court has made clear that "[i]t would be 'an abuse of discretion'" to "'override a [party's] deliberative waiver.'" *Wood v. Milyard*, 566 U.S. 463, 472-73 (2012) (quoting *Day v. McDonough*, 547 U.S. 198, 202 (2006)).

Rule 60(b)(6) is no exception. As this Court held long ago, parties "cannot be relieved of [their] choice[s]" through that mechanism simply "because hindsight seems to indicate" the improvidence of their decisions. *Ackermann*, 340 U.S. at 198. A party's waiver of the right to amend in the normal course—like Respondents' repeated waivers here—thus cannot justify relief from the entry of a final judgment that results from that party's "considered choice." *Id.*

The Second Circuit's tortured approach violates these basic principles of waiver. By requiring district courts to consider Rule 15(a)'s liberality policy in tandem with Rule 60's regard for finality—even when the movant has consistently and consciously rejected numerous invitations and opportunities to amend—

the Second Circuit has directed district courts to override and rescue parties from their "free, calculated, [and] deliberate choices." *Id.* That is precisely the sort of unfair and inefficient relitigation loop that this Court has repeatedly warned against. "There must be an end to litigation someday," and a litigant's strategic choices "are not to be relieved from." *Id.*

C. The Second Circuit's Outlier Balancing Test Is Untenable.

The Second Circuit's approach cannot be squared with any of this. The decision below held that Respondents need not show "extraordinary circumstances" to reopen the final judgment entered against them because, in its view, "special considerations come into play" when "vacatur is sought in order to obtain leave to file an amended complaint." Pet.App.7 (quoting *Mandala*, 88 F.4th at 361). But the court failed to root these supposedly special considerations in text, context, or precedent. And it contradicted each of those sources of legal authority along the way.

1. The Second Circuit's Test Is Atextual.

Most notably, the Second Circuit's balancing test is unmoored from the text of the Federal Rules. This Court interprets the Federal Rules of Civil Procedure as it would any statute. *See Bus. Guides, Inc. v. Chromatic Commc'ns Enters., Inc.*, 498 U.S. 533, 540-41 (1991). Its analysis in that interpretive enterprise always "begins with the text." *Ross v. Blake*, 578 U.S. 632, 638 (2016). Here, however, the Second Circuit

"made no attempt to ground its analysis" in the actual language of Rule 60(b)(6). *Id.*

Nor could it. Nothing in that Rule's text compels districts courts to give "'due regard' to 'the liberal spirit of Rule 15'" *after* final judgment "by ensuring plaintiffs at least one opportunity to replead." *Mandala*, 88 F.4th at 362 (quoting *Metzler Inv. GmbH v. Chipotle Mexican Grill, Inc.*, 970 F.3d 133, 146 (2d Cir. 2020)). Nothing in the Federal Rules' text allows plaintiffs to leapfrog over "Rule 60(b)'s finality gauntlet" to the sanctuary of "Rule 15(a)'s liberal repleading policy." Pet.App.8. And nothing in the text calls for any exceptions to Rule 60(b)'s demanding standards for "Relief from a Final Judgment." Fed. R. Civ. P. 60(b).

Meanwhile, the text of Rule 15(a) expressly indicates that it has no role to play after judgment. Instead, it applies only to "Amendments Before Trial." Fed. R. Civ. P. 15(a); *see Krupski v. Costa Crociere S. p. A.*, 560 U.S. 538, 553 (2010). It is in that setting—before trial and a final judgment—that the Rules encourage courts to "freely give leave" to amend, so that the relevant factual allegations and legal issues can be joined and presented at trial. Fed. R. Civ. P. 15(a)(2). By contrast, Rule 15(a) does not provide any mechanism for amending pleadings after dismissal, final judgment, and affirmance on appeal. At that point, there are no pending pleadings to amend. And alterations of the final judgment are the province of Rule 60(b).

The Second Circuit thus failed to heed the plain text of *both* Rule 15(a) *and* Rule 60(b) when fashioning its balancing test. That led it to fault the District

Court for evaluating Plaintiffs' Rule 60(b) motion "under only Rule 60(b)'s standard." Pet.App.7. But that is exactly what the District Court was *supposed* to do. "Plaintiffs must first meet the threshold requirement of 60(b)(6)'s extraordinary or exceptional circumstances to vacate the judgment before seeking" to amend their pleadings. *In re Ferro Corp. Deriv. Litig.*, 511 F.3d 611, 624 (6th Cir. 2008). The structure and plain text of the Federal Rules both make clear that failure to meet that burden forecloses relief.

2. The Second Circuit's Test Conflicts with Other Provisions of Rule 60.

The Second Circuit's test makes even less sense when assessed within the "total context" of Rule 60. *Pavelic & LeFlore v. Marvel Ent. Grp.*, 493 U.S. 120, 123 (1989). A Rule 60(b) motion to reopen "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." Fed. R. Civ. P. 60(c)(1). Yet the Second Circuit's balancing test for Rule 60(b)(6) enables litigants to evade those explicit time limitations in at least three ways.

First, the Second Circuit's liberal repleading policy permits litigants to bypass Rule 60's strict time limitations for "excusable neglect." Fed. R. Civ. P. 60(b)(1). If a plaintiff neglects to include certain allegations in his complaint and that omission is "excusable," then he has only one year to move to reopen the judgment based on that oversight through Rule 60(b)(1). He cannot do the same through Rule 60(b)(6), as a party cannot "'avail himself'" of that provision "if his motion is based on grounds specified in clause (1)." *Liljeberg*, 486 U.S. at 863 n.11 (citation

omitted). But the Second Circuit allows and even encourages plaintiffs to do precisely that, by compelling district courts to reopen actions under Rule 60(b)(6) if the plaintiffs "reasonably" (*i.e.*, excusably) neglected to include their late-breaking allegations before final judgment. *Mandala*, 88 F.4th at 359, 364.[4] Rather than embrace that misguided approach, this Court should "resist" any interpretation that "render[s] [Rule 60(b)] so internally inconsistent." *Jones v. Hendrix*, 599 U.S. 465, 479 (2023) (citation omitted).

Second, the Second Circuit's balancing test serves as an end-run around Rule 60(b)(1)'s time limits for "mistake." In *Mandala*, for instance, the Court of Appeals held that Rule 60(b)(1) is "inapplicable"—and that "'the liberal spirit of Rule 15'" instead kicks in—when a "vacatur motion arises *from a legal mistake*" that leads a plaintiff into "insufficient pleading." 88 F.4th at 360-62 (emphasis added; citation omitted). Yet, there is no reason why that form of "legal mistake" would pull a motion outside of Rule 60(b)(1)'s ambit. Those who drafted and adopted the Rules "chose to include 'mistake' unqualified." *Kemp*, 596 U.S. at 534. "When the Rule was adopted in 1938 and revised in

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[4] Of course, if a plaintiff "*in*excusably" omitted their new allegations, that cannot possibly provide a "reason that *justifies* relief." Fed. R. Civ. P. 60(b)(6) (emphasis added); *see, e.g.*, Inexcusable, *American College Dictionary* 621 (Clarence L. Barnhart ed., 1953) ("incapable of being justified"); Inexcusable, *Webster's New Collegiate Dictionary* 428 (6th ed. 1949) ("not admitting excuse or justification"). It is therefore "clear" that "inexcusable neglect" similarly "does not justify relief under Rule 60(b)(6)." *Helm v. Resolution Tr. Corp.*, 84 F.3d 874, 879 (7th Cir. 1996); *see Ackermann*, 340 U.S. at 202; *PIRS Cap., LLC v. Williams*, 54 F.4th 1050, 1055 (8th Cir. 2022).

1946, the word 'mistake' applied to any 'misconception,' 'misunderstanding,' or 'fault in opinion or judgment.'" *Id.* (quoting *Webster's New International Dictionary* 1383 (1914)). That includes "mistakes of law" made by judges and litigants alike. *Id.* at 534-35. The Second Circuit's atextual standard thus clashes with Rule 60's limited availability of relief for "mistake" as well. That provides yet another contextual strike against it.

Third, the Second Circuit's approach overrides Rule 60(b)(2)'s restrictions for vacatur based on new evidence. That provision allows parties "to reopen proceedings" based only "on matter which could not reasonably have been previously adduced"—and even then, only if the party presents that material within a year of final judgment. *INS v. Doherty*, 502 U.S. 314, 326 (1992); *see* Fed. R. Civ. P. 60(b)(2) ("newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial"). This rule is consistent with centuries of historical practice. *See, e.g.*, Joseph Story, *Commentaries on Equity Pleadings* 322 (2d ed. 1840) (explaining that a final judgment can be reopened based only on "some new matter, which hath arisen in time after the decree, and not on any new proof, which might have been used, when the decree was made" (discussing the Ordinances in Chancery of Lord Chancellor Bacon)); *Purcell v. Miner*, 71 U.S. (4 Wall.) 519, 521 (1867) (same). But, under the Second Circuit's regime, movants can introduce new factual allegations through Rule 60(b)(6), even if they could have presented them before, and even if more than a year has elapsed from the entry of final judgment. *See Mandala*, 88 F.4th at 365. In this way, too, the Second

Circuit has put Rule 60 "at war with itself." *United States ex rel. Polansky v. Exec. Health Res., Inc.*, 599 U.S. 419, 434 (2023) (citation omitted).

3. The Second Circuit's Test Distorts this Court's Precedents.

Left with no support in Rule 60(b)(6)'s text or context, the Second Circuit tried to ground its standard in *Foman v. Davis*, 371 U.S. 178. *See Mandala*, 88 F.4th at 362; Pet.App.6. But *Foman* did not address a Rule 60(b)(6) motion. This Court instead recognized the motion there (which was filed just a day after the district court's decision) "as one under *Rule 59(e)*." *Foman*, 371 U.S. at 179, 181 (emphasis added).

As a result, *Foman* is simply inapt in this setting. Rather, the controlling precedent is *Gonzalez*, which reaffirmed that a Rule 60(b)(6) motion "requires a showing of 'extraordinary circumstances.'" 545 U.S. at 536. And there is no basis to conflate that demanding standard with the one for Rule 59(e). "The difference between the two rules . . . is material, both in scope and purpose, and, by their own terms, different standards apply." *Daulatzai*, 97 F.4th at 177.

Indeed, "Rule 60(b) differs from Rule 59(e) in just about every way that matters to the inquiry here." *Banister*, 590 U.S. at 518; *see Daulatzai*, 97 F.4th at 177-78. A Rule 59(e) motion "is a one-time effort to bring alleged errors in a just-issued decision to a [district] court's attention, before taking a single appeal." *Banister*, 590 U.S. at 521; *see* Fed. R. Civ. P. 59(e). Accordingly, the time for bringing a Rule 59(e) motion "is short—28 days from entry of the judgment, with no possibility of an extension." *Banister*, 590 U.S. at 507-08. And, because "[i]t is a limited continuation

of the original proceeding," a timely Rule 59(e) motion automatically "'suspend[s] the finality' of any judgment." *Id.* at 514, 521 (citation omitted); *see* Fed. R. App. P. 4(a)(4)(A)(iv). "Only the disposition of that motion restores the finality of the original judgment," and that disposition "merges with the prior determination, so that the reviewing court takes up only one judgment" on appeal. *Banister*, 590 U.S. at 508-09 (brackets and quotation marks omitted). By contrast, "[a] Rule 60(b) motion—often distant in time and scope and always giving rise to a separate appeal—attacks an already completed judgment," and it "'does not affect the [original] judgment's finality or suspend its operation." *Id.* at 520-21 (second alteration in original) (quoting Fed. R. Civ. P. 60(c)(2)). A Rule 60(b) motion therefore uniquely "threaten[s] an already final judgment with successive litigation." *Id.* at 519. Consequently, the "standard for granting a Rule 59(e) motion" is more "broad and open ended" than Rule 60(b)(6)'s strict standard for relief. *Daulatzai*, 97 F.4th at 177.

The Second Circuit failed to grasp these crucial differences. Instead, *Mandala* and the decision below wrongly treated Rule 59(e) and Rule 60(b)(6) motions as fungible, and then uncritically transplanted *Foman*'s more forgiving Rule 59(e) standard to override the stringent requirements for Rule 60(b)(6). This Court should reject that misguided approach. It disregards Rule 60(b)'s unique text and context and flouts this Court's Rule 60(b) precedents.

4. The Second Circuit's Test Undermines the Guiding Principles of the Federal Rules of Civil Procedure.

Even if there were any doubt (which there is not), the Federal Rules would require this Court to resolve it against the Second Circuit's interpretation. That is because the Rules state that they must be "construed" in the face of ambiguity to "secure the just, speedy, and inexpensive determination of every action and proceeding." Fed. R. Civ. P. 1.

The Second Circuit's approach flips those guiding principles on their head. It eschews finality, and it undermines confidence in the outcome of hard-fought litigation. It also enables plaintiffs to "use the court as a sounding board to discover holes in their arguments, then 'reopen the case by amending their complaint to take account of the court's decision,'" even after testing the complaint against a full appeal and repeatedly declining earlier opportunities to amend. *Leisure Caviar*, 616 F.3d at 616 (quoting *James v. Watt*, 716 F.2d 71, 78 (1st Cir. 1983) (Breyer, J.)). Such gamesmanship will inevitably draw out litigation and drive up its already high costs.

This case proves the point. The matter "has been closed since January 15, 2020," when Petitioner secured a final judgment in its favor. Pet.App.10. Petitioner prevailed on appeal after that. Then Petitioner successfully showed that Rule 60(b) provided no path for reopening the final judgment. Respondents' "fail[ure] to satisfy the requirements of Rule 60(b) should therefore have ended the matter." *Daulatzai*, 97 F.4th at 179. Yet, Respondents continue to seek a return to square one—merely so that they

can plead new factual allegations that were previously available to them and which they had expressly declined to plead before dismissal.

Allowing losing litigants to thus restart the loop of litigation would not promote the "speedy" and "inexpensive" resolution of claims. Fed. R. Civ. P. 1. Nor would it be "just." *Id.* Quite the opposite: Like the doctrine of res judicata, Rule 60(b)'s demanding requirements for reopening a final judgment are themselves rooted in "fundamental and substantial justice," and they are designed to further both "'public policy and . . . private peace.'" *Federated Dep't Stores, Inc. v. Moitie*, 452 U.S. 394, 401 (1981) (citation omitted); *see supra* Section I.A. They should therefore "be cordially regarded and enforced by the courts." *Moitie*, 452 U.S. at 401 (citation omitted). The "weighty interests in finality" must "trump the interest in giving losing litigants access to an additional" round of proceedings in all but the most unusual case. *See San Remo Hotel, L.P. v. City & County of S.F.*, 545 U.S. 323, 345 (2005). That is particularly true when the movant seeks a mulligan to rescue himself from his "free, calculated, deliberate choices." *Ackermann*, 340 U.S. at 198.

Consistent with these fundamental tenets of civil procedure, courts have long rejected belated attempts by plaintiffs to attack a final judgment with an amended complaint. *See supra* note 3 (collecting cases). They have instead required plaintiffs to put their best foot forward *before* judgment or risk an end to their lawsuit. And they have reserved Rule 60(b)(6) relief—as this Court's precedents command—for only

truly "compelling circumstances" outside the movant's control. *James*, 716 F.2d at 78 (Breyer, J.).

* * *

In sum, Rule 15(a) "governs amendment of pleadings *before* judgment is entered; it has no application *after* judgment is entered." *Jacobs v. Tempur-Pedic Int'l Inc.*, 626 F.3d 1327, 1344 (11th Cir. 2010). From that point, a party that seeks "relief from a final judgment" must first satisfy the rigorous demands of Rule 60(b). Fed. R. Civ. P. 60(b) (capitalization altered).[5] And where, as here, the party seeks such relief under Rule 60(b)(6), he must "show 'extraordinary circumstances'" beyond his control that would "justify[] the reopening of a final judgment." *Gonzalez*, 545 U.S. at 535 (quoting *Ackermann*, 340 U.S. at 199); *see Pioneer Inv. Servs.*, 507 U.S. at 393. Only after surmounting that intentionally high hurdle for vacating the judgment can he invoke the more liberal policies of Rule 15(a). The Second Circuit erred in holding to the contrary.

II. Respondents Cannot Satisfy Rule 60(b)(6)'s Stringent Standard.

This Court should reverse the decision below and bring an end to this litigation once and for all. Unlike the Second Circuit, the District Court applied the correct legal standard by refusing to "'entertain a motion to amend the complaint' under Rule 15(a) without 'a valid basis to vacate the previously entered judgment' under Rule 60(b)." Pet.App.7 (quoting District Court's decision). It properly treated those

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[5] Or those of Rule 59(e), if the motion is filed within 28 days of the entry of judgment.

Rules as posing two distinct inquiries. And, in a thoughtful opinion issued after a pre-motion conference and full briefing, it methodically explained why Respondents "have not demonstrated any extraordinary circumstances warranting relief under Rule 60(b)(6)." Pet.App.14.

A. Respondents Have Not Demonstrated "Extraordinary Circumstances."

When a District Court applies the correct legal standard, as here, "Rule 60(b) proceedings are subject to only limited and deferential appellate review." *Gonzalez*, 545 U.S. at 535. An appellate court "may review the [district court's] ruling only for abuse of discretion." *Browder v. Dir., Dep't of Corrs. of Ill.*, 434 U.S. 257, 263 n.7 (1978). And that standard affords "a wide range of choice" to the district court. *McLane Co. v. EEOC*, 581 U.S. 72, 83 (2017) (citation omitted). Appellate courts cannot "interfere with the District Court's exercise of discretion unless" they are left with "a definite and firm conviction that the court committed a clear error of judgment." *Betterbox Commc'ns, Ltd. v. BB Techs, Inc.*, 300 F.3d 325, 332 (3d Cir. 2002) (Alito, J.) (alterations adopted; citation omitted). In other words, the Court must "find a complete absence of a reasonable basis and [be] certain that the [District Court's] decision is wrong." *Davis v. Kan. Dep't of Corrs.*, 507 F.3d 1246, 1248 (10th Cir. 2007) (citation omitted).

That is not the case here. Far from it. Respondents have never contended "that any of their proposed new allegations were unavailable to them" when they filed their complaint or when they repeatedly declined the District Court's invitations to amend. Pet.App.15.

They argue only that the Second Circuit "clarified" the JASTA pleading standard in some respects in their previous appeal of the District Court's dismissal. BIO.2. But that is neither correct nor relevant.

It is not correct because the Second Circuit affirmed the dismissal on grounds that the District Court had relied on—namely, that Respondents' "allegations do not support an inference that BLOM Bank was aware of the Three Customers' ties with Hamas prior to the relevant attacks." Pet.App.49; *see also* Pet.App.74-75 ("Plaintiffs' allegations therefore fail to raise above the speculative level the specter that BLOM was aware of a connection between the Three Customers and Hamas at the time it provided financial services to the Three Customers."). In *dicta*, the Second Circuit disagreed with *other* grounds relied on by the District Court. But the District Court's independent conclusion that Respondents failed to demonstrate general awareness at the time of the alleged assistance—as JASTA requires—"remain[s] completely unaffected by anything that was decided or said" by the Second Circuit in this case or any other. *Polites v. United States*, 364 U.S. 426, 436 (1960) (affirming denial of Rule 60(b) motion).

Respondents' argument is also irrelevant because, even if the Second Circuit had clarified its view of the law, that would not be enough to satisfy Rule 60(b)(6). "Intervening developments in the law by themselves rarely" if ever "constitute the extraordinary circumstances required for relief under Rule 60(b)(6)." *Agostini*, 521 U.S. at 239; *see* Pet.App.14-15. And the developments here are by no means groundbreaking. The governing statute did not change after final

judgment. Respondents merely allege a "clarification[]" of the law by the Second Circuit that was in line with their own interpretation. BIO.25. There is nothing "extraordinary" about that. Respondents never "explain[ed] why they did not allege facts sufficient to satisfy the standard for which they were advocating." Pet.App.17 n.5. And clarifying the law is what appellate courts do all the time. In fact, this Court has held that even a "*change* in the law" worked by one of its decisions abrogating previously controlling circuit precedent could not justify Rule 60(b)(6) relief. *Gonzalez*, 545 U.S. at 536-37 (emphasis added). Such a change in decisional caselaw, the Court explained, is "hardly extraordinary." *Id.* at 536. The circumstances here are even less so.

In short, the District Court's determination that Respondents failed to satisfy Rule 60(b)(6)'s high bar for reopening a final judgment fell well within the range of permissible decisions. It was not an abuse of discretion. It should have been upheld for that reason alone.

B. Respondents Waived or Forfeited Multiple Opportunities to Amend Their Complaint.

Not only did the District Court act within its discretion, but it would have abused its discretion had it ruled the other way. As this Court has explained, it is "an abuse of discretion" to "override a [party's] deliberative waiver." *Wood*, 566 U.S. at 472-73 (citation omitted). And this case involves waiver many times over. Respondents "do not contend that the additional facts they now propose to allege were not available" to them before, and they "concede that they

twice declined the opportunity to amend their Complaint before th[e] [District] Court dismissed it." Pet.App.16, 18 n.6. The District Court rightly held that those repeated waivers foreclosed relief as well. *See Ackermann*, 340 U.S. at 198.

Respondents first rejected the District Court's invitation to amend at the pre-motion conference. Pet.App.16-17. Before that conference, Petitioner explained that "the Complaint alleges nothing more than that [Petitioner] provided routine banking services to organizations that later were revealed to be connected to Hamas." JA.145. "[N]one of the allegations, if true, would establish that [Petitioner] was aware of that connection at the time it provided those banking services" to the Three Customers. *Id.* Accordingly, the District Court asked Respondents' counsel if there were "any additional facts [they] could add to the allegations" to address Petitioner's arguments. Pet.App.93. Respondents' counsel "expressly declined" the invitation. Pet.App.17. The District Court then asked a second time if Respondents "would not want to amend" if the Court "were to grant [Petitioner's] motion." Pet.App.93. Respondents unequivocally stated that they "would not seek leave to amend." Pet.App.94. Hence, the District Court issued a minute entry and scheduling order to that effect. JA.156.

Notwithstanding that entry, the District Court gave Respondents yet another chance to amend at oral argument on Petitioner's motion to dismiss. Pet.App.17-18. At the hearing, the judge explained that she "just [did not] see any knowledge on the part of [Petitioner]" alleged in the complaint. Pet.App.118.

She asked if "everything [she] need[ed] to consider in terms of sufficiency of [the] pleading is going to be found in the complaint that's filed in this case." Pet.App.124. And she asked Respondents to confirm that "[t]here are no facts that [Respondents] would have to offer to address some of the contentions of [Petitioner] regarding knowledge, especially." Pet.App.125. In response, Respondents "again expressly declined the opportunity to amend their complaint" and chose to proceed on their complaint as pled. Pet.App.18. That was a "calculated and deliberate" choice. *Ackermann*, 340 U.S. at 198. Rule 60(b)(6) therefore "has no application." *Id.* at 202.

Nor did Respondents' waivers stop there. Despite proceeding up to the Second Circuit, Respondents "never appealed the 'with prejudice' aspect of the dismissal" and never argued that the District Court should have granted them leave to replead. Pet.App.16 n.4. They simply maintained that their allegations were sufficient. The District Court correctly recognized this litigation choice as still another waiver that precluded Respondents from seeking leave to replead if they lost on appeal. *See id.* (citing 18A Wright & Miller, *Federal Practice & Procedure* § 4433 (3d ed. 2021) ("A party who elects to appeal on one issue, omitting another issue on which it lost, is subject to issue preclusion on the issue not appealed.")).

That failure was by itself fatal, even ignoring Respondents' previous waivers. If a party's "reason asserted for [its] Rule 60(b)(6) motion could have been addressed on appeal from the judgment," then the motion must be denied "as merely an inappropriate

substitute for an appeal." *Aikens v. Ingram*, 652 F.3d 496, 501 (4th Cir. 2011) (en banc). This understanding that Rule 60(b)(6) "cannot be used as a substitute for appeal" has been "settled" for decades. Jean F. Rydstrom, *Construction and Application of Rule 60(b)(6) of Federal Rules of Civil Procedure*, 15 A.L.R. Fed. 193, § 2[a] (2024). And that principle makes eminent sense. Otherwise, parties could skirt the limitations period for post-judgment motions based on "mistake, inadvertence, surprise, or excusable neglect," Fed. R. Civ. P. 60(b)(1), as well as the jurisdictional time limits for appealing an adverse decision, *see* Fed. R. App. P. 4(a); *Bowles v. Russell*, 551 U.S. 205, 206 (2007).

Each of the foregoing waivers demonstrates that Respondents were not "faultless in the delay." *Pioneer Inv. Servs.*, 507 U.S. at 393. That delay resulted from their own strategic decisions, each of which precludes relief. And, beyond those waivers, Respondents forfeited still more opportunities to seek amendment of their complaint. In particular, before failing to appeal from the District Court's "with prejudice" ruling, they failed to file a Rule 59(e) motion challenging that aspect of the District Court's dismissal. And despite being invited to file supplemental briefing in the Second Circuit—after that court issued its controlling decision in *Kaplan*—Respondents still failed to request leave to amend in light of that new precedent.

Respondents have thus come nowhere close to meeting Rule 60(b)(6)'s "extraordinary circumstances" standard. *Gonzalez*, 545 U.S. at 536. In fact, they could not even satisfy *Foman*'s more lenient standard

for Rule 59(e) motions. *Foman* held only that a district court errs by "outright refus[ing]" to permit amendment before appeal "without any justifying reason." 371 U.S. at 182. Here, by contrast, the District Court provided many justifying reasons for denying relief (after appellate proceedings had already concluded). It explained that Respondents "had ample opportunity to pursue all legal avenues available to them for relief," but they simply chose not to do so. Pet.App.16. They instead engaged in a "documented series of deliberate choices not to cure the deficiencies identified in their pleading by [Petitioner] and [the District] Court." Pet.App.19. Those "free, calculated, deliberate choices are not to be relieved from." *Id.* (quoting *Ackermann*, 340 U.S. at 198). Not only was the District Court's decision a permissible exercise of discretion, but it was demonstrably correct.

CONCLUSION

For the foregoing reasons, the Court should reverse the judgment below.

Respectfully submitted,

JONATHAN R. STREETER
TAMER MALLAT
DECHERT LLP
Three Bryant Park
1095 Avenue of the Americas
New York, NY 10036

BRIAN A. KULP
CHRISTOPHER J. MERKEN
DECHERT LLP
Cira Centre
2929 Arch Street
Philadelphia, PA 19104

MICHAEL H. MCGINLEY
Counsel of Record
STEVEN A. ENGEL
DECHERT LLP
1900 K Street, NW
Washington, D.C. 20006
(202) 261-3378
michael.mcginley@dechert.com

Counsel for Petitioner

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