No. 23-971

IN THE
Supreme Court of the United States

GARY WAETZIG,

Petitioner,

v.

HALLIBURTON ENERGY SERVICES, INC.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

REPLY BRIEF

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REPLY BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

I. The Question Presented Divides The Courts Of Appeals

Respondent cannot and does not seriously dispute that the decision below implicates a divide among the courts of appeal on whether a voluntary dismissal without prejudice under Rule 41(a)(1)(i) is a "final proceeding" that may be reopened via Rule 60(b). *See* Pet. App. 15a (discussing Fifth Circuit's conflicting opinion in *Yesh Music* v. *Lakewood Church*, 727 F.3d 356 (2013) and acknowledging that the Fifth Circuit "concluded that a voluntary dismissal without prejudice is a final proceeding under Rule 60(b)"). Instead, Respondent tries to minimize the holding of *Yesh Music* and suggests the other courts of appeals' similar approaches are not evidence of a divide. Neither argument passes muster.

A. Despite contending that the opinion below was correct, Respondent characterizes the Tenth Circuit's express rejection of the Fifth Circuit's approach as merely "tension" that "arguably conflicts" with the Fifth Circuit's decision. Opp. 12.

This disregards the Tenth Circuit's extensive analysis of *Yesh Music*, and the Tenth Circuit's clear decision to follow Judge Jolley's *dissent* in *Yesh Music*. *See* Pet. App. 16a (agreeing with Judge Jolly's dissent on the ground that a voluntary dismissal without prejudice "was not final . . . and [] it was not a proceeding"). This is not "tension." The opinion below

expressly considers, and rejects, the contrary holding of another court of appeals.

Petitioner also briefly asserts that the Tenth Circuit's rejection of the Fifth Circuit's reasoning should be disregarded because of the "highly unusual circumstances" in *Yesh Music*, namely that the action was voluntarily dismissed twice. Opp. 12 (citing 727 F.3d at 358). But that fact had no bearing on *Yesh Music*'s ruling, which the Tenth Circuit later rejected, that "finality" in the Rule 60(b) context requires a "practical" construction. *Yesh Music*, 727 F.3d at 360 (quoting *Gillespie* v. *U.S. Steel Corp.*, 379 U.S. 148 (1964)). That fact also did not affect the Fifth Circuit's holding that the term "'proceeding' does not necessarily require any [judicial] action." *Ibid.*

B. Respondent makes similar meritless attempts to distinguish the holdings of the Third, Seventh, Eighth, and Ninth Circuit decisions, all of which also conflict with the decision below, by pointing to the specific and different procedural postures of those cases. What is clear is that these other cases all apply Rule 60(b) in a pragmatic and flexible manner, in sharp contrast to the Tenth Circuit's rigid holding.

Thus, although the Tenth Circuit held below that a voluntary dismissal under Rule 41(a)(1)(A)(i) cannot be a "proceeding" because "no judicial officer was involved in any way," Pet. App. 18a, the Eighth Circuit held that stipulated dismissals *with* prejudice *are* "final judgments," even though such dismissals may occur "without *any involvement by the court*." *White* v. *National Football League*, 756 F.3d 585, 595

(8th Cir. 2014) (emphasis added). The Tenth Circuit's holding also contradicts established law in the Third Circuit, which recognizes that "[a]ny time a district [court] enters a judgment, even one dismissing a case by stipulation of the parties, [it] retains, by virtue of Rule 60(b), jurisdiction to entertain a later motion to vacate the judgment on the grounds specified in the rule." *Redman* v. *United States*, 2023 WL 8519210, at *2 (3d Cir. Dec. 8, 2023) (alterations in original) (quoting *Halderman* v. *Pennhurst State Sch. & Hosp.*, 901 F.2d 311, 320 (3d Cir. 1990)).

The Tenth Circuit also found that a voluntary dismissal without prejudice lacks "requisite finality" because "[a]lthough the dismissal may have brought a particular lawsuit to a close, the overarching dispute between the parties has not been resolved." Pet. App. 18a–19a. The Seventh Circuit considered and rejected this exact point in *Nelson* v. *Napolitano*, 657 F.3d 586, (7th Cir. 2011), finding that "[a] voluntary dismissal pursuant to Rule 41(a)(1)(A)(i) . . . does not deprive a district court of jurisdiction for all purposes," before concluding that the district court did not abuse its discretion in finding that the Rule 60(b) factors were not met. *Id.* at 589; *see also In re Hunter*, 66 F.3d 1002, 1004 (9th Cir. 1995) ("acknowledgment of satisfaction of judgment" in bankruptcy is "functionally equivalent to filing a voluntary dismissal," and therefore counts as a "judgment, order, or proceeding from which Rule 60(b) relief can be granted").

* * *

The Tenth Circuit's decision conflicts with decisions of the Third, Fifth, Seventh, Eighth, and Ninth Circuits, and creates a circuit split worthy of this Court's review.

II. The Decision Below Is Wrong

Respondent's next argument for why certiorari should be denied jumps over this Court's Rule 10 and goes straight to the merits—arguing that the decision below, rather than the Fifth Circuit's decision, is correct. Opp. 13–16. In doing so, Respondent doubles down on its analytical and interpretive errors.

A. Respondent first argues that the Tenth Circuit correctly determined that a Rule 41 dismissal is not a "final proceeding" because it does not "involve, at a minimum, a judicial determination with finality." Opp. at 14 (citation omitted). But the Rule does not expressly impose such a requirement, and this Court "give[s] Federal Rules of Civil Procedure their plain meaning" and interprets a Rule in a manner similar to "a statute." *Pavelic & LeFlore* v. *Marvel Ent. Grp.*, 493 U.S. 120, 123 (1989). And Respondent's interpretation of "final proceeding" fails to adhere to well-settled principles of statutory interpretation.

For instance, one "source that might shed light on [a] statute's ordinary meaning" would be "dictionary definitions." *Food Mktg. Inst.* v. *Argus Leader Media*, 588 U.S. 427, 435 (2019). These do not require a judicial determination. As the opinion below notes,

"final proceeding," per contemporary dictionaries, means, inter alia, a "[d]efinitive," "completed," or "conclusive" "application to a court of justice . . . for aid in the enforcement of rights." Pet. App. 9a (alteration in original). But the Tenth Circuit admits that neither the "general" definition nor the "more particular" definition of "proceeding" in contemporary dictionaries requires a "judicial determination." *See ibid.* Indeed, the "more particular" definition is extremely broad, covering "any application to a court of justice, however made, for aid in the enforcement of rights, for relief, for redress of injuries, for damages, or for any remedial object." *Ibid.* Despite this, the Tenth Circuit still imposed a judicial-determination requirement.

It is unsurprising that the Fifth Circuit disagreed, concluding that "a 'proceeding' does not necessarily require any [judicial] action." *Yesh Music*, 727 F.3d at 360. Consistent with dictionary definitions, the Fifth Circuit held that "'[t]he term 'proceeding' is indeterminate,' and may be used to describe the entire course of a cause of action or any act or step taken in the cause by either party." *Ibid.* (alteration in original) (quoting *Reid* v. *Angelone*, 369 F.3d 363, 368 (4th Cir.2004)).

B. Moreover, a Rule 41 dismissal, with or without prejudice, plainly is "final" in the ordinary sense of that word, as it is "definitive" and "terminates" a proceeding. The fact that it may be without prejudice does not make the dismissal any less "final." Unlike an interlocutory decision or step, a Rule 41 dismissal effectuates the dismissal of an action. The fact that a

party may be entitled to a "do over" by re-filing a *new* (and different) action does not change the fact that a Rule 41 dismissal makes what is done, done—the hallmark of finality for purposes of Rule 60 relief.

The Tenth Circuit's decision to the contrary rested almost exclusively on a misplaced application of the *ejusdem generis* canon, which holds that "where general words follow an enumeration of specific items, the general words are read as applying only to other items akin to those specifically enumerated." *Harrison* v. *PPG Indus., Inc.*, 446 U.S. 578, 588 (1980). The first problem, however, is that "[a]s [this Court] ha[s] often noted: 'The rule of *ejusdem generis*, while firmly established, is only an instrumentality for ascertaining the correct meaning of words when there is uncertainty.'" *Ibid.* (quoting *United States* v. *Powell*, 423 U.S. 87, 91 (1975)). In *Harrison*, this Court "discern[ed] no uncertainty in the meaning of the phrase, 'any other final action.'" *Ibid.* Similarly here, there is no uncertainty requiring application of the *ejusdem generis* rule to conclude, as the Tenth Circuit erroneously did, that a "final proceeding" must involve a judicial determination in conformity with final "judgment" and "order," the terms preceding "proceeding" in Rule 60.[1]

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[1] For instance, "an accepted offer of judgment under Rule 68, Fed. R. Civ. P., [is] 'executed by the parties without any involvement by the court,'" *WBB Construction, Inc.* v. *Bellcomb, Inc.*, 2016 WL 1389760, at *2 (D. Minn. Apr. 7, 2016) (quoting *White*, 756 F.3d at 595), but would still qualify as a "final judgment" under Rule 60(b), *Stubblefield* v. *Windsor Capital Group*, 74 F.3d 990, 992–93 (10th Cir. 1996) (declining to review district court decision

The second problem is that the Tenth Circuit's application of *ejusdem generis* conflicts with the surplusage canon. Neither the Tenth Circuit nor Respondent explains how requiring a "judicial determination" for a "proceeding" in the context of Rule 60 would not render the term "proceeding" superfluous. The Tenth Circuit provides no example of a "judicial determination" that is neither a judgment nor an order—and Respondent does not either. There is a clear interpretation that gives effect to every word in Rule 60 and accords with its plain, ordinary meaning: an action or lawsuit that comes to a close—and thus, is eligible for Rule 60 relief—without a judicial determination. While Respondent and the Tenth Circuit may wish to employ *ejusdem generis* to effectively erase the word "proceeding" from Rule 60 and to contradict its everyday usage, "understood as this Court always has, the canons have no such transformative effect on the workaday language" of Rule 60. *Yates* v. *United States*, 574 U.S. 528, 564 (2015) (Kagan, J., dissenting).

C. The only other contention Respondent raises in defense of the Tenth Circuit's decision is that Rule 41 dismissals without prejudice are not "final" because a plaintiff may re-file the case. Opp. 15–16. As noted above, however, there is nothing about the ability to re-file a new case that makes the dismissal under Rule 41 any less final. And there would be no "confusing and destabilizing" effect as Respondent contends, *id.*

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vacating Rule 68 judgment under Rule 60(b)(1) given interlocutory nature of appeal).

at 16, because Rule 60 sets forth specific criteria that a plaintiff must satisfy to obtain relief. Indeed, this case exemplifies the usefulness of Rule 60 relief where there is a Rule 41 dismissal without prejudice: a plaintiff who wants to and can re-file a new case likely would prefer that route given that he or she would not need to satisfy Rule 60's stringent criteria, whereas a plaintiff who cannot re-file a new case can rely only on Rule 60 for a chance to reopen his or her case. There is thus no basis, let alone need, to construe "final proceeding" in Rule 60 as not covering a Rule 41 voluntary dismissal without prejudice.

III. The Question Presented Is Important And Respondent Concedes There Are No Vehicle Problems

Given the clear circuit split and fact that the question presented is both outcome determinative and squarely presented, Respondent's brief focuses on the supposed lack of importance of the question presented. Much of Respondent's argument is rhetorical, such as pejoratively describing an issue of federal procedure as being "arcane." *E.g.*, Opp. 1, 2 (describing question presented as "exceedingly narrow" and "arcane" and arising only in "unusual circumstances"). Adjectives are no substitute for substance, however, and the reality is that the question presented directly implicates core limits on a district court's authority to reopen cases. *See* Pet. 15–17; *see also United States* v. *Roy*, 855 F.3d 1133, 1166–67 (11th Cir. 2017) (en banc) (explaining that repeatedly arguing one cannot know if an error is

harmless without "speculation" "is couched in good grammar and sensible syntax" but lacking in substance).

Stripped of rhetoric, Respondent's opposition makes just two contentions: (1) the question presented arises infrequently, and (2) any problem can be fixed by the Rules Committee. Neither contention undermines the need for review.

First, Respondent errs as to the frequency of the issue. Putting aside that there are published appellate decisions on point, plaintiffs frequently voluntarily dismiss cases under Rule 41 only to seek to re-open them later, as demonstrated by the fact that at least three district courts in the Tenth Circuit have already cited the decision below for the proposition that Rule 60(b) cannot be used to re-open voluntarily dismissed cases. *See Moore* v. *Hudson*, 2024 WL 1051176, at *1 (D. Kan. Mar. 11, 2024) (citing *Waetzig* to hold the court lacks the power to grant a Rule 60 motion); *West* v. *Wells Fargo Bank, N.A.,* 2023 WL 8261644, at *1 (D. Utah Nov. 29, 2023) (citing *Waetizg* and stating, "[i]ndeed, the Tenth Circuit has recently clarified that even the plaintiff that dismissed the action is unable to reopen the case"); *Brody* v. *Bruner*, 2024 WL 729654, at *1 (D. Colo. Feb. 22, 2024) (stating that under Rule 41(a), "'dismissal is automatic, immediately divesting the district court of subject-matter jurisdiction'") (quoting *Waetzig*, Pet. App. 5a).

Conversely, the Fifth Circuit's *Yesh Music* decision has been cited numerous times for the proposition that Rule 60 does authorize a court to re-open a case that was voluntarily dismissed under Rule 41(a). *E.g.*,

Rismed Oncology Systems, Inc. v. *Baron*, 297 F.R.D. 637, 654–55 (N.D. Ala. 2014) (surveying cases including *Yesh Music* to conclude that the Eleventh Circuit would likely "adopt the majority position and hold that a Rule 41(a)(1)(A) voluntary dismissal by a plaintiff constitutes a 'final order, judgment, or proceeding' for purposes of Rule 60(b)"); *Thomas* v. *Shulkin*, 2019 WL 13293258, at *1 (S.D. Miss. Mar. 7, 2019) ("A voluntary dismissal without prejudice is a 'final proceeding' subject to vacatur under Fed. R. Civ. P. 60(b)") (citing *Yesh Music*, 727 F.3d at 362–63).

This caselaw also demonstrates the invalidity of Respondent's "unusual circumstances" argument. Different circumstances may lead a party to seek to re-open a case after a Rule 41(a) voluntary dismissal—such as the expiration of a statute of limitations—but the cited cases have a common thread: whether principles of equity should permit a plaintiff to re-open the case or instead be barred from obtaining relief due to other procedural issues. And this common thread is an important one, going to the scope of a court's authority to re-open cases where justice warrants it. As Judge Matheson points out in his dissent below, "if later those plaintiff-dismissed claims cannot be reasserted (e.g., the statute of limitations has run on the claims that were dismissed without prejudice), their earlier dismissal without prejudice may be functionally equivalent to a dismissal with prejudice." Pet. App. 25a. Indeed, Rule 60(b) itself is designed to provide relief only in "'exceptional circumstances,'" *Motorola Credit Corp. v. Uzan*, 561 F.3d 123, 126 (2d Cir. 2009) (citation omitted), and it therefore is logical and sensible that Rule 60(b) relief would be available in circumstances

such as those here. *See also Hormel v. Helvering*, 312 U.S. 552, 557 (1941) ("Rules of practice and procedure are devised to promote the ends of justice, not to defeat them.").

For these reasons, whether the text and background of Rule 60(b) deprive a federal court of the power to take action in circumstances like here is a very important question. *See McIntosh* v. *United States*, 601 U.S. 330, 338 (2024) (rejecting the argument that Fed. R. Crim. P. 32.2(b)(2)(B) deprived district court of power to "order forfeiture once [the defendant] objected to the absence of a preliminary order prior to his initial sentencing").

Second, Respondent's "Rules Committee" claim does not weigh against review. This Court frequently resolves questions of federal law that divide lower courts even if they concern the Federal Rules, given the importance of ensuring the uniform application of those rules. *See, e.g.*, *Becker* v. *Montgomery*, 532 U.S. 757, 762 (2001) ("We granted certiorari . . . to assure the uniform interpretation of the governing Federal Rules."); *McIntosh*, 601 U.S. at 338 (holding Fed. R. Crim. P. 32.2(b)(2)(B) "establishes a time-related directive" not "a mandatory claim-processing rule"). The same is true of federal statutes—while Congress could resolve a dispute among lower courts as to the proper interpretation of a statute, that does not displace the Court's role in resolving such disputes, not only to resolve the specific split, but also to provide guidance as to the proper methods of interpretation.

Finally, Respondent does not (and could not) dispute that this case cleanly presents the question presented. The issue is purely one of law, and the

Tenth Circuit's decision rested directly on its conclusion that, unlike the decision of the Fifth Circuit, a Rule 41(a) "voluntary dismissal without prejudice does not qualify as a final proceeding" and thus cannot be reopened under Rule 60(b). Pet. App. 18a. Thus, the answer to the question presented would be outcome-determinative for Petitioner, as Respondent admits. *See* Opp. 17.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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