No. 23-971

IN THE

Supreme Court of the United States

GARY WAETZIG,

Petitioner,

v.

HALLIBURTON ENERGY SERVICES, INC.,

Respondent.

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

BRIEF FOR PETITIONER

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QUESTION PRESENTED

Federal Rule of Civil Procedure 60(b) empowers district courts, on just terms and under circumstances specified in that Rule, to "relieve a party or its legal representative from a final judgment, order, or proceeding."

The question presented, which has divided the courts of appeals, is whether a Rule 41 voluntary dismissal without prejudice is a "final judgment, order, or proceeding" under Rule 60(b).

PARTIES TO THE PROCEEDING

Petitioner Gary Waetzig was plaintiff in the district court and appellee below.

Respondent Halliburton Energy Services, Inc., was defendant in the district court and appellant below.

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Other Authorities

Black's Law Dictionary
(3d ed. 1933) 8, 12–13, 17, 19, 26–27

Black's Law Dictionary
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Elizabeth G. Porter, *Pragmatism Rules*,
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Lester B. Orfield, *Writ of Error Coram Nobis*,
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Neal C. Head, *The History and Development of Nonsuit*,
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Rule 60 Advisory Committee Note—
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Rule 60 Advisory Committee Note—
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Stephen B. Burbank,
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Stephen N. Subrin, *How Equity Conquered Common Law: The Federal Rules of Civil Procedure in Historical Perspective*,
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The Right of a Plaintiff to Take a Voluntary Nonsuit or to Dismiss His Action Without Prejudice, 37 Va. L. Rev. 969 (1951) 31

Theodore R. Mann, *History and Interpretation of Federal Rule 60(b) of the Federal Rules of Civil Procedure*, 25 Temp. L.Q. 77 (1951) 35

Webster's New International Dictionary of the English Language (1930) 17

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Wright & Miller, 9 Fed. Prac. & Proc. § 2362 (4th ed.) 2

OPINIONS BELOW

The opinion of the court of appeals reversing the district court's judgment is reported at 82 F.4th 918, and reproduced at Pet. App. 1a–28a. The decisions of the district court for the District of Colorado are unreported. The district court's decision on the merits of Petitioner's motion to vacate the arbitration award (Pet. App. 29a–48a) is available at 2022 WL 3153909. The decision on the motion to reopen the case under Rule 60(b) is reproduced beginning at Pet. App. 49a.

JURISDICTION

The Tenth Circuit issued its decision reversing the grant of Petitioner's motion to reopen the case and vacate the arbitration award on September 11, 2023, Pet. App. 1a, and then denied rehearing *en banc* on December 4, 2023, Pet. App. 65a. Petitioner timely petitioned for a writ of certiorari on March 4, 2024. This Court granted the petition on October 4, 2024, and has jurisdiction under 28 U.S.C. 1254(1).

PROVISIONS INVOLVED

The full text of Federal Rules of Civil Procedure 41 and 60 is set forth in an appendix to this brief.

STATEMENT

A. Legal Background

Before the Federal Rules of Civil Procedure, federal courts applied the procedural law of the forum state in which they sat when they adjudicated nonequity cases, and applied the Federal Equity Rules in equity suits. See *Semtek Int'l Inc.* v. *Lockheed Martin Corp.*, 531 U.S. 497, 501 (2001) (discussing Conformity Act of June 1, 1872, ch. 255, § 5, 17 Stat. 196, 197); see also Stephen N. Subrin, *How Equity Conquered Common Law: The Federal Rules of Civil Procedure in Historical Perspective*, 135 U. Pa. L. Rev. 909, 914–26 (1987) (discussing historical development of Federal Rules).

To achieve uniformity in federal practice, Congress passed the Rules Enabling Act in 1934, which empowered this Court to write federal rules of civil procedure and evidence. 28 U.S.C. 2071, *et seq.*; see also Stephen B. Burbank, *The Rules Enabling Act of 1934*, 130 U. Pa. L. Rev. 1015 (1982). The federal rules were drafted and then adopted by order of this Court on December 20, 1937. *Orders Re: Rules of Procedure*, 302 U.S. 783 (1937). They were then transmitted to Congress on January 3, 1938, and took effect September 16, 1938.

One of the new rules adopted in 1937 was Rule 41(a)(1). "The purpose of [that rule] [was and] is to permit the plaintiff to dismiss an action voluntarily when no other party will be prejudiced." Wright & Miller, 9 Fed. Prac. & Proc. § 2362 (4th ed.).

Consistent with its purpose, the current text of Rule 41(a)(1)(A) provides that a plaintiff may "dismiss an action without a court order by filing[] (i) a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment; or (ii) a stipulation of dismissal signed by all parties who have appeared." No court order is needed; the plaintiff's notice is the sole requirement. See *Pedrina* v. *Chun*, 987 F.2d 608, 610 (9th Cir. 1993) (holding district court lacked authority to require Rule 41(a)(1) dismissal by motion rather than notice). Moreover, by default, "[u]nless the notice or stipulation states otherwise, the dismissal is without prejudice" (except where "the plaintiff previously dismissed any federal- or state-court action based on or including the same claim"). Fed. R. Civ. P. 41(a)(1)(B).

The Rules adopted in 1937 also included Rule 60(b). That rule now specifies that, "[o]n motion and just terms," a district court may "relieve a party or its legal representative from a final judgment, order, or proceeding." Fed. R. Civ. P. 60(b). (The word "final" was added in 1946.) Rule 60(b) also specifies the circumstances in which a district court may grant relief, such as "fraud" and "mistake, inadvertence, surprise, or excusable neglect," and "any other reason that justifies relief." This provision has "equitable roots," Elizabeth G. Porter, *Pragmatism Rules*, 101 Cornell L. Rev. 123, 139 (2015), and this Court has taken a "flexible approach" to interpreting and applying it. *Horne* v. *Flores*, 557 U.S. 433, 450 (2009) (Rule 60(b)(5) case) (quoting *Rufo* v. *Inmates of Suffolk County Jail*, 502 U.S. 367, 381 (1992)).

B. Factual And Procedural Background

1. In February 2020, Petitioner Gary Waetzig sued his former employer, Respondent Halliburton Energy Services, Inc., in the United States District Court for the District of Colorado, bringing a claim for wrongful termination in violation of the Age Discrimination in Employment Act. In response, Respondent asserted the claims were subject to arbitration. Rather than oppose Respondent's arbitration petition, Petitioner dismissed his federal case voluntarily in April 2020 by filing a notice of dismissal under Rule 41(a)(1)(A). This voluntary dismissal was Petitioner's first, meaning that, by default, it was without prejudice.

2. Petitioner then began an arbitration. Under the parties' arbitration agreement, (1) the arbitrator was to give ten calendar days' notice to the parties in advance of any "hearing;" (2) a "recording" of any hearing on the merits would be prepared; and (3) the arbitrator would provide a "brief statement of the essential findings of fact and conclusions of law on which the award is based." Pet. App. 40a–41a.

On May 28, 2021, the arbitrator scheduled a telephone conference with the parties five calendar days later, on June 2, 2021. Pet. App. 30a. When the conference commenced, the arbitrator announced she would hear oral arguments on Respondent's motion for summary judgment. *Ibid.* No recording of this hearing was made. *Id.* at 31a. On June 2 (the same day as the arbitration hearing), the arbitrator granted Respondent's summary-judgment motion without

providing any statement of the essential findings of fact or conclusions of law. *Ibid.*

3. In September 2021, Petitioner moved in the district court to reopen his case and to vacate the award. The district court issued an order to show cause as to whether the court had authority to consider Petitioner's motion, given that he had voluntarily dismissed it under Rule 41(a)(1)(A)(i). Pet. App. 51a.

After the parties briefed this issue, the district court held in January 2022 that it had authority to reopen Petitioner's case under Rule 60(b). Pet. App. 58a. The court began by noting that the Tenth Circuit had held that a voluntary dismissal with prejudice was a "final judgment," and believed the Tenth Circuit would apply the same reasoning to a dismissal without prejudice. Pet. App. 54a. It went on to explain that "the weight of the case law from other circuits that have considered whether a voluntary dismissal of a case without prejudice is a final proceeding within the meaning of Rule 60(b) have found that it is." *Ibid.* In that regard, the court observed that various circuit courts hold that stipulated dismissals under Rule 41(a)(1)(A)(ii) fall within the ambit of Rule 60(b), and that a voluntary dismissal by notice under Rule 41(a)(1)(A)(i) (like the one filed by Petitioner in this case) must do so as well, because both forms of dismissal "require no judicial action or approval, are effective automatically upon filing, and are presumptively without prejudice." Pet. App. 55a & n.3 (citation omitted). The district court was also

persuaded that Mr. Waetzig's notice of voluntary dismissal was "final" under Rule 60(b), based on the plain meaning of that term. Pet. App. 56a–58a.

Evaluating the merits of Petitioner's motion to reopen, the district court held that it was appropriate to exercise its discretion to grant Petitioner's motion under both Rule 60(b)(1) and 60(b)(6). Pet App. 59a.[1] In a subsequent opinion issued on August 3, 2022, the district court vacated the arbitration award on the basis that the arbitrator failed to abide by the parties' arbitration agreement and ordered further proceedings before a new arbitrator. Pet. App. 48a.

4. A divided panel of the Tenth Circuit reversed on the basis that the district court lacked authority to reopen Petitioner's case under Rule 60(b). Recognizing that its decision split from those of its sister circuits, the court held that, "[u]nder Federal Rules of Civil Procedure 41(a) and 60(b), a court cannot set aside a voluntary dismissal without prejudice because it is not a final judgment, order, or proceeding," Pet. App.

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[1] The district court found Rule 60(b)(1) applicable because "Plaintiff appears to have made a careless mistake when he dismissed the action . . . without moving to stay or administratively close the case." As an alternative ground, the court also cited Rule 60(b)(6), given this Court's intervening decision in *Badgerow* v. *Walters*, 596 U.S. 1 (2022). Pet. App. 60a; see also Pet. App. 62a (recognizing that Petitioner could not initiate a new action "due to the Supreme Court's holding in *Badgerow*," and because the applicable statute of limitations had now passed). The district court's exercise of discretion under Rule 60(b) is not in issue here, because it was not addressed by the Tenth Circuit below.

2a, and, consequently, "a voluntary dismissal without prejudice under Rule 41(a) divests the district court of subject-matter jurisdiction to consider a Rule 60(b) motion to reopen." Pet. App. 4a.

In reaching its decision, the majority trained its attention on the terms "final" and "proceeding," consulting contemporary dictionary definitions of the two terms and invoking two canons of construction (*ejusdem generis* and *noscitur a sociis*). Although it refused to provide these terms a definitive definition,[2] the court was "persuaded" that "a final proceeding must involve, at a minimum, a *judicial determination* with *finality*." *Ibid.* (first emphasis added). Under this construction, the court held that Mr. Waetzig's Rule 41 voluntary dismissal without prejudice lacked both a "judicial determination" and "finality." Pet. App. 18a. As such, the majority held that the district court lacked subject-matter jurisdiction to decide Mr. Waetzig's Rule 60(b) motion. *Id.* at 21a.

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[2] The court mused: "Perhaps 'final proceeding' is a catchall, covering anything that does not result in an order or judgment but still involves a final, burdensome judicial determination. And perhaps we will 'know it when [we] see it.' But we know that Mr. Waetzig's voluntary dismissal without prejudice is not it." Pet. App. 19a–20a (quoting *Jacobellis* v. *Ohio*, 378 U.S. 184, 197 (1964) (Stewart, J., concurring)).

SUMMARY OF ARGUMENT

I. The plain text makes clear that a voluntary dismissal under Rule 41(a)(1)(A) is a "final proceeding" under Rule 60(b) and, alternatively, that it is a "final judgment."

A. To begin, a notice of voluntary dismissal without prejudice, and the dismissal itself, are both "final" for Rule 60(b) purposes. When the word "final" was added to Rule 60(b), dictionaries defined "final" to mean something that is "[d]efinitive; terminating; completed; conclusive; last," and "generally contrasted [the term] with 'interlocutory.'" *Black's Law Dictionary* (3d ed. 1933). Notices of dismissal under Rule 41, and the dismissals themselves, meet this definition whether the dismissal is with or without prejudice, because they are case-terminating rather than "interlocutory."

B. A notice of voluntary dismissal under Rule 41(a) and the resulting dismissals are not merely "final," but they are also "*proceedings*" under Rule 60(b).

At the time Rule 60(b) was adopted, the term "proceeding" meant and included "all possible steps in an action from its commencement to the execution of judgment." *Black's Law Dictionary* (3d ed. 1933). "Proceeding" also carried the "more particular" meaning of "any application [made] to a court of justice, however made, for aid in the enforcement of rights, for relief, for redress or injuries, for damages, or for any remedial object." *Ibid.* A notice of voluntary

dismissal meets both definitions, because it is a step in the litigation process, and an application for relief.

This conclusion is reinforced by contextual canons of construction. The surplusage canon rebuts the Tenth Circuit's view that a "proceeding" requires a court order, because otherwise the use of the term "order" in Rule 60 would cover every possible "proceeding," rendering that term surplusage. The whole-text canon is in accord; the Rules use the term "proceeding" in other places to refer to steps in the litigation process that do not necessarily require a court order. The canon of *noscitur a sociis*, although invoked by the Tenth Circuit, also supports Petitioner; it confirms that Petitioner is employing the correct dictionary meaning (activity on the docket of a court). And the *ejusdem generis* canon, which the Tenth Circuit cited, is not relevant, because the term "proceeding" is not a "catchall" term qualified by the adjective "other," but is instead the third in a list of matters for which Rule 60(b) relief is available.

C. In the alternative, a Rule 41(a)(1)(A) dismissal is also a final "judgment" under Rule 60(b). The word "judgment" has a broad meaning under Rule 60(b), considering that judgments could be entered by a party—not only courts—at common law and in 1937. Consequently, a dismissal effectuated by way of Rule 41(a) counts as a judgment under these definitions. The definition of "judgment" in Federal Rule 54(a) further supports this interpretation, as do circuit court cases interpreting it.

II. The common law and other historical evidence confirm Petitioner's interpretation.

A. Before the adoption of the Federal Rules in 1937, every jurisdiction permitted plaintiffs to dismiss a lawsuit as of right in certain circumstances, sometimes without court order. In addition, courts had authority to relieve parties from final judgments, orders, and proceedings in certain circumstances, such as fraud or mistake. Moreover, in 1937, "the weight of authority" recognized that courts did have the power, "upon a proper showing," to modify voluntary dismissals and "reinstate the case" even if the dismissal was "without consent of [the] court." *Lusas* v. *St. Patrick's Roman Cath. Church Corp. of Waterbury*, 193 A. 204, 206 (Conn. 1937).

B. Nothing in the historical context suggests an intent to break with this settled practice. To the contrary, the 1937 Advisory Committee Notes state that Rule 60(b) was modeled on a California statute that California courts interpreted broadly, including to permit courts to reopen voluntarily dismissed proceedings. *Palace Hardware Co.* v. *Smith*, 66 P. 474, 476 (Cal. 1901). The rule-makers' selection of the California model shows their intent to bring with it the broad interpretation given by the California courts (which lines up with the weight of authority). See *Hall* v. *Hall*, 584 U.S. 59, 72–75 (2018). Nothing in the text or related Advisory Committee Notes suggest an intent to restrict court's authority contrary to that consensus, either in 1937 or at any time since.

Ibid. The Rules simplified and carried forward courts' traditional authority to reopen dismissed cases.

III. Reading Rule 60(b) to strip federal courts of authority to reopen cases that were voluntarily dismissed would frustrate the purposes and effectiveness of the Rules, including by creating a twilight zone between interlocutory and final matters where courts bizarrely would be powerless to correct mistakes and frauds. There is no indication that the Rules intended to deprive federal courts of their traditional authority to provide redress when, for example, an attorney dismissed an action without authority, or when dismissal was procured by fraud.

ARGUMENT

I. Courts Have Authority Under The Plain Text Of Rule 60(b) To Reopen Cases Voluntarily Dismissed Under Rule 41(a)(1)(A)

Rule 60(b) provides that, "[o]n motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding" if one of six circumstances is met, such as "mistake, inadvertence, surprise, or excusable neglect" (Rule 60(b)(1)), "fraud" (Rule 60(b)(3)), or "any other reason that justifies relief" (Rule 60(b)(6)).

The plain text of this Rule, construed according to ordinary principles of interpretation, clearly provides district courts with authority, in their discretion, to reopen cases dismissed without prejudice under Rule 41(a)(1). That is because the prior dismissal was "final," and both the request for the dismissal and the

dismissal itself were "proceedings" within the meaning of Rule 60(b). Alternatively, the prior dismissal was or resulted in a "final judgment." See *Nelson* v. *Adams USA, Inc.*, 529 U.S. 460, 465–66 (2000) (reading Federal Rule per its plain text).

A. Rule 41(a)(1)(A) Dismissals Are "Final" Within The Meaning Of Rule 60

The plain text of Rule 60(b) instructs that a notice seeking voluntary dismissal under Rule 41(a)(1), and the resulting dismissal itself, count as "final" under Rule 60(b), contrary to what the Tenth Circuit held.

1. Although Rule 60 was adopted in 1937, the word "final" was not added to the text of Rule 60(b) until 1946. See Rule 60 Advisory Committee Note—1946 Amendment. Neither the Federal Rules nor Rule 60's Advisory Committee Notes define the word "final," as used in the context of that Rule, but contemporaneous dictionary definitions make clear Rule 41(a)(1)(A) voluntary dismissals fall within the term's compass.

As the Tenth Circuit stated (Pet. App. 9a), *Black's Law Dictionary* defined "final" to mean "[d]efinitive; terminating; completed; conclusive; last." *Black's Law Dictionary* 779 (3d ed. 1933); see also *id.* 757 (4th ed. 1951) (using same words). Similarly, the 1937 edition of *Webster's Universal Dictionary of the English Language* defined "final" as "[t]hat which is the termination; the last," and noted that "*[f]inal* is applied to that which brings with it an end." *Id.* at 642 (also defining "final" as "[c]onclusive; decisive; determinative; as, a *final* judgment"). Both the Third

and Fourth Editions of *Black's Law* further specify that, "in jurisprudence, this word is generally contrasted with 'interlocutory.'" *Black's Law Dictionary* 779 (3d ed. 1933); *id.* 757 (4th ed. 1951).

Dictionary definitions thus instruct that the rule-makers, in qualifying the sorts of matters subject to modification under Rule 60(b) (*i.e.*, "judgment[s], order[s], or proceeding[s]") with the adjective "final," intended to distinguish case-"terminating" from "interlocutory" matters. *Black's Law Dictionary* (4th ed. 1951). This distinction makes sense: courts retained their historically broad authority to modify any interlocutory matter without regard to Rule 60(b), but the modification of a "final" (or case-terminating) matter was subject to Rule 60(b), and needed the sort of finding set forth therein (*e.g.*, fraud or mistake).

The 1946 Advisory Committee Note to Rule 60, although not providing a definition of the term "final," confirms that understanding. *Hall*, 584 U.S. at 72–73 ("Advisory Committee Notes are 'a reliable source of insight into the meaning of a rule'" (quoting *United States* v. *Vonn*, 535 U.S. 55, 64 n.6 (2002)). It provides: "The addition of the qualifying word 'final' emphasizes the character of the judgments, orders or proceedings from which Rule 60(b) affords relief; and hence interlocutory judgments are not brought within the restrictions of the rule, but rather they are left subject to the complete power of the court rendering them to afford such relief from them as justice requires."

2. The dictionary definitions of the word "final," considered in the proper context, including the

Advisory Committee Notes, lead to the conclusion that both a self-executing request for dismissal under Rule 41(a)(1) and the dismissal itself are "final" for Rule 60(b) purposes, whether that dismissal be by unilateral notice or joint stipulation, and whether the dismissal be with or without prejudice.

Regardless of those specifics, a Rule 41(a)(1) dismissal has the purpose and effect of terminating the action, and it is thus "final" in the way Rule 60 uses the word, because the case-terminating dismissal definitively ends a previously pending action. See *Yesh Music* v. *Lakewood Church*, 727 F.3d 356, 360 (5th Cir. 2013) ("A plain reading of 'final' [in Rule 60(b)] supports defining it as something which is practically 'finished,' 'closed,' or 'completed.'"). Indeed, in this case, when Petitioner noticed a voluntary dismissal, there was nothing left for Respondent or the court to do. The plain text of Rule 41(a)(1) made the dismissal effective without further action by anybody, and "without a court order." The case was over, as evidenced by the district court's loss of power to rule on most other case-related matters (like summary-judgment motions).

The fact that Petitioner's dismissal was without prejudice does not change the analysis. It is true that, during the limitation period, Petitioner could have refiled a new case that was still timely, but the newly filed case would have been exactly that—a new action, which would require new case-initiating documents, a new case number, and assignment to a judge. The case that was previously dismissed was finally terminated

by the filing of a notice and by operation of Rule 41, and the previously dismissed case still would be moribund even if a new case were filed. In no way could it be said that the case-dismissing notice was "interlocutory" as opposed to "final."

It is also worth noting that the law considers numerous other proceedings, orders, and judgments to be "final" for other purposes (such as appeal) although they are without prejudice. An order dismissing a case for lack of personal jurisdiction, for example, is without prejudice, but it is still final if it terminates the case (and thus may be appealed under the final-judgment rule). Focusing on whether a dismissal is with or without prejudice thus misses the mark; what is relevant is that the dismissal is case-terminating rather than "interlocutory." *Black's Law Dictionary* (4th ed. 1951); Rule 60 Advisory Committee Note—1946 Amendment.

3. The conclusion that Petitioner's Rule 41(a)(1) dismissal was "final" under Rule 60(b) is further supported by the pragmatic approach taken to interpreting Rule 60, in line with its equitable origin. See *Horne* v. *Flores*, 557 U.S. 433, 452 (2009) ("In addition to applying a Rule 60(b)(5) standard that was too strict, the Court of Appeals framed a Rule 60(b)(5) inquiry that was too narrow."); *White* v. *Nat'l Football League*, 756 F.3d 585, 596 (8th Cir. 2014) ("The Rule is designed to prevent injustice by allowing a court to set aside the unjust results of litigation.").

This Court has recognized in other contexts the need to construe "finality" flexibly and pragmatically,

explaining with respect to jurisdictional constraints that "the requirement of finality is to be given a 'practical rather than a technical construction.'" *Gillespie* v. *U.S. Steel Corp.*, 379 U.S. 148, 152 (1964) (quoting *Cohen* v. *Beneficial Indus. Loan Corp.*, 337 U.S. 541, 546 (1949)); *Bell* v. *New Jersey*, 461 U.S. 773, 779 (1983) ("Our cases have interpreted pragmatically the requirement of administrative finality, focusing on whether judicial review at the time will disrupt the administrative process.").

So too here. Reading the term "final" to exclude anything interlocutory—and thus to exclude only matters that remain subject to the court's inherent modification authority—is not just consistent with the dictionary definitions and the Advisory Committee Notes, but it also provides the word "final" a sensible reading in line with the Rule's equitable origin and purpose. Reading the word "final" as the Tenth Circuit did, as capturing only a *subset* of case-terminating matters, not only departs from dictionary definitions, but also would mean that certain docket activity would be neither subject to ongoing superintendence (as being interlocutory) nor to revisitation under Rule 60(b). That is much "too narrow" an ambit. *Horne*, 557 U.S. at 452. And it would be bizarre indeed for Rule 60(b) to create such a twilight zone. *Infra* at 46.

B. A Rule 41(a)(1) Dismissal Notice Counts As A "Proceeding" Under Rule 60

Notices of voluntary dismissal under Rule 41(a), and the resulting dismissals, are not merely "final,"

they are also "*proceeding*[*s*]" under Rule 60(b), meaning that a court has authority to "relieve a party or its legal representative" from a notice filed by a plaintiff, and the dismissal itself.

1. When Rule 60(b) was first adopted in 1937, the word "proceeding" meant, "[i]n a general sense, the form and manner of conducting juridical business before a court or judicial officer; regular and orderly progress in form of law; including all possible steps in an action from its commencement to the execution of judgment." *Black's Law Dictionary* (3d ed. 1933). As the decision below recognized, contemporaneous dictionary definitions also included "more particular" definitions, one of which defined "proceeding" to include "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." *Black's Law Dictionary* (3d ed. 1933); *id.* (4th ed. 1951); see also *Webster's New International Dictionary of the English Language* 1710 (1930) (defining "proceeding" as "[a]ny step or act taken in conducting litigation," and "[t]he course of procedure in an action at law").

Contemporaneous court decisions defining the term were in accord. One explained that "[t]he term 'proceeding,' as applied to suits, means any step or measure taken in the prosecution or defense of an action." *Millar* v. *Whittington*, 105 S.E. 907, 908 (W. Va. 1921). And it held, therefore, that "the filing of [a] bill in this cause was a proceeding taken in the cause." *Ibid.* Ohio's high court instructed that

"'[p]roceeding' is a term of much broader signification than either suit or action," and "include[s] all methods of invoking the action of courts and embrace[s] any controversy which may or may not rise to the dignity of a suit or action." *Ruch* v. *State*, 146 N.E. 67, 71 (Ohio 1924). The Supreme Court of Georgia put it similarly: posing the question, "[w]hat is a proceeding?" it answered, "[s]ome act, or acts, done in furtherance of the enforcement of an existing right, real or imaginary." *Coca-Cola Co.* v. *City of Atlanta*, 110 S.E. 730, 733 (Ga. 1922). It added "[a] proceeding may be by petition in a court of competent jurisdiction or it may be by a summary remedy prescribed by statute." *Ibid.*[3]

2. These contemporaneous definitions confirm that the word "proceeding" captures any step by a party or the court in the course of litigation, and that the term thus encompasses a notice effectuating dismissal of a case under Rule 41(a)(1)(A), and the dismissal itself, meaning that courts do have the authority to "relieve" a party from them under Rule 60(b).

A notice of voluntary dismissal under Rule 41(a)(1)(A) is a "step[] in an action" between "commencement [and] execution," thus falling within the general definition of the term recited by *Black's*

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[3] As further explained below (pp. 30, 39–41), the text of Rule 60(b) was drawn from a provision of California law that also spoke of relief from a "judgment, order, or proceeding," and California courts both (a) adopted the broad reading of the term "proceeding" set forth in the text, and (b) allowed relief from voluntary notices of dismissal. This further confirms Petitioner's textual reading is the correct one.

Law Dictionary (3d ed. 1933), and court decisions from that time. Reading Rule 60(b)'s reference to "proceeding" consistent with this broad definition to mean any activity on the docket whether by a party or the court (other than those that are interlocutory, given the "finality" modifier, see *supra* at 12–16) also conforms to the equitable nature and purpose of the Rule, which is to confirm the judicial authority to relieve parties from what transpired in the judicial process, provided the grounds for relief are met (*e.g.*, fraud or mistake).

Beyond that, a self-executing Rule 41(a)(1)(A) notice automatically resulting in dismissal also falls within the definition of "proceeding" that the court below called narrower, because it is an "application to a court," *Black's Law Dictionary* 1431 (3d ed. 1933), or a "method[] of invoking the action of [a] court[]," *Ruch*, 146 N.E. at 71. Indeed, an "application" includes both "[t]he thing applied" (*i.e.*, the voluntary dismissal as applied to a court's docket) and "[t]he act of making request of soliciting." *Webster's Universal Dictionary of the English Language* 84 (1937). A Rule 41 notice (or stipulation) of voluntary dismissal meets the narrower dictionary definition of "proceeding," because it is a request made to the court, one given immediate effect by operation of Rule 41(a)—upon docketing by the court's clerk—without further action by a judge.

3. Contextual canons are in accord. The canon against surplusage thus supports the conclusion that a notice of voluntary dismissal is a "proceeding" under

Rule 60(b), and counsels against the Tenth Circuit's view that judicial action is needed for non-interlocutory docket activity to count as a final proceeding. Indeed, reading "proceeding" broadly to capture any docket activity, including any application, whether or not it results in or includes judicial action, "gives effect to every clause and word of [Rule 60(b)]," in contrast to the decision below, which does not. *Marx* v. *Gen. Revenue Corp.*, 568 U.S. 371, 385 (2013). This is because, by requiring a "judicial determination" for there to be a "proceeding," the decision below gives that word the exact same office as the term "order."

Petitioner's interpretation finds further support in the canon that courts usually construct a word used in various parts of a scheme in the same way. *E.g.*, *Turkiye Halk Bankasi A. S.* v. *United States*, 598 U.S. 264, 275–76 (2023) (considering 28 U.S.C. 1604 "alongside its neighboring FSIA provisions"); *Powerex Corp.* v. *Reliant Energy Servs.*, 551 U.S. 224, 232 (2007) ("A standard principle of statutory construction provides that identical words and phrases within the same statute should normally be given the same meaning."). Consider first Rule 60(c)(1): it prescribes "[a] motion under Rule 60(b) must be made . . . no more than a year after the *entry* of the judgment or order or the *date* of the proceeding." Fed. R. Civ. P. 60(c) (emphases added). This confirms that unlike orders and judgments, which are *entered* by a court, "proceedings" within the meaning of Rule 60 may occur as the case progresses *without* being so entered.

Moreover, the term "proceeding" is consistently used elsewhere in the Rules to include party filings not requiring court intervention, and there is no reason to interpret "proceeding" in Rule 60(b) differently. Rule 62(a), for example, provides that "execution on a judgment and *proceedings to enforce it* are stayed for 30 days after its entry." (emphasis added). Plainly, a stay of judgment-enforcement "proceedings" halts all applications and actions, including those made by parties, such as discovery requests. That is indeed the entire purpose of Rule 62. See *Fish Mkt. Nominee Corp.* v. *Pelofsky*, 72 F.3d 4, 6 (1st Cir. 1995) (discussing how Rule 62 "stays proceedings to *enforce* the judgment, for example, discovery to determine the location of a judgment debtor's property available to satisfy the judgment"). There are other examples of the Rules using the term "proceedings" to refer to steps taken by parties, not just judicial action. *E.g.*, Fed. R. Civ. P. 37(b)(2)(A)(iv) ("stay[] [of] further proceedings"); Fed. R. Civ. P. 41(d) ("stay" of "proceedings").

The court below invoked the canon of *noscitur a sociis* to deprive the district court of its reopening authority. This was error.

To the extent it applies, the *noscitur a sociis* canon actually supports Petitioner. It "teaches that a word is 'given more precise content by the neighboring words with which it is associated.'" *Fischer* v. *United States*, 603 U.S. 480, 487 (2024) (quoting *United States* v. *Williams*, 553 U.S. 285, 294 (2008)). Cf. *Babbitt* v. *Sweet Home Chapter of Communities for a Great*

Oregon, 515 U.S. 687, 702 (1995) (reversing decision improperly applying canon to give term "essentially the same function as other words . . . thereby denying it independent meaning"). Here, the word "proceeding" *is* being read in the context of its neighbors, in that the correct definition—which *does* capture notices of voluntary dismissals (and resulting dismissals)—refers to activity on the docket of a court that terminate an action, just like orders and judgments. In other words, the canon appropriately is used to reject inapt definitions of the word "proceeding." See *ibid.* (rejecting circuit court's application of *noscitur a sociis* and applying that maxim to conclude different definition is correct).

4. In light of the foregoing, it is unsurprising that this Court has suggested in dicta that "merely reopening" a voluntarily dismissed suit via Rule 60(b) is proper. *Kokkonen* v. *Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 378 (1994). It is equally unsurprising that multiple circuit courts instruct that a notice of voluntary dismissal under Rule 41(a)(1) is a "proceeding," whether or not judicial action was taken. The Third Circuit thus held that the "dismissal of [a] suit was . . . a proceeding" that could be modified. *Williams* v. *Frey*, 551 F.2d 932, 935 (3d Cir. 1977), *abrogated on other grounds by Torres* v. *Oakland Scavenger Co.*, 487 U.S. 312 (1988); see also *Redman* v. *United States*, 2023 WL 8519210, at *2 (3d Cir. Dec. 8, 2023) (per curiam) ("Where, as here, a notice of voluntary dismissal has taken effect, the district court retains the authority to exercise its discretion to

reinstate the voluntarily dismissed complaint under Federal Rule of Civil Procedure 60(b).").

So too did the Fifth Circuit in *Yesh Music* v. *Lakewood Church*, concluding that "a Rule 41(a)(1)(A) voluntary dismissal without prejudice qualifies as a 'final proceeding,'" citing "extensive circuit cases." 727 F.3d at 362–63 ("Because stipulated dismissals are no more 'final' than unilateral dismissals, nor do they require any more judicial intervention, it would be anomalous to call the former a 'final proceeding' while insisting that the latter is not.").

And the federal courts are not alone. As one state's highest court held: "Surely, a voluntary notice of dismissal is *something*, it doesn't exist in limbo. We conclude that it is indeed a 'proceeding.'" *Miller* v. *Fortune Ins. Co.*, 484 So. 2d 1221, 1224 (Fla. 1986). In reaching that conclusion, the court explained that the "list of items for which relief may be granted under subsection (b) [of Fla. R. Civ. P. 1.540, the equivalent to Rule 60(b),] appears to be an attempt to cover *exhaustively* all actions which may be taken by the court or the parties. There was no intent by this Court in promulgating the rule to expressly exclude voluntary dismissals[.]" *Ibid.*; see also *Walker Bros. Inv., Inc.* v. *City of Mobile*, 252 So. 3d 57, 63–64 (Ala. 2017) (citing *Yesh Music*, 727 F.3d at 361–62); *Confederated Tribes & Bands of Yakama Nation* v. *Okanogan County*, 16 Wash App. 2d 1030 (2021).

5. Against all of this, the Tenth Circuit invoked the *ejusdem generis* canon, but reliance on that maxim was "misplaced." *Harrison* v. *PPG Indus., Inc.*, 446

U.S. 578, 588 (1980). As 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 other words, "[t]he rule of *ejusdem generis* is no more than an aid to construction and comes into play only when there is some uncertainty as to the meaning of a particular clause in a statute." *United States* v. *Turkette*, 452 U.S. 576, 581 (1981). Here, there is no such uncertainty, because the term is unambiguous, as discussed.

Moreover, the canon of *ejusdem generis* applies only to "a general or collective term at the end of a list of specific items," instructing that a broad term "is typically controlled and defined by reference to the specific classes . . . that precede it." *Fischer*, 603 U.S. at 487 (cleaned up; collecting cases). But the word "proceeding" here is the third in a list, and is not qualified by the adjective "other." *Friel* v. *Alewel*, 298 S.W. 762, 764 (Mo. 1927) ("Plaintiffs aver that, to the words, 'no suit, action or proceeding,' found in section 1320, the rule *ejusdem generis* is applicable, because the word 'proceeding' synonymizes with the preceding words, 'suit, action.' We are unable to agree that the rule is apposite, for the word 'proceeding,' as used in the statute, is not inferentially limited to the preceding class by the use of some qualifying adjective, such as 'other,' but the word 'proceeding' was intended to refer to a course of action independent of a suit or action, filed in a court of equity or law, to foreclose."). Cf. *Harrington* v. *Purdue Pharma L. P.*,

144 S. Ct. 2071, 2082 (2024) (interpreting catchall term, "any other appropriate provision not inconsistent with the applicable provisions of this title"); *Epic Sys. Corp.* v. *Lewis*, 584 U.S. 497, 512 (2018) (interpreting "catchall term," "other concerted activities for the purpose of . . . other mutual aid or protection.").

The canon's inapplicability is further confirmed by Rule 60(b)'s use of the disjunctive: "judgment, order, *or* proceeding." The fact that a "phrase is disjunctive" counsels against application of *ejusdem generis*. *Ali* v. *Fed. Bureau of Prisons*, 552 U.S. 214, 225 (2008) ("The structure of the phrase 'any officer of customs or excise or any other law enforcement officer' does not lend itself to application of the canon.").[4]

C. Alternatively, A Rule 41(a)(1) Dismissal Is A "Judgment"

In the alternative, the decision below can and should also be reversed because a Rule 41 dismissal counts not just as a "proceeding" but also as a "judgment" within Rule 60(b)'s compass. See *Uhe* v. *Chicago, M. & St. P. Ry. Co.*, 54 N.W. 601, 602 (S.D. 1893) ("The word 'proceedings,' in a judicial sense, is

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[4] The decision below also cited Rule 60's title, Pet App. 10a, but "[a] title will not, of course, 'override the plain words' of a statute" or rule. *Dubin* v. *United States*, 599 U.S. 110, 121 (2023) (quoting *Fulton* v. *City of Philadelphia*, 593 U.S. 522 (2021)); see also *Fla. Dep't of Revenue* v. *Piccadilly Cafeterias, Inc.*, 554 U.S. 33, 47 (2008) ("To be sure, a subchapter heading cannot substitute for the operative text of the statute.").

much more comprehensive than that of 'judgment;' the former very frequently including the latter.").[5]

1. The word "judgment" has a broad meaning under Federal Rule 60(b). At the time Rule 60(b) was adopted, the word referred, "[i]n practice," to "[t]he official and authentic decision of a court of justice upon the respective rights and claims of the parties to an action or suit therein litigated and submitted to its determination." *Black's Law Dictionary* (3d ed. 1933). But it was not so limited.

At common law and in 1937, judgments could be "based upon the admissions or confessions of one only of the parties." *Black's Law Dictionary* (3d ed. 1933). *Black's* gave examples. Among them was when "the plaintiff says he 'will not further prosecute his suit'" (*nolle prosequi*) or "where, after appearance and before judgment, the plaintiff voluntarily enters upon

[5] The decision below stated that "no one assert[ed] that we have a 'final judgment,'" Pet. App. 7a, but that is incorrect. The district court in this case concluded that Petitioner's Rule 41(a) dismissal was either a final judgment or final proceeding (Pet. App. 54a, 56a); Respondent appealed, arguing that "a voluntary dismissal without prejudice is neither final nor a judgment, order or proceeding," Halliburton-CA-10-Br. 16–17; and Petitioner in his appellee brief argued otherwise, citing *Schmier* v. *McDonalds LLC,* 569 F.3d 1240, 1242 (10th Cir. 2009), where the Tenth Circuit had held that a voluntary dismissal was a "judgment." Waetzig-CA10-Br. 33–34. Regardless, the Tenth Circuit held that "[u]nder Federal Rules of Civil Procedure 41(a) and 60(b), a court cannot set aside a voluntary dismissal without prejudice because *it is not a final judgment*, order, or proceeding." Pet. App. 2a (emphasis added). This pure question of law—which is made in the alternative—is thus properly presented in this case (and is clearly encompassed within the question presented).

the record that he 'withdraws his suit,'" (*retraxit*), "whereupon judgment is rendered." *Ibid.* Alternatively, a plaintiff may "find[] he has misconceived his action" and then "obtain[] leave from the court to *discontinue*, on which there is a judgment against him and he has to pay costs; but he may commence a new action for the same cause." *Ibid.* These were all judgments, as they terminated cases, whether with or without prejudice. *Ibid.*

2. Dismissal effectuated by way of a Rule 41(a) notice or stipulation counts as a judgment under these definitions, and courts may relieve parties from their effect. Thus, although Rule 41(a)(1) dispensed with the need for a court order in certain circumstances, the Rule makes clear that the simple act of filing specified requests addressed to the court (a notice or stipulation) does result in dismissal, and that the effect on the parties' rights is the same, by operation of law, as if a court entered an order. It is a judgment as defined in *Black's Law Dictionary* (3d ed. 1933).

It is error to conclude that judicial action is needed to have a "judgment." Consider that if the plaintiff's filing is the second notice, Rule 41(a)(1)(B) instructs, the "notice of dismissal operates as an adjudication on the merits." Clearly, a notice operating as a merits adjudication is functionally a judgment, and the fact that the dismissal occurred without judicial action does not change the analysis. Thus, contrary to what the Tenth Circuit held, a district court's ability to reopen a dismissal cannot turn on whether dismissal was effectuated by motion seeking a court order or by

self-executing notice or stipulation. And, as further noted, a dismissal still has the requisite "finality" even if it is without prejudice—because it is case-terminating and not interlocutory. *Supra* at 12–16.

Rule 54(a)'s definition of the term "judgment" further supports reversal. Rule 54(a) prescribes that the term "'[j]udgment' as used in these rules *includes* a decree and any order from which an appeal lies. A judgment should not *include* recitals of pleadings, a master's report, or a record of prior proceedings." (emphasis added). The use of the word "includes" in Rule 54 (rather than "is") means that Rule 54 should be interpreted broadly consistent with dictionary definitions—thus including dismissals obtained by request of the plaintiff—although at minimum the term includes the specific matters set forth in Rule 54(a). See *United States* v. *Whiting*, 165 F.3d 631, 633 (8th Cir. 1999) ("When a statute uses the word 'includes' rather than 'means' in defining a term, it does not imply that items not listed fall outside the definition."); *Keith Mfg. Co.* v. *Butterfield*, 955 F.3d 936, 940 (Fed. Cir. 2020) ("Rule 54 'judgment' includes more than just appealable orders.").

3. Given the definitions in relevant dictionaries and Rule 54, and the fact a Rule 41(a)(1)(A) dismissal brings litigation to a conclusion like any other final judgment, it is no surprise that several courts have deemed notices of voluntary dismissals under Rule 41(a)(1) to be judgments under Rule 60(b). The Tenth Circuit itself had so likewise, in a case cited to the court below. *Schmier* v. *McDonald's LLC*, 569 F.3d

1240, 1242 (10th Cir. 2009) (notice of voluntary dismissal with prejudice is "a 'final judgment'" despite there being no court order, and, "[l]ike other final judgments, a dismissal with prejudice under Rule 41(a)(1)(A)(i) can be set aside or modified under Federal Rule of Civil Procedure 60(b)"). So had the D.C. Circuit, concluding in *Randall* v. *Merrill Lynch*, that a party's second voluntary dismissal is a Rule 60(b) "judgment" for it "operated as an adjudication on the merits." 820 F.2d 1317, 1320 (D.C. Cir. 1987).

Similarly, the Eighth Circuit in *White* v. *Nat'l Football League* held that a stipulated dismissal was a judgment under Rule 60(b), taking note of Rule 54's expansive compass and explaining that "the concerns that underlie Rule 60(b) are equally as present after a stipulated dismissal as they are after a court-ordered end to litigation." 756 F.3d 585, 596 (8th Cir. 2014). None of the dismissals involved any action by the court, just the filing of a notice or stipulation by the parties, and yet they were deemed "judgments" subject to reopening.

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In sum, a Rule 41(a)(1)(A) dismissal counts as "final" within the meaning of Rule 60(b), and it also counts as a "proceeding," or else a "judgment."

II. History And Design Confirm That Courts Have The Power To Reopen Or Set Aside Rule 41(a)(1) Dismissals Under Rule 60(b)

The context of Rule 41 and 60(b)'s adoption confirms what their text makes clear: federal courts have authority to reopen cases voluntarily dismissed without prejudice. Indeed, courts generally had that authority at the time the Federal Rules were first adopted, and Rules 41 and 60 did not abrogate that power. See *Krupski* v. *Costa Crociere S. p. A.*, 560 U.S. 538, 548–49, 553–54 (2010) (interpreting Rule 15 in light of its text, purpose, and history, including Advisory Committee Notes). Quite the contrary: Rule 60(b) was modeled on a California statute interpreted by California courts to provide just that authority.

The Court's unanimous decision in *Hall* v. *Hall* is accordingly instructive. There, the Court noted that Rule 42(a) was "expressly modeled" on a "statutory predecessor" given authoritative meaning by this Court. 584 U.S. at 72–73. The Rules gave the term at issue there ("consolidate") "no definition," but the Court explained in *Hall* that they "presumably carried forward the same meaning we had ascribed" the term in the statute that served as a model. *Id.* at 73. After all, the Court explained, "[n]o sensible draftsman, let alone a Federal Rules Advisory Committee, would take a term . . . and silently and abruptly reimagine [it] to mean" something new. *Id.* at 75. The same is true here, although Rule 60(b) was taken from a California statute interpreted by California's courts. Those courts' interpretation was carried forward.

A. In 1937, Courts Had Recognized Authority To Reopen Voluntarily Dismissed Cases

Adopted in 1937 and made effective in 1938, Federal Rules 41 and 60 replaced a prior mix of state procedures and equity rules governing federal-court cases. In line with the Rules Enabling Act, they should be interpreted consistent with the context of their adoption. *Semtek*, 531 U.S. at 503 (avoiding interpretation of Rule 41(b) "arguably violat[ing] the jurisdictional limitation of the Rules Enabling Act"). That is particularly because they were intended to reflect "expansive and flexible aspects of equity." Subrin, *supra*, 135 U. Pa. L. Rev. at 922.

Here, the context is particularly salient, because it confirms that, at the time the Rules were adopted, plaintiffs had authority to terminate cases without court order, and that courts had authority to reopen cases terminated in that fashion on grounds now recognized in Rule 60(b) (such as fraud, mistake, etc.).

1. Consider first the practice concerning voluntary dismissals as of Rule 41(a)(1)'s adoption. At common law and under state statutes generally in place when the Federal Rules were first adopted, "dismissals or nonsuits as a matter of right [were often allowed] until the entry of the verdict." *Cooter & Gell* v. *Hartmarx Corp.*, 496 U.S. 384, 397 (1990).

Plaintiffs indeed had overlapping mechanisms to obtain dismissal of their own case—"nonsuit," "discontinuance," and voluntary "dismissal." See P.M.L. (Note), *The Right of a Plaintiff to Take a*

Voluntary Nonsuit or to Dismiss His Action Without Prejudice, 37 Va. L. Rev. 969, 969 n.1 (1951) ("P.M.L. Note"); Neal C. Head, *The History and Development of Nonsuit*, 27 W. Va. L.Q. 20, 20 (1920) (explaining that at common law, "the consent of the judge [was] necessary" to voluntarily discontinue an action, "while a nonsuit was a matter of right").

By the 1930s, although some jurisdictions permitted dismissals only "upon order of the court," many others had procedures, established through state statutes or otherwise, permitting parties to dismiss cases without any judicial intervention save a court clerk's docketing of the dismissal in the court's records. See *Lusas* v. *St. Patrick's Roman Cath. Church Corp. of Waterbury*, 193 A. 204, 206 (Conn. 1937) (collecting authority); *In re Matthiessen's Est.*, 52 P.2d 248, 249 (Cal. Ct. App. 1935) ("[A] party may dismiss by written request to the clerk filed with the papers in the case and . . . when this request is entered *by the clerk* it is effective for all purposes. Obviously such a dismissal does not require an order of the court." (emphasis in original)); *Davenport* v. *Hardman*, 192 S.E. 11, 12 (Ga. 1937) ("Where the answer of the defendant is purely defensive, the plaintiff may dismiss his action, either in term or vacation, without any leave or order of the court.").[6]

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[6] See also *Siegfried* v. *New York, L.E. & W.R. Co.*, 34 N.E. 331, 332 (Ohio 1893) (discussing how statute permitted "plaintiff [to] voluntarily dismiss his action" and "dismissal by the plaintiff involves no action of the court"), *superseded by statute as stated*, *Frysinger* v. *Leech*, 512 N.E.2d 337 (Ohio 1987); *Shreveport Long*

At the same time, most jurisdictions did limit the circumstances where such a dismissal was appropriate without court order, a limit later reflected in Rule 41. *E.g.*, *In re Skinner & Eddy Corp.*, 265 U.S. 86, 93–94 (1924) (voluntary dismissal not appropriate where "the cause has proceeded so far that the defendant is in a position to demand on the pleadings an opportunity to seek affirmative relief and he would be prejudiced by being remitted to a separate action"); *Lusas*, 193 A. at 205–06 (requiring cause to withdraw a case upon "commencement of a hearing upon the merits"). As reflected *supra* and *infra*, this limitation on the circumstances where dismissals could be obtained without leave was carried into Rule 41.

2. Next, consider the judicial authority now reflected in Rule 60(b). At the time of the Rules' adoption, the common-law rule instructed that courts enjoyed and retained effectively "plenary power" over their dockets before "the expiration of the term," and also retained some set-aside powers thereafter. James Wm. Moore & Elizabeth B.A. Rogers, *Federal Relief from Civil Judgments*, 55 Yale L.J. 623, 627 (1946).

Thus, it was well settled that courts enjoyed broad power to modify or set aside final court orders,

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Leaf Lumber Co. v. *Jones*, 177 So. 593, 594 (La. 1937) ("The motion to discontinue takes effect the moment it is filed, without an order of dismissal by the court."); *Graham* v. *Superior Mines*, 49 P.2d 443, 444 (Mont. 1935) ("[T]he usual procedure for obtaining a dismissal . . . consists in filing with the clerk a praecipe for the dismissal of the action and directing the clerk to enter dismissal on the register of actions. . . . In such a case the dismissal is complete upon entry in the clerk's register.").

judgments, or proceedings "during the term at which rendered." *Occidental Life Ins. Co.* v. *Niendorf*, 44 P.2d 1099, 1102 (Idaho 1935); see also *United States* v. *Benz*, 282 U.S. 304, 306 (1931) (describing this power as the "general rule"). As one federal court explained: "The rule applicable to final judgments and decrees is well known and of constant application. When a final judgment is entered, it may be vacated during the judgment term. However conclusive in its character, it is still under the control of the trial court, and may be amended, suspended, or vacated at any time up to the close of that term, but not afterwards, unless in some way carried over by proceedings during the judgment term." *Storey* v. *Storey*, 221 F. 262, 263 (W.D. Wis. 1915); *Pestana* v. *State*, 762 S.E.2d 178, 181 (Ga. 2014) ("The plenary control of the court over orders and judgments during the term at which they were rendered extends to all orders and judgments[.]"); *Lacey* v. *Citizens' Lumber & Supply Co.*, 248 N.W. 378, 378 (Neb. 1933) (same).

Even after a court's term ended, courts retained a reservoir of authority to revisit closed cases, under a variety of legal and equitable doctrines. "From the beginning there has existed along side the term rule a rule of equity to the effect that under certain circumstances, one of which is after-discovered fraud, relief will be granted against judgments regardless of the term of their entry." *Hazel-Atlas Glass Co.* v. *Hartford-Empire Co.*, 322 U.S. 238, 244 (1944). In addition, "courts of common law . . . at a subsequent term ha[d] power to correct inaccuracies in mere matters of form, or clerical errors, and, in civil cases,

to rectify such mistakes of fact as were reviewable on writs of error *coram nobis*, or *coram vobis*, for which the proceeding by motion is the modern substitute." *United States* v. *Mayer*, 235 U.S. 55, 67 (1914).[7]

"[A]lthough the precise relief obtained in a particular case by use of these ancillary remedies is shrouded in ancient lore and mystery," Rule 60 Advisory Committee Note—1946 Amendment, those remedies were well recognized when Rule 60 was first adopted, and courts undoubtedly had and were then given authority to permit reopening for equitable reasons. See *Preveden* v. *Hahn*, 36 F. Supp. 952, 953–54 (S.D.N.Y. 1941) (granting motion to vacate judgment based on attorney entering stipulation without party's authority); Theodore R. Mann, *History and Interpretation of Federal Rule 60(b) of the Federal Rules of Civil Procedure*, 25 Temp. L.Q. 77 (1951) (discussing 1946 amendment to Rule 60(b)).

3. Putting together the predecessor lines of authority later codified into Rule 41(a)(1) and Rule 60(b), "the weight of authority" in the 1930s was clearly recognized to grant courts the power, "upon a proper showing," to modify voluntary dismissals and "reinstate the case," even "where the parties have a right without consent of court to withdraw or voluntarily dismiss the case." *Lusas*, 193 A. at 206

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[7] See Lester B. Orfield, *Writ of Error Coram Nobis*, 8 Ind. L.J. 247, 247–48 (1933) (discussing relationship between writs of *coram nobis* and writs of *coram vobis*).

(collecting cases). As one state supreme court then put it before the enactment of the Federal Rules:

> Were an order of court necessary to render efficacious the dismissal, the court's power to vacate and set aside its own order cannot be gainsaid. It would be strange indeed, if the right given the plaintiff, unaided by the court, to dismiss an action, should deprive the court of its power to inquire into the means by which the stipulation was obtained, and which it would have but for the statute.

Harjo v. *Black*, 153 P. 1137, 1138 (Okla. 1915) (setting aside voluntary dismissal filed without court intervention).

And so, courts did exercise their authority to reopen cases that were voluntarily dismissed, even those dismissed without court order and without prejudice. *E.g.*, *Commonwealth, to Use of Beckingham* v. *Magee*, 73 A. 346, 346 (Pa. 1909) (reinstating voluntarily dismissed action); *Jackson* v. *Waldron*, 5 F. 245, 246–47 (C.C.W.D. Tenn. 1880) ("We have no statute in Tennessee authorizing a court to set aside a voluntary nonsuit, but it is the constant practice to do it."); *Willard* v. *Wood*, 1 App. D.C. 44, 55 (App. D.C. 1893), *aff'd*, 164 U.S. 502 (1896) ("[I]t has been held that after a voluntary dismissal of a bill by the

plaintiff, he will not be allowed to reinstate it, unless it be shown that there was surprise or mistake.").[8]

Courts reopened voluntarily dismissed cases in many circumstances. One recurring scenario was where attorneys withdrew a case without the consent of their client. *E.g.*, *Ryan* v. *Phoenix Ins. Co. of Hartford, Conn.*, 215 N.W. 749, 750 (Iowa 1927) (noting exception to general rule that a voluntary nonsuit "terminates the jurisdiction of the court" when "the order of dismissal was by counsel without authority to do so"); *S. Grocery Stores* v. *Cain*, 173 S.E. 256, 256 (Ga. 1934) (affirming judgment that reinstated case where "entry of dismissal of the case was made by a person who had no authority to dismiss the case for and in behalf of the plaintiff"); *Ross* v. *Eagle Coal Co.*, 36 S.W.2d 48, 49 (Ky. 1931) ("court did not abuse a sound discretion in setting aside the

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[8] See also *Reaume* v. *Carpenter*, 89 N.W. 953, 954 (Mich. 1902) (setting aside nonsuit to which plaintiff submitted even though the statute of limitations had passed because "[i]t seems to [the court] unjust . . . that the negligence of plaintiff or her counsel should cost plaintiff her entire right of action"); *Zimmerman* v. *Western Builders' & Salvage Co.*, 297 P. 449, 450 (Ariz. 1931) ("It is the general rule of law that it is discretionary with the trial court to reinstate an action previously dismissed."); *Link* v. *Anselm*, 1910 WL 3096, at *1 (Pa. Com. Pl.), *aff'd sub nom. James H. Link Mach. Co.* v. *Cont'l Tr. Co.*, 75 A. 985 (Pa. 1910) (similar); *Hoodless* v. *Winter*, 16 S.W. 427, 428 (Tex. 1891) ("It will not unfrequently happen that the party who takes the nonsuit should be relieved from its effect upon a timely application, upon such terms as the court may in its discretion impose, and as may be proper to promote the ends of justice.").

order" of dismissal obtained by attorney who lacked authority).

Fraud was another recurring circumstance cited by courts in reopening cases that were voluntarily dismissed. For instance, in *Thompson* v. *Bay Circuit Judge*, the Supreme Court of Michigan issued a per curiam opinion unequivocally stating that if a "discontinuance" (*i.e.*, a voluntary dismissal) "was obtained fraudulently, we think the court might set the same aside on motion and proper showing." 101 N.W. 61, 61 (Mich. 1904). Other courts agreed. *E.g.*, *National Power & Paper Co.* v. *Rossman*, 142 N.W. 818, 820 (Minn. 1913) (affirming vacatur of dismissal by stipulation signed by the parties on ground court "has undoubted jurisdiction to vacate a dismissal in such a case" due to collusion and fraud).

B. The Rules Adopted Existing Practice And Maintained Courts' Authority To Reopen Voluntarily Dismissed Cases

When Congress enacts new statutes, this Court does not "lightly assume" that it "'intended to depart from established principles' such as the scope of a court's inherent power." *Chambers* v. *NASCO, Inc.*, 501 U.S. 32, 47 (1991) (quoting *Weinberger* v. *Romero–Barcelo*, 456 U.S. 305, 313 (1982)). The same goes for the Federal Rules. This Court requires a "clear[] expression of purpose" to conclude that a federal rule "was intended to abrogate" a "long . . . unquestioned" power. *Link* v. *Wabash R. Co.*, 370 U.S. 626, 631–32 (1962); see also *Hall*, 584 U.S. at 72–73.

Nowhere do the Federal Rules indicate that they intended to derogate from the traditional power of the courts, detailed above in Section II.A, to reopen cases that were dismissed without court order—when warranted on the basis of fraud, mistake, or the like—and instead there is every indication that the Rules retained the prior judicial authority.[9]

1. Most tellingly, the drafters indicated by their choice of locution for Rule 60(b) that they *did* intend to authorize reopening of cases dismissed voluntarily.

The Advisory Committee Notes to the original Rule 60 identify the source of Rule 60(b): "[t]his section is based upon Calif. Code Civ. Proc. (Deering, 1937) § 473." In turn, that provision of California law allowed California courts, "upon such terms as may be just, [to] relieve a party or his legal representatives from a judgment, order, or other proceeding taken against him through his mistake, inadvertence, surprise or excusable neglect." *Palace Hardware*, 66 P. at 476 (quoting Calif. Code Civ. Proc. § 473). This is the same power federal courts have had under Rule 60(b) since 1938.

The California rule was "liberally construed" by California courts. *Ibid.*; *Stonesifer* v. *Kilburn*, 29 P.

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[9] This principle applies whether the Court views the question as one of subject-matter jurisdiction, as the Tenth Circuit did, or one involving a non-jurisdictional question about federal courts' authority under Rule 60(b). To the extent Rule 60(b) implicates a court's subject matter jurisdiction, however, it is even more obvious that jurisdiction-stripping by implication should not be permitted. See *Jones* v. *Hendrix*, 599 U.S. 465, 492 (2023).

332, 335 (Cal. 1892). Consistent with contemporaneous dictionaries (*supra* at 17–19), the Supreme Court of California interpreted the word "proceeding" in Calif. Code Civ. Proc. § 473 broadly to take the wide-ranging definition capturing "'any step taken by a suitor to obtain the interposition or action of a court'" and "any step taken by a party in the progress of a civil action"—that is, "[a]nything done from the commencement to the termination is a proceeding." *Ibid.* (quotation marks omitted).

Importantly, moreover, California courts read the predecessor to Rule 60(b) to authorize California courts to set aside a voluntary "judgment of dismissal on the order of the plaintiff," *Palace Hardware Co.*, 66 P. at 476, in line with "the weight of authority" elsewhere, *Lusas*, 193 A. at 206 (citing California law and other authority); see also *Salazar* v. *Steelman*, 71 P.2d 79, 80–81, 83 (Cal. Ct. App. 1937) (affirming reinstatement of case previously dismissed voluntarily "without prejudice").[10]

Those interpretations of the California rule are the "old soil" that the rule-makers carried forward into Rule 60(b). *Hall*, 584 U.S. at 73 ("[I]f a word is obviously transplanted from another legal source, whether the common law or other legislation, it brings

[10] At the time, California permitted plaintiffs to unilaterally dismiss a case without court intervention. *In re Matthiessen's Est.*, 52 P.2d at 249; see also *Spellacy* v. *Superior Ct.*, 72 P.2d 262, 262 (Cal. Ct. App. 1937) (voluntary dismissal accomplished "by written request to the clerk, filed with the papers in the case" under certain circumstances).

the old soil with it." (quoting Felix Frankfurter, *Some Reflections on the Reading of Statutes*, 47 Colum. L. Rev. 527, 537 (1947)). And this context further confirms that Rule 60(b) was intended to grant federal courts broad authority to reopen closed cases, including those dismissed voluntarily by the plaintiff without prejudice or court order.[11]

2. Nothing in the balance of the Federal Rules indicates that the rule-makers intended to derogate from this established common-law background. *Hall*, 584 U.S. at 75 ("nothing in the pertinent proceedings of the Rules Advisory Committee supports the notion that [the new rule] was meant to overturn the settled" practice and understanding).

To begin, Rule 41(a)(1) plainly codified the existing practice permitting plaintiffs to dismiss cases by notice without court order (see *supra* at 2–3, 30–38), although it limited the circumstances where dismissal

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[11] California amended Calif. Code Civ. Proc. § 437 in 1992 to add the word "dismissal" so that the provision read "[t]he court may, upon any terms as may be just, relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her . . . ." Civil Procedure, 1992 Cal. Legis. Serv. Ch. 876 (A.B. 3296) (West). However, this did not change the judiciary's prior interpretation and was a matter of style over substance. *Zamora* v. *Clayborn Contracting Grp., Inc.*, 47 P.3d 1056, 1060 & n.3 (Cal. 2002). After this amendment, the California Supreme Court was clear that "the language of this provision has not changed appreciably since [1872]" and "California courts have consistently held that parties may obtain relief from judgments, dismissal, or stipulations voluntarily entered into pursuant to a voluntary agreement through the discretionary relief provision of section 473." *Id.* at 1059–60.

would be allowed by simple notice without court order. Indeed, Rule 41(a)(1) replaced "liberal state and federal procedural rules [that] often allowed dismissals or nonsuits as a matter of right until the entry of the verdict," with a prescription authorizing dismissal "without the permission of the adverse party or the court only during the brief period before the defendant had made a significant commitment of time and money." *Cooter & Gell*, 496 U.S. at 397. Although the circumstances in which a nonsuit could be taken were narrowed—in order to strike a new balance between plaintiffs' historic dismissal rights and defendants' interests in avoiding the re-litigation of meritless matters, all in order to "curb abuses of these nonsuit rules," *ibid.*—the procedure remained intact.

For its part, as noted, Federal Rule 60(b) codified the existing authority to reopen judgments, orders, and proceedings, with no suggestion that the rule-makers intended to narrow judicial authority to reopen, and instead (as explained) every indication that Rule 60(b) was meant to codify the broad, flexible, and simplified approach from California. There is thus no suggestion in the text or context of either of these Rules that the drafters intended to depart from the recognized practice of courts to reopen cases that plaintiffs voluntarily dismissed by notice.

3. Nor have the Rules materially changed since they were adopted in 1937 in such a way as to require a reading abridging the common-law reopening authority. *Link*, 370 U.S. at 631–32.

As noted above, the rule-makers made clear in 1946 that Rule 60(b) applied only to "final" judgments, orders, or proceedings, and they did so to "emphasize[] the character of the judgments, orders, or proceedings from which Rule 60(b) affords relief." See Rule 60 Advisory Committee Note—1946 Amendment. The point was simply to confirm and clarify, consistent with the dictionary definition of "final," that "*interlocutory* judgments are not brought within the restriction of the rule, but rather they are left subject to the complete power of the court rendering them to afford such relief from them as justice required." *Ibid.* (emphasis added); see *supra* at 12–16.

Federal Relief from Civil Judgments, a Yale Law Journal article co-authored by one of the original drafters of the Federal Rules of Civil Procedure and cited by the 1946 Advisory Committee Notes, provides further context as to why this amendment was made. See Moore & Rogers, *supra*, 55 Yale L.J. at 623. The article, which the Advisory Committee Notes cited as providing "an extended discussion of the old common law writs and equitable remedies, the interpretation of Rule 60, and proposals for change," espoused the principle that, "so long as [a] court has jurisdiction over an action, it should have complete power over interlocutory orders made therein and should be able to revise them when it is 'consonant with equity' to do so." *Id.* at 642 (citing *John Simmons Co.* v. *Grier Bros.*, 258 U.S. 82 (1922)). The article instructed, however, that some cases interpreting Rule 60(b) and addressing "interlocutory orders proceeded . . . on the theory that Rule 60(b) was applicable to such orders."

55 Yale L.J. at 643. The authors thought this result was consistent with the broad text of Rule 60(b), *id.* at 643–44, but did not believe it was sound, because a district court's authority to reopen interlocutory orders should not be so limited. *Ibid.*; see also *id.* at 686. The article thus proposed, among other "substantive changes," a clarification that "the court's power over interlocutory orders is [] properly not limited" by Rule 60(b). *Id.* at 691.

As the Advisory Committee Notes instruct, the rule-makers pursued exactly this clarification in 1946, and did so to broaden district-court authority. The addition of the word "final" indeed divided the world of judgments, orders, and proceedings into two groups: (1) interlocutory ones, as to which courts had plenary authority (subject to, *e.g.*, the law-of-the-case doctrine and the mandate rule), and (2) "final" ones, as to which the grounds for reopening were historically more limited, based on equity and common law doctrines, and, since 1937, prescribed by Rule 60(b). See *supra* at 12–16, 30–41.

But there is no indication that the addition of the word "final" to the Rules intended to derogate from the authority recognized in 1937 by California's courts to reopen voluntary dismissals (including those without prejudice) when warranted by traditional notions of equity jurisprudence (such as fraud or mistake). Instead, not only did the rule-makers make clear their intent to relax limitations on district-court authority as to interlocutory matters, but the 1946 Advisory Committee Notes also reaffirmed that Rule 60(b)

captured all "kinds of relief from judgments which were permitted in the federal courts prior to the adoption of these rules," including "all the remedies and types of relief heretofore available by *coram nobis*, *coram vobis*, *audita querela*, bill of review, or bill in the nature of a bill of review"). And, at the same time, the rule-makers added to the express grounds for Rule 60(b) relief (including adding an express reference to fraud, which was a ground implied by the cases).

It would therefore be unreasonable to infer from all of this that the rule-makers intended to, *sub silentio*, confine the authority of the courts and radically depart from historic practice. See *Hall*, 584 U.S. at 74 ("Congress, we have held, 'does not alter the fundamental details' of an existing scheme with 'vague terms' and 'subtle device[s].' That is true in spades when it comes to the work of the Federal Rules Advisory Committees." (quoting *Whitman* v. *American Trucking Assns., Inc.*, 531 U.S. 457, 468 (2001)).

* * *

Rules 41 and 60 indicate the rule-makers' intent to adopt and codify existing practice, and thus to retain judicial power to reopen cases that had been dismissed by simple notice upon a proper showing (such as fraud or mistake).

III. Petitioner's Interpretation Preserves The Purposes And Effectiveness Of The Rules

Finally, reading Rule 60(b) to strip federal courts of authority to reopen cases that were voluntarily dismissed without prejudice would frustrate the purposes and effectiveness of the Federal Rules.

1. To begin, as earlier noted, the approach taken by the Tenth Circuit in the decision below creates a twilight zone within Rule 60(b). All interlocutory matters and rulings would be subject to complete judicial oversight and discretion (subject to traditional constraints like the law-of-the-case doctrine). And judicial orders terminating cases with prejudice would be subject to reopening under Rule 60(b), in the court's discretion, under the conditions set forth in the Rule. But there would also be a *third* category of docket activity entirely beyond federal courts' authority.

This would be a bizarre result, one that should be rejected given well-recognized authority of courts correcting frauds and mistakes, and the consistent statements of the rule-makers that they intended to maintain courts' historic powers, including in the 1946 amendment that added the word "final" to augment judicial authority. Cf. *Link*, 370 U.S. at 631–32 ("It would require a much clearer expression of purpose than Rule 41(b) provides for us to assume that it was intended to abrogate so well-acknowledged a proposition.").

2. The holding in the decision below that a "judicial determination" is needed to bring a dismissal within the ambit of Rule 60(b) also frustrates Rule 41's patent objectives. The entire point of Rule 41(a)(1)(A) is to provide, in some circumstances, that a dismissal could be obtained "without a court order," and the Rule specifies that in some circumstances the notice or stipulation could automatically "operate[] as an adjudication on the merits" (*i.e.*, if the parties so specify or if it is the second such dismissal). *Id.* 41(a)(1)(B). Again, it would be bizarre for the streamlined procedure giving a plaintiff's notice (or stipulation) the effect of a dismissal, potentially with prejudice, to be treated differently for Rule 60(b) purposes than if the plaintiff had proceeded by way of a motion requesting the court's signature.

Not only would that produce a perverse outcome that contravenes Rule 41's obvious purpose of giving a dismissal-on-notice the same effect as a dismissal-by-court-order, but it also would needlessly incentivize prolonging litigation or seeking court intervention, thus wasting judicial resources. Cf. *Axon Enter., Inc.* v. *Fed. Trade Comm'n*, 598 U.S. 175, 216 (2023) (Gorsuch, J., concurring) (citing Fed. R. Civ. P. 1). If a "judicial determination" is needed to leave open the possibility of obtaining Rule 60(b) relief in the event of a mistake, fraud, or other unexpected circumstance, then it is difficult to imagine why parties well-advised by counsel would be willing to dismiss by notice or stipulation when the cost of that decision would be surrendering the right to request Rule 60(b) relief.

3. Consider also the upshot of the decision below for the sorts of cases that, traditionally, warranted relief. Imagine a plaintiff's attorney dismissing a case without authority, perhaps by defrauding his client (or by mistake). Or imagine a defendant entering into a settlement requiring the plaintiff to dismiss her case on notice or by stipulation, where the defendant lied about his intention to pay money and thus procured the dismissal by deceit or fraud. Because no "judicial determination" occurs, the district court would lose jurisdiction upon the dismissal, depriving the court of the power to correct the injustice.

Under Respondent's interpretation, a court has no authority under Rule 60(b) to return to the status quo and remedy the mistake or fraud in any case involving a Rule 41(a)(1)(A) dismissal, even in cases where the fraud or other injustice was perpetrated on the court itself. These are highly strange results, creating a trap for the unwary not required by the Rules' text. Moreover, the matter would have turned out differently under "the weight of authority" in the 1930s, where courts could "reinstate the case." *Lusas*, 193 A. at 206–07; see *Ryan*, 215 N.W. at 750 (reopening case where "dismissal was by counsel without authority"); *Thompson,* 101 N.W. at 61 (same, for fraud). There is no good reason to conclude the Rules require such a result.

CONCLUSION

The Court should hold that federal courts have the power to reopen Rule 41(a)(1)(A) dismissals pursuant to Rule 60(b), reverse the judgment of the Tenth Circuit, and remand the case for further proceedings.

Respectfully submitted,

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Federal Rule of Civil Procedure 41

Rule 41. Dismissal of Actions

(a) Voluntary Dismissal.

(1) ***By the Plaintiff.***

(A) *Without a Court Order*. Subject to Rules 23(e), 23.1(c), 23.2, and 66 and any applicable federal statute, the plaintiff may dismiss an action without a court order by filing:

(i) a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment; or

(ii) a stipulation of dismissal signed by all parties who have appeared.

(B) *Effect.* Unless the notice or stipulation states otherwise, the dismissal is without prejudice. But if the plaintiff previously dismissed any federal- or state-court action based on or including the same claim, a notice of dismissal operates as an adjudication on the merits.

(2) ***By Court Order; Effect.*** Except as provided in Rule 41(a)(1), an action may be dismissed at the plaintiff's request only by court order, on terms that the court considers proper. If a defendant has pleaded a counterclaim before being served with the plaintiff's motion to dismiss, the action may be dismissed over the defendant's objection only if the counterclaim can remain pending for independent adjudication. Unless

the order states otherwise, a dismissal under this paragraph (2) is without prejudice.

(b) Involuntary Dismissal; Effect. If the plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it. Unless the dismissal order states otherwise, a dismissal under this subdivision (b) and any dismissal not under this rule--except one for lack of jurisdiction, improper venue, or failure to join a party under Rule 19--operates as an adjudication on the merits.

(c) Dismissing a Counterclaim, Crossclaim, or Third-Party Claim. This rule applies to a dismissal of any counterclaim, crossclaim, or third-party claim. A claimant's voluntary dismissal under Rule 41(a)(1)(A)(i) must be made:

(1) before a responsive pleading is served; or

(2) if there is no responsive pleading, before evidence is introduced at a hearing or trial.

(d) Costs of a Previously Dismissed Action. If a plaintiff who previously dismissed an action in any court files an action based on or including the same claim against the same defendant, the court:

(1) may order the plaintiff to pay all or part of the costs of that previous action; and

(2) may stay the proceedings until the plaintiff has complied.

Federal Rule of Civil Procedure 60

Rule 60. Relief From a Judgment or Order

(a) Corrections Based on Clerical Mistakes; Oversights and Omissions. The court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record. The court may do so on motion or on its own, with or without notice. But after an appeal has been docketed in the appellate court and while it is pending, such a mistake may be corrected only with the appellate court's leave.

(b) Grounds for Relief from a Final Judgment, Order, or Proceeding. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect;

(2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);

(3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;

(4) the judgment is void;

(5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has

been reversed or vacated; or applying it prospectively is no longer equitable; or

(6) any other reason that justifies relief.

(c) Timing and Effect of the Motion.

(1) ***Timing.*** A motion under Rule 60(b) must be made within a reasonable time--and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding.

(2) ***Effect on Finality.*** The motion does not affect the judgment's finality or suspend its operation.

(d) Other Powers to Grant Relief. This rule does not limit a court's power to:

(1) entertain an independent action to relieve a party from a judgment, order, or proceeding;

(2) grant relief under 28 U.S.C. § 1655 to a defendant who was not personally notified of the action; or

(3) set aside a judgment for fraud on the court.

(e) Bills and Writs Abolished. The following are abolished: bills of review, bills in the nature of bills of review, and writs of coram nobis, coram vobis, and audita querela.