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 RESPONDENT

PATRICK J. FUSTER
GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071
(213) 229-7000

HEATHER F. CROW
THE KULLMAN FIRM, P.L.C.
2915 Kerry Forest Pkwy
Suite 101
Tallahassee, FL 32309
(850) 296-1953

MATTHEW D. MCGILL
Counsel of Record
JONATHAN C. BOND
LOCHLAN F. SHELFER
JOSHUA R. ZUCKERMAN
GIBSON, DUNN & CRUTCHER LLP
1700 M Street, N.W.
Washington, D.C. 20036
(202) 955-8500
MMcgill@gibsondunn.com

Counsel for Respondent

QUESTION PRESENTED

Whether a plaintiff's voluntary dismissal of his suit without prejudice under Federal Rule of Civil Procedure 41(a)(1)(A)(i) is a "final judgment, order, or proceeding" from which he may seek relief under Rule 60(b).

RULE 29.6 STATEMENT

The corporate-disclosure statement in respondent's brief in opposition remains accurate.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Page(s)**

Cases (continued) **Page(s)**

Cases (continued) **Page(s)**

Cases (continued) **Page(s)**

Cases (continued) **Page(s)**

Cases (continued) **Page(s)**

Cases (continued) **Page(s)**

Cases (continued) **Page(s)**

Statutes

Statutes (continued) **Page(s)**

Rules

Rules (continued) **Page(s)**

Other Authorities

Other Authorities (continued) **Page(s)**

IN THE

Supreme Court of the United States

No. 23-971

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 RESPONDENT

INTRODUCTION

Federal Rule of Civil Procedure 60(b) permits a party in federal court to seek "relie[f] * * * from a final judgment, order, or proceeding" in the litigation. Fed. R. Civ. P. 60(b). It does not authorize what petitioner attempted here: a collateral attack that a federal court otherwise could not adjudicate on the outcome of a separate, arbitral proceeding. And it does not let him unwind his own unilateral action in the litigation—here, a voluntary dismissal without prejudice—that required no court action and imposed no legal burdens.

Petitioner brought this case in federal district court against respondent, his former employer, alleging age discrimination under federal law. But his suit could not proceed because petitioner had agreed to arbitrate such disputes. He chose to dismiss his suit voluntarily without prejudice under Federal Rule of Civil Procedure 41(a)(1)(A)(i). The parties proceeded to arbitration, where respondent prevailed.

Petitioner then returned to district court and presented the peculiar request now at issue: He moved to "reopen" his voluntarily dismissed case and to "vacate [the] arbitration award," C.A. App. 24 (capitalization altered), urging the court to "assume jurisdiction under Rule 60," *id.* at 217. The district court obliged, but the Tenth Circuit reversed, correctly recognizing that Rule 60(b) does not authorize that remarkable remedy.

The decision below should be affirmed for two independent reasons. First, the district court lacked jurisdiction to grant the only relief petitioner's motion requested: vacatur of the arbitral award. He sought vacatur under Section 10 of the Federal Arbitration Act (FAA), 9 U.S.C. § 10. But this Court made clear in *Badgerow* v. *Walters*, 596 U.S. 1 (2022), that Section 10 does not create jurisdiction and that a freestanding basis for federal jurisdiction must appear on the face of a vacatur application. And this Court has long held that a party cannot use Rule 60(b) to end-run such jurisdictional obstacles: A Rule 60(b) motion seeking "more than just a continuation or renewal of the dismissed suit * * * requires its own basis for jurisdiction." *Kokkonen* v. *Guardian Life Insurance Co. of America*, 511 U.S. 375, 378 (1994).

Petitioner does not seek to resume the federal age-discrimination case he dismissed. That would be futile because the arbitral award adjudicated the parties' dispute. Instead, he seeks to use this defunct suit as a back door into a collateral challenge to that award. But because petitioner never established any independent jurisdictional basis for that relief, the district court lacked authority to entertain it under Rule 60(b).

Second, Rule 60(b) cannot apply here in any event because petitioner does not seek relief from any "final judgment, order, or proceeding." Fed. R. Civ. P. 60(b). The event that ended the original litigation was his own voluntary dismissal without prejudice under Rule 41(a)(1)(A)(i). That dismissal was not "final" in the familiar sense that Rule 60(b) uses the term, which traces back to the First Congress. A "final" decision must conclusively resolve the relevant dispute or issue. A voluntary dismissal without prejudice is paradigmatically *non*-final: By definition, it leaves the plaintiff free to refile. Petitioner does not defend the panel dissent's position that non-final events can *become* final due to later developments. And his novel theory that any "case-terminating" occurrence is "final" (Br. 16) has no basis in the law.

Petitioner's voluntary dismissal of his own case without prejudice also is not a "judgment, order, or proceeding." Fed. R. Civ. P. 60(b). None of those terms encompasses a party's self-executing action that requires no court action and imposes no legal burdens. Petitioner has never argued that his unilateral withdrawal of the suit was an "order." His halfhearted contention that it was a "judgment" is forfeited and untenable. And his sweeping theory (Br. 20) that "proceed-

ing" covers "any docket activity" is refuted by the very canons he invokes.

Petitioner's appeal to policy is misdirected. Outside the rule-promulgation process, this Court's role is to interpret, not innovate. And petitioner's contorted reading of Rule 60(b) is a solution in search of a problem. Ordinarily, plaintiffs who voluntarily dismiss without prejudice need no judicial relief; they can simply sue again. The idiosyncratic predicament petitioner encountered here is exceedingly unlikely to recur. The inventive hypotheticals petitioner imagines where attorneys dismiss suits without authority or defendants fraudulently induce dismissal can be addressed by other bodies of law. They provide no basis to stretch Rule 60(b) into a cure for every litigation ill.

RULES INVOLVED

Pertinent Federal Rules are reproduced in the appendix to this brief. App., *infra*, 1a-16a.

STATEMENT

1. In 2020, petitioner brought this suit in district court against respondent, his former employer, alleging that his termination violated the Age Discrimination in Employment Act (ADEA), 29 U.S.C. § 623 *et seq*. Pet. App. 2a. The case could not proceed, however, because petitioner was "contractually obligated to arbitrate any dispute with [respondent]." *Ibid.*

Instead of seeking a stay of the litigation pending arbitration, see *Smith* v. *Spizzirri*, 601 U.S. 472, 475-479 (2024); *Adair Bus Sales, Inc.* v. *Blue Bird Corp.*, 25 F.3d 953, 955 (10th Cir. 1994), petitioner elected to dismiss his own suit voluntarily without

prejudice under Federal Rule 41(a)(1)(A)(i). Pet. App. 2a; see C.A. App. 22. Rule 41(a) allows a plaintiff to dismiss his own action unilaterally, "without a court order," by filing a "notice of dismissal" before the defendant serves an answer or motion for summary judgment. Fed. R. Civ. P. 41(a)(1)(A)(i). Such a dismissal is "without prejudice" unless the plaintiff's notice of dismissal states otherwise, and it does not "operat[e] as an adjudication on the merits" unless "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 parties proceeded to arbitration. Pet. App. 2a-3a. Their arbitration agreement contemplated streamlined proceedings, including telephonic conferences "[i]n the discretion of the arbitrator" to "expedite" the "summary determination of dispositive legal issues." C.A. App. 82-83. Respondent submitted a motion for summary judgment on petitioner's ADEA claim, *id.* at 105-126, and petitioner filed a 22-page response that called the issues "relatively straight forward [sic]," *id.* at 128; see *id.* at 128-149. Less than a month after petitioner filed his response, the arbitrator conducted a telephonic conference during which she heard oral argument on the motion. Pet. App. 30a. The arbitrator later issued an award granting summary judgment to respondent. *Id.* at 3a; see C.A. App. 36.

2. a. In 2021, "[d]issatisfied with the outcome" of the arbitration, petitioner "returned to federal court." Pet. App. 2a. But he did not "fil[e] a new lawsuit challenging arbitration." *Ibid.* Instead, he filed in this previously dismissed case what he styled a "motion to reopen and vacate [the] arbitration award." C.A. App. 24

(capitalization altered). Petitioner's motion contended that the arbitral award was procedurally invalid because he had not received notice that the telephonic conference would address respondent's summary-judgment motion and because the arbitrator did not record that conference or accompany the award with a written statement of reasons. *Id.* at 29-31.

Petitioner's motion identified Section 10 of the FAA, 9 U.S.C. § 10, as the sole basis for the district court's subject-matter jurisdiction. C.A. App. 25. Several months after the motion was filed, however, this Court held in *Badgerow* v. *Walters*, 596 U.S. 1 (2022), that Section 10 does not itself "support federal jurisdiction" and that courts must look to the "face of [an] application" to vacate an arbitral award—not to the parties' underlying dispute submitted to arbitration—to determine whether jurisdiction exists. *Id.* at 8-9.

The district court later issued an order to show cause, questioning whether it possessed jurisdiction over petitioner's motion. Pet. App. 51a; see C.A. App. 210-213. Petitioner acknowledged that, "in the event a new case is opened, [his] claim w[ould] be dismissed for lack of jurisdiction because, under *Badgerow*, the federal court cannot assume jurisdiction over the arbitration award based on [the] federal question" presented by his underlying ADEA claim. C.A. App. 216-217 & n.2. Although petitioner's briefing on his motion had not invoked Rule 60, his response urged the court to "assume jurisdiction under Rule 60." *Id.* at 217; see generally *id.* at 24-35, 200-204.

b. The district court granted petitioner's request to reopen his dismissed suit under Rule 60(b). Pet. App. 49a-64a & n.1. The court acknowledged that a

voluntary dismissal without prejudice "is effective at the moment the notice of dismissal is filed" without further order of the court. *Id.* at 53a (brackets and citation omitted). The court also acknowledged that, although it had issued a minute order recognizing petitioner's voluntary dismissal, *ibid.* (citing D. Ct. Doc. 9 (Apr. 13, 2020)), any such subsequent "order granting dismissal is superfluous, a nullity, and without procedural effect," *ibid.* (citations omitted). The court observed that "'the filing of a Rule 41(a)(1)(i) [sic] notice itself closes the file' and 'the court has no role to play,'" and "the effect of the filing of" the notice "is to leave the parties as though no action had been brought." *Ibid.* (brackets and citation omitted). The court nevertheless held that a voluntary dismissal without prejudice is a "final *proceeding* within the meaning of Rule 60(b)." *Id.* at 54a (emphasis added).

The district court further determined that reopening petitioner's case was warranted for two reasons. Pet. App. 58a-64a. First, the court deemed relief appropriate under Rule 60(b)(1) on the theory that petitioner had made a "careless mistake" by dismissing his original case instead of staying it pending arbitration. *Id.* at 59a. Second, it held that Rule 60(b)(6) authorized relief based on "[t]he intervening change in law" in *Badgerow*, which foreclosed federal-court jurisdiction over a freestanding application to vacate the arbitral award. *Id.* at 60a.

c. In a subsequent order, the district court granted petitioner's request to vacate the arbitral award based on his procedural challenges. Pet. App. 29a-48a. The court remanded the case "to arbitration" before a different arbitrator. *Id.* at 48a.

3. The court of appeals reversed. Pet. App. 1a-21a.

a. The court of appeals rejected petitioner's contention that Rule 60(b) authorized reopening his original case. Pet. App. 5a-21a. It explained that a "plaintiff can only obtain relief under Rule 60(b) if his voluntary dismissal without prejudice under Rule 41(a) qualifies as 'a final judgment, order, or proceeding.'" *Id.* at 7a (quoting Fed. R. Civ. P. 60(b)). The court noted that "no one assert[ed]" that the dismissal was a "'final judgment.'" *Ibid.* It further held that the dismissal did not result in any "final order" because petitioner's notice of voluntary dismissal "was effective upon filing," rendering an "*order* of dismissal" unnecessary. *Ibid.*

The court of appeals then held that a voluntary dismissal without prejudice is not a "final proceeding." Pet. App. 7a; see *id.* at 7a-21a. The court reasoned that finality is lacking because a "plaintiff can usually refile," even "the next day." *Id.* at 18a. "Although the dismissal may have brought a particular lawsuit with its own unique case number to a close," it explained, "the overarching dispute between the parties has not been resolved." *Id.* at 18a-19a.

The court of appeals also reasoned that a "final proceeding" "must be confined to *judicial determinations* similar to" the final judgments and final orders covered by the same phrase. Pet. App. 9a-10a (citation omitted); see *id.* at 10a-18a. Petitioner's voluntary dismissal entailed no such "judicial determination," the court held, because it was "automatic upon filing" and "no judicial officer was involved in any way." *Id.* at 18a.

The court of appeals further reasoned that, when a plaintiff files a self-executing voluntary dismissal, "no one has been *burdened* by court action, a requirement for Rule 60(b) *relief*." Pet. App. 19a. "By choosing to dismiss without prejudice," the court explained, "the plaintiff is leaving the door open for a future suit." *Ibid.* The court noted that "[t]his remains true even if it appears the plaintiff is unlikely to succeed by refiling his suit," including because of intervening developments. *Ibid.* In this case, the court observed, petitioner's voluntary dismissal did not itself preclude him from reviving his ADEA suit against respondent or seeking vacatur of the arbitral award. *Id.* at 19a & n.11. Any obstacle, the court concluded, stemmed instead from the subsequent arbitration award and this Court's intervening decision in *Badgerow*. *Id.* at 19a n.11. But such "future occurrence[s] * * * cannot boomerang back" and transform a non-final "voluntary dismissal without prejudice into a final judgment, order, or proceeding." *Id.* at 19a.

b. Judge Matheson dissented. Pet. App. 22a-28a. He accepted that, "[a]s a general rule, a plaintiff's voluntary dismissal without prejudice is not 'final.'" *Id.* at 24a (citation omitted). But he reasoned that such a dismissal "may later become final due to procedural developments." *Ibid.* In his view, petitioner could satisfy that test because the arbitral award and *Badgerow* now barred him from litigating his underlying claim and from seeking vacatur of the arbitral award in federal court, respectively. *Id.* at 28a. He further concluded that a voluntary dismissal without prejudice is a "proceeding," citing circuit precedent treating voluntary dismissal "with prejudice" as a final proceeding. *Id.* at 23a & n.1.

4. The court of appeals denied rehearing en banc. Pet. App. 65a.

SUMMARY OF ARGUMENT

I. The district court lacked subject-matter jurisdiction over petitioner's Rule 60(b) motion. That motion sought not to resume federal-court litigation of his ADEA claim, but instead to assert a collateral challenge to an arbitral award that the court otherwise lacked jurisdiction to adjudicate. *Kokkonen* v. *Guardian Life Insurance Co. of America*, 511 U.S. 375 (1994), squarely forecloses such attempts to circumvent jurisdictional limits via a Rule 60(b) motion.

A. Petitioner's motion to reopen invoked the FAA as the source of jurisdiction to vacate the arbitral award, but the FAA requires an "independent jurisdictional basis." *Badgerow* v. *Walters*, 596 U.S. 1, 8 (2022) (citation omitted). Although the arbitration concerned a claim arising under federal law, *Badgerow* establishes that jurisdiction over an application to vacate under Section 10 cannot be premised on the parties' underlying dispute. *Id.* at 8-9. A separate jurisdictional basis must appear on "the face" of the application to vacate. *Id.* at 9. Petitioner's motion to reopen did not identify any such basis.

B. Conceding that *Badgerow* blocked a new suit in federal court to vacate the arbitral award, petitioner asked the district court to "assume jurisdiction under Rule 60" to grant the same relief. C.A. App. 217. That theory runs headlong into *Kokkonen*, which held that a Rule 60(b) motion seeking "more than just a continuation or renewal of the dismissed suit * * * requires its own basis for jurisdiction." 511 U.S. at 378. Like any Federal Rule, Rule 60(b) cannot

"extend * * * the jurisdiction of the district courts." Fed. R. Civ. P. 82. And *Kokkonen* makes clear that parties may not invoke Rule 60(b) to sidestep jurisdictional obstacles. Because petitioner sought not to resume litigation of his ADEA claim in federal court, but instead to assert a challenge to an arbitral award, the court lacked jurisdiction under *Kokkonen* to entertain petitioner's Rule 60(b) request.

The court of appeals' judgment reversing the district court's order that granted petitioner's motion should be affirmed on that ground. Alternatively, because this jurisdictional defect renders the question presented irrelevant here, the Court may wish to dismiss the writ of certiorari as improvidently granted.

II. The decision below should be affirmed in any event because petitioner's voluntary dismissal of his own suit without prejudice under Rule 41(a)(1)(A)(i) was not a "final judgment, order, or proceeding" from which a party may seek "relie[f]." Fed. R. Civ. P. 60(b).

A. A Rule 41(a)(1)(A)(i) voluntary dismissal without prejudice is not "final" in the well-settled sense that Rule 60(b) uses that familiar legal term.

1. The term "final"—as applied to a judgment, order, or proceeding—means a determination that conclusively resolves the issues in its scope. That understanding of finality in the context of judicial action traces back to the First Congress and was well established when Congress added "final" to Rule 60(b) in 1946. "Final" in Rule 60(b) incorporates that settled understanding. See *Hall* v. *Hall*, 584 U.S. 59, 66 (2018).

Voluntary dismissals without prejudice under Rule 41(a)(1)(A)(i) are quintessentially *non*-final in

that sense. Although they instantly end the litigation, such dismissals do not conclusively resolve anything and pose no impediment to the plaintiff's refiling the same action immediately. Courts thus have consistently recognized that dismissals without prejudice are not final—just like their historical predecessor, the voluntary nonsuit. *Central Transportation Co.* v. *Pullman's Palace Car Co.*, 139 U.S. 24, 39 (1891). This Court has held that even a voluntary dismissal *with* prejudice is not final if the claims might "spring back to life." *Microsoft Corp.* v. *Baker*, 582 U.S. 23, 41 (2017). Dismissals *without* prejudice necessarily flunk the settled test for finality.

2. Petitioner does not defend the position adopted by the dissent below that voluntary dismissals without prejudice, although not final when filed, can *become* final due to later events. As the majority correctly held, that "boomerang" view of finality is wrong and irreconcilable with the "instant and automatic effect" of a such dismissals. Pet. App. 19a & n.11.

Petitioner instead advances a novel theory of finality that covers any "case-terminating" event. Br. 8. That reading conflicts with Rule 60(b)'s text, ignores its historical context, and contravenes the canons petitioner himself invokes.

B. Petitioner's voluntary dismissal without prejudice also was not a "judgment, order, or proceeding." Fed. R. Civ. P. 60(b).

1. The court of appeals correctly concluded that petitioner forfeited any argument that a voluntary dismissal without prejudice is a "judgment." Petitioner offers no compelling reason to revisit that fact-bound forfeiture determination.

Petitioner's "judgment" theory is meritless in any event. The Federal Rules define a "[j]udgment" to "includ[e] a decree and any order from which an appeal lies." Fed. R. Civ. P. 54(a). A Rule 41(a)(1)(A)(i) voluntary dismissal without prejudice involves no decree or order, and no appeal lies from the dismissal. Petitioner seizes on the negative space that he contends is created by "includes." But this Court has already equated the term "judgment" with "'final decision' as that term is used" for appellate jurisdiction. *Bankers Trust Co.* v. *Mallis*, 435 U.S. 381, 384 n.4 (1978) (per curiam). And it would be passing strange to describe the unilateral, self-executing election by a party that entails no judicial action of any kind as a "judgment."

2. A voluntary dismissal without prejudice also is not a "proceeding." Fed. R. Civ. P. 60(b).

A proceeding requires a determination of rights or obligations that burdens a party. Because "proceeding" follows "judgment" and "order," Fed. R. Civ. P. 60(b), the *noscitur a sociis* and *ejusdem generis* canons support construing final proceedings as conclusive determinations of rights and obligations on par with final judgments and orders. The court's authority to "relieve" a party from a final proceeding, *ibid.*, further confirms the need for some legal burden. A voluntary dismissal without prejudice, however, renders the case a nullity without determining anything and imposes no burden for a court to "relieve."

Petitioner is wrong to argue (Br. 20) that "any docket activity" qualifies as a proceeding. His expansive interpretation defies the *noscitur* and *ejusdem* canons by subsuming final judgments and orders into his definition of final proceedings. And his invocation

of the canon against surplusage highlights his own test's superfluities while ignoring the meaningful gap-filling role that "proceeding" performs in capturing final determinations of rights and obligations that do not result in judgments or orders.

Petitioner also theorizes that Rule 60(b) preserved federal courts' preexisting authority to set aside voluntary dismissals without prejudice. But he mistakenly relies on state-court decisions, despite this Court's holding that federal law alone governed federal courts' authority to set aside final decisions. *United States* v. *Mayer*, 235 U.S. 55, 69 (1914). Petitioner's state-survey approach would reintroduce the same difficulties that led Congress to adopt the Rules Enabling Act and also does not establish a "well-settled" rule. *Kemp* v. *United States*, 596 U.S. 528, 539 (2022) (citation omitted). To the contrary, many state courts followed the traditional rule that, "[w]hen the plaintiff took a nonsuit of his own motion he was out of court, and could not move to set aside the nonsuit." Neil C. Head, *The History and Development of Nonsuit*, 27 W. Va. L.Q. 20, 23 (1920); see, *e.g.*, *Weisguth* v. *Supreme Tribe of Ben Hur*, 112 N.E. 350, 351 (Ill. 1916).

C. Petitioner insists (Br. 46) that every case-terminating docket entry must be subject to judicial superintendence to eliminate a "twilight zone" in the Federal Rules. But if Rule 60(b) should expand to fill the universe, that is a task for the rulemaking process, not for this Court in this case. Ample other tools check attorney misconduct and defendant deception even when a plaintiff cannot refile. And petitioner's objection ultimately lies at the feet of Rule 41, which

grants plaintiffs an unqualified right to dismissal without prejudice.

ARGUMENT

The district court lacked authority to grant petitioner's Rule 60(b) motion for two separate reasons. First, the court lacked jurisdiction. Petitioner did not seek to revive his voluntarily dismissed ADEA claim; rather, he sought to vacate an arbitral award. There was no basis for federal jurisdiction that would allow the court to entertain that request in the first place. Second, the only event in *this* case that petitioner's motion sought to reopen—his own voluntary dismissal without prejudice—was not a "final judgment, order, or proceeding" from which Rule 60(b) authorized the court to grant "relie[f]." Fed. R. Civ. P. 60(b). For both reasons, this Court should affirm.

I. THE DISTRICT COURT LACKED JURISDICTION OVER PETITIONER'S MOTION TO VACATE THE ARBITRAL AWARD

The district court could not entertain petitioner's Rule 60(b) motion because the court was powerless to grant the only relief the motion sought: vacatur of the arbitral award. Petitioner did not seek to revive his underlying ADEA claim, which he voluntarily dismissed to pursue contractually mandated arbitration. Instead, he sought to use this moribund case to assert a challenge to the arbitral award—which the district court otherwise lacked jurisdiction to adjudicate. But this Court has seen and rejected similar stratagems before. In *Kokkonen* v. *Guardian Life Insurance Co. of America*, 511 U.S. 375, 377 (1994), the Court made clear that a party cannot use Rule 60(b) to bypass jurisdictional barriers. Because the district court undisputedly

lacked jurisdiction over an original action to vacate the arbitral award, and because petitioner has never pleaded nor proved any alternative jurisdictional basis for that relief, the court lacked jurisdiction over petitioner's motion that sought the same relief—vacatur of the award—styled under Rule 60(b) and lodged in this already-filed case.

This jurisdictional defect is properly before this Court. Federal courts have "limited jurisdiction, defined (within constitutional bounds) by federal statute." *Badgerow* v. *Walters*, 596 U.S. 1, 7 (2022) (citing *Kokkonen*, 511 U.S. at 377). Respondent argued below, and the court of appeals held, that the district court lacked "subject-matter jurisdiction" here. Pet. App. 4a; see Resp. C.A. Br. 28-29. And this Court has always recognized its "special obligation" to assure itself "'not only of its own jurisdiction, but also that of the lower courts in a cause under review.'" *Bender* v. *Williamsport Area School District*, 475 U.S. 534, 541 (1986) (citation omitted); see, *e.g.*, *Capron* v. *Van Noorden*, 6 U.S. (2 Cranch) 126, 127 (1804); cf. Sup. Ct. R. 15.2 (issues that "go to jurisdiction" exempt from forfeiture).

This jurisdictional issue also resolves this case. The district court categorically lacked the capacity to grant the only remedy petitioner's motion requested and so did not have the jurisdiction to entertain the motion at all. For this reason alone, this Court should affirm or, alternatively, dismiss the writ of certiorari as improvidently granted.

A. Petitioner moved to reopen this ADEA suit for the sole purpose of vacating the arbitral award, asserting jurisdiction based on the FAA alone. C.A. App.

25. But the FAA "bestow[s] no federal jurisdiction" and "requir[es] an independent jurisdictional basis." *Hall Street Associates, LLC* v. *Mattel, Inc.*, 552 U.S. 576, 581-582 (2008). Section 10 also does not permit a "look-through approach" that pins jurisdiction to the parties' underlying dispute. *Badgerow*, 596 U.S. at 9. Instead, courts must determine whether another federal statute establishes subject-matter jurisdiction over an application to vacate an arbitral award by looking to the "the face of the application itself." *Ibid.*; see *id.* at 11-12. As petitioner later conceded, *Badgerow* thus doomed any request to vacate the award under Section 10 of the FAA. C.A. App. 216-217.

Nor does any independent basis for federal jurisdiction appear on "the face of [petitioner's] application" to vacate the award. *Badgerow*, 596 U.S. at 9. Although his complaint in this case identifies jurisdictionally diverse parties, C.A. App. 10, neither the complaint nor petitioner's motion to reopen alleged any amount in controversy, see 28 U.S.C. § 1332(a), nor does that jurisdictional ingredient "affirmatively appear in the record," *Bender*, 475 U.S. at 546. Petitioner cannot attempt to fill that factual gap on appeal through "briefs and arguments" in this Court. *Id.* at 547; see *Summers* v. *Earth Island Institute*, 555 U.S. 488, 500 (2009) (refusing to consider affidavits in support of standing that were introduced "after appeal ha[d] been filed"). In all events, he has never made and so has forfeited any argument that diversity jurisdiction applies; unlike arguments *against* jurisdiction, arguments in *favor* of jurisdiction are subject to forfeiture. See *California* v. *Texas*, 593 U.S. 659, 674 (2021).

B. Because *Badgerow* barred any freestanding federal-court action to overturn the arbitral award,

petitioner repackaged that request under Rule 60(b). He urged the district court to "assume jurisdiction under Rule 60" and to reopen his earlier voluntary dismissal for the sole purpose of ruling on that same application to vacate the award. C.A. App. 217. But that rebranding campaign runs into another line of this Court's precedent that precludes using Rule 60(b) to overcome jurisdictional limitations.

As this Court held in *Kokkonen*, which petitioner cites (Br. 22), a party cannot employ Rule 60(b) to obtain relief that the court would otherwise lack jurisdiction to afford. There, the plaintiff stipulated to dismiss his claims with prejudice under Rule 41 after entering into a settlement agreement with the defendant. 511 U.S. at 376-377. The defendant later moved to reopen that case so that the district court could enforce the settlement agreement against the plaintiff who had allegedly breached its terms. *Id.* at 377. The district court asserted, and the Ninth Circuit endorsed, inherent supervisory authority over the settlement following dismissal. *Ibid.*

This Court reversed, holding that neither Rule 60(b) nor the district court's inherent ancillary jurisdiction allowed reopening to enforce the settlement agreement. *Kokkonen*, 511 U.S. at 378-382. The Court "emphasized" that the defendant sought "enforcement of the settlement agreement, and *not* merely reopening of the dismissed suit by reason of breach of the agreement that was the basis for dismissal." *Id.* at 378 (emphasis added). Such a request, the Court held, "is more than just a continuation or renewal of the dismissed suit, and hence requires its own basis for jurisdiction." *Ibid.* Nor could the district court exercise ancillary jurisdiction to enforce the settlement's terms—

even though the court was aware of and had approved those terms in granting the parties' stipulation to dismiss. *Id.* at 381. Because the order of dismissal did not expressly retain the district court's authority to enforce the settlement, the court lacked jurisdiction to reopen the case to decide the contractual dispute. *Id.* at 381-382.

Kokkonen is no outlier in looking past a Rule 60(b) motion's label to the substance of the relief sought in determining whether it lies outside the court's power. For example, the Court has held that the bar on second or successive habeas petitions applies when a request, "although labeled a Rule 60(b) motion, is in substance a successive habeas petition." *Gonzalez* v. *Crosby*, 545 U.S. 524, 531 (2005). *Gonzalez* reinforces the conclusion that courts must ascertain, without regard to a motion's trappings, whether in substance it seeks relief the law does not authorize. See also, *e.g.*, *Pitchess* v. *Davis*, 421 U.S. 482, 489-490 (1975) (per curiam) (Rule 60(b) did not allow habeas petitioner to circumvent exhaustion requirement).

Indeed, *Kokkonen*'s approach is compelled by the "axiomatic" principle—expressly codified in Rule 82—that "the Federal Rules of Civil Procedure do not create or withdraw federal jurisdiction." *Owen Equipment & Erection Co.* v. *Kroger*, 437 U.S. 365, 370 (1978); see Fed. R. Civ. P. 82 (Federal Rules "do not extend or limit the jurisdiction of the district courts"); see also, *e.g.*, *Kontrick* v. *Ryan*, 540 U.S. 443, 453 (2004); *Snyder* v. *Harris*, 394 U.S. 332, 337 (1969). Construing Rule 60(b) to permit relief a court otherwise lacks jurisdiction to grant would contravene that tenet.

Kokkonen's correct approach forecloses petitioner's resort to Rule 60(b) here. Like the movant in *Kokkonen*, 511 U.S. at 378, petitioner's motion sought to revive his case not to resume litigating his claim in federal court, but to use that empty vessel as a vehicle to seek relief the court could not otherwise grant—vacatur of the arbitral award. And, like the movant in *Kokkonen*, *id.* at 381-382, petitioner asked the district court to enforce a contract that the court had no power to police—here, the arbitration agreement. Rule 60(b) does not authorize such "jurisdictional 'expan[sion] by judicial decree.'" *Badgerow*, 596 U.S. at 12 (quoting *Kokkonen*, 511 U.S. at 377). Simply put, Rule 60(b) could not vest the court with jurisdiction to reopen the case to grant that relief.

This jurisdictional defect is reason enough to affirm the court of appeals' judgment, which reversed the district court's order granting petitioner's motion on the ground that the court lacked "subject-matter jurisdiction to consider [the] Rule 60(b) motion." Pet. App. 4a. Alternatively, because this jurisdictional defect deprives the question presented regarding the relationship of Rules 60(b) and 41(a)(1)(A)(i) of any significance in this case, the Court may wish to dismiss the writ of certiorari as improvidently granted. Either way, this jurisdictional defect precludes petitioner from prevailing.

II. RULE 60(B) DOES NOT AUTHORIZE DISTRICT COURTS TO REOPEN VOLUNTARY DISMISSALS WITHOUT PREJUDICE

Rule 60(b) relief is unavailable in any event because the only event in this case petitioner's motion sought to unwind—his own prior voluntary dismissal

of the case without prejudice—was not a "final judgment, order, or proceeding" from which the district court could grant petitioner "relie[f]." Fed. R. Civ. P. 60(b). Such a dismissal is not "final" (*ibid.*) because by definition it leaves the plaintiff free to refile. And a plaintiff's unilateral withdrawal of his case, which immediately and automatically ends the litigation without any court action or any effect on the parties' legal rights or obligations, is not a "judgment, order, or proceeding." *Ibid.* Petitioner's contrary arguments are untenable.

A. A Voluntary Dismissal Without Prejudice Is Not "Final"

Rule 60(b) expressly limits the authority it confers to "reliev[ing]" a party from a "*final* judgment, order, or proceeding." Fed. R. Civ. P. 60(b) (emphasis added). That qualifier carries the same meaning in Rule 60(b) that it has borne for centuries in the context of review of judicial action. A judicial disposition is final when it conclusively resolves all relevant issues in its scope. A voluntary dismissal without prejudice cannot qualify because it does not definitively determine anything; it poses no impediment to the plaintiff's restarting the suit immediately.

Unable to square such dismissals with the traditional understanding of finality, petitioner invents his own novel test that treats any "case-terminating" event as "final." Br. 13. That made-to-order meaning departs from well-settled law, misreads Rule 60(b)'s text, and contradicts the canons he invokes.

1. A dismissal without prejudice is not "final" because it does not conclusively resolve the dispute

In interpreting Rule 60(b), this Court considers not only the "ordinary meaning" but also the "legal meaning" of its terms in their immediate and historical context. *Kemp* v. *United States*, 596 U.S. 528, 534 (2022). By pairing "final" with "judgment, order, or proceeding," the 1946 amendment of Rule 60(b) tapped into the well-settled finality requirement that has governed appealability since the Founding. A voluntary dismissal without prejudice is quintessentially non-final under that well-settled standard. The relevant historical practice confirms that conclusion.

a. In everyday usage, "final" can denote either mere chronology ("[p]ertaining to or coming at or as the end; ultimate; last") or conclusiveness ("making unnecessary, further action or controversy; conclusive; decisive"). *Funk & Wagnalls New Practical Standard Dictionary* 437 (1944); accord *Webster's New International Dictionary* 816 (1922) (*Webster's*). In law, "final" by itself can bear both meanings. *Black's Law Dictionary* 779 (3d ed. 1933) (*Black's*) ("[d]efinitive; terminating; completed; conclusive; last").

But terms in the Federal Rules, as in statutes, should not be read in isolation. They should be construed in light of their "legal lineage," *Hall* v. *Hall*, 584 U.S. 59, 66 (2018), as well as their textual, historical, and structural context. Here, those indicia all point to a specific meaning: court actions that conclusively resolve all relevant issues in their scope. Voluntary dismissals without prejudice fail that test.

Because "two words together may assume a more particular meaning than those words in isolation," *FCC* v. *AT&T Inc.*, 562 U.S. 397, 406 (2011), an adjective like "final" cannot be read in a vacuum, but rather with a view to what it modifies: "judgment, order, or proceeding," Fed. R. Civ. P. 60(b). When the term was added to Rule 60(b) in 1946, as today, "final" had a settled meaning when modifying "judgment": A judgment is "final" only when it "dispos[es] of all issues involved in the litigation." *Catlin* v. *United States*, 324 U.S. 229, 236 (1945). And the adjective "final" must mean the same thing when attached to "order" and "proceeding" because an adjective does not shapeshift "depending on which object it is modifying." *Reno* v. *Bossier Parish School Board*, 528 U.S. 320, 329 (2000).

That concept of finality has been a mainstay requirement of appellate jurisdiction dating back to the First Congress. When Congress created circuit courts, it vested them with the authority to hear appeals only over "final decrees and judgments." Judiciary Act of 1789, ch. 20, § 22, 1 Stat. 84; see *Midland Asphalt Corp.* v. *United States*, 489 U.S. 794, 798 (1989). That finality requirement has carried forward in the grant on the books today of appellate jurisdiction over "all final decisions." 28 U.S.C. § 1291.

Applying the Judiciary Act of 1789 and its successors, this Court has held that a "judgment or decree" is "final" principally when it "terminate[s] the litigation between the parties on the merits of the case, so that if there should be an affirmance * * * the court below would have nothing to do but to execute the judgment or decree it had already rendered." *Bostwick* v. *Brinkerhoff*, 106 U.S. 3, 3-4 (1882). A non-

merits dismissal can be final in that sense only if it "effectually terminates the particular case, prevents the plaintiff from further prosecuting the same and relieves the defendant from putting in a defense." *Wilson* v. *Republic Iron & Steel Co.*, 257 U.S. 92, 96 (1921). The Court also has recognized a limited class of collateral orders, *e.g.*, *Cohen* v. *Beneficial Industrial Loan Corp.*, 337 U.S. 541, 546 (1949), and post-judgment orders, *e.g.*, *Budinich* v. *Becton Dickinson & Co.*, 486 U.S. 196, 201-202 (1988), that are final (and thus appealable) in their own right because they conclusively resolve the issues within their scope.

Rule 60(b) incorporates that familiar, longstanding definition of "final." As originally promulgated, Rule 60(b) allowed courts to grant relief from any "judgment, order, or proceeding." Fed. R. Civ. P. 60(b) (1938). The Rule borrowed that language from a California statute that extended to interlocutory decisions. Fed. R. Civ. P. 60(b) Advisory Committee Note to 1937 Adoption (citing Cal. Civ. Proc. Code § 473); see, *e.g.*, *Chiarodit* v. *Chiarodit*, 21 P.2d 562, 564 (Cal. 1933). In 1946, however, the Rules Committee added a finality requirement to "emphasiz[e] the character of the judgments, orders or proceedings from which Rule 60(b) affords relief." Fed. R. Civ. P. 60(b) Advisory Committee Note to 1946 Amendment.

The choice to "transplan[t]" a finality requirement from a legal tradition dating back to the First Congress "brings the old soil" of decisions holding that voluntary nonsuits and dismissals without prejudice are not final. *Hall*, 584 U.S. at 73 (citation omitted). The pairing of "final" and "judgment"—in a provision addressing relief from judicial action—makes the parallel

to finality for appealability unmistakable. See p. 23, *supra*.

Rule 60 elsewhere reinforces that same connection. When adding the finality requirement, the 1946 amendments clarified that a Rule 60(b) motion "does not affect the finality of a judgment" for appeal. Fed. R. Civ. P. 60(b) (1946); see Fed. R. Civ. P. 60(c)(2) (materially identical); see also Fed. R. App. P. 4(a)(4)(A)(vi) (Rule 60(b) motion tolls time to appeal only when filed "within the time allowed for filing a motion under Rule 59"). This Court accordingly has recognized that an action typically becomes final for purposes of appeal and Rule 60(b) at the same time. See *Stone* v. *INS*, 514 U.S. 386, 401 (1995).

Rule 60(b) thus applies only to judgments, orders, and proceedings that are "final," as that word has been used in this context since the Founding: a court action conclusively resolving all relevant issues.

b. Voluntary dismissals without prejudice are not, and never have been, final under that well-established meaning. The distinguishing feature of a dismissal *without* prejudice is that it does *not* definitively resolve the dispute but leaves the plaintiff free to restart the dispute. *Cone* v. *West Virginia Pulp & Paper Co.*, 330 U.S. 212, 217 (1947). As the court of appeals explained, "[b]y choosing to dismiss without prejudice, the plaintiff is leaving the door open for a future suit"; absent other, independent barriers to suit, the defendant has no repose at all. Pet. App. 19a.

The question whether voluntary dismissals without prejudice fail the traditional test for finality has been asked and answered many times over. The primary common-law predecessor to a Rule 41(a)(1)(A)(i)

voluntary dismissal without prejudice was the voluntary nonsuit. *Costello* v. *United States*, 365 U.S. 265, 285-286 (1961). For well over a century before 1946, this Court and others had repeatedly made clear that a plaintiff could not appeal from a voluntary nonsuit. See, *e.g.*, *Central Transportation Co.* v. *Pullman's Palace Car Co.*, 139 U.S. 24, 39 (1891); *United States* v. *Evans*, 9 U.S. (5 Cranch) 280, 281 (1809) (Marshall, C.J.). Voluntary nonsuits were not final "because the action may be brought anew." *Rudolph* v. *Sensener*, 39 App. D.C. 385, 387 (1912).

Following Rule 41(a)'s adoption, lower courts have consistently recognized that a dismissal without prejudice is not a "final decision" for the purposes of Section 1291 because the plaintiff "'is entitled to bring a later suit on the same cause of action.'" *Marshall* v. *Kansas City Southern Railway Co.*, 378 F.3d 495, 500 (5th Cir. 2004) (citation omitted); see, *e.g.*, *American States Insurance Co.* v. *Capital Associates of Jackson County, Inc.*, 392 F.3d 939, 940 (7th Cir. 2004) (Easterbrook, J.) ("Dismissals without prejudice are canonically non-final and hence not appealable under 28 U.S.C. § 1291."); *Treasurer of State of Michigan* v. *Barry*, 168 F.3d 8, 13 (11th Cir. 1999) ("voluntary dismissals, granted without prejudice, are not final decisions" because "it is possible that the claim dismissed without prejudice will be re-filed").

That consensus view follows *a fortiori* from this Court's decision in *Microsoft Corp.* v. *Baker*, 582 U.S. 23 (2017), which held that even a dismissal *with* prejudice can be non-final where the plaintiff for other reasons retains the ability to renew dismissed claims. *Id.* at 41. The plaintiffs in *Microsoft* sued the company for an alleged design defect in the Xbox video-game

console. *Id.* at 33. After the district court denied class certification and the Ninth Circuit denied permission to take an interlocutory appeal from that order, the plaintiffs stipulated to dismissal of their claims with prejudice and took an appeal. *Id.* at 34-35. This Court held that the voluntary dismissal with prejudice was not final because the plaintiffs had manufactured the dismissal and even asserted a "right to 'revive' those claims if the denial of class certification [were] reversed on appeal." *Id.* at 41. If a preclusive voluntary dismissal *with* prejudice is not final because of the possibility that claims might "spring back to life" due to later events (there, potential victory on appeal), *ibid.*, then a voluntary dismissal *without* prejudice cannot possibly be final because nothing whatsoever prevents the plaintiff from refiling the very next day, see *Cone*, 330 U.S. at 217.

An unbroken line of precedent and practice shows that voluntary dismissals without prejudice are not "final." The court of appeals thus was correct that Rule 60(b) does not authorize relief from the dismissal here.

2. Neither the dissent's nor petitioner's contrary test for finality has merit

Neither the dissenting opinion below nor petitioner in this Court has attempted to show how voluntary dismissals without prejudice satisfy the traditional test for finality. Each instead offered an invented alternative test. But both lack merit.

a. The dissent below reasoned that, although "[a]s a general rule" voluntary dismissals without prejudice are not final at the time they occur, in certain circumstances such dismissals can *become* final due to later

developments. Pet. App. 24a. Petitioner does not defend that approach, so this Court need not consider it. And in any event, that "boomerang" theory is untenable, as the majority below recognized. *Id.* at 19a.

The dissent posited that petitioner's non-final dismissal without prejudice became final when *Badgerow* "effectively excluded [petitioner] from federal court." Pet. App. 28a (citation omitted). But what must be "final" to open the Rule 60(b) door is the "judgment, order, or proceeding" at issue. Fed. R. Civ. P. 60(b). And as the majority below explained, finality must be assessed "at the moment the plaintiff filed the requisite notice" because the effect of a Rule 41(a)(1)(A)(i) dismissal notice is "instant and automatic." Pet. App. 19a n.11.

The Rule's structure and this Court's precedent both instruct that finality should be knowable at the time of the judgment, order, or proceeding. Allowing finality to spring up months or years later would make a hash of the time limits, which run from "the entry of the judgment or order or the date of the proceeding." Fed. R. Civ. P. 60(c)(1). And as the Court has held for the finality requirement governing appeals, "[c]ourts and litigants are best served by [a] bright-line rule, which accords with traditional understanding." *Budinich*, 486 U.S. at 202.

The dissent's boomerang approach to finality makes especially little sense in the circumstances of this case. *Badgerow* did not alter anything about the Rule 41(a)(1)(A)(i) dismissal notice that petitioner had filed nearly two years earlier. Its holding—concerning the FAA—had no bearing on whether petitioner could refile his dismissed ADEA suit in federal court

and affected only whether petitioner could file a separate action in federal court seeking vacatur of the arbitral award.

b. For his part, petitioner argues (Br. 13) that Rule 60(b) adopted a novel finality definition that encompasses any "case-terminating" docket activity. That interpretation cannot be squared with Rule 60(b)'s text, context, or structure.

To start, petitioner's theory cannot account for Rule 60(b)'s reference to "final judgment[s]." This Court held in *Catlin*, the year before the 1946 amendment that added "final" to Rule 60(b), that a judgment is "final" when it "dispos[es] of all issues involved in the litigation." 324 U.S. at 236. Under petitioner's theory, however, Rule 60(b) would have a different, custom-made definition that a judgment is final whenever it terminates a docket. Cf. *Hall*, 584 U.S. at 66. The only way petitioner could get around the final-judgment rule in *Catlin* is to limit his bespoke definition of "final" to "proceeding." But that argument would make "final" a chameleon within the same phrase, contrary to ordinary interpretive principles. See *Reno*, 528 U.S. at 329.

Petitioner points (Br. 16) to this Court's statement that "the requirement of finality is to be given a 'practical rather than a technical construction'" for Section 1291. *Gillespie* v. *United States Steel Corp.*, 379 U.S. 148, 152 (1964) (citation omitted). But that adage cuts decisively against petitioner. As this Court recently explained, courts give finality a "'practical'" construction by "resist[ing] efforts to stretch" the concept in a way "that would erode the finality principle and disserve its objectives." *Microsoft*, 582 U.S. at 37

(citation omitted). The Court should similarly resist petitioner's attempt to sap the settled term "final" of its longstanding meaning.

Petitioner also is wrong to argue (Br. 44) that taking Rule 60(b)'s finality requirement seriously "divide[s] the world" into interlocutory decisions and final ones. The voluntary dismissal with prejudice in *Microsoft* was not interlocutory because it "left nothing for the District Court to do but execute the judgment." 582 U.S. at 43 (Thomas, J., concurring in the judgment). Even so, the Court held that the dismissal was not final because the dismissed claims might be revived. *Id.* at 41.

Petitioner's theory (Br. 28) that something could be final for Rule 60(b) even if not final for appeal would leave litigants and courts lost at sea in applying conflicting conceptions of finality. That novel project would invite complexity in a context—circumscribed relief from final decisions—where it is most unwelcome. Here, as elsewhere, this Court should adopt the "clearer rule" that avoids "overly complex jurisdictional administration." *Hertz Corp.* v. *Friend*, 559 U.S. 77, 96 (2010).

Worse, if Rule 60(b) relief were available from rulings that are not "final" for purposes of appealability, a party could help himself to a statutorily unauthorized appeal simply by filing a Rule 60(b) motion and appealing from its denial. See *Browder* v. *Director, Department of Corrections of Illinois*, 434 U.S. 257, 263 n.7 (1978) (ruling on a Rule 60(b) motion is a final decision under Section 1291). Rule 60(b) should not permit such bootstrapping.

B. Petitioner's Voluntary Dismissal Without Prejudice Was Not A "Judgment, Order, Or Proceeding"

Rule 60(b) is independently inapplicable because it permits relief only from a "judgment, order, or proceeding." Fed. R. Civ. P. 60(b). A voluntary dismissal without prejudice is none of those things. Each item in the list denotes court action that determines legal rights and imposes legal burdens. A plaintiff's withdrawal of his suit—which has "instant and automatic effect" without any judicial intervention, Pet. App. 19a n.11—does not remotely fit that bill.

Petitioner does not dispute that the dismissal was not an "order." Although the district court issued a minute order purporting to confirm the effect of the dismissal, D. Ct. Doc. 9, the court itself later acknowledged that, under Tenth Circuit precedent petitioner does not challenge, "an order granting dismissal is superfluous, a nullity, and without procedural effect," Pet. App. 53a (quoting *Lundahl* v. *Halabi*, 600 F. App'x 596, 603 (10th Cir. 2014), in turn quoting *Janssen* v. *Harris*, 321 F.3d 998, 1000 (10th Cir. 2003)).

Petitioner's core contention on appeal is that Rule 60(b) does not require any "court order." Br. 9. He argues instead that his voluntary dismissal was either a "judgment" or a "proceeding." Br. 16-29. The Tenth Circuit correctly deemed the former contention forfeited, and neither has any merit.

1. A voluntary dismissal without prejudice is not a "judgment"

Petitioner's contention that his voluntary dismissal was a "judgment" is both forfeited and wrong.

The court of appeals observed that "no one asserts that we have a 'final judgment.'" Pet. App. 7a. Its analysis accordingly focused on whether such a dismissal is a "final proceeding." *Ibid.*; see *id.* at 7a-21a. At the petition stage, petitioner acknowledged that in the court of appeals "the parties agreed that Petitioner's voluntary dismissal was not a 'final judgment' or a 'final order.'" Pet. 8. His petition neither asked this Court to overlook that forfeiture nor advanced any "final judgment" argument. Petitioner now disputes that forfeiture finding in a lengthy footnote (Br. 26 n.5) but offers no reason for this Court to revisit that fact-bound determination. And the passage of his Tenth Circuit brief where he purports (*ibid.*) to have preserved the argument did no such thing. Resp. C.A. Br. 33-34.

In any event, the voluntary dismissal without prejudice was not a final "judgment." Fed. R. Civ. P. 60(b). The Federal Rules define a "'[j]udgment' as used in these rules"—plural—to "includ[e] a decree and any order from which an appeal lies." Fed. R. Civ. P. 54(a). As this Court observed, "[a] 'judgment' for purposes of the Federal Rules of Civil Procedure" thus "appear[s] to be equivalent to a 'final decision' as that term is used in 28 U.S.C. § 1291." *Bankers Trust Co.* v. *Mallis*, 435 U.S. 381, 384 n.4 (1978) (per curiam) (quoting Fed. R. Civ. P. 54(a)); see *Melkonyan* v. *Sullivan*, 501 U.S. 89, 95 (1991). But petitioner's dismissal without prejudice does not check either box: It takes effect "*without* a court order," *Frank* v. *Gaos*, 586 U.S. 485, 492 (2019) (per curiam) (emphasis added); accord Fed. R. Civ. P. 41(a)(1)(A), and it is *not* appealable, see pp. 25-27, *supra*.

Petitioner seizes (Br. 28) on the word "includes" in Rule 54(a) as compelling a "broa[d]" understanding of

"judgment." But the phrase "includes a decree and any order from which an appeal lies" in Rule 54(a) simply reflects the Rules' merger of procedure in courts of law with that of courts of equity, which issued decrees rather than judgments. *E.g.*, *Local Loan Co.* v. *Hunt*, 292 U.S. 234, 241 (1934); see p. 23, *supra* (same distinction in Judiciary Act of 1789). The Rules Committee might have worried about decrees falling through the cracks when consolidating to "one form of action" and leaving equity-specific language behind. Fed. R. Civ. P. 2. Whatever their reasons, Rule 54(a) does not plausibly empower courts to recognize new types of "judgments" that meet neither of Rule 54(a)'s criteria. And even if "includes" left the door ajar, petitioner's expansive view of "judgment" as including a party's own unilateral, unappealable action drives a truck through it.

Petitioner's capacious reading of "judgment" also conflicts with Rule 58, which requires "[*e*]*very* judgment" to "be set out in a separate document" (with exceptions not including Rule 41 dismissals) and instructs the clerk to enter that document. Fed. R. Civ. P. 58(a), (b) (emphasis added). This Court has held, before and after Rule 58, that the "judgment is the act of *the court*," even when entered by a clerk. *Commissioner* v. *Bedford's Estate*, 325 U.S. 283, 286 (1945) (emphasis added) (quoting *Ex parte Morgan*, 114 U.S. 174, 175 (1885)). Because a Rule 41(a)(1)(A)(i) notice is an act of the *plaintiff*, it could not be a judgment as the Federal Rules define the term.

Spurning the Federal Rules, petitioner relies on a dictionary that describes without-prejudice judgments. Br. 26-27. But that dictionary describes "judgments" entered *by a court* after the plaintiff has aban-

doned the litigation. *Black's* 1026, 1028. That those judgments were "*based upon* the admissions or confessions of one only of the parties," Pet. Br. 26 (quoting *Black's* 1026) (emphasis added), does not mean the party's action itself is a judgment. And even if *Black's* or other dictionaries defined "judgments" that expansively in other contexts, those meanings must yield to the Federal Rules' own "explicit definition" of the term. *Tanzin* v. *Tanvir*, 592 U.S. 43, 47 (2020) (citation omitted).

2. A voluntary dismissal without prejudice is not a "proceeding"

Petitioner's voluntary dismissal without prejudice also does not fit into Rule 60(b)'s catchall category for a "final * * * proceeding." Fed. R. Civ. P. 60(b).

a. The term "proceeding," like the items it follows ("judgment" and "order"), means a determination of legal rights that imposes legal burdens on a party through the judicial process. Because a voluntary dismissal without prejudice simply wipes the slate clean while leaving the plaintiff free to sue again, it is not a proceeding from which one could seek Rule 60(b) relief.

i. When Rule 60(b) was first promulgated in 1938, the term "proceeding" meant "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* 1430. That definition points to actions that involve "juridical business" and move the litigation from commencement through execution of judgment.

In the context of Rule 60(b), a proceeding is a step in litigation that determines the parties' rights and obligations. "[P]roceeding" brings up the rear behind "judgment" and "order"—a structure that implicates two related canons. Pet. App. 9a-10a. The *noscitur a sociis* canon "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) (citation omitted). And the related *ejusdem generis* canon instructs that "a general or collective term at the end of a list of specific items is typically controlled and defined by reference to the specific classes that precede it." *Ibid.* (citation, ellipsis, and internal quotation marks omitted). Applying those canons, courts read the general term "in light of any 'common attribute[s]' shared by the specific items." *Southwest Airlines Co.* v. *Saxon*, 596 U.S. 450, 458 (2022) (citation omitted).

Both canons point in the same direction here. The common attribute of both "judgment" and "order," particularly when paired with "final," is a determination of a party's rights or obligations. As explained, a final judgment conclusively resolves an action. See p. 32, *supra*. An "order" is "[e]very direction of a court or judge made or entered in writing, and not included in a judgment," and becomes "final" when it "either terminates the action itself, or decides some matter litigated by the parties, or operates to divest some rights; or one which completely disposes of the subject-matter and the rights of the parties." *Black's* 1298. In practice, actions that do not require a separate judgment may be final orders or final proceedings. Fed. R. Civ. P. 58(a)(1)-(5); see, *e.g.*, 28 U.S.C. § 2254 Rule 11(a)

(referring to district court's habeas decision as a "final order").

The sole verb in Rule 60(b)'s umbrella clause confirms that a proceeding involves a determination of rights or obligations that burdens a party: A district court "may *relieve* a party * * * from a final * * * proceeding." Fed. R. Civ. P. 60(b) (emphasis added). To "relieve" is to "[t]o raise or remove, as anything which depresses, weighs down, or crushes," "to render less burdensome or afflicting," or (in law) "[t]o ease any imposition, burden, wrong, or oppression, by judicial * * * interposition." *Webster's* 1801; accord *Black's* 1523 ("deliverance from oppression, wrong, or injustice"). As the court of appeals observed, one must be "*burdened* by court action" to be able to request "Rule 60(b) *relief*." Pet. App. 19a.

The category of final proceedings does meaningful work as a catchall for conclusive resolutions of rights and obligations that burden parties, as the Federal Rules of Civil Procedure reflect. For example, Rule 69 sets forth "proceedings supplementary to and in aid of judgment or execution." Fed. R. Civ. P. 69(a)(1). Rule 71.1 also establishes specific "proceedings to condemn real and personal property by eminent domain," including the appointment of commissions to determine just compensation and "proceedings" to distribute the deposit of just compensation. Fed. R. Civ. P. 71.1(a), (h)(2), (j)(2). "A term appearing in several places" in an act or code "is generally read the same way each time it appears." *Ratzlaf* v. *United States*, 510 U.S. 135, 143 (1994). And such "proceedings" can produce decisions that satisfy the longstanding finality requirement for appeal. *E.g.*, *Bank Markazi* v. *Peterson*, 578 U.S. 212, 221-224 (2016) (judgment enforcement

under Rule 69); *United States* v. *Merz*, 376 U.S. 192, 197 (1964) (commissioners' report under predecessor Rule 71A).

This Court's decisions offer further examples where parties sought relief from burdens imposed by conclusive legal determinations that do not neatly fit the definition of a final judgment or order and that "proceeding" in Rule 60(b) could encompass. Take, for example, consent decrees. Although they are only "comparable" to judgments, *Farrar* v. *Hobby*, 506 U.S. 103, 111 (1992), this Court has endorsed Rule 60(b) relief from consent decrees, *e.g.*, *Rufo* v. *Inmates of Suffolk County Jail*, 502 U.S. 367, 378 (1992). The Court has also suggested that voluntary dismissals *with* prejudice (by a plaintiff's unilateral action or stipulation) may sometimes qualify for Rule 60(b) relief, *Kokkonen*, 511 U.S. at 378—even though a Rule 41 dismissal is not a judgment under Rule 54 and takes effect "without a court order," Fed. R. Civ. P. 41(a)(1)(A). But such a dismissal "operates as an adjudication on the merits," Fed. R. Civ. P. 41(a)(1)(B), and thus imposes legal burdens from which a party could seek relief.

ii. Whatever the outer limit of "proceeding[s]" under Rule 60(b), voluntary dismissals without prejudice do not qualify. Rule 41 allows a plaintiff to erase a case as though it never happened—determining no one's rights or obligations and leaving no legal burdens from which a party could need relief.

Before the Federal Rules of Civil Procedure, this Court recognized the principle that a court "los[es] [its] jurisdiction" upon a plaintiff's dismissal without prejudice. *Southern Railway Co.* v. *Miller*, 217 U.S.

209, 217 (1910). This Court later reiterated that a district court's jurisdiction "end[s] at th[e] point" that a plaintiff files a notice of dismissal under Rule 41(a)(1). *Melkonyan*, 501 U.S. at 103. And it is "hornbook law that 'a voluntary dismissal without prejudice under Rule 41(a) *leaves the situation as if the action never had been filed*.'" *United States* v. *L-3 Communications EOTech, Inc.*, 921 F.3d 11, 19 (2d Cir. 2019) (quoting 9 Charles Alan Wright & Arthur R. Miller, *Federal Practice & Procedure* § 2367, at 559 (3d ed. 2017)); see, *e.g.*, *In re Piper Aircraft Distribution Systems Antitrust Litigation*, 551 F.2d 213, 219 (8th Cir. 1977) (explaining that a voluntary dismissal without prejudice "render[s] the proceedings a nullity").

When petitioner filed his notice of dismissal without prejudice, he "wipe[d] the slate clean" and left nothing that could have burdened him. *Sandstrom* v. *ChemLawn Corp.*, 904 F.2d 83, 86 (1st Cir. 1990). The notice "divest[ed] the district court of subject-matter jurisdiction" to adjudicate the case as though petitioner had never filed the case at all—the *absence* of a proceeding, not a proceeding that can be set aside under Rule 60(b). Pet. App. 4a. As the court of appeals held, "simply filing a sheet of paper" to hit the reset button on litigation is not a "proceeding." *Id.* at 16a.

iii. In truth, the "proceeding" from which petitioner seeks relief is the arbitration—not the voluntary dismissal without prejudice. And *Badgerow*, not his dismissal of this case, shut the door on his return to federal court to seek relief from *that* proceeding.

Below, petitioner claimed to have been wrongfooted by *Badgerow*, which the district court and the dissent took as cause to reopen the case and to grant

relief from the arbitral proceeding. Pet. App. 52a; see *id.* at 27a-28a (Matheson, J., dissenting). But courts cannot "create equitable exceptions to jurisdictional requirements," *Bowles* v. *Russell*, 551 U.S. 205, 214 (2007), as this Court's decisions applying Rule 60(b) establish, see pp. 18-19, *supra*. After all, there is no grace period during which this Court's jurisdictional interpretations apply only prospectively. Cf. *Teague* v. *Lane*, 489 U.S. 288, 300 (1989) (plurality opinion).

The premise of petitioner's theory is flawed in any event: He wants to use Rule 60(b) to wind back the clock and pretend as though the district court had stayed the case pending arbitration. Pet. Br. 6 n.1. The dissent adopted his theory that, once the district court vacated the dismissal, the federal-question jurisdiction over petitioner's "original case" allowed the court to decide the application to vacate. Pet. App. 28a n.5. But even that counterfactual scenario in which petitioner obtained a stay—which was available as of right to petitioner upon request, see p. 4, *supra*, and which would have enabled petitioner to resume his ADEA suit following arbitration (irrespective of the intervening expiration of the limitations period) if that were actually his aim—would not have allowed the district court to relieve him from the *separate* arbitral proceeding that is his real target.

The entry of a stay is not a "jurisdictional anchor" for an application to vacate under the FAA. *SmartSky Networks, LLC* v. *DAG Wireless, Ltd.*, 93 F.4th 175, 184 (4th Cir. 2024); see *id.* at 184-187. That conclusion follows from *Kokkonen*, which stated that the facts concerning an alleged breach of the parties' agreement (like the arbitration agreement here) are "quite separate from the facts to be determined in the

principal suit" and cannot support ancillary jurisdiction. 511 U.S. at 381. A stay could facilitate a district court's jurisdiction over an application to vacate an award only following an order compelling the parties to arbitrate. See *Smith* v. *Spizzirri*, 601 U.S. 472, 478 (2024); *Badgerow*, 596 U.S. at 26 (Breyer, J., dissenting); see also Br. in Opp. 17. Again, that distinction accords with *Kokkonen*, which suggests that a district court that compels parties to arbitrate pursuant to an arbitration agreement might have ancillary jurisdiction to enforce that agreement against the resulting award to "vindicate its authority" in compelling the parties to arbitrate. 511 U.S. at 380-381.

Petitioner's roundabout invocation of Rule 60(b) thus leads him back to where he started: no final proceeding imposing legal burdens that warrant relief, and no jurisdictional basis for the district court to adjudicate his application to vacate the arbitral award.

b. Petitioner fights the conclusion that a voluntary dismissal without prejudice is not a proceeding on two principal grounds. First, he advocates an implausibly broad definition of "proceeding" as "any docket activity." Br. 20. Second, he urges the Court to pick his side in a state-court split over whether voluntary dismissals without prejudice could be set aside in 1938. Neither approach brings his voluntary dismissal within Rule 60(b)'s scope.

i. Petitioner defends a self-consciously "broa[d]" interpretation of "proceeding." Br. 20. In his view, that word "capture[s] any docket activity, including any application." *Ibid.* That unbounded interpretation is a mismatch with Rule 60(b)'s text, structure, and history.

Petitioner grounds (Br. 17) his any-docket-activity interpretation in "a more particular" definition of proceedings as "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* 1431. But interpretation is not a game of stringing together atomistic dictionary definitions. See *AT&T*, 562 U.S. at 406. Especially when paired with "final," "proceeding" cannot possibly include any request to a court; such a *request* that awaits court action cannot conclusively resolve anything. See pp. 34-36, *supra*.

Petitioner also applies the *noscitur* and *ejusdem* canons in an internally inconsistent manner. On the one hand, he argues (Br. 22) that the common attribute among judgments, orders, and proceedings under the *noscitur* canon is "activity on the docket of a court that terminate[s] an action." On the other, he insists (Br. 24) that "proceeding" is not a "general or collective term" subject to the *ejusdem* canon. *Fischer*, 603 U.S. at 487 (citation omitted). But his definition of "proceeding" as "any activity on the docket" (Br. 19) would equally capture judgments and orders. See Fed. R. Civ. P. 79(b) (imposing docket-keeping requirements for "every final judgment and appealable order"). That is why petitioner's interpretation violates both canons: He gives a maximally broad interpretation to "proceeding" that subsumes the two other terms and thereby "renders meaningless the specific text that accompanies it." *Fischer*, 603 U.S. at 487.

Petitioner's any-docket-activity interpretation is even more implausible under Rule 60(b)'s original language. On his theory, before the 1946 addition of the finality requirement, *every* docket entry was the

potential target of a Rule 60(b) motion. That limitless interpretation cannot be reconciled with the inaugural Federal Rules. The original Rule 60(a) more broadly authorized relief for clerical mistakes in a "judgment, order, or *other part of the record*," Fed. R. Civ. P. 60(a) (1938) (emphasis added), in contrast to the narrower "judgment, order, or proceeding" in Rule 60(b). Further reflecting Rule 60(b)'s narrower sweep, the original Rule 55 made clear that Rule 60(b) was available to set aside a "judgment by default," but not an "entry of default." Fed. R. Civ. P. 55(c) (1938). Petitioner's capacious interpretation thus creates illogical superfluity because an entry of default, as a docket entry, *would* qualify as a "proceeding" under his reading of Rule 60(b).

Trying to turn the tables, petitioner invokes (Br. 19-20) the canon against surplusage to defend his sweeping interpretation of a proceeding as any docket activity. The charge backfires because it is *petitioner's* interpretation that envelops "judgments" and "orders," both of which are docket activity. And it is misplaced because "proceeding" does independent work in covering determinations of rights and obligations that impose burdens on parties but do not readily qualify as a judgment or order. See pp. 36-37, *supra*. That list may be modest because, as a lead drafter of the original Rules noted, "the words 'order, or proceeding' in 60(b) can usually add nothing to what is embraced within the term 'judgment.'" 7 James M. Moore, *Federal Practice* ¶ 60.27[1] n.9 (2d ed. 1979) (cited in *Hensley* v. *Henry*, 400 N.E.2d 1352, 1353 n.6 (Ohio 1980)). But when presented with similar arguments about "surplusage problems," this Court has refused to overread a "belt-and-suspenders approach" as

"compel[ling] an all-encompassing reading." *Guam* v. *United States*, 593 U.S. 310, 320 (2021).

In the end, respondent agrees with petitioner (Br. 21) that proceedings do not always "requir[e] court intervention" by a judge—as opposed to, say, a court officer's execution of a judgment. See Fed. R. Civ. P. 69. But a proceeding still must impose legal burdens that could warrant "relie[f]" under Rule 60(b). Even without stretching "proceeding" to encompass any docket activity, the reference to final proceedings is not a null set and does not implicate the canon against surplusage.

ii. Petitioner next shifts his focus to state law. He contends (Br. 35-41) that state courts traditionally had the power to set aside voluntary dismissals and nonsuits. In his telling, the "weight of authority" among state courts formed the "old soil" into which Rule 60(b) was planted. Br. 40 (citations omitted). But petitioner digs in the wrong garden and does not find anything worth repotting in the Federal Rules at any rate.

As an initial matter, petitioner's excavation of state law overlooks that *federal* law set the baseline for federal courts' authority to set aside final decisions. That power flows from federal courts' "own inherent and discretionary power." *Plaut* v. *Spendthrift Farm, Inc.*, 514 U.S. 211, 233-234 (1995) (citing *Hazel-Atlas Glass Co.* v. *Hartford-Empire Co.*, 322 U.S. 238, 244 (1944)). Even when federal courts used to apply the forum State's procedural law, the power to set aside final decisions has always "relate[d] to the *power* of the courts, and not to the mode of procedure"—with the consequence that "this authority can neither be

conferred upon nor withheld from the courts of the United States by the statutes of a state." *United States* v. *Mayer*, 235 U.S. 55, 69 (1914) (citation omitted).

If petitioner were right (Br. 42) that Rule 60(b) "codified the existing authority to reopen judgments, orders, and proceedings," then that existing authority could be determined only by reference to federal law as of the promulgation of the Federal Rules. Rule 60(b) replaced "a handful of writs, the precise contours of which were 'shrouded in ancient lore and mystery.'" *United States* v. *Beggerly*, 524 U.S. 38, 43 (1998) (citation omitted). Specifically, the Rule "abolished: bills of review, bills in the nature of bills of review, and writs of coram nobis, coram vobis, and audita querela." Fed. R. Civ. P. 60(e). But petitioner does not cite any authority for applying the abolished writs to voluntary dismissals without prejudice.

Under federal law, the answer was clear: Courts could not reinstate claims that had been voluntarily dismissed without prejudice. At the Founding, courts would not "set aside [a] nonsuit" based on "allegation of surprise." *Murray* v. *Marsh*, 17 F. Cas. 1059, 1060 (C.C.D.N.C. 1803) (Case No. 9,965) (per curiam, joined by Marshall, C.J.). This Court later recognized a limited power to reinstate cases following *involuntary* dismissals caused by clerical mistakes. *Wetmore* v. *Karrick*, 205 U.S. 141, 155 (1907) (citing *The Palmyra*, 25 U.S. (12 Wheat.) 1 (1827)). And the only two federal cases that petitioner cites (Br. 36) going the other way consciously (and mistakenly) followed state law. See *Willard* v. *Wood*, 1 App. D.C. 44, 55 (1893) (applying New York law). In *Jackson* v. *Waldron*, 5 F. 245 (C.C.W.D. Tenn. 1880), for example, the court allowed

reinstatement under Tennessee law while recognizing that the decision Chief Justice Marshall joined in *Murray* was "strongly against the plaintiff." *Id.* at 247.

Petitioner's attempt to blend old soil from state law is antithetical to the Federal Rules' existence. Congress previously required federal courts to "conform, as near as may be, to the practice, pleadings, and forms and modes of proceeding existing at the time in like causes in the courts of record of the State within which such circuit or district courts are held." Conformity Act, ch. 255, § 5, 17 Stat. 197 (1872). In a report coauthored by former President and future Chief Justice Taft, the American Bar Association decried that "effort at conformity with state practice" as "a failure" that "ha[d] become a menace to the administration of justice." Thomas W. Shelton et al., *Report of the Committee on Uniform Judicial Procedure*, 1 Am. Bar. Ass'n J. 386, 389 (1915). Congress responded with the Rules Enabling Act, ch. 651, 48 Stat. 1064 (1934) (codified as amended at 28 U.S.C. §§ 2071-2074), which empowered this Court to prescribe uniform procedures for "the just, speedy, and inexpensive determination" of all civil cases, Fed. R. Civ. P. 1. Petitioner's state-survey approach to applying the Federal Rules would magnify the Conformity Act's defects 50 times over.

Petitioner's resort to state law also fails on its own terms. In *Kemp*, this Court refused to bend Rule 60(b) to align with state law because (among other reasons) state courts had split on the question, belying the notion that the "term's meaning was 'well-settled' before the transplantation." 596 U.S. at 539 (citation omitted). Petitioner's historical survey is even more of a mixed bag than in *Kemp*.

Petitioner's own lead case (Br. 35) acknowledged "conflict in the decisions in other jurisdictions." *Lusas* v. *St. Patrick's Roman Catholic Church Corp. of Waterbury*, 193 A. 204, 206 (Conn. 1937). In several States, a plaintiff who "voluntarily abandoned" his action had only one "recourse": "begin his action anew." *Weisguth* v. *Supreme Tribe of Ben Hur*, 112 N.E. 350, 351 (Ill. 1916); see, *e.g.*, *Simpson* v. *Brock*, 40 S.E. 266, 266 (Ga. 1901) ("[T]he act of dismissing the case was that of the plaintiff's own counsel," so "it is obvious that the court had no authority to reinstate the case over the defendant's objection."); *Jackson* v. *Merritt*, 21 D.C. 276, 283 (1892) (holding that "[t]he court will not set aside a non-suit voluntarily suffered by plaintiff" (citation omitted)). Those decisions reflect the traditional common-law rule that, "[w]hen the plaintiff took a nonsuit of his own motion he was out of court, and could not move to set aside the nonsuit." Head, *supra*, 27 W. Va. L.Q. at 23; see *Barnes* v. *Whiteman*, 9 Dowl. 181, 182 (Q.B. 1840) ("where a plaintiff has elected to be nonsuited, he cannot move afterwards to set it aside").

Petitioner also cuts corners for his own cases. He overcounts by including with-prejudice dismissals, *e.g.*, *Harjo* v. *Black*, 153 P. 1137, 1137 (Okla. 1915), and ambiguous dismissals, *e.g.*, *Lusas*, 193 A. at 205. And he says that one case "reinstat[ed] [a] voluntarily dismissed action" (Br. 36) when that court actually approved the plaintiff's attempt to "commenc[e] de novo" a *second* action after discontinuing the first. *Commonwealth* v. *Magee*, 73 A. 346, 346 (Pa. 1909). The difficulty of deciphering opaque procedural histories in century-old opinions littered across dozens of jurisdictions is yet more good reason to stick to

Rule 60(b)'s text, particularly in the absence of a "well-settled" practice. *Kemp*, 596 U.S. at 539 (citation omitted).

Varied state-court practices likewise refute petitioner's more targeted theory that Rule 60(b) incorporated only interpretations of Section 473 of the California Code of Civil Procedure. Petitioner relies (Br. 40) primarily on *Palace Hardware Co.* v. *Smith*, 66 P. 474 (Cal. 1901), which involved a *with*-prejudice dismissal, and glancingly on *Salazar* v. *Steelman*, 71 P.2d 79 (Cal. Ct. App. 1937), which involved a without-prejudice dismissal. A lone intermediate appellate ruling—particularly one that omits the word "proceeding" when quoting Section 473, *id.* at 80—could not establish a firm rule that voluntary dismissals without prejudice are proceedings when *Kemp* declined to adopt either side of a state-court split involving California's *highest* court. 596 U.S. at 538. And petitioner's chief case recognized conflict among California courts. *Lusas*, 193 A. at 206 (citing *Smurda* v. *Superior Court*, 266 P. 843 (Cal. Ct. App. 1928)).

In short, federal courts could not set aside voluntary dismissals without prejudice before the Federal Rules. And nothing in Rule 60(b) disturbed the traditional rule that a plaintiff who voluntarily abandons his claims cannot later seek their reinstatement. Petitioner's theory thus founders on history as well as text and structure.

C. Petitioner's Policy Arguments Are Misdirected And Unpersuasive

Unable to square his interpretation with the Federal Rules' text, history, or precedent, petitioner retreats to the "purposes and effectiveness of the rules."

Br. 46-48 (formatting omitted). Those arguments are made to the wrong audience and do not justify extending Rule 60(b) in any event.

1. Petitioner complains (Br. 46) that withholding any procedural mechanism to reinstate Rule 41 dismissals without prejudice would be a "bizarre result." But Rule 60(b), like most written laws, reflects tradeoffs between competing values—here, finality and flexibility. *Rodriguez* v. *United States*, 480 U.S. 522, 525-526 (1987) (per curiam). Just as an "appeal to the virtues of finality" does not justify artificially limiting an "exception to finality," criticism of that exception's limits cannot carry the day against "the text of Rule 60(b) itself." *Gonzalez*, 545 U.S. at 529.

The forum for debating the balance Rule 60(b) strikes is not litigation but the "rulemaking process," where the "collective experience of bench and bar" can be harnessed and considered by the Rules Committee, the Court, and Congress. *Mohawk Industries, Inc.* v. *Carpenter*, 558 U.S. 100, 114 (2009). Nothing prevents the Rules Committee from recommending, and the Court and Congress from approving, amendments to the Rules that alter that balance—for example, relaxing Rule 60(b)'s finality requirement, or expressly authorizing a plaintiff to request rescission of a voluntary dismissal without prejudice. But the text of Rule 60(b) as written, strengthened by precedent, structure, and history, prevents petitioner from achieving that result in this case.

2. In all events, petitioner's prescription is a cure in search of a disease.

Petitioner suggests (Br. 46) that voluntary dismissals without prejudice will be lost in a Bermuda

Triangle of Federal Rules under the court of appeals' interpretation. But the outcome in this case follows from the recognition that Rule 41 allows a plaintiff to hit the eject button on a case without reaching a final decision. Reopening a voluntarily dismissed case generally achieves nothing because the plaintiff can refile, even the next day. Pet. App. 18a. To the extent refiling his suit was not viable in light of intervening developments like the expiration of the limitations period, that is a function of petitioner's decision not to obtain a stay instead of dismissal. See pp. 4-5, *supra*. Petitioner instead gravitated toward Rule 60(b) only after *Badgerow* confirmed that he wrongly sought to vacate the arbitral award in federal court instead of state court—not because the voluntary dismissal itself restrained him. See pp. 38-39, *supra*.

Petitioner is left to posit (Br. 48) hypotheticals where voluntary dismissals without prejudice are filed due to an attorney's mistake (or disloyalty) or a defendant's fraud. Those speculative concerns are overstated. Attorney error poses no policy concern unless some other, additional circumstance intervenes that precludes the plaintiff from refiling—*e.g.*, if counsel's negligence is not discovered within the limitations period. And an attorney or defendant seeking to deceive a plaintiff into providing repose is unlikely to commit willful malpractice or fraud simply to secure a dismissal *without* prejudice.

The Federal Rules are not an all-purpose fix-it tool for every error or misdeed connected to litigation. As to attorney error, for example, the Rules respect the longstanding principle that litigants may not "avoid the consequences of the acts or omissions of [their] freely selected agent." *Link* v. *Wabash Railroad Co.*,

370 U.S. 626, 633-634 (1962). Redress for willful attorney misconduct lies in state-law malpractice actions, not in collateral litigation in federal court. Cf. *Gunn* v. *Minton*, 568 U.S. 251, 264 (2013). And responsibility for policing a defendant's fraudulent inducement or breach of settlements likewise generally lies in state courts. Cf. *Kokkonen*, 511 U.S. at 382. Rule 1's instruction to pursue "just" resolutions of civil actions when applying the Federal Rules does not support reading Rule 60(b) to make federal courts a roving justice league to right every litigation-adjacent wrong.

* * * * *

At the end of the day, petitioner's contention (Br. 16) that all docket activity must be subject to "ongoing superintendence" or "revisitation" cannot be squared with Rule 41, which precludes court interference with voluntary dismissals without prejudice. See *Cone*, 330 U.S. at 217. Rule 60(b) does not override Rule 41's design, much less save petitioner from his own litigation choices.

CONCLUSION

The judgment should be affirmed.

Respectfully submitted.

PATRICK J. FUSTER
GIBSON, DUNN &
CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071
(213) 229-7000

HEATHER F. CROW
THE KULLMAN FIRM, P.L.C.
2915 Kerry Forest Pkwy
Suite 101
Tallahassee, FL 32309
(850) 296-1953

MATTHEW D. MCGILL
Counsel of Record
JONATHAN C. BOND
LOCHLAN F. SHELFER
JOSHUA R. ZUCKERMAN
GIBSON, DUNN & CRUTCHER LLP
1700 M Street, N.W.
Washington, D.C. 20036
(202) 955-8500
MMcgill@gibsondunn.com

Counsel for Respondent

December 18, 2024

APPENDIX

TABLE OF CONTENTS

Page

1. Fed. R. Civ. P. 1 provides:

Scope and Purpose

These rules govern the procedure in all civil actions and proceedings in the United States district courts, except as stated in Rule 81. They should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding.

2. Fed. R. Civ. P. 2 provides:

One Form of Action

There is one form of action—the civil action.

3. Fed. R. Civ. P. 41 (1938) provides:

Dismissal of Actions

(a) VOLUNTARY DISMISSAL: EFFECT THEREOF.

(1) *By Plaintiff; By Stipulation*. Subject to the provisions of Rule 23(c) and of any statute of the United States, an action may be dismissed by the plaintiff without order of court (i) by filing a notice of dismissal at any time before service of the answer or (ii) by filing a stipulation of dismissal signed by all the parties who have appeared generally in the action. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in any court of the United States or of any state an action based on or including the same claim.

(2) *By Order of Court*. Except as provided in paragraph (1) of this subdivision of this rule, an action

shall not be dismissed at the plaintiff's instance save upon order of the court and upon such terms and conditions as the court deems proper. If a counterclaim has been pleaded by a defendant prior to the service upon him of the plaintiff's motion to dismiss, the action shall not be dismissed against the defendant's objection unless the counterclaim can remain pending for independent adjudication by the court. Unless otherwise specified in the order, a dismissal under this paragraph is without prejudice.

(b) INVOLUNTARY DISMISSAL: EFFECT THEREOF.

For failure of the plaintiff to prosecute or to comply with these rules or any order of court, a defendant may move for dismissal of an action or of any claim against him. After the plaintiff has completed the presentation of his evidence, the defendant, without waiving his right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction or for improper venue, operates as an adjudication upon the merits.

(c) DISMISSAL OF COUNTERCLAIM, CROSS-CLAIM, OR THIRD-PARTY CLAIM.

The provisions of this rule apply to the dismissal of any counterclaim, cross-claim, or third-party claim. A voluntary dismissal by the claimant alone pursuant to paragraph (1) of subdivision (a) of this rule shall be made before a responsive pleading is served or, if

there is none, before the introduction of evidence at the trial or hearing.

(d) COSTS OF PREVIOUSLY DISMISSED ACTION.

If a plaintiff who has once dismissed an action in any court commences an action based upon or including the same claim against the same defendant, the court may make such order for the payment of costs of the action previously dismissed as it may deem proper and may stay the proceedings in the action until the plaintiff has complied with the order.

4. Fed. R. Civ. P. 41 provides:

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.

5. Fed. R. Civ. P. 54 provides in pertinent part:

Judgment; Costs

(a) DEFINITION; FORM. "Judgment" 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.

* * * * *

6. Fed. R. Civ. P. 55 (1938) provides in pertinent part:

Default

(a) ENTRY.

When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter his default.

(b) JUDGMENT.

Judgment by default may be entered as follows:

(1) *By the Clerk*. When the plaintiff's claim against a defendant is for a sum certain or for a sum which can by computation be made certain, the clerk upon request of the plaintiff and upon affidavit of the amount due shall enter judgment for that amount and costs against the defendant, if he has

been defaulted for failure to appear and if he is not an infant or incompetent person.

(2) *By the Court.* In all other cases the party entitled to a judgment by default shall apply to the court therefor; but no judgment by default shall be entered against an infant or incompetent person unless represented in the action by a general guardian, committee, conservator, or other such representative who has appeared therein. If the party against whom judgment by default is sought has appeared in the action, he (or, if appearing by representative, his representative) shall be served with written notice of the application for judgment at least 3 days prior to the hearing on such application. If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct such hearings or order such references as it deems necessary and proper and shall accord a right of trial by jury to the parties when and as required by any statute of the United States.

(c) SETTING ASIDE DEFAULT.

For good cause shown the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 60(b).

* * * * *

7. Fed. R. Civ. P. 58 provides:

Entering Judgment

(a) SEPARATE DOCUMENT. Every judgment and amended judgment must be set out in a separate document, but a separate document is not required for an order disposing of a motion:

(1) for judgment under Rule 50(b);

(2) to amend or make additional findings under Rule 52(b);

(3) for attorney's fees under Rule 54;

(4) for a new trial, or to alter or amend the judgment, under Rule 59; or

(5) for relief under Rule 60.

(b) ENTERING JUDGMENT.

(1) *Without the Court's Direction.* Subject to Rule 54(b) and unless the court orders otherwise, the clerk must, without awaiting the court's direction, promptly prepare, sign, and enter the judgment when:

(A) the jury returns a general verdict;

(B) the court awards only costs or a sum certain; or

(C) the court denies all relief.

(2) *Court's Approval Required.* Subject to Rule 54(b), the court must promptly approve the form of the judgment, which the clerk must promptly enter, when:

(A) the jury returns a special verdict or a general verdict with answers to written questions; or

(B) the court grants other relief not described in this subdivision (b).

(c) TIME OF ENTRY. For purposes of these rules, judgment is entered at the following times:

(1) if a separate document is not required, when the judgment is entered in the civil docket under Rule 79(a); or

(2) if a separate document is required, when the judgment is entered in the civil docket under Rule 79(a) and the earlier of these events occurs:

(A) it is set out in a separate document; or

(B) 150 days have run from the entry in the civil docket.

(d) REQUEST FOR ENTRY. A party may request that judgment be set out in a separate document as required by Rule 58(a).

(e) COST OR FEE AWARDS. Ordinarily, the entry of judgment may not be delayed, nor the time for appeal extended, in order to tax costs or award fees. But if a timely motion for attorney's fees is made under Rule 54(d)(2), the court may act before a notice of appeal has been filed and become effective to order that the motion have the same effect under Federal Rule of Appellate Procedure 4 (a)(4) as a timely motion under Rule 59.

8. Fed. R. Civ. P. 60 (1938) provides:

Relief from Judgment or Order

(a) CLERICAL MISTAKES.

Clerical mistakes in judgments, orders, or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders.

(b) MISTAKE; INADVERTENCE; SURPRISE; EXCUSABLE NEGLECT.

On motion the court, upon such terms as are just, may relieve a party or his legal representative from a judgment, order, or proceeding taken against him through his mistake, inadvertence, surprise, or excusable neglect. The motion shall be made within a reasonable time, but in no case exceeding six months after such judgment, order, or proceeding was taken. A motion under this subdivision does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court (1) to entertain an action to relieve a party from a judgment, order, or proceeding, or (2) to set aside within one year, as provided in Section 57 of the Judicial Code, U.S.C., Title 28, § 118, a judgment obtained against a defend-ant not actually personally notified.

9. Fed. R. Civ. P. 60 (1946) provides:

Relief from Judgment or Order

(a) CLERICAL MISTAKES.

Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from

oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal, such mistakes may be so corrected before the appeal is docketed in the appellate court, and thereafter while the appeal is pending may be so corrected with leave of the appellate court.

(b) MISTAKES; INADVERTENCE; EXCUSABLE NEGLECT; NEWLY DISCOVERED EVIDENCE; FRAUD, ETC.

On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a Judgment, order, or proceeding, or to grant relief to a defendant not

actually personally notified as provided in Section 57 of the Judicial Code, U.S.C., Title 23, § 118, or to set aside a Judgment for fraud upon the court. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review, are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

10. Fed. R. Civ. P. 60 provides:

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.

11. Fed. R. Civ. P. 69 provides:

Execution

(a) IN GENERAL.

(1) *Money Judgment; Applicable Procedure.* A money judgment is enforced by a writ of execution, unless the court directs otherwise. The procedure on execution—and in proceedings supplementary to and in aid of judgment or execution—must accord with the procedure of the state where the court is located, but a federal statute governs to the extent it applies.

(2) *Obtaining Discovery.* In aid of the judgment or execution, the judgment creditor or a successor in interest whose interest appears of record may obtain discovery from any person—including the judgment debtor—as provided in these rules or by the procedure of the state where the court is located.

(b) AGAINST CERTAIN PUBLIC OFFICERS. When a judgment has been entered against a revenue officer in the circumstances stated in 28 U.S.C. § 2006, or against an officer of Congress in the circumstances stated in 2 U.S.C. § 118, the judgment must be satisfied as those statutes provide.

12. Fed. R. Civ. P. 71.1 provides in pertinent part:

Condemning Real or Personal Property

(a) APPLICABILITY OF OTHER RULES. These rules govern proceedings to condemn real and personal property by eminent domain, except as this rule provides otherwise.

* * * * *

(h) TRIAL OF THE ISSUES.

(1) *Issues Other Than Compensation; Compensation.* In an action involving eminent domain under federal law, the court tries all issues, including compensation, except when compensation must be determined:

(A) by any tribunal specially constituted by a federal statute to determine compensation; or

(B) if there is no such tribunal, by a jury when a party demands one within the time to answer or within any additional time the court sets, unless the court appoints a commission.

(2) *Appointing a Commission; Commission's Powers and Report.*

(A) *Reasons for Appointing.* If a party has demanded a jury, the court may instead appoint a three-person commission to determine compensation because of the character, location, or quantity of the property to be condemned or for other just reasons.

(B) *Alternate Commissioners.* The court may appoint up to two additional persons to serve as alternate commissioners to hear the case and replace commissioners who, before a decision is filed, the court finds unable or disqualified to perform their duties. Once the commission renders its final decision, the court must discharge any alternate who has not replaced a commissioner.

(C) *Examining the Prospective Commissioners.* Before making its appointments, the court must advise the parties of the identity and qualifications of each prospective commissioner and alter-

nate, and may permit the parties to examine them. The parties may not suggest appointees, but for good cause may object to a prospective commissioner or alternate.

(D) *Commission's Powers and Report.* A commission has the powers of a master under Rule 53(c). Its action and report are determined by a majority. Rule 53(d), (e), and (f) apply to its action and report.

* * * * *

(j) DEPOSIT AND ITS DISTRIBUTION.

(1) *Deposit.* The plaintiff must deposit with the court any money required by law as a condition to the exercise of eminent domain and may make a deposit when allowed by statute.

(2) *Distribution; Adjusting Distribution.* After a deposit, the court and attorneys must expedite the proceedings so as to distribute the deposit and to determine and pay compensation. If the compensation finally awarded to a defendant exceeds the amount distributed to that defendant, the court must enter judgment against the plaintiff for the deficiency. If the compensation awarded to a defendant is less than the amount distributed to that defendant, the court must enter judgment against that defendant for the overpayment.

* * * * *

13. Fed. R. Civ. P. 82 provides:

Jurisdiction and Venue Unaffected

These rules do not extend or limit the jurisdiction of the district courts or the venue of actions in those courts. An admiralty or maritime claim under Rule 9(h) is governed by 28 U.S.C. § 1390.