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Media Inquiries: [Judy Pino](#), 202-869-5218

NCLA Backs SCOTUS Case Seeking to Resolve Circuit Split on Interp of Federal Civil Proc. Rule 60(b)

Dexter Earl Kemp v. United States of America

Washington, DC (March 2, 2022) – Yesterday, the New Civil Liberties Alliance, a nonpartisan, nonprofit civil rights group, filed an [amicus brief](#) in *Kemp v. United States*, a case before the Supreme Court challenging the U.S. Court of Appeals for the Eleventh Circuit’s interpretation of rules allowing courts to correct judgments for legal error. Contrary to the text and Supreme Court cases applying Federal Rule of Civil Procedure 60(b), the Eleventh Circuit failed to grant relief to Petitioner Dexter Kemp in response to an error of law committed by the U.S. District Court for the Southern District of Florida.

When the Supreme Court adopted the Federal Rules of Civil Procedure in the 1930s, it provided that Rule 60 should be available to correct judicial errors of law. The Court granted cert in *Kemp* because it presents an ideal opportunity to remedy a decades-long split that has divided courts of appeals over how Rule 60(b) applies to “legal error.”

In 2018, Mr. Kemp, a federal prisoner, moved under Rule 60(b) in the district court to reopen his case, arguing that the court failed to account for Supreme Court Rule 13.3 when it dismissed his post-conviction petition as untimely. The Government and the Eleventh Circuit both recognized that the district court committed a legal error. The Question Presented is whether Rule 60(b)(1) authorizes relief from final judgment based on legal error, “as well as mistake, inadvertence, surprise, or excusable neglect”—or does “legal error” fall into a different subsection, Rule 60(b)(6), that also authorizes relief to Mr. Kemp based on the district court’s error?

Congress enacted Rule 60(b) to simplify, expand, and standardize post-judgment review with the goal of “accomplish[ing] justice” and avoiding “undermining the public’s confidence in the judicial process.” Congress designed the Rule and its subsections to provide for correction of judgments that were flawed in particular ways. Moreover, Congress updated the Rule soon after its initial implementation to *expand* litigants’ ability to obtain relief from erroneous judgments. Reading the Rule to provide for overlapping or alternate remedies in the way proposed by the Government defeats the design of the Rule, contradicts the harmonious reading canon of statutory interpretation, and fails to serve the Rule’s purpose of doing substantial justice.

Notably, the Government’s interpretation of the word “mistake” in subsection (b)(1) to include “legal error” cuts against Congress’s goals. It would create a structural anomaly within the Rule, subjecting some legal errors to two different time limitations, giving courts no interpretive guidance to decide between them. In addition, it would cut back on the traditional remedy of a “bill of review,” which permitted parties to reopen judgments for legal error longer than one year after the judgment was entered. The Supreme Court should not allow the Executive Branch to rewrite the rules of civil procedure to better fit its current goals. The Eleventh Circuit should be reversed, and relief should be granted under Rule 60(b)(6) as originally provided when the rules were adopted.

NCLA released the following statements:

“Judges make mistakes, and to their great credit, they have, over centuries, developed tools to correct their judicial errors. When the Supreme Court codified Rule 60(b), the drafters intended to expansively preserve all known common law writs and bills to that time, including for unconstitutional judgments. They even inserted a ‘savings clause’ to allow judges flexibility to ensure substantial justice under unforeseen circumstances. The Government’s reading of the Rule values finality over justice. But the rules were enacted to ensure ‘substantial justice,’ which should never take a back seat to any lesser policy goal.”

— **Peggy Little, Senior Litigation Counsel, NCLA**

“The Federal Rules of Civil Procedure play a powerful role in making sure our judicial system is open, fair, and serves the interests of justice. Proper application of the rules—including Rule 60(b)—is even more important when issues arise between the Government and its citizens.”

— **Kara Rollins, Litigation Counsel, NCLA**

For more information visit the *amicus* page [here](#).

ABOUT NCLA

[NCLA](#) is a nonpartisan, nonprofit civil rights group founded by prominent legal scholar [Philip Hamburger](#) to protect constitutional freedoms from violations by the Administrative State. NCLA’s public-interest litigation and other pro bono advocacy strive to tame the unlawful power of state and federal agencies and to foster a new civil liberties movement that will help restore Americans’ fundamental rights.

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