No. 24-808

In the Supreme Court of the United States

CONEY ISLAND AUTO PARTS UNLIMITED INC.,
PETITIONER,

v.

JEANNE ANN BURTON, CHAPTER 7 TRUSTEE FOR VISTA-PRO AUTOMOTIVE, LLC,
RESPONDENT.

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

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Federal Rule of Civil Procedure 60(b)(4) permits a district court to grant relief from a judgment that "is void." Rule 60(c)(1), in turn, provides that any "motion under Rule 60(b) must be made within a reasonable time."

The question presented is:

Whether Rule 60(c)(1) permits a party asserting that a judgment is void for lack of personal jurisdiction to file its Rule 60(b)(4) motion at any time, even an *un*reasonable one.

STATEMENT OF RELATED PROCEEDINGS

This case arises from the following proceedings:

- *Burton v. Coney Island Auto Parts Unlimited, Inc. (In re Vista-Pro Auto., LLC)*, No. 23-5881 (6th Cir. Jul. 26, 2024) (affirming denial of motion to vacate default judgment), *en banc denied* (6th Cir. Aug. 29, 2024)
- *Coney Island Auto Parts Unlimited, Inc. v. Vista-Pro Auto., LLC*, No. 3:22-cv-804 (M.D. Tenn. Sept. 8, 2023) (affirming denial of motion to vacate default judgment)
- *Vista-Pro Auto., LLC v. Coney Island Auto Parts Unlimited, Inc. (In re Vista-Pro Auto., LLC)*, Nos. 3:14-bk-09118, 3:15-ap-90079 (Bankr. M.D. Tenn. Sept. 23, 2022) (denying motion to vacate default judgment)
- *Vista-Pro Auto., LLC v. Coney Island Auto Parts Unlimited, Inc.*, No. 21-8906 (S.D.N.Y. Apr. 21, 2022) (affirming denial of motion to vacate default judgment)
- *Vista-Pro Auto., LLC v. Coney Island Auto Parts Unlimited, Inc.*, No. 20-00401 (Bankr. S.D.N.Y. Oct. 12, 2021) (denying motion to vacate default judgment)

There are no other proceedings in state or federal trial or appellate courts, or in this Court, directly related to this case within the meaning of this Court's Rule 14.1(b)(iii).

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BRIEF IN OPPOSITION

INTRODUCTION

Petitioner seeks review of a narrow question: whether motions to vacate judgments void for lack of personal jurisdiction under Federal Rule of Civil Procedure 60(b)(4) must be filed within a "reasonable time" or within any time at all. This discrete procedural dispute does not warrant the Court's review.

As this Court recently confirmed, "[a]ll" Rule 60(b) motions "must be filed 'within a reasonable time.'" *Kemp*

v. United States, 596 U.S. 528, 533 (2022). That requirement flows from the plain text of Rule 60(c): "a motion under Rule 60(b) must be made within a reasonable time." There is no exception for Rule 60(b)(4) motions contesting personal jurisdiction. The Sixth Circuit's decision below unremarkably applied that unambiguous text to reject petitioner's six-year-tardy Rule 60(b)(4) motion as untimely.

Petitioner (at 8-11) contends that, notwithstanding Rule 60(c)'s plain text, eleven other circuits would have permitted the motion challenging personal jurisdiction even though petitioner's delay was not "reasonable" "under any understanding of that standard." Pet.App.35a. That is incorrect. No circuit consistently follows petitioner's proposed rule. In six circuits, petitioner has failed to identify any case articulating an unlimited-time rule in the personal-jurisdiction context to which petitioner limits the question presented. And in at least seven circuits (including all five in which petitioner actually cites a personal-jurisdiction case) Rule 60(b)(4) motions can be untimely in appropriate cases. Moreover, the Sixth Circuit's application of the "reasonable time" rule means that, in practice, only unreasonable delays like petitioner's will fail on timeliness grounds.

Plus, as petitioner's cited cases demonstrate, timeliness is rarely the sole reason for denying a Rule 60(b)(4) motion. These motions routinely fail on the merits because the definition of a void judgment is so strictly limited. This case proves the point: service of process was proper, so the judgment is not void. Adopting petitioner's position on the question presented would thus not change the bottom line in this case or many others. To the extent disagreement remains, recent developments in the caselaw counsel for further percolation. And this Court

can address the issue through its rule-making power, not on the merits docket.

Moreover, the decision below is emphatically correct. Rule 60(c)'s text is unambiguous and contains no exceptions for motions like petitioner's. And there is no conceivable policy justification for crafting an atextual exception for those like petitioner who undisputedly act *un*reasonably. This Court has repeatedly denied certiorari on versions of this question, including as recently as 2023. *Infra* p. 9 n.1. The same result is appropriate here.

FEDERAL RULE INVOLVED

Federal Rule of Civil Procedure 60 provides, in relevant part:

(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:

…

(4) the judgment is void;

…

(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.

STATEMENT

A. Factual Background

Vista-Pro Automotive, LLC, was a Nashville-based company that sold auto parts. Pet.App.6a-7a. The company fell behind on its obligations and, in 2014, its creditors filed an involuntary Chapter 7 bankruptcy petition in the Middle District of Tennessee. Pet.App.6a-7a.

One month later, the parties converted the case into a Chapter 11 restructuring proceeding. Pet.App.7a; Agreed Order, Bankr. M.D. Tenn., 14-bk-9118, Dkt. 29. Thereafter, Vista-Pro began to file adversary proceedings to collect unpaid accounts receivable. In February 2015, Vista-Pro filed one such adversary proceeding against petitioner Coney Island Auto Parts Unlimited, Inc., seeking $48,696 in unpaid auto-part invoices. Pet.App.7a, 106a.

Vista-Pro served Coney Island by mail, following Bankruptcy Rule 7004(b)(3), which allows parties to serve corporations by mailing the summons and complaint to the attention of a corporate officer or agent. Pet.App.7a. Coney Island—a New York company—had designated the corporation itself (and not an individual) as the registered agent for service of process in the New York Department of State database. Pet.App.7a-8a. So Vista-Pro mailed the summons and complaint to "Coney Island Auto Parts Unltd., Inc." at its Brooklyn address without listing any individual's name on the envelope. Pet.App.7a.

After Coney Island failed to respond, Vista-Pro secured entry of a default from the bankruptcy court clerk in April 2015. Pet.App.8a. Vista-Pro next moved for a default judgment, again mailing notice to Coney Island at its Brooklyn address. Pet.App.8a. But again, Coney Island failed to respond, and in May 2015 the bankruptcy court entered a default judgment against Coney Island for $48,696 plus interest. Pet.App.107a.

Meanwhile, in the underlying bankruptcy case, Vista-Pro's creditors moved to reconvert the proceedings to a Chapter 7 proceeding. Pet.App.8a. The bankruptcy court obliged and appointed respondent as trustee in June 2015. Pet.App.8a; Notice, Bankr. M.D. Tenn., 14-bk-9118, Dkt. 376.

Back in the adversary proceeding against Coney Island, the trustee sought to collect on the May 2015 default judgment. Pet.App.8a-9a. To start, the trustee mailed a demand letter to Coney Island in April 2016, which she addressed to Coney Island's CEO, Daniel Beyda. Pet.App.8a-9a. Coney Island concedes that it received this letter but again failed to respond. Pet.App.9a, 84a.

In May 2016, the trustee served discovery on Coney Island, once again by mail to the attention of "Daniel Beyda, CEO." Young Affidavit 2, Bankr. S.D.N.Y., No. 20-401, Dkt. 7-1 ("Young Aff."). Receiving no response, the trustee moved to compel and served notice on Coney Island, again by mail addressed to Beyda. Young Aff. 2-3. And when the bankruptcy court granted the trustee's motion, she served that order on Coney Island via Beyda too. Young Aff. 3. Again, Coney Island concedes that it received those notices. Mot. Hr'g Tr. 9, 11, Bankr. M.D. Tenn., No. 3:15-ap-90079, Dkt. 71 ("Mot. Hr'g Tr."). But again it did not respond.

In 2018, the trustee served subpoenas on Coney Island's known vendors, once again providing notice of those subpoenas to Coney Island through Beyda. Young Aff. 3. Still, the trustee heard nothing, Young Aff. 3, even though Coney Island conceded it received these subpoenas too, Mot. Hr'g Tr. 41-43.

After years of trying to collect, the trustee eventually registered the judgment in New York and served a subpoena on Coney Island's New-York-based bank.

Pet.App.9a. The bank placed a $97,000 hold on Coney Island's account in February 2021. Pet.App.9a.

B. Procedural Background

1. The account hold spurred Coney Island into action—eventually. In October 2021, eight months after the hold began, Coney Island filed a Rule 60(b)(4) motion in the Southern District of New York bankruptcy court to vacate the Tennessee court's May 2015 default judgment. Pet.App.9a, 84a. Coney Island asserted that Vista-Pro's failure to list an individual officer's name on the summons rendered the service invalid and deprived the Tennessee court of personal jurisdiction, despite Coney Island's failure to designate an individual agent in New York. Pet.App.144a. The New York bankruptcy court denied the motion as a matter of comity and directed Coney Island to refile in Tennessee. Pet.App.144a-46a.

Instead of immediately refiling in Tennessee, Coney Island appealed to the Southern District of New York district court. That court affirmed in April 2022, noting that Coney Island offered no explanation for "why it had eschewed" the "obvious forum" of the Tennessee bankruptcy court. Pet.App.130a-33a.

2. Another three months later, in July 2022, Coney Island finally filed a Rule 60(b)(4) motion to vacate the May 2015 default judgment in the Middle District of Tennessee. Pet.App.103a. Although the motion came six years after it was concededly on notice of the default judgment, Coney Island offered no explanation for its delay and did not "contend[] that the delay should be considered reasonable." Pet.App.98a. Instead, Coney Island argued that judgments void for lack of personal jurisdiction can be set aside under Rule 60(b)(4) at any time, no matter how unreasonable the delay. *See* Pet.App.80a.

The Tennessee bankruptcy court denied Coney Island's motion. Pet.App.100a. The court assumed without deciding that service was deficient and the default judgment void. Pet.App.83a & n.1. Regardless, the court held, Coney Island had not made the motion within a "reasonable time" as required under Rule 60(c)(1). Pet.App.97a-100a. Coney Island conceded that it knew of the default judgment by April 2016, so the inexplicable five-year gap between then and its 2021 motion in New York was unreasonable. Pet.App.98a-100a.

The district court affirmed, holding the bankruptcy court "correctly came to the conclusion dictated by published Sixth Circuit decisions." Pet.App.74a. The court agreed that "the delay is unreasonable and Coney Island offer[ed] nothing to justify the delay." Pet.App.77a.

3. The Sixth Circuit likewise affirmed. Writing for the majority, Judge Larsen rejected Coney Island's argument that a motion to vacate a void judgment under Rule 60(b)(4) "is subject to no time limit at all." Pet.App.12a.

Under the plain text of Rule 60(c)(1), the court explained, "[a]ll Rule 60(b) motions must be filed within a reasonable time," and for motions under Rule 60(b)(1), (2), or (3), "that reasonable time may not exceed one year." Pet.App.14a (quoting *Kemp*, 596 U.S. at 533) (quotation marks omitted). As a result, Rule 60(c)(1)'s text commands that Coney Island's "motion had to be filed within a 'reasonable time,' though not necessarily within one year of judgment." Pet.App.14a.

The majority emphasized that common sense favors the reasonable-time limitation. Pet.App.27a. Otherwise, parties could "engage in flagrantly inequitable conduct … by consciously sleeping on [their] rights in order to cause prejudice to the judgment holder, undermine the finality of long-forgotten judgments, or upset reliance interests."

Pet.App.29a. And because the definition of "reasonable time" "account[s] for a variety of circumstances, including a party's innocent delay in learning of a void judgment against it or in learning why the judgment is void," any countervailing fairness concerns are minimal. Pet.App.31a.

The court thus concluded that, because Coney Island's motion was not filed "within a reasonable time under any understanding of that standard," the motion was untimely. Pet.App.35a.

Judge McKeague dissented, recognizing the "somewhat unique" facts that arose from Coney Island's failure to defend the reasonableness of its delay. Pet.App.38a. In his view, the panel was not bound by the "reasonable time" requirement announced in past cases. Pet.App.59a. Alternatively, he urged the court to "renounce that rule" and hold "that the mere passage of time cannot render a void judgment valid." Pet.App.37a.

The Sixth Circuit subsequently denied rehearing en banc over Judge McKeague's dissent. Pet.App.2a.

REASONS FOR DENYING THE PETITION

The narrow issue of whether parties may unreasonably delay filing Rule 60(b)(4) motions contesting personal jurisdiction does not warrant this Court's review.

Contrary to petitioner's claims of an 11-1 split, no circuit uniformly follows petitioner's approach. For six circuits, petitioner has failed to offer any personal-jurisdiction case falling within the question presented. And at least seven circuits join the Sixth Circuit in finding Rule 60(b)(4) motions untimely in appropriate cases. At the same time, the Sixth Circuit's understanding of "reasonable time" gives litigants wide latitude to justify their delay

and bring motions years later, just as they can in every circuit.

Moreover, the question presented is rarely outcome determinative, as this case illustrates. Because Rule 60(b)(4)'s reach is strictly cabined, these motions are oft-denied. In many of petitioner's own cases, a timely Rule 60(b)(4) motion nevertheless failed on the merits—meaning the result would have been the same regardless of where the motion was filed. The same is true here. VistaPro's service was proper, so the judgment is not void and petitioner's motion should ultimately fail under any timing rule.

Given the cabined number of cases where the question presented matters, this Court has unsurprisingly denied several petitions raising the same or similar questions in recent years.[1] The lower courts can and should continue to consider the question in light of Judge Larsen's thorough analysis below and recent decisions of this Court strongly suggesting that Rule 60(c)(1) has no exceptions. And this Court can make any necessary changes via the rule-making process—not by cluttering the merits docket.

Finally, the decision below is correct. Rule 60(c)(1)'s text has no exceptions: The "reasonable time" requirement unambiguously applies to all Rule 60(b) motions including those under Rule 60(b)(4). Any contrary rule

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[1] *See Grist Mill Cap., LLC v. Universitas Educ., LLC*, 144 S. Ct. 184 (2023); *Herrera v. Stansell*, 577 U.S. 815 (2015); *Mathison v. United States*, 563 U.S. 990 (2011); *Stupakoff v. Otto (GmbH & Co. KG)*, 555 U.S. 825 (2008); *cf. Smith v. U.S. Cong.*, 144 S. Ct. 636 (2024) (limiting question presented to Rule 60(b)(4) motions based on a lack of subject-matter jurisdiction); *S. Fork Band v. United States*, 555 U.S. 1098 (2009) (considering parallel Rule 60 in Court of Federal Claims); *Tecchio v. Citicorp Mortg., Inc.*, 552 U.S. 1056 (2007) (due-process challenge to comparable state rule).

would reward parties even for inexplicable, bad-faith delay at the cost of the judicial system's critical interest in finality. Here, the bankruptcy court appointed the trustee to maximize the bankruptcy estate and distribute proceeds to Vista-Pro's creditors. But petitioner's unreasonable, years-long delay has generated thousands of dollars in unnecessary expenses, depleting the estate. The Court should deny the petition.

I. There Is No Entrenched Split on the Question Presented

Petitioner (at 8-11) asserts an 11-1 "circuit split over whether Rule 60(c)(1) imposes any time limit on motions to vacate a default judgment for lack of personal jurisdiction." That account seriously overstates the severity of any split.

1. Petitioner (at 8) portrays eleven circuits—the First, Second, Third, Fourth, Fifth, Seventh, Eighth, Ninth, Tenth, Eleventh, and D.C. Circuits—as adopting a per se rule that there is "no … time limitation" on Rule 60(b)(4) motions asserting a lack of personal jurisdiction. But none of these circuits hew to petitioner's line consistently: In all eleven, petitioner either fails to cite a personal-jurisdiction case, or the circuit will deny Rule 60(b)(4) motions as untimely in appropriate circumstances (or both).

Initially, petitioner seeks to "cleave off" Rule 60(b)(4) motions contesting personal jurisdiction from all other Rule 60(b)(4) motions. Pet.App.21a-22a. But curiously, five of petitioner's cited cases do not involve personal jurisdiction at all. *See United States v. One Toshiba Color Television*, 213 F.3d 147, 156 (3d Cir. 2000) (en banc) (due-process violation); *Garcia Fin. Grp., Inc. v. Va. Accelerators Corp.*, 3 F. App'x 86, 87 (4th Cir. 2001) (illegal underwriting contract); *V.T.A., Inc. v. Airco, Inc.*, 597

F.2d 220, 225-26 (10th Cir. 1979) (due process, illegal restraint of trade, and usurpation of Patent Office authority); *Hertz Corp. v. Alamo Rent-A-Car, Inc.*, 16 F.3d 1126, 1129-31 (11th Cir. 1994) (subject-matter jurisdiction); *Bell Helicopter Textron, Inc. v. Islamic Republic of Iran*, 734 F.3d 1175, 1177 (D.C. Cir. 2013) (subject-matter jurisdiction). And petitioner's Eighth Circuit case does not involve a Rule 60(b)(4) motion at all but rather a state-law challenge to an "integration order" of the Arkansas Oil and Gas Commission. *See Katter v. Ark. La. Gas Co.*, 765 F.2d 730, 732-35 (8th Cir. 1985).[2]

Even zooming out to Rule 60(b)(4) motions generally, petitioner vastly overstates any split. At least seven circuits, like the Sixth Circuit, will deny Rule 60(b)(4) motions as untimely in appropriate cases:

First Circuit. The First Circuit has not consistently followed petitioner's rule. Although the court has said that void judgments based on personal jurisdiction have "no time limit within which to request relief," *Farm Credit Bank of Balt. v. Ferrera-Goitia*, 316 F.3d 62, 67 (1st Cir. 2003), "delay" can still "lend support" to rejecting a Rule 60(b)(4) motion on the merits, *Sea-Land Serv., Inc. v. Ceramica Europa II, Inc.*, 160 F.3d 849, 852 (1st Cir. 1998) (cited at Pet. 8). And in another case, the First Circuit has affirmed the denial of Rule 60(b)(4) motions "as both untimely and meritless" without mentioning a carve-out for personal-jurisdiction challenges. *Brown v. Bank*

[2] As far as respondent is aware, the Eighth Circuit has not squarely addressed the question presented. But that court has noted in passing that, in general, Rule 60(b)(4) motions "allow[] relief when a 'judgment is void,' so long as a motion for relief is filed 'within a reasonable time.'" *See Fulmer v. Fifth Third Equip. Fin. Co. (In re Veg Liquidation, Inc.)*, 931 F.3d 730, 739 (8th Cir. 2019).

of Am. Corp., 2024 WL 4799545, at *1 (1st Cir. Aug. 26, 2024).

Second Circuit. The Second Circuit does not endorse petitioner's rule. While that court is "exceedingly lenient" with the filing deadline for Rule 60(b)(4), its forbearance is not limitless. *"R" Best Produce, Inc. v. DiSapio*, 540 F.3d 115, 124 (2d Cir. 2008) (citation omitted) (cited at Pet. 8-9). Instead, as in the Sixth Circuit, "[a] Rule 60(b)(4) motion must be made 'within a reasonable time' after entry of the judgment." *Grace v. Bank Leumi Tr. Co. of N.Y.*, 443 F.3d 180, 190 (2d Cir. 2006).

The Second Circuit has thus denied a Rule 60(b)(4) motion as untimely when the party "previously filed a motion to vacate a default judgment that failed to raise a voidness argument and subsequently advance[d] such an argument in a Rule 60(b)(4) motion more than a year after the entry of the default judgment." *State St. Bank & Tr. Co. v. Inversiones Errazuriz Limitada*, 374 F.3d 158, 179 (2d Cir. 2004); *accord Beller & Keller v. Tyler*, 120 F.3d 21, 23-24 (2d Cir. 1997) (in dicta). Likewise, the Second Circuit has denied as untimely a Rule 60(b)(4) motion filed six years post-judgment when the movant failed to raise the "service of process arguments on [a previous] appeal." *Universitas Educ., LLC v. Grist Mill Cap., LLC*, 2023 WL 2170669, at *2 (2d Cir. Feb. 23, 2023). Indeed, that court has recognized that an over-five-year filing delay (like Coney Island engaged in here) would, "[i]n a typical case," amount to untimeliness. *Grace*, 443 F.3d at 191.

Fifth Circuit. The Fifth Circuit has not consistently followed petitioner's rule, either. Although the Fifth Circuit has said that "Rule 60(b)(4) motions have no time limit," *Norris v. Causey*, 869 F.3d 360, 365 (5th Cir. 2017) (cited at Pet. 9-10), it has also said that a Rule 60(b)(4) motion premised on personal jurisdiction may be denied as untimely in "extraordinary circumstances," *see Jackson v.*

FIE Corp., 302 F.3d 515, 523 (5th Cir. 2002). And that court has recognized that there is "no set-in-stone filing deadline" for such motions, as "a Rule 60(b)(4) movant need only file a motion within a 'reasonable' amount of time." *Doucet v. Danos & Curole Staffing, LLC*, 856 F. App'x 550, 551 (5th Cir. 2021). A reasonable time does not mean *any* time: The Fifth Circuit has denied a Rule 60(b)(4) motion as untimely when the party could have raised the jurisdictional objection on appeal but did not. *Worldwide Detective Agency, Inc. v. Cannon Cochran Mgmt. Servs., Inc.*, 622 F. App'x 383, 385-86 (5th Cir. 2015).

Seventh Circuit. Likewise, the Seventh Circuit has observed that "Rule 60(b)(4) does not provide a license for litigants to sleep on their rights." *Simmons v. Yurkovich*, 497 F. App'x 664, 666 (7th Cir. 2012) (quoting *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 275 (2010)). Accordingly, that circuit holds out the possibility that a Rule 60(b)(4) motion challenging personal jurisdiction may be untimely in "exceptional circumstances." *See Philos Techs., Inc. v. Philos & D, Inc.*, 645 F.3d 851, 857 (7th Cir. 2011) (citation omitted) (cited at Pet. 10); *accord Pacurar v. Hernly*, 611 F.2d 179, 181 (7th Cir. 1979).

Ninth Circuit. For its part, the Ninth Circuit has said that "[m]otions to set aside a judgment as void under Rule 60(b)(4) may be brought at any time." *Million (Far E.) Ltd. v. Lincoln Provisions Inc. USA*, 581 F. App'x 679, 682 (9th Cir. 2014) (cited at Pet. 10). But the court has not followed that rule consistently; in other cases, it has said that "[m]otions brought under Rule 60(b)(4)-(6) 'must be made within a reasonable time.'" *Cotterill v. City of San Francisco*, 2025 WL 484697, at *1 (9th Cir. Feb. 13, 2025). And on multiple occasions, the Ninth Circuit has found Rule 60(b)(4) motions untimely when the movant waited "years after the entry of judgment." *Id.* (nine-year delay);

Shorter v. Baca, 2025 WL 900434, at *3 (9th Cir. Mar. 25, 2025) (ten-year delay); *Garcia v. United States*, 2021 WL 3202164, at *1 (9th Cir. July 28, 2021) (twenty-month delay).

Eleventh Circuit. The Eleventh Circuit too has been inconsistent. That court has said that "the time within which a Rule 60(b)(4) motion may be brought is not constrained by reasonableness." *Hertz Corp.*, 16 F.3d at 1130 (cited at Pet. 11). But in other cases, it has held that "[a] motion under Rule 60(b)(4) 'must be made within a reasonable time.'" *Dial HD, Inc. v. ClearOne Commc'ns, Inc.*, 2024 WL 4903934, at *1 (11th Cir. Nov. 27, 2024). The court has emphasized that—contrary to petitioner's view—"[i]t is manifestly not the case that a Rule 60(b)(4) motion can be raised at *any* time under *any* circumstances." *A&F Bahamas LLC v. World Venture Grp., Inc.*, 796 F. App'x 657, 661 (11th Cir. 2020). When the movant "knowingly sat on his rights," a Rule 60(b)(4) motion will be found untimely. *Gill v. Wells*, 610 F. App'x 809, 812 (11th Cir. 2015) (citation omitted).

In practice, the Eleventh Circuit has routinely denied Rule 60(b)(4) motions as untimely. *Dial HD*, 2024 WL 4903934, at *1-2 (eleven-year delay); *Webster v. Sec'y*, 2021 WL 8015837, at *1 (11th Cir. Dec. 20, 2021) (twenty-year delay); *A&F Bahamas*, 796 F. App'x at 661-62 (two-year delay); *Gill*, 610 F. App'x at 812-13 (six-year delay). That practice includes Rule 60(b)(4) motions asserting a lack of personal jurisdiction. *Saregama India, Ltd. v. Aiyer*, 2024 WL 4163938, at *1 (11th Cir. Sept. 12, 2024) (ten-year delay).

D.C. Circuit. The D.C. Circuit also has inconsistent caselaw on the question presented. The court has said that "Rule 60(b)(4) motions are not governed by a reasonable time restriction." *Bell Helicopter*, 734 F.3d at 1179 (cited at Pet. 11). But it has also held the opposite and

denied a Rule 60(b)(4) motion as untimely. *Karim-Panahi v. Wash. Metro. Area Transit Auth.*, 2008 WL 5640693, at *1 (D.C. Cir. Dec. 19, 2008).

2. On the other side of petitioner's asserted split is the Sixth Circuit's decision below. As petitioner (at i) correctly recognizes, the Sixth Circuit follows Rule 60(c)(1)'s text and requires that Rule 60(b)(4) motions be filed within a "reasonable time."

But as the court below explained, the "reasonable-time limitation anticipates a fact-specific inquiry that can account for a variety of circumstances, including a party's innocent delay in learning of a void judgment against it or in learning why the judgment is void." Pet.App.31a. Courts in the Sixth Circuit look to the "facts of a given case including the length and circumstances of the delay, the prejudice to the opposing party by reason of the delay, and the circumstances compelling equitable relief." Pet.App.32a (quoting *Olle v. Henry Case & Wright Corp.*, 910 F.2d 357, 365 (6th Cir. 1990)). And the reasonable-time clock for Rule 60(b)(4) motions only "begins ticking when the movant is or should be aware of the factual basis for the motion." Pet.App.32a (citation omitted). Accordingly, many delays in filing a Rule 60(b)(4) motion would not render the motion untimely in the Sixth Circuit. *See* Pet.App.31a-33a; *e.g.*, *Senu-oke v. Van Pemberton*, 2006 WL 3483958, at *5 (S.D. Ohio Nov. 30, 2006) (3-year delay still timely).

The upshot: a motion will be untimely in the Sixth Circuit but potentially timely elsewhere only in rare cases of *unreasonable* delay. Far from being the "sole outlier," Pet. i, the Sixth Circuit is in good company.

II. The Question Presented Does Not Warrant This Court's Review

Moreover, any narrow delta between the circuits will rarely be outcome determinative, as this case illustrates.

1. The bar for vacating a judgment as void under Rule 60(b)(4) due to a jurisdictional defect is extraordinarily high. Relief is reserved "only for the exceptional case in which the court that rendered judgment lacked even an 'arguable basis' for jurisdiction." *Espinosa*, 559 U.S. at 271. Only specific defects can render a judgment void, and the "list of such infirmities is exceedingly short." *Id.* at 270. In practice, then, many of the Rule 60(b)(4) motions that would fail on timeliness grounds in the Sixth Circuit would fail on the merits elsewhere.

Petitioner's own cases (at 8-11) prove this point. Of the eleven cases petitioner collects from other circuits, six ultimately deny the motion on another ground. *See Sea-Land Serv.*, 160 F.3d at 852-53; *Garcia Fin. Grp.*, 3 F. App'x at 88-89; *Norris*, 869 F.3d at 367-68 (as to one motion); *Million (Far E.) Ltd.*, 581 F. App'x at 682; *V.T.A., Inc.*, 597 F.2d at 226; *Katter*, 765 F.2d at 735.

This case would follow suit. Even if Coney Island had not waited six years to file its motion in New York, the judgment is not void for lack of personal jurisdiction. Coney Island, as the movant, bears the burden to show that the judgment is void. *E.g.*, *Philos Techs.*, 645 F.3d at 857. But Coney Island cannot carry its burden because Vista-Pro's service complied with Bankruptcy Rule 7004(b)(3), giving the Tennessee court personal jurisdiction over Coney Island.

Rule 7004(b)(3) allows service upon a corporation by mail directed to the "attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." New

York law allows New York companies, like Coney Island, to "designate a registered agent … upon whom process against such corporation may be served." N.Y. Bus. Corp. Law § 305(a). That agent can be "a domestic corporation … of any type or kind formed, or authorized to do business" in New York. *Id.* Coney Island designated "The Corporation" as its agent with the New York Secretary of State. Ex. 1, Bankr. M.D. Tenn., 15-ap-90079, Dkt. 52-1. Vista-Pro accordingly served Coney Island by name at the listed address. *Supra* p. 4. Bankruptcy courts frequently look to the agent registered with the relevant secretary of state to determine if process followed Rule 7004(b)(3). *E.g.*, *Vida v. T.W. Doers Inv. Firm, Inc. (In re Benitez)*, 2023 WL 6395906, at *2 n.8 (Bankr. N.D. Tex. Oct. 2, 2023); *Ohai v. Delta Cmty. Credit Union (In re Ohai)*, 2023 WL 5439825, at *8 (Bankr. N.D. Ga. Aug. 23, 2023).

This Court should not grant certiorari to salvage on timeliness grounds motions that will often fail on the merits, including the motion here.

2. Petitioner (at 12) also overstates the frequency with which the question presented arises, inflating its case count through two overbroad Westlaw searches. Each of these searches returns patently irrelevant results—as petitioner (at 12) itself concedes, "[n]ot all are on point." That is putting it charitably. Petitioner's count apparently includes far-afield cases like *Sindar v. Utah*, 2024 WL 5057685, at *1-2 (D. Utah Dec. 10, 2024), which evaluated a pro se habeas petitioner's mandamus petition. The searches also sweep in cases like *United States v. Brown*, 2025 WL 671481, at *1 (4th Cir. Mar. 3, 2025), which denied a certificate of appealability for a Rule 60(b)(4) motion seeking relief from the dismissal of an untimely habeas petition, and *Nguyen v. Stoller*, 2024 WL

4012849, at *1 (E.D. Cal. Aug. 30, 2024), which addressed a motion under Rule 59(e).

Petitioner (at 12) attempts to further boost its count by suggesting that the Court's decision "will likely affect" States' interpretations of analogous rules because "the question presented implicates a constitutional due process concern." But petitioner forfeited any freestanding due-process objection below, Pet.App.21a, and the petition does not appear to make a due-process argument either. So how petitioner thinks due-process concerns will affect the States is anyone's guess.

3. This is also a paradigmatic case for further percolation. On petitioner's own telling (at 2), the decision below is the first ever to apply the "reasonable time" limitation to Rule 60(b)(4) motions challenging personal jurisdiction. *Accord* Pet.App.21a (recognizing same). And, as noted above, many circuits have staked out internally inconsistent positions on the question presented. *Supra* pp. 11-15. This Court should give other circuits an opportunity to reevaluate their previous, concededly atextual positions, *see infra* pp. 20-21, in light of Judge Larsen's well-reasoned analysis.

Moreover, petitioner (at 14-15) concedes that this Court's 2010 decision in *Espinosa* provides grounds to question the unlimited-time approach by emphasizing that Rule 60(b)(4) movants cannot sit on their rights. *See Espinosa*, 559 U.S. at 275. Petitioner (at 15) contends that *Espinosa* created "substantial ambiguity" because some circuits have maintained their unlimited-time approach, but that supports further percolation too. Petitioner cites just four examples of post-*Espinosa* cases adopting its rule, but only one actually addresses *Espinosa*'s reasoning. *Compare Bell Helicopter*, 734 F.3d at 1179 (addressing *Espinosa*), *with Million (Far E.) Ltd.*, 581 F. App'x 679 (not addressing *Espinosa*), *Philos Techs.*, 645

F.3d 851 (same), *and Norris*, 869 F.3d at 366 (citing *Espinosa* but not addressing this passage).

Petitioner also does not square its position with this Court's recent statement in *Kemp* that Rule 60(c)'s "reasonable time" deadline applies to "[a]ll" Rule 60(b) motions. 596 U.S. at 533. Yet all of the cases in petitioner's asserted split predate that decision. Judicial economy counsels in favor of allowing the lower courts to address these developments in the first instance.

4. In all events, any disagreement over how Rule 60(c)(1) applies to judgments void for lack of personal jurisdiction can be resolved via the rule-making process (although how Rule 60(c)(1)'s text could possibly be any clearer, petitioner never says). *See* 28 U.S.C. §§ 2072-74. The scope of Rule 60(b) "presents a policy question about the proper balance between finality and error correction." *See Kemp*, 596 U.S. at 541 (Gorsuch, J., dissenting). In the rule-making process, "policy interests on both sides can be accounted for and weighed in light of the 'collective experience of bench and bar.'" *Id.* at 542 (quoting *Mohawk Indus., Inc. v. Carpenter*, 558 U.S. 100, 114 (2009)).

Rules 41, 52, and 54 were all amended to address division among the circuits and the Advisory Committee could easily take up the same task here should it choose. *See* Fed. R. Civ. P. 41, Notes of Advisory Committee on Rules, 1946 Amendment; Fed. R. Civ. P. 52, Notes of Advisory Committee on Rules, 1985 Amendment; Fed. R. Civ. P. 54, Notes of Advisory Committee Rules, 1946 Amendment. Certiorari is unwarranted to resolve a question about the Federal Rules that "matters only under rare circumstances." *Kemp*, 596 U.S. at 540-41 (Gorsuch, J., dissenting).

III. The Decision Below Is Correct

The Sixth Circuit correctly held that Rule 60(c)(1)'s "reasonable time" requirement contains no exception for motions to vacate void judgments under Rule 60(b)(4), including those asserting a lack of personal jurisdiction.

1. Rule 60(c)(1) provides that "[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." By its plain terms, that Rule unambiguously applies to all Rule 60(b) motions, including those under Rule 60(b)(4). As this Court recently said, "Rule 60(c) imposes deadlines on Rule 60(b) motions. *All* must be filed 'within a reasonable time.'" *Kemp*, 596 U.S. at 533 (emphasis added); *accord id.* at 540 (Sotomayor, J., concurring) ("Rule 60(c)(1) … requires that all Rule 60(b) motions be 'made within a reasonable time.'"). "If the drafters of the rule meant that a district court may never dismiss a Rule 60(b)(4) motion as untimely, then commanding that such motions 'must be made within a reasonable time' was an odd way to express it." Pet.App.25a-26a.

The text makes no exception for Rule 60(b)(4) motions. In fact, the text imposes a special limitation on Rule 60(b)(1)-(3) motions, which must be filed in one year. The drafters thus knew how to craft rules for specific Rule 60(b) grounds and chose not to do so for Rule 60(b)(4). That decision was presumptively intentional. *See, e.g.*, *Mississippi ex rel. Hood v. AU Optronics Corp.*, 571 U.S. 161, 169 (2014).

Unsurprisingly, petitioner's own cases (at 8-11) are avowedly atextual. *See, e.g.*, *"R" Best Produce*, 540 F.3d at 123 (Rule 60(c)(1) requires "most motions for relief, including a motion under Rule 60(b)(4)" to "be made 'within a reasonable time.'"); *One Toshiba*, 213 F.3d at 157 ("It is

true that the text of the rule dictates that the motion will be made within 'a reasonable time.'"); *V.T.A., Inc.*, 597 F.2d at 224 n.9 ("Indeed, the rule explicitly states that a motion made under sections other than 60(b)(1), (2) or (3) must be filed within a reasonable time."). The Sixth Circuit correctly held to the text here.

2. Moreover, the reasonable-time limitation furthers Rule 60's goals. As this Court has explained, "Rule 60(b)(4) strikes a balance between the need for finality of judgments and the importance of ensuring that litigants have a full and fair opportunity to litigate a dispute." *Espinosa*, 559 U.S. at 276. Lawsuits must come to an end. Although void judgments are "exceptional" and what counts as "a reasonable time" is inherently fact-dependent, Rule 60 "evinces a belief that, in some circumstances, a court may reasonably decide that a motion to vacate has come too late." Pet.App.30a.

Petitioner's contrary approach "would permit a party to engage in flagrantly inequitable conduct." Pet.App.29a. By definition, petitioner's position helps only movants who (like itself) act *un*reasonably. A litigant could "consciously sleep[] on its rights in order to cause prejudice to the judgment holder, undermine the finality of long-forgotten judgments, or upset reliance interests." Pet.App.29a. Here, for example, petitioner seeks to unwind the "nearly fully administered Chapter 7 estate of a debtor that ceased operating at least seven years ago." Pet.App.99a n.4. The Federal Rules rightly do not reward such chaos-inducing gamesmanship.

3. Petitioner offers no textual or practical arguments for its position but asserts (at 13) that two of this Court's precedents, while not "directly touching upon the question presented," "came close." These cases offer no support for petitioner's position.

Start with *Klapprott v. United States*, where this Court permitted a motion to set aside a default judgment stripping the petitioner of his citizenship, filed four years after entry of judgment. 335 U.S. 601, 602-03 (1949) (opinion of Black, J.). As petitioner (at 13) notes, "there was no question in that case whether petitioner had moved in 'reasonable time'" so the question was not presented. The two-Justice plurality simply noted that the one-year deadline for Rule 60(b)(1)-(3) motions does not apply to Rule 60(b)(4) motions. *Klapprott*, 335 U.S. at 609. As the Sixth Circuit explained below, that "statement is entirely consistent with the plain meaning of the Rule … and it does not imply that the indefinite 'reasonable time' limit does not apply." Pet.App.20a n.1.

Petitioner (at 14-15) also points to *Espinosa*, but that case cuts against petitioner's approach. In *Espinosa*, the Court rejected on the merits a Rule 60(b)(4) motion to set aside the discharge of student-loan debt. 559 U.S. at 263-65. As petitioner (at 14-15) concedes, *Espinosa* cautioned that "Rule 60(b)(4) does not provide a license for litigants to sleep on their rights"—just what petitioner did here. *See Espinosa*, 559 U.S. at 275. Nothing in the text, common sense, or this Court's caselaw supports disregarding Rule 60(c)(1)'s unambiguous "reasonable time" requirement just to help those, like petitioner, who seek to game the system via unreasonable delay.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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