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

BRIEF FOR PETITIONER

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QUESTION PRESENTED

Settled legal principles dictate that a judgment entered in the absence of personal jurisdiction is void. Federal Rule of Civil Procedure 60(b)(4) authorizes courts to vacate a judgment when it is void. A motion seeking *vacatur*, however, "must be made within a reasonable time." Fed. R. Civ. P. 60(c)(1).

The United States Court of Appeals for the Sixth Circuit held that Rule 60(c)(1) sets time limitations for motions to vacate void judgments, notwithstanding that they are uniformly adjudged void *ab initio*.

The question presented is:

Whether Federal Rule of Civil Procedure 60(c)(1) imposes any time limit to set aside a default judgment void for lack of personal jurisdiction.

PARTIES TO THE PROCEEDING

Petitioner is Coney Island Auto Parts Unlimited Inc., a New York corporation.

Respondent is Jeanne Ann Burton, Chapter 7 Trustee for Vista-Pro Automotive, LLC.

RELATED PROCEEDINGS

None.

AMENDMENTS TO CORPORATE DISCLOSURE STATEMENT

None.

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OPINIONS BELOW

The Sixth Circuit's decision denying a rehearing *en banc* (Pet. App.[1] 1a-3a) is available at *Burton v. Coney Island Auto Parts Unlimited, Inc. (In re Vista-Pro Auto., LLC)*, 2024 U.S. App. LEXIS 22121, 2024 WL 4128204. The Sixth Circuit's panel opinion and dissent (Pet. App. 4a-67a) is published at 109 F.4th 438. The Tennessee district court's opinion (Pet. App. 68a-78a) is available at 2023 WL 5917401, 2023 U.S. Dist. LEXIS 160108. The Tennessee bankruptcy court's opinion (Pet. App. 79a-103a) is unavailable electronically.

The New York district court's opinion (Pet. App. 104a-133a) is available at 2022 U.S. Dist. LEXIS 73419, 2022 WL 1185924. The New York bankruptcy court's opinion (Pet. App. 134a-149a) is unavailable electronically.

JURISDICTION

The judgment of the Sixth Circuit was entered on July 26, 2024, and an order declining *en banc* review entered on August 29, 2024. The

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[1] On July 3, 2025, the Court granted Coney Island's motion to dispense with printing a Joint Appendix. Therefore, references herein to the Appendix are to the Appendix annexed to the Petition for Writ of Certiorari.

petition for certiorari was filed on January 30, 2025, and granted on June 6, 2025. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

PROVISIONS INVOLVED

Federal Rule of Civil Procedure 60.

Federal Rule of Civil Procedure 60 (1946).

Rule 60 of the Rules of Civil Procedure for the District Courts of the United States (1938).

The text of each version of the Rule is set forth in the Appendix annexed hereto.

STATEMENT OF THE CASE

In November 2014, Vista-Pro Automotive, LLC and its creditors agreed to commence a case under Chapter 11 of the United States Bankruptcy Code in the Bankruptcy Court for the Middle District of Tennessee. (Pet. App. 82a). On February 11, 2015, Vista-Pro commenced an adversary proceeding against petitioner Coney Island Auto Parts Unlimited Inc., a New York corporation, for unpaid invoices. (Pet. App. 82a).

On February 23, 2015, Vista-Pro served the summons and complaint through regular United States Mail, addressed to:

Coney Island Auto Parts Unltd., Inc.
2317 McDonald Ave.
Brooklyn, NY 11223

(Pet. App. 106a). This method of service contravened Federal Rule of Bankruptcy Procedure 7004(b)(3), which permits service of process upon corporations via regular mail, but requires that the mailing be addressed specifically "to an officer, a managing or general agent, or an agent authorized by appointment or by law to receive service." Courts have construed this requirement strictly.

Without receiving a response to its complaint, on May 19, 2015, Vista-Pro moved for judgment by default, and the bankruptcy court granted its motion. (Pet. App. 107a). The resulting judgment was in the amount of $48,696.21, plus $7.00 per diem (the "Judgment"). (Pet. App. 107a).

In early 2016 the case was converted into a Chapter 7 liquidation proceeding and the bankruptcy court appointed Jeanne Ann Burton as Trustee. (Pet. App. 8a). The Trustee became the plaintiff for all subsequent proceedings and is the respondent here.

On July 22, 2020 – over five years after obtaining the Judgment in Tennessee – the Trustee commenced a proceeding in the Bankruptcy Court for the Southern District of New York to register the Judgment in that court. (Pet. App. 107a). The bankruptcy court granted the application. In early 2021, the Trustee served upon Coney Island's bank an information subpoena with restraining notice pursuant to New York law. (Pet. App. 107a-108a). In response to the subpoena, on February 5, 2021, the bank advised Coney Island that it had placed a hold on its account in the amount of $97,392.42 (twice the amount of the Judgment). (Pet. App. 108a).

Following unsuccessful negotiations, on October 7, 2021, Coney Island moved the New York bankruptcy court to vacate the Judgment due to the Tennessee bankruptcy court's lack of personal jurisdiction. (Pet. App. 109a). During the hearing, the court agreed that service seemed to be improper but denied the motion and held that Coney Island's recourse lies with the Tennessee bankruptcy court as a matter of comity because that court entered the Judgment and the underlying bankruptcy proceeding remained open. (Pet. App. 136a, 144a-148a). On December 6, 2021, Coney Island's bank transferred funds to the New York City Marshal to satisfy the Judgment. (Pet. App. 112a).

Coney Island timely appealed the bankruptcy court's decision to the United States District Court for the Southern District of New York. On April 21, 2022, the district court affirmed the bankruptcy court's discretionary order directing Coney Island to seek relief in the Tennessee bankruptcy court. (Pet. App. 104a-133a).

Thereafter, Coney Island moved the Tennessee bankruptcy court to vacate the Judgment. On September 23, 2022, that court denied the motion to vacate. (Pet. App. 79a). It found that the Sixth Circuit requires *vacatur* motions to be made within a "reasonable time" pursuant to Rule 60(c)(1) even when the motion is addressed to a void judgment pursuant to Rule 60(b)(4). (Pet. App. 90a). Although the bankruptcy court recognized that the Sixth Circuit's view differs from that of other Circuit Courts of Appeals, it was bound by the Sixth Circuit's authority. (Pet. App. 94a-95a). The bankruptcy court did not make any firm findings concerning the propriety of service upon Coney Island, but noted that "it appears on its face that the service was defective." (Pet. App. 83a).

Coney Island timely appealed the bankruptcy court's ruling to the district court. On September 8, 2023, the district court affirmed the bankruptcy court's holding. (Pet. App. 68a-78a). The district court largely agreed with the

bankruptcy court that although Coney Island's argument might be successful in other Circuit Courts of Appeals, it could not prevail in the Sixth Circuit. (Pet. App. 72a-74a).

Coney Island then appealed to the Sixth Circuit. On July 26, 2024, that court's panel affirmed the district court's order in a split decision. *Burton v. Coney Island Auto Parts Unlimited, Inc. (In re Vista-Pro Auto., LLC)*, 109 F.4th 438 (6th Cir. 2024) (Pet. App. 4a-67a). The panel majority held that the decision in *United States v. Dailide*, 316 F.3d 611 (6th Cir. 2003), was controlling precedent. 109 F.4th at 442-44. In that case, a citizenship revocation proceeding, the court held that a four-year delay between entry of judgment and a motion collaterally attacking the district court's subject matter jurisdiction was untimely pursuant to Rule 60(c)(1). *Dailide*, 316 F.3d at 618.

The panel majority noted that although its approach differs from the majority view embraced by other Circuits, its reading of Rule 60(c)(1) is more consistent with the text of the Rule and its applicability to void judgments of any kind. *Burton*, 109 F.4th at 444 (Pet. App. 24a).

Judge David McKeague authored a forceful dissent. He observed that, for a variety of reasons, the court should not adhere to *Dailide*. 109 F.4th at 448-450 (Pet. App. 45a-52a).

Moreover, the use of the term "reasonable time" in Rule 60(c)(1), along with statements made by members of the Advisory Committee on Rules for Civil Procedure when it adopted the current formulation of Rule 60, signals that it intended the "reasonable" time limit to apply to voidable judgments, not ones void *ab initio*. 109 F.4th at 452 (Pet. App. 60a-64a).

SUMMARY OF ARGUMENT

If a judgment is void immediately upon entry, how could the passage of time vivify it?

Over 150 years ago this Court recognized the ancient common law concept that a judgment entered in the absence of personal or subject matter jurisdiction is absolutely void upon entry and a legal nullity. Given a judgment that is immediately void, logic dictates that it must remain void for all time because there can be no revival of something which never existed. And because a void judgment lacks legal effect from its inception and cannot be imbued with life, lower courts have consistently vacated such judgments, even before this Court formalized the concept in its jurisprudence.

In 1938, what were then known as the Rules of Civil Procedure for the District Courts of the United States were adopted, including the precursor to the modern Rule 60, dealing with

vacation of judgments and orders. Both the original and modern form of Rule 60 requires motions for *vacatur* to be made within a "reasonable time." The surviving verbatim records of the Advisory Committee on the Rules of Civil Procedure that worked to amend Rule 60 in 1946 indicate that the committee members believed that void judgments are susceptible to attack "at any time," and that none of their proposed amendments to Rule 60 would operate to remove any legal remedy then in existence in respect of void judgments.

Since the 1946 amendments to what became the Federal Rules of Civil Procedure, and through subsequent amendments, courts have continued to find void judgments repugnant to the law and vacated them if merited. A number of these courts vacated void judgments that were otherwise dated while acknowledging that although Rule 60 contains a "reasonable time" limitation, it cannot apply to void judgments. Eventually, preeminent treatises like Wright & Miller concurred that a motion to vacate a void judgment cannot be denied on grounds of untimeliness alone.

The common assessment among these courts was that denying a Rule 60(b)(4) motion to vacate a judgment void *ab initio* on temporal grounds permits the judgment creditor to enforce a legal nullity that lacked effect from its entry.

Such a denial, in effect, breathes life into a judgment that never existed, contravening federal procedural law. Moreover, such a judgment could not pass constitutional muster inasmuch as giving effect to a void judgment is contrary to the Fourteenth Amendment's Due Process Clause.

Notwithstanding this established jurisprudence, the Sixth Circuit erroneously held that Coney Island's delay in filing a Rule 60(b)(4) motion to vacate the Judgment rendered the bankruptcy court's lack of personal jurisdiction immaterial. Practically, the Sixth Circuit's holding gave the Trustee what she did not previously have – an enforceable judgment. By the mere passage of time, therefore, the Trustee's "void judgment" became an "enforceable judgment."

The Sixth Circuit's holding that a void judgment may gain validity through the passage of time conflicts with published decisions from every other Circuit Court of Appeals, which consistently recognize that void judgments under Rule 60(b)(4) are nullities subject to attack at any time. This Court should reverse the judgment below and hold that motions to vacate void judgments must be resolved on their merits, irrespective of delay, to ensure uniformity and fidelity to constitutional and procedural requirements.

ARGUMENT

I. It Has Been This Court's Settled Law For Over 150 Years That a Judgment Entered In the Absence of Personal Jurisdiction is Void *Ab Initio*

In *Harris v. Hardeman*, 55 U.S. 334 (1853), this Court held that for a judgment to be valid or binding, "it is essential that the court should have jurisdiction of the person and the subject-matter; and the want of jurisdiction is a matter that may *always* be set up against a judgment when sought to be enforced, or where any benefit is claimed under it. The want of jurisdiction makes it utterly void and unavailable for any purpose." *Id.* at 339 (emphasis added) (quoting *Borden v. Fitch*, 15 Johns. 121, 141 (N.Y. Sup. Ct. 1818)). This holding adopted Lord Coke's reasoning in *Case of the Marshalsea*, 10 Coke Rep. 68b, 77a, 77 Eng. Rep. 1027, 1041 (K.B. 1612), which held that the Court of the Marshalsea, having authority only over cases involving members of the royal household or disputes arising within the 12-mile radius of the king's court, assumed jurisdiction over a defendant in a matter not involving the royal household and outside of the radius, thereby rendering its judgment void. *See also Grumon v. Raymond*, 1 Conn. 40, 45 (1814) ("Where there is a want of jurisdiction over the persons . . . or over the cause . . . or over the process, . . . it is the same

as though there was no court. It is *coram non judice*" [a judgment of a person, not a court]).

Later, in the seminal case of *Pennoyer v. Neff*, 95 U.S. 714 (1878), this Court held that a court's jurisdiction is limited to persons and property found within the borders of the State in which it is situated. *Id.* at 730-31. Notably, although the facts of the case primarily involved differences between *in personam* and *in rem* jurisdiction, the Court emphasized that proper service of process has always been an essential prerequisite for establishing valid personal jurisdiction. *Id.* ("In all the cases brought in the State and Federal courts, where attempts have been made under the act of Congress to give effect in one State to personal judgments rendered in another State against non-residents, without service upon them, or upon substituted service by publication, or in some other form, it has been held, without an exception, so far as we are aware, that such judgments were without any binding force . . . .").

Subsequently, in *Hanson v. Denckla*, 357 U.S. 235 (1958), this Court reaffirmed that with the adoption of the Fourteenth Amendment, "any judgment purporting to bind the person of a defendant over whom the court had not acquired *in personam* jurisdiction was void within the State as well as without." *Id.* at 250. Similarly, in *World-Wide Volkswagen Corp. v. Woodson*, 444

U.S. 286 (1980), the Court held that a "judgment rendered in violation of due process is void in the rendering State and is not entitled to full faith and credit elsewhere." *Id.* at 291. And in *Burnham v. Superior Court of California*, 495 U.S. 604 (1990), the Court observed that "the judgment of a court lacking jurisdiction *is* void," not merely voidable in an appropriate circumstance. *Id.* at 608 (emphasis added).

Punctuated throughout the foregoing decisions and others of this Court is the notion that a judgment entered in the absence of personal jurisdiction is void when entered and remains so forever. *See, e.g., Pennoyer*, 95 U.S. at 728 ("The judgment, if void when rendered, will always remain void[.]"); *Harris*, 55 U.S. at 344 ("The leading distinction is between judgments and decrees merely void, and such as are voidable only. The former are binding nowhere, the latter everywhere, until reversed by a superior authority."); *Elliott v. Lessee of Peirsol*, 26 U.S. 328, 340-41 (1828) ("[T]he jurisdiction of any Court exercising authority over a subject, may be inquired into in every Court, when the proceedings of the former are relied on and brought before the latter by the party claiming the benefit of such proceedings."); *Simon v. S. R.R. Co.*, 236 U.S. 115, 122 (1915) ("Such judgments [entered without personal jurisdiction] are not erroneous and not voidable but upon principles of natural justice, and under the due

process clause of the Fourteenth Amendment, are absolutely void."); *Kalb v. Feuerstein*, 308 U.S. 433, 438 (1940) (holding that a State court's judgment "was not merely erroneous but was beyond its power, void, and subject to collateral attack").

Against this backdrop, the question presented is further elucidated: if a judgment rendered without personal jurisdiction is inherently void and bereft of legal force, how can there exist a temporal limitation to seek its *vacatur*, beyond which such a judgment might inexplicably acquire validity?

II. The Adoption of Rule 60 Did Not Change the Principle That a Judgment Void *Ab Initio* Remains Void Regardless of the Passage of Time

Rule 60 of the Rules of Civil Procedure became effective on September 16, 1938. *See* Rules of Civil Procedure for the District Courts of the United States (as adopted Dec. 20, 1937, eff. Sept. 16, 1938). At the time of its adoption, Rule 60(b) read:

> 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. . . . This rule does not limit the power of a court [] to entertain an action to relieve a party from a judgment, order or proceeding . . . .

R. Civ. P. 60(b) (1938). The Rules were amended in 1946 (with effect in 1948), and Rule 60(b) took on its present substantive form, stating:

> 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. . . . 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 . . . .

Fed. R. Civ. P. 60(b) (1948). Subsequent amendments made stylistic changes and moved the "reasonable time" provision into an added Rule 60(c). *See* Fed. R. Civ. P. 60(c)(1).

It should be noted at the outset that the drafters of the original Rules and amendments themselves understood that a judgment void upon

entry remains so for all time and may be assailed at any time, stating: "It was also settled that a judgment which was void for want of either jurisdiction of the subject matter or jurisdiction of the defendant was subject to collateral attack in any forum at any time." 3 Proceedings of the Advisory Committee on Rules for Civil Procedure, Mar. 25-28, 1946 ("Advisory Committee"), at 555 (citing *Pennoyer*, *supra*).

Indeed, cases both before and after the 1938 adoption of Rule 60(b) and its amendment in 1946 hold that litigants may move at any time to vacate judgments void for lack of personal jurisdiction. *See, e.g., Pollitz v. Wabash R. Co.*, 180 F. 950, 951 (C.C.S.D.N.Y. 1910) (citing *Hardeman*, *supra*) ("[A]ll courts have the inherent power to vacate at any time their own judgments rendered without jurisdiction."); *United States v. Mani*, 196 F. 160, 164 (D.S.D. 1912) ("And again, if the judgment is absolutely void for want of jurisdiction, it may be attacked by the parties in interest collaterally at any time."); *Woods Bros. Const. Co. v. Yankton Cty.*, 54 F.2d 304, 310 (8th Cir. 1931) ("Of course, if a judgment is void on its face for want of jurisdiction it binds no one and can be set aside by the court at any time."); *Parker Bros. v. Fagan*, 68 F.2d 616, 617 (5th Cir. 1934) ("A judgment that is absolutely null and void, mere *brutum fulmen* [an empty threat], can be set aside and stricken from the record on motion at any time, and may be collaterally assailed[.]"); *United States v. Sotis*,

131 F.2d 783, 787 (7th Cir. 1942) ("It is universally conceded that a judgment void for want of jurisdiction over the person of a defendant may be vacated on motion, irrespective of lapse of time" (citation omitted)); *United States v. 534.7 Acres of Land*, 157 F.2d 828, 831 (5th Cir. 1946) ("The money judgment against appellant, being null and void, could be vacated by the court below at any time."); *Phelan v. Bradbury Bldg. Corp.*, 7 F.R.D. 429, 431 (S.D.N.Y. 1947) ("If it is a void judgment this court may vacate it at any time.").

In view of the foregoing, it can hardly be said that when the Federal Rules of Civil Procedure were adopted in 1946 any federal judicial officer believed there was a temporal limitation on motions to vacate void judgments based on lack of *in personam* jurisdiction. In fact, the opposite was true. Accordingly, when questioned whether the proposed Rule 60(b)(4) would be subject to the same one-year limitation found in Rules 60(b)(1)-(3), the Chairman of the Advisory Committee responded, "No, the later ones have no limitation of time on them." Advisory Committee at 604. Similarly, the Advisory Committee agreed that nothing within the amended Rule 60(b)(4) should be construed as "taking away any substantial right which the parties have today," and that none of the members "would vote for anything which we thought would take away any present remedy." *Id.* at 615-16.

Predictably, therefore, following the 1948 effective date of the amendment to Rule 60, federal courts continued holding that a judgment entered in the absence of personal jurisdiction may be vacated at any time.

A. Courts and Commentators Have Uniformly Opined That There is No Time Limit to Vacate a Void Judgment

There is a linear post-1948 history of courts holding that motions for *vacatur* of a void judgment may be filed at any time. *See, e.g., Yanow v. Weyerhaeuser S.S. Co.*, 274 F.2d 274, 278 (9th Cir. 1959) ("Rule 60(b) contains an express condition upon which the relief there provided for may be granted as follows: 'The motion shall be made within a reasonable time . . . .' If the judgment with respect to which relief is here sought were one which was truly void in the fullest sense of that term, that is to say, if it were one which was subject to collateral attack, because legally ineffective for any purpose, then it is possible that the 'reasonable time' limitation might not apply."); *Taft v. Donellan Jerome, Inc.*, 407 F.2d 807, 808 (7th Cir. 1969) ("Certainly, under [Rule] 60(b)(4), [a litigant] may attack the judgment for lack of jurisdiction over the person at any time since a judgment rendered without jurisdiction over the person would be void."); *V.T.A., Inc. v. Airco, Inc.*, 597 F.2d 220, 224 n.9

(10th Cir. 1979) ("Arguably, a motion to set aside a judgment for voidness under 60(b)(4) is subject to a 'reasonable' time limitation. 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. However, if a judgment is void, it is a nullity from the outset and any 60(b)(4) motion for relief is therefore filed within a reasonable time."); *Hertz Corp. v. Alamo Rent-A-Car*, 16 F.3d 1126, 1130 (11th Cir. 1994) (agreeing with "Professors Wright and Miller, [that] the time within which a Rule 60(b)(4) motion may be brought is not constrained by reasonableness" (citing 11 Wright & Miller, Federal Practice and Procedure § 2862 (1973))); *United States v. One Toshiba Color Television*, 213 F.3d 147, 157 (3d Cir. 2000) (en banc) ("[N]o passage of time can transmute a nullity into a binding judgment, and hence there is no time limit for such a motion. It is true that the text of the rule dictates that the motion will be made within 'a reasonable time.' However, nearly overwhelming authority exists for the proposition that there are no time limits with regards to a challenge to a void judgment because of its status as a nullity; thus laches is no bar to recourse to Rule 60(b)(4)."); *"R" Best Produce, Inc. v. DiSapio*, 540 F.3d 115, 123-24 (2d Cir. 2008) ("In fact, it has been oft-stated that, for all intents and purposes, a motion to vacate a default judgment as void may be made at any time" (internal quotation marks omitted)); *Bell Helicopter Textron, Inc. v. Iran*,

734 F.3d 1175, 1180 (D.C. Cir. 2013) (rejecting plaintiff's argument that Rule 60(c)(1) applies to motions to vacate a void default judgment as "contrary to this court's precedent, as well as that of almost every other circuit court of appeals, all of which reject a time limit that would bar Rule 60(b)(4) motions").

The Sixth Circuit stands as an outlier. The earliest decision in which it seemingly departed from the otherwise established practice that Rule 60(b)(4) motions to vacate void judgments are never time-barred is the unreported opinion in *Richard v. Allen*, 1996 U.S. App. LEXIS 8117, 1996 WL 102419 (6th Cir. March 7, 1996), which affirmed denial of a motion to vacate a purportedly void judgment solely on timeliness grounds. *Id.* at *1. Likewise in *Ohio Cas. Ins. Co. v. Pulliam*, 1999 U.S. App. LEXIS 14136, at *8-9, 1999 WL 455336, at *3-4 (6th Cir. June 23, 1999) ("Pulliam's remaining claims fell under 60(b)(4) and 60(b)(6). As noted above, claims under these subsections must be filed 'within a reasonable time.'"), and *Manohar v. Massillon Cmty. Hosp.*, 2000 U.S. App. LEXIS 4867, 2000 WL 302776, at *1 (6th Cir. March 17, 2000) ("Manohar filed his Rule 60(b)(4) motion on March 23, 1999, almost five years after the underlying judgment was entered. However, he offered no explanation or excuse for the delay in filing his motion."). Neither the *Richard*, *Pulliam* nor *Manohar* panels acknowledged that their rulings departed

from the great weight of decisions on that issue around the Nation.

It was not until *United States v. Dailide*, 316 F.3d 611 (6th Cir. 2003), however, that the Sixth Circuit issued a reported decision addressing the question presented here. In *Dailide*, a citizenship revocation case, plaintiff-appellant collaterally attacked the district court's subject matter jurisdiction four years after entry of judgment against him. *Id.* at 617. The district court denied the motion, and the Sixth Circuit affirmed because "Dailide had not brought his Rule 60(b)(4) motion within a reasonable time after disposition, and his prayer for relief is untimely." *Id.* at 618. Separate from its untimeliness, the court also found that appellant's argument lacked merit. *Id.* at 619.

The majority's decision below was largely based on its view that it was constrained to follow *Dailide* (*see* Pet. App. 23a), whereas Judge McKeague in dissent argued that *Dailide* is not controlling (Pet. App. 45a). The Sixth Circuit chose not to take the matter up *en banc*. *See Burton*, 2024 U.S. App. LEXIS 22121, 2024 WL 4128204. Nonetheless, although *Dailide*, like the unreported decisions that preceded it, did not delve into the circuit split resulting from its decision, it did remark parenthetically that "[s]ubject matter jurisdiction can be challenged at any time." 316 F.3d at 619 n.4. Ultimately,

however, the court denied the possibility of relief pursuant to Rule 60(b)(4) because appellant could have raised the issue on his earlier direct appeal but chose not to, leading it to believe that he was engaging in a tactic to delay his deportation until death. *Id.* In view of its alternative holding that the appeal is substantively meritless, the timeliness issue was not discussed further.

B. Coney Island Does Not Contend That Rule 60(c)(1) is Unconstitutional

To be clear, Coney Island does not contend that Rule 60 or Rule 60(c)(1) are unconstitutional. Rather, it contends that motions pursuant to Rule 60(b)(4) relating to judgments void *ab initio* are of a special class and not bound by the timeliness standard in Rule 60(c)(1). Certainly, a future amendment to the Federal Rules of Civil Procedure may choose to clarify this existing principle. Until then, however, this Court should endorse the widespread standard and resolve the circuit split.

III. This Court's Decision That Rule 60(c)(1) Does Not Bar Motions to Vacate Void Judgments Will Not Have Untoward Effects On Litigants

Should the Court determine that Rule 60(c)(1)'s "reasonable time" requirement does not apply to judgments void *ab initio*, litigants will not suffer undue prejudice if they take reasonable steps to protect their interests.

First, in regard to judgments void due to lack of personal jurisdiction, as in this case, *vacatur* will only result in a dismissal without prejudice. *See* Fed. R. Civ. P. 4(m) (requiring dismissal without prejudice in the event a defendant is not served within 90 days of the filing of a complaint); *Hughes v. United States*, 71 U.S. 232, 237 (1866) ("If the first suit was dismissed for . . . want of jurisdiction, or was disposed of on any ground which did not go to the merits of the action, the judgment rendered will prove no bar to another suit."). Thus, a plaintiff could seek reinstatement and effect proper and timely service. If, subsequently, a statute of limitations would act to bar the ensuing action, a plaintiff may file an amended pleading and seek relation back to the original suit. *See* Fed. R. Civ. P. 15(c)(1)(B) (permitting an amended pleading to "relate[] back to the date of the original pleading" when "the amendment asserts a claim or defense that arose out of the conduct, transaction, or

occurrence set out – or attempted to be set out – in the original pleading"); *ASARCO LLC v. Goodwin*, 756 F.3d 191, 202 (2d Cir. 2014) (holding that the "central inquiry" under Rule 15(c)(1)(B) "is whether adequate notice of the matters raised in the amended pleading has been given to the opposing party within the statute of limitations by the general fact situation alleged in the original pleading"); *Luevano v. Wal-Mart Stores, Inc.*, 722 F.3d 1014, 1026 (7th Cir. 2013) ("As we have explained, the July 9, 2010 order in this case dismissed only the complaint, not the entire case. The timely-filed case remained pending, and plaintiff could amend her complaint to address the problems found by the district court."); *see also* Fed. R. Civ. P. 4(m) ("But if the plaintiff shows good cause for the failure [to serve timely], the court must extend the time for service for an appropriate period."). As a result, plaintiffs in the possession of a vacated judgment faced with a statute of limitations problem have established recourse to preserve their claims.

Further, the Sixth Circuit majority in this case expressed concern that vacating a void judgment at any time "would permit a party to engage in flagrantly inequitable conduct – for instance by consciously sleeping on its rights in order to cause prejudice to the judgment holder, undermine the finality of long-forgotten judgments, or upset reliance interests." *Burton*, 109 F.4th at 445. As an initial matter, this Court

has held that there is no obligation on the part of defendants to act with any sort of alacrity if they believe a court lacks jurisdiction over them. *See Ins. Corp. of Ireland v. Compagnie Des Bauxites De Guinee*, 456 U.S. 694, 706 (1982) ("A defendant is always free to ignore the judicial proceedings, risk a default judgment, and then challenge that judgment on jurisdictional grounds in a collateral proceeding."); *see also Practical Concepts, Inc. v. Republic of Bolivia*, 811 F.2d 1543, 1547 (D.C. Cir. 1987) (R. Ginsburg, J.) (noting that a defendant who believes a court lacks jurisdiction "may refrain from appearing, thereby exposing himself to the risk of a default judgment. *When enforcement of the default judgment is attempted*, however, he may assert his jurisdictional objection" (emphasis added)).

To avoid the possibility of prejudice, however, a plaintiff should carefully scrutinize the validity of service of process, especially when seeking a judgment by default. In this case, for example, service was improper because process was mailed to Coney Island without addressing it to a general or managing agent. *Burton*, 109 F.4th at 440 ("Vista-Pro mailed a summons and complaint to Coney Island at its McDonald Avenue address in Brooklyn. The summons and complaint were addressed to 'Coney Island Auto Parts Unltd., Inc.,' without any corporate officer's or other individual's name on the mailing."); Bankr. R. Civ. Pro. 7004(b)(3)(A) (authorizing

service by regular mail if addressed "to an officer, a managing or general agent, or an agent authorized by appointment or by law to receive service"); *Beneficial Cal., Inc. v. Villar (In re Villar)*, 317 B.R. 88, 93 (Bankr. 9th Cir. 2004) ("[N]ationwide service of process by first class mail is a rare privilege which should not be abused or taken lightly and, thus, the service has to be made to a *specifically named* officer" (emphasis in original)); *Reaves v. Am.'s Serv. Co. (In re Reaves)*, 396 B.R. 708, 716 (Bankr. W.D. Tenn. 2008) ("Courts have found that when a pleading was not addressed to an officer by either name or title it is insufficient service under rule 7004(b)(3)."). Had the Trustee verified that service was proper in conjunction with moving for default judgment, it could have avoided this collateral litigation.

Separately, a plaintiff enforcing a judgment should act promptly in order to bring the issue to a head and, if necessary, obtain a determination as to the judgment's validity. Here, Vista-Pro obtained the Judgment in May 2015, but the Trustee engaged only in sporadic, seemingly bi-annual efforts to collect. (*See* Pet. App. 101a-102a). Had the Trustee acted sooner, any prejudice stemming from the passage of time may have been averted.

In addition, the Court should take note that the possibility of gamesmanship likewise exists if

it were to rule in the Trustee's favor. The set of facts in this case offers a paradigm: an unscrupulous plaintiff[2] serves process via regular mail without following the applicable service rules. The defendant will be presumed to have received it pursuant to the "well settled" rule that "proof that a letter properly directed was placed in a post office, creates a presumption that it reached its destination in usual time and was actually received by the person to whom it was addressed." *Hagner v. United States*, 285 U.S. 427, 430 (1932). The defendant does not respond to the complaint and plaintiff obtains a default judgment, waits a few years and begins collection. When the defendant moves to vacate the judgment pursuant to Rule 60(b)(4), the plaintiff will argue that it had notice of the lawsuit through the mailing but did not move to vacate within the "reasonable time" required by Rule 60(c)(1). That is essentially what happened in this case, though no party acted intentionally. Yet, strict compliance with service of process rules is not optional. *See King v. Taylor*, 694 F.3d 650, 656 n.1 (6th Cir. 2012) ("The Federal Rules of Civil Procedure provide a very specific method for apprising a defendant of a lawsuit and

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[2] To be clear, Coney Island is not asserting that the Trustee or her counsel has acted in any way inappropriately throughout the pendency of this matter.

conferring a court's jurisdiction over him. [] That method was not followed here. We do not have the option of looking past that failure, even though it was harmless in light of Taylor's full awareness of the lawsuit.").

The Court should not permit the mere possibility of gamesmanship in either direction to override constitutional requirements. *See EPA v. Calumet Shreveport Refin., L.L.C.*, ___ U.S. ___, 145 S. Ct. 1735, 1748 (2025) (declining to interpret a statute in a manner that would permit its abuse).

IV. The Sixth Circuit's Decision Was Incorrect and Should Be Reversed

The majority and dissenting opinions below concentrated their discussions in large part on whether *Dailide* was binding precedent. *Burton*, 109 F.4th at 442, 448-49. Because the action has reached this Court that question is no longer pertinent. Further, although the majority and dissent disagreed over whether the holding in *Dailide* was based on timing versus the appeal's merit, *Burton*, 109 F.4th at 442, 449, neither discussed the footnote in which the court acknowledged that a void judgment "can be challenged at any time." *Dailide*, 316 F.3d at 619 n.4. Consequently, *Dailide*'s discussion concerning timing seems to be *obiter dicta*.

Next, the majority below opined that "ours is the only reading that is faithful to the text of Rule 60(c)(1), which by its plain terms imposes a reasonable-time requirement on *each* of the enumerated grounds in Rule 60(b)." *Burton*, 109 F.4th at 444 (emphasis in original). But the Federal Rules of Civil Procedure do not override constitutional strictures. *See Dickson v. Quarterman*, 462 F.3d 470, 479 n.7 (5th Cir. 2006) (noting that when a requirement "is based on the Constitution, it overrides court-made rules of procedure" (quoting 2 Charles Alan Wright, Federal Practice ad Procedure § 254.2 (3d ed. 2000))). Accordingly, the Sixth Circuit's holding that the Federal Rules of Civil Procedure ought to or even may override constitutional protections, *Burton*, 109 F.4th at 445 (Pet. App. 30a-31a), is incorrect and this Court should reverse it.

The Sixth Circuit also recognized that at the time of the 1948 amendments to Rule 60, "there was a well-established rule that void judgments could be vacated at any time." *Burton*, 109 F.4th at 444. It reasoned from this that had the Advisory Committee sought to except void judgments from the operation of the rule, it could have done so expressly. *Id.* at 444-45. But as discussed above, the Advisory Committee agreed that, based on *Pennoyer*, void judgments could be subject to "collateral attack in any forum at any time," and none of the Committee members would vote in favor of a change to any existing remedy.

Advisory Committee at 555, 615-16. And even if they had sought to change that common precept, it would, as explained above, be subject to constitutional attack. In any event, as explained in § II.A., *supra*, following 1948 courts uniformly continued permitting collateral attacks on void judgments notwithstanding the "reasonable time" requirement of the amended Rule 60.

CONCLUSION

A void judgment cannot spring to life because some "fact-specific" inquiry determines that a motion to vacate it was filed too late. If it was void when entered then it is void for all time. Accordingly, Coney Island respectfully requests that the Court reverse the holding of the Sixth Circuit and remand this action for further proceedings consistent with its opinion.

Respectfully submitted,

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APPENDIX OF RELEVANT RULES

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Federal Rule of Civil Procedure 60: Relief from a Judgment or Order

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

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

> (1) mistake, inadvertence, surprise, or excusable neglect;
>
> (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
>
> (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;

(4) the judgment is void;

(5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or

(6) any other reason that justifies relief.

(c) Timing and Effect of the Motion.

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

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

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

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

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

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

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

Federal Rule of Civil Procedure 60: Relief from Judgment or Order (1946)

(a) Clerical mistakes. Clerical mistakes in judgments, orders or other parts of the record and errors herein 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 28, § 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.

Federal Rule of Civil Procedure 60: Relief from Judgment or Order (1938)

(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 defendant not actually personally notified.