No. 26-5979

ORIGINAL

Supreme Court, U.S.
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IN THE SUPREME COURT OF THE UNITED STATES

DAVID D. RICHARDSON,
Petitioner

v.

UNITED STATES OF AMERICA,
Respondent

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Third Circuit

David D. Richardson, *Petitioner*
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QUESTIONS PRESENTED

1. Whether a district court dismiss a complaint *with prejudice* pursuant to Rule 12(b)(5), after concluding that service of process was insufficient and the court therefore never acquired personal juridiction over the defendant, notwithstanding this Court's repeated holdings that a judgment entered without personal jurisdiction is void and subject to relief under Rule 60(b)(4)to address those , as well as the Third Circuit's own Precedent and every circuit court of appeals to consider the matter have held that a judgment entered without personal juridiction is void and subject to Rul;e 60(b)(4) relief.

2. Whether a court of appeals exeeds the limits imposd by the "party presentation principle" and the Due Process Clause by affirming the denial of Rule 60(b)(4) relief on legal theories raised *sua sponte*, after first concluding that Petitioner's Rule 60(b)(4) argument was meritless, without notice, or an opportunity to adddress those newly raised theories.

3. Whether appellate review of a Rule 60(b)(4) motion is confined to determining whether the challenged judgment is void for lack of personal jurisdiction over the defendant, or whether a court of appeals may instead affirm by conducting an independent merits review unrelated to the jurisdictional issue presented.

LIST OF PARTIES

1. Davd D. Richardson, Petitioner

2. United States of America, Respondent

RELATED PROCEEDINGS

3. *Richardson v. United States of Amerca*, 2:23-cv-02015 (E.D.Pa. 2023)(Hon. Joel H. Slomsky)

4. *Richardson v. United States of America*, C.A. NO. 25-2771 (3d Cir. 2025).

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2. This Court must decide the important question of whether the panel's affirmance, which raised new and alternative grounds *sua sponte* without notice, or an opportunity to be heard, "acted inconsistently with due process.

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APPENDICIES

1. The district court's August 20, 2025, order denying relief under Rule 60(b)(4).

2. The Third Circuit Court of Appeals May 19, 2026, affirmance of the district court's order.

3. The Third Circuit Court of Appeals June 30, 2026, denial of reconsideration *en banc*.

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The citation to the district court's judgment below is *Richardson v. United States of America*, No. 2:23-cv-02015. (E.D.PA. 2023)(The Hon. Joel H. Slomsky). The citation to the Third Circuit Court of Appeals affirmance below is C.A. No. 25-2771.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1). The judgment sought to be revied was entered by the Third Circuit Court of Appeals on May 19, 2026, followed by the June 30, 2026, denial of reconsideration en banc.

RELEVANT CONSTITUTIONAL PROVISIONS

The Fifth Amendment's due process clause provides in relevant part that: "No peron shall be ... deprived of lfe, liberty, or property, without due process of law." Amendment V.

RELEVANT FEDERAL RULES OF CIVIL PROCEDURE (FRCP)

FRCP Rule 60(b)(4) provides that: A court may relief a party from a final judgment on motion and just terms that a judgment is void.

FRCP Rule 12(b)(5) provides that: A party may assert the following defenses by motion: insufficent service of process.

FRCP Rule 12(b)(6) provides that: Failure to state a claim upon which relief can be granted.

STATEMENT OF THE CASE

Federal Rule of Civil Procedure 60(b)(4) allows a court to relieve a party from a final judgment on motion and just terms for the following reasons: (4) the judgment is void.

This case presents the important question of whether the Third Circuit's affirmance of the district court's August 5, 2024, judgment denying Peititioner's Rule 60(b)(4) motion created a *intra-circuit* split; "departed so drastically from the principle of party-presentation" by introducing new dispositive alternative theories for affirmance *sua sponte; or "acted inconsistently with due process"* where Petitioner's Rule 60(b)(4) motion was premised upon the district court's dismissal of Petitioner's complaint *with prejudice* under Federal Rule of Civil Procedure 12(b)(5) which deprived the district court of personal jurisdiction over the defendant and thus, satisfies *United States Aid Funds, Inc. v. Espinosa*, 559 U.S. 260 (2010) "jurisdictional defect" (personal) or "lack of even an *arguable* basis for jurisdiction;" and, *United States v. Sineneng-Smith*, 590 U.S. _____ (2020)("principle of party-prsentation").

PROCEDURAL HISTORY

On or about July 14, 2025, Petitioner, acting *pro se*, filed a motion to vacate the district court's August 5, 202, judgment as void under Rule 60(b)(4). The "gist" of Petitioner's motion centered around the district court's dismissal of Petitioner's complaint *with prejudice* pursuant to Rule 12(b)(5). Petitioner alleged that because the district court dismissed his complaint *with prejudice* under Rule 12(b)(5), the district court never acquired personal jurisdiction over the defendant in order to proceed to a merits review under Federal Rule of Civil Procedure 12(b)(6) and in absence thereof, the district court's judgment was void under Rule 60(b)(4).

DISTRICT COURT'S REVIEW

Upon review of Petitioner's Rule 60(b)(4) motion. The district court held that it had *broad discretion* to dismiss Petitioner'scomplaint *with prejudice* under Rule 12(b)(5) and to proceed to a *merits-review* under Rule 12(b)(6) becasuse Petitioner amended his complaint *four-times*[1] and that any further amendment would be futile because Petitioner failed to state a claim for

negigent infliction of emotional distress. However, the district court never addressed the jurisdictional question posed by Rule 60(b)(4) nor had the district court ever instructed Petitioner what had to be cured through amendment,

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[1] The district court's holding that Petitioner amendment his complaint *four-times* finds no support in the record. Insofar as, after the filing of Petitioner's *pro se* complaint on May 22, 2023, (ECF 1), petitioner filed an amended complaint on July 6, 2023. (ECF 4). Said amendment was withdrawn on September 5, 2023. (ECF 16). In the interim, Petitioner filed an amended complaint on July 13, 2023. (ECF 9), On July 24, 2023, Petitioner filed an amended complaint (ECF 10). Said amendments were filed without court leave or the other party's consent and thus were without legal effect.E.g., *Dussouy v. Gulf Coast Investment Corp.*, 660 F.2d 594 (5t Cir. 1981). On October 13, 2023, Petition filed a motion for leave to file an amended complaint (ECCF 20).At a hearing held on or about November 21, 2023, the district court granted Petitioner leave to file an amended complaint and deemed (ECF) as the *operative* complaint. Accordingly, (ECF 20) supeceded all previous amendments. *West Run Student Housing Associates, LLC v. Huntington National Bank*, 712 F.3D 165, 171 (3d Cir. 2013). Accordingly, Petitioner only amended his complaint *once*, (ECF 20). Regarding the district court's futility holding, vacatur under Rule 60(b)(4) does not prejudice the right of Petitioner to file a new complaint when the court has jurisdiction over the defendant. *Orange Theater Corp. v. Rayherstz*, 139 F.2d 871 (3d Cir. 1944).

APPELLATE COURT'S REVIEW

Petitioner filed a timely notice of appeal to the Third Circuit Court of Appeals, which was docketed at 25-2771. Upon review of the district court's judgment, a panel of the court affirmed, holding that Petitioner's Rule 60(b)(4) motion was meritless. However, the panel went further and raised new dispositive issues

sua sponte, i.e., that Petitioner was attempting to use his Rule 60(b)(4) motion as a substitute for an appeal; that Petitioner disclaimed any due process violation; and, that Petitioner failed to raise any exceptional circumstances for Rule 60(b)(4) relied Said alternative theories for affirmance were never raised by Petitioner, nor addressed by the district court below.

REASONS FOR GRANTING THE WRIT

1. This Court must decide the important question of whether the Third Circuit Court of Appeals affirmance of the district court's denial of Petitioner's Rule 60(b)(4) motion was in direct conflict with *Espinosa* regarding jurisdictional defects and the lack of even an *arguable* basis for jurisdiction; and the principle of the party-presentation

Espinosa sets the key Rule 60(b)(4) standard: "a judgment is void only in the rare instance where the court lacked jurisdiction (subject-matter or personal) or acted inconsistently with due process. The Court emphasized that this requires a lack of even an *arguable* basis for jurisdiction. That language is a global construction of "void" under Rule 60(b)(4) and applies when the underlying judgment followed contested merits proceedings.

Here, the district court lacked even an *arguable* basis for jurisdiction where it dismissed Petitioner's complaint *with*

prejudice under Rule 12(b)(5). *Lampe v. Xouth*, 952 F.2d 697, 701 (3d Cir. 1991)("A court obtains personal jurisdiction over a defendant when the defendant is properly served with process. " Thus, absent proper service, personal jurisdiction never attaches); *Ins. Corp. of Ireland v. Camognie des Business de Guinee*, 456 U.S. 694, 706 (1982)("Until the court has established personal jurisdiction, ... any assertion of judicial power over the party violates due process"); *Omni Capital Int'l, Ltd. v. Rudolf Wolff & Co.*, 484 U.S. 97 (1987)("[B]efore a federal court may exercise personal jurisdiction over a defendant, the procedural requirements of service must be satisfied").

By affirming the district court's judgment, the panel effectively authorized its appellate and district courts to issue merits judgments against plaintiffs despite never having acquired personal jurisdiction over the defendant. Not only is said affirmance in conflict with *Espinosa*, but also, the court's own precedent in *Budget Blinds, Inc. v. White*, 536 F.3d, 244, 258 (3d Cir. 2008)(Rule 60(b)(4) allows a court to relieve a party from a final judgment "if the judgment is void." A judgment is void within the meaning of Rule 60(b)(4) if the court that rendered it lacked personal jurisdiction over the defendant). In fact, *every*

federal circuit court of appeals uniformly recognize that a judgment entered without personal jurisdiction over a defendant is void under Rule 60(b)(4). *United States v. Boch Oldsmobile, Inc.*, 909 F.2d 657, 660 (1st Cir. 1990); *Covington Industries, Inc. v. Resintex A.G.*, 629 F.2d 730, 773 (2d Cir. 1980); *Combs v. Nick Garin Trucking*, 825 F.2d 437, 441 (D.C. Cir. 1987)(often cited alongside Fourth Circuit authority); *New York Life Insurance Co. v. Brown*, 84 F.3d 137, 142-43 (5th Cir. 1996); *United States Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 271 (2010)(Although Supreme Court authority, the Sixth Circuit cases applying it repeatedly recognize: "A judgment is void if the rendering court lacked jurisdiction); *Relational, LLC v. Hodges*, 627 F.2d 668, 671 (7th Cir. (2010); *Hanson v. Circuit Court of the First Judicial District*, 591 F.2d 404, 407 (8th Cr. 1979); *In re Center Wholesale, Inc.*, 759 F.3d 1164, 1172 (9th Cir. 2013): *Gschwind v. Cessna Aircraft Co.*, 232 F.3d 1342, 1346 (10 Cir. 2000); *Burke v. Smith*, 252 F.3d 1260, 1263 (11th Cir. 2001); *New England Tank Indistries of New Hampshire, Inc. v. United States*, 861 F.2d 685, 693 (Fed. Cir. 1988) Accordingly, the panel's affirmance has created an *intra-circuit* split.

Instantly, it is beyond dispute that Petitioner was entitled

to Rule 60(b)(4) relief. Said conclusion is buttressed by the fact that the district court *expressly* found a defect in service under Rule 12(b)(5), which rendered the court without personal jurisdiction over the defendant, *Lampe/Omni Captial nt'l, Ltd*, supra, and provided the predicate for Rule 60(b)(4) relief Which constituted the type of *jurisdictional defect* and lack of an *arguable* basis for jurisdiction identified as grounds for voiding a judgment under Rule 60(b)(4) in *Espinosa*, supra.[2]

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[2] By affirming the district court's *purported discretion*, rather than addressing whether personal jurisdiction existed. The panel effectively left in place a decision that allows courts to enter a merits decision despite the lack of personal jurisdiction over a defendant which *assumed* jurisdiction on the very issue that Rule 60(b)(4) required it to decide. Once the district court determined that service of process was insufficient under Rule 12(b)(5), it necessarily acknowledged that it had not acqured personal jurisdiction over the defendant. At that stage, the court possessed no discretionary authority to adjudicate the merits or dismiss the complaint *with prejudice*.The existence of discretion presupposes jurisdiction however, jurisdiction cannot be created by discretion. *Cohen v. Virginia*, 19 U.S. (6 Wheat) 264 (1821). Nor can discretion substitute for the constitutional requirement that the court possess authority over the parties before entering binding *merits-decision* See *Insurance Corp. Of Ireland v. Compagnie des Bauxites de Guniee*, 456 U.S. 694, 706 (1982)("Personal jurisdiction is an individual constitutional liberty protected by due process. Absent personal jurisdiction, the court has no power to bind the parties"). And, "until a court has established personal jurisdiction, … any assertion of judicial power over the party violates due process. *United States Bank of Oregon v. Independent Insurance Agents of America*, 508 U.S. 439, 446-47 (1993).

2. This Court must decide the important question of whether the panel's affirmance, which raised new and dispositive issues *sua sponte,* without notice, or an opportunity to be heard, "acted inconsistentlywith due process" under the holding of *Espinosa,* which renders said portion of the panel's affirmance subject to vacatur under Rule 60(b)(4).

The Fifth Amendment's Due Process Clause provides in relevant part that: "No person shall be deprived of lfe, liberty, or property without due process of law." Amendment V. The core of due process is the right to notice and a meaningful opportunity to be heard. *Lanchance v. Erickson*, 522 U.S. 262, 266 (1998).

In *United States v. Sineneng-Smith*, 590 U.S. _____ (2020), the Court unanimously vacated a Ninth Circuit decision because the panel "departed so drastically from the principle of party-presentation" by redesigning the case around issues never raised by the parties and deciding on that basis. The Court stressed that the adversarial system requires courts to give litigants the chance to present their views on the grounds used to decide the case. While framed in terms of party-presentation rather than a freestanding due-process holding, the opinion is routinely cited for the proposition that deciding on unpresented issues without àdversarial input is improper.

In *United States National Bank of Oregan v. Independent Insurance Agents of America*, 508 U.S. 439, 446-47 (1993), the Court held that an appellate court "may raise an issue *sua sponte* where an issue is antecedent to, ... and ultimately dispositive of, [a] dispute before it."

Here, the panel "departed so drastically fron the principle of party-presentation" by raising alternative theories for affirmance *sua sponte* that were not antecedent to, nor ultimately dispositive of, the *sole* Rule 60(b)(4) issue before the panel for resolution.

Compounding the afore is that said alternative theories were nether raised by Petitioner, nor addressed by the district court below. But were raised withot notice, or an opportunity to be heard. Thus, the panel "acted inconsistently with due process" as to render said portion of the panel's affirmance void under Rule 60(b)(4) in accordance with *Espinosa/Sineneng-Smith*.

Respectfully Submitted:

David D. Richardson

David D. Richardson, Petitioner, *Pro se*

CONCLUSION

The decision below authorizes a federal court to preserve a judgment after the district court lacked personal jurisdiction over the defendant, contrary to the jurisdictional limitations imposed by the Federal Rules of Civil Procedure and this Court's precedents governing void judgments under Rule 60(b)(4). It further permts a court of appeals to affirm on dispositive alternative grounds conceived by the court itself-grounds neither advanced by the parties in the district court, nor antecedent to the *sole* Rule 60(b)(4) question presented by the court for resolution.

Those errors implicate fundamental limitations on the exercise of federal judicial power and the propr role of appellate courts in our adversarial system. This Court's review is warranted and that appellate courts may not sustain judgments that a judgment entered without personal jurisdiction cannot be insulated from Rule 60(b)(4) review, by deciding new dispositive alternative theories for affirmance *sua sponte* that were outside the scope of the parties presentation without affording the affected party notice and a meaningful opportunity to be heard.

Dated: August 1, 2026

David D. Richardson, Petitioner