

IN THE SUPREME COURT OF THE UNITED STATES

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1 P R O C E E D I N G S

2 (10:03 a.m.)

3 CHIEF JUSTICE ROBERTS: We will hear
4 argument first this morning in Case 24-808,
5 Coney Island Auto Parts Unlimited versus
6 Burton.

7 Mr. Ginzburg.

8 ORAL ARGUMENT OF DANIEL GINZBURG

9 ON BEHALF OF THE PETITIONER

10 MR. GINZBURG: Thank you, Mr. Chief
11 Justice, and may it please the Court:

12 Historically, judgments entered in the
13 absence of personal jurisdiction have been
14 described as a nullity, utterly void upon
15 entry, lacking any legal effect, and odious to
16 due process. Accordingly, they have routinely
17 been vacated without reference to any specific
18 period of time or deadline, and courts have
19 noted that it is per se an abuse of discretion
20 for a court not to vacate a void judgment.

21 In this action, the lower courts did
22 not determine whether the judgment was void.
23 Rather, they held that Coney Island took too
24 long to bring its motion for vacatur, in
25 violation of Rule of Civil Procedure 60(c)(1),

1 which requires such motions to be made within a
2 reasonable time. This Court has never had
3 occasion previously to consider whether Rule
4 60(c)(1) applies to judgments void ab initio or
5 the definition of "reasonable time."

6 We respectfully submit that the lower
7 courts erred because, as a matter of logic,
8 Rule 60(c)(1) cannot apply to judgments void ab
9 initio, and the reason for that is that if the
10 judgment is void immediately upon entry and
11 remains so for all time, there cannot be a time
12 after which the judgment cannot be vacated
13 because a judgment that is void ab initio
14 cannot suddenly spring to life and become
15 active and enforceable through the passage of
16 time alone.

17 To harmonize the doctrine of void ab
18 initio and reasonable time, the Court may find,
19 as it has in the past, that a defendant,
20 believing that a court lacks jurisdiction, may
21 elect to ignore the proceeding, suffer the
22 default judgment, and then collaterally attack
23 that judgment when the judgment creditor
24 attempts to enforce it.

25 Enforcement, however, must be

1 adversarial in nature or actually invading a
2 personal interest, for example, a contempt
3 proceeding or seizure of a bank account, such
4 that ignoring it would be tantamount to waiver
5 of a known right or acquiescence in the
6 judgment. If enforcement were defined as any
7 action at all trying to collect on a judgment,
8 such as mailing post-judgment discovery, then
9 it amounts to that post-judgment discovery
10 essentially acting as a supplemental
11 unauthorized process because the mailing itself
12 would commence the time period the expiration
13 of which would cause a subsequent application
14 for vacatur to be denied as untimely.

15 I welcome the Court's questions.

16 JUSTICE THOMAS: So you're not arguing
17 that your motion, your 60(b) motion, was filed
18 within a reasonable amount of time?

19 MR. GINZBURG: We believe, Your Honor,
20 that there is no reasonable amount of time
21 within which a judgment that is void ab initio
22 can be vacated.

23 JUSTICE THOMAS: How is void ab initio
24 different from the grounds listed in 60(b), the
25 judgment is void, as a basis for the motion?

1 MR. GINZBURG: We believe, Your Honor,
2 that a -- 60(b)(4) applies to both void
3 judgments and voidable judgments. And so, when
4 a judgment is -- is voidable, there is no
5 reasonable time limitation because, at that
6 point, the court that had entered it had
7 jurisdiction, and for some other reason, the --
8 the judgment should be -- should be held void,
9 as opposed to a void judgment, which has no
10 legal effect right from the beginning.

11 JUSTICE THOMAS: So how do you respond
12 to Respondent's argument that you're conflating
13 the merits with the timeliness of the motion?

14 MR. GINZBURG: Well, we believe, Your
15 Honor, that if a judgment is void ab initio,
16 there -- there is no timeliness aspect that
17 would cause -- that should cause a court to not
18 vacate that judgment.

19 JUSTICE ALITO: Suppose a -- a
20 district court issues a judgment that is void
21 ab initio and the party against which the
22 judgment is entered waits a year before filing
23 a notice of appeal. Would the court of appeals
24 be obligated to entertain that appeal?

25 MR. GINZBURG: I think it would, Your

1 Honor, because, at that point, the appeal --
2 the filing of the notice of appeal is
3 tantamount -- or is not tantamount -- is --
4 would require an appearance before a court and
5 would result in -- in -- in -- in -- the
6 appearance before the court would result in
7 submission to the jurisdiction of that court.

8 JUSTICE ALITO: I mean, that does seem
9 to be the logic of the idea of a judgment being
10 void ab initio, and we addressed that last term
11 in Hewitt versus the United States, not a case
12 that -- it's a criminal case, but still, we
13 talked about void ab initio and we said, if a
14 judgment is void ab initio, it never -- it's as
15 if it never existed. It was erased from the
16 historical record.

17 So the -- what you're saying does
18 follow from the logic of that, but doesn't it
19 seem strange that the appellant would have an
20 unlimited amount of time to appeal from a
21 judgment that's void ab initio?

22 MR. GINZBURG: I think even a void
23 judgment can be -- can be given effect if the
24 defendant or the judgment debtor acquiesces to
25 the court's jurisdiction. And so, if, for

1 whatever reason, the -- the -- the judgment
2 debtor believes that there is no basis for
3 the -- for the appeal, the filing of the notice
4 of appeal establishes jurisdiction and results
5 in a waiver of the opportunity to file a Rule
6 60(b)(4) motion.

7 CHIEF JUSTICE ROBERTS: What about
8 fraudulent judgments? Is -- do you think that
9 they can be challenged at -- at any time as
10 well, or there's no ground on which they can be
11 reopened?

12 MR. GINZBURG: Well, I believe
13 fraudulent judgments are covered by Rule
14 60(b)(3), which requires a -- which requires
15 a -- or which must be filed within one year.
16 And so that timeliness aspect applies through
17 Rule 60(c)(1), as well as Rule 60(b)(3).

18 JUSTICE JACKSON: Well, I guess -- I
19 guess I'm a little concerned about the
20 potential collapsing of the merits with your
21 argument in this case because your argument, as
22 Justice Alito pointed out, is premised on the
23 fact that this judgment is actually void, but,
24 obviously, the person who benefits from the
25 judgment would say it's not. And so some court

1 somewhere, I think, would have to resolve that.

2 And I guess the question is, why
3 should you be able to make that kind of
4 challenge without any sort of procedural
5 limitation in terms of time? Someone has the
6 judgment who's benefited from it, and they are
7 living their lives and thinking everything is
8 fine, and under your rule, that can be upended
9 at any time on the basis of your claim that the
10 void is -- that -- that the judgment is void.

11 Don't we have procedural rules that
12 sort of just limit your ability to make that
13 claim and really don't speak to the issue of
14 whether or not it's actually void; you just
15 have to make that allegation within a
16 particular period of time?

17 MR. GINZBURG: Justice Jackson, I
18 would say that void judgments or judgments void
19 ab initio are within a separate class, and so
20 the Constitution requires that void judgments
21 not be given effect.

22 JUSTICE JACKSON: Right. But what if
23 we don't know whether or not this is a void
24 judgment? I mean, that's the issue, right?
25 That's -- that's the -- the merits claim that

1 you are making when you filed this motion, and
2 someone has to decide it.

3 And I guess my question is, what is a
4 court supposed to do? Ten years later, you --
5 you pop up and say this was a void judgment.

6 Doesn't the court have to decide
7 whether or not it's a void judgment in order to
8 determine whether or not you have filed this in
9 a time -- in a timely fashion?

10 MR. GINZBURG: Well, the -- yes.
11 Obviously, you have to make a motion.

12 JUSTICE JACKSON: Mm-hmm.

13 MR. GINZBURG: And you have to
14 convince the court that the judgment is void,
15 but I -- if -- if the judgment is void from the
16 get-go --

17 JUSTICE JACKSON: Mm-hmm.

18 MR. GINZBURG: -- then there cannot be
19 a time limit, setting apart res judicata or
20 waiver, when that judgment would suddenly
21 spring to life.

22 JUSTICE JACKSON: I guess my problem
23 is that usually we would have to -- we -- we
24 would decide whether or not you are able to
25 file the motion as a threshold matter before we

1 get to the question of whether you're right
2 about the motion, and you seem to have those --
3 those inverted.

4 MR. GINZBURG: Well, I think -- and to
5 go back, I would say that, obviously, you have
6 to file the motion. You still have to convince
7 the -- the court that the judgment is void.
8 But there cannot be a time after which that
9 cannot be done because, if the judgment was
10 a nullity from the beginning, then there is
11 nothing for the court to do other than to
12 determine whether it is void. And if it is
13 void, then the decision of whether it is void
14 is essentially a confirmatory ministerial act.

15 JUSTICE GORSUCH: Mr. Ginzburg, I just
16 have two clarifying questions. The first --

17 MR. GINZBURG: Yes, Your Honor.

18 JUSTICE GORSUCH: The first concerns
19 Justice Thomas's -- one of Justice Thomas's
20 questions.

21 I know you resist the notion that
22 (c)(1) applies and the reasonable time limit,
23 but you didn't make any argument under that
24 here as I -- as I see it, so we don't have to
25 decide in this case whether, if (c)(1) applies,

1 you did, in fact, proceed in a reasonable time.

2 Is that correct?

3 MR. GINZBURG: Yes, Your Honor. We
4 believe that, again, if a judgment is void
5 ab initio, then the reasonable time does --

6 JUSTICE GORSUCH: I appreciate that,
7 but --

8 MR. GINZBURG: -- not apply.

9 JUSTICE GORSUCH: -- the alternative
10 argument is not before us that you -- you
11 complied with (c)(1), right?

12 MR. GINZBURG: That's correct, Your
13 Honor.

14 JUSTICE GORSUCH: Okay. And then, if
15 we were to rule against you, and I know you
16 resist that --

17 MR. GINZBURG: Yes.

18 JUSTICE GORSUCH: -- would -- would --
19 would your client be able to file a (d) motion,
20 a collateral attack to the judgment?

21 MR. GINZBURG: Justice Gorsuch, the --

22 JUSTICE GORSUCH: (d)(1).

23 MR. GINZBURG: -- case law on -- on
24 Rule 60(d)(1) is -- is -- is a little sparse.

25 JUSTICE GORSUCH: I'd agree with that.

1 MR. GINZBURG: So I would say that the
2 usual scenario in which a Rule 60(d)(1) motion
3 is filed is when somebody has run out of time
4 to file a motion under Rules 60(b)(1) through
5 (3). And so I think, if -- if the Court were
6 to disagree with Coney Island's position, then
7 that would be the end of the case because --
8 well, I guess it would --

9 JUSTICE GORSUCH: Do you really want
10 to give up the (d)(1) argument?

11 MR. GINZBURG: I guess it would depend
12 on -- on -- on exactly what the Court's holding
13 is. So, if --

14 JUSTICE GORSUCH: How would you have
15 us write it to preserve that option for you?

16 (Laughter.)

17 MR. GINZBURG: I guess I would -- I
18 would request --

19 JUSTICE GORSUCH: If you want to
20 preserve it.

21 MR. GINZBURG: I would always want
22 to preserve it, but I -- I -- I -- I would
23 write it -- respectfully, I think the Court
24 should write it as saying that the reasonable
25 time limitation in Rule 60(b)(4) -- oh, excuse

1 me, the reasonable time limitation in 60(c)(1)
2 does apply to 60(b)(4) motions, but there is
3 also a time -- there -- there is otherwise no
4 time limit under Rule 60(b)(1).

5 JUSTICE GORSUCH: Thank you.

6 JUSTICE BARRETT: If you had this
7 independent collateral action, whether under
8 60(d)(1) or imagine a world without 60(b) and
9 you can just bring an independent collateral
10 attack on the judgment, would the defense of
11 laches apply, or would your reasoning there be
12 that, no, there just can never be any
13 limitation, no statute of limitation, no laches
14 defense from the other side if a judgment is
15 void ab initio?

16 MR. GINZBURG: I would say, Justice
17 Barrett, that, yes, there is no laches argument
18 to be made in connection with a void judgment
19 in -- in -- void in the pure sense of the term.

20 JUSTICE KAGAN: So what are the --

21 JUSTICE SOTOMAYOR: And what do you do
22 with the history -- I'm sorry.

23 What do you do with the history that
24 some state courts for decades have applied
25 laches to just this situation? Doesn't that

1 defeat your common law understanding?

2 MR. GINZBURG: I believe, Your Honor,
3 that if we were to -- or -- or, if the Court
4 were to rule that -- that laches cannot apply
5 to a void judgment, then that would --

6 JUSTICE SOTOMAYOR: Yeah. You're
7 asking us to rule that way --

8 MR. GINZBURG: Right.

9 JUSTICE SOTOMAYOR: -- because you say
10 there's a common law. But, if there isn't a
11 common law because there were laches applied by
12 some courts, not all of them but some, doesn't
13 that defeat your argument?

14 MR. GINZBURG: I would say, Your
15 Honor, that -- that it would not defeat the
16 argument because, if the Court were to find
17 that -- that a void judgment cannot be given
18 effect for due process reasons --

19 JUSTICE SOTOMAYOR: You're going
20 around in a circle. We can only find that if
21 there really is a common law rule and Rule
22 60(b) doesn't override it, because common law
23 rules can be overridden by 60(b).

24 MR. GINZBURG: Correct. And -- and
25 so --

1 JUSTICE SOTOMAYOR: And so if we look
2 at what the Advisory Committee said when it was
3 creating 60(b) was that it wanted to -- because
4 the existing rules in common law were
5 "confusing," one of the purposes of the
6 amendment was to clarify the rule so that the
7 federal rule will provide -- will be
8 controlling. So what do we do with that?

9 MR. GINZBURG: Well, because the
10 void -- the -- the enforcement of a void
11 judgment, even to overcome laches, would
12 require a violation of due process.

13 JUSTICE SOTOMAYOR: Could Congress
14 write a rule that says exactly what you want --
15 even void judgments need to be filed within a
16 reasonable time? Does Congress have the power
17 to do that?

18 MR. GINZBURG: I was going to say,
19 Your Honor, I don't think Congress has that
20 power because the Constitution -- because of
21 the Due Process Clause. And so, if the Court
22 were to find in Coney Island's --

23 JUSTICE SOTOMAYOR: But you gave up
24 constitutional arguments in your brief.

25 MR. GINZBURG: I'm sorry, Your Honor?

1 JUSTICE SOTOMAYOR: You gave up
2 constitutional arguments in your brief.

3 MR. GINZBURG: I think we gave up --
4 we didn't give up constitutional arguments. We
5 gave up a -- an argument that Rule 60(c)(1)
6 itself is unconstitutional.

7 But the Due Process Clause still
8 exists, obviously, and so we would say that the
9 Due Process Clause would -- would require an
10 overriding of -- of -- of a laches argument.

11 JUSTICE SOTOMAYOR: Thank you,
12 counsel.

13 JUSTICE KAGAN: What falls within the
14 category of void judgments in your mind? Like,
15 what's -- what's -- what are the range of
16 things that are in the category?

17 MR. GINZBURG: It would have to be --
18 and the Court has -- has spoken on this several
19 times. It would have to be a judgment that
20 was entered in the absence of subject matter
21 jurisdiction, personal jurisdiction, or some
22 other defect that would cause a similar effect.

23 JUSTICE KAGAN: Some other defect, do
24 you have any others that -- that you -- you
25 know, offhand that fall within that same

1 category?

2 MR. GINZBURG: Potentially, bribery of
3 a judicial official or some other -- some other
4 defect that -- that goes to the very heart
5 of -- of the court's power to hear a dispute.

6 JUSTICE ALITO: What --

7 JUSTICE KAGAN: But your argument
8 would necessarily mean that any time limits as
9 to raising a personal jurisdiction issue
10 would -- would be invalid, is that correct?

11 MR. GINZBURG: Yes, Your Honor.

12 JUSTICE KAGAN: Okay.

13 JUSTICE ALITO: What have the --

14 CHIEF JUSTICE ROBERTS: I was just
15 going to say your friend on the -- argues that
16 you're conflating two concepts, whether a void
17 judgment can become valid, I suppose, in some
18 abstract sense and what the procedures are for
19 vacating a judgment. I guess you assume that
20 even if the judgment -- that it must be
21 vacated.

22 On the other hand, I think the
23 argument is that -- I don't know whether it's
24 in an abstract sense, you consider the
25 judgment, even though valid, it can't -- under

1 the normal procedures, can't be asserted.

2 I mean, sort of like a statute of
3 limitations, I suppose. I mean, there, you
4 know, you don't necessarily have to suggest
5 there's anything valid about what, you know,
6 you wanted to challenge, but it just can't be
7 raised given the statute of limitations.

8 MR. GINZBURG: I would say, Mr. Chief
9 Justice, that if -- if -- the procedural aspect
10 of it is the filing of the motion, meaning that
11 it still has to be filed according to the
12 Federal Rules of Civil Procedure, it has to be
13 filed appropriately, it has to be filed in the
14 correct court, has to be signed under Rule 11.

15 But I -- I don't think that the
16 reasonable time limitation is -- is a potential
17 procedural bar.

18 CHIEF JUSTICE ROBERTS: Can you think
19 of --

20 JUSTICE KAGAN: But the Rules of Civil
21 Procedure, for example, say, you know, that
22 when a suit is brought and you have a personal
23 jurisdiction defense, you have to raise that
24 defense before the answer or, you know, with
25 the answer, if you file an answer.

1 You know, there's some sense of, like,
2 when you're supposed to file your personal
3 jurisdiction defense, and if you don't and if
4 you wait forever, it's lost.

5 Would that also be -- you know, we
6 should basically say that that rule is
7 unconstitutional, a violation of due process?

8 MR. GINZBURG: No, Justice Kagan.

9 In -- in -- in that case, if somebody were to
10 file a -- a motion under Rule 12(b), they would
11 be submitting to the jurisdiction of the trial
12 court, and the trial court's decision would
13 then govern the proceeding.

14 The same with an answer. If somebody
15 files an answer and makes -- or even makes an
16 appearance, they have submitted to the
17 jurisdiction of the trial court, and they have
18 a direct appeal if they disagree with the
19 court's decision.

20 JUSTICE ALITO: What have the courts
21 of appeals and the commentators, Moore's,
22 Wright and Miller, said about this question and
23 whether there's a reasonable time limitation on
24 seeking relief from a judgment that's void ab
25 initio?

1 MR. GINZBURG: I think they have
2 almost universally, the courts of appeals have
3 almost universally, and the commentators have
4 held that there is no -- or the reasonable time
5 limitation does not apply to a void judgment in
6 the purest sense of the word, such as lacking
7 personal jurisdiction or subject matter
8 jurisdiction.

9 If the Court has no further questions.

10 CHIEF JUSTICE ROBERTS: Thank you,
11 counsel.

12 Anything further?

13 Anything further?

14 JUSTICE KAVANAUGH: No.

15 CHIEF JUSTICE ROBERTS: Thank you,
16 counsel.

17 Ms. Blatt?

18 ORAL ARGUMENT OF LISA S. BLATT

19 ON BEHALF OF THE RESPONDENT

20 MS. BLATT: Mr. Chief Justice, and may
21 it please the Court:

22 The petition asked whether Rule
23 60(c)(1) imposes any time limit to set aside a
24 void default judgment. The answer is yes. The
25 plain text requires that (b)(4) motions be

1 filed within a reasonable time.

2 The phrase "reasonable time" does not
3 mean any time. First, "any time" would include
4 an unreasonable time, the exact opposite of
5 "reasonable." Second, by definition,
6 "reasonable" means within just limits, not
7 whenever. Third, a "reasonable time" means
8 courts actually considered the facts of an --
9 of an individual case. It doesn't mean the
10 movant wins regardless of the facts. Fourth,
11 had the drafters intended no time limit based
12 on the grounds for relief, they easily could
13 have placed void judgments under 60(d), which
14 has no time limits. Notably, (d)(3) allows
15 relief from judgments at any time for fraud on
16 the court.

17 The three courts below ruled
18 Petitioner's delay was unreasonable. The court
19 of appeals stated: "Coney Island has not
20 argued that it brought its motion within a
21 reasonable time." The district court said:
22 "The delay is unreasonable, and Coney Island
23 offers nothing to justify the delay." And this
24 from the bankruptcy court: "Coney Island has
25 not even contended that the delay should be

1 considered reasonable."

2 I welcome questions.

3 JUSTICE THOMAS: Is there a way to
4 challenge a void judgment beyond Rule 60?

5 MS. BLATT: We don't think so based on
6 the text of the rule and the history. The rule
7 itself is pretty expansive. It says it is the
8 way to get relief from a valid judgment. And
9 the history is pretty clear. The Advisory
10 Committee notes, which are codified, says it's
11 obvious that this is the only way to get
12 relief. We're trying to, you know, close the
13 door. The text of Rule 60(e) abolishes all the
14 common law writs and remedies that were used to
15 get relief.

16 And we would rely, for those who care
17 about this kind of stuff, the Advisory
18 Committee chairman said there's no way left to
19 get relief other than Rule 60. I mean, you
20 don't have to decide that, and 60(d) has the
21 one independent action, so they did leave that
22 safety valve. That was very important to
23 the -- to the drafters, that there's always an
24 independent action.

25 This Court in United States versus

1 Beggerly has said Rule 60(d) independent
2 actions are reserved to correct gross
3 miscarriages of injustice. So there is that
4 Supreme Court case that says that. And the
5 rule committee note says that laches applies to
6 those kind of -- kind of actions.

7 JUSTICE SOTOMAYOR: I want to be
8 clear, Ms. Blatt, in this case, we don't have a
9 question, although the Sixth Circuit
10 acknowledged it, about whether the reasonable
11 time period should only start when enforcement
12 is attempted, correct?

13 MS. BLATT: Correct. And --

14 JUSTICE SOTOMAYOR: All right, because
15 that seemed to be a part of your opposing
16 counsel's opening argument, that somehow it was
17 reasonable because --

18 MS. BLATT: Yes. And, I mean, we
19 think the question presented forecloses that,
20 but we do think that at the time of
21 enforcement, it could be quite reasonable to
22 wait. Here, though, we --

23 JUSTICE SOTOMAYOR: But you do agree
24 there are many, many judgments entered.
25 Some -- with or without notice, but somebody

1 might find out about something, no one's ever
2 tried to enforce it, and why spend the money
3 getting a lawyer? We don't want to
4 encourage --

5 MS. BLATT: Right. That's what I was
6 saying. I think it might quite be reasonable
7 to wait until the time of enforcement. That
8 might be the first time the person's ever heard
9 of it. The person might have reason to think
10 the judgment was never going to be collected.
11 And, most importantly, there may be no
12 prejudice from whenever the -- the movant
13 filed. So we would just think a district court
14 would have wide discretion.

15 I would say that this case is kind of
16 the poster child of why you can't really say
17 enforcement, because it's conceded in 2016 that
18 the trustee was trying to enforce the debt and
19 then spent seven separate attempts and
20 thousands and thousands of dollars to get to
21 the point of seizing the bank assets.

22 JUSTICE SOTOMAYOR: But that -- that's
23 an issue that a court below will have to
24 address in another --

25 MS. BLATT: No, because they --

1 they've all conceded --

2 JUSTICE SOTOMAYOR: Right.

3 MS. BLATT: -- that it's reasonable.

4 But, yes, in any given case, the -- you know,
5 prejudice would be considered. I think Justice
6 Jackson made a very good point. The person --
7 the debtor, Vista-Pro, filed the -- the
8 allegedly improper service. The trustee comes
9 in, sees a valid judgment on its face, has no
10 reason to think there's improper service,
11 doesn't even find out that there's an alleged
12 improper service until five and a half years
13 after the fact, when it's way too late. Had
14 the -- the judgment debtor just said at year
15 one, hey, there's improper service, they
16 could -- could have redone the service.

17 So these are the kinds of arguments
18 that would be considered had the other side
19 tried to offer a justification.

20 But I do think Justice Jackson makes
21 that good point that there might be prejudice
22 if the person has no reason to think the
23 judgment's invalid and has -- you know,
24 claiming please pay, please pay, and a
25 bankruptcy estate is wasting money trying to go

1 after a judgment debtor that should go to
2 creditors.

3 JUSTICE JACKSON: Ms. Blatt --

4 MS. BLATT: Sure.

5 JUSTICE JACKSON: -- your -- the
6 Petitioners here raise a Rules Enabling Act
7 argument but only in reply, so you didn't get a
8 chance to address it in the briefs. Do you
9 want to take a moment to focus on that here?

10 MS. BLATT: Sure. As I understand the
11 Rules Enabling Act, it just can't enlarge
12 rights, but I think that's another version of,
13 well, you're giving effect to a judgment that,
14 by hypothesis, might be void, kind of spring to
15 life. And I think you quite nicely said
16 there's just a procedural bar that you have to
17 go through to get your right to argue that
18 it's -- it's void or get relief from it.

19 So I don't see any problem under the
20 Rules Enabling Act. It's just not expanding
21 any right. It's just a -- a filing requirement
22 that you have to file within a reasonable time.

23 JUSTICE ALITO: Mr. Ginzburg says that
24 all the courts -- almost all the courts of
25 appeals have decided this question against you,

1 and the leading commentators take the opposite
2 position. How do you account for that?

3 MS. BLATT: So I think that's correct.
4 I think these courts were writing, you know,
5 either now or at the time in a way that they
6 were comfortable not following the literal
7 text. Some of them acknowledge that they're
8 not following the literal text and this is just
9 not consistent with the Court's modern
10 approach.

11 I will say that most of these courts,
12 I believe five of them, and the dissent, trace
13 back to this D.C. Circuit decision from 1962,
14 Austin versus Smith, that just didn't even
15 mention Rule 60(c)(1). But, since, you know,
16 the coming of Justice Scalia in 1986, the Court
17 has taken just a different approach to
18 statutory interpretation.

19 And we cite an example of I think it's
20 U.S. versus Brogan, where all the courts of
21 appeals had ruled 1001 gives you a right to
22 lie, and this Court just said, you know, we're
23 going to overrule that. And I think just last
24 term you ruled against a case I argued when all
25 the courts had gone our way.

1 (Laughter.)

2 JUSTICE ALITO: Well, speaking --
3 speaking of last term --

4 MS. BLATT: Sorry. Sorry.

5 JUSTICE ALITO: -- and -- and lost
6 causes, what do you say about Hewitt and the
7 idea that a judgment that is void ab initio
8 never existed? It -- you know, it's -- it --
9 we can't see it. It doesn't exist. It doesn't
10 exist.

11 MS. BLATT: Yeah. So --

12 JUSTICE ALITO: I mean, doesn't that
13 lead to the conclusion that was drawn by all
14 these courts of appeals?

15 MS. BLATT: No, and here's why. In
16 addition to it's conflating the grounds for
17 relief in 60(b), you know, fraud by the
18 opposing party, and you've already paid the
19 judgment -- you know, you've already paid it;
20 how can you make me pay it twice? And the
21 example we give in the brief, and I think it's
22 quite instructive, is the area of preclusion.
23 This Court has already said that courts can
24 give effect to void judgments, even concededly
25 void, because, if a party unsuccessfully

1 challenges subject matter jurisdiction, they're
2 barred by res judicata and collateral estoppel.

3 And you could -- and if it's
4 concededly, you know, on its face, it's issued
5 by the court of clowns --

6 (Laughter.)

7 MS. BLATT: -- you have to give effect
8 to the judgment based on res judicata. And I
9 will say, if you have a court of clowns
10 example, you could probably get rid of that
11 under the independent action for gross
12 injustice.

13 JUSTICE ALITO: Well, then what should
14 we say about void ab initio in our opinion?
15 Well, I mean, it doesn't really erase it from
16 the annals of history. It has -- that's an
17 overstatement?

18 MS. BLATT: It's not an overstatement
19 to -- to describe fraud on -- on the court or
20 fraud by the other party are void ab initio.
21 It's -- that's the grounds when you get into
22 court under Rule 60. That's the procedure
23 where you get relief from that judgment.

24 The whole concept of Rule 60(c)
25 assumes that there are quite offensive

1 judgments and it's giving you relief, but
2 there's either a one-year time limit, a
3 reasonable time limit, or no time limit. And
4 this void judgment falls in the reasonable time
5 limit.

6 JUSTICE ALITO: Well, if -- suppose
7 the reasonable time limit applies, and I know
8 maybe we don't have to decide what that means
9 here, but if we were to decide that, would you
10 agree that there should be a lot more
11 flexibility with regard to a -- the
12 reasonableness of a filing when what is being
13 contested is a judgment that's void ab initio?

14 MS. BLATT: No.

15 JUSTICE ALITO: You don't think that
16 couldn't -- that wouldn't -- no?

17 MS. BLATT: I think a default judgment
18 might. Like, I think a default judgment just
19 raises implications, you need to hear of it.
20 But just I -- I think at least the way the
21 rule's set up, maybe how void it is somehow
22 bears on why you took so long.

23 But, generally, why you took so long,
24 it goes to why did you take so long? I mean,
25 when did you know of it? Did you ever -- you

1 know, was it a burden because, you know, you
2 didn't want to go all the way and file this
3 motion? And also, is prejudice arising? But,
4 sure, reasonableness is an abuse of discretion,
5 and so, of course, a court can basically do
6 whatever it wants, assuming, you know --

7 JUSTICE KAGAN: But do you think
8 there's any category of cases in which a
9 reasonable amount of time can, in fact, be any
10 time?

11 MS. BLATT: No. I mean, that's
12 infinity. So --

13 JUSTICE KAGAN: Like, that any --
14 that -- that there's some category of cases
15 that because of some feature that they have --

16 MS. BLATT: No.

17 JUSTICE KAGAN: -- that -- that
18 whenever you raise it, it will be considered?

19 MS. BLATT: No. By definition, it's
20 conceiving that there could be an unreasonable
21 time and any time. Now, that being said, you
22 could say, you know, I'm happy to give you any
23 number, a billion years, I'm just not going to
24 concede any because it has to be reasonable.

25 And, in the bankruptcy context,

1 there's almost always going to be prejudice
2 because the -- the trustee is trying to close
3 the estate.

4 And I'm talking about notice. This is
5 a person who has notice and, you know, there's
6 prejudice creeping in. But, if there's no
7 prejudice, then, you know, I'm not going to say
8 any time but a lot of time.

9 Most people get a default judgment
10 once they know about it, you know, and,
11 certainly, if they're sophisticated, they try
12 to get rid of it.

13 If they're unsophisticated, then sure.
14 You're not going to make the person hire a
15 lawyer. You just wait, you know, whatever is
16 reasonable. I mean, that's -- that's --

17 JUSTICE JACKSON: So your concept of
18 reasonable time, it seems to me, carries with
19 it some idea or consideration of the prejudice
20 to the other side. Is that right?

21 MS. BLATT: Well, prejudice to the
22 judgment creditor and I just think you could
23 reasonably take into account the burden on --
24 what Justice Sotomayor was saying about, you
25 know, did the person lack resources. I think

1 that certainly --

2 JUSTICE JACKSON: And notice with
3 regard --

4 MS. BLATT: Oh, yeah.

5 JUSTICE JACKSON: Yeah.

6 MS. BLATT: So, definitely, we think
7 due process requires notice. Absolutely. We
8 just think it's due process notice which is
9 actual or constructive. In other words, you
10 can't hide and go, you know, travel to the moon
11 and avoid notice if -- if the person is, you
12 know, doing all the things that the Due Process
13 Clause requires to give notice. But, here,
14 notice is conceded, I think, six times over
15 because the trustee kept trying to do it.

16 JUSTICE ALITO: Suppose somebody who's
17 never left New York City, never traveled west
18 of the Hudson, never done anything on the
19 Internet, never bought anything by mail,
20 receives a judgment issued by a state court in
21 Montana, and this person doesn't have a lot of
22 money to hire a lawyer and says, what is this?
23 I've never been in Montana. I don't know
24 anything about this -- this lawsuit. I never
25 was served. I'm just going to ignore it.

1 Would -- wouldn't it be reasonable for
2 that person to have more time to seek relief
3 from this -- from this judgment?

4 MS. BLATT: Yes. So I was trying to
5 concede a lot with Justice Sotomayor, but I
6 don't think Rule 60 applies to state judgments.
7 I think you've got to go to the --

8 JUSTICE ALITO: All right. It's a --
9 okay. It's a district --

10 MS. BLATT: -- the state court.

11 JUSTICE ALITO: -- district judge
12 in --

13 MS. BLATT: Yeah.

14 JUSTICE ALITO: -- district court for
15 the District of Montana.

16 MS. BLATT: Sure. There might be a
17 lot of reasons where there's just no reason.
18 Like, you got a default judgment, you hear
19 about it. I mean, if it's worth a lot of
20 money, I might get scared and call a lawyer.
21 But, if you have no reason to think, you know,
22 the -- they're never going to come after me,
23 but when they know -- when you know someone's
24 coming after you, you probably should -- should
25 act.

1 But, if there's no prejudice, we don't
2 have a problem with, you know, at the time of
3 enforcement loosely defined, which would be the
4 judgment creditors trying to collect on the
5 debt.

6 If I could just -- just turn to just
7 history really quickly, I do think, you know,
8 the plain text obviously overrides the history.
9 Rule 60(e)'s text says we want to get rid of
10 all the common law remedies. But we do point
11 out just three factors in the history that
12 shows it wasn't uniform, and all three of those
13 factors ironically are present here.

14 The first is we cite at Note 2 of our
15 brief many courts held that these judgments
16 where there's improper service had to be filed
17 within a reasonable time. So that's -- I think
18 that's kind of what Justice Jackson was talking
19 about, the judgment on its face looks pretty
20 valid, so parties at -- not all parties, but
21 some courts said they had to act within a
22 reasonable time.

23 And then the second was laches, that
24 Justice Sotomayor also recognized that laches
25 was a defense.

1 And then, finally, which is this case
2 also, in the bankruptcy context, courts would
3 not vacate bankruptcy court judgments when
4 reliance interests had vested.

5 And we would say, you know, the
6 trustee is an innocent party here and had no
7 reason and this really could have been fixed,
8 would not have had to spend all that money had
9 the -- had the judgment debtor just said you --
10 you need to re-serve me, and, instead, five and
11 a half years went away while the estate was
12 being drained.

13 Oh, and just one last thing for
14 Justice Kagan. Espinosa defines the void
15 judgment. It's a little odd, the definition.
16 It said certain jurisdictional defects, but it
17 didn't say what they were, and any judgments
18 that were lacking notice and opportunity.

19 So I think they were talking about --
20 I'm not sure what the "certain" was, but I
21 think they're also saying, if it's due process,
22 you didn't have any notice or opportunity,
23 that's void.

24 And if there are no questions, we
25 would ask that the decision below be affirmed.

1 CHIEF JUSTICE ROBERTS: Thank you,
2 counsel.

3 Rebuttal, Mr. Ginzburg.

4 REBUTTAL ARGUMENT OF DANIEL GINZBURG
5 ON BEHALF OF THE PETITIONER

6 MR. GINZBURG: Thank you, Mr. Chief
7 Justice.

8 First, with respect to this case in
9 particular, the record contains the only
10 declaration from anyone on either side. In the
11 declaration from my client, Mr. Daniel Beyda,
12 he said that he found out about the judgment in
13 February of 2021.

14 That is not contested in the record.
15 And so, with respect to what is a reasonable
16 time, he did seek out counsel when the -- when
17 he found out about the judgment. I -- I
18 believe the -- the -- the bankruptcy court
19 should have taken that into account.

20 With respect to my colleague's
21 position that -- that all of these cases kind
22 of emanate from the D.C. Circuit's decision in
23 Austin versus Smith, I -- I -- I respectfully
24 disagree because there's a long, uninterrupted
25 line of cases beginning in the early 18 -- 19th

1 century and going up through the 1938 enactment
2 of the original Rules of Civil Procedure
3 following the 1946 amendments and really just a
4 long line of cases, each of which held that a
5 void judgment is in a special class by itself
6 and cannot be barred by the passage of time
7 alone.

8 And -- and -- and, lastly, preclusion
9 and res judicata do exist, but those depend on
10 an opportunity to be heard, as well as notice.
11 So, for instance, if somebody were to file
12 following judgment a Rule 60(b)(1) motion and
13 not a Rule 60(b)(4) motion, certain courts have
14 held that the 60(b)(4) motion is precluded
15 because the court -- the -- the litigant has
16 already had an opportunity to -- to make the
17 argument.

18 I -- I would agree with that except in
19 the instance of that party not knowing that it
20 has a 60(b)(4) argument. So, if it does not
21 know -- so, if it makes a 60(b)(1) argument
22 without knowing that it also has a 60(b)(4)
23 argument that the judgment is void for whatever
24 reason, for instance, lack of subject matter
25 jurisdiction due to a party not being diverse

1 in a -- in a diversity case, then, in that
2 case, I do believe that preclusion -- the case
3 cannot be -- or the argument cannot be
4 precluded because there has to be an
5 opportunity to be heard, and on a Rule 60(b)(4)
6 argument, that judgment, if -- if the person
7 only finds out about that judgment at the time
8 after filing the Rule 60(b)(1) motion, that
9 litigant should have the opportunity to also
10 make the 60(b)(4) argument because that is when
11 it found out about the judgment.

12 CHIEF JUSTICE ROBERTS: Thank you,
13 counsel.

14 The case is submitted.

15 (Whereupon, at 10:40 a.m., the case
16 was submitted.)

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