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***ESSAY***

# VOID JUDGMENTS AND "REASONABLE TIME"

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## INTRODUCTION

Rule 60(b) of the Federal Rules of Civil Procedure authorizes federal district courts, "[o]n motion and just terms," to "relieve a party or its legal representative from a final judgment, order, or proceeding for" certain specified reasons.[1] Rule 60(b)(4) specifically allows parties to seek such relief where "the judgment is void."[2] Rule 60(c)(1) establishes a time limit for Rule 60(b) motions, demanding that certain requests for relief—including requests based on a party's inadvertence or mistake, newly discovered evidence, or allegations of fraud—must be brought "no more than a year after the entry of the judgment" from which relief is sought.[3] All other motions under the Rule must be made "within a reasonable time."[4]

Notwithstanding the Rule's seemingly straightforward language, multiple federal courts of appeals have concluded that Rule 60(c)(1)'s "reasonable time" requirement does not apply where a party seeks relief

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[1] Fed. R. Civ. P. 60(b).

[2] Fed. R. Civ. P. 60(b)(4).

[3] Fed. R. Civ. P. 60(c)(1); Fed. R. Civ. P. 60(b)(1)–(3).

[4] Fed. R. Civ. P. 60(c)(1).

from the consequences of an assertedly void judgment.[5] The refusal to apply the reasonable time limitation to motions under Rule 60(b)(4) is premised on the idea that "no passage of time can transmute a nullity into a binding judgment, and hence there is no time limit for such a motion."[6] This view also finds support among leading academic commentators on federal jurisdiction and procedure.[7]

But not everyone is convinced. Some courts, including the U.S. Court of Appeals for the Sixth Circuit, have adopted a literal interpretation of the Rule that would require *all* motions under Rule 60(b)—including those authorized by Rule 60(b)(4)—to be made within a "reasonable time."[8] The U.S. Supreme Court recently granted certiorari in *Coney Island Auto Parts Unlimited, Inc. v. Burton*,[9] which presents the question of "[w]hether Federal Rule of Civil Procedure 60(c)(1) imposes any time limit to set aside a void default judgment for lack of personal jurisdiction."[10] This case seems to confront the Court with a direct conflict between the literal text of Rule 60 and deep intuitions regarding the relationship between jurisdiction and judgment validity.

This Essay suggests a way in which the Court could answer that question that makes sense of both the Rule's text and background history, and the traditional conception that void judgments are nullities carrying no legal effect. This interpretation draws upon the traditional common

[5] See Petition for a Writ of Certiorari at 8–11, Coney Island Auto Parts Unlimited, Inc. v. Burton, 145 S. Ct. 2775 (2025) (No. 24-808) (mem.) (observing that, "[a]part from the Sixth Circuit, every Court of Appeals to have addressed the issue has concluded that no . . . time limitation exists" for a motion under Rule 60(b)(4) and citing decisions from the First, Second, Third, Fourth, Fifth, Seventh, Eighth, Ninth, Tenth and Eleventh Circuits as well as the D.C. Circuit).

[6] United States v. One Toshiba Color Television, 213 F.3d 147, 157 (3d Cir. 2000) (en banc); see also, e.g., United States v. Boch Oldsmobile, Inc., 909 F.2d 657, 661 (1st Cir. 1990) ("Even if appellants' motion was not made within the prescribed period, if the judgment was void, relief must be granted nevertheless."); Austin v. Smith, 312 F.2d 337, 343 (D.C. Cir. 1962) ("Under [Rule 60(b)(4)] . . . , the only question for the court is whether the judgment is void; if it is, relief from it should be granted. . . . [T]he Rule places no time limit on an attack upon a void judgment . . . .").

[7] 11 Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice and Procedure § 2862, at 431 (3d ed. 2012) ("[T]here is no time limit on an attack on a judgment as void.") [hereinafter Wright, Miller & Kane].

[8] In re Vista-Pro Auto., LLC, 109 F.4th 438, 444 (6th Cir. 2024), *cert. granted sub nom. Coney Island*, 145 S. Ct. 2775; see also, e.g., Lee v. Marvel Enters., Inc., 765 F. Supp. 2d 440, 449 (S.D.N.Y. 2011) ("[A] claim for Rule 60(b)(4) relief must have been brought within a 'reasonable time.'"), aff'd, 471 F. App'x 14 (2d Cir. 2012).

[9] *Coney Island*, 145 S. Ct. 2775.

[10] Petition for a Writ of Certiorari, supra note 5, at i.

law distinction between judgments that were void on the face of the record and judgments for which the rendering court's lack of jurisdiction could only be established through extrinsic evidence. Though judgments of the former type were generally regarded as absolute nullities that could be challenged at any time, challenges that hinged on extrinsic evidence often faced additional obstacles, including a potential laches defense if the moving party unreasonably delayed in seeking relief. Interpreting Rule 60(c)(1) in light of this distinction would make sense of the text's extension of the "reasonable time" requirement to motions for relief from void judgments without imputing to the enactors an intention to depart from deeply rooted background principles regarding the relationship between adjudicative jurisdiction and the validity and finality of legal judgments. This interpretation also comports with the overarching policy goals of Rule 60(b) and of the Federal Rules more broadly.

## I. COMMON LAW BASICS: JURISDICTION, FINALITY, AND VALIDITY

Let's start with some basics. Jurisdiction, as classically conceived, is the power or basic authority of a court.[11] A court possessing jurisdiction has full authority to bind the parties to its pronouncements with respect to the subject matter of a litigation.[12] Once a judgment becomes final, that judgment will generally preclude later relitigation of the same claims or issues between the parties no matter how mistaken the deciding court's conclusions may have been.[13] In this way, jurisdiction can be seen to encompass a limited "right to be wrong."[14]

[11] Steel Co. v. Citizens for a Better Env't, 523 U.S. 83, 94 (1998) ("Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause." (quoting Ex parte McCardle, 74 U.S. (7 Wall.) 506, 514 (1869))).

[12] See Elliott v. Lessee of Peirsol, 26 U.S. (1 Pet.) 328, 329 (1828) ("Where a Court has jurisdiction, it has a right to decide any question which occurs in the cause; and, whether its decision be correct, or otherwise, its judgments, until reversed, are regarded as binding in every other Court.").

[13] See Federated Dep't Stores, Inc. v. Moitie, 452 U.S. 394, 398 (1981) (explaining that "[a] final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action," even if "the judgment may have been wrong or rested on a legal principle subsequently overruled in another case").

[14] Perry Dane, Jurisdictionality, Time, and the Legal Imagination, 23 Hofstra L. Rev. 1, 23 (1994) ("[A] court with jurisdiction has the right to be wrong and still be authoritative."); see Pope v. United States, 323 U.S. 1, 14 (1944) ("Jurisdiction to decide is jurisdiction to make a wrong as well as a right decision.").

A court that lacks jurisdiction, by contrast, has no power to bind the parties at all. At common law, any claimed "judgment" issued by such a court was regarded as *coram non judice*—literally, before a person who is not a judge[15]—and entitled to no greater weight or authority than the opinion of a private citizen.[16] As described by a leading nineteenth-century treatise on the law of judgments:

> A void judgment is in legal effect no judgment. By it no rights are divested. From it no rights can be obtained. Being worthless in itself, all proceedings founded upon it are equally worthless. It neither binds nor bars any one. All acts performed under it, and all claims flowing out of it are void. . . . [I]f it be null, no action upon the part of the plaintiff, no inaction upon the part of the defendant, . . . can invest it with any of the elements of power or of vitality.[17]

This somewhat simplified picture of the conceptual relationship between jurisdiction, finality, validity, and voidness has been complicated in various ways by messier legal realities. Rule 60 itself reflects a limited deviation from the finality principle, allowing parties to escape the consequences of a nominally "final" judgment in at least some circumstances.[18] The voidness principle too has been relaxed to some extent by modern innovations—most notably, the doctrine of "jurisdiction-to-determine-jurisdiction," which accords preclusive effect to a prior court's determination of jurisdictional questions where "those questions have been fully and fairly litigated and finally decided in the court which rendered the original judgment."[19]

[15] Coram Non Judice, Black's Law Dictionary (11th ed. 2019).

[16] See, e.g., Rose v. Himely, 8 U.S. (4 Cranch) 241, 276 (1808) ("If the court . . . had jurisdiction of the case, its sentence is conclusive. If it had no jurisdiction, the proceedings are *coram non judice*, and must be disregarded.").

[17] A.C. Freeman, A Treatise on the Law of Judgments: Including All Final Determinations of the Rights of Parties in Actions or Proceedings at Law or in Equity § 117, at 112–13 (S.F., Bancroft-Whitney Co. 3d rev. ed. 1886) (1881).

[18] See infra Part IV (discussing the background of Rule 60).

[19] Durfee v. Duke, 375 U.S. 106, 111 (1963); see, e.g., United States v. United Mine Workers of Am., 330 U.S. 258, 292 n.57 (1947) ("[A] court has jurisdiction to determine its own jurisdiction, and if it be contested and on due hearing it is upheld, the decision unreversed binds the parties as a thing adjudged." (quoting Carter v. United States, 135 F.2d 858, 861 (5th Cir. 1943))); Chicot Cnty. Drainage Dist. v. Baxter State Bank, 308 U.S. 371, 377 (1940); Treinies v. Sunshine Mining Co., 308 U.S. 66, 74–78 (1939); Stoll v. Gottlieb, 305 U.S. 165, 172–77 (1938).

Both the finality principle and the voidness principle were also complicated by certain features of eighteenth- and nineteenth-century legal practice. As discussed below in Part II, long before Rule 60's adoption, mechanisms existed that allowed parties limited opportunities to seek relief from the consequences of a final judgment.[20] And the asserted voidness of a prior judgment provided one potential basis for such relief.[21]

But as Part III will show, the availability of such relief was significantly constrained by the near-conclusive presumption of validity that English and early American courts gave to the records of domestic courts of general jurisdiction. Although the consensus view among most American courts prior to Rule 60's adoption was that a judgment void on its face could be vacated at any time,[22] parties seeking to demonstrate the voidness of a prior judgment through extrinsic evidence often faced additional hurdles—including the potential equitable defense of laches.[23]

## II. RELIEF FROM FINAL JUDGMENTS PRIOR TO RULE 60

Prior to the adoption of Rule 60 in 1938, "the availability of relief from a judgment or order" issued by a federal court "turned on whether the court" that rendered the judgment "was still in the same 'term' in which the challenged judgment was entered."[24] Courts were generally deemed to possess "plenary power" to alter or revoke their own prior judgments at any point before the expiration of the term during which those judgments had issued.[25] But once the term concluded, the court's jurisdiction over its judgments ceased.[26] After that point, most forms of relief from the judgment could only be obtained through an independent action in equity to restrain the judgment's enforcement or through a

[20] See infra notes 27–28 and accompanying text.

[21] See infra note 29–30 and accompanying text.

[22] See infra notes 55–56 and accompanying text.

[23] See infra notes 44–54 and accompanying text.

[24] United States v. Beggerly, 524 U.S. 38, 42 (1998); see also James Wm. Moore & Elizabeth B.A. Rogers, Federal Relief from Civil Judgments, 55 Yale L.J. 623, 627 (1946) ("At that time the term of court was the critical factor in the district court's power over its final judgments at law and in equity.").

[25] Zimmern v. United States, 298 U.S. 167, 169–70 (1936).

[26] See United States v. Mayer, 235 U.S. 55, 67 (1914) ("In the absence of statute providing otherwise, the general principle obtains that a court cannot set aside or alter its final judgment after the expiration of the term at which it was entered, unless the proceeding for that purpose was begun during that term.").

handful of historically defined writs and procedures, "the precise contours of which were 'shrouded in ancient lore and mystery.'"[27] The most prominent of these historically defined mechanisms were the common law writs of *coram nobis* and *audita querela*, and equitable bills of review or bills in the nature of bills of review.[28]

Those seeking relief from the consequences of a void judgment had additional options. Some courts viewed such relief as falling within an exception to the end-of-term rule, reasoning that expunging a void judgment from its records was part of a court's inherent authority.[29] Alternatively, a defendant might wait until an attempt was made to execute the judgment in a later proceeding and attempt to establish the judgment's voidness as a defense.[30] But as the next Part will show, the availability of these opportunities was limited, in many instances, by the force that courts typically gave to the official records of domestic courts of general jurisdiction.

## III. JURISDICTIONAL CHALLENGES AND THE "FACE OF THE RECORD"

Understanding the limits courts of the late nineteenth and early twentieth century placed on parties' ability to raise post-judgment jurisdictional challenges requires a basic understanding of the role that

[27] *Beggerly*, 524 U.S. at 43 (quoting Fed. R. Civ. P. 60(b) advisory committee's note to 1946 amendment).

[28] Moore & Rogers, supra note 24, at 627. *Coram nobis* (sometimes referred to as "*coram vobis*") was a narrow remedy that authorized the judge who issued a particular judgment to revoke that judgment at a later term based on factual errors that were unknowable to the court at the time it had entered its original judgment. Id. at 669–71. The writ of *audita querela* provided a somewhat broader mechanism to resist execution of a judgment—due to either some significant defect in the original proceeding or a post-judgment defense (such as a release or satisfaction). Id. at 659–68. Bills of review and bills in the nature of bills of review could be used to reopen equitable decrees for certain specified reasons, including clear legal error, newly discovered evidence, or fraud. Id. at 675–76.

[29] See, e.g., Little Rock Junction Ry. v. Burke, 66 F. 83, 88 (8th Cir. 1895) ("[I]t is a general rule that . . . a court of superior jurisdiction has power at any time to vacate its own judgments when it appears from an inspection of its record that a particular judgment or decree is utterly void for want of jurisdiction . . . . This is an inherent power, which all courts of superior jurisdiction possess as a necessary part of the machinery for administering justice . . . ."); Ladd & Tilton v. Mason, 10 Or. 308, 312 (1882) ("The inherent power of the court to set aside and vacate . . . an entry, made without jurisdiction, at any time . . . , whether at the same term it is made, or any subsequent term, seems hardly to admit of a serious doubt.").

[30] See Elliott v. Lessee of Peirsol, 26 U.S. (1 Pet.) 328, 329 (1828) ("The jurisdiction of any Court, exercising authority over a subject, may be inquired into in every other Court, when the proceedings of the former are relied on, and brought before the latter by a party claiming the benefit of such proceedings.").

the court's official record played in English and early American legal practice. In the English legal system of the eighteenth century, each of the king's courts was regarded as a "court of record," meaning that its "acts and judicial proceedings" were required to be "enrolled in parchment for a perpetual memorial and testimony."[31] The records produced by such courts were regarded as being of "such high and supereminent authority, that their truth [was] not to be called in question," and no plea or proof to the contrary would be accepted in any later proceeding.[32] Many American courts applied the same conclusive presumption of validity to their own official records and to the records produced by other courts within the same state.[33] This presumption severely limited the ability of litigants to question the jurisdiction of a deciding court in subsequent collateral proceedings. A prior judgment of a domestic court of record could "serve as an independent and conclusive ground of a lawsuit."[34] Litigants seeking to defend against such a lawsuit under the common law system of pleading could only resist through a plea of *nul tiel record*, which "defended on the ground that the record was nonexistent, facially invalid, or incapable of supporting the action."[35] If the plaintiff could produce a sealed exemplification of the judgment, the plea would be rejected unless the defect in the court's jurisdiction was apparent on the face of the record itself.[36]

[31] 3 William Blackstone, Commentaries *24.

[32] Id.; see also Edward Coke, The First Part of the Institutes of the Laws of England § 175 (Francis Hargrave & Charles Butler eds., London, E. & R. Brooke, 14th ed. 1789) (1628) ("[A] record or inrolment is a memoriall or monument of so high a nature, . . . as it importeth in it selfe such an absolute verity, as if it be pleaded . . . that there is no such record, it shall not receive any triall by witnesse, jury, or otherwise, but only by itselfe."). By contrast, courts of more limited and inferior jurisdiction, such as courts-baron, hundreds courts, and county courts, kept no official record of their proceedings, and the findings of such courts could thus be disputed in later proceedings and, if necessary, "tried and determined by a jury." 3 Blackstone, supra note 31, at *25, *33–36.

[33] See Freeman, supra note 17, § 116, at 111 ("The weight of the adjudged cases . . . sustains the proposition that the judgment of a domestic court of general jurisdiction is not void, except when the court has no jurisdiction over the subject matter of the suit, or . . . it is shown *by the record* to have had no jurisdiction over the judgment defendant." (emphasis added)).

[34] Stephen E. Sachs, Full Faith and Credit in the Early Congress, 95 Va. L. Rev. 1201, 1214 (2009).

[35] Id.

[36] Id. at 1214–15. Many state courts refused to accord the same presumption of validity to judgments issued by courts of record from other states. See, e.g., Freeman, supra note 17, § 563, at 593–94; Kingsbury v. Yniestra, 59 Ala. 320, 321 (1877); Lowe v. Lowe, 40 Iowa 220, 223–25 (1875); Carleton v. Bickford, 79 Mass. (13 Gray) 591, 593–96 (1859); cf. Thompson v. Whitman, 85 U.S. (18 Wall.) 457, 468 (1873) (observing that state-court rules

This presumption of validity also posed challenges for parties seeking affirmative relief through the historically defined ancillary remedies or through an independent action in equity. A recurring fact pattern throughout the nineteenth and early twentieth centuries involved circumstances in which a defendant sought to challenge representations in the record that he or she had been served with process by demonstrating that the official responsible for such service had negligently or maliciously misrepresented the relevant facts to the court.[37]

At common law, the only relief for such aggrieved defendants would be a new action in tort against the officer who had made the relevant misrepresentations.[38] But over the course of the nineteenth century, courts and scholars increasingly recognized the harsh consequences of such a rule, the practical effect of which would be to deny defendants adequate relief in the large majority of cases.[39] As a result, by the early twentieth century, most American jurisdictions allowed defendants to pursue

"requir[ing] that no averment shall be admitted to contradict the record" have "no extra-territorial force" and are thus not binding on other states under the Full Faith and Credit Clause).

[37] The following nineteenth- and early-twentieth-century cases are among the many cases that present allegations of this sort: Kibbe v. Benson, 84 U.S. (17 Wall.) 624, 625–29 (1873); Walker v. Robbins, 55 U.S. (14 How.) 584, 584–85 (1852); Friebe v. Elder, 105 N.E. 151, 152–55 (Ind. 1914); Du Bois v. Clark, 55 P. 750, 750 (Colo. App. 1898); Owens v. Ranstead, 22 Ill. 161, 162–63 (1859); Ridgeway v. Bank of Tenn., 30 Tenn. (11 Hum.) 523, 523 (1851); Taylor v. Lewis, 25 Ky. (2 J.J. Marsh.) 400, 400 (1829).

[38] 2 John Norton Pomeroy, Jr., A Treatise on Equitable Remedies § 663, at 1113 (1905); see, e.g., *Du Bois*, 55 P. at 751 ("Undoubtedly, under the English common law, the rule which prevailed was that, as between parties and privies the return of the officer was conclusive, and that it could not be questioned, except in an action against him for a false return."); *Taylor*, 25 Ky. (2 J.J. Marsh.) at 400 ("It would lead to mischievous consequences, if the official return of an officer, in favor of a party, acting in good faith, could be impeached in chancery, to the prejudice of the innocent party; and he made to suffer for another's wrong."); see also Miedreich v. Lauenstein, 232 U.S. 236, 246–47 (1914) (concluding that a state law making a sheriff's return conclusive evidence of service did not violate the Fourteenth Amendment's Due Process Clause where law "permitted a recovery against the sheriff" if the return was false).

[39] See 2 Pomeroy, supra note 38, § 663, at 1113–14 (describing "[t]he remedy at law against an officer" as being "at best of a very doubtful character" and noting that "in many cases damages, if recovered, are a wholly inadequate remedy"); 1 Henry Campbell Black, A Treatise on the Law of Judgments: Including the Doctrine of Res Judicata § 377, at 600 (2d ed. 1902) (observing that the remedy through an officer suit "must often be illusory" and that, at best, would "involve[] a circuity and remoteness of obtaining redress which is foreign to the spirit of equity"); *Ridgeway*, 30 Tenn. (11 Humph.) at 525 (holding that "[t]he action for a false return" against an officer was not the type of adequate remedy at law as would preclude equitable relief, as "the officer, who made the false return, . . . might be unable to make the proper indemnity, or succeed in evading his liability").

equitable relief seeking to restrain a void judgment's enforcement regardless of whether the alleged jurisdictional defect was discernible from the face of the deciding court's record or could only be determined through consideration of extrinsic evidence.[40]

Nonetheless, the distinction between judgments that were void on their face and those whose invalidity could only be established through extrinsic evidence remained significant. Through at least the early portion of the twentieth century, a minority view persisted in some states that barred consideration of extrinsic evidence unless the plaintiff in the initial proceeding had engaged in some sort of wrongdoing through which the false representation to the court had been procured.[41] And even in states that followed the majority view, defendants seeking to introduce evidence challenging the original court's jurisdiction often faced additional hurdles deriving from the equitable nature of the relief they sought.

For example, courts in several states required defendants seeking to present extrinsic evidence of a lack of service of process to also demonstrate that they would be able to present a meritorious defense to the plaintiff's substantive allegations.[42] The rationale underlying this requirement was the idea that it was "not the province of equity to correct mere technical wrongs" and that "[a] party seeking its aid must" therefore "show some substantial injury."[43] Likewise, a party might be barred from

[40] See 2 Pomeroy, supra note 38, § 663, at 1113 ("[I]t can be safely stated that the general rule, by the weight of authority, is that a return may be attacked in an action to set aside the judgment."); Freeman, supra note 17, § 495, at 534 ("There seems to be but little dissent from the proposition that the want of service of process may be shown in equity in opposition to the statement in the judgment roll."); Johnson v. Gregory, 29 P. 831, 832 (Wash. 1892) ("[W]e are convinced . . . that the great weight at least of modern authority sustains the view that the return of the officer may be assailed in a direct proceeding [in equity] to set aside the judgment . . . .").

[41] See, e.g., Friebe v. Elder, 105 N.E. 151, 155 (Ind. 1914); McClung v. McWhorter, 34 S.E. 740, 740–41 (W. Va. 1899); Preston v. Kindrick, 27 S.E. 588, 588–90 (Va. 1897); Thomas v. Ireland, 11 S.W. 653, 653–54 (Ky. 1889).

[42] See, e.g., Sweet v. Denver & R.G.R. Co., 147 P. 669, 670 (Colo. 1915); Handley v. Jackson, 50 P. 915, 916 (Or. 1897); State v. Hill, 8 S.W. 401, 402–03 (Ark. 1888); Dunklin v. Wilson, 64 Ala. 162, 167–68 (1879); Taggart & Taggart v. Wood, 20 Iowa 236, 237–38 (1866); Gregory v. Ford, 14 Cal. 138, 141–42 (1859).

[43] 2 Pomeroy, supra note 38, § 667, at 1119; see also, e.g., Ableman v. Roth, 12 Wis. 81, 91 (1860) ("Courts of equity will not interfere . . . where no substantial right has been lost, and no unfair advantage gained, simply because, by some trick or artifice, a judgment, which is just and equitable in itself, has been obtained in advance of the time when it would otherwise have been rendered."). Courts in a few states dispensed with this requirement, reasoning that the entry of a judgment without notice was a sufficient injury to warrant the aid of equity, but this seems to have been a minority view. See Mass. Benefit Life Ass'n v. Lohmiller, 74 F. 23,

seeking relief by other traditional equitable principles, including the doctrine of laches.

Laches is an equitable defense that can be invoked when a plaintiff has unreasonably delayed in seeking relief to the prejudice of a defendant.[44] Allowing a laches defense to an action seeking relief from a purportedly void judgment might reasonably be seen as standing in tension with the view that void judgments are legal nullities. After all, if a void judgment is incapable of affecting the parties' legal rights at all, how could the mere passage of time transform that legal nullity into a source of binding legal obligation? As noted above, this line of reasoning is central to the decisions of those modern courts that have refused to apply Rule 60(c)(1)'s "reasonable time" limitation to motions seeking relief from void judgments.[45]

But the common law courts' rigid adherence to the face-of-the-record doctrine meant that such courts would not regard a judgment as truly "void" for all purposes unless a jurisdictional defect appeared on the face of the record. The refusal of common law courts to look beyond the record was not predicated on any notion that courts could "bootstrap" their own jurisdiction into existence simply by declaring it existed.[46] Rather, the face-of-the-record limitation reflected a conclusive evidentiary presumption, grounded in public-policy principles favoring finality and repose, as well as respect for the sovereign authority of domestic courts of general jurisdiction.[47] In other words, the prohibition on looking

28–29 (7th Cir. 1896) (noting disagreement among state courts but concluding that the requirement of a valid defense reflected the preponderant view among state courts).

[44] See Samuel L. Bray, A Little Bit of Laches Goes a Long Way: Notes on *Petrella v. Metro-Goldwyn-Mayer*, *Inc.*, 67 Vand. L. Rev. En Banc 1, 2 (2014) (identifying unreasonable delay and prejudice as the requisite elements of a laches defense).

[45] See supra note 6 and accompanying text.

[46] Cf. Jordan v. Chi. & N.W. Ry. Co., 104 N.W. 803, 806 (Wis. 1905) (Dodge, J., concurring in the judgment) (criticizing the idea that courts could create jurisdiction simply by declaring the existence of facts necessary to their jurisdiction like "magic," in effect "sanction[ing] the logic of the man who would lift himself by pulling on his own boot straps").

[47] See, e.g., Thompson v. Whitman, 85 U.S. (18 Wall.) 457, 468 (1873) (attributing the presumption in states that had adopted it to "[p]ublic policy and the dignity of the courts"); Johnson v. Jones, 2 Neb. 126, 134 (1872) ("The presumption that the powers committed to judicial tribunals have been properly exercised is essential to the repose of society; and the evils which must result from allowing it to be overcome by parol evidence would seem greater than the benefit that can be derived from the correction of injustice in particular instances."); Callen v. Ellison, 13 Ohio St. 446, 455 (1862) (noting that it cannot properly be said that a tribunal possesses jurisdiction "because it has so decided," but rather that its decision is treated as "binding because it was authorized to make it, and because public policy, and the respect

beyond the record effectively required common law courts to act "as if" jurisdiction existed (and, thus, as if the court's judgment was legally valid) even if the particular facts necessary to establish such jurisdiction never actually came into being.[48] Courts exercising equity jurisdiction did not consider themselves bound by such legal formalities. An important function of equity historically was to allow parties to obtain a more accurate and context-sensitive determination of their dispute than could be obtained through the rigid formalities of the common law courts' procedures.[49] But equity has its limits. And among those limits is the doctrine of laches, which is grounded in the equitable maxim that "equity aids the vigilant" rather than those who "slumber on their rights"—a maxim that itself can be seen as "a special form of the yet more general principle, He who seeks equity must do equity."[50] This defense helps equity courts "to match the consequences of uncertainty and complexity with the party who created them" and limits plaintiffs' ability to opportunistically delay seeking relief in order to obtain some type of unfair litigation advantage.[51]

The equitable nature of the relief sought in proceedings challenging judgments that were not void on their face did not wholly assuage concerns about according legal effect to jurisdictionless judgments.

due to the sovereignty it represents, at least in tribunals acting under the same sovereignty, requires that the decision should be regarded, while it remains on the record unimpeached and unreversed").

[48] See, e.g., Stephen E. Sachs, Finding Law, 107 Calif. L. Rev. 527, 561–62 (2019) (discussing the prevalence of such "as if" exceptions in American law).

[49] See, e.g., 1 Joseph Story, Commentaries on Equity Jurisprudence 28 (Bos., Little, Brown & Co. 6th ed. 1853) ("[O]ne of the most striking and distinctive features of Courts of Equity is, that they can adapt their decrees to all the varieties of circumstances, which may arise, and adjust them to all the peculiar rights of all the parties in interest . . . ."); 1 Blackstone, supra note 31, at *92 (noting that one function of courts of equity was "to give a more specific relief, and more adapted to the circumstances of the case, than can always be obtained by the generality of the rules of the positive or common law"); cf. The Federalist No. 83, at 505 (Alexander Hamilton) (Clinton Rossiter ed., 1961) ("The great and primary use of a court of equity is to give relief in extraordinary cases, which are exceptions to general rules." (emphasis omitted)).

[50] 1 John Norton Pomeroy, Jr., A Treatise on Equity Jurisprudence as Administered in the United States of America, § 418, at 695–96 (3d ed. 1905); see also, e.g., Hays v. Port of Seattle, 251 U.S. 233, 239 (1920) ("[Laches] rests upon the long-established doctrine of courts of equity that their extraordinary relief will not be accorded to one who delays the assertion of his claim for an unreasonable length of time, especially where the delay has led to a change of conditions that would render it unjust to disturb them at his instance.").

[51] Henry E. Smith, Equity as Meta-Law, 130 Yale L.J. 1050, 1128 (2021); see also, e.g., Bray, supra note 44, at 6–8 (discussing the functions of laches).

Courts in some states held that the logic of the voidness principle meant that laches should not bar a request for relief from a void judgment even if such voidness was not apparent on the face of the record.[52] But by the time of Rule 60's adoption, the majority rule in most U.S. jurisdictions was that requests for relief from a judgment not void on its face were limited by the doctrine of laches.[53] In the view of these courts, judgments whose invalidity could only be established through extra-record evidence were not, in contemplation of law, "void" judgments but rather were merely "voidable."[54]

By contrast, where a jurisdictional defect was apparent on the face of the deciding court's record, the doctrine of laches was generally held not to apply.[55] Such judgments were typically viewed by the common law courts as legal nullities, and those seeking relief from such judgments had no need for the types of extraordinary relief available only from equity

[52] See, e.g., Nat'l Metal Co. v. Greene Consol. Copper Co., 89 P. 535, 537–38 (Ariz. 1907) (asserting that the defendant's delay in seeking relief from judgment premised on allegedly invalid service was "not the inaction which bars relief in equity," but rather "inaction in reliance upon its legal rights").

[53] See, e.g., Lamar v. Houston, 184 So. 293, 295 (Miss. 1938) (stating that it would "not hesitate to apply the principle that freedom from laches is generally a prerequisite to the granting of equitable relief from a judgment or decree not void on its face"); Laurens Tr. Co. v. Copeland, 151 S.E. 617, 621 (S.C. 1930) ("Where . . . [a] judgment is not void on its face, . . . courts in many instances refuse to exercise their quasi equitable powers to vacate a judgment . . . except in clear cases, to promote the ends of justice, and where it appears that the party making the application is himself without fault and has acted in good faith and with ordinary diligence."); Pettis v. Johnston, 190 P. 681, 691 (Okla. 1920); Renfroe v. Parmelee, 220 S.W. 816, 817 (Ark. 1920); Norton v. Atchison, T. & S.F.R. Co., 32 P. 452, 454 (1893); Harrison v. Hargrove, 13 S.E. 939, 940 (N.C. 1891); Stocking v. Hanson, 28 N.W. 507, 507–08 (Minn. 1886).

[54] See, e.g., *Pettis*, 190 P. at 691 ("We reaffirm the doctrine . . . that 'a judgment is not void in the legal sense for want of jurisdiction, unless its invalidity and want of jurisdiction appear on the record; it is voidable merely.'" (quoting Edwards v. Smith, 142 P. 302, 304 (Okla. 1914))); Great W. Mining Co. v. Woodmas of Alston Mining Co., 23 P. 908, 913 (Colo. 1890) ("A judgment rendered without bringing the defendants into court is not for this reason void, but voidable only, unless the failure to obtain jurisdiction over them appears in the record."); *Harrison*, 13 S.E. at 940 ("[I]t is well settled by our decisions and other authorities that, the vice being a secret one, and the record reciting the necessary jurisdictional facts, such a decree is voidable only . . . ."); see also 1 Back, supra note 39, § 170, at 249 ("[I]n the case of a domestic judgment, it is a serious question whether the lack of jurisdiction must not appear on the face of the record in order to entitle the courts to treat it as a [legal] nullity.").

[55] See, e.g., Weiner v. Wittman, 27 A.2d 866, 867 (N.J. 1942); Romberger v. Romberger, 139 A. 159, 160 (Pa. 1927); McCamant v. McCamant, 187 S.W. 1096, 1099 (Tex. Civ. App. 1916); Friebe v. Elder, 105 N.E. 151, 153 (Ind. 1914); Schwartz v. Temple, 37 P. 414, 415 (Cal. 1894).

courts. As the Supreme Court of California noted in explaining the availability of relief from such judgments:

> A judgment which is void upon its face, and which requires only an inspection of the judgment roll to demonstrate its want of vitality, is a dead limb upon the judicial tree, which should be lopped off if the power so to do exists. It can bear no fruit to the plaintiff, but is a constant menace to the defendant. . . . [A] court whose process is abused by an attempt to enforce a void judgment will interfere for its own dignity, and for the protection of its officers, to arrest further action.[56]

Thus, by the time of Rule 60's adoption, the time for seeking relief from a void judgment depended on the nature of the evidence the party intended to rely upon to prove that the deciding court lacked jurisdiction. Requests for relief that required only a review of the court's record could generally be raised at any time and no delay on the part of the party seeking relief—no matter how egregious—would bar relief. By contrast, courts in most U.S. jurisdictions denied relief to parties who failed to exercise reasonable diligence in pursuing relief based on extra-record evidence that contradicted the record.

## IV. THE BACKGROUND OF RULE 60

As originally adopted in 1938, Rule 60 said nothing at all about void judgments.[57] Instead, the Rule "provided a simple remedy by motion to set aside a judgment on the grounds of mistake, inadvertence, surprise, or excusable neglect" and required that any such motion be filed within a "reasonable time" but in no case longer than six months after entry of the judgment from which relief was sought.[58] As originally framed, the Rule thus established a uniform six-month deadline for motions seeking the types of relief that were typically obtainable from a court by motion prior to the conclusion of its term.[59] The original version of the Rule also

[56] People v. Greene, 16 P. 197, 199 (Cal. 1887).

[57] See Moore & Rogers, supra note 24, at 692 (noting the absence of language in the original Rule that would allow a court to "purge its records of void judgments").

[58] 11 Wright, Miller & Kane, supra note 7, § 2851, at 287; Moore & Rogers, supra note 24, at 632.

[59] 11 Wright, Miller & Kane, supra note 7, § 2851, at 287; see also 4B Charles Alan Wright, Arthur R. Miller & Adam N. Steinman, Federal Practice and Procedure § 1161, at 525–31 (4th ed. 2015) (discussing the background of Federal Rule of Civil Procedure 6 and the decision to "end[] the significance of terms of court as a time limitation").

included language declaring that the Rule did not limit a court's power to "entertain an . . . action to relieve a party from a judgment, order, or proceeding."[60] "The accepted view was that this left the door open to use the old ancillary remedies to challenge judgments on other than the four grounds then specifically listed in the rule."[61]

In 1946, after extensive deliberations over proposed revisions, the Advisory Committee approved an amended version of Rule 60.[62] The 1946 amendment "extensively revised" Rule 60(b) "in accordance with the premise that 'the rules should be complete in this respect and define the practice with respect to any existing rights or remedies to obtain relief from final judgment.'"[63] Among other things, the amendments expressly abolished several of the ancillary remedies that had been presumed to survive the adoption of the original Rule 60.[64] The amendment also added new grounds for relief that had not been present in the original version of Rule 60(b) and divided the grounds for relief into two categories. The first category included all the grounds for relief identified in the original Rule, as well as motions premised on fraud and newly discovered evidence.[65] The 1946 amendments required that motions falling within the first category must be brought within no more than one year after a judgment (extending the six-month deadline that had been present in the original Rule).[66]

In the second category, the Advisory Committee identified additional grounds for relief that had not been included in the original version of the Rule. These grounds for relief included satisfaction, release, or discharge of the judgment, reversal or vacatur of an earlier judgment on which the judgment was based, and a catchall provision allowing the motion for

[60] Moore & Rogers, supra note 24, at 693.

[61] 11 Wright, Miller & Kane, supra note 7, § 2851, at 287.

[62] See Dustin B. Benham, *Twombly* and *Iqbal* Should (Finally!) Put the Distinction Between Intrinsic and Extrinsic Fraud Out of Its Misery, 64 SMU L. Rev. 649, 662–64 (2011) (discussing the revisions).

[63] 11 Wright, Miller & Kane, supra note 7, § 2851, at 287 (quoting Fed. R. Civ. P. 60(b) advisory committee's note to 1946 amendment).

[64] Fed. R. Civ. P. 60(e) ("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*." (emphasis added)).

[65] Fed. R. Civ. P. 60(b)(1)–(3); see Fed. R. Civ. P. 60(b) advisory committee's note to 1946 amendment.

[66] Fed. R. Civ. P. 60(c)(1); see Fed. R. Civ. P. 60(b) advisory committee's note to 1946 amendment.

"any other reason that justifies relief."[67] Also placed within this category were motions seeking relief on the ground that the original "judgment is void."[68] Motions falling within the second category were not made subject to the one-year deadline applicable to other motions under the Rule but still were required to be brought within a "reasonable time."[69]

The Advisory Committee did not expressly explain its decision with regard to the grounds of relief falling within the second category nor its decision to subject such motions to a "reasonable time" requirement. But the grounds identified matched grounds that could be used to seek relief under certain ancillary remedies eliminated by the amendments,[70] and thus cohered with the drafters' aspiration to allow the Federal Rules to "deal with the practice in every sort of case in which relief from final judgments is asked" and to "prescribe the practice" for motions seeking such relief.[71]

## V. VOID JUDGMENTS, "REASONABLE TIME," AND THE POLICY OF RULE 60

The modern circuit split that the Supreme Court agreed to consider in *Coney Island Auto Parts Unlimited, Inc. v. Burton* presents a seemingly irresolvable tension between the plain language of Rule 60 and bedrock conceptions of judicial power. Courts on neither side of this split have offered a particularly satisfying justification for the conclusions they have reached.

Those courts that have concluded that Rule 60(c)(1)'s "reasonable time" limit does not apply to voidness challenges pursuant to Rule 60(b)(4) have not offered any plausible explanation that would reconcile that interpretation with the Rule's plain language.[72] In effect, such courts treat the Rule's extension of a "reasonable time" limit to motions seeking relief from void judgments as a kind of scrivener's error that federal

[67] Fed. R. Civ. P. 60(b)(5)–(6).

[68] Fed. R. Civ. P. 60(b)(4).

[69] Fed. R. Civ. P. 60(c)(1).

[70] See supra note 28 and accompanying text (discussing the ancillary remedies of *coram nobis*, *audita querela*, bills of review, and bills in the nature of bills of review).

[71] Fed. R. Civ. P. 60(b) advisory committee's note to 1946 amendment.

[72] See, e.g., United States v. One Toshiba Color Television, 213 F.3d 147, 157 (3d Cir. 2000) (en banc) (acknowledging that "the text of the rule dictates that the motion will be made within 'a reasonable time'" but rejecting that reading as inconsistent with "overwhelming authority").

courts should be free to disregard.[73] But given the extensive deliberations that preceded the 1946 amendments to Rule 60,[74] it seems doubtful that the applicability of the reasonable time limitation simply slipped through the approval process unnoticed.

But the opposing view presents its own challenges. The U.S. Court of Appeals for the Sixth Circuit's decision in *In re Vista-Pro Automotive, LLC*—the decision from which the Supreme Court granted certiorari in *Coney Island Auto Parts*—conceded the inconsistency of its interpretation with the "majority view" among the lower courts and acknowledged what it assumed to be the Rule's departure from "a well-established rule that void judgments could be vacated at any time."[75] It insisted, however, that the framers' decision to place the "reasonable time" limitation in the text most likely reflected a conscious decision to depart from that "well-established" background rule.[76] But if the drafters had intended such a sharp departure from settled judicial practice, it seems odd that they failed to acknowledge any such intention in the detailed Advisory Committee Notes that accompanied the 1946 amendments to the Rule.[77]

The historical connection between the voidness principle, the face-of-the-record doctrine, and the equitable doctrine of laches helps to resolve this seeming tension. Contrary to statements in certain of the modern cases, courts prior to 1946 did not categorically allow post-judgment jurisdictional challenges without regard to the passage of time. Rather, most courts allowed voidness challenges to be brought at any time *only* where a jurisdictional defect was apparent on the face of the record.[78] All other challenges were subject to the equitable doctrine of laches and thus

[73] Cf. Niz-Chavez v. Garland, 141 S. Ct. 1474, 1480 n.1 (2021) (describing the "'scrivener's error' doctrine," which allows a court to adopt a non-literal interpretation of a statute "in exceptional circumstances" involving "obvious technical drafting errors" (citation omitted)).

[74] See Moore & Rogers, supra note 24, at 685–93 (discussing the two years of Advisory Committee deliberations leading up to the 1946 amendments).

[75] In re Vista-Pro Auto., LLC, 109 F.4th 438, 444 (6th Cir. 2024).

[76] Id.

[77] See Fed. R. Civ. P. 60 advisory committee's note to 1946 amendment (discussing changes to Rule 60 without explicitly addressing the addition of void judgments as a basis to challenging final judgments or the applicability of a "reasonable time" limitation to such motions); cf. Catherine T. Struve, The Paradox of Delegation: Interpreting the Federal Rules of Civil Procedure, 150 U. Pa. L. Rev. 1099, 1152–61 (2002) (discussing the interpretive value of the Advisory Committee Notes under various interpretive theories).

[78] See supra notes 53–55 and accompanying text.

could be barred by an unreasonable delay that resulted in prejudice to the defendant or some innocent third party.

Interpreting the "reasonable time" requirement in light of the face-of-the-record doctrine and the equitable doctrine of laches also comports with the policy goals underlying Rule 60 and the Federal Rules more generally. Rule 60 aims "to strike a proper balance between the conflicting principles that litigation must be brought to an end and that justice should be done."[79] Like other Federal Rules of Civil Procedure, it is to be "construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding."[80] Requiring a party to move with reasonable diligence in seeking relief from the court would seem to comport with the aspiration that judicial resolution be "speedy" and "inexpensive."[81] The harder question is when, in the circumstances of a particular case, imposing such a requirement would be "just."

The Sixth Circuit's majority opinion in *In re Vista Pro Automotive* illustrates the potential tradeoffs involved. On the one hand, the Sixth Circuit rightly observed that "applying a reasonable-time limitation to Rule 60(b)(4) motions comports with basic equitable principles" that underlie the Rule.[82] In particular, it noted the concern that jettisoning the reasonable time restriction completely might "permit a party to engage in flagrantly inequitable conduct," such as "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."[83]

On the other hand, the Sixth Circuit also acknowledged that the reasonable time requirement might, in some cases, conflict with countervailing autonomy interests of defendants. The Sixth Circuit noted the U.S. Supreme Court's observation that "a defendant who doubts a court's jurisdiction" may *either* "submit[] to the jurisdiction of the court for the limited purpose of challenging jurisdiction," and thereby "agree[]

[79] 11 Wright, Miller & Kane, supra note 7, § 2851, at 286; see also, e.g., United Student Aid Funds, Inc. v. Espinosa, 559 U.S. 260, 276 (2010) ("Rule 60(b)(4) strikes a balance between the need for finality of judgments and the importance of ensuring that litigants have a full and fair opportunity to litigate a dispute.").

[80] Fed. R. Civ. P. 1.

[81] See, e.g., Steinhoff v. Harris, 698 F.2d 270, 273 (6th Cir. 1983) (connecting Rule 60's "reasonable time" limitation to the judicial system's "interest . . . in the prompt and inexpensive resolution of litigation").

[82] In re Vista-Pro Auto., LLC, 109 F.4th 438, 445 (6th Cir. 2024).

[83] Id.

to abide by that court's determination on the issue of jurisdiction," *or* "ignore the judicial proceedings, risk a default judgment, and then challenge that judgment on jurisdictional grounds in a collateral proceeding."[84] This option reflects the limited jurisdictional capacity of courts in our legal system and the autonomy interests individuals possess in not submitting themselves to a court that lacks any lawful authority over them. It would make little sense to insist that defendants be given the option of refusing to submit their jurisdictional objections to a court whose jurisdiction they doubt prior to entry of a final judgment, only to then insist that those same objections be presented to that same court within some judicially determined "reasonable time" after that court entered its judgment.

The face-of-the-record doctrine applied by courts in the years before the 1946 amendments to Rule 60 struck a reasonable balance between these competing concerns. For judgments whose invalidity could be determined solely by looking to the official record of the court, concerns about protecting reasonable reliance interests and opportunistic behavior by defendants were limited. In such circumstances, the plaintiff and any third parties whose rights might be affected by the entry of a judgment had access to the same information that the defendant might later use to challenge the rendering court's jurisdiction. If the original court did not actually possess jurisdiction, any reliance placed on its purported "judgment" should arguably be regarded as unreasonable and thus not warranting protection by the courts.[85]

Judgments whose invalidity could only be shown through extrinsic evidence, however, stood on a much different footing. The information

[84] Id. at 446 (alterations in original) (quoting Ins. Corp. of Ir., Ltd. v. Compagnie des Bauxites de Guinee, 456 U.S. 694, 706 (1982)); see also, e.g., Restatement (Second) of Judgments § 65 cmt. b (Am. L. Inst. 1982) ("When the [defendant] knew about the action but perceived that the court lacked territorial or subject matter jurisdiction, he is given a right to ignore the proceeding at his own risk but to suffer no detriment if his assessment proves correct."); "R" Best Produce, Inc. v. DiSapio, 540 F.3d 115, 123 (2d Cir. 2008) (noting that the differential treatment of appearing and non-appearing defendants likely reflects the view "that a non-appearing defendant, even with notice, should be spared the burden of defending in a distant forum"); cf. Ariel Waldman, Comment, Allocating the Burden of Proof in Rule 60(b)(4) Motions to Vacate a Default Judgment for Lack of Jurisdiction, 68 U. Chi. L. Rev. 521, 521 (2001) (suggesting additional reasons why a defendant might choose not to raise a jurisdictional challenge until post-judgment proceedings, including a desire "to postpone the expenditure of her time and money until a later date").

[85] Cf. Beck v. Curti, 45 P.2d 601, 603 (Nev. 1935) (holding "the rule of caveat emptor" applies to judicial sales and that the voidness of a judgment that was apparent on the face of the record therefore extinguished title defendant had acquired through such a sale).

relied upon to establish such challenges—such as whether a particular defendant had, in fact, been served with process in an appropriate manner—might lie within the unique knowledge of the moving party. Allowing post-judgment jurisdictional challenges to be brought in such circumstances long after a judgment has issued could significantly undermine the public's confidence in the validity and finality of judicial proceedings.[86] Such a doctrine might also encourage defendants to engage in strategic delay in order to obtain some form of unfair litigation advantage.[87] The equitable doctrine of laches, which most state courts applied to challenges of this sort prior to Rule 60's adoption, helped to guard against such dangers by requiring aggrieved defendants to exercise reasonable diligence and promptness in seeking relief.[88]

Federal courts applying Rule 60 have largely lost sight of this distinction. Courts that have held Rule 60's "reasonable time" limitation inapplicable to voidness challenges under Rule 60(b)(4) have not distinguished between voidness challenges premised on the face of the record and those that ask the court to consider extrinsic evidence.[89] Likewise, the Sixth Circuit's more literalistic interpretation leaves open the possibility that courts might refuse relief even when faced with a glaring jurisdictional defect that was easily discernible from the face of the record.[90]

[86] See, e.g., Miedreich v. Lauenstein, 232 U.S. 236, 246–47 (1914) (noting that if individuals were unable to rely on the official records of courts, "there would be no protection to parties who have relied upon judicial proceedings importing verity, upon the faith of which rights have been adjudicated and value parted with").

[87] See *In re Vista-Pro Auto.*, 109 F.4th at 445.

[88] See, e.g., Bray, supra note 44, at 9–11 (discussing functions of the laches defense); see also Smith, supra note 51, at 1128 (observing that "[u]nreasonable delay in asserting one's rights calls forth reliance on the part of others," which may be "deliberate" and "opportunistic," and that the laches defense helps courts avoid being used as "instruments of oppression").

[89] See, e.g., Norris v. Causey, 869 F.3d 360, 365 (5th Cir. 2017) (holding the reasonable-time limitation inapplicable to a Rule 60(b)(4) motion requiring factual findings by the district court regarding the sufficiency of service of process on the defendant); Sea-Land Serv., Inc. v. Ceramica Europa II, Inc., 160 F.3d 849, 851–52 (1st Cir. 1998) (holding the "reasonable time" limit inapplicable to a Rule 60(b)(4) motion where a corporate defendant sought to rely on extrinsic evidence to prove that it was not properly served with process).

[90] See *In re Vista-Pro Auto.*, 109 F.4th at 445. Dissenting from the Sixth Circuit's panel decision, Judge David McKeague observed that the record "assumed by the bankruptcy court below" showed "the judgment to be void on its face." Id. at 447 (McKeague, J., dissenting). Unlike the majority and most other courts that have addressed the issue, Judge McKeague also included language in his dissent leaving open the possibility that Rule 60's "reasonable time" limitation might apply differently to facially void judgments than it would to judgments whose

A more sensible approach would be to construe Rule 60(c)(1)'s "reasonable time" language—as applied to motions seeking relief from void judgments under Rule 60(b)(4)—in light of the traditional equitable principles that most courts had applied to similar requests for relief in the years prior to the 1946 amendments to the Rule. Where a jurisdictional defect is apparent on the face of the court's record, a "reasonable time" in which to seek relief from the court's judgment might very well be equivalent to "any time."[91] Absent some exceptional circumstance, those who become aware of a purported judgment entered by a court that clearly lacked any authority over their claims should not face an affirmative obligation to seek legal relief from a court. At most, any calculation of a "reasonable time" in which relief from such a judgment must be sought should run from the time when the judgment is sought to be enforced before a court that actually possesses jurisdiction rather than from when the initial judgment was entered.[92]

By contrast, where no jurisdictional defect is apparent on the face of the record, the balance of equities may be different. In such circumstances, the defendant could still possess a potential autonomy interest in avoiding submission to a court that lacks the requisite legal authority over his or her rights. But that interest must be balanced against, and may be outweighed by, the competing interests of plaintiffs or third parties who may have reasonably relied to their detriment on the judgment's assumed existence and validity.[93] In such circumstances, it seems reasonable to require those asking the court for relief from the

voidness could only be established through extrinsic evidence. See id. at 452 ("*As applied to facially void judgments*, a 'reasonable' time limit might very well be no time limit at all." (emphasis added)).

[91] Cf. Beller & Keller v. Tyler, 120 F.3d 21, 24 (2d Cir. 1997) ("[I]t 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) (citation omitted)).

[92] See, e.g., *In re Vista-Pro Auto.*, 109 F.4th at 446 (suggesting that "perhaps the reasonable-time clock does not start running" against a defendant over which the rendering court lacked jurisdiction "until enforcement is first attempted"); cf. N. Pac. S.S. Co. v. Indus. Accident Comm'n, 23 F.2d 109, 110 (D. Cal. 1918) (noting that in a suit to enjoin enforcement of a void judgment, laches would run only from the time when enforcement was sought).

[93] Cf. Stocking v. Hanson, 28 N.W. 507, 507–08 (Minn. 1886) (noting that laches should bar relief from a judgment valid on its face where the moving party has delayed "so long . . . in applying for [relief] that others innocently relying on the record and apparent validity of the judgment have placed themselves in such position that to vacate the judgment will operate to defraud them").

consequences of such a judgment to move with reasonable promptness in seeking that remedy.[94]

Even some of the lower federal courts in circuits that have denied the applicability of the reasonable-time limitation to Rule 60(b)(4) motions have relied on other doctrines, such as waiver, to deny relief to parties who have engaged in protracted delay.[95] While the results reached by these courts seem reasonable, their reasoning is needlessly circuitous. Moreover, to the extent such holdings necessarily imply that other types of post-judgment party behavior can "transmute" a void judgment into a binding one, it seems odd to insist that the behavior specifically identified in the Rule itself—*i.e.*, unreasonable delay—is incapable of producing such an effect.[96]

This analysis might be somewhat more complicated, however, where a Rule 60(b)(4) motion challenges a federal court's subject matter

[94] As noted above, the equitable defense of laches required a showing of *both* unreasonable delay on the part of the party seeking relief *and* the existence of prejudice to their opponent. See Bray, supra note 44, at 2. Lower federal courts have also generally acknowledged that the existence of prejudice, or the lack thereof, is also highly relevant to determining what constitutes a "reasonable time" under Rule 60. See, e.g., Salazar ex rel. Salazar v. District of Columbia, 633 F.3d 1110, 1118 & n.5 (D.C. Cir. 2011) (collecting cases from other circuits); Schultz v. Com. First Fin., 24 F.3d 1023, 1025 (8th Cir. 1994) ("We consider the movant's reason for delay and the existence of any prejudice to the opposing party when determining a 'reasonable time.' ").

In the absence of any meaningful prejudice to the non-movant, a court might plausibly consider a non-moving party's sincere belief that the rendering court lacked jurisdiction as a sufficient basis for allowing a motion seeking relief, even after an extended delay. See, e.g., *Salazar*, 633 F.3d at 1118–19 (concluding that it would be an abuse of discretion to deny a Rule 60(b)(6) motion in a "complex and long-running institutional reform case" as untimely "without finding that the movant's delay has prejudiced the non-moving party"); cf. Harris v. Defenbaugh, 109 P. 681, 683 (Kan. 1910) (holding that laches did not bar a challenge brought nearly five years after an allegedly void judgment was granted because the delay could not have "caused any prejudice to the defendant or have altered his condition").

[95] See, e.g., Stansell v. Revolutionary Armed Forces of Colom., 771 F.3d 713, 737 (11th Cir. 2014) (holding that the defendant had waived his Rule 60(b)(4) motion where he had "knowingly sat on his rights for nine months before filing anything at all with the district court"); State St. Bank & Tr. Co. v. Inversiones Errazuriz Limitada, 374 F.3d 158, 179 (2d Cir. 2004) (denying a motion as untimely where the defendant had filed a prior Rule 60 motion that did not mention voidness and waited more than a year after denial of that motion to assert a voidness challenge); Farm Credit Bank of Balt. v. Ferrera-Goitia, 316 F.3d 62, 66, 68 (1st Cir. 2003) (concluding that the defendants waived their personal jurisdiction objection by first asserting it in a Rule 60(b)(4) motion filed more than two-and-a-half years after the judgment and judicial sale of their property).

[96] Cf. 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 . . . a [Rule 60(b)(4)] motion.").

jurisdiction rather than its exercise of personal jurisdiction over a particular defendant. Constitutional limits on personal jurisdiction are grounded in a due process interest reflecting an "individual's right to be subject only to lawful power."[97] Like most other individual rights, limits on personal jurisdiction can thus be waived or forfeited.[98] Such a waiver or forfeiture might result from a party's litigation-related conduct[99]—including, potentially, conduct occurring after the entry of a final judgment.[100] Attaching such a consequence to a party's failure or refusal to comply with Rule 60's "reasonable time" restriction thus seems little different in principle from doing so for non-compliance with other procedural rules.[101]

Constitutional and statutory limits on subject-matter jurisdiction, by contrast, "function[] as a restriction on federal power" and are thus typically viewed as beyond the capacity of individuals to alter by waiver or consent.[102] Even if no jurisdictional objection is raised by any party to a lawsuit, federal courts are obligated to assure themselves of the existence of their jurisdiction at every stage of litigation.[103] The Supreme Court has thus suggested that "[t]he objection that a federal court lacks subject-matter jurisdiction . . . may be raised . . . at any stage in the litigation, *even after trial and the entry of judgment*."[104] Imposing a "reasonable time" limit that would have the effect of validating a

[97] Fuld v. Pal. Liberation Org., 145 S. Ct. 2090, 2105 (2025) (quoting J. McIntyre Mach., Ltd. v. Nicastro, 564 U.S. 873, 884 (2011) (plurality opinion)).

[98] Ins. Corp. of Ir., Ltd. v. Compagnie des Bauxites de Guinee, 456 U.S. 694, 703–04 (1982).

[99] See, e.g., id. at 704–05 ("The actions of the defendant may amount to a legal submission to the jurisdiction of the court, whether voluntary or not.").

[100] See, e.g., *Stansell*, 771 F.3d at 736–37 (concluding that the defendant waived his personal jurisdiction objection by waiting more than nine months after the judgment to seek relief); cf. Restatement (Second) of Judgments § 66 cmt. a (Am. L. Inst. 1982) ("[P]arties to a dispute may resolve it not only by adjudication but by contract or concord, express or implied by conduct giving rise to an estoppel. . . . A judgment purporting to determine the rights of the parties, though lacking effect of its own force because of invalidity, can thus be adopted as a consensual resolution of the parties' rights.").

[101] See, e.g., Fed. R. Civ. P. 12(h)(1) (deeming certain defenses, including lack of personal jurisdiction under Rule 12(b)(2), waived unless raised by motion or included in a responsive pleading); *Ins. Corp. of Ir.*, 456 U.S. at 705 (describing how personal jurisdiction may be deemed waived as a sanction for noncompliance with a discovery order under Fed. R. Civ. P. 37(b)(2)(A)).

[102] *Ins. Corp. of Ir.*, 456 U.S. at 702.

[103] See, e.g., Ruhrgas AG v. Marathon Oil Co., 526 U.S. 574, 583–84 (1999) ("[S]ubject-matter delineations must be policed by the courts on their own initiative even at the highest level."); Mansfield, Coldwater & Lake Mich. Ry. Co. v. Swan, 111 U.S. 379, 382 (1884).

[104] Arbaugh v. Y & H Corp., 546 U.S. 500, 506 (2006) (emphasis added).

judgment that was void in fact for lack of federal subject-matter jurisdiction might thus exceed the limits on federal judicial authority prescribed by Article III.[105] The "reasonable time" limit prescribed by Rule 60 thus arguably should not apply to voidness challenges implicating a federal court's subject-matter jurisdiction—at least in those circumstances where the movant has not had a reasonable opportunity to contest subject-matter jurisdiction in the original proceeding.[106]

## CONCLUSION

The plain language of Rule 60(c)(1) requires all motions under the Rule—including voidness challenges authorized by Rule 60(b)(4)—to be brought within a "reasonable time" after judgment. Most federal courts, however, have chosen to ignore this limitation in deference to a supposed general rule that voidness challenges may always be brought at any time. A closer look at the background of Rule 60 and the judicial treatment of voidness challenges prior to the Rule's adoption suggests that this supposed "general rule" was not nearly as categorical as modern courts have supposed. Rule 60 was adopted and amended against a general pattern of decisions that allowed voidness challenges to be brought at any time *only* where a judgment's voidness could be established by looking to the face of the record alone. Voidness challenges that depended on

[105] See Stephen E. Ludovici, Note, Rule 60(b)(4): When the Courts of Limited Jurisdiction Yield to Finality, 66 Fla. L. Rev. 881, 889 (2014) ("[T]he standard of 60(b)(4) may allow federal courts to unconstitutionally exercise subject-matter jurisdiction not granted by Congress.").

[106] Under the doctrine of jurisdiction-to-determine-jurisdiction, a prior court's determination of its own subject-matter jurisdiction will typically be given preclusive effect in subsequent proceedings. See supra note 19 and accompanying text (describing the doctrine). Courts applying this doctrine have held that even an erroneous exercise of subject-matter jurisdiction is not generally regarded as sufficient to invalidate a judgment unless "there [was] . . . no arguable basis on which [the prior court] could have rested a finding that it had jurisdiction." Wendt v. Leonard, 431 F.3d 410, 413 (4th Cir. 2005) (quoting Nemaizer v. Baker, 793 F.2d 58, 65 (2d Cir. 1986)); see also, e.g., United Student Aid Funds, Inc. v. Espinosa, 559 U.S. 260, 271 (2010) ("Federal courts considering Rule 60(b)(4) motions . . . generally have reserved relief only for the exceptional case in which the court that rendered judgment lacked even an arguable basis for jurisdiction." (internal quotation marks omitted) (quoting *Nemaizer*, 793 F.2d at 65)). But there is reason to doubt whether the doctrine should apply when a defendant has exercised their right not to appear and contest jurisdiction in the original proceeding. See, e.g., Bell Helicopter Textron, Inc. v. Islamic Republic of Iran, 734 F.3d 1175, 1181–82 (D.C. Cir. 2013) (concluding that the doctrine of jurisdiction-to-determine-jurisdiction did not apply when the defendant did not appear in the original proceeding).

extra-record evidence were generally subject to the equitable doctrine of laches, which required the party seeking relief to move with reasonable diligence in asserting his or her rights.

Interpreting Rule 60(c)(1) in light of this distinction would give meaningful significance to the decision by the Rule's framers to apply a "reasonable time" limitation to Rule 60(b)(4) motions without departing sharply from background understandings of the relationship between jurisdiction and judgment validity. Such an interpretation would also strike a sensible balance between the competing interests in finality and litigation fairness that undergird the Rule.