

SUPREME COURT OF THE UNITED STATES

IN THE SUPREME COURT OF THE UNITED STATES

GARY WAETZIG,)
)
) Petitioner,)
)
) v.) No. 23-971
)
HALLIBURTON ENERGY SERVICES, INC.,)
)
) Respondent.)

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 HALLIBURTON ENERGY SERVICES, INC.,)
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 Respondent.)
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Washington, D.C.

Tuesday, January 14, 2025

The above-entitled matter came on for oral argument before the Supreme Court of the United States at 11:23 a.m.

APPEARANCES:
 VINCENT LEVY, ESQUIRE, New York, New York; on
 behalf of the Petitioner.
 MATTHEW D. MCGILL, ESQUIRE, Washington, D.C.; on
 behalf of the Respondent.

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P R O C E E D I N G S

(11:23 a.m.)

CHIEF JUSTICE ROBERTS: We'll hear argument next in Case 23-971, Waetzig versus Halliburton Energy Services.

Mr. Levy.

ORAL ARGUMENT OF VINCENT LEVY

ON BEHALF OF THE PETITIONER

MR. LEVY: Mr. Chief Justice, and may it please the Court:

As ever -- every Federal Circuit to have considered the question held until the decision below, Rule 41 voluntary dismissals without prejudice may be reopened under Rule 60(b) because they are final proceedings or final judgments.

To start, a voluntary dismissal is a proceeding or a judgment. The phrase "judgment, order, or proceeding" in Rule 60(b) was taken in 1937 from Section 473 of California's Code of Civil Procedure, and at the time, California's Supreme Court had interpreted Section 473 to cover all steps in litigation, and it -- it had specifically applied Section 473 to voluntary dismissals. These authoritative California decisions were carried into Rule 60(b), and they are consistent with

1 dictionary definitions of the terms "proceeding"
2 and "judgment."

3 Next, a voluntary dismissal is also
4 final. Some courts, after adoption of the rule,
5 initially read it to constrain their authority to
6 revise interlocutory matters. And the advisory
7 committee thought this was wrong, so it added the
8 word "final" to confirm that Rule 60(b) comes into
9 play only when a court lacks inherent authority to
10 modify a matter as interlocutory.

11 But a dismissal terminates a case, so it
12 cannot be modified using a court -- the court's
13 inherent power, and it is, therefore, final for
14 Rule 60(b) purposes. And that conclusion, again,
15 is confirmed by contemporaneous dictionary
16 definitions.

17 Respondent mostly avoids these points.
18 It leads by asking the Court to affirm on the new
19 theory that the district court lacked jurisdiction
20 to vacate an arbitration award after reopening the
21 case. This objection is not covered by the
22 question presented and presents no obstacle to
23 resolving it. And the argument will fail on remand
24 because it misreads *Badgerow* and *Kokkonen*, which
25 are the two cases my friends rely upon. And when

1 it comes to the question presented, Respondent
2 offers no cogent response to the dictionary
3 definitions, the California decisions, or the
4 advisory notes. The Court should reverse.

5 I welcome the Court's questions.

6 JUSTICE THOMAS: Didn't the Tenth Circuit
7 also treat this as jurisdictional?

8 MR. LEVY: The -- the Tenth Circuit
9 treated the decision -- the issue of whether Rule
10 60(b) could be -- whether the case could be
11 reopened as going to the jurisdiction of the court
12 to vacate the award, and, therefore, there are two,
13 effectively, threshold issues that could be
14 resolved.

15 And under Sinochem, of course, there's no
16 sequencing to jurisdictional issues, which is, I
17 think, the point that Justice Gorsuch made in the
18 dissent that we cite in our briefs, where, if there
19 are two jurisdictional issues and the court grant
20 -- or two issues that are threshold and go to a
21 court's jurisdiction and the court grants review to
22 decide one of them, it should decide that question,
23 and the other jurisdictional issues or issues going
24 to jurisdiction remain for remand.

25 JUSTICE THOMAS: So do you agree that

1 it's jurisdictional, or is it simply an application
2 of 60(b)?

3 MR. LEVY: I -- I do not agree that it's
4 jurisdictional. I think it's a -- it's a -- it's
5 about the application of Rule 60(b), and if relief
6 is granted, then the case is reopened and there is
7 jurisdiction. But the question that is itself
8 presented I would characterize as a threshold issue
9 in the same way as in Sinochem forum non
10 conveniens was a threshold issue which was not
11 jurisdictional.

12 CHIEF JUSTICE ROBERTS: Your -- your
13 friend suggests that the reason that you're going
14 through this process after voluntarily dismissing
15 the case, now trying to revive it, it's an ADEA
16 claim that you lost in arbitration, and it's a way
17 to try to bring a collateral attack on the
18 arbitration award. Is that -- is that what's going
19 on?

20 MR. LEVY: Well, there was a motion to --
21 to reopen the case and to vacate the award, and the
22 case was then sent back to arbitration. So it was
23 -- the motion was a challenge to the arbitration
24 award.

25 JUSTICE JACKSON: But isn't it a separate

1 motion?

2 MR. LEVY: It was -- it was -- it --

3 JUSTICE JACKSON: I mean, there's a
4 motion to vacate, but there's also a motion to
5 reopen, and the court would have to make two
6 independent determinations regarding that, correct?

7 MR. LEVY: The district court treated it
8 as two issues, entered two orders. They are both
9 attached to our petition. The first order
10 chronologically was to reopen the case under Rule
11 60(b). And then later, having reopened the case,
12 the court vacated the arbitration award.

13 JUSTICE JACKSON: And, here, we're just
14 concerned about the propriety of the first issue?

15 MR. LEVY: That's right.

16 CHIEF JUSTICE ROBERTS: Well, your friend
17 on the other side is concerned about a little more
18 than that. He says -- I mean, what is the reason
19 for what you're doing if not to collaterally attack
20 the arbitration award?

21 MR. LEVY: Well, I think that goes to the
22 -- I agree the motion was filed and the reopening
23 was done to vacate the award. Those are -- those
24 go to two different -- they don't go -- those
25 issues do not go to the question presented.

1 They go to, number one, whether the court
2 was right to grant relief under Rule 60(b). I note
3 that that issue was not addressed by the court
4 itself in the majority opinion, although the
5 dissent would have affirmed the district court's
6 grant of relief under Rule 60(b)(6). And so, on
7 remand, my friends can argue that the 60(b) ruling,
8 the exercise of discretion by the district court
9 should be vacated as an abuse of discretion.

10 And then, of course, there will be the
11 separate issue on remand, to the extent arguments
12 have been preserved, as to whether the separate
13 order vacating the award should be affirmed.

14 CHIEF JUSTICE ROBERTS: Right. But, I
15 mean, I'm just trying to get a handle on why we're
16 going through all this. And the arbitration award
17 has been confirmed in court, right?

18 MR. LEVY: It has not been confirmed.

19 CHIEF JUSTICE ROBERTS: Okay. But there
20 is a proceeding to do that, or are you challenging
21 that independently?

22 MR. LEVY: The -- what happened is there
23 was an arbitration award. Then there was a motion
24 filed by my client to reopen the case and vacate
25 the award. And then that award was vacated. And

1 then the matter was appealed.

2 CHIEF JUSTICE ROBERTS: Well, then, so
3 your friend is wrong to suggest that the reason --
4 I mean, the ADEA claim was resolved in the
5 arbitration. Now, if it's going to be challenged,
6 it should be challenged in that forum. No?

7 MR. LEVY: Well, there's -- there's a
8 motion under -- arbitration awards would be subject
9 to challenge under the FAA. And the court, the
10 district court here, determined that those grounds
11 were satisfied and that the arbitration award
12 should be vacated and did vacate the award.

13 CHIEF JUSTICE ROBERTS: Well, the -- your
14 -- your dismissal was a voluntary dismissal, right?
15 So you should have -- you could have challenged the
16 arbitration award independently at that point,
17 right? There's no -- why do you -- why is it
18 necessary for you to vacate your voluntary
19 dismissal to restore the -- that action as opposed
20 to bringing an independent action challenging the
21 arbitration award?

22 MR. LEVY: So, sequentially, my -- my
23 client filed an ADEA case. My -- Halliburton
24 argued that the case should be arbitrated, asked
25 that the case be dismissed and sent to arbitration.

1 My client withdrew the case at that point without
2 prejudice, although it was after the limitation
3 period had lapsed, and went to arbitration.

4 The arbitration proceeded. An
5 arbitration award was rendered. And my client then
6 challenged the award by going back to court and
7 saying we would like to reopen the case and have
8 the arbitration vacated under Section 10 of the
9 FAA.

10 At that point, the district court said
11 that it had -- that the case had been dismissed and
12 issued an order to show cause asking how it had
13 jurisdiction. My client pointed to Rules 60(b)(1)
14 and (6) as grounds to reopen the case, and that's
15 the path that the district court took. It entered
16 one order reopening the case and then, after that
17 occurred, entered another order vacating the award.
18 When the case went up on appeal, all those issues
19 were presented.

20 CHIEF JUSTICE ROBERTS: Well, but if --
21 why -- your voluntary dismissal was without
22 prejudice, right? Why do you have to reopen that?
23 Can't you just bring another proceeding?

24 MR. LEVY: Well, no, because of the
25 limitation periods.

1 CHIEF JUSTICE ROBERTS: So this is a way
2 of avoiding the -- the statute of limitations?

3 MR. LEVY: Well, it's -- it's -- it's an
4 application arguing that the application of the
5 limitation periods to this case is inequitable
6 given the circumstances of the case, which is an --
7 an -- an argument that the district court accepted
8 in granting relief under Rules 60(b)(6) and (b)(1)
9 as well. But, under (b)(6), that was the ground
10 that the dissent would have affirmed. And so, on
11 remand, that -- that will be whatever arguments
12 remain as to whether the reopening of the case
13 under Rule 60(b)(6) --

14 CHIEF JUSTICE ROBERTS: I'm sorry, I'm
15 just trying to get a handle on exactly what
16 happened.

17 If you had filed another ADEA challenge,
18 that would have been barred by the statute of
19 limitations?

20 MR. LEVY: That's right.

21 CHIEF JUSTICE ROBERTS: So you're
22 reopening your voluntary dismissal to avoid that
23 consequence?

24 MR. LEVY: It's -- well, a new case could
25 not have been filed on the merits because of the

1 limitation period. And a new application under the
2 FAA also could not have been filed because that has
3 also a limitation period of 90 days.

4 And so considering all these factors, the
5 -- the law and -- and the other issues that are
6 discussed by the district court, the district court
7 reopened the case. And that is an issue that is,
8 A, not jurisdictional, B, was not addressed below,
9 and C, could be considered on remand.

10 JUSTICE SOTOMAYOR: Counsel, I -- I see
11 two jurisdictional issues here.

12 One, what's the district court's
13 jurisdiction? What's the subject matter -- what
14 gives it subject matter jurisdiction to consider
15 the 60(b) motion at all? And the second
16 jurisdictional issue I see is: What gives it
17 subject matter jurisdiction to vacate an arbitrable
18 award?

19 So they chose to go, the Tenth Circuit,
20 on the 60(b). That's what we granted cert on. And
21 so I'm assuming that you must think that the
22 jurisdiction over the motion to reopen stems from
23 the original ADEA case?

24 MR. LEVY: That's right.

25 JUSTICE SOTOMAYOR: All right. So that

1 has been opened. What would have given the
2 district court jurisdiction to vacate the -- an
3 arbitrable award?

4 MR. LEVY: Right.

5 JUSTICE SOTOMAYOR: Because I don't think
6 the jurisdiction that's granted by the federal
7 statute or the ADEA is simply to order the parties
8 to go to arbitration. So what gives it subject
9 matter jurisdiction to vacate the award?

10 MR. LEVY: Well, once the case is
11 reopened, it's a federal case, and -- and our --
12 first, it has jurisdiction because of that. And --

13 JUSTICE SOTOMAYOR: It has jurisdiction
14 to reopen the ADEA case, but this is no longer an
15 ADEA case.

16 MR. LEVY: So --

17 JUSTICE SOTOMAYOR: At least the motion
18 to vacate is not related to anything that's
19 happened in the rights and responsibilities between
20 the two of you with respect to the claim.

21 MR. LEVY: Well, it's related in the
22 sense that it -- as the Court looked at the
23 question in *Badgerow*, the question of -- of a -- a
24 motion to -- to vacate an award, and there, of
25 course, the merits were not before the Court, it

1 was a standalone motion to vacate. And that was
2 the premise of the question.

3 And the Court said in that circumstances
4 you need independent subject matter jurisdiction.
5 It didn't speak to whether if the case -- the
6 merits were before the Court and the case were
7 reopened, there would be a need for an independent
8 -- for subject matter jurisdiction. Justice
9 Breyer, in dissent, noted there -- there may not
10 be. And I -- I didn't read the majority -- the
11 opinion of the Court to say otherwise.

12 Kokkonen itself, upon which Badgerow was
13 based, made very clear --

14 JUSTICE KAGAN: Well, assume that -- if
15 you assume that -- I think that Badgerow would
16 prevent you from just relying on the federal
17 statute to vacate the arbitration award. My
18 understanding of the facts here is that you're
19 going to try to get in through diversity. Is that
20 right?

21 MR. LEVY: We do have diversity. The
22 amount in controversy was not pleaded, and -- and
23 the court -- whether the court would forgive that
24 is a matter below.

25 JUSTICE KAGAN: Uh-huh. And if -- at any

1 rate, even if you can't -- even if you don't have
2 jurisdiction to vacate the arbitration award,
3 because Badgerow says you can't do it based on the
4 federal statute and they're not going to allow you
5 to replead your diversity claim, you know, even
6 assuming that, I take it that what you're saying is
7 that the jurisdictional question as to 60(b) is
8 entirely different?

9 MR. LEVY: That's exactly right. It --
10 none of these issues are -- are obstacles to
11 resolving the question presented. I'm -- I'm
12 taking them as -- as -- as given, of course.

13 JUSTICE KAGAN: Yeah. I mean, I think
14 you have a tough row to hoe on the Badgerow
15 question, honestly, but that doesn't seem to be the
16 jurisdictional question that's in front of us.

17 MR. LEVY: I will say that the courts of
18 appeals after Badgerow have split on the question
19 as to whether, if the -- if a case remains open,
20 there is a basis to vacate an award. With the
21 Seventh Circuit and the Third Circuit saying you do
22 not need an independent basis and the Fourth
23 Circuit coming out the other way, that may be the
24 next case.

25 JUSTICE KAGAN: Okay. But I guess

1 regardless, is what I'm saying, even if I disagree
2 with you or, you know, however hard or easy that
3 question might be, your real contention here is
4 that this is a different jurisdictional question
5 and that the Badgerow question can be decided at
6 some place down the road.

7 MR. LEVY: That's exactly right. And in
8 terms of -- of the question presented, it -- the
9 text is clear and the California courts are clear
10 that proceedings and judgments are to be --
11 proceedings are to be interpreted broadly.
12 Judgments at the time the rules were enacted
13 included voluntary dismissals.

14 The California Supreme Court interpreted
15 the same words to include voluntary dismissals,
16 rejected the argument that voluntary dismissals
17 could not -- could not be reopened because it was
18 voluntary.

19 The -- the point is --

20 JUSTICE GORSUCH: Mr. Levy, on -- on
21 that, your reading hinges on "proceeding," places a
22 lot of weight there. I wonder, though, what
23 wouldn't be a proceeding on your theory? I know
24 what an order is, I know what a judgment is. But
25 is a proceeding every docket entry? And if it is,

1 then why do we have order and judgment? Have we
2 created a -- a problem where they're rendered
3 meaningless?

4 MR. LEVY: Well, I think the -- the way
5 the statute was written was to go from narrower to
6 broader because every judgment --

7 JUSTICE GORSUCH: Without doubt, yeah.

8 MR. LEVY: -- every judgment is also an
9 order, and the way the courts interpreted
10 "proceeding" would -- would include orders and --
11 and judgments --

12 JUSTICE GORSUCH: Yeah, does it swallow
13 the whole thing, though, and does that create a
14 problem? And what wouldn't be a proceeding?

15 MR. LEVY: Well, I think it's a
16 belts-and-suspenders approach to making sure that
17 there was broad authority to --

18 JUSTICE GORSUCH: So, yes, it does
19 swallow it, but we should overlook that?

20 MR. LEVY: Well, it's a virtue, so
21 I don't know that I would --

22 JUSTICE GORSUCH: It's a virtue, not a
23 vice. Okay. All right. All right. Got it. I
24 got it, I think.

25 And then Microsoft, how do you deal with

1 that, where this Court said that a dismissal with
2 prejudice wasn't a final decision for purposes of
3 1291?

4 MR. LEVY: Right. So I think this goes
5 to an argument my friends make, which is to try to
6 import the concept of finality from appeals to --

7 JUSTICE GORSUCH: 60(b).

8 MR. LEVY: -- 60(b). And I think a
9 couple of points in response, and we make them in
10 our brief.

11 The first one is that the -- the -- the
12 rule-makers used different words. They didn't use
13 final decisions, final decisions subject to appeal.
14 They made very clear initially that it covered
15 whatever California covered, which is everything.
16 And then the word "final" was added later to make
17 clear that the courts' authority over interlocutory
18 matters was not constrained. So that history and
19 the way the -- where the words come from impart a
20 very different meaning. So that's number one.

21 Number 2 --

22 JUSTICE GORSUCH: Number one's good
23 enough for me.

24 MR. LEVY: Okay.

25 JUSTICE GORSUCH: Judge Matheson's

1 dissent and his boomerang theory of finality --

2 MR. LEVY: Yeah.

3 JUSTICE GORSUCH: -- which you seem to
4 embrace, so I -- I -- I don't mean it pejoratively,
5 but that things can become final, you didn't make
6 that argument here.

7 You're asking us, as I understand it, to
8 hold that there was always a final proceeding. It
9 didn't -- it didn't mature into finality due to
10 later events. Is that right?

11 MR. LEVY: So ours wins under both
12 standards. And we took -- we -- we -- we endorsed,
13 I think, something closer to Yesh from the Fifth
14 Circuit --

15 JUSTICE GORSUCH: Yeah.

16 MR. LEVY: -- which looks at finality
17 when made. But we would win under Judge
18 Matheson --

19 JUSTICE GORSUCH: You would take it if
20 you had to. Got it. Okay.

21 MR. LEVY: And -- and, as I mentioned, if
22 finality turns on the limitation period, in this
23 case, when the dismissal was initially made, the --
24 the limitation period's already applied. So even
25 that standard would be met.

1 JUSTICE GORSUCH: Thank you, Mr. Levy.

2 JUSTICE JACKSON: Can you walk us through
3 the enactment history and, in particular, the --
4 the significance of the addition of "final"?

5 MR. LEVY: So, initially, as I said, the
6 -- in 1937, the statute -- the -- the rule, I'm
7 sorry, covered judgments, orders, or proceedings.
8 The advisory committee notes made clear that's
9 taken from the California decisions, and Professor
10 Moore has said in various places at the time that
11 the California decisions are authoritative.

12 Between 1937 and 1946, some courts were
13 reading Rule 60(b) to apply to interlocutory
14 matters so that if a -- if a -- a decision were
15 made or an order taken along the way, that --

16 JUSTICE JACKSON: In an open, pending
17 case?

18 MR. LEVY: In an open, pending case.
19 That the movant would have to show mistake, fraud,
20 or the like under Rule 60(b), and, otherwise, the
21 court would be without authority.

22 And Professor Moore, in -- in the article
23 that is referenced in the advisory committee notes,
24 says that's wrong because, as this Court had said
25 in 1922 in the John Simmons Company case, courts

1 retain plenary inherent authority to revisit
2 interlocutory matters and that's how it should be.

3 And so, for that reason, Professor Moore
4 recommended, and that was ultimately taken up, that
5 the word "final" be added to Rule 60(b), not to
6 limit Rule 60(b) but, rather, to make sure that
7 inherent -- that interlocutory matters would always
8 be subject to reopening, unconstrained by Rule
9 60(b).

10 JUSTICE JACKSON: And how is it that
11 Respondent's argument is using "final" to limit?

12 MR. LEVY: Well, I think the Respondent
13 have said "final" means res judicata effect, or
14 Respondent -- or that "final" means appealability.

15 JUSTICE JACKSON: That it must affect the
16 parties -- it's the sort of certain kinds of
17 proceedings is what --

18 MR. LEVY: That's right.

19 JUSTICE JACKSON: -- Respondent looks --
20 uses "final" to do, and that, therefore, limits the
21 district court's ability to address after the fact
22 those kinds of cases.

23 MR. LEVY: That's right. I think -- I
24 think my friends are trying to inject in the first
25 step of whether Rule 60(b) is even available a test

1 as to whether there's an effect on the legal rights
2 when the intent was clear to make 60(b) as broad as
3 possible in terms of which orders, matter, or
4 proceedings could be reexamined and to make very
5 clear that the circumstances in which they could be
6 reexamined would be narrow and they would have to
7 be -- to meet the 60(b)(1) through (6) test in the
8 court's -- in the discretion of the district court.

9 JUSTICE JACKSON: And you read "orders,
10 judgments, and proceedings" not as some sort of,
11 you know, strict list but really Congress trying to
12 say pretty much everything? Waterfront?

13 MR. LEVY: That's right. And I -- that's
14 how the California Supreme Court interpreted it
15 under the Court's decision in Hall versus Hall.
16 The -- the -- the -- the court takes notice when
17 the advisory committee notes takes a provision from
18 a statute or other source, puts it into the federal
19 rules, and holds that that is intentional and
20 carries the soil with it. At least as a
21 presumptive matter, the decisions of the California
22 Supreme Court interpreting "proceeding" to cover
23 everything and specifically applying their version
24 of the -- of the code, which had the same operative
25 language, to cover voluntary dismissals is strong

1 evidence that that was intended by the rule-makers.

2 And, of course, we -- we also rely on the
3 word "judgment" and not just "proceeding" because,
4 as I said, at the time, judgments were defined to
5 include voluntary dismissals. And -- and -- and
6 that was the settled meaning in 1937, and that's
7 the way California's Supreme Court talked about it
8 too.

9 JUSTICE SOTOMAYOR: Can I go back to -- a
10 bit to Justice Gorsuch's question. There's some
11 superfluity in your definition, but there is also
12 in the other side's because every proceeding would
13 encompass a judgment and an order, correct?

14 MR. LEVY: That's right.

15 JUSTICE SOTOMAYOR: Or a judgment and
16 order would -- because they require there to be
17 some sort of judicial intervention as I understand,
18 that would -- that would mean that every proceeding
19 would -- encompasses judgment and orders as well
20 and vice versa.

21 MR. LEVY: I think that both
22 interpretations -- all the interpretations we've
23 seen have some surplusage, and in that
24 circumstance, the Court has said the canon against
25 surplusage doesn't apply. What I will say is we do

1 give independent meaning to "judgment, order, and
2 proceeding" because they don't all mean the same
3 thing in our view of the world. But --

4 JUSTICE SOTOMAYOR: Well, and you have
5 some support for that because one of the provisions
6 of this Act talks about the date of the -- the date
7 of the proceeding as opposed to the entry of the
8 judgment or order, correct?

9 MR. LEVY: That's right. That's Rule
10 60(c)(1).

11 JUSTICE SOTOMAYOR: All right. With -- I
12 guess, with respect to this question of finality,
13 the other side relies very much on the definition
14 of 1291, and 1291 doesn't seem quite as apt an
15 analogy to me as one would think because that has
16 to do more with what is the jurisdiction between a
17 district court and an appellate court.

18 And that's very different here because
19 this is about the jurisdiction of a district court,
20 correct?

21 MR. LEVY: That's exactly right.

22 JUSTICE SOTOMAYOR: And so I guess what
23 -- when you're pointing to the California cases and
24 to the -- to the California cases and to the
25 advisory notes, you're saying you should look at

1 finality in the way that Congress was using it,
2 which is case-ending finality rather than legal
3 determination finality, correct?

4 MR. LEVY: We're -- we're looking -- we
5 -- we do endorse the case-ending finality concept
6 and -- and also whether, as Professor Moore stated,
7 there is inherent authority to modify --

8 JUSTICE SOTOMAYOR: It can't be the
9 ending of the controversy because, otherwise, there
10 wouldn't be jurisdiction, which they admit there
11 is. If a court signs a judgment dismissing without
12 prejudice, which it does regularly, that doesn't
13 end the legal responsibility between the parties,
14 correct?

15 MR. LEVY: That's right. And there --
16 there are many orders that are deemed final for
17 appellate purposes or -- or otherwise that can be
18 refiled that are nonetheless deemed final because
19 they terminate the case. And the Court has said
20 that in its decisions interpreting the appellate
21 statutes, which --

22 JUSTICE SOTOMAYOR: Thank you, counsel.

23 CHIEF JUSTICE ROBERTS: Thank you,
24 counsel.

25 Justice Thomas?

1 JUSTICE THOMAS: No.

2 CHIEF JUSTICE ROBERTS: Justice
3 Sotomayor, anything further?

4 Justice Kagan?

5 Justice Kavanaugh, anything?

6 Justice Barrett?

7 Justice Jackson?

8 Okay. Thank you, counsel.

9 Mr. McGill.

10 ORAL ARGUMENT OF MATTHEW D. MCGILL

11 ON BEHALF OF THE RESPONDENT

12 MR. MCGILL: Thank you, Mr. Chief
13 Justice, and may it please the Court:

14 I want to start with the question of
15 jurisdiction. We know from *Badgerow* that a Section
16 10 motion to vacate under the Federal Arbitration
17 Act requires its own basis for federal
18 jurisdiction. We know from *Kokkonen* and Rule 82
19 that Rule 60 cannot extend the jurisdiction of the
20 district court to new forms of relief, such as a
21 motion to vacate an arbitral award.

22 Petitioner needs a basis for his Section
23 10 request, but Rule 60 can't supply it, and that
24 was the only basis for jurisdiction ever presented
25 below. That's the argument that there's no

1 jurisdiction here.

2 On the merits, I want to point to three
3 major problems with Petitioner's construction of
4 Rule 60.

5 First, we have a good only -- good for
6 only Rule 60 definition of finality. That runs
7 into two really big problems. The first is that
8 Rule 60 interacts with Federal Rule of Appellate
9 Procedure 4 to toll the deadline to file a notice
10 of appeal. If finality means something different
11 under Rule 60 than it does under Rule 4, we're
12 going to have confusion where confusion is least
13 desirable, the time and deadline to file a notice
14 of appeal.

15 The second point is because a rule -- the
16 denial or grant for that matter of a Rule 60 motion
17 is itself an appealable final order, this would --
18 his definition of finality, my friend's definition
19 of finality, would allow a litigant to bootstrap
20 himself into an appeal from an otherwise
21 unappealable order.

22 His definition of "proceeding" means that
23 prior to 1946, every docket entry could have been
24 subject to a Rule 60 motion, even a complaint or a
25 notice of appeal. Our -- our reading of the

1 statute reads "judgment, order, and proceeding" in
2 harmony. It does not -- one does not subsume the
3 other.

4 And the last point is -- that I would
5 make is Petitioner's definition here takes no
6 account of Rule 60's key verb, which is to relieve.
7 There has to be some burden for the court to
8 relieve. And a voluntary dismissal without
9 prejudice that leaves the plaintiff free to refile
10 his claims at any time in any court does not impose
11 any legal burden for a court to relieve.

12 I welcome the Court's questions.

13 JUSTICE THOMAS: So do you think that
14 finality is consistent across all of the Federal
15 Rules of Civil Procedure?

16 MR. MCGILL: I believe that with respect
17 to Rule 60 at least, it has to have the same
18 definition as "final orders" under Rule 1291.
19 Otherwise, for -- for instance, the Petitioner's
20 definition could take no account of collateral
21 orders. A collateral -- the time to -- to appeal a
22 collateral order runs from the date of the order.
23 However, under his view, because a collateral order
24 doesn't terminate a case, it's not subject to Rule
25 60 relief and it couldn't be -- couldn't benefit

1 from the tolling that FRAP 4 provides for motions
2 filed under Rule 60.

3 So the -- the rule -- and also, this
4 Court's decision in Stone versus INS, which we cite
5 in our red brief, elaborates on how Rule 60 and the
6 Rules of Appellate Procedure work together to
7 define the -- the time to file a notice of appeal.
8 His -- his definition of finality is going to
9 create confusion where it is least desirable --

10 JUSTICE JACKSON: But what do we do about
11 the fact --

12 MR. MCGILL: -- and where clarity is most
13 needed.

14 JUSTICE JACKSON: -- what do we do about
15 the fact that there is evidence in this sort of
16 record of proceedings that indicates that the
17 committee here was inserting "final" for a
18 particular reason?

19 I mean, are you asking that we just
20 ignore the committee notes in the -- the enactment
21 history, which suggests that whatever "finality"
22 means in 1291, here, it was doing particular work?

23 MR. MCGILL: Not -- not at all, Your
24 Honor. So the finality requirement comes in in
25 1946. In 1946, "final," when used to describe a

1 judgment or order, had a very particular meaning
2 that comes from -- came from this Court's appellate
3 jurisdiction cases --

4 JUSTICE JACKSON: No, but -- but --

5 MR. MCGILL: -- going back to the
6 founding.

7 JUSTICE JACKSON: -- but do you -- do you
8 dispute his recitation of the facts with respect to
9 why the committee put "final" in this particular
10 rule?

11 MR. MCGILL: It's not false, but it's not
12 entirely true, Your Honor.

13 (Laughter.)

14 So the -- what the advisory committee
15 note explains is that the final -- the finality
16 requirement was doing two things. One is it wanted
17 to make clear that for final judgments, orders, and
18 proceedings, there was one way for them to be
19 revisited, and that was through the federal rules
20 of appellate procedure. Gone were the writs of
21 coram nobis, coram vobis, audita querela and other
22 things shrouded in lore and mystery.

23 The second point, which was related to
24 the first, is that the stricter standards under
25 Rule 60 applied only to final orders, not to

1 interlocutory orders that remained subject to the
2 Court's inherent authority. Now, that doesn't help
3 Petitioner. He's never looked to the Court's
4 inherent authority because under Badgerow, the
5 Court's inherent authority over an ADEA case would
6 not give him subject matter jurisdiction to vacate
7 --

8 JUSTICE JACKSON: Well, it's --

9 MR MCGILL: -- an arbitration award.

10 JUSTICE JACKSON: -- interesting to me
11 that you raised Badgerow because I'm trying to
12 understand where that is in the case presented in
13 this case, even as you have framed it in the red
14 brief.

15 I was surprised, given our colloquy
16 earlier, about the fact that there are two
17 different jurisdictional arguments here and that
18 this case appeared to be all about the scope of
19 final judgment, order, or proceeding in Rule 60.
20 That's what you say in your question presented.

21 So what is this Badgerow argument? Like,
22 why are we looking at that or caring about that in
23 this context?

24 MR. MCGILL: This Court should care about
25 it because it goes to the lower court's

1 jurisdiction under this Court's decision in Bender
2 versus Williamsport --

3 JUSTICE JACKSON: I understand, but we
4 didn't take the case to decide that basis for
5 jurisdiction, right?

6 MR. MCGILL: The -- the same, of course,
7 was true in Bender versus Williamsport Area School
8 District. This Court has an independent
9 obligation, even if I were prepared to concede
10 jurisdiction, it has its own obligation to assure
11 itself of its jurisdiction and those of the courts
12 below.

13 JUSTICE JACKSON: Why didn't you put that
14 in the question presented that you presented in --
15 in your red brief? I mean, you led us to believe
16 by looking at your question presented that this
17 case was all about Rule 60.

18 MR. MCGILL: So, two points, Your Honor.
19 First is I don't view it as the Respondent's job to
20 rewrite the Petitioner's question presented, but I
21 think the -- the gravamen of your point is why
22 didn't I raise this in our brief in opposition.
23 And the answer to that is that candidly I did not
24 understand or fully contemplate the jurisdictional
25 significance of the Petitioner's motion to vacate

1 until we started briefing on the merits.

2 And let's talk about that --

3 JUSTICE KAGAN: But that's -- but that's
4 down the road, isn't it, Mr. McGill? I mean, you
5 might have a very good argument on -- on -- on
6 Badgerow. You might have a very good argument that
7 there is no jurisdiction to vacate the arbitration
8 award.

9 But -- but that's not what's in front of
10 us. What's in front of us is the 60(b) motion.
11 And that's an antecedent question. You know, one
12 question is can you bring a 60(b) motion.

13 MR. MCGILL: The --

14 JUSTICE KAGAN: The next question is: If
15 you do bring a 60(b) motion and get it granted, can
16 you do anything with respect to that or are you
17 precluded from vacating the arbitration award
18 because of Badgerow?

19 MR. MCGILL: So I -- I've got two -- two
20 points I want to make in response to that. The
21 first goes to --

22 JUSTICE KAGAN: I mean, I like Badgerow,
23 as well as the next person, you know?

24 (Laughter.)

25 MR. MCGILL: I think it's fabulous.

1 JUSTICE KAGAN: But it's just not the
2 time to be talking about back row. Badgerow, you
3 might have a lot to say about Badgerow, you know,
4 in a few months' time.

5 MR. MCGILL: So let me address it with --
6 with two -- two points. The first goes to what the
7 motion below actually did. And the second goes to
8 the sequencing Sinochem point that has been raised.

9 First is what did the motion do? It
10 starts at page 24 of the court of appeals joint
11 appendix. It's a motion to reopen and to vacate
12 the arbitral award. The only relief it requests is
13 to vacate the arbitral award, and it does not ever
14 request to reopen actually the existing federal
15 claim.

16 And the reason we know that is the only
17 other aspect of relief it requests is to appoint a
18 new arbitrator to adjudicate that claim for relief.
19 So the only thing the motion does is to seek to
20 vacate the arbitral award. It's seeking to use
21 Rule 60(b) as the jurisdictional hook to do that,
22 something that the case itself could not do. So
23 that's -- that's the first point; what does the
24 motion do?

25 The district court then breaks it apart

1 into two separate orders. It says: I'm reopening
2 under 60(1) -- 60(b)(1) and (6). And then it says
3 under the FAA, later, I'm going to vacate the
4 arbitral award.

5 So you have -- the only request that's
6 ever been made is to vacate the arbitral award.
7 That's the relief that requires subject matter
8 jurisdiction. The relief that's being requested
9 requires its own form of subject -- it's own basis
10 for subject matter jurisdiction, the only basis
11 presented is Rule 60. That is not sufficient under
12 Kokkonen.

13 Second, the sequencing point. The court
14 of appeals refers to this as a jurisdictional
15 issue, but I don't think that's correct. We know
16 that because Rule 80 -- under Rule 82, the
17 availability of Rule 60 relief could not expand or
18 contract the district court's statutory
19 jurisdiction.

20 When the court of appeals was referring
21 to subject matter jurisdiction, what it really was
22 referring to was the long history that -- that a
23 court could not -- lacked power to set aside or
24 otherwise interfere with a plaintiff's voluntary
25 dismissal. It used a sloppy label in calling it

1 subject matter jurisdiction, but the availability
2 of Section 60 relief really is like the question in
3 Steel Company whether a plaintiff's particular
4 claim is available under the statute.

5 So we don't think Sinochem sequencing
6 actually is available here. It's more like Steel
7 Company, where the jurisdictional question has to
8 come first. And there's simply no answer to the
9 fact that --

10 JUSTICE JACKSON: But, I --

11 MR. MCGILL: -- the only basis --

12 JUSTICE JACKSON: -- I don't understand
13 -- I don't understand that at all. I mean, after
14 -- I appreciate that the request seemed to merge
15 the two, but once the district court broke them
16 apart and issued two separate orders and the rest
17 of the way there was a challenge as to whether or
18 not the district court properly granted a motion to
19 reopen, and that was the thing that this Court took
20 cert on, I don't understand why it necessitates us
21 to care about whether the district court was right
22 with respect to its other order.

23 MR. MCGILL: I -- Justice Jackson, it's
24 because the motion to reopen had sought no relief
25 for the claims.

1 JUSTICE JACKSON: I -- I understand what
2 it sought. What I'm suggesting is that that claim
3 could never have been responded to by the district
4 court until it had the ability to do something.
5 And so as a threshold matter, the district court
6 said this is a closed case.

7 MR. MCGILL: If --

8 JUSTICE JACKSON: I would have to reopen
9 it to give you the relief that you seek. I'm
10 issuing Order Number 1 reopening the case. And
11 then here's Order Number 2 regarding the relief
12 that you seek.

13 And from then on, we all were focused on
14 whether or not the district court made a mistake in
15 determining that this case could even be reopened.
16 And to the extent that that's the issue, that
17 that's what was presented here, that that's what
18 the courts have split on, I don't understand why we
19 can't just isolate that as requested and answer it.

20 MR. MCGILL: I'm not afraid of the
21 question presented, but I -- to -- the
22 jurisdictional point is -- is important here. If
23 the motion had requested some form of relief
24 related to the case itself, if it had been I want
25 to relitigate my case and vacate the arbitral

1 award, then at least there would be a request for
2 relief that -- over which the district court
3 originally had subject matter jurisdiction.

4 JUSTICE GORSUCH: But, Mr. McGill, on the
5 first one, as I understand the common law history,
6 courts had -- were considered to have jurisdiction
7 over orders, even final ones, judgments until the
8 expiration of the term of the court, right?

9 MR. MCGILL: Except with respect to
10 voluntary non-suits, Your Honor.

11 JUSTICE GORSUCH: Correct. There's a
12 little bit of -- all right. But that was the
13 general rule.

14 And I understood 60(b) to say -- well, we
15 don't have terms -- we don't do that anymore, but
16 you have a federal question about your judgment and
17 whether it should be reopened that's available to
18 you if you can meet these really hard criteria.

19 What's wrong with that understanding of
20 60(b) and the jurisdictional point there?

21 MR. MCGILL: 60(b), there's -- I would
22 think that Rule 60(b) can't expand itself the
23 district court's --

24 JUSTICE GORSUCH: No, of course not.

25 MR. MCGILL: -- subject matter

1 jurisdiction.

2 JUSTICE GORSUCH: But the point is the
3 courts have always had this kind of power to fix
4 injustices in their judgments, in their orders, at
5 least during the term of court, got rid of that.
6 But the -- the point should remain with that change
7 that they generally do.

8 MR. MCGILL: I think a district court
9 certainly has jurisdiction. If you look at the
10 Beggerly case, the district court has subject
11 matter jurisdiction to entertain an independent
12 action attack -- attacking the judgment for --

13 JUSTICE GORSUCH: And -- and --

14 MR. MCGILL: -- for massive fraud, for
15 instance.

16 JUSTICE GORSUCH: And to reopen for
17 massive fraud or things like that.

18 MR. MCGILL: Correct. Correct. But, the
19 --

20 JUSTICE GORSUCH: Okay. All right.
21 Okay. I think I got that.

22 And then on -- on final and what does
23 "final" mean and what it meant in 1946, more
24 importantly, I took it to mean that it's not
25 interlocutory. I, mean that's how Black's defined

1 it. That's how Moore and Rogers, that's how the
2 Rules Committee, do you disagree with that
3 understanding?

4 MR. MCGILL: It -- there has to be a
5 conclusive resolution of the issues in the
6 litigation.

7 JUSTICE GORSUCH: Okay. I'll take that.
8 Why isn't there at least a conclusive resolution
9 that the Petitioner's first non-suit is gone? They
10 don't get another free bite at the apple, right?
11 Voluntary dismissal, the beauty of it is you get
12 another chance any time you want, but you only get
13 one. After that, you have to have leave of court.
14 And here didn't the district court at -- at least
15 resolve that by saying you've had your non-suit,
16 you've had your voluntary dismissal.

17 Why didn't it finally, conclusively
18 resolve that aspect of -- of the plaintiff's
19 rights?

20 MR. MCGILL: The -- so the -- the
21 dismissal is the retraction of a complaint. It
22 doesn't resolve any issue --

23 JUSTICE GORSUCH: But it --

24 MR. MCGILL: -- in the litigation.

25 JUSTICE GORSUCH: But you'd agree,

1 though, that the withdrawal, and the non-suit, as
2 it used to be called, that -- that does have a
3 consequence in the world?

4 MR. MCGILL: The -- the dismissal has a
5 legal effect. And --

6 JUSTICE GORSUCH: Plaintiff doesn't get
7 another free bite at the apple. He's exhausted his
8 one free bite.

9 MR. MCGILL: I -- I guess I -- I would
10 phrase it a little bit differently, Justice
11 Gorsuch. I would say if he chooses to file a -- a
12 second suit and dismisses that second suit, then
13 that disposition under the Rule 41 would be with
14 prejudice. But that --

15 JUSTICE GORSUCH: Okay. So that --

16 MR. MCGILL: -- is an external
17 circumstance.

18 JUSTICE GORSUCH: So that would -- would
19 that amount to a final something for your purposes?

20 MR. MCGILL: A dismissal with prejudice
21 under Rule 41?

22 JUSTICE GORSUCH: Well, a -- the second
23 time. Say he withdraws again. The second time?
24 Has he --

25 MR. MCGILL: Yes.

1 JUSTICE GORSUCH: So that would be. So
2 if he voluntary withdrew again and, therefore, now
3 what?

4 MR. MCGILL: May I -- may I just
5 elaborate why?

6 JUSTICE GORSUCH: Yeah.

7 MR. MCGILL: Because it -- it's a
8 conclusive resolution. It's an adjudication -- it
9 operates under the rules as an adjudication on the
10 merits. It resolves everything.

11 JUSTICE GORSUCH: Correct.

12 MR. MCGILL: It's --

13 JUSTICE GORSUCH: I -- I got that.

14 MR. MCGILL: We -- we would say it's a
15 proceeding.

16 JUSTICE GORSUCH: I understand that. So
17 why isn't the first one a proceeding when he's
18 exhausting his one free non-suit?

19 MR. MCGILL: Because it has to be a final
20 proceeding, and there's no finality because there's
21 no conclusive resolution of anything. He can
22 refile in any court at any time.

23 JUSTICE GORSUCH: Okay.

24 MR. MCGILL: And that's -- that -- but I
25 would turn also back to the -- I -- the point that

1 the finality here has to have the same definition
2 and same scope as the -- as that that applies to
3 final decisions under 1291. Otherwise, the notice
4 of appeal tolling requirements make no sense; and
5 otherwise litigants will be able to bootstrap
6 themselves into appeals of otherwise unappealable
7 orders.

8 I would like to just address the
9 California law point that -- because it has been
10 suggested that the 1937 enactment of Rule 60
11 somehow incorporates the corpus of California
12 decisional law. There's no indication of that in
13 the advisory committee notes itself. And, of
14 course, California law does not and has never
15 controlled the federal court's ability to review
16 its own judgments. That has always been a matter
17 of federal law. It goes back to Justice -- Chief
18 Justice Marshall riding circuit in North Carolina
19 in 1803 in Marsh versus Murray. We cite that case
20 in our brief.

21 And the Petitioner has no response to it
22 whatsoever. He cites two California Supreme Court
23 cases. They're both worth noting. The Palace
24 Hardware case is a dismissal with prejudice. So it
25 would be final even under the 1946 definition. And

1 the -- the Stonesifer case he cites says -- says a
2 proceeding covers -- you know, covers any step in
3 the action seeking court action. A dismissal
4 without prejudice, a non-suit is the opposite of
5 that. It is a retraction of your complaint. It is
6 saying I don't need relief from the court anymore.

7 JUSTICE JACKSON: What if that's done
8 mistakenly? I mean, suppose we have a situation in
9 which a person files a suit and then they file a
10 Rule 41 unilateral dismissal, say a week later, and
11 on a Monday. And on Tuesday counsel rushes back to
12 the court and says: Oh, my goodness, I made a
13 mistake in filing this notice of voluntary
14 dismissal. I did it in the wrong case.

15 Is it your position that the court really
16 has nothing -- they couldn't reopen the case under
17 those circumstances?

18 MR. MCGILL: It would -- any relief would
19 not come under Rule 60(b). Of course, the primary
20 relief --

21 JUSTICE JACKSON: Why not? Because it
22 wasn't a proceeding?

23 MR. MCGILL: Because -- because it's not
24 a final proceeding.

25 JUSTICE JACKSON: Okay.

1 MR. MCGILL: And there's no burden that
2 is being imposed on the litigant because that --
3 for the court to relieve because, under your
4 hypothetical --

5 JUSTICE JACKSON: Mm-hmm.

6 MR. MCGILL: -- the plaintiff can simply
7 refile his action.

8 JUSTICE GORSUCH: Well, but he's lost his
9 one free non-suit and -- because of his attorney's
10 malfeasance and mistake. I mean, it could be fraud
11 even. And it can meet all the 60(b) criteria, but
12 the judge would be powerless under your theory to
13 do anything about it.

14 MR. MCGILL: That's always been true
15 going back to 1803. The real question here is
16 whether Rule 60 did anything to upend that settled
17 practice. There's no indication of that
18 whatsoever. It certainly wouldn't come out of
19 California law.

20 All the -- all the Petitioner has to
21 point to in that is the Salazar case, which is a
22 single decision of a single intermediate appellate
23 court in California. That is not old soil that
24 gets transplanted into the federal garden. The --
25 the language of the rule does mirror the 19 -- does

1 mirror the California statute. It also mirrors the
2 New York statute and the Minnesota statute that --
3 that are also cited in the advisory committee
4 notes.

5 So there's no indication here that the --
6 that the -- that the rules committee, this Court,
7 or Congress ever intended to be bound by California
8 decisional law going out into the future.

9 The last point I want to make is just
10 with respect to -- actually, two points I want to
11 make. One is the argument that this dismissal
12 without prejudice would constitute a judgment.

13 "Judgments" is defined -- "a judgment" is
14 defined by the Federal Rules of Civil Procedure in
15 Rule 54. It is a definition that applies in these
16 rules. The Petitioner has no answer to that. The
17 dismissal without prejudice clearly is not a Rule
18 54 judgment.

19 Finally, the question, Justice Sotomayor,
20 you asked what is -- what would be a final
21 proceeding here? The -- the key point is, first,
22 the -- the -- the proceeding is meant to cover the
23 small sliver of conclusive actions, conclusive
24 dispositions, that are not themselves judgments or
25 orders. So what might that be? A writ of habeas

1 corpus, proceedings supplementary under Rule 69
2 with respect to the execution of a judgment,
3 condemnation proceedings under Rule 71.1. These
4 are --

5 JUSTICE SOTOMAYOR: They all end up in a
6 judgment or an order.

7 MR. MCGILL: That may be true today, but
8 it wasn't necessarily true in 1937. And it wasn't
9 necessarily true going out into the future. The --
10 the rules could change in a way. And, in fact, you
11 have Rule 53 masters when they're consented to be
12 final, a ruling could be -- could be consented to
13 as final. There's no actual necessity for a court
14 order. It's better practice --

15 JUSTICE SOTOMAYOR: The problem with all
16 of that is they all end up, all of those separate
17 proceedings end up with the court doing something.

18 MR. MCGILL: And I think what -- what the
19 use of "proceedings" both in California -- in the
20 California Code and in Rule 60 is meant to do is to
21 pick up those conclusive dispositions that, for one
22 reason or another, are not under the heading of a
23 judgment or order. It's not intended to swallow
24 every order and every judgment.

25 Our reading of the rule --

1 JUSTICE SOTOMAYOR: Thank you, counsel.

2 CHIEF JUSTICE ROBERTS: Nothing further?

3 Justice Thomas?

4 Justice Alito?

5 Justice Sotomayor?

6 Justice Kavanaugh?

7 Justice Barrett?

8 Justice Jackson?

9 Thank you, counsel.

10 MR. MCGILL: Thank you.

11 CHIEF JUSTICE ROBERTS: Rebuttal,

12 Mr. Levy?

13 REBUTTAL ARGUMENT OF VINCENT LEVY

14 ON BEHALF OF THE PETITIONER

15 MR. LEVY: The Respondent is proposing a
16 rule that would render a court without any
17 authority to remedy an issue of outright fraud or
18 mistake, leading to the dismissal of a case, albeit
19 without prejudice, but that causes the plaintiff to
20 lose its right because of -- of a limitation or
21 otherwise, and that also leads to the loss of the
22 right to bring a -- a non-suit in a second case.

23 That cannot be what Rule 60 was intended
24 to capture. There's no evidence of that in the
25 text or the -- or the advisory committee notes or

1 the California decisions. The California decisions
2 were clear on point.

3 They are also in accord with the weight
4 of authority among the states. That's reflected in
5 -- in the decision of the Supreme Court of
6 Connecticut, in the Lusas decision, which cites not
7 only California for this point also New York, which
8 is one of the statutes that is cited by the rules
9 committee. But Professor Moore did say that the
10 court -- that that was the inspiration and that the
11 -- that meaning does come with it.

12 The -- my friend has said that there is
13 nothing to relieve a -- a moving party from in the
14 context of without-prejudice dismissal. That is
15 not true. Beyond the right -- again, I -- I don't
16 want to repeat myself, but the limitation periods
17 would be one example and the -- the right to bring
18 another case with a non-suit could be another.

19 And unless the Court has questions.

20 CHIEF JUSTICE ROBERTS: Thank you. Thank
21 you, counsel.

22 The case is submitted.

23 (Whereupon, at 12:12 p.m., the case was
24 submitted.)

25

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