No. 23-CV-273

IN THE DISTRICT OF COLUMBIA COURT OF APPEALS

DC HEALTH, REGISTRAR OF VITAL RECORDS,
APPELLANT,

V.

MIKE PARKER,
APPELLEE.

ON APPEAL FROM A JUDGMENT OF THE
SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLANT

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STATEMENT OF THE ISSUES

The District of Columbia Department of Health, Registrar of Vital Records ("DC Health"), is responsible for maintaining the integrity of vital records in the District of Columbia, including delayed registrations of birth. Unlike a contemporaneous birth certificate, a delayed registration of birth is a record of birth in the District that is issued one year or more after the applicant claims to have been born. Given the national security and other concerns implicated by such records, a delayed registration of birth cannot be issued unless applicants provide sufficient, probative, and credible evidence to substantiate the facts of their alleged birth in the District. *See* D.C. Code §§ 7-231.11, 7-231.16.

In this case, DC Health denied appellee Mike Parker's application for delayed registration of birth because he failed to provide the documentation required to prove that he was born in the District and because his application raised concerns about fraud or misrepresentation. Rather than cure those deficiencies, Parker filed a petition for delayed registration of birth in the Superior Court, but without serving his petition on DC Health, the Mayor, or the Attorney General, as required by Superior Court Rule 4(j)(3)(D). The court nonetheless granted Parker's petition after an ex parte hearing, and in July 2022, it ordered DC Health to issue Parker a delayed registration of birth. The court subsequently denied DC Health's motion to vacate the July 2022 order under Rule 60(b)(4) and Rule 60(b)(6)—despite the fact that

Parker at one time admittedly possessed an Iranian birth certificate and a U.S. passport listing his birthplace as Iran. The questions presented are:

1. Whether the Superior Court erred in denying DC Health's motion to vacate the July 2022 order as void under Rule 60(b)(4) when Parker undisputedly did not serve DC Health—or the Mayor or the Attorney General—at the outset of this litigation in accordance with Superior Court Rule 4(j)(3)(D).

2. Whether the Superior Court erred in denying DC Health's motion to vacate the July 2022 order under Rule 60(b)(6) when the court undisputedly failed to consider the requisite factors under this Court's decision in *Starling v. Jephunneh Lawrence & Assocs.*, 495 A.2d 1157 (D.C. 1985)—all of which favor relief.

STATEMENT OF THE CASE

Parker applied to DC Health for a delayed registration of birth on March 12, 2021. Joint Appendix ("JA") 10. DC Health denied Parker's application on August 17, 2021. JA 12. Parker then filed a petition in the Superior Court for an order of delayed registration of birth under D.C. Code § 7-231.16 on October 27, 2011. JA 6. Parker emailed his petition to DC Health and sent a copy to DC Health via first-class mail on October 27, 2021. JA 20. The Superior Court held an ex parte in-chambers hearing on Parker's case on July 19, 2022, and it granted his petition the same day. JA 27. On December 21, 2022, Parker moved for an order to show cause to compel DC Health to issue a delayed registration of birth. JA 30.

DC Health moved to vacate the July 2022 order under Rules 60(b)(4) and 60(b)(6) on January 26, 2023. JA 33. Parker opposed DC Health's motion, and the Superior Court held hearings on March 20 and 23, 2023. JA 45. The court denied DC Health's motion to vacate on March 24, 2023, and it ordered DC Health to issue Parker a delayed registration of birth by April 7, 2023. JA 55. DC Health filed a timely notice of appeal on April 3. JA 4. DC Health also moved for a stay pending appeal in the Superior Court on April 3, and it filed an emergency motion in this Court for an administrative stay and a stay pending appeal on April 5. JA 4, 59. The Superior Court denied DC Health's stay motion, but this Court granted DC Health's motion for an administrative stay, and it later granted DC Health's motion for a stay pending appeal on May 5, 2023. JA 69-75.

STATEMENT OF FACTS

1. Legal Background.

A. Post-judgment relief under Rule 60(b)(4) and 60(b)(6).

Like its federal counterpart, Superior Court Rule 60(b) allows the court to vacate otherwise final judgments. As relevant here, the court can order vacatur when a prior "judgment is void," Super. Ct. Civ. R. 60(b)(4), or for "any other reason that justifies relief," Super. Ct. Civ. R. 60(b)(6). Judgments are void for purposes of Rule 60(b)(4) if the person or entity against whom they were entered was not properly served under Rule 4. *Cruz v. Sarmiento*, 737 A.2d 1021, 1026 (D.C. 1999). Relief under Rule 60(b)(6) is appropriate when, among other things, the movant

acted promptly and in good faith, the movant presents an adequate defense on the merits, and vacatur would not prejudice opposing parties. *Starling v. Jephunneh Lawrence & Assocs.*, 495 A.2d 1157, 1159-62 (D.C. 1985). Motions seeking such relief must "be made within a reasonable time." Super. Ct. Civ. R. 60(c).

B. Serving District of Columbia agencies under Rule 4.

By statute, the "manner of service of process shall be prescribed by rule of the court." D.C. Code § 11-943(c). The rule of court governing service of process on District agencies is Rule 4(j)(3)(D). It states:

> To serve a District of Columbia agency or a District of Columbia officer or employee sued only in an official capacity, a party must serve by delivering (pursuant to Rule 4(c)(2)-(3)) or mailing (pursuant to Rule 4(c)(4)) a copy of the summons, complaint, Initial Order, any addendum to that order, and any other order directed by the court to the parties at the time of filing to the Mayor (or designee), the Attorney General (or designee), as well as the agency, officer, or employee.

Super. Ct. Civ. R. 4(j)(3)(D).

In short, Rule 4(j)(3)(D) allows plaintiffs to serve District agencies in one of only two ways. First, they can have a nonparty deliver their case-initiating materials to the Mayor, the Attorney General, and the agency. *See* Super. Ct. Civ. R. 4(c)(2), (c)(3). Second, they can mail their documents to the Mayor, the Attorney General, and the agency via registered or certified mail, return receipt requested. *See* Super. Ct. Civ. R. 4(c)(4). But either way, plaintiffs must file a proof of service as to each party served—the Mayor, the Attorney General, and the agency—within 60 days of

filing their complaint. Super. Ct. Civ. R. 4(m)(1)(A); *see Dorsey v. District of Columbia*, 839 A.2d 667, 668-69 (D.C. 2003).

Notably, some provisions of Rule 4 provide default methods of service that govern "[u]nless applicable law provides otherwise." *E.g.*, Super. Ct. Civ. R. 4(e) (serving adults domestically); Super. Ct. Civ. R. 4(f) (serving individuals abroad); Super. Ct. Civ. R. 4(h) (serving corporations). But no such language qualifies Rule 4(j)(3)(D)'s requirements for serving District agencies. Accordingly, when plaintiffs suing a District agency fail to comply with Rule 4(j)(3)(D), or fail to file proof of service, dismissal of their suit is "automatic." *Thompson v. District of Columbia*, 863 A.2d 814, 817 (D.C. 2004) (quoting *Dorsey*, 839 A.2d at 669); *see* Super. Ct. Civ. R. 4(m)(4) ("[T]he plaintiff's failure to comply with the requirements of this rule will result in the dismissal without prejudice of the complaint.").

C. The Vital Records Act and DC Health Regulations.

The District has regulated vital records like birth certificates by statute and agency rule for decades. *See Labofish v. Berman*, 55 F.2d 1022, 1024 (D.C. Cir. 1932). In doing so, the District has followed the Model State Vital Statistics Act as developed and updated by federal agencies. *See* Model State Vital Statistics Act and Regulations, DHHS Publication No. 94-1115 (1992 rev.) (Feb. 1994).

In 2018, the District enacted the Vital Records Modernization Amendment Act ("VRA" or "Act"), D.C. Code § 7-231.01 *et seq.*, to "establish a new system of

recordkeeping for vital records." D.C. Law 22-164, 65 D.C. Reg. 9324 (Sept. 14, 2018) (eff. Oct. 30, 2018). While continuing to follow the Model Act, the VRA arose from an "increased level of awareness about national security and the importance of preventing fraud in the vital statistics system." D.C. Council, Committee on Health, Report on Bill 22-250, Attach. B at 2 ("Committee Report") (Mar. 14, 2018), https://tinyurl.com/yzh2tk5m. To that end, the VRA created a "system for the reporting, maintenance, issuance, security, and confidentiality of vital records," including birth records. D.C. Code §§ 7-231.02(a), 7-231.01(57).

The VRA charges DC Health with maintaining such records. *Id.* § 7-231.23(a) (directing agency to "implement a preservation management program to preserve vital record documents"). Under the Act, DC Health must "supervise the vital statistics system" and "[a]dminister and enforce" the VRA and "any implementing rules." *Id.* § 7-231.03(b)(1), (3); *see id.* § 7-231.29 ("The Registrar . . . shall issue rules to implement the provisions of this chapter."). This includes the responsibility "[t]o ensure the security of the vital statistics system" by taking "measures to deter the fraudulent use of vital records" and to "[v]alidate data provided in reports submitted for registration." *Id.* § 7-231.04(1), (9). Of special relevance here, it also includes the duty to create rules for determining "the evidence that shall be required to establish the facts of live birth." *Id.* § 7-231.08(g).

To carry out these duties, DC Health has promulgated regulations clarifying the Act's substantive and evidentiary requirements. *See* 29 DCMR § 2800 *et seq*. Under DC Health's regulations, a "document shall be considered to be complete, and acceptable for registration if," among other things, it "[i]ncludes each item of information requested on the form or satisfactorily accounts for its omission"; it "[c]ontains no alterations or erasures"; and it "[c]ontains no improper or inconsistent data." *Id.* § 2801.7(b), (c), (h). Documents failing to meet those requirements cannot be registered as a vital record. *See id.* § 2801.1 ("Vital records are considered to be registered only upon acceptance of the document by the Registrar.").

D. Delayed registrations of live birth in the District.

1. DC Health can issue delayed registration of birth only under certain circumstances.

DC Health is responsible for reviewing applications for delayed registration of birth. D.C. Code § 7-231.11; *see id.* § 7-231.24(k) ("Only the Registrar may certify issuances of District live birth."). Such applications are "not typical" (03/20/23 Tr. 28-29), as they seek to document a birth as having occurred in the District one year or more after such birth. D.C. Code § 7-231.11(b). By law, applications of this sort "shall not be registered until evidence to substantiate the facts of live birth in the District has been supplied to the Registrar," *id.* § 7-231.11(a), which includes an individual's name, parentage, birthdate, and birthplace, *id.*

§ 7-231.11(d)(2); *see* 29 DCMR § 2803.7 (listing the "minimum facts which must be established by documentary evidence in a delayed registration of birth").

The VRA prohibits DC Health from issuing a delayed registration of birth in certain circumstances. *First*, DC Health "shall not register" a birth if the "applicant does not submit the minimum documentation." D.C. Code § 7-231.11(d)(1); *see id.* § 7-231.11(e). As relevant here, the minimum documentation required to establish name, birthplace, and birthdate is "three (3) pieces of probative documentary evidence, no more than one (1) of which may be an affidavit of personal knowledge," 29 DCMR § 2804.1(b), and the minimum documentation to establish parentage is "at least one (1) document other than an affidavit of personal knowledge," *id.* § 2804.2; *see id.* § 2803.02 (recognizing agency's "discretion" to "require additional evidence in support of the facts of birth"). Acceptable documents include a sworn, notarized affidavit from a parent, *id.* § 2805.3, as well as "a census, hospital, church, or school record," *id.* § 2805.1. Each document "shall be from independent sources and shall be the original record, a duly certified copy, or a copy accompanied by a signed statement from the custodian of the record." *Id.* § 2805.1.

Second, DC Health "shall not register" a live birth if it "has reasonable cause to question the validity or adequacy of the applicant's sworn notarized statement or the documentary evidence, and the deficiencies are not corrected." D.C. Code § 7-231.11(d)(1). In particular, when the Registrar suspects that an application "may

have been submitted for the purpose of fraud or misrepresentation, the Registrar may withhold performance of that service pending inquiry by appropriate authorities to determine whether fraud or misrepresentation has occurred." *Id.* § 7-231.26(b).

2. The Superior Court can order delayed registration of birth only under certain circumstances.

If DC Health denies a request for delayed registration, applicants can "bring an action in court to establish the date, place of live birth, and parentage of the person whose live birth is to be registered." D.C. Code § 7-231.11(d)(2). To do so, petitioners must "file a complaint" in the Superior Court requesting "an order to register the record." *Id.* § 7-231.16(a). These suits are "governed by the Rules of the court," and "[t]he court shall provide notice of the proceeding to the Registrar." *Id.* Courts must also forward any resulting orders to DC Health "no later than the 10th day following the month in which the order was entered." *Id.* § 7-231.16(h).

The VRA allows the Superior Court to grant relief only under certain conditions. *First*, petitioners must pass a criminal background check. *Id.* § 7-231.16(e). Specifically, "[*b*]*efore* issuing findings, the court shall order the petitioner to undergo a criminal background check to be provided to the court at the petitioner's expense." *Id.* (emphasis added). Consistent with the VRA's goals, this background check is conducted "for the purpose of revealing any aliases, the petitioner's citizenship status, and criminal records related to identity theft or document fraud by the petitioner." *Id.*

Second, petitioners must submit proof that they were "born in the District." *Id.* § 7-231.16(f). Petitioners' evidence must provide a basis for the court to "make findings as to the place and date of live birth, parentage, and other findings to substantiate the facts of live birth in the District." *Id.* This requires petitioners to provide, among other things, "all documentary evidence [they] used to support the application submitted to the Registrar," *id.* § 7-231.16(d), in addition to "[a]ny other information needed to establish the facts of live birth," *id.* § 7-231.16(b)(5).

2. Factual and Procedural Background.

A. DC Health denies Parker's application for delayed registration of birth.

In March 2020, Parker applied for a delayed registration of birth. JA 10. Parker sought to establish the District as his birthplace based on affidavits from his mother and father (Matin and Reza Parvaresh); his parents' drivers' licenses; and a document from the National Archives indicating that Parker's birthname was Mahyar Parvaresh. JA 6-19, 24-25. Parker also provided a certificate of naturalization from 1982 and a scanned copy of a U.S. passport from 2017. JA 23, 26. The certificate of naturalization listed Parker's country of former nationality as Iran, while the passport listed Parker's birthplace as Washington, D.C. JA 23, 26.

DC Health denied Parker's application in August 2021. JA 12-17. As the denial letter explained, Parker failed to provide the minimum required documentation because DC Health can accept only one affidavit—not two, as Parker

submitted—and because none of the remaining materials could be accepted as valid evidence for delayed registration of birth. JA 12-17. For example, the document indicating that Parker changed his name in 1982 did "not prove or provide facts to establish that the intended registrant Mike Parker/(AKA Mahyar Parvaresh) was born in the District of Columbia." JA 16. The same was true of Parker's passport because, by law, "the determination of whether an individual was born in the District of Columbia can only be made by the Registrar for the District of Columbia[,] not the U.S. State Department," and thus a passport "is not sufficient to establish live birth in the absence of evidence in the authorized system of record." JA 15.

B. Parker petitions the Superior Court for delayed registration of birth but does not serve DC Health, the Mayor, or the Attorney General in accordance with Rule 4(j)(3)(D).

In October 2021, two months after DC Health denied his application, Parker filed a petition with the Superior Court. JA 6-9. He sought an order establishing a record of his parentage, birthdate, and birthplace, as well as an order directing DC Health to issue him a "Delayed Certificate of Birth." JA 6. Parker's petition did not, however, provide the Superior Court with all of the evidence included in his application to DC Health, as required by D.C. Code § 7-231.16(d). For example, Parker included the affidavits from his parents, and he mentioned their drivers' licenses. JA 6-8, 18-19. But Parker neither included nor mentioned his certificate of naturalization or his U.S. passport. JA 6-8.

In a "Certificate of Notice," Parker claimed to have sent his petition to DC Health on October 27, 2021. JA 20. His counsel attested that he sent a copy of the petition "to the registrar of vital records by first class U.S. mail" and "by email to: doh@dc.gov," but mentioned no other efforts to serve DC Health, the Mayor, or the Attorney General. JA 20. Moreover, nothing in the record indicates that the Superior Court itself notified DC Health of Parker's proceeding as required by D.C. Code § 7-231.16(a), which Parker has acknowledged, JA 46 ("It's not clear from the docket that the court gave the Department of Health notice[.]").

C. After an ex parte hearing, the Superior Court grants Parker's petition for delayed registration of birth.

The court (Judge Michael L. Rankin presiding) held a hearing in-chambers on Parker's petition in July 2022. JA 27. Because Parker did not serve DC Health, the Mayor, or the Attorney General under Rule 4(j)(3)(D), no one from DC Health participated in the proceeding, and the court notified only Parker's counsel about the hearing via email. JA 2. On the day of the hearing, Parker's counsel emailed the court several of the documents omitted from the petition, including his U.S. passport, the National Archives document, and his certificate of naturalization. JA 23-26.

At the hearing, the court observed that this case was "unusual." 07/19/22 Tr. 3-4. Parker claimed to have been born in the District in 1951 based on "family history" and his "original birth certificate." 07/19/22 Tr. 9, 12, 15. But as the court noted, Parker's family history was "hearsay," and he could not produce his original

birth certificate. 07/19/22 Tr. 13-18, 26-27. According to Parker, his birth certificate "was lost by the U.S. Passport Agency" in the early 1970s, and he started looking for another copy in 2018 when he became concerned about collecting his inheritance. 07/19/22 Tr. 13-17, 22-24. The court did not ask Parker or his counsel about whether the petition for delayed registration of birth had been served on DC Health, the Mayor, or the Attorney General.

At the end of the hearing, the court granted Parker's petition. 07/19/22 Tr. 26-29. While acknowledging that DC Health "did not credit some documents" offered by Parker, the court deemed him a "credible witness" whose "testimony seems to" have a "ring of truth." 07/19/22 Tr. 4-5, 26-27. Parker's counsel indicated that his client had not yet passed the VRA's mandatory criminal background check: "We understand that you'll also order a criminal background check at Mr. Parker's expense, and he's glad to take care of that too." 07/19/22 Tr. 25. Yet the court nonetheless issued an order the same day, before any background check, finding that Parker was born in the District and ordering DC Health to "promptly issue" Parker a "delayed certificate of birth." JA 28-29. The service list at the end of the order suggests that the court intended to mail a copy of the order to DC Health, JA 29, but the record contains no further evidence that a copy was in fact mailed to, or received by, DC Health as the VRA requires, *see* D.C. Code § 7-231.16(h) (requiring court to "forward a certified copy of the order" to the Registrar).

D. The Superior Court denies DC Health's motion to vacate.

Parker claims to have provided a copy of the July 2022 order to a DC Health employee in September 2022, and in December 2022, he moved for an order directing DC Health to show cause why it should not be held in contempt for failing to comply. JA 30-32. DC Health filed an opposition and moved to vacate the July 2022 order under Rules 60(b)(4) and 60(b)(6). JA 33-44. As DC Health explained, the order was void for lack of service and should be vacated in any event because DC Health promptly sought relief in good faith, Parker would not be prejudiced, and DC Health had an adequate defense. JA 33. DC Health further noted that it had initiated inquiries with the State Department about Parker. JA 42. Those inquiries prompted a subsequent State Department investigation. JA 61-62.

The Superior Court (now Judge Zinora M. Mitchell-Rankin presiding) held hearings in March 2023. At those hearings, Parker testified again that he was born in the District, that he became a naturalized U.S. citizen only because, as the child of a "high level" foreign diplomat, he was "not entitled to U.S. citizenship automatically," and that the "U.S. passport agency" had "lost" his original birth certificate. 03/20/23 Tr. 18-19; 03/23/23 Tr. 32-33. Yet Parker admitted that he had previously applied for a U.S. passport with an Iranian birth certificate, and that he had received a U.S. passport stating that he was born in Iran. 03/20/23 Tr. 19, 24. According to Parker, his parents "obtained a[n] identity for" him when he was a

child indicating that he "was born in Iran," which is why he had "an Iranian passport" when he came to the United States in September 1970. 03/20/23 Tr. 19.

DC Health presented two witnesses—Registration Supervisor Valerie Grant, and Interim Registrar Rudolph Brothers—to explain the agency's mission, its procedures, and its reasons for denying Parker's application. 03/20/23 Tr. 26-27; 03/23/23 Tr. 5-6. These witnesses testified that DC Health is obligated under the VRA to "ensur[e] the integrity of the records and the items that are registered" (03/23/23 Tr. 19), and that this was particularly true for delayed registrations of birth, which require applicants "to validate" that their "birth actually occurred in the District" (03/20/23 Tr. 31); *see* (03/23/23 Tr. 7). Yet Parker had not carried that burden, the witnesses explained, because he had offered only one acceptable document—his mother's affidavit. 03/20/23 Tr. 30-32; *see* 03/23/23 Tr. 13, 19, 23-24. Everything else in Parker's application constituted a "secondary document" that was insufficient to prove live birth in the District. 03/20/23 Tr. 31-32.

The trial court questioned why Parker's U.S. passport did not prove that he was born in the District. 03/20/23 Tr. 32-37; 03/23/23 Tr. 12-13, 16-25. DC Health's witnesses offered several responses. They noted that the State Department is not responsible for determining the facts of birth in the District, that "we do not have anything indicating what documents were used" to obtain Parker's passport, and that, in any event, the State Department was investigating Parker. 03/20/23

Tr. 30-33; 03/23/23 Tr. 11-13, 22, 30. Additionally, the "normal practice" of the State Department is to notify DC Health when a vital record is lost, and yet DC Health had no record of any such notification about Parker. 03/23/23 Tr. 14-15. Instead, the State Department had notified DC Health that Parker had "filed for passports at two different times and at both of those times showed two different places of birth." 03/20/23 Tr. 42. Moreover, other inconsistencies in Parker's documentation also raised concerns about fraud or misrepresentation, including the fact that his "naturalization paperwork indicated Iran" as his country of former nationality. 03/23/23 Tr. 27; *see* 03/20/23 Tr. 39, 42.

The trial court was unpersuaded. It appeared to believe that, because passports typically require a birth certificate, Parker's current passport proved that he was born in the District, without addressing Parker's admission that he previously had a U.S. passport listing his birthplace as Iran. 03/20/23 Tr. 24, 32-37; 03/23/23 Tr. 12-13, 16-18. The court also dismissed concerns about fraud in Parker's application (03/20/23 Tr. 40-43), and it displayed little interest in the State Department's investigation (03/23/23 Tr. 29-31). In the court's view, DC Health had not presented "specific" and "absolute facts" proving fraud, and besides, "the State Department issued a passport anyway." 03/20/23 Tr. 40-43; 03/23/23 Tr. 27. The court also saw no inconsistency in Parker's documentation because nationality is "different" than

birthplace, so Parker's naturalization papers listing Iran were not "a reflection of somehow his status as an Iranian from birth." 03/23/23 Tr. 41, 43.

The court gave DC Health little time to explain why Parker's inadequate service of process independently warranted vacatur. 03/23/23 Tr. 43-46. In the closing minutes of the second day of hearings, DC Health attempted to explain that, because it was never properly served under Rule 4, the July 2022 order was void and must be vacated for that reason alone under Rule 60(b)(4). 03/23/23 Tr. 43. Parker's counsel asserted, however, that "we followed the particulars of this statute," and that "the order should not be vacated even if service was improper" because the "test for vacating the orders is two pronged," and DC Health "d[id] not have a meritorious defense." 03/23/23 Tr. 44. The court did not inquire into this issue further, except to note that it would "rule based on what is before the Court." 03/23/23 Tr. 46.

The Superior Court denied DC Health's motion the next day. The court held that service under Rule 4(j)(3)(D) was unnecessary because D.C. Code § 7-231.16(a) "conspicuously calls for notice, which is meaningfully distinct at law from the service [DC Health] raises." JA 57. The court further concluded that, because "a court order" is "meant to provide [an] independent legal basis for DC Health to perform an action," it would be "unreasonable" for the court to adhere to the same requirements that govern DC Health's initial determinations. JA 57. The court thus ordered DC Health to issue Parker a delayed registration of birth within 14 days, and

it "warn[ed]" DC Health that, while the court declined "to issue an order for contempt at this time," the "next such motion will likely be entertained." JA 57.

STANDARD OF REVIEW

The denial of post-judgment relief under Rule 60(b) is generally reviewed for abuse of discretion. *Cruz*, 737 A.2d at 1023, 1025-26. Trial courts, however, have "no discretion when relief is sought pursuant to subdivision (4) of Rule 60(b) on the ground that the judgment is void," and thus "appellate review of the court's decision on a Rule 60(b)(4) motion is not deferential; it is *de novo*." *Jones v. Hersh*, 845 A.2d 541, 545 (D.C. 2004). Trial courts likewise have no discretion to sidestep this Court's *Starling* factors in denying Rule 60(b)(6) relief—doing so is reversible error. *See Carrasco v. Thomas D. Walsh, Inc.*, 988 A.2d 471, 476 (D.C. 2010); *Johnson v. Lustine Realty Co.*, 640 A.2d 708, 709-10 (D.C. 1994).

SUMMARY OF ARGUMENT

The decision below should be reversed for either of two independent reasons.

1. The trial court erred in denying DC Health's Rule 60(b)(4) motion to vacate because the July 2022 order was void for lack of service of process. Parker undisputedly did not properly serve DC Health, the Mayor, or the Attorney General as required by Rule 4(j)(3)(D) before the trial court ordered DC Health to issue a delayed registration of birth. That failure by itself renders the July 2022 order void and thus mandates reversal under this Court's precedents.

Contrary to the trial court's erroneous suggestion, the VRA's notice requirement does not displace Rule 4(j)(3)(D)'s service requirements. The former requires courts to inform DC Health of a delayed-registration proceeding, while the latter requires plaintiffs to serve their petition on DC Health, the Mayor, and the Attorney General through in-person delivery or certified or registered mail with return receipt. Because those requirements in no way conflict, both provisions must apply in this case. Indeed, the Council gave every indication that the VRA does *not* override Rule 4(j)(3)(D) in explicitly stating that "[a] petition filed under this section *shall be governed by the Rules of the court*." D.C. Code § 7-231.16(a) (emphasis added). In short, Parker was required to comply with Rule 4(j)(3)(D) in serving his petition on DC Health, the Mayor, and the Attorney General. His failure to do so renders the July 2022 order void and warrants relief under Rule 60(b)(4).

2. This Court should also reverse based on the erroneous denial of DC Health's motion for relief under Rule 60(b)(6). Under this Court's *Starling* decision, trial courts must consider several factors in evaluating the propriety of post-judgment relief, including whether the movant had actual notice of the suit, whether it sought relief promptly and in good faith, whether vacatur would prejudice opposing parties, and whether the movant has adequate defenses. But here, the trial court did not expressly or meaningfully address *any* of the *Starling* factors, which is reversible error by itself under this Court's precedents.

By the same token, the trial court erred in failing to recognize that each of the *Starling* factors weighs decisively in favor of DC Health. The record indicates that DC Health lacked actual notice at an institutional level of Parker's suit before the July 2022 order was issued. The record is even clearer that DC Health acted promptly and in good faith by moving to vacate the July 2022 order, and that vacatur would not prejudice Parker in any cognizable sense.

What is more, DC Health has several meritorious defenses to Parker's suit. First, Parker has not undergone, let alone passed, the VRA's mandatory criminal background check, a prerequisite to obtaining a delayed registration of birth from the Superior Court. Second, Parker has undisputedly failed to satisfy DC Health's evidentiary rules for proving birthplace, which the VRA's text applies with equal force in Superior Court proceedings. Third, even if those evidentiary rules do not bind petitioners in Superior Court, Parker's weak evidence cannot rationally support a finding that he was born in the District. Fourth and finally, his application—and its many inexplicable discrepancies—raise substantial concerns about fraud and misrepresentation that simply cannot be ignored in light of the VRA's text, structure, and purpose. Given the decisive tilt of the *Starling* factors, this Court should itself order that DC Health's Rule 60(b)(6) motion be granted.

ARGUMENT

I. The Superior Court Erred In Failing To Vacate The July 2022 Order As Void Under Rule 60(b)(4).

The trial court committed reversible error in denying DC Health's motion for post-judgment relief under Rule 60(b)(4). By its terms, Rule 60(b)(4) provides relief from "void" judgments. Super. Ct. Civ. R. 60(b)(4). A judgment is "void" if entered against a party who was not properly served at the outset of litigation. *McLaughlin v. Fidelity Sec. Life Ins.*, 667 A.2d 105, 107 (D.C. 1995); *see Cruz*, 737 A.2d at 1026 (explaining that "a judgment unsupported by effective service" is "therefore void"). As a result, "when confronted with a denial of a motion to vacate" a judgment that "is void for lack of sufficient service of process," this Court has held that it "*must reverse*." *Cruz*, 737 A.2d at 1026 (emphasis added). This is just such a case. Parker's failure to properly serve DC Health, the Mayor, *or* the Attorney General renders the July 2022 order void, and nothing in the VRA excuses Parker's failure to comply with Rule 4(j)(3)(D)'s service-of-process requirements.

A. Parker undisputedly failed to serve DC Health, the Mayor, or the Attorney General at the outset of this suit in the manner required by Rule 4(j)(3)(D).

Parker's failure to serve his petition in compliance with Rule 4 is undeniable. As noted, Rule 4(j)(3)(D) required Parker to send his petition to the Mayor, the Attorney General, and DC Health by certified or registered mail with return receipt requested, or have a nonparty deliver it. *See supra* pp. 4-5. Rule 4 permits no other

method of service, and each entity and officer listed in the rule must be served regardless of whether they are named as a defendant. *See Dorsey*, 839 A.2d at 668-69 (requiring proof of service on each actor listed in Rule 4(j) "because 'that's what the rule says'" (quoting *Tuke v. United States*, 76 F.3d 155, 157 (7th Cir. 1996))).

Yet Parker undisputedly took none of the steps required by Rule 4(j)(3)(D). He made no effort to serve his petition on the Mayor or the Attorney General—whether by mail or in-person service—and he filed no proof of service as to those officers. *See* JA 20. He also undisputedly failed to serve his petition on DC Health via certified or registered mail or through in-person service. *See* JA 20. Instead, Parker merely sent a copy of his petition "to the registrar of vital records by first class U.S. mail," and he sent an "email to: doh@dc.gov." JA 20. That is inadequate under any reading of Rule 4(j)(3)(D). *See Dorsey*, 839 A.2d at 668-69.

Parker's failure to serve DC Health, the Mayor, and the Attorney General thus renders the July 2022 order void and mandates vacatur under Rule 60(b)(4). *See Jones*, 845 A.2d at 545 ("[I]f a judgment is void, it must be vacated."). For several reasons, moreover, this is true regardless of whether Parker notified certain DC Health staff of his suit. For one, "actual notice of an action cannot cure ineffective service of process." *Johnson v. Payless Shoe Source, Inc.*, 841 A.2d 1249, 1254 (D.C. 2004). For another, contacting administrative staff does not put the agency itself or its legal advisors on notice. *See Larry M. Rosen & Assocs., Inc. v. Hurwitz*,

465 A.2d 1114, 1117 (D.C. 1983) ("A receptionist in one's office, even if authorized to sign for and open all of the mail, is not necessarily authorized to accept service of process."). And for yet another, notifying DC Health does not provide notice to the Mayor or Attorney General. *See Eldridge v. District of Columbia*, 866 A.2d 786, 787-88 (D.C. 2004) ("[A]n agent of an individual for other purposes is not necessarily authorized to receive service[.]"). The July 2022 order was thus void for insufficient service and the trial court erred in refusing to vacate that order.

Contrary to Parker's assertions below, Rule 60(b)(4) is not a "two pronged" test requiring both "improper service" *and* "a meritorious defense." 03/23/23 Tr. 44. As this Court has held, "a meritorious defense is not required when a judgment is void." *Alexander v. Polinger Co.*, 496 A.2d 267, 269 (D.C. 1985). Nor must a Rule 60(b)(4) movant show "other equities on his behalf." *Jones*, 845 A.2d at 545 (internal quotation marks omitted). Rather, when service of process is inadequate, the movant "is entitled to have the judgment treated for what it is, a legal nullity," and "the only way that the court may exercise its discretion is by granting relief." *Id.* (internal quotation marks omitted). In short, because Parker undisputedly failed to comply with Rule 4(j)(3)(D), he did not properly serve his petition, and the July 2022 order must be vacated for that reason alone. *See Cruz*, 737 A.2d at 1026.

B. Nothing in the VRA displaces Rule 4(j)(3)(D)'s service-of-process requirements for District agencies.

Despite acknowledging that Parker had not complied with Rule 4(j)(3)(D), the trial court refused to vacate the July 2022 order. *See* JA 55-58. The court held that, because a provision of the VRA requires courts to "provide notice of the proceeding to the Registrar," D.C. Code § 7-231.16(a), Parker was not required to serve his petition in accordance with Rule 4(j)(3)(D). JA 56-57. The court appears to have concluded that Section 7-231.16(a)'s notice requirement displaced Rule 4(j)(3)(D)'s service requirements, and thus absolved Parker of his obligation to serve DC Health, the Mayor, and the Attorney General. *See* JA 55-57.

That is incorrect. As an initial matter, nothing in the record indicates that the trial court complied with its obligation under Section 7-231.16(a) to provide DC Health "notice of the proceeding." Parker himself has admitted as much: "It's not clear from the docket that the court gave the Department of Health notice as required [by Section 7-231.16]." JA 46. Accordingly, even if Section 7-231.16 could displace Rule 4(j)(3)(D), it certainly does not do so when *neither* provision has been satisfied, as appears to be the case here.

But more fundamentally, the court's displacement theory is wrong. Under District law, the "manner of service of process" is generally "prescribed by rule of court," not by statute. D.C. Code § 11-943(c); *see Thompson*, 863 A.2d at 818 ("[W]e must look to the rules of the Superior Court—not the D.C. Code—to

determine what manner of service is proper[.]"). Suits against District agencies are no different, which is clear from the fact that Rule 4(j)(3)(D), unlike many of its neighboring provisions, is not simply a default method of service that can be displaced by statutory implication. *Compare* Super. Ct. Civ. R. 4(e), 4(f), 4(h) ("Unless applicable law provides otherwise . . . ."), *with* Super. Ct. Civ. R. 4(j) (containing no similar caveat). The VRA itself, moreover, expressly confirms that Rule 4(j)(3)(D)'s service-of-process requirements govern petitions for delayed registration of birth, and it does so in the very provision relied on by the trial court: "A petition filed under this section *shall be governed by the Rules of the court*." D.C. Code § 7-231.16(a) (emphasis added); *see* JA 56 (quoting this sentence).

The trial court thus erred in presuming that Section 7-231.16(a) displaces Rule 4(j)(3)(D). As this Court has noted, one provision of law cannot "control" another unless they irreconcilably conflict. *Speyer v. Barry*, 588 A.2d 1147, 1163-64 (D.C. 1991). Otherwise, a statute and rule must "be construed to harmonize" unless the legislature "clearly" conveyed its intent to "statutorily supersede" the rule in the statute's "plain language." *U.S. ex rel. Boothe v. Sun Healthcare Grp., Inc.*, 496 F.3d 1169, 1175-76 (10th Cir. 2007) (Gorsuch, J.) (internal quotation marks omitted) (holding that the False Claims Act, 31 U.S.C. § 3730(e)(4)(A), did not displace Federal Rule 12(b)(1)'s requirement to assess jurisdictional challenges on a "claim-by-claim basis"); *see Gaubert v. Fed. Home Loan Bank Bd.*, 863 F.2d 59,

67 (D.C. Cir. 1988) (holding that corporate-receivership statute, 12 U.S.C. § 1464, did not displace Federal Rule 23.1's shareholder-demand requirement).

Here, nothing in Section 7-231.16 conflicts with or unambiguously displaces Rule 4(j)(3)(D). The statute requires a "court" to provide the "Registrar" with "notice of the proceeding," D.C. Code § 7-231.16(a), while Rule 4 requires "a party" to "serve" his petition on the Mayor, Attorney General, and DC Health through a process server or by registered or certified mail, D.C. Super. Ct. R. 4(c), (j)(3)(D). The statute and rule are thus complementary directives addressing different actors (courts versus parties) and different topics (notice of a proceeding versus service of process). *See POM Wonderful LLC v. Coca-Cola Co.*, 573 U.S. 102, 118 (2014) (harmonizing provisions with "separate scopes" that can both "be implemented in full"). The trial court thus erred in concluding that Section 7-231.16(a) exempted Parker from basic service-of-process requirements. *See Boothe*, 496 F.3d at 1175-76; *Gaubert*, 863 F.2d at 67 (holding that rule-based requirements cannot be read "out of a particular statutory setting" absent "a clear exemption" in the statute).

II. The Superior Court Erred In Denying Post-Judgment Relief Under Rule 60(b)(6).

The trial court also committed reversible error by not vacating the July 2022 order under Rule 60(b)(6). As this Court has held, "Rule 60(b) should be liberally construed." *Starling*, 495 A.2d at 1162. In reviewing motions under Rule 60(b)(6), trial courts must consider the Court's *Starling* factors: "whether the movant (1) had

actual notice of the proceedings, (2) acted in good faith, (3) took prompt action, and (4) presented an adequate defense, as well as (5) whether vacatur would prejudice the non-moving party." *Reshard v. Stevenson*, 270 A.3d 274, 282 (D.C. 2022). The trial court in this case erred in at least two fundamental respects: it failed to consider the *Starling* factors in any meaningful detail, and it failed to recognize that those factors strongly favor DC Health. This Court can reverse on either ground.

A. The trial court's failure to consider this Court's *Starling* factors warrants reversal without more.

Under this Court's precedents, trial courts have "a responsibility to inquire where matters are raised which might entitle the movant to relief under Rule 60(b)." *Starling*, 495 A.2d at 1162. For that reason, the failure to analyze each of the *Starling* factors constitutes reversible error by itself. *See Johnson*, 640 A.2d at 709-10 (reversing where trial court failed to "address two factors which bore directly on the merits of appellant's [Rule 60(b)] motion"); *Reid v. District of Columbia*, 634 A.2d 423, 425 (D.C. 1993) (similar); *Watkins v. Carty's Auto. Elec. Ctr., Inc.*, 632 A.2d 109, 110 (D.C. 1993) (similar). The same is true when a trial court fails to provide a sufficiently reasoned explanation for denying relief. *See Carrasco*, 988 A.2d at 476 (reversing where trial court's analysis "was too cursory").

These principles apply here with particular force. The trial court's order does not even mention the *Starling* factors, and its cursory analysis has little bearing on the propriety of relief under Rule 60(b)(6). *See* JA 55-58. The most that can be

gleaned is that the trial court believed it would be "unreasonable" for a court to follow the same "procedures" under which DC Health denied Parker's application. JA 57. But even if that passing remark was meant to weigh in on the adequacy of the District's defenses, it has nothing to do with any of the other factors that courts must consider in analyzing Rule 60(b)(6) motions (i.e., whether DC Health sought relief promptly and in good faith or whether vacatur would prejudice Parker). *See Starling*, 495 A.2d at 1159-62. The trial court's decision thus cannot survive appellate scrutiny under this Court's precedents. *See Carrasco*, 988 A.2d at 476.

B. The *Starling* factors overwhelmingly favor DC Health.

Even aside from the trial court's failure to consider the *Starling* factors—which is, again, reversible error by itself—the judgment below cannot stand because all of those factors weigh in favor of granting Rule 60(b)(6) relief. Indeed, for the reasons that follow, denying DC Health's motion would necessarily be an abuse of discretion even if the lower court had properly considered each of the *Starling* factors. This Court should therefore direct that the motion be granted.

1. The record suggests that DC Health lacked actual notice of Parker's suit before September 2022.

The first *Starling* factor favors relief because the record indicates that DC Health as an institution lacked actual notice of Parker's suit before the July 2022 hearing and ensuing order. *See Wylie v. Glenncrest*, 143 A.3d 73, 83 (D.C. 2016) (recognizing relief should be granted if movant "is not guilty of willful neglect").

First, as noted, there is no indication the trial court notified DC Health of this proceeding under D.C. Code § 7-231.16(a), as Parker has acknowledged: "It's not clear from the docket that the court gave the Department of Health notice[.]" JA 46. Second, even if Parker sent his petition to DC Health by email and first-class mail, JA 20, District agencies do not expect to receive notice of lawsuits in such ways, and in any event, the trial court's docket shows that only Parker was notified of the July 2022 hearing, JA 2. And third, it is unclear whether the trial court provided DC Health a certified copy of the July 2022 order as required by D.C. Code § 7-231.16(h). The most sensible inference to be drawn from this record is that DC Health as an institution was unaware of Parker's petition or the July 2022 hearing—especially given that DC Health had every incentive to participate in these proceedings and defend its interests if it had actual notice. *See Carrasco*, 988 A.2d at 475 (suggesting that movant lacked "actual notice" in part because it was "hard to fathom why he would have ignored" the suit "unless he was unaware of it").

2. DC Health moved to vacate the July 2022 order in good faith and with reasonable promptness.

The second and third *Starling* factors also favor DC Health, as Parker conceded below: "Petitioner does not contend that Respondent acted in bad faith or did not act promptly." JA 47. Indeed, DC Health promptly moved to vacate the July 2022 order within a few months of learning that it existed in September 2022. *See Crosby v. Brown*, 289 A.3d 696, 702 n.6 (D.C. 2023) ("Whether the movant

acted promptly is to be measured from the time the movant discovered the judgment." (internal quotation marks omitted)). And DC Health's pursuit of vacatur arose not from a bad-faith refusal to comply with a court order, but from, among other things, serious concerns about fraud and misrepresentation that barred it from granting Parker's application. *See, e.g.*, D.C. Code § 7-231.11(d)(1) (providing that DC Health "shall not register" a birth if it "has reasonable cause to question the validity" of "documentary evidence").

3. Vacating the July 2022 order would cause no prejudice, and Parker has never argued otherwise.

Nor has Parker ever suggested that vacating the July 2022 order would prejudice him, which is yet another *Starling* factor that supports DC Health. *See Carrasco*, 988 A.2d at 476 (reversing denial of relief where "[n]o prejudice to Walsh was identified in the record below"). In prior cases, this factor has weighed strongly in favor of reversing the denial of post-judgment relief when "the trial court did not draw any explicit conclusions concerning prejudice" and when the nonmovant fails to "elaborate on" any claims of "'prejudice and hardship.'" *Brown v. Kone, Inc.*, 841 A.2d 331, 335 (D.C. 2004); *see Frausto v. U.S. Dep't of Com.*, 926 A.2d 151, 157 (D.C. 2007) (similar). Both conditions are met here: the trial court said nothing about prejudice and neither did Parker. This is unsurprising given that vacatur would simply require Parker to litigate his claim on the merits in an adversarial proceeding, which is no "prejudice" at all. *See Jones v. Health Res. Corp. of Am.*, 509 A.2d

1140, 1145 (D.C. 1986) (finding no prejudice where any "further delay would be limited to the time and expense of additional proceedings").

4. DC Health has several valid defenses.

Finally, the fourth *Starling* factor favors relief, as DC Health has multiple defenses to Parker's claim that he is entitled to a court order compelling issuance of a delayed registration of birth. For purposes of Rule 60(b)(6), an "adequate defense" simply means "reason to believe that vacating the judgment would not be an empty exercise or a futile gesture." *Reshard*, 270 A.3d at 284 & n.15 (cleaned up). It does not require movants to make "a showing as strong as that of 'likely to succeed.'" *Id.* (cleaned up); *Nuyen v. Luna*, 884 A.2d 650, 657 (D.C. 2005) (same). After all, the merits of a defense "go to the ultimate resolution of the case and are appropriate for trial, not a hearing on a motion for vacat[ur]." *Clark v. Moler*, 418 A.2d 1039, 1043 (D.C. 1980); *see Reshard*, 270 A.3d at 284 & n.15; *Nuyen*, 884 A.2d at 657.

For the reasons explained below, DC Health has multiple defenses, each of which is at the very least adequate, if not plainly meritorious.

a. Parker has not shown that he underwent or passed the VRA's mandatory criminal background check.

DC Health's first defense is that Parker has not shown that he underwent, much less passed, the criminal background check required by D.C. Code § 7-231.16(e). The VRA unambiguously mandates that trial courts must—"[*b*]*efore* issuing findings" on a petition for delayed registration of birth—"order the petitioner

to undergo a criminal background check to be provided to the court at the petitioner's expense." *Id.* (emphasis added). This background check is conducted "for the purpose of revealing any aliases, the petitioner's citizenship status, and criminal records related to identity theft or document fraud by the petitioner." *Id.* So, unless petitioners show that they have completed a criminal background check, the VRA statutorily bars courts from "issuing findings" on their petitions. *See id.*

Parker has not satisfied this requirement. His counsel, in fact, confirmed as much at the ex parte hearing in July 2022 when he suggested that the trial court had yet to "order a criminal background check." 07/19/22 Tr. 25. In granting Parker's petition, however, the court ignored this statutory requirement entirely—and it did so just hours after being reminded that Parker had not satisfied it. JA 27-29. Since then, both the trial court and Parker have repeatedly declined to address this issue. *See* JA 55-58, 71-73. But that silence cannot change the fact that Parker's failure to satisfy an express statutory precondition on the court's issuance of findings is a valid defense by itself. *See Ross v. SEC*, 34 F.4th 1114, 1121 (D.C. Cir. 2022) (holding that courts cannot "dispense with a [statutory] condition" (quoting *Digital Realty Tr., Inc. v. Somers*, 138 S. Ct. 767, 777 (2018) (cleaned up))).

b. Parker did not submit the minimum documentation required by the VRA and DC Health regulations.

Parker's petition fails for the independent reason that he cannot satisfy the minimum evidentiary requirements of the VRA or DC Health regulations. The

Superior Court, no less than DC Health, is bound by the VRA's requirements. Under the Act, courts cannot order delayed registration of birth unless petitioners provide, among other things, "all documentary evidence [they] used to support the application submitted to the Registrar," D.C. Code § 7-231.16(d), as well as "[a]ny other information needed to establish the facts of live birth," *id.* § 7-231.16(b)(5). The VRA makes clear that DC Health regulations "determine the evidence that shall be required to establish the facts of live birth." *Id.* § 7-231.08(g).

The evidence needed to prevail in Superior Court thus necessarily includes the minimum documentation required by DC Health regulations. To establish his birthname, birthplace, and birthdate, then, Parker needed to present the Superior Court with "three (3) pieces of probative documentary evidence, no more than one (1) of which may be an affidavit," 29 DCMR § 2804.1(b), and to establish parentage, he needed to present "at least one (1) document other than an affidavit," *id.* § 2804.2. Acceptable documents include "a census, hospital, church, or school record," so long as they are from "independent sources." *Id.* § 2805.1.

Parker's evidence undisputedly does not meet these standards. As noted, Parker submitted affidavits from his parents; his parents' drivers' licenses; a National Archives document listing his birthname; a certificate of naturalization listing Iran as his country of former nationality; and a U.S. passport listing the District as his birthplace. JA 6-26. But only one of those documents—a single

parental affidavit—constituted acceptable documentary evidence. *See* 29 DCMR §§ 2804.1(b), 2804.2, 2805.1, 2805.3. The rest were legally inadequate and could "not prove or provide facts to establish that" Parker in fact "was born in the District." JA 16. Rather, in addition to one of his parental affidavits, Parker needed at least two other pieces of "probative documentary evidence" to prove birth in the District, 29 DCMR § 2804.1(b), such as a "census, hospital, church, or school record," *id.* § 2805.1. But he admittedly could not provide such evidence, and under the VRA, that failure means Parker had not provided the court with all "information needed to establish the facts of live birth," D.C. Code § 7-231.16(b)(5), as defined by the VRA through DC Health regulations, *see id.* § 7-231.08(g).

Parker's failures were not mere technical missteps. Requiring multiple pieces of independent evidence of birth helps to prevent fraud and to ensure the integrity of DC Health's vital records system. Such goals would be unachievable if petitioners like Parker can obtain a delayed registration of birth by submitting documentation that says nothing about his place of birth (e.g., his parents' drivers' licenses), that arguably suggests he was born elsewhere (e.g., his certificate of naturalization listing Iran as his country of former nationality), or that is, at best, inconclusive and, at worst, potentially fraudulent (e.g., his current passport, *see infra* pp. 38-44).

The trial court nonetheless deemed Parker's shortcomings irrelevant on the theory that the VRA "directs the Court [to] make findings" about birthplace "with

no reference to the procedures of DC Health." JA 57. But that theory is unsound and inconsistent with the VRA's structure. The question here is not whether courts can make findings about birthplace; the question is what *evidence* must be presented to warrant a finding about birthplace. The VRA answers that question by directing DC Health to "determine the *evidence that shall be required to establish the facts of live birth* by rules issued pursuant to § 7-231.29." D.C. Code § 7-231.08(g) (emphasis added). This statutory command does not differentiate between agency and judicial proceedings, and it dovetails with the requirement that petitioners must provide the Superior Court with "[a]ny other information *needed to establish the facts of live birth*." *Id.* § 7-231.16(b)(5) (emphasis added). Contrary to the trial court's conclusion, then, petitioners must satisfy DC Health's minimum evidentiary standards whether they are seeking delayed registration of birth before the agency or the Superior Court. Parker's failure to do so here forecloses his petition, and thus constitutes an independently adequate defense for the District.

c. Parker's evidence cannot justify delayed registration of birth under any standard.

Even if DC Health's rules with regard to acceptable evidence did not apply in the Superior Court, Parker's claim would fail anyway. Factual findings must be rationally grounded in sufficient, probative evidence. *See Mingle v. Oak St. Apt. Ltd.*, 249 A.3d 413, 415-16 (D.C. 2021) ("The evidence upon which the trial court relies must not be so slight or insufficient as to fail to rationally support a finding

upon the appropriate standard of proof."). Testimony that is unreliable, illogical, internally inconsistent, or at odds with common experience does not suffice. *See In re Bradley*, 70 A.3d 1189, 1193-95 (D.C. 2013); *D.C. Gen. Hosp. v. D.C. Off. of Emp. Appeals*, 548 A.2d 70, 77 (D.C. 1988). Findings about birthplace are no different and cannot be based solely on self-interested assertions and inconclusive documentation. *See Evans v. Bureau of Vital Stat.*, 179 N.Y.S.3d 604, 604-05 (N.Y. App. Div. 2023) (reversing delayed registration of birth where petitioner offered only his own testimony and baptismal certificate); *Hammod v. N.Y. City Dep't of Health*, 694 N.Y.S.2d 394, 394-95 (N.Y. App. Div. 1999) (indicating that unsupported assertions are not "convincing proof" of birthplace).

The evidence here cannot rationally support a finding that Parker was born in the District. As the trial court noted, Parker's story rests, at bottom, on vague "hearsay" about his "family history" and a mysterious "original birth certificate" that no one—including Parker—has seen since the early 1970s. 07/19/22 Tr. 12-18, 26-27; *see* 03/20/23 Tr. 18-19, 24-25. Parker also testified that he held an Iranian birth certificate and an Iranian passport (03/20/23 Tr. 19, 24), and he admittedly made no effort to obtain a copy of his D.C. birth certificate until 2018, several decades after the State Department supposedly lost the original (07/19/22 Tr. 22-23). *See D.C. Gen. Hosp.*, 548 A.2d at 77 (rejecting testimony that was "highly questionable in the light of common experience"). Moreover, while the State

Department's "normal practice" is to notify DC Health when it loses a vital record (03/23/23 Tr. 14-15), the only notification DC Health had received about Parker was that he had applied for two different passports using "*two different places of birth*" (03/20/23 Tr. 42) (emphasis added). *See Bradley*, 70 A.3d at 1194 (rejecting unsupported, self-serving testimony that was contradicted by other witnesses).

Parker's documentation offers him even less support. Most of his documents are either silent about birthplace (e.g., his parents' drivers' licenses and the National Archives document), or too cursory and unreliable to carry any significant probative weight on their own (e.g., his parents' affidavits). *See Garcia v. Clinton*, 915 F. Supp. 2d 831, 835 (S.D. Tex. 2012) ("[T]estimony by interested witnesses, like Plaintiffs' parents, must be 'taken with a grain of salt.'" (quoting *De Vargas v. Brownwell*, 251 F.2d 869, 872 (5th Cir. 1958))), *aff'd sub nom. Garcia v. Kerry*, 557 F. App'x 304 (5th Cir. 2014). That is especially so given that Parker admittedly possessed an Iranian birth certificate at one time (03/20/23 Tr. 24), which would, in related contexts, give rise to a presumption that he was born in Iran, not the District. *See Corona-Palomera v. INS*, 661 F.2d 814, 818 (9th Cir. 1981) (holding that foreign birth records create presumption of "foreign birth" in removal proceedings); *Garcia*, 915 F. Supp. 2d at 834 (treating foreign birth certificates as "almost conclusive evidence of birth in that country" in cases under 8 U.S.C. § 1503(a) (cleaned up)).

Parker's passport further illustrates the flaws in his evidence. As noted, that passport was issued in April 2017 and lists "Washington, D.C." as Parker's "[p]lace of birth." JA 23. The trial court appeared to conclude that this was unimpeachable proof that Parker was born in the District because he purportedly could not have obtained that passport in 2017 without providing the State Department a valid D.C. birth certificate when he first applied for a U.S. passport in the early 1970s. 03/20/23 Tr. 34-36, 43; 03/23/23 Tr. 27.

The trial court was mistaken on all fronts. The State Department has never required a birth certificate to verify an applicant's birthplace or otherwise obtain a passport—either today or in the early 1970s. *See, e.g.*, 22 C.F.R. § 51.43(a)(2), (b) (1970). To the contrary, the State Department has long accepted affidavits, baptismal records, and similar documentation as evidence of identity and citizenship. *See id.* (allowing applicants to "submit the best obtainable secondary evidence"); *Liacakos v. Kennedy*, 195 F. Supp. 630, 633 (D.D.C. 1961) (noting the "Passport Bureau" accepted "affidavits in lieu of birth certificates").[1] Parker's passport thus does not show, or even suggest, that he once possessed a valid D.C. birth certificate.

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[1] *Compare* 22 C.F.R. § 51.43(a)(2), (b) (1971) (accepting "a baptismal or other church record" or "the best obtainable secondary evidence"), *and* 22 C.F.R. § 51.43(a)(2), (b) (1972) (same), *with* 22 C.F.R. § 51.42(b) (2023) ("If the applicant cannot submit a birth certificate that meets the requirement of paragraph (a) of this section, he or she must submit secondary evidence sufficient to establish to the satisfaction of the Department that he or she was born in the United States.").

Besides, Parker's passport does not prove he was born in the District for a more fundamental reason. A passport is a legal document that allows international travel; it does not embody a conclusive factual determination of birthplace that DC Health or the Superior Court must accept as definitive. *See* 22 C.F.R. § 51.22(e)(1) (outlining the minimal steps required to certify an applicant's identity). Far from it. A passport is not even "conclusive proof of *citizenship*" in all cases given that federal law "does not go so far as to empower the State Department to determine citizenship through the issuance of a passport." *United States v. Moreno*, 727 F.3d 255, 261 (3d Cir. 2013) (emphasis added) (holding that a passport proves "citizenship only if its holder was actually a citizen of the United States when it was issued" (citing 22 U.S.C. § 2705)). It stands to reason that a passport is not conclusive proof of *birthplace* either, especially when, as here, the petitioner admittedly possessed a foreign birth certificate. *See United States v. Valdez-Araiza*, 780 F. App'x 444, 446 (9th Cir. 2019) (noting that Arizona denied "a delayed birth certificate" even though the applicant's "U.S. passport" listed her "place of birth" as "Nogales, Arizona").

As a practical matter, moreover, the State Department cannot be expected to make a reliable determination of every passport applicant's birthplace. Parker's passport, for example, was one of about *21 million* passports and passport cards that the State Department issued in 2017 from an untold number of applications. *See Reports and Statistics*, U.S. Dep't of State, https://tinyurl.com/d7477xks. Compare

that with DC Health, which handles only about two to five applications for delayed registration of birth each year. 03/20/23 Tr. 28-29. Given the sheer volume of the State Department's workload, it would be unrealistic to treat passports as ironclad evidence that their holder was in fact born in the identified location.

In sum, Parker's passport does not prove that he once possessed a D.C. birth certificate, let alone that he was actually born in the District. Parker could have relied on affidavits in the early 1970s to obtain his first U.S. passport and thereafter used each successive passport to obtain the next. *See* 22 C.F.R. § 51.23(b) (allowing applicants to establish their "identity by the submission of a previous passport"). All that is clear from the record is that Parker admittedly possessed an Iranian birth certificate, an Iranian passport, and a different U.S. passport *listing his birthplace as Iran*. 03/20/23 Tr. 19, 24. Even addressed on its own terms, then, Parker's evidence is insufficient to warrant a delayed registration of birth, and this too constitutes an independent and adequate defense for the District.

d. Parker's application raised significant concerns about fraud and misrepresentation.

Finally, aside from being inadequate, Parker's evidence also raises serious concerns about fraud and misrepresentation, which is yet another independent reason to deny his petition. For decades, fraud has plagued delayed registrations of birth. *See, e.g.*, *Mathin v. Kerry*, 782 F.3d 804, 807 n.1 (7th Cir. 2015) (noting that a "delayed birth certificate" had been "flagged" as "fraudulent"); *De Vargas*, 251 F.2d

at 870 (same, "delayed birth certificate" was "fraudulently procured"). Such records are, in fact, customarily given less weight in the immigration context precisely "because 'the opportunity for fraud is much greater with a delayed birth certificate.'" *Zina v. Robinson*, No. 21-CV-2299, 2023 WL 171884, at *5 (D. Minn. Jan. 12, 2023) (quoting *In re Serna*, 16 I & N Dec. 643, 645 (B.I.A. 1978)).

The VRA was enacted in 2018 to address such problems. As Mayor Bowser explained, the VRA arose from an "increased level of awareness about national security and the importance of preventing fraud in the vital statistics system." Committee Report, Attach. B at 2. To achieve those goals, the VRA directs DC Health to "withhold" services if an application "may have been submitted for the purpose of fraud or misrepresentation," D.C. Code § 7-231.26(b), and in particular, to deny petitions for delayed registration of birth if it has "reasonable cause to question the validity" of an applicant's "documentary evidence," *id.* § 7-231.11(d)(1); *see id.* § 7-231.04(1), (9) (instructing agency "to deter the fraudulent use of vital records"). Fraud prevention is also one of the reasons why the VRA bars courts from ordering delayed registration of birth until and unless petitioners "undergo a criminal background check." *Id.* § 7-231.16(e).

These concerns further support denying Parker's petition. Parker admittedly came to the United States in 1970 with an Iranian passport. 03/20/23 Tr. 19, 24. Parker admittedly possessed an Iranian birth certificate. 03/20/23 Tr. 19. Parker

admittedly possessed another U.S. passport identifying his birthplace as Iran, not the District. 03/20/23 Tr. 19, 24. And Parker's naturalization papers admittedly list Iran as his country of former nationality. JA 26.

Yet the trial court ignored nearly all of this evidence in denying DC Health's Rule 60(b)(6) motion. The court's order said nothing about Parker's Iranian birth certificate, nothing about his Iranian passport, and nothing about his other U.S. passport listing Iran as his birthplace. JA 55-58. It also said nothing about the federal investigations into Parker, which the court allowed DC Health to address only "very quickly" at the March 2023 hearings. 03/23/23 Tr. 29-31.

Moreover, the court's few attempts to address DC Health's concerns were unpersuasive. For example, DC Health implored the court not to treat Parker's passport as dispositive proof that he was born in the District for several reasons, not the least of which was that, according to the State Department, "Parker filed for passports at two different times" using "two different places of birth." 03/20/23 Tr. 42. But the court dismissed this concern out of hand because "the State Department issued a passport anyway." 03/20/23 Tr. 43. That was error. The State Department's failure to detect potential fraud during its initial review process hardly suggests that no fraud occurred, much less that a court should ignore contrary evidence when presented with it. If anything, the fact that Parker's passport was

issued "anyway," despite his ever-changing birthplaces, proves that his passport is not conclusive (or even reliable) evidence that he was born in the District.

Equally flawed was the court's attempt to reconcile Parker's certificate of naturalization (listing Iran as his country of former nationality) with his current passport (listing the District as his birthplace). In the court's view, no inconsistency existed between those documents because nationality and birthplace are not always identical, so Parker may have been from Iran but not born there. 03/23/23 Tr. 40-43. But the mere possibility that Parker was born outside of Iran is not evidence that he *was* born in the District, and in any event, it cannot explain why Parker admittedly possessed an *Iranian birth certificate* and a different U.S. passport listing *Iran* as his *birthplace*, 03/20/23 Tr. 19, 24—facts that the trial court's order ignored.

Nor could Parker himself explain these discrepancies. Parker said he possessed an Iranian birth certificate and passport because his parents had to create an "identity" for him so that he could be "an Iranian citizen" under "Iranian law." 03/20/23 Tr. 19 ("[W]hile I was a child in Iran, the identity that my parents obtained for me indicated that I was born in Iran[.]"). But the fact that Parker's parents, by his own account, may have intentionally procured false citizenship documentation from the Iranian government is no reason to believe him or them now when they say he was born in the District. Rather, "their willingness to lie to one government suggests their willingness to do the same here." *Garcia*, 915 F. Supp. 2d at 835.

Parker offered a similarly dubious explanation for why he became a naturalized U.S. citizen despite allegedly having been born in the District. As Parker tells it, he did not acquire U.S. birthright citizenship because his father, Reza Parvaresh, was a "high level" Iranian diplomat at the time of Parker's birth in 1951. 03/20/23 Tr. 18. But Parker has provided nothing to verify that story, and contemporaneous public records cast serious doubt on it. The naturalization process would have been necessary only if Parker's father had been a foreign diplomatic officer listed on the State Department's Diplomatic List when Parker was born. *See* 8 C.F.R. § 101.3(a); *Matter of Huang*, 11 I. & N. Dec. 190, 190-91 (B.I.A. 1965). Yet the State Department's Diplomatic Lists from the early 1950s make no mention of a "Reza Parvaresh" serving as an Iranian diplomat, which undercuts the very foundation of Parker's claim of birth in the District. *See, e.g.*, U.S. Dep't of State, Diplomatic List 87-88 (Dec. 1950), https://tinyurl.com/4e74ey4s; U.S. Dep't of State, Diplomatic List 91-92 (June 1951) https://tinyurl.com/2s455f2u; U.S. Dep't of State, Diplomatic List 96-97 (Jan. 1952), https://tinyurl.com/ypyvth5m.[2]

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[2] This Court, and the Superior Court on remand, can take judicial notice of the State Department's Diplomatic Lists as public governmental records. *See Taylor v. England*, 213 A.2d 821, 823 (D.C. 1965) (taking judicial notice of agency's "public records"); *see also Tracy v. Cooley*, No. 09-CV-8645, 2010 WL 4318876, at *3 (C.D. Cal. June 15, 2010) (taking judicial notice of State Department Diplomatic List (citing *Am.-Arab Anti-Discrimination Comm. v. Reno*, 70 F.3d 1045, 1070 (9th Cir. 1995))), *R & R adopted*, 2010 WL 4316971 (C.D. Cal. Oct. 25, 2010).

All of this confirms that Parker's petition should be denied. Importantly, doing so would not necessarily permanently bar Parker from obtaining a delayed registration of birth. If the trial court finds the evidence inconclusive or discrepant (as it should), it could deny Parker's petition without prejudice, subject to the submission of additional documentation. But in its current form, Parker's petition simply raises far too many unexplained concerns about fraud and misrepresentation to be granted in light of the VRA's text, structure, and purposes.

* * *

The District's multiple defenses—combined with the other *Starling* factors—warrant Rule 60(b)(6) relief. The District has presented several independent grounds on which to conclude that Parker's petition for delayed registration of birth cannot be granted consistent with the VRA, and thus vacating the July 2022 order would not be an empty or futile gesture. *See Reshard*, 270 A.3d at 284 & n.15; *Nuyen*, 884 A.2d at 657. This is yet another independent basis for reversing the trial court's denial of DC Health's motion for post-judgment relief.

CONCLUSION

The Superior Court's decision should be reversed and the case remanded with instructions to vacate the July 2022 order.

Respectfully submitted,

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September 2023

REDACTION CERTIFICATE DISCLOSURE FORM

I certify that I have reviewed the guidelines outlined in Administrative Order No. M-274-21 and Super. Ct. Civ. R. 5.2, and removed the following information from my brief:

1. All information listed in Super. Ct. Civ. R. 5.2(a); including:
   - An individual's social-security number
   - Taxpayer-identification number
   - Driver's license or non-driver's' license identification card number
   - Birth date
   - The name of an individual known to be a minor
   - Financial account numbers, except that a party or nonparty making the filing may include the following:

     (1) the acronym "SS#" where the individual's social-security number would have been included;

     (2) the acronym "TID#" where the individual's taxpayer identification number would have been included;

     (3) the acronym "DL#" or "NDL#" where the individual's driver's license or non-driver's license identification card number would have been included;

     (4) the year of the individual's birth;

     (5) the minor's initials; and

     (6) the last four digits of the financial-account number.

2. Any information revealing the identity of an individual receiving mental-health services.

3. Any information revealing the identity of an individual receiving or under evaluation for substance-use-disorder services.

4. Information about protection orders, restraining orders, and injunctions that "would be likely to publicly reveal the identity or location of the protected party," 18 U.S.C. § 2265(d)(3) (prohibiting public disclosure on the internet of such information); see also 18 U.S.C. § 2266(5) (defining "protection order" to include, among other things, civil and criminal orders for the purpose

of preventing violent or threatening acts, harassment, sexual violence, contact, communication, or proximity) (both provisions attached).

5. Any names of victims of sexual offenses except the brief may use initials when referring to victims of sexual offenses.

6. Any other information required by law to be kept confidential or protected from public disclosure.

/s/ Bryan J. Leitch	22-CV-273
Signature	Case Number
Bryan J. Leitch	Sept. 13, 2023
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CERTIFICATE OF SERVICE

I certify that on September 13, 2023, this brief was served through this Court's electronic filing system to:

Michael F. Callahan

/s/ Bryan J. Leitch
BRYAN J. LEITCH