No. 24-___

IN THE

Supreme Court of the United States

DONTE PARRISH,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fourth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Ordinarily, litigants must file a notice of appeal within 30 or 60 days of an adverse judgment. 28 U.S.C. § 2107(a)–(b). Under 28 U.S.C. § 2107(c) and Fed. R. App. P. 4(a)(6), however, district courts can reopen an expired appeal period when a party did not receive timely notice of the judgment. The Courts of Appeals have divided about whether a notice of appeal filed after the expiration of the ordinary appeal period but before the appeal period is reopened becomes effective once reopening is granted.

The Question Presented is whether a litigant who files a notice of appeal after the ordinary appeal period expires must file a second, duplicative notice after the appeal period is reopened.

PARTIES TO THE PROCEEDING

Petitioner Donte Parrish was the plaintiff in the district court and the appellant in the court of appeals.

Respondent the United States of America was the defendant in the district court and the appellee in the court of appeals.

RULE 29.6 STATEMENT

No publicly held corporations are involved in this proceeding.

RELATED PROCEEDINGS

This case arises out of the following proceedings:

- *Parrish v. United States*, No. 20-1766, U.S. Court of Appeals for the Fourth Circuit (judgment entered on July 17, 2023).
- *Parrish v. United States*, No. 1:17-cv-00070, U.S. District Court for the Northern District of West Virginia (judgment entered on March 24, 2020).

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The Magistrate Judge's report and recommendation is unpublished but available at 2019 WL 9068337 and reproduced at Pet.App.23a–43a. The District Court's opinion adopting the report and recommendation in part and dismissing the case is unpublished but available at 2020 WL 1330350 and reproduced at Pet.App.44a–55a.

The Fourth Circuit's opinion construing the notice of appeal as a Rule 4(a)(6) motion to reopen the appeal period and remanding is unpublished but available at 827 F. App'x 327 and reproduced at Pet.App.56a–58a. The District Court's order reopening the appeal period is unreported and reproduced at Pet.App.59a–62a.

The Fourth Circuit's opinion dismissing the appeal for lack of jurisdiction is published at 74 F.4th 160 and reproduced at Pet.App.1a–22a. The Fourth Circuit's order denying panel rehearing is unpublished and reproduced at Pet.App.70a. The Fourth Circuit's order denying rehearing en banc is unpublished but available at 2024 WL 1736340 and reproduced at Pet.App.63a–69a.

JURISDICTION

The Fourth Circuit entered judgment on July 17, 2024. It denied a timely petition for rehearing en banc on April 23, 2024, and denied a timely petition for panel rehearing on April 25, 2024. On June 28, 2024, Chief Justice Roberts extended the time to file a petition for a writ of certiorari from July 24, 2024 to September 9, 2024. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTE AND RULE INVOLVED

28 U.S.C. § 2107 provides, in relevant part:

> (a) Except as otherwise provided in this section, no appeal shall bring any judgment, order or decree in an action, suit or proceeding of a civil nature before a court of appeals for review unless notice of appeal is filed, within thirty days after the entry of such judgment, order or decree.
>
> (b) In any such action, suit, or proceeding, the time as to all parties shall be 60 days from such entry if one of the parties is—
>
> (1) the United States;
>
> (2) a United States agency;
>
> (3) a United States officer or employee sued in an official capacity; or
>
> (4) a current or former United States officer or employee[.]
>
> (c) The district court may, upon motion filed not later than 30 days after the expiration of the time otherwise set for bringing appeal, extend the time for appeal upon a showing of excusable neglect or good cause. In addition, if the district court finds—
>
> (1) that a party entitled to notice of the entry of a judgment or order did not receive such notice from the clerk or any party within 21 days of its entry, and
>
> (2) that no party would be prejudiced,
>
> the district court may, upon motion filed within 180 days after the entry of the

> judgment or order or within 14 days after receipt of such notice, whichever is earlier, reopen the time for appeal for a period of 14 days from the date of entry of the order reopening the time for appeal.

Rule 4(a) of the Federal Rules of Appellate Procedure provides, in relevant part:

> **(1) Time for Filing a Notice of Appeal.**
>
> (A) In a civil case, except as provided in Rules 4(a)(1)(B), 4(a)(4), and 4(c), the notice of appeal required by Rule 3 must be filed with the district clerk within 30 days after entry of the judgment or order appealed from.
>
> (B) The notice of appeal may be filed by any party within 60 days after entry of the judgment or order appealed from if one of the parties is:
>
> (i) the United States;
>
> (ii) a United States agency;
>
> (iii) a United States officer or employee sued in an official capacity; or
>
> (iv) a current or former United States officer or employee sued in an individual capacity for an act or omission occurring in connection with duties performed on the United States' behalf . . . .
>
> [. . .]
>
> **(2) Filing Before Entry of Judgment.** A notice of appeal filed after the court announces a decision or order—but before the entry of the judgment or

order—is treated as filed on the date of and after the entry.

(3) Multiple Appeals. If one party timely files a notice of appeal, any other party may file a notice of appeal within 14 days after the date when the first notice was filed, or within the time otherwise prescribed by this Rule 4(a), whichever period ends later.

(4) Effect of a Motion on a Notice of Appeal.

(A) If a party files in the district court any of the following motions under the Federal Rules of Civil Procedure—and does so within the time allowed by those rules—the time to file an appeal runs for all parties from the entry of the order disposing of the last such remaining motion:

(i) for judgment under Rule 50(b);

(ii) to amend or make additional factual findings under Rule 52(b), whether or not granting the motion would alter the judgment;

(iii) for attorney's fees under Rule 54 if the district court extends the time to appeal under Rule 58;

(iv) to alter or amend the judgment under Rule 59;

(v) for a new trial under Rule 59; or

(vi) for relief under Rule 60 if the motion is filed within the time allowed for filing a motion under Rule 59.

(B)

(i) If a party files a notice of appeal after the court announces or enters a judgment—but before it disposes of any motion listed in Rule 4(a)(4)(A)—the notice becomes effective to appeal a judgment or order, in whole or in part, when the order disposing of the last such remaining motion is entered.

[. . .]

(5) Motion for Extension of Time.

(A) The district court may extend the time to file a notice of appeal if:

(i) a party so moves no later than 30 days after the time prescribed by this Rule 4(a) expires; and

(ii) regardless of whether its motion is filed before or during the 30 days after the time prescribed by this Rule 4(a) expires, that party shows excusable neglect or good cause.

(B) A motion filed before the expiration of the time prescribed in Rule 4(a)(1) or (3) may be ex parte unless the court requires otherwise. If the motion is filed after the expiration of the prescribed time, notice must be given to the other parties in accordance with local rules.

(C) No extension under this Rule 4(a)(5) may exceed 30 days after the prescribed time or 14 days after the date when the order granting the motion is entered, whichever is later.

(6) Reopening the Time to File an Appeal.

The district court may reopen the time to file an appeal for a period of 14 days after the date when its order to reopen is entered, but only if all the following conditions are satisfied:

(A) the court finds that the moving party did not receive notice under Federal Rule of Civil Procedure 77(d) of the entry of the judgment or order sought to be appealed within 21 days after entry;

(B) the motion is filed within 180 days after the judgment or order is entered or within 14 days after the moving party received notice under Federal Rule of Civil Procedure 77(d) of the entry, whichever is earlier; and

(C) the court finds that no party would be prejudiced.

INTRODUCTION

Appellate courts lack jurisdiction and must dismiss an appeal when a notice of appeal is filed too late. *See Bowles v. Russell*, 551 U.S. 205, 214 (2007). But notices of appeal filed too early, before the appeal clock has started, are different. "[U]nlike a tardy notice of appeal, certain premature notices do not prejudice the appellee," so "the technical defect of prematurity" does not "extinguish" the appeal. *FirsTier Mortg. Co. v. Investors Mortg. Ins. Co.*, 498 U.S. 269, 273 (1991). That principle is reflected in the Federal Rules of Appellate Procedure, which expressly provide that certain premature notices of appeal become effective when the appeal period begins to run. *See* Fed. R. App. P. 4(a)(2), 4(a)(5)(B)(i). And the Courts of Appeals have long recognized that other premature notices of appeal ripen in this way, too.

The circuits are split, however, on the application of that principle to a notice of appeal filed *after* the initial appeal period expires but *before* the district court reopens the time to appeal under 28 U.S.C. § 2107(c) and Appellate Rule 4(a)(6). Five circuits apply the general rule and hold that such a notice of appeal becomes effective once the appeal period reopens. But the Fourth Circuit holds the opposite. It requires litigants to file a duplicative, second notice of appeal within 14 days of the reopening order in order to perfect an appeal. Courts on both sides of the issue openly acknowledge this division of authority. And the Fourth Circuit has refused to reconsider its outlier position en banc.

In this case, Petitioner Donte Parrish paid the price. Parrish is an inmate who was in the process of being

transferred from federal to state custody when the District Court dismissed his pro se lawsuit. As a result, Parrish did not receive notice of the judgment until months later. He promptly filed a notice of appeal that explained his delay; the Fourth Circuit construed that filing as a motion to reopen the time to appeal; and on remand, the District Court reopened the appeal period and returned the case to the Fourth Circuit. Parrish thus had every reason to believe his appeal would proceed. And in five other circuits, it would have. But because Parrish never filed a second notice of appeal after the District Court reopened the appeal period, the Fourth Circuit dismissed his appeal for lack of jurisdiction.

Parrish is far from the only litigant affected by this issue. At least five appellate courts have addressed this issue in the last five years alone. And that count dramatically understates the number of cases affected. This issue arises so frequently because nearly half of all federal appeals—including the vast majority of prisoner appeals—are filed pro se. Many of those litigants do not receive notice of adverse judgments in a timely fashion but file notices of appeal at the first possible opportunity. And when a district court later reopens the appeal period under Rule 4(a)(6), those litigants often do not realize that they might need to file a second, duplicative notice of appeal during the 14-day reopening period—assuming they even learn of the reopening order before the 14 days are up. For those litigants, the Question Presented spells the difference between an opportunity to appeal and the end of the road. And it disproportionately affects populations that struggle the most to vindicate their interests in court.

The Fourth Circuit's rule is also wrong. As this Court has squarely held—and other provisions of Rule 4 expressly recognize—premature notices of appeal generally ripen when the time to appeal starts to run. *See FirsTier*, 498 U.S. at 273; Fed. R. App. P. 4(a)(2), 4(a)(5)(B)(i). And there is no basis in law or logic for treating notices of appeal filed before the time to appeal is reopened under Rule 4(a)(6) any differently. The Fourth Circuit's contrary decision hinges on an untenable distinction between "extend" and "reopen" that cannot be reconciled with this Court's recent ruling in *HollyFrontier Cheyenne Refining, LLC v. Renewable Fuels Ass'n*, 594 U.S. 382 (2021).

Finally, this case is an excellent vehicle for answering the Question Presented and restoring uniformity among the Courts of Appeals on this important jurisdictional question. The Court should grant certiorari, reverse the decision below, and hold that a previously filed notice of appeal ripens when a district court grants a motion to reopen the appeal period.

STATEMENT OF THE CASE

A. Legal Framework

28 U.S.C. § 2107 sets the deadlines for civil appeals in federal court. Ordinarily, a notice of appeal must be filed within 30 days of the order or judgment a litigant wishes to appeal. 28 U.S.C. § 2107(a). When the United States is a party, that appeal period is 60 days. *Id.* § 2107(b). Either way, the notice of appeal deadline is jurisdictional. *See Bowles*, 551 U.S. at 214.

Section 2107(c) articulates two circumstances in which notices of appeal can be filed beyond the default deadlines set forth in § 2107(a) and § 2107(b). *First*, a

district court may *extend* the appeal period if a party moves for an extension "not later than 30 days after the expiration of the time otherwise set for bringing appeal" and shows "excusable neglect or good cause" for missing the deadline. 28 U.S.C. § 2107(c). Appellate Rule 4(a)(5), which governs "Motion[s] for Extension of Time," implements that provision in substantively identical terms. *See* Fed. R. App. P. 4(a)(5)(A).

Second, a district court may *reopen* the appeal period if (1) a party did not receive notice of the judgment within 21 days after it was entered, (2) the party moves for reopening within the earlier of "180 days after entry of the judgment . . . or within 14 days after" receiving notice, and (3) no party would be prejudiced. 28 U.S.C. § 2107(c). Appellate Rule 4(a)(6), which governs "Reopening the Time to File an Appeal," implements that provision in substantively identical terms. *See* Fed. R. App. P. 4(a)(6).

B. Factual Background

Donte Parrish is a federal prisoner who alleges that he spent years wrongfully detained in administrative segregation based on a jailhouse murder he did not commit. Ct.App. Dkt. No. 25 ("JA") at 84. The murder occurred in December 2009, when an inmate in the prison where Parrish was then detained was killed during a prison riot. *Id.* The Bureau of Prisons charged Parrish with killing and being present in an unauthorized area, and held him in administrative segregation while the FBI spent nearly six years purportedly investigating the incident. JA31, 63, 84.

During his time in administrative segregation—20 months of which was spent in a Special Management Unit that has been described as "the worst place in the federal prison system"[1]—Parrish alleges that he was forced to spend most of his time isolated in a small cell, was denied access to his property, lost law library privileges, was denied family visits, had difficulty contacting his lawyer, and was denied access to showers. *See* JA43–45, 96. He was sometimes restrained and forced to sleep in shackles, and at one point "was forced to stay in a cell with [a] feces stained wall and floor for at least a week." JA45, 74. Parrish alleges that all of this was because of his supposed responsibility for the murder, but that he was held for years without a hearing to contest the charges. *See* JA31–32, 39–40, 44, 54–55.

Parrish was ultimately vindicated. JA63. After nearly eight years, the Bureau of Prisons found that he had committed "[n]o prohibited act" and expunged his disciplinary record. JA63, 77. But by then, Parrish had already spent years in harsh, punitive segregation.

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[1] Justin Peters, How America's Model Prison Became the Most Horrific Facility in the Federal System, SLATE (Nov. 20, 2013), https://slate.com/news-and-politics/2013/11/usp-lewisburg-special-management-unit-how-americas-modelprison-became-the-most-horrific-facility-in-the-federal-system.html (reporting that inmates in the Unit spend "23 hours per day" confined in cells "so small" that two occupants "cannot walk around at the same time").

C. Procedural History

1. On April 7, 2017, Parrish drafted and signed a federal complaint seeking compensation for the years he wrongfully spent in administrative segregation and delivered that complaint for mailing. JA16–25, 132–34. The District Court received his complaint and deemed it filed on May 3, 2017. JA25.

After multiple rounds of briefing, the District Court dismissed Parrish's case in an opinion and order dated March 23, 2020 and a judgment dated March 24, 2020. Pet.App.55a, 57a, 59a. Both documents were mailed to the federal prison in Illinois where Parrish had previously been incarcerated. *Id.* at 60a–61a. But unbeknownst to the court, Parrish was in the process of being transferred from federal to state custody. *Id.*; D.Ct. Dkt. No. 133 (Notice of Change of Address) (Apr. 14, 2020). As a result, Parrish did not receive notice of the judgment against him until June 25, 2020 "at the earliest," Pet.App.61a—more than 90 days after its entry and long after the time to file a notice of appeal had expired, 28 U.S.C. § 2107(b).

2. Parrish acted promptly to try to salvage his opportunity to appeal. Within 14 days of receiving notice of the judgment, he filed a document entitled "Notice of Appeal." Pet.App.71a; *see* D.Ct. Dkt. No. 131-1 (notice of appeal envelope). In that document, Parrish explained the reason for his delay: "Due to my being transferred from Federal to State custody I did not receive this order until June 25, 2020. It is now 7/8/20 and I'm filing this notice of appeal." Pet.App.71a. The Fourth Circuit construed that filing as a motion to reopen the appeal period under Rule

4(a)(6) and remanded for the District Court to rule on the motion. *Id.* at 56a–58a.

The District Court found that Parrish had received notice of the judgment more than 21 days after its entry, that he had moved for reopening within 14 days of receiving notice, and that no party would be prejudiced by reopening the appeal period. *Id.* at 61a (citing Fed. R. App. P. 4(a)(6)). It therefore reopened the appeal period for 14 days. *Id.* at 61a–62a. It further directed the clerk to "supplement th[e] Court's record accordingly, and transmit the same to the United States Court of Appeals for the Fourth Circuit." *Id.* at 62a.

3. The case then returned to the Fourth Circuit. There, both Parrish and the Government agreed that Parrish's original notice of appeal had become effective in light of the reopened appeal period. *See* Ct.App. Dkt. No. 27 (Opening Br.) at 1; Ct.App. Dkt. No. 39 (U.S. Br.) at 1.

The Fourth Circuit disagreed. A divided panel dismissed Parrish's appeal for lack of jurisdiction, holding that he had "not file[d] a timely notice of appeal." Pet.App.2a. In so doing, the panel majority recognized that the District Court had properly reopened the appeal period under 28 U.S.C. § 2107(c) and Rule 4(a)(6). *Id.* at 4a–5a. It reasoned, however, that Parrish was required to file a *new* notice of appeal within the reopened appeal period—*i.e.*, 14 days from the District Court's order. *Id.* at 12a–13a. And it rejected Parrish's argument "that when the district court reopened the time to appeal . . . , it 'validated' his prior untimely notice of appeal." *Id.* at 5a–6a. Although the panel majority agreed that earlier-filed

notices of appeal can ripen when a district court grants a Rule 4(a)(5) extension motion, the panel rejected that principle for Rule 4(a)(6) reopening motions. According to the panel, "reopening" is different from "extending." *Id.* at 6a, 9a–12a. Moreover, "Parrish's earlier filing ha[d] already been construed" as a motion to reopen and, in the majority's view, could not also serve as a notice of appeal. *Id.* at 3a–4a.

Judge Gregory dissented. *Id.* at 14a–22a. He would have held that Parrish's initial, pre-reopening notice of appeal sufficed to confer jurisdiction over Parrish's appeal. *Id.* at 14a, 16a–17a. Judge Gregory pointed out that the Courts of Appeals consistently hold "that a Rule 4(a)(5) extension retroactively validates an earlier, untimely notice of appeal." *Id.* at 16a. And in Judge Gregory's view, the majority's "attempted distinction" between reopening and extending an appeal period "quickly crumbles under scrutiny." *Id.* at 20a. He also rejected the majority's suggestion that "Parrish's July 2020 filing cannot simultaneously serve as both a notice of appeal and a motion to reopen." *Id.* at 21a.

4. Parrish moved for rehearing and rehearing en banc. Ct.App. Dkt. No. 55 (pro se petition); Ct.App. Dkt. No. 72 (supplemental petition by appointed counsel). In response, the Government agreed with Parrish that the panel had erred in holding that it lacked jurisdiction. Ct.App. Dkt. No. 84, at 2, 12. As a result, the Government took "no position with respect to Parrish's request for panel rehearing." *Id.* at 2. But it opposed rehearing en banc on the ground that, in its view, this issue was not "sufficiently important to warrant the intervention of the en banc court." *Id.*

The panel denied rehearing over Judge Gregory's dissenting vote. Pet.App.70a. And the Fourth Circuit denied rehearing en banc by a 9-6 vote. *Id.* at 63a–64a. Judge Niemeyer wrote a statement in support of the en banc denial. *Id.* at 65a–67a. Judge Gregory, joined by three other judges, wrote a dissent. *Id.* at 67a–69a.

"At its core," the dissenters explained, "this case requires us to determine whether access to [appellate courts] should be foreclosed for failure to refile a notice of appeal during the newly reopened period following success under Rule 4(a)(6)." *Id.* at 67a. That issue, the dissenters recognized, has "split" "circuit courts and judges." *Id.* at 68a. And it is a question of "exceptional importance," including because it disproportionately harms "populations who may not be able to consistently access information electronically" and has a "grav[e] . . . impact on those it affects." *Id.* at 68a–69a.

REASONS FOR GRANTING THE WRIT

The Courts of Appeals are divided on the recurring question whether a notice of appeal filed before an appeal period is reopened becomes sufficient once a district court reopens the appeal period, or whether a new and duplicative notice of appeal is required after reopening. This issue is profoundly important to the pro se litigants it most frequently affects. The decision below is wrong. And this case is an excellent vehicle. Certiorari should be granted.

I. THE COURTS OF APPEALS ARE DIVIDED.

In the decision below, the Fourth Circuit held that a litigant must file a new notice of appeal after a district court reopens the time to appeal under Rule

4(a)(6). Five Courts of Appeals disagree and hold that a previously filed notice of appeal ripens once a Rule 4(a)(6) motion is granted. That split is entrenched: The Fourth Circuit has declined to reconsider its position en banc, and three other circuits have acknowledged the split and adhered to their positions since the panel's decision below.

A. The Fourth Circuit Requires a New, Post-Reopening Notice of Appeal.

In the decision below, the Fourth Circuit dismissed Parrish's appeal for lack of jurisdiction because he did not file a new notice of appeal after the District Court reopened the appeal period. Pet.App.1a; *see supra*, at 13–14. In so doing, the court held that an order granting a motion to reopen under 28 U.S.C. § 2107(c) and Rule 4(a)(6) does not "validate [an] earlier filed untimely notice of appeal." Pet.App.10a; *see id.* at 5a–6a. It further reasoned that a single filing cannot simultaneously serve as a motion to reopen and a notice of appeal. *See id.* at 3a–4a. Accordingly, litigants in the Fourth Circuit who file a notice of appeal before a motion to reopen is granted must file a second, duplicative notice within 14 days of the district court's reopening order to pursue an appeal. *Id.* at 12a–13a.

Although the decision below recognized that a prior Fourth Circuit panel had accepted jurisdiction based on a pre-reopening notice of appeal, the court definitively rejected that position. *Id.* at 12a (discussing *Grant v. City of Roanoke*, 810 F. App'x 236 (4th Cir. 2020) (per curiam)). "This unpublished decision," the court reasoned, "does not, in its one short paragraph, conduct any analysis of the Rule 4(a)(6)

issue" and "hardly constitutes binding, persuasive authority." *Id.* Indeed, the prior decision itself disclaimed any precedential value. *Grant*, 810 F. App'x at 236 ("Unpublished opinions are not binding precedent in this circuit.").

The decision below thus reflects the Fourth Circuit's definitive answer to the Question Presented. And the Fourth Circuit declined to reconsider its position en banc—despite the parties' agreement that the panel had erred, despite a dissent from the denial of rehearing en banc, and despite its recognition of the circuit split. *See supra*, at 14–15. The Fourth Circuit's position is thus deeply entrenched.

B. The Third, Sixth, Seventh, Ninth, and Tenth Circuits Do Not Require a New, Post-Reopening Notice of Appeal.

The Third, Sixth, Seventh, Ninth, and Tenth Circuits disagree with the Fourth Circuit and hold that a previously filed notice of appeal ripens when a district court grants reopening under Rule 4(a)(6). In those jurisdictions, Parrish's appeal would have been heard on the merits.

1. In *Winters v. Taskila*, 88 F.4th 665, 671 (6th Cir. 2023), the Sixth Circuit held that an appellant who files a notice of appeal prior to a reopening order does not need to file a second, post-reopening notice of appeal. The facts of that case are substantively indistinguishable from the facts of this one. Like Parrish, Winters was a pro se inmate who did not receive notice of the district court's judgment because he had been moved from one correctional facility to another. *Id.* at 667. Like Parrish, Winters promptly filed a notice of appeal that was treated as a motion to

reopen. *See id.* at 668. And like Parrish, Winters did not file a new notice of appeal within 14 days after the order reopening the appeal period. *See id.*

But unlike the Fourth Circuit, the Sixth Circuit held that "Winters did not need to file a new notice of appeal after the district court granted the motion to reopen." *Id* at 671. In so holding, the Sixth Circuit recognized that "the courts of appeal are not all in tune on these issues." *Id.* at 672 (citing, *inter alia*, the decision below). And it rejected the Fourth Circuit's analysis at every turn. A premature notice, the court reasoned, "ripens when the window to appeal begins"—no matter whether the event triggering the appeal period is the entry of final judgment, Rule 54(b) certification, or Rule 4(a)(6) reopening. *Id.* at 671 (citing Fed. R. App. P. 4(a)(2) (final judgment), and *Good v. Ohio Edison Co.*, 104 F.3d 93, 95 (6th Cir. 1997) (Rule 54(b) certification)). And "a single pleading may serve more than one function—for example, . . . a notice of appeal may serve as a motion for an extension of time." *Id.* at 669–70 (citing *Smith v. Barry*, 502 U.S. 244, 249 (1992)).

2. The Ninth Circuit reached the same result in *United States v. Withers*, 638 F.3d 1055, 1061–62 (9th Cir. 2011). Like Parrish and Winters, Withers—another pro se inmate—filed an untimely notice of appeal. *See id.* And like Parrish and Winters, Withers explained in his notice that he received the judgment only after the initial appeal period had expired. *See id.* The Ninth Circuit held that the district court should have construed Withers' notice of appeal as a motion to reopen and should have granted it. *Id.* It further held that the pre-reopening notice of appeal was sufficient to confer appellate jurisdiction. *See id.*

3. The Third, Seventh, and Tenth Circuits have endorsed the same rule, albeit in unpublished decisions.

a. In *Holden v. Att'y Gen. of N.J.*, 2023 WL 8798084 (3d Cir. Dec. 20, 2023), the Third Circuit considered an appeal in the same mold as Parrish's, Winters', and Withers': A pro se inmate received notice of a judgment after the time to appeal expired, immediately filed a document captioned "notice of appeal," was granted reopening under Rule 4(a)(6), and did not file a new notice of appeal during the 14-day reopening period. *See id.* at *1, n.4. The Third Circuit recognized that the "appeal [was] timely, and [that] [it] ha[d] jurisdiction," notwithstanding the absence of a post-reopening notice of appeal. *Id.*

b. The Seventh Circuit has addressed this issue both before and after the decision below. First, in *Norwood v. East Allen County Schools*, 825 F. App'x 383 (7th Cir. 2020), the appellant—a school teacher acting pro se—filed a notice titled "Belated Appeal" that explained he had not received timely notice of the district court's judgment. *Id.* at 386. The district court construed the notice as a motion to reopen and granted it, finding no evidence that the teacher had been served with the judgment. *See Norwood v. E. Allen Cnty. Schs.*, No. 15-cv-249, Dkt. No. 196, at 3 (N.D. Ind. Feb. 26, 2019). The teacher did not file a new notice of appeal during the 14-day reopening period. 825 F. App'x at 386. But the Seventh Circuit held that the teacher's initial notice had become effective when the appeal period was reopened. *Id.* "That [he] filed it before the judge reopened the window to appeal" did not "affect its timeliness," the court reasoned, because "a prematurely filed notice of appeal becomes effective

after the district court enters the order that opens the time to appeal." *Id.* at 387.

In *Hammer v. Bortz*, 2024 WL 2559204 (7th Cir. May 24, 2024), the Seventh Circuit acknowledged the circuit split created by the decision below but adhered to its position. *See id.* at *3. The appellant—a pro se inmate—learned of the judgment against him only after inquiring about the status of his case. *Id.* at *2. And he filed a notice of appeal accompanied by a declaration explaining that he had only just received untimely notice of the adverse judgment. *See id.* The Seventh Circuit construed that filing as a Rule 4(a)(6) motion, and the district court granted it. *Id.* Although "Hammer did not file a new notice of appeal" during the 14-day reopening period, the Seventh Circuit held that his initial notice "became effective" "when the judge accepted [his] explanation and granted the motion to reopen." *Id.* at *3.

In so holding, the Seventh Circuit observed that "[o]ther circuits that have addressed this question have reached divergent conclusions on whether the failure to file a new notice of appeal after the time is reopened deprives the appellate court of jurisdiction." *Id.* (citing the decision below and *Winters*, 88 F.4th at 671). Recognizing that its prior "practice ha[d] aligned with the Sixth Circuit's"—not the Fourth's—the court again held that "a second notice of appeal within the reopened window for appeal" is not required. *Id.*

c. The Tenth Circuit reached the same result in both *United States v. Marshall*, 1998 WL 864012, at *2 (10th Cir. Dec. 14, 1998), and *Farrow v. Tulupia*, 2022 WL 274489, at *1 n.1 (10th Cir. Jan. 31, 2022). In *Marshall*, a pro se inmate filed a late notice of appeal

after notice of a judgment against him was mailed to the wrong prison. *See* 1998 WL 864012, at *2. The district court then granted his motion to reopen the appeal period. *See id.* Relying on circuit precedent addressing Rule 4(a)(5) motions, the Tenth Circuit held that "a district court's grant of a Fed. R. App. P. 4(a)(6) motion validates a notice of appeal filed prior to the entry of such an order." *Id.* (footnote omitted)). In the Rule 4(a)(6) context, just as in the Rule 4(a)(5) context, "to require the filing of a new notice of appeal would amount to little more than empty paper shuffling." *Id.* (quoting *Hinton v. City of Elwood*, 997 F.2d 774, 778 (10th Cir. 1993)).

Similarly, in *Farrow*, the appellant—yet another pro se inmate—filed a notice of appeal at the same time as a Rule 4(a)(6) motion to reopen, asking the court "to process the notice once it had addressed his motion." 2022 WL 274489, at *1 n.1. He never filed a second notice after the motion to reopen was granted. But the Tenth Circuit held that the previously filed notice of appeal "became effective, conferring [appellate] jurisdiction" when the appeal period was reopened. *Id.*

* * *

The circuits are thus openly divided about whether they have jurisdiction to hear appeals like Parrish's. Had Parrish been incarcerated in the Third, Sixth, Seventh, Ninth, or Tenth Circuits, his appeal would have been decided on its merits. But because he was incarcerated in the Fourth Circuit, his appeal was dismissed for lack of jurisdiction. Courts on both sides of the split have acknowledged the division of authority, and the Fourth Circuit has refused to

reconsider its outlier position. Only this Court can restore uniformity.

II. THE QUESTION PRESENTED IS IMPORTANT.

The division of authority on the Question Presented warrants this Court's review. This issue recurs even more frequently than the decisions above suggest. And when it does arise, it is outcome-determinative of a litigant's right to appeal.

1.a. Courts encounter cases like Parrish's all the time. In just one week in December 2023, for example, the Third Circuit and the Sixth Circuit both issued decisions holding that a duplicative notice of appeal is *not* required. *See Winters*, 88 F.4th 665 (6th Cir. Dec. 15, 2023); *Holden*, 2023 WL 8798084 (3d Cir. Dec. 20, 2023). The Fourth Circuit was considering Parrish's en banc petition during the same time. And in June 2024, the Fourth Circuit dismissed at least three appeals in the same posture as Parrish's. *See Sparks v. Russell*, 2024 WL 2862119 (4th Cir. June 6, 2024); *Hammond v. Burns*, 2024 WL 3102794 (4th Cir. June 24, 2024) (consolidating and dismissing two appeals).

Those cases, moreover, are just the tip of the iceberg. Although the Question Presented is jurisdictional, its answer is often undisputed by the parties. *See, e.g.*, Ct.App. Dkt. No. 39 (U.S. Br.) at 1 (agreeing that no second notice was required). As a result, courts frequently proceed to the merits without discussing the potential problem. *See, e.g.*, *Dec v. Pennsylvania*, 2024 WL 3338301 (3d Cir. July 9, 2024); *McKenzie v. Wolfe*, 2024 WL 399104 (4th Cir. Feb. 2, 2024). That means that the outcome of substantively identical appeals can turn not only on the circuit in which each appeal is filed but also on the

happenstance of whether each panel happens to notice the potential jurisdictional flaw. It also means that the Question Presented almost certainly arises in many more cases than the opinions addressing it reflect.

b. That should come as no surprise. Last year, pro se litigants filed nearly half of all notices of appeal. *See 2023 Year-End Report on the Federal Judiciary* 9 (Dec. 31, 2023), *available at* https://www.supremecourt.gov/publicinfo/year-end/2023year-endreport.pdf. And close to 90% of prisoner appeals were filed pro se. *Id.*

Pro se litigants are exponentially more likely to receive untimely notice of a judgment than counseled parties. Whereas attorneys receive immediate notice through electronic case-filing systems, pro se litigants receive notice by snail mail. *See* Fed. R. Civ. P. 77(d)(1) (requiring clerk to notify parties of orders and judgments as provided by Rule 5(b), which provides for service by mail upon pro se litigants). Unlike electronic notifications, mail often gets delayed in transit. *See* U.S. Postal Serv., Analysis of FY 2023 Performance 31 (2024), *available at* https://www.prc.gov/sites/default/files/reports/2803_2804%20Report_Final.pdf ("In FY 2023, the Postal Service failed to meet six out of its eight targets for" first-class mail products, including late delivery of nearly 20 percent of mail meant to be delivered within three to five days); U.S. Postal Serv. Office of Inspector General, Spring 2024 Semiannual Report to Congress 17 (2024), *available at* https://www.uspsoig.gov/sites/default/files/reports/2024-05/FY2024_Spring_SARC.pdf (reporting problems with timely mail delivery in 95% of audited locations). And unlike

email addresses, physical addresses do not follow people around when they move—which can cause delivery failures and forwarding delays. *See, e.g.*, *Acosta v. Tex. Dep't of Criminal Justice*, 2021 WL 5395997, at *3 (N.D. Tex. 2021) (discussing documentation of USPS mail forwarding delays of up to 10 days); *Gallegos-Lopez v. Kansas City*, 2009 WL 2912637, at *2 (D. Kan. Sept. 9, 2009) (USPS failed to timely forward EEOC's right-to-sue letter to new address); Pet.App.67a (Gregory, J., dissenting) ("Rule 4(a)(6) is usually invoked under circumstances where a party relocates, is relocated, or is otherwise unable to receive mail at the address listed with the court.").

Pro se prisoners face even more serious obstacles to obtaining timely notice—and have less power to mitigate them. *See Houston v. Lack*, 487 U.S. 266, 270–72 (1988) (pointing out pro se prisoners' lack of control over outgoing mail); Fed. R. Crim. P. 49, Adv. Comm. Notes (2018 Amendment) (recognizing that "incarcerated individuals . . . often lack reliable access to the internet or email"). Prison mail systems are notoriously slow. *See* Advisory Comm. on Appellate Rules, Agenda for Fall 2016 Meeting 163 (2016), https://www.uscourts.gov/sites/default/files/2016-10-appellate-agenda-book_0.pdf (reporter's memorandum identifying recurring legal questions arising from "delay by prison authorities in delivering" court orders to prisoners); Dallas Morning News, *Mail Delays Frustrate Prisoners* (Nov. 12, 2023) (documenting delays of three weeks to two months in Texas prisons' mail processing); *Penton v. Johnson*, 2023 WL 7121407, at *2–3 (9th Cir. Oct. 30, 2023) (denying qualified immunity to prison officials who failed to forward a transferred prisoner's mail "for over

seven months"). And prisoners are often moved between facilities without notice. *See* U.S. Marshals Servs. Office of Pub. Affairs, Fact Sheet: Prisoner Transportation, https://www.usmarshals.gov/sites/default/files/media/document/2024-Prisoner-Transportation.pdf (reporting nearly a quarter million prisoner movements by the Marshals Service in FY 2023, at an average pace of almost 1,000 prisoner movements each day); *Grandison v. Moore*, 786 F.2d 146, 149 (3d Cir. 1986) ("Prisoners . . . have no control over their whereabouts, and may be temporarily transferred out of the prison for court proceedings or placed in administrative or punitive segregation which can delay mail delivery."); *see, e.g.*, Pet.App.60a–61a; *Winters*, 88 F.4th at 671. Indeed, Mr. Parrish has been held in three different institutions just this calendar year.

With tens of thousands of pro se appeals filed each year, even a low rate of mail-delivery delay or failure produces a meaningful number of cases where a litigant must rely on Rule 4(a)(6) for the chance to appeal.

c. Pro se litigants who belatedly receive an adverse judgment often attempt to salvage an appeal in one of two ways. Many litigants file a notice of appeal that contains an explanation for their delay. *See, e.g.*, Pet.App.71a; *Winters*, 88 F.4th at 668; *Withers*, 638 F.3d at 1061. Courts must construe pro se filings generously, *see Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (per curiam), so such notices are construed as Rule 4(a)(6) motions. *See Withers*, 638 F.3d at 1062. Other litigants file a notice of appeal and a Rule 4(a)(6) motion simultaneously. *See, e.g.*, *Farrow*, 2022 WL 274489, at *1 n.1. The upshot in either case is the

same: Litigants who try to appeal and explain the circumstances as soon as they learn of the judgment against them may receive relief in the form of a reopened appeal period under Rule 4(a)(6).

But some pro se litigants will have no meaningful opportunity to file a second notice of appeal within the 14-day reopening window. Every litigant who benefits from Rule 4(a)(6), by definition, previously failed to receive notice of a judgment within 21 days. *See* 28 U.S.C. § 2107(c); Fed. R. App. P. 4(a)(6)(A). And if such a litigant does not receive notice of the reopening order before the 14-day window closes, he cannot possibly file a second notice of appeal on time.

Even when litigants do promptly learn that the appeal period has been reopened, it may not even occur to them that a second notice of appeal might be required. The Rules Advisory Committee has long recognized that "[m]any litigants, especially pro se litigants, fail to file [a] second notice of appeal." Adv. Comm. Notes (1993 Amendment). And who could blame them, given that courts often *affirmatively inform* litigants that they need not file a duplicative notice. *See, e.g.*, *Martinez v. Lamanna*, 2021 WL 1759924, at *5 (S.D.N.Y. May 4, 2021) ("Plaintiff need not file a new notice of appeal."); *Jacoby v. Thomas*, 2019 WL 3226896, at *3 (M.D. Ala. July 17, 2019) ("[Plaintiff] is not required to file a new notice of appeal."); *Brown v. United States*, 2010 WL 376922, at *1 (W.D.N.C. Jan. 25, 2010) (previously filed notice of appeal "shall be deemed timely filed" upon reopening of appeal period). Indeed, the Fourth Circuit initially suggested as much in this very case. *See* Pet.App.58a ("The record, as supplemented, will be returned to this court for further consideration.").

2. In addition to recurring frequently, the Question Presented also has a "grav[e] . . . impact on those it affects." Pet.App.69a (Gregory, J., dissenting). That is because a timely notice of appeal is a jurisdictional requirement. *See Bowles*, 551 U.S. at 214. This Court has already held that an appeal must be dismissed if a notice of appeal is filed after the 14-day reopening period has expired. *See id.* at 207–09. And neither 28 U.S.C. § 2107 nor the Federal Rules authorizes courts to extend or reopen the reopening window under any circumstances. *See id.* at 214 ("Court[s] ha[ve] no authority to create equitable exceptions[.]").

As a result, litigants who do not learn that the appeal period has been reopened (or that a second notice is required) until after the 14-day window has closed are left with no possibility of recourse. That is true no matter the strength of their appellate arguments or how inequitable that result might be.

The harsh consequences of the Fourth Circuit's rule are particularly troubling given the population this issue "most commonly" affects: "pro se litigants who were unable to notice their intent to seek [appellate] review during the statutory appeals period, often due to no fault of their own." Pet.App.67a (Gregory, J., dissenting). These litigants are disproportionately "elderly, unhoused, detained, imprisoned, . . . differently abled," or otherwise unable "to consistently access information electronically." *Id.* at 68a. The Fourth Circuit's rule thus "require[s] more of those who have less." *Id.* at 69a.

III. THE FOURTH CIRCUIT'S POSITION IS WRONG.

As the Government recognized below, *see* Ct.App. Dkt. No. 84, at 2, the Fourth Circuit's minority rule is also simply wrong. Like other premature notices of appeal, notices of appeal filed before the appeal period is reopened become effective once a motion to reopen is granted. The use of the word "reopen" in Section 2107(c) and Rule 4(a)(6) does not justify a different result. And there is no reason why a notice of appeal cannot serve two functions at once.

1.a. Unlike filing a notice of appeal too late, filing a notice of appeal too early does not "extinguish an otherwise proper appeal." *FirsTier*, 498 U.S. at 273. That principle—sometimes called the doctrine of "cumulative finality," *see generally* Bryan Lammon, *Cumulative Finality*, 52 GA. L. REV. 767 (2018)—follows from this Court's functional approach to notices of appeal. *See Becker v. Montgomery*, 532 U.S. 757, 767 (2001) (holding that a notice suffices so long as there is "no genuine doubt" about "who is appealing, from what judgment, to which appellate court"). Taking that same functional approach, the Courts of Appeals have long held that premature notices of appeal ripen once an appeal becomes procedurally proper. *See, e.g.*, *Hodge v. Hodge*, 507 F.2d 87, 89 (3d Cir. 1975) (notice filed after announcement of a decision but before the entry of judgment); *Firchau v. Diamond Nat'l Corp.*, 345 F.2d 269, 271 (9th Cir. 1965) (notice filed after dismissal of a complaint but before dismissal of the entire action); *Bryant v. Elliott*, 467 F.2d 1109,1109 (5th Cir. 1972) (per curiam) (notice filed after expiration of the appeal period but before extension was granted). And this Court expressly endorsed the ripening principle in *FirsTier*. *See* 498

U.S. at 274 ("conclud[ing] that Rule 4(a)(2) permits a notice of appeal filed from certain nonfinal decisions to serve as an effective notice from a subsequently entered final judgment").

The ripening principle is also reflected in the Federal Rules of Appellate Procedure. It appears in Rule 4(a)(2), which provides that "[a] notice of appeal filed after the court announces a decision or order—but before the entry of the judgment or order—is treated as filed on the date of and after the entry." It is reflected in Rule 4(a)(4)(B)(i), which provides that "a notice of appeal" filed "after the court announces or enters a judgment—but before it disposes of [certain] motion[s] listed in Rule 4(a)(4)(A)— . . . becomes effective . . . when the order disposing of the last such remaining motion is entered." And it appears in an analogous provision for criminal appeals, too. *See* Rule 4(b)(2). These provisions were added to the Federal Rules in 1979 in "recogni[tion]" of the pre-existing consensus among the Courts of Appeals that "premature appeals" are "effective." Adv. Comm. Notes (1979 Amendment).

Consistent with that broader principle and this Court's reasoning in *FirsTier*, the Courts of Appeals consistently hold that prematurely filed notices of appeal ripen not only in the circumstances covered by Rules 4(a)(2) and 4(a)(4)(B)(i), but also in contexts not addressed by those provisions. Most notably, the Courts of Appeals uniformly recognize that a notice of appeal filed before a needed Rule 54(b) certification ripens once that certification is obtained—even though Rule 4 does not expressly provide for ripening in that situation. *See Clausen v. Sea-3, Inc.*, 21 F.3d 1181, 1184–85 (1st Cir. 1994) (collecting cases); *Tilden Fin.*

Corp. v. Palo Tire Serv., Inc., 596 F.2d 604, 607 (3d Cir. 1979); *Good*, 104 F.3d at 95 (6th Cir. 1997); *Nat'l Ass'n of Bds. of Pharm. v. Bd. of Regents*, 633 F.3d 1297, 1307 (11th Cir. 2011); *State Contracting & Eng'g Corp. v. Florida*, 258 F.3d 1329, 1334–35 (Fed. Cir. 2001).

b. The same principle—that premature notices of appeal ripen once an appeal period opens—controls here, too. That result follows directly from this Court's holding in *FirsTier*. And it is consistent with the way premature notices of appeal are treated in other contexts.

It is also consistent with the functional approach to notices of appeal, because a second, post-reopening notice of appeal serves no conceivable purpose. Once the initial notice is filed, there can be "no genuine doubt" about "who is appealing, from what judgment, to which appellate court" in this context. *Becker*, 532 U.S. at 767. If anything, a notice of appeal filed before Rule 4(a)(6) reopening gives the appellee more notice of the coming appeal than one filed after reopening. And an appellee will never be prejudiced when an appeal proceeds based on the premature notice, because Rule 4(a)(6) reopening is available only if the district court finds that no prejudice will flow from reopening. 28 U.S.C. § 2107(c)(2); Fed. R. App. P. 4(a)(6)(C). Accordingly, a second-notice requirement would be a "hollow ritual" that amounts to nothing more than "paper shuffling." *Hinton*, 997 F.3d at 778 (internal quotation marks omitted).

And at what cost. It would create a trap for unwary pro se litigants. *See supra*, at 23–27. And even where pro se litigants do manage to spot the tripwire, it would still leave some litigants in the lurch through no

fault of their own, because litigants eligible for relief under Rule 4(a)(6) may not even learn of an order granting a motion to reopen until after the 14-day reopening period expires. After all, they necessarily did not learn of a judgment within a longer 21-day period. *See supra*, at 26.

2. The Fourth Circuit did not even cite *FirsTier*. And it offered no justification for deviating from the background presumption of cumulative finality. Instead, it relied on an untenable distinction between an "extension" under Rule 4(a)(5) and "reopening" under Rule 4(a)(6). According to the Fourth Circuit, an "extension" under Rule 4(a)(5) contemplates an unbroken period from the entry of the appealable order to the end of the extended appeal period. Pet.App.9a–12a. That continuity, it reasoned, is what allows a premature notice of appeal to ripen when a Rule 4(a)(5) extension motion is granted. *Id.* By contrast, the Fourth Circuit insisted that "reopening" under Rule 4(a)(6) creates a new, noncontiguous appeal period. *Id.* at 9a–10a. As a result, it concluded that a premature notice of appeal does not ripen when a Rule 4(a)(6) motion is granted. *See id.*

Both premises underlying that analysis are wrong.

a. The first faulty premise is that an extension under Rule 4(a)(5)—unlike reopening under Rule 4(a)(6)—necessarily involves an unbroken appeal period. By the plain terms of § 2107(c) and Rule 4(a)(5), a motion for an extension can be filed up to 30 days *after* the appeal period has lapsed. *See* 28 U.S.C. § 2107(c); Fed. R. App. P. 4(a)(5). Indeed, this Court recently cited Rule 4(a)(5) extension motions as an example of extensions that do *not* necessarily involve

a continuous period of time. In *HollyFrontier*, the Court held that refineries may receive a benefit in Year 1, not receive that benefit in Year 2, and then receive an "extension" of the same benefit in Year 3. 594 U.S. at 389–90. In so holding, it relied on an analogy to Rule (4)(a)(5) extensions. "Under certain circumstances," the Court explained, "a court 'may . . . extend' a party's 'time for appeal' even 'after the expiration of the time otherwise set for bringing appeal.'" *Id.* at 390–91 (quoting 28 U.S.C. § 2107(c)). "In other words, the timer can start, run, finish, and then *restart*"—precisely "because a court has the power to 'extend' the time allotted even after a lapse." *Id.* at 391.

HollyFrontier thus expressly rejected the proposition that extensions always "retroactively deem[] the time originally allotted as now extending continuously to some new and future due date." *Id.* at 392. Indeed, the Court recognized that when Congress wants to retroactively create continuity via an extension, it says so—including by using modifiers like "consecutive" or "successive." *See id.* And Congress said nothing of the sort in § 2107(c). So Rule 4(a)(5) motions do not necessarily result in an unbroken appeal period any more than Rule 4(a)(6) motions do.

Even if Rule 4(a)(5) relief *did* retroactively create a single, continuous appeal period, the Fourth Circuit lacked any basis for concluding that Rule 4(a)(6) relief does not operate in the same way. Both Section 2107(c) and Rule 4(a)(6) refer to reopening "the time for appeal" or "the time to file an appeal." Insomuch as extensions result in a continuous appeal period, that language suggests a continuous appeal period under the reopening mechanism, too.

b. The second faulty premise is that a notice of appeal can ripen only when it is retroactively deemed to have been filed during a continuous, unbroken appeal period. The Fourth Circuit created that continuity requirement from whole cloth, with no basis in text. And that novel requirement contradicts this Court's functional approach to notices of appeal.

The function of a notice of appeal—as its name suggests—is to put courts and other parties on notice that a litigant is pursuing an appeal. *See Becker*, 532 U.S. at 767; *FirsTier*, 498 U.S. at 273. A premature notice plainly serves that function regardless of whether the appeal period is later deemed to have been continuous all along. After all, retroactively deeming an extended appeal period to have been continuous "cannot change the fact that, absent time travel, a lapse or interruption has occurred." *HollyFrontier*, 594 U.S. at 392.

Moreover, imposing a continuity requirement for ripening would upset the longstanding consensus among Courts of Appeals that a notice of appeal filed before Rule 54(b) certification ripens once certification is obtained. *See supra*, at 29–30. And to the extent this continuity requirement is jurisdictional, it threatens the viability of Rule 4(a)(2) and Rule 4(a)(4)(B)(i) as well. In all of these contexts, the initial notice is not filed within a continuous appeal period—or, indeed, within any appeal period at all.

3. Finally, the Fourth Circuit's passing suggestion that a single filing cannot serve as both a notice of appeal and a Rule 4(a)(6) motion is meritless. *See* Pet.App.3a–4a. Indeed, this Court has already reversed the Fourth Circuit for making the same

fundamental mistake in another case. In *Smith*, this Court held that even though the "Federal Rules do envision that the notice of appeal and the appellant's brief will be two separate filings," the Rules "do not preclude an appellate court from treating a filing styled as a brief as a notice of appeal." 502 U.S. at 249. A notice of appeal, in other words, need not be filed on a separate piece of paper that serves no other purpose. *See id.* That logic compels the conclusion that a notice of appeal can also serve as a motion to reopen. *See, e.g.*, *Winters*, 88 F.4th at 669–70 (Winters's filing "may serve more than one function"); *Withers*, 638 F.3d at 1062 ("Withers's notice of appeal should have been generously construed as both a notice of appeal and a motion to reopen the time for filing an appeal."); *Norwood*, 825 F. App'x at 387 (rejecting the argument that a Rule 4(a)(6) "motion . . . cannot be construed as a notice of appeal").

IV. THE CASE IS AN EXCELLENT VEHICLE.

Finally, this case is an ideal vehicle for answering the Question Presented. The question whether a prematurely filed notice of appeal can ripen upon Rule 4(a)(6) reopening was fully briefed and definitively answered below. And it was the sole ground for the Fourth Circuit's ruling. *See* Pet.App.2a ("Because Donte Parrish did not file a timely notice of appeal from the judgment in this civil action, we dismiss his appeal for lack of jurisdiction.").

To the extent the Government again sides with Parrish on the merits, *see* Ct.App. Dkt. No. 84, at 2, that is no basis for declining review. This Court regularly grants certiorari and appoints an *amicus curiae* to defend a Court of Appeals' ruling where there

is no dispute between the parties on the Question Presented. *See, e.g.*, *Patel v. Garland*, 596 U.S. 328, 336 (2022); *Lange v. California*, 594 U.S. 295, 301 (2021); *McLane Co. v. E.E.O.C.*, 581 U.S. 72, 79 (2017). It should take the same tack here.

CONCLUSION

The petition for a writ of certiorari should be granted.

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