No. 24-275

In the Supreme Court of the United States

DONTE PARRISH, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

BRIEF FOR RESPONDENT
SUPPORTING PETITIONER

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QUESTION PRESENTED

Under 28 U.S.C. 2107(c), a district court may "reopen the time for appeal for a period of 14 days" after the deadline for filing a notice of appeal has already passed in certain circumstances involving parties who did not receive timely notice of the entry of a judgment or order. In this case, petitioner, while proceeding *pro se*, filed a notice of appeal after the deadline for filing such a notice had passed. The district court found that the requirements of Section 2107(c) were satisfied, and the court exercised its authority under that provision to reopen the time for appeal. Petitioner did not then file a further notice of appeal. The court of appeals concluded that petitioner could not rely on his earlier notice of appeal and that the court lacked appellate jurisdiction. The question presented is:

Whether a court of appeals has appellate jurisdiction when a civil litigant who did not receive timely notice of an adverse judgment files an untimely notice of appeal, the district court then reopens the appeal period for 14 days under Section 2107(c), and the litigant fails to file a further notice of appeal within the 14-day period.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-22a) is reported at 74 F.4th 160. An earlier opinion of the court of appeals is reprinted at 827 Fed. Appx. 327. The order of the court of appeals denying rehearing en banc and opinions respecting that order (Pet. App. 63a-69a) are available at 2024 WL 1736340. The opinion of the district court (Pet. App. 44a-55a) and the report and recommendation of the magistrate judge (Pet. App. 23a-43a) are available, respectively, at 2020 WL 1330350 and 2019 WL 9068337. An additional order of the district court (Pet. App. 59a-62a) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on July 17, 2023. Petitions for rehearing were denied on April 23, 2024 (Pet. App. 63a-64a) and April 25, 2024 (Pet.

App. 70a). On June 28, 2024, the Chief Justice extended the time within which to file a petition for certiorari to and including September 9, 2024, and the petition was filed on that date. The petition for a writ of certiorari was granted on January 17, 2025. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

STATUTORY PROVISION AND RULE INVOLVED

Pertinent statutory provisions are reprinted in the appendix. App., *infra*, 1a-10a.

INTRODUCTION

Section 2107 of Title 28 establishes for civil cases in federal court a general 30-day deadline for filing a notice of appeal and a 60-day deadline in cases where the government is a party. See 28 U.S.C. 2107(a) and (b). District courts can extend that deadline upon a showing of excusable neglect or good cause, and may reopen the time for appeal if the court finds that a party did not receive timely notice of the judgment and the reopening would not prejudice any party. 28 U.S.C. 2107(c). But Section 2107 does not address how courts should treat a notice of appeal that is filed before a motion to extend or reopen the time for appeal was granted.

This case involves a notice of appeal that a *pro se* plaintiff filed after the appeal period had expired, but before the district court granted his motion to reopen the appeal period. Petitioner argued that even though his notice of appeal was premature insofar as it was filed before the court reopened the appeal period, it was effectively validated by the court's subsequent order reopening the appeal period.

The court of appeals held that it lacked appellate jurisdiction, reasoning that petitioner's notice of appeal was too late when it was filed but too early by the time the district court granted his motion to reopen the ap-

peal period. In the court's view, to perfect his appeal, Section 2107(c) required petitioner to file a second, duplicative notice of appeal within the 14-day period after the district court reopened the time for appeal.

That holding is incorrect because a premature notice of appeal may become effective upon a district court's order reopening the appeal period. That principle is consistent with the treatment of premature notices of appeal adopted by the Federal Rule of Appellate Procedure that implements Section 2107 and embraced by this Court. In multiple contexts, Rule 4 permits premature notices of appeal to be validated by later events, without requiring litigants to file a duplicative notice. This Court has approved of that principle, noting that "premature notices do not prejudice the appellee and that the technical defect of prematurity therefore should not be allowed to extinguish an otherwise proper appeal." *FirsTier Mortg. Co.* v. *Investors Mortg. Ins. Co.*, 498 U.S. 269, 273 (1991). And this Court has likewise applied harmless-error principles and endorsed disregarding technical defects in a notice of appeal so long as the filing occurs before the jurisdictional deadline expires, provides adequate information regarding what is being appealed, and does not prejudice another party.

The Court should apply those same principles here and permit petitioner's premature notice of appeal to relate forward to the date the district court granted his motion to reopen the appeal period. The notice petitioner filed made the parties and the court aware of petitioner's intent to appeal, and the district court concluded that no party would be prejudiced by giving effect to petitioner's previously filed notice of appeal. Requiring petitioner to file a second notice of appeal after reopening would be pointless.

STATEMENT

A. Legal Background

In civil cases in federal court, 28 U.S.C. 2107 specifies the time limits for filing a notice of appeal. Rule 4 of the Federal Rules of Appellate Procedure implements those time limits. Section 2107 generally provides that, to perfect a timely appeal from a judgment, order, or decree entered in a civil case, a notice of appeal must be filed "within thirty days after the entry of such judgment, order or decree." 28 U.S.C. 2107(a); see Fed. R. App. P. 4(a)(1)(A). If the United States or an agency, officer, or employee of the United States is a party, the deadline extends to 60 days for all parties. 28 U.S.C. 2107(b); see Fed. R. App. P. 4(a)(1)(B). Those statutory deadlines are "mandatory and jurisdictional." *Bowles* v. *Russell*, 551 U.S. 205, 209 (2007) (citation omitted).

This case concerns the exceptions to those general deadlines, which are set forth in Section 2107(c). Under the first sentence of Section 2107(c), the district court may "extend the time for appeal upon a showing of excusable neglect or good cause," but only if a motion for such an extension is filed "not later than 30 days after the expiration of the time otherwise set for bringing appeal." 28 U.S.C. 2107(c). That authority is implemented in Rule 4(a)(5).

Under the second sentence of Section 2107(c), at issue here, the court may "reopen the time for appeal" if the court finds that a party entitled to notice of the entry of the judgment or order at issue "did not receive such notice from the clerk or any party within 21 days of its entry" and that "no party would be prejudiced." 28 U.S.C. 2107(c)(1) and (2). That authority is implemented in Rule 4(a)(6).

Several additional limitations restrict the district court's authority to reopen the time for appeal. First, the court may reopen the appeal period only "upon motion filed within 180 days after entry of the judgment or order" at issue, or "within 14 days after" the party that failed to receive notice of the entry of the judgment or order receives such notice, "whichever is earlier." 28 U.S.C. 2107(c); see Fed. R. App. P. 4(a)(6)(B). Second, the court may reopen the time for appeal only "for a period of 14 days from the date of entry of the order reopening the time for appeal." 28 U.S.C. 2107(c); see *Bowles*, 551 U.S. at 213 (holding that the 14-day limit "on how long a district court may reopen" the period for appeal is jurisdictional).

B. Factual And Procedural Background

1. In 2017, petitioner brought this action *pro se* in the United States District Court for the Northern District of West Virginia. Pet. App. 23a. Petitioner was incarcerated at the time at "USP Big Sandy in Inez, Kentucky," serving a 180-month term of imprisonment. *Ibid.* (footnote omitted); see *id.* at 4a. Petitioner alleged that he was wrongfully placed in administrative segregation within the federal prison system for three years while under suspicion of having murdered a fellow inmate. See *id.* at 27a, 45a. Ultimately, federal law enforcement authorities declined to pursue criminal charges against petitioner for the murder, and the Bureau of Prisons found insufficient evidence to sustain any disciplinary charges. Gov't C.A. Br. 3, 5. The gravamen of petitioner's complaint was that his conditions of confinement during the murder investigation were tortious—*e.g.*, that he was falsely imprisoned and the victim of an abuse of process. *Id.* at 8; see Pet. App. 27a.

Petitioner's complaint invoked the Federal Tort Claims Act (FTCA), 28 U.S.C. 1346(b), 2671 *et seq.* The FTCA waives the sovereign immunity of the United States and creates a cause of action for damages for certain torts committed by federal employees acting within the scope of their employment. See *Brownback* v. *King*, 592 U.S. 209, 211-212 (2021). To be actionable under the FTCA, a claim must be brought against "the United States." 28 U.S.C. 1346(b)(1). Petitioner's complaint complied with that requirement and named the United States as the defendant. Pet. App. 4a.

The government moved to dismiss the complaint or, in the alternative, for summary judgment, and the motion was referred to a magistrate judge. The magistrate judge recommended granting the government's motion. Pet. App. 23a-43a. The district court largely adopted the magistrate judge's report and recommendation and dismissed all of petitioner's FTCA claims, concluding that one was time-barred and that the others had not been administratively exhausted (as required by the FTCA). *Id.* at 44a-57a; see 28 U.S.C. 2675(a).

The district court's order was dated and entered on the docket on March 23, 2020. Pet. App. 55a. The following day, the clerk of court entered a separate judgment in favor of the United States. D. Ct. Doc. 131 (Mar. 24, 2020). Under the provision in Section 2107(b) applicable to civil actions in which the United States is a party, the deadline for filing a notice of appeal was 60 days from the entry of judgment. See 28 U.S.C. 2107(b); Fed. R. App. P. 4(a)(1)(B). Accounting for a weekend, see Fed. R. App. P. 26(a)(1)(C), any notice of appeal was therefore due on or before Monday, May 25, 2020.

2. On July 13, 2020, the district court received and docketed a handwritten notice of appeal from peti-

tioner, postmarked July 9, 2020. See D. Ct. Docs. 137 and 137-1 (July 13, 2020). In the notice of appeal, petitioner stated that, "[d]ue to [his] being transferred from Federal to State custody[,] [he] did not receive [the district court's judgment] until June 25, 2020." Pet. App. 4a. That notice was "clearly untimely." *Id.* at 57a. It was filed not only after the May 25 deadline for noticing an appeal but also outside the additional 30-day period in which petitioner could have filed a motion to extend the time for appeal under Section 2107(c)'s first sentence and Rule 4(a)(5). See Fed. R. App. P. 4(a)(5)(A)(i).

The district court transmitted the notice of appeal to the court of appeals, which remanded in an unpublished, per curiam opinion. Pet. App. 56a-58a. The court of appeals "construe[d] the notice of appeal as a motion to reopen the appeal period under Rule 4(a)(6)." *Id.* at 58a. The court observed that, according to petitioner's statements in the notice of appeal, he had "not receive[d] a copy of the [district] court's judgment until 93 days after entry, and he filed the notice of appeal within 14 days after he purportedly received" notice of the judgment, *ibid.*—allegations which, if true, could support a motion to reopen the appeal period. The court of appeals therefore remanded to the district court to address petitioner's motion in the first instance. *Ibid.* The court of appeals also directed that, after the district court determined whether to reopen the appeal period, "[t]he record, as supplemented, will be returned" to the court of appeals "for further consideration." *Ibid.*

3. On remand, the district court determined that petitioner's filing "satisfied the requirements of Federal Rule of Appellate Procedure 4(a)(6)." Pet. App. 61a; see *id.* at 59a-62a. The court found that, apparently as a result of being transferred from federal to state cus-

tody, petitioner did not receive notice of the entry of the court's prior judgment "within 21 days after entry," Fed. R. App. P. 4(a)(6)(A); that petitioner filed what the court of appeals had construed as a motion to reopen the appeal period "within 14 days after" receiving belated notice of the judgment, Fed. R. App. P. 4(a)(6)(B); and that "no party would be prejudiced" by reopening the appeal period, Fed. R. App. P. 4(a)(6)(C). See Pet. App. 57a, 61a. The court granted petitioner's motion and "re-open[ed] the time for [petitioner] to file his appeal for fourteen (14) days following the entry of this [o]rder," *i.e.*, 14 days following January 8, 2021. *Id.* at 61a (capitalization and emphasis omitted).[*] The court further stated that the clerk shall "supplement this Court's record accordingly, and transmit the same to the United States Court of Appeals for the Fourth Circuit." *Id.* at 62a.

Petitioner did not file an additional notice of appeal, or anything else, during the 14-day period following the district court's order of January 8, 2021. Pet. App. 5a. "On January 27, 2021, five days after the 14-day period had closed, [petitioner] mailed a document to" the court of appeals, which the clerk of that court docketed as "a supplemental informal brief." *Ibid.*

4. After that filing, the court of appeals appointed counsel to represent petitioner. Pet. App. 5a. Through counsel, petitioner filed a brief contending that the court had appellate jurisdiction based on the combination of petitioner's untimely notice of appeal (filed on July 13, 2020) and the district court's subsequent order reopening the appeal period under Rule 4(a)(6). Pet.

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[*] The district court's order contains a typographical error, listing the date as "January 8, 2020." Pet. App. 62a. In fact, the order was entered on January 8, 2021. See *id.* at 5a.

C.A. Br. 1, 18-22. Petitioner cited circuit precedent holding, in the context of the predecessor to Rule 4(a)(5), that "[a] finding by the District Judge that the delay in filing [a notice of appeal] was excusable will validate a late filing." *Id.* at 18 (quoting *Evans* v. *Jones*, 366 F.2d 772, 773 (4th Cir. 1966) (per curiam)). The government "agree[d] with [petitioner's] jurisdictional statement," expressing the view that petitioner "need not file a second" notice of appeal, as his "intent to seek appellate review has been communicated and notice has been provided to the other parties and the court." Gov't C.A. Br. 1, 11. The parties joined issue on the merits.

The court of appeals dismissed the appeal for lack of appellate jurisdiction, over the dissent of then-Chief Judge Gregory. Pet. App. 1a-22a. The court acknowledged that when a litigant files an untimely notice of appeal and the district court subsequently *extends* the time for appeal under the first sentence of Section 2107(c) and Rule 4(a)(5) to encompass the date on which the litigant had already filed a notice of appeal, the district court's action "validate[s]" the prior notice of appeal, such that the litigant need not then file a second, duplicative notice of appeal within the extended period. *Id.* at 11a (quoting *Evans*, 366 F.2d at 773).

But the court of appeals rejected petitioner's arguments for treating a *reopening* of the appeal period under the second sentence of Section 2107(c) and Rule 4(a)(6) the same way. The court opined that "Congress deliberately used 'reopen' to imply that before such an order, the appeal was indeed foreclosed." Pet. App. 10a (citation omitted). The court reasoned that by providing for reopening, Congress "authorized a special exception by which a court could authorize *a new 14-day window* for filing an appeal, running from the date of

the district court's order granting the 14-day window." *Id.* at 11a-12a. The court interpreted the statute to "require[] that a notice of appeal be filed within" that new 14-day period, *id.* at 12a, and the court further noted that the district court's order "explicitly advised [petitioner] on this requirement," *id.* at 10a.

The court of appeals also believed that because it had already construed petitioner's earlier notice of appeal as a motion to reopen under Rule 4(a)(6), it could not "reconstrue it to be simultaneously both the motion that must precede a district court's reopening order and the notice that must follow after the order is granted." Pet. App. 3a-4a. Accordingly, the court determined that it lacked jurisdiction over petitioner's appeal because he had failed to file a new notice of appeal "within 14 days of the entry of the order" granting his motion to reopen. *Id.* at 10a.

Chief Judge Gregory dissented. Pet App. 14a-22a. In his view, "[n]othing in the text of 28 U.S.C. § 2107(c) compels" adopting what he described as a "formalistic and hollow" requirement for litigants who have already filed an untimely notice of appeal to then file a second notice of appeal after the time for appeal has been reopened. *Id.* at 14a. Chief Judge Gregory therefore would have held, consistent with case law under Rule 4(a)(5) both within and outside of the Fourth Circuit, that a district court's order reopening the appeal period under Rule 4(a)(6) "validates an earlier untimely notice of appeal," *id.* at 16a, at least where the earlier notice provides "'sufficient notice to other parties and the courts' that the appellant intends to seek appellate review," *id.* at 17a (quoting *Smith* v. *Barry*, 502 U.S. 244, 248 (1992)). And he would have found that standard satisfied here, observing that there was no dispute in this

case that petitioner's "July 2020 notice of appeal continued to convey his intent to seek appellate review in January 2021." *Id.* at 22a.

5. Following the panel's decision, petitioner's appointed counsel moved to withdraw, explaining that petitioner wished to seek rehearing en banc but that counsel would not file such a petition "in light of the relatively confined universe of appellants [the panel] ruling is likely to apply to and the stringency of Rule 35's direct conflict or exceptional importance requirements." C.A. Doc. 54, at 2 (Aug. 28, 2023). The court of appeals granted that motion, and petitioner filed a *pro se* petition for rehearing en banc. C.A. Doc. 55 (Aug. 31, 2023).

After petitioner filed his petition, the Sixth Circuit issued a decision holding that an appellant "did not need to file a new notice of appeal after the district court granted [his] motion to reopen" because "[a] notice of appeal filed too early, generally speaking, ripens when the window to appeal begins." *Winters* v. *Taskila*, 88 F.4th 665, 671 (2023). Petitioner then obtained new counsel, and the court permitted petitioner to file a supplemental petition through counsel. C.A. Doc. 72 (Jan. 30, 2024).

The government filed responses to both petitions, arguing in relevant part that the jurisdictional question was not sufficiently important to warrant en banc review. See Gov't C.A. Br. 2; Gov't C.A. Supp. Br. 7. The government nevertheless "agree[d]" with petitioner that "when the district court * * * reopened the time in which to appeal, [petitioner's] untimely notice of appeal (filed after the original sixty-day period) was functionally converted into a premature notice of appeal (filed before the reopened fourteen-day period), which

is sufficient to secure appellate jurisdiction." Gov't C.A. Br. 2.

The court of appeals denied rehearing en banc by a 9-6 vote. Pet. App. 63a-64a. Judge Niemeyer, who had authored the panel opinion, issued a statement in support of denying rehearing en banc, in which he reiterated his view that Section 2107(c) and Rule 4(a)(6) did not authorize "resurrection of [petitioner's] earlier notice of appeal." *Id.* at 66a. Chief Judge Gregory also issued a dissent from the denial of rehearing en banc, which Judges Wynn, Thacker and Berner joined. *Id.* at 67a-69a. Those judges expressed the view that, although the jurisdictional question would "impact only a few individuals," it was nonetheless significant enough to warrant en banc review. *Id.* at 69a. They also observed that Section 2107(c) and Rule 4(a)(6) do not expressly address "whether an untimely notice of appeal may be validated by a district court's subsequent grant of a Rule 4(a)(6) motion" or "whether a single filing may serve as both a motion to reopen the appeal period and a notice of appeal." *Id.* at 67a-68a.

SUMMARY OF ARGUMENT

Section 2107(c) and Rule 4(a)(6) authorize district courts under certain circumstances to reopen the time during which a litigant may file an appeal "for a period of 14 days from the date of entry of the order reopening the time for appeal." 28 U.S.C. 2107(c); see Fed. R. App. P. 4(a)(6). The text of Section 2107(c) and Rule 4(a)(6) do not speak to whether a premature notice of appeal can relate forward to the date of reopening. But permitting such relation forward is consistent with principles endorsed by the Federal Rules of Appellate Procedure and this Court, whereas requiring a duplicative notice of appeal would serve no purpose.

A. Both the Federal Rules of Appellate Procedure and this Court's precedents have embraced principles that allow for the validation of a premature notice of appeal in certain circumstances. For example, Rule 4(a)(2) treats a notice of appeal filed after the announcement of a decision, but before the entry of a judgment, as filed on the date of the relevant judgment, without requiring a duplicative notice of appeal. And, even though Section 2107 states that a notice of appeal must be filed "after" the entry of judgment, this Court has held that Rule 4(a)(2) permissibly allows a premature notice of appeal to relate forward to the day the judgment is entered. See *FirsTier Mortg. Co.* v. *Investors Mortg. Ins. Co.*, 498 U.S. 269, 272-273 (1991).

As this Court and the Federal Rules recognize, the practice of validating prematurely filed notices of appeal predated the Federal Rules. And many courts of appeals have recognized that the practice extends beyond the circumstances addressed in those Rules, including when a party files a notice of appeal after the lapse of the standard appeal period, but before the court grants an extension.

Validating a premature notice of appeal is also consistent with general harmless-error principles reflected in this Court's refusal to allow technical defects in notices of appeal to prevent courts from exercising appellate jurisdiction. In multiple cases, this Court has held that courts should disregard irregularities in notices of appeal, so long as the notice complies with jurisdictional requirements and "no genuine doubt exists about who is appealing, from what judgment, to which appellate court." *Becker* v. *Montgomery*, 532 U.S. 757, 767 (2001). Those requirements are satisfied here. Petitioner filed his notice of appeal before the expiration of the jurisdic-

tional time limit afforded by the reopening, the notice of appeal provides adequate notice of petitioner's intent to appeal, and permitting the appeal will not prejudice any party. In these circumstances, there is no basis to prevent the appeal from proceeding.

B. The court of appeals' contrary reasoning does not withstand scrutiny.

The court of appeals primarily reasoned that Section 2107(c) distinguishes between extending the appeal period and reopening the appeal period. The court viewed extending the appeal period as retroactively validating a notice of appeal that was untimely when filed, whereas it believed that reopening the appeal period operates prospectively and requires a duplicative notice of appeal to be filed within the 14-day period after the reopening. But that distinction ignores a key similarity: in both cases, the original time for appeal had elapsed when the notice of appeal was filed. It is true that when the appeal period is reopened, a prior notice of appeal may appropriately be viewed as premature. But that fact does not resolve the key question of whether that premature notice of appeal can relate forward to the date the motion is granted. Background principles that favor disregarding inconsequential irregularities in notices of appeal supply the answer: the notice of appeal does relate forward.

The court of appeals also invoked the district court's statement that it was reopening the appeal period for petitioner to file his appeal for 14 days "'*following*' the entry of the order." Pet. App. 10a. But a district court's legally erroneous statements cannot *expand* appellate jurisdiction, so they should not contract that jurisdiction either.

Finally, the court of appeals erred in suggesting that petitioner's notice of appeal could not function as a notice of appeal because the court had already construed it as a motion to reopen. This Court has contemplated that single filings may serve multiple functions, including as a notice of appeal. Litigants frequently request that courts consider single documents for multiple purposes. And, especially when liberally construing documents filed by *pro se* litigants, courts routinely treat single documents as serving multiple roles. The notice of appeal petitioner filed should be permitted to serve its intended purpose, and petitioner's appeal should be permitted to proceed.

ARGUMENT

GRANTING A MOTION TO REOPEN THE TIME FOR APPEAL MAY VALIDATE A PREVIOUSLY FILED NOTICE OF APPEAL

Section 2107(c) and Rule 4(a)(6) authorize the district court to "reopen the time for appeal for a period of 14 days from the date of entry of the order reopening the time for appeal." 28 U.S.C. 2107(c); Fed. R. App. P. 4(a)(6). This Court has made clear that a court of appeals lacks appellate jurisdiction if no notice of appeal is filed until after those 14 days have elapsed. See *Bowles* v. *Russell*, 551 U.S. 205, 213 (2007). But neither Section 2107(c) nor Rule 4(a)(6) specifically addresses the proper result if a party files a notice of appeal before the court grants a motion to reopen the appeal period. Applying relevant background principles, such notices of appeal should be permitted. The court of appeals erred in holding otherwise.

A. Principles Underlying The Federal Rules Of Appellate Procedure And This Court's Precedents Support Permitting The Validation Of A Previously Filed Notice Of Appeal Upon The Granting Of A Motion To Reopen

Both the Federal Rules of Appellate Procedure and this Court's precedents have given effect to premature or irregular notices of appeal, so long as there is adequate notice and no prejudice. The principles underlying those rules and precedents apply equally to a notice of appeal filed before the granting of a motion to reopen the appeal period.

1. In multiple contexts, the Federal Rules of Appellate Procedure allow for premature notices of appeal to be given effect based on later events. Under Rule 4(a)(2), "[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" of the relevant judgment or order. Fed. R. App. P. 4(a)(2). In addition, under Rule 4(a)(4)(B)(i), "[i]f a party files a notice of appeal after the court announces or enters a judgment—but before it disposes of" certain specified motions—"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." Fed. R. App. P. 4(a)(4)(B)(i). Similar rules also apply to criminal appeals. See Fed. R. App. P. 4(b)(2) and (b)(3)(B). In each instance, the rules make clear that a party who has filed an early notice of appeal need not file a duplicative notice when the time to effectuate the appeal arises.

This Court addressed a premature notice of appeal under Rule 4(a)(2) in *FirsTier Mortgage Co.* v. *Investors Mortgage Insurance Co.*, 498 U.S. 269 (1991). In that case, the notice of appeal was filed after the district

court issued a bench ruling on a motion for summary judgment, but before the court issued its findings of fact and conclusions of law to support the ruling. The Court noted that Section 2107 and Rule 4(a)(1) generally require an appellant to file a notice of appeal within 30 days "*after*" the entry of the judgment being appealed. *Id.* at 272 (emphasis added; citation omitted). The Court thus had to determine whether FirsTier's notice—filed "close to a month before entry of judgment"—was "fatally premature." *Ibid.* Although Section 2107 states that a notice of appeal is to be filed "after" the entry of judgment, 28 U.S.C. 2107(a), the Court held that the notice of appeal was valid because Rule 4(a)(2) permitted the premature notice to relate forward to the day judgment was entered, *FirsTier*, 498 U.S. at 272-273.

The Court explained in *FirsTier* that the relation-forward principle reflects that, "unlike a tardy notice of appeal, certain premature notices do not prejudice the appellee and that the technical defect of prematurity therefore should not be allowed to extinguish an otherwise proper appeal." 498 U.S. at 273. Nor did application of the rule unlawfully enlarge appellate jurisdiction under 28 U.S.C. 1291, which confers jurisdiction over appeals of "final decisions." *Ibid.*; see *FirsTier*, 498 U.S. at 275. Rather, Rule 4(a)(2) "permits a premature notice of appeal from [a] bench ruling to relate forward to judgment and serve as an effective notice of appeal *from the final judgment*." *FirsTier*, 498 U.S. at 275.

2. This Court in *FirsTier* recognized that Rule 4(a)(2)'s "relation forward provision" was added to the Federal Rules of Appellate Procedure in 1979 to "codify" a "general practice in the courts of appeals of deeming certain premature notices of appeal effective." *FirsTier*, 498 U.S. at 273; see *id.* at 275-276; see Fed. R.

App. P. 4 advisory committee's note (1979 Amendment). But while the Federal Rules address some common circumstances in which parties may file premature notices of appeal, those Rules do not set out the only instances in which courts may deem such notices to be effective. Rather, the general practice of recognizing premature notices of appeal exists in circumstances beyond those discussed in *FirsTier* and specifically addressed in the Federal Rules. That practice accords with this Court's precedents that have repeatedly held that certain notices of appeal are effective despite technical defects, reflecting longstanding harmless-error principles. Under that approach, petitioner's notice of appeal should relate forward to the district court's granting of the motion to reopen.

a. Courts of appeals have long deemed premature notices of appeal effective based on later events. Both before and after Rule 4(a)(2) adopted the relation-forward principle, numerous courts have explained that when a party files a notice of appeal after the standard appeal period lapses but before the court grants an extension under the first sentence of Section 2107(c) and Rule 4(a)(5), that party need not file a duplicative notice of appeal after the extension is granted. See, *e.g.*, *Van Orman* v. *Purkett*, 43 F.3d 1201, 1201 (8th Cir. 1994); *Hinton* v. *City of Elwood*, 997 F.2d 774, 778 (10th Cir. 1993); *Bryant* v. *Elliott*, 467 F.2d 1109, 1109 (5th Cir. 1972) (per curiam); *Reed* v. *People of the State of Michigan*, 398 F.2d 800, 801 (6th Cir. 1968) (per curiam); *Evans* v. *Jones*, 366 F.2d 772, 773 (4th Cir. 1966) (per curiam). Those courts have held that a finding of excusable neglect that warrants an extension of the appeal period "will validate" the prior notice of appeal. *Reed*, 398 F.2d at 801; *Evans*, 366 F.2d at 773.

In addition, every circuit has held that when a party files a notice of appeal of the judgment on some claims while other claims remain pending, a district court's later certification of the decided claims for appeal under Federal Rule of Civil Procedure 54(b) will perfect that prematurely filed appeal. See *Clausen* v. *Sea-3, Inc.*, 21 F.3d 1181, 1187 (1st Cir. 1994); *In re Chateaugay Corp.*, 922 F.2d 86, 91 (2d Cir. 1990); *Tilden Fin. Corp.* v. *Palo Tire Serv. Inc.*, 596 F.2d 604, 607 (3d Cir. 1979); *Harrison* v. *Edison Bros. Apparel Stores, Inc.*, 924 F.2d 530, 532 (4th Cir. 1991); *Crowley Maritime Corp.* v. *Panama Canal Comm'n*, 849 F.2d 951, 953-954 (5th Cir. 1988); *Good* v. *Ohio Edison Co.*, 104 F.3d 93, 95 (6th Cir. 1997); *Lac Courte Oreilles Band of Lake Superior Chippewa Indians* v. *Wisconsin*, 760 F.2d 177, 180-181 (7th Cir. 1985); *Martinez* v. *Arrow Truck Sales, Inc.*, 865 F.2d 160, 161-162 (8th Cir. 1988) (per curiam); *Aguirre* v. *S.S. Sohio Intrepid*, 801 F.2d 1185, 1189 (9th Cir. 1986); *United States* v. *Hardage*, 982 F.2d 1491, 1494-1495 (10th Cir. 1993); *National Ass'n of Bds. of Pharm.* v. *Board of Regents of the Univ. Sys.*, 633 F.3d 1297, 1307 (11th Cir. 2011); *Tidler* v. *Eli Lilly & Co.*, 824 F.2d 84, 86-87 (D.C. Cir. 1987) (per curiam); *State Contracting & Eng'g Corp.* v. *Florida*, 258 F.3d 1329, 1334-1335 (Fed. Cir. 2001), cert. denied, 534 U.S. 1131 (2002).

b. This Court has also shown a general unwillingness to allow a technical defect in a notice of appeal to preclude appellate jurisdiction. In accordance with the understanding that courts may disregard harmless errors, the Court has allowed appeals to proceed so long as sufficient notice is provided and prejudice is avoided.

Before the Federal Rules of Appellate Procedure were adopted, for example, in *Lemke* v. *United States*, 346 U.S. 325 (1953) (per curiam), a convicted defendant

was sentenced on March 10, 1952, and filed an appeal on March 11, before judgment was entered on March 14. *Id.* at 326. The defendant did not file a new notice of appeal after judgment was entered, and the court of appeals dismissed the appeal as fatally premature. This Court reversed, reasoning that the notice of appeal, which was "still on file on March 14," "gave full notice after that date * * * of the sentence and judgment which petitioner challenged." *Ibid.* In those circumstances, the Court viewed the "irregularity" as "governed by" Federal Rule of Criminal Procedure 52(a), which adopts a harmless-error rule that instructs courts to "'disregard[]'" "'[a]ny error, defect, irregularity or variance which does not affect substantial rights.'" *Ibid.* Following *Lemke*—and before the Federal Rules of Appellate Procedure addressed the issue—courts of appeals applied the same reasoning in the civil context, recognizing that Federal Rule of Civil Procedure 61 likewise states that courts "must disregard all errors and defects that do not affect any party's substantial rights." Fed. R. Civ. P. 61. See, *e.g.*, *Lecklikner* v. *Transandina Compania Naviera, S.A.*, 390 F.2d 179, 180 n.1 (3d Cir. 1968) (per curiam); *Firchau* v. *Diamond Nat'l. Corp.*, 345 F.2d 269, 271 (9th Cir. 1965); see Fed. R. App. P. 4 advisory committee's note (1979 Amendment) (noting that "courts of appeals quite generally have held premature appeals effective" in civil cases).

This Court similarly held that a notice of appeal was valid despite technical defects in *Foman* v. *Davis*, 371 U.S. 178 (1962). There, the appellant filed a notice of appeal from a judgment dismissing his complaint while his motions to vacate that judgment and to amend the complaint were pending. *Id.* at 179. When the district court denied the motions, the appellant filed a second

notice of appeal from that order. *Ibid.* The court of appeals dismissed the appeal, reasoning that the first notice of appeal was premature because of the pendency of the motions, and the second notice was ineffective because it purported to appeal only the order denying the motions, and not the judgment itself. *Id.* at 180-181. This Court reversed, holding that "[e]ven if" the first notice of appeal was premature, "[t]aking the two notices and the appeal papers together, petitioner's intention to seek review of both the dismissal and the denial of the motions was manifest." *Id.* at 181. The "defect" in the notices of appeal, the Court explained, "did not mislead or prejudice the respondent." *Ibid.* And the Court viewed it as "too late in the day and entirely contrary to the spirit of the Federal Rules of Civil Procedure for decisions on the merits to be avoided on the basis of such mere technicalities." *Ibid.* Rather, "[t]he Federal Rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits." *Id.* at 181-182 (citation omitted).

This Court followed the same course in *Smith* v. *Barry*, 502 U.S. 244 (1992). There, Smith, proceeding *pro se*, filed a notice of appeal following a jury trial while a motion for judgment notwithstanding the verdict was pending. Under the version of Rule 4(a)(4) then in effect, a "notice of appeal filed before the disposition" of such a motion was "without effect." *Id.* at 246; see Fed. R. App. P. 4 advisory committee's note (1993 Amendment) (referring to the prior rule as "creat[ing] a trap for an unsuspecting litigant who files a notice of appeal before a posttrial motion, or while a posttrial motion is pending"). Smith then filed an informal brief after the

district court denied the motion for judgment notwithstanding the verdict but within the deadline for filing a notice of appeal. *Smith*, 502 U.S. at 246-247. The court of appeals dismissed the appeal for lack of jurisdiction, holding that Smith's notice of appeal was untimely and that an informal brief could not substitute for a timely notice. *Id.* at 247.

This Court reversed. *Smith*, 502 U.S. at 248-250. Although the Court recognized that the requirement that a notice of appeal be filed within the time allowed by Rule 4 is jurisdictional, the Court reasoned that it "may nonetheless find that the litigant has complied with the rule if the litigant's action is the functional equivalent of what the rule requires." *Id.* at 248 (quoting *Torres* v. *Oakland Scavenger Co.*, 487 U.S. 312, 316-317 (1988)). And the Court further held that the court of appeals had erred in concluding that an informal brief could never satisfy that test. *Ibid.* Rather, if a document is "filed within the time specified by Rule 4" and "gives the notice required by Rule 3, it is effective as a notice of appeal." *Id.* at 249.

This Court has thus been consistent in holding that "imperfections in noticing an appeal should not be fatal where no genuine doubt exists about who is appealing, from what judgment, to which appellate court." *Becker* v. *Montgomery*, 532 U.S. 757, 767 (2001) (holding that *pro se* notice of appeal lacking a required signature did not deprive the court of appellate jurisdiction). Those holdings are consistent with the longstanding and widespread view that courts should disregard harmless errors. See *Chapman* v. *California*, 386 U.S. 18, 22 (1967) (noting that "[a]ll 50 States have harmless-error statutes or rules, and the United States long ago through its Congress established for courts" a harmless error

rule); see *id.* at 22 n.5 (citing 28 U.S.C. 2111, Fed. R. Crim. P. 52(a), and Fed. R. Civ. P. 61).

c. Given those precedents, it is unsurprising that every court of appeals to consider the question, other than the Fourth Circuit in this case, has concluded that granting a motion to reopen the appeal period validates a premature notice of appeal. See, *e.g.*, *Winters* v. *Taskila*, 88 F.4th 665, 671 (6th Cir. 2023); *Hammer* v. *Bortz*, No. 23-1842, 2024 WL 2559204, at *3 (7th Cir. May 24, 2024); *Holden* v. *Attorney Gen.*, No. 21-1862, 2023 WL 8798084, at *1 n.4 (3d Cir. Dec. 20, 2023); *Norwood* v. *East Allen County Schs.*, 825 Fed. Appx. 383, 386-387 (7th Cir. 2020); *United States* v. *Marshall*, 166 F.3d 349, 1998 WL 864012, at *2 (10th Cir. Dec. 14, 1998) (Tbl.), cert. denied, 528 U.S. 861 (1999).

Treating petitioner's notice of appeal as relating forward to the day the motion to reopen was granted is consistent with the principles animating the Federal Rules and this Court's precedents addressing premature or irregular notices of appeal. As required by *Smith*, petitioner's notice was filed before the expiration of the jurisdictional deadline and conveyed the information required to provide adequate notice. See 502 U.S. at 248-249. And as in *FirsTier*, validating petitioner's premature notice of appeal will not prejudice any party. See 498 U.S. at 273; see also Pet. App. 61a.

Indeed, a lack of prejudice is a prerequisite to granting a motion to reopen in the first place. See 28 U.S.C. 2107(c)(2); Fed. R. App. P. 4(a)(6)(C). And there is likely to be more certainty—and therefore less potential for prejudice—for opposing parties in the circumstances of a reopening than in other contexts in which premature notices of appeal are permitted. In the case of Rule 4(a)(2) and 4(a)(4)(B)(i), for example, at the time

the premature notice of appeal is filed, the order being appealed has not been entered or may yet be amended. In the context of a motion to reopen, by contrast, when the notice of appeal is filed, the final judgment has issued. Moreover, a premature notice of appeal can be validated by later events only if it complies with the other requirements for such a notice, including that it must provide other parties notice of "who is appealing, from what judgment, to which appellate court." *Becker*, 532 U.S. at 767. When a court validates a premature notice of appeal upon reopening, opposing parties thus receive the requisite notice of the particular judgment at issue on appeal earlier than the reopened appeal period would otherwise allow.

Validating petitioner's premature notice of appeal is also consistent with common sense. At the time the court of appeals finally ruled on its jurisdiction in this case, petitioner had already filed a notice of appeal from the relevant final judgment, and the district court had already determined that the reason for petitioner's untimeliness was covered by Section 2107(c). Pet. App. 4a-5a; see *id.* at 60a-61a. In granting the motion to reopen for an additional 14 days, the district court permitted petitioner to file a notice of appeal even later than the one he had filed. *Id.* at 61a. In these circumstances, there is no logical basis for requiring petitioner to file a second, duplicative notice of appeal. Petitioner's earlier notice of appeal served the purpose of "provid[ing] sufficient notice to other parties and the courts" of his intent to appeal from the judgment entered against him. See *Smith*, 502 U.S. at 248. And while petitioner's notice was plainly too late at the time it was filed because the standard appeal period had expired, that problem "vanished when the judge accepted [petitioner's] expla-

nation and granted the motion to reopen." *Hammer*, 2024 WL 2559204, at *3.

Permitting the notice of appeal to relate forward is particularly appropriate in the context of reopening, where the court has found that the reason the party did not file an appeal within the standard timeframe is that he did not receive timely notice of the order being appealed. Problems with timely receipt of the judgment being appealed may also extend to receipt of the order granting reopening. Yet, under the court of appeals' rule, if a party does not file a notice of appeal within the reopened period—even if that failure is because the party did not receive the reopening order—that party has no recourse and will be jurisdictionally barred from appealing. See *Bowles*, 551 U.S. at 213. It therefore would be reasonable for a litigant to file a premature notice to prevent that possibility. By contrast, requiring a duplicative notice of appeal in those circumstances "would amount to little more than 'empty paper shuffling.'" *Hinton*, 997 F.2d at 778 (citation omitted).

B. The Court Of Appeals' Contrary Reasoning Is Flawed

In holding that petitioner was required to file a duplicative notice of appeal, the court of appeals relied on an irrelevant distinction between extensions and reopenings, an incorrect view of the effect of the district court's order, and an unwarranted restriction on a single filing serving multiple purposes. None of those grounds justifies departing from this Court's precedents and longstanding harmless-error principles and dismissing petitioner's appeal.

1. The court of appeals primarily based its conclusion that Section 2107(c) precluded the court from exercising jurisdiction by sharply distinguishing between how extensions of the time to appeal versus reopenings

of the time to appeal might operate. In the court's view, an extension of the appeal period retroactively renders timely a premature notice of appeal, if the notice was filed within the period of the extension the court later granted. By contrast, the court believed that a reopening of the appeal period operates only prospectively for 14 days from the date of the reopening order. See Pet. App. 9a-12a. That reasoning drives an unnatural wedge between extensions and reopenings.

The principal differences between a motion to extend the time for appeal and a motion to reopen the time for appeal under Section 2107(c) are in the showing required and the time within which the motion may be brought. A motion for an extension must be filed within 30 days of the expiration of the regular appeal period and requires a showing of "excusable neglect or good cause." 28 U.S.C. 2107(c). By contrast, a motion to reopen the time for appeal may be filed as late as 180 days after the entry of judgment and requires a showing that the party failed to receive timely notice of the entry of judgment and that no party would be prejudiced by the delayed appeal. *Ibid.*

The different balances Congress struck in those two situations has no bearing on the distinct issue of whether a previously filed notice of appeal should be given effect once the district court grants a motion for more time to appeal, whether by an extension or reopening. The 30-day limit on an extension and the showing required of the would-be appellant reflects that he bears some degree of fault in that situation, and at the same time, the other parties are unlikely to be significantly prejudiced by affording that relatively brief opportunity to appeal. By contrast, the longer period of up to 180 days for filing a motion to reopen the time for

an appeal allows the would-be appellant what Congress deemed an appropriate length of time for him to learn of a judgment about which he received no notice, while taking account of the countervailing equities that may have accrued for other parties during that time.

The court of appeals appeared to place weight on Congress's use of the term "'reopen,'" which it took "to imply that before such an order, the appeal was indeed foreclosed." Pet. App. 10a. But the same can be true of an extension. As this Court has explained with respect to Section 2107(c), "the timer can start, run, finish, and then *restart*—because a court has the power to 'extend' the time allotted even after a lapse." *HollyFrontier Cheynne Ref., LLC* v. *Renewable Fuels Ass'n*, 594 U.S. 382, 391 (2021). In that situation, the extension does not "retroactively deem[] the time originally allotted as now extending *continuously* to some new and future due date." *Id.* at 392 (emphasis added).

Regardless, the distinction between an extension and reopening at most indicates that, at the time the relevant motion is granted, an earlier-filed notice of appeal is no longer premature in the case of an extension, whereas it remains premature for a reopening. But viewing the notice of appeal as premature after reopening simply raises the question whether the notice can relate forward to the date the reopening is granted. And as explained, pp. 16-25, *supra*, permitting the notice of appeal to relate forward here is consistent with the principles undergirding the validation of premature or technically defective notices of appeal in other circumstances.

2. The court of appeals observed that the district court, in granting the motion to reopen the time for appeal, stated it was "reopening 'the time for [petitioner]

to file his appeal for fourteen (14) days *following* the entry' of the order." Pet. App. 10a; see *id.* at 61a. The court of appeals viewed that language as requiring petitioner to file a new notice of appeal within that 14-day period. *Id.* at 10a. But any mistaken belief by the district court that a new notice of appeal was required should not affect the analysis of whether such a notice was legally required.

In *Bowles*, this Court held that it was irrelevant that the appellant relied to his detriment on the district court order erroneously reopening the appeal period for 17 days rather than the 14 days permitted by Section 2107(c). 551 U.S. at 209-213. Just as the Court recognized that a district court's legally erroneous statement cannot expand appellate jurisdiction, such error should not be permitted to contract appellate jurisdiction. In any event, the language of the district court's order was not so clear as to assuredly put petitioner on notice that he needed to file a second notice. After stating that the time for an appeal was reopened for 14 days, the court instructed the clerk to "supplement th[e] Court's record accordingly, and transmit the same to the [court of appeals]." Pet. App. 62a. A *pro se* litigant could reasonably understand the district court to be sending the case back to the court of appeals without any need for a new notice of appeal.

3. Finally, the court of appeals erred in suggesting (Pet. App. 3a-4a) that petitioner's notice of appeal could not be construed as both a notice of appeal and a motion to reopen the time to appeal.

This Court in *Smith* contemplated that an informal brief might serve a dual function as a notice of appeal, so long as it meets the requirements for both documents. 502 U.S. at 249; see Fed. R. App. P. 3(c)(7) (providing that

an "appeal must not be dismissed for informality of form or title of the notice of appeal"). This Court has likewise recognized that a notice of appeal can properly be treated as an application for a certificate of appealability. *Slack* v. *McDaniel*, 529 U.S. 473, 483 (2000).

More broadly, litigants—including the United States—routinely ask courts to assign a single document multiple functions. See, *e.g.*, Gov't Appl. at 36-37, *Garland* v. *Texas Top Cop Shop Inc.*, No. 24A653 (Dec. 31, 2024) (asking Court to construe stay application as a petition for certiorari before judgment); *United States* v. *Texas*, 143 S. Ct. 51 (2022) (denying stay application, construing it as a petition for certiorari before judgment, and granting petition). And, consistent with this Court's instruction that *pro se* filings should be construed liberally, see *Erickson* v. *Pardus*, 551 U.S. 89, 94 (2007) (per curiam), district courts routinely construe documents filed by *pro se* litigants to serve multiple functions, see, *e.g.*, *Doe* v. *City of New York*, 22-cv-7910, 2022 WL 5108577, at *1 (S.D.N.Y. Oct. 3, 2022) (construing *pro se* plaintiff's complaint to serve as a motion to proceed under a pseudonym); *Parsons* v. *North Carolina Dep't of Revenue*, 18-cv-452, 2019 WL 2181913, at *2 (E.D.N.C. May 20, 2019) (construing *pro se* plaintiff's amended complaint filed after responsive pleading to serve as a motion to amend); *Theriault* v. *Stratton*, No. 14-cv-1374, 2014 WL 12873236, at *1 & n.1 (M.D. Fla. July 2, 2014) (construing *pro se* plaintiff's amended complaint as a motion to proceed *in forma pauperis*).

Petitioner here unquestionably intended for his filing to function as a notice of appeal. He captioned it as a "Notice of Appeal," and in the notice he clearly expressed his intent to appeal the district court's judgment. D. Ct. Doc. 137, at 1. Unsurprisingly, both the

district court and court of appeals recognized it as a notice of appeal. Pet. App. 57a, 59a. The Court should not preclude that filing from serving its intended purpose simply because the court of appeals construed it to serve an additional purpose.

CONCLUSION

This Court should reverse the judgment of the court of appeals and remand for further proceedings.

Respectfully submitted.

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APPENDIX

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APPENDIX

1. 28 U.S.C. 2107 provides:

Time for appeal to court of appeals

(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 sued in an individual capacity for an act or omission occurring in connection with duties performed on behalf of the United States, including all instances in which the United States represents that officer or employee when the judgment, order, or decree is entered or files the appeal for that 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 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.

(d) This section shall not apply to bankruptcy matters or other proceedings under Title 11.

2. Fed. R. App. P. 4 provides:

Appeal as of Right—When Taken

(a) Appeal in a Civil Case.

(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—including all instances in which the United States represents that person when the judgment or order is entered or files the appeal for that person.

(C) An appeal from an order granting or denying an application for a writ of error *coram nobis* is an appeal in a civil case for purposes of Rule 4(a).

(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.

(ii) A party intending to challenge an order disposing of any motion listed in Rule 4(a)(4)(A), or a judgment's alteration or amendment upon such a motion, must file a notice of appeal, or an amended notice of appeal—in compliance with Rule 3(c)—within the time prescribed by this Rule measured from the entry of the order disposing of the last such remaining motion.

(iii) No additional fee is required to file an amended notice.

(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 receives 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.

(7) **Entry Defined**.

(A) A judgment or order is entered for purposes of this Rule 4(a):

(i) if Federal Rule of Civil Procedure 58(a) does not require a separate document, when the judgment or order is entered in the civil docket under Federal Rule of Civil Procedure 79(a); or

(ii) if Federal Rule of Civil Procedure 58(a) requires a separate document, when the judgment or order is entered in the civil docket under Federal Rule of Civil Procedure 79(a) and when the earlier of these events occurs:

- the judgment or order is set forth on a separate document, or
- 150 days have run from entry of the judgment or order in the civil docket under Federal Rule of Civil Procedure 79(a).

(B) A failure to set forth a judgment or order on a separate document when required by Federal Rule of Civil Procedure 58(a) does not affect the validity of an appeal from that judgment or order.

(b) Appeal in a Criminal Case.

(1) **Time for Filing a Notice of Appeal.**

(A) In a criminal case, a defendant's notice of appeal must be filed in the district court within 14 days after the later of:

(i) the entry of either the judgment or the order being appealed; or

(ii) the filing of the government's notice of appeal.

(B) When the government is entitled to appeal, its notice of appeal must be filed in the district court within 30 days after the later of:

(i) the entry of the judgment or order being appealed; or

(ii) the filing of a notice of appeal by any defendant.

(2) **Filing Before Entry of Judgment.** A notice of appeal filed after the court announces a decision, sentence, or order—but before the entry of the judgment or order—is treated as filed on the date of and after the entry.

(3) **Effect of a Motion on a Notice of Appeal.**

(A) If a defendant timely makes any of the following motions under the Federal Rules of Criminal Procedure, the notice of appeal from a judgment of conviction must be filed within 14 days after the entry of the order disposing of the last such remaining motion, or within 14 days after the entry of the judgment of conviction, whichever pe-

riod ends later. This provision applies to a timely motion:

(i) for judgment of acquittal under Rule 29;

(ii) for a new trial under Rule 33, but if based on newly discovered evidence, only if the motion is made no later than 14 days after the entry of the judgment; or

(iii) for arrest of judgment under Rule 34.

(B) A notice of appeal filed after the court announces a decision, sentence, or order—but before it disposes of any of the motions referred to in Rule 4(b)(3)(A)—becomes effective upon the later of the following:

(i) the entry of the order disposing of the last such remaining motion; or

(ii) the entry of the judgment of conviction.

(C) A valid notice of appeal is effective—without amendment—to appeal from an order disposing of any of the motions referred to in Rule 4(b)(3)(A).

(4) **Motion for Extension of Time.** Upon a finding of excusable neglect or good cause, the district court may—before or after the time has expired, with or without motion and notice—extend the time to file a notice of appeal for a period not to exceed 30 days from the expiration of the time otherwise prescribed by this Rule 4(b).

(5) **Jurisdiction.** The filing of a notice of appeal under this Rule 4(b) does not divest a district court

of jurisdiction to correct a sentence under Federal Rule of Criminal Procedure 35(a), nor does the filing of a motion under 35(a) affect the validity of a notice of appeal filed before entry of the order disposing of the motion. The filing of a motion under Federal Rule of Criminal Procedure 35(a) does not suspend the time for filing a notice of appeal from a judgment of conviction.

(6) **Entry Defined**. A judgment or order is entered for purposes of this Rule 4(b) when it is entered on the criminal docket.

(c) Appeal by an Inmate Confined in an Institution.

(1) If an institution has a system designed for legal mail, an inmate confined there must use that system to receive the benefit of this Rule 4(c)(1). If an inmate files a notice of appeal in either a civil or a criminal case, the notice is timely if it is deposited in the institution's internal mail system on or before the last day for filing and:

(A) it is accompanied by:

(i) a declaration in compliance with 28 U.S.C. §1746—or a notarized statement—setting out the date of deposit and stating that first-class postage is being prepaid; or

(ii) evidence (such as a postmark or date stamp) showing that the notice was so deposited and that postage was prepaid; or

(B) the court of appeals exercises its discretion to permit the later filing of a declaration or notarized statement that satisfies Rule 4(c)(1)(A)(i).

(2) If an inmate files the first notice of appeal in a civil case under this Rule 4(c), the 14-day period provided in Rule 4(a)(3) for another party to file a notice of appeal runs from the date when the district court dockets the first notice.

(3) When a defendant in a criminal case files a notice of appeal under this Rule 4(c), the 30-day period for the government to file its notice of appeal runs from the entry of the judgment or order appealed from or from the district court's docketing of the defendant's notice of appeal, whichever is later.

(d) **Mistaken Filing in the Court of Appeals**. If a notice of appeal in either a civil or a criminal case is mistakenly filed in the court of appeals, the clerk of that court must note on the notice the date when it was received and send it to the district clerk. The notice is then considered filed in the district court on the date so noted.