No. 24-275

IN THE

Supreme Court of the United States

DONTE PARRISH,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

BRIEF FOR PETITIONER

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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.

CORPORATE DISCLOSURE STATEMENT

No publicly held corporations are involved in this proceeding.

STATEMENT OF 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 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 March 24, 2020).

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OPINIONS BELOW

The Magistrate Judge's report and recommendation is unpublished but available at 2019 WL 9068337 and reproduced at Pet.App.23a–43a. The District Court's opinion adopting the report and recommendation in part and dismissing the case is unpublished but available at 2020 WL 1330350 and reproduced at Pet.App.44a–55a.

The Fourth Circuit's opinion construing the notice of appeal as a motion to reopen and remanding is unpublished but available at 827 F. App'x 327 and reproduced at Pet.App.56a–58a. The District Court's order reopening the appeal period is unpublished but reproduced at Pet.App.59a–62a.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. Its order denying panel rehearing is unpublished but reproduced at Pet.App.70a. Its 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. A petition for a writ of certiorari was filed on September 9, 2024, and this Court granted certiorari on January 17, 2025. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTE AND RULE INVOLVED

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

§ 2107. 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 [in certain circumstances] . . . .

(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.

[. . . .]

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 [in certain circumstances] . . . .

[. . . .]

(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.

[. . . .]

(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.

(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.

INTRODUCTION

Petitioner Donte Parrish was being transferred from federal to state custody when the District Court dismissed his case. As a result, he did not receive notice of the judgment against him until well after the time to appeal had expired. Once he finally learned of the judgment, Parrish filed a notice of appeal that explained his delay. The Court of Appeals construed that notice as a motion to reopen the appeal period, and remanded so the District Court could rule on that motion. *See* 28 U.S.C. § 2107(c); Fed. R. App. P. 4(a)(6). On remand, the District Court found that all conditions for reopening were satisfied: Parrish had not received timely notice of the judgment, he had promptly moved for reopening, and no party would be prejudiced. So it granted the motion, reopened the appeal period, and returned the case to the Court of Appeals.

Parrish had every reason to believe that his appeal would proceed to the merits from there. And in any other court it would have. As other courts recognize, previously filed notices of appeal "ripen" when the appeal period reopens. So the notice of appeal Parrish filed before reopening was granted should have sufficed. But the Fourth Circuit had other ideas. It concluded that Parrish's notice of appeal was both too late (for the original appeal period) and too early (for the reopened appeal period). So, according to the Fourth Circuit, Parrish needed to file a *second* notice of appeal—this time, during the 14-day reopening period. Since he had not done that, the Fourth Circuit dismissed the appeal for lack of jurisdiction.

That was wrong. There was no need for Parrish to file a second notice of appeal, because his original one became effective when the appeal period reopened. Both this Court and the Federal Rules take a functional approach to notices of appeal, particularly for pro se litigants. Consistent with the functional approach, this Court has endorsed a "general practice"—reflected both in court decisions and the Federal Rules—"of deeming certain premature notices of appeal effective." *FirsTier Mortg. Co. v. Invs. Mortg. Ins. Co.*, 498 U.S. 269, 273 (1991). Congress incorporated that background ripening principle into § 2107. And its application to § 2107(c) yields a clear jurisdictional rule that avoids senseless results. Reopening is available only to litigants who do not receive notice of a judgment within 21 days. 28 U.S.C. § 2107(c)(1). Requiring those litigants to file a notice of appeal within an even shorter, 14-day period would render § 2107(c) ineffective for many (if not most) of the litigants it serves.

The Fourth Circuit's second-notice requirement has no basis in text, precedent, or common sense. Its only purported textual grounding—an attempted distinction between "reopen" and "extend"—is both nonsensical and irreconcilable with *HollyFrontier Cheyenne Refining, LLC v. Renewable Fuels Ass'n*, 594 U.S. 382 (2021). The court's alternative suggestion that motions to reopen cannot also function as notices of appeal is foreclosed by *Smith v. Barry*, 502 U.S. 244 (1992).

Parrish's notice of appeal ripened when the appeal period reopened. No second notice was required. This Court should reverse the decision below and remand for a ruling on the merits.

STATEMENT OF THE CASE

A. Legal Framework

28 U.S.C. § 2107 governs the "time for appeal" in civil cases. Subsection (a) requires appellants to file notices of appeal "within thirty days after the entry of" the "judgment, order or decree" they seek to challenge. Subsection (b) provides a longer "time"—"60 days from such entry"—if the parties include the United States, a federal agency, or certain federal officers. Subsection (c) provides that those default appeal periods can be extended or reopened based on extenuating circumstances.

Section 2107(c) consists of two sentences. The first sentence provides that district courts may "extend the time for appeal" "upon motion filed not later than 30 days after the expiration of the time otherwise set for bringing appeal." *Id.* § 2107(c). That relief is available upon "a showing of excusable neglect or good cause." *Id.* The second sentence states that district courts may "reopen the time for appeal for a period of 14 days" "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." *Id.* That relief is available upon a finding that (1) the appellant did not receive notice of the order in question "within 21 days of its entry" and (2) "no party would be prejudiced." *Id.* § 2107(c)(1)–(2).

Appellate Rules 4(a)(5) and (a)(6) implement § 2107(c). Rule 4(a)(5), which governs "Motion[s] for Extension of Time," implements § 2107(c)'s first sentence. Subsection (A) restates the statutory timing and "good cause" requirements; subsection (B) addresses ex parte motions; and subsection (C)

provides that "[n]o 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." Fed. R. App. P. 4(a)(5). Appellate Rule 4(a)(6), which governs "Reopening the Time to File an Appeal," implements § 2107(c)'s second sentence. It provides that district courts "may reopen the time to file an appeal for a period of 14 days" when § 2107(c)'s notice, timing, and prejudice requirements are satisfied. Fed. R. App. P. 4(a)(6).

B. Factual Background

Donte Parrish alleges that he spent years in harsh, punitive segregation for a jailhouse murder he did not commit. Ct.App. Dkt. No. 25 ("Cir.App.") at 84. It all started when the Bureau of Prisons charged Parrish with killing another inmate during a prison riot, as well as with being present in an unauthorized area during the same event. *See id.* Prison officials refused to provide Parrish with a hearing or other meaningful opportunity to contest those charges. *See* Cir.App.31–32, 39–40, 44, 54–55. Nevertheless, they moved him into segregation while the FBI commenced an investigation that took nearly six years to complete. Cir.App.31, 63, 84.

During most of his time in segregation, Parrish was isolated in a small cell. Cir.App.34. He 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* Cir.App.43–45, 96. He was sometimes restrained and forced to sleep in shackles. Cir.App.74. At one point,

he "was forced to stay in a cell with [a] feces stained wall and floor for at least a week." Cir.App.45, 74.

Parrish spent almost two years of his time in segregation in FCI Lewisburg's Special Management Unit, Cir.App.44–45, which has been described as "the worst place in the federal prison system."[1] After an investigation, the Office of the Inspector General concluded that the unit's use of solitary confinement was "particularly concerning."[2] The Bureau of Prisons announced the unit's shutdown soon after that OIG report was released.[3]

Parrish was ultimately vindicated. Cir.App.63. After he had spent nearly three years in segregation, the Bureau of Prisons found that Parrish had committed "[n]o prohibited act" and expunged his disciplinary record. Cir.App.63, 77.

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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 spent "23 hours per day" confined in cells "so small" that two occupants "cannot walk around at the same time").

[2] U.S. Department of Justice, Office of the Inspector General, 17-05, *Review of the Federal Bureau of Prisons' Use of Restrictive Housing for Inmates with Mental Illness* 15–18 (2017), https://oig.justice.gov/reports/2017/e1705.pdf.

[3] U.S. Department of Justice, Office of the Inspector General, 24-113, *Inspection of the Federal Bureau of Prisons' Federal Correctional Institution Lewisburg* 3 n.1 (2024), https://oig.justice.gov/sites/default/files/reports/24-113.pdf.

C. Procedural History

1. Parrish prepared a complaint seeking compensation for the years he had wrongfully spent in segregation. Cir.App.16–25, 132–34. He signed the complaint and delivered it for mailing on April 7, 2017. Cir.App.22, 106. The District Court received that complaint and deemed it filed on May 3, 2017, nearly a month later. Cir.App.25.

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. The court mailed both documents to USP Thomson, the federal prison where Parrish had previously been incarcerated. *Id.* at 60a–61a. But by that point, Parrish was in the process of being transferred from federal to state custody. *Id.* at 60a–61a; D.Ct. Dkt. No. 133 (Notice of Change of Address); *see also* Sentencing Memorandum of United States at 4, Dkt. No. 147, *United States v. Parrish*, No. 05-cr-417 (M.D. Pa. May 23, 2024) (explaining that Parrish had been released from federal custody on March 24, 2020, after the United States agreed that his sentence was unlawful). "[S]ervice of the [judgment] was accepted at USP Thomson on April 7, 2020." Pet.App.60a (citing D.Ct. Dkt. No. 132). But "the [order] was returned as undelivered . . . ." *Id.*

Parrish promptly filed a notice of change of address. D.Ct. Dkt. No. 133 (April 14, 2020). He then filed a second notice, along with a note "requesting a docket sheet." D.Ct. Dkt. No. 134 (June 9, 2020). Upon receiving the docket sheet, Parrish realized "that [his] lawsuit ha[d] been denied." D.Ct. Dkt. No. 135 (June 23, 2020). So he filed a letter asking for "a copy of the

judge[']s last ruling sent to [his] new address." *Id.* In the end, 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 60-day appeal period had expired, 28 U.S.C. § 2107(b).

2. Parrish acted quickly to try to salvage his opportunity to appeal. On July 8, 2020, he filed a document entitled "Notice of Appeal." Pet.App.71a; *see also* D.Ct. Dkt. No. 131-1 (envelope). In that document, Parrish explained the reason for his delayed filing: "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 the notice of appeal as a motion to reopen the appeal period and remanded for the District Court to rule on that motion. Pet.App.56a–58a.

On remand, 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)). The District Court therefore reopened the appeal period for 14 days. *Id.* at 61a–62a. It further directed the clerk to "supplement [the] record accordingly, and transmit the same to the United States Court of Appeals for the Fourth Circuit." *Id.* at 62a.[4]

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[4] The District Court's reopening order contains a typo suggesting that reopening was granted on January 8, 2020. Pet.App.62a. As the Court of Appeals recognized, reopening was actually granted on January 8, 2021. *See* Pet.App.5a.

3. Parrish's appeal thus returned to the Fourth Circuit. There, both Parrish and the Government agreed that Parrish's original notice of appeal had become effective when the District Court reopened the appeal period. *See* Ct.App. Dkt. No. 27 (Opening Br.) at 1; Ct.App. Dkt. No. 39 (U.S. Br.) at 1. That is how other appellate courts treat notices of appeal filed after the ordinary appeal period has expired but before reopening is granted. *See Winters v. Taskila*, 88 F.4th 665, 671 (6th Cir. 2023); *United States v. Withers*, 638 F.3d 1055, 1061–62 (9th Cir. 2011); *Holden v. Att'y Gen. of N.J.*, 2023 WL 8798084 (3d Cir. Dec. 20, 2023); *Farrow v. Tulupia*, 2022 WL 274489, at *1 n.1 (10th Cir. Jan. 31, 2022); *Norwood v. E. Allen Cnty. Schs.*, 825 F. App'x 383, 386–87 (7th Cir. 2020); *United States v. Marshall*, 1998 WL 864012, at *2 (10th Cir. Dec. 14, 1998).

A divided panel of the Fourth Circuit rejected that consensus position. The panel majority acknowledged that notices of appeal filed after the ordinary appeal period expires ripen when a district court grants an extension under § 2107(c)'s first sentence. Pet.App.11a. It reasoned, however, that the word "reopen" precludes a previously filed notice of appeal from ripening when a district court grants reopening under § 2107(c)'s second sentence. *See id.* at 5a–6a, 9a–12a. The panel majority also suggested that "Parrish's earlier filing" could no longer serve as a notice of appeal because it "ha[d] already been construed" as a motion to reopen. *Id.* at 3a–4a. The majority thus deemed Parrish's notice of appeal ineffective. And because Parrish had not filed a second notice of appeal during the 14-day reopening

window, it dismissed his appeal for lack of jurisdiction. Pet.App.2a.

Judge Gregory dissented. *Id.* at 14a–22a. He found no second-notice "requirement in the text of § 2107(c)," *id.* at 18a, and would have held that Parrish's notice of appeal ripened when reopening was granted. *See id.* at 14a, 16a–17a. Judge Gregory opined that the majority's "attempted distinction" between reopening an appeal period and extending it "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). The panel denied rehearing over Judge Gregory's dissenting vote. Pet.App.70a. And the Fourth Circuit denied rehearing en banc by a vote of 9-to-6. *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. The panel's ruling, the dissenters recognized, had created a circuit "split." *Id.* at 68a. And it will have a "grav[e] . . . impact on those it affects," often denying them any meaningful opportunity to appeal. *Id.* at 68a–69a.

SUMMARY OF ARGUMENT

I. Notices of appeal filed after the original appeal period expires ripen when the appeal period reopens.

A. This Court and the Federal Rules take a functional approach to notices of appeal, particularly for pro se litigants. So long as notices of appeal afford adequate notice, purely technical defects do not render them ineffective. For decades, courts—including this Court—have taken the same functional approach to notices of appeal that are filed too early. Premature notices usually afford more notice, not less. As a result, they generally ripen when an appeal period opens. That ripening principle is reflected in the Federal Rules. In fact, it is so well established that rulemakers expressly disclaim it where it does not apply.

B. Section 2107 incorporates the same ripening principle. Nothing in § 2107(c)'s text requires litigants to file a duplicative notice of appeal after the appeal period reopens. To the contrary, § 2107(c) incorporates the notice of appeal requirement set forth in § 2107(a), which provides that a notice of appeal need only be filed "within 30 days after" the order on appeal—*i.e.*, before the jurisdictional deadline. Ordinary ripening rules apply to notices of appeal filed before the § 2107(a) clock starts ticking. There is no textual basis for treating § 2107(c) any differently. Indeed, historical context confirms that premature notices of appeal ripen under § 2107(c)'s second sentence, just as they do under the statute's other provisions. The "no prejudice" standard baked into § 2107(c)'s text captures the ripening principle perfectly.

C. Applying the ripening principle results in a clear and sensible jurisdictional rule. Litigants that benefit from reopening orders are almost always incarcerated people acting pro se—a category of litigants that often fails to receive timely notice of court orders due to circumstances far beyond their control. A second-notice requirement is a tripwire that pro se litigants (and even lawyers) may fail to spot. And even those who realize that a second notice is required may have no way to file one during the 14-day reopening window. Under the Fourth Circuit's rule, those litigants will lose their right to appeal through no fault of their own—and for no conceivable reason, since reopening can be granted only when "no party [will] be prejudiced." 28 U.S.C. § 2107(c).

II. The Fourth Circuit's justifications for its second-notice requirement fall flat.

A. The Fourth Circuit primarily relied on an attempted distinction between the word "reopen" and the word "extend." According to the court, notices of appeal ripen under § 2107(c)'s first sentence because an "extension" retroactively creates a continuous appeal period, but they do not ripen under § 2107(c)'s second sentence because "reopening" works differently. That logic fails at every step. Ripening does not hinge on the fiction that an untimely notice of appeal was timely all along. That is not how extensions work, in any event: Like reopening motions, extension motions can be granted either before or after the original appeal period expires. Congress's use of different terms merely reflects the obvious differences between the two mechanisms. There is no way to read the word "reopen" as implicitly dislodging the ripening principle that applies in every

other context—much less as imposing a second-notice requirement for reopening only.

B. The Fourth Circuit also briefly suggested that Parrish's notice of appeal could no longer be considered a notice of appeal once it had been construed as a motion to reopen. Apparently, the Fourth Circuit doesn't think a single filing can work two jobs at once. This Court has already held, however, that notices of appeal can do exactly that.

ARGUMENT

I. NOTICES OF APPEAL FILED AFTER THE ORDINARY APPEAL PERIOD EXPIRES RIPEN WHEN THE APPEAL PERIOD IS REOPENED.

Notices of appeal that are filed too early generally become effective when an appeal clock starts running. That background ripening principle—which follows from the functional approach to notices of appeal—is reflected both in caselaw and in the Federal Rules. Congress baked it into § 2107's text. And it yields a simple, workable rule that avoids stripping pro se litigants of their right to appeal and prejudices no one.

A. Premature notices of appeal generally take effect when an appeal period opens.

Courts and rulemakers take a functional approach to notices of appeal, particularly for pro se litigants. Consistent with that approach, this Court and others have long recognized—across a wide variety of contexts—that premature notices of appeal generally

ripen when an appeal period begins. That background principle is also reflected in the Federal Rules.

1. Notices of appeal serve an important purpose: They inform parties and courts that a particular litigant wishes to challenge a particular court order. *See Smith*, 502 U.S. at 248. But the notice-of-appeal requirement is not meant to be a landmine. "[I]mperfect . . . compliance" with formal rules is not disqualifying. *Torres v. Oakland Scavenger Co.*, 487 U.S. 312, 315 (1988); *see also Hoiness v. United States*, 335 U.S. 297, 300 (1948) (explaining that "niceties of form" are immaterial and "defect[s] . . . of . . . a technical nature" should be "disregarded"); Fed. R. App. P. 3(c)(7) ("An appeal must not be dismissed for informality of form or title of the notice of appeal, for failure to name a party whose intent to appeal is otherwise clear from the notice, or for failure to properly designate the judgment if the notice of appeal was filed after entry of the judgment and designates an order that merged into that judgment.").

A notice of appeal is fit for purpose so long as it actually provides adequate notice. *See Smith*, 502 U.S. at 248 ("[T]he notice afforded by a document . . . determines the document's sufficiency as a notice of appeal."). To do that, a notice of appeal need only leave "no genuine doubt . . . about who is appealing, from what judgment, [and] to which appellate court." *Becker v. Montgomery*, 532 U.S. 757, 767 (2001) (reversing court of appeals for dismissing an appeal because the appellant had failed to sign the notice of appeal); *see also Foman v. Davis*, 371 U.S. 178, 181 (1962) (notice of appeal sufficient where "petitioner's intention to seek review of" particular judgments "was

manifest”); *Hoiness*, 335 U.S. at 301 (notice of appeal sufficient where “[w]hat appellant sought to have reviewed was plain”).

The functional approach to notices of appeal echoes broader requirements that courts elevate function over form. Federal Rule of Civil Procedure 61 provides that, “[a]t every stage of the proceeding, the court must disregard all errors and defects that do not affect any party’s substantial rights.” Fed. R. Civ. P. 61. And first among all Rules of Civil Procedure is the general principle that Rules “should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding.” Fed. R. Civ. P. 1. “It is . . . entirely contrary to the spirit of the Federal Rules of Civil Procedure for decisions on the merits to be avoided on the basis of . . . mere technicalities.” *Foman*, 371 U.S. at 181.

The functional approach to notices of appeal also follows from this Court’s consistent refrain that pro se filings must be construed generously. *See, e.g.*, *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (per curiam) (“A document filed *pro se* is ‘to be liberally construed[.]’” (quoting *Estelle v. Gamble*, 429 U.S. 97, 106 (1976))). Most of this Court’s “functional approach” cases have involved notices of appeal filed by pro se litigants. This Court has always afforded those notices of appeal the same liberal construction it affords other pro se filings. *See, e.g.*, *Smith*, 502 U.S. at 248–50 (construing “informal brief” filed by pro se litigant as a notice of appeal); *Becker*, 532 U.S. at 767–68 (deeming pro se notice of appeal sufficient even though unsigned); *cf. also Houston v. Lack*, 487 U.S. 266, 270 (1988) (holding that a notice

of appeal filed by an incarcerated pro se litigant is sufficient if delivered to prison authorities by the jurisdictional deadline); *Fallen v. United States*, 378 U.S. 139, 142–44 (1964) (similar).

2. This Court has applied this same functional approach to premature notices of appeal. In *FirsTier*, this Court considered a notice of appeal filed "after the District Court announced from the bench that it intended to grant summary judgment for respondent, but before entry of judgment." 498 U.S. at 270. The question before the Court was whether that notice was "fatally premature," given that the appeal period did not begin running until judgment was entered. *Id.* at 272. The answer was no. *See id.* at 273–74. Federal Rule of Appellate Procedure 4(a)(2) provides that "a notice of appeal 'filed after the announcement of a decision or order but before the entry of the judgment or order shall be treated as filed after such entry and on the day thereof.'" *Id.* at 272–73 (quoting Fed. R. App. P. 4(a)(2)). As the Court recognized, that Rule reflects "a general practice in the courts of appeals of deeming certain premature notices of appeal effective." *Id.* at 273 (citing, *e.g.*, *In re Grand Jury Impaneled Jan. 21, 1975*, 541 F.2d 373, 377 (3d Cir. 1976)). This Court endorsed that practice, holding that "the technical defect of prematurity . . . should not be allowed to extinguish an otherwise proper appeal" when it "do[es] not prejudice the appellee." *Id.*; *see also id.* at 274–75 (rejecting the argument that this practice "enlarg[ed] appellate jurisdiction").

FirsTier variously described the premature-notice principle in terms of "ripen[ing]," "relat[ion] forward," and becoming "effective." *Id.* at 275, 277. However

labeled, the principle has been applied "quite generally" in civil cases for decades. Fed. R. App. P. 4, Advisory Committee Notes on 1979 Amendment. *See, e.g.*, *United States v. Valdosta-Lowndes Cnty. Hosp. Auth.*, 668 F.2d 1177, 1178 n.2 (11th Cir. 1982) (notice filed after entry of judgment but before decision on JNOV motion); *Tilden Fin. Corp v. Palo Tire Serv., Inc.*, 596 F.2d 604, 606–07 (3d Cir. 1979) (notice filed before appellant obtained Rule 54(b) certification); *Richerson v. Jones*, 551 F.2d 918, 922–23 (3d Cir. 1977) (notice filed after merits ruling but before ruling on attorney's fees); *Jetco Elec. Indus. v. Gardiner*, 473 F.2d 1228, 1231 (5th Cir. 1973) (notice filed after entry of judgment against appellant but before resolution of claims against other parties); *Morris v. Uhl & Lopez Eng'rs, Inc.*, 442 F.2d 1247, 1250–51 (10th Cir. 1971) (same, in slightly different configuration); *Merchants & Planters Bank v. Smith*, 516 F.2d 355, 356 n.3 (8th Cir. 1975) (same, in slightly different configuration); *Eason v. Dickson*, 390 F.2d 585, 587–88 (9th Cir. 1968) (notice filed after denial of motion to convene three-judge district court, which appellant believed disposed of his claims on the merits); *Markham v. Holt*, 369 F.2d 940, 941–42 (5th Cir. 1966) (notice filed after entry of order granting summary judgment but before entry of judgment).

This Court applied the same principle in the criminal context more than three-quarters of a century ago. In *Lemke v. United States*, 346 U.S. 325 (1953) (per curiam), the defendant filed a notice of appeal on March 11, but judgment was not entered until March 14. *See id.* at 326. "Since no notice of appeal was filed after that time," the lower court "dismissed [the appeal] as premature." *Id.* This Court

reversed that ruling and reinstated the appeal. "The notice of appeal filed on March 11," it recognized, "was . . . still on file on March 14 and gave full notice after that date, as well as before, of the sentence and judgment which petitioner challenged." *Id.* Because the notice of appeal's "irregularity" did "not affect substantial rights," it was sufficient. *Id.* (quoting Fed. R. Crim. P. 52(a)).[5]

3. By 1979, the ripening principle was so well established that rulemakers had to expressly enumerate circumstances in which premature notices should *not* be allowed to ripen. That year, the Rules Committee amended Appellate Rule 4(a)(4) to provide that "[a] notice of appeal filed before the disposition of [certain post-judgment motions] shall have no effect." Fed. R. App. P. 4(a)(4) (1979); *see* Fed. R. App. P. 4, Adv. Comm. Notes on 1993 Amendment (discussing the 1979 rule). Prior to that amendment, courts of appeals had generally treated such notices as sufficient, recognizing that they ripened once post-judgment motions were resolved. *See Acosta v. La. Dep't of Health & Hum. Servs.*, 478 U.S. 251, 254 (1986) (per curiam) (explaining that the amended Rule created an exception to the "general rule that a notice of appeal filed after announcement of an order but before its entry in the docket will be deemed timely filed"); *Williams v. Bolger*, 633 F.2d 410, 412 (5th Cir. 1980) (acknowledging that the amendment had "overrule[d] several" of the court's "previous decisions"). But changes to appeal-docketing

[5] As this Court recognized in *Manrique v. United States*, 581 U.S. 116 (2017), "the *Lemke* petitioner's notice of appeal would now be timely under Rule 4(b)(2)." *Id.* at 125.

procedures had resulted in a "broad class of situations . . . in which district courts and courts of appeals would both have had the power to modify the same judgment." *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 59–60 (1982). "The 1979 Amendments avoided that potential conflict" by treating a notice of appeal as void—*i.e.*, "as if no notice of appeal [had been] filed at all"—once certain post-judgment motions were filed. *Id.* at 60, 61.

At the same time it amended Rule 4(a)(4) to preclude ripening in some contexts, the Rules Committee added Rule 4(a)(2), which expressly provided for ripening in others. That provision, which "codif[ied]" existing practice in part, *FirsTier*, 498 U.S. at 273, states 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," Fed. R. App. P. 4(a)(2). *See* Fed. R. App. P. 4, Adv. Comm. Notes (1979) (citing, as examples of the particular application of ripening it acknowledged, *In re Grand Jury*, 541 F.2d 373; *Hodge v. Hodge*, 507 F.2d 87 (3d Cir. 1976); *Song Jook Suh v. Rosenberg*, 437 F.2d 1098 (9th Cir. 1971); *Ruby v. Sec'y of the Navy*, 365 F.2d 385 (9th Cir. 1966); and *Firchau v. Diamond Nat'l Corp.*, 345 F.2d 269 (9th Cir. 1965)).

Rule 4(a)(2)'s ripening provision survives today. Rule 4(a)(4)'s anti-ripening exception does not. In 1993, the Rules Committee amended Rule 4(a)(4) to restore the ripening principle's applicability to post-judgment motions. *See* Fed. R. App. P. 4, Adv. Comm. Notes (1993). As the Committee recognized, "[m]any litigants, especially pro se litigants," had "fail[ed] to file the second notice of appeal" the Rule required—

and so had lost the opportunity to appeal. *Id.*; *see Averhart v. Arredondo*, 773 F.2d 919, 920 (7th Cir. 1985) (Posner, J.) (recognizing that such mistakes are "thoroughly understandable," because "[t]he idea that the first notice of appeal lapses . . . is not intuitive"). Rule 4(a)(4)(B)(i) now expressly incorporates the ripening principle, providing that notices of appeal filed "after the court announces or enters a judgment—but before it disposes of [post-judgment motions]— . . . become[ ] effective . . . when the order disposing of the last such remaining motion is entered."

The Rules' brief dalliance with a narrow exception to the ripening principle had no effect on the principle's application in other contexts. Courts continued to treat other premature notices of appeal as sufficient even while the anti-ripening version of Rule 4(a)(4) was in effect. *See, e.g.*, *Alcorn County v. U.S. Interstate Supplies, Inc.*, 731 F.2d 1160, 1166 (5th Cir. 1984) ("[A] premature notice of appeal does invoke appellate jurisdiction except in the narrow circumstances described in Rule 4(a)(4)."); *Cape May Greene, Inc. v. Warren*, 698 F.2d 179, 185 (3d Cir. 1983) ("[T]he prohibition against giving effect to premature notices of appeal shall be confined to the specific instances cited in Rule 4(a)(4).").

Nor has the Rules' express incorporation of the ripening principle in some contexts limited its application in others. Indeed, courts consistently acknowledge that notices of appeal filed too early ripen in circumstances not expressly contemplated by the Rules. For example, notices of appeal filed after an interlocutory order but before Rule 54(b) certification ripen when the order is certified. *See,*

e.g., *Clausen v. SEA-3, Inc.*, 21 F.3d 1181, 1184–85 (1st Cir. 1994) (collecting cases from Second, Fourth, Seventh, Eighth, Ninth, Tenth, and D.C. Circuits); *Liberty Bell Bank v. Rogers*, 726 F. App'x 147, 150 n.5 (3d Cir. 2018); *Swope v. Columbian Chems. Co.*, 281 F.3d 185, 191–94 (5th Cir. 2002); *Good v. Ohio Edison Co.*, 104 F.3d 93, 95 (6th Cir. 1997); *Wilson v. Navistar Int'l Transp. Corp.*, 193 F.3d 1212, 1213 (11th Cir. 1999). And notices of appeal filed after the original appeal period expires ripen when the appeal period is extended under § 2107(c)'s first sentence. *See Moore v. Nelson*, 611 F.2d 434, 436 n.4 (2d Cir. 1979); *Evans v. Jones*, 366 F.2d 772, 773 (4th Cir. 1966); *Cuevas v. Reading & Bates Corp.*, 770 F.2d 1371, 1375, 1377 (5th Cir. 1985), *overruled on other grounds*, *In re Air Crash Disaster Near New Orleans*, 821 F.2d 1147, 1163 n. 25 (5th Cir. 1987) (en banc); *Van Orman v. Purkett*, 43 F.3d 1201, 1202 (8th Cir. 1994); *United States v. Layton*, 855 F.2d 1388, 1416 (9th Cir. 1988); *N. Am. Specialty Ins. Co. v. Corr. Med. Servs., Inc.*, 527 F.3d 1033, 1039 (10th Cir. 2008); *see also Consol. Freightways Corp. of Del. v. Larson*, 827 F.2d 916, 921 (3d Cir. 1987).

B. Section 2107(c) incorporates that ripening principle.

Section 2107(c) was enacted in 1991, right on *FirsTier*'s heels and after the ripening principle had been established for decades. *See* Pub. L. 102-198, § 12 (Dec. 9, 1991); *supra* 22–27. The provision's text, structure, and history all indicate that the reopening mechanism incorporates the background ripening principle. Like other premature notices of appeal that provide adequate notice, notices of appeal filed after

the original appeal period expires take effect when the appeal period is reopened.

Text. Jurisdictional requirements spring only from clear statements in statutory text. *See, e.g.*, *Wilkins v. United States*, 598 U.S. 152, 158–60 (2023) (courts apply "the jurisdictional label" only when Congress has made a "clear statement" that a provision "truly operates as a limit on a court's subject-matter jurisdiction"); *Hamer v. Neighborhood Hous. Servs.*, 583 U.S. 17, 19 (2017) ("[A] time limit prescribed only in a court-made rule . . . is not jurisdictional."). Section 2107(c) authorizes courts 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." The provision contains no statement—much less a clear one—that appellate courts lack jurisdiction unless an appellant files a notice of appeal *after* reopening. Section 2107(c) does not even mention notices of appeal. Nor does it say anything about what appellants must do during the 14-day reopening period. In the absence of a clear statement, there can be no jurisdictional requirement that litigants who have already filed an otherwise-sufficient notice of appeal file a second one during the reopening window.

Structure. Section 2107's broader structure confirms that subsection (c) incorporates the ripening default rule. Subsection (a) creates the notice-of-appeal requirement; subsections (b) and (c) simply set different deadlines for completing that requirement. Ripening is available under subsections (a) and (b). The notice-of-appeal requirement must mean the same thing for subsection (c).

Subsection (c) does not itself set out a requirement to file a notice of appeal. It provides only for reopening of "the time for appeal." The obligation to file a notice of appeal comes from subsection (a), which contains § 2107's only reference to notices of appeal. Subsection (a) requires that a notice of appeal be filed "within thirty days after the entry of" the decision at issue, "[e]xcept as otherwise provided in this section."

Subsections (b) and (c) provide otherwise. Both subsections incorporate the notice-of-appeal requirement in subsection (a), but they set different deadlines in certain categories of cases. Where subsection (b) applies, "the time" is "60 days from such entry." And under subsection (c), courts may "extend the time for appeal" or "reopen the time for appeal for a period of 14 days." In both provisions, "the time" and "the time for appeal" refer back to the only complete statement of the notice-of-appeal requirement in § 2107: subsection (a)'s requirement that a notice of appeal be filed "within thirty days after" an order's entry.

The operative language in subsection (a)—"within 30 days after the entry"—is consistent with the ripening principle. That phrase specifies both the latest time a notice of appeal can be filed and the event from which that deadline is measured. When used in the deadline context, the preposition "within" means "before the end of." "Within," *Merriam-Webster* (2025); *see also* "Within," *Collins Dictionary* (2025) ("not beyond in distance, time, degree, range, scope, etc."); "Within," *Oxford English Dictionary* (2025) ("In the limits of (a period of time); most usually, before the end of, after not more than"; "Not beyond or above (a specified or implied amount or degree); at, in, or of

less than or not more than; so as not to exceed or surpass"); Cambridge English Dictionary, *English Grammar Today* ("Within stresses that something is . . . not later than a particular time."), https://dictionary.cambridge.org/us/grammar/british-grammar/within. So in subsection (a), "within" sets the date by which a notice of appeal must be filed. And the phrase "after the entry" anchors that deadline to a specific point in time—*i.e.*, it tells you which day to start counting.

The notice-of-appeal requirement in subsection (a) is therefore consistent with ripening. Notices of appeal are filed "within" the appeal period so long as they are filed before the deadline. *See Smith*, 502 U.S. at 248–49 ("If a document filed within the time specified by Rule 4 gives the notice required by Rule 3, it is effective as a notice of appeal."). That is just as true for premature notices of appeal as it is for notices of appeal filed after the appeal period begins. After all, a premature notice is "still on file"—in other words, "is filed," 28 U.S.C. § 2107(a)—when the appeal period begins to run, and it gives "full notice [of the appeal] after that date, as well as before." *Lemke*, 346 U.S. at 326.

As explained above, courts have long held exactly that with respect to appeal periods governed by subsections (a) and (b). *See supra* 22–27 (collecting cases holding that notices of appeal filed before entry of the appealable order ripen when the appeal period opens under subsections (a) and (b)). They have reached the same result for appeal periods governed by subsection (c)'s first sentence, which addresses extensions. *See supra* 27.

As every circuit save the Fourth has also recognized, there is no textual basis for treating subsection (c)'s second sentence any differently. *See supra* 27 (collecting cases holding that notices of appeal filed after the original appeal period expires ripen when the appeal period is reopened). Each subsection of § 2107 uses different language to set different deadlines. But the same language in subsection (a) creates the notice-of-appeal requirement for all three subsections. That requirement must work the same way across the entire statute. *See Clark v. Martinez*, 543 U.S. 371, 378 (2005) (where one statutory term "applies without differentiation to" a set of "categories," construing it to perform different work as to "each category would . . . invent a statute," not "interpret one").

History. Historical context points in the same direction. Subsection (c) was added to § 2107 in 1991, when Congress acted on a suggestion in the Advisory Committee's Notes on Rule 4. Pub. L. 102-198, § 12 (Dec. 9, 1991) ("Conformity with Rules of Appellate Procedure"); *see* Fed. R. App. P. 4, Adv. Comm. Notes (1991) ("recommend[ing]," in a "Transmittal Note," that § 2107 "might appropriately be revised in light of th[e] proposed [Rule 4(a)(6)]"). By that point, as this Court had recognized just a few months earlier, there was a well-established "general practice in the courts of appeals of deeming certain premature notices of appeal effective." *FirsTier*, 498 U.S. at 273; *see supra* 22–26. The functional approach to notices of appeal was also long settled. *See supra* 20–22. Against that backdrop, the drafters of the Federal Rules understood that premature notices of appeal would

ripen when an appeal period opened absent an express provision to the contrary. *See supra* 25.

Congress would have understood that too. And when it added § 2107(c) to expand access to appellate review, it said nothing to prevent the background ripening principle from operating on § 2107(c) the same way it does on the statute's first two subsections. *Cf. Arellano v. McDonough*, 598 U.S. 1, 6 (2023) (equitable tolling forms the "jurisprudential backdrop" for interpreting limitations periods); *Peter v. NantKwest, Inc.*, 589 U.S. 23, 30 (2019) (recognizing that the background American Rule is "the starting point" for assessing a fee-shifting statute); *Lorillard v. Pons*, 434 U.S. 575, 580 (1978) (explaining that Congress is "presumed to be aware of an administrative or judicial interpretation of a statute and to adopt that interpretation when it re-enacts a statute without change"); *Forest Grove Sch. Dist. v. T.A.*, 557 U.S. 230, 239 (2009) (similar); *Boeing Co. v. United States*, 537 U.S. 437, 457 (2003) (similar).

In fact, Congress did the opposite: It used language that perfectly encapsulates the "no prejudice" rationale that has animated the ripening principle since its inception. *Compare* 28 U.S.C. § 2107(c)(2) (authorizing reopening only upon a finding that "no party would be prejudiced"), *with FirsTier*, 498 U.S. at 273 (recognizing that "prematurity . . . should not be allowed to extinguish an otherwise proper appeal" where the "premature notice[ ] do[es] not prejudice the appellee"); *see also, e.g.*, *Firchau*, 345 F.2d at 271 (notice sufficient when "premature filing" did not "affect[] substantial rights"); *Markham*, 369 F.2d at 942 (standard for ripening is whether "prejudice will result to the appellee"); *Song Jook Suh*, 437 F.2d

at 1100 (premature notice sufficient where no one was prejudiced); *Eason*, 390 F.2d at 588 ("the test [for ripening] was one of prejudice or its absence"); *Morris*, 442 F.2d at 1250 (permitting ripening when "no prejudice could result to any one"); *Hodge*, 507 F.2d at 89 (permitting ripening when "the non-appealing party is not prejudiced by the prematurity"); *In re Grand Jury*, 541 F.2d at 376–77 (permitting ripening because "the government ha[d] not been prejudiced by the prematurity"); *Richerson*, 551 F.2d at 922–23 (permitting ripening "in the absence of a showing of prejudice to the other party"); *Tilden Fin. Corp.*, 596 F.2d at 606–07 (permitting ripening absent risk of "prejudice to either party"); *Williams v. Okoboji*, 599 F.2d 238, 239 (8th Cir. 1979) ("generally the appellant may proceed" despite a "prematurely filed notice of appeal," absent "prejudice resulting from the prematurity of the notice").

Because § 2107(c) incorporates the "no prejudice" standard, ripening is always warranted upon reopening—assuming, of course, that a notice of appeal is otherwise adequate. Notices filed after expiration of the ordinary appeal period but before reopening are necessarily filed after judgment. So they "provide[ ] sufficient notice to other parties and the courts" of the grounds for the appeal. *Smith*, 502 U.S. at 248; *compare Manrique*, 581 U.S. at 123–25 (premature notice insufficient when filed before "the court has . . . decided the issue that the appellant seeks to appeal"), *and Sacks v. Rothberg*, 845 F.2d 1098, 1099 & n.* (D.C. Cir. 1988) (per curiam) (observing that every circuit recognizes this limitation in civil cases, too), *with* Fed. R. App. P. 3(c)(7) (providing that "failure to properly designate the

judgment" is not grounds for dismissal "if the notice of appeal was filed after entry"). Indeed, they necessarily provide appellees and courts with more notice than post-reopening notices, not less. *See Lemke*, 346 U.S. at 326 (recognizing that premature notices of appeal give "full notice after" the appeal period begins, "as well as before"); Fed. R. App. P. 4, Adv. Comm. Notes to 1993 Amendment (observing that an appellee would receive "sufficient notice of the appellant's intentions" from a premature notice). Section 2107(c) thus fits comfortably within the ripening tradition against which it was enacted.

C. Ripening upon reopening is a simple jurisdictional rule that preserves § 2107(c)'s purpose.

Applying ordinary ripening principles results in a straightforward jurisdictional rule that benefits parties and courts alike. It also avoids undermining § 2107(c)'s purpose, which was to preserve appellate rights for litigants who fail to receive timely notice of a judgment through no fault of their own. The Fourth Circuit's second-notice requirement guts the reopening mechanism by rendering it ineffective for many of the people who need it most.

1. Jurisdictional rules "have a unique potential to disrupt the orderly course of litigation." *Wilkins*, 598 U.S. at 157. They have "drastic" consequences, depriving courts of the power to resolve disputes no matter the equities. *Henderson v. Shinseki*, 562 U.S. 428, 435 (2011). And they force courts to issue-spot without party assistance—and even sometimes (as here) against party agreement. *See id.* at 434 ("[F]ederal courts have an independent obligation to

ensure that they do not exceed the scope of their jurisdiction, and therefore they must raise and decide jurisdictional questions that the parties either overlook or elect not to press.”). For these reasons, “simplicity is a major virtue” for jurisdictional rules. *Hertz Corp. v. Friend*, 559 U.S. 77, 94 (2010).

This Court has long endorsed a simple jurisdictional rule for notices of appeal: If a notice is functionally sufficient—*i.e.*, if it actually provides adequate notice before the jurisdictional deadline—it does the trick. *See supra* 20–22. That simple rule has a simple corollary: Notices of appeal filed after the ordinary appeal period expires ripen when reopening is granted. That is a straightforward, intuitive rule that can readily be applied in every case. It also avoids creating a second-notice tripwire that litigants must spot—or else pay the jurisdictional price.

2. Reading § 2107(c) to set that trap would make the reopening mechanism virtually useless for the very people it serves: pro se litigants in general, and incarcerated pro se litigants in particular.

Because reopening is available only for litigants who do not receive notice of an adverse ruling within 21 days, pro se litigants are its almost-exclusive beneficiaries. The reason for that is straightforward: Whereas lawyers now almost always receive instant electronic notice, pro se litigants usually must grapple with old-fashioned mail. *Compare* Fed. R. Civ. P. 5(d)(3)(a) (“A person represented by an attorney must file electronically, unless nonelectronic filing is allowed by the court for good cause or required by local rule.”), *with* Federal Judicial Center, *Federal Courts’ Electronic Filing by Pro Se Litigants* 1, 3, 7–8 (2022),

https://www.fjc.gov/sites/default/files/materials/20/FederalCourtProSeECF.pdf (finding that only around half of federal district courts permit pro se litigants to file electronically and that "[p]risoners cannot use CM/ECF" even in those jurisdictions). And despite the postal service's best efforts, "snow [or] rain [or] heat [or] gloom of night" can sometimes "stay[]" even the finest "courier from swift completion of their appointed rounds." U.S. Postal Service, *Postal Service Mission and "Motto,"* https://about.usps.com/who/profile/history/pdf/mission-motto.pdf; *see* U.S. Postal Service, Analysis of FY 2023 Performance 31 (2024), https://www.prc.gov/sites/default/files/reports/2803_2804%20Report_Final.pdf (finding that "the Postal Service failed to meet six out of its eight targets for" first-class mail products "[i]n FY 2023," including late delivery of nearly 20 percent of mail meant to be delivered within three to five days); U.S. Postal Service Office of Inspector General, Spring 2024 Semiannual Report to Congress 16 (2024), 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).

Incarcerated pro se litigants face further obstacles to timely notice. Not only are they "forced" "to entrust their appeals to the vagaries of the mail," they also must rely on "prison authorities whom [they] cannot control or supervise" to forward incoming mail promptly. *Houston*, 487 U.S. at 271. It takes time for prisons to process, screen, and distribute incoming mail in the best of circumstances. *See, e.g.*, Pa. Dep't of Corr., *Mail* (setting target of "6–8 days for inmates to receive their mail" after it arrives at the prison),

https://www.pa.gov/agencies/cor/resources/for-family-and-friends/mail.html; Cal. Dep't of Corr. Office of the Inspector General, *Review of Correctional Facility Mail Processing* 19 (2002) (inspector could not verify whether prisons were meeting the state's goal of delivering mail to inmates within "seven calendar days from receipt of the mail from the post office," and reporting that postmarks can already be "one to two weeks old" by the time mail arrives at the prison), https://www.oig.ca.gov/wp-content/uploads/2019/05/Mail-Processing-Correctional-Facility-Department-of-Corrections-Review.pdf; *cf.* 28 C.F.R. § 540.14(a) ("Institution staff shall open and inspect all incoming general correspondence."). And circumstances are of course not always ideal. *See, e.g.*, *Young v. Kenney*, 949 F.3d 995, 997 (6th Cir. 2020) (per curiam) (movant did not receive notice of order because he had been "placed in the prison's psychiatric unit" and was "not permitted to have property in [his] possession"); *United States v. Orejuela*, 2024 WL 5151216, at *1 (E.D.N.Y. Dec. 18, 2024) (prison refused to deliver mail because of the court's "[c]lerical error," even though the litigant had "consistently informed the [c]ourt of his correct" mailing information); *cf. Houston*, 487 U.S. at 271 (recognizing that "prison authorities . . . may have incentive to delay" mail processing).

Transfers from one prison facility to another can create additional delays. Incarcerated people are moved frequently and for a variety of reasons. *See* U.S. Marshals Service, *JPATS: A Day in the Life of Prisoner Transports* (Aug. 23, 2024) (U.S. Marshals perform "over 200,000 prisoner movements yearly," including for "disciplinary reasons, court and study

orders, mental health evaluations, and attorney special requests"), https://www.usmarshals.gov/news/stories/jpats-day-life-of-prisoner-transports; *see also, e.g.*, Cir.App.150–51 (documenting at least 18 such moves across 12 years). These moves often happen without notice, and can leave prisoners without any means of updating the court in a timely fashion. *See, e.g.*, Ga. Dep't of Corr. Standard Operating Proc. 222.01 at 7 (Oct. 24, 2023) ("For reasons dictated by good security practices," approved transfers "shall always be kept confidential and under no circumstances shared with the offender or [his] contacts" in advance); N.Y. Corrections & Community Supervision Handbook for the Families and Friends of N.Y. State DOCCS Inmates 5 (2019) (warning visitors that "[u]nscheduled transfers" can "result in you traveling a long distance only to find that [an inmate] is no longer at that facility"); *cf.* 28 C.F.R. § 540.16(a) (directing that prisoners "enroute to a designated institution" be given "correspondence privileges" only "insofar as practical"). The resulting delays can be substantial. *See, e.g.*, *Winters*, 88 F.4th at 667 (order "took months to reach" the appellant because he had been moved to a different prison); *Reho v. United States*, No. 1:20-cr-775, ECF No. 49 at 1–2 (N.D. Ohio Sept. 13, 2022) (movant did not receive notice because he had been transferred between federal prisons); *Brik v. McConnell*, No. 20-cv-1825, ECF No. 52 at 2 (N.D. Ohio Oct. 15, 2024) (movant did not receive notice because he had been transferred first to a halfway house and then to home confinement).

Section 2107(c)'s reopening mechanism was designed to overcome the problems inherent in physical mail delivery and amplified in the prison

context. And it worked. Thanks to § 2107(c), mail delays and prison-processing problems no longer deprive pro se litigants of their right to appeal. *See* Pet.App.67a–68a (Gregory, J., dissenting from denial of rehearing en banc) (reopening is "most commonly, if not exclusively, sought by pro se litigants who were unable to notice their [appeal on time], often due to no fault of their own"); 16A Fed. Prac. & Proc. § 3950.6 (5th ed.) (reopening allays "the plight of th[e] litigant" who "first learned of the entry of judgment" too late to seek an extension of the appeal period).

3. At least, they didn't until the Fourth Circuit's second-notice requirement came along. That new mandate sets a "trap for the unwary," penalizing the same litigants § 2107(c) was designed to serve. *Averhart*, 773 F.2d at 920. And even the most wary may be unable to avoid its harsh effects.

The problem for the unwary is obvious. "The idea that the first notice of appeal lapses . . . is not intuitive." *Id.* And experience has proven that "[m]any litigants, especially pro se litigants, fail to file [a] second notice of appeal" even in the face of clear rules requiring one. Fed. R. App. P. 4, Adv. Comm. Notes (1993); *see also Blanchard v. Frosh*, 2024 WL 4471726 (4th Cir. Oct. 11, 2024) (per curiam) (dismissing appeal for failure to file post-reopening notice, despite clear requirement to do so articulated in the decision below). Indeed, even attorneys may not realize that a duplicative notice is required. *Cf. Lewis v. B.F. Goodrich Co.*, 850 F.2d 641, 645 (10th Cir. 1988) (en banc) (explaining that the court's earlier practice of requiring a duplicative notice after Rule 54(b) certification had "often proved a trap for unwary attorneys").

The short length of the reopening window makes that bad problem worse. The same mail and prison-processing delays that warrant reopening in the first place will eat up at least some of the 14-day reopening period. *See supra* 35–38; *see, e.g.*, Appellant's Motion for Extension of Time to Respond at 1, *Holston v. Mora*, No. 22-12808 (Feb. 6, 2025) (requesting additional time because pro se appellant did not receive court's request for briefing until the 13th day of 14-day briefing period). And incarcerated litigants can't just jump onto Westlaw any time they please. *See* 28 C.F.R. § 543.11(i) (directing that "each inmate shall continue his regular institutional activities without undue disruption by legal activities"); Ohio Admin. Code R. 5120-9-20(B)(3) ("Each institution shall establish a schedule of library hours when legal materials can be used."); *cf. Lewis v. Casey*, 518 U.S. 343, 351 (1996) (no "freestanding right to a law library"). So it is anything but reasonable to expect that litigants who receive a reopening order will be able to discover the second-notice requirement—and get a second notice on file—before the reopening window closes.

Indeed, for many of those litigants, the reopening clock will run before they even learn that reopening has been granted—making compliance with the second-notice requirement quite literally impossible. By definition, every litigant who benefits from reopening did not receive notice of an adverse judgment within 21 days. *See* 28 U.S.C. § 2107(c). The problem should be as obvious as the fact that 14 is less than 21: The same litigants who do not learn of an adverse judgment within 21 days may not learn of a reopening order within 14 days. Except this time,

there is no further reopening mechanism—or even equitable remedy—to save them. Under *Bowles v. Russell*, 551 U.S. 205 (2007), a court can grant reopening just once, for just 14 days. *Id.* at 213 (holding that "Congress specifically limited the amount of time by which district courts can extend the notice-of-appeal period in § 2107(c)"). And once that 14-day period expires, courts have "no authority to create equitable exceptions." *Id.* The upshot is that, under the Fourth Circuit's rule, litigants who do not learn of a reopening order within 14 days lose the right to appeal altogether.

What reason could there be for that result? Again, § 2107(c) authorizes reopening only upon a finding that "no party would be prejudiced." 28 U.S.C. § 2107(c)(2); *see supra* 10, 32–33. So requiring litigants to file a second notice of appeal would be nothing more than a "hollow ritual" of "empty paper shuffling" that benefits no one. *N. Am. Specialty*, 527 F.3d at 1039 (citation omitted). And the litigants it penalizes—people who systematically fail to receive timely notice of court orders—are the very same ones § 2107(c) was designed to protect.

If a statute "is susceptible of two constructions, one of which will carry out and the other defeat its manifest object, [it] should receive the former construction." Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 63–65 (2012) (cleaned up); *see also Abramski v. United States*, 573 U.S. 169, 181 (2014) (rejecting reading that would "defeat the point" of the statute). That canon could have been written for this case. This Court has previously rejected constructions of notice-of-appeal rules that "place[ ] pro se litigants in a

singularly exacting time bind." *Becker*, 532 U.S. at 766. It should do so again here.

II. THE FOURTH CIRCUIT'S SECOND-NOTICE REQUIREMENT LACKS ANY SOUND JUSTIFICATION.

The Fourth Circuit rejected Parrish's notice of appeal for two reasons. First, it concluded that § 2107(c)'s use of the word "reopen"—particularly in conjunction with the word "extend"—implicitly precludes notices of appeal from ripening when reopening is granted. Second, it suggested that notices of appeal cease to operate as notices of appeal once they are construed as motions to reopen. Neither point withstands scrutiny.

A. "Reopen" is consistent with ripening.

Nothing about the word "reopen"—either on its own or in conjunction with the word "extend"—displaces the background ripening principle. Yes, "reopening" is often (though not always) granted after the original appeal period closes. But contrary to the Fourth Circuit's assumption, the ripening principle has never hinged on the fiction that the appeal period was actually open all along. And the Fourth Circuit's attempt to distinguish "reopenings" from "extensions" on that basis fails, because extensions do not necessarily create a continuous appeal period, either.

1. As Parrish's own case reflects, appeal periods can "reopen" after having been closed. *See* Pet.App.57a (recognizing that the ordinary appeal period expired 60 days after the District Court entered its judgment on March 24, 2020 (citing Rule 4(a)(1)(B))); Pet.App.5a (recognizing that the appeal period was reopened on January 8, 2021). But a prior closure is by no means

required. Reopening is available when an appellant does not receive notice within 21 days—which is less than the ordinary time allowed for appeals under either § 2107(a) or § 2107(b). That means reopening can be granted either before or after the original appeal period expires.

But even assuming, as the Fourth Circuit seemed to, that the word "reopen" necessarily implies a prior closure, *see* Pet.App.10a, that in no way precludes ripening. Quite the opposite: Ripening only ever comes into play when a notice of appeal is filed while the appeal period is closed.

Take the scenario contemplated by *FirsTier* and Rule 4(a)(2), where a notice of appeal is filed after a decision is announced but before an appealable order is entered. *See FirsTier*, 498 U.S. at 273; Fed. R. App. P. 4(a)(2). No appeal period is open when such a notice is filed. Nevertheless, the notice ripens when the appeal clock starts ticking. That is because "the technical defect of prematurity" does not "extinguish [the] otherwise proper appeal." *FirsTier*, 498 U.S. at 273. It is not because entry of an appealable order somehow rewrites history and retroactively extends the appeal period all the way back to when the notice was first filed. The appeal clock still started when it started. *See, e.g.*, *Firchau*, 345 F.2d at 271 (acknowledging "the premature filing of th[e] notice" before entry of final judgment).

Rule 54(b) certification works the same way. *See supra* 26–27 (citing cases and noting that courts of appeals unanimously recognize ripening in this context). A notice of appeal filed before certification of an interlocutory order is not filed during any open

appeal period. Nevertheless, a subsequent certification ripens the previously filed notice. *See, e.g.*, *Swope*, 281 F.3d at 191–94. The notice, in other words, becomes effective once the appeal period opens. No one pretends that the appeal period actually stretched back to the original, uncertified order. *See, e.g.*, *Tilden*, 596 F.2d at 607 (acknowledging that "the appeal was taken prematurely" before entry of Rule 54(b) certification).

In these contexts and others, ripening is required *precisely because* the appeal window was closed when the notice of appeal was filed. In none of them does ripening turn on a time traveler's fiction that the window was actually open all along. So even assuming the word "reopen" implied a prior closure, the ripening principle still applies. Indeed, the fact that the appeal period was closed when the notice of appeal was filed is what sets the stage for the ripening in the first place.

2. The Fourth Circuit's attempt to distinguish "reopening" an appeal period from "extending" it goes nowhere for similar reasons. The two mechanisms' obvious differences account for their different labels. There is no way to read those labels as implicitly incorporating the ripening principle in § 2107(c)'s first sentence but displacing it in the second—including because the Fourth Circuit's assumption that extensions always result in a continuous appeal period was simply mistaken.

a. Section 2107(c)'s two sentences create two different mechanisms that address two different sets of circumstances. They have different standards: Extensions are warranted "upon a showing of

excusable neglect or good cause," while reopening is warranted when the appellant did not receive notice of a judgment "within 21 days." 28 U.S.C. § 2107(c). They have different deadlines: Extension motions must be "filed not later than 30 days after the expiration of the time otherwise set for bringing appeal," while reopening motions must be "filed within 180 days after entry of the judgment or order or within 14 days after receipt of such notice, whichever is earlier." *Id.* And they authorize different relief: Congress did not impose an outside limit on extensions, *see Hamer*, 583 U.S. at 24–27 (holding that "the statute does not say how long an extension may run" and that the 30-day limit in Rule 4(a)(5)(C) is only a claim-processing rule), while reopening is limited to 14 days, *see Bowles*, 551 U.S. at 213 (holding that the 14-day limit is jurisdictional).

These obvious, structural differences between the two mechanisms more than account for their different names. Indeed, it would have been strange for Congress to have used the same label for both of them. "Motion to reopen" is much clearer—and much simpler—than "motion to extend the appeal period under § 2107(c)'s second sentence."

To be sure, the two mechanisms—which appear in the same subsection—also have plenty in common: Both provide additional time for an appeal; both require a motion; both afford district courts discretion; and both, as explained above (as to reopening) and below (as to extension), are available before or after the original appeal period expires. *See supra* 42–43 (explaining that reopening is also available before original appeal period expires); *see infra* 46–48 (explaining that extensions are also available after

original period expires). Adding one more commonality to that list—that both incorporate the background ripening principle—is entirely consistent with the material-variation canon. That canon recognizes that different terms generally differ along at least one axis; it does not require construing different terms to be different in every respect. *Cf. City of Columbus v. Ours Garage & Wrecker Serv., Inc.*, 536 U.S. 424, 435 (2002) (different parts of statute had the same scope "notwithstanding th[e] difference in verbal formulation").

b. In concluding otherwise, the Fourth Circuit doubled down on its fictional-continuity idea, suggesting that the word "extension" implicitly incorporates the ripening principle because an extension necessarily entails a continuous appeal period. Pet.App.9a–12a. As already explained, the premise of that argument is wrong: Ripening does not require continuity. *See supra* Part II.A.1.

The court's understanding of how extensions work was wrong, too. The Federal Rules provide that a court can "extend the time" for complying with a civil deadline not only "before the original time . . . expires" but also "after the time has expired." Fed. R. Civ. P. 6(b)(1)(A)–(B). That is entirely consistent with the way extensions work in the real world. They sometimes operate as a "continuation" of some ongoing period. *HollyFrontier*, 594 U.S. at 390. But it is also "entirely natural—and consistent with ordinary usage—to seek an 'extension' of time even after some lapse." *Id.* "Think of the forgetful student who asks for an 'extension' for a term paper after the deadline has passed, the tenant who does the same after overstaying his lease, or parties who negotiate

an 'extension' of a contract after its expiration." *Id.* Indeed, this Court has previously failed to identify "a single dictionary definition of the term 'extension' requiring unbroken continuity." *Id.*; *see, e.g.*, *Black's Law Dictionary* (12th ed. 2024) (defining "extension" as "[a] period of additional time to take an action").

Section 2107(c) extensions are no different. A motion to extend the appeal period can be filed either before or after the original appeal deadline expires. *See* 28 U.S.C. § 2107(c) (authorizing extensions "upon motion filed not later than 30 days after the expiration of the time otherwise set for bringing appeal"); *see also* Fed. R. App. P. 4(a)(5)(A) ("The district court may extend the time to file a notice of appeal if . . . a party so moves no later than 30 days after the time prescribed . . . .").

That does not mean that an extension—in this context, or any other—retroactively extends the original time allotted all the way through to the new deadline. This Court recognized exactly that in *HollyFrontier*. *HollyFrontier* 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, the Court rejected the notion that extensions "operate[ ] like . . . *nunc pro tunc* judicial decree[s]—retroactively deeming the time originally allotted as now extending continuously to some new and future due date." *Id.* at 392. An extension may excuse an otherwise timely filing; but "[i]t cannot change the fact that, absent time travel, a lapse or interruption has occurred." *Id.*

The Court even used § 2107(c) as an example. "Under certain circumstances," the Court recognized, "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 [appeal clock] can start, run, finish, and then *restart*—because a court has the power to 'extend' the time allotted even after a lapse." *Id.* at 391. There is no need to pretend "that a break in continuity, a lapse, or an interruption never happened." *Id.* at 392.

The Fourth Circuit's vision of extensions is exactly the one *HollyFrontier* rejected. As even the Fourth Circuit acknowledged, notices filed after an appeal period lapses ripen when an extension is granted. *See* Pet.App.10a–12a; *Evans*, 366 F.2d at 773. That is not because extensions make it so that the appeal period never lapsed at all. It is because pre-extension notices of appeal provide adequate notice to all parties, consistent with ordinary ripening principles. *See supra* 20–24, 33–34. Pre-reopening notices of appeal ripen for the same reason.

B. A filing can be both a notice of appeal and a motion to reopen.

The Fourth Circuit also made the offhand suggestion that Parrish's notice of appeal could not be "reconstrue[d]" as a notice of appeal because it "ha[d] already been construed—to his benefit—as a motion [to reopen]." Pet.App.3a–4a; *see id.* at 21a (Gregory, J., dissenting) (characterizing this point as a "separate[ ]" justification for the majority's ruling). That suggestion was wrong, as a matter of both precedent and principle.

1. In *Smith*, this Court held that an appellate brief could also be construed as a notice of appeal. 502 U.S. at 249. The "Federal Rules," the Court recognized, "do envision that the notice of appeal and the appellant's brief will be two separate filings." *Id.* But they "do not preclude an appellate court from treating a filing styled as a brief as a notice of appeal." *Id.* A notice of appeal, in other words, need not be filed on a separate piece of paper that serves no other purpose. *See id.* "If a document filed within the time specified by Rule 4" affords the requisite notice, "it is effective as a notice of appeal"—regardless of how that document is labeled or what other roles it performs. *Id.* at 248–49; *see supra* 20–22 (discussing the functional approach to notices of appeal).

That principle is not limited to appellate briefs. Requests for certificates of appealability can moonlight as notices of appeal. *See* Fed. R. App. P. 22(b)(2) ("If no express request for a certificate [of appealability] is filed, the notice of appeal constitutes a request addressed to the judges of the court of appeals."); *see, e.g.*, *Clark v. Cartledge*, 829 F.3d 303, 307 n.3 (4th Cir. 2016) (construing a motion for extension of time to request a certificate of appealability as both a notice of appeal and a request for a certificate of appealability). Motions to proceed in forma pauperis can, too. *See, e.g.*, *Taylor v. Knapp*, 871 F.2d 803, 805 n.1 (9th Cir. 1989) ("The district court properly treated Taylor's motion to proceed on appeal in forma pauperis as a notice of appeal[.]"). Even affidavits can suffice. *See, e.g.*, *United States v. Gibson*, 568 F.2d 111, 112 (8th Cir. 1978) (per curiam) (construing affidavit accompanying a motion for leave

to appeal in forma pauperis as a notice of appeal). In each of these contexts, *Smith*'s reasoning controls.

Motions to reopen are no different. As other courts of appeals have recognized, *Smith* compels the conclusion that a single filing can be both a motion to reopen and a notice of appeal. *See, e.g.*, *Winters*, 88 F.4th at 669–71 (citing *Smith*, recognizing that a filing "may serve more than one function," and construing a notice of appeal as a motion to reopen); *Norwood*, 825 F. App'x at 386–87 (7th Cir. 2020) (citing *Smith* and rejecting the argument that a motion to reopen "cannot [also] be construed as a notice of appeal"); *see also 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.").

2. The Fourth Circuit's suggestion that Parrish's notice of appeal ceased operating as a notice of appeal once it was construed as a motion to reopen also flouts basic principles of appellate jurisdiction and civil litigation.

For starters, jurisdictional rules come only from statutes. *Hamer*, 583 U.S. at 19. No statute imposes a separate-document requirement for notices of appeal. And the Federal Rules affirmatively provide that "[a]n appeal must not be dismissed for informality of form or title of the notice of appeal." Fed. R. App. P. 3(c)(7).

What the Rules do require is that a notice of appeal leave "no genuine doubt . . . about who is appealing, from what judgment, [and] to which appellate court." *Becker*, 532 U.S. at 767; *see also* Fed. R. App. P. 3(c)(7). Parrish's notice of appeal fits that bill. It specifies the

party taking the appeal and the order to be appealed; and there was only one court to which the appeal could be taken. Pet.App.71a; *see* Fed. R. App. P. 3(c); *Smith*, 502 U.S. at 248. Parrish's notice of appeal thus did exactly what it needed to do: It put everyone on notice of his intent to appeal.

Parrish was also acting pro se. Courts have a duty to construe pro se filings generously. *See supra* 22; *Erickson*, 551 U.S. at 94; *Estelle*, 429 U.S. at 106; *Haines v. Kerner*, 404 U.S. 519, 520 (1972) (per curiam). That sometimes means they must "ignore the legal label that a *pro se* litigant attaches to a motion and recharacterize the motion in order to place it within a different legal category." *Castro v. United States*, 540 U.S. 375, 381 (2003). That sort of recharacterization "avoid[s] inappropriately stringent application of formal labeling requirements" and ensures "correspondence between the substance of a *pro se* motion's claim and its underlying legal basis." *Id.* at 381–82; *see also Mata v. Lynch*, 576 U.S. 143, 150–51 (2015) (recognizing that "courts sometimes construe one kind of filing as another").

The Fourth Circuit abided these principles when it construed Parrish's notice of appeal as a motion to reopen. Its refusal to also construe his notice of appeal as a notice of appeal is exactly the sort of "inappropriately stringent application of formal labeling requirements" this Court has consistently rejected. *Castro*, 540 U.S. at 381.

CONCLUSION

The Court should reverse the decision below and remand for the Fourth Circuit to consider Parrish's appeal on the merits.

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