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 OF RODERICK & SOLANGE MACARTHUR JUSTICE CENTER, RIGHTS BEHIND BARS, AND THE PRISON LAW OFFICE, AS AMICI CURIAE IN SUPPORT OF PETITIONER

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INTEREST OF AMICI[1]

Amici are nonprofit organizations with decades of experience representing incarcerated people in federal and state courts. Amici file this brief to share their expertise and provide real-world examples of the practical hurdles amici's incarcerated clients face—particularly in sending and receiving mail. Amici's aim is to assist this Court's understanding of how detrimental adopting the Fourth Circuit's duplicative notice-of-appeal rule would be to incarcerated pro se litigants in light of those many practical barriers.

The Roderick & Solange MacArthur Justice Center ("MJC") is a nonprofit public interest law firm founded in 1985 which has offices in four states and the District of Columbia. Through its Supreme Court and Appellate Program, MJC litigates cases before this Court and appellate courts nationwide in order to vindicate the civil rights of persons who have been subjected to mistreatment by the criminal legal system, for example by racial discrimination, wrongful conviction, excessive sentencing, or police or prosecutorial misconduct. MJC routinely represents incarcerated litigants in their appeals on matters relating to solitary confinement, denial of medical care, access to courts, the death penalty, and others.

Rights Behind Bars ("RBB") is a nonprofit legal organization specifically dedicated to bringing cases on behalf of incarcerated individuals. At the appellate level, RBB takes an affirmative approach by identifying

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[1] No part of this brief was written by counsel for any party. No party, or any other person or entity other than amici or their counsel, monetarily contributed to the preparation or submission of this brief.

The George Washington University takes no position on this case.

uncounseled incarcerated litigants, or those proceeding with small-firm counsel, and intervenes on the parties' behalf to assist in the preparation of the case presented on appeal.

The Prison Law Office is a nonprofit public interest firm similarly established to litigate cases on behalf of incarcerated individuals whose rights have been unjustly impeded as an effect of their incarceration. Both RBB and the Prison Law Office share a mission of litigating cases on behalf of incarcerated individuals in order to ensure that their clients' constitutional rights are upheld.

SUMMARY OF ARGUMENT

Pro se litigants face difficulties in pursuing their cases due to their lack of legal training and, in some instances, lack of basic education. For pro se prisoners, those difficulties are compounded by additional barriers inherent in the American carceral setting, including limited access to resources, limited control over one's environment and movement, and—most relevant here—complicated prison mail systems that often result in significant delays in, and sometimes complete extinguishing of, prisoners' ability to send and receive mail.

It is precisely because of such difficulties in receiving and sending mail that pro se prisoners are often unable to meet Federal Rule of Appellate Procedure 4(a)'s deadline for filing a notice of appeal. When a pro se prisoner is late filing a notice of appeal due to delays in receipt of the entry of judgment, Rule 4(a)(6) permits district courts to reopen the appeal filing period for 14 days. Most circuits have, sensibly, held that the original notice of appeal suffices to let the appeal proceed—no need to make the pro se prisoner refile the exact same notice within a now even more

constrained time period that he may not even receive notice of until after the 14 days has passed.

The Fourth Circuit took a different approach, demanding that the pro se prisoner file a duplicative notice of appeal, within the 14-day window, or else forfeit his right to appeal. That outlier approach is wrong as a legal matter, for the reasons in Petitioner's brief. But it also fails to acknowledge the practical impediments pro se prisoners face—impediments that are often the reason why their notice of appeal was late to begin with. This Court need not and should not adopt a rule so divorced from the reality of the litigants it predominantly affects.

Indeed, the federal courts have a long tradition of attempting to counterbalance the limitations of proceeding pro se by adopting commonsense doctrines that account for those limitations, such as reviewing pro se filings liberally and, where appropriate, providing pro se litigants warnings about important procedural steps affecting their substantive rights. This judicial approach reflects both practical necessity and fundamental fairness, and is of particular importance to pro se prisoners, who face additional and substantial barriers to court access. Adopting the circuit majority's well-reasoned rule here would be fully consistent with this longstanding tradition. This Court should reverse.

ARGUMENT

I. A Duplicative Notice of Appeal Requirement Would Impose an Unreasonable Burden on Pro Se Prisoners in Light of the Considerable Barriers to Accessing the Courts They Already Face.

Pro se prisoners contend with myriad unique challenges that hamper meaningful participation in the judicial process. Collectively, these challenges illustrate the difficult hurdles pro se prisoners must overcome to access the judicial system. The requirement of a duplicative filing would complicate an already fraught process, creating a procedural hurdle that is unwarranted and, in many cases, functionally impossible for pro se prisoners to satisfy. Ultimately, this requirement imposes a real and often insurmountable barrier, effectively denying pro se prisoners meaningful access to the courts.

A. Systemic Barriers in the Prison Environment Constrict Pro Se Prisoners' Access to the Courts and Make it Difficult to Meet Filing Deadlines.

A carceral environment imposes substantial institutional challenges that constrict pro se prisoners' ability to meet procedural deadlines and file timely pleadings. These challenges, stemming from the inherent nature of incarceration, include complications imposed by a prison's intricate mail processes, limited access to legal resources, financial constraints, and basic material limitations. Prisoners must effectively navigate these challenges in order to participate in the judicial process—and for prisoners without counsel, the challenges are often insurmountable.

1. The Strictures of Prison Mail Systems Impede Pro Se Prisoners' Ability to Timely Receive and Send Court Communications.

Prison mail procedures often hinder a prisoner's timely access to the courts, making it difficult to meet filing deadlines.[2] In *Houston v. Lack*, 487 U.S. 266 (1988), the Court acknowledged these challenges and adopted the "prison mailbox rule," which treats a prisoner's pleading as "filed" when it is delivered to prison authorities. 487 U.S. 266, 270–71. The Federal Rules of Appellate Procedure codified the mailbox rule. *See* Fed. R. App. P. 4(c)(1) (providing that a prisoner's filing is timely if deposited in the institution's internal mail system on or before the last day for filing). Yet, this provision does not fully alleviate the logistical and procedural difficulties inherent in prison mail processes, particularly in their modern iterations.

One such difficulty is extensive screening protocols. Prisoners have no control over how swiftly or accurately prison authorities process incoming mail. They routinely receive their mail significantly delayed or not at all. Regulations require prison officials, such as wardens, to accept all prisoner mail and distribute it under facility-specific protocols. U.S. Postal Serv., Customer

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[2] Courts have also taken seriously that, in addition to hindering incarcerated persons' access to courts, these mail-related issues and their censoring effects can implicate the First Amendment rights of prisoners or the parties attempting to send them mail if not "reasonably related to legitimate penological interests." *Turner v. Safley*, 482 U.S. 78, 84–91 (1987); *Hayes v. Idaho Corr. Ctr.*, 849 F.3d 1204, 1209 (9th Cir. 2017) (citing *Procunier v. Martinez*, 416 U.S. 396, 408 (1974), overruled on other grounds by *Thornburgh v. Abbott*, 490 U.S. 401 (1989); *Witherow v. Paff*, 52 F.3d 264, 265 (9th Cir. 1995)).

Support Ruling No. PS-206, Mail Addressed to Prisoners (1996); *see also* U.S. Postal Serv., Administrative Support Manual § 274.96, Mail Addressed to Prisoners (2021). In the Bureau of Prisons, as in many state systems, all correspondence must navigate a complex screening process, with varying levels of scrutiny applied to different categories of mail. *See* 28 C.F.R. § 540.12 (2024). Prison staff have the authority to open all general mail for inspection at any time, and failure to properly label legal correspondence as legal mail may result in it being treated as general mail or even being rejected. 28 C.F.R. § 540.18(b) (2024); 28 C.F.R. § 540.19(b) (2024).

Some state prison systems impose additional barriers on legal mail that often result in delays or sometimes flat-out rejections. For instance, some facilities require legal mail to include, in a particular location and format on the front of the envelope, a control number and time code that changes as often as weekly; failure to comply leads to outright rejection of the legal mail.[3] Even when properly marked, legal mail must be opened in a prisoner's presence, prolonging its receipt.[4]

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[3] *See, e.g.*, Pa. Dep't Corr., *General Incoming Correspondence – Frequently Asked Questions*, Mail, https://www.pa.gov/agencies/cor/resources/for-family-and-friends/mail.html (last visited Mar. 1, 2025).

[4] *See, e.g.*, 28 C.F.R. § 540.18(a) (2024) ("The Warden shall open incoming special mail only in the presence of the inmate for inspection for physical contraband and the qualification of any enclosures as special mail."); 37 Tex. Admin. Code § 291.2(2)(C) ("Incoming correspondence from [the inmate's attorney(s)] . . . shall be opened only in the presence of the inmate with inspection limited to locating contraband."); Fla. Dep't of Corrections, *Write an Inmate*, Contact an Inmate, https://www.fdc.myflorida.com/institutions/contact-an-inmate (last visited Mar. 1, 2025) ("[e]very attempt will be made to intercept any incoming legal and/or

Many facilities are also required to verify every piece of legal mail by contacting the attorney to confirm they in fact sent it, further delaying the mail arriving to the prisoner.[5]

As Mr. Parrish's case exemplifies, prisoners' lack of control over mail delivery is further exacerbated when they are transferred or when the updated forwarding information is not communicated, resulting in legal mail being misdirected, returned to sender, or lost. U.S. Postal Serv., Customer Support Ruling No. PS-206,

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privileged mail sent to the routine mail processing center in error, however, please be aware that, due to the volume of mail being processed, there is a risk of such mail being opened, inspected, and scanned electronically.").

[5] *See, e.g.,* Arizona Dep't of Corrs. Dep't Order Manual Proc. 11.7 (May 15, 2023) https://corrections.az.gov/sites/default/files/documents/policies/900/DO%20902%20-%20AL.pdf ("Designated staff shall not rely solely on the words 'LEGAL MAIL' having been stamped on the envelope. Designated staff shall verify via online resources or contact the law firm or legal organization in a good faith effort to determine the name of the addressee responsible for the mail and that the addressee is a licensed attorney. Once verified, staff shall stamp 'LEGAL MAIL' on the envelope.").

In response to this cumbersome process, the Michigan Department of Corrections is instituting a rollout of TextBehind for legal mail. Yet this solution itself is problematic and adds yet another layer of bureaucracy on the prisoner's receipt of legal mail. If the legal mail does not have a QR code from TextBehind, the mail will be rejected. Scott Atkinson, *Michigan Prisons Instituting New Requirements for Legal Mail*, Mich. Bar J. (Dec. 2024), https://www.michbar.org/journal/Details/Michigan-prisons-institute-new-requirements-for-legal-mail?ArticleID=4979&fbclid=IwZXh0bgNhZW0CMTEAAR3b-m8gkS7W0IJUyyPd7-o-IkmtzuJa8EBlPjg5RtHRXoupFJGLuBdJnlA_aem_ExSQVYX2T2DETCOi2SzBew; Mich. Dep't Corr., *TextBehind*, https://www.michigan.gov/corrections/textbehind (last visited Mar. 1, 2025).

Mail Addressed to Prisoners (1996) (requiring the return of mail to post office).

In one instance, a MacArthur Justice Center ("MJC") client in a state prison facility contacted MJC to inquire about their computation and release date. MJC subsequently sent documents in response through the mail. The communications were clearly marked "legal and confidential mail." A week later, the prison facility called to verify that MJC was the sender. Seventeen days after sending the communications and nine days after verification, MJC received the communications in the mail (which had clearly been opened) with a "return to sender" sticker. The mail had been returned because the client had been transferred from one state prison to another. The envelope was also stamped "refused, unable to forward," despite prison officials knowing the client's new location, as he remained in their custody. These types of communication challenges for *counseled* prisoners are profoundly more difficult for pro se prisoners for whom there is no advocate outside of the prison pressing for the prisoner's rights.

Indeed, routine delivery timelines can become unpredictable even when the prisoner has not been transferred. For example, a Rights Behind Bars ("RBB") client who was in the custody of the Ohio Department of Rehabilitation and Corrections had mail from the U.S. District Court for the Southern District of Indiana rejected and returned to the court after being flagged by a dog for potentially containing illegal substances. Similarly, an MJC client in a state prison facility waited weeks for urgent legal documents needed for an upcoming deadline, only to learn that the mailroom had marked court correspondence "refused/return to sender" without explanation.

Some prison rules create categorical delays for prisoners' receipt of mail. For example, the Pennsylvania Department of Corrections estimates that it "can take 6-8 days for [prisoners] to receive their mail." Pa. Dep't Corr., *General Incoming Correspondence – Frequently Asked Questions*, Mail, https://www.pa.gov/agencies/cor/resources/for-family-and-friends/mail.html (last visited Mar. 1, 2025) (alterations added). All incoming mail is sent to a processing center via USPS, a process that itself takes 3-5 days, with an additional day for processing. *Id.* From there, the policies provide only that "a reasonable effort will be made" to deliver the mail to the prisoner in 2 days' time. *Id.*

Such delays carry serious consequences for prisoners facing court deadlines. Delays are not limited to state facilities. In one federal prison, a former MJC client was informed that the mailroom returned documents sent from MJC. MJC, for the second time, mailed the documents and emailed the General Counsel of the Bureau of Prisons and warden to verify the contents of the package. Several weeks after the mail's delivery, the client had not received the documents. MJC eventually learned that the warden's office was holding the documents. After several more weeks of communication with the facility, MJC still had no confirmation that the client received the legal documents.

These are just a few examples of the types of prison mail delays that amici's clients and other incarcerated persons experience on a daily basis.

2. Pro Se Prisoners' Access to Courts is Further Complicated by Limited Access to Technology and Library Resources.

Beyond mail delays, the challenge of accessing legal resources is further complicated by technological barriers that effectively isolate prisoners from modern legal research tools. With limited and often highly controlled access to the internet or electronic legal databases, pro se prisoners are at a significant disadvantage in developing legal arguments, conducting factual research, communicating with potential witnesses or class members, and the many other benefits of the electronic age.

Law libraries in prisons often lack up-to-date materials and subject prisoners to limited library hours, impairing their capacity to conduct legal research, obtain necessary filing forms, and prepare timely, procedurally compliant court documents. A national survey revealed that over half of state prison libraries reported reduction of resources, resulting in limiting law library hours, narrowing the scope of the legal collection, and diminishing library funds. Alexander Linden, Note, *The Library is Closed: Disagreement Over a Prisoner's Right to Access the Courts*, 104 B.U. L. Rev. 989, 1004 (2024).

The practical reality of these restrictions is stark: while modern legal research occurs through real-time electronic databases, pro se prisoners often must navigate outdated resources during limited library hours. Even when prisoners are permitted to use library facilities, they routinely face extended waiting periods ranging from two days to over ten days. Elizabeth Greenberg et al., National Center for Education Statistics, *Literacy Behind Bars: Results*

From the 2003 National Assessment of Adult Literacy Prison Survey 62 (2007), https://nces.ed.gov/pubs 2007/2007473.pdf; *see also* Rahsaan Thomas, *Barriers to Jailhouse Lawyering*, UCLA L. Rev. Discourse (May 10, 2021), https://www.uclalawreview.org/barriers-to-jailhouse-lawyering/ (incarcerated author discussing barriers to the legal system including only being able to enter the law library twice during a six-month lockdown).

Indeed, a single prison lockdown or "loss of privileges" sanction can halt library access altogether. In one facility that was on near-constant lockdown, a prospective MJC client could not access the law library, and when he was able to finally request his paper materials from the law librarians, it took three weeks for him to receive it. He missed the deadline for filing his lawsuit.

3. Financial Constraints and Limited Supplies Further Hinder Pro Se Prisoners' Access to Courts.

Pro se prisoners must further contend with financial constraints and limited access to basic supplies. For starters, the filing fee for a federal appeal is $605, an astronomical amount for an indigent prisoner. United States Courts, *Court of Appeals Miscellaneous Fee Schedule*, USCourts.gov (Dec. 1, 2023), https://www.uscourts.gov/court-programs/fees/court-appeals-miscellaneous-fee-schedule. The Prison Litigation Reform Act mandates that indigent prisoners pay filing fees in installments taken from their commissary accounts, disallowing the complete waiver of the costs that non-incarcerated indigent plaintiffs receive. 28 U.S.C. § 1915(b)(1). Postage often costs extra, with few exceptions, and prisons generally prohibit prisoners from receiving stamps from outside sources. *See, e.g.*,

28 C.F.R. § 540.21(a), (j) (2024). Juxtaposed against typical prison wages not exceeding $1.50 per hour, the financial outlay associated with a pro se prisoner appeal in itself poses a serious hurdle to accessing the federal appellate courts. Prison Policy Initiative, *How Much Do Incarcerated People Earn in Each State?* (Apr. 10, 2017), https://www.prisonpolicy.org/blog/2017/04/10/wages/ (providing data showing typical wages for prison jobs ranging between $0.14 and $1.41 per hour).

Further, even basic writing materials, such as envelopes and paper, can be difficult to obtain. Although courts have recognized a limited right to supplies for legal work, the practical realities of this right often fall short of meaningful access. *See, e.g.*, *Morgan v. Nevada Bd. State Prison Comm'rs*, 593 F. Supp. 621, 624 (D. Nev. 1984) (admonishing the prison law library for being out of paper and envelopes for weeks at a time); *see also Conklin v. Wainwright*, 424 F.2d 516, 517 (5th Cir. 1970) (discussing abuse by prison authorities when they withheld paper and petitioner had to correspond with the court on four and a half feet of toilet paper); *Smith v. Erickson*, 961 F.2d 1387, 1388 (8th Cir. 1992) (holding that one free mailing per week for legal correspondence met constitutional requirements when an incarcerated person holds a negative balance in account). These seemingly minor restrictions can derail essential filing tasks and foreclose meaningful appellate review.

B. The Fourth Circuit's Duplicative Notice of Appeal Filing Requirement Compounds These Challenges and Will Result in Many Pro Se Prisoners Losing Their Right to Appeal.

The cumulative effect of these institutional challenges creates a framework where basic court access becomes

a formidable challenge for pro se prisoners. When considered alongside strict procedural requirements, these challenges do more than create complications. They fundamentally threaten the basic ability of pro se prisoners to meaningfully access the judicial system. It is inappropriate to impose duplicative procedural requirements that only compound an already onerous process for pro se prisoners.

Indeed, it is illogical to demand that pro se prisoners who have filed an excusable untimely notice of appeal re-navigate the procedural labyrinth within an even more restrictive 14-day period just to file the exact same document—and then to deprive them of their right to pursue their appeal if they fail to do so. Such an outcome does not square with fundamental principles of fairness, nor does it account for the practical realities of carceral constraints. This Court should reject the Fourth Circuit's approach in favor of the one adopted by the majority of its sister Circuits.

II. Courts Can and Regularly Do Mitigate Recognized Inherent Limitations Posed by Proceeding Pro Se.

The rule Petitioner seeks, which the majority of circuits have recognized, is appropriately consistent with how this and other courts treat pro se litigants more generally. Courts have long recognized limitations inherent to many pro se litigants, which include a general lack of legal expertise and a below-average rate of basic literacy than in the remainder of the general population. To mitigate these limitations, and in the interests of justice, federal courts at all levels have developed doctrines meant to preserve pro se litigants' access to courts. These doctrines include flexibility in construing pro se litigants' filings and explaining complex legal and procedural rules to them.

A. Pro Se Litigants Face Sisyphean Challenges Due to Their Limited Education and Related Issues.

Parties proceeding pro se, in comparison to parties represented by trained and licensed attorneys, often lack the requisite legal training and knowledge to successfully navigate the courts and procedural rules.

Courts have long recognized the commonsense reality that pro se litigants generally lack legal training and often even basic education and literacy. In *Lewis v. Faulkner*, 689 F.2d 100 (7th Cir. 1982), the Seventh Circuit noted that "few prisoners[[6]] have a legal background[.]" 689 F.2d 100, 102 (footnote and alteration added); *see also Rand v. Rowland*, 154 F.3d 952, 956 (9th Cir. 1998) (*en banc*) (discussing "a bright-line rule that . . . we refuse[] to be drawn into a 'particularized analysis of each prisoner litigant's sophistication'") (omission and alteration added) (quoting[7] *Klingele v. Eikenberry*, 849 F.2d 409, 411 (9th Cir. 1988)), *cert. denied sub nom. Rowland v. Rand*, 527 U.S. 1035 (1999); *cf. Martinez v. Ct. Appeal Cal. 4th App. Dist.*, 528 U.S. 152, 161 (2000) ("[o]ur experience has taught us that a pro se defense is usually a bad defense") (alteration added; internal quotation marks omitted).

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[6] From 2000 to 2019, "[p]risoner petitions constituted 69 percent of the civil pro se caseload." United States Courts, *Just the Facts: Trends in Pro Se Civil Litigation from 2000 to 2019*, USCourts.gov (Feb. 11, 2021), https://www.uscourts.gov/data-news/judiciary-news/2021/02/11/just-facts-trends-pro-se-civil-litigation-2000-2019 (alteration added).

[7] The *Rand* court slightly misquoted *Klingele*, but not in any substantive sense: the quote in *Klingele* reads "a particularized analysis of each prisoner litigant's legal sophistication." 849 F.2d at 411 (9th Cir. 1988).

In *Johnson v. Avery*, 393 U.S. 483 (1969), this Court observed that "[j]ails and penitentiaries include among their inmates a high percentage of persons who are totally or functionally illiterate" and "whose educational attainments are slight." 393 U.S. 483, 487 (alteration added). Decades later, one circuit court indicated that this literacy problem had not abated in the years since *Johnson*, saying that "[m]any prisoners can explain themselves orally but not in writing. They may be illiterate in English, or they may simply be such poor writers that they can't convey their thoughts other than orally." *Williams v. Wahner*, 731 F.3d 731, 734 (7th Cir. 2013) (alteration added). Incarcerated people are also more likely to suffer from mental illness than the non-incarcerated population. *See, e.g.*, National Alliance on Mental Illness, *Mental Health Treatment While Incarcerated*, https://www.nami.org/advocacy/policy-priorities/improving-health/mental-health-treatment-while-incarcerated/ (last visited Mar. 1, 2025) (estimating that about 40% of incarcerated people have a history of mental illness, twice the prevalence within the overall adult population).

These issues affecting pro se litigants weigh more heavily on pro se prisoners who also face the unique challenges discussed above, including technical procedural compliance and procedural comprehension difficulties imposed by prisons' intricate mail strictures, lack of access to legal research resources, internet access, and financial limitations. *See supra* Section I.

B. Courts Review Pro Se Litigants' Filings With a Degree of Flexibility and Give Technical Explanations to Pro Se Litigants.

Courts at all levels have long recognized that the inherent limitations faced by pro se litigants, including pro se prisoners, necessitate a flexible approach to

procedural requirements. *See supra* Section II.A. This approach includes reviewing their filings flexibly and explaining nonintuitive legal and procedural rules to them.

1. Federal Courts Apply Flexibility When Construing Pro Se Litigants' Filings.

Federal courts traditionally review pro se filings with less scrutiny than those of their counseled counterparts. This tradition stems from a fundamental commitment to promoting meaningful access to justice, particularly for those proceeding without the benefit of legal counsel. This principle is exemplified in the Federal Rules of Civil Procedure, which mandate that "[p]leadings must be construed so as to do justice," Fed. R. Civ. P. 8(e) (alteration added), and has been consistently reinforced through judicial practice at all levels.

This Court typically accommodates pro se litigants by determining whether their filings demonstrate content sufficient to comply with procedural rules. In *Haines v. Kerner*, 404 U.S. 519 (1972), the Court held that pro se prisoners' pleadings are subjected to "less stringent standards than formal pleadings drafted by lawyers[.]" 404 U.S. at 520–21 (alteration added); *see also Boag v. MacDougall*, 454 U.S. 364, 365 (1982) (*per curiam*). In applying these less stringent standards, the Court focuses on whether the substance of the filing contains the necessary components to serve as the "functional equivalent" of a standardized filing. *Smith v. Barry*, 502 U.S. 244, 248 (1992) (internal quotation marks omitted; internal citation omitted). In *Smith*, the Court found that a pro se brief could function as a notice of appeal if it included information requisite to notify "other parties and the courts" of the impending appeal. *Id.* at 248–49.

This flexibility remains tailored to the specific limitations of pro se litigants without relaxing the procedural requirements to which all parties are held. For example, these accommodations do not guarantee success on the merits. *Estelle v. Gamble*, 429 U.S. 97, 106–108 (1976) (although state prisoner's "handwritten *pro se* document [was] to be liberally construed," it still failed to state a cognizable 42 U.S.C. § 1983 claim). Nor does leniency "excuse noncompliance with" procedural rules. *Barry*, 502 U.S. at 248.

By striking this balance and operating under such measured rules of construction, this Court has adopted "the view 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). Failure to take cognizance of pro se litigants' limitations in accordance with these precepts can be "even more pronounced [than mere failure to adhere to pleading standards set forth by the Federal Rules of Civil Procedure] [where the] petitioner has been proceeding, from the litigation's outset, without counsel." *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (*per curiam*) (alterations added).

This general policy applies at all stages of litigation. At the complaint stage, "a *pro se* complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers." *Id.* (internal quotation marks omitted) (quoting *Estelle*, 429 U.S. at 106) (also reinforcing that "a document filed *pro se* is 'to be liberally construed'"). The general policy also appears in the appellate context, with the federal circuit courts uniformly construing appellate

submissions by pro se litigants "liberally." *United States v. Wilkes*, 20 F.3d 651, 653 (5th Cir. 1994).[8]

In balancing necessary procedural standards with promoting meaningful access to justice, this Court's approach protects pro se litigants from facing adverse consequences "for [their] failure to recognize subtle factual or legal deficiencies in [their] claims[,]" *Hughes v. Rowe*, 449 U.S. 5, 15 (1980) (alterations added), thus mitigating concerns that genuinely meritorious claims will be overlooked because a pro se litigant's compliance with highly-technical procedural rules is less than perfect.

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[8] *See also, e.g.*, *Ortiz v. McBride*, 323 F.3d 191, 194 (2d Cir. 2003) ("This court construes appellate briefs submitted by *pro se* litigants liberally and reads such submissions to raise the strongest arguments they suggest."); *United States v. Terrell*, 345 F. App'x 97, 101 (6th Cir. 2009) ("we must construe a notice of appeal liberally . . . and this principle applies especially to documents filed by pro se litigants") (internal citation omitted); *Parker v. Four Seasons Hotel, Ltd.*, 845 F.3d 807, 811 (7th Cir. 2017) ("On appeal, we . . . construe pro se filings liberally, and will address any cogent arguments we are able to discern in a pro se appellate brief."); *Trice v. Eversole*, 499 F. App'x 636, 636 (8th Cir. 2013) ("pro se appellate filings are to be construed liberally"); *Balisteri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990) (pro se appellate briefs must be liberally construed to ensure litigant does not lose right to hearing on the merits); *Ledbetter v. City of Topeka,* 318 F.3d 1183, 1187 (10th Cir. 2003) ("Because Mr. Ledbetter proceeds pro se, we construe his pleadings liberally."); *Epps v. Comm'r, Ala. Dep't of Human Res.*, No. 22-10857, 2023 U.S. App. LEXIS 3718, at *4 (11th Cir. Feb. 16, 2023) (court "constru[ed] liberally [appellant's] pro se initial appellate brief") (alterations added).

2. Courts Have Required Explanation of Complex Rules in Pro Se Cases.

Courts have also developed doctrines requiring courts to explain unintuitive aspects of civil procedure and to warn pro se litigants about the consequences of failing to comply with them. For example, *Castro v. United States*, 540 U.S. 375 (2003), requires courts to warn pro se habeas petitioners when the court is recharacterizing a pleading as a 28 U.S.C. § 2255 petition, as such recharacterization could have the consequence of barring future § 2255 petitions under the Antiterrorism and Effective Death Penalty Act. 540 U.S. 375, 377, 383–84.

District courts have arrived at similar warning regimes in other contexts as well. Many "admonish[] pro se litigants about the potential consequences of failing to respond to a motion to dismiss[;]" "some courts require additional notice [at summary judgment] if the nonmovant is pro se[;]" and several even "offer guides or handbooks for self-represented litigants on their court websites." Andrew Hammond, *The Federal Rules of Pro Se Procedure*, 90 Fordham L. Rev. 2689, 2703, 2714 (2022) (alterations added).

Additionally, most circuits require that "before entering summary judgment against [pro se] appellant, the District Court, as a bare minimum, should have provided him with fair notice of the requirements of the summary judgment rule." *Hudson v. Hardy*, 412 F.2d 1091, 1094 (alterations added) (D.C. Cir. 1968) (followed by *Roseboro v. Garrison*, 528 F.2d 309, 310 (4th Cir. 1975)); *see also Renchenski v. Williams*, 622 F.3d 315, 340 (3d Cir. 2010) ("adequate notice in the pro se prisoner context includes providing a prisoner-plaintiff with a paper copy of the conversion Order, as well as a copy of [Fed. R. Civ. P.] 56 and a short summary explaining its

import that highlights the utility of a [Fed. R. Civ. P.] 56(f) affidavit") (alterations added); *Neal v. Kelly*, 963 F.2d 453, 456 (D.C. Cir. 1992); *Graham v. Lewinski*, 848 F.2d 342, 344 (2d Cir. 1988) ("it does seem inequitable, without a more explicit warning, to expect an incarcerated pro se to know that in response to the State's motion for summary judgment he cannot rely upon the papers already filed"); *Lewis v. Faulkner*, 689 F.2d 100, 102 (7th Cir. 1982) (incarcerated pro se plaintiff did not have reasonable notice of the implications of Fed. R. Civ. P. 56 because defendants did not cite it or discuss failure to respond in their filing); *Klingele v. Eikenberry*, 849 F.2d 409, 411–12 (9th Cir. 1988) ("[d]istrict courts are obligated to advise prisoner pro per litigants of [Fed. R. Civ. P.] 56 requirements") (alterations added) (followed by *Rand v. Rowland*, 154 F.3d 952, 956–59 (9th Cir. 1998) (*en banc*), *cert. denied sub nom. Rowland v. Rand*, 527 U.S. 1035 (1999)); *Moore v. Florida*, 703 F.2d 516, 520 (11th Cir. 1983) ("a court should be particularly careful to ensure proper notice to a pro se litigant") (quoting *Herron v. Beck*, 693 F.2d 125, 127 (11th Cir. 1982) (internal quotation marks omitted)).

Federal courts' jurisprudence consistently emphasizes that complex legal and procedural rules should be explained to pro se litigants and should not be wantonly used against them without concrete measures taken to first enable them to comprehend these, at times, esoteric rules.

Adopting the circuit majority rule here—which is the better rule legally in any event—would be fully consistent with these doctrines, as it would account for the practical impediments pro se litigants, and especially pro se prisoners, face when trying to meet stringent filing deadlines. The Fourth Circuit's rule, by contrast, is anathema to these concerns and incompatible with

the federal courts' long tradition of according pro se litigants flexibility and grace.

CONCLUSION

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

Respectfully submitted,

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