IN THE SUPREME COURT OF THE UNITED STATES

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No. 24-275

DONTE PARRISH, PETITIONER

v.

UNITED STATES OF AMERICA

_____

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

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MOTION OF THE RESPONDENT FOR DIVIDED ARGUMENT

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Pursuant to Rules 21 and 28.4 of the Rules of this Court, the Acting Solicitor General, on behalf of the United States, respectfully moves for divided argument in this case. The United States requests that petitioner and the United States each be allotted 15 minutes of argument time and that the appointed amicus curiae be allotted 30 minutes of argument time. Counsel for petitioner consents to this motion.

This case concerns 28 U.S.C. 2107, which establishes deadlines for filing a notice of appeal in civil cases in federal court. Section 2107 generally requires a notice of appeal to be filed "within thirty days after the entry of" the relevant

"judgment, order, or decree." 28 U.S.C. 2107(a). That deadline is extended to sixty days in cases involving the federal government. 28 U.S.C. 2107(b). District courts can extend that deadline upon a showing of excusable neglect or good cause, and may reopen the time for appeal "for a period of 14 days from the date of entry of the order reopening the time for appeal" if the court finds that a party did not receive timely notice of the judgment and the reopening would not prejudice any party. 28 U.S.C. 2107(c).

In this case, petitioner brought a pro se action against the United States while incarcerated and did not receive timely notice of an adverse judgment. He filed a notice of appeal after the close of the general appeal period but before the district court reopened the appeal period. Both petitioner and the United States took the position that petitioner's notice of appeal was sufficient under Section 2107(c). The court of appeals nevertheless held that it lacked appellate jurisdiction, reasoning that petitioner's notice of appeal was too late when it was filed but too early when the district court granted his motion to reopen the appeal period.

The United States continues to agree with petitioner that Section 2107(c) does not require a litigant to file a second, duplicative notice of appeal after the district court reopens the appeal period. The United States has accordingly filed a brief as respondent supporting petitioner. Unlike petitioner, however, the United States has not taken the position that Section 2107(c)

itself requires courts to accept premature notices of appeal. See Pet. Br. 27-34; Gov't Br. 15. The parties also bring different perspectives to the question presented. As the appellant before the court of appeals, petitioner has a personal stake in obtaining appellate review in this case. By contrast, because the question presented is most likely to arise in cases involving pro se appellants without access to electronic filing, the Court's resolution of the question generally will affect the United States only as an appellee. The United States' participation in oral argument in this case accordingly may be of material assistance to the Court.

The government has participated in oral argument as amicus curiae in other cases involving questions of appellate procedure. See, e.g., United States ex rel. Eisenstein v. City of New York, 556 U.S. 928 (2009); Bowles v. Russell, 551 U.S. 205 (2007). And this Court has routinely granted motions for divided argument when the government is a respondent supporting petitioner. See, e.g., Hewitt v. United States, No. 23-1002 (argued Jan. 13, 2025); Erlinger v. United States, 602 U.S. 821 (2024); Jones v. Hendrix, 599 U.S. 465 (2023); Patel v. Garland, 596 U.S. 328 (2022); Smith v. Berryhill, 587 U.S. 471 (2019). The Court should follow the same course here.

Respectfully submitted.

SARAH M. HARRIS
Acting Solicitor General
Counsel of Record

MARCH 2025