No. 24-275

In the Supreme Court of the United States

DONTE PARRISH,
Petitioner,
v.
UNITED STATES,
Respondent

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

BRIEF OF COURT-APPOINTED *AMICUS CURIAE* IN SUPPORT OF THE JUDGMENT BELOW

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QUESTION PRESENTED

When a party wishing to appeal a final judgment fails to file a notice of appeal by the statutory deadline, a district court may grant a motion to "reopen the time for appeal for a period of 14 days from the date of entry of the order reopening the time for appeal." 28 U.S.C. § 2107(c). The question presented is whether, during that reopened period, the would-be appellant must file a timely notice of appeal.

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INTEREST OF AMICUS CURIAE

By order dated January 28, 2025, this Court invited Michael R. Huston to brief and argue this case as *amicus curiae* in support of the judgment below.

STATUTORY AND RULE PROVISIONS INVOLVED

The pertinent statutory and rule provisions are reprinted in the appendix to this brief. App.1a-10a, *infra*.

INTRODUCTION

Appellate jurisdiction in a court of appeals depends on a timely filed notice of appeal. Petitioner never filed a timely notice of appeal. The "notice of appeal" that he did file was both out-of-time and procedurally defective. And when the district court then gave petitioner a reopened window "to file his appeal," he did not file anything. The court of appeals thus correctly dismissed petitioner's appeal for lack of jurisdiction.

That judgment should be affirmed. Although petitioner does not attempt to argue that he ever filed a notice of appeal during a timely window, he asks for the same benefits as if he had. Petitioner bases that argument not on the text of the controlling statute (28 U.S.C. § 2107(c)) or Federal Rule of Appellate Procedure (Rule 4(a)(6)), but instead on his proposal for this Court to adopt an implicit "ripening principle" grounded on functional considerations. That argument has multiple fatal flaws. For one, petitioner vastly overstates the ripening principle, which both Congress and this Court have confined to situations fundamentally unlike this one: premature notices filed *before* entry of judgment. Even more important, this Court has squarely held that it has "no authority to create equitable exceptions to jurisdictional requirements." *Bowles* v. *Russell*, 551 U.S. 205, 214 (2007). The Court should not depart from that settled holding now to excuse petitioner's unexplained failure to comply with straightforward jurisdictional rules even after the district court gave him a second chance.

Enforcing Section 2107(c) and Rule 4(a)(6) according to their terms can produce harsh results in some cases. But as *Bowles* and other cases show, that is the inevitable consequence of Congress's choice to adopt jurisdictional rules. And the important benefits of clear jurisdictional

rules should not be overlooked: They support the finality of judgments, and they create certainty and predictability for all litigants. It may seem unfair to a party who filed 10 minutes past the deadline that he is treated the same as one who filed 10 days late, but Congress accepted that tradeoff in exchange for clear and consistent jurisdictional instructions. Any further changes to those rules can come only from Congress or the rules committee.

No statute or rule permits treating petitioner's tardy notice of appeal—a legal nullity when filed—as if it were filed during the specifically defined window that the district court reopened. But even if the text could be stretched to permit ripening of a tardy notice of appeal in certain cases, it certainly does not *compel* ripening. Petitioner has not shown that the court of appeals abused its discretion by simply insisting on compliance with Section 2107(c) and Rule 4(a)(6) according to their letter. The judgment below can be affirmed on that basis as well.

STATEMENT

A. Legal framework

1. Section 2107 prescribes the time limits for filing appeals in civil actions. 28 U.S.C. § 2107. Parties must file a notice of appeal "within thirty days" after entry of the "judgment, order or decree" being appealed, *id.* § 2107(a), or 60 days if the United States is a party, *id.* § 2107(b). Congress has chosen to make those deadlines "mandatory and jurisdictional." *Bowles*, 551 U.S. at 209 (quoting *Griggs* v. *Provident Consumer Discount Co.*, 459 U.S. 56, 61 (1982) (per curiam)). A party's failure to scrupulously adhere to the statutory requirements for filing a timely notice of appeal can thus have harsh consequences. See, *e.g.*, *id.* at 214 (no jurisdiction where notice of appeal was filed too late even if result is "thought to be inequitable"

because appellant received faulty instructions from the court); *Manrique* v. *United States*, 581 U.S. 116, 120-121 (2017) (too-early notice of appeal challenging decision the court had not yet made "failed to properly appeal under the statute").

Congress has established two exceptions to the default appeal deadlines. The first allows the district court to "extend the time for appeal upon a showing of excusable neglect or good cause" if a motion is brought "not later than 30 days after the expiration of the time otherwise set for bringing appeal." 28 U.S.C. § 2107(c). Federal Rule of Appellate Procedure 4(a)(5) implements that exception and provides that no extension "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."

The second exception—at issue here—applies if a would-be appellant does not receive notice of the order or judgment with sufficient time to timely notice an appeal. It provides that the district court may "reopen the time for appeal" only if a party did not receive notice of the judgment "within 21 days of its entry," and "no party would be prejudiced" by an appeal. 28 U.S.C. § 2107(c). The district court may reopen the appeal period *only* "upon motion filed within 180 days after entry of the judgment" or "within 14 days after" the party receives notice of the judgment, "whichever is earlier." *Ibid.* If the district court grants that motion, it "reopen[s] the time for appeal for a" specifically described "period": "14 days from the date of entry of the order reopening the time for appeal." *Ibid.*

Rule 4(a)(6) implements that exception and provides that a 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." Fed. R. App. P. 4(a)(6).

2. Section 2107(c)'s reopening provision did not exist as a separate exception until 1991. Before that, a district court could "extend the time for appeal not exceeding thirty days from the expiration of the original time herein prescribed, upon a showing of excusible neglect based on failure of a party to learn of the entry of the judgment, order or decree." 28 U.S.C. § 2107 (1948). When the Federal Rules of Appellate Procedure were adopted in 1967, they authorized an extension "[u]pon a showing of excusable neglect" without referencing a failure to receive notice of the judgment. Fed. R. App. P. 4(a) (1967).

In 1991, this Court amended Rule 4 to create a new exception to the appeal deadlines for a party that did not receive timely notice of the judgment but subsequently learned of it within 180 days. See H.R. Doc. No. 102-79, at 2, 18-20 (May 1, 1991). Previously, courts had sometimes sought to evade harsh results from the 30-day appeal deadline by vacating and reentering judgments in order to re-start the appellate clock. See, *e.g.*, *Harnish* v. *Manatee County*, 783 F.2d 1535, 1538 (11th Cir. 1986).

The new Rule 4(a)(6) sought to "mitigate [the] harsh result" of a party being "unfairly deprived of an appeal because of the failure of a court clerk," but the Rule reflected a "careful balancing of interests" because "it was designed not to unduly affect the time when judgments became final." *Marcangelo* v. *Boardwalk Regency*, 47 F.3d 88, 90 (3d Cir. 1995). This balance was achieved by requiring that a motion to reopen be filed "within 7 days of receipt of such notice" and by permitting the prevailing party to start the appellate clock by serving notice of the judgment. H.R. Doc. No. 102-79, at 18; see Fed. R. Civ. P. 77, advisory committee's note (1991 Amendment). The Committee Note stated that "[i]f the motion is granted, the district court may reopen the time for filing a notice of

appeal only for a period of 14 days from the date of entry of the order reopening the time for appeal." Fed. R. App. P. 4, advisory committee's note (1991 Amendment).

The Advisory Committee also recommended that Congress amend 28 U.S.C. § 2107 "in light of this proposed rule." H.R. Doc. No. 102-79, at 13, 20. Congress agreed. Eight days after the new rules became effective, Congress amended Section 2107(c) to ratify new Rule 4(a)(6). See Pub. L. No. 102-198, sec. 12, § 2107, 105 Stat. 1623 (1991) ("Conformity with Rules of Appellate Procedure"); 16A Charles Alan Wright & Arthur Miller, FEDERAL PRACTICE AND PROCEDURE § 3950.6 (5th ed. 2019).

In 1998, the Rules Committee clarified the language—but not the substance—of Rule 4(a)(6) to make clear that the grant of reopening created a new time "to file" an appeal. Adding the words "to file" in the Rule's phrase "reopen the time *to file* an appeal for a period of 14 days" was part of a years-long project to "rewrite all of the Federal Rules of Appellate Procedure … in 'plain English.'" Fed. R. App. P. 4, advisory committee's report 1 (Nov. 1997 Amendment) (emphasis added). The relevant amendments were "stylistic only" and did not alter the substantive requirement—long recognized by the Advisory Committee—that Rule 4 and Section 2107(c) required a filing. See Fed. R. App. 4, advisory committee's minutes 15-16 (1989 Amendment) (suggesting adding "a new subparagraph (6) to Appellate Rule 4(a)" that "would provide a new period of 14 days in which *to file* a notice of appeal") (emphasis added); Fed. R. App. 4, advisory committee's note (1991 Amendment) (allowing reopening of

"the time for filing a notice of appeal").[1] The Advisory Committee did not recommend that Section 2107(c) be amended. Fed. R. App. 4, advisory committee's note (1998 Amendment).

B. The present controversy

1. Petitioner Donte Parrish was serving a 180-month sentence in federal prison when he was accused of murdering another inmate. C.A. Doc. 25 at 152. Prison officials placed him in administrative segregation, but federal prosecutors did not pursue charges. *Id.* at 63, 82. In 2017, petitioner filed a *pro se* complaint challenging his segregation under the Federal Tort Claims Act. *Id.* at 30. The district court granted the government's motion to dismiss on March 23, 2020, Pet.App.55a, and entered judgment the next day, C.A. Doc. 25 at 329.

Petitioner did not file a notice of appeal before the 60-day deadline passed on May 26, 2020. Nor did he file before the deadline to extend the appeal period passed 30 days later. Instead, two weeks after the extension period expired, petitioner mailed a document titled "Notice of Appeal" to the district court. Pet.App.71a. He stated that he had not received timely notice of the judgment because he had been transferred from federal to state custody. *Ibid.* Petitioner did not ask for reopening, and he did not cite Rule 4(a)(6). *Ibid.*

2. Petitioner's notice of appeal was clearly untimely, so the court of appeals lacked jurisdiction unless the district court granted reopening under Rule 4(a)(6). The court of appeals exercised its discretion to construe peti-

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[1] Rule 4(a)(6) was also *substantively* amended at the same time to provide that notice from the district court (not just notice from the clerk) would bar reopening.

tioner's untimely "notice of appeal" as a motion to reopen and remanded to the district court. Pet.App.56a-58a.

The district court granted reopening on January 8, 2021, and "**REOPEN[ED]** the time for [petitioner] to file his appeal for fourteen (14) days." Pet.App.61a-62a. The court ordered the Clerk "to transmit this Order to the pro se plaintiff, certified mail, return receipt requested." *Ibid.*

Petitioner has never claimed that he did not receive notice of the district court's reopening order within 14 days. But petitioner did not file a notice of appeal—or anything else—during the 14-day period following that order.

3. Petitioner's appeal languished on the court of appeals' docket for nine months without action. C.A. Doc. 13-16. The court eventually appointed counsel for petitioner. C.A. Doc. 16. Although the government conceded appellate jurisdiction, C.A. Doc. 39 at 11, the court dismissed the appeal for lack of jurisdiction, Pet.App.1a-13a. The majority explained that petitioner had not complied with the unambiguous requirement of Rule 4(a)(6) and the district court's reopening order: he did not file anything within the 14-day period that had been "reopened" for him "to file an appeal." Fed. R. App. P. 4(a)(6); see Pet.App.10a.

Petitioner had based his argument for appellate jurisdiction on Fourth Circuit precedent holding that, under Rule 4(a)(5), an "extension" of the time to appeal enlarges one continuous appeal period that may permit the "ripening" of a premature notice of appeal into a timely notice. See Pet.App.6a (referencing *Evans* v. *Jones*, 366 F.2d 772 (4th Cir. 1966) (per curiam)). But the court of appeals explained that, even accepting that precedent, the text of Rule 4(a)(6) is different: a "reopening" under Rule 4(a)(6) creates a distinct 14-day period during which a notice of

appeal must be filed. Pet.App.9a-11a. Petitioner's earlier notice of appeal was not filed during that period and was therefore ineffective.

The court of appeals also rejected petitioner's contention that his untimely filing could function as both a notice of appeal and a motion to reopen. Pet.App.3a-4a.

Judge Gregory dissented. Pet.App.14a-22a. He argued that circuit precedent regarding extensions should control because there is no significant difference between "extend" and "reopen." *Id.* at 19a.

The court of appeals denied rehearing. Pet.App.63a-70a. Judge Niemeyer's statement in support explained that Section 2107(c) requires a notice of appeal to be filed during the 14-day reopened period. *Id.* at 65a-66a. Judge Niemeyer observed that, whatever harsh results that requirement may sometimes create, the court of appeals lacked the power to fashion an equitable exception to the jurisdictional limits set by Congress. *Ibid.* Judge Gregory dissented. Pet.App.67a-69a.

SUMMARY OF ARGUMENT

A. Only a *timely* notice of appeal "confers jurisdiction on the court of appeals." *Griggs* v. *Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982) (per curiam). Petitioner's notice of appeal was not timely; it was indisputably filed late. Thus, his only path to an appeal was through reopening under 28 U.S.C. § 2107(c). But the statutory text requires a would-be appellant to *act* during the "period of 14 days from the date of the entry of the order" granting reopening. 28 U.S.C. § 2107(c). Congress's creation of a defined 14-day period plainly requires action during that period—specifically, filing a notice of appeal.

The Rules of Appellate Procedure confirm this conclusion by providing for the ripening of premature notices of

appeal in certain situations, but not others. In *this* situation, the notice of appeal was not "premature" but tardy: it was filed after petitioner's deadline to appeal had expired, and before the district court later reopened his "time for appeal." Requiring action during that "period of 14 days" is consistent with precedent recognizing that the ripening principle extends no further than the text of Congress's enacted rules. *FirsTier Mortg. Co.* v. *Investors Mortg. Ins. Co.*, 498 U.S. 269, 273 (1991).

In enacting Section 2107(c) and adopting Rule 4(a)(6), Congress made a choice that would-be appellants must act during their reopened, 14-day "time for appeal." Respecting that policy choice advances much-needed clarity in the interpretation of jurisdictional statutes, while leaving it to Congress to adjust those rules if it so chooses.

B. Petitioner's contrary arguments fail because he vastly overstates the supposed "background ripening principle" and relies on extra-textual policy arguments. To prevail, petitioner must be correct that "ripening is always warranted upon reopening." Pet.Br.33.

That was never the law. Before the enactment of Rule 4 and Section 2107(c)'s reopening provisions, judges sometimes allowed a premature notice of appeal to "ripen," but not in the circumstances of this case. Moreover, in codifying that common-law practice, Congress placed limits on ripening that petitioner now asks this Court to ignore. Petitioner has no answer to the text or structure of Section 2107(c) or the appellate rules, which cannot be read to embrace his policy-based notion that any notice of appeal must be effective if it provides adequate notice of intent to appeal. It is not sufficient that a would-be appellant's filing gives notice; Congress's chosen jurisdictional procedures must also be followed.

Petitioner also asks this Court to take two statutory provisions—involving "extension" and "reopening"—and give them the same meaning. That contradicts this Court's interpretive presumption against Congress using different words to describe the same jurisdictional requirements.

Petitioner falls back on policy arguments and asks this Court to create exceptions for sympathetic litigants. But this Court has long observed that proper application of jurisdictional rules can have harsh consequences. Congress is entitled to draw jurisdictional lines, and the judiciary must enforce them according to their terms.

C. In the alternative, even if the statute and rule could be read to permit ripening in a circumstance like this one, the text certainly does not *compel* a court of appeals in all circumstances to treat a time-barred notice of appeal like petitioner's as if it were timely filed. Courts retain discretion to insist on compliance with the statute and rule according to their terms. Petitioner has not shown that the court of appeals abused its discretion by declining to extend him further grace after his admitted (and unexplained) failure to file anything during the window that the district court reopened for him.

ARGUMENT

Section 2107(c) and Rule 4(a)(6) offer a straightforward second-chance procedure to would-be appellants who missed their time to appeal an adverse judgment. The disappointed party may file a motion that, if granted, "reopen[s]" the time "to file an appeal" for a specifically described "period of 14 days." The ordinary meaning of that text is obvious: by creating a defined 14-day period, the statute and rule require *action* during that period. The court of appeals correctly determined that petitioner's appeal was defective because he took no action during the period that was reopened for him, even though the district court took care to ensure that petitioner received notice of the reopening and an instruction "to file his appeal."

Petitioner's argument depends on replacing clear textual instructions with an amorphous "background ripening principle" informed by functional notions of adequate notice. Pet.Br.9. But there is no warrant for such a "text-light approach to the statute." *Milner* v. *Department of the Navy*, 562 U.S. 562, 573 (2011). Where the statute and appellate rules permit ripening of earlier-filed notices of appeal, they say so expressly. That they do not provide for ripening here is no license to create new, atextual exceptions for arguably sympathetic litigants.

Petitioner further contends that his ripening principle is mandatory; he says courts of appeals lack discretion to require a notice of appeal to be filed during the reopened 14-day period. See Pet.Br.33 ("ripening is always warranted upon reopening"). But at a minimum, a court does not abuse its discretion by requiring a party like petitioner who has already received a second chance to simply adhere to the plain-text filing requirement.

This Court should affirm the judgment below.

A. The court of appeals correctly determined that it lacked jurisdiction.

The time to appeal set forth in Section 2107 is "mandatory and jurisdictional." *Griggs* v. *Provident Consumer Discount Co.*, 459 U.S. 56, 61 (1982) (per curiam). Only a *timely* notice of appeal "confers jurisdiction on the court of appeals." *Id.* at 58. A party who wishes to appeal must comply with both Section 2107 and the "linked jurisdictional provisions" of Appellate Rules 3 and 4. *Becker* v. *Montgomery*, 532 U.S. 757, 765 (2001). These provisions are strictly construed and may not be extended or altered except as specifically permitted by statute. See *Bowles* v. *Russell*, 551 U.S. 205, 213 (2007); Fed. R. App. P. 26(b)(1).

1. Section 2107(c) requires a notice of appeal to be filed after reopening.

a. Where, as here, a would-be appellant misses both the standard appeal period and the 30-day window to extend it, his only option is to seek to "reopen" his "time for appeal" under 28 U.S.C. § 2107(c). See *Bowles*, 551 U.S. at 208. A district court "may" (but need not) grant reopening upon "motion" if the court "finds" that the would-be appellant did not receive notice of the judgment "within 21 days of its entry" and that "no party would be prejudiced" by reopening. 28 U.S.C. § 2107(c). The motion must be made within 180 days after the judgment or 14 days after the party receives notice of the judgment, "whichever is earlier." *Ibid.*

If the district court grants the motion, then a "period of 14 days" begins running "from the date of entry of the order reopening the time to appeal." 28 U.S.C. § 2107(c). That new "period" is the would-be appellant's only "time for appeal." *Ibid.*

b. That statutory text admits of only one fair construction: the movant must file a notice of appeal *during*

the reopened "period of 14 days." Only that reading gives meaningful "effect to all of" Congress's provisions. *United States ex rel. Eisenstein* v. *City of New York*, 556 U.S. 928, 933 (2009); see *National Ass'n of Mfrs.* v. *Department of Defense*, 583 U.S. 109, 128-129 (2018) ("the Court is obliged to give effect, if possible, to every word Congress used") (citation omitted).

First, the use of the word "reopen" presumes that the period to appeal has already closed before the motion is filed. This Court has routinely construed "reopen" that way. See *Miller* v. *French*, 530 U.S. 327, 344 (2000) (discussing power of federal courts to "reopen final judgments"); *Plaut* v. *Spendthrift Farm, Inc.*, 514 U.S. 211, 238 (1995) (discussing courts' power to "reopen" an "otherwise closed court judgment") (quotation omitted); *Interstate Commerce Comm'n* v. *Brotherhood of Locomotive Eng'rs*, 482 U.S. 270, 277 (1987) (statutory power to "reopen" refers to a "prior decision" subject to reconsideration). That usage is consistent with the ordinary meaning of "reopen," which refers to a period that has closed and requires specific action "to begin again." *Reopen*, Webster's Third New International Dictionary of The English Language 1923 (1986); *Reopen*, The Oxford English Dictionary 624 (2d ed. 1989) ("to open again").

The statute's description of the reopening window as a "time for appeal" reinforces the conclusion. The "time for appeal" is the only time during which an appeal can be commenced. And taking or commencing an appeal always requires an action—specifically, filing a notice of appeal. Section 2107(a) limits federal appellate jurisdiction by prohibiting any "appeal" from "bring[ing] any judgment … before a court of appeals for review unless notice of appeal is filed." 28 U.S.C. § 2107(a). Here, petitioner did

nothing to bring his appeal during the "time for appeal." 28 U.S.C. § 2107(c).

Congress's creation of a specific "period of 14 days" during which the time for appeal is reopened forcefully confirms that the would-be appellant must file during that period. A "period" in the context of a procedural statute means a time during which a litigant must act. See, *e.g.*, *Artis* v. *District of Columbia*, 583 U.S. 71, 75 (2018) (28 U.S.C. § 1367 sets a "period for refiling" in state court after dismissal of claims); 28 U.S.C. § 2263(b)(3) (permitting extension of "period" to "file[ ]" application for writ of habeas corpus); 11 U.S.C. § 1121(e) (in certain bankruptcies, "only the debtor may file a plan" during a "period" of "180 days"). That the reopened appeal period runs "from" the "date of entry" strengthens the same point, because the word "from" is used to "indicat[e] a starting-point in time, or the beginning of a period." *From*, The Oxford English Dictionary 211 (2d ed. 1989). Simply put: It is implausible that Congress would have created a strictly delimited 14-day period setting the bounds for the reopened "time for appeal" unless some action were required during that period.

Requiring a would-be appellant to act during Congress's 14-day reopened appeal period gives meaning to all of Section 2107's "provisions, so that no part will be inoperative or superfluous, void or insignificant." *Corley* v. *United States*, 556 U.S. 303, 314 (2009) (cleaned up). Any construction of Section 2107(c) that made the filing of a notice of appeal optional during Congress's window would depart from that foundational interpretive rule.

c. This Court has already analyzed Section 2107(c) and reached the same conclusion. In *Bowles*, the Court described Section 2107(c)'s 14-day period as a "filing period" and a "time for filing a notice of appeal." 551 U.S.

at 208. Those observations reflect the most natural meaning of the text: It sets out an inalterable, jurisdictional period during which a would-be appellant must *act*.

In *Bowles*, a prisoner was denied habeas relief and missed the time to appeal. 551 U.S. at 207. The district court granted Bowles's motion to reopen and advised that he had 17 days to appeal (rather than the statutory 14 days). Bowles filed after the statutory period had elapsed, but within the deadline incorrectly set by the district court. This Court held that, notwithstanding the obvious prejudice to Bowles, his appeal was untimely for failure to comply with Section 2107(c)'s "mandatory and jurisdictional" 14-day window. *Id.* at 207-208.

This Court's subsequent discussions of *Bowles* provide yet-more evidence of the ordinary meaning of the textual instruction: when the district court reopens the time to appeal for a 14-day period, a would-be appellant must *file* an appeal during that period to establish appellate jurisdiction. See *Henderson ex rel. Henderson* v. *Shinseki*, 562 U.S. 428, 433 (2011) ("In *Bowles*, we held that the statutory limitation on the length of an extension of the *time to file* a notice of appeal … is 'jurisdictional.'") (citations omitted) (emphasis added); *Hamer* v. *Neighborhood Hous. Servs. of Chicago*, 583 U.S. 17, 18-19 (2017) (*Bowles* addressed the "time to file a notice of appeal").

2. Rule 4(a)(6) reinforces that a timely notice of appeal is required.

Federal Rule of Appellate Procedure 4, which (together with Rule 3) operationalizes Section 2107's jurisdictional mandate, *Becker*, 532 U.S. at 765, confirms that a notice of appeal must be filed during the 14-day period following a grant of reopening. Rule 4(a)(6) specifies that the district court may "reopen the time *to file an appeal*" for a 14-day period. (Emphasis added). Petitioner failed to

establish jurisdiction because he did not "file an appeal" during the period that the district court reopened for him.

When the Advisory Committee added that "to file" language to Rule 4(a)(6) in 1998, it explained that it was not changing what the rule has meant since its adoption. The 1998 amendment was "intended to be stylistic only" "to make the rule more easily understood." Fed. R. App. P. 4, advisory committee's note (1998 Amendment). Cf. *City of San Antonio* v. *Hotels.com, L. P.*, 593 U.S. 330, 339 (2021). The Advisory Committee has insisted since 1991 on the movant making a filing during the 14-day period: "If the motion is granted, the district court may reopen the time for filing a notice of appeal only for a period of 14 days from the date of entry of the order reopening the time for appeal." Fed. R. App. P. 4, advisory committee's note (1991 Amendment).

This also "happens to be a case in which the legislative history" makes it "pellucidly clear" that the Rule accurately reflects the meaning of the statutory text. *Zuni Pub. Sch. Dist. No. 89* v. *Department of Educ.*, 550 U.S. 81, 106 (2007) (Stevens, J. concurring). As described above, p.6, *supra*, the Advisory Committee asked Congress to amend Section 2107 to match the newly adopted Rule 4(a)(6), and Congress obliged just eight days later with a bill implementing these "technical corrections," H.R. Rep. 102-322 at 4 (1991), reprinted in 1991 U.S.C.C.A.N. 1303, 1304. The House Judiciary Committee reported that the amendments to Section 2107 were "[d]ue to recent changes in the Rules of Appellate Procedure." *Id.* at 1309.

"Those who find legislative history useful will find confirmation in" these unanimous sources of contemporary interpretation—all of which suggest that Rule 4(a)(6) and Section 2107(c) were intended to have the same meaning,

and to require a *filing* during the 14-day appeal period upon reopening. *Kirtsaeng* v. *John Wiley & Sons, Inc.*, 568 U.S. 519, 535 (2013).

3. Section 2107(c) and Rule 4(a)(6) do not allow "ripening," unlike other provisions that do.

The judgment below is further supported by what the text relevant here does *not* say: Unlike other provisions "deeming certain premature notices of appeal effective," *FirsTier Mortg. Co.* v. *Investors Mortg. Ins. Co.*, 498 U.S. 269, 273 (1991), neither Section 2107(c) nor Rule 4(a)(6) contemplates deeming a tardy notice of appeal timely following reopening.

Other parts of Rule 4(a) embrace a narrow ripening principle for notices of appeal filed within one of two defined windows: "after the court announces a decision or order," and either "before the entry of the judgment or order," Rule 4(a)(2), or else "before [the district court] disposes of any motion listed in Rule 4(a)(4)(A)," Rule 4(a)(4)(B)(i). See *FirsTier*, 498 U.S. at 272-273. Those are the limited, enumerated exceptions to the general rule that a notice of appeal must be filed after entry of a final order, and before 30 (or 60) days have elapsed. Fed. R. App. P. 4(a)(1). This Court in *FirsTier* explained that the judicially created exception codified by Rule 4(a)(2) "was intended to protect the unskilled litigant who files a notice of appeal from a decision that he reasonably but mistakenly believes to be a final judgment[.]" 498 U.S. at 276; see, *e.g.*, *Firchau* v. *Diamond Nat'l Corp.*, 345 F.2d 269, 270-271 (9th Cir. 1965).

But *FirsTier* also indicated that, to the extent the ripening principle ever had a broader scope, it was cabined by the enacted text of Rules 4(a)(2) and 4(a)(4)(B)(i). See 498 U.S. at 276. As this Court has elsewhere explained, when Congress codifies what was once an unwritten judi-

cial "practice[ ]," it was "for the consideration of Congress, not the courts," to decide what to codify and what to omit. *RadLAX Gateway Hotel, LLC* v. *Amalgamated Bank*, 566 U.S. 639, 649 (2012).

After *FirsTier*, any "broader notion of when a notice of appeal filed before entry of judgment may be effective" cannot "survive the Supreme Court's narrower construction of the specific appellate rule governing such notices of appeal without rendering the rule largely if not entirely superfluous." *Outlaw* v. *Airtech Air Conditioning & Heating, Inc.*, 412 F.3d 156, 160 n.2 (D.C. Cir. 2005) (Roberts, J.). There would be no reason for Rules 4(a)(2) and 4(a)(4)(B) to specify ripening in these limited situations if ripening naturally applied to every filing submitted before a period to file has expired.

Petitioner (Pet.Br.26) and the Solicitor General (U.S.Br.18) assert that ripening is not confined to only those rules expressly embracing it. They point to courts' acceptance of notices of appeal filed after a district court order but before the order is certified for interlocutory appeal under Federal Rule of Civil Procedure 54(b). But as several courts have noted, that acceptance is merely a straightforward application of Rule 4(a)(2). See, *e.g.*, *Clausen* v. *Sea-3, Inc.*, 21 F.3d 1181, 1187 (1st Cir. 1994) ("[B]y virtue of Fed.R.App.P. 4(a)(2), [appellant's] premature notice of appeal ripened when the district court certified its … judgment pursuant to Fed.R.Civ.P. 54(b)."); *Lewis* v. *B.F. Goodrich Co.*, 850 F.2d 641, 645 (10th Cir. 1988); *In re Bryson*, 406 F.3d 284, 289 (4th Cir. 2005); *Brown* v. *Columbia Sussex Corp.*, 664 F.3d 182, 189 (7th Cir. 2011). An interlocutory order is "announced" for purposes of Rule 4(a)(2) when it is issued, and "its judgment [is] entered" when the Rule 54(b) certification renders it final and appealable. *Brown*, 664 F.3d at 187.

The text of Rule 4(a)(6) is also meaningfully different from those rules that allow ripening. Rules 4(a)(2) and 4(a)(4)(B)(i) both specify the date on which a "ripened" notice of appeal should be deemed to have been filed: A premature notice of appeal susceptible to ripening under Rule 4(a)(2) "is treated as filed on the date of and after the entry" of judgment. Fed. R. App. P. 4(a)(2). And a notice of appeal filed while the time to appeal is tolled pending disposition of a post-judgment motion under Rule 4(a)(4)(A) "becomes effective … when the order disposing of the last such remaining [post-judgment] motion is entered." Fed. R. App. P. 4(a)(4)(B)(i). Rule 4(a)(6), by contrast, does not identify any point during the 14-day reopening window that a premature notice of appeal should be "treated as filed" or "become effective." It is unlikely the Rules would fail to specify when an "event of jurisdictional significance" occurs. *Griggs*, 459 U.S. at 58.

In sum, the various rules permitting, limiting, and rejecting "ripening" of notices of appeal filed at the wrong time would all be surplusage if, as the dissent argued below, the rules embrace some universal principle that an order granting extension or reopening "retroactively validates an earlier, untimely notice of appeal." Pet.App.16a. That construction would "render … entire" rules and "subparagraph[s] meaningless." *Pulsifer* v. *United States*, 601 U.S. 124, 143 (2024) (citation omitted). As the Chief Justice once wrote for the D.C. Circuit: "The fact that there is a rule governing pre-judgment premature notices of appeal and another rule governing post-judgment premature notices of appeal hardly means that courts are at liberty to fashion additional doctrines saving premature notices of appeal that are not saved under the rules[.]" *Outlaw*, 412 F.3d at 160 n.2.

4. Requiring a timely notice of appeal after reopening is granted is consistent with precedent and respects Congress's choices.

a. Faithful application of the text of Section 2107(c) is consistent with centuries of precedent demanding strict compliance with jurisdictional rules. When an "appeal has not been prosecuted in the manner directed, within the time limited by the acts of Congress, it must be dismissed for want of jurisdiction." *United States* v. *Curry*, 47 U.S. 106, 113 (1848). And "if the mode prescribed for … appeal be too strict and technical, and likely to produce inconvenience or injustice, it is for Congress to provide a remedy by altering the existing laws; not for the court." *Ibid.*

Clear rules inform all parties of the importance of compliance, with the understanding that the court will lack the power to adjust those rules for special circumstances. That is why this Court has long held that "strict adherence to the procedural requirements specified by the legislature is the best guarantee of evenhanded administration of the law." *Mohasco Corp.* v. *Silver*, 447 U.S. 807, 826 (1980). True, application of jurisdictional statutes can lead to harsh results in individual cases; "[f]iling deadlines, like statutes of limitations, necessarily operate harshly and arbitrarily with respect to individuals who fall just on the other side of them, but if the concept of a filing deadline is to have any content, the deadline must be enforced." *United States* v. *Locke*, 471 U.S. 84, 101 (1985). "Any less rigid standard would risk encouraging a lax attitude toward filing dates." *United States* v. *Boyle*, 469 U.S. 241, 249 (1985).

b. Contrary to petitioner's suggestion (Pet.Br.24), no equitable doctrine permitted the court of appeals to simply "deem" his improper notice of appeal timely. A court's power to deem a document as having been filed at

a time other than when it was entered on the docket comes from the common-law doctrine of *nunc pro tunc*, meaning "now for then." *Roman Catholic Archdiocese of San Juan, Puerto Rico* v. *Acevedo Feliciano*, 589 U.S. 57, 65 (2020) (citing Black's Law Dictionary 1287 (11th ed. 2019)). That doctrine permits federal courts to deem filings effective as of an earlier date to "'reflect[ ] the reality' of what has already occurred." *Ibid.* (quoting *Missouri* v. *Jenkins*, 495 U.S. 33, 39 (1990)).

But the *nunc pro tunc* doctrine has strict limits and cannot save petitioner's untimely filing here. It has always been understood to extend a court's power to correct a "delay [that] has arisen from the act of the court," *Gray* v. *Brignardello*, 68 U.S. 627, 636 (1863), and is not "attributable to the laches of the parties," *Mitchell* v. *Overman*, 103 U.S. 62, 63-65 (1880). Issuing an order *nunc pro tunc* is appropriate only to conform the record to the historical facts, not as an "Orwellian vehicle for revisionist history—creating 'facts' that never occurred in fact." *Roman Catholic Archdiocese*, 589 U.S. at 65 (citation omitted).

The *nunc pro tunc* doctrine was historically used to rescue an otherwise untimely appeal only when the untimeliness was caused by the court's failure to take a required action. To take an appeal in the Nineteenth Century, a party had to submit a "bill of exceptions" to be signed by a judge during a "term" of court. *Aetna Ins. Co.* v. *Boon*, 95 U.S. 117, 118 (1877). Often a bill of exceptions was timely "tendered to the judge," yet not timely signed. *Sheppard* v. *Wilson*, 47 U.S. 260, 274 (1848). So judges would "sign bills of exception after the trial, *nunc pro tunc*, the bills being dated as if taken on the trial." *Id.* at 275. In all cases, it was the delay of the *court* to act on the party's timely filing—not a delay by the party—that permitted the order to be made effective as of an earlier date.

That traditional equitable authority could not support resurrecting petitioner's untimely appeal, where his failure to file a timely notice of appeal was not attributable to the court. Petitioner does not dispute that he filed his purported "notice of appeal" after his time to appeal expired. His filing was therefore "not merely defective" but "a nullity," having the same effect as "if no notice of appeal were filed at all." *Griggs*, 459 U.S. at 61. Equity cannot alter that "reality." *Roman Catholic Archdiocese*, 589 U.S. at 65 (citation omitted); see *Bowles*, 551 U.S. at 214.

c. Attempting to equitably enlarge the reopening period would also upset the balance that Congress struck when it expanded the 30-day appeal period to 180 days for parties who did not receive notice of a judgment. Before Section 2107(c), a party who received notice of a judgment for the first time more than 30 days after the close of the appeal period had no recourse. *E.g.*, *Alaska Limestone Corp.* v. *Hodel*, 799 F.2d 1409, 1412 (9th Cir. 1986); *Hensley* v. *Chesapeake & Ohio Ry. Co.*, 651 F.2d 226, 228 (4th Cir. 1981). The Advisory Committee note to Rule 4(a)(6) explains that reopening is a "*limited* opportunity for relief" for such parties. Fed. R. App. P. 4, advisory committee's note (1991 Amendment) (emphasis added). Without limits, reopening could "unduly affect the time when judgments become final." *Marcangelo*, 47 F.3d at 90.

Section 2107(c) thus "careful[ly] balance[es the] interests" in a fair opportunity for appeal against the interests of all parties and the courts in finality. *Marcangelo*, 47 F.3d at 90. The reopening that Congress created is only available for a limited time after a party receives notice; is never available more than 180 days after judgment is entered; creates a limited jurisdictional window in which the party must file a notice of appeal or else forfeit the appeal for good; and is not available if the prevailing party

would be prejudiced by the judgment loser's apparent failure to appeal. Fed. R. App. P. 4(a)(6); see also advisory committee's note (1991 Amendment). Those limits mean that not every party that fails to receive timely notice of a judgment will succeed in reopening his appeal. Congress put petitioner's situation in that category.

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The statutory text and corresponding rule reflect a compromise that is fair to all litigants and that supports efficient judicial administration: A party that did not receive notice of the original judgment can receive a second chance through a motion to reopen. But a party whose motion is granted—whose window "to file an appeal" is reopened—must actually *file* a timely notice of appeal to create appellate jurisdiction. Petitioner did not, so his appeal was properly dismissed.

B. Petitioner's arguments are unavailing.

Petitioner doesn't really dispute that Section 2107 required him to file a notice of appeal, that his notice of appeal was ineffective when filed, or that the statute and rule plainly contemplate a notice of appeal filed during the reopened window. Petitioner's argument instead depends on the contention that Section 2107(c) implicitly adopts a "background ripening principle" that purportedly permits a court to "deem … effective" his premature notice of appeal. Pet.Br.9 (quoting *FirsTier*, 498 U.S. at 273). That argument is flawed in multiple respects.

1. Petitioner advances an extra-broad "ripening" principle that lacks historical support.

a. For one thing, petitioner vastly overstates the "ripening principle" that existed before Rule 4(a)(2).

Petitioner cites (Pet.Br.22-23) a laundry list of pre-1979 decisions supposedly embracing a broad ripening

principle. But those decisions largely concern the situation addressed by Rule 4(a)(2)—a premature notice of appeal filed before entry of judgment—that is not at issue here. Two cases squarely presented that situation. See *Richerson* v. *Jones*, 551 F.2d 918, 922-923 (3d Cir. 1977); *Markham* v. *Holt*, 369 F.2d 940, 942 (5th Cir. 1966).[2] Two more cases concerned the closely analogous circumstance of a notice of appeal filed after an interlocutory order but before the Rule 54(b) certification making that order appealable. See *Tilden Fin. Corp.* v. *Palo Tire Serv.*, 596 F.2d 604, 606-607 (3rd Cir. 1979); *Merchants & Planters Bank of Newport, Ark.* v. *Smith*, 516 F.2d 355, 356 n.3 (8th Cir. 1975) (per curiam). Three other cases applied the cumulative finality doctrine to treat two non-final orders that together dispose of the case as, functionally, a single appealable order. See *Jetco Elec. Indus.* v. *Gardiner*, 473 F.2d 1228, 1231 (5th Cir. 1973); *Morris* v. *Uhl & Lopez Eng'rs, Inc.*, 442 F.2d 1247, 1250 (10th Cir. 1971); *Eason* v. *Dickson*, 390 F.2d 585, 588 (9th Cir. 1968).[3]

None of petitioner's cases suggests that a notice of appeal filed too late after the order appealed from can ever be effective. The cases instead concerned notices of appeal that were timely in relation to the order appealed from, but that were filed before the order became final.

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[2] The same is true of *Lemke* v. *United States*, 346 U.S. 325 (1953) (per curiam), invoked by the Solicitor General (U.S.Br.19). As this Court observed 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.

[3] Petitioner's last cited decision does not involve prematurity at all. It held that an untimely JNOV motion was a legal nullity that did not toll the time for appeal under then-Rule 4(a)(4), so the government's *timely* notice of appeal was effective. *United States* v. *Valdosta-Lowndes Cnty. Hosp. Auth.*, 668 F.2d 1177 (11th Cir. 1982).

Those cases do not support the existence of an even-broader ripening principle that would be necessary for petitioner here, where a late notice of appeal was filed for the first time *after* entry of an appealable order.

b. In any event, *FirsTier* clarified that any ripening is now confined to the terms of the Rules. This Court held that "Rule 4(a)(2) was intended to codify a general practice in the courts of appeals of deeming certain"—not all—"premature notices of appeal effective." *FirsTier*, 498 U.S. at 273. "Premature" has a precise meaning in this context—it is not just a synonym for "before." Rather, an action is "premature" when it is "done *before the usual, proper, or appointed time*." *Premature*, The Oxford English Dictionary 362 (2d ed. 1989) (emphasis added). The proper time for petitioner to appeal was within 60 days after the judgment, per Rule 4(a)(1)(B). He filed his only notice of appeal *after* that window closed. That was not premature. It is what *FirsTier* called a "tardy notice of appeal" that *cannot* benefit from ripening. 498 U.S. at 273.

Importantly, *FirsTier* refused to extend ripening beyond the terms of Rule 4(a)(2). A "notice of appeal from a clearly interlocutory decision," like "a discovery ruling," will *not* subsequently ripen because "[a] belief that such a decision is a final judgment would *not* be reasonable." 498 U.S. at 276. The Rule, as construed in *FirsTier*, is thus narrower than the broad ripening principle that petitioner espouses. For example, the pre-1979 *Eason* decision relied on by petitioner (Pet.Br.23) permitted ripening of a notice from a clearly interlocutory order—the denial of a motion for appointment of a three-judge court. See 390 F.2d at 587-588. But under Rule 4(a)(2) and *FirsTier*, that filing would have been ineffective to bring up the subsequent judgment for appeal. 498 U.S. at 276. As then-Judge Roberts explained, *FirsTier* repudiated any "broader

notion" of ripening, which would necessarily render the rule's text "superfluous." *Outlaw*, 412 F.3d at 160 n.2.

c. Petitioner's description of the ripening principle (Pet.Br.35) as depending merely on "provid[ing] adequate notice before the jurisdictional deadline" cannot be squared with Rule 4. Notice alone is not sufficient; a would-be appellant must comply with Section 2107 and Rules 3 and 4.

As discussed above, Rules 4(a)(2) and 4(a)(4)(B) delimit the period during which ripening can occur with not only a fixed end point but also a fixed starting point: "after the court announces a decision or order." Fed. R. App. P. 4(a)(2); accord Fed. R. App. P. 4(a)(4)(B) ("after the court announces or enters a judgment"). A putative notice of appeal filed either before the starting point or after the end point is not timely and has no legal effect, regardless of what notice it might provide. See *Griggs*, 459 U.S. at 61.

This Court has never applied petitioner's atextual "functional approach" to ripening. Contra Pet.Br.21. To the contrary, the Court held that it is *not* enough for a putative notice of appeal to "give[ ] the notice required by Rule 3" regarding a non-prevailing party's intent to appeal; such a filing is ineffective unless it is also "filed within the time specified by Rule 4." *Smith* v. *Barry*, 502 U.S. 244, 249 (1992); see also *Becker*, 532 U.S. at 765.

If notice alone were sufficient, then the ripening exception would swallow the deadlines in Rule 4(a)(1). Parties could annex a "notice of appeal" of any future adverse judgment to any pleading or motion and thereby "provide[ ] adequate notice before the jurisdictional deadline"—which is all that petitioner claims is required. Pet.Br.35. Courts consistently reject that view. Rule 4(a)(2) "does not afford relation forward for a notice of

appeal that is filed *before* the court announces the decision that the would-be appellant later seeks to challenge." FEDERAL PRACTICE & PROCEDURE § 3950.5; see, *e.g.*, *Wall Guy, Inc.* v. *F.D.I.C.*, 95 F.4th 862, 869 (4th Cir. 2024); *Marshall* v. *Comm'r Pa. Dep't of Corrs.*, 840 F.3d 92, 95 (3d Cir. 2016); *Bogle* v. *Orange Cnty. Bd. of Cnty. Comm'rs*, 162 F.3d 653, 656 (11th Cir. 1998).[4]

Section 2107(c)'s text takes the same approach. A motion for leave to reopen will virtually always afford the notice required by Rule 3(c)(1), but the statute nevertheless requires a notice of appeal within 14 days after reopening is granted. Functional notice has never been enough to satisfy Rules 3 and 4.

2. Petitioner's vision of ripening cannot be reconciled with the text or structure of Section 2107.

Petitioner's reading of Section 2107(c) (Pet.Br.27-34) would run roughshod over its textual instructions. Nothing in the text, structure, or history of Section 2107 supports allowing a tardy notice of appeal to "ripen" during the reopened period for an appeal.

a. Petitioner asserts (Pet.Br.28) that an appeal can be commenced without filing a notice of appeal after reopening is granted because "Section 2107(c) does not even mention notices of appeal" and "does [not] say anything about what appellants must do during the 14-day reopening period." No court has embraced that argument, which ignores the "cardinal rule that a statute is to be read as a whole." *King* v. *St. Vincent's Hosp.*, 502 U.S. 215, 221 (1991). Section 2107(a) sets out the general rule that,

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[4] This Court has held, applying the analogous provision governing criminal appeals (Rule 4(b)(2)), that "[i]f the court has not yet decided the issue the appellant seeks to appeal, then the [ripening] Rule does not come into play." *Manrique*, 581 U.S. at 124.

"[e]xcept as otherwise provided in this section, no appeal" shall commence "unless notice of appeal is filed, within thirty days after the entry of such judgment, order or decree." Section 2107(c) then affords a district court discretion to reopen the time to appeal beyond the 30-day window, but it does not modify the clear requirement in Section 2107(a) that every appeal be commenced by filing a timely notice of appeal.

b. Petitioner's structural argument (Pet.Br.28-31) asks the Court to extrapolate the rules' limited and enumerated "ripening" exceptions into a wide-ranging standard for all notices of appeal filed at the wrong time. See Pet.Br.19 (arguing that "premature notices of appeal generally take effect when an appeal period opens"). He claims that, because *some* premature notices of appeal can ripen consistent with Section 2107(a), the same must be true under Section 2107(c) because (c) incorporates the notice-of-appeal requirement found in (a).

Petitioner's argument cannot account for the important textual differences between subsections (c) and (a). Section 2107(a)—the provision for ordinary, timely appeals—uses the word "within," which petitioner argues can also mean "before," such that a notice of appeal filed before a final judgment can ripen upon entry of final judgment. Pet.Br.29. But that argument is merely a statutory justification for Rule 4(a)(2) ripening, which is no help to petitioner here. See p.18, *supra*. There is no comparable ripening instruction in Rule 4(a)(6), and the differing text of Section 2107(c) confirms that no ripening was permitted in reopening cases. Section 2107(c), unlike subsection (a), does not use the word "within." It says that, once reopened, a notice of appeal must be filed during a "period of 14 days from the date of entry of the order reopening the time for appeal."

This Court presumes that "differences in language like this convey differences in meaning." *Henson* v. *Santander Consumer USA Inc.*, 582 U.S. 79, 86 (2017). Unlike Section 2107(a), Section 2107(c) defines both the beginning *and* the end of the "period" during which a would-be appellant must act. It commences "*from* the date of entry of the order" and continues for "14 days." *Ibid.* (emphasis added).

Petitioner also misunderstands the role of Section 2107(c) in the statute. The premise of petitioner's argument is that a *premature* notice of appeal can sometimes ripen upon "the entry of such judgment, order or decree"—that is, the moment when an order becomes final. See 28 U.S.C. § 2107(a). But Section 2107(c) applies only to a party who failed to timely appeal a final order. It therefore does not logically incorporate the limited ripening principle for premature notices of appeal filed before an order became final.

3. Petitioner draws the wrong inferences about Congress's intent for reopened appeal periods.

a. Petitioner's legislative history argument (Pet.Br. 31-34) is actually an argument about the *absence* of legislative history: Because Section 2107(c) was enacted after *FirsTier*, and the legislative history does not expressly reject ripening following a granted motion to reopen, petitioner claims Congress "would have understood" that ripening would apply. But for the reasons explained above, any Member of Congress who studied *FirsTier* would have drawn exactly the opposite conclusion. See pp.17-18, *supra*. To the extent Congress acquiesced to *FirsTier*, that decision plainly provides that ripening does *not* apply to "tardy notices of appeal" like petitioner's. 498 U.S. at 273. *FirsTier* would have instructed Congress

that, for a notice of appeal to ripen, an express provision was needed akin to Rule 4(a)(2).

The history also shows that, in 1991, the Advisory Committee and Congress understood and expected that parties would sometimes need to file more than one notice of appeal in connection with the same judgment. As petitioner notes (Pet.Br.25), at the time Section 2107(c) was enacted and Rule 4(a)(6) was promulgated, the then-operative Rule 4(a)(4) required a party that filed a premature notice of appeal after judgment but before disposition of a post-judgment motion tolling the time to appeal to file a "second notice of appeal" after disposition of the post-judgment motion. Fed. R. App. P. 4, advisory committee's note (1993 Amendment). The Advisory Committee subsequently eliminated that second-notice-of-appeal requirement. *Ibid.* But the Committee has made no similar change to Rule 4(a)(6), which was adopted against both the formalist backdrop of Rule 4(a)(4)'s second-notice-of-appeal requirement and *FirsTier*'s proscription on the ripening of "tardy notice[s] of appeal," 498 U.S. at 273.

b. Petitioner next argues (Pet.Br.32-34) that Section 2107(c)'s provision conditioning reopening on a lack of prejudice shows that Congress intended to authorize ripening. See also U.S.Br.19 (analogizing to "harmless errors"). But while a lack of prejudice is necessary to authorize ripening, it has never been sufficient. The appellee in *Bowles* was not even arguably prejudiced when the appellant filed his notice of appeal "within the 17 days [erroneously] allowed by the District Court's order." 551 U.S. at 207; see *id.* at 221 (Souter, J., dissenting). Nevertheless, the Court construed Rule 4(a)(6) to mean what it said and dismissed the untimely appeal. *Id.* at 213.

If petitioner were correct that "ripening is always warranted upon reopening" in light of the "'no prejudice'

standard," (Pet.Br.33), then Section 2107(c) and Rule 4(a)(6) would not establish a 14-day window in which a notice of appeal must be filed. They would simply provide that a granted motion to reopen commences the appeal.

c. Proper application of these jurisdictional rules is hardly a "hollow ritual of empty paper shuffling." Contra Pet.Br.41 (cleaned up). The timely filing of a notice of appeal does more than merely provide notice that a party wishes to appeal; it carries significant practical consequences. In addition to "transfer[ring] adjudicatory authority from the district court to the court of appeals," *Manrique*, 581 U.S. at 120, a notice of appeal begins an administrative process that often encompasses ordering transcripts, setting a briefing schedule, and compiling the record. Parties and courts need to know when deadlines begin to run and when they will end. Requiring a timely post-reopening notice of appeal provides that certainty.

A notice of appeal that complies with Rules 3 and 4 provides an appellee with notice (i) that appellant has appealed the judgment; (ii) that jurisdiction has transferred; and (iii) that the clock has started running on appellant's opportunity to be heard. Both a timely and a premature notice of appeal (within the scope of Rules 4(a)(2) and 4(a)(4)) provide that notice. But a tardy notice of appeal, like petitioner's, does not. See *Griggs*, 459 U.S. at 61. Neither does the filing of a motion to reopen, or even the order granting it. These events communicate that the judgment loser *might* appeal, but not that he definitely will appeal. It is thus reasonable for a putative appellee to ignore a tardy notice of appeal.

What's more, the notice function of Rules 3 and 4 has an undeniably formalist dimension. A document that leaves "genuine doubt … about who is appealing, from what judgment, [or] to which appellate court" does not

suffice. *Becker*, 532 U.S. at 767; see also *Torres* v. *Oakland Scavenger Co.*, 487 U.S. 312, 314-318 (1988) (a putative appellee not named in the notice of appeal will not be "bound by an adverse judgment"). These elements—the parties to the case, the judgment at issue, and the circuit to which the appeal is taken—*must* be stated in the notice of appeal *even though* they are already well-known to all parties. Unless the formalities are complied with, this Court has long held there is no appellate jurisdiction. On petitioner's functional approach, those cases would make no sense.

Beyond the litigants, courts and their administrative staff are among the primary beneficiaries of jurisdictional rules that provide not just notice but certainty. When the rules allow for ripening, they specify precisely when a notice of appeal becomes effective. See Fed. R. App. P. 4(a)(2) ("notice of appeal … treated as filed on the date of and after the entry" of final judgment); Fed. R. App. P. 4(a)(4)(B)(i) (specifying when notice of appeal "becomes effective"). Those clarifying instructions enable courts to set key deadlines or assess a party's compliance with appeal obligations such as paying fees, Fed. R. App. P. 3(e), or ordering transcripts, Fed. R. App. P. 10(b)—both of which must be completed within specified days from the filing of a notice of appeal. But if this Court accepted petitioner's atextual "ripening" following a grant of reopening, then there would be no similar clarity about when the notice of appeal is effective. Under petitioner's "ripening principle," there is no way for a court clerk to objectively calculate deadlines keyed to the filing date of a notice of appeal that was never filed—and thus no way to objectively resolve a dispute between the parties over compliance with their obligations or deadlines.

Petitioner's proposed rule would thus compound the workload of judicial administrative staff who are already

stretched thin. In 2024, civil case filings in district courts "increased 22 percent" to 347,991 cases nationwide.[5] Federal district and circuit court judges alike have for years expressed concern about their overloaded dockets, including the impact of that workload on court staff.[6] Under petitioner's view, a court clerk responsible for processing thousands of documents would be forced to go sleuthing to determine whether, when, and how an untimely and procedurally improper document should be deemed a timely notice of appeal, and if so what impact it would have on various deadlines and appeal requirements. In this case, confusion about petitioner's non-filing during the reopening window probably contributed to his appeal sitting for months with no progress. See p.8, *supra*.

In short, because Section 2107(c) and Rule 4(a)(6) create a new specific window to file an appeal, both a reasonable prevailing party and a court clerk would expect the losing party to either file his notice of appeal during that window or else give up the appeal. The close of the 14-day window provides certainty, at last, regarding the finality of the judgment.

4. Petitioner fails to account for the textual difference between "extension" and "reopening."

Petitioner next attacks the court of appeals' holding that, even if "extensions" of the time to appeal under Rule

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[5] See Federal Judicial Caseload Statistics 2024, Administrative Office of the United States Courts, https://www.uscourts.gov/data-news/reports/statistical-reports/federal-judicial-caseload-statistics/federal-judicial-caseload-statistics-2024 (last visited Mar. 26, 2025).

[6] See Merrit McAlister, Aldaberto Jordan, and Kimberly J. Mueller, *What Can Be Done About Backlogs?*, JUDICATURE, Vol. 107, No. 2 (2023), https://judicature.duke.edu/wp-content/uploads/sites/3/2023/10/MCALISTERetal_Vol107No2.pdf.

4(a)(5) can accommodate ripening (according to Fourth Circuit precedent), the different text of Rule 4(a)(6) reopening requires a different outcome. The court of appeals was right. Petitioner does not persuasively argue (Pet.Br.42-48) that the words "extend" and "reopen" in Section 2107(c) and Rules 4(a)(5) and 4(a)(6) mean the same thing. Indeed, petitioner concedes (Pet.Br.44) that the extension and reopening provisions in Section 2107(c) "create two different mechanisms that address two different sets of circumstances." Whatever the correct ultimate interpretation of Rule 4(a)(5), petitioner cannot demonstrate that a ripening principle can be squared with the distinct text and circumstances involved in a reopened window "to file an appeal" under Rule 4(a)(6).[7]

Petitioner makes much of *HollyFrontier Cheyenne Refining, LLC* v. *Renewable Fuels Association*, 594 U.S. 382 (2021), where this Court held that a statute's use of the word "extend" does not require "a break in continuity," such that a period may be "extended" even after it

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[7] The D.C. Circuit explained persuasively in *Outlaw* that courts are not "at liberty to fashion additional [ripening] doctrines" beyond Rules 4(a)(2) and 4(a)(4). 412 F.3d at 160 n.2 (Roberts, J.); accord *Bowles*, 551 U.S. at 214 ("[T]his Court has no authority to create equitable exceptions to jurisdictional requirements[.]"). Although this appeal does not present an opportunity to consider ripening under Rule 4(a)(5), the circuit court decisions embracing it may well be incorrect for some of the same reasons discussed above. Section 2107(c) requires a motion for extension to be filed "not later than 30 days after the expiration of the time otherwise set for bringing appeal," not "within thirty days" as in Section 2107(a) (which petitioner contends sometimes means "before"). And Rule 4(a)(5), like Rule 4(a)(6), does not provide for ripening and does not state a date on which an earlier-filed notice of appeal would become effective. At the very least, this Court should not decide the meaning of Rule 4(a)(6) by taking as a given the ripening approach that some lower courts have accepted under Rule 4(a)(5).

has lapsed. *Id.* at 392. According to petitioner (Pet.Br.47), it must follow that a "premature" notice of appeal can be deemed timely upon a reopening of the time to appeal because reopenings and "extensions are no different."

But that hardly follows. *HollyFrontier* interpreted the word "extension" in a specific context—an administrative agency's denial of a small-refinery hardship exemption under the Clean Air Act. See 594 U.S. at 386; 42 U.S.C. § 7545(o)(9)(B)(i). The Court was careful *not* to "suggest that every use of the word 'extension' must be read the same way." *HollyFrontier*, 594 U.S. at 392.

Even accepting petitioner's definition of "extend," he primarily argues that because *HollyFrontier* took "extension" to permit an agency to reach back and extend eligibility periods after they had closed, "reopening" must permit courts to do the same thing. But if extend and reopen were interchangeable, then Congress could have simply retained the statutory language that already permitted the district court to "*extend* the time for appeal … based on failure of a party to learn of the entry of the judgment." 28 U.S.C. § 2107(c) (1948) (emphasis added). Congress instead chose to enact an entirely different process for "reopening" the time to appeal.

Extension and reopening also differ in another important way: Whereas Section 2107(c) creates a 14-day window for reopening, Congress did "not say how long an extension may run." *Hamer*, 583 U.S. at 23-24. Section 2107(c) therefore affords courts some discretion. See *id.* at 27 (limitation on length of extension in Rule 4(a)(5)(C) is a non-jurisdictional claim-processing rule). By sharp contrast, the statute prescribes, as a jurisdictional requirement, a clear 14-day window for filing a post-reopening notice of appeal. See *Bowles*, 551 U.S. at 213.

In all events, *HollyFrontier* did not construe the term "reopen" and it does not support petitioner's atextual position that Congress used "extend" and "reopen" in Section 2107(c) to mean the same thing. Multiple statutes consistently use the term "reopen" to refer to a discontinuity in which proceedings that have been closed require some action taken to open them. See, *e.g.*, 8 U.S.C. § 1229a(5)(C) (order of removal may be rescinded and removal proceedings restarted "upon a motion to reopen"); 11 U.S.C. § 350 ("After [a bankruptcy] estate is fully administered …, the court shall close the case," but "[a] case may be reopened … to administer assets, to accord relief to the debtor, or for other cause."); 26 U.S.C. § 7481(c)(1) (after a "decision of the Tax Court becomes final," "the Tax Court may reopen the case solely to determine whether the taxpayer has made an overpayment of … interest"). Petitioner does not explain why Congress would use the term "reopen" if it intended the new and expressly marked 14-day time to appeal to be continuous with the original period. That argument is irreconcilable with the text and structure of Section 2107.[8]

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[8] Petitioner argues (Pet.Br.43) that reopening can also be continuous because a motion to reopen can technically be filed on day 22 after the judgment, before the original appeal period closed. That's technically correct, but petitioner misses the point of that provision. Reopening is available to parties who receive notice toward the end of their initial time to appeal, without enough time to file a timely notice. This is especially important for parties who file by mail, which was universal in 1991. If reopening were available only when notice is received after the full 30 days, then a would-be appellant who received notice on day 29 would have to choose between two bad options: either attempt to file a notice of appeal and risk missing the deadline, or move to extend and be required to prove excusable neglect or good cause. 28 U.S.C. § 2107(c).

The Fourth Circuit below thus construed Section 2107(c) and Rule 4(a)(5) (in accordance with precedent) as extending "the period for filing a notice of appeal," such that "a notice of appeal filed at any time within the original time for appeal *or the approved extension period* would be timely." Pet.App.9a (emphasis added). Petitioner argues (Pet.Br.44) that this explanation of extension is conceptually flawed because ripening in other contexts does not depend on a "time traveler's fiction" that a premature notice of appeal was actually timely. But that is precisely how Rules 4(a)(2) and 4(a)(4) operate. A notice of appeal that was reasonably but erroneously filed before final judgment is permitted "to become effective when judgment is entered"—in other words, it is deemed to have been filed not on the actual date of filing but rather on some future date (as if by a time traveler). See *FirsTier*, 498 U.S. at 276; see also *Outlaw*, 412 F.3d at 160-161.

But the court of appeals also correctly recognized that, unlike an extension, "reopening" necessarily creates a *discontinuity* that bars any attempt to relate forward a tardy notice of appeal. Pet.App.10a. Gone is the first appeal period under Section 2107(a), including its permissive "within" language. See Pet.Br.30. The new, jurisdictional 14-day reopening period runs "for a period of 14 days *from* the date of entry of the order reopening the time for appeal"—a fixed start and end. 28 U.S.C. § 2107(c); see *Bowles*, 551 U.S. at 213. Under the specific terms of Section 2107(c) and Rule 4(a)(6), that period was petitioner's second (and last) chance "to file his appeal." His appeal failed because he did not take it.

5. Jurisdictional rules should be applied uniformly to all litigants.

a. Petitioner and his *amici* argue that this Court should liberally construe Section 2107(c) to make special

accommodations for *pro se* and incarcerated filers. But *Bowles* is powerful testimony that this Court cannot craft exceptions to jurisdictional rules for sympathetic litigants. See 551 U.S. at 214. Even when correct application of a jurisdictional rule may be described as "too strict and technical, and likely to produce inconvenience or injustice, it is for Congress to provide a remedy by altering the existing laws; not for the court." *Gonzalez* v. *Thaler*, 565 U.S. 134, 166 (2012) (Scalia, J., dissenting) (quoting *Curry*, 47 U.S. at 113).

For that reason, when the Seventh Circuit recognized that the former Rule 4(a)(4) posed a "trap for the unwary into which many appellants, especially those not represented by counsel … have fallen," it *still* was powerless to create a special exception for *pro se* litigants and could only recommend that the Rules be amended (and that district courts provide prophylactic guidance to *pro se* litigants). *Averhart* v. *Arrendondo*, 773 F.2d 919, 920 (7th Cir. 1985). The text and structure of Section 2107(c) and Rule 4(a)(6) cannot yield to petitioner's concerns about how those rules might apply to the detriment of some hypothetical *pro se* appellants.

Even if this Court could reconstrue Rule 4(a)(6) to address petitioner's policy arguments, it should not replace an administrable bright-line rule with an uncertain ripening principle. "By definition all rules of procedure are technicalities," but their uniform application is beneficial "on the theory that securing a fair and orderly process enables more justice to be done in the totality of cases." *Torres*, 487 U.S. at 319 (1988) (Scalia, J., concurring in the judgment). The requirement to commence an appeal by filing a timely notice of appeal under Rules 3 and 4 is easily understood by lawyers. See *McNeil* v. *United States*, 508 U.S. 106, 113 (1993) ("Our rules of pro-

cedure are based on the assumption that litigation is normally conducted by lawyers.").

b. Petitioner argues (Pet.Br.39) that it is "not intuitive" to *pro se* appellants that they must file a "second notice of appeal" upon a grant of reopening. But this Court has "never suggested that procedural rules in ordinary civil litigation should be interpreted so as to excuse mistakes by those who proceed without counsel." *McNeil*, 508 U.S. at 113. In any event, petitioner quotes inapposite precedent regarding the former Rule 4(a)(4), which provided that the filing of a post-judgment motion nullified a *timely filed* notice of appeal from the final judgment and required that a second notice of appeal be filed following disposition of the post-judgment motion. Fed. R. App. P. 4(a)(4) (1979). In this case, unlike under former Rule 4(a)(4), no timely notice of appeal was *ever* filed. So a "second notice of appeal" is not at issue. Section 2107(c) and Rule 4(a)(6) required that petitioner file a single, *timely* notice of appeal within the reopened period.

Petitioner's "second notice of appeal" argument also rests on a flawed assumption: that other litigants in his position will file a tardy notice of appeal instead of the motion to extend or reopen that is unambiguously required by Rule 4. In construing the rules, this Court should not take as a starting point that litigants will ignore them.

c. Petitioner further argues that requiring a notice of appeal to be filed within the 14-day reopening window is unfair because "[t]he same litigants who do not learn of an adverse judgment within 21 days may not learn of a reopening order within 14 days." Pet.Br.40. That is not what happened here. The district court ordered that petitioner be notified of its order granting reopening. See pp.7-8,

supra. And there is no evidence that petitioner did not timely receive that order.

What's more, any harshness associated with this rule has already been softened by Rule 4(c), which codifies the prison mailbox rule: To timely file a notice of appeal, an incarcerated appellant need only deposit the pleading in the prison's "internal mail system" by the deadline. Fed. R. App. P. 4(c)(1). Beyond that, it is Congress that created a 14-day jurisdictional window that necessarily applies only to people who did not timely receive notice of the judgment. Congress did so as a means of balancing the creation of a second chance with the need for finality. See pp.5-6, *supra*. The judiciary must enforce that balance—whatever its wisdom.

d. Finally, petitioner finds no refuge in the liberal construction of *pro se* pleadings. Pet.Br.21 (citing *Erickson* v. *Pardus*, 551 U.S. 89 (2007) (per curiam)). This case does not turn on the labeling of a document or contents of a notice of appeal under Rule 3, see, *e.g.*, *Becker*, 532 U.S. at 766, but rather timeliness under Rule 4. There is nothing in the untimely notice of appeal for this Court to liberally construe—the filing deadline cannot be "construed."

That doesn't mean this Court is powerless. The Court can use its supervisory authority over the lower federal courts, see *Dickerson* v. *United States*, 530 U.S. 428, 437 (2000), to diminish the likelihood (Pet.Br.41) of the hypothetical litigant who does "not learn of a reopening order within 14 days" by instructing district courts to do just what the court did here: include in every order granting a motion to reopen a clear direction to file a timely notice of appeal within 14 days. See *Averhart*, 773 F.2d at 920.

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"Rules of procedure are a necessary part of an orderly system of justice. Their efficacy, however, depends upon the willingness of the courts to enforce them according to their terms. Changes in rules whose inflexibility has turned out to work hardship should be effected by the process of amendment, not by ad hoc relaxations by this Court in particular cases. Such dispensations in the long run actually produce mischievous results, undermining the certainty of the rules and causing confusion among the lower courts and the bar." *Houston* v. *Lack*, 487 U.S. 266, 283 (1988) (Scalia, J., dissenting) (quoting *Thompson* v. *I.N.S.*, 375 U.S. 384, 390 (1964) (Clark, J., dissenting)). Petitioner offers no sound basis for this Court to "short-circuit the orderly process of rule amendment in order to provide immediate relief in the present case." *Ibid.*

C. At minimum, the court of appeals was not compelled to exercise discretion in petitioner's favor.

The judgment below could also be affirmed on the ground that, even if Section 2107(c) could be read to permit a late-filed notice of appeal to "ripen" after reopening is granted, the court of appeals was not *required* to deem petitioner's untimely notice of appeal effective upon reopening. Petitioner acknowledges that, to obtain reversal, he needs this Court to establish a requirement that "ripening is *always* warranted upon reopening." Pet.Br.33 (emphasis added). But the statute and Rule do not displace courts' inherent discretion to insist on scrupulous adherence to textual requirements. Especially in a case like this one where petitioner had received multiple prior accommodations.

1. Petitioner's case made it this far only because he benefitted from multiple acts of judicial discretion. Most important, the Fourth Circuit exercised discretion to con-

strue his untimely notice of appeal as a motion to reopen. Pet.App.56a-58a; Pet.Br.8. The Rules of Civil Procedure afford courts discretion to reconstrue improperly styled pleadings because "erroneous nomenclature does not prevent the court from recognizing the true nature of a motion." *Sacks* v. *Reynolds Secs., Inc.*, 593 F.2d 1234, 1239 (D.C. Cir. 1978) (citation omitted). But no written rule demands reconstruals in every case. The court of appeals might have reasonably informed petitioner that his "notice of appeal" was ineffective and directed him to file a motion to reopen in accord with Section 2107(c) and Rule 4(a)(6).[9]

Petitioner also benefited from the district court's decision to grant his (reconstrued) motion to reopen. Section 2107(c) vests discretion in the district court to grant or deny reopening using the word "may." 28 U.S.C. § 2107(c). "The word 'may' *clearly* connotes discretion." *Bouarfa* v. *Mayorkas*, 604 U.S. 6, 13 (2024) (cleaned up).

Despite receiving those benefits, petitioner declined to take advantage of the 14-day reopening period provided by the district court. And he has never offered any excuse for not doing so. Yet petitioner now asks this Court for a

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[9] Petitioner (Pet.Br.50-51) and the United States (U.S.Br.28-30) argue that the Fourth Circuit erred in suggesting that its reconstrual of petitioner's untimely notice of appeal as a motion to reopen precluded that document from also serving as a notice of appeal. *Amicus* agrees in part. Under *Smith* v. *Barry*, courts of appeals may "treat[ ] a filing styled as a brief as a notice of appeal … if the filing is timely under Rule 4 and conveys the information required by Rule 3(c)." 502 U.S. at 249. That decision implies that a court of appeals can construe a document to serve more than one purpose. But the Fourth Circuit correctly determined that petitioner's filing could not be treated as a notice of appeal because it was not "timely under Rule 4." See *ibid.*; accord *Griggs*, 459 U.S. at 60.

third exercise of discretion: to treat his objectively untimely notice of appeal as if it had been timely filed.

2. Petitioner relies on cases (Pet.Br.22-23) where a court of appeals exercised discretion to treat prematurely filed notices of appeal as timely filed. But those cases have no relevance to the *tardy* notice of appeal at issue here. And even if this Court were persuaded by petitioner's argument that his notice of appeal should be deemed "premature," then his cases (and others) confirm that the decision whether to treat a prematurely filed notice of appeal as timely is committed to courts' discretion.

In *Richerson*, the Third Circuit held that a premature notice of appeal "*may be regarded* as an appeal from the final order in the absence of a showing of prejudice to the other party." 551 F.2d at 922 (emphasis added). The Ninth Circuit has similarly held that a premature notice of appeal "*may fairly be regarded* as a manifestation … of [the appellant's] intention to appeal." *Eason*, 390 F.2d at 588 (emphasis added). And the Tenth Circuit held that it "properly *could* refuse … to dismiss the appeal on the notice that was filed," and "that it *had the right* … to retain jurisdiction of the appeal." *Morris*, 442 F.2d at 1250-1251 (emphasis added). The D.C. Circuit agrees. See *Duma* v. *C.I.R.*, 534 F. App'x 4, 5 (D.C. Cir. 2013) ("[E]ven if we had the discretion to recognize premature notices of appeal, we would not exercise it here[.]").

3. Assuming the text of Section 2107(c) could be stretched to permit a court of appeals to recognize a tardy notice of appeal as having been filed during the 14-day reopening period, the judgment here should still be affirmed because the Fourth Circuit did not abuse its discretion by declining to do so on this record. "Traditionally, … decisions on matters of discretion are reviewable for abuse of discretion." *Highmark, Inc.* v. *Allcare Health*

Mgmt. Sys., Inc., 572 U.S. 559, 563 (2014) (cleaned up). Abuse-of-discretion review affords "great deference … to the [lower court's] determination." *Monasky* v. *Taglieri*, 589 U.S. 68, 92 (2020) (Alito, J., concurring in part).

The Fourth Circuit reasonably declined to cure petitioner's failure to file a notice of appeal during the 14-day reopening period because petitioner offered no explanation for not following Rule 4(a)(6) and the district court's order. Unlike a hypothetical petitioner who does not receive notice of the reopening or is confused by the order, the district court here specifically allowed petitioner "to refile his appeal" and "**REOPEN[ED]** the time for [petitioner] to file his appeal for fourteen (14) days following the entry of this Order." Pet.App.61a. The district court also took steps to ensure that petitioner received notice of that reopening order: sending it by certified mail and requesting a return receipt. *Id.* at 62a. There was no evidence that petitioner received the district court's reopening order too late. The court of appeals' reliance on these facts (Pet.App.10a) in deciding not to exercise discretion to permit ripening was reasonable.

Petitioner's inability to overcome the abuse-of-discretion standard of review provides an alternative ground for affirming the judgment.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted,

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Statutory and Rule Provisions Appendix

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28 U.S.C. § 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 for an act or omission occurring in connection with duties performed on behalf of the United States, including all instances in which the United States represents that officer or employee when the judgment, order, or decree is entered or files the appeal for that officer or employee.

(c) The district court may, upon motion filed not later than 30 days after the expiration of the time otherwise set for bringing appeal, extend the time for appeal upon a showing of excusable neglect or good cause. In addition, if the district court finds--

(1) that a party entitled to notice of the entry of a judgment or order did not receive such notice from the clerk or any party within 21 days of its entry, and

(2) that no party would be prejudiced,

the district court may, upon motion filed within 180 days after entry of the judgment or order or within 14 days after receipt of such notice, whichever is earlier, reopen the time for appeal for a period of 14 days from the date of entry of the order reopening the time for appeal.

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

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Federal Rule of Appellate Procedure 4
Appeal as of Right—When Taken

…

(a) Appeal in a Civil Case.

(1) Time for Filing a Notice of Appeal.

(A) In a civil case, except as provided in Rules 4(a)(1)(B), 4(a)(4), and 4(c), the notice of appeal required by Rule 3 must be filed with the district clerk within 30 days after entry of the judgment or order appealed from.

(B) The notice of appeal may be filed by any party within 60 days after entry of the judgment or order appealed from if one of the parties is:

(i) the United States;

(ii) a United States agency;

(iii) a United States officer or employee sued in an official capacity; or

(iv) a current or former United States officer or employee sued in an individual capacity for an act or omission occurring in connection with duties performed on the United States' behalf—including all instances in which the United States represents that person when the judgment or order is entered or files the appeal for that person.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) Motion for Extension of Time.

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

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

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

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

be given to the other parties in accordance with local rules.

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

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

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

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

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

(7) Entry Defined.

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

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

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

• the judgment or order is set forth on a separate document, or

• 150 days have run from entry of the judgment or order in the civil docket under Federal Rule of Civil Procedure 79 (a).

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

(b) Appeal in a Criminal Case.

(1) Time for Filing a Notice of Appeal.

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

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

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

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

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

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

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

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

(A) If a defendant timely makes any of the following motions under the Federal Rules of Criminal Procedure, the notice of appeal from a judgment of conviction must be filed within 14 days after the entry of the order disposing of the last such remaining motion, or within 14 days after the entry of the judgment of conviction, whichever period ends later. This provision applies to a timely motion:

(i) for judgment of acquittal under Rule 29;

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

(iii) for arrest of judgment under Rule 34.

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

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

(ii) the entry of the judgment of conviction.

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

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

(5) Jurisdiction. The filing of a notice of appeal under this Rule 4(b) does not divest a district court of jurisdiction to correct a sentence under Federal Rule of Criminal Procedure 35(a), nor does the filing of a motion under 35(a) affect the validity of a notice of appeal filed before entry of the order disposing of the motion. The filing of a motion under Federal Rule of Criminal Procedure 35(a) does not suspend the time for filing a notice of appeal from a judgment of conviction.

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

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

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

(A) it is accompanied by:

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

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

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

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

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

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

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