No. 18A_____

In the Supreme Court of the United States

SHRADDHA PATEL, *Applicant,*

v.

KIRIT PATEL, A/K/A KIRITKUMAR AMBALAL PATEL, *ET AL.*, *Respondents.*

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

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SHRADDHA PATEL'S APPLICATION TO EXTEND THE TIME TO FILE PETITION FOR A WRIT OF *CERTIORARI* TO THE FOURTH CIRCUIT

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APPENDIX

To the Honorable John G. Roberts, Jr., as Circuit Justice for the Fourth Circuit:

Pursuant to Supreme Court Rules 13.5, 22.2, and 30.3, Shraddha Patel – plaintiff-appellant in the underlying action – respectfully applies for a sixty-day extension of the time within which to petition this Court for a writ of *certiorari* to the U.S. Court of Appeals for the Fourth Circuit. This application sets forth several factors that justify an extension. By order dated August 21, 2018, the Fourth Circuit denied the Applicant's timely petition for panel rehearing and rehearing *en banc*. Without an extension, the petition for a writ of *certiorari* is due by November 19, 2016; with the requested extension, the petition for a writ of *certiorari* would be due by January 18, 2019. Applicant files this application more than ten days prior to the current deadline for the petition for a writ of *certiorari*.

BACKGROUND

1. This litigation arises from a diversity tort action by Applicant against the four defendants-respondents – her father and stepmother, Kirit and Krupa Patel of California, and her aunt and uncle, Nina and Atul Patel of Pennsylvania – and four others[1] for abducting Applicant from her home in Arlington, Virginia, while she was very ill with bronchitis, then holding her captive for five months, during which they diverted her assets to their use and used her identity to obtain financial benefits such as rent for her home and unemployment benefits.

[1] Manu Patel and Suresh Patel were dismissed for lack of personal jurisdiction, Order, at 6-7(ECF #274), and Prabudas Patel and Nisha Patel voluntarily dismissed. Order (ECF #222).

2. It is undisputed that Kirit, Krupa, and Atul Patel kept Applicant captive in substandard conditions, deprived her of medical care, and inflicted physical and emotional abuse on her. In particular, it is undisputed that Applicant's father Kirit Patel – who had a history of physically abusing Applicant's mother – threatened to kill Applicant and her mother if Applicant tried to escape.

3. It is further undisputed that, before Applicant escaped in October 2013, Kirit, Krupa, and Atul Patel caused Applicant significant economic losses that dwarf the $9,500 in damages awarded to Applicant by the District Court:

- Applicant's Arlington home, which went into foreclosure, was valued at $365,000.00;
- Her vehicle, valued at $20,000 with approximately $7,000 balance remaining on her note, was eventually repossessed for non-payment;
- She also lost personal property and furnishings from her home valued at approximately $30,000.00;
- On top of the credit-related defaults on the home and car, various credit cards and utility bill when unpaid, further damaging her credit; and
- Because of the severe damage to her credit rating, Applicant has been unable to continue her career in the financial industry, resulting in approximately $100,000 in lost income annually since her abduction, but continuing after her escape (*i.e.*, her income has not improved because she has been rejected from continuing her career due to the damage to her credit).

4. At the time that the District Court set a hearing on Applicant's motion

for default judgment against the California defendants, she was proceeding *pro se*. It is undisputed: (a) that the Clerk's Office of the United States District Court for the Eastern District of Virginia advised her that that Court would not schedule a hearing for her default-judgment award against her defaulting father and stepmother until she scheduled the hearing; (b) that she was then seeking to find counsel for such a hearing; and (c) that she did not receive notice of the district court's default-judgment hearing ever and did not receive notice of the $9,500 judgment until 33 days after the entry of that judgment.

5. After Applicant failed to appear for the default-judgment hearing, the District Court entered judgment for a nominal amount and closed the case, without seeking to contact Applicant.

6. On or about October 20, 2018, Shraddha prevailed upon her former trial counsel to file a new appearance and support her motion under FED. R. APP. P. 4(a)(5) for an extension of the time within which to notice an appeal, which the district judge *sua sponte* converted to a motion under FED. R. APP. P. 4(a)(6) and denied as untimely under that rule (App. 5a-8a), without providing Applicant an opportunity to respond.[2] The defendants did not file anything in District Court in response to Applicant's

[2] Rule 4(a)(6) extends for up to 180 days after entry of judgment, but requires would-be appellants to seek relief within 14 days of notice of the judgment; Rule 4(a)(5) extends for up to 30 days after entry of judgment and requires would-be appellants to seek relief within 30 days of entry of the judgment. The two rules also set different substantive criteria for obtaining an extension. Applicant's motion met the timeline and criteria of Rule 4(a)(5), under which she moved for an extension, but would be untimely under Rule 4(a)(6).

motion for an extension of time within which to notice an appeal.

7. The Court of Appeals upheld the District Court's holding that Rule 4(a)(6) displaces Rule 4(a)(5) in no-notice cases (App. 13a) and denied Applicant's timely petition for panel rehearing and rehearing *en banc* (App. 15a). As in the District Court, the defendants-appellees did not file any response either to Applicant's opening brief or to her petition for rehearing.

8. Applicant wishes to petition this Court for a writ of *certiorari* on the issue of whether Rule 4(a)(6) displaces Rule 4(a)(5) in no-notice cases. Without securing an extension of the time within which to appeal the District Court's $9,500 judgment against her undisputed out-of-pocket losses well in excess of that judgment, Applicant will not be able to recover her losses in this matter.

9. Although Applicant wishes to petition this Court for a writ of *certiorari*, she currently lacks the funds to cover the third-party disbursements (*i.e.*, the filing fee, printing, service costs). Applicant has recently begun a new job and believes that she will have raised the necessary funds within 60 days.

ARGUMENT

With the foregoing background, Applicant respectfully submits that a 60-day extension is necessary and appropriate for several reasons.

First, the Fourth Circuit's decision that Rule 4(a)(6) displaces Rule 4(a)(5) in no-notice cases splits squarely with the decisions of several circuits that *both rules* apply by their terms, *see*, *e.g.*, *Zack v. United States*, 133 F.3d 451, 453 (6th Cir. 1998); *In re Alexander*, 197 F.3d 421, 426 (9th Cir. 1999); *Baker v. United States*, 670 F.3d 448, 462 n.19 (3d Cir. 2012), without acknowledging – much less addressing – that

conflict.

Second, the panel decision here also splits with several unreported – and thus non-binding – decisions from the Fourth Circuit itself, which have held or assumed that both Rules 4(a)(5) and 4(a)(6) apply in no-notice cases. *See*, *e.g.*, *In re Goodnow*, 22 F.App'x 89, 90 (4th Cir. 2001); *Daniels v. Potter*, 164 F.App'x 386, 386-87 (4th Cir. 2006); *Buckley v. Freund*, 22 F.App'x 185, 185-86 (4th Cir. 2001); *Thomas v. Crosby*, 133 F.App'x 901, 902 (4th Cir. 2005); *United States v. Tidd*, 544 F.App'x 172, 172-73 (4th Cir. 2013); *United States v. Gray*, 98 F.App'x 239, 240 n.2 (4th Cir. 2004). While these decisions cannot control, they emphasize the unfairness of holding Applicant to a contrary interpretation of Rule 4(a)(5), as well as the need to resolve the question for future litigants.

Third, insofar as Rule 4(a)(5) pre-dated Rule 4(a)(6) and initially applied to no-notice cases, *Ali v. Lyles*, 769 F.2d 204, 205 (4th Cir. 1985); *accord* PUB. L. NO. 80-773, §1, 62 Stat. 869, 993 (1948) (statutory precursor required "a showing of excusible [sic] neglect based on failure of a party to learn of the entry of the judgment"), the Fourth Circuit's assumption (App. 13a) – following the District Court (App. 5a-8a) – that Rule 4(a)(6) somehow displaced Rule 4(a)(5) in no-notice cases violates the canon against repeal by implication, *Nat'l Ass'n of Home Builders v. Defenders of Wildlife,* 551 U.S. 644, 662 (2007) ("repeals by implication are not favored and will not be presumed unless the intention of the legislature to repeal [is] clear and manifest"), which "applies with particular force when the asserted repealer would remove a remedy otherwise available." *Schlesinger v. Councilman,* 420 U.S. 738, 752 (1975).

Fourth, with respect to the equities of the relief that Applicant seeks, her need to gather the costs associated with petitioning this Court for a writ of *certiorari* flow directly from the undisputed injury that defendants-respondents inflicted on her. Her inability to obtain employment comparable to her pre-kidnapping employment flows from the blemishes on her credit history caused by the defendants-respondents use of her identity while they held her captive. Further, if she still had her now-foreclosed home, she could have easily taken out a home-equity loan to cover the costs of petitioning this Court for a writ of *certiorari*. Under the circumstances, extending the time within which Applicant may petition this Court would be equitable *vis-à-vis* the defendants-respondents.

Fifth, this action is an appropriate vehicle for resolving the split in circuit authority over whether Rule 4(a)(6) displaces Rule 4(a)(5) in no-notice cases: with Rule 4(a)(5)'s 30-day deadline within which move to extend the time within which to appeal, Applicant's appeal can proceed; with Rule 4(a)(6)'s 14-day deadline within which to move to extend the time within which to appeal, Applicant's appeal cannot proceed.

Sixth, and finally, although the defendants-respondents have not filed – and likely will not file – anything substantive in this appeal, Applicant's quarrel here is with the lower courts' narrow view of appellate jurisdiction under Rules 4(a)(5)-(6), not with the defendants-respondents *per se*. If the issue were not jurisdictional, the defendants-respondents would have waived any objection to the relief that Applicant seeks. Accordingly, Applicant's petition for a writ of *certiorari* will request that this

Court appoints *amicus* counsel to argue the lower court's jurisdictional concerns.

REQUESTED RELIEF

Applicant respectfully requests a 60-day extension of the time within which to petition for a writ of *certiorari*.

CONCLUSION

For the foregoing reasons, Applicant Shraddha Patel respectfully submits that the time within which to file a petition for a writ of *certiorari* should be extended by 60 days, from November 19, 2018, to and including January 18, 2019.

Dated: November 8, 2018

Respectfully submitted,

/s/ Lawrence J. Joseph

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APPENDIX

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

SHRADDHA PATEL,	)	
Plaintiff,	)	
	)	
v.	)	**Case No. 1:15-cv-598**
	)	
KIRIT PATEL, *et al.*,	)	
Defendants.	)	

ORDER

At issue, post-judgment, in this family dispute diversity action is whether plaintiff's untimely notice of appeal, filed 60 days after entry of judgment and 27 days after receiving notice of the judgment, can be rescued by either Rule 4(a)(5) or Rule 4(a)(6), FRAP. For the reasons that follow, plaintiff's arguments do not rescue her untimely notice of appeal.

I.

A brief summary of the procedural history in this case is necessary for resolution of the motion at bar. Plaintiff, a Virginia resident, filed this multi-count state law diversity action in May 2015 against eight defendants, all of whom appear to be plaintiff's family members. Specifically, defendants include: plaintiff's father, Kirit Patel ("Kirit"); plaintiff's step-mother, Krupa Patel ("Krupa"); plaintiff's uncle, Atul Patel ("Atul"); plaintiff's aunt, Nina Patel ("Nina"); plaintiff's uncle, Prabudas Patel ("Prabudas"); plaintiff's aunt, Nisha Patel ("Nisha"); plaintiff's brother, Suresh Patel ("Suresh"); and Manu Patel ("Manu").

Plaintiff generally alleged that defendants conspired to take her by force from her Virginia apartment, and then assaulted her, battered her, and falsely imprisoned her in Pennsylvania and California between May and October 2013. *See Patel v. Patel*, No. 1-15-cv-598, at *1 (E.D. Va. Nov. 18, 2017) (Order) (discussing the factual allegations in the complaint).

Specifically, plaintiff's second amended complaint ("SAC") alleged the following claims against defendants: (i) false imprisonment against Kirit, Krupa, Atul, Nina, and Suresh; (ii) battery against Kirit, Krupa, Atul, Nina, Nisha, and Suresh; (iii) assault against Kirit, Krupa, Atul, Nina, Prabudas, Nisha, and Suresh; (iv) intentional infliction of emotional distress against Kirit, Krupa, Atul, Nina, Prabudas, Nisha, and Suresh; (v) a violation of the Virginia Computer Crimes Act against Kirit; and (vi) common law civil conspiracy against all defendants.

Although all defendants were properly served with plaintiff's initial complaint, the Clerk entered default against all defendants when they failed to file timely responses. Prabudas and Nisha eventually appeared, and plaintiff voluntarily dismissed them from this case. *See Patel v. Patel*, No. 1-15-cv-598, at *1 (E.D. Va. Sept. 6, 2016) (Order) (dismissing Prabudas and Nisha without prejudice because of the parties' stipulation). Manu and Suresh were dismissed from this case for lack of personal jurisdiction. *See Patel v. Patel*, No. 1-15-cv-598, at *1–3, 12 (E.D. Va. July 31, 2017) (Order) (discussing the procedural history of this case and dismissing Suresh and Manu for lack of personal jurisdiction). Defendants Atul and Nina also entered appearances in this case and proceeded *pro se* to a jury trial. During the three-day jury trial, plaintiff was represented by Matthew Crist, her current counsel. Defendants prevailed on all claims[1] except the false imprisonment claim against Atul, for which the jury awarded plaintiff $4,000 in compensatory damages. Defendant Atul satisfied the $4,000 judgment on March 28, 2017.

The two remaining defendants are Kirit and Krupa. On December 20, 2016 plaintiff, by counsel, moved for default judgment against these two defendants, and the motion was referred to the magistrate judge for the preparation of a Report and Recommendations. The magistrate judge recommended that default judgment be denied because the allegations in plaintiff's

[1] Among the claims on which defendants Atul and Nina prevailed was the claim by plaintiff of common law civil conspiracy in which plaintiff alleged that Atul and Nina conspired with the other six defendants to commit the following torts: false imprisonment, assault, batter, and conversion of plaintiff's property.

complaint, when considered in light of the entire record, did not support her claims for relief. Plaintiff objected to this conclusion on the ground that the magistrate judge failed to follow the controlling default judgment standard, which requires courts to accept a plaintiff's well-pleaded allegations as true for purposes of liability. Furthermore, plaintiff sought a hearing at which she could present evidence of damages.

Shortly after filing plaintiff's objections to the magistrate judge's Report and Recommendations, plaintiff's counsel, Matthew Crist, filed a motion to withdraw on May 19, 2017. In a letter attached to that motion, plaintiff confirmed that she had no objection to counsel's withdrawal and understood that Mr. Crist would "no longer be monitoring the changes or any subsequent filings in this case" and that plaintiff would be "acting as [her] own representative and point of contact with the Court." (Doc. 271 Ex. 1). By Order issued on May 22, 2017, plaintiff's counsel's motion to withdraw was granted, and plaintiff proceeded *pro se* at that point. *See Patel v. Patel*, No. 1-15-cv-598, at * 1 (E.D. Va. May 22, 2017) (Order) (granting plaintiff's counsel's motion to withdraw).

On July 31, 2017, an Order issued adopting in part and denying in part the magistrate judge's recommendation regarding plaintiff's motion for default judgment. *See Patel v. Patel*, No. 1-15-cv-598, at *11-12 (E.D. Va. July 31, 2017) (Order). Specifically, the magistrate judge's recommendation was adopted with respect to the findings of fact and the recommendation concerning the dismissal of Suresh and Manu for lack of personal jurisdiction. *Id.* at *11. The recommendation was denied with respect to the default judgment against Kirit and Krupa. *Id.* at *12. The Order also scheduled a hearing for August 18, 2017 so that plaintiff could present evidence concerning her claims and requested damages. *Id.* Finally, the Order specifically directed the Clerk to send a copy of the Order to the *pro se* plaintiff and to

defendants Kirit and Krupa. Although the July 31 Order mailed to the Kirit and Krupa was returned as undeliverable, the July 31 Order mailed to plaintiff was not returned as undeliverable. Plaintiff never submitted any motion for a continuance of the August 18 hearing or indicated in any way that she could not attend. Plaintiff subsequently failed to appear at the hearing scheduled for 10:00 a.m. on August 18, 2017.

When plaintiff failed to appear at the August 18 hearing, plaintiff's objections to the magistrate judge's report were decided without the benefit of a hearing, as permitted by Rule 55(b)(2), Fed. R. Civ. P. *See* Rule 55(b)(2), Fed. R. Civ. P. (stating that the court "*may* conduct hearings" to effectuate a default judgment) (emphasis added). Specifically, an Order issued on August 18 sustaining plaintiff's objections to the magistrate judge's Report and Recommendations and directing the Clerk to enter default judgment against defendants in the amount of $5,500. *See Patel v. Patel*, No. 1-15-cv-598, at *11-12 (E.D. Va. Aug. 18, 2017) (Order). The Order also made clear that if plaintiff wished to appeal, she must "do so by filing a written notice of appeal with the Clerk's Office within thirty (30) days of the entry date of this Order, pursuant to Rules 3 and 4, Fed. R. App. P." *Id.* On August 21, 2017, the Clerk entered default judgment. That same day—August 21, 2017—the Clerk mailed a copy of the August 18, 2017 Order and the default judgment to plaintiff and defendants via United States mail. The August 18 Order, mailed to Kirit and Krupa at the addresses on file, was returned as undeliverable. The August 18 Order was also mailed to plaintiff at Post Office Box 3674, Laurel, Maryland 20709,[2] but was not returned as undeliverable.

Plaintiff failed to file a notice of appeal within 30 days of entry of the judgment pursuant to Rule 4(a)(1)(A), FRAP. On October 20, 2017—60 days after entry of the default judgment—

[2] Plaintiff provided this Post Office Box address in a letter she wrote accompanying her former counsel's motion to withdraw.

plaintiff, now once again represented by her former counsel Matthew Crist, filed a motion to extend the time to file a notice of appeal pursuant to Rule 4(a)(5), FRAP. (Doc. 285). In her motion, plaintiff avers that on July 31, 2017, she spoke to the Clerk's Office, and that a clerk told her no hearing on plaintiff's motion for default judgment would be held, unless scheduled by plaintiff. Moreover, plaintiff alleges that she never received the July 31, 2017 Order scheduling a hearing for August 18, 2017. With respect to the judgment against Kirit and Krupa entered on August 21, 2017, plaintiff avers that she did not receive notice of the judgment until September 23, 2017, three days after the 30-day deadline to file a notice of appeal pursuant to Rule 4(a)(1)(A), FRAP. Plaintiff argues that this lack of timely notice of the judgment constitutes "good cause" and "excusable neglect" justifying an extension of the time to appeal under Rule 4(a)(5), FRAP.

II.

Plaintiff's motion and argument to extend the time to appeal rests solely on Rule 4(a)(5). Accordingly, before resolution of the merits of plaintiff's claim, it is necessary to determine whether Rule 4(a)(5) applies in this case.

Analysis of this issue properly begins with the text of the Rule 4(a)(1)(A), which provides that a notice of appeal generally must "be filed with the district clerk within 30 days after entry of the judgment or order appealed from." Rule 4(a)(1)(A), FRAP. Although this requirement is "mandatory and jurisdictional,"[3] district courts have two ways to grant extensions of the 30-day time period. *Bowles v. Russell*, 551 U.S. 205, 208 (2007). Under Rule 4(a)(5), district courts may extend the time to file a notice of appeal if two conditions are met: "(i) a party so moves no later than 30 days after the time prescribed by this Rule 4(a) expires; and (ii) . . .

[3] *Browder v. Dir., Dep't of Corrections*, 434 U.S. 257, 264 (1978) (internal quotation omitted).

that party shows excusable neglect or good cause." Rule 4(a)(5)(A)(i)-(ii), FRAP. District courts may also reopen the time to appeal pursuant to Rule 4(a)(6), if "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." Rule 4(a)(6)(A), FRAP.

The plain text of these Rules compels the conclusion that Rule 4(a)(6), and not Rule 4(a)(5), applies here because Rule 4(a)(6) addresses the precise factual scenario in this case, namely plaintiff's claim that she did not receive notice of the judgment until September 23, 2017. Specifically, Rule 4(a)(6) allows district courts to reopen the time to appeal where "the court finds that the moving party did not receive notice . . . of the entry of the judgment or order sought to be appealed within 21 days after entry." Rule 4(a)(6)(A), FRAP. And here, plaintiff's only explanation for why plaintiff failed to file a timely notice of appeal is that plaintiff did not receive notice of the judgment until September 23, 2017, three days after the expiration of the 30-day deadline under Rule 4(a)(1). Accordingly, the plain text of Rule 4(a)(6) makes clear that Rule 4(a)(6) applies here, not Rule 4(a)(5), as plaintiff claims. In other words, Rule 4(a)(6), by its terms, applies where the party's only contention is that she did not receive notice of the judgment with enough time to file a timely notice of appeal. Rule 4(a)(5), by contrast, applies in those cases where notice of the judgment is received in time to comply with the requirements of Rule 4(a)(1), but some other good cause or excusable neglect justifies the party's failure to file a timely notice of appeal.

Further supporting this plain text compelled conclusion is the simple fact that to apply Rule 4(a)(5), and not Rule 4(a)(6), in this case would render Rule 4(a)(6) superfluous. Were a failure to receive notice of a judgment sufficient alone to constitute "good cause" or "excusable neglect" under Rule 4(a)(5), there would be no need for a separate rule expressly contemplating

cases where, as here, the court finds "that the moving party did not receive notice . . . of the entry of the judgment . . . ." Rule 4(a)(6)(A), FRAP. Plaintiff's interpretation of Rule 4(a)(5) thus runs afoul of the well-settled principle that "statutes should be read so far as possible to give independent effect to all their provisions." *Babbitt v. Sweet Home Chapter of Comtys. for a Greater Or.*, 515 U.S. 687, 724 (1995) (Scalia, J., dissenting) (citing *Ratzlaf v. United States*, 510 U.S. 135, 140-41 (1994)).

Nor is it appropriate to apply Rule 4(a)(5) in this case because to apply Rule 4(a)(5) here would allow clever lawyers to evade the statutory deadlines established in Rule 4(a)(6). Specifically, a party must file a Rule 4(a)(6) motion no more than 14 days after receiving notice of the judgment sought to be appealed. In contrast, parties must file a Rule 4(a)(5) motion within 30 days after the 30-day deadline in Rule 4(a)(1) expires—that is, ordinarily no more than 60 days after the entry of judgment. A specific example illuminates the potential inconsistency in the deadlines established by the two Rules. Where, as here, a party receives notice of the judgment 33 days after the judgment is entered and the party's only contention is that she did not receive timely notice of the judgment, the two Rules, if both were applicable, would establish different timelines. Under Rule 4(a)(5), a party would have 60 days after the entry of the judgment to file a motion. But under Rule 4(a)(6), a party would have less time, namely, the party would have 14 days from the time she received notice—in this case, 47 days after the entry of the judgment[4]—to file a motion. A clever lawyer could avoid the timing requirements of Rule 4(a)(6) by recasting her pleading as a Rule 4(a)(5) motion and in so doing, gain an extra 13 days to file her motion. This interpretation cannot be correct because, as the Supreme Court has made clear, "[i]t would require the suspension of disbelief to ascribe to [the Advisory Committee] the

[4] The party would have 47 days to file the motion under Rule 4(a)(6) because: (i) the party received notice 33 days after entry of the judgment; (ii) the party has 14 days after receiving notice to file the motion.

design to allow its careful and thorough . . . scheme to be circumvented by artful pleading." *Brown v. GSA*, 425 U.S. 820, 833 (1976) (Stewart, J.).

The statutory history of the relevant Federal Rules further buttresses this conclusion. Prior to 1991, Rule 4(a)(5) was the only means by which district courts could extend a party's time to file a notice of appeal under Rule 4(a). In 1991, the Advisory Committee added Rule 4(a)(6) to

> provide[] a limited opportunity for relief in circumstances where the notice of entry of a judgment or order, required to be mailed by the clerk of the district court pursuant to Rule 77(d) of the Federal Rules of Civil Procedure, is either not received by a party or is received so late as to impair the opportunity to file a timely notice of appeal.

Rule 4(a)(6), FRAP 1991 Advisory Committee's note. Given this history, it is clear that plaintiff's use of Rule 4(a)(5) in this case leads to the unsupportable conclusion that the Advisory Committee spent time and resources drafting a new rule to cover a factual scenario already addressed by an existing rule. *See Bob Jones Univ. v. United States*, 461 U.S. 574, 617 (1983) (Rehnquist, J., dissenting) (rejecting an interpretation of a statute that compelled the conclusion that "Congress has spent almost a century adding illustrations simply to clarify an already defined common law term").

In sum, the text and amending history of the Federal Rules of Appellate Procedure disclose that Rule 4(a)(6), not Rule 4(a)(5), applies where, as here, a party fails to file a timely notice of appeal because the party did not receive timely notice of the judgment.

III.

Even if plaintiff were to invoke Rule 4(a)(6), as the circumstances require, that Rule would not save plaintiff's untimely notice of appeal. Rule 4(a)(6)(B) requires that a motion to reopen time to notice an appeal must be "filed within 180 days after the judgment or order is entered or within 14 days after the moving party receives notice under Federal Rules of Civil

Procedure 77(d) of the entry, *whichever is earlier*." Rule 4(a)(6)(B), FRAP (emphasis added). Here, plaintiff admits that she received notice of the default judgment on September 23, 2017. Accordingly, under Rule 4(a)(6), plaintiff was required to file her motion to reopen time to appeal by October 10. Because plaintiff did not file this motion until October 20—10 days after the October 10 deadline—the motion is untimely and must be denied.

Plaintiff's arguments do not compel a contrary conclusion. Plaintiff avers that she called the Clerk's Office on July 13, 2017 and that an individual in the Clerk's Office told plaintiff that a hearing on plaintiff's default judgment motion would not take place until plaintiff scheduled the hearing. *See* Pl. Decl. ¶ 3. To be sure, efforts to determine the status of the case and the court's own conduct may be relevant to whether neglect predicated on a failure to receive notice can be deemed excusable. *See Two Way Media LLC v. AT&T Corp.*, 782 F.3d 1311, 1316 (Fed. Cir. 2015) (citing *Chipser v. Kohlmeyer & Co.*, 600 F.2d 1061, 1063 (5th Cir. 1979)). Importantly, however, plaintiff's conversations with the Clerk's Office occurred before plaintiff received notice of the judgment on September 23, 2017. After plaintiff received the judgment, she did not contact the Clerk's Office to inquire about the availability of an appeal, even though the Order itself stated that plaintiff needed to file a written notice of appeal within 30 days of entry of the Order. Plaintiff has therefore offered no adequate explanation as to why she failed to file a motion to reopen the time to appeal within 14 days of receiving notice of the judgment.

Plaintiff also avers that defendants opened an unauthorized mailbox in her name, impeding her ability to receive her mail. *See* Pl. Decl. ¶ 10. But again, plaintiff admits that she received notice of the judgment on September 23, 2017, and offers no explanation for her failure to file a motion to reopen the time to appeal within 14 days of receiving that judgment.

Nor does plaintiff's former status as a *pro se* litigant change this result. It is axiomatic that although *pro se* pleadings are construed liberally, "*pro se* litigants, like all other parties, must abide by the Federal Rules of Appellate Procedure." *United States v. Wilkes*, 20 F.3d 651, 653 (5th Cir. 1994); *Gather v. Okarng*, 2011 WL 11563900, at *1 (10th Cir. 2011). And, as the Supreme Court has made clear, "the timely filing of a notice of appeal in a civil case is a jurisdictional requirement." *Bowles v. Russell*, 551 U.S. 205, 214 (2007). Thus, plaintiff's former *pro se* status cannot cure the untimeliness of her motion.

IV.

In sum, the text and history of the Federal Rules of Appellate Procedure reflect that Rule 4(a)(6), not Rule 4(a)(5), applies to cases where, as here, a party seeks to extend her time to appeal based solely on a lack of notice of the judgment. Plaintiff failed to file her motion within 14 days after she received notice of the judgment as required under Rule 4(a)(6).

Accordingly, and for good cause,

It is hereby **ORDERED** that plaintiff's motion to extend the time to file a notice of appeal is **DENIED**. (Doc. 285).

The Clerk is directed to send a copy of this Order to all counsel of record and to Kirit and Krupa Patel, and to place this matter among the ended causes.

Alexandria, Virginia
December 1, 2017

/s/
T. S. Ellis, III
United States District Judge

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-1022

SHRADDHA PATEL,

Plaintiff - Appellant,

v.

KIRIT PATEL, a/k/a Kiritkumar Ambalal Patel; KRUPA PATEL; ATUL PATEL, a/k/a Atulkumar Ambalal Patel, a/k/a Atulkumar Arvindbhai Patel; NINA PATEL, a/k/a Nayna Patel,

Defendants - Appellees,

and

PRABUDAS AMBALAL PATEL; NISHA PATEL, a/k/a Nisha Prabudas Patel; MANU PATEL; SURESH PATEL,

Defendants.

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. T. S. Ellis III, Senior District Judge. (1:15-cv-00598-TSE-TCB)

Submitted: June 14, 2018 Decided: June 18, 2018

Before TRAXLER, DUNCAN, and WYNN, Circuit Judges.

Affirmed in part and dismissed in part by unpublished per curiam opinion.

Lawrence John Joseph, Washington, D.C., for Appellant. Kirit Patel, Krupa Patel, Atul Patel, Nina Patel, Appellees Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Shraddha Patel appeals the district court's denial of her motion for an enlargement of time to file an appeal. Patel contends that the district court improperly construed her motion as one under Fed. R. App. P. 4(a)(6), and that she is entitled to an extension of time under Fed. R. App. P. 4(a)(5). Patel also seeks to appeal various orders leading up to and including the final order entered on August 21, 2017. We affirm in part and dismiss in part.

With regard to the district court's order denying Patel's motion to extend the appeal period, we have reviewed the record and Patel's arguments on appeal and find no reversible error. Accordingly, we affirm the denial of the motion to extend the appeal period for the reasons stated by the district court. *Patel v. Patel*, No. 1:15-cv-00598-TSE-TCB (E.D. Va. filed Dec. 1, 2017, & entered Dec. 4, 2017).

Turning to Patel's appeal of the remaining orders, parties are accorded 30 days after the entry of the district court's final judgment or order to note an appeal, Fed. R. App. P. 4(a)(1)(A), unless the district court extends the appeal period under Fed. R. App. P. 4(a)(5), or reopens the appeal period under Fed. R. App. P. 4(a)(6). "[T]he timely filing of a notice of appeal in a civil case is a jurisdictional requirement." *Bowles v. Russell*, 551 U.S. 205, 214 (2007).

The district court's final order was entered on the docket on August 21, 2017. Patel filed her notice of appeal on December 29, 2017. Because Patel failed to file a timely notice of appeal or to obtain an extension or reopening of the appeal period, we dismiss the appeal of the remaining orders for lack of jurisdiction.

We deny Patel's motions to defer and for preparation of transcripts at government expense. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED IN PART;
DISMISSED IN PART

FILED: August 21, 2018

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-1022
(1:15-cv-00598-TSE-TCB)

SHRADDHA PATEL

Plaintiff - Appellant

v.

KIRIT PATEL, a/k/a Kiritkumar Ambalal Patel; KRUPA PATEL; ATUL PATEL, a/k/a Atulkumar Ambalal Patel, a/k/a Atulkumar Arvindbhai Patel; NINA PATEL, a/k/a Nayna Patel

Defendants - Appellees

and

PRABUDAS AMBALAL PATEL; NISHA PATEL, a/k/a Nisha Prabudas Patel; MANU PATEL; SURESH PATEL

Defendants

O R D E R

The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 35 on the petition for rehearing en banc.

Entered at the direction of the panel: Judge Traxler, Judge Duncan, and Judge Wynn.

For the Court

/s/ Patricia S. Connor, Clerk

CERTIFICATE OF SERVICE

The undersigned certifies that, on this 8th day of November 2018, a true and correct copy of the foregoing application and its appendix was served by first-class mail, postage prepaid, on the following unrepresented parties:

Atul & Nina Patel
125 Grandview Blvd.
Reading, PA 19609

Kirit & Krupa Patel
PO Box 1090
Mammoth Lakes, CA 93546

The undersigned further certifies that, on this 8th day of November, 2018, the foregoing application and its appendix were electronically filed with the Court, and an original and two true and correct copies of the foregoing application and its appendix were lodged with the Clerk of the Court by messenger for filing.

Executed November 8, 2018,

/s/ Lawrence J. Joseph

Lawrence J. Joseph