No. 21–1211

In the Supreme Court of the United States

CONSTANCE GEORGE, PETITIONER

v.

HOUSE OF HOPE RECOVERY; BRIDGES TO CHANGE, INC.; WASHINGTON COUNTY DEPARTMENT OF HOUSING SERVICES; AND PATRICIA BARCROFT

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF IN OPPOSITION TO CERTIORARI

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QUESTION PRESENTED

Whether this Court should review the Ninth Circuit's correct and fact-bound ruling that, under *Smith* v. *Barry*, 502 U.S. 244 (1992), George did not "provide sufficient notice" that she was "appeal[ing] from a judgment against Bridges to Change and Washington County" (Pet. App. 13a) where, regardless of the answer to that question, this Court could not grant any effectual relief because George's claims against those respondents are derivative of her claims against respondents House of Hope and Patricia Barcroft and she has not sought review here of the lower courts' determination that those respondents have no liability.

RULE 29.6 CORPORATE DISCLOSURE STATEMENT

House of Hope Recovery was a 501(c)(3) not-for-profit corporation, had no parent entity, and it never offered any stock. On or around November 10, 2021, House of Hope Recovery was administratively dissolved and ceases to exist.

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INTRODUCTION

George's petition asks this Court to review a pretextual question that is plagued with vehicle problems, cannot possibly lead to effectual relief, is not the subject of any lower-court split, and is neither recurring nor important. Certiorari should be denied.

First, George asks this Court to answer whether, under Federal Rule of Appellate Procedure 3—which sets out the requirements for a notice of appeal—a court can "dismiss an appeal because the appellant did not serve the notice of appeal." Pet. i. But that question rests on the false premise that the Ninth Circuit "impos[ed] a jurisdictional service requirement" and dismissed because "*Ms. George* had not served * * * the notice of appeal." Pet. 2, 18. In reality, the court created no such "jurisdictional service rule," much less an appellant-specific one. Rather, it carefully applied this Court's guidance in *Smith* v. *Barry*, 502 U.S. 244 (1992), concerning Rule 3's jurisdictional requirements. Specifically, the court assessed whether George "provide[d] sufficient notice" that she was appealing the district court's grants of summary judgment in favor of Bridges to Change and Washington County (the "Program Respondents") following George's concession that she lacked sufficient evidence to support those claims as a matter of law. Pet. App. 13a.

Even if George's "question presented" were in fact presented by the decision below, however, this case would be a poor vehicle to resolve it. To begin with, answering that question in her favor could not change the ultimate outcome of this case. In the district court, George, represented by counsel, expressly waived all merits arguments related to the underlying summary

judgment rulings. Further, George cannot recover from the Program Respondents unless House of Hope and Patricia Barcroft (the "HOH Respondents") are liable. But the Ninth Circuit affirmed the jury's verdict that the HOH Respondents are *not* liable, and George does not challenge that holding on certiorari. And since no court could ever grant George "any effectual relief whatever" (*Chafin* v. *Chafin*, 568 U.S. 165, 172 (2013)), George cannot present a genuine case or controversy—only a manufactured one.

Second, the purported "circuit split" crumbles upon the slightest examination. Here too, George's assertion of a circuit split rests on a false premise—that "longstanding Ninth Circuit caselaw holds that Rule 3 requires the *appellant* to serve the notice of appeal to establish jurisdiction." Pet. 1. Yet *not one* decision that George cites creates such a rule. The only case that states (in dictum) that service is required was published more than a decade before this Court's guidance in *Smith*. That alone confirms that any conflict is not only stale but also illusory. And the only post-*Smith* Ninth Circuit decision that she cites explicitly *rejects* any jurisdictional service requirement. Indeed, it openly embraces George's proposed rule. Like every other circuit, the Ninth Circuit follows this Court's mandate that an appellant provide "sufficient notice." George did not.

Third, the petition presents no recurring question of exceptional importance. Neither George nor her amicus has pointed to a single case where a court has dismissed an appeal based on an *appellant's* failure to serve a notice of appeal. Moreover, the decision below is fact-bound, unpublished, and nonprecedential, and the equities support denying review.

For all these reasons, certiorari should be denied.

STATEMENT

More than nine years ago, George stayed for nine days at House of Hope—a faith-based residential program that, before its dissolution in 2021, provided transitional housing for homeless women in recovery in Aloha, Oregon. This case arises from George's claims of religious and racial discrimination against House of Hope and Patricia Barcroft, its executive director, and from its derivative claims against the Program Respondents. Dkt. 1 at 9-10.[1] The courts below properly rejected those claims.

A. District Court Proceedings

Following discovery, all respondents filed motions for summary judgment. Dkts. 22, 24, 28. In response, George (through retained counsel) conceded in writing that she "ha[d] no admissible evidence to submit that would create genuine issues of material fact" on her claims against the Program Respondents. Dkts. 37, 38 at 2. At a hearing on those motions, the district court confirmed that concession and granted those motions from the bench. Dkt. 179 at 4-5.

As to the HOH Respondents, the court granted and denied summary judgment in part. Dkt. 43. The remaining claims against the HOH Respondents proceeded to trial, which culminated in a hung jury. Dkt. 65. After a second trial, a jury found in favor of the HOH Respondents. Dkts. 43, 145. George was represented by counsel at all relevant times before the district court, including at both trials, at the entry of the

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[1] Unless otherwise noted, docket references are to the district court docket (Case No. 3:15-cv-01277-SB (D. Or.)).

final judgment, and when she sought appointment of pro bono counsel and initially had expressed her intent to appeal. See Dkt. 143 (Mot. for Pro Bono Counsel, Apr. 18, 2018); Dkt. 145 (Judgment, Apr. 20, 2018); Dkt. 156 (Granting Withdrawal of George's Counsel, May 15, 2018).

On the last day to file a notice of appeal, George submitted another motion for the appointment of pro bono counsel and expressly indicated her intent to appeal some, but not all, of the district court's decisions. Dkt. 157 (May 21, 2018). Over five weeks after the appeal deadline, George filed a so-titled notice of appeal. Dkt. 159. In that filing, the only perceptible basis for appeal was premised on "being denied the opportunity to a fair trial" (in reference to the first trial that culminated in a hung jury) and purported issues George had with her counsel at the time. *Ibid.*

B. Ninth Circuit Proceedings

George's filings led the courts, the parties, and her own appellate counsel to conclude that George was not appealing any ruling related to the Program Respondents. George's earlier appellate counsel did not understand the Program Respondents to be involved in any way in the appeal. See Dkt. 10 (9th Cir.) (only identifying HOH Respondents in George's Mediation Questionnaire). Indeed, the Program Respondents were never involved in the Ninth Circuit's court-ordered mediation. As her current counsel put it: "All the parties, the district court, and [the Ninth Circuit] proceeded for more than two years * * * as though this appeal related only to the House of Hope Defendants." Dkt. 74 (9th Cir.) at 25. Even George tacitly conceded the insufficiency of the notice

accorded by her original filing with the Ninth Circuit: she much later filed a "notice of appeal" directed only to the Program Respondents. See Dkt. 174. That attempt—well over two years after the appeal was first instituted—led the Program Respondents to ultimately enter an appearance. George was represented by counsel at all relevant times during the pendency of her Ninth Circuit appeal.

When George belatedly sought to inject the district court's summary judgment rulings in favor of the Program Respondents into the appeal (Dkt. 33 (9th Cir.)), her pro bono counsel refused to represent her on the merits of those claims (Pet. App. 55a n.1; Dkt. 43 at 1 (9th Cir.)), but did represent her on all other aspects of the appeal, including on procedural matters related to the Program Respondents (Pet. App. 52a-60a; Dkt. 43 (9th Cir.)).

The Ninth Circuit dismissed George's appeal against the Program Respondents for lack of jurisdiction, holding that she "did not comply with the requirements of Federal Rule of Appellate Procedure 3 as to those two defendants." Pet. App. 3a-4a. The court relied on *Smith*'s requirement that a "filing [must] *provide*[] *sufficient notice* to other parties and the courts." *Ibid*. (quoting 502 U.S. at 248). The court also noted that George "did not serve her notice of appeal on" the Program Respondents. Pet. App. 3a. As to the HOH Respondents, the court held that it had jurisidiction over the appeal and affirmed the finding of no liability on the merits. Pet. App. 3a-6a.

George then petitioned for panel rehearing, arguing that she was not required to serve the notice of appeal under Rule 3 and that service itself did not affect jurisdiction. Pet. App. 55a-60a. The Ninth Circuit

denied rehearing but issued an amended opinion. Pet. App. 9a-16a. To clarify its reasoning, the court removed the reference to George's service and added that she "did not provide adequate notice of an appeal from a judgment against" the Program Respondents. Pet. App. 13a. The court did not amend its opinion as to the HOH Respondents. Pet. App. 13a-16a.

REASONS FOR DENYING THE PETITION

I. This case is a poor vehicle to resolve the question presented.

The petition rests on a gross mischaracterization of the decision below and asks this Court to decide a hypothetical question not presented by the record. If this Court somehow adopted her preferred service rule, George would still lose *on jurisdiction*. And even if the Court somehow overturned the Ninth Circuit's Rule 3 ruling, her claims would still fail because there is no scenario in which this Court could grant George "any effectual relief whatever" (*Chafin*, 568 U.S. at 172) on her remaining claims. Thus, in light of the Court's limited resources and its prohibition against "decid[ing] questions that cannot affect the rights of litigants in the case before" it (*ibid.*), adjudicating "hypothetical" questions (*TransUnion LLC* v. *Ramirez*, 141 S. Ct. 2190, 2203 (2021)), and "issu[ing] advisory opinions" (*ibid.*), it should decline to take up the "question presented" here.

A. The petition for certiorari rests on a mischaracterization of the decision below.

George asks this Court to decide whether Federal Rule of Appellate Procedure 3 "permits a court of appeals to dismiss an appeal because the appellant did not serve the notice of appeal." Pet. i. But the decision below did not turn on service. The court focused on

what both Rule 3 and this Court require: *notice*. See Fed. R. App. P. 3(c)(1); *Smith*, 502 U.S. at 248. Whatever the law requires in terms of service was simply irrelevant to the outcome below.

Under Rule 3, an appellant must "designate the judgment, order, or part thereof being appealed." Fed. R. App. P. 3(c)(1)(B) (2018). As this Court has explained, that "dictate[] [is] jurisdictional in nature," and "the notice afforded by a document * * * determines" whether that "dictate[]" has been met. *Smith*, 502 U.S. at 248. In other words, the court of appeals has jurisdiction over only those "judgment[s], order[s], or part[s] thereof" that the appellant's filing gives notice of an intent to appeal.[2] Importantly, a filing may provide notice of, and thus confer jurisdiction over, appeals as to some, but not all, of the district court's rulings—and thus as to some, but not all, defendants. *E.g.*, *Smith* v. *Barry*, 985 F.2d 180, 183-184 (4th Cir. 1993).

Applying that framework, the Ninth Circuit held that George "did not provide adequate *notice* of an appeal *from a judgment against*" the Program Respondents, and thus "did not comply with" Rule 3

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[2] *E.g.*, 16A Wright & Miller, Fed. Prac. & Proc. § 3949.4, at 109-110 ("[A] notice of appeal that specifies only part of a final judgment * * * will not suffice to appeal other parts of the judgment."); *Gustafson* v. *Bi-State Dev. Agency of Mo.-Ill. Metro. Dist.*, 29 F.4th 406, 413 (8th Cir. 2022) ("[A] notice which manifests an appeal from a specific district court order or decision precludes an appellant from challenging an order or decision that he or she failed to identify in the notice."); accord *Caribbean Mgmt. Grp., Inc.* v. *Erikon LLC*, 966 F.3d 35, 41 (1st Cir. 2020); *Vt. Ry., Inc.* v. *Town of Shelburne*, 918 F.3d 82, 86 (2d Cir. 2019).

"*as to those two defendants*." Pet. App. 13a (emphasis added). Then, relying on this Court's rule that a notice of appeal must "*provide*[] *sufficient notice* to other parties and the courts," the court concluded that it "lack[ed] jurisdiction over [George's] appeal of her claims against" the Program Respondents. Pet. App. 13a-14a (quoting *Smith*, 502 U.S. at 248). Importantly, in response to George's petition for rehearing, the court added language about the adequacy of the *notice* and removed the reference to George's *service*—thus clarifying that it was not adopting any jurisdictional service rule. And because George's functional notice of appeal did "g[i]ve notice of her intent to appeal" "the district court's April 20, 2018 judgment" in favor of the HOH Respondents, the court "consider[ed] the merits of the appeal as to" them. Pet. App. 13a-14a; Dkt. 145.

Grasping for a holding nowhere present in the Ninth Circuit's decision, George repeatedly proclaims that "the Ninth Circuit held it lacked jurisdiction over two appellees because *Petitioner herself* had not served them with her notice of appeal." Pet. i (emphasis added). But the court did no such thing. It mentioned service only once; it did not imply that service is jurisdictional; and it did not even specify *who* must effectuate service. Pet. App. 11a-15a.

Instead, the court noted, in a parenthetical to a "see also" cite, a pre-*Smith* case's statement that "in prior cases" the court had "required the document * * * *to have been served*." Pet. App. 14a (emphasis added) (quoting *In re Sweet Transfer & Storage, Inc.*, 896 F.2d 1189, 1193 (9th Cir. 1990)). The court did so as further support for *Smith*'s explanation that "[t]he purpose of a notice of appeal 'is to ensure that the filing provides sufficient notice to other parties and the courts." Pet.

App. 13a-14a (quoting *Smith*, 502 U.S. at 248). To state the obvious, there is nothing the least bit improper or odd in mentioning service as relevant to a Rule 3 analysis; other circuits often do so.[3]

Tellingly, it is undisputed that George herself did not serve her functional notice of appeal on *any* party (Pet. 21), yet no one argues that her failure to serve the HOH Respondents denied the Ninth Circuit jurisdiction over the appeal against them. See Program Resp. Opp. 10. The Ninth Circuit held that it *did* have jurisdiction to resolve those claims against the HOH Respondents on the merits. Pet. App. 14a. If George were correct that the Ninth Circuit required service *by the appellant* for jurisdiction, that conclusion would have been impossible. In short, the Ninth Circuit's dual holdings hinge on *notice*, not on *the appellant's service*. The court correctly applied settled law in resolving that issue, and George's "question presented" challenges a nonexistent holding.

Nor could George's repeated (if unsubstantiated and disputed) assertion that "the district clerk * * * served the notice on all parties," including the Program Respondents (Pet. 1-2[4]), change anything. Even if the Program Respondents had received a copy of George's functional notice of appeal, they *still* would not have had notice that George was appealing any judgment related to them—which is exactly what the

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[3] *E.g.*, *Johnson* v. *Leonard*, 929 F.3d 569, 575 (8th Cir. 2019); *Emps. Mut. Cas. Co.* v. *Bartile Roofs, Inc.*, 618 F.3d 1153, 1164 n.9 (10th Cir. 2010); *Garner* v. *Cuyahoga Cnty. Juv. Ct.*, 554 F.3d 624, 644-645 (6th Cir. 2009); *Listenbee* v. *City of Milwaukee*, 976 F.2d 348, 350-351 (7th Cir. 1992).

[4] See also Pet. i, 1-2, 2-3, 7, 10, 11, 22, 26.

Ninth Circuit held. Pet. App. 13a. George spills much ink on a point that is simply immaterial.

In sum, George's entire argument rests on a fundamental mischaracterization of what the court below actually held—namely, that the court dismissed for lack of jurisdiction solely because *George herself* did not *serve* her functional notice of appeal. Because the Ninth Circuit did not rely on George's novel service rule, the "record does not adequately present th[e] question" on which she seeks certiorari, and review should be denied. *E.g.*, *McClanahan* v. *Morauer & Hartzell, Inc.*, 404 U.S. 16, 16 (1971).

B. No decision on the question presented could change the outcome of the litigation, rendering review a scholastic exercise that would result in an advisory opinion.

Review should also be denied because, even if the Court were to reverse the Ninth Circuit on the jurisdictional question (it should not), that would have no bearing on the ultimate outcome of this litigation—the inevitable dismissal of all of George's claims.

That is so for at least two reasons. First, George conceded, and the district court accepted, that she had no evidence to support her claims against the Program Respondents—the parties who supposedly prevailed because the court below adopted a jurisdictional "service" rule. Second, all of George's claims against the Program Respondents are premised on a finding of liability against the HOH Respondents. But the HOH Respondents won at trial and on appeal, and George does not challenge either ruling here. Even if this Court chose to take up the alleged jurisdictional ruling affecting the Program Respondents and somehow reversed, it would be "impossible for a court to grant

[George] any effectual relief whatever." *Mission Prod. Holdings, Inc.* v. *Tempnology, LLC*, 139 S. Ct. 1652, 1661 (2019) (citation omitted).

1. George waived all merits challenges to the decisions below.

Even if this Court granted certiorari and adopted George's proposed jurisdictional rule, that rule would have no effect on the outcome of this case. Before the district court, George conceded—through counsel, unequivocally, and in writing—that she "ha[d] no admissible evidence to submit that would create genuine issues of material fact" on her claims against the Program Respondents. Dkts. 37, 38 at 2. Her belated assertion that her counsel "conceded [those claims] without her permission" changes nothing. Absent "a demonstration of ineffectiveness," parties are "deemed bound" by their lawyer's waiver. *New York* v. *Hill*, 528 U.S. 110, 114-115 (2000). Not only is there no evidence of ineffectiveness, George submitted evidence to the contrary: her lawyer complied with his ethical obligations. Dkt. 44 at 44 (advising George he "had to be honest with the court"). George has therefore waived any merits argument that she could ultimately prevail on the claims she now seeks to revive.

George seems to realize this. Nowhere before this Court does she advance any argument on the merits. Her appellate counsel refused to represent her on the merits of her claims below against the Program Respondents (Dkt. 43 at 1 (9th Cir.)), even though he was appointed "for purposes of this appeal" without reservation (Dkt. 32 (9th Cir.)) and represented George on all other aspects of the appeal, including procedural matters relating to the Program

Respondents (Pet. App. 55a-60a; Dkt. 43 (9th Cir.)) and now the instant petition.

George's request for review is a belated attempt to resurrect claims that were properly dismissed at summary judgment. A litigant's *ex post* regret is not a ground for reversal, let alone certiorari.

2. Even if George had not waived her merits arguments, the unchallenged no-liability verdict in favor of the HOH Respondents precludes relief.

In any event, the Ninth Circuit's ruling that the HOH Respondents have no liability, together with George's failure to seek review of that ruling, makes any review of the Ninth Circuit's jurisdictional holding an entirely academic and futile exercise.

George's claims against the Program Respondents are entirely derivative of her claims against the HOH Respondents—and thus fail if the claims against the HOH Respondents fail. See Dkt. 1 at 9. But George does not ask this Court to revisit the Ninth Circuit's determination that the HOH Respondents are not liable. And George's counsel does not dispute that the HOH Respondents won that judgment fair and square. That creates an insurmountable vehicle problem.

Because Article III "limits federal-court jurisdiction to 'cases' and 'controversies'" (*Campbell-Ewald Co.* v. *Gomez*, 577 U.S. 153, 160 (2016)), "[f]ederal courts may not 'decide questions that cannot affect the rights of litigants in the case before them'" (*Chafin*, 568 U.S. at 172) and must dismiss a case if "it is impossible for a court to grant any effectual relief whatever" (*Tempnology*, 139 S. Ct. at 1661). Since the Program Respondents cannot be held liable absent a judgment against the HOH Respondents, George's decision

to accept the no-liability determination as to the HOH Respondents necessarily means she has abandoned any case against the Program Respondents.

George is thus effectively asking this Court to issue an advisory opinion on a jurisdictional question that will not change the Ninth Circuit's bottom line—an opinion that cannot result in "any effectual relief whatever." *Ibid*. The thrust of the petition seeks a hearing by the Ninth Circuit on an already conceded summary judgment ruling that has repeatedly been found to lack merit and is not outcome-determinative. George ignores that reality. This Court should not.

II. George's supposed circuit "split" is illusory; the Ninth Circuit's opinion is on all fours with this Court and every other circuit.

Beyond the fact that this Court cannot reach or decide George's purported "question presented," that question is not the subject of a circuit split. The alleged "split" rises and falls with whether the Ninth Circuit employs a jurisdictional requirement that "appellant[s] must serve the notice of appeal." *E.g*., Pet. 12. It does not. As explained above, the decision below turned on notice and did not impose a service requirement, much less an appellant-specific one. The other two cases that George cites in support of her assertion that "longstanding Ninth Circuit caselaw holds that Rule 3 requires the *appellant* to serve the notice of appeal to establish jurisdiction" (Pet. 1) fall equally flat—and that court's post-*Smith* authority confirms that it is in accord with every other circuit.

The main case that George cites in support of her characterization of Ninth Circuit precedent, *Rabin* v. *Cohen*, 570 F.2d 864, 866 (9th Cir. 1978) (see Pet. 18-21), was published almost a half century ago—well

before this Court's decision in *Smith* clarified the jurisdictional requirements for notices of appeal. Thus, even if George had accurately characterized that decision, it does not suggest the court would reach the same result today.

Contrary to George's repeated assertions, however, *Rabin* did not require "that the appellant serve the notice of appeal" to establish jurisdiction. *Supra* at 7-10 & n.3. Rather, the court there merely stated in *dictum* that filings "not denominated notices of appeal" would still "be so treated" if, among other things, they "[we]re served upon the other parties to the litigation." *Rabin*, 570 F.2d at 866.

The other Ninth Circuit decision that George points to is *Sweet Transfer*. Pet. 19-20. According to George, the court there "dismissed the appeal for lack of jurisdiction" "because *the appellants* had not served * * * the appellees." Pet. 20 (emphasis added). But *Sweet Transfer* held no such thing. Rather, it held that "[a]ppellants['] submissions" "d[id] not clearly evince their intent to appeal or provide *notice* to" the appellee, and "[t]herefore, they d[id] not constitute a notice of appeal." *Sweet Transfer*, 896 F.2d at 1194 (emphasis added). As support for the lack of notice, the court noted that "[i]n prior cases" it "ha[d] required the document in question to have been served upon the other parties." *Id.* at 1193 (citation and emphasis omitted). But *Sweet Transfer* does not rest on service at all, and certainly not on "the appellant's" failure to serve. Moreover, the decision (like *Rabin*) predates *Smith*, so it would create at most a stale conflict, if any.

The only other post-*Smith* Ninth Circuit decision that George cites relied on *Smith*, explaining that, although "certain appellees were 'never served with

the notice of appeal,'" "such a failure d[id] not affect the validity of the appeal." Pet. 20 (quoting *Pollard* v. *The GEO Grp., Inc.*, 629 F.3d 843, 852 n.7 (9th Cir. 2010), *rev'd on other grounds*, *Minneci* v. *Pollard*, 565 U.S. 118 (2012)). That is the exact rule that George advocates as the rule applied "in the other courts of appeals." Pet. 15, 20. Thus, the Ninth Circuit's post-*Smith* authority confirms that the court follows this Court's jurisdictional requirement that an appellant "provide[] sufficient notice" as to what she appeals.[5]

III. The petition presents no exceptionally important question warranting this Court's review.

Notwithstanding George's apocalyptic tone, the decision below does not raise the kind of exceptionally important issues that warrant this Court's review.

First, the Ninth Circuit's unpublished decision has no precedential value. 9th Cir. R. 36-3. In fact, the Ninth Circuit admonishes that unpublished opinions "should not be cited." *Ibid.* Moreover, the court did not purport to set forth any grand or novel rule; it simply resolved the facts of this particular case. That

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[5] See *Erikon*, 966 F.3d at 41; *Bacon* v. *Phelps*, 961 F.3d 533, 540-541 (2d Cir. 2020); *Trzaska* v. *L'Oreal USA, Inc.*, 865 F.3d 155, 163 (3d Cir. 2017); *Clark* v. *Cartledge*, 829 F.3d 303, 305 (4th Cir. 2016); *Wiener, Weiss & Madison* v. *Fox*, 971 F.3d 511, 514 (5th Cir. 2020); *Ramsey* v. *Penn Mut. Life Ins. Co.*, 787 F.3d 813, 819 (6th Cir. 2015); *JPMorgan Chase Bank, N.A.* v. *Asia Pulp & Paper Co.*, 707 F.3d 853, 861-862 (7th Cir. 2013); *Gustafson*, 29 F.4th at 413; *Bartile Roofs*, 618 F.3d at 1164 n.9; *LaCourse* v. *PAE Worldwide Inc.*, 980 F.3d 1350, 1354 (11th Cir. 2020); *Foster* v. *Sedgwick Claims Mgmt. Servs., Inc.*, 842 F.3d 721, 727-728 (D.C. Cir. 2016).

fact-bound ruling has limited impact and does not merit review by this Court.

Second, even assuming that the court had adopted a jurisdictional service rule, George and her amicus dramatically overstate its "potentially massive impact." Pet. 27. Neither George nor the amicus cite a single example where the Ninth Circuit (or any court) has found that an appellant provided sufficient notice that she was appealing a certain ruling and also found that it lacked jurisdiction because *the appellant herself* failed to serve the notice of appeal. Nor do they cite any case that was dismissed for lack of jurisdiction where *the clerk* had sufficient notice and erroneously failed to serve. That complete dearth of authority underscores that the question purportedly presented is of little practical importance. And, of course, if the claimed issue does arise as frequently as George suggest, its resolution "can await a day when the issue is posed less abstractly" and "in the context of meaningful litigation." *The Monrosa* v. *Carbon Black Export, Inc.*, 359 U.S. 180, 184 (1959).

To the extent that George disputes the Ninth Circuit's conclusion that her filing did not provide adequate notice, that fact-bound question raises no issue of broad importance warranting this Court's review. To assess the sufficiency of notice, a court looks at all "circumstances" (*Shapiro ex rel. Shapiro* v. *Paradise Valley Unified Sch. Dist. No. 69*, 374 F.3d 857, 863-864 (9th Cir. 2004) (collecting cases)), and "examine[s] them in the context of the record as a whole" to "discern the appellant's intent" (*Erikon*, 966 F.3d at 41). Reviewing an appellate court's finding on sufficiency of notice would amount to simple error correction, wasting this Court's resources. In any event, the court below got it right.

George has admitted to the insufficiency of the notice provided. *Infra* at 5. Regardless of her intent, her functional notice of appeal led the courts, her counsel, and other parties to believe that her appeal related only to the HOH Respondents. Her own litigation conduct—not pursuing the involvement of parties she supposedly sought a resolution from on appeal—runs contrary to any other inference. That the court and all parties were misled for *over two years* was reason enough for the Ninth Circuit to conclude that George "did not provide adequate notice of an appeal from a judgment against" the Program Respondents. Pet. App. 13a; see, *e.g.*, Wright & Miller, 16A Fed. Prac. & Proc. § 3949.4 (5th ed. 2022); *Sindhi* v. *Raina*, 905 F.3d 327, 331 (5th Cir. 2018); *Nichols* v. *Ala. State Bar*, 815 F.3d 726, 730 (11th Cir. 2016).

Finally, the equities powerfully support denying review. Time and again, George has failed to lodge appropriate and timely challenges and has then attempted to reopen long-dead litigation and revive foregone legal challenges. Her unfounded allegations of religious and racial discrimination have been roundly rejected over nine years of litigation, following dispositive motion briefing, two jury trials, and an appeal. House of Hope has dissolved, and the astonishing amount of judicial and party resources that have gone into vetting George's allegations have not yielded a single outcome in her favor. Those allegations should end here, as review would only waste further resources and postpone the inevitable.

CONCLUSION

For the foregoing reasons, the petition for certiorari should be denied.

Respectfully submitted,

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