

No. 23-711

IN THE
Supreme Court of the United States

JAMES P. RYAN,

Petitioner,

v.

CARLO DEMARIA, JR., *et al.*,

Respondents.

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

BRIEF OF RESPONDENTS IN OPPOSITION

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QUESTIONS PRESENTED

1. Did the U.S. Court of Appeals for the First Circuit properly dismiss Petitioner's appeal where Petitioner did not appeal within 30 days of the entry of judgment and did not seek an extension in accordance with 28 U.S.C. § 2107(c) (first sentence) and Fed. R. App. P. 4(a)(5)?
2. Did the U.S. Court of Appeals for the First Circuit have jurisdiction to review the District Court's order denying the Petitioner's request to reopen the appeal deadline under 28 U.S.C. § 2107(c) and Fed. R. App. P. 4(a) (6), where the District Court's order was never appealed?

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INTRODUCTION

James Ryan’s (“Ryan”) Petition for a writ of certiorari should be denied. The decision of the U.S. Court of Appeals for the First Circuit to dismiss Ryan’s untimely appeal of an Order of Dismissal by the U.S. District Court for the District of Massachusetts was correct, and does not conflict with decisions of the other circuit courts of appeals or with the decisions of this Court. Ryan’s notice of appeal of that Order was filed 86 days late, and the First Circuit correctly dismissed it pursuant to Fed. R. App. P. 4(a)(1) (A) and 28 U.S.C. § 2107(a).

And with respect to Ryan’s request for review of the District Court’s subsequent post-judgment order under Fed. R. App. P. 4(a)(6) and 28 U.S.C. § 2107(c) (second sentence), which denied Petitioner’s request to reopen the appeal deadline, that District Court order was never appealed to the First Circuit, and thus there is no appellate decision below that could be subject to certiorari relief. Because there is neither error below in the Order of Dismissal nor a decision pertaining to 28 U.S.C. § 2107(c) that is subject to certiorari relief, the petition should be denied rather than remanded for further proceedings.

Accordingly, certiorari is not warranted.

STATEMENT OF THE CASE

A. Proceedings Below.

Ryan filed suit *pro se* in the U.S. District Court for the District of Massachusetts on July 15, 2021. Pet. App. 39. The suit named over fifty defendants, including public

and private attorneys, state and local officials, and state court personnel. *Id.* at 23-24, 29-38, 54. The action arose from Ryan's grievances regarding a rental property that he owned in Everett, Massachusetts. *Id.* at 23. Petitioner challenged the evacuation of the property in 2009 due to alleged building code violations, the foreclosure on the property in 2010, and the purported failure of various individuals to resolve his concerns about those proceedings. *Id.* at 23-28. Ryan's complaint contained no enumerated causes of action and did not specify which claims he asserted against which defendants. *Id.* at 35. A generous reading of the complaint suggests that Ryan may have intended to bring claims for Fourteenth Amendment violations and securities fraud, a claim pursuant to the Federal Tort Claims Act (FTCA), and a claim for treble damages under the Civil Racketeering Influenced and Corrupt Organization (RICO) statute. *Id.* In response, a majority of the defendants filed motions to dismiss. *Id.* at 24.

On January 25, 2022, the District Court (Boal, M.J.) issued a Report and Recommendation regarding the motions to dismiss. Pet. App. 20-55. In it, the Magistrate Judge recommended that the motions be granted. *Id.* The Magistrate Judge found numerous procedural and substantive deficiencies that warranted dismissal. These included that (1) Ryan failed to identify which claims he asserted against which defendants, rendering his complaint "so confused, ambiguous, vague, or otherwise unintelligible that its true substance, if any, is well disguised," *id.* at 37-38 (internal citations omitted); (2) a majority of his claims were time barred, *id.* at 38-39; (3) the Due Process claim must be dismissed as against the several defendants who were not state actors, and in any

event, his complaint failed to state a Due Process claim, *id.* at 44-47; (4) Ryan failed to allege an act or omission in connection with the sale of securities requiring dismissal of his securities fraud claim, *id.* at 47-48; (5) Ryan failed to state a FTCA claim because no defendant was an employee of the federal government, *id.* at 48-49; (6) the Complaint was devoid of allegations that would satisfy any element of a RICO claim against any defendant, *id.* at 49-50; and (7) the judicial and prosecutorial defendants were entitled to absolute immunity from Ryan’s claims, *id.* at 50-52.

On February 2, 2022, Ryan filed a “Comprehensive Response to Report and Recommendations.” *Id.* at 19. After considering both the Magistrate Judge’s report and Ryan’s response, the District Court (Gorton, J.) accepted and adopted the Report and Recommendations issued by the Magistrate Judge, and on March 4, 2022, entered an Order of Dismissal. *Id.* at 11, 19. This Order of Dismissal triggered a thirty-day period for Ryan to file a Notice of Appeal. Thereafter, on April 14, 2022, Ryan filed a motion to remove certain defense counsel from the case, which was denied on May 31, 2022 (Gorton, J.). *Id.* at 11.

Ryan filed a Notice of Appeal in the District Court on June 29, 2022, seeking review of the March 4 Order of Dismissal and of the Order denying Ryan’s Motion requesting the removal of certain defense counsel. *Id.* at 12. This appeal of the dismissal came approximately 86 days after the deadline of April 4, 2022 by which to file a notice of appeal of the Order of Dismissal.¹ See Fed. R. App. P. 4(a)(1)(A) and 28 U.S.C. § 2107(a).

1. April 3, 2022, which was 30 days after the entry of the March 4, 2022 order, was a Sunday. See Fed. R. App. P. 26(a)(1)(C).

On July 26, 2022, after the appeal was docketed in the U.S. Court of Appeals for the First Circuit, Ryan filed a “Motion for an Out of Time Appeal” in the District Court. Pet. App. 12. On August 2, 2022, the District Court denied the motion. *Id.* at 15. The District Court decided that, to the extent the motion was a request for an extension of time to file a notice of appeal under Fed. R. App. P. 4(a) (5), the motion was untimely. *Id.* at 12-13. *See* 28 U.S.C. § 2107(c) (first sentence) (requiring a “motion filed not later than 30 days after the expiration of the time otherwise set for bringing appeal”). The District Court further concluded that, to the extent the motion was a request to reopen the time for filing the notice of appeal under Fed. R. App. P. 4(a)(6), *see* 28 U.S.C. § 2107(c) (second sentence), the request was a matter of discretion for the District Court, and the District Court exercised its discretion to deny that request. *Id.* at 13-14. Ryan never filed a notice of appeal of the District Court’s August 2, 2022 order.

B. The Decision of the U.S. Court of Appeals for the First Circuit.

On May 10, 2023, the U.S. Court of Appeals for the First Circuit issued judgment on Ryan’s appeal of the District Court’s orders dismissing his complaint and denying his motion to remove certain counsel. Pet. App. 1, 7. As to the appeal of the District Court’s March 4, 2022 order dismissing his complaint, the Court of Appeals dismissed Ryan’s appeal on the basis that it was untimely. *Id.* Citing *Bowles v. Russell*, the First Circuit reiterated that “the timely filing of a notice of appeal in a civil case is a jurisdictional requirement.” 551 U.S. 205, 214 (2007). As to the appeal of the District Court’s May 31, 2022 order denying Ryan’s motion to remove counsel, the Court of Appeals affirmed the order.

The judgment of the Court of Appeals did not review or issue rulings on the District Court’s August 2, 2022 order denying Ryan’s motion to extend or reopen the appeal deadline under 28 U.S.C. § 2107(c), which Ryan had not appealed. Pet. App. 7.

ARGUMENT

Ryan attempts to create an illusion of circuit splits and conflicting decisions that do not exist. *See* Sup. Ct. R. 10. The subject petition is based on Ryan’s mischaracterization of the First Circuit’s decision, as well as faulty interpretations of relevant provisions governing appeals. In fact, the First Circuit’s decision to dismiss Ryan’s out-of-time appeal was correct and does not conflict with any decision of this Court or any other, and the First Circuit did not consider Ryan’s motion to reopen the time to appeal because Ryan never appealed the District Court’s denial of that motion. Accordingly, his petition should be denied.

I. THE COURT OF APPEALS’ CONCLUSION THAT IT LACKED JURISDICTION TO REVIEW THE UNTIMELY APPEAL WAS PLAINLY CORRECT AND DOES NOT CONFLICT WITH ANY DECISION OF THIS OR ANY OTHER COURT.

The First Circuit decided only one issue, namely, whether Ryan’s appeal of the district court’s March 4, 2022 Order of Dismissal was properly before it. It plainly was not, because that appeal was filed nearly three months late, and Ryan does not and cannot point to any conflicting authority on that point. The First Circuit’s decision thus presents no question warranting this Court’s review.

A. The First Circuit Lacked Jurisdiction Under 28 U.S.C. § 2107(a) to Review the Untimely Appeal of the Order of Dismissal.

Put simply, Ryan failed to comply with the jurisdictional mandate set forth in 28 U.S.C. § 2107(a), the provisions of which are mirrored in Fed. R. App. P. 4(a)(1)(A). Specifically, 28 U.S.C. § 2107(a) provides, in pertinent part, that “no appeal shall bring any judgment, order or decree in an action, suit or proceeding of a civil nature before a court of appeals or review unless notice of appeal is filed, within thirty days after the entry of such judgment, order or decree.” Likewise, Fed. R. App. P. 4(a)(1)(A) provides, in pertinent part, that: “[i]n a civil case . . . 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.”

The District Court entered its order of dismissal on March 4, 2022. The statutory provision of § 2107(a) provided Ryan with thirty days in which to file his Notice of Appeal for that dismissal (i.e., until April 4, 2022, April 3 being a Sunday). Ryan did not file his Notice of Appeal until June 29, 2022 – close to three months after the expiration date – while having made no attempt to move for an extension in the interim. By failing to comply with the filing deadline prescribed by statute, Ryan *himself* deprived the First Circuit of jurisdiction over his appeal. *Bowles v. Russell*, 551 U.S. 205, 214 (“this Court has no authority to create equitable exceptions to jurisdictional requirements” set by statute).

Ryan faults the First Circuit for “saying the time limit in [Fed. R. App. P. 4(a)(1)(C)] was a jurisdictional

bar.” Pet. 18. This argument is flawed. The language of the First Circuit’s judgment makes no reference to Fed. R. App. P. 4(a)(1)(C) whatsoever, nor does Ryan clarify where he perceives this reference to arise. Instead, the First Circuit cites solely to *Bowles*, 551 U.S. at 214 to explain its rationale for dismissing the case as untimely and to emphasize the importance of the jurisdictional component in its decision.

The *Bowles* court addressed the maximum amount of time that an appeal period may be reopened by motion to a district court, as prescribed by both Fed. R. App. P. 4(a) (6) and 28 U.S.C. § 2107(c) (second sentence). In *Bowles*, this Court found that the petitioner failed to comply with those time prescriptions and affirmed the Circuit Court’s dismissal of the appeal for lack of jurisdiction. This Court held that an appeal filing deadline prescribed by *statute* will be regarded as “jurisdictional,” meaning that the late filing of the appeal notice necessitates dismissal of the appeal. *Bowles*, 551 U.S. at 213 (“[W]hen an ‘appeal has not been prosecuted within the matter directed, within the time limited by the acts of Congress, it must be dismissed for want of jurisdiction,’” quoting *United States v. Curry*, 47 U.S. 106, 106, 113 (1848)). *See also Kontrick v. Ryan*, 540 U.S. 443, 452 (2004) (“Only Congress may determine a lower federal court’s subject-matter jurisdiction,” citing U.S. Const. Art. III, § 1).

The First Circuit’s citation to *Bowles* resolves Ryan’s contention regarding the basis of the denial of his appeal. Because Ryan filed his notice of appeal more than 30 days after the entry of the order from which he wishes to appeal, 28 U.S.C. § 2107(a) barred the First Circuit from considering his appeal unless one of the exceptions set

forth in subsections (b) and (c) applied. 28 U.S.C. § 2107(a) (providing that appeal must be noticed within 30 days “[e]xcept as otherwise provided in this section”). And because the exception in subsection (b) does not apply, and – as explained *infra* Part II – the exception in subsection (c) was not before the First Circuit, the Court had no choice but to dismiss the appeal.

Accordingly, the Court of Appeals appropriately determined that it had no jurisdiction to hear Ryan’s untimely appeal, and properly dismissed the appeal in accordance with *Bowles*.

B. The First Circuit’s Dismissal Comports with *Hamer v. Neighborhood Housing Services of Chicago*.

Ryan’s contention that the First Circuit’s decision conflicts with other decisions of this Court, specifically *Hamer*, is erroneous. In *Hamer*, this Court expounded on *Bowles* to clarify the application of the jurisdictional mandate to appeals-related time prescriptions as set forth in statute as opposed to those only set forth in court rules. 583 U.S. 17, 26 (2017).² It held that “[i]f a

2. Though Ryan contends that *Hamer* addressed a “circuit split,” the *Hamer* court simply noted that several courts of appeals had “tripped over” the language in *Bowles* that “the taking of an appeal within the prescribed time is ‘mandatory and jurisdictional.’” *Hamer*, 583 U.S. at 26 (internal citations omitted).

In fact, the circuit courts of appeals have ruled consistently with *Hamer*. See, e.g., *Cameron v. EMW Women’s Surgical Ctr.*, P.S.C., 595 U.S. 267, 283 (2022) (Thomas, J., concurring) (“Federal Rules of Appellate Procedure 3(a)(1) and 4(a)(1)(A) together require that any appeals from a district court judgment be pursued by

time prescription governing the transfer of adjudicatory authority from one Article III court to another appears in a statute, the limitation is jurisdictional; otherwise,

filings a notice of appeal within 30 days after entry of the judgment. We have described this requirement as ‘jurisdictional.’”) (citation omitted); *Omega SA v. 375 Canal, LLC*, 984 F.3d 244, 251 (2d Cir. 2021) (“A notice of appeal generally must be ‘filed with the district clerk within 30 days after entry of the judgment or order appealed from. . . . This appeal deadline is jurisdictional. . . .’”) (internal citations omitted); *Garrett v. Murphy*, 17 F.4th 419, 424 (3d Cir. 2021) (recognizing that the filing requirement of 28 U.S.C. § 2107(a) is jurisdictional); *Frew v. Young*, 992 F.3d 391, 395 (5th Cir. 2021) (“Because that 30-day requirement [to file a notice of appeal] has statutory roots in 28 U.S.C. § 2107, it is jurisdictional.”); *Ruiz v. Wing*, 991 F.3d 1130, 1137 (11th Cir. 2021) (“[W]hen an appellant fails to file a notice of appeal within thirty days ‘after entry of the judgment or order appealed from’ . . . we lack jurisdiction to consider the appeal.”) (citations omitted); *Serv. Emps. Intl. Union Local 32BJ v. Preeminent Protective Servs. Inc.*, 997 F.3d 1217, 1220 (D.C. Cir. 2021) (“This 30-day deadline [to file a notice of appeal] is jurisdictional.”); *Young v. Kenney*, 949 F.3d 995, 996 (6th Cir. 2020) (per curiam) (“The timing requirements to file a notice of appeal are mandatory jurisdictional prerequisites that generally may not be waived.”); *Hanson v. Shubert*, 968 F.3d 1014, 1017 (9th Cir. 2020) (“The thirty-day time limit [to file a notice of appeal] is ‘mandatory and jurisdictional.’”) (citation omitted); *Sharp Farms v. Speaks*, 917 F.3d 276, 289-290 (4th Cir. 2019) (“Because [appellant]’s appeal of the order denying his motion is governed by the 30-day time period prescribed in 28 U.S.C. § 2107(a), we lack jurisdiction over his untimely appeal and must dismiss it.”); *Nestorovic v. Metro. Water Reclamation Dist. of Greater Chi.*, 926 F.3d 427, 431 (7th Cir. 2019) (per curiam) (reaffirming that both the 30-day period to file a notice of appeal and the requirement of excusable neglect or good cause to obtain an extension are jurisdictional); *Williams v. York*, 891 F.3d 701, 706 (8th Cir. 2018) (“[T]he timely filing of a notice of appeal in a civil case is a jurisdictional requirement.”) (citations omitted).

the time specification fits within the claim-processing category.” *Id.* at 17.

The particular “time limits” at issue in *Hamer* are inapposite in both substance and effect from those in the present matter. The subject time prescription at issue in *Hamer* was the maximum amount of time that a court could grant for an extension of time to bring an appeal under Fed. R. App. P. 4(a)(5)(C). Recognizing that the provisions set forth in Fed. R. App. P. 4(a)(5)(C) contain no statutory counterpart, this Court held that the time limit in question was *not* a jurisdictional question, and therefore was not subject to the rigidity of jurisdictional rules. 583 U.S. at 20 (“Mandatory claim-processing rules are less stern. If properly invoked, mandatory claim-processing rules must be enforced, but they may be waived or forfeited,” citing *Manrique v. United States*, 581 U.S. 116 (2017)).

Ryan misconstrues *Hamer*’s impact upon the current matter. Although Ryan correctly points out that the time limit under Fed. R. App. P. 4(a)(5)(C) is not one of a jurisdictional nature for purposes of appealing to the circuit courts, *see Pet.* 17, the particular provisions of the Federal Rule of Appellate Procedure at issue in this matter *are* rooted in statute, and therefore are jurisdictional. Indeed, where the First Circuit’s decision was based on Ryan’s failure to adhere to the thirty-day deadline correspondingly set forth in 28 U.S.C. § 2107(a) and Fed. R. App. P. 4(a)(1)(A), the jurisdictional bar is rooted in statute, and was not merely a claim-processing rule. *Accord Hamer*, 583 U.S. at 27-28. Fed. R. App. P. 4(a)(5)(C) serves a different purpose and instead prescribes the maximum time for an extension to file a notice of

appeal. Moreover, the time limit conferred by Fed. R. App. P. 4(a)(5)(C) is specifically premised on circumstances where the subject litigant seeks an extension of the time to appeal within “30 days after the expiration of the time otherwise set for bringing appeal,” 28 U.S.C. § 2107(c) (first sentence) – which Ryan failed to do here.

II. BECAUSE RYAN NEVER APPEALED FROM THE DISTRICT COURT’S DENIAL OF THE REQUEST TO REOPEN THE APPEAL DEADLINE, THE PROPRIETY OF THAT DENIAL WAS NOT BEFORE THE FIRST CIRCUIT AND IS NOT BEFORE THIS COURT.

Ryan’s reference to the 180-day provision in 28 U.S.C. § 2107(c) (second sentence), and Fed. R. App. P. 4(a)(6) is irrelevant for purposes of the current petition because Ryan never appealed from the District Court’s order denying his motion to reopen the appeal deadline under those provisions. The First Circuit’s decision did not address this contention, therefore, because the District Court’s order was never before it.

In contending that the First Circuit “failed” to consider the 180-day provision in 28 U.S.C. § 2107(c) and Fed. R. App. P. 4(a)(6), Ryan misrepresents the timeline. Whereas the language of the Petition suggests that Ryan filed his Motion for Out of Time Appeal under 28 U.S.C. § 2107(c) and Fed. R. App. P. 4(a)(6) *prior* to the Notice of Appeal, this is untrue. It was not until July 26, 2022 – almost one full month *after* filing the appeal at issue – that Ryan filed a “Motion for Out of Time Appeal” in the District Court.

Ryan cannot simply “roll in” other motions made with the District Court *after* filing his appeal in June 2022, just as he cannot criticize the First Circuit for failing to consider those filings in dismissing his untimely appeal.³

Thus, despite Ryan’s reference to the “180-day provision” and Fed. R. App. P. 4(a)(6), these were not part of Ryan’s appeal to the First Circuit, nor of the First Circuit’s decision to dismiss the appeal. As such, they are not before this Court.

III. DENIAL OF THE PETITION, RATHER THAN REMAND, IS THE APPROPRIATE DISPOSITION OF THIS PETITION.

The First Circuit’s decision to dismiss Ryan’s appeal for lack of jurisdiction was unquestionably correct and rooted in sound judicial and statutory principles. Ryan’s argument that a “Grant, Vacate, Remand” is appropriate because it has “some virtues” is unpersuasive. *Lawrence ex rel. Lawrence v. Chater*, 516 U.S. 163, 167 (1996) (“In

3. Even assuming *arguendo* that review of a District Court’s post-judgment order under 28 U.S.C. § 2107(c) or Fed. R. App. P. 4(a)(6) somehow could be rolled into a prior appeal without a notice of appeal as to that post-judgment order, the question whether a court of appeals must or may consider an appeal from such an order in those circumstances is not presented in the Petition. And the Petitioner cannot cure such a defect through his reply brief, because “[o]nly the questions *set out in the petition*, or fairly included therein, will be considered by the Court.” Sup. Ct. R. 14.1(a) (emphasis added); *see Yee v. City of Escondido*, 503 U.S. 519, 535 (1992) (this Court “ordinarily do[es] not consider questions outside those presented in the petition for certiorari” except in “the most exceptional cases”).

an appropriate case, a GVR order conserves the scarce resources of this Court that might otherwise be expended on plenary consideration, assists the court below by flagging a particular issue that it does not appear to have fully considered, assists this Court by procuring the benefit of the lower court’s insight before we rule on the merits, and alleviates the “[p]otential for unequal treatment” that is inherent in our inability to grant plenary review of all pending cases raising similar issues.” (internal citations omitted)). Here, there are no remaining issues to be considered, no issues to flag for a lower court, no risk of “unequal treatment,” and granting certiorari would not provide this Court with any beneficial insight. *See id.* Ryan was fully and fairly heard by the District Court on numerous occasions.

This case does not present a question regarding a split in authority, or otherwise raise any compelling or extraordinary circumstances. *See* Sup. Ct. R. 10. Even if the First Circuit had “failed” to consider *Hamer* in its deliberations, which Ryan claims without basis, no new result would be reached. And because there was no appeal taken to the First Circuit regarding a motion to reopen the thirty-day appeal deadline, a remand in this instance would be meaningless.

CONCLUSION

For the reasons set forth above, this Court should deny Ryan's Petition for a Writ of Certiorari.

Respectfully submitted,

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