No.

In the Supreme Court of the United States

DANIEL HAMPTON,
Petitioner,

v.

DENIS MCDONOUGH,
in his Official Capacity
as Secretary of the United States
Department of Veterans Affairs

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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October 15th, 2024

QUESTION RAISED

I

1. Whether Federal Rule of Appellate Procedure Rule 4(a)(4)(B)(ii) is jurisdictional or claims processing?
2. Whether Federal Rule of Appellate Procedure Rule 4(a)(4)(B)(ii) preempts a properly filed initial notice of appeal, under FRAP Rule 3 (a)1, and when post-judgment Order (relief) affirms original Order; in processing an appellate claim.
3. Whether FRAP Rule 4(a)(4)(B)(ii) is overbroad and ambiguous, hence facially unconstitutional *considering* 28 U.S.C §2107's jurisdictional mandate.

PARTIES TO THE PROCEEDING

All parties to the proceedings are listed in the caption.

TABLE OF CONTENTS

APPENDIX

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

CONSTITUTIONAL PROVISIONS

STATUTES

JUDICIAL RULES

OTHER AUTHORITIES

PETITION FOR A WRIT OF CERTIORARI

Daniel Hampton respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit; mandate of July 27th, 2024; Ordered July 19th, 2024. App - a1.

OPINIONS BELOW

The decision of the United States Court of appeals for the Second Circuit is unreported and is reproduced in the Appendix at a2–6. The decision of the U.S. District Court for the Eastern New York is unreported and is reproduced in the Appendix at App. a2–6.

JURISDICTION

The United States Court of Appeals for the Second issued its Order on July 19th, 2024. And mandate on July 27th, 2024. App. a1-6. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Equal Protection Clause

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

28 U.S.C. § 1651(a).

The **All Writs Act of 1789**, which provides in relevant part as follows:

> The Supreme Court and all courts established by Act of Congress may issue all writs necessary and appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

Federal Rule of Appellate Procedure Rule 4(a)(4)(B)(ii)

> (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.

28 U.S. Code § 2107

> (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.

TITLE 28, UNITED STATES CODE § 2072.

> Rules of procedure and evidence; power to prescribe
> (a) The Supreme Court shall have the power to prescribe general rules of practice and procedure and rules of evidence for cases in the United States district courts (including proceedings before magistrate judges thereof) and courts of appeals.
> (b) **Such rules shall not abridge, enlarge or modify any substantive right**. All laws in conflict with such rules shall

be of no further force or effect after such rules have taken effect.
(c) Such rules may define when a ruling of a district court is final for the purposes of appeal under section 1291 of this title.
(Added Pub. L. 100–702, title IV, § 401(a), Nov. 19, 1988, 102 Stat. 4648, eff. Dec. 1, 1988; amended Pub. L. 101–650, title III, §§315, 321, Dec. 1, 1990, 104 Stat. 5115, 5117.)

42 U.S. Code § 2000e–2, Civil Rights Act of 1964, *herein* Title VII.

(a) Employer practices
It shall be an unlawful employment practice for an employer—
(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or
(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

STATEMENT OF THE CASE

Pursuant to Federal Rule of Appellate Procedure Rule 35 (a):

The panel Second Circuit's decision conflicts with *Weitzner v. Cynosure, Inc.*, 802 F.3d 307, 311 (2d Cir. 2015), as corrected (Oct. 27, 2015) (holding that the 28-day time limit under Federal Rule of Appellate Procedure 4(a)(4)(B)(ii)) is a claim-processing rule).

Consideration by the Supreme Court is therefore necessary to secure and maintain uniformity of the court's jurisprudence

regarding definitions of 'mandatory claim processing classification' under FRAP Rule 4(a)(4)(B)(ii) for all Circuits.

Petitioner, Daniel Hampton, states that the Second Circuit's own summary order, conflicts with other Circuits in the country, who have held that the FRAP Rule 4(a)(4)(B)(ii) is mandatory claims processing. These contradictory decisions are namely in the Ninth Circuit, Fifth Circuit and Seventh Circuit.

REASONS FOR GRANTING WRIT OF CERTIORARI

The instant Summary Order, as mandated on July 19th, 2024, contradicts other accepted Second Circuit decisions on findings of what is "mandatory claims processing," namely *Weitzner v. Cynosure, Inc.,* 802 F.3d 307, 311 (2d Cir. 2015). The Second Circuit's error was to follow *Weitzner* blindly, rather than stating if FRAP Rule 4(a)(4)(B)(ii) is a mandatory claim processing rule, before applying it to Hampton's appeal.

This error is fatal to the May 7th, 2024, summary Order (now mandate), because instead of stating how the Second Circuit views FRAP Rule 4(a)(4)(B)(ii), the Summary Order is a an ineffectual application of both – jurisdictional and equitable law, further confusing the existing jurisprudence surrounding how FRAP Rule 4(a)(4)(B)(ii) should be applied in other future cases

among the circuits regarding mandatory claims processing *vis-à-vis* jurisprudence.

The Second Circuit failed to draw a roadmap but succeeded in creating more confusion regarding FRAP Rule 4(a)(4)(B)(ii)'s classification, for future adjudicative purposes.

(a) Second Circuit's Internal Conflict Regarding Mandatory Claims Definition:

The Second circuit has held in the *Weitzner* Court that:

"Appellant's late motion under Federal Rules of Civil Procedure 59 and 60 did not toll his deadline for filing his notice of appeal, see Fed. R. App. P. 4(a)(4)(A), and Appellant does not merit any equitable exception given the facts of this case," *see Weitzner v. Cynosure, Inc.*, 802 F.3d 307, 312–13 (2d Cir. 2015). *Ediagbonya v. United States*, No. 21-2846, 2022 WL 19830664, at *1 (2d Cir. Dec. 13, 2022)

Thus, the decision in *Weitzner* not to extend equitable remedies was fact driven; not merely rule application in the manner of product liability's *res ipsa loquter*. The invocation of FRAP Rule 4(a)(4)(B)(ii), does not mean the Second Circuit follows *Weistzner* blindly without looking at the equitable facts of any instant matter. This is the proper holding of the *Weizner* Court – facts matter when FRAP Rule 4(a)(4)(B)(ii) is seduced. It is claims processing; the Second Circuit misapplied *Weizner*.

Here, the Second Circuit Clerk entered an Order directed towards a *pro se* litigant; the order never stated that Hampton had to file an amended notice of appeal to render the final district court's decision appealable. Accordingly, it became a claims processing order at this point, directed at a pro se litigant, the court cannot take that away from its docket.

This was an oversight of the clerk, and the Order, even when interpreted by counsel later clearly does not state the need for an amended appeal notice under the jurisdictional interpretation of FRAP Rule 4(a)(4)(B)(ii), later adopted. This was an oversight when viewed with the fact that Mr. Hampton's initial appeal against his judgment was timely filed under Federal Rule of Appellate Procedure Rule 3 (a) 1. Thus, the Second Circuit's later jurisdictional approach (should have submitted an amendment), was to annul Hampton's original reliance on the clerk's claims' processing order of a timely filed appeal. App. a7.

Hampton filed a timely notice of appeal for the underlying judgment. Federal Rule of Appellate Procedure Rule 4 (a)(4)(B)1 does not nullify Hampton's prior satisfaction of Federal Rule of Appellate Procedure Rule of 3 (a) (1), triggered by his timely filing an appeal. *Id.* Furthermore, there is no legislative support that such an interpretation was intended in the civil rules cited when

Federal Rule of Civil Procedure Rule 58, clearly states that an order denying amendment of judgment does not change the judgment.

Hampton's timely appealed judgment, in the Lower Trial Court, EDNY, essentially never changed and could be reviewed by an appellate court, even if the Lower Court's order denying an amended judgment. *See,* FRAP Rule 3 (a) 1, *supra*. The fact remains that the underlying Hampton appeal was timely filed.

Hampton argues that Rule 4(a)(4)(B)(ii) is not a jurisdictional bar, as applied by the Second Circuit; but only a mandatory claim-processing rule that is subject to equitable exceptions, and that any omission cannot have jurisdictional omission. The Second Circuit stated, "We need not decide whether FRAP Rule 4(a)(4)(B)(ii) is jurisdictional because even assuming…." Summary Order, at 3. This was an error, classification of FRAP Rule 4(a)(4)(B)(ii), by the Second Circuit, is a initial requirement of any court. No court, or circuit can state a neutral position on the classification and then adjudicate.

Even when litigants do not discuss Rules, here FRAP Rule 4(a)(4)(B)(ii), this does not excuse the Second Circuit from properly applying the correct classification of that rule. Restated, the Second Circuit did not arrive at the proper adjudication of

Hampton's appeal because it failed to classify whether FRAP Rule 4(a)(4)(B)(ii) as jurisdictional or not; this is a legal travesty[1]. The Circuit cannot pivot on blaming attorneys for its own failure to clarify whether FRAP Rule 4 (a)(4)(B)(ii) is jurisdictional or claims processing; essentially the Second circuit refused to properly adjudicate; this is an error, and the supreme Court should step in to secure uniformity and predictability regarding FRAP Rule 4(a)(4)(B)(ii) precedent. A Circuit court, such as the Second Circuit cannot clearly take the position that it does not have to determine whether 4(a)(4)(B)(ii) is jurisdictional or not; this is contrary to what other Circuits had done:

> The 30-day time limit to appeal a judgment or order in a civil case is a jurisdictional requirement set by Congress. See 28 U.S.C § 2107(a); Bowles v. Russell, 551 U.S. 205, 214 (2007) ("Today we make clear that the timely filing of a notice of appeal in a civil case is a jurisdictional requirement."); Hamer v. Neighborhood Hous. Servs. of Chi., 583 U.S. 17, 27 (2017) (recognizing that although the Court had been loose with the word "jurisdictional" in the past, time limits imposed by Congress are truly jurisdictional). Because Garnett failed to timely file a new notice of appeal or an amended notice of appeal from the order denying his Rule 60(b) motion, we lack jurisdiction to consider the order on appeal. *See A.C.L.U. of Ky. v. McCreary County*, 607 F.3d 439, 451 (6th Cir. 2010).

Garnett v. Akron City School District Board of Education, 2023 WL 6632836 (6th Cir. Oct. 12, 2023).

[1] Because definition comes before adjudication or classification, in any science – including jurisprudence: the science of legal reasoning.

Thus, the Sixth Circuit states that the Rule is jurisdictional, the Second Circuit states, that: "we need not decide that Rule 4 (B) ii) is mandatory." This is adjudication in a vacuum, with no anchoring, no basis for vertical precedent.

What is then is the correct approach, falls within the jurisdiction of the Supreme Court?

Furthermore, a unified approach to adjudication of Rule 4(a)(4)(B)(ii) with FRAP Rule 3(a)(1)[2], is the proper adjudicative process, integrating both rules – not choosing one rule above the other as if the former supersedes the later. App. a2-6. Ignoring Hampton's rights in one Rule (FRAP Rule 3(a)1), while uplifting the rights in another FRAP Rule 4(a)(4)(B)(ii). This is legal error. FRAP Rule 4(a)(4)(B)(ii), does not nullify FRAP Rule 3 (a) 1 timely appeal jurisdiction – FRAP Rule 4(a)(4)(B)(ii), cannot annul a jurisdictional provision pursuant to FRAP Rule 3's thirty day's appeal notice[3].

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[2] The Second Circuit avoided the issue (applying both Rule 3 (a) a1 and Rule 4 (a)(4)(B)ii contemporaneously):

> "The Secretary has not argued that Hampton's failure to file any amended notice of appeal at all (much less a timely one) also violates Federal Rule of Appellate Procedure 3(a)(1), which provides that an appeal "from a district court to a court of appeals may be taken only by filing a notice of appeal with the district clerk within the time allowed by Rule 4." Because we conclude below that Hampton's failure to comply with Rule 4(a)(4)(B)(ii) bars his appeal, we need not reach the question of whether it would be independently barred by Rule 3, or whether that rule is jurisdictional." App. a4. Fn 1. Remand back to the Second Circuit, on this issue * would be proper.

[3] Because Hampton got his foot through the door, his appeal was timely, on the initial issues he sought to address. When those issues require an amended notice, as an explanation of the judge's opinion, affirming the judgment, the later requirement should not nullify the first requirement addressing the foundational incident, here "judgment," appealed because it essentially was affirmed. Amended notice was intended for judgments that differ with the original appealed decision. Period.

The Circuit summary order failed to look at the totality of Hampton's rights regardless of FRAP Rule 4(a)(4)(B)(ii); in the context of Hampton's original timely filed appeal (claim). Hampton's initial notice of appeal states a valid claim, jurisdictionally against the judgment entered.

Procedurally, the District court should have stayed its decision on the reconsideration motions until his timely filed appeal was heard. Thus, the antagonism between District Court and Appeals court, is one in claims processing.

When an Order stays a valid appeal (claim), it must fully inform a *pro se* litigant, of the necessary steps required for his claim to be restated if the court's interpretation is jurisdictional – regardless of whether pro se hires a lawyer or not. Gen. Docket. No. 9. The Second Circuit did not do this. The court normally takes the *pro se* litigant as a person needing procedural guidance to effectuate their claim, not as a blind person to whom obstacles must be cleverly placed by the court, rendering his future appeal void.

Hampton sought to appeal his judgment and to address the outcome of the jury trial. Accordingly, the jury judgment is what Hampton appealed; his reasons are meritorious for that appeal, even if the judge's affirmation of post-judgment were to be

ignored, as lacking an amended notice of appeal under FRAP Rule 4(a)(4)(B)(ii). App. a7.

As a matter of legal science this Circuit cannot reference past summary orders to be the law as this violates their own very rule of summary orders stating:

> Local Rule 32.1.1. stating:
> "(a) Precedential Effect of Summary Orders. Rulings by summary order do not have precedential effect."

However, this Court cites mainly summary orders in its decision to dispose Hampton's appeal, including the *Weizner* decision. *See* General Docket No. 8.

PROCEDURAL HISTORY AND BACKGROUND

On March 7th, 2023, Mr. Hampton filed a Notice of Appeal of the district court's judgment. App. a8. He then elaborated on his reasons in two post-trial motions under Rule 59 and Rule 60, at the lower court. The clerk of the second circuit stayed the appeal pending the lower court's decisions on the Rule 60 (b) and Rule 59 motions. General Docket No. 9. App.a.8.

DEEP ISSUES:

1. Should this Supreme Court allow a poorly worded FRAP Rule, Rule 4(a)(4)(B)(ii) to continue creating disparate outcomes for the lower courts?

ISSUES RAISED:

1. Whether Federal Rule of Appellate Procedure Rule 4(a)(4)(B)(ii) is jurisdictional or claims processing?
2. Whether Federal Rule of Appellate Procedure Rule 4(a)(4)(B)(ii) preempts a properly filed initial notice of appeal, under FRAP Rule 3 (a)1, and when post-judgment Order (relief) affirms original Order; in processing an appellate claim.
3. Whether FRAP Rule 4(a)(4)(B)(ii) is overbroad and ambiguous, hence facially unconstitutional *considering* 28 U.S.C §2107's jurisdictional mandate.

ARGUMENT

1. WRIT OF CERTIORARI SHOULD BE GRANTED BECAUSE THE SECOND CIRUCIT ERRED IN ITS FAILURE TO STATE WHETHER OR NOT RULE 4(a)(4)(B)(ii) IS JURISDICTIONAL OR CLAIMS PROCESSING.

A. MANDATORY CLIAMS PROCESSING CLASSIFICATION:

It is a legal error for the Second Circuit to jump from one case to another without stating its position on whether Rule 4(a)(4)(B)(ii) is claims processing or jurisdictional. This is a legal error by the Second circuit. Rule 4(a)(4)(B)(ii) is not a protean creature, changing, based on the nature of the facts or who is the litigant. No law, and certainly no jurisprudence exists in which the Rule's interpretation depends on who comes to court; wherein

in some instances it is jurisdictional, mandatory claims processing or the definition is ignored completed. This is confusion: an inherent system of favoritism against certain litigants deemed unworthy of the more lenient "claims processing," adjudication. This not only violates the Fourteenth Amendment's equal protection clause, but such adjudication by the Second circuit would be facially unconstitutional.

The Second circuit cannot use a milieu of summary orders to create unfair outcomes for appellants, while contradicting the very nature of summary orders in this Circuit:

"RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. Rule 32.1.1."

Summary Orders are thus not law in this Second Circuit, but merely clerical dismissals of appeals sanctioned by the panel. *Id*. If this Court wants to issue a substantive Opinion it should do so, allowing litigants to appeal the matter further in the U.S. Supreme court.

*

The supreme court has held in *Brown v. Western R. Co. of Alabama*, 338 U. S. 294, 296 (1949), "federal right cannot be defeated by the forms of local practice." This implies that local practice cannot depart too far-off from other circuits' interpretation of the same federal rule or law. Creating

essentially a haven for local practice is unsupported by Supreme Court decisions. *Id.*

"The guiding consideration is that the administration of justice should reasonably appear to be disinterested as well as be so in fact." *Public Utilities Comm'n of D.C. v. Pollak*, 343 U.S. 451, 466-467 (1952). Different decisions under the same rule – 4(a)(4)(B)(ii) – in different circuits, is hardly a disinterested administration of justice for the rule; for the litigants receiving the jurisdictional classification, like Hampton.

In the alternative if Federal Rule of Appellate Procedure Rule 4(a)(4)(B)(ii) nullifies Mr. Hampton's timely filed appeal under Federal Rule of Appellate Procedure Rule 3 (a)1, claim then this court should engage in substantive analysis of Federal Rule of Appellate Procedure Rule 3 (a)1, from a jurisdictional point. This circuit held in the instant matter:

The contradiction in the Second circuits application was self-evident: stating, under *United States v. Frias*, 521 F.3d 229, 234 (2d Cir. 2008), that:

> "Our determination that Rule 4(b) is **not jurisdictional** [but rather a mandatory claim-processing rule], . . . **does not authorize courts to disregard it when it is raised**. When the government properly objects to the untimeliness of a defendant's criminal appeal, Rule 4(b) is mandatory and inflexible."

Thus, the Second Circuit is stating that Federal Rule of Appellate Procedure Rule, herein "FRAP," 4(a)(4)(B)(ii) is triggered jurisdictional when raised, this is disparate treatment of a Rule. What of the instances when the Federal Rule of Appellate Procedure Rule 4(a)(4)(B)(ii) is not mentioned, but which require the Rule's application?

Thus *Frias*, supports Petitioner's position that Rule 4(a)(4)(B)(ii)) is not jurisdictional, even when invoked, as is the case in the instant matter. But, the Court deviated from *Frias* and treated Rule 4(a)(4)(B)(ii) as jurisdictional with no equitable considerations to be factored in. Essentially, the second Court deviated from *Frias*, refusing to process Hampton's claim based on the facts, stating that no equitable remedies are available for Hampton: this was a legal error and jurisdictional in nature. The invocation of Rule 4 (a)4(B)ii does not preclude application of *Frias*: which comes with equitable leniency in effectuating claims properly filed because the underlying dictum from *Frias*, is that FRAP Rule 4 (b) does not stop a properly filed underlying appellate claim under FRAP Rule 3 (a)1.

To apply Frias disparately, as is the case in the instant Second Circuit matter, is unconstitutional under the Fourteenth

Amendment, for the reasons previously stated: firstly, it ignores the circuit's responsibility to define the working application of the rule (whether its jurisdictional or claims processing), secondly, it allows different litigants to get different treatment of the same rule, because the Rule is undefined – jurisdictional vis-à-vis mandatory claims, thirdly, it allows for non-precedential summary orders (including Frias decision), to have precedential weight; a complete abrogation of the Circuit's own Local Rule 32.1.1. stating:

REASONS FOR GRANTING THE WRIT

This writ of certiorari should be granted because it involves unequal justice, expressed as disparate treatment, throughout the Circuits surrounding application of Rule 4(a)(4)(B)(ii).

I. The Circuits Are Divided On Whether Federal Rule of Civil Appellate Rule 4(a)(4)(B)(ii) [4] Is Jurisdictional Or Claims Processing.

A. Nature of Circuit Split

[4] U.S. Supreme Court Rule 10.

Considerations Governing Review on Writ of Certiorari

Review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons. The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers:

(a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter.

The Circuit split arises from competing principles of finality and accuracy underlying the jurisprudence for applying FRAP Rule 4(a)(4)(B)(ii) after a litigant timely file their appeal under FRAP Rule 3 (a) 1.

B. What is the current Circuit jurisprudence on right to representation in civil matters?

i. Criteria To Rule Under FRAP 4(a)(4)(B)(ii) Is Disparate:

FRAP Rule 4(a)(4)(B)(ii) litigation offers no unified direction on how circuit courts should consider its interpretation when deciding it with 28 U.S. Code § 2107, concurrently. i.e. *a properly filed initial notice of appeal, when post-judgment Order affirms original Order; and no amended notice was filed.*

"Only Congress may determine a lower federal court's subject-matter jurisdiction."

Kontrick, 540 U.S., at 452, 124 S.Ct. 906 (citing U.S. Const. Art. III, § 1); *Owen Equipment & Erection Co. v. Kroger,* 437 U.S. 365, 370, 98 S.Ct. 2396, 57 L.Ed.2d 274 (1978) ("[I]t is axiomatic that the Federal Rules of Civil Procedure do not create or withdraw federal jurisdiction."). Accordingly, a provision governing the time to appeal in a civil action qualifies as jurisdictional only if

Congress sets the time. See *Bowles,* 551 U.S., at 211–212, 127 S.Ct. 2360 (noting "the jurisdictional distinction between court-promulgated rules and limits enacted by Congress"); *Sibbach v. Wilson & Co.,* 312 U.S. 1, 10, 61 S.Ct. 422, 85 L.Ed. 479 (1941) (noting "the inability of a court, by rule, to extend or restrict the jurisdiction conferred by a statute"). A time limit not prescribed by Congress ranks as a mandatory claim-processing rule, serving "to promote the orderly progress of litigation by requiring that the parties take certain procedural steps at certain specified times." *Henderson v. Shinseki,* 562 U.S. 428, 435, 131 S.Ct. 1197, 179 L.Ed.2d 159 (2011). Hamer v. Neighborhood Hous. Servs. of Chicago, 583 U.S. 17, 19, 138 S. Ct. 13, 17, 199 L. Ed. 2d 249 (2017).

"This case presents a question of time, specifically, time to file a notice of appeal from a district court's judgment. In *Bowles v. Russell*, 551 U.S. 205, 210-213, 127 S.Ct. 2360, 168 L.Ed.2d 96 (2007), this Court clarified that an appeal filing deadline prescribed by statute will be regarded as "jurisdictional," meaning that late filing of the appeal notice necessitates dismissal of the appeal. But a time limit prescribed only in a court-made rule, B*owles*

acknowledged, is not jurisdictional; it is, instead, a mandatory claim-processing rule subject to forfeiture if not properly raised by the appellee. Ibid.; *Kontrick v. Ryan*, 540 U.S. 443, 456, 124 S.Ct. 906, 157 17*17 L.Ed.2d 867 (2004). Because the Court of Appeals held jurisdictional a time limit specified in a rule, not in a statute, 835 F.3d 761, 763 (C.A.7 2016), we vacate that court's judgment dismissing the appeal." *Id.*

"Only Congress may determine a lower federal court's subject-matter jurisdiction." *Kontrick,* 540 U.S., at 452, 124 S.Ct. 906 (citing U.S. Const. Art. III, § 1); *Owen Equipment & Erection Co. v. Kroger,* 437 U.S. 365, 370, 98 S.Ct. 2396, 57 L.Ed.2d 274 (1978) ("[I]t is axiomatic that the Federal Rules of Civil Procedure do not create or withdraw federal jurisdiction."). Accordingly, a provision governing the time to appeal in a civil action qualifies as jurisdictional **only if Congress sets the time.** See *Bowles,* 551 U.S., at 211-212, 127 S.Ct. 2360 (noting "the jurisdictional distinction between court-promulgated rules and limits enacted by Congress"); *Sibbach v. Wilson & Co.,* 312 U.S. 1, 10, 61 S.Ct. 422, 85 L.Ed. 479 (1941) (noting "the inability of a court, by rule, to extend or

restrict the jurisdiction conferred by a statute"). A time limit not prescribed by Congress ranks as a mandatory claim-processing rule, serving "to promote the orderly progress of litigation by requiring that the parties take certain procedural steps at certain specified times." *Henderson v. Shinseki,* 562 U.S. 428, 435, 131 S.Ct. 1197, 179 L.Ed.2d 159 (2011). *Id.*

"This Court and other forums have sometimes overlooked this distinction, "mischaracteriz[ing] claim-processing rules or elements of a cause of action as jurisdictional limitations, particularly when that characterization was not central to the case, and thus did not require close analysis." *Reed Elsevier, Inc. v. Muchnick,* 559 U.S. 154, 161, 130 S.Ct. 1237, 176 L.Ed.2d 18 (2010). But prevailing precedent makes the distinction critical. Failure to comply with a jurisdictional time prescription, we have maintained, deprives a court of adjudicatory authority over the case, necessitating dismissal — a "drastic" result. *Shinseki,* 562 U.S., at 435, 131 S.Ct. 1197; *Bowles,* 551 U.S., at 213, 127 S.Ct. 2360 ("[W]hen an `appeal has not been prosecuted... within the time limited by the acts of Congress, it must be dismissed for want of

jurisdiction.'" (quoting *United States v. Curry,* 6 How. 106, 113, 12 L.Ed. 363 (1848))). The jurisdictional defect is not subject to waiver or forfeiture[1] and may be raised at any time in the court of first instance and on direct appeal. *Kontrick,* 540 U.S., at 455, 124 S.Ct. 906.[2] In contrast to the ordinary operation of our adversarial system, courts are obliged to notice jurisdictional issues and raise them on their own initiative. *Shinseki,* 562 U.S., at 434, 131 S.Ct. 1197." *Id.*

"Mandatory claim-processing rules are less stern. If properly invoked, mandatory claim-processing rules must be enforced, but they may be waived or forfeited. *Manrique v. United States,* 581 18*18 U.S. ___, ___, 137 S.Ct. 1266, 1271-1272, 197 L.Ed.2d 599 (2017). "[C]laim-processing rules ... [ensure] relief to a party properly raising them, but do not compel the same result if the party forfeits them." *Eberhart v. United States,* 546 U.S. 12, 19, 126 S.Ct. 403, 163 L.Ed.2d 14 (2005) (*per curiam*)." *Id.*

In the instant matter, Hampton raised the mandatory claims processing nature of FRAP Rule 4(a)(4)(B)(ii)., that directly contradicts with Congress's legislated

jurisdictional directive under 28 U.S.C 28 U.S. Code § 2107 stating: **(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. (FRAP Rule 3(a)1).

FRAP Rule 4(a)(4)(B)(ii), through its misapplication, as jurisdictional denies Congress of its legislative power by rendering 28 U.S. Code § 2107, above void in contemporaneous practis. It violates 28 USC 2007, that the Supreme court, "(b) **Such rules shall not abridge, enlarge or modify any substantive right**."

Clearly, FRAP Rule 4(a)(4)(B)(ii) is a wild card that this Court needs to address squarely, or litigants stand to be have their civil liberties – right of appeal, undermined.

C. **Role of Supreme Court In Giving Direction and Leadership in Civil Rights Litigation, Including Title VII**.

The Supreme Court has held that under *Brown v. Western R. Co. of Alabama*, 338 U. S. 294, 296 (1949), "federal right cannot be defeated by the forms of local practice."

"First, it ignores our prior assessment of "the dominant characteristic of civil rights actions: *they belong in court."* *Burnett,* 468 U. S., at 50 (emphasis added.)

"The central objective of the Reconstruction-Era civil rights statutes...is to ensure that individuals whose federal constitutional or statutory rights are abridged may recover damages or secure injunctive relief." *Burnett*, 468 U.S., at 55.

The Supreme Court has been at the heart and soul of civil rights litigation from its onset. Title VII claims are essentially civil rights within the context of employment. Those civil rights require serious direction and uniformity from the Supreme Court to create one "federal" law. Court appointment of an attorney where vesture of rights, previously given to the appellant, in the District Court, later withdrawn by the Circuit court is a question of national importance because it goes to the root of what federal law is – one legal system, with no avenues for forum shopping.

When an appellant litigates in one circuit, they should expect the same treatment offered in the Ninth Circuit or the Second Circuit, on the issue regarding FRAP Rule

4(a)(4)(B)(ii). It should not boil down to an unlucky hand at the Second Circuit. But instead, a uniform directive from the Supreme Court what FRAP Rule 4(a)(4)(B)(ii), is and is not. A writ addressing this Rule, is long overdue and in the interest of justice.

II. This Case is a Vehicle to Clarify Both the Main Circuit Split (Whether Rule 4(a)(4)(B)(ii) Is Jurisdictional Or Claims Processing) And How Rule 4(a)(4)(B)(ii) Relates To FRAP Rule 3 (a) 1.

The Supreme Court has held that:

"The guiding consideration is that the administration of justice should reasonably appear to be disinterested as well as be so in fact." *Public Utilities Comm'n of D.C. v. Pollak*, 343 U.S. 451, 466-467 (1952).

With Hampton's case, this Court can resolve the Circuit split regarding the application of FRAP Rule 4(a)(4)(B)(ii) and what supports reasonable appearance of fair dealings under the same RULE.

The Supreme Court should state the "core and unified," process necessary for Circuit courts to remain unified on the issue in the absence of a statute. This is not legislation from the bench but resolution of disparate and potentially unconstitutional

circuit court decisions in rule interpretation. Furthermore, such a decision by the Supreme Court will give notice to Congress to play its role in resolving this circuit conflict under the doctrine of separation of powers regarding FRAP Rule 4(a)(4)(B)(ii)**.**

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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