# In the Supreme Court of the United States



PATRICK D. LANDS,

Petitioner,

v.

CITY OF RALEIGH,

Respondent.

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

#### PETITION FOR A WRIT OF CERTIORARI

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#### **QUESTION PRESENTED**

Whether the First, Second, Fourth, Eighth, and Tenth Courts of Appeal have misinterpreted this Court's opinion in Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship, 507 U.S. 380, 391-92 (1993) by emphasizing one factor—"the reason for the delay" over all other factors in contrast to the conclusions of the Third, Fifth, Sixth, Seventh, Ninth, Eleventh, and DC circuits which disagree with the primacy of that factor, with the result that the notice of appeal filed one day late by a white male police officer who took FMLA to help his father out in his business and who received no remuneration for the same, and who was terminated in retaliation for doing so, was precluded from being heard on the merits by the Fourth Circuit resulting in the affirmation of the summary judgment decision by the district court.

#### LIST OF PROCEEDINGS

U.S. Court of Appeals for the Fourth Circuit No. 24-1211 and 24-1921

Patrick D. Lands, *Plaintiff-Appellant* v. City of Raleigh, *Defendants-Appellees* 

Final Opinion: April 14, 2025

U.S. District Court, E.D. North Carolina

No. 5:21-cv-00491-BO

Patrick D. Lands, *Plaintiff* v. City of Raleigh, *Defendant* 

Order Granting Defendant's Motion for Summary Judgment: February 7, 2024

Order Denying Rule 60 Motion: August 21, 2024

Order Denying Motion to

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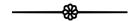
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#### PETITION FOR A WRIT OF CERTIORARI

Patrick D. Lands, by and through undersigned counsel in this consolidated appeal,<sup>1</sup> respectfully petitions this Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit.



#### **OPINIONS BELOW**

The Fourth Circuit's unpublished Opinion dismissing petitioner's appeal on the merits and affirming the judgment of the District Court is included in the Appendix ("App.") at 1a. "This appeal represents a lawyer's nightmare." *Pincay v. Andrews*, 389 F.3d 853, 854 (9th Cir. 2004), *cert. denied*, 544 U.S. 961 (2005) (upon en banc consideration, affirming the district court's order granting an extension of time to file the notice of appeal).

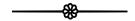


#### **JURISDICTION**

The United States Court of Appeals for the Fourth Circuit affirmed the District Court opinions on April 14, 2025. (App.1a) Petitioner invokes this Court's

<sup>1</sup> The Fourth Circuit ultimately consolidated Lands' appeal of the order granting the City summary judgment, 24-1211, with the motion to reconsider the motion to extend the time to appeal by one day, in 24-1921.

jurisdiction pursuant to 28 U.S.C. § 1254(1) and files this petition within the time required.



#### STATUTORY PROVISIONS INVOLVED

## 28 U.S.C. § 2107 Time for Appeal to Court of Appeals

- (a) Except as otherwise provided in this section, no appeal shall bring any judgment, order or decree in an action, suit or proceeding of a civil nature before a court of appeals for review unless notice of appeal is filed, within thirty days after the entry of such judgment, order or decree.
- (b) In any such action, suit, or proceeding, the time as to all parties shall be 60 days from such entry if one of the parties is—
- (1) the United States;
- (2) a United States agency;
- (3) a United States officer or employee sued in an official capacity; or
- (4) a current or former United States officer or employee sued in an individual capacity for an act or omission occurring in connection with duties performed on behalf of the United States, including all instances in which the United States represents that officer or employee when the judgment, order, or decree is entered or files the appeal for that officer or employee.

- (c) The district court may, upon motion filed not later than 30 days after the expiration of the time otherwise set for bringing appeal, extend the time for appeal upon a showing of excusable neglect or good cause. In addition, if the district court finds—
- (1) that a party entitled to notice of the entry of a judgment or order did not receive such notice from the clerk or any party within 21 days of its entry, and
- (2) that no party would be prejudiced,
  the district court may, upon motion filed
  within 180 days after entry of the judgment
  or order or within 14 days after receipt of
  such notice, whichever is earlier, reopen the
  time for appeal for a period of 14 days from
  the date of entry of the order reopening the
  time for appeal.
- (d) This section shall not apply to bankruptcy matters or other proceedings under Title 11.

# Fed. R. App. P. 4 Appeal as of Right—When Taken

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

- (B) The notice of appeal may be filed by any party within 60 days after entry of the judgment or order appealed from if one of the parties is:
  - (i) the United States;
  - (ii) a United States agency;
  - (iii) a United States officer or employee sued in an official capacity; or
  - (iv) a current or former United States officer or employee sued in an individual capacity for an act or omission occurring in connection with duties performed on the United States' behalf—including all instances in which the United States represents that person when the judgment or order is entered or files the appeal for that person.
- (C) An appeal from an order granting or denying an application for a writ of error coram nobis is an appeal in a civil case for purposes of Rule 4(a).
- (2) Filing Before Entry of Judgment. A notice of appeal filed after the court announces a decision or order but before the entry of the judgment or order is treated as filed on the date of and after the entry.
- (3) Multiple Appeals. If one party timely files a notice of appeal, any other party may file a notice of appeal within 14 days after the date when the first notice was filed, or within the

time otherwise prescribed by this Rule 4(a), whichever period ends later.

- (4) Effect of a Motion on a Notice of Appeal.
  - (A) If a party files in the district court any of the following motions under the Federal Rules of Civil Procedure—and does so within the time allowed by those rules—the time to file an appeal runs for all parties from the entry of the order disposing of the last such remaining motion:
    - (i) for judgment under Rule 50(b);
    - (ii) to amend or make additional factual findings under Rule 52(b), whether or not granting the motion would alter the judgment;
    - (iii) for attorney's fees under Rule 54 if the district court extends the time to appeal under Rule 58;
    - (iv) to alter or amend the judgment under Rule 59;
    - (v) for a new trial under Rule 59; or
    - (vi) for relief under Rule 60 if the motion is filed within the time allowed for filing a motion under Rule 59.

(B)

(i) If a party files a notice of appeal after the court announces or enters a judgment—but before it disposes of any motion listed in Rule

- 4(a)(4)(A)—the notice becomes effective to appeal a judgment or order, in whole or in part, when the order disposing of the last such remaining motion is entered.
- (ii) A party intending to challenge an order disposing of any motion listed in Rule 4(a)(4)(A), or a judgment's alteration or amendment upon such a motion, must file a notice of appeal, or an amended notice of appeal—in compliance with Rule 3(c)—within the time prescribed by this Rule measured from the entry of the order disposing of the last such remaining motion.
- (iii) No additional fee is required to file an amended notice.
- (5) Motion for Extension of Time.
  - (A) The district court may extend the time to file a notice of appeal <u>if</u>:
    - (i) a party so moves no later than 30 days after the time prescribed by this Rule 4(a) expires; and
    - (ii) regardless of whether its motion is filed before or during the 30 days after the time prescribed by this Rule 4(a) expires, that party shows excusable neglect or good cause.
  - (B) A motion filed before the expiration of the time prescribed in Rule 4(a)(1) or (3) may be ex parte unless the court requires

- otherwise. If the motion is filed after the expiration of the prescribed time, notice must be given to the other parties in accordance with local rules.
- (C) No extension under this Rule 4(a)(5) may exceed 30 days after the prescribed time or 14 days after the date when the order granting the motion is entered, whichever is later.
- (6) Reopening the Time to File an Appeal. The district court may reopen the time to file an appeal for a period of 14 days after the date when its order to reopen is entered, but only if all the following conditions are satisfied:
  - (A) the court finds that the moving party did not receive notice under Federal Rule of Civil Procedure 77(d) of the entry of the judgment or order sought to be appealed within 21 days after entry;
  - (B) the motion is filed within 180 days after the judgment or order is entered or within 14 days after the moving party receives notice under Federal Rule of Civil Procedure 77(d) of the entry, whichever is earlier; and
  - (C) the court finds that no party would be prejudiced.
- (7) Entry Defined.
  - (A) A judgment or order is entered for purposes of this Rule 4(a):

- (i) if Federal Rule of Civil Procedure 58(a) does not require a separate document, when the judgment or order is entered in the civil docket under Federal Rule of Civil Procedure 79(a); or
- (ii) if Federal Rule of Civil Procedure 58(a) requires a separate document, when the judgment or order is entered in the civil docket under Federal Rule of Civil Procedure 79(a) and when the earlier of these events occurs:
  - the judgment or order is set forth on a separate document, or
  - 150 days have run from entry of the judgment or order in the civil docket under Federal Rule of Civil Procedure 79(a).
- (B) A failure to set forth a judgment or order on a separate document when required by Federal Rule of Civil Procedure 58(a) does not affect the validity of an appeal from that judgment or order.

#### STATEMENT OF THE CASE

#### A. Background

Patrick Lands was a white male police officer working for the City of Raleigh when his father was involved in a serious accident resulting in serious injuries. (App.20a, 162a-168a) As a result, Lands and other family members assembled a care team to assist with his father's activities of daily living, which included helping him keep his business going during his recovery. (Id.) After Lands returned to work, a citizen made a complaint which resulted in an investigation into the activities of daily living with which Lands assisted during his father's recovery and about which the City had inquired not at all during his leave period. (*Id.*) As a result, the City concluded that even though he received no remuneration from helping his father with his activities of daily living including helping his father keep his small business afloat that his doing so was grounds for his termination because it was an improper use of his FMLA and other leave. (App.25a-33a)

While the district court denied the motion to dismiss Lands' complaint, it ultimately granted summary judgment against Lands, (App.19a-33a), even though Lands provided evidence that other officers who had engaged in egregious misconduct had not been discharged and that the City's reason for discharging his was pretextual for FMLA discrimination/retaliation (*Id.*). Petitioner's attorneys learned from opposing counsel that they missed the deadline for filing a timely notice of appeal by one day, which resulted

from omitting Leap Day in the calculation of when the appeal was due. (App.39a) The district court denied the petitioner's motion to extend the appeal deadline by one day, finding that the reason for the delay was the most important fact in determining excusable neglect. (App.17a) The court then denied the motion to reconsider that decision rejecting petitioner's argument that the court had committed an error of law in failing to correctly apply the *Pioneer* factors. (App.11a-14a) On appeal, the Fourth Circuit dismissed the appeal on the merits as untimely (24-1211) and found no error in the district court's application of the *Pioneer* factors (24-1921). (App.1a-3a)

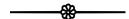
#### B. Summary of Law

This case arises out of the provisions in Fed. R. App. 4(a)(5) and 28 U.S.C. § 2107 which allow a district court to grant a motion to extend the time for filing a notice of appeal if certain circumstances are present, in this case, namely whether the party so moving can show "excusable neglect or good cause." This case also arises out of the district court's application of the "Pioneer factors" derived from this Court's opinion thirty years ago in *Pioneer Inv. Servs. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380 (1993).

In ruling on petitioner's counsel's motion to extend the appeal deadline by one day, the district court purportedly applied the *Pioneer* factors. The court accurately described those factors as "prejudice to the opposing party, length of delay and potential impact on judicial proceedings, reason for the delay (including whether it was within the reasonable control of the movant) and whether the movant acted in good faith." (App.17a) The court then concluded that even though the majority of the factors weighed in favor of granting

the motion, "the <u>most important factor</u>—the reason for the delay—weighs decidedly against him." (*Id.*) In addition, in applying the *Pioneer* factors to evaluate the presence of <u>excusable neglect</u>, the court failed to consider whether petitioner, in the alternative, had <u>good cause</u><sup>2</sup> for its one-day delay.

There is a conflict in the circuits about the proper application of the *Pioneer* factors, with the First, Second, Fourth, Eighth, and Tenth Courts of Appeal construing this Court's opinion by emphasizing one factor—"the reason for the delay"—over all other factors in contrast to the conclusions of the Third, Fifth, Seventh, Ninth, Eleventh, and DC circuits.



#### REASONS FOR GRANTING THE PETITION

This petition should be granted: (1) because there is conflict amongst the circuits on the controlling issue of federal law about whether one *Pioneer* factor is more important than all of the others when engaging in the "equitable determination" of "whether a party's neglect of a deadline is excusable;" (2) because this court has previously considered this issue important enough to grant certiorari and provided guidance in *Pioneer*, but the lower courts have disagreed on the meaning of the Court's guidance and now need clarification about this

<sup>&</sup>lt;sup>2</sup> "While there appears to be no clear test for good cause, the Fourth Circuit has noted that good cause is a more lenient standard than excusable neglect." *Roman v. Sam's Club/Walmart*, No. 7:10-CV-524, 2013 WL 1643936, at \*2 (W.D. Va. Apr. 16, 2013) (citing *Thompson v. E.I. DuPont de Nemours & Co.*, 76 F.3d 530, 533 (4th Cir. 1996)).

issue; and (3) because the federal trial and appellate courts need guidance about what the FMLA permits an employee to do and for how many hours a day while assisting a family member with the "activities of daily living."

- I. THERE IS A CONFLICT AMONG THE CIRCUITS AS TO WHETHER ONE *PIONEER* FACTOR IS MORE IMPORTANT THAN THE REST WHEN DETERMINING WHETHER EXCUSABLE NEGLECT OR GOOD CAUSE EXISTS TO GRANT A MOTION TO FILE A NOTICE OF APPEAL ONE DAY LATE UNDER 28 U.S.C. § 2107 AND FED. R. APP. P. 4(a)(5)(a)(ii), IN THIS CASE, A ONE DAY LATE
  - A. The First, Second, Fourth, Eighth, and Tenth Circuits Have Held That the "Reason for the Delay" Is the Most Important or Dispositive Factor

There is a clear split amongst the circuits as to whether any *Pioneer* factor is most important.<sup>3</sup> The First, Second, Fourth, and Eighth Circuits have held that the "reason for the delay" is the most important *Pioneer* factor.

In Alexander v. Saul, 5 F.4th 139, 149 (2d Cir. 2021), the court stated that "[i]ndeed, 'we...have

<sup>&</sup>lt;sup>3</sup> In addition to this confusion of the relative weight of the factors, there is also confusion as to the role of the factor "whether the delay was in the reasonable control of the late party." See Cmty. Fin. Serv. Bank v. Edwards (In re Edwards), 748 F. App'x 695, 699 (6th Cir. 2019) (noting its decision was inconsistent as to whether there were four or five Pioneer factors or whether "the third factor [is] inclusive of "whether the delay was within the reasonable control of the late party." Cmty. Fin. Serv. Bank v. Edwards (In re Edwards), 748 F. App'x 695, 699 (6th Cir. 2019)).

focused on . . . "the reason for the delay, including whether it was within the reasonable control of the movant" 'despite 'the existence of the four-factor test in which three of the factors usually weigh in favor of the party seeking the extension."); ("We begin with the most important factor: the reason for the delay.")

In Tubens v. Doe. 976 F.3d 101, 105 (1st Cir. 2020). the First Circuit rejected the argument that it was error for the district court to fail to weigh the other three factors and focus solely on "the reason for the delay." 976 F.3d at 104. The Court cited to several other of its cases, stating that "[t]his court, in contrast, has not always enumerated each Pioneer factor and analyzed them separately." Id. (citing United States v. Union Bank for Sav. & Inv. (Jordan), 487 F.3d 8, 24 (1st Cir. 2007) (citing all four factors but analyzing only reason for delay and prejudice); Aguiar-Carrasquillo v. Agosto-Alicea, 445 F.3d 19, 28 (1st Cir. 2006); Dimmitt v. Ockenfels, 407 F.3d 21, 24 (1st Cir. 2005) (characterizing *Pioneer* as enumerating some factors pertinent to [the] excusable neglect' inquiry" and treating the reason for delay as "the most critical"). *Id*. at 105.

The Second Circuit has implied that *Pioneer* supports a conclusion that courts should accord "dispositive weight" to the third factor: "the reason for the delay, including whether it was within the reasonable control of the movant." *Alexander v. Saul*, 5 F.4th 139, 149 (2d Cir. 2021) (citing *Pioneer*, 507 U.S. at 395). The court also maintained that "[a]ffording dispositive weight to that factor accords with our precedents, which have described the reason for the delay as the most important *Pioneer* factor" and noted that "[s]everal of our sister circuits follow the same approach." *Id.* 

(citing cases from the Sixth, Tenth, First, Eighth, and Fourth Circuits).

Likewise, and cited to by the district court below in this case, the Fourth Circuit inconsistently acknowledges, on one hand, that circumstances within a party's control including "inadvertence, mistake, or carelessness, as well as . . . intervening circumstances beyond the party's control" may be neglect and that "excusable" has been defined by its precedents as "an equitable [inquiry], taking account of all relevant circumstances surrounding the party's omission,' including 'the danger of prejudice to the [nonmovant], the length of the delay and its potential impact on judicial proceedings, the reason for the delay, including whether it was within the reasonable control of the movant, and whether the movant acted in good faith." Justus v. Clarke, 78 F.4th 97, 108 (4th Cir. 2023)(citing Thompson v. E.I. DuPont de Nemours & Co., 76 F.3d 530, 533 (4th Cir. 1996)). However, the Court also holds on the other hand that ""[t]he most important of the[se] factors . . . for determining whether 'neglect' is 'reasonable" is the reason for the delay." *Id.* (citing *Thompson*. 76 F.3dat 534).

The Eighth Circuit noted that the district court below had provided "a rather truncated analysis of the *Pioneer* factors in its written order, finding Mink's proffered reason for the delay inadequate to establish excusable neglect." *United States v. Mink*, 107 F.4th 824, 827 (8th Cir. 2024). The Court refused to reverse on this basis finding that the district court's limited analysis in this respect "does not *ipso facto* warrant reversal" and conducted its own "independent consideration" of the *Pioneer* factors. *Id.* In doing so, it considered "the most important factor: the reason for

the delay," *id.*, as well as whether "[t]he delay was . . . within [petitioner's] reasonable control," *id.* at 828.

The Tenth Circuit, like the district court below applied the *Pioneer* factors to the facts in the case before it, but reversed the district court's finding of excusable neglect even though it agreed with the district court that "[t]hree of the relevant circumstances noted in *Pioneer* weigh in favor of a finding of excusable neglect." *United States v. Torres*, 372 F.3d 1159, 1162 (10th Cir. 2004). In explaining its decision, the court stated:

Nonetheless, "fault in the delay remains a very important factor—perhaps the most important single factor—in determining whether neglect is excusable." [Citations omitted.] ("We have observed that the four *Pioneer* factors do not carry equal weight; the excuse given for the late filing must have the greatest import." (internal quotation marks and bracket omitted)).

United States v. Torres, 372 F.3d 1159, 1163 (10th Cir. 2004) (citing Lowry v. McDonnell Douglas Corp., 211 F.3d 457, 463 (8th Cir. 2000) as standing for the same proposition).

- B. The Fifth, Seventh, Ninth and Eleventh Circuits Disagree With the First, Second, Fourth, Eighth, and Tenth Circuits for Different Reasons and the Third and DC Circuits Emphasize that When the Reason for the Delay is Attorney Error, that Error May Still be Excusable Neglect
  - 1. The Seventh and Eleventh Circuits Disagree That the Reason for the Delay Is the Most Important Factor and Find That Other *Pioneer* Factors are More Important

The Seventh Circuit's precedents focus on the nature of the balancing test required when determining the existence of excusable neglect. They accord primary importance to 1) the degree to which the non-movant is prejudiced and 2) the good faith of the movant. *Abuelyaman v. Ill. State Univ.*, 667 F.3d 800, 808 (7th Cir. 2011). In explaining the balancing nature of the excusable neglect determination, the court explained:

"excusable neglect" is far from a toothless standard. Indeed, "[a]n unaccountable lapse is not excusable neglect. . . . The term 'excusable neglect' . . . refers to the missing of a deadline as a result of such things as misrepresentations by judicial officers, lost mail, and plausible misinterpretations of ambiguous rules." [Citations omitted.] But the "excusable neglect" standard is not a merciless one, either. At bottom, "[t]he test as to what constitutes excusable neglect is an 'equitable one, taking account of all relevant circumstances surrounding the party's omission." [United States

v.] Brown, 133 F.3d at 996 (quoting Pioneer [citation omitted]). Thus, "the standard is a balancing test, meaning that a delay might be excused even where the reasons for the delay are not particularly compelling." Id. at 997. Analysis of the circumstances surrounding a motion for an extension of time to file an appeal involves the consideration of several factors, the most important of which are the degree to which the appellee is prejudiced and the good faith of the appellant. Id. at 996 (citing Pioneer, 507 U.S. at 398).

*Id.* Thus, the court emphasized both the balancing nature of the test and prioritized "the degree to which the appellee is prejudiced and the good faith of the appellant," which in this case would excuse a notice of appeal filed one day late and solely due to a failure to consider a day in the calendar which occurs only every four years.

Like the Seventh Circuit, the Eleventh Circuit also prioritizes the absence of prejudice, but it also noted that under *Pioneer*, the Supreme Court "accorded primary importance" to "the interest of efficient judicial administration." *Cheney v. Anchor Glass Container Corp.*, 71 F.3d 848, 850 (11th Cir. 1996), *Accord United States v. Hameen*, Nos. 19-14279, 22-12968, 2023 U.S. App. LEXIS 24684, at \*13 (11th Cir. Sep. 18, 2023), *rev'd on other grounds*. \_\_\_ U.S. \_\_\_, 144 S.Ct. 2712 (2024) (quoting *Cheney* and stating "[t]he Supreme Court accorded 'primary importance' to the absence of prejudice to the nonmoving party and to the interest of efficient judicial administration.")

In considering whether an untimely demand for a trial *de novo* after arbitration was due to excusable

neglect, the Eleventh Circuit described the reason for the delay and concluded that although within the control of the movant,

[the] noncommunication and resulting inaction amounts only to an "omission[] caused by carelessness." [Pioneer, 507 U.S. at 388] []. In other words, their failure to comply with the filing deadline is attributable to negligence. There is no indication that counsel deliberately disregarded Local Rule 8.06. Anchor Glass has not argued that Cheney intended to delay the trial, or that he sought an advantage by filing late. The nonfiling was simply an innocent oversight by counsel. We find no bad faith that would warrant forfeiture of Cheney's right to a full trial of his cause. Id.

*Id.* at 850. Likewise, in this case, counsel did not disregard the thirty-day deadline and engaged in no bad faith, but simply failed to count February 29th, a day which occurs only every four years, when calculating the filing date.

## 2. The Fifth, and Ninth Circuits Have Declined to Give Any Particular Weight to Any of the *Pioneer* Factors

Undertaking a review of an appeal of a district court's reversal of a bankruptcy court's determination that no excusable neglect existed, the Fifth Circuit engaged in a detailed review of the district court's analysis of the four *Pioneer* factors. W. Wilmington Oil Feild v. Nabors Corp. Servs. (In re CJ Holding Co.), 27 F.4th 1105, 1112 (5th Cir. 2022) and noted that "some lower courts within this circuit appear divided as to

the most important factor." *Id.* In doing so, the court explicitly rejected the importance placed by the Seventh and Eleventh Circuits on the "prejudice" factors, noting cases which held "the prejudice factor is more important than the other three *Pioneer* factor." *Id.* The court also noted that other courts, including "at least two of our sister circuits have held that the reason-for-delay factor is paramount." *Id.* The Fifth Circuit declined to "extend our precedent here to hold that any other *Pioneer* factor is more important than the others."

The Ninth Circuit first "declined to give primary weight to any one of the *Pioneer* factors, concluding that 'the weighing of *Pioneer*'s equitable factors' must be left to the discretion of the district court in every case" in *Pincay v. Andrews*, 389 F.3d 853 (9th Cir. 2004). *Mendez v. Knowles*, 556 F.3d 757, 765 (9th Cir. 2009) (quoting *Pincay*, 389 F.3d at 860, where paralegal misread rule and confused the 30 day notice of appeal deadline for non-government parties with the 60 day deadline when the government is a party).

As the *Pincay* court aptly described,

[t]his appeal represents a lawyer's nightmare. A...law firm, with what it thought was a...system to determine and calendar filing deadlines, missed a critical one: the 30-day time period in which to file a notice of appeal under Federal Rule of Appellate Procedure 4(a)(1)(A).

389 F.3d at 854. But, as the court noted, the rule of appellate procedure (and 28 U.S.C. § 2107)

provides for a grace period of 30 days within which a lawyer in such a fix may ask the

district court for an extension of time, and the court, in the exercise of its discretion, may grant the extension if it determines that the neglect of the attorney was "excusable."

*Id.* (paralegal misread rule and confused the 30 day notice of appeal deadline for non-government parties with the 60 day deadline when the government is a party).

As the court further explained,

[t]he misreading of the rule was a critical error that, had the district court viewed the situation differently, would have ended the litigation then and there with an irreparably adverse result for Andrews. The district court, however, found the neglect excusable and granted the motion for an extension of time to file the notice of appeal."

*Id.* at 855. Pincay appealed the Court's order allowing Andrews additional time to file his appeal, and two the three judges on the panel

concluded that Andrews's attorney had improperly delegated the function of calendaring to a paralegal, and held that the attorney's reliance on a paralegal was inexcusable as a matter of law. *Pincay v. Andrews*, 351 F.3d 947, 951-52 (9th Cir. 2003). It ordered the appeal dismissed. The dissent would have applied a more flexible and deferential standard and affirmed the district court. *Id.* at 952-56 (Kleinfeld, J., dissenting).

A majority of the active non-recused judges of the court voted to rehear the case en banc to consider whether the creation of a per se rule against delegation to paralegals, or indeed any per se rule involving missed filing deadlines, is consistent with the United States Supreme Court's leading authority on the modern concept of excusable neglect, *Pioneer Investment Services Co. v. Brunswick Associated Ltd. Partnership*, 507 U.S. 380, 123 L.Ed.2d 74, 113 S.Ct. 1489 (1993). We now hold that per se rules are not consistent with *Pioneer*, and we uphold the exercise of the district court's discretion to permit the filing of the notice of appeal in this case.

Id.

Indeed, the status of *Pioneer* as the "leading authority on the modern concept of excusable neglect" is exactly at issue in this appeal. As the Ninth Circuit correctly noted, "[t]he larger question in this case is whether the misreading of the clear rule could appropriately have been considered excusable." Id. at 856. In contemplating "[r]esolution of that question," the court exerted "some effort to try to distill any principles that have evolved in the 10 years since *Pioneer*." Id. Noting that the Pioneer Court had "adopted a broader and more flexible test for excusable neglect," the Ninth Circuit noted that its cases had mimicked *Pioneer*'s "flexible approach" and adopted an approach in which the court would "ordinarily examine all of the circumstances involved rather than holding that any single circumstance in isolation compels a particular result regardless of the other factors." Id.

Noting some ambiguity in its precedent, the *Pincay* court noted that the Ninth Circuit's "confusion is not isolated" and that "[t]he authorities interpreting

Pioneer in a number of circuits are in some disarray. Id. at 857. The Court then discussed that state of the law at that time in the Fifth, Seventh, and Eleventh Circuits and the differing approaches taken by each. The Court then noted that nonetheless there was agreement on the standard of whether the matter was within the discretion of the district court:

In this case the mistake itself, the misreading of the Rule, was egregious, and the lawyer undoubtedly should have checked the Rule itself before relying on the paralegal's reading. Both the paralegal and the lawyer were negligent. That, however, represents the beginning of our inquiry as to whether the negligence is excusable, not the end of it. The real question is whether there was enough in the context of this case to bring a determination of excusable neglect within the district court's discretion.

#### Id. at 858-59.

Turning to the application of the *Pioneer* factors, the court summarized the parties' positions:

The parties seem to agree that three of the factors militate in favor of excusability, and they focus their arguments on the remaining factor: the reason for the delay. Appellee Andrews characterizes the reason for the delay as the failure of a "carefully designed" calendaring system operated by experienced paralegals that heretofore had worked flawlessly. Appellant Pincay, on the other hand, stresses the degree of carelessness in the failure to read the applicable Rule.

Id. at 859. The Court also noted that it was

mindful that Rule 4 itself provides for leniency in limited circumstances. It could have been written more rigidly, allowing for no window of opportunity once the deadline was missed. Many states' rules provide for an extension of the time for filing a notice of appeal under few, if any, circumstances. [Citations omitted.] The federal rule is a more flexible one that permits a narrow 30-day window for requesting an extension . . . .

*Id.* (noting that "several of our sister circuits have tried to fashion a rule making a mistake of law per se inexcusable under Rule 4.")

The approach adopted by the Ninth Circuit was described thusly:

the correct approach is to avoid any per se rule. *Pioneer* cautioned against "erecting a rigid barrier against late filings attributable in any degree to the movant's negligence." 507 U.S. at 395 n.14. There should similarly be no rigid legal rule against late filings attributable to any particular type of negligence.

Id. at 860.

In a concurring opinion in *Pincay*, Judge Berzon noted

Pioneer portends a balancing test, and does not ascribe determinative significance to any single factor. In other words, whether neglect is "excusable" is the conclusion one reaches after considering the pertinent factors, not an independent element with moral content. Pioneer thus indicates that a district court may find neglect "excusable" if it is caught quickly, hurts no one, and is a real mistake, rather than one feigned for some tactical reason—even if no decent lawyer would have made that error. There is no linguistic flaw in terming such errors "excusable," meaning nothing more than "appropriate to excuse."

Id. 389 F.3d at 860. The fact that this Court denied the petition for certiorari in *Pincay* also makes the Ninth Circuit's approach especially instructive and the Court itself re-affirmed its holding in *Mendez v. Knowles*, 556 F.3d 757, 767 ((9th Cir. 2009) (holding "[t]here should...be no rigid legal rule against late filings attributable to any particular type of negligence.").

## 3. The Third Circuit and DC Circuits Have Rejected Per Se Rules That Attorney Error Is Never Excusable Neglect

The Third Circuit addressed the untimely filing of a notice of appeal in *Ragguette v. Premier Wines & Spirits*, 691 F.3d 315 (3d Cir. 2012) and engaged in a lengthy discussion of the "reason for the delay" factor in that case, eventually holding that the district court had erred in granting the motion filed on March 5, 2010, to extend time finding excusable neglect based on the reasons for excusable neglect, namely trial preparation for other cases and a glitch in the office procedures which failed to result in a notice of appeal being filed of the order granting summary filed on January 5, 2010.

The court noted it had previously set down guidance in the form of a "form of a non-exclusive list of factors to guide the district court's exercise of discretion" when distinguishing between "a qualitative distinction between inadvertence which occurs despite counsel's affirmative efforts to comply and inadvertence which results from counsel's lack of diligence." *Id.* at 325 (citing *Consolidated Freightways Corp. of Del. v. Larson*, 827 F.2d 916, (1987)). The Third Circuit had also previously clarified that "no one [*Pioneer*] factor is dispositive." *Kanoff v. Better Life Renting Corp.*, 350 Fed. Appx. 655, 657 (3d Cir. 2009)

Explaining its holding in *Larson*, the *Ragguette* court added:

We then determined, inter alia, that: (1) the attorney's mistake was not the result of professional incompetence; (2) he was not attempting to create some sort of facile excuse to extend the time to appeal and, on the contrary, gained nothing from his error; (3) this type of human error, though avoidable, was not readily foreseeable; and (4) the attornev otherwise acted with due (if not perfect) diligence and in good faith in attempting to comply with Rule 4(a)(5) (including, among other things, drafting the notice of appeal within the 30-day limit, serving the notice of appeal on opposing counsel in a timely fashion, and then expeditiously filing a motion for an extension of time). Id. at 919-20. "This court interprets Rule 4(a)(5) to require a finding of excusable neglect in those instances where the court, after weighing the relevant considerations is satisfied that counsel has exhibited

substantial diligence, professional competence and has acted in good faith to conform his or her conduct in accordance with the rule, but as a result of some minor neglect, compliance was not achieved." Id. at 920. While emphasizing that the mistake there could have been detected by careful proofreading, we believed that even the most diligent attorneys are subject to these kinds of common human errors and, in particular, do not need to be reminded to address their mail accurately or to caption their cases properly. Id. Even though the district court's approach might have effectively deterred incompetence or callous disregard for the rules in some circumstances, it would serve "little deterrent purpose" in the context of human errors that are "not readily capable of regulatory control." Id. We further noted that, "[w]here as here the delay was minimal, and where the court has determined that the delay was not the result of any bad faith but rather occurred despite counsel's substantially diligent efforts at compliance, the judicial interest in deciding cases on the merits outweighs the [\*\*30] interests in finality." Id.

Ragguette, 691 F.3d at 326. The Court acknowledged that the other *Pioneer* factors were required to be considered, stating "while prejudice to the opposing party, disruption of efficient judicial administration, and bad faith are frequently absent, the mere fact that 'those factors may nearly always favor' the moving party does not mean that they can be ignored." *Id.* at 331. However, the Court explicitly found that the other

three factors in the case were "clearly insufficient to outweigh the 'reason for the delay' factor." *Id*.

The D.C. Circuit has also declined to adopt a per se rule that garden variety attorney inattention can never constitute excusable neglect. *In re Vitamins Antitrust Class Actions*, 327 F.3d 1207, 1209 (D.C. Cir. 2003).

The *Pioneer* standard precludes the adoption of any such *per se* rule. The Court in *Pioneer* purposely fashioned a flexible rule which, by its nature, counsels against the imposition of a *per se* rule on attorney neglect. "Although inadvertence, ignorance of the rules, or mistakes construing the rules do not usually constitute 'excusable' neglect, it is clear that 'excusable neglect' . . . is a somewhat 'elastic concept' and is not limited strictly to omissions caused by circumstances beyond [\*\*\*6] the control of the movant."

Id. at 1209-1210. Moreover, the DC Circuit, like the Fifth and Ninth Circuits, see supra, has declined to give any particular Pioneer factor any particular weight. Id. (citing Yesudian ex rel. U.S. v. Howard Univ., 270 F.3d 969, 971 (D.C. Cir. 2001) (applying the excusable neglect standard without emphasis on any particular Pioneer factor.)) Notably also the D.C. Circuit has found the Pioneer factors to be non-exclusive. FG Hemisphere Assocs. v. Democratic Republic of Congo, 447 F.3d 835, 838 (D.C. Cir. 2006)(considering a case similar to the one at bar involving a Rule 60(b) motion to reconsider based on an untimely response to a motion.)

II. THIS COURT HAS ALREADY DEEMED THIS ISSUE IMPORTANT ENOUGH TO GRANT CERTIORARI IN THE *PIONEER* CASE BUT THE CIRCUIT COURTS HAVE EXTRAPOLATED HOLDINGS FROM *PIONEER* THAT ARE INCONSISTENT WITH THE COURT'S OPINION IN THAT CASE

In addition to a conflict among the Circuits, this Court previously found the interpretation of the phrase "excusable neglect" in the context of the filing of a late pleading to be sufficiently important to grant a petition for writ of certiorari in *Pioneer*, 507 U.S. at 382 (considering a bankruptcy court's refusal of a late filed proof of claim). The phrase "excusable neglect" has been considered in the context of this case and similarly a court's finding of no excusable neglect is not only a lawyer's nightmare but is also a complete bar to any consideration of a petitioner's claims on the merits.

The conflict in the lower court opinions that brought *Pioneer* to this Court's docket for an identification of the factors are similar to the circumstances that beg for clarification in the case at bar because they beg this Court to provide clarity and for uniformity in <a href="https://www.how.no.edu/how.

The *Pioneer* district court originally remanded the matter to the bankruptcy court with a direction to consider a number of factors including prejudice to the debtor, the length of the delay and its impact on efficient court administration, whether the delay was beyond the reasonable control of the person whose duty it was to file the proof of claim, whether creditor filing the late proof of claim acted in good faith, and whether the clients should be penalized for their cour-

sel's mistake or neglect. 507 U.S. at 385. After weighing the factors and attaching "considerable importance" to certain factors, the bankruptcy court again affirmed its ruling.

The Sixth Circuit reversed, finding the district court's factors were "helpful" but not necessarily "exhaustive," and found that the fifth factor favored the creditors, and that the record thus demonstrated excusable neglect. *Id.* at 386. This Court granted certiorari "[b]ecause of the conflict in the Courts of Appeals over the meaning of "excusable neglect." The Court noted the following about the conflict among the Courts of Appeal:

The Courts of Appeals for the Fourth, Seventh, Eighth, and Eleventh Circuits have taken a narrow view of "excusable neglect" under Rule 9006(b)(1), requiring a showing that the delay was caused by circumstances beyond the movant's control. See In re Davis, 936 F.2d 771, 774 (CA4 1991); In re Danielson, 981 F.2d 296, 298 (CA7 1992); Hanson v. First Bank of South Dakota, N. A., 828 F.2d 1310, 1314-1315 (CA8 1987); In re Analytical Systems, Inc., 933 F.2d 939, 942 (CA11 1991). The Court of Appeals for the Tenth Circuit, by contrast, has applied a more flexible analysis similar to that employed by the Court of Appeals in the present case. In re Centric Corp., 901 F.2d 1514, 1517-1518, cert. denied sub nom. Trustees of Centennial State Carpenters Pension Trust Fund v. Centric Corp., 498 U.S. 852, 112 L.Ed.2d 112, 111 S.Ct. 145 (1990). The Courts of Appeals similarly have divided in their interpretations

of "excusable neglect" as found in Rule 4(a)(5) of the Federal Rules of Appellate Procedure. Some courts have required a showing that the movant's failure to meet the deadline was beyond its control, see, e.g., 650 Park Ave. Corp. v. McRae, 836 F.2d 764, 767 (CA2) 1988); Pratt v. McCarthy, 850 F.2d 590, 592 (CA9 1988), while others have adopted a more flexible approach similar to that employed by the Court of Appeals in this case, see, e.g., Consolidated Freightways Corp. of Delaware v. Larson, 827 F.2d 916 (CA3 1987), cert. denied sub nom. Consolidated Freightways Corp. v. Secretary of Transp. of Pennsylvania, 484 U.S. 1032, 98 L.Ed.2d 775, 108 S.Ct. 762 (1988); Lorenzen v. Emp. Ret. Plan of Sperry-Hutchinson Co., 896 F.2d 228, 232-233 (CA7 1990).

## Id. at 387 fn.3 (emphasis added).

Notably, this Court mentioned the applicability of the rule at issue in this case pertaining to the timely filing of notices of appeal in Fed. R. App. P. 4(a) which is the issue in this case. Also, as in *Pioneer*, in this case as described *infra* the Courts of Appeal have taken a variety of approaches on the flexibility scale ("narrow" to "more flexible"). Thus, the fact that the issue of what constitutes excusable neglect more than 30 years ago was important enough to clarify and now once again needs clarification and for the same reasons means that this Court can not be "too clear" about what it meant in *Pioneer* and whether the Courts of Appeal have strayed from the clarification the Court attempted to offer in 1993 with the result that meritorious cases deserving of review are abandoned when

as in this case a one day late notice of appeal is found to preclude review.

- III. IF PIONEER AND THE EXCUSABLE NEGLECT OR GOOD CAUSE STANDARDS ARE APPLIED PROPERLY IN THIS CASE, IT IS CLEAR THAT REVERSAL IS WARRANTED AND THAT THE ISSUE OF WHETHER AN EMPLOYEE ON FMLA LEAVE IS LIMITED IN THE KINDS OF NONREMUNERATIVE ACTIVITIES OF DAILY LIVING IN WHICH THE EMPLOYEE CAN ASSIST WHILE ON FMLA SHOULD BE REVIEWED BY THE FOURTH CIRCUIT
  - A. 28 U.S.C. § 2107 and Fed. R. App. 4(a)(5) (A)(ii) Allow the Extension of a Notice of Appeal Deadline to be Granted If Either Good Cause or Excusable Neglect Is Shown

The Seventh Circuit Court explained that its previous holding that "[t]he more lenient standard of good cause" applied only to "requests for extensions of time made prior to the expiration of the thirty-day appeal period" had been in effect overruled by the 2002 amendments to Fed. R. App. P. 4 which "clarified that the distinction is no longer a temporal one" and that "[t]he advisory committee notes to the 2002 amendments state that Rule 4(a)(5)(A)(ii) was amended to correct the misunderstanding of the Rule that separate standards applied based on when the motion was filed." *Sherman v. Quinn*, 668 F.3d 421, 425 (7th Cir. 2012).

The court further explained that the difference between "good cause" and "excusable neglect" was a question of fault: "[t]he excusable neglect standard applies in situations in which there is fault; in such situations, the need for extension is usually occasioned by something within the control of the movant." *Id.* On the other hand, the good cause standard "applies in situations in which there is no fault—excusable or otherwise." *Id.* . . . . In light of the 2002 amendment to Rule 4(a)(5)(A)(ii), motions filed after the original appeal period expires are no longer subject solely to the excusable neglect standard.

Id. In Sherman, the Court reversed the district court's granting of an extension to file a notice of appeal where the movant's counsel indicated "no facts or reasonable reading of the rule that render the error a 'natural' one. He simply asserts that he was overloaded with obligations and working without an assistant," Id. at 426. The Third Circuit has taken a similar approach where counsel failed to file a notice of appeal electronically. Kanoff v. Better Life Renting Corp., 350 F. App'x 655, 658 (3d Cir. 2009) The court stated:

[p]ut simply, this was not a case where "as the result of some minor neglect, compliance was not achieved." [Citation omitted.] Compliance was not achieved because counsel failed to educate himself about a sea change in filing requirements that had taken place more than three years before the relevant events of the instant case.

Id.

"Good cause" generally refers to a valid, justifiable reason for a party's request or action, often requiring a showing of diligence or necessity. The Third Circuit has described it thusly:

"Good cause" is understood to mean "[a] legally sufficient reason," and it reflects "the burden placed on a litigant (usu. by court rule or order) to show why a request should be granted or an action excused." BLACK'S LAW DICTIONARY 251 (9th ed. 2009). Of course, a proffered reason or "cause" that may be legally sufficient in one context may not be so in another. Federal practice is replete with rules that require a moving party to show "good cause," but determining whether the showing made will justify granting the relief sought can be accomplished only by considering the specific nature and purpose of the rule at issue.

Joseph v. Hess Oil V.I. Corp., 651 F.3d 348, 351-52 (3d Cir. 2011).

"Good cause' is a non-rigorous standard that has been construed broadly across procedural and statutory contexts." Ahanchian v. Xenon Pictures, Inc., 624 F.3d 1253, 1259 (9th Cir. 2010). Good cause has also been described as "a substantial reason amounting in law to a legal excuse for failing to perform an act required by law" and "not a particularly demanding requirement." Landry v. Swire Oilfield Servs., L.L.C., 323 F.R.D. 360, 395-96 (D.N.M. 2018) (quoting BLACK'S LAW DICTIONARY 692 (6th ed.1990) and BLACK'S LAW DICTIONARY 251 (9th ed.2009) ("good cause. . . . A legally sufficient reason.") "Good cause' is usually not difficult to show." Rankin v. City of Niagara Falls, 293 F.R.D. 375, 390 (W.D.N.Y. 2013).

This Court has considered the definitions of "good cause" in several context-specific cases but none of them provide any guidance in the context of motions to extend time to file notices of appeal from a district court decision to the federal courts of appeal. See, e.g., Sebelius v. Auburn Reg'l Med. Ctr., 568 U.S. 145, 157 (2013) (considering whether the good cause standard for extending the time for filing a request for a hearing was jurisdictional and that the agency interpretation of the statute was permissible); Free Enter. Fund v. Pub. Co. Accounting Oversight Bd., 561 U.S. 477, 484 (2010) (holding act creating the oversight board and protecting board members from removal except for good cause not determined by the President but by other tenured officers, none of whom was subject to the President's direct control was incompatible with the Constitution's separation of powers); Lyng v. Int'l Union, 485 U.S. 360, 379 n.5, (1988) (considering definition of "good cause" in unemployment qualification statute); Wimberly v. Labor & Indus. Relations Com. 479 U.S. 511, 516, 107 S.Ct. 821, 824 (1987) (same); Bd. of Educ. v. McCluskey, 458 U.S. 966, 967 (1982) (considering definition of "good cause" in school board's rules providing that a student may be expelled or suspended). Pioneer provides guidance as to the factors to be considered when determining whether excusable neglect exists in the specific context of late filings of proof of claims in bankruptcy courts and arguably Rule 4 motions to extend the time to file a notice of appeal, but not it does not speak to the commonly believed to be less arduous task of showing "good cause" for motions to extend time in those situations.

B. *Pioneer* Requires an Equitable Determination Weighing of All of the Factors More or Less Equally and Does Not Permit Elevating the Factor of "The Reason for the Delay" Over the Importance of the Other Factors

A close reading of the Court's opinion in *Pioneer* and a consideration of the conflicts in the circuits which this Court attempted to resolve leave the unmistakable impression, if not conclusion, that the *Pioneer* Court meant what it said.

First, the Court noted that

[t]here is, of course, a range of possible explanations for a party's failure to comply with a court-ordered filing deadline. At one end of the spectrum, a party may be prevented from complying by forces beyond its control, such as by an act of God or unforeseeable human intervention. At the other, a party simply may choose to flout a deadline.

*Id.* at 387-88. In between, the Court noted that there might be a variety of situations where a party misses a deadline "although for a very good reason" in addition to cases "where a party misses a deadline through inadvertence, miscalculation, or negligence." *Id.* at 388.

This Court specifically rejected the petitioner's argument that a party seeking relief was required to show that the delay "was caused by circumstances beyond its reasonable control." *Id.* 

The Court expressly noted that the argument advanced was "not consonant with either the language

of the Rule or the evident purposes underlying it." *Id.* The Court explained:

First, the Rule grants a reprieve to out-oftime filings that were delayed by "neglect." The ordinary meaning of "neglect" is "to give little attention or respect" to a matter, or, closer to the point for our purposes, "to leave undone or unattended to esp[ecially] through carelessness." WEBSTER'S NINTH NEW COLLEGI-ATE DICTIONARY 791 (1983) (emphasis added). The word therefore encompasses both simple. faultless omissions to act and, more commonly, omissions caused by carelessness. Courts properly assume, absent sufficient indication to the contrary, that Congress intends the words in its enactments to carry "their ordinary, contemporary, common meaning." Perrin v. United States, 444 U.S. 37, 42, 62 L.Ed.2d 199, 100 S.Ct. 311 (1979). Hence, by empowering the courts to accept late filings "where the failure to act was the result of excusable neglect," Rule 9006(b)(1), Congress plainly contemplated that the courts would be permitted, where appropriate, to accept late filings caused by inadvertence, mistake, or carelessness, as well as by intervening circumstances beyond the party's control.

Id.

C. Petitioner Was Deprived of the Court's Consideration of an Important Issue Involving the FMLA, Namely Whether an Employee Can be Penalized for the Type of Nonremunerative Assistance Provided While on FMLA Leave

Lower courts have disagreed with the district court that found that petitioner engaged in activities not permitted under the FMLA while on leave when he assisted his father in his small business, helping him keep it afloat while he was recovering from serious and debilitating injuries. See, e.g., Ballard v. Chicago Park Dist., 741 F.3d 838, 840 (7th Cir. 2014) ("[s]o long as the employee provides 'care' to the family member, where the care takes place has no bearing on whether the employee receives and finding that caring for a family member can include more activities than just participating in "ongoing treatment."); 29 U.S.C. § 2612(a)(1)(C)(a) (noting employee need not be the only individual or family member available to care for the family member and that care for a family member encompasses both physical and psychological care); Cheek v. City of Edwardsville, KS, 514 F. Supp. 2d 1236, 1250 (D. Kan. 2007) ("father had just had open heart surgery . . . [and] [s]he went to his house and 'took care of whatever needed to be taken care of . . . whatever he needed to be done."").

Petitioner was not obligated to have engaged in care for his father 24/7 while on FMLA; an employee has no greater or lesser right to the "benefits and conditions of employment." For example, had petitioner been working, he would have been permitted to assist his father with his business or go on vacation. An employee has no greater or lesser right to the "benefits

and conditions of employment than if the employee had been continuously employed during the FMLA leave period." See Smith v. Diffee Ford-Lincoln-Mercury, Inc., 298 F.3d 955, 960 (10th Cir. 2002) (quoting Gunnell v. Utah Valley State College, 152 F.3d 1252, 1262 (10th Cir. 1998) (quoting 29 C.F.R. § 825.216).

In Scamihorn v. Gen. Truck Drivers, 282 F.3d 1078, 1080 (9th Cir. 2002), the Court reversed summary judgment in favor of employer where a son took off several months from his work to provide assistance and comfort to his father who had fallen into a deep depression after the employee's sister (the father's daughter) was murdered. The Court opined:

The *Scamihorn* family's health problem is of the type the FMLA plainly was intended to address. Although it is a close call whether Scamihorn ultimately can prove he indeed fits within the requisite FMLA criteria, we believe at this stage of the proceedings—viewing the evidence most favorably to him as we must—he has provided sufficient evidence to create triable issues of fact warranting a trial on the merits.

*Id.* In this case, the denial of petitioner's motion for an extension of one day for lack of excusable neglect has resulted in the affirmation of petitioner's termination for taking care of his father by helping him with the activities of daily living, which <u>included</u> some time helping with his business for no compensation.



## CONCLUSION

For the foregoing reasons, Mr. Lands respectfully requests that this Court issue a writ of certiorari to review the judgment of the Fourth Circuit Court of Appeals.

Respectfully submitted,

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