No. 25-187

In the Supreme Court of the United States

SERAFIM GEORGIOS KATERGARIS,

Petitioner,

v.

CITY OF NEW YORK,

Respondent.

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

BRIEF IN OPPOSITION

MURIEL GOODE-TRUFANT
Corporation Counsel of the City of New York
100 Church Street
New York, NY 10007
(212) 356-2500
rdearing@law.nyc.gov

RICHARD DEARING
Counsel of Record
CLAUDE S. PLATTON
HANNAH J. SAROKIN

QUESTION PRESENTED

In 2022, petitioner Serafim Katergaris sued the City of New York under 42 U.S.C. § 1983, alleging the denial of due process in connection with a violation issued by the City in 2015 for a missed boiler-inspection report for his property. Petitioner alleged that he had not learned of the violation until 2021.

The district court granted summary judgment to the City, holding that the claim was untimely under the three-year statute of limitations. It concluded that the City's evidence of proper mailing of a notice of violation to petitioner's address in March 2015 triggered a presumption of receipt under the federal-common-law "mailbox rule." Although petitioner denied receiving the notice, he failed to rebut the presumption because the undisputed evidence established that he did not live at the property during the period when the notice was sent; he failed to proffer any evidence from his then-wife, who did live there; the property had no mailbox, and mail was either left on the ground outside or in a plastic bag tied to the fence; and petitioner conceded that it was "quite possible" that his mail would be delivered and then lost before he became aware of it. The court of appeals affirmed in a nonprecedential decision.

The question presented is: Did the court of appeals correctly hold that petitioner failed to rebut the presumption of receipt?

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Other Authorities

Rules

INTRODUCTION

Under the mailbox rule, evidence establishing that a document was placed in the mail raises a rebuttable presumption of receipt. *Rosenthal v. Walker*, 111 U.S. 185, 193-94 (1884). In this case, the court of appeals held that evidence of proper mailing of a notice of violation to petitioner's address entitled the City to a presumption of receipt and that petitioner failed to rebut the presumption. The court's fact-bound and well-founded application of the mailbox rule does not warrant the Court's review. The petition for certiorari should be denied.

First, this case is a particularly poor vehicle for addressing the question presented. Petitioner asks the Court to review whether a sworn denial of receipt, standing alone, is sufficient to rebut the presumption. But he did not merely deny receipt: he also acknowledged in sworn testimony that he was not living at the premises during the pertinent time and that his haphazard mail-handling practices made it "quite possible" that mail could have been properly delivered but lost before he became aware of or retrieved it. While the decision below reiterated the Second Circuit's prior holding that a denial alone is insufficient, the judgment did not turn on it because petitioner's denial did not stand alone.

Moreover, this highly unrepresentative case does not present a useful lens through which to consider whether a bare denial could be sufficient in more typical circumstances. Again, petitioner admitted to unreliable mail-retrieval practices and conceded

that he was an absentee owner at the time of the mailing. While his then-wife did live at the premises when not traveling for work, petitioner failed to proffer any evidence from her and conceded that he did not know her mail-handling practices because he was not there. He makes no attempt to show that *any* court of appeals would find the presumption rebutted on this record, which contains overwhelming evidence undercutting the force of his denial. The case thus offers no opening to probe the differences in the courts' articulations of the standards for rebutting the mailbox-rule presumption.

Second, there is no circuit split requiring the Court's resolution. Petitioner points to several courts of appeals that have stated that a denial of receipt alone can rebut the presumption. But he fails to show that this difference is dispositive in a significant number of cases, given the wide variety of evidence that courts, including the Second Circuit, have recognized may corroborate a denial. Indeed, while the circuits may differ in their phrasing of the rebuttal standard, in practice rebuttal will rarely turn on a bare denial of receipt, unaccompanied by corroborating evidence.

Third, the question presented does not warrant review. The mailbox rule has existed for well over a century, and the cases petitioner highlights span decades. Yet six circuits still have not addressed whether a bare denial is sufficient to rebut the presumption. Moreover, the issue has not been fully ventilated in the courts that have addressed it.

Thus, the question remains unripe for a grant of certiorari. Further, this common-law rule is inherently flexible and case specific, lessening the need to ensure uniformity in how it is articulated because its application will turn on the facts. In all, there is no need for the Court to address this issue now.

STATEMENT

A. The mailed notice of violation and petitioner's unreliable system of mail retrieval

Petitioner, who owns several properties, purchased a four-story residential building in Manhattan in November 2014 with his then-wife (2d Cir. Appendix ("A"), 2d Cir. ECF Nos. 29-31, at 9, 110, 271-73, 718). He did not move into the building, however, until May 2015 (A719). Before he bought it, the property had contained a low-pressure boiler, though it was removed sometime after 2013 but before the sale (*id.*).

The City requires owners of properties with low-pressure boilers to obtain and submit proof of yearly inspections. 1 R. City of N.Y. § 103-01(d). Failure to submit the inspection report will result in a $1,000 fine. *Id.* 103-01(f). The City's Department of Buildings (DOB) processes boiler-inspection reports after each annual cycle (A137, 178, 393).

The prior owner of petitioner's building failed to submit a boiler-inspection report for 2013 (A395). After that annual cycle, DOB compiled a list of all delinquent owners and properties, which included

petitioner and the subject address, and contracted with a vendor to generate notices of violation (A221, 393-98). For that 2013 annual cycle, the DOB list of delinquent properties totaled 17,919 violations (A395-96, 403).

On March 23, 2015, DOB's vendor confirmed contemporaneously with DOB that its subcontractor had printed and mailed the notices of violation, which included a notice for petitioner's property, consistent with regular office procedures (A320-22, 344, 358-59, 366, 391, 396, 398, 400). A small fraction of those notices—roughly 500, or less than 3%—were returned undeliverable (A18, 184). However, it is undisputed that petitioner's name and address were correct on the notice of violation for his property (A278-79) and that postage for the bulk mailing was paid (A353).

Though petitioner was able to receive mail at his property, he conceded in his deposition that he had no reliable system to ensure that he retrieved it (A276-77, 719). Petitioner was not living at the property at the time of the notice's mailing (A719). Throughout March 2015, petitioner stated that he was only at the subject premises for a total of about three days (*id.*).

While petitioner's then-wife lived at the property at the relevant time, she did not submit a declaration or any other evidence (A719). For his part, petitioner acknowledged that his then-wife traveled frequently and did not check mail every day (A275). Petitioner further admitted in his deposition that he

did not know his then-wife's mail-retrieval practices (A275, 277). When asked who would retrieve the mail when she was traveling, petitioner stated: "She would pick it up when she got back, I guess. I'm – I wasn't there" (A277).

On the frequent occasions when no one was home to retrieve mail, the postal service had no reliable place to put it. Indeed, petitioner conceded at his deposition that there was no mailbox on the premises in March 2015 (A276). Instead, he relied on a haphazard mail-retrieval system. He testified that he tied "a little plastic bag" to a fence, which "[s]ome mail would be left in" (A276-78). Alternatively, mail "would be thrown down in the lower entrance," or "left on the stoop" (A276). When asked if mail was ever lost under this slapdash system, petitioner testified that "anytime you leave something outside … it can be taken" or "wind could blow it" (A277). He further explained that "unless [he] was expecting something and didn't receive it, [he] wouldn't know if [he] received it or not" (A278). And when asked if mail could have been delivered by the postal service and lost before he retrieved it, petitioner conceded that it was "quite possible" (A277).

Well after his deposition, petitioner submitted a declaration in opposition to the City's motion for summary judgment that attempted to rehabilitate his deposition testimony. He stated that he "never received" the notice of violation in 2015, though did not explain how he knew that to be true given his concessions in his deposition testimony (A718). He further stated that his then-wife "would collect any

mail that came from where the Postal Service left it outside the Property" and "would tell me whenever any mail came addressed to me," but again did not detail his then-wife's practices for retrieving mail or specify when she was traveling during the relevant time (A719). And he continued to proffer no evidence at all from his ex-wife.

B. Petitioner's lawsuit against the City and the decisions below

1. In August 2022, more than seven years after the City mailed the notice of violation, Petitioner sued the City under 42 U.S.C. § 1983 for denial of due process (A8, 29-32). After limited discovery focusing on timeliness (Pet. App. 43a), the City moved for summary judgment on the ground that the three-year statute of limitations applicable to § 1983 claims in New York had run (Pet. App. 10a).

2. The district court granted the motion and dismissed the case (*id.*). The court held that the City's evidence of mailing raised a presumption under the mailbox rule that petitioner received the notice of violation in 2015, and petitioner failed to rebut the presumption with competent proof of nonreceipt. Specifically, the court determined that petitioner's "unsubstantiated" denial and "scant" supporting evidence—which the court noted "likely could be given by the large majority of persons denying receipt of mail"—were insufficient (*id.* at 36a). Moreover, his testimony as to the mail-retrieval system at the property made it even "less plausible that the 2015 notice of violation went undelivered—as opposed to

having been overlooked or not responded to" (*id.*). The court noted that petitioner was not yet living at the property and his then-wife traveled frequently, and that he failed to "adduce any testimony from his ex-wife" or explain when she was traveling during the relevant time (*id.*). His testimony as to his ex-wife's mail handling practices was thus "largely hearsay, and to the extent not, entitled to limited weight" (*id.*).

The court concluded that the evidence painted a "portrait of sloppy, if not collegiate, practices with respect to incoming mail" that was "at odds with the inference Katergaris seeks to raise of a system of receiving, collecting, and responding to mail so rigorous and orderly that it would have been improbable for a delivered mailing to have gone unacted-upon" (*id.* at 36a-37a). The court thus held that petitioner "knew or had reason to know" of his due-process claim when the notice of violation was delivered in March 2015, rendering his suit against the City untimely (*id.* at 24a, 38a).

3. The Second Circuit affirmed in a nonprecedential decision (Pet. App. 2a-3a). The court determined that the City had triggered the presumption of receipt under the mailbox rule by showing that the notice of violation was correctly addressed and mailed following standard office procedures (*id.* at 5a-6a). Petitioner does not seek this Court's review of this portion of the Second Circuit's decision.

Next, the court of appeals agreed with the district court that petitioner had not rebutted the presumption of receipt (Pet. App. 6a-8a). The court cited its

prior holding that "denial of receipt, without more, is insufficient to rebut the presumption" (*id.* at 7a (cleaned up)[1]). The court clarified, however, that "rebutting the presumption does not require 'direct proof that the routine office procedure was either not followed or carelessly carried out'" (*id.* (cleaned up)). Instead, the court looked for something more than "mere denial" in the record and held that petitioner's circumstantial evidence—including his purported prompt response to other unspecified fines and his quick payment of this fine once he alleged he learned of it while trying to sell the property—was "undercut" by his testimony concerning his lack of a mailbox and "unreliable" mail-retrieval system (*id.*). Indeed, the court noted that petitioner's system consisted of, as he described it, "'a little plastic baggie' hanging from the fence into which mail might be 'rolled-up' and 'stuffed' if it were not 'thrown down into the lower entrance' or left outside 'on the stoop'" (*id.*).

Lastly, the court of appeals rejected petitioner's argument that its interpretation of the mailbox rule made the presumption of receipt "effectively irrebuttable" and in conflict with Rule 301 of the Federal Rules of Evidence (*id.*). As the court noted, petitioner provided "no support" for his contention that Rule 301 requires a presumption to be rebuttable by bare denial (*id.* at 7a-8a). The court also emphasized that

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[1] This brief uses "cleaned up" to indicate that internal quotation marks, alterations, or citations have been omitted from quotations.

petitioner had "mischaracterize[d] the stringency of [the court's] rule" (*id.* at 8a).

REASONS FOR DENYING THE PETITION

A. This case is a poor vehicle for addressing the question presented.

Petitioner asks the Court to consider whether a "sworn denial" is sufficient to rebut the presumption of receipt under the mailbox rule (Pet. i). But the facts of this case make it a poor vehicle for addressing that question, for three main reasons. First, the case does not properly present the question because the judgment below did not turn on whether a bare denial is sufficient. Second, the unusual facts of this case do not offer a useful lens through which to consider what weight to accord to a bare denial in more typical circumstances. And third, even if a circuit split exists, as petitioner contends, this case would not help resolve it because no circuit would be likely to reach a different judgment on these facts.

1. This Court "reviews judgments, not statements in opinions." *California v. Rooney*, 483 U.S. 307, 311 (1987) (cleaned up). But petitioner asks the Court to review remarks in the Second Circuit's decision. Though the court of appeals recited the principle that a denial of receipt, "without more," is insufficient to rebut the presumption (Pet. App. 7a (cleaned up)), that principle is not necessary to the judgment, since petitioner's denial did not stand alone but rather was accompanied by extensive evidence from his own mouth undercutting any force it may have. Petitioner conceded that when DOB

mailed the notice of violation, he had not yet moved into the subject premises, and he further offered that he was at the premises only for a handful of days in the entire month of March 2015 (A276, 719). His then-wife, who did not testify, was also frequently traveling, and they did not have anyone checking their mail in their absence (A275).

Petitioner also admitted that he had no mailbox at the property (A276). Instead, as the district court noted, he chose to employ a "sloppy, if not collegiate" mail-retrieval system (Pet. App. 36a). Indeed, to the extent he had a system at all, it consisted of "a little plastic baggie hanging from the fence into which mail might be rolled-up and stuffed if it were not thrown down in the lower entrance or left outside on the stoop" (*id.* at 7a (cleaned up)).

The petition studiously avoids these conceded facts, just noting in passing that petitioner "did not have a mailbox at the time" (Pet. 7). But below, even petitioner had to admit that it was "quite possible" that his mail could be delivered and lost before he retrieved it (A277). As he surmised, his mail—left outside and unsecured, potentially for extended periods—could readily be "taken" or blown away by the wind (*id.*). He thus admitted that he would not know whether he had received a piece of mail "unless [he] was expecting something and didn't receive it" (A278). In all, petitioner's multiple admissions render his denial here effectively meaningless in establishing whether the mail was properly delivered.

In essence, petitioner would have the Court artificially segment off his denial of receipt from the rest of the record he created and consider whether it would have been enough on its own to rebut the presumption (Pet. i). But the Court would review the court of appeal's judgment, not its words. And on this record, the court of appeals correctly held that the presumption was not rebutted, regardless of whether a bare denial of receipt would have been enough to overcome it. This Court has long declined to use its review power merely to rewrite lower courts' decisions or review dicta. *See Miss. Univ. for Women v. Hogan*, 458 U.S. 718, 723 n.7 (1982). Petitioner has provided no basis for it to deviate from this well-established practice here.

2. This case further presents a poor vehicle to address the question presented because it is unrepresentative of denial-of-receipt cases. Indeed, the peculiarities of this case highlight that not all denials are created equal. The circumstances of petitioner's denial make it an outlier that can provide little insight about how to resolve the question presented under more typical facts.

To start, petitioner concedes that he was an absentee owner when DOB mailed the notice of violation for his property on March 26, 2015 (A274, 719). At the time, he was living in England, and he did not move into the property until the end of May 2015; nor did he say when in March he visited (*id.*). Only his then-wife was living at the property at the time, though she traveled frequently (*id.*).

Although the petition extols the importance of ensuring that witnesses testify only about their personal knowledge (Pet. 11-12), petitioner fails to establish that he had personal knowledge of what was delivered to the property in late March or early April 2015. Moreover, petitioner failed to proffer any statement at all from his then-wife—the only person living at the property at the pertinent time—and he did not establish that he had any personal knowledge of her mail-retrieval practices. To the contrary, he did not claim to know when she was traveling during the relevant period and conceded that he did not know how often she checked for mail (A275-77, 719). That he denied seeing the notice of violation himself thus cannot establish whether it was delivered to the property. Compounding the problem is the unusually "sloppy, if not collegiate" mail-retrieval system employed at the property (Pet. App. 36a) that, as petitioner conceded, made it "quite possible" that his mail could be lost without his ever knowing (A276-78).

The petition suggests that any sworn denial of receipt should be enough to rebut the presumption and force the question of receipt to a jury, but a denial might have vastly different significance depending on its context. For instance, a denial might mean one thing if offered by all members of a household as opposed to just one. *See, e.g.*, *Gaspar-Francisco v. Bondi*, No. 22-126, 2025 U.S. App. LEXIS 3320, at *2-3 (9th Cir. Feb. 11, 2025) (in immigration context, holding that denial was insufficient to rebut presumption of receipt where unsupported by

declarations from "the homeowner or other residents" of the property). Or if the party offering the denial lived at the address at the time as opposed to infrequently visiting. *See, e.g., Moscoso-Alvarado v. Wilkinson*, 836 F. App'x 587, 588 (9th Cir. 2021) (in immigration context, holding that mail recipient failed to rebut presumption where evidence showed he was only home for "a few days"). Or if the denying party is an individual as opposed to a corporation. *See, e.g.*, *Barnett v. Okeechobee Hosp.*, 283 F.3d 1232, 1241-42 (11th Cir. 2002). Crucially, whatever the "typical" denial might look like, it is miles away from the denial that petitioner offered here. The factual oddities of this case gave the Second Circuit no reason to consider other possible forms of a denial or to decide whether a denial alone could ever be sufficient to rebut the presumption. Nor would the case offer this Court a useful opening to explore such questions.

3. The petition's deficiencies are further illustrated by what it fails to say. While petitioner asserts that this case implicates a circuit split, he does not assert that *any* circuit would treat his testimony here as sufficient to rebut the presumption. To the contrary, it is unlikely that any circuit would.

For instance, petitioner relies heavily on *Lupyan v. Corinthian Colleges Inc.*, 761 F.3d 314, 319 (3d Cir. 2014) (Pet. 3, 14-15, 18-19), which endorsed a bare-denial standard. But the Third Circuit has more recently declined to find the presumption rebutted where the mail recipient's denial was unsupported and the evidence otherwise undercut the

denial. *See Ebner v. Bank of N.S.*, 795 F. App'x 107, 109 n.5 (3d Cir. 2020) (unsupported denial insufficient where recipient received other mailings from same sender at same address); *see also Hanna v. Sec'y of U.S. Dep't of Agric.*, 812 F. App'x 104, 104-05 (3d Cir. 2020) (same). Here, petitioner's own testimony powerfully undermines his denial, and there is no basis to presume—nor does petitioner contend—that any other circuit would find the presumption rebutted on these facts.[2] Indeed, it is exceedingly unlikely that any court of appeals,

[2] Moreover, the courts of appeals might plausibly view much of petitioner's post-deposition declaration through the lens of the widely recognized "sham affidavit" rule, under which courts generally decline to credit a sworn statement in opposition to summary judgment that is contradicted by or inconsistent with prior testimony, particularly where the discrepancy remains unexplained. *See e.g.*, *Escribano-Reyes v. Prof'l Hepa Certificate Corp.*, 817 F.3d 380, 386-87 (1st Cir. 2016); *Perma Research & Dev. Co. v. Singer Co.*, 410 F.2d 572, 578 (2d Cir. 1969); *Martin v. Merrell Dow Pharms., Inc.*, 851 F.2d 703, 705-06 (3d Cir. 1998); *Riggins v. SSC Yanceyville Operating Co., LLC,* 800 F. App'x 151, 160-61 (4th Cir. 2020); *Free v. Wal-Mart La., LLC*, 815 F. App'x 765, 767 (5th Cir. 2020); *Jones v. General Motors Corp.*, 939 F.2d 380, 384-85 (6th Cir. 1991); *Buckner v. Sam's Club, Inc.,* 75 F.3d 290, 293 (7th Cir. 1996); *Garang v. City of Ames*, 2 F.4th 1115, 1122 (8th Cir. 2021); *Russell v. Pac. Motor Trucking Co.*, 672 F. App'x 629, 630 (9th Cir. 2016); *Gabaldon v. N.M. State Police*, 139 F.4th 1207, 1211-12 (10th Cir. 2025); *Rodriguez v. Jones Boat Yard, Inc.*, 435 F. App'x 885, 887 (11th Cir. 2011); *Galvin v. Eli Lilly & Co.*, 488 F.3d 1026, 1030 (D.C. Cir. 2007); *Del. Valley Floral Group, Inc. v. Shaw Rose Nets, LLC,* 597 F.3d 1374, 1381-82 (Fed. Cir. 2010).

regardless of how it articulates the rule, would have found that petitioner made such a showing on this record.

B. There is no split in authority requiring the Court's intervention.

Petitioner also fails to establish a circuit split requiring the Court's resolution. To start, he mischaracterizes the stringency of the Second Circuit's approach to rebutting the presumption. And, to the extent courts differ in their formulation of the rebuttal standard, in practice they largely look to the totality of the evidence to decide whether the presumption has been overcome. Lastly, petitioner fails to show that the Second Circuit's approach conflicts with the Federal Rules of Evidence.

1. Petitioner frames his bid for certiorari around a mischaracterization of the Second Circuit's approach. He asserts that the court has adopted "a uniquely harsh" standard for rebutting the presumption (Pet. 10) and that "the presumption [is] so overwhelming that it essentially bars contradiction" (*id.* at 19). These assertions bear little resemblance to the Second Circuit's precedents.

To be sure, the court has held that "[d]enial of receipt, *without more*, is insufficient to rebut the presumption." *Akey v. Clinton Cty.*, 375 F.3d 231, 235 (2d Cir. 2004) (emphasis added). The court has not discussed this limitation in depth. But it likely reflects that a bare denial of receipt, unaccompanied by any contextualizing facts, is easily given but of limited force. Most importantly, as the court

suggested in the decision at issue here, such a denial, if credited, speaks to the party's knowledge of receipt, but does not establish whether the party would have reason to know if delivery had occurred (*see* Pet. App. 8a ("The summary judgment rule would be rendered sterile if the mere incantation of intent or state of mind would operate as a talisman to defeat an otherwise valid motion." (quoting *ITC Ltd. v. Punchgini, Inc.*, 482 F.3d 135, 150 (2d Cir. 2007))).

This case starkly illustrates the distinction: petitioner did not live at the property at the time of mailing and failed to proffer evidence from the only person who did (A275-78, 719). And he conceded that his mail might have been delivered and then lost before he ever became aware of it (*see* A277-78). Such a denial is insufficient to raise a genuine issue of fact as to nonreceipt and defeat summary judgment under established principles that the Second Circuit has expressly recognized. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986); *see ITC Ltd.*, 482 F.3d at 149 ("Courts and commentators are in general agreement that proffered evidence is sufficient to rebut a presumption as long as the evidence could support a reasonable jury finding of the nonexistence of the presumed fact." (cleaned up)).

Contrary to petitioner's contention (Pet. 10, 19), the Second Circuit has not placed any firm limits on the types of corroborating evidence that could enable a party to meet its burden. Indeed, in its first decision addressing the issue, the court rejected the

notion that "direct proof of divergence from routine procedure is the sole or exclusive means" to rebut the presumption, instead suggesting that "circumstantial evidence" of nonreceipt could suffice. *Meckel v. Cont'l Res. Co.*, 758 F.2d 811, 817 (2d Cir. 1985) (applying New York law). The court thus entertained (though found lacking) the plaintiffs' showing that few recipients of a mass mailing had acted in response to it and that some other intended recipients did not recall whether they received it. *Id*. at 818. By contrast, the court determined that the presumption of receipt was rebutted where the mail recipient offered "more than mere denial of receipt" by detailing "his family's regular procedure for reviewing" received mail. *Weiss v. Macy's Retail Holdings, Inc.*, 741 F. App'x 24, 28 (2d Cir. 2018) (applying New York law).

The decision below confirmed *Meckel*'s rejection of a more stringent rule and similarly did not hesitate to consider the "additional circumstantial evidence" that petitioner highlighted to support his denial of receipt, including "that he generally pays or contests citations immediately upon receipt, and that he responded immediately when he did learn of the violation in 2021" (Pet. App. 7a). But what carried the day was the overwhelming evidence of petitioner's poor mail-handling practices that "undercut" his denial and circumstantial evidence (*id.*).

Consistent with this flexible approach, district courts within the circuit have credited a range of circumstantial evidence as potentially sufficient to support a denial of receipt and rebut the presumption.

See, e.g., *Raeburn v. Dep't of Hous. Pres. & Dev. of N.Y.*, No. 10-cv-4818, 2015 U.S. Dist. LEXIS 82751, at *20-21 (E.D.N.Y. June 22, 2015) (presumption rebutted by recipient's denial of receipt of one letter paired with receipt and prompt response to follow-up letter sent a few months later); *Spagnuoli v. Louie's Seafood Rest., LLC*, 13-CV-4907, 2022 U.S. Dist. LEXIS 38735, at *14 (E.D.N.Y. Mar. 4, 2022) (stating that "testimony denying receipt in combination with evidence of standardized procedures for processing mail" at home "can be sufficient").[3]

Thus, petitioner is wrong to suggest that the Second Circuit "requires extensive evidence" for rebuttal (Pet. 19). And he offers no basis to conclude that the forms of evidence that he concedes a party might be able to offer to corroborate a denial—such as evidence of "their practice of opening mail" or "mention [of] other mail they received at the critical time" (*id.*

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[3] Petitioner cites district court cases purporting to show that the Second Circuit's rule is effectively irrebuttable (Pet. 20). Several involve bare denials or denials without credible supporting evidence. *See, e.g. Makhnevich v. Bougopoulos*, 18-cv-285, 2022 U.S. Dist. LEXIS 57706, at *22 (E.D.N.Y. Mar. 29, 2022); *Vargas v. Capital One Fin. Advisors*, 12-civ-5728, 2013 U.S. Dist. LEXIS 116234, at *18-19 (S.D.N.Y. Aug. 15, 2013). Others required a mail recipient to show proof of irregularity in the mailing, *see, e.g.*. *Stein v. Am. Gen. Life Ins. Co.*, 34 F. Supp. 3d 224, 230 (E.D.N.Y. 2014), which the court of appeals confirmed in the decision below is not its rule (*see* Pet. App. 7a ("[R]ebutting the presumption does not require direct proof that the routine office procedure was either not followed or carelessly carried out." (cleaned up))).

at 18-19)—would be insufficient under the court's approach.

2. In practice, the Second Circuit's approach to rebutting the presumption is largely consistent with that of the six other courts of appeals that have addressed the question.[4] While there are some variations in how the circuits articulate their rebuttal standard, they consistently look to the totality of the circumstances, as the Second Circuit did here, so rebuttal will rarely depend on a bare denial of receipt, without corroborating evidence.

a. At the outset, two other circuits, which petitioner fails to discuss, draw the same line as the court below. The Fifth Circuit has concluded that an "assertion of non-receipt ... supported by circumstantial evidence" may be enough to rebut the presumption and avoid summary judgment, but a "bare assertion of non-receipt" would not. *Custer v. Murphy Oil USA, Inc.*, 503 F.3d 415, 421 (5th Cir. 2007); *see also Faciane v. Sun Life Assur. Co.*, 931 F.3d 412, 421 (5th Cir. 2019) ("bare assertion of non-receipt" insufficient).

[4] By referencing district-court decisions from the First, Fourth, Seventh, and Eighth Circuits (Pet. 20-21), petitioner acknowledges that those circuits have not yet addressed this question. Petitioner cites no trial-level decision from either the D.C. Circuit or the Federal Circuit. And, although he also cites decisions of district courts in the Fifth Circuit, that court, as discussed next, has adopted the same approach as the Second Circuit.

The Eleventh Circuit adopted the same principle in a decision holding that a corporate employee's declaration of nonreceipt, "without citing any basis for such knowledge"—for example, an explanation of "office procedures for processing received mail"—was insufficient to rebut the presumption. *Barnett*, 283 F.3d at 1241-42. The court noted that declarations denying receipt from a few corporate divisions were not probative of nonreceipt because other divisions could have received the mailing, or it could have been lost. *Id.* at 1242. More recently, the court affirmed its rule, stating that "[a] party must do more than simply allege that she never received a mailed item in order to rebut the presumption" of receipt. *Michelson v. Sec'y, Dep't of the Army Agency*, 860 F. App'x 677, 678 (11th Cir. 2021).

b. Petitioner cites decisions from four other courts of appeals that, he contends, hold that a bare denial of receipt is sufficient. But while their formulations of the standard differ from the Second Circuit's, the courts appear to *apply* the rebuttal standard largely in line with the court below, considering the totality of the evidence regarding receipt.

To start, petitioner cites the Ninth Circuit's decision in *Nunley* v. *City of Los Angeles*, 52 F.3d 792 (9th Cir. 1995), but that case did not involve a bare denial of receipt or squarely hold that one would be sufficient. An attorney asserted nonreceipt of a mailed order, and the evidence showed that the attorney and a paralegal had each gone to the clerk's office well after the date of mailing to inquire

whether an order had been issued. *Id.* at 794. On this record, the Ninth Circuit held that the attorney had provided a "specific factual denial" sufficient to rebut the presumption. *Id.* at 796-97. While the court cautioned that "extensive evidence" is unnecessary, sufficient proof of nonreceipt might entail "affidavits regarding the usual practice of opening mail and actions consistent with non-receipt" or any "indication of failed delivery." *Id*. at 796.

So too in *In re Yoder*, 758 F.2d 1114 (6th Cir. 1985), which involved mailed notice of the deadline to file proofs of products-liability claims. The evidence of proper mailing of the notice was highly equivocal, and, in addition to the attorney's denial of receipt of the notice, two other attorneys testified that they also had not received it. *Id.* at 1120-21. Thus, although the Sixth Circuit stated that "[t]estimony of non-receipt, standing alone" could rebut the presumption, *id.* at 1118, the record before the court contained corroborating evidence, which the court considered.

Likewise, the Tenth Circuit case that petitioner relies on, *Witt* v. *Roadway Express*, 136 F.3d 1424 (10th Cir. 1998), did not turn on a bare denial of receipt. There, the EEOC mailed two right-to-sue letters one day apart to the same address, but the recipient submitted an affidavit averring that he received one letter promptly and the other a month later. *Id.* at 1429-30. The court held that a presumption of prompt receipt was rebutted by the recipient's affidavit. *Id*. And in a subsequent decision, the court cited *Witt* for the proposition that "an opposing

party's sworn denial of receipt *can* create a credibility issue that must be resolved by the trier of fact," but also noted specific facts in the record supporting the denial, including that the mail recipient received a second letter sent shortly after the disputed one and acted on it immediately. *Laborers' Int'l Union, of N. Am., Local 578 v. NLRB*, 594 F.3d 732, 740 (10th Cir. 2010) (Gorsuch, J.) (emphasis added; cleaned up).

Even the case most strongly embracing a bare-denial rule presented additional evidence of nonreceipt. In *Lupyan*, the Third Circuit concluded that a party should be able to rebut the presumption with "a sworn statement to dispute receipt." 761 F.3d at 322. But the court also emphasized that the mailing party there was entitled to only a "very weak presumption" because the mailer could have but failed to use certified mail and the evidence of mailing consisted of "self-serving affidavits signed nearly four years after the alleged mailing date." *Id.* at 320. And, as noted above, the Third Circuit subsequently held—without citing *Lupyan*—that a bare denial of receipt, without support and undercut by circumstantial evidence, was insufficient to rebut the presumption. *Ebner*, 795 F. App'x at 109 n.5; *see Hanna*, 812 F. App'x at 105.

Thus, despite differences in their phrasing of the relevant principles, the circuits' application of the rebuttal standard is not so different in practice. Moreover, several of the circuits have not had an opportunity to fully address this question or have not

fully settled their approach, as shown by the recent decisions of the Third Circuit moving away from an expansive view of *Lupyan*.

3. To try to elevate the profile of the purported circuit split, petitioner contends that the Second Circuit's approach conflicts with Federal Rule of Evidence 301 (Pet. 18-19). But his argument again rests on a mischaracterization of the stringency of the Second Circuit's approach (*id.*). In any event, Rule 301 speaks to a different issue—the burdens of production and persuasion as to presumptions in civil cases.[5] It "says nothing about how much evidence is needed to rebut a presumption." 1 Weinstein's Fed. Evid. § 301.02 (2025). Nor does it require a court deciding a summary-judgment motion to credit a conclusory denial. *See Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 888-89 (1990) (on summary judgment, it is insufficient "to replace conclusory allegations of the complaint or answer with conclusory allegations of an affidavit").[6]

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[5] Rule 301 provides, in full: "In a civil case, unless a federal statute or these rules provide otherwise, the party against whom a presumption is directed has the burden of producing evidence to rebut the presumption. But this rule does not shift the burden of persuasion, which remains on the party who had it originally."

[6] Several courts have looked to Rule 301 to answer a different question that is not implicated here—whether a rebutted presumption of receipt has any continuing relevance to determining whether receipt occurred. *Lupyan*, 761 F.3d at 320-21; *Nunley*, 52 F.3d at 796; *Yoder*, 758 F.2d at 1119-20.

Finally, petitioner argues that the Second Circuit's approach is somehow improper because it derives from New York law (Pet. 12-14). But state law is an obvious source to draw from in setting federal-common-law rules, as this Court has recognized. *See United States v. Kimbell Foods, Inc.*, 440 U.S. 715, 718 (1979) (adopting state law as the "appropriate federal rule"). Indeed, this Court's original decision applying the mailbox rule cited several state-court decisions as the rule's source. *Rosenthal*, 111 U.S. at 193.

C. This case does not present an important issue warranting the Court's review.

In addition to the above points, the question presented is not an important one for the Court to decide. To start, there is no compelling reason for the Court to take up the question now. As petitioner concedes, the mailbox rule is more than a century old (Pet. 21). It has been four decades since the Second Circuit first articulated the approach that petitioner challenges, and three decades since the court adopted it as federal common law. *Meckel*, 758 F.2d at 817; *Leon v. Murphy*, 988 F.2d 303, 309 (2d Cir. 1993). The line of cases that petitioner highlights as in conflict with the Second Circuit's approach reaches back forty years as well. *Yoder*, 758 F.2d at 1116. And, despite the mailbox rule's long history, six federal circuits still have not even reached the rebuttal question, and recent decisions of the Third Circuit indicate that its approach is not yet settled. *See Ebner*, 795 F. App'x at 109 n.5; *Hanna*, 812 F.

App'x at 105. The issue should at minimum be allowed to percolate further.

The issue also has not been fully examined in the courts that have reached it. None of those courts has had occasion to explore in depth the reasons for their principle that a bare denial will not suffice or to explore in any systematic way what evidence beyond a bare denial might be sufficient. Plus, to our knowledge based on available electronic dockets, no party, including petitioner here, asked the Second, Fifth, or Eleventh Circuits to review *en banc* any of the decisions cited above or in petitioner's brief that consider a bare denial insufficient to rebut the presumption. Against this backdrop, petitioner identifies no pressing reason for the Court to grant review here.

Petitioner also shows no need to impose uniformity on the lower courts' approaches. For one thing, the common-law mailbox rule is inherently flexible and context specific. *See Lutwak v. United States*, 344 U.S. 604, 615 (1953) ("It has been said so often as to have become axiomatic that the common law is not immutable but flexible, and by its own principles adapts itself to varying conditions."). Regardless of how courts articulate baseline principles, the outcomes will often turn on the facts. As the foregoing discussion illustrates (*supra* at 14-15, 20-24), even in courts receptive to a bare denial, the records in individual cases often contain corroborating evidence. And courts that have adopted the principle that a bare denial does not suffice, such as the court

below, will consider a range of corroborating evidence offered in support.

Moreover, petitioner fails to explain why the lower courts could not come to different conclusions about the quantum of evidence required to rebut the presumption. Allowing a denial alone to rebut—without any specific factual allegations or other evidence even tending to support the denial—risks rendering the presumption all but toothless, forcing the question of receipt to a jury in virtually every case, no matter how strong the evidence of proper mailing. The differences that petitioner highlights reflect reasonable disagreements about how best to allocate the risk of error. And litigants are well positioned to develop their record in light of what their circuit requires. After all, petitioner's real problem here is not the standards that the courts below applied to his claim, but rather that the facts are strikingly poor for him. He shows no reason for the Court to weigh in on the question presented, particularly in this case where the Second Circuit's judgment was resoundingly correct.

CONCLUSION

The petition should be denied.

MURIEL GOODE-TRUFANT
Corporation Counsel of
the City of New York

Counsel for Respondent

RICHARD DEARING
Counsel of Record
CLAUDE S. PLATTON
HANNAH J. SAROKIN
New York City Law Department
100 Church Street
New York, NY 10007
(212) 356-2500
rdearing@law.nyc.gov

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