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

REPLY BRIEF FOR PETITIONER

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REPLY BRIEF FOR THE PETITIONER

The Petition established that the Second Circuit diverges from its sister circuits in adopting a standard that holds that a sworn denial of receipt of a piece of mail is insufficient to rebut the presumption of receipt and send the issue to the trier of fact.

In response, the City does not seriously dispute that the circuits split on the nature of the mailbox rule. Instead, it argues that, despite the Second Circuit's strict formulation of its test, it ultimately applies a more lenient "totality of the evidence" test comparable to that of other circuits. The City also argues that the petition is too fact-bound to be granted, even though the key issue raised by the Petition is the Second Circuit's consideration of those facts under the wrong legal standard. And it concludes by arguing that the split is too old for this Court's review yet somehow still in need of further percolation.

Each argument is wrong. The Second Circuit applies the presumption in a uniquely inflexible manner. The split is real and irreconcilable, and it has a significant effect on how courts consider whether individuals, businesses, and governments sent or received mail, a conclusion with wide-ranging legal and financial consequences. The petition for a writ of certiorari should be granted.

I. The decision below further entrenches the Second Circuit's outlier status in the circuit split.

The City does not seriously dispute the circuit split. Instead, it says that despite the differences in

the courts' "formulation" of the rule, Resp. 15, they all operate the same way in practice, with a "flexible" approach, Resp. 17, that looks to the "totality of the evidence to decide whether the presumption has been overcome," Resp. 15. This misreads the cases. The Second Circuit applies a different presumption with a different legal standard from the other circuits. That is a split.

1. The Second Circuit applies the rule it first set out in *Meckel*, reaffirmed in *Akey*, and has steadfastly followed since: A sworn denial of receipt does not rebut the presumption that a letter was received, and a supposed recipient must provide additional evidence to overcome it. *Meckel* v. *Cont'l Res. Co.*, 758 F.2d 811, 817 (2d Cir. 1985); *Akey* v. *Clinton County*, 375 F.3d 231, 235 (2d Cir. 2004); see also App. 7a. The City agrees that "to meet its burden" of rebutting the presumption, a party must provide "corroborating evidence" beyond a mere denial of receipt. Resp. 16. The City describes this as a "flexible approach" and invokes cases that all turn on whether the supposed recipient presented evidence beyond denial, thus enabling them to overcome the presumption. Resp. 17–18. But the Second Circuit considers that additional evidence under a legal standard that *presumes* service was made, even after the supposed recipient avers under penalty of perjury that he never received the document. That is a more demanding legal standard than other circuits, which hold that a denial of receipt eliminates the presumption entirely.

2. In contrast, the Third, Sixth, Ninth, and Tenth circuits apply a different test under which a sworn denial of receipt raises a triable question of fact. For

these courts, rebutting the presumption eliminates it. For its part, the City tries to minimize this test, suggesting that these courts apply a "totality of the evidence" test akin to the Second Circuit or that these courts have since retreated from these holdings. Neither is the case. The Second Circuit applies a different test than its sister circuits. To the extent that there is any confusion in the caselaw, that would merely support that this is an area in disarray warranting this Court's intervention.

Take the Third Circuit, whose decision in *Lupyan* v. *Corinthian Colleges Inc.*, 761 F.3d 314 (2014), set the bar for analysis of the mailbox rule, painstakingly tracing its roots and operation. In response, the City says the circuit is "moving away" from *Lupyan*, pointing to two unpublished, non-precedential decisions from 2020 that deemed denial insufficient to overcome the presumption. Resp. 22–23 (citing *Ebner* v. *Bank of Nova Scotia*, 795 F. App'x 107, 109 n.5 (3d Cir. 2020); *Hanna* v. *Sec'y of U.S. Dep't of Agric.*, 812 F. App'x 104, 105 (3d Cir. 2020)). Neither even cites *Lupyan*, let alone discusses why it should be discarded. *Lupyan* remains good law, and the Third Circuit's rule is that denial of receipt rebuts the presumption. See *Guerra* v. *Consol. Rail Corp.*, 936 F.3d 124, 137 n.7 (3d Cir. 2019) (applying *Lupyan* to conclude that a "presumption would disappear" in the face of a denial of receipt).

The City's efforts to blur the differences between the Second Circuit's approach and that of the other circuits are equally unavailing. For both the Sixth and the Ninth circuits, the City points to other "corroborating" evidence the courts discussed. Resp. 20–

21 (citing *In re Yoder Co.*, 758 F.2d 1114 (6th Cir. 1985); *Nunley* v. *City of Los Angeles*, 52 F.3d 792 (9th Cir. 1995)). Yet both of those courts discussed the other evidence *after* they deemed the presumption rebutted by the testimony of non-receipt. Having been rebutted, the presumption retained no probative effect under Rule 301, leaving the court to "weigh the evidence and make a considered factual determination concerning receipt." *Nunley*, 52 F.3d at 796; see also *Yoder*, 758 F.2d at 1119–20 (stating that "a presumption vanishes entirely once rebutted, and the question must be decided as any ordinary question of fact"). Both courts deem denial alone sufficient to rebut the presumption.

Nor does the City harmonize the Tenth Circuit's approach. That court's methodology is completely inconsistent with the Second Circuit's approach, as the Tenth Circuit clearly held that "evidence denying receipt creates a credibility issue that must be resolved by the trier of fact." *Witt* v. *Roadway Express*, 136 F.3d 1424, 1430 (1998). The court deemed Mr. Witt's sworn statement—supported by nothing else—"evidence which could reasonably be found to rebut the presumption" of receipt. *Id.* at 1429–30.

3. The City adds two new circuits to the mix: the Fifth and the Eleventh. It claims that these two "draw the same line" as the Second Circuit. Resp. 19. To Petitioner's eye, those circuits do not always align with the Second Circuit. See *United Student Aid Funds Inc.* v. *Muracombi Enters. Inc.*, 330 F. App'x 453 (5th Cir. 2009); *Spencer* v. *U.S. Postal Serv.*, No. 07-cv-150, 2007 WL 2566031, at *5 (N.D. Fla. Aug. 31, 2007). Nevertheless, to the extent that these courts have

issued decisions applying the same test as the Second Circuit, it furthers the point that the split is entrenched and in need of this Court's review.

* * *

The City's efforts to minimize the differences between the Second Circuit's approach and its sister circuits fail. As it stands now, a litigant in New York has fewer opportunities to vindicate his rights than a litigant from Delaware to California and beyond. If Petitioner lived in Denver or Philadelphia, he could present his case to a trier of fact to consider whether his civil rights lawsuit was timely. But because he lives in New York, he cannot. The mailbox rule ought to be a national rule for operation in the federal courts that remains the same from state to state, circuit to circuit, rather than one varying based on geography.

II. The decision below is erroneous.

The Second Circuit's rule is wrong because it involves weighing disputed facts at the summary judgment stage. This Court has repeatedly emphasized that "[c]redibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions." *Anderson* v. *Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). But the Second Circuit, like the district court below it as well as the City, weighed the facts under the wrong legal standard. Under *any* case presenting a question of how to apply the mailbox rule, there will be facts supporting both sides. Indeed, if the facts were particularly clear, the presumption would not matter. The presence of disputed facts is why the legal standard is so

important. The question is teed up for this Court to address the legal standard and remand for reconsideration under the proper standard.

The conflicting evidence in this case demonstrates why applying the proper legal standard is critical: imposing an irrebuttable presumption eliminates credibility when it is outcome determinative. Some evidence shows that Petitioner never received the letter, while other evidence supports the notion that it could have been delivered. Consider the City's discussion of some of the facts, Resp. 10, along with these:

- Petitioner swore under oath that he never received the notice of violation. C.A. JA-718.

- Hundreds of 2013 boiler violations, maybe 500, were returned to the City as undeliverable and never followed up on. C.A. JA-795–96.

- Some of the pieces AST mailed were damaged. C.A. JA-795–96.

- No one with personal knowledge of AST's mailing practices (generally or in this case specifically) testified about those practices. See C.A. JA-320–22, 362–63.

- The City did not mail the notice at issue. See C.A. JA-41. Instead, it outsourced its mailing of the notice to a third-party company, Vanguard. C.A. JA-173.

- Vanguard did not mail the notice at issue. C.A. JA-313–14. Instead, it outsourced its mailing of

the notice to another third-party company, AST. C.A. JA-313–14.

- The City was unaware that Vanguard contracted with AST. See C.A. JA-138.

- Petitioner had a history of paying fines on time. C.A. JA-719.

- Petitioner took prompt action immediately upon learning about the notice of violation at issue here. C.A. JA-720.

- Petitioner spoke daily with his then-wife during the relevant period, and she would tell him when mail addressed to him arrived. App. 61a.[1]

To be clear, Petitioner does not ask the Court to resolve these facts. The point is that in a case like this, with facts on both sides, the proper legal standard matters. These conflicting, material facts should have led the court to deem the presumption rebutted and ask the factfinder to resolve the disputes rather than a judge on summary judgment. That is how federal courts outside the Second Circuit would have treated the conflicting evidence.[2] But Petitioner is within the

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[1] Implicitly agreeing that credibility is key, the City suggests that Petitioner's sworn declaration should be viewed as a "sham affidavit." Resp. 14 n.2. It never moved to strike the declaration below, however, and at summary judgment, "[t]he evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor." *Anderson*, 477 U.S. at 255.

[2] *E.g.*, *Lennox Carwash, Inc.* v. *AMCO Ins. Co.*, No. 23-cv-03746, 2024 WL 1483814, at *4 (C.D. Cal. Feb. 26, 2024), aff'd, No. 24-1975, 2025 WL 1513774 (9th Cir. May 28, 2025); *In re Alsem Constr., LLC*, 750 F. Supp. 3d 694, 699 (E.D. La. 2024);

Second Circuit and thus his effort to vindicate his civil rights foundered on an effectively irrebuttable presumption that he received a piece of mail he had never seen.

III. The question presented is important and warrants review in this case.

In support of its contention that this Court should not grant review in this case, the City rejects Petitioner's invocation of Federal Rule of Evidence 301, labeling it irrelevant, and argues that Petitioner's case is fact-bound, and that the split is somehow simultaneously too old and too new. Each is wrong.

1. The City casts Federal Rule of Evidence 301 as irrelevant here, claiming that it "says nothing" about the quantum of evidence needed to rebut a presumption. Resp. 23. But this conclusion ignores the full implications of the split. Other circuits interpret Rule 301 as *compelling* the conclusion that a denial of receipt suffices to rebut the mailbox rule's presumption. *Lupyan*, 761 F.3d at 320–21; *Nunley*, 52 F.3d at 796.

The Second Circuit, meanwhile, expressly rejected the argument that Rule 301 requires this outcome. Pet. 7a–8a. A litigant in the Second Circuit must provide far more evidence to "burst the bubble" of a presumption than a litigant in other circuits. Thus, there is a circuit split regarding the quantum of evidence

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Jones v. *Waypoint Res. Grp., LLC*, No. 19-cv-12851, 2021 WL 963935, at *2 (E.D. Mich. Mar. 15, 2021); *Panzer* v. *Verde Energy USA, Inc.*, 507 F. Supp. 3d 606, 614 (E.D. Pa. 2020); *Perry* v. *GMFS, LLC*, No. 18-cv-01572, 2020 WL 5658901, at *6 n.3 (N.D. Ala. Sept. 23, 2020).

required to rebut a Rule 301 presumption as applied to the mailbox rule. This leads to inconsistent requirements—and legal standards—between the Second Circuit and most other circuits.

From the City's perspective, this inconsistency in the treatment of the mailbox rule presumption from circuit to circuit is a good thing, as "the common-law mailbox rule is inherently flexible and context specific." Resp. 25. Thus, there is "no need [for this Court] to impose uniformity on the lower courts' approaches." *Ibid.* Indeed, the Second Circuit's reliance on state law to guide the interpretation of federal common law, and consequently the application of Rule 301 in the federal courts, is salutary, as "state law is an obvious source to draw from in setting federal-common-law rules." Resp. 24.

This is exactly backwards and, if that is what the Second Circuit's approach represents, then this Court's review is even more necessary. Ultimately, this case raises the choice of whether the federal courts' application of federal common law and Rule 301 is consistent throughout the country, or whether the federal courts will apply different standards on the nature of a presumption based on state laws within that circuit. The former approach is the correct one, as both the federal common law and the application of the Federal Rules of Evidence should be consistent from circuit to circuit. See, *e.g.*, *Hanna* v. *Plumer*, 380 U.S. 460, 472 (1965) ("One of the shaping purposes of the Federal Rules is to bring about uniformity in the federal courts by getting away from local rules. This is especially true of matters which relate to the administration of legal proceedings . . . ."

(citation omitted)); *Shady Grove Orthopedic Assocs., P.A.* v. *Allstate Ins. Co.,* 559 U.S. 393, 416 (2010) (recognizing that Congress created a "uniform system of federal procedure" such that the federal rules should not vary from jurisdiction to jurisdiction); *Phoenix Mut. Life Ins. Co.* v. *Adams*, 30 F.3d 554, 564 (4th Cir. 1994) ("federal common law should be consistent across the circuits").

Here, the City and the Second Circuit urge a return to the "clumsy system" that existed before the promulgation of the Federal Rules of Evidence, when the rules governing federal proceedings were "archaic, paradoxical and full of compromises and compensations by which an irrational advantage to one side is offset by a poorly reasoned counterprivilege to the other." *Michelson* v. *United States*, 335 U.S. 469, 486 (1948). The system adopted by the Second Circuit—in which federal proceedings are governed by not only in which circuit a litigant resides, but even which state within that circuit—is exactly that system. It represents a direct, clear, and notable rejection of Congress's and this Court's desire for uniformity in federal legal proceedings, which this Court should review now.

2. The City also suggests this Petition is too fact-bound and some of the facts purportedly cut against Petitioner. As set forth above, pp. 5–8, of course facts go both ways. If Petitioner had conclusive proof that the City had not mailed the notice, there would be no dispute and the legal standard would not matter. But, as with any other factual dispute, how courts apply the legal standard is of critical importance, and the Second Circuit applied the wrong one.

3. The City also argues that the mailbox rule is old—this Court set out the original rule over a century ago, and the split much discussed here first came about four decades ago. Resp. 24. But age does not resolve the conflict—if anything, it makes resolution more imperative, not less, as it demonstrates that the conflict is real and not going away. Compare, *e.g.*, *Chung* v. *Royal Care, Inc.*, No. 23-cv-07962, 2025 WL 1029432 (E.D.N.Y. Jan. 8, 2025), *report and recommendation adopted*, 2025 WL 809900 (E.D.N.Y. Mar. 14, 2025) (deeming sworn denial insufficient to overcome the presumption of receipt at summary judgment), with *In re Alsem Constr., LLC*, 750 F. Supp. 3d 694, 699 (E.D. La. 2024) (deeming sworn denial sufficient to overcome the presumption of receipt and send the issue to the factfinder). This case presents an excellent opportunity to resolve it and to do so before the Second Circuit treats more litigants in New York, Connecticut, and Vermont under a significantly different rule than the other circuits treat litigants within their jurisdiction.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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