No. _____

IN THE
Supreme Court of the United States

MELVON ADAMS
Petitioner,

vs.

UNITED STATES,
Respondent.

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

PETITION FOR WRIT OF CERTIORARI

MICHELLE ANDERSON BARTH
CJA appointed counsel for Petitioner
Law Office of Michelle Anderson Barth
P.O Box 4240
Burlington, VT 05406
(619) 884-3883

QUESTIONS PRESENTED

Some lower courts hold that even when extraordinary circumstances prevent a defendant's timely filing of a notice of appeal in a criminal case, Rule 4(b) requires mandatory dismissal upon the government's motion to dismiss for timeliness. The Question Presented here is whether Federal Rule of Appellate Procedure 4(b)'s time-limitations for the filing of a criminal appeal, which are non-jurisdictional, are subject to equitable tolling even after the government objects to untimeliness, consistent with this Court's equitable tolling jurisprudence.

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PETITION FOR CERTIORARI

Petitioner Melvon Adams respectfully prays for a writ of *certiorari* to review the judgment of the United States Court of Appeals for the Second Circuit.

OPINIONS BELOW

On July 22, 2025, a three-judge panel for the Second Circuit issued an order ("the Order") dismissing Mr. Adams' appeal. *United States v. Adams*, No. 24-CR-1339, (2d Cir. July 22, 2025). The decision is attached as Exhibit A.

On September 15, 2025, Mr. Adams filed a motion for rehearing and suggestion for rehearing *en banc*. The Second Circuit denied his motion on October 14, 2025. That order is attached as Appendix B.

JURISDICTION

On July 22, 2025, a three-judge panel for the Second Circuit issued an order dismissing the Petitioner's appeal. Subsequently, on October 14, 2025, the Second Circuit denied Mr. Adams's motion for rehearing and suggestion for rehearing *en banc*.[1] This Court has jurisdiction to review the Second Circuit's order pursuant to 28 U.S.C. § 1254.

FEDERAL RULES, STATUTORY, AND CONSTITUTIONAL PROVISIONS

1. Rule 4(b) of the Federal Rules of Appellate Procedure [excerpted in relevant part] provides:

(b) Appeal in a Criminal Case.
(1) Time for Filing a Notice of Appeal.

[1] The time to file a petition for a writ of *certiorari* runs from the date a timely petition for rehearing is denied. Sup. Ct. R. 13(3). A petition for a writ of *certiorari* is timely when filed within 90 days. Sup. Ct. R. 13(1). The motion for rehearing in this case was denied on October 14, 2025, making the petition for writ of certiorari due on January 12, 2026. A petition is timely filed if mailed on the date for filing. Sup. Ct. R. 29.2.

> **(A)** In a criminal case, a defendant's notice of appeal must be filed in the district court within 14 days after the later of:
>
> **(i)** the entry of either the judgment or the order being appealed; or
>
> **(ii)** the filing of the government's notice of appeal.
>
> * * * * *
>
> **(4) Motion for Extension of Time.** Upon a finding of excusable neglect or good cause, the district court may--before or after the time has expired, with or without motion and notice--extend the time to file a notice of appeal for a period not to exceed 30 days from the expiration of the time otherwise prescribed by this Rule 4(b).

I.

STATEMENT OF THE CASE

The undersigned was appointed to Melvon Adams' appeal after a long and circuitous procedural route, nearly eighteen months after he was sentenced. But the appointment of counsel to pursue an ordinary direct appeal on Mr. Adams' behalf was, at best, a Pyrrhic victory for him. Ultimately, Mr. Adams' appeal was dismissed as untimely because his original pro se notice of appeal was filed outside of the time period required by Rule 4(b) of the Federal Rule of Appellate Procedure. Before the Second Circuit, it did not matter that Mr. Adams was not at fault for the late filing of his original notice of appeal. In granting the government's motion to dismiss his appeal, the Second Circuit relied on *United States v. Frias*, which stated that Rule 4(b) requires mandatory dismissal upon the government's motion to dismiss for timeliness. *United States v. Frias*, 521 F.3d 229, 234 (2d Cir. 2008).

The Fourth Circuit in *United States v. Marsh*, reached a similar conclusion in holding "that 4(b) is a mandatory claim-processing rule" not subject to equitable

tolling. *United States v. Marsh*, 944 F.3d 524, 530 (4th Cir. 2019).

These courts interpret the government's control over a defendant's access to appellate review as absolute, no matter a criminal defendant's circumstances. Thus, upon a government motion to dismiss for timeliness, judges may not consider equitable tolling principles, even when principles of fairness require permitting review. The Second and Fourth Circuits' consensus in this regard is inconsistent with this Court's equitable tolling jurisprudence. Rule 4(b)'s rigid time limitations for the filing of a criminal appeal are non-jurisdictional. And, given this Court's jurisprudence applied in similar contexts, Rule 4(b) should be subject to equitable tolling as well—notwithstanding the government's objection to a notice's untimeliness. This case is a perfect vehicle to course-correct a problem that impacts vulnerable incarcerated defendants nationwide.

By way of background, Mr. Adams was sentenced on March 14, 2023, before a district court for the Southern District of New York. At that time, he was represented by other appointed counsel. Mr. Adams wished to appeal his case and had a right to do so. Mr. Adams claimed to have communicated with his attorney about his desire to file a notice of appeal. However, after the judge entered the judgment on March 16, 2023, no notice of appeal was filed on Mr. Adams' behalf.

At the time, Mr. Adams had no way to know that his attorney did not file a notice of appeal. He was incarcerated and had no communication with his attorney after his sentencing. Incarcerated defendants do not receive notice through the court electronic case-filing systems like attorneys. They depend on their appointed lawyers

both to file the necessary notice on time, and to communicate with them regarding their appeals. Sometimes, due to simple miscommunication between an attorney and client or negligence on the attorney's part, a notice of appeal is not filed, despite a defendant's express desire to seek appellate review.

Furthermore, after Mr. Adams was sentenced, there were long periods of delay and transit before he was finally designated to a Bureau of Prisons ("BOP) facility. In general, many incarcerated defendants spend extraordinary amounts of time in BOP transit after sentencing, until being designated to a BOP facility. Defendants are often left at temporary waystations, sometimes crisscrossing the country, before arriving at a final BOP destination. This system makes it nearly impossible to ensure one's notice of appeal was filed timely.

Once Mr. Adams arrived at his final BOP designation, he sent a letter to the district court on May 1, 2023. He sent this letter only forty-six days after he was sentenced. Mr. Adams' letter noted that he intended for his attorney to file a notice of appeal, but did not know whether it had been done, and asked the district court for guidance. According to the district court's docket, the district court did not take any action on Mr. Adams' request for an appeal but did send him information about ordering transcripts for a fee.

Thereafter, on September 9, 2023, Mr. Adams moved to vacate his sentence pursuant to 18 U.S.C. § 2255 ("2255 petition"), arguing that 18 U.S.C. § 922(g)(1), which makes it unlawful for a convicted felon to possess a firearm in or affecting interstate commerce, violated his Second Amendment right to keep and bear arms.

His 2255 petition was docketed separately from his original criminal case. After reviewing Mr. Adams' 2255 petition, the district court summarily dismissed it as being without merit. The district court also declined to issue a certificate of appealability. Mr. Adams appealed that determination.

On May 10, 2024, the Second Circuit issued an order deferring resolution of Mr. Adams' pending motions in his Section 2255 appeal. CADR 32 in Appeal No. 23-7219. As part of that appeal, the Second Circuit reviewed Mr. Adams' pro se letter to the district court from May 1, 2023. *Id.* Upon review, the Second Circuit liberally construed his pro se letter to be a notice of appeal from the criminal judgment. The Second Circuit issued an order directing the district court to treat Mr. Adams' letter to be a notice of appeal from the criminal judgment. *Id.* Once docketed, the Second Circuit further ordered that the direct appeal of his criminal case would proceed in the ordinary course. The Second Circuit noted, however, that its decision to treat Mr. Adams' notice of appeal was without prejudice to the government raising the timeliness of his direct appeal.

At that point, Mr. Adams was permitted to file a direct appeal, and the undersigned was appointed to his case. On direct appeal, Adams contended that the Second Circuit should reverse his conviction under 18 U.S.C. § 922(g)(1), because this Court's decision in *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022), has effectively rendered Section 922(g)(1) unconstitutional on its face and as applied to him. Mr. Adams also contended that this Court's decision in *United States v. Rahimi*, 602 U.S. 680 (2024), examining 18 U.S.C. § 922(g)(8), provided further

support for his claims.

The day before the government's answering brief was due, the government filed a motion to dismiss Adams' appeal as untimely. Over opposition, the Second Circuit granted the government's motion to dismiss and dismissed the appeal as untimely, citing Fed. R. App. P. 4(b)(1)(A) and *United States v. Frias*, 521 F.3d 229, 234 (2d Cir. 2008). The Order, in its entirety, provides as follows:

> The Government moves to dismiss Appellant's appeal as untimely. Appellant opposes. Upon due consideration, it is hereby ORDERED that the motion to dismiss is GRANTED and the appeal is DISMISSED as untimely. *See* Fed. R. App. P. 4(b)(1)(A); *United States v. Frias*, 521 F.3d 229, 234 (2d Cir. 2008).

Adams filed a motion for reconsideration and reconsideration en banc. That motion was denied as well.

This Court should grant this petition because the Second Circuit has wrongly interpreted Fed. R. App. P. 4(b)(1)(A). The Second Circuit is not alone. The Fourth Circuit has also held that it may not consider basic equity principles, such as equitable tolling, when the government files a motion to dismiss for timeliness. This case is an ideal vehicle to provide much-needed clarification to litigants and the lower courts. As noted by Judge Block for the Eastern District of New York:

> The governing case law has an attenuated history which continues to challenge the district courts and is sorely in need of focused clarification and application.

United States v. Escobar, 761 F. Supp. 3d 493, 494 (E.D.N.Y. 2024).

Finally, for litigants like Mr. Adams, the failure to consider principles of equity and fairness disproportionately affects populations that struggle most to vindicate their interests in court.

II.

ARGUMENT

A. Contrary to this Court's equitable tolling jurisprudence, lower courts have held that consideration of equitable tolling principles is categorically unavailable once the government objects to timeliness under Rule 4(b) of the Federal Rules of Appellate Procedure.

As noted above, the Second Circuit's order dismissing Mr. Adams' appeal is sparse. In dismissing the appeal as untimely, it cited Fed. R. App. P. 4(b)(1)(A) and *United States v. Frias*, 521 F.3d 229, 234 (2d Cir. 2008). Rule 4(b)(1)(A) establishes that a notice of appeal must be filed within fourteen days from the latter of the entry of judgment (or order being appealed from) or notice that the government is seeking an appeal. Fed. R. App. P. 4(b)(1)(A)(i)-(ii). Here, the panel dismissed Mr. Adams appeal because he did not file his notice within fourteen days of the entry of judgment. Rule 4(b), however, has multiple subsections, including the standard governing a "motion for extension of time" to file the notice for "excusable neglect or good cause" Fed. R. App. P. 4(b)(4). For neglect or good cause,[2] the district court may grant a thirty-day extension. Here, the Second Circuit construed Mr. Adams' letter to be a notice of appeal. It then directed the district court to file it on the docket as such.

[2] "Good cause" and "excusable neglect" have "different domains," *Lorenzen v. Employees Retirement Plan*, 896 F.2d 228, 232 (7th Cir. 1990). But they are not interchangeable. The excusable neglect standard implies some fault; i.e., something within the control of the movant. The good cause standard, on the other hand, applies in situations where there is no fault.

Thus, the district court did not need, nor did it have the occasion, to make any formal findings about why Mr. Adams' notice of appeal was not filed timely.

Relying on *Frias*, the Second Circuit panel in Adams' case seemed to have focused on one line:

> When the government properly objects to the untimeliness of a defendant's criminal appeal, Rule 4(b) is mandatory and inflexible. *See Eberhart,* 546 U.S. at 17–18, 126 S.Ct. 403; *Moreno–Rivera,* 472 F.3d at 50 n. 2; *see also United States v. Singletary,* 471 F.3d 193, 196 (D.C.Cir.2006).

Frias, 521 F.3d at 234. With *Frias,* the Second Circuit joined several sister circuits in concluding that Rule 4(b), unlike Rule 4(a), governing the timing of civil appeals, is not jurisdictional. *Id.* at 233. This is significant because the time to appeal a criminal judgment is set forth only in a court-prescribed rule of appellate procedure. However, reading the above passage literally, the distinction between a jurisdictional bar and a court-prescribed rule collapse. Reading Rule 4(b) so inflexibly leads to the conclusion that equitable tolling could never be invoked when the government objects to timeliness. "Pragmatically, it would not matter, therefore, whether 4(b) is jurisdictional. In either event, the result would be the same. In [Judge Block's] view, it is conceptually a non sequitur. *Escobar*, 761 F. Supp. 3d 493 at 495.

In this way, *Frias* goes too far. As this Court observed, "[t]he procedural rules adopted by the Court for the orderly transaction of its business are not jurisdictional and can be relaxed by the Court in the exercise of its discretion when the ends of justice so require." *Schacht v. United States*, 398 U.S. 58, 64 (1970) (permitting the late filing of a motion for reconsideration for certiorari in the interests of justice). Moreover, applying basic equitable principles "is particularly apt when a person's

liberty is at stake." *Escobar*, 761 F. Supp. 3d at 499.

In stating that dismissal is mandatory upon a government motion for timeliness, *Frias* relied on *Eberhart v. United States*, 546 U.S. 12, 17-18, (2005). But *Eberhart* did not distinguish between those claim-processing rules that were subject to equitable exceptions and those that were not.

Since then, this Court addressed the issue in the context of a civil appeal in *Nutraceutical Corporation v. Lambert*, 586 U.S. 188, 139 (2019). *Nutraceutical* reasoned: "[t]hough subject to waiver and forfeiture, some claim-processing rules are mandatory—that is, they are unalterable if properly raised by an opposing party." *Id.* at 192 (internal quotations omitted). As such, "[r]ules in this mandatory camp are not susceptible" to equitable tolling or "harmless error analysis." *Id.* But the Court also wrote "the simple fact that a deadline is phrased in an unqualified manner does not necessarily establish that tolling is unavailable." *Id.* at 193. As such, "[w]hether a rule precludes equitable tolling turns not on its jurisdictional character but rather on whether the text of the rule leaves room for such flexibility." *Id.* In *Nutraceutical*, the Court ruled that the civil claim-processing rule in that case, Federal Rule of Civil Procedure 23(f), expressed a "clear intent" to compel rigorous enforcement of that rule, and it was not, therefore, subject to equitable tolling or harmless error analysis. *Id.* at 191–93. Nonetheless, *Nutraceutical* left open whether unusual circumstances such as misinformation from a district court about a deadline or how "an insurmountable impediment to filing timely might compel a different result." *Nutraceutical Corp.* 586 U.S. at 197 n.7.

Since *Nutraceutical*, the Fourth Circuit, in a divided opinion, held "that 4(b) is a mandatory claim-processing rule" and is not subject to equitable tolling. *Marsh*, 944 F.3d at 530. In *Marsh*, the district court failed to advise the defendant of the defendant's right to appeal. *Marsh* examined whether that failure excused the late filing of the notice of appeal. Applying *Nutraceutical*, the majority concluded that 4(b)(1) reflected a clear intent to preclude equitable tolling. In so doing, however, it did not distinguish between the civil rule at issue in *Nutraceutical*, and the 4(b)(1) criminal rule in *Marsh*.

Dissenting in judgment from the majority view, Judge Gregory reasoned that Rule 4(b)(1) "does not set forth an inflexible rule requiring dismissal whenever its clock has run ... [and] non-jurisdictional rules are normally subject to a rebuttable presumption in favor of equitable tolling." *Marsh,* 944 F.3d at 536–37(quoting *Holland v. Florida*, 560 U.S. 631, 645–46 (2010)) (Gregory, J dissenting). He noted that this "Court has gone so far as declaring that nonjurisdictional rules are "normally subject to a 'rebuttable presumption' in favor 'of equitable tolling.'" *Id*. (citing *Holland*, 560 U.S. at 645–46. As such, the nature of a claim-processing rule does not suggest that it is "utterly exceptionless." *Id*. (citing *Carlisle v. United States*, 517 U.S. 416, 435, (1996) (Ginsburg, J., concurring) ("But like limitation periods generally, the 29(c)/45(b) constraint is not utterly exceptionless."). As court-promulgated, nonjurisdictional rules are subject to equitable limitations. *Id*.

Given the gravity of the right at stake, judicial review, and the special vulnerabilities of incarcerated individuals to vindicate that right, this Court should

clarify for lower courts that equitable tolling principles apply to Rule 4(b). Mr. Adams' *pro se* letter to the district court represents his clear attempt to personally ensure that his notice of appeal was filed in a timely manner. Mr. Adams also informed the court that he had arrived at his BOP designated facilty and provided his new mailing address. *Bacon v. Phelps*, 961 F.3d 533, 540 (2d Cir. 2020) (although no formal notice of appeal was filed in the district court, Bacon's letters indicating he had sent a notice of appeal, viewed with "the appropriate amount of liberality due pro se litigants," were sufficient to constitute a notice of appeal).

Moreover, pro se prisoners face serious obstacles, unlike other litigants when it comes to sending outgoing mail. *See Houston v. Lack*, 487 U.S. 266, 270–72 (1988) (pointing out pro se prisoners' lack of control over outgoing mail); Fed. R. Crim. P. 49, Adv. Comm. Notes (2018 Amendment) (recognizing that "incarcerated individuals . . . often lack reliable access to the internet or email"). Prison mail systems are notoriously slow.

Finally, many defendants remain in transit for long periods of time after sentencing, awaiting a final designation to a Bureau of Prisons facility. And prisoners are often moved between facilities without notice. *See* U.S. Marshals Servs. Office of Pub. Affairs, Fact Sheet: Prisoner Transportation[3] (reporting nearly a quarter million prisoner movements by the Marshals Service in FY 2023, at an average pace of almost 1,000 prisoner movements each day); *Grandison v. Moore,* 786 F.2d 146,

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3 https://www.usmarshals.gov/sites/default/files/media/document/ 2024-PrisonerTransportation.pdf

149 (3d Cir. 1986) ("Prisoners . . . have no control over their whereabouts, and may be temporarily transferred out of the prison for court proceedings or placed in administrative or punitive segregation which can delay mail delivery."). These circumstances present significant obstacles to litigants like Adams who wish to assert their right to appeal in federal court. This Court should protect them by granting this petition.

III.

CONCLUSION

For the foregoing reasons, the petitioner prays that a writ of *certiorari* issue to review the judgment of the United States Court of Appeals for the Second Circuit.

Respectfully submitted,

Michelle Barth

MICHELLE ANDERSON BARTH
CJA appointed counsel for Petitioner
Law Office of Michelle Anderson Barth
P.O. Box 4240
Burlington, VT 05406
(619) 884-3883