PUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 20-1766

DONTE PARRISH,

Plaintiff - Appellant,

v.

UNITED STATES OF AMERICA,

Defendant - Appellee.

Appeal from the United States District Court for the Northern District of West Virginia, at Clarksburg. Irene M. Keeley, Senior District Judge. (1:17-cv-00070-IMK)

Argued: March 8, 2023 Decided: July 17, 2023

Before NIEMEYER, GREGORY, and RICHARDSON, Circuit Judges.

Dismissed by published opinion. Judge Niemeyer wrote the opinion, in which Judge Richardson joined. Judge Gregory wrote a dissenting opinion.

ARGUED: Rachel Martin, Andrew Nell, UNIVERSITY OF VIRGINIA SCHOOL OF LAW, Charlottesville, Virginia, for Appellant. Jordan Vincent Palmer, OFFICE OF THE UNITED STATES ATTORNEY, Wheeling, West Virginia, for Appellee. **ON BRIEF:** J. Scott Ballenger, Appellate Litigation Clinic, UNIVERSITY OF VIRGINIA SCHOOL OF LAW, Charlottesville, Virginia, for Appellant. Erin K. Reisenweber, Assistant United States Attorney, Christopher J. Prezioso, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Wheeling, West Virginia, for Appellee.

NIEMEYER, Circuit Judge:

Because Donte Parrish did not file a timely notice of appeal from the judgment in this civil action, we dismiss his appeal for lack of jurisdiction. *See* 28 U.S.C. § 2107.

Parrish claimed that because of circumstances beyond his control, he did not receive notice of the district court's judgment for over 90 days after it was entered, and he filed a notice of appeal shortly after he did receive notice. In response, we found his notice of appeal untimely, but we construed the notice as a timely motion to reopen the appeal period pursuant to Federal Rule of Appellate Procedure 4(a)(6), which implements an exception found in 28 U.S.C. § 2107(c), and remanded the case to the district court. The district court then entered an order under Rule 4(a)(6), reopening the time for noticing an appeal for 14 days from the date of its order. Parrish, however, failed to file a notice of appeal within the window so provided.

Section 2107(c) of Title 28, which is the statute prescribing the timing requirements for filing appeals in civil actions, provides that a would-be appellant who does not receive timely notice of a judgment and thereafter fails to file a timely notice of appeal may nonetheless request — not more than 180 days after the judgment is entered — that the district court exercise its discretion to reopen the time for appeal by providing a new 14-day window within which to file a notice of appeal. 28 U.S.C. § 2107(c); *see also* Fed. R. App. P. 4(a)(6). Compliance with this narrow supplemental opportunity for filing a timely notice of appeal is especially significant because the times specified by statute for filing appeals in civil actions are jurisdictional. *See Bowles v. Russell*, 551 U.S. 205, 214 (2007); *see also Hamer v. Neighborhood Hous. Servs. of Chicago*, 138 S. Ct. 13, 17–18 (2017).

In defense of his failure to file a notice of appeal within the 14-day window, Parrish argues that we should treat the district court's order reopening the time for appeal as a *nunc pro tunc* "validation" of his earlier untimely notice of appeal and conclude therefore that he was not required to file a second notice during the 14-day window created by the district court's order. We conclude, however, that this argument is foreclosed by both the text of § 2107(c) and the text of the district court's order. Moreover, because Parrish's earlier filing has already been construed — to his benefit — as a motion under Rule 4(a)(6), we cannot now reconstrue it to be simultaneously both the motion that must precede a district court's reopening order and the notice that must follow after the order is granted. Accordingly, we dismiss Parrish's appeal for lack of jurisdiction.

I

In 2017, while serving a 180-month term of imprisonment in federal prison, Parrish, proceeding pro se, commenced this civil action against the United States pursuant to the Federal Tort Claims Act. At its core, his complaint alleged that prison officials unlawfully detained him in administrative segregation for approximately three years. He demanded $5 million in compensatory damages. In a memorandum opinion and order, the district court granted the government's motion to dismiss the complaint on the grounds that one of Parrish's claims was time-barred and the remaining claims had not been administratively exhausted. The court entered final judgment dismissing Parrish's complaint on March 24, 2020.

Parrish claimed that he did not receive a copy of the district court's judgment until June 25, 2020, over 90 days after it was entered, and thus he filed a notice of appeal dated July 8, 2020. In his notice of appeal, he explained, "Due to my being transferred from Federal to State custody I did not receive this order until June 25, 2020. It is now 7/8/20 and I'm filing this notice of appeal."

We concluded that Parrish's notice of appeal was "clearly untimely." *Parrish v. United States*, 827 F. App'x 327, 327 (4th Cir. 2020) (per curiam). But in view of the circumstances — that Parrish did not receive notice of the district court's judgment "until 93 days after entry" and that he filed the notice of appeal "within 14 days after" receiving a copy of the judgment — we "construe[d] [Parrish's] notice of appeal as a motion to reopen the appeal period under Rule 4(a)(6)" and remanded the case to the district court "to determine whether the appeal period should be reopened." *Id.*

On remand, the district court granted Parrish's motion to reopen by order dated January 8, 2021, stating in its order, "[P]ursuant to Federal Rule of Appellate Procedure 4(a)(6), . . . the Court REOPENS the time for Parrish to file his appeal for fourteen (14) days following the entry of this Order." The court also directed the clerk of court to transmit the order to Parrish by certified mail, return receipt requested.

Parrish did not, however, file a notice of appeal — or anything else — during the 14-day period authorized by the district court's order. On January 27, 2021, five days after the 14-day period had closed, Parrish mailed a document to this court, which the Clerk docketed on February 2, 2021, as a supplemental informal brief.

To assist us with the somewhat involved procedural issues in this case, we appointed counsel to represent Parrish in this court.[*]

II

Parrish contends that when the district court reopened the time to appeal under Federal Rule of Appellate Procedure 4(a)(6) with its order dated January 8, 2021, it "validated" his prior untimely notice of appeal dated July 8, 2020, and he therefore was not required to file a second notice of appeal during the 14-day window. He explains that when a district court *extends* the time to file a notice of appeal under Rule 4(a)(5) based on excusable neglect, a previous untimely notice of appeal filed within the time so extended is validated. *See Evans v. Jones*, 366 F.2d 772, 772–73 (4th Cir. 1966) (per curiam). He argues that the same reasoning for validating a prior notice of appeal when "extensions" are granted under Rule 4(a)(5) should also apply to "reopenings" under Rule 4(a)(6). Accordingly, he maintains that with a "validated" prior notice of appeal, he need not have filed a second notice of appeal, which would simply amount to "empty paper shuffling." (Quoting *Hinton v. City of Elwood*, 997 F.2d 774, 778 (10th Cir. 1993)).

While Parish's argument relies on cases decided under Rule 4(a)(5), that rule is not itself jurisdictional. *See Hamer*, 138 S. Ct. at 17 (noting, while applying Rule 4(a)(5), that "it is axiomatic that the Federal Rules of Civil Procedure do not create or withdraw federal jurisdiction" (cleaned up)). Rule 4(a)(5) simply implements 28 U.S.C. § 2107(c), *id*. at 21,

[*] We are grateful to Professor J. Scott Ballenger, Director of the Appellate Litigation Clinic, University of Virginia School of Law, and law students Rachel Martin and Andrew Nell for their fine representation in service to Parrish and the court.

and it is § 2107 that defines our appellate jurisdiction in this matter, *see id*. at 17–18; *Bowles*, 551 U.S. at 213–14. Accordingly, we must satisfy ourselves that, under § 2107(c), we have jurisdiction.

We begin with the statutory text. In 28 U.S.C. § 2107, Congress established mandatory timing requirements for conferring jurisdiction on courts of appeals in civil actions. In § 2107(a), it provided that in civil actions, courts of appeals have jurisdiction to review district courts' judgments, orders, or decrees if the notice of appeal is "filed[] within thirty days after the entry of such judgment, order or decree." 28 U.S.C. § 2107(a). But § 2107(b) then lengthens the 30-day appeal period to 60 days where one of the parties is the United States. *Id.* § 2107(b). And finally, § 2107(c) provides two exceptions to those timing requirements.

The first exception, stated in the first sentence of § 2107(c) and implemented by Federal Rule of Appellate Procedure 4(a)(5), specifies that "[t]he 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." 28 U.S.C. § 2107(c) (emphasis added); *see also* Fed. R. App. P. 4(a)(5).

The second exception, stated in the second sentence of § 2107(c) and implemented by Federal Rule of Appellate Procedure 4(a)(6), provides:

> [I]f 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.

28 U.S.C. § 2107(c) (emphasis added). This exception thus authorizes the district court, in its discretion, to reopen the time for filing a notice of appeal for 14 days if it finds that (1) the appellant did not receive notice of the judgment to be appealed within 21 days of its entry; (2) the appellant files a motion to reopen within 180 days after the entry of judgment or within 14 days after receipt of notice of the judgment, whichever is earlier; and (3) no party would be prejudiced by granting the motion.

The Supreme Court has construed these statutory limits on appellate court jurisdiction strictly. In *Bowles*, the appellant failed to file a timely notice of appeal and thereafter moved to reopen the period during which he could file his notice of appeal pursuant to § 2107(c) and Rule 4(a)(6). 551 U.S. at 207. The district court granted the appellant's motion, but rather than reopening the filing period for 14 days, as authorized by statute, the district court's order "inexplicably" gave the appellant 17 days within which to file his notice of appeal. *Id*. The appellant thereafter filed his notice of appeal on day 16 — which was within the 17 days authorized by the district court but beyond the 14-day period authorized by § 2107(c). *Id*. Despite the fact that the appellant relied on the district court's error in authorizing 17 days, the Supreme Court concluded that the appellant's appeal had to be dismissed because *statutory* limitations on the timing of appeals are "mandatory and jurisdictional" and are not susceptible to equitable modification. *Id*. at 208–09 (quoting *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 61 (1982) (per

curiam)). As the Court emphasized, "Because Congress decides whether federal courts can hear cases at all, it can also determine when, and under what conditions, federal courts can hear them." *Id*. at 212–13.

In this case, the exception stated in the first sentence of § 2107(c) — providing for extensions of time for excusable neglect or good cause — does not apply. If that exception *were* to apply, the period for filing a notice of appeal would be extended, and thus it would be reasonable to conclude that a notice of appeal filed at any time within the original time for appeal or the approved extension period would be timely. But that exception is applicable only when the appellant files a motion for an extension "not later than 30 days" after the established time for filing a notice of appeal — in this case, not later than June 24, 2020 (*i.e.*, 30 days after the 60-day appeal period in cases in which the United States is a party). It is undisputed that Parrish did not file a motion pursuant to that exception, and even if his July 8, 2020 notice of appeal were to be treated as such a motion, it still would be untimely, and therefore the first exception would not apply.

Because the first exception does not apply here, the only exception on which Parrish can rely is the one provided in the second sentence of § 2107(c), which does not purport to extend the time for appeal from the date of the judgment, but rather provides for a *new* 14-day window for filing a notice of appeal, running from the date of the district court's order granting the reopening. The district court in this case found that Parrish qualified for a reopening of the appeal period under the second exception and provided him with a new opportunity to file a notice of appeal within 14 days of its order, *i.e.*, by January 22, 2021. Thus, before the date of the district court's order, any appeal by Parrish was foreclosed by

the untimeliness of his notice because his notice was not filed within 60 days of the judgment or any possible extension of that period. The order granting the motion therefore "reopened," rather than "extended," the period so that he could file a notice of appeal that was timely. Indeed, Congress deliberately used "reopen" to imply that before such an order, the appeal was indeed foreclosed. *See Reopen*, Merriam-Webster's Collegiate Dictionary 1054 (11th ed. 2020) (defining "reopen" as "to open *again*" or "to begin *again*" (emphasis added)). Thus, to appeal in these circumstances, Parrish would have to file a appeal within 14 days of the entry of the order.

Not only does the text of § 2107(c) require that Parrish file his notice of appeal during the reopened period, the text of the district court's order granting his motion to reopen also explicitly advised him on this requirement. The court said that it was reopening "the time for Parrish to file his appeal for fourteen (14) days *following* the entry" of the order. (Emphasis added). This language does not purport to validate his earlier filed untimely notice of appeal, as Parrish would now have it.

Parrish nonetheless relies on court decisions addressing the first exception in § 2107(c) — the *extension* provision implemented by Rule 4(a)(5) — and argues that such caselaw "applies with equal force" to the *reopening* provision in § 2107(c). But the cases he cites provide him with little help, as they only address Rule 4(a)(5), not 4(a)(6), and apply the rule in materially distinct circumstances. In *Hinton v. City of Elwood*, on which Parrish relies, the appellant filed his notice of appeal one day beyond the 30-day period specified in § 2107(a), therefore making it untimely. 997 F.2d at 777. But Hinton thereafter filed a motion for an extension of time *within the 30-day extension period*

permitted by § 2107(c) and Rule 4(a)(5). *Id*. While the district court granted that motion, Hinton did not file a second notice of appeal. The Tenth Circuit concluded nonetheless that the district court's granting of the motion to extend "validated" the prior notice of appeal. *Id*. at 778. Similarly, in *Evans v. Jones*, on which Parrish also relies, we construed an untimely notice of appeal, which was filed after the 30-day period mandated by § 2107(a) but *within the subsequent 30-day extension period* permitted by Federal Rule of Civil Procedure 73(a) (the prior version of Federal Rule of Appellate Procedure 4(a)(5)), as a motion *to extend* under that rule based on excusable neglect. 366 F.2d at 772–73. We indicated that if the district court found that the delay was excusable, it would "validate" the prior notice of appeal "provided the effect [was] not to extend the time for filing more than thirty days from the expiration of the original thirty-day period." *Id*. at 773. Thus, these cases dealt with *extensions* of appeal periods sought by filing a motion (or a notice construed as a motion) within the permissible time period for requesting such an extension. And in that circumstance, it would reasonably follow that *extending* the time for filing the appeal validates any notice of appeal filed within the period of extension. But this case involves a motion *to reopen* the appeal time after it had long expired. In such a circumstance, Congress authorized a special exception by which a court could authorize *a new 14-day window* for filing an appeal, running from the date of the district court's order granting the 14-day window. And that exception clearly requires that a notice of appeal be filed within the 14-day period.

In support of his position that Rule 4(a)(6) incorporates Rule 4(a)(5) jurisprudence, our good colleague in dissent states that "in at least one prior case, this Court has accepted

a district court's holding that an order reopening the appeal period validated an earlier, untimely notice of appeal," citing *Grant v. City of Roanoke*, 810 F. App'x. 236 (4th Cir. 2020). *Infra* at 15. This unpublished decision, however, does not, in its one short paragraph, conduct any analysis of the Rule 4(a)(6) issue. This hardly constitutes binding, persuasive authority.

Finally, Parrish argues that he is "functionally in the same position as the *pro se* litigant" in *Clark v. Cartledge*, 829 F.3d 303 (4th Cir. 2016). In that case, we found that a pro se litigant's motion for an extension of time to request a certificate of appealability, which was filed within the 30-day window mandated by § 2107(a), was the "functional equivalent" of a notice of appeal sufficient to satisfy Federal Rule of Appellate Procedure 3. *Clark*, 829 F.3d at 304–06. In doing so, however, we emphasized that to benefit from such a ruling, "the litigant's motion *must* be timely under Rule 4." *Id*. at 307–08. Therefore, regardless of what *Clark* says about the importance of construing pro se filings liberally, it does not allow us to excuse Parrish's failure to comply with the timing requirements of § 2107(c).

Parrish filed only one notice of appeal in this case, and that notice was untimely under any relevant jurisdictional standard established by Congress. It was filed after the original 60-day period for appealing expired, and it was filed after any extension period that could have been obtained. When a *new* period for appeal was given to Parrish, he did not file a notice of appeal within that new period. This "[f]ailure to comply with a jurisdictional time prescription . . . deprives a court of adjudicatory authority over the case,

necessitating dismissal." *Hamer*, 138 S. Ct. at 17. Accordingly, we dismiss Parrish's appeal for lack of jurisdiction.

IT IS SO ORDERED

GREGORY, Circuit Judge, dissenting:

Through no fault of his own, Donte Parrish did not learn the district court had dismissed his Federal Tort Claims Act complaint until three months after the court entered judgment. After he finally received notice of the judgment on June 25, 2020, Parrish filed a *pro se* notice of appeal on July 8, 2020. This Court recognized that his notice of appeal was "clearly untimely," but construed it as a timely motion to reopen the appeal period under Federal Rule of Appellate Procedure 4(a)(6). *Parrish v. United States*, 827 F. App'x 327, 327 (4th Cir. 2020) (per curiam). The district court's judgment remained unchanged in the months between that filing and the district court's January 8, 2021 order reopening the appeal period, and the government agrees that Parrish's initial notice of appeal sufficiently informed all parties of his intent to appeal.

Yet my colleagues in the majority hold that we lack jurisdiction over Parrish's appeal because Parrish failed to *refile* his notice of appeal after the district court reopened the appeal period. Nothing in the text of 28 U.S.C. § 2107(c) compels such a formalistic and hollow requirement. To the contrary, Fourth Circuit precedent makes clear that the district court's order reopening the appeal period validated Parrish's earlier notice of appeal without the need for refiling. Because that precedent establishes that we have jurisdiction over Parrish's appeal, I respectfully dissent.

I.

Section 2107 prescribes a straightforward set of rules governing the timeliness of an appeal, which is a necessary prerequisite for a court of appeals to exercise jurisdiction.

To confer jurisdiction on this Court, an appellant generally must file a notice of appeal within 30 days after the district court enters judgment (60 days if the United States is a party). 28 U.S.C. § 2107(a)–(b). There are two exceptions to this deadline. First, the district court may extend the time to appeal if the appellant so moves no later than 30 days after the appeal deadline expires and can show "excusable neglect or good cause." § 2107(c). Federal Rule of Appellate Procedure 4(a)(5) elaborates on this exception, and provides that the court may grant an extension of up to 30 days after the original appeal deadline or 14 days after the court grants the motion for an extension, whichever is later. Fed. R. App. P. 4(a)(5).

Second, the district court may reopen the time to appeal for a period of 14 days if (1) the appellant did not receive notice of the judgment within 21 days of its entry; (2) the appellant moves to reopen within 14 days after receiving notice or within 180 days after the entry of judgment, whichever is earlier; and (3) the court finds that no party would be prejudiced by the reopening. § 2107(c). Rule 4(a)(6) reiterates these three requirements for reopening the time to file an appeal. Fed. R. App. P. 4(a)(6). When the district court reopens the appeal period, the new 14-day window for filing a notice of appeal runs from the date of the order granting the reopening. § 2107(c).

Each exception provides a way for an appellant to receive additional time to notice their appeal. The two exceptions just apply in different scenarios. An appellant may file a motion for an extension if they received notice of the district court's judgment at the proper time but, because of excusable neglect or good cause, either (1) cannot file a notice of appeal before the deadline or (2) failed to file a notice of appeal before the deadline but

discovered the oversight within 30 days after the deadline. *Id.* A motion to reopen, on the other hand, is the proper vehicle if the appellant did not receive notice of the judgment within 21 days of its entry, as long as no more than 180 days have passed since the date the district court entered judgment. *Id.* For our purposes, the key point is that an appellant may file either motion after the original appeal period closes.

The question in Parrish's case is whether the district court's order reopening his appeal period validated his earlier notice of appeal, which he filed after the 60-day appeal deadline passed. This Court's longstanding precedent readily answers that question in the affirmative. In *Evans v. Jones*, the appellant filed a notice of appeal one day after the appeal period closed, which this Court construed as a motion for an extension. 366 F.2d 772, 772–73 (4th Cir. 1966) (per curiam) (applying precursor to Rule 4(a)(5)). The Court made clear that a later district court order granting an extension would "validate" the appellant's untimely notice of appeal. *Id.* at 773.

Since our decision in *Evans*, other circuits have similarly held that a Rule 4(a)(5) extension retroactively validates an earlier, untimely notice of appeal. *Hinton v. City of Elwood*, 997 F.2d 774, 777–79 (10th Cir. 1993); *McNicholes v. Subotnik*, 12 F.3d 105, 107 (8th Cir. 1993). In *Hinton*, the Tenth Circuit explained that this scenario resembles a prematurely filed notice of appeal, which courts treat as valid "when the order appealed from is likely to remain unchanged in both its form and its content." 997 F.2d at 778. Because a Rule 4(a)(5) motion for an extension "does not portend any substantive alteration in the form or content of the order being appealed from," the Tenth Circuit concluded that a district court's approval of an extension "validate[s] a prior notice of appeal." *Id.* The

Hinton Court aptly noted that requiring the appellant to refile a notice of appeal in this context "would amount to little more than empty paper shuffling," and it did not believe that Rule 4(a)(5) was "designed to impose such a hollow ritual on a would-be appellant." *Id.* (internal quotation marks omitted).

The rule this Court established in *Evans* applies with equal force where, as here, a late-filed notice of appeal is followed by a successful Rule 4(a)(6) motion to reopen. Like a Rule 4(a)(5) motion for an extension, a Rule 4(a)(6) motion to reopen does not rely on any intervening change in the district court's judgment—it simply requests additional time to notice an appeal of the judgment. In both contexts, once the district court grants additional time to appeal, the only remaining question is whether the initial notice of appeal continues to "provide[] sufficient notice to other parties and the courts" that the appellant intends to seek appellate review. *Smith v. Barry*, 502 U.S. 244, 248 (1992). If it does—and it typically will—the district court's decision to grant an extension or reopen the appeal period validates the notice of appeal.

In fact, in at least one prior case, this Court has accepted a district court's holding that an order reopening the appeal period validated an earlier, untimely notice of appeal. After the district court granted the motion to reopen, it explained that "[b]ecause a notice of appeal has already been docketed, [appellant] does not need to file a new notice of appeal." *Grant v. City of Roanoke*, No. 7:16-CV-00007, 2019 WL 6833664, at *3 (W.D. Va. Dec. 13, 2019). We then exercised jurisdiction over the appeal. *See Grant v. City of Roanoke*, 810 F. App'x 236 (4th Cir. 2020), *cert. denied*, 141 S. Ct 2471 (2021).

Given our decision in *Evans*, the jurisdictional question in Parrish's case should be easy to resolve. The district court's decision to reopen the time for an appeal validated Parrish's earlier notice of appeal, which gives us jurisdiction. The government agrees that Parrish's notice of appeal sufficiently communicated his intent to appeal the district court's judgment. That makes sense, as nothing about the judgment changed between July 2020, when Parrish filed the notice of appeal, and January 2021, when the district court reopened the appeal period. Requiring Parrish to refile merely duplicates his earlier notice of appeal and "amount[s] to little more than empty paper shuffling." *Hinton*, 997 F.2d at 778 (internal quotation marks omitted).

II.

My colleagues in the majority see things differently. They maintain that the question is not whether the court and government received notice of Parrish's intent to appeal, but whether Parrish complied with § 2107(c)'s jurisdictional rules governing the timing of appeals. In their view, the statute always requires an appellant to re-notice an appeal after the district court reopens the appeal period, regardless of any previously filed notice of appeal. Try as I might, my efforts to find such a requirement in the text of § 2107(c) come up empty.

Section 2107(c) is silent on the effect an order reopening the appeal period may have on a previously filed notice of appeal. The statute merely provides that the district court may "reopen the time for appeal for a period of 14 days from the date of entry of the order reopening the time for appeal." § 2107(c). In cases where the appellant has not yet

filed a notice of appeal, § 2107(c) obviously requires the appellant to file one within the 14-day reopened period. In a case like Parrish's, though, nothing in the statutory text compels refiling.[*] If the statute required an appellant to refile a notice of appeal in this scenario, an appellant also would need to refile a notice of appeal after the district court granted a motion for an extension. After all, "reopening the time for appeal" is no less ambiguous on this issue than "extend[ing] the time for appeal." § 2107(c). But that interpretation, of course, would conflict with our decision in *Evans*.

Unsurprisingly, then, the majority embarks on an effort to evade *Evans* by distinguishing a Rule 4(a)(5) extension from a Rule 4(a)(6) reopening. As they see it, a successful motion for an extension simply prolongs the original appeal period. A motion to reopen is different, they argue, because it seeks a new window to notice an appeal after the original appeal period has closed. In other words, the majority asserts that our appellate jurisdiction is "foreclosed" prior to an order reopening the appeal period, which is not the case when a district court merely extends the appeal period. *Ante* at 8–9.

This attempted distinction quickly crumbles under scrutiny. True, a litigant may move for an extension before the original appeal period expires and this Court loses the capacity to exercise jurisdiction. But § 2107(c) and Rule 4(a)(5) also permit an appellant

[*] The Supreme Court's decision in *Bowles v. Russell*, 551 U.S. 205 (2007), does not support the majority's position. There, the Court held that it lacked jurisdiction to hear an appeal the appellant had noticed 16 days after the district court reopened the appeal period (for a period of 17 days). *Id.* at 207–09. The Court explained that the filing failed to comply with the plain text of § 2107(c), which sets a 14-day limit for a reopened appeal period. *Id.* at 209–10. By contrast, the statute simply does not address whether an order reopening the appeal period validates an earlier-filed notice of appeal.

to file a motion for an extension up to 30 days *after the appeal period expires*. In such a case, an extension order does not retroactively create an unbroken, prolonged appeal period. Rather, the order permits the appellant to notice an appeal within a new window of time that ends either 14 days after the entry of the extension order or 30 days after the original appeal deadline, whichever comes later. Fed. R. App. P. 4(a)(5). Thus, when an appellant files a notice of appeal after the appeal deadline, then successfully files a motion for an extension, the notice of appeal does not fall "within" the extension period the district court grants. *Ante* at 5.

Evans involved that exact scenario. *See* 366 F.2d at 772–73. The appellant filed his notice of appeal one day after the original deadline, at a time when we were unable to exercise jurisdiction over the appeal. After treating the filing as a motion for an extension, we held that an order granting an extension would "validate" the appellant's notice of appeal, *id.* at 773—that is, the appellant would not need to refile it. That our jurisdiction was foreclosed when the appellant filed the notice of appeal had no bearing on our analysis.

The majority's semantic distinction between an extension and a reopening runs headlong into this binding precedent. If the appellant in *Evans* did not need to re-notice his appeal after we construed his late-filed notice as a motion for an extension, *id.* at 772–73, there is no principled reason to require Parrish to re-notice his appeal after we construed his late-filed notice as a motion to reopen and the district court granted that motion. In both cases, our inability to exercise jurisdiction when the appellant filed the untimely notice of appeal does not preclude the district court's later extension or reopening order from

validating the notice. *Id.* Put simply, *Evans* directs us to treat Parrish's notice of appeal as validated and exercise jurisdiction over his appeal.

Separately, the majority reasons that Parrish's July 2020 filing cannot simultaneously serve as both a notice of appeal and a motion to reopen, so it ceased to be the former once we construed it as the latter. Once again, *Evans* easily defeats that argument. In *Evans*, we construed a late notice of appeal as a motion for an extension, then proceeded to hold that a district court order granting an extension would validate that same notice of appeal. *Id.* at 773.

Lastly, the majority finds it significant that the district court's order reopening the appeal period "explicitly advised" Parrish of the requirement to refile a notice of appeal within 14 days. *Ante* at 9. I agree that the district court apparently believed Parrish needed to file a new notice of appeal. But if appellate courts treated district courts' interpretations of the law as dispositive, we would quickly find ourselves out of work. The question here is not what the district court told Parrish he needed to do; it's whether any "genuine doubt exist[ed] about who is appealing, from what judgment, [and] to which appellate court." *Clark v. Cartledge*, 829 F.3d 303, 305 (4th Cir. 2016) (quoting *Becker v. Montgomery*, 532 U.S. 757, 767 (2001)). It is beyond dispute that Parrish's July 2020 notice of appeal continued to convey his intent to seek appellate review in January 2021.

III.

In short, the majority is simply incorrect in holding that § 2107(c) required Parrish to file a duplicative notice of appeal during the reopened appeal period. If, as my

colleagues assert, we must disregard a prior notice of appeal filed when our jurisdiction was "foreclosed," the notice of appeal in *Evans* could not have been validated by a later extension order. But the *Evans* Court held just the opposite. The majority's contrived distinction between motions to extend and motions to reopen flouts that precedent—and this Court's jurisdictional obligations.