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Federal courts are filled with situations where an inmate might rely on the prison mail system to mail a document to the court. However, the prison mail system is notoriously unreliable. The prison mailbox rule was formed to provide a fair opportunity for inmates to personally mail a filing to the court before the expiration of the legally permitted time to file.

Federal Rule of Appellate Procedure 4(c) codifies the prison mailbox rule. It provides that an inmate's appeal is considered filed with the clerk when the inmate delivers the filing to prison mail authorities. Prior to the Supreme Court's decision in Houston v. Lack, an explicit prison mailbox rule did not exist. In formulating the prison mailbox rule in Houston, the Court focused specifically on the struggles faced by pro se prisoners when filing paperwork with the courts. This Note addresses the dispute that was born among the federal circuit courts following the Court's decision in Houston and the adoption of Rule 4(c).

More specifically, this Note addresses whether the prison mailbox rule applies to all prisoners, including those represented by counsel, or whether the rule applies only to pro se prisoners. The question of whether the rule applies to both represented and unrepresented prisoners with equal force comes up with regularity in the federal courts. Where the prison mailbox rule is implicated, whether an inmate's appeal will be heard on its merits may depend exclusively on geography—does the inmate live in a circuit that follows a narrow interpretation of the rule? If the answer is yes, the appeal may be dismissed, no matter the strength of the appeal on its merits. Only if the answer is no may the appeal be heard on its merits. This Note proposes that the Supreme Court put an end to the disparate treatment of inmate appeals among the circuits by clarifying both Rule 4(c) and its decision in Houston. Due to the text of Rule 4(c) and the policy behind the creation of the prison mailbox rule, this Note suggests that the Supreme Court, in resolving the split among the circuits, hold that a broad interpretation of the

prison mailbox rule should be employed, thus rightfully allowing all inmates, rather than just unrepresented inmates, to benefit from the rule's protection.

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NOTE

THE SCOPE OF THE PRISON MAILBOX RULE

Caitlyn B. Switzer[†]

ABSTRACT

Federal courts are filled with situations where an inmate might rely on the prison mail system to mail a document to the court. However, the prison mail system is notoriously unreliable. The prison mailbox rule was formed to provide a fair opportunity for inmates to personally mail a filing to the court before the expiration of the legally permitted time to file.

Federal Rule of Appellate Procedure 4(c) codifies the prison mailbox rule. It provides that an inmate's appeal is considered filed with the clerk when the inmate delivers the filing to prison mail authorities. Prior to the Supreme Court's decision in Houston v. Lack*, an explicit prison mailbox rule did not exist. In formulating the prison mailbox rule in* Houston*, the Court focused specifically on the struggles faced by pro se prisoners when filing paperwork with the courts. This Note addresses the dispute that was born among the federal circuit courts following the Court's decision in* Houston *and the adoption of Rule 4(c).*

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Houston. *Due to the text of Rule 4(c) and the policy behind the creation of the prison mailbox rule, this Note suggests that the Supreme Court, in resolving the split among the circuits, hold that a broad interpretation of the prison mailbox rule should be employed, thus rightfully allowing all inmates, rather than just unrepresented inmates, to benefit from the rule's protection.*

I. INTRODUCTION

An inmate wrongfully convicted of murder decides to file a notice of appeal within the legally permitted time period. A court-appointed attorney represented the inmate at trial and still represents the inmate. However, the inmate has not heard from the attorney, and due to institutional limitations on outside communications, the inmate has experienced difficulty contacting the attorney. As a result, the inmate personally drafts the notice of appeal and delivers it to the prison mail authorities to mail to the courthouse.

Unfortunately, due to reasons beyond the inmate's control, the inmate's notice of appeal arrives to the clerk of court one day after the expiration of the legally permitted time for appeal. Consequently, the inmate is most likely unable to appeal the wrongful conviction because, as a general rule, a notice of appeal is only valid if it is filed on time.[1] To be considered filed on time, a notice of appeal must be filed with the clerk within the legally permitted time period. However, there is an exception promulgated in Federal Rule of Appellate Procedure 4(c), which provides in relevant part: "If an inmate files a notice of appeal in either a civil or a criminal case, the notice is timely if it is deposited in the institution's internal mail system on or before the last day for filing."[2] Thus, when an inmate files a notice of appeal, it is considered filed on time if it is given to prison authorities before the expiration of the statutorily permitted time for appeal.[3] Nevertheless, the court of appeals finds that, because the inmate was represented by counsel, the prison mailbox rule does not apply to the inmate.[4] Accordingly, the appellate court ultimately dismisses the appeal—despite the fact that the

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1 *See* FED. R. APP. P. 4(a)(1).

2 *Id.* at 4(c)(1).

3 *Id.* at 4(c); FED. R. APP. P. 4 advisory committee's note to 1993 amendment.

4 For example, see Cousin v. Lensing, 310 F.3d 843, 847 (5th Cir. 2002), and Burgs v. Johnson County, 79 F.3d 701, 701–02 (8th Cir. 1996) (per curiam).

inmate had no communication with counsel and independently drafted and mailed the notice of appeal, and despite the fact that the notice only arrived late because of the sloth-like speed of the prison mail system. Is this result correct in light of the procedural rule? Astonishingly, some federal circuit courts have held that it is.[5]

For example, in some federal circuits, the courts look to the legislative history of Rule 4(c) and its underlying policy rationales in reaching the conclusion that inmates like the one in the above hypothetical who, although passively "represented by counsel," must file, and in some circumstances even draft, their own legal documents are not entitled to the protection of the Rule 4(c) prison mailbox rule.[6] Essentially, this means that some circuits have abandoned traditional principles of rule interpretation when interpreting Rule 4(c).[7] On the other hand, some federal circuits follow a more logical approach when tasked with determining whether Rule 4(c) applies to all inmates, regardless of the inmates' representation by counsel. Rather than blindly throwing out principles of statutory interpretation, these courts look to the plain language of Rule 4(c) to determine its meaning.[8] Unfortunately, the federal circuit courts have not settled on only one approach to answering the question raised by the above hypothetical, and the Supreme Court has not yet resolved the circuit split on the issue.[9] The circuit split needs to be resolved because this discrepancy in the treatment of inmate appeals creates inconsistency across different federal jurisdictions.[10]

Resolving the circuit split is a relatively simple task because the issue boils down to the plain text of the rule. However, policy and legislative

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[5] *See Cousin*, 310 F.3d at 846–47; *Burgs*, 79 F.3d at 701–02.

[6] *See* United States v. Camilo, 686 F. App'x 645, 646 (11th Cir. 2017) (per curiam); *Burgs*, 79 F.3d at 701–02.

[7] *See infra* Section IV.A.2.

[8] *See* United States v. Craig, 368 F.3d 738, 740 (7th Cir. 2004); *see also* United States v. Moore, 24 F.3d 624, 626 n.3 (4th Cir. 1994) (noting Rule 4(c) applies to represented and unrepresented prisoners alike).

[9] Courtenay Canedy, Casenote & Comment, *The Prison Mailbox Rule and Passively Represented Prisoners*, 16 GEO. MASON L. REV. 773, 779 (2009).

[10] *Compare* Cretacci v. Call, 988 F.3d 860, 863 (6th Cir. 2021) (dismissing the appeal), *with* United States v. Carter, 474 F. App'x 331, 333 (4th Cir. 2012) (per curiam) (allowing the appeal to be heard on the merits).

history have played a key role in the development of the split because some courts look beyond the text of the rule.[11] In fact, the catalyst for the conflicting approaches can be traced back to policy discussions found in one Supreme Court case.[12] Although spelling out which approach courts should follow will eliminate the inconsistency between the circuit courts, it is necessary to address both policy and statutory interpretation in deciding the correct approach because the perceived tension between policy and traditional statutory interpretation is what caused the emergence of divergent approaches.[13]

The overall question this Note addresses is whether inmates who submit filings through the prison mail system lose the benefit of the prison mailbox rule and Rule 4(c) if they have counsel. Section II of this Note discusses the background to the Federal Rules of Appellate Procedure, as well as the adoption of Rule 4. Most importantly, Section II lays out the history of the prison mailbox rule and its common law development. Section III analyzes precedent concerning the prison mailbox rule and Rule 4(c), explaining the different approaches taken by lower federal courts to the application of both rules. Section III also presents why the Supreme Court should clarify Rule 4(c) and the prison mailbox rule. Section IV further explains the necessity for the Supreme Court to clarify the prison mailbox rule and give clear direction to lower federal courts facing jurisdictional limitation questions. Ultimately, this Note submits that the Supreme Court, in clarifying the prison mailbox rule, should adopt a broad interpretation of Rule 4(c).

II. BACKGROUND

A. The Federal Rules of Appellate Procedure: A Brief History

Understanding of the prison mailbox rule and Rule 4(c) necessarily begins with an understanding of the Federal Rules of Appellate Procedure (Appellate Rules) generally because the reason for the creation of the Appellate Rules aids in their interpretation. The Appellate Rules were

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[11] *See* Canedy, *supra* note 9, at 778.

[12] *See infra* Section II.B.1.b; *see also* Canedy, *supra* note 9, at 780.

[13] Canedy, *supra* note 9, at 781 ("Ultimately, the disagreement in construing Rule 4(c)(1) stems from differing approaches to statutory construction and the understanding of the Supreme Court's ruling in [*Houston v.*] *Lack*.").

promulgated to establish uniformity in procedure among the circuits.[14] Once an understanding of the Appellate Rules and the reason for their creation is established, the common law prison mailbox rule and the promulgation of Rule 4(c) can be explored.

1. The Adoption of the Federal Rules of Appellate Procedure

The Federal Rules of Appellate Procedure are integral to the smooth functioning of the American appellate system. Congress empowered the Supreme Court to prescribe federal rules of practice and procedure when it passed the Rules Enabling Act in 1934.[15] The Rules Enabling Act laid the foundation for the Supreme Court to later establish a set of uniform appellate procedure rules. Congress vested rulemaking authority in the Supreme Court with the hope that such rulemaking power would promote and establish uniformity within the American procedural system.[16] Congress recognized that the establishment of uniformity promotes justice and fairness, as the smallest difference in procedure can substantially affect the outcome of a defendant's case.[17] By promulgating the Appellate Rules, the Supreme Court provided necessary uniformity within the federal appellate procedural system, thus supporting the principle of fundamental fairness that is entrenched in the American legal system.[18]

However, federal courts have not always followed a set of uniform appellate procedural rules.[19] Although some rules governing federal appellate procedure were included in the original edition of the Federal

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[14] 16A CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 3945 (Catherine T. Struve ed., 5th ed. 2019), Westlaw (database updated April 2022).

[15] Rules Enabling Act, Pub. L. No. 73–415, 48 Stat. 1064 (1934) (current version at 28 U.S.C. § 2072).

[16] Charles E. Clark, *Power of the Supreme Court to Make Rules of Appellate Procedure*, 49 HARV. L. REV. 1303, 1305 (1936).

[17] For a more detailed discussion of the importance of uniformity in federal procedural rules, see Andrew P. Lopiano, Comment, *Dumplings Instead of Flowers: The Need for a Case-By-Case Approach to FRCP 60(b)(6) Motions Predicated on a Change in Habeas Corpus Law*, 15 LIBERTY U. L. REV. 111, 113–15 (2020).

[18] *See, e.g.*, United States v. Lovasco, 431 U.S. 783, 790 (1977); *see also* Tracey L. Meares, *Everything Old is New Again: Fundamental Fairness and the Legitimacy of Criminal Justice*, 3 OHIO STATE J. CRIM. L. 105, 108 (2005) (explaining the importance of fundamental fairness in the criminal justice system).

[19] WRIGHT & MILLER, *supra* note 14, § 3945.

Rules of Civil Procedure,[20] which were implemented in 1938,[21] the federal circuits had their own rules of appellate procedure that differed in various ways prior to when the Supreme Court adopted the first version of the Appellate Rules.[22] The Court began the process of remedying the lack of uniformity caused by the differences between the federal circuits' appellate procedural rules when it appointed the original Advisory Committee on Appellate Rules in 1960.[23] In March 1964, the Advisory Committee circulated a preliminary draft of the proposed Appellate Rules.[24] Following a revision of the draft, in accordance with the power provided to the Supreme Court in the Rules Enabling Act, the Court promulgated the first version of the Appellate Rules in December 1967. [25] The Appellate Rules then became effective July 1, 1968, after seven months of legislative inaction by Congress.[26]

2. The Adoption of Appellate Rule 4

Appellate Rule 4 covers appeals as of right, i.e., appeals that an appellate court must hear.[27] The original version of Rule 4, adopted in 1967, contained only two subdivisions, which were derived from Federal Rule of Civil Procedure 37 and Federal Rule of Criminal Procedure 73 "without any

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[20] *Id.* § 3950.

[21] 4 CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 1004 (Adam N. Steinman ed., 4th ed. 2021), Westlaw (database updated June 2022).

[22] WRIGHT & MILLER, *supra* note 14, § 3945. The circuits' appellate rules differed on a number of topics, including but not limited to the submission of formal motions, the manner of presenting both the record to the court and the questions before the court, petitions for rehearing and corresponding answers, the time allowed for oral argument, and the costs chargeable to the losing party. *Id.*

[23] WRIGHT & MILLER, *supra* note 21, § 1007; WRIGHT & MILLER, *supra* note 14, § 3946.

[24] WRIGHT & MILLER, *supra* note 14, § 3946.

[25] Federal Rules of Appellate Procedure with Conforming Amendments to Federal Rules of Civil Procedure and Federal Rules of Criminal Procedure, 43 F.R.D. 61 (1967) (Westlaw)[hereinafter FRAP with Conforming Amendments]; WRIGHT & MILLER, *supra* note 14, § 3946.

[26] WRIGHT & MILLER, *supra* note 14, § 3946. For a more in-depth overview of the intricacies of the federal rulemaking process, see David Marcus, *Institutions and an Interpretive Methodology for the Federal Rules of Civil Procedure*, 2011 UTAH L. REV. 927, 931–33 (2011).

[27] *Appeal as of right*, BLACK'S LAW DICTIONARY (11th ed. 2019); FED. R. APP. P. 4.

change of substance."[28] Subdivision (a) of Rule 4 governs appeals in civil cases, replacing Federal Rule of Civil Procedure 37, and subdivision (b) governs appeals in criminal cases, replacing Federal Rule of Criminal Procedure 73.[29] Between 1967 and 1993, the language of Rule 4 was amended twice, but the procedural substance of the rule was not significantly altered.[30] The current version of the rule contains two additional subdivisions: (c) and (d).[31] Subdivision (d) discusses mistaken filings,[32] whereas subdivision (c) contains the rule commonly referred to as the prison mailbox rule. Rule 4(c) provides, in pertinent part:

> If an institution has a system designed for legal mail, an inmate confined there must use that system to receive the benefit of this Rule 4(c)(1). If an inmate files a notice of appeal in either a civil or a criminal case, the notice is timely if it is deposited in the institution's internal mail system on or before the last day for filing . . . .[33]

The rule also requires that the notice be accompanied by appropriate evidence of the timely deposit.[34] Subdivision (c) was not added to Rule 4 until 1993.[35] Thus, that portion of the rule is relatively young (about thirty years old), and courts are continuing to work through its application.[36]

B. The Development of the Prison Mailbox Rule and Rule 4(c)

Even before the adoption of Rule 4(c), the Appellate Rules provided some exceptions to the untimely filing of appeals.[37] Amendments to Rule 4 in 1979 provided for extensions of the time to file an appeal based on

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[28] FED. R. APP. P. 4 advisory committee's note to 1967 adoption.

[29] *Id.* at 4(a)–(b).

[30] *See id.* at 4 advisory committee's note to 1979 amendment, advisory committee's note to 1991 amendment.

[31] *Id.* at 4(c)–(d).

[32] *Id.* at 4(d).

[33] *Id.* at 4(c).

[34] FED. R. APP. P. 4(c)(1)(A)(ii).

[35] FED. R. APP. P. 4 advisory committee's note to 1993 amendment.

[36] *See, e.g.*, United States v. Craig, 368 F.3d 738, 740 (7th Cir. 2004).

[37] WRIGHT & MILLER, *supra* note 14, § 3950.

"excusable neglect or good cause."[38] However, this extension period, currently found in Rule 4(a)(5), is limited to "30 days after the original appeal time or [14] days from the entry of the order granting the extension."[39] Despite the existence of an avenue for relief from the strict filing deadline provided in Rule 4(a)(1)(A),[40] it became apparent that an additional rule was necessary to provide relief specific to inmates filing appeals: enter Rule 4(c). Unlike the exception for good cause found in Rule 4(a)(5), the exception found in Rule 4(c) is not predicated upon a judicial determination of some necessary condition such as good cause.[41] Instead, Rule 4(c) merely requires that the person seeking to benefit from the rule is an inmate who used their institution's internal mail system.[42] Rules 4(a)(5) and 4(c) are the only exceptions to untimely filing found in Rule 4, and Rule 4(c) is the only exception in the Appellate Rules that is provided for specific persons.[43]

Before analyzing whether a broad or narrow interpretation of Rule 4(c) should be adopted, it is important to understand the origin of the rule. Although the prison mailbox rule is now codified in Rule 4(c), its genesis can be found in the Supreme Court's jurisprudence. The Advisory Committee's proposal of Rule 4(c) was caused by the issuance of a Supreme Court decision adopting a similar common law rule.[44]

1. From *Fallen v. United States* to *Houston v. Lack*: The Foundation of Rule 4(c)

The adoption of the prison mailbox rule is generally attributed to two cases: *Fallen v. United States*[45] and *Houston v. Lack*.[46] The Court's decision

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[38] FED. R. APP. P. 4(a)(5)(A); *see* WRIGHT & MILLER, *supra* note 14, § 3950.

[39] WRIGHT & MILLER, *supra* note 14, § 3950; FED. R. APP. P. 4(a)(5)(C).

[40] FED. R. APP. P. 4(a)(1)(A).

[41] *See id.* at 4(c).

[42] *Id.* at 4(c)(1).

[43] *See id.* at 4.

[44] ADVISORY COMM. ON FED. RULES OF APP. PROC., MINUTES OF THE APRIL 17, 1991, MEETING OF THE ADVISORY COMMITTEE ON FEDERAL RULES OF APPELLATE PROCEDURE 25 (1991).

[45] Fallen v. United States, 378 U.S. 139 (1964).

[46] Houston v. Lack, 487 U.S. 266 (1988); *see* Catherine T. Struve, *The Federal Rules of Inmate Appeals*, 50 ARIZ. STATE L.J. 247, 269 (2018).

in *Fallen* laid the groundwork for its later establishment of the prison mailbox rule in *Houston*.[47] The Court's decision in *Houston* was the catalyst for the Advisory Committee's proposal of what is now known as Rule 4(c).[48] Analysis of the proper scope of the prison mailbox rule necessarily begins with establishing why it was created, which can be seen throughout the Court's reasoning in both *Fallen* and *Houston*.

a. *Fallen v. United States*

Although decided prior to the adoption of the Appellate Rules, the Supreme Court's decision in *Fallen* heavily influenced the development of the prison mailbox rule.[49] The decision has been referred to as establishing an "implicit" prison mailbox rule that set the stage for the Supreme Court's later explicit declaration of the rule.[50] In *Fallen*, the Supreme Court was tasked with determining whether an inmate, Floyd Charles Fallen, had filed a timely notice of appeal.[51] Fallen, a wheelchair-using paraplegic,[52] was convicted of violations of the postal laws.[53] At the time of his sentencing, Fallen was represented by a court-appointed attorney, and prior to leaving his sentencing hearing, Fallen asked the court-appointed attorney to represent him on appeal.[54] The court-appointed attorney declined to represent Fallen further and suggested that Fallen secure other representation if he wanted to file an appeal.[55] Rather than securing other representation, Fallen took it upon himself to file a *pro se* notice of appeal—that is, an appeal filed without the representation of counsel.[56] The clerk received Fallen's notice of appeal fourteen days after the entry of judgment,

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47 Struve, *supra* note 46, at 269.

48 *See id.* For a more in-depth discussion detailing the origins of the prison mailbox rule in English common law, see Canedy, *supra* note 9, at 774–76.

49 *Fallen*, 378 U.S. 139; *see* FRAP with Conforming Amendments, 43 F.R.D. 61 (1967) (Westlaw).

50 Struve, *supra* note 46, at 269.

51 *Fallen*, 378 U.S. at 139.

52 *Id.* at 140 n.2.

53 *Id.* at 140.

54 *Id.*

55 *Id.*

56 *Id.* at 140–42.

which is four days later than the deadline prescribed by former Federal Rule of Criminal Procedure 37.[57]

Despite the tardiness of Fallen's filing, the Supreme Court ordered the lower court to consider the merits of Fallen's appeal.[58] In reversing the lower court's dismissal of the appeal, the Supreme Court emphasized that "the Rules are not, and were not intended to be, a rigid code to have an inflexible meaning irrespective of the circumstances."[59] Because Fallen's medical condition prevented him from filing immediately, and because Fallen was not afforded the opportunity to secure a new attorney, the Supreme Court declined to "read the Rules so rigidly."[60] The Court found that Fallen did all that he could under the circumstances and ultimately allowed his appeal to be heard on the merits.[61]

Justice Stewart filed a concurring opinion in which three other justices joined.[62] Justice Stewart asserted that "a defendant incarcerated in a federal prison and acting without the aid of counsel files his notice of appeal in time, if, within the 10-day period provided by the Rule, he delivers such notice to the prison authorities for forwarding to the clerk of the District Court."[63] According to Justice Stewart, the case should have been remanded not because Fallen did all that he could under the circumstances but because Fallen had delivered his notice of appeal to the prison authorities within the ten-day filing period.[64]

It is important to note that the result flowing from the majority decision in *Fallen* is consistent with the underlying policy found throughout the legislative history of the original Rule 3, which was promulgated following

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[57] Fallen v. United States, 378 U.S. 139, 141 (1964). Because *Fallen* was decided in 1964, the Appellate Rules did not govern, as they were not adopted until three years later in 1967. Thus, *Fallen* was decided using former Federal Rule of Criminal Procedure 37(a)(2), the substance of which is now found in Appellate Rule 4(b). *See id.* at 139; FED. R. APP. P. 4(b).

[58] *Fallen*, 378 U.S. at 144.

[59] *Id.* at 142.

[60] *Id.* at 143–44.

[61] *Id.* at 144.

[62] *Id.* (Stewart, J., concurring).

[63] *Id.*

[64] Fallen v. United States, 378 U.S. 139, 144–45 (1964) (Stewart, J., concurring).

the Court's *Fallen* decision.[65] The Advisory Committee note to the original Rule 3 emphasized the need for flexibility when handling filings by *pro se* inmates.[66] The note also "observed that the Supreme Court's opinion in *Coppedge v. United States* had cited '[e]arlier cases evidencing a "liberal view of papers filed by indigent and incarcerated defendants."'"[67] Therefore, the Court's flexible approach to inmate appeals was supported by the original set of Appellate Rules adopted just four years after the Court decided *Fallen*.[68] The Court's decision in *Fallen* continued the trend of flexibility when it comes to filing deadlines for inmate appeals.

b. *Houston v. Lack*

Twenty-four years after *Fallen*, the Supreme Court once again faced a question regarding the timing of an inmate appeal in *Houston v. Lack*.[69] However, this time the Court looked to Rule 4, which provides a thirty-day filing period, to determine the timeliness of the appeal.[70] In *Houston*, a state prisoner, Prentiss Houston, filed a *pro se* habeas petition, which was dismissed.[71] Houston then filed a notice of appeal.[72] However, the clerk did not receive his notice of appeal until one day after the expiration of the thirty-day filing period.[73] Houston delivered the notice of appeal to the prison authorities for mailing twenty-seven days after the entry of the dismissal.[74] Thus, the notice was delivered to the prison authorities before the expiration of the thirty-day filing period.[75]

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[65] FRAP with Conforming Amendments, 43 F.R.D. 61 (1967) (Westlaw); WRIGHT & MILLER, *supra* note 14, § 3946.

[66] Struve, *supra* note 46, at 269.

[67] *Id.* at 266.

[68] FRAP with Conforming Amendments, 43 F.R.D. 61 (1967) (Westlaw); WRIGHT & MILLER, *supra* note 14, § 3946.

[69] Houston v. Lack, 487 U.S. 266 (1988).

[70] FED. R. APP. P. 4(a)(1)(A); *Houston*, 487 U.S. at 268.

[71] *Houston*, 487 U.S. at 268.

[72] *Id.* at 268.

[73] *Id.* at 268–69.

[74] *Id.* at 268.

[75] *Id.*

The *Houston* Court issued a 5-4 split decision.[76] The majority adopted the rule proposed by Justice Stewart in his concurring opinion in *Fallen*.[77] The majority held, as was suggested by Justice Stewart, that the timeliness of a *pro se* prisoner's filing is measured by whether the notice of appeal is delivered to prison authorities within the thirty-day filing window rather than when the notice is received by the clerk.[78] Although the Court adopted the rule from the *Fallen* concurrence, the Court provided several policy justifications for the rule that were not articulated in Justice Stewart's concurring opinion.[79] Justice Stewart did not provide substantial reasoning when he declared the rule, leaving much for the Court in *Houston* to explain.[80]

First, the *Houston* Court acknowledged that "[t]he situation of prisoners seeking to appeal without the aid of counsel is unique."[81] The Court further reasoned:

> [P]risoners cannot take the steps other litigants can take to monitor the processing of their notices of appeal and to ensure that the court clerk receives and stamps their notices of appeal before the 30-day deadline. Unlike other litigants, *pro se* prisoners cannot personally travel to the courthouse to see that the notice is stamped "filed" or to establish the date on which the Court received the notice. Other litigants may choose to entrust their appeals to the vagaries of the mail and the clerk's process for stamping incoming papers, but only the *pro se* prisoner is forced to do so by his situation.[82]

In establishing the prison mailbox rule, the Court focused on the difficulties faced by prisoners when they are left with no options because the only method of communication with the courts available to them is the

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[76] *Id.* at 266.

[77] Houston v. Lack, 487 U.S. 266, 270 (1988).

[78] *Id.* at 276.

[79] *Compare* Fallen v. United States, 378 U.S. 139, 144–45 (1964) (Stewart, J., concurring), *with Houston*, 487 U.S. at 270–75.

[80] *See Fallen*, 378 U.S. at 144–45 (Stewart, J., concurring).

[81] *Houston*, 487 U.S. at 270.

[82] *Id.* at 270–71.

unpredictable and unreliable prison mail system.[83] The Court emphasized this when it said that "a *pro se* prisoner has no choice but to hand his notice over to prison authorities for forwarding to the court clerk."[84]

In addition, the Court distinguished the application of a mailbox rule to inmate filings from other circumstances.[85] The Court noted that "the rejection of the mailbox rule in other contexts has been based in part on concerns that it would increase disputes and uncertainty over when a filing occurred and that it would put all the evidence about the date of filing in the hands of one party."[86] However, according to the Court, concerns about uncertainty over the date of filing are actually decreased by application of the rule in situations involving the use of the prison mail system.[87] In fact, increased certainty exists when inmates file using the prison mail system because the prison mail authorities have "well-developed procedures" for documenting when a filing is received for mailing.[88] Consequently, inmates cannot successfully assert that they attempted to file their papers on an earlier date in the same way that someone who is not incarcerated might be able to when they use the mail system to deliver a court filing.[89] The Court recognized that the prison mail system provides unusual levels of uncertainty, that the procedural difficulties faced by inmates are unique, and ultimately, that such procedural difficulties warranted the creation of a special rule to protect filings mailed by inmates.[90]

Joined by three other justices, Justice Scalia filed a dissenting opinion.[91] According to Justice Scalia, the prison mailbox rule declared by the majority is "a good one," but it should only be adopted using the rule promulgation procedures set in place by Congress.[92] Justice Scalia noted that it is standard practice, when interpreting a phrase like "filed with the district clerk,"[93] to

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83 *Id.* at 271.

84 *Id.* at 275.

85 *Id.*

86 *Id.*

87 Houston v. Lack, 487 U.S. 266, 275 (1988).

88 *Id.*

89 *Id.*

90 *Id.*

91 *Id.* at 277 (Scalia, J., dissenting).

92 *Id.* at 284.

93 FED. R. APP. P. 4(a)(1)(A).

assign the phrase a single meaning rather than declaring one meaning and then providing additional meanings "as the judicially perceived equities of individual cases might require."[94] Justice Scalia concluded that a procedural rule establishing a filing deadline, such as the rule found in Rule 4(a)(1), is not the sort of rule that invites judicial judgment on a case-by-case basis.[95]

2. The Adoption of Rule 4(c): Codification of the Prison Mailbox Rule

The Supreme Court's decision in *Houston* drew attention to the unique struggles that prisoners face during litigation because they are institutionalized. This attention sparked the creation of two new procedural rules.[96] The Court and the Appellate Rules Committee both adopted and extended the Court's holding in *Houston*—the Court when it adopted Supreme Court Rule 29.2[97] and the Appellate Rules Committee when it adopted Rule 4(c).[98] The Court adopted Rule 29.2 in 1990.[99] Rule 29.2 states that an appeal filed by an inmate is timely if it is deposited in the institution's mail system on or before the last day for filing.[100] However, this procedural rule only applies to the Supreme Court.[101] At the time of Rule 29.2's adoption, no such procedural rule existed that applied to all federal courts of appeal.[102]

Following the adoption of Supreme Court Rule 29.2, the Appellate Rules Committee reexamined Rule 4 in 1991.[103] In the April 17, 1991, Advisory Committee meeting, Committee member Judge Keeton proposed the

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94 *Houston*, 487 U.S. at 278 (Scalia, J., dissenting).

95 *Id.*

96 *Id.* at 284 ("The filing rule the Court supports today seems to me a good one, but it is fully within our power to adopt it by an amendment of the Rules."); *see* SUP. CT. R. 29.2; FED. R. APP. P. 4(c).

97 *See* SUP. CT. R. 29.2 (stating that an appeal filed by an inmate is timely if it is deposited in the institution's mail system on or before the last day for filing).

98 Struve, *supra* note 46, at 272.

99 WRIGHT & MILLER, *supra* note 14, § 3950.12.

100 SUP. CT. R. 29.2.

101 *See* SUP. CT. R. 48.

102 *See* WRIGHT & MILLER, *supra* note 14, § 3950.12. *Compare* SUP. CT. R. 29.2, *with* FED. R. APP. P. 4.

103 ADVISORY COMM. ON FED. RULES OF APP. PROC., MINUTES OF THE APRIL 17, 1991, MEETING 27 (1991); *see also* WRIGHT & MILLER, *supra* note 14, § 3950.12.

adoption of a new subdivision.[104] According to the meeting notes, Judge Keeton "suggested creating a new paragraph 4(c) dealing with filings by institutionally confined persons, rather than amending both 4(a) and 4(b)."[105] The Advisory Committee circulated two drafts of the proposed rule.[106] The committee explained the difference between the two drafts: "[T]he prior draft limited its application to persons 'not represented by an attorney.' The new draft does not contain that limitation because the Supreme Court's rule [29.2] does not."[107]

The Advisory Committee unanimously approved the second draft of the new subdivision (c) and formally adopted it in 1993.[108] It was then that the principles of fairness found in the Court's decisions in *Fallen* and *Houston*, which recognized the difficulties faced by inmates filing appeals and the resulting need for flexibility, were memorialized in a procedural rule applicable to all federal appellate courts: Rule 4(c).[109]

III. SAME RULE, DIFFERENT APPLICATIONS

In some of the federal circuits, the courts have misinterpreted and misapplied Rule 4(c) due to erroneous reliance on the circumstances surrounding the creation of the rule and the rule's perceived underlying policy rationales. As a result, these circuits have concluded that passively represented[110] inmates who file, and sometimes also draft, their own legal documents are not entitled to the specific protection for inmates provided by the Rule 4(c) prison mailbox rule.[111] However, other federal circuits follow a more logical approach when tasked with determining the scope of Rule 4(c). According to these circuits, Rule 4(c)'s prison mailbox rule applies to all inmates without regard to the inmates' representation by

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[104] ADVISORY COMM. ON FED. RULES OF APP. PROC., MINUTES OF THE APRIL 17, 1991, MEETING 27 (1991).

[105] *Id.*

[106] *Id.* at 25–26.

[107] *Id.* at 26.

[108] *Id.* at 27; FED. R. APP. P. 4 advisory committee's note to 1993 amendment.

[109] FED. R. APP. P. 4 advisory committee's note to 1993 amendment.

[110] Prisoners who are technically represented but are "acting unaware of or independent of that fact." Canedy, *supra* note 9, at 787.

[111] *See* United States v. Camilo, 686 F. App'x 645, 646 (11th Cir. 2017) (per curiam); Burgs v. Johnson County, 79 F.3d 701, 702 (8th Cir. 1996) (per curiam).

counsel.[112] Rather than blindly throwing out basic principles of statutory interpretation, these courts look to the plain language of Rule 4(c) to ascertain its scope.[113] Therefore, the federal circuit courts do not employ only one approach to Rule 4(c)'s interpretation and application.[114] This section provides an overview of the circuit split on the application of the prison mailbox rule and Rule 4(c) with an explanation of the two different approaches adopted by the federal circuit courts.

A. Introduction

Despite the adoption of Rule 4(c), some of the federal circuit courts still look to *Houston* before looking to the plain language of the rule.[115] As a result, those circuit courts apply the exception found in Rule 4(c) exclusively to *pro se* prisoners even though the term "*pro se*" does not appear in the text of the rule.[116] However, other jurisdictions that look to the plain language of Rule 4(c) apply the prison mailbox rule to all prisoners—regardless of representation—who file an appeal using the prison mail system.[117] These divergent approaches to the application of the prison mailbox rule produce very different outcomes,[118] and the inconsistency between the circuit courts is problematic for many reasons.

First, the divergence in interpretation leads to different treatment for prisoners in different parts of the country.[119] A falsely convicted prisoner may, depending on geography, be denied the opportunity to argue an appeal simply because they had to file that appeal using the prison mail system. This denial due to the use of the prison mail system depends exclusively on the circuit in which the prisoner files.[120] In some cases, this

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[112] *See* United States v. Carter, 474 F. App'x 331, 333 (4th Cir. 2012) (per curiam); United States v. Craig, 368 F.3d 738, 740 (7th Cir. 2004); United States v. Moore, 24 F.3d 624, 626 (4th Cir. 1994).

[113] *See Craig*, 368 F.3d at 740; *Moore*, 24 F.3d at 626 n.3.

[114] Canedy, *supra* note 9, at 779.

[115] *See, e.g.*, *Burgs*, 79 F.3d at 702.

[116] *See, e.g.*, Cousin v. Lensing, 310 F.3d 843, 847 (5th Cir. 2002); *Burgs*, 79 F.3d at 702.

[117] *See Carter*, 474 F. App'x at 333; *Craig*, 368 F.3d at 740; *Moore*, 24 F.3d at 626.

[118] *Compare* Cretacci v. Call, 988 F.3d 860 (6th Cir. 2021) (dismissing the appeal), *with Carter*, 474 F. App'x at 333 (allowing the appeal to be heard on the merits).

[119] *Compare Craig*, 368 F.3d at 740 (allowing the appeal to be heard on the merits), *with Burgs*, 79 F.3d at 702 (dismissing the appeal).

[120] *See Craig*, 368 F.3d at 740; *Burgs*, 79 F.3d at 701–02.

means that the difference between freedom and wrongful incarceration rests on whether a prisoner is in a jurisdiction that respects the plain language of Rule 4(c) and its purpose.

In addition, the divergence in interpretation violates principles of fairness central to the American justice system[121] not only because prisoners in different parts of the country are treated differently but also because the clarity of jurisdictional rules is critical to fair process.[122] Indeed, the consequence of a jurisdictional limitations ruling is severe.[123] A claim or appeal that the court deems untimely may never be heard, despite the legitimacy of the claim.[124] Therefore, a clear rule regarding the timeliness of inmate filings is imperative.

B. Conflicting Interpretations: A Narrow vs. Broad Scope

Based on *Houston*, a prison mailbox rule has been applied to filings other than appeals, such as civil complaints,[125] habeas petitions,[126] appeals of bankruptcy orders,[127] and administrative filings under the Federal Torts Claims Act.[128] However, Rule 4(c) only governs appeals as of right.[129] Therefore, some cases involving application of the common law prison mailbox rule may not necessarily involve interpretation of Rule 4(c).[130] Nevertheless, all cases involving application of the common law prison mailbox rule and the Supreme Court's decision in *Houston* play a critical

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121 *See* Meares, *supra* note 18, at 108.

122 *See* John F. Preis, *Jurisdiction and Discretion in Hybrid Law Cases*, 75 U. CIN. L. REV. 145, 167 (2006) ("Just about nobody, it seems, thinks that jurisdictional rules should be fuzzy.").

123 Petition for Writ of Certiorari at 16, *Cretacci*, 988 F.3d 860 (No. 21-221).

124 *See* FED. R. APP. P. 3(a).

125 *See, e.g.*, Richard v. Ray, 290 F.3d 810, 813 (6th Cir. 2002) (per curiam).

126 *See, e.g.*, Jones v. Bertrand, 171 F.3d 499, 501–02 (7th Cir. 1999).

127 *See In re* Flanagan, 999 F.2d 753, 755 (3d Cir. 1993).

128 *See, e.g.*, Tapia-Ortiz v. Doe, 171 F.3d 150, 152 (2d Cir. 1999) (per curiam).

129 FED. R. APP. P. 4.

130 *See, e.g.*, Cretacci v. Call, 988 F.3d 860, 863 (6th Cir. 2021). Because of the Supreme Court's decision in *Houston*, a prison mailbox rule exists independent of Rule 4(c), even though the rule contained in Rule 4(c) is referred to as the prison mailbox rule. *See* United States v. Craig, 368 F.3d 738, 740 (7th Cir. 2004) (referring to 4(c) as housing the prison mailbox rule).

role in the interpretation of Rule 4(c) due to the close relation between the two.

The split between the circuits can be broken down by dividing the circuits into two groups—the circuits that adopt a narrow interpretation of Rule 4(c) and the prison mailbox rule, and those that adopt a broad interpretation.[131] With the circuit courts dividing themselves into these two groups, it is necessary to analyze the differences in reasoning to illustrate the injustice that results when courts follow a narrow interpretation of the prison mailbox rule.

1. A Narrow Interpretation

According to the narrow interpretation of the prison mailbox rule, inmates can only receive the benefit of the prison mailbox rule if they are acting *pro se*—that is, if they are not represented by counsel.[132] The Sixth,[133] Eighth,[134] Tenth,[135] and Eleventh[136] Circuits have all narrowly applied the prison mailbox rule. It is important to clarify that these courts construe the rule so narrowly that they do not even apply the rule to filings made by passively represented prisoners, i.e., filings independently drafted and subsequently dispatched by prisoners without the assistance of their counsel of record. The Seventh Circuit also bars application of the prison mailbox rule to prisoners represented by counsel under some, but not all, circumstances.[137] However, under the narrow application adopted by the Sixth, Eighth, Tenth, and Eleventh Circuits, no circumstances will allow a represented inmate to benefit from the prison mailbox rule—even if they rely on the prison mail system to their own detriment in the same way that an unrepresented inmate like Prentiss Houston[138] would.[139]

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131 *See* Canedy, *supra* note 9, at 779–80.

132 *Pro se*, BLACK'S LAW DICTIONARY (11th ed. 2019).

133 *Cretacci*, 988 F.3d at 863.

134 Burgs v. Johnson County, 79 F.3d 701, 702 (8th Cir. 1996) (per curiam).

135 United States v. Rodriguez-Aguirre, 30 F. App'x 803, 805 (10th Cir. 2002).

136 United States v. Camilo, 686 F. App'x 645, 646 (11th Cir. 2017) (per curiam).

137 *Compare* Rutledge v. United States, 230 F.3d 1041, 1051 (7th Cir. 2000), *with* United States v. Craig, 368 F.3d 738, 740 (7th Cir. 2004).

138 Recall that Prentiss Houston was the *pro se* appellant in *Houston v. Lack*. Houston v. Lack, 487 U.S. 266 (1988); *see supra* Section II.B.1.b.

139 *See, e.g.*, *Camilo*, 686 F. App'x at 645–46.

The Eighth Circuit in *Burgs v. Johnson County* was one of the first circuits to address the prison mailbox rule.[140] In *Burgs*, an inmate, Nathaniel Burgs, filed a civil suit against Johnson County and its jail officials.[141] Burgs's suit was predicated on incidents that occurred while he was being held in Johnson County Jail as a pretrial detainee and parole violator.[142] The district court granted the defendants' motion for summary judgment, and "the final order and judgment were mailed to Burgs's counsel."[143] The opinion indicates that "three days after the filing deadline passed, Burgs filed *pro se* a notice of appeal and request for appointment of counsel."[144] Although Burgs's notice and request were deemed filed three days late, they were signed and dated two days prior to the expiration of the legally permitted time for appeal.[145]

The circuit court granted Burgs's request for appointment of appellate counsel, appointing the same counsel that had represented Burgs in the lower court.[146] After the court appointed Burgs's appellate counsel, the court considered whether the prison mailbox rule from *Houston v. Lack* "appl[ied] to an appellant who was represented by counsel in the district court."[147] If the court held that the prison mailbox rule applied under such circumstances, then Burgs's notice of appeal would have been considered timely filed.[148]

The court held that Burgs's notice of appeal was not filed within the statutorily permitted time period and dismissed his appeal.[149] In reaching this conclusion, the court did not rely on Rule 4(c).[150] Despite the existence and applicability of Rule 4(c), the court relied exclusively on the Supreme Court's decision in *Houston*.[151] According to the court, the rule in *Houston*

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140 Burgs v. Johnson County, 79 F.3d 701, 701 (8th Cir. 1996) (per curiam).

141 *Id.*

142 *Id.*

143 *Id.*

144 *Id.*

145 *Id.*

146 Burgs v. Johnson County, 79 F.3d 701, 702 (8th Cir. 1996) (per curiam).

147 *Id.*

148 *Id.*

149 *Id.*

150 *Id.*

151 *Id.*

applied exclusively to *pro se* prisoners, and although Burgs filed his own notice of appeal using the prison mail system, Burgs was considered to be represented by counsel, not *pro se*, due to the court's appointment of appellate counsel.[152]

The Eighth Circuit's holding is contrary to both the text of Rule 4(c) and the policy in *Houston* that triggered the creation of Rule 4(c). Rule 4(c) simply states that an inmate's appeal, when filed using the prison mail system, is considered timely once it is delivered to prison mail authorities rather than when it is received by the clerk.[153] The term "*pro se*" is absent from the text of the rule.[154] Under a plain reading of the rule, Burgs's appeal would have been considered timely because he mailed his appeal prior to the passing of the statutorily permitted time for appeal.[155]

Cretacci v. Call, the most recent federal circuit case addressing the prison mailbox rule and adopting a narrow interpretation similar to *Burgs*, came before the Sixth Circuit in January 2021.[156] While *Crettaci* does not concern an appeal as of right,[157] its outcome and the court's discussion of the prison mailbox rule are highly relevant to the discussion surrounding the interpretation and application of Rule 4(c). In *Cretacci*, the appellant, Blake Cretacci, filed a civil complaint using the prison mail system.[158] Cretacci was technically represented by counsel at the time that he filed the complaint.[159] However, Cretacci's attorney mistakenly was not admitted to practice law in the district in which the complaint needed to be filed.[160] When Cretacci's attorney realized that he would be unable to file the complaint, he brought the complaint to Cretacci.[161] Cretacci filed the complaint by delivering it to correctional officers one day before the statute of limitations expired on several of his claims.[162] The clerk of court received the complaint four days

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152 Burgs v. Johnson County, 79 F.3d 701, 702 (8th Cir. 1996) (per curiam).

153 FED. R. APP. P. 4(c).

154 *See id.*

155 *Burgs*, 79 F.3d at 701; FED. R. APP. P. 4(c).

156 Cretacci v. Call, 988 F.3d 860 (6th Cir. 2021).

157 *Id.* at 862–63.

158 *Id.* at 865.

159 *Id.* at 864–65.

160 *Id.* at 864.

161 *Id.* at 865.

162 Cretacci v. Call, 988 F.3d 860, 865 (6th Cir. 2021).

later, which was after the statute of limitations had run on some of the claims found in Cretacci's complaint.[163]

Because the clerk received the complaint after the expiration of the statute of limitations, the defendants in the case moved for summary judgment.[164] The defendants argued that because Cretacci was represented by counsel when his complaint was filed, he "could not benefit from the prison mailbox rule."[165] The district court sided with the defendants and held that the prison mailbox rule did not apply to Cretacci because he was represented, despite the fact that he filed his complaint using the prison mail system.[166] Cretacci appealed the district court's dismissal.[167]

The Sixth Circuit affirmed the district court's judgment, holding that the prison mailbox rule cannot be applied to represented prisoners.[168] The court noted that, because the case involved a civil complaint rather than an appeal as of right, Rule 4(c) did not apply.[169] Thus, the court's decision rested on interpretation of the Supreme Court's decision in *Houston v. Lack*.[170] According to the court, *Houston* is inapplicable to represented prisoners because it was designed specifically to "prevent pro se prisoners from being penalized by any delays in filing caused by the prison mail system" because *pro se* prisoners have no choice but to use the prison mail system.[171] The court noted that represented prisoners do not suffer from the same lack of options—a represented prisoner's counsel can file the court documents and ensure timely delivery.[172] What the Sixth Circuit failed to acknowledge is that, under some circumstances, represented prisoners face the same procedural obstacles as unrepresented prisoners and have no choice but to rely on the prison mail system to file court documents.[173]

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163 *Id.*

164 *Id.*

165 *Id.*

166 *Id.*

167 *Id.*

168 Cretacci v. Call, 988 F.3d 860, 867 (6th Cir. 2021).

169 *Id.*

170 *Id.*

171 *Id.*

172 *Id.*

173 *See, e.g.*, Vaughan v. Ricketts, 950 F.2d 1464, 1466–68 (9th Cir. 1991) (discussing a situation where a prisoner was effectively abandoned by his counsel).

As is illustrated by *Burgs* and *Cretacci*, the narrow interpretation of the prison mailbox rule leaves little room for flexibility and rejects application of the rule to all inmates.[174] When Rule 4(c) is applicable, its text is ignored by courts in favor of reliance on a faulty interpretation of the Supreme Court's decision in *Houston*, as seen in *Burgs*.[175] Furthermore, the courts adopting the narrow interpretation have imposed an additional step in the application of the rule: determining whether an inmate may be considered represented. This extra analytical step is burdensome and,as discussed in Section IV of this Note, unnecessary because such a narrow interpretation of the prison mailbox rule is inconsistent with the text of Rule 4(c) as well as the policy behind the creation of the rule.[176]

2. A Broad Interpretation

According to the broad interpretation of the prison mailbox rule and Rule 4(c), inmates receive the benefit of the prison mailbox rule, regardless of whether they are represented by counsel, if they use the prison mail system to deliver a court filing.[177] Only two federal circuits, the Fourth Circuit and the Seventh Circuit, have adopted the broad interpretation of the prison mailbox rule.[178] Unlike several of the circuits that have adopted the narrow interpretation of the rule, the Fourth and Seventh Circuits look first to the text of Rule 4(c) to determine whether the prison mailbox rule applies to both represented and unrepresented inmates.[179]

The Fourth Circuit was the first to hold that the prison mailbox rule applies to all inmates—without regard to an inmate's representation by counsel—and first encountered the issue in *United States v. Moore*.[180] *Moore*

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[174] *See Cretacci*, 988 F.3d at 862; Burgs v. Johnson County, 79 F.3d 701, 701 (8th Cir. 1996) (per curiam).

[175] *Burgs*, 79 F.3d at 702. *See generally* Houston v. Lack, 487 U.S. 266 (1988).

[176] *See infra* Section IV.

[177] *See, e.g.*, United States v. Moore, 24 F.3d 624, 626 (4th Cir. 1994) ("*Houston* governs all notices of appeal filed by prisoners in a criminal proceeding, without regard to whether they are represented by counsel.").

[178] *See* United States v. Craig, 368 F.3d 738, 740 (7th Cir. 2004); *Moore*, 24 F.3d at 626.

[179] *See Craig*, 368 F.3d at 740; *Moore*, 24 F.3d at 626. *Compare Craig*, 368 F.3d at 740 (relying on Rule 4(c)), *with Burgs*, 79 F.3d at 702 (failing to mention Rule 4(c)).

[180] *See Moore*, 24 F.3d at 625.

was decided in 1994, just one year after the adoption of Rule 4(c).[181] In *Moore*, the appellant, Brian Lee Moore, filed an appeal related to a criminal conviction.[182] Despite the fact that he was represented by the federal public defender's office, Moore filed his appeal using the prison mail system, and he did so six days prior to the filing deadline.[183] However, the appeal was not received by the clerk until two days after the expiration of the filing deadline.[184]

First, the Fourth Circuit remanded the appeal with an order for the district court to determine whether the Supreme Court's decision in *Houston* could be applied to Moore's filing.[185] The district court held that *Houston* does not apply in cases where a prisoner is represented by counsel, therefore the rule did not apply in Moore's case.[186] Moore appealed that order, and the Fourth Circuit disagreed with the district court's decision.[187] The circuit court reasoned that *Houston* "stands for the principle that it is unfair to permit a prisoner's freedom to ultimately hinge on either the diligence or the good faith of his custodians."[188] That foundational principle, according to the court, is applicable to both represented and unrepresented prisoners alike.[189] The court further reasoned that even a represented prisoner may act "without the aid of counsel."[190] In addition, the court pointed to the consistency between Rule 4(c) and *Houston*.[191] The court noted that the Advisory Committee intended Rule 4(c) to be a codification of the *Houston* decision.[192] Because Rule 4(c) does not distinguish between represented and unrepresented prisoners, it lends more

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181 *See id.* at 626 n.3; FED. R. APP. P. 4 advisory committee's note to 1993 amendment.

182 *Moore*, 24 F.3d at 625.

183 *Id.*

184 *Id.*

185 *Id.*

186 *Id.*

187 *Id.*

188 United States v. Moore, 24 F.3d 624, 625 (4th Cir. 1994).

189 *Id.*

190 *Id.*

191 *Id.* at 626 n.3.

192 *Id.*

confidence to the court's reasonable conclusion that *Houston* does not apply exclusively to unrepresented prisoners.[193]

Like the Fourth Circuit, the Seventh Circuit found that the prison mailbox rule and Rule 4(c) apply to represented prisoners.[194] In *United States v. Craig*, the Seventh Circuit emphasized that, when dealing with appeals as of right, courts must look to Rule 4(c) before looking to the Supreme Court's decision in *Houston* (a fact that the Eighth Circuit failed to acknowledge in *Burgs*).[195] Thus, both the Fourth and Seventh Circuits have found that a broad interpretation of the prison mailbox rule is supported not only by the text of Rule 4(c) but also by the Court's decision in *Houston*.

IV. LOOKING TO THE FUTURE: SAME RULE, SAME APPLICATION

When courts ignore the plain language of Rule 4(c), injustice results not only because of inconsistency but also because a narrow reading of the rule is contrary to the Supreme Court's holding in *Houston* and the policy behind the creation of the rule. Whether Rule 4(c) and the prison mailbox rule apply to both represented and unrepresented inmates is a question that arises frequently in federal courts.[196] In fact, federal courts are "replete with scenarios" where an inmate might rely on the prison mail system to mail a filing for themselves.[197] Such situations might include one where an inmate has been effectively abandoned by their counsel,[198] where counsel is unable to make a filing,[199] where an inmate seeks to move against their counsel,[200]

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193 *Id.*

194 United States v. Craig, 368 F.3d 738, 740 (7th Cir. 2004).

195 *Compare id.* ("Today the mailbox rule depends on Rule 4(c), not on how *Kimberlin* understood *Houston*. . . . A court ought not pencil 'unrepresented' or any extra word into the text of Rule 4(c), which as written is neither incoherent nor absurd."), *with* Burgs v. Johnson County, 79 F.3d 701 (8th Cir. 1996).

196 *See* Cretacci v. Call, 988 F.3d 860, 863 (6th Cir. 2021); United States v. Camilo, 686 F. App'x 645, 646 (11th Cir. 2017); United States v. Carter, 474 F. App'x 331, 333 (4th Cir. 2012); *Craig*, 368 F.3d at 740; Stillman v. LaMarque, 319 F.3d 1199, 1201 (9th Cir. 2003); Cousin v. Lensing, 310 F.3d 843, 847 (5th Cir. 2002); United States v. Rodriguez-Aguirre, 30 F. App'x 803, 805 (10th Cir. 2002); Rutledge v. United States, 230 F.3d 1041, 1052 (7th Cir. 2000); *Burgs*, 79 F.3d at 702; *Moore*, 24 F.3d at 626; United States v. Kimberlin, 898 F.2d 1262, 1265 (7th Cir. 1990).

197 Petition for Writ of Certiorari at *11, *Cretacci*, 988 F.3d 860 (No. 21-221).

198 *E.g.*, Vaughan v. Ricketts, 950 F.2d 1464, 1468 (9th Cir. 1991).

199 *E.g.*, *Cretacci*, 988 F.3d at 864–65.

where an inmate has no counsel,[201] or where multiple counsel represent an inmate at once and the inmate becomes confused as to who should file papers on their behalf.[202] Thus, unrepresented prisoners are not the only inmates that use the prison mail system to submit court filings. Sometimes those passively represented prisoners who have not heard from or are unable to communicate with their counsel have no choice but to rely on the prison mail system to deliver their filings because they cannot or will not rely on their counsel to make the filing for them, as is demonstrated by several cases.[203] The Supreme Court must address this frequently reoccurring issue.

The Court recently had an opportunity to address the issue in 2021.[204] After the Sixth Circuit concluded in *Cretacci v. Call* that the prison mailbox rule did not apply to Blake Cretacci because he was represented, Cretacci petitioned the Supreme Court for certiorari on the question of whether the prison mailbox rule applies exclusively to unrepresented prisoners.[205] However, the Court declined to hear Cretacci's appeal.[206] When the next *Cretacci* comes before the Supreme Court, the Court must seize the opportunity to bring clarity to the prison mailbox rule and resolve the split between the federal circuit courts, finding that the broad interpretation of Rule 4(c) and the common law prison mailbox rule is the correct one. Although only the Supreme Court can clarify the confusion surrounding Rule 4(c) and the prison mailbox rule's application, until the Court does so, lower federal courts should adopt a broad interpretation of the prison mailbox rule. The courts should do so for two reasons: first, Rule 4(c)'s text demands that it be applied to all inmates rather than only unrepresented inmates, and second, public policy supports the prison mailbox rule's broad application.

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200 *E.g.*, Michelson v. Duncan, No. 17-CV-50, 2020 U.S. Dist. LEXIS 40234, at *1 (W.D.N.C. Apr. 7, 2020).

201 *E.g.*, Houston v. Lack, 487 U.S. 266, 268 (1988).

202 *E.g.*, Telfair v. Tandy, 797 F. Supp. 2d 508, 511 (D.N.J. 2011).

203 *See, e.g.*, *Michelson*, 2020 U.S. Dist. LEXIS 40234, at *1; *Telfair*, 797 F. Supp. 2d at 511.

204 *See* Petition for Writ of Certiorari, *supra* note 197, at *i.

205 *Id.* at *4.

206 Cretacci v. Call, 988 F.3d 860 (6th Cir. 2021), *cert. denied*, 142 S. Ct. 400 (2021).

A. Rule 4(c)'s Text Demands Broad Application

Establishing the prison mailbox rule's scope, particularly in regard to appeals as of right, necessarily begins with discussion of the text of Rule 4(c). Upon examination, it is clear the text of Rule 4(c) demands that the prison mailbox rule be applied broadly. The scope of the rule as it is written is not limited to unrepresented prisoners.[207] However, before interpreting Rule 4(c)'s text, the method of interpretation must be established.[208] Although there are generally agreed upon principles of statutory interpretation, not all agree that those principles of statutory interpretation should also be used to interpret rules of procedure.[209]

1. Procedural Rules: The Methods of Interpretation

There are a few different proposed methods of procedural rule interpretation. Two approaches emphasize the strong hand of the Supreme Court in the procedural rulemaking process.[210] Proponents of these methods of interpretation place more focus on the rulemaking body than on the procedural rules themselves. These approaches, called the "inherent-authority view"[211] and "faithful agent"[212] approach, are flawed. Another method of interpretation, predicated on the Rules Enabling Act, is more reasonable but unworkable. Instead of relying on any of these three approaches, the Court and lower federal courts should focus on the text of procedural rules and utilize principles of statutory interpretation.

The "inherent-authority view"[213] submits that procedural rule interpretation should not rely on the plain meaning of the rule's text nor the intent of the rule-maker.[214] Instead, those in favor of the inherent-authority

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[207] *See* ANTONIN SCALIA & BRYAN A. GARNER, READING LAW: THE INTERPRETATION OF LEGAL TEXTS 101 (2012) ("Without some indication to the contrary, general words (like all words, general or not) are to be accorded their full and fair scope."); FED. R. APP. P. 4(c).

[208] Lumen N. Mulligan & Glen Staszewski, *Civil Rules Interpretive Theory*, 101 MINN. L. REV. 2167, 2170 (2017) ("[J]ust as in contested statutory cases, interpretive approach matters in Rules cases—a lot.").

[209] *Id.* at 2173.

[210] *See* Marcus, *supra* note 26, at 933.

[211] Mulligan & Staszewski, *supra* note 208, at 2174.

[212] Marcus, *supra* note 26, at 929.

[213] Mulligan & Staszewski, *supra* note 208, at 2199.

[214] *Id.* at 2200.

view posit that the Court has the power to broadly interpret the rules that it promulgates under the Rules Enabling Act.[215] Judge Karen Nelson Moore was the first to suggest this approach in a 1993 article.[216] In her article, Judge Nelson argued that, because Congress gave the Court such great power in the federal rulemaking process, the Court should have "greater power to interpret Rules than it [has] to interpret statutes."[217] Judge Nelson concluded that the Court could "'reform[] the Rules' through interpretation," but in so doing, the Court should consider the broad purpose of the rule as well as any new purposes that the rule should further.[218] This view presents one major yet simple problem: it breeds inconsistent results. Although the Supreme Court would maintain broad interpretive power, lower federal courts would not, as they are not granted the same rulemaking authority that the Court is granted in the Rules Enabling Act.[219] Thus, this method of interpretation provides no guidance to lower federal courts. In addition, it allows the Court to subvert the rulemaking process established in the Rules Enabling Act, which requires Congressional approval of procedural rules before they become effective.[220]

Others have argued for an approach that, although also predicated on the Rules Enabling Act, argues for more restraint on the Court's interpretive power.[221] This view suggests that if the Court wishes to alter a procedural rule, it must do so through the process established in the Rules Enabling Act.[222] Proponents of this method argue that, under this approach, the Court should not ignore "authoritative sources of meaning in favor of its own policy conception of a desirable Rule."[223] While this restrictive approach may appear more reasonable and neither breeds inconsistency nor subverts Congressional approval like the inherent authority view, it still

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215 *Id.* at 2200–01; 28 U.S.C. § 2072.

216 *See* Karen Nelson Moore, *The Supreme Court's Role in Interpreting the Federal Rules of Civil Procedure*, 44 HASTINGS L.J. 1039, 1093 (1993).

217 Marcus, *supra* note 26, at 933 (alteration in original).

218 *Id.* (alteration in original).

219 28 U.S.C. § 2072.

220 28 U.S.C. § 2074.

221 Catherine T. Struve, *The Paradox of Delegation: Interpreting the Federal Rules of Civil Procedure*, 150 U. PA. L. REV. 1099, 1141 (2002).

222 *Id.* at 1130.

223 *Id.* at 1141.

presents several problems.[224] Most significantly, while this approach explicitly outlines what the Court *should not* do when interpreting a procedural rule, it provides little guidance as to what the Court and other federal courts *should* do when interpreting a procedural rule.[225]

Another suggested method of procedural rule interpretation has been deemed the "faithful agent" approach.[226] Proponents of this method of interpretation, like proponents of the inherent-authority view, predicate their argument on the Court's position as "chief rulemaker" of rules of procedure.[227] According to this approach, the Court maintains broad interpretive power because of the rulemaking power granted to it by Congress in the Rules Enabling Act.[228] This approach encourages the abandonment of textualism and instead emphasizes the purpose and intent of the rule-maker.[229] If using this approach, the Court should seek to understand and apply the Rule's purpose, even if it is not supported by the Rule's text. Such an approach would create high levels of uncertainty for both the Court and the rule-makers. When acting as an interpreter, the Court must attempt to ascertain a purpose of the rule-maker that may not be expressed in the text of the Rule, which is an unreasonably difficult task. In addition, without reliance on the text of the Rules, there will be no way for rule-makers to draft rules in a manner that ensures the Rules are applied the way they are intended to be applied.

The final interpretative method, which is the method that the Court and other federal courts should adopt for Rule 4(c), is what the Court primarily uses to interpret procedural rules: principles of statutory interpretation.[230] In addition to those reasons that render the other approaches unreasonable, this approach utilizing statutory interpretation is superior to the others for three simple reasons—it provides clear guidelines for courts, it provides

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224 Marcus, *supra* note 26, at 934.

225 *Id.*

226 *Id.* at 929.

227 *Id.* at 929 n.15.

228 *Id.* at 933–35; *see also* 28 U.S.C. § 2072.

229 Marcus, *supra* note 26, at 929.

230 *See, e.g.*, Shady Grove Orthopedic Assocs., v. Allstate Ins. Co., 559 U.S. 393, 406 (2010) (plurality opinion) (treating FRCP 23 as if it were a statute for purposes of interpretation).

clear direction for rule drafters, and it allows for just results where participants in the system take procedural rules at face value.

Principles of statutory interpretation are well-known and widely used.[231] Therefore, it would be simpler for the Court and lower federal courts to apply them.[232] In addition, when courts rely on principles of statutory interpretation, drafters of procedural rules can easily ascertain the method the courts will use when interpreting the rules they draft.[233] Moreover, principles of statutory interpretation place great emphasis on textual meaning.[234] Reliance on the text is the most reasonable approach because the parties involved in litigation will be relying on those same rules to understand proper procedure. When a party wants to know the proper procedure for a given legal action, such as the filing of an appeal, the party will look first to the text of the rule, not the rule's legislative history. It would be preposterous to expect the parties in a legal proceeding to parse through a procedural rule's legislative history and then decipher that history's significance. Thus, the use of principles of statutory interpretation is the best method for interpreting procedural rules.[235]

2. Interpretation of Rule 4(c)'s Text

As the Seventh Circuit noted in *United States v. Craig*, it is a basic principle of interpretation that a court may not "pencil in" words that are not in a rule or statute.[236] However, that is precisely what a court does when it limits Rule 4(c)'s application to unrepresented prisoners.[237] Such an

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[231] *See* LARRY M. EIG, CONG. RSCH. SERV., 97-589, STATUTORY INTERPRETATION: GENERAL PRINCIPLES AND RECENT TRENDS 3–4 (2014).

[232] Elizabeth G. Porter, *Pragmatism Rules*, 101 CORNELL L. REV. 123, 131–32 (2015) ("The Court's statutory interpretations of the Rules tend to be rational, cleanly structured, and to reach a conclusion that provides clear guidance for lower courts.").

[233] VALERIE C. BRANNON, CONG. RSCH. SERV., R45153, STATUTORY INTERPRETATION: THEORIES, TOOLS, AND TRENDS 3 (2018) ("Understanding the theories that govern how judges read statutes is essential for Congress to legislate most effectively.").

[234] WILLIAM N. ESKRIDGE, JR., INTERPRETING LAW: A PRIMER ON HOW TO READ STATUTES AND THE CONSTITUTION 85 (2016).

[235] *Cf.* Bank of Nova Scotia v. United States, 487 U.S. 250, 255 (1988) (stating that a procedural rule ought to be interpreted using the same methods of construction used for statutes and the Constitution).

[236] United States v. Craig, 368 F.3d 738, 740 (7th Cir. 2004).

[237] *See* FED. R. APP. P. 4(c).

approach is incorrect because, as Justice Scalia has emphasized, subjective rule-maker intent should not play a role in federal procedural rule interpretation.[238] Instead, the text of the rule, in this case Rule 4(c), should be relied upon.[239] Despite this, rather than following the text of the rule as it is written, courts either misapply it by erroneously relying on perceived subjective rule-maker intent[240] or treat the rule as optional by ignoring it entirely.[241] An interpretation of the text in accordance with principles of statutory interpretation shows that the only reasonable interpretation of Rule 4(c) applies the rule to all inmates.

When interpreting a statute, courts look first to the statute's text, and if the language is unambiguous, that is where the court's inquiry ends.[242] Similarly, it is well established that where a procedural rule's meaning is unambiguous, the Court should not adopt an interpretation contradictory to that meaning.[243] This is a basic rule of statutory interpretation, most often referred to as "the plain meaning rule."[244] If the plain meaning of Rule 4(c) is ascertainable, the Court and lower federal courts should not refer to any piece of legislative history, such as Advisory Committee notes, nor should

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[238] Krupski v. Costa Crociere S. p. A., 560 U.S. 538, 557 (2010) ("The Advisory Committee's insights into the proper interpretation of a Rule's text are useful to the same extent as any scholarly commentary. But the Committee's *intentions* have no effect on the Rule's meaning. Even assuming that we and the Congress that allowed the Rule to take effect read and agree with those intentions, it is the text of the Rule that controls.") (Scalia, J., concurring).

[239] *Id.*

[240] *See, e.g.*, Grady v. United States, 269 F.3d 913, 916 (8th Cir. 2001).

[241] *See, e.g.*, Burgs v. Johnson County, 79 F.3d 701, 702 (8th Cir. 1996).

[242] Bank of Am. Nat'l Trust & Sav. Ass'n v. 203 N. LaSalle St. P'ship, 526 U.S. 434, 459 (1999) (Thomas, J., concurring) ("Our precedents make clear that an analysis of any statute . . . must not begin with external sources, but with the text itself."); Robinson v. Shell Oil Co., 519 U.S. 337, 340 (1997) ("Our inquiry must cease if the statutory language is unambiguous . . . ."); N.Y. State Conf. of Blue Cross & Blue Shield Plans v. Travelers Ins. Co., 514 U.S. 645, 655 (1995) ("[W]e begin as we do in any exercise of statutory construction with the text of the provision in question.").

[243] *See, e.g.*, Shady Grove Orthopedic Assocs., v. Allstate Ins. Co., 559 U.S. 393, 406 (2010) (plurality opinion) ("Rule 23 unambiguously authorizes *any* plaintiff, in *any* federal civil proceeding, to maintain a class action if the Rule's prerequisites are met. We cannot contort its text, even to avert a collision with state law that might render it invalid.").

[244] ESKRIDGE, JR., *supra* note 234, at 33.

they refer to any perceived rule-maker intent.[245] Rather, the Court and lower federal courts should apply the rule in accordance with its plain meaning.[246]

Rule 4(c) has an easily ascertained plain meaning. The rule is unambiguous because it is not subject to more than one reasonable interpretation.[247] The text of Rule 4(c) plainly provides that its protections are afforded to all inmates confined in an institution:

> Appeal by an Inmate Confined in an Institution. (1) If an institution has a system designed for legal mail, *an inmate* confined there must use that system to receive the benefit of this Rule 4(c)(1). If *an inmate* files a notice of appeal in either a civil or a criminal case, the notice is timely if it is deposited in the institution's internal mail system on or before the last day for filing . . . .[248]

The rule merely states that if "an inmate confined in an institution" uses the prison mail system to file an appeal, it is treated as "timely if it is deposited in the institution's mail system on or before the last day for filing."[249] It is plain that the rule makes no mention of inmate representation status.[250] Because the rule does not make any distinction between represented and unrepresented prisoners in its text, the only reasonable interpretation of the rule is that it does not limit its application to unrepresented prisoners alone. The words "*pro se*" or "unrepresented" ought not be penciled into the rule where no ambiguity exists.

The plain meaning of Rule 4(c), which is not limited to unrepresented prisoners, is further solidified by the *Black's Law Dictionary* definition of the Rule. The well-regarded legal dictionary, like Rule 4(c) itself, does not

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245 *See id.*

246 *See id.*; *see also Robinson*, 519 U.S. at 340.

247 *See Ambiguity*, BLACK'S LAW DICTIONARY (11th ed. 2019) ("Doubtfulness or uncertainty of meaning or intention, as in a contractual term or statutory provision; indistinctness of signification, *esp. by reason of doubleness of interpretation*.") (emphasis added).

248 FED. R. APP. P. 4(c)(1) (emphasis added).

249 *Id.*

250 *See id.*

limit the rule's application.[251] The definition provided states that the "prison-mailbox rule" is "[t]he doctrine that for purposes of computing a legal deadline, a prisoner's court filing is considered filed when it is deposited in the prison's internal mail system."[252] The reason the dictionary definition of "prison-mailbox rule" does not limit the rule to unrepresented prisoners is because a reading of Rule 4(c)'s text plainly shows that the rule does not contain any such limitation.[253]

It is worth noting that, based on principles of statutory interpretation, not only must the Supreme Court apply Rule 4(c) to all prisoners, but lower federal courts must also apply Rule 4(c) to all prisoners. [254] Lower federal courts must not disregard the text of federal procedural rules.[255] As has been noted by some, "a discernable tendency exists among lower courts to treat the Federal Rules as helpful guides whose textual commands can yield as circumstances require."[256] However, the Supreme Court has previously declared that federal procedural rules are "as binding as any statute" and must be given the same weight by federal courts as constitutional and statutory provisions.[257] Because the text of Rule 4(c) plainly shows that the prison mailbox rule's application is not limited to unrepresented prisoners, federal courts must not contravene that plain meaning by limiting Rule 4(c)'s application.[258]

B. Public Policy Supports the Prison Mailbox Rule's Broad Application

Rule 4(c)'s text is unambiguous,[259] but even if it was ambiguous, it should be applied to all inmates. The Court's decision in *Houston* can fairly be extended to apply to all inmates, rather than only inmates who submit

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[251] *See Prison-Mailbox Rule*, BLACK'S LAW DICTIONARY (11th ed. 2019).

[252] *Id.*

[253] *See* FED. R. APP. P. 4(c).

[254] For a more in-depth explanation of statutory interpretation see ESKRIDGE, JR., *supra* note 234, at 1–29.

[255] Bank of Nova Scotia v. United States, 487 U.S. 250, 255 (1988).

[256] Marcus, *supra* note 26, at 928.

[257] *Bank of Nova Scotia*, 487 U.S. at 255; *see also* Marcus, *supra* note 26, at 928.

[258] It has been argued that the prison mailbox rule should extend to *pro se* and passively represented prisoners but not all prisoners. *See* Canedy, *supra* note 9, at 787. However, such an interpretation also contravenes the rule's plain meaning.

[259] *See supra* Section IV.A.2.

filings while acting without representation. The policy reasons for the prison mailbox rule outlined by the Court in *Houston* support the prison mailbox rule's broad application.[260] Indeed, the prison system creates many obstacles for those that are incarcerated.[261] Inmates represented by counsel are not so fortunate as to escape the obstacles that stem from incarceration—such obstacles create problems for both represented and unrepresented inmates with equal force.[262] Despite this, the majority of the federal circuits still find that although all inmates face the same obstacles, all inmates should not be afforded an equal opportunity to subvert the legal consequences that may result from those obstacles.[263] Such a stance breeds inconsistency in the law, which should be avoided if possible.[264] Where application of the prison mailbox rule is concerned, the inconsistency that currently exists in the law can and should be avoided.

Houston can be fairly extended to apply to all inmates because the Court in *Houston* focused on the unique struggles faced by prisoners as a result of incarceration.[265] Recall that the appellant in *Houston*, Prentiss Houston, filed her appeal *pro se*.[266] Because Prentiss Houston filed her appeal *pro se*, the Court's discussion focused specifically on the plight of *pro se* prisoners.[267] However, this does not mean that the Court's reasoning cannot be extended further.[268] All of the obstacles Houston faced that the Court emphasized may also be experienced by a prisoner that has counsel,

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[260] United States v. Moore, 24 F.3d 624, 625 (4th Cir. 1994).

[261] *See id.* at 626 ("[E]ven represented prisoners might be prevented from timely communicating with counsel.").

[262] *Id.*

[263] *See* Cretacci v. Call, 988 F.3d 860, 863 (6th Cir. 2021); United States v. Camilo, 686 F. App'x 645, 646 (11th Cir. 2017); United States v. Rodriguez-Aguirre, 30 F. App'x 803, 805 (10th Cir. 2002); Burgs v. Johnson County, 79 F.3d 701, 702 (8th Cir. 1996).

[264] J. Brandon Duck-Mayr, *Explaining Legal Inconsistency*, 34(1) J. THEORETICAL POL. 107, 108 (2021). The author notes that "inconsistency in legal doctrine reduces judicial legitimacy," and points to lower courts applying appellate court rules as a primary example of where inconsistency in legal doctrines can stem from. *Id.*

[265] Houston v. Lack, 487 U.S. 266, 271 (1988).

[266] *Id.* at 268; *see also* discussion *supra* Section II.B.1.b.

[267] *Houston*, 487 U.S. at 275.

[268] Piacentini v. Levangie, 998 F. Supp. 86, 89 (D. Mass. 1998) ("Nothing in the language of *Houston* precludes an extension of that reasoning beyond the facts and circumstances of that case.")

especially those prisoners that are passively represented.[269] In *Houston*, the Court heavily discussed the difficulties faced by prisoners when they are left with no options.[270] They are left with no options because the exclusive method of communication with the courts available to unrepresented prisoners is the unpredictable and unreliable prison mail system.[271] In many cases, represented prisoners, like unrepresented prisoners, are left with no options.[272] This could be for any number of reasons, such as because the prisoner's counsel is unreliable or because the prisoner is unable to communicate with their counsel.[273] Just like unrepresented prisoners, represented prisoners do not have the freedom to personally deliver their filing to the clerk.[274] Thus, the barriers to communication with the court system affect represented and unrepresented prisoners with equal force.[275] Because barriers to communication, emphasized in *Houston*, affect all prisoners, the protection crafted by the Court in *Houston* can be fairly extended to all prisoners.[276]

Moreover, consistency in the law is valued.[277] That is the very reason the Supreme Court adopted a uniform set of Appellate Rules.[278] Courts should not apply the common law prison mailbox rule and Rule 4(c) differently if such an inconsistency can be avoided. Here, the inconsistency is avoidable. Because *Houston* can be fairly extended to all prisoners, treating appeals as of right under Rule 4(c) different from other types of inmate court filings is unnecessary. When another opportunity to clarify the prison mailbox rule arises, the Court should find that the broad interpretation of Rule 4(c) and

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[269] *See* Canedy, *supra* note 9, at 789 ("By definition, a passively represented prisoner suffers from the same problems facing a *pro se* prisoner.").

[270] *Houston*, 487 U.S. at 271.

[271] *Id.*

[272] *See* Canedy, *supra* note 9, at 789.

[273] United States v. Craig, 368 F.3d 738, 739 (7th Cir. 2004).

[274] Canedy, *supra* note 9, at 784.

[275] *See* Teddy Duncan, *Calling While Incarcerated*, EMERALD MEDIA GRP. (July 7, 2021), https://theemeraldmagazine.com/calling-while-incarcerated-the-exorbitant-price-of-communication-in-prisons/; United States v. Moore, 24 F.3d 624, 626 (4th Cir. 1994).

[276] Houston v. Lack, 487 U.S. 266, 271 (1988).

[277] Duck-Mayr, *supra* note 264, at 108.

[278] *See supra* Section II.A.1.

the common law prison mailbox rule is the approach that lower federal courts should adopt.

V. CONCLUSION

The Supreme Court created the prison mailbox rule to provide a fair opportunity for inmates to submit court filings. The Court should resolve the current split among the circuit courts because those courts that do not provide a fair opportunity for inmates to submit court filings must be corrected. The injustice created by the disparate treatment of prisoner filings cannot continue. Principles of statutory interpretation plainly show why Rule 4(c) must be applied to both represented and unrepresented prisoners alike, and the policy behind *Houston*'s common law prison mailbox rule supports this application. Therefore, federal courts should adopt the broad interpretation of both Rule 4(c) and the common law prison mailbox rule.