No. 01-437

In the Supreme Court of the United States

ZUZANNA J. DILLON, ET AL., PETITIONERS

v.

COLIN L. POWELL, SECRETARY OF STATE, ET AL.

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

BRIEF FOR THE FEDERAL RESPONDENTS IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether an agency's attempts to notify potential class action plaintiffs by, inter alia, certified mail, newspaper advertisements, and governmental office postings, violated the due process rights of plaintiffs who claim that they did not receive actual notice.

2. Whether refusing to allow class action plaintiffs to file untimely proofs of claim constitutes an abuse of discretion, when such filings were proffered seven to ten years after a court-ordered deadline, six to nine years after any other plaintiff was allowed to file, and several months after the process for resolving other plaintiffs' substantive claims had begun.

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OPINIONS BELOW

The opinions of the court of appeals (Pet. App. 1a-5a) and the district court (Pet. App. 16a) are unreported.

JURISDICTION

The judgment of the court of appeals was entered on March 15, 2001. Petitions for rehearing were denied on June 14, 2001 (Pet. App. 9a-10a, 11a-12a). The petition for a writ of certiorari was filed on September 12, 2001. The jurisdiction of the Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. This case arises from a class action alleging gender discrimination in violation of Title VII of the

Civil Rights Act of 1964, 42 U.S.C. 2000e *et seq.*, by the United States Information Agency (USIA) in its hiring of civil service employees.[1] The lawsuit was filed in 1977, and, seven years later, the district court held USIA liable for unlawful hiring practices. *Hartman* v. *Wick*, 600 F. Supp. 361 (D.D.C. 1984).

In 1988, the district court ordered USIA to undertake a "comprehensive effort to notify potential class members" of the pending lawsuit, including: (i) notice by certified mail to all current and former female agency employees, to all current and former purchase order vendors, and to all current and former female job applicants, (ii) a month of weekly advertising in each dominant newspaper of the United States' eighteen largest metropolitan areas, and comparable advertising in all newspapers or professional journals where the agency had posted job openings during the class period, (iii) notice in the Office of Personnel Management's regional offices and in all offices of USIA and Voice of America. *Hartman* v. *Wick*, 678 F. Supp. 312, 328-330, 341 (D.D.C. 1988). The district court also ordered USIA to search its records for information about potential class members, and plaintiffs' counsel was allowed discovery concerning USIA's use of "word of mouth" to solicit applicants, so that similar means could be used to detect and notify potential plaintiffs. *Id.* at 331.

Petitioners do not dispute USIA's compliance with the district court's 1988 order, and the district court found that USIA had made an "exhaustive good faith effort to effect notice on all possible claimants." 7/27/98

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[1] Allegations that were formerly part of this lawsuit, concerning discrimination in USIA foreign service employment, have now been resolved and are not before this Court.

Mem. Order 3. The agency spent approximately one million dollars notifying potential plaintiffs, sending certified mail with return receipt to thousands of possible class members using addresses reflected in the agency's own files and, where individuals' Social Security numbers were known, in files of the Internal Revenue Service (IRS). See 6/12/00 Aff. Lorie J. Nierenberg paras. 6-8, 11-16 (Exh. A to Defs.' Consolidated Opp'n to Elin-Kai Toona Gottschalk's Mot. to File Proof of Claim and Objection to Exclusion from Settlement (filed June 12, 2000)).

In its 1988 order, the district court defined the certified class to include women in six occupational categories who had unsuccessfully applied for affected positions between October 8, 1974, and November 16, 1984. *Hartman*, 678 F. Supp. at 320, 325-328. The court instructed such class members to file with plaintiffs' counsel proofs of claim postmarked no later than July 15, 1989. Plaintiffs'/Appellees' Mot. Summ. Affirmance 3. Approximately 1100 women complied with that deadline, and twenty-two women filed untimely proofs of claim postmarked after July 15, 1989, but before March 29, 1991. *Ibid.*

On October 1, 1991, the district court appointed a special master to conduct individual remedial proceedings for each plaintiff who had filed a proof of claim before that appointment. Plaintiffs'/Appellees' Mot. Summ. Affirmance 3; 7/20/98 Mem. Order 1. Counsel for the plaintiff class then gave USIA copies of all timely filed claim forms, and in June 1996 the special master began to conduct hearings on individual plaintiffs' entitlement to relief. Plaintiffs'/Appellees' Mot. Summ. Affirmance 3. After forty-eight such hearings were complete, the parties initiated settlement negotiations, using the average recovery obtained in the relief

hearings—$450,000 per claimant—as a basis for discussion. See 6/27/00 Tr. Fairness Hr'g 44-45. On March 22, 2000, the parties executed a formal consent decree to settle all pending claims against USIA in exchange for $508 million plus interest. *Ibid.*; Plaintiffs'/Appellees' Mot. Summ. Affirmance 4.

2. Petitioners are three women who sought to join the USIA class action many years after the district court's filing deadline, and many months after the special master began issuing individual remedial decisions. Indeed, two of the three petitioners sought to join the class action only after the consent decree had been executed.

Zuzana Dillon claims that she learned of the USIA class action in December 1996. Pet. 8-9. On April 24, 1997, Dillon moved for leave to file a belated proof of claim; that motion was denied on September 30, 1998, and she moved for reconsideration on June 6, 2000. Plaintiffs'/Appellees' Mot. Summ. Affirmance 3-4. Similarly, Elin-Kai Gottschalk claims that she heard of the lawsuit in June 1999; she proffered her untimely proof of claim on May 31, 2000. *Id.* at 5-6; 6/19/00 Reply Mem. in Support of Mot. of Class Member Elin-Kaitoona Gottschalk to File Proof of Claim and Response to Opp'ns Filed by the Parties. In 1991, Perviz Chokhani received actual notice regarding a different aspect of the USIA class action, not presently before this Court, which offered non-monetary relief to foreign service applicants. 6/19/00 Defs.' Consolidated Opp'n to Perviz (Walji) Chokhani's Mot. to File Proof of Claim and Objection to Exclusion from Settlement 5. However, Chokhani claims that she was first aware of the civil service portion of the lawsuit, which allowed recovery of monetary relief, through press reports about the March 2000 settlement. Chokhani filed a request to join

the civil service class action on June 6, 2000. *Ibid.* Each of petitioners' motions alleged that the notice USIA provided, pursuant to the district court's 1988 order, violated due process because petitioners did not receive actual notice of the pending lawsuit. Pet. 7, 9, 12.

3. On July 12, 2000, the district court rejected petitioners' due process challenges and denied their requests to join the class action. Pet. App. 16a. Petitioners appealed and filed a motion with the District of Columbia Circuit seeking summary reversal; respondents filed corresponding motions for summary affirmance. The District of Columbia Circuit granted respondents' motions, holding that the district court's decision to deny petitioners' requests to join the class constituted a permissible exercise of its discretion over extensions of time. Pet. App. 1a-5a; see Fed. R. Civ. P. 6(b)(2) (granting courts discretion to extend deadlines "where the [movant's] failure to act was the result of excusable neglect").

ARGUMENT

The unpublished decision of the court of appeals is correct and does not conflict with any decision of this Court or of any other court of appeals. Thus, further review is not warranted.

1. Petitioners claim that the Constitution required USIA to provide actual notice to any litigant who could be identified. Pet. 26-30. No authority is offered for that proposition, however, and this Court has repeatedly stated that efforts that do not provide actual notice nonetheless satisfy due process if they are "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *E.g.*, *Mullane* v. *Central Hanover Bank & Trust Co.*, 339

U.S. 306, 314 (1950). That is particularly true in the context of multi-claimant cases and class actions. *Mullane* held that notice mailed to identifiable class members at a "known place of residence" satisfies due process. 339 U.S. at 318. Likewise, in *Mennonite Bd. of Missions* v. *Adams*, 462 U.S. 791, 798 (1983), this Court clarified that, when a litigant is identified within a matter of public record, "constructive notice by publication must be supplemented by notice mailed to the [litigant's] *last known available address*." *Ibid.* (emphasis added).

In this case, USIA employed multiple means—including certified mail, newspapers, professional journals, "word of mouth" networks, and governmental postings—that were reasonably calculated to notify potential plaintiffs of the pending class action. Moreover, it is not disputed that the USIA sent notices by certified mail to thousands of identified members of the plaintiff class at their "last known" addresses "available" in USIA records, and the USIA similarly paid the IRS to mail notices to last known addresses available to the IRS using the class members' Social Security numbers. See 6/19/00 Decl. Lorie J. Nierenberg paras. 12-14 (Exh. A to Defs.' Consolidated Opp'n to Perviz (Walji) Chokhani's Mot. to File Proof of Claim and Objection to Exclusion from Settlement (filed June 19, 2000)); cf. *Chemetron Corp.* v. *Jones*, 72 F.3d 341, 347 (3d Cir. 1995) ("The requisite search * * * focuses on the [notifier's] own books and records. Efforts beyond a careful examination of these documents are generally not required."). USIA thus provided petitioners and other class members with the full extent of notice that they were constitutionally due, and petitioners cite no case by this Court or by any court of appeals suggesting that such extensive efforts could be deemed inadequate.

In the alternative, petitioners contend that, even if actual notice is not necessary for every litigant, they were nonetheless entitled to actual notice because the government "kn[ew] or learn[ed]" that the addresses used to contact them were "incorrect." Pet. 26-27, 29. As support, petitioners note that receipts for the USIA's certified mailings to Dillon and Gottschalk were returned unsigned. Petitioners offer no credible evidence, however, that the addresses used by USIA were constitutionally unreasonable at the time the mailings issued in 1989.[2]

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[2] Petitioners claim that USIA wrongly mailed Dillon's notice to an address where she had resided until 1980. In 1980, Dillon moved to Turkey, and she claims that "USIA officials knew where [she] was living in 1980." 5/21/97 Aff. Zuzanna Dillon paras. 9, 13 (Exh. A to Objection of Class Member Zuzanna Dillon to Exclusion from Settlement (filed June 6, 2000)). Dillon acknowledges, however, that her Turkish address was not permanent, and she does not claim that USIA could have surmised that the address would still be effective nine years after her move. On the contrary, Dillon returned to the United States in 1983, and she did not inform USIA of the address she used from 1983 until 2000—the only address potentially relevant to USIA's 1989 mailing. *Ibid.*

With respect to Gottschalk, petitioners claim that she sent an application to USIA with an updated address in January of 1989. Pet. 10-11. That assertion misstates the record. Gottschalk's affidavit indicates only that she "applied for full-time employment with the Voice of America and with the USIA during the period November 1978 to January 1989." 5/5/00 Aff. Elin Toona Gottschalk para. 2 (Exh. A to Objection of Class Member Elin-Kaitoona Gottschalk to Exclusion from Settlement (filed June 6, 2000)). There is no evidence that Gottschalk filed more than one application, nor is there evidence describing when, where, how, or to whom she might have applied. The ambiguous text of Gottschalk's affidavit falls short of showing that USIA knew and unreasonably disregarded her proper address in 1989.

Because of the returned receipts, petitioners contend that the Constitution required USIA to consult a telephone book or to again pursue accurate addresses using petitioners' Social Security numbers. As the district court noted, however, "[h]indsight is a powerful tool for figuring out how [potential plaintiffs] might have been found." Pet. App. 14a. Although petitioners now suggest various means by which USIA could conceivably have contacted them, petitioners have not demonstrated that the efforts USIA actually took were unreasonable, nor have they shown that, in 1989, USIA should have known that further efforts would have had a reasonable chance of success.[3]

In Chokhani's case, petitioners claim that she did not receive actual notice, Pet. 6, but they have not claimed that USIA *knew* she was not notified. Moreover, although USIA possessed Chokhani's address and Social Security number in its files for foreign service applicants, USIA did not have such information in its files for civil service applicants. Petitioners have not argued that USIA's failure to cross-reference information from its handwritten application forms was, in 1989, constitutionally unreasonable. See Application Control Record 1 (Exh. B to Motion of Class Member Perviz (Walji) Chokhani to File Proof of Claim (filed June 6, 2000)); cf. Pet. App. 14a ("[T]he efforts that were made were deemed at the time—this was before the Internet by the way—to [be] if not perfect, the best that could be fashioned at the time.").

[3] Even if USIA had deduced from the returned mail receipts that Dillon's and Gottschalk's addresses were inaccurate—a conclusion that itself is not a necessary one—USIA almost certainly would have inferred that petitioners' telephone numbers had also changed. Indeed, Gottschalk lived in Florida and moved four times after 1984, whereas Dillon moved to and from Turkey. 5/21/97 Aff. Zuzanna Dillon paras. 9, 13 (Exh. A to Objection of Class Member Zuzanna Dillon to Exclusion from Settlement (filed June 6, 2000)); 5/5/00 Aff. Elin Toona Gottschalk para. 10 (Exh. A to Objection of Class Member Elin-Kaitoona Gottschalk to Exclusion from Settle-

On the contrary, the district court found as a factual matter that USIA had made an "exhaustive good faith effort to effect notice on all possible claimants." 7/27/98 Mem. Order 3. And because petitioners' actual addresses in 1989 "[we]re unknown" to USIA, despite reasonable efforts to obtain them, USIA's efforts to provide constructive notice through publication and postings were constitutionally sufficient. See *Mullane*, 339 U.S. at 318. Although more accurate addresses might possibly have been "discovered upon investigation," due process does not require repeated, individualized inquiries. *Id.* at 317 (noting "the practical difficulties and costs that would be attendant on frequent investigations into the status of great numbers of beneficiaries"); see also *Tulsa Prof'l Collection Servs., Inc.* v. *Pope*, 485 U.S. 478, 490 (1988) ("*Mullane* disavowed any intent to require 'impracticable and extended searches in the name of due process.'") (ellipsis omitted). The Constitution requires that notice be reasonably calculated to inform potential claimants of pending litigation, and that constitutional standard was more than met here. Therefore, in the absence of a circuit conflict regarding the adequacy of USIA's efforts, petitioners' due process claims do not merit further review.[4]

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ment (filed June 6, 2000)). Accordingly, it is difficult to understand petitioners' assertion that USIA should reasonably have known in 1989 that these evidently mobile individuals would be "easy to locate" with the simple aid of a telephone and a local directory. Pet. 8, 10.

[4] Petitioners do not request that this petition be held pending the Court's disposition of *Dusenbery* v. *United States*, No. 00-6567 (argued Oct. 29, 2001), nor would such a hold be appropriate in this case. *Dusenbery* addresses the adequacy of notice in an individual forfeiture action. Whatever the proper standard of notice in such

2. Petitioners also argue that the District of Columbia Circuit's unpublished opinion created a circuit conflict regarding the proper legal standards for untimely filings. Pet. 17-26. The District of Columbia Circuit's opinion, however, applied established legal principles, and its result does not conflict with the law of any other court of appeals.

The District of Columbia Circuit's analysis properly focused on *Pioneer Investment Services Co.* v. *Brunswick Associates Limited Partnership*, 507 U.S. 380 (1993), which explains that an untimely filing should be accepted as though it were timely if the movant's delay was due to "excusable neglect."[5] Although determinations of excusable neglect require fact-bound, equitable consideration of "all relevant circumstances surrounding the party's omission," this Court has listed four examples of factors that are typically relevant: (i) the danger of prejudice to the non-movant, (ii) the length of delay and its potential impact on judicial proceedings, (iii) the reason for the delay and whether it was within the movant's reasonable control, and (iv) whether the movant acted in good faith. *Id.* at 395.

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individual cases, the Court has repeatedly held in the class action or multiple plaintiff context that notice like that provided here—or indeed significantly less elaborate notice—is constitutionally sufficient.

[5] Petitioners' suggestion that the District of Columbia Circuit "did not find *Pioneer* [to be] controlling" precedent, Pet. 17, is manifestly misplaced. In this case, the District of Columbia Circuit cited *Pioneer* and cases from courts of appeals that have applied *Pioneer*. Pet. App. 3a-4a. And the District of Columbia Circuit has similarly recognized *Pioneer*'s precedential force in a subsequent, published opinion. See *Students Against Genocide* v. *Department of State*, 257 F.3d 828, 833 n.5 (D.C. Cir. 2001).

Petitioners claim that two errors occurred in the application of *Pioneer* to this case. First, petitioners claim that the lower courts weighed the pertinent circumstances improperly. Pet. 19-24. That argument is mistaken, and it underestimates district courts' discretion regarding extensions of time. Here, the district court found that allowing petitioners to join the class, after the parties had executed a settlement, would have risked prejudice to the plaintiff class by upsetting the financial expectations underlying that settlement. See Pet. App. 14a. The size of the $508 million settlement fund was explicitly negotiated based on the number of pending claims and the average value of each claim. 6/27/00 Tr. Fairness Hr'g 44-45. Accordingly, the consent decree's allocation of funds explicitly defined the plaintiff class to include only claimants who had filed proofs of claim "prior to the District Court's [October 1, 1991] Order of Reference." Consent Decree para. 1. Allowing petitioners to join the class, so late in the settlement process, would have required USIA's interests and those of the class plaintiffs to be balanced anew, thereby risking possible detriment to either side or to both.

Moreover, if the district court had refused to approve the settlement in order to admit petitioners' untimely claims, no coherent principle could have excluded other untimely claimants from the class.[6] The district court found that more than seventy women had contacted

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[6] Petitioners suggest that the lower courts were wrong to consider untimely claimants who, unlike petitioners, did not seek to intervene prior to the fairness hearing. Pet. 20 n.2. That argument, however, cannot be reconciled with petitioners' correct observation that "excusable neglect" standards would have applied to any claimant's motions filed up to ten days after the entry of final judgment. Reply Pet. 5-6; see Fed. R. Civ. P. 60(b).

class counsel since the settlement was negotiated, and the court inferred that more plaintiffs might soon come forward, Pet. App. 14a, in response to post-settlement press coverage. The special master's October 1991 appointment and the commencement of hearings in June 1996 formed a principled basis, grounded in the litigation process itself, for distinguishing petitioners' April 1997 and June 2000 filings—as well as potentially later filings by other claimants—from those of the admitted class members, the latest of which was filed in March 1991.

Rejecting the settlement to allow additional claimants to participate would also have risked a substantial delay in the judicial proceedings. The parties might have had to evaluate the new claims, negotiate a new settlement, and, if settlement could not be reached, submit the remaining claims for adjudication by the special master. 6/27/00 Tr. Fairness Hr'g 17 (counsel for USIA) ("[T]here is prejudice not only to the plaintiff class but also to the defendant because [allowing new claimants to join] could theoretically threaten to unravel the whole settlement."). The parties exerted substantial effort, over many years, before finally negotiating a settlement. Petitioners suggest that adding three, seventy-three, or more plaintiffs to the class would not have significantly harmed the prospects of enforcing that settlement. The district court disagreed, however, based on its informed assessment of the factual circumstances surrounding the case. The sheer amount of time that passed before petitioners attempted to file their claims also supports the district court's decision. Petitioners concede that they filed their proofs of claim seven to ten years after the court-ordered deadline, and such delay is far longer than was present in any decision cited by petitioners.

Even the reasons proffered for petitioners' untimeliness do not necessarily support a finding of excusable neglect, because petitioners were clearly responsible for part of that delay. When petitioners learned of the USIA class action, at least two of them failed promptly to participate in the remedial process. Dillon waited approximately four months before requesting leave to file her claim and, after that motion was denied, she made no attempt to revive her claim for twenty additional months—until a monetary settlement was announced in the press. Similarly, Gottschalk waited a year after learning about the case before submitting her untimely proof of claim. Thus, though petitioners assert that they were blameless because they did not know of the lawsuit, a significant delay occurred even after they had received actual notice of the suit. No case cited by petitioners has found excusable neglect where a claimant's delay resulted from several years of inaction without notice, followed by several months of inaction with notice. See *In re Painewebber Ltd. P'ships Litig.*, 147 F.3d 132, 135 (2d Cir. 1998) (declining to find excusable neglect where a class action plaintiff missed a deadline due to hospitalization, but delayed nine additional months after his release before filing an untimely motion).

Contrary to petitioners' assertions, the facts of *In re Orthopedic Bone Screw Products Liability Litigation*, 246 F.3d 315 (3d Cir. 2001), and *Pioneer*, 507 U.S. at 380, also indicate that the district court's decision in this case was a proper exercise of discretion. In *Orthopedic Bone Screw*, class members were required to file a Registration Form in May 1997, and a Proof of Claim in April 1999. The Third Circuit held that a claimant who filed a Registration Form seven months late, but who filed a Proof of Claim two months *early*,

should be allowed to join the class. The Third Circuit found the claimant "blameless" because the defendant had failed adequately to provide notice to potential class members; the court also noted that the claims administrator was not appointed until a month after the plaintiff had filed his Proof of Claim. *Orthopedic Bone Screw*, 246 F.3d at 325-327 & n.11. Thus, plaintiff's untimely Registration Form had absolutely no dilatory effect on the ongoing judicial proceedings. *Id.* at 325.

Similarly, in *Pioneer*, a litigant filed twenty days late because his notice of the judicial deadline contained a "dramatic ambiguity." 507 U.S. at 398. This Court found that the untimely filing should be accepted because the trial court specifically found that the movant's twenty-day, good faith delay caused no prejudice to the parties and had no impact on the judicial proceedings. Importantly for this case, however, the Court concluded that "were there *any evidence* of prejudice to petitioner or to judicial administration * * * we could not say that the Bankruptcy Court abused its discretion in declining to find the neglect to be 'excusable.'" *Ibid.* (emphasis added).

In the case at bar, petitioners' untimeliness was measured in years and months rather than days, the notice provided by USIA was adequate and unambiguous, a special master had been appointed and adjudication of individual claims had already begun before their filings were submitted, and the district court found significant evidence of prejudice both to the parties and to judicial administration. In light of such circumstances, it was not error for the District of Columbia Circuit to find that the district court acted within its discretion.

The second error asserted by petitioners concerns not the merits of the district court's decision, but the

allegedly terse style used to explain it. Petitioners claim that the district court committed a per se abuse of discretion by violating its "duty of explanation," i.e., by not undertaking a "point by point" analysis of "all four *Pioneer* factors." Pet. 25-26. Petitioners' argument contains two flaws. First, petitioners did not raise any such "duty of explanation" argument before the district court, before the District of Columbia Circuit, or in their petition for rehearing en banc.[7] See *Pennsylvania Dep't of Corrs.* v. *Yeskey*, 524 U.S. 206, 212-213 (1998) ("Where issues are neither raised before nor considered by the Court of Appeals, this Court will not ordinarily consider them."). Moreover, this case presents a poor vehicle for resolving any potential conflicts regarding such an alleged duty of explanation, both because the unpublished opinions under review do not discuss the issue and because the factors supporting the result in this case are plain from the record. See pp. 10-14, *supra.*

Second, petitioners' argument misinterprets the law of the Third Circuit, which is the only court of appeals expressly to recognize a "duty of explanation." *E.g.*, *Orthopedic Bone Screw*, 246 F.3d at 321.[8] Petitioners

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[7] On the contrary, petitioners' only explicit basis for seeking an extension of time before the district court was the alleged inadequacy of USIA's notice. *E.g.*, 6/6/00 Mot. of Class Member Perviz (Walji) Chokhani to File Proof of Claim 2 ("[T]he failure of USIA to provide actual or constructive notice to Ms. Chokhani violated the requirements of Fed. R. Civ. P. 23 and the due process clause of the Constitution. Accordingly, Ms. Chokhani should be allowed additional time within which to file a Proof of Claim.").

[8] Compare *Bateman* v. *United States Postal Serv.*, 231 F.3d 1220, 1224 (9th Cir. 2000) (reversing a district court that applied an incorrect legal standard for excusable neglect, and reached an incorrect result), with *TCI Group Life Ins. Plan*, 244 F.3d 691, 696-697 (9th Cir. 2001) (noting that the substance of excusable neglect analysis need not be articulated using *Pioneer*'s four factors).

properly note that the Third Circuit has stated a general preference for "point by point analysis" of the four factors listed in *Pioneer*. Pet. 26. The Third Circuit has also repeatedly stated, however, that excusable neglect requires an equitable, flexible inquiry that accounts for "all relevant circumstances surrounding the party's omission." *E.g.*, *In re Cendant Corp. Prides Litig.*, 235 F.3d 176, 181-182 (2000); *Pioneer*, 507 U.S. at 395 & n.14. Indeed, when a district court fails to perform the pertinent four-part analysis, the Third Circuit itself has undertaken to "review * * * the substantive matter of whether 'excusable neglect'" exists, unless the factual record is insufficiently developed to allow such review. *In re Cendant Corp. Prides Litig.*, 234 F.3d 166, 172 (3d Cir. 2000). Petitioners cite no decision from the Third Circuit or from any other where a district court's decision, which was substantively correct, was reversed simply for failing to recite *Pioneer*'s four factors. Nor could the unpublished decision in this case create or contribute to such a split of authority, even if one existed. There is no conflict between the Third and District of Columbia Circuits with respect to a case like this one, where the undisputed facts were sufficiently clear for the court of appeals to decide the case without further assistance from the district court.

Petitioners' final claim is that this Court should grant certiorari in order to "review the D.C. Circuit's failure to conduct a thorough, systematic application of the law to the facts." Pet. 26. Such an expansion of the "duty of explanation" to regulate appellate courts' opinions, rather than those of district courts, finds no support in the Third Circuit jurisprudence or in that of any other circuit. Many courts of appeals, including those cited by petitioners, have resolved excusable neglect cases with-

out resort to a technical, four-step inquiry; on the contrary, appellate courts often analyze only those circumstances that particularly serve to explain and justify their decisions. *E.g.*, *United States* v. *Cruz-Mendez*, No. 98-4048, 1999 WL 1015549, at *2 (10th Cir. Nov. 9, 1999) (unpublished), cert. denied, 530 U.S. 1248 (2000); *Midwest Employers Cas. Co.* v. *Williams*, 161 F.3d 877, 879-880 (5th Cir. 1998); *In re Painewebber Ltd. P'ships Litig.*, 147 F.3d at 135-136. For similar reasons, the District of Columbia Circuit's unpublished opinion in this case focused on prejudice to the parties, judicial administration, certainty, finality, the length of petitioners' delay, and equality among untimely applicants—a combination of factors deemed sufficient to explain its decision granting summary affirmance. Pet. App. 3a-4a. Nothing in this Court's jurisprudence, or in that of other courts of appeals, required the District of Columbia Circuit to provide further explanation. Hence, because the result in this case did not misapply *Pioneer* and does not create any conflict among the circuits, review by this Court is not warranted.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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