PUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 22-4166

UNITED STATES OF AMERICA,

Plaintiff – Appellee,

v.

GREGORY BRANTLEY,

Defendant – Appellant.

Appeal from the United States District Court for the Eastern District of North Carolina, at Wilmington. Terrence W. Boyle, District Judge. (7:20−cr−00196−BO−1)

Argued: October 27, 2023 Decided: November 28, 2023

Before DIAZ, Chief Judge, WILKINSON, Circuit Judge, and Robert S. BALLOU, United States District Judge for the Western District of Virginia, sitting by designation.

Dismissed by published opinion. Judge Wilkinson wrote the opinion, in which Chief Judge Diaz and Judge Ballou joined.

ARGUED: Jenna Turner Blue, BLUE LLP, Raleigh, North Carolina, for Appellant. David A. Bragdon, OFFICE OF THE UNITED STATES ATTORNEY, Raleigh, North Carolina, for Appellee. **ON BRIEF:** Michael F. Easley, Jr., United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Raleigh, North Carolina, for Appellee.

WILKINSON, Circuit Judge:

Gregory Brantley was sentenced to 123 months' imprisonment followed by a five-year term of supervised release after pleading guilty to drug distribution and firearms charges. In the written judgment, the district court included special conditions of supervised release that had not been pronounced as part of Brantley's oral sentence. We held in *United States v. Rogers*, 961 F.3d 291 (4th Cir. 2020), that the addition of such unpronounced conditions is an error that violates the defendant's right to be present at sentencing. When a defendant timely appeals a *Rogers* error, we must vacate the sentence and remand for the defendant to be sentenced anew. Brantley, however, filed his notice of appeal well outside the time limits imposed by Rule 4(b) of the Federal Rules of Appellate Procedure, and the government moved to dismiss.

We thus consider whether defendants who raise *Rogers* errors are excused from the usual timeliness rules for filing a notice of appeal. We hold that they are not. Rule 4(b) is a mandatory claim-processing rule that operates without regard for the error complained of. Accordingly, we grant the government's motion and dismiss Brantley's appeal.

I.

Brantley was charged with possession of powder and crack cocaine with intent to distribute in violation of 21 U.S.C. § 841(a)(1), possession of a firearm in furtherance of a drug-trafficking crime in violation of 18 U.S.C. § 924(c)(1)(A)(i), and possession of a firearm as a convicted felon in violation of 18 U.S.C. §§ 922(g)(1) and 924. He pleaded guilty to all three offenses.

Brantley was sentenced in open court, which was followed by the entry of a written judgment to memorialize the sentence verbally announced. At the sentencing hearing, the judge told Brantley that he would be "subject to the standard conditions" of supervised release "as adopted in the Eastern District of North Carolina." But the subsequent written judgment, entered on August 3, 2021, contained several special conditions of supervised release not mentioned in the oral pronouncement. These were no minor alterations. One special condition forbade Brantley from opening new lines of credit without permission. Another stipulated Brantley's consent to warrantless searches of his person or his home whenever his probation officer saw fit.

The addition of these unpronounced conditions was indisputably in error. In *Rogers*, we held that district courts are required to orally announce at sentencing the imposition of any discretionary conditions of supervised release, which can include nonmandatory standard conditions and special conditions. 961 F.3d at 297. This requirement ensures that the district court will fulfill its duty to explain the reasons for those discretionary conditions. *Id.* at 298 (citing *United States v. McMiller*, 954 F.3d 670, 676 (4th Cir. 2020)). Moreover, a defendant's best chance to dispute such conditions is at the sentencing hearing, and defendants ought to be given the opportunity to do so. *See id*. When defendants lodge timely appeals, we vacate and remand meritorious *Rogers*-error cases for resentencing as a matter of course. *See, e.g.*, *United States v. Williams*, No. 18-4926, 2023 WL 4181231, at *1 (4th Cir. June 26, 2023) (per curiam).

Brantley's appeal, however, was not timely. It was not until March 14, 2022, that Brantley sent the district court a letter indicating his desire to appeal—223 days after the

entry of judgment in his case and long after Rule 4(b)'s deadline had expired. The government promptly moved to dismiss his appeal as untimely. Brantley opposed the government's motion, arguing (1) that his lateness was caused by his attorney's failure to send him the paperwork needed to file a notice of appeal, (2) that his attorney's failure was compounded by the district court's failure to inform him of his right to appeal as required by Federal Rule of Criminal Procedure 32(j), and (3) that *Rogers* claims should not be barred by Rule 4(b). Our precedents easily dispose of his first two contentions. Neither good cause nor Rule 32(j) errors can justify a Rule 4(b) violation. *See United States v. Marsh*, 944 F.3d 524, 529–31 (4th Cir. 2019). We are thus left to decide only whether to disregard Rule 4(b)'s deadline when faced with a *Rogers* error.

II.

A.

Federal Rule of Appellate Procedure 4(b) requires a criminal defendant in Brantley's position to file a notice of appeal "in the district court within 14 days after . . . the entry of either the judgment or the order being appealed." Fed. R. App. P. 4(b)(1)(A)(i). Courts may, however, grant up to a thirty-day extension "[u]pon a finding of excusable neglect or good cause." Fed. R. App. P. 4(b)(4). Brantley's notice of appeal was filed 223 days after the entry of judgment in his case, far outside either of those deadlines.

Rule 4(b)(1) is not jurisdictional. *See Marsh*, 944 F.3d at 529. It thus can be waived or forfeited if it is not timely raised. We have allowed late-filed appeals to go forward when, for example, the government has waived any timeliness objections. *See United States v. Urutyan*, 564 F.3d 679, 684–86 (4th Cir. 2009).

Here, however, the government did timely move to dismiss Brantley's appeal. And although Rule 4(b)(1) is not jurisdictional, it is a mandatory claim-processing rule. *Marsh*, 944 F.3d at 529–30. Such rules are not subject to equitable extension, and once properly raised, we must "strictly apply" them. *United States v. Hyman*, 884 F.3d 496, 499 (4th Cir. 2018). Thus "[w]hen the Government promptly invokes the rule in response to a late-filed criminal appeal, we must dismiss." *United States v. Oliver*, 878 F.3d 120, 123 (4th Cir. 2017).

B.

Brantley does not dispute that Rule 4(b)(1) is a mandatory claim-processing rule, but he argues that *Rogers* errors ought not be subject to its strictures. He points to *United States v. Singletary*, in which we held that a *Rogers*-error appeal was not barred by the defendant's appeal waiver in his plea agreement. 984 F.3d 341, 344 (4th Cir. 2021). The same logic, Brantley argues, should exempt his *Rogers*-error appeal from the strict application of Rule 4(b).

We disagree. In *Singletary*, the defendant had waived "the right to appeal the conviction and *whatever sentence is imposed*." *Id.* at 342 (emphasis added). That waiver, we held, did not prohibit him from bringing a *Rogers* claim on appeal because "discretionary conditions appearing for the first time in a written judgment in fact have *not* been 'imposed' on the defendant." *Id.* at 345 (emphasis in original). Those discretionary conditions thus fell outside of the plain language of the waiver.

In contrast, Rule 4(b)'s application does not turn on whether a sentence was "imposed" or on any other substantive considerations. Its timeline operates without

reference to the substance of a claim, and the clock starts ticking the moment the judgment is entered. The text of Rule 4(b) states in no uncertain terms that "a defendant's notice of appeal *must* be filed in the district court within 14 days." Fed. R. App. P. 4(b)(1)(A) (emphasis added). During that fourteen-day period (or, in cases of excusable neglect, in the thirty days that follow), a defendant must uncover any error both in the judgment and in the proceedings that preceded it, whether that be a *Rogers* error or some other type.

Rule 4(b) does not place a distinctive or unreasonable burden on defendants raising *Rogers* claims. To the contrary, a defendant will be on notice of a potential *Rogers* claim whenever a written judgment adds discretionary conditions of supervised release that were not announced at the defendant's sentencing hearing. In fact, this court decides the merits of timely *Rogers* claims all the time. *See, e.g.*, *United States v. Bowden*, No. 21-4294, 2023 WL 4197433, at *2–3 (4th Cir. June 27, 2023) (per curiam); *United States v. Limbaugh*, No. 21-4449, 2023 WL 119577, at *2–3 (4th Cir. Jan. 6, 2023); *United States v. Gomez-Jimenez*, No. 21-4254, 2022 WL 17984480, at *2 (4th Cir. Dec. 29, 2022) (per curiam).

C.

Brantley also points to language in *Singletary* that referred to discretionary conditions imposed for the first time in the written judgment as "nullities." 984 F.3d at 344. He argues that a judgment containing such nullities is invalid on its face because the conditions contained within it were never actually imposed. Such facial invalidity, he contends, ought to be correctable at any time because the judgment is somehow automatically moot.

While we have said that discretionary conditions appearing for the first time in a written judgment are indeed "nullities," *see Singletary*, 984 F.3d at 344, that does not make the written judgment entered here invalid. District court judgments, no matter how assertedly incorrect, are presumptively valid and binding until an appellate court says otherwise (or until the district court sees fit to amend them). *See Oliver*, 878 F.3d at 125. There is nothing unique about *Rogers* errors that exempt them from that rule. A judgment with a *Rogers* error, just as any other judgment, is valid until corrected on appeal or amended by the district court.

III.

Brantley's notice of appeal came more than six months late. To throw open the gates to such late appeals would not only upset the finality important to our judicial system, but would also implicate fairness concerns. Rule 4(b)'s timeline applies across the board. There is a danger in privileging certain claims above others. Which claims of error are to be exempt from Rule 4(b)'s requirements and which are not? By what criteria may we pick and choose the favored contentions?

And for how long will the disregard of Rule 4(b)'s timeline be countenanced? Three months; six months; a year or longer? Inequities and inconsistencies will soon appear. Rule 4(b) sets forth numerical timelines and guideposts, but Brantley suggests none.

An even application of Rule 4(b), on the other hand, provides clarity to all criminal defendants as to when their notices of appeal are due. Rule 4(b) already provides one equitable extension of its initial deadline for cases "[u]pon a finding of excusable neglect or good cause." We have no authority to add another.

For the foregoing reasons, we hereby grant the government's motion and dismiss Brantley's appeal as untimely.

DISMISSED