No. 18-8636

IN THE SUPREME COURT OF THE UNITED STATES

BRIAN HOSKINS, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

NOEL J. FRANCISCO
Solicitor General
Counsel of Record

BRIAN A. BENCZKOWSKI
Assistant Attorney General

SCOTT A.C. MEISLER
Attorney

Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

QUESTION PRESENTED

Whether petitioner established a "complete miscarriage of justice" that would entitle him to federal postconviction relief based on the vacatur of a prior state conviction, where the state conviction was relevant to the federal proceedings only in the calculation of petitioner's advisory Sentencing Guidelines range, his federal sentence was imposed under a plea agreement that required that particular sentence, see Fed. R. Crim. P. 11(c)(1)(C), and the sentence fell in the middle of the advisory guidelines range that would be calculated for a similar offender without such a prior state conviction.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-19) is reported at 905 F.3d 97. The order of the district court (Pet. App. 21-28) is not published in the Federal Supplement but is available at 2016 WL 4154344. The report and recommendation of the magistrate judge (Pet. App. 29-47) is not published in the Federal Supplement but is available at 2016 WL 11383915.

JURISDICTION

The judgment of the court of appeals was entered on September 26, 2018. A petition for rehearing was denied on December 10, 2018 (Pet. App. 20). The petition for a writ of certiorari was

filed on Monday, March 11, 2019. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a guilty plea in the United States District Court for the District of Vermont, petitioner was convicted on one count of distributing cocaine base, in violation of 21 U.S.C. 841(a)(1). Judgment 1. He was sentenced to 112 months of imprisonment, to be followed by five years of supervised release. Judgment 2-3. Three years later, petitioner filed a motion to vacate his sentence under 28 U.S.C. 2255. D. Ct. Doc. 62 (Dec. 14, 2015). The district court granted the motion and resentenced petitioner to 86 months of imprisonment, to be followed by three years of supervised release. Pet. App. 49-50. The court of appeals vacated and remanded with instructions to reinstate the original sentence. Id. at 18-19.

1. In April 2011, a confidential source informed police officers in Essex, Vermont that petitioner, who had just completed a term of imprisonment on an earlier federal drug conviction, was selling large amounts of cocaine. Revised Presentence Investigation Report (PSR) ¶ 8. Between May and June 2011, two confidential sources made ten controlled purchases of crack cocaine from petitioner. Ibid.; see PSR ¶¶ 9-18. Petitioner was arrested shortly after leaving home to carry out a controlled purchase. PSR ¶ 18. A search of petitioner's residence pursuant to a warrant revealed labeled money that had been used in the

controlled purchases and text messages on petitioner's cell phone indicating a recent cocaine sale to a local resident. Ibid.

A federal grand jury indicted petitioner on one count of distributing cocaine base, in violation of 21 U.S.C. 841(a)(1). Superseding Indictment 1; Pet. App. 30. One of petitioner's associates testified before the grand jury that petitioner supplied him with 10 to 30 grams of crack cocaine per week, intended for resale. PSR ¶ 20. A second witness testified that he began purchasing powder cocaine from petitioner shortly after petitioner's release from federal prison in 2010 and that in more recent transactions, petitioner "would always have 'hard' cocaine, or crack-cocaine, on him." PSR ¶ 19.

2. During ensuing plea discussions, the government informed petitioner that if the parties could not reach an agreement, the government would seek a superseding indictment charging petitioner for all of his drug-distribution activity and would file an information under 21 U.S.C. 851 to establish petitioner's prior convictions, including a 2003 federal conviction for distributing cocaine base, as serious drug felonies. See Gov't C.A. App. 228-240. Doing so would have exposed petitioner to a statutory minimum sentence of 120 months of imprisonment. See 21 U.S.C. 841(b)(1)(B) (2006 & Supp. V 2011).

The parties eventually entered into a plea agreement under Federal Rule of Criminal Procedure 11(c)(1)(C). See Pet. App. 2. Under that rule, the government and the defendant can "agree [on]

a specific sentence" and their "request binds the court once the court accepts the plea agreement." Fed. R. Crim. P. 11(c)(1)(C); see Hughes v. United States, 138 S. Ct. 1765, 1773 (2018). "In deciding whether to accept an agreement that includes a specific sentence, the district court must consider the Sentencing Guidelines." Hughes, 138 S. Ct. at 1773.

The parties accordingly discussed the likely advisory Guidelines range that would apply to petitioner. See Gov't C.A. App. 233-240. The government set forth its view that petitioner qualified as a "career offender" under the advisory Guidelines because he had "at least two prior felony convictions of * * * a controlled substance offense," Sentencing Guidelines § 4B1.1(a) (2011), including the 2003 federal conviction and a 2002 Vermont conviction for distributing heroin. Gov't C.A. App. 233-234. The government acknowledged that a career-offender designation would result in an advisory Guidelines range of 151-188 months. Id. at 233. At the same time, the government informed petitioner that courts in the District of Vermont "rarely impose career offender sentences on defendants who plead guilty." Ibid. The government therefore suggested that the parties "consider the likely" advisory Guidelines range "w[ith]o[ut] a career offender enhancement." Ibid.

The parties eventually agreed on a 112-month sentence, which the government understood "to be the middle of the likely 100-125 month non-career offender range." Gov't C.A. App. 239; see id. at

24 (plea agreement). The district court accepted the plea agreement and sentenced petitioner to 112 months of imprisonment. Pet. App. 4. In doing so, the court agreed that petitioner was a career offender under the Guidelines, with a resulting advisory Guidelines range of 151-188 months of imprisonment. Ibid.; see Gov't C.A. App. 76-77. The court explained that a 112-month sentence nevertheless was appropriate because it still was "60 percent greater than the previous 70 month sentence that [petitioner] received" on his 2003 federal conviction, id. at 77; the career-offender enhancement had "substantially increased his guidelines range," ibid.; and the sentence provided sufficient specific deterrence to petitioner and general deterrence to others, id. at 77-78. See Statement of Reasons ¶ 8.

3. Petitioner later filed a motion in Vermont state court collaterally attacking his 2002 conviction for distributing heroin. Pet. App. 5; see Gov't C.A. App. 93-100. The state court granted petitioner's motion and vacated the conviction on the ground that his 2002 plea colloquy had been defective. Gov't C.A. App. 92. The defect was that rather than "admit[] the truth of the allegations" against him in "a conversation" with the trial court, petitioner had instead stipulated to the facts underlying his guilty plea, which violates Rule 11(f) of the Vermont Rules of Criminal Procedure. Ibid.; see Pet. App. 5.

Following that vacatur, petitioner collaterally attacked his federal sentence under 28 U.S.C. 2255. See Pet. App. 5-6. He

argued that because the Vermont drug conviction had been vacated, he no longer qualified as a career offender under the federal Guidelines and was therefore entitled to resentencing under an advisory Guidelines range without the career-offender enhancement. See id. at 6; Gov't C.A. App. 83-89. The magistrate judge recommended that petitioner's motion be granted. Pet. App. 29-47. The magistrate judge took the view, based on the parties' discussion of the career-offender guideline during plea negotiations, that "the now-vacated state court drug conviction played a significant, if not a controlling role, in the ultimate determination of the sentence." Id. at 41.

The district court overruled the government's objections to the magistrate judge's report and recommendation, and it granted petitioner's Section 2255 motion. Pet. App. 21-28. As relevant here, the district court rejected the government's reliance on cases holding that errors in calculating or applying the advisory Sentencing Guidelines are not cognizable under Section 2255(a), as well as the government's contention that petitioner's claim was not cognizable because he "was sentenced under a binding plea agreement under Rule 11(c)(1)(C)." Id. at 25. The court stated that "the career offender calculation provided the framework for [its] acceptance of the [plea] agreement" and noted its comment at sentencing that it had "accepted the agreement because * * * [petitioner] was 'facing a lot more time'" with a career-offender enhancement. Id. at 26 (citation omitted).

The district court allowed petitioner to retain his guilty plea and scheduled a resentencing hearing. D. Ct. Doc. 101, at 3 (Nov. 2, 2016). At that hearing, the court determined that petitioner's advisory Guidelines range without the career-offender enhancement was 100-125 months. 12/28/2016 Tr. 30; see Pet. App. 8. The court imposed a below-Guidelines sentence of 86 months of imprisonment based on petitioner's post-sentencing rehabilitation and the disparity between the crack and powder cocaine guidelines. 12/28/2016 Tr. 29-30.

4. The court of appeals vacated and remanded with instructions to reinstate the original 112-month term of imprisonment. Pet. App. 1-19. The court explained that a federal prisoner seeking collateral relief under 28 U.S.C. 2255(a) for a non-constitutional, non-jurisdictional error must show that "the claimed error constituted 'a fundamental defect which inherently results in a complete miscarriage of justice.'" Pet. App. 9-10 (citation omitted); see United States v. Addonizio, 442 U.S. 178, 185 (1979); Davis v. United States, 417 U.S. 333, 346 (1974). The court determined that petitioner "fail[ed] to hurdle this high bar" for three reasons stemming from "[t]he unique facts of [his] case." Pet. App. 12-13.

First, the court of appeals observed that petitioner's "Rule 11(c)(1)(C) plea agreement provided for a sentence well below" the advisory Guidelines range with the career-offender classification, and that the agreement allowed petitioner "to avoid a superseding

indictment and enhanced mandatory minimum sentence of ten years." Pet. App. 13. The court explained that petitioner therefore "left the bargaining table with a deal that secured him real benefit, hardly indicating a miscarriage of justice." Ibid.

Second, the court of appeals observed that although the district court "was obliged to calculate and consider [petitioner's] Guidelines range before deciding" to accept the plea agreement, that "range was advisory, not mandatory," and "the district judge could not even 'presume' that a sentence within [that] range was proper." Pet. App. 13-14 (citing Rita v. United States, 551 U.S. 338, 351 (2007)). "In these circumstances," the court of appeals determined, "the vacatur of a state conviction that supported a career offender Guidelines calculation that was not applied is insufficient, by itself, to show that the below-Guidelines 112-month sentence manifests a complete miscarriage of justice." Id. at 14-15.

Third, the court of appeals found it "particularly difficult" for petitioner to show that his 112-month sentence "manifests a complete miscarriage of justice" when that sentence fell "in the middle of the Guidelines range applicable to him without a career offender enhancement." Pet. App. 15. Noting that a within-Guidelines sentence is "rarely" found unreasonable even on direct appeal, the court determined that petitioner's within-Guidelines sentence was not a miscarriage of justice on collateral review, with its "added interest in finality." Ibid.

The court of appeals expressly declined to "make any categorical conclusion" about when "a complete miscarriage of justice sufficient to warrant collateral relief" might exist. Pet. App. 14 n.7. While it suggested that "[s]everal circuits" had more broadly concluded "that sentences imposed pursuant to advisory Guidelines based on an erroneous or later invalidated career offender determination did not result in a complete miscarriage of justice sufficient to warrant collateral relief," it emphasized that "the advisory nature of the" Guidelines was "one factor, among others," that precluded petitioner from establishing that his sentence was "a complete miscarriage of justice." Ibid. The court additionally observed that petitioner's state-court conviction had not been vacated "because [petitioner] was actually innocent," because "the conduct at issue was no longer criminal," or over concerns about "the reliability of inculpatory evidence." Id. at 5 n.3. Accordingly, the court determined that it had no need "to consider here how such circumstances might inform a miscarriage-of-justice analysis." Ibid.

The court of appeals also explained (Pet. App. 15-16) that its ruling was consistent with the decisions in Johnson v. United States, 544 U.S. 295 (2005), Daniels v. United States, 532 U.S. 374 (2001), and Custis v. United States, 511 U.S. 485 (1994). The court recognized that Daniels and Custis stated that "defendants who successfully challenge state court convictions may apply to reopen federal sentences enhanced by those convictions." Pet.

App. 15. But the court observed that those decisions involved "the application of statutory mandatory minimum sentences under the Armed Career Criminal Act" of 1984 (ACCA), 18 U.S.C. 924(e), not the application of advisory Guidelines. Pet. App. 16. Similarly, the court observed that although "Johnson cited Daniels and Custis to make the same observation in the Guidelines context," the case actually addressed only "timeliness, not cognizability," and it involved the "then-mandatory Guidelines." Ibid. The court further observed that "none of these three cases involved Rule 11(c)(1)(C) sentences that fell * * * within the applicable non-career offender Guidelines." Ibid.

Finally, the court of appeals determined (Pet. App. 17-18) that its ruling was consistent with this Court's recent decision in Hughes, supra. The court of appeals recognized Hughes's holding that for purposes of a motion under 18 U.S.C. 3582(c)(2) to reduce a defendant's sentence based on a retroactive amendment to the Guidelines, "'a sentence imposed pursuant to a [Rule 11(c)(1)(C)] agreement is "based on" the defendant's Guidelines range so long as that range was part of the framework the district court relied on in imposing the sentence or accepting the agreement.'" Pet. App. 17-18 (quoting Hughes, 138 S. Ct. at 1775). But the court observed that unlike the defendant in Hughes, petitioner here "does not seek relief from his original sentence under [18 U.S.C.] § 3582(c)(2)," but instead seeks postconviction relief under 28 U.S.C. 2255. Pet. App. 18. The court explained that unlike with

Section 3582, "the determinative question on a § 2255 sentence challenge is not whether the original sentence was based on a Guidelines range that subsequent events rendered inapplicable, but whether maintenance of the sentence in light of those events manifests a complete miscarriage of justice." Ibid. The court determined that petitioner "fails to satisfy this more demanding standard." Ibid.

ARGUMENT

Petitioner renews his contention (Pet. 11-22) that he is entitled to postconviction relief on the ground that the vacatur of his Vermont conviction means he no longer qualifies as a career offender under the advisory Sentencing Guidelines. The court of appeals correctly determined that "[t]he unique facts of this case" did not constitute a complete miscarriage of justice warranting postconviction relief under 28 U.S.C. 2255, where petitioner received an agreed-upon sentence under a Rule 11(c)(1)(C) plea agreement that afforded him significant benefits and the agreed-upon sentence by design fell near the midpoint of the advisory guidelines range that would have applied in the absence of the later-vacated state conviction. Pet. App. 13. That case-specific determination does not conflict with any decision of this Court or the other courts of appeals. Further review is unwarranted.

1. Under Section 2255, a federal prisoner may move to vacate, set aside, or correct his sentence on the ground that it "was imposed in violation of the Constitution or laws of the United

States, or * * * the court was without jurisdiction to impose such sentence, or * * * the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack." 28 U.S.C. 2255(a). That statutory remedy, however, "does not encompass all claimed errors in conviction and sentencing." United States v. Addonizio, 442 U.S. 178, 185 (1979).

In particular, "an error that may justify reversal on direct appeal will not necessarily support a collateral attack on a final judgment." Addonizio, 442 U.S. at 184; see United States v. Frady, 456 U.S. 152, 166 (1982) ("We reaffirm the well-settled principle that to obtain collateral relief a prisoner must clear a significantly higher hurdle than would exist on direct appeal."). Rather, to qualify for relief under Section 2255, a prisoner must identify a constitutional violation, a jurisdictional defect, or a non-constitutional error that amounts to "a fundamental defect which inherently results in a complete miscarriage of justice" or "an omission inconsistent with the rudimentary demands of fair procedure." United States v. Timmreck, 441 U.S. 780, 783 (1979) (quoting Hill v. United States, 368 U.S. 424, 428 (1962)). The court of appeals' case-specific application of that undisputed standard to "the unique facts of this case" is correct and does not warrant further review. Pet. App. 13. For several reasons, the vacatur of petitioner's 2002 state heroin conviction on procedural grounds did not produce "a fundamental defect" in his federal sentence that "inherently result[ed] in a complete

miscarriage of justice," Timmreck, 441 U.S. at 783 (citation omitted).

First, petitioner agreed to his 112-month sentence in a Rule 11(c)(1)(C) plea agreement that afforded significant benefits to him. Most important, petitioner avoided a statutory minimum sentence of ten years of imprisonment. See Pet. App. 13. The government made clear that if the parties could not reach an agreement, it intended to charge petitioner with additional drug-distribution activity (evidence of which already had been presented to the grand jury) and file an information under 21 U.S.C. 851 that would permit statutory enhancement of petitioner's sentence based on his prior drug convictions. See Pet. App. 13; Gov't C.A. App. 233, 243. By agreeing to the 112-month sentence in the Rule 11(c)(1)(C) plea agreement, petitioner therefore avoided facing a higher, 120-month statutory minimum sentence. See 21 U.S.C. 841(b)(1)(B) (2006 & Supp. V 2011).

Whether or not petitioner's career-offender status under the advisory Guidelines also motivated petitioner to agree to, and the district court to accept, the plea agreement, avoiding the ten-year statutory minimum alone was a "real benefit" to petitioner. Pet. App. 13. Moreover, that statutory minimum, which requires only one "prior conviction for a felony drug offense," 21 U.S.C. 841(b)(1)(B) (2006 & Supp. V 2011), would have been unaffected by the later vacatur of petitioner's 2002 Vermont conviction because petitioner's 2003 federal conviction alone would have sufficed.

This Court previously has recognized that even a claim of "actual innocence" on collateral review is not availing unless the defendant can show innocence of any "more serious charges" that the government has "forgone * * * in plea bargaining." Bousley v. United States, 523 U.S. 614, 624 (1998). A similar principle suggests that petitioner's plea agreement here was not a "complete miscarriage of justice," as the court of appeals determined. Pet. App. 13.

Second, the career-offender enhancement played a more limited role in the context of a Rule 11(c)(1)(C) plea agreement than it would have in a sentencing in which the parties had not agreed on a binding sentence. The district court calculated petitioner's advisory guidelines range not as the starting point of an independent weighing of the statutory sentencing factors in 18 U.S.C. 3553(a), but for the distinct and more limited purpose of determining whether "justifiable reasons" supported the then-below-Guidelines sentence the parties had agreed to. Sentencing Guidelines § 6B1.2(c)(2) (2011); see Hughes v. United States, 138 S. Ct. 1765, 1773, 1776 (2018). Had the court found the reasons insufficient, its only option would have been to reject the agreement entirely -- which might have left petitioner exposed to the 120-month statutory minimum, as explained above. Those circumstances further illustrate that "a complete miscarriage of justice," Addonizio, 442 U.S. at 185 (citation omitted), did not

occur when the district court imposed a lower 112-month sentence under the parties' agreement.

Third, even for its limited purpose, the career-offender enhancement affected only an advisory, not mandatory, sentencing range. This Court has indicated that a sentencing error is not remediable under Section 2255 when, as here, the sentence imposed was "within the statutory limits" and the error "did not affect the lawfulness of the judgment itself." Addonizio, 442 U.S. at 186-187; cf. Beckles v. United States, 137 S. Ct. 886, 894 (2017). Accordingly, every circuit to have considered the issue has determined that non-constitutional claims alleging miscomputation of an advisory, as opposed to mandatory, guidelines range are not cognizable under Section 2255 because they do not result in a complete miscarriage of justice. See United States v. Foote, 784 F.3d 931, 932, 935, 940 (4th Cir.), cert. denied, 135 S. Ct. 2850 (2015) (No. 14-9792); Snider v. United States, 908 F.3d 183, 189-191 (6th Cir. 2018), cert. denied, 139 S. Ct. 1573 (Apr. 15, 2019) (No. 18-8234); United States v. Coleman, 763 F.3d 706, 708-709 (7th Cir. 2014), cert. denied, 135 S. Ct. 1574 (2015) (No. 14-8459); Spencer v. United States, 773 F.3d 1132, 1135-1137 (11th Cir. 2014) (en banc), cert. denied, 135 S. Ct. 2836 (2015) (No. 14-8449). The particular circumstances of this case, which involve an advisory range that was correctly calculated at the time and a sentence that the parties agreed upon, likewise is not a complete miscarriage of justice.

Fourth, petitioner's 112-month sentence is in the middle of the guidelines range that would apply now, without the prior conviction that originally supported the career-offender classification. See Pet. App. 15. Indeed, the government agreed to that sentence in part precisely because it was "the middle of the likely 100-125 month non-career offender range." Gov't C.A. App. 239. It is not a complete miscarriage of justice for petitioner to serve an agreed-upon sentence that is within the guidelines range that currently would apply to him. As the court of appeals observed (Pet. App. 15), a within-Guidelines sentence is unlikely to merit reversal for being substantively unreasonable even on direct appeal. See Rita v. United States, 551 U.S. 338, 350 (2007). The uncontested reasonableness of petitioner's 112-month sentence, were it imposed for the first time today, underscores that the sentence does not warrant correction under the more demanding standard applicable on collateral review, "where there is [an] added interest in finality." Pet. App. 15; see Frady, 456 U.S. at 166 ("[T]he Federal Government, no less than the States, has an interest in the finality of its criminal judgments.").

Fifth, the state court vacated petitioner's 2002 conviction not because of, for example, a constitutional violation or a claim of actual innocence, but instead because of a technical defect in the plea colloquy under the State's rules of criminal procedure. See Pet. App. 5 n.3; C.A. App. 92. A procedural error of that

type in a federal criminal proceeding would not warrant vacatur of the conviction under Section 2255, Timmreck, 441 U.S. at 783-784; Hill, 368 U.S. at 428, or relief from the collateral consequences of that conviction, such as recidivism-enhanced sentences for crimes committed in the future. The vacatur of petitioner's prior state conviction on grounds that would not justify vacatur of an analogous federal conviction further undermines any suggestion that the state conviction's role in his federal sentencing was a "complete miscarriage of justice." Addonizio, 442 U.S. at 185 (citation omitted).

2. Petitioner's contrary arguments (Pet. 11-16) lack merit.

a. Petitioner errs in contending (Pet. 11-12) that the decision below conflicts with Custis v. United States, 511 U.S. 485 (1994), and Daniels v. United States, 532 U.S. 374 (2001). Custis held that in federal sentencing proceedings, a defendant may not collaterally attack a prior state conviction that qualifies him for an enhanced sentence under the ACCA, "with the sole exception of convictions obtained in violation of the right to counsel." 511 U.S. at 487; see id. at 490-497. Daniels extended that holding to Section 2255 proceedings. 532 U.S. at 384. The Court explained that the proper forum in which to collaterally attack a prior state conviction was the state court system. Custis, 511 U.S. at 497; Daniels, 532 U.S. at 382. In both cases, the Court stated that a defendant who successfully attacks his prior state convictions in state court "may then apply for

reopening of any federal sentence enhanced by the state sentences," but cautioned that it "express[ed] no opinion on the appropriate disposition of such an application." Custis, 511 U.S. at 497; see Daniels, 532 U.S. at 382.

The court of appeals' decision here is consistent with both Custis and Daniels. As the court of appeals recognized, both of those cases involved "application of statutory mandatory minimum sentences under the" ACCA, not application of the advisory federal Sentencing Guidelines. Pet. App. 16. Neither Custis nor Daniels involved a sentence imposed under a Rule 11(c)(1)(C) plea agreement that allowed the defendant to avoid facing an even longer statutory minimum sentence. Nor did either case involve a sentence that was in fact "within the applicable" sentencing range even after the prior conviction is vacated. Ibid. And in neither case did the Court apply the complete-miscarriage-of-justice standard or express a view about how that standard would apply to circumstances similar to those here. Indeed, had either of the defendants in Custis or Daniels successfully obtained vacatur of the prior conviction that had rendered him an armed career criminal under the ACCA, presumably he would have sought relief on the ground "that the sentence was in excess of the maximum authorized by law," 28 U.S.C. 2255(a), and not under the catch-all "complete miscarriage of justice" standard that petitioner does not dispute applies to his claim here, Addonizio, 442 U.S. at 185 (citation omitted).

Petitioner's reliance (Pet. 12-13) on Johnson v. United States, 544 U.S. 295 (2005), likewise is misplaced. Although Johnson also involved the vacatur of a prior state conviction that had rendered the defendant a career offender under the Guidelines, the case actually "present[ed] the distinct issue of how soon a prisoner, successful in his state proceeding, must challenge the federal sentence under § 2255." Id. at 304 (emphasis added). The Court determined that the defendant there had waited too long because he had not exercised reasonable diligence in collaterally attacking his state conviction. Id. at 310-311. Although the Court suggested that had the defendant timely filed his Section 2255 motion, his claim might have been cognizable, see id. at 302-303, the court of appeals here correctly recognized that "the holding in Johnson was narrow, addressing timeliness, not cognizability" of the claim, Pet. App. 16. Furthermore, Johnson involved the "then-mandatory Guidelines," not the advisory Guidelines that governed petitioner's sentencing. Ibid. And like Custis and Daniels, Johnson neither involved a sentence imposed under a Rule 11(c)(1)(C) plea agreement nor had occasion to apply the complete-miscarriage-of-justice standard.

b. Petitioner also contends (Pet. 13-15) that the court of appeals' reliance on the advisory, as opposed to mandatory, nature of the Guidelines is inconsistent with Peugh v. United States, 569 U.S. 530 (2013), Molina-Martinez v. United States, 136 S. Ct. 1338 (2016), and Rosales-Mireles v. United States, 138 S. Ct. 1897

(2018), which "emphasized that the advisory Guidelines continue to be the central feature of federal sentencing." Pet. 14. That contention is misplaced.

Although this Court has stated that the Guidelines, while advisory, are "the lodestone of sentencing," Peugh, 569 U.S. at 544, none of the cases petitioner relies on involved the granting of postconviction relief under Section 2255, much less relief from a bargained-for sentence in a Rule 11(c)(1)(C) plea agreement. Peugh held that the Ex Post Facto Clause applies to changes in the advisory Guidelines, 569 U.S. at 544, while Molina-Martinez and Rosales-Mireles held that a forfeited challenge to a Guidelines calculation ordinarily will satisfy the third and fourth elements of the plain-error standard under Federal Rule of Criminal Procedure 52(b), see Rosales-Mireles, 138 S. Ct. at 1911; Molina-Martinez, 136 S. Ct. at 1345; cf. United States v. Olano, 507 U.S. 725, 732 (1993) (listing the four elements of plain-error review).

Critically, however, all of those cases were decided in the context of a direct criminal appeal, not postconviction review. See Rosales-Mireles, 138 S. Ct. at 1905; Molina-Martinez, 136 S. Ct. at 1344-1345; Peugh, 569 U.S. at 534-535. This Court has repeatedly "reaffirm[ed] the well-settled principle that to obtain collateral relief a prisoner must clear a significantly higher hurdle than would exist on direct appeal." Frady, 456 U.S. at 166; see Addonizio, 442 U.S. at 184. That principle holds true even when the direct appeal is decided on plain-error review. See

Rosales-Mireles, 138 S. Ct. at 1906 (plain-error review encompasses "a broader category of errors that warrant correction" than the miscarriage-of-justice standard); Olano, 507 U.S. at 736 (same); Frady, 456 U.S. at 167 (same).

Accordingly, as the court of appeals here recognized (Pet. App. 15 n.8), the correctibility on direct appeal of an error in the calculation of the advisory Guidelines range does not imply that such an error may be corrected on collateral review under Section 2255. In fact, as explained at p. 15, supra, courts of appeals uniformly have determined that alleged errors in the calculation of an advisory guidelines range, including errors involving career-offender designations, generally are not cognizable in a collateral attack on a final sentence under Section 2255. E.g., Snider, 908 F.3d at 191; Foote, 784 F.3d at 940; Spencer, 773 F.3d at 1137; Coleman, 763 F.3d at 708-709. Petitioner does not dispute that the only basis for collateral relief for a defendant whose sentence is within mandatory (i.e., statutory) limits, but outside of an advisory Guidelines range, is the stringent complete-miscarriage-of-justice standard. See Addonizio, 442 U.S. at 185. Petitioner identifies no sound reason why a career-offender enhancement under the advisory Guidelines based on a prior conviction that has been vacated on procedural grounds should categorically be a complete miscarriage of justice when a career-offender enhancement based on a prior conviction that no longer qualifies as a "crime of violence" or "controlled

substance offense" under Sentencing Guidelines § 4B1.1(a) (2011) would not.

c. Petitioner's reliance (Pet. 15-16) on this Court's recent decision in Hughes, supra, also is misplaced. The question in Hughes was whether a sentence imposed pursuant to a Rule 11(c)(1)(C) plea agreement is "based on" the advisory Guidelines sentencing range within the meaning of 18 U.S.C. 3582(c)(2), which authorizes a district court to "reduce the term of imprisonment" of a "defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission." See 138 S. Ct. at 1774. The Court "h[e]ld that a sentence imposed pursuant to a [Rule 11(c)(1)(C)] agreement is 'based on' the defendant's Guidelines range so long as that range was part of the framework the district court relied on in imposing the sentence or accepting the agreement." Id. at 1775; see Koons v. United States, 138 S. Ct. 1783, 1788 (2018).

As petitioner acknowledged below (Pet. C.A. Br. 32), "[n]othing supports the application of th[e] statute-specific rule" under 18 U.S.C. 3582(c)(2) to proceedings under 28 U.S.C. 2255(a). Even if petitioner's 112-month sentence was "based on" his advisory Guidelines range with the career-offender enhancement -- thereby leaving open the possibility of relief under 18 U.S.C. 3582(c)(2) if the Sentencing Commission were to lower that range in the future -- it does not mean he is entitled to relief under the "more demanding standard" applicable to claims for

postconviction relief under Section 2255. Pet. App. 18. Rather, as the court of appeals recognized (ibid.), the relevant question is whether requiring petitioner to serve his original sentence would result in a "complete miscarriage of justice." Addonizio, 442 U.S. at 185 (citation omitted). Under that standard, petitioner's voluntary agreement to his sentence in a Rule 11(c)(1)(C) plea agreement, thereby avoiding charges under which he would have faced an even longer statutory minimum sentence, is one relevant -- although not necessarily the only relevant -- factor. That is particularly so because in negotiating the plea agreement here, the government expressly acknowledged that the district court, in keeping with local practice, was unlikely to sentence petitioner as a career offender and that the parties should therefore negotiate a sentence within the non-career-offender range that would apply now. Gov't C.A. App. 233, 239. Hughes, which had no occasion to address the issue of postconviction relief under Section 2255, does not cast any doubt on the relevance of these considerations in determining whether a prisoner has satisfied the complete-miscarriage-of-justice standard.

3. Petitioner is incorrect in contending (Pet. 16-22) that the decision below creates a circuit conflict. As a threshold matter, the court of appeals here declined to "make any categorical conclusion" about the general availability of collateral relief, Pet. App. 14 n.7, and instead said only that petitioner's claim

did not merit relief under the complete-miscarriage-of-justice standard as applied to the "unique facts of this case," id. at 13. That factbound determination does not create a circuit conflict warranting this Court's review.

In any event, petitioner errs in asserting (Pet. 17) that the circuits have "uniformly recognized * * * a right to be resentenced" under Section 2255 whenever a defendant successfully vacates "a state predicate conviction" that triggered a federal sentencing enhancement. Nearly all of the cases petitioner cites (Pet. 17-19 & n.3) either involved prisoners sentenced under the ACCA, e.g., United States v. Doe, 239 F.3d 473 (2d Cir. 2001) (per curiam), or are pre-2005 cases involving career-offender designations under the then-mandatory Sentencing Guidelines, cf. United States v. Booker, 543 U.S. 220 (2005). As explained at pp. 13-16, supra, such decisions do not address whether postconviction relief under Section 2255 is available when, as here, the defendant is sentenced in an advisory Guidelines regime, pursuant to a Rule 11(c)(1)(C) plea agreement, to a term of imprisonment in the middle of the non-career-offender range.

The decisions petitioner cites (Pet. 17-18 & n.3) that involved the advisory Guidelines likewise are inapposite because they did not directly address whether a postconviction sentencing challenge is cognizable under these circumstances. In United States v. Aguilar-Diaz, 626 F.3d 265 (2010), the Sixth Circuit determined that, under Custis, the defendant could not

collaterally attack the validity of his prior state conviction in his federal sentencing proceeding. Id. at 269-270. And in Purvis v. United States, 662 F.3d 939 (2011), the Seventh Circuit held that the district court erred in dismissing as untimely or as an unauthorized successive application a Section 2255 motion predicated on the vacatur of a prior state conviction. Id. at 945. Although both courts appeared to assume based on Custis or Daniels that relief would be available to federal prisoners if their motions were procedurally sound, see id. at 943; Aguilar-Diaz, 626 F.3d at 270, neither court had occasion to apply the complete-miscarriage-of-justice standard that applies to petitioner's claims here.

Petitioner also asserts (Pet. 18-19 & n.3) that the Second Circuit's own decision in Doe, supra, conflicts with the decision below. Even if that were correct, such an intra-circuit conflict would not warrant this Court's review. See Wisniewski v. United States, 353 U.S. 901, 902 (1957) (per curiam) ("It is primarily the task of a Court of Appeals to reconcile its internal difficulties."). In any event, there is no intra-circuit conflict. Doe involved a defendant sentenced under the ACCA and the mandatory Sentencing Guidelines, and the court of appeals did not engage in a cognizability analysis or apply the complete-miscarriage-of-justice standard. See 239 F.3d at 475. And United States v. Devost, 609 Fed. Appx. 47 (2d Cir. 2015), like Aguilar-Diaz and Purvis, merely assumed that the defendant would not be "without

recourse" were he to successfully vacate his prior state conviction, but had no occasion to apply the complete-miscarriage-of-justice standard. Id. at 48 & n.1.

As petitioner observes (Pet. 20-21), some courts addressing postconviction claims challenging sentences imposed under the advisory Guidelines have suggested in passing that although miscomputing a career-offender enhancement -- for example, by incorrectly classifying a conviction as a violent felony or controlled substance offense -- would not warrant postconviction relief, vacatur of a prior state conviction might. See Foote, 784 F.3d at 932; Spencer, 773 F.3d at 1135; see also United States v. Dorsey, 611 Fed. Appx. 767, 770 (4th Cir. 2015) (per curiam). But neither of the published decisions had occasion to apply such a rule to grant relief, see Foote, 784 F.3d at 932 (denying relief in other circumstances); Spencer, 773 F.3d at 1135 (same), and the one unpublished decision did not involve circumstances central to the court of appeals' determination here -- a Rule 11(c)(1)(C) plea agreement that specified a sentence in the middle of the advisory range that would have applied absent the later-vacated prior conviction, see Dorsey, 611 Fed. Appx. at 769-770.

Finally, contrary to petitioner's assertion (Pet. 19-21), the court of appeals' decision here does not conflict with Cuevas v. United States, 778 F.3d 267 (1st Cir. 2015). In Cuevas, the defendant sought relief under Section 2255 after the vacatur of two prior state convictions that might have been tainted by

evidence from a lab analyst who later was discovered to have falsified thousands of test results. Id. at 269; see Bridgeman v. District Attorney for Suffolk Dist., 67 N.E.3d 673, 675-677 (Mass. 2017) (describing the misconduct and explaining that it affected some 40,000 convictions). Applying the complete-miscarriage-of-justice standard, Cuevas found the facts there "sufficiently exceptional such that [the defendant's] claim is cognizable under § 2255." 778 F.3d at 272. The court emphasized that its "holding [wa]s narrow," ibid., and dependent on the fact that the defendant's convictions had been "vacated in the 'interests of justice' on the basis of * * * 'egregious' governmental misconduct in the lab that certified the test results on which [the defendant's] state convictions rested," id. at 274 (citation omitted).

Cuevas's self-described "narrow" holding does not suggest that the First Circuit would grant relief when, as here, the defendant's prior state conviction is vacated because of a purely procedural error that would not warrant vacatur if it occurred in a federal criminal proceeding; the defendant was sentenced under a Rule 11(c)(1)(C) plea agreement that allowed him to avoid a statutory minimum sentence that would have been longer than the actual sentence he received; and the defendant's sentence is by design in the middle of the advisory guidelines range that would apply post-vacatur. 778 F.3d at 272. Indeed, the court of appeals here specifically identified Cuevas as presenting considerations

entirely different from the "unique facts of this case," Pet. App. 13; see id. at 5 n.3 ("[W]e have no reason to consider here how such circumstances [as in Cuevas] might inform a miscarriage-of-justice analysis.").

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

NOEL J. FRANCISCO
Solicitor General

BRIAN A. BENCZKOWSKI
Assistant Attorney General

SCOTT A.C. MEISLER
Attorney

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