No. 19-5315

IN THE SUPREME COURT OF THE UNITED STATES

RAYMOND AGUILAR, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the court of appeals erred in determining that petitioners were not entitled to collateral relief on their claim that the residual clause in Section 4B1.2 of the previously binding United States Sentencing Guidelines is void for vagueness under Johnson v. United States, 135 S. Ct. 2551 (2015).

2. Whether a court of appeals' grant of authorization for a federal prisoner to file a second or successive collateral attack on his sentence under 28 U.S.C. 2255, based on a prima facie conclusion that it presents a claim that may provide the basis for such an attack under 28 U.S.C. 2255(h), precludes the district court from determining on closer inspection that no such claim is presented and dismissing the Section 2255 motion on that basis.

ADDITIONAL RELATED PROCEEDINGS

United States District Court (D. Kan.):

United States v. Aguilar, No. 02-cr-40035 (June 13, 2003)

United States v. Nichols, No. 03-cr-20149 (Sept. 13, 2005)

Aguilar v. United States, No. 16-cv-4077 (Aug. 24, 2017)

Nichols v. United States, No. 16-cv-2381 (June 20, 2018)

United States Court of Appeals (10th Cir.):

United States v. Nichols, No. 18-3179 (Apr. 23, 2019)

United States v. Aguilar, No. 17-3192 (May 3, 2019)

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OPINIONS BELOW

The orders of the court of appeals (Pet. App. 1a-2a, 9a-10a) are not published in the Federal Reporter but are reprinted at 772 Fed. Appx. 629 and 765 Fed. Appx. 428, respectively.[1] The orders of the district court (Pet. App. 3a-8a, 11a-18a) are not published in the Federal Supplement but are available at 2017 WL 3674976 and 2018 WL 3055872, respectively.

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[1] Pursuant to this Court's Rule 12.4, petitioners are Raymond Aguilar and Sammy Nichols, who received separate judgments from the same court of appeals presenting closely related questions. See Pet. 2-3.

JURISDICTION

The judgment of the court of appeals in No. 17-3192 was entered on May 3, 2019. The judgment of the court of appeals in No. 18-3179 was entered on April 23, 2019. The petition for a writ of certiorari was filed on July 22, 2019. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following guilty pleas in separate proceedings before the United States District Court for the District of Kansas, petitioners were convicted of federal offenses. The district court sentenced petitioner Raymond Aguilar to 262 months of imprisonment, Pet. App. 3a, and petitioner Sammy Nichols to 360 months of imprisonment, id. at 11a. Petitioners did not appeal.

In 2005, Aguilar filed an unsuccessful motion to set aside his sentence under 28 U.S.C. 2255 (2000). 02-cr-40035 D. Ct. Doc. 147 (Nov. 2, 2005). In 2016, the court of appeals granted Aguilar authorization to file a second or successive motion to vacate his sentence under 28 U.S.C. 2255. Pet. App. 4a. The district court subsequently dismissed Aguilar's motion, but granted a certificate of appealability (COA). Id. at 3a-8a. The court of appeals affirmed. Id. at 1a-2a.

In 2008, the district court reduced Nichols's sentence to 324 months of imprisonment. 03-cr-20149 D. Ct. Doc. 369, at 1 (June 21, 2011). In 2011, Nichols filed an unsuccessful motion to vacate his sentence under Section 2255. Pet. App. 12a. In 2016, the

court of appeals granted Nichols authorization to file a second or successive motion to vacate his sentence under Section 2255. Ibid. The district court subsequently dismissed Nichols's motion, but granted a COA. Id. at 11a-18a. The court of appeals affirmed. Id. at 9a-10a.

1. Petitioners pleaded guilty to separate offenses in the District of Kansas.

a. On January 23, 2002, an undercover law enforcement agent and a confidential informant purchased 222 grams of methamphetamine from Claudia Vargas for $4500. Aguilar Presentence Investigation Report (PSR) ¶¶ 12-15. On February 6, 2002, Vargas agreed to sell the undercover agent one pound of methamphetamine for $8000. Aguilar PSR ¶¶ 17-18. When Vargas produced two objects wrapped in duct tape, law enforcement arrested Vargas and an accomplice -- Jorge Alfredo Valles-Rodriguez -- who had accompanied her. Aguilar PSR ¶ 21. One of the wrapped objects contained 450 grams of methamphetamine. Aguilar PSR ¶ 22.

Vargas and Valles-Rodriguez identified Aguilar as the leader of their drug-trafficking operation. Aguilar PSR ¶¶ 23-24. In particular, Aguilar negotiated the drug prices and Valles-Rodriguez transported the drugs to Vargas or another drug mule, who then completed the sale. Ibid. Law enforcement confirmed that Aguilar had organized drug transactions with Vargas and Valles-Rodriguez. Aguilar PSR ¶ 22. Aguilar subsequently pleaded guilty to one count of conspiracy to distribute over 500 grams of

methamphetamine, in violation of 21 U.S.C 846. Aguilar Judgment 1; Pet. App. 3a.

b. Between 2000 and 2003, Nichols and multiple other individuals distributed powder and crack cocaine in the area of Kansas City, Kansas. Nichols PSR ¶ 21. On three occasions in 2001, law enforcement conducted controlled buys of crack cocaine from Nichols. Nichols PSR ¶¶ 22-24. During a February 2002 warrant-authorized search of a Kansas City home, officers arrested the occupant, who identified Nichols as his powder-cocaine supplier. Nichols PSR ¶¶ 30, 36. In May 2003, a defendant who pleaded guilty to a federal drug charge informed law enforcement that he had received weekly crack-cocaine deliveries from Nichols ranging in size from 4.5 ounces to more than a pound. Nichols PSR ¶¶ 40-43. In September 2003, a confidential informant stated that Nichols and a second individual were selling crack cocaine from a particular house. Nichols PSR ¶ 59. And as federal law enforcement continued its investigation of this drug distribution ring, other individuals identified Nichols as a large-scale cocaine supplier. Nichols PSR ¶¶ 60-62, 65, 68

Nichols fled Kansas City to avoid a federal arrest warrant. Nichols PSR ¶ 88. On April 8, 2004, Texas police stopped his car for a traffic violation. Ibid. Nichols refused to provide identification and fled the scene, nearly hitting the officer with his car. Ibid. A chase ensued, with Nichols aiming his car at two different patrol vehicles. Nichols PSR ¶ 89. Nichols then

pulled into a driveway and fled on foot. Ibid. After catching Nichols and arresting him, officers discovered the outstanding federal warrant. Ibid. Nichols subsequently pleaded guilty to one count of conspiracy to distribute at least five kilograms of cocaine, in violation of 21 U.S.C 846. 03-cr-20149 D. Ct. Doc. 188 (Nov. 4, 2004); Pet. App. 11a.

2. The Probation Office determined that each petitioner qualified as a career offender under Sentencing Guidelines § 4B1.1 (2001 & 2004). Aguilar PSR ¶¶ 40-41; Nichols PSR ¶ 116.[2] Under former Section 4B1.1, a defendant was subject to enhanced punishment as a "career offender" if (1) he was at least 18 years old at the time of the offense of conviction, (2) the offense of conviction was a felony "crime of violence" or "controlled substance offense," and (3) he had at least two prior felony convictions for a "crime of violence" or a "controlled substance offense." Sentencing Guidelines § 4B1.1 (2001 & 2004). The term "crime of violence" was defined in Sentencing Guidelines § 4B1.2(a) (2001 & 2004) to include a felony offense that (1) "has as an element the use, attempted use, or threatened use of physical force against the person of another," or (2) "is burglary of a dwelling, arson, or extortion, involves use of explosives, or otherwise

[2] The 2001 edition of the Sentencing Guidelines was used to calculate Aguilar's sentence. Aguilar PSR ¶ 29. The 2004 edition of the Sentencing Guidelines was used to calculate Nichols's sentence. Nichols PSR ¶ 107. The relevant portions of the Sentencing Guidelines were the same in both versions.

involves conduct that presents a serious potential risk of physical injury to another."

a. In recommending career-offender classification for Aguilar, the Probation Office cited his prior Iowa conviction for third-degree burglary and his prior Kansas conviction for aggravated burglary. Aguilar PSR ¶ 41. With the classification, Aguilar's offense level was 34 and his criminal history category was VI, resulting in a Sentencing Guidelines range of 262 to 327 months of imprisonment. Aguilar PSR ¶ 98.

Because Aguilar's sentencing hearing predated this Court's decision in United States v. Booker, 543 U.S. 220 (2005), the district court was obligated to impose a sentence within the applicable Sentencing Guidelines range unless it found that exceptional circumstances justified a departure. See id. at 233-234. The court adopted the Probation Office's Guidelines calculations and sentenced Aguilar to 262 months of imprisonment. Pet. App. 3a. Aguilar did not appeal.

b. In recommending career-offender classification for Nichols, the Probation Office did not explicitly specify the prior convictions that warranted that classification. Nichols PSR ¶ 116. It did, however, inform the district court that Nichols had a previous Missouri conviction for drug trafficking and a previous Kansas conviction for involuntary manslaughter. Nichols PSR ¶¶ 121, 122. With the classification, the court calculated Nichols's offense level as 41 and criminal history category as VI,

resulting in a Sentencing Guidelines range of 360 months to life imprisonment. Pet. App. 11a.

Nichols's sentencing hearing occurred after this Court's decision in Booker. See Nichols Judgment 1-3. The district court sentenced Nichols to 360 months of imprisonment. Id. at 2. The Statement of Reasons attached to Nichols's judgment shows that the court understood the Sentencing Guideline range as "advisory." Pet. App. 15a. In 2008, the court reduced Nichols's sentence to 324 months of imprisonment. 03-cr-20149 D. Ct. Doc. 369, at 1.

3. In 2005, Aguilar filed his first motion to vacate his sentence under 28 U.S.C. 2255 (2000). 02-cr-40035 D. Ct. Doc. 143 (Feb. 22, 2005). The district court denied Aguilar's motion as untimely. 02-cr-40035 D. Ct. Doc. 147. In 2011, Nichols filed his first motion to vacate his sentence under 28 U.S.C. 2255. 03-cr-20149 D. Ct. Doc. 366 (Feb. 25, 2011). The court denied Nichols's motion as untimely and denied a COA. 03-cr-20149 D. Ct. Doc. 369. The court of appeals likewise denied a COA. 03-cr-20149 D. Ct. Doc. 389 (March 23, 2012).

4. In 2015, this Court held in Johnson v. United States, 135 S. Ct. 2551, that the "residual clause" of the Armed Career Criminal Act of 1984 (ACCA), 18 U.S.C. 924(e)(2)(B)(ii), is unconstitutionally vague. 135 S. Ct. at 2557. The ACCA's residual clause defines a "violent felony" to include an offense that "otherwise involves conduct that presents a serious potential risk of physical injury to another." 18 U.S.C. 924(e)(2)(B)(ii).

Petitioners subsequently filed motions for collateral relief under 28 U.S.C. 2255, asserting that Johnson required vacatur of their non-ACCA sentences.

a. In 2016, Aguilar filed an application for an order authorizing him to file a second or successive motion to vacate his sentence under Section 2255. See 28 U.S.C. 2255(h). The court of appeals granted that application. 02-cr-40035 D. Ct. Doc. 153 (May 25, 2016). Aguilar then filed his Section 2255 motion, arguing that application of the career-offender guideline in his case had rested on the clause in former Sentencing Guidelines § 4B1.2 (2001) that is similarly worded to the clause at issue in Johnson, and that under the logic of Johnson, the Guidelines clause was also unconstitutionally vague. 02-cr-40035 D. Ct. Doc. 154, at 6-8 (June 5, 2016). Aguilar further contended that Johnson applies retroactively to cases on collateral review, id. at 3, and that his motion was timely under 28 U.S.C. 2255(f)(3) because he filed it within one year of Johnson, 02-cr-40035 D. Ct. Doc. 154, at 1; see also 28 U.S.C. 2255(f)(3) (authorizing prisoners to file a Section 2255 motion within one year from "the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review").

The district court dismissed Aguilar's motion. Pet. App. 3a-8a. The court explained that a second or successive motion under 28 U.S.C. 2255 can be authorized only where the defendant

relies on "a new rule of constitutional law, made retroactive to cases on collateral review by th[is Court], that was previously unavailable." Pet. App. 5a (quoting 28 U.S.C. 2255(h)(2)). The court observed that "th[is] Court has not recognized the right that Mr. Aguilar seeks to assert -- that his sentence imposed under the mandatory Guidelines' residual clause is unconstitutionally vague." Id. at 7a. And the district court accordingly determined that Aguilar "has failed to satisfy the preconditions of [Section] 2255(h)(2) and his motion must be dismissed." Ibid. The court nevertheless granted a COA. Id. at 7a-8a.

b. In 2016, Nichols filed an application for an order authorizing him to file a second or successive motion to vacate his sentence under Section 2255. See 28 U.S.C. 2255(h). The court of appeals granted that application. 03-cr-20149 D. Ct. Doc. 435 (May 31, 2016). Nichols then filed his Section 2255 motion, arguing (similar to Aguilar) that his sentence was invalid under the reasoning of Johnson. 03-cr-20149 D. Ct. Doc. 436 (June 3, 2016).

The district court denied relief. Pet. App. 11a-18a. The court first stated that "[it] understood that the Guidelines were advisory" when it sentenced Nichols, and it cited several references to the term "advisory" in the Statement of Reasons attached to Nichols's judgment. Id. at 15a. In the alternative, the court observed that "the Tenth Circuit has not extended the right recognized in Johnson to a challenge under the then mandatory

Guidelines." Id. at 16a (citing United States v. Greer, 881 F.3d 1241 (10th Cir.), cert. denied, 139 S. Ct. 374 (2018)). Consequently, the district court found that "[Nichols's] motion to vacate fails to meet the authorization standards for a second or successive motion under Section 2255(h)." Ibid. The court nevertheless granted a COA. Id. at 17a-18a.

5. While petitioners' appeals were pending, the court of appeals reaffirmed in United States v. Pullen, 913 F.3d 1270 (10th Cir. 2019), petition for cert. pending, No. 19-5219 (filed July 15, 2019), that "Johnson did not create a new rule of constitutional law applicable to the mandatory Guidelines." Id. at 1284. The court then issued summary orders in petitioners' cases, citing Pullen and affirming the district court's dismissals of their Section 2255 motions. Pet. App. 1a-2a, 9a-10a.

ARGUMENT

Petitioners contend (Pet. 15-27) that this Court should grant review to consider whether the residual clause in former Sentencing Guidelines § 4B1.2 (2001 & 2004), as applied to petitioners, was unconstitutionally vague in light of Johnson v. United States, 135 S. Ct. 2551 (2015). Review on that issue is not warranted, and this Court has recently and repeatedly denied certiorari in a number of cases raising similar issues. Petitioners also contend (Pet. 4-15) that the district courts erred in dismissing their second or successive Section 2255 motions after the court of appeals previously authorized the filing of those motions under

28 U.S.C. 2255(h)(2). Petitioners' contention lacks merit, and the decision below does not conflict with any decision of this Court or another court of appeals. The petition for a writ of certiorari should be denied.

1. Petitioners contend (Pet. 15-27) that the court of appeals erred in denying relief on their claim, which they brought in motions under 28 U.S.C. 2255, that the residual clause in Section 4B1.2 (2001 & 2004) of the previously binding federal Sentencing Guidelines is void for vagueness under Johnson. For the reasons explained on pages 9 to 16 of the government's brief in opposition to the petition for a writ of certiorari in Gipson v. United States, No. 17-8637 (filed July 25, 2018), cert. denied, 139 S. Ct. 373 (2018), that contention does not warrant this Court's review.[3] This Court has recently and repeatedly denied review of other petitions presenting similar issues. See, e.g., Blackstone v. United States, 139 S. Ct. 2762 (2019) (No. 18-9368); Green v. United States, 139 S. Ct. 1590 (2019) (No. 18-8435); Cannady v. United States, 139 S. Ct. 1355 (2019) (No. 18-7783); Sterling v. United States, 139 S. Ct. 1277 (2019) (No. 18-7453); Allen v. United States, 139 S. Ct. 1231 (2019) (No. 18-7421); Bright v. United States, 139 S. Ct. 1204 (2019) (No. 18-7132); Whisby v. United States, 139 S. Ct. 940 (2019) (No. 18-6375);

[3] We have served petitioner with a copy of the government's brief in opposition in Gipson.

Jordan v. United States, 139 S. Ct. 653 (2018) (No. 18-6599). The same result is warranted here.[4]

a. Petitioners' motions under 28 U.S.C. 2255 were not timely, because petitioners filed the motions more than one year after their convictions became final and because this Court's decision in Johnson did not recognize a new retroactive right with respect to the formerly binding Sentencing Guidelines that would provide petitioners with a new window for filing their claims. See 28 U.S.C. 2255(f)(1) and (3); Br. in Opp. at 9-14, Gipson, supra (No. 17-8637). Nearly every court of appeals to address the issue -- including the court below -- has determined that similarly situated defendants are not entitled to collaterally attack their sentences. See United States v. London, 937 F.3d 502, 507-508 (5th Cir. 2019) (holding that a challenge to the residual clause

[4] Other pending petitions have raised similar issues. See Gadsden v. United States, No. 18-9506 (filed Apr. 18, 2019); Pullen v. United States, No. 19-5219 (filed July 15, 2019); Bronson v. United States, No. 19-5316 (filed July 19, 2019); Brigman v. United States, No. 19-5307 (filed July 22, 2019); Hemby v. United States, No. 19-6054 (filed Sept. 18, 2019); Jennings v. United States, No. 19-6336 (filed Oct. 17, 2019); Holz v. United States, No. 19-6379 (filed Oct. 21, 2019); Autrey v. United States, No. 19-6492 (filed Nov. 1, 2019); Douglas v. United States, No. 19-6510 (filed Nov. 4, 2019); Simmons v. United States, No. 19-6521 (filed Nov. 4, 2019); Hirano v. United States, No. 19-6652 (filed Nov. 12, 2019); Simmons v. United States, No. 19-6658 (filed Nov. 14, 2019); Bridge v. United States, No. 19-6670 (filed Nov. 14, 2019); Hunter v. United States, No. 19-6686 (filed Nov. 14, 2019); Fernandez v. United States, No. 19-6689 (filed Nov. 14, 2019); Lackey v. United States, No. 19-6759 (filed Nov. 20, 2019); Hicks v. United States, No. 19-6769 (filed Nov. 20, 2019); London v. United States, No. 19-6785 (filed Nov. 25, 2019).

of the formerly binding career-offender guideline was untimely under Section 2255(f)(3)), petition for cert. pending, No. 19-6785 (filed Nov. 25, 2019); United States v. Blackstone, 903 F.3d 1020, 1026-1028 (9th Cir. 2018) (same), cert. denied, 139 S. Ct. 2762 (2019); Russo v. United States, 902 F.3d 880, 883-884 (8th Cir. 2018) (same), cert. denied, 139 S. Ct. 1297 (2019); United States v. Green, 898 F.3d 315, 322-323 (3d Cir. 2018) (same), cert. denied, 139 S. Ct. 1590 (2019); United States v. Greer, 881 F.3d 1241, 1248-1249 (10th Cir.), cert. denied, 139 S. Ct. 374 (2018); United States v. Brown, 868 F.3d 297, 303 (4th Cir. 2017), cert. denied, 139 S. Ct. 14 (2018); Raybon v. United States, 867 F.3d 625, 629-630 (6th Cir. 2017), cert. denied, 138 S. Ct. 2661 (2018); see also Upshaw v. United States, 739 Fed. Appx. 538, 540-541 (11th Cir. 2018) (per curiam), cert. denied, 139 S. Ct. 841 (2019). Only the Seventh Circuit has concluded otherwise. See Cross v. United States, 892 F.3d 288, 293-294, 299-307 (2018). But that shallow conflict -- on an issue as to which few claimants would be entitled to relief on the merits, see Br. in Opp. at 16, Gipson, supra (No. 17-8637); pp. 13-14, infra -- does not warrant this Court's review, and this Court has previously declined to review it. See pp. 11-12, supra.

b. Further review is unwarranted in any event because in petitioners' cases -- as in most others presenting similar issues -- petitioners could not prevail on the merits of their claims.

First, Nichols was sentenced after this Court's decision in Booker, Pet. App. 14a, and the district court expressly recognized at the time that his Sentencing Guidelines range was "advisory," id. at 15a. In Beckles v. United States, 137 S. Ct. 886 (2017), this Court held that "the advisory Sentencing Guidelines are not subject to a vagueness challenge under the Due Process Clause." Id. at 895. Because Nichols's claim is a vagueness challenge to a provision of the advisory Guidelines, it is foreclosed by Beckles.

In addition, petitioners' motions for collateral relief were not their first collateral attacks, see Pet. 4, and they were therefore subject to additional limitations. See 28 U.S.C. 2255(h); 28 U.S.C. 2244(b)(2)(A) and (4). The limitation on second or successive collateral attacks in Section 2244(b)(2)(A) is worded similarly, but not identically, to the statute of limitations under Section 2255(f)(3) -- which in itself supports the denial of relief, see Greer, 881 F.3d at 1248-1249 -- and may provide an independent basis for denying motions like petitioners'. See Br. in Opp. at 18-19, Gipson, supra (No. 17-8637).

2. Petitioners separately contend (Pet. 4-15) that the district courts erred in dismissing their second or successive Section 2255 motions after the court of appeals previously authorized the filing of those motions under 28 U.S.C. 2255(h)(2). That contention lacks merit.

a. A "second or successive" motion under 28 U.S.C. 2255 may not be filed without obtaining pre-filing authorization from the court of appeals, "as provided in [28 U.S.C.] 2244." 28 U.S.C. 2255(h). The court of appeals may grant authorization upon a prima facie showing that the proposed motion contains "a new rule of constitutional law, made retroactive to cases on collateral review by th[is] Court, that was previously unavailable." 28 U.S.C. 2255(h)(2); see 28 U.S.C. 2244(b)(3)(A). Authorization, when granted, vests the district court with jurisdiction that it would otherwise lack to entertain the successive motion. See Burton v. Stewart, 549 U.S. 147, 153 (2007) (per curiam) (finding similar authorization requirement for second or successive collateral attacks on state convictions to be jurisdictional).

"[O]nce the court of appeals grants authorization, the district court must determine whether the petition does, in fact, satisfy the requirements for filing a second or successive motion before the merits of the motion can be considered." United States v. Murphy, 887 F.3d 1064, 1067 (10th Cir.) (citation omitted), cert. denied, 139 U.S. 414 (2018). Section 2255(h)(2) cross-references the procedures in "section 2244," which specifies that "[a] district court shall dismiss any claim presented in a second or successive application that the court of appeals has authorized to be filed unless the applicant shows that the claim satisfies the requirements of this section." 28 U.S.C. 2244(b)(4). Contrary to petitioners' contention (Pet. 4-8), it makes little sense to

atextually interpret that cross reference as limited to the prima facie look described in 28 U.S.C. 2244(b)(3), unaccompanied by the further procedure in Section 2244(b)(4), under which the district court takes a closer look, which can then be reviewed through the normal appellate process. Accordingly, if the motion does not satisfy the statutory requirements, then the court must dismiss the motion; if the motion does satisfy the statutory requirements, then the court addresses the merits of the motion along with any applicable defenses.

The district courts followed that procedure in petitioners' cases. The courts found that petitioners did not meet their burden to show that their motions relied on "a new rule of constitutional law, made retroactive to cases on collateral review by th[is] Court," as required by 28 U.S.C. 2255(h)(2), and dismissed their motions. See Pet. App. 6a-7a, 15a-16a.

b. Like the court of appeals below, the other courts of appeals similarly treat their orders authorizing a second or successive motion under 28 U.S.C. 2255(h) as "tentative," and instruct "the district court [to] dismiss the motion that [it] ha[s] allowed the applicant to file * * * if the court finds that the movant has not satisfied the requirements for the filing of such motion." Bennett v. United States, 119 F.3d 468, 470 (7th Cir. 1997); see also, e.g., Johnson v. United States, 720 F.3d 720, 720-721 (8th Cir. 2013) (per curiam); United States v. Winestock, 340 F.3d 200, 205-206 (4th Cir.), cert. denied, 540

U.S. 995 (2003); Reyes-Requena v. United States, 243 F.3d 893, 899 (5th Cir. 2001); United States v. Villa-Gonzalez, 208 F.3d 1160, 1164-1165 (9th Cir. 2000) (per curiam).

Petitioners assert (Pet. 13-14) the Sixth Circuit employs different procedures for second or successive motions under 28 U.S.C. 2255. That assertion lacks merit. A Sixth Circuit order granting authorization to file a second or successive motion establishes only that "the applicant ma[d]e a showing of possible merit sufficient to warrant a fuller exploration by the district court." In re Watkins, 810 F.3d 375, 379 (2015) (citations and internal quotation marks omitted). As in other circuits, "[u]pon review of the merits of the basis for the successive motion, the district court is required to dismiss the motion 'unless the applicant shows that the claim satisfies the requirements'" for a second or successive motion. Paulino v. United States, 352 F.3d 1056, 1058 (6th Cir. 2003) (quoting 28 U.S.C. 2244(b)(4)). Indeed, in Paulino, the Sixth Circuit affirmed the district court's dismissal of a second or successive Section 2255 motion because the defendant had not met "the requirements for his obtaining relief * * * to wit: the existence of a new rule of constitutional law." Id. at 1059 (internal quotation marks omitted). That is the same reason why the district courts dismissed petitioners' second or successive Section 2255 motions.

The Sixth Circuit did not (and could not have) overruled that approach in Williams v. United States, 927 F.3d 427 (2019) (cited

at Pet. 13-14). In Williams, the court concluded -- as the government itself had acknowledged -- that Section 2244(b)(1), which is not at issue here and contains a "restrictive clause" that "refer[s] exclusively to state prisoners," does not apply to federal prisoners. Id. at 435. Williams did not address a district court's authority to dismiss a second or successive Section 2255 motion where, upon review of the merits, the court concludes that the defendant failed to satisfy the requirements in Section 2255(h) for filing a second or successive Section 2255 motion. Given the absence of any circuit disagreement on this question, further review is unwarranted.

c. In any event, this case presents an unsuitable vehicle for review of the question presented, because the court of appeals ultimately held that petitioners' Section 2255 motions were untimely on the ground that Johnson did not recognize a new retroactive right with respect to the formerly binding Sentencing Guidelines that would provide them with a new window for filing their claims under Section 2255. See Pet. 1a-2a, 9a-10a (adopting United States v. Pullen, 913 F.3d 1270, 1284 (10th Cir. 2019), petition for cert. pending, No. 19-5219 (filed July 15, 2019), and holding that "Johnson did not create a new rule of constitutional law applicable to the mandatory Guidelines"). Whether the district court employed the correct procedures when addressing petitioners' motions makes no practical difference to the outcome of this case

given the court of appeals' determination that they are not entitled to relief.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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