No. _____

IN THE
Supreme Court of the United States

STATE OF ALASKA,

Petitioner,

v.

SEAN WRIGHT,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

CLYDE "ED" SNIFFEN, JR.
Acting Attorney General

TIMOTHY W. TERRELL
Counsel of Record
Assistant Attorney General
State of Alaska, Dept. of Law
Office of Criminal Appeals
1031 W. 4th Ave., Suite 200
Anchorage, Alaska 99501
907-269-6383
tim.terrell@alaska.gov

Counsel for Petitioner

January 7, 2021

QUESTION PRESENTED

Sean Wright fully served his Alaska sexual-abuse-of-a-minor convictions as of September 17, 2016. After moving from Alaska, Wright was convicted, under federal law, of failure to register as a sex offender in federal court in Tennessee. In February 2018 Wright filed a habeas petition under 28 U.S.C. § 2254 in federal court in Alaska, challenging his sexual-abuse-of-a-minor convictions on speedy trial grounds. The district court dismissed the petition on the basis that Wright was not in custody on the Alaska convictions. The Ninth Circuit reversed. Relying on *Zichko v. Idaho*, 247 F.3d 1015, 1019-20 (9th Cir. 2001), it held that Wright's incarceration and supervised release term for the *federal* failure-to-register conviction rendered him in custody for purposes of challenging his fully-served *Alaska* convictions. *Wright v. Alaska,* 819 Fed.Appx. 544, 545-46 (9th Cir., Sept. 2, 2020). This petition for a writ of certiorari presents the following question:

When an offender has fully served the sentence imposed pursuant to a *state* conviction, does a federal habeas court have jurisdiction to consider a § 2254 challenge to that conviction merely because it served as a predicate for an independent *federal* conviction under which the offender is now in custody?

STATEMENT OF RELATED PROCEEDINGS

Wright v. Alaska, 2008 WL 11424264 (D.Alaska, Aug. 4, 2008), No. 3:07-CV-00244-JWS-DMS

Wright v. Alaska Superior Court, 2008 WL 11424297 (D.Alaska, Aug. 7, 2008), No. 3:07-CV-00244-JWS-DMS

Wright v. Volland, 331 Fed.Appx. 496 (9th Cir. 2009), No. 08-35724

Wright v. Volland, 558 U.S. 975, 130 S.Ct. 473 (2009), No. 09-6464

Wright v. State, 347 P.3d 1000 (Alaska App. 2015),
Court of Appeals No. A-10587

State v. Wright, 404 P.3d 166 (Alaska 2017), Supreme Court No. S-15917

Wright v. Alaska, 2019 WL 2453641 (D.Alaska, June 12, 2019),
No. 3:18-cv-00056-JKS

Wright v. Alaska, 819 Fed.Appx. 544 (9th Cir., Sept. 2, 2020), No. 19-35543

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The report of the United States Magistrate Judge recommending denial of Wright's pre-trial habeas petition is available at *Wright v. Alaska,* 2008 WL 11424264 (D.Alaska, Aug. 4, 2008), and is reprinted in the appendix at 105a-126a. The order of the United States District Court for the District of Alaska adopting the report is available at *Wright v. Alaska Superior Court,* 2008 WL 11424297 (D.Alaska, Aug. 7, 2008), and is reprinted in the appendix at 103a-104a. The Ninth Circuit's decision affirming the district court is reported at *Wright v. Volland,* 331 Fed.Appx. 496 (9th Cir. 2009), and is reprinted in the appendix at 99a-102a. The order denying certiorari is reported at *Wright v. Volland,* 558 U.S. 975, 130 S.Ct. 473 (2009).

The opinion of the Alaska Court of Appeals reversing Wright's conviction on direct appeal is reported at *Wright v. State,* 347 P.3d 1000 (Alaska App. 2015), and is reprinted in the appendix at 78a-98a. The opinion of the Alaska Supreme Court reversing the Alaska Court of Appeals' decision is reported at *State v. Wright,* 404 P.3d 166 (Alaska 2017), and is reprinted in the appendix at 24a-77a.

The decision of the United States District Court for the District of Alaska dismissing Wright's post-conviction habeas petition is unpublished and is reprinted in the appendix at 7a-17a. The district court's order denying Wright motion for reconsideration of the dismissal order is reported at *Wright v. Alaska,* 2019 WL 2453641 (D.Alaska, June 12, 2019), and is reprinted in the appendix at 18a-22a.

The Ninth Circuit's decision reversing the district court's dismissal order is reported at *Wright v. Alaska,* 819 Fed.Appx. 544 (9th Cir., Sept. 2, 2020), and is reprinted in the appendix at 1a-6a. The Ninth Circuit's order denying Alaska's petition for rehearing en banc is reprinted in the appendix at 23a.

JURISDICTIONAL STATEMENT

The Ninth Circuit issued its decision on September 2, 2020. On October 9, 2020, it denied Alaska's petition for rehearing en banc. This petition invokes the Court's jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

This case involves the meaning of the phrase "custody pursuant to the judgment of a State court" as it is used in 28 U.S.C. § 2254(a), which provides that "The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States."

STATEMENT OF THE CASE

Sean Wright was convicted in the Alaska Superior Court of multiple counts of sexual abuse of a minor and sentenced to 14 years with 2 years suspended, *i.e.,* 12 years to serve, followed by 10 years' probation. *Wright v. State,* 347 P.3d 1000, 1005 (Alaska App. 2015). The Alaska Court of Appeals rejected Wright's Sixth Amendment speedy trial claim, but reversed his conviction and remanded for further evaluation of his state constitutional speedy trial claim. *Id.* at 1005-11, The Alaska Supreme

Court disagreed and upheld the superior court's rejection of the state constitutional speedy trial claim. *State v. Wright,* 404 P.3d 166, 178-81 (Alaska 2017).

Wright finished his term of imprisonment while his case was on direct appeal. In late September 2016 the Alaska Department of Corrections sent Wright a letter stating that he was finished with his sentence, including all probation and parole supervision, effective September 17, 2016. [Supplemental Excerpt of Record, Ninth Circuit ("SER") 76] Wright's only remaining obligation under Alaska law was to register as a sex offender if he remained in Alaska, as required by Alaska Statutes 12.63.010-.020.

Wright moved to Tennessee, failed to register as a sex offender there, was convicted in the United States District Court for the Eastern District of Tennessee for failing to register as required by 18 U.S.C. § 2250(a), and was sentenced to time served and 5 years' supervised release. [Excerpt of Record, Ninth Circuit ("ER") 113-120; SER 15, ¶ 2] He was incarcerated in Tennessee from June 28, 2017 until February 16, 2018, when he was released pursuant to the plea agreement in the federal case. [SER 15-16 ¶¶ 2-3] Wright was sentenced on March 4, 2019. [ER 113-119]

On February 26, 2018, Wright filed a timely habeas petition under 28 U.S.C. § 2254 in the United States District Court for the District of Alaska, challenging his Alaska sex offense convictions on Sixth Amendment speedy trial grounds. [Docket No. 1 in *Wright v. Alaska,* No. 3:18-cv-00056-JKS] Alaska's answer to his amended petition denied that Wright was in custody within the meaning of Section 2254 when he filed his initial petition, noting that he had fully served the sentences imposed

pursuant to his state convictions as of September 2016. [Docket No. 19, at 7, 9] Wright's reply pleading relied on *Zichko v. Idaho,* 247 F.3d 1015 (9th Cir. 2001), to assert that his then-pending *federal* failure-to-register charges rendered him in custody with respect to his Alaska state-court sex offense convictions. [Docket No. 23, at 2-3] *Zichko* held "that a habeas petitioner is 'in custody' for the purposes of challenging an earlier, expired rape conviction, when he is incarcerated for failing to comply with a state sex offender registration law because the earlier rape conviction 'is a necessary predicate' to the failure to register charge." 247 F.3d at 1019 (citing and quoting *Brock v. Weston,* 31 F.3d 887, 890 (9th Cir. 1994)).

When the case proceeded to substantive briefing, Alaska's merits brief argued that Wright was not entitled to relief on his Sixth Amendment speedy trial claim both because he had procedurally defaulted it by not raising it in his Alaska Supreme Court brief and because the Alaska Court of Appeals' resolution of that issue was not an unreasonable application of clearly established federal law. [Docket No. 28, at 13-24] Alaska's brief also discussed the custody issue and recognized *Zichko*'s holding but argued that it was erroneously decided. [Docket No. 28, at 30-36] Wright's merits reply brief disputed Alaska's procedural default argument and its assessment of his speedy trial claim, but did not address the custody issue. [Docket No. 31, at 1-16]

District Court Judge James K. Singleton, Jr., dismissed Wright's habeas petition on the basis that Wright was not in custody with respect to the Alaska convictions when he filed the petition, concluding that *Zichko* did not control. Judge Singleton recognized that *Brock v. Weston,* 31 F.3d at 890-91, and *Zichko,* 247 F.3d at 1019-

20, stood for the proposition "that the 'in custody' requirement [of 28 U.S.C. § 2254(a)] is met where the habeas petition may be construed as a challenge to the petitioner's current confinement as enhanced by the expired conviction." App. 15a. But Judge Singleton noted that Wright's current offense was a federal offense which could only be challenged via 28 U.S.C. § 2255, and stated that "*Zichko,* which involved a state prisoner who was currently in custody on a non-expired state court conviction, does not apply in Wright's case." App. 16a. Judge Singleton noted elsewhere that "Wright may not validly challenge an expired state conviction by way of 28 U.S.C. § 2254 merely because he is in custody in another jurisdiction on federal charges." App. 16a n.2.

Wright moved to reconsider. [Docket No. 34] Judge Singleton denied reconsideration. App 18a-22a.

Wright appealed to the Ninth Circuit Court of Appeals. Alaska argued that *Zichko* was erroneous and should be overruled, and that even if *Zichko* were not overruled, the district court was nonetheless correct in concluding that it did not govern where the prior conviction that Wright sought to attack was issued by a sovereign separate from the sovereign which imposed the sentence for which he was actually in custody. [Respondent's Brief in *Wright v. Alaska,* No. 19-35543, at 21-44] The Ninth Circuit panel relied on *Zichko* and implicitly rejected Alaska's separate-sovereigns argument to conclude that Wright's federal failure-to-register conviction rendered him "in custody" with respect to his Alaska state convictions, reversing the district court's dismissal order and remanding for further consideration of Wright's claims.

Wright v. Alaska, 819 Fed.Appx. 544, 545-46 (9th Cir., Sept. 2, 2020). Alaska filed a petition for rehearing en banc but no judges voted for or called for a vote on the petition, which was denied on October 9, 2020. App. 23a.

REASONS FOR GRANTING THE PETITION

I. Summary – The Ninth Circuit's Decision is at Odds With *Maleng v. Cook* and with the Decisions of Other Circuit Courts, Which Refuse to Treat Custody Imposed for Failure to Register as a Sex Offender as Custody Pursuant to the Underlying Conviction Which Triggered the Duty to Register

In federal district court, Judge Singleton correctly focused on the issue of what procedural vehicle Wright could use to challenge his then-current federal custody. "[A] prisoner is entitled to one free-standing collateral attack per judgment[.]" *Magwood v. Patterson,* 561 U.S. 320, 334, 130 S.Ct. 2788, 2798 (2010) (quoting *Beyer v. Litscher*, 306 F.3d 504, 507 (7th Cir. 2002)). And *Magwood* held that the custody that the petitioner is attacking in the federal habeas statute for state prisoners, 28 U.S.C. § 2254, and its analogue for federal prisoners, 28 U.S.C. § 2255, is not separable from the judgment that the petitioner is attacking. The Court stated: "The requirement of custody *pursuant to a state-court judgment* distinguishes § 2254 from other statutory provisions authorizing relief from constitutional violations – such as § 2255, which allows challenges to the judgments of federal courts[.]" 561 U.S. at 333, 130 S.Ct. at 2797 (emphasis in the original). "Custody is crucial for § 2254 purposes, but it is inextricable from the judgment that authorizes it." *Id.*

Accordingly, to the extent that Wright sought to challenge his then-current custody for his federal failure-to-register conviction by arguing that that conviction

was in some way flawed, Wright was required to pursue that challenge in a 28 U.S.C. § 2255 petition, as Judge Singleton recognized. But to the extent that Wright sought to challenge his state-court convictions that triggered the duty to register, "a federal prisoner may not attack a predicate state conviction through a § 2255 motion challenging an enhanced federal sentence[.]" *Johnson v. United States,* 544 U.S. 295, 304, 125 S.Ct. 1571, 1578 (2005) (citing *Daniels v. United States,* 532 U.S. 374, 376, 121 S.Ct. 1578, 1580 (2001)). That is to say, "if the prior conviction was no longer open to direct or collateral attack in its own right, the federal prisoner could do nothing more about his sentence enhancement." *Johnson, id.* at 304, 125 S.Ct at 1578 (citing *Daniels,* 532 U.S. at 382, 121 S.Ct. at 1580). Thus, if Wright's Alaska convictions were no longer open to direct or collateral attack in their own right – which they were not as to his speedy trial claim – they could not be challenged in a § 2255 petition.[1]

The Ninth Circuit approached the analysis from a different perspective, looking at the judgment that Wright was attacking, his state-court judgment for his sex-

[1] Wright's conviction was no longer subject to challenge via direct appeal. The Alaska Supreme Court affirmed his conviction on September 22, 2017. *State v. Wright,* 404 P.3d 166 (Alaska 2017). Wright had 90 days, or until December 21, 2017, to file a petition for a writ of certiorari, which he did not do, so by the time he filed his federal habeas petition on February 26, 2018, his direct appeal process was over.

Wright had one year from the time his conviction became final on direct appeal to file a post-conviction relief action, *see* Alaska Statute 12.72.020(a)(3)(A), so he technically still had the right to seek post-conviction relief in state court in February 2018 when he filed his federal habeas petition, but paragraph (a)(2) of that statute barred any "claim [that] was, or could have been but was not, raised in a direct appeal[,]" so Wright could not have raised his Sixth Amendment speedy trial claim in a state post-conviction relief action because it was raised before the Alaska Court of Appeals on direct appeal and could have been raised in the Alaska Supreme Court. And though Wright's habeas petition was timely, he procedurally defaulted his Sixth Amendment claim by not raising it before the Alaska Supreme Court, so he no longer had the ability to raise this claim in a federal habeas action.

ual-abuse-of-a-minor convictions, and seeing if there was a sufficient connection between it and the source of his current custody, his federal failure-to-register conviction. The Ninth Circuit relied on *Zichko v. Idaho,* which held "that a habeas petitioner is 'in custody' for the purposes of challenging an earlier, expired rape conviction, when he is incarcerated for failing to comply with a state sex offender registration law because the earlier rape conviction 'is a necessary predicate' to the failure to register charge." 819 Fed.Appx. at 545 (citing 247 F.3d at 1019). *Zichko* pre-dates the recognition in *Magwood v. Patterson* that the judgment that a petitioner is attacking cannot generally be separate from the actual source of custody that the petitioner is serving, and is questionable for that reason alone.

More significantly, *Zichko* on its own terms is in error, being irremediably at odds with this Court's case law on when custody is "pursuant to" to the judgment of a state court. It ignores a fundamental and well-established principle of habeas law: Once a prisoner has fully served the sentence imposed for a conviction, he is no longer in custody pursuant to the conviction and therefore cannot file a federal habeas petition directly attacking it.[2] More than three decades ago this Court noted that "[w]e have never held, however, that a habeas petitioner may be 'in custody' under a conviction [and thus able to challenge it via habeas] when the sentence imposed for that conviction has *fully expired* at the time the petition is filed." *Maleng v. Cook,* 490 U.S.

[2] His remedy, if the conviction is federal, is to seek a writ of coram nobis in federal court; if the conviction is from a state court, his remedy is to seek a writ of coram nobis in state court or apply for any other remedies available under state law. *Chaidez v. United States,* 568 U.S. 342, 345 n.1, 133 S.Ct. 1103, 1106 n.1 (2013); *Rawlins v. Kansas,* 714 F.3d 1189, 1196-97 (10th Cir. 2013) (noting that federal courts will not review state-court convictions under a writ of coram nobis).

488, 491, 109 S.Ct. 1923, 1925 (1989) (emphasis in the original). And the Court came back to this point again in 2001, holding that a habeas petitioner who was "no longer serving the sentences imposed pursuant to" one set of state convictions could not "bring a federal habeas petition directed solely at those convictions," even though the petitioner was then in custody pursuant to *other* state convictions. *Lackawanna County District Attorney v. Coss,* 532 U.S. 394, 401, 121 S.Ct. 1567, 1573 (2001).

Federal circuit courts applying *Maleng* to the situation of sex offender registry statutes, which often make it a separate offense to fail to register, have recognized that incarceration for the failure-to-register conviction does not constitute custody as to an underlying sex offense conviction which has been fully served. *See Piasecki v. Court of Common Pleas,* 917 F.3d 161, 177 (3d Cir. 2019); *Hautzenroeder v. Dewine,* 887 F.3d 737, 743 (6th Cir. 2018). *See also Stanbridge v. Scott,* 791 F.3d 715, 718-21 (7th Cir. 2015) (civil commitment as sexually violent predator did not constitute custody as to fully served sex offense conviction which was the necessary predicate for the civil commitment order). "Only the Court of Appeals for the Ninth Circuit has accepted the view that a petitioner is 'in custody,' 'for the purpose[] of challenging an earlier, expired rape conviction, when he is incarcerated for failing to comply with a state sex offender registration law[.]" *Bonser v. District Attorney Monroe County,* 659 Fed.Appx. 126, 129 n.4 (3d Cir. 2016) (quoting *Zichko*, 247 F.3d at 1019). Thus there is a circuit split between the Ninth and the Third, Sixth, and Seventh Circuits which merits this Court's review.

The Ninth Circuit also failed to recognize the significance of the fact that the prior judgment that Wright sought to attack was issued by a sovereign separate from the one who imposed the sentence he was serving when he filed his habeas petition. This Court, in its decisions allowing habeas petitioners to challenge a sentence in a string of consecutive sentences at a time when they were not serving the challenged sentence, has carefully noted that the consecutive sentences were imposed by the same sovereign. *See Garlotte v. Fordice,* 515 U.S. 39, 40, 115 S.Ct. 1948, 1949 (1995). And this Court in cases involving attacks on a sentence to be served in the *future* has adverted to the separate-sovereigns distinction and noted that it did *not* affect the outcome of a custody analysis. *Braden v. 30th Judicial Circuit Court of Kentucky,* 410 U.S. 484, 489 n.4, 93 S.Ct. 1123, 1126 n.4 (1973). The implication to be drawn by contrasting the cases is that there are situations where the separate-sovereigns distinction affects a custody analysis.

There are two key reasons why this distinction makes a difference when a habeas petitioner attempts to attack a *prior*, fully served conviction imposed by a separate sovereign. One is that if the prior conviction is vacated, the second sovereign is not bound to credit time served on the first conviction against the petitioner's current conviction, and thus the case will not achieve the key purpose of habeas, immediate or speeded up release. The other reason derives from comity and federalism, and the idea that one sovereign cannot by attaching its own consequences to the conviction of another sovereign expose that conviction to a springing and revived right to collaterally attack it. Indeed, the Ninth Circuit, albeit without drawing out the legal basis

for it, had recognized the separate-sovereigns distinction three times. *See Contreras v. Schiltgen,* 122 F.3d 30, 33 (9th Cir. 1997); *Allen v. Oregon,* 153 F.3d 1046, 1048 (9th Cir. 1998); *Resendiz v. Kovensky,* 416 F.3d 952, 957 (9th Cir. 2005). The panel in *Wright* implicitly rejected these cases, which were cited in Alaska's brief, and found *Zichko* controlling in the specific situation of sex offenders. *Wright* reflects a circuit split on the separate-sovereigns issue as well as internal inconsistency within the Ninth Circuit.

II. Discussion – This Court's Case Law on "Custody Pursuant to the Judgment of a State Court" in Habeas Cases and its Application to the Situation of Multiple Judgments

This case concerns interpretation of the phrase "custody *pursuant to* the judgment of a State court" in 28 U.S.C. § 2254(a) (italics added). The specific issue is how much of a temporal gap or attenuation is permitted between the time when a habeas petitioner is actually in custody with respect to the conviction that he challenges and the time when the habeas petition is filed and litigated, and what are the permissible reasons for such a gap.

A. In early habeas practice, there was no temporal gap between the time of custody in connection with that charge and the time of a petition challenging that charge

The issue of how much gap between the actual custody relative to a criminal charge and the time of the habeas litigation challenging that custody did not arise in pre-American Revolution habeas practice in Great Britain because habeas was then primarily a pre-trial mechanism used to test the court's jurisdiction or the jailor's authority to detain, and a petitioner in such circumstances was clearly in custody

pursuant to the charge that he was trying to contest. *See Peyton v. Rowe,* 391 U.S. 54, 59 & n.12, 88 S.Ct. 1549, 1552 & n.12 (1968). And even to the extent that habeas could have been used then as a post-conviction vehicle to challenge a conviction or sentence, British judges lacked the power to impose consecutive sentences, so again as a general matter a habeas petitioner would be in custody with respect to the judgment that he challenged. *See id.* at 66, 88 S.Ct. at 1555.

B. As habeas shifted to a post-conviction remedy and courts gained the power to impose consecutive sentences, the possibility of a temporal gap between custody and a habeas petition challenging it became manifest, but this Court initially adhered to a contemporaneous-litigation rule

The problem of there being a temporal gap between the time of the habeas litigation and the custodial status for the conviction being attacked came to the fore when habeas shifted to being used primarily as a post-conviction mechanism to collaterally attack a conviction or sentence, and when courts gained power to impose consecutive sentences. And when this Court was first confronted with this problem in the mid-1930's, the Court held that an inmate serving consecutive sentences could not, while he was serving the second sentence challenge the third sentence in a habeas petition because he was not yet in "custody" with respect to the third sentence and the habeas statutes require that at the time the habeas petition is filed, the petitioner must be in custody with respect to the criminal judgment that he seeks to attack. *McNally v. Hill,* 293 U.S. 131, 137-40, 55 S.Ct. 24, 27-28 (1934).

C. This Court carved out a narrow exception to the contemporaneous-challenge rule in the case of consecutive sentences imposed by the same sovereign, in *Peyton v. Rowe* and *Garlotte v. Fordice*

This Court later reconsidered the wisdom of *McNally*'s rule that requires habeas challenges to be brought long after the case had been tried, when witnesses and evidence might no longer be available and memories would be faded. *Peyton v. Rowe*, 391 U.S. 54, 88 S.Ct. 1549 (1968). The petitioners attacked the later, yet-to-be-served sentence in a string of consecutive sentences all imposed by courts of the same state, and the federal district courts relied on *McNally v. Hill* to dismiss their petitions as premature. *Id.* at 55-57, 88 S.Ct. at 1550-51. This Court reversed, holding that "a prisoner serving consecutive sentences is 'in custody' under any one of them for purposes of [28 U.S.C.] § 2241(c)(3)." *Id.* at 67, 88 S.Ct. at 1556. The Court noted that the habeas statutes authorized relief other than just immediate release from prison, including future release from prison, and that invalidating a sentence to be served in the future would serve the central objective of habeas corpus. *Id.* In other words, the Court abandoned a rigid adherence to a prematurity rule as an aspect of standing in favor of a rule that was more finely tuned to the relief available in a habeas action and which would enhance a habeas court's ability to provide effective redress.

The *Peyton* rule has also been applied when the attacks on a consecutive sentence are in the reverse order from *Peyton*, *i.e.*, when the petitioner is in custody on the second or later of a string of consecutive sentences and seeks to attack a first or earlier sentence which has already been served. This Court so held in *Garlotte v. Fordice*, 515 U.S. 39, 115 S.Ct. 1948 (1995), a case involving consecutive sentences

imposed by Mississippi state courts. This Court recognized that under the traditional sentence-advancement incarceration-crediting principles applied in most jurisdictions, if a first sentence delayed service of the second sentence, the former's later invalidation will result in it being credited against the second sentence, so that the start date of the second sentence moves backward to that of the first sentence. *Id.* at 45-47, 115 S.Ct. at 1952. This hastens the petitioner's release, the central objective of habeas. *Id.* at 47, 115 S.Ct. at 1952. And with respect to truly consecutive sentences, the Court noted that the laws of sentencing jurisdictions would often "reveal[] the difficulties courts and prisoners would face trying to determine when one sentence ends and a consecutive sentence begins." *Id.* at 46 n.5, 115 S.Ct. at 1952 n.5. This Court rejected a rigid adherence to mootness as an aspect of standing, in favor of a rule that placed redressability at the center and which took into account the practical difficulties in allocating credit among sentences for different judgments.

D. This Court held in *Maleng v. Cook* and *Lackawanna District Attorney v. Coss* that in the case of non-consecutive sentences, a habeas petitioner cannot attack an earlier, fully served sentence merely because it has some relationship to a later, currently applicable sentence

In *Maleng v. Cook*, the Court shifted away from the special situation of consecutive sentences imposed by the same sovereign, as seen in *Peyton* and *Garlotte,* back to the situation where the sentences are sequential but not truly consecutive, *i.e.*, there is a gap between service of incarceration periods, and where the first sentence had been completely served when a habeas petition was filed challenging it. The

Court held that Maleng was not in custody pursuant to the fully served prior sentence, noting that "We have never held . . . that a habeas petitioner may be 'in custody' under a conviction when the sentence imposed for the conviction has *fully expired* at the time his petition is filed." *Maleng,* 490 U.S. at 491, 109 S.Ct. at 1925.[3] And the Court rejected the possibility that the collateral consequences of a conviction, including its use as a prior conviction to enhance the sentencing level for a subsequent offense, could create custody as to an expired sentence. *Id.* at 492-93, 109 S.Ct. at 1926.

Maleng was serving a federal sentence, and had a detainer from Washington to serve a 1978 conviction which he had not yet served, but was attempting to challenge a 1958 Washington conviction which enhanced the sentence for the 1978 conviction. 490 U.S. at at 489-90, 109 S.Ct. at 1924-25. The Court said that his petition could be "read as asserting a challenge to the 1978 sentences, as enhanced by the allegedly invalid prior [1958] conviction," and that he was thus in custody for habeas purposes. *Id.* at 493, 109 S.Ct. at 1927. But the Court concluded, "We express no view on the extent to which the 1958 conviction itself may be subject to challenge in the attack upon the 1978 sentences which it was used to enhance." *Id.* at 494, 109 S.Ct. at 1927. Many lower courts, the Ninth Circuit included, interpreted the Court's leaving of the "open question" in *Maleng* as a tacit endorsement of the constitutionality of the back-door "as enhanced by" approach, where a current offense sufficed to create

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[3] Although the Court did not refer to it, the anti-time-banking principle recognized by courts, *see, e.g., United States v. Jackson,* 952 F.3d 492, 498 (4th Cir. 2020), *i.e.,* the principle that if one conviction is invalidated, time served on it will not be credited against another later and completely unrelated sentence, in order to avoid giving criminals a "line of credit" against future incarceration, explains this result, because if the first conviction is invalidated, it will still not hasten the petitioner's release on the later sentence. Also, the clear separation between incarceration periods makes it possible to allocate credit among the sentences.

custody, which was viewed as a mere jurisdictional hook which then allowed the habeas court to invalidate the prior conviction's use to affect the current sentence (and in some circuits, to universally invalidate the prior conviction). *Feldman v. Perrill,* 902 F.2d 1445, 1448-49 (9th Cir. 1990); *Young v. Vaughn,* 83 F.3d 72, 78 (3d Cir. 1996).

In *Lackawanna County District Attorney v. Coss*, 532 U.S. 394, 121 S.Ct. 1567 (2001), the Court rejected this approach. This Court held that "once a state conviction is no longer open to direct or collateral attack in its own right because the defendant failed to pursue those remedies while they were available (or because the defendant did so unsuccessfully), the conviction may be regarded as conclusively valid." *Id.* at 403, 121 S.Ct. at 1574. This is true even when the prior conviction enhances the sentence for the petitioner's current offense. *Id.* at 403-04, 121 S.Ct. at 1574.

III. Why *Zichko v. Idaho* and Its Application to *Wright v. Alaska* Should Be Overruled

To fully understand why *Zichko v. Idaho* is wrong, it is helpful to understand the Ninth Circuit's pre-*Lackawanna* interpretation of *Maleng* and the history of amending the *Zichko* decision. As earlier noted, Maleng had a detainer from Washington to serve a 1978 conviction which he had not yet served, but was attempting to challenge a 1958 Washington conviction which enhanced the sentence for the 1978 conviction. *Maleng,* 490 U.S. at 489-90, 109 S.Ct. at 1924-25. The Court said that his petition could be "read as asserting a challenge to the 1978 sentences, as enhanced by the allegedly invalid prior [1958] conviction," and that he was thus in custody for habeas purposes. *Id.* at 493, 109 S.Ct. at 1927. But the Court concluded, "We express

no view on the extent to which the 1958 conviction itself may be subject to challenge in the attack upon the 1978 sentences which it was used to enhance." *Id.* at 494, 109 S.Ct. at 1927. As noted previously, the Ninth Circuit interpreted the Court's leaving of the "open question" in *Maleng* as a tacit endorsement of the approach where a current offense sufficed to create custody, which was viewed as a jurisdictional hook which then allowed the habeas court to invalidate a prior conviction's use to affect the sentence for the current offense. *See, e.g., Brock v. Weston,* 31 F.3d at 890-91; *Feldman v. Perrill,* 902 F.2d at 1448-49.

This Court decided *Lackawanna* on April 25, 2001, only eight days before the slip opinion in *Zichko* was issued on May 3, 2001. *Lackawanna,* 532 U.S. at 394, 121 S.Ct. at 1567; *Zichko*, 247 F.3d at 1015. The Ninth Circuit was apparently unaware of *Lackawanna* when it issued its slip opinion. *See* App. 127a-135a. The slip opinion applied the same interpretation of *Maleng* that the Ninth Circuit had long applied, as allowing a habeas challenge to a fully served prior conviction if it had the effect of enhancing the sentencing range for the current offense, under the view that the petitioner's custody as to the current offense permitted a collateral attack on any related convictions. But then *Lackawanna* came to the court's attention, and on June 5, 2001, the Ninth Circuit issued an amended opinion, adding two paragraphs found at 247 F.3d at 1020, beginning with "The Supreme Court's recent decision in *Lackawanna* . . . is not to the contrary" and "Because we now hold . . . ." The court decoupled *Lackawanna*'s holding in an odd way and then concluded that it had not changed the validity of the Ninth Circuit's interpretation of *Maleng*. *Id.* With that background in

mind, it is easier to appreciate why *Zichko* is at odds with both *Maleng* and *Lackawanna.*

A. *Zichko* ignored *Maleng* and *Lackawanna*'s holdings that an earlier, fully served conviction cannot be challenged in habeas merely because it bears some connection to the offense for which the petitioner is in custody

First, *Zichko* failed to grasp that the correct resolution of *Maleng*'s open question, as applied to its holding that Maleng was in custody as to the 1978 Washington sentence, not the 1958 Washington sentence, was that the merits challenge which the Court held could be entertained in *Maleng* was to the later sentence. That is, *Zichko* recognized *Maleng*'s fact pattern, but implicitly concluded that in stating the question left open at the end of *Maleng* – whether the prior conviction can be collaterally attacked when the petitioner is only in custody as to a later conviction – this Court was intimating an affirmative answer and that this was *Maleng*'s true holding. But *Lackawanna* answered this question in the negative. 532 U.S. at 402-04, 121 S.Ct. at 1573-74.

B. *Zichko* failed to follow *Maleng*'s holding that the collateral consequences of a fully served conviction do not constitute "custody"

Second, *Zichko* failed to apply *Maleng*'s holding that the collateral consequences of a fully served conviction do not create custody, even those consequences that actually materialize. To be sure, federal courts have not been able to coalesce around a uniform test for what constitutes a collateral consequence of a conviction, as this Court recognized in *Padilla v. Kentucky*, 559 U.S. 356, 364 n.8, 130 S.Ct. 1473, 1481 n.8 (2010). But as the Ninth Circuit has recognized, whatever one can say about

the criteria for what makes something a collateral consequence, a consequence is clearly collateral when it is imposed by a separate sovereign. *Resendiz v. Kovensky,* 416 F.3d 952, 957 (9th Cir. 2005). Wright's obligation to register as a sex offender in any state that he might move to arose from federal law, in particular 18 U.S.C. § 2250(a), 34 U.S.C. § 20911, and 34 U.S.C. § 20913, and not from Alaska law.

Other circuits correctly understand *Maleng* and its application to sex offender registries. In *Piasecki v. Court of Common Pleas,* the Third Circuit, after articulating its unique view that the conditions associated with being on the sex offender registry in Pennsylvania were so onerous as to make it analogous to probation, and thus "custody" for habeas purposes, went on to state that "this is not a situation where Piasecki was in custody as a result of an intervening judgment such as a separate conviction or a civil commitment hearing. In those cases, a litigant could not challenge a previously expired conviction that is no longer the source of any restrictions." 917 F.3d at 177. In other words, an intervening judgment such as a conviction for failure to register as a sex offender would constitute custody only as to that new offense. Or as the Sixth Circuit noted, if "Hautzenroeder were to violate [Ohio's sex offender registry] requirements, any repercussions would stem not from her original conviction but from a new, separate criminal proceeding." *Hautzenroeder v. Dewine,* 887 F.3d at 743.

C. *Zichko* erroneously relied on now-defunct Fifth Circuit case law holding that a habeas petitioner will satisfy the custody requirement when "he is in custody pursuant to another conviction that is positively and demonstrably related to the conviction he attacks"

Zichko also erred in relying on Fifth Circuit case law holding that a habeas petitioner will satisfy the custody requirement when "he is in custody pursuant to another conviction that is positively and demonstrably related to the conviction he attacks." 247 F.3d at 1019 (quoting *Carter v. Procunier,* 755 F.2d 1126, 1129 (5th Cir. 1985)). The Fifth Circuit later summarized this approach, stating that "'in custody' for jurisdiction under § 2254(a) does not necessarily mean 'in custody for the offense being attacked.'" *Young v. Lynaugh,* 821 F.2d 1133, 1137 (5th Cir. 1987) (cited and quoted cases omitted). Notably, however, this approach predates both *Maleng* and *Lackawanna.* Accordingly, the Fifth Circuit later abandoned this test, albeit in fits and starts and with some back-tracking, recognizing that it was inconsistent with the principles set out in *Peyton, Garlotte, Maleng,* and *Lackawanna* as to when offenses may be sufficiently connected such that a habeas petitioner may be deemed in custody on and able to challenge a conviction for which he is not currently serving the sentence. *See Hendrix v. Lynaugh,* 888 F.2d 336, 338 (5th Cir. 1989) (purporting to abolish *Young v. Lynaugh* test), *Allen v. Collins,* 924 F.2d 88, 89 (5th Cir. 1991) (applying it), *Willis v. Collins,* 989 F.2d 187, 189 (5th Cir. 1993) (same), and *United States v. Clark,* 284 F.3d 563, 565-67 (5th Cir. 2002) (finally abandoning it post-*Lackawanna*).

Zichko was wrong to rely on the Fifth Circuit's now-abandoned "positively and demonstrably related" test as the basis for evaluating custody status when there is a

time gap between the time of the habeas litigation and the actual service of the sentence on the challenged conviction. This test is too loose and amounts to a presumption in favor of finding custody with respect to a completely served sentence, whenever there is some type of connection between the current offense that the petitioner is actually in custody on and the prior offense. Such examples may include the prior offense being used to enhance the sentencing range for the current offense, or being a necessary predicate for the current offense.

The Seventh Circuit has provided the best explanation of the "custody" test stated in a positive form, stating that "a habeas petitioner is not 'in custody' pursuant to a particular conviction unless his physical liberty of movement is limited in a non-negligible way and that limitation is a direct consequence of the challenged conviction." *Stanbridge v. Scott,* 791 F.3d 715, 719 (7th Cir. 2015).

D. *Zichko* is at odds with this Court's cases recognizing that the connection between the petitioner's current restraints and the judgment or order that the petitioner challenges cannot be unduly attenuated, and there are multiple points of attenuation here

1. Sex offenders have volitional control over compliance with a duty to register

The above analysis sets out why *Zichko* is at odds with *Maleng* in particular, but it is also at odds with other aspects of this Court's articulation of principles governing habeas corpus relief. The opposite limitation inherent in the "direct connection" standard described by *Stanbridge* is that there cannot be significant attenuation between the custody the petitioner is currently subject to and the prior criminal

charge or judgment which the petitioner challenges and claims is the genesis of his current custody.

The anti-attenuation concept can be seen in *Wales v. Whitney,* 114 U.S. 564, 5. S.Ct. 1050 (1885). The Secretary of the Navy issued an order to the Navy's chief surgeon, telling him that he was confined to the District of Columbia pending the outcome of court-martial proceedings, and the surgeon sought habeas relief. *Id.* at 567-68, 5 S.Ct. at 1050. This Court rejected the claim that this order constituted custody, stating:

> Something more than moral restraint is necessary to make a case for habeas corpus. There must be actual confinement or the present means of enforcing it. The class of cases in which a sheriff or other officer, with a writ in his hand for the arrest of the person whom he is required to take into custody, to whom the person to be arrested submits without force being applied, comes under this definition. The officer has authority to arrest, and the power to enforce it. If the party named in the writ resists or attempts to resist arrest, the officer can summon bystanders to his assistance, and may himself use personal violence. Here the force is imminent and the party is in presence of it.

Id. at 572, 5 S.Ct. at 1053. But this Court noted that the Secretary's order telling the surgeon that he was required to remain in the District of Columbia lacked these characteristics, noting that no one was supervising the surgeon and that if he took a train out of the district, no one would stop him. *Id.* at 572, 5 S.Ct. at 1053-54. This Court noted that in such a situation, his arrest by the Secretary would require another order, and ultimately would be imprisonment pursuant to that distinct order. *Id.* at 572, 5 S.Ct. at 1054. The Court stated, "The fear of this latter proceeding, which may or may not keep Dr. Wales within the limits of the city, is a moral restraint which concerns his own convenience, and in regard to which he exercises his own will." *Id.*

at 572, 5 S.Ct. at 1054. By contrast, in *Jones v. Cunningham,* 371 U.S. 236, 83 S.Ct. 373 (1963), the Court explained why the situation of a parolee was more like that of the person subject to an arrest warrant, stating, "He can be rearrested at any time the Board or parole officer believes he has violated a condition of his parole, and he might be thrown back in jail to finish serving the allegedly invalid sentence with few, if any of the procedural safeguards that normally must be and are provided to those who are charged with a crime." *Id.* at 242, 83 S.Ct. at 377.

To summarize, when the conditions that the petitioner claims constitute custody do not spring from behavior that he has already committed and which was the basis for the petitioner's original judgment of conviction, but rather would come into being only upon the petitioner's new act (which he has the ability not to commit), and where such a consequence could not be imposed without the interposition of a new criminal trial, the connection between the original conviction and the possible consequence of failing to abide by a condition which was itself a collateral consequence of the original conviction is too attenuated for that consequence to constitute custody *pursuant to* the judgment for the original conviction. That is why the *Piasecki* and *Hautzenroeder* cases recognize that incarceration as punishment for failing to register as a sex offender does not constitute custody that would revive the right to collaterally attack the fully served underlying sex offense conviction which triggered the duty to register. Sex offenders have volitional control over compliance with the duty to register as a sex offender, and in a mootness/attenuation analysis, it is presumed

they will follow the law. *Spencer v. Kemna,* 523 U.S. 1, 15, 118 S.Ct. 978, 986-87 (1998).

The Ninth Circuit correctly recognized the attenuation concept in a case *Zichko* relied on, *Brock v. Weston,* stating that a state civil commitment as a sexually violent predator was not custody with respect to the underlying sex offense conviction because "confinement under the Act is not simply an extension of an inmate's previous sentence; it has additional prerequisites and involves a separate jury trial." 31 F.3d at 889. But, later in the decision, *Brock* went awry because it failed to understand *Maleng*'s true holding and concluded that despite the attenuation between the sex offense and the petitioner's civil commitment, Brock could nonetheless challenge the sex offense because his current custody pursuant to the commitment order allowed him to collaterally attack anything related to that order. *Zichko* repeated the error.

2. Failure to register as a sex offender is a status offense not contingent on the validity of the underlying sex offense conviction

Another basis of attenuation between a conviction for a sex offense and a conviction for failure to register as a sex offender is that the latter offense is a status offense, *i.e.*, the duty to register is triggered by the mere fact of a sex offense conviction, and the validity or invalidity of the conviction is irrelevant to that.[4] Invalidation of the underlying sex offense conviction may eliminate the on-going duty to register,

[4] This is true under the federal SORNA statutes, as the First Circuit recognized in *United States v. Roberson*, 752 F.3d 517, 520-25 (1st Cir. 2014). It is likewise true of many state failure-to-register offenses. *See, e.g., In re Watford,* 112 Cal.Rptr.3d 522, 525-28 (Ct. App. 2010); *State v. G.L.,* 19 A.3d 1017, 1020-23 (N.J. Super., App. Div. 2011).

but it will not invalidate a conviction for failing to register obtained before the underlying conviction was invalidated. Thus, a habeas action invalidating the sex offense conviction would not implicate the core purpose of habeas, because it would not obtain the petitioner's release from the failure-to-register conviction.

3. When the failure to register conviction is from a separate sovereign than the underlying sex offense conviction, that sovereign is not required to credit time on the sex offense sentence against the failure to register sentence if the former is vacated

With respect to attenuation, *Wright*'s reliance on and extension of *Zichko* is also wrong because of its failure to recognize the separate-sovereigns aspect that further attenuates the connection between the offenses at issue.[5] As noted previously, this Court has adverted to this distinction several times but not had occasion to discuss it in detail and show when this concept may come into play and make a difference in a custody analysis. This case presents an excellent vehicle for the Court to do so.

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[5] One key distinction that must be made is that the separate-sovereigns distinction does not come into play at all when a petitioner with consecutive sentences is currently serving an earlier conviction in the string of sentences and seeks to attack a *future*, yet-to-be-served conviction. None of the concerns noted in the text below, discussing the exception, come into play when the conviction from a separate sovereign is a future, yet-to-be-served sentence, and the invalidation of the future sentence will fulfill one of the key purposes of habeas in that it will speed up the petitioner's release. The Fifth Circuit correctly recognized this difference in the applicability of the separate-sovereigns exception to attacks on past versus future sentences in *Rubio v. Davis,* 907 F.3d 860, 862 (5th Cir. 2018), noting that "[t]he State's reliance on *Stanbridge v. Scott,* 791 F.3d 715 (7th Cir. 2015), is misplaced because that case involved a challenge to a past conviction for which the petitioner had already fully served his sentence." A panel judge expressed skepticism of the separate-sovereigns exception at oral argument, noting that there were situations that it seems to have no applicability, but this distinction explains why that is so, and why it works against Wright, because his challenge is to a prior conviction from a separate sovereign.

The first basis for the separate-sovereigns exception is rooted in principles of comity, finality, and federalism. These considerations appropriately factor into defining "custody" in 28 U.S.C. § 2254.[6] Habeas works major inroads on all of these things, allowing as it does relitigation and vacation of state convictions. And there are therefore limits to what a separate government can do. Suppose state law defined offense X by making it only punishable by a fine, which does not create custody under § 2254. It might be within the federal government's powers to enact a law that says, for each person convicted in state court of offense X, the defendant will also be punished by one year in federal prison. But the federal government could not by the expedient of enacting such a law create habeas custody over persons convicted in state court of this offense and thus allow a collateral attack on the state-court judgment. One sovereign cannot by attaching its own consequences to the conviction of another sovereign expose that conviction to a springing and revived right to collaterally attack it. The additional consequences imposed by those laws are the affair of the enacting jurisdiction and do not create custody as to the earlier conviction. *Harris v. Ingram,* 683 F.2d 97, 98 (4th Cir. 1982) ("[a]ny effect the Virginia conviction might have on his present custody is due to federal law"); *Hanson v. Circuit Court,* 591 F.2d 404, 409 (7th Cir. 1979) (same observation as to California law); *Noll v. Nebraska,* 537 F.2d 967, 970 (8th Cir. 1976).

The second reason why the separate-sovereigns rationale comes into play in defining the scope of custody when the prior conviction is from another jurisdiction is

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[6] *Wright v. West*, 505 U.S. 277, 293, 112 S.Ct. 2482, 2491 (1992); *Lehman v. Lycoming County Children's Services Agency*, 458 U.S. 502, 512 & n.15, 102 S.Ct. 3231, 3238 & n.15 (1982).

because if the habeas action attacking the prior conviction were successful and it was fully vacated, the federal government (or the other state, if the current conviction is from another state) is not required to credit time spent in custody on the now-vacated conviction against the conviction which constitutes the petitioner's current basis of custody. *Setser v. United States*, 566 U.S. 231, 235-42, 132 S.Ct. 1463, 1468-72 (2012); *Pinaud v. James*, 851 F.2d 27, 30-31 (2d Cir. 1988). Accordingly, such an action would not achieve the core purpose of habeas, to achieve the immediate, or at least the speeded up release of the petitioner. This is another doctrinal underpinning of the separate-sovereigns doctrine. *See Diaz v. State of Florida, Fourth Judicial Circuit Court,* 683 F.3d 1261, 1264-65 (11th Cir. 2012).[7]

As noted previously, the Ninth Circuit has recognized the separate-sovereigns distinction regarding custody in *Contreras v. Schiltgen*, 122 F.3d 30, 33 (9th Cir. 1997), *Allen v. Oregon,* 153 F.3d 1046, 1048 (9th Cir. 1998), and *Resendiz v. Kovensky,* 416 F.3d 952, 952 (9th Cir. 2005). But the court provided little explanation of the conceptual underpinnings of this rule in those cases, and the panel in *Wright* implicitly rejected the state's invocation of this principle and concluded that *Zichko* created a carve-out for sex offenders from the separate-sovereigns doctrine. That carve-out

[7] In the context of consecutive sentences, this Court has noted that an additional reason for treating consecutive sentences imposed by the *same sovereign* as a continuous stream of custody is the practical difficulty in separating out and allocating the credit against each sentence, and figuring out exactly when one sentence ends and the next sentence begins. *Garlotte v. Fordice,* 515 U.S. 39, 45-46 & n.5, 115 S.Ct. 1948, 1952 n.5 (1995). But in the context of sentences imposed by separate sovereigns, it is not difficult to do so. Before handing over a prisoner to another sovereign, the first sovereign would perform a time-accounting to ascertain when the prisoner would have served its sentence, and the transfer point would in general mark the date when the first sentence had been served. And this ability to make this distinction in the separate-sovereigns context is an additional reason why custody is not pursuant to the prior judgment of another sovereign when the petitioner is currently in the custody of a separate sovereign.

was unwarranted and this Court should take review of this case and provide guidance to lower courts regarding the separate-sovereigns exception.

IV. This Case is a Good Candidate for Summary Reversal

The decision that the panel relied on, *Zichko v. Idaho*, was published and has been on the books for 19 years. It was wrong when issued, and the Court might have been justified in giving the Ninth Circuit a few years to correct its own error, but two decades have gone by and the Ninth Circuit has not done so. Instead, it has extended *Zichko*'s holding to cases where the predicate conviction being attacked was imposed by a separate sovereign. The Ninth Circuit stands alone in its holding in *Zichko,* but it is the largest federal circuit, comprising of almost 20 percent of the United States' population. The *Zichko* holding is flatly at odds with this Court's clear case law but the Ninth Circuit shows no inclination to correct the error. Given the above, this Court should summarily reverse the panel decision in this case and overrule *Zichko* in a published decision.

CONCLUSION

The Ninth Circuit's decision in *Zichko v. Idaho,* holding that a conviction for failure to register as a sex offender will revive "custody" status as to an otherwise fully served conviction for the underlying sex offense, has gained new significance as both states and the federal government have passed laws making sex offenders who leave their state of conviction and move to other states register as a sex offender in the destination state. In this situation, many more offenders may be convicted of fail-

ure to register, and then attempt to file a habeas challenge to their long-expired sentence for the underlying sex offense that triggered the duty to register. Moreover, *Zichko*'s holding also presents this same situation with respect to a common criminal offense, felon in possession of a firearm, allowing a felon to revive a challenge to an otherwise fully expired felony conviction if the felon is convicted of a new offense of felon in possession. *Davis v. Nassau County,* 524 F.Supp.2d 182, 189-90 (E.D.N.Y. 2007) (rejecting *Zichko,* and noting that its rationale if accepted would permit revived attacks on felony convictions if the person were later convicted of being a felon in possession of a firearm). And *Zichko* creates conflict with, and confusion as to the operation of, the statute of limitations for federal habeas petitions in 28 U.S.C. § 2244(d)(1). Indeed, in rejecting the right to collaterally attack prior convictions that affect the length of the sentence for a current offense, this Court noted that to rule otherwise would "sanction an end run around statutes of limitations[.]" *Daniels v. United States,* 532 U.S. 374, 383, 121 S.Ct. 1578, 1584 (2001).

This case presents significant issues that call for this Court's attention. The Court should grant review, summarily reverse the Ninth Circuit panel decision in this case, and overrule the *Zichko* decision on which it relies. This court should affirm Judge Singleton's dismissal of Wright's habeas petition on the basis that he was not in custody in connection with his Alaska state-court sex offenses when he filed the petition attempting to challenge them.

Dated this 7th day of January, 2021, at Anchorage, Alaska.

Respectfully Submitted,

CLYDE "ED" SNIFFEN, JR.
Acting Attorney General

TIMOTHY W. TERRELL
Counsel of Record
Assistant Attorney General
State of Alaska, Dept. of Law
Office of Criminal Appeals
1031 W. 4th Ave., Suite 200
Anchorage, Alaska 99501
907-269-6383
tim.terrell@alaska.gov

Counsel for Petitioner