IN THE SUPREME COURT OF THE UNITED STATES

No. 21-511

TIM SHOOP, WARDEN, PETITIONER

v.

RAYMOND A. TWYFORD, III

(CAPITAL CASE)

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

MOTION OF THE UNITED STATES FOR LEAVE TO PARTICIPATE
IN ORAL ARGUMENT AS AMICUS CURIAE, FOR DIVIDED ARGUMENT,
AND FOR ENLARGEMENT OF TIME FOR ARGUMENT

Pursuant to Rule 28 of the Rules of this Court, the Solicitor General, on behalf of the United States, respectfully moves that the United States be granted leave to participate in the oral argument in this case as an amicus curiae supporting neither party; that the time allotted for oral argument be enlarged to 65 minutes; and that the United States be allowed 15 minutes of argument time, with both parties allowed 25 minutes of argument time. The United States has filed a brief as amicus curiae in support of neither party, supporting respondent on the first question presented and petitioner on the second. Respondent has consented to this motion and agreed to cede five minutes of argument time to the United

States. Petitioner does not oppose granting leave to the United States to participate in the oral argument or enlarging the time for oral argument to allow the United States 15 minutes of argument time. But petitioner opposes the division of time proposed above on the ground that, although the United States and petitioner agree that the court of appeals erred in its resolution of the second question presented, petitioner argues that the decision below should be reversed, whereas the United States argues that it should be vacated and the case remanded for further proceedings. Petitioner proposes that the time be divided as follows: 30 minutes for petitioner, 15 minutes for the United States, and 25 minutes for respondent.

1. The first question presented concerns whether and under what circumstances the All Writs Act, 28 U.S.C. 1651, can authorize a federal district court to order a state prisoner to be transported for a medical test or examination. For several reasons, the United States has a substantial interest in the resolution of that question.

First, the United States litigates cases that could require such orders. For example, it prosecutes state and local correctional and law-enforcement officers who willfully violate, or conspire to violate, constitutional rights while acting under color of law. See 18 U.S.C. 241-242. In prosecutions involving allegations of excessive force, medical examinations or testing

may be necessary to resolve disputes over the existence and extent of a victim's injuries. Because state prisoners may be victims of such crimes, the United States has a substantial interest in ensuring that it would be able to obtain transport of state prisoners for medical tests if necessary. The United States also has a substantial interest in ensuring that constitutional rights can be vindicated through private suits under 42 U.S.C. 1983, which likewise may require medical testing of state prisoners.

Second, the United States has a substantial interest in opposing petitioner's argument that 28 U.S.C. 2241(c)'s authorization of writs of habeas corpus in specified circumstances prohibits courts from ordering prisoner transport in any other circumstances. Pet. Br. 18-19, 29-34. Were the Court to hold that Section 2241(c) forecloses all prisoner transport orders not expressly addressed in that section, it would call into question federal courts' authority to grant ultimate relief requiring prisoner transport -- such as for medical treatment or a transfer to a different prison. Pursuant to its authority under the Civil Rights of Institutionalized Persons Act, 42 U.S.C. 1997 et seq., and Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. 12131, the United States seeks and obtains consent judgments and other orders governing the conduct of state and local prisons, which may require the transport of prisoners for off-site medical treatment. The United States thus has a substantial

interest in ensuring that courts have authority to enter such judgments and issue orders enforcing them.

Third, as the most frequent litigant in the federal courts, the United States has a substantial interest in the sound and consistent application of the All Writs Act. The United States frequently litigates the scope of the Act in this Court. See, e.g., United States v. Denedo, 556 U.S. 904 (2009) (No. 08-267); Clinton v. Goldsmith, 526 U.S. 529 (1999) (No. 98-347); Pennsylvania Bureau of Corr. v. United States Marshals Serv., 474 U.S. 34 (1985) (No. 84-489); United States v. New York Tel. Co., 434 U.S. 159 (1977) (No. 76-835). The manner in which the Court decides the question presented here thus may have an effect on the United States not only in cases implicating state prisoner transport, but also in other cases involving the All Writs Act.

2. The second question presented is whether a court asked to invoke the All Writs Act to order the transportation of a state prisoner for a medical test in connection with a habeas petition under 28 U.S.C. 2254 must first determine that the results of the test could be used to establish the prisoner's entitlement to relief. The answer to that question turns in part on the standards governing discovery in Section 2254 cases, including the requirement that discovery only be authorized on a finding of "good cause." Rules Governing Section 2254 Cases in the United States District Courts, Rule 6(a) (Section 2254 Rules). Those standards

overlap with the standards that govern discovery in postconviction proceedings for federal prisoners under 28 U.S.C. 2255, which include the same "good cause" requirement. Rules Governing Section 2255 Proceedings in the United States District Courts, Rule 6(a). The United States therefore has a substantial interest in the resolution of the second question presented.

The United States has previously participated in oral argument as amicus curiae in Section 2254 cases that involve the same or similar standards as those applied in Section 2255 cases. See, e.g., Banister v. Davis, 140 S. Ct. 1698 (2020) (No. 18-6943); Wood v. Milyard, 566 U.S. 463 (2012) (No. 10-9995); Gonzalez v. Thaler, 565 U.S. 134 (2012) (No. 10-895); Mayle v. Felix, 545 U.S. 644 (2005) (No. 04-563). And the United States participated in oral argument as amicus curiae in Harris v. Nelson, 394 U.S. 286 (1969) (No. 199), where the Court considered whether the All Writs Act could be used to create procedures governing discovery sought by a state prisoner in federal habeas proceedings (before the Court issued the Section 2254 Rules).

In light of the government's substantial interests in both questions presented, we believe that the United States' participation at oral argument could materially assist the Court in its consideration of this case.

Respectfully submitted.

ELIZABETH B. PRELOGAR
Solicitor General

MARCH 2022