No. 21-6200

IN THE SUPREME COURT OF THE UNITED STATES

JESUS RUIZ, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether petitioner was entitled to seek relief under 28 U.S.C. 2255 from his convictions under 18 U.S.C. 924(c) (1994), notwithstanding the lower courts' determination that any error would be harmless in light of petitioner's additional, unchallenged convictions and seven life sentences.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-30a) is reported at 990 F.3d 1025. The order of the district court (Pet. App. 31a-34a) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on March 10, 2021. A petition for rehearing was denied on August 4, 2021 (Pet. App. 35a-45a). The petition for a writ of certiorari was filed on October 29, 2021. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the Northern District of Illinois, petitioner was convicted on one count of conspiring to commit racketeering, in violation of 18 U.S.C. 1962(d); one count of conspiring to commit kidnapping, in violation of 18 U.S.C. 1201(c); one count of kidnapping resulting in death, in violation of 18 U.S.C. 1201(a) (1994); one count of assaulting a federal officer, in violation of 18 U.S.C. 111 (1994); four counts of hostage-taking, including one count resulting in death, in violation of 18 U.S.C. 1203(a); and three counts of using a firearm during and in relation to a crime of violence, in violation of 18 U.S.C. 924(c) (1994). Pet. App. 3a. He was sentenced to seven concurrent terms of life imprisonment, a ten-year concurrent term of imprisonment, and an additional 45-year consecutive term of imprisonment, to be followed by five years of supervised release. Ibid.; C.A. App. A65-A66. The court of appeals affirmed, 191 F.3d 799, and this Court denied a petition for a writ of certiorari, 528 U.S. 1180 (2000) (No. 99-7852).

In 2006, the district court denied petitioner's motion under 28 U.S.C. 2255 to vacate, set aside, or correct his sentence, and the court of appeals denied a certificate of appealability (COA). C.A. App. A81-A95, A96. In 2016, petitioner sought leave to file a second-or-successive Section 2255 motion, which the court of

appeals granted. Pet. App. 4a-5a. Petitioner then filed a motion under Section 2255, which the district court denied. Id. at 31a-34a. The court of appeals affirmed. Id. at 1a-30a.

1. Petitioner was "an 'enforcer' collecting drug debts for a Mexican cartel." Pet. App. 2a. Petitioner and his co-conspirators "collected payments by kidnapping at gunpoint debtors or their family members, holding them hostage, and beating the victims until ransom payments were made." Ibid.

In the month before his capture, petitioner and his co-conspirators kidnapped four individuals. Pet. App. 2a. Although three of the victims escaped, the fourth victim, the 17-year-old brother of a debtor, "was not so fortunate." Ibid. He was kidnapped in Milwaukee, driven to Chicago, and held captive in an apartment, where one of petitioner's co-conspirators shot him in the stomach. Ibid. The co-conspirator locked the victim in a bathroom, where he was left without treatment for over 30 hours. Ibid.; see Presentence Investigation Report ¶¶ 14, 18.

After the victim went missing, his family contacted law enforcement. Pet. App. 2a. Agents with the Federal Bureau of Investigation orchestrated a controlled ransom delivery operation. Id. at 2a-3a. As the agents approached, however, the kidnappers fled and led the agents on a high-speed chase. Id. at 3a. At one point, one of petitioner's co-conspirators pointed a gun at a

federal agent. Ibid. The chase ended after an agent struck the conspirators' car, and they were apprehended. Ibid. The victim was not found until the next morning; he later died of his wounds. Ibid.

2. A federal grand jury indicted petitioner on one count of conspiring to commit racketeering, in violation of 18 U.S.C. 1962(d); one count of conspiring to commit kidnapping, in violation of 18 U.S.C. 1201(c); one count of kidnapping resulting in death, in violation of 18 U.S.C. 1201(a) (1994); one count of assaulting a federal officer, in violation of 18 U.S.C. 111 (1994); four counts of hostage-taking, including one count resulting in death, in violation of 18 U.S.C. 1203(a); and three counts of using a firearm during and in relation to a crime of violence, in violation of 18 U.S.C. 924(c) (1994). Pet. App. 3a; see C.A. App. A5-A28 (Superseding Indictment). Each Section 924(c) count was based on a different underlying offense -- one on conspiring to commit kidnapping, one on kidnapping, and one on assault on a federal officer. Pet. App. 3a; C.A. App. A26-A28. A jury found petitioner guilty on all counts. Pet. App. 3a.

The district court sentenced petitioner to seven concurrent life sentences: one for conspiring to commit racketeering; four for hostage-taking, including one for hostage-taking resulting in death; one for conspiring to commit kidnapping; and one for

kidnapping resulting in death. C.A. App. A65-A66. The court observed that two counts of conviction -- hostage-taking resulting in death and kidnapping resulting in death -- carried mandatory life sentences. Pet. App. 3a-4a; see C.A. App. A65-A66. The court also imposed a ten-year term of imprisonment for assaulting a federal officer, to run concurrently to the life sentences. C.A. App. A65-A66; see Pet. App. 3a. Finally, for petitioner's three Section 924(c) convictions, the court imposed a five-year term of imprisonment and two twenty-year terms of imprisonment, each to run consecutively to the other sentences. Ibid.

The Seventh Circuit affirmed, 191 F.3d 799, and this Court denied a petition for a writ of certiorari, 528 U.S. 1180 (2000) (No. 99-7852). Petitioner subsequently filed several petitions for relief. See Pet. App. 4a. In 2006, the district court denied petitioner's motion under Section 2255 to vacate, set aside, or correct his sentence, and the court of appeals denied a COA. C.A. App. A81-A95, A96. Petitioner later filed an application to file a second or successive motion under Section 2255, which the court of appeals denied, C.A. App. A99-A100, and a petition for a writ of habeas corpus under 28 U.S.C. 2241, which the United States District Court for the Western District of Wisconsin denied, C.A. App. A106-A118.

3. In 2016, nearly two decades after his convictions, the court of appeals granted petitioner authorization to file a successive motion to vacate under Section 2255. Pet. App. 4a-5a; see 28 U.S.C. 2244(b)(3). Petitioner's Section 2255 motion challenged his three Section 924(c) convictions based on this Court's decision in Johnson v. United States, 576 U.S. 591 (2015), which held that the "residual clause" of the Armed Career Criminal Act of 1984, 18 U.S.C. 924(e)(2)(B)(ii), is unconstitutionally vague. See Pet. App. 4a-5a. Petitioner asserted that his Section 924(c) convictions should be vacated on the theory that the definition of "crime of violence" in Section 924(c)(3)(B) is likewise unconstitutionally vague, and his predicate crimes -- conspiracy to commit kidnapping, kidnapping, and assaulting a federal officer -- do not qualify as "crimes of violence" under the "elements clause" of Section 924(c)(3)(A). Id. at 5a-6a.

The district court denied petitioner's motion. Pet. App. 31a-34a. The court declined to decide the merits of petitioner's claims, because any error in his Section 924(c) convictions was "harmless." Id. at 33a. The court observed that petitioner "only challenged the consecutive sentences imposed by the Court after trial," and that even if he succeeded on that challenge, he would remain subject to seven concurrent life sentences, which "would remain in full force and effect." Ibid. The court accordingly

found that because the "ultimate sentence[] would not change," petitioner had "no avenue to relief." Ibid.

4. The court of appeals granted petitioner's request for a COA and affirmed. Pet. App. 1a-30a.

a. During the pendency of the appeal, this Court held in United States v. Davis, 139 S. Ct. 2319 (2019), that the definition of a "crime[] of violence" in Section 924(c)(3)(B) is unconstitutionally vague. Id. at 2336. In the court of appeals, the government acknowledged that Davis invalidated one of petitioner's convictions under Section 924(c), see Gov't C.A. Br. 14 (addressing conviction predicated on conspiracy to kidnap), but it maintained that the other Section 924(c) convictions remained valid because kidnapping resulting in death and assaulting a federal officer are crimes of violence under the alternative crime-of-violence definition in Section 924(c)(3)(A), id. at 15-25. The government also maintained that the district court had correctly found any error in petitioner's Section 924(c) convictions to be harmless, such that petitioner could not show the "actual prejudice" required for relief under Section 2255. See id. at 9-15.

Agreeing with the district court, the court of appeals found that on "the extraordinary fact pattern before [it]," it could not "say that any error underlying [petitioner's] § 924(c) convictions

could be considered anything other than harmless." Pet. App. 10a. The court of appeals observed that because petitioner would remain subject to seven concurrent life sentences, "even a complete vacatur of the § 924(c) convictions and their accompanying sentences" would not "reduce the time that [petitioner] must serve in prison." Id. at 10a-11a. The court accordingly reasoned that petitioner could not "show any prejudice befalling him from any erroneous § 924(c) convictions." Id. at 11a. And it found that petitioner could not "establish[] that he will suffer any concrete, non-speculative collateral consequences if [the court] decline[d] to reach the merits of his Davis claim, let alone any consequences affecting his 'custody' for purposes of" relief under Section 2255. Ibid.

The court of appeals acknowledged the "general presumption" that criminal convictions carry collateral consequences. Pet. App. 11a (citing Sibron v. New York, 392 U.S. 40 (1968)). But the court explained that such a presumption "does not establish the more specific precept that a criminal conviction can never be harmless [if the] collateral consequences are exceedingly remote and highly unlikely to ever manifest themselves." Ibid. The court found that to be the case here: "At bottom, [petitioner] point[ed] to no traditional collateral consequences -- like the loss of the right to vote, participate on a jury, or own a firearm -- that

would not also result from his unchallenged convictions and life sentences." Id. at 12a. And accepting that the $300 special assessment petitioner was ordered to pay for each Section 924(c) conviction did constitute a collateral consequence, the court determined that it did not provide a basis for relief under Section 2255, which "serves as a remedy to contest a prisoner's custody -- not the imposition of fines or other special assessments." Ibid. Finally, the court found that petitioner failed to "forecast[] any foreseeable changes in the law that [would] call into question his seven life sentences," particularly because "even if the law were to change," it would not affect petitioner's sentences unless Congress or this Court decided "to apply the [new] law retroactively." Id. at 13a.

While emphasizing that the concurrent-sentence doctrine -- a "discretionary doctrine [that] allows courts to 'pretermit decision about convictions producing concurrent sentences, when the extra convictions do not have cumulative effects'" -- did not apply to petitioner's consecutive sentences for his Section 924(c) convictions, the court of appeals considered it an apt "analogy" for the circumstances here. Pet. App. 13a (quoting Ryan v. United States, 688 F.3d 845, 849 (7th Cir. 2012), cert. denied, 568 U.S. 1162 (2013)). The court observed that "the same considerations of futility, speculation, and preservation of judicial resources that

underpin[]" the concurrent-sentence doctrine supported a finding of harmlessness "in the face of [petitioner's] seven remaining and valid life sentences." Id. at 15a. In doing so, the court stressed the "narrow[ness]" of its decision, explaining that it depended on the "exceedingly rare" circumstances before it. Id. at 18a.

b. Judge Wood dissented. Pet. App. 19a-30a. She agreed that "harmless-error analysis is required for a section 2255 motion," but would have held that petitioner's Section 924(c) convictions were ipso facto "harmful," and that the possibility that the terms of imprisonment for those convictions would become applicable if legal reforms were to invalidate all of petitioner's remaining convictions and life sentences was a sufficient "collateral consequence" of those convictions to support relief. Id. at 21a-22a, 25a-29a.

c. The court of appeals denied petitioner's petition for rehearing and rehearing en banc. Pet. App. 35a-36a. Judge Wood again dissented, in an opinion joined by Judges Rovner and Hamilton. Id. at 37a-45a.

ARGUMENT

Petitioner contends (Pet. 10-16) that the lower courts erred in finding any error in his Section 924(c) convictions harmless on collateral review. Petitioner further suggests (Pet. 16-20) that the court of appeals' discussion of the concurrent-sentence

doctrine entrenches a disagreement among the courts of appeals. Those contentions lack merit. The court of appeals correctly observed that any decision regarding petitioner's 924(c) convictions would have no effect on his custody, and any tension among the courts of appeals regarding the concurrent-sentence doctrine is not implicated by the decision below, because the court of appeals did not apply that doctrine in this case. No further review is warranted.

1. Section 2255 authorizes federal prisoners to file a motion to vacate, set aside, or correct their sentences on specifically enumerated grounds, namely, where the sentence "was imposed in violation of the Constitution or laws of the United States, or * * * the court was without jurisdiction to impose such sentence, or * * * the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack." 28 U.S.C. 2255(a). That statutory remedy, however, "does not encompass all claimed errors in conviction and sentencing." United States v. Addonizio, 442 U.S. 178, 185 (1979). "[A]n error that may justify reversal on direct appeal will not necessarily support a collateral attack on a final judgment." Id. at 184; see United States v. Frady, 456 U.S. 152, 166 (1982) ("We reaffirm the well-settled principle that to obtain collateral relief a prisoner must

clear a significantly higher hurdle than would exist on direct appeal.").

To qualify for relief under Section 2255, a movant must identify a constitutional violation, a jurisdictional defect, or a non-constitutional error that amounts to "a fundamental defect which inherently results in a complete miscarriage of justice, []or an omission inconsistent with the rudimentary demands of fair procedure." United States v. Timmreck, 441 U.S. 780, 783-784 (1979) (quoting Hill v. United States, 368 U.S. 424, 428 (1962)). In addition, in the context of Section 2255, the ultimate determination focuses on whether the defendant has demonstrated an error that affects his "custody." 28 U.S.C. 2255(a) ("A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released" on particular grounds "may move the court which imposed the sentence to vacate, set aside or correct the sentence."); see Heflin v. United States, 358 U.S. 415, 421 (1959) (Stewart, J., concurring) (Section 2255 was intended to maintain "the basic principle of habeas corpus that relief is available only to one entitled to be released from custody.").

A movant who can show error in his custody then bears the further burden of establishing that the error was prejudicial, i.e., that it had a "substantial and injurious effect or influence"

on the outcome of the proceedings. Brecht v. Abrahamson, 507 U.S. 619, 637 (1993) (citation omitted); cf. Pet. App. 9a-10a (declining to decide whether the Brecht standard or the harmless-error standard from Chapman v. California, 386 U.S. 18, 22 (1967), applied to petitioner's claims, because any error was harmless "[u]nder either measure").

"[H]armless error review is an equitable doctrine allowing courts to decline to afford relief when an error does not affect an existing judgment." Pet. App. 9a. It "'conserve[s] judicial resources by enabling appellate courts to cleanse the judicial process of prejudicial error without becoming mired in harmless error.'" United States v. Hasting, 461 U.S. 499, 509 (1983) (quoting Roger J. Traynor, The Riddle of Harmless Error 81 (1970)).

Applying those principles, the court of appeals determined that any error in petitioner's Section 924(c) convictions was nonprejudicial because vacating those convictions would not entitle petitioner to release from custody or reduce the time petitioner must serve in prison. Pet. App. 10a-11a. Petitioner's sentence also includes seven concurrent terms of life imprisonment -- two of which were mandatory, with the imprisonment for his three Section 924(c) offenses to run consecutively. And because petitioner did not challenge the validity of any of the convictions underlying his life sentences, the district court could not have

granted any relief that would have resulted in, or hastened, his release. The court of appeals accordingly found that in these "exceedingly rare" circumstances, id. at 18a, any "'attempt to decide on collateral review whether each of the'" Section 924(c) convictions was valid "would be 'unnecessary' and 'would smack of an advisory opinion,'" id. at 15a (quoting Ryan v. United States, 688 F.3d 845, 849, 852 (7th Cir. 2012), cert. denied, 568 U.S. 1162 (2013)) (emphasis omitted); cf. United States v. Blackburn, 461 F.3d 259, 262 (2d Cir. 2006) (finding that motion for relief under Section 2255 was moot where the possibility that the district court would impose a reduced term of supervised release was "remote and speculative"), cert. denied, 550 U.S. 969 (2007).

Petitioner errs in asserting (Pet. 12-16) that the decision below conflicts with this Court's decision in Sibron v. New York, 392 U.S. 40 (1968), and its progeny. In Sibron, the Court explained that "a criminal case is moot only if it is shown that there is no possibility that any collateral legal consequences will be imposed on the basis of the challenged conviction," and stated that it would "presume[]" the existence of collateral consequences in the context of criminal convictions because "most" such "convictions do in fact entail adverse collateral legal consequences." 392 U.S at 55, 57; see Spencer v. Kemna, 523 U.S. 1, 7-8 (1998).

The decision below expressly recognized that this Court "has been 'willing to presume that a wrongful criminal conviction has continuing collateral consequences (or, what is effectively the same, to count collateral consequences that are remote and unlikely to occur),'" and did not address mootness at all. Pet. App. 11a (quoting Spencer, 523 U.S. at 8). It instead observed that "recognizing that general presumption does not establish the more specific precept that a criminal conviction can never be harmless -- that circumstances may exist where collateral consequences are exceedingly remote and highly unlikely to ever manifest themselves." Ibid. (emphasis added). It additionally observed that because petitioner sought relief under Section 2255, he was required to "identify[] a collateral consequence that rises to the level of impacting his ongoing 'custody,'" ibid., and then determined that in the "exceptional circumstances" of this case, petitioner had not demonstrated prejudicial error warranting relief under Section 2255, id. at 15a. Even assuming petitioner's Section 924(c) convictions were erroneous, petitioner had not demonstrated that he would suffer any "concrete, non-speculative collateral consequences" from them, "let alone any consequences affecting his 'custody' for purposes of habeas relief." Id. at 11a.

Petitioner's contrary argument (Pet. 15-16) rests on a general description of the collateral consequences of a conviction that a criminal defendant may experience, such as potential impeachment of future testimony or exposure to a recidivist sentencing statute. But petitioner fails to refute the court of appeals' factbound determination that to the extent they are applicable here, those collateral consequences "would * * * also result from his unchallenged convictions and life sentences." Pet. App. 12a. As the court explained, the $300 special assessment petitioner was required to pay for his Section 924(c) convictions does not provide a basis for relief under Section 2255, which "serves as a remedy to contest a prisoner's custody -- not the imposition of fines or other special assessments." Id. at 11a-12a (citing Ryan, 688 F.3d at 849; see Blaik v. United States, 161 F.3d 1341, 1342-1343 (11th Cir. 1998) (collecting cases). And while petitioner asserts (Pet. 15) that "[i]t is impossible to determine whether the next several decades will bring about legislative or judicial amendments to the law undermining the life sentences on his other convictions," the court reasonably declined to rely on petitioner's speculation that legal developments would retroactively invalidate all seven of those life terms, see Pet. App. 13a.

2. Petitioner further asserts (Pet. 16-20) that this case implicates a purported disagreement among the courts of appeals regarding the application of the concurrent-sentence doctrine on collateral review. But any such tension is not implicated by the decision below, because the court of appeals did not in fact apply the concurrent-sentence doctrine to petitioner's consecutive sentences.

Historically, courts that applied the concurrent-sentence doctrine declined to consider challenged counts of conviction, so long as one count carrying a concurrent sentence remained valid. See Benton v. Maryland, 395 U.S. 784, 788-790 (1969). In Benton, this Court questioned whether a "satisfactory explanation" supported the doctrine. Id. at 789. But while the Court held that the doctrine imposes "no jurisdictional bar to consideration of challenges to multiple convictions," it observed that "in certain circumstances a federal appellate court, as a matter of discretion, might decide * * * that it is 'unnecessary' to consider all the allegations made by a particular party," and it acknowledged that the doctrine "may have some continuing validity as a rule of judicial convenience." Id. at 791. And since Benton, this Court has itself applied the doctrine. See Barnes v. United States, 412 U.S. 837, 848 & n.16 (1973) (declining, in direct-

appeal context, to review four of six counts on which concurrent sentences had been imposed).

The Court has subsequently explained, however, that the doctrine does not apply on direct appeal when a special assessment under 18 U.S.C. 3013 has been imposed for each conviction. See Ray v. United States, 481 U.S. 736 (1987) (per curiam); see also Rutledge v. United States, 517 U.S. 292, 301 (1996). Courts have thus reasoned that "[a]s a practical matter, the concurrent-sentence doctrine was abrogated for direct appeal when Congress imposed a special assessment * * * for each separate felony conviction." Ryan, 688 F.3d at 849; see, e.g., United States v. McKie, 112 F.3d 626, 628 n.4 (3d Cir. 1997). For movants seeking post-conviction relief, however, the concurrent-sentence doctrine can have continuing application. See Benton, 395 U.S. at 793 n.11 (noting a "stronger case" for abolishing the concurrent-sentence doctrine "in cases on direct appeal, as compared to convictions attacked collaterally").

Petitioner contends (Pet. 17) that the court of appeals are divided "on whether, and to what extent, the concurrent sentence doctrine applies on collateral review." See Pet. 17-20. But any such division is not implicated here, because the court of appeals did not apply the concurrent-sentence doctrine in resolving petitioner's case. Instead, the court recognized that this case

"does not fit within the concurrent sentence doctrine because [petitioner's] § 924(c) convictions yielded consecutive sentences to be served in addition to his seven life sentences." Pet. App. 15a. The court simply discussed the concurrent-sentence doctrine because that doctrine could, "by analogy," shed light on the application of the harmless-error rule, as "the same considerations of futility, speculation, and preservation of judicial resources that underpinned" the concurrent-sentence doctrine "ring[] true" in the harmless-error context. Id. at 13a, 15a. Thus, the "analogy to the concurrent sentence doctrine" served only to "reinforce[] [the court's] harmless error analysis," id. at 15a, and petitioner is mistaken in asserting that "[t]he question of the continuing vitality of the concurrent sentence doctrine" is "squarely implicated in this case," Pet. 19.

3. This case also does not warrant this Court's review for the further reason that, as the court of appeals emphasized, the question presented has limited prospective importance. As the court explained, its decision was "narrow" and based on the "exceedingly rare" circumstances here -- in which petitioner's seven concurrent life sentences precluded him from showing that his Section 924(c) convictions lengthen his term of imprisonment or carry any concrete, non-speculative collateral consequences. Pet. App. 15a, 18a. The court made clear that in most cases, "the

combination of a constitutionally infirm conviction and consecutive sentences [would] be prejudicial to a defendant." Id. at 18a. At all events, the extreme unlikelihood that all seven life sentences for various different crimes would be vacated means that review of the court's circumstance-specific decision is unlikely to benefit petitioner. See, e.g., Supervisors v. Stanley, 105 U.S. 305, 311 (1882) (explaining that this Court does not "sit [to] decide abstract questions of law * * * which, if decided either way, affect no right" of the parties).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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