



U.S. Department of Justice

Office of the Solicitor General

Washington, D.C. 20530

June 17, 2022

Honorable Scott S. Harris
Clerk
Supreme Court of the United States
Washington, D.C. 20543

Re: *Jones v. Hendrix*, No. 21-857

Dear Mr. Harris:

On May 16, 2022, this Court granted certiorari in this case, which presents a question about whether and under what circumstances the “saving clause” in 28 U.S.C. 2255(e) entitles a federal prisoner who already has filed an initial motion for postconviction relief under Section 2255 to file a petition for a writ of habeas corpus under 28 U.S.C. 2241 based on an intervening decision of statutory interpretation. The government has taken varying positions on that question since the relevant statutes were amended in 1996. In this case, the government argued in the court of appeals that saving-clause relief is categorically unavailable for such statutory claims, even if an intervening decision of this Court overturns previously binding circuit precedent and makes clear that the prisoner was convicted of conduct that is not a crime. The court of appeals agreed. In its brief in opposition to certiorari, the government explained that petitioner would not be entitled to habeas relief even if the question presented were resolved in his favor, but did not express a view on the merits of that question.

The purpose of this letter is to notify the Court that the Solicitor General has determined that the government will not defend the rationale of the court of appeals’ decision. Because the government will, however, continue to defend the court of appeals’ judgment and its conclusion that Section 2255(e)’s saving clause does not allow petitioner to seek habeas relief under Section 2241, the government will not file a brief as respondent supporting petitioner on the deadline for petitioner’s brief on the merits (June 30, 2022, pending the Court’s disposition of the parties’ request for an extension of that deadline to July 14, 2022).

Under the circumstances, the Court may wish to invite an amicus curiae to file a brief to defend the rationale of the court of appeals’ decision. If the Court wishes to do so and asks the amicus curiae to file such a brief on September 12, 2022 (the date that the parties have requested as the extended deadline for respondent’s brief on the merits), the government would be prepared to file its brief supporting affirmance five weeks earlier, on August 8, 2022. Petitioner’s reply brief could be due 30 days after the amicus curiae’s brief, and, if permitted by the Court, the government would also be prepared to file a reply brief (limited to the issues in the amicus curiae’s

brief) on the same date. Cf. *McLane Co. v. EEOC*, No. 15-1248 (adopting a similar briefing structure and schedule); *Green v. Brennan*, No. 14-613 (same).

Sincerely,

Elizabeth B. Prelogar
Solicitor General

cc: See Attached Service List

21-0857

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