

IN THE SUPREME COURT OF THE UNITED STATES

No. 21-857

MARCUS DEANGELO JONES, PETITIONER,

v.

DEWAYNE HENDRIX, WARDEN

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

MOTION FOR ALLOCATION OF ARGUMENT TIME

Pursuant to Rules 21 and 28 of the Rules of this Court, the Solicitor General, on behalf of respondent, respectfully moves that the total argument time in this case be allocated equally among petitioner, respondent, and the amicus curiae appointed by the Court. Accordingly, if this motion were granted, petitioner, respondent, and the Court-appointed amicus curiae each would be allocated 20 minutes of argument time. Petitioner and the Court-appointed amicus curiae agree with this allocation and consent to this motion.

This case presents a question about whether and, if so, under what circumstances a federal prisoner who has already filed a motion for postconviction relief under 28 U.S.C. 2255 is entitled to seek habeas corpus relief under the "saving clause" in 28 U.S.C.

2255(e) based on a claim that he was convicted for conduct that the statute does not make criminal. The court of appeals concluded that such statutory claims are categorically not cognizable under the saving clause. After the Court granted certiorari, the government informed the Court that it would defend the court of appeals' judgment but not the rationale of its decision. On June 28, 2022, the Court appointed Morgan L. Ratner, Esq., of Washington, D.C., to brief and argue this case, as amicus curiae, in support of the judgment below.

Petitioner has filed a brief contending that statutory claims like the one he raises are cognizable under the saving clause when the applicable substantive circuit law at the time of the prisoner's conviction and initial Section 2255 motion is later held to be incorrect. The government has filed a brief contending that such statutory claims are cognizable under the saving clause only when an intervening decision of this Court makes clear that the prisoner is actually innocent of the crime of conviction, and that petitioner in this case cannot demonstrate actual innocence. The amicus curiae has filed a brief contending that such statutory claims are categorically not cognizable under the saving clause.

Because no two briefs agree with each other about the applicable legal rule and how it should be applied to the

circumstances of this case, the government proposes that argument time be allocated as follows:

Petitioner:	20 minutes
Respondent:	20 minutes
Court-appointed amicus curiae:	20 minutes

That allocation mirrors the allocation of argument time that the Court approved in Green v. Brennan, No. 14-613, which involved similar circumstances. Petitioner and the Court-appointed amicus curiae agree with this allocation of argument time and consent to this motion.

Respectfully submitted.

ELIZABETH B. PRELOGAR
Solicitor General
Counsel of Record

SEPTEMBER 2022