No. 22-5206

IN THE SUPREME COURT OF THE UNITED STATES

SHAIN DUKA, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether, on collateral review, the rationale of the concurrent-sentence doctrine permits a district court to decline to vacate a challenged conviction when that challenge, even if successful, would have no practical effect on the defendant's custody because he is serving a valid life sentence on a separate count.

ADDITIONAL RELATED PROCEEDINGS

United States District Court (D.N.J.):

United States v. Shnewer, No. 7-cr-459 (Apr. 28, 2009)

Duka v. United States, 13-cv-3665 (Aug. 6, 2020)

United States Court of Appeals (3d Cir.):

Duka v. United States, No. 20-2799 (Mar. 8, 2022)

United States Supreme Court:

Duka v. United States, No. 11-1308 (June 11, 2012)

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OPINIONS BELOW

The opinion of the court of appeals is reported at 27 F.4th 189. The order of the district court (Pet. App. C1-C26) is unreported but is available at 2020 WL 4530035.

JURISDICTION

The judgment of the court of appeals was entered on March 8, 2022. A petition for rehearing was denied on May 3, 2022 (Pet. App. B2). The petition for a writ of certiorari was filed on July 11, 2022. 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 District of New Jersey, petitioner was convicted on one count of conspiring to murder members of the United States military, in violation of 18 U.S.C. 1114 and 1117; one count of possessing a firearm in furtherance of a crime of violence, in violation of 18 U.S.C. 924(c)(1)(A), (c)(1)(B)(ii); one count of possessing a machinegun, in violation of 18 U.S.C. 922(o); and two counts of possessing a firearm as a noncitizen unlawfully in the United States, in violation of 18 U.S.C. 922(g)(5). Judgment 1. The district court sentenced petitioner to life imprisonment on the conspiracy count, a 30-year term of imprisonment to run consecutively with the life sentence on the Section 924(c) count, and three concurrent ten-year terms of imprisonment on the remaining counts. Judgment 3. The court further imposed a life-plus-five-years term of supervised release. Judgment 4. The court of appeals affirmed, 671 F.3d 329, and this Court denied a petition for a writ of certiorari, 567 U.S. 906 (No. 11-1308).

In 2020, the district court denied petitioner's amended motion under 28 U.S.C. 2255 to vacate, set aside, or correct his sentence. Pet. App. C1-C26. The court of appeals affirmed. 27 F.4th 189.

1. Petitioner is one of three brothers who, along with several co-defendants, planned to wage violent jihad against United States military bases in New Jersey, Pennsylvania, and

Delaware. 27 F.4th at 191; 671 F.3d at 333-335. To prepare for the attacks, petitioner and his co-defendants purchased semi-automatic rifles, a pistol, and a shotgun; trained with firearms in the Pocono mountains; watched violent jihadist videos; and discussed jihad and plans to attack the United States military. 27 F.4th at 191. They also attempted to buy fully automatic weapons -- AK-47s and M-16s -- through a government informant but were immediately arrested after doing so. 27 F.4th at 191; 671 F.3d at 335.

A federal grand jury in the District of New Jersey returned an indictment charging petitioner with one count of conspiring to murder members of the United States military, in violation of 18 U.S.C. 1114 and 1117; one count of attempting to murder members of the United States military, in violation of 18 U.S.C. 1114; one count of possessing a firearm in furtherance of a crime of violence, in violation of 18 U.S.C. 924(c)(1)(A) and (B)(ii); one count of possessing a machinegun, in violation of 18 U.S.C. 922(o); and two counts of possessing a firearm as a noncitizen unlawfully in the United States, in violation of 18 U.S.C. 922(g)(5). 27 F.4th at 191-192. A jury found petitioner guilty on all but the attempted-murder count. Id. at 192.

The district court sentenced petitioner to a guidelines-recommended term of life imprisonment for conspiring to murder members of the U.S. military. 27 F.4th at 192. It also imposed two ten-year terms of imprisonment, to run concurrently with that

life sentence, for the machine-gun possession and unlawful-firearm-possession counts. Ibid. Finally, the court imposed a 30-year term of imprisonment, to run consecutively to his other sentences, for petitioner's Section 924(c) conviction. Ibid.

The court of appeals affirmed, 671 F.3d 329, and this Court denied a petition for a writ of certiorari, 567 U.S. 906 (No. 11-1308).

2. Petitioner subsequently filed several petitions for postconviction relief. See 27 F.4th at 192-193. In 2013, petitioner moved under 28 U.S.C. 2255 to vacate, set aside, or correct his sentence on various grounds. Id. at 192. The district court denied the motion, and the court of appeals denied a certificate of appealability. Ibid. In 2019, petitioner moved for relief from that judgment under Federal Rule of Civil Procedure 60(b)(6), asserting that the district court failed to properly instruct the jury on the appropriate mens rea for the conspiracy charge. The district court denied the motion, and the court of appeals denied petitioner's request for a certificate of appealability stating that the "'correctness of the challenged jury instruction is not debatable.'" 2020 WL 8073724, at *1.

In 2016, while those challenges were ongoing, petitioner filed a second Section 2255 motion, seeking to vacate his Section 924(c) conviction based on this Court's intervening decision in Johnson v. United States, 576 U.S. 591 (2015), which held that the residual clause in 18 U.S.C. 924(e) was unconstitutionally vague.

See 27 F.4th at 192-193. The district court denied that motion as an unauthorized second or successive Section 2255 motion. Id. at 193. Petitioner appealed, and the government and petitioner jointly moved to remand for the district court to consider the effect of the intervening decision in United States v. Davis, 139 S. Ct. 2319 (2019), which held that similarly worded language in 18 U.S.C. 924(c) was likewise unconstitutionally vague. The court of appeals granted that motion. 27 F.4th at 193.

Among other arguments, petitioner contended on remand that (1) his Section 924(c) conviction should be vacated under Davis; (2) his murder-conspiracy conviction should be vacated due to ineffective assistance of trial and appellate counsel; and (3) he is actually innocent of the conspiracy to murder members of the U.S. military. Pet. App. C8-C10. The district court rejected all three arguments. As to the first, it relied on the "rationale" of the "concurrent sentence doctrine" -- under which a court has "'discretion to avoid resolution of legal issues affecting less than all counts in an indictment if at least one will survive and sentences on all counts are concurrent'" -- to decline to vacate petitioner's Section 924(c) conviction. Id. at C16 (citation omitted).

Although petitioner's Section 924(c) sentence was to be served consecutively to his conspiracy sentence, the district court recognized that, "as a practical matter, [petitioner] will never serve [his] § 924(c) conviction[] due to [his] life

sentence[] on the[] conspiracy to murder conviction[]." Pet. App. C16. The court further explained that petitioner's Section 924(c) conviction "had no effect on" his sentence for "[his] conspiracy to murder conviction[]" and petitioner would not suffer "any collateral consequences arising from the challenged conviction" that amount to custody. Id. at C17, C19.

The district court also rejected petitioner's ineffective-assistance claim. The court noted that petitioner's claim rested on his counsel's failure to object to, or challenge on appeal, the jury instructions on malice aforethought, but that the Third Circuit had already held that the correctness of the jury instructions was "'not debatable.'" Pet. App. C21, C23. And the court rejected petitioner's actual-innocence claim, explaining that petitioner had failed to present any "new evidence that was not available at trial." Id. at C24.

The district court issued a certificate of appealability only as to whether "the concurrent sentence doctrine's rationale could be applied in this case." Pet. App. C26.

4. The court of appeals affirmed. 27 F.4th 189. The court declined to expand the certificate of appealability to incorporate petitioner's ineffective-assistance and actual-innocence claims. Id. at 193-194, 196-197. And the court likewise found that the district court did not abuse its discretion in invoking "the rationale of the concurrent sentence doctrine" to decline to vacate petitioner's Section 924(c) conviction because the "same practical

concern underlying the concurrent sentence doctrine is present here." Id. at 194-195. The court observed that, given petitioner's life sentence on the conspiracy count, vacating petitioner's Section 924(c) conviction would "not reduce the time [he] must serve in prison," ibid., and that petitioner had not identified any "unique collateral consequences" of the Section 924(c) conviction -- such as the special assessment imposed on that count -- that amounted to "custody," id. at 194-196. And it accordingly explained that considering petitioner's argument would "result in the expenditure of the court and parties' time and resources" but could not lead to any "cognizable change" in petitioner's "custody" even if it "proved successful." Id. at 195.

ARGUMENT

Petitioner renews his argument (Pet. 3-5) that the district court abused its discretion in applying the rationale of the concurrent-sentence doctrine to decline to vacate petitioner's allegedly invalid Section 924(c) conviction where petitioner was validly convicted and sentenced to life imprisonment on a separate count of conviction. The court of appeals correctly rejected that argument, and petitioner has failed to identify any square conflict of authority that warrants this Court's review. To the extent that any disagreement exists among the courts of appeals with respect to the contours of the concurrent-sentence doctrine, this case is not a suitable vehicle for addressing any such

disagreement. This Court has denied review in other cases presenting similar issues. See, e.g., Ruiz v. United States, 142 S. Ct. 1421 (2022) (No. 21-6200); Buffin v. United States, 571 U.S. 952 (2013) (No. 13-53). It should follow the same course here.[1]

1. The lower courts permissibly applied the rationale of the concurrent-sentence doctrine to decline to undertake merits review of petitioner's challenge to his Section 924(c) conviction.

a. The concurrent-sentence doctrine is "a 'species' of 'harmless-error analysis.'" Al-'Owhali v. United States, 36 F.4th 461, 466 (2d Cir. 2022) (quoting Kassir v. United States, 3 F.4th 556, 564 (2d Cir. 2021)). Historically, courts that applied this 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

[1] Another pending petition for a writ of certiorari raises a similar issue. See Suggs v. United States, No. 22-5752 (filed Sept. 28, 2022).

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); 27 F.4th at 195-196. 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 v. United States, 688 F.3d 845, 849 (7th Cir. 2012), cert. denied, 568 U.S. 1162 (2013); 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 has continued vitality. 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").

b. Section 2255 authorizes federal prisoners to file a motion to vacate, set aside, or correct their sentences on specifically listed 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.").

Instead, the ultimate determination in the Section 2255 context 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."). 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). And the "prejudice required to obtain relief must ultimately relate to the [petitioner's] challenged custody." Kassir, 3 F.4th at

566; accord Ruiz v. United States, 990 F.3d 1025, 1032 (7th Cir. 2021), cert. denied, 142 S. Ct. 1421 (2022).

A special assessment imposed for a particular conviction thus is "not reviewable in habeas corpus proceedings." Gardner v. Warden Lewisburg USP, 845 F.3d 99, 104 (3d Cir. 2017); see Ryan v. United States, 688 F.3d 845, 849 (7th Cir. 2012) ("A collateral attack under * * * 2255 contests only custody, however, and not fines or special assessments."). Accordingly, the concurrent-sentence doctrine has continued relevance in the context of a collateral challenge to a conviction that, even if successful, "offers [the defendant] no reasonable prospect of a shorter time in custody." Kassir, 3 F.4th at 569.

c. Applying the foregoing principles, the court of appeals reasonably determined that the district court's "invocation of the rationale of the concurrent sentence doctrine was proper." 27 F.4th at 196. Contrary to petitioner's assertion (Pet. 3), "the same practical concern underlying the concurrent sentence doctrine [is] present here": petitioner's motion to vacate his Section 924(c) conviction would consume the "court and parties' time and resources," while giving rise to "no possibility for any cognizable change" in petitioner's custodial sentence. 27 F.4th at 195.

Specifically, petitioner is serving a term of life imprisonment for conspiring to murder members of the U.S. military. 27 F.4th at 193, 195. The district court rejected petitioner's challenges to that conviction as meritless and denied a certificate

of appealability on those claims, and the court of appeals likewise denied petitioner's request to expand the certificate of appealability to include those claims. See pp. 5-7, supra. Petitioner has not sought certiorari on his actual-innocence and ineffective-assistance claims. Nor has he challenged the court of appeals' repeated decision to decline to issue a certificate of appealability on these claims.

Accordingly, in light of the still-valid life sentence on the conspiracy count, "even a complete vacatur of [petitioner's] Section 924(c) sentence[]" would not reduce "the time [he] must serve in prison." 27 F.4th at 194-195. Although not technically concurrent with the life sentence, the Section 924(c) sentence would not begin to run until the entire life term of imprisonment is complete -- "a distinction without a difference," as the court of appeals recognized. Id. at 195.

d. Petitioner hypothesizes (Pet. 7) that a court might one day "hold in the future" that a "conspiracy to kill may not be based on such thin evidence as was held to suffice herein," and asserts that such a possibility supports adjudicating his Section 924(c) challenge now. But the courts below reasonably declined to rely on petitioner's speculation that a factbound development in the law applicable to sufficiency-of-the-evidence challenges would retroactively invalidate his conspiracy conviction -- particularly where petitioner has failed to identify any new evidence not

presented at trial in support of his sufficiency claim. See p. 6, supra.

Petitioner additionally asserts (Pet. 3-4) that he would be entitled to a full resentencing if his Section 924(c) conviction were vacated. The district court found, however, that even if it were to vacate petitioner's Section 924(c) conviction, it would not need to conduct a full resentencing because the Section 924(c) conviction "had no effect on this Court's sentence as it relates to [petitioner's] conspiracy to murder conviction[]." Pet. App. C19. Specifically, petitioner's conspiracy-to-murder and Section 924(c) convictions were grouped separately, and petitioner's offense level, criminal history, and guidelines range of life imprisonment on the conspiracy-to-murder count were independent of his Section 924(c) conviction. Presentence Investigation Report ¶¶ 254-260, 290, 319. The district court therefore found "no circumstance under which [petitioner's] life sentence for conspiracy to murder would change." Pet. App. C21.

Petitioner also has failed to identify any collateral consequences of his Section 924(c) conviction that would satisfy the "custody" requirement of Section 2255. 27 F.4th at 195-196 & n.3; see Ruiz, 990 F.3d at 1031-1033 (likewise recognizing that a defendant serving a valid life sentence faces no cognizable collateral consequences amounting to custody under Section 2255 from a conviction on a separate count). As the court of appeals explained, petitioner's reliance on the $100 special assessment

imposed in connection with his Section 924(c) conviction is misplaced; that assessment "may serve as a basis for an appellant to maintain a stake in attacking a conviction on direct appeal," but it is "not a cognizable basis for relief in this Section 2255 proceeding," which challenges his "custody." 27 F.4th at 196; see pp. 9-11, supra.

Petitioner further argues (Pet. 3-4) that the logic of the concurrent-sentence doctrine cannot be applied to preserve an invalid conviction. But petitioner offers no sound basis for distinguishing between invalid convictions and invalid sentences in the circumstances presented here -- "where, regardless of the outcome, the defendant will remain subject to the same sentence," and petitioner has failed to identify any "cognizable collateral consequences stemming from [the challenged] conviction." 27 F.4th at 194, 196. And the doctrine would lack any salience at all if a court were required to determine validity as a prerequisite; unnecessary merits adjudication is precisely what the doctrine seeks to avoid.

Moreover, petitioner is incorrect in asserting that "there was nothing left to be decided" in order to determine whether his Section 924(c) conviction remained valid. Pet. 3-4. The superseding indictment charged petitioner with violating Section 924(c) based on two predicate crimes of violence: (1) conspiracy to murder members of the U.S. military as charged in Count 1 of the superseding indictment, in violation of 18 U.S.C. 1114 and

1117, and (2) attempted murder of members of the U.S. military as charged in Count 2 of the superseding indictment, in violation of 18 U.S.C. 1114. Gov't C.A. App. 15. The government acknowledged that, after Davis, it had elsewhere conceded that "conspiracy is not categorically a crime of violence under § 924(c)(3)(A)." D. Ct. Doc. 85 at 4. But petitioner's Section 924(c) conviction would nonetheless stand if attempted murder of U.S. servicemembers qualifies as a crime of violence under Section 924(c)'s elements clause and if the trial evidence could permit a rational jury to find petitioner guilty of that crime. Gov't C.A. Br. 18-20.

Although petitioner was acquitted on the attempted-murder count, this Court has rejected the argument that "an acquittal on a predicate offense necessitates a finding of insufficient evidence on a compound felony." See United States v. Powell, 469 U.S. 57, 67-69 (1984). Thus, in order to vacate petitioner's Section 924(c) conviction, the parties and court would have needed to apply the categorical approach and to review the exhibits and transcripts from petitioner's two-and-a-half-month jury trial to determine if sufficient evidence was presented at trial for a rational jury to find that petitioner attempted to murder military servicemembers.

2. The decision below does not conflict with any decision of this Court or any other court of appeals.

a. Petitioner asserts (Pet. 4) that the court of appeals' decision conflicts with this Court's decisions in Putnam v.

United States, 162 U.S. 687 (1896), Sibron v. New York, 392 U.S. 40 (1968), Ball v. United States, 470 U.S. 856 (1985), and Rutledge v. United States, 517 U.S. 292 (1996). Each of those decisions, however, involved challenges to convictions on direct appeal. As explained above, while the concurrent-sentence doctrine may have little relevance in the context of direct appeals, for individuals like petitioner who are seeking post-conviction relief under Section 2255, the concurrent-sentence doctrine has continued validity. See pp. 9-11, supra.

b. Petitioner further contends (Pet. 4-5) that the decision below conflicts with decisions of other federal courts of appeals. But petitioner fails to identify a conflict of authority over the question actually presented in this case.

Three circuits -- the Second, Fifth, and Seventh Circuits -- have recognized, consistent with the decision below, that a district court may validly invoke the concurrent-sentence doctrine in collateral-review proceedings when a defendant faces a life sentence on a valid count of conviction, such that prevailing on a challenge to an allegedly "constitutionally infirm conviction and consecutive sentence[] will" not "secure any prospect of tangible relief." Ruiz, 990 F.3d at 1035; accord Al-'Owhali, 36 F.4th at 467-468 ("We have discretion to apply the doctrine when, as in this case, (1) the collateral challenge will have no effect on the time the prisoner must remain in custody and (2) the unreviewed conviction will not yield additional adverse collateral

consequences."); Scott v. Louisiana, 934 F.2d 631, 635 (5th Cir. 1991) (affirming the denial of habeas corpus relief on the defendant's attempted-murder counts because the trial court had sentenced the defendant to life imprisonment for his second-degree murder conviction).[2] The remaining courts of appeals have not confronted in published opinions the circumstances presented here -- where a defendant's collateral attack on one conviction, even if successful, would not affect a separate conviction and life sentence and the defendant has failed to identify adverse collateral consequences stemming from the challenged conviction.

Petitioner asserts that the Fourth, Eighth, Ninth, and Eleventh Circuits have rejected application of the logic of the concurrent-sentence doctrine to invalid convictions, rather than sentences. While the Fourth and Eighth Circuits have suggested that "the concurrent sentence doctrine cannot be applied to avoid reviewing the validity of one of a defendant's convictions," United

[2] Petitioner suggests (Pet. 5) that the Fifth Circuit decided otherwise in "United States v. Stovall, 660 F.3d 880 [5th Cir. 2011]." No such case appears to exist. To the extent petitioner intended to refer to United States v. Stovall, 825 F.2d 817 (5th Cir.), amended, 833 F.2d 526 (5th Cir. 1987), that decision determined only that it can be "appropriate not to apply the concurrent sentence doctrine" in a direct appeal where the defendant challenges "evidentiary guilt or innocence" on a particular count of conviction. Id. at 825 n.9. As noted above, the concurrent-sentence doctrine has different and continued salience in the collateral-review context. See pp. 9-11, supra, Moreover, the Fifth Circuit subsequently applied the doctrine in the collateral-review context in Scott, supra, confirming that no conflict exists.

States v. Charles, 932 F.3d 153, 158-160 (4th Cir. 2019); accord Eason v. United States, 912 F.3d 1122, 1123-1124 (8th Cir. 2019), both decisions involved a defendant's challenge to the legality of his sentence, not his conviction. Charles, 932 F.3d at 160-161; Eason, 912 F.3d at 1123. Petitioner does not identify any decision in which either court has applied such apparent dictum or considered whether it would hold true in the rare situation where a Section 2255 movant is serving a term of life imprisonment on a valid count of conviction. See Al-'Owhali, 36 F.4th at 468 (explaining why such an unusual movant does not face "a substantial risk of adverse collateral consequences") (citation and internal quotation marks omitted).

The Eleventh Circuit's grant of permission to file a second or successive Section 2255 motion in In re Wainwright, No. 19-13272, 2019 U.S. App. LEXIS 28380 (Sept. 17, 2019), endorsed application of the concurrent-sentence doctrine in general, noting that the doctrine would not preclude relief if each of the defendant's concurrent sentences were invalid. Id. at *12. And in a subsequent unpublished opinion, moreover, the Eleventh Circuit articulated an approach consistent with the decision below. Mozie v. United States, No. 21-11435, 2021 WL 4947432, at *2 (11th Cir. Oct. 25, 2021) (applying concurrent-sentence doctrine because even if the challenged conviction were "found to be invalid," the defendant "would remain in custody serving multiple concurrent life sentences").

Finally, while the Ninth Circuit's decision in United States v. De Bright, 730 F.2d 1255 (1984) (en banc), "reject[ed] the use of the concurrent sentence doctrine as a discretionary means of avoiding the review of criminal convictions," id. at 1260, that decision involved a challenge to a conviction on direct appeal -- not post-conviction review. See pp. 9-11, 15-16, supra. The Ninth Circuit has subsequently declined to apply the concurrent-sentence doctrine in a collateral challenge, on the apparent view that convictions may have adverse consequences that sentences do not. See Alaimalo v. United States, 645 F.3d 1042, 1050 (2011). But it is not clear that the brief statement of the panel majority in that case, which was not discussed at any length, would necessarily be deemed binding by a future panel in considering application of the discretionary and context-specific principles of the concurrent-sentence doctrine.

3. At all events, this case would be a poor vehicle to address the question presented because petitioner's Section 924(c) conviction remains valid even after Davis. As explained above, see pp. 14-15, supra, the other charged predicate offense, attempted murder of military servicemembers under Sections 1111 and 1114, constitutes a crime of violence, Alvarado-Linares v. United States, 44 F.4th 1334, 1347-1348 (11th Cir. 2022); United States v. Smith, 957 F.3d 590, 594-596 (5th Cir. 2020). And the trial evidence permitted a rational jury to find petitioner guilty on that count. See, e.g., 671 F.3d at 334 (noting that the

trial evidence demonstrated that petitioner and his brothers attempted to purchase fully automatic weapons to further their murderous plans). Review in this case is thus particularly unlikely to benefit petitioner given both his intact life sentence and meritless Section 2255 motion. 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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