No. 23-5014

IN THE
SUPREME COURT OF THE UNITED STATES

JAMIE WILLIAMS,

***Petitioner*,**

v.

UNITED STATES OF AMERICA,

***Respondent*.**

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

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PETITIONER'S REPLY TO THE MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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Introduction

The government agrees that the decision below is wrong. But even though Mr. Williams is serving a *life* sentence and was wrongfully denied the opportunity to seek a reduced sentence due to the erroneous decision below, the government callously argues that the issue does not warrant this Court's review and speculates that the question presented is unlikely to be outcome-determinative. To the contrary, the question is important, and Mr. Williams deserves a decision from the district court in the first instance that is based on consideration of the relevant factors, rather than on an erroneous legal interpretation of his ineligibility.

Six petitions raising this question are pending before the Court, and there are more cases waiting in the wings that involve other individuals who were similarly harmed by the Eleventh Circuit's wrong interpretation of the First Step Act. These defendants would have been eligible for relief in any other circuit. Surely, such injustice is sufficiently important to warrant the Court's attention. Because even the government agrees the decision below is wrong, the Court should grant review, summarily reverse, or hold Mr. Williams case if review is granted

in a similar case.

I. The government concedes that the decision below is wrong and that the circuits are conflicted.

The government agrees that the decision below is wrong. *See* Memorandum for the United States in Opposition (Mem. Opp.) at 1-2; Brief for the United States in Opposition, *Harper v. United States*, No. 23-27 (*Harper* Opp.) at 9, 11, 12. The government explicitly recognizes "the Eleventh Circuit's erroneous interpretation of the First Step Act," *see Harper* Opp. at 12, its "error . . . in its interpretation of Section 404(b)," *see id.* at 12 n.2, and its erroneous, post-*Concepcion*[1] holding in *Jackson*,[2] *see id.* at 11. And it openly criticizes the Eleventh Circuit's interpretation of *Concepcion*. *See id.* at 11-12. The implication is clear: the government does not dispute that the Eleventh Circuit's decisions conflict with *Concepcion*.[3] And it offers no reason why the clear conflict

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[1] *Concepcion v. United States*, 597 U.S. 481 (2022).

[2] *United States v. Jackson*, 58 F.4th 1331 (11th Cir. 2023).

[3] As advanced in his petition for certiorari, Mr. Williams maintains that the Eleventh Circuit's decision below conflicts with both *Terry* and *Concepcion* despite the government's suggestion that the conflict is only with *Concepcion*. *See Harper* Opp. at 12 n.2 ("The court's error rested not in its interpretation of 'covered offense' under Section 404(a), but in its interpretation of Section 404(b).").

with *Concepcion* does not warrant either summary reversal or full review by this Court.[4] *See* S. Ct. R. 10(c).

Instead, the government prefers to oppose review by ignoring the conflict with *Concepcion* and conceding—but attempting to minimize—the circuit conflict. Mem. Opp. at 2. The government contends that review is unwarranted because the conflict is "lopsided and of limited practical significance." Mem. Opp. at 2; *see Harper* Opp. at 9 (calling the conflict "shallow and lopsided"). But the split is not as shallow as the government suggests. It is entrenched. The Eleventh Circuit continues to reinforce the conflict—and it's erroneous holding. *See United States v. McCoy*, -- F.4th --, 2023 WL 8634904 (11th Cir. Dec. 14, 2023). And the fact that the Eleventh Circuit stands alone in its error is no reason to let the disparity stand.

1. The government acknowledges "three published decisions ... in which courts of appeals have squarely resolved the issue differently from

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[4] Mr. Williams addressed in his petition for certiorari the conflict between the Eleventh Circuit's rule and *Concepcion*. *See* Petition for Writ of Certiorari at 16-20. Since he filed his petition, the Eleventh Circuit has explicitly reiterated the heart of the conflict, explaining that the "as-if" clause "imposes two relevant limits." *United States v. McCoy*, -- F.4th --, 2023 WL 8634904, *3 (11th Cir. Dec. 14, 2023).

the Eleventh Circuit." *Harper* Opp. at 12 (citing *United States v. Robinson*, 9 F.4th 954, 959 (8th Cir. 2021) (per curiam); *United States v. White*, 984 F.3d 76, 87-88 (D.C. Cir. 2020); *United States v. Ware*, 964 F.3d 482, 488-489 (6th Cir. 2020)). But the conflict is deeper than this. As Mr. Williams has shown, *see* Petition for Writ of Certiorari ("Pet.") at 11-16, 21-22, the Eleventh Circuit's opinion in this case "cannot be reconciled with" decisions from the Second, Third, Fourth, Fourth, Sixth, Seventh, Eighth, Tenth, and D.C. Circuits, all of which "have held that the availability of § 404 relief turns *only* on the statute of conviction." *See United States v. Jackson*, 995 F.3d 1308, 1315 (11th Cir. 2021) (Martin, J., dissenting from the denial of rehearing en banc) (emphasis added); *see also id*. at 1314 n.4 (collecting cases).

The government points out that, like these other circuits, "the Eleventh Circuit has similarly stated that the Section 404(a) covered-offense determination turns on 'the offense for which the district court imposed a sentence,' without 'considering the specific quantity of crack cocaine involved in the movant's violation." *Harper* Opp. at 12 (citing *United States v. Jones*, 962 F.3d 1290, 1300-1301 (11th Cir. 2020), *reh'g denied*, *United States v. Jackson*, 995 F.3d 1308 (11th Cir. 2021), *and*

vacated sub nom, *Jackson v. United States*, 143 S. Ct. 72 (2022), *and reinstated by United States v. Jackson*, 58 F.4th 1331 (11th Cir. 2023)). But *unlike* these other circuits, the Eleventh Circuit then created a special rule—which applies only to defendants sentenced prior to *Apprendi v. New Jersey*, 530 U.S. 466 (2000)—in which the district court is "bound" to use any "previous finding of drug quantity," to determine the revised statutory penalties for the offense. *See Jones*, 962 F.3d at 1304. No other circuit has done this. Instead, "other circuits have applied their elements-only eligibility rule in pre-*Apprendi* cases without suggesting *Apprendi* as a point of distinction." Brief of National Ass'n of Fed. Defenders as Amicus Curiae Supporting Petitioner ("NAFD Br.") at 16 & n.15 (citing, *e.g.*, *United States v. Chapman*, 66 F.4th 108, 111 (3d Cir. 2023), and *United States v. Young*, No. 19-2520 (7th Cir. 2020)).

The conflict is entrenched. The Eleventh Circuit has repeatedly declined to correct its mistake—first, when it denied rehearing en banc in *Jones*, and second when it reinstated the *Jones* opinion after a prior remand from this Court in light of *Concepcion*. *See United States v. Jackson*, 995 F.3d 1308, 1311-1316 (11th Cir. 2021) (Martin, J. respecting the denial of rehearing en banc); *United States v. Jackson*, 58 F.4th 1331,

1336 (11th Cir. 2023) (holding, on remand, that "*Concepcion* does not alter our decision in *Jones*"). Most recently, the Eleventh Circuit recommitted to its mistake in *United States v. McCoy*, -- F.4th --, 2023 WL 8634904 (11th Cir. Dec. 14, 2023). The Eleventh Circuit will not reverse course, and the split will not resolve on its own.

2. The fact that the Eleventh Circuit stands alone is not a reason to deny review. This Court regularly grants certiorari to resolve circuit conflicts even when there is only a single circuit in the minority. *See*, *e.g.*, *Dahda v. United States*, 138 S. Ct. 1491, 1496 (2018) (2-1 split); *Nichols v. United States*, 578 U.S. 104, 108 (2016) (1-1); *Peugh v. United States*, 569 U.S. 530, 535 n.1 (2013) (5-1).

The Eleventh Circuit's *Jones* opinion, on which the decision below was based, "prohibits an entire class of prisoners in Alabama, Florida, and Georgia from getting relief Congress meant for them to have. And relief would be available to them almost anywhere else in our country." *Jackson*, 995 F.3d at 1316 (Martin, J., dissenting from the denial of rehearing en banc). Even the government now concedes that the decision below is wrong. "To know this much is to know what should be done" in this case. *Hicks v. United States*, 137 S. Ct. 2000, 2000 (2017) (Gorsuch,

J., concurring).

II. The question presented is important and warrants review.

1. The government contends that the question presented is of "declining prospective importance, in light of the diminishing set of potential Section 404 movants whose motions would implicate it." Mem. Opp. at 2. But the government made the same argument in *Terry v. United States*, 141 S. Ct. 1858 (2021). *See* Brief for the United States in Opposition, *Terry v. United States*, No. 20-5904, 2020 WL 9909508 at *27-28 (U.S. Dec. 4, 2020). The Court correctly rejected the argument in *Terry*–and implicitly did so again when it granted certiorari in *Concepcion*. The Court should do the same here.

It should not be forgotten, furthermore, that Mr. Williams is serving a *life* sentence—and was denied the chance to seek a reduced sentence based on a decision the government agrees is wrong. The suggestion that righting this wrong lacks sufficient "importance" to warrant review is disconcerting, to say the least. *See Hicks*, 137. S. Ct. at 2001 (Gorsuch, J., concurring) ("For who wouldn't hold a rightly diminished view of our courts if we allowed individuals to linger longer in prison than the law requires only because we were unwilling to correct

our own obvious mistakes?").

Moreover, Mr. Williams has identified fourteen cases raising this issue, in addition to his own, that are currently under review. All but one of the defendants in these cases are serving life sentences similar to the one imposed in Mr. Williams's case.

Five of the fourteen cases are currently pending in this Court and scheduled for the same conference. *See Jackson v. United States*, No. 22-7728 (filed June 5, 2023); *Clowers v. United States*, No. 22-7783 (filed June 12, 2023); *Perez v. United States*, No. 22-7794 (filed June 12, 2023); *Harper v. United States*, No. 23-27 (filed July 6, 2023); *Ingram v. United States*, No. 23-341 (filed July 7, 2023). Another three cases are within the timeframe for filing a petition to this Court. *See United States v. McCoy*, No. 21-13838 , -- F.4th --, 2023 WL 8634904 (11th Cir. Dec. 14, 2023) (opinion affirming the denial of relief); *United States v. Duenas*, No. 22-14027, 2023 WL 8257858 (11th Cir. Nov. 29, 2023) (opinion affirming the denial of relief); *United States v. Solomon*, No. 23-10480, 2023 WL 6568132 (11th Cir. Oct. 10, 2023) (opinion affirming the denial of relief). A fourth case is fully briefed and awaiting decision in the Eleventh Circuit. *See United States v. Williams*, No. 23-11088 (11th Cir.) (briefing

complete on September 11, 2023).

The other five cases remain pending in the district courts. *See*, *e.g.*, *United States v. Rostan*, 0:97-cr-06002-JEM Doc. 361 (S.D. Fla. Mar. 13, 2019) (still pending as of Dec. 21, 2023). In some cases, the defendants have voluntarily withdrawn or stayed their claims in light of *Jones*, in order to avoid the limitation on successive claims in § 404(c). *See United States v Kemmye Parson et. al,* 95-8089-cr-CMA Doc. 1790 (S. D. Fla. Feb. 23, 2021) ("The only relief [four] Defendants seek is an order holding the Court's decision in abeyance while *United States v. Jones*, 962 F.3d 1290 (11th Cir. 2020), is reheard *en banc* and thereafter possibly by the Supreme Court."). This Court's immediate review is needed to remedy the grave injustices in these cases.

2. There are additionally an unknown number of cases in which defendants have already been wrongly denied relief under *Jones*.[5] The government assumes that the bar on successive petitions in § 404(c)(2) of the First Step Act would prevent a defendant who was previously denied

[5] In some cases, defendants received partial relief, but were still affected by pre-*Apprendi* drug quantities. *See United States v. Adams*, No. 6:98-cr-91-CEM-DAB (M.D. Fla.), Doc. 245, *appeal filed*, No. 19-14153 (11th Cir.).

relief from presenting a renewed claim in light of a change in law. But the courts have not yet decided whether § 404(c) would apply in this situation, and there is a strong argument that it would not.[6]

In any event, the Eleventh Circuit has interpreted § 404(c)(2) as a claims-processing rule which may be waived by the government, and not as a jurisdictional bar. *See United States v. Deruise*, 2023 WL 3668929, *1 (11th Cir. May 26, 2023). In light of the government's concession that *Jones* was wrongly decided, the government would presumably waive its objection to a renewed motion for a defendant who was previously harmed by *Jones*. *See id*. at *1 ("Because the First Step Act's bar on a district court considering a successive motion for a sentence reduction under § 404 is a claim-processing rule, not a jurisdictional bar, and the government has waived any argument based on this bar, we vacate and

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[6] Section 404(c) provides that district courts may not "entertain a motion made under this section to reduce a sentence" in two scenarios: (1) "if the sentence was previously imposed or previously reduced in accordance with the amendments made by sections 2 and 3 of the Fair Sentencing Act of 2010"; or (2) "if a previous motion made under this section to reduce the sentence was, after the date of enactment of this Act, denied after a complete review of the motion on the merits." Because *Jones* erroneously precluded district courts from exercising their discretion, it can be argued that the district courts failed to conduct a "complete review of the motion on the merits," as required to trigger the bar in § 404(c)(2).

remand so that the district court may consider whether to exercise its discretion to reduce Deruise's sentence.").

3. The government hypothesizes that that "[t]he fact that all courts of appeals allow at least *consideration* of judge-found drug quantities means that in many Section 404 cases, district courts in those circuits will reach similar outcomes as district courts in the Eleventh Circuit would." *Harper* Opp. at 13 (emphasis in original). But both anecdotal and empirical evidence suggests that this will be the rare exception, rather than the rule.

The NAFD Brief identifies "dozens" of cases outside the Eleventh Circuit where relief was granted to "individuals whose offenses were found at sentencing, pre-*Apprendi*, to involve a quantity of crack that exceeds the current statutory threshold of 280 grams, under analyses that are incompatible with *Jones*'s rule for pre-*Apprendi* cases." NAFD Brief at 17-21 & nn. 17-18. Many of these cases involved drug quantities far exceeding 280 grams of crack cocaine; and the district courts imposed reduced sentences, even after considering these large drug quantities. *See*, *e.g.*, *United States v. Coakley*, 96-cr-26, dkt. 172 & 178 (E.D.N.C. Aug. 29, 2019) (3.1 kilograms of crack cocaine); *United States v. Jones*,

96-cr-111, dkt. 384 (W.D. Tex. Sept. 26, 2019) (13.76 kilograms); *United States v. Angulo-Lopez*, 91-cr-220, dkt. 1359 (W.D. Okla. Dec. 24, 2019) (42.82 kilograms); *United States v. Bowman*, 92-cr-392, 2020 WL 470284 (S.D.N.Y. Jan. 29, 2020) (26.1 kilograms); *United States v. Palmer*, 89-cr-36, 2023 WL 226522 at *6 (D.D.C. Feb. 28, 2023) (150 kilograms).

This is hardly surprising. Federal judges have long decried mandatory drug sentencing laws. *See* Sarah French Russel, *Rethinking Recidivist Enhancements: The Role of Prior Drug Convictions in Federal Sentencing*, 43 U.C. DAVIS L. REV. 1135, 1168-69 (April 2010) ("Indeed, federal judges have spoken out against mandatory minimum sentences, and several prominent judges have even stepped down from the bench citing their opposition to mandatory minimum sentences in drug cases.") (footnotes omitted). "A 2004 survey found that 73.7% of district court judges and 82.7 of circuit court judges believe that 'drug punishments are greater than appropriate to reflect the seriousness of drug trafficking offenses.'" *Id.* (footnote omitted).

The government's speculation about the potential harmlessness of the Eleventh Circuit's error is further belied by empirical research about the impact of the Sentencing Guidelines. "The [United States Sentencing]

Commission's statistics demonstrate the real and pervasive effect the Guidelines have on sentencing." *Molina-Martinez v. United States*, 578 U.S. 189, 199 (2016). "In most cases district courts continue to impose 'either within-Guidelines sentences or sentences that depart downward from the Guidelines on the Government's motion.'" *Id.* (citation omitted). Thus, it can be presumed that in "most cases," where a defendant is no longer subject to a higher mandatory minimum sentence—*i.e.*, *life*—the district court will impose a reduced sentence in accordance with the Guidelines.

III. This case is an ideal vehicle to resolve the conflict.

This case presents an ideal vehicle through which to resolve the circuit conflict. The issue is clearly and cleanly presented.

The government suggests only one reason why Mr. Williams's case is an unsuitable vehicle, and it is pure speculation. The government argues that the question presented is "unlikely to be outcome-determinative" because, it claims, Mr. Williams "would be a poor candidate for Section 404 relief." Mem. Opp. at 2, 3. Arguing that the district court "could" account for facts related to Mr. Williams's offense, the government implies that the district court would deny Mr. Williams

relief. Mem. Opp. at 3. But that is a question for the district court to decide in the first instance. And the district court here never suggested that it would exercise its discretion to deny Mr. Williams relief. *See United States v. Williams*, 8:97-cr-61-SCB-AAS-1, Doc. 134.

Instead, the district court's order was a straightforward determination that Mr. Williams was ineligible. The district court held that it "lack[ed] authority to reduce Defendant's sentence in this case because his sentence would have remained the same had the 2010 FSA been in effect." Doc. 134 at 3. And that was because the Court was "bound by the previous finding of drug quantity used to determine his statutory penalty," Doc. 134 at 3, a finding that the Eleventh Circuit affirmed, *see United States v. Williams*, No. 20-13388 (11th Cir. 2023), Slip. Op. at 3 ("The district court correctly used Williams's judge-found quantity."), and that the government now agrees is wrong. *See* Mem. Opp. at 1-2.

There is simply no basis to find that the error was harmless in this case. But there is a "reasonable probability of a different outcome absent the error," under this Court's precedents. *See Molina-Martinez*, 578 U.S. at 198 ("When a defendant is sentenced under an incorrect Guidelines

range—whether or not the defendant's ultimate sentence falls within the correct range—the error can, and most often will, be sufficient to show a reasonable probability of a different outcome absent the error.").

Granting review or summarily reversing would potentially give Mr. Williams the opportunity to present his case to the district court and would allow the district court to consider the factors under a correct understanding of his eligibility for relief.

IV. This case warrants a merits review or summary reversal.

Finally, the government has failed to address Mr. Williams's request for summary reversal. *See* Pet. at 5, 25. The Eleventh Circuit, alone among the courts of appeals, has interpreted a federal statute in a way that all agree is wrong. And the Eleventh Circuit refused to correct its error, even after a remand from this Court in light of *Concecpion*. "Such 'plain and repetitive error' deserves summary reversal." *Shoop v. Cunningham*, 598 U.S. ---, 143 S. Ct. 37 (2022) (Thomas, J., dissenting from the denial of certiorari) (citing *Parker v. Matthews*, 567 U.S. 37, 49 (2012) (per curiam) ("It was plain and repetitive error for the Sixth Circuit to rely on its own precedents in granting Matthews habeas relief.")). *See also Cavazos v. Smith*, 561 U.S. 1, 7-8 (2011) ("This Court

vacated and remanded this judgment twice before. ... Each time the panel persisted in its course, reinstating its judgment without seriously confronting the significance of the cases called to its attention. ... Its refusal to do so necessitates this Court's action today."); Pet. at 31-32 (citing three cases where summary reversal was granted after a prior remand: *CNH Indus. N.V. v. Reese*, 138 S. Ct. 761 (2018) (per curiam); *Spears v. United States*, 555 U.S. 261 (2009) (per curiam); *Nelson v. United States*, 555 U.S. 350 (2009) (per curiam)).

Because the law is clear, and the government agrees that the decision below is wrong, the Court should grant review or, in the alternative, summarily reverse. Should the Court grant review in a petition presenting a similar issue, Mr. Williams respectfully asks the Court to hold his petition pending its resolution.

CONCLUSION

Based upon the foregoing, the petition should be granted. Mr. Williams asks this Court to grant certiorari and review the decision of the United States Court of Appeals for the Eleventh Circuit.

Alternatively, he asks the Court to grant this petition, and summarily reverse the decision of the court of appeals.

Respectfully submitted,

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