No. 23-6250

IN THE SUPREME COURT OF THE UNITED STATES

MATTHEW C. SPAETH, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the provision of petitioner's plea agreement preserving his right to raise "subsequent claims with regards to ineffective assistance of counsel or prosecutorial misconduct" created an exception to the rule, articulated by this Court in Tollett v. Henderson, 411 U.S. 258 (1973), that an unconditional guilty plea precludes a criminal defendant from raising independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea.

2. Whether petitioner's guilty plea relinquished his right to collaterally attack his sentence based on an alleged deprivation of constitutional rights that occurred prior to the entry of the guilty plea.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-18a) is reported at 69 F.4th 1190. The order of the district court (Pet. App. 19a-29a) is unreported but is available at 2021 WL 1244789. A prior order of the district court (App. 34a-66a) is unreported but is available at 2021 WL 150989.

JURISDICTION

The judgment of the court of appeals was entered on June 12, 2023. A petition for rehearing was denied on August 11, 2023 (Pet. App. 67a). On October 11, 2023, Justice Gorsuch extended the time within which to file a petition for a writ of certiorari to and

including December 11, 2023, and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a guilty plea in the United States District Court for the District of Kansas, petitioner was convicted of conspiring to possess 50 grams or more of methamphetamine with the intent to distribute, in violation of 21 U.S.C. 841(a)(1) and 846 (2012). Judgment 1. He was sentenced to 180 months of imprisonment, to be followed by five years of supervised release. Judgment 2-3. After petitioner's conviction became final, he filed a motion to vacate, set aside, or correct his sentence under 28 U.S.C. 2255. Pet. App. 3a. The district court dismissed the motion. Id. at 19a-29a. The court of appeals affirmed. Id. at 1a-18a.

1. Petitioner was a participant in a drug-trafficking operation that distributed large quantities of methamphetamine and other illegal drugs between January 2014 and September 2014. D. Ct. Doc. 247-1, at 1 (Sept. 20, 2016). Among other things, petitioner made weekly, multi-pound purchases of methamphetamine from a supplier and provided the methamphetamine that was sold during numerous controlled drug purchases. Id. at 1-2. In September 2014, petitioner was arrested in his home, where officers found 168 grams of methamphetamine, along with digital scales and other drug paraphernalia. Id. at 4.

A federal grand jury charged petitioner with one count of conspiring to possess 50 grams or more of methamphetamine with the intent to distribute, in violation of 21 U.S.C. 841(a)(1) (2012) and 21 U.S.C. 846 (2012); two counts of possessing 50 grams or more of methamphetamine with the intent to distribute, in violation of 21 U.S.C. 841(a)(1) (2012); one count of possessing of a firearm in furtherance of a drug-trafficking crime, in violation of 18 U.S.C. 924(c) (2012); and one count of possessing a firearm following a felony conviction, in violation of 18 U.S.C. 922(g)(1) (2012). Indictment 1-11; Gov't C.A. Br. 4.

2. Petitioner was detained at Corrections Corporation of America (CCA), a detention facility in Leavenworth, Kansas. Pet. App. 2a, 16a. In the spring of 2016, the U.S. Attorney's Office for the District of Kansas began investigating the involvement of CCA inmates and employees in a drug-smuggling conspiracy at the facility, in a case that became known as United States v. Carter, 429 F. Supp. 3d 788 (D. Kan. 2019), and referred to as the "Black Investigation" in the decisions below. Pet. App. 2a. Petitioner was suspected of involvement in that conspiracy, ibid., though he was not ultimately charged.

In April 2016, the government subpoenaed recordings of outgoing telephone calls placed by around 40 detainees, including petitioner. Pet. App. 2a-3a. CCA automatically recorded most detainee telephone calls. Ibid. While at CCA, petitioner placed five recorded telephone calls to his appointed counsel between

July 8, 2015, and May 3, 2016. Ibid. The five calls totaled 23 minutes. Ibid. An Assistant U.S. Attorney filed an affidavit in this case representing that at no time prior to petitioner's sentencing was she aware of the recordings between petitioner and his counsel, and that she has not listened to them. Id. at 3a.

In August 2016, a district judge (not the same one presiding over his criminal case) issued a "clawback" order, impounding all video and audio recordings of attorney-client communications in the government's possession. Pet. App. 2a. "The record does not reveal when [petitioner] or his counsel learned that the government had obtained his recorded calls." Ibid.

3. In September 2016, petitioner entered into a plea agreement pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C) in which he agreed to plead guilty to the conspiracy count in exchange for the government dismissing the remaining charges. Pet. App. 2a. The parties recommended a binding sentence of 180 months of imprisonment. Ibid. In his written plea agreement, petitioner represented that he was pleading guilty because he was guilty of the offense conduct and that he entered his guilty plea freely, voluntarily, and knowingly. Ibid.

The plea agreement contained a paragraph entitled "Waiver of Appeal and Collateral Attack" that began with a blanket waiver of petitioner's right to appeal or collaterally attack his sentence and ended with a limitation that states, in what is referred to as the "carve-out" provision, that "the defendant in no way waives

any subsequent claims with regards to ineffective assistance of counsel or prosecutorial misconduct." Pet. App. 2a, 10a-11a; see Plea Agreement 6-7.[1] The district court accepted the guilty plea. Pet. App. 2a. During the plea colloquy at his change-of-plea hearing, petitioner again represented that he was pleading guilty

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[1] In full, the appeal waiver provision read as follows:

> The defendant knowingly and voluntarily waives any right to appeal or collaterally attack any matter in connection with this prosecution, his conviction, or the components of the sentence to be imposed herein, including the length and conditions of supervised release, as well as any sentence imposed upon a revocation of supervised release. The defendant is aware that 18 U.S.C. § 3742 affords him the right to appeal the conviction and sentence imposed. By entering into this agreement, the defendant knowingly waives any right to appeal a sentence imposed in accordance with the sentence recommended by the parties under Rule 11(c)(1)(C). The defendant also waives any right to challenge his sentence, or the manner in which it was determined, or otherwise attempt to modify or change his sentence, in any collateral attack, including, but not limited to, a motion brought under 28 U.S.C. § 2255 (except as limited by United States v. Cockerham, 237 F.3d 1179, 1187 (10th Cir. 2001)), or a motion brought under Federal Rule of Civil Procedure 60(b). In other words, the defendant waives the right to appeal the sentence imposed in this case, except to the extent, if any, the Court imposes a sentence in excess of the sentence recommended by the parties under Rule 11(c)(1)(C). However, if the United States exercises its right to appeal the sentence imposed, as authorized by 18 U.S.C. § 3742(b), the defendant is released from this waiver and may appeal the sentence received, as authorized by 18 U.S.C. § 3742(a). Notwithstanding the forgoing waivers, the parties understand that the defendant in no way waives any subsequent claims with regards to ineffective assistance of counsel or prosecutorial misconduct.

Pet. App. 10a.

because he was guilty of the offense conduct and that he entered his guilty plea freely, voluntarily, and knowingly. Ibid.

Five months later, in January 2017, the district court held a sentencing hearing, at which it calculated an advisory Sentencing Guidelines range of 210 to 262 months of imprisonment. Pet. App. 2a. The court then sentenced petitioner to 180 months of imprisonment, as set forth in the plea agreement. Ibid. Although Federal Rule of Criminal Procedure 11(d)(2)(B) permits a defendant to withdraw a guilty plea before the court imposes a sentence if "the defendant can show a fair and just reason for requesting the withdrawal," petitioner did not seek to withdraw on any ground.

4. The district court ultimately found that calls between CCA detainees and their attorneys were routinely recorded even when the attorney requested the privatization of their telephone numbers. Pet. App. 3a. The Carter litigation has "led to important reforms within the entire District of Kansas," designed to better protect attorney-client communications. Id. at 53a.

In 2019, petitioner (like more than 100 other CCA inmates) moved for postconviction relief under 28 U.S.C. 2255, contending that the government had violated the Sixth Amendment by intruding on his attorney-client communications. Petitioner asked the district court to vacate his conviction and release him immediately or, in the alternative, to vacate his sentence and resentence him to 90 months of imprisonment. Pet. App. 3a.

The government opposed petitioner's motion. In doing so, it relied on the principle, articulated by this Court in Tollett v. Henderson, 411 U.S. 258, 267 (1973), that, "[w]hen a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea." Ibid. Rather, "[h]e may only attack the voluntary and intelligent character of the guilty plea by showing that the advice he received from counsel" in connection with the plea was constitutionally deficient. Ibid. And here, the government argued, petitioner did not contend that his counsel rendered ineffective assistance relating to his decision to plead guilty. See Pet. App. 41a-42a; D. Ct. Doc. 725, at 7-9 (Dec. 23, 2020).

After ordering supplemental briefing on the effect of the plea agreement's appellate waiver on the Tollett rule, the district court (the same district judge as in the Carter litigation) issued a decision on several issues in the consolidated cases of numerous CCA inmates. See Pet. App. 34a-66a. The court found, inter alia, that the appellate-waiver paragraph in petitioner's plea agreement "did not purport to waive Tollett." Id. at 3a-4a. The court also rejected petitioner's "argument that Tollett didn't apply to pre-plea constitutional violations whose effects somehow continued post-plea to sentencing." Id. at 4a. Having clarified that Tollett provided the applicable standard, the court invited

petitioner to seek leave to amend his motion to seek relief on the ground that his guilty plea was involuntary. Ibid.; see id. at 47a.

Petitioner declined to amend his Section 2255 motion. Pet. App. 4a. Instead, he sought and obtained a certificate of appealability (COA) on the issues decided by the district court in its decision about the effect of Tollett on the Section 2255 motions. Ibid. Petitioner acknowledged that, by doing so, he invited dismissal of his motion. Ibid. The district court, observing that petitioner did not "attempt to meet" the standard for showing that his plea was involuntary due to ineffective assistance of plea counsel, dismissed petitioner's Section 2255 motion and issued a COA. Id. at 25a-26a.

5. The court of appeals affirmed the dismissal. Pet. App. 1a-18a.

The court of appeals first addressed the question "whether the carve-out provision in Petitioner's unconditional standard plea agreement constitutes a waiver of the government's right to raise, or created an exception to, the rule of law in Tollett." Id. at 4a, 10a. The court determined that the appeal waiver did not waive the requirement that petitioner satisfy the Tollett standard, and thus that petitioner had only "one avenue to pursue pre-plea constitutional violations -- ineffective assistance of counsel that causes [his] plea[] to be involuntary and unknowing." Id. at 11a. The court arrived at that determination "for several

reasons." Ibid. "First, the appeal waiver addresses [petitioner's] waiver of appellate rights, not the government's." Ibid. "Second, and relatedly, the carve-out provision" -- i.e., the last sentence of the appeal-waiver paragraph -- "does not purport to bind the government to anything; it merely provides an exception to [petitioner's] earlier blanket waiver." Ibid. "Third, and relatedly again, the appeal waiver does not -- and cannot -- manufacture new rights for [petitioner] beyond those provided by law." Ibid. "Fourth, the carve-out provision simply excepts from [petitioner]'s blanket appeal waiver his right to appeal any subsequent (so post-plea-based) claims for ineffective assistance of counsel and prosecutorial misconduct." Ibid.

Having determined that the plea agreement's appellate waiver did not preclude the application of the Tollett rule, the court of appeals found that the district court "did not err in ruling that Tollett bars [petitioner's] Sixth Amendment challenge." Pet. App. 12a. The court of appeals observed that petitioner "does not even try to argue that he meets Tollett," and is "not asserting that his plea counsel performed deficiently, let alone that such performance prejudiced him." Ibid. It further observed that, "in the district court, [petitioner] repeatedly stated that he pleaded guilty voluntarily and knowingly and that he was satisfied with his plea counsel's performance." Ibid. And it accordingly

observed that petitioner failed to meet his burden under Tollett of vacating his guilty plea. Ibid.[2]

Finally, the court of appeals addressed petitioner's contention that, "even if Tollett bars his pre-plea constitutional claims, it cannot bar a challenge to his sentence." Pet. App. 15a. The court stated that it was "uncertain what [petitioner] is claiming" because "[a]s far as the record reflects, the five attorney-client intrusions occurred pre-plea and are unlinked to his sentencing." Ibid. The court thus "assume[d] that [petitioner] is arguing that, because the pre-plea invasion" of his attorney-client relationship "somehow disabled counsel as a matter of law, that defect persisted into the sentencing phase." Ibid.

The court rejected that argument. Pet. App. 15a. First, the court reiterated that it had "already concluded that [petitioner's] plea counsel's performance was neither deficient nor prejudicial." Ibid. Second, the court stated that it "cannot agree that Tollett permits [petitioner] to recast a pre-plea claim as an ongoing sentencing error." Ibid. The court explained that Tollett rested on a guilty plea breaking the causal effect of any unconstitutional conduct on the defendant's conviction. Ibid.

[2] The court of appeals further determined that the government's pre-plea acquisition of confidential communications does not render a plea unknowing and involuntary or relieve petitioner of the need to show prejudice under the court of appeals' decision in Shillinger v. Haworth, 70 F.3d 1132 (10th Cir. 1995). Pet. App. 12a-14a. Petitioner does not challenge that aspect of the court's decision in this Court. Pet. 12 n.3.

And the court reasoned that, without any claim of "post-plea intrusions into his attorney-client conversations," the alleged pre-plea conduct "falls under Tollett's ambit no matter if the effect of that conduct continues through sentencing." Ibid.

ARGUMENT

Petitioner renews his contention (Pet. 13-24) that the carve-out provision of the appeal waiver in his plea agreement created an exception the rule of Tollett v. Henderson, 411 U.S. 258 (1973), that an unconditional guilty plea bars a criminal defendant from raising independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea. The court of appeals correctly rejected that contention, and it did not create a conflict with any decision of this Court or another court of appeals by doing so.

Petitioner also renews his contention (Pet. 24-34) that, even if his guilty plea bars him from collaterally challenging his conviction under 28 U.S.C. 2255 based on his pre-plea constitutional claims, it does not bar him from challenging his sentence based on those same claims. The court of appeals correctly rejected that contention as well, and again did not create a conflict with any decision from this Court or another court of appeals.[3] Further review is unwarranted.

[3] The same two questions are presented in the pending petition for a writ of certiorari in Ayala-Garcia v. United States, No. 23-6621 (filed Jan. 26, 2024). The second question is also presented in the petition for a writ of certiorari in Morris v. United States, No. 23-6230 (filed Dec. 8, 2023).

1. The court of appeals correctly determined that petitioner's guilty plea barred his Section 2255 challenge to his conviction based on government conduct preceding his guilty plea.

a. In Tollett, this Court held that a defendant could not collaterally attack his counseled guilty plea after learning that state prosecutors had systematically excluded black jurors from the grand jury. 411 U.S. at 259-260. The Court explained that the "focus of the federal habeas inquiry is the nature of the advice and the voluntariness of the plea, not the existence as such of an antecedent constitutional infirmity." Id. at 266. That is because "a guilty plea represents a break in the chain of events which has preceded it in the criminal process." Id. at 267. Thus, "[w]hen a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea." Ibid. Rather, "[h]e may only attack the voluntary and intelligent character of the guilty plea by showing that the advice he received from counsel" with respect to the plea was constitutionally deficient. Ibid.

In the years since Tollett, this Court has repeatedly reaffirmed that "a valid guilty plea 'forgoes not only a fair trial, but also other accompanying constitutional guarantees."' Class v. United States, 138 S. Ct. 798, 805 (2018) (citation omitted). Thus, the plea "renders irrelevant -- and thereby

prevents the defendant from appealing -- the constitutionality of case-related government conduct that takes place before the plea is entered." Ibid. The only exceptions that the Court has identified are certain claims that "would extinguish the government's power to 'constitutionally prosecute' the defendant if the claim were successful." Id. at 806 (quoting United States v. Broce, 488 U.S. 563, 575 (1989) (internal quotation marks omitted)).

The court of appeals correctly found that petitioner's guilty plea relinquished his challenge to the government's pre-plea conduct. The district court's plea colloquy makes clear that petitioner "pleaded guilty voluntarily and knowingly and that he was satisfied with his plea counsel's performance." Pet. App. 12a. Any challenge to petitioner's guilty plea based on pre-plea conduct is thus inconsistent with his admission "in open court that he is in fact guilty of the offense with which he is charged." Tollett, 411 U.S. at 267. And, unlike the narrow category of claims that may survive a guilty plea, a claim alleging that the government intruded on attorney-client communications before the guilty plea would not "extinguish the government's power to 'constitutionally prosecute' the defendant if the claim were successful." Class, 138 S. Ct. at 806 (citation and internal quotation marks omitted).

b. Petitioner's contrary arguments lack merit.

Petitioner claims (Pet. 13-18) that the court of appeals erred by foreclosing the possibility of a plea agreement that overrides Tollett's relinquishment rule. See, e.g., Pet. 14 (asserting that the court of appeals mistakenly held that "Tollett precludes the government from conditioning a defendant's guilty plea on the defendant's right to collaterally attack the conviction"). But the decision below did not do so. Instead, it simply rejected petitioner's argument that the carve-out in his appeal waiver dispensed with the Tollett rule. See Pet. App. 11a (finding that the government did not "waive[] any reliance on Tollett"). It determined, inter alia, that "the appeal waiver addresses [petitioner's] waiver of appellate rights, not the government's" and that "the carve-out provision does not purport to bind the government to anything; it merely provides an exception to [petitioner's] earlier blanket waiver in the first sentence" of the appeal waiver. Ibid. Accordingly, while petitioner's guilty plea could be described as "conditional" in the sense that it was conditioned on the plea agreement, nothing in the plea agreement itself dispenses with the background rule of Tollett.

Although petitioner would characterize the court of appeals' decision as much more far-reaching, he does acknowledge that the court of appeals' interpretation of his particular plea agreement is at least an alternative ground for the decision. See Pet. 19 (acknowledging that petitioner "would likely not be eligible for any relief because the Tenth Circuit alternatively held that

[petitioner] did not reserve the right to raise a pre-plea-based prosecutorial misconduct claim in the plea agreement"). And his fact-specific challenge to the court of appeals' interpretation of the particular language at issue -- principally, the meaning of the word "subsequent" as used in his plea agreement -- does not warrant this Court's review, see, e.g., Sup. Ct. R. 10, and lacks merit in any event. As the court of appeals explained (Pet. App. 17a), his position that "subsequent" refers to the time of the plea agreement, rather than to the time at which a preserved post-conviction claim might arise, would render the term "subsequent" superfluous: all appellate and postconviction claims are temporally "subsequent" to a plea.

c. Petitioner identifies no other factor that would justify this Court's review of the first question presented. His assertion (Pet. 15) of a conflict with this Court's decisions is question-begging; it presupposes that his interpretation of the plea agreement, the decision below, and Tollett itself is correct. And notwithstanding his claim of a circuit conflict (Pet. 18), he identifies no conflicting authority in other circuits. His assertion that the district court in his own case "itself issued conflicting opinions on this issue," Pet. 18 n.6 (citations omitted), is not a basis for this Court's review.

2. Petitioner also argues (Pet. 24-34) that even if his guilty plea precludes him from challenging his conviction, it does

not bar him from challenging his sentence. The court of appeals correctly rejected that argument as well. Pet. App. 15a.

a. "A plea of guilty and the ensuing conviction comprehend all of the factual and legal elements necessary to sustain a binding, final judgment of guilt and a lawful sentence." Broce, 488 U.S. at 569 (emphasis added). Accordingly, this Court has never suggested that a defendant may circumvent the Tollett rule by claiming that the same defect raised before the guilty plea also infected sentencing proceedings after the plea. To the contrary, Tollett holds that, "[w]hen a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea." Tollett, 411 U.S. at 267 (emphasis added). That is what petitioner has done here: he has raised an independent "claim" relating to the government's pre-plea conduct. That claim is squarely barred by Tollett and its progeny, irrespective of whether it is used to attack the validity of his conviction or his sentence. The court of appeals thus correctly rejected petitioner's attempt to "recast a pre-plea claim as an ongoing sentencing error." Pet. App. 15a.

Petitioner suggests that a guilty plea breaks only the causal effect of any pre-plea conduct "on a defendant's conviction," and not its sentence. Pet. 26 (quoting Pet. App. 15a). Again, however, that argument is inconsistent with this Court's opinion

in Tollett itself, which rested on the principle that "a guilty plea represents a break in the chain of events which has preceded it in the criminal process." Tollett, 411 U.S. at 267 (emphasis added). And here, petitioner is relying on events that "preceded" his guilty plea to attack the sentence that he received after his guilty plea. As the district court correctly explained, "[f]inding such a continuing violation" after the guilty plea broke the chain of events that preceded it "would render [Tollett] meaningless." Pet. App. 47a.

Petitioner also points (Pet. 33) to the text of 28 U.S.C. 2255, which authorizes prisoners to "move the court which imposed the sentence to vacate, set aside, or correct the sentence," 28 U.S.C. 2255(a). But without a challenge to his sentence that is independent of his barred challenge to his conviction by plea, that characterization of a Section 2255 motion does not aid him.

b. Petitioner asserts that "the Tenth Circuit effectively created a conflict in the Circuits, as no other court of appeals has extended Tollett to sentencing challenges." Pet. 31. But the absence of authority in other circuits addressing a particular question demonstrates the absence of a conflict, not the existence of one. It is thus a reason to deny further review, not to grant it. See Sup. Ct. R. 10.

In any event, petitioner is incorrect to claim that other courts have not addressed this issue. Several courts of appeals have cited Tollett in rejecting attempts to revive a claim that

was relinquished by a guilty plea on the theory that the same error infected sentencing. See United States v. Arango, 966 F.2d 64, 66 (2d Cir. 1992) (challenge to constitutionality of seizure of evidence used at sentencing); United States v. Leming, 532 F.2d 647, 649-650 (9th Cir. 1975) (challenge to sentence based on Youth Corrections Act), cert. denied, 424 U.S. 978 (1976); United States v. Smallwood, 920 F.2d 1231, 1240 (5th Cir. 1991) (challenge to constitutionality of seizure of evidence used at sentencing)[4]; United States v. Quezada, No. 93-1972, 1994 WL 66104, at *2 (1st Cir. 1994) (Tbl.) (similar); United States v. Robeson, 231 F. Appx. 222, 224 (4th Cir. 2007) (per curiam) (similar). The same principle bars petitioner's claim here.

3. At all events, this case would be a poor vehicle to address the questions presented, for multiple reasons. First, petitioner acknowledges (Pet. 19) that any relief would depend not only on favorable resolution of his broader Tollett issue, but also favorable resolution of the fact-specific issue of how to construe the language in his plea agreement. Second, his entry of a plea under Federal Rule of Criminal Procedure 11(c)(1)(C), in which the parties "agree that a specific sentence or sentencing range is the appropriate disposition of the case," Fed. R. Crim.

[4] Petitioner suggests that Smallwood is "best viewed through the lens of abandonment." Pet. 32. But Smallwood expressly applied Tollett, not a freestanding abandonment theory. See Smallwood, 920 F.3d at 1240 (quoting Tollett, 411 U.S. at 267).

P. 11(c)(1)(C) pretermits (or at least complicates) his argument that he is entitled to challenge his sentence.

Finally, the circuit precedent on which he relied in seeking relief on attorney-client privilege grounds is currently undergoing en banc reconsideration by the court of appeals. See United States v. Hohn, 91 F.4th 1060 (10th Cir. 2024) (en banc) (ordering further briefing on, inter alia, whether "Shillinger v. Haworth, 70 F.3d 1132 (10th Cir. 1995) correctly h[e]ld that it is structural error for the government to purposefully intrude without legitimate justification into the attorney-client relationship and that prejudice must be presumed"); see Pet. App. 3a (observing that petitioner "rested his motion on Schillinger). The court of appeals may thus reverse the decision on which petitioner's Section 2255 motion is premised.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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