No. 24-5529

IN THE SUPREME COURT OF THE UNITED STATES

JOSE MUYET, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND 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 valid life sentences on separate counts.

ADDITIONAL RELATED PROCEEDINGS

United States District Court (S.D.N.Y):

United States v. Muyet, No. 01-cv-09371 (Jan. 12, 2023)

United States v. Muyet, No. 95-cr-00941 (July 28, 1998)

United States Court of Appeals (2d Cir.):

Muyet v. United States, Nos. 23-333 and 23-334 (June 10, 2024)

Muyet v. United States, No. 16-2094 (July 8, 2020)

Muyet v. United States, No. 18-1193 (July 12,2018)

Muyet v. United States, No. 14-2923 (Jan. 9, 2015)

United States v. Muyet, Nos. 98-1421(L), 98-1538, 98-1550, 98-1565, 98-1633 (Sept. 8, 2000)

Supreme Court of the United States:

Muyet v. United States, No. 06-8381 (Jan. 22, 2007)

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-5a) is unreported but is available at 2024 WL 2890390. The opinion of the district court (Pet. App. 6a-19a) is also unreported but is available at 2023 WL 170869.

JURISDICTION

The judgment of the court of appeals was entered on June 10, 2024. The petition for a writ of certiorari was filed on September 9, 2024. 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 Southern District of New York, petitioner was convicted on one count of racketeering, in violation of 18 U.S.C. 1962(c); one count of participating in a racketeer influenced corrupt organization (RICO) conspiracy, in violation of 18 U.S.C. 1962(d); nine counts of conspiring to commit murder, in violation of the Violent Crimes in Aid of Racketeering (VICAR) statute (18 U.S.C. 1959 et seq.); 11 counts of VICAR murder, in violation of 18 U.S.C. 1959(a)(1); three counts of VICAR attempted murder, in violation of 18 U.S.C. 1959(a)(5); one count of VICAR conspiracy to commit murder and assault resulting in serious bodily injury, in violation of 18 U.S.C. 1959(a)(5) and (6); two counts of VICAR attempted murder and assault resulting in serious bodily injury, in violation of 18 U.S.C. 1959(a)(5) and (3); one count of conspiring to distribute heroin and cocaine base, in violation of 21 U.S.C. 846; ten counts of using a firearm during and in relation to a crime of violence, in violation of 18 U.S.C. 924(c); and one count of using a firearm during and in relation to a drug trafficking crime, in violation of 18 U.S.C. 924(c). C.A. App. 162-164 (Judgment). The district court sentenced petitioner to life imprisonment, to be followed by five years of supervised release. Id. at 165-167. The court of appeals affirmed. 225 F.3d 647.

On post-conviction review, the district court denied petitioner's motion to vacate ten of the Section 924(c) convictions. Pet. App. 6a-19a. The court of appeals affirmed. Id. at 1a-5a.

1. From 1991 to 1995, petitioner was the co-leader, along with Radames Vega, of the "Nasty Boys," a Bronx street gang that dealt large quantities of heroin and cocaine base and regularly committed acts of violence, including murder, to protect its drug operation. Presentence Investigation Report (PSR) ¶¶ 69-97. Vega was responsible for the drug suppliers, and petitioner managed the daily street operations. PSR ¶ 74. Petitioner imposed stringent rules of operation within the gang and demanded total compliance with his commands, including compliance with commands to commit murder. PSR ¶ 78.

Petitioner and the Nasty Boys maintained control over their territory through acts of violence, often at petitioner's direction. PSR ¶ 83. They met any effort to hinder their operation with "instantaneous and brutal" violent retaliation. PSR ¶ 83. Petitioner personally participated in the murders of at least 11 people, and the attempted murders of many more, by authorizing shootings and helping to carry shootings out. PSR ¶¶ 73, 75-76, 79-97; Gov't C.A. Br. 3-9 (describing the murders, attempted murders, and conspiracies to commit those murders).

2. A grand jury in the Southern District of New York returned an indictment charging petitioner with one count of racketeering, in violation of 18 U.S.C. 1962(c); one count of RICO conspiracy, in violation of 18 U.S.C. 1962(d); nine counts of VICAR conspiracy to commit murder, in violation of 18 U.S.C. 1959(a)(5) and (2); 11 counts of VICAR murder, in violation of 18 U.S.C. 1959(a)(1); three counts of VICAR attempted murder, in violation of 18 U.S.C. 1959(a)(5) and (2); one count of VICAR conspiracy to commit murder and assault resulting in serious bodily injury, in violation of 18 U.S.C. 1959(a)(5) and (6); two counts of VICAR attempted murder and assault resulting in serious bodily injury, in violation of 18 U.S.C. 1959(a)(5) and (3); one count of conspiring to distribute heroin and cocaine base, in violation of 21 U.S.C. 846; 12 counts of using a firearm during and in relation to a crime of violence, in violation of 18 U.S.C. 924(c); and one count of using a firearm during and in relation to a drug trafficking crime, in violation of 18 U.S.C. 924(c). C.A. App. 162-164 (Judgment); Gov't C.A. Br. 9-10 (describing charges); C.A. App. 58-106 (Indictment).

Aside from the Section 924(c) count predicated on a drug-trafficking crime, the other twelve Section 924(c) offenses were predicated on the murders, attempted murders, and conspiracies to commit those murders described in the VICAR counts. C.A. App. 99-106. As the predicate crimes required under the VICAR statute,

see 18 U.S.C. 1959(a), the government alleged that petitioner's actions had violated the New York murder, attempted murder, and conspiracy to commit murder statutes, N.Y. Penal Law §§ 105.15, 110.00, and 125.25. All but one of the Section 924(c) counts alleged that petitioner had used or carried a firearm during and in relation to both a conspiracy offense and the substantive crime. See, e.g., C.A. App. 99 (alleging petitioner "used and carried a firearm during and in relation to a crime of violence, to wit, the conspiracy to murder and the murder of Herman Figueroa") (Count 31); see C.A. App. 99-105 (Counts 31-36, 37-38, 40-42). The remaining Section 924(c) count was not tied to a conspiracy; instead, it alleged that petitioner used and carried a firearm "during and in relation to * * * the attempted murder of Miguel Parrilla." C.A. App. 103-104 (Count 39).

3. The government dismissed one of the Section 924(c) counts before trial (Count 40), and the jury acquitted petitioner on one other Section 924(c) count (Count 36). Gov't C.A. Br. 9-10 & nn.2-3. The jury found petitioner on guilty on all the other counts in the indictment. C.A. App. 162-164.

The district court sentenced petitioner to life imprisonment plus 205 consecutive years of imprisonment. C.A. App. 165-166. The sentence consisted of 14 concurrent life terms on the racketeering count, the RICO conspiracy count, the 11 VICAR murder counts, and the drug conspiracy count; 15 concurrent ten-year

sentences on the VICAR conspiracy and attempted murder counts; a consecutive five-year sentence on the first Section 924(c) count, and ten consecutive 20-year sentences on the remaining Section 924(c) counts. Ibid.

The court of appeals affirmed. 225 F.3d 647.

4. Following multiple unsuccessful attacks on his convictions and sentence, see Pet. App. 8a-10a, the court of appeals granted petitioner leave to file a successive motion under 28 U.S.C. 2255 to argue that his Section 924(c) convictions should be vacated under Johnson v. United States, 576 U.S. 591 (2015), which found the residual clause of the Armed Career Criminal Act of 1984, Pub. L. No. 98-473, Tit. II, ch. XVIII, 98 Stat. 2185 (18 U.S.C. 924(e)(2)(B)(ii)) unconstitutionally vague, and United States v. Davis, 588 U.S. 445 (2019), which found the similar definition of crime of violence in Section 924(c)(3)(B) to be unconstitutionally vague. 16-2094 Doc. 49 (May 12, 2020) (C.A. Order).

Petitioner argued that his ten Section 924(c) convictions predicated on a crime of violence, with the exception of Count 39, were predicated in part on a conspiracy offense that no longer qualified as a crime of violence post-Davis. Petitioner further argued that even if those Section 924(c) convictions were predicated on the substantive crimes of murder, attempted, murder, or assault resulting in serious bodily injury, those offenses can

all be committed by "culpable omissions" and thus do not categorically require the "'use'" of force, as required under the alternative "'crime of violence'" definition in Section 924(c)(3)(A). 01-cv-09371 D. Ct. Doc. 64, at 9-26 (Nov. 12, 2020); see United States v. Taylor, 596 U.S. 845, 850 (2022) (explaining that courts employ a "categorical approach" in assessing whether an offense is a crime of violence under Section 924(c)(3)(A)).

The district court denied petitioner's Section 2255 motion based on the concurrent-sentence doctrine. Pet. App. 16a-18a. The court observed that under the court of appeals' decision in Kassir v. United States, 3 F.4th 556 (2d Cir. 2021), the district court had discretion to decline to consider a Section 2255 challenge where the movant would remain in custody regardless of the outcome. Pet. App. 17a. And finding that vacating the Section 924(c) convictions would afford petitioner no chance of a shorter time in custody given his multiple life sentences, and because the convictions would have no realistic collateral consequences, the court "exercise[d] its discretion" to reject petitioner's Section 2255 motion under the concurrent-sentence doctrine. Id. at 18a.

The district court further noted that petitioner's claim was likely meritless in any event, because murder and attempted murder remain valid Section 924(c) offenses after Davis, even if conspiracy to commit murder is not. Pet. App. 18a. By the time the district court ruled on the Section 2255 motion, the en banc

Second Circuit had rejected petitioner's argument that crimes which can be committed by an act of omission do not categorically require the use of force. See United States v. Scott, 990 F.3d 94, 107-123 (2d Cir. 2021) (en banc), cert. denied, 142 S. Ct. 397 (2021).

5. The court of appeals granted a certificate of appealability and affirmed. Pet. App. 1a-5a, 20a. The court recognized that the district court had not abused its discretion "by applying the concurrent-sentence doctrine." Id. at 3a. The court of appeals explained that the doctrine "applies to a collateral challenge to a conviction for which the sentence runs consecutively to one or more unchallenged life sentences." Ibid. (quoting Al-'Owhali v. United States, 36 F. 4th 461, 467 (2d Cir. 2022)). The court of appeals also emphasized that the district court here had "understood its discretion to conduct a de novo resentencing," but had made clear that even if it were to vacate the challenged Section 924(c) counts, "it would not exercise its discretion to resentence" petitioner to a "shorter prison term." Id. at 3a-4a.

ARGUMENT

Petitioner renews (Pet. 19-23) his argument that the district court abused its discretion in applying the rationale of the concurrent-sentence doctrine to decline to vacate some of petitioner's allegedly invalid Section 924(c) convictions, where

petitioner was validly convicted and sentenced to life imprisonment on 14 other counts 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. This Court has recently and repeatedly denied review in other cases presenting similar issues. See, e.g., Duka v. United States, 143 S. Ct. 749 (2023) (No. 22-5206); Suggs v. Warden, FCI Loretto, 143 S. Ct. 749 (2023) (No. 22-5752); 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. The lower courts permissibly applied the rationale of the concurrent-sentence doctrine to decline to undertake merits review of petitioner's challenge to ten of his eleven Section 924(c) convictions.

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 the 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 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). 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 postconviction 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.").

The ultimate determination in the Section 2255 context focuses on whether the defendant has demonstrated an error that affects his "custody," via the remedy of "release[]." 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.") (emphasis added). A movant who can show error in his custody 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, 688 F.3d at 849 ("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 "acted within its discretion in declining to reach the merits by applying the concurrent-sentence doctrine." Pet. App. 3a. "[T]he 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, United States v. Duka, 27 F.4th 189, 195 (3d Cir. 2022), cert. denied, 143 S. Ct. 749 (2023).

Specifically, petitioner is serving 14 terms of life imprisonment for racketeering, RICO conspiracy, 11 VICAR murders, and a drug conspiracy. C.A. App. 165-166. The lower courts rejected challenges to those convictions and sentences in prior appeals, including on postconviction review. See Pet. App. 8a-10a. The court of appeals granted petitioner leave to file the instant successive motion under 28 U.S.C. 2255, but petitioner's motion was limited to the argument that his Section 924(c) convictions that are predicated on a crime of violence are not valid under United States v. Davis, 588 U.S. 445 (2019). Accordingly, in light of the still-valid life sentences on 14 other counts, "even a successful challenge on the merits [of his Section 924(c) convictions] would afford [petitioner] no reasonable prospect of a shorter time in custody." Pet. App. 4a (citation omitted. Although not technically concurrent with the life sentences, the Section 924(c) sentences would not begin to run

until the life terms of imprisonment are complete -- "a distinction without a difference." Duka, 27 F.4th at 195.

Petitioner asserts (Pet. 18-20, 22-23) that his Section 2255 motion sought a release from "custody," despite the existence of fourteen valid life sentences, because he requested a full resentencing if his Section 924(c) convictions were vacated. But as the court of appeals explained, the district court made clear that even if it were to vacate petitioner's Section 924(c) convictions, "it would not exercise its discretion to resentence" petitioner to "a shorter prison term." Pet. App. 4a; see id. at 17a-18a. Instead, the district court found that "even a successful challenge on the merits would afford [p]etitioner no reasonable prospect of a shorter time in custody." Id. at 18a.

Petitioner's factbound challenge to that determination, which relies on a later decision of the same court of appeals, see Pet. 18-19, does not warrant this Court's review. See Sup. Ct. R. 10; Wisniewski v. United States, 353 U.S. 901, 902 (1957) (per curiam). And petitioner has failed to identify any collateral consequences of his Section 924(c) conviction that would satisfy the "custody" requirement of Section 2255. Duka, 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).

Petitioner contends (Pet. 20-21) that mandatory language in Section 2255(b) required the district court to review his Section 924(c) challenges on the merits. But Section 2255(b)'s requirements -- including a prompt hearing with findings and conclusions of law -- do not apply if the "motion and the files and records of the case conclusively show that the prisoner is entitled to no relief," 28 U.S.C. 2255(b) -- i.e., "release[]," 28 U.S.C. 2255(a) -- as the district court found here. Pet. App. 17a-18a. Likewise, the requirements that a court "vacate and set the judgment aside" and discharge the prisoner or correct his sentence apply only if the prisoner demonstrates an error that affects the validity of his continued custody. See pp. 11-12, supra; 28 U.S.C. 2255(a)-(b).

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

a. Petitioner contends (Pet. 21-22) that this Court's precedents preclude application of the concurrent-sentence doctrine here. But as already explained, although the concurrent-sentence doctrine may have little relevance in the context of direct appeals, see Ray, 481 U.S. at 737, the doctrine has continued vitality in cases on collateral review, including for individuals like petitioner who are seeking postconviction relief under Section 2255. See pp. 9-12, supra; Benton, 395 U.S. at 793 n.11. Petitioner cites (Pet. 22) Rutledge v. United States, 517

U.S. 292 (1996), and Sibron v. New York, 392 U.S. 40 (1968), but both decisions involved challenges to convictions on direct appeal. Rutledge, 517 U.S. at 296; Sibron, 392 U.S. at 49-50.

b. Petitioner further contends (Pet. 4-5, 14-15) that the decision below conflicts with decisions of federal courts of appeals. But petitioner fails to identify a conflict of authority over the question actually presented in this case.

Four circuits -- the Second, Third, 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; see Duka, 27 F.4th at 194-196 (finding no abuse of discretion where district court declined to consider challenge to Section 924(c) conviction in light of defendant's life sentence on another count); Al-'Owhali, 36 F.4th at 467 ("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); cf. Amaya v. United States, 71 F.4th 487, 490-491 (6th Cir. 2023) (finding that district court did not err by dismissing Davis claim without reaching the merits because vacatur of Section 924(c) conviction would not affect defendant's sentence in light of valid life sentences imposed on other counts).

The remaining courts of appeals have not confronted in published opinions the circumstances presented here -- where a defendant's collateral attack on certain convictions, even if successful, would not affect separate convictions and life sentences and the defendant has failed to identify adverse collateral consequences stemming from the challenged convictions. Petitioner errs in asserting (Pet. 4-5, 14-15) that the Fourth, Eighth, Ninth, Tenth, and D.C. 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 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; see Oslund v. United States, 944 F.3d 743, 746 n.2 (8th Cir. 2019) (noting that the defendant challenged only the sentence imposed, not the underlying conviction); United States v. Jefferson, 60 F.4th 433, 436 (8th Cir. 2023) (prisoner sought resentencing under the Fair Sentencing Act and "there is no challenge to the validity of [his] * * * conviction"). And petitioner does not identify any decision in which either court has applied such apparent dictum or considered whether it would hold true in the situation where a Section 2255 movant is serving a term of life imprisonment on a valid count of conviction -- let alone 14 valid life terms. 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).

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. 10-12, 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.

The Tenth and D.C. Circuit decisions cited by petitioner (Pet. 16) likewise involved direct appeals, see United States v. Harris, 695 F.3d 1125, 1139 (10th Cir. 2012); United States v. Agramonte, 276 F.3d 594, 598 (D.C. Cir. 2001) -- a context in which this Court has already indicated that the presence of separate special assessments for each count of conviction may preclude invocation of the concurrent-sentence doctrine. Neither decision analyzes how the doctrine would apply on collateral review. And in United States v. Smith, 104 F.4th 314 (2024), petition for cert. pending, No. 24-5098 (filed July 12, 2024), the D.C. Circuit expressly declined to decide whether the rationale of the concurrent-sentence doctrine could be applied on postconviction review in circumstances similar to those here. Id. at 321. Petitioner has identified no conflict that warrants this Court's review.

3. This Court recently granted a writ of certiorari in Delligatti v. United States, No. 23-825 (argued Nov. 12, 2024), to consider whether a VICAR attempted-murder charge that was premised on the commission of attempted second-degree murder, in violation of New York law, qualifies as a crime of violence under Section

924(c)(3)(A). Petitioner contends (Pet. 13, 23-27) that because one of his Section 924(c) counts was predicated on VICAR attempted murder in violation of New York law, the Court should hold his petition for Delligatti, and then -- if the Court's decides Delligatti in favor of the petitioner in that case -- grant this the petition here to decide whether the courts below erred in applying the concurrent-sentence doctrine.

The Court should reject that request. In applying the concurrent-sentence doctrine in this case, the district court determined that vacatur of petitioner's Section 924(c) convictions would have no effect on his sentence. Pet. App. 17a ("Petitioner will remain in custody regardless of the outcome of the motion."); id. at 18a ("[E]ven a successful challenge on the merits would afford [p]etitioner no reasonable prospect of a shorter time in custody."). The court of appeals, in turn, expressly recognized that "the district court understood its discretion to conduct a de novo resentencing" if it vacated petitioner's Section 924(c) counts, but that the district court nevertheless determined that even if it were to vacate those counts, "it would not exercise its discretion to resentence [petitioner] because doing so would not result in a shorter prison term." Id. at 3a-4a.

Even if petitioner were correct in his arguments about the concurrent-sentence doctrine, this Court's review is discretionary, and is not appropriately exercised in a case with

no meaningful practical consequences. See Supervisors v. Stanley, 105 U.S. 305, 311 (1882) (explaining that this Court does not grant a writ of certiorari to "decide abstract questions of law * * * which, if decided either way, affect no right" of the parties); The Monrosa v. Carbon Black Exp., Inc., 359 U.S. 180, 184 (1959) ("While this Court decides questions of public importance, it decides them in the context of meaningful litigation. Its function in resolving conflicts among the [c]ourts of [a]ppeals is judicial, not simply administrative or managerial."). Thus, because the lower courts already determined that petitioner would not be resentenced to a shorter time in custody even if his Section 924(c) claims were valid, there is no reason to hold the petition for Delligatti.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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