No. 24-5532

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IN THE SUPREME COURT OF THE UNITED STATES

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ERIC ROBERT RUDOLPH, PETITIONER

v.

UNITED STATES OF AMERICA

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

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# BRIEF FOR THE UNITED STATES IN OPPOSITION

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## QUESTION PRESENTED

Whether the court of appeals correctly denied petitioner's motion to vacate his sentence under 28 U.S.C. 2255(a), where petitioner entered into a plea agreement that contained an express waiver of the right to collaterally attack his sentence.

ADDITIONAL RELATED PROCEEDINGS

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

Rudolph v. United States, No. 20-cv-8024 (July 29, 2021)

United States v. Rudolph, No. 00-cr-422 (July 20, 2005)

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

United States v. Rudolph, No. 00-cr-805 (Nov. 8, 2021)

United States v. Rudolph, No. 00-cr-805 (Aug. 29, 2005)

United States Court of Appeals (11th Cir.):

Rudolph v. United States, No. 21-12828 (Feb. 2, 2024)

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## OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-9) is reported at 92 F.4th 1038. The order of the United States District Court for the Northern District of Georgia (Pet. App. 13-72) is reported at 570 F. Supp. 3d 1277. The opinion of the United States District Court for the Northern District of Alabama (Pet. App. 73-115) is reported at 551 F. Supp. 3d 1270.

## JURISDICTION

The judgment of the court of appeals was entered on February 12, 2024. A petition for rehearing was denied on May 10, 2024 (Pet. App. 10-12). On August 6, 2024, Justice Thomas extended the

time for filing a petition for a writ of certiorari to and including September 7, 2024, and the petition was filed on September 9, 2024 (a Monday). 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 Northern District of Georgia, petitioner was convicted on three counts of malicious damage of property with an explosive device resulting in death or personal injury, in violation of 18 U.S.C. 844(i); two counts of malicious damage of property with an explosive device, in violation of 18 U.S.C. 844(i); and three counts of using a destructive device during and in relation to a crime of violence, in violation of 18 U.S.C. 924(c). 1 C.A. App. 100. The district court sentenced him to four consecutive sentences of life imprisonment, and an additional 120 consecutive years of imprisonment. Id. at 102. Petitioner did not appeal.

Following a guilty plea in the United States District Court for the Northern District of Alabama, petitioner was convicted on one count of malicious damage of property with an explosive device resulting in death and personal injury, in violation of 18 U.S.C. 844(i); and one count of using a destructive device during and in relation to a crime of violence, in violation of 18 U.S.C. 924(c). C.A. Supp. App. 34. The district court sentenced him to two

consecutive sentences of life imprisonment. Id. at 35. Petitioner did not appeal.

In 2020, petitioner moved in each district court under 28 U.S.C. 2255 to vacate his Section 924(c) sentences. Each court denied petitioner's motion. Pet. App. 13-72, 73-115. The court of appeals affirmed. Id. at 1-9.

1. Between 1996 and 1998, petitioner committed a series of bombings in Atlanta and Birmingham. Pet. App. 1. "He used homemade explosives designed to maximize casualties." Ibid. His bombings directly killed two people, indirectly led to another person's death, and injured many others. Id. at 1-2.

Petitioner's first target was the 1996 Summer Olympic Games in Atlanta. Pet. App. 1. On the night of July 26, 1996, more than 50,000 people were gathered in Atlanta's Centennial Olympic Park. Id. at 2. "Unbeknownst to them, [petitioner] had placed a bomb under a bench near the main stage -- three metal plumbing pipes covered with more than five pounds of * * * homemade shrapnel." Ibid. When the bomb exploded, it instantly killed a 44-year-old woman "who had come to Atlanta with her daughter to participate in the Olympic festivities." Ibid. "More than 100 other people were seriously injured, and a cameraman also died after suffering a heart attack during the commotion." Ibid.

Six months later, petitioner placed two bombs at an abortion clinic in Sandy Springs, Georgia. Pet. App. 2. He intended the

first bomb to "trigger an evacuation of personnel and prompt the response of law enforcement, who would then be drawn within the blast range of the second." Ibid. "As planned, the first bomb badly damaged the building and the clinic," while the second bomb "seriously injur[ed] two federal agents," "sen[t] five people to the hospital," and "caus[ed] hearing loss in about fifty others." Ibid.

Five weeks after the abortion clinic bombing, petitioner attacked "an Atlanta nightclub with a 'largely gay and lesbian clientele.'" Pet. App. 2. "He again placed two bombs," with the "first injur[ing] five patrons and caus[ing] extensive property damage." Ibid. The second bomb was identified by a police officer and caused no further injuries. Ibid. Hours after the bombing, petitioner "mailed letters to four Atlanta news outlets" explaining that "the first bombs were for supporters of abortion and homosexuality, and the second bombs were for federal agents." Ibid. The letters also "warned of more bombings against those targets in the future." Ibid.

Almost a year later, petitioner targeted another abortion clinic, this time in Birmingham, Alabama. Pet. App. 2. He placed a bomb near the walkway leading to the clinic and detonated it while a Birmingham police officer was leaning over it, killing the police officer and injuring a clinic nurse. Ibid. After petitioner had been identified as a suspect in the Birmingham

bombing, he fled to North Carolina, where he remained a fugitive until he was caught five years later. Ibid.

2. For the three Georgia bombings, a federal grand jury in the Northern District of Georgia returned an indictment charging petitioner with five counts of malicious damage of property with an explosive device resulting in death and personal injury, in violation of 18 U.S.C. 844(i); five counts of using a destructive device during and in relation to a crime of violence, in violation of 18 U.S.C. 924(c); four counts of transporting explosives in interstate commerce with intent to kill, injure, and intimidate individuals and to destroy property, in violation of 18 U.S.C. 844(d); and seven counts of willfully making threats concerning an attempt to kill, injure, and intimidate and to unlawfully damage property with an explosive, in violation of 18 U.S.C. 844(e). See Pet. App. 2.

For the Birmingham bombing, a federal grand jury in the Northern District of Alabama returned an indictment charging petitioner with one count of malicious damage of property with an explosive device resulting in death, in violation of 18 U.S.C. 844(i); and one count of using a destructive device during and in relation to a crime of violence, in violation of 18 U.S.C. 924(c). See Pet. App. 2. The grand jury also returned special findings on aggravating factors that would justify a death sentence under 18 U.S.C. 3592(c), including that petitioner intentionally killed a

victim with premeditation. See 3 C.A. App. 49-50. The government filed notice of its intent to seek the death penalty. See Pet. App. 2-3.

3. In 2005, petitioner entered into simultaneous plea agreements in the Northern District of Georgia and the Northern District of Alabama. Pet. App. 3.

In the Georgia case, petitioner pleaded guilty to three counts of maliciously damaging property with an explosive device, resulting in death or personal injury, in violation of 18 U.S.C. 844(i); two counts of maliciously damaging property with an explosive device, in violation of 18 U.S.C. 844(i); and three counts of using a destructive device during and in relation to a crime of violence, in violation of 18 U.S.C. 924(c). See 1 C.A. App. 25-42, 100. The parties agreed pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C) that petitioner's sentence should be life imprisonment for one of the Section 844(i) counts and each of the three Section 924(c) counts, and that his sentence for the remaining counts should be the maximum allowable term of imprisonment. 1 C.A. App. 27.

In exchange, the government agreed not to seek the death penalty and to dismiss all other counts of the indictment. 1 C.A. App. 27. Two of the dismissed counts -- for transporting explosives in interstate commerce resulting in death, in violation of 18 U.S.C. 844(d) -- were punishable by death. See 1 C.A. App.

15, 21-22 (Counts 3 and 19). Petitioner agreed to disclose where he had hidden explosives, and the government agreed not to bring further charges based on the uncovered explosives. Id. at 27-28. Petitioner also "voluntarily and expressly waive[d], to the maximum extent permitted by federal law, the right to appeal his conviction and sentence in this case, and the right to collaterally attack his sentence in any post-conviction proceeding, including motions brought under 28 U.S.C. § 2255 or 18 U.S.C. § 3711, on any ground." Id. at 28.

The district court accepted the plea agreement and sentenced petitioner to four consecutive sentences of life imprisonment, in addition to 120 consecutive years of imprisonment. 1 C.A. App. 102. That sentence consisted of a life sentence on the Section 844(i) count resulting in death; three life sentences on the Section 924(c) counts; 20-year terms on the Section 844(i) counts resulting in property damage; and 40-year terms on the Section 844(i) counts resulting in injury. See ibid. Petitioner did not appeal.

In the Alabama case, petitioner pleaded guilty to both counts of the indictment -- one Section 844(i) count and one Section 924(c) count. See 3 C.A. App. 52. The parties agreed pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C) that the sentence imposed for each count should be life imprisonment. 3 C.A. App. 54. In exchange, the government agreed to withdraw its notice of

intent to seek the death penalty, C.A. Supp. App. 30, and to bring no further charges related to petitioner's bombing, 3 C.A. App. 55. Petitioner again waived his right to appeal or collaterally attack his sentence. Id. at 56. The district court accepted the plea agreement and sentenced petitioner to two consecutive terms of life imprisonment. C.A. Supp. App. 34-35. Petitioner did not appeal.

4. Fourteen years after petitioner's guilty pleas, this Court held in United States v. Davis, 588 U.S. 445 (2019), that the "crime of violence" definition in Section 924(c)(3)(B) is unconstitutionally vague. Id. at 470. Following Davis, petitioner filed motions under 28 U.S.C. 2255 in both district courts to vacate his Section 924(c) sentences. Pet. App. 3. He contended that under Davis, his Section 844(i) offenses were no longer crimes of violence and thus could not serve as predicates for his Section 924(c) convictions and sentences. Ibid.

Both district courts denied petitioner's Section 2255 motions. Pet. App. 14-72, 73-115. The Alabama district court found petitioner's motion to be barred by the collateral-attack waiver in his plea agreement. Id. at 99-114. The court rejected petitioner's contention that "his collateral attack waiver is not enforceable against his Davis claim because 'his conduct [no longer falls] within the definition of the charged crime.'" Id. at 108 (citation omitted; brackets in original). The court explained

that petitioner "knowingly and voluntarily waived his right to collaterally attack his sentence on any ground" and thus assumed the "risk[]" that the law might change in his favor. Id. at 114. The court also emphasized that the government "agreed not to pursue the death penalty," in exchange for petitioner agreeing not "to collaterally attack his sentences." Ibid. Thus, the court "enforce[d] [the parties' agreement] according to its terms." Ibid.

The Georgia district court likewise denied petitioner's analogous motion. Pet. App. 13-72. The court first concluded that petitioner had "procedurally defaulted his Davis claims." Id. at 54. It determined that under Eleventh Circuit precedent, petitioner could not show cause for his procedural default because the building blocks for a vagueness challenge to Section 924(c)(3)(B) long predated this Court's decision in Davis. Id. at 45-46; see id. at 29-30. Because the court found that petitioner had not shown cause for the default, it did not address whether petitioner had been prejudiced. Id. at 46.

The Georgia district court further concluded that petitioner's procedural default could not be excused based on actual innocence of the Section 924(c) offenses because the government agreed to forgo the death penalty and dismissed several other charges in exchange for the guilty plea, two of which were punishable by death or life imprisonment and thus carried a more

serious or equally serious punishment as the Section 924(c) offenses. Pet. App. 47-54 (discussing Bousley v. United States, 523 U.S. 614, 622 (1998)).

The Georgia district court also found, in the alternative, that petitioner's Section 2255 motion was barred by the collateral-attack waiver in his plea agreement. Pet. App. 55-69. The court rejected petitioner's argument that it would be a miscarriage of justice to enforce the collateral attack waiver. Id. at 66-69.

5. The two cases were consolidated for appeal, and the court of appeals affirmed. Pet. App. 1-9. After finding that the collateral-attack waiver applied to petitioner's Davis claims, see id. at 4-8, the court rejected petitioner's request "to adopt the so-called miscarriage of justice exception to the general rule that appeal waivers are enforceable," id. at 8. The court noted that it "has long held that knowing and voluntary waivers of the right to appeal are enforceable" and has previously "declined to adopt" a miscarriage-of-justice exception. Ibid. At the same time, however, the court accepted "that 'there are certain fundamental and immutable legal landmarks within which the district court must operate regardless of the existence of sentence appeal waivers,'" including "the inviolability of statutory maximum sentences." Id. at 8 n.3 (citation omitted).

The court of appeals then explained that "[e]ven if [it] were inclined" to recognize a miscarriage-of-justice exception,

petitioner "would not qualify for relief" under it "for any number of reasons." Pet. App. 8. Specifically, the court emphasized that petitioner is not "'actually innocent' of the § 924(c) crimes which charged him with using a destructive device while committing arson." Ibid. "To establish actual innocence in the procedural default context," the court explained, "a prisoner must show that 'it is more likely than not that no reasonable juror would have convicted him.'" Ibid. (quoting Bousley, 523 U.S. at 623). "'[A]ctual innocence,'" the court continued, "means 'factual innocence, not mere legal insufficiency.'" Ibid. (citation omitted). And the court observed that "[i]n cases like [petitioner's] where the Government has forgone other, more serious charges in the course of plea bargaining, the petitioner must show that he is actually innocent of the forgone charges as well." Ibid.

The court of appeals disagreed with petitioner's suggestion that he "is 'actually innocent' of using an explosive device during and in relation to a crime of violence under 18 U.S.C. § 924(c)." Pet. App. 8. The court also found that petitioner was not "actually innocent of the dropped charges, which included four counts under 18 U.S.C. § 844(d) for transporting an explosive in interstate commerce with intent to kill, injure, and intimidate individuals and to unlawfully damage property, and seven counts under 18 U.S.C. § 844(e) for willfully making threats concerning

an attempt to kill, injure, and intimidate and to unlawfully damage property with an explosive." Id. at 8-9.

Ultimately, the court of appeals determined that petitioner "is bound by the terms of his own bargain." Pet. App. 9. "He negotiated to spare his life," the court observed, "and in return he waived the right to collaterally attack his sentences in any post-conviction proceedings." Ibid. "Because [petitioner's] § 2255 motions are collateral attacks on his sentences," the court found them "barred by his plea agreement." Ibid.

ARGUMENT

Petitioner renews his contention (Pet. 19-25) that an implied miscarriage-of-justice or actual-innocence exception to his collateral-attack waiver should allow his Section 2255 motions to proceed. The court of appeals correctly affirmed the denial of petitioner's Section 2255 motions because he validly waived his right to collaterally attack his sentences. Its disposition does not conflict with any decision of this Court or another court of appeals. And this case would be an unsuitable vehicle for resolving the question presented in any event. This Court has recently denied petitions for writs of certiorari on similar issues, see Newman v. United States, No. 23-1288 (Oct. 7, 2024); Jimenez v. United States, 143 S. Ct. 1745 (2023) (No. 22-536), and it should do the same here.

1. a. This Court has repeatedly recognized that a defendant may validly waive constitutional and statutory rights as part of a plea agreement so long as his waiver is knowing and voluntary. See, e.g., Ricketts v. Adamson, 483 U.S. 1, 9-10 (1987) (waiver of right to raise double-jeopardy defense); Town of Newton v. Rumery, 480 U.S. 386, 389, 398 (1987) (waiver of right to file action under 42 U.S.C. 1983). As a general matter, statutory rights are subject to waiver in the absence of some "affirmative indication" to the contrary from Congress. United States v. Mezzanatto, 513 U.S. 196, 201 (1995). Likewise, even the "most fundamental protections afforded by the Constitution" may be waived. Ibid.

In accord with those principles, the courts of appeals have uniformly enforced knowing and voluntary waivers of the right to appeal or collaterally attack a sentence.* As the courts of appeals have recognized, such waivers benefit defendants by providing them

* See United States v. Teeter, 257 F.3d 14, 21-23 (1st Cir. 2001); United States v. Riggi, 649 F.3d 143, 147-150 (2d Cir. 2011); United States v. Khattak, 273 F.3d 557, 560-562 (3d Cir. 2001); United States v. Marin, 961 F.2d 493, 495-496 (4th Cir. 1992); United States v. Wilkes, 20 F.3d 651, 653 (5th Cir. 1994) (per curiam); Watson v. United States, 165 F.3d 486, 489 (6th Cir. 1999); United States v. Woolley, 123 F.3d 627, 631 (7th Cir. 1997); United States v. Andis, 333 F.3d 886, 889-890 (8th Cir.) (en banc), cert. denied, 540 U.S. 997 (2003); United States v. Abarca, 985 F.2d 1012, 1014 (9th Cir.), cert. denied, 508 U.S. 979 (1993); United States v. Hernandez, 134 F.3d 1435, 1437 (10th Cir. 1998); United States v. Bushert, 997 F.2d 1343, 1347-1350 (11th Cir. 1993), cert. denied, 513 U.S. 1051 (1994); United States v. Guillen, 561 F.3d 527, 529-532 (D.C. Cir. 2009).

with "an additional bargaining chip in negotiations with the prosecution." United States v. Teeter, 257 F.3d 14, 22 (1st Cir. 2001); see United States v. Elliott, 264 F.3d 1171, 1174 (10th Cir. 2001). Appeal waivers correspondingly benefit the government by enhancing the finality of judgments and discouraging meritless appeals. See, e.g., United States v. Guillen, 561 F.3d 527, 530 (D.C. Cir. 2009); United States v. Andis, 333 F.3d 886, 889-890 (8th Cir.) (en banc), cert. denied, 540 U.S. 997 (2003); Teeter, 257 F.3d at 22.

Collateral-attack waivers have the same benefits. See, e.g., DeRoo v. United States, 223 F.3d 919, 923 (8th Cir. 2000). "The 'chief virtues' of a plea agreement * * * are promoted by waivers of collateral appeal rights as much as by waivers of direct appeal rights." Ibid. (citation omitted). Like appeal waivers, collateral-attack waivers "preserve the finality of judgments and sentences, and are of value to the accused to gain concessions from the government." Ibid. As the court of appeals recognized, the benefits inure to both parties: "Defendants trade costly trials and the risk of lengthy sentences for the certainty offered by a guilty plea to a lesser set of charges. And confidence about the meaning of terms in a plea agreement helps defendants in the long run by reducing transaction costs and making plea agreements worthwhile for the government to strike." Pet. App. 4.

This case directly illustrates the mutual benefits of such waivers. Pursuant to the plea agreements, the government agreed that it would not seek the death penalty against petitioner for the death-eligible counts in either proceeding, and it withdrew the notice of intent to seek the death penalty that it had already filed in the Northern District of Alabama. 1 C.A. App. 27; 3 C.A. App. 54. In the Northern District of Georgia, the government additionally agreed to dismiss 13 other counts, two of which were punishable by death or life imprisonment. 1 C.A. App. 27; see 18 U.S.C. 844(d).

In exchange, petitioner pleaded guilty to five Section 844(i) counts and three Section 924(c) counts in Georgia, and one additional count of each offense in Alabama. 1 C.A. App. 25; 3 C.A. App. 52. He agreed to life sentences in each court. 1 C.A. App. 27; 3 C.A. App. 54. And he "voluntarily and expressly waive[d] * * * the right to appeal" or "collaterally attack his sentence in any post-conviction proceeding, including [a] motion[] brought under 28 U.S.C. § 2255." 1 C.A. App. 28; see 3 C.A. App. 56. The court of appeals correctly held petitioner to "the terms of his own bargain" and declined to "disrupt [his] agreement" with the government. Pet. App. 9.

b. Petitioner's counterarguments lack merit.

Petitioner suggests (Pet. 24) that collateral-attack waivers are "involuntary and uninformed" when the applicable law later

changes. See Pet. 20 (emphasizing that "history has proved wrong the parties' understanding of the law at the time of the plea"). But this Court has made clear that "a voluntary plea of guilty intelligently made in the light of the then applicable law does not become vulnerable because later judicial decisions indicate that the plea rested on a faulty premise," such as the premise that "the maximum penalty then assumed applicable has been held inapplicable in subsequent judicial decisions." Brady v. United States, 397 U.S. 742, 757 (1970).

The Court has further emphasized that courts may accept guilty pleas "despite various forms of misapprehension under which a defendant might labor," including a defendant's lack of "complete knowledge of the relevant circumstances" or his failure to foresee a "change in the law." United States v. Ruiz, 536 U.S. 622, 630 (2002). Thus, "the enforceability of a collateral-attack waiver turns on whether the prisoner's agreement to the waiver was knowing and voluntary, not whether the underlying conviction itself no longer appears valid after a change in law." Portis v. United States, 33 F.4th 331, 337 (6th Cir. 2022). And petitioner does not dispute that "[t]he principle that future changes in law do not vitiate collateral-challenge waivers is mainstream" and followed by "[a]ll circuits." Id. at 335-336; see id. at 336 (citing cases).

Petitioner further contends (Pet. 19-25) that his collateral-attack waiver -- from which he substantially benefited -- is unenforceable under an unwritten exception for cases involving "actual innocence," which he equates with a "miscarriage of justice." Pet. 21 (citation omitted); see Pet. 13 n.3. But even assuming the existence of such an implied exception, petitioner has failed to show that his collateral attack should proceed under it. This Court made clear in Bousley v. United States, 523 U.S. 614 (1998), that where the government "has forgone more serious charges in the course of plea bargaining," a "showing of actual innocence must also extend to those charges." Id. at 624; see Pet. 10 (acknowledging this requirement). Petitioner cannot make that showing here.

As described above, as part of the plea agreements, the government agreed not to seek the death penalty for the Section 844(i) charges that resulted in the deaths of two people, and it also agreed to dismiss two Section 844(d) charges that were punishable by death or life imprisonment. 1 C.A. App. 27-28; 3 C.A. App. 54. The court of appeals correctly determined that the government's agreement to forgo the death penalty and those additional death-eligible charges triggers Bousley's requirement that petitioner show actual innocence of "more serious charges," 523 U.S. at 624, and that petitioner had not met that requirement, Pet. App. 8-9.

Moreover, even if one viewed the dropped charges and penalties here as "equally serious" to the actual ones, Pet. App. 8 n.4, the result would be the same. While courts may disagree about whether a prisoner must show actual innocence of equivalent charges in the context of overcoming procedural default, see United States v. Caso, 723 F.3d 215, 222 n.3 (D.C. Cir. 2013), a prisoner who fails to show actual innocence of such charges is, at the least, not entitled to any miscarriage-of-justice exception to a collateral-attack waiver. Allowing a defendant to altogether escape from, or reduce, punishment that he could still receive had the plea agreement been structured slightly differently would eliminate an important benefit of the waiver -- and would itself be unjust. Cf. Bousley, 523 U.S. at 624.

2. Contrary to petitioner's contention (Pet. 12-15), the question presented does not implicate any conflict in the circuits. Petitioner observes (Pet. 14) that four circuits "have enforced [collateral-attack] waivers against Davis claims." Those results are consistent with the result here. And petitioner identifies no circuit that would find a collateral-attack waiver unenforceable on the facts here.

Four of the decisions petitioner cites themselves enforced appeal waivers, so the results of those cases do not conflict with the corresponding enforcement of his collateral-attack waiver. See Guillen, 561 F.3d at 532; United States v. Hahn, 359 F.3d 1315,

1329 (10th Cir. 2004) (per curiam); Andis, 333 F.3d at 893-894; United States v. Khattak, 273 F.3d 557, 563 (3d Cir. 2001). And the remaining decision, United States v. McKinney, 60 F.4th 188 (4th Cir. 2023), involved circumstances meaningfully distinct from this case. There, the defendant pleaded guilty to conspiracy to commit Hobbs Act robbery and a Section 924(c) charge, in exchange for the dismissal of a substantive Hobbs Act robbery charge. See id. at 190-191. Although the substantive Hobbs Act count would have supplied an alternative, valid, predicate for the Section 924(c) count that the defendant challenged, the court's discussion of the appeal waiver did not consider that issue. See ibid. And McKinney, unlike this case, did not involve the government's agreement not to bring more serious, death-eligible charges.

3. At all events, this case would be a poor vehicle in which to consider the question presented. Even if petitioner's Section 924(c) sentences were vacated, there would be no practical effect on his overall sentence in either of the two cases. 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). In challenging his Section 924(c) sentences, petitioner sought also to obtain a plenary resentencing where he could receive a reduced sentence on his Section 844(i) convictions, even though they were unaffected by Davis. See Pet.

App. 3. But petitioner would not be entitled to resentencing on the Section 844(i) counts. Petitioner's plea agreements are governed by Federal Rule of Criminal Procedure 11(c)(1)(C), which allows the parties to "agree that a specific sentence * * * is the appropriate disposition of the case." Fed. R. Crim. P. 11(c)(1)(C); see 1 C.A. App. 25; 3 C.A. App. 52. In turn, a district court may either "accept" or "reject" such an agreement. Fed. R. Crim. P. 11(c)(3)(A).

In the Northern District of Georgia, the parties agreed that the court would impose a life sentence for the Section 844(i) count that resulted in the death of an individual, and the "maximum term of imprisonment allowed by law" for the remaining Section 844(i) counts. 1 C.A. App. 27. The court accepted that agreement. Id. at 100-102. Thus, even if the challenged Section 924(c) counts and consecutive sentences were vacated, petitioner would still be subject to a life sentence, in addition to 120 consecutive years of imprisonment. See ibid. Similarly, in the Northern District of Alabama, the parties agreed that the court would impose a life sentence for the Section 844(i) count that resulted in the death of a police officer. 3 C.A. App. 54. The court accepted that agreement. C.A. Supp. App. 34-35. Thus, even if petitioner's Section 924(c) sentence were vacated, he would remain subject to a life sentence. Id. at 35. This Court's intervention is

unwarranted to consider an issue that would have no practical effect on petitioner's sentence.

## CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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