No. 24-6178

in the

Supreme Court of the United States

MICHAEL HARVEL,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI FROM THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

REPLY TO BRIEF IN OPPOSITION

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The only common-sense interpretation of 18 U.S.C. § 242 is that Congress intended the death penalty to apply to a civil rights violation that resulted in the death of another. This is borne out by the legislative history, this Court's precedents, and the timing of the amendment which added the death penalty to sections of § 242. The Solicitor General's main contention is that because 18 U.S.C. § 242 on its face appears to permit the death penalty for kidnappings, sexual assaults, and attempts to kill made under color of law, that this Court must take the statute at face value, and assume that was Congress's intent when it amended the statute in 1994.

"Statutes have to be interpreted to avoid absurd results." *United States v. Williams*, 106 F.4th 639, 649 (7th Cir. 2024). [A] court may look beyond the plain language of a statute if applying the plain language would produce an absurd result." *In re Lehman*, 205 F.3d 1255, 1256 (11th Cir. 2000). The Solicitor General makes a circular argument that the Sixth Circuit's interpretation of the language of the statute does not lead to an absurd result *because* the plain language of the statute is clear. Under this logic, any statute avoids the "absurd result" canon, and makes it meaningless and unenforceable. But this Court has never eschewed this canon when it is necessary to avoid an otherwise disastrous or unconstitutional result. "Where a statute is susceptible of two constructions, by one of which grave and doubtful constitutional questions arise and by the other of which such questions

are avoided, duty of court is to adopt the latter, out of respect for Congress, which is assumed to legislate in the light of constitutional limitations." *Jones v. United States*, 526 U.S. 227, 239-240, 119 S. Ct. 1215, 1222, 143 L. Ed. 2d 311 (1999).

The Solicitor General further contends that, in adding the complained of language to the statute in 1994, Congress *could* have been attempting to modify the statute of limitations for kidnapping and sexual assault civil rights cases. (BIO, p.10) But while anything is possible, the fact is that the Congressional record provides Congress's actual intent: the heading of the 1994 amendment was, "Death Penalty for Civil Rights Murders." Further, the summary of the bill set forth in the Congressional Record states that § 242 was being amended "to authorize the death penalty for violation of four of the major Federal Civil Rights laws if such violation results in death." H.R. REP. 103-466 (Mar. 25, 1994) The Solicitor General further guesses that Congress could have been attempting to influence this Court's "evolving-standards caselaw" on the efficacy of the death penalty for non-capital crimes. However, this Court has cautioned that, where a court can only guess at Congressional intent as to a criminal statute, the rule of lenity must apply. *Muscarello v. United States*, 524 U.S. 125, 138, 118 S. Ct. 1911, 1919, 141 L. Ed. 2d 111 (1998). The Solicitor General's guesses as to the intent of Congress, despite the legislative history, proves the axiom that "it is 'particularly inappropriate' to read language into a statute of limitations 'when, as here, Congress has shown that it knows how to adopt the omitted language or provision.'" *Corner Post, Inc. v. Bd. of*

Governors of Fed. Rsrv. Sys., 603 U.S. 799, 814, 144 S. Ct. 2440, 2453, 219 L. Ed. 2d 1139 (2024). The Solicitor General's "alternative reasons" arguments thus fail.

Finally, the Solicitor General notes that there is no circuit split, and that the only other circuits to address this issue align with the Sixth Circuit's holding. Harvel concedes that there is no circuit split. However, a lack of circuit split has never prevented this Court from correcting a circuit's improper reading of a criminal statute where liberty is affected. See *Johnson v. United States*, 576 U.S. 591, 135 S. Ct. 2551, 192 L. Ed. 2d 569 (2015)(granting certiorari and deciding ACCA's residual clause violated due process despite lack of circuit split); *United States v. Booker*, 543 U.S. 220, 125 S. Ct. 738, 160 L. Ed. 2d 621 (2005))(granting certiorari and deciding mandatory Sentencing Guidelines violated Sixth Amendment despite lack of circuit split); *Burrage v. United States*, 571 U.S. 204, 134 S. Ct. 881, 187 L. Ed. 2d 715 (2014)(granting certiorari and deciding "but for" causation requirement under 21 U.S.C. § 848 despite lack of circuit split).

And the Solicitor General's reliance on the concurrence of other circuits with the Sixth Circuit is misplaced.[1] Take for example *United States v. Ealy*, 363 F.3d 292 (4th Cir. 2004), *Ealy* does not involve an 18 U.S.C. § 242 charge, but involves murder charges under 21 U.S.C. § 848. The Fourth Circuit rested its decision on the

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1 Curiously, the Solicitor General seeks to rely on these other circuit authorities without directly citing them to this Court. They only cite this Court to the Sixth Circuit's line citation of "similar cases" from the opinion.

fact that 21 U.S.C. § 848 was in fact a capital crime. *Id.* at 297. The court held "whether a crime is 'punishable by death' under § 3281 or 'capital' under § 3282 depends on whether the death penalty may be imposed for the crime under the enabling statute." *Id.* at 296.

The Sixth Circuit's reliance on *United States v. Edwards*, 159 F.3d 1117 (8th Cir. 1998) fairs no better. The defendant in *Edwards* was charged with arson resulting in death, another death penalty eligible offense. The Eighth Circuit, in allowing 18 U.S.C. § 3281's limitation period to apply, provided little actual analysis on the issue, determining only that the offense was punishable by death even if the offense occurred during the window where the death penalty was held to be unconstitutional. 159 F.3d at 1128.

The Sixth Circuit's opinion also listed *United States v. Gallaher*, 624 F.3d 934 (9th Cir. 2010) as a comparative holding. In that case, however, the Ninth Circuit addressed another murder offense, this one within a Native American enclave. The court determined that "[i]f the statute of limitations for murder were to shorten so dramatically as a consequence of a tribe's decision not to reinstate the death penalty, tribal governments would be forced to choose between capital punishment—to which they may have religious or political objections—and justice for the most heinous of crimes. Respect for tribal sovereignty counsels us to permit tribal governments to choose whether to allow capital punishment independently of the applicable statute

of limitations." *Id.* at 942. *Gallagher* is not on point, and could have been no assistance to the Sixth Circuit.

Finally, the Sixth Circuit noted the Tenth Circuit decision in *United States v. Murphy*. 100 F.4th 1184 (10th Cir. 2024). *Murphy* is admittedly closer to the mark. But *Murphy* involved an actual murder, and since the murder occurred in Indian country, the only issue is whether the lack of death penalty as an option in that territory meant that the more restrictive statute of limitations applied. The court held that lack of the ability to impose the death penalty, under those conditions, did not remove the 18 U.S.C. § 3281 statute of limitations. *Id.* at 1206. The Tenth Circuit noted that "§ 3281 bears the heading 'Capital [O]ffenses. [ ] A 'capital offense' is a 'crime for which the death penalty may be imposed.' [ ] '[T]he word 'may' clearly connotes discretion.' [ ] Thus, the death penalty remains a viable choice at all points for the offenses specified in the statute if the tribes use their discretion to permit it." *Id. Murphy* was decided on a different legal standard, and does not create the unified circuit front that the Solicitor General alludes to.

In 1994, Congress did not intend to add the death penalty as a possible penalty for kidnappings, sexual assaults, or attempts to kill under 18 U.S.C. § 242. The Sixth Circuit's erroneous reading of the statute resulted in an improper application of 18 U.S.C. § 3281's limitless statute of limitations in this case. This Court should grant certiorari, and construe 18 U.S.C. § 242 to those offenses which result in death.

CONCLUSION

Harvel requests that this Court grant certiorari, reverse the Sixth Circuit's decision, and remand for resentencing on the remaining convictions.

Respectfully submitted,

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