No. _____

In the Supreme Court of the United States

CAROLYN JACKSON,
Applicant,

v.

UNITED STATES OF AMERICA,
Respondent.

APPLICATION FOR AN EXTENSION OF TIME TO FILE A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

HERBERT I. WALDMAN
RUBIN M. SININS
Javerbaum Wurgaft Hicks Kahn Wikstrom & Sinins, P.C.
505 Morris Avenue, Suite 200
Springfield, NJ 07081
(973) 379-4200
HWaldman@Lawjw.com

CHRISTOPHER D. MAN
Counsel of Record
Winston & Strawn LLP
1901 L Street NW
Washington, DC 20036
(202) 282-5000
CMan@winston.com

Counsel for Applicant

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To the HONORABLE SAMUEL A. ALITO, JR., Associate Justice of the Supreme Court of the United States and Circuit Justice for the Third Circuit:

Pursuant to this Court's Rule 13.5, applicant Carolyn Jackson requests a 60-day extension of time, to and including August 19, 2025, to file a petition for a writ of certiorari. *See* S. Ct. R. 30.3.

JUDGMENT FOR WHICH REVIEW IS SOUGHT

Carolyn Jackson seeks review of the U.S. Court of Appeals for the Third Circuit's judgment affirming the district court's denial of her motion to bar resentencing on double jeopardy and due process grounds because she had fully completed the sentence that was previously imposed. *See United States v. Jackson*, 132 F.4th 266 (3d Cir. 2025) (*Jackson IV*) (Exhibit 1); *United States v. Jackson*, 2023 WL 5994640 (D.N.J. Sept. 15, 2023) (Exhibit 2). No rehearing was sought in the Third Circuit on this matter.

JURISDICTION

The Court will have jurisdiction over a timely-filed petition for certiorari under 28 U.S.C. § 1254(1). Jackson's petition is currently due on or before June 20, 2025—90 days after the date of entry of the Third Circuit's judgment. S. Ct. R. 13.1, 13.3. This application is being filed at least 10 days before that deadline. *See* S. Ct. R. 13.5.

REASONS JUSTIFYING AN EXTENSION OF TIME

"For good cause, a Justice may extend the time to file a petition for a writ of certiorari for a period not exceeding 60 days." S. Ct. R. 13.5. There is good cause to extend the deadline to August 19, 2025.

Factual background. On July 8, 2015, Carolyn Jackson was convicted in the U.S. District Court for New Jersey. Jackson completed her 40-month sentence of imprisonment on March 19, 2019 and, with the completion of her supervised release, she had fully served her sentence by October 5, 2022. The Probation Office delivered her notice that she completed her sentence as of October 5, 2022, and the State of Florida restored her voting rights as of February 17, 2023. Nevertheless, four-and-a-half years after being released from prison, and more than a year after her sentence was fully served, on October 30, 2023, Jackson was resentenced and given an additional 100 months of incarceration.

This situation arose because Jackson was sentenced four times over the course of nearly a decade in which the government repeatedly appealed Jackson's sentence but never sought to stay the execution of her sentence pending those appeals. Jackson was convicted of conspiracy and eleven counts of endangering the welfare of a child under New Jersey law, which were charged federally under the Assimilative Crimes Act, 18 U.S.C. § 13, because part of those offenses took place on a U.S. military installation. *See* N.J. Stat. Ann. § 2C:5-2; N.J. Stat. Ann. § 2C:24-4(a).

On December 15, 2015, Jackson was sentenced to 24 months' imprisonment and three years of supervised release by the U.S. District Court of New Jersey. Upon appeal by the government, a divided panel of the Third Circuit vacated the sentence solely for procedural error. *United States v. Jackson*, 862 F.3d 365 (3d Cir. 2017)

(*Jackson I*).[1] Jackson remained in custody during the appeal period until she completed the full custodial portion of that sentence.

On April 12, 2018, Jackson was sentenced a second time, this time to 40 months' imprisonment and three years of supervised release. Still unsatisfied, the government again appealed the sentence. On March 19, 2019, while that appeal was pending, Jackson completed the custodial part of this sentence. The April 2018 sentence was vacated solely for procedural error. *United States v. Jackson*, 819 F. App'x 97 (3d Cir. 2020) (*Jackson II*). When the case was remanded a second time, Jackson was serving a three-year period of supervised release in Florida.

On October 6, 2021, Jackson was sentenced a third time, this time to time served (the 40 months she already served) plus one year of supervised release. The government appealed the sentence yet again. While the government's appeal was pending, Jackson completed her supervised release and received notice from the Probation Office that her sentence was complete at that point. On February 17, 2023, Jackson's voting rights were restored by the State of Florida. Despite having completed her sentence in full, on April 3, 2023, the Third Circuit again vacated Jackson's sentence solely for procedural error and directed that Jackson be resentenced for a fourth time, this time by a different district court judge. *United States v. Jackson*, 2023 WL 2755578 (3d Cir. 2023) (*Jackson III*).

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[1] Judge Cowen also would have found the 24-month sentence substantively unreasonable, but Judge Fuentes joined the majority opinion only in finding procedural error and did not reach the substantive reasonableness issue. 862 F.3d at 393 & n.16. Judge McKee would have affirmed. *Id.* at 403 (dissenting).

Prior to her fourth sentencing, Jackson filed a motion arguing that, because she had completed her sentence, it would violate her double jeopardy and due process rights under the Fifth Amendment to be punished a second time through the imposition of a new, additional sentence. That motion was denied in an unpublished opinion on September 15, 2023. *United States v. Jackson*, 2023 WL 5994640 (D.N.J.). Then, on October 31, 2023, the district court sentenced Jackson to imprisonment for 140 months. *United States v. Jackson*, No. 2:13-cr-290, DE527–28 (D.N.J.). Jackson appealed that sentence to the Third Circuit, which affirmed on March 21, 2025. *Jackson IV*, 132 F.4th 266. Jackson was reincarcerated on February 13, 2024, and remains imprisoned.

Legal background. The Fifth Amendment provides that "[n]o person shall . . . be subject for the same offence to be twice put in jeopardy of life or limb; . . . nor be deprived of life, liberty, or property, without due process of law." U.S. Const. amend. V. With respect to double jeopardy, prior to *United States v. DiFrancesco*, 449 U.S. 117 (1980), it had "long been established that once a prisoner commences service of [a] sentence, the Clause prevents a court from vacating the sentence and then imposing a greater one." *DiFrancesco*, 449 U.S. at 153–54 (Stevens, J., dissenting); *see id.* at 134 (Blackmun, J., majority opinion) (describing this as "the established practice in the federal courts"). A narrowly divided 5-4 Court decided *DiFrancesco* abrogated those prior precedents. *DiFrancesco* held that—when a defendant had not completed his sentence—the Court will look to the defendant's "expectation of finality in his sentence" in determining whether the Double Jeopardy

Clause is violated. *Id.* at 136. It found that right was not violated when the defendant was resentenced after already beginning (but not completing) his original sentence because the defendant was aware that the government had the right to a speedy appeal of his sentence under a narrow statute then in effect. *Id.*[2]

As the Third Circuit acknowledged in the opinion below, "*DiFrancesco* 'did not address the application of double jeopardy principles to a defendant whose sentence has been fully served.'" *Jackson IV*, 132 F.4th at 274 (quoting *United States v. Arrellano-Rios*, 799 F.2d 520, 523 (9th Cir. 1986)). To the contrary, this Court has been clear both before and after *DiFrancesco* that the Double Jeopardy Clause prevents a defendant from being resentenced *after* she has completed her sentence.

Indeed, that is the only sensible answer because the "jeopardy" that the Fifth Amendment guards against is the danger of *punishment*—and a person who has already been punished once cannot be punished a second time for the same charge without offending the Double Jeopardy Clause. Long ago, this Court recognized: "It is the punishment that would legally follow the second conviction which is the real danger guarded against by the Constitution." *Ex parte Lange*, 85 U.S. 163, 173

[2] The Organized Crime Control Act of 1970 created a category of "dangerous special offenders," who could be subject to increased penalties, and the government had narrow rights to appeal those sentences. *See* 18 U.S.C. § 3576 (repealed). The statute had strict timeliness requirements for this review, which the *DiFrancesco* Court emphasized required the appeal "be taken promptly." 449 U.S. at 136. The Court recognized that "the appeal may prolong the period of any anxiety that may exist, but it does so only for the finite period provided by the statute." *Id.* Thus, *DiFrancesco* was not decided in a context like Jackson's where roughly a decade passed between her initial sentence and the Third Circuit affirming her final sentence.

(1873); *see also North Carolina v. Pearce*, 395 U.S. 711, 717 (1969) (explaining the Clause "protects against multiple punishments for the same offense").

Before *DiFrancesco*, this Court repeatedly made clear that a person—like Jackson—who had completed her sentence cannot be sentenced a second time for the same offense. In *Lange*, this Court found that double jeopardy principles prevented a defendant who "had fully performed, completed, and endured" his sentence from being resentenced because the district court's "power to punish for that offence was at an end. . . . [T]he authority of the court to punish the prisoner was gone. The power was exhausted; its further exercise was prohibited. It was error" to resentence the defendant "because the power to render any further judgment did not exist." 85 U.S. at 176; *see also In re Bradley*, 318 U.S. 50, 52 (1943) (reversing a resentencing on double jeopardy grounds because the defendant made "full satisfaction" of his prior sentence and, thus, "the power of the court was at an end"). A unanimous Court in *United States v. Benz* clarified that a district court "may amend a sentence so as to *mitigate* the punishment, but not so as to *increase* it" because "to increase the penalty is to subject the defendant to double punishment for the same offense in violation of the Fifth Amendment to the Constitution." 282 U.S. 304, 307 (1931) (emphasis added).

This Court has been just as clear in reaffirming this principle since *DiFrancesco*. Most emphatically, Justice Scalia, joined by Justices Stevens, Brennan and Marshall, wrote in his dissent in *Jones v. Thomas* that he was "sure" that, after a defendant had served her sentence, a judge could not add more time to that sentence

because "the Double Jeopardy Clause is a statute of repose for sentences as well as for proceedings. Done is done." 491 U.S. 376, 392 (1989) (dissenting). No member of this Court quarreled with Justice Scalia's conclusion that "done is done"; rather, the majority dismissed Justice Scalia's hypothetical, noting that "this case does not present the situation posited by the dissent." *Id.* at 385. Subsequently, Justice Kennedy, who wrote the majority opinion in *Jones*, endorsed Justice Scalia's view when authoring the majority opinion in *CTS Corp. v. Waldburger*, explaining that "the Double Jeopardy Clause has been described as 'a statute of repose' because it in part embodies the idea that at some point a defendant should be able to put past events behind him." 573 U.S. 1, 9 (2014) (quoting *Jones,* 491 U.S. at 392 (Scalia, J., dissenting)).

Moreover, although *DiFrancesco* eliminated double jeopardy protection for many defendants who are still serving their sentences, the Due Process Clause may still protect such defendants. As the First Circuit explained, "the power of a sentencing court to correct even a statutorily invalid sentence must be subject to some temporal limit." *Breest v. Helgemoe,* 579 F.2d 95, 101 (1st Cir. 1978). At the outset of serving a sentence, when the release date is far off, release may be too distant to provide an inmate with much hope; "[a]s the months and years pass, however, the date of that prospect must assume a real and psychologically critical importance," which may help the inmate in "enduring his confinement and coping with the prison regime." *Id.* At that point, it may "be fundamentally unfair, and thus violative of due process for a court to alter even an illegal sentence in a way which frustrates a

prisoner's expectations by postponing his parole eligibility or release date far beyond that originally set." *Id.*; *see also United States v. Mayes*, 162 F.3d 1162, at *5 (6th Cir. Aug. 19, 1998) (unpublished) (holding a five year delay in correcting a clerical error in a judgment that would require the defendant to be confined to a halfway house violated due process); *DeWitt v. Ventetoulo,* 6 F.3d 32, 36 (1st Cir. 1993) (finding a due process violation where a defendant's life sentence had been unlawfully suspended and was reimposed six years after he was released from custody); *United States v. Rico*, 902 F.2d 1065, 1068 (2d Cir. 1990) ("The expectation of finality comes from the prospect of release as defendant nears the end of his or her prison term."). Thus, "due process may also be denied when a sentence is enhanced after the defendant has served so much of his sentence that his expectations as to its finality have crystallized and it would be fundamentally unfair to defeat them." *United States v. Lundien*, 769 F.2d 981, 987 (4th Cir. 1985); *see also United States v. Davis*, 329 F.3d 1250, 1255 (11th Cir. 2003) (same); *United States v. Davis*, 112 F.3d 118, 123 (3d Cir. 1997) (same). The due process violation is all the more egregious when defendants have actually completed their sentences.

The decisions below. Without citing *Lange*, *Benz*, or *Bradley*—or addressing Justice Scalia's observation in *Jones* that "done is done"—the Third Circuit viewed the question of whether the Double Jeopardy Clause prevents resentencing a defendant who has completed her sentence while her sentence is on appeal as "a

matter of first impression." *Jackson IV*, 132 F.4th at 274.[3] The Third Circuit concluded that, even though Jackson's sentence was complete, and she had reintegrated into society since her release from prison four-and-a-half years earlier, the Double Jeopardy Clause would not prevent her from being resentenced to an additional 100 months of jail time. *Id.* Because Jackson had notice of the government's right to appeal her sentence, the Third Circuit concluded the Double Jeopardy Clause did not prevent her from being punished a second time. *Id.* This notion that the government can violate a citizen's constitutional rights if it gives her advance notice of its intent to do so is without precedent.

The Third Circuit dismissed Jackson's due process argument in two brief paragraphs for the same reason, finding "there is no reasonable expectation of finality while an appeal is pending." *Jackson IV*, 132 F.4th at 276. The fact that Jackson had served a 40-month sentence of incarceration, completed her sentence in full, and been released four-and-a-half years before she was resentenced and reincarcerated was irrelevant in the court's analysis. All that mattered to the Third Circuit was

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[3] Instead, the Third Circuit cited *Bozza v. United States*, 330 U.S. 160 (1947), as upholding a resentencing that replaced an unlawful sentence with a lawful one. *Jackson IV*, 132 F.4th at 274. But *Bozza* does not undermine Jackson's double jeopardy claim. The defendant in *Bozza* was subject to a mandatory minimum fine *and* imprisonment, but the court initially sentenced the defendant only to imprisonment. A few hours later, before the defendant had even left the courthouse to begin his prison sentence, the court corrected the sentence and imposed a fine as well. 330 U.S. at 165. Before *DiFrancesco* held that a sentence can be modified while a defendant is serving his sentence, *Bozza* was understood to allow only that a sentence be modified before a defendant begins serving it. *DiFrancesco*, 449 U.S. at 134 (Blackmun, J., majority opinion); *id.* at 153–54 (Stevens, J., dissenting). *Bozza* certainly does not stand for the proposition that a defendant who has completed her sentence can be sentenced a second time consistent with the Double Jeopardy Clause.

that—fair or not—Jackson was on notice, during the four-and-a-half years that she was reacclimating to society upon her release from prison, that she could be reincarcerated at any time.

The need for review. Jackson's forthcoming appeal will address whether the Third Circuit appropriately extended *DiFrancesco* to allow a defendant who has completed her sentence in full to be resentenced to additional punishment in accordance with the Double Jeopardy Clause of the Fifth Amendment. Because the Third Circuit's decision conflicts with this Court's precedents and those of the Fourth, Seventh, Eighth, and Ninth Circuits, as well as decisions of the highest courts of at least eight states, Jackson's case is worthy of this Court's review.

Until the Third Circuit's decision in this case, the courts of appeals to have addressed the issue had uniformly agreed. In *Arrellano-Rios*, the Ninth Circuit explained: "We need not decide at what point, in the service of a defendant's legal sentence, a reasonable expectation of finality arises. We are certain, however, that the expectation has arisen, and jeopardy has attached, upon its completion." 799 F.2d at 524. The Ninth Circuit explained that its "conclusion is supported by the fact that we find no cases holding that finality is not accorded to a fully served legal sentence." *Id.*; *see also United States v. Radmall*, 340 F.3d 798, 800 (9th Cir. 2003) ("Completion of a sentence ordinarily creates . . . a legitimate expectation of finality."); *United States v. Foumai*, 910 F.2d 617, 620 (9th Cir. 1990) (A "sentence becomes final and irrevocable no later than the date it is fully served."). The Fourth, Seventh, and Eighth Circuits agree with the Ninth Circuit. *See United States v. Silvers*, 90 F.3d

95, 101 (4th Cir. 1996) ("Although an expectation of finality does not legitimately accrue by the mere commencement of the sentence, once a defendant fully serves a sentence for a particular crime, the Double Jeopardy Clause's bar on multiple punishments prevents any attempt to increase thereafter a sentence for that crime."); *United States v. Daddino*, 5 F.3d 262, 265 (7th Cir. 1993) ("When the district court amended his sentence, Daddino had completed service of his incarceration and paid all fines and restitution; only a portion of his probation and supervised release remained. As a consequence, Daddino acquired a legitimate expectation of finality in both the length of his incarceration and the amount of his fines and restitution. Therefore, the district court could not disturb these aspects of his sentence."); *Oksanen v. United States,* 362 F.2d 74, 80 (8th Cir. 1966) ("[W]ith the termination of probation order of June 6, 1958, appellant had completely served his sentence. Therefore, when, on July 29, 1965, appellant was sentenced to three more years[']probation, he was being punished a second time for the commission of a single offense."). Even the government conceded before the Fourth Circuit that a defendant cannot be resentenced after a prior sentence had been completed. *See Silvers*, 90 F.3d at 101 ("[T]he government concedes, reimposition of sentence on counts upon which Silvers had fully satisfied his sentence violated the Double Jeopardy Clause."); Gov't Br., *Silvers*, 1995 WL 17054102, at *21 (4th Cir. Dec. 22, 1995) ("[A]lthough the district court was allowed substantial leeway in resentencing the defendant, it did not have the authority or the power to revisit the various counts in which Silvers had fully satisfied the sentences. . . . he had fully served the five-year sentences imposed

in counts eleven, thirteen and nineteen, hence the Double Jeopardy Clause prevented the district court from resentencing on these counts.") (citing *Arrellano-Rios*, 799 F.2d at 523).

The Third Circuit's decision below is the first court of appeals decision to break with this understanding. The Third Circuit sought to distinguish these cases because they did not involve resentencing following the government's appeal of those sentences, but that sleight of hand ignores that the Fourth, Seventh, Eighth, and Ninth Circuit's decisions explicitly turned on the fact that the defendants had fully served their sentences. Each of those cases made that point unequivocally, and a fully served sentence is done when it is done, regardless of any appeal. A fully served sentence completes the punishment for the offense, such that any subsequent additional punishment places a defendant in jeopardy a second time.

To be sure, the Third Circuit is correct that an expectation of finality in a sentence arises once appeals have concluded or the time to appeal has passed, even if a defendant is still serving her sentence. But that is not the only way double jeopardy protections are triggered; the completion of a sentence does so as well. Even viewed through a lens that asks whether an expectation of finality has arisen, that expectation undoubtedly arises once a defendant completes her sentence. Here, Jackson completed her prison sentence four-and-a-half years before her resentencing, Probation had formally concluded its supervision of her, and her voting rights had been restored because her sentence had ended. Regardless of any pending appeal,

Jackson did what anyone in her circumstances should have done: she sought to put her sentence behind her and begin her rehabilitated life anew.

This Court's adoption of Justice Scalia's view that "the Double Jeopardy Clause is a statute of repose for sentences as well as for proceedings" is illuminating. *See Waldburger*, 573 U.S. at 9 ("[T]he Double Jeopardy Clause has been described as 'a statute of repose' because it in part embodies the idea that at some point a defendant should be able to put past events behind him.") (quoting *Jones,* 491 U.S. at 392 (Scalia, J., dissenting)). In the *Ex Post Facto* Clause context, when looking at statutes of repose, the Court similarly distinguishes laws that seek to extend "*unexpired* statutes of limitations," which are permissible, from "situations where limitations periods have *expired*." *Stogner v. California*, 539 U.S. 607, 618 (2003) (invalidating a statute that revived expired causes of action against child molesters). Both a sentence and a statute of limitations can be modified while they are in effect, but resentencing after a sentence has been completed, like reviving an expired cause of action, is prohibited because it creates a new punishment.[4]

[4] Although Jackson's sentence was later declared *procedurally* unlawful, it was not *substantively* unlawful. Only one Third Circuit judge found her initial 24-month sentence substantively unreasonable, but she was resentenced and served her full 40-month sentence, which was more than 60 percent longer than her initial sentence. *See supra* n.1. No judge found that sentence substantively unreasonable. The Third Circuit noted that the novelty of applying New Jersey law under the Assimilative Crimes Act raised "a number of rather unusual sentencing issues" and agreed with the district court that "we are dealing with a less than clear statute." *Jackson I*, 862 F.3d at 370; *id.* at 378 (quoting district court hearing). There was nothing obvious to Jackson or anyone else indicating that the 40-month sentence of incarceration that Jackson served was unlawful.

Heaping injustice upon injustice here, if Jackson's violation of New Jersey laws had been prosecuted in New Jersey courts, none of this would have happened. When the State is permitted to appeal a sentence under New Jersey law, "Rule 2:9-3(c) provides that the 'execution of sentence shall be stayed pending appeal by the State.'" *State v. Thomas*, 211 A.3d 1241, 1245 (N.J. Super. App. Div. 2019). The Court explained: "The State must ensure the stay of the execution of the sentence is in effect in order to ensure double jeopardy will not apply." *Id.* Other states avoid the double jeopardy problem by staying sentences pending appeal as well. *See, e.g.*, Alaska R. App. P. 206(a)(1) (2022) ("A sentence of imprisonment shall be stayed if an appeal is taken and the defendant is released pending appeal."); Colo. App. R. 8.1(a)(2) (2025) ("A sentence of imprisonment will be stayed if a notice of appeal is filed and a defendant elects, through written notice, not to commence service of the sentence or is admitted to bail. Any stay of a sentence of imprisonment will be for not more than sixty-three days unless the defendant is admitted to bail."); N.M. Stat. Ann. § 31-11-1(a) (2024) ("All appeals and writs of error in criminal cases have the effect of a stay of execution of the sentence of the district court until the decision of the supreme court or court of appeals."); *State v. Roberts*, 893 N.E.2d 818, 823 (Ohio 2008) ("The effect of a stay pending review in a criminal appeal is preventive in nature. It preserves the status quo of the litigation pending appellate review" and a defendant "has no reasonable expectation of finality regarding the sentence that is subject to the stay.").

While a stay is not automatic in the federal system, nothing prevented the government from seeking such a stay here to obviate the double jeopardy issue—or from taking other ameliorative action, such as seeking to expand Jackson's supervised release or requesting expedited briefing or resentencing. But the government did none of those things.

Moreover, if Jackson had completed her sentence in New Jersey, the New Jersey Supreme Court has been clear that any resentencing after she completed her sentence would violate the Double Jeopardy Clause. *See State v. Shubert*, 53 A.3d 1210, 1220 (N.J. 2012) ("The State has not cited to us any published case from any jurisdiction that has permitted a defendant's sentence to be increased after the sentence has been completed. In our judgment, the reason for the omission is clear: to permit such an action is a violation of a defendant's fundamental rights under the Double Jeopardy Clauses of the United States and New Jersey Constitutions."); *State v. Laird*, 135 A.2d 859, 867 (N.J. 1957) ("Once the sentence has been executed, it would seem that on the plainest principles of justice the jurisdiction of the court to increase the punishment is at an end. . . ."). Other state high courts reach the same conclusion. *See, e.g.*, *State v. Brasher*, 218 N.E.3d 899, 905 (Ohio 2022) ("Once an offender has completed his or her sentence, the trial court loses jurisdiction to modify it.") (citing *State v. Holdcroft*, 1 N.E.3d 382, 389 (Ohio 2013) (Under the Double Jeopardy Clause, "when the entirety of a prison sanction has been served, the defendant's expectation in finality in his sentence becomes paramount, and his sentence for that crime may no longer be modified.")); *Lanier v. State*, 270 So.3d 304,

310 (Ala. Crim. App. 2018) ("[A] trial court's correcting an illegal sentence after the expiration of that sentence violates principles of double jeopardy . . . ."); *State v. Brown*, 479 S.W.3d 200, 211 (Tenn. 2015) (holding rule allowing correction of an illegal sentence at any time could not be used to resentence a defendant who completed his sentence); *March v. State*, 782 P.2d 82, 83 (N.M. 1989) (holding a New Mexico procedure that allows for enhancing sentences of habitual offenders violated double jeopardy when applied to a defendant who had completed his unenhanced sentence); *State v. Heyward*, 207 A.2d 730, 731 (Conn. 1965) ("[T]he defendant, having satisfied the sentence of the law for his crime, then was entitled to be enlarged, a free man. To subject him, instead, to another, and more severe, judgment for the same offense was a denial of due process and placed him again in jeopardy for the crime for which he had already paid the penalty.").

The Kansas Supreme Court, for example, cited the federal courts of appeals decisions discussed above to reject the sort of distinction the Third Circuit sought to draw in Jackson's case, explaining: "Since *DiFrancesco*, multiple federal courts have held that after a defendant has completed a sentence, a legitimate expectation in the finality of the sentence arises and double jeopardy principles prevent reformation of the original completed sentence." *State v. Van Lehman*, 427 P.3d 840, 844–45 (Kan. 2018). In *Van Lehman*, Kansas had a procedure that allowed the government to move to correct a sentence "at any time," but the Kansas Supreme Court held that the Double Jeopardy Clause prevents such resentencing after defendants complete their sentence. *Id.* at 846–47. The defendant in *Van Lehman* would have been on notice

of the government's right to seek the correction of a sentence at any time, just as the Third Circuit found that Jackson was aware that her sentence could be modified on appeal. In fact, the state moved to modify his sentence while he was still serving it. *Id.* at 842. But the Kansas Supreme Court—unlike the Third Circuit in Jackson's case—did not find that knowledge stripped the defendant of double jeopardy protection.

The New York Court of Appeals reached a similar conclusion in *People v. Williams*, 925 N.E.2d 878 (N.Y. 2010). In *Williams*, a change in New York law required postrelease supervision (PRS) when a determinate sentence was imposed. In a series of cases, defendants received unlawful determinate sentences without PRS. After those defendants completely served their determinate sentences, they were resentenced to add PRS. They challenged that additional punishment under the Double Jeopardy Clause.

New York, like Kansas and some other states, allows unlawful sentences to be corrected at any time, but the court found that "there must be a temporal limitation on a court's ability to resentence a defendant." *Id.* at 890. The New York Court of Appeals found the Fourth, Seventh, Eighth, and Ninth Circuit cases discussed above "persuasive" and held "that, after release from prison, a legitimate expectation in the finality of a sentence arises and the Double Jeopardy Clause prevents reformation to attach a PRS component to the original completed sentence." *Id.* at 889.

The Third Circuit improperly sought to distinguish *Van Lehman*, *Williams*, and other cases where defendants similarly had completed their sentences because,

unlike in Jackson's case, the time to appeal had passed. *Jackson IV*, 132 F.4th at 275 n.14. That distinction is irrelevant in the context of those cases, however, because under the applicable state law a sentencing court had the inherent or statutory authority to revisit an unlawful sentence at any time. Thus, all those defendants are like Jackson in that they were on notice that subsequent legal proceedings could alter their sentences.

If the government's theory—that double jeopardy claims are defeated whenever the government has a legal avenue to seek modification of a sentence—was accepted, then Double Jeopardy Clause protections would *never* apply where courts have the inherent or statutory authority to modify a sentence at any time. But none of the states with those laws have accepted the Third Circuit's theory that the Double Jeopardy Clause can be so easily circumvented. Instead, they uniformly hold that Double Jeopardy Clause protections also are triggered when a defendant has completed her sentence. That understanding of the Double Jeopardy Clause applies just as much to Jackson, who completed her sentence and reintegrated into society before a court decided that she should be given additional punishment and hauled off to prison again.

Jackson's petition also raises an important issue under the Due Process Clause. Until the decision below, defendants who have completed their sentences have found protection against resentencing under the Double Jeopardy Clause, but the Due Process Clause is an additional source of protection. It applies even when

the Double Jeopardy Clause does not, including to defendants who are still serving their sentences and others who are on notice that their sentences could be modified.

The Third Circuit's decision below is in tension with the First Circuit's decision in *DeWitt* and the Sixth Circuit's decision in *Mayes*, which both found due process violations where a defendant had enjoyed their freedom and resumed their lives before being resentenced. In *Dewitt v. Ventetoulo*, a court suspended all but fifteen years of the defendant's life sentence to reward him for his assistance to a prison guard who had been assaulted by an inmate, thereby allowing for the defendant's early release on parole. 6 F.3d at 33. After the defendant was released on parole for eight months and had resumed his life on the outside, the sentencing court found that its suspension of the defendant's sentence was unlawful and vacated that decision, which restored the initial life sentence and terminated the defendant's parole. *Id.* Given that the defendant was free for eight months "and laid down new roots in society, acquiring a job and reestablishing family ties," the First Circuit found that vacating the order suspending his sentence violated the Due Process Clause. *Id.* at 35.

A due process violation was also found in *Mayes*. There, the defendant reached a plea agreement with the government that included six months in a halfway house and the court imposed that sentence orally. The written judgment, however, indicated this sentence was "suspended" even though the court had no authority to suspend a sentence. 162 F.3d 1162, at *1–2. The government never instructed the defendant to report to a halfway house, and he never went. Five years after the

sentence was imposed, the court discovered the error and amended the judgment to eliminate the suspension so the defendant would have to serve his time in the halfway house. *Id.* The Sixth Circuit found that this "harsh" amended judgment violated due process, given that the defendant had moved on with his life over the prior five years. *Id.* at 5.

The due process violation imposed by Jackson's resentencing is more egregious than in *DeWitt* and *Mayes.* Jackson had four-and-a-half years to rebuild her life after prison, and she completed the final supervised release portion of her sentence more than a year before she was resentenced. That is far longer than the eight months in *DeWitt* and—unlike the defendant in that case, who was subject to ongoing parole restrictions—Jackson's sentence was served completely. Jackson enjoyed her freedom for roughly as long as the defendant in *Mayes*, but Jackson first suffered meaningful punishment by serving her 40-month prison sentence while even Mayes himself acknowledged that he deserved "some form of punishment." *Id.* at 6.

The Third Circuit rejected Jackson's due process claim solely because it found "there is no reasonable expectation of finality while an appeal is pending." *Jackson IV*, 132 F.4th at 276. But that rationale is at odds with *Mayes*. Although Jackson knew the government had appealed her sentence and, if successful, that could result in resentencing, Mayes was certain that there had been a mistake in the written judgment that did not reflect his agreed-upon sentence that the court imposed orally. Mayes' knowledge of the mistake factored against him in the Sixth Circuit's due process analysis, but the prejudice of allowing him years to rebuild his life post-

conviction—and then taking that away from him—led the Sixth Circuit to find a due process violation. Jackson had no similar knowledge that her sentence was improper, and, because she had to start from scratch to rebuild her life after 40 months in prison, it was far harsher to return her to prison for another 100 months.

Counsel's conflicts. Jackson requests this extension of time to give her newly retained *pro bono* counsel the opportunity to thoroughly research the legal issues and prepare a petition that fully addresses the important constitutional issues raised below. Jackson's counsel of record, Christopher D. Man, is preparing for a jury trial that will begin in the Northern District of Texas on June 2, 2025, *United States v. Hamilton* (N.D. Tex. No. 3:19-cr-83), and may last multiple weeks. Other appellate counsel working on the petition are also new to the case and require more time to familiarize themselves with the voluminous record and intricate legal issues.

Low risk of delay or prejudice. There would be no risk of delay or prejudice to this case if this application for an extension is granted because Jackson is already fifteen months into serving her most recently imposed 100-month prison sentence. Accordingly, any delay in the Court's consideration of her petition for certiorari leaves her sentence in place and being executed. The only party prejudiced by the delay is Jackson, in the event the Court subsequently agrees that she never should have been returned to prison. Because it is important to her that her counsel have sufficient time to make the strongest case on her behalf, she is willing to accept the brief delay that she requests here.

CONCLUSION

For these reasons, Jackson requests an extension up to and including August 19, 2025, to file a petition for a writ of certiorari in this case.

Respectfully submitted,

/s/ *Christopher D. Man*

HERBERT I. WALDMAN
RUBIN M. SININS
Javerbaum Wurgaft Hicks Kahn
Wikstrom & Sinins, P.C.
505 Morris Avenue, Suite 200
Springfield, NJ 07081
(973) 379-4200
HWaldman@Lawjw.com

CHRISTOPHER D. MAN
Counsel of Record
Winston & Strawn LLP
1901 L Street NW
Washington, DC 20036
(202) 282-5000
CMan@winston.com

JUNE 2, 2025

EXHIBIT 1

PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

_____

Nos. 23-2492, 23-3016, 23-2992, 23-2508

_____

UNITED STATES OF AMERICA

v.

CAROLYN JACKSON
Appellant in 23-2492, 23-2992

&

JOHN E. JACKSON
Appellant in 23-3016, 23-2508

_____

On Appeal from the United States District Court
for the District of New Jersey
(District Court Nos. 2:13-cr-00290-001, 2:13-cr-00290-002)
District Judge: Honorable Susan D. Wigenton

_____

Submitted Under Third Circuit L.A.R. 34.1(a) on
December 10, 2024

_____

Before: BIBAS, CHUNG, and ROTH, Circuit Judges

(Filed: March 21, 2025)

Rubin M. Sinins
Herbert I. Waldman
Javerbaum Wurgaft Hicks Kahn Wikstrom
505 Morris Avenue
Suite 200
Springfield, NJ 07081

Counsel for Appellant Carolyn Jackson

Louise Arkel
Evan J. Austin
Carol Dominguez
David A. Holman
Office of Federal Public Defender
1002 Broad Street
Newark, NJ 07102

Counsel for Appellant John E. Jackson

Mark E. Coyne
John F. Romano
Steven G. Sanders
Office of United States Attorney
970 Broad Street
Room 700
Newark, NJ 07102

Counsel for Appellee

OPINION OF THE COURT

CHUNG, Circuit Judge.

Carolyn Jackson and her husband, John Jackson, were convicted of horrific child abuse after a thirty-nine-day jury trial. The original trial judge sentenced the Jacksons three times—twice after remand from this Court. On each appeal, we found the sentencing judge did not sentence the Jacksons in a manner supported by the jury's verdict and federal sentencing law. The Jacksons' sentences were vacated upon a third appeal and were remanded for resentencing with instructions that their cases be reassigned to a different judge. The Jacksons now bring this appeal, challenging the sentences imposed by the new judge. We will affirm.

I. BACKGROUND

Because the facts have been reviewed at length in prior cases, we do not revisit them here.[1] Suffice it to say, this case concerns serious child abuse inflicted by the Jacksons on three

[1] For a full discussion of the facts, see United States v. Jackson, 862 F.3d 365, 368-370 (3d Cir. 2017). This was the first appeal, and we refer to it herein as "Jackson I." The second appeal was United States v. Jackson, 819 F. App'x 97, 99 (3d Cir. 2020) ("Jackson II"), and the third appeal was United States v. Jackson, 2023 WL 2755578 (3d Cir. Apr. 3, 2023) ("Jackson III").

adopted children, Joshua, "C," and "J," all below the age of four at the time of their abuse. The Jacksons were charged in a fifteen-count superseding indictment with conspiracy under N.J.S.A. § 2C:5-2 and several counts of endangering the welfare of a child under N.J.S.A. § 2C:24-4a.[2] At a jury trial overseen by Judge Katharine Hayden, John was found guilty of Counts 1, 3-9, and 11-12, and Carolyn was found guilty of Counts 1-12. Counts 2, 4, 7, 8, and 11, termed the "omission counts," charged the Jacksons' with withholding food, water, and/or medical care from the children. The other counts, known as the "commission counts," charged the Jacksons with forcing the children to ingest substances such as hot sauce and red pepper flakes, and physically assaulting them with various objects.

While Jackson III was pending, Carolyn Jackson completed serving her most recently imposed sentence.[3]

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[2] Although these were state law violations, the Jackson were charged federally because these offenses occurred "on a military installation under the special jurisdiction of the federal government." Jackson I at 387. New Jersey law was accordingly "'assimilated' into federal law pursuant to the Assimilative Crimes Act ('ACA')." Id. at 368, 387.

[3] John Jackson does not explicitly concede that he had not finished serving his third sentence before it was vacated. In his opening brief, however, he indicates that he continued to serve his third sentence through the same date that the Third Circuit issued judgment in Jackson III. John Opening Br. at 65-66. Whether or not he completed his sentence does not affect the outcome of his appeal.

In Jackson III, we vacated the Jacksons' sentences and remanded for resentencing. The case was reassigned to Judge Susan Wigenton, who ordered that presentence reports (PSRs) be prepared for each Appellant.[4] After consideration of the entire trial record, the PSRs, the sentencing submissions, and the parties' presentations at a sentencing hearing, Judge Wigenton sentenced Carolyn Jackson to a term of imprisonment of 140 months and John Jackson to a term of imprisonment of 108 months.

The Jacksons timely appealed.

II. JURISDICTION AND STANDARD OF REVIEW

The District Court had jurisdiction under 18 U.S.C. § 3231. We have jurisdiction under 18 U.S.C. § 3742. We review findings of fact for clear error. United States v. Grier, 475 F.3d 556, 561 (3d Cir. 2007). We review questions of law, including whether the law of the case doctrine applies, de novo. Monasky v. Taglieri, 589 U.S. 68, 83 (2020) (questions of law); PDX N., Inc. v. Comm'r New Jersey Dep't of Lab. & Workforce Dev., 978 F.3d 871, 881 n.10 (3d Cir. 2020) (law of the case). We review the procedural and substantive reasonableness of a sentence for abuse of discretion. United States v. Tomko, 562 F.3d 558, 567 (3d Cir. 2009). However, when a party did not object to an alleged error at sentencing,

[4] Judge Hayden had directed the U.S. Probation Office not to prepare offense level calculations for the Jacksons' second and third resentencings.

we review only for plain error. United States v. Flores-Mejia, 759 F.3d 253, 255 (3d Cir. 2014).

III. DISCUSSION

John and Carolyn Jackson raise the following issues on appeal.[5] They argue that Judge Wigenton (1) violated their Fifth and Sixth Amendment rights when she found facts at sentencing by a preponderance of the evidence, (2) violated their Fifth and Sixth Amendment rights by resentencing them after they had finished serving their previously imposed sentences, (3) violated the law of the case doctrine, (4) imposed procedurally unreasonable sentences, and (5) imposed substantively unreasonable sentences. We will affirm.

A. Findings of Fact at Sentencing

Facts pertinent to sentencing need only be submitted to a jury when such facts raise the applicable statutory maximum or mandatory minimum sentence. Apprendi v. New Jersey, 530 U.S. 466, 490 (2000) (statutory maximums); Alleyne v. United States, 570 U.S. 99, 103 (2013) (mandatory minimum sentences). The Jacksons argue nonetheless that their Sixth Amendment rights to trial by jury and their Fifth Amendment rights to due process were violated when the District Court found, by a preponderance of the evidence, that the Jacksons'

[5] Carolyn Jackson asserted all issues. John Jackson joins the first two issues and appears to also join the third. John Opening Br. at 3, 65-67. John and Carolyn each bring their own procedural and substantive unreasonableness arguments.

offenses caused "serious bodily injury" or involved a "dangerous weapon." Carolyn[6] Opening Br. at 8. These factual findings supported the District Court's application of the aggravated assault Guideline and resulted in higher Guidelines range terms of imprisonment. The Jacksons argue that the District Court's application of the aggravated assault Guideline makes them liable for committing aggravated assault, a crime for which the jury did not convict them. They also argue that the "'statutory maximum' for Apprendi purposes is the maximum sentence a judge may impose solely on the basis of the facts reflected in the jury verdict or admitted by the defendant." Carolyn Opening Br. at 14-15 (quoting Blakely v. Washington, 542 U.S. 296, 303 (2004) (emphasis omitted)). Therefore, they contend, the Sixth Amendment and the Due Process Clause require these facts to have been found by a jury rather than the sentencing judge. Id. at 11 (quoting Apprendi, 530 U.S. at 496).

We have repeatedly rejected these arguments and held that judicial findings of fact that increase the defendant's Guidelines range, but not the statutory maximum, do not violate the Constitution. See, e.g., United States v. Gonzalez, 905 F.3d 165, 205-06 (3d Cir. 2018); United States v. Fisher, 502 F.3d 293, 305, 306 (3d Cir. 2007). Here, the District Court sentenced both Jacksons to terms of imprisonment within the statutory maximum term of imprisonment of ten years and the

6 To avoid confusion, we will sometimes refer to Carolyn and John Jackson by their first names.

Court's factual findings did not increase that range.[7] Consistent with our precedent, we conclude that the District Court did not violate the Jacksons' Fifth and Sixth Amendment rights by relying upon its own factfinding in applying the aggravated assault Guideline.

B. Finality of Sentence

1. Fifth Amendment Right Against Double Jeopardy

The Double Jeopardy Clause of the Fifth Amendment provides that no person shall "be subject for the same offence to be twice put in jeopardy of life or limb." U.S. Const. amend. V. In the sentencing context, the double jeopardy right attaches when a defendant has "a reasonable expectation of finality" in his sentence. See Wilmer v. Johnson, 30 F.3d 451, 458 (3d Cir. 1994). A defendant whose sentence is under appeal "has no expectation of finality in his sentence until the appeal is concluded or the time for appeal has expired." Id. at 457 (quoting United States v. DiFrancesco, 449 U.S. 117, 136 (1980)); United States v. McMillen, 917 F.2d 773, 777 n.5 (3d Cir. 1990) ("DiFrancesco teaches that the defendant can have no expectation of finality of sentence until the government's statutory period for appeal has expired."). Therefore, no Double Jeopardy concern is implicated when a defendant is

[7] For instance, Carolyn received a total sentence of 140 months, comprised of 120 months at Count One followed by 20 months on Counts Two through Twelve. Each crime of conviction carried a maximum term of imprisonment of ten years. Jackson I at 389; N.J.S.A. 2C:43-6a(2). None of Judge Wigenton's findings of fact raised those statutory maximums.

resentenced after his sentence was vacated on appeal. DiFrancesco, 449 U.S. at 136; see also Bozza v. United States, 330 U.S. 160, 167 (1947) (lawful resentencing after vacatur "did not twice put petitioner in [double] jeopardy" because "[t]he sentence as corrected, imposes a valid punishment for an offense instead of an invalid punishment for that offense"); United States v. Busic, 639 F.2d 940, 948 (3d Cir. 1981) (dictum) ("Nothing in the history or policy of the [Double Jeopardy Clause] suggests that its purposes included protecting the finality of a sentence and thereby barring resentencing to correct a sentence entered illegally or erroneously."); United States v. Guevremont, 829 F.2d 423, 427 (3d Cir. 1987).

The Jacksons argue, though, that once a defendant completes the sentence originally imposed, though under appeal, he has a legitimate expectation of finality.[8] Like the District Court, we recognize that this is a matter of first impression. See United States v. Jackson, 2023 WL 5994640, at *5 n.6 (D.N.J. Sept. 15, 2023). The Supreme Court's seminal decision in DiFrancesco "did not address the application of double jeopardy principles to a defendant whose sentence has been fully served." See United States v. Arrellanos-Rios, 799 F.2d 520, 523 (9th Cir. 1986) (citing 449 U.S. 117 (1980)). Our Court's decision in United States v. McMillen also expressly left open the possibility that "a defendant who has completely satisfied his sentence may have a reasonable expectation of finality as to the completed sentence." 917 F.2d 773, 777 n.5 (3d Cir. 1990) (citing United

[8] As noted above, John Jackson's continued to serve his sentence through the day Jackson III was issued. Whether or not he completed his sentence while his appeal was pending is irrelevant to the outcome of this appeal.

States v. Rico, 902 F.2d 1065, 1068–69 (2d Cir. 1990)). Today's decision forecloses it.

To support their argument, the Jacksons cite cases that they either misconstrue or that are readily distinguishable from their situation. For instance, some cited cases confirm that a district court judge can impose a new sentence without violating the Double Jeopardy Clause.[9] Other cited cases are inapposite because they explain that a defendant's completed sentence on two counts cannot be adjusted after conviction on a third count was reversed[10] or that a prior sentence cannot be amended *after* the time for appeal has passed[11] or where the government never appealed the sentence.[12] And many of these

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[9] See Busic, 639 F.2d at 947-48 ("There is nothing in the history or the policies of the Double Jeopardy Clause that justifies the denial of resentencing when the sentence has been spread erroneously over counts that have been declared invalid."); United States v. Silvers, 90 F.3d 95, 99 (4th Cir. 1996) (finding that resentencing on reinstated conviction did not violate Double Jeopardy because the defendant was simply placed in the position he would have been in had there been no error).

[10] United States v. Arrellano-Rios, 799 F.2d 520, 524 (9th Cir. 1986).

[11] United States v. Daddino, 5 F.3d 262, 265 (7th Cir. 1993).

[12] Smith v. State, 334 So. 3d 377, 378, 379 n.4 (Fla. Dist. Ct. App. 2022); State v. Houston, 2010 Iowa App. LEXIS

cases state that a legitimate expectation of finality requires that the time for appeal has passed, or the appeal is completed,[13] even when the defendant has served his sentence.[14]

1546, *5 (Iowa Ct. App. Dec. 8, 2010) (comparing the facts before it to a case where "the State sought review of the defendant's discharges from probation by timely writs of certiorari to the supreme court" and noting that "[h]ere, the State never timely challenged the order discharging [the defendant] from probation").

[13] United States v. Rico, 902 F.2d 1065, 1068 (2d Cir. 1990) ("So long as a sentence can be increased on appeal, defendant has no expectation of its finality" (citing DiFrancesco, 449 U.S. at 134-136, 139)); McMillen, 917 F.2d at 777 ("McMillen 'is charged with knowledge of the statute and its appeal provisions, and has no expectation of finality in his sentence until the appeal is concluded or the time to appeal has expired'" (quoting DiFrancesco, 449 U.S. at 136)).

[14] State v. Lehman, 308 Kan. 1089, 1097 (2018) ("[T]he view that the district court cannot correct an illegal sentence after the sentence expires and the direct appeal has been completed (or the time to appeal has lapsed) is more in keeping with the purpose of double jeopardy protection, allowing a person to move on with his or her life after having paid the debt to society without wondering whether the government will come back to extract further punishment."); People v. Williams, 14 N.Y.3d 198, 217 (2010) ("Even where a defendant's sentence is illegal, there is a legitimate expectation of finality once the initial sentence has been served and the direct appeal has been completed (or the time to appeal has

Despite the vast number of cases the Jacksons cite, all support the proposition that a defendant has no legitimate expectation of finality in their sentence while that sentence is under appeal.[15] We decline to break from this precedent. To do otherwise would allow the Jacksons to avoid legal sentences

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expired)."); State v. Schubert, 212 N.J. 295, 312 (2012) (same); Lanier v. State, 270 So. 3d 304, 310 (Ala. Crim. App. 2018) ("[W]e hold that a trial court loses jurisdiction to correct an illegal sentence once that sentence expires and the direct appeal has been completed or the time to appeal has lapsed and that a trial court's correcting an illegal sentence after the expiration of that sentence violates principles of double jeopardy."); People v. Velez, 19 N.Y.3d 642, 649 (2012) ("[W]e [have] held that, where a sentence is no longer subject to appeal, the Double Jeopardy Clause of the Federal Constitution forbids a resentencing … after the original sentence is completed." (quoting Williams, 14 N.Y.3d at 217 (2010)).

[15] See, e.g., United States v. Radmall, 340 F.3d 798, 801 (9th Cir. 2003) (when defendant's sentence for multiple counts reflects "his overall offense conduct rather than separate and independent sentences on each count," the defendant cannot have an expectation of finality on one part of his sentence when another part of the sentence is appealed); United States v. Foumai, 910 F.2d 617, 621 (9th Cir. 1990) (defendant had "a legitimate expectation of finality in his reversed conviction" because time for appeal had passed); Jones v. Thomas, 491 U.S. 376, 387 (1989) (concluding after appeal, that "[t]he Missouri court's alteration of respondent's sentence to a single term for felony murder with credit for time served provided suitable protection of his double jeopardy rights.").

and "provide [them an] unjustified windfall[,]" simply because they received such erroneously short sentences. Jones, 491 U.S. at 387 ("[N]either the Double Jeopardy Clause nor any other constitutional provision exists to provide unjustified windfalls."). Because the Jacksons' sentences were under appeal, they had no reasonable expectation of finality in their sentences, completed or not, and their double jeopardy rights did not attach.

2. Fifth Amendment Right to Due Process

The Jacksons also argue that, even if their resentencings did not violate double jeopardy, their general Fifth Amendment due process rights were violated because they had a legitimate expectation of finality upon completion of their sentences while Jackson III was pending. Quoting from United States v. Davis, they argue that "[a] defendant's due process rights may be violated 'when a sentence is enhanced after the defendant has served so much of his sentence that his expectations as to its finality have crystallized.'" 112 F.3d 118, 123 (3d Cir. 1997) (quoting United States v. Lundien, 769 F.2d 981, 987 (4th Cir. 1985)). But Davis clarified that "[a] defendant … does not automatically acquire a vested interest in a shorter, but incorrect sentence." Id. (citing DeWitt v. Ventetoulo, 6 F.3d 32, 35 (1st Cir. 1993), cert. denied, 511 U.S. 1032 (1994)). Davis also does not apply here because it addresses a defendant's legitimate expectation of finality in a sentence when a *habeas* proceeding is pending, Davis, 112 F.3d at 123, and had no impact on DiFrancesco's holding that a defendant has no reasonable expectation of finality in his sentence until the time for appeal has passed or the appeal is completed.

The Jacksons assert two other reasons their resentencings were fundamentally unfair and violated due

process. First, they rely upon cases that are easily distinguished and do not support concluding a due process violation occurred here.[16] Second, the Jacksons argue that the fragmented manner in which they have been sentenced means that due process would be violated if they were resentenced. We have now made clear, however, that there is no reasonable expectation of finality while an appeal is pending. We decline to impose a different rule when serial appeals are involved. While the fragmented nature of the proceedings here may be undesirable, it does not violate due process and certainly does not weigh in favor of rewarding the Jacksons the windfall of serving sentences that this Court has found to be erroneous.

C. Law of the Case

The law of the case is a prudential rule that "holds that a rule of law announced in a case should later be applied to the same issues in subsequent stages in the litigation. Law of the case may counsel against, but does not prevent, a district court from reconsidering its prior rulings." Saint-Jean v. Palisades Interstate Park Comm'n, 49 F.4th 830, 836 (3d Cir. 2022) (internal quotations and citations omitted). Carolyn Jackson

[16] See United States v. Ray, 578 F.3d 184, 199, 202 (2d Cir. 2009) (concluding that a fifteen-year delay between remand and sentencing violated due process); DeWitt v. Ventetoulo, 6 F.3d 32, 34 (1st Cir. 1993) (holding that reinstatement of a defendant's life sentence violated due process where the state had reopened a "final unappealed decision").

argues that three of Judge Wigenton's sentencing decisions[17] impermissibly contradicted Judge Hayden's earlier, law-of-the-case decisions.

The law of the case doctrine does not apply here. We vacated the October 15, 2021, sentencing order of Judge Hayden and remanded for sentencing. Jackson III, at *3, 5. When a sentence is vacated, the defendant is rendered unsentenced. United States v. Mitchell, 38 F.4th 382, 388 (3d Cir. 2022). Judge Wigenton thus had a clean slate on which there was no law of the case for sentencing. See Pepper v. United States, 562 U.S. 476, 507-08 (2011). This applies equally to the dangerous weapons enhancement, even in light of this Court's Jackson II ruling that Judge Hayden had not clearly erred when finding that various objects used by the Jacksons were not "'dangerous weapons[.]'" Jackson II at 101 n.10. That ruling neither concluded that Judge Hayden's finding was affirmatively correct, nor bound the resentencing court to find the same.

D. Procedural and Substantive Unreasonableness

District courts follow a three-step process to sentence a defendant. United States v. Wright, 642 F.3d 148, 152 (3d Cir. 2011). "At step one, the court calculates the applicable Guidelines range which includes the application of any sentencing enhancements. At step two, the court considers any

[17] These are: Judge Wigenton's decision to calculate the Jacksons' sentence using eleven groupings, to use the assault and aggravated assault Guideline for the omission counts, and to apply the dangerous weapon sentencing enhancement.

motions for departure and, if granted, states how the departure affects the Guidelines calculation. At step three, the court considers the recommended Guidelines range together with the statutory factors listed in 18 U.S.C. § 3553(a) and determines the appropriate sentence, which may vary upward or downward from the range suggested by the Guidelines." Id. (internal citations omitted). The Jacksons argue that their sentences were procedurally and substantively unreasonable. As noted above, we review the procedural and substantive reasonableness of a sentence under an abuse of discretion standard. Tomko, 562 F.3d at 567. When a party appeals an error to which they did not object at sentencing, we review only for plain error. Flores-Mejia, 759 F.3d at 255.

1. Carolyn Jackson's Procedural Unreasonableness Arguments

"When a defendant alleges procedural error, we must ensure that the district court did not fail to calculate (or miscalculate) the Guidelines range; treat the Guidelines as mandatory; gloss over the Section 3553(a) factors; choose a sentence based on a clearly erroneous fact; or inadequately explain the chosen sentence." United States v. Jumper, 74 F.4th 107, 114 (3d Cir. 2023) (internal quotation marks omitted).

Carolyn did not object to the alleged errors at sentencing, so we review only for plain error. Flores-Mejia, 759 F.3d at 255.[18] Carolyn urges us to find that the sentencing

[18] Although Carolyn characterizes this as a substantive unreasonableness argument, it is better analyzed for procedural unreasonableness because she challenges the judge's factual findings as erroneous.

judge abused her discretion by relying on inaccurate information, preventing the judge from giving "rational and meaningful consideration" to the Section 3553(a) factors. Grier, 475 F.3d at 571. Specifically, she argues that the sentencing court failed to recognize that: Carolyn expressed remorse; used corporal punishment to punish all of her children, not just her adopted children; and "C" and Joshua had injuries the defendants did not cause. She further argues that the sentencing court erroneously blamed Carolyn for Joshua's death, called the corporal punishment torture, and did not consider Carolyn's positive post-sentence conduct. Carolyn Opening Br. at 50-58. We cannot conclude that the District Court plainly erred.

First, Judge Wigenton did recognize Carolyn's expression of remorse and found a marginal acceptance of responsibility. She was not required to agree with Judge Hayden's finding that Carolyn Jackson fully accepted responsibility. Similarly, Judge Wigenton recognized that Carolyn abused all of her children, and accurately noted that she abused her adopted children more severely. Furthermore, Judge Wigenton stated she did not impose the sentence as means to punish the Jacksons for Joshua's death, did not depart upward based on her view that the children suffered torture, and explained why she found the children's various injuries were caused by the defendant's abuse.[19] Finally, there is no

[19] This is consistent with Jackson I in which we stated, "It defies common sense to believe that the jury found that Defendants physically assaulted their adopted children, withheld sufficient nourishment and water from them, and forced them to ingest hot sauce, red pepper flakes, and raw

basis to conclude that, when Judge Wigenton stated that she hopes Carolyn will do things differently, she did not consider Carolyn's post-sentence conduct. Those statements were made in the context of analyzing the Section 3553(a) factors (e.g., the nature of the offense and the need for the sentence imposed to reflect the seriousness of the offense) and recognizing the lifelong harm inflicted upon the children. We perceive no plain error.

2. John Jackson's Procedural Unreasonableness Argument

John Jackson argues that Judge Wigenton's application of the assault Guideline to the omission counts was procedural error.[20] We need not decide whether the District Court erred because to the extent there was any error, such error was harmless in light of the District Court's imposition of a valid alternative sentence.

Procedural errors at sentencing, which include

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onion—but that such conduct did not cause the marks and bruises, the malnourishment, the hypernatremia, and the children's other injuries and medical issues." Jackson I at 397.

[20] Because no Guideline has been expressly promulgated for the state offenses of conviction, the sentencing court applies the "most analogous" offense Guideline pursuant to U.S.S.G. § 2X5.1. Jackson I at 371. In Jackson I, we held that the elements-based test applies to determine which Guideline, if any, is most analogous to the convicted offense. Id. at 376. John argues that the District Court failed to apply an elements-based test when determining that the assault Guideline applied to the omission counts.

miscalculations of the Guidelines, are subject to harmless error review. United States v. Raia, 993 F.3d 185, 195 (3d Cir. 2021). "In the context of a Guidelines calculation error, harmless error means that the record must demonstrate that there is a high probability that the sentencing judge would have imposed the same sentence under a correct Guidelines range, that is, that the sentencing Guidelines range did not affect the sentence actually imposed." Id. (internal quotations omitted). The sentencing judge can demonstrate the requisite high probability by "explicitly stat[ing] that [she] would have imposed the same sentence even under the correct Guidelines range." Id. "However, even an explicit statement that the same sentence would be imposed under a different Guidelines range is insufficient if that alternative sentence is not also a product of the entire three-step sentencing process." Id. at 196.

John Jackson argues that any error was not harmless because the District Court only made a general statement that it would impose the same sentence without "reveal[ing] any consideration of the omission counts as untethered to the guidelines." John Opening Br. at 43-44. He argues, essentially, that if the District Court had declined to apply the assault Guidelines to the omission counts, it would have found that there was no applicable Guidelines section[21] and that the appropriate sentence for these counts would have been determined solely by the Section 3553(a) factors. Thus, the

[21] As noted above, because no Guideline has been expressly promulgated for the state offenses of conviction, the sentencing court applies the "most analogous" offense Guideline. If none are sufficiently analogous, the sentencing court relies upon the Section 3553(a) factors in imposing a sentence.

argument goes, although Judge Wigenton addressed the Section 3553(a) factors, the alleged error is not harmless because she did not explicitly state that this analysis applied in the absence of a Guidelines range.

We disagree. We conclude that the District Court issued a valid alternative sentence that was a product of the three-step sentencing process. Raia, 993 F.3d at 196. The District Court explained she would accept the arguments of defense counsel, that is, a Guidelines range of seventy-to-eighty-seven months predicated on the conclusion that there was no Guidelines section applicable to the omission counts. She then explained that she would vary upwards to reach the sentence of 108 months based upon the facts, the history, and the circumstances of the charged offenses. Those facts and that history were already greatly detailed in her consideration of the Section 3553(a) factors. Having explicitly referenced them, the District Court need not have restated her analysis. In sum, the District Court's process satisfies us "that there is a high probability that [Judge Wigenton] would have imposed the same sentence under a correct Guidelines range." Raia, 993 F.3d at 195 (internal quotations omitted). Any procedural error is therefore harmless.

3. Substantive Unreasonableness Arguments

Carolyn and John Jackson also argue that their sentences are substantively unreasonable. "[D]efendants bear a heavy burden to show that a sentence within the applicable Guidelines range was substantively unreasonable." United States v. Seibert, 971 F.3d 396, 402 (3d Cir. 2020) (cleaned up). If a sentence is procedurally sound, we assume that it is reasonable and "affirm unless we believe that no reasonable

court would have imposed that sentence for the reasons provided." Jumper, 74 F.4th at 114 (internal quotations omitted). "As long as a sentence falls within the broad range of possible sentences that can be considered reasonable in light of the § 3553(a) factors, we must affirm." United States v. Wise, 515 F.3d 207, 218 (3d Cir. 2008).

John Jackson argues that his sentence is substantively unreasonable because Judge Wigenton did not adequately consider John's history of abuse and military service as a mitigating factor. However, "a district court's failure to give mitigating factors the weight a defendant contends they deserve does not make a sentence substantively unreasonable." Seibert, 971 F.3d at 402 (internal quotations omitted).

Carolyn and John Jackson's sentences are substantively reasonable. "[T]he record as a whole reflects rational and meaningful consideration of the factors enumerated in 18 U.S.C. § 3553(a)." Id. at 399-400. We cannot conclude that no reasonable court would have imposed the sentences in light of the egregious conduct here.

IV. CONCLUSION

For the reasons presented above, we will affirm.

EXHIBIT 2

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

CHAMBERS OF
SUSAN D. WIGENTON
UNITED STATES DISTRICT JUDGE

MARTIN LUTHER KING COURTHOUSE
50 WALNUT ST.
NEWARK, NJ 07101
973-645-5903

September 15, 2023

Rubin Sinins
Javerbaum Wurgaft Hicks Kahn Wikstrom & Sinins
505 Morris Avenue
Springfield, NJ 07081
Counsel for Defendant Carolyn Jackson

Carol Dominguez
Office of the Federal Public Defender
1002 Broad Street
Newark, NJ 07102
Counsel for Defendant John E. Jackson

Desiree L. Grace
Office of the United States Attorney
970 Broad Street
Newark, NJ 07102
Counsel for the United States of America

LETTER OPINION FILED WITH THE CLERK OF THE COURT

Re: *United States v. Carolyn Jackson, et al.*
Criminal Action No. 13-290 (SDW)

Counsel:

On August 18, 2023, the Government submitted a letter (D.E. 505 ("Letter")) requesting that, notwithstanding the recently filed notices of appeal (D.E. 503, 506), this Court proceed with resentencing Defendants Carolyn Jackson ("Carolyn") and John E. Jackson's ("John," together with Carolyn, "Defendants"). This Court having considered the parties' submissions, and for the reasons discussed below, finds that it has jurisdiction to resentence Defendants on October 11, 2023.

DISCUSSION

A.

This Court writes only for the parties and, accordingly, incorporates the background and sentencing history section from its Letter Opinion dated August 7, 2023 ("August 7 Opinion").

(D.E. 500 at 1–3.) In sum, Defendants "inflicted devastating abuse on their three young foster children—Joshua, J, and C—over the course of five years, causing serious and lasting harm." (D.E. 487-1 at 3.) Defendants were first indicted in federal court on April 29, 2013.[1] (D.E. 1.) On July 8, 2015, following a 39-day jury trial, Defendants were found guilty of a majority of the counts with which they were charged in the superseding indictment.[2]

In the eight years since the jury pronounced its verdict, Defendants have been thrice sentenced, and each time, the Third Circuit has vacated those erroneous sentences. Most recently, on April 3, 2023, the Third Circuit vacated the sentences that were imposed on Defendants in October 2021. (*See generally* 484, 487.) Accordingly, the panel expressly remanded the case "for resentencing," and "direct[ed] the Chief Judge of the United States District Court for the District of New Jersey to assign this case and all related matters to a different district court judge." (D.E. 487-1 at 12.) On April 19, 2023, Chief Judge Renee M. Bumb reassigned the case to this Court. (D.E. 485). Resentencing has been set for October 11, 2023. (D.E. 490.)

The Motion to Bar Resentencing

On May 18, 2023, Carolyn filed a motion to bar resentencing, which John joined and supplemented. (D.E. 493, 495, 497–98.) Therein, Defendants argued that, because they each had at one time finished serving their erroneous sentences before the Third Circuit vacated them,[3] the imposition of any further sentence now would violate their rights under both the Double Jeopardy and Due Process Clauses of the Constitution. (*See generally* D.E. 493-1; D.E. 498.)

On August 7, 2023, this Court denied Defendants' motion. (D.E. 500–01.) In so doing, this Court held, among other things, that Defendants' arguments had no basis in precedent, the principles of fundamental fairness, or practical application. (*See generally* D.E. 500.) Shortly thereafter, Defendants filed notices of appeal to the Third Circuit. (D.E. 503, 506.)

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[1] After a mistrial was declared in November 2014, the Government again charged Defendants in a superseding indictment on January 15, 2015. (D.E. 175.)

[2] As this Court explained in the August 7 Opinion:

> Defendants were found guilty of the following: conspiring from August 2005 to April 2010 to engage in acts that endangered their three foster children (Count 1); physically assaulting all three children with various objects and their hands (Counts 3, 6, and 12); withholding adequate water from J and C and prohibiting these children from drinking water (Counts 4 and 8); forcing J to ingest hot sauce, red pepper flakes, and raw onion, and forcing C to ingest hot sauce and red pepper flakes (Counts 5 and 9); and withholding prompt and proper medical care for C's dehydration and elevated sodium levels (Count 11). In addition, the jury found Carolyn—but not John—guilty of withholding sufficient nourishment and food from Joshua (Count 2), and "[c]ausing [C] to ingest excessive sodium and a sodium-laden substance while restricting [C's] fluid intake, causing [C] to suffer hypernatremia and dehydration, a life[-]threatening condition," (Count 10).

(D.E. 500 at 2.)

[3] Carolyn argued that she completed her sentence in October 2022—while the most-recent appeal was pending before the Third Circuit. (D.E. 493-1 at 7.) John contended that he completed serving his second sentence on September 19, 2019—before the Third Circuit vacated it on June 26, 2020. (D.E. 498 at 2.)

On August 18, 2023, the Government submitted the Letter, in which it argues that Defendants' appeals are substantively and procedurally frivolous and, thus, do not prohibit this Court from proceeding with resentencing. (D.E. 505.) On August 22, 2023, Carolyn filed a letter in opposition, which John again joined in a short letter. (D.E. 507, 508.) For the reasons set forth below, this Court finds that Defendants' appeals are procedurally frivolous and that, in any event, the unique circumstances of this case weigh heavily in favor of proceeding with resentencing.

C.

"[T]he filing of a notice of appeal is an event of jurisdictional significance—it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal." *Richardson v. Superintendent Coal Twp. SCI*, 905 F.3d 750, 761 (3d Cir. 2018) (quoting *Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58 (1982)). Not all decisions by the district court are immediately appealable, however. Nor does a notice of appeal automatically divest the district court of jurisdiction.

In criminal cases, courts of appeals generally have jurisdiction under 28 U.S.C. § 1291 to review "'final decisions' of federal district courts." *United States v. Alexander*, 985 F.3d 291, 294 (3d Cir. 2021) (citing *United States v. Wright*, 776 F.3d 134, 139 (3d Cir. 2015)). "This 'final judgment' rule ordinarily 'prohibits appellate review until conviction and imposition of sentence' in a criminal case." *Wright*, 776 F.3d at 140 (quoting *Flanagan v. United States*, 465 U.S. 259, 263 (1984)). "[I]n a narrow range of situations,"[4] however, criminal defendants may seek "immediate appellate review under the collateral order doctrine." *Alexander*, 985 F.3d at 294 (citing *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 545–47 (1949)). To fall within the ambit of the collateral order doctrine, the appealed order must: "'[1] conclusively determine the disputed question, [2] resolve an important issue completely separate from the merits of the action, and [3] be effectively unreviewable on appeal from a final judgment.'" *Id.* (alterations in original) (quoting *Coopers & Lybrand v. Livesay*, 437 U.S. 463, 468 (1978)).

In *Abney v. United States*, the Supreme Court held that a pretrial order denying a motion to dismiss an indictment on double jeopardy grounds constitutes a final order for purposes of 28 U.S.C. § 1291. 431 U.S. 651, 662 (1977). Three years after the Supreme Court decided *Abney*, the Third Circuit recognized that the Abney rule, when coupled with the divestiture rule, "provid[ed] criminal defendants with an effective new tool for delaying their trials for long periods of time." *United States v. Leppo*, 634 F.2d 101, 104 (3d Cir. 1980). In other words, "[a]n Abney appeal delays trial because ordinarily the trial court loses its power to proceed once a party files a notice of appeal," and criminal defendants were taking advantage of that delay by filing frivolous appeals. *Id.* In an effort to balance the principles underlying *Abney* and the divestiture rule "against the public policy favoring the rapid disposition of criminal cases," the Third Circuit held

[4] The limited scope of the collateral order doctrine is well settled. As the Third Circuit has explained:

> Time and again, the Supreme Court has reiterated the limited nature of this doctrine . . . . This admonition holds special significance in criminal cases, where we must apply the collateral-order exception "with the utmost strictness," primarily "to avoid delays due to piecemeal appellate litigation, as these delays may work to the detriment of the rights of the defendant or prejudice the prosecution's ability to prove its case." Such appeals are thus permitted "only in the most rare and exceptional circumstances."

Id. (internal citations omitted).

that a district court is not divested of jurisdiction if it finds "the [criminal defendant's] motion to be frivolous and support[s] its conclusions by written findings." *Id.* at 104–05.

At issue in the instant dispute is whether Defendants' recent appeals divested this Court of jurisdiction to proceed with resentencing. The Government, citing *Leppo*, contends that Defendants' appeals are both substantively and procedurally frivolous. (D.E. 505.) Put differently, the Government argues that Defendants' double jeopardy and due process arguments have no possible validity and that Defendants' appeals are premature because the August 7 Opinion and its accompanying order were neither a final judgment nor an order within the scope of the collateral order doctrine. (*Id.*) Because Defendants' appeals do not satisfy the collateral order exception, and because the unique circumstances of this case weigh heavily against divestiture at this stage, this Court finds that it has jurisdiction to resentence the Defendants.

Defendants' Appeals Are Procedurally Frivolous

Defendants argue that an immediate appeal is necessary here to protect their interests against being twice punished for the same crime. (*See generally* D.E. 507–08.) At bottom, Defendants insist that resentencing them would be "effectively unreviewable" on appeal. (*Id.*) Defendants' interests here are wholly different from the interests underlying the *Abney* decision, and consequently, Defendants' arguments must fail.

In crafting the *Abney* rule—that *pretrial* motions to dismiss an indictment on double jeopardy grounds fell within the collateral order doctrine—the Supreme Court was careful to identify the interests at stake and delineate the extent to which those interests would be lost if they were not subject to immediate appeal. *Abney*, 431 U.S. at 663 (explaining that the "conclusion that a defendant may seek immediate appellate review of a district court's rejection of his double jeopardy claim is based on special considerations permeating claims of that nature which justify a departure from the normal rule of finality"). As the *Abney* Court explained:

> [T]he Double Jeopardy Clause protects an individual against being twice convicted for the same crime, and that aspect of the right can be fully vindicated on an appeal following final judgment, as the Government suggests. However, this Court has long recognized that the Double Jeopardy Clause protects an individual against more than being subjected to double punishments. It is a guarantee against being twice put to trial for the same offense.

Id. at 660–61 (citation omitted). It is that latter guarantee—the guarantee that an individual "will not be forced . . . to endure the personal strain, public embarrassment, and expense of a criminal trial more than once for the same offense"—that supported the *Abney* decision, *id.* at 661; and it is that guarantee which, as the Supreme Court remarked, "[o]bviously . . . would be lost if the accused were forced to 'run the gauntlet' a second time before an appeal could be taken," *id.* at 662. Simply put, a *pretrial* order denying a motion to dismiss an indictment on double jeopardy grounds is effectively unreviewable on appeal from a final judgment, because the harm from which the double jeopardy clause protects, in that context, is the trial itself. *Id.* at 660 ("[The defendant] is contesting the very authority of the Government to hale him into court to face *trial on the charge* against him." (emphasis added)).

Defendants' interests at stake here are more limited and can be reviewed on appeal following imposition of a sentence. To be sure, "[t]he interest protected by the Double Jeopardy Clause in th[e] multiple punishment context is confined to 'ensuring that the total punishment [does] not exceed that authorized by the legislature.'" *United States v. Pollen*, 978 F.2d 78, 84 (3d Cir. 1992) (quoting *Jones v. Thomas*, 491 U.S. 376, 381 (1989)); and as the *Abney* Court noted, the interest against being twice punished for the same crime "*can be fully vindicated on an appeal following final judgment*," *Abney*, 431 U.S. at 660 (emphasis added). In sum, Defendants' arguments clearly do not satisfy the third element of the collateral order doctrine and, accordingly, are procedurally frivolous.[5]

Other Considerations Weigh in Favor of Resentencing

In its August 7 Opinion, this Court noted the "tortured procedural history" of this case. (D.E. 500 at 8.) Defendants' first sentencing occurred in 2015, and after nearly eight years and three timely—and meritorious—appeals to the Third Circuit, they have yet to be subject to a sentence free from judicial error. That judicial error largely stemmed from the sentencing judge's failure "to follow [the Third Circuit's] mandate." (D.E. 487-1 at 3.) In its April 3, 2023 opinion, the Third Circuit expressly remanded Defendants' case for resentencing. (*Id.* at 12.) It is well settled that this Court must do so. (*Id.* at 8 ("It is a well-established principle of law that a district court must follow an appellate court's mandate.").)

In addition to this Court's obligation to follow the Third Circuit's mandate, principles of judicial economy and the public's interest in the rapid adjudication of criminal prosecutions weigh heavily in favor of resentencing Defendants. As the *Abney* Court explained, "[a]dherence to th[e] rule of finality has been particularly stringent in criminal prosecutions because 'the delays and disruptions attendant upon intermediate appeal,' which the rule is designed to avoid, 'are especially inimical to the effective and fair administration of the criminal law.'" *Abney*, 431 U.S. at 657. The *Leppo* Court cited similar concerns in rejecting "[a] ritualistic application of the divestiture rule"—*i.e.*, it "conflicts with the public policy favoring rapid adjudication of criminal prosecutions," and "provid[es] criminal defendants with an effective new tool for delaying their trials for long periods of time." *Leppo*, 634 F.2d at 104. Accordingly, in rejecting a per se divestiture rule, the *Leppo* panel adopted the "reasoned choice" approach propounded by the Fifth Circuit in *United States v. Dunbar*, 611 F.2d 985, 988 (5th Cir. 1980) (en banc), which provides:

> On the one hand, the Court must recognize that the failure to review a colorable double jeopardy claim before trial begins creates a substantial risk that the accused's constitutional rights will be infringed. On the other hand, we must weigh the concern . . . that

[5] Defendants contend that the Third Circuit's exercise of jurisdiction in *United States v. Washington*, 549 F.3d 905, 911 (3d Cir. 2008) indicates that this Court's August 7 Opinion and Order are immediately appealable. (D.E. 507 at 3–4.) Defendants' reliance on *Washington* is misplaced. In *Washington*, the district court—rather than the Third Circuit—vacated the defendant's sentence and sought to impose an increased sentence. *Washington*, 549 F.3d at 911. The appeal arose from the district court's decision to exercise its "'inherent power' to vacate its own judgment" of sentence years after the sentence was imposed. *Id.* Here, the posture is altogether different. Each of Defendants' three sentences has been vacated by the Third Circuit, and this Court is resentencing Defendants following the Third Circuit's most-recent decision to remand the matter for resentencing. As such, unlike *Washington*, this matter is not yet—nor has it ever been—"final" for purposes of 28 § U.S.C. 1291. *Wright*, 776 F.3d at 140 ("This 'final judgment' rule ordinarily 'prohibits appellate review until conviction and imposition of sentence' in a criminal case." (quoting *Flanagan*, 465 U.S. 259, 263 (1984)).

> the divestiture of jurisdiction rule "leaves the court powerless to prevent intentional dilatory tactics, forecloses without remedy the nonappealing party's right to continuing trial court jurisdiction, and inhibits the smooth and efficient functioning of the judicial process."

Leppo, 634 F.2d at 105 (quoting *Dunbar*, 611 F.2d at 988). The Third and Fifth Circuits are not alone in adhering to these principles. *See, e.g.*, *United States v. Rodgers*, 101 F.3d 247, 251 (2d Cir. 1996) ("The divestiture of jurisdiction rule is . . . not a per se rule. It is a judicially crafted rule rooted in the interest of judicial economy, designed to 'avoid confusion or waste of time resulting from having the same issues before two courts at the same time.' Hence, its application is guided by concerns of efficiency and is not automatic." (internal citations omitted)); *United States v. Rodriguez-Rosado*, 909 F.3d 472, 477–78 (1st Cir. 2018) ("The [Abney] rule . . . is rooted in concerns of judicial economy, crafted by courts to avoid the confusion and inefficiency that would inevitably result if two courts at the same time handled the same issues in the same case. Hence its application turns on concerns of efficiency and isn't mandatory." (internal citations omitted)).

Against the backdrop of that authority, this Court finds that the principles of judicial economy, the public's interest in the rapid adjudication of criminal cases, and the Third Circuit's unambiguous mandate weigh heavily against a ritualistic application of the divestiture rule. Undoubtedly, applying the divestiture rule here would further delay the already-protracted sentencing history of this case. As Defendants are well aware, "[i]t is not uncommon for an appeal to take a full year before final resolution." *Leppo*, 634 F.2d at 104. The public, however, has an interest in the rapid resolution of these criminal prosecutions; as do the Defendants and, importantly, the victims who suffered from Defendants' abuse. Principles of judicial economy would similarly be served, as Defendants' appeals of this Court's August 7 Opinion and its accompanying order will be considered alongside any appeals related to the sentence that will be imposed by this Court.

In sum, Defendants' substantively specious[6] and procedurally frivolous appeals present no compelling reason for this Court to deviate from the Third Circuit's unambiguous mandate. The unique circumstances of this case, paired with the principles underlying the divestiture rule, weigh heavily in favor of proceeding with resentencing. Therefore, resentencing will proceed as scheduled.

[6] While this Court declines to find the Defendants' appeals substantively frivolous, the arguments therein are wholly unsupported by binding precedent, the principles of fundamental fairness, and practical considerations. Third Circuit precedent, however, has left open the possibility that a criminal defendant's erroneous sentence could become final—and thus receive double jeopardy or due process protection—after a defendant has fully served it. (*See generally* D.E. 500.) As such, this Court finds it possible, albeit extremely unlikely, that Defendants' arguments are valid. That is especially so because "[d]ouble jeopardy is an area of the law filled with technical rules, and the protections it affords defendants might at times be perceived as technicalities." *Jones*, 491 U.S. at 387. Given the dearth of dicta leaving open the possibility for an "I-finished-my-sentence" exception in the double jeopardy and due process contexts, this Court will not find that Defendants' arguments are substantively frivolous—however impractical such a rule may be in the context of direct appeals.

CONCLUSION

For the foregoing reasons, the Government's request is **GRANTED**. An appropriate order follows.

/s/ Susan D. Wigenton
SUSAN D. WIGENTON, U.S.D.J.

Orig: Clerk
cc: Parties