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March 1, 2019

Honorable Scott S. Harris
Clerk
Supreme Court of the United States
Washington, D.C. 20543

Re: United States v. Gerald Wheeler, No. 18-420

Dear Mr. Harris:

The Solicitor General has filed a letter in the above-captioned case recounting that the district court granted Mr. Wheeler’s request for habeas relief at a hearing on February 28, 2019, and resentenced him to an imprisonment term of “time served.” Contrary to the Solicitor General’s suggestion, that development counsels against a grant of certiorari at this time, not in favor of it.

The district court entered its written judgment on March 1, 2019, and Mr. Wheeler has filed a notice of appeal to challenge one aspect of the district court’s resentencing decision. During the course of those appeal proceedings, the government will have the opportunity to ask the en banc Fourth Circuit to reverse the panel decision, given that the concerns of potential mootness that previously deterred Judge Agee from requesting en banc review will no longer be present. *See* Pet. 56a.

This Court should deny the current petition for certiorari and await the outcome of the Fourth Circuit’s proceedings. The pendency of ongoing proceedings “alone furnishe[s] sufficient ground for the denial of” the petition at this time. *Hamilton-Brown Shoe Co. v. Wolf Bros. & Co.*, 240 U.S. 251, 258 (1916). If the government does not prevail in the Fourth Circuit, it will have the opportunity to seek this Court’s review at that time. *See Major League Baseball Players Ass’n v. Garvey*, 532 U.S. 504, 508 n.1 (2001) (per curiam) (stating that this Court “ha[s] authority to consider questions determined in earlier stages of the litigation where certiorari is sought from” the most recent judgment).

Given that the government recently—in the middle of this case—changed a two-decades-old position regarding its interpretation of § 2241, the opportunity for additional percolation in the courts of appeals would be beneficial for this Court’s ultimate review. Moreover, as we explained in the Brief in Opposition, the government’s remaining interest in this particular case—to re-incarcerate Mr. Wheeler for the short period that remains of his

concededly unlawful sentence—does not warrant this Court’s intervention. Because of the myriad vehicle problems present in this case, the Court should wait for additional percolation in the circuit courts, which will produce a different, much cleaner vehicle for this Court’s review of the relevant legal issue.

Sincerely,

/s/ Joshua B. Carpenter
Counsel for Respondent Gerald Wheeler

CC: Solicitor General