No. _____

IN THE
Supreme Court of the United States

ARTHUR SEALE,

Petitioner,

v.

UNITED STATES,

Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Third Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether a federal prisoner is required to obtain a certificate of appealability under 28 U.S.C. § 2253(c) to appeal a district court's choice of remedy after granting postconviction relief under 28 U.S.C. § 2255.

2. If a certificate of appealability is required, whether a prisoner who prevailed on a constitutional claim in the § 2255 proceeding, meets the standard for making a "substantial showing of the denial of a constitutional right," § 2253(c)(2).

PARTIES TO THE PROCEEDING

Petitioner is Arthur Seale, an inmate at the Federal Correctional Institution Fairton, in Fairton, New Jersey.

Respondent is the United States of America.

RELATED PROCEEDINGS

United States District Court for the District of New Jersey:

- *United States v. Seale*, Crim. No. 92-372
- *Seale v. United States*, Civ. No. 19-21016

United States Court of Appeals for the Third Circuit:

- *In re: Arthur Seale*, Appeal No. 19-2888
- *United States v. Seale*, Appeal No. 23-1088
- *Seale v. United States*, Appeal No. 23-1089

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Arthur Seale respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Third Circuit.

OPINIONS BELOW

The order of the Court of Appeals denying a certificate of appealability was not reported. (Pet. App. 1a–2a) The Memorandum Order of the District Court denying a certificate of appealability was not reported. (Pet. App. 3a–7a).

JURISDICTION

The Court of Appeals entered its judgment on March 22, 2024. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

28 U.S.C. § 2253 provides, in pertinent part:

> (a)In a habeas corpus proceeding or a proceeding under section 2255 before a district judge, the final order shall be subject to review, on appeal, by the court of appeals for the circuit in which the proceeding is held.
>
> (b)There shall be no right of appeal from a final order in a proceeding to test the validity of a warrant to remove to another district or place for commitment or trial a person charged with a criminal offense against the United States, or to test the validity of such person's detention pending removal proceedings.
>
> (c)

(1)Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from—
(A)the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court; or
(B)the final order in a proceeding under section 2255.
(2)A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.
(3)The certificate of appealability under paragraph (1) shall indicate which specific issue or issues satisfy the showing required by paragraph (2).

28 U.S.C. § 2255 provides, in pertinent part:

(a)A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.

(b)Unless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief, the court shall cause notice thereof to be served upon the United States attorney, grant a prompt hearing thereon, determine the issues and make findings of fact and conclusions of law with respect thereto. If the court finds that the judgment was rendered without jurisdiction, or that the sentence imposed was not authorized by law or otherwise open to collateral attack, or that there has been such a denial or infringement of the constitutional rights of the prisoner as to render the judgment vulnerable to collateral attack, the court shall vacate and set the judgment aside and shall discharge the prisoner or resentence him or grant a new trial or correct the sentence as may appear appropriate.

* * *

(d)An appeal may be taken to the court of appeals from the order entered on the motion as from a final judgment on application for a writ of habeas corpus.

INTRODUCTION

There is an acknowledged circuit split over the scope and application of the certificate of appealability ("COA") requirement in 28 U.S.C. § 2253(c). This Court's caselaw and the statutory text make clear that a COA is required to appeal a district court's denial of postconviction relief under 28 U.S.C. § 2255. But this Court has never decided whether a COA is required when a district court *grants* a motion for postconviction relief but then errs when selecting the "appropriate" remedy. 28 U.S.C. § 2255(b). The circuits are evenly split on this question. Two circuits—the Fourth and Sixth—allow federal prisoners to appeal a district court's choice of remedy on a successful § 2255 motion without obtaining a COA. Two other circuits—the Third and Eleventh—require a COA. This Court should grant certiorari to resolve this question for several reasons.[1]

First, a federal prisoner's ability to appeal an erroneous ruling under § 2255 should not depend on geography; the availability of appellate review, and the procedure for seeking such review, should be consistent nationwide.

Second, the order below is wrong, and a COA is not required where a prisoner is granted relief by the District Court. The text, structure, history, and purpose of § 2253 make clear that the COA requirement only applies to appeals challenging a district court's *denial* of postconviction relief, not a district court's choice of remedy after *granting* relief. And even if the COA requirement applies, the requirement is

[1] As explained below, Mr. Seale respectfully asks this Court to hold this petition for a writ of certiorari until the Third Circuit decides if it will permit his criminal appeal to proceed on the merits.

satisfied where, as here, the prisoner made a "substantial showing of the denial of a constitutional right" by prevailing on a constitutional claim below.

Third, the questions presented are critically important. Section 2255 allows federal prisoners to seek relief if the sentence they are serving was imposed in violation of the Constitution or the laws of the United States. But that right means little without an effective remedy. Under the reading adopted by the Third and Eleventh Circuits, a district court's choice of remedy under § 2255(b) is unreviewable even if it is clearly erroneous, an absurd result that will wrongfully deny countless federal prisoners meaningful relief on a recurring basis.

Finally, this case is a good vehicle to resolve the questions presented because Mr. Seale appealed both the civil order granting relief but denying resentencing and the amended criminal judgment, bringing his case squarely in contrast with the Fourth and Sixth circuits.

STATEMENT OF THE CASE

A. Legal Framework

1. Under 28 U.S.C. § 2255, a federal prisoner serving a sentence "imposed in violation of the Constitution or laws of the United States" may "move the court which imposed the sentence to vacate, set aside, or correct [it]." § 2255(a). If the motion has merit, "the court shall vacate and set the judgment aside and shall discharge the prisoner or resentence him or grant a new trial or correct the sentence as may appear appropriate." § 2255(b). This language "confers upon the district court broad and flexible power in its actions following a successful § 2255 motion." *United States v. Davis*, 112 F.3d 118, 121 (3d Cir. 1997). That power is not unlimited, however: the text of the statute requires that the remedy be "appropriate." § 2255(b). The courts of appeals accordingly review a district court's choice of remedy under § 2255(b) for abuse of discretion. *See, e.g., United States v. Torres-Otero*, 232 F.3d 24, 29–30 (1st Cir. 2000); *United States v. Gordon*, 156 F.3d 376, 381 (2d Cir. 1998); *United States v. Hadden*, 475 F.3d 652, 667 (4th Cir. 2007); *Ajan v. United States*, 731 F.3d 629, 633 (6th Cir. 2013); *Troiano v. United States*, 918 F.3d 1082, 1086 (9th Cir. 2019); *United States v. Brown*, 879 F.3d 1231, 1235 (11th Cir. 2018).

2. Appeals from § 2255 proceedings are governed by 28 U.S.C. § 2253. That section, as amended by the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), provides that "an appeal may not be taken to the court of appeals from . . . the final order in a proceeding under section 2255" unless "a circuit justice

or judge issues of a certificate of appealability." § 2253(c)(1)(B). Section 2253 further provides that "[a] certificate of appealability may issue . . . only if the applicant has made a substantial showing of the denial of a constitutional right." § 2253(c)(2).

3. This Court has held that a federal prisoner must obtain a COA when appealing "a district court's denial" of habeas relief. *Miller-El v. Cockrell*, 537 U.S. 232, 335 (2003). But the Court has never decided whether a federal prisoner must obtain a COA when appealing a district court's choice of remedy after *granting* relief. The circuits are deeply divided on this question, as explained below.

B. Proceedings Below

1. Petitioner Arthur Seale is currently an inmate at the Federal Correctional Institution at Fairton, in Fairton, New Jersey. In 1992, Mr. Seale pled guilty, without a plea agreement, to seven counts:

(1) conspiring with his wife to extort Exxon and to threaten and commit physical violence against [the victim] in furtherance of the extortion, 18 U.S.C. § 1951;
(2) extorting Exxon and with threatening and committing physical violence against [the victim] in furtherance of the extortion, 18 U.S.C. § 1951;
(3) using a firearm during and in relation to the crime of violence charged in Counts 1 and 2, 18 U.S.C. § 924(c);
(4) mailing a communication demanding ransom and threatening to kill [the victim] and others, 18 U.S.C. § 876;
(5) making a threatening telephone call, 18 U.S.C. § 875(a) and (b);
(6) traveling in interstate commerce to facilitate the extortion scheme, 18 U.S.C. § 1952; and
(7) traveling in interstate commerce to facilitate the extortion scheme, 18 U.S.C. § 1952.

Mr. Seale's mandatory guideline range was calculated as 360 months to life imprisonment, with a mandatory five years to follow. The District Court sentenced Mr. Seale to 95 years, the statutory maximum term on each count.

2. On August 16, 2019, Mr. Seale filed a *pro se* motion for postconviction relief under 28 U.S.C. § 2255 contending that his § 924(c) conviction was invalid under *Johnson v. United States*, 576 U.S. 591 (2015). *Seale v. United States*, Civ. No. 19-21016, DE ## 1,3 (D.N.J. Aug. 16, 2019). This motion was authorized as a second or successive petition by the Third Circuit. Appeal No. 19-2888 (3d Cir.).

3. On June 17, 2020, Mr. Seale filed a supplemental motion through appointed counsel. Civ. No. 19-21016, DE # 12 (D.N.J. June 17, 2020). The supplemental motion argued that neither conspiracy to commit extortion (Count One) nor extortion (Count Two), both charged as violations of 18 U.S.C. § 1951, were predicate crimes of violences for his conviction under 18 U.S.C. § 924(c) (Count Three). Thus, vacatur of the Section 924(c) conviction was necessary. Mr. Seale also argued that a full resentencing was appropriate for several reasons. First, the convictions and sentences were interdependent: the guideline enhancement for possessing a dangerous weapon was not applied because of the Section 924(c) conviction. As such, vacatur of only Mr. Seale's Section 924(c) conviction and sentence would result in a remaining guideline calculation which was contrary to law. Next, Mr. Seale argued that the mandatory guidelines regime under which he was sentenced had been declared unconstitutional and now courts must consider a variety of sentencing goals after correctly calculating the guideline range. Finally, Mr. Seale explained that a sentence of 28 years (now 32 years), what he had already served, was an appropriate sentence considering his extraordinary rehabilitation. His achievements since sentencing were extensive, and intentionally focused on

self-reflection and atonement, and most recently included several years serving as a medical/hospice work at the Federal Medical Center in Devens, Massachusetts. *Seale v. United States*, Civ. No. 19-21016, DE # 12 (June 17, 2020).

4. The District Court granted Mr. Seale's § 2255 motion in part in an opinion and order filed on December 30, 2022. (Pet. App. 8a–21a). The Court vacated the Section 924(c) conviction after finding that it was invalid. Nonetheless, the District Court rejected a full resentencing, explaining:

> Finally, the Court must turn to the question of relief. Petitioner argues that, in light of the vacation of his § 924(c) conviction, he should receive an entirely new sentencing on all of his offenses under the sentencing package doctrine. District courts have "broad and flexible power" in determining the proper course "following a successful § 2255 motion" which results in the vacation of one count of a petitioner's conviction. *United States v. Davis*, 112 F.3d 118, 121 (3d Cir. 1997). Under the sentencing package doctrine, where a petitioner has been "found guilty on a multicount indictment" and "one or more of the component counts is vacated" a district judge is "free" to resentence the petitioner on all the remaining counts if such an action is necessary to "accurately reflect the [sentencing] judge's original intent regarding the appropriate punishment for a defendant convicted of multiple offenses and to reflect the gravity of the crime." *Id*. at 122-23. The thrust of the doctrine, then, is that, in the face of a vacated conviction, a court may resentence a petitioner on all counts where the sentence on the vacated count was interdependent with the sentence on the remaining counts and such a resentencing is necessary to reflect the sentencing judge's ultimate plan and to take account for the seriousness of the remaining offenses, whose sentences may have been discounted to account for the now vacated count of the conviction. *Id*. at 123. The ultimate purpose of the doctrine, then, is to permit a court to resentence the defendant with any guidelines enhancements which the court was prevented from applying by the now vacated conviction or to permit the court to increase the sentence on the remaining counts where necessary to effect the total sentencing package intended by the sentencing judge. *See United States v. Smith*, 467 F.3d 785, 789-90 (D.C. Cir. 2006). A full resentencing under the doctrine is therefore inappropriate where the sentencing judge already imposed "the highest sentence available" on the remaining counts of the conviction, indicating that the vacatur of a consecutive § 924(c) conviction does not unravel the package imposed. *Id*. at 790.

> This Court need not guess at Judge Brown's intentions in sentencing Petitioner. At the sentencing hearing, Judge Brown made it abundantly clear that his "intent [wa]s that [Petitioner] never be free' and that the Court intended to impose a sentence that ensured that Petitioner would be "imprisoned for the rest of [his] life without parole." (Sent. Tr. at 91.) Judge Brown therefore imposed the applicable statutory maximum sentence on each count of the indictment and ran those counts consecutive to one another. (Id. at 91-92.) As with the defendant in Smith, Petitioner received on his remaining convictions "the highest sentence available" in the form of the applicable statutory maximum sentences run consecutively, and as such the vacatur of the§ 924(c) sentence alone does not "unravel" an interdependent sentencing plan. As the applicable maximums were imposed, this Court has no opportunity to impose a harsher sentence on the remaining counts in order to rebalance Petitioner's sentence, and the increased guidelines range which would result from the inapplicability of § 924(c) could have no effect on Petitioner. The only possible outcome of a full resentencing for Petitioner would be either the sentence Petitioner already has minus the five years for the vacated count, or a windfall in the form of a lesser sentence on Petitioner's remaining counts. Such a windfall would not "accurately reflect" Judge Brown's sentencing intentions, nor would it allow the restoration of a package plan disturbed by a vacated count. The sentencing package doctrine is thus inapplicable-Petitioner's statutory maximum sentences were not interdependent with the consecutive § 924(c) conviction, and there is no occasion in this matter to rebalance Petitioner's remaining sentences to better reflect the sentencing court's intentions.
>
> This Court thus concludes that a full resentencing is inappropriate and Petitioner's request must be denied as such. This Court will therefore grant Petitioner's motion to the extent he seeks the vacation of his § 924(c) conviction, vacate the five-year consecutive sentence imposed on that count, and leave Petitioner's remaining sentences intact.

(Pet. App. 19a-21a). The Court entered an amended judgment in Mr. Seale's criminal case vacating his Section 924(c) conviction and five-year sentence but leaving his other sentences (adding up to 90 years) undisturbed. (Pet. App. 24a-27a).

5. The Court then declined to issue a certificate of appealability, reasoning that resentencing would be a windfall and that the "intentions of the original sentencing judge were abundantly clear." (Pet. App. 6a-7a). It also found that Mr. Seale did not make a substantial showing of a denial of a constitutional right" where "there is no constitutional obligation that a full resentencing occur following the vacation of a single count of a conviction" and a court has "considerable discretion in determining whether a resentencing is required." *Id*.

6. On January 12, 2023, Mr. Seale filed notices of appeal of (a) the order denying resentencing in the motion under § 2255 and (b) the amended judgement on the criminal docket. He requested a COA from the District Court, arguing that a COA was not required to appeal the District Court's choice of remedy after it granted his motion for postconviction relief and that, if a COA was required, he had met the standard for one. The District Cout denied a COA.

7. On March 22, 2024, the Third Circuit also denied Mr. Seale's request for a certificate of appealability on the civil appeal docket. In a brief order, it wrote:

> Seales's request for a certificate of appealability is denied. We may issue a certificate of appealability "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). Jurists of reason would not debate the District Court's decision to not hold a resentencing hearing. *See United States v. Davis*, 112 F.3d 118, 121 (3d Cir. 1997) (noting that "[the plain language of § 2255] confers upon the district court broad and flexible power in its actions following a successful § 2255 motion").

Pet. App. 2a. However, the Third Circuit has not yet decided the appeal that Mr. Seale filed in his criminal case after the District Court entered an amended judgment. *See* Appeal No. 23-1088 (3d Cir.). The government argued that a COA

was required to proceed on the appeals in both the criminal and civil cases, and, accordingly, the criminal appeal should be dismissed for lack of jurisdiction or summarily affirmed because no substantial question was presented. Because that associated criminal appeal remains pending, this Court should hold this petition for a writ of certiorari until the Third Circuit decides if the criminal appeal can proceed on the merits. If Mr. Seale can proceed on the merits, then this petition becomes moot. If he cannot proceed on the merits, then he would file for certiorari in the criminal appeal and join it with this petition.

REASONS FOR GRANTING THE PETITION

A. The Circuit Courts Are Deeply Divided Over the Need for a COA When Appealing a District Court's Choice of Remedy Under 28 U.S.C. § 2255(b).

This Court should grant review because the Circuits are deeply split over the need for a COA when appealing a district court's choice of remedy under § 2255(b), creating an untenable situation in which the availability of appellate review and the procedure for obtaining it varies across the country.

1. The question presented in this case was first addressed by the Fourth Circuit in 2007. *See Hadden*, 475 F.3d at 652. The Fourth Circuit found that when a prisoner "seeks to appeal . . . the district court's decision *not to grant relief* on some of the claims in support of his § 2255 petition, he is appealing 'the final order in a proceeding under § 2255' and must obtain a COA." *Id*. at 664 (emphasis in original). If, however, "the petitioner seeks to appeal the order by challenging *the*

relief granted—i.*e.,* whether the relief was 'appropriate' under § 2255 . . . he is appealing a new criminal sentence and therefore need not obtain a COA." *Id.* (emphasis in original).

The Fourth Circuit explained that this reading "serves the policies behind §§ 2253 and 2255." *Id*. at 665. It explained that "one of the central purposes of § 2253's COA requirement is to prevent the Government from having to respond to merit-less appeals from the denial of habeas relief." *Id*. (citations omitted). This policy makes sense because "habeas review occurs after the prisoner has already had an opportunity on direct appeal to challenge his conviction and sentence." *Id*. When a district court grants habeas relief and imposes a particular remedy, however, "that order has never been subjected to appellate review." *Id*. The Fourth Circuit accordingly found that "Section 2253's policy justifications would be over-served" if it was interpreted to discourage appeals from a district court's choice of remedy after granting habeas relief. *Id*.

2. The Sixth Circuit came to the same conclusion six years later in *Ajan*. 731 F.3d at 629. Citing *Hadden*, the Sixth Circuit held that "a COA is not required to appeal the relief granted after a successful § 2255 motion." *Ajan*, 731 F.3d at 631-32.

3. In 2021, the Eleventh Circuit split from the Fourth and Sixth Circuits in *United States v. Cody*, 998 F.3d 912 (11th Cir. 2021). The Eleventh Circuit held that a district court's choice of remedy is part of the "proceeding under § 2255," and that, as a result, "a certificate of appealability is required to challenge the choice of

remedy." *Id*. at 913, 915. This Court denied Mr. Cody's petition for a writ of certiorari. *See Cody v. United States*, 142 S. Ct. 1419 (2022).

4. The Third Circuit then deepened the split when, in *Clark v. United States*, 76 F.4th 206 (3d Cir. 2023), it agreed with the Eleventh Circuit and held that a "COA is required when an appeal challenges solely whether the district court granted an appropriate § 2255 remedy." *Id*. at 211. This Court denied Mr. Clark's petition for a writ of certiorari. *See Clark v. United States*, 144 S. Ct. 1382 (2024).

5. Other circuits have also come to differing conclusions on this issue without fully addressing it. In *Williams v. United States*, 150 F.3d 639 (7th Cir. 1998), the Seventh Circuit dismissed a choice-of-remedy appeal for lack of jurisdiction after finding in a single sentence that a COA was required, which the petitioner-appellant did not contest. *Id*. at 640. By contrast, the Second Circuit recently decided a choice-of-remedy appeal on the merits without requiring a COA. *See United States v. Peña*, 58 F.4th 613 (2d Cir. 2023).

6. Until this Court steps in to resolve it, this circuit split will continue to lead to starkly different results in materially identical cases.

7. In addition to creating inconsistencies in the availability of appellate review, the circuit split has also created inconsistencies in the procedure for obtaining it. Because the Fourth Circuit considers an appeal from a district court's choice of remedy under § 2255 an appeal from a new criminal sentence, it requires the appeal to be filed by the 14-day criminal deadline. *See United States v. Chaney*, 911 F.3d 222, 225 (4th Cir. 2018). In the Third and Eleventh Circuits, by contrast,

the 60-day deadline for civil appeals presumably applies because an appeal from the district court's choice of remedy is considered an appeal from the § 2255 proceeding. *See* Rule 11(b) of the Rules Governing Section 2255 Proceedings for the United States District Courts.

8. Mr. Seale's case remains in the limbo between the different procedural rules. At the District Court, Mr. Seale had an order issue on his civil docket and an amended judgment issue on his criminal docket. He appealed both orders within 14 days of the criminal judgment and two appeal dockets issued. The Third Circuit decided the civil appeal, concluding that a COA was required and Mr. Seale did not meet that standard. But there has still been no decision on his criminal appeal. Mr. Seale now brings this petition for certiorari within 90 days of the order issuing in his civil appeal, but this Court cannot decide this petition until it is informed if the Third Circuit will permit the appeal from the amended judgment on the criminal docket to proceed on the merits. As such, Mr. Seale asks this Court to hold this petition for a writ of certiorari until the Third Circuit decides if the criminal appeal can proceed. If he can proceed on the merits, then this petition becomes moot. If he cannot proceed on the merits, then he would file for certiorari in the criminal appeal and join it with this petition.

9. This unequal and uncertain state of the law should be corrected. A federal prisoner's ability to obtain appellate review of an erroneous § 2255 order should not depend on the district in which the order was entered. And a prisoner (and counsel) should not be guessing on how and when to proceed to protect appellate rights. This

Court should grant certiorari to clarify the law and ensure the COA requirement is applied consistently nationwide.

B. The Decision Below is Wrong.

Review is also warranted because the order below, relying on the recent Third Circuit decision in *Clark v. United States*, 76 F.4th 206 (3d Cir. 2023) is wrong. The text, structure, history, and purpose of § 2253 make clear that the COA requirement only applies to appeals from orders denying habeas relief. And even if the COA requirement applies to choice-of-remedy appeals, the plain text of the requirement is satisfied when a prisoner makes a "substantial showing of the denial of a constitutional right" by prevailing on a constitutional claim in the § 2255 proceeding. § 2253(c)(2).

1. The statutory interpretation from *United States v. Cody*, 998 F.3d 912 (11th Cir. 2021) and *Clark v. United States*, 76 F.4th 206 (3d Cir. 2023) is appealing in its logical simplicity but is ultimately at odds with the statutory text and structure, ignores relevant precedent and history, and leads to absurd results. The Third and Eleventh Circuits reason that (1) under § 2253, a COA is required to appeal the "final order in a proceeding under section 2255," § 2253(c)(1)(B); (2) a district court's choice of remedy after granting relief is part of the "proceeding under section 2255," *id*; and (3) therefore, a COA is required to appeal the choice of remedy. These decisions focus on the phrase "proceeding under Section 2255." *See*

Cody, 998 F.3d at 915 (discussing the dictionary definition of the word "proceeding").

2. But the COA requirement does not apply to every appeal arising from a § 2255 "proceeding"—it applies only to appeals from the "*final order*" in such proceedings. *Id.* (emphasis added). A "final order" subject to the COA requirement in § 2253(c) is the order that "*dispose[s] of the merits* of a habeas corpus proceeding—a proceeding challenging the lawfulness of the petitioner's detention." *Harbison v. Bell*, 556 U.S. 180, 183 (2009) (emphasis added). *Harbison* accordingly instructs that the COA requirement only applies to appeals challenging resolution of the *merits* of a § 2255 motion, the district court's decision on whether the challenged sentence was "imposed in violation of the Constitution or laws of the United States." § 2255(a). A district court's choice of remedy under § 2255(b) does not "dispose of the merits" of the motion—it is a collateral decision that comes after the "lawfulness of the petitioner's detention" has already been decided. *Harbison*, 566 U.S. at 183. As a result, an appeal from the choice of remedy is not an appeal from the "final order" and does not require a COA under *Harbison*.

3. This reading is in harmony with several other features of the statutory text. First, the COA requirement in § 2253 applies to the "final order" in federal postconviction proceedings under § 2255 *and* habeas corpus proceedings under § 2254. *See* § 2253(c)(1)(A) and (B). The "final order" in a habeas corpus proceeding does not involve the choice of remedy presented in § 2255 because the habeas court "cannot do anything else than discharge the prisoner from wrongful confinement."

In re Medley, 134 U.S. 160, 173 (1890). Because "identical words used in different parts of the statute are generally presumed to have the same meaning," *IBP, Inc. v. Alvarez*, 546 U.S. 21, 34 (2005), the phrase "final order" should be read to mean the same thing in both contexts: the order determining "the lawfulness of the petitioner's detention," *Harbison*, 556 U.S. at 183.

4. The history and purpose of § 2253 support this reading. This Court has explained that the COA requirement is "not the innovation of AEDPA." *Miller-El*, 537 U.S. at 337. It is the statutory successor of the "certificate of probable cause" ("CPC"), an earlier requirement prisoners had to meet to obtain "appellate review of the dismissal of a habeas petition." *Slack v. McDaniel*, 529 U.S. 473, 480 (2000). Congress established the CPC as a "threshold prerequisite to appealability in 1908, in large part because it was concerned with the increasing number of frivolous habeas corpus petitions challenging capital sentences which delayed execution pending the completion of the appellate process." *Miller-El*, 537 U.S. at 337 (internal quotation marks and citations omitted). The CPC requirement also reflected the understanding that "a presumption of finality and legality attaches" after "direct review . . . comes to an end" and that, as a result, "[t]he role of federal habeas proceedings . . . is secondary and limited." *Barefoot v. Estelle*, 463 U.S. 880, 887 (1983). AEDPA, which introduced the modern COA requirement, likewise sought to "eliminate delays in the federal habeas review process," *Gonzalez v. Thaler*, 565 U.S. 134, 144 (2012), and promote "finality." *Miller-El*, 537 U.S. at 326.

None of these motivating concerns—frivolity, delay, and finality—are present when a prisoner appeals a district court's choice of remedy under § 2255(b). The habeas petition is not frivolous because relief has already been granted on the merits. There is nothing to "screen[] out"—the COA's "gatekeeping function" has been satisfied. *Gonzalez*, 565 U.S. at 145. The appeal is not delaying the challenged sentence from being carried out because the challenged sentence has already been vacated. Nor is finality a concern, because the finality of the original judgment was pierced when the district court "vacate[d] it and set [it] aside." § 2255(b). As the Fourth Circuit noted 15 years ago in *Hadden*, when the COA requirement is applied to an order granting, as opposed to denying, habeas relief, its purpose is "over-served." 475 F.3d at 664.

5. Finally, the reading adopted by the Third and Eleventh Circuits leads to absurd results. Under their reading, a COA is required to appeal a district court's choice of remedy under § 2255(b) but, in a Kafkaesque twist, one can never issue because the choice of remedy does not involve a "constitutional right." § 2253. This means that a federal prisoner cannot obtain appellate relief even if the district court applied the wrong legal standard, misunderstood its discretion, failed to explain its decision, or clearly erred in some other way in imposing the "appropriate" remedy. § 2255(b). This result is all the more absurd because it only applies once a prisoner has demonstrated entitlement to relief by prevailing on the merits of their claim. Congress would not create a framework for postconviction relief under § 2255 only

to make it unenforceable in a critical respect and would not have denied appellate review to the prisoners with the most substantial claims.

6. The better reading—the one more consistent with the text, structure, history, and purpose of § 2253—is that the COA requirement only applies to appeals from a district court's denial of postconviction relief, not a district court's choice of remedy after granting relief.

7. Additionally, even if the COA requirement applies to choice-of-remedy appeals, the Court of Appeals was wrong to dismiss Mr. Seale's appeal as not meeting the standard for a COA. The statutory text is plain: to obtain a COA, the prisoner must make a "substantial showing of the denial of a constitutional right." § 2253(c). Mr. Seale has done exactly that. It is undisputed that the claim Mr. Seale raised in his § 2255 motion was constitutional: he argued that his § 924(c) conviction rested on an unconstitutionally vague definition of "crime of violence" under *Johnson* and its progeny and the District Court agreed. That is all that is required for a COA to issue under § 2253(c). By prevailing on his *Johnson* claim in the district court, Mr. Seale necessarily made a "substantial showing of the denial of a constitutional right." § 2253(c).

8. The Court of Appeals nevertheless denied a COA because it found that Mr. Seale did not make a "substantial showing of the denial of a constitutional right" *on appeal*. Pet. App. 2a. But this interpretation of § 2253 is in direct conflict with this Court's decision in *Slack v. McDaniel*. The appellant there was a state prisoner whose habeas petition was denied after the district court found it violated

the bar on "second or successive" petitions. *Slack*, 529 U.S. at 478. In this Court, the state argued the prisoner could not obtain a COA because the language of § 2253(c) indicates that "no appeal can be taken if the District Court relies on procedural grounds to dismiss the petition." *Id.* at 483. The state argued, in other words, that "only constitutional rulings may be appealed." *Id.*

This Court "reject[ed] this interpretation." *Id.* It explained:

> The writ of habeas corpus plays a vital role in protecting constitutional rights. In setting forth the preconditions for issuance of a COA under § 2253(c), Congress expressed no intention to allow trial court procedural error to bar vindication of substantial constitutional rights on appeal.

Id. The Court accordingly held that "[w]hen the district court denies a habeas petition on procedural grounds without reaching the prisoner's underlying constitutional claim," a COA should issue when the prisoner shows that "jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right" and "jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Id.* at 484.

9. The logic of *Slack* applies with equal force here. There is no reason to believe Congress intended to allow an appeal when a district court commits procedural error at the merits stage but prohibit an appeal when a district court commits procedural error at the remedy stage. In both scenarios, the procedural error would "bar vindication of substantial constitutional rights" if left uncorrected. *Slack*, 529 U.S. at 483. And in both scenarios, the prisoner has satisfied the COA's screening function by independently showing "the denial of a constitutional right." § 2253(c).

10. Accordingly, if this Court finds that the COA requirement applies to choice-of-remedy appeals, it should clarify that the requirement is met where, as here, the prisoner made a "substantial showing of the denial of a constitutional right" by raising and prevailing on a constitutional claim in the postconviction proceeding.

C. The Questions Presented are Critically Important.

This Court should also grant review because the questions presented are critically important and likely to frequently recur.

1. Section 2255 is the principal means for federal prisoners to obtain relief when, after the conclusion of direct review, it becomes apparent that the sentence they are serving violates the law. That is what happened following this Court's decisions in *Johnson*, *Sessions v. Dimaya*, 138 S. Ct. 1204 (2018), and *United States v. Davis*, 139 S. Ct. 2319 (2019), which struck down as unconstitutionally vague the similarly worded residual clauses in the Armed Career Criminal Act, the Immigration and Nationality Act, and Section 924(c). These decisions led to thousands of motions for postconviction relief under § 2255. *See Davis*, 139 S. Ct. at 2333 (explaining that the residual clause in § 924(c) alone had been used in "tens of thousands of federal prosecutions" since its enactment); *In re Matthews*, 934 F.3d 296, 298 n.2 (3d Cir. 2019) (authorizing over 200 federal prisoners in the Third Circuit to file § 2255 motions under *Johnson* and its progeny); *In re Jones*, 830 F.3d 1295, 1301 (11th Cir. 2016) (Rosenbaum and Pryor,

JJ., concurring) (noting "1,800 *Johnson*-based requests for authorization" to file second-or-successive § 2255 motions in a three-month period).

2. If the decisions of the Third and Eleventh Circuit are left to stand, the courthouse doors will be wrongfully closed to countless federal prisoners like Mr. Seale, who were granted postconviction relief under *Johnson* but then denied an effective remedy due to district court error.

3. And although many *Johnson* cases have already been resolved, this problem will continue to recur every time this Court issues a new decision, which is retroactively applicable, striking down a federal criminal law as unconstitutional. *See, e.g., United States v. Rahimi*, 143 S. Ct. 2688 (2023) (granting certiorari to review a Fifth Circuit decision striking down 18 U.S.C. § 922(g)(8) as facially unconstitutional under the Second Amendment).

4. This Court should grant certiorari in this case and clarify the COA requirement so that federal prisoners with valid constitutional claims—now and in the future—can obtain the relief to which they are entitled under § 2255.

D. This Case is a Good Vehicle.

Finally, this case is a good vehicle to resolve the question presented. Mr. Seale's case squarely enters the circuit split because, unlike in *Clark*, Mr. Seale did also appeal the amended criminal judgment within 14 days. Moreover, even though Mr. Seale's case presented the circumstance for granting a COA that *Clark* had left viable, the Court of Appeals still ruled that Mr. Seale did not meet the standard for

a COA. Mr. Seale's case therefore clarifies that *Clark* firmly closed the appellate courthouse doors to prisoners in the Third Circuit who had successfully raised constitutional issues below.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be held until the Third Circuit decides if the criminal appeal can proceed. If Mr. Seale can proceed on the merits, then this petition becomes moot. If he cannot proceed on the merits, then he would file for certiorari in the criminal appeal and join it with this petition, at which time he would ask that the petition for certiorari be granted.

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Respectfully submitted,

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