Nos. 24-594 & 23-7806

IN THE

Supreme Court of the United States

ARTHUR SEALE,

Petitioner,

v.

UNITED STATES,

Respondent.

On Petitions for Writs of Certiorari
to the United States Court of Appeals
for the Third Circuit

REPLY BRIEF FOR PETITIONER

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Rules

REPLY BRIEF FOR PETITIONER

Petitioner Arthur Seale, in his two petitions, asks this Court to resolve a purely jurisdictional question: Does the Third Circuit have jurisdiction to review the district court's refusal to resentence him after he obtained vacatur of one of his convictions under Section 2255?

Even on the Government's theory, the answer to that question must be "yes." The Government appears to accept that, at most, the COA requirement can apply to only *one* of the two appeals before the Third Circuit—either the appeal from the civil order or, "instead," the appeal from the amended criminal judgment. Crim. Dkt. BIO 12-13.[1] It necessarily follows that the Third Circuit erred in applying the COA requirement to bar *both* of Dr. Seale's appeals. This Court should grant certiorari to reverse on this common ground alone.

If that were not enough, the Government does not dispute that the courts of appeals are divided over Dr. Seale's ability to appeal the refusal to resentence him. Nor does it contest that this case provides a superb vehicle to resolve the question presented because Dr.

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[1] This brief serves as a reply in support of certiorari in dockets No. 24-594 and No. 23-7806. Citations to "Crim. Dkt." refer to docket No. 24-594, containing Dr. Seale's petition from the amended judgment in his criminal case. Citations to "Civ. Dkt." refer to docket No. 23-7806, containing the petition from the order in his civil Section 2255 case. Contrary to the Government's assertion, Dr. Seale did not "decline[] to file a reply" in Case No. 23-7806. Crim. Dkt. BIO 20. The case has not been distributed, and, as the Government well knows, there is no deadline to file a cert reply. Sup. Ct. R. 15.6.

Seale appealed from both his criminal and civil dockets. And the Government does not deny that, unless this Court clarifies the state of the law, prisoners like Dr. Seale will be forced to clog the courts with duplicative appeals.

The Government is thus left opposing review by speculating about what might happen to Dr. Seale on remand. But the courts below ruled only on jurisdiction, and that is the only question presented. This Court should grant certiorari to answer that question.

I. The Government concedes the split.

The Government does not dispute that the courts of appeals are divided 3-1-2 over whether and how to exercise jurisdiction over an appeal like Dr. Seale's—that is, where a criminal defendant has secured vacatur under Section 2255 and then seeks to appeal a district court's failure to resentence him. Crim. Dkt. BIO 15.

1. The Second, Fourth, and Sixth Circuits would hear Dr. Seale's criminal appeal without requiring a COA. Crim. Dkt. Pet. 9-10. The Government complains that it's unclear whether they would *also* hear Dr. Seale's petition from his *civil* Section 2255 docket. Civ. Dkt. BIO 17-18. True but irrelevant: The Government does not—and cannot—dispute that Dr. Seale could have obtained appellate review in those three circuits by appealing the amended judgment in his *criminal* docket. Crim. Dkt. BIO 15.

2. The Seventh Circuit would hear Dr. Seale's civil appeal by granting a COA. Crim. Dkt. Pet. 11-12. In the Seventh Circuit, defendants like Dr. Seale—who

have secured vacatur of a conviction on a constitutional ground—can obtain a COA to challenge the district court's failure to resentence upon a showing that their sentences "would have been lower" if their "constitutional rights [had] been respected at the time of conviction." *Williams v. United States*, 150 F.3d 639, 641 (7th Cir. 1998). The Government protests that the *Williams* rule is infrequently cited, but it doesn't deny that the rule remains on the books in the Seventh Circuit, that the Third Circuit has rejected it, or that Dr. Seale could appeal under it. Crim. Dkt. BIO 21; Crim. Dkt. Pet. 11-12.

3. By contrast, the Third and Eleventh Circuits would not exercise jurisdiction over either appeal. Both hold that a COA is necessary even in a criminal appeal, unlike the Second, Fourth, and Sixth Circuits. *Clark v. United States*, 76 F.4th 206, 211 (3d Cir. 2023); *United States v. Cody*, 998 F.3d 912, 914-15 (11th Cir. 2021). And, unlike the Seventh Circuit, the Third Circuit would grant a COA only if the failure to resentence was itself a constitutional violation, *Clark*, 76 F.4th at 212 n.6, rather than the statutory violation at issue here.

II. This case provides an excellent vehicle to resolve the question presented.

The Government does not contest that the question presented was pressed and passed upon below or that the Third Circuit's dismissal was solely for lack of jurisdiction. Crim. Dkt. Pet. 15. And because the COA requirement applies to "*the* final order" in a Section 2255 proceeding, 28 U.S.C. § 2253(a) (emphasis added), this Court is best served by a case that tees up both possible final orders (from the

criminal and civil proceedings). Indeed, the Government has previously opposed certiorari on the question presented where a criminal defendant petitioned only from his civil docket and not his criminal one. *See* BIO at 18, *Clark*, *supra* (No. 23-5950). Dr. Seale has appealed from both dockets and cured any such defect.

Unable to dispute that this case is a clean vehicle to resolve the jurisdictional question, the Government instead speculates about how lower courts might rule on the merits of Dr. Seale's claim on remand. Its speculation is beside the point. This Court has never treated conjecture about the ultimate disposition of a case as a barrier to granting certiorari on jurisdictional questions. *See* Crim. Dkt. Pet. 16 n.4 (collecting cases).

In any event, the Government's arguments on that score are wrong.

1. First, the Government argues that even if the Third Circuit had jurisdiction over Dr. Seale's criminal appeal, its hands would be tied. Crim. Dkt. BIO 13-14. Per the Government, the Third Circuit must "take the relief ordered by the district court in the Section 2255 proceeding as a given" even in Dr. Seale's criminal appeal. *Id.* 13.

That's wrong. Indeed, the Second, Fourth, and Sixth Circuits do not consider themselves so bound in a criminal appeal by the civil Section 2255 proceeding. *See, e.g.*, *United States v. FNU LNU*, 2024 WL 4039575, at *3 (2d Cir. Sept. 4, 2024); *United States v. Hadden*, 475 F.3d 652, 667 (4th Cir. 2007); *Ajan v. United States*, 731 F.3d 629, 630 (6th Cir. 2013). And the Government cites exactly zero cases for the

proposition that a habeas proceeding might have preclusive effect on subsequent activity in a criminal docket.

The Government's sole citation is to one line from a 1970 railroad bankruptcy case that is inapposite for many reasons, chief among them that it dealt with a bondholder's *choice* not to take an appeal as of right. Crim. Dkt. BIO 13-14 (discussing *New Haven Inclusion Cases*, 399 U.S. 392, 481 (1970)). On the Government's telling, though, Dr. Seale doesn't have an appeal as of right, so he had no *choice* to make.

2. Second, the Government surmises that it's "far from clear . . . that petitioner was entitled to" a resentencing. Crim. Dkt. BIO 15. Notice the Government's hedging: "far from clear." *Id.* The Government seems to acknowledge it's quite plausible that Dr. Seale *is* entitled to a resentencing.

As it must. The Third Circuit believes it lacks jurisdiction to hear these appeals at all and thus hasn't weighed in on when a defendant in Dr. Seale's position is entitled to a resentencing. *See* Crim. Dkt. Pet. 8. But in the Second Circuit, for instance, Dr. Seale would be entitled to a resentencing because he can present "plausible arguments of changed circumstances" and "the resentencing judge [was] not the original sentencing judge." *Kaziu v. United States*, 108 F.4th 86, 94 (2d Cir. 2024).[2] Indeed, one Second Circuit judge would require a full resentencing, rather

[2] It's not even certain in the Second Circuit that a defendant must show both changed circumstances and a new judge at resentencing. The Second Circuit held only that "at least in tandem," the two factors are sufficient. *Kaziu*, 108 F.4th at 94 & n.7.

than a sentence correction, "unless the resentencing would be purely ministerial." *Id.* at 98 (Calabresi, J., concurring).

The Government claims Dr. Seale would not be entitled to resentencing in the Second Circuit because his original sentencing transcript "sufficiently reveal[s] the rationale behind the original sentence." Crim. Dkt. BIO 18 (internal quotation marks omitted). But the majority in *Kaziu* rejected that exact argument. Even if the new judge could "hypothesize from the sentencing record," the majority reasoned that a "learned hypothesis is a weak substitute for direct knowledge." *Kaziu*, 108 F.4th at 93. And courts in the Second Circuit do not read that circuit's cases to impose such a requirement. *See, e.g.*, *United States v. Kaziu*, 2025 WL 629873, at *2 (E.D.N.Y. Feb. 27, 2025).

3. *Third*, the Government argues the Court should deny certiorari because Dr. Seale may remain in custody regardless of what this Court decides. *See* Crim. Dkt. BIO 15. This Court has never limited its certiorari docket to only those cases that will, for certain, result in release from custody.

Plus, a favorable decision from this Court would provide Dr. Seale a meaningful opportunity to argue for eventual release. If Dr. Seale secures resentencing, a district court will have to "consider[] the defendant on that day, not on the date of his offense or the date of his conviction." *Concepcion v. United States*, 597 U.S. 481, 486 (2022). This includes post-offense developments, which give the "most up-to-date picture" of the defendant's history and characteristics.

Pepper v. United States, 562 U.S. 476, 491-92 (2011). Today, Dr. Seale is a seventy-eight-year-old man who has maintained a spotless prison record for thirty-three years, earned a Ph.D., and devoted himself to decades of service to his fellow inmates. Crim. Dkt. Pet. 17. A district court judge could surely conclude Dr. Seale no longer deserves the maximum possible sentence, or even that he deserves to be free at the end of his life. And though Dr. Seale still has a pending state sentence, he also has a clemency application pending to the Governor of New Jersey.

* * *

Even if this Court has doubts about any of those arguments, however, certiorari is still warranted. The hurdles Dr. Seale will purportedly face on remand are simply not relevant to the question presented to this Court, which concerns solely the Third Circuit's appellate jurisdiction. The Government devotes most of its space to what lower courts might do if they took jurisdiction only because it cannot dispute that this case is a clean vehicle for the jurisdictional question.

III. The question presented is important.

1. The Government acknowledges that it is "not clear" whether petitioners like Dr. Seale should appeal from their criminal judgments or civil orders. Civ. Dkt. BIO 21-22. And prisoners and their counsel are just as confused. Crim. Dkt. Pet. 18. Absent this Court's resolution, criminal defendants will be forced to appeal from *both* their civil and criminal dockets, creating duplicative litigation that clogs the courts but may never receive any consideration. *Id.*

2. To be sure, the question presented implicates only "a specific subset of collateral attacks," as the Government puts it. Crim. Dkt. BIO 11. But the "specific subset" in question is comprised entirely of federal prisoners who have already succeeded on meritorious claims involving their initial convictions—surely the last group that should be left in procedural limbo.

And that "specific subset" will balloon each time this Court invalidates a federal criminal statute on constitutional grounds. *See, e.g.*, *In re Matthews*, 934 F.3d 296, 298 n.2 (3d Cir. 2019); *In re Jones*, 830 F.3d 1295, 1301 (11th Cir. 2016) (Rosenbaum and Pryor, JJ., concurring). The question presented thus takes on new importance as this Court is poised to determine the constitutionality of various criminal statutes under the Second Amendment, for example. Crim. Dkt. Pet. 19 n.7.

3. Dr. Seale's case exemplifies the stakes for individual litigants. The Third and Eleventh Circuits' approach operates as an absolute bar to all manner of grave statutory claims. Here, for instance, the district court denied Dr. Seale a full resentencing because it believed it was bound by the original sentencing judge's intent. Crim. Dkt. Pet. 7. That is a clear violation of the rule that a defendant is judged as he stands before the court, not as the man he used to be. *Id.* 17 (citing *Concepcion v. United States*, 597 U.S. 481, 486, 493 (2022)). But that challenge is statutory, not constitutional, and—according to the court below—is thus insulated from review. The question presented is thus the difference between Dr. Seale dying in prison and being able to make a case for his liberty.

IV. The COA requirement cannot bar both of Dr. Seale's appeals.

The Government does not dispute that if the COA requirement applies to one of Dr. Seale's appeals, it cannot apply to the other. The arguments in at least one of the Government's BIOs must therefore be wrong. In any case, the Government's arguments fail on their own terms.

1. The Government's primary argument, across both BIOs, hinges on its idea of what "steps" are "necessary" under Section 2255. Civ. Dkt. BIO 12-13; Crim. Dkt. BIO 11-12. This "step" theory does not hold water.

Recall that the COA requirement applies to an appeal from "the final order in a proceeding under section 2255." 28 U.S.C. § 2253(c)(1)(B). The Government claims that requirement must apply to an appeal of the decision to correct a sentence instead of conducting a resentencing because a "proceeding under Section 2255 necessarily includes . . . each of the procedural steps that Section 2255(b) . . . directs the district court to take," including choosing between resentencing and sentence correction. Crim. Dkt. BIO 11-12; *see also* Civ. Dkt. BIO 12-13.

But that argument proves too much. As the Government acknowledges, Section 2255(b) "directs the district court" not only to choose between resentencing and correcting a sentence, but to actually "effectuate[]" the resentencing or corrected sentence. Civ. Dkt. BIO 12-14. Yet every court acknowledges that the COA requirement would *not* apply where a prisoner appealed an error committed during the course of his resentencing, even though the

resentencing is one of the "procedural steps" that Section 2255(b) "directs the district court to take." Crim. Dkt. BIO 11-12; *see also Clark v. United States*, 76 F.4th 206, 211 (3d Cir. 2023); *United States v. Cody*, 998 F.3d 912, 916 (11th Cir. 2021).

2. And the Government has no response to Dr. Seale's arguments that, at the very least, the COA requirement cannot apply to his criminal appeal. *See* Crim. Dkt. Pet. 20-25. First, the Government does not explain how the amended criminal judgment can be the "order" contemplated by the COA requirement, 28 U.S.C. § 2253(c). As the government acknowledges, one acts on the other; an order "direct[s]" the entry of the corrected judgment. Crim. Dkt. BIO 13. So the judgment is distinct from any "order." Second, the Government does not explain how the criminal docket can be part of the "Section 2255 proceeding" when the former predates the latter by thirty years, is initiated by a different party, and is criminal rather than civil. Crim. Dkt. Pet. 20-21.

3. As to Dr. Seale's alternative argument—if he must secure a COA, he is necessarily entitled to one (Civ. Dkt. Pet. 19-21)—the Government's approach is similarly atextual. The COA requirement asks only that a criminal defendant make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). The vacatur of Dr. Seale's 18 U.S.C. § 924(c) conviction is not just a "substantial showing" but categorical proof of such a denial.

The Government nonetheless claims that Dr. Seale is not entitled to a COA because he does not "seek to appeal the district court's resolution of that constitutional question." Civ. Dkt. BIO 22. This reads

into the COA requirement language that is not there. The statute does not ask whether a criminal defendant "seek[s] to appeal" the denial of a constitutional right, *id.*; it asks only whether there has *been* the denial of a constitutional right, 28 U.S.C. § 2253(c)(2).

4. Even if the Government's arguments in either of the BIOs were correct, *both* BIOs cannot be correct. In setting out its theory of the merits, the Government provides two possibilities: Either "*the* appealable final order" (to which the COA requirement attaches) is the "corrected judgment" in his criminal docket or, "*instead*," it is the "order directing that a corrected judgment be entered" in his civil docket. Crim. Dkt. BIO 12-13 (emphasis added).

Under the Government's own theory, then, it must have been error for the Third Circuit to block both of Dr. Seale's appeals. This Court should grant certiorari to confirm as much and to clarify the correct path of appeal for Dr. Seale and for future litigants.

CONCLUSION

For the foregoing reasons, the petitions for a writ of certiorari should be granted.

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