No. 24-594

In the Supreme Court of the United States

ARTHUR SEALE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether petitioner must obtain a certificate of appealability—which is necessary to appeal "the final order in a proceeding under [28 U.S.C] 2255," 28 U.S.C. 2253(c)(1)(B)—to appeal the district court's resolution of his Section 2255 claim through the issuance of an amended criminal judgment.

ADDITIONAL RELATED PROCEEDING

United States District Court (D.N.J.):

United States v. *Seale*, No. 3:92-cr-372 (Dec. 1, 1992) (original criminal judgment)

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OPINIONS BELOW

The orders of the court of appeals (Pet. App. 1a-2a, 3a-4a) are unreported.

JURISDICTION

The amended order of the court of appeals was entered on September 23, 2024. The petition for a writ of certiorari was filed on November 26, 2024. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a guilty plea in the United States District Court for the District of New Jersey, petitioner was convicted on one count of conspiring to commit Hobbs Act extortion, in violation of 18 U.S.C. 1951; one count of Hobbs Act extortion, in violation of 18 U.S.C. 1951; one count of carrying or using a firearm in furtherance of a crime of violence, in violation of 18 U.S.C. 924(c);

one count of using the mail with intent to commit extortion, in violation of 18 U.S.C. 876; one count of using a telephone with intent to commit extortion, in violation of 18 U.S.C. 875; and two counts of traveling interstate with intent to commit extortion, in violation of 18 U.S.C. 1952. 12/1/1992 Judgment 1. The district court sentenced petitioner to a total of 95 years of imprisonment, which included a five-year consecutive sentence on the Section 924(c) count, and a $1.75 million fine. *Id.* at 2-4. The court of appeals vacated the fine, and remanded for resentencing, but otherwise affirmed. 20 F.3d 1279. At resentencing, the district court adjusted the fine but did not alter the terms of imprisonment. See 04-cv-3830 D. Ct. Doc. 12, at 1 (Dec. 12, 2005) (2005 D. Ct. Op.).

In 2019, the court of appeals granted petitioner authorization to file a successive motion under 28 U.S.C. 2255 to challenge his Section 924(c) conviction. 19-2888 C.A. Order (Oct. 18, 2019). In December 2022, the district court granted petitioner's authorized Section 2255 motion in part and denied it in part, Pet. App. 29a-44a, ordering that petitioner's Section 924(c) conviction and its five-year consecutive sentence be vacated, directing that an amended criminal judgment be entered to effectuate that relief, and denying petitioner's request for a full resentencing, *id.* at 45a-46a. Four days later, in January 2023, the court entered an amended criminal judgment reflecting those changes. *Id.* at 8a-16a.

Petitioner appealed both the order resolving his Section 2255 motion (Appeal No. 23-1089) and the amended criminal judgment (Appeal No. 23-1088). Pet. App. 47a. In the appeal from the order resolving petitioner's Section 2255 motion, the court of appeals denied petitioner's request for a certificate of appealability (COA). *Id.* at 20a-21a. The court of appeals subsequently dis-

missed petitioner's appeal from the amended criminal judgment for lack of jurisdiction. *Id.* at 1a-2a (amended order); see *id.* at 3a-4a (original order). The petition in this case addresses petitioner's appeal from the amended criminal judgment.

1. a. In late 1991, petitioner, a former security officer for Exxon Corporation and a nine-year police veteran, developed a scheme to kidnap the president of an Exxon subsidiary, Sidney J. Reso, to obtain a large ransom. 20 F.3d at 1281; see Sent. Tr. 12-13, 15 (Nov. 30, 1992). Petitioner and his wife prepared for the kidnaping for three months, conducting surveillance at Reso's home to understand his schedule and transportation options and building a coffin-like box in which to put Reso after capturing him. 20 F.3d at 1281. Petitioner also researched environmental causes to concoct a false motive for the kidnaping. *Ibid.*

On the morning of April 29, 1992, petitioner and his wife abducted Reso as he left home for work. 20 F.3d at 1281. When Reso reached the foot of his driveway to collect his morning newspaper, petitioner exited a van driven by his wife and grabbed Reso at gunpoint. 92-5686 Gov't C.A. Br. 11 (May 12, 1993), available at 1993 WL 13120477. Reso struggled, and petitioner shot him in the arm. *Ibid.*; see 20 F.3d at 1281. Rather than end the scheme, petitioner and his wife continued the kidnaping, handcuffing Reso and taping his eyes and mouth shut with duct tape, locking him in the coffin-sized box, and keeping Reso in the box for four days with no food and little water at a self-serve storage unit, until Reso died while alone in the box. Sent. Tr. 70, 88 (court findings); see 92-5686 Gov't C.A. Br. 10-15; see also 20 F.3d at 1281.

Notwithstanding Reso's death, petitioner and his wife continued to execute their scheme for another six weeks. 20 F.3d at 1281. Posing as an environmental group named the "Fernando Pereira Brigade, Warriors of the Rainbow," they demanded an $18.5 million ransom and led the Reso family, Exxon employees, the Federal Bureau of Investigation, and the general public to "believe that Reso was still alive but would be 'eliminated' if their instructions were not followed." *Ibid.* Petitioner's heavily publicized scheme triggered "the largest nationwide manhunt since the high-profile kidnapping of Patricia Hearst." Catherine S. Manegold, *Twisted Tale of a Kidnapping And of Dreams Gone Wrong*, N.Y. Times, July 1, 1992, at A1, B4.

In June 1992, petitioner and his wife were apprehended before any ransom was paid. 20 F.3d at 1281.

b. After petitioner's wife cooperated with the authorities and led the police to the shallow grave in which petitioner had buried Reso, petitioner pleaded guilty without a plea agreement to all seven counts of his federal indictment. 20 F.3d at 1281-1282; see 92-5686 Gov't C.A. Br. 2-3. At sentencing, the district court emphasized that petitioner had committed a "variety of serious heinous crimes" that were "thoroughly evil," finding "no other word for it." Sent. Tr. 87. The court found petitioner's crimes were "cold [and] calculating," reflected "unmitigated evil," and exhibited such "casual amoral brutality and viciousness [that they] shocked even the most jaded." *Id.* at 89.

In addition to recounting the circumstances of Reso's coffin-like confinement, the district court observed that Reso's "teeth [had been] broken" and "knocked down his throat." Sent. Tr. 88; see *id.* at 70. The court also emphasized the degree to which Reso's family had suf-

fered: petitioner had "demand[ed] that [Reso's] 57-year-old wife * * * personally appear on television" to "plead for [Reso's] life"; required that "she and the family personally accompany the ransom money and answer the telephone"; and made the family and "the world" listen to Reso's "last words"—"forced and compelled ransom directions" that "sen[t] [Reso's] family around at high speed through the countryside" with "a maze of directions in writing and over the telephone" to "deliver a huge ransom in cash." *Id.* at 65, 87-88. "The planning and coldness behind all of this," the court stated, "defies imagination" and was "unique in its cruelty." *Id.* at 65, 88.

The sentencing court determined that the "cold-blooded, calculated and deliberate" nature of petitioner's crimes and "[t]he magnitude of [his] acts" "require[d] that the [c]ourt deal with [petitioner] as severely as the law allows." Sent. Tr. 87, 89. The court emphasized that its "intent" was that "[petitioner] be imprisoned for the rest of [his] life without parole" so that he would "never be free." *Id.* at 91. The court imposed the statutory maximum sentence for each of petitioner's counts of convictions and ran each sentence "consecutive with one another" to produce a total sentence of 95 years of imprisonment, including the five-year consecutive sentence for petitioner's Section 924(c) conviction. See *id.* at 91-92.

On direct appeal, the court of appeals upheld petitioner's prison sentence, 20 F.3d at 1282 n.3, but vacated the fine and remanded for resentencing, *id.* at 1290.[1] At resentencing, the district court adjusted the

[1] Justice Alito was a judge on the court of appeals when petitioner's appeal was pending but was not on the panel that resolved that appeal, and no petition for rehearing was filed.

fine, but it did not alter the terms of imprisonment. See 2005 D. Ct. Op. 2.

c. While petitioner's federal case was pending, the State of New Jersey prosecuted petitioner for his related state-law kidnaping and murder offenses; petitioner pleaded guilty; and, in 1992, after the district court sentenced petitioner, the state court sentenced petitioner to two terms of imprisonment to run consecutively to his 95-year federal sentence: a 30-year term of imprisonment (for first-degree kidnaping) and a consecutive term of life imprisonment (for first-degree felony murder), with no parole eligibility until after petitioner has served 45 years of his state sentences. Judgment of Conviction at 1, *State* v. *Seale*, No. 92001345 (N.J. Super. Ct. Morris Cnty. Dec. 1, 1992) (N.J. Judgment); see 92-cr-372 D. Ct. Doc. 90, at 15 (July 31, 2020); Charles Strum, *Man Sentenced to Life in Killing of Exxon Official*, N.Y Times, Dec. 1, 1992, at B1, B7.

In his statement of reasons for those sentences, the state judge noted that petitioner would "die in federal prison" if his federal sentence "is fully implemented." N.J. Judgment 2-A. But the judge acknowledged that "it is possible that [petitioner] may some day be released from federal prison" and made clear that, "[i]f so," he was imposing consecutive state sentences for the "especially cruel" kidnaping and murder because it is "imperative that [petitioner] shall never under any circumstances be at liberty in our society." *Ibid.*

2. Petitioner subsequently filed a series of unsuccessful motions to vacate his federal sentence under 28 U.S.C. 2255. See 04-cv-3830 D. Ct. Order (Dec. 12, 2005) (denying motion); 07-cv-4356 D. Ct. Doc. 12 (Feb. 27, 2007) (withdrawing motion); 18-cv-9075 D. Ct. Order

(Mar. 26, 2019) (dismissing motion). His repeated requests for clemency have thus far also been denied.[2]

In 2019, the court of appeals granted petitioner's application to file a successive Section 2255 motion to challenge his Section 924(c) conviction based on this Court's then-recent decision in *United States* v. *Davis*, 588 U.S. 445 (2019), which held that Section 924(c)(3)(B)'s definition of a predicate "crime of violence" is unconstitutionally vague, *id.* at 470. See 19-2888 C.A. Order 1 (Oct. 18, 2019); 19-2888 C.A. Mot. to File Second or Successive Section 2255 Mot. 1-2 (Aug. 26, 2019); see also 18 U.S.C. 924(c)(3) (Supp. IV 1986).

On December 30, 2022, the district court granted petitioner's Section 2255 motion in part and denied it in part. Pet. App. 45a-46a. The court vacated petitioner's "[Section] 924(c) conviction and its accompanying five-year sentence" and fine, but denied petitioner's "request for a full resentencing." *Id.* at 46a & n.1; see *id.* at 41a-43a. The court instead ordered that an "amended judgment" be entered in petitioner's criminal case in which the "sentences on the remaining counts of [petitioner's] conviction shall remain intact and undisturbed." *Id.* at 46a.

In its accompanying opinion (Pet. App. 29a-44a), the district court explained that while petitioner was entitled to vacatur of his Section 924(c) conviction in light of *Davis*, *id.* at 34a-41a, an "entirely new sentencing" to allow reconsideration of the total sentence "under the

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[2] The President denied petitioner's 2003 and 2019 clemency petitions on November 23, 2010, and December 28, 2023. See Office of the Pardon Att'y, U.S. Dep't of Justice, *Search for a Case* (Mar. 3, 2025) (petition status reflected in downloadable "case search data file"), https://www.justice.gov/pardon/search-clemency-case-status. Petitioner's 2024 clemency request remains pending. See *ibid.*

sentencing package doctrine" was unwarranted, *id.* at 41a. The court stated that when one or more counts of conviction are vacated, the sentencing-package doctrine allows for resentencing on the remaining counts when necessary to accurately reflect the sentencing court's intent regarding the appropriate total punishment for the defendant's crimes. *Id.* at 41a-42a. The court explained that the "thrust of the doctrine" is to authorize a court to revisit the overall sentence when the original "sentence on the remaining counts" was "interdependent" with the "sentence on the vacated count." *Ibid.* The court observed, however, that a full resentencing is unwarranted "where the sentencing judge [has] already imposed 'the highest sentence available' on the remaining counts of the conviction," because such a sentence reflects that the subsequent "vacatur of a consecutive § 924(c) conviction d[id] not unravel the package imposed." *Id.* at 42a (citation omitted).

In this case, the district court found the sentencing judge's original sentencing intent to be "abundantly clear," where the judge had chosen "'the highest sentence available'" by imposing "the applicable statutory maximum sentence on each count" of conviction and then directing that all of those sentences were to "run consecutively" to each other. Pet. App. 42a-43a. The court observed that the sentencing judge had emphasized that he had chosen that maximal sentence to "ensure[] that [p]etitioner would be 'imprisoned for the rest of his life without parole'" and thus reflected his "'intent'" that petitioner should "'never be free.'" *Id.* at 42a (quoting Sent. Tr. 91) (brackets omitted).

The district court thus found that the vacatur of the five-year consecutive sentence for an invalid Section 924(c) count did "not 'unravel' an interdependent sen-

tencing plan." Pet. App. 43a. And the court explained that given that "the applicable maximums [had already been] imposed," a full resentencing was unnecessary because it would not provide the court any "opportunity to impose a harsher sentence on the remaining counts in order to rebalance [p]etitioner's sentence." *Ibid.* The court added that any "lesser sentence on [p]etitioner's remaining counts" would result in a "windfall" to petitioner. *Ibid.*

Four days later, on January 3, 2023, the district court entered an amended judgment on the docket for petitioner's criminal case (No. 92-cr-372), reflecting the vacatur of petitioner's conviction and sentence on the Section 924(c) count and maintaining the remaining consecutive sentences totaling 90 years. Pet. App. 8a-11a.

3. Petitioner filed a notice of appeal, which was placed on the dockets for his Section 2255 proceeding (No. 19-cv-21016) and criminal case (No. 92-cr-372), in which he stated that he was appealing both "the order granting in part and denying in part his [Section 2255] petition * * * in Civil Number 19-21016" and the amended "judgment * * * in Criminal Number 92-372." Pet. App. 47a. The court of appeals docketed petitioner's appeal from the Section 2255 order as Appeal No. 23-1089 and his appeal from the amended criminal judgment as Appeal No. 23-1088. See *id.* at 20a-21a. Under 28 U.S.C. 2253(c)(1) "[u]nless a circuit justice or judge issues a [COA], an appeal may not be taken to the court of appeals from * * * (B) the final order in a proceeding under section 2255." 28 U.S.C. 2253(c)(1). As a result of that provision, "federal courts of appeals lack jurisdiction to rule on the merits of appeals" from such orders "until a COA has been issued." *Gonzalez* v. *Thaler*, 565 U.S. 134, 142 (2012) (citation omitted).

a. In Appeal No. 23-1089, the court of appeals partially remanded the Section 2255 proceeding for the district court to decide whether a COA should issue. 23-1089 C.A. Order (Jan. 31, 2023).

The district court denied a COA on remand. Pet. App. 22a-28a. The court explained that, under 28 U.S.C. 2253(c), a COA may be granted only if the applicant "makes 'a substantial showing of the denial of a constitutional right.'" Pet. App. 26a. And the court found that petitioner failed to make that showing because petitioner "seeks to appeal only the denial of a full resentenc[ing]" yet made no "substantial showing that the court's denial of [such] a resentencing amounted to the denial of a constitutional right." *Id.* at 27a. The court emphasized that it had "considerable discretion in determining whether a resentencing is required"; that "resentencing is [not] necessary [here] to rebalance the remaining counts" given the "abundantly clear" intent of the original sentencing judge; and that no constitutional provision requires "a full resentencing * * * following the vacation of a single count of conviction." *Id.* at 27a-28a.

The court of appeals (in No. 23-1089) then likewise denied a COA. Pet. App. 20a-21a. The court observed that it "may issue a [COA] 'only if the applicant has made a substantial showing of the denial of a constitutional right,'" and it found that "[j]urists of reason would not debate the District Court's decision to not hold a resentencing hearing." *Id.* at 20a (quoting 28 U.S.C. 2253(c)(2)). Petitioner's petition for a writ of certiorari from that order denying a COA is pending in this Court. See No. 23-7806 (filed June 20, 2024).

b. Subsequently, in Appeal No. 23-1088, the court of appeals dismissed petitioner's appeal from his amended

criminal judgment. Pet. App. 3a. The court later clarified that it had dismissed the appeal for "lack of jurisdiction." *Id.* at 1a. Petitioner's certiorari petition at issue here (in No. 24-594) seeks review of that order.

ARGUMENT

Petitioner contends (Pet. 20-25) that the court of appeals erred in dismissing his appeal for lack of jurisdiction on the theory that 28 U.S.C. 2253(c)'s COA requirement does not apply where a prisoner appeals from a corrected criminal judgment that is entered as the relief on a postconviction claim under 28 U.S.C. 2255. The court of appeals correctly dismissed petitioner's appeal from his amended criminal judgment. Any disagreement in the courts of appeals on the question presented is limited to a specific subset of collateral attacks and would not warrant review in this case because petitioner would not be entitled to any more Section 2255 relief in any court of appeals. The Court has denied review in other cases presenting similar issues. See *Clark* v. *United States*, 144 S. Ct. 1382 (2024) (No. 23-5950); *Cody* v. *United States*, 142 S. Ct. 1419 (2022) (No. 21-6099). The same result is warranted here.

1. In "a proceeding under section 2255 before a district judge," the "final order" is "subject to review, on appeal." 28 U.S.C. 2253(a). But "the final order in a proceeding under section 2255" cannot be appealed "[u]nless a circuit justice or judge issues a certificate of appealability." 28 U.S.C. 2253(c)(1)(B). That COA requirement applies to the remedial decision that petitioner is attempting to challenge on appeal.

A proceeding under Section 2255 necessarily includes the filing of a motion as authorized by Section 2255(a) and each of the procedural steps that Section 2255(b) then directs the district court to take with re-

spect to that motion. *Cody* v. *United States*, 998 F.3d 912, 915-916 (11th Cir. 2021), cert. denied, 142 S. Ct. 1419 (2022). One of those steps is the court's selection of one of the four types of relief that Section 2255(b) authorizes. *Id.* at 916; accord *Clark* v. *United States*, 76 F.4th 206, 211 (3d Cir. 2023), cert. denied, 144 S. Ct. 1382 (2024). The final sentence of Section 2255(b) provides that if the court finds that a prisoner's sentence is unlawful, the court, in addition to vacating and setting aside the judgment, "shall [1] discharge the prisoner or [2] resentence him or [3] grant a new trial or [4] correct the sentence as may appear appropriate." 28 U.S.C. 2255(b).

In this case, the district court granted Section 2255 relief to petitioner but rejected his request that it "resentence him," finding instead that the "appropriate" remedy under Section 2255(b) was to directly "correct [his] sentence" by eliminating the invalid Section 924(c) conviction and its associated sentence while leaving the other sentences intact, 28 U.S.C. 2255(b). See Pet. App. 29a, 43a. The court thus ordered the entry of an "amended [criminal] judgment" reflecting that the "[Section] 924(c) conviction and its accompanying five-year [consecutive] sentence are vacated" and that petitioner's "sentences on the remaining counts of conviction shall remain intact and undisturbed." *Id.* at 46a (capitalization omitted); see *id.* at 45a-46a (order). And such a corrected judgment was accordingly entered on the docket of petitioner's criminal case. See *id.* at 8a-11a.

There is no sound way to conceive of the Section 2255 proceeding that would allow petitioner to take an appeal to challenge the form of relief granted on his Section 2255 claim without first obtaining a COA. Most obviously, if the corrected judgment itself was the appeala-

ble "final order in the Section 2255 proceeding," then petitioner would be required to obtain a COA to appeal it. 28 U.S.C. 2253(c)(1)(B). If, instead, the order directing that a corrected judgment be entered, but that other relief be denied, was the appealable "final order," then appealing that order required a COA. *Ibid.* And contrary to what the current certiorari petition appears to contend (Pet. 20-25), petitioner cannot circumvent the COA requirement on the theory that the corrected judgment is *not* part of the Section 2255 proceeding.

On that theory, an appeal of the corrected judgment would not encompass the relief ordered in the Section 2255 proceeding at all. Although a final order generally subsumes prior orders in the same proceeding for purposes of an appeal, *Dupree* v. *Younger*, 598 U.S. 729, 735 (2023), that principle provides petitioner no shelter because, under his theory (Pet. 21), the same is not true for a prior Section 2255 order if it is an order in a civil case that is itself independent from the criminal case in which an amended judgment is later entered. Thus, an appeal as of right from the corrected judgment, on the theory that it is part of a separate criminal case, would not subsume the final order in the Section 2255 proceeding, or the election of remedy therein—which was independently appealable. See 28 U.S.C. 2253(a). Instead, in the absence of a successful appeal of that final order —which would be subject to the COA requirement, see 28 U.S.C. 2253(c)(1)(B)—an appeal as of right from the corrected judgment would have to take the relief ordered by the district court in the Section 2255 proceeding as a given. See, *e.g.*, *New Haven Inclusion Cases*,

399 U.S. 392, 481 (1970) (court order remains binding on party who "took no appeal from the order").[3]

The court of appeals therefore correctly dismissed petitioner's appeal of the amended criminal judgment at issue in this certiorari petition. Pet. App. 1a, 3a. Either petitioner has appealed from the final order in a Section 2255 proceeding that lacks a COA, or he has appealed from a different proceeding altogether that seeks to challenge the final order in a Section 2255 proceeding that has already concluded (still without a COA). Either way, petitioner's challenge was not one that the court of appeals could entertain.

And for similar reasons, the court of appeals correctly dismissed petitioner's appeal of the order directing the entry of a corrected judgment, which is the subject of his other pending certiorari petition. As explained in the government's brief in opposition to that petition, assuming that order was the final order in a Section 2255 proceeding, it required a COA—which petitioner has never obtained. 23-7806 Br. in Opp. at 12-17 (Nov. 22, 2024).

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[3] Petitioner suggests (Pet. 21) that "a state prisoner in [petitioner's] position would not need a COA" after receiving a federal habeas order "vacat[ing]" his state-court criminal judgment. But the order of a federal court in a habeas proceeding would not in itself directly vacate or otherwise alter a state-court judgment; instead, it would grant a writ of habeas corpus. See Pet. 21 n.8 (citing *Fay* v. *Noia*, 372 U.S. 391, 430-431 (1963), overruled in part on other grounds by *Wainwright* v. *Sykes*, 433 U.S. 72 (1977)). And if a state court elects to vacate its own criminal judgment and to conduct a resentencing of a state prisoner in the wake of a federal court's conditional writ of habeas corpus, the prisoner would be differently situated from petitioner, whose Section 2255 order directly corrected his sentence.

2. Petitioner asserts (Pet. 9-11) that the decision of the court of appeals in this case conflicts with decisions by the Second, Fourth, and Sixth Circuits, which have allowed a successful Section 2255 movant to challenge a district court's decision "declining to resentence him" by appealing (without a COA) the new criminal judgment entered as a result of the Section 2255 order. Pet. 9; see Pet. 9-11 (citing *Kaziu* v. *United States*, 108 F.4th 86 (2d Cir. 2024); *Ajan* v. *United States*, 731 F.3d 629 (6th Cir. 2013); and *United States* v. *Hadden*, 475 F.3d 652 (4th Cir. 2007)). But he does not identify any disagreement that would extend beyond the limited subset of cases that involve sentences that are directly corrected without a resentencing proceeding (as opposed to granting another form of postconviction relief, see 28 U.S.C. 2255(b), or denial of postconviction relief altogether). And any further review is unwarranted in this case, because it is far from clear that any court of appeals permitting such an appeal would conclude that petitioner was entitled to more relief than he received.

a. The district court here determined in its Section 2255 ruling (Pet. App. 29a-44a) that "a full resentencing [would be] inappropriate" as a remedy for the unconstitutionality of petitioner's Section 924(c) conviction and its five-year consecutive sentence, because eliminating the Section 924(c) conviction and sentence did "not 'unravel' an interdependent sentencing plan." *Id.* at 43a. The court emphasized that the sentencing court had been "abundantly clear" that it had imposed "'the highest sentence available'"—choosing "the applicable statutory maximum sentence on each count" of conviction and running all sentences "consecutive[ly]"—in order to "ensure[] that [p]etitioner would be 'imprisoned for the rest of his life.'" *Id.* at 42a (citations and brackets omit-

ted); see pp. 4-5, *supra* (discussing sentencing). And because the remaining terms of imprisonment were already at the maximum, a full resentencing would not permit "a harsher sentence on the remaining counts in order to rebalance [p]etitioner's sentence" to compensate for the removal of the consecutive term for the Section 924(c) offense. Pet. App. 43a. There is no sound basis for concluding that the Second, Fourth, or Sixth Circuits would require resentencing in these circumstance.

In *United States* v. *Hadden*, the Fourth Circuit determined that a district court had not abused its discretion in choosing "to 'correct' [a] sentence" by vacating the defective Section 924(c) portion thereof "in lieu of conducting a formal 'resentencing'" where (a) "the Government did not seek" to, and the district court "did not, in fact, increase," the prisoner's remaining original sentences in the original sentencing proceedings, and (b) "the *district court* itself—by striking the § 924(c) sentence and reentering the remaining sentence—indicated that *it* was satisfied with the resulting sentence." 475 F.3d at 668-669 (explaining that the "sentence-package theory of sentencing" does not require a "formal 'resentencing'" in that context) (brackets omitted). As just explained, that is the case here. See Pet. App. 42a-43a.

The Sixth Circuit, in *Ajan* v. *United States*, observed that a district court is "certainly free" to "choose a correction over a different remedy" by simply vacating the part of a sentence based on an invalid Section 924(c) conviction and leaving the remaining sentence unchanged. 731 F.3d at 633. The Sixth Circuit remanded Ajan's case to district court only because the district court's decision left it unclear "whether the district

court exercised its [Section 2255] discretion or thought it had none." *Id.* at 633-634. And when a district court does exercise its discretion to vacate a defective Section 924(c) portion of the sentence and leaves the rest unchanged, the Sixth Circuit does not overturn that decision where the district court determines that "vacating [the Section] 924(c) sentence did 'not impact the sentences [the prisoner] received on the other counts.'" *United States* v. *Augustin*, 16 F.4th 227, 232 (6th Cir. 2021) (citation omitted), cert. denied, 142 S. Ct. 1458 (2022).

In this case, the district court expressly recognized that it had "considerable discretion in determining whether a resentencing is required." Pet. App. 28a. And it exercised that "'broad and flexible power'" by determining that "the proper course 'following [petitioner's] successful [Section] 2255 motion'" was to correct petitioner's sentence rather than hold a full resentencing. *Id.* at 41a-43a (citation omitted). Nothing indicates that the Sixth Circuit would find that discretionary determination to be impermissible.

Nor is there any such indication in the Second Circuit, whose decision in *United States* v. *Peña*, 58 F.4th 613, cert. denied, 144 S. Ct. 147 (2023), agreed with the Sixth Circuit that Section 2255(b)'s "plain text" "vests [a] district court[] with discretion to select the appropriate relief from a menu of options" after it vacates a conviction under Section 2255, *id.* at 619-620 (finding *Augustin*'s "reasoning to be persuasive"). And *Peña* went on to explain that a district court does not abuse its discretion in declining to conduct a full resentencing where such a "resentencing would have been 'strictly ministerial,' serving simply to delete sentences on the now-vacated counts." *Id.* at 623. The district court permissibly found that to be the case here.

Petitioner's reliance (Pet. 11, 17) on *Kaziu* v. *United States* is misplaced. There, the original sentencing judge imposed four concurrent prison terms of 27, 15, 15, and 27 years for the four counts of conviction, yielding a total term of 27 years of imprisonment—well below statutory maximum term of life imprisonment for two of the counts. 108 F.4th at 88. A different district court judge later granted Section 2255 relief by vacating a Section 924(c) conspiracy conviction and its 27-year term of imprisonment. *Id.* at 90; see *id.* at 88. The judge then "chose to reweigh the [Section] 3553(a) sentencing factors" for the remaining 27-year sentence based on paper submissions and reduce it to 25 years. *Id.* at 90, 94. The Second Circuit concluded that the judge abused his discretion in declining to conduct a full resentencing because, in significant part, "the sentencing transcript" did not sufficiently reveal "the rationale behind the original sentence" (imposed by a different judge), so as to refute the possibility that "the now vacated conviction[] may have inflated Kaziu's sentences on the remaining convictions." *Id.* at 92.

Here, however, the sentencing record could not be more clear. The sentencing judge sentenced petitioner to the statutory maximum term for every count of conviction and ran each term consecutively to each other to produce "'the highest sentence available'" and "ensure[] that '[p]etitioner would be 'imprisoned for the rest of his life.'" Pet. App. 42a-43a (citations and brackets omitted). No relief is warranted, and petitioner fails to demonstrate that any circuit would provide it.

b. Petitioner suggests (Pet. 16-17) that the Court should disregard the problems with his "ultimate merits case" and resolve the jurisdictional question that he presents. But this Court grants certiorari to "decide[]

questions of public importance" and "resolv[e] conflicts among the Courts of Appeals" "in the context of meaningful litigation" in which the Court's resolution of those questions could plausibly affect the outcome in the case. *The Monrosa* v. *Carbon Black Exp., Inc.*, 359 U.S. 180, 184 (1959).

Petitioner provides no plausible basis for concluding that he would obtain a lesser sentence if his appeal were allowed to proceed. Petitioner suggests (Pet. 17) that he might show that the district court abused its discretion by declining to grant a full resentencing because "everything that is relevant to reaching a proper sentence"—including rehabilitation—is also "relevant to the decision of whether to correct or to resentence." *Ibid.* (quoting *Kaziu*, 108 F.4th at 94 n.7). But the decision on which petitioner relies does not support that view. *Kaziu* found an abuse of discretion based on the "*combin*[*ation*]" of "two factors" that—when considered "in tandem"—were deemed to "limit the district court's discretion to dispense with plenary resentencing": (1) the judge who granted Section 2255 relief did not conduct the original sentencing and did not know "the rationale behind the original sentence," which the record did not reveal and, in addition, (2) "plausible arguments of changed circumstances" were presented that could have affected the relevant analysis. *Kaziu*, 108 F.4th at 92, 94 (emphasis added).

The record here, by contrast, is "abundantly clear" that eliminating petitioner's Section 924(c) conviction and sentence would not have affected his other sentences, which, if reduced, would provide petitioner an unwarranted "windfall." Pet. App. 42a-43a. Moreover, even if petitioner's federal sentence (with more than four decades remaining) were reduced to such an extent

as to lead to his release from federal imprisonment, any such victory would be Pyrrhic, because petitioner (who is now 78) must still serve his consecutive state-court life and 30-year sentences for murdering and kidnaping Reso, which require that he serve at least 45 years of his state prison sentences after finishing his federal sentence before he could become eligible for state parole. See p. 6, *supra*.

3. Finally, petitioner's argument (Pet. 25) that he was in fact entitled to a COA revisits the second question presented in his other petition for a writ of certiorari, 23-7806 Pet. at ii, 19-21, not any issue that he has raised as an independent question here, Pet. i, 1 (seeking review of orders at Pet. App. 1a-4a). The other petition, however, did not argue that a circuit conflict warranted review on the COA question. 23-7806 Pet. at 19-21. The government's brief in opposition accordingly emphasized that "petitioner does not identify a division of authority that would warrant this Court's review of [that] question," 23-7806 Br. in Opp. at 22, and petitioner declined to file a reply. In any event, to the extent that petitioner is entitled to supplement the other petition's argument on that issue with the new argument in the petition here, his argument is unsound.

Contrary to petitioner's contention (Pet. 11-12, 25), *Williams* v. *United States*, 150 F.3d 639 (7th Cir. 1998), does not reflect a division of authority on the COA question. Petitioner quotes (Pet. 11, 25) language from *Williams* suggesting that a movant "might" establish an entitlement to a COA by "showing that, had his constitutional rights been respected at the time of conviction, the sentence imposed at the time would have been lower." 150 F.3d at 641. But because the court found that "Williams cannot make a showing of this kind," it

neither resolved whether such a showing would actually be sufficient, nor elaborated on what would qualify as such a showing. *Ibid.* And in the 26 years since *Williams*, only three court of appeals decisions have cited *Williams*'s discussion of the COA standard, all for different propositions not pertinent here.[4]

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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[4] *United States* v. *Jumah*, 431 Fed. Appx. 494, 496-497 (7th Cir. 2011) (unpublished); *Owens* v. *Boyd*, 235 F.3d 356, 358 (7th Cir. 2001); *United States* v. *Moreland*, 175 F.3d 1021, 1999 WL 265286, at *3 (7th Cir. 1999) (Tbl.).