No. 25-49

IN THE

Supreme Court of the United States

ALEXANDER SITTENFELD AKA P.G. SITTENFELD,
Petitioner,

v.

UNITED STATES OF AMERICA
Respondent.

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

REPLY BRIEF FOR PETITIONER

JAMES R. SAYWELL
JONES DAY
901 Lakeside Avenue
Cleveland, OH 44114

ALEXANDER V. MAUGERI
JONES DAY
250 Vesey Street
New York, NY 10281

NOEL J. FRANCISCO
Counsel of Record
ANTHONY DICK
JONES DAY
51 Louisiana Ave., NW
Washington, D.C. 20001
(202) 879-3939
njfrancisco@jonesday.com

KELLY HOLT RODRIGUEZ
JONES DAY
90 South Seventh Street
Suite 4950
Minneapolis, MN 55402

Counsel for Petitioner

TABLE OF CONTENTS

Page

INTRODUCTION 1

ARGUMENT 2

I. THE COURT SHOULD GRANT, VACATE, AND REMAND WITH INSTRUCTIONS TO VACATE THE CONVICTION AND DISMISS THE INDICTMENT. 2

II. ALTERNATIVELY, THE COURT SHOULD GRANT PLENARY REVIEW OF THE QUESTION PRESENTED. 3

CONCLUSION 5

TABLE OF AUTHORITIES

Page(s)

CASES

Blucher v. United States,
439 U.S. 1061 (1979) 3

Carlesi v. New York,
233 U.S. 51 (1914) 4

Nixon v. United States,
506 U.S. 224 (1993) 4

Petite v. United States,
361 U.S. 529 (1960) (per curiam) 3

Rinaldi v. United States,
434 U.S. 22 (1977) 2

Sibron v. New York,
392 U.S. 40 (1968) 4

United States v. Benton,
98 F.4th 1119 (D.C. Cir. 2024) 4

United States v. Connell,
2025 WL 326590
(D.D.C. Jan. 29, 2025) 2

Watts v. United States,
422 U.S. 1032 (1975) 3

OTHER AUTHORITIES

Federal Rule of Criminal Procedure 48 ..... 2, 3

Samuel Williston, *Does A Pardon Blot Out Guilt?*, 28 Harv. L. Rev. 647 (1915) 4

INTRODUCTION

In its response brief, the Government does not contest that Mr. Sittenfeld's conviction is legally indefensible, the decision below is wrong, and the question presented is worthy of this Court's review. It is thus undisputed that Mr. Sittenfeld was subject to an erroneous felony conviction, spent four months in prison away from his wife and young children, paid a substantial criminal fine, and had his reputation besmirched for engaging in perfectly innocent conduct that did not violate any law. The fact that such a miscarriage of justice could occur shows that the lower courts are badly in need of guidance on when otherwise lawful campaign contributions can be prosecuted as "bribes" under federal law.

After the President pardoned Mr. Sittenfeld, and while he was considering whether he still needed to file a petition for certiorari, the Department of Justice informed Mr. Sittenfeld's counsel by e-mail that "We cannot refund the fine [he paid] because the funds have been transferred to an account in the Treasury," and "the government lacks discretion to refund the fine." It made those statements after stating that it would "run th[e] question up the chain." Now, in its response brief, the Government says that any "concerns" about whether the fine will be repaid "rest on an unduly narrow view of the President's pardon power," and that Mr. Sittenfeld "is entitled to the return of any fines that he has paid." BIO 4–5. The Government also says that the pardon erases all collateral consequences of his conviction, mooting the appeal. And it asks the Court to grant, vacate, and remand so that the district court can vacate the conviction and dismiss the indictment.

In light of the Government's position, and its recently filed Rule 48(a) motion, Mr. Sittenfeld agrees that this Court should grant the petition and vacate the decision below. But on remand, the conviction should be vacated, and this Court should include explicit instructions to that effect in its order, as it has in prior cases.

If the Court is not willing to grant that full relief, it should grant plenary review. After all, the Government does not dispute that the question presented is worthy of review and the decision below is wrong. Nor does it contend that there is any barrier to review other than its assertion of mootness. But unless and until Mr. Sittenfeld's conviction is vacated, the case is clearly not moot. The Court should therefore either remand with express instructions for the conviction to be vacated, or else grant the petition and hear the case on the merits.

ARGUMENT

I. THE COURT SHOULD GRANT, VACATE, AND REMAND WITH INSTRUCTIONS TO VACATE THE CONVICTION AND DISMISS THE INDICTMENT.

As the Government explains, it recently filed a motion in district court under Rule 48(a) to vacate the conviction and dismiss the charges against Mr. Sittenfeld with prejudice. That relief is available even after the district court enters a judgment of conviction. *See, e.g., Rinaldi v. United States*, 434 U.S. 22, 32 (1977). But the district court cannot act on the Rule 48 motion as long as the case remains pending on appeal. *See, e.g., United States v. Connell*, 2025 WL 326590, at *4 (D.D.C. Jan. 29, 2025) (denying Rule 48 motion for lack of jurisdiction in light of pending appeal).

In prior cases where the Solicitor General asked the Court to grant certiorari, vacate, and remand for dismissal under Rule 48, the Court has done so with explicit instructions to vacate the conviction and dismiss the case. *See Blucher v. United States*, 439 U.S. 1061 (1979) ("Certiorari granted, judgment vacated, and case remanded to the United States District Court for the District of Wyoming with directions to vacate its judgment and dismiss the indictment."); *Watts v. United States*, 422 U.S. 1032 (1975) ("Upon representation of the Solicitor General set forth in his brief for the United States filed May 2, 1975, judgment vacated, and case remanded to the United States District Court for the Northern District of Georgia to permit the Government to dismiss charges against petitioner."); *Petite v. United States*, 361 U.S. 529, 531 (1960) (per curiam) ("The case is remanded to the Court of Appeals to vacate its judgment and to direct the District Court to vacate its judgment and to dismiss the indictment."). The Court should do the same here, since all agree the conviction should not stand.

II. ALTERNATIVELY, THE COURT SHOULD GRANT PLENARY REVIEW OF THE QUESTION PRESENTED.

To the extent the Court is not inclined to instruct the lower courts to vacate the conviction and dismiss the indictment, it should grant plenary review of the question presented. As the Petition for Certiorari established, Pet. 19–35, and the Government does not dispute, this case presents a critically important question on which lower courts are in sore need of guidance.

Although the Government claims the pardon moots this appeal, "a criminal case is moot only if it is shown that there is *no possibility* [of] any collateral legal consequences." *Sibron v. New York*, 392 U.S. 40, 57 (1968) (emphasis added). While the Government asserts that the pardon "obliterate[s]" all collateral consequences, BIO 6, it ignores the cases that have held the opposite. *See* Pet. 37–38 (citing examples); *Nixon v. United States*, 506 U.S. 224, 232 (1993) ("[T]he granting of a pardon is in no sense an overturning of a judgment of conviction."); *Carlesi v. New York*, 233 U.S. 51, 59 (1914) (a pardoned offense can still be considered as a "circumstance of aggravation" in future sentencing); *United States v. Benton*, 98 F.4th 1119, 1129 (D.C. Cir. 2024) ("[U]nder the modern understanding of a Presidential pardon's effect, it does not blot out guilt or create a factual fiction that conviction never occurred."); Samuel Williston, *Does A Pardon Blot Out Guilt?*, 28 Harv. L. Rev. 647, 654 (1915) ("[I]t has always been the law and still is that in spite of the pardon the conviction may be used to discredit [a] witness.").

Indeed, the Government *concedes* the possibility of collateral consequences, as it has filed a motion in the district court seeking to vacate the conviction "to effectuate the pardon and avoid any doubt about its effects." BIO 4. It is thus clear that the existence of such "doubt" precludes a finding of mootness.

Moreover, despite statements in the government's response brief suggesting that the pardon may "automatically" entitle Mr. Sittenfeld to a refund, BIO 5, the Government is not in fact prepared to refund the fine as an automatic consequence of the pardon. After the government filed its response, Mr. Sittenfeld's

counsel sought clarification of the Government's position regarding his entitlement to a refund. The Government responded that it will not provide a refund unless and until Mr. Sittenfeld's conviction is vacated or the judiciary otherwise authorizes a refund.

Accordingly, short of a certainty that the conviction will be vacated and the fine repaid, the case is not moot and plenary review would be proper.

CONCLUSION

The Court should grant the petition for writ of certiorari, vacate the judgment of the court of appeals, and remand the case to the district court with express instructions to vacate the district court's judgment and dismiss the indictment. Alternatively, the Court should grant plenary review and hear the case on the merits.

NOVEMBER 24, 2025

Respectfully submitted,

JAMES R. SAYWELL
JONES DAY
901 Lakeside Avenue
Cleveland, OH 44114

ALEXANDER V. MAUGERI
JONES DAY
250 Vesey Street
New York, NY 10281

NOEL J. FRANCISCO
Counsel of Record
ANTHONY DICK
JONES DAY
51 Louisiana Ave., NW
Washington, D.C. 20001
(202) 879-3939
njfrancisco@jonesday.com

KELLY HOLT RODRIGUEZ
JONES DAY
90 South Seventh Street
Suite 4950
Minneapolis, MN 55402

Counsel for Petitioner