

NO. 23-7166

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2024

CHARLES JONES,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

REPLY BRIEF OF THE PETITIONER

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REPLY BRIEF OF PETITIONER

This Court should GVR petitioner's case so the Eleventh Circuit can consider the jurisdictional issue in light of the Solicitor General's new position presented in its responsive brief.

The Solicitor General has reaffirmed that the life sentence in this case should be vacated, and it has expressly requested a GVR so the court below can reconsider whether there was proper jurisdiction in this case in light of the government's new legal position in these proceedings: that once the court of appeals has granted authorization to consider a second or successive 28 U.S.C. §2255 motion under 28 U.S.C. §§2244(b)(3)(A), (C) and 2255(h)(2), that the secondary look at these issues by the district court pursuant to 28 U.S.C. §2244(b)(4) is not a jurisdictional inquiry. (Respondent's br. at 11). As more fully explained below, Petitioner is in full agreement with the government that this case should be GVR'd so the Eleventh Circuit can consider the government's new legal position after full and complete briefing.

In the proceedings below, all the parties agreed that the district court had proper jurisdiction over petitioner's instant second or successive ("SOS") §2255 motion because the motion was based on a new rule of constitutional law that was retroactively applicable on collateral review as required by 28 U.S.C. §2255(h)(2). (Respondent's br. 11, 15-16). The government and the petitioner further agreed that the residual clause of 18 U.S.C. §3559(c) -- which dictated a life sentence in this case -- was unconstitutionally vague, and that petitioner should be resentenced without

the §3559(c) enhancement. (Respondent’s br. 15-16). Nonetheless, the Eleventh Circuit issued a published opinion that found the district court had no jurisdiction to decide Petitioner’s SOS §2255 motion because there was no new rule of constitutional law that was retroactively applicable to the §3559(c) enhancement. *Jones v. United States*, 82 F.4th 1039, 1047-48 (2023). In accordance with its erroneous holding, the Eleventh Circuit ordered petitioner’s motion to be remanded and dismissed for lack of jurisdiction. *Id.*

In the proceedings before this Court, the Solicitor General has made concessions in addition to those made before the Eleventh Circuit. Petitioner agrees with these new concessions. In particular, Petitioner agrees with the Solicitor General that: the Eleventh Circuit erred when it found the district court lacked jurisdiction to decide the merits of petitioner’s SOS §2255 motion because the district court’s secondary new-rule inquiry under 28 U.S.C. §2244(b)(4) is nonjurisdictional; it was error by the Eleventh Circuit to disregard the government’s concessions below and its waiver of any nonjurisdictional defenses; and the Eleventh Circuit’s errors had a substantial effect on the outcome of Petitioner’s case. (Respondent’s br. at 15-16).

The government argues in its responsive brief that the Eleventh Circuit erred, in large part, due to the fact that it assumed the district court’s §2244(b)(4) inquiry was jurisdictional without considering otherwise or requiring briefing on the issue. (Responsive br. at 16). It further argues that the court of appeals would have

benefitted from this Court's recent case of *Harrow v. Department of Defense*, 601 U.S. 480 (2024), which also bears on the issue. *Id.* As a result of its concessions and positions, as well as the fact that the issue was not raised or briefed below, the government has requested a GVR as an appropriate resolution of this case. (Respondent's br. at 11, 16). The Petitioner agrees with the government that a GVR is appropriate to allow the Eleventh Circuit to consider the Solicitor General's previously unarticulated position on the jurisdictional issue in the first instance with full and complete briefing.

The Petitioner further asserts that a GVR in this case is especially warranted because the Eleventh Circuit, through its published decision, created both an intercircuit and intracircuit conflict on the new §2244(b)(4) issue without any apparent inkling that it was doing so. The government's new position that §2244(b)(4) is not jurisdictional is based on a Sixth Circuit case, *Williams v. United States*, 927 F.3d 427, 439 (6th Cir. 2019). (Respondent's brief at 14). The Court in *Williams* found that the court of appeal's initial authorization of an SOS §2255 motion challenging an Armed Career Criminal Act (ACCA) enhancement provided jurisdiction under §2255(h)(2). *Id.* at 436-438. Additionally, it found that the district court's secondary *de novo* review of the requirements set out in §2244(b) and §2255(1) and (2) were non-jurisdictional mandatory rules processing procedures which could be waived. *Id.* at 436-438. Because the government had waived its defenses under §2255(h) and §2244(b), the defendant in *Williams* obtained SOS §2255

relief. *Id.* at 445-446. Had Mr. Jones litigated his SOS §2255 motion in the Sixth Circuit, he – like Williams – would have been granted relief from his unconstitutional sentence. Without a GVR, this unwarranted disparity between defendants in the Eleventh Circuit and defendants in the Sixth Circuit will remain intact, even though the Eleventh Circuit was apparently unaware of the fact that it had created such disparities under 28 U.S.C. §2255(b)(4). These disparities are not limited to §3559(c) claims.

In addition, a GVR should be granted because the Eleventh Circuit’s decision creates an intracircuit conflict which also bears on the intercircuit conflict with *Williams*. The government noted in its responsive brief that the Eleventh Circuit has published authorities with opposite holdings regarding the jurisdictional nature of the district court’s secondary §2244(b)(4) inquiry. The government first cited *Jackson v. United States*, 875 F.3d 1089 (11th Cir. 2017). The *Jackson* court analyzed the certificate of appealability requirements set out in 28 U.S.C. §2253. It noted that a certificate of appealability was required if the district court had issued a final order in a §2255 proceeding. 875 F.3d at 1089. *Jackson* found that “for §2253 purposes,” the district court’s *de novo* look at §2255(h)(2)’s requirements was a determination “on the merits,” – and that “the District Court had jurisdiction . . . because [the Eleventh Circuit] had authorized [the §2255 motion] under §2244(b)(3)(A).” Accordingly, *Jackson* found that the district court’s new-rule inquiry in SOS §2255 motions was a decision on the merits, not a jurisdictional issue.

Contrary to *Jackson* is another published Eleventh Circuit case, *Randolph v. United States*, 904 F.3d 962 (11th Cir. 2018). *Randolph* found that the district court’s secondary new-rule inquiry under §2255(h)(2) to determine if a new rule was previously unavailable was a jurisdictional matter. It stated that under §2255(h)(2) the district court had to revisit the new-rule inquiry, and if the district court found that the motion met (h)(2)’s requirements, “the district court had jurisdiction to decide whether any relief was due,” but “if the motion did not meet the §2255(h) requirements, the court lacked jurisdiction to decide whether the motion had any merit.” *Randolph*, 904 F.3d at 964. The Eleventh Circuit’s decision in Petitioner’s case relied on *Randolph* to carry that jurisdictional holding forward. *Jones*, 82 F.4th 1039 (2023). However, if the Eleventh Circuit had been aware of *Jackson*, it would have been compelled through the prior panel precedent rule to apply the earlier case, which was *Jackson*’s non-jurisdictional ruling. This would have resulted in relief for Mr. Jones from his unconstitutional mandatory life sentence, and it would have avoided the intercircuit conflict that arose with *Williams*, *supra*.

Even though the government has suggested that the Eleventh Circuit can reconcile these differences in some future case (Respondent br. at 17), the more just and expeditious route would be to GVR this case now to correct a clear error that was inadvertently missed by the parties and the courts, especially since the issue has now been highlighted and can be squarely addressed below. In contrast, if the issue is allowed to fester, the law will continue to be muddled and confused for the foreseeable

future. This Court should GVR the case so these issues can be fully briefed and the Eleventh Circuit can avoid creating intracircuit and intercircuit conflicts, or at the very least make an explicit decision that such conflicts are its intended result.

As noted in the government's responsive brief, a GVR is a highly beneficial resolution because it would conserve scarce resources of the courts; "assist[] the court below by flagging" issues that were not considered; "assist[] this Court by procuring the benefit" of the lower court's insight before ruling on the merits; and it would "improve the fairness and accuracy of the judicial outcome," which both parties agree is lacking here. *Lawrence v. Chater*, 516 U.S. 163, 167-68 (1996). Moreover, in this case, a GVR would allow the Eleventh Circuit to avoid creating multiple conflicts in the law if that was not its intention. In light of the above, a GVR is the best option for resolving the myriad of issues in this case.

At this eight-year juncture in Jones' case, a GVR is the most just and expeditious resolution available. The alternative of denying cert based on a new issue in the Respondent's brief -- even though the issue was never raised below by any party or any court -- would result in extreme unfair prejudice, and would be especially egregious because it would unjustly deny relief from a mandatory life sentence that both parties agree is unconstitutional and should be vacated. Furthermore, denial of cert would allow continued intracircuit and intercircuit conflicts, constitutional violations, and disparities under Eleventh Circuit law. This Court should address the new issue raised in Respondent's brief by GVR'ing the case

so the §2244(b)(4) issue can be properly briefed and resolved. There is no prejudice with a GVR as both parties agree that this is an appropriate resolution of Jones' cert petition. (see Respondent's Brief at 11-12, 15-17).

CONCLUSION

Based upon the foregoing, the Court should GVR Jones' case in light of the Solicitor General's new legal position expressed in its responsive brief.

Respectfully submitted,

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