No. 24-_____

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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QUESTION PRESENTED

Petitioner Arthur Seale successfully moved under 28 U.S.C. § 2255 to vacate one of his convictions on constitutional grounds. But the district court declined to conduct a full resentencing. Instead, it merely amended his criminal judgment to subtract the prison time attributable to the vacated conviction. Dr. Seale appealed from that amended criminal judgment, arguing that the district court should have resentenced him. The Third Circuit held that the certificate of appealability requirement in 28 U.S.C. § 2253(c) barred jurisdiction over Dr. Seale's appeal.

The question presented is: Can 28 U.S.C. § 2253(c) bar courts of appeals from exercising jurisdiction over cases like Dr. Seale's?

RELATED PROCEEDINGS

Proceedings below:

United States Court of Appeals (3d Cir.):

United States v. Seale, No. 23-1088 (Sept. 23, 2024) (dismissing appeal from amended criminal judgment for lack of jurisdiction)

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

United States v. Seale, Crim. No. 92-372 (criminal docket; amended judgment entered Jan. 3, 2023)

Proceedings in companion case:

Supreme Court of the United States:

Seale v. United States, No. 23-7806 (June 20, 2024) (petition for a writ of certiorari from Section 2255 docket)

United States Court of Appeals (3d Cir.):

Seale v. United States, No. 23-1089 (Mar. 22, 2024) (denying certificate of appealability and dismissing appeal from Section 2255 docket)

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

Seale v. United States, Civ. No. 19-21016 (Dec. 30, 2022) (order granting in part and denying in part Section 2255 motion to vacate sentence)

Other proceedings:

United States Court of Appeals (3d Cir.):

In re Seale, No. 19-2888 (Oct. 18, 2019) (granting leave to file successive Section 2255 motion)

United States v. Seale, No. 92-5686 (Apr. 7, 1994) (direct appeal from original criminal judgment)

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

Seale v. United States, Civ. No. 18-9075 (Mar. 26, 2019) (dismissing second or successive Section 2255 motion)

Seale v. United States, Civ. No. 07-4356 (Feb. 27, 2009) (withdrawing second Section 2255 motion)

Seale v. United States, Civ. No. 04-3830 (Dec. 12, 2005) (denying first Section 2255 motion)

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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 in this case.

OPINIONS BELOW

The order of the Third Circuit (Pet. App. 1a-2a) is unpublished. The amended judgment entered by the district court (Pet. App. 8a-16a) is unpublished.

JURISDICTION

The order of the court of appeals was entered on September 10, 2024. Pet. App. 3a-4a. This Court has jurisdiction under 28 U.S.C. § 1254(1).

RELEVANT STATUTORY PROVISIONS

28 U.S.C. §§ 2253(c)(1)(B), (c)(2) provide in relevant part:

> (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—
>
> . . .
>
> (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.

INTRODUCTION

After successfully moving under 28 U.S.C. § 2255[1] to vacate his unconstitutional conviction, petitioner Arthur Seale argued that the district court should conduct a full resentencing, giving him a chance to present evidence of his extensive rehabilitation. Instead, the district court merely subtracted the five years attributable to the vacated conviction from Dr. Seale's 95-year sentence. It filed an amended criminal judgment on Dr. Seale's criminal docket, deleting the unconstitutional conviction and replacing Dr. Seale's 95-year sentence with a 90-year one.

Dr. Seale filed two appeals, one from the amended criminal judgment entered onto his criminal docket (at issue in this petition) and one from his civil Section 2255 docket (pending before this Court, No. 23-7806). The Third Circuit held it had jurisdiction over neither. As relevant here, it concluded that 28 U.S.C. § 2253(c)'s certificate of appealability requirement applied and required the dismissal of both appeals notwithstanding Dr. Seale's claims of legal error.

The Third Circuit has recognized that its "sister courts are divided" over whether and when to exercise jurisdiction in cases like Dr. Seale's. *See Clark v. United States*, 76 F.4th 206, 211 (3d Cir. 2023), *cert. denied*, 144 S. Ct. 1382 (2024). Some allow appeals from the underlying criminal case, some from the civil Section 2255 case, and some from neither. And though that split implicates the many prisoners whose convictions are vacated each time this Court narrows

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[1] Subsequent statutory references are to Title 28 of the United States Code unless otherwise indicated.

the scope of a criminal statute on constitutional grounds, this Court is unlikely to see a vehicle as clean as this one again. Few prisoners will have the wherewithal to file two notices of appeal, in two different dockets, as Dr. Seale did. And fewer still will have a claim to resentencing as strong as Dr. Seale's. In the thirty-three years since he was originally sentenced, Dr. Seale has maintained a spotless record, with not a single infraction to his name. He has earned four degrees, including a Ph.D. And Dr. Seale—now seventy-seven years old—has helped hundreds of prisoners through his teaching and hospice work.

This Court should take advantage of this rare opportunity by granting certiorari to clarify the jurisdictional rules governing appeals like Dr. Seale's.

STATEMENT OF THE CASE

A. Legal background

1. Section 2255 allows federal defendants to challenge the legality of their detention. Proceedings under Section 2255 are collateral civil proceedings.[2] *See Heflin v. United States*, 358 U.S. 415, 418 n.7 (1959). A successful Section 2255 motion results in an amended judgment in the prisoner's criminal proceeding. 28 U.S.C. § 2255(b). If a prisoner is successful in vacating a conviction or sentence, the district court should "discharge the prisoner or resentence him or grant a new trial or correct the

[2] For example, to petitioner's knowledge, all district courts open a separate civil docket when a motion is filed under Section 2255.

sentence as may appear appropriate." 28 U.S.C. § 2255(b).

As relevant here, a judge who "resentence[s]" a defendant must hold a sentencing hearing, where the court considers new argument and evidence and reevaluates the defendant's sentence in light of changes in the law and facts. *See United States v. Flack*, 941 F.3d 238, 241 (6th Cir. 2019). A defendant also has the right to be present at a resentencing, the right to allocute, and other procedural rights. *Id.* at 240 (collecting cases); *see, e.g.*, Fed. R. Crim. P. 43(a)(3), 32(i)(4).

By contrast, a judge who "corrects" a defendant's sentence can only take the "arithmetical, technical, or mechanical" step of vacating the sentence that accompanied the now-vacated conviction. *Flack*, 941 F.3d at 241 (citing Fed. R. Crim. P. 35(a)). None of the procedural rights that apply to a resentencing apply to a sentence correction. *Id.*

2. Federal prisoners have a right to appeal the final order in a Section 2255 proceeding. 28 U.S.C. § 2253(a). But that right is cabined; prisoners may appeal from "the final order in a proceeding under section 2255" only when they obtain a "certificate of appealability" (COA). 28 U.S.C. § 2253(c)(1)(B). To obtain a COA, a prisoner must make a "substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). That is, a COA cannot issue based on the denial of statutory or other procedural rights. Without a COA, an appellate court lacks jurisdiction over an appeal from the final order in a Section 2255 proceeding. *Gonzalez v. Thaler*, 565 U.S. 134, 142 (2012).

Those restrictions stand in contrast to appeals from criminal cases. A criminal defendant can appeal his conviction or sentence as of right. *See Coppedge v. United States*, 369 U.S. 438, 441-42 (1962). Federal appellate courts have jurisdiction over these direct appeals under 28 U.S.C. § 1291 and 18 U.S.C. § 3742, neither of which require leave to file an appeal. And a criminal defendant need not raise a constitutional issue on appeal; he can appeal a procedural or statutory error as of right.

B. Factual and procedural background

1. In 1992, petitioner Arthur Seale was arrested for his part in a high-profile kidnapping. He was charged in the District of New Jersey with kidnapping and extortion. Pet. App. 31a. He pleaded guilty to seven federal charges, including, as relevant here, the knowing and willful carrying and use of a firearm in relation to a "crime of violence" under 18 U.S.C. § 924(c). *Id.* 22a. The then-mandatory Sentencing Guidelines required that Dr. Seale receive a sentence of life imprisonment, and the court achieved that result by imposing the statutory maximum term on each count, with all sentences running consecutively. *Id.* 25a. Accordingly, the district court sentenced Dr. Seale to 95 years. *Id.* 22a. Dr. Seale then filed multiple unsuccessful Section 2255 motions.

2. In 2019, this Court held the residual clause in 18 U.S.C. § 924(c)(3)(B) unconstitutionally vague. *United States v. Davis*, 588 U.S. 445, 470 (2019). Dr. Seale then filed a pro se motion under Section 2255 to vacate his 18 U.S.C. § 924(c) conviction. Pet. App. 29a. The Third Circuit authorized the motion as second or

successive, allowing Dr. Seale's motion to proceed in district court. *Id.* 32a.

Represented by counsel, Dr. Seale then filed a supplemental motion arguing for vacatur of his 18 U.S.C. § 924(c) conviction. Supp. Mem. of Law in Supp. Mot. to Correct Sentence Under 28 U.S.C. § 2255, Civ. No. 19-21016, ECF No. 12 (Supp. Mem.). He also made several arguments that he was entitled to a resentencing, rather than just a sentence correction. *Id.* at 13-16. For example, Dr. Seale argued that the vacatur of his 18 U.S.C. § 924(c) conviction would render his prior Guidelines calculation incorrect and thus necessitate a resentencing. *Id.* at 14 (citing *United States v. Davis*, 112 F.3d 118, 121-22 (3d Cir. 1997); *Gall v. United States*, 552 U.S. 38, 51 (2007)). He also argued that he should be resentenced because the mandatory guidelines regime under which he was originally sentenced had since been declared unconstitutional. *Id.* (citing *United States v. Booker*, 543 U.S. 220, 246-47 (2005)).

Most importantly, Dr. Seale argued that his "age, lack of criminal history, education, and medical conditions" warranted a reduced sentence under the 18 U.S.C. § 3553(a) sentencing factors. *Id.* at 16-25; *see also Pepper v. United States*, 562 U.S. 476, 491-92 (2011). He noted that he had never been cited for an incident or infraction. Supp. Mem. 18. He emphasized that his "achievements since sentencing"—including earning four degrees in prison, starting with a bachelor's degree and culminating in a Ph.D.—"are extensive, and intentionally focused on self-reflection and atonement." *Id.* at 23. He explained that he had

helped over 500 inmates earn GEDs and over 100 inmates earn associate degrees. *Id.* at 20. And he documented his most recent service, as a volunteer inmate companion, working with prisoners suffering from end-of-life complications like dementia. *Id.* at 21-22.

3. Dr. Seale's case then proceeded in two separate dockets.

a. First, in Dr. Seale's civil Section 2255 docket, Civ. No. 19-21016, the district court issued an order vacating Dr. Seale's 18 U.S.C. § 924(c) conviction but denying his request for a full resentencing. Pet. App. 45a-46a. The district court believed it had to deny Dr. Seale's motion for a resentencing because the original sentencing judge expressed an intent that Dr. Seale "never be free" and because a resentencing might result in a "windfall." *Id.* 43a.

Dr. Seale sought to appeal from his civil docket, arguing, as relevant here, that his appeal did not require a COA and that even if it did, he had made the necessary "substantial showing of the denial of a constitutional right" when he proved his 18 U.S.C. § 924(c) conviction was unconstitutional. *See id.* 27a; 28 U.S.C. § 2253(c)(2). The district court held that a COA was required and that Dr. Seale was not entitled to one. Pet. App. 26a-28a.

Dr. Seale next sought review from the Third Circuit, raising the same arguments. *Id.* 47a. The Third Circuit agreed with the district court and dismissed the appeal for lack of jurisdiction. *Id.* 1a.

Dr. Seale then petitioned this Court for certiorari on the Third Circuit's ruling. Dkt. No. 23-1089, ECF

No. 20. That petition is pending before this Court. Pet., No. 23-7806.

b. Second, the district court entered an amended judgment in the docket for Dr. Seale's 1992 criminal proceeding, Crim. No. 92-372. Pet. App. 8a-16a. The amended judgment vacated the 18 U.S.C. § 924(c) conviction and its accompanying five-year sentence. *Id.* 8a. It made no other changes to Dr. Seale's sentence, leaving him with a 90-year term of imprisonment on the remaining counts. *Id.* 11a.

Dr. Seale filed a timely appeal from that amended judgment to the Third Circuit. *Id.* 47a. The government argued to the Third Circuit that the appeal should be dismissed for lack of jurisdiction, or, in the alternative, affirmed on the merits. U.S. C.A. Br. 1. In response, Dr. Seale again argued that he should be able to appeal without a COA and, in the alternative, that he was entitled to one. Petr. C.A. Br. 6-10, 7 n.2. The Third Circuit summarily dismissed Dr. Seale's criminal appeal. Pet. App. 3a. On Dr. Seale's motion, it clarified that the dismissal was for lack of jurisdiction. *Id.* 1a.

This petition for certiorari in Dr. Seale's criminal docket follows.

REASONS FOR GRANTING THE WRIT

There is a square and acknowledged split over how a criminal defendant who has secured vacatur under Section 2255 should appeal the district court's failure to resentence him. Some courts say he can appeal from the amended judgment in his criminal case, some say from his civil Section 2255 docket, and some foreclose an appeal altogether. This Court has

before it two petitions—one from Dr. Seale's Section 2255 docket and this petition from his criminal docket. Granting both would allow this Court to fully resolve the split. This Court should do so and reject the untenable line drawn by the court below, which held that a federal prisoner may appeal any challenge to a resentencing following a Section 2255 vacatur *except* the challenge Dr. Seale raised—that he didn't get a resentencing at all.

I. There is an acknowledged split on the question presented.

The Third Circuit recognized that its "sister courts are divided" on whether courts of appeals have jurisdiction in cases like this one: A criminal defendant secures vacatur of a conviction under Section 2255 but argues that the district court erred in declining to resentence him. *See Clark*, 76 F.4th at 211. Four circuits recognize their jurisdiction in such cases; two circuits do not.

A. Four circuits would exercise jurisdiction over Dr. Seale's appeal.

The Second, Fourth, and Sixth Circuits would exercise jurisdiction over Dr. Seale's appeal from his criminal docket without requiring a COA. The Seventh Circuit would exercise jurisdiction over Dr. Seale's appeal from his civil Section 2255 docket: It would require a COA but would hold that Dr. Seale was entitled to a COA.

1. In 2007, the Fourth Circuit held that a criminal defendant who prevails on the merits of his Section 2255 claim and then challenges the district court's failure to resentence him "is appealing a new criminal

sentence and therefore need not obtain a COA." *United States v. Hadden*, 475 F.3d 652, 664 (4th Cir. 2007). Like Dr. Seale, the defendant in *Hadden* obtained vacatur of one of his convictions under Section 2255. *Id.* at 657. As in Dr. Seale's case, the district court corrected the *Hadden* defendant's sentence rather than conducting a resentencing. *Id.* Like Dr. Seale, the *Hadden* defendant then filed a direct criminal appeal from his amended judgment. *Id.* at 657-58. And like Dr. Seale, the *Hadden* defendant argued on appeal that the district court was required to conduct a resentencing rather than merely correcting his sentence. *Id.* at 658, 666.

The Fourth Circuit explained that the appeal went to aspects of the *Hadden* defendant's criminal punishment rather than the merits of his civil habeas petition. *Id.* at 666. Therefore, his was a direct appeal governed by 18 U.S.C. § 3742(a) and 28 U.S.C. § 1291, not 28 U.S.C. § 2253(c). No COA was required. *Id.* at 664, 666.

2. The Sixth Circuit adopted the Fourth Circuit's rule in 2013. Because the defendant in *Ajan v. United States*, 731 F.3d 629 (6th Cir. 2013), sought to "challeng[e] *the relief granted* . . . he [was] appealing a new criminal sentence and therefore need not obtain a COA." *Id.* at 631 (quoting *Hadden,* 475 F.3d at 664). The Sixth Circuit reasoned that, under 18 U.S.C. § 3742(a), "a criminal defendant is *entitled* to a direct review of a sentence for non-constitutional error." *Id.* at 632. Requiring a COA was thus untenable because it "would limit review of a defendant's first legal sentence to only constitutional error." *Id.*

3. In *Kaziu v. United States*, 108 F.4th 86 (2d Cir. 2024) (Calabresi, J.), the Second Circuit agreed with the Fourth and Sixth Circuits. It held that no COA was required to appeal a district court's decision "whether merely to correct the invalid sentence by dropping the part that was based on the invalid conviction" or to "engage in a full resentencing." *Id.* at 94 n.7.

Before and after *Kaziu*, the Second Circuit has consistently exercised jurisdiction in cases like Dr. Seale's. *See, e.g.*, *United States v. Pena*, 58 F.4th 613, 618 (2d Cir. 2022), *cert. denied*, 144 S. Ct. 147 (2023); *United States v. FNU LNU*, 2024 WL 4039575, at *3 (2d Cir. Sept. 4, 2024).

4. Finally, the Seventh Circuit would also exercise jurisdiction over Dr. Seale's appeal, albeit from his civil Section 2255 order rather than from his criminal amended judgment. Though the Seventh Circuit requires a COA in such cases, it also holds that petitioners like Dr. Seale are entitled to one.

In *Williams v. United States*, 150 F.3d 639 (7th Cir. 1998) (Easterbrook, J.), the Seventh Circuit held that a petitioner can obtain a COA so long as he can show that, "had his constitutional rights been respected at the time of conviction," his original sentence "would have been lower." *Id.* at 641. That is, when a prisoner shows a constitutional violation sufficient to vacate his conviction or sentence in the first place, he's made the "substantial showing of the denial of a constitutional right" that's needed to obtain a COA. *Id.* (quoting 28 U.S.C. § 2253(c)(2)).

Dr. Seale would have gotten a COA under the Seventh Circuit's rule. Had Dr. Seale's "constitutional rights been respected at the time of conviction," *id.*, he

would not have been convicted under 18 U.S.C. § 924(c). Absent his 18 U.S.C. § 924(c) conviction, his sentence "would have been lower," *id.*: The statutory maximum would have been 90 years, instead of 95 years, so Dr. Seale's sentence would have been at least five years shorter. *See* Pet. App. 11a.

B. Two circuits would not exercise jurisdiction over Dr. Seale's appeal.

1. In 2021, the Eleventh Circuit weighed in on the question presented. Like Dr. Seale, the criminal defendant in *United States v. Cody*, 998 F.3d 912 (11th Cir. 2021) (Pryor, C.J.), *cert denied*, 142 S. Ct. 1419 (2022), had appealed both the final order in his Section 2255 proceeding and his amended criminal judgment on the ground that the district court should have given him a full resentencing after he obtained vacatur of one of his convictions. *Id.* at 914-15. The Eleventh Circuit held the COA requirement applied to both his criminal and his civil appeal. *Id.* Acknowledging the Fourth Circuit's "contrary holding," the Eleventh Circuit nonetheless held that it lacked jurisdiction. *Id.* at 916.

The Eleventh Circuit provided two bases for its conclusion. First, the Eleventh Circuit reasoned that the COA requirement applies to "a proceeding under section 2255"; that one of Section 2255's clauses requires the court to "select one of four remedies" provided in the subsection; and that the "proceeding under Section 2255" thus extends through selection of the remedy. *Id.*, at 915-16 (quoting 28 U.S.C. §§ 2253(c), 2255(b)). Second, the Eleventh Circuit said that the COA requirement applies to an appeal "to the extent it raises section 2255 issues." *Id.* at 915 (citing

United States v. Futch, 518 F.3d 887, 894 (11th Cir. 2008)).

The Eleventh Circuit acknowledged that challenges to what it called the "implementation of a chosen remedy"—for instance, an argument that the resentencing process was defective due to an incorrect Guidelines calculation—don't require a COA. *See id.* at 916. But it nonetheless held that cases where the defendant was denied any resentencing process whatsoever require a COA. *Id.*

2. The Third Circuit subsequently "agree[d] with the Eleventh Circuit" that absent a COA, a defendant cannot appeal a failure to resentence him following vacatur of a conviction pursuant to Section 2255. *See Clark*, 76 F.4th at 211. Like the Eleventh Circuit, the Third Circuit recognized as "uncontroverted that a challenge to the sentence entered following a § 2255 proceeding is directly appealable." *Id.* But it nonetheless held that a COA was required if the basis for such a challenge was a refusal to resentence. *Id.* It has applied that holding to appeals from Section 2255 civil dockets, *id.* at 210, and to appeals like this one, from criminal dockets, *see* Pet. App. 1a.

The Third Circuit also held—in contrast to the Seventh Circuit—that the "constitutional claim" that entitled the prisoner to vacatur in the first place could not form the basis of a COA to challenge his post-vacatur sentence. *See Clark*, 76 F.4th at 212 n.6.

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

1. This petition raises a pure question of law that was pressed and passed upon below. Dr. Seale first

argued that the COA requirement in Section 2253(c) did not apply to his criminal appeal. Petr. C.A. Br. 6-10 (response to Government's motion to dismiss or summarily affirm). He then argued that even if he needed a COA, he had already made a "substantial showing of the denial of a constitutional right" by proving that his 18 U.S.C. § 924(c) conviction was unconstitutional. *Id.* at 7 n.2. The Third Circuit rejected both arguments, dismissing the case for lack of jurisdiction. Pet. App. 1a, 3a.

2. Dr. Seale's case presents a uniquely clean vehicle for three reasons. First, Dr. Seale, unlike the vast majority of Section 2255 movants, has cleared the procedural hurdles to obtaining vacatur. *See* 28 U.S.C. §§ 2244(b)(2)-(3). Particularly since nearly 80 percent of federal habeas petitioners litigate their appeals pro se, that is "no mean feat." *See* U.S. Courts, *U.S. Courts of Appeals—Pro Se and Non-Pro Se Cases Commenced and Terminated* (last visited Nov. 21, 2024), https://perma.cc/3JZ6-7QWQ; *Reynolds v. Hepp*, 902 F.3d 699, 715 (7th Cir. 2018) (Wood, C.J., dissenting).

Second, Dr. Seale appealed from *both* his civil *and* his criminal dockets (and appealed from his criminal docket within the 14-day timeframe allowed for criminal appeals, *see* Fed. R. App. P. 4(b)(1)(A)). Pet. App. 47a. Alongside Dr. Seale's parallel petition in No. 23-7806, this petition thus presents a rare opportunity to fully resolve the circuit split. And only with both procedural postures before it can this Court ascertain which document constitutes "*the* final order"—singular—referenced in the certificate of appealability requirement. *See* 28 U.S.C. § 2253(c); *infra* at 24.

And third, thanks to Dr. Seale's diligence, it's clear that lack of jurisdiction was the sole basis for the decision below. The Third Circuit granted the Government's "Motion to Dismiss For Lack of Jurisdiction or, Alternatively, to Summarily Affirm." Pet. App. 3a. As is its typical practice, though, the Third Circuit did not initially clarify whether it was dismissing the appeal for lack of jurisdiction or affirming the district court's sentencing decision on the merits. *See id.* But because Dr. Seale filed a motion requesting it do so, the Third Circuit went on to clarify that the sole basis for its dismissal was lack of jurisdiction. *Id.* 1a.

3. In response to a petition from the Third Circuit's opinion in *Clark*, the Government made two vehicle arguments. *See* BIO at 17-21, *Clark, supra* (No. 23-5950). Neither provides a reason to deny certiorari in this case.[3]

a. The Government argued *Clark* was an inappropriate vehicle because that defendant appealed only from the Section 2255 order and only in his civil docket. *See* BIO at 17-19, *Clark, supra* (No. 23-5950). The better vehicle, the Government maintained, would be one where the criminal defendant filed a notice of appeal as to his amended criminal judgment in his criminal docket. *Id.* at 18-19. Dr. Seale did just that. Pet. App. 47a.

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[3] Aside from *Clark*, counsel has identified only one other petition for certiorari on the question presented. That petition predated the Second and Third Circuits' entry into the split. *See Cody v. United States*, 142 S. Ct. 1419 (2022).

Indeed, in its Brief in Opposition to Dr. Seale's companion case (No. 23-7806, from Dr. Seale's Section 2255 docket) the Government acknowledged that *this* case (an appeal from Dr. Seale's criminal docket) would implicate the split with the Fourth and Sixth Circuits. BIO at 18, *Seale*, *supra* (No. 23-7806).

b. The Government also argued that *Clark* presented a bad vehicle because the petitioner was not "entitled to more relief than he received"—that is, because the petitioner would ultimately lose on the merits even if the Third Circuit had jurisdiction over his case. *See* BIO at 19, *Clark*, *supra* (No. 23-5950). But any questions about the merits of Dr. Seale's claims would be addressed by the Third Circuit in the first instance on remand. This Court routinely grants review on jurisdictional questions without regard to the underlying merits.[4]

This petition thus should not hinge on the strength of Dr. Seale's ultimate merits case. But if that

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[4] *Compare United States v. Wong*, 575 U.S. 402, 405 (2015) (Federal Tort Claims Act statute of limitations not jurisdictional and subject to equitable tolling), *with Booth v. United States*, 914 F.3d 1199, 1206-08 (9th Cir. 2019) (holding, on remand from *Wong*, that equitable tolling did not save plaintiff's claim); *compare Hamer v. Neighborhood Hous. Servs. of Chi.*, 583 U.S. 17, 27 (2017) (Fed. R. App. P. 4(a)(5)(C) is not jurisdictional), *with Hamer v. Neighborhood Hous. Servs. of Chi.*, 897 F.3d 835, 841 (7th Cir. 2018) (on remand from *Hamer*, affirming denial of petitioner's claim on the merits); *compare Spokeo, Inc. v. Robins*, 578 U.S. 330, 334 (2016) (vacating judgment because of Article III concerns), *with Robins v. Spokeo, Inc.*, 867 F.3d 1108, 1118 (9th Cir. 2017) (reaffirming Article III standing following vacatur in *Spokeo*); *see also Andrews v. United States*, 373 U.S. 334, 336-37 (1963) (resolving jurisdictional question in favor of petitioner where court below had already ruled against him on merits).

factor is relevant to this Court's assessment, Dr. Seale has several compelling arguments for resentencing. For instance, the district court wrongly assumed Dr. Seale's request for resentencing "*must* be denied" because it believed the court that originally sentenced Dr. Seale would have wanted that. Pet. App. 43a (emphasis added); *see Ajan*, 731 F.3d at 633. And, independent of Section 2255(b), several other sources of law require the district court to conduct a full resentencing. *See supra* at 6-7.

Most importantly, "everything that is relevant to reaching a proper sentence is relevant to the decision of whether to correct or to resentence." *Kaziu*, 108 F.4th at 94 n.7. Here, Dr. Seale's "conduct . . . since the original sentencing" and "rehabilitation since his prior sentencing" are both relevant to reaching the proper sentence and thus to the decision of whether to correct or resentence. *See Concepcion v. United States*, 597 U.S. 481, 486, 493 (2022) (citing *Pepper*, 562 U.S. at 490, 492 (2011)).

And Dr. Seale's conduct and rehabilitation have been extraordinary. He appears to be the first person to ever earn a Ph.D. while incarcerated; he has never been cited for a single infraction in 33 years of incarceration; and he has dedicated countless hours of service as a hospice worker and counselor. *See* Supp. Mem. 18, 21; *see also supra* at 6-7. But the district court focused entirely on the nature of his crime and the information that was before the sentencing court in 1992. By treating everything since as irrelevant to the decision whether to correct or to resentence, the district court surely erred.

III. The question presented is important.

1. The split creates uncertainty about how and when to appeal a district court's denial of resentencing, leaving prisoners and their counsel guessing and resulting in duplicative litigation. For example, defendants in some circuits must appeal within 14 days of their amended criminal judgments, whereas defendants in the Seventh Circuit have 60 days from the date of their Section 2255 orders.[5] Indeed, even the Government has noted that "it is unclear" how criminal defendants ought to appeal in a case like Dr. Seale's. *See* BIO at 22, *Seale*, *supra* (No. 23-7806).

Until this Court resolves the question presented, all prisoners would now be well advised to appeal from both their civil and criminal dockets, clogging the courts with two notices of appeal, two separate appellate cases, and two separate certiorari petitions. Indeed, that's just what Dr. Seale did here: Two notices of appeal, two Third Circuit cases, and now two petitions for certiorari. *Supra* at 7-8.

2. The question presented lurks in the background every time this Court narrows the scope of a criminal statute on constitutional grounds. Scores of prisoners were eligible for Section 2255 review after this Court's holdings in *Johnson v. United States*, 576 U.S. 591, 606 (2015), *Sessions v. Dimaya*, 584 U.S. 148, 152

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[5] *See Hadden*, 475 F.3d at 658 (appeal taken from criminal judgment); Fed. R. App. P. 4(b) (14 days to file criminal notice of appeal); *Williams*, 150 F.3d at 640; Petr. C.A. Br. at V, *Williams, supra* (No. 97-3187) (appeal taken from civil Section 2255 order); Fed. R. App. P. 4(a) (60 days to file notice of appeal in Section 2255 case).

(2018), and *Davis*, 588 U.S. at 470. Thousands of petitions for postconviction relief followed.[6] And this Court will surely be asked to narrow another criminal statute on a constitutional basis in short order.[7]

To be sure, many of those prisoners will stumble on one of Section 2255's procedural hurdles and will not obtain vacatur. But for defendants who clear all those hurdles—even those whose convictions were obtained in violation of the Constitution—the Third and Eleventh Circuits essentially foreclose appellate review of an unlawful remedy: They require a COA but hold that a COA may not issue unless the failure to resentence itself amounts to a constitutional violation. Accordingly, even if the district court applied the wrong legal standard, misunderstood its discretion, failed to explain its reasoning, or clearly erred in some other way, a criminal defendant in the Third or Eleventh Circuits is out of luck.

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[6] *See Davis*, 588 U.S. at 465 (explaining that the residual clause in 18 U.S.C. § 924(c) had been used in "tens of thousands of federal prosecutions"); *In re Matthews*, 934 F.3d 296, 298 n.2 (3d Cir. 2019) (authorizing over 200 Section 2255 petitions in the Third Circuit 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 Section 2255 petitions in a three-month period).

[7] For example, several Second Amendment challenges to the scope of criminal laws seem poised to reach this Court. *See, e.g.*, *United States v. Jackson*, 2024 WL 4683965, at *1 (8th Cir. Nov. 5, 2024); Transcript of Oral Argument, *Range v. Attorney General*, (21-2835) (3d. Cir. 2024), https://perma.cc/T547-VBMJ.

IV. The Third Circuit was wrong to dismiss Dr. Seale's appeal for lack of jurisdiction.

Dr. Seale is proceeding on two related petitions for writs of certiorari. In the petition already pending before this Court, No. 23-7806, Dr. Seale explains why the Third Circuit had jurisdiction over his appeal from the order entered in his civil habeas proceeding. This section explains why, even if the Third Circuit did not have jurisdiction over that appeal, it does over this one—an appeal from the amended judgment in his criminal case.

A. The COA requirement does not apply to Dr. Seale's appeal.

Section 2253(c) applies only to appeals from "the final order in a proceeding under section 2255." 28 U.S.C. § 2253(c)(1)(B). That COA requirement does not apply to Dr. Seale's case. He is not taking an appeal from "a proceeding under section 2255," and he is not taking an appeal from "the final order" under Section 2255. *Id.*

1. Start with the "proceeding under Section 2255" language.

a. Dr. Seale's Section 2255 proceeding is Civ. No. 19-21016 (D.N.J.). This petition, however, concerns Dr. Seale's appeal from his criminal docket, Crim. No. 92-372 (D.N.J.). To state the obvious, a proceeding that started in 1992, years before Dr. Seale filed a Section 2255 motion, isn't a "proceeding under Section 2255." The captions of the two dockets reflect that reality, too: The United States is the moving party in Dr. Seale's criminal proceeding, while Dr. Seale is the moving party in his Section 2255 proceeding. *Compare*

Pet. App. 1a (*United States v. Seale*) *with* Pet. App. 20a (*Seale v. United States*).

Other features of Dr. Seale's case buttress that conclusion. First, Crim. No. 92-372 is a purely criminal proceeding. A Section 2255 proceeding, by contrast, is "not a proceeding in the original criminal prosecution but an independent civil suit." *Heflin*, 358 U.S. at 418 n.7 (1959); *see also United States v. Asakevich*, 810 F.3d 418, 422 (6th Cir. 2016) (Sutton, J.). Second, a state prisoner in Dr. Seale's position would not need a COA. After obtaining vacatur under Section 2254, such a prisoner would directly appeal a failure to resentence to the *state* court in the first instance, not the federal court.[8] Such a state appeal would not, of course, be governed by the federal Section 2253(c) provision. A state prisoner's right to appeal after receiving federal habeas relief should not be greater than his federal counterpart.[9]

b. The Third and Eleventh Circuits don't appear to disagree with any of that. As *Clark* put the point, "[i]t is uncontroverted that a challenge to the sentence entered following a § 2255 proceeding is directly

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[8] *See Harbison v. Bell*, 556 U.S. 180, 183 (2009) (Section 2254 proceeding ends with resolution of petition's merits); *Fay v. Noia*, 372 U.S. 391, 430-31 (1963), *overruled in part by Wainwright v. Sykes*, 433 U.S. 72 (1977) (federal habeas court "cannot revise the state court judgment"); *Pickens v. Howes*, 549 F.3d 377, 380 (6th Cir. 2008) (rather than making request of federal court to alter scope of relief, state made request of state court).

[9] *See Miller-El v. Cockrell*, 537 U.S. 322, 337 (2003); 28 U.S.C. § 2255(d); *compare* 28 U.S.C. § 2253(c)(1)(A) (COA requirement for Section 2254 proceeding), *with* 28 U.S.C. § 2253(c)(1)(B) (COA requirement for Section 2255 proceeding).

appealable." 76 F.4th at 211; *see also Cody*, 998 F.3d at 916. A defendant may appeal from his amended criminal judgment following a successful Section 2255 motion if he's arguing that the district court miscalculated his sentence, denied him the right to allocute, or imposed an unreasonable new sentence—no COA necessary.

The Third and Eleventh Circuits nonetheless draw a line between those appeals and appeals like Dr. Seale's, where the defendant argues that the district court should have resentenced him rather than merely correcting his sentence. *See Clark*, 76 F.4th at 212; *Cody*, 998 F.3d at 916.

Those courts gesture at two reasons for that distinction, neither persuasive. First, they suggest that a "proceeding under Section 2255" extends through the district court's choice of remedy because Section 2255(b) requires the court to choose a remedy (discharge, resentence, grant a new trial, or correct the sentence). *See Cody*, 998 F.3d at 916. That reasoning would prove too much. After all, Section 2255(b) doesn't merely require the court to *choose* a remedy; Section 2255(b) requires the court to *implement* that remedy—to actually conduct the resentencing, for instance. But the Third and Eleventh Circuit admit that appeals stemming from "implementation of the remedy" (that the resentencing proceeding was flawed, for instance) aren't appeals from "proceedings under Section 2255." *Id.*; *see also Clark*, 76 F.4th at 211.

Second, those circuits justify imposing a COA requirement on appeals like Dr. Seale's because they "raise[] Section 2255 issues." *See Cody*, 998 F.3d at

915. But there's no basis in the text of the statute for such an "issues"-based test. Section 2253(c) asks whether the appeal is "taken from . . . a *proceeding* under Section 2255." 28 U.S.C. § 2253(c)(1)(B) (emphasis added). It doesn't ask whether petitioners are raising particular *issues*. As the Fourth Circuit explained, the amended judgment is part of the criminal proceeding whether it argues over the implementation of a resentencing or over whether a full resentencing was required in the first place. *Hadden*, 475 F.3d at 666; *see also Ajan*, 731 F.3d at 631. Plus, many of the arguments in appeals over the choice between resentencing and correction won't be based on Section 2255 at all. In Dr. Seale's case, for instance, he not only argued that the choice was not "appropriate" within the meaning of Section 2255(b) but also that other sources of law required the district court to conduct a full resentencing. *See supra* at 6-7.

Besides, the distinction the Third and Eleventh Circuits purport to draw makes no sense. Those circuits would find that a defendant arguing he was denied his right to allocution at a resentencing, *see* Fed. R. Crim. P. 32(i)(4)(A)(ii), is allowed to appeal without a COA. But a defendant arguing that he was denied not only his right to allocution but all his other sentencing rights—in other words, a defendant arguing that the district court erred by failing to resentence him at all—*does* require a COA. That cannot be right.

2. Section 2253(c) doesn't cover Dr. Seale's case for a second reason. This case is an appeal taken from Dr. Seale's "Amended Judgment in a Criminal Case." Pet. App. 1a, 8a. But Section 2253(c) restricts appeals taken only from "*the final order* in a proceeding under

section 2255." 28 U.S.C. § 2253(c)(1)(B) (emphasis added). The amended judgment in Dr. Seale's criminal case is not an "order," and it is certainly not "*the* final order."

An "order" and an amended criminal judgment are distinct as a matter of law in this context. One acts on the other: A successful Section 2255 motion results in the entry of an order; that "order," in turn, serves to "vacate and set the *judgment* aside"—that is, the criminal judgment in the underlying criminal case. 28 U.S.C § 2255(b) (emphasis added). The two documents thus serve different functions, and this appeal only concerns the judgment in Dr. Seale's criminal case, not the order in his Section 2255 case.

Even if the amended judgment constituted a "final order," it surely was not "*the* final order" referred to in Section 2253(c). 28 U.S.C. § 2253(c)(1) (emphasis added). Use of the "definite article," "coupled with a singular noun," makes clear that Congress was referring to a single docket entry in the COA provision. *See Niz-Chavez v. Garland*, 593 U.S. 155, 165-66 (2021). That's particularly apparent by contrast with other appellate jurisdiction statutes, which are far more capacious—Section 1291, for example, provides jurisdiction over "*all* final decisions," and Section 1294 over "reviewable decision*s*," plural. 28 U.S.C. §§ 1291, 1294 (emphasis added).

But the Third Circuit applied Section 2253(c) to appeals taken from *two* separate docket entries—the final order in Dr. Seale's civil case *and* the amended judgment in his criminal case. Pet. App. 1a, 20a-21a. The Government has argued that the order in Dr. Seale's Section 2255 docket is "*the* final order" for

purposes of Section 2253(c). *See* BIO at 14-15, *Seale*, *supra* (No. 23-7806). So it can't maintain that the amended criminal judgment is also "*the* final order" under Section 2253(c).

B. Even if this Court holds a COA was required, Dr. Seale was entitled to one.

This Court should not extend the COA requirement to cover Dr. Seale's direct criminal appeal. If, however, this Court were to disagree, it should hold that Dr. Seale satisfied Section 2253(c)'s "substantial showing of the denial of a constitutional right" requirement when he proved that his 18 U.S.C. § 924(c) conviction was unconstitutional. *See* 28 U.S.C. § 2253(c)(2).

The Third Circuit has held that a petitioner like Dr. Seale, who has already shown he was denied a constitutional right in his underlying criminal case, must also show a second constitutional error was committed when the court refused to give him a resentencing. *See Clark*, 76 F.4th at 213. The text of Section 2253 supports no such requirement. 28 U.S.C. § 2253. It does not specify *when* the "denial of a constitutional right" must have occurred. *Id.* at § 2253(c)(2). And as the Seventh Circuit explained in *Williams*, Section 2253(c)(2) does not require that the "denial of a constitutional right" be the object of the instant appeal. *Id.*; *Williams*, 150 F.3d at 641.

Thus, even if—contrary to the text of the statute and the rule for every other direct criminal appeal—a COA were required in this case, Dr. Seale cleared the hurdle to obtain one when his 18 U.S.C. § 924(c) conviction was found unconstitutional.

CONCLUSION

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

Respectfully submitted,

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