No. 23-7166

IN THE SUPREME COURT OF THE UNITED STATES

CHARLES EDWARD JONES, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES

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QUESTION PRESENTED

Whether, after authorizing the district court to consider a second or successive motion pursuant to 28 U.S.C. 2255(h)(2), the court of appeals erred in later viewing the motion as nonetheless jurisdictionally barred for failure to satisfy that provision's requirements.

ADDITIONAL RELATED PROCEEDINGS

United States District Court (S.D. Fla.):

United States v. Jones, No. 02-cr-20875 (Apr. 25, 2003)

Jones v. United States, No. 05-cv-22622 (Dec. 14, 2006)

Jones v. United States, No. 12-cv-20820 (May 26, 2017)

Jones v. United States, No. 16-cv-22268 (Aug. 25, 2020)

United States Court of Appeals (11th Cir.):

United States v. Jones, No. 03-12256 (Dec. 17, 2003)

Jones v. United States, No. 07-10388 (Sept. 28, 2007)

United States v. Jones, No. 09-14686 (Apr. 30, 2010)

United States v. Jones, No. 11-13323 (June 26, 2012)

Jones v. United States, Nos. 12-14512, 12-14514 (Dec. 26, 2012)

United States v. Jones, No. 13-15564 (Sept. 22, 2014)

In re Jones, No. 16-12940 (June 17, 2016)

In re Jones, No. 16-14106 (July 27, 2016)

Jones v. United States, No. 18-10027 (July 2, 2019)

Jones v. United States, No. 20-13365 (Sept. 14, 2023)

Supreme Court of the United States:

Jones v. United States, No. 03-10749 (Oct. 4. 2004)

Jones v. United States, No. 08-5395 (Oct. 6, 2008)

Jones v. United States, No. 10-5703 (Oct. 4, 2010)

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A2) is reported at 82 F.4th 1039. The order of the district court (Pet. App. A3) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on September 14, 2023. A petition for rehearing was denied on December 8, 2023 (Pet. App. A1). On February 27, 2024, Justice Thomas extended the time within which to file a petition for a writ of certiorari to and including April 6, 2024, and the petition was filed on April

5, 2024. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the Southern District of Florida, petitioner was convicted on one count of armed bank robbery, in violation of 18 U.S.C. 2113(a) and (d); one count of discharging a firearm during and in relation to a crime of violence, in violation of 18 U.S.C. 924(c)(1)(A)(iii); and one count of possessing a firearm following a felony conviction, in violation of 18 U.S.C. 922(g)(1). Pet. App. A5, at 1. The district court sentenced petitioner to a term of imprisonment of life plus 120 months, to be followed by five years of supervised release. Id. at 2-3. The court of appeals affirmed, 90 Fed. Appx. 383 (Tbl.), and this Court denied a petition for a writ of certiorari, 543 U.S. 848. The district court later denied petitioner's motion under 28 U.S.C. 2255 to vacate his sentence, and both the district court and the court of appeals declined to issue a certificate of appealability (COA). 05-cv-22622 D. Ct. Doc. 56 (Dec. 14, 2006); 05-22622 D. Ct. Doc. 60 (Jan. 5, 2007); 07-10388 C.A. Order (Sept. 28, 2007).

In 2016, petitioner obtained leave from the court of appeals to file a second Section 2255 motion to challenge his sentence in light of Johnson v. United States, 576 U.S. 591 (2015). 16-12940 C.A. Order 2, 8 (June 17, 2016). The district court denied the

motion but granted a COA. 16-cv-22268 D. Ct. Doc. 31, at 8, 14 (Nov. 7, 2017). The court of appeals vacated and remanded for further proceedings. 18-10027 C.A. Doc. 31-2 (July 2, 2019). On remand, the district court again denied petitioner's motion but granted a COA. Pet. App. A3. The court of appeals vacated and remanded with instructions that the district court dismiss petitioner's motion for lack of jurisdiction. Pet. App. A2.

1. On September 30, 2002, petitioner entered a bank in North Miami Beach and pointed a semiautomatic handgun at the teller. Presentence Investigation Report (PSR) ¶ 3. Petitioner handed over a bag and instructed the teller to fill it with money. Ibid. The teller complied and placed $16,000 into the bag. PSR ¶ 4. Petitioner grabbed the bag and started to leave but paused to place the gun in his waist area. Ibid. The gun fired. Ibid. Petitioner ran out of the bank and eventually got into a getaway car. PSR ¶¶ 4, 8. After tracing the car to an accomplice, officers located petitioner and arrested him. PSR ¶¶ 10-15.

A federal grand jury in the Southern District of Florida indicted petitioner on one count of armed bank robbery, in violation of 18 U.S.C. 2113(a) and (d); one count of discharging a firearm during and in relation to a crime of violence, in violation of 18 U.S.C. 924(c)(1)(A)(iii); and one count of possessing a firearm following a felony conviction, in violation of 18 U.S.C. 922(g)(1). Indictment 1-3.

2. Before trial, the government filed a notice of its intent to seek a mandatory life sentence under 18 U.S.C. 3559(c) on the armed-bank-robbery count. 02-cr-20875 D. Ct. Doc. 38, at 1-2 (Jan. 7, 2003). Section 3559(c) requires a mandatory life sentence for (inter alia) a defendant whose current federal offense is a "serious violent felony" and who has at least two prior convictions in federal or state court for "serious violent felonies." 18 U.S.C. 3559(c)(1)(A)(i). The statute defines a "serious violent felony" to include:

> any * * * offense punishable by a maximum term of imprisonment of 10 years or more that has as an element the use, attempted use, or threatened use of physical force against the person of another or that, by its nature, involves a substantial risk that physical force against the person of another may be used in the course of committing the offense.

18 U.S.C. 3559(c)(2)(F)(ii). The clause beginning "that has as an element" has been described as the provision's "elements clause," and the clause beginning "that, by its nature," has been described as the provision's "residual clause." The government invoked Section 3559(c) based on two of petitioner's prior Florida convictions: (1) a 1988 conviction for robbery; and (2) a 2001 conviction for burglary with assault or battery. 02-cr-20875 D. Ct. Doc. 38, at 1-2; see PSR ¶¶ 63, 70.

3. Petitioner proceeded to trial, and a jury found him guilty on all counts. Jury Verdict 1. At sentencing, petitioner did not dispute that he was subject to a mandatory life sentence

under Section 3559(c) on the armed-bank-robbery count. Pet. App. A3, at 2. The district court sentenced petitioner to life imprisonment on the armed-bank-robbery count and 360 months of imprisonment on the Section 922(g)(1) count, to be served concurrently. Pet. App. A5, at 2. The court additionally sentenced petitioner to 120 months on the Section 924(c) count, to be served consecutively to his sentences on the other counts. Ibid. The court of appeals affirmed, 90 Fed. Appx. 383 (Tbl.), and this Court denied a petition for a writ of certiorari, 543 U.S. 848.

In 2005, petitioner filed a motion under 28 U.S.C. 2255 to vacate his sentence, alleging, among other things, ineffective assistance of counsel. 05-cv-22622 D. Ct. Doc. 1, at 4 (Oct. 3, 2005). The district court dismissed the motion and declined to issue a COA. 05-cv-22622 D. Ct. Doc. 56; 05-22622 D. Ct. Doc. 60. The court of appeals likewise denied a COA, 07-10388 C.A. Order, and this Court denied a petition for a writ of certiorari, 555 U.S. 912.

4. In 2015, this Court concluded in Johnson v. United States, supra, that the "residual clause" of the Armed Career Criminal Act (ACCA), 18 U.S.C. 924(e)(2)(B), which is worded similarly to Section 3559(c)(2)(F)(ii)'s residual clause, is unconstitutionally vague. 576 U.S. at 597. The Court subsequently held that Johnson announced a new substantive rule that applies

retroactively to cases on collateral review. Welch v. United States, 578 U.S. 120, 135 (2016).

In 2016, the court of appeals granted petitioner's application for authorization to file a second Section 2255 motion. 16-12940 C.A. Order 2, 8. In that motion, petitioner sought to vacate his life sentence on the ground that Section 3559(c)(2)(F)(ii)'s residual clause was unconstitutionally vague in light of Johnson and that his prior Florida convictions therefore did not qualify as "serious violent felonies." See 16-cv-22268 D. Ct. Doc. 5, at 15-17 (June 26, 2016). The district court denied petitioner's motion, concluding that "Johnson does not apply" to Section 3559(c)(2)(F)(ii). 16-cv-22268 D. Ct. Doc. 31, at 8. The court granted a COA. Id. at 14.

While petitioner's appeal was pending, the government filed with the court of appeals a motion to remand the case in light of Beeman v. United States, 871 F.3d 1215 (11th Cir. 2017), cert. denied, 139 S. Ct. 1168 (2019). 18-10027 C.A. Doc. 24, at 4 (May 20, 2019). The government explained that the court in Beeman had recognized that, to prevail on a claim based on Johnson, a movant must show that reliance on the ACCA's residual clause led to his enhanced sentence. Id. at 13. The government contended that because the district court had not addressed whether petitioner's sentence had relied on the residual clause in Section 3559(c)(2)(F)(ii), the case should be remanded for that court to

do so. Id. at 17. The court of appeals granted the government's motion, vacated the district court's denial of petitioner's Section 2255 motion, and remanded for further proceedings. 18-10027 C.A. Doc. 31-2.

5. On remand, the district court again denied petitioner's Section 2255 motion. Pet. App. A3. The court found that petitioner had met his burden to show that reliance on Section 3559(c)(2)(F)(ii)'s residual clause had led to his enhanced sentence because, "at the time of sentencing," Florida burglary with assault or battery was "a 'serious violent felony' under only the residual clause." Id. at 6. The court nevertheless concluded that petitioner had "fail[ed] to successfully challenge his sentence because the residual clause of § 3559(c) is not recognized as unconstitutional under Johnson." Id. at 14.

The district court acknowledged that since Johnson, this Court's decisions in Sessions v. Dimaya, 584 U.S. 148 (2018), and United States v. Davis, 588 U.S. 445 (2019), had found similarly worded residual-clause provisions in 18 U.S.C. 16(b) and 18 U.S.C. 924(c)(3)(B), respectively, to be unconstitutionally vague. Pet. App. A3, at 12-13. But in the district court's view, the holdings of Johnson, Dimaya, and Davis did not "necessarily apply to other residual clauses," and the court "decline[d] to strike [down] the residual clause of § 3559(c) as unconstitutional." Id. at 13. The court did, however, grant a COA on whether Section

3559(c)(2)(F)(ii)'s "residual clause is unconstitutionally vague." Id. at 14.

6. While petitioner's appeal was pending before the court of appeals, the Department of Justice informed Congress that the Department had "determined that no reasonable basis exists to distinguish" Section 3559(c)(2)(F)(ii)'s residual clause from the provision this Court found "to be unconstitutionally vague in Davis." Pet. App. B1, at 2. The Department observed that Section 3559(c)(2)(F)(ii)'s residual clause was "almost identical" to the provision at issue in Davis and that it had "been interpreted to require the same 'categorical approach' to the classification of predicate offenses." Ibid. The Department therefore recognized that Davis had rendered Section 3559(c)(2)(F)(ii)'s residual clause unconstitutional. Ibid.

Consistent with that position, the government acknowledged in its brief before the court of appeals that Section 3559(c)(2)(F)(ii)'s residual clause was unconstitutionally vague. Gov't C.A. Br. 7-12. The government also declined to contest the district court's determination that petitioner's life sentence depended on Section 3559(c)(2)(F)(ii)'s residual clause. Id. at 12. The government therefore urged the court of appeals to reverse the denial of petitioner's Section 2255 motion and to remand for the district court to resentence petitioner without the Section 3559(c) enhancement. Ibid.

In light of the government's position, the court of appeals appointed an amicus to defend the district court's judgment. 20-13365 C.A. Order (July 20, 2021). The court-appointed amicus filed a brief arguing that Section 3559(c)(2)(F)(ii)'s residual clause is constitutional and that, even if it is not, petitioner failed to meet his burden of showing that his life sentence depended on that clause. Amicus C.A. Br. 2-3.

The court of appeals subsequently directed the parties and the court-appointed amicus to "be prepared at oral argument to discuss the jurisdictional issue of whether [petitioner's] second or successive section 2255 motion relied on 'a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.'" 20-13365 C.A. Order 2 (Jan. 5, 2022). At oral argument, petitioner, the government, and the court-appointed amicus agreed that petitioner's second Section 2255 motion relied on such a new rule of constitutional law. See 20-13365 C.A. Oral Argument 0:46-0:53, 8:55-9:21, 15:23-15:27, www.ca11.uscourts.gov/oral-argument-recordings.

7. The court of appeals vacated and remanded with instructions to dismiss petitioner's Section 2255 motion for lack of jurisdiction. Pet. App. A2.

a. The court of appeals observed that under Section 2255(h)(2), "[a] second or successive motion" for postconviction

relief under Section 2255 "must be certified as provided in [28 U.S.C.] section 2244 by a panel of the appropriate court of appeals to contain . . . a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable." Pet. App. A2, at 8 (quoting 28 U.S.C. 2255(h)(2)) (brackets in original). The court of appeals acknowledged that "neither the government nor the amicus curiae [had] raised the issue" of whether Section 2255(h)(2)'s requirements were satisfied. Ibid. The court of appeals also acknowledged that the district court had not "expressly consider[ed]" the issue. Id. at 9. But the court of appeals felt "obligated to address" the "jurisdictional" requirements of Section 2255(h)(2) "before reaching the merits of [petitioner's] motion." Id. at 8.

The court of appeals then took the view that petitioner's "motion failed to satisfy the requirements" of Section 2255(h)(2). Pet. App. A2, at 8. The court acknowledged that the "precedents [petitioner] relies on -- Johnson and Davis -- did announce new rules." Id. at 18. But the court concluded that those decisions did not "supply the new rule of constitutional law he needs to satisfy section 2255(h)(2)" because they did not specifically involve Section 3559(c)(2)(F)(ii)'s residual clause. Id. at 15-16. In the court's view, "there is no new rule of constitutional law from the Supreme Court allowing for [petitioner's] second

section 2255 motion" because this Court "has not yet answered the 'question central' to [his] petition": "'whether [Section 3559(c)(2)(F)(ii)'s] residual clause is unconstitutionally vague.'" Id. at 20 (citations omitted). The court of appeals therefore concluded that "the district court did not have jurisdiction to decide the merits of [petitioner's] second section 2255 motion." Id. at 5.

b. Judge Wilson dissented. Pet. App. A2, at 22-28. In his view, "jurisdiction pursuant to § 2252(h)(2)" existed because petitioner was "merely asking [a court] to enforce the principle that governed Johnson: that defendants have the right not to be sentenced under an unpredictable and arbitrary residual clause." Id. at 22.

DISCUSSION

Petitioner contends (Pet. 15-28) that his claim challenging the constitutionality of Section 3559(c)(2)(F)(ii)'s residual clause is cognizable in a second or successive Section 2255 motion. The government agrees with petitioner that the court of appeals erred in its view that, even though it had granted certification under Section 2255(h)(2) for the filing of a second or successive motion for postconviction relief, the district court lacked jurisdiction to consider petitioner's claim. This Court may therefore appropriately decide to grant the petition for a writ of certiorari, vacate the judgment of the court of appeals, and remand

for further consideration of that jurisdictional issue, which had a substantial effect on the outcome of the case. In the alternative, however, the Court should deny certiorari, as it is unclear whether the error below will be repeated in any future circuit decisions.

1. The court of appeals erred in concluding that the district court lacked jurisdiction to decide the merits of petitioner's challenge to the constitutionality of Section 3559(c)(2)(F)(ii)'s residual clause, and in thereby failing to consider the government's willingness to waive all nonjurisdictional defenses.

a. Under Section 2255(h), a "second or successive" Section 2255 motion "must be certified as provided in section 2244 by a panel of the appropriate court of appeals to contain" either (1) "newly discovered evidence" that satisfies certain requirements, or (2) "a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable." 28 U.S.C. 2255(h). Section 2244(b)(3)(A), in turn, requires the movant to seek an order from the court of appeals "authorizing the district court to consider" the second or successive Section 2255 motion. 28 U.S.C. 2244(b)(3)(A). And Section 2244(b)(3)(C) provides that the court of appeals may grant such authorization upon "a prima facie showing" that the motion relies on the requisite newly discovered

evidence or new rule of constitutional law. 28 U.S.C. 2244(b)(3)(C). If the court of appeals does not grant such certification, then the district court is "without jurisdiction to entertain" the second or successive motion. Burton v. Stewart, 549 U.S. 147, 153 (2007) (per curiam) (construing Section 2244).

Once the court of appeals does grant certification, however, the district court's consideration of the motion is generally governed by Section 2244(b). See In re Bradford, 830 F.3d 1273, 1276 & n.1 (11th Cir. 2016). Under Section 2244(b)(4), the district court "shall dismiss" any claim unless the movant "shows" that the claim relies on the requisite newly discovered evidence or new rule of constitutional law. 28 U.S.C. 2244(b)(4). That requirement, while mirroring Section 2255(h)'s certification requirement, is not itself framed in jurisdictional terms.

In Harrow v. Department of Defense, 601 U.S. 480 (2024), this Court recently reaffirmed that a requirement should be treated "as jurisdictional only if Congress 'clearly states' that it is." Id. at 484 (citation omitted). No such clear statement appears in Section 2244(b)(4). Although Section 2244(b)(4) mandates dismissal unless the movant makes the requisite showing, this Court "has long 'rejected the notion that "all mandatory prescriptions, however emphatic, are . . . properly typed jurisdictional."'" Gonzalez v. Thaler, 565 U.S. 134, 146 (2012) (citation omitted). Once the court of appeals has granted authorization "to consider"

a second or successive Section 2255 motion, 28 U.S.C. 2244(b)(3)(A), whether the movant has shown that the motion satisfies the newly-discovered-evidence or new-rule requirement is a nonjurisdictional inquiry, which can be "forfeited or waived," Harrow, 601 U.S. at 483-484; see Williams v. United States, 927 F.3d 427, 439 (6th Cir. 2019) (explaining that Section 2244(b)(4) "does not impose a jurisdictional bar on a federal prisoner * * * seeking relief under § 2255").

Additional features of the statutory scheme confirm that the inquiry is nonjurisdictional. First, Section 2244(b)(3) describes the effect of the initial order by the court of appeals as "authorizing the district court to consider" the second or successive Section 2255 motion. 28 U.S.C. 2244(b)(3)(A); see 28 U.S.C. 2244(b)(3)(B) (describing the court of appeals' order in identical language); 28 U.S.C. 2244(b)(3)(C) (describing the court of appeals' order as authorizing the motion's "filing"). A grant of authority to the district court "to consider" the motion implies that any further inquiry into whether the motion satisfies the relevant statutory requirements is a merits inquiry rather than a jurisdictional one.

Second, the newly-discovered-evidence and new-rule requirements are "largely duplicative" of the merits of the movant's underlying claim for relief. Gonzalez, 565 U.S. at 143 (identifying such overlap as one reason why certain COA

requirements are nonjurisdictional). And Section 2244(b)(4) frames the newly-discovered-evidence and new-rule requirements in terms of something that the movant must "show[]" in order to avoid dismissal, 28 U.S.C. 2244(b)(4), suggesting that it is in the nature of a prerequisite to relief.

b. The court of appeals in this case authorized the filing of petitioner's second Section 2255 motion. 16-12940 C.A. Order 8. That authorization vested the district court with jurisdiction "to consider" that motion. 28 U.S.C. 2244(b)(3)(A). The government then acknowledged that the motion satisfied the new-rule requirement, that Section 3559(c)(2)(F)(ii)'s residual clause is unconstitutionally vague, and that petitioner should be resentenced without the Section 3559(c) enhancement. See 20-13365 C.A. Oral Argument 8:55-9:21; Gov't C.A. Br. 7-12. In affirmatively supporting relief, the government's intent was to waive any reliance on the new-rule requirement as a defense to petitioner's claim. And the court of appeals would have no sound reason to sua sponte rely on a nonjurisdictional defense that the government had affirmatively waived. See Wood v. Milyard, 566 U.S. 463, 465-466 (2012) (finding that a court of appeals abused its discretion in overriding a State's "waiver" of a nonjurisdictional defense to a post-conviction petition).

2. In light of the court of appeals' error, this Court could appropriately grant the petition for a writ of certiorari, vacate

the decision below, and remand for further consideration. See, e.g., Stampe v. United States, 142 S. Ct. 1356 (2022) (No. 21-6412); Santos v. United States, 139 S. Ct. 1714 (2019) (No. 18-7096); Franklin v. United States, 139 S. Ct. 1254 (2019) (No. 17-8401); Close v. United States, 583 U.S. 802 (2017) (No. 16-9461). The court of appeals treated the new-rule requirement as a jurisdictional bar without the benefit of briefing on whether the requirement is jurisdictional in the first place, see p. 9, supra, and without the benefit of this Court's decision in Harrow, which bears on that issue.

A remand would allow the court to reconsider that issue in light of the position expressed in this brief and this Court's recent decision in Harrow. See Lawrence v. Chater, 516 U.S. 163, 167 (1996) (per curiam) (recognizing the Court's power to grant, vacate, and remand in light of "positions newly taken by the Solicitor General" and in order to "assist[] the court below by flagging a particular issue that it does not appear to have fully considered"). As noted above, this Court's intervening decision in Harrow reaffirmed that a requirement should be treated "as jurisdictional only if Congress 'clearly states' that it is." 601 U.S. at 484 (citation omitted); see Lawrence, 516 U.S. at 166 (recognizing the Court's power to grant, vacate, and remand in light of its "own decisions"). And if the court of appeals on remand appropriately treats the new-rule requirement as

nonjurisdictional, the government's waiver of that requirement would permit the court to reach the merits of petitioner's claim that Section 3559(c)(2)(F)(ii)'s residual clause is unconstitutionally vague.

3. In the alternative, the petition for a writ of certiorari should be denied. Although the court of appeals denied rehearing en banc in this case, see Pet. App. A1, the rehearing petition (to which the court did not request a response) did not raise the issue of whether the new-rule requirement is jurisdictional. Nor did the petition identify the competing circuit precedent on that issue: The court of appeals has previously recognized that, once it has authorized the district court to consider a second or successive Section 2255 motion, a determination that the motion does not satisfy the newly-discovered-evidence or new-rule requirement is "an adjudication on the merits." Jackson v. United States, 875 F.3d 1089, 1091 (11th Cir. 2017) (per curiam). As "[i]t is primarily the task of a Court of Appeals to reconcile its internal difficulties," Wisniewski v. United States, 353 U.S. 901, 902 (1957) (per curiam), plenary review here is unwarranted.

a. In Jackson v. United States, the court of appeals authorized the district court "to consider a second or successive § 2255 motion on the basis of" Johnson v. United States, 576 U.S. 591 (2015). 875 F.3d at 1090. Then, "[w]ith the benefit of the complete record," the district court found that the motion did not

satisfy the new-rule requirement and dismissed the motion with prejudice. Ibid. The court of appeals determined that the movant could not appeal that dismissal without obtaining a COA because the dismissal was an order disposing of the motion "on the merits." Ibid.

In doing so, the court of appeals declined to view the district court's determination that the motion did not satisfy the new-rule requirement as a "jurisdictional" determination. Jackson, 875 F.3d at 1091. The court of appeals explained that the district court "had jurisdiction over the case because [the court of appeals] had authorized it under § 2244(b)(3)(A)." Ibid. And the court of appeals stated that the district court "exercised that jurisdiction in performing a de novo review of the merits of [the movant's] claim under Johnson." Ibid. The court of appeals therefore characterized the dismissal of the motion as "an adjudication on the merits," akin to a "dismissal with prejudice for failure to state a claim upon which relief can be granted." Id. at 1091 & n.4; see id. at 1091 ("The District Court had jurisdiction, exercised it, performed de novo review as instructed by [the court of appeals], and dismissed [the second or successive] petition on the merits.").

b. In this case, however, the court of appeals enforced the new-rule requirement as a jurisdictional bar on deciding the merits of petitioner's Section 2255 motion. Pet. App. A2, at 5. In doing

so, the court of appeals failed to cite, much less reconcile the decision below with, its prior decision in Jackson, which recognized that the new-rule requirement is nonjurisdictional where, as here, the court of appeals has authorized the district court to consider a second or successive Section 2255 motion. 875 F.3d at 1091.

Instead, the court of appeals principally relied on a quote from its prior decision in Randolph v. United States, 904 F.3d 962 (11th Cir. 2018), stating that if a second or successive Section 2255 motion "does not meet the § 2255(h) requirements," the district court "lacks jurisdiction to decide whether the motion has any merit." Pet. App. A2, at 9 (quoting Randolph, 904 F.3d at 964). But Randolph itself postdates and fails to address Jackson, and therefore would not be the governing precedent. See United States v. Hogan, 986 F.2d 1364, 1369 (11th Cir. 1993) ("[I]t is the firmly established rule of this Circuit that each succeeding panel is bound by the holding of the first panel to address an issue of law.").

And while the decision below cited other decisions in discussing the purportedly "jurisdictional" post-certification requirements (see Pet. App. A2, at 8-9), none refers to the new-rule requirement as jurisdictional at all. See Granda v. United States, 990 F.3d 1272, 1283-1284 (11th Cir. 2021), cert. denied, 142 S. Ct. 1233 (2022); In re Bradford, 830 F.3d at 1276; In re

Moore, 830 F.3d 1268, 1271 (11th Cir. 2016); In re Pinder, 824 F.3d 977, 979 (11th Cir. 2016); In re Moss, 703 F.3d 1301, 1303 (11th Cir. 2013); Jordan v. Secretary, Dep't of Corr., 485 F.3d 1351, 1357-1358 (11th Cir.), cert. denied, 552 U.S. 979 (2007).

c. The court of appeals therefore identified no valid basis for concluding that the district court lacked jurisdiction to consider the merits of petitioner's second Section 2255 motion. And in future cases, the court may adhere to Jackson's correct determination, rather than the erroneous one in the decision below. Thus, if this Court does not grant, vacate, and remand, it should deny certiorari.

CONCLUSION

The Court may elect to grant the petition for a writ of certiorari, vacate the court of appeals' judgment, and remand the case for further proceedings in light of Harrow v. Department of Defense, 601 U.S. 480 (2024), and the position expressed in this brief. In the alternative, the petition for a writ of certiorari should be denied.

Respectfully submitted.

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