No. 21-___

IN THE

Supreme Court of the United States

DENNIS DE JESUS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

When a court erroneously holds that it lacks jurisdiction to decide a matter, can a cursory statement that the court would deny relief on the merits if it had jurisdiction qualify as an alternative holding, as determined by the Third, Fourth, and Eleventh Circuits, or is such a statement instead merely dicta of no binding effect, as determined by the Fifth, Sixth, Seventh, Ninth, and Tenth Circuits?

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

The parties to the proceeding below are Petitioner Dennis De Jesus and Respondent United States of America. There are no nongovernmental corporate parties requiring a disclosure statement under Supreme Court Rule 29.6.

RELATED PROCEEDINGS

United States of America v. Dennis De Jesus, No. 0:14-cr-60270-JIC, U.S. District Court for the Southern District of Florida. Judgment entered June 30, 2015, *amended* Aug. 28, 2015.

Dennis De Jesus v. United States of America, No. 0:16-cv-61718-JIC, U.S. District Court for the Southern District of Florida. Dispositive order entered Jan. 8, 2018, *motion to alter or amend denied* Mar. 2, 2018.

Dennis De Jesus v. United States of America, No. 18-11092, U.S. Court of Appeals for the Eleventh Circuit. Judgment entered Jan. 27, 2021, *rehearing denied* Apr. 30, 2021.

TABLE OF CONTENTS

TABLE OF CONTENTS
(continued)

Page

TABLE OF CONTENTS
(continued)

Page

TABLE OF AUTHORITIES

Page(s)

CASES

TABLE OF AUTHORITIES
(continued)

Page(s)

STATUTES

TABLE OF AUTHORITIES
(continued)

Page(s)

INTRODUCTION

The Eleventh Circuit determined that the District Court erred in holding that it lacked jurisdiction, and yet nevertheless affirmed based on the District Court's cursory statement that it would have denied relief even if it had jurisdiction. In allowing such a cursory statement concerning the merits to qualify as a holding, the Eleventh Circuit's approach, shared by the Third and Fourth Circuits, runs contrary to the positions taken by the Fifth, Sixth, Seventh, Ninth, and Tenth Circuits; the principles articulated by this Court in *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 101 (1998); and the allocation of decision-making authority between trial and appellate courts, particularly on issues governed by the abuse of discretion standard of review. This Court should grant the petition for writ of certiorari to resolve this conflict and protect against the jurisdictional overreach and error invited by the Third, Fourth, and Eleventh Circuits' rule.

OPINIONS BELOW

The Eleventh Circuit's opinion (Pet. App. 1a–5a) is available at 842 F. App'x 492. The District Court's opinion on Mr. De Jesus' motion to alter or amend (Pet. App. 7a–10a) is available at 2018 WL 10436234. The District Court's underlying order denying Mr. De Jesus relief under 28 U.S.C. § 2255 (Pet. App. 11a–18a) is available at 2018 WL 10436235, and the magistrate judge's report and recommendation (Pet. App. 19a–50a) is available at 2017 WL 11501751.

JURISDICTION

The Eleventh Circuit entered judgment on January 27, 2021, Pet. App. 6a, and denied rehearing and rehearing en banc on April 30, 2021, *id.* at 51a. By order of March 19, 2020, this Court extended the deadline to file a petition for certiorari "to 150 days from the date of the lower court judgment, order denying discretionary review, or order denying a timely petition for rehearing." This Court has jurisdiction under 28 U.S.C. § 1254(1).

RELEVANT PROVISIONS

28 U.S.C. § 2255 provides, in relevant part:

> **(a)** A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.
>
> **(b)** Unless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief, the court shall cause notice thereof to be served upon the United States attorney, grant a prompt hearing thereon, determine the issues and make findings of fact and conclusions of law with respect thereto. If the court finds that the judgment was rendered without jurisdiction, or that the sentence imposed was not authorized by law or otherwise open to collateral attack,

> or that there has been such a denial or infringement of the constitutional rights of the prisoner as to render the judgment vulnerable to collateral attack, the court shall vacate and set the judgment aside and shall discharge the prisoner or resentence him or grant a new trial or correct the sentence as may appear appropriate.
>
> * * *
>
> **(d)** An appeal may be taken to the court of appeals from the order entered on the motion as from a final judgment on application for a writ of habeas corpus.

28 U.S.C. § 2255.

Federal Rule of Civil Procedure 59(e) provides:

> A motion to alter or amend a judgment must be filed no later than 28 days after the entry of the judgment.

Fed. R. Civ. P. 59(e).

STATEMENT

This Court should grant certiorari to resolve the split over whether, when a court holds it lacks jurisdiction, a cursory statement that the court would have denied relief on the merits can qualify as an alternative holding. The Third, Fourth, and Eleventh Circuits have held that such a cursory statement on the merits can qualify as an alternative holding. *Rutherford v. McDonough*, 466 F.3d 970, 976 (11th Cir. 2006); *IFC Interconsult, AG v. Safeguard Int'l Partners, LLC*, 438 F.3d 298, 317 (3d Cir. 2006); *Food Town Stores, Inc. v. E.E.O.C.*, 708 F.2d 920, 923 (4th Cir. 1983). But the Fifth, Sixth, Seventh, Ninth, and Tenth Circuits disagree. *See, e.g.*, *Leibovitch v. Islamic Republic of Iran*,

697 F.3d 561, 572–73 (7th Cir. 2012) (vacating district court's "hypothetical determination" of merits and remanding for reconsideration of claims with the understanding that jurisdiction existed); *accord Will v. Lumpkin*, 978 F.3d 933, 937–40 & n.39 (5th Cir. 2020); *Leal Garcia v. Quarterman*, 573 F.3d 214, 216 n.4 (5th Cir. 2009); *Kentucky v. U.S. ex rel. Hagel*, 759 F.3d 588, 600–01 (6th Cir. 2014); *Charter Twp. of Muskegon v. City of Muskegon*, 303 F.3d 755, 763–64 (6th Cir. 2002); *Moore v. Maricopa Cnty. Sheriff's Off.*, 657 F.3d 890, 895 (9th Cir. 2011); *In re Dep't of Energy Stripper Well Litig.*, 206 F.3d 1345, 1351 (10th Cir. 2000). The Court should resolve this split by holding that, after a court holds it lacks jurisdiction, its statement concerning the merits cannot qualify as an alternative holding. This issue is important because allowing such a statement to qualify as an alternative holding—as the Third, Fourth, and Eleventh Circuits have done—incentivizes federal courts to overreach their jurisdiction, invites them into error, and leaves appellate courts doing work that rightfully belongs to the trial courts with primary responsibility for resolving issues in the first instance.

A. Factual and Procedural Background

1. In 2018, Mr. De Jesus timely filed an uncounseled motion under Federal Rule of Civil Procedure 59(e) to alter or amend the District Court's denial of his motion under 28 U.S.C. § 2255 to vacate, set aside, or correct his sentence. Pet. App. 69a–71a. In his underlying Section 2255 motion, Mr. De Jesus challenged his convictions under 18 U.S.C. §§ 2423(c), 2422(b), and 2252(a)(4)(B) on the following grounds: (1) the United States lacked authority to punish the underlying conduct, which occurred in a foreign nation where

it was legal and accepted; (2) punishing Mr. De Jesus for that conduct violated the constitutional requirement of fair notice because the conduct was legal where it occurred; and (3) counsel provided ineffective assistance in, among other things, failing to inform Mr. De Jesus that he could fight the charges against him on those bases. Pet. App. 56a–61a; *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) ("A document filed *pro se* is to be liberally construed." (internal quotation marks omitted)). The District Court had jurisdiction under 18 U.S.C. § 3231, 28 U.S.C. § 2255, and 28 U.S.C. § 1331.

The District Court denied Mr. De Jesus' Section 2255 motion. Specifically, the District Court adopted the magistrate judge's recommendation to deny Mr. De Jesus' motion, along with the magistrate judge's misunderstanding of Mr. De Jesus' arguments as presenting a claim that the United States categorically cannot punish conduct that occurs abroad and a "classic mistake of law argument." Pet. App. 17a.

To correct the District Court's misunderstanding, Mr. De Jesus filed his uncounseled motion under Rule 59(e). Whereas the District Court apparently had denied his Section 2255 motion on the view that Mr. De Jesus challenged his convictions on grounds of extraterritoriality alone or as a matter of mere international law, Mr. De Jesus clarified that he was arguing that he was unconstitutionally convicted for a non-offense because "the conduct [underlying his convictions] is legal within Colombian society" and therefore was beyond the power of Congress to punish. *Id.* at 69a–71a. And whereas the District Court had understood his vagueness argument as a "mistake of law argument," Mr. De Jesus explained that he had argued that

he had not been accorded the constitutionally required fair notice because his conduct occurred in a foreign country where it was legal. *Id.*; *id.* at 17a.

The District Court "denied" Mr. De Jesus' Rule 59(e) motion on the ground that it lacked jurisdiction, believing the motion to be an unauthorized successive Section 2255 motion. *Id.* at 7a–10a; *see* 28 U.S.C. § 2244. The District Court concluded its ruling with three sentences:

> Moreover, even if the Court did have jurisdiction, it would still deny the Motion. Petitioner raises no new arguments or issues. Instead, he simply rehashes arguments that the Court previously rejected in the Habeas Order. *Cf. Huggins v. Pastrana*, No. 09-CV-22635-LENARD/WHITE, 2010 WL 4384211, at *2 (S.D. Fla. Sept. 22, 2010) ("Rule 59(e) cannot be used to relitigate matters that already have been considered, or to proffer new arguments or evidence that the petitioner could have brought up earlier.").

Pet. App. 10a. The District Court made no other comments as to Mr. De Jesus' claims.

2. Mr. De Jesus appealed the District Court's ruling, and the Eleventh Circuit appointed counsel after this Court released a decision holding (in the context of a petition under 28 U.S.C. § 2254) that a timely Rule 59(e) motion is not a second or successive habeas petition. *See Banister v. Davis*, 140 S. Ct. 1698 (2020). A panel of the Eleventh Circuit agreed with Mr. De Jesus that, under *Banister*, the District Court erred in holding it lacked jurisdiction to decide Mr. De Jesus' Rue 59(e) motion. Pet. App. 2a–3a.

The Eleventh Circuit panel, however, ultimately affirmed based on the District Court's cursory statement that it would deny relief on the merits if it did have jurisdiction. In affirming the District Court's order, the Panel relied on the Eleventh Circuit's decision in *Rutherford*, in which the court held that it may affirm based on a district court's assessment of the merits of a case even if the district court's statements concerning the merits are accompanied by the district court's conclusion that it lacks jurisdiction to decide the merits. 466 F.3d at 976. Following *Rutherford*, the Eleventh Circuit panel deemed the District Court's cursory statement on the merits an "alternative holding" and affirmed on that basis, concluding that "the district court did not abuse its discretion in denying De Jesus's Rule 59(e) motion." Pet. App. 3a–5a. In doing so, the Panel relied on essentially the same case law and reasoning as did the District Court in denying Mr. De Jesus' Section 2255 motion—that is, the case law and reasoning relied on by the District Court *before Mr. De Jesus attempted to correct the misunderstanding of his arguments via his Rule 59(e) motion*. *See id.* at 14a–17a.

On April 30, 2021, the Eleventh Circuit denied Mr. De Jesus' petition for rehearing or rehearing en banc. *Id.* at 51a. This petition follows.

REASONS FOR GRANTING THE PETITION

I. THE DECISION BELOW IMPLICATES A SPLIT AMONG THE FEDERAL COURTS CONCERNING WHETHER AND WHEN, FOLLOWING A HOLDING OF NO JURISDICTION, A PURPORTED CONCLUSION ON THE MERITS QUALIFIES AS A BINDING HOLDING.

It is well established that "[f]ederal courts are courts of limited jurisdiction[,] … which is not to be expanded by judicial decree." *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). "Without jurisdiction the court cannot proceed at all in any cause. Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause." *Steel Co.*, 523 U.S. at 94 (quoting *Ex parte McCardle*, 74 U.S. (7 Wall.) 506, 514 (1868)). It should follow that when a court determines it lacks jurisdiction, any statements beyond "announcing the fact and dismissing the cause" are improper—or at best, dicta. *Cf. United States v. Rubin*, 609 F.2d 51, 69 n.2 (2d Cir. 1979) (Friendly, J., concurring) ("A judge's power to bind is limited to the issue that is before him; he cannot transmute dictum into decision by waving a wand and uttering the word 'hold.'"). And yet the federal appellate courts are divided over whether a court can render a holding on the merits after concluding it lacks jurisdiction.

A. Recognizing this Court's command in *Steel Co.*, the Fifth, Seventh, Ninth, and Tenth Circuits have concluded that, where a district court concludes it lacks jurisdiction, the district court's statements concerning the merits do not qualify as an alternative

holding capable of supporting affirmance. As a result, these Circuits remand for adjudication of the merits when a district court erroneously concludes it lacks jurisdiction—even if the district court also purported to reject the appellant's position on the merits in an alternative "holding." *See, e.g.*, *Leibovitch*, 697 F.3d at 572–73; *Will*, 978 F.3d at 937–40 & n.39; *Leal Garcia*, 573 F.3d at 216 n.4; *Hagel*, 759 F.3d at 600–01; *Moore*, 657 F.3d at 895; *Dep't of Energy*, 206 F.3d at 1351.

Consider, for example, the Seventh Circuit's decision in *Leibovitch*. The district court in that case dismissed the plaintiffs' emotional distress claims for lack of jurisdiction, but it also purported to hold that the plaintiffs' claims failed on the merits. 697 F.3d at 563, 572–73. On appeal, the Seventh Circuit concluded that the district court did have jurisdiction—but it vacated the district court's discussion of the merits and remanded for reconsideration of the merits of plaintiffs' claims. *Id.* at 573. As the Seventh Circuit explained, in presuming jurisdiction, the district court had violated a bedrock rule ensuring federal courts stay within their lawful authority:

> Our concern is that a court may not presume hypothetical jurisdiction in order to decide a question on the merits. *See Steel Co.*, [523 U.S. at 101] ("Hypothetical jurisdiction produces nothing more than a hypothetical judgment—which comes to the same thing as an advisory opinion, disapproved by this Court from the beginning."). Therefore, we vacate the district court's hypothetical determination and remand for reconsideration of the emotional distress claims.

Id. at 572–73.

The Fifth, Ninth, and Tenth Circuits, too, have declined to treat a district court's discussion of the merits as a holding where the court also concluded it lacked jurisdiction. As these courts have all recognized, to hold otherwise would be contrary to the general principle, recognized in *Steel Co.*, that federal courts should not exercise hypothetical jurisdiction to reach the merits of a dispute. *See Leal Garcia*, 573 F.3d at 216 n.4 ("Leal also appeals the second part of the district court's decision, in which it hypothesized that it had jurisdiction and reached the merits of his claim after determining that it was without jurisdiction. … The Supreme Court has rejected the use of 'hypothetical jurisdiction,' and we reject its use here.");[1] *Dep't of Energy*, 206 F.3d at 1351 ("*Steel* rejected the use of so-called 'hypothetical jurisdiction' to reach the merits of a case, and a jurisdictional dismissal is all that is necessary to the holding. As such, we must consider the remainder of the district court's decision dicta."); *Moore*, 657 F.3d at 895 (where two prior lawsuits filed by *in forma pauperis* plaintiff had been dismissed "for lack of subject matter jurisdiction *and* for [Plaintiff's]

[1] Without discussing *Leal Garcia*, the Fifth Circuit recently applied a different approach in *Will*, 978 F.3d at 940 & n.39, *petition for certiorari filed* May 27, 2021 (No. 20-1669), holding that a non-cursory—indeed, "comprehensive"—rejection of a claim on the merits could qualify as an alternative holding on the merits, even if accompanied by a holding that the court lacks jurisdiction. *See infra* 10–11 (noting that the Sixth Circuit has taken that approach). *Leal Garcia* remains controlling under the Fifth Circuit's prior panel precedent rule. *See, e.g.*, *United States v. Ocean Bulk Ships, Inc.*, 248 F.3d 331, 340 n.2 (5th Cir. 2001) (explaining the rule). In any event, the *Will* approach would also require reversal here given the cursory nature of the District Court's alternative "holding." *See infra* 17.

failure to state a claim," the two dismissals did not count as "strikes" under 28 U.S.C. § 1915(g): "In these circumstances, … it is not possible for the district court to have made this type of alternative holding. A federal court cannot assume subject-matter jurisdiction to reach the merits of a case.").

B. The Sixth Circuit has taken a different approach to district court decisions that discuss the merits after holding that the district court lacked jurisdiction. Specifically, the Sixth Circuit has held that, where a district court has concluded it lacks jurisdiction, a district court's discussion of the merits can qualify as an alternative holding so long as it is sufficiently thorough. At a minimum, this means that a "conclusory" discussion of the merits does not suffice. *See, e.g.*, *Muskegon*, 303 F.3d at 764 (after concluding that district court erred in deciding it lacked jurisdiction to decide Rule 60(b)(5) motion, remanding for further development in the district court).

For example, in *Hagel*, the Sixth Circuit concluded that the district court erred in holding it lacked jurisdiction, and refused to consider the district court's cursory statement on the merits a sufficient basis for affirmance. 759 F.3d at 600. The panel explained that"[t]he district court denied [plaintiff's] request for a preliminary injunction *because it found—in two, rather conclusory sentences*—that [plaintiff] had not shown that it was likely to succeed on the merits." *Id.* (emphasis added). Because the district court's statement was "conclusory," the panel remanded, holding that "it [is] best to allow the district court to consider whether any injunctive relief is available or appropriate at this time." *Id.* The Sixth Circuit's narrowly tai-

lored approach—whereby appellate panels, after concluding a district court erred in finding it lacked jurisdiction, can affirm based on the district court's alternative merits statement only where the statement is more than cursory—requires a merits basis to be fully developed to qualify as an alternative holding.

C. Finally, the Third, Fourth, and Eleventh Circuits have held that any purported resolution of the merits by a district court can qualify as an alternative holding supporting affirmance, even where the district court has held that it lacks jurisdiction. The Eleventh Circuit adopted that position in *Rutherford*, on which the Panel in this case relied. Pet. App. 3a. In *Rutherford*, the Eleventh Circuit held that when a district court wrongly decides it lacks jurisdiction, the court of appeals can affirm based on any alternative ruling made by the district court. 466 F.3d at 976.

The Eleventh Circuit in *Rutherford* relied on decisions from the Third and Fourth Circuits to support its position. *Id.* (citing *IFC Interconsult*, 438 F.3d 298; *Food Town Stores*, 708 F.2d at 923). In *IFC Interconsult*, the Third Circuit held that judicial economy justified treating the district court's exercise of "hypothetical jurisdiction" as an alternative basis for affirmance, despite its finding that the district court "should not have ruled" on the merits "as there would not be a proper 'case or controversy' that it could adjudicate" after holding that it lacked subject matter jurisdiction. 438 F.3d at 317. The Fourth Circuit adopted the same position in *Food Town Stores*, treating the district court's hypothetical merits ruling granting summary judgment as an alternative holding warranting affir-

mance even though the district court had also (erroneously) held that it lacked subject matter jurisdiction. 708 F.2d at 923–25.

* * *

The upshot is that this case presents a deep circuit split ready for this Court's review. The Fifth, Seventh, Ninth, and Tenth Circuits all have taken the position that, when a district court has held it lacks jurisdiction, its statements concerning the merits do not qualify as an alternative holding. The Sixth Circuit has held that such statements can qualify as an alternative holding so long as they are sufficiently thorough. And the Third, Fourth, and Eleventh Circuits have held without qualification that a court's statements on the merits following a holding of no jurisdiction can qualify as an alternative holding. This Court should step in and resolve the split which, as discussed below, concerns an issue important to the federal courts and to individual litigants, including Mr. De Jesus.

II. THE COURT SHOULD RESOLVE THE CIRCUIT SPLIT PRESENTED BY THIS PETITION TO PREVENT JURISDICTIONAL OVERREACH AND LEGAL ERROR.

The question presented by this petition is obviously important to Mr. De Jesus, because its resolution will determine whether a court will grapple with the merits of his arguments. But the question's importance sweeps far more broadly: To treat a district court's discussion of the merits as a holding even where the district court has concluded it lacks jurisdiction is to invite jurisdictional overreach and legal error. This Court therefore should grant this petition to adopt a hard-and-fast rule that, when a court concludes (even

wrongly) that it lacks jurisdiction, any statements as to the merits of the case amount to no more than dicta—i.e., not alternative holdings capable of, for instance, supporting affirmance.

A. The approach adopted by the Third, Fourth, and Eleventh Circuits invites district courts to ignore the strict limits on federal jurisdiction. A district court that opines on the merits after holding it lacks jurisdiction necessarily flouts the command that "the only function remaining to the court" that has concluded it lacks jurisdiction "is that of announcing the fact and dismissing the cause." *Steel Co.*, 523 U.S. at 94 (quoting *McCardle*, 74 U.S. at 514). After all, so far as the district court believes in making the decision, it *does* lack jurisdiction.

District courts face real temptation to flout the principles reiterated in *Steel Co.* An efficiency-minded district court will have every incentive to insulate its decisions from review. And the rule applied by the Eleventh Circuit (along with other Circuits, *see supra* 12–13) will tempt the district court to roll the dice, reaching merits determinations despite a believed lack of jurisdiction, secure in the understanding that the move will be cost-free to the district court: If the court lacks jurisdiction, the merits determination and the violation of jurisdictional premises on which it is based engenders no cost to the court, even as it amounts to an advisory opinion; if the court has jurisdiction, the merits determination sticks and possibly prevents reversal. This Court can and should eliminate that temptation—and safeguard the proper and properly limited role of the federal courts—by holding categorically that when a court concludes it lacks jurisdiction,

statements concerning the merits do not qualify as holdings.

B. The Court should grant review for the additional reason that the approach adopted by the Third, Fourth, and Eleventh Circuits—treating as binding a court's comments on the merits following a jurisdictional ruling—increases the risk of error. When a court addresses the merits after holding it lacks jurisdiction, the court's statements on the merits have, in the court's view, no immediate consequence for the case, giving rise to a familiar problem posed by dicta more generally: Where an issue is not determinative in a case, the court's statements on that issue may be based on underdeveloped analysis (or no analysis at all, as with the District Court's comments in this case). As explained by Judge Leval, assertions made in dictum often result from insufficient judicial scrutiny: "[W]hen courts declare rules that have no consequence for the case, their cautionary mechanism is often not engaged. They are far more likely in these circumstances to fashion defective rules, and to assert misguided propositions, which have not been fully thought through." Pierre N. Leval, *Judging Under the Constitution: Dicta About Dicta*, 81 N.Y.U. L. Rev. 1249, 1263 (2006); *see id.* at 1262–63, 1268.

Consequently, it invites error to treat as a holding a district court's discussion of the merits when the district court has concluded it lacks jurisdiction. That approach creates unnecessary risks that appellate panels will affirm based on "merits" statements from district courts that did not fully grapple with the merits. Indeed, where a district court opines on the merits after holding it lacks jurisdiction, an appellate court may be left operating outside its usual zone, effectively

deciding the matter in the first instance given the inadequate analysis of the district court. *See Pac. Bell Tel. Co. v. linkLine Commc'ns, Inc.*, 555 U.S. 438, 457 (2009) ("[W]e are a court of review, not of first view") (quoting *Cutter v. Wilkinson*, 544 U.S. 709, 718 n.7 (2005)). And the problem is aggravated where, as here, the "merits" issue is subject to the abuse of discretion standard and thus calls for an exercise of the district court's judgment. *See McLane Co. v. E.E.O.C.*, 137 S. Ct. 1159, 1169 (2017) ("[A]buse-of-discretion review is employed not only where a decisionmaker has a wide range of choice as to what he decides, free from the constraints which characteristically attach whenever legal rules enter the decision[making] process; it is also employed where the trial judge's decision is given an unusual amount of insulation from appellate revision for functional reasons." (internal quotation marks omitted)).

The upshot is that, when a district court has concluded it lacks jurisdiction, treating that court's accompanying merits discussion as a holding creates a risk of error by crediting and thus inviting "merits" rulings rendered with insufficient attention. This Court should grant this petition for writ of certiorari and protect against that risk by holding—consistent with the approach adopted in the Fifth, Seventh, Ninth, and Tenth Circuits—that a court's discussion of the merits cannot qualify as a holding when the court engaging in the discussion has concluded it lacks jurisdiction to address the issue. Or, at the very least the Court should adopt the approach taken by the Sixth Circuit, holding that, when a district court has held it lacked jurisdiction, its discussion of the merits

cannot qualify as an alternative holding if that discussion was conclusory, failing to grapple meaningfully with the parties' arguments.

C. The broader importance of the question presented by this petition should not obscure its importance to Mr. De Jesus: The approach adopted by the Eleventh Circuit has resulted in no court grappling with his arguments, as clarified in his Rule 59(e) motion, but under any other approach this case would have been remanded to the District Court to address his arguments.

First, consider the effect of the Eleventh Circuit's rule on Mr. De Jesus. As noted, the District Court did not meaningfully grapple with Mr. De Jesus' Rule 59(e) arguments, instead rejecting them with a cursory statement that Mr. De Jesus "raises no new arguments or issues." Pet. App. 10a. In doing so, the District Court overlooked Mr. De Jesus' clarification of his arguments that he was unconstitutionally convicted for a non-offense because "the conduct [underlying his convictions] is legal within Colombia[ ]," where it occurred, as opposed to challenging his convictions on grounds of extraterritoriality alone or as a matter of mere international law. *Id.* at 69a–71a; *see id.* at 110a n. 17, 111a n.18 (explaining these arguments in counseled filing). And the District Court's failure to grapple with Mr. De Jesus' merits arguments led the Eleventh Circuit astray, as shown by the Eleventh Circuit's affirmance based on the District Court's "alternative holding": The Eleventh Circuit restated the reasoning contained in the District Court's order denying Mr. De Jesus' *Section 2255* motion, instead of addressing Mr. De Jesus' arguments as presented in his Rule 59(e) motion, which had attempted to clarify the District

Court's misunderstanding of his Section 2255 arguments. *Compare id.* at 3a–5a *with id.* at 14a–17a. And the consequence is simple to state: No court addressed Mr. De Jesus' actual arguments, which are reflected in his Rule 59(e) motion.

Things would have been far different under either of the other two approaches to this issue. Under the approach taken by the Fifth, Seventh, Ninth, and Tenth Circuits, the District Court's statements on the merits categorically would not have counted as an alternative holding—meaning this case would have been remanded for the District Court to address Mr. De Jesus' arguments. *See supra* 8–11. And, a remand also would have resulted under the approach taken by the Sixth Circuit, because the District Court's cursory treatment of the merits would not have qualified as a holding. *See supra* 11–12. Resolution of this issue thus matters for Mr. De Jesus.

Mr. De Jesus deserves the opportunity to have his Rule 59(e) motion adjudicated on the merits. No court has meaningfully grappled with Mr. De Jesus' arguments: The District Court reached an issue it thought it lacked jurisdiction to reach, treating Mr. De Jesus' arguments in conclusory fashion. The District Court thus left the Eleventh Circuit to decide Mr. De Jesus' arguments in effectively the first instance, and as a result the Eleventh Circuit restated the District Court's initial misunderstanding of Mr. De Jesus' claims—the very misunderstanding Mr. De Jesus' Rule 59(e) motion was intended to correct. *See supra* 5–6. This Court should grant the writ of certiorari to resolve the circuit split and prevent this sort of jurisdictional overreach and legal error.

CONCLUSION

For the foregoing reasons, the Court should grant the petition for writ of certiorari.

August 3, 2021

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