No. 13-53

In the Supreme Court of the United States

DONALD MAYNARD BUFFIN, JR., PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether, under a now-superseded version of a money-laundering statute, "proceeds" of a predicate mail-fraud offense may be defined as "gross receipts" for purposes of concealment money laundering, in violation of 18 U.S.C. 1956(a)(1)(B)(i).

2. Whether, on collateral review, the concurrent-sentence doctrine permits declining to vacate invalid convictions when a defendant is serving sentences for those convictions concurrently with sentences of equal length for valid convictions.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-14a) is unreported but is available at 513 Fed. Appx. 441. The opinion of the district court (Pet. App. 18a-33a) is unreported but is available at 2010 WL 2802477.

JURISDICTION

The judgment of the court of appeals was entered on January 30, 2013. A petition for rehearing was denied on April 10, 2013 (Pet. App. 34a-35a). The petition for a writ of certiorari was filed on July 9, 2013. 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 Western District of Michigan, petitioner

was convicted on 39 counts of mail fraud, in violation of 18 U.S.C. 1341 (Supp. IV 2004); one count of conspiracy to commit mail fraud, in violation of 18 U.S.C. 371 (2000); one count of conspiracy to commit money laundering, in violation of 18 U.S.C. 1956(h) (2000); one count of conspiracy to defraud the United States of income tax, in violation of 18 U.S.C. 371 (2000); 15 counts of "promotion" money laundering, in violation of 18 U.S.C. 1956(a)(1)(A)(i) (2000); and three counts of "concealment" money laundering, in violation of 18 U.S.C. 1956(a)(1)(B)(i) (2000). Pet. App. 18a-19a. The district court sentenced petitioner to concurrent terms of 180 months of imprisonment for the money-laundering conspiracy count, each promotion money-laundering count, and each concealment money-laundering count, and 60 months of imprisonment for each of the remaining counts, to be followed by three years of supervised release. *Id.* at 19a. Petitioner's convictions and sentence were affirmed on direct appeal. *Id.* at 36a-63a.

In June 2008, after petitioner's convictions and sentence became final, this Court held in *United States* v. *Santos*, 553 U.S. 507 (2008), that for purposes of a promotion money-laundering conviction under 18 U.S.C. 1956(a)(1)(A)(i) based on financial transactions involving the proceeds of an illegal gambling business, the term "proceeds" in the statute refers to "profits," rather than "gross receipts."

In February 2009, petitioner filed a motion for postconviction relief pursuant to 28 U.S.C. 2255 (Supp. V 2011) based on *Santos*. The district court denied the motion. Pet. App. 18a-33a. The court of appeals granted a certificate of appealability (COA) on the issue of whether the government had failed to

establish that the "proceeds" used to convict petitioner of promotion money laundering were profits, rather than gross income. *Id.* at 15a-17a. The court of appeals concluded that petitioner's promotion money-laundering convictions were invalid, but it denied postconviction relief under the concurrent-sentence doctrine. *Id.* at 1a-14a.

1. Petitioner was a salesman and an office manager for a fraudulent investment business known as Access Financial (Access). Access claimed to be a profitable investment enterprise that would provide large returns to clients. It was, however, a Ponzi scheme that relied on redistributions of invested principal while siphoning off other monies for the conspirators' personal use. Between 1998 and 2001, Access defrauded investors out of millions of dollars. Petitioner and his co-conspirators procured $20.7 million in total "investments," with $8.4 million being redistributed to investors, $4.8 million diverted for personal use, and $7.3 million used for ancillary transfers and payments. Among his other functions, petitioner hosted seminars to obtain new investor funds for the scheme. The conspirators funneled money through 20 bank accounts, keeping no records as to where their investors' funds had gone. Pet. App. 2a; Gov't C.A. Br. 4-13.

As office manager, petitioner was responsible for payroll and management of Access's bank accounts. To collect his own compensation from Access, petitioner set up a checking account under the name "His Will Ministries." He used funds from that account to pay his personal expenses. Pet. App. 2a.

2. A federal grand jury in the Western District of Michigan returned an indictment charging petitioner with 39 counts of mail fraud, in violation of 18 U.S.C.

1341 (Supp. IV 2004); one count of conspiracy to commit mail fraud, in violation of 18 U.S.C. 371 (2000); one count of conspiracy to commit money laundering, in violation of 18 U.S.C. 1956(h) (2000); one count of conspiracy to defraud the United States of income tax, in violation of 18 U.S.C. 371 (2000); 15 counts of promotion money-laundering, in violation of 18 U.S.C. 1956(a)(1)(A)(i) (2000); and three counts of concealment money-laundering, in violation of 18 U.S.C. 1956(a)(1)(B)(i) (2000). Pet. App. 18a-19a.

After a five-week trial, a jury convicted petitioner on all counts. Pet. App. 3a, 19a. The district court sentenced petitioner to concurrent terms of 180 months of imprisonment for the money-laundering conspiracy count, each promotion money-laundering count, and each concealment money-laundering count, and 60 months of imprisonment for each of the remaining counts, to be followed by three years of supervised release. *Id.* at 19a. Petitioner's convictions and sentence were affirmed on direct appeal. *Id.* at 36a-63a.

3. a. Petitioner was convicted of two types of money-laundering offenses. Under 18 U.S.C. 1956(a)(1)(A)(i)—referred to as promotion money laundering—it is an offense for a person, "knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, [to] conduct[] or attempt[] to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity * * * with the intent to promote the carrying on of specified unlawful activity."

Under 18 U.S.C. 1956(a)(1)(B)(i)—referred to as concealment money laundering—it is an offense for a

person, "knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, [to] conduct[] or attempt[] to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity * * * knowing that the transaction is designed in whole or in part * * * to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity." The version of the statute in effect at the time of petitioner's offenses did not define "proceeds."

After petitioner's convictions became final, this Court decided *Santos*, *supra*. The defendants in *Santos* were convicted of money laundering based on payments the operator of an illegal lottery made to his winners and runners using the receipts from his lottery operation, which was run in violation of the federal gambling statute, 18 U.S.C. 1955. The defendants were convicted under 18 U.S.C. 1956(a)(1)(A)(i), the promotion money-laundering statute. See 18 U.S.C. 1956(c)(7) (enumerating specified unlawful activities to include, *inter alia*, illegal gambling, drug trafficking, and certain fraud offenses). The question presented in *Santos* was whether, with respect to the transactions at issue, "the term 'proceeds' * * * means 'receipts' or 'profits.'" *Santos*, 553 U.S. at 509 (opinion of Scalia, J.). Five Justices concluded that the defendants' convictions should be overturned but divided on the reasoning for that result.

Justice Scalia, writing for a four-Justice plurality, concluded that the word "proceeds" in Section 1956(a)(1) is ambiguous and therefore, in light of the rule of lenity, should be read in all cases as limited to the profits of the unlawful activity. *Santos*, 553 U.S.

at 510-514. The plurality emphasized that if "proceeds" meant "receipts," then the government could bring promotional money-laundering charges in "nearly every" case like *Santos* where the putative laundering transaction was a "normal part" of the underlying unlawful activity. *Id.* at 515-517. In such cases, according to the plurality, the money-laundering charge may be said to "merge" with the crime generating the proceeds, such that a separate conviction for money laundering would be tantamount to a second conviction for the same offense. *Ibid.* In the plurality's view, defining "proceeds" as "profits" eliminates this problem. *Id.* at 517.

Justice Alito, writing for a four-Justice dissent, would have concluded that "proceeds" in the statute always means "the total amount brought in"—*i.e.*, the gross receipts of the unlawful activity. *Santos*, 553 U.S. at 532 (citation omitted).

Justice Stevens concurred in the judgment, concluding that "this Court need not pick a single definition of 'proceeds' applicable to every unlawful activity." *Santos*, 553 U.S. at 525. Thus, he concluded based on the legislative history of the money-laundering statute that Congress intended "proceeds" to include "gross revenues from the sale of contraband and the operation of organized crime syndicates involving such sales." *Id.* at 525-526. But as to the case at hand, Justice Stevens concluded that the revenue generated by a gambling business used to pay "the essential expenses" of operating the business, including winnings and salaries, is not "proceeds" within the meaning of the money-laundering statute. *Id.* at 528. Justice Stevens relied on (1) the absence of legislative history bearing on the definition of "proceeds" in the

gambling context and (2) the "merger problem" identified in the plurality opinion. *Id.* at 526-527.

b. Shortly after *Santos* was decided, Congress enacted the Fraud Enforcement and Recovery Act of 2009 (FERA), Pub. L. No. 111-21, 123 Stat. 1617. FERA amends the federal money-laundering statute, 18 U.S.C. 1956, to define "proceeds" as "any property derived from or obtained or retained, directly or indirectly, through some form of unlawful activity, including the gross receipts of such activity." 18 U.S.C. 1956(c)(9) (Supp. V 2011). Petitioner's convictions were governed by the version of the statute considered in *Santos*, however, and so in 2009 he filed a motion under 28 U.S.C. 2255 (Supp. V 2011) to vacate his money-laundering convictions in light of *Santos*. Pet. App. 20a-21a.

4. The district court denied petitioner's Section 2255 motion. Pet. App. 18a-33a. The court explained that because petitioner had not raised a challenge to the government's proof that petitioner had engaged in money-laundering using the "proceeds" of his fraudulent activity in the district court or on direct appeal, the claim was procedurally defaulted unless petitioner could show (1) cause and actual prejudice or (2) actual innocence. *Id.* at 21a (citing *Massaro* v. *United States*, 538 U.S. 500, 504 (2003)).

The district court concluded that petitioner had failed to establish cause for failing to raise the argument on direct appeal. Pet. App. 21a-26a. The court further concluded that "[e]ven if [petitioner] did establish cause, he fail[ed] to establish actual prejudice." *Id.* at 26a. The court stated that under Justice Stevens' opinion in *Santos*, petitioner's money-laundering convictions raised a merger problem and therefore

should have been based on the "profits" of petitioner's scheme. *Id.* at 28a. The court further explained, however, that petitioner had nevertheless failed to establish prejudice because "sufficient evidence existed to convict him of [both promotion and concealment] money laundering, even if the jury had been properly instructed to use 'profits' as the definition of 'proceeds.'" *Id.* at 29a-32a. The court further concluded that "[f]or the same reasons [petitioner] fails to show prejudice, he fails to show actual innocence." *Id.* at 33a.

The district court denied a COA. Pet. App. 33a. The court of appeals, however, granted a COA on the issue "whether the government failed to establish that the proceeds used to convict [petitioner] of money laundering were profits rather than gross income, and whether such a showing was required by *United States* v. *Santos*." *Id.* at 16a-17a.

5. The court of appeals affirmed. Pet. App. 1a-14a.

a. The court of appeals concluded that petitioner's procedurally defaulted claim could be considered on collateral review under the "actual innocence" framework. Pet. App. 5a. The court stated that, under circuit precedent, "actual innocence is demonstrated by showing '(1) the existence of a new interpretation of statutory law, (2) which was issued after the petitioner had meaningful time to incorporate the new interpretation into his direct appeals or subsequent motions, (3) is retroactive, and (4) applies to the merits of the petition to make it more likely than not that no reasonable juror would have convicted him.'" *Ibid.* (quoting *Wooten* v. *Cauley*, 677 F.3d 303, 307-308 (6th Cir. 2012)).

Applying that test, the court of appeals explained that "the proceeds-equals-profits interpretation of 18 U.S.C. § 1956 is a new interpretation of statutory law" decided four months after petitioner's convictions were affirmed on direct appeal and that the holding of *Santos* was retroactively applicable because it was a "substantive change of law" that "increas[ed] the government's burden of proof" on the money-laundering offenses. Pet. App. 5a-6a (citations and internal quotation marks omitted). The court stated that those conclusions satisfied the first three prongs of the actual innocence inquiry, leaving the court to consider "whether the *Santos* decision, as applied to the merits of the petition, makes it more likely than not that no reasonable juror would have convicted" petitioner. *Id.* at 6a (citation and internal quotation marks omitted).

The government conceded, and the court of appeals therefore assumed, that under Justice Stevens' opinion in *Santos*, a merger problem existed for petitioner's promotion money-laundering convictions in that defining "proceeds" as gross receipts would merge the money-laundering conduct with the underlying conduct constituting mail fraud. Pet. App. 9a. The court concluded, however, that no merger problem existed with regard to petitioner's concealment money-laundering convictions. *Id.* at 9a-14a.

The court of appeals rejected petitioner's argument that "the definition of proceeds must have the same meaning throughout the money-laundering statutes even if that means applying a profits definition to money-laundering provisions that do not create a merger problem." Pet. App. 10a (internal quotation marks omitted). The court explained that Justice

Stevens' opinion in *Santos* requires a case-by-case determination of whether commission of the predicate unlawful activity necessarily proved the money-laundering offense and thus presented a merger problem. *Id.* at 10a-11a. The court held that such was not the case with respect to the concealment money-laundering convictions because proving mail fraud "typically does not require the * * * step of proving that someone in possession of unlawfully obtained funds has conducted, or attempted to conduct, a financial transaction to 'disguise the nature, location, source, ownership, or control of the proceeds.'" *Id.* at 12a (quoting 18 U.S.C. 1956(a)(1)(B)(i)). The court explained that because "the elements of mail fraud are not entirely coextensive with the elements of concealment money laundering, the 'automatic' commission that serves as the foundation for merger * * * is absent in this case." *Ibid.*

The court of appeals viewed the indictment and the government's proof as further confirming that, in petitioner's case, the proof of the underlying mail-fraud offenses did not prove the concealment money-laundering offenses. The court explained that for the concealment money-laundering offenses, the government relied on a series of separate acts, such as petitioner's "depositing of checks to 'His Will Ministries,'" to prove concealment money laundering. Pet. App. 13a. "In contrast," the court explained, "[petitioner's] mail fraud convictions were premised primarily on newsletter mailings and fraudulent checks to investors." *Ibid.*

b. For each of his concealment money-laundering convictions, petitioner was serving a 180-month sentence concurrently with identical sentences imposed

for each promotion money-laundering conviction. Pet. App. 19a. Because the court of appeals concluded that petitioner's concealment money-laundering convictions were valid, it invoked the "concurrent-sentence doctrine," whereby a court may exercise its discretion to "decline to hear a substantive challenge to a conviction when the sentence on the challenged conviction is being served concurrently with an equal or longer sentence on a valid conviction." *Id.* at 14a (citation omitted). The court thus declined to grant petitioner post-conviction relief and affirmed the district court's decision. *Ibid.*

ARGUMENT

Petitioner contends (Pet. 11-26) that his concealment money-laundering convictions must be vacated in light of *United States* v. *Santos*, 553 U.S. 507 (2008), because "proceeds" in the money-laundering statute means "profits" rather than "gross receipts." That claim does not warrant this Court's review. The application of *Santos* to predicate offenses other than illegal gambling is not an issue of continuing importance because Congress has amended the money-laundering statute to expressly define "profits" as "gross receipts" for all predicate offenses. And, in any event, the court of appeals logically concluded that "proceeds" need not be defined as "profits" for purposes of petitioner's concealment money-laundering offense, and its decision does not implicate any circuit conflict warranting this Court's review.

Petitioner further contends (Pet. 26-38) that the court of appeals erred in applying the concurrent-sentence doctrine to decline to vacate his promotion money-laundering convictions. The court of appeals

properly applied that doctrine, and review of the doctrine is not warranted in this case.

1. a. On May 20, 2009, the President signed FERA into law. Pub. L. No. 111-21, 123 Stat. 1617. FERA amends the federal money-laundering statute, 18 U.S.C. 1956, to define "proceeds" as "any property derived from or obtained or retained, directly or indirectly, through some form of unlawful activity, including the gross receipts of such activity." 18 U.S.C. 1956(c)(9) (Supp. V 2011). The new definition resolves prospectively the question addressed by *Santos*—whether "proceeds" in the money laundering statute means the "gross receipts" or only the "profits" of the predicate offense. The meaning of "proceeds" under the prior version of the statute that this Court construed in *Santos* is thus no longer of ongoing importance. This Court's review is therefore not warranted to clarify the holding in *Santos*.

b. In any event, the court of appeals logically concluded that, under the former version of Section 1956, "proceeds" need not be defined as "profits" with respect to a concealment money-laundering offense. Petitioner's concealment money-laundering offenses did not "merge" with his underlying mail-fraud offenses. As the court explained, proving mail fraud "typically does not require the * * * step of proving that someone in possession of unlawfully obtained funds has conducted, or attempted to conduct, a financial transaction to 'disguise the nature, location, source, ownership, or control of the proceeds.'" Pet. App. 12a (quoting 18 U.S.C. 1956(a)(1)(B)(i)). For petitioner's concealment money-laundering offenses, the government relied on acts of concealment, such as petitioner's "depositing of checks to 'His Will Minis-

tries,'" to prove that petitioner laundered money. *Id.* at 13a. The underlying mail-fraud convictions were premised on different conduct—newsletter mailings and fraudulent checks mailed to investors. *Ibid.*

c. Petitioner contends (Pet. 19-23) that *Santos* must be construed to define "proceeds" as "profits" for all purposes under the now-superseded version of 18 U.S.C. 1956 because defining "proceeds" differently depending on the context would conflict with the principle expressed in *Clark* v. *Martinez*, 543 U.S. 371 (2005), that a term should be given a single meaning throughout a statutory scheme. In light of this Court's decision in *Santos*, that contention is unfounded.

Reading the former money-laundering statute to require a profits definition in all cases would be inconsistent with *Santos*. No five Members of the Court agreed on a generally applicable definition of the term "proceeds" in Section 1956(a)(1). This Court's general rule for ascertaining the holding of a case in which no opinion commands a majority is that "the holding of the Court may be viewed as that position taken by those Members who concurred in the judgment[] on the narrowest grounds." *Marks* v. *United States*, 430 U.S. 188, 193 (1977) (citation omitted). In some cases, however, "no lowest common denominator or 'narrowest grounds' * * * represents the Court's holding." *Nichols* v. *United States*, 511 U.S. 738, 745-746 (1994). In that situation, the Court has found it "not useful to pursue the *Marks* inquiry." *Ibid.*

The courts of appeals have generally indicated that if no "one opinion can meaningfully be regarded as 'narrower' than another" in the sense that it is a "logical subset of other, broader opinions," then the *Marks*

analysis will not necessarily apply. See *United States* v. *Alcan Aluminum Corp.*, 315 F.3d 179, 189 (2d Cir. 2003) (quoting *King* v. *Palmer*, 950 F.2d 771, 781 (D.C. Cir. 1991) (en banc), cert. denied, 505 U.S. 1229 (1992)), and 540 U.S. 1103 (2004); see also *United States* v. *Johnson*, 467 F.3d 56, 63-64 (1st Cir. 2006), cert. denied, 552 U.S. 948 (2007); *Anker Energy Corp.* v. *Consolidation Coal Co.*, 177 F.3d 161, 169-170 (3d Cir.), cert. denied, 528 U.S. 1003 (1999). In such a case, the courts of appeals have generally concluded that it may be possible to find a legal theory shared by a majority of the Justices by looking to a combination of the plurality or separate concurring opinions and the dissent. See, *e.g.*, *Johnson*, 467 F.3d at 64-66. But where that inquiry also proves unavailing, then "the only binding aspect of [the] splintered decision is its specific result." *Anker Energy Corp.*, 177 F.3d at 170.

That is the situation with *Santos*. Although the *Santos* plurality suggested that Justice Stevens' concurring opinion rests on a narrower ground, 553 U.S. at 523, even that proposition did not command a majority of the Court. Neither Justice Stevens' opinion nor the plurality opinion is a "logical subset" of the other. The plurality opinion rests on the rationale that "proceeds" has a single meaning for all specified unlawful activities, and that meaning is "profits." See *id.* at 523-524. Justice Stevens' opinion, by contrast, is organized around the view that "proceeds" has a different meaning for different specified unlawful activities. *Id.* at 528. Thus, neither opinion is a logical subset of the other or provides a common denominator because the opinions rest on logically inconsistent premises. Similarly, neither opinion can be combined with the reasoning of the dissenting Justices to gener-

ate a controlling legal principle because the dissent concluded that "proceeds" always means "gross receipts." *Id.* at 546 (Alito, J., dissenting). The dissent thus rejects both Justice Stevens' premise (that "proceeds" has different meanings for different unlawful activities) and the plurality's conclusion (that "proceeds" means "profits"). See *id.* at 531-532.

Accordingly, the only binding aspect of the *Santos* decision is its specific result, which does not have any application to petitioner's case. See *United States* v. *Brown*, 553 F.3d 768, 783 (5th Cir. 2008) ("The precedential value of *Santos* is unclear outside the narrow factual setting of that case."), cert. denied, 129 S. Ct. 2812, and 558 U.S. 897 (2009). And *Santos* cannot, as petitioner suggests (Pet. 19-23), be read to mean that "proceeds" must be defined as profits in all cases. It is clear that five Justices did not accept that proposition—including Justice Stevens, whose vote was necessary to the outcome in *Santos*.

d. Petitioner cites decisions of the courts of appeals that have adopted varying views of the breadth of *Santos*'s holding, with some courts limiting their holdings to situations where the specified unlawful activity is gambling, others applying their holdings whenever an analogous merger problem would arise, and others focusing on the legislative history of Section 1956. See Pet. 13-19. But the consensus view of *Santos* in the circuits would not apply a "profits" definition to petitioner's concealment money-laundering convictions.

In the cases that have specifically considered concealment money laundering, the courts of appeals have concluded that "proceeds" need not be defined as "profits." See *United States* v. *Wilkes*, 662 F.3d 524,

549 (9th Cir. 2011), cert. denied, 132 S. Ct. 2119 (2012); *United States* v. *Aslan*, 644 F.3d 526, 545-546 (7th Cir. 2011); see Pet. App. 13a-14a (stating that "the weight of authority from our sister circuits" supports the conclusion that concealment money laundering does not require a "profits" definition). Petitioner identifies no court of appeals that has held otherwise. Accordingly, even if this Court's review to clarify the meaning of *Santos* were warranted—which it is not—this case would provide no occasion for this Court to intervene.

2. Petitioner further contends (Pet. 26-38) that the court of appeals erred in applying the concurrent-sentence doctrine to decline to vacate his promotion money-laundering convictions. That issue does not warrant this Court's review.

a. Historically, courts of appeals that applied the concurrent-sentence doctrine affirmed counts of conviction that had no significance for the defendant, without considering them on the merits. See *Benton* v. *Maryland*, 395 U.S. 784, 788-790 (1969) (discussing doctrine). Although this Court questioned in *Benton* whether a "satisfactory explanation" supported the doctrine, *id.* at 789, it stated that the doctrine "may have some continuing validity as a rule of judicial convenience," *id.* at 791; see also *Barnes* v. *United States*, 412 U.S. 837, 848 & n.16 (1973) (after *Benton*, declining to review four of six counts on which concurrent sentences had been imposed).

The concurrent-sentence doctrine, in its original form, has little relevance today. For example, the doctrine may not be applied on direct appeal when a special assessment under 18 U.S.C. 3013 has been imposed for the challenged conviction. See *Ray* v.

United States, 481 U.S. 736 (1987) (per curiam). Special assessments have been imposed under Section 3013 since 1984, and they are mandatory on any person convicted of an offense against the United States, whether the offense is an infraction, misdemeanor, or felony. 18 U.S.C. 3013(a). Thus "[a]s a practical matter, the concurrent-sentence doctrine was abrogated for direct appeal when Congress imposed a special assessment * * * for each separate felony conviction." *Ryan* v. *United States*, 688 F.3d 845, 849 (7th Cir. 2012), cert. denied, 133 S. Ct. 1275 (2013); *United States* v. *McKie*, 112 F.3d 626, 628 n.4 (3d Cir. 1997) (concurrent-sentence doctrine "is rarely invoked in federal court now because of the mandatory * * * assessment imposed on each federal count resulting in conviction").

b. For prisoners like petitioner who are seeking post-conviction relief from a prison sentence only, the concurrent-sentence doctrine has continued validity and was properly applied in this case. See *Benton*, 395 U.S. at 793 n.11 (stating that there is "[a] stronger case" for abolishing the concurrent-sentence doctrine "in cases on direct appeal, as compared to convictions attacked collaterally").[*]

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[*] The concurrent-sentence doctrine also has continued validity in federal courts when a defendant does not appeal his conviction, but only challenges his sentence under 18 U.S.C. 3742(a), asserting an improper application of the Sentencing Guidelines. Where resolution of a sentencing issue relating to some counts could not affect the defendant's total sentence, the court may invoke the concurrent-sentence doctrine to decline to reach the issue. See *United States* v. *Segien*, 114 F.3d 1014, 1021 (10th Cir. 1997), cert. denied, 523 U.S. 1024 (1998) (overruled on other grounds by *United States* v. *Commanche*, 577 F.3d 1261 (10th Cir. 2009)); *United States* v. *Olunloyo*, 10 F.3d 578, 581-582 (8th Cir. 1993).

Because petitioner must continue to serve his 180-month sentences for concealment money laundering, a court on collateral review may decline to disturb his concurrent 180-month sentences for promotion money laundering, even if they are invalid. Affording him relief from the promotion convictions would not require that he be released at an earlier time or resentenced on his valid concealment convictions.

Nor has petitioner made a case for misapplication of the discretionary concurrent-sentence doctrine by identifying any collateral consequences that he will suffer if his money-laundering convictions are not vacated. Petitioner describes generally collateral consequences of a conviction that a criminal defendant may experience, such as potential exposure to a recidivist sentencing statute for a future offense and being subjected to societal stigma. Pet. 35-36. But those collateral consequences are of no practical concern here, where petitioner was validly convicted of 45 other felonies (39 counts of mail fraud, one count of mail-fraud conspiracy, three counts of concealment money-laundering, one count of money-laundering conspiracy, and one count of conspiracy to defraud the United States). Pet. App. 18a-19a. Because petitioner will experience no concrete effects from the court of appeals' holding, its discretionary and unpublished decision does not warrant further review.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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