

IN THE SUPREME COURT OF THE UNITED STATES

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CARLOS RASHAD GOULD, PETITIONER

v.

UNITED STATES OF AMERICA

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

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MEMORANDUM FOR THE UNITED STATES

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Petitioner was convicted under 18 U.S.C. 924(c)(1)(A), which provides for minimum prison sentences "[e]xcept to the extent that a greater minimum sentence is otherwise provided by this subsection or by any other provision of law." He contends (Pet. 3-5) that the "except" clause of Section 924(c)(1)(A) exempts him from the five-year mandatory consecutive sentence imposed by that provision because he also received a greater mandatory minimum sentence on a different count of conviction. The court of appeals rejected that argument and affirmed petitioner's sentence, which includes the

consecutive five-year term prescribed by Section 924(c)(1)(A).  
Pet. App. 1a-2a.

Petitioner notes (Pet. 4-5) that the court of appeals' decision conflicts with the Second Circuit's decisions in United States v. Whitley, 529 F.3d 150 (2d Cir. 2008), and United States v. Williams, 558 F.3d 166 (2d Cir. 2009), petition for cert. pending, No. 09-466 (filed October 20, 2009). In Williams, the Second Circuit held, following its decision in Whitley, that the "except" clause exempts a defendant from any sentence under Section 924(c)(1)(A) whenever he is subject to a higher mandatory sentence for a different offense "arising from the same criminal transaction or operative set of facts." 558 F.3d at 171-172.

The government filed a petition for a writ of certiorari to review the Second Circuit's decision in Williams. United States v. Williams, No. 09-466, petition for cert. pending (filed October 20, 2009). As that petition explains, the Second Circuit's interpretation of the "except" clause is incorrect. Eight other courts of appeals have addressed this issue, and none has adopted the Second Circuit's reading of the statute. See United States v. Segarra, 582 F.3d 1269, 1272-1273 (11th Cir. 2009) (per curiam); United States v. Abbott, 574 F.3d 203, 208-211 (3d Cir. 2009), petition for cert. pending, No. 09-479 (filed October 19, 2009); United States v. London, 568 F.3d 553, 564 (5th Cir. 2009), petition for cert. pending, No. 09-5844 (filed Aug. 11, 2009); United States v. Pulido, 566 F.3d 52, 65 & n.6 (1st Cir. 2009),

petition for cert. pending, No. 09-5949 (filed Aug. 14, 2009); United States v. Easter, 553 F.3d 519, 525-527 (7th Cir. 2009) (per curiam), petitions for cert. pending, No. 08-9560 (filed Mar. 26, 2009), and No. 08-10584 (filed May 20, 2009); United States v. Jolivette, 257 F.3d 581, 586-587 (6th Cir. 2001); United States v. Studifin, 240 F.3d 415, 421-424 (4th Cir. 2001); United States v. Alaniz, 235 F.3d 386, 386-390 (8th Cir. 2000), cert. denied, 533 U.S. 911 (2001). For the reasons stated in the Williams petition, that case provides an appropriate vehicle to resolve this conflict between the courts of appeals on this issue.

The Court's disposition of Williams will likely affect the proper resolution of this case. Accordingly, this petition should be held for United States v. Williams, and then disposed of as appropriate in light of this Court's disposition of that case.\*

ELENA KAGAN  
Solicitor General  
Counsel of Record

DECEMBER 2009

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\* The government waives any further response to the petition unless this Court requests otherwise.