

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

MARCELLAS HOFFMAN,)	
Petitioner,)	Civil Action No. 7:18-cv-00265
)	
v.)	
)	By: Michael F. Urbanski
WARDEN BRECKON,)	Chief United States District Judge
Respondent.)	

ORDER

Marcellas Hoffman, a federal inmate proceeding pro se, filed this action as a petition for writ of habeas corpus under 28 U.S.C. § 2241. On February 26, 2020, the court granted the respondent’s motion to dismiss for lack of subject matter jurisdiction. The court also denied as futile Hoffman’s motion to amend his petition to challenge the validity of his conviction under 18 U.S.C. § 922(g)(1), based on the Supreme Court’s decision in Rehaif v. United States, 139 S. Ct. 2191 (2019). On April 15, 2022, the United States Court of Appeals for the Fourth Circuit vacated the order denying relief as to the § 922(g)(1) conviction and remanded the case to this court for a determination of whether Hoffman can satisfy the test set forth in In re Jones, 226 F.3d 328 (4th Cir. 2000), for determining whether a federal inmate may challenge his conviction under § 2241 via the savings clause in 28 U.S.C. § 2255(e). See Hoffman v. Breckon, No. 20-6322, 2022 U.S. App. LEXIS 10328 (4th Cir. Apr. 15, 2022); see also 28 U.S.C. § 2255(e) (providing that a court may entertain a § 2241 petition if the petitioner can demonstrate that a § 2255 motion is “inadequate or ineffective to test the legality of his detention”). Following the issuance of the mandate, the court entered an order establishing a briefing schedule for the parties to address the issue identified by the Fourth Circuit. See ECF No. 39.

The matter is now before the court on the respondent's motions to suspend the briefing schedule and stay further proceedings pending the Supreme Court's decision in Jones v. Hendrix, No. 21-857, a case from the Eighth Circuit that addressed whether a similar Rehaif claim could be brought under § 2241 by way of the savings clause. See Jones v. Hendrix, 8 F.4th 683, 686–88 (8th Cir. 2021) (discussing the existing circuit split as to whether a “change in case law, combined with the successive-motions bar [in § 2255], makes § 2255's remedy inadequate or ineffective,” and ultimately concluding that the circumstances presented were insufficient to satisfy the savings clause). Hoffman has advised the court that he “does not oppose” the requested stay. ECF No. 46.

The court agrees with the respondent that the Supreme Court's decision in Jones will likely impact the resolution of the threshold jurisdictional question presented in this case. Under these circumstances, the court finds that a stay is warranted. See Kane v. United States, No. 20-6839, 2022 U.S. App. LEXIS 19691, at *1 (4th Cir. July 15, 2022) (order granting unopposed motion to hold appeal in abeyance pending decision in Jones v. Hendrix); Thompson v. Streeval, No. 7:22-cv-00288 (W.D. Va. July 29, 2022) (order staying § 2241 petition pending decision in Jones v. Hendrix); Spaulding v. Streeval, No. 7:22-cv-00118 (W.D. Va. June 29, 2022) (same).

For these reasons, it is hereby **ORDERED** that the respondent's motions to suspend the briefing schedule and stay further proceedings, ECF Nos. 41 and 48, are **GRANTED**, and this matter is **STAYED** pending the Supreme Court's decision in Jones v. Hendrix, No. 21-857. It is further **ORDERED** that the respondent shall file a response to Hoffman's Rehaif claim not later than 30 days after the Supreme Court issues its decision. The petitioner shall then have 30 days in which to file any reply.

The Clerk is directed to send a copy of this order to the parties.

It is so **ORDERED**.

Entered: August 19, 2022



Digitally signed by Michael F.
Urbanski Chief U.S. District
Judge
Date: 2022.08.19 18:34:47
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Michael F. Urbanski
Chief United States District Judge