

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

WILLIE LEE DANIELS — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI

RECEIVED

TO APR 19 2018

OFFICE OF THE CLERK
SUPREME COURT, U.S.

ELEVENTH CIRCUIT COURT OF APPEALS

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

WILLIE LEE DANIELS #60497-018

(Your Name)

FEDERAL CORRECTIONAL INSTITUTION

(Address)

PO. BOX. 1032, COLEMAN FLA 33521

(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

1. Whether Mathis v. United States, is retroactive to cases on collateral review, where the principles set forth in Motgomery v. Louisiana, dictate that Mathis is a new .. substantive rule ?
2. Whether 21 U.S.C. § 841(a) is unconstitutional and does not qualify as a controlled substance offense after the Supreme Court's decisions in Descamps v. United States and Mathis v. United States ?

LIST OF PARTIES

- All parties appear in the caption of the case on the cover page.
- All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

- reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

- reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

- reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

- reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was 1/29/2018.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. __A_____.

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

For cases from **state courts**:

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. __A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

AMENDMENT 5

Criminal actions-Provisions concerning-Due process of law and just compensation clauses.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT 6

Rights of the accused.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

STATEMENT OF THE CASE

Willie Lee Daniels is a federal prisoner serving a 120 month sentence for possession with intent to distribute - cocaine base, in violation of 21 U.S.C. § 841(a). He moved for certificate of appealability in the eleventh Circuit Court of Appeals questioning whether 21 U.S.C. § 841(a) is now unconstitutional after the U.S. Supreme Court's two decisions Descamps v United States, and Mathis v. United States, respectively. Specifically, petitioner argued that his prior florida § 893.13 drug convictions did not qualify as predicate controlled substance offenses, and whether 21 U.S.C. § 841(a) did not qualify as controlled substance .. offense after Descamps and Mathis. The District Court ruled that Petitioner's 28 U.S.C. § 2255(f)(3) petition was then untimely, however, the court made a determination that the Mathis decision was not retroactive, thus the one year .. statute under (f)(3) was inapplicable. Petitioner moves this court to determine whether Mathis is a retroactive Supreme Court decision and applicable to § 2255 collateral review, and whether Petitioner's prior State and Federal Drug ... convictions survie the categoricat analysis set forth in Descamps/Mathis. In conjuction, Petitioner seeks determination on the constitutionality of 21 U.S.C. § 841 post Descamps/Mathis.

REASONS FOR GRANTING THE PETITION

I.

Whether § 841(a) is unconstitutional after the U.S. Supreme Court's decision in Desamps and Mathis, ?

Turning to the merits of the Petitioner's Section 2241 motion. This court must determine whether it would create a thorny constitutional issue, if this court fails to review Petitioner claims based on new substantive Supreme Court decisions that were previously unavailable and that demonstrates Petitioner's conviction and sentence run afoul of the United States Constitution. See Moncrieffe v. Holder, 133 S.Ct. 1678 (2013); Descamps v. United States, 133 S.Ct. 2276 (2013); Mathis v. United States, 136 S.Ct. 2243 (2016).

Recently, the United States Supreme Court has - defined Federal felony offenses are offenses punishable by a term of imprisonment exceeding one year. Moncrieffe v. Holder, 133 S.Ct. 1678, 1685 (2013).

Petitioner argues that because § 841(a) fails to include any penalty provision from its offense elements standing alone, the mandatory minimum life sentence imposed in this case is unlawful as a matter of law.

In Descamps, the Supreme Court held that to determine whether an offense can be used to enhance a defendant's sentence, courts are limited to reviewing the "elements" of

the offense. Based on this, § 841(a) contains no penalty as part of the offense elements and therefore, a violation of said statute cannot be said to be a felony offense. Although 21 U.S.C. § 841(a) is title "Unlawful Acts," this subsection alone does not define a complete offense because it includes no punishment. Castillo v. United States, 530 U.S. 120, 125 120 S.Ct. 2090, 147 (2000)(noting that the mere fact that a statutory sections is entitled "Penalties" does not indicate whether that section creates sentencing factors or entirely new crimes for "[t]he title alone does not tell us which are which").

As an additional matter, it cannot be said that § 841(a) passes constitutional muster. Given this conclusion, there would only be two ways to save the constitutionality of § 841(a) following Descamps and Mathis. The first way is to apply the traditional doctrine of severability to excise the unconstitutional portions of the statute and to retain those provisions that can survive. The second way is to become the pseudo-legislative branch of government by holding that § 841(b) is really an element of the offense, not a sentencing factor. Neither method, however, works in this instance, because it is clear following Descamps and Mathis that the "factor" in § 841(b) are not offense elements. United States v. Clay, 376 F.3d 1296, 1298 (11th Cir. 2004).

Because § 841(a) is unconstitutional as previously interpreted, the question becomes whether some form of the statute may be upheld under the doctrine of severability. Specifically, "whenever an act of Congress contains unobjectionable provisions separable from those found to be

unconstitutional, it is the duty of this court to so declare, and to maintain the act in so far as it is valid." Alaska Airlines v. Brock, 480 U.S. 678, 684 (1987)(citation omitted). A two-part inquiry govern the determination of whether unconstitutional provisions are severable. The first question is "whether the Act which remains after the unconstitutional provisions are excised is 'fully operative' [or] whether the unconstitutional provisions are 'functionally independent' from the remainder of the Act." Board of Natural Resources v. Brown, 992 F.2d 937, 948 (9th Cir. 1993). "Second, if the Act, absent the unconstitutional provisions, if fully operative as law, [the Court] then inquire[s] whether Congress would have enacted the constitutional provisions of the Act independently of the unconstitutional provisions." Id.

In this case, the second prong of the inquiry is likely satisfied, as Congress clearly desired to proscribe the conduct prohibited by § 841(a). The first prong of the severability inquiry, however, cannot be satisfied because § 841(a) is not "fully operative" or "functionally independent" from § 841(b). Without § 841(b), § 841(a) does not set forth any penalties whatsoever. In essence, without § 841(b), § 841(a) constitutes crimes without a punishment. Indeed, without § 841(b), it would not even be clear whether § 841(a) was a felony or misdemeanor. Not only would such a statute be inoperative, it would be unconstitutional. See, e.g., United States v. Batchelder, 442 U.S. 114, 123 (1979)(stating that "it is a fundamental tenet of due process that 'no one may be required at peril of life, liberty or property to speculate as to the meaning of penal

statutes....[V]ague sentencing provisions may pose constitutional questions if they do not state with sufficient clarity the consequences of violating a given criminal statute") (citations omitted).⁽¹⁾

Moreover, this Court cannot attempt to uphold the statute under the doctrine of severability by attempting to guess what penalties Congress would have imposed if it had known that § 841(a) was unconstitutional. Indeed, even if this Court has a good idea of what Congress may have had in mind when it passed the defective legislation, it cannot invent such anticipated penalties. The Supreme Court's decision in United States v. Evans, 333 U.S. 483, 486 (1948), a case presenting issues quite similar to the instant one, makes this clear.

In Evans, the Supreme Court considered a statute that prohibited smuggling and harboring aliens and provided that violators of the law "shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding \$2,000 and by imprisonment for a term not exceeding

(1) The Supreme Court's decision in United States v. Jackson, 390 U.S. 570 (1968), is not to the contrary. The statute at issue in Jackson provided that whoever transported a kidnaped person in interstate commerce "shall be punished (1) by death if the kidnaped person has not been liberated unharmed, and if the verdict of the jury shall so recommend, or (2) by imprisonment for any term of years or for life, if the death penalty is not imposed." *Id.* at 571. The Supreme Court held that the death penalty provision of the statute was unconstitutional, but "that the provision [was] severable from the remainder of the statute [and thus] there [was] no reason to invalidate the law in its entirety simply because its capital punishment clause violate[d] the Constitution." *Id.* at 572; see also *id.* at 585-91. In Jackson, however, there was at least some penalty remaining in the statute after the unconstitutional portion was severed. In this instance, however, the remaining portion of the statute does not contain any penalty whatsoever and therefore cannot exist on its own.

five years for each and every alien so landed or brought in or attempted to be landed or brought in." Id. at 484. Thus, the plain language of the statute assigned maximum penalties for aliens smuggled into the United States, but did not assign maximum penalties for aliens harbored in the United States. The defendant in that case was charged with harboring, not smuggling, and the district court granted his motion to dismiss the indictment because the statute did not provide maximum penalties for his offense. See *id.* The Supreme Court unanimously affirmed.

As in this case, the Supreme Court in *Evans* recognized that it was overwhelmingly clear that Congress intended to criminalize the conduct at issue. See *id.* at 485. Nevertheless, the Supreme Court rejected the government's request "to make [the statute] effective by applying one...of the possibilities which seems most nearly to accord with the criminal proscription and the terms of the penalizing provision." *Id.* The Supreme Court refused to "plug the hole in the statute[,]" *id.* at 487, concluding that "[t]his is a task outside the bounds of judicial interpretation. It is better for Congress, and more in accord with its function, to revise the statute than for us to guess at the revision it would make. That task it can do with precision. We could do no more than make speculation law." *Id.* at 495.

If the Supreme Court could not rewrite the relatively simple statute in *Evans*, this Court certainly should not take the step of severing out the unconstitutional provisions in § 841(a) and then rewriting the statute as whole with invented

penalties. As demonstrated by § 841(b), the sentencing considerations in drug cases are extremely complicated and are best left for Congress. In short, § 841(b) cannot be served out, as the remaining portions of the statute are inoperative. As a result, this court should grant reconsideration, and conclude that § 841(a) is unconstitutional, as well as the minimum mandatory life sentence imposed in this case.⁽²⁾

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Willie Daniels

Date: 4-10-18

⁽²⁾ Recently, the Supreme Court struck down the residual clause of Title 18 U.S.C. § 924(e)(2)(B) as being unconstitutionally vague. Johnson v. United States, 135 S.Ct. 2551, 2563 (2015). Just as the case in Johnson, due process is violated when someone's life or liberty is taken under § 841(a) when such Statute provides no fair notice of any conduct intended to be punished. Id., citing Kolender v. Lawson, 461 U.S. 352, 357-358 (1983).