No._____

IN THE
SUPREME COURT OF THE UNITED STATES

JOHN TAYLOR TYER, PETITIONER

vs.

UNITED STATES OF AMERICA, RESPONDENT

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

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QUESTIONS PRESENTED

1. When a prisoner has made a substantial showing of factual innocence -- as in this case where the firearms Petitioner purportedly possessed in the furtherance of a drug trafficking crime had been previously seized and were in the custody of local law enforcement authorities at the time the government alleges Petitioner committed the act -- does a district court err when it holds that the broad jurisdiction of 28 U.S.C. § 2241 does not grant it the authority to review the merits of the case?

2. Is a motion under 28 U.S.C. § 2255 inadequate or ineffective to test the legality of a prisoner's conviction or sentence when a lay prisoner -- a construction worker by trade -- eventually obtains evidence demonstrating his factual innocence but not in time to meet the strict AntiTerrorism and Effective Death Penalty Act's statute of limitation in § 2255(f), in such a way that it permits such a prisoner to file for habeas relief through §§ 2255(e) and 2241 under the savings clause?

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The Petitioner, JOHN TAYLOR TYER, pro se, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit in this case which affirmed the judgment of sentence imposed in the District Court.

OPINIONS BELOW

The Opinion of the United States Court of Appeals for the Fourth Circuit affirming the United States District Court's denial is unreported and attached hereto as Appendix A. The judgment denying habeas relief entered by the United States District Court for the Eastern District of Virginia is unreported and hereto attached as Appendix B.

JURISDICTION

The judgment of the United States Court of Appeal's for the Fourth Circuit was entered on August 27, 2018. See Appendix A. The jurisdiction of this Honorable Court is invoked pursuant to Title 18, United States Code, Section 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The issues herein concern the release of a factually innocent prisoner through the Great Writ as found in Title 28, United States Code, Section 2241, which provides, in part, "[w]rits of habeas corpus may be granted by the Supreme Court, any justice thereof, the district court and any circuit judge within their respective jurisdiction. ... The writ of habeas corpus shall not extend to a prisoner unless ... [h]e is in custody in violation of the Constitution or laws ... of the United States;" the limitations imposed by the AntiTerrorism and Effective Death Penalty Act upon normal habeas corpus procedures as found in Title 28, United States Code, Section 2255(f), which provides, in part, "[a] 1-year period of limitation shall apply to a motion under this section. The limitations period shall run from the latest of ... the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence;" the due process provisions found in the Fifth Amendment to the United States Constitution, which provides, in part, "[n]o person shall be ... deprived of

life, liberty, or property[] without due process of law;" the right to the effective assistance of counsel found in the Sixth Amendment to the United States Constitution, which provides, in part, "[i]n all criminal prosecutions, the accused shall ... have the Assistance of Counsel for his defence;" and that the imprisonment of a factually innocent person is cruel and unusual punishment under the Eighth Amendment to the United States Constitution, which forbids, in part, "cruel and unusual punishment." Appendix C.

STATEMENT OF THE CASE

As a result of Petitioner's guilty plea, he was convicted on July 8, 2011 of one count of conspiracy to distribute a controlled substance offense in violation of 21 U.S.C. § 841 and one count of possession of a firearm in furtherance of a drug trafficking offense in violation of 18 U.S.C. § 924(c). The Sentencing Court imposed a sentence of 166 months for the controlled substance offense and a consecutive 60 months for the firearm offense, totalling 226 months of imprisonment.

Petitioner's subsequent appeal to the US Court of Appeals and Motion to Vacate under 28 U.S.C. § 2255 -- which raised an actual innocence claim of his conviction under 18 U.S.C. § 924(c) -- were denied. Petitioner's application for a Certificate of Appealability was likewise denied on June 30, 2015.

On March 2, 2016, the Sentencing Court granted a motion for reduction in sentence under 18 U.S.C. § 3582(c)(2) in light of a new retroactive US Sentencing Commission Amendment (Amendment 782), and the Court reduced Petitioner's sentence to 192 months imprisonment (132 months for the controlled substance offense and 60 consecutive months for the firearm offense).

Sometime after this, Petitioner finally obtained evidence that the local authorities (Coats Police Department) seized the two firearms in question -- as detailed in the indictment against Petitioner -- prior to any opportunity to possess those firearms in the furtherance of a controlled substance offense (See Appendix D) and that the Coats Police Department maintained possession over the firearms in question until recently (See Appendix E). In light of this evidence, Petitioner now raises that he could not be guilty of possessing the very firearms previously seized and held for years by local authorities for any purpose, let alone in the furtherance of a drug trafficking offense.

Despite Petitioner's detailed argument and submission of alibi witnesses' sworn affidavits and police records confirming seizure and maintaining of the firearms in question, the District Court procedurally dismissed Petitioner's actual innocence claim, holding that a § 2241 habeas petition does not permit the review of Petitioner's actual innocence claim despite the fact that § 2255 cannot suffice for the claim, either.

The United States Court of Appeals affirmed the District Court's decision, finding that only a new law would permit Petitioner's claim through § 2241.

Petitioner now comes before this Honorable Supreme Court, requesting that it review and determine that § 2255 petitions are inadequate and ineffective to test the legality of a conviction when a Petitioner comes by evidence he -- as a construction worker -- could not personally have known how to obtain earlier -- evidence which proves him innocent of a crime mandating five (5) years of his life in prison -- but that would not qualify as "newly discovered evidence" for purposes of § 2255.

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REASONS FOR GRANTING THE WRIT:

I. THE GREAT WRIT UNDER TITLE 28, UNITED STATES CODE, SECTION 2241 IS BROAD ENOUGH TO PERMIT ANY FEDERAL COURT TO REVIEW THE MERITS OF A CLAIM WHEN A PRISONER HAS MADE A SUBSTANTIAL SHOWING OF FACTUAL INNOCENCE

Since Congress enacted the AntiTerrorism and Effective Death Penalty Act (AEDPA) in 1996, the lower courts and even this Court have struggled to determine what's left of the Great Writ. In most cases under the AEDPA, prisoners challenging the legality of their convictions or sentences must raise such challenges through a habeas corpus motion under Title 28, United States Code, Section 2255, which the AEDPA significantly narrowed to reduce the number of prisoner motions flooding the courts.

In that task, the AEDPA succeeded, but it has created much debate over whether there are yet exceptions outside the scope of the AEDPA that may still be reviewable despite the AEDPA's strict limitations, some of those claims being reviewable under Title 28, United States Code, Section 2241, often called "the Great Writ," even when a prisoner is challenging the legality of his or her conviction or sentence. On several occasions, this Court has found that one circumstance that qualifies for such exception regularly is when a prisoner makes a substantial showing that he or she is imprisoned despite being actually, factually innocent of the crime of conviction. This Court has labeled such an instance as a "miscarriage of justice exception." See McQuiggin v. Perkins, 569 U.S. ___, 185 L.Ed.2d 1019, 1030-31 (2013):

> [This Court] ha[s] applied the miscarriage of justice exception to overcome various procedural defaults. These include "successive" petitions asserting previously rejected claims, see Kuhlmann v. Wilson, 477 U.S. 436 [] (1986)[], "abusive" petitions asserting in a second petition claims that could have been raised in a first petition, see McClesky v. Zant, 499 U.S. 467, 494-95 [] (1991), failure to develop facts in a state court, see Keeney v. Tamayo-Reyes, 504 U.S. 1, 11-12 [] (1992), and failure to observe state procedural rules, including filing deadlines, see Coleman v. Thompson, 501 U.S. 722, 750 [] (1991); [Murray v.] Carrier, 477 U.S. [478], at 495-496 [(1986)].

> The miscarriage of justice exception, [this Court's] decisions bear out, survived AEDPA's passage. [See] Calderon v. Thompson, 523 U.S. 538 [] (1998) ... at 558 []("The miscarriage of justice standard is altogether consistent ... with AEDPA's central concern that the merits of concluded criminal proceedings not be revisited in the absence of a strong showing of actual innocence."). In Bousley v. United States, 523 U.S. 614, 622 [] (1998), [the Court] held ... that actual innocence may overcome a prisoner's failure to raise a constitutional objection on direct review. Most recently, in House [v. Bell], [the Court] reiterated that a prisoner's proof of actual innocence may provide a gateway for federal habeas review of a procedurally defaulted claim of constitutional error. 547 U.S., at 537-538.
>
> These decisions "see[k] to balance the societal interests in finality, comity, and conservation of scarce judicial resources with the individual interest in justice that arises in the extraordinary case." Schlup [v. Delo], 513 U.S., at 324 [(1995)]. **Sensitivity to the injustice of incarcerating an innocent individual should not abate when the impediment is AEDPA's statute of limitations.**

McQuiggin, 185 L.Ed.2d, at 1030-31 (emphasis added).

The decisions in this Court's explanation all point to the fact that the AEDPA should not bar a reviewing court's decision to adjudicate an actual innocence claim through habeas corpus. Some of the cited cases above were challenges raised through § 2255, others through § 2241. This Court's decisions and explanation do not seem to apply such rules to only one of those habeas statutes. This particularly makes sense for § 2241 habeas petitions because § 2241(a) authorizes:

> Writs of habeas corpus may be granted by the Supreme Court, any justice thereof, the district court and any circuit judge within their respective jurisdictions.

28 U.S.C. § 2241(a). While the language of the statute clearly does not **require** any judge, justice, or court to review habeas petitions made through § 2241, it bestows the authority to any court or judge or justice should they choose to review the issue. As such, a court that claims it is not permitted to review a claim that qualifies under the miscarriage of justice exception raised through § 2241 commits error when such a court expresses the erroneous belief that it lacks authority to review the merits of such a motion.

This is especially harmful when the claim raised demonstrates the actual

innocence for which a prisoner is imprisoned. The Ninth Circuit, relying on this Court's holding in Holland v. Florida, 560 U.S. 631 (2010), recently explained:

> The actual innocence exception "serves as an 'additional safeguard against compelling an innocent man to suffer an unconstitutional loss of liberty,' guaranteeing that the ends of justice will be served in full." McClesky, at 495 (quoting Stone v. Powell, 428 U.S. 465, 492-93, n.31 [] (1976)).
>
> ...
>
> [T]he [Supreme] Court warned in Holland:
>
> The importance of the Great Writ, the only writ explicitly protected by the Constitution, along with congressional efforts to harmonize the new statute with prior law, counsels hesitancy before interpreting AEDPA's statutory silence as indicating a congressional intent to close courthouse doors that a strong equitable claim would ordinarily keep open. [Holland, 130 S.Ct.] at 2562 (internal citations omitted). **It is difficult to imagine a stronger equitable claim for keeping open the courthouse doors than one of actual innocence, "the ultimate equity on the prisoner's side."** Withrow v. Williams, 507 U.S. 680, 700 [] (1993)[](noting that the Supreme Court "continuously has recognized that ... a sufficient showing of actual innocence" is normally enough, "standing alone, to outweigh other concerns and justify adjudication of the prisoner's constitutional claim"). Indeed, "the individual interest in avoiding injustice is most compelling in the context of actual innocence." Schlup, 513 U.S. at 324.

Lee v. Lampert, 653 F.3d 929, 934-35 (CA9 2011)(emphasis added).

Especially taking into account this Court's decisions relied on by the Ninth Circuit Court of Appeals, it seems that a court, judge, or justice does not only err when it procedurally dismisses a § 2241 petition which makes a substantial showing of actual innocence, erroneously believing he or she lacks the authority granted it through § 2241, but **also errs even when using its discretion** -- as given in § 2241 -- to refuse to review the merits of a colorable showing of actual innocence.

This especially makes sense when considering federal resources, as the AEDPA was created to protect. Continuing to incarcerate a person for a mandatory five (5) years for a crime of which he is actually innocent will cost about $141,615 in federal resources, **far more** than it would cost for a

court to review the merits of an actual innocence claim and order the appropriate relief.[1] With that in mind, the concerns the AEDPA usually serves to protect are actually **hindered and undermined** when a court refuses to adjudicate a substantial showing of actual innocence.

So, considering the above, it seems that courts **may** and **should** review colorable claims of actual innocence when submitted through habeas corpus despite procedural bars -- AEDPA's statute of limitations or otherwise -- that would usually block the way to such review. The remaining question is whether the Great Writ through a § 2241 petition is the type of habeas petition to provide such relief to an actually innocent prisoner. A review of the history of the Great Writ under § 2241 as used to correct the wrongful imprisonment of those actually innocent of the crimes of conviction, as articulated by this Court in Withrow and used in In re Davis, 557 U.S. 952 (2009), resoundingly answers that question in the affirmative.

In Davis, the prisoner later obtained and submitted affidavits of recantation from the witnesses brought against him at trial. He raised a claim of actual innocence through § 2241. The late Honorable Justice Scalia dissented, expressing his belief that "'[e]ven if the District Court were to be persuaded by Davis's affidavits, it would have no power to grant relief' in light of 28 U.S.C. § 2254(d)(1) [the equivalent of AEDPA limitations]." Id., 174 L.Ed.2d 614, 615.

In response, the majority opinion, authored by Justice Stevens and joined by Justices Ginsburg and Breyer, expressed:

> The court may also find it relevant to the AEDPA analysis that Davis is bringing an "actual innocence" claim. See, e.g., Triestman v. United States, 124 F.3d 361, 377-380 (CA2 1997)(discussing "serious" constitutional concerns that would arise if AEDPA were interpreted to bar judicial review of certain actual innocence claims); Pet. for Writ

[1]The RAND Corporation published its 2013 finding that the average cost of incarceration annually is no less than $28,323 per inmate. See Evaluating the Effectiveness of Correctional Education by Lois M. Davis, Robert Boznick, Jennifer L. Steele, Jessica Saunders, and Jeremy N. V. Miles. Sponsored by the Bureau of Justice Assistance.

> of Habeas Corpus 20-22 (arguing that Congress intended actual innocence claims to have special status under AEDPA). Even if the court finds that § 2254(d)(1) applies in full, it is arguably unconstitutional to the extent it bars relief for a death row inmate who has established his innocence.

Davis, 174 L.Ed.2d at 615.

While Davis involves a death penalty and this case does not, there are still similar constitutional concerns to incarcerating a person who is actually innocent. See Triestman, 124 F.3d at 379 ("Even one day in prison would be cruel and unusual punishment for the 'crime' of having the common cold. ... A person may not be convicted under the eighth amendment of innocent conduct. ... Concern about the injustice that results from the conviction of an innocent person has long been at the core of our criminal justice system. It is arguable, therefore, that continued imprisonment of an actually innocent person would violate just such a fundamental principle.")(quoting Robinson v. California, 370 U.S. 660, 667 (1962); Schlup v. Delo, 513 U.S. 298, 325 (1995))(internal quotations omitted).

As discussed in detail below, this case mirrors Justice Stevens's concerned statement in Davis, "But imagine a petitioner in Davis' situation who possesses new evidence conclusively and definitively proving, beyond any scintilla of doubt, that he is an innocent man." Davis, 174 L.Ed.2d at 615.

In reaching its determination that § 2241 provided an appropriate and reviewable avenue for Davis's actual innocence claim despite possible AEDPA and other procedural bars that would normally preclude such review, this Court considered the history of the Great Writ like that found in Withrow.

> By statute, a federal habeas court has jurisdiction over any claim that a prisoner is "in custody in violation of the Constitution or laws" of the United States. See 28 U.S.C. §§ 2241(c)(3), 2254(a), 2255. While that jurisdiction does require a claim of legal error in the original proceedings, cf. Herrera v. Collins, 506 U.S. 390 [] (1993), it is otherwise sweeping in its breadth. As early as 1868, this Court described in these terms:
>
> "This legislation is of the most comprehensive character. It brings

within the habeas corpus jurisdiction of every court and of every judge every possible case of privation of liberty contrary to the National Constitution, treaties, or laws. It is impossible to widen this jurisdiction." Ex parte McCardle, 6 Wall 318, 325-326, 18 L.Ed. 816 (1868).

Our later case law affirmed that assessment. Habeas jurisdiction extends, we have held, to federal claims for which an opportunity for full and fair litigation has already been provided in state or federal court, see Brown v. Allen, 344 U.S. 443, 458-459 [] (1953); Kaufman v. United States, 394 U.S. 217, 223-224 [] (1969); to procedurally defaulted federal claims, including those over which this Court would have no jurisdiction on direct review, see Fay v. Noia, 372 U.S. 391, 426, 428-429 [] (1963); Kaufman, supra, at 223 []; Wainwright v. Sykes, 433 U.S. 72, 90-91 [] (1977); Coleman v. Thompson, 501 U.S. 722, 750 [] (1991); and to federal claims of a state criminal defendant awaiting trial, see Ex parte Royall, 117 U.S. 241, 251 [] (1886).

...

In English law, habeas corpus was one of the so-called "prerogative" writs, which included the writs of mandamus, certiorari, and prohibition. Duker, The English Origins of the Writ of Habeas Corpus: A Peculiar Path to Fame, 53 NYU L. Rev. 983, 984, n.2 (1978); 3 W. Blackstone, Commentaries 132 (1768). "[A]s in the case of all other prerogative writs," habeas corpus would not issue "as a mere course," but rather required a showing "why the extraordinary power of the crown is called in to the party's assistance." Ibid. And even where the writ was issued to compel the production of the prisoner in court, the standard applied to determine whether relief would be accorded was equitable: The court was to "determine whether the case of [the prisoner's] commitment be just, and thereupon do as to justice shall appertain." 1 id., at 131.

This Court has frequently rested its habeas decisions on equitable principles. In one of the earliest federal habeas cases, Ex parte Watkins, 3 Pet 193, 201, 7 L.Ed. 650 (1830), Chief Justice Marshall wrote: "No doubt exists respecting the power [of the Court to issue the writ]; the question is, whether this be a case in which it ought to be exercised." ... The federal habeas statute did "not deprive the court of discretion," which "should be exercised in the light of the relations existing, under our system of government, between the judicial tribunals of the Union and of the States." Ibid.

...

Prior opportunity to litigate an issue should be an important equitable consideration in any habeas case, and should ordinarily preclude the court from reaching the merits of a claim, **unless it goes to the fairness of the trial process or to the accuracy of the ultimate result.**

Withrow, 507 U.S. 715-720 (emphasis added).

In a case like Petitioner's -- where the ultimate result is the five-

year mandatory imprisonment of someone who is actually innocent of the conviction and that such imprisonment is the result of several constitutional violations throughout the criminal proceedings -- it is certainly appropriate to permit review of Petitioner's actual innocence claim, as it would be in any such case.

Despite all of this Court's clear instructions that § 2241 offers broad relief that one would reasonably believe to be available in an actual innocence claim, the lower courts are significantly limiting such petitions by adding their own requirements, taking the AEDPA into account to make its determinations. See for example United States v. Wheeler, 886 F.3d 415 (CA4 2018)(requiring actual innocence claim to rely on a new law retroactive on collateral review); Wooten v. Cauley, 677 F.3d 303, 307 (CA 6 2012)(same); In re Davenport, 147 F.3d 605 (CA7 1998)(same); Bryant v. Warden, FCC Coleman-Medium, 738 F.3d 1253 (CA11 2013)(same).

Ironically, this "requirement" is nowhere to be found in the statute of § 2241 or the cases interpreting same from this Court detailed above. The Circuit Court limitations give pause, and this Court alone has the authority, and the responsibility, to correct this significant narrowing which permits the lower courts to procedurally dismiss and completely ignore even habeas petitions demonstrating factual innocence of prisoners.

Importantly for Petitioner's case, when he plead guilty, he did so without understanding the legal meaning of the word "possess" found in the statute of conviction: 18 U.S.C. § 924(c). See Appendix F. His counsel repeatedly told him that the circumstances of his case -- two hunting long-barreled firearms found in a dusty storage room in a building **not attached** to the building where the drug manufacturing equipment was found, firearms that **had been seized by local police authorities** -- constituted an offense under § 924(c). See Appendix F. The constitutional errors did not stop there. At

Petitioner's Rule 11 Plea Hearing, the sentencing judge **never explained** what the statute meant, what qualifies as an offense under § 924(c), or that Petitioner's alleged conduct somehow qualified as a violation of § 924(c).

When Petitioner plead guilty to the charged offense under § 924(c), he did so with the erroneous understanding first given by his attorney and then allowed to stand by the sentencing judge that "owning" the firearms on the date alleged was sufficient. This is credible because no reasonable person with a true understanding of what a violation under § 924(c) is would plead guilty to possessing firearms in the furtherance of a drug trafficking crime when he knew (1) the Government only charged a § 924(c) violation for **one day** in the indictment -- January 22, 2007; (2) that on that day, he had alibi witnesses who worked with him on a construction project all day long away from his house; (3) by the time he returned home, local police authorities had already searched his house and seized the two long-barreled firearms in his house's "storage room;" and (4) he was arrested immediately upon returning home from his construction project before ever going near his house on that day, and that all the charges were later dismissed by the sheriff.

The **only** information alleged by the Government to support the indictment was in Count 8 of the indictment:

> On or about January 22, 2007, in the Eastern District of North Carolina, John Taylor Tyer and Jacob Scott Tyer, the defendants herein, aiding and abetting each other, knowingly possessed firearms in furtherance of a drug trafficking offense, prosecutable in a court of the United States ... in violation of Title 18, United States Code 924(c) and 2.

The only statement regarding this charge in Petitioner's plea is even less clear:

> Elements: First: That the defendant possessed a firearm;
>
> Second: That the firearm was possessed in furtherance of a drug trafficking crime.

Petitioner's Plea Agreement p. 4, Count Eight, ¶ 3 (Appendix G).

Lastly, the Rule 11 Plea Hearing equally failed to give Petitioner any genuine understanding or notice of what the charged § 924(c) offense entailed or required.

> The Court: Did you as charged in Count One beginning in or about January of 2007, and continuing thereafter up to and including the date of the indictment, did you conspire together with another person to unlawfully and intentionally distribute more than 500 grams of a mixture or substance containing a detectable amount of methamphetamine and did you intentionally become a member of that conspiracy?
>
> Defendant: Yes, Sir.
>
> The Court: And did you, as charged in Count 8, possess a firearm in furtherance of that drug trafficking crime?
>
> Defendant: Yes.
>
> The Court: Then you are, in fact, guilty of Counts One and Eight, aren't you?
>
> Defendant: I'm sorry, I didn't catch that.
>
> The Court: You are guilty of each of one of Counts One and Eight?
>
> Defendant: Yes.

See Doc. 272, Court Order, p. 5, citing December 7, 2010 Transcript pp. 29-30.

This is a **far cry** from what the due process clause of the Fifth Amendment to the United States Constitution requires, as revisited by this Court on more than one occasion. See McCarthy v. United States, 394 U.S. 459, 466 (1969)(A plea "cannot be truly voluntary unless the defendant possesses an understanding of the law in relation to the the facts."); see also United States v. Vonn, 535 U.S. 55, 68-69 (2009)(reiterating McCarthy's rule that due process requires the judge to ensure the defendant has an understanding of how the law applies to the facts of his or her case).

This type of error, of course, is particularly egregious in cases like McCarthy and Vonn where the defendants had plead guilty to a crime they only later learned they misunderstood and were actually innocent. Such is the case here, as shown below.

To be guilty of possessing firearms in the furtherance of a drug trafficking crime in violation of 18 U.S.C. § 924(c)(1)(A), the accused must have (1) possessed at least one firearm, and (2) such possession must have furthered a drug trafficking crime. See 18 U.S.C. § 924(c).

As it is in this case, the Government has no proof of **either** of the required elements, and Petitioner is able to demonstrate his **innocence of both.**

According to the local police report (Appendix D) recording the January 22, 2007 search of Petitioner's home while he was at work, they seized two long-barreled firearms -- specifically a "Stevens 12 G[auge] S[hotgun]: Serial Number E742657" and a "CVA/50 cal[iber] Black [powder rifle]: Serial Number 86380434" -- from a room the police labeled a "Living Room." This "Living Room" was actually a room Petitioner and his girlfriend, Angela Lucas -- who lived with him from 2005 onward -- used as a "storage room." See Appendix D, pp. 1-3 and F & H.

On January 22, 2007, the only day alleged by the Government for the § 924(c) violation, Petitioner got up early to work on a construction project for James Capps, a project Capps declares under penalty of perjury Petitioner had been working on for and with him for two weeks already as of that day (See Appendix I) -- and Petitioner's girlfriend, Lucas, drove Petitioner to Capps's house around 6:30 AM right after they woke because they only had one vehicle and she needed it that day, as Lucas declares under penalty of perjury. See Appendices F, H, & I.

According to his witnesses' sworn statements, Petitioner was not at home all day and was at work with Capps. See Appendices F, H, & I. Lucas declares under penalty of perjury that the local police arrived at their house "just after lunch time" and Lucas and Capps testify that Capps dropped Petitioner off back at his house -- after a long day of work -- between 6:30

and 7:00 PM. See Appendices F, H, & I.

When Petitioner arrived at his home, the police were still there searching his property. See Appendices F & H. They did not let Petitioner go into his home, and they immediately searched his person and found that he was **not armed**, as recorded in the police report. See Appendix D, p. 2 & Appendices F & H.

Shortly after Petitioner arrived home and was searched, Lucas was taken into custody for a small amount of methamphetamine the police had earlier found in her purse during their search, as is corroborated by the police report. See Appendix D, p. 3 and Appendices F & H.

Ironically, the only other "drug related" evidence found during the search as recorded on the police report were a set of black electronic scales found in "Tyre's vehicle" and some wrapping material such as aluminum foil found in Petitioner's son's bedroom closet. See Appendix D, p. 3. Police also found but did not record an empty dry ice bag in Petitioner's barn. It was the empty bag of dry ice that lead the federal Government to indict Petitioner for drug manufacturing in his barn three years after the local authorities dismissed the case against Petitioner.

Around 11:00 PM, Petitioner was taken into custody to the Harnett County Sheriff's Department, where Lucas was already waiting. See Appendices F & H.

Based on the alibi witness testimony and the police report of the search and seizure, Petitioner did not possess -- either through actual or constructive possession -- either of the two long-barreled hunting rifles at all on the day the federal Government charged he committed the crime of possessing a firearm in the furtherance of a drug trafficking crime. With this proof that Petitioner did not possess any firearms on the day in question, Petitioner's innocence of the § 924(c) conviction is clearly demonstrated.

Further, it is important to this case that this Court has emphasized, "a 'defendant cannot be charged under § 924(c)(1) merely for storing a weapon near drugs or drug proceeds,' or for 'placement of a firearm to provide a sense of security or to embolden.'" Bousley v. United States, 523 U.S. 614, 617 (1998)(quoting Bailey v. United States, 516 U.S. 137, 149 (1998)).

As already shown, the police reports reflect that the only drug-related evidence connected to Petitioner was found in his barn and in his truck, and the only two firearms in question weren't even stored anywhere near the truck or the barn that was not connected to the house with the storage room where the hunting long-barreled firearms were collecting dust.

The Government has never offered any testimony or other evidence that would prove or even reasonably allege Petitioner's guilt under § 924(c). The indictment fails to specify any facts that would allege it, Petitioner's court-appointed counsel convinced him that simply owning the firearms constituted such guilt, and the lower court failed to give any explanation at all that put Petitioner on notice of the type of conduct that can constitute offenses under § 924(c). **ALL** of these are significant constitutional violations which led to the conviction of an actually innocent person, and Petitioner will serve a mandatory five (5) years consecutive to the unchallenged drug conviction for a crime he did not commit if this Court does not correct the lower courts' significant narrowing of habeas corpus under § 2241.

It is this very type of situation, being barred by the courts below based on their belief that the AEDPA narrows § 2241 habeas petitions far more than the statute and this Court have expressed, that creates a procedure which permits the continued incarceration of one who is actually innocent and -- being unschooled himself -- was convinced otherwise by his court-appointed counsel. Granting certiorari to review the lower courts' decisions

limiting habeas corpus under § 2241 to permit such constitutional wrongs to stand is appropriate.

II. EVEN IF THIS COURT HOLDS THAT § 2241 IS NOT BROAD ENOUGH TO PERMIT RELIEF WHEN A PRISONER DEMONSTRATES ACTUAL INNOCENCE, IT IS APPROPRIATE TO HOLD THAT 28 U.S.C. § 2255 IS INADEQUATE OR INEFFECTIVE TO TEST THE LEGALITY OF A CONVICTION WHEN A PRISONER LATER OBTAINS PROOF OF ACTUAL INNOCENCE, BUT NOT IN TIME TO CONSTITUTE "NEWLY DISCOVERED EVIDENCE" FOR PURPOSES OF § 2255(f), PERMITTING REVIEW UNDER THE SAVINGS CLAUSE OF § 2255(e) AND 28 U.S.C. § 2241

As shown above, the Courts of Appeals below have held that a new, substantive change in law is required to permit review of a § 2241 petition when it challenges the legality of a prisoner's conviction or sentence. See United States v. Wheeler, 886 F.3d 415 (CA4 2018); Wooten v. Cauley, 677 F.3d 303 (CA6 2012); In re Davenport, 147 F.3d 605 (CA7 1998); Bryant v. Warden, FCC Coleman-Medium, 738 F.3d 1253 (CA11 2013), to name a few. In fact, neither Petitioner nor his fellow prisoners adept at research in the prison law library have found **any** Court of Appeals who has chosen not to impose this requirement, even on claims of actual innocence.

The Courts of Appeals that have addressed the issue of when § 2241 habeas relief may be employed have all held that, as they say, the AEDPA requires that a § 2241 petitioner prove that a § 2255 habeas petition is inadequate or ineffective to test the legality of the conviction or sentence. See 28 U.S.C. § 2255(e), commonly known as the "savings clause" permitting § 2241 relief when § 2255 is so inadequate or ineffective.

When reviewing claims presenting new evidence which demonstrates actual innocence of the underlying conviction, the lower courts first look to § 2255(f), which provides, in part, "A 1-year period of limitation shall apply to a motion under this section [§ 2255]. The limitation period shall run from ... the date on which the facts supporting the claim or claims could have been discovered through the exercise of due diligence." 28 U.S.C. § 2255(f)-(f)(4).

On the face of this section, it would appear that new evidence such as that Petitioner later obtained and presented would reopen the one-year window to file a petition under § 2255. On the face, Petitioner here could have filed his actual innocence claim under § 2241. But cases from this Court and the lower court in the Fourth Circuit Court of Appeals which has jurisdiction over Petitioner's case demonstrate that § 2255 is not at all available to Petitioner because of this Court's finding related to the "due diligence" requirement in § 2255(f)(4). See Johnson v. United States, 544 U.S. 295 (2005) (holding that a vacatur of a prior conviction which impacts a federal mandatory sentence qualifies as a new fact under § 2255(f)(4) to reopen the one-year window to file such a petition, **but the one-year window only reopens from the moment** the court rules the defendant **could** have first obtained such vacatur of prior conviction through due diligence; the courts ruled that Johnson could have obtained the vacatur earlier, resulting in his § 2255 petition being untimely and procedurally barred under the AEDPA); see also Dabbs v. United States, App. No. 15-6511 (CA4 2015)(holding that -- despite Petitioner's clear lack of knowledge and no clear connection to the information which led to his New Jersey prior conviction vacatur during his federal incarceration until he met another federal inmate whose New Jersey prior had just been vacated for being unconstitutionally obtained -- the courts ruled that Dabbs could somehow have learned earlier that New Jersey was vacating such convictions; thus, Dabbs's § 2255 was dismissed as untimely, and the Fourth Circuit Court of Appeals affirmed).

Considering the above cases interpreting the application of § 2255(f)(4), and considering that the affidavits and state evidence were technically always available (despite the due diligence Petitioner and his girlfriend Lucas continually applied in attempts to obtain the state records to no avail from the local Sheriff's department before Petitioner learned of

the NC State Freedom of Information process from another inmate), the lower courts would most certainly have applied Johnson to come to the same conclusion as the Fourth Circuit did in Dabbs's case above.

This creates quite the dilemma. Either Petitioner would have had to have knowledge not accessible to him in the federal prison law library (NC FOI information), or he cannot file a § 2255 petition. This requirement creates a hurdle that effectively requires pro se prisoners without access to state law and information -- even those who were contractors and not schooled in research and law such as Petitioner -- to have the same knowledge and access to law as professional attorneys not incarcerated. This means that either the prison law libraries **must** be improved to include state law and information so that prisoners are not so barred, lawyers have to be hired by each federal prison to assist prisoners in their research in prison, or the due diligence limitation imposed by this Court in Johnson must be given exceptions when a prisoner can demonstrate actual innocence of the crime for which he is imprisoned, as is the case here.

Here, as Petitioner only learned of this through a "jailhouse lawyer" from North Carolina who transferred to the Virginia prison where Petitioner is housed, the "due diligence" requirement imposes too high a burden on the lay pro se Petitioner, a burden which precludes the clear showing of actual innocence made. The moment Petitioner learned of the NC FOI process, he immediately took advantage of it and finally obtained the evidence he and Lucas had been attempting to obtain through letters, visits to the Sheriff's Department, and phone calls. Despite all of these attempts, due diligence would not be met according to the Johnson and very similar Dabbs cases above.

This means that § 2255 is **not** available for a challenge such as Petitioner's, as there is no reasonable way he could have obtained the evidence earlier, but the courts would not hold that he met the due diligence

requirements -- which would require knowledge beyond that of his own schooling and experience -- and when § 2255 is not available, adequate, or effective to test the legality of a conviction, § 2241 combined with § 2255(e)'s savings clause are supposed to be available to those such as Petitioner.

As such, Petitioner respectfully requests that this Court grant certiorari to determine whether the lower courts should cease their limitations on § 2241 relief to require a new, substantive law, and instead to additionally consider cases for § 2241 relief which present new, substantive **facts** which a petitioner -- through his or her lack of schooling or legal knowledge or a lacking federal prison law library -- did not obtain early enough to include in a § 2255 petition, especially when the new evidence demonstrates actual innocence of the crime for which he or she is imprisoned.

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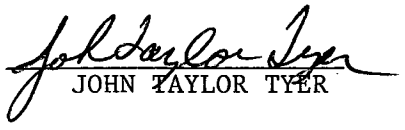
CONCLUSION

WHEREFORE, it is respectfully requested that a Writ of Certiorari be granted.

RESPECTFULLY SUBMITTED,



JOHN TAYLOR TYER