

No. _____

18-8215

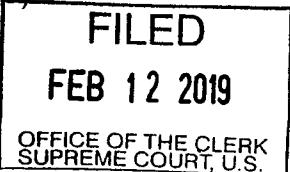
IN THE
SUPREME COURT OF THE UNITED STATES
OF AMERICA

BLAKE SANDAIN — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO



FIFTH CIRCUIT COURT OF APPEALS

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

PETITION FOR WRIT OF CERTIORARI

BLAKE SANDAIN

(Your Name)

P.O. Box 1009

(Address)

WELCH, WV. 24801

(City, State, Zip Code)

N/A

(Phone Number)

QUESTION(S) PRESENTED

- 1) Does using 2255(h)(2) second or successive on how the court of appeals retain jurisdiction to hear second or successive petition's deprive petitioner's of due process, when it's used on the 2241 saving clause on how the district court retain jurisdiction to hear the 2241 saving clause?
- 2) Does the ruling of Mathis (2016) implicates the validity of a sentence enhancement for the purpose of 2241 saving clause, or does the ruling of Mathis (2016) prohibits certain conduct covered by state statutes to be used in the federal jurisdiction?

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:

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	
STATEMENT OF THE CASE	
REASONS FOR GRANTING THE WRIT	
CONCLUSION.....	

INDEX TO APPENDICES

APPENDIX A COURT OF APPEALS OPINION

APPENDIX B DISTRICT COURT OPINION

APPENDIX C MAGISTRATE REPORT AND RECOMMENDATION

APPENDIX D APPELLANT BRIEF OPPOSING the Denial of 2241

APPENDIX E

APPENDIX F

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Whorton v Bockting, 549 U.S. 406 (2007) -----	2
Taylor v United States, 495 U.S. 515 (1990) -----	2
Descamps v United States, 133 S.Ct 2276 (2013) -----	2
Mathis v United States, 136 S.Ct 2243 (2016) -----	1
U.S. v Reyes-Requena, 243 F.3d 893 (5th Cir 2001) -----	1
U.S. v Smith, Letis# 3166 (9th Cir 2018) -----	1
U.S. v Burton, Letis# 161344 (7th Cir 2019) -----	1
U.S. v Morgan, 845 F.3d 664 (5th Cir 2017) -----	2
U.S. v Mayes, 817 F.3d 128, 133 (11th Cir 2016) -----	2
U.S. v Hill, 836 F.3d 591 (6th Cir 2016) (Continued on Attached page) -----	2

STATUTES AND RULES

28 U.S.C. 2241

28 U.S.C. 2255 (h) (2)

OTHER

U.S. V Surratt, 855 F.3d 218 (4th Cir. 2017) --- Pg. 2

U.S. V Akazola-Galea 876 F.3d at 1259 (9th Cir. 2016) --- 3

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 Fifth Circuit Court of Appeals, Lexis 32511; 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 B to the petition and is

reported at District Court, Lexis 26111; 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 January 8, 2019.

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

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

**FIFTH AMENDMENT CONSTITUTIONAL
RIGHT**

STATEMENT OF THE CASE

ON February 11, 2018, Petitioner filed a 2241 in light of the Statutory interpretation case of Mathis (2016) in the fifth Circuit District Court. The District Court in denying the 2241 Petition ruled that they did not retain Jurisdiction because Mathis (2016) is not a NEW rule of law made retroactive from the United States Supreme Court, and applied 2255(h)(2) on the 2241 Saving Clause to deny the Petition.

Petitioner appealed the District Court UNCONSTITUTIONAL USE of 2255(h)(2) on the 2241 Saving Clause to the fifth Circuit Court of Appeals. The Court of Appeals failed to address whether using the UNCONSTITUTIONAL USE of 2255(h)(2) on the 2241 Saving Clause deprived Petitioner of due process to be heard on the merits of his Petition, and instead used a standard of *de novo*, and ruled that Mathis (2016) did not establish the nonexistent offense under the Saving Clause which is *incorrect*.

REASONS FOR GRANTING THE PETITION

Petitioner Present an important Matter the Supreme Court Should Grant Certiorari ON. The fifth Circuit District Court and the fifth Circuit Court of Appeals has Departed from their own Precedent Circuit Case law ON establishing Retroactive for the 2241 Saving Clause, as well as Departed from the United States Supreme Court Precedent ON establishing Retroactive for the 2241 Saving Clause ON a Statutory Ruling such as Mathis V United States, 136 S.Ct 2243 (2016).

The fifth Circuit Precedent of U.S. V Reyes-Requena, 243 F.3d 893 (5th Cir 2001) States FOR the purposes of the escape hatch ON a Clarification of law like Mathis V United States, 136 S.Ct 2243 (2016), there is NO requirement that the Material Change in law Establish a new Rule of Constitutional law. See U.S. V Reyes-Requena, 243 F.3d 893 (5th Cir 2001); Also See U.S. V Smith, Lexis 3766 9th Cir 2018), and U.S. V BURTON, Lexis 16M344 (1st Cir 2014).

The following will Show from multiple Court Opinions, the fifth Circuit Ruling that Mathis (2016) does not receive Retroactive because it did not announce a new Rule of Law consistent with 2255(h)(2), has Departed from their own Precedent Circuit Case law in U.S. V Reyes-Requena (2001) supra establishing Retroactive for the 2241 Saving Clause ON a Statutory Ruling such as Mathis V United States, 136 S.Ct 2243 (2016), as well as Departed from the long standing principal of the United States Supreme Court INSTRUCTING the lower District Court in applying Retroactive to Collateral Review (2241). (CONTINUE ON ATTACHED PAGES)

See *Whorton v. Bockting*, 549 U.S. 406 (2001); "state" in that case of law like *Muthlis* (2010) requires retroactive application of law and collateral review. It is not clear that this holding would clarify existing precedents from *Taylor v. United States*, 435 U.S. 515 (1980) that set the rules of law in how the federal judiciary must treat new statute structures in the federal jurisdiction more than or equal to the state's did not announce or new rule. U.S. v. *Morgan*, 845 F.3d 664 (5th Cir. 2016) (concluding that nothing in *Descamps* (2012) holding that Descamps applied retroactively on collateral review because it did not announce a new rule (citing *Descamps*, 133 S. Ct. at 2283) error case law applying the categorical approach and its most cited裁判案例 all but pushes this case). Id. at 285 (*That* is the sole law here that *Descamps* undercuts, it is the *Multifaceted*裁判案例 of the *Government* concluded that *F.3d 591, 596 (5th Cir. 2016)* (holding that the Supreme Court escape hatch of the *state* law or *prior* source. U.S. v. *Smith*, 855 F.3d 218 (After 2011) applying Descamps as applied Descamps and the fourth circuit case of U.S. v. *Surkay*) did not convince or was rule of collateral review law. *Lewis* 376 (April 2016) (holding that the Supreme Court in Descamps, further, it clarified as a matter of state-utah (intermediate application of the *Taylor* United States, 435 U.S. 515 (1980) process in light of *Taylor* United States, 435 U.S. 515 (1980))

Likewise, Mathis v United States, 136 S.Ct 2243 (2016) which clarified Descamps (2013) cannot be read as creating a new rule. See U.S. v Arzola-Galea, 876 F.3d at 1259 (Mathis does not establish a new rule of constitutional law, rather it clarifies the Descamps application of the modified and categorical analysis to the career offender process -- subsequent decisions have confirmed the notion that Mathis (2016) is a clarification of existing rules rather than a new rule itself. See U.S. v Burton, Lexis 169344 (4th Cir 2017); "stating that Mathis (2016) did not announce a new rule of constitutional law, and noted that an independent claim based on Mathis (2016) must be brought under 2241".

In light of all the above circuits including the fifth circuit in the case of U.S. v Morgan 845 F.3d 614 (5th Cir 2017) concluding that nothing in Descamps indicates that it's holding announced a new rule, because it further clarified the new ruling in Taylor v United States, 495 U.S. 576 (1990). It stands to reason that the fifth circuit has departed from its own precedent, as well as the Supreme Court precedent in establishing retroactive for the further interpretation ruling such as Mathis v United States, 136 S.Ct 2243 (2016) under the 2241 saving clause.

FURTHER, the fifth CIRCUIT COURT has departed from the SUPREME COURT RULING in DENYING PETITIONER 2241 PETITION, by stating that Mathis v United States, 136 S.Ct 2243 (2016) implicates the VALIDITY of a SENTENCE ENHANCEMENT, and does not establish a NONEXISTENT OFFENSE for the PURPOSE of the 2241 SWING CLAUSE. The above POSITION has departed from the SUPREME COURT RULING, because Mathis (2016) decides whether a STATE STATUTE ELEMENTS is the SAME, OR IS NARROWER than those of the FEDERAL GENERIC OFFENSE a CONGRESSIONAL ENACTMENT, see 4B1.1 Guideline Definition.

But if the CRIME of the STATE CONVICTION COVERS ANY MORE CONDUCT than the FEDERAL GENERIC OFFENSE, then it is NOT a QUALIFYING OFFENSE for ENHANCEMENT PURPOSES- EVEN IF the DEFENDANT'S ACTUAL CONDUCT (ie, the FACTS of the CRIMINAL ACTS fits WITHIN the GENERIC OFFENSE'S BOUNDARIES, Mathis, 136 S.Ct at 2248 (Mathis (2016) MATERIAL CHANGED STATE STATUTE ELEMENTS, WHERE IT IS MORE THAN LIKELY that NO REASONABLE JURY WOULD CONVICT HIM OF IT in the FEDERAL JURISDICTION). IN light of all the above FACTS CLEARLY showing that PETITIONER MET ALL the SWING CLAUSE CRITERIA, PETITIONER REQUEST that CERTIORARI IS GRANTED, because PETITIONER does NOT have ANY OTHER POST CONVICTION REMEDY available to be able to REACH the MERITS of how Mathis (2016) ABROGATED his CIRCUIT COURT PRECEDENT.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Blake Sandifer

Date: Feb 4, 2019