

No. _____

18-8215

IN THE

SUPREME COURT OF THE UNITED STATES

OF AMERICA

BLAKE SANDIAIN

(Your Name)

PETITIONER

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 SANDIAIN

(Your Name)

P.O. Box 1009

(Address)

Welch, WV. 24801

(City, State, Zip Code)

N/A

(Phone Number)

FILED

FEB 12 2019

OFFICE OF THE CLERK
SUPREME COURT, U.S.

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 petitions 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. 575 (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 (5 th Cir 2001) - - - - -	1
U.S. v Smith, Lexis #3766 (9 th Cir 2018) - - - - -	1
U.S. v Burton, Lexis #167344 (7 th Cir 2017) - - - - -	1
U.S. v Morgan, 845 F.3d 664 (5 th Cir 2017) - - - - -	2
U.S. v May's, 817 F.3d 728, 733 (11 th Cir 2016) - - - - -	2
U.S. v Hill, 836 F.3d 591 (6 th 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 ARAZOLA-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 _____.

☐ 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 167344 (11th Cir 2017).

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 Rockting*, 549 U.S. 406 (2007); "stating that a old Rule of law like Mathis (2016) receives retroactive on direct review and collateral review. ID

In *Descamps*, 133 S.Ct 2276 (2013) the Supreme Court was clear that its holding "merely clarified existing precedent from *Taylor v United States*, 493 U.S. 575 (1990) that set the new Rule of law in how the federal jurisdiction are to use state statutes in the federal jurisdiction more than a quarter century ago. (Collecting other circuits, stating that *Descamps* did not announce a new Rule: *U.S. v Morgan*, 845 F.3d 664 (5th Cir 2017) (concluded that nothing in *Descamps* indicates that it's holding announced a new Rule that was constitutionally based: *U.S. v May's*, 817 F.3d 728, 733 (11th Cir 2016). Holding that *Descamps* applied retroactively on collateral review because it did not announce a new Rule (citing *Descamps*, 133 S.Ct at 2283 for case law explaining the categorical approach and its modified counterpart all but resolves this case") is at 2285 (That is the job, as we have always understood it, of the modified categorical approach: *U.S. v Hill*, 836 F.3d 591, 596 (6th Cir 2016) (The Government conceded that *Descamps* and the fourth circuit case of *U.S. v Surratt*, 855 F.3d 218 (4th Cir 2017) applying *Descamps* applied retroactively to a *Descamps* claim raised under the escape hatch of the 2241 by a prisoner: *U.S. v Smith*, Letis 3766 (9th Cir 2018) (Holding that the Supreme Court did not announce a new Rule of constitutional law in *Descamps*. Rather, it clarified as a matter of statutory interpretation - application of the career offender process in light of *Taylor v United States*, 493 U.S. 575 (1990)

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 Arazola-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 167344 (7th 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 64 (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. 575 (1990). It stands to reason that the fifth circuit has departed from it's 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 saving 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 ABl.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 defendants 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 statutes 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 saving 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 Sandler

Date: Feb 4, 2019