No. _____

IN THE SUPREME COURT OF THE UNITED STATES

JEREMY SNIDER, Petitioner,

- vs -

UNITED STATES OF AMERICA, Respondent.

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

PETITION OF JEREMY SNIDER FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Petitioner Jeremy Snider brought his case pursuant to 28 U.S.C. § 2255 seeking post-conviction sentencing relief. His claim rested on an erroneous designation as a career offender under the Sentencing Guidelines. By a 2-to-1 vote, the United States Court of Appeals for the Sixth Circuit held that all non-constitutional advisory guideline claims are non-cognizable under § 2255. Thus, this petition presents the following question:

1. Whether non-constitutional claims for sentencing relief grounded on the advisory Sentencing Guidelines can ever be cognizable under 28 U.S.C. § 2255.

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Jeremy Snider petitions the Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit in this case.

REFERENCES TO OPINIONS BELOW

The opinion of the United States Court of Appeals, App., *infra*, 1a-23a, is reported at 908 F.3d 183 (6th Cir.), *reh'g en banc denied*, (Dec. 18, 2018). Relevant earlier appellate decisions from this case are neither reported nor available online, but are included in the appendix at App., *infra*, 51a-52a, 53a-55a. Opinions from the district court are similarly neither reported nor available online, but are included in the appendix at App., *infra*, 27a-45a, 46a, 47a-50a.

STATEMENT OF JURISDICTION

The court of appeals entered judgment on November 9, 2018. App. 1a-23a. On December 18, 2018, the court denied a rehearing en banc. App. 56a. The jurisdiction of the Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Pertinent statutory provisions, specifically 28 U.S.C. § 2255, are reprinted in the appendix to this petition. App., *infra*, 57a-59a.

STATEMENT OF THE CASE

On July 6, 2007, a jury found Jeremy Snider guilty on six counts of a superseding indictment. The counts were drug- and firearm-related: count one, a violation of 21 U.S.C. § 846 for conspiracy to manufacture over 50 grams of a mixture and substance containing a detectable amount of methamphetamine; count two, a violation of 21 U.S.C. §§ 841(a)(1) and 846 for the manufacture and attempt to manufacture a mixture and substance containing a detectable amount of methamphetamine; count three, a violation of 21 U.S.C. § 843(a)(6) for possession of equipment, chemicals, products, and materials which may be used to manufacture methamphetamine; count four, a violation of 18 U.S.C. § 922(g) for being a felon in possession and receipt of a firearm shipped and transported in interstate commerce; count five, a violation of 18 U.S.C. § 922(j) for possession of a stolen firearm transported in interstate commerce with knowledge that the firearm was stolen; and count six, a violation of 18 U.S.C. § 924(c)(1)(2) for possession of a firearm in furtherance of a drug trafficking crime.

On April 18, 2008, the district court sentenced Mr. Snider to 300 months on counts one and four, 240 months on count two, and 20 months on counts three and five to run concurrently for a sentence of 300 months; and 60 months on count six to run consecutively for a total sentence of 360 months. The court also ordered four years of supervised release. In the sentencing hearing, the district court found Mr. Snider to be a career offender under U.S.S.G. § 4B1.1.

The direct appeal challenged only Mr. Snider's conviction on count six, which the government conceded. As a result, the court of appeals ordered dismissal of Mr. Snider's conviction on count six. On July 9, 2010, the district court issued an order dismissing count 6 and resentencing Mr. Snider to a total of 300 months of incarceration plus four years of supervised release. App. 24a-26a. The district court held that no resentencing hearing was needed, because the court was imposing the original sentence on counts one through five, and was not considering any new evidence. Mr. Snider continued to be considered a career offender.

On June 16, 2011, Mr. Snider filed a pro se motion under 28 U.S.C. § 2255. His petition raised four issues. The district court required the government to respond to the first one dealing with a violation of Mr. Snider's Sixth Amendment rights due to ineffective assistance of counsel who had failed to object to the application of the career offender guideline. App. 27a-45a. On November 18, 2013, the court denied Mr. Snider's initial petition. App. 46a. Through various timely motions to alter or amend, the petition remained before the district court for almost three more years.

On September 16, 2016, following an invitation from the court of appeals to provide an update on Mr. Snider's case, the district court denied all requests to alter or amend the motion, and transferred all related motions to the court of appeals as second or successive motions under 28 U.S.C. § 2255. App. 47a-50a. Mr. Snider appealed. The court of appeals dealt with his case in three separate orders.

In the first order on December 8, 2016, the court of appeals dismissed the appeal to the extent that Mr. Snider appealed the September 16th transfer order itself. App. 51a-52a. It held that an order transferring a motion to an appellate court for consideration as a second or successive motion to vacate is not appealable. App. 52a.

In the second order on May 16, 2017, the court of appeals granted a certificate of appealability on Mr. Snider's claims that he was incorrectly sentenced as a career offender and that he received ineffective assistance of counsel. The court denied relief on all other claims. App. 53a-55a. These two claims were preserved because, according to the court, reasonable jurists could find it debatable whether the district court erred in denying Mr. Snider's claims that he had been incorrectly classified as a career offender and that he had received ineffective assistance of counsel. App. 54a.

In the third order on November 9, 2018, the court of appeals, on a 2-to-1 vote, affirmed the district court's order denying Mr. Snider's § 2255 motion. App. 1a-23a. This third order is the subject of this petition. The panel majority held that "a defendant cannot use a § 2255 motion to vindicate non-constitutional challenges to advisory guideline calculations." App. 11a, *citing United States v. Foote*, 784 F.3d

931, 939 (4th Cir. 2015). In the panel majority's view, Mr. Snider's challenge of his career offender status could not be the subject of a § 2255 motion. The majority opinion acknowledged that "the Supreme Court has not addressed whether an advisory, non-constitutional Sentencing Guidelines case could reach such exceptional levels," App. 8a, namely, where the § 2255 claim involves "a fundamental defect which inherently results in a complete miscarriage of justice." *Id.*, *citing Davis v. United States*, 417 U.S. 333, 346 (1974).

The dissent read the law differently, observing that, while the law to date requires a showing of a "miscarriage of justice" to obtain relief under non-jurisdictional or non-constitutional § 2255 motions, "the holdings are limited and do not suggest that defendants who have incorrectly been designated as career offenders under the advisory guidelines may never bring § 2255 motions." App. 14a. The dissent also noted that the case law of the Sixth Circuit "does not preclude all advisory career offender guideline claims under § 2255." App. 16a. Because neither this Court nor the Sixth Circuit had ever adopted a per se rule holding that incorrect advisory career offender designations are incapable of collateral attack under § 2255, the dissent saw no basis in reason or law to adopt such a blanket prohibition now. App. 17a.

On December 18, 2018, the court of appeals denied Mr. Snider's petition for rehearing en banc. App. 56a. This timely petition follows.

REASONS FOR GRANTING THE WRIT

The question posed in this case affects thousands of persons presently incarcerated in federal prisons across the country, and will continue to affect thousands and thousands more until it is resolved. But federal inmates are not the only ones this question adversely affects.

It is a question that has caused federal district and circuit judges to spend countless hours struggling and disputing which answer to the question is the correct one, resulting in sharp dissents and divisions within and across circuits, all causing unnecessary and time-consuming uncertainty for the lower courts and litigants. But its impact goes beyond the courts.

It is a question that has required federal prosecutors, from the newest hires to the most seasoned highest-ranking lawyers, similarly to spend countless hours and limited resources defending these kinds of post-conviction cases all because it remains unclear which answer to the question is the correct one. And no one who is incarcerated, regardless of the nature of his or her crime, should live not knowing the clear answer to such an important question going to the heart of whether sentencing relief in many cases is even achievable. But the impact of the uncertainty goes even beyond federal judges, prosecutors, and inmates.

It is a question that has needlessly vexed members of the criminal defense bar, too. Defense lawyers should not have to spend their time and resources, often on a pro bono basis, quixotically fighting for clients on a front that still eludes a definitive answer from this Court. If the answer is no, defense lawyers will no longer need to pursue the dead-end argument on behalf of their clients, and run the risk of creating

false hope. If the answer is yes, defense lawyers will be able to better marshal their scarce resources to argue more cogently and more pointedly following the guidance the Court provides with the answer.

The question is a simple one. Can a federal inmate ever use a § 2255 motion to seek post-conviction sentencing relief on a non-constitutional advisory sentencing guideline claim?

It is time for a definitive answer from the highest court in the land. The answer is either yes or no. Once that simple answer is known, the cloud of uncertainty, which has remained far too long, will be lifted—alleviating undue burdens on time and resources, and adding certainty to one avenue of sentencing relief in desperate need of more certainty and clarity.

A. The Court Of Appeals Decided An Important Question Of Federal Law That Has Not Been, But Should Be, Settled By This Court.

Each year, federal inmates file thousands of § 2255 motions seeking to vacate or amend their sentences. While not all of these motions raise sentencing guideline claims, a significant portion of them do given the fundamental role the Sentencing Guidelines play in all federal sentencing hearings. Each new motion adds a new civil case on a district court's docket, and triggers the renewed involvement of the United States Attorney's Office for that district, which was originally involved with the underlying criminal case. Typically, defense counsel are then brought in through engagement, appointment, or pro bono to assist the defendant—now plaintiff against

the United States—in navigating the complicated and often uncharted seas of post-conviction law.

The panel majority in the court of appeals in this instance acknowledged that for this substantial portion of new filings every year, the Supreme Court has not addressed a most fundamental question that virtually every federal inmate who contemplates filing a § 2255 motion to vacate or correct his or her sentence asks. Can you even bring such a motion if your claim is based on a non-constitutional Sentencing Guidelines error? App. 8a, *citing Hawkins v. United States*, 706 F.3d 820, 829 (7th Cir. 2013) (Rovner, J. dissenting), *opinion supplemented on denial of reh'g*, 724 F.3d 915 (7th Cir. 2013), *cert. denied*, 571 U.S. 1197 (2014).

The basis for a § 2255 filing lies in the statute itself. Title 28, § 2255(a) provides:

> (a) ***A prisoner in custody*** under sentence of a court established by Act of Congress ***claiming the right to be released upon the ground*** that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or ***that the sentence*** was in excess of the maximum authorized by law, or ***is otherwise subject to collateral attack***, may move the court which imposed the sentence to vacate, set aside or correct the sentence.

28 U.S.C. § 2255(a) (emphasis added).

If the law does not categorically preclude § 2255 motions to correct sentences flawed by an erroneous designation of the defendant as a career offender under the Sentencing Guidelines, U.S.S.G. § 4B1.1, the inmate must fit the claim within the fourth of the four possible grounds for a § 2255 motion. That is where Mr. Snider's claim rests.

The panel majority interpreted existing law from this Court as providing "certain guideposts." "At one end is *Davis* [*v. United States*, 417 U.S. 333 (1974)], which held that § 2255 relief is available for someone whose conviction is based on conduct that is later determined to be non-criminal." App. 8a, *citing Davis*, 417 U.S. at 346-47. *Davis* held that an inmate whose conviction is based on conduct later determined to be non-criminal can seek relief through a § 2255 motion. *Davis*, *id.*

"At the other end of the spectrum, the Supreme Court has held on several occasions that a district court's failure to follow procedural rules is not tantamount to a complete miscarriage of justice absent prejudice to the defendant." App. 9a, *citing Peguero v. United States*, 526 U.S. 23, 24 (1999), *United States v. Timmreck*, 441 U.S. 780, 784-85 (1979), and *Hill v. United States*, 368 U.S. 424, 429 (1962). The error in *Peguero* was the district court's failure to inform the defendant of the right to appeal. The error in *Timmreck* was the district court's failure to mention a special parole term at a Rule 11 hearing. The error in *Hill* was the district court's failure to ask the defendant if he wanted to speak at his sentencing hearing.

In between the guideposts the court of appeals saw *United States v. Addonizio*, 442 U.S. 178 (1979), as providing helpful guidance. App. 9a. *Addonizio* dealt with changes in the now defunct Parole Commission's policies that had the effect of extending a federal inmate's sentence beyond the sentencing judge's expectation.

None of these so-called guideposts is particularly helpful in reality, however, because none of them deals with claims based on sentencing guideline errors, let alone the specific guideline governing career offender status. The panel majority in

Mr. Snider's case concluded that none of the prejudice Mr. Snider suffers from the error in his case fits into the categories thus far identified by this Court as either permissible or impermissible § 2255 claims. The panel majority went further. It concluded that "a defendant cannot use a § 2255 motion to vindicate non-constitutional challenges to advisory guideline calculations," App. 11a, *citing United States v. Foote*, 784 F.3d 931, 939 (4th Cir. 2015), thereby creating a blanket per se prohibition.

The court of appeals added the following observation to its holding:

> We note that, although not without dissent, every other court of appeals to have looked at the issue has agreed that a defendant cannot use a § 2255 motion to vindicate non-constitutional challenges to advisory guideline calculations. *See Foote*, 784 F.3d at 939 ("[T]here is no decision left standing in any circuit whereby a challenge to one's change in career offender status, originally determined correctly under the advisory Guidelines, is cognizable on collateral review. However, we cannot ignore that these decisions are extremely close and deeply divided."); *Spencer v. United States*, 773 F.3d 1132, 1144 (11th Cir. 2014) (en banc); *Hawkins*, 706 F.3d at 824-25.

App. 11a (footnote omitted). Such an important issue should not be left to debate and dissent in the lower courts—especially here where resources are perhaps being unnecessarily wasted and cases being needlessly brought and adjudicated simply because there is to date no clear answer from this Court to the question underlying the majority opinion from the court of appeals: can a federal inmate ever use a § 2255 motion to vindicate non-constitutional challenges to advisory guideline applications?

The issue of committing resources, perhaps unnecessarily, because this Court has not to date provided a clear answer is not an insignificant one in this instance. Although the court of appeals examined 28 U.S.C. § 2255(a) in holding that Mr.

Snider could not use a § 2255 motion to seek sentencing relief when a non-constitutional Sentencing Guidelines error is at issue, other provisions of the statute warrant discussion as well. Indeed, these other provisions highlight the importance of having the Court answer for the entire country the question posed in this petition to avoid the persistent predicaments described in the quotation above—and to save significant judicial and other resources in the process.

For instance, 28 U.S.C. § 2255(b) provides:

> (b) ***Unless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief***, the court shall cause notice thereof to be served upon the United States attorney, grant a prompt hearing thereon, determine the issues and make findings of fact and conclusions of law with respect thereto. If the court finds that the judgment was rendered without jurisdiction, or that the sentence imposed was not authorized by law or otherwise open to collateral attack, or that there has been such a denial or infringement of the constitutional rights of the prisoner as to render the judgment vulnerable to collateral attack, the court shall vacate and set the judgment aside and shall discharge the prisoner or resentence him or grant a new trial or correct the sentence as may appear appropriate.

28 U.S.C. § 2255(b) (emphasis added). As the law currently stands, considerable uncertainty surrounds the question whether a federal inmate can use a § 2255 motion to obtain relief on a non-constitutional claim based on an error in the interpretation or application of the Sentencing Guidelines. If the Court were to grant this petition and decide one way or the other the question posed in this petition, district courts would then be able to exercise, with a level of confidence not available today, the discretion the statute provides them by either denying the motion shortly after it is filed without further time-consuming proceedings (if the Court answers the question in the negative) or proceeding with the steps set forth in § 2255(b) by involving the

United States Attorney and so forth (if the Court answers the question in the affirmative).

Having the Court grant this petition and decide one way or the other the question posed in it would also help the courts of appeals save judicial resources. Title 28, U.S.C. § 2255(d) provides:

> (d) An appeal may be taken to the court of appeals from the order entered on the motion as from a final judgment on application for a writ of habeas corpus.

28 U.S.C. § 2255(d). If there is certainty on the question posed in this petition, courts of appeals would know whether to dismiss frivolous appeals due to the non-cognizable nature of the claim under § 2255 (if the Court answers the question in the negative) or to proceed to a consideration of the merits (if the Court answers the question in the affirmative)

Finally, having the Court grant this petition and decide one way or the other the question posed in it would enable more efficient spending of that portion of the Judiciary's budget designated for appointment of counsel under the Criminal Justice Act. 18 U.S.C. 3006A. Title 28, U.S.C. § 2255(g) provides:

> (g) Except as provided in section 408 of the Controlled Substances Act, in all proceedings brought under this section, and any subsequent proceedings on review, the court may appoint counsel, except as provided by a rule promulgated by the Supreme Court pursuant to statutory authority. Appointment of counsel under this section shall be governed by section 3006A of title 18.

28 U.S.C. § 2255(g). With certainty as to whether non-constitutional Sentencing Guidelines claims are cognizable under § 2255, district and appellate courts would know with greater confidence from the start whether appointment of counsel is not

needed because the claim is subject to dismissal from the outset (if the Court answers the question in the negative) or appointment of counsel is needed because the claim is cognizable under § 2255 and a prompt dismissal order on jurisdictional grounds is probably not in the offing (if the Court answers the question in the affirmative).

It is worth noting that this is but one area of post-conviction relief where courts and judges disagree on whether certain claims are cognizable under § 2255. The panel majority observed that courts disagree whether errors in calculating a mandatory guideline range are cognizable under § 2255; whether a defendant can use the savings clause of § 2255(e) and 28 U.S.C. § 2241 to challenge a mandatory guideline enhancement when the defendant is foreclosed from bringing a successive § 2255 motion; and whether guidelines claims are cognizable under § 2255 where the predicate conviction supporting the guideline enhancement was later vacated. App. 11a, n.5. In short, having the Court grant the petition and decide this one important aspect of cognizable claims under § 2255 one way or the other would go a long way in bringing clarity to an area of post-conviction law fraught with considerable division.

B. The Court Of Appeals Decided An Important Federal Question In A Way That Conflicts With Relevant Decisions Of This Court.

The dissent provides an alternative basis for granting Mr. Snider's petition. Even if one should agree with the panel majority's holding on the merits, the dissent's key observation below supports the conclusion that that holding conflicts with relevant decisions of this Court. According to the dissent:

> As applied to miscalculations of the advisory career offender guidelines, however, the reasoning and holdings of these

> [Supreme Court] cases are distinguishable. Although these cases establish "miscarriage of justice" as the applicable standard for non-jurisdictional or non-constitutional § 2255 motions, ***the holdings are limited and do not suggest that defendants who have incorrectly been designated as career offenders under the advisory guidelines may never bring § 2255 motions***.

App. 14a (emphasis added).

The cases the dissent was referring to were the same three cases on which the panel majority focused: *Peguero v. United States*, *supra*, 526 U.S. 23, *United States v. Timmreck*, *supra*, 441 U.S. 780, and *Hill v. United States*, *supra*, 368 U.S. 424. As noted above, in *Peguero*, the district court failed to inform the defendant of the right to appeal. In *Timmreck*, the district court failed to mention a special parole term at a Rule 11 hearing. In *Hill*, the district court failed to ask the defendant if he wanted to speak at his sentencing hearing. Even the panel majority acknowledged that these errors—all in essence a district court's failure to follow procedural rules—did not prejudice the defendant. App. 9a. These cases are therefore inapposite to resolving the question at hand, since Mr. Snider is clearly prejudiced by having objectively received more prison due to his erroneous designation as a career offender.

Furthermore, the dissent points out a gaping hole in the panel majority's analysis of these three cases.

> Outside these specific instances (i.e., without additional "aggravating circumstances"), the Court in *Hill*, *Timmreck*, and *Peguero* expressed no opinion as to whether other, more significant, sentencing errors could constitute a miscarriage of justice. Indeed, by engaging in a more fact intensive examination, the Court endorsed a limited, rather than broader, cognizability analysis.

App. 15a. This unassailable conclusion, derived from this Court's relevant precedents, highlights the paucity of any legal justification for jumping to the startling conclusion, as the majority opinion does, that non-constitutional Sentencing Guidelines claims can never be vindicated through a § 2255 motion. The panel majority's per se prohibition plainly conflicts with relevant decisions of this Court.

The panel majority's analysis of *United States v. Addonizio* provides additional support why this Court should grant this petition. In *Addonizio*, the error the inmate sought to rectify by way of a § 2255 motion was an incorrect assumption the sentencing judge made about the future course of parole proceedings. *Addonizio*, 442 U.S. at 186. In denying the relief, the Court concluded, "And in our judgment, there is no basis for enlarging the grounds for collateral attack to include claims based not on any objectively ascertainable error but on the frustration of the subjective intent of the sentencing judge." *Id.* at 187. The dissent is correct to note that the error in Mr. Snider's case—an incorrect career offender designation that resulted in additional prison time—is hardly similar to "the subjective intent of the sentencing judge." App. 15a-16a.

The panel majority ignored this distinction. Instead, it viewed the finding in *Addonizio*, namely, that the sentence was lawful when imposed, as weighing heavily in favor of a blanket per se prohibition of § 2255 relief for non-constitutional guideline claims. App. 10a. This Court made clear in *Addonizio*, however, that that finding was in fact not determinative of whether § 2255 relief was available to the inmate. *Addonizio*, 442 U.S. at 186-90. The same was true in the approach the Court took in

Johnson v. United States, 544 U.S. 295, 298 (2005), where it implicitly recognized a § 2255 claim even though the sentence was lawful when imposed and became subject to collateral attack only after state courts vacated the predicate offenses. The panel majority's conclusion from the Court's relevant law, therefore, conflicts with that law, and thereby provides additional support for granting Mr. Snider's petition.

A quarter century before the first Sentencing Guidelines Manual, this Court held that an inmate could use a § 2255 motion to seek sentencing relief on a non-jurisdictional or non-constitutional claim provided a complete miscarriage of justice occurred. *Hill v. United States*, 368 U.S. 424, 428 (1962). The Court's analysis of the error in *Hill* was neither rigid nor narrow, but instead flexible and sweeping; phrased not as a single standard but actually embracing several. The Court articulated a standard that requires "a fundamental defect which inherently results in a complete miscarriage of justice" or "an omission inconsistent with the rudimentary demands of fair procedure" or "'exceptional circumstances where the need for the remedy afforded by the writ of habeas corpus is apparent.'" *Id.*, *quoting Bowen v. Johnston*, 306 U.S. 19, 27 (1939) (citations omitted). This is as it should be, as the Court in *Hill* underscored the broad form of relief a § 2255 motion was intended to make available to inmates.

> Suffice it to say that it conclusively appears from the historic context in which § 2255 was enacted that the legislation was intended simply to provide in the sentencing court a remedy exactly commensurate with that which had previously been available by habeas corpus in the court of the district where the prisoner was confined.

Hill, 368 U.S. at 427 (footnote and citation omitted). The Court subsequently affirmed this approach in *Davis v. United States*, *supra*, 417 U.S. at 346, and in *United States v. Addonizio*, *supra*, 442 U.S. at 185.

> This statute [28 U.S.C. § 2255] was intended to alleviate the burden of habeas corpus petitions filed by federal prisoners in the district of confinement, by providing ***an equally broad remedy*** in the more convenient jurisdiction of the sentencing court.

Addonizio, *id.*, *citing United States v. Hayman*, 342 U.S. 205, 216-217 (1952) (emphasis added).

The Court in *Hill* and in subsequent opinions taught us that the task of determining whether a certain error constituted a miscarriage of justice requires a case-specific, fact-intensive inquiry. *See*, *e.g.*, *Hill*, 368 U.S. at 429 ("[w]hether § 2255 relief would be available if a violation of Rule 32(a) occurred in the context of other aggravating circumstances is a question we . . . do not consider"); *Peguero*, 526 U.S. at 27, 29 ("[a] violation of Rule 32(a)(2) . . . does not entitle a defendant to collateral relief in all circumstances" and determining, after examining case-specific circumstances, that the defendant was not prejudiced when he had independent knowledge of his right to appeal); *Timmreck*, 441 U.S. at 784–85 (determining it was "unnecessary to consider whether § 2255 relief would be available if a violation of Rule 11 occurred in the context of other aggravating circumstances").

Both the panel majority and the dissent engaged in a case-specific, fact-intensive inquiry to determine whether an erroneous career offender designation under U.S.S.G. § 4B1.1 could constitute a miscarriage of justice. They came to different conclusions. That, however, is not what is important for purposes of this

petition. What is important for purposes of this Court's review is that, if the lower court opinion is left standing, district judges in the Sixth Circuit will never again engage in that type of fact-intensive, case-specific inquiry when presented with § 2255 motions seeking relief on non-constitutional guideline claims.

After engaging in its own analysis of the law and facts relevant to Mr. Snider's case, the panel majority chose to take the law in a different direction. It eliminated the fact-intensive inquiry this Court instructed decades ago was necessary for § 2255 motions. Instead, the panel majority created an exception to that legal framework for claims arising under the Sentencing Guidelines. It replaced the fact-intensive inquiry prescribed by this Court's jurisprudence with a sweeping per se prohibition of § 2255 motions for all non-constitutional Sentencing Guidelines claims. By doing so, it admittedly simplified the decision-making process for lower courts when adjudicating § 2255 motions. But by doing so, it also exceeded its judicial authority by ignoring well-established precedents of this Court and by devising a new legal standard of its own. The panel majority's per se prohibition plainly conflicts with relevant decisions of this Court.

C. The Question Presented Warrants The Court's Review.

The internal conflict of the opinion from the court of appeals shines a spotlight on why this case warrants review by the Court. The majority opinion acknowledges this Court has not addressed whether an advisory, non-constitutional Sentencing Guidelines case could embody a fundamental defect as to result in a complete miscarriage of justice—thus warranting § 2255 relief. App. 8a. By holding that

requests for sentencing relief based on non-constitutional guideline claims are never cognizable under § 2255 and at the same time noting that opinions across the other Circuits are extremely close and deeply divided, App. 11a, the majority appears to be telegraphing to the Court the need for review of this case. Regardless, the panel majority in Mr. Snider's case has moved well beyond the law established by the Court. And regardless of how one views the merits of the majority opinion, the panel majority is indisputably announcing that it has ruled on an important question of federal law that has not been, but should be, settled by this Court. Thus, for these reasons, this opinion warrants review.

The dissent shines its own spotlight on an alternative reason why this case warrants review by the Court. In challenging the per se prohibition of certain § 2255 motions the panel majority has created for the first time, the dissent shows that this Court has instead permitted § 2255 relief for a wide range of cases where a miscarriage of justice has occurred. Moreover, errors as to an inmate's criminal history score—and thus erroneous designation as a career offender—can constitute such a miscarriage of justice. If so, then the majority opinion plainly conflicts with relevant law of this Court. Regardless of how one views the merits of the dissenting opinion, the dissent is indisputably announcing that the panel majority has decided an important federal question in a way that conflicts with relevant decisions of this Court. Thus, for these reasons, this opinion warrants review.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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March 1, 2019