

18-9197  
No.

In The  
Supreme Court of the United States

October Term 2018

ORIGINAL

Earl Moore,  
Petitioner,

v.

United States Of America,  
Respondent.

On Petition For A Writ Of Certiorari  
To The United States Court of Appeals  
For The Fourth Circuit

Petitioner for Certiorari

Earl Moore  
Reg. No. 63586-066  
F.C.I. Hazelton  
P.O. Box 5000  
Bruceton Mills, WV., 26525

## Question Presented

Earl Moore Found himself in the sights of what has become known as a sting operation. That is, Moore was sitting at home in great need of resources to pay his bills when a controlled call came in requesting that he join in a stash-house robbery. Unbeknowst to Moore this was no crime to be had, but only a fabricated offense specifically designed to capture innocent individuals in dire straits. Such a crime includes a large quantity of drugs, and most always the confidential source requests the defendant to bring a gun.

Moore fell for the scheme and was arrested and proceeded to trial where he was convicted, and because he was designated as a career offender his sentence landed in the range of 360 to life. The Court without hesitation sentence Moore To 30-years in prison as a career offender. Following thei Court decision in Mathis v. United States, and after his direct appeal, and § 2255, Moore sought relief under § 2241 on the basis that his Pennsylvania resisting arrest is not longer a crime of violence. The § 2241 court determined that Mathis did not represent a "change" and therefore Moore could not satisfy the second prong of the test in United States v. Wheeler. The question is whether Mathis is a substantive change and therefore whether the Court of Appeals erred in dismissing his § 2241?

No. \_\_\_\_\_

---

In The  
Supreme Court of United States

---

Earl Moore,  
Petitioner,

v.

United States of America,  
Respondent.

---

To the Chief Justice and Associate  
Justices of Supreme Court:

Earl Moore ("Moore"), moves <sup>+</sup>this Court for a writ of certiorari to the United States Court of Appeals for the Fourth Circuit, and in support states:

Opinions Below

The Magistrate's report and recommendation and order adopting that report dated August 8, 2018, is attached with the Court of appeals affirmance and denial of rehearing at Exhibit-A

## Jurisdiction

This Court has jurisdiction under 28 U.S.C. § 1254(1).

## Constitutional and Statutory Provisions Involved

The Fifth Amendment's Due Process Clause

## Statement of the Case

Earl Moore was purportedly drawn into a fictitious stash house robbery. Following his trial, Moore was designed a career offender and received a 30-year sentence. He filed unsuccessfully a direct appeal and a § 2255. Subsequently, this issued the opinion in Mathis v. United States, 136 S.Ct. 2243 (2016), settling the footnote mis-interpreted in Descamps v. United States, 133 S.Ct. 2151 (2013). In that vein, Moore argued under the saving clause he was no longer a career offender and the court in his district of confinement should vacate his sentence. the district court determined that Mathis did not represent a change, but worse that Mathis was not retroactive.

## Reason For Granting Certiorari

There is no question that Mathis interpreted a statute, and under this Court's precedent "when this Court contrues a statute, it is explaining its understanding of what the statute has meant continuously since the date when it became law." United States v. O'Brien, 560 U.S. 218, 231 (2010)(quoting Rivers v. Roadway Express Inc., 511 U.S. 298, 313, n.12 (1994)). In other words, under this Court's precedent

Mathis is retroactive. But, the district of confinement court determined that Mathis is not retroactive, and without this Court's intervention it may be years before a court finally follows the law regarding the retroactivity of Mathis.

In addition, Mathis is a change. That is, before Mathis was Descamps and it did not cover the issue in Mathis. While both of these rulings followed the footing in Taylor v. United States, 495 U.S. 575 (1990), each one of them addressed a different type of law that would later be required in finding whether a prior conviction qualifies as a crime of violence or controlled substance offense.

For Moore's point, he points to this Court's observation[s] in Mathis: "[t]his case concerns a different kind of alternatively phrased law: not one that lists multiple elements disjunctively, but, instead, one that enumerates various factual means of committing a single element." Mathis, 136 S.Ct. at 2249. In that vein, Mathis is a change in law that applies retroactively. Therefore, the Fourth Circuit erred in affirming the dismissal without prejudice of his § 2241. Many court have founf that Mathis is retroactive, but the Fourth Circuit and many of the district courts within the circuit have determined that it is no while other courts within the Fourth Circuit have found that Mathis is retroactive. Without this Court's intervention the courts will remain deeply divided. For example, in the Seventh Circuit Mathis has been found to apply retroactively. See Jahns v. Julian, No. 16-CV-0239, 2018 U.S. Dist. LEXIS 54252 (D. In. Mar. 30, 2018):

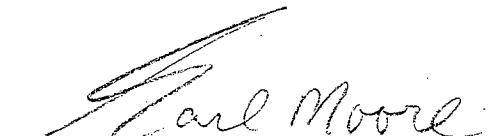
This Court agrees with the petitioner and the respondent's briefing in other cases, that Mathis is a new substantive rule that should be applied retroactively in a § 2241 petition. Holt v. United States, 843 F.3d 720, 721-22 (7th Cir. 2016) ("substantive decisions such as Mathis presumptively apply retroactively on collateral review.").

Jahns, 2018 U.S. Dist. LEXIS at 2. Judge Lane Magnus-Stinson in Jahns found that "[a] new rule is applied retroactively where it places certain kinds of primary, private individual conduct beyond the power of criminal law-making authority to proscribe, and this concept extends to rules prohibiting a certain category of punishment for a class of defendants because of their status or offense." Id. at 2 (quoting Montgomery v. Louisiana, 136 S.Ct. 718, 729 (2016)). "A conviction or sentence imposed in violation of a substantive rule is not just erroneous but contrary to law and, as a result void." Id. at 731. "As applied to this case, Mathis reflects a new substantive rule which may be applied retroactively. Based on this change, Jahns argues that he is now innocent of the ACCA finding." Jahns, 2018 U.S. Dist. LEXIS 54252 \* 3. As such, this Court should grant certiorari and settle the issue of whether Mathis is retroactive.

### Conclusion

Certiorari should be granted in this case.

Filed this 19th day of April 2019.

  
Earl Moore

## Exhibit-A