No. 19-5549

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES



ANTHONY DION COLLINS — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

IN THE FIFTH CIRCUIT COURT OF APPEAL
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

ANTHONY DION COLLINS #30693-048
(Your Name)
USP BEAUMONT
P.O. BOX 26030
(Address)

BEAUMONT, TEXAS 77720
(City, State, Zip Code)

(Phone Number)

## QUESTION(S) PRESENTED

I. WHETHER A FUNDAMENTAL DEFECT IS SUFFICIENT TO SATISFY THE SAVING CLAUSE WHERE PETITIONER ERRONEOUS SENTENCE FELL BENEATH THE STATUTORY MAXIMUM?

## LIST OF PARTIES

[XX] 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:

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## STATUTES AND RULES

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 _____; 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[ ] is unpublished.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 _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.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 N/A; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the N/A court appears at Appendix _____ to the petition and is

[ ] reported at N/A; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished. N/A

## JURISDICTION

[ ] For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was JUNE 10, 2019.

[X] 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: N/A, and a copy of the order denying rehearing appears at Appendix N/A.

[ ] 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 N/A. A copy of that decision appears at Appendix N/A.

[ ] A timely petition for rehearing was thereafter denied on the following date: N/A, and a copy of the order denying rehearing appears at Appendix N/A.

[ ] 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

**Violation of Due Process under the Fifth Amendment.**

21 U.S.C. §841 (b)(1)(A), provided in relevant part:
.... any person who violates subsection (a) of this section shall be sentence as follows... if any person commits a violation of this subparagraph... after two or more prior convictions for a felony drug offense have become final, such person shall be sentenced to a mandatory term of life imprisonment without release and fined accordance with the preceding sentence.

**(NRS) §453.321 Nevada Revised Statute cites: offer, attempt or commission of unauthorized act relating to controlled or counterfeit substance unlawful; it is unlawful for a person to: (a) import, transport, sell, exchange, barter, supply, prescribe, dispense, give away or administer a controlled or counterfeit substance; (b)Manufacture or compound a counterfeit substance; or (c) Offer or attempt to do any act set forth in paragraph (a) or (b).**

§ 28 U.S.C § 2255(e): **The saving clause states:** An application for a writ of habeas in behalf of a prisoner who is authorized to apply for relief by motion pursuant to this section shall not be entertained if it appears that the applicant has failed to apply for relief by motion, to the court which sentenced him, or that such court has denied him relief, unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of his detention 28 U.S.C. § 2255(e).

## STATEMENT OF THE CASE

At trial, Mr. Collins was convicted of Possession with intent to distribute cocaine in violation of 21 U.S.C. § 841(a)(1). Because Mr. Collins had two prior felony drug convictions for (1) Conspiracy to sell a controlled substance and (2), Sale of a controlled substance under Nevada Revised Statute §(453.321), the District Court had no choice but to sentence him to a mandatory life imprisonment without relief.

In 2016, The Supreme Court decided the case of **United States v. Mathis, 136, S.Ct. 2243, 195 L.Ed 2d 604,** which ruled how the modified categorical approach is applied in the context of federal sentencing.

Thus, In determining whether a prior conviction is included within the § 841(a)(1) offense defined or enumerated in the 4B1.2 Guidelines you only have to look to the elements of the prior offense, not to the actual conduct of the defendant committing the offense. For Mr. Collins this means that insufficient due process concerns are heightened under **Mathis** because his prior Nevada drug offense convictions no longer qualifies as a "controlled substance offense" within the meaning of the federal generic definition. Nevada Revised Statute § (453.321) for sale of a controlled substance, and Conspiracy to sell a controlled substance is a "Divisible Statute" that list potential other offense elements in the alternative as follow: **(A) Offer, Attempt, or Commission of unarthorized act relating to controlled, or counterfeit substance unlawful** - See (APPENDIX C).

## REASONS FOR GRANTING THE PETITION

The District Court erred in concluding that the saving clause does not permit petitioner to seek relief under section § 2241 purely because he challenges the legality of his sentence, rather than his conviction. See. (EXHIBIT B).

The District Court's reliance on **Reyes-Requena** 2255(e) saving - clause, deprived petitioner of any "meaningful opportunity" to demonstrate that he is being held pursuant to the erroneous application or interpretation of relevant law.

The Saving Clause pertains to one's "detention," and Congress deliberately did not use the word "conviction" or "offense," as it did elsewhere in § 2255. See. 28 U.S.C. §2255(h)(1) (referencing"the offense"), id §2255 (f)(1) (reference "conviction"). See **Russello v. United States**, 464 U.S. 16-23 (1983) ("Where Congress includes particular language in one section of a statute but omits it in another section of the same act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." (alteration and internal quotation marks omitted)).

Moreover, a sentence imposed above the otherwise - applicable statutory maximum based on a legal error is a "fundamental defect" redressable under the saving clause. See. **Brief in opposition** at 11-13 & nn. 3-4, **Dority v. Roy**, 131 S.Ct. 3023 (No.10-8286). A conviction for non-criminal conduct implicates the seperation -of-powers principles that "it is only Congress, and not the courts," which makes conduct criminal. **Bousley v. United States**, 523 U.S.

614, 620-621 (1998). Similarly, a sentence above the statutory maximum implicates the seperation -of- powers principle that "the power *** to prescribe the punishments to be imposed upon those found guilty of [federal crimes] resides wholly with Congress. **Whalen v. United States**, 445 U.S. 684, 689 (1980).

Federal Courts do not have the authority to impose a sentence without legislative authorization, and a sentence above the statutory maximum represents just such an unarthorized sentence. (Sentencing Courts may impose any sentence that has been authorized by statue). The imposition of an erroneous mandatory minimum sentence is likewise a fundamental error that raises seperation -of- powers concerns analogous to those implicated by a sentence above the statutory maximum. Only Congress has the exclusive authority to establish maximum and minimum penalties for a criminal offense. See. **United States v. Wiltberger**, 18 U.S. (5 Wheat.) 76, 95 (1820) ("**It is the legislature, not the Court, which is to define a crime, and ordain its punishment.**") When courts commit legal error in determining that a defendant is required to be sentenced to a mandatory minimum term - they transgress the authority that Congress established and effectively erroneously sentence the defendant to an aggravated crime.

Thus, the imposition of a mandatory minimum term [based] on a legal error significantly affects a defendant's liberty interests in a way that implicates due process concerns.

Under **pre-Mathis**, the prevailing misunderstood career offender and

statutory enhancements [led] courts to use prior convictions predicated under divisible solicit statutes that legislature regarded as not serious to be considered a "felony drug offense" to justify a significant increase in the federal mandatory life sentence for those defendant's who [un]like Mr. Collins, have been convicted of two prior "felony drug offenses" in appliance with the federal generic definition.

The erroneous imposition of a mandatory life term based on a legal error wrongly deprives the court of its discretion to impose a lower sentence after considering all the mitigating and aggravating factors surrounding the offense. The resulting sentence therefore represents an unjustified loss of liberty.

Clearly, this is a due process violation because Mr. Collins has a substantial and legitimate expectation expectation that he would be deprived his liberty only to the extent determined by the [sentencing body] in the exercise of its statutory discretion. See Hicks v. Oklahoma, 447 U.S. 343 (1980). Similary in United States v. Tucker, 404 U.S. 443, 444-45 (1972), The Supreme Court quoted, ("We deal here, not with a sentence imposed in the informed discretion of a trial judge, but with a sentence founded at least in part upon misinformation of constitutional magnitude. id. at 447.
It continued, [t]his prisoner was sentenced on basis of assumptions concerning his criminal record, which were materially untrue.")
id (quoting Townsend v. Burk, 334, U.S. 736 (1948).
Likewise, Here the District Court assumed that the two Prior Nevada convictions was sufficient to impose a life sentence,

creating a fundamental defect, which results in a miscarriage of justice. In **Brown** v. **Caraway**, 719 F.3d at 588 (7th Cir. 2013), The Court held that "an increase amounted to a miscarriage of justice and a fundamental sentence defect" because the "period of incarceration exceeded that permitted by law." **id.** at587 (alteration and internal quotation marks omitted). **Naravez** v. **United States**, 674 F.3d 621, 629 (4th Cir. 2011), The court held that an "erroneous increase has been the basis for granting habeas relief." **id.** citing **Tucker**, 404 U.S. at 447. Congress has bestowed "the courts broad remedial powers to secure the historic office of the writ." **Boumediene** v. **Bush**, 553 U.S. 723, 776 (2008). It is uncontroversial... that the privilege of habeas corpus entitles the prisoner to a meaningful opportunity to demonstrate that he is being held pursuant to "the erroneous application or interpretation of relevant law." **id.** at 779 (quoting **INS** V. **ST. CYR**, 533 U.S. 289, 302 (2001)). Habeas Corpus is "above all, an adaptable remedy," and its precise application and scope change depending upon the circumstances." **id.** Thus, The Distrcit Court and The Fifth Circuit erred by establishing a bright-line rule that the only fundamental error that meets the requirements of the saving clause is a conviction for conduct that is not criminal. The Court of Appeals affirmend "for the reason stated by the District Court." In the lower courts' view, because Mr. Collins challenges an enhance sentence rather than his conviction, saving clause relief is categorically unavailable.

The Fifth Circuit have consistently held that "Challenges to sentencing enhancements do not satisfy the saving clause of 2255(e)."

That is incorrect because sentences that exceed the statutory maximum, or that impose a statutory mandatory minimum based on a legal error are cognizable under the saving clause. whether it's under the Career offender provision 4b1.1, or 851 enhancement, a sentenced imposed above the other-wise applicable statutory maximum based on a legal error is a fundamental defect that's redressable under the saving clause. Therefore, the District Court erred by not ensuring Mr. Collins had a meaningful opportunity to demonstrate that he is entitled to relief from his allegedly erroneous sentence.

The saving clause requirement of showing inadequacy in **Reyes-Requena v. United States**, 243 F.3d 893,901 (5th Cir. 2001), Did not address whether an erroneously impose sentence is sufficient to "invoke the saving clause or whether it could be a fundamental defect," as it had no occasion to do so. To the contrary, **Jones**, Court stated, "Section 2255... was not intended to limit the rights of federal prisoners to collaterally attack their convictions and sentences," suggesting that the saving clause encompasses challenges to one's sentence. **id. Jones, 226 F.3d at 332 (4th Cir. 2000)** (Emphasis added). Including sentencing errors in the ambit of the saving clause also finds support in the statutory language.

In addition, The Supreme Court has long recognized a right to traditional habeas corpus relief based on an illegal extended

sentence. See **Nelson** v. **Campell**, 541 U.S. 637, 643 (2004). ("[T]he 'core' of habeas corpus has included challenges to "the duration of [the prisoner's] sentence.")

Indeed, one purpose of traditional habeas relief was to remedy statutory, as well as constitutional claims presenting a "fundamental defect which inherently results in a miscarriage of justice" and "exceptional circumstances where the need for the remedy afforded by the writ of habeas corpus is present. "**Davis**, 417 U.S. at 346 (quoting **Hill** v. **United States**, 368 U.S. 424, 428 (1962)). But if the District Court held that a prisoner was foreclosed from seeking collateral relief from a fundamentally defective sentence, and "through no fault of his own - has no sourse of redress," this purpose would remain unfulfilled. **Jones**, 226 F.3d at 333 n.3. (4th Cir. 2000). Therefore, 2255(e) Saving Clause must provide an avenue for prisoners to test the legality of their sentence because the saving clause portal under **Reyes-Requena** leaves a multitude of petitioners like Mr. Collins without a means for challenging their sentences. Clearly, Congress could have made saving clause relief dependant only on changes in Supreme Court constitutional law by using the identical language in 2255(e), but it did not. This is underscored by the fact that Congress anticipated the saving clause would apply to prisoners who had already been "denied... relief" by the sentencing court, sweeping in those prisoners filing a successive § 2255 motion. **id.** § 2255(e).

Under **Reyes-Requena**, The saving clause applies ony to a claim that is based on "a retroactively applicable Supreme Court decision," which establishes that the petitioner may have been "convicted of a nonexistent offense" and that was "foreclosed by circuit law at the time when the claim should have raised in the Petitioner's trial, appeal, or first § 2255 motion."

**II.** The District and Appellate Court erred in denying Collins's petition under 28 U.S.C. § 2241 that relied on **Mathis** adopting the magistrate Judge's report and recommendation asserting that mathis did not announce a new rule of constitutional law that was retroactively to cases on collateral review. However, Mathis did announce an interpretative decision and such decisions interpreting federal statutes that substantively defines criminal offenses automatically applies retroactively. See. **Schriro v. Summerlin**, 542 U.S. 348, 351, 124 S.Ct. 2519, 159 L.Ed. 2d 442 (2004).

On its face **Mathis** was a substantive decision that interprets the scope of a federal statute. The Supreme Court decision in Mathis dealt with Armed Career Criminal (ACCA), However, the primary focus on the court's decision in Mathis was how to determine whether a statute is "divisible" or "indivisibe," and thus, whether the modified categorical approach can be used to determine when a statute defines more than one offense - of which offense defendant was convicted. See. **Hinkle**, F.3d 569 (5th Cir.2016). The decision in Mathis

[clarified] an interpretation of a federal statute that was based on its long standing principles and reasoning that underlies them. Mathis, 136 S.Ct. at 2251. Thus, such interpretative decisions "decide for the entire country how court's should have read the statute since it was enacted. "They apply retroactively because they necessarily carry a significant risk that a defendant stands convicted and/or punished of an act that law does not make criminal ... Schriro, 542 U.S. at 352 (quoting Bousley , 523 U.S. at 620-21) "(New substantive rules generally applies retroactively. This includes decisions that narrow the scope of a criminal statute by interpreting its items...")

Mathis do not change the law, but rather explain what the law has always meant and cases interpreting federal statutes are fully retroactive. Gonzales-Gonzales v. Weber, 472 F.3d 1198, 1202-04 (10th Cir. 2006) (quoting Harper v. Virginia Dept. of Taxation, 509 U.S. 86, 97-98 (1993). The Supreme Court held that "an old rule applies [both] on direct and collateral review." Whorton v. Bocking, 549 U.S. 406, 416 127 S.Ct. 1173, 167 L.Ed. 2D1. (2007). Additionally, Holt v. United States, 843 F.3d 720; 2016 U.S. app Lexis 22136, The Seventh Circuit (quoted "Substantive decisions such as Mathis presumptively apply retroactively on collateral review.") See, e.g., Davis v. United States, 417 U.S. 333, 94 S.Ct. 2298, 41 L.Ed 2d 109 (1974); Montgomery v. Louisiana, 136 S.Ct. 718 193 L.Ed 2d 599 (2016).

Under these presidents Mr. Collins should've been authorized to proceed under §2255 (e) "saving clause" because Congress

restricted second or successive petitions to constitutional claims. See, Lorentsen v. Hood, 223 F.3d 950-953 (9th Cir. 2000).

Given the foreclosure of Mr. Collins's time of sentencing and direct appeal, and the advent of Mathis after his first section 2255 motion, habeas relief under the saving clause should've been available.

## CONCLUSION

The petition for a writ of certiorari should be granted, the judgment of the court of appeals vacated, and the case remanded for further proceedings in light of the position expressed in this brief.

Respectfully Submitted.

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