19 No. 6842

In the

Supreme Court of the United States

VIVEK SHAH

Petitioner,

v.

MARCUS HOLMES,

Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Seventh Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Under 28 U.S.C. § 2255, a federal prisoner has the opportunity to collaterally attack his sentence once on any ground cognizable on collateral review, with "second or successive" attacks limited to certain claims that indicate factual innocence or that rely on constitutional-law decisions made retroactive by this Court. 28 U.S.C. 2255(h). Under 28 U.S.C. 2255(e), an "application for a writ of habeas corpus [under 28 U.S.C. 2241] in behalf of a prisoner who is authorized to apply for relief by motion pursuant to" Section 2255 "shall not be entertained * * * unless it * * * appears that the remedy by motion is inadequate or ineffective to test the legality of his detention."

(1) Whether a federal prisoner claiming factual innocence as a result of a new, retroactively applicable statutory interpretation by the circuit court of conviction may file a habeas corpus petition pursuant to 28 U.S.C. § 2241 after his first 28 U.S.C. § 2255 motion claiming his innocence was denied as untimely.

(2) Whether a specific intent to extort money under 18 U.S.C. § 875(b) could be satisfied when the government stipulates it as a fact in the plea agreement that the defendant intended to extort money as well as intended it to be a hoax.

INTERESTED PARTIES

There are no parties to the proceeding other than those named in the caption of the case.

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In the Supreme Court of the United States

No.

VIVEK SHAH, PETITIONER

v.

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

PETITION FOR A WRIT OF CERTIORARI

Vivek Shah respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit in this case.

OPINIONS BELOW

The opinion of the Seventh Circuit Court of Appeals (App. "C", *infra*, p.6) is not reported in the Federal Reporter. The order of the court of appeals denying rehearing (App. "F", *infra*, p.27) is not reported in the Federal Reporter. The order of the district court (App. "B", infra, p.3) is not published in the Federal Supplement.

JURISDICTION

The judgment of the court of appeals was entered on October 24, 2019. A petition for rehearing was denied on November 8, 2019 (App. "F", *infra*, p.27). The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The questions presented implicate the following United States Code sections, in relevant part.

18 U.S.C § 875. Interstate communications

(b) Whoever, with intent to extort from any person, firm, association, or corporation, any money or other thing of value, transmits in interstate or foreign commerce any communication containing any threat to kidnap any person or any threat to injure the person of another, shall be fined under this title or imprisoned not more than twenty years, or both.

28 U.S. Code § 2255. Federal custody; remedies on motion attacking sentence

(e) An application for a writ of habeas corpus 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.

(h) A second or successive motion must be certified as provided in section 2244 by a panel of the appropriate court of appeals to contain—

(1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense; or

(2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.

28 U.S.C. § 2241. Power to grant writ

(a) Writs of habeas corpus may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdictions.

(b) The writ of habeas corpus shall not extend to a prisoner unless—

(1) He is in custody under or by color of the authority of the United States or is committed for trial before some court thereof; or

(2) He is in custody for an act done or omitted in pursuance of an Act of Congress, or an order, process, judgment or decree of a court or judge of the United States; or

(3) He is in custody in violation of the Constitution or laws or treaties of the United States

STATEMENT OF THE CASE

This case presents a mature and widely recognized conflict on an exceptionally important and recurring question involving the review of federal criminal judgments. When a court of appeals issues a retroactively applicable decision narrowing the reach of a federal criminal statute, there will be persons in custody who stand convicted of conduct that is no longer criminal. Some of those persons will be able to challenge their unlawful confinement on direct appeal or on an initial motion to vacate or set aside the sentence under 28 U.S.C. § 2255. But for others who have exhausted their direct appeal and initial § 2255 motion before the court of appeals issued its decision rendering their confinement illegal, there will be no further avenue for relief under § 2255, given its familiar bar on second or successive motions—even though that court's decision applies retroactively. This

case presents the question whether the saving clause in § 2255(e) permits such persons to pursue habeas relief under § 2241 (and, if so, what threshold showing they must make). The courts of appeals are now divided 9-2 on that question when it involves a decision of *this* Court, and this case presents a striking illustration of the conflict especially when a petitioner invokes a decision of the circuit of conviction. Furthermore, the court of appeals has decided the meaning of "specific intent" that conflicts with relevant decisions of this Court.

1. In 2012, Petitioner Vivek Shah, a struggling actor at the time, devised an elaborate hoax by mailing creative letters entitled "Extortion Notice" to seven victims - billionaires and movie moguls (notably Harvey Weinstein), mailing each from one state to another, demanding odd sums of money, and using false identities and aliases to purchase and activate various prepaid access device cards to purchase postage from the United States Postal Service. In 2013, pursuant to a plea agreement, Petitioner pleaded guilty and was sentenced to 87 months of imprisonment followed by a three-year supervised release term in the Southern District of West Virginia for violating, *inter alia*, 18 U.S.C. § 875(b). *Shah v. United States*, 2017 WL 3168425, at *1 (S.D. W. Va. July 26, 2017), *aff'd*, No. 17-7053 (4th Cir. 2019) (App. "D"). He did not appeal. The government stipulated in the Plea Agreement that "The United States and Vivek Shah stipulate and agree that * * * Mr. Shah mailed each of the * * * letters with the intent to extort money from the person to whom the letter was addressed. Mr. Shah also intended to obtain publicity that he hoped would further his acting career" (App. "A" at p.2).

2. More than a year after his conviction became final, Petitioner filed a motion in the Southern District of West Virginia pursuant to 28 U.S.C. § 2255, unsuccessfully (and admittedly, incorrectly) arguing that post- *Elonis v. United States*, 135 S. Ct. 2001 (2015), he was innocent since, like Elonis, he too did not have the "intent to threaten." In *Elonis*, this Court added an "intent to threaten" element to 18 U.S.C. § 875(c)'s clause of "any threat to injure the person of another." While the § 2255 motion was pending, the Fourth Circuit decided *United States v. White*, 810 F.3d 212 (4th Cir. 2016) in which the defendant claimed, similar to Petitioner's prior claim, that he too did not have the intent to threaten under § 875(b)'s "any threat to injure the person of another" element. The Fourth Circuit rejected that claim and explained that it is impossible for someone to have been found guilty by a jury of the "intent to extort" element and not have the "intent to threaten" since the "intent to extort" element subsumes an intent to threaten as well. In order to explain its conclusion, the Fourth Circuit, for the first time, interpreted the element of "intent to extort" and held that § 875(b) is (1) a "specific intent" crime and (2) "intent to extort" is defined as "to procure something of value." *Id.* at 219, 223. Petitioner's § 2255 motion was denied as untimely since he "presented no new evidence sufficient to show that no reasonable juror would have found him guilty beyond a reasonable doubt (App. "D" at p.18)" in order to overcome the one-year statute of limitation as articulated in *Schlup v. Delo*, 513 U.S. 398, 321 (1995). The Fourth Circuit denied a Certificate of Appealability since there was no

"substantial showing of the denial of a constitutional right" (App. "E" at p.26) (internal quotation marks omitted).

3. Petitioner then sought a Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241 in the Northern District of Illinois, claiming that after *White*, based on the new retroactive statutory interpretation of the circuit of his conviction, he was innocent since a specific intent to procure something of value could not be satisfied due to the fact that it was a hoax. The district court construed the petition as a second or successive § 2255 believing that the exact same *White* claim of not having the "intent to threaten" was being pursued (App. "B"). On appeal, Seventh Circuit found that although the district court erred in construing the petition as a second or successive § 2255, Petitioner was not innocent because he had admitted in his plea agreement that he had the intent to extort (App. "C") and that "the Southern District of West Virginia expressly considered *White* in denying his motion." *Id.* at 8. Namely, the court was referring to an attempt of re-litigation of the § 2255 claim, despite the unavailability of "new evidence." A timely Petition for Panel Rehearing was denied on November 8, 2019 (App. "F").

REASONS FOR GRANTING THE PETITION

A. The scope of the Savings Clause has divided the Courts of Appeals

This case presents a deep and widely recognized conflict on an exceptionally important and recurring question involving the availability of federal habeas review. Recognizing that abuse of the writ of habeas corpus was the central concern addressed by the AEDPA's enactment of § 2255's gatekeeping provisions, the Third

Circuit concluded that "a prisoner who had no earlier opportunity to challenge his conviction for a crime that an intervening change in substantive law may negate" poses little threat of undermining congressional intent and may, therefore, file a § 2241 petition for consideration by the district court. *In re Dorsainvil*, 119 F.3d 245, 251 (3d Cir. 1997). The Second Circuit, in *Triestman v. United States*, 124 F.3d 361, 363 (2d Cir. 1997), allowed access to the savings clause in circumstances in which § 2255 is unavailable and a failure to allow collateral review would raise serious constitutional questions. That test was later clarified in *Cephas v. Nash*, 328 F.3d 98, 104 (2nd Cir. 2003) (holding that the savings clause is available to a prisoner who "(1) can prove 'actual innocence on the existing record,' and (2) 'could not have effectively raised [their] claim[s] of innocence at an earlier time'"). The Fifth Circuit held that the savings clause of § 2255 applies to a claim:

> (i) that is based on a retroactively applicable Supreme Court decision which establishes that the petitioner may have been convicted of a nonexistent offense and (ii) that was foreclosed by circuit law at the time when the claim should have been raised in the petitioner's trial, appeal, or first § 2255 motion. *Reyes-Requena v. United States*, 243 F.3d 893, 904 (5th Cir. 2001).

Subsequent Fifth Circuit cases have construed this test narrowly, finding the Savings Clause to be available only when the petitioner claims to have been convicted of conduct that has since been decriminalized (and applied retroactively). This allowance is, however, not extended to: (1) claims that a prisoner is not guilty because a trial error rendered the jury verdict deficient;[1] (2) claims in which the

[1] See *Jeffers v. Chandler*, 253 F.3d 827, 831 (5th Cir. 2001) ("'Actual innocence' for the purposes of our savings clause test could only be shown if Jeffers could prove that based on a retroactively applicable Supreme Court decision, he was convicted for conduct that did not constitute a crime.").

prisoner is challenging only the validity of the sentence and not the conviction; (3) claims where the prisoner was guilty of other aspects of the crime, despite being convicted of some conduct that is retroactively legal or (4) claims in which the change in law would have "no effect on whether the facts of his case would support his conviction for the substantive offense."[2] The Ninth Circuit further summarized the collective rule of the circuits to mean that the petitioner may proceed under § 2241 when the petitioner: (1) claims to be "legally innocent of the crime for which he has been convicted"; and (2) "has never had an unobstructed procedural shot at presenting this claim."[3]

The Tenth Circuit created a more significant split when the court issued its decision in *Prost v. Anderson*, 636 F.3d 578 (10th Cir. 2011), *cert. denied*, 565 U.S. 1111 (2012). Writing for the majority, then-Judge Gorsuch stated that "the plain language of § 2255 means what it says and says what it means: a prisoner can proceed to § 2241 only if his initial § 2255 motion was itself inadequate or ineffective to the task of providing the petitioner with a chance to test his sentence or conviction." *Prost* at 587. He reasoned that an intervening change in circuit precedent as a result of a decision of this Court does not mean that a "petitioner [lacked] an opportunity to bring his argument," because the saving clause "guarantee[s] nothing about what the opportunity promised will ultimately yield in

[2] See *Wesson v. U.S. Penitentiary Beaumont, Tx*, 305 F.3d 343, 348 (5th Cir. 2002).
[3] *Ivy v. Pontesso*, 328 F.3d 1057, 1060 (9th Cir. 2003) (internal quotations omitted), followed by Stephens v. Herrera, 464 F.3d 895, 898 (9th Cir. 2006); see also *Lorentsen v. Hood*, 223 F.3d 950, 953–54 (9th Cir. 2000) (holding that the savings clause is accessible when a petitioner is "innocent of the crime for which he has been confined but has had no prior opportunity to test the legality of that confinement").

terms of relief." *Id.* at 584. Put differently, the fact that a court was bound by adverse circuit precedent at the time of the initial § 2255 motion is simply irrelevant to the inadequacy of the § 2255 remedy. *Id.* at 590. Instead, under the Tenth Circuit's interpretation, the § 2255 remedy is "inadequate or ineffective" only when a prisoner has no practical ability to invoke it: for example, if the prisoner is unable to comply with the venue requirement of § 2255. *Id.* at 587- 588. Judge Seymour concurred in part and dissented in part. She criticized the majority for "creating an unnecessary circuit split on an issue that was neither raised by the parties nor implicated by the facts of this case." *Prost* at 599. Judge Seymour reasoned that "the fundamental purpose of habeas corpus and collateral review—even post-AEDPA—is to afford a prisoner a 'reasonable opportunity to obtain a reliable judicial determination of the fundamental legality of his conviction and sentence.' " *Id.* at 605 (*quoting Davenport, supra,* 147 F.3d at 609). But she ultimately would have dismissed the § 2241 application on the ground that the applicant "clearly was not foreclosed by circuit precedent from raising his claim * * * at the time of his initial petition." *Id.* at 602. Although the government supported the applicant's petition for rehearing en banc, the Tenth Circuit denied rehearing in *Prost* by a 5-5 vote. The Tenth Circuit's decision in Prost plainly served as the inspiration for the Eleventh Circuit in *McCarthan v. Director of Goodwil Industries-Suncoast, Inc.,* 851 F.3d 1076 (11th Cir. 2017) (en banc). Three years after *Prost,* Judge William Pryor—the author of the majority opinion in *McCarthan*—foreshadowed the Eleventh Circuit's eventual about-face, faulting the

court in a separate opinion for making the "same mistake" as other circuits of "fail[ing] to consider the ordinary meaning of the text of the savings clause." *Samak v. Warden, FCC Coleman-Medium*, 766 F.3d 1271, 1277, 1294 (11th Cir. 2014). Judge Pryor urged the Eleventh Circuit to "do away with this * * * sham" and to overrule its precedent following the majority rule. *Id.* at 1295. Although the government agreed with the petitioner that those cases were correctly decided, the Eleventh Circuit overruled those cases anyway and held that "that a change in caselaw does not make a motion to vacate a prisoner's sentence 'inadequate or ineffective'" under the Savings Clause. *McCarthan* at 1080.

The Seventh Circuit reasoned that a person in custody who sought to challenge erroneous circuit precedent in his direct appeal or initial § 2255 motion never had the reasonable opportunity that habeas corpus demands. See *In re Davenport*, 147 F.3d 605, 611 (7th Cir. 1998). As the Seventh Circuit put it, "[t]he trial judge, bound by our * * * cases, would not listen to him; *stare decisis* would make us unwilling (in all likelihood) to listen to him; and the Supreme Court does not view itself as being in the business of correcting errors." *Ibid.* Nor would § 2255 provide such an opportunity after an intervening and retroactively applicable statutory-interpretation decision of this Court that postdated an initial § 2255 motion, because of the bar on second or successive motions. See 28 U.S.C. 2255(h). In those circumstances, the Seventh Circuit reasoned, § 2255 "can fairly be termed inadequate," because "it is so configured as to deny a convicted defendant any

opportunity for judicial rectification of so fundamental a defect in his conviction as having been imprisoned for a nonexistent offense." *Davenport,* 147 F.3d at 611. The Seventh Circuit thus held that, where a person in federal custody "had no reasonable opportunity to obtain earlier judicial correction of a fundamental defect in his conviction or sentence because the law changed after his first 2255 motion," the Saving Clause in § 2255(e) is triggered and an application for habeas corpus under § 2241 is available. *Ibid.* Moreover, the Seventh Circuit has recently permitted a federal prisoner to utilize § 2241 based on retroactive change in circuit law. See *Beason v. Marske*, 926 F.3d 932, 935 (7th Cir. 2019) But all that was lost when Seventh Circuit in this case stated that Petitioner would not be able pursue a § 2241 factual innocence claim based on new retroactive statutory interpretation when his claim was denied in a prior § 2255 motion for failing to present new evidence. The court below specifically cited *Roundtree v. Krueger*, 910 F.3d 312, 313 (7th Cir. 2018) ("[N]one of this circuit's decisions ... permits relitigation under § 2241 of a contention that was actually resolved in a proceeding under § 2255, unless the law changed after the initial collateral review."). However, viewed through a different lens, Petitioner's contention that based on newly presented evidence he was not factually innocent was resolved in the § 2255 motion, but the contention that based on a new statutory-interpretation case he is factually innocent was not resolved.

B. The Seventh Circuit has decided the meaning of "specific intent" that conflicts with relevant decisions of this Court

The Seventh Circuit found that Petitioner admitted in his plea agreement that he had the "specific intent" to extort money from his victims and that he sent "hoax" extortion letters that he hoped would bring him publicity and boost his acting career. (App. "C" at p.7). This "specific intent" was found by the court despite there being no admission of such words "specific intent" anywhere in the plea agreement (which provides, "The United States and Vivek Shah stipulate and agree that... Mr. Shah mailed each of the * * * letters with the intent to extort money from the person to whom the letter was addressed. Mr. Shah also intended to obtain publicity that he hoped would further his acting career." (App. "A" at p.2)).

To begin with, the *White* decision is a retroactive statutory interpretation case that could not have been invoked in a successive § 2255 motion. See *Schriro v. Summerlin*, 542 U.S. 348 (2004). It also could not have been invoked in Petitioner's first § 2255 motion since the motion itself was untimely filed (after the statute of limitations had expired). Although the court stated in its opinion that "the Southern District of West Virginia expressly considered *White* in denying his motion,"(App. "B" at p.3), it considered *White* in the context of the "intent to threaten" element and not "intent to extort." Moreover, the contention that Petitioner is actually innocent cannot have been considered resolved in the Southern District of West Virginia because that court denied the contention not as a freestanding claim but as means to overcome the statute of limitations, where the standard is: "the petitioner must show that it is more likely than not that no reasonable juror would have convicted

him in the light of the new evidence." (App. "D" at p.18). In fact, that court repeatedly stated that since Petitioner did not present any new evidence, he was not entitled to have his untimely claims heard. *Id* at 18, 20-21.

Applying the Fourth Circuit's newly issued interpretation of § 875(b) to the facts stipulated and agreed by the parties shows that Petitioner has suffered from a fundamental defect grave enough to be deemed a miscarriage of justice. In the Fourth Circuit,

> "A specific-intent requires not simply the general intent to do the immediate act with no particular, clear, or undifferentiated end in mind, but the additional deliberate and conscious purpose or design of accomplishing a very specific and remote result; mere knowledge that a result is substantially certain to follow from one's actions is not the same as the specific intent or desire to achieve that result. *Oxygene v. Lynch*, 813 F.3d 541, 549 (4th Cir. 2016) (internal quotation marks and emphasis omitted).

With this understanding of the law, Petitioner pleaded guilty to a general intent crime and the fact that it was intended to be a hoax *negates* a specific intent to procure something of value.

In *Carter v. United States,* 530 U.S. 255 (2000) this Court used an example to help distinguish between general and specific intent:

> [A] person entered a bank and took money from a teller at gunpoint, but deliberately failed to make a quick getaway from the bank in the hope of being arrested so that he would be returned to prison and treated from alcoholism. Though this defendant knowingly engaged in the acts of using force and taking money (satisfying "general intent"), he did not intend permanently to deprive the bank of its possession of the money (failing to satisfy

> "specific intent"). *Id* at 268 (citing *United States v. Lewis*, 688 F.2d 1276, 1279 (10th Cir. 1980)).

Like the Lewis example that this Court has provided, Petitioner acted in the "hope" to further his acting career. Implicit in the intent to obtain publicity is also the intent to be caught, or arrested, so that the publicity would further his acting career. There is no contrary argument since without intended to be caught, there would be no publicity and therefore no furtherance of his acting career. Of course, if the purpose was to obtain publicity, then it would be illogical for the purpose to be to obtain money as well. (What career would an actor have envisioned for having to go to prison for up to two decades?)

This Court has said that "'purpose' corresponds loosely with the common-law concept of specific intent, while 'knowledge' corresponds loosely with the concept of general intent." *United States v. Bailey*, 444 U.S. 394, 405 (1980). And that "a person who causes a particular result is said to act purposefully if he consciously desires that result, whatever the likelihood of that result happening from his conduct, while he is said to act knowingly if he is aware that that result is practically certain to follow from his conduct, whatever his desire may be as to that result." *Id.* at 404 (internal quotation marks omitted). As a theoretical matter, therefore, knowledge alone that a particular result is certain to occur does not constitute specific intent. "Put differently, the law distinguishes actions taken 'because of' a given end from actions taken 'in spite of their unintended but foreseen consequences." *Vacco v. Quill*, 521 U.S. 793, 802-03 (1997).

Although the record does not provide this Court with any further facts as to how he intended to obtain publicity that would help further his acting career, the conclusive fact is nevertheless that he sent the letters thinking, believing, hoping, and intending that he would somehow obtain publicity which would help further his career as an actor. The admission in the Plea Agreement of having the "intent to extort" amounted to nothing more than a general intent and not a specific intent to extort.

At most, the admission that he intended to extort money could be considered an intention to make the bodily movement of writing the demand and threat letter and transmitting it in interstate commerce. In grammatical terms, the word "extort" is a transitive verb, a type of action verb which tells what the subject does. Thus the fact remains that he intended the actions and not the consequences. The word "obtain" (as in obtain publicity) reflects a desire – a term synonymous with "procure." As such, it could not have been his conscious object to procure money. Since it would make no sense that a person would want to obtain publicity to help further his acting career without purposefully and consciously desiring that result (and not to further a prison career), it is apparent that he did not have the specific intent to extort money. The Seventh Circuit's opinion is thus contrary to the teachings of this Court.

The Seventh Circuit decision states that admitting to the element of "intent to extort" means admitting to a "specific intent" - even though that element was interpreted after the admission (App. "C" at p.7). Petitioner never specifically

admitted to a specific intent. Yet, the court presumed that he did. (As a hypothetical corollary, would the panel have concluded that Petitioner admitted to a "general intent" had the *White* decision held that § 875(b) is a general intent crime?). It would also be the equivalent of saying that after *Bailey v. United States*, 516 U.S. 137 (1995), a defendant whose plea agreement provided a factual basis of the defendant having 'used a firearm by means of possessing it in a safe,' would not be innocent since he admitted to the element "uses or carries a firearm."

The Seventh Circuit's decision is therefore in conflict with prior decisions of this Court.

C. The questions presented warrant review of this Court

The need for this Court's immediate intervention is self-evident. As a result of the decision below, many federal prisoners are unable to bring collateral challenges to their convictions or sentences where all agree that those convictions or sentences are no longer lawful. Absent this Court's intervention, those prisoners will potentially be deprived of their liberty for years beyond what Congress has authorized. It is therefore obvious, as the government itself has recognized, that the question presented is one of "recurring and exceptional importance." *U.S. Resp. to Pet. for Reh'g* at 15, *Prost*, supra (10th Cir. Apr. 25, 2011). The Court's intervention is urgently required, and this case presents the Court with a suitable vehicle to resolve the conflict.

1. The question presented is recurring and fundamental to the fairness of the criminal justice system. In recent years, this Court and courts of appeals have

issued numerous decisions rejecting their lower courts' expansive interpretation of a federal criminal statute and narrowing the statute's scope. And a decision that "narrow[s] the scope of a criminal statute by interpreting its terms" is generally retroactively applicable. *Schriro* at 351-352. If allowed to stand, the court of appeals' decision dictates that many federal prisoners will not be able to take advantage of those decisions and will remain incarcerated for conduct that all agree is no longer criminal.

2. Petitioner is factually innocent since his conduct did not amount to having a specific intent to procure something of value. Whether petitioner is entitled to any remedy for this injustice is a critically important issue that deserves the Court's attention. This Court has said that the "venerable distinction" between general and specific intent "has been the source of a good deal of confusion." *United States v. Bailey*, 444 U.S. 394, 403 (1980); *see also 1 Wayne R. LaFave, Substantive Criminal Law § 5.2* (2d ed. 2013) ("The meaning of the word 'intent' in the criminal law has always been rather obscure....").

3. This case is an apt vehicle for considering and resolving the questions presented. The questions are pure questions of law and formed the sole basis for the court of appeals' decision. There are thus no threshold impediments to the Court's resolution of that question in this case.

CONCLUSION

The Court should grant this Petition for a Writ of Certiorari.

Dated this 20th day of November, 2019.

Respectfully submitted,

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