No. _____

In the

SUPREME COURT OF THE UNITED STATES

_____

STANLEY EDWARD JAMISON, JR.,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent

_____

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

_____

Petition for Writ of Certiorari

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QUESTIONS PRESENTED

Whether Mr. Jamison's § 2255 motion filed within one year of *Johnson v. United States*, 135 S. Ct. 2551 (2015), claiming that *Johnson* invalidates the pre-*Booker* mandatory Guidelines' residual clause in U.S.S.G. § 4B1.2(a)(2), is timely under 28 U.S.C. § 2255(f)(3) because it invoked the "right" that the Supreme Court "newly recognized"?

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In the

Supreme Court of the United States

STANLEY EDWARD JAMISON, JR.,

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PETITION FOR CERTIORARI

STANLEY EDWARD JAMISON, JR., petitions for a writ of certiorari to review the judgment and opinion of the United States Court of Appeals for the Ninth Circuit in his case.

Opinions Below

The Ninth Circuit's panel memorandum decision affirming the district court's denial of habeas relief is unpublished. It is included in the Appendix at App. - 1. The district court's decision denying relief was unpublished. It is included in the Appendix at App.-3 to App.-4. The magistrate judge's findings and recommendations adopted by the district court were also unpublished. These are in the Appendix at App.-5 to App.-9.

JURISDICTION

The Ninth Circuit's decision was filed on December 17, 2019. App.-1. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

28 U.S.C. § 2255(f) states:

> (f) A 1-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of—
> …
> (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

U.S.S.G. § 4B1.2(a) (1998) reads:

> (a) The term "crime of violence" means any offense under federal or state law, punishable by imprisonment for a term exceeding one year, that —
>
> > (1) has as an element the use, attempted use, or threatened use of physical force against the person of another, or
> > (2) is burglary of a dwelling, arson, or extortion, involves use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury to another.

INTRODUCTION

Section 2255(f) states that a one-year statute of limitations applies to federal habeas petitions and runs from the latest of several triggering dates, including "the date on which the right asserted was initially recognized by the Supreme Court." 28

U.S.C. § 2255(f)(3). Petitioner asserts that the"right" he sought to invoke was"recognized" by this Court — the lower courts did not. Whether it requires this Court to decide a case in the same statutory context as a petitioner, or whether a habeas petitioner should file once this Court issues a decision with clear application to his case, is a crucial question. The Circuits are divided on this question, resulting in different outcomes for similarly situated petitioners – some receive relief, others do not, depending on the chance of their location. This Court should grant Petitioner's writ.

In 2015, this Court held that the residual clause in the Armed Career Criminal Act was void for vagueness. *Johnson v. United States*, 135 S. Ct. 2551 (2015). Thousands of federal prisoners filed habeas petitions claiming that their convictions and sentences, though not based on the ACCA, were infected by the same ordinary-case analysis and ill-defined risk threshold that combined in *Johnson* to "produce[] more unpredictability and arbitrariness than the Due Process Clause tolerates." *Johnson*, 135 S. Ct. at 2558. In Mr. Jamison's case, his § 2255 motion challenged the residual clause in the career-offender provision of the mandatory 1998 guidelines, and argued it was void for vagueness under *Johnson*. But the Ninth Circuit never reached the merits of his claims: It found Jamison's claim untimely because this Court had yet to decide a case that addressed directly *Johnson*'s impact on the mandatory career-

offender guideline. As such, it concluded, this Court had not recognized "the right" Petitioner asserted. App.-2.

Last term, this Court decided *United States v. Davis*, 139 S.Ct. 2319 (2019), which directly held *Johnson* applied to the residual clause in 18 U.S.C. § 924(c). In *Session v. Dimaya*, 138 S.Ct. 1204 (2018), this Court likewise held *Johnson* applied and left unconstitutional 18 U.S.C. §16(b).

There is division in the Circuits on whether a challenge under *Johnson*'s to the career-offender provision of the mandatory guidelines is timely under 28 U.S.C. § 2255(f)(3). The First and Seventh Circuits find such claims timely. The Third, Fourth, Sixth, and Tenth Circuits find the claims untimely, and the district courts of the Second, Fifth, and D.C. Circuits are internally divided—as the district courts of the Ninth Circuit were before the decision in *United States v. Blackstone*, 903 F.3d 1020 (9th Cir. 2018), case.

This inconsistency creates not just unfairness, but more work in the judiciary. This Court's failure to intervene has created a secondary market for relief: at least one petitioner blocked from raising a mandatory guidelines claim via § 2255 in his district of *conviction* won relief raising a mandatory guideline claim via § 2241 petition in the district of *confinement* — taking advantage of favorable local caselaw in that Circuit about whether a mandatory guideline error is a cognizable "miscarriage of justice"

under that statute. As it stands, whether a prisoner receives review of his mandatory-guideline claim is a matter of arbitrariness.

The status quo is unacceptable. This Court should grant the writ and decide, finally, whether a claim that *Johnson* invalidates the residual clause in the mandatory career-offender guideline is timely if filed within a year of *Johnson*.

STATEMENT OF THE CASE

1. After a jury trial, Mr. Jamison was convicted of two counts of bank robbery in violation of 18 U.S.C. § 2113(a). App.-6. At sentencing, the district court gave Jamison a term of 236 months in prison. It found Jamison was a career offender under U.S.S.G. §§ 4B1.1 and 4B1.2 because his bank robbery offense was a "crime of violence" and that he had at least two qualifying prior convictions. *Id*. At the time of the sentencing hearing in 2000, the district court was mandated by statute to follow the Guidelines. *Id.*; *see also* 18 U.S.C. § 3553(b). Without a career offender finding, Jamison's 1998 Guideline range would have been 110-137 months (offense level 26, criminal history category V). Jamison appealed. While the Ninth Circuit affirmed his convictions, it remanded for the limited purpose of allowing the district court, in compliance with 18 U.S.C. § 3553(c)(1), to state its reasons for its sentencing decision which was outside the guideline range. *United States v. Jamison*, 35 Fed. App'x 305,

at *6 (9th Cir. 2002) (unpublished). The district court reimposed the 236-month sentence with an explanation on August 13, 2002.

2. On June 26, 2015, this Court decided *(Samuel) Johnson v. United States*, 135 S. Ct. 2551 (2015), holding that the residual clause in the Armed Career Criminal Act (ACCA) was unconstitutional. The uncertainty about how to identify the "ordinary case" of the crime, together with the uncertainty about how to determine whether a risk is sufficiently "serious,""both denies fair notice to defendants and invites arbitrary enforcement by judges." *Id*. at 2557-58. In *Welch v. United States,* 136 S. Ct. 1257 (2016), this Court held that *Johnson* applies retroactively to cases on collateral review.

3. Within a year of *Johnson*, Mr. Jamison filed an application for authorization to file a second or successive § 2255 motion in the district court attacking his conviction and sentence. His proffered 2255 motion argued that *Johnson* applied and voided the residual clauses in the career-offender guideline. The Ninth Circuit granted the application and directed the district court to consider the petition deemed filed in the district court on June 17, 2016, the date the application was filed in the appellate court.

The government opposed all relief, but did not assert the *Johnson*-based section 2255 motion was untimely. It raised other procedural and substantive grounds for

opposing the grant of relief (procedural bar and *Teague*[1/] based nonretroactivity to mandatory Guidelines; *Beckles*[2/] based opposition; and a substantive opposition). But the magistrate judge, citing *Day v. McDonough*, 547 U.S. 198, 198,126 S. Ct. 1675,164 L. Ed. 2d 376 (2006), directed Mr. Jamison to address why his *Johnson* motion was timely filed. Jamison did so, but he also objected to the court raising *sua sponte* an affirmative defense that the government has knowingly waived or forfeited. The government filed no response within the time allowed by the magistrate judge's order.

Over two months later. the magistrate judge gave *sua sponte* the government more time to file a response regarding the timeliness issue. The government filed a supplemental brief arguing the timeliness issue should be considered and that the Supreme Court's decision in *Beckles* established that the motion was untimely.

On January 8, 2018, the magistrate judge recommended dismissing the *Johnson* motion as untimely. App.-5 to App.-9. She concluded this Court had not decided whether the mandatory Guidelines career offender "residual clause" at issue was unconstitutionally vague and that *Johnson* did not so hold. App.-7 to App.-9. Over Jamison's objections, the district court adopted this analysis and dismissed the motion

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[1] *Teague v. Lane*, 489 U.S. 288 (1989).

[2] *Beckles v. United States*, 137 S. Ct. 886, 197 L. Ed. 2d 145 (2017).

as untimely. App.-3 to App.-4. The district court granted a certificate of appealability on whether the motion was timely filed. App.-4.

4. The Ninth Circuit affirmed in an unpublished memorandum decision that dismissed Mr. Jamison's claims on timeliness grounds. App. 1-2. It relied on an earlier published decision, *United States v. Blackstone,* 903 F.3d 1020, 1028 (9th Cir. 2018), *cert. denied*, 139 S. Ct. 2762 (2019), which held that "*Johnson* did not recognize a new right applicable to the mandatory Sentencing Guidelines on collateral review."

REASON FOR GRANTING THE WRIT

The Court Should Grant Plenary Review to Clarify the Timeliness of Mandatory Guidelines Claims Based on *Johnson*

The Court should grant certiorari to resolve a conflict in the Circuits in the treatment of timeliness of mandatory-guidelines claims.

1. There Is a Deep and Entrenched Inter- and Intra-circuit Split on the Timeliness of Mandatory Guidelines Claims

After this Court denied a number of claims raising the application of *Johnson* to the mandatory guidelines, *see Brown v. United States*, 139 S. Ct. 14, 14 & n.1 (2018) (Sotomayor, J., dissenting from denial of certiorari), the circuit split has grown.

a. The Seventh Circuit has held that mandatory guidelines claims based on *Johnson* are timely. *Cross v. United States*, 892 F.3d 288, 294 (7th Cir. 2018). This

Circuit has not retreated from that position to realign itself with other courts. *See e.g., Sotelo v. United States*, 922 F.3d 848, 851 (7th Cir. 2019) ("[W]e reject the government's suggestion to reconsider *Cross*'s holding that *Johnson* recognized a new right as to the mandatory sentencing guidelines."). Instead, it continues to grant petitioners relief under *Cross*. *E.g.*, *D'Antoni v. United States*, 916 F.3d 658, 665 (7th Cir. 2019).

The First Circuit has also found a mandatory guideline claim timely when filed within one year of *Johnson*. *Moore v. United States*, 871 F.3d 72, 81-83 (1st Cir. 2017). The Solicitor General maintained that that decision did not represent the "settled circuit law on the issue," because it was issued in the context of a second-or-successive application. *See* Brief in Opposition, at 15 n.4, *United States v. Gipson*, 17-8637 (2018). But since that time, *Moore* has been the basis for grants of substantive relief in the First Circuit. *E.g.*, Order, *United States v. Moore*, 1:00-10247-WGY, 2018 U.S. Dist. LEXIS 194252, 2018 WL 5982017 (D. Mass. Nov. 1, 2018) (granting § 2255 relief); *United States v. Roy*, 282 F. Supp. 3d 421, 432 (D. Mass. 2017). The United States has not appealed those decisions.

Thus, in two Circuits, petitioners have been granted substantive relief on claims that would be considered untimely in the Ninth Circuit.

b. Meanwhile, the Third, Fourth, Sixth, Ninth, and Tenth Circuits have all held that *Johnson* did not recognize the right not to be sentenced under the ordinary case doctrine in the guideline context, and thus *Johnson* claims raised by those sentenced under the mandatory career-offender guideline are untimely. *United States v. Green*, 898 F.3d 315, 322-23 (3d Cir. 2018); *United States v. Brown*, 868 F.3d 297, 301-03 (4th Cir. 2017); *Raybon v. United States*, 867 F.3d 625, 629-31 (6th Cir. 2017); *Blackstone*, 903 F.3d at 1026; *United States v. Greer*, 881 F.3d 1241, 1247 (10th Cir. 2018).

While these decisions are binding in these Circuits, the arguments have not stopped. In *Chambers v. United States*, a judge of the Sixth Circuit called on her colleagues to reconsider their decision in *Raybon*. 763 Fed. App'x 514, 519, 2019 WL 852295, at *4 (Feb. 21, 2019) (Moore, J, concurring) ("I write separately because *Raybon* was wrong on this issue.). And in the Tenth Circuit, the Court continued to grant certificates of appealability—despite *Greer*—in recognition that reasonable jurists could come out the other way on the timeliness question. Order, *United States v. Crooks*, CA No. 18-1242, 2019 WL 1757314, at *2 (10th Cir. Apr. 19, 2019). The fact that other Circuits disagree establishes the right to a certificate of appealability.

Thus even in Circuits that have "settled law," the question continues to vex the courts.

c. Finally, some Circuits have not yet issued decisions. In some places, the timeliness of the claim depends on which courthouse, or even which courtroom in a single courthouse, one finds oneself. *Compare United States v. Hammond*, 354 F. Supp. 3d 28, 42 (D.D.C. 2018) (finding mandatory guideline claim based on *Johnson* timely) *with* Order, *United States v. Upshur*, 10-cr-251, 2019 WL 936592, at *7 (D.D.C. Feb. 26, 2019) (finding mandatory guideline claim based on *Johnson* untimely); Report and Recommendation, *Zuniga-Munoz v. United States*, 02-cr-134-JRN, Dkt #79, at 4-8 (W.D. Tex. Apr. 26, 2018), *aff'd* Dkt. #81 (finding mandatory guideline claim timely and granting relief) *with* Order, *Givens v. United States*, 16-cv-515-SS, 2018 WL 327368, at *2 (W.D. Tex. Jan. 8, 2018) (finding mandatory guideline claim untimely and denying relief); *Mapp v. United States*, 95-cr-1162, 2018 WL 3716887, at *4 (E.D.N.Y. Aug. 3, 2018) (granting relief in a habeas petition raising mandatory guideline *Johnson* claim), *vacated on other grounds*, *with Nunez v. United States*, 16-cv-4742, 2018 WL 2371714, at *2 (S.D.N.Y. May 24, 2018) (denying *Johnson* claims on timeliness grounds).

The split in this case is well-developed and mature, and it's not going away. Nor is the issue continuing to evolve in the lower courts. Instead, as new cases are decided, courts simply decide which side of the split they will join. There is simply no reason to let the lower courts continue to struggle over the question; this is a case

that "presents an important question of federal law that has divided the courts of appeal" and merits this Court's review. *See Brown*, 139 S. Ct. at 16 (Sotomayor, J., dissenting from denial of certiorari) (citing Sup. Ct. Rule 10).

2. The Question Presented Is of Exceptional Importance

a. This disparate case law is too important to be left in place. More than a thousand individuals filed petitions after *Johnson* raising a claim that *Johnson* applied to their career-offender sentence. *See Brown*, 139 S. Ct. at 16. If their claims are not heard, many will spend an additional decade or more in custody, based solely on an improperly imposed guideline sentence. *Cf* Sentencing Resource Counsel Project, Data Analyses 1 (2016), *available* http://www.src-project.org/wp-content/uploads/2016/04/Data-Analyses-1.pdf (citing FY 2014 statistics, the average guideline minimum for career offenders charged with drug offenses was 204 months, and the average minimum for drug offenders not charged as career offenders was 83 months). The career-offender designation in Mr. Jamison's case raised his guideline range from 110-137 months (offense level 26, criminal history category V) to 210-262 months.

Not only will those sentenced under the mandatory guidelines be left out in the cold, but petitioners in the future will be left without clear guidance for what event triggers the statute of limitations for filing a habeas claim. A defendant is permitted

to file a single § 2255 petition before he triggers the higher standard for filing a second or successive petition under 28 U.S.C. § 2255(h). If he files too late, or too early, even his meritorious claims will likely never be adjudicated. Where such high stakes decisions have such little margin for error, it is important that litigants have clear rules to apply.

b. Moreover, this Court's failure to address this arbitrariness has created a secondary market for habeas relief, where petitioners receive differential treatment depending, not only on the Circuit where they sustained their conviction, but on the Circuit in which they happen to be serving their sentence. For example, Petitioner Stony Lester was convicted in the Eleventh Circuit, a circuit which has held *Johnson* does not apply to the mandatory guidelines at all. *In re Griffin*, 823 F.3d 1350, 1356 (11th Cir. 2017) (en banc). Like all others convicted in that Circuit, he was foreclosed from relief via § 2255 motion. *Lester v. United States*, 921 F.3d 1306 (11th Cir. Apr. 29, 2019). But the BOP placed Lester in a facility in the Fourth Circuit. That Circuit has held that a petitioner may file, via 28 U.S.C. § 2241's "escape hatch," a petition arguing that one's mandatory guideline calculation was wrong. *United States v. Wheeler*, 886 F.3d 415, 433 (4th Cir. 2018). Thus, even as the Eleventh Circuit denied his § 2255 petition, the Fourth Circuit found that his career-offender sentence should be vacated, concluded that any route to such relief was blocked in the Eleventh

Circuit, and it granted his § 2241 petition. *Lester v. Flournoy*, 909 F.3d 708, 714 (4th Cir. 2018). After two Circuits expended simultaneous efforts writing separate published opinion spanning seventy-five pages (and pointing in different directions), Mr. Lester was released from custody. Notably, all that effort was poured into a case where Mr. Lester's substantive eligibility for relief has been clear for a full decade. *See Lester*, 909 F.3d at 710 (citing *Chambers v. United States*, 555 U.S. 122, 127-28 (2009), as the case that established that Lester's career-offender sentence was erroneous).

If his claim is unique, it soon will not be. Three Circuits deem an error in the calculation of the mandatory guidelines to be a miscarriage of justice cognizable under 28 U.S.C. § 2241. *Wheeler*, 886 F.3d at 433; *Brown v. Caraway*, 719 F.3d 583, 587-88 (7th Cir. 2013); *Hill v. Master*, 836 F.3d 591, 593 (6th Cir. 2016). Others have caselaw foreclosing that route to the prisoners housed within their Circuit. *E.g.*, *McCarthan v. Director of Goodwill Indus.-Suncoast, Inc.*, 851 F.3d 1076, 1090 (11th Cir. 2017) (en banc). Thus, while it might have seemed like the fight was winding down when the Court denied *Brown*, those denials in fact signaled the start of the second round. This second round creates yet another level of disparity even more disconnected from substantive merit for relief. And it requires another set of attorneys

and courts, far from the relevant records and unfamiliar with the local state laws, to expend efforts reviewing a case.

This is too much arbitrariness to be tolerated. It cannot be that some federal inmates whose convictions arise in certain circuits or who are housed in certain circuits receive review of their mandatory-guidelines career offender claims, and others are foreclosed from review simply because of where they were sent to serve out their term. The evolution of this secondary market for relief underscores the need for this Court's immediate intervention.

3. The Ninth Circuit's decision is wrong

On the merits, the Ninth Circuit erred in dismissing Mr. Jamison's claim for relief as untimely.

1. Where a federal prisoner believes he should benefit from a Supreme Court decision, he must file his petition within one year of the date "on which the right asserted was initially recognized by the Supreme Court." 28 U.S.C. § 2255(f)(3).[3] *Johnson* struck down the residual clause of the Armed Career Criminal Act as void for vagueness. 135 S. Ct. at 2557. In so doing, it reiterated that due-process vagueness

[3] Section 2255(f)(3) states, in whole: "the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review." The *Blackstone* decision, however, discussed only the first clause.

principles apply, not only to statutes defining the elements of crimes, but also to provisions "fixing sentences." *Id.* (citing *United States v. Batchelder*, 442 U.S. 114, 123 (1979)). And it concluded that the combination of the ordinary-case analysis and an ill-defined risk threshold "produces more unpredictability and arbitrariness than the Due Process Clause tolerates." *Johnson*, 135 S. Ct. at 2558. Mr. Jamison's mandatory-guideline claim asserts the right not to have his sentence fixed by the same residual-clause analysis the Supreme Court already deemed unconstitutionally vague in *Johnson*, *Dimaya*, and *Davis*. He satisfies Section 2255(f)(3) and his claim is timely.

The Ninth Circuit in *Blackstone* decided that prisoners need to wait for the Supreme Court to expressly apply *Johnson* to the mandatory guidelines. *Blackstone*, 903 F.3d at 1026. Its decision rests on three errors: disregard for the text of Section 2255(f)(3), a faulty analogy between the statute of limitations for federal prisoners and the "clearly established federal law" standard applicable to state prisoners, and a misreading of this Court's decision in *Beckles v. United States*, 137 S. Ct. 886 (2017).

2. First, the panel's analysis disregards the starting place for any statutory interpretation question: the text of Section 2255(f)(3) itself. Section 2255 uses "right" and "rule," not "holding." *Moore*, 871 F.3d at 82. "Congress presumably used these broader terms because it recognizes that the Supreme Court guides the lower courts

not just with technical holdings but with general rules that are logically inherent in those holdings, thereby ensuring less arbitrariness and more consistency in our law." *Id.* While *Johnson*'s holding struck down the residual clause of the ACCA, the right it recognized was the right not to have one's sentence dictated by a residual clause that combines the hopelessly vague ordinary-case analysis and an ill-defined risk threshold. That is the same right that Mr. Jamison asserts. A contrary view "divests *Johnson*'s holding from the very principles on which it rests and thus unduly cabins *Johnson*'s newly recognized right." *United States v. Brown*, 868 F.3d 297, 310 (4th Cir. 2017) (Gregory, C.J., dissenting).

Any uncertainty about the breadth of the "right" recognized by *Johnson* was dispelled by *Sessions v. Dimaya*, 138 S. Ct. 1204, 1213 (2018). The *Dimaya* Court held that "*Johnson* is a straightforward decision, with equally straightforward application" to the 18 U.S.C. § 16(b) residual clause. *Id.* Though Section 16(b) uses different statutory language, the Court acknowledged that the residual clause was subject to the same vagueness concerns highlighted in *Johnson*, and thus could not be distinguished. *Id.* at 1213-14. "And with that reasoning, *Johnson* effectively resolved the case now before us." *Id.* at 1213. Just as *Johnson* "effectively resolved" the validity of the residual clause in Section 16(b), a provision that used wholly different statutory language, *Johnson* effectively resolved the issue here.

Moreover, Section 2255(f)(3) requires only that a petitioner *assert* the right recognized by the Supreme Court. It "does not say that movant must ultimately *prove* that the right applies to his situation; he need only claim the benefit of a right that the Supreme Court has recently recognized." *Cross v. United States*, 892 F.3d 288, 294 (7th Cir. 2018). To "assert" is "to invoke or enforce a legal right." Black's Law Dictionary 139 (10th ed. 2014); *see also Dodd v. United States*, 545 U.S. 353, 360 (2005) (describing a § 2255 motion as timely if it was filed within one year of the decision from which it "sought to benefit"). And asserting a right does not require anything more than different language in related sections of a statute, we presume these differences in language convey differences in meaning." *Lopez v. Sessions*, 901 F.3d 1071, 1077-78 (9th Cir. 2018) (internal quotation marks and alterations omitted). Moreover, Section 2254(d)(1) serves a different purpose than Section 2255(f)(3). Section 2254(d)(1) — the clearly-established-federal-law standard — is a barrier for state prisoners who claim that a state court has contravened federal law, as interpreted by the Supreme Court. The strictness of that rule promotes comity and federalism: Section 2254 is a vehicle to correct state courts unreasonably deviate from the Supreme Court's interpretation of federal constitutional law. *Harrington v. Richter*, 562 U.S. 86, 102 (2011). In that context, as a matter of respect to state courts, the Supreme Court will intervene only if the state court's decision is clearly answered to

the contrary by a prior decision of the Supreme Court. *Woods v. Donald*, 135 S. Ct. 1372, 1376 (2015). Thus, the standard is "intentionally difficult to meet." *Id.*

In contrast, Section 2255(f)(3) is a statute-of-limitations provision for federal prisoners. Comity and federalism concerns have no relevance when a federal prisoner asks a federal court to vacate a federal judgment. *See Danforth v. Minnesota*, 552 U.S. 264, 279 (2008) ("Federalism and comity considerations are unique to federal habeas review of state convictions."). If the Court were to examine the purpose of AEDPA, as *Blackstone* held it was obligated to do, 903 F.3d at 1027, the proper inquiry is not the purpose of the clearly established federal law requirement in Section 2254(d)(1), but the purpose of the statute-of-limitation provision itself. AEDPA's statute of limitations has the "statutory purpose of encouraging prompt filings in federal court in order to protect the federal system from being forced to hear stale claims." *Carey v. Saffold*, 536 U.S. 214, 266 (2002). This, too, is a unifying mark of statutes of limitation; they are "designed to encourage [petitioners] 'to pursue diligent prosecution of known claims.'" *California Pub. Employees' Ret. Sys. v. ANZ Sec., Inc.*, 137 S. Ct. 2042, 2049 (2017) (citation omitted); *see also Wood v. Carpenter*, 101 U.S. 135, 139 (1879) ("Statutes of limitation . . . . stimulate to activity and punish negligence."). Mr. Jamison filed within in one year of *Johnson* because he saw the relevance *Johnson* had to his own case.

The Ninth Circuit's decision in Mr. Jamison's case, as with *Blackstone* generally, thwarts the very purpose of § 2255(f)(3) by forcing Jamison and others to wait and file a later (now potentially successive) petition. Because Congress intended the AEDPA statute of limitations "to eliminate delays in the federal habeas review process," not create them, *Holland v. Florida*, 560 U.S. 631, 648 (2010), a reading of Section 2255(f)(3) of limitations is premised on notice of one's claim, not its ultimate validity. *Nevada v. United States*, 731 F.2d 633, 635 (9th Cir. 1984) ("[T]he crucial issue in our statute of limitations inquiry is whether [the City] had notice of the federal claim, not whether the claim itself is valid.").

Like other statutes of limitations, then, Section 2255(f)(3) is merely a triggering point — marking the moment when Mr. Jamison had notice that his sentence was imposed in violation of the Constitution. When Jamison filed his claim, *Johnson* had held that a provision materially identical to the provision that drove his lengthened career offender sentence was void for vagueness. It had reiterated that, under *Batchelder*, sentencing provisions that fixed sentences were subject to a vagueness challenge. *Johnson*, 135 S. Ct. at 2557. The Ninth Circuit had always applied *Batchelder* to the mandatory guidelines. *United States v. Gallagher,* 99 F.3d 329, 334 (9th Cir. 1996); *United States v. (Linda) Johnson,* 130 F.3d 1352, 1354 (9th Cir. 1997). In other words, *Johnson* was the missing piece of the puzzle. Because statutes

of limitations generally run from the occurrence of the last circumstance necessary to give rise to a claim, *see (Robert) Johnson v. United States*, 544 U.S. 295, 305-09 (2005), Mr. Jamison was correct to assume that *Johnson* was the trigger that would start his one-year count down.

The Ninth Circuit's faulty analogy to the clearly-established-federal-law standard in Section 2254(d) also puts that Court in conflict with settled interpretation given to the "right" as defined in the second clause of Section 2255(f)(3), which, of course, must have the same meaning as the provision interpreted here. *See* 28 U.S.C. § 2255(f)(3) ("the date on which the right asserted was initially recognized, if *that right* has been newly recognized by the Supreme Court") (emphasis added). The Circuits have broadly read the second clause to invoke *Teague*'s "new rule" jurisprudence.[4/] And in that context, this Court has recognized that the "new rule" is

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[4] *Butterworth v. United States*, 775 F.3d 459, 464-65 (1st Cir. 2015); *Coleman v. United States*, 329 F.3d 77, 81-82 (2d Cir. 2003); *United States v. Smith*, 723 F.3d 510, 515 (4th Cir. 2013); *United States v. Morgan*, 845 F.3d 664, 667-68 (5th Cir. 2017); *Headbird v. United States*, 813 F.3d 1092, 1095 (8th Cir. 2016); *United States v. Hong*, 671 F.3d 1147, 1148-50 (10th Cir. 2011); *Figueroa-Sanchez v. United States*, 678 F.3d 1203, 1207-08 (11th Cir. 2012). The Ninth Circuit has said the same, albeit in unpublished opinions. *Simpson v. Evans*, 525 F. App'x 535, 537 (9th Cir. 2013) (applying a *Teague* "new rule" case to interpret the state prisoner corollary to Section 2255(f)(3)); *United States v. Berkley*, 623 F. App'x 346, 347 (9th Cir. 2015) (applying new rule analysis to interpret Section 2255(f)(3)).

the case that "breaks new ground," not a later case that merely applies that rule to a different context. *Chaidez v. United States*, 568 U.S. 342, 342-48 (2013).

In *Stringer v. Black*, this Court held that its decisions applying *Godfrey v. Georgia*, 446 U.S. 420 (1980), to similar capital sentencing statutes in Oklahoma and Mississippi did not create new rules. 503 U.S. 222, 229 (1992). For "new rule" purposes, it didn't matter that Oklahoma's statute "involved somewhat different language" than the Georgia statute considered in *Godfrey*. *Id.* at 228-29 ("[I]t would be a mistake to conclude that the vagueness ruling of *Godfrey* was limited to the precise language before us in that case."). Nor did it matter that Mississippi's sentencing process differed from Georgia's, because those differences "could not have been considered a basis for denying relief in light of [Supreme Court] precedent existing at the time." *Id.* at 229. *Godfrey* may have broken new ground and created a new rule, but the application of *Godfrey* to analogous statutory contexts did not.

Under *Stringer* and *Chaidez*, an application of a new rule to an analogous statutory scheme does not create a second new rule; the second rule is merely derivative of the first. And for the same reason, a new rule recognized by the Supreme Court should not be confined to its narrow holding. Rather, the "right" recognized by a decision of this Court encompasses the principles and reasoning underlying the

decision that have applications elsewhere — even if there are minor linguistic or mechanical differences in the provisions at issue.

Applying this standard here, the "right" recognized in *Johnson* must be defined according to the principles it recognized—and not merely its narrow result. *Johnson* did not merely strike down the residual clause of the ACCA; it recognized the right not to have one's sentence fixed by the application of the ordinary-case analysis applied to a hazy risk threshold. And application of *Johnson* to the pre-*Booker*[5] guidelines "is not clearly different in any way that would call for anything beyond a straightforward application of *Johnson.*" *Moore*, 871 F.3d at 81. Because "the mandatory Guidelines' residual clause presents the same problems of notice and arbitrary enhancement as the ACCA's residual clause at issue in *Johnson*," Mr. Jamison is asserting the same right newly recognized in *Johnson*, and he can lay claim to Section 2255(f)(3)'s statute-of-limitation provision. *Brown*, 868 F.3d at 310 (Gregory, C.J., dissenting).

By following *Blackstone* in the fact of *Davis* and *Dimaya,* the Circuit erred. It misread and misapplied *Beckles v. United States*, 137 S. Ct. 886 (2017). While *Beckles* created an exception to *Johnson*'s reach – to any Due Process based vagueness challenge – where the sentencing provision does not "fix the permissible

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[5] *United States v. Booker,* 3543 U.S. 220 (2005).

range of" sentences, as with the advisory guidelines. *Id.* at 894-95. But *Beckles* did nothing to disturb *Johnson*'s reasoning that where a vague sentencing provision *does* fix a defendant's sentence, it is subject to attack under the Due Process Clause. If anything, it reiterates that point. *Id.* at 892; *see also Cross*, 892 F.3d at 304-05; *Brown*, 868 F.3d at 308 (Gregory, C.J., dissenting). Nor did it upset *Booker*'s holding that, by virtue of Section 3553(b), the mandatory guidelines fixed sentences; they "had the force and effect of laws" and that, "[i]n most cases . . . the judge [was] bound to impose a sentence within the Guidelines range." *Booker* 543 U.S. at 234; *see Brown*, 868 F.3d at 310 (Gregory, C.J., dissenting).

The Ninth Circuit's decision thus read too much into the Justice Sotomayor's statement, in *Beckles*, that the application of *Johnson* to the mandatory guidelines is an "open" question. *Beckles*, 137 S. Ct. at 903 n.4 (Sotomayor, J., concurring). The concurrence simply clarified that the Court's holding was limited to the advisory guidelines; the case did not present the application of *Johnson* to the mandatory guidelines, and, perforce, did not foreclose it. And it certainly casts no doubt on Mr. Jamison's assertion of a right recognized in *Johnson*.

For all of these reasons, the Ninth Circuit's decision is wrong, and should be reversed.

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4. This Case Presents a Good Vehicle For This Issue

Finally, Mr. Jamison's case presents a good vehicle for addressing the mandatory guidelines issue. The Ninth Circuit addressed the issue squarely, and the timeliness analysis of Section 2255(f)(3) controlled the outcome. The Court's decision below was not fact-bound, and a decision here would resolve the timeliness of *Johnson* claims based on the mandatory guidelines nationwide. Thus, this case presents a good opportunity for the Court to address the timeliness of a claim based on *Johnson* in the mandatory guidelines.

CONCLUSION

For all the above reasons, Mr. Jamison asks this Court to grant his writ Dated:

March 16, 2020

Respectfully submitted,

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