

20-5622

NO. 20-2026

IN THE

SUPREME COURT OF THE UNITED STATES

LARRY E. STARKS JR.-PETITIONER,

ORIGINAL

VS.

UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF ILLINOIS-RESPONDENT,

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

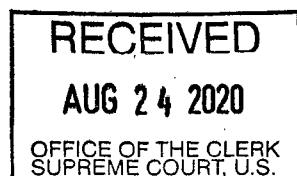
PETITION FOR WRIT OF CERTIORARI

LARRY E. STARKS JR. NO. 17008-026

ASHLAND FEDERAL CORRECTIONAL INSTITUTION

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QUESTION(S) PRESENTED

A. WHETHER THE COURT OF APPEALS FOR THE SEVENTH CIRCUIT ERRED AND ABUSED ITS DISCRETION BY TERMINATING THE INQUIRY AS TO WHETHER THE PETITIONER MET THE REQUIREMENTS TO HAVE THE WRIT ISSUED ON THE GROUNDS THAT THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF ILLINOIS COMMITTED AN EGREGIOUS JUDICIAL USURPATION OF POWER. WHEN THE DISTRICT COURT RECORD CLEARLY REFLECTS THAT THE PETITIONER WAS UNLAWFULLY SENTENCED TO THE CAREER OFFENDER ENHANCEMENT BY AN ACT OF THE SENTENCING COMMISSION, NOT BY AN ACT OF CONGRESS, WHICH SEVERELY VIOLATED THE PETITIONER'S CONSTITUTIONAL RIGHT'S UNDER THE FIFTH AMENDMENT AND THE TENTH AMENDMENT...

LIST OF PARTIES

ALL PARTIES 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 PROCEEDINGS IN THE COURT WHOSE JUDGMENT IS
THE SUBJECT OF THIS PETITION IS AS FOLLOWS:

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Appendix A-1, Copy of order and opinion from the Court of Appeals denying
Petitioner's Writ of Mandamus, dated: June 23rd, 2020.

Appendix A-2, Copy of the Writ of Mandamus Petitioner filed with the Court of Appeals.

Appendix A-3, Copy of the Havis Ruling in the Court of Appeal's for the Sixth Circuit,
dated: June 9th, 2019.

TABLE OF AUTHORITIES CITED

1). Ex parte United States, 242 U.S. 27, 39-40, 37 S. Ct. 72, L. Ed. 129 (1996).....	6
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STATUTES AND RULES

Rules of Appellate Procedure, Rule 20 Extraordinary Writs

OTHER

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 at Appendix A-1 to the petition and is

[X] reported at 20-2026; or,

[X] has been designated for publication but is not 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,

[] is unpublished

JURISDICTION

Cases from Federal Courts:

The date on which the United States Court of Appeals decided my case was on June 23rd, 2020.

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: _____, and a copy of the order denying rehearing appears at appendix _____.

An extension of time to file the petition for writ of Certiorari was granted to and including _____ (date).

The Jurisdiction of this Court is invoked under 28 U.S.C § 1254(1) and 28 U.S.C. § 1651.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Rules of Appellate Procedure, Rule 20 Extraordinary Writs

CONSTITUTIONAL PROVISIONS INVOLVED

Fifth Amendment, United States Constitution

Tenth Amendment, United States Constitution

STATEMENT OF THE CASE

On July 23rd, 2010, Petitioner was sentenced to the Career Offender Enhancement, and received 234 months to be served with the Bureau of Prisons. The Sentencing Court invoked the Career Offender Enhancement on the basis that his instant offense for attempted manufacture of methamphetamine qualified as a Controlled Substance Offense under § 4B1.2(b); Which means: " An offense under Federal or State law, punishable by imprisonment for a term exceeding one year, that prohibits the manufacture, import, export, distribution, or dispensing of a Controlled Substance (or counterfeit substance) or the possession of a Controlled Substance (or counterfeit substance) with intent to manufacture, import, export, distribute, or dispense. The Sentencing Commission's Commentary to § 4B1.2(b) states that a Controlled Substance Offense " includes the offenses of aiding and abetting, conspiracy, and attempting to commit such offenses." In *United States v. Havis*, Appeal No: 17-5772, the decision from the United States Court of Appeal's for the Sixth Circuit, revealed to the Petitioner that his instant offense for attempted manufacture of methamphetamine did not qualify as a Controlled Substance Offense; and was not suppose to be used to invoke his Career Offender Enhancement. Further, the decision revealed that the Sentencing Commission, as a non-delegated body, exceeded its scope of authority by modifying Congress's definition of what constitutes a Controlled Substance Offense, when they added the included offenses in the Commentary without the authorization of Congress. Which caused a Judicial Usurpation of power that makes Petitioner's sentence as a Career Offender unlawful. On June 15th, 2020, Petitioner filed a Writ of Mandamus to obtain relief for his unlawful sentence. On July 23rd, 2020, the Seventh Circuit Court of Appeal's denied the Writ without conducting an inquiry into the Petitioner's fruitful claim that his sentence is unlawful and a product of Judicial Usurpation of Power.

REASONS FOR GRANTING THE PETITION

This Honorable Court has the Supervisory Power to direct United States Court of Appeals for the Seventh Circuit to conduct a fair inquiry into the Petitioner's fruitful claim, that his sentence is unlawful, and constitutes extraordinary circumstances that warrant mandamus relief. Secondly, the unlawful sentence was caused by a Judicial Usurpation of Power, because a non-delegated body, the Sentencing Commission exceeded its scope of authority by modifying § 4B1.2(b) without Congress's approval. The Legislative branch usurped its power by failing to review the Commentary. Which allowed the Sentencing Commission to exceed its scope of authority, in modifying what constitutes a Controlled Substance Offense, thereby causing thousands of criminal defendant's to be unlawfully sentenced to Career Offender Enhancements for decades. This was done by an act of the Sentencing Commission, not by an act of Congress. The Commentary that added non-existent offenses to the § 4B1.2(b) Guidelines was implemented November 1st, 1989. The Judicial branch, as a legal expert, usurped its power by failing to identify that the added offenses in the Commentary was not an interpretation of what constitutes a Controlled Substance Offense under § 4B1.2(b), but a modification of that Guideline, which has no legal force, and should not have been used as offenses to invoke Career Offender Enhancements on criminal defendants' in the Federal system. Thirdly, the decision in United States v. Havis, No. 17-5732, from the United States Court of Appeals for the Sixth Circuit, revealed to Petitioner that his sentence was unlawful. See Appendix A-3. On June 15th, 2020, Petitioner filed a Writ of Mandamus to obtain relief for his unlawful sentence. See Appendix A-2. On June 23rd, 2020, the Seventh Circuit Court of Appeals denied the Writ without conducting an inquiry into Petitioner's fruitful claim that his sentence is unlawful and a product of Judicial Usurpation of Power. Petitioner contends that he met the requirements for mandamus relief...

ARGUMENT

A. CONSTITUTIONAL QUESTION: WHETHER THE COURT OF APPEALS FOR THE SEVENTH CIRCUIT ERRED AND ABUSED ITS DISCRETION BY TERMINATING THE INQUIRY AS TO WHETHER THE PETITIONER MET THE REQUIREMENTS TO HAVE THE WRIT ISSUED ON THE GROUNDS THAT THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF ILLINOIS COMMITTED AN EGREGIOUS USURPATION OF JUDICIAL POWER. WHEN THE DISTRICT COURT RECORD CLEARLY REFLECTS THAT THE PETITIONER WAS UNLAWFULLY SENTENCED TO THE CAREER OFFENDER ENHANCEMENT BY AN ACT OF THE SENTENCING COMMISSION, NOT BY AN ACT OF CONGRESS; WHICH SEVERELY VIOLATED THE PETITIONER'S CONSTITUTIONAL RIGHT'S UNDER THE FIFTH AMENDMENT AND THE TENTH AMENDMENT...

The petitioner contends that an unlawful sentence caused by a usurpation of judicial power, because a non-delegated body, the Sentencing Commission exceeded its scope of authority by modifying § 4B1.2(b) without Congress's approval; constitutes extraordinary cause for mandamus relief. The mandamus writ is one of the most potent weapons in the judicial arsenal and may issue only if three conditions are satisfied. First, the petitioner must establish that he has no other adequate remedy. A condition designed to ensure that the writ will not be used as a substitute for the regular appeal process. Second, the petitioner must show that his right to the issuance of the writ is clear and indisputable. Third, the issuing Court in the exercise of its discretion, must be satisfied that the circumstances are appropriate to issue writ. A "demanding standard" must be satisfied before this Honorable Court will exercise its jurisdiction under 28 U.S.C § 1651 and issue a writ of mandamus or prohibition: it is clear that only exceptional circumstances amounting to a judicial usurpation of power will justify the invocation of this extraordinary remedy. And that a party seeking mandamus has the burden that its right to issuance of the writ is clear and indisputable. The challenging of a District Judge's power to impose the sentence, is an issue of judicial power, that has long been recognized as falling squarely within the narrow range of cases for which mandamus relief is appropriate. See *Ex parte United States*, 242 U.S. 27, 39-40, 37 S. Ct. 72, 61 L. Ed. 129 (1996); "All the Judicial Power of the Federal District Court's and the Judge's thereof must be traced to the Acts of Congress passed pursuant to the Constitution."

Petitioner further contends that the Legislative branch usurped its power by failing to review the Commentary; which allowed the Sentencing Commission to exceed its scope of authority, in modifying what constitutes a Controlled Substance Offense, thereby causing thousands of criminal defendants' to be unlawfully sentenced to Career Offender Enhancements for decades. This was done by an act of the Sentencing Commission, not by an act of Congress. The Commentary that added non-existent offense to the § 4B1.2(b) Guidelines for the purpose of invoking the Career Offender Enhancement was implemented November 1st, 1989. The Judicial branch, as a legal expert, usurped its power by failing to identify that the added offenses in the Commentary was not an interpretation of what constitutes a Controlled Substance Offense under § 4B1.2(b), but a modification of that Guideline, which had no legal force, and should not have been used as offenses to invoke Career Offender Enhancements on criminal defendants' in the Federal system. On July 23rd, 2010, Petitioner was sentenced to the Career Offender Enhancement, and received 234 months to be served with the Bureau of Prisons. The Sentencing Court invoked the Career Offender Enhancement on the basis that his instant offense for attempted manufacture of methamphetamine qualified as a Controlled Substance Offense under § 4B1.2(b). In the decision of United States v. Havis, No. 17-5772 (decided and filed on June 6th, 2019.), from the United States Court of Appeal's for the Sixth Circuit; Petitioner recognized that his sentence was unlawful. See Appendix A-3. On June 15th, 2020, Petitioner filed a Writ of Mandamus to obtain relief for his unlawful sentence. See Appendix A-2. On June 23rd, 2020, the Seventh Circuit Court of Appeal's denied the Writ without conducting an inquiry into Petitioner's fruitful claim that his sentence is unlawful and a product of Usurpation of Judicial Power. Additionally, Petitioner cannot meet the requirements under § 2255(h), to request permission from the Court of Appeal's to file a second § 2255 motion, and his first § 2255 motion was denied on or about July 12th, 2012. Petitioner also cannot meet the requirements under § 2255(e) gateway to file a § 2241, because he was not sentenced pre-Booker, and the Havis decision has not been declared retroactive by the Supreme Court. This Writ of Mandamus is the correct remedy to correct the usurpation of judicial power and the separation of powers violation under the Fifth and Tenth Amendment of the United States Constitution. Petitioner contends that the United States Court of Appeal's for the Seventh Circuit had the power to review on a petition for

for mandamus the basic, undecided question, whether the United States District Court for the Central District of Illinois, as a legal expert, committed a Usurpation of Judicial Power; when it sentenced the Petitioner to the Career Offender Enhancement through an act of the Sentencing Commission, rather than, through an act of Congress. Which was in direct violation of 18 U.S.C. § 3553 "Imposition of Sentence" (a)(4)(A)(i) and (5)(A), and a clear usurpation of judicial power. See *Schlagenhauf v. Holder*, 379 U.S. 104, 114, 85 S. Ct. 234, 13 L. Ed. 2d 152 (1964); See also *Cheney v. United States District Court for the District of Columbia*, 542 U.S. 367 (2004). The writ is appropriately, issued, when there is "usurpation of judicial power" or a clear abuse of discretion, *Bankers Life & Casualty Co. v. Holland*, *supra*, 346 U.S. at 383, 98 L. Ed. at 112.

**ANALYSIS OF THE SENTENCING COMMISSION'S ROLE AS AN INDEPENDENT BODY
WITH QUASI-LEGISLATIVE AND QUASI-JUDICIAL POWER.**

Congress created the Commission as an independent body, "charged with the task of establishing sentencing policies and practices for the Federal Criminal Justice System." *Stinson v. United States*, 508 U.S. 36, 40-41 (1993). The Commission fulfills its purpose by issuing the Guidelines which provide direction to judges about the type and length of sentences to impose in a given case. *Id.* at 41. Although judges have some discretion to deviate from the Guidelines' recommendations, our procedural rules "nevertheless impose a series of requirements on sentencing Court's that cabin the exercise of that discretion," *Peugh v. United States*, 569 U.S. 530, 543 (2013). A judge cannot stray from a defendant's Guidelines range, for example, without first giving an adequate explanation for the variance. See *id.* The Commission thus exercises a sizable piece "of the ultimate Government power, short of Capital punishment"—power to take away someone's liberty. *United States v. Winstead*, 890 F.3d 1082, 1092 (D.C. cir. 2018). That power is ordinarily left to two branches of Government—first to the legislature, which creates a range of statutory penalties for each Federal crime, and then to judges, who sentence defendants within the statutory framework. But the Commission falls squarely in neither the legislative or judicial branch; rather it is "an unusual hybrid in structure and authority", entailing elements of both quasi-legislative and quasi-judicial. *Mistretta v. United States*, 488 U.S. 361, 412 (1989). In *Mistretta*, the Supreme Court explained how

the Commission functions in this dual role without disrupting the balance of authority in our Constitutional structure. Although the Commission is nominally a part of the judicial branch, it remains "fully accountable to Congress", which reviews each guideline before it takes effect. *Id.* at 394; See also 28 U.S.C § 994(p). The rulemaking of the Commission, moreover, "is subject to the notice and comment requirements of the Administrative Procedure Act." *Id.* at 394; See also 28 U.S.C § 994(x). These constraints—Congressional review and notice and comment—stand to safeguard the Commission from uniting legislative and judicial authority in violation of the separation of powers. Unlike the Guidelines themselves, however, Commentary to the Guidelines never passes through the gauntlets of Congressional review or notice and comment. That is not a problem, the Supreme Court tells us, because the Commentary has no independent legal force—it serves only to interpret the Guidelines' text, not to replace or modify it. See *Stinson*, 508 U.S. at 44–46; See also *United States v. Rollins*, 836 F.3d 737, 742 (7th cir. 2016)(en banc)(The application notes are interpretations of, not additions to the Guidelines themselves...). Commentary binds Court's only "if the Guidelines which the Commentary interprets will bear the same construction."

Therefore, the Petitioner asserts that there's no way in the Supreme Court's decision in *Mistrutta*, that it could have predicted that the Sentencing Commission had already violated the constraints or was about to violate the constraints under 28 U.S.C § 994(p). The Sentencing Commission modified the 4B1.2(b) on November 1st, 1989, without Congress's approval. Wherefore, the Petitioner prays that this Honorable Supreme Court grants this Petition for Writ of Certiorari, and sets forth order finding that the Writ of Mandamus is the correct remedy and solution to this blatant constraints violation on the part of the Sentencing Commission; and further find that the United States Court of Appeal's for the Seventh Circuit erred and abused its discretion by terminating inquiry into Petitioner's claim of usurpation of judicial power against the United States District Court for the Central District of Illinois. Additionally, respectfully remand the issue back to the Seventh Circuit Court of Appeal's with the directive to conduct inquiry into the claim of judicial usurpation of power; or in the alternate remand this issue to the District Court for an evidentiary on Petitioner's claim.

Respectfully Submitted,

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CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully Submitted,

Harry E. Starks Jr.
Dated: August 13th, 2020