NO. 20-6448

IN THE SUPREME COURT OF THE UNITED STATES

EUGENE DAVIS,

Petitioner,

v.

HERMAN QUAY, WARDEN,

Respondent

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

REPLY BRIEF OF PETITIONER

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The government concedes that the issue of the scope of relief under the "savings clause" in Section 2255(e) of Title 28 is one of exceptional importance. *See* Brief for the United States in Opposition ("Opp.") 13. The government also acknowledges that this issue has engendered a deep and intractable circuit split. *See* Opp. 11-13. Yet the government offers three reasons to maintain the divide. First, it emphasizes that this Court has declined to review the issue in several cases, including at the government's request in *United States v. Wheeler*, No. 18-420. *See* Opp. 13. Second, in its view, the Petitioner, Eugene Davis, cannot satisfy the requirement of the circuits with the broadest reading of the savings clause, that is, that precedent foreclosed his claim on direct appeal and on an initial collateral challenge. *See* Opp. 14. And finally, the government suggests that Mr. Davis may not be entitled to relief in any event because he has been released from imprisonment. *See* Opp. 16. None of these reasons has merit.

1. To begin, merely because this Court has declined to address the scope of the savings clause in other cases is of no moment. What matters is the issue presented here. Indeed, many cases cited by the government had problems that rendered them poor vehicles for review, including *Wheeler*. For example, the defendant in *Wheeler* prevailed on the challenge to his sentence. *See United States v. Wheeler*, 886 F.3d 514, 434 (4th Cir. 2018). And the district court resentenced him to time served. *See United States v. Wheeler*, No. 3:06-cr-00363 at Doc's. 195 & 202

(W.D. N.C.). Here, by contrast, Mr. Davis is still serving his sentence for the Armed Career Criminal Act ("ACCA") conviction.

2. As for the contention that Mr. Davis cannot show that circuit precedent foreclosed his challenge to the ACCA, one need look no further than *Mathis v. United States*, 136 S. Ct. 2243 (2016), which arose from the same circuit in which Mr. Davis raised his challenge—the Eighth. *See United States v. Mathis*, 786 F.3d 1068 (8th Cir. 2015). The Eighth Circuit in *Mathis* recognized that its holding was controlled by its 2006 ruling in *United States v. Bell*, 445 F.3d 1086 (8th Cir. 2006). *See Mathis*, 786 F.3d at 1073.

Moreover, Mr. Davis challenged on direct appeal whether the Iowa third-degree burglary convictions constituted "crimes of violence" for the career-offender enhancement under the Sentencing Guidelines. *See United States v. Davis*, 414 F. App'x 891, 892 (8th Cir. 2011). The Eighth Circuit denied his claim based on controlling Circuit precedent. *See id.* (citing *United States v. Stymiest*, 581 F.3d 789 (8th Cir. 2009)). While this argument concerned the crime of violence definition under the career-offender enhancement, like every circuit, the Eighth construed the career-offender and ACCA crime of violence definitions congruently. *See United States v. Yackel*, 990 F.3d 1132, 1135 (8th Cir. 2021) (collecting cases). Thus, as the district court here found, when Mr. Davis filed his initial collateral motion, arguing that the Iowa third-degree burglaries failed to satisfy the crime of violence definition under the ACCA, the Eighth Circuit had decided that issue on direct appeal. *See* Pet. App. 9a. Accordingly, it was clear long before Mr. Davis' direct appeal that Eighth

Circuit precedent foreclosed any challenge to ACCA or career-offender predicates based on Iowa third-degree burglaries.

3. Finally, the government asserts that, even if the issue presented warrants further review, the argument is now "complicated" because Mr. Davis has been released from imprisonment. Opp. 16. But the government's point is only partially accurate. Mr. Davis is currently in the Waterloo Residential Correctional Facility. *See generally United States v. Davis*, No. 1:09-CR-00052 at Doc. 103 at p. 5 (Amended Judgment). So while he is not in the custody of the Bureau of Prisons, he is not at liberty. And as the government concedes, the ACCA conviction affects the length of his supervised release sentence and the classification of the felony conviction. *See* Opp. 16 (citing 18 U.S.C. §§ 3559(a) & 18 U.S.C. § 3583(b)). This is no small point because "supervised release punishments arise from and are 'treat[ed] . . . as part of the penalty for the initial offense.'" *United States v. Haymond*, 139 S. Ct. 2369, 2379-80 (2019) (plurality opinion) (quoting *Johnson v. United States*, 529 U.S. 694, 700 (2000)).

Thus, the government's arguments about Mr. Davis' case as a vehicle for review are meritless.

CONCLUSION

For all of these reasons and those presented in Mr. Davis' petition for a writ of certiorari, this Honorable Court should grant review.

Respectfully submitted,

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