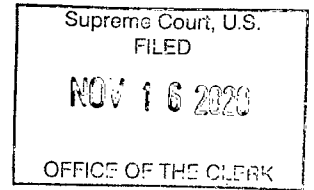


No. 20-6469 ORIGINAL



IN THE  
SUPREME COURT OF THE UNITED STATES

HECTOR Valentine — PETITIONER  
(Your Name)

vs.

UNITED STATES — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Hector Valentine  
(Your Name)

FCI Allenwood Medium  
P.O. Box 2000

(Address)

White Deer, PA, 17887

(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

1. Whether the Third Circuit's Erred in not addressing conduct has been rendered non-criminal by an intervening Supreme Court Decision "Mathis v. United States"
2. Whether the Third Circuit's Erred in not addressing actual innocence claim of career offender challenge or statute of conviction in the drug amount challenge due to plea agreement Double Waiver provision.

## LIST OF PARTIES

- [ ] 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:

1. United States of America
2. Hector Valentine

## RELATED CASES

United States v. Folk, 954 F.3d 597, 604 (3d Cir. 2020) (cert. place on docket Oct. 13, 2020 No. 20-5983).

Shepherd v. Krueger, 911 F.3d 861, No. 17-1362, 2018 WL 6787494, at 1 (7th Cir. Dec. 26, 2018).

Braswell v. Smith, 952 F.3d 441 (2020 U.S. App. Lexis 6806 No. 19-6200 4th Cir. Jan. 28, 2020).

Chazen v. Marske, 2019 U.S. App. Lexis 27142 (7th Cir. Sept. 9, 2019).

## TABLE OF CONTENTS

OPINIONS BELOW .....	1
JURISDICTION.....	
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED .....	
STATEMENT OF THE CASE .....	
REASONS FOR GRANTING THE WRIT .....	
CONCLUSION.....	

## INDEX TO APPENDICES

APPENDIX A	ON June 22, 2020 the Judgement was affirmed
APPENDIX B	by the Court of Appeals For The Third Circuit.
APPENDIX C	ON July 2, 2019, District Court Dismissed Petition.
APPENDIX D	Sept. 15, 2020 Petition For Rehearing was denied.
APPENDIX E	ON July 8, 2019, a timely Notice of Appeal was filed.
APPENDIX F	

# TABLE OF AUTHORITIES CITED

Bullard v. US, 937 F.3d 654, 659 (6th Cir. 2019), ...	7
Folkner v. US, 954 F.3d 591, 604 (3d Cir. 2020), ...	7
Wooden v. Coulter, 677 F.3d 303, 307 (6th Cir. 2012), ...	8
CASES Brown v. Caraway, 719 F.3d 708, 710 (7th Cir. 2013), ...	2
Shepard v. Kruegar, 911 F.3d 861, No. 17-1362 (7th Cir. 2018), ...	2, 5
Wheeler v. US, 806 F.3d 415, 2018 U.S. App. Lexis 7756 No. 16-6073 4th Cir. March 28, 2018), ...	2
Mathis v. US, 136 S.Ct. 2243 (2016), ...	2, 3, 4, 5
Beckles v. US, 137 S.Ct. 886 (2017), ...	3
Lester v. Flournoy, 909 F.3d 708, 710 (4th Cir. 2018), ...	4
Hill v. Master, 836 F.3d 591, 593 (6th Cir. 2016), ...	4
Allen v. Zver, 950 F.3d 1841 (9th Cir. 2020), ...	4
Braswell v. Smith, 952 F.3d 441, (4th Cir. 2020), ...	5, 6, 8
Chazenn v. Marske, 2019 U.S. App. Lexis 22142 (7th Cir. 2019), ...	6
Adams v. US, 814 F.3d 175 (4th Cir. 2016), ...	6
Copeland v. US, 707 F.3d 522, 530 (4th Cir. 2013), ...	6
Hicks v. Oklahoma, 447 U.S. 343, 346, 100 S.Ct. 222, (1980), ...	7
STATUTES AND RULES	
Huesco v. Barnhart, 948 F.3d 324, 341, 356 (2020) (6th Cir. 2020), ...	8
Alleyne v. United States, 133 S.Ct. 2151, 186 L.Ed.2d 314 (2013), ...	8
US v. Gonzalez, 420 F.3d 1111 (2d Cir. 2005), ...	9
McGale v. US, 178 F.3d 115, (2d Cir. 1999), ...	9
US v. Valentine, No. 18-2643 2d Cir. Nov. 15, 2018), ...	9
Poindexter, 492 F.3d 263, 271 (4th Cir. 2007), ...	6
28 U.S.C. § 2241, ...	3, 9
§ 841(c)(1), ...	8

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 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   B   to the petition and is

☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ 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 \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

The opinion of the \_\_\_\_\_ 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

☐ For cases from federal courts:

The date on which the United States Court of Appeals decided my case was June 22, 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: Sept. 15, 2020, and a copy of the order denying rehearing appears at Appendix C.

☐ 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 \_\_\_\_\_.  
A copy of that decision appears at Appendix \_\_\_\_\_.

☐ A timely petition for rehearing was thereafter denied on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

☐ 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**

5th Amendment Rights to be Deprive  
of Life or Liberty.



## STATEMENT OF CASE

ON July 2, 2019, District Court Dismissed (Doc 1) for lack of Jurisdiction. (Appendix B).

ON July 8, 2019, a timely Notice of Appeal was filed. See (Appendix D).

ON June 22, 2020 the Judgement was Affirmed by the Court of Appeals For The Third Circuit. See (Appendix A).

ON Sept. 15, 2020 Petition For Rehearing with suggestion by Panel and was denied. See Appendix (C).

Whether the Third Circuit's Erred  
in not addressing conduct has been  
rendered non-criminal by an intervening  
Supreme Court Decision "Mathis v. United States"

Petitioner will support his reason in why  
Third Circuit erred in not addressing conduct has  
been rendered non-criminal by an intervening Supreme  
Court decision. At this time Petitioner follow  
under other circuit court opinion that show a  
split and address the challenge. See (Brown v.  
Caraway, 719 F.3d 708, 710 C7th Cir. 2013); See (Wheeler v.  
US, 806 F.3d 415, 2018 U.S. App. Lexis 7756 No. 16-6073  
4th Cir. March 28, 2018); See (Shepard v. Krueger, 911  
F.3d 861, No. 17-1362, 2018 WL 6787494, at \*1 C7th Cir.  
Dec. 26, 2018) (electing to by pass... procedural hurdles

"regarding a Mathis-based claim on § 2241 petition where the petition" can be resolved most simply on the merits").

Furthermore Petitioner contentions also is directed in other opinion's which has not been addressed by this court. When turning to the record of pre-Booker and post-Booker claims being challenge on the merits, The record is sound by lower court decision, that the [Beckles v. United States] ruling is inapplicable in a challenge on non-violence prior conviction as in Petitioner case at hand.

Therefore Petitioner will continue to stress the important of why other precedents

in these ruling, to why Petitioner rely on Mathis v. United States, 136 S.Ct. 2243 (2016), to meet the challenge in the intervening change in law. See (Lester v. Flournoy, 909 F.3d 708, 710 (4th Cir. 2018)); See (Hill v. Master, 836 F.3d 591, 593 (6th Cir. 2016); See (Allen v. Ives, 950 F.3d 1184; 2020 U.S. App. Lexis 15652 No. 18-3501 9th Cir. Feb. 24, 2020).

Now upon these circuit split's decisions and the record before us it would be establish that Petitioner has met the hindsight to address non-criminal challenge under intervening Supreme Court decision as such as [Mathis v. United States].

Wherefore Petitioner Mr. Valentine is requesting this Court to Reverse and Remand 3rd Circuit Court of Appeals decision.

Whether the Third Circuit's Erred  
in not addressing actual innocence  
claim of Career offender challenge  
or statute of conviction in the drug  
amount challenge due to plea agree-  
ment Double Waiver provision.

Petitioner will proceed in a relevant sister  
circuit opinion, to explain why the government can  
elect not to enforce an appeal waiver and instead  
have Petitioner contest his claim on the merits.

See (Shepherd v. Krueger, 911 F.3d 861, No. 17-1362, 2018

WL 6787494, at 1 7th Cir. Dec. 26, 2018) (electing to

by pass... procedural hurdles regarding a Mathis-

based § 2241 petition where the petition "can be

resolved most simply on merits."); See (Braswell v.

Smith, 952 F.3d 441; 2020 U.S. App. Lexis 6806 No.

19-6200 4th Cir. Jan. 28, 2020) (cites *US v. Poindexter*, 492 F.3d 263, 271 (4th Cir. 2007), noting the government can elect not to enforce an appeal waiver and instead contest the merits of a defendant's argument.); See (*Chazenv. Marske*, 2019 U.S. App. Lexis 27142 (7th Cir. Sept. 9, 2019)). However, this Court can follow the same standard to not enforce an otherwise valid waiver if, "to do so would result in a miscarriage of justice." See (*Adams v. US*, 814 F.3d 178, 182 (4th Cir. 2016)), or where there is an illegal sentence, ... involving fundamental issues. See (*Copeland v. US*, 707 F.3d 522, 530 (4th Cir. 2013); See (*Allen v. Ives*, (No. 18-35001) 9th Cir. Feb. 24, 2020). Petitioner claims constitute

a right to liberty. See *Hicks v. Oklahoma*,  
447 U.S. 343, 346, 100 S.Ct. 2227, 65 L.Ed. 2d 175  
(1980). On this point, the Supreme Court should  
rely on *United States v. Folk*, 954 F.3d 597, 604  
(3d Cir. 2020), which in Folk decision circuit  
court highlighted, *Bullard v. US*, 937 F.3d 654, 659  
(6th Cir. 2019), perhaps in an attempt to find  
some ambiguity in Folk holding.

The record is shown to rely on multiple  
other circuit opinions in Folk opinion. But  
*Bullard* however, only further highlights the  
problem Folk identified with forcing prisoners  
to bear sentences that are no longer mandatory. Just  
as in *Valentine* case at hand. The Supreme Court

Should further rely on this case. See (Wooten v.

Cavley, 677 F.3d 303, 307 (6th Cir. 2012) (hold in part,

that a petitioner may use a 2241 petition upon existence

new interpretation. Petitioner will continue to

direct his challenge to a circuit opinion which supports

the same argument. See (Braswell v. Smith, 952 F.3d

at 451; 2020 U.S. App. Lexis 6806 No. 19-6200 4th Cir.

Mar. 4, 2020); See (Huesco v. Barnhart, 948 F.3d 324,

341, 355; 2020 U.S. App. Lexis 2329 (6th Cir. 2020).

Furthermore the Supreme Court

caselaw *Alleyne v. United States*, 133 S.Ct. 2151,

186 L.Ed. 2d 314 (2013). Comes forth to challenge

the one unit prosecution under § 841 (a)(1) to

address why the statute of conviction is inapplicable



in Petitioner case at hand. Because the government cannot meet any one time that Valentine possessed over 280 or grams of Crack cocaine. Therefore Petitioner will follow, rely on these supporting caselaws. See (US v. Gonzalez, 420 F.3d 111; (2d Cir. 2005); also (Mchale v. US, 175 F.3d 115; (2d Cir 1999) [reinstated Direct Appeal]).

Then the record before Petitioner transfer out of Second Circuit upon the facts government argued the court did not have jurisdiction. See (US v. Valentine, No. 18-2643 2d Cir. Nov. 15, 2018) (Second Circuit delivered a opinion in regards to the Career Offender can proceed on 28 U.S.C. § 2241).

More so Petitioner is directed to further rely on the facts that the district court cited

two state drug convictions as predicate offenses for the career offender enhancement 2d Cir. 12-3328 (Direct Appeal), Doc. 50 (Appendix) at 53.

Petitioner Therefore respectfully requests that the Court Grant Certiorari or Reverse and Remand back to Third Circuit Court of Appeals to address Statute of conviction change and Career Offender challenge on the merits as Mr. Valentine is actually innocent.

**REASONS FOR GRANTING THE PETITION**

Petitioner provide split in circuits  
and this issue has not been addressed  
in the Supreme Court for Decades.

Wherefore Mr. Valentine prays Honorable  
Supreme Court Judges Reverse and Remand  
Third Circuit Court of Appeals Decision.

**CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Harold Valentine

Date: 11-18-20