

No. **20-7548** ORIGINAL

FILED

MAR 19 2021

OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

DAVID ANTOINE LUSTER

(Your Name)

— PETITIONER

VS.

UNITED STATES OF AMERICA

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THIRD CIRCUIT COURT OF APPEALS

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

DAVID ANTOINE LUSTER

(Your Name)

P.O. BOX 6000

(Address)

GLENVILLE, W.V. 26351

(City, State, Zip Code)

(Phone Number)

RECEIVED

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SUPREME COURT, U.S.

QUESTION(S) PRESENTED

1. Did § 403(a) of THE FIRST STEP ACT [Reverse] the Precedent set in DEAL V. UNITED STATES, 508 US 129, 113 S.Ct. 1993 (1993)?
2. Did Congress in § 403(a), with PLAIN LANGUAGE, FURNISH the PROPER STATEMENT OF the LAW AT the time MR. LUSTER's [CONVICTION] became FINAL?
3. Does FURNISHING the PROPER STATEMENT OF the LAW, [CLARIFY] the EXISTING LAW?
4. CAN A [first time offender] of § 924(c)(1) be [convicted] of MORE THAN ONE § 924(c)(1) ACCUSATIONS in [ONE PROCEEDING]?
5. Is a first time offender [ACTUALLY INNOCENT] of a "SECOND OR SUBSEQUENT CONVICTION" AS DEFINED IN DEAL V. UNITED STATES, 508 US 129 (1993)?
6. CAN 18 USC § 3663A "INCORPORATE BY REFERENCE" § 16, NOW THAT § 16(b) IS "LEGALLY NULLIFIED"?
7. Is MR. LUSTER'S SECOND CONVICTION OF 924(c) CONSISTENT WITH the DUE PROCESS CLAUSE? 14th Amendment?

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:

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TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
<u>Deal v. United States</u> , 508 US 129, 113 S.Ct. 1993 (1993)	i
<u>Fiore v. White</u> , 531 US 225 (2001)	6
<u>United States v. McCoy</u> , 981 F.3d 271 (2020) (4th Cir.)	7
<u>United States v. Gonzalez-Lombardia</u> , No. 15-46041, 2016 U.S. App. Lexis 2325 (February 10, 2016)	i
<u>Jackson</u> , 443 US, 47316, 61 L.Ed. 2d 560, 99 S.Ct. 2781	7
<u>In re Winship</u> , 397 US 358, 364, 25 L.Ed. 2d 368, 90 S.Ct. 1668 (1970)	7

STATUTES AND RULES

18 USC § 924 (c)(1)	i, 5, 6, 7
18 USC § 924 (c)(1)(C)	5
18 USC § 3663A	i, 5
18 USC § 16	i, 5
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OTHER

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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 December 8, 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: MARCH 8, 2021, 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

TITLE 18 USC § 924(c)(1) "WHOEVER, DURING AND IN RELATION TO ANY CRIME OF VIOLENCE... USES OR CARRIES A FIREARM, SHALL, IN ADDITION TO THE PUNISHMENT PROVIDED FOR SUCH CRIME OF VIOLENCE..., BE SENTENCED TO IMPRISONMENT FOR FIVE YEARS... IN THE CASE OF HIS 'SECOND OR SUBSEQUENT CONVICTION UNDER THIS SUBSECTION,' SUCH PERSON SHALL BE SENTENCED TO IMPRISONMENT FOR TWENTY-FIVE YEARS..."

FIRST STEP ACT § 403 CLARIFICATION OF SECTION 924(c) OF TITLE 18, USC
CA) IN GENERAL - SECTION 924(c)(1)(C) OF TITLE 18, USC, IS AMENDED, IN THE MATTER PRECEDING CLAUSE (i), BY STRIKING "SECOND OR SUBSEQUENT CONVICTION UNDER THIS SUBSECTION" AND INSERTING "VIOLATION OF THIS SUBSECTION THAT OCCURS AFTER A PRIOR CONVICTION UNDER THIS SUBSECTION HAS BECOME FINAL."

§ 16 - (b) ANY OTHER OFFENSE THAT IS A FELONY AND THAT, BY ITS NATURE, INVOLVES A SUBSTANTIAL RISK THAT PHYSICAL FORCE AGAINST THE PERSON OR PROPERTY OF ANOTHER MAY BE USED IN THE COURSE OF COMMITTING THE OFFENSE.

18 USC § 3663A INCORPORATED BY REFERENCE IN THE MANDATORY VICTIM RESTITUTION ACT § 16.

STATEMENT OF THE CASE

THIS IS A CIVIL ACTION UNDER §2241 BROUGHT BY A FEDERAL PRISONER WHO ALLEGES HE IS UNLAWFULLY IN THE CUSTODY OF BUREAU OF PRISON BECAUSE HE IS ACTUALLY INNOCENT OF A "SECOND OR SUBSEQUENT CONVICTION"; STATUTORY INTERPRETATION. THE DISTRICT COURT DISMISSED WITH PREJUDICE, STATING: "IN PARTICULAR, JUDGE LANZILLO CONCLUDED THAT PETITIONER HAS FAILED TO CLAIM THAT HE WAS CONVICTED OF CONDUCT THAT WAS SUBSEQUENTLY DECRIMINALIZED BY A CHANGE IN THE LAW."

STATEMENT OF FACTS: THE PETITIONER, MR. LUSTER, IN A DECLARATION UNDER THE PENALTY OF PERJURY STATED HE IS A FIRST TIME OFFENDER. MR. LUSTER DOES NOT HAVE THE CONDUCT OF "AFTER A PRIOR CONVICTION UNDER THIS SUBSECTION HAS BECOME FINAL." MR. LUSTER STATED "ACTUALLY INNOCENT OF THE STATUTORY INTERPRETATION OF THE INTENTION MEANT BY 'SECOND OR SUBSEQUENT CONVICTION.'" UNDER PENALTY OF PERJURY MR. LUSTER CLAIMED AND CONGRESS CLARIFIED THE LAW, ABOLISHING THE NECESSITY OF RETROACTIVITY, AS IN FIONE V. WHITE, 531 US 225, 228, 121 S.Ct. 712, 148 L. Ed. 2d 629 (2001), WHERE CONGRESS OVERRULED THE WRONG INTERPRETATION OF THE PHRASE "SUBSEQUENT CONVICTION" IN § 924(c)(1). THE SUBSEQUENT CLARIFICATION OF THE RELEVANT STATUTE THE PETITIONER WAS CONVICTED OF VIOLATING REVEALED THAT A FIRST TIME OFFENDER IS THE CONDUCT THAT THE FEDERAL CRIMINAL STATUTE, AS PROPERLY INTERPRETED, DOES NOT PROHIBIT.

REASONS FOR GRANTING THE PETITION

CONGRESS WITH PLAIN LANGUAGE SET OUT IN §403 CLARIFICATION OF SECTION 924(c) OF TITLE 18, USC, CLARIFIED THE STATUTE AND WAS THE LAW OF THE UNITED STATES - AS PROPERLY INTERPRETED - AT THE TIME OF MR. LUSTER'S CONVICTION. BECAUSE §403(a) IS NOT NEW LAW, THIS CASE/STATUTE PRESENTS NO ISSUE OF RETROACTIVITY.

RATHER, THE QUESTION IS SIMPLY WHETHER THE UNITED STATES CAN, CONSISTENTLY WITH THE FEDERAL DUE PROCESS CLAUSE, CONVICT LUSTER FOR BEING A FIRST TIME OFFENDER, CONDUCT THAT ITS CRIMINAL STATUTE, AS PROPERLY INTERPRETED, DOES NOT PROHIBIT.

THIS COURT'S PRECEDENTS MAKE CLEAR THAT MR. LUSTER'S CONVICTION AND CONTINUED INCARCERATION ON THIS CHARGE VIOLATE DUE PROCESS. THE SUPREME COURT HAS HELD THAT THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT FORBIDS A STATE TO CONVICT A PERSON OF A CRIME WITHOUT PROVING THE ELEMENTS OF THAT CRIME BEYOND A REASONABLE DOUBT. SEE JACKSON, 443 US AT 316, 61 L.ED. 2D 560, 99 S.Ct. 2781; IN RE WINSHIP, 397 US 358, 364, 25 L.ED. 2D 868, 90 S.Ct. 1068 (1970). IN THIS CASE, "SUBSEQUENT CONVICTION," CONTEXTUAL MEANING WAS "VIOLATION OF THIS SUBSECTION THAT OCCURS 'AFTER A PRIOR CONVICTION UNDER THIS SUBSECTION' HAS BECOME FINAL," IS A BASIC ELEMENT OF THE CRIME OF WHICH MR. LUSTER WAS CONVICTED.

THE FIRST STEP ACT MADE A MONUMENTAL CONNECTION TO THE UNDERSTANDING OF §924(c). BY CLARIFYING THAT A SUBSEQUENT CONVICTION ARISES FROM A SEPARATE CASE AND ALREADY "HAS BECOME FINAL," §403(a), 132 STAT. AT 5222. UNITED STATES V. MCCOY, 981 F.3d 271 (4th Cir. 2020).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

15/ DAVID ANTONIO LUSTER

Date: MARCH 16, 2021