20-8448

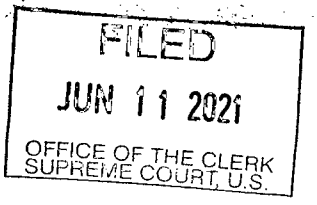
NO.21-_____

IN THE
SUPREME COURT OF THE UNITED STATES

HENRY PAUL RICHARDSON,
Petitioner,

CHRISTOPHER-GOMEZ,WARDEN,
Respondent,

ORIGINAL



On Petition For A Writ of Certiorari to The
United States Court of Appeals For The
Fourth Circuit

PETITION FOR A WRIT OF CERTIORARI

HENRY PAUL RICHARDSON
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PETITIONER

QUESTIONS PRESENTED

I. Does The Saving Clause Under Section 28 U.S.C. 2255(e), permit A Federal prisoner To Proceed in a Habeas petition Pursuant to Section 28 U.S.C. 2241, when the Remedy Under Section 28 U.S.C. 2255 is inadequate or ineffective to test the legality of a prisoner's detention when:(1) the prisoner makes a claim of Actual innocence within the meaning of Schlup v. Delo, 513 U.S. 298 (1995),and (2) has not had an unobstructed procedural opportunity at presenting that claim?

II. Does The Fourth Circuit Precedent in In Re jones, 226 f.3d 328 (4th Cir. 2000), erroneously Interprets Section 28 U.S.C. 2255(e), and Limits a federal prisoner's Access To Invoke The Saving Clause;and, Also Conflicts with Other Circuit Court of Appeals Interpretation of The Saving Clause?

PARTIES INVOLVED

All parties appear in the Caption of the Cover page.

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TABLE OF AUTHORITIES

CASES:

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Henry Paul Richardson, respectfully Submits this Petition for a Writ of Certiorari to review the judgment of the United States Court of appeals for the fourth Circuit, rendered in the Case No. 20-6953 on December 22, 2020, affirming the Judgment of the District Court for the Eastern District of Virginia.

OPINION BELOW

The Memorandum and Order of the United states District Court for the District of Virginia, denying relief is found at No. 3:19-cv-812 (Pet. App.B). The Fourth Circuit per curiam opinion affirming the decision of the District Court is found in Appeal No. 20-6953 (4th cir. dec. 22, 2020).(Pet. App. A), and that Court's denial of rehearing en banc is not published (Pet. App. C). All three decisions are printed in the appendice to this Petition.

JURISDICTION

The Fourth Circuit issued its opinion on December 22, 2020, and denied Mr. Richardson's timely petition for rehearing en banc on March 1, 2021, and issued its mandate of judgment denying rehearing en banc on March 9, 2021. (Pet. App. C). This Court has lawful jurisdiction pursuant to section 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

SECTION 2255(e) of TITLE 28, PROVIDES:

[A]n application for a writ of habeas corpus in behalf of a prisoner who is Authorized to apply for relief by motion pursuant to this section, shall not be entertained if it appears that the applicant has failed to apply for relief, by motion to the Court which Sentenced him, or that such Court has denied him relief, unless it also appears that the remedy by Motion is inadequate or ineffective to tes the legality of his detention."

SECTION 2241(c) OF TITLES 28 PROVIDES:

(c) The Writ of habeas corpus shall not extend to a prisoner unless---

(1) He is in custody under or by color of the Authority of the United States or is committed for trial before some court thereof; or

(2) He is in custody for an act done or omitted in pursuance of an act of Congress, or an order, process, judgment or decree of a court or judge of the United States; or

(3) He is in custody in violation of the Constitution or laws of treaties of the United States; or

(4) He. being a citizen of a foreign state and domiciled therein is in custody for an act done or omitted under any alleged right, title, authority, privilege, protection, or exemption claimed under the commission, order or sanction of any foreign state, or under color thereof, the vaildity and effect of which depend upon the law of nations; or

(5)It is necessary to bring him into Court to testify or for trial.

STATEMENT OF CASE

On June 27, 2006, Petitioner Henry Paul Richardson, was convicted by a jury in the United States District Court for the Eastern District of Virginia of Capital Murder in violation of section 18 U.S.C. 924(j), and firearm and drug Conspiracy in violation of section 18 U.S.C. 924(c); 21 U.S.C 846. On January 5, 2007, a sentencing hearing was held and Mr. Richardson was sentencted to a mandatory life sentence imprisonment without the possbility of release, along with an additional mandatory 30 year sentencs of imprisonment.

Since the denial of Mr. Richardson's first 28 U.S.C. 2255 motion on July 24, 2012. New evidence of Mr. Richardson's Actual innocence was discovered by private investigator Mr. Alfred C. Brown during the course of his investigation into the Murder of freeman Brown. Aafter the completion of Mr. Brown's independent investigation, the following information was disclosed to Mr. Richardson:(1) The Sole eyewitness, Sylvester T. Washington revealed that his trial testimony Against Mr. Richardson were based upon Police coercion by Richmond Police Detective David E. Burt, Richmond Police officer Sandy ledbetter, F.B.I. Agent Gary jennnings, and Assistant U.S. Attorney Roderick Young to 'Falsely implicate Mr. Richardson as the shooter. Mr. Washington further revealed that the three people he saw that night were dark skinned, and that Mr. Richardson were light skinned.Mr. Washington stated that none of the shooters were Mr. Richardson. See (Pet. App. D, affidavit of Government soloe eyewitness sylvester Washington para#13, #14).

Investigator Mr. Brown's investigation further revealed two new eyewitness accounts. New eyewitness accounts, Ms. Natilia Nikki Johnson who were a 911 caller and witnessed the Murder of her neighbor Freeman Brown. Ms. Johnson informed investigator Mr. Brown that she were on her porch when a van drove down saint paul street and stopped on West Coutts street. According to Ms. Johnson, there were three people inside the van, they had hoodies on. Ms. Johnson stated two individuals exited the van and began shooting, as a result, freeman Brown were shot and killed

and sylvester Washington were wounded. Ms. Johnson description of the shooters: The two shooters that exited the van were dark skinned. The drive were also dark skinned as well, but the driver never exited the van. Ms. Johnson stated she was familiar with Mr. Richardson's description from living in the community, her memory of him is he is ligh skinned. Ms. Johnson stated neither of the shooters that exited were Mr. Richardson.she stated further none of the shooters were light skinned.Ms. Johnson also pointed out to investigator Mr. Brown that the two allege shooters height were around 5'11 or so, while Mr. Richardson is short and height is around 5'5. Ms. Johnson stated that she reported this information to the 911 caller dispatch at the time she placed the call, however, she were never interviewed or questioned by Richmond Police regarding the Murder of freeman Brown. The First time Ms. Johnson was interviewed was by private investigator Mr. Alfred C. Brown. See (Pet. App. D, affidavit of Natilia Nikki Johnson). In addition, New eye witness account, Andrew Grant also stated he were present during the murder of freeman Brown. According to Mr. Grant, he seen the allege shooter, and he is familiar with description of Mr. Richardson from living in the community,however, he memory of Mr. Richardson is he very light skinned with curly hair, however, Mr. Grant stated that the allege shooter was not light skinned or Mr. Richardson. See (Pet. App. D, Statement of new eye witness account of Andrew Grant).

Prior to Mr. Richardson's capital Murder trial, there were issues regarding the Government sole eye witness sylvester Washington mental state, and whether he Could have identified Mr. Richardson or even understood any encounter with the Richmond Detective David E. Burt during the photo spread at the hospital on february 21, 2006, due to Mr. Washington lapsing into a seven day coma on february 15, 2006. Almost decade after Mr. Richardson's capital Murder trial, New Scientific evidence was presented by Neurologist Mr. Elkhonon Goldberg after he reviewed the sole eye witness Mr. Washington's medical records, the Richmond police reports, and Mr. Washington's trial testimony. Mr. Goldberg Submitted an affidavit stating several issues of concern exist, leading one to question the vailidity of the presumed perpretratoir's idenification by Mr. Washington. The first issue pertains to the possibility of retrograde amnesia,i.e.,memory impairment for the events antedating the assault. The Second issue pertains to Mr. Washington's mental state at the time when he made the identification. The third issue pertains to the format of the identification procedure itself. The fourth issue pertains to the illicity substances Mr. Washington reportedly taken before the assault. The fifth issue pertains to the medications Mr. Washington was on at and around the time of the identification. See (Pet. App. D, Affidavit of Neurologist and medical professor Mr. Elkhonon Goldberg).

On or around 2017, Petitioner Mr. Richardson while detained at the federal correctional institution, FCI Petersburg, located in Virginia. Mr. Richardson filed a Petition for a writ of habeas corpus Pursuant to section 28 U.S.C. 2241 Invoking the Saving Clause under section 28 U.S.C. 2255(e). Mr. Richardson raised the argument that the remedy by motion under section 28 U.S.C. 2255 is "inadequate or ineffective to test the legality of his detention when: (1) he makes a claim of Actual innocence within the meaning of Schlup v. Delo, 513 U.S. 298, 324, 327 (1995), and (2) Mr. Richardson has not has an "unobstructed procedural opportunity" at presenting that claim, through no fault of his own. Mr. Richardson's claim of Actual of innocence was not available during his direct appeal, and first 28 U.S.C. 2255 motion on July 24, 2012. Mr. Richardson asserts the procedural remedy by motion under section 2255, for the purpose of filing a Second or successive 2255 motion is " an inadequate or ineffective remedy to "test" Mr. Richardson's claim of Actual innocence within the meaning of Schlup v. Delo, 513 U.S. 298 (1995); Bousely v. United States, 523 U.S. 614 (1998). Mr. Richardson presented the argument that his claim of actual innocence for the purpose of invoking the saving clause, is "tested" by this Court Actual innocence gateway standard articulated in Schlup,513 U.S. 324, 327; Bousely, 523 U.S 623 id. This Court have held that a habeas petitioner, Claiming Actual innocence and Asserting a Constitutional error, is entitled to habeas review if the Petitioner Can: (1) Support his allegations of constitutional error with New reliable evidence--i.e.,Whether it be exculpatory, Scientific evidence, New eye witness Accounts, or critical physcial evidence not presented at trial; and (2) that Shows it is more likely than not that no reasonable juror would have Convicted him in light of the new evidence.id.

Mr. Richardson presented Sufficient New evidence, demonstrating his Actual innocence within meaning of Schlup v. Delo, 513 U.S. 298, 324, 327 (1995) Which consist of the following: (1) The Government's Sole eye witness Sylvester T. Washington's Recantation of his trial testimony. Mr. Washington revealed that his trial testimony was based upon police coercion to falsely implicate Mr. Richardson as the allege shooter when the three allege shooters were dark skinned, and Mr. Richardson is light skinned. Mr. Richardson further revealed that none of the allege shooters were Mr. Richardson; (2) New eye witness accounts of Andrew Grant, and 911 caller Natilia Nikki Johnson clearly exonerates Mr. Richardson of the Murder of freeman Brown; (3) New exculpatory evidence that were discovered by private investigator Mr. Alfred C. Brown established Mr. Richardson's Actual innocence, and (4) New Scientific evidence provided by Neurologist and medical professor, Mr. Elkhonon Goldberg calls into question the 'reliability of Sole eyewitness Sylvester T. Washington's identification, and his memory based on Science, after reviewing the effects of trauma, and pharmaceuticals on his memory rendering his trial testimony unreliable based on new scientific evidence that was not presented to the jury during Mr. Richardson's trial that would have established his actual innocence. See (Pet. App. D)

Mr. Richardson presented new evidence in the form of five affidavits, establishing his actual innocence. He requested

an evidentiary pursuant in light of the Newly supplemented Record as required by this Court Actual innocence Standard articulated in Schlup v. Delo, 513 U.S. 298, 324, 327 (1995).

On April 30, 2020, the United States District Court dismissed Mr. Richardson's habeas petition without resolving the question presented: 'Does the Saving Clause under section 28 U.S.C. 2255(e), permit Mr. Richardson to proceed in a habeas petition pursuant to section 28 U.S.C. 2241, when the procedural remedy is "inadequate or ineffective to test the legality of his detention when: (1) he makes a claim of actual innocence within the meaning of Schlup v. Delo, 513 U.S. 298 (1995), and (2) he has not had an unobstructed procedural opportunity at presenting that claim,through no fault of his own. The District Court stated Mr. Richardson failed to meet the three-prong standard in In re jones, 226 f.3d 328, 333-34 (4th cir. 2000). The District Court further stated:'Richardson fails to demonstrate that Subsequent to his direct appeal, and his first 28 U.S.C. 2255 motion, the substantive law changed that such conduct of which he was convicted is deemed not to be criminal. See (Pet. App. B, United States District Court opinion pg. 4, and 5).

Mr. Richardson filed a timely Appeal with the fourth Circuit Court of appeals, presenting the following questions: (1) Whether the Fourth Circuit three-prong standard in In re jones, 226 f.3d 328 (4th cir. 2000), is inapplicable to test Mr. Richardson's Claim of Actual innocence within the meaning of Schlup v. Delo, 513 U.S. 298 (19995), for the purpose of invoking the Saving clause under Section 28 U.S.C. 2255(e); and
(2) Does The Saving Clause under Section 28 U.S.C. 2255(e), permit Mr. Richardson to proceed in a habeas petition pursuant to section 28 U.S.C. 2241,when the procedural remedy is inadequate or ineffective to test the legality of his detention, when (1)he makes a claim of actual innocence within the meaning of Schlup v. Delo, 513 U.S. 298 (1995); Bousely v. United States, 523 U.S. 614 (1998)?

On December 22, 2020, the fourth Circuit Court of appeals affirmed the judgment of the District Court in a unpublished opinion stating: Mr. Richanrdson fails to meet the three prong standard in In re jones, 226 f.3d 328, 333-34 (4th cir. 2000). (Pet. App. A). On february 2021, Mr. Richardson filed a timely Petition for a rehearing en banc, requesting the full en banc Court to order briefing for the following reasons:

(1) The Panel Decision issued in Richardson v. Gomez, Appeal no. 20-6953 (4th cir.dec. 22, 2020), Conflicts with other Circuit Court of appeals interpretation of the Saving Clause under section 28 U.S.C. 2255(e). The Third, Sixth, and Ninth Circuits, interprets the saving clause to permit a prisoner claim of actual innocence within the meaning of Schlup v. Delo, 513 U.S. 298 (1995); and Bousely v. United States, 523 U.S. 614(1998)?

(2) Does the Saving Clause under section 28 U.S.C. 2255(e), permit a federal prisoner to proceed in a habeas petition pursuant to section 28 U.S.C. 2241,when the remedy is inadequate or ineffective to test the legality of a prisoner detention when: (1) he makes a claim of actual innocence within the meaning of Schlup v. Delo, 513 U.S. 298 (1995), and (2) he has not had an unobstructed procedural opportunity at presenting that claim?

On March 1, 2021, the fourth circuit entered an order, denying Mr. Richardson's Petition for rehearing en banc. The mandate of judgment issued on March 9, 2021. See (Pet. App. C).

REASONS FOR GRANTING THE WRIT

This Court Should Grant the Writ because The Fourth Circuit Court of appeals Precedent decided over twenty-one years ago in In re jones, 226 f.3d 328 (4th Cir. 2000), departs from the natural meaning of the Statutory text of the Saving Clause Under Section 28 U.S.C. 2255(e), which requires a Court to determine, 'Whether the remedy by Motion under Section 28 U.S.C. 2255 is "inadequate or ineffective to 'test' the legality of a prisoner's detention." The fourth Circuit precedent fails to recognize that the Interpretation of the Statutory phrase...i.e.," the [remedy] by motion under section 28 U.S.C. 2255 is "inadequate or ineffective" to "test" the legality of a prsoner's detention"...is [not] confined to a specific Claim. Instead, A Court reviewing a federal prisoner's Petition for a writ of habeas corpus Pursuant to section 28 U.S.C. 2241, is required to give the natural meaning to the Stautory text under section 2255(e), when considering: "Is the remedy by Motion under Section 28 U.S.C. 2255 is "inadequate or ineffective" to 'test' a prisoner's Claim---simply because the Saving Clause text under section 2255(e), is 'undefined, and does [not] limit a federal prisoner's Access to invoke the saving clause portal, to "test" a Specific Claim.

Congress did [not] define the Saving Clause Under Section 28 U.S.C. 2255(e), simply because the enactment of section 2255(e) in 1948, and reaffirmed in the Antiterrorism Death penalty Act (AEDPA), was to provide a federal prisoner an "unobstructed procedural opportunity to at presenting a claim that the procedual remedy under section 2255 is "inadequate or ineffective" to "test." The fourth Circuit recent decision issued in Richardson v. Gomez, Appeal no.20-6953 (4th cir. Dec. 22, 2020),denying the prisoner Mr. Richardson Access to invoke the saving clause portal under section 2255(e), and proceed in a habeas petition pursuant to section 28 U.S.C. 2241, when the remedy by motion under section 28 U.S.C. 2255 is "inadequate or ineffective to test the legality of his detention when: (1) Mr. Richardson makes a claim of actual innocence within the meaning of Schlup v. Delo, 513 U.S. 298 (1995), and (2) he has not had an "unobstructed procedural opportunity" at presenting that claim, through no fault of his own.

The fourth circuit decision issued in Richardson v. Gomez, denied the prisoner access to invoke the saving clause portal, and proceed in a habeas petition pursuant to 28 U.S.C. 2241, to "test" Mr. Richardson's Claim of Actual innocence. Simply because Mr. Richardson fails to meet the the three-prong standard adopted in In re jones, 226 f.3d 328, 333-34 (4th cir. 2000). The Court decision below is based on an erroneous Interpretation of relevant law, and also Conflicts with the textual Interpretation of the saving clause Under section 2255(e), for three seperate reasons: One, the Saving Clause text under Section 28 U.S.C.2255(e) is [not] define; two, A Court is required to give the natural meaning to the Statutory phrase of the Saving Clause text under Section 2255(e), when considering:'Is the remedy by Motion under Section 28 U.S.C. 2255 is inadequate or ineffective to the the legality of a prisoner's detention based the Claim presented by the prisoner; and three,the three-prong standard adopted by the fourth circuit in In re jones--- 'is inapplicable to a prisoner's [Mr. Richardson's] Claim of Actual innocence. Simply because a prisoner's [Mr. Richardson's] Claim of actual innocence for the purpose of invoking the saving clause, is "tested" by this Court Actual innocence standard articulated in Schlup v. Delo, 513 U.S. 298, 324, 327 (1995); Bousely v. United States, 523 U.S. 614, 623 (1998). See, Section I below.

This Court Should also Grant the Writ because the recent decision issued by the Fourth Circuit in Richardson v. Gomez, appeal no 20-6953 (4th cir. Dec. 22, 2020), Conflicts with the Third, Sixth, and Ninth Circuit, Tenth, and elventh Circuit Court of appeals Interpretation of the Saving Clause under section 28 U.S.C. 2255(e). The Third, Sixth, and Ninth Circuit Court appeals have interpreted the Saving Clause to permit a federal prisoner to proceed in a habeas petition pursuant to 28 U.S.C. 2241, when: (1) a prisoner makes a claim of actual innocence, and (2) the prisoner has not had an unobstructed procedural opporunity at presenting that claim. Th Third, Sixth, and Ninth Circuits holds a prisoner claim of actual of innocence for the purpose of invoking the Saving Clause, is "tested" by the Actual innocence Standard articulated in Schlup v. Delo, 513 U.S. 298, 324, 327 (1995); Bousely v. United States, 523 U.S. 614, 623 (1998). Contrast, to the Third, Sixth, and Ninth Circuits interpretation of the Saving Clause--- the fourth circuit limits a federal prisoner [Mr. Richardson's] Access to invoke the saving clause portal under section 2255(e), and proceed in a habeas petition pursuant to section 28 U.S.C. 2241, unless a prisoner's Claim is based upon a substantive Change in Caselaw that occured after a prisoner's direct appeal, and first 28 U.S.C. 2255 motion, that renders a prisoner's conduct of which he was convicted of non-criminal. See, In re jones, 226 f.3d at 333-34 (4th cir. 2000).

Congress did [not] intend for Courts below to limit a federal prisoner's Access to invoke the Saving Clause portal Under Section 2255(e),when the remedy by Motion is "inadequate or ineffective to "test" the prisoner [Mr. Richardson] Claim of Actual innocence, when Mr. Richardson has been denied a 'procedural remedy [avenue], afforded by the saving clause portal, to "test" his claim of Actual innocence. The Fourth Circuit precedent in In re jones, 226 f.3d 328, 333-34 (4th cir. 2000), is inapplicable to test Mr. Richardson's claim of actual innocence. Mr. Richardson's claim of actual innocence for the purpose of invoking the saving clause, is tested by this Court Actual innocence Standard articulated in Schlup v. Delo, 513 U.S. 298, 324, 327 (1995); Bousely v. United States, 523 U.S. 614, 623 (1998). See, Section I below.

This Court Should also Grant the Writ because the Circuit Court of Appeals below are Split on the 'textual Interpretation of:"When the remedy by motion under Section 28 U.S.C. 2255 is "inadequate or ineffective to test the legality of a prisoner's detention, because the Circuit Court of appeals beelow, now apply multiple, Conflicting Standards. The law of the Third, Sixth, and Ninth Circuit Court of appeals---would permit Mr. Richardson to proceed in a habeas petition pursuant to 28 U.S.C. 2241, to "test" his Claim of Actual innocence, simply because he has not had an unobstructed procedural opportunity" at presenting that Claim. Under the law of others, like the Fourth Circuit, where Mr. Richardson is currently "detained", he cannot proceed in a habeas petition under Section 28 U.S.C. 2241, simply because the fourth Circuit precedent limits a federal prisoner's Access to invoke the saving clause portal under section 28 U.S.C. 2255(e), unless the prisoner's Claim is based on an Substantive change of caselaw that occured after a prisoner's direct appeal, and first 28 U.S.C. 2255 motion, that renders a prisoner's conduct of which he was convicted of non criminal.id. Contrast, The Tenth, and eleventh Circuit Court of appeals precedent states: the remedy by motion under section 28 U.S.C. 2255 is [not] inadequate or ineffective to test the legality of a prisoner's detention when: (1) a prisoner's claim is based upon a substantive change in Caselaw. The Tenth, and eleventh Circuits hold that a prisoner's initial 28 U.S.C. 2255 must be inadequate or ineffective in order to a prisoner to invoke the saving clause. Certiorari Review necessary to enforce Congress purpose of the Saving clause reach and meaning of Section 28 U.S.C. 2255(e), and to resolve the Conflict Among the Circuit Court of appeals below as to the textual Interpretation of: "When the remedy under section 28 U.S.C. 2255 is inadequate or ineffective to test the legality of a prisoner"s detention." Mr. Richardson is serving a mandatory life sentence without the possibility of release, and has been deprived an "unobstructed procedural opportunity" to present his Claim of Actual innocence within the meaning of Schlup v. Delo, 513 U.S. 298 (1995). Certiorari review is Warranted by this Court.

I. Conflict with The Third, Sixth, Ninth, Tenth, and Eleventh Circuits Interpretation of The Saving Clause Text Under Section 28 U.S.C. 2255(e).

DISCUSSION.

Since 1948, Congress has required that a federal prisoner file a motion to vacate, 28 U.S.C. 2255, Instead of a petition for a writ of habeas corpus, 28 U.S.C. 2241, to collaterally attack the legality of his sentence. See Pub. L. No.80-773, 62 Stat. 869, 967-68. A motion to vacate allows a prisoner to contest his sentence "upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the Court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law or is otherwise subject to collateral attack." 28 U.S.C. 2255(a). Section 2255(e), makes clear that a motion to vacate is the exclusive mechansim for a federal prisoner to seek collateral relief unless he/she can Satisfy the "Saving clause" at the the end of that subsection:

"An application for a writ of habeas corpus in behalf of a prisoner who is Authorized to apply for relief by motion, pursuant to this section, Shall not be entertained if it appears that the applicant has failed to apply for relief, by motion, to the Court which sentenced him, or that such court has denied him relief, unless it also appears that the remedy by motion is "inadequate or ineffective" to test the legality of a prisoner's detention."id. 2255(e) (emphasis added). "[s]aving,[not savings,] is the precise word" for "a statutory provision exempting from coverage something that would otherwise be included," Bryan A Garner, Garner's Dictionary of legal Usage 797 (3d ed. 2011); has nothing to do with Saving a statute from unconstitutionality, See e.g., 28 U.S.C. 1331(1)("Saving to suitors in all cases all other remedies to which they are otherwise omitted").

To determine, Whether the Saving clause of Section 28 U.S.C. 2255(e), permits a federal prisoner [Mr. Richardson], to proceed in a habeas petition Pursuant to 28 U.S.C. 2241, when the remedy by motion under Section 28 U.S.C. 2255 is "inadequate or ineffective to test the legality of his detention when two conditions is met: (1) the prisoner makes a claim of actual of innocence within the meaning of Schlup v. Delo, 513 U.S. 298 (1995), and (2) he has not had an "unobstructed procedural opportunity at presenting that claim, through no fault of his own. First, Mr. Richardson explain how the fourth circuit Court of appeals (and other circuits), have interpreted the saving clause text under section 2255(e). Second, Mr. Richardson explain further why the fourth circuit precedent in In re jones, 226 f.3d 328, 333-34 (4th cir. 2000),fails to adhere to the text of the Saving Clause. Third, in light of the incongruity of the text and the fourth circuit precedent, Mr. Richardson explains why the fourth circuit precedent in In re jones,erroneously interprets the Saving Clause text of Section 2255(e), and limits a federal prisoner Access to invoke the saving clause portal, when the remedy by motion under section 2255 is "inadequate or ineffective to "test" Mr. Richardson's Claim of Actual innocence within the meaning of Schlup v. Delo, 513 U.S. 298 (1995). For the reasons stated fully below, this Court Should overruled the fourth circuit precedent in In re jones, 226 f.3d 328 (4th cir. 2000).

(a) The Fourth Circuit precedent in In re jones, erroneously Interprets The Saving Clause Text of Section 2255(e), and limits a federal prisoner Access To Invoke The Saving Clause.

Congress enacted Section 28 U.S.C. 2255 to address the "serious adminstrative problems "caused by the requirement that habeas petitioners be brought in the District of incarceration, often far from where relevant records and witnesses were located. United States v. Hayman,342 U.S. 205,210-19, 72 S. Ct. 263, 96 l ed. 232 (1952). The motion to vacate "afforded] the same rights in another more convenient forum," namely the District Court where the prisoner was sentenced. id. 219. In 1996, Congress reformed the system of collateral review when it passed the Antiterrorism and effective Death penalty Act. See Pub. L. No.104-132, 110 Stat. 1214. The Act made several changes to section 2255, including the addition of a bar on second successive motions, 28 U.S.C. 2255(h), and Statute of limitation, id. 2255(f). See 110 Stat. at 1220. But the Act did not alter the Saving Clause text of section 2255(e).

The Fourth Circuit Court of appeals considered the meaning of the Saving clause twenty-one years Ago in the decision issued in In re jones, 226 f.3d 328 (4th cir. 2000). Byron Jones, a federal prisoner, convicted of four counts of using a firearm during a drug offense pursuant to section 18 U.S.C. 924(c), based on a search of his apartment that uncovered crack cocaine, as well as four firearms found in a locked closet. See. id. at 330. However, Jones filed his 28 U.S.C. 2255 motion, this Court decided Bailey v. United States, 516 U.S. 137 (1995), which rendered Jones's Convictions invalid. See id at 330. Specifically, Bailey held that the government must prove active employment of a firearm in order to convict a defendant for using a firearm under section 18 U.S.C. 924(c)(1). See id. (citing Bailey, 516 U.S. at 143). Therefore, Jones's Conduct underlying his convictions was no longer illegal. See id. at 330;334. Unable to file a second or successive 2255 motion because Bailey was a statutory (not a constitutional) decision, Jones attempted to file a 28 U.S.C. 2241 Claim for relief by using the saving clause portal. See id. 329-30.

In Analyzing Jones claim, the fourth Circuit adopted a three-prong standard that must be present for a petitioner to satisfy the saving clause:

[section] 2255 is inadequate or ineffective to test the legality of a conviction when: (1) at the time of conviction, settled law of the circuit or the supreme court established the legality of the conviction; (2) Subsequent to the prisoner's direct appeal, and first 2255 motion, the substantive law changed such that the conduct of which the prisoner was convicted of is deemed not criminal; and (3) the prisoner cannot satisfy the gatekeeping provisions of 2255 because the new rule is not one of constitutional law. Jones, 226 f.3d at 333-34. Jones, added "Courts [allowing 2241 review of Bailey claims] have focused on the more fundamental defect, presented by a situation in which an individual is incarcerated for conduct that is not criminal but, through no fault of his own, has no source of redress." id. at 333.n.3. (emphasis added). The fourth circuit court of appeals then found that Jones satisfied all three-prongs of the standard above and granted his request to file a 2241 petition via saving clause.

The question remain to be resolved by this Court, Does the fourth circuit precedent in In re jones, 226 f.3d 328 (4th cir. 2000), issued over twenty one years ago, errroneously intreprets the saving clause text under section 28 U.S.C. 2255(e), and limits a prisoner's Access to utilize the saving clause portal, when the remedy by motion under section 28 U.S.C. 2255 is "inadequate or ineffective to test a prisoner's claim. The fourth circuit's textual interpretation of the saving clause of section 2255(e), "limits a prisoner's access to invoke the saving clause portal, unless a prisoner's claim meets the three-prong standard adopted in In re jones, 226 f.3d 328, 333-34 id. The fourth circuit's intrepretation of the saving clause is based on an erroneous intrepretation of relevant law, and Conflicts with the natural meaning of the saving clause text of section 2255(e).

(b) The Text of The Saving Clause Under Section 28 U.S.C. 2255(e).

The Saving clause permits a federal prisoner to proceed in a habeas petition pursuant to section 28 U.S.C. 2241, [o]nly' when a prisoner 'remedy by motion under section 28 U.S.C. 2255 is "inadequate or ineffective to test the legality of his detention." 28 U.S.C. 2255(e). When we read this tex, several terms offer important clues about the meaning: "remedy," "to test," "inadequate or ineffective," and "detention." Careful review of these terms and the whole test makes clear that the fourth circuit precedent in In re jones, 226 f.3d 328, 333-34 (4th cir. 2000), erroneously interprets the saving clause, and limits a prisoner's access to proceed under the saving clause portal, unless a prisoner present a claim based upon a substantive change in caselaw that renders the conduct of which he was convicted of non criminal. See, 226 f.3d 333-34.id.

Mr. Richardson asserts A Careful review of the whole text of the saving clause makes clear that the saving clause portal is not limited to a Specific Claim, or a Substantive change in Caselaw. Instead, the natural meaning of the Saving Clause text of section 2255(e), was designed by Congress to provide a prisoner like Mr. Richardson An "unobstructed procedural opportunity" to present a claim where the [procedural remedy] by motion under section 28 U.S.C. 2255 is 'inadequate or ineffective to "test" Mr. Richardson's Claim of Actual innocence within the meaning of Schlup v. Delo, 513 U.S. 298, 324, 327 (1995).

In recent decades, this Court has insisted that Statutory interpretation depends on Statutory text. e.g., Ross v. Blake, 136 S. Ct. 1850, 1854, 195 l. ed. 2d (2016). Its approach "calls on the judicial interpreter to consider the entire text, in view of its structure and of the physcial and logicial relation of its many parts." Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts 167 (2012); Star Athlelica, L.L.C. v. Varsity Brands, Inc., 137 S. Ct. 1002, 1010, 197 l. ed. 2d 354 (2017).

Following these instructions, This Court Should begin with section 2255(e)'s language:

'An application for a writ of habeas corpus in behalf of a prisoner who is Authorized to apply for relief by motion pursuant to this Section, Shall not be entertained if it appears that the applicant has failed to apply for relief, by motion, to the Court which sentenced him, or that such court has denied him relief, unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of prisoner"s detention. 28 U.S.C. 2255(e). Under this text, prisoner's who have had a 2255 motion "denied" must show that the Statute's remedy (that is, its "means" for seeking relief) is inadequate or ineffective (that is, "insufficient" or "incapable") to test (that is, "try") a legal challenge to their detention. See, e.g., Bouvier's law dictionary (1934)("remedy"); Webster's New Int'l Dictionary 1254, 1271 (1st ed. 1933)("test"). Notably, this Statutory language does not give Court's license to ask Whether they consider 2255 to be inadequate or ineffective in the abstract. Rather, "the inadequacy or ineffectiveness must relate specificially to a procedural deficiency in 'test(ing) the legality of [a prisoner's] detention." Cain v. Markley, 347 f.2d 408, 410 (7th cir. 1965). So section 2255(e) asks only whether 2255's motion is 'sufficient to assert a claim on the merits; it does not gurantee "Success" on the merits. 28 U.S.C. 2255(e) does not contain textual limitations placed on second or successive motions under Subsection 28 U.S.C. 2255(h), which identifies two specific scenarios in which successive 2255 motions are permitted. This Court has emphasized, Such diference must mean something. "Where Congress includes particular language in one section of a statute but omits it in another section of the same act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." Russello v. United States, 464 U.S. 16, 23 (1983). In this vein, " Congress could have limited the saving clause portal to a specific Claim---by incorporating the language in the saving clause text of subsection 2255(e), but Congress did not."

The term "detention" in the Saving Clause text carries a broader meaning than the term "Conviction and Sentence" that appears in the Statute. Section 28 U.S.C. 2255(a) allows a prisoner to challenge his "sentence" and "conviction." 2255(a). But the Saving clause preserves Challenges to a prisoner's "detention" that would go "unremedied." 2255(e). When Congress uses "different language in similiar sections," we should give these words different meanings. See, Iraloa & CIA, S.A. v. Kimberly,-Clark Corp., 232 f.3d 854, 859 (11th cir. 2000). When Congress enacted Section 2255, the word "detention" meant "keeping in custody or confinement," Detention, 3 Oxford english Dictionary 266 (1st ed. 1933) or "the act of keeping back or withholding, either accidentially or by design, a person or thing," Detention, Black's law dictionary 569 (3d ed 1933). Because someone can be kept in "custody without criminal conviction or sentence, or "withheld" Contrary to the terms of conviction or sentence, it is clear that the meaning of "detention" covers circumstances of confinement other than those attributed to the conviction or sentence.

When a prisoner attacks aspects of his detention in ways that do not challenge the validity of his conviction or sentence, then the saving clause may provide him access to a different remedy. This reading of the test comports with the traditional distinction between a motion to vacate and a petition for a writ of habeas corpus. A motion to vacate covers only challenges to the validity of a conviction or sentence, but the saving clause and a peition for a writ of habeas corpus covers challenges to the legality of a prisoner's "detention." 28 U.S.C. 2255(e).

(c) The Fourth Circuit denied The prisoner Access To Invoke The Saving Clause portal, When the remedy by motion under Section 2255 is "inadequate or ineffective" To Test Mr. Richardson's Claim of Actual innocence within the meaning of Schlup v. Delo.

On December 22, 2020, the fourth circuit court of appeals affirmed the judgment below of the United States District Court with[out] resolving the legal question presented by the federal prisoner Mr. Richardson: 'Does The Saving Clause Under Section 2255(e), permit a federal prisoner to Proceed in a habeas petition pursuant to 28 U.S.C. 2241, when the remedy by motion under section 2255 is inadequate or ineffective to test the legality of his detention when: (1) Mr. Richardson makes a claim of actual innocence within the meaning of Schlup v. Delo, 513 U.S. 298 (1995), and (2) has not had an "unobstructed procedural opportunity at presenting that claim. Mr. Richardson's Claim of actual innocence for the purpose of invoking the saving the clause, is "tested by the Actual innocence standard articuluated in Schlup, 513 U.S. 324, 327 (1995); Bousely v. United States, 523 U.S. 614, 623 (1998). The fourth Circuit decision, denying Mr. Richardson's Access to invoke the saving clause portal under Section 28 U.S.C. 2255(e), and proceed in a habeas petition Pursuant to 28 U.S.C. 2241, to "test" his Claim of Actual innocence--simply because Mr. Richardson falis to meet the three prong standard in In re jones, 226 f.3d 328 4th cir. 2000). The Court decision below, is based on an erroneous interpretation of relevant law, and also Conflicts with the textual interpretation of the saving clause under section 2255(e), for seperate reasons: One, the saving clause text under section 2255(e) is [not] define; two, A Court is required to give the natural meaning to the statutory phrase of the saving clause text under section 2255(e), when considering: 'Is the remedy by motion under section 2255 is "inadequate or ineffective to test the legality of a prisoner's detention based on a prisoner's claim; and three, the three-prong standards adopted by the fourth circuit in In re jones id.---is inapplicable to a prisoner's [Mr. Richardson] Claim of actual innocence within the meaning of Schlup v. Delo,513 U.S. 298 (1995).

(d) The Third, Sixth, and Ninth Circuits have Interpreted The Saving Clause Under Section 2255(e), To Permit A Federal prisoner to proceed in a habeas petition Under Section 2241, When A Federal prisoner makes a Claim of Actual innocence within the meaning of Schlup/ Bousely.

To Support Mr. Richardson's position, the Third, Sixth, Ninth Circuit Court of appeals 'have interpreted the Saving clause text under section 28 U.S.C. 2255(e) to permit a federal prisoner to proceed in a habeas petition pursuant to section 28 U.S.C. 2241, when:(1) a federal prisoner makes a claim of actual innocence, and (2) he has not had an "unobstructed procedural opportunity" at presenting that claim." See, e.g.,Bruce v. Warden LEWISBURG USP, 868 f.3d 170, 174 (3d cir. 2017); United States v. Tyler, 732 f.3d 240, 247 (3d cir. 2014); Wooten v. Cauley, 677 f.3d 303, 307 (6th cir. 2012); Martin v. Perez, 314 f.3d 799, 804 (6th cir. 2003); and Stephens v. Herrara,

464 f.3d 895, 898 (9th cir. 2008). The Third, Sixth, and Ninth circuits have held that the remedy by motion under section 2255(e) is "inadequate or ineffective to test the legality of a prisoner's detention when the prisoner makes a claim of actual innocence within the meaning of Schlup v. Delo, 513 U.S. 298 (1995); and Bousely v. United States, 523 U.S. 614 (1998).

(e) The Third, Sixth, and Ninth Circuits have Interpreted a prisoner's Claim of actual innocence for the purpose of Invoking the Saving Clause, is "tested" by This Court Actual innocence 'Standard articulate in Schlup/ Bousely.

To further Support Mr. Richardson's position that a federal prisoner's claim of actual innocence for the purpose of invoking the Saving clause, is "tested" by this Court 'Actual innocence Standard articulated in Schlup v. Delo, 513 U.S.C. 298, 324, 327 (1995); Bousely v. United States, 523 U.S. 614, 623 (1998). See, The Third, Sixth, and the Ninth Circuit court of appeals decisions issued in Bruce v. Warden LEWISBURG USP, 868 F.3d 170, 174 (3d cir. 2017); United States v. Tyler, 732 f.3d 240, 247 (3d cir. 2014); Wooten v. Cauley, 677 f.3d 303, 307 (6th cir. 2012); Martin v. Perez, 314 f.3d 799, 804 (6th cir. 2003); Stephens v. Herrara, 464 f.3d 895, 898 (9th cir. 2008).The Third, Sixth, and Ninth Circuits definition of Actual innocence derives from this Court 'Actual innocence Standard' articulated in Schlup, 513 U.S. 324, 327; Bousely, 523 U.S. 623 id. The Third, Sixth, and Ninth Circuits have held: To establish Actual innocence, a prisoner must demonstrate that in light of all the evidence, it is more likely than not that no reasonable juror would have convicted the prisoner. This Court "Actual innocence Standard" when a federal prisoner makes a claim of actual innocence requires a Court to review "all the evidence in the record as a whole--old, and new evidence that the jury did not necessarily Credit in rendering its verdict, that was inadmissible at trial, or become available only after trial-- "to determine Whether it is more likely than not that no reasonable juror would hav convicted him."id.

II. The Decision Below was Wrong because The Saving Clause portal, Under Section 2255(e), permits Mr. Richardson's Claim of Actual innocence.

If the Court Agrees that the Saving Clause text Under Section 28 U.S.C. 2255(e), is not defined, ~~[or] limited to a specific Claim. Instead, the Saving Clause portal, permit a federal prisoner [Mr. Richardson]~~ to proceed in a habeas petition under Section 28 U.S.C. 2241, when the remedy is "inadequate or ineffective to test the legality of his detention, the decision below was wrong. Mr. Richardson asserts the remedy by motion under section 28 U.S.C. 2255 is " inadequate or ineffective to the test the legality of his detention when: (1) he makes a claim of actual innocence within the meaning of Schlup v. Delo, 513 U.S. 298 (1995), and (2) has not had an "unobstructed procedural opportunity" at presenting that claim, through no fault of of his own. Mr. Richardson's Claim of actual innocence for the purpose of invoking the saving clause, is "tested" by this Court 'actual innocence standard articulated in Schlup v. Delo, 513 U.S. 298, 324, 327 (1995); Bousely v. United States, 523 U.S. 614, 623 (1998). Therefore, Mr. Richardson is entitled to proceed in a habeas petition Pursuant to section 28 U.S.C. 2241, based on his Claim of Actual innocence within the meaning of Schlup, 513 U.S. 324, 327.id.

III. The Conflict involves important and recurring questions of Statutory Construction.

(a). The Circuits below are Split on When Section 28 U.S.C. 2255 is inadequate or ineffective to test the legality of a prisoner's detention.

The Conflict presented here involves important and recurring questions regarding the interpretation of the Saving Clause text of section 28 U.S.C. 2255(e). The Questions presented here occur regularly. Since the enactment of the saving clause under section 2255(e), in 1948, and reaffirmed in the AEDPA provisions on 1996. There is little guidance from any Court on when Section 28 U.S.C. 2255 is an indequate or ineffective remedy. See Echavaria-Olarte v. Rardin, 1997 U.S. Dist. lexis 3262 No. C 97-0691, 1997 WL 135905 (N.D. Cal. Mar. 18,1997).

This Court has not Clarified what makes section 28 U.S.C. 2255 inadequate or ineffective. In this Vacumm, the Circuit Court of appeals below have a variety of different standards when assessing claims that Section 2255 is "inadequate or ineffective." As the Eleventh Circuit observed, "[t]here is a deep and mature Circuit split on the reach of the Saving clause [2255(e)]." Bryant v. Warden, FCC Coleman-medium, 738 f.3d 1253, 1279 (11th cir. 2013); Also See, Brown v. Caraway, 719 f.3d 583, 600-01 (7th cir. 2013)(statement of Easterbrook, C.J.,)(calling for this Court to resolve Split of Authority of Section 2255(e)).

Still, "inadequate and ineffective" must mean something or Congress would not have enacted it in 1948, and reaffirmed it in the AEDPA on 1996. See, National Union fire Ins. Co. v. City Sav., F.S.B., 28 f.3d 376, 389 (3d cir. 1994)("In Construing a Statute we are obliged to give effect, if possible, every word Congress used, Reiter v. Sonotone Corp., 442 U.S. 330, 339, 60 L. ed. 2d 931, 99 S. Ct. 2326 (1979), and without good reason, we will not assume that a portion of a statute is superfluous, void, or insignificant.")(citation omitted); Consolidated Rail Corp. v. United States, 283 U.S. App. D.C. 47, 896 f.2d 574, 579 (D.C. Cir. 1990)("We assume that Congress intended that language which it chose to employ actually was to have meaning; effect must be given, if possible, to every word, Clause and sentence of a statute...so that no part will be inoperative or superfluous, void, or insignificant")(citations and internal quotations marks omitted). But what, precisely does it mean? While there have hundreds of cases reciting this stautory provision, this Court have yet to Articulate the Scope and meaning. We begin with the Circuit Courts below Interpretation of When Section 28 U.S.C. 2255 is inadequate or ineffective to test a prisoner's detention."

1. Second Circuit Interpretation of Section 2255(e).

The Second Circuit Court of appeals Considers Section 28 U.S.C. 2255 inadequate or ineffective whenever a "failure to allow for collateral review would raise serious constitutional questions. See, Triestman v. United States,124 f.3d 361, 367 (2d cir. 1997). In the Second Circuit, therefore, a federal prisoner who is detained and makes a claim of actual innocence, who cannot access habeas review to challenge the prisoner's detention, would raise serious constitutional due process concerns and likely trigger the saving clause of section 2255(e), to avoid such concerns.

2. The Third, Sixth, and Ninth Circuits Interpretation of Section 2255(e).

The Third, Sixth, and Ninth Circuit Court of appeals interprets the Saving Clause Under Section 28 U.S.C. 2255(e), to permit a federal prisoner like Mr. Richardson to make a claim of actual innocence within the meaning of Schlup v. Delo, 513 U.S. 298, 324, 327 (1995),If the prisoner has not had an "unobstructed procedural opportunity" at presenting that claim. See, Bruce v. Warden, LEWISBURG USP, 868 f.3d 170, 174 (3d cir. 2017); United States v. Tyler, 732 f.3d 240, 247 (3d cir. 2014); Wooten v. Cauley, 677 f.3d 303, 307 (6th cir. 2012); Martin v. Perez, 314 f.3d 700, 804 (6th cir. 2003); and Stephens v. Herrara, 464 f.3d 895, 898 (9th cir. 2008).

3. The Eighth Circuit Interpretation of Section 2255(e).

The Eighth Circuit of appeals, however, interprets the Saving Clause under section 2255(e), more narrowly, and have yet to allow a federal prisoner habeas review via section 2255's saving clause. See, Abdullah v. Hedrick, 392 f.3d 957, 963 (8th cir. 2004).

4. The Fourth Circuit Interpretation of Section 2255(e).

The Fourth Circuit Court of appeals interprets the Saving Clause under section 2255(e), to apply [only], when a prisoner's claim is based on a substantive change in Caselaw. See, the standard used in In re jones, 226 f.3d 328, 333-34 (4th cir. 2000). See, the Fourth Circuit three-prong standard: (1) at the time of a prisoner's conviction, settled law of the circuit or the supreme court established the legality of the prisoner conviction; (2) Subsequent to the prisoner's direct appeal, and first 28 U.S.C. 2255 motion, the substantive law changed such that the conduct of which the prisoner were convicted of is no longer deemed criminal; and (3) the prisoner cannot meet the gatekeeping provision of 2255 because the new rule is not one of constitutional law.id.

5. The Tenth, and Eleventh Circuits Interpretation of Section 2255(e).

The Tenth, and Eleventh Circuit Court of appeals interprets the Saving clause under section 2255(e), to apply [only], when a federal prisoner 'initial remedy by motion under section 28 U.S.C. 2255 is inadequate or ineffective to test the legality of the prisoner's detention." See, Prost v. Anderson, 636 f.3d 578 (10th cir. 2011); MCCARTHAN V. DIRECTOR OF GOODWILL INDUSTRIES-SUNCOAST INC., 851 f.3d 1076 (11th cir. 2017)(en banc).

6. The Tenth, and Eleventh Circuit Disagrees with the Fourth Circuit Interpretation of Section 2255(e).

The Tenth, and Eleventh Circuit Court of appeals 'disagrees with the Fourth circuit Court of appeals Interpretation of the Saving clause under section 28 U.S.C. 2255(e). The Tenth, and Eleventh Circuit, both have held thatthe Saving Clause under section 2255(e), 'does not permit a federal to proceed in a habeas petition pursuant to section 28 U.S.C. 2241, when a prisoner's claim is based on a substantive change in Caselaw that occured after a prisoner's direct appeal, and first 2255 motion. The Tenth, and Eleventh Circuits states:'When Circuit precedent forecloses a prisoner's claim, it may well mean Circuit law is 'inadequate or deficient. But that does not mean the 'remedial vechile set forth in section 28 U.S.C. 2255 is inadequate or ineffective to the task of testing the argument. A prisoner has an adequate procedure to raise any claim attacking his sentence or conviction, even if that claim is foreclosed by circuit precedent. The precedent may later prove to be right or wrong as a matter of substantive law, but the saving clause under section 2255(e) is satisfied so long as the prisoner had an opportunity to bring and test his claim. When a prisoner's motion attacks his sentence or conviction based on a cognizable claim that an be brought in the correct venue, the remedy by motion is adequate and effective to test his claim. See, Prost v. Anderson, 636 f.3d 578 (10th cir. 2011); MCCARTHAN V. DIRECTOR

OF GOODWILL INDUSTRIES-SUNCOAST, INC., 851f.3d 1076 (11th cir. 2017)(en banc).

Contrast to the Tenth and Eleventh Circuit holding that a substantive change in Caselaw does not render the remedy by motion "inadequate or ineffective to test the legality of a prisoner's detention." The Fourth Circuit---disagrees with the Tenth, and Eleventh circuit court of appeals. The fourth circuit interprets the remedy by motion under section 2255 is "inadequate or ineffective" test the legality of a prisoner's conviction [only] if a prisoner's claim is based on a substantive change in Caselaw. The fourth circuits limits a prisoner's access to utilize the saving clause [only] if the Subsequent, Substantive change in law occured after a prisoner's direct appeal, and first 2255 motion.

7. The Third, Sixth, and Ninth Circuits also Disagrees with the Fourth Circuit Interpretation of Section 2255(e).

The Third, Sixth, and Ninth Circuit Court of appeals 'disagrees with the fourth Circuit court of appeals Interpretation of the Saving clause under section 2255(e). The Third, Sixth, and Ninth Circuit Court of appeals interprets the Saving clause under section 2255(e), to permit a federal prisoner to proceed in a habeas petition pursuant to 28 U.S.C. 2241 when:(1) A prisoner makes a claim of actual innocence within the meaning of Schlup v. Delo, 513 U.S. 298, 324, 327 (1995); Bousely v. United States, 523 U.S. 614, 623 (1998).

Contrast to the Third, Sixth, and Ninth Circuits Interpretation of the saving clause portal under Section 2255(e), to permit a federal prisoner to make a claim of actual innocence within the meaning of Schlup.id. The Fourth Circuit's interpretation of the saving clause under section 2255(e), limits a federal prisoner's Access to invoke the saving clause under section 2255(e), even if the remedy by motion under section 2255 is "inadequate or ineffective to "test" Mr. Richardson's claim of Actual innocence. The Question of:" When the Remedy by Motion under Section 28 U.S.C. 2255 is "inadequate or ineffective to test the legality of a prisoner's detention" presents recurring issues in the federal Circuits, ensuring the perpetuation of the Conflict.

(b) The Fourth Circuit is not likely to resolve this issue en banc.

In re jones, is the fourth Circuit's first published decision to Consider the meaning of the saving Clause text under Section 2255(e), over twenty-one years ago. The fourth Circuit limits a federal prisoner Access to invoke the saving clause portal of section 2255(e), unless a prisoner meets the three-prong standard in In re jones, 226 f.3d 328, 333-334 (4th cir. 2000). Specifically, the fourth circuit limits a prisoner's access to utilize the saving clause under section 2255(e), unless a prisoner's claim is based on a substantive change in caselaw. 226 f.3d 333-334.id.

The fourth Circuit is not likely to revisit its position because of the chilling effect of its "prior precedent rule." As stated below, the "holding" in In re jones, remains binding unless until it is overruled or abrogated by the Circuit Court sitting en banc or by this Court. The prospect of en banc review is entirely speculative, and as shown by the recent order denying rehearing en banc in Richardson v. Gomez, appeal no. 20-6953 (4th cir. march 1, 2021), "no judge in active service" on the fourth circuit court of appeals is interested in Considering this issue en banc. (Pet. App. C).

(c) Only This Court Can Resolve the Conflicts existing Among the Circuit Court of appeals and ensure compliance with Congress purpose of the Saving Clause of Section 2255(e).

The Conflicts described above Should be resolved by this Court. Only this Court can resolve the Conflicts existing Among the Circuit Court of appeals on this important and recurring question of Statutory Interpretation. In Addition, this Court has an interest in enforcing compliance with Congress purpose of enactment of the saving clause of subsection 28 U.S.C. 2255(e), when the remedy by motion under section 28 U.S.C. 2255 is "inadequate or ineffective to test the legality of a prisoner's detention." Certiorari review is Warranted because the Circuit Courts are divided on an important question of Statutory Interpretation. Clay v. United States, 537 U.S. 522, 524 (2003); Shapiro v. United States, 335 U.S. 1, 4 (1948).

Prisoner Mr. Richardson is aware that this Court has never Considered Certiorari review of the question presented: 'When is the remedy by motion under Section 28 U.S.C. 2255 is "inadequate or ineffective to test the legality of a prisoner's detention? Based on the Correct Interpretation of Section 28 U.S.C. 2255(e), Does the Saving Clause portal, permit Mr. Richardson to proceed in a habeas petition Pursuant to 28 U.S.C. 2241 when two conditions is met: (1) Mr. Richardson makes a claim of actual innocence within the meaning of Schlup v. Delo, 513 U.S. 298 (1995), and (2) he has not had an "unobstructed procedrual opportunity at presenting that claim, throught no fault of his own? In Addition, Does Mr. Richardson's Claim of Actual innocence for the purpose of invoking the saving clause, is "tested" by this Court Actual innocence standard articulated in Schlup v. Delo, 513 U.S. 298, 324, 327 (1995); Bousely v. United States, 523 U.S. 614, 623 (1998). The Circuit Court decisions below in Bruce v. Warden LEWISBURG USP, 868 f.3d 170, 174 (3d cir. 2017); United States v. Tyler, 732 f.3d 240, 247 (3d cir. 2014); Wooten v. Cauley, 677 f.3d 303, 307 (6th cir. 2012); Martin v. Perez, 314 f.3d 799, 804 (6th cir. 2003), and Stephens v. Herrara, 464 f.3d 895, 898 (9th cir. 2008), however, serve to Crystallize the Conflict Among the Circuits. These decisions below interprets the Saving Clause under section 2255(e), to permit a federal prisoner like Mr. Richardson to proceed in a habeas petition Pursuant to section 28 U.S.C. 2241, when two conditions is met: (1) a prisoner makes a claim of actual innocence within the meaning of Schlup v. Delo, 513 U.S. 298 (1995), and (2) he has not had an "unobstructed procedural opportunity" at presenting that claim. These decisions below holds a federal prisoner claim of actual innocence for the purpose of invoking the saving clause, is "tested" by this Court Actual innocence standard articulated in Schlup, 513 U.S. 324, 327; Bousely, 523 U.S. 623.id. That Interpretation of the Saving Clause of section 2255(e), has been sounded rejected by the Fourth Circuit.

The Conflict is Clear, and the resolution of the Conflict is dispositive of this Case. The Saving Clause portal under section 2255(e), permits Mr. Richardson to proceed in a habeas petition pursuant to section 28 U.S.C. 2241, when: (1) Mr. Richardson's makes a claim of actual innocence within the meaning of Schlup v. Delo, 513 U.S. 298 (1995), and (2) he has not had an "unobstructed procedural opportunity at presenting that claim, through no fault of his own. Mr. Richardson's Claim of Actual of innocence for the purpose of invoking the saving clause, is "tested" by this Court Actual innocence standard articulated in Schlup v. Delo, 513 U.S. 298,324, 327 (1995); Bousely v. United States, 523 U.S. 614, 623 (1998). The remedy by motion under section 28 U.S.C. 2255 is " inadequate or ineffective " to "test" Mr. Richardson's Claim of actual innocence within the meaning of Schlup, 513 U.S. 324, 327; Bousely, 523 U.S. 623.id. For these reasons, the present Case is Worthy for Certiorari Review.

CONCLUSION

For The Reasons stated above, the Court Should Grant the Writ.

Respectfully Submitted

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