

No. _____

In The
Supreme Court of the United States

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LORENZO WILLIAMS,

Petitioner,

vs.

STEVE KALLIS,

Respondent.

—————◆—————

**On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Seventh Circuit**

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PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

This Petition seeks to resolve a circuit conflict.

Persons convicted of a federal offense can file a petition to challenge their convictions pursuant to 28 U.S.C. § 2241, but only if relief under 28 U.S.C. § 2255 is “inadequate or ineffective.” Mr. Williams alleged in his § 2241 petition that this Court’s decision in *Mathis v. United States*, 136 S.Ct. 2243 (2016), was a change in the law that was not available to him when he had a right to file a § 2255 motion. Various circuit courts have held that a change in the law after the time to file a § 2255 motion makes that remedy “inadequate and ineffective.” But the courts have not agreed on whether that change in the law must be an act of Congress, a decision from this Court, or a decision of a circuit court.

The questions for review here are:

1. What type of change in the law allows a person to file a § 2241 petition? Does it have to be an act of Congress, a court decision declaring a new rule of constitutional law, or a court decision establishing a new rule of statutory construction?
2. Was the decision in *Mathis* a change in the law regarding whether a prior state robbery conviction is a crime of violence?

RELATED CASES

The Order of the United States Court of Appeals for the Seventh Circuit, filed June 1, 2021, denying Petitioner's Motion for Rehearing.

The Order of the United States Court of Appeals for the Seventh Circuit, filed March 26, 2021, affirming the decision of the district court.

The Order of the United States District Court for the Central District of Illinois, filed August 19, 2019, denying the Petitioner's Motion for Reconsideration.

The Order of the United States District Court for the Central District of Illinois, filed June 24, 2019, denying the Petitioner's Petition Pursuant to 28 U.S.C. § 2241.

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PRIOR OPINIONS IN THIS CASE

The following opinions in other courts in this case are attached and identified as follows:

The Order of the United States Court of Appeals for the Seventh Circuit, filed June 1, 2021, denying Petitioner’s Motion for Rehearing.

The Order of the United States Court of Appeals for the Seventh Circuit, filed March 26, 2021, affirming the decision of the district court.

The Order of the United States District Court for the Central District of Illinois, filed August 19, 2019, denying the Petitioner’s Motion for Reconsideration.

The Order of the United States District Court for the Central District of Illinois, filed June 24, 2019, denying the Petitioner’s Petition Pursuant to 28 U.S.C. §2241.



JURISDICTIONAL STATEMENT

The order of the United States Court of Appeals for the Seventh Circuit denying the Petitioner’s Motion for Rehearing and which is sought to be reviewed was filed June 1, 2021. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).



**STATUTORY PROVISIONS
INVOLVED IN THIS REVIEW**

28 U.S.C. § 2241 states in pertinent part:

Writs of habeas corpus may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdictions. The order of a circuit judge shall be entered in the records of the district court of the district wherein the restraint complained of is had.

28 U.S.C. § 2255 states in pertinent part:

(a) A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released 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, may move the court which imposed the sentence to vacate, set aside or correct the sentence.

(e) An application for a writ of habeas corpus on 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 his detention.

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STATEMENT OF THE CASE

A. Procedural Background

Lorenzo Williams was convicted in the United States District Court for the Northern District of Iowa of Hobbs Act robbery, 18 U.S.C. § 1951, in 2000. Because he had two prior convictions for robbery under Iowa state law, Mr. Williams was given a life sentence pursuant to 18 U.S.C. § 3559(c)(1)(A)(i).

After several attempts to obtain relief under 28 U.S.C. § 2255, Mr. Williams filed a petition for habeas corpus pursuant to 28 U.S.C. § 2241, in the United States District Court for the Central District of Illinois, where he was imprisoned. The district court denied relief on the basis that Mr. Williams was required to seek relief through § 2255 because he had not shown that use of § 2255 was “inadequate or ineffective.” The United States Court of Appeals for the Seventh Circuit affirmed, and Mr. Williams now seeks certiorari from this Court.

B. Statement of the Facts

Lorenzo Williams was convicted of Hobbs Act robbery, 18 U.S.C. § 1951, in 2000. It was alleged that he robbed a cab driver. Because Mr. Williams had two prior robbery convictions under Iowa state law, he was

given a life sentence under 18 U.S.C. § 3559(c)(1)(A)(i), the so-called Three Strikes Law.

The Three Strikes Law imposes a life sentence on a defendant who is convicted in federal court of a serious violent felony and has at least two prior convictions in state or federal court for a serious violent felony. Mr. Williams had two prior robbery convictions under Iowa state law. Iowa Code § 711.1 defines robbery as:

1. A person commits robbery when, having the intent to commit a theft, the person does any of the following acts to assist or further the commission of the intended theft or the person's escape from the scene thereof with or without the stolen property:
 - a. Commits an assault upon another.
 - b. Threatens another with or purposely puts another in fear of immediate serious injury.
 - c. Threatens to commit immediately any forcible felony.

In his § 2241 petition to the United States District Court for the Central District of Illinois, Mr. Williams argued that his prior robbery convictions were not serious violent felonies that would form a predicate for invocation of the Three Strikes Law. The basis of this argument was that this Court's decision in *Mathis v. United States*, 136 S.Ct. 2243 (2016), was a new rule that was not available to Mr. Williams when he filed his § 2255 motion. The district court denied Mr. Williams'

motion, holding that *Mathis* did not establish a new rule and that Mr. Williams' claim was available to him in his § 2255 motion. Therefore, the court held, Mr. Williams could not bring his action under § 2241.

Mr. Williams appealed that decision to the United States Court of Appeals for the Seventh Circuit. The Seventh Circuit affirmed. The Seventh Circuit held that § 2241 requires a new and retroactive change in statutory law, citing *Montana v. Cross*, 829 F.3d 775 (7th Cir. 2016) and *In re Davenport*, 147 F.3d 605 (7th Cir. 1998). The court concluded that, as applied to Mr. Williams, *Mathis* did not create a new and retroactive change in statutory law.



REASONS FOR GRANTING THIS PETITION

When the sentence enhancement imposed by the Three Strikes Law increases a guideline sentence with a statutory maximum of 240 months and a guideline sentence, as in Mr. Williams' case, of 130 to 162 months, to a life sentence, it is imperative that the predicate convictions be determined correctly. That is why this Court in *Mathis* made it clear that a sentencing court must hew to the categorical approach in determining whether a predicate offense qualifies to trigger the sentencing enhancement. And because *Mathis* established a new rule of statutory construction, it was not available to Mr. Williams when he filed his § 2255 motions. So he was justified in using § 2241 to challenge his sentence.

I. THIS CASE SEEKS TO RESOLVE A CIRCUIT CONFLICT.

A. Various circuit courts disagree on whether a new rule making a § 2255 motion inadequate or ineffective must be an act of Congress, a court decision declaring a new rule of constitutional law, or a court decision establishing a new rule of statutory construction.

Generally, the only vehicle for a defendant to challenge his or her federal conviction and sentence is through a motion pursuant to 28 U.S.C. § 2255. However, there are serious constraints on that procedure. The motion must be filed within one year of the latest of—

- (1) the date on which the judgment of conviction becomes final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been

discovered through the exercise of due diligence.

28 U.S.C. § 2255(f).

And a second or successive § 2255 motion cannot be filed unless there is newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense; or a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable. 28 U.S.C. § 2255(h).

But a defendant faced with these procedural hurdles does have one avenue of relief. He or she can file a petition for habeas corpus under 28 U.S.C. § 2241, if relief under § 2255 is “inadequate or ineffective.” 28 U.S.C. § 2255(e). A defendant’s claim for relief is inadequate or ineffective if the basis of the claim was not available when the defendant could have filed the initial § 2255 motion or a second or successive motion. As the Ninth Circuit has put it, procedure under § 2255 is inadequate when the defendant “has not had an unobstructed procedural shot at presenting [his or her] claim.” *Marrero v. Ives*, 682 F.3d 1190, 1192 (9th Cir. 2012).

The question that arises, however, is whether a change in the law after all avenues of relief under § 2255 are foreclosed makes § 2255 inadequate or ineffective, and if so, what sort of change in the law would apply. Must the change in the law be an act of

Congress? Can a Supreme Court decision suffice, and if so, must the decision be a new rule of constitutional law, or can a decision involving statutory interpretation be sufficient? Or can a decision of a court of appeals, either on a constitutional or statutory basis, provide grounds for claiming that relief under § 2255 is inadequate or ineffective? These are questions that have resulted in conflicting decisions in the various courts of appeals and that should be answered by this Court in this case.

In *Hueso v. Barnhart*, 948 F.3d 324 (6th Cir. 2020), for example, the Sixth Circuit held that § 2255's savings clause is only available if the claim is based on a decision of the Supreme Court and the defendant claims that based on the new decision, he or she is actually innocent. A decision of a circuit court will not suffice. The court did note that the various circuits are in conflict with respect to the availability of relief under § 2241. For example, in *McCarthan v. Dir. of Goodwill Industries*, 851 F.3d 1076 (11th Cir. 2017), the 11th Circuit reversed precedent and held that a change in case law, even from the Supreme Court, is not enough to make § 2255 inadequate or ineffective. The court stated that as long as § 2255 theoretically allows a defendant to make an argument, even in the face of established contrary precedent, it is not inadequate or ineffective.

The *Hueso* court also referred to the decision in *Brown v. Caraway*, 719 F.3d 583 (7th Cir. 2013). The *Caraway* court relied on 7th Circuit precedent in *In re Davenport*, 147 F.3d 605 (7th Cir. 1998), wherein the

court set forth three conditions for a defendant to use § 2241:

1. The defendant's claim must rely on a new case involving statutory interpretation, not a case based on constitutional law.
2. The decision changing the law must be a retroactive decision not available when the defendant's first § 2255 motion was filed.
3. In a case challenging the defendant's sentence, the sentencing enhancement must be grave enough to be a miscarriage of justice, or a fundamental defect in the sentence.

The *Caraway* court also made clear that § 2255 is not adequate or effective if binding circuit precedent precludes the defendant's claim at the time the § 2255 motion is filed. In other words, binding circuit precedent made a recent change in the law, such as *Mathis* in this case, grounds for the defendant's argument that the issues was one he or she could not have invoked in a § 2255 motion. See, *Chazen v. Marske*, 938 F.3d 851 (7th Cir. 2019).

Finally, the *Hueso* court pointed to the decision in *United States v. Wheeler*, 886 F.3d 415 (4th Cir. 2018). The *Wheeler* court first recognized that courts have broad remedial powers to secure the historic purpose of the writ of habeas corpus, citing *Baumediene v. Bush*, 553 U.S. 723, 128 S.Ct. 2229 (2008). The court went on to say that habeas corpus entitles a prisoner to a meaningful opportunity to demonstrate that he or she is being held by an erroneous application or

interpretation of relevant law, citing *INS v. St. Cyr*, 533 U.S. 289, 121 S.Ct. 2271 (2001). The *Wheeler* court concluded that § 2241 is available on essentially the same conditions as set forth in *In re Davenport* supra.

On the contrary, the 10th Circuit, in *Prost v. Anderson*, 636 F.3d 578 (10th Cir. 2011), held that if a defendant had an opportunity to test the legality of his conviction or sentence in his initial § 2255 motion, he or she is not entitled to bring an action under § 2241, even when a Supreme Court opinion involving statutory interpretation would make the conviction or sentence illegal. It seems significant, however, in *Prost*, that 10th Circuit precedent did not clearly foreclose Mr. Prost from making his argument at the time of his § 2255 motion. Other cases discussed above emphasize that if circuit precedent clearly foreclose a defendant's argument, the defendant is not required to presciently predict that the precedent will be overruled in the future in order for the § 2255 remedy to be inadequate or ineffective.

For a further discussion of the conflict among the circuits see, Brandon Hasbrouck, *Saving Justice: Why Sentencing Errors Fall Within the Savings Clause*, 28 *U.S.C. § 2255(e)*, 108 *Georgetown L. J.* 287, 298-307 (2019).

Based on the foregoing, there is clearly a conflict among the circuits on several aspects of the interpretation and application of the savings clause in § 2255(e) that this Court should resolve.

B. Mr. Williams' case is an appropriate vehicle for raising the issues in this petition.

Mr. Williams' sentence was enhanced on the basis of at least two prior robbery convictions in Iowa state court. Robbery, pursuant to Iowa Code § 711.1, is defined as follows:

A person commits a robbery when, having the intent to commit a theft, the person does any of the following acts to assist or further the commission of the intended theft or the person's escape from the scene thereof with or without the stolen property:

- a. Commits an assault upon another.
- b. Threatens another with or purposely puts another in fear of immediate serious injury.
- c. Threatens to commit immediately any forcible felony.

The district court and the Eighth Circuit, following established Eighth Circuit precedent, used the modified categorical approach in determining that Mr. Williams' prior robbery convictions qualified as predicate offenses for the sentencing enhancement.

Then, in 2016, long after any opportunity for Mr. Williams to file a § 2255 motion, the Supreme Court issued its opinion in *Mathis v. United States*, 136 S.Ct. 2243 (2016). In *Mathis* the court held that when a statute sets out several means of committing a crime, a court must use the categorical approach in determining whether the offense comes within the generic

version of the crime. If it does not, the prior conviction cannot be used to enhance a sentence.

The Iowa robbery statute sets out different means of committing the crime. As the Iowa Supreme Court said in *State v. Hickman*, 623 N.W.2d 847, 851 (Iowa 2001), Iowa Code § 711.1 lists “alternative means for committing first-degree robbery.” More to the point, in *State v. Copenhaver*, 844 N.W.2d 442, 448 (Iowa 2014), the Iowa Supreme Court said:

The first element [of § 711.1] relevant to the facts of this case requires the defendant to have the intent to commit a theft. . . . The second element of robbery requires the defendant to do *any* of the following acts to assist or further the commission of the intended theft. . . .:

1. Commit[] an assault upon another.
2. Threaten[] another with or purposely put[] another in fear of immediate serious injury.
3. Threaten[] to commit immediately any forcible felony.

Id. § 711.1 (emphasis added). If the State can prove these **two** elements beyond a reasonable doubt, the defendant has committed a crime of robbery.

The Iowa Supreme Court made it clear, therefore, that there are only two elements to robbery under the Iowa statute, not four. The three enumerated ways to commit robbery are means, not elements. Therefore,

the categorical approach, as required by *Mathis*, applies.

So, pursuant to *Mathis*, § 711.1 is not a divisible statute and a sentencing court can only look to determine if the terms of the statute go beyond the definition of generic robbery. Generic robbery was defined by this Court in *Stokeling v. United States*, 139 S.Ct. 544, 550 (2019), as follows:

[T]he elements of the common-law crime of robbery, . . . ha[ve] long required force or violence. At common law, an unlawful taking was merely larceny unless the crime involved “violence.” . . . And “violence” was “committed if sufficient force [was] exerted to overcome the resistance encountered.”

Iowa Code § 711.1, on the other hand, includes assault or threats. Threats do not encompass the use of force. And assault under Iowa law, Iowa Code § 708.1, includes an act intended to place another in fear. This does not contemplate the use of force, either. Therefore, the Iowa definition of robbery goes beyond the definition of generic robbery, and pursuant to *Mathis*, cannot be used to enhance a sentence.

The Seventh Circuit, in reviewing Mr. Williams’ § 2241 petition, relied on Seventh Circuit precedent that § 2241 was available only if the defendant’s claim relies on a new and retroactive change in statutory law that could not have been invoked in a first § 2255 motion, citing *Montana v. Cross*, 829 F.3d 775, 783 (7th Cir. 2016) and *In re Davenport*, 147 F.3d 605, 610 (7th

Cir. 1998) (App. p. 3). The court did not concede that *Mathis* was a “new” change in statutory law (App. p. 4), and claimed that Mr. Williams could have raised his claim in earlier litigation (App. p. 4). But the law in the Eighth Circuit at the time of Mr. Williams’ appeal and § 2255 motion was that a defendant subject to the Three Strikes Law on the basis of prior robbery convictions had to prove by clear and convincing evidence that the facts of the prior conviction did not constitute a serious violent felony. *United States v. Davis*, 260 F.3d 965 (8th Cir. 2001). It was not until the Supreme Court in *Mathis* established that a prior conviction does not count as a predicate offense if, using the categorical approach, the prior conviction is based on a statute that is broader than the generic offense. Considering the Iowa robbery statute, that is exactly the situation in Mr. Williams’ case.

C. The circuit conflict demonstrated above is an important issue that should be addressed by this Court in this case.

It should be clear from the foregoing discussion that the purpose and scope of § 2255(e) is a significant issue that has vexed the circuit courts for quite some time. Furthermore, the impact on defendants challenging their convictions and sentences makes this an important issue. The result has been a series of circuit court opinions that have been well-researched and have attempted to follow the proper purpose and scope of § 2255(e), but still resulted in disparate outcomes.

Most importantly, it is not fair to defendants that in some circuits access to § 2241 would be available and in other circuits, on the same facts and issues, access would not be available. That is exactly the kind of conflict this Court must resolve.

It is also important for this Court to determine the proper purpose and scope of § 2241. Congress substantially limited the availability of § 2255 to challenge a conviction or sentence. A defendant must file the motion within one year of the latest of certain dates in his or her case and there is generally only one chance to file the motion. To the extent that § 2255(h) provides an exception to those restrictions, the exception is extremely limited. The right to file a second or successive § 2255 motion is limited to newly discovered evidence or a new rule of constitutional law. In setting these parameters Congress was seeking to prevent what it considered an abuse of § 2255. Benjamin R. Orye III, *The Failure of Words: Habeas Corpus Reform, The Antiterrorism and Effective Death Penalty Act, and When a Judgment of Conviction Becomes Final for the Purposes of 28 U.S.C. 2255(1)*, 44 Wm. & Mary L. Rev. 441 (2002). Abuses cited by supporters of the legislation were delays in carrying out death sentences and frivolous, unnecessary petitions. *Id.*

Congress obviously recognized, however, that the restrictions on § 2255 motions might be too restrictive in certain circumstances. That is why § 2255(e), the savings clause, is included in the statute. Indeed, as this Court said in *Boumediene v. Bush*, 553 U.S. 723, 775, 128 S.Ct. 2229 (2008):

The purpose of [§ 2255] was not to restrict access to the writ [of habeas corpus] but to make postconviction proceedings more efficient.

“nowhere in the history of Section 2255 do we find any purpose to impinge upon prisoners’ rights of collateral attack upon their convictions. On the contrary, the sole purpose was to minimize the difficulties encountered in habeas corpus hearings by affording the same rights in another and more convenient forum.”

So giving the broadest possible interpretation to the savings clause would be consistent with this history and purpose of § 2255.

It is also important to note that habeas corpus is governed by principles of equity. *Duckworth v. Eagan*, 492 U.S. 195, 213 (1989) (O’Connor, J., concurring), including the “principles of fundamental fairness under[lying] the writ.” *Sawyer v. Whitley*, 505 U.S. 333, 351 (1992) (Blackmun, J., concurring). This means that § 2255 must provide the defendant a “**meaningful** opportunity” for relief. *Boumediene*, 553 U.S. at 779. A hypothetical or realistically ineffective opportunity will not suffice. So if a defendant has not had a “reasonable opportunity” to present his or her claim in a § 2255 proceeding, the writ of habeas corpus pursuant to § 2241 should be available.



CONCLUSION

The essence of the writ of habeas corpus, the Great Writ, is to correct convictions and sentences that violate fundamental fairness. *Wainright v. Sykes*, 433 U.S. 72, 96-97 (1977). As demonstrated above, the savings clause, § 2255(e), was designed, and should be applied, to ensure that fundamental fairness.

Mr. Williams respectfully requests that this Court grant certiorari to resolve the conflict among the circuits and clarify the scope and application of § 2255(e).

Respectfully submitted,

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