NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2021

Matthew James Haymond, Sr. - Petitioner,

vs.

United States of America - Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

(1) Whether Mr. Haymond was improperly denied First Step Act § 404 relief from his mandatory life sentence under 21 U.S.C. § 841(b)(1)(A), where the district court found him "eligible" for a reduction, but not "entitled" to one, since his admissions to more than 280 grams of crack cocaine in plea proceedings meant "he would still be subject to mandatory life in prison" under 21 U.S.C. § 841(b)(1)(A), even with benefit of the First Step Act's retroactive implementation of the Fair Sentencing Act of 2010 ("FSA 2010").

PARTIES TO THE PROCEEDINGS

The caption contains the names of all parties to the proceedings.

DIRECTLY RELATED PROCEEDINGS

(1) *United States v. Haymond*, 3:08-cr-00022-JAJ-SBJ (S.D. Iowa) (criminal proceedings).

(2) *United States v. Haymond*, 19-3426 (8th Cir.) (direct appeal).

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The petitioner, Matthew James Haymond, Sr., through counsel, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Eighth Circuit in Case No. 19-3426, entered on December 1, 2020. Mr. Haymond's petition for panel and en banc rehearing was denied on February 8, 2021.

OPINION BELOW

The district court denied Mr. Haymond's motion for a reduction in sentence pursuant to First Step Act § 404(b) in October 2019. It found that, even though Mr. Haymond was held accountable at sentencing for only 144.1 grams of crack cocaine, his admission in plea proceedings to knowing "others were involved with more than 4.5 kilograms of cocaine base" meant that "he would still be subject to mandatory

life in prison" under 21 U.S.C. § 841(b)(1)(A), such that he was "not entitled to relief." In December 2020, the Eighth Circuit Court of Appeals correctly observed that *if* Mr. Haymond's sentence is controlled by the statutory penalties of 21 U.S.C. § 841(b)(1)(B), his guideline range with Section 404's retroactive application of the Fair Sentencing Act of 2010 "would be determined by his career offender status . . . rather than a mandatory minimum life sentence, a change that would affect the district court's analysis under the First Step Act." The Eighth Circuit then inexplicably affirmed, summarily finding the district court "did not clearly err" in relying on Mr. Haymond's plea admissions to conclude that he was responsible for more than 280 grams of crack cocaine and still subject to the mandatory life penalty in 21 U.S.C. § 841(b)(1)(A).

JURISDICTION

The Eighth Circuit Court of Appeals entered its judgment affirming the district court's order denying First Step Act § 404 relief on December 1, 2020. It denied Mr. Haymond's petition for panel or en banc rehearing on February 8, 2021. Jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

First Step Act of 2018, Pub. L. No. 115-391, § 404, 132 Stat. 5194, 5222:

> (a) DEFINITION OF COVERED OFFENSE.—In this section, the term "covered offense" means a violation of a Federal criminal statute, the statutory penalties for which were modified by section 2 or 3 of the Fair Sentencing Act of 2010 (Public Law 111–220; 124 Stat. 2372), that was committed before August 3, 2010.

(b) DEFENDANTS PREVIOUSLY SENTENCED.—A court that imposed a sentence for a covered offense may, on motion of the defendant, the Director of the Bureau of Prisons, the attorney for the Government, or the court, impose a reduced sentence as if sections 2 and 3 of the Fair Sentencing Act of 2010 (Public Law 111–220; 124 Stat. 2372) were in effect at the time the covered offense was committed.

(c) LIMITATIONS.—No court shall entertain a motion made under this section to reduce a sentence if the sentence was previously imposed or previously reduced in accordance with the amendments made by sections 2 and 3 of the Fair Sentencing Act of 2010 (Public Law 111–220; 124 Stat. 2372) or if a previous motion made under this section to reduce the sentence was, after the date of enactment of this Act, denied after a complete review of the motion on the merits. Nothing in this section shall be construed to require a court to reduce any sentence pursuant to this section.

STATEMENT OF THE CASE

On July 31, 2008, Mr. Haymond pled guilty to one count of conspiring to distribute at least 50 grams of a mixture or substance containing cocaine base, after two prior felony drug offenses, in violation of 21 U.S.C. §§ 846, 841(b)(1)(A), and 851. DCD 56–59; PSR ¶¶ 2–3.[1] Pursuant to a written plea agreement with the government, he admitted "that he distributed in excess of 50 grams of cocaine base (crack) in the course of the conspiracy and that he knew that others were involved with more than 4.5 kilograms of cocaine base."[2] DCD 56–59; PSR ¶¶ 2–3.

At sentencing, the district court adopted the presentence report's suggestion that Mr. Haymond was responsible for relevant conduct drug quantities comprising only 144.1 grams of crack cocaine,[3] 20.9 grams of marijuana, and two benzylpiperazine pills, corresponding to base offense level 32. *See* PSR ¶ 64. Mr.

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[1] In this brief, the following abbreviations will be used:
"DCD" — district court clerk's record from *United States v. Haymond*, S.D. Iowa Case No. 3:08-cr-00022-JAJ-TJS-3, followed by docket entry and page number, where noted; and
"PSR"— presentence report, available at DCD 81, followed by the page number of the originating document and paragraph number, where noted.

[2] Specifically, Mr. Haymond admitted in plea documents that "[f]rom August of 2005 or earlier, until January of 2008, [he] was aware and did believe that Eric Haymond was receiving between 4 ½ and 9 ounces of crack from Hopson each week." *Id.*, p. 11 ¶ 3.

[3] The PSR writer agreed with Mr. Haymond's objection to being held accountable for a larger quantity of crack cocaine based on his plea admissions to being "aware of the large amount of cocaine base Hopson sold" to Eric Haymond, concluding that although the Haymond brothers received controlled substances from the same source, each sold them "independently," rather than as part of a conspiracy. Eric's drug quantities were thus de-attributed as relevant conduct, leaving Mr. Haymond responsible for only 144.1 grams of crack cocaine—significantly less than the 280 gram post-FSA 2010 threshold for imposition of § 841(b)(1)(A) penalties. *See* PSR p. 57.

Haymond was also a career offender, resulting in an increased base offense level 37, and a final sentencing guideline calculation of adjusted offense level 34, criminal history category VI, and sentencing range 262–327 months. PSR ¶¶ 70–73, 109, 182. Because his pre-FSA 2010 statutory mandatory minimum term of imprisonment was life under 21 U.S.C. § 841(b)(1)(A), however, Mr. Haymond's final sentencing guideline range was increased to life, pursuant to USSG § 5G1.1(c). *Id.* ¶ 182. On December 11, 2008, the district court sentenced Mr. Haymond to mandatory life imprisonment and ten years of supervised release. DCD 79. On October 31, 2014, the district court reduced the sentence to 200 months pursuant to a government motion under Federal Rule of Criminal Procedure 35(b).[4] DCD 120.

On July 12, 2019, after the First Step Act of 2018 made FSA 2010 retroactive, Mr. Haymond moved for a reduction in sentence pursuant to § 404(b). DCD 152. The court denied Mr. Haymond's motion on October 28, 2019, stating:

> The government notes that the defendant admitted responsibility for more than 280 grams of crack cocaine when he pleaded guilty and, therefore, is entitled to no relief.[5]
>
> The court recognizes the split in decisions on this issue across the country. The court concludes that the government has the better argument for several reasons. First, when the defendant was

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[4] Because the Rule 35(b) motion represents a limited reduction from a starting point of mandatory life, it is not *directly* relevant to the issue argued in this Petition. Accordingly, for ease of reference, the remainder of this brief will refer to Mr. Haymond's sentence as continuing to be one of "life."

[5] Specifically, the government argued that Mr. Haymond was not "entitled" to a sentence reduction because, "given the amount of crack cocaine that [he] admitted as a part of his conspiracy [more than 280 grams], he would still be subject to mandatory life in prison," even applying FSA 2010. DCD 169, p. 2.

> originally indicted, the government appropriately charged that he conspired to distribute, manufacture and possess with intent to distribute more than fifty grams of crack cocaine. It cited to 21 U.S.C. § 841(b)(1)(A), indicating that the defendant should be subjected to a potential range of imprisonment from ten years to life, based on drug quantity (prior to other sentencing enhancements). The law has long counseled the government to track the statutory language when framing indictments. It is not reasonable for the law to require the government to anticipate amendments to statutes when drafting indictments. It is further not reasonable for the government to return to the grand jury to charge a different drug quantity every time its evidence changes.
>
> The defendant is entitled to retroactive application of the Fair Sentencing Act of 2010. If indicted today, given the amount of crack cocaine that the defendant admitted as a part of his conspiracy, he would still be subject to mandatory life in prison. Nothing has changed except for the requirement that the drug quantity was increased from 50 to 280 grams in order to trigger the mandatory minimum ten years of incarceration. The defendant is not entitled to relief.

DCD 169, pp. 1–2; App. A, p. 2.

Mr. Haymond timely appealed the district court's denial of § 404 relief on November 8, 2019. DCD 170. Relying primarily on the Eighth Circuit's decision in *United States v. McDonald*, he argued that the district court had committed a significant procedural error by misunderstanding the scope of its discretionary authority, which caused it to essentially find him *ineligible* for relief under the auspices of discretion. In particular, he argued the lower court clearly premised its denial of relief on an erroneous belief that its discretion was limited, because First Step Act defendants who admit responsibility for more than 280 grams of crack cocaine in their plea proceedings are still subject to the mandatory statutory penalties of 21 U .S.C. § 841(b)(1)(A). As well, he argued that *even if* actual conduct

determined the statutory penalties that guided his § 404 motion, they would still fall under § 841(b)(1)(B) because the district court adopted at sentencing the PSR's conclusion that Mr. Haymond was personally responsible for only 144.1 grams of crack cocaine—far less than the 280 gram post FSA-2010 revised threshold. *See supra* n. 2; PSR p. 57; DCD 80, p. 7.

On May 28, 2020, about two weeks after appeal briefing was completed, the Eighth Circuit issued a published decision squarely rejecting any sort of "conduct-based" approach to First Step Act eligibility. *United States v. Banks*, 960 F.3d 982, 984 (8th Cir. 2020) ("The government argues that Banks is not eligible for a reduced sentence, because he was accountable for 2.8 kilograms of cocaine base, and the Fair Sentencing Act did not reduce the penalties for an offender responsible for that drug quantity. This contention is foreclosed by *United States v. McDonald*. On December 1, 2020, the Eighth Circuit affirmed the lower court's denial of Mr. Haymond's First Step Act § 404 motion. *See* App. B. It agreed with Mr. Haymond that he was eligible for First Step Act relief, and even noted that *"[i]f [the penalties of § 841(b)(1)(B)] appl[y]*, then Haymond's guidelines range under the Fair Sentencing Act *would* be determined by his career offender status, 262 to 327 months imprisonment, rather than a mandatory minimum life sentence, a change that *would affect* the district court's analysis under the First Step Act." App. B, p. 4 (emphasis added). Curiously, however, it then concluded that the district court did not clearly err in finding Mr. Haymond still subject to a mandatory life penalty

based on admissions in the plea agreement. The Eighth Circuit denied Mr. Haymond's petition for panel and en banc rehearing on February 8, 2021. *See* App. C.

REASONS FOR GRANTING THE WRIT

The district court denied Mr. Haymond's First Step Act § 404 motion for a sentence reduction for a single reason having nothing to do any actual discretionary decision-making: because it misunderstood the scope of available § 404 relief, mistakenly believing that a defendant who admits to more than 280 grams of crack cocaine in his plea proceedings remains subject to his original statutory penalties—here, mandatory life incarceration under § 841(b)(1)(A). Although the Eighth Circuit acknowledged that the lower court decision would be subject to reversal if the statutory penalties from § 841(b)(1)(B) applied—and they plainly do—it inexplicably affirmed the district court's denial of § 404 relief. Respectfully, the Eighth Circuit panel decision is obviously and unambiguously incorrect. Absent a writ of certiorari, Mr. Haymond will be unjustly deprived of an opportunity Congress specifically intended him to have—the opportunity to be fairly considered for a reduced sentence premised upon the lower statutory and guideline penalties that are now applicable to his 50 gram offense.

In *Terry v. United States*, this Court made clear that because FSA 2010 "increased the trigger quantity under subparagraph (A) to 280 grams," Mr. Haymond, as "a person charged with those original [50 gram] elements," is now subject to the more lenient prison range for subparagraph (B)." 593 U.S. ___, 141 S. Ct. 1858, 1863 (June 14, 2021) (clarifying that the term "statutory penalties" in First Step Act § 404(a) requires a "focus [on] the statutory penalties for petitioner's

offense, such that it does not apply to those convicted under § 841(b)(1)(C).”). Indeed, even the Eighth Circuit’s own authority in *Banks* makes crystal clear that whether Mr. Haymond admitted responsibility for 50 grams, 144 grams, 280 grams, or 4.5 kilograms, the statute he pled guilty to in 2008—§ 841(b)(1)(A)—“required only proof that he conspired to distribute 50 grams or more of cocaine base, and the Fair Sentencing Act reduced the penalties for a 50-gram conspiracy.” *United States v. Banks*, 960 F.3d 982, 984 (8th Cir. 2020).

In considering Mr. Haymond’s § 404 petition, the district court was obligated to consider the propriety of a discretionary sentence reduction with the bounds of the ten-year to life statutory penalties of § 841(b)(1)(B), and a correctly-determined amended sentencing guideline range of 262–327 months. *See* App. B, p. 4 (observing that this would be Mr. Haymond’s applicable sentencing guideline range if § 841(b)(1)(B) statutory penalties control); *United States v. Holder*, 981 F.3d 647, 650 (8th Cir. 2020) (holding a district court must “determine the amended guideline range *before* exercising its discretion whether to grant relief”); *United States v. Broadway*, __F.4th__, 2021 WL 2546657, at *1 (10th Cir. June 22, 2021) (“[B]efore a district court exercises its discretion, it should look to the drug quantity and Sentencing Guidelines associated with an eligible defendant’s offense of conviction, rather than his underlying conduct, to ‘impose a reduced sentence as if [FSA 2010] were in effect at the time the covered offense was committed.’”). Here, the district court calculated both penalty ranges incorrectly, mistakenly finding, in clear

violation of *Alleyne v. United States*, 570 U.S. 99 (2013), that Mr. Haymond could not receive a reduction because he continued to be subject to statutory and guideline penalties of life incarceration under § 841(b)(1)(A) based on *relevant conduct* quantity admissions. *See Alleyne*, 570 U.S. at 115–16 (any fact that "aggravates the legally prescribed range of allowable sentences . . . constitutes an element of a separate, aggravated offense that . . . must . . . be submitted to the jury and found beyond a reasonable doubt").

The need for a writ of certiorari is further evidenced by the fact that, six months after the district court denied § 404 relief to Mr. Haymond in October 2019, it denied § 404 reductions from mandatory § 841(b)(1)(A) life sentences in *United States v. Tracy Howard*, Case No. 3:07-cr-00638, Dkt. 209 (S.D. Iowa Apr. 27, 2020), and *United States v. Damian Howard*, Case No. 3:08-cr-00095, Dkt. 57 (S.D. Iowa Apr. 27, 2020).[6] In each case, the district court denied relief for precisely the same reason it denied relief to Mr. Haymond, albeit explaining in somewhat greater detail that although each defendant was "eligible" for relief, neither was "entitled" to it because "the goal of giving retroactive application to the Fair Sentencing Act is to treat defendants the same before and after the enactment of the Fair Sentencing Act." *Compare with* App. A ("If indicted today, given the amount of crack cocaine that the defendant admitted as a part of his conspiracy, he would still be subject to

[6] Because the initial Orders are sealed, they are not included in the Appendix.

mandatory life in prison. . . . The defendant is not entitled to relief."). That goal, according to the district court, had been fully satisfied given that each defendant "was informed of the government's intention to prove drug quantity sufficient to subject him to a mandatory life sentence given his prior felony drug convictions" and "admitted to responsibility for a quantity of crack cocaine that qualifies for such treatment today." *Tracy Howard*, Dkt. 209; *Damien Howard*, Dkt. 57.

Each of the *Howard* defendants took appeals, and in each case, the government consented to remand, acknowledging that although the district court "initially seemed to recognize that [the defendant] was eligible for a sentencing reduction," it may have erroneously determined the defendants were "not entitled to relief" from their mandatory life sentences because they admitted responsibility for more than 280 grams of crack in plea proceedings. App. D, pp. 9–10; App. E., pp. 14–15. Upon remand, the district court judge reduced Tracy Howard's sentence from life imprisonment to 240 months. App. D, p. 12. It likewise reduced Damian Howard's sentence to 240 months. App. E, p. 17. Unless Mr. Haymond's case is also remanded, which at this point will require granting the instant writ of certiorari, he will unjustly remain bound by a mandatory life sentence, which the government conceded was likely error in similar cases, and which the district court would clearly be inclined to correct if given the opportunity.

Mr. Haymond's right to a procedurally sound First Step Act § 404 review is a matter of exceptional importance. As this Court observed in *Terry*, the First Step

Act was intended by Congress to help remedy some of the disparate and unduly harsh effects of the arbitrary 100-to-1 crack to powder cocaine ratio that controlled federal sentencing prior to August 2010. *See Terry*, 141 S. Ct. at 1860–62. The Court of Appeals, however, made a clear mistake in failing to reverse the district court's denial of relief. Indeed, although it began with a correct assessment of the pertinent legal question [*whether Mr. Haymond is subject, with benefit of § 404, to the statutory penalties in §§ 841(b)(1)(A) or (b)(1)(B)?*], the Eighth Circuit got sidetracked by an irrelevant issue [*did he admit to more than 280 grams*], and ultimately reached an incorrect conclusion [*the mandatory life penalty in § 841(b)(1)(A) still applies or can be deemed controlling in the discretionary analysis*]. By affirming a conclusion that Mr. Haymond cannot receive a § 404 sentence reduction because he remains subject to mandatory life incarceration under § 841(b)(1)(A), the decision directly conflicts with this Court's *Terry* decision, as well as with virtually all of the Eighth Circuit's own authority on First Step Act § 404 including, among others, published decisions in *United States v. Banks*, 960 F.3d 982 (8th Cir. 2020), *United States v. Birdine*, 962 F.3d 1032 (8th Cir. 2020), *United States v. Howard*, 962 F.3d 1013, 1014 (8th Cir. 2020), and *United States v. Holder*, 981 F.3d 647, 650 (8th Cir. 2020). As well, because the decision improperly subjects Mr. Haymond to statutory penalties based on "relevant conduct," rather than "elemental" quantities of crack cocaine, it contradicts the constitutional principles announced by this Court in *Alleyne*. 570 U.S. at 115–16.

Pursuant to *Alleyne*, *Terry*, Eighth Circuit authorities, and the text of the appellate panel decision itself, "[because § 841(b)(1)(B)] applies . . . Haymond's guidelines range . . . would be determined by his career offender status . . . rather than a mandatory minimum life sentence . . . a change that *would* affect the district court's analysis under the First Step Act." App. B, p. 4. Because case law establishes that the § 841(b)(1)(B) penalties *do* apply to Mr. Haymond, it is patently clear that the lower court procedurally erred by expressly finding that Mr. Haymond's § 404 resentencing was controlled by the *wrong* statutory and guideline penalties. A writ of certiorari is necessary so the case can be returned to the lower court for a legally correct discretionary decision.

CONCLUSION

For the foregoing reasons, Mr. Haymond respectfully requests that the Court grant his Petition for Writ of Certiorari, vacate the Eighth Circuit's December 1, 2020, affirmance order, and remand the case with instructions to reverse the district court order denying First Step Act § 404 relief, and remand the case for further consideration.

RESPECTFULLY SUBMITTED,

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