No. 21-857

IN THE

Supreme Court of the United States

MARCUS DEANGELO JONES,
Petitioner,

v.

DEWAYNE HENDRIX, WARDEN,
Respondent.

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

BRIEF OF NATIONAL ASSOCIATION OF FEDERAL DEFENDERS AS AMICUS CURIAE IN SUPPORT OF PETITIONER

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INTEREST OF AMICUS CURIAE[1]

The National Association of Federal Defenders (NAFD), formed in 1995, is a nationwide, volunteer organization made up of attorneys who work for federal public defender offices and community defender organizations authorized under the Criminal Justice Act, 18 U.S.C. § 3006A. Each year, federal defenders represent tens of thousands of indigent criminal defendants in federal court, as well as numerous indigent prisoners seeking postconviction relief under 28 U.S.C. §§ 2254, 2255, and 2241 where the federal court has appointed counsel as a discretionary matter under § 3006A(a)(2)(B).

NAFD members have particular expertise and interest in the subject matter of this litigation.

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[1] Pursuant to Supreme Court Rule 37, *amicus* states that no counsel for any party authored this brief in whole or in part, and that no entity or person other than *amicus* and its counsel made any monetary contribution toward the preparation and submission of this brief. Petitioner filed a blanket consent with this Court, and NAFD obtained consent to file this brief both from the United States and from the court-appointed amicus curiae who has accepted this Court's invitation to file a brief and argue in support of the judgment below.

SUMMARY OF ARGUMENT

By its terms, the saving clause of 28 U.S.C. § 2255(e) preserves habeas corpus review of the legality of federal detention when § 2255's remedy is inadequate or ineffective. The dispute in this case is between two interpretations of § 2255(e)'s text: one that "give[s] meaning to Congress' express decision (reaffirmed in the AEDPA) to preserve habeas corpus for federal prisoners in those extraordinary instances where justice demands it," *Triestman v. United States*, 124 F.3d 361, 378 (2d Cir. 1997); and another, which the Eighth Circuit has adopted, under which habeas corpus ceases to play a meaningful role in federal cases.

As discussed in Mr. Jones's brief and those of other amici, the Eighth Circuit's interpretation of the saving clause is not the better one. Indeed, it contradicts the text of § 2255(e), which expressly allows some federal prisoners who have failed to file a § 2255 motion, or who've had their prior § 2255 motion denied, to be heard on an application for habeas corpus under 28 U.S.C. § 2241. For years, until 2011, circuit courts agreed that the saving clause covered, at the least, federal prisoners' claims that they were imprisoned for conduct that Congress did not make criminal, where there was no other remedy and their failure to raise the claim earlier was excusable. This agreement came out of § 2255(e)'s text and also context: the "essential function of habeas corpus," which "is to give a prisoner a reasonable opportunity to obtain a reliable judicial determination of the fundamental legality of his conviction and sentence." *In re Davenport*, 147 F.3d 605, 609 (7th Cir. 1998).

This case is not just about Mr. Jones. It is about the authority of a federal court to review the legality of a federal prisoner's ongoing detention. This case does not raise the concerns about federal courts encroaching on state criminal legal systems that so often animate this Court's habeas jurisprudence. *See, e.g.*, *Shinn v. Ramirez*, 142 S. Ct. 1718, 1730–31 (2022). This situation is also different from state-prisoner habeas under 28 U.S.C. § 2254 because by the time state prisoners reach the federal habeas court, they have already had a direct appeal and usually also at least one round (sometimes more) of state collateral review, including state habeas corpus. For federal prisoners, in contrast, federal courts are the only forum for relief.

If this Court adopts the Eighth Circuit's position on § 2255(e)'s saving clause, it will definitively, and completely, eliminate habeas review of federal judgments of conviction, even when it is clear that a person is in prison for conduct that is not criminal. This Court should not contemplate such a dramatic contraction of federal habeas authority without first considering the rare—but real—circumstances under which individuals are sometimes convicted and sentenced for conduct that Congress has not made criminal.[2] For, at a minimum, § 2255(e) preserves habeas review for these individuals.

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[2] Given the question presented, this brief addresses only habeas petitions based on statutory, not constitutional, claims.

ARGUMENT

I. The text of § 2255(e)'s saving clause protects, at a minimum, federal habeas review of whether federal detention is authorized by Congress where the person's claim cannot be entertained under § 2255.

The writ of *habeas corpus ad subjudiciendum* holds a singular place in the Anglo-American legal system. Known as the "Great Writ," this Court long ago extolled it as "the best and only sufficient defence of personal freedom." *Ex Parte Yerger*, 75 U.S. 85, 95 (1868). Indeed, before there was a Bill of Rights, the Constitution protected liberty by preserving the privilege of habeas corpus, via the Suspension Clause. *See* U.S. Const. art. 1, § 9, cl. 2.

Since its inception in 1948, § 2255, rather than habeas corpus, has served as the primary means of reviewing federal detention. But from the start, § 2255 has provided that, although it is usually the exclusive remedy for a federal prisoner challenging a judgment of conviction, a person who failed to file, or lost, a § 2255 motion may yet be heard on a habeas application if the § 2255 remedy "is inadequate or ineffective to test the legality of his detention."

The provision that was originally the final paragraph of § 2255 and is now § 2255(e) states:

> 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 his detention.

United States v. Hayman, 342 U.S. 205, 207 n.1 (1952) (quoting the section). The last clause of the provision is the *saving clause*, describing the exception to the provision's more general rule about the exclusivity of the § 2255 remedy.

Until AEDPA,[3] the reach of § 2255 was "commensurate" with habeas corpus, *Hill v. United States*, 368 U.S. 424, 427 (1962), and procedural defenses applied the same way to both, *see, e.g.*, *United States v. Frady*, 456 U.S. 152, 167–68 (1982). Thus, no court had occasion to consider what sorts of claims would "test the legality of . . . detention." But whatever the outer boundaries of that phrase, persons described in the question presented in this case fit within the text that Congress wrote. A federal prisoner's claim that he is imprisoned for conduct that Congress did not make criminal undoubtedly seeks to "test the legality of his detention."

When Congress enacted AEDPA in 1996, it did not restrict the saving clause—it incorporated it into the new postconviction scheme. Congress placed new restrictions on § 2255 motions, including a jurisdictional prohibition on second-or-successive § 2255 motions with just two exceptions: an innocence claim based on newly discovered evidence and

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[3] Antiterrorism and Effective Death Penalty Act of 1996.

a claim based on a new, retroactive rule of constitutional law. § 2255(h). This provision, by its terms, applies only to § 2255 motions, not habeas applications filed under § 2241. *Id.* With this and other new statutory restrictions, § 2255's remedy by motion diverged from § 2241's remedy by habeas application.

But Congress did not alter a word of the saving clause. Thus, it created a scheme under which § 2255(h) prohibits federal prisoners from filing successive § 2255 motions in most circumstances; but if a prisoner's claim goes to the fundamental "legality of his detention," and the § 2255 remedy is "inadequate or ineffective to test" that claim, then he can be heard on a habeas application under § 2241. And whatever might be the outer boundaries of the phrase "the remedy by motion is inadequate or ineffective" (to test the legality of detention), that phrase includes a situation in which a federal court lacks jurisdiction to even entertain a § 2255 motion.

It is not as if Congress could have missed the fact that some people barred from filing a successive § 2255 motion are authorized to file an application for a writ of habeas corpus: § 2255(e)'s saving clause explicitly covers a federal prisoner who previously filed a § 2255 motion and was "denied . . . relief." So the saving clause does not work an "end run" around AEDPA. *See Jones v. Hendrix*, 8 F.4th 683, 688 (8th Cir. 2021). It is part of AEDPA. That is, the post-AEDPA federal postconviction scheme retains a meaningful role for habeas corpus as a backstop remedy for federal prisoners whose detention is fundamentally unlawful.

II. The circuit courts' early post-AEDPA jurisprudence recognized that the saving clause preserves, at a minimum, habeas review of a claim that a federal prisoner is detained for conduct that is not a federal crime.

Once AEDPA was law, the relationship between § 2255(h) and (e) was tested almost immediately, via litigation concerning *Bailey v. United States*, 516 U.S. 137 (1995). At the time, 18 U.S.C. § 924(c) criminalized "us[ing] or carr[ying]" a firearm in relation to a crime of violence or drug-trafficking crime. In a unanimous decision, this Court in *Bailey* held that "use" of a firearm "denotes active employment," not mere possession. 516 U.S. at 150–51.

Consistent with precedent, this Court in *Bousley v. United States* explained that since "only Congress, and not the courts," can make conduct criminal, "decisions of this Court holding that a substantive federal criminal statute does not reach certain conduct . . . necessarily carry a significant risk that a defendant stands convicted of an act that the law does not make criminal." 523 U.S. 614, 620–21 (1998) (internal quotation marks omitted). Accordingly, "the doctrinal underpinnings of habeas review" required that a federal prisoner be permitted to access the *Bailey* decision on collateral review. *Id.* at 621.

Many federal prisoners with *Bailey* claims were unable to file § 2255 motions, though, because the newly enacted § 2255(h) barred district courts from entertaining successive motions. In a series of *Bailey*-related postconviction appeals, the circuit courts

agreed that § 2255(e)'s saving clause permitted a claim barred by § 2255(h) to be raised under § 2241 where: (1) the claim was that the person's conduct did not violate the statute of conviction; (2) the error was revealed by an intervening Supreme Court decision; and (3) relief was foreclosed by circuit precedent at the time the person filed their one possible § 2255 motion. *In re Dorsainvil*, 119 F.3d 245, 249–52 (3d Cir. 1997); *see also, e.g.*, *Triestman*, 124 F.3d at 373–79; *In re Jones*, 226 F.3d 328, 333–34 (4th Cir. 2000); *Reyes-Requena v. United States*, 243 F.3d 893, 900–904 (5th Cir. 2001); *Davenport*, 147 F.3d at 611–12.

Many years later, the Tenth Circuit would criticize these decisions as atextual. *Prost v. Anderson*, 636 F.3d 578, 592–93 (10th Cir. 2011). It is true that § 2255(e) does not use the words "intervening law" or "circuit precedent." But the post-*Bailey* cases did engage with the statutory text; they attempted to describe in practical terms one class of persons for whom the § 2255 remedy was "inadequate" or "ineffective" to "test the legality of . . . detention." *See, e.g.*, *Jones*, 226 F.3d at 333 ("[T]here must exist some circumstance in which resort to § 2241 would be permissible; otherwise, the saving clause itself would be meaningless."); *Triestman*, 124 F.3d at 375 ("[T]he language of § 2255, providing that habeas remains available when § 2255 is 'inadequate or ineffective *to test the legality of [the prisoner's] detention*' . . . seems to get at legal inadequacies, not practical ones.").

And, although *Prost* and its progeny, including the case at bar, purport to focus on text, their textual

analysis is unsatisfying. As Mr. Jones's brief explains, those courts' analyses depend on reading the word "is" in the past tense. They ignore that § 2255(e), by its terms, contemplates that habeas will be available in some cases where an earlier § 2255 motion was denied. And they have nearly—or even entirely—read the saving clause out of existence. As interpreted by the Eighth, Tenth, and Eleventh Circuits, the saving clause would apply, at most, where the sentencing court literally no longer exists. Pet. Br. 31–33. This is an odd reading of text that's about the "adequacy" and "effectiveness" of the § 2255 remedy.

The Eighth, Tenth, and Eleventh Circuits seem frustrated with meritless filings. But even reading § 2255(e)'s saving clause out of existence would not eliminate such filings. The number of prisoner filings seems to correlate with the prison population, not legal standards.[4] And regardless, federal courts are capable of distinguishing meritless claims from meritorious ones. There is no need to deprive courts of jurisdiction altogether to review whether federal detention is fundamentally illegal.

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[4] In recent years, as the prison population has declined—for the first time in decades—prisoner filings have also declined. *Compare* Admin. Off. of the U.S. Courts, Federal Judicial Caseload Statistics, U.S. District Courts—Civil Cases Commenced, by Nature of Suit During the 12-Month Periods Ending September 30, 2017 through 2021 (2021) (Table C-2A) (https://www.uscourts.gov/sites/default/files/data_tables/jb_c2a_0930.2021.pdf), *with* Federal Bureau of Prisons, Population Statistics: Past Population Totals (https://www.bop.gov/mobile/about/population_statistics.jsp#old_pops).

III. Adopting the Eighth Circuit's position would bar federal habeas jurisdiction even where it is perfectly clear that a federal prisoner is detained for conduct that Congress did not make criminal.

The Eighth Circuit's position has the effect of barring federal courts from granting relief even in cases where it is clear—even where everyone *agrees*—that a federal prisoner is imprisoned for conduct that is not criminal, he properly raised his claim at every appropriate juncture, and there is no other remedy. And because federal courts are the only courts that review the legality of federal detention, adopting the Eighth Circuit's position would mean that no court could consider such a prisoner's claim. Section 2255(e) does not permit, much less require, this result.

A. When this Court interprets a federal criminal statute more narrowly than previously understood, it reveals that some persons convicted of that crime are innocent.

The illegality of a federal prisoner's detention is sometimes revealed by an opinion of this Court interpreting a federal criminal statute more narrowly than previously understood. *Bousley*, 523 U.S. at 620. This likely is more common in the federal system than in state systems because the federal government, lacking the "general police power of the sort retained by the State," *United States v. Lopez*, 514 U.S. 549, 567 (1995), prosecutes many innovative crimes, with little if any common-law provenance.

Thus, this Court periodically grants cert to answer questions like these:

- *Skilling v. United States*, 561 U.S. 358 (2010): What, if any, limitations are there on the phrase "intangible right of honest services" in the context of the federal fraud statutes' proscription of schemes to deprive another of that right?
- *Bond v. United States*, 572 U.S. 844 (2014): Does a federal statute implementing a chemical-weapons treaty cover a domestic assault making use of a chemical irritant?
- *Yates v. United States*, 574 U.S. 528 (2015): Does the Sarbanes–Oxley Act's prohibition on destroying tangible objects to obstruct an investigation cover the act of tossing undersized fish overboard a boat to evade federal authorities?
- *Marinello v. United States*, 138 S. Ct. 1101 (2018): Does the Internal Revenue Code's felony obstruction crime require that there be an administrative proceeding to obstruct, or is it meant to reach virtually all violations of the tax code?
- *Van Buren v. United States*, 141 S. Ct. 1648 (2021): Does the Computer Fraud and Abuse Act of 1986 cover an employee's authorized use of a computer for a purpose that the employer does not permit?

This is, of course, in addition to *Rehaif v. United States*, 139 S. Ct. 2191 (2019), at issue here, in which

the Court addressed the *mens rea* for the federal firearm statute.

This Court's answers to the above questions exposed that at least the petitioners in those cases were convicted, and most of them imprisoned, for conduct that was not a federal crime.

B. Post-*Skilling* litigation reveals that habeas jurisdiction via § 2255(e)'s saving clause is critical to remedy fundamentally unlawful detention, including where a person is imprisoned for conduct that Congress did not make criminal, but cannot file a § 2255 motion.

Some of the cases listed above (*e.g.*, *Bond*, *Yates*) may have been one-offs—the result of a creative, overreaching federal prosecutor acting in a single case. Others, however, have had significant impact. *Skilling*, for example, sharply narrowed the reach of federal wire and mail fraud in every circuit. Now, more than ten years later, we are able to see how impacted cases were resolved. Examining post-*Skilling* litigation provides insight into the important role that § 2255(e)'s saving clause (and thereby habeas corpus under § 2241) can play in the overall postconviction scheme that Congress created.

The dispute in *Skilling* was over 18 U.S.C. § 1346, which states that a "'scheme or artifice to defraud'"—the sort of scheme criminalized in the federal mail and wire fraud statutes—"includes a scheme or artifice to deprive another of the intangible right of honest services." *See also* 18 U.S.C. §§ 1341 (mail fraud), 1343 (wire fraud).

Section 1346 was enacted to overrule *McNally v. United States*, 483 U.S. 350 (1987). For decades before *McNally*, circuit courts had interpreted the federal fraud statutes as implicitly covering schemes to defraud the public of the intangible right to "honest services," permitting federal charges for bribery and kickback schemes, and also for other dishonest dealings that would otherwise be state crimes, or no crime at all. *Skilling*, 561 U.S. at 399–401. This Court in *McNally* put a stop to that, refusing to "construe the [fraud] statute in a manner that leaves its outer boundaries ambiguous and involves the Federal Government in setting standards of disclosure and good government for local and state officials." 483 U.S. at 360. Congress swiftly enacted § 1346 to revive the pre-*McNally* concept of honest services.

In *Skilling*, this Court granted cert to review whether § 1346 was unconstitutionally vague (along with a jury-prejudice question). Petition for a Writ of Certiorari at i, *Skilling*, 561 U.S. 358 (No. 08-1394), 2009 WL 1339243. It avoided striking down the statute for vagueness by interpreting § 1346 narrowly, to criminalize only bribery and kickback schemes. *Skilling*, 561 U.S. at 408. It explained that "Congress intended § 1346 to reach at least bribes and kickbacks" and "[r]eading the statute to proscribe a wider range of offensive conduct . . . would raise the due process concerns underlying the vagueness doctrine." *Id.*; *see also id.* at 412 ("Interpreted to encompass only bribery and kickback schemes, § 1346 is not unconstitutionally vague."). Justice Scalia concurred to opine that § 1346 was, in fact, unconstitutionally vague, and the Court should not have tried to save it. *Id.* at 415–20 (Scalia, J., concurring).

1. Most individuals whom Skilling *revealed to have been wrongly convicted of honest-services fraud had access to a meaningful remedy without need of the saving clause.*

Skilling's paring down of honest-services fraud to reach only bribery and kickback schemes significantly narrowed the reach of that statute. So, post-*Skilling*, a number of individuals whose conduct was not within the proper scope of the statute enacted by Congress sought relief—at every stage of a criminal case. And most of those people were able to access a meaningful remedy without resort to habeas corpus via § 2255(e)'s saving clause.

Pretrial. In *United States v. Weyhrauch*, 623 F.3d 707 (9th Cir. 2010), *on remand from* 561 U.S. 476 (2010), post-*Skilling* relief was afforded pretrial. Before *Skilling*, the court of appeals had decided on a pretrial interlocutory appeal by the government that honest-services fraud could be proved by a state legislator's undisclosed conflict of interest, even where state law did not require such disclosure. *United States v. Weyhrauch*, 548 F.3d 1237, 1244–47 (9th Cir. 2008). After this Court vacated and remanded the case for reconsideration in light of *Skilling*, the court of appeals affirmed the district court's original order. *Weyhrauch*, 623 F.3d at 707. On remand, the district court dismissed the indictment on the government's motion. Judgment of Discharge, *United States v. Weyhrauch*, No. 3:07-cr-00056-JWS (D. Alaska Mar. 16, 2011), ECF 498.

Pre-sentencing. At least one person was able to obtain a post-trial judgment of acquittal before sentencing, without objection from the government,

where he had been convicted of honest-services fraud based on an undisclosed conflict of interest. Order, *United States v. Carbo*, No. 05-cr-418-MAM (E.D. Pa. Jul. 1, 2010), ECF No. 208.[5]

Direct appeal. The Federal Reporters reveal a significant number of individuals who got relief via direct appeal. Some were at the tail-end of their appeal and able to get relief after a *Skilling*-based GVR from this Court. *See United States v. Black*, 625 F.3d 386, 388 (7th Cir. 2010), *on remand from* 561 U.S. 465 (2010); *United States v. Hereimi*, 396 F. App'x 433, 434 (9th Cir. 2010), *on remand from* 561 U.S. 1041 (2010); *United States v. Siegelman*, 640 F.3d 1159, 1174–77 (11th Cir. 2011), *on remand from* 561 U.S. 1040 (2010); *United States v. Harris*, 488 F. App'x 216, 218 (9th Cir. 2012), *on appeal from district court as remanded from* 561 U.S. 1041 (2010).[6]

Others had cases pending in the courts of appeals when *Skilling* was decided. *See, e.g.*, *United States v. Riley*, 621 F.3d 312, 320–24 (3d Cir. 2010); *United States v. Bruno*, 661 F.3d 733, 739–40 (2d Cir. 2011); *United States v. Wright*, 665 F.3d 560, 570–72 (3d Cir. 2012); *United States v. Hornsby*, 666 F.3d 296,

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[5] The district court had previously granted a judgment of acquittal but the Third Circuit reversed under the pre-*Skilling* standard. *United States v. Carbo*, 572 F.3d 112, 113 (3d Cir. 2009). Post-*Skilling*, everyone agreed that acquittal was appropriate.

[6] In each of the cases string-cited in this section (for obtaining relief via direct appeal, section 2255, and coram nobis), the federal docket confirms that the defendant, after obtaining relief, was not subsequently reconvicted of honest-services fraud.

305–05 (4th Cir. 2012); *United States v. Pitt*, 482 F. App'x 787, 791 (4th Cir. 2012).

Section 2255. A few individuals whose convictions for honest-services fraud were otherwise final, and who were still in prison, were able to get relief via § 2255 motion. *See, e.g.*, *Stayton v. United States*, 766 F. Supp. 2d 1260 (M.D. Ala. 2011); *United States v. Lynch*, 807 F. Supp. 2d 224 (E.D. Pa. 2011) (defendant Campenella); *Roth v. United States*, No. 3:08-CR-69-TAV-HBG-1, 2014 WL 29096 (E.D. Tenn. Jan. 2, 2014).

Coram nobis. A handful of persons who had been wrongly convicted of honest-services fraud, but were no longer in federal custody, were able to get relief from their convictions via writ of error coram nobis. *See*, *e.g.*, *United States v. Lynch*, 807 F. Supp. 2d 224 (E.D. Pa. 2011) (defendant Lynch); *United States v. Panarella*, No. Crim.A. 00-655, 2011 WL 3273599 (E.D. Pa. Aug. 1, 2011); *Martignoni v. United States*, No. 10 Civ. 6671 JFK, 2011 WL 4834217 (S.D.N.Y. Oct. 12, 2011); *United States v. Sutton*, No. 5:08-cr-40-2 HL, 2012 WL 523689 (M.D. Ga. Feb. 15, 2012); *Colino v. United States*, No. SACV 11-0904 DOC, 2012 WL 1198446 (C.D. Cal. Apr. 9, 2012).

2. The habeas remedy at § 2241, via § 2255(e)'s saving clause, played an essential role in at least one Skilling*-related case.*

Although most people whom *Skilling* revealed to be innocent of federal wire or mail fraud were able to access remedies not at issue here, NAFD has identified one person, Kevin Geddings, who would have had no remedy at all if not for § 2255(e)'s saving

clause.[7] When this Court issued *Skilling*, Mr. Geddings's conviction was final. He had previously filed a § 2255 motion, so he couldn't file another. And because he was still in prison, he could not file a petition for a writ of error coram nobis. But he was able to get habeas relief. The story of Mr. Geddings's case illustrates the important role that the saving clause plays as a backstop in the federal postconviction scheme.

Kevin Geddings was convicted at trial of five counts of honest-services mail fraud "based on his failure to disclose a conflict of interest as a North Carolina lottery commissioner," and sentenced to 48-months' imprisonment. *United States v. Geddings*, 278 F. App'x 281, 282, 286 (4th Cir. 2008). He appealed, arguing that the evidence was insufficient (based on an argument about the scope of § 1346) and that § 1346 was unconstitutionally vague, but the Fourth Circuit rejected these arguments with little fanfare. *Id.* at 286–87, 287 n.8. Mr. Geddings filed a cert petition in this Court asking whether the scope of § 1346 should be narrowed ("so as to prevent overbreadth and vagueness problems, avoid undue Federal interference in state affairs, and conform to the rule of lenity") and also whether § 1346 was "unconstitutionally vague," but this Court denied review. *Geddings v. United States*, 555 U.S. 946 (2008); *see also* Petition for Writ of Certiorari at i, *Geddings*, 555 U.S. 946 (No. 08-318), 2008 WL 4181850.

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[7] There may well be others in this position that NAFD has not identified, although we expect it would be a small number.

Facing a lengthy prison sentence, Mr. Geddings filed within the one-year limitations period what he would have understood to be his only hope: a timely § 2255 motion. *Geddings v. United States*, No. 5:06-cr-136-D, 2019 WL 2247509 (E.D.N.C. May 15, 2009).[8] At that point, it was the law of the case (from the direct appeal) that § 1346 extended to Mr. Geddings's conduct and was not unconstitutionally vague. *See United States v. Roane*, 378 F.3d 382, 396 n.7 (4th Cir. 2003). Mr. Geddings raised ineffective-assistance-of-counsel claims, including a claim that his trial counsel was ineffective for failing to object to the prosecutor's claim in closing argument "that Geddings was committing honest services fraud 'simply by serving as a lottery commissioner with an undisclosed potential conflict of interest.'" *Geddings*, 2019 WL 2247509, at *4. The district court denied his motion.

Then this Court decided *Skilling*. Under the Eighth Circuit's rule in *Jones*, *Skilling* could not have had any impact on Mr. Geddings—at least, not until he served out the remainder of his prison sentence and could possibly try for coram-nobis relief. His conviction was final. Section 2255(h) barred a successive § 2255 motion.[9] And Mr. Geddings would

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[8] The Westlaw heading at 2019 WL 2247509 erroneously dates this decision in 2019, rather than 2009.

[9] If in *Skilling* a majority of justices had agreed with Justice Scalia that § 1346 was unconstitutionally vague, Mr. Skilling would have been permitted to file a successive § 2255 motion. *See* § 2255(h)(2). But because the *Skilling* majority narrowed the reach of the statute in order to save it from vagueness, § 2255(e) became the only mechanism for relief.

not have been able to file a habeas corpus application via § 2255(e)'s saving clause based on the Eighth Circuit's notion that when Mr. Geddings filed his first § 2255 motion, § 2255 was "perfectly capable of facilitating" a *Skilling*-type claim, *Jones*, 8 F.4th at 688—a notion that is belied by the facts of Mr. Geddings's case.

But *Jones* was not the law. And what actually happened is that on the day that this Court decided *Skilling*, the district court, *sua sponte*, ordered the government to file a memorandum explaining what could be done about Mr. Geddings's conviction and sentence. *Geddings v. United States*, No. 5:06-cr-136-D, 2010 WL 2572631, at *1 (E.D.N.C. June 24, 2010). Five days later, the Court entered another order—this time explaining that the government had "concede[d] that Geddings is entitled to have his conviction vacated." *Geddings v. United States*, No. 5:06-cr-136-D, 2010 WL 2639920, at *2 (E.D.N.C. June 29, 2010). The government had explained to the district court that Mr. Geddings could not file a successive § 2255 motion due to § 2255(h) but that he was "entitled to relief under 28 U.S.C. § 2241," citing *In re Jones*, 226 F.3d at 332. *Id.* The government further moved the court to release Mr. Geddings from prison on bond pending the filing of his habeas application, and the court granted that motion. *Id.* Mr. Geddings was released from prison the next day. *See* https://www.bop.gov/inmateloc/.

The court later granted Mr. Geddings's unopposed application for a writ of habeas corpus and vacated his conviction. *Geddings v. Johnston*, No. 5:10-HC-2138-D (E.D.N.C. Aug. 27, 2010), ECF 6. Mr. Geddings's circumstances fit comfortably within the

text of § 2255(e): He was a person who was authorized to apply for relief by motion pursuant to § 2255, and the court that sentenced him had denied him relief under § 2255 (the first two clauses of § 2255(e)), but it also appeared that § 2255 was an inadequate and ineffective remedy to test the legality of his detention (the saving clause). As such, the district court properly entertained and granted a writ of habeas corpus.

Unquestionably, if the Eighth Circuit's interpretation of the saving clause in *Jones* had been the law in the Fourth Circuit in 2010, Mr. Geddings would have had no remedy at all. Indeed, since the Eighth Circuit's holding is about jurisdiction, the district court would have lacked the power even *to review* Mr. Geddings's case. Mr. Geddings would have had to serve out the remainder of his prison sentence for conduct that everyone agreed was not criminal. This would have been profoundly unjust. As Judge Jordan put it in his concurring opinion in *McCarthan v. Dir. of Goodwill Indust.-Suncoast, Inc.*, "[a] criminal justice system run by fallible human beings . . . cannot, I submit, refuse to hear the claims of those incarcerated for non-existent offenses." 851 F.3d 1076, 1108 (11th Cir. 2017) (Jordan, J., concurring).

The text of § 2255(e)'s saving clause neither requires nor permits this result. In the habeas context, this Court has said that it "will not construe a statute to displace courts' traditional equitable authority absent the clearest command." *Holland v. Fla.*, 560 U.S. 631, 646 (2010) (internal citations and quotation marks omitted). The saving clause plainly covers a claim going to the fundamental legality of detention where the claim cannot be heard via § 2255

motion. Thus, § 2255 describes a scheme under which some persons who are not permitted to file a successive § 2255 motion are permitted to file an application for a writ of habeas corpus. That scheme is not only textually sound but also makes sense in light of the role of habeas corpus, the fact that federal courts are the only forum that can or will ever address federal prisoners' claims, and the fundamental nature of the claims at issue.

The Court should reverse so that Mr. Jones can present his claim to the district court and that court can determine the merits of his claim.

CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be reversed.

Respectfully submitted,

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