NO. _____

In the Supreme Court of the United States

MARK JULIAN EDMONDS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

After this Court struck down the Armed Career Criminal Act's residual cause in 2015, the Fifth Circuit granted Mr. Edmonds permission to file a "second or successive" motion arguing that he was no longer eligible for an ACCA sentence without the residual clause. *See* 28 U.S.C. § 2255(h)(2). The district court nonetheless concluded that it lacked jurisdiction to address the legality of the ACCA sentence, and the Fifth Circuit affirmed.

Was Mr. Edmonds required to prove, in district court, that it is "more likely than not" that the sentencing judge "actually relied on" the ACCA's unconstitutional residual clause when imposing the original sentence?

DIRECTLY RELATED PROCEEDINGS

United States v. Edmonds, No. 3:98-cr-370 (N.D. Tex. May 11, 2000)

United States v. Edmonds, No. 00-10488 (5th Cir. Mar. 13, 2001)

Edmonds v. United States, No. 00-10636 (U.S. Oct. 1, 2001)

Edmonds v. United States, No. 3:02-cv-2132 (N.D. Tex. Mar. 16, 2004)

United States v. Edmonds, No. 04-11199 (5th Cir. Nov. 15, 2005, reh'g denied May 15, 2006)

Edmonds v. United States, No. 05-11442 (U.S. Oct. 2, 2006)

United States v. Edmonds, No. 12-10561 (5th Cir. Feb. 8, 2013)

In re Edmonds, No. 16-10673 (5th Cir. June 27, 2016)

United States v. Edmonds, No. 3:16-cv-1835 (N.D. Tex. July 11, 2019)

United States v. Edmonds, No. 19-11007 (5th Cir. June 29, 2022)

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PETITION FOR A WRIT OF CERTIORARI

Mark Julian Edmonds respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

The Fifth Circuit's opinion (2022 WL 2340562, Petition Appendix 1a–2a) was not selected for publication in the Federal Reporter. The opinions of the District Court (2019 WL 3024649, App. 7a–11a) and the Magistrate Judge (2019 WL 4418418, App. 12a–37a) were also unpublished.

JURISDICTION

The Fifth Circuit entered judgment on June 29, 2022. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

This case involves the interpretation and application of 28 U.S.C. § 2255(a), (b), and (h):

> (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.
>
> (b) Unless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief, the court shall cause notice thereof to be served upon the United States attorney, grant a prompt hearing thereon, determine the issues and make findings of fact and conclusions of law with respect thereto. If the court finds that the judgment was rendered without jurisdiction, or that the sentence imposed was not authorized by law or otherwise open to collateral attack, or that there has been such a denial or infringement of the constitutional rights of the prisoner as to render the judgment vulnerable to collateral attack, the court shall vacate and set the judgment aside and shall discharge the prisoner or resentence

> him or grant a new trial or correct the sentence as may appear appropriate.
>
> * * * *
>
> (h) A second or successive motion must be certified as provided in section 2244 by a panel of the appropriate court of appeals to contain--
>
> (1) 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
>
> (2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.

The case also involves 28 U.S.C. § 2244(a)–(b):

> (a) No circuit or district judge shall be required to entertain an application for a writ of habeas corpus to inquire into the detention of a person pursuant to a judgment of a court of the United States if it appears that the legality of such detention has been determined by a judge or court of the United States on a prior application for a writ of habeas corpus, except as provided in section 2255.
>
> (b)(1) A claim presented in a second or successive habeas corpus application under

section 2254 that was presented in a prior application shall be dismissed.

(2) A claim presented in a second or successive habeas corpus application under section 2254 that was not presented in a prior application shall be dismissed unless--

(A) the applicant shows that the claim relies on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or

(B)(i) the factual predicate for the claim could not have been discovered previously through the exercise of due diligence; and

(ii) the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

(3)(A) Before a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.

(B) A motion in the court of appeals for an order authorizing the district court to consider

> a second or successive application shall be determined by a three-judge panel of the court of appeals.
>
> (C) The court of appeals may authorize the filing of a second or successive application only if it determines that the application makes a prima facie showing that the application satisfies the requirements of this subsection.
>
> (D) The court of appeals shall grant or deny the authorization to file a second or successive application not later than 30 days after the filing of the motion.
>
> (E) The grant or denial of an authorization by a court of appeals to file a second or successive application shall not be appealable and shall not be the subject of a petition for rehearing or for a writ of certiorari.
>
> (4) A district court shall dismiss any claim presented in a second or successive application that the court of appeals has authorized to be filed unless the applicant shows that the claim satisfies the requirements of this section.

The case also touches on the Armed Career Criminal Act's definition of "violent felony," 18 U.S.C. § 924(e)(2)(B):

> (2) As used in this subsection--
>
> * * * *

> (B) the term "violent felony" means any crime punishable by imprisonment for a term exceeding one year, or any act of juvenile delinquency involving the use or carrying of a firearm, knife, or destructive device that would be punishable by imprisonment for such term if committed by an adult, that--
>
> (i) has as an element the use, attempted use, or threatened use of physical force against the person of another; or
>
> (ii) is burglary, arson, or extortion, involves use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury to another.

New York Penal Law § 140.25 provides:

> A person is guilty of burglary in the second degree when he knowingly enters or remains unlawfully in a building with intent to commit a crime therein, and when:
>
> 1. In effecting entry or while in the building or in immediate flight therefrom, he or another participant in the crime:
>
> (a) Is armed with explosives or a deadly weapon; or
>
> (b) Causes physical injury to any person who is not a participant in the crime; or
>
> (c) Uses or threatens the immediate use of a dangerous instrument; or

> (d) Displays what appears to be a pistol, revolver, rifle, shotgun, machine gun or other firearm; or
>
> 2. The building is a dwelling.
>
> Burglary in the second degree is a class C felony.

New York Penal Law § 140.00(2) and (3) provide:

> The following definitions are applicable to this article:
>
> * * * *
>
> 2. "Building," in addition to its ordinary meaning, includes any structure, vehicle or watercraft used for overnight lodging of persons, or used by persons for carrying on business therein, or used as an elementary or secondary school, or an inclosed motor truck, or an inclosed motor truck trailer. Where a building consists of two or more units separately secured or occupied, each unit shall be deemed both a separate building in itself and a part of the main building.
>
> 3. "Dwelling" means a building which is usually occupied by a person lodging therein at night.

INTRODUCTION

In 2000, the district court sentenced Petitioner Mark Julian Edmonds to serve 27 years plus 3 months in federal prison for receiving ammunition after a felony conviction. App. 1a–2a. Back then, there was no point in arguing that New York burglary was non-generic.[1] He probably would have prevailed, given New York's expansive definition of "building." N.Y. Penal Law § 140.00(2); *see Taylor v. United States*, 495 U.S. 575, 599 (1990) (A state's definition of "burglary" is non-generic if it "includ[es] places, such as automobiles and vending machines, other than buildings."). But this Court had explained that the ACCA's residual clause could be read to include "offenses similar to generic burglary." *Id.* at 599 n.9. Federal courts at the time uniformly held that residential burglaries and similar offenses were violent because of the risk of confrontation. *United States v. Delgado-Enriquez*, 188 F.3d 592, 595 (5th Cir. 1999)); *United States v. Flores*, 875 F.2d 1110, 1113 (5th Cir. 1989) ("Whenever a private residence is broken into, there is always a substantial risk that force will be used."); *United States v. Cruz*, 882 F.2d 922, 923 (5th Cir. 1989) (same); *United States v. Andrello*, 9 F.3d 247, 249–50 (2d Cir. 1993).

After this Court struck down the ACCA's residual clause in *Johnson v. United States*, 576 U.S. 591 (2015), the generic-or-not question became critical for deciding the legality of Mr. Edmonds's sentence. Yet

---

[1] Mr. Edmonds did argue that his burglaries counted as a single conviction under New York Law. 5th Cir. R. 1399–1400. The sentencing court overruled that objection.

the Fifth Circuit still refused to decide that question. Even though Mr. Edmonds's ACCA sentence would be authorized under the residual clause, but is unlawful without that clause, the Court held that his motion did not "contain" or rely on *Johnson*'s new rule because he failed to prove, by a preponderance of the evidence, that the sentencing judge back in 2000 was thinking about the unconstitutional residual clause instead of misapplying the enumerated offense clause.

STATEMENT

After one jury failed to reach a verdict,[2] the second federal jury to hear evidence against Mr. Edmonds acquitted him of possessing a firearm and possessing a short-barreled shotgun but convicted him of receiving ammunition after a felony conviction. 5th Cir. R. 560–562, 578. Normally, that charge carried a maximum sentence of 10 years in prison and 3 years of supervised release. 18 U.S.C. § 924(a)(2); § 3583(b)(2) (1994). But the district court applied the Armed Career Criminal Act, 18 U.S.C. § 924(e), after concluding that Mr. Edmonds's nine convictions for New York burglary were for "violent felonies." App. 1a–2a. The enhancement raised the mandatory minimum sentence to 15 years, and allowed the Court to impose a much longer sentence—327 months (27.25 years), followed by five years of supervised release. App. 1a; 5th Cir. R. 579–80.

The sentencing court announced that it was relying on the nine 1985 guilty pleas from New York. App. 1a–

[2] See, e.g., 5th Cir. R. 507, entry 57; ROA.506 at docket entry 57 & subsequent, unnumbered entries on Dec. 7, 1999

2a. "Critically, the court did not expressly state whether it relied on the ACCA's residual or enumerated clauses in rendering the sentence." App. 2a n.2.

The Fifth Circuit affirmed the conviction on direct appeal. *United States v. Edmonds*, 252 F.3d 434 (Table), 2001 WL 360663 (5th Cir. Mar. 13, 2001.). This Court denied certiorari. *Edmonds v. United States*, 534 U.S. 870 (2001). Previous attempts at collateral attack failed.

This Court's decision in *Johnson v. United States*, 567 U.S. 591 (2015), appeared to provide a path to post-conviction relief. The Fifth Circuit granted prefiling authorization under 28 U.S.C. § 2255(h)(2) for a motion arguing that "his prior New York convictions for burglary in the second degree could only be violent felonies under the residual clause" App. 39a. The Fifth Circuit ordered the district court to "dismiss the § 2255 motion without reaching the merits if it determines that Edmonds has failed to make the showing required by § 2255(h)(2)." App. 39a (citing 28 U.S.C. § 2244(b)(4) and *Reyes-Requena v. United States*, 243 F.3d 893, 899 (5th Cir. 2001)).

While the case was pending in district court, the Fifth Circuit issued two controversial decisions in *United States v. Wiese*, 896 F.3d 720 (5th Cir. 2018), and *United States v. Clay*, 921 F.3d 550 (5th Cir. 2019), as revised (Apr. 25, 2019). Read together, those cases insist that a prisoner like Mr. Edmonds must "prove," in district court, by a preponderance of the evidence, that his sentencing judge actually relied on the ACCA's residual clause when sentencing him. *See Clay*, 921 F.3d at 558. The district court decided that

Mr. Edmonds could not meet that nigh-impossible burden. App. 10a. The Fifth Circuit recognized that these issues were debatable, but nonetheless affirmed. App. 4a–6a. This timely petition follows.

REASONS FOR GRANTING THE PETITION

I. The circuits are divided about the "gatekeeping" requirements for 28 U.S.C. § 2255(h)(2) motions.

There is an acknowledged and entrenched circuit split over the burden of proof a movant in Mr. Edmonds's shoes must satisfy before obtaining a ruling on the legality of his sentence. Mr. Edmonds met the statutory requirements: he secured prefiling authorization, *see* § 2252(h)(2), and he claimed a right to release from imprisonment that did not exist until *Johnson*—that is, he claimed that his ACCA sentence was authorized by the residual clause but is not authorized without clause. That was not enough for the court below.

A. The circuits are divided over a movant's burden of proof regarding a sentencing judge's state of mind.

1. In six circuits, a movant must prove that a sentencing judge's state of mind by a preponderance of the evidence.

According to *United States v. Wiese*, a movant who secures prefiling authorization to raise a claim under *Johnson* and § 2255(h)(2) "must actually prove at the district court level that the relief he seeks relies either on a new, retroactive rule of constitutional law or on

new evidence." 896 F.3d at 723 (citing 28 U.S.C. § 2244(b)(2), (4)). The purpose of the inquiry is "determining the mindset of a sentencing judge" when the sentence was imposed. *Id.* at 725 The Fifth Circuit later decided that "a prisoner seeking the district court's authorization to file a successive § 2255 petition raising a *Johnson* claim must show that it was more likely than not that he was sentenced under the residual clause." *Clay*, 921 F.3d at 559.

The same rule governs in the First, . . . Sixth, Eighth, Tenth, and Eleventh Circuits." *Clay*, 921 F.3d at 554–55 (citing *Dimott v. United States*, 881 F.3d 232, 243 (1st Cir. 2018); *Potter v. United States*, 887 F.3d 785, 788 (6th Cir. 2018); *Walker v. United States*, 900 F.3d 1012, 1015 (8th Cir. 2018); *United States v. Washington*, 890 F.3d 891, 896 (10th Cir. 2018); and *Beeman v. United States*, 871 F.3d 1215, 1221–22 (11th Cir. 2017)).

2. In three (or possibly four) circuits, a movant need not prove actual reliance by a preponderance of the evidence.

Movants in the Fourth and Ninth Circuits are more fortunate. They do not have to prove a sentencing judge's state-of-mind by a preponderance of the evidence. In those circuits, a § 2255(h)(2) motion is "procedurally proper" if the movant's "ACCA-enhanced sentence 'may have been predicated on application of the now-void residual clause.'" *United States v. Hodge*, 902 F.3d 420, 426 (4th Cir. 2018) (quoting *United States v. Winston*, 850 F.3d 677, 682 (4th Cir. 2017)); accord *United States v. Geozos*, 870 F.3d 890, 896 (9th Cir. 2017) ("[W]hen it is unclear

whether a sentencing court relied on the residual clause in finding that a defendant qualified as an armed career criminal, but it may have, the defendant's § 2255 claim 'relies on' the constitutional rule announced in *Johnson*.").

In the Third Circuit, a movant may satisfy his gatekeeping burden "when he demonstrates that his sentence may be unconstitutional in light of the new rule of constitutional law." *United States v. Peppers*, 899 F.3d 211, 223 (3d Cir. 2018). Once the case moves to the "merits" stage, a movant must "demonstrate that his sentence necessarily implicates the residual clause, which may be shown either by evidence that the district court in fact sentenced him under the residual clause or proof that he could not have been sentenced under the elements or enumerated offenses clauses based on current case law, and that that made a difference in his sentence." *Id.* at 236 n.21.

The D.C. Circuit has not yet addressed the question, but many (or possibly all) of the district judges there seem to agree that the "might have relied" approach is the correct one. *United States v. Taylor*, 272 F. Supp. 3d 127, 134 (D.D.C. 2017) (Kollar-Kotelly, J.); *United States v. Wilson*, 249 F.Supp.3d 305, 310–12 (D.D.C. 2017) (Huvelle, J.); *United States v. Brown*, 249 F. Supp. 3d 287, 291 (D.D.C. 2017) (Sullivan, J.); *United States v. Booker*, 240 F. Supp. 3d 164, 169 (D.D.C. 2017) (Friedman, J.).

3. Two circuits acknowledge the split but have not yet picked a side.

The Second and Seventh Circuits have acknowledged the existence of the "circuit split"

between the "'may have relied' approach" of the Fourth and the Ninth Circuits and the "more stringent standard" of the Fifth Circuit and others, which requires "petitioners to show that it is 'more likely than not' that a sentencing court relied on the ACCA's residual clause before granting relief." *Savoca v. United States*, 21 F.4th 225, 234 n.7 (2d Cir. 2021); *see also Waagner v. United States*, 971 F.3d 647, 654 (7th Cir. 2020) ("The courts of appeals are divided on whether a petitioner who files a *Johnson*-based successive § 2255 motion must establish 'that it was more likely than not that he was sentenced under the residual clause.'"). Thus far, these two courts have not "weigh[ed] in on this dispute." *Savoca*, 21 F.4th at 234 n.7; *see Waagner*, 971 F.3d at 654 ("We have not yet taken a position on the question.").

B. The circuits also disagree about whether the proof-of-reliance requirements is jurisdictional.

The Fifth Circuit believes that the proof-of-reliance requirement is jurisdictional. *See Wiese*, 896 F.3d at 724 (ascribing "jurisdictional" significance to the district court's gatekeeping analysis); *Clay*, 921 F.3d at 554 ("Where a prisoner fails to make the requisite showing before the district court, the district court lacks jurisdiction and must dismiss his successive petition without reaching the merits."); *In re Davila*, 888 F.3d 179, 183 (5th Cir. 2018) ("We have previously described Section 2244 as establishing two jurisdictional 'gates' through which a petitioner must proceed to have the merits of his successive habeas claim considered.").

The Sixth Circuit disagrees. *See United States v. Williams*, 927 F.3d 427, 436–39 (6th Cir. 2019) (en banc). And based on the Government's filings in similar cases, Mr. Edmonds believes that the Government *agrees* that any substantive gatekeeping rules that apply in § 2255(h)(2) cases are non-jurisdictional.

II. There is no statutory support for a rule requiring proof that the sentencing judge more-likely-than-not relied on the ACCA's residual clause.

Before a federal prisoner like Mr. Edmonds can file a second or successive motion under § 2255(h)(2), the Court of Appeals must certify that his motion "contain[s] . . . (2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable."

Everyone agrees that *Johnson* announced the right kind of rule: the rule was new; this Court "made" the rule retroactive in *Welch v. United States*, 578 U.S. 120 (2016); and the rule was "previously unavailable" to prisoners sentenced before *Johnson*. If a proposed motion "contains" the rule announced in *Johnson*, and particularly if a Court of Appeals "certifie[s]" that proposition before the motion is filed in district court, then a prisoner has satisfied all of the threshold requirements for a successive motion and is entitled to a ruling on the merits. So says § 2255(h)(2).

Unfortunately, the circuit courts have transmogrified this straightforward statutory process into multiple complex theoretical questions, and then

have divided multiple ways on how to approach those theoretical questions.

The circuits that insist the movant must *prove* the sentencing judge's state of mind by a preponderance have various explanations for how that requirement arises from § 2255(h)(2). In some circuits, the requirement is thought to arise from § 2244(b), which is primarily addressed to state prisoners' habeas-corpus actions. Section 2255(h) plainly incorporates one part of the state-prisoner procedure: prefiling appellate certification, "as provided in section 2244" § 2255(h); *see* § 2244(b).

In *Reyes-Requena v. United States*, 243 F.3d 895 (5th Cir. 2001), the Fifth Circuit held that § 2255(h) also implicitly incorporated other aspects of the state-prisoner § 2244 procedure, including the district-court gatekeeping step found in § 2244(b)(4). This is the stage at which the *Wiese-Clay* inquiry is supposed to be performed.

If a district court is required to perform the "second" gatekeeping inquiry in § 2244(b)(4), there is debate about whether the court should utilize the substantive criteria for *state prisoners* in § 2244(b)(2), or the federal standard in § 2255(h). The provisions are not identical. *United States v. MacDonald*, 641 F.3d 596, 609 (4th Cir. 2011). For new-constitutional-rule claims, a state prisoner must show that his proposed claim "relies on" the new rule; a federal prisoner need only show that his proposed motion "contains" the new rule. *Id.*; *see also In re Hoffner*, 870 F.3d 301, 307 n.9 (3d Cir. 2017). "This 'difference in language'—in one section, what a claim requires; in the other, what a motion requires—'demands a

difference in meaning.'" *Raines v. United States*, 898 F.3d 680, 692 (6th Cir. 2018) (Cole, C.J., concurring); accord *In re Bradford*, 830 F.3d 1273, 1276 n.1 (11th Cir. 2016) (§ 2255(h) "cannot incorporate § 2244(b)(2).").

The Fifth Circuit believes that§ 2255(h) incorporates the *full* district-court review procedure in § 2244(b)(4)—including the substantive "relies on" rule. But even then, it is the *claim* that must rely on the new rule; it is irrelevant whether a previous factfinder "relied on" one provision or another. 28 U.S.C. § 2244(b)(2)(A). Neither § 2244 nor § 2255 discusses reliance by, or the "mindset" of, the original decisionmaker who committed the as-yet-unknown error. *Contra Wiese*, 896 F.3d at 725.

III. *Johnson* should provide collateral relief to anyone whose sentence was objectively authorized by the residual clause but is not authorized by the remaining portions of § 924(e)(2).

There is no reason why collateral relief under *Johnson* should depend on the sentencing court's state-of-mind. Imagine four defendants who together committed three so-called burglaries under New York law. After they finish serving their New York prison sentences, federal authorities find all four of them in receipt of ammunition on the same day. All four of them are charged with and convicted of violating § 922(g)(1), and (as luck would have it) all four are sentenced under the Armed Career Criminal Act in the same federal courthouse on May 11, 2000—the same day Mr. Edmonds was sentenced—but by four different district judges.

- In Albert's case, the judge announces that the New York burglary offense is the generic, enumerated offense of "burglary," so it is a violent felony.
- In Bob's case, the judge announces that the New York "burglary" offense is a residual-clause violent felony.
- In Carl's case, the judge—gravely mistaken or confused—declares that the burglary offense satisfies the ACCA's elements clause.
- In David's case, the judge applies the ACCA but (like Mr. Edmonds's sentencing judge) says nothing about which clause of the ACCA played a role.

None of these defendants would have any reason to challenge the ACCA enhancement on direct appeal. This Court had defined generic "burglary" to exclude crimes committed in or against "places, such as automobiles and vending machines, other than buildings." *Taylor*, 495 U.S. at 599. That would signal, to anyone who bothered to look, that New York burglary is nongeneric—state law expands the "ordinary meaning" of "building" to include "any structure, vehicle or watercraft used for overnight lodging of persons, or used by persons for carrying on business therein, or used as an elementary or secondary school, or an inclosed motor truck, or an inclosed motor truck trailer." N.Y. Penal Law § 140.00(2).

But *Taylor also* held that "[t]he Government remains free to argue that any offense—including

offenses similar to generic burglary—should count towards enhancement as one that 'otherwise involves conduct that presents a serious potential risk of physical injury to another' under § 924(e)(2)(B)(ii)." 495 U.S. at 600 n.9. In other words, the residual clause would have doomed any challenge to New York burglary's status as a violent felony.

That's why *Johnson* is critical to prisoners like Mr. Edmonds. Before *Johnson*, courts believed the residual clause was constitutional, and there is no question that the clause would have embraced New York burglary. Years later, after his previous attempts to challenge the statute failed, this Court held that the residual clause was unlawful. And so Mr. Edmonds's argument is exactly the type envisioned by 28 U.S.C. § 2255(h)(2).

Imagine that all four of the prisoners mentioned above, like Mr. Edmonds, moved to vacate their ACCA-enhanced sentences, arguing that the New York burglary no longer constitutes a violent felony without the residual clause. Each of these motions would "contain" and "rely" on *Johnson*'s rule, because that rule moved their sentences from the "apparently lawful" category into the "substantively unlawful" category.

What result? In any sensible system, the result for all four of these hypothetical defendants would be the same. They have identical criminal records. The substantive meaning of "violent felony" never changed, even though courts were oblivious to the residual clause's invalidity, and sometimes ignorant of the proper reach of the enumerated offense and elements clauses. In any sensible system, the four

defendants' motions under § 2255 would stand or fall together: either all four are entitled to collateral relief (if New York burglary is nongeneric), or none are entitled to collateral relief (if New York burglary is generic burglary). None of this should depend on what the various sentencing judges said, thought, didn't say, or didn't think. Substantively speaking, the ACCA sentences are either lawful or unlawful. It does not matter what the sentencing court was thinking at the time.

Under *Wiese* and *Clay*, however, only Bob would be entitled to a merits decision. That is not a sensible system.

Congress did not impose any gatekeeping requirements for federal prisoners other than appellate authorization. Even if Congress silently required district-court gatekeeping akin to that performed on state-court habeas corpus petitions, Mr. Edmonds's motion satisfied § 2255(h)(2). Conclusion

This Court should grant the petition and reverse the judgment of the court of appeals below.

Respectfully submitted,

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