No. 22-____

IN THE
Supreme Court of the United States

ROBERT A. MANGINE,

Petitioner,

v.

SHANNON D. WITHERS,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Petitioner in this case, Mr. Robert Mangine, is wrongfully classified as a career offender. His misclassification did not become apparent until after this Court's decision in *Mathis v. United States*, 136 S. Ct. 2243 (2016), by which time Mr. Mangine had already filed his first motion under 28 U.S.C. § 2255. Because he was barred from filing a second or successive § 2255 motion, Mr. Mangine filed a habeas petition pursuant to the "savings clause" of § 2255(e). Mr. Mangine asserted that his erroneous career-offender status deprives him of the right to seek a sentence reduction pursuant to 18 U.S.C. § 3582(c)(2) based on a retroactive amendment to the Sentencing Guidelines. The district court dismissed the petition, and a panel of the Seventh Circuit affirmed. The panel held that categorical ineligibility for a sentence reduction under § 3582(c)(2) does not constitute a "miscarriage of justice" and therefore does not warrant savings clause relief. The questions presented are:

Whether and under what circumstances relief is available under § 2255(e) for federal prisoners challenging errors in their sentences; and

Whether the erroneous deprivation of Petitioner's statutory right to seek a sentence reduction under 18 U.S.C. § 3582(c)(2) constitutes a miscarriage of justice such that Petitioner may obtain relief under § 2255(e).

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

The parties to the proceeding below were Petitioner, Robert A. Mangine, who was the Petitioner-Appellant in the Seventh Circuit, and the Respondent, Shannon D. Withers, who was the Respondent-Appellee in the Seventh Circuit. Previously, the Respondent-Appellee was Dan Sproul and, before him, William True.

There are no nongovernmental corporate parties requiring a disclosure statement under Supreme Court Rule 29.6.

RELATED PROCEEDINGS

1. *United States v. Mangine*, No. 6:00-cr-02005 (N.D. Iowa). Judgment entered Sept. 18, 2001. Order denying sentence reduction entered July 2, 2015.

2. *United States v. Mangine*, No. 01-3355 (8th Cir.). Judgment entered Sept. 9, 2002.

3. *Mangine v. United States*, No. 6:14-cv-02025 (N.D. Iowa). Judgment entered June 17, 2014.

4. *Mangine v. United States*, No. 14-2702 (8th Cir.). Judgment entered Jan. 23, 2015.

5. *Mangine v. Walton*, No. 3:15-cv-00189 (S.D. Ill.). Judgment entered July 27, 2015.

6. *Mangine v. United States*, No. 16-2764 (8th Cir.). Judgment entered Oct. 23, 2017.

7. *Mangine v. Sproul*, No. 3:18-cv-01030 (S.D. Ill.). Judgment entered Oct. 29, 2018.

8. *Mangine v. Withers*, No. 18-3639 (7th Cir.). Judgment entered July 6, 2022.

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INTRODUCTION

Congress provided that a federal prisoner may petition his sentencing court for a sentence reduction based on retroactive amendments to the U.S. Sentencing Guidelines that decrease the applicable sentencing range. *See* 18 U.S.C. § 3582(c)(2). Petitioner in this case, Mr. Robert Mangine, stands to benefit from such relief. As a result of a retroactive amendment to the Guidelines adopted by the U.S. Sentencing Commission, Mr. Mangine is eligible for a reduction of up to three years in his sentence.

But Mr. Mangine faces a significant obstacle: he was erroneously sentenced as a career offender, and his career-offender status currently precludes him from obtaining relief pursuant to § 3582(c)(2). Everyone agrees that Mr. Mangine's career-offender status is erroneous in light of *Mathis v. United States*, 136 S. Ct. 2243 (2016). In an effort to vacate his career-offender designation, Mr. Mangine filed a petition for habeas corpus pursuant to 28 U.S.C. § 2241. Although federal prisoners must normally challenge their sentences by filing a motion pursuant to 28 U.S.C. § 2255, Mr. Mangine had already filed one such motion before *Mathis* and was thus barred from filing a second or successive one. Accordingly, Mr. Mangine filed his habeas petition pursuant to the "savings clause" of § 2255(e), which permits traditional habeas petitions where, as here, § 2255 is "inadequate or ineffective to test the legality of his detention."

The district court dismissed the petition, and the Seventh Circuit affirmed. Both courts concluded that Mr. Mangine failed to show that his erroneous career-

offender designation resulted in a "miscarriage of justice," a necessary prerequisite in the Seventh Circuit to seeking relief under § 2255(e). The Seventh Circuit held that Mr. Mangine's categorical ineligibility for a sentence reduction under § 3582(c)(2) does not constitute a miscarriage of justice, because relief is "dependent" on the future "exercise of judicial discretion." Pet.App.10a.

The Seventh Circuit's decision warrants this Court's review. First, the case implicates numerous circuit splits. It implicates the split at issue in *Jones v. Hendrix*, No. 21-857 (U.S. argued Nov. 1, 2022), which this Court granted to decide whether petitioners may invoke the savings clause to file claims that otherwise would be second or successive § 2255 claims if their claim was foreclosed by prior circuit precedent. This case also implicates a circuit split involving whether a prisoner may seek relief under § 2255(e) to correct sentencing errors or whether the savings clause is reserved for challenges to convictions. Finally, among those circuits that do allow for relief under § 2255(e) for sentencing errors, there is a further circuit split as to the types of sentencing errors that warrant relief.

Second, the Seventh Circuit's decision was incorrect. Mr. Mangine's categorical ineligibility for a sentence reduction under § 3582(c)(2) as a result of his erroneous career-offender status is a miscarriage of justice because it wrongly deprives him of his statutory right to have the sentencing court apply its discretion and determine whether a reduced sentence is warranted. The error in Mr. Mangine's sentence has effectively raised his sentencing floor by prohibiting the court from exercising its discretion

under the statute to grant a reduced sentence. The Seventh Circuit also ignored the serious violations of separation-of-powers principles and Mr. Mangine's liberty interests that resulted from the wrongful denial of his statutory right to a sentence-reduction proceeding.

Third, the questions presented are exceptionally important and likely to recur. This case involves whether an entire class of claims for habeas relief based on sentencing errors are cognizable through the savings clause. This case also offers the Court an opportunity to clarify how the "miscarriage of justice" standard applies to sentencing errors. Finally, this case concerns the viability of relief under § 3582(c)(2) with respect to federal prisoners whose sentencing errors foreclose them from obtaining the relief Congress authorized for them.

For these reasons, and because this case presents an ideal vehicle for review, Mr. Mangine respectfully requests this Court to grant the petition. At minimum, the Court should hold his petition for resolution of *Jones*. If the Court rules for the petitioner in that case and allows for petitions based on overturned circuit precedent, it should grant this petition to resolve the question of whether and under what circumstances sentencing errors warrant relief under § 2255(e). At the very least, the Court may clarify in *Jones* the legal standard that applies to savings-clause claims, which may occasion a GVR in this case.

OPINIONS BELOW

The court of appeals' opinion is reported at 39 F.4th 443 and reproduced at Pet.App.1a–11a. The district court's opinion is unpublished but available at

2018 WL 5437710 and reproduced at Pet.App.12a–22a.

JURISDICTION

The court of appeals affirmed the district court's judgment on July 6, 2022. Pet.App.1a–11a. On September 7, 2022, the court of appeals denied Petitioner's timely petition for rehearing. Pet.App.29a. Justice Barrett extended the time to file this petition until February 4, 2023. No. 22A367 (U.S.). This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISION INVOLVED

Subsection (e) of Section 2255 of Title 28 of the United States Code 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.

STATEMENT OF THE CASE

A. Statutory Background

Federal prisoners who seek to bring collateral attacks on their convictions or sentences must ordinarily bring an action under 28 U.S.C. § 2255, "the federal prisoner's substitute for habeas corpus." *Brown v. Rios*, 696 F.3d 638, 640 (7th Cir. 2012). But traditional habeas relief under § 2241 is available

under the "savings clause" of § 2255(e) if a § 2255 motion is "inadequate or ineffective to test the legality of his detention." When courts narrow the scope of a federal criminal statute in decisions that apply retroactively, a federal prisoner who has already filed a § 2255 motion is not statutorily authorized to bring a second one under § 2255 because "[s]tatutory problems are simply not covered in section 2255." *Purkey v. United States*, 964 F.3d 603, 615 (7th Cir. 2020); *see* 28 U.S.C. § 2255(h)(1), (2) (limiting second and successive § 2255 motions to claims of "newly discovered evidence" proving innocence or a new and retroactive rule of constitutional law).

The Seventh Circuit and a majority of other circuits have held that, in such situations, § 2255 is "inadequate or ineffective" because it does not offer the petitioner "a reasonable chance to correct an error that is corrigible retroactively." *In re Davenport*, 147 F.3d 605, 611 (7th Cir. 1998). Thus, in these circuits, a federal court may entertain a § 2241 petition to correct "a fundamental defect in [a federal prisoner's] conviction or sentence" based on previously unavailable decisions of statutory interpretation that apply retroactively. *Id.* The Seventh Circuit has adopted a three-part test used to assess whether a petitioner may obtain relief under the savings clause:

> (1) the claim relies on a statutory interpretation case, not a constitutional case, and thus could not have been invoked by a successive § 2255 motion; (2) the petitioner could not have invoked the decision in his first § 2255 motion and the decision applies retroactively; and (3) the error is grave enough to be deemed a miscarriage of justice.

Chazen v. Marske, 938 F.3d 851, 856 (7th Cir. 2019).

B. Factual Background

1. On May 18, 2001, a jury in the Northern District of Iowa found Mr. Mangine guilty on four counts of a five-count indictment. Pet.App.12a. The two convictions that drove his sentencing were Conspiracy to Distribute 500 Grams or More of Methamphetamine in a School Zone in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(A), 846, and 860 (Count 4), and Carrying a Firearm in Relation to a Drug Trafficking Crime in violation of 18 U.S.C. § 924(c)(1)(A) (Count 3). Pet.App.13a. He was also found guilty of being a Felon in Possession of a Firearm in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2) (Count 2) and Possession with Intent to Distribute Methamphetamine in violation of 21 U.S.C. § 841(a)(1) and (b)(1)(C) (Count 5). *Id.*

A probation officer prepared a Presentence Report (PSR) to assist the court at sentencing. The PSR concluded that, under Chapter Two of the Sentencing Guidelines, Mr. Mangine's offense level was 39 and his criminal-history category was V. Pet.App.19a–20a. The PSR also concluded, however, that he qualified as a "career offender" under § 4B1.1 of the Guidelines due to prior convictions for Second Degree Burglary under Iowa law and Second Degree Burglary under Florida law. Pet.App.13a, 19a–20a. Based on the career-offender designation, the court assigned Mr. Mangine a criminal history category of VI. Pet.App.20a. Mr. Mangine's sentencing range, based on an offense level 39 and criminal history category VI, was 360 months to life. *Id.*

The court agreed with the PSR's findings, concluding that Mr. Mangine qualified as a career offender and that his offense level was 39, his criminal history category was VI, and the then-mandatory Guidelines range was 360 months to life. Pet.App.2a. The court sentenced Mr. Mangine to 360 months' imprisonment for Count 4, the very bottom of the Guidelines range, as well as lesser concurrent sentences for Counts 2 and 5. *Id.* The court also imposed a mandatory consecutive 60-month sentence on Count 3. *Id.* In total, Mr. Mangine received a 420-month sentence. *Id.*

Mr. Mangine appealed but did not challenge his sentence. Pet.App.3a. The Eighth Circuit affirmed his conviction, and he did not file a petition for certiorari. *Id.*

2. On May 15, 2014, Mr. Mangine filed his first § 2255 motion in the Northern District of Iowa based on a different issue not present in the current case. Pet.App.14a. In his first § 2255 motion, he challenged the court's reliance on his Florida burglary conviction to classify him as a career offender based on the Supreme Court's decision in *Descamps v. United States*, 570 U.S. 254 (2013). *Id.* The court denied the motion as untimely and because it found *Descamps* did not apply retroactively to cases on collateral review. *Id.* The court denied Mr. Mangine a certificate of appealability, as did the Eighth Circuit. *See Mangine v. United States*, No. 14-2702 (8th Cir. Jan. 23, 2015). His application to the Eighth Circuit to file a second or successive motion under 28 U.S.C. § 2255 was also denied. *See Mangine v. United States*, No. 16-2764 (8th Cir. Oct. 23, 2017).

On February 23, 2015, Mr. Mangine filed a habeas petition under 28 U.S.C. § 2241 in the Southern District of Illinois, again challenging the use of his Florida burglary conviction as a predicate offense for his career-offender designation under *Descamps*. Pet.App.14a. The court denied the petition. Pet.App.15a. Although it acknowledged *Descamps* applies retroactively, it concluded that *Descamps* did not announce a new rule but simply "reaffirmed" the Supreme Court's analysis from a prior case. *Id.*

3. In the Sentencing Reform Act of 1984, Pub. L. No. 98-473, 98 Stat. 1837, 1987, Congress established the Sentencing Commission and authorized it to promulgate the Sentencing Guidelines and issue policy statements regarding their application. *See* 28 U.S.C. §§ 991, 994(a). Congress also charged the Commission with periodically reviewing and amending the Guidelines. *See id.* § 994(o). When an amendment reduces the Guidelines range for an offense, the Commission must determine "in what circumstances and by what amount the sentences of prisoners serving terms of imprisonment for the offense may be reduced." *Id.* § 994(u). When the Commission makes a Guidelines amendment retroactive, 18 U.S.C. § 3582(c)(2) "authorizes a district court to reduce an otherwise final sentence that is based on the amended provision," *Dillon v. United States*, 560 U.S. 817, 821 (2010), "after considering the factors set forth in section 3553(a) to the extent that they are applicable," 18 U.S.C. § 3582(c)(2). A sentence reduction must be consistent with applicable policy statements issued by the Commission. *Id.*

On July 2, 2015, the U.S. District Court for the Northern District of Iowa, on its own motion, considered whether to grant Mr. Mangine a sentence reduction under § 3582(c)(2). Pet.App.33a. The impetus for the court's motion was Amendment 782 to the Guidelines. Pet.App.34a. In 2014, the Sentencing Commission issued Amendment 782, which "reduced by two levels the offense levels for most drug-trafficking crimes." *United States v. Guerrero*, 946 F.3d 983, 985 (7th Cir. 2020). The Sentencing Commission also made the amendment retroactive. Pet.App.36a.

The court acknowledged that Amendment 782 would reduce Mr. Mangine's total adjusted offense level from 39 to 37. Pet.App.36a–37a. If he had not been designated as a career offender, he would have had a criminal-history category of V, making him eligible for a sentence reduction by lowering his Guidelines range to 324–405 months. *See* U.S.S.G. Ch. 5, Pt. A. But because he had been deemed a career offender, his criminal-history level was set to VI. And with that criminal-history level, "Amendment 782 . . . does not have the effect of lowering [Mr. Mangine's] guideline range." Pet.App.36a–37a. Rather, he "still faces a guideline range of 360 months imprisonment to life based on a total adjusted offense level of 37 and a criminal history category of VI." Pet.App.37a. Thus, "[b]ecause the applicable guideline range remain[ed] the same" in light of his career-offender status, the court held that Mr. Mangine was "not entitled to a reduction of his sentence." *Id.* The court relied on U.S.S.G. § 1B1.10(a)(2)(B), which provides that "[a] reduction . . . is not authorized under 18 U.S.C. § 3582(c)(2) if . . . an amendment . . . does not have the

effect of lowering the defendant's applicable guideline range."

C. District Court Proceedings

In 2016—two years after Mr. Mangine filed his first § 2255 motion—the Supreme Court decided *Mathis v. United States*, 136 S. Ct. 2243 (2016), which significantly changed the scope of the career-offender designation for purposes of sentencing law. On April 30, 2018, Mr. Mangine filed the instant petition pursuant to 28 U.S.C. § 2241 in the Southern District of Illinois, arguing that his career-offender classification is erroneous in light of *Mathis*. Pet.App.12a. Mr. Mangine could not have brought a second § 2255 motion to pursue this claim, because the statute does not allow second or successive § 2255 motions based on retroactive statutory-interpretation decisions such as *Mathis*. *See* 28 U.S.C. § 2255(h); *Davenport*, 147 F.3d at 611.

In *Mathis*, the Supreme Court held that a conviction under Iowa's burglary statute is not a "violent felony" under the Armed Career Criminal Act ("ACCA"), 18 U.S.C. § 924(e). 136 S. Ct. at 2257. And because a "violent felony" is the same as a "crime of violence" for purposes of the "career offender" enhancement, *see, e.g.*, *United States v. Edwards*, 836 F.3d 831, 834 n.2 (7th Cir. 2016), Mr. Mangine's Iowa burglary conviction was not a crime of violence. Consequently, Mr. Mangine lacks the requisite predicate offenses to qualify as a career offender. Mr. Mangine further argued that, but for his erroneous classification as a career offender, he would be eligible for a three-year reduction in his sentence pursuant to Amendment 782 of the Sentencing Guidelines.

The Government filed a motion to dismiss the petition. *See* Dkt. No. 15, *Mangine v. Sproul*, No. 3:18-cv-01030 (S.D. Ill. Aug. 30, 2018). The Government conceded that *Mathis* "clearly dictates that [Mr. Mangine's] Iowa Second Degree Burglary conviction is not a 'crime of violence' within the meaning of the career offender provision of the Guidelines" and that he therefore "does not have the requisite number of convictions for career offender classification." *Id.* at 6. But the Government maintained that Mr. Mangine was nevertheless not entitled to relief because this error did not result in a "miscarriage of justice," a necessary precondition in the Seventh Circuit for filing a § 2241 habeas petition under § 2255(e). *Id.* at 7.

The district court agreed that Mr. Mangine's erroneous career-offender classification did not result in a miscarriage of justice and thus denied Mr. Mangine's petition. Pet.App.21a. The district court reasoned that, at the time of his 2001 sentencing, Mr. Mangine "was subject to a sentence ranging from 360 months to life, without regard to any error that might have occurred in categorizing him as a career offender under USSG § 4B1.1." Pet.App.20a. Mr. Mangine thus could not "demonstrate that his sentence was the result of a wrongly-applied career-offender enhancement" or show that this error caused a "miscarriage of justice." Pet.App.20a–21a. The district court denied the petition and dismissed the case with prejudice.

D. Circuit Court Proceedings

On appeal, the panel affirmed the district court's denial of Mr. Mangine's habeas petition, holding that

his erroneous career-offender designation did not result in a miscarriage of justice. Pet.App.6a. The panel concluded that a sentencing error "that did not manifest itself in an unlawful sentence" does not constitute a miscarriage of justice. Pet.App.8a. "With or without the [career-offender] designation," the panel explained, Mr. Mangine's Guidelines range for his offenses "would have been 360 months to life." Pet.App.9a. Accordingly, he did not "suffer[] a miscarriage of justice." *Id.*

The panel further held that Mr. Mangine's categorical ineligibility for a sentence reduction under § 3582(c)(2) was not a miscarriage of justice. The panel reasoned that Mr. Mangine's "path to a sentence reduction under § 3582 involves two steps: a court must first relieve him of the career offender designation and then, in separate proceedings, afford sentencing relief." *Id.* "[E]ven if he prevails at step one, he may well fail at step two." *Id.* "Being excluded from this two-step path to relief—dependent as it is on predictions about the exercise of judicial discretion—is not a miscarriage of justice." Pet.App.10a. And because Mr. Mangine was "not claiming that the imposed 360-month sentence for his crimes is unlawful," the panel maintained, he was not "'test[ing] the legality of his detention.'" *Id.* (quoting § 2255(e)).

Mr. Mangine filed a petition for rehearing, which was denied on September 7, 2022. Pet.App.29a.

REASONS FOR GRANTING THE WRIT

I. The Decision Below Deepens Circuit Splits Regarding The Availability Of Relief Under § 2255(e) For Sentencing Errors.

Section 2255(e) permits a federal prisoner to file a habeas petition when a motion under § 2255 is "inadequate or ineffective to test the legality of his detention." The circuit courts are divided as to whether this provision offers relief to federal prisoners challenging the legality of their noncapital sentences. Among the circuits that recognize the availability of such relief, the courts are further divided as to the types of sentencing errors that may warrant relief under § 2255(e). This case implicates both circuit splits.

A. The Circuit Courts Are Divided As To Whether Relief Under § 2255(e) Is Available For Sentencing Errors.

The majority of circuit courts recognize that federal prisoners may in certain circumstances challenge the legality of their convictions under § 2255(e) based on retroactive Supreme Court decisions that rendered prior circuit court precedent incorrect. *See* Pet. for Cert. at 12, *Jones v. Hendrix*, No. 21-857 (U.S. Dec. 7, 2021) (explaining that the First, Second, Third, Fourth, Fifth, Sixth, Seventh, and Ninth Circuits allow for such claims).[1] But these circuits disagree as to whether federal prisoners may use § 2255(e) to challenge the legality of their

[1] The petitioner in *Jones* identified the Eighth, Tenth, and Eleventh Circuits as prohibiting such claims under § 2255(e). *Id.* at 11.

sentences on that same basis. *See generally* Brandon Hasbrouck, *Saving Justice: Why Sentencing Errors Fall Within the Savings Clause, 28 U.S.C. § 2255(e)*, 108 Geo. L.J. 287, 298–306 (2019).

The Third and Fifth Circuits hold that a federal prisoner may not use § 2255(e) to challenge the legality of his sentence. *See Gardner v. Warden Lewisburg USP*, 845 F.3d 99, 103 (3d Cir. 2017); *In re Bradford*, 660 F.3d 226, 230 (5th Cir. 2011). These circuits have limited the availability of relief under § 2255(e) to situations where the prisoner challenges his conviction based on an intervening change in the law that establishes he was convicted of a non-existent crime. *See Gardner*, 845 F.3d at 103; *Bradford*, 660 F.3d at 230. But these circuits have rejected similar challenges to sentencing errors where the intervening changes to the law "did not establish a rule that made prior criminal conduct noncriminal." *Gardner*, 845 F.3d at 103; *see also Bradford*, 660 F.3d at 230 ("[T]his Court has held that a claim of actual innocence of a career offender enhancement is not a claim of actual innocence of the crime of conviction and, thus, not the type of claim that warrants review under § 2241.").

The Fourth, Sixth, Seventh, and Ninth Circuits, on the other hand, permit federal prisoners to seek relief under § 2255(e) for sentencing errors. *See United States v. Wheeler*, 886 F.3d 415 (4th Cir. 2018); *Hill v. Masters*, 836 F.3d 591 (6th Cir. 2016); *Brown v. Caraway*, 719 F.3d 583 (7th Cir. 2013); *Allen v. Ives*, 950 F.3d 1184 (9th Cir. 2020). These circuits have emphasized that the language of the savings clause "focuses on the legality of the prisoner's detention; it does not limit its scope to testing the legality of the

underlying criminal conviction." *Brown*, 719 F.3d at 588 (citation omitted); *see also Wheeler*, 886 F.3d at 427–28 ("The savings clause pertains to one's 'detention,' and Congress deliberately did not use the word 'conviction' or 'offense,' as it did elsewhere in § 2255. Detention necessarily implies imprisonment." (citations omitted)).

B. The Circuit Courts Are Further Divided Regarding The Kinds Of Sentencing Errors Eligible For Relief Under § 2255(e).

Among the circuits that permit prisoners to seek relief under § 2255(e) for sentencing errors, there is disagreement as to what kinds of sentencing errors warrant such relief.

The Seventh Circuit takes the narrowest view. In the Seventh Circuit, a sentencing error is actionable only when it results in a sentence that exceeds the maximum authorized by law. In *Brown*, the Seventh Circuit held that a prisoner could challenge his erroneous career-offender status because it resulted in a sentence above the then-mandatory Sentencing Guidelines range. 719 F.3d at 587–88. The court concluded that this sentencing error "represents a fundamental defect that constitutes a miscarriage of justice corrigible in a § 2241 proceeding." *Id.* at 588. In the case below, however, the court held that a sentencing error that "did not manifest itself in an unlawful sentence" was not a "miscarriage of justice" and thus not actionable under § 2255(e). Pet.App.8a.

The Fourth Circuit, by contrast, has recognized the availability of relief under § 2255(e) even if the sentencing error did not result in an unlawful

sentence. In *Wheeler*, the court held that a sentencing error that increased the applicable mandatory minimum sentence constituted a "miscarriage of justice," notwithstanding that the sentence was within the statutory sentencing range. 886 F.3d at 431. The court explained that an "erroneously-imposed sentencing floor is problematic" because it "creates the mistaken impression that the district court had no discretion to vary downward from the low end of the defendant's range." *Id.* (cleaned up). Thus, the court rejected the government's argument that the petitioner did not suffer a miscarriage of justice simply because he "could have been assigned the same sentence even with the correct mandatory minimum." *Id.*

Likewise, the Ninth Circuit has also allowed for relief where a sentencing error increased the petitioner's mandatory minimum sentence. In *Allen*, the court held that a petitioner could challenge his erroneous career-offender designation that "increased his minimum sentence under the mandatory Guidelines from 235 months to 262 months and disqualified him from receiving an otherwise available downward departure." 950 F.3d at 1189. The court permitted the petitioner's claim to proceed notwithstanding that his 262-month sentence was within the properly calculated Guidelines range. *See id.* at 1186.

The Sixth Circuit has recognized that other consequences besides the length of the original sentence may constitute a miscarriage of justice. In *Hill*, the petitioner's erroneous career-offender designation resulted not only in an increased sentencing range, but also rendered him

"'categorically ineligible' for subsequent retroactive amendments to the guidelines," which could "reduce his sentence by 'as many as nine years.'" 836 F.3d at 593. As the court explained, "Congress, through the Sentencing Commission, intended that prisoners in [the petitioner's] position be eligible for certain further reductions," and that "[h]is characterization as a career offender wrongly renders him ineligible for that relief." *Id.* at 599. According to the Sixth Circuit, requiring the petitioner to bear these "accompanying disadvantages" of his career-offender status contributed to the "miscarriage of justice" he suffered. *Id.* at 600.

II. The Decision Below Is Wrong

In the decision below, the panel held that Mr. Mangine could not seek relief under § 2255(e) for his erroneous career-offender designation because it did not result in a "miscarriage of justice." Pet.App.10a. The court concluded that Mr. Mangine's categorical ineligibility for a potential sentence reduction under 18 U.S.C. § 3582(c)(2) is not a miscarriage of justice because relief from his sentence is not guaranteed; it is ultimately "dependent" on "the exercise of judicial discretion." *Id.*

This holding is incorrect. Categorical ineligibility for a potential sentence reduction under § 3582(c)(2) deprives Mr. Mangine of a statutory right granted by Congress to eligible federal prisoners whose sentencing ranges have been decreased as a result of retroactive amendments to the Sentencing Guidelines. This deprivation is sufficient in and of itself to constitute a miscarriage of justice. Mr. Mangine's erroneous career-offender status wrongly deprives

him of his statutory right to seek a new sentence within a lower sentencing range that, but for this error, he is legally entitled to seek. The fact that a sentence reduction is ultimately "dependent" on "the exercise of judicial discretion," Pet.App.10a, does not negate the injury that results from being denied the opportunity to ask the court to apply its discretion in the first place. Indeed, wrongfully depriving Mr. Mangine of the right to seek a sentence reduction calls into question the legality of his detention because it means that he is not being detained in accordance with the lawful process established by Congress, which allows him the opportunity for a sentence reduction. Thus, because an ordinary motion under § 2255 does not allow for Mr. Mangine to raise this legal argument, it is both "inadequate" and "ineffective" to "test the legality of his detention." 28 U.S.C. § 2255(e).

Mr. Mangine's career-offender designation has effectively imposed on him an erroneously inflated sentencing floor, because the sentencing court lacks the discretion it otherwise would have under § 3582(c)(2) to impose a lower sentence than his current one. An "erroneously-imposed sentencing floor" causes a miscarriage of justice because it "create[s] the mistaken impression that the district court had no discretion" to impose a lower sentence. *Wheeler*, 886 F.3d at 431. As this Court has recognized, "[i]t is indisputable that a fact triggering a mandatory minimum alters the prescribed range of sentences to which a criminal defendant is exposed." *Alleyne v. United States*, 570 U.S. 99, 112 (2013). "Elevating the low-end of a sentencing range heightens the loss of liberty associated with the crime: the defendant's 'expected punishment has increased as a result of the

narrowed range,'" and the judge is required "'to impose a higher punishment than he might wish.'" *Id.* at 113 (quoting *Apprendi v. New Jersey*, 530 U.S. 466, 522 (2000) (Thomas, J., concurring)). Mr. Mangine's erroneous career-offender classification has similarly exposed him to a higher sentencing range than he otherwise would have been subject to under § 3582(c)(2).

The panel opinion also ignores separation-of-powers principles, which this Court has stated forms the "doctrinal underpinnings" of habeas review. *Bousley v. United States*, 523 U.S. 614, 621 (1998). Because "fixing penalties" is a "legislative, not judicial, function[]," *United States v. Evans*, 333 U.S. 483, 486 (1948), "the separation of powers prohibits a court from imposing criminal punishment beyond what Congress meant to enact," *Welch v. United States*, 578 U.S. 120, 134 (2016). A prisoner therefore has a "constitutional right to be deprived of liberty as punishment for criminal conduct *only to the extent authorized by Congress*." *Whalen v. United States*, 445 U.S. 684, 689–90 (1980) (emphasis added). Denying Mr. Mangine his statutory right to seek a sentence reduction that Congress made available to him under § 3582(c)(2) thus encroaches on Congress's authority in this area.

Violations of the separation of powers "trench[] particularly harshly on individual liberty." *Id.* at 689. This Court's case law makes clear that erroneous deprivations of a sentencing court's lawful discretion are errors of constitutional magnitude. In *Hicks v. Oklahoma*, 447 U.S. 343 (1980), for example, a state trial court imposed a 40-year sentence on a defendant by operation of the state's habitual offender statute. A

state appellate court subsequently held that the statute was unconstitutional but nonetheless affirmed the defendant's sentence because it was within the range of punishment that could have been imposed absent application of the habitual offender statute. *Id.* at 345. This Court disagreed. Absent application of the habitual offender law, the governing statute empowered the jury to impose any sentence "'not less than ten … years,'" and "[t]he possibility that the jury would have returned a sentence of less than 40 years" was "substantial." *Id.* at 346. This Court found that the defendant in *Hicks* had "a substantial and legitimate expectation that he will be deprived of his liberty only to the extent determined by the jury in the exercise of its statutory discretion," which the Constitution protected "against arbitrary deprivation by the State." *Id.* The state appellate court "denied the petitioner the jury sentence to which he was entitled under state law, simply on the frail conjecture that a jury *might* have imposed a sentence equally as harsh as that mandated by the invalid habitual offender provision." *Id.* This "arbitrary disregard" of the defendant's liberty violated due process. *Id.*

In *United States v. Tucker*, 404 U.S. 443 (1972), this Court held that a prisoner could obtain habeas relief from a sentence imposed on the basis of misinformation. The sentencing court had sentenced the prisoner to the maximum term authorized by the applicable statute in part based on two previous felony convictions. *Id.* at 444. Subsequently, those convictions were held constitutionally invalid. *Id.* at 444–45. This Court rejected the government's argument that the prisoner's sentence was not subject to review because it was within "statutory limits." *Id.*

at 447. This Court concluded that the sentence was not "imposed in the informed discretion of a trial judge," but was "founded at least in part upon misinformation of constitutional magnitude." *Id.* The petitioner was wrongfully sentenced "on the basis of assumptions concerning his criminal record which were materially untrue." *Id.*

Here, Mr. Mangine has suffered a similar injury as a result of his erroneous career-offender status. Mr. Mangine has "a substantial and legitimate expectation" under § 3582(c)(2) to pursue a three-year reduction in his sentence as "determined by the [sentencing court] in the exercise of its statutory discretion." *Hicks*, 447 U.S. at 346. The panel "denied" Mr. Mangine this discretionary sentence reduction proceeding "to which he was entitled under [federal] law, simply on the frail conjecture" that the sentencing court "*might* have imposed" the same sentence. *Id.* Though the length of Mr. Mangine's sentence is within the "statutory limits," Mr. Mangine was denied the lawful opportunity to have the sentencing court apply its "informed discretion" to his request for a sentence reduction "'on the basis of assumptions concerning his criminal record which were materially untrue.'" *Tucker*, 404 U.S. at 447.

The panel should have found that the arbitrary deprivation of Mr. Mangine's statutory right to seek a sentence reduction under § 3582(c)(2) is a miscarriage of justice for which he may seek relief under § 2255(e).

III. The Questions Presented Are Exceptionally Important.

This case involves issues of exceptional importance that are likely to recur. First, this case

concerns whether and under what circumstances federal prisoners may seek relief under § 2255(e) for sentencing errors. Retroactive decisions of this Court can implicate the lawfulness of sentences as much as they do convictions. The availability of relief from unlawful sentences based on subsequent retroactive decisions of this Court is a highly consequential issue for federal prisoners, for whom years of imprisonment could hang in the balance.

Second, this case offers the Court the opportunity to clarify when a sentencing error constitutes "a fundamental defect which inherently results in a complete miscarriage of justice." *Davis v. United States*, 417 U.S. 333, 346 (1974). In light of the deep disagreement among the circuit courts, the judiciary would benefit from this Court's guidance regarding application of the miscarriage-of-justice standard to sentencing errors, an important and frequently recurring issue.

Third, this case concerns the viability of sentencing relief pursuant to § 3582(c)(2). "Congress, through the Sentencing Commission, intended that prisoners in [Mr. Mangine's] position be eligible for" sentence reductions based on retroactive amendments to the Sentencing Guidelines. *Hill*, 836 F.3d at at 599. The panel's decision denies this avenue of relief to Mr. Mangine and similarly situated individuals. There is a good chance that, but for the legal error in Mr. Mangine's sentence, he would obtain a reduction in his sentence. As of September 2020, 31,759 prisoners have had their sentences reduced pursuant to Amendment 782 alone, amounting to 62.5% of the applications for sentence relief. *See* U.S.S.C., *2014 Drug Guidelines Amendment Retroactivity Data*

Report, tbl. 3 (May 2021). Of the applications denied, 18.3% were because Career Offender or Armed Career Criminal provisions controlled the sentence and another 11.9% were because the applicable Guidelines range did not change. *Id.*, tbl. 8. The error in Mr. Mangine's sentence resulted in denial of his application for those very reasons. Without this Court's intervention, federal prisoners who are erroneously classified as career offenders will continue to be wrongfully excluded from this important avenue of relief from which tens of thousands of similarly situated individuals have benefited.

IV. This Case Is An Ideal Vehicle.

The questions presented were properly preserved and are squarely posed. There are no extraneous facts for this Court to wade through and no alternative holdings below. The sole basis for the panel's holding is that the erroneous deprivation of Mr. Mangine's right to seek a sentence reduction under § 3582(c)(2) does not constitute a miscarriage of justice and does not warrant relief under § 2255(e). This case presents the optimal opportunity to clarify whether and under what circumstances relief is available under § 2255(e) for sentencing errors.

At minimum, the Court should hold this petition for resolution of *Jones v. Hendrix*. If the Court rules for the petitioner in that case and allows for petitions based on overturned circuit precedent, it should grant this petition to resolve the question of whether and under what circumstances sentencing errors warrant relief under § 2255(e). At the very least, the Court may clarify in *Jones* the legal standard that applies to

savings-clause claims, which may occasion a GVR in Mr. Mangine's case.

CONCLUSION

The Court should grant the petition for writ of certiorari.

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Respectfully submitted,

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