

No. 22-738

In the Supreme Court of the United States

ROBERT A. MANGINE, PETITIONER

v.

SHANNON D. WITHERS, WARDEN

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

MEMORANDUM FOR THE RESPONDENT

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Petitioner contends (Pet. 13-24) that he is entitled to federal habeas corpus relief under 28 U.S.C. 2241 based on his claim that he was incorrectly classified as a career offender at sentencing, which in turn has rendered him ineligible for a sentence reduction based on a retroactive amendment to the Sentencing Guidelines. Under the “saving clause” in 28 U.S.C. 2255(e), a federal prisoner may seek habeas relief under Section 2241 only if “the remedy by motion [under Section 2255] is inadequate or ineffective to test the legality of his detention.” *Ibid.*

This Court has granted review in *Jones v. Hendrix*, No. 21-857 (argued Nov. 1, 2022), to address whether and, if so, under what circumstances a federal prisoner may seek habeas relief under the saving clause on a claim that his conviction is invalid under *Rehaif v. United States*, 139 S. Ct. 2191 (2019), which narrowed

the scope of a federal criminal statute. The Court's resolution of the question presented in *Jones* could conceivably affect the judgment of the court of appeals below. Accordingly, the Court should hold the petition for a writ of certiorari pending its decision in *Jones* and then dispose of this petition as appropriate.*

Respectfully submitted.

ELIZABETH B. PRELOGAR
Solicitor General

APRIL 2023

* The government waives any further response to the petition for a writ of certiorari unless this Court requests otherwise.