NO. _____

IN THE

Supreme Court of the United States

_____ TERM, 20__

ERIC LEE COLEMAN,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

Brad Hansen
Federal Public Defender
FEDERAL PUBLIC DEFENDER'S OFFICE
400 Locust Street, Suite 340
Des Moines, Iowa 50309
Phone: (515) 309-9610
Email: brad_hansen@fd.org
ATTORNEY FOR PETITIONER

QUESTION PRESENTED

The question presented is whether a court must consider the availability (or non-availability) of an affirmative defense in the categorical approach.

PARTIES TO THE PROCEEDINGS

The caption lists all parties to the proceedings.

DIRECTLY RELATED PROCEEDINGS

This case arises from the following proceedings in the United States District Court for the Southern District of Iowa and the United States Court of Appeals for the Eighth Circuit:

United States v. Coleman, No. 3:20-cr-111-SMR-SBJ (S.D. Iowa) (criminal proceedings), judgment entered March 2, 2022.

United States v. Coleman, No. 22-1528 (8th Cir.) (direct criminal appeal), judgment and opinion entered February 27, 2023.

There are no other proceedings in state or federal trial or appellate courts or in this Court directly related to this case.

TABLE OF CONTENTS

INDEX TO APPENDICES

TABLE OF AUTHORITIES

Federal Statutes

State and Territorial Statutes

Guidelines

Federal Cases

Supreme Court

Courts of Appeals

Military

State Cases

Other

PETITION FOR WRIT OF CERTIORARI

Petitioner Eric Lee Coleman respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit.

OPINION BELOW

The Eighth Circuit's published opinion in Mr. Coleman's case is available at 60 F.4th 1184 and appears in the appendix to this petition at page 1. The district court did not file an opinion regarding the question presented.

JURISDICTION

The Eighth Circuit entered judgment in Mr. Coleman's case on February 27, 2023. Mr. Coleman did not file a petition for rehearing by the panel or by the *en banc* court.

This Court has jurisdiction over this case under 28 U.S.C. § 1254(1).

RELEVANT GUIDELINE PROVISION

> (a) The term "crime of violence" means any offense under federal or state law, punishable by imprisonment for a term exceeding one year, that—
>
> (1) has as an element the use, attempted use, or threatened use of physical force against the person of another, or
>
> (2) is murder, voluntary manslaughter, kidnapping, aggravated assault, a forcible sex offense, robbery, arson, extortion, or the use or unlawful possession of a firearm described in 26 U.S.C. § 5845(a) or explosive material as defined in 18 U.S.C. § 841(c).

USSG § 4B1.2(a).

STATEMENT OF THE CASE

Eric Lee Coleman pled guilty to drug offenses. At sentencing, the district court concluded that Mr. Coleman qualified as a career offender under USSG § 4B1.1. (App. A, p. 1.) To be a career offender, a defendant must, among other things, have "at least two prior felony convictions of either a crime of violence or a controlled substance offense." USSG § 4B1.1(a).

Mr. Coleman appealed, arguing that his Illinois conviction for attempted murder in the first degree is not a "crime of violence," as defined in § 4B1.2(a).[1] He did not dispute that a *completed* murder is a crime of violence. He argued, however, that voluntary abandonment is not an affirmative defense to an attempt crime in Illinois. *See People v. Brown*, 414 N.E.2d 475, 481 (Ill. Ct. App. 1980). By contrast, in most other jurisdictions,[2] it *is* an affirmative defense to an attempt crime if the

---

[1] "The term 'crime of violence' means any offense under federal or state law, punishable by imprisonment for a term exceeding one year, that . . . (1) has as an element the use, attempted use, or threatened use of physical force against the person of another, or (2) is murder, voluntary manslaughter, kidnapping, aggravated assault, a forcible sex offense, robbery, arson, extortion, or the use or unlawful possession of a firearm described in 26 U.S.C. § 5845(a) or explosive material as defined in 18 U.S.C. § 841(c)." USSG § 4B1.2(a). It "include[s] the offenses of aiding and abetting, conspiring, and attempting to commit such offenses." *Id.* comment. n.1.

[2] *See* Ala. Code § 13A-4-2(c); Alaska Stat. § 11.31.100(c); Ariz. Rev. Stat. § 13-1005; Ark. Stat. Ann. § 5-3-204; Colo. Rev. Stat. § 18-2-101(3); Conn. Gen. Stat. Ann. § 53a-49(c); Del. Code Ann. tit. 11, § 541(b); Fla. Stat. Ann. § 777.04(5)(a); Ga. Code Ann. § 16-4-5; Haw. Rev. Stat. § 705-530(1); Ind. Code Ann. § 35-41-3-10; Ky. Rev. Stat. Ann. § 506.020; Me. Rev. Stat. Ann. tit. 17-A, § 154; Minn. Stat. Ann. § 609.17(3); Mont. Code Ann. § 45-4-103(4); N.H. Rev. Stat. Ann. § 629:1(III); N.J. Stat. Ann. § 2C:5-1(d); N.Y. Penal Law § 40.10; N.D. Cent. Code § 12.1-06-05(3); Ohio Rev. Code Ann. § 2923.02(D); Or. Rev. Stat. § 161.430; 18 Pa. Cons. Stat. Ann. § 901(c); Tenn. Code Ann. § 39-12-104; Tex. Penal Code Ann. § 15.04; Utah Code Ann. § 76-2-307;

individual "abandoned his effort to commit the crime or otherwise prevented its commission, under circumstances manifesting a complete and voluntary renunciation of his criminal purpose." Model Penal Code § 5.01. Thus, Mr. Coleman argued that his attempted murder conviction does not qualify as a crime of violence under the enumerated clause of § 4B1.2(a)(2) because Illinois does not allow for an affirmative defense that most jurisdictions do (in other words, that generic attempted murder encompasses the affirmative defense). He further argued that the Illinois offense is not a crime of violence under the force (or elements) clause of § 4B1.2(a)(1) because a voluntarily abandoned attempt does not involve the use, attempted use, or threatened use of physical force against the person of another.

The Eighth Circuit disagreed. Concurring with a handful of other Courts of Appeals,[3] the Eighth Circuit concluded that an affirmative defense is irrelevant to the categorical approach, reasoning as follows:

> Coleman's argument is at odds with [the] instruction [in *Mathis v. United States*, 579 U.S. 500 (2016),] that we must "focus solely on whether the elements of the crime of conviction sufficiently match the elements" of the generic offense. 579 U.S. at 504. Coleman acknowledges *Mathis*'s directive but claims that the Supreme Court did not squarely hold that affirmative defenses are irrelevant to the categorical approach. That is true, but we view *Mathis* as necessarily

---

Wyo. Stat. § 6-1-301(b); *People v. Kimball*, 311 N.W.2d 343 (Mich. 1981), *modified on other grounds*, 313 N.W.2d 285; *Ross v. State*, 601 So.2d 872, 874 (Miss. 1992); *State v. Latraverse*, 443 A.2d 890, 896 (R.I. 1982); *see also* Am. Samoa Code Ann. § 46.3403; 9 Guam Code Ann. § 7.73(a); 33 P.R. Stat. § 4665; *United States v. Schoof*, 37 M.J. 96, 103 (C.M.A. 1993).

[3] *See United States v. Escalante*, 933 F.3d 395, 399 (5th Cir. 2019); *Donawa v. United States Attorney General*, 735 F.3d 1275, 1282 (11th Cir. 2013); *United States v. Velasquez-Bosque*, 601 F.3d 955, 963 (9th Cir. 2010).

> preventing the consideration of affirmative defenses under the categorical approach. *Mathis* defined a crime's elements as "the constituent parts of a crime's legal definition—the things the prosecution must prove to sustain a conviction." *Id.* And prosecutors need not prove an affirmative defense (or the absence thereof) to sustain a conviction. *See Smith v. United States*, 568 U.S. 106, 110 (2013) ("While the Government must prove beyond a reasonable doubt every fact necessary to constitute the crime with which the defendant is charged, proof of the nonexistence of all affirmative defenses has never been constitutionally required.") (brackets, citation, and internal quotation marks omitted).

(App. A, pp. 6-7.) Consequently, the Eighth Circuit affirmed the district court's sentencing decision.

REASONS FOR GRANTING THE WRIT

This Court should grant Mr. Coleman's petition because the Eighth Circuit's decision was incorrect, and this case presents an opportunity to clarify the role of an affirmative defense in the categorical approach.

Contrary to the Eighth Circuit's reliance on *Mathis*, this Court has never confronted the issue. To be sure, *Mathis* said that courts must look to the elements of the crime, "while ignoring the particular *facts* of the case." 579 U.S. at 504 (emphasis added). *Mathis* undoubtedly said that elements matter in the categorical approach, and facts do not; however, it did not say anything about how affirmative defenses fit into the categorical approach.

On the other hand, this Court has instructed courts to consider the "statutory definition" of an offense, *Taylor v. United States*, 495 U.S. 575, 602 (1990), which is clear evidence that affirmative defenses are a part of the analysis. There are many examples of affirmative defenses set out directly in criminal statutes, including throughout the U.S. Code.[4] And, as illustrated in footnote 2, at least 26 states and

---

[4] *See, e.g.*, 8 U.S.C. § 1324a(a)(3) (affirmative defense to unlawful employment of alien); 18 U.S.C. § 373(b) (affirmative defense of "voluntary and complete renunciation of . . . criminal intent" to solicit a crime of violence); 18 U.S.C. § 845(c) (affirmative defense to explosives offense); 18 U.S.C. § 931(b) (affirmative defense to body-armor-related crimes); 18 U.S.C. § 1029(g)(2) (affirmative defense to access device fraud); 18 U.S.C. § 1204(c) (affirmative defense to international parental kidnapping); 18 U.S.C. § 1466A(e) (affirmative defense to child obscenity crime); 18 U.S.C. § 1512(e) (affirmative defense to witness tampering); 18 U.S.C. § 2250(c) (affirmative defense to failure to register as a sex offender); 18 U.S.C. §§ 2252(c), 2252A(c) (affirmative defenses to child pornography crimes); 18 U.S.C. § 2320(d) (noting availability of affirmative defense to trafficking in counterfeit goods and services); 18 U.S.C. § 2421A(e) (affirmative defense to sex trafficking offense); 18

three territories provide for the affirmative defense of voluntary withdrawal by statute (in addition to the other states that, like the military, recognize it in case law). Thus, like elements, affirmative defenses (or lack thereof) are integral to understanding how a jurisdiction defines a crime and thus are relevant to the categorical analysis. Ignoring affirmative defenses ignores *Taylor*'s instruction to consider the definition of an offense.

Additionally, the Eighth Circuit's "elements-only" approach runs contrary to *Moncrieffe v. Holder*, 569 U.S. 184 (2013). In that case, this Court considered in the categorical approach an affirmative sentencing defense for which the defendant bears the burden of proof. Specifically, the Court considered whether Moncrieffe's state felony conviction for possession of marijuana with intent to distribute was a drug trafficking offense under federal law. *Id.* at 188-89. The Court noted that under the federal Controlled Substances Act ("CSA"), marijuana distribution is a felony, but the law contains a provision reducing the offense to a misdemeanor if the defendant establishes that he only distributed a small amount of marijuana for no remuneration. *See* 21 U.S.C. § 841(b)(4). The Court explained that, because the Georgia statute did not contain a similar exception, the Georgia statute was over-inclusive. 569 U.S. at 193-94. In so holding, the Court expressly rejected the government's argument that the CSA's "misdemeanor provision is irrelevant to the categorical analysis because [it] is merely a 'mitigating exception,' to the CSA offense,

---

U.S.C. § 3146(c) (affirmative defense to failure to appear); 19 U.S.C. § 1308(c)(6) (affirmative defense to importation of animal fur offense).

not one of the 'elements' of the offense." *Id.* at 195. As *Moncrieffe* said, "a generic federal offense may be defined by reference to both elements in the traditional sense *and sentencing factors*." *Id.* at 198 (quotation marks omitted) (emphasis added). If such sentencing factors are relevant, then surely affirmative defenses are relevant as well.

Finally, the Eighth Circuit's approach runs contrary to the purpose of the categorical approach, which looks to the "*least* serious conduct" that could result in conviction for the offense at issue. *Borden v. United States*, 141 S. Ct. 1817, 1832 (2021). In Illinois, an individual would face conviction for attempted murder even if he abandoned his effort to commit the crime and *prevented* its commission. In most states, such a voluntarily abandoned effort would *not* be an attempt. In other words, the "least serious" conduct that is an attempt crime in Illinois would not constitute a generic attempt.

Accordingly, the Eighth Circuit erred by concluding that affirmative defenses are irrelevant to the categorical approach. This Court should grant Mr. Coleman's petition to correct the error and provide guidance on this significant and recurring issue.

CONCLUSION

For these reasons, Mr. Coleman respectfully requests that his petition for writ of certiorari be granted.

RESPECTFULLY SUBMITTED,

/s/ Brad Hansen

Federal Public Defender
FEDERAL PUBLIC DEFENDER'S OFFICE
400 Locust Street, Suite 340
Des Moines, Iowa 50309
Phone: (515) 309-9610
Email: brad_hansen@fd.org
ATTORNEY FOR PETITIONER