

24-5410  
No. \_\_\_\_\_

ORIGINAL

Supreme Court, U.S.  
FILED

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OFFICE OF THE CLERK

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IN THE

SUPREME COURT OF THE UNITED STATES  
\_\_\_\_\_

JOSEPH MILLER

— PETITIONER

(Your Name)

VS.

UNITED STATES OF AMERICA

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

JOSEPH MILLER

(Your Name)

P.O. BOX 5000, ROUTE 40 & 4

(Address)

GREENVILLE, IL. 62246

(City, State, Zip Code)

## QUESTIONS FOR REVIEW

Whether the decision in Jones v Hendrix, 143 S. Ct. 1857 (2023) can be applied retroactively "rescinding habeas Corpus review of Statutory Interpretation Claims" (that involve Statutory or Legal Innocence Claims), undermine Congress's intent of the Savings Clause and "violate the Ex Post Facto Clause of the Constitution" Article 1, Section 9 and 10 by divesting a prisoner of the right to challenge unlawful detention based on a Legal or Statutory Innocence Claim ?

[W]hen Congress Amended 28 U.S.C. 2255 by enacting AEDPA in 1996, and limiting Second or Successive Petitions to only two (2) specific categories. Whether Congress ["through the enactment of AEDPA"] caused 28 U.S.C. 2255 to become "incommensurate" (un-equal) to the Traditional Habeas Corpus that it was crafted to replace, and be "identical to in Scope", "by limiting the claims that can be raised in a Second or Successive Petition", and by doing so "inadvertantly violated the Ex Post Facto Clause of the Constitution" by restricting and inhibiting a right that was cognizable before enactment of AEDPA ? or "Was the Savings Clause left in place to preserve rights cognizable in habeas and thereby cognizable in 28 U.S.C. 2255 ?

Whether Due Process is violated when "Federal Court" imposes Criminal Punishment or Penalty pursuant to a Substance that the Federal Statutes, and CSA (Controlled Substance Act) fail to regulate or prohibit, and fail to provide fair notice of its illegality under Federal Law ?

## LIST OF PARTIES

☒ All parties appear in the caption of the case on the cover page.

☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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- 1) 28 U.S.C. 2255
- 2) 28 U.S.C. 2241
- 3) RULES OF STATUTORY CONSTRUCTION

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- 1) EX POST FACTO CLAUSE OF THE U.S. CONST. ART. 1, SECTION 9, AND 10
- 2) DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT PURSUANT TO FAIR NOTICE
- 3) VOID FOR VAGUENESS DOCTRINE

IN THE SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a Writ of Certiorari will be issued to review the Judgment below.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Seventh Circuit appears at Appendix A to the Petition reported at 23-2385

The opinion of the United States district Court appears at Appendix B to the petition and is reported at 3:23-cv-000296-JPG

JURISDICTION

The date on which the united States Court of Appeals for the Seventh Circuit decided petitioners case was January 23rd, 2024

A Timely petition for rehearing was denied by the United States Court of Appeals on the following date: April 29th, 2024, and a copy of the order denying rehearing appears at Appendix C. An extension of time to file a writ of Certiorari was Granted to and including August 20th, 2024 on July 23rd, 2024 in Application No. 24-A77

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Constitution provides that "[n]o State shall...Pass any Ex Post Facto Law" U.S. Constitution Art. 1 § 10, Cl. 1, defined as an act that "retroactively alters the definition of crimes or increase[s] the punishment for criminal deeds. See also U.S. Constitution Art. 1, § 9, Cl. 3 ("No ...Ex Post Fact Law Shall be passed"). Statutes that transgress the Ex Post Facto Clause [] share two characteristics. They are 'both retroactive and penal'.

The Fifth Amendment to the United States Constitution states in pertinent part; "No Person shall be.. deprived of life, liberty, or property without due process of law.

## STATEMENT OF THE CASE

### I.

- 1) on January 5th, 2012 Joseph Miller (Petitioner) was arrested and charged by way of complaint with one count of Bank robbery. Miller was indicted on the same charge on January 18th 2012.
- 2) Petitioner proceeded to trial by Jury on June 24th, 2013, and was found guilty on one count of Bank robbery pursuant to 18 U.S.C. 2113(a).
- 3) Petitioner appealed his sentence and conviction and the Seventh Circuit affirmed his conviction on July 22nd, 2015
- 4) on February 27th 2017 Petitioner filed his original 28 U.S.C. 2255 to vacate his sentence and conviction.
- 5) On September 6th, 2018 Petitioner filed a Motion to Supplement his 2255 pursuant to Fed. R. Civ. P. 15(d), after discovering New Evidence of Fraud on the Court.
- 6) On October 21st, 2019 the District Courts order was entered into the record denying Petitioners (Miller from this point forward) 2255.
- 7) On or around January 27th, 2023 Miller filed a Habeas Corpus Petition pursuant to 28 U.S.C. 2241 in the United States District Court, For the Southern District of Illinois Case No. 3:23-CV-296-JPG<sup>(1)</sup> challenging the sentencing Courts Imposition of the Career Offender Status and unwarranted sentence enhancement that was applied to Millers sentence.
- 8) Miller argued he was impermissibly branded a Career Offender and improperly sentenced as a result of prior offenses that do not qualify as predicate offenses making him Legally Innocent of being a Career Offender

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(1) At the time of Petitioners sentencing through the time of the initial filing of Petitioners 28 U.S.C. 2241, it had been determined in this circuit and others that it is possible for a prisoner to challenge his Federal Sentence under section 2241, specifically, section 2255(e) contains a Savings Clause which authorizes a Federal prisoner to file a section 2241 where the remedy under 2255 is inadequate or ineffective to test the legality of his detention.



- 9) Miller asserted in his 2241 that the United States Probation Office and the Sentencing Court failed to properly analyze his prior state convictions pursuant to the Categorical Approach citing Taylor v United States, 495 U.S. 575 (1990).
- 10) Miller Presented Evidence in his 2241 that the Sentencing Court erred and assumed incorrectly during sentencing that the analysis outlined in Taylor v United States, concerning the Categorical Approach only applied to Burglary and ACCA Sentencing.
- 11) Miller argued in his 2241 that his Illinois drug conviction is overbroad and does not count as a predicate offense for enhancement purposes, because the Illinois Statute is overbroad and broader than the Federal Definition of cocaine including the Controlled Substance Act (CSA)
- 12) Miller also argued as a Secondary argument "Positional Isomers" listed in the Illinois Statute are not listed as being illegal, prohibited, or regulated under the Federal Law, Sentencing Guidelines, or the CSA and imposing punishment or penalty for a substance that the Federal Law does not prohibit or regulate is potentially violating the due process clause of the Constitution by the governments failure to provide fair notice of its illegality if it intends to inflict punishment for this substance.
- 13) Miller argued that the Illinois vehicular hijacking conviction does not count as a predicate offense for enhancement purposes. Miller relied on Borden v United States, 141 S. Ct. 1817 (2012). The Borden Court clarified and decided offenses with a mens rea of recklessness do not qualify as violent felonies as they do not require the active employment of force against another person.
- 14) Miller argued the Illinois Statute in 1995, did not include an explicit mens rea for any of its elements, Illinois Law provide that "if a statute does not prescribe a particular mental state, any mental state defined in section 4-4 [intent], 4-5 [knowledge], or [recklessness] is applicable. in other words if a statute is silent about a specific mens rea recklessness will suffice, and that mens rea must then attach to 'each element' of the statute.

15) The District Court for the Southern District of Illinois opined in its order that Millers sentence was based on the "Career Offender Enhancement", which placed Millers sentence at level Thirty-Two (32) ~~Category Six (6) 210-240 months, and 'had he not been a Career Offender -~~ presumably he would have been subject to a lower advisory Guideline Range".

16) On June 5th, 2023 The Southern District of Illinois denied Millers 28 U.S.C. 2241 without addressing any of the Claims raised in Millers Petition only opining that "Miller could have raised a Mathis Categorical Approach argument like the Successful arguments in Ruth and Borden in his 2255 Motion with respect to both his prior convictions... and because Miller had a reasonable opportunity to obtain a reliable Judicial determination of the fundamental legality of his conviction and sentence"... he cannot seek relief under 2241. Appendix B

17) Miller Filed a Notice of Appeal to the District Court on or around July 9th, 2023

18) On September 8th, 2023 Miller was ordered by the Seventh Circuit Court of Appeals to file a Position Statement explaining why it should not dismiss the appeal or summarily affirm the district courts denial of savings clause relief in light of Jones v Hendrix.

19) Miller filed a Position Statement explaining that the Retroactive application of Jones v hendrix violates the Ex Post Fact Clause of the Constitution.

20) On January 23rd 2024 The U.S Court of Appeals for the Seventh Circuit denied Millers Appeal after receiving the Position Statement in light of Jones v Hendrix which was decided after Millers 2241 was denied. Appendix A.

21) Miller filed a timely combined Petition for Panel Rehearing with Suggestion for Rehearing En banc on April 1st, 2024.

22) On April 29th, 2024 Millers Petition for Rehearing with Suggestion for Rehearing En banc was denied Appendix C

## II.

### REASONS FOR GRANTING THIS PETITION

Comes now the Petitioner Joseph Miller ("Miller") Pro-se, requesting that his claims be construed liberally pursuant to Haines v Kerner, 404 U.S. 519, 520 (1972).

This Honorable Court should Grant Petitioners request for Writ of Certiorari for the following reasons;

This Court should determine as a matter of first impression whether the preservation of the integrity of the "United States Constitution", the "Publics Perception of the Federal Judicial System", and "Reputation of this Court" can remain unaffected, un-disparaged, and in high-standing if it fails to resolve a Novel Claim and Question of Law that effects an in-determinate amount of individuals in Federal Prison as a result of un-resolved Statutory interpretation Claims involving innocence and this Courts failure to determine--

1) Whether the decision in Jones v Hendrix, 143 S. Ct. 1857 (2023) can be applied retroactively "rescinding habeas corpus review of Statutory Interpretation Claims" (that involve Statutory or Legal Innocence Claims), undermine Congress's intent of the Savings Clause and "violate the Ex Post Facto Clause of the Constitution" Article 1, Section 9, and 10 ? ["when this type of claim was cognizable in Federal Court prior to 1948 through the recodification and the crafting of 28 U.S.C. 2255 up until this Courts decision in Jones"]

2) Whether when Congress amended 28 U.S.C. 2255 by enacting AEDPA in 1996, and limiting Successive Petitions to only two (2) specific categories; Did Congress ["through the enactment of AEDPA"] cause 28 U.S.C. 2255 to become "in-commensurate" (un-equal) to the Traditional Habeas Corpus that it was crafted to replace, and be "identical in Scope", by limiting the claims that can be raised in a Second or Successive Petition, and by doing so "inadvertantly violated the Ex Post Facto Clause of the Constitution" by stripping away the right to challenge unlawful detention pursuant to a Statutory Innocence Claims, which were cognizable in Federal Court before the enactment of AEDPA and its limitations ? or "was the Savings Clause left in place to preserve rights cognizable in habeas and thereby cognizable in 28 U.S.C. 2255 "

~~The presumption and implication that the Ex Post Facto Clause of the Constitution has been infringed upon is a serious concern, and should not be disregarded as frivolous and irrelevant especially when the stakes are so high, when considering the deprivation of liberty, and the continued incarceration of legal innocents, after a Statutory Interpretation has been issued by this Court which establish the Statute of Conviction did not cover the conduct of conviction.~~

Since our country's inception, liberty has held a preeminent place in our pantheon of values, Our Founding Fathers took care to preserve it through a wealth of carefully crafted Constitutional Safeguards, Among them are the due process Clause and the Ex Post Facto Clause of the Constitution.

The Ex Post Facto Clause of the Constitution Art. 1, § 9, Cl. 3, "forbids the application of any new punitive measures to a crime already consummated". Lindsey v Washington, 301 U.S. 397, 401. (1937). see also Weaver v Graham, 450 U.S. 24-33 (1981). By including this prohibition in the constitution the Founding Fathers "aimed at [Preventing] laws that 'retroactively alter the definition of crimes or increase punishment' for criminal acts already consummated". California Dept. of Corr. v Morales, 514 U.S. 499, 504 (1995).

The decision in Jones v Hendrix, unlawfully strips away a convicted persons right to challenge unlawful detention pursuant to a Statutory interpretation that may prove Statutory and Legal innocence of the Statute of Conviction, this has a direct relationship to violations of Due Process, The Due Process Clause, and the Ex Post Facto Clause of the Constitution, unless a remedy is made available to resolve issues involving Statutory or Legal Innocence Claims and Unlawful Detention

When a decision of Statutory Interpretation is established by this court declaring that the Statute of Conviction did not cover specific conduct, and renders a convicted person innocent of the crime of conviction, but this same court subsequently enacts a law that strips from the convicted person the right to challenge the unlawful detention; This type of law can be termed an Ex Post Facto Law that negatively affects a persons right "not to be deprived of liberty without due process of law".

This Honorable Court should grant Petitioners request for Writ of Certiorari to determine whether the decision in Jones v Hendrix violates the Ex Post Facto Clause of the Constitution, and is disadvantageous to petitioner and other similarly situated prisoners by stripping away the only remedy and ("right") that was cognizable in Federal Court prior to that decision to challenge unlawful detention pursuant to a Statutory Interpretation "which involves Statutory or Legal innocence" ? [This lack of remedy lengthens the period that an in-determinate amount of individuals in the petitioners position must spend in prison regardless of being innocent of the crime]. Lindsey v Graham, supra at 401-402

AND

This Honorable Court should determine Whether when Congress amended 28 U.S.C. 2255 by enacting AEDPA in 1996, and limiting Successive Petitions to only two (2) specific categories "Precluding all others including legal or Statutory Innocence Claims"; Did Congress ["through the enactment of AEDPA"] Cause 28 U.S.C. 2255 to become "incommensurate" to the Traditional Habeas Corpus that it was crafted to replace and be "Identical in Scope", by limiting the claims that can be raised...and thereby "inadvertantly violating the Ex Post Facto Clause of the Constitution", by stripping away the right to challenge unlawful detention pursuant to Statutory Innocence Claims, that was cognizable in Federal Court before the enactment of AEDPA and its limitations ? Or was the savings Clause left in place to preserve rights that were cognizable in Habeas ?

This Honorable Court should grant Petitioners request for Writ of Certiorari to determine whether due process is violated when "Federal Court" imposes Criminal Punishment or Penalty pursuant to a Substance that the Federal Statutes, and CSA (Controlled Substance Act) fail to regulate, or Prohibit, and fail to provide fair notice of its Illegality under Federal Law ?

Under the Void for Vagueness Doctrine, a penal statute must "define a Criminal Offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement". Kolender v Lawson 461 U.S. 352, 357 (1993).

The District Court and the Appellate Court failed to address and adjudicate this due process claim and question of law before denying petitioners 2241, and this failure creates the risk of an unnecessary deprivation of liberty, and particularly undermines the fairness, integrity, and public reputation of Judicial proceedings. United States v Atkinson, 279 U.S. 157 (1939)

This Honorable Court should grant Petitioners request for Writ of Certiorari and determine whether due process is violated when "Federal Court" imposes Criminal Punishment or Penalty pursuant to a Substance that the Federal Statutes, and CSA Fail to regulate, or prohibit, and fails to provide fair notice of its illegality under Federal Law ?

#### QUESTION

##### I.

As a matter of first impression this Honorable Court should determine whether the decision in Jones v Hendrix, 143 S. Ct. 1857 "rescinding Habeas Corpus review of Statutory Interpretation Claims" (that involve Statutory or Legal Innocence Claims), undermine Congress's intent of the Savings Clause, and "violate the Ex Posto Facto Clause of the Constitution" Article 1, Section 9, and 10 by divesting a convicted person of a prior cognizable right to challenge unlawful detention based on a legal or Statutory Innocence Claim and due process of Law ?

Comes now the Petitioner Joseph Miller (Miller from this point forward) Pro-se requesting that his claims be construed liberally pursuant to Haines v Kerner, 404 U.S. 519, 520 (1972).

Section 28 U.S.C. 2255 is an outgrowth of the historic Habeas Corpus powers of the Federal Courts as applied to the case of Federal Prisoners. The First Judiciary Act authorized the Federal Courts "to grant Writs of Habeas Corpus for the purpose of an inquiry into the cause of committment," with a proviso that such writs could "extend to Prisoners in gaol<sup>(1)</sup> only where they [were] in custody

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1) gaol- jail-, see jail, gaol delivery, an english commission for a judge to try prisoners out of jail; a place of confinement of prisoners often a place where city or county prisoners are confined while waiting trial, or as a punishment for misdemeanors.

under or by colour of the authority of the United States, or [were] committed for trial before some court of the same, or [were] necessary to be brought into court to testify. Act of September 24th, 1789, § 14, 1 Stat. 82.

In 1867, Congress expanded the Federal Courts habeas powers to cover "all cases where any person may be restrained of his or her liberty in violations of the Constitution, or of any treaty or law of the United States," Ch. 28, 14 Stat. 385. For most of our Nations history, a federal prisoner "claiming the right to be released," §2255(a), in a collateral attack on his sentence would have relied on the history of these Acts and their successors.

That changed with the 1948 recodification and reorganization of the Judiciary Code, (See generally 62 Stat. 869). In enacting the present Title 28 of the United States Code, Congress recodified the Federal Courts pre-existing habeas authority in §2241 and 2243, which, confer the power to grant the writ and direct the Issuing Court to "dispose of the matter as law and justice require." id., at 964-965. At the same time, Congress created § 2255 as a separate remedial vehicle specifically designed for federal prisoners collateral attack on their sentences.

In 1948 Congress enacted § 2255 as a remedial vehicle that Federal Prisoners could collaterally attack their sentences by motion in the Sentencing Court, rather than by a petition for Writ of Habeas Corpus under § 2241 in the district of confinement. The change to 28 U.S.C. § 2255 was to address the "administrative problems" created by district courts collaterally reviewing one another's proceedings without having access to needed evidence<sup>(2)</sup> and "aggravated" by the high-concentration of federal prisoners in certain judicial districts that therefore faced "an inordinate number of habeas corpus actions".

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(2) It should be noted Technology was not what it is today, there was no e-mail, Fax, or Computer system, § 2255 was enacted "Eight Years before President Eisenhower signed legislation funding the interstate highway system". Transporting records and witness's to a prisoners district of confinement was costly and timely and it was only logical to have prisoners collaterally attack their sentences by motion in the sentencing court where records and witness's are more accessible.

The "Sole Purpose" of this Innovation, as the Court acknowledged a few years later, "was to minimize the difficulties encountered in habeas Corpus hearings by affording the same rights in another and more convenient forum." *United States v Hayman*, 342 U.S. 205, 219 (1952); See also *Davis v United States*, 417 U.S. 333, 343 (1974). ("[Section] 2255 was intended to afford federal prisoners a remedy identical in scope to federal habeas corpus"); accord, *United States v Addonizio*, 442 U.S. 178, 185 (1979); *Hill v United States*, 368 U.S. 424, 427 (1962).

To Make this change effective, congress generally barred federal prisoners authorized to file a § 2255 motion from filing a petition under 2241. Section 2255 solved those problems by rerouting federal prisoners collateral attacks on their sentences to the court that sentenced them instead of the district court of their confinement. However, in a provision of 2255(e) now known as the Savings Clause Congress preserved access to § 2241 in cases where "the remedy by motion is inadequate or ineffective to test the legality of a prisoners detention.

Traditionally, Courts have treated the Savings Clause as covering unusual circumstances in which it is impossible or impracticable for a prisoner to seek relief from the sentencing court. The Savings Clause might also apply when "it is not practicable for the prisoner to have his motion determined in the Trial Court because of his inability to be present at the hearing, or for other reasons". *Hayman*, 342 U.S., at 215, n.23

As This Court explained [in a prior ruling] if 2255 bars a claim that was cognizable at habeas "revealing that 28 U.S.C. § 2255 is not commensurate or equal to the traditional habeas", the Savings Clause § 2255(e) "should by reason and/or by logical inference 'Kick-in' and the prisoner may proceed in habeas Corpus" (2241). *Sanders v United States*, 373 U.S. 1, 14-15 (1963); See also *United States v Hayman*, 342 U.S. 205, 223 (1952)..

This Court does not dispute Congress enacted 2255 "to afford [ ] a remedy identical in scope to Federal Habeas Corpus". *Davis v United States*, 417 U.S. 333, 342 (1974) to ensure that equivalence, Congress built in the Savings Clause, allowing recourse to habeas when



"remedy by motion" under § 2255 is "inadequate or ineffective" compared to the remedy it replaced; In order to avoid making 2255 "in-commensurate" or unequal to the traditional habeas corpus, The Savings Clause was necessary to preserve the same rights cognizable in habeas or it could not and would not be identical in Scope.

The decision in Jones v Hendrix "rescinding habeas corpus review of Statutory Interpretation Claims", that involve Statutory or Legal Innocence Claims clearly undermines Congress's intent of the Savings Clause, as well as the aim of providing a remedy identical in scope to the traditional habeas and affording prisoners the same rights in another and more convenient forum. The lack of remedy and disability to challenge unlawful detention raises due process concerns, and violates the <sup>3</sup>Ex Post Facto Clause of the Constitution, "by stripping a prisoner of a prior right that was cognizable under habeas", ("the right to challenge unlawful detention").

The decision in Jones v Hendrix unveils another way that § 2255 can be inadequate or ineffective, when this newly created procedure strips a prisoner of the right to challenge unlawful detention pursuant to a Statutory Interpretation, "a Claim that was previously cognizable in habeas". This is an inadequacy concerning the operation of § 2255 from Congress's perspective, because the "sole purpose" of the transition to § 2255 "was to minimize the difficulties encountered in habeas corpus hearings" and "still affording the same rights in another and more convenient forum". Hayman v United States, 342 U.S. 205, 219 (1952); see also Davis v United States, 417 U.S. 333, 343 (1974).

It appears from the Historic context in which § 2255 was enacted that the legislation was intended to provide in the sentencing court a remedy exactly commensurate with that which had previously been available by habeas corpus. When a new § 2255 procedure actually operates to foreclose a Post-conviction claim that a prisoner could have brought previously in a habeas petition, The § 2255 process is patently inadequate on its face to accomplish Congress's aim of allowing prisoners to test the legality of their detention under 2255 to the same extent as they could have under habeas that 2255 replaced.

(3) Blacks Law Dictionary 10th Edition defines

Ex Post Facto- Done or made after the fact; having retroactive force or effect: Ex Post Facto Law [Constitutional Law] A statute that criminalizes an action and simultaneously provides for punishment for those who took the action before it became a crime; a law that impermissibly applies retroactively, especially in a way that negatively affects a persons rights...or increasing punishment for past conduct

The retroactive application of Jones rescinding habeas corpus review of Statutory Interpretation Claims that involve Statutory or legal Innocence Claims,- "Without providing a 'remedy or relief' for inadvertant unlawful detention" which may be a subsequent consequence of this decision, is Punitive in Nature and without "Legislative Sanction, Authority or Directive". This provision appears in Article I, the article of the Constitution that lays out the powers and privileges of Congress. "All Legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives." See U.S. Const. Art. I, § I. Article I is about The Congress of the United States, Not state legislators, or the Supreme Court.

A search of 28 U.S.C. 2255 and the AEDPA Amendments in 1996 show Congress did not intend to close the Courthouse doors to a prisoner claiming Statutory or Legal Innocence, nor did Congress Legislate against the Savings Clause including or covering Statutory Innocence Claims. However, Congress did legislate and aim to enact § 2255 to replace the traditional habeas corpus and afford prisoners a remedy identical in Scope to that which was being replaced.

Congress re-enacted the Savings Clause using identical language when it passed AEDPA. (§2255(e)); Because the Savings Clause operated in 1948 to "save" from extinguishment habeas claims that were cognizable before the enactment of §2255, the same was true when Congress revised those procedures in the 1996 Amendments, by keeping the Savings Clause intact and untouched to ensure that §2255 or the AEDPA Amendments did not, through inapt, or inept language substantially alter the scope of available postconviction relief for federal prisoners, and this is exactly what has happened as a result of the Jones decision.

The Jones v Hendrix decision usurped Congress of its Legislative powers and offends the aim of Congress enacting a remedy (2255) that is Commensurate with the traditional habeas, and identical in scope, by "stripping prisoners of the right to challenge unlawful detention" a claim that was cognizable in habeas, and this "Violates the Ex Post Facto Clause of the Constitution". This Claim was cognizable before the enactment of 2255 in 1948, and this Court made Crystal Clear in

Davis v United States, 417 U.S. 333, 343-347 (1974) that Statutory Innocence Claims are legally cognizable in a § 2255 motion. Congress ensured that the enactment of Section § 2255 did not disadvantage prisoners as compared to the claims that were cognizable in habeas. However, The decision in Jones v Hendrix offends the legislation of Congress and disadvantages an in-determinate amount of individuals in Federal prison by Stripping Prisoners of the right to challenge unlawful detention, without providing any remedy or relief for Statutory Innocence Claims and this violates the Ex Post Facto Clause

The retroactive application of Jones v Hendrix creates a sufficient risk of Increasing the Measure of Punishment, by lengthening the period that an in-determinate amount of individuals will spend in prison regardless of being innocent of the crime in comparison to another prisoner who may have committed the same crime, after a Statutory Interpretation has been issued by this court determining that the Statute of Conviction did not cover specific conduct

The decision in Jones v Hendrix Stripping prisoners of the right to challenge unlawful detention "who were sentenced prior to the Statutory Interpretation" as well as the "New Law or New 2255 Procedure" announced in Jones violates the Ex Post Facto Clause of the United States Constitution By restricting access to relief that at one time was available pursuant to legislation of Congress, and by imposing additional burdens on prisoners that did not exist at the time of the committed offense, or the Sentencing of the Offense, and this violates the Ex Post Facto Clause of the Constitution.

Jones v Hendrix creates a disability that reaches back and <sup>4</sup>Proscribes Prohibits, and inhibits a prisoner from exercising a right to petition the Courts for relief as a result of his Change in Status, by stripping the prisoner of the Right he once possessed. The risk of an unnecessary deprivation of liberty particularly undermines the Fairness, Integrity, and Public Reputation of Judicial Proceedings. United States v Atkinson, 297 U.S. 157 (1939).

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(4) Blacks Law Dictionary 10th Edition defines  
Proscribe- to outlaw, or prohibit, to forbid officially  
Prohibit-to forbid by law- to prevent, preclude or severely hinder  
Inhibit-Implies the imposition of restraints, or restrictions that amount to prohibitions not only by authority but also by the exigencies of the time or situation

Retroactive application of Law is said to be disfavored and there are multiple prohibitions of it. see *Landgraf v USI Film Prod.*, 511 U.S. 244 (1994). The Ex Post Facto Clause prohibits laws that impose punishment for acts not punishable when committed, or that impose greater disadvantages upon the defender than those imposed when the act was committed. *Weaver v Graham*, 450 U.S. 24, 28-30 (1981). The Due Process Clause "also protects the interest of fair notice and repose that may be compromised by retroactive legislation", *Landgraf*, 511 U.S. 266-270. Retroactivity is present if a statute would impair rights a party possessed when he acted, increase a party's liability for past conduct, or impose new duties with respect to transactions already completed . *id.* at 280.

It is therefore not surprising that the anti-retroactivity principle finds expression in several provisions of our Constitution. The Ex Post Facto Clause flatly prohibits retroactive application of penal legislation. As Justice Marshall observed in his opinion for the Court in *Weaver v Graham*, the Ex Post Facto Clause not only ensures that individuals have "fair warning" about the effect of Criminal Statutes, but also "restricts governmental powers by restraining arbitrary and potentially vindictive legislative." *id.*, at 28-29

While Statutory retroactivity has long been disfavored, deciding when a statute operates "retroactively" is not always a simple mechanical task. Sitting on the Circuit, Justice Story, offered an influential definition in "Society for Propagation of the Gospel v Wheeler", 22 F Cas 756 (No 13,156)(CC NH 1814), a case construing a provision of the New Hampshire Constitution that broadly prohibits "retrospective" laws both criminal and civil. Justice Story first rejected the notion that the provision bars only retroactive legislation, ie., "statutes... enacted to take effect from a time anterior to their passage." *Id.*, 767. Such a construction, he concluded, would be "utterly subversive of all the objects" of the Prohibition. Instead, the ban on retrospective legislation embraced "all statutes, which, though operating only from their passage, affect vested rights and past transactions." Justice Story elaborated "every statute, which takes away or impairs vested rights acquired under existing laws, or creates a new obligation, imposes a new duty, or attaches a new disability, in respect to

transactions or considerations already past, must be deemed retrospective..." Ibid. (citing *Calder v Bull*, 3 Dall 386, 1L Ed 648 (1798), and *Dash v Van Kleeck*, 7 Johns. \*477 (NY 1811)).

A Statute does not operate "retrospectively" merely because it is applied in a case arising from conduct antedating or before the statutes enactment, see *Republic Nat. Bank of Miami v United States*, 506 U.S. 80; 100 (1992)(Thomas, J., concurring in part and concurring in Judgment), or upsets expectations based in prior law. Rather, "the court must ask 'Whether the new provision attaches new legal consequences to events completed before its enactment.' The conclusion that a particular rule operates "retroactively" comes at the end of a process of judgment concerning the nature and extent of the change in the law and the degree of connection between the operation of the new rule and a relevant past event. Since the early days of this Court, it has declined to give retroactive effect to statutes burdening Private rights unless Congress had made clear its intent.

The decision in *Jones v Hendrix* rescinding habeas corpus review of Statutory Interpretation Claims that involve Statutory or legal Innocence Claims, depriving prisoners of the right to challenge unlawful detention "creates and imposes a new disability and new legal consequences related to past events" that impair rights possessed before its enactment and this infringes upon and "may violate the Due Process Clause, and the Ex Post Facto Clause of the Constitution."

This Court should determine whether the decision in *Jones v Hendrix*. "rescinding Habeas corpus review of Statutory Interpretation Claims" (that involve Statutory or Legal Innocence Claims), undermine Congress's intent of the Savings Clause and "violate the Ex Post Facto Clause of the Constitution"? This is a "Novel Claim and Question of Law", and should not be disregarded as frivolous and irrelevant when the stakes are so high. This Court should consider the unlawful deprivation of liberty, and continued incarceration of legal innocents, after a Statutory Interpretation has been issued by this Court clarifying the Statute of Conviction did not cover the conduct.

The decision in Jones v Hendrix, attatches new legal consequences to an act completed before its enactment and impairs rights acquired, and cognizable under the pre-existing law. (habeas) This violates the Ex Post Facto Clause of the Constitution by depriving an in-determinate amount of prisoners of the right to challenge unlawful detention. The decision in Jones will most surely lengthen the time that a prisoner must spend in prison regardless of being innocent of the crime.

Pursuant to the Jones v Hendrix decision, an "in-determinate amount of individuals will continue to be punished for a crime that was never legally committed", and thereby being deprived of the most basics of liberty, [Freedom] and due process of law as a consequence of having "No Right" to challenge unlawful detention". While Simultaneously this Court being aware of this injustice, and deprivation of liberty of its fellow citizens "turns a blind-eye to this fact" when it fails to provide a process for the restoration of liberty, or a right to a fair hearing before a tribunal with the power to decide a case. (often called due process).

This type of action raises another question of whether a Miscarriage of Justice has occurred, when the Court is guilty of punishing a person who is innocent of a crime, then refuses to correct its own sentencing error once it becomes aware of the error? There is no doubt that "Conviction and Punishment ...for an act that the law does not make criminal" "inherently results in a complete miscarriage of justice". Bousley v United States, 523 U.S. 614, 623-624 (1998).

This Court should decide to restore the prisoners right to challenge unlawful detention pursuant to a Statutory Interpretation Claim that may involve a Statutory or Legal Innocence, as this Claim was cognizable in habeas. This should be a right in any civilized country, "The right not to be unlawfully detained without due process of law, and a remedy accessible to undue an injustice or error of law".

Failure to restore the rights of prisoners to petition the courts for relief pursuant to unlawful detention and deprivation of liberty, "a claim that was cognizable in habeas" violates the Ex Post Facto Clause of the Constitution.

## RELIEF SOUGHT

This Court should determine that "28 U.S.C. 2255" does allow prisoners with Statutory Interpretation Claims, that involve Statutory or Legal Innocence to Petition the "Sentencing Court" for relief through a Second or Successive Petition "only" under 2255(e)'s Savings Clause, and "only" by permission of the Appellate Court after it determines the petitioners claim does have merit will Petitioner be allowed the petition the Sentencing Court for relief

"2255 does allow for unlawful detention claims to be cognizable in Federal Court". This Court made crystal clear in Davis v United States, 417 U.S. 333, 343-347 (1974) that Statutory Innocence Claims are cognizable in a 2255 Motion.

Allowing prisoners with unlawful detention claims based on Statutory or Legal Innocence Claims to petition the "Sentencing Court" for relief "after" Petitioning the Appellate Court for permission to file a Second or Successive petition based on a Statutory Interpretation that was issued after petitioners original 2255 was filed will allow the Savings Clause to perform its intended purpose, which was to save from extinguishment [ ] claims that were cognizable before the enactment of 28 U.S.C. 2255.

This shift to the Sentencing Court will allow 28 U.S.C. 2255 to be commensurate with the traditional habeas it was crafted to replace and be identical in scope, This shift will also provide prisoners who are without a remedy to obtain relief as a result of being innocent of their crime of conviction by petitioning the Appellate, Court, and the Sentencing Court for relief instead of the court in the district of their confinement. (28 U.S.C. 2241)

Courts are concerned with the finality of judgments and judicial expediency, however this shift to the Sentencing Court pursuant to Statutory or Legal Innocence Claims will not open the floodgates to collateral attack on sentences. Those concerns are real but such concerns should not take precedence over justice. and, justice requires resorting to the Savings Clause to correct fundamental sentencing errors.

## QUESTION

### II.

As a Matter of First impression this Honorable Court should determine ; [W]hen Congress amended 28 U.S.C. 2255 by enacting AEDPA in 1996, and limiting Second Successive Petitions to only two (2) specific categories. "Whether Congress ['through the enactment of AEDPA'] caused 28 U.S.C. 2255 to become in-commensurate to the Traditional Habeas Corpus that it was crafted to replace, and be identical in Scope," "by limiting the claims that can be raised in a Second or Successive Petition", -and by doing so "inadvertantly violated the Ex Post Facto Clause of the Constitution by restricting and inhibiting a right that was cognizable before the enactment of AEDPA ? - or "Was the [ ] Savings Clause left in place to preserve rights cognizable in habeas, and thereby cognizable in 2255 ?

Comes now the Petitioner Joseph Miller Pro-se requesting that his claims be construed liberally pursuant to Haines v Kerner, 404 U.S. 519, 520 (1972)

The fairness, integrity, and legitimacy of the judicial system is seriously undermined-if and not permanently damaged- when courts deny federal prisoners the right to pursue meritorious challenges to unlawful detention. Therefore unless and until this Court resolves the issue of "Whether divesting a prisoner of the right to challenge unlawful detention 'violates the Ex Post Facto Clause'? in favor of allowing unlawful detention claims based on Statutory or Legal Innocence Claims to proceed. ["in the Sentencing Court"] or ["in the district of confinement"] We must ask ourselves : What reasonable citizen wouldn't bear a diminished view of the judicial process and its integrity if courts refused to correct obvious errors of its own devise that threaten to require individuals to linger longer in federal prison than the law demands ?  
Rosales-Mireles v United States, 138 S. Ct. 1897, 1908 (2018)

The following rules of Statutory Construction and Interpretation apply to this Question and Argument

- 1) The law should be given its plain meaning wherever possible.
- 2) Statutes must be interpreted so as to be entirely harmonious with all laws as a whole. The pursuit of this harmony is often the best method of determining the meaning of specific words or provisions which might otherwise appear ambiguous.



It is ..true that statutory construction "is a holistic endeavor" and that the meaning of a provision is "clarified by the remainder of the statutory scheme..[when] only one of the permissible meanings produces a substantive effect that is compatible with the rest of the law." U.S. v Cleveland Indians Baseball Co., 532 U.S. 200, 218-220 (2001).

3) Every word within a Statute is there for a purpose and should be given its due significance.

This fact only underscores the duty to refrain from reading a phrase into the statute when Congress has left it out. "'[W]here Congress includes particular language in one section of a statute but omits it in another..., it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." Russello v United States, 464 U.S. 16, 23 (1983).

4) All laws are to be interpreted consistent with the legislative intent for which they were originally enacted...The passage of no amount of time can change the original legislative intent of the law.

7) If a word is not Statutorily defined, then the Courts are bound to start with the common law meaning of the word. "Absent contrary direction from Congress, we begin our interpretation of Statutory language with the general presumption that a statutory term has its common law meaning. Morissette v United States, 342 U.S. 246, 253 (1952)

8) The purpose for defining a word within a statute is so that its ordinary (dictionary) meaning is not implied or assumed...

12) Expressum Facit Cessare Tacitum Rule; What is expressed makes what is silent cease, ie, where we find an express declaration we should not resort to implication. [The Law Dictionary, Anderson Publishing 2002]

15) Judges may not extend the meaning of words used within a statute, but must resort ONLY to the meaning clearly indicated in the Statute itself. That means they may not imply or infer the common definitions of a term IN ADDITION to the Statutory definition, but must rely only on the things clearly included in the statute itself and nothing else

Congress amended section 2244 several times, including in 1948. The 1948 recodification added 28 U.S.C. 2255 to the Statutory Scheme which provided a new motion by which federal prisoners could seek post-conviction relief, separate and apart from an application for a writ of habeas corpus under section 2241. The driving or impelling force for section 2255 was to address administrative problems when federal courts located near prisons were flooded by petitions from prisoners who until that point, were required by section 2241 to apply for writs in the district of their confinement. *United States v Hayman* 342 U.S. 205, 210-213 (1952)

Section 2255 "replaced traditional habeas corpus for federal prisoners with a process that allowed the prisoner to file a motion with the sentencing Court". *Boumediene v Bush*, 553 U.S. 723, 774 (2008)

The 1948 amendments also gave birth to the so-called "savings Clause" found in Section 2255(e). This section provides that a federal prisoner may not apply for the traditional writ of habeas corpus under 2241 "unless the remedy under 2255 is "inadequate or ineffective to test the "legality of [ ] detention".(28 U.S.C. 2255(e))

The next significant statutory habeas amendments occurred with the 1996 passage of the Antiterrorism and Effective Death Penalty Act (AEDPA). Congress accomplished two things. First, AEDPA imposed new restrictions on federal prisoners ability to file multiple 2255 motions challenging their "Convictions and Sentences", those restrictions "statutorily codified the abuse of writ doctrine", a common law doctrine designed to prevent the abuse of habeas corpus. In Section 2255(h) Congress expressly permitted federal prisoners to file successive petitions to challenge the "legality of Convictions or Sentences"; Through new evidence of factual innocence h(1), or through a new, retroactive rule of Constitutional law h(2).

Second Congress, re-codified the Savings Clause as a new Statutory subsection in AEDPA, "leaving open(some-what of) a safety valve for prisoners to test the "legality of [their] detention" where section 2255, as revised, proved inadequate or ineffective- including where they had been denied...relief on an earlier motion. See Brief for Amicus Curiae the Constitution project in Support for petitioner at 4, *McGarthan v Collins*, 138 S. Ct. 502 (2017)(No.17-85)(quoting 2255(e).

In other words, Congress left intact the habeas Savings Clause in Section 2255(e) as a residual source of authority for federal post-conviction relief, which "entitles a prisoner to a meaningful opportunity to demonstrate that he is being held pursuant to an erroneous application or interpretation of relevant law. Boudemienne at 779. Therefore Congress intended for section 2255(e) to continue to preserve the core function of habeas review, "which is to provide prisoners a meaningful opportunity to challenge the legality of detention". Trevino v Thaler, 569 U.S. 413, 421 (2013)

In all cases of Statutory Construction, the starting point to any analysis is to examine the language of the statute for a "plain and unambiguous meaning with regard to the particular dispute in the case". Barnhart v Sigmon Coal Co., 534 U.S. 438, 450 (2002)

Whether the Savings Clause allows for consideration of Second or Successive Claims of at least some sentencing claims is determined by the examination of the Statutory language. The Statutory language of the Savings Clause in 2255(e) allows for a prisoner to seek a writ of habeas Corpus (2241).. when the "remedy" provided by 2255 proves to be inadequate or ineffective to test the "legality of detention".

The Jones v Hendrix decision concluded that Sentencing Claims fall outside of the habeas Savings Clause by contending that "remedy" refers to the process of challenging the prisoners conviction, and "not the outcome of the process", in other words "as long as a federal prisoner had the opportunity to bring an argument it does not matter if Supreme Court or Circuit precedent foreclosed the argument the remedy under 2255 is adequate and effective."

This interpretation is inconsistent with its prior Supreme Court precedent . This Court made clear that the correct inquiry is whether the process afforded by section 2255 can fairly be described as providing "a meaningful opportunity" for relief. Boumediene at 779 ("We do consider it uncontroversial, however that the privilege of habeas corpus entitles a prisoner to a meaningful opportunity to demonstrate that he is being held pursuant to 'the erroneous application or interpretation of relevant law.')(quoting Immigration & Naturalization Serv. v St. Cyr, 533 U.S. 289, 302 (2001)).

This Court has stated that a "theoretically available procedural alternative" or "theoretical opportunity", cannot and does not offer defendants a "meaningful opportunity" to test the "legality of their detention". Trevino v Thaler, 568 U.S. 413, 427-428 (2013)

The Supreme Court has used "remedy" to refer to the result a plaintiff obtained by filing suit not just the process... As a verb "remedy" means to get something right, as a noun it can mean the fix for that something (e.g., the result). Professor Leah M. Litman, Legal Innocence and Federal Habeas, 104 Va. L. Rev. 417, 437 (2018) n.6. at 74

Congress's use of the terms "legality" and "detention" in 2255(e) is very important to the scope of the Savings Clause. The word "detention" by definition includes challenges to conviction, but it equally applies to challenges to a sentence<sup>5</sup>. "Detention" is also commonly defined as keeping in custody<sup>6</sup>. This Court has previously stated, detention implies imprisonment. Zadvydas v Davis, 533 U.S. 678, 690 (2001) ("Freedom from imprisonment") [is freedom] from government custody, detention, or other forms of physical restraint. "Legality" means the quality, state, or condition of being allowed by law<sup>7</sup>, the plain language of this phrase appears to invite claims where the prisoners success on his claim could result in a reduced period of detention.

The Savings Clause makes no specific reference to "Convictions or Sentences" as it does in Section 2255(h), but instead makes relief available when 2255 remedy is inadequate or ineffective to test the "Legality of Detention". Congress made clear when it legislated the text of (2255(e)) the Savings Clause that it focused on the legality of a prisoners detention, and does not limit the scope to testing the legality of the Criminal Conviction or Sentence. The language in these two distinct sections of 2255 are clearly different and this is to be presumed that Congress's choice of different words are intentional. Rules of Statutory Construction and Interpretation Rule Three (3).

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(5) Detention- Blacks Law Dictionary (10th Edition) The act or the instance of holding a person in custody or confinement..compulsory delay

(6) Detention- Websters Third New International Dictionary of the English Language (1966) (defining "detention" as "a holding in custody

(7) Legality-(Blacks Law Dictionary (10th Edition) The quality, state, or condition of being allowed by law.

This interpretation finds support in section 2255's structure. Other provisions of Section 2255 impose a Conviction-only limitation, high-lighting that no implicit limitation was intended in 2255(e). "Where Congress includes particular language in one section of a statute but omits it in another section of the same act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion". *Dean v United States*, 556 U.S. 568, 573 (2009)(quoting *Russello v United States*, 464 U.S. 16, 23 (1983)).

In Section 2255(h), Congress provided an avenue for a Successive Collateral attack based on newly discovered evidence sufficient to establish " that no reasonable fact-finder would have found the movant guilty of the offense". 2255(h)(1).

If Congress had intended to limit the Savings Clause relief to claims challenging only the offense, or conviction, rather than the sentence, it could have easily done so by simply using the word "Conviction" or "Offense" in Section 2255(e)- just as it did in Section 2255(h)(1) instead of "detention". However it did not and it is accepted that when Congress uses certain words in one part of a statute, but omits them in another, this Court should presume that this different draftmanship was deliberate. There should be no dispute that "detention" includes a "Sentence" and that being able to test the "legality of detention" is broader than just being able to test the "legality of the offense or conviction".

Pursuant to the *Jones v Hendrix* decision, as long as the prisoner had a theoretical opportunity to raise his claim in the original 2255, even if there was existing Supreme Court or Circuit Court precedent that rendered the claim Futile or Frivolous the Section 2255 proceeding is deemed adequate and effective to test the legality of the detention. According to *Jones* the Savings Clause is limited to claims challenging the "execution of a sentence," such as "the deprivation of good-time credits or parole determinations". This reasoning clearly means that unless a prisoner can meet one of the two (2) conditions under 2255(h) he is just "out of luck" because the Statutory Interpretation declaring his innocence to the crime of conviction means nothing because the prisoner will still be punished for a crime that was not legally committed.

This type of reasoning and action raises another question regarding the fairness and integrity of the Court and whether a Miscarriage of Justice is occurred, when the court is guilty of punishing a person who is innocent of the crime, then refuses to correct its own Sentencing Error once it becomes aware of the error ? There is no doubt that "Conviction and Punishment". for an act that the law does not make Criminal""inherently results in a complete miscarriage of justice". United States v Bousley, 523 U.S. 614, 623-624 (1998)

The decision in Jones v Hendrix has usurped Congress of its legislative Power and Intent when it enacted a remedy (2255) that is "Commensurate with the traditional habeas and identical in Scope". United States v Hayman, 342 U.S. 205, 219 (1952); Davis v United States, 417 U.S. 333, 343 (1974).

The decision in Jones has also stripped the Savings Clause of any independent meaning by merging and engrafting 2255(h)'s requirements onto it. The Jones decision is guilty of violating the Ex Post Facto Clause of the Constitution by "stripping prisoners of the right to to challenge unlawful detention". This is a claim that was cognizable in habeas, and when Congress re-enacted the Savings Clause using the identical language when it passed AEDPA in 1996, The original intent of Congress or the Savings Clause did not Change. The Savings Clause operated in 1948 to "save from extinguishment habeas claims that were cognizable before the enactment of § 2255". This means the Same was true when Congress revised those procedures in 1996. This reasoning coincides with rule four (4), of the Statutory Construction and Interpretation; ["All laws are to be interpreted consistent with the legislative intent for which they were originally enacted..The passage of no amount of time can change the original legislative intent of the law"]. This Court acknowledged this fact and made crystal clear that Statutory Innocence Claims are cognizable in a § 2255 Motion. United States v Davis, 417 U.S. 333, 343-347 (1974).

The Jones decision has altered the sole purpose and intent of Congress when it enacted 28 U.S.C. § 2255, which was to "Minimize the difficulties encountered in habeas corpus hearings by affording the same rights in another more convenient forum" and be identical in Scope to habeas. Davis v United States. at 343:

id. at 344 ("Nowhere in the history of 2255 do we find any purpose to impinge upon prisoners' rights of collateral attack on their conviction"); *Hill v United States*, 368 U.S. 424, 427 (1962) ("It conclusively appears from the historic context in which § 2255 was enacted that the legislation was intended simply to provide the sentencing court a remedy exactly commensurate with that which had been previously available by habeas corpus in the court of the district where the prisoner was confined").

The Ex Post Facto Clause of the Constitution Article 1, § 9 Cl. 3 "forbids the application of any new punitive measures to a crime already consummated". *Lindsey v Washington*, 301 U.S. 397, 401 (1937); *Weaver v Graham*, 450 U.S. 24 (1981). ("For a criminal or penal law to be Ex Post Facto, it must be retrospective, that is, it must apply to events occurring before its enactment, and it must disadvantage the offender affected by it"). quoting *Lindsey* at 401:

The Jones decision is disadvantageous to an in-determinate number of individuals in Federal prison as a result of stripping prisoners of the right to challenge unlawful detention pursuant to a Statutory Interpretation that proves [ ] innocent of the crime to which punishment has been issued. This type of claim was cognizable in habeas, through the enactment of 2255 in 1948 up until the Jones decision.

The Jones decision unfortunately observes that Congress's intent when it enacted AEDPA in 1996, and limited Successive Petitions to Two (2) specific conditions established in 2255(h)(1), which relies on newly discovered evidence, and 2255(h)(2), which relies on a new rule of Constitutional Law, and this precludes all other claims; and 2255(e), only provides relief for claims challenging the "execution of a sentence" such as "the deprivation of good time credits or parole determinations". This theory is inconsistent with the aim of Congress when it crafted § 2255 as being a remedy that is commensurate or equal to the original habeas that it was enacted to replace, and be identical in scope.

The Jones decision hinges on the rationale and reasoning that when Congress amended 2255 in 1996 pursuant to the enactment of AEDPA, and limited the claims that can be raised in a Second and Successive Petition, "Congress changed its legislative intent and sole purpose for creating Section 2255"- which was to "minimize the difficulties encountered in habeas corpus hearings, and affording the same rights in another more convenient forum". United States v Hayman at 219. Section 2255 was intended to afford federal prisoners a remedy identical in scope to federal habeas corpus. United States v Davis, 417 U.S. 333,343 (1974).

The Jones decision hints and infers that "the right to challenge unlawful detention based on a Statutory or Legal Innocence Claim was dissolved by, and when Congress enacted 2255(h)(1) and (h)(2), and was silent on unlawful detention claims based on Statutory Interpretations being cognizable under the Savings Clause". This type of reasoning implies that "Congress is responsible for violating the Ex Post Facto Clause of the Constitution" by stripping prisoners of the right to challenge unlawful detention based on a new Statutory Interpretation of law, and foreclosing a claim that was cognizable under the traditional habeas that 2255 replaced.

The Question then is "Whether the intent of Congress changed when it enacted AEDPA in 1996- from its original intent" when it enacted 2255 as a remedial vehicle that "Federal Prisoners could collaterally attack their sentences to the same extent as they could under habeas in 1948"? ["The Petitioner does not believe Congress's intent changed]

This question is answered by the Clear Rules of "Statutory interpretation"

Rule 4) All laws are to be interpreted consistent with the legislative intent for which they were originally enacted, as revealed in the Congressional record prior to the passage...

Rule 12) Expressum Facit Cessare Tacitum Rule: What is expressed makes what is silent cease, i.e., where we find an express declaration we should not resort to implication. [The Law Dictionary, Anderson Publishing 2002]



Rule 15) Judges may not extend the meaning of words used within a statute, but must resort ONLY to the meaning clearly indicated in the statute itself. Meaning they may not imply or infer common definitions of a term In Addition to the statutory definition, but must rely on the things clearly included in the statute itself and nothing else.

Rule 18) In all criminal case, the Rule of Lenity requires that where the interpretation of a criminal Statute is ambiguous, the ambiguity should be resolved in favor of the human being and against the government.

Pursuant to the original legislative intent of Congress, 28 U.S.C. 2255 was enacted to replace the traditional habeas, it was to be identical in scope and afford prisoners the same rights in a more convenient forum. Hayman at 219: Davis at 343

Congress's words and intent are clear: A federal prisoner is permitted to seek habeas corpus via the Savings Clause, if the prisoner had no reasonable opportunity to obtain earlier judicial correction of a "fundamental defect" in the prisoners conviction and sentence because the law changed after the first section 2255 motion.

There is another due process concern at issue here- a prisoner should have access to the courts to test "whether their detention is lawful. This principle is fundamental to our constitutional system. The framers of the Constitution were determined to constitutionalize protections against arbitrary detention. The framers created Safeguards that require the "Executive to answer to an impartial body with a valid cause for depriving one of liberty." Duncan v Louisiana, 391 U.S. 145, 169 (1968)

The Framers of the Constitution did this by carefully placing due-process of law in the Fifth Amendment and habeas corpus through the Suspension Clause. The writ of habeas corpus insures the integrity of the process resulting in imprisonment, and Second the Supreme Court has held, "affords a swift and imperative remedy in all cases of restraint upon personal liberty". Price v Johnston, 334 U.S. 266 283 (1948). The due process was concerned with the how and why a man was imprisoned, and habeas was the procedural avenue that a prisoner could get those questions before a court' and be granted a remedy for any due process violations. Hamdi v Kumstfeld, 542 U.S. 507, 554-555 (2004)

The Suspension Clause protects the writ of habeas corpus under the Constitution. The Supreme Court has stated that the Savings Clause- to the extent that the rest of 2255 does not provide for review- "The Savings Clause ensures access to habeas commensurate with what the Suspension Clause Constitutionally may require". *Swain v Pressley*, 430 U.S. 372, 381 (1977) citing *United States v Hayman*, 342 U.S. 205, 223 (1952).

This Court has treated the Savings Clause as a Constitutional fail-safe for Section 2255. The Suspension Clause protects Second and Successive Claims that section 2255(h) fails to permit, and it does this "through the Savings Clause". *Boumediene*, 553 U.S. at 776 If the Savings Clause is not interpreted this way to protect the claims of actual innocence, and unlawful sentencing claims (including Unlawful detention based on a New Statutory Interpretation) it would violate the Suspension Clause and the Ex Post Facto Clause of the Constitution by the deprivation of cognizable rights under habeas.

As a result of the Fifth Amendment and the Due Process Clause of the Constitution, There must be an adequate remedy or substitute for relief when an in-determinate number of federal prisoners are being stripped of the right to challenge unlawful detention through the Savings Clause in 2255(e). This is a claim that was cognizable in habeas before the enactment of 28 U.S.C. 2255. "ONLY" Congress can suspend this constitutional guarantee against arbitrary detention, and only under specific narrow circumstances that do not exist; "Congress did not legislate its intent to suspend this right, and this court should not imply or infer Congress's intent to do so without clear legislative intent.. especially when the language is unambiguous that Congress's intent was to enact a remedy that was "commensurate with the traditional habeas and identical in scope". The deprivation of this right which was cognizable under habeas, violates the Ex Post Facto Clause of the Constitution without clear intent from Congress especially when no Substitute has been offered to resolve unlawful detention claims based on a Statutory Interpretation.

The decision in Jones has a negative affect on an in-determinate number of federal prisoners as a result of being deprived of the right to have access to the courts to challenge [ ] Unlawful detention. Many prisoners will continue to be unlawfully imprisoned, thereby being punished for a crime that was never legally committed without a remedy for relief. This is unlawful and raises another question of "Whether a miscarriage of justice has occurred resulting from the "conviction" and "punishment" for an act that the law does not make criminal ? Bousley at 623-624

If this Court fails to determine the Novel Claim and Question of Law regarding "Whether Jones v Hendrix, or Congress inadvertantly violated the Ex Post Facto Clause of the Constitution by stripping prisoners of the right to challenge unlawful detention based on a Statutory Interpretation" ? The Integrity of the United States Constitution, The Publics Perception of the Federal Judicial System, and The Reputation of this Court could be permanently damaged, as a result of many prisoners innocent of crimes lingering in Federal Prison serving unlawful sentences, and unlawful detention resulting from a district court, Supreme Court, or controlling circuit court wrongly interpreting a statute that significantly enhanced a prisoners sentencing range; and the court refusing to correct errors of its own devise.

This type of procedure will deprive many individuals of the most basics of liberty and due process of law pursuant to the right to challenge unlawful detention, while this court being aware of this atrocity and deprivation of liberty chose to turn a blind eye by failing to provide a process for the restoration of liberty, or a right to a fair hearing before a tribunal with the power to decide a case.

The implication that due process and the Ex Post Facto Clause of the Constitution has been infringed upon is a serious matter, and is clear and obvious because prior to 1948 before the 28 U.S.C. 2255 Statute was crafted and enacted legal innocence, and Statutory innocence claims were cognizable in Federal Court., and whether Congress's silence on this particular issue during the enactment of AEDPA can be determined to be Congress's intent to eliminate or dissolve a prisoners right to challenge unlawful detention is

unclear, and this court is wrong to infer something that was not clearly legislated. This Court must determine whether Jones v Hendrix violates the Ex Post Facto by stripping Prisoners of the right to challenge unlawful detention, or was the Savings Clause left in place to preserve those rights that were cognizable in habeas before the enactment of § 2255.

#### RELIEF SOUGHT

This Court should re-examine and reconsider its prior ruling in Jones v Hendrix and determine that 28 U.S.C. § 2255(e) does permit prisoners with Statutory Interpretation Claims that involve Statutory or Legal Innocence Claims to petition the Courts for relief pursuant to 2255(e)'s Savings Clause in the "district of their confinement" for the following reasons :

- 1) When Congress replaced the traditional habeas with § 2255 Congress ensured the enactment of Section 2255 did not disadvantage prisoners as compared to the claims that were cognizable under habeas
- 2) The Claim of unlawful detention was cognizable under habeas.
- 3) The Savings Clause as installed by Congress operated to save from extinguishment habeas claims that were cognizable before the enactment of 2255
- 4) The dissolution or deprivation of this right without providing a process for the restoration of liberty will most likely infringe upon due process of law and violate the Ex Post Facto Clause

#### ALTERNATE PROVISION FOR RELIEF

This Court should determine that 28 U.S.C. 2255 does allow prisoners with Statutory Interpretation Claims that involve Statutory or Legal Innocence Claims to Petition the "Sentencing Court" for relief through a Second or Successive Petition "only" under 2255(e)'s Savings Clause, and only by permission of the Appellate Court after it determines the Petitioners Claim does have merit will he or she be allowed to Petition the Sentencing Court for relief.

Unlawful Detention Claims are cognizable in Federal Court.  
This Court made crystal in Davis v United States, 417 U.S. 333, 343  
(1974) that Statutory Innocence Claims are Cognizable in a 2255 Motion.

Allowing prisoners with unlawful detention claims based on Statutory  
or Legal Innocence Claims to petition the "Sentencing Court" for  
relief "after" Petitioning the Appellate Court for Permission to  
file a Second or Successive Petition based on a Statutory  
Interpretation that was issued after Petitioners original 2255 was  
filed will allow the Savings Clause to perform its intended purpose  
which is to save from extinguishment [ ] claims that were cognizable  
before the enactment of 28 U.S.C. 2255.

The shift to the Sentencing Court will allow 2255 to be commensurate  
with the traditional habeas it was crafted to replace and be identical  
to in scope. This shift will also provide prisoners who are without a  
remedy to obtain relief as a result of being innocent of their crime  
of conviction by petitioning the Appellate, and Sentencing Court for  
relief instead of the Court in the district of confinement as in  
28 U.S.C. 2241.

Courts are concerned with the finality of judgments and judicial  
expediency, however this shift to the Sentencing Court pursuant to  
Statutory or Legal Innocence Claims will not open the Floodgates to  
collateral attack on sentences. Those concerns are real, but such  
concerns should not take precedence over Justice, and Justice  
requires resorting to the Savings Clause to correct fundamental  
sentencing errors.

### QUESTION III.

Whether Due Process is violated when "Federal Courts" imposes  
Criminal Punishment or penalty pursuant to a Substance that the  
Federal Statutes, and the CSA (Controlled Substance Act) fail to  
regulate, or prohibit, and fail to provide fair notice of its  
illegality under Federal Law ?

A Criminal Statute violates the Fifth Amendments guarantee of due process of law if it is "so vague that it fails to give ordinary people 'fair notice' of the conduct (or substances) it punishes or so standardless that it invites arbitrary enforcement". United States v Burke, 2022 US Dist lexis 100432 (7th Dist 2022)(quoting Johnson v United States 576 U.S. 591 (2015)).

An examination of the list of Controlled Substances identified in the United States Guidelines, and the Controlled Substance Act (CSA), show a difference in how "Cocaine" is defined compared to the Illinois State Law definition. Under Federal Law "Cocaine" is defined to include only optical and geometrical isomers. 21 U.S.C. § 812 Schedule II (a)(4). ( as used in Schedule II (a)(4) the term "isomer" means only optical and geometrical), 21 U.S.C. § 802 (17)(D). The Illinois statute includes optical, positional, and geometrical isomers. The Illinois statute is Categorically broader than the Federal Statute by definition, and should not be used as a Predicate offense for enhancement purposes as a result of vagueness and lack of fair notice.

The Fifth Amendments guarantee that "[n]o person shall be deprived of life, liberty, or property without due process of law" forbids vague criminal laws. U.S. Const. Amend V.; Johnson v United States, 135 S.Ct 2551, 2556 (2015). This Constitutional Proscription gives rise to the general rule that "prohibits the government from imposing sanctions under a criminal law so vague that it fails to give ordinary people fair notice of the conduct it punishes,.. Welch v United States, 136 S.Ct 1257 (2016).

The Federal Law clearly specifies which particular substances are considered illegal, regulated, and prohibited under Federal Law. "Positional Isomers are absent from the list of controlled and prohibited substances." The Petitioner argued in his 2241 (Pg. 39) that the due process clause and the constitutional requirements of definiteness are violated when a Statute, guideline definition, and CSA all fail to give a person of ordinary intelligence fair notice of specific substances and/ or conduct that are forbidden under Federal Law, but then moves to inflict additional punishment and/ or penalty under its law pursuant to unlisted and unregulated substances. This action infringes upon and violates the due process clause of the Constitution by its failure to provide fair notice of its illegality.

### RELIEF SOUGHT

Petitioner is requesting that this claim be addressed and adjudicated in This Court determining whether the due process clause of the Constitution has been infringed upon as a result of punishment or penalty being imposed pursuant to a substance that the Federal Statute, Sentencing Guidelines, and the CSA all fail to list as being illegal and prohibited under Federal Law, but then moves to impose punishment, penalty, or sentence enhancement.

### ALTERNATE REQUEST FOR RELIED

Petitioner request that this claim be remanded back to the Appellate Court and/or District Court with instruction for it to determine "whether a non-listed substance in the Federal Statute, Sentencing Guidelines, or the CSA can be used as a predicate offense for enhancement purposes pursuant to due process clause and the "void for vagueness doctrine" ?

### CONCLUSION

This petition for Writ of Certiorari should be granted to resolve a Novel Claim and Question of Law that effects an In-determinate number of individuals in Federal Prison as a result of un-resolved Statutory Interpretation Claims involving Innocence.

RESPECTFULLY SUBMITTED

X

Joseph Miller

JOSEPH MILLER 12481-424  
FEDERAL CORRECTIONAL INSTITUTION  
ROUTE 40 & 4  
P.O. BOX 5000  
GREENVILLE, IL 62246

Date

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