

IN THE  
SUPREME COURT OF THE UNITED STATES  
CASE No. 18-5781

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LARRY DEAN DUSENBERY,  
PETITIONER,

-VS-

..... RONNIE R. HOLT, WARDEN,  
RESPONDENT.

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

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..... Larry Dean Dusenbery  
Petitioner in pro per  
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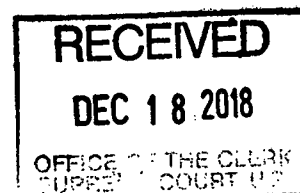


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REPLY

The government argues that it has filed a petition for Writ of Certiorari in United States v. Wheeler, No. 18-420 (Filed Oct. 3, 2018), with an identical question as Petitioner's, and that this case should not be held pending the disposition of Wheeler. (Gov. brief at 2).

Petitioner filed his brief in this case on June 24, 2018, over three months before the government filed its brief in Wheeler. The government filed two motions for extension of time in order to have its brief in front of Petitioner's for certiorari. It is Petitioner's position that certiorari should be granted in this case and this Court should hold Wheeler pending the disposition of Dusenbery.

Next, the government argues that certiorari should be denied in this case because Petitioner would not be entitled to relief even in the courts of appeals that have given the saving clause the most prisoner-favorable interpretation. (Gov. brief at 4). Petitioner respectfully submits that the government's position is incorrect.

In Hill v. Masters, 836 F.3d 591 (6th Cir. 2016), the Sixth Circuit granted relief on a sentencing issue to Mark Hill. The court ruled that Hill was enhanced improperly as a career offender. The court also allowed the issue to be brought under 28 USC Section 2241. Finally, the court ruled that the petitioner must show (1) a case of statutory interpretation, (2) that is retroactive and could not have been invoked in the

initial Section 2255 motion, and (3) that the misapplied sentence presents an error sufficiently grave to be deemed a miscarriage of justice or a fundamental defect. The case relied on by Hill was Descamps v. United States, 133 S.Ct. 2276 (2013).

In Descamps, this Court clarified the correct approach for determining whether state-law offenses qualify as "violent felonies" for the purpose of a sentence enhancement under the Armed Career Criminal Act (ACCA) of 1984. 18 USC Section 924 (e)(1). The Court foreclosed the use of the modified categorical approach for criminal statutes that consist of a single set of elements that define the crime "more broadly than the generic offense." Descamps, 133 S.Ct. at 2283. Instead, it directed the lower courts to use the categorical approach to compare the elements of the generic crime to the elements in the statute that forms the basis of the defendant's prior conviction. Id. at 2281-82. Also see Mathis v. United States, 136 S.Ct. 2243 (2016).

The government also conceded that, after Descamps, Maryland's second-degree assault statute no longer constituted a crime of violence for the purpose of the career-offender enhancement, and stated, if Hill were to be sentenced today, he would not qualify as a career offender. The government further conceded that Descamps applied retroactively.

If Petitioner was sentenced today, like Hill, the government would not be entitled to enhance his sentence under 21 USC Section 851 based on the principles of Mathis and