

No. \_\_\_\_\_

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IN THE SUPREME COURT OF THE UNITED STATES

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DENNIS WILSON,  
Petitioner,

v.

UNITED STATES OF AMERICA,  
Respondent.

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

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**PETITION FOR WRIT OF CERTIORARI**

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## **QUESTION PRESENTED**

Whether the predicted outcome and the potential sentence faced by Mr. Wilson, should he be convicted at trial, is to be compared to the plea agreement when determining whether Mr. Wilson was denied his fundamental rights to counsel and trial?

## **PARTIES**

The caption of the case contains the name of all the parties. The Petitioner is Dennis Wilson, and the Respondent is the United States of America. No party is a corporation.

## **RULE 14(b)(iii) STATEMENT**

This case arises from the following proceedings in the United States District Court for the Southern District of Indiana, and the United States Court of Appeals for the Seventh Circuit:

- *Wilson v. United States*, No. 24-1708 (7th Cir. June 13, 2025)
- *United States v. Wilson*, No. 1:21-cr-00178-JRS-CSW (S.D. Ind. March 26, 2024)
- *USA v. Wilson*, No. 1-19-cr-00198 (S.D. Ind. December 4, 2019).
- *USA v. Wilson*, No. 1-18-mj-00116 (S.D. Ind. February 7, 2018).
- *USA v. Wilson*, No. 1-18-cr-00068 (S.D. Ind. December 3, 2019).

There are no other directly related proceedings in state or federal courts, or in this Court.

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## **Petition for Writ of Certiorari**

Dennis Wilson, an inmate currently incarcerated at FCI Petersburg Medium correctional institution in Hopewell, Virginia, respectfully petitions this court for a writ of certiorari to review the judgment of the Seventh Circuit Court of Appeals.

### **Opinions Below**

The criminal case that led to Mr. Wilson's conviction is reported as *United States of America v. Wilson*, Case No. 1:18-cr-000068-JRF-MJD. Mr. Wilson then commenced a proceeding in the United States District Court, Southern District of Indiana, Indianapolis Division pursuant to 28 U.S.C. § 2255, *Wilson v. USA*, 1:21-cv-00178-JRS-TAB, contending that he had ineffective assistance of counsel in his criminal case. The District Court dismissed Mr. Wilson's claims with prejudice and Mr. Wilson filed his *Notice of Appeal*.

### **Jurisdiction**

The Seventh Circuit Court of Appeals affirmed the District Court's decision under *Dennis Wilson v. United States of America*, Case No. 24-1708, on June 13, 2025. Mr. Wilson invokes this Court's Jurisdiction

under 28 U.S.C. § 2101 and timely filed this petition for a writ of certiorari within ninety days of the Court of Appeal's Judgment.

### **Constitutional Provisions Involved**

The 6<sup>th</sup> Amendment to the United States Constitution provides:

*In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.*

### **Statement of the Case**

In *Strickland v. Washington*, this Court set a standard that is required for a defendant or petitioner to be successful in ineffective assistance of counsel claims.<sup>1</sup> This standard requires the petitioner to show that the counsel's performance was deficient and due to this deficient performance, the petitioner was prejudiced.<sup>2</sup>

Over 40 years ago, this Court held in *Hill v. Lockhart*, that the two-part *Strickland* test applied to challenges to guilty pleas based on ineffective assistance of counsel.<sup>3</sup> The first part of the test is nothing

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<sup>1</sup> See *Strickland v. Washington*, 466 U.S. 668, 687–91(1984).

<sup>2</sup> *Id.*

<sup>3</sup> *Hill v. Lockhart*, 4747 U.S. 52, 58 (1985).



more than attorney competence, but the second part or the “prejudice” prong focuses on whether “counsel's constitutionally ineffective performance affected the outcome of the plea process.”<sup>4</sup>

This case presents the question of whether this *Hill* standard is met when counsel fails to provide competent advice and learn all the facts of the case, leading to the defendant pleading guilty rather than continuing to trial.

I. The criminal case and Mr. Wilson’s plea agreement.

On July 31, 2019, a Change of Plea Hearing was held. Mr. Wilson pleaded guilty to five counts of Sexual Exploitation of a Child, in violation of 18 U.S.C. § 2251(a) and (e), for a 35 to 50-year prison term.<sup>5</sup> The court accepted the plea, and Mr. Wilson was subsequently sentenced to forty (40) years of imprisonment on each count to be served concurrently.<sup>6</sup>

Like most defendants, Mr. Wilson’s concerns revolved around the length of the sentence and what sentence he could potentially face if he decided to proceed to trial. To get a proper idea of what sentence Mr. Wilson faced; his prior offenses had to be considered. Had Mr. Wilson’s

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<sup>4</sup> *Id.* at 58–59.

<sup>5</sup> See Trial Court, Dkt. No. 4.

<sup>6</sup> See Trial Court, Dkt. No. 27.

trial counsel taken the proper steps, she would have found that Mr. Wilson was not subject to a mandatory life sentence under 18 U.S.C. § 3559(e) due to his prior offense not being a categorical match and she would have found prior cases supporting this argument. This information would have made a difference in Mr. Wilson deciding whether to accept the plea agreement or continue to trial.

## II. Petition for Habeas Corpus

Mr. Wilson filed post-conviction petitions and claimed that he did not understand his plea agreement and his attorney did a “half job.” The court took this as a motion pursuant to 28 U.S.C. § 2255, alleging ineffective assistance of counsel.<sup>7</sup> The District Court then dismissed all his claims with prejudice on March 26, 2024.<sup>8</sup> The District Court came to this conclusion due to no evidence showing that the case would have ended differently if he had gone to trial.

## III. Mr. Wilson’s Appeal

On April 26, 2024, Mr. Wilson filed a *Motion of Issuance of a Certificate of Appealability*, and it was subsequently granted. Mr. Wilson

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<sup>7</sup> See *Motion*, Dkt. Nos. 42, 44.

<sup>8</sup> See *Order on Motion for Relief*, Dkt. No. 26.

appealed the decision of the District Court on his motion pursuant to 28 U.S.C. § 2255. The Seventh Circuit Court of Appeals affirmed the District Court’s judgment, finding that “Wilson faced an effective life sentence no matter what . . . and his prospects at trial were grim.” The Court concluded, “In short, Wilson knew that going to trial would almost certainly yield an outcome worse than what he achieved by pleading guilty, so his counsel’s allegedly erroneous advice did not make going to trial and less enticing.”

### REASONS FOR GRANTING THE WRIT

- a. **Whether a “substantial error” in the plea negotiations prejudiced Mr. Wilson, thus requiring clarification from this Court that the rights to assistance of counsel and trial remain fundamental, regardless of the apparent outcome and likelihood of success at trial.**

All “defendants facing felony charges are entitled to the effective assistance of competent counsel.”<sup>9</sup> *Strickland v. Washington*, sets the standard for ineffective assistance of counsel, requiring the petitioner to show that the counsel’s performance was deficient and due to this deficient performance petitioner was prejudiced.<sup>10</sup> In the plea process, the first part of the *Strickland* test is nothing more than the competency

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<sup>9</sup> *McMann v. Richardson*, 397 U.S. 759, 771 n.14 (1955).

<sup>10</sup> 466 U.S. 668, 687–91(1984).

already required of counsel's performance.<sup>11</sup> The second prong of the *Strickland* test "focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process. In other words, in order to satisfy the "prejudice" requirement, the defendant must show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial."<sup>12</sup> Further when the alleged error by counsel is a failure to investigate all facts of the case, the determination of whether the defendant was prejudiced "will depend on the likelihood that discovery of the evidence would have led counsel to change his recommendation as to the plea."<sup>13</sup>

- i. Mr. Wilson's trial counsel was ineffective when she failed to provide competent advice regarding Mr. Wilson's plea agreement during sentencing.

Here, there is no dispute that Mr. Wilson was provided inaccurate advice by his counsel regarding his possible sentence. This was further compounded by the Government's own error in calculating the potential sentence. In short, counsel failed to properly inform Mr. Wilson of relevant law regarding his prior offenses. This satisfies the first prong of

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<sup>11</sup> *Hill*, 474 U.S. at 58.

<sup>12</sup> *Id.* at 59.

<sup>13</sup> *Id.*

the *Strickland* analysis and cannot fall within the “the wide range of professionally competent assistance” as required by the Sixth Amendment.<sup>14</sup> Had Mr. Wilson’s trial counsel taken the proper steps, she would have found that Mr. Wilson was not subject to a mandatory life sentence under 18 U.S.C. § 3559(e), because his prior offense was not a categorical match. His counsel would have also found prior cases supporting this argument. A lengthy sentence is not the same as a mandatory life sentence. This information should have been conveyed to Mr. Wilson, so he could make an informed decision on whether to accept the plea agreement with a binding sentence of 35-50 years’ imprisonment or continue to trial.

Mr. Wilson was not subject to a mandatory life sentence under 18 U.S.C. § 3559(e) because his predicate offense corresponds to a federal offense, 18 U.S.C. § 2243(a), which is not contained in the narrow definition of “federal sex offenses” found in 18 U.S.C. § 3559(e)(2)(B). The definitions of prior sex convictions that would subject a defendant to a mandatory life sentence in 18 U.S.C. § 3559(e) are much more limited and include references to specific offenses within the federal code.

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<sup>14</sup> *Hill*, 474 U.S. at 62.

Such an argument was confirmed by *United States v. Skaggs*, 25 F.4<sup>th</sup> 494 (7<sup>th</sup> Cir. Ct. App. 2022). In *Skaggs*, the Seventh Circuit held that an Indiana Conviction for sexual misconduct does not constitute a “prior sex conviction” that triggers an 18 U.S.C. § 3559(e) mandatory life sentence. Skaggs was an Indiana resident who was convicted on numerous charges including nine (9) counts of sexual exploitation of a child.<sup>15</sup> The Seventh Circuit reasoned that because the federal offense, 18 U.S.C. § 2243, as it relates to Indiana’s sexual misconduct with a minor statute, is not included in the narrow definition of “Federal sex offenses,” found in 18 U.S.C. § 3559(e)(2)(A). Thus, a prior conviction for sexual misconduct with a minor in Indiana cannot serve as a predicate for a mandatory life sentence under 18 U.S.C. § 3559(e).<sup>16</sup> The Court affirmed the sentencing because regardless of whether he had prior convictions or not, there were other aggravating factors contributing to his life sentence.<sup>17</sup>

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<sup>15</sup> *Id.* at 494.

<sup>16</sup> *Id.* at 500.

<sup>17</sup> *Id.* at 501.

The specific language of Indiana Code § 35-42-4-9 (1998), the state statute that Mr. Wilson’s trial counsel believed triggered a mandatory life sentence at the time of his conviction was:

(a) *A person at least eighteen (18) years of age who, with a child at least fourteen (14) years of age but less than sixteen (16) years of age, performs or submits to sexual intercourse or deviate sexual conduct commits sexual misconduct with a minor, a Class C felony. However, the offense is:*

(1) *a Class B felony if it is committed by a person at least twenty-one (21) years of age.*<sup>18</sup>

Moreover, the Plea Agreement between Mr. Wilson and the Government stipulates that Mr. Wilson’s prior state conviction under the above-mentioned code “is an offense relating to sexual abuse and abusive sexual contact involving a minor.” According to 18 U.S.C. § 3559(e)(2)(A) the two sections related to sexual abuse and abusive sexual contact involving a minor are 18 U.S.C. §§ 2242, and 2244(a)(1). The elements that the federal government must prove to convict a defendant under 18 U.S.C. § 2242 at the time Mr. Wilson entered his plea agreement were:

*Whoever. . . knowingly—*

(1) *causes another person to engage in a sexual act by threatening or placing that other person in fear*

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<sup>18</sup> Indiana Code § 35-42-4-9 (1998).

*(other than by threatening or placing that other person in fear that any person will be subjected to death, serious bodily injury, or kidnapping);*

*(2) engages in a sexual act with another person if that other person is—*

*(A) incapable of appraising the nature of the conduct; or*

*(B) physically incapable of declining participation in, or communicating unwillingness to engage in, that sexual act;*

*or attempts to do so, shall be fined under this title, and imprisoned for any terms of years or for life.*

A comparison of the statute that Mr. Wilson was previously convicted under and 18 U.S.C. § 2242 reveals that the state statute cannot serve as a predicate because the state statute is a strict liability offense while § 2242 requires the prosecution to prove elements in addition to a voluntary act. While a defendant could be convicted under the state statute for having consensual intercourse with someone who is physically and mentally capable of appraising the nature of the conduct, these facts could not lead to a conviction under the federal statute, because under 18 U.S.C. § 2242, the prosecution must prove that the intercourse was not fully consensual. Therefore, the state statute that Mr. Wilson was convicted under is not categorically related to 18 U.S.C. § 2242 and is too broad.



Turning to 18 U.S.C. § 2244(a)(1), abusive sexual misconduct involving a minor also cannot serve as a predicate offense. This is because abusive sexual misconduct involving a minor falls within 18 U.S.C. § 2244(a)(3), which states that “[w]however . . . knowingly engages in or causes sexual contact with or by another person, if to do so would violate . . . subsection (a) of section 2243.” As was made clear in *Skaggs*, a state law conviction categorically related to § 2243 may not serve as a predicate that would trigger a mandatory life sentence. This factor indicates that whoever drafted the code specifically wished to avoid subjecting individuals with a single prior conviction for a strict liability offense to a mandatory life sentence under 18 U.S.C. § 3559(e).

In contrast, 18 U.S.C. § 2244(a)(1) states that “[w]however . . . knowingly engages in or causes sexual contact with or by another person, if to do so would violate . . . subsection (a) or (b) of section 2241” which reads as follows:

*(a) By Force or Threat.—Whoever . . . knowingly causes another person to engage in a sexual act—*

*(1) by using force against that other person; or*

*(2) by threatening or placing that other person in fear that any person will be subjected to death, serious bodily injury, or kidnapping;*

*or attempts to do so, shall be fined under this title, imprisoned for any term of years or life, or both.*

(b) *By Other Means.—Whoever . . . knowingly—*  
    (1) *renders another person unconscious and thereby engages in a sexual act with that other person; or*  
    (2) *administers to another person by force or threat of force, or without the knowledge or permission of that person, a drug, intoxicant, or other similar substance and thereby—*  
        (A) *substantially impairs the ability of that other person to appraise or control conduct; and*  
        (B) *engages in a sexual act with that other person;*  
*or attempts to do so, shall be fined under this title, imprisoned for any term of years or life, or both.*

A comparison of the statute that Mr. Wilson was previously convicted under and 18 U.S.C. § 2241(a) and (b) reveals that the state statute cannot serve as a predicate because the elements required for the state to prove a defendant was guilty of his prior state offense are broader than the elements that the prosecution must prove to secure a conviction under 18 U.S.C. § 2241(a) and (b). Therefore, the state statute that Mr. Wilson was convicted under is not categorically related to 18 U.S.C. § 2241(a) or (b). This means that Mr. Wilson’s trial counsel erred during the plea-bargaining stage when she assumed that he may be subject to a mandatory life sentence and counseled him to accept the plea agreement which contained a sentencing range between 35 and 50 years.

Also, as the Seventh Circuit later noted in *Bridges v. United States*, it was possible for the defendant’s trial counsel to be ineffective for failing

to raise an issue despite a lack of circuit precedent on the issue.<sup>19</sup> Here, Mr. Wilson’s trial counsel was ineffective because relevant case law indicated that when a defendant is facing a sentence enhancement due to a prior conviction, counsel should always perform categorical analysis to determine if a prior conviction qualifies as an enhancer under the statute that their client is being charged with violating, before conceding that their client is subject to an enhancement. This was not a complex categorical analysis but rather required a comparison of Mr. Wilson’s state conviction to the federal statute it related to in order to determine whether it is included in the definition of “Federal sex offense” found in 18 U.S.C. § 3559(e)(2)(A). The failure to do so means that their “attempt to learn all the facts of the case . . . before allowing [their] client to plead guilty” was insufficient as required by *Bridges*.

- ii. But for his counsel’s deficient performance and inaccurate advice, Mr. Wilson was prejudiced and would not have accepted the plea agreement and would have insisted on going to trial.

The assistance of counsel necessarily requires that Mr. Wilson receive correct legal advice. By receiving erroneous advice, Mr. Wilson was ultimately harmed, because this error led to him entering into a plea

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<sup>19</sup> See *Bridges v. United States*, 991 F.3d 793, 804 (7<sup>th</sup> Cir. 2021).

agreement that had a minimum sentencing range that was 10 years higher than the correct minimum range of 25 to 50 years and he was denied his fundamental right to trial. Mr. Wilson’s 40-year prison sentence was within the agreed-upon range of 35 to 50 years, as well as the correct range of sentence. However, by providing inaccurate information, Mr. Wilson’s trial counsel “undermines confidence in the outcome” of his case, since he was not given the opportunity to argue for a sentence within the actual guideline range of 25 to 50 years and potentially receive a lower sentence. Due to this inaccurate advice by his counsel, he was denied both the fundamental right to counsel and ultimately his right to go to trial.

Mr. Wilson entered into this plea agreement not knowing the potential sentence he could face for Sexual Misconduct with a Minor without the mandatory life sentence. Like other defendants, Mr. Wilson was relying on what he believed to be advice from competent counsel. Because plea bargains have become central to the administration of our criminal justice system, a defendant’s counsel has certain responsibilities during this process.<sup>20</sup> His counsel should have gathered all of the facts

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<sup>20</sup> *Missouri v. Frye*, 566 U.S. 134 (2012).

and information regarding Mr. Wilson's case and advised him that his prior offenses did not qualify for the mandatory life sentence. This was not done and Mr. Wilson relied on his counsel, to do because that is what a competent counsel would have done.

If Mr. Wilson's proper guideline range was communicated to him, he would not have accepted the plea agreement of 35 to 50 years of imprisonment and would have continued to trial, where even if convicted, he faced the potential for the same, or even a lower sentence. This lack of information regarding his prior offenses stripped him of his right to effective assistance of counsel and his right to go to trial. The guidelines are only slightly different, but with him facing such a potentially long sentence, he would have taken his chances for the possibility of any better outcome. Instead, he gave up two fundamental rights with very little benefit.

### **CONCLUSION**

For the foregoing reasons, Mr. Wilson respectfully requests that this Court issue a writ of certiorari to review the judgment of the Seventh Circuit Court of Appeals.

DATED this 25<sup>th</sup> day of August 2025.

Respectfully submitted,

/s/ Terry Tolliver

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**CERTIFICATE OF SERVICE**

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I, Terry Tolliver, counsel of record for the Petitioner Dennis Wilson, and an attorney appointed under the Criminal Justice Act of 1964, hereby certify that on the 25<sup>th</sup> day of August, 2025, I caused to be filed eleven (11) copies of the Petition for a Writ of Certiorari and Motion to Proceed *in forma pauperis* in the above-referenced case by first-class mail, postage prepaid, with the Clerk of the Court for the United States Supreme Court. I further certify that, as required by Sup. Ct. R. 29(3), I served one copy of the foregoing via U.S. first-class registered certified

Mail and electronic mail upon the counsel for the Respondent as listed below:

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