

TRULINCS 64595060 - CARSON, ADAM - Unit: LEW-E-A

FROM: 64595060
TO:
SUBJECT: Cert Cover Page
DATE: 02/15/2026 08:28:09 AM

25-6958

ORIGINAL

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

ADAM CARSON - PETITIONER

vs.

UNITED STATES OF AMERICA - RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO:
THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

ADAM CARSON 64595-060
FCI LEWISBURG
PO BOX 1000
LEWISBURG, PA 17837

PETITIONER, pro se

FILED
FEB 17 2026
OFFICE OF THE CLERK
SUPREME COURT, U.S.

TRULINCS 64595060 - CARSON, ADAM - Unit: LEW-E-A

FROM: 64595060
TO:
SUBJECT: Question Presented
DATE: 02/17/2026 07:28:45 AM

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QUESTION PRESENTED

A 2255 motion may not be employed to relitigate an issue that was raised and considered on Direct Appeal. If an offender unsuccessfully challenges their designation as a career offender on Direct Appeal, arguing that a prior state conviction for robbery is not a crime of violence or a qualifying predicate offense to support a career offender enhancement, and later the Court of Appeals determines en banc that the challenged robbery conviction is not a crime of violence for purposes of the career offender enhancement, Does an offender's due process liberty interests require the mandate be recalled in order to challenge the now unconstitutional sentence (and support equal justice under the law) since an offender is prohibited from raising the argument in a 2255 motion because it was already raised and decided on Direct Appeal?

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:

RELATED CASES

United States v. Carson, 796 Fed. Appx. 238 (6th Cir. 2019)
- Direct Appeal, Case No. 18-3919, U.S. Court of Appeals - Sixth Circuit
Judgment entered on November 26, 2019

United States v. Carson, No. 1:17-cr-00008, U.S. District Court
for the Northern District of Ohio, judgment entered
on September 19, 2018. Judgment Amended on
April 26, 2023

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TRULINCS 64595060 - CARSON, ADAM - Unit: LEW-E-A

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

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

- reported at 2025 U.S. App. Lexis 24729 (Am. Ct. 4-23-25); or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

- reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

- reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

- reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was September 23, 2015.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: January 5, 2016, and a copy of the order denying rehearing appears at Appendix C.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fed. R. App. P. 41

Rules Governing 2255 proceedings

U.S.S.G. 4B1.1(a)

U.S. Const. amend. XIV - Due Process Clause

FROM: 64595060
TO:
SUBJECT: Statement of the case
DATE: 02/17/2026 07:26:17 AM

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STATEMENT OF THE CASE

On June 12, 2018, a jury found the Defendant-Appellant, Adam Carson, Guilty of Count One: Bank Robbery in violation of 18 U.S.C. 2113(a) and Count Two: Tampering with a witness in violation of 18 U.S.C. 1512(b)(1) (R. 90: Verdict).

A presentence report was compiled by a United States probation officer on September 5, 2018 (R. 104: PSR). In the report it stated, Counts One and Two are Grouped for Guideline calculation purposes. The Guideline for 18 U.S.C. 2113(a) is a base offense level of 20. Because a financial institution was robbed, the offense level is increased by 2 levels. The Witness Tampering added an additional 2 levels for obstructing justice for an adjusted offense level of 24. With an offense level of 24, and a criminal history category of VI, Carson's sentencing Guideline would have been 100 to 125 months.

However, Carson was given a career offender enhancement for his three prior convictions of robbery in Ohio, in violation of Ohio Revised Code 2911.02(A)(2), being considered "crimes of violence". Because of the career offender designation, Carson's total offense level was increased to 32, raising his sentencing Guideline to 210-262 months. After reviewing the PSR, Carson filed written objections to the career offender enhancement (R. 105: Objections).

Carson's Sentencing hearing was held on September 17, 2018 (R. 131: Sent. Hearing). During the hearing, Carson again objected to his Ohio robbery convictions under 2911.02(A)(2) being considered crimes of violence. The District Court overruled Carson's objections and subsequently sentenced him to 240 months imprisonment (R. 107: Judgment).

Carson appealed (R. 110: NOA), retained counsel, and filed a litany of claims on Direct Appeal. One of those claims being that the District Court erred when it calculated Carson's sentence using a career offender enhancement. Carson specifically argued that his prior convictions for robbery in Ohio do not qualify as crimes of violence under the sentencing Guidelines. Specifically, under *Gates v. United States*, 2018 U.S. App. Lexis 4075 (6th Cir. 2018) and *United States v. Yates*, 866 F. 3d 723 (6th Cir. 2017), his Ohio robbery convictions do not qualify as crimes of violence.

Carson's claim was denied. The Sixth Circuit stated, "Our precedent squarely forecloses this argument. See: *United States v. Johnson*, 933 F. 3d 540, 546 (6th Cir. 2019)." In *Johnson*, the court held that a conviction for Ohio robbery under Ohio Revised Code 2911.02(A)(2) qualifies as a crime of violence. The Court stated that because of their precedent set in *Johnson*, it forecloses Carson's claim. See: *United States v. Carson*, 796 Fed Appx. 238 at 5 (6th Cir. 2019).

Carson filed his 28 U.S.C. 2255 motion on October 12, 2021 (R. 167: 2255). Because Carson's career offender enhancement claim was denied on Direct Appeal, he was prohibited from challenging the legality of the career offender enhancement in his 28 U.S.C. 2255 petition.

Since Carson was sentenced and his sentence was Affirmed on Direct Appeal, the Sixth Circuit has changed their position on whether Ohio robbery's are crimes of violence several times. See: *United States v. Butts*, 40 F. 4th 766 (6th Cir. 2022), *United States v. Carter*, 69 F. 4th 361 (6th Cir. 2023), *United States v. Ivy*, 93 F. 4th 937 (6th Cir. 2024), and *United States v. Cervenak*, 110 F. 4th 1296 (6th Cir. 2024). Cervenak filed a petition for rehearing En Banc which was granted to resolve the tension in Sixth Circuit caselaw regarding Ohio robbery's.

In December of 2024, the entire Sixth Circuit Court of Appeals sat En Banc to hear arguments in *United States v. Cervenak*, Case No. 23-3466, to determine if convictions for robbery in Ohio under 2911.02(A)(2) are crimes of violence under the Guidelines.

On April 2, 2025, an En Banc decision was reached in Cervenak which determined that Ohio robbery convictions under 2911.02(A)(2) are not crimes of violence under the Guidelines and the District Court erred in applying the career offender Guideline to enhance Cervenak's sentencing Guideline range. (It should be noted that the Honorable Joan Larsen, who wrote the opinion in Carson's Direct Appeal, joined the majority opinion in full, reversing her previously held stance that Ohio robbery was a crime of violence). See: *United States v. Cervenak*, 135 F. 4th 311 (6th Cir. 2025) (en banc) With this decision, Cervenak now becomes the controlling precedent resolving the Circuit split.

Based upon the new precedent established in Cervenak, Carson's career offender Guidelines sentence is now invalid, and he is entitled to be resentenced without the career offender enhancement. Without the career offender enhancement, Carson's Guideline range would be 100-125 months (with an offense level of 24 and a criminal history category of VI). Accordingly, Carson filed a Motion to Recall the Mandate to challenge his erroneous career offender designation and the validity of his sentence. (A motion to recall the mandate is the only method for challenging Carson's unconstitutional sentence because he challenged his career offender designation on Direct Appeal which prohibits him from relitigating the issue in a motion under 2255):

The Sixth Circuit denied Carson's motion to recall the mandate stating that, "the proper method for challenging an allegedly unconstitutional sentence is through habeas corpus, not by recalling the mandate." *United States v. Carson*, 2025 U.S. App. Lexis 24729 (6th Cir. 9-23-25). A timely petition for rehearing was denied by the Sixth Circuit on January 5, 2026. Carson now seeks relief from this Honorable Court to determine if his mandate must be recalled to address the gross disparity between the sentence Carson is currently serving and the one that would be imposed today.

FROM: 64595060

TO:

SUBJECT: Reasons for granting the petition

DATE: 02/17/2026 07:31:36 AM

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REASONS FOR GRANTING THE PETITION

It is within the inherent powers of a Federal Court of Appeals to recall a mandate. *Calderon v. Thompson*, 523 U.S. 538, 549, 118 S. Ct. 1489 (1998). "The power to recall a mandate is one of last resort, to be held in reserve against grave, unforeseen contingencies." *Calderon*, 118 S. Ct. at 1489. Here, Petitioner Carson's mandate must be recalled since he is no longer subject to the career offender enhancement because of the new precedent established by the en banc court of the Sixth Circuit in *United States v. Cervenak*, 135 F. 4th 311 (6th Cir. 2025) (en banc), which determined that Ohio robbery convictions under 2911.02(A)(2) are not crimes of violence for the purposes of the career offender enhancement. As a result of Carson's erroneous career offender designation, he was sentenced to 115 months of additional incarceration. Due process and the concept of equal justice under the law requires that Carson's mandate be recalled and his sentence be vacated.

In the order denying Carson's motion to recall the mandate, the Judge claimed "the proper method for challenging an allegedly unconstitutional sentence is through habeas corpus, not by recalling the mandate." *United States v. Carson*, 2025 U.S. App. Lexis 24729 (6th Cir. 2025). That is not true. There are three types of issues that a Section 2255 motion can not raise: (1) issues that were raised on Direct Appeal, (2) non-constitutional issues that could have been, but were not raised on Direct Appeal, and (3) Constitutional issues that were not raised on Direct Appeal (See: Rules Governing 2255 Proceedings).

Here, Carson's career offender argument was raised and decided on Direct Appeal. Therefore, Carson was prohibited from raising that argument again in a habeas petition. See: *Dupont v. United States*, 76 F. 3d 108, 110 (6th Cir. 1996) ("A 2255 motion may not be used to relitigate an issue that was raised on appeal"). Accordingly, the Sixth Circuit's claim that Carson can only challenge his unconstitutional sentence through habeas has been foreclosed and this court must order that Carson's mandate be recalled.

If a change in the law has rendered an offender's sentence unconstitutional, due process and the concept of equal justice under the law requires this court to provide an avenue for an offender to challenge their sentence if habeas is no longer available. A motion to recall the mandate is a solution to this problem.

In Carson's motion to recall the mandate, he made the necessary showing of exceptional circumstances and public importance for the Sixth Circuit to recall its mandate. Specifically, Carson pointed out the fact that the Judge who wrote the opinion in his Direct Appeal, the Honorable Joan Larsen, joined the majority in the Sixth Circuit's en banc decision in

United States v. Cervenak, 135 F. 4th at 311, and reversed her previously held stance that Ohio robbery under 2911.02(A)(2) was a crime of violence. This fact alone establishes extraordinary circumstances that warrants recall of the mandate.

Carson also proved his argument regarding his erroneous career offender designation was correct in his Direct Appeal. The en banc court determined that Ohio robbery convictions under 2911.02(A)(2) are not crimes of violence, and the District Court erred in applying the career offender Guideline to enhance Cervenak's sentencing Guidelines range. The court also concluded that Ohio robbery convictions are not crimes of violence under the elements clause or enumerated offenses clause, and that Cervenak's Ohio robbery convictions are broader than Guidelines extortion and Guidelines robbery because Ohio robbery and extortion does not categorically match Guidelines extortion or robbery. Therefore, like Cervenak, Carson's prior convictions for robbery in Ohio under 2911.02(A)(2) did not qualify as crimes of violence under the Sentencing Guidelines and he was not subject to the career offender enhancement. Had Judge Larsen made that conclusion at the time Carson filed his Direct Appeal, his sentence would have been vacated and his maximum Guideline range of imprisonment would be between 100-125 months (with an offense level 24 and a Criminal History Category of VI).

Carson also established the "exceptional circumstances" to have his mandate recalled. By any humane measure, the difference between a 240 month sentence and a 125 month sentence is a gross disparity meriting recall of a mandate. Ten years in a federal prison versus ten years of liberty is a sizeable part of an individual's life, during which they must contend with the psychological, emotional, and social challenges inherent in incarceration. Ten additional years of incarceration feels like an eternity for an adult in custody. Upholding Carson's current unlawful 240 month sentence, and making him serve ten additional years of incarceration, rises to the level of cruel and unusual punishment and violates the Constitution. Especially when you consider that an additional decade in prison is 25% of Carson's remaining life expectancy. Accordingly, this court should conclude that Carson's due process liberty interests establishes the exceptional circumstances requires to recall the mandate. (It should also be noted that as a result of the Cervenak decision, the Sixth Circuit has recently vacated several sentences due to the fact that the offender's prior Ohio robbery convictions under 2911.02(A)(2) can no longer support the career offender enhancement. See: United States v. Salako, 2025 U.S. App. Lexis 22884 (6th Cir. 9-3-25), United States v. Hampton, 2025 U.S. App. Lexis 23907 (6th Cir. 9-15-25), United States v. Boggs, 2025 U.S. App. Lexis 28989 (6th Cir. 11-4-25); and Lathan v. United States, 2025 U.S. App. Lexis 19491 (6th Cir. 8-1-25) (COA granted)).

Additionally, this court should consider its stance regarding procedural and substantive rules of law. New constitutional rules of criminal procedure generally do not apply retroactively to cases on collateral review, but new substantive rules do apply retroactively. See: Teague v. Lane, 109 S. Ct. 1060 (1989); Schiro v. Summerlin, 124 S. Ct. 2519 (2004) "A rule is substantive rather than procedural if it alters the range of conduct or the class of persons that the law punishes." Schiro,

542 U.S. at 353. "This includes decisions that narrow the scope of a criminal statute by interpreting its terms, as well as constitutional determinations that place particular conduct or persons covered by the statute beyond the State's power to punish." ID at 351-352.

Under this Framework, the rule announced by the Sixth Circuit in *Cervenak* is substantive. The en banc courts' determination that prior Ohio convictions for robbery under 2911.02(A)(2) are not crimes of violence for purposes of the career offender enhancement under 4B1.1(a), changed the substantive reach of who classifies as a career offender, thus altering "the range of conduct or the class of persons" that 4B1.1(a) punishes, ID *Schriro* at 353.

Before *Cervenak*, an offender who had prior convictions for robbery in Ohio under 2911.02(A)(2) was subject to the career offender enhancement and faced a minimum Guidelines sentence of 151 months. After *Cervenak*, a prior conviction for robbery in Ohio under 2911.02(A)(2) could not mandate or authorize an enhanced sentence under 4B1.1(a) because it did not qualify as a crime of violence. Since *Cervenak* affected the reach of the underlying statute rather than the judicial procedures by which the statute is applied, it is thus a substantive decision and should have retroactive effect under *Teague* in cases on collateral review.

In evaluating this case, it is important to remember that "no state can deprive particular persons or classes of persons of equal and impartial justice under the law." *Caldwell v. State*, 137 U.S. 692, 697, 11 S. Ct. 224 (1891). "This concept of equal justice under the law is not just rhetoric to be written and forgotten; this court must transform these words into a living truth." See: *Cooper v. Aaron*, 78 S. Ct. 1401 (1958).

Carson's significant liberty interests are at stake here. He has proven that his Argument on Direct Appeal regarding his prior convictions for robbery in Ohio not qualifying as crimes of violence was in fact correct, and he is no longer subject to 115 months of additional incarceration under the career offender enhancement. Carson has also shown that the Judge who wrote the opinion in his Direct Appeal, has now reversed her previously decision regarding Ohio robbery under 2911.02(A)(2) qualifying as a crime of violence. Most importantly, Carson has proven due process requires that his motion to recall the mandate must be allowed to proceed and his sentence vacated because he was prohibited from raising the issue regarding his erroneous career offender designation in a 2255 motion because the issue was raised, and wrongfully denied on Direct Appeal. Therefore, a motion to recall the mandate is the only method available for challenging Carson's unconstitutional sentence. "This type of unforeseen contingency which warrants recall of the mandate permits yet another round of appellate review." *United States v. Saikaly*, 424 F. 3d 514, 517 (6th Cir. 2005).

TRULINCS 64595060 - CARSON, ADAM - Unit: LEW-E-A

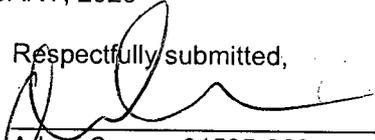
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SUBJECT: Conclusion
DATE: 02/15/2026 03:14:51 PM

CONCLUSION

Wherefore, in the interests of due process, fairness, and justice, based on the above aforementioned facts, Carson urges this Honorable Court to Grant this petition for a Writ of Certiorari and vacate the order which denied his Motion to Recall the Mandate.

DONE THIS 16th DAY OF FEBRUARY, 2026

Respectfully submitted,


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