No. __-_____

IN THE

Supreme Court of the United States

RICHARD DEWAYNE LEWIS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

GEREMY C. KAMENS
Federal Public Defender

Joseph S. Camden
Assistant Federal Public Defender
Counsel of Record
701 East Broad Street, Suite 3600
Richmond, VA 23219
(804) 565-0800
Joseph_Camden@fd.org

April 21, 2026

QUESTION PRESENTED

Whether an intervening decision of this Court that renders a court of appeals' judgment demonstrably wrong can constitute an "extraordinary circumstance" warranting recall of the mandate under *Calderon v. Thompson*, 523 U.S. 538 (1998), and if so, whether the court of appeals abused its discretion by denying recall where the petitioner was diligent, the sentence is still executory, and no reliance or finality interest weighs against recall.

PARTIES TO THE PROCEEDINGS

The parties to the proceedings in the Fourth Circuit were Richard Dewayne Lewis and the United States of America.

RELATED CASES

(1) *United States v. Lewis*, No. 22-4291 (4th Cir. 2025), Doc. 50 (filed Jan. 21, 2026)

(2) *United States v. Lewis*, 90 F.4th 288 (4th Cir. 2024)

(2) *United States v. Lewis*, 3:03CR309-HEH, United States District Court for the Eastern District of Virginia. Judgment entered May 3, 2022.

TABLE OF CONTENTS

APPENDIX

TABLE OF AUTHORITIES

Cases

Statutes

Treatises

Constitutional Provisions

PETITION FOR WRIT OF CERTIORARI

Richard Lewis respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit.

OPINION BELOW

The opinion of the United States Court of Appeals appears at page 1a of the appendix to the petition.

JURISDICTION

The district court in the Eastern District of Virginia had jurisdiction under 18 U.S.C. § 3231. The Fourth Circuit had jurisdiction to issue the original mandate under 28 U.S.C. § 1291, and had jurisdiction to recall its mandate under C*alderon v. Thompson*, 523 U.S. 538, 549 (1998) ("[T]he courts of appeals are recognized to have an inherent power to recall their mandates[.]"). The Fourth Circuit issued its order denying the motion to recall the mandate on January 21, 2026. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Title 18, U.S. Code § 3583(e) provides:

> **(e) Modification of Conditions or Revocation.**—The court may, after considering the factors set forth in section 3553(a)(1), (a)(2)(B), (a)(2)(C), (a)(2)(D), (a)(4), (a)(5), (a)(6), and (a)(7)—
>
> [. . .]
>
> **(3)** revoke a term of supervised release, and require the defendant to serve in prison all or part of the term of supervised release authorized by statute for the offense that resulted in such term of supervised release without credit for time previously served on postrelease supervision

U.S. CONST., Art. III provides:

> The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish.

STATEMENT OF THE CASE

Richard Lewis was sentenced to 20 months of imprisonment, consecutive to a state sentence he is still serving, on a revocation of supervised release. He argued at sentencing that the district court was forbidden from considering "just punishment," a retributive sentencing factor listed in 18 U.S.C. § 3553(a)(2)(A), but omitted from the revocation statute, 18 U.S.C. § 3583(e). C.A.J.A. 56.[1] The district court rejected the argument. The only § 3553(a) factor it mentioned in imposing 20 months' consecutive imprisonment was the need to "provide just punishment." C.A.J.A. 61; 18 U.S.C. § 3553(a)(2)(A).

The Fourth Circuit affirmed in a published opinion. *United States v. Richard Dewayne Lewis*, 90 F.4th 288 (4th Cir. 2024). It acknowledged that the district court's reference to "the need to provide just punishment [is] inconsistent with § 3583(e)," *id.* at 299, but applied *United States v. Webb*, 738 F.3d 638, 642 (4th Cir. 2013), which held that "mere reference" to an omitted § 3553(a) factor is not reversible error unless it is also the "predominate[]" purpose of the sentence. *Lewis*, 90 F.4th at 300.

This Court denied Mr. Lewis's petition for certiorari on May 13, 2024. *Lewis v. United States*, 144 S.Ct. 2543 (2024). Two days later, the petitioners in *Esteras* filed their petition, which was granted. *Esteras v. United States*, 145 S.Ct. 413 (2024). In *Esteras v. United States*, 606 U.S. 185, 195 (2025), this Court held that any reliance on an omitted factor, over objection, is reversible error unless the government shows it was harmless. *Id.* at 197 ("[C]ourts cannot consider § 3553(a)(2)(A) when deciding

[1] "C.A.J.A." refers to the joint appendix filed in the court of appeals. *See* Joint Appendix, *United States v. Lewis,* No. 22-4291, Doc. 15 (filed Sep. 6, 2022).

whether to revoke supervised release."). *Esteras* expressly abrogated the three circuit decisions on which *Webb* relied. Pet. App. 12a.

Mr. Lewis then filed a motion to recall the mandate. Pet. App. 2a. He argued that *Esteras* rendered the Fourth Circuit's opinion demonstrably wrong; that he had raised the issue at every stage of the proceedings; that his sentence was still executory and would not begin until June 2027; and that allowing the sentence to stand would produce incongruent results with the *Esteras* defendants, whose cases were pending contemporaneously. Pet. App. 8a-22a.

The government opposed recall. It argued principally that under Fourth Circuit precedent, alleged legal errors are categorically insufficient to constitute "extraordinary circumstances" warranting recall, citing *Elijah v. Dunbar*, 66 F.4th 454, 462 (4th Cir. 2023), and *Hall v. Warden*, 364 F.2d 495 (4th Cir. 1966) (en banc). Pet. App. 31a-33a. The government contended that the standard Lewis proposed was drawn from Fifth Circuit precedent, *United States v. Tolliver*, 116 F.3d 120, 123 (5th Cir. 1997), that conflicts with binding Fourth Circuit law. Pet. App. 36a. The government acknowledged that Mr. Lewis had raised his claim at every stage but faulted the timing of his motion. Pet. App. 42a.

The Fourth Circuit denied the motion in an unreasoned order on January 21, 2026. Pet. App. 1a. Mr. Lewis has not yet begun serving the sentence. His projected release date from the Virginia Department of Corrections to the Bureau of Prisons is June 14, 2027.[2]

[2] https://vadoc.virginia.gov/general-public/inmate-locator/ (Inmate I.D.# 1017025, as of April 20, 2026).

REASONS FOR GRANTING THE PETITION

This petition presents the question whether a court of appeals abuses its discretion by categorically refusing to recall its mandate when an intervening decision of this Court has undermined the legal basis of the earlier judgment. The circuits are split on this question. The First, Second, Third, Fifth, Seventh, and Ninth Circuits recognize that a subsequent Supreme Court decision rendering a prior judgment demonstrably wrong may, combined with favorable equities, justify recall. The Fourth Circuit, along with the Sixth and Eighth, takes a narrower view: non-jurisdictional legal error is generally insufficient to warrant recall, regardless of the equities. That disagreement, applied here to an executory sentence of imprisonment, warrants this Court's review.

I. THE CIRCUITS DISAGREE ON HOW TO ADDRESS INTERVENING PRECEDENT FROM THIS COURT ON A MOTION TO RECALL THE MANDATE

The circuits are divided on whether an intervening decision of this Court can support recall of the mandate. Six circuits recognize that it can. Though they vary on the degree of conflict required, all treat a supervening Supreme Court decision as a weighty consideration that, combined with diligence and other equities, may constitute the extraordinary circumstances necessary for recall. *Powers v. Bethlehem Steel Corp.*, 483 F.2d 963, 964-65 (1st Cir. 1973) ("If a situation arose, such as a subsequent decision by the Supreme Court, which showed that our original judgment was demonstrably wrong, a motion to recall mandate might be entertained."); *Sargent v. Columbia Forest Prods., Inc.*, 75 F.3d 86, 90 (2d Cir. 1996) ("One circumstance that may justify recall of a mandate is '[a] supervening change in governing law that calls

into serious question the correctness of the court's judgment.'" (quoting *McGeshick v. Choucair*, 72 F.3d 62, 63 (7th Cir. 1995))); *Am. Iron & Steel Inst. v. E.P.A.*, 560 F.2d 589, 596 (3d Cir. 1977) ("[W]hen the solemn declarations of a court are called into question by a later Supreme Court opinion[, r]ecall of a mandate, in such a situation, would appear to be an appropriate response by a court of appeals."); *United States v. Tolliver*, 116 F.3d 120, 123 (5th Cir. 1997) ("An example of such an injustice is when a subsequent decision by the Supreme Court renders a previous appellate decision demonstrably wrong."); *Zipfel v. Halliburton Co.*, 861 F.2d 565, 567 (9th Cir. 1988) ("When a decision of the Supreme Court departs in some pivotal aspects from a decision of a federal appeals court, recall of a mandate may be warranted to the extent necessary to protect the integrity of the court of appeals' prior judgment.") (internal quotations, citations omitted).

The Fourth, Sixth, and Eighth Circuits take a materially different approach. The Fourth Circuit has held that "alleged erroneous rulings of law are generally not held to be sufficiently unconscionable to justify reopening a judgment not void when issued." *Elijah v. Dunbar*, 66 F.4th 454, 462 (4th Cir. 2023) (brackets omitted). In so holding, *Elijah* relied on the Eighth Circuit's decision in *Iverson's Est. v. Comm'r*, 257 F.2d 408 (8th Cir. 1958), which held it was "neither necessary nor proper" to consider whether an intervening decision of this Court rendered the court's prior decision erroneous, instead giving finality conclusive effect. And it relied on *Hines v. Royal Indem. Co.*, 253 F.2d 111, 114 (6th Cir. 1958), which held that "an alleged failure to

correctly construe and apply the applicable state law does not constitute" grounds for recall.

That split controlled this case. The government's principal argument below was that binding Fourth Circuit precedent categorically prohibits recall based on intervening Supreme Court authority. Pet. App. 31a-36a. It asserted as a categorical rule, relying on *Hall v. Warden*, 364 F.2d 495 (4th Cir. 1966) (en banc) that "non-jurisdictional legal errors are not extraordinary circumstances justifying recall of the mandate." Pet. App. 33a. It acknowledged that the Fifth Circuit and others had held that intervening precedent could justify recall of the mandate, but those opinions "conflict[] with [the Fourth Circuit's] binding precedent holding that non-jurisdictional legal errors are not extraordinary circumstances justifying recall of the mandate." Pet. App. 36a. The government's own clearly articulated position is that a split of authority exists.

The Fourth Circuit denied recall in an unreasoned order. Because diligence, disparity, and the absence of reliance interests all weighed in favor of recall, the most reasonable explanation for the denial is that the court accepted the government's categorical-bar argument. *Michigan v. Long*, 463 U.S. 1032, 1040 (1983); *Harrington v. Richter*, 562 U.S. 86, 102 (2011). It is "important that ambiguous or obscure adjudications by [lower] courts do not stand as barriers to a determination by this Court" of the applicable law. *Michigan v. Long*, 463 U.S. at 1041.[3]

[3] *See also Sicurella v. United States*, 348 U.S. 385, 392 (1955) ("Here, where it is impossible to determine on exactly which grounds the Appeal Board decided, the integrity of the Selective Service System demands, at least, that the Government not recommend illegal grounds.").

Recent scholarship confirms the division. As one commentator has observed, "Court of appeals are . . . inconsistent about whether an error of law is alone sufficient to justify recall of mandate." Elizabeth Fritz, *Reexamining Recall of Mandate: Limitations on the Inherent Power to Change Final Judgments*, 23 J. APP. PRAC. & PROCESS 301, 322-23 (2023) (hereinafter "Fritz, *Reexamining Recall of Mandate*").

II. IT IS IMPORTANT THAT COURTS OF APPEAL HAVE GUIDANCE ON THE WEIGHT TO BE ACCORDED INTERVENING PRECEDENT AND FINALITY WHERE IMPRISONMENT IS AT STAKE

The uncorrected opinion in this case is not merely a theoretical problem. The Fourth Circuit's published decision in *Lewis* remains on the books, and the government continues to invoke it. *See, e.g.*, Brief of the United States, *United States v. Chafin*, 2026 WL 967434, at *16 (defendant-appellant's "position is squarely foreclosed by *Lewis,* which remains good law after *Esteras*") (filed Apr. 7, 2026). So long as the mandate stands, *Lewis* will serve as authority for the proposition that reliance on a forbidden sentencing factor is not reversible error—a proposition this Court rejected in *Esteras*.

More broadly, this case presents an opportunity to define the outer boundary of a court of appeals' discretion to deny recall of its mandate. *Calderon* established a guidepost for when recall is an abuse of discretion. 523 U.S. at 550-51. But since *Calderon*, "no formal rules have yet emerged to define and cabin the power" of a court of appeals to refuse recall. Wright & Miller, 16 Fed. Prac. & Proc. Juris. § 3938 (3d ed.); Fritz, *Reexamining Recall of Mandate* at 302-03. The decision whether to recall a mandate is reviewed for abuse of discretion. *Calderon*, 523 U.S. at 549. A court

abuses that discretion as much by applying a categorical rule against recall as by recalling a mandate for inconsequential reasons. A "categorical bar" is "unduly rigid, and it impermissibly encumbers" what must be a discretionary decision. *Halo Elecs., Inc. v. Pulse Elecs., Inc.*, 579 U.S. 93, 100, 104 (2016); *see also eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 393-94 (2006) ("categorical grant of relief" by Court of Appeals is error where decision governed by "traditional equitable principles"). This Court should set the boundaries on both ends.

III. THE FOURTH CIRCUIT ABUSED ITS DISCRETION, AND THERE WILL NEVER BE A BETTER VEHICLE FOR SETTING THE OUTER BOUNDS OF DISCRETION TO REFUSE A REQUEST TO RECALL THE MANDATE

Recall of the mandate is an extraordinary remedy. But where every recognized equitable factor weighs in favor of recall, a blanket denial is an abuse of discretion. The applicable standard, distilled from the circuits that engage with this Court's intervening precedent, is:

> Even though a change in the law should not, on its own, be treated as sufficient grounds to recall mandate, courts may find that the presence of additional factors--such as incongruity of results with codefendants, the diligence of the parties and unavailability of other remedies, and a diminished public interest in finality--counsel in favor of recalling mandate.

Fritz, *Reexamining Recall of Mandate* at 323-24. All of those factors are present here, and all weigh heavily in favor of recall.

The opinion is demonstrably wrong. *Esteras* held that *any* reliance on an omitted § 3553(a)(2)(A) factor, over objection, is reversible error unless the government shows harmlessness. 606 U.S. at 195, 197. The Fourth Circuit affirmed

Mr. Lewis's sentence under a "predominates" standard drawn from *Webb*, 90 F.4th at 300, applying a standard resting on the very circuit decisions *Esteras* abrogated. Pet. App. 12a. The error was not harmless: "just punishment" was the only enumerated § 3553(a) factor the district court mentioned, C.A.J.A. 61, the government never argued harmlessness below, and the district court never indicated it would have imposed the same sentence without the forbidden factor.

Mr. Lewis was diligent. He raised this claim at sentencing, on direct appeal, in his petition for certiorari, and in the motion to recall the mandate. C.A.J.A 56; *United States v. Lewis*, No. 22-4291 (4th Cir.), ECF No. 14 at 10-16; *United States v. Lewis*, No. 23-7145, Jt. Pet. for Certiorari (Apr. 2, 2024). *See, e.g.*, *Taylor v. United States*, 822 F.3d 84, 93 (2d Cir. 2016) ("the mandate may be recalled when a defendant acts with diligence" to pursue remedy for attorney's failure to file petition or withdraw); *Tolliver*, 116 F.3d at 123-24 & n.4 (recalling mandate only as to one defendant in multi-defendant case where others had not petitioned and therefore "shown no interest in participating").

The results are incongruent. Mr. Lewis's certiorari petition was denied two days before the *Esteras* petition was filed. The Fourth Circuit's opinion in his case issued after *Esteras*'s, which was delayed by two petitions for rehearing. Pet. App. 20a. The difference in outcome is attributable to the vicissitudes of case processing, not the merits. That is the definition of "incongruent results in cases pending at the same time." *Tolliver*, 116 F.3d at 123 (quoting *American Iron & Steel Inst. v. Environmental Protection Agency*, 560 F.2d 589, 594 (3d Cir. 1977)).

Finality interests are minimal. Mr. Lewis has not begun serving the federal sentence and will not until June 2027. That is more than enough time for resentencing in accordance with *Esteras*. No party has relied on the judgment's finality. And the "public interest in correcting erroneous . . . sentence[s] may counsel a more generous recall rule in criminal cases than in other contexts." *United States v. Davila*, 890 F.3d 583, 587 (5th Cir.), *reh'g granted and opinion vacated*, 738 F. App'x 257 (5th Cir. 2018) (quoting C. Wright, A. Miller, & E. Cooper, 16 Federal Practice and Procedure § 3938 at 880 (3d ed. 2012)). Mr. Lewis committed the underlying distribution offenses while wheelchair-bound due to a suicide attempt, without support and ineligible for Section 8 housing; circumstances that make the additional consecutive term of imprisonment all the more significant. C.A.J.A. 52-53. Mr. Lewis faces 20 months of imprisonment on an erroneous sentence, a consequence weighty enough to deserve the court's attention.

The equities relevant to recall are one-sided. This case is the ideal vehicle for establishing that a court of appeals abuses its discretion by categorically refusing to recall its mandate when an intervening decision of this Court has rendered the basis for a sentence of imprisonment demonstrably wrong, the petitioner has been diligent, the sentence is executory, and no competing interest favors finality.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

GEREMY C. KAMENS
Federal Public Defender
for the Eastern District of Virginia

Joseph S. Camden
Counsel of Record
Assistant Federal Public Defender
Office of the Federal Public Defender
for the Eastern District of Virginia
701 East Broad Street, Suite 3600
Richmond, VA 23219
(804) 565-0830
Joseph_Camden@fd.org

April 21, 2026