

No. 14-5143

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2014

SAMUEL COLUMBUS HILL,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

**On Petition for a Writ of Certiorari to the
United States Court of Appeals
For the Eleventh Circuit**

**REPLY TO OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI**

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QUESTION PRESENTED

Whether the savings clause of 28 U.S.C. § 2255(e) applies to a claim that the sentencing guidelines were misapplied in the pre-*Booker* mandatory guidelines era, in a way that resulted in a substantially longer sentence but a sentence that did not exceed the statutory maximum.

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INTRODUCTION

In suggesting that the Court should deny review, the United States admits that Hill was not a career criminal when he was sentenced in the original criminal case that gives rise to this proceeding, and concedes that Hill was wrongly sentenced to a *mandatory career criminal sentence* that far exceeded what he should have correctly received *since he was not a career criminal*.¹ That alone justifies this Court accepting the case for review and ultimately vacating the lower court's decision and remanding for a just sentence consistent with Hill's status as a non-career criminal.

But, the United States tells this Court that it should overlook this admitted sentencing error—an error which has led to Hill serving 240 months in prison when a correct sentence would have included no more than 78 months, and has led to other Americans under the jurisdiction of the Eleventh Circuit, the

¹ Brief in opposition at 26 (acknowledging that the Seventh Circuit has held that a petitioner in Hill's shoes is entitled to relief where a prisoner was sentenced erroneously as a career offender of the then-mandatory Sentencing Guidelines).

Third Circuit², the Fifth Circuit³, and the Sixth Circuit⁴ likewise spending years in prison as career criminals despite the fact that the Government concedes that those Americans are not career criminal—is not worthy of correction because the number of people affected by this error will “steadily decrease” as the mandatory guideline regime slowly recedes further into the past. See Brief in Opposition at 26.

The Government’s position is rich for any number of reasons, not the least of which is that the Government often argues against granting relief in a post-conviction proceeding because to do so would “open the floodgates” to a wave of new post-conviction litigation. See, e.g., *Padilla v. Kentucky*, 130 S. Ct. 1473, 1484 (2010)(noting that the Solicitor General stressed importance of

² *Okereke v. United States*, 307 F.3d 117, 120–21 (3d Cir. 2002)(holding that savings clause did not open door to habeas review based on actual innocence of sentencing enhancement).

³ *In re Bradford*, 660 F.3d 226, 230 (5th Cir. 2011) (holding that a claim of actual innocence of a career offender enhancement is not a claim of actual innocence of the crime of conviction and, thus, not the type of claim that warrants review under § 2241).

⁴ *United States v. Peterman*, 249 F.3d 458, 461-62 (6th Cir. 2001)(holding that savings clause does not allow for § 2241 claim where defendant does not claim actual innocence of underlying crime but rather only actual innocence of sentencing factor).

protecting finality of convictions due to concern that to do otherwise would open floodgates to new petitions for post-conviction relief); *Hill v. Lockhart*, 474 U.S. 52, 58 (1984)(acknowledging 'floodgates' concern but applying *Strickland*⁵ to claim of ineffective assistance based on failure of trial counsel to advise client of parole eligibility before client pleaded guilty). Here, on the other hand, the Government suggests that there would *not* be a flood of petitioners entitled to the relief that Hill seeks, and thus the Court should look away from this present injustice and *not* grant review of Hill's case.

Nowhere in the Government's brief does the Court hear anything about *justice* for the present-day inmates, like Hill, who are serving mandatory time in prison on the basis of a career offender classification they do not fit. That these men and women were mandatorily sentenced to prison terms years longer than a lawful sentence should have allowed is of no moment to the Government. Rather, it is the Department of *Justice's* position that Americans who are not career criminals should remain in

⁵ *Strickland v. Washington*, 466 U.S. 668 (1984).

prison as career criminals since there are *not enough* examples of this *injustice* to make these cases worthy of the Court's time.⁶

Whether a case will open the floodgates or not open the floodgates to petitioners seeking post-conviction relief is not a reason for this Court to accept or deny a case for review. See Supreme Court Rule 10. Rather, this Court accepts cases for review "for compelling reasons," including where a "United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter." *Id.* The Government and Hill may not agree on much, but they do agree on this: the Eleventh Circuit in the case below entered a decision that conflicts with the Seventh Circuit's decision in *Brown v. Caraway*⁷ on the same important matter. See Government's Brief in Opposition at 26. The injustice of Hill's detention, and this circuit conflict, should lead to this Court granting review of Hill's case.

⁶ The Government does not even attempt to quantify the number of prisoners entitled to the relief that Hill seeks while it downplays the number of prisoners who would be entitled to that relief.

⁷ *Brown v. Caraway*, 719 F.3d 583 (7th Cir. 2013).

ARGUMENT

I

THE CONFLICT PRESENTED BY THIS CASE AND THE SEVENTH CIRCUIT'S DECISION IN *BROWN* MAKES THIS CASE THE RIGHT ONE FOR THE COURT TO ACCEPT FOR REVIEW

The Eleventh Circuit incorrectly interpreted the savings clause of 28 U.S.C. § 2255(e) in the decision below. The savings clause permits a federal prisoner to seek habeas corpus relief when Section 2255 is inadequate or ineffective to test the legality of his “detention.” 28 U.S.C. § 2255(e). The circumstances under which Section 2255 may be “inadequate or ineffective” are varied, but for the instant case the key statutory term is “detention.”

Section 2255(e) is the only subsection of Section 2255 that uses the word ‘detention,’ but the term is not defined. Since “detention” is not defined in the statute, the Court should give the term its “ordinary meaning.” *Hamilton v. Lanning*, 130 S. Ct. 2464, 2471 (2010). The ordinary meaning of the term “detention” encompasses challenges to a conviction as well as the duration of one’s imprisonment. See Black’s Law Dictionary 449 (6th ed.

1990)(defining “detain” to include “to keep in custody”). Or, as the Government has previously explained when discussing the savings clause of Section 2255(e), “[i]n ordinary parlance, a prisoner alleging that he was convicted for non-criminal conduct would say that he was being unlawfully detained just as a prisoner who was claiming that his prison sentence was too long would claim that he too was being improperly detained.” See Government’s Brief for the Respondent Warden at 12, *Brown v. Caraway*, 719 F.3d 583 (7th Cir. 2013).

The Eleventh Circuit, however, held that the savings clause did *not* allow Hill to challenge the illegality of his *detention* as long as the length of the detention did not exceed the statutory maximum for his underlying crime. Pet. App. A at 3-4. That holding fails to appreciate the purposes behind the savings clause and the manner in which the trial courts sentenced defendants in the pre-*Booker*⁸ mandatory guidelines era. *Brown*, 719 F.3d at 588. As the Seventh Circuit explained in *Brown*:

[S]entences imposed pursuant to erroneous interpretations of the mandatory guidelines

⁸ *Booker v. United States*, 543 U.S. 220 (2005).

bear upon the legality of the petitioner's *detention* for purposes of the savings clause. [] For a prisoner serving a sentence imposed when the guidelines were mandatory, a § 2241 habeas petition raising a guidelines error "tests the legality of his *detention*" within the meaning of the savings clause, § 2255(e), because the guidelines had the force and effect of law; *the only lawful sentence was a guidelines sentence.*

Id. (internal citation omitted)(emphasis added).

In other words, Hill's improper designation as a career offender during the mandatory guidelines era gave rise to a *detention* that exceeded the legal maximum he could have received under the mandatory guidelines if he had been properly classified. *Id.* at 587. That illegal sentence, or *detention*, amounts to a "miscarriage of justice" that the savings clause allows to be rectified via Section 2241 even though Hill had previously filed a Section 2255 motion. "To [improperly] classify an individual as belonging to a "subgroup of defendants[.]" in this case the subgroup known as career offenders, is to "increase, dramatically, the point of departure of his sentence' and accordingly is 'certainly as serious as the most grievous misinformation that has been the

basis for granting habeas relief.” *Id.* at 587-88 (citing *Narvaez v. United States*, 674 F.3d 621, 629 (7th Cir. 2011)).

Thus, the misapplication of the sentencing guidelines that took place in Hill’s case in the pre-*Booker* era represents a fundamental defect that constitutes a miscarriage of justice that is “corrigible in a § 2241 proceeding.” *Id.* at 588. This conclusion correctly accounts for the purpose of the great writ, and the Court should adopt the reasoning of the Seventh Circuit in *Brown* when it accepts this case for review on the merits and reverses the Eleventh Circuit’s decision.

II

**THIS CASE ALSO PRESENTS AN IMPORTANT QUESTION
OF FEDERAL LAW FOR THE COURT TO RESOLVE:
WHETHER FINALITY IS MORE IMPORTANT
THAN JUSTICE?**

It is undeniable that Hill’s sentence was wrongly and dramatically enhanced under the then-mandatory federal sentencing guidelines based upon the lower courts’ erroneous conclusion that his prior conviction for carrying a concealed firearm qualified as a “crime of violence” for career offender purposes. It is also undeniable that Hill challenged the error at

every opportunity along the way of his case—at sentencing, on appeal, and in his prior Section 2255 proceeding. But the courts all told him—incorrectly—that there was no sentencing error. And now that this Court’s ruling in *Begay*⁹ has made the sentencing error in Hill’s case plain, the Eleventh Circuit and the Government submit that there is no longer any available remedy for the error, because his case is final and the law purportedly does not provide an escape hatch to remedy the error that has led Hill to spend more than an extra decade in prison under a label that did not apply to him.

Where does Hill go to get that decade of his life back?

Of course, Hill cannot get that decade of his life back. But he can see that justice is finally done in his case. This Court can remind the Eleventh Circuit, and the nation, that the great writ of habeas corpus exists for just this type of case, and that finality does not trump justice in the United States of America.

⁹ *Begay v. United States*, 553 U.S. 137 (2008).

In his dissent in the *Gilbert*¹⁰ case that the Eleventh Circuit held controlled the instant case's outcome, Senior Judge James Hill of the Eleventh Circuit made plain his opinion of that court's decision to deny habeas relief to a petitioner in the same position that Hill is in today:

I recognize that without finality there can be no justice. But it is equally true that, without justice, finality is nothing more than a bureaucratic achievement. Case closed. Move on to the next. Finality with justice is achieved only when the imprisoned has had a meaningful opportunity for a reliable judicial determination of his claim. Gilbert has never had this opportunity.

A judicial system that values finality over justice is morally bankrupt. That is why Congress provided in § 2255 an avenue to relief in circumstances just such as these. For this court to hold that it is without the power to provide relief to a citizen that the Sovereign seeks to confine illegally for eight and one-half years is to adopt a posture of judicial impotency that is shocking in a country that has enshrined the Great Writ in its Constitution. Surely, the Great Writ cannot be so moribund, so shackled by the procedural requirements of rigid gatekeeping, that it does not afford review of Gilbert's claim.

¹⁰ *Gilbert v. United States*, 640 F.3d 1293 (11th Cir. 2011).

Gilbert v. United States, 640 F.3d 1293, 1337 (11th Cir. 2011)(*en banc*)(Hill, S.J., dissenting)(emphasis added). Judge Hill’s concern that the decision in *Gilbert* reflects a judicial system that values finality over justice is a concern not lost on Petitioner Hill, who has been fighting his illegal sentence for years, and is now faced with a decision of the Eleventh Circuit which tells him that his case is final and he is *not* entitled to the relief that justice requires.

But the American judicial system is *not* morally bankrupt. Finality without justice may be a feature of the justice systems in other nations, *but not in the United States*—and this case provides the Court with the right vehicle to reaffirm that principle.

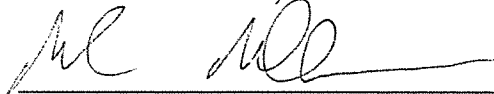
CONCLUSION

This Court should reject the Government’s request that the Court ignore Appellant Hill’s unlawful detention; instead, the Court should vacate Petitioner Hill’s sentence with instructions to the lower court to re-sentence him without the career criminal enhancement since Hill was not a career criminal at the time he was sentenced.

Based on the foregoing reasons and any other reasons the Court deems fit, Petitioner Samuel Columbus Hill respectfully asks the Court to grant his petition, accept this case for review, and ultimately vacate the Eleventh Circuit's decision below with instructions to remand the case for re-sentencing. In doing so, the Court will honor the Constitution and the great writ that our Founding Fathers expressly put into the Constitution so as to correct injustices that can arise from time to time even in the greatest system of justice the world has ever known.

Respectfully Submitted,

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