No. 12-270

In the Supreme Court of the United States

CHARLES DANIEL MAYE, PETITIONER

v.

ANTHONY HAYNES, WARDEN

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

BRIEF FOR THE FEDERAL RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

28 U.S.C. 2255 permits a convicted federal prisoner to collaterally attack his conviction and sentence under certain circumstances. As relevant here, Section 2255 provides that a prisoner who may seek relief under that provision may not apply for federal habeas corpus relief under 28 U.S.C. 2241, unless the remedy by motion under Section 2255 "is inadequate or ineffective to test the legality of his detention." 28 U.S.C. 2255(e). The question presented is whether the court of appeals correctly concluded that petitioner failed to show that his Section 2255 post-conviction remedy was "inadequate or ineffective" with respect to his claim that the Eleventh Circuit's intervening decisions in *United States* v. *Salum*, 257 Fed. Appx. 225 (2007) (unpublished), and *United States* v. *Rodriguez*, 628 F.3d 1258 (2010), cert. denied, 131 S. Ct. 2166 (2011), establish that he did not violate 18 U.S.C. 1030(a)(2)(B).

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-4) is not published in the Federal Reporter but is reprinted in 458 Fed. Appx. 878. The order of the district court (Pet. App. 5-7) is unreported but is available at 2011 WL 2470651.

JURISDICTION

The judgment of the court of appeals was entered on February 28, 2012. A petition for rehearing was denied on April 26, 2012 (Pet. App. 32-33). The petition for a writ of certiorari was filed on July 2, 2012. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the Middle District of Florida, petitioner was convicted of conspiring to intentionally access a protect-

ed computer without authorization and in excess of authorization, to obtain information from a department or agency of the United States, for private financial gain and in furtherance of extortion, and conspiring to knowingly make material false statements to a federal agent, in violation of 18 U.S.C. 371; two counts of intentionally accessing a protected computer without authorization and in excess of authorization to obtain information from a department or agency of the United States, for private financial gain and in furtherance of extortion, in violation of 18 U.S.C. 1030(a)(2)(B) and (c)(2)(B)(i)-(ii); and knowingly and willfully making material false statements to a federal agent in a matter within the jurisdiction of the Federal Bureau of Investigation (FBI), in violation of 18 U.S.C. 1001(a)(2). Pet. App. 81-97. He was sentenced to 97 months of imprisonment, to be followed by three years of supervised release. *Id.* at 1-2, 14. Petitioner filed a notice of appeal but then withdrew the appeal. *Id.* at 2.

In August 2007, petitioner moved to vacate his sentence under 28 U.S.C. 2255. The district court denied the motion and declined to issue a certificate of appealability (COA). Pet. App. 12-31; 07-cv-01258 Docket entry No. 31 (M.D. Fla. Mar. 31, 2008). The court of appeals and this Court also declined to issue a COA. 07-cv-01258 Docket entry No. 32 (M.D. Fla. July 21, 2008); *Maye* v. *United States*, 555 U.S. 1151 (2009) (No. 08A460).

In April 2011, petitioner filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. 2241 in the United States District Court for the Southern District of Georgia. The district court adopted the magistrate judge's report and recommendation that the petition be dis-

missed. Pet. App. 5-7. The court of appeals affirmed. *Id.* at 1-4.

1. Petitioner was a deputy sheriff with the Hillsborough County, Florida, Sheriff's Office. He also worked for local businessman (and co-defendant) Leroy Collins as a manager at Collins's mobile home park. Collins paid petitioner for his work and the two men had an ongoing financial relationship. Pet. App. 15, 81.

After Collins's girlfriend, Linda Bobo, ended their 15-year relationship and began a new relationship with James McLemore, Collins began harassing Bobo and McLemore. Petitioner assisted in that effort by using his position as a policeman to access the Florida Crime Information Center (FCIC) and National Crime Information Center (NCIC) databases. Petitioner conveyed the information he obtained from those databases to Collins to further Collins's criminal activities, including extortion and other acts of violence against Bobo, McLemore, and other former girlfriends. Pet. App. 15-19.

Petitioner accessed the databases on numerous occasions between 1996 and 2003 at Collins's request. He obtained restricted information about Bobo, McLemore, and other former girlfriends of Collins. For example, petitioner obtained Bobo's and McLemore's driving records, provided the information to Collins, and stopped Bobo's vehicle on several occasions. Petitioner also obtained Bobo's home address and Collins caused her home to be burglarized. Petitioner then obtained McLemore's home address and Collins went to the address, spoke to McLemore's estranged wife, and then shot McLemore outside of his home. Bobo and McLemore moved to a different address, but petitioner continued to obtain information about them for Collins,

and Collins continued to threaten them. Collins eventually killed McLemore and blinded Bobo. Petitioner also obtained information about two other former girlfriends of Collins and provided it to Collins so he could threaten them. Pet. App. 15-19.

2. A grand jury in the Middle District of Florida charged petitioner with conspiring to intentionally access a protected computer without authorization and in excess of authorization, to obtain information from a department or agency of the United States, for private financial gain and in furtherance of extortion, and conspiring to knowingly make material false statements to a federal agent, in violation of 18 U.S.C. 371; two counts of intentionally accessing a protected computer without authorization and in excess of authorization, to obtain information from a department or agency of the United States, for private financial gain and in furtherance of extortion, in violation of 18 U.S.C. 1030(a)(2)(B) and (c)(2)(B)(i)-(ii); and knowingly and willfully making material false statements to a federal agent in a matter within the jurisdiction of the FBI, in violation of 18 U.S.C. 1001(a)(2). Pet. App. 81-97.

The case proceeded to trial. At trial, a technical information specialist with the FBI, who was responsible for maintaining records of transactions involving the NCIC database, testified that petitioner made numerous inquiries to the FCIC (Florida) database about Collins's victims and their vehicles and that the FCIC database retrieved information from the NCIC (federal) database to respond to those queries. The witness testified that in response to the queries, the NCIC reported that the queried individuals had no outstanding warrants and that the queried vehicles were not reported as stolen. This testimony was corroborated by other government

witnesses who testified about how the NCIC database works and the particular queries petitioner made. Pet. App. 60-61, 5-73; 3/31/2006 Trial Tr. 95-103, 110-112 (testimony of Director of Information Services in Hillsborough County Sherriff's Office); 4/3/2006 Trial Tr. 38-39, 43-44 (testimony of information analyst for Florida Department of Law Enforcement).

A jury convicted petitioner on all counts. Pet. App. 1-2. Petitioner filed an appeal but then voluntarily withdrew it. *Id.* at 2, 14.

3. Beginning in 2007, petitioner sought post-conviction relief on several occasions.

a. In August 2007, petitioner filed an amended motion to vacate his sentence under 28 U.S.C. 2255. He contended that the results of a polygraph test administered after his conviction demonstrated that he was innocent of the charges and that his privately retained counsel was ineffective for eight different reasons. Pet. App. 14-15, 19-20.

The district court denied the motion. Pet. App. 12-30. The court concluded that petitioner failed to meet the "exceptionally high standard for actual innocence claims," explaining that "[t]he Government presented a formidable case against Petitioner, and the polygraph results (a mere four questions) were not so truly extraordinary that no reasonable juror would have disbelieved the evidence that was presented at trial." *Id.* at 20 (internal quotation marks omitted). The court then concluded that each of the alleged grounds of ineffective assistance lacked merit because petitioner's attorney's performance was not deficient. *Id.* at 20-30.

The district court denied petitioner's request for a COA. 07-cv-01258 Docket entry No. 31 (M.D. Fla. Mar. 31, 2008). The court of appeals and this Court also de-

clined to issue a COA. 07-cv-01258 Docket entry No. 32 (M.D. Fla. July 21, 2008); *Maye* v. *United States*, 555 U.S. 1151 (2009) (No. 08A460).

b. In October 2010, petitioner filed a complaint under Federal Rule of Civil Procedure 60(d)(1), requesting that the district court reopen his Section 2255 proceedings based on one of his prior arguments about ineffective assistance of counsel. The district court dismissed the complaint, which it construed as a second or successive claim for relief under Section 2255, for lack of jurisdiction. *Maye* v. *United States*, No. 10-cv-02327, 2010 WL 4279405, at *2 (M.D. Fla. Oct. 25, 2010).

c. In December 2010, petitioner filed a motion under Federal Rule of Criminal Procedure 34(a)(2) "to vacate judgment of conviction" for lack of subject matter jurisdiction. Mot. to Vacate J. of Conviction 1 (M.D. Fla. Dec. 6, 2010) (04-cr-00321 Docket entry No. 220). He argued, for the first time, that he could not be convicted for a violation of 18 U.S.C. 1030(a)(2)(B) because the evidence showed he only accessed state databases, and not federal databases. Mot. to Vacate 5-6. In support of that argument, petitioner cited *United States* v. *Salum*, 257 Fed. Appx. 225 (11th Cir. 2007), an unpublished case decided after petitioner filed his Section 2255 motion. Mot. to Vacate 4. The government responded that petitioner's motion is untimely if construed as a Rule 34 motion and barred as second or successive if interpreted as a Section 2255 motion. Gov't Resp. in Opp. to Mot. to Vacate 2-5 (Feb. 14, 2011) (04-cr-00321 Docket entry No. 222). The government also contended that petitioner's claim lacks merit because the evidence established that petitioner accessed and obtained information from a federal database. *Id.* at 5-6.

The district court denied the motion, citing the time requirement in Rule 34 and the prohibition on second or successive petitions in Section 2255. 04-cr-00321 Order 1 (Feb. 17, 2011) (Docket entry No. 223) (citing Fed. R. Crim. P. 34(a)(2) and 28 U.S.C. 2255(h)).

The district court and the court of appeals denied petitioner's application for a COA. See 04-cr-0321 Docket entry No. 232 (M.D. Fla. Apr. 13, 2011); 11-11022 Order 1-3 (11th Cir. Aug. 19, 2011). The court of appeals then denied petitioner's application for an order authorizing the district court to consider a second or successive Section 2255 motion. 12-11782 Opinion 1-3 (11th Cir. Apr. 25, 2012).

4. In April 2011, petitioner filed a petition for a writ of habeas corpus under 28 U.S.C. 2241 in the United States District Court for the Southern District of Georgia, the district of his confinement. Petitioner renewed his contention that his conviction was infirm because the government had not established that he obtained information from a federal, as opposed to state, agency. Section 2241 Motion 2-4 (Apr. 14, 2011) (11-cv-00059 Docket entry No. 1). In support of that claim, petitioner again relied on *Salum*, *supra*, and also cited *United States* v. *Rodriguez*, 628 F.3d 1258 (11th Cir. 2010), cert. denied, 131 S. Ct. 2166 (2011). Section 2241 Motion 2-4. The government responded that a Section 2241 remedy is not available to petitioner because he failed to show that a Section 2255 remedy is "inadequate or ineffective." Gov't Motion to Dismiss Section 2241 Motion 3-6 (May 5, 2011) (11-cv-00059 Docket entry No. 6) (quoting 28 U.S.C. 2255(e)).

The district court referred the matter to a magistrate judge, who recommended dismissing the petition. Pet. App. 8-11. The magistrate judge explained that an indi-

vidual "seek[ing] to collaterally attack his conviction" generally must do so by filing a motion under 28 U.S.C. 2255 in the district of conviction. Pet. App. 9. The magistrate noted, however, that a Section 2241 petition "may be entertained" if the individual establishes that the remedy provided under Section 2255 is inadequate or ineffective to test the legality of his detention by showing that his claim is based upon "(1) * * * a retroactively applicable Supreme Court decision; (2) the holding of that Supreme Court decision establishes the petitioner was convicted for a nonexistent offense; and (3) circuit law squarely foreclosed such a claim at the time it otherwise should have been raised in the petitioner's trial, appeal, or first § 2255 motion." *Id.* at 10 (quoting *Wofford* v. *Scott*, 177 F.3d 1236, 1244 (11th Cir. 1999)). Because petitioner failed to cite any retroactively applicable Supreme Court precedent that might support his claim, the magistrate judge concluded that it was "unnecessary to examine his petition further." *Id.* at 10-11.

After an "independent and *de novo* review of the record," the district court adopted the magistrate judge's report and recommendation and dismissed the petition. Pet. App. 5-7. The court rejected petitioner's argument that a controlling circuit court decision (rather than Supreme Court decision) could provide a basis for finding that the Section 2255 remedy is inadequate or ineffective. *Id.* at 5-6. The court noted that, in any event, neither of the decisions petitioner cited could have "overturned circuit precedent that applied during [petitioner's] trial, direct appeal, or first § 2255 motion" because "[n]either decision was rendered by the en banc Court." *Id.* at 6.

5. The court of appeals affirmed in an unpublished, per curiam opinion. Pet. App. 1-4. The court explained

that petitioner must establish that a Section 2255 proceeding is "inadequate or ineffective to test the legality of his detention," and a Section 2255 proceeding is not "inadequate or ineffective" simply because the petitioner previously filed an unsuccessful Section 2255 petition and is precluded from filing a second or successive petition without authorization from the court of appeals. *Id.* at 3 (quoting 28 U.S.C. 2255(e)). Citing its prior decision in *Wofford*, *supra*, the court held that petitioner failed to establish that the Section 2255 proceeding was "inadequate or ineffective" because he did not identify any retroactively applicable Supreme Court decision that might be a basis for relief or show that the circuit's law had squarely foreclosed his claim at the time the claim should have been raised. Pet. App. 3-4.

6. Petitioner filed a petition for rehearing en banc, which was denied, with no judge in regular active service requesting that the court be polled on rehearing en banc. Pet. App. 32-33.

ARGUMENT

Petitioner renews his contention (Pet. 15-21) that the savings clause of Section 2255(e) authorizes him to obtain habeas corpus relief under 28 U.S.C. 2241 based on a purported change in the law in the Eleventh Circuit. The court of appeals' unpublished, per curiam decision rejecting petitioner's claim does not warrant further review. Even if petitioner were correct that an intervening court of appeals decision can justify resort to Section 2241, he has identified no relevant change in law in the Eleventh Circuit, and his attack on the sufficiency of the evidence supporting his convictions lacks merit. Petitioner's contention (Pet. 12-14) that this Court should grant review to address the scope of the phrase "exceeds authorized access" in 18 U.S.C. 1030 also lacks

merit. Petitioner never made any such argument in the courts below and does not now establish that he is entitled to relief on that basis. Further review is therefore unwarranted.

1. Petitioner contends (Pet. 15-21) that the savings clause of Section 2255(e) authorizes him to obtain habeas corpus relief under 28 U.S.C. 2241 based on a change in Eleventh Circuit law. Even if such a change could justify invoking Section 2241, no such change took place in this case.

a. Section 2255 generally provides the exclusive means by which a federal prisoner may collaterally attack the validity (as distinguished from the execution) of his conviction or sentence. See, *e.g.*, *Matheny* v. *Morrison*, 307 F.3d 709, 711 (8th Cir. 2002) ("A petitioner may attack the execution of his sentence through [Section] 2241 in the district where he is incarcerated; a challenge to the validity of the sentence itself must be brought under [Section] 2255 in the district of the sentencing court.") (citation omitted); *Valona* v. *United States*, 138 F.3d 693, 694 (7th Cir. 1998) (similar); *Bradshaw* v. *Story*, 86 F.3d 164, 166-167 (10th Cir. 1996) (similar). A federal prisoner seeking to challenge the validity of his sentence may file a petition for a writ of habeas corpus under Section 2241 only if he can show that Section 2255 is "inadequate or ineffective to test the legality of his detention." 28 U.S.C. 2255(e).

This Court has not addressed the circumstances under which a Section 2255 motion is "inadequate or ineffective to test the legality of [a prisoner's] detention," making resort to Section 2241 appropriate. The courts of appeals, however, have generally agreed upon a number of governing principles. They recognize that Section 2255 is not "inadequate or ineffective" simply because

relief has been denied under that provision, see, *e.g.*, *Pack* v. *Yusuff*, 218 F.3d 448, 452 (5th Cir. 2000); because a prisoner is barred from pursuing Section 2255 relief once the statute of limitations has expired, see, *e.g.*, *Hill* v. *Morrison*, 349 F.3d 1089, 1091 (8th Cir. 2003); or because a prisoner has been denied authorization to file a second or successive Section 2255 motion, see, *e.g.*, *United States* v. *Barrett*, 178 F.3d 34, 50 (1st Cir. 1999), cert. denied, 528 U.S. 1176 (2000). See generally *Charles* v. *Chandler*, 180 F.3d 753, 756 (6th Cir. 1999) (collecting circuit cases supporting each statement above). A contrary rule, as the courts have explained, would nullify the limitations that Congress placed on federal collateral review. See *In re Jones*, 226 F.3d 328, 333 (4th Cir. 2000); *Barrett*, 178 F.3d at 50; *In re Davenport*, 147 F.3d 605, 608 (7th Cir. 1998); *In re Dorsainvil*, 119 F.3d 245, 251 (3d Cir. 1997); *Triestman* v. *United States*, 124 F.3d 361, 376 (2d Cir. 1997).

The courts of appeals have found Section 2255 to be "inadequate or ineffective" in certain limited circumstances. In particular, the courts of appeals have generally interpreted the clause to allow a federal prisoner to invoke Section 2241 to attack a conviction when an intervening decision of this Court establishes that the prisoner is in custody upon conviction for an act that the law does not make criminal; the prisoner's claim was foreclosed by circuit law at the time of sentencing, direct appeal, and a first motion under Section 2255; and the prisoner cannot satisfy the requirements for bringing a second motion under Section 2255. See *Reyes-Requena* v. *United States*, 243 F.3d 893, 903-904 (5th Cir. 2001); *Jones*, 226 F.3d at 333-334; *Wofford* v. *Scott*, 177 F.3d 1236, 1242 (11th Cir. 1999); *Davenport*, 147 F.3d at 609-612; *Triestman*, 124 F.3d at 378-380; *Dorsainvil*, 119

F.3d at 251-252; see also Pet. App. 3-4 (citing *Wofford*).[1] One court of appeals has permitted resort to Section 2241 based on an intervening court of appeals decision, *Alaimalo* v. *United States*, 645 F.3d 1042, 1047-1049 (9th Cir. 2011), and another has declined to rule it out, see *Morales* v. *Bezy*, 499 F.3d 668, 673 (7th Cir. 2007), cert. dismissed, 554 U.S. 933 (2008).

b. Petitioner's case does not present a situation in which Section 2255 provides an inadequate means of challenging his conviction, even if (as he contends) the savings-clause test can be satisfied by intervening and binding court of appeals authority. Petitioner has not demonstrated that controlling Eleventh Circuit precedent foreclosed his claim at the time of conviction, direct appeal, or the Section 2255 motion.

Petitioner cites (Pet. 5, 15-16) two decisions: *United States* v. *Salum*, 257 Fed. Appx. 225 (11th Cir. 2007), and *United States* v. *Rodriguez*, 628 F.3d 1258 (11th Cir. 2010), cert. denied, 131 S. Ct. 2166 (2011). *Salum* is an unpublished decision that does not create binding circuit precedent. Moreover, neither *Salum* nor *Rodriguez*

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[1] But see *Prost* v. *Anderson*, 636 F.3d 578, 584-594 (10th Cir. 2011) (divided decision rejecting the "'erroneous circuit foreclosure' test" adopted by other circuits and holding that a prisoner may not "resort to the savings clause and [Section] 2241" if "the legality of his detention could have been tested in an initial [Section] 2255 motion"), cert. denied, 132 S. Ct. 1001 (2012). The government disagrees with the Tenth Circuit's interpretation of the savings clause in *Prost*, and it acquiesced in Prost's petition for rehearing en banc, while emphasizing that Prost's Section 2241 petition should fail on the merits. In any event, *Prost* does not benefit petitioner, because petitioner could have raised his argument about the evidence to support his conviction in a Section 2255 motion. In fact, he did raise it in his December 2010 Rule 34 motion, which the courts interpreted as a successive Section 2255 motion. See pp. 6-7, *supra*.

changed the applicable law in petitioner's favor. Petitioner's argument is that the government failed to prove at his trial that he obtained information from a federal department or agency. Pet. 5, 15-16. The government presented evidence showing that petitioner accessed the federal NCIC database, and the jury convicted petitioner on these counts. See pp. 4-5, *supra*. The Eleventh Circuit's decisions in *Salum* and *Rodriguez* do not cast doubt on the jury's conclusion. To the contrary, both cases simply recite the elements of an offense under Section 1030(a)(2)(B), including the requirement that a defendant access a protected computer and obtain information from a federal department or agency. See *Salum*, 257 Fed. Appx. at 230; *Rodriguez*, 628 F.3d at 1263. The Eleventh Circuit's description of the elements of the offense followed the plain language of the statute, and neither *Salum* nor *Rodriguez* purported to modify the proof requirements. Nor could they; as the court of appeals explained (Pet. App. 3-4), neither decision was rendered by the en banc court. Petitioner therefore has not demonstrated that he was foreclosed by applicable law from pursuing at an earlier time his claim that the government did not charge or prove that he obtained information from a federal agency. And his failure to raise that claim at trial, on direct appeal, or under Section 2255 precludes the extraordinary relief he now seeks under Section 2241.[2]

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[2] Petitioner also contends (Pet. 16) that the Eleventh Circuit's decision affirming his co-defendant's conviction foreclosed his claim "under the law of the case doctrine." That argument is not supported. On appeal, Collins challenged the district court's denial of his motion for a mistrial on unrelated grounds and the sufficiency of the evidence on the false statement count, and the court of appeals rejected those arguments. *United States* v. *Maye*, 241 Fed. Appx. 638,

In any event, petitioner's claim fails on the merits. The indictment alleged that he accessed the NCIC computer database "without authorization and in excess of authorization, and did thereby obtain information from a department and agency of the United States." Pet. App. 93, 95. The evidence at trial established that petitioner obtained information from the NCIC database that Bobo and others had no outstanding warrants and that the queried vehicles were not stolen. The government presented several witnesses, including the person at the FBI responsible for maintaining records of access to the NCIC database, who established that petitioner accessed that database. See pp. 4-5, *supra*. The jury was told it must find that petitioner "obtained information from any department or agency of the United States" to convict him on the Section 1030 counts and it found petitioner guilty on those counts. Jury Instructions 9 (Apr. 7, 2006) (04-cr-00321 Docket entry No. 147); see Pet. App. 1. Further review of petitioner's fact-bound claim is unwarranted.

2. Petitioner also contends (Pet. 12-14) that this Court should grant review to address the meaning of the phrase "exceeds authorized access" in 18 U.S.C. 1030(a). But petitioner has raised no argument, in the courts below or in this Court, that his conviction depends on how that phrase is interpreted. In particular, he has not argued that his conviction would be infirm if the phrase "exceeds authorized access" applies to "restrictions on *access* to information, and not restrictions on its *use*." Pet. 13 (quoting *United States* v. *Nosal*, 676 F.3d 854, 863-864 (9th Cir. 2012) (en banc)). Instead, petitioner's

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639, 643-644 (11th Cir. 2007). The decision did not address, let alone foreclose, the claim that petitioner raised about the sufficiency of the evidence supporting the Section 1030 counts.

argument has been that the government failed to show that he obtained "information from any department or agency of the United States." 18 U.S.C. 1030(a)(2)(B); see Pet. 5, 15-16. And because petitioner did not raise below any contention about the scope of the phrase "exceeds authorized access," the court of appeals did not address any such argument. See Pet. App. 1-4.[3] This Court is one of review, not first view, and thus petitioner's claim is not properly presented. *Arkansas Game & Fish Comm'n* v. *United States*, 133 S. Ct 511, 521-522 (2012).

Moreover, petitioner was charged with accessing the federal databases both "without authorization and in excess of [his] authorization." Pet. App. 93, 95. The jury likewise was instructed that petitioner could be convicted of a Section 1030(a)(2) violation if he "intentionally accessed a computer without authorization or in excess of [his] authorization." Jury Instructions 9. Petitioner does not provide any reason to believe that his conviction depended on a certain interpretation of the phrase "exceeds authorized access."

Finally, even if petitioner had raised an argument about the reach of the phrase "exceeds authorized access" in his Section 2241 petition, he could not obtain relief on that basis. Although petitioner alleges disagreement in the courts of appeals on the scope of the phrase "exceeds authorized access" (Pet. 12-14), he does

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[3] In April 2012, after the court of appeals entered its decision, see Pet. App. 1, petitioner filed a letter alerting the court of appeals to the decision in *United States* v. *Nosal*, *supra*. But petitioner did not make any argument about the scope of the phrase "exceeds authorized access"; instead, he reiterated his argument that the statute "require[s] that the access be to a federal database" and the evidence in his case did not show such access. Letter 1 (filed Apr. 12, 2012).

not contend that there has been any intervening, retroactive decision of this Court or the Eleventh Circuit narrowing the reach of Section 1030, or that he was precluded under circuit law from arguing that he did not "exceed authorized access" under the statute. Accordingly, further review of any such claim is unwarranted.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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