



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, DC 20530

The Honorable Kamala D. Harris
President
United States Senate
Washington, DC 20510

Dear President Harris:

On behalf of the Administration, I am pleased to present for Congressional consideration a legislative proposal that fixes a gap in existing law identified in *Jones v. Hendrix*, 599 U.S. 465 (2023). This proposal is designed to provide convicted federal defendants with the procedural opportunity to assert a claim that their convictions or sentences are illegal as a result of an intervening Supreme Court decision narrowing the reach of a federal criminal statute.

Defendants are often prosecuted under existing laws based on a theory that the statute reaches a certain range of conduct, but the Supreme Court later determines that the statute only covers a narrower swath of conduct. Under existing law, a defendant's ability to obtain relief in light of a new Supreme Court decision curtailing the reach of a federal statute turns entirely on the happenstance of timing. Defendants can invoke a new statutory-construction decision if it is announced while their case is on direct appeal and they can even invoke it if they are proceeding in a first post-conviction collateral attack under 28 U.S.C. § 2255. But, if the Supreme Court issues a new statutory-construction decision after the defendant has completed his appeal and his first Section 2255 motion, there is no longer any mechanism available under Section 2255 to challenge his detention. Under existing law, a second collateral attack under Section 2255 is permissible if, and only if, the claim presents compelling new evidence of factual innocence or a new retroactive rule of constitutional law.¹ New Supreme Court statutory decisions simply cannot form the basis for a successive collateral attack under Section 2255 under any circumstances.

This dilemma, as identified in *Jones*, can only be resolved through the legislative process.² The Department of Justice (Department) offers this amendment to restore a necessary pathway to allow redress in these cases. This bill amends existing Section 2255(h) to add a new subsection (h)(3) that permits the courts of appeals to authorize defendants to file second or successive Section 2255 motions that are based on certain new rules of statutory interpretation. In particular, new subsection (h)(3)(a) permits a successive collateral attack where the defendant

¹ See 28 U.S.C. § 2255(h)(1)-(2).

² See *Jones v. Hendrix*, 599 U.S. at 532 (2023) (Jackson, J., dissenting).

stands convicted for an act that was once thought to be a crime, but which the Supreme Court has subsequently confirmed is not a crime. New subsection (h)(3)(b)(i) permits a successive collateral attack where the defendant received a sentence that was once thought to be within the limits set by Congress, but the Supreme Court has since determined is in excess of the statutory maximum. And finally, new subsection (h)(3)(b)(ii) permits a successive collateral attack when the defendant received a mandatory minimum sentence which, by virtue of a new statutory-construction decision of the Supreme Court, turns out to have been inapplicable.

By making these changes to Section 2255, the bill ensures that individuals convicted of federal crimes, or sentenced to federal terms of imprisonment, that the Supreme Court later determines were not authorized by Congress, have an opportunity to seek judicial correction.

The Department looks forward to working with Congress on this legislative action.

Sincerely,

CARLOS
URIARTE

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Carlos Felipe Uriarte
Assistant Attorney General

Enclosure

cc:

The Honorable Charles E. Schumer
Majority Leader
United States Senate
Washington, DC 20510

The Honorable Mitch McConnell
Minority Leader
United States Senate
Washington, DC 20510

The Honorable Richard J. Durbin
Chair
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Lindsey Graham
Ranking Member
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