SHOULD SECOND CHANCES BE TIED TO PLACE OF CONFINEMENT? AN ANALYSIS OF SUCCESSIVE HABEAS PETITIONS AFTER *WHEELER* AND *HUESO*

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There is a well-documented tension in the legal system between the finality of a judicial decision and a prisoner's right to appeal their allegedly faulty sentence. A recent circuit split between the Fourth and Sixth Circuits highlights this tension, as the circuits are split on a narrow issue involving federal prisoners' right to successive petitions for habeas corpus. Specifically, the circuits are split as to whether a new ruling of statutory law by a circuit court is sufficient to trigger the § 2255(e) savings clause and allow federal prisoners a second chance to petition for habeas corpus after their initial § 2255 appeal has failed. This Note supports the Fourth Circuit's interpretation of § 2255(e)'s savings clause and argues for Congress to take legislative action to remedy this split and simplify the postconviction appeals process.

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I. INTRODUCTION

In America's criminal justice system, there is a well-documented tension between the finality of a judicial decision and prisoners' rights to appeal, with proponents on either side of this issue.[1] On one hand, there are countless heartbreaking stories of innocent prisoners released from prison once exculpatory evidence is unearthed, sometimes after spending decades of their lives behind bars.[2] Even more tragic, there are cases in which prisoners must remain in prison solely due to procedural constraints, even in situations where the witness who helped convict them subsequently recants.[3] At the other end of the spectrum, there are parties concerned about the potential for prisoners to clog the court system with frivolous appeals which result in a never-ending judicial cycle.[4]

While this Note does not claim to offer the perfect solution to this complicated issue, it is useful to mention that the disagreements surrounding the finality of a judicial decision and a prisoner's right to appeal their sentence play a small part in the overarching discussion about criminal justice reform that is taking place in America today.[5] It should be no surprise that reform ideas for mass incarceration are on the forefront of many minds, as America holds roughly 4% of the world's population yet nearly 16% of all prisoners on the planet.[6] This works out to an incarceration rate of roughly 629 incarcerated persons per 100,000 people in our country, which is the highest incarceration rate of any

1. *See, e.g.*, Press Release, Jorge Renaud, Senior Pol'y Analyst 2018-2019, Prison Pol'y Initiative, Eight Keys to Mercy: How to Shorten Excessive Prison Sentences, (Nov. 2018), https://www.prisonpolicy.org/reports/longsentences.html#secondlook [https://perma.cc/FR75-8T2T] (describing various reform ideas that advocate for shortened criminal sentences); Justin Smith, *Opinion: Tough-on-Crime Sentencing Made America Safer*, COLORADOAN (Jan. 4, 2019, 6:00 AM), https://www.coloradoan.com/story/opinion/2019/01/04/opinion-tough-crime-sentencing-made-america-safer/2464732002/ [https://perma.cc/Q5G6-YPMC] (arguing that tougher criminal sentencing schemes benefit American communities).

2. *See, e.g.*, Sandra E. Garcia, *DNA Evidence Exonerates a Man of Murder After 20 Years in Prison*, N.Y. TIMES (Oct. 16, 2018), https://www.nytimes.com/2018/10/16/us/20-years-exonerated-dna-prison.html [https://perma.cc/S73S-AC4Z].

3. *See, e.g.*, Barbara Bradley Hagerty, *Why a Man Declared Innocent Can't Get Out of Prison*, NPR (Dec. 6, 2017, 2:45 PM), https://www.npr.org/2017/12/06/568314351/why-a-man-declared-innocent-can-t-get-out-of-prison [https://perma.cc/8K3E-VNP9].

4. *See* Liliana Segura, *Gutting Habeas Corpus*, INTERCEPT (May 4, 2016, 12:54 PM), https://theintercept.com/2016/05/04/the-untold-story-of-bill-clintons-other-crime-bill/ [https://perma.cc/Q7YY-4W4C].

5. *See* Shaila Dewan, *Here's One Issue That Could Actually Break the Partisan Gridlock*, N.Y. TIMES (Nov. 24, 2020), https://www.nytimes.com/2020/11/24/us/criminal-justice-reform-republicans-democrats.html [https://perma.cc/Z8P9-RE4R].

6. *Ending Mass Incarceration*, VERA INST. OF JUST., https://www.vera.org/ending-mass-incarceration (last visited July 6, 2022) [https://perma.cc/8VWU-5VNP].

country in the world.[7] These high incarceration rates have driven public opinion towards a relatively broad consensus, as more than 70% of Americans hold the belief that reducing prison populations is important.[8] A vast majority, 91% of Americans, agree with the statement that "the criminal justice system has problems that need fixing."[9] This consensus even crosses party lines, as 68% of Americans "would be more likely to vote for an elected official if the candidate supported reducing prison population and using the savings to reinvest in drug treatment and mental health programs."[10] This brief snapshot of data supports the fact that many Americans see mass incarceration as a pressing issue and want to reduce the country's prison population in one way or another.[11]

Not only do Americans and activist organizations want to lower prison populations, but some states have already taken legislative steps to do the same.[12] For instance, in recent decades New York has "repealed most of its mandatory minimum drug laws."[13] Between the years of 2009 and 2014, this step taken by New York resulted in "prison sentences . . . decreas[ing] by 40 percent."[14] Other states have taken similar measures in recent years in an attempt to reduce their respective prison populations.[15]

While there is a seemingly endless number of reform ideas pushed for by criminal justice reform advocates, they will all require some form of legislative action to become meaningful and lasting, as evidenced by states that have already passed legislation.[16] It is important to analyze and understand the current statutory and procedural schemes that are used to incarcerate individuals and control prisoners' rights to relief from their criminal sentences. This is because the statutes which control the means through which a prisoner may appeal their sentence must be altered to allow for a greater number of imprisoned persons to have the opportunity to appeal their sentences. Reforming the statutes which govern prisoners' appeals may meaningfully lower the prison population.[17] This overarching push for a reduction in prison population provides the backdrop for the narrowly focused circuit split examined in this Note that deals specifically

7. *Highest to Lowest–Prison Population Rate*, WORLD PRISON BRIEF, https://www.prisonstudies.org/highest-to-lowest/prison_population_rate?campaign_id=9&emc=edit_nn_20210215&field_region_taxonomy_tid=All&instance_id=27155&nl=the-morning&regi_id=134903260&segment_id=51724&te=1&user_id=956079ec69b526896e1546a221c8f88f (last visited July 6, 2022) [https://perma.cc/TNS8-6877].

8. James Cullen, *Ways to End Mass Incarceration*, BRENNAN CTR. FOR JUST. (July 18, 2018), https://www.brennancenter.org/our-work/analysis-opinion/ways-end-mass-incarceration [https://perma.cc/RZ33-D6E3].

9. *91 Percent of Americans Support Criminal Justice Reform, ACLU Polling Finds*, ACLU (Nov. 16, 2017), https://www.aclu.org/press-releases/91-percent-americans-support-criminal-justice-reform-aclu-polling-finds [https://perma.cc/Z5CK-F9VZ].

10. *Id.*

11. *See* Dewan, *supra* note 5.

12. GREG NEWBURN & SAL NUZZO, JAMES MADISON INST., MANDATORY MINIMUMS, CRIME, AND DRUG ABUSE: LESSONS LEARNED, PATHS AHEAD 3 (2019), https://www.jamesmadison.org/wp-content/uploads/2019/02/PolicyBrief_MandatoryMinimums_Feb2019_v04.pdf [https://perma.cc/F4PN-HF9H].

13. *Id.*

14. *Id.*

15. *Id.* at 4–8.

16. *Id.* at 2–8.

17. *See, e.g.*, 28 U.S.C. § 2255.

with the right of federal prisoners to successively appeal their sentence by petitioning for a writ of habeas corpus.

The statutory method through which federal prisoners may appeal for relief, 28 U.S.C. § 2255,[18] provides the backdrop for this Note's examination of the tension which exists between the finality of a judicial opinion and a prisoner's right to appeal their sentence. Federal prisoners are currently restricted to one chance at appeal by way of § 2255.[19] The statute allows for a second § 2255 motion for relief only "if prisoners show new evidence of their innocence or a new rule of *constitutional* law from the Supreme Court."[20] In light of these statutory restrictions, federal prisoners who have exhausted their sole appeal under § 2255 have turned to other avenues to seek relief, namely the writ of habeas corpus.[21] The writ of habeas corpus is codified as 28 U.S.C. § 2241.[22]

Federal prisoners, however, may only file a successive writ of habeas corpus if the § 2255(e) "savings clause" is triggered.[23] Put succinctly, the § 2255(e) savings clause is triggered when a federal prisoner's initial remedy under § 2255 is deemed "inadequate or ineffective."[24] A prisoner's hopes for obtaining relief by way of a second-chance habeas corpus petition completely depend on the court's determination of what qualifies as "inadequate or ineffective" to trigger § 2255(e)'s savings clause.[25] This Note will focus on a circuit split between the Fourth and Sixth Circuits, involving each circuit's interpretation of when § 2255(e)'s savings clause is triggered.[26]

The specific issue that the Fourth and Sixth Circuits disagree on is whether federal prisoners may file a successive habeas corpus petition, after exhausting their initial § 2255 motion, based on a new statutory ruling by a circuit court[27]—in other words, whether a new statutory ruling by a circuit court triggers the § 2255(e) savings clause and renders the prisoner's first attempt at relief under § 2255 "inadequate or ineffective to test the legality of his detention."[28] The Fourth Circuit has held that a new statutory ruling by a circuit court may trigger the § 2255(e) savings clause, leaving the door open for a federal prisoner to then file a successive habeas petition for relief in that situation.[29] The Sixth Circuit has held the opposite, that a new statutory ruling by a circuit court is not sufficient to trigger the § 2255(e)'s savings clause, thus closing the door to successive

18. *Id.*
19. *Id.*
20. Hueso v. Barnhart, 948 F.3d 324, 326 (6th Cir. 2020); 28 U.S.C. § 2255(h).
21. *See* 28 U.S.C. § 2241.
22. *Id.*
23. 28 U.S.C. § 2255(e).
24. *Id.*
25. *Id.*
26. *Compare* Hueso v. Barnhart, 948 F.3d 324, 326 (6th Cir. 2020), *with* United States v. Wheeler, 886 F.3d 415, 428–29 (4th Cir. 2018).
27. *Hueso*, 948 F.3d at 326; *Wheeler*, 886 F.3d at 428–29.
28. *See* § 2255(e).
29. *Wheeler*, 886 F.3d at 428–29.

habeas petitions by federal prisoners where a new statutory ruling by a circuit court may be beneficial to a prisoner's appeal.[30]

Part II of this Note will discuss the background of this dispute by diving into both the history of habeas corpus and the progression to the current statutory scheme that restricts federal prisoners' appeal rights—28 U.S.C. § 2255 and the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA").[31] Part II will also explain the legislative history of these statutes and how the text operates to restrain federal prisoners from a second chance at relief from their sentences absent the satisfaction of certain statutory exclusion requirements.[32]

Part III of this Note will analyze the current circuit split between the Fourth and Sixth Circuits, focusing on the circuits' disagreement over whether new statutory decisions by a circuit court may trigger § 2255(e)'s savings clause.[33] The Fourth Circuit and Sixth Circuit came to different conclusions on this issue, with the Fourth Circuit holding that a new statutory decision by a circuit court triggers the savings clause and the Sixth Circuit holding the opposite.[34] This Part will analyze both circuits' interpretation of the statute and the different approaches taken to reach opposite conclusions. Part III will also draw on fundamental ideals of fairness and modern-day policy concerns discussed by each circuit, as well as relevant policy recommendations from outside sources to help aid the overall analysis.

Part IV will recommend that Congress take affirmative action to resolve this circuit split to offer some clarity to the complexities involving the appeals of federal prisoners created by the differing interpretations of § 2255. This Note will argue that the Fourth Circuit's interpretation and approach taken to remedy this split should serve as a guiding light to Congress in redrafting § 2255. This Note will argue for a congressional remedy as opposed to advocating for Supreme Court intervention. A legislative remedy is necessary because there is an urgent need for a solution and the Supreme Court recently denied certiorari to clear up the circuit split.[35]

Part V of this Note will offer a concise conclusion of the main points offered in the analysis and a restatement of this Note's primary thesis: that immediate legislative action is required to clarify the existing inconsistent interpretations of § 2255(e)'s savings clause between the circuit courts—specifically the split created by the Fourth and Sixth Circuits in *United States v. Wheeler* and *Hueso v. Barnhart*.[36]

30. *Hueso*, 948 F.3d at 326.
31. *See* discussion *infra* Part II.
32. *See* discussion *infra* Part II.
33. *Hueso*, 948 F.3d at 326; *Wheeler*, 886 F.3d at 428–29.
34. *Hueso*, 948 F.3d at 326; *Wheeler*, 886 F.3d at 428–29.
35. *See generally* Hueso v. Barnhart, 948 F.3d 324 (6th Cir. 2020), *cert. denied*, 141 S. Ct. 872 (2020).
36. *See Hueso*, 948 F.3d at 326; *Wheeler*, 886 F.3d at 428–29.

II. BACKGROUND

This Part will provide background information on the history of habeas corpus and America's transition to the current statutory scheme that controls the process through which federal prisoners may apply for relief. This Part will also give relevant background information on the text of § 2255, the statute that is the focal point of this circuit split between the Fourth and Sixth Circuits.[37] This Part will also explore the legislative history of the AEDPA and how its incorporation has limited the opportunity for federal prisoners to file motions to appeal their sentences under both § 2255 and § 2241.[38]

A. History of Habeas Corpus

Although there is a lack of consensus among academics, some scholars trace the inception of the writ of habeas corpus, the so-called "Great Writ," back to Roman law.[39] The development of the writ in English common law has been documented and studied extensively.[40] Until the end of the fifteenth century, the proceeding that would eventually develop into the modern-day writ of habeas corpus was "merely a procedural order to 'have the body' before a court for various reasons."[41]

The end of the fifteenth century brought changes to the ancient writ.[42] Both religious and political strife with the Crown led to the development of the writ from a procedural right to one that protected an individual's liberty.[43] By the inception of the United States, the writ of habeas corpus was "regarded as 'the most efficacious safeguard of personal liberty ever devised.'"[44]

In this context, it is no surprise that the founders of our country enshrined the writ in the United States Constitution: "The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it."[45] The delegates who incorporated the privilege of the writ of habeas corpus in the Constitution were wary of royal imprisonment without due process and were attempting to protect civil liberties in the colonies.[46] The writ's evolution continued throughout America's history, with

37. *See* 28 U.S.C. § 2255.

38. Segura, *supra* note 4; Lynn Adelman, *Who Killed Habeas Corpus?*, DISSENT MAG. (2018), https://www.dissentmagazine.org/article/who-killed-habeas-corpus-bill-clinton-aedpa-states-rights [https://perma.cc/LDT2-H7EB].

39. Neil Douglas McFeeley, *The Historical Development of Habeas Corpus*, 30 S.W.L.J. 585, 585 (1976).

40. *See id.*

41. *Id.* at 586.

42. *Id.* ("During this period the writ of habeas corpus was one of the means utilized by the central courts to assert superiority over their rivals.").

43. *Id.* at 587.

44. *Id.* at 590 ("That safeguard was protection from illegal detention; that is, detention without recourse to the judicial process. The writ was developed to protect against executive detention; its function was to block imprisonment by royal fiat without a judicial hearing. The writ was not an appeal device after conviction by a 'legal,' competent tribunal, but rather an extraordinary remedy against executive detention.").

45. U.S. CONST. art. I, § 9, cl. 2.

46. McFeeley, *supra* note 39, at 594.

the next major development occurring in 1789, when Congress enacted the Judiciary Act of 1789.[47]

The Judiciary Act of 1789 created the federal judiciary and concurrently gave the federal judiciary the right to issue writs of habeas corpus.[48] This original American iteration of habeas corpus extended to prisoners in federal custody the right to petition the court for habeas relief.[49] The writ continued to expand at multiple points throughout American history, most notably in 1867, where Congress made the writ available to "any person . . . restrained of his or her liberty in violation of the constitution . . . or law of the United States."[50] This expansion conferred the right to petition for a writ of habeas corpus upon state prisoners.[51] The expanded right resulted in an influx of prisoners seeking relief under their newly conferred right to petition for a writ of habeas corpus.[52]

The subsequent flood of petitions for writs of habeas corpus had the practical effect of making it more difficult for courts to "separate meritorious claims from frivolous ones, and created procedural difficulties because the sentencing records were located in the defendant's district of sentencing rather than the defendant's district of confinement."[53] In effect, habeas petitions were funneled "into the few courts with jurisdiction over prisons, compelling those courts to review cases from faraway locations."[54]

These practical difficulties eventually led Congress to enact an alternate statutory scheme for federal prisoners to appeal their sentences: 28 U.S.C. § 2255.[55] Congress enacted this statute in 1948 to streamline the appellate process at the federal level.[56] Section 2255 did not rid federal prisoners of the right to a petition for the writ of habeas corpus, but gave prisoners the "same rights granted by the habeas statute . . . but in a 'more convenient forum.'"[57] Today, the right to writ of habeas corpus remains codified as 28 U.S.C. § 2241.[58] While § 2255 did not completely destroy or replace the writ of habeas corpus, its

47. Scott R. Grubman, *What a Relief? The Availability of Habeas Relief Under the Savings Clause of Section 2255 of the AEDPA*, 66 S.C. L. REV. 369, 372 (2012).

48. *Id.*

49. *Id.*

50. *Id.* at 372–73.

51. *Id.* at 373.

52. *See* United States v. Hayman, 342 U.S. 205, 212 (1952) (noting the "great increase in the number of applications for habeas corpus filed in the federal courts by state and federal prisoners" after the passage of the 1867 Act).

53. Ashley Alexander, *One Strike, You're Out: The Post*-Hueso *State of Habeas Corpus Petitions Under the Savings Clause*, 57 AM. CRIM. L. REV. 84, 85 (2020).

54. Hueso v. Barnhart, 948 F.3d 324, 327 (6th Cir. 2020) (citing *Hayman*, 342 U.S. at 213–14, 214 n.18); *see also* Nicholas Matteson, *Feeling Inadequate?: The Struggle to Define the Savings Clause in 28 U.S.C. § 2255*, 54 B.C. L. REV. 353, 358–60 (2013) (discussing the effect that increased habeas petitions had on the federal court system).

55. *See* Alexander, *supra* note 53, at 85 (citing *Hayman*, 342 U.S. at 219).

56. *The History of Habeas Corpus in America*, 2255 MOTION, https://2255motion.com/history-habeas-corpus-america/ (last visited June 1, 2022) [https://perma.cc/5QYR-KTH4].

57. *Hueso*, 948 F.3d at 327 (citing *Hayman*, 342 U.S. at 219).

58. 28 U.S.C. § 2241.

language did instruct courts "not to entertain a habeas petition under § 2241 if a prisoner had not filed (or had unsuccessfully filed) a § 2255 motion."[59]

Section 2255 is a remedy which allows federal prisoners to ask a court "to vacate, set aside or correct"[60] their sentences on "the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack."[61] In the mid-1990s, partly due to public pressure to adopt a more tough-on-crime agenda, Congress made significant changes to the language of § 2255 with the passage of the AEDPA.[62] For purposes of this Note, the most relevant changes brought about by the AEDPA are those that affected the number of times a federal prisoner may file a motion for relief under § 2255, as well as a federal prisoner's ability to file a successive motion for relief by way of petition for habeas corpus.[63]

B. AEDPA—Antiterrorism and Effective Death Penalty Act

The AEDPA was passed just one day prior to the one-year anniversary of the terrorist attack on the Alfred P. Murrah Federal Building in Oklahoma City in 1995.[64] The purpose of the AEDPA was to "curb the abuse of the statutory writ of habeas corpus, and to address the acute problems of unnecessary delay and abuse in capital cases."[65] In the prior decade, there had been numerous attempts by legislators to pass habeas corpus reforms.[66] The national tragedy in Oklahoma City combined with the political climate at the time, however, galvanized support among both parties in Congress to pass the wide-sweeping AEDPA with strong bipartisan support.[67]

The passage of the AEDPA has had major implications for both state and federal prisoners.[68] For purposes of this Note, I will focus on the AEDPA's effect on a federal prisoner's right to appeal, which is codified as 28 U.S.C. § 2255(h).[69]

59. *Hueso*, 948 F.3d at 327.

60. 28 U.S.C. § 2255(a).

61. *Id.*

62. Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, sec. 105, § 2255, 110 Stat. 1214, 1220 (1996).

63. 28 U.S.C. § 2255(h).

64. Grubman, *supra* note 47, at 378–79.

65. *Id.* at 378.

66. *Id.* ("Between 1986 and 1995, members of Congress introduced more than eighty bills proposing habeas reform, attempting in particular to impose a statute of limitations for federal habeas relief.").

67. Segura, *supra* note 4 ("AEDPA's dizzying provisions–from harsh immigration policies to toughened federal sentencing–were certainly a hasty response to terrorism . . . . After the Republicans seized control of Congress in the historic 1994 midterm elections, the Clinton White House sought to double down on its law-and-order image in advance of the 1996 presidential race.").

68. Grubman, *supra* note 47, at 379 (explaining the limitations placed on both state prisoners to file successive habeas petitions under § 2254, as well as similar limitations placed on federal prisoners under § 2255).

69. 28 U.S.C. § 2255(h).

Section 2255(h) restricts federal prisoners' rights to successive motions for relief under § 2255 to two narrowly defined situations.[70]

First, § 2255(h)(1) provides that a successive § 2255 motion must contain "newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense."[71] In other words, a federal prisoner may not file a second motion for relief under § 2255 without "clear and convincing evidence" of their innocence.[72] This stringent standard provides prisoners a slim chance for a second § 2255 motion, as "clear and convincing" evidence of innocence is a difficult standard for prisoners to meet.[73] If a federal prisoner is unable to meet the "clear and convincing" standard set forth in § 2255(h)(1), however, they still have another chance at their appeal under § 2255(h)(2).[74]

Second, § 2255(h)(2) provides an alternative option to federal prisoners who are unable to satisfy the strict evidentiary threshold set forth in § 2255(h)(1).[75] Section 2255(h)(2) allows a successive motion under § 2255 if the successive motion contains "a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable."[76] Section 2255(h)(2) therefore allows prisoners to file a second § 2255 motion if there is a new ruling of constitutional law from the Supreme Court which applies retroactively to their case.[77]

In sum, from the time the AEDPA became law, federal prisoners have been limited to one chance to appeal their sentence under the available statutory remedy, § 2255, unless they can meet one of the conditions highlighted in § 2255(h)(1) or § 2255(h)(2): that either the prisoner's innocence is shown by "clear and convincing evidence" or the prisoner's motion contains a new rule of constitutional law, created by the Supreme Court and retroactively applied to their case.[78]

These restrictive limitations on successive § 2255 motions have forced federal prisoners to turn to other procedural methods to obtain relief when looking to bring a successive challenge to their sentences, namely the writ of habeas corpus in § 2241.[79] Section 2255, however, contains procedural constraints that federal prisoners must satisfy before filing a successive § 2241 motion.[80] In order for a federal prisoner to file a § 2241 motion for habeas relief after motioning for relief under § 2255, they must first satisfy § 2255(e)'s

70. *See id.*
71. § 2255(h)(1).
72. *Id.*
73. *Id.*
74. § 2255(h)(2).
75. *Id.*; § 2255(h)(1).
76. § 2255(h)(2).
77. *Id.*
78. Grubman, *supra* note 47, at 380 (describing an alternate way for prisoners to seek habeas relief through the mechanism of 2255(e)'s savings clause).
79. Alexander, *supra* note 53, at 87.
80. *See* 28 U.S.C. § 2255(e).

"savings clause."[81] If the § 2255(e) savings clause is not triggered, then federal prisoners that find themselves bound from making a successive motion under § 2255 will also be procedurally bound from filing a secondary petition for habeas corpus relief.[82] The federal prisoners who find themselves frozen out of both procedural avenues for secondary relief will have to resort to the last-ditch, and largely fruitless, effort of petitioning the executive branch for a presidential pardon to obtain relief from their sentence.[83]

C. Section 2255(e)'s Savings Clause

Although the AEDPA altered the language of § 2255 to limit federal prisoners to a single motion for relief under § 2255 unless one of the two conditions found in § 2255(h) is satisfied, the statute has a built-in mechanism to give prisoners another avenue for a successive chance at appeal by petition for writ of habeas corpus under § 2255(e).[84] This § 2255(e) provision is known as the savings clause.[85] Federal prisoners who are barred from a second motion for relief under § 2255 may file a second motion for relief under § 2241 if their initial § 2255 motion is ruled to be "inadequate or ineffective to test the legality of his detention."[86]

The savings clause acts as an escape hatch for federal prisoners who do not meet the high bar set forth by § 2255(h) to obtain secondary relief under § 2255.[87] Federal prisoners in this situation nevertheless may be able to access a secondary claim for relief by way of petition for habeas corpus through use of this statutory escape hatch.[88] Much like the language of many statutes, however, § 2255(e)'s textual meaning is not universally agreed upon, and circuit courts have come to different interpretations as to what is required to trigger the savings clause.[89] Most recently, the Fourth and Sixth Circuits have added to the confusion by publishing their differing interpretations about whether a new rule of statutory law from a circuit court renders a federal prisoner's prior motion for relief under § 2255 "inadequate or ineffective to test the legality of his detention."[90]

The Fourth Circuit has a more liberal interpretation of § 2255 and has held that the savings clause is triggered, and successive habeas corpus petitions are permitted, when there is a new rule of statutory law from a circuit court which applies retroactively.[91] Conversely, the Sixth Circuit has applied a much more

81. *Id.*

82. *Id.*

83. U.S. CONST. art. II, § 2, cl. 1 ("The President . . . shall have Power to grant Reprieves and Pardons for Offenses against the United States, except in Cases of Impeachment.").

84. § 2255(e).

85. Grubman, *supra* note 47, at 380 ("The savings clause of § 2255 provides that a prisoner whose motion for relief made under § 2255 has been denied may subsequently apply for habeas relief . . . .").

86. § 2255(e).

87. 28 U.S.C. § 2255(h).

88. *See* § 2255(e).

89. *Compare* McCarthan v. Dir. of Goodwill Indus.-Suncoast, Inc., 851 F.3d 1076, 1085–95 (11th Cir. 2017) (en banc), *with* Brown v. Caraway, 719 F.3d 583, 586–88 (7th Cir. 2013).

90. § 2255(e).

91. United States v. Wheeler, 886 F.3d 415, 434 (4th Cir. 2018).

stringent, textualist interpretation of the statute and has held that a new rule of a statutory law does not trigger the savings clause.[92] The Sixth Circuit held that only a new ruling from the Supreme Court can render a federal prisoner's initial § 2255 motion "inadequate or ineffective."[93] This Note's analysis will attempt to decipher both the Fourth and Sixth Circuits' reasoning and offer a clear recommendation to remedy the existing circuit split.

III. ANALYSIS

This Part will analyze the different approaches taken by the Fourth and Sixth Circuits to reach opposite interpretations on the question of whether a new statutory decision by a circuit court may trigger § 2255(e)'s savings clause.[94]

The Fourth Circuit's interpretation involved the adoption of a judicially created four-factor test to be applied to determine when the § 2255(e)'s savings clause is triggered, with the most important factor focused on whether a federal prisoner's sentence created a "fundamental defect."[95] The Sixth Circuit maintained a strict textual reading of the statute and placed heavy emphasis on an all-inclusive reading of the statute, interpreting each section to be read under its "harmonious-reading rule," which led the court to its conclusion barring federal prisoners from secondary habeas petitions based off of a new ruling of statutory law from the circuit court.[96]

While both circuits came to different conclusions, the underlying tension between judicial finality and an individual's interest in appealing their sentence remains in the foreground throughout both opinions, as evidenced by the Sixth Circuit's opening paragraph in its opinion: "Since the founding, Congress has adjusted and readjusted the important balance between an individual's interest in correcting a wrongful conviction and society's interest in stopping perpetual attacks on final criminal judgments. In the Antiterrorism and Effective Death Penalty Act of 1996, Congress adjusted this balance again . . . ."[97] The Fourth and Sixth Circuits attempt to find the balance between both the strong interest in correcting a prisoner's wrongful verdict and the equally strong interest in finalizing criminal judgments as they navigate this narrowly focused statutory issue.

The case facts in *Wheeler* share striking similarities to those in *Hueso*.[98] Both cases involve defendants attempting a secondary habeas challenge to their now-nullified mandatory-minimum sentences, after being barred from bringing successive § 2255 motions due to the restrictions set forth in § 2255(h).[99] Both

92. Hueso v. Barnhart, 948 F.3d 324, 335 (6th Cir. 2020) ("[W]e must read our standards in a way that harmonizes § 2255(e) with § 2255(f)(3) and § 2255(h)(2). This view of the section as a whole shows that later circuit decisions do not suffice to prove that an initial § 2255 motion is inadequate or ineffective to test a claim.").

93. *Id.* at 334.

94. *Id.*

95. *See Wheeler*, 886 F.3d at 429.

96. *Hueso*, 948 F.3d at 334.

97. *Id.* at 326.

98. *Id.* at 330; *Wheeler*, 886 F.3d at 419.

99. *Hueso*, 948 F.3d at 330–31; *Wheeler*, 886 F.3d at 419–21.

defendants, Ramon Hueso and Gerald Wheeler, play the all-too-familiar roles of similarly situated parties who receive unequal treatment by the law, here due to disagreement between two circuits over the meaning of § 2255(e).[100] Ramon Hueso, who is confined in the Sixth Circuit, was denied the chance to bring a successive petition for habeas corpus after exhausting his initial § 2255 motion, while conversely, Gerald Wheeler was granted that opportunity, solely because of Wheeler's place of confinement—the Fourth Circuit.[101]

This analysis will dive into each circuit's interpretation of § 2255's text and how the difference in interpretation has exacerbated the unfortunate reality that the geography of a federal prisoner's confinement, more so than any other factor, is ultimately what controls a prisoner's right to a successive attack on their sentence by way of a petition for habeas corpus when the prisoner relies on a new ruling of statutory law from a circuit court.[102]

A. Sixth Circuit—Hueso v. Barnhart

In *Hueso v. Barnhart*, the Sixth Circuit held that federal prisoners barred from filing a second § 2255 motion may not seek habeas relief under § 2241 based on new statutory decisions from circuit courts.[103] In its decision, the Sixth Circuit emphasized the fact that Congress's choice of language put forth in § 2255(h) "allowed prisoners to file a second § 2255 motion only if the Supreme Court adopts a new rule of constitutional law."[104] The Sixth Circuit gave heavy weight to the textual reading of the statute's provisions as a whole, as well as the congressional intent behind the limitations upon second motions contained within separate sections of § 2255.[105] The court feared these unconnected sections of § 2255 would be written out of the statute if the court held that statutory decisions from circuit courts had the ability to trigger the § 2255(e) savings clause.[106] This decision by the Sixth Circuit created a circuit split with the Fourth Circuit, which held that statutory decisions from circuit courts may trigger the savings clause in *Wheeler*.[107]

1. Facts of the Case—Hueso

In 2009, Ramon Hueso was convicted in a district court in Alaska for conspiring to "distribute and possess with intent to distribute illegal drugs."[108] The sentencing range for Hueso's offense was "between 10 years and life imprisonment."[109] The government, however, asked that a sentencing

100. *Hueso*, 948 F.3d at 326; *Wheeler*, 886 F.3d at 428–29.
101. *Hueso*, 948 F.3d at 326; *Wheeler*, 886 F.3d at 428–29.
102. *Hueso*, 948 F.3d at 326; *Wheeler*, 886 F.3d at 428–29.
103. 948 F.3d at 326.
104. *Id.*
105. *Id.*
106. *Id.*
107. *Wheeler*, 886 F.3d at 434.
108. *Hueso*, 948 F.3d at 329.
109. *Id.*

enhancement be applied to Hueso because he had a "prior conviction for a felony drug offense."[110] The court explained that "[f]ederal law defines 'felony drug offense' as 'an offense that is punishable by imprisonment for more than one year under any law of the United States . . . .'"[111]

If the sentencing enhancement were to apply, Hueso's mandatory-minimum sentence would have doubled from ten years to twenty years.[112] Hueso had twice been convicted of possession of illegal drugs in the State of Washington.[113] Unfortunately for Hueso, both of his prior convictions had a maximum penalty of five years under Washington state law, meaning both convictions qualified as felony drug offenses under the federal definition of felony drug offense.[114] Although the maximum sentence for his prior crimes was a penalty of five years, Hueso had merely received "concurrent 40-day sentences" for his prior convictions.[115]

When the district court sentenced Hueso, it followed Ninth Circuit precedent which "held that state convictions like Hueso's were felony drug offenses so long as 'the state's statutory maximum sentence' exceeded one year, even if 'the maximum sentence available under the state sentencing guidelines' did not."[116] Because Hueso's prior sentences carried possible maximum sentences longer than one year, the district court sentenced Hueso to longer than the twenty-year mandatory minimum, even though Hueso had only been sentenced to "concurrent 40-day sentences" for his prior crimes.[117] In 2013, Hueso filed an initial § 2255 motion for relief that was unsuccessful.[118]

Because Hueso had already filed an initial § 2255 motion, he was unable to file a second motion because his successive § 2255 motion did not satisfy the requirements outlined in § 2255(h), as it contained neither "new evidence of innocence or new constitutional rules."[119] Thus, in 2013 Hueso filed a successive § 2241 petition for habeas corpus in the district in which he was confined and argued that his initial § 2255 motion was "inadequate or ineffective" under the § 2255(e) savings clause.[120]

Hueso's petition challenged his sentence "on the ground that his state convictions were not 'felony drug offenses,'" and thus his "mandatory minimum

110. *Id.* at 330 ("Federal law defines 'felony drug offense' as 'an offense that is punishable by imprisonment for more than one year under any law of the United States or of a State or foreign country that prohibits or restricts conduct relating to' certain controlled substances.").

111. *Id.*

112. *Id.* at 329–30 ("If, however, Hueso had 'a prior conviction for a felony drug offense,' his mandatory-minimum sentence jumped from 10 years to 20 years.").

113. *Id.* at 330.

114. *Id.*

115. *Id.*

116. *Id.* (quoting United States v. Rosales, 516 F.3d 749, 758 (9th Cir. 2008)).

117. *Id.*

118. *Id.*

119. *Id.* at 331; 28 U.S.C. § 2255(h)(1) ("[N]ewly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense.").

120. *See* 28 U.S.C. § 2255(e); *Hueso*, 948 F.3d at 330.

should have been 10 years, not 20 years."[121] Hueso's petition relied on cases which dealt with statutory questions around mandatory-minimum sentencing: *Carachuri-Rosendo v. Holder* and *United States v. Simmons*.[122]

Unfortunately for Hueso, the Sixth Circuit did not decide whether Hueso's state convictions were "felony drug convictions."[123] The court also did not decide whether Hueso's sentencing challenge was the "type of statutory error that can be asserted on collateral review at all."[124] The Sixth Circuit explained that the Supreme Court had held that "statutory errors do 'not provide a basis for collateral attack unless the claimed error constituted "a fundamental defect which inherently results in a complete miscarriage of justice."'"[125]

The Sixth Circuit focused its decision solely on whether the circuit decisions Hueso relied upon in his new motion triggered the savings clause and rendered his initial § 2255 motion "inadequate or ineffective."[126] Thus, Hueso's fate depended on the Sixth Circuit's procedural interpretation of § 2255.[127] The Sixth Circuit held that the circuit cases cited by Hueso did not render his initial § 2255 motion "inadequate or ineffective," barring Hueso from a second chance at appealing his sentence.[128]

2. Sixth Circuit's Interpretation of § 2255

The Sixth Circuit adopted a "reasonable-opportunity standard" for prisoners in Ramon Hueso's position—a federal prisoner trying to prove that their initial § 2255 motion was inadequate or ineffective.[129] The reasonable-opportunity standard adopted by the Sixth Circuit requires that prisoners show "'that binding adverse precedent (or some greater obstacle) left [them] with "no reasonable opportunity" to' assert their legal claim on the front end—in their initial § 2255 motion."[130] The Sixth Circuit maintained that a new statutory ruling from a circuit court did not meet this standard.[131] In analyzing the statue, the court explained that it read the § 2255's separate provisions together through the use of the court's "harmonious-reading" rule.[132] The court was unable to reconcile differing provisions of § 2255 when read harmoniously, noting specifically that the limitations placed on multiple filings in Congress's 1996 passage of the AEDPA would be written out of the statute if it were to allow Ramon Hueso a second-chance appeal.[133]

121. *Hueso*, 948 F.3d at 330.
122. Carachuri-Rosendo v. Holder, 560 U.S. 563, 576 (2010); United States v. Simmons, 649 F.3d 237, 239 (4th Cir. 2011).
123. *Hueso*, 948 F.3d at 332.
124. *Id.* at 331.
125. *Id.* at 332 (quoting United States v. Addonizio, 442 U.S. 178, 185 (1979)).
126. *Id.*
127. *See generally* 28 U.S.C. § 2255.
128. *Hueso*, 948 F.3d at 332.
129. *Id.*
130. *Id.* (quoting Wright v. Spaulding, 939 F.3d 695, 703 (6th Cir. 2019)).
131. *Id.*
132. *Id.* at 334.
133. *Id.*

In sum, the Sixth Circuit concluded that § 2255(e)'s savings clause required more than a new statutory ruling from a circuit court to be triggered and held that a federal prisoner must show a "Supreme Court decision that adopts a new interpretation of a statute after the completion of the initial § 2255 proceedings."[134]

a. Text and Structure

The Sixth Circuit began its analysis with a "harmonious-reading"[135] of the applicable statutory text:

> An application for a writ of habeas corpus in behalf of a prisoner who is authorized to apply for relief by motion pursuant to this section, shall not be entertained if it appears that the applicant has failed to apply for relief, by motion, to the court which sentenced him, or that such court has denied him relief, unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of his detention.[136]

The Sixth Circuit points out that the statutory language of § 2255 does not give courts the ability to decide whether § 2255 itself is inadequate "in the abstract," rather the "inadequacy or ineffectiveness must relate specifically to a procedural deficiency in 'test(ing) the legality of [a prisoner's] detention.'"[137] The court noted that the plain language reading of § 2255(h)'s limits on successive motions clearly does not in and of itself render a prisoner's § 2255 remedy inadequate or ineffective.[138]

The Sixth Circuit explained that other circuits interpret this issue with a completely textual analysis by differentiating the question of whether the "circuit law is inadequate" from whether "the § 2255 remedial vehicle is inadequate or ineffective."[139] Unlike other courts, the Sixth Circuit has held § 2255(e) to "allow new habeas petitions even if a later Supreme Court decision affects only a prisoner's sentence, not just the prisoner's conviction."[140]

Using this framework, the Sixth Circuit concluded that the savings clause may only be triggered by a new Supreme Court decision.[141] The court explained that, reading § 2255's sections cooperatively and not independently, it would be illogical to allow for new statutory rulings from circuit courts to render a prisoner's § 2255 claim inadequate or ineffective, as that would eliminate two other limits within § 2255.[142] The court explained, "'[i]nterpretation of a phrase of uncertain reach'—as we have interpreted the phrase 'inadequate or

134. *Id.* at 333.
135. *Id.* at 334.
136. 28 U.S.C. § 2255(e).
137. *Hueso*, 948 F.3d at 333 (quoting Cain v. Markley, 347 F.2d 408, 410 (7th Cir. 1965)).
138. *Id.*
139. *Id.* at 333–34.
140. *Id.* at 326.
141. *Id.*
142. *Id.* at 333.

ineffective' to be—'is not confined to a single sentence when the text of the whole statute gives instruction as to its meaning.'"[143]

First, the court addressed § 2255(h)(2)'s limitation, which states that a "new rule of constitutional law" must come from the Supreme Court to authorize a successive § 2255 appeal.[144] The court explained that allowing for new statutory law from the circuit court to render a § 2255 motion inadequate or ineffective would make it easier to assert a §2241 claim than a "new constitutional claim[]" by way of § 2255(h)(2).[145] The court described this interpretation of the statute as an "odd dichotomy"[146] which it could not reconcile nor support. The court extrapolated further and stated that by allowing a new statutory ruling from a circuit court, this would lead to the conclusion that a new ruling of constitutional law from a circuit court "likewise would have to trigger § 2255(e)," which then would erase "§ 2255(h)(2)'s requirement of a new Supreme Court decision."[147]

Second, the Sixth Circuit explained that allowing prisoners the right to file a habeas petition would invalidate § 2255(f)(3).[148] This section of the statute states that federal prisoners have a one-year period, from multiple potential start dates, during which they must file their initial § 2255 motion.[149] Section 2255(f)(3) begins the one-year limitation from "the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review."[150] The Sixth Circuit pointed out that a new circuit change in interpretation "does not trigger the delayed start date for initial § 2255 motions."[151] The Sixth Circuit could not reconcile the incongruity that allowing prisoners to use the same circuit cases as a "habeas backdoor" to get around the statute of limitations in § 2255(f)(3) would present.[152]

The Sixth Circuit explained that prisoners that could not satisfy § 2255(f)(3)'s "Supreme Court limit" could just file a § 2241 petition instead, rendering § 2255(f)(3) null.[153] Thus, the court concluded that new rulings of statutory law from circuit courts could not be utilized to trigger the savings clause because of the limitations included in § 2255(h)(2) and § 2255(f)(3).

143. *Id.* at 334 (quoting Star Athletica v. Varsity Brands, Inc., 137 S. Ct. 1002, 1010 (2017)).
144. *Id.*; 28 U.S.C. § 2225(h)(2).
145. *Hueso*, 948 F.3d at 334–35.
146. *See id.* at 334.
147. *Id.* at 335.
148. *Id.*
149. 28 U.S.C. § 2255(f).
150. § 2255(f)(3).
151. *Hueso*, 948 F.3d at 335.
152. *Id.*
153. *Id.*

b. Statutory History

The second prong of the Sixth Circuit's analysis dealt with both the statutory history of § 2255 and Congress's passage of the AEDPA in 1996.[154] The court noted that prior to Congress's enactment of § 2255(h) there were a number of judicially developed limits on prisoner's right to file successive motions for relief that Congress codified in § 2255(h).[155] The court explained that prior to 1996, a "cause" requirement "allowed prisoners to file another collateral challenge only if a new claim had not been 'reasonably available' in prior challenges."[156] The court pointed out that case law surrounding the "cause" requirement for prisoners looking to use new precedent required Supreme Court precedent.[157] The Sixth Circuit explained that holding that a circuit precedent could now show § 2255's inadequacy—when it could not before the passage of the AEDPA—would "render[] meaningless these preexisting 'cause' requirements."[158]

Further, the Sixth Circuit explained that the need for a new Supreme Court decision was due in part to the procedural issues Congress originally sought to remedy with the initial enactment of § 2255 in 1948.[159] In the present day, § 2255 places a prisoner's collateral challenge in the court that sentences the prisoner originally, nullifying the confusing past process that required separate federal courts to attempt to apply the law from different circuits.[160] The court explained that the requirement of a Supreme Court decision "lessens the potential friction" between the sentencing court and court of confinement.[161] This friction is reduced because the sentencing court hears the § 2255 motion, while the court of confinement hears the § 2241 habeas petition.[162] This is because a Supreme Court decision binds both courts.[163] The court concluded that a Supreme Court decision removes the need for the court of confinement to "grade" the opinions of the sentencing circuit when hearing a § 2241 motion.[164]

The court ended its analysis by mentioning that the requirement of a new ruling of constitutional law from the Supreme Court denies prisoners that might otherwise be incentivized to forum shop for the circuit with the best law for their case the opportunity to do so.[165]

154. *Id.*
155. *Id.*
156. *Id.*
157. *Id.* at 336.
158. *Id.*
159. *Id.*; *see also* United States v. Hayman, 342 U.S. 205, 212–13 (1952).
160. *Hueso*, 948 F.3d at 336.
161. *Id.*
162. *Id.*
163. *Id.*
164. *Id.* at 336–37.
165. *Id.* at 337.

c. Policy Implications

The Sixth Circuit's interpretation of § 2255 in *Hueso* taps directly into the tension felt between the finality of judicial decisions and a prisoner's right to appeal, as well as several other relevant policy concerns pertinent to federal prisoners being held within the Sixth Circuit. First, because federal prisoners are statutorily provided only one chance at appealing their sentence, the stakes are exceedingly high for each federal prisoner's initial § 2255 appeal.[166] The Sixth Circuit's holding in *Hueso* leaves no room for error for any federal prisoner that appeals their sentence under § 2255.[167] This is particularly worrying when confronted with the fact that many prisoners appeal their sentence *pro se*, that is, without the representation of an attorney.[168] Indeed, there is no constitutional right to counsel after the first criminal appeal.[169]

Federal prisoners largely lack the resources to hire counsel for secondary appeals and must navigate the appellate process on their own.[170] Even those that have the means to afford a lawyer face the realistic potential that a simple error may cost them their one shot at relief under § 2255.[171] The Sixth Circuit's decision to restrict new statutory rulings from triggering § 2255(e)'s savings clause unnecessarily adds to the confusion and restrictions faced by federal prisoners that attempt to exercise a successive petition for a writ of habeas corpus.[172]

Second, the Sixth Circuit's decision goes directly against fundamental ideas of fairness and modern-day attitudes supporting the end of mass incarceration.[173] As Judge Moore points out in her dissent, the sole reason Ramon Hueso must remain in prison for an extra ten years is that at the time of his conviction, the Ninth Circuit maintained a mandatory-minimum sentence of twenty years for his drug crimes.[174] If Ramon Hueso had been sentenced today,

166. *See* 28 U.S.C. § 2255(h).

167. *Hueso*, 948 F.3d at 326.

168. U.S. COURTS OF APPEALS - JUDICIAL BUSINESS 2016, https://www.uscourts.gov/statistics-reports/us-courts-appeals-judicial-business-2016#:~:text=Thirty%2Deight%20percent%20of%20all,original%20proceedings%20and%20miscellaneous%20applications (last visited June 1, 2022) [https://perma.cc/25PB-8AVG] ("Thirty-eight percent of all filings by pro se litigants were prisoner petitions. Eighty-eight percent of the 13,551 prisoner petitions received were filed pro se.").

169. Ken Strutin, *Post-Conviction Representation, Pro Se Practice and Access to the Courts*, LLRX (Feb. 19, 2013), https://www.llrx.com/2013/02/post-conviction-representation-pro-se-practice-and-access-to-the-courts/ [https://perma.cc/N2X6-R4YH].

170. *See* Press Release, Bernadette Rabuy & Daniel Kopf, Senior Pol'y Analyst & Data Ed., Prison Pol'y Initiative, Prisons of Poverty: Uncovering the Pre-Incarceration Incomes of the Imprisoned, (July 9, 2015), https://www.prisonpolicy.org/reports/income.html [https://perma.cc/P4VF-26CG] ("[I]n 2014 dollars, incarcerated people had a median annual income of $19,185 prior to their incarceration, which is 41% less than non-incarcerated people of similar ages.").

171. *3 Common Mistakes Pro Se Litigants Make*, PROADVOCATE GRP. (Nov. 6, 2019), https://www.proadvocate.org/3-common-mistakes-pro-se-litigants-make/ [https://perma.cc/N38F-BV7Q] ("[P]ro se litigants lose cases daily because of minor mistake caused by lack of enough research.").

172. *See* Alexander, *supra* note 53, at 95.

173. *See* Press Release, Renaud, *supra* note 1.

174. Hueso v. Barnhart, 948 F.3d 324, 340 (6th Cir. 2020) (Moore, J., dissenting).

he would receive a maximum sentence of ten years due to the Ninth Circuit's revised definition of "felony drug offense."[175]

Hueso must remain in prison serving a mandatory-minimum sentence that is no longer valid in the Ninth Circuit because he does not meet the procedural requirements set forth by the Sixth Circuit to trigger the § 2255(e) savings clause.[176] Hueso's initial § 2255 motion failed, and although a new statutory ruling by the Ninth Circuit has arisen giving him the opportunity for relief, he will be denied that chance because he happens to be incarcerated in the Sixth Circuit, far from where he was convicted.[177] Hueso's situation—denied the opportunity to seek freedom for an additional decade due to a procedural holding—goes against fundamental ideals of fairness and justice and highlights the need for urgent congressional action.

That a federal prisoner's place of confinement dictates whether they may seek a second chance at a habeas appeal based on a statutory change in circuit law demands statutory reform. The majority in *Hueso* stressed that the requirement of a new Supreme Court decision to trigger the § 2255(e) savings clause removes the issue caused when circuit courts have to "grade" one another.[178] While on its face this reasoning appears logical, as the issue of circuits attempting to "grade" one another is a legitimate concern, it makes much more sense for Congress to skip to the root of the problem to solve the underlying issue. That is, to take clear legislative action to clearly define federal prisoners' rights to successive petitions for habeas corpus so that the circuit courts do not have to concern themselves with the prospect of grading one another.[179]

B. Fourth Circuit—United States v. Wheeler

In *Wheeler*, the Fourth Circuit held that federal prisoner Gerald Wheeler's successive habeas petition, filed after Wheeler had exhausted his initial § 2255 motion, was sufficient to trigger the § 2255(e) savings clause.[180] The Fourth Circuit explained that Wheeler had activated the savings clause by showing that a "retroactive change in the law, occurring after the time for direct appeal and the filing of his first § 2255 motion, rendered his applicable mandatory minimum unduly increased, resulting in a fundamental defect in his sentence."[181] The Fourth Circuit's reasoning culminated in a judicially developed four-factor test used to determine whether a federal prisoner's initial § 2255 motion is inadequate or ineffective to test the legality of his detention.[182]

175. *Id.*
176. *Id.*
177. *Id.*
178. *Id.* at 336–37.
179. *Id.*
180. United States v. Wheeler, 886 F.3d 415, 419 (4th Cir. 2018).
181. *Id.*
182. *See id.*; 28 U.S.C. § 2255(e).

Unlike the Sixth Circuit, the Fourth Circuit held that a new ruling of statutory law from a circuit court could trigger the savings clause.[183] The Fourth Circuit did not maintain the requirement set forth by the Sixth Circuit in *Hueso*—that a new ruling from the Supreme Court was necessary to trigger the § 2255(e) savings clause.[184] The Fourth Circuit provided a convincing argument that statutory rulings from circuit courts may be used to render a federal prisoner's initial § 2255 claim "inadequate and ineffective."[185]

1. Facts of the Case

In September 2006, Gerald Wheeler was charged with seven separate counts of felony drug offenses in the Western District of North Carolina.[186] The Government sought an enhanced penalty due to a prior conviction Wheeler received in 1996 for possession of cocaine under 21 U.S.C. § 841(b)(1)(B).[187] Section 841(b)(1)(B) provides: "If any person commits . . . a [§ 841(b)(1)(B)] violation after a prior conviction for a *felony drug offense* has become final, such person shall be sentenced to a term of imprisonment which may not be less than 10 years. . . ."[188]

In February 2008, Wheeler was sentenced to 120 months of imprisonment.[189] In determining Wheeler's sentence, the district court determined that Wheeler's prior drug conviction "was a 'felony drug offense.'"[190] This determination enhanced Wheeler's statutory range to anywhere from ten years to life in prison.[191] If the district court had not enhanced Wheeler's sentence, Wheeler's sentencing range "would have been 70–87 months, and his statutory sentencing range would have been 5 to 40 years."[192]

In 2010, Wheeler filed an initial § 2255 motion which was dismissed by the district court.[193] The district court explained that Wheeler's appeal was denied on the basis of two prior Fourth Circuit cases: *United States v. Harp* and *United States v. Simmons*.[194] Those two decisions held that "[T]o determine whether a conviction is for a crime punishable by a prison term exceeding one year [under North Carolina law], . . . we consider the maximum *aggravated* sentence that

183. *Wheeler*, 886 F.3d at 419.

184. *See id.* at 428 ("We see no need to read the savings clause as dependent only on a change in Supreme Court law.").

185. *See id.* at 426–29.

186. *Id.* at 419 ("[C]onspiracy to possess with intent to distribute at least 50 grams of crack cocaine and 500 grams of powder cocaine . . . ("Count One"); possession with intent to distribute at least 5 grams of crack cocaine ("Count Five"); using and carrying a firearm during and in relation to a drug trafficking crime ("Count Six"); and being a felon in possession of a firearm ("Count Seven").").

187. *Id.*

188. *Id.*

189. *Id.* at 429.

190. *Id.* at 419.

191. *Id.*

192. *Id.* at 420.

193. *Id.*

194. *See* United States v. Harp, 406 F.3d 242, 246 (4th Cir. 2005); United States v. Simmons, 635 F.3d 140, 146 (4th Cir. 2011).

could be imposed for that crime upon a defendant with the worst possible criminal history."[195] This ruling directly and negatively impacted Wheeler because although Wheeler had received a sentence of less than one year for his 1996 conviction, the crime he was convicted of carried a potential "maximum sentence of 15 months."[196] The ruling effectively rendered moot any challenge to Wheeler's 2006 conviction by way of § 2255.[197]

Wheeler filed another notice of appeal in 2011.[198] While Wheeler's appeal was pending, the Fourth Circuit overturned its decision in *Simmons* and explained that the relevant determination for whether an offense was to be classified as a "felony drug offense" was the "potential maximum sentence to which a defendant is exposed, not the highest possible sentence."[199] Unfortunately for Wheeler, the Fourth Circuit denied his appeal of his initial § 2255 motion because "*Simmons* did not apply retroactively on collateral review."[200]

In 2013, Wheeler again filed a request for authorization to file a second § 2255 motion as well as a request for relief under § 2241.[201] The court denied Wheeler's second § 2255 motion as it did not satisfy the requirements set forth in § 2255(h) and instead turned to whether Wheeler's initial § 2255 motion met the savings clause test.[202] Before the court could rule on Wheeler's request for relief under § 2241, the Fourth Circuit held that its decision in *Simmons* applied retroactively on collateral review.[203]

2. Fourth Circuit's Interpretation of § 2255

Unlike the Sixth Circuit, the Fourth Circuit did not hold that a Supreme Court decision was necessary to trigger the § 2255(e) savings clause.[204] The Fourth Circuit discussed the history of both § 2255 and habeas corpus when it began its analysis.[205] The court explained that § 2255 was originally intended to provide a "remedy identical in scope to federal habeas corpus" and that the sole purpose of the statute was to provide federal prisoners the "*same rights* in another and more convenient forum."[206] With this background laid, the court restated its responsibility to federal prisoners by stating that the court was "entrusted with ensuring [Wheeler] has a meaningful opportunity to demonstrate that he is entitled to relief from his allegedly erroneous sentence."[207] The Fourth Circuit

195. *See Wheeler*, 886 F.3d at 420 (quoting *Harp*, 406 F.3d at 246); *see also Simmons*, 635 F.3d at 146.
196. *Wheeler*, 886 F.3d at 420.
197. *Id.*
198. *Id.*
199. *Id.*
200. *Id.* at 421.
201. *Id.*
202. *Id.*
203. *Id.*
204. *Id.* at 428.
205. *Id.* at 426.
206. *Id.*
207. *Id.*

additionally relied on the text of the statute as well as the circuit's past decisions, specifically the Fourth Circuit's decisions in *In re Jones* and the recently vacated *Surratt* decision.[208]

a. In re Jones

First, the court discussed the relevant circuit precedent provided by *In re Jones*.[209] Like Gerald Wheeler, the defendant in that case, Byron Jones, was imprisoned for a drug crime and had exhausted his initial § 2255 motion prior to a Supreme Court ruling that rendered his conviction illegal.[210] Unlike Wheeler, Jones's *sentence* was deemed illegal due to a new statutory decision by the Supreme Court.[211] Due to the Supreme Court's decision being statutory in nature and not "constitutional," however, Jones was barred from filing a second § 2255 motion and attempted to file a § 2241 motion relief using the savings clause.[212] The court formulated a three-factor test in Jones's case which the petitioner had to satisfy to trigger the savings clause.[213]

Most notably, the factors focused on whether the "legality of the conviction" was needed to trigger the savings clause and did not address sentencing errors.[214] In addition to the factors discussed in *Jones*, the court highlighted its focus on whether an individual prisoner lands in a situation caused by a "fundamental defect" in the law, causing them to be imprisoned for noncriminal conduct.[215] Although the court in *Jones* did not discuss whether the savings clause opened the door to habeas relief for *sentencing* errors, the Fourth Circuit in *Wheeler* read *Jones* to apply more broadly to sentencing errors, which set the stage for the *Wheeler* court's formulation of a "New Savings Clause Test."[216]

b. Section 2255's Text and the "New Savings Clause Test"

Similar to the Sixth Circuit, the Fourth Circuit looked to the plain reading of § 2255's text.[217] The court explained that "[i]ncluding sentencing errors within the ambit of the savings clause also finds support in the statutory language."[218]

208. *Id.* at 426–28.
209. *Id.* at 426.
210. *Id.*
211. *Id.* (citing In re Jones, 226 F.3d 328, 330 (4th Cir. 2000)) (internal citations omitted).
212. *Id.* at 426–27.
213. *Id.* at 427 (quoting *Jones*, 226 F.3d at 333–34) ("[Section] 2255 is inadequate and ineffective to test the legality of a conviction when: (1) at the time of conviction, settled law of this circuit or the Supreme Court established the legality of the conviction; (2) subsequent to the prisoner's direct appeal and first § 2255 motion, the substantive law changed such that the conduct of which the prisoner was convicted is deemed not to be criminal; and (3) the prisoner cannot satisfy the gatekeeping provisions of § 2255 because the new rule is not one of constitutional law.").
214. *See id.* (quoting *Jones*, 226 F.3d at 333–34).
215. *Id.* (quoting *Jones*, 226 F.3d at 333 n.3, 333–34).
216. *Id.* at 427–29.
217. *Id.* at 427–28.
218. *Id.* at 427.

The court focused on the different language Congress used in separate sections of the statute in its analysis.[219] The Fourth Circuit also turned to the historical use of habeas corpus when coming to its conclusion, noting that "the Supreme Court has long recognized a right to traditional habeas corpus relief based on an illegally extended sentence."[220] The court cited *Davis v. United States* when it explained that one of the original purposes of habeas corpus relief was to "remedy statutory, as well as constitutional, claims" that presented "a fundamental defect."[221] The Fourth Circuit rationalized that withholding the right of a prisoner from relief from a "fundamentally defective sentence" would not fulfill one of the original purposes of habeas corpus.[222]

The Fourth Circuit combined its reasoning from *Jones* with its textual and historical analysis to conclude that *Jones* applied to fundamental sentencing errors and that § 2255(e) must serve as a tool to test the "legality of [prisoners'] sentences pursuant to § 2241."[223] The Fourth Circuit established a "New Savings Clause Test for Erroneous Sentences" based on its previously mentioned reasoning from *Jones* and its belief that prisoners should have the ability to challenge allegedly illegal sentences by way of § 2241.[224] The New Savings Clause Test is discussed at length in Part IV of this Note.

Additionally, the court addressed the lack of a requirement for a new rule of law from the Supreme Court in its formulation of the New Savings Clause Test.[225] The Fourth Circuit mentioned a recently vacated opinion in *Surratt*, which held that only a Supreme Court decision could open the savings clause door based on the text of § 2255(h), when explaining its formulation of the new test.[226] Unlike the court in *Surratt*, the Fourth Circuit found that the argument and requirement of a new Supreme Court decision that was based in the language of § 2255 "cuts the other way."[227]

The court in *Wheeler* pointed out that Congress could have incorporated the Supreme Court restriction included in § 2255(h) into § 2255(e), but because it did not, Supreme Court cases should not be necessary to trigger the savings

219. *Id.* at 427–28 ("The savings clause pertains to one's 'detention,' and Congress deliberately did not use the word 'conviction' or 'offense,' as it did elsewhere in § 2255.").

220. *Id.* at 428 (citing Nelson v. Campbell, 541 U.S. 637, 643 (2004)).

221. *Id.* (quoting Davis v. United States, 417 U.S. 333, 346 (1974) (quoting Hill v. United States, 368 U.S. 424, 428 (1962))).

222. *Id.*

223. *Id.* ("Therefore, we readily conclude that § 2255(e) must provide an avenue for prisoners to test the legality of their sentences pursuant to § 2241, and *Jones* is applicable to fundamental sentencing errors, as well as undermined convictions.").

224. *Id.* at 428–29.

225. *Id.* at 428.

226. *Id.* ("The majority in the vacated *Surratt* opinion surmised that only a Supreme Court decision can 'open the door to successive relief' because § 2255(h), which pertains to second or successive § 2255 motions, requires 'a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court.'").

227. *See id.* at 428–29 ("But this argument cuts the other way. Congress could have made savings clause relief dependent *only* on changes in Supreme Court constitutional law by using the identical language in § 2255(e), but it did not.").

clause.[228] Judge Moore made the same point about the majority's misapplied textual analysis of the statute in her dissent in *Hueso*.[229] Unlike the Sixth Circuit, Congress's failure to include language that mandated a new Supreme Court ruling in § 2255(e)'s text ultimately led to the Fourth Circuit's decision that a change to a circuit's controlling law was sufficient to trigger the savings clause.[230]

IV. RECOMMENDATION

This Note recommends that Congress take immediate legislative action to remedy the uncertainties that federal prisoners face when attempting successive appeals. It is unacceptable and fundamentally unfair to maintain an unclear statutory system when the stakes involve an individual's liberty. Congress must provide a framework that results in uniform understanding of § 2255(e) to ensure each federal prisoner knows their rights to appeal and when sentences imposed by the judiciary are final.[231] Congress should use the Fourth Circuit's "New Savings Clause Test" as a guiding light when revising or replacing § 2255 and renounce the narrow interpretation put forth by the Sixth Circuit.[232]

This Note stresses that immediate legislative action is necessary due to the Supreme Court's recent denial of certiorari to decide this circuit split between the Fourth and the Sixth Circuits.[233] The Supreme Court had the opportunity to remedy this circuit split but chose not to do so,[234] and therefore the only realistic chance at reforming the differing interpretation of § 2255(e) between the circuits is by way of the legislative branch. Congress—empowered with the judicial reasoning put forth by the Fourth Circuit—should be able to come to a commonsense edit or replacement of § 2255.

The Fourth Circuit's four-factor test's reasoning is clear, fundamentally fair, and addresses modern-day policy concerns. Modern-day public policy concerns include evolving public attitudes about mass incarceration and movements to repeal mandatory-minimum sentences and sentencing-

228. *Id.* ("Congress anticipated the savings clause would apply to prisoners who had already been 'denied . . . relief' by the sentencing court, sweeping in those prisoners filing a successive § 2255 motion.").

229. S*ee* Hueso v. Barnhart, 948 F.3d 324, 343–44 (6th Cir. 2020) (Moore, J., dissenting) ("The majority's professed adherence to plain-language review falls short, as it ignores the simple fact that the savings clause in § 2255(e) does not contain the textual limitations placed on second or successive motions in § 2255(h). Whereas the savings clause permits recourse to § 2241 when a remedy by § 2255 motion is 'inadequate or ineffective,' § 2255(h) identifies only two specific scenarios in which successive § 2255 motions are permitted.").

230. *Wheeler*, 886 F.3d at 429.

231. *See* 28 U.S.C. § 2255(e).

232. *Wheeler*, 886 F.3d at 429 ("[Section] 2255 is inadequate and ineffective to test the legality of a sentence when: (1) at the time of sentencing, settled law of this circuit or the Supreme Court established the legality of the sentence; (2) subsequent to the prisoner's direct appeal and first § 2255 motion, the aforementioned settled substantive law changed and was deemed to apply retroactively on collateral review; (3) the prisoner is unable to meet the gatekeeping provisions of § 2255(h)(2) for second or successive motions; and (4) due to this retroactive change, the sentence now presents an error sufficiently grave to be deemed a fundamental defect.").

233. *See generally* Hueso v. Barnhart, 948 F.3d 324 (6th Cir. 2020), *cert. denied*, 141 S. Ct. 872 (2020).

234. *Id.*

enhancement schemes.[235] The simple fact remains: a federal prisoner's place of confinement should not play the outsized determinative role that it does today in controlling prisoners' rights to appeal their sentences.[236]

Due to the current lack of uniform statutory interpretation of § 2255, Ramon Hueso must spend an extra ten years of his life in federal prison under a mandatory-sentencing scheme put in place at a time when "tough on crime" thinking prevailed in legislatures and which is no longer legally valid in the circuit in which he was sentenced.[237] With the realistic potential that more mandatory-minimum sentences be repealed across the country, Congress must remedy this statutorily imposed and congressionally approved injustice.[238]

A. New Savings Clause Test

The four-factor test set forth by the Fourth Circuit is laid out in a manner that addresses both the concern for prisoners to receive a fair chance at appeal if there is a relevant development in law applicable to their case and the concern that the judicial system will be overrun by frivolous appeals.[239] The Fourth Circuit's four-factor "New Savings Clause Test" provides that § 2255 is "inadequate and ineffective" when:

> (1) at the time of sentencing, settled law of this circuit or the Supreme Court established the legality of the sentence; (2) subsequent to the prisoner's direct appeal and first § 2255 motion, the aforementioned settled substantive law changed and was deemed to apply retroactively on collateral review; (3) the prisoner is unable to meet the gatekeeping provisions of § 2255(h)(2) for second or successive motions; and (4) due to this retroactive change, the sentence now presents an error sufficiently grave to be deemed a fundamental defect.[240]

The test allows for a subsequent habeas corpus appeal if a retroactive change in law results in an error that is serious enough to be deemed a "fundamental defect."[241] These factors clear up the confusion created by the circuit split between the Fourth and Sixth Circuits. The first factor lays the groundwork for the subsequent factors that make clear that both a Supreme Court case as well as a circuit court ruling affecting the legality of a federal prisoner's

235. Memorandum from The Mellmann Gro. & Pub. Op. Strategies to the Pub. Safety Performance Project of the Pew Charitable Trs. 2 (Feb. 10, 2016), https://www.pewtrusts.org/~/media/assets/2016/02/national_survey_key_findings_federal_sentencing_prisons.pdf [https://perma.cc/V4CW-FNSB] ("There Is Broad Support For Reforming Federal Mandatory Minimum Sentences, Including Eliminating Them Altogether.").

236. *See* Lauren Staley, *Inadequate and Ineffective? Factual Innocence and the Savings Clause of § 2255*, 81 U. CIN. L. REV. 1149, 1167 (2013) (contrasting the concern of docket congestion when "weighed against the potential for a factually innocent person to be wrongfully incarcerated—an issue that could be adjudicated fairly and accurately merely by allowing that prisoner to file a § 2241 petition—there can be no doubt that the courts should err on the side of fair adjudication").

237. *See* Hueso v. Barnhart, 948 F.3d 324, 340 (6th Cir. 2020) (Moore, J., dissenting).

238. *See, e.g.*, Memorandum from The Mellmann Gro. & Pub. Op. Strategies, *supra* note 235, at 4.

239. United States v. Wheeler, 886 F.3d 418, 429 (4th Cir. 2018).

240. *Id.*

241. *Id.*

sentence have the ability to trigger the savings clause.[242] This interpretation goes directly against the Sixth Circuit's interpretation of the savings clause and allows for prisoners such as Ramon Hueso to get a fair chance at relief from their now-defunct criminal sentences if a relevant, retroactively applied change in statutory law from a circuit court occurs.[243]

Second, the second factor importantly ties into the first factor by allowing a change in substantive circuit law to trigger the savings clause.[244] Additionally, the combination of the second and third factors respect the limiting provisions set forth in § 2255(e): that an initial motion must be made first and that either settled substantive law of the circuit or Supreme Court changed and now may be applied retroactively on collateral review.[245] The second and third factors serve as guardrails against frivolous claims by prisoners by maintaining restrictions on federal prisoners' right to successive appeals, while also providing an opportunity for relief to federal prisoners when there is a relevant change to substantive law made by either a circuit court or Supreme Court and that change is subject to retroactive collateral review.[246]

Lastly, the fourth factor is arguably the most important factor set forth in the *Wheeler* test because it provides a new standard for prisoners to meet when contesting their sentencing errors.[247] When satisfied alongside the first three factors, a federal prisoner is granted reprieve from the restrictive procedural restraint on successive appeals found in § 2255(h).[248] The fourth factor serves this important function by granting prisoners a chance to appeal their sentence when a relevant change in law occurs, while also maintaining a relatively high threshold for federal prisoners to clear, as the error to the prisoner's sentence must constitute a "fundamental defect."[249]

Advocates whose main concerns include fears that prisoners will bring frivolous claims may find their worries misplaced when applying the Fourth Circuit's test, as it only slightly opens the door to federal prisoners seeking successive relief from their sentences. Proponents for the finality of judicial sentences must also take note that from June 30, 2017 to June 30, 2018, the U.S. Courts of Appeals heard 7,073 criminal appeals and only about 6.6% of those heard were reversed.[250] While by no means a majority, that amounts to 466

242. *Id.*

243. *See, e.g.*, Hueso v. Barnhart, 948 F.3d 324, 340 (6th Cir. 2020) (Moore, J., dissenting).

244. *See Wheeler*, 886 F.3d at 429 ("(1) at the time of sentencing, settled law of this circuit or the Supreme Court established the legality of the sentence; (2) subsequent to the prisoner's direct appeal and first § 2255 motion, the aforementioned settled substantive law changed and was deemed to apply retroactively on collateral review . . . ").

245. *Id.*

246. *See id.* ("(2) subsequent to the prisoner's direct appeal and first § 2255 motion, the aforementioned settled substantive law changed and was deemed to apply retroactively on collateral review; (3) the prisoner is unable to meet the gatekeeping provisions of § 2255(h)(2) for second or successive motions . . .").

247. *Id.* ("[T]he sentence now presents an error sufficiently grave to be deemed a fundamental defect.").

248. *Id.*; 28 U.S.C. § 2255(h).

249. *Wheeler*, 886 F.3d at 429.

250. *See* Admin. Off. of the U.S. Cts., *Table B-5—U.S. Courts of Appeals Statistical Tables for the Federal Judiciary (June 30, 2018)*, U.S. CTS., http://www.uscourts.gov/statistics/table/b-5/statistical-tables-federal-judiciary/2018/06/30 (last visited June 1, 2022) [https://perma.cc/HZU6-4X5F].

prisoners who had meritorious claims against their criminal sentence.[251] The Fourth Circuit's test allows for more legitimate claims to be heard, which may rightly grant reprieve to additional wrongly sentenced prisoners that are currently unable to obtain relief because of § 2255's current procedural constraints while also maintaining a relatively stringent threshold that will prevent an excessive influx of frivolous appeals.[252]

Supporters of the Sixth Court's reasoning in *Hueso* may claim the Fourth Circuit's judicially developed test renders important provisions of § 2255 null, namely the timing and constitutional law restrictions set forth § 2255(h)(2) and § 2255(f)(3).[253] While this analysis of the statute's current text does raise valid questions about Congress's intent, the court in *Wheeler* accurately reads § 2255(e)'s text by noting the section's lack of a requirement for a new ruling of constitutional law necessary to trigger the savings clause.[254] This accurate reading of § 2255(e)'s text combined with the historical and policy considerations taken into consideration by the Fourth Circuit led the court to produce the most equitable outcome to deal with differing interpretations of the savings clause: the "New Savings Clause Test."[255]

B. Fundamental Fairness and Modern-Day Policy Concerns

The Fourth Circuit's interpretation of the savings clause aligns with both concepts of fundamental fairness and modern policy concerns about mass incarceration.[256] Fundamental fairness demands that federal prisoners imprisoned within different jurisdictions be afforded the same opportunities to remedy their sentences when there is a new statutory ruling by a circuit court within the district they were sentenced.[257] Federal prisoners who have exhausted their initial motion for relief under § 2255 find themselves with no options to collaterally attack their sentence if they are imprisoned within the Sixth Circuit even if there is a new statutory ruling by a circuit court. Federal prisoners imprisoned within the Fourth Circuit, however, can successively petition for

251. *Id.*

252. 28 U.S.C. § 2255(e), (h).

253. § 2255(h)(2) ("A second or successive motion must be certified as provided in section 2244 by a panel of the appropriate court of appeals to contain . . . a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable."); 28 U.S.C. § 2255(f)(3) ("A 1-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of . . . the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review.").

254. United States v. Wheeler, 886 F.3d 418, 428–29 (4th Cir. 2018); § 2255(e).

255. *Wheeler*, 886 F.3d at 429.

256. *See* Memorandum from The Mellmann Gro. & Pub. Op. Strategies, *supra* note 235, at 2 ("Eight in ten voters (79%) support giving judges the flexibility to determine sentences based on the facts of each case when considering drug offenses, while 77% support the same policy for all cases. Only 18% (drug cases) and 19% (all cases) find that proposal unacceptable."); *Ending Mass Incarceration*, *supra* note 6.

257. *See* Staley, *supra* note 236, at 1167 ("Courts should risk some logistical inconvenience if the alternative is a possible violation of a constitutional right in the nature of false imprisonment.").

habeas corpus by way of the savings clause when there is a new relevant statutory ruling by a circuit court.[258]

Not only is it common sense that federal prisoners be uniformly afforded the same opportunities to appeal their sentences, but Congress must side with the court in *Wheeler* for ideals of fairness and justice to prevail. It is not necessarily a politically controversial position for members of Congress either; as previously noted, there has been a large public shift away from the tough-on-crime attitudes prevalent at the time the AEDPA was passed.[259] Modern-day ideas of prison reform have increased in popularity, including reform of sentencing enhancements and mandatory minimums for nonviolent crimes.[260] The combination of a potentially politically viable environment and the urgent need for uniformity in the postconviction appeals process should push legislators to take swift action.

V. CONCLUSION

Congress must take immediate legislative action to remedy the circuit split between the Fourth and Sixth Circuits. As discussed previously, the Supreme Court's recent decision to deny certiorari has put the onus on the legislative branch to cure the current split.[261] This Note agrees with the framework provided by the Fourth Circuit in *Wheeler* and suggests that Congress follow a similar statutory framework when retooling or replacing the statutory language of § 2255.[262]

Equally important as Congress's need to act immediately is the need for statutory clarity. Congress must strive to leave no gray area for contention between the circuits on this issue to avoid the current state of misinterpretation around federal prisoners' rights to appeal in the future. While this Note agrees with the Fourth Circuit's interpretation of the savings clause, it stops short of providing a comprehensive suggestion for how Congress should revise the complete statutory language of § 2255. There are and will continue to be numerous relevant issues related to a prisoner's right to appeal their allegedly faulty sentence, but Congress must act now while it has the opportunity to close the door on one of those many issues: rewriting the § 2255(e)'s savings clause and defining when exactly it may be triggered by a new rule of law.[263]

258. *See* Hueso v. Barnhart, 948 F.3d 324, 326 (6th Cir. 2020); *Wheeler*, 886 F.3d at 428–29.

259. Memorandum from The Mellmann Gro. & Pub. Op. Strategies, *supra* note 235, at 2; *see* Segura, *supra* note 4.

260. Memorandum from The Mellmann Gro. & Pub. Op. Strategies, *supra* note 235, at 2; *Ending Mass Incarceration*, *supra* note 6; *see* NEWBURN & NUZZO, *supra* note 12, at 9.

261. *See supra* note 35 and accompanying text.

262. *See Wheeler*, 886 F.3d at 428–29 (outlining the court's judicially developed savings clause test).

263. *See* 28 U.S.C. § 2255(e).