No. 17-1243

IN THE

SUPREME COURT OF THE UNITED STATES

Vilaychith Khouanmany — PETITIONER
(Your Name)

vs.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court Of Appeals For The Eighth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Vilaychith Khouanmany
(Your Name)

5701 8th St. Camp Parks-Unit-a
(Address)

Dublin, Ca. 94568
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

1. *Is Denying Appealbity of case no.17-1243 when the issues of career offender, enhancements of my priors and excessives sentences, and was unfairly denied right to bail to fight her case?*

2. *How can an indigent prisoner with No Legal knowlege be prepared to file a Habeas in the strick time limits, where the court denied appointment of counsel?*

3. *Is it fair for an indigent prisoner to file such a complicated brief in such short period of time?*

4. *Is it fair to bring an appeal with a type writer with the time limit is too short?*

5. *Is it Fair to bring an appeal with inadequate law libray and limited time in law library?*

6. *Is it fair for the court NOT to follow the Law in the "Speedy Trial§3161" : Time limits and exclusions, they granted an extension due to overly complicated bearer such as only having access to a type writer NOT having sufficient access to State and Federal Laws due to the fact that petitioner is NOT an Attorney and NOT learning the LAW?*

7. *Is it unreasonable to request the court to appoint a counsel?*

8. *Is it NOT unreasonable for this Honorable Court to appoint petitioner counsel?*

LIST OF PARTIES

[ ] All parties appear in the caption of the case on the cover page.

[X] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

see attached::paper

LIST OF PARTIES

Caption For Case Number: 17-1243

United States of America, Solicitor General of the United States

Plaintiff - Appellee

v.

Vilaychith Khouanmany

Defendant - Appellant

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[X] For cases from **federal courts:**

The opinion of the United States court of appeals appears at Appendix A to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

[ ] For cases from **state courts:**

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

[XX] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was *June 8, 2018*.

[ ] No petition for rehearing was timely filed in my case.

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: *August 10, 2018*, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[ ] For cases from **state courts**:

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

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STATEMENT OF THE CASE

Nature of the Case: This is a direct appeal by defendant, Vilaychith Khouanmany, following a guilty plea and sentence in the Southern District of Iowa on a charge of conspiracy to distribute a mixture and substance containing methamphetamine or actual methamphetamine. Khouanmany appeals her sentence.

Factual and Procedural Background: On December 30, 2015, a United States Postal inspector seized a suspicious package that was being sent from Sacramento, California to Des Moines, Iowa. PSR ¶ 11.[1] After obtaining a search warrant, the package was found to contain two ounces of methamphetamine. *Id.* Law enforcement made a controlled delivery of the package the following day. *Id.* ¶ 12. The package was accepted by Vanaka Chey, who lived in the basement of the delivery residence with her boyfriend, Somkhit Southam. *Id.* Chey thereafter placed a recorded phone call to Khouanmany, wherein she told Khouanmany that the package had arrived and asked if Khouanmany wanted an unidentified individual to receive some of the methamphetamine from the package. *Id.* Khouanmany

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[1] In this brief, the following abbreviations will be used:
"DCD" — district court clerk's record, followed by docket entry and page number, where noted;
"PSR" — presentence report, followed by the page number of the originating document and paragraph number, where noted; and
"Sent. Tr." — Sentencing hearing transcript, followed by page number.

advised Chey to collect money from the unidentified individual before giving him methamphetamine. *Id.*

During post-*Miranda* interviews, Chey advised law enforcement that Khouanmany contacted her in March or April 2015 and wanted to ship methamphetamine to Iowa so Chey could sell it. *Id.* ¶ 15. Including the controlled delivery, Chey received quantities of methamphetamine in the mail from Khouanmany approximately six times between April and December 2015. *Id.* ¶¶ 11, 15–17. Chey would either distribute the methamphetamine herself or give it to Southam to distribute; Chey would then deposit the proceeds from the sales into bank accounts that Khouanmany identified. *Id.* ¶ 13, 15–17, 19.

On February 25, 2016, law enforcement in Sacramento, California arrested Khouanmany and executed a search warrant at her residence. *Id.* ¶ 20. They discovered packaging materials, several marijuana plants, and 2.3 pounds of processed marijuana. *Id.* ¶ 20. A search of Khouanmany's vehicle revealed various bank and shipping receipts, a medical marijuana physician's statement, and a cell phone bearing the same number Chey and Southam used to contact Khouanmany. *Id.* ¶ 21.

On August 19, 2016, Khouanmany pled guilty, pursuant to a plea agreement with the government, to one count of conspiring to distribute methamphetamine, in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(C), and 846. DCD 29, 31. Although

the PSR found that Khouanmany was subject to a base offense level of 28 and a two point enhancement for her role in the offense, these calculations were "trumped" by application of the career offender guideline in USSG § 4B1.1(b)(3), which provided for a base offense level 32. PSR ¶¶ 29, 32, 34, 35. In particular, the PSR recounted that Khouanmany was a career offender based on the controlled substance convictions alleged in PSR ¶¶ 48 (California H&S Code § 11378), 51 (Iowa Code § 124.401(1)(d)), and 52 (Iowa Code § 124.401(1)(d), second offense). After deducting three points for acceptance of responsibility, the PSR determined an advisory guidelines sentencing range of 151–188 months, based upon a total adjusted offense level of 29 and a category VI criminal history. PSR ¶¶ 35–38, 116. Khouanmany raised several objections to the guideline calculation, but conceded that none of them impacted the advisory guideline sentencing range in light of the career offender finding. DCD 38. Khouanmany did not object to the applicability of the career offender provision.

In both her sentencing brief and at the sentencing hearing, Khouanmany requested that the court vary and impose a sentence below the advisory sentencing guideline range. DCD 44; Sent Tr. at 3:8–6:24. The government argued for a sentence of 151 months, at the bottom of the advisory guideline range. DCD 45; Sent Tr. 9:1–12:13. The district court declined Khouanmany's request for a

variance and sentenced her to 151 months incarceration and three years of supervised release. Sent Tr. 12:15–14:4.

SUMMARY OF THE ARGUMENT

Khouanmany makes two arguments on appeal. First, she argues that her prior Iowa convictions are not "controlled substance offenses" that supported application of the career offender guideline pursuant to USSG § 4B1.1. Second, she challenges her 151 month sentence as unreasonable, as a lesser sentence would have been sufficient punishment under the circumstances.

ARGUMENT

I. KHOUANMANY'S PRIOR IOWA CONVICTIONS WERE NOT "CONTROLLED SUBSTANCE OFFENSES" UNDER THE SENTENCING GUIDELINES, MAKING APPLICATION OF THE CAREER OFFENDER PROVISION PLAINLY ERRONEOUS[2]

Standard of Review: A failure to properly calculate the United States Sentencing Guideline range constitutes a procedural sentencing error. *United States v. Townsend*, 618 F.3d 915, 918 (8th Cir. 2010) (quoting *United States v. Hill*, 552 F.3d 686, 690 (8th Cir. 2009)). Here, Khouanmany failed to object to application of the career offender guideline, and therefore review is for plain error.

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[2] The argument that Iowa Code § 124.401(1) is not a "controlled substance offense" is currently pending before the Eighth Circuit in a previously filed case, *United States v. Victor Hugo Maldonado*, No. 16-3882.

United States v. Pirani, 406 F.3d 543, 550 (8th Cir. 2005). Under plain error review, Khouanmany must establish an "'(1) error, (2) that is plain, and (3) that affects substantial rights." *Id.* (quoting *United States v. Olano*, 507 U.S. 725, 732–36 (1993)). If all three conditions are met, an appellate court may then exercise its discretion to correct a forfeited error, but only if the error "seriously affects the fairness, integrity, or public reputation of judicial proceedings." *Id.*

Merits: USSG § 4B1.1(b)(3) provides for a minimum base offense level of 32 if a defendant committed the instant offense after sustaining "two prior felony convictions of either a crime of violence or a controlled substance offense." USSG § 4B1.1(a). The term "controlled substance offense" is defined in USSG § 4B1.2(b) as "an offense under federal or state law, punishable by imprisonment for a term exceeding one year, that prohibits the . . . distribution, or dispensing of a controlled substance . . . or the possession of a controlled substance . . . with intent to . . . distribute, or dispense."

To determine whether a conviction qualifies as a "controlled substance offense" under the guidelines, this Court must apply the "categorical approach," "focus[ing] solely on whether the elements of the crime of conviction sufficiently match" the guidelines' definition of a "controlled substance offense." *Mathis v. United States*, 136 S. Ct. 2243, 2248 (2016); *see also United States v. Hinkle*, 832 F.3d 569, 574–75 (5th Cir. 2016).

As the Supreme Court clarified in *Mathis*, distinguishing between a crime's *elements* and the *means* of committing the crime is essential. "'Elements' are the 'constituent parts' of a crime's legal definition – the things the 'prosecution must prove to sustain a conviction.'" *Mathis*, 136 S. Ct. at 2248 (quoting Black's Law Dictionary 634 (10th ed. 2014)). By contrast, a statute's "alternative possible means of commission" are "extraneous to the crime's legal requirements," and "need neither be found by a jury nor admitted by a defendant" for a conviction. *Id.* at 2248, 2251. In resolving the "threshold inquiry" as to whether a statute sets forth elements or means, a court may consult statutory text, a state court decision, and (only in the absence of guidance from state law) the record of the prior conviction. *See id.* at 2256–57.

A statute is "indivisible" if it "sets out a single . . . set of elements to define a single crime." *Id.* at 2248. If an indivisible statute encompasses a broader scope of conduct than the guidelines' definition of a "controlled substance offense," the Court must conclude that the crime is not a "controlled substance offense." *See id.* at 2248–49. This is so even if the statute itself "specif[ies] multiple means of fulfilling" a particular element, "some but not all of which" satisfy the definition, because the Court must "disregard[] the means by which the defendant committed his crime, and look[] only to that offense's elements." *Id.* at 2250, 2256.

In this case, Khouanmany's 2011 conviction for conspiring to deliver marijuana and possessing marijuana with intent to deliver (PSR ¶ 51), and her 2012 Iowa conviction for possessing marijuana with intent to deliver (PSR ¶ 52) did not qualify as convictions for "controlled substance offenses" because the Iowa statute for both convictions is indivisible and contains elements encompassing conduct broader than that specified by the guidelines definition of "controlled substance offense." Khouanmany's base offense level, therefore, should have been 30 rather than 32, her adjusted offense level should have been 27 rather than 29, and her sentencing range should have been 130–162 months rather than 151–188 months.[3]

A. *The Guidelines' Definition of a "Controlled Substance Offense" Does Not Encompass a Mere Offer to Sell Drugs*

A mere offer to sell drugs does not necessarily involve the "distribution, or dispensing of a controlled substance . . . or the possession of a controlled substance . . . with intent to . . . distribute, or dispense," as required by USSG § 4B1.2(b). Indeed, the Fifth Circuit recently concluded that an offer to sell is not a "controlled substance offense" under the guidelines. *Hinkle*, 832 F.3d at 572; *United States v.*

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[3] In actuality, Khouanmany's offense level may have been lower still because without the career offender enhancement, the Court would have had to resolve Khouanmany's objection to the leader/organizer enhancement pursuant to USSG § 3B1.1(c). PSR ¶ 32. Had the district court resolved this issue in Khouanmany's favor, her offense level would have been only 25 and her advisory guideline range would have been 110–137 months.

Price, 516 F.3d 285, 287–88 (5th Cir. 2008); *see also United States v. Savage*, 542 F.3d 959, 965–66 (2d Cir. 2008) (agreeing with the Fifth Circuit because "[a]n offer to sell can be fraudulent"); *but see United States v. Evans*, 699 F.3d 858, 867–68 (6th Cir. 2012) (rejecting defendant's argument that a statute encompassing a mere offer to sell was not a "controlled substance offense" because the specific statute required evidence of a bona fide offer to sell); *United States v. Bryant*, 571 F.3d 147, 158 (1st Cir. 2009) (same).

Without expressly addressing the issue, the Eighth Circuit has also suggested that an offer to sell drugs is not a "controlled substance offense" under the guidelines. In *United States v. Bynum*, 669 F.3d 880 (8th Cir. 2012), this Court held that a Minnesota statute constituted a "serious drug offense" within the meaning of the Armed Career Criminal Act ("ACCA") even though it encompassed a mere offer to sell drugs. 669 F.3d at 885–88. *Bynum* relied upon Fifth Circuit precedent refusing to construe the ACCA's definition of "serious drug offense" to conform to the narrower guidelines definition of "controlled substance offense." *Id.* at 885–86. In reaching its conclusion, *Bynum* cited with approval the Fifth Circuit's opinion in *Price*, which held that a district court erred by enhancing a defendant's offense level under USSG § 2K2.1(a) for a conviction under Texas Health & Safety Code § 481.112(a). *Id.* (citing *Price*, 516 F.3d at 287–89).

Texas Health & Safety Code § 481.112(a) provides that "a person commits an offense if the person knowingly manufactures, delivers, or possesses with intent to deliver a controlled substance." A separate definitional provision of the Texas law defines "deliver" as the "transfer, actually or constructively, to another [of] a controlled substance, counterfeit substance, or drug paraphernalia, regardless of whether there is an agency relationship." Tex. Health & Safety Code § 481.002(8). The statute specifies that the term "deliver" "includes offering to sell a controlled substance." *Id.* Thus, an offense under Texas Health & Safety Code § 481.112(a) is not a "controlled substance offense" for guideline purposes. *Hinkle*, 832 F.3d at 572; *Price*, 516 F.3d at 287–89.

Whereas the definitional section of the Texas Health & Safety Code expressly encompasses a mere offer to sell drugs, the Iowa statute does not. The question, accordingly, is whether Iowa Code § 124.401(1) can be construed broadly enough to encompass a mere offer to sell. Khouanmany respectfully submits that it can be so construed. Khouanmany's 2011 and 2012 Iowa convictions (PSR ¶¶ 51–52) both involved a violation of Iowa Code § 124.401(1), which states that "it is unlawful for any person to . . . possess with the intent to . . . deliver a controlled substance . . . or conspire with one or more other persons to . . . deliver, or possess with the intent to . . . deliver a controlled substance." The term "deliver" is defined in a separate statutory provision as "the actual, constructive, or attempted transfer from one

person to another of a controlled substance, whether or not there is an agency relationship." Iowa Code § 124.101(7).

As construed by Iowa courts, the Iowa Code's "deliver" element can be construed to cover conduct akin to a mere offer to sell drugs. For instance, in *State v. Brown*, 466 N.W.2d 702 (Iowa Ct. App. 1990), the Iowa Court of Appeals affirmed the defendant's conviction for aiding and abetting the delivery of crack cocaine. *Id.* at 703. The court concluded that sufficient evidence supported the conviction because the "defendant initiated the transaction," "pointed out the supplier and informed the [buyers] how they could get his supplier to stop the car," and asked the buyers "the amount in dollars of the crack cocaine they wanted to purchase." *Id.* at 704; *see also State v. Allen*, 633 N.W.2d 752, 756 (Iowa 2001) (holding that sufficient evidence supports a conviction for aiding and abetting delivery of drugs where the defendant "facilitates a drug transaction, whether at the behest of a buyer or a seller").

Accordingly, the Iowa statute under which Khouanmany was convicted could be construed broadly enough to encompass conduct akin to a mere offer to sell drugs. It is, therefore, categorically broader than the guidelines' definition of a "controlled substance offense."

B. ***The Statute Is Indivisible***

The Iowa statute is clearly indivisible. *See Mathis*, 136 S. Ct. at 2253. The term "deliver" as used in Iowa Code § 124.401(1) is a statutory element that must be proven to establish guilt. The separate definitional provisions for "deliver" in Iowa Code § 124.101(7) merely describes the alternative *means* by which a defendant can satisfy the statutory "deliver[y]" *element*. The language of the Iowa statute does not suggest that the state is required to prove the means by which the defendant actually "deliver[s]" the controlled substance. In other words, the statutes are indivisible because the state is not required to prove whether the defendant accomplished delivery by a mere offer to sell, or whether the defendant did something more egregious. The Fifth Circuit reached precisely this conclusion in *Hinkle*, 832 F.3d 569. Citing *Mathis*, it found that the "listed methods of delivery [in the definitional section] 'are not alternative elements, going toward the creation of separate crimes. To the contrary, they lay out alternative ways of satisfying [the] single [statutory delivery] element.'" *Hinkle*, 832 F.3d at 576 (quoting *Mathis*, 136 S. Ct. at 2250) (alterations in original).

The construction of the Iowa statute provides further support for a conclusion that it is indivisible. As with the Texas statute in *Hinkle*, the Iowa statute defines "deliver" in a separate statutory provision. *See* Iowa Code § 124.101(7). This Court has previously recognized that "if a phrase is defined in a separate statutory

section, that 'provides textual support' that the definition is a list of 'means by which [an] element may be committed.'" *United States v. McFee*, 842 F.3d 572, 575 (8th Cir. 2016) (quoting *United States v. Headbird*, 832 F.3d 844, 849 (8th Cir. 2016)). The separate definitional provision in Iowa Code § 124.101(7) is merely an "illustrative example[]" of the various *means* to "deliver" under § 124.401(1); thus, the definition addresses "only [the] crime's means of commission." *Mathis*, 136 S. Ct. at 2256. Moreover, Iowa law is devoid of any indication that the state must prove to a jury beyond a reasonable doubt the specific means by which a defendant actually "deliver[ed]" drugs. *See State v. Corsi*, 686 N.W.2d 215, 222 (Iowa 2004) ("[W]e do not think the defendant was prejudiced by the court's decision to put different methods of violating section 124.401(1) in one instruction and calling them all 'conspiracy.'"); *State v. Williams*, 305 N.W.2d 428, 431 (Iowa 1981) ("We believe section 204.401(1)(a) [the predecessor statute to Iowa Code § 124.401(1)] . . . is a trafficking statute providing for several means of its violation.").

For the reasons stated, Khouanmany submits: (1) a mere offer to sell drugs is not a "controlled substance offense" under USSG § 4B1.2(b); (2) Khouanmany's Iowa Code § 124.401(1) convictions involved a statute that was sufficiently broad to cover a mere offer to sell; and (3) the statute is indivisible. Accordingly, Iowa Code § 124.401(1) is categorically broader that the guidelines' definition of "controlled

substance offense" and Khouanmany's convictions under that provision should not have been used as predicate offenses for purposes of applying the career offender guideline in USSG § 4B1.1. The district court therefore committed a significant procedural error by concluding that Khouanmany's base offense level was 32 pursuant to the career offender guideline.[4] This error was plain because all of the case law supporting a determination that § 124.401(1) is categorically broader than the guidelines' definition was in place well before Khouanmany's sentencing hearing. And, the error clearly affected Khouanmany's substantial rights because if the law had been properly applied, she would have been subject to a lower advisory sentencing guidelines range. Finally, the error seriously affected the fairness, integrity, or public reputation of the judicial proceedings because Khouanmany should not have faced a higher sentencing range based on an improper application of the sentencing guidelines.

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[4] Although this Court held in a brief unpublished decision that a Nebraska conviction for attempted possession with intent to deliver is a "controlled substance offense," *United States v. Simon*, No. 99-3033, 2000 WL 298239, at *1 (8th Cir. 2000) (unpublished), the decision predates *Mathis* and other Supreme Court authority calling it into question. *See United States v. Anderson*, 771 F.3d 1064, 1066-67 (8th Cir. 2014). In any event, unpublished decisions are not binding authority. 8th Cir. R. 32.1 A.

II. KHOUANMANY'S 151 MONTH SENTENCE IS UNREASONABLE.

Standard of Review: Khouanmany challenges her sentence as substantively unreasonable. "A defendant need not object to preserve an attack on the length of the sentence imposed if he alleges only that the District Court erred in weighing the § 3553(a) factors." *United States v. Miller*, 557 F.3d 910, 916 (8th Cir. 2009).

Khouanmany's sentence is reviewed for reasonableness in light of the factors set forth in 18 U.S.C. § 3553(a). *United States v. Jeffries*, 615 F.3d 909, 910 (8th Cir. 2010); *United States v. Miner*, 544 F.3d 930, 943 (8th Cir. 2008); *United States v. Pizano*, 403 F.3d 991, 995 (8th Cir. 2005). This is the equivalent of an abuse of discretion review. *United States v. Green*, 691 F.3d 960, 966 (8th Cir. 2012) ("We review the substantive reasonableness of a sentence under a deferential abuse-of-discretion standard."); *accord United States v. Manning*, 738 F.3d 937, 947 (8th Cir. 2014). This "narrow and deferential" review means that only an "unusual case" will warrant a finding of a substantively unreasonable sentence. *United States v. Shuler*, 598 F.3d 444, 447 (8th Cir. 2010).

However, substantive reasonableness review is not a "hollow gesture." *United States v. Kane*, 639 F.3d 1121, 1135 (8th Cir. 2011); *see also United States v. Martinez*, 821 F.3d 984, 989 (8th Cir. 2016) (reversing sentence because district court erred in finding defendant was a career offender and the alternative basis for

sentence, specifically an upward variance, resulted in an unreasonable sentence); *United States v. Dautovic*, 763 F.3d 927, 934–35 (8th Cir. 2014) (finding 20-month sentence substantively unreasonable). An extreme sentence that reflects an "unreasonable weighing" of the relevant sentencing factors remains subject to correction on appeal. *Dautovic*, 763 F.3d at 934–35.

"A district court abuses its discretion and imposes an unreasonable sentence when it fails to consider a relevant and significant factor, gives significant weight to an irrelevant or improper factor, or considers the appropriate factors but commits a clear error of judgment in weighing those factors." *Miner*, 544 F.3d at 932.

Merits: Khouanmany respectfully submits that her 151 month sentence is substantively unreasonable because the district court committed a clear error of judgment in weighing the sentencing factors.

Khouanmany's conviction in this case is premised on the fact that she shipped quantities of methamphetamine to Iowa on approximately six occasions. There were no firearms or violence involved in the offense. The length of her activities spanned only a relatively small amount of time – less than one year.

Khouanmany's background was extremely difficult. She and her family fled the war in Laos and lived in a refugee camp in Thailand for a year before coming to the United States in 1980. PSR ¶ 69. Once in the United States, her parents struggled to find employment and to learn to speak English, and were able to provide

only basic necessities. *Id.* Parts of her family were never able to leave Laos, and Khouanmany still experiences nightmares over the situation. *Id.*

Khouanmany also has significant mental health issues. She has experienced situational depression on and off since 2004. *Id.* ¶ 94. Her mental health problems substantially worsened after she experienced sexual assaults in 2012, 2013, and 2016. *Id.* ¶¶ 70, 91–93. Since that time, she has experienced depression, anxiety, post-traumatic stress disorder, delusions, night terrors, memory loss, and difficulty thinking. *Id.* ¶¶ 91–92. Khouanmany also has a significant history of substance abuse. She got involved with marijuana at the age of 18, after she began using it to treat pain from a recurring kidney condition and for her mental health concerns. PSR ¶ 94. Over the years, her habit became substantial; in the two to three years before her arrest, she was smoking two ounces of marijuana per day. *Id.*

Khouanmany also had a four-year period where she struggled with alcohol abuse while her mother was sick and dying from cancer. *Id.* ¶ 95. Her drinking problem appears to have ultimately given way to her addiction to marijuana. *Id.*; *see* USSG § 5H1.4 (noting that "[s]ubstance abuse is highly correlated to an increased propensity to commit crime"). While Khouanmany had a relatively lengthy criminal history, it is notable that her past offenses did not involve guns or violence. PSR ¶¶ 41–54. Indeed, most of Khouanmany's crimes between the ages of 26 and 42 (the time of sentencing) are drug or alcohol-related, reflecting the

severity of her addictions. *Id.* ¶¶ 47–53. She had never served more than about two years in prison.

Khouanmany was only 42 years old at the time of sentencing, with an 18 year old daughter. She graduated high school, took vocational courses, and attended several years of college. PSR ¶¶ 99–104. She had many years of long-term employment working in real estate by purchasing foreclosed properties, renovating the properties if necessary, and reselling them. *Id.* ¶¶ 107–08.

Finally, while application of the career offender guideline did not increase Khouanmany's criminal history, it did artificially and unnecessarily inflate her offense level, resulting in a guideline range starting at 151 months rather than 130 months, or possibly even 110 months. As defense counsel noted in Khouanmany's sentencing memorandum, the career offender guideline is not based on empirical research and data, and is instead the result of a congressional directive to punish recidivist offenders near the top of the statutory penalty range. *See* DCD 44, p. 6 (citing *United States v. Newhouse*, 919 F. Supp. 2d 955, 972–73 (N.D. Iowa 2013)). Moreover, the career offender guideline has been criticized by the Sentencing Commission itself as promoting sentences which are among the most severe, and the least likely to promote the statutory purposes of sentencing. *See* U.S. Sentencing Commission, 15 Years of Guidelines Sentencing: An Assessment of How Well the Federal Criminal Justice System is Achieving the Goals of Sentencing Reform, 133–

34 (2004). Indeed, the career offender enhancement does not distinguish between non-violent, recidivist drug offenders like Khouanmany, and violent offenders who require lengthy prison terms to protect the public. This creates "unwarranted sentenc[ing] disparities," in contravention of 18 U.S.C. § 3553(a)(6). Recognizing this problem, judges frequently vary below guideline range sentences for career offenders. *See* U.S. Sentencing Commission, Quick Facts, Career Offender, p. 2. (observing that in fiscal year 2014, the rate of non-government sponsored below range sentences for career offenders was 25.9%, and the average reduction in sentence received by these career offenders was 34.9%).

The district court had an obligation to impose a sentence that was "sufficient, but not greater than necessary" to satisfy the familiar goals of sentencing. 18 U.S.C. § 3553(a). Given Khouanmany's acceptance of responsibility for her wrongdoing, her serious mental health and substance abuse problems, her difficult background, her strong work history, and the fact that her sentence was driven by a career offender guideline that has little correlation to the circumstances of her offense or history, Khouanmany submits that the district court improperly weighed the sentencing factors in this case. She further submits that on this record, a sentence of 151 months imprisonment was greater than necessary under the facts and circumstances of this case and, thus, substantively unreasonable.

No. 17-1243

REASONS FOR GRANTING THE PETITION

Reasons for Granting my Petition is that I have over served my time for 56 grams of meth that Chey got caught with and I took responsiblity for my action, Chey received NO TIME. I was not a mother then and NOW I am a mother to my daughter that needs me to help her through college so she can be a successful woman. I went to college, recieved "Real Estates" degrees , I have been buying and selling real estates for over 18 years, started working in Real Estates since I was 17 years old and worked my way up to start buying and selling my own properties. If you give me this one chance I promise I can show you that I can be the mother I am and a wife one day to a special man. Hopefully one day I will be able to have kids again due to the over bleeding and infections I had for over three weels because Des Moines Police decided to go inside my ANAL and VaGINA to look for drugs that was never there then booked me at Polk County Jail case no.FECR252919 which got DISMISSED 4/27/2012 that's when I had to plead out to the two Marijuana charges that I should never have plead out to because I did win part of my appeal in the State of Iowa Appeal Courts/ I know I had made some poor choices but for me to recieved 13 years sentences for my First Time Drug Federal Offenses is overBroadd and Excessives sentences. If I get the chance to be free I will never be around drug addict again. Even if you sentence me to "OUT CUSTODY" in a half-house I would appreciated it so I can get a job and get the proper medical care and treatment I needs.

There IS NO limit on How long a federal Prisoner can be placed in a half house Under 18 USC 3621(b). The BOP or Judges' Courts has the authority to designate a federal halfway house as a prisoner's place of imprisonment just like a Federal Correctional Institution or other BOP Institution. this is because a federal halfway house is considered a "penal or correctional facility" within the meaning of 18 U.S.C.3621(b). Elwood v. Jeter, 386 F.3d 842,846-47(8th Cir.2004); Goldings v.Winn, 383 F.3d 17, 28-29(1st Cir.2004); Levine v. Apker, 455 F.3d 71, 82(2d Cir.2006). The BOP recognizes this authority. In November 14, 2008, memorandum entitled "Inmate Requests for Transfer to Residential Reentry Centers," BOP's former General , Kathleen Kenny, wrote that:

"Inmates are legally eligilble to be placed in an RRC at any time during their prison sentence. Federal courts haveemade clear that RRCs are penal or correctional institutions within the meaning of applicable statutes."

With my serious injuries from working Food service and chronic care, I qualified to be at RRC so I can get a job and medical insurance so I can pay for my own proper medical treatments. See Adminstrative Remedies Cases No.923128, 923130, 923131-A1, 9292489F1, 911107-A1 and Administrative Claim No.TRT-WZR-2018-05115- Received June 6, 2018 and Tort Claim filed Ootober 3, 2017.

Please just give me and my baby this one chance to reunite and be one happy family, there's just Cailtin and I and our dog POPEYE.

Submitted on this 7th day of Septmeber, 2018.

RESPECTFULLY SUBMITTED, VIBAYCHITH KHOUANMANY. CLEMENCY #6272295