19-6389

No. _____

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Quincy Dennis — PETITIONER
(Your Name)

vs.

J.A. Terris, Warden — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Sixth Circuit Court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Mr. Quincy Dennis #02797-061
(Your Name)

Satellite Camp; 2650 301 South
(Address)

Jesup, GA. 31599
(City, State, Zip Code)

N/A Incarcerated
(Phone Number)

QUESTION(S) PRESENTED

QUESTION # ONE: Whether petitioner Dennis is entitled to seek federal habeas corpus relief under 28 U.S.C. § 2241 on the ground that 28 U.S.C. § 2255 is "inadequate or ineffective" to allow him to raise a claim that an intervening change and retroactively applicable statutory-contruction decision establishes that the district court erroneously imposed a mandatory minimum sentence of life imprisonment (now reduced by President Obama to 30-years) ?

QUESTION # TWO: Whether the categorical approach as outlined in Taylor, 495 U.S. 575 (1990); and Mathis, 136 S. Ct. 2243 (2016), is applicable to the definition of a "felony drug offense" pursuant to 21 U.S.C. § 802 (44) ?

LIST OF PARTIES

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

[ ] 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:

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Statutes And Rules

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[ ] is unpublished.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[x] is unpublished.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[ ] is unpublished.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

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

The date on which the United States Court of Appeals decided my case was June 21, 2019.

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

[ ] A timely petition for rehearing was denied by the United States Court of Appeals 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. § 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).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

STATEMENT OF THE CASE

In November 1996, Quincy Dennis agreed to sell cocaine to a cofidential informant. Mr. Dennis and the informant met at the Madison Bowl in Cincinnati, and Mr. Dennis explained the cocaine was "at the house." Police arrested Dennis after he left the meeting and found 227.4 grams of crack cocaine and a loaded 9mm pistol. Afterward, police searched his house and found 1,291.91 grams of cocaine, 265.34 grams of crack cocaine, scales, baking soda, bowls with cocaine residue, and $8,109 in cash.

A grand jury charged Mr. Dennis in a three-count indictment. The charges included attempted distribution of 50 grams or more of cocaine base, in violation of 21 U.S.C. § 841 (a) (1) and (b) (1) (A) (iii); possession with intent to distribute 50 grams or more of cocaine base, in violation of 21 U.S.C. § 841 (a) (1) and (b) (1) (A) (iii); and possession with intent to distribute 500 grams or more of cocaine, in violation of 21 U.S.C. § 841 (a) (1) and (b) (1) (B) (ii). Mr. Dennis had been previously convicted twice Ohio drug offenses one involving simple possession and one involving distribution of cocaine, thus the government filed a notice of prior drug convictions under 21 U.S.C. § 851. This notice increased the mandatory minimum sentence for the two crack cocaine offenses to life imprisonment. 21 U.S.C. § 841 (b) (1) (A).

A jury convicted Dennis after a three-day trial. At sentencing, probation attributed 10,113.98 kilograms of marijuana equivalency to Dennis based on the quantity of cocaine and carck cocaine seized by police. This drug quantity, coupled with the gun found in his car, placed him in offense level 38. But Mr. Dennis was also

a career offender because of his two prior Ohio drug offenses, however under today's law Mr. Dennis would "no longer" be considered a Chapter Four Career Offender. This designation increased his guideline range to 360 months to life before the mandatory life sentence required by the statute. The district court sentenced Dennis to life on the two crack cocaine offenses and 30 years on the cocaine offense. The Sixth Circuit Court of Appeals affirmed in, United States v. Dennis, 178 F.3d 1297 (6th Cir. 1999) (table).

In January 2017, President Obama commuted Mr. Dennis's sentence of life imprisonment to 360 months of imprisonment. Notwithstanding his sentence commutation, Mr. Dennis filed a habeas petition in December 2017 in the Eastern District of Michigan under 28 U.S.C. § 2241. Petitioner Dennis, argued that he was "actually innocent" of his life sentence, claiming that one of the prior Ohio prior drug convictions (for Ohio Simple Possession) used to enhance his federal sentence no longer qualified as a "felony drug offense" as defined within 21 U.S.C. § 802 (44). Dennis also argued that his enhanced sentence violated the due process clause, thus being void for vagueness and that his prior felony Ohio drug convictions no longer supported his enhanced sentence in the wake of Mathis v. United States, 136 S. Ct. 2243 (2016). The district court concluded that it did not have jurisdiction to consider his petition because his sentence was imposed by executive order and dismissed his petition, thus a timely appeal was filed. On June 21, 2019, the Sixth Circuit Court of Appeals held that: "President Obama's commuted Dennis's mandatory life sentence did not prevent him from seeking to attack his sentence collaterally, however denied

relief under **Mathis** and **Carachuri-Rosendo**, thus as the result of the Sixth Circuit holding that the "categorical approach" does not apply to the definition of "felony drug offense" pursuant to 21 U.S.C. § 802 (44).

However, Petitioner Dennis, argues that the Sixth Circuit erred by erroneously holding that the categorical approach does not apply to a "felony drug offense" in the case herein.

REASONS FOR GRANTING THE PETITION

Petitioner Dennis, acknowledges that a review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted by this court only for compelling reasons, see Supreme Court Rule 10.

In the instant case, Petitioner Dennis, contends that this Honorable U.S. Supreme Court should **GRANT** Quincy Dennis's Petition for Writ of Certiorari in light of a split in the federal Court of Appeals as to whether an erroneous mandatory minimum in light of statutory interpretation in which applies retroactively maybe raised within a 28 U.S.C. § 2241 Habeas Corpus Petition as the Sixth Circuit Court of Appeals has held that a federal prisoner may not bring such a claim within a 2241 Habeas Corpus Petition, see Romo v. Ormond, No. 17-6137, 2018 U.S. App. LEXIS 26076 (6th Cir. 2018). However, Petitioner Dennis, asserts the law of the federal Circuit Court of Appeals, see Trenkler v. United States, 536 F.3d 85, 99 (1st Cir. 2008) (savings clause is permitted to proceed via actual innocence of the conviction or sentence); In re Triestman, 124 F.3d 361, 377 (2d Cir. 1997) (savings clause may be triggered where "the failure to allow for collateral review would raise serious constitutional questions); In re Dorsainvil, 119 F.3d 245, 251 (3d Cir. 1997) (May proceed via savings clause if sentence applied in light of a fundamental defect or miscarriage of justice standard); United States v. Wheeler, 886 F.3d 415 (4th Cir. 2018) (May proceed via the savings clause based on a sentence issues with an erroneously increased mandatory minimum); Romo v. Ormond, No. 17-6137, 2018 U.S. App. LEXIS 26076 (6th Cir. 2018) (May not proceed via

the savings clause in light of an erroneous mandatory minimum sentence); In re Daveport, 147 F.3d 605, 609-11 (7th Cir. 1998) (Proceed under savings clause if sentence applied erroneously in light of a fundamental defect or miscarriage of justice); Abdullah v. Hedrick, 392 F.3d 957, 964 (8th Cir. 2004) (The Eighth Circuit failed to permit a federal prisoner to lodge a 2241 Habeas Corpus Petition via the savings clause in light of Bailey arguing actual innocence of conviction); Harrison v. Ollison, 519 F.3d 952, 959-60 (9th Cir. 2008) (Proceed under savings clause if sentence applied erroneously in light of a fundamental defect or miscarriage of justice); Prost v. Anderson, 636 F.3d 578 (10th Cir. 2011) (May not proceed via the savings clause in light of an erroneous mandatory minimum sentence); Reyes-Requena v. United States, 243 F.3d 893, 904 (5th Cir. 2001) (May proceed under savings clause and file a 2241 Petition if he shows that the petition asserts a claim "based on a retroactively applicable Supreme Court decision which establishes that [he] may have been convicted of a nonexistent offense" and that the claim was "foreclosed by circuit law at the time when [it] should have been raised in [his] trial, appeal, or first § 2255 motion); McCarthan v. Director of Goodwill Industries-Suncost, Inc., 851 F.3d 1076, 1092-93 (11th Cir. 2017) (en banc) (The savings clause permits federal prisoners to proceed under § 2241 only when: (1) "challeng[ing] the execution of his sentence, such as the deprivation of good-time credits or parole determinations" (2) "the sentencing court is unavailable," such as when the sentencing court itself has been dissolved; or (3) "practical considerations (such as multiple sentencing courts) might prevent a petitioner from filing a motion to vacate."); and In re Smith, 285 F.3d 6, 350

U.S. App. D.C. 354 (D.C. Cir. 2002) (savings clause based on a sentence issued with an erroneously increased mandatory minimum).

Mr. Dennis, asserts that appears that a federal prisoner may lodge a claim in light of an intervening change in law by the U.S. Supreme Court based upon an erroneous mandatory minimum sentence in the Second Circuit, Third Circuit, Fourth Circuit, Seventh Circuit, Ninth Circuit, and D.C. Circuit, however, Mr. Dennis, argues that the same similarly situated individual incarcerated within the First Circuit, Fifth Circuit, Sixth Circuit, Eighth Circuit, and Eleventh Circuit would not be able to proceed via the savings clause of § 2255 (e), in a 2241 Writ of Habeas Corpus proceedings, thus this constitutes a viable Equal Protection Clause violation. (emphasis added). The U.S. Supreme Court will usually **GRANT** a Petition for Writ of Certiorari to resolve a split in the federal Court of Appeals, see Hall Street Assocs. v. Mattel, 552 U.S. 576 (2008); Gonzalez v. United States, 533 U.S. 242 (2008); and Rhines v. Weber, 544 U.S. 269, 273-74 (2005), thus this Honorable U.S. Supreme Court should GRANT Quincy Dennis's Writ of Certiorari as to Question # One, to resolve split in the federal Court of Appeals in the matter herein.

Merits of Question # One

Petitioner Dennis, states that he relies upon the U.S. Supreme Court's statutory interpretation in **Carachuri-Rosendo v. Holder,** 560 U.S. 563 (2010), in which the Fourth Circuit held to be "retroactive" see Miller v. United States, 735 F.3d 141, 145 (4th Cir. 2013) (The U.S. Supreme Court's Ruling in Carachuri-Rosendo v. Holder, 560 U.S. 563 (2010), is a statutory interpretation in which applies retroactively on collateral-attack).

In the instant case, Petitioner Dennis, asserts that he relies upon the U.S. Supreme Court's Ruling in Carachuri-Rosendo v. Holder, 560 U.S. 563 (2010), as in light of the Supreme Court's Ruling, thus Mr. Dennis's mandatory life sentence (commuted by President Obama to 30-years), constitutes an erroneous imposition of a mandatory minimum sentence in which is a fundamental defect that warrants correction under the savings clause as Quincy Dennis had no opportunity to raise it. The sentencing enhancement pursuant to 21 U.S.C. § 841 (b) (1) (A) for the for his prior conviction for March 8, 1995 Ohio Aggravated Trafficking was a mere (simple possession), as it involved roughly **1.5 grams** of crack cocaine. See Appendix C (A copy of Dennis's Presentence Investigation Report at page 3-4, prepared on March 26, 1997). Mr. Dennis, asserts that as reflected by Appendix C, one of two Ohio drug convictions was for a violation of Ohio Rev. Code § 2925.03 (A) (4), in which states as follows: (A) No person shall knowingly do any of the following: (4) Possess a controlled substance in an amount equal to or exceeding the bulk amount, but in an amount less than three time that amount; see United States v. Montanez, 442 F.3d 485, 491 (6th Cir. 2006) (Ohio Revised Code § 2925.03 (A) (4) fall short of the federal definition of a controlled substance); and State v. Goodnight, 52 Ohio App. 2d 333, 370 N.E. 2d 486, 493 (Ohio App. 1977) (holding that Ohio Rev. Code § 2925.03 (A) (4), does not require the State to prove an intent to distribute). Thus, Petitioner Dennis, argues that as the result of his 1995 Ohio drug conviction involving merely **1.5 grams** of crack cocaine in which he possessed, therefore the U.S. Supreme Court has held that a "state conviction for siple possession of controlled substance was categorical match with

21 U.S.C. § 844 (a)," see Lopez v. Gonzales, 549 U.S. 47, 53, 127 S. Ct. 625, 166 L. Ed. 2d 462 (2006). (emphasis added).

However, Petitioner Dennis, asserts that in Carachuri-Rosendo, 130 S. Ct. 2577, 177 L. Ed. 2d 68 (2010), the U.S. Supreme Court explained how to properly determine the "maximum term of imprisonment" and relevant here Mr. Dennis, argues that his March 8, 1995 Ohio Simple Possession qualifies as a **federal misdemeanor** conviction under federal law and is a match to 21 U.S.C. § 844 (a), because the quantity was **1.5 grams** of crack cocaine that he unlawfully possessed, thus as the quantity being less than 5 **grams** of crack cocaine it qualified as a federal misdemeanor under federal law; and therefore a **categorical match** with 21 U.S.C. § 844 (a).

Because Mr. Dennis's Ohio Simple Possession under federal law is punishable by no more than **1 year of imprisonment**, see 21 U.S.C. § 844 (a), thus the maximum term of imprisonment authorzied must be **more than one year**, however as the U.S. Supreme Court held in Carachuri-Rosendo, for any conviction to be considered a felony, the "maximum term of imprisonment authorized must be more than one year." Id. at 2586 (citing 18 U.S.C. § 3559 (a) (5)). (bold emphasis).

Petitioner Dennis, contends that in light of the U.S. Solicitor General's **concession** in Persaud v. United States, 13-6435, 134 S. Ct. 1023, 188 L. Ed. 2d 117 (2014), that the U.S. Supreme Court's Ruling in Carachuri-Rosendo applied retroactively and was applicable to enhanced sentence via 21 U.S.C. § 841 (b) (1) (A) and § 802 (44), on the Solicitor General's **concession**, thus the Supreme Court issued a GVR on January 27, 2014, thus the Government must speak with one voice if the nation is to be respected, see Munaf

v. Green, 553 U.S. 674, 704 (2008) ("undermine the Government's ability to speak with one voice...."); and furthermore several federal Court of Appeals have held that Judicial estoppel will be invoked against the government when it conducts what "appears to be a knowing assault upon the integrity of the judicial system," see United States v. Owens, 54 F.3d 271, 275-76 (6th Cir. 1995); and Burrows v. Terris, No. 2:17-cv-13787, 2018 U.S. Dist. LEXIS 199326 (E.D. Mich., Nov. 26, 2018) (Recognizing the limited application of judicial estoppel against the Government quoting **Owens**, thus holding as the result of the inconsistent positions of different U.S. Attorney's Offices of the retroactivity of the U.S. Supreme Court's Ruling in **Mathis** on habeas review further supports this Court's conclusion that **Mathis** should be applied retroactively in petitioner's case. **VACATED** ACCA enhancement and **REMANDED** to Central District of Illinois for resentencing hearing). It follows that "if" the U.S. Solicitor General takes a different position than it did in the U.S. Supreme Court's proceeding in **Persaud**, therefore the limited application of judicial estoppel against the Government is warranted in the matter herein. (emphasis added).

Therefore, Petitioner Dennis, argues firmly that in light of this Honorable U.S. Supreme Court's Ruling in **Carachuri-Rosendo**, 130 S. Ct. at 2586 (2010), thus his 1995 Ohio Simple Possession in violation of Ohio Rev. Code § 2925.03 (A) (4), qualifies as a **federal misdemeanor** and as the result of 21 U.S.C. § 844 (a) being punishable by a **maximum** of one year it is **"no longer"** a valid predicate offense to enhance his federal sentence pursuant to 21 U.S.C. § 841 (b) (1) (A), thus the erroneous imposition of a mandatory minimum sentence is a fundamental defect that warrants corre-

ction under the savings clause when Quincy Dennis otherwise had no opportunity to raise it. See **Persaud v. United States,** 13-6435, 134 S. Ct. 1023, 188 L. Ed. 2d 117 (2014) (Brief for the United States, id. at 21).

Petitioner Dennis, respectfully request as to Question # One this Honorable U.S. Supreme Court **GRANT** his Writ of Certiorari and **VACATE** his mandatory life sentence (commuted to 30-years of imprisonment by ex-President Obama), thus remand to the lower court for resentencing as his federal sentence should now be reduced to 20-years of imprisonment in the matter herein. (emphasis added).

QUESTION # TWO:

Whether the categorical approach as outlined in Taylor, 495 U.S. 575 (1990); and Mathis, 136 S. Ct. 2243 (2016), is applicable to the definition of a "felony drug offense" pursuant to 21 U.S.C. § 802 (44) ?

In the instant case, Petitioner Dennis, asserts that this Honorable U.S. Supreme Court should GRANT Quincy Dennis's Petition for Writ of Certiorari in light of a split in the federal Court of Appeals as to whether the categorical approach outlined in Taylor and Mathis applies to the definition of a "felony drug offense" pursuant to 21 U.S.C. § 802 (44), as the Sixth Circuit Court of Appeals has repeatedly held that the categorical approach does not apply, see Dennis v. Terris, No. 18-2081, ___ F.3d ___, 2019 U.S. App. LEXIS 18614 (6th Cir. June 21, 2019); and Romo v. Ormond, No. 17-6137, 2018 U.S. App. LEXIS 26076 (6th Cir. 2018). However, Petitioner Dennis, states the law of the federal Circuit Court of Appeals, see United States v. Brown, 500 F.3d 48, 59 (1st Cir. 2007) (Employing the categorical approach to determine whether a prior state drug conviction constitutes a 'felony drug offense' for purposes of section 21 U.S.C. § 841 (b) (1), based upon the definition in 21 U.S.C. § 802 (44)); McCoy v. United States, 707 F.3d 184, 187 (2d Cir. 2013) (same); United States v. Aviles, 2019 U.S. App. LEXIS 27517 (3d Cir. Sept. 12, 2019) (same); United States v. Nelson, 484 F.3d 257, 261 n.3 (4th Cir. 2007) (same); United States v. Curry, 404 F.3d 316, 320 (5th Cir. 2005) (same); United States v. Soto, 8 Fed. Appx. 535, 541 (6th Cir. 2001) (noting that the Sixth Circuit "does not employ a categorical approach to determining whether a prior conviction constitutes a 'felony drug offense'

for purposes of section [21 U.S.C. §] 841 (b) (1)"); United States v. Elder, 900 F.3d 491, 498 (7th Cir. 2018) (same); United States v. Brown, 598 F.3d 1013, 1015-16 (8th Cir. 2010) (same); United States v. Ocampo-Estrada, 868 F.3d 1101-1108 (9th Cir. 2017) (same); United States v. Yeley-Davis, 632 F.3d 673, 681-82 (10th Cir. 2011) (Refusing to employ categorical approach to determine whether state drug conviction qualifies as a "felony drug offense" pursuant to 21 U.S.C. § 802 (44)); United States v. Howard, 18-12109, 2019 U.S. App. LEXIS 9599 (11th Cir. 2019) (Refusing to employ categorical approach to determine whether state drug conviction qualifies as a "felony drug offense" pursuant to 21 U.S.C. § 802 (44)); and United States v. Cross, 249 F. Supp. 3d 339 (D.D.C., Apr. 18, 2017) (Refusing to employ the categorical approach to determine Maryland state drug conviction qualifies as a "felony drug offense" pursuant to 21 U.S.C. § 802 (44)).

Mr. Dennis, contends that if a criminal defendant lodges a challenge to his 841 (b) (1) (A) enhancement in the First Circuit, Second Circuit, Third Circuit, Fourth Circuit, Fifth Circuit, Seventh Circuit, Eighth Circuit, and Ninth Circuit, however, Mr. Dennis, argues that the same similarly situated criminal defendant individual whose criminal case is within Sixth Circuit jurisdiction, Tenth Circuit jurisdiction, Eleventh Circuit jurisdiction and D.C. Circuit jurisdiction may not obtain relief through statutory interpretation U.S. Supreme Court Rulings such as Carachuri-Rosendo, Descamps, and Mathis, thus this constitutes a viable Equal Protection Clause violation. (emphasis added). The U.S. Supreme Court will usually **GRANT** a Petition for Writ of Certirari to resolve a split in the federal Court of Appeals, see Hall Street Assocs.

v. Mattel, 552 U.S. 576 (2008); Gonzalez v. United States, 533 U.S. 242 (2008); and Rhines v. Weber, 544 U.S. 269, 273-74 (2005), thus this Honorable U.S. Supreme Court should GRANT a Petition for Writ of Certiorari as to Question # Two, to resolve split in the federal Court of Appeals in the case herein.

Merits of Question # Two

In **Mathis**, the Supreme Court also instructed that "[t]he first task for a sentencing court faced with an alternatively phrased statute is...to determine whether its listed items are elements or means." id. 579 U.S. ___, 136 S. Ct. at 2256.

Petitioner Dennis, was convicted of two prior drug convictions under Ohio law as follows:

(1) March 8, 1995 Ohio Aggravated Trafficking (Preparation/ Transporting) in violation of Ohio Rev. Code § 2925.03 (A) (2)

(2) March 8, 1995 Ohio Aggravated Trafficking (Possession-Bulk) in violation of Ohio Rev. Code § 2925.03 (A) (4)

Petitioner Dennis, asserts that he merely challenges his Ohio Simple Possession prior conviction in the wake of **Mathis** (2016) which falls under Ohio Rev. Code § 2925.03 (A) (4), thus employing the categorical approach to Ohio Simple Possession which states as follows:

(A) No person shall knowingly do any of the following:

(4) Possess a controlled substance in an amount equal to or exceeding the bulk amount, but in an amount less than three time that amount;

The Ohio Court of Appeals have held that Ohio Rev. Code § 2925. 03 (A) (4), does not require the State to prove an intent to distribute, see State v. Goodnight, 52 Ohio App. 2d 333, 370 N.E.

2d 486, 493 (Ohio App. 1977); and the Sixth and Ninth Circuit Court of Appeals have both held that: "Ohio Revised Code § 2925.03 (A) (4) falls short of the federal definition of a controlled substance offense, see United States v. Montanez, 442 F.3d 485, 491 (6th Cir. 2006); and United States v. Foster, 28 F.3d 109, 1994 WL 201201 (9th Cir. 1994).

To determine whether Petitioner Dennis's prior Ohio drug conviction in violation of Ohio Rev. Code § 2925.03 (A) (4) would qualify as a federal felony drug offense, thus this Court must look to the statutory elements under which the offender was previously convicted, rather than the underlying conduct or facts giving rise to that conviction. See United States v. Ocampo-Estrada, 868 F.3d 1101, 1108 (9th Cir. 2017). This analysis requires a categorical approach comparison between the predicate offense of conviction and the federal definition. First, "we ask whether the statute of conviction is a categorical match to the generic predicate offense; that is, if the statute of conviction criminalizes only as much (or less) conduct than the generic offense." See Ocampo-Estrada, 868 F.3d at 1108 (9th Cir. 2017). (emphasis added).

In the instant case, Petitioner Dennis, argues firmly that when employing the categorical approach to his Ohio Simple Possession conviction, thus under this approach Mr. Dennis's state drug conviction is an "felony drug offense" if the elements are a categorical match or narrower, however if the state statute criminalizes a greater swath of conduct than the elements of the Controlled Substances Act than it does not qualify as a 'felony drug offense', see United States v. Aviles, 2019 U.S. App. LEXIS 27517 (3d Cir. Sept. 12, 2019); United States v. Elder, 900 F.3d 491,

498 (7th Cir. 2018); and United States v. Ocampo-Estrada, 868 F.3d 1101, 1108 (9th Cir. 2017).

As an initial matter, § 841 (a) (1) is not analogous to Ohio Rev. Code § 2925.03 (A) (4), see 21 U.S.C. § 841 (a) (1) makes it unlawful for any person to **knowingly or intentionally** "manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance." "The term 'distribute' means to deliver...a controlled substance....." 21 U.S.C. § 802 (11). Because Ohio Rev. Code § 2925.03 (A) (4) encompasses a drug conviction where the individual neither possessed with intent to distribute, manufacture, or dispense, thus 21 U.S.C. § 841 (a) (1), is not a categorical match to Quincy Dennis's Ohio Simple Possession via Ohio Rev. Code § 2925.03 (A) (4), as Mr. Dennis's Ohio drug conviction required specific intent to distribute, see State v. Goodnight, 52 Ohio App. 2d 333, 370 N.E. 2d 486, 493 (Ohio App. 1977) (Ohio state courts have held that Ohio Rev. Code § 2925.03 (A) (4) does not require the State to prove an intent to distribute), thus to be convicted in federal court pursuant to 21 U.S.C. § 841 (a) (1) (It shall be unlawful for any person to knowingly or intentionally...distribute...a controlled substance....."); and United States v. Pope, 561 F.2d 663, 670 (6th Cir. 1977) ("The 'intent to distribute' is an essential element of § 841 (a) (1)....21 U.S.C. § 841 (a) (1) requires **both** general criminal intent and the specific 'intent to distribute' before a violation is proven."). (emphasis added). Therefore, Petitioner Dennis, argues firmly that as the result of Ohio Simple Possession in violation of § 2925.03 (A) (4), criminalizes a **greater swath of conduct than the elements of the Controlled**

Substances Act, thus this mismatch of elements means Quincy Dennis's Ohio Simple Possession pursuant to § 2925.03 (A) (4) is not a "felony drug offense" under the ("CSA"), see **Mathis**, 136 S. Ct. at 2251 (2016). (emphasis added).

Therefore, Petitioner Dennis, respectfully request that this Honorable U.S. Supreme Court **GRANT** his Petition for Writ of Certiorari and **VACATE** his 30-year federal sentence and **REMAND** with instructions that 21 U.S.C. § 841 (b) (1)(A) enhancement **"no longer"** applies to Ohio Simple Possession prior conviction in the case at bar. (emphasis added).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

x Quincy Bowers

Date: September 16, 2019