

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2020

UNITED STATES OF AMERICA, *Respondent*,

-vs-

JURMAINE JEFFRIES, *Petitioner*.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Petitioner Jurmaine Jeffries respectfully requests this Honorable Court issue a Writ of Certiorari to review the decision issued by the United States Court of Appeals for the Sixth Circuit in *United States v. Jeffries*, 958 F.3d 517 (6th Cir. 2020) (Donald, J., dissenting), reversing the district court's grant of Mr. Jeffries's motion for new trial. Mr. Jeffries also sought en banc review, which the Sixth Circuit denied. *United States v. Jeffries*, 2020 U.S. App. LEXIS 23569 (6th Cir. July 24, 2020).

Respectfully submitted,

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QUESTION PRESENTED FOR REVIEW

- I. Whether the “death enhancement” of 21 U.S.C. § 841(b)(1)(C) requires proximate causation when the statute’s language is ambiguous – triggering the rule of lenity in favor of its requirement – and general criminal law principles and this Court’s jurisprudence favor proximate cause.

TABLE OF CONTENTS

PAGE NO.

Questions Presented for Review	1
Table of Contents	2
Table of Authorities	3
Citation of Opinions Below	4
Jurisdiction	4
Federal Statutes and Constitutional Provisions Involved.....	4, 5
Statement of the Case	6
Reasons for Granting the Writ of Certiorari	8
I. Mr. Jeffries’s Petition Should Be Granted Because the Sixth Circuit Has Decided a Question of Federal Law that Has Not Been, But Should Be, Settled by this Court.....	8
Conclusion	12
APPENDIX A: <i>United States v. Jeffries</i> , 958 F.3d 517 (6th Cir. 2020)	
APPENDIX B: <i>United States v. Jeffries</i> , 2020 U.S. App. LEXIS 23569 (6th Cir. July 24, 2020)	

TABLE OF AUTHORITIES

FEDERAL CASE AUTHORITY

PAGE NO.

<i>Burrage v. United States</i> , 134 S. Ct. 881 (2014)	8, 9, 12
<i>CSX Transp., Inc. v. McBride</i> , 564 U.S. 685 (2001)	10, 11
<i>Exxon Co. v. Sofec</i> , 517 U.S. 830 (1996).....	9
<i>Morissette v. United States</i> , 342 U.S. 246 (1952)	11
<i>Paroline v. United States</i> , 572 U.S. 434 (2014)	9, 10, 11
<i>Smith v. United States</i> , 508 U.S. 223 (1993).....	9
<i>United States v. Gypsum Co.</i> , 438 U.S. 422 (1978).....	10
<i>United States v. Jeffries</i> , 2018 U.S. Dist. LEXIS 219134 (N.D. Ohio Oct. 1, 2018) ...	6
<i>United States v. Jeffries</i> , 958 F.3d 517 (6th Cir. 2020).....	4, 7, 12
<i>United States v. Jeffries</i> , 2020 U.S. App. LEXIS 23569 (6th Cir. July 24, 2020)...	4, 7

FEDERAL STATUTES

21 U.S.C. § 841.....	<i>passim</i>
28 U.S.C. § 1254.....	4

ADDITIONAL AUTHORITY

LaFave, Wayne R., <i>Substantive Criminal Law</i> , § 6.4(a) (2d ed. 2003).....	8
Brown, L., <i>The New Shorter Oxford English Dictionary</i> (1993).....	9

CITATION OF OPINIONS BELOW

The decision of the United States Court of Appeals for the Sixth Circuit is set forth in *United States v. Jeffries*, 958 F.3d 517 (6th Cir. 2020) (Donald, J., dissenting). *See* Appendix A. Mr. Jeffries also petitioned the Sixth Circuit for a rehearing en banc, which was denied in an Order. *United States v. Jeffries*, 2020 U.S. App. LEXIS 23569 (6th Cir. July 24, 2020). *See* Appendix B.

JURISDICTION

The United States Court of Appeals for the Sixth Circuit entered its final judgment on May 8, 2020 and denied en banc review on July 24, 2020. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

FEDERAL STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

21 U.S.C. § 841(a)(1) provides:

Except as authorized by this title, it shall be unlawful for any person knowingly or intentionally—

(1) to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance;

21 U.S.C. § 841(b)(1)(C) provides:

Except as otherwise provided in section 409, 418, 419, or 420 [21 USCS § 849, 859, 860, or 861], any person who violates subsection (a) of this section shall be sentenced as follows:

...

In the case of a controlled substance in schedule I or II, gamma hydroxybutyric acid (including when scheduled as an approved drug product for purposes of section 3(a)(1)(B) of the Hillory J. Farias and Samantha Reid Date-Rape Drug Prohibition Act of 1999 [21 USCS § 812 note]), or 1 gram of flunitrazepam, except as provided in subparagraphs (A), (B), and (D), such person shall be sentenced to a term of imprisonment of not more than 20 years and if death or serious bodily injury results from the use of such substance shall be sentenced to a term of imprisonment of not less than twenty years or more than life, . . .

STATEMENT OF THE CASE

In 2015, a woman overdosed on fentanyl and passed away. Jurmaine Jeffries's contact information was found in the woman's phone, and their exchanges appeared to be drug-related. There were at least eight other contacts in her phone with messages that also appeared to be related to drugs, including messages suggesting the woman was also acting as a "middleman" between dealers and drug users. Focusing on contacts with Mr. Jeffries, law enforcement induced him to come to the residence and then effectuated an arrest.

Jurmaine Jeffries, a twenty-seven year old man at the time of the alleged offense, was charged under 21 U.S.C. § 841(b)(1)(C).¹ This statute charged him not only with trafficking in fentanyl but with trafficking where death or serious injury "resulted from" the offense. As a result of this death enhancement, he faced a sentence between twenty years and life in prison.

Prior to trial, Mr. Jeffries moved the district court to give a proximate cause jury instruction, which was denied. Mr. Jeffries went to trial and was found guilty of the death enhancement offense, as well as the possession with intent to distribute charge. Following trial, Mr. Jeffries moved the district court for a new trial, arguing in part that it was error not to provide a proximate cause instruction. The district court reversed its prior reasoning and agreed, stating a proximate cause instruction should have been given where the statute is ambiguous and the rule of lenity applies. *United States v. Jeffries*, 2018 U.S. Dist. LEXIS 219134 (N.D. Ohio Oct. 1, 2018).

¹ Mr. Jeffries was also charged with possession with intent to distribute, a violation of 21 U.S.C. § 841(a)(1), without a death enhancement.

Before he could be retried, the government filed an appeal to the Sixth Circuit Court of Appeals. In a 2-1 decision, the Sixth Circuit reversed the district court's grant of a new trial and ordered the case remanded for sentencing. *United States v. Jeffries*, 958 F.3d 517 (6th Cir. 2020). Judge Donald authored a dissenting opinion adopting the reasoning of the district court and detailing the history of and need for proximate causation in the criminal context. *United States v. Jeffries*, 958 F.3d 517, 524-32 (6th Cir. 2020) (Donald, J., dissenting). Mr. Jeffries moved the Sixth Circuit for review en banc but was denied. *United States v. Jeffries*, 2020 U.S. App. LEXIS 23569 (6th Cir. July 24, 2020). He now respectfully petitions this court to review his case through a writ of certiorari.

REASONS FOR GRANTING THE WRIT OF CERTIORARI

I. Mr. Jeffries’s Petition Should Be Granted Because the Sixth Circuit Has Decided a Question of Federal Law that Has Not Been, But Should Be, Settled by this Court.

A. The death enhancement under 21 U.S.C. § 841(b)(1), which increases the penalty for conviction to twenty years to life in prison, requires proximate causation.

This case presents as an ideal vehicle to address the question left open by this Court in *Burrage v. United States*, 134 S. Ct. 881, 887 (2014). Under 21 U.S.C. § 841(b)(1)(C), where death or serious injury “results from” the use of a controlled substance, a defendant charged with drug trafficking faces a significantly enhanced penalty. The statute does not define “results from” or indicate the level of causation required. But in evaluating that same statutory subsection, this Court recognized that causation has long been a hybrid concept made up of actual cause (but-for cause) and legal cause (proximate cause). *Burrage* at 887. This Court acknowledged that “a defendant generally may not be convicted unless his conduct is ‘both (1) the actual cause, and (2) the legal cause (often called the proximate cause) of the result.’” *Id.* (quoting 1W. LaFare, *Substantive Criminal Law*, § 6.4(a), pp. 464-466 (2d ed. 2003)).

The *Burrage* Court held that § 841(b)(1)(C) requires the jury be instructed on but-for causation. *Id.* at 888, at syllabus. But this Court also accepted review in *Burrage* on the question of whether the jury instruction should include that “the victim’s death by drug overdose was a foreseeable result of the defendant’s drug trafficking,” – an instruction of proximate cause. *Id.* at 887. However, this Court never reached that second question. Instead, this Court stated, “We find it necessary

to decide only the first: whether the use of heroin was the actual cause of Banka's death in the sense that § 841(b)(1)(C) requires." *Id.* This Court, therefore, left open the question of whether proximate causation, or the foreseeability of the resulting death, need also be proven.

The statutory language of § 841(b)(1)(C) is ambiguous, as it does not specify the level of causation required. The rule of lenity should control here based on that ambiguity. The rule of lenity holds that "where there is ambiguity in a criminal statute, doubts are resolved in favor of the defendant." *Smith v. United States*, 508 U.S. 223, 246 (1993) (Scalia, J., dissenting) (internal citations omitted). This Court noted that the phrase "results from" must be given its ordinary meaning, which is that "it '[a]rises as an effect, issue, or outcome from some action, process, or design.'" *Burrage* at 210-11 (quoting 2 The New Shorter Oxford English Dictionary 2570 (1993)). In other words, the dictionary definition suggests foreseeability beyond simple but-for causation.

This Court's jurisprudence also reflects a significant appreciation for the role of proximate causation in criminal cases. As this Court held in *Paroline v. United States*, 572 U.S. 434, 444 (2014), proximate cause "means that it was not just any cause, but one with sufficient connection to the result." Proximate causation is often described in terms of foreseeability or the scope of the risk created by the underlying conduct. *Id.* at 445. It serves "to preclude liability in situations where the causal link between conduct and result is so attenuated that the consequence is more aptly described as mere fortuity." *Id.* (citing *Exxon Co. v. Sofec*, 517 U.S. 830, 838-39

(1996)). Put another way, proximate cause requires some direct relationship between the injury asserted and the injuring conduct claimed. *Id.* at 444 (quoting *CSX Transp., Inc. v. McBride*, 564 U.S. 685 (2001)).

Moreover, a proximate cause instruction under 21 U.S.C. 841(b)(1)(C) makes practical sense, because death is not necessarily the foreseeable result of dealing drugs in every case. The reality of drug trafficking frequently involves dealing to the same drug-addicted people, often for a long time. When a drug dealer provides drugs to a long-time user, his or her reasonable expectation is not that the user will likely overdose and die. Rather, because that drug addict has been using repeatedly – often daily or multiple times a day for a period of months or years – the more reasonably foreseeable result for the drug trafficker is that the user will take the provided drugs and then return again for more.

That is not to suggest that drug overdoses are uncommon for drug addicted people. However, overdose deaths are not so closely related causally as to require strict causation and no analysis of proximate cause. The more reasonable interpretation would be evaluating foreseeability on a case-by-case basis, as proximate cause requires.

General criminal law principles also support that § 841(b)(1)(C) includes a proximate cause requirement. As this Court has noted, proximate cause is a standard aspect of causation in criminal law. *Paroline*, 572 U.S. at 446. Strict liability is general disfavored by this Court. “While strict-liability offenses are not unknown to the criminal law and do not invariably offend constitutional requirements. . .the

limited circumstances in which Congress has created and this Court has recognized such offenses... attest to their generally disfavored status.” *United States v. U.S. Gypsum Co.*, 438 U.S. 422, 437-48 (1978). As a result, offenses that do allow strict liability generally carry penalties that are “commonly are relatively small, and conviction does no grave damage to the offender’s reputation.” *Morrisette v. United States*, 342 U.S. 246, 256 (1952). An offense carrying no less than twenty years of incarceration and a maximum term of life imprisonment is not relatively small, further suggesting 21 U.S.C. § 841(b)(1)(C) should not be construed as lacking a proximate cause requirement.

Finally, this Court has pointed out that it is common for criminal statutes to not expressly incorporate a proximate causation requirement “[g]iven proximate cause’s traditional role in causation analysis.” *Paroline*, 572 U.S. at 446. Instead, “this Court has more than once found a proximate-cause requirement built into a statute that did not expressly impose one.” *Id.* (internal citations omitted). *See also CSX Transp.*, 564 U.S. at 709 (“We have applied the standard requirement of proximate cause to actions under federal statutes where the text did not expressly provide for it.”). Therefore, the lack of express statutory language regarding proximate causation does not resolve the question before this Court.

Far from creating consistency, interpreting § 841(b)(1)(C) to lack a proximate cause requirement runs counter to traditional criminal law principles, as well as this Court’s interpretation of the concept. Despite that fact, the Sixth Circuit held that a

proximate cause instruction is not required where a defendant is charged under § 841(b)(1)(C). *United States v. Jeffries*, 958 F.3d 517, 522-23 (6th Cir. 2020).

This Court explained the dangers of not following the rule of lenity in regards to criminal statutes, stating, “Especially in the interpretation of a criminal statute subject to the rule of lenity, we cannot give the text a meaning that is different from its ordinary, accepted meaning, and that disfavors the defendant.” *Burrage* at 216. Without this Court’s intervention in Mr. Jeffries’s case, that will be the result. That result will affect not only Mr. Jeffries but the many other defendants charged under this statute being tried without holding the government to the burden of proof as to proximate cause. Therefore, review by this Court is appropriate.

CONCLUSION

Mr. Jeffries respectfully petitions this Court to accept his case for a review of its merits.

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