

No. 21-5633

IN THE SUPREME COURT OF THE UNITED STATES

ROLAND J. MCLAIN, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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Petitioner contends (Pet. 7-20) that his previous Indiana convictions for dealing marijuana, hash oil, hashish, or salvia, in violation of Ind. Code Ann. § 35-48-4-10 (LexisNexis Supp. 2013), are not “controlled substance offense[s]” within the meaning of Sentencing Guidelines § 4B1.2(b), on the theory that a “controlled substance offense” under Section 4B1.2 must involve a controlled substance under the federal Controlled Substances Act. See Pet. App. 2a (observing that salvia is controlled under Indiana law but not under federal law). For the reasons given in the government’s brief in opposition to the pending petition for a

writ of certiorari in Guerrant v. United States, No. 21-5099 (Nov. 3, 2021), that contention does not warrant this Court's review. We have served petitioner with a copy of the government's brief in opposition in Guerrant, and the brief is also available on this Court's website.

As the government has explained in its brief in Guerrant, this Court ordinarily does not review decisions interpreting the Sentencing Guidelines, because the Sentencing Commission can amend the Guidelines to eliminate any conflict or correct any error. See Br. in Opp. at 5-7, Guerrant, supra (No. 21-5099). And in any event, the court of appeals' decision is correct. The Sentencing Guidelines define the term "controlled substance offense" to include "an offense under * * * state law, * * * that prohibits * * * the possession of a controlled substance * * * with intent to * * * distribute," without reference to the federal Controlled Substances Act. Sentencing Guidelines § 4B1.2(b). As the government has explained, that definition encompasses offenses involving substances that are controlled under state law, even if those substances are not also controlled under federal law. See Br. in Opp. at 7-10, Guerrant, supra (No. 21-5099).

Petitioner contends (Pet. 7-16) that the courts of appeals disagree about the meaning of the term "controlled substance" in Section 4B1.2(b). But as explained in the brief in opposition in Guerrant, any circuit disagreement is recent and limited, which counsels even further against this Court's review and in favor of

allowing the Sentencing Commission the opportunity to address it.
See Br. in Opp. at 11-12, Guerrant, supra (No. 21-5099).*

Respectfully submitted.

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* The government waives any further response to the petition for a writ of certiorari unless this Court requests otherwise.