No._____

IN THE SUPREME COURT OF THE UNITED STATES

ALECIA TRAPPS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition For A Writ of *Certiorari* To The United States Court of Appeals for the Ninth Circuit

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PETITION FOR A WRIT OF CERTIORARI

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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:

LIST OF DIRECTLY RELATED PROCEEDINGS

1. United States District Court for the Eastern District of California, United States of America v. Alecia Trapps, No. 1:18-cr-00076-JLT-BAM The district court entered judgment on September 21, 2021.

2. United States Court of Appeals for the Ninth Circuit, United States of America v. Alecia Trapps, No. 21-10295. The Ninth Circuit entered judgment on September 22, 2022.

QUESTION PRESENTED FOR REVIEW

In United States v. Bautista, 989 F.3d 698, 702 (9th Cir. 2021), an opinion that the Ninth Circuit applied here to determine whether Petitioner is a career offender under U.S.S.G. § 4B1.1(a), the Ninth Circuit – consistent with an approach that at least three other federal courts of appeals have either explicitly or implicitly adopted – held that federal law controls whether a past state conviction is a "controlled substance offense" for § 4B1.1(a) purposes. Contrarily, however, as Justice Sotomayor noted in her statement respecting denial of certiorari in Guerrant v. United States, 142 S. Ct. 640, 640 (2022) (joined by Justice Barrett), at least four other circuits apply state law to conduct that § 4B1.1(a) determination.

The question presented is as follows:

Did the Ninth Circuit's disposition of Petitioner's claim under § 4B1.1(a) of the United States Sentencing Guidelines conflict with a rule that at least four other federal courts of appeals have promulgated, holding contrarily that state law – not federal – governs whether a state conviction is a "controlled substance offense," to determine whether a defendant is a career offender under Guidelines?

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Petitioner Alecia Trapps respectfully requests that the Court issue a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit, entered on September 22, 2022.

OPINION BELOW

A three-judge panel of the Ninth Circuit originally issued an unpublished memorandum disposition and entered judgment on September 22, 2022, affirming Petitioner's conviction and sentence.[1]

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[1] A copy of the memorandum disposition is included in the Appendix. See App. 1-6 (United States v. Trapps, No. 21-10295 (9th Cir. Sept. 22, 2022)).

JURISDICTION

The Ninth Circuit entered judgment in this case on September 22, 2022. App. 1-5. This Court has jurisdiction under 28 U.S.C. § 1254(1). See also S. Ct. R. 13.3; S. Ct. Miscellaneous Order, July 19, 2021.

STATUTORY PROVISION INVOLVED

Under § 4B1.1 of the United States Sentencing Guidelines, "(a) [a] defendant is a career offender if (1) the defendant was at least eighteen years old at the time the defendant committed the instant offense of conviction; (2) the instant offense of conviction is a felony that is either a crime of violence or a controlled substance offense; and (3) the defendant has at least two prior felony convictions of either a crime of violence or a controlled substance offense.

(b) Except as provided in subsection (c), if the offense level for a career offender from the table in this subsection is greater than the offense level otherwise applicable, the offense level from the table in this subsection shall apply. A career offender's criminal history category in every case under this subsection shall be Category VI."

STATEMENT OF THE CASE

Petitioner draws the following factual recitation primarily from the district court record, including the Presentence Report.

A. As a Teenager, Petitioner, Who Grew Up in a Dysfunctional Household with Domestic Violence, Unfortunately Starts What Eventually Becomes a Decades-Long Battle with Substance Abuse and Alcohol

Petitioner Alecia Trapps was born in Martinez, California (an East Bay municipality) in 1963. App. 196. Sadly, Petitioner "never had a relationship with her biological father," who suffered from serious substance abuse problems. App. 146, 210.

That unfortunately resulted in Petitioner's mother, who had three children, having to become a single parent. And although Petitioner's mother strived mightily under the circumstances, she "struggled to provide financially for her children." App. 146, 210.

The family's difficult plight became even more challenging after Petitioner's mother married a man named Blake McCree in 1968. McCree contributed financially to his new household, which resided at different times in Oakland and Pittsburg, California, but he also was an alcoholic who habitually assaulted Petitioner's mother when he arrived home drunk. App. 210. The couple divorced in 1978, when Petitioner was 15 years old. Id.

Attempting to avoid the difficult realities of her domestic environment, which also included "gangs and drug dealers" that permeated Petitioner's home

neighborhood, she instead focused heavily on scholastic athletics, participating in softball, basketball, and badminton. App. 147, 210. Petitioner was a particularly stellar basketball player, and potentially was sufficiently talented to have drawn attention from Division I collegiate programs that could have offered her athletic scholarships. Id.

But instead, as sadly often occurs among people raised in similarly situated environments, when she was 15 years old, Petitioner started to use controlled substances. Initially beginning somewhat innocuously with marijuana, Petitioner then progressed the following year to drinking "glasses of hard liquor four to five times a week to the point of intoxication." App. 211. And that drinking pattern later accelerated in 1989 after her older brother, Lenny, was murdered and she sought self-medicating solace in alcohol to alleviate her grief. App. 210-11; see infra at 6.

B. Continuing Her Education, Petitioner Enrolls in a Community College and Plays on Its Basketball Team, But Her Substance and Alcohol Abuse Ostensibly Continues Unabated

Notwithstanding her heavy use of alcohol and marijuana, Petitioner managed to stay on track academically. She graduated from Pittsburg High School in 1982, and then matriculated at Santa Rosa Junior College in Santa Rosa, California. For approximately the next two years, she "studied law enforcement

and business" but did not receive an associate's degree. She then completed an additional semester at Southwest College in Los Angeles in 1984. App. 212.

While in college in Santa Rosa, Petitioner played on the school's women's basketball team. But apparently sometime in 1984, Petitioner learned that her grandfather had died, and her impoverished grandmother was sick and was having difficulty making ends meet. Consequently, Petitioner decided to leave college so that she could help her grandmother. App. 147.

Although Petitioner's marijuana use decreased during her collegiate period, she apparently continued her heavy imbibing of liquor that she had started during her high school years. See App. 211.

C. Petitioner Becomes Gainfully Employed in the Central Valley, But Her Substance Abuse Worsens Precipitously As She Begins to Use Hard Drugs Daily

Apparently sometime in 1984, Petitioner moved to Modesto, California, and started working for Campbell's Soup Company in nearby Stockton. App. 148, 211. But despite being gainfully employed, Petitioner's substance abuse problems worsened, beginning with her periodically smoking crack cocaine. App. 211.

By 1986, Petitioner unfortunately started to smoke methamphetamine and

snort powder cocaine. Her addiction to those controlled substances became so acute that she soon began to use them daily – continuing until her federal arrest in April 2018, with only "brief periods of sobriety" – requiring her to spend more than $5,000 per year to purchase them. App. 148, 211.

D. Petitioner Briefly Stops Using Controlled Substances and Changes Jobs, But Her Brother's Murder Causes Her Mental Health and Addiction-Related Issues to Deteriorate

Eventually, Campbell's Soup terminated Petitioner because of excessive "absenteeism." App. 213. Perhaps viewing that as somewhat of a proverbial wakeup call, Petitioner soon found a job at a local supermarket as a "meat and seafood clerk." App. 148. Although she received a small raise compared to her earlier compensation at Campbell's Soup, the employment experience was unpleasant, subjecting her to racist remarks from customers and multiple years without being promoted to a superior position within the store. Id.

What was even more traumatic for Petitioner, though, was learning in 1989 that Lynnie Trapps, her 27-year-old brother, had been murdered. App. 148, 210. That sadly propelled Petitioner into a five-year downward mental-health spiral, causing her to relapse and therefore resume her daily use of methamphetamine and power cocaine, coupled with even more alcohol consumption. And even more unfortunately, instead of pursuing gainful employment, Petitioner gravitated

toward distributing controlled substances to finance her addiction. App. 148.

Perhaps unsurprisingly, then, during that five-year period, Petitioner twice was convicted in California for narcotics-related offenses. The first one in 1993 resulted from Petitioner's violating California law by transporting and/or selling a controlled substance (apparently "rock cocaine"). For that, a Superior Court judge in Stanislaus County sentenced her to a five-year custodial term in state prison. That same year, Petitioner also was convicted of possessing a controlled substance (also apparently "rock cocaine"). A Superior Court judge in Stanislaus County sentenced her to a seven-year custodial term in state prison. App. 205-206.

After serving approximately three years of those sentences, Petitioner received parole on October 15, 1996. App. 148, 205-206.

E. Without Regular, Gainful Employment Post-Incarceration, Petitioner Once Again Lapses Into Distributing Controlled Substances to Finance Her Addiction, and She Experiences More Familial Tragedies and Criminal Justice Problems

Like many formerly incarcerated persons, Petitioner – despite applying and searching broadly – could not secure employment, otherwise than occasional work as "an in-home care provider." App. 149, 212. Sadly, but unfortunately

unsurprisingly, that difficult experience caused Petitioner, who was not then receiving professional treatment for her addiction, to relapse and resume selling crack cocaine. App. 149.

Consequently, in 2001, Petitioner was convicted in the Superior Court in Stanislaus Country for possessing cocaine base for sale. For that, a judge sentenced Petitioner to a 365-day custodial term, followed by three years of probation. App. 206.

While serving that probationary term, Petitioner learned that her mother was seriously ill with breast cancer. That prompted Petitioner to "move[] in" with her mother to be a "full-time caregiver." App. 149. But her mother's plight caused Petitioner's addiction-related and other mental-health problems to worsen. And tragically, Petitioner reunited with her biological father, only to see him die in 2003 from "organ failure." App. 149, 210.

Unfortunately, Petitioner then committed a probation violation during that post-release period, and a Superior Court judge sentenced her in 2004 to a four-year custodial term. Following an initial parole violation, Petitioner received another period of parole on December 22, 2005. App. 149, 206.

As her mother continued to struggle against breast cancer, Petitioner once again attempted sobriety and decided to re-dedicate herself to caring for her ailing

mother. Sadly, however, Petitioner's mother finally passed away in 2008. App. 149, 210 .

The grief that Petitioner experienced following that tragedy unfortunately prompted her to relapse, and she therefore started habitually consuming alcohol and using methamphetamine and powder cocaine to self-medicate. And while Petitioner was increasingly frequenting "flop houses and crack dens" following her mother's death, state authorities arrested her – apparently sometime in October 2009 – and charged her with violating California Health & Safety Code § 11351.5 by possessing "cocaine base" for sale. App. 150, 206-07.

While being detained pretrial, Petitioner litigated aggressively against the prosecutors, ultimately going to trial approximately three years after being charged. A jury in the Superior Court convicted her, however, and a judge then sentenced her on November 1, 2012, to a three-year custodial sentence. Because Petitioner received credit for time served during the detention period, she was released following the sentencing proceedings, and placed into an "alternative work program" until November 21, 2014. App. 150, 206.

During that post-release period, Petitioner reunited with her sister, Regina. Over the next few months, the women cooked together, using their late mother's "soul food" recipes and also developing new dishes. But tragedy struck once

again in 2013, when Regina died from liver failure. App. 150, 210.

Unsurprisingly, Regina's death – leaving Petitioner without any parents or siblings (see App. 150, 210) – devastated Petitioner emotionally, and she again lapsed into a pattern of heavy drinking and methamphetamine usage. But she reunited with Regina's son, Jimmy Brantley, who had his own substance abuse and gambling problems, ultimately convincing Brantley to move in with her and "clean up his act." App. 151, 199.

During that time, Petitioner began to focus on developing a "soul food catering business" that she named "Jeannie's Soul Food," in her late sister's memory. App. 151, 212. But the business was not sufficiently remunerative, leading her unfortunately to engage in the conduct that underlies what the indictment in this case alleges. App. 151.

F. Petitioner Supposedly Conspires with Brantley and Others to Distribute Controlled Substances from California to Alaska

Commencing as early as early January 2015 and lasting for a little more than three years, Petitioner, Brantley, and perhaps five other persons ostensibly conspired to distribute methamphetamine and heroin from Modesto to Juneau, Alaska. In a nutshell, Petitioner allegedly used Brantley and Carmen Conejo as

couriers, and also supposedly worked directly with two narcotics suppliers (Sheena Taylor and Ernest Westley).[2] App. 199-200.

Beginning in early-April 2018, federal agents – who apparently had conducted a lengthy investigation of Petitioner and her associates – began arresting the putative conspirators. This culminated in Petitioner's and Brantley's arrests on, respectively, April 11 and April 12, 2018, apparently in Manteca, California. App. 201-202.

During an otherwise defective Rule 11 colloquy in February 2019 (see infra at 15-19), Petitioner acknowledged that the putative conspiracy involved "more than 1,300 grams of methamphetamine and more than 250 grams of heroin," during a period stemming from January 1, 2017, to April 11, 2018. App. 10-11, 199. According to the PSR, Petitioner was "accountable for at least 256.7 grams of heroin, 1562.4 grams of methamphetamine (actual), and 3,018.8 grams of methamphetamine,[3] which [results in] a converted drug weight of 37,542.30 kilograms." App. 202.

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[2] Westley, in turn, used Joseph Vasquez, Jr,, as a methamphetamine supplier. App. 200.

[3] Although somewhat imprecise, the second reference to methamphetamine apparently pertains to a "mixture or substance" containing that controlled substance. App. 56.

G. A Grand Jury Indicts Petitioner and Five Putative Co-Conspirators

Shortly before government agents effectuated arrests (see supra at 11), a grand jury empaneled in the Eastern District of California returned an indictment on April 5, 2018, charging Petitioner, Brantley, Conejo, Westley, Taylor, and Vasquez with one count of violating 21 U.S.C. § 846 by supposedly conspiring to distribute, and possess with intent to distribute, methamphetamine and heroin from Modesto to Juneau (see supra at 10-11). App. 55-56.

At an arraignment on April 12, 2021, Petitioner pleaded not guilty to the § 846 count. Initially, a magistrate judge ordered Petitioner to be detained pretrial, but scheduled a later hearing on the subject matter for April 16, 2018. App. 76, 78-79.

H. Once Again, a Magistrate Judge Orders Petitioner's Detention, But Schedules a Later Bail Review Hearing

Following that hearing, a magistrate judge denied bail for Petitioner on April 16, 2018, and ordered her to be detained pretrial. Among other things, the magistrate judge determined, applying a preponderance-of-evidence standard, that "no condition or combination of conditions [could] reasonably assure [Petitioner's] appearance . . . ." And she also found that the government had clearly and convincingly proven that "no combination of conditions will assure

the safety of any other person and the community." App. 81. In particular, the magistrate judge noted Petitioner's "histor[ies] relating to" both "drug abuse" and "alcohol abuse." Id.

The magistrate judge did, however, give Petitioner an opportunity the following month to seek – via a motion – a bail review hearing, during which Petitioner would present evidence to controvert the government's preliminary showing. App. 167.

I. A Magistrate Judge Reconsiders the Earlier Detention Order, and Instead Permits Petitioner to Be Released on Her Own Recognizance, Provided That Petitioner Participate in a Substance Abuse Treatment Program

After Petitioner made a more-fulsome evidentiary showing that she was neither a flight risk nor a danger to the community, a magistrate judge entered an order on May 17, 2018, that directed the government to release Petitioner from pretrial detention on her own recognizance. The magistrate judge imposed significant conditions, however, including requiring Petitioner to submit urine samples regularly to test for controlled substances and alcohol, and mandating that she participate in a protracted inpatient rehabilitation program "and comply with all the rules and regulations of the program." App. 83-84, 87-93.

J. After Petitioner Has Difficulties At Her Treatment Facility, a Magistrate Judge Orders Her to Be Remanded to Pretrial Detention, Where She Remains for Approximately Three Years

Unfortunately, Petitioner eventually missed one of her required urine test appointments, and the Pretrial Services Office in Fresno contended that she submitted a diluted sample on another occasion.[4] Further, Petitioner also had unauthorized contact with Brantley, her nephew and co-defendant, and ostensibly had such a severe falling out at her treatment facility that it decided to dismiss her from its program. See, e.g., App. 94.

Consequently, the government filed a notice in the district court on November 2, 2018, alleging that Petitioner had violated five separate conditions of her pretrial release and seeking to remand her to custody. App. 94-95. Although a magistrate judge initially did not deem Petitioner's putative transgressions to be sufficient to warrant his revoking her release immediately (see App. 98, 100-102), he later held a two-day evidentiary hearing to determine ostensibly whether there were any conditions sufficient to ensure that Petitioner could appear in court as scheduled and avoid being a danger to the community. App. 98, 103-136.

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[4] The government later backtracked somewhat, and did not use this particular sample to seek Petitioner's remand to custody. See App. 105-108.

After the parties finished presenting testimony from several witnesses, the magistrate judge found on November 26, 2018, that Petitioner's conduct – including her unfortunate encounter with Brantley and the difficulties that resulted in her being dismissed from her treatment program – illustrated that he could not fashion viable pretrial release conditions. He therefore ordered Petitioner to be remanded immediately to custody. App. 136-139.

K. The District Court Conducts a Patently Deficient Change-of-Plea Hearing Under Rule 11, and Notably Does Not Query Petitioner Adequately Regarding Issues Implicating Her Plea's Voluntariness

Eventually, without entering into a written agreement with the government, Petitioner decided to plead guilty to the indictment's § 846 count. App. 7-18.

At a perfunctory change-of-plea hearing on February 11, 2019, however, the district court (Judge Laurence J. O'Neill) conducted a manifestly deficient Rule 11 colloquy. Among other things, despite Rule 11(b)(1)'s lengthy list of mandatory tasks that a district court had to accomplish before even determining that the plea was knowing, voluntary, and intelligent, the district court plainly did not do the following: (a) notify Petitioner that any false statement that she might make in open court could later subject her to criminal liability "for perjury or false

statement"[5] (Fed. R. Crim. P. 11(b)(1)(A)); (b) inform her that she had a right to a jury trial[6] (Fed. R. Crim. P 11(b)(1)(C)); (c) notify Petitioner that she had a right to have appointed counsel represent her at trial[7] (Fed. R. Crim. P. 11(b)(1)(D)); (d) notify Petitioner that she had a right to confront adverse witnesses at trial (Fed. R. Crim. P. 11(b)(1)(E))[8]; (e) inform her that she had a right "to be protected from compelled self-incrimination (Fed. R. Crim. P. 11(b)(1)(E))[9]; (f) notify Petitioner that she had a right "to testify and present evidence (Fed. R. Crim. P. (b)(1)(E)); and (g) inform her that she had the right "to testify, and present evidence, and to

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[5] Indeed, there is no indication in the transcript that the district court ever placed Petitioner under oath before beginning the hearing – which is customary during a Rule 11 colloquy. See App. 8-18.

[6] The district court informed Petitioner, "If you wanted to go to trial, all you would have to do is tell me so and we would make sure the trial went to trial in a timely fashion under the law." App. 13. But that omitted any reference to Petitioner's constitutional rights under the Sixth Amendment to a jury trial.

[7] Mentioning what would occur if Petitioner were to proceed to trial, the district court stated only that "You would be there, your lawyer would be there for you. The government would have the burden of proving the case against you. They would attempt to meet that burden by bringing witnesses and evidence, and you would watch them try to do that. You would watch them bring in witnesses, and your attorney would ask those witnesses questions for you, or cross-examine them." App. 12.

[8] See supra at n.7.

[9] The district court stated only that if Petitioner "wanted to take the witness stand and testify, you could, but you wouldn't have to, and nobody would use that against you if you didn't." App. 13.

compel the attendance of witnesses," (Fed. R. Crim. P. (b)(1)(E)).[10] App. 13-14.

In addition to those seven serious deficiencies, the district court committed at least three additional material errors, ones that particularly impacted Petitioner's substantial rights.

First, the district court did not query Petitioner about whether she understood "in determining a sentence, the [district] court's obligation to calculate the applicable sentencing-guideline range and to consider that range, possible departures under the Sentencing Guidelines, and other sentencing factors under 18 U.S.C. § 3553(a) . . . ." Fed. R. Crim. P. 11(b)(1)(M). Indeed, and quite remarkably, the district court did not mention the Guidelines or § 3553(a) at all. See App. 8-18.

Second, the district court also did not address the particulars of the "applicable forfeiture" with Petitioner. Fed. R. Crim. P. 11(b)(1)(J). Rather, the district court stated only that "there are certain things that are outlined at pages 2 and 3 of the indictment as a result of your change of plea; do you understand that?" Petitioner replied affirmatively. App. 11-12.

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[10] The district court stated only that Petitioner "could bring in witnesses and evidence," and "[w]e would help you get that here by the subpoena power of the Court . . . ." App. 13.

And finally – and perhaps most importantly – the district court did not make the comprehensive inquiry that Rule 11(b)(2) requires "to confirm [Petitioner's] competence and intelligence to enter a plea of guilty." United States v. Fuentes-Galvez, 969 F.3d 912, 915 (9th Cir. 2020). Initially, the district court did not ask Petitioner's sentencing "counsel whether [she] thought [Petitioner] was pleading knowingly and voluntarily," (id.) only more generally whether there was "any reason" why it "should not now take the change of plea." App. 14.

Further, the district court "did not make any inquiries as to whether [Petitioner] was capable of knowingly and voluntarily entering a plea at that time (e.g., whether [she] was under the care of a physician, whether [she] was taking any medication, how far [she] had gone through school, or other questions that might bear on whether [Petitioner] understood the nature of [her] plea)." Fuentes-Galvez, 969 F.3d at 915; App. 8-18. Indeed, given Petitioner's decades-long struggles with serious substance abuse problems – some of which manifested themselves during earlier proceedings that ultimately resulted in a magistrate judge's ordering Petitioner's pretrial detention (see supra at 12-15) – it is particularly surprising that the district court avoided that topic categorically. And the district court "did not ask [Petitioner] whether [she] understood [her] attorney or felt fully satisfied with the counsel, representation, and advice given to [her] by

[her] attorney." Fuentes-Galvez, 969 F.3d at 915.

Despite those multiple Rule 11 errors, the district court ultimately accepted Petitioner's change of plea, deeming it to be knowing and voluntary. App. 17.

L. The District Court Sentences Petitioner to a 252-Month Custodial Term

After protracted delays and multiple continuances – many of them associated with the COVID-19 pandemic and Petitioner's insisting that she have an in-person hearing (see App. 23-24, 187-190) – the district court (this time, a different district judge, Judge Dale A. Drozd) convened a sentencing hearing on September 17, 2021. App. 19.

Considering that Petitioner had objected to two of the government's proposed sentencing enhancements – based on a putative leader/organizer role (U.S.S.G. § 3B1.1(a)) and the government's claim that Petitioner had used her residence primarily for distribution-related purposes (U.S.S.G. § 2B1.1(b)(12)), the district court initially heard extended arguments regarding Guidelines-related issues. Ultimately, the district court overruled Petitioner's objection to the four-level role enhancement under § 3B1.1(a), but sustained hers to § 2B1.1(b)(12). App. 25-27.

Accordingly, the district court determined that Petitioner's adjusted base offense was 37.[11] It then noted that although Petitioner fell within Criminal History Category III, she is a career offender under U.S.S.G. § 4B1.1(a) because of two qualifying state felony drug convictions (see supra at 7, 9). App. 27-28, 203-204. The district court apparently applied extant Ninth Circuit case law that dictates federal law – not state legal principles underlying Petitioner's putative qualifying convictions – supply the governing principles for determining whether Petitioner was a career offender. See App. 26-27; United States v. Bautista, 989 F.3d 698, 702 (9th Cir. 2021). Consequently, that then automatically elevated her into Criminal History Category VI, and her advisory Guidelines range therefore was 360-months-to-life. App. 26-27, 203-204.

Counsel for Petitioner and the government then made extended arguments about the sentencing factors set forth in 18 U.S.C. § 3553(a). As she had done so in her sentencing memorandum, Petitioner requested the mandatory-minimum term of 120 months (21 U.S.C. § 841(b)(1)(A)(i) and (viii)). App. 32, 153-159.

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[11] The district court ostensibly arrived at that figure by initially determining a base offense level of 36 because of the combined drug weight to which to the parties had ostensibly stipulated (see U.S.S.G. § 2D1.1(c)(2); App. 203. It then enhanced by four levels under § 3B1.1(a), and subtracted three under U.S.S.G. § 3E1.1 because Petitioner had timely accepted responsibility. See App. 28-29, 203-204.

The government took an entirely different position, asking the district court to impose a 324-month custodial sentence. App. 30-31.

Following Petitioner's lengthy allocution (during which she apologized repeatedly to the district court and the government for her conduct, see App. 36-42) and heartfelt remarks by one of Petitioner's nieces (see App. 33-36), the district court decided to "vary" from the advisory Guidelines range. App. 42. Neither agreeing with Petitioner's request for a mandatory-minimum term, nor concurring with the government's harsher assessment (see App. 42-44), the district court instead sentenced Petitioner to a 252-month custodial term. It also imposed a five-year supervised release term, including some special conditions tailored toward addressing Petitioner's multi-decades-long problems with substance abuse. App. 44-45.

M. The Court of Appeals' Disposition

In an unpublished memorandum disposition that it issued on September 20, 2022, a three-judge panel of the Ninth Circuit affirmed Petitioner's conviction and sentence. App. 1-6. Particularly pertinent to the present petition, the panel deemed itself bound by extant precedent regarding § 4B1.1's career-offender guideline (App. 2 n.1 (citing Bautista, 989 F.3d at 702)), therefore determining that the district court had not erred by failing to review Petitioner's state court

narcotics-related convictions under California law – instead of federal law – to determine their applicability under § 4B1.1(a).[12]

ARGUMENT

1. Simply put, the rule that the Ninth Circuit applied based on extant precedent concerning § 4B1.1(a), such as Bautista, reflects a deep circuit split concerning whether federal law or state law controls in determining whether a prior conviction is a "controlled substance" offense under that career-offender guideline. Indeed, as Justice Sotomayor's statement in Guerrant v. United States respecting the denial of certiorari illustrates, there are four federal courts of appeals that either apply federal law (namely whether the Controlled Substances Act, Pub. L. No. 91-513, 84 Stat. 1236 (1971), prohibits the narcotic at issue) or are sympathetic to that approach. 142 S. Ct. 640, 640 (Sotomayor, J., respecting denial of petition for a writ of certiorari). But contrastingly, four other circuits look to a particular state's law to define what § 4B1.1(a) encompasses. Id.

2. Consequently, because the question that this petition presents has percolated throughout the federal courts of appeals for close to a decade,

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[12] The Ninth Circuit panel determined conclusorily that Trapps would not have fared differently if the analysis had occurred using California legal principles, but the panel did not cite to any authorities to support that proposition. App. 2 n.1.

Petitioner's case presents a suitable vehicle to resolve the direct conflict that exists between the different approaches that the federal courts of appeals have taken toward the § 4B1.1(a) question. At bottom, notwithstanding the Ninth Circuit's unreasoned dictum in a footnote in its memorandum disposition, vacatur would be necessary here if state law were to govern because the Ninth Circuit would need to conduct an actual legal analysis to determine whether California law's applicability under § 4B1.1(a) would yield a different result from what occurred in the district court.

The Court should therefore grant Petitioner's petition for a writ of certiorari. See Sup. Ct. R. 10(a).

I. A DEEP CIRCUIT SPLIT EXISTS REGARDING WHETHER FEDERAL LAW OR STATE LAW GOVERNS WHAT CONSTITUTES A CONTROLLED SUBSTANCE OFFENSE UNDER § 4B1.1(a).

As Justice Sotomayor's recent statement respecting the denial of certiorari in Guerrant (joined by Justice Barrett) encapsulates, both the Second and Ninth Circuits look exclusively to federal law – namely, if the narcotics offense at issue involved a drug that the Controlled Substances Act regulates – to determine whether a state crime is a "controlled substance offense" under § 4B1.1(a) of the Guidelines. See Guerrant, 142 S. Ct. at 640 (citing Bautista, 989 F.3d at 702-04;

United States v. Townsend, 897 F.3d 66, 68, 71 (2d Cir. 2018)). And although two other federal courts of appeals – the First and Fifth Circuits – have not definitively adopted that rule, they have "indicated agreement with this approach." Id. (discussing United States v. Crocco, 15 F.4th 20, 23-25 (1st Cir. 2021); United States v. Gomez-Alvarez, 781 F.3d 787, 792-94 (5th Cir. 2015)).

Contrastingly, as Justice Sotomayor's statement in Guerrant discusses, the Fourth, Seventh, Eighth, and Tenth Circuits "define[] what qualifies as a 'controlled substance' based on the relevant state law." Guerrant, 142 S. Ct. at 640 (citing United States v. Jones, 15 F.4th 1288, 1291-1296 (10th Cir. 2021); United States v. Henderson, 11 F.4th 713, 718-719 (8th Cir. 2021); United States v. Ward, 972 F.3d 364, 371-374 (4th Cir. 2020); United States v. Ruth, 966 F.3d 642, 651-654 (7th Cir. 2020). Accordingly, Justice Sotomayor added, "Defendants in those Circuits therefore qualify as career offenders for federal sentencing purposes even if their only prior offenses involved substances not prohibited under federal law. As a result, they are subject to far higher terms of imprisonment for the same offenses as compared to defendants similarly situated in the Second or Ninth Circuits." Id.

II. THIS CASE IS A SUITABLE VEHICLE FOR RESOLVING THE DEEP CIRCUIT SPLIT CONCERNING § 4B1.1(a).

Although the Ninth Circuit elected not to publish its disposition, there are at least two reasons why this case represents a suitable vehicle to resolve this question – a vexing circuit split involving a procedural issue that recurs every day federal district courts in the United States convene for sentencing hearings.

First, because Petitioner does not currently challenge anything associated with the Rule 11 colloquy in her case – the only other issue that she raised on direct appeal in the Ninth Circuit – the § 4B1.1(a) question – is the only one that remains. Thus, if the Court were to grant certiorari and reject the approach that the Second and Ninth Circuits (endorsed implicitly by the First and Fifth Circuits) have taken, that would result in a remand to the district court for resentencing. Although the Ninth Circuit in its memorandum disposition here purported to decide the question alternatively based on California state law regarding controlled substances, it did not have any reasoned analysis (App. 2 n.1), therefore demonstrating that vacatur would be necessary for a three-judge panel to apply any contrary rule that the Court might promulgate.

And second, as Petitioner suggested supra, career-offender determinations regularly recur in federal district courts because of how common what sound as

"controlled substance" offenses are under state law. National uniformity, as Justice Sotomayor's statement in Guerrant called for, is therefore necessary to ensure that all federal defendants have the same legal principles applied to Guidelines calculations under § 4B1.1(a).[13]

Consequently, this case is a suitable vehicle for the Court to resolve the deep circuit conflict that exists regarding how a district court determines whether a "controlled substance" offense qualifies for career-offender treatment under § 4B1.1(a). See Sup. Ct. R. 10(a).

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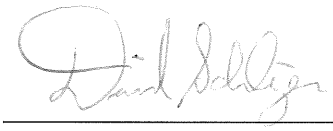
[13] Considering that the United States Sentencing Commission has had an operating quorum for only slightly more than four months (see http://ussc.gov/about/news/press-releases/august-5-2022 (last visited on Dec. 18, 2022)), Justice Sotomayor's calling on it to resolve the circuit split (Guerrant, 141 S. Ct. at 640-41), is perhaps a but too sanguine. The Court does not have the same multi-year backlog that the Sentencing Commission has, and it therefore is better situated to perform that task.

CONCLUSION

The Court should grant the petition for writ of certiorari.

Dated: December 21, 2022

Respectfully submitted,



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Counsel for Petitioner

No._____

IN THE SUPREME COURT OF THE UNITED STATES

ALECIA TRAPPS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for A Writ of *Certiorari* to The United States Court of Appeals for the Ninth Circuit

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PROOF OF SERVICE

I, David A. Schlesinger, declare that on December 21, 2022, as required by Supreme Court Rule 29, I served Petitioner Alecia Trapps's MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* and PETITION FOR A WRIT OF CERTIORARI on counsel for Respondent by depositing an envelope containing the motion and the petition in the United States mail (Priority, first-class), properly addressed to her, and with first-class postage prepaid.

The name and address of counsel for Respondent is as follows:

The Honorable Elizabeth B. Prelogar, Esq.
Solicitor General of the United States
United States Department of Justice
950 Pennsylvania Ave., N.W., Room 5614
Washington, DC 20530-0001
Counsel for Respondent

Additionally, I mailed a copy of the motion and the petition to my client, Petitioner Alecia Trapps, by depositing an envelope containing the documents in the United States mail, postage prepaid, and sending it to the following address:

Alecia Trapps
Register No. 77322-097
Aliceville FCI
Federal Correctional Institution
P.O. Box 4000
Aliceville, AL 35442

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 21, 2022

DAVID A. SCHLESINGER
Declarant