No. 22-6825

IN THE SUPREME COURT OF THE UNITED STATES

RICHIE LEE EDMONDS, III, PETITIONER

v.

UNITED STATES OF AMERICA

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

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ELIZABETH B. PRELOGAR
Solicitor General
Counsel of Record
Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

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Petitioner contends (Pet. 16-24) that his two prior marijuana-related convictions under Michigan law, Pet. App. 5a, are not categorically "controlled substance offense[s]" under Sentencing Guidelines § 4B1.2(b) (2018) because he was convicted of those crimes at a time when the definition of marijuana included hemp, which had been removed from both the federal and state drug schedules by the time of his federal sentencing, Pet. App. 6a. Petitioner argues (Pet. 16) that the classification of his prior state convictions as "controlled substance offense[s]," Sentencing Guidelines § 4B1.2(b) (2018), should depend on the drug schedules

in effect at the time of his federal sentencing, rather than at the time of his state crimes.

The petition for a writ of certiorari in Altman v. United States, cert. denied, No. 22-5877 (May 1, 2023), presented a similar timing question in the context of Iowa marijuana and cocaine convictions. As the government explained in its brief in opposition to the petition in Altman, the correct approach in determining whether a defendant's prior state offense qualifies as a predicate under Sentencing Guidelines § 4B1.2(b) (2018) is to look to the state drug schedules applicable at the time that offense occurred. See Gov't Br. in Opp. at 20-23, Altman, supra (No. 22-5877); see also id. at 23 (citing United States v. Clark, 46 F.4th 404, 408 (6th Cir. 2022), petition for cert. pending, No. 22-6881 (filed Feb. 24, 2023)).[1] Furthermore, any conflict on the question presented does not warrant this Court's review; 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. Id. at 17-20, 23-24.[2] And although this Court has granted certiorari to

[1] The government has served petitioner with a copy of its brief in Altman, which is also available on this Court's online docket.

[2] The government further suggested that the Commission could choose to resolve the question presented in the course of addressing a related issue it was then considering. See Gov't Br. in Opp. at 18-19, Altman, supra (No. 22-5877). Since that time, however, the Commission has adopted amendments without addressing

review a similar timing question in the context of the Armed Career Criminal Act of 1984 (ACCA), 18 U.S.C. 924(e); see Jackson v. United States, No. 22-6640 (May 15, 2023); Brown v. United States, No. 22-6389 (May 15, 2023), the ACCA and Guidelines questions are distinct and should not be conflated. See Gov't Br. in Opp. at 24-27, Altman, supra (No. 22-5877).

On May 1, 2023, this Court denied the petition for a writ of certiorari in Altman. See Order, Altman, supra (No. 22-5877). It should do the same here.[3]

Respectfully submitted.

ELIZABETH B. PRELOGAR
Solicitor General

MAY 2023

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the question presented. See generally Sentencing Guidelines for United States Courts, 88 Fed. Reg. 28,254 (May 3, 2023).

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