

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*

**REPLY BRIEF IN SUPPORT OF
PETITION FOR WRIT OF CERTIORARI**

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Introduction

Petitioner Richie Edmonds, III, files this Reply Brief pursuant to Rule 15(6) to address certain arguments made in Respondent's Brief in Opposition to Petitioner's Petition for a Writ of *Certiorari* to this Court.

The government does not dispute that the question presented in the Petition has created a square conflict among the federal circuits. Nor does it disagree that the conflict has great practical implications for sentencing courts and individual defendants. The government argues that the petition should be denied because *Jackson v. United States*, No. 22-6640 (May 15, 2023) and *Brown v. United States*, No. 22-6389 (May 15, 2023), are distinguishable because they treat a similar time-of-conviction question in the context of the Armed Career Criminal Act (ACCA), as opposed to the Guidelines. However, lower courts have relied on this Court's ACCA jurisprudence to interpret the Guidelines issue presented in the petition.

Moreover, as the government concedes, just last month the Sentencing Commission declined to address the issue presented in this case when they issued new amendments. Thus, the question of how federal sentencing courts should define the phrase "controlled substance offense" will continue to spawn recurring problems until it is resolved by this Court. Where the Sentencing Commission had an opportunity to address the issue but failed to do so, it would unconscionable to delay resolution of this issue affecting a significant number of individuals.

ARGUMENT

I. This case presents an unsettled question of federal law on which a square conflict has developed among the Circuits.

The issue presented in this case—the correct application of the categorical approach in both statutory and Guidelines frameworks—is not a rare one, and the lower courts are inconsistent in their approach to the question. The First, Second, Fourth, Ninth, and Tenth Circuits all have rejected the time-of-conviction approach in the Guidelines and the Armed Career Criminal context (ACCA), 18 U.S.C. § 924(e). *United States v. Abdulaziz*, 998 F.3d 519 (1st Cir. 2021) (Guidelines); *United States v. Gibson*, 55 F.4th 153 (2d Cir. 2022) (Guidelines); *United States v. Hope*, 28 F.4th 487 (4th Cir. 2022) (ACCA); *United States v. Perez*, 46 F.4th 691 (8th Cir. 2022) (ACCA); *United States v. Bautista*, 989 F.3d 698 (9th Cir. 2021) (Guidelines); *United States v. Williams*, 48 F.4th 1125 (10th Cir. 2022) (ACCA). However, the Third, Sixth, Eighth, and Eleventh Circuits have endorsed a time-of-conviction approach. *United States v. Lewis*, 2023 WL 411362 (3d Cir., Jan. 26, 2023) (Guidelines), *United States v. Clark*, 46 F.4th 404 (6th Cir. 2022) (Guidelines); *United States v. Mongan*, 2022 WL 2208325 (8th Cir., June 21, 2022) (Guidelines); *United States v. Jackson*, 55 F.4th 846 (11th Cir. 2022) (ACCA).

This case squarely presents an important issue of federal law with significant practical consequences for federal sentencing courts and individuals. Until this Court resolves the issue, thousands of defendants, with convictions for the same conduct will be subjected to substantially different sentences, depending on where the federal sentencing takes place. It is not tolerable for one individual to suffer far more dire

consequences than another for the same conduct based *solely* on geography. The federal sentencing courts require this Court’s guidance in ensuring the fair and consistent application of the law. This will not be corrected without this Court’s intervention.

II. This case involves a persistent and important question of statutory interpretation that requires guidance by this Court.

On May 15, 2023, the Supreme Court granted certiorari in *Jackson v. United States*, No. 22-6640 (May 15, 2023), and *Brown v. United States*, No. 22-6389 (May 15, 2023). These cases review a time-of-conviction question in the context of the Armed Career Criminal Act (ACCA). The government argues those cases are “distinct” from the instant case, such that this Court’s decisions on the petitions granted in *Jackson* and *Brown* are irrelevant. The government is wrong.

The Courts of Appeals relied upon this Court’s ACCA jurisprudence in interpreting the issue presented in the instant case. In particular, the Sixth Circuit in *Clark* interpreted the term “controlled substance offense” in the “career offender” context by relying on *McNeill v. United States*, 563 U.S. 816 (2011), regarding the definition of “serious drug felony” under the ACCA statute. *Clark*, 46 F. 4th at 408-410 (6th Cir. 2022). Likewise, the Eighth Circuit and the Third Circuit also relied on *McNeill*’s ACCA analysis in decisions addressing the interpretation of the phrase “controlled substance offense(s)” in U.S.S.G. § 4B1.2(b). *United States v. Jackson*, 2022 WL 303231 at *2 (8th Cir., Feb. 2, 2022); *United States v. Mongan*, 2022 WL 2208325 at *1 (8th Cir., June 21, 2022); *United States v. Lewis*, 2023 WL 411362, at *6 (3d Cir., Jan. 26, 2023).

Furthermore, the issue has been percolating in the lower courts for many years, yet the Commission has not resolved it. As Justice Sotomayor, joined by Justice Barrett, explained in her statement respecting the denial of *certiorari* in *Guerrant v. United States*, 142 S. Ct. 640, 640-41 (2022), it is “the responsibility of the Sentencing Commission to address [the circuit split] to ensure fair and uniform application of the Guidelines.”

Recently, the petitioner in *Altman v. United States*, No. 22-5877 (May 1, 2023), asked this Court to address a similar timing issue. The government argued in its opposition that that the duty to interpret the issue belonged to the Sentencing Commission, which was aware of the circuit conflict. This Court denied *certiorari*. However, after *certiorari* was denied, the Commission adopted new amendments—but again failed to resolve the question presented in this case.¹ As both Justices cautioned in *Guerrant*, the “unresolved divisions among the Courts of Appeals can have *direct and severe consequences for defendants’ sentences.*” *Guerrant*, 142 S. Ct. at 641 (emphasis added). Here, this unsettled question of federal law will continue to subject thousands of defendants, with convictions for the same conduct, to substantially different sentences, depending on where they are sentenced. This Court’s guidance is needed.

¹ See generally *Sentencing Guidelines for United States Courts*, 88 Fed. Reg. 28, 254 (May 3, 2023).

CONCLUSION

Under the circumstances, the petition for writ of certiorari should be granted.

Respectfully submitted,

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Dated: June 7, 2023

CERTIFICATE OF COMPLIANCE PURSUANT TO RULE 33

I hereby certify that this reply to the response in opposition of the petition for writ of certiorari complies with the type-volume limitation set forth in Rule 33(2). This reply contains 6 pages and uses 12-point Century Schoolbook proportionally spaced type.

Respectfully submitted,

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