

No. _____

Seventh Circuit Appeal No. 21-2587

IN THE

SUPREME COURT OF THE UNITED STATES

CHRISTOPHER L. RAMIREZ,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

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QUESTION PRESENTED

- 1) Whether “controlled substance offenses” under United States Sentencing Guidelines §4B1.2(b) are limited to those offenses involving substances listed in the federal Controlled Substances Act?

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OPINION BELOW

The decision of the Court of Appeals for the Seventh Circuit (“Seventh Circuit”) is a published opinion. The opinion is attached as Appendix A and is reported at *United States v. Ramirez*, 52 F.4th 705 (7th Cir. 2022).

JURISDICTION

On November 8, 2022, the Seventh Circuit entered its opinion in Mr. Ramirez’s appeal. The opinion affirmed Mr. Ramirez’s sentence.

On January 26, 2023, in Application No. 669, Associate Justice Amy Coney Barret granted Mr. Ramirez’s application for an extension of time to file this petition. The deadline was extended to April 7, 2023.

This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1254(1).

STATUTORY OR CONSTITUTIONAL PROVISIONS INVOLVED

United States Sentencing Guidelines (U.S.S.G.) §4B1.2(b) relevantly provides:

The term "controlled substance offense" means an offense under federal or state law, punishable by imprisonment for a term exceeding one year, that prohibits the manufacture, import, export, distribution, or dispensing of a controlled substance

INTRODUCTION

Mr. Ramirez was designated as a career offender based on two Wisconsin convictions for possession with intent to distribute. One of those convictions, his only two drug offenses that factored into his criminal history score, involved THC. But when Mr. Ramirez committed his federal offense, the relevant controlled substance definitions in Wisconsin and at the federal level had narrowed such that Mr. Ramirez was convicted of an offense broader than both current state and federal law relating to marijuana.

Without the career offender designation, one both parties in the plea process did not contemplate, he would have faced a 110-137 month United States Sentencing Guidelines (“Guidelines”) range. Yet because of that overbroad state conviction from almost ten years prior, he faced a Guidelines range of 188-235 months. While not receiving a Guidelines sentence, this significantly higher range no doubt provided a much higher anchoring point for Mr. Ramirez’s eventual sentence.

This Court has seen several petitions asking whether U.S.S.G. §4B1.2(b)’s controlled substance offense definition includes state-defined substances or is limited to those substances listed in the federal Controlled Substances Act (“CSA”). While the circuit split on this issue has widened and solidified, the Court has not accepted petitions to hear the matter. Yet members of the Court even issued a statement explaining the nature of the split and its consequences on defendant’s designated as career offenders. But in so doing, the statement asked the United States Sentencing Commission (“Commission), then without a quorum, to act and resolve this issue.

While the Commission regained full membership and has proposed amendments, alternative options agreeing with either side of the split, that is of no relief to Mr. Ramirez, and the many of those individuals designated as career offenders before the November 2024 enactment of any such future amendment. It is also very likely that no relief will be forthcoming even after that date, as there has been no suggestion of retroactive relief from the Commission. As a result, for Mr. Ramirez and those like him, this Court is the last body empowered to remedy a significant harm through the application of an enhancement that should not apply but may stick for the rest of their many years and decades in prison.

STATEMENT OF THE CASE¹

Christopher Lee Ramirez was born in Manitowoc, Wisconsin, in 1982. (PSR ¶58.) The only child of Estella Robinson and Elpido Ramirez, Mr. Ramirez “has never met his father and is unsure of his current whereabouts.” (*Id.*) Mr. Ramirez’s father was an associate in a large-scale drug dealing enterprise spearheaded by Ruben Torres, Mr. Ramirez’s maternal grandfather. (*Id.* at ¶59.) Mr. Ramirez’s parents, his father an adult and his mother only 12, met through their own involvement in this drug operation. (*Id.*) Mr. Ramirez’s mother was impregnated at the age of 12 and gave birth to Mr. Ramirez at the age of 13. (*Id.*) Due to his mother’s youth, Mr. Ramirez was placed in the care of his maternal grandmother, Olivia Gonzalez, who was the main caretaker of Mr. Ramirez as he grew up. (*Id.*)

Unfortunately, Mr. Ramirez did not receive proper parental support from Ms. Gonzalez. (*Id.* at ¶60.) In the care of his grandmother, Mr. Ramirez “was not made to attend school, and had a first row seat in the world of drug dealing.” (*Id.*) Mr. Ramirez had a “hectic” childhood, “constantly traveling between California, Texas, Florida, and Wisconsin” with his grandmother, purportedly to visit and help other family members. (*Id.* at ¶62.) When Mr. Ramirez was around the age of six, he remembers seeing his grandmother engage in distribution of heroin and cocaine out of a trailer park in Bakersfield, California. (*Id.* at ¶61.) Mr. Ramirez further recalls accompanying “his grandmother and an uncle on trips to Nogales every other

¹ The following abbreviations are used herein: Criminal Record on Appeal, cited by document number and page: “R. __:__,” Appellate Court Record, cited by document number and page: “App. R. __:__,” and Sentencing Transcripts, cited by page and line: “Sent. Tr. __:__.

weekend to pick up quantities of marijuana.” (*Id.*) Mr. Ramirez recalls that, by the age of 14, “he would regularly make trips to ‘the dope man’ to sell and exchange drugs” on behalf of his grandmother. (*Id.*) The young Mr. Ramirez understood that every single member of his family was addicted to drugs and alcohol and took part in the drug trade. (*Id.*) As a result, Mr. Ramirez’s childhood residences, typically located in places considered slums, were raided at least three times and most of his family members had been incarcerated sometime during their lives. (*Id.* at ¶62.)

Growing up in such an unstable and crime-laden environment, Mr. Ramirez made frequent contact with police from a young age and ultimately succumbed to the disease of addiction himself. (*Id.* at ¶64.) At the young age of ten, Mr. Ramirez became involved with a street gang. (*Id.*) Mr. Ramirez also began drinking alcohol and smoking marijuana when he was about that same age. (*Id.*) By age 13, Mr. Ramirez began using “harder drugs” along with alcohol and marijuana. (*Id.*) In particular, Mr. Ramirez first tried methamphetamine, LSD, and PCP at age 13, and crack cocaine at age 14. (*Id.* at ¶¶75-83.) Also at age 13, Mr. Ramirez was shot at for the first time. (*Id.* at ¶64.) Mr. Ramirez recalls being shot at five times during his youth, though he was not hit during any of these incidents. (*Id.*)

Without access to regular mental health treatment, Mr. Ramirez has tried to break out of his drug habits on his own. (*Id.* at ¶¶75-83.) Mr. Ramirez stated that he stopped using marijuana in 2014, alcohol in 2017, and cocaine in 2020. (*Id.*) Despite these efforts, Mr. Ramirez incurred two Wisconsin convictions related to marijuana

and cocaine possession during the 2010s: a marijuana conviction in 2012 and a cocaine conviction in 2014. (*Id.* at ¶¶47-48.)

It was in this context that Mr. Ramirez was situated when Manitowoc police officers executed a traffic stop on the vehicle he was driving in February 2021. (*Id.* at ¶14.) Officers deployed a K-9 unit which alerted on Mr. Ramirez's vehicle. (*Id.*) In that vehicle, officers found a bag containing suspected methamphetamine. (*Id.*)

On May 12, 2021, Mr. Ramirez pleaded guilty to possession with intent to distribute 50 grams or more of a mixture and substance containing methamphetamine, in violation of 21 U.S.C. § 841(a)(1) and (b)(1)(B). (PSR ¶5.) Mr. Ramirez was declared a career offender under U.S.S.G. §4B1.1 because of his prior Wisconsin cocaine and marijuana convictions. (PSR ¶25.)

Because Mr. Ramirez was labeled a career offender his total offense level was calculated to be 31 with a criminal history category of VI. (PSR ¶91.) The resulting Guidelines range which the district court considered at sentencing was between 188 months and 235 months, or about 15 to 20 years. (Sent. Tr. 7:5-10; App. 7.) The Government recommended that Mr. Ramirez be sentenced to 125 months, or 10 years and 5 months, in federal prison. (Sent. Tr. 7:11-14; App. 7.)

Without the career offender enhancement, Mr. Ramirez would have had an offense level of 25 (though still with a criminal history category of VI), giving him a Guidelines range of 110 to 137 months, or about 9 to 11 years. If the district court was to proportionately depart in relation to this lowered Guidelines range, Mr. Ramirez could have received a sentence of six years or less.

Mr. Ramirez appealed his sentence to the Seventh Circuit on two grounds, one of which was his career offender designation. *Ramirez*, 52 F.4th at 711. Mr. Ramirez asked the Seventh Circuit to reconsider its decision in *United States v. Ruth*, 966 F.3d 642 (7th Cir. 2020). *Ruth* was one of the first cases to help create the deep circuit split regarding whether the Guidelines use federally controlled substances only or include broader state-defined substances for career offender purposes.

But the Seventh Circuit was not willing to overrule *Ruth*. The opinion cited to Justice Sotomayor's statement accompanying denial of certiorari in *Guerrant v. United States*, __ U.S. __, 142 S. Ct. 640 (2022) (Sotomayor, J.), discussing the nature of the existing circuit split. *Ramirez*, 52 F.4th at 714. But the Seventh Circuit felt that its position was sound, that it was not an outlier, and did not create substantial injury. *Id.* at 714-16. It went on to briefly reject arguments related to federal presumptions at sentencing, along with the uniformity purpose of the United States Sentencing Guidelines (Guidelines). *Id.* at 716.

REASONS FOR GRANTING THE PETITION

I. While the Court Has Rejected Similar Petitions, the Court Should Take Up This Matter to Consider Relief for Those Already Sentenced under the Career Offender Designation and Those Who Will Continue to Face Disparate Treatment.

As noted earlier, this Court has received many petitions from across the circuits asking to address the question Mr. Ramirez poses again in this petition. And, as discussed in the introduction, the Court has not accepted such a case, and members of the Court have issued a public statement when denying one such petition in which the Justices stated the Court would not intervene, but the Commission needed to right this wrong. *Guerrant*, 142 S. Ct. 640. Yet the wrong done to date, and that will be done until the Commission enacts amendments and makes them retroactive is disastrous. It has resulted in years, sometimes numbering in the double-digits, of additional prison time. And for Mr. Ramirez and others sentenced to date and for the foreseeable future, that harm may be resolved only if the Court steps in.

The Court is aware of the effect of the career offender designation on any given case. But what may not be well known is just how broad this effect is. It is this wide-ranging, historical wrong that the Court must step in to correct, because it may be the only entity that will or could.

In 2021, the last year for which the Commission has released data on the subject, over 1,200 individuals were sentenced as career offenders. U.S. Sent’g

Comm'n, *Quick Facts: Career Offenders* (June 2022).² Almost 95% of these cases resulted in an increased Guidelines range, meaning the designation drove the first critical step in federal sentencing. *Id.* Over 63% of those more than 1,200 individuals received sentences of at least ten years in prison, and the designation disproportionately affected Black individuals, with over half of the career offender cases involving black defendants. *Id.*

These are also not just recent trends, and don't reflect any dramatic uptick in designations. Between 2005 and 2017, 28,333 cases involved the career offender designation. U.S. Sent'g Comm'n, *The Influence of the Guidelines on Federal Sentencing: Federal Sentencing Outcomes, 2005-2017*, 55 (Dec. 2020).³ Given the significant sentences often levied in such cases, it is likely many, if not most, of those individuals are still serving their sentences today. Had the controlled substance offense definition been limited to the CSA, many of those individuals may well be back in their communities after serving far shorter sentences.

In the past, the Commission has felt constrained in amending the Career Offender in amending the Career Offender portion of the Guidelines because of its statutory basis. U.S. Sent'g Comm'n, *Report to the Congress: Career Offender*

² Available at https://www.ussc.gov/sites/default/files/pdf/research-and-publications/quick-facts/Career_Offenders_FY21.pdf.

³ Available at https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2020/20201214_Guidelines-Influence-Report.pdf#page=58

Sentencing Enhancements 13 (August 2016).⁴ Lastly, even if an amendment were enacted, it would not likely be retroactive, as the Commission has only made 30 of the 813 amendments to date retroactive. U.S.S.G. §1B1.10(d); U.S.S.G. App. C.⁵ If the Commission addresses this issue, and Congress allows it to pass, it will be unlikely to act in a manner that will impact Mr. Ramirez and the many individuals sentenced or soon facing sentencing using the Career Offender designation, or the many other Guidelines provisions that use the “controlled substance offense” definition in U.S.S.G. §4B1.2 and other materially identical definitions. *United States v. Jones*, 32 F.4th 1290, 1297 (10th Cir. 2022).

While the Commission had proposed addressing the issue in its 2022 proposed amendments by siding explicitly with one of the two sides, without clarification of the intent of its past language, the Commission tabled that amendment at its April 5, 2023, public hearing. *See generally*, U.S. Sent’g Comm’n, *Amendments to the Sentencing Guidelines (Preliminary)* (April 5, 2023).⁶ Further, while the Commission did vote to promulgate other amendments to the career offender designation, it did

⁴ Available at https://www.ussc.gov/sites/default/files/pdf/news/congressional-testimony-and-reports/criminal-history/201607_RtC-Career-Offenders.pdf

⁵ Notably, the last time the Commission amended U.S.S.G. §4B1.2, it did not make that amendment, Amendment 798, retroactive. U.S.S.G. §1B1.10. As noted previously, the proposed amendments did not indicate retroactivity as a possibility. U.S. Sent’g Comm’n, *Proposed Amendments to the Sentencing Guidelines* (Feb. 2, 2023) available at https://www.ussc.gov/sites/default/files/pdf/amendment-process/reader-friendly-amendments/20230201_RF-proposed.pdf

⁶ Available at https://www.ussc.gov/sites/default/files/pdf/amendment-process/reader-friendly-amendments/20230405_prelim-RF.pdf.

not vote to begin the exploratory process of making those retroactive.⁷ As a result, at least 20 more months will pass without guidance or correction of this split, leading to countless more individuals being impacted by the controlled substance offense divide. This is further reason why the Court should not abstain from helping interpret the existing Guidelines.

In any event, even in general, traditional abstention in resolving disputes in guideline interpretations is not a compelling reason to refrain from providing clarity to sentencing courts. *Cf. United States v. Braxton*, 500 U.S. 344 (1991) (declining to resolve guideline interpretation issue when Commission had started process to revise guideline provision at issue). *Braxton* does not stand for proposition for Guidelines abstention. The Court declined to resolve the guideline issue presented because the Commission had initiated the process for amending the guideline. *Braxton*, 500 U.S. at 348 ("We choose not to resolve the first question presented in the current case, because the Commission has already undertaken a proceeding that will eliminate circuit conflict[.]"). *Braxton* was also resolved on a separate ground that did not require resolution of the circuit split. *Id.* at 349 ("Unlike the first question discussed above, which presents a general issue of law on which the Circuits have fallen into disagreement, *Braxton*'s second question is closely tied to the facts of the present case."). This renders any discussion on Guidelines abstention dicta. Indeed, relying on *Braxton* to avoid resolving circuit splits squarely conflicts with this Court's rules.

⁷ The Commission did vote to make other general criminal history amendments potentially retroactive. U.S. Sent'g Comm'n, *Issue for Comment: Retroactivity* (April 5, 2023) available at https://www.ussc.gov/sites/default/files/pdf/amendment-process/reader-friendly-amendments/20230405_prelim-IFC.pdf.

Supreme Court Rule 10 provides guidance for when a question presented is compelling enough. When different circuits have decided important questions of federal law differently, this Court is best suited to intervene and resolve the differences. Rule 10(a). The Court must resolve these differences. *See Sidhu, Dawinder S., Sentencing Guidelines Abstention* (February 15, 2022). Am. Crim. Law. Rev., Vol. 60, (arguing guidelines abstention by the Court is “inconsistent with the Court's role and rules, congressional intent, administrative law principles, and the practical realities of the Commission's amendment process.”) (forthcoming).⁸

Moreover, the Commission, lower courts, and practitioners would generally benefit from this Court's resolution to guideline interpretation issues in a range of cases. How the Court approaches the dispute and reasons in its decision will inform practitioners on the appropriate interpretative tools to apply when a guideline dispute occurs. *Jones*, 32 F.4th at 1296 (Rosman, J., dissenting from denial of rehearing) (“We lack uniformity even in how to decipher the intent of the Sentencing Commission.”). The lack of this guidance is a primary reason different courts of appeals have arrived at opposite conclusions on the same issue.

While members of the Court have spoken explicitly on this subject, and the rest of the Court implicitly, it does not appear that there will be action to resolve this issue in the hundreds of cases that happen each year and have happened for many years. Many of those individuals are likely left with this Court to provide a remedy, and many individuals could be prevented from experiencing significant injury if the Court

⁸ Available at <https://ssrn.com/abstract=3950703>.

were to clarify how to interpret the language of the Guidelines. This is such a case in which to do so.

II. The Circuit Split Remains and Demonstrates the Need for Interpretive Guidance for the Guidelines.

The Court is likely aware of the circuit split, a review helps to demonstrate the vastly different reasoning behind the circuits' decision. This reflects the need for interpretative guidance generally for the Guidelines, and especially in this area with such a significant effect on sentencing.

A. Circuits Limiting Controlled Substance Offenses to Those Substances in the CSA.

The First, Second, and Ninth Circuits have concluded that an individual has committed a Guidelines controlled substance offense only if the chemical composition of the substance was the same as that listed in the Controlled Substances Act. *See, e.g., United States v. Abdulaziz*, 998 F.3d 519 (1st Cir. 2021); *United States v. Bautista*, 989 F.3d 698, 702-704 (9th Cir. 2021); *United States v. Townsend*, 897 F.3d 66, 68, 71 (2d Cir. 2018). The Fifth Circuit has rendered a similar decision where it does not explicitly agree with the First, Second, and Ninth Circuits, yet applies the same cross-referencing method between the CSA and state-level drug statutes. *See, e.g., United States v. Gomez-Alvarez*, 781 F.3d 787, 792-94 (5th Cir. 2015). The Sixth Circuit has also joined this side of the split, though only in unpublished opinions. *See,*

e.g., *United States v. Williams*, 850 F.App'x 393, 401 (6th Cir. 2021) (unpublished) (citing *Bautista*, 989 F.3d at 703-04).⁹

These circuits have used different interpretive approaches with a common theme: uniformity. Some circuits use the “*Jerome Principle*” to hold that there is a presumption that federal law, not that of the many states, apply to federal sentencing provisions. *Townsend*, 897 F.3d at 70-71 (citing *Jerome v. United States*, 318 U.S. 101, 104 (1943)). Others have pointed to the purpose of the Guidelines themselves. These circuits, such as the Ninth, note that defining a controlled substance offense based on the CSA promotes “uniform application of federal sentencing law, thus serving the stated goals of both the Guidelines and the categorical approach.” *Bautista*, 989 F.3d at 702 (citing *United States v. Leal-Vega*, 680 F.3d 1160, 1166 (9th Cir. 2012)). Even individual judges point to the Guidelines themselves for sources of the principle that uniformity should be the keystone of Guidelines interpretation. *United States v. Ward*, 972 F.3d 364, 381 (4th Cir. 2020) (Gregory, C.J., concurring) (noting that one of the goals of the Guidelines is “reasonable uniformity in sentencing,” U.S.S.G. Ch.1, Pt.A, §3).

While the theme of these circuits and judge is clear, the pathway to that uniformity objective is varied. These decisions are rooted in the Guidelines, and the purposes behind the federal sentencing system, but this variation shows the need for

⁹ The Sixth Circuit is internally conflicted on this issue. See *United States v. Smith*, 681 F.App'x 483 (6th Cir. 2017) (unpublished). In *Smith*, a different Sixth Circuit panel relied only on the state statutes for the definition of controlled substance. See also *United States v. Solomon*, 763 F.App'x 442, 447 (6th Cir. 2019) (unpublished) (discussing the internal conflict).

the Court to provide interpretive guidance on addressing difficult interpretive questions.

B. Circuits Allowing for State-Defined Controlled Substances to Qualify as “Controlled Substance Offenses”

In opposition to the First, Second, Fifth, and Ninth Circuits, as well as opinions from the Sixth Circuit, the Fourth, Seventh, Eighth, and Tenth Circuits use a broader definition of a controlled substance under §4B1.2(b). Those circuits apply state law and even dictionary definitions to determine whether a substance can justify an enhancing conviction. *See, e.g., United States v. Jones*, 15 F.4th 1288, 1291-96 (10th Cir. 2021); *United States v. Henderson*, 11 F.4th 713, 718-19 (8th Cir. 2021); *United States v. Ward*, 972 F.3d 364, 371-74 (4th Cir. 2020); *Ruth*, 966 F.3d at 651-654. These courts again follow a common, but completely different thread of interpretation, strict textual review, to get to the broadened result.

The method of interpretation these circuits used is exemplified by the Seventh Circuit in *Ruth*. There, the court used narrower methods of textual interpretation, noting that the career offender provisions of the Guidelines “[do] not incorporate, cross-reference, or in any way refer to the Controlled Substances Act.” *Id.* at 651. Rather, the Seventh Circuit declared that sentencing courts should use the natural definition of “controlled substance,” and that the career offender guideline “is most plainly read to ‘include state-law offenses related to controlled or counterfeit substances punishable by imprisonment for a term exceeding one year.’” *Id.* at 654

(internal quotations omitted). *See also Ward*, 972 F.3d at 372 (“Ward’s argument ignores the plain meaning of § 4B1.2(b).”).

These inconsistent approaches among the circuits to interpreting the same phrase have and will continue to result in significant and unwarranted sentencing disparities, frustrating the purpose of the Guidelines and federal sentencing law. 18 U.S.C. § 3553(a)(6). Uniformity of interpretive method in some form is needed.

C. The Seventh Circuit’s Decisions in *Ruth* and *Ramirez* are Wrong.

In evaluating the appropriate interpretive framework, the Court should determine that the supposed textual approach used by the Seventh Circuit and its sister circuits is an incorrectly limited way in which to interpret the Guidelines. In reviewing the term “controlled substance,” the circuits that look to the many states ignore and contradict the very purposes of both federal sentencing generally and the Guidelines specifically.

First, the overly inclusive consideration of state definitions, with their significant variations and constant changes, fails to promote the uniformity and avoidance of unwarranted disparities that federal sentencing is meant to promote. *See* § 3553(a)(6); U.S.S.G. Ch.1, Pt.A, §3. Such unmoored textual interpretation creates the potential for continued ambiguity and variations from circuit to circuit, district to district, and perhaps even within districts. Instead, as with interpreting ambiguous statutes, there should be a consideration of the intent of the very system in which the language is contained. Such an approach, as taken by the Second and

Ninth Circuits, among others, provides a singular definition that is consist across the county.

Second, this Court has long said that federal law, not that of the many states, should define the law at sentencing, in part to preserve the very uniformity sought by § 3553 and the Guidelines. *See, e.g., Taylor v. United States*, 495 U.S. 575, 591 (1990) (a federal sentence enhancement should not “depend on the definition adopted by the State of conviction.”); *United States v. Turley*, 352 U.S. 407, 411 (1957) (“[I]n the absence of a plain indication of an intent to incorporate diverse state laws into a federal criminal statute, the meaning of the federal statutes should not be dependent on state law.”). *See also Gibbons v. Ogden*, 22 U.S. 1, 211 (1824) (state laws that “interfere with, or are contrary to[,]” federal law cannot control, they “must yield”).

By using a broad, vastly disparate set of standards that put defendants in different positions for no other reason than where their prior convictions arose, the Seventh Circuit and its sister circuits have contradicted the purpose behind the text they said they were interpreting. Doing so was error, and this Court should take this case to provide guidance to lower courts on just how to engage in the task of Guidelines interpretation.

CONCLUSION

For these reasons, Mr. Ramirez asks the Court to issue a Writ of Certiorari and review this case on the merits.

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