CASE NO. _____

**IN THE SUPREME COURT OF THE UNITED STATES**

October 2022 Term

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**DIANTE TURMAN,**

*Petitioner,*

v.

**UNITED STATES OF AMERICA**

*Respondent.*

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On Petition for a Writ of Certiorari
To the Eighth Circuit Court of Appeals

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# PETITION FOR A WRIT OF CERTIORARI


Submitted By:

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## QUESTION PRESENTED

Congress and the U.S. Sentencing Commission require judges to impose criminal sentences that take account of a penalty range advised by the Sentencing Guidelines Manual in effect on the date of sentencing. The Guidelines advise but do not mandate longer sentences if one has a prior conviction for a "Controlled Substance Offense," ("CSO") defined as

> "an offense under federal or state law . . . that prohibits the manufacture, import, export, distribution, or dispensing of a controlled substance . . . or the possession of a controlled substance . . . with intent to manufacture, import, export, distribute, or dispense."

U.S.S.G. §4B1.2(b). Three Circuits hold that this definition incorporates federal or state schedules defining CSOs as of the date of the new federal sentencing. If a prior offense could have been based on a substance the same jurisdiction no longer deems criminal, it is not a CSO now. Other circuits hold that *McNeill v. United States*, 563 U.S. 816 (2011), requires courts to impose higher sentences for illegal gun possession based on prior drug offenses regardless of intervening amendments to the drug schedule. *McNeill* did not involve the Sentencing Guidelines or address the mandates requiring courts to apply the Guidelines Manual and definitions used therein in effect at the time of the new sentencing. The question presented here is:

> Does *McNeil* require courts to define "controlled substance offenses" under Section 4B1.2(b) to include convictions under laws encompassing substances no longer deemed criminal at the time of the current federal sentencing?[1]

[1] This Court will decide a closely related question of whether *McNeill* requires courts to follow superseded drug schedules in identifying "serious drug offenses" under the Armed Career Criminal Act, 18 U.S.C. §924(e)(1)(2)(A)(ii) in *Justin Brown v. United States*, No. 22-6389, consolidated with *Eugene Jackson v. United States*, No. 22-6640.

## Parties to the Proceedings

Petitioner Diante Turman was represented in the lower court proceedings by his appointed counsel, Federal Public Defender Nanci H. McCarthy and Assistant Federal Public Defenders David C. Hemingway and Ryan E. Hehner, 1010 Market, Suite 200, Saint Louis, Missouri 63101. The United States was represented by United States Attorney Sayler Fleming and Assistant United States Attorney Zachary Bluestone, Thomas Eagleton Courthouse, 111 South 10th Street, Saint Louis, Missouri 63102.

## DIRECTLY RELATED PROCEEDINGS

This case arises from the following proceedings:

- *United States v. Turman*, 4:18-CR-00381-SRC-1, (E.D. Mo) (criminal proceeding), judgment entered Aug. 27, 2021;

- *United States v. Turman*, 21-3190 (8th Cir.) (direct criminal appeal), appellate judgment entered Dec. 9, 2022;

- *United States v. Turman*, 21-3190 (8th Cir.) (direct criminal appeal), order denying petition for rehearing en banc and rehearing by the panel entered Jan. 12, 2023; and

- *Turman v. United States*, 22A879 (Supreme Court) (Application to extend time to file a petition for a writ of certiorari) order granting additional time entered Apr. 7, 2023.

There are no other proceedings directly related to this case within the meaning of Rule 14.1(b)(iii).

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## OPINION BELOW

The Opinion of the United States Court of Appeals for the Eighth Circuit is not published. It appears in the Appendix ("Appx.") at page 1.

## JURISDICTIONAL STATEMENT

The Eighth Circuit Court of Appeals entered its judgment on December 9, 2022. Appx. 1-3. Mr. Turman filed a timely motion for rehearing, which was denied January 12, 2023. Appx. 4. Justice Kavanaugh, Circuit Justice for the Eighth Circuit United States Court of Appeals, granted Mr. Turman additional time to file his petition for certiorari by June 11, 2023. Appx. 5. This petition is timely filed by mailing on Monday, June 12, 2023, the first open court day after Sunday June 11, 2023. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1

## FEDERAL STATUTORY PROVISIONS

### 18 U.S.C. § 3553. Imposition of a sentence.

a) Factors to be considered in imposing a sentence. The court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection. The court, in determining the particular sentence to be imposed, shall consider—

(1) the nature and circumstances of the offense and the history and characteristics of the defendant;

(2) the need for the sentence imposed—

(A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;

(B) to afford adequate deterrence to criminal conduct;

(C) to protect the public from further crimes of the defendant; and

(D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;

(3) the kinds of sentences available;

(4) the kinds of sentence and the sentencing range established for—

A) the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines—

(i) issued by the Sentencing Commission pursuant to section 994(a)(1) of title 28, United States Code, subject to any amendments made to such guidelines by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28); and

(ii) that, except as provided in section 3742(g) [18 USCS § 3742(g)], are in effect on the date the defendant is sentenced;

…….

(5) any pertinent policy statement—

(A) issued by the Sentencing Commission pursuant to section 994(a)(2) of title 28, United States Code, subject to any amendments made to such policy statement by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28);
and

(B) that, except as provided in section 3742(g) [18 USCS § 3742(g)], is in effect on the date the defendant is sentenced.[;]

(6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and

(7) the need to provide restitution to any victims of the offense.

**U.S.S.G. §4B1.1(a) provides that**:

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.

**U.S.S.G. §4B1.2(b) defines a "controlled substance offense" as follows:**

The term "controlled substance offense" means an offense under federal or state law, punishable by imprisonment for a term exceeding one year, that prohibits he manufacture, import, export, distribution, or dispensing of a controlled substance (or a counterfeit substance) or the possession of a controlled substance (or a counterfeit substance) with intent to manufacture, import, export, distribute, or dispense.

## STATEMENT OF THE CASE

Petitioner raises a question at the heart of a circuit conflict causing disparate U.S. Sentencing Guidelines calculations used to sentence thousands of people each year. The disparity stems from whether one is sentenced in a circuit that interprets the Sentencing Guidelines enhancement based on prior convictions for "controlled substance offenses" according to the schedule listing criminal drugs in effect at the time of the prior drug conviction or by the schedule existing at the time of the new federal sentencing. Petitioner's record presents a common example of the problem.

The Government invoked the jurisdiction of the United States District Court for the Eastern District of Missouri by filing an indictment on May 2, 2018 that charged Petitioner with possessing cocaine base in violation of 21 U.S.C. §§841(a), -841(b)(1)(C) (2018). His sentencing occurred August 27, 2021. A Presentence Report advised the Court to calculate an increased Guidelines range incorporating a "career offender" enhancement in U.S.S.G. § 4B1.1(a). It based this in part on two prior convictions, one of them being a 2003 Missouri marijuana conviction. This enhancement increased his final advisory guidelines range from 120 to 150 months to 151-188 months.

This case thus exemplifies a common scenario of the disparity generated by the decriminalization of hemp, a non-behavior-altering plant with only a trace of the psychoactive substance THC that does not produce a high. The Puritans brought Hemp to America, where it was long used on ships in the form of rigging, ropes and canvas. Econ. Research Serv., U.S. Dep't of agric., *Economic Visibility of*

*Industrial Hemp in the United States: A Review of State Pilot Programs* (Feb. 2020). The market for hemp dried up as steam shipping and cheaper alternatives developed. *Id.* With the advent of the "War on Drugs", Congress added hemp to the Controlled Substance Act's definition of "marijuana" in 1970. *United States v. White Plume*,447 F.3d 1067, 1072 (8th Cir. 2006). Missouri included it in its definition of marijuana where it remained at the time of Mr. Turman's 2003 conviction for marijuana possession with intent to distribute. By the time of his 2021 federal sentencing in this case, Missouri and other states plus the Federal Government had decriminalized hemp.

U.S.S.G. §4B1.1 increases the advisory Guidelines sentencing range 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."

U.S.S.G. § 4B1.1(a). The Guidelines define a "Controlled Substance Offense," as

> "an offense under federal or state law . . . that prohibits the manufacture, import, export, distribution, or dispensing of a controlled substance . . . or the possession of a controlled substance . . . with intent to manufacture, import, export, distribute, or dispense."

U.S.S.G. §4B1.2(b). Courts use a "categorical approach" to identify predicate "controlled substance offenses" according to the statutory elements, rather than the specific substance the defendant's case actually involved. A conviction under a statute that is satisfied by a substance not included in the applicable drug schedule cannot satisfy the "controlled substance offense" definition because its scope is broader than the controlling definition.

Mr. Turman argued that Missouri's 2003 marijuana definition was broader than the state's definition of marijuana at the time of his sentencing and so could not satisfy the 2021 Guidelines definition of "controlled substance offense." The District Court overruled the objection and declared Mr. Turman's 2003 conviction a controlled substance offense making him a career offender subject to a Sentencing Guidelines range inflated to 151-180 months in prison. The Court imposed a prison term of 60 months, a variance the Government supported based on the nature and circumstances of the government's evidence as well as salient mitigation based in Mr. Turman's background. It declined Mr. Turman's requests for further variance.

The Eighth Circuit affirmed the District Court's calculation and consideration of the enhanced career offender Guidelines range of 151-188 months. Appx. 1-3. It cited an intervening opinion that rejected a claim that an Iowa conviction for possessing marijuana was not a controlled substance offense after Iowa de-scheduled hemp. Appx. at 3, citing *United States v. Bailey*, 37 F. 4th 467, 469-70 (8th Cir. 2022) (per curiam). The *Bailey* decision adopted the outcome of a terse unpublished opinion in *United States v. Jackson,* No. 20-3685, 2022 WL 303231 (8th Cir. Feb. 2, 2022) (unpublished). *Jackson* quoted this Court's decision in *McNeill v. United States*, 563 U.S. 816, 822 (2011), and announced "we may not look to 'current state law to define a previous offense.'" 2022 WL 303231 at *2. McNeill was subjected to an enhanced statutory mandatory minimum of 15 years (five years higher than the law otherwise allowed) under the Armed Career Criminal Act ("ACCA"), 924(e)(2)(A)(ii), based on a prior conviction for a drug

conviction that qualified as a "serious drug offense" punishable by at least 10 years in prison. 563 U.S. at 2222. McNeill argued that his prior North Carolina conviction did not constitute a predicate "serious drug offense" because the North Carolina legislature had subsequently reduced the maximum authorized sentence to a term less than ten years. *Id* at 2221. This Court disagreed and held that, under ACCA, "a federal sentencing court must determine whether 'an offense under State law' is a 'serious drug offense' by consulting the 'maximum term of imprisonment' applicable to a defendant's previous drug offense at the time of the defendant's state conviction for that offense." *Id.* at 825.

Petitioner sought rehearing from the Eighth Circuit *en banc.* He argued that this Court's ruling in *McNeill* did not address the question posed in his case of how to determine the elements of the generic "controlled substance offense" Section 4B1.2(b) defined by incorporating state-controlled substances schedules. The Eighth Circuit denied rehearing on January 11, 2023. Appx. 4. Justice Kavanaugh granted petitioner's application for additional time to file his certiorari petition, extending the date the maximum 60 days to Sunday, June 11, 2023.

## GROUNDS FOR GRANTING THE WRIT

### I. This Court should address the Circuit split on whether *McNeill* compels district courts to interpret the "controlled substance offense" definition in U.S.S.G. §4B1.2(b) by the State drug schedules in effect at the time of the prior conviction rather than the state schedules defining controlled substances at the time of the new federal sentence.

This Court should grant this petition to resolve a circuit conflict generating significant federal sentence disparities in thousands of cases a year caused by the differing views Circuits hold as to the salience or irrelevance of this Court's *McNeill* ruling to U.S.S.G. § 4B1.2(b)'s definition of "controlled substance offense." Three circuits hold that *McNeill* requires courts to interpret the state law definition the Guideline incorporates to define a "controlled substance" based on repudiated drug schedules. Three others hold that interpreting the Guidelines "controlled substance offense" definition to encompass convictions satisfied by substances the jurisdiction excludes as non-criminal contradicts the mandate of Congress and the Sentencing Commission that judges apply Guidelines provisions in effect "at the time of sentencing." 18 U.S.C. §3553(a)(4)(a)(i).

This Court is poised to address *McNeill*'s meaning next term in *Justin Brown v. United States*, No. 22-6389, and *Eugene Jackson v. United States*, No. 22-6640. *Brown* and *Jackson* raise a similar circuit conflict arising under the ACCA definition of "serious drug felony" which identifies predicate state court convictions according to whether they involve substances criminalized under the Federal Controlled Substances Act, 21 U.S.C. §802. In *Brown* and *Jackson,* this Court will decide whether Section

924(e)(2)(A)(ii) incorporates the federal drug schedules in effect at the time of the federal firearm offense to which the ACCA is to be applied, or the federal schedule in effect at the time of the prior state drug offense. *Brown*, Cert. Pet. at i; *Jackson,* Cert. Pet. at i. This Court's resolution of the matter will likely bear on the circuit conflict on the Guidelines issue Petitioner raises—in fact, the petitions for certiorari in those cases cited this conflict as justifying certiorari in *Jackson* and *Brown*. *See* Jackson, Cert. Pet. 3 (No. 22-6640) (Jan. 24, 2023) (confusion over *McNeill* "affects cases arising under the Guidelines too, creating more disparities"). The government agreed that the split over *McNeill* warranted the Court's attention, at least when it came to ACCA. Br. for U.S. 11-13 (No. 22-6640) (Mar. 24, 2023). At the very least, this Court should hold Mr. Turman's petition pending the outcome in *Brown* and *Jackson*.

A. The Circuit split about U.S.S.G. §4B1.2(b) centers on *McNeill*.

The Sentencing Reform Act of 1984 established a Sentencing Guidelines system intended to facilitate an empirical approach and a "continuous evolution" of better sentencing practice to achieve the sentencing goals in 18 U.S.C. § 3553(a)(1)-(4). *Rita v. United States*, 551 U.S. 338, 348 (2007). Congress and the Commission require courts to apply the guidelines manual in effect at the time of sentencing, rather than the version in effect at the time of the offense conduct, or an earlier conviction. 18 U.S.C. § 3553(a)(4)(A)(ii); U.S.S.G. § 1B1.11(a). The manual in effect at Mr. Turman's sentencing did not itself define a "controlled substance" under §

4B1.2. See U.S.S.G. § 4B1.2(b). It instead incorporated Missouri's definition. *Compare United States v. Henderson*, 11 F.4th 713, 719 (8th Cir. 2021).

The First, Second, and Ninth Circuits have held that current § 4B1.2 does not incorporate repealed law or recommend that sentencing courts mete out additional punishment for conduct no longer deemed criminal. *United States v. Gibson*, 55 F, 4th 153, 164 (2nd Cir. 2022) (the career offender Guideline enhancement is not intended to punish Gibson for the drug crime he committed in 2002, but that would be its effect, because the conduct in which Gibson engaged in 2002 is no longer a federal drug crime); *United States v. Abdulaziz*, 998 F.3d 519, 523; (1st Cir. 2021) (courts apply the Guidelines in effect at sentencing, rather than the Guidelines in effect either at the time of a defendant's conviction or at an earlier time); *United States v. Bautista*, 989 F.3d 698, 703 (9th Cir. 2021) (applying an outdated definition of the substances criminalized by the Federal Controlled Substances Act[2] encompassing hemp rather than the current schedule excluding hemp as a form of marijuana would cause disparities federal sentencing law advises courts to avoid).

Two other circuits have taken the Eighth Circuit's view and rely on *McNeill* to hold that the Sentencing Guidelines manual in effect at the time of a new federal sentencing identifies a defendant's criminal history by superseded and repudiated statutes including substances the state no longer deems criminal. *See United States v. Lewis*, 58 F. 4th 764, 773 (3rd Cir. 2023), *United States v. Clark*, 46 F. 4th 404,

[2] The Ninth Circuit holds that the CSO definition used to qualify prior drug convictions under Section 4B1.2(b) applies the current definition of Controlled Substances Act, 21 U.S.C. § 801 et seq. The Circuit reasons that this most comports with the avoidance of unwarranted disparities Congress sought to diminish through the Guidelines system. *See Bautista*, 989 F.3d at 702.

406 (6th Cir. 2022). Both *Clark* and *Lewis* recognized that no binding caselaw directly addressed the issue, yet both cited *McNeill* on the basis that it "answered a closely related question" of whether an intervening legislative reduction of the maximum term of sentencing excluded a prior serious drug crime from satisfying the criterion of carrying a punishment exceeding 10 years. *See Clark*, 46 F. 4th at 409; *Lewis*, 58 F. 4th at 771-72. The Sixth Circuit in *Clark* reasoned that *McNeill*'s emphasis on "looking back" at a prior conviction confirmed the textual support provided in Section 4B1.1(a)'s reference to "*prior* felony convictions" and Section 4B1.2(c)'s reference to an instant offense that occurred "subsequent" to two predicate offenses for a Guidelines calculation identifying COSs based on state statutes that authorized criminal sentences based on now-legal substances. 46 F. 4th at 409.

The Third Circuit in *Lewis* likewise relied on *McNeill* because it involved recidivism enhancements, "which by nature concerns a defendant's past conduct." 58 F.3d at 772. It decried what it deemed "absurd results" that granted windfalls to "the most serious drug traffickers" and subverted an intent to punish recidivists more severely than first time offenders. 58 F.3d at 772. At the same time, the Third Circuit acknowledged that *McNeill* "does not control [the issue here] because 'longstanding principles of statutory interpretation allow different results under the Guidelines as opposed to under the ACCA." *Id.* at 771-72. The ACCA serves a singular intent to enhance punishment for firearm possession relying on prior convictions for violent felonies and serious drug offenses making the use of such

weapons more likely, *see, e.g., Begay v. United States*, 553 U.S. 137, 146 (2008) (Congress intended enumerated offenses to exemplify crimes identifying someone more likely to point a gun and pull the trigger). In contrast, the Sentencing Guidelines mandate to incorporate federal and state definitions of what constitutes a "controlled substance" at the time of a subsequent federal sentencing consistent with Section 3553(a)(4)(A)(i) serves the singular mandate Congress established for judges to choose a sentence "sufficient, but not greater than necessary" to fulfill the punitive *and* rehabilitative goals of sentencing. *See Kimbrough v. United States*, 552 U.S. 85, 101 (2007). The circuit interpretation of Section 4B1.2(b) as focusing on the view of criminality state law defines at the time of the current sentencing fulfills this statutory mandate and the evolution of better sentencing practice Congress intended. *Rita*, 551 U.S. at 349.

B. The Court's clarification of *McNeill* will warrant reconsideration of Petitioner's claim and warrants holding the petition in abeyance.

This Court's pending decision in *Brown* and *Jackson* will likely impact the circuit split Petitioner Turman raises by addressing the meaning of *McNeill*. The lower Circuit opinions in Petitioner's case and in the Eleventh Circuit ruling challenged in *Jackson* embody the same misapplication of *McNeill*, as the petitioner in No. 22-6640 explained:

> In adopting [a time-of-conviction] regime, the Eleventh Circuit relied almost entirely on *McNeill*, which held that courts must look to state law in effect at the time of the prior drug offense to determine its statutory maximum. The same is true when it comes to the offense elements. And that makes sense: courts must use state law from the time of the state conviction to ascertain the state-law attributes of the offense for which the defendant was actually convicted. Those attributes

> are locked in at the time of conviction. But *McNeill* said nothing about the federal criteria (here, the federal drug schedules) to which the state-law attributes (here, the offense elements) are compared.

*Id.* at 39. Petitioner made this argument in the Eighth Circuit. His reply brief cited the acknowledgment in *McNeill* that the elements of a prior state crime are historical facts that do not change with time. *United States v. Turman,* No. 21-3190, Reply Brief, p. 4 (8th Cir., May 20, 2022). He contrasted the Guidelines definition in Sections 4B1.1 and 4B1.2 which incorporates state law definitions that *do* change through legislative enactments. *United States v. Turman*, No. 21-3190, Opening Brief, pp. 20 & n.3, 46 (8th Cir., Feb. 23, 2022). This Court in *McNeill* had no occasion or justification to address the distinct and diverse considerations and broader sentencing goals the Guidelines' definitions serve. *See Rita,* 551 U.S. at 349 (noting the Sentencing Commission's efforts to encompass all relevant sentencing considerations, recognizing that "the goals of *uniformity* and *proportionality* often conflict," emphasis in original). The criteria defining "controlled substance offenses" as used in Sections 4B1.1 and 4B1.2 *do* change to reflect intervening changes in the law—the guidelines themselves require this.

In fact, the Eighth Circuit itself recognized a limit to *McNeill*' which it justified on whether a Federal Court is applying a definition derived from state or federal law. The Eighth Circuit in *United States v. Perez*,46 F.4th 691 (8th Cir. 2022), held that under ACCA, courts must look to the federal Controlled Substances Act to define what constitutes a "controlled substance" to qualify a conviction for a "serious drug offense" under Section 924(e)(2)(A)(ii). *Id.* at 699-700. The Court in *Perez* observed

that, "[w]hether a previous state conviction is [an ACCA predicate] serious drug offense only becomes salient at time of sentencing for a federal conviction under 18 U.S.C. §922(g)." *Id.* at 699. Mr. Turman would point out that the question of whether a state conviction is a controlled substance offense under Section 4B1.2(b) likewise only becomes salient at the time of sentencing for a subsequent conviction the Guidelines calculation for which are subject to enhancement based on the earlier crime. *Perez* ignored this parallel to hold that state law at the time of the conviction dictated the federal definition for controlled substance offense. *Id.* at 702. In fact, the Eighth Circuit held that "*McNeill* requires" this result when examining state statutes, *see id.* at 703 & n.4, while simultaneously declaring that *McNeill* "does not translate to this issue concerning the [Controlled Substances Act used in ACCA to identify serious drug offenses]." *Id.* at 700.

*McNeill* provides no support for this federal versus state dichotomy. It misunderstands the inquiry and definitions the Sentencing Guidelines embody and require district courts to apply. Rather than asking courts "to define a previous offense," *Bailey*, 37 F.4th at 470, the Guidelines incorporate state law to define *the current federal standard*. *McNeill* did not purport to decide how to do that (as the Eighth Circuit itself held in *Perez*).

II. The sentencing disparity the Circuit Split engenders warrants prompt review by this Court. Alternatively *Brown* and *Jackson* will warrant remand.

The Eighth Circuit's misapplication of *McNeill* lies at the heart of the error Mr. Turman presents and stems from a very similar misconstruction of *McNeill* at the heart of the issues raised in *Brown* and *Jackson* that this Court will decide next term. But for the District Court's designation of his 2003 marijuana conviction as a controlled substance offense, his Sentencing Guidelines range would have been 120 to 150 months in prison, rather than 151 to 188 months. The Guidelines comprise the "lodestone" consideration framing a district court's choice even when it imposes a sentence below their range. *Peugh v. United States*, 569 U.S. 530, 544 (2013). The Eighth Circuit did not suggest the error was harmless, even in light of the district court's imposition of a 60-month sentence based on the profound mitigating evidence in Mr. Turman's background and the circumstances of his offense in this case. The District Court was obliged to impose a sentence "sufficient, but not greater than necessary" to provide just punishment reflecting the seriousness of the offense and the defendant's background, deterrence, and serve rehabilitation in the most effective manner. 18 U.S.C. §3553(a)(1)-(4).

The circuit conflict petitioner raises produces disparities affecting thousands of citizens sentenced in the United States. The "career offender" Guidelines in Section 4B1.1 t to the vagaries of geography thanks to a Circuit split. The § 4B1.1 enhancement (which turns on the definitions in § 4B1.2) applies to more than 2,000 people every year. U.S. Sent'g Comm'n, *Report to Congress: Career Offender*

*Sentencing Enhancements*, 18 (Aug. 2016). Those hit with the enhancement see an increase to their final guidelines range over 91% of the time. *Id.* at 21. Further, two other guidelines incorporate Section 4B1.2 and call for more punishment when a defendant's criminal history includes one or more controlled substance offenses. *See* U.S.S.G. §§ 2K1.3 (offenses involving explosive materials), § 2K2.1 (certain firearm offenses).

The circuit conflict Mr. Turman raises manifests as a guidelines issue, but at bottom it is about *McNeill*. This Court alone has the power to resolve the conflict over its meaning and it will exercise that prerogative in the next term. After it does, Petitioner requests that the Court grant his petition.

## CONCLUSION

WHEREFORE, Petitioner requests that this Court grant his Petition for a Writ of Certiorari.

Respectfully submitted,

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