No. 22-7898

IN THE SUPREME COURT OF THE UNITED STATES

ANTHONY LAMART LAWRENCE, PETITIONER

v.

UNITED STATES OF AMERICA

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

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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Petitioner contends (Pet. 6, 9-10) that his marijuana-related conviction under Iowa law, Presentence Investigation Report ¶¶ 33, 45, is not categorically a "controlled substance offense" under Sentencing Guidelines § 4B1.2(b) because he was convicted of that crime at a time when the definition of marijuana included hemp, which had been removed from the state and federal drug schedules by the time of his federal sentencing, Pet. 6. Petitioner argues (Pet. 6, 9-10) that the classification of his prior state conviction as a "controlled substance offense," Sentencing Guidelines § 4B1.2(b), should depend on the drug schedules in

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

As explained in the government's brief in opposition to the petition for a writ of certiorari in Baker v. United States, No. 22-7359 (July 26, 2023), which presents a similar claim, the correct approach in determining whether a defendant's prior state crime qualifies as a predicate under Section 4B1.2(b) is to look to the state drug schedules applicable at the time that crime occurred. See Gov't Br. in Opp. at 11-15, Baker, supra (No. 22-7359).[1] As that brief also explains, any conflict on the question presented does not warrant this Court's review; this Court ordinarily does not review decisions interpreting the Guidelines because the Sentencing Commission can amend the Guidelines to eliminate any conflict or correct any error. Id. at 8-11.

Furthermore, as explained in the brief in opposition in Baker, although this Court has granted certiorari in Jackson v. United States, No. 22-6640 (May 15, 2023), and Brown v. United States, No. 22-6389 (May 15, 2023), to review a similar timing question in the context of the Armed Career Criminal Act of 1984 (ACCA), 18 U.S.C. 924(e), it is unnecessary to hold Guidelines cases pending the Court's decision on the ACCA question, because the ACCA and Guidelines questions are distinct. See Gov't Br. in Opp. at 16-

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

18, Baker, supra (No. 22-7359). On May 1, 2023, this Court denied the petition for a writ of certiorari in Altman v. United States, No. 22-5877, which, like petitioner's case, raised the Guidelines timing question in the context of Iowa marijuana convictions. See Pet. at i, 8-9, Altman, supra (No. 22-5877). It should do the same here.

To the extent that the Court may nevertheless perceive the Guidelines issue to be properly influenced by the ACCA issue, the Court could elect to hold petitions presenting the Guidelines issue pending its resolution of the ACCA issue in Jackson and Brown. But it need not do so, and the ACCA conflict provides no sound reason for plenary consideration of the separate Guidelines question.[2]

Respectfully submitted.

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