

No. \_\_\_\_\_

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IN THE SUPREME COURT OF THE UNITED STATES

DAVID WRIGHT, JR.

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent,

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

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PETITION FOR A WRIT OF CERTIORARI

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Respectfully submitted,

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### **QUESTION PRESENTED**

Whether the District Court erred by counting a prior conviction for violation of a state statute that had been changed to make the conduct not a crime, and by using a repealed state statute decriminalizing gun possession, to increase his guideline range.

## **LIST OF PARTIES**

[X] All parties appear in the caption of the case on the cover page.

## **RELATED CASES**

- *United States v. Wright*, No. 6:21-cr-02008-001, U.S. District Court for the Northern District of Iowa. Judgment entered Feb. 11, 2022.
- *United States v. Wright*, No. 22-1401, U.S. Court of Appeals for the Eighth Circuit. Judgment entered April 20, 2023.

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## **TABLE OF AUTHORITIES**

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## **PETITION FOR A WRIT OF CERTIORARI**

Petitioner, David Wright, Jr., respectfully prays that a writ of certiorari issue to review the judgment below.

## **OPINIONS BELOW**

The opinion of the United States Court of Appeals for the Eighth Circuit appears at Appendix A to the Petition and is unpublished.

The judgment of the United States District Court for the Northern District of Iowa appears at Appendix B to the Petition.

## **JURISDICTION**

The Eighth Circuit entered judgment on April 20, 2023. This court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

### **18 U.S.C. § 1254 – Court of Appeals; Certiorari; Certified Questions**

Cases in the court of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

### **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 –

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

## STATEMENT OF THE CASE

On November 18, 2020, police officers conducting surveillance attempted to stop a vehicle for speeding violations they witnessed as part of their surveillance. The defendant was a passenger in the vehicle driven by Tajanik Williams in Waterloo, Iowa. Once the vehicle was disabled, Defendant exited the vehicle and fled the scene on foot. Officers subsequently located a stolen AR-15 in the vehicle. Wright was later apprehended and held at the Black Hawk County Jail, and this federal case initiated in early-2021. *See R. Docs. 2-7.*

Wright was charged with two counts of possessing a firearm as a felon under 18 U.S.C. § 922(g)(1) and 924(a)(2). R. Doc. 2. Wright pleaded guilty to both charged counts on June 10, 2021. R. Doc. 21. The District Court accepted his guilty plea on June 25. R. Doc. 23. There was no plea agreement.

The Presentence Investigation Report calculated Wright's base offense level under U.S.S.G. § 2K2.1 as 26, finding that the offense involved a semiautomatic firearm capable of accepting a large capacity magazine, and also that he had been previously convicted of at least two felony convictions for either a crime of violence or controlled substance offense. The base offense level was based in part on a conviction for possession of marijuana with intent to deliver under Iowa Code § 124.401(1)(d) entered on March 1, 2018. He received two-level enhancement under 2K2.1(b)(4)(A), because the AR-15 was stolen. He also received a four-level enhancement under § 2K2.1(b)(4)(A)



for possessing the firearms in connection with another felony offense, the no longer existent Iowa crime of Carrying Weapons under Iowa Code § 724.4(1) (2020). After a three-level reduction for acceptance of responsibility, the PSR calculated his Total Offense Level as 29. With a criminal history score of 14, Wright's criminal history category was VI. This resulted in an advisory guideline range of 151 to 188 months of imprisonment.

Wright objected to his base offense level and the application of the four-level enhancement for connection with another felony offense. He argued that his 2018 Iowa conviction for possession with intent to distribute marijuana did not qualify as a controlled substance offense, as the Iowa statute had changed since his conviction, and now is overbroad and includes substances not defined as "controlled substances" under the Federal Controlled Substances Act. He also argued that because Iowa law had changed in 2021, eliminating carrying weapons as a criminal offense, the two-level enhancement for possession in connection with another offense should not apply. Based upon these objections he argued his guideline range should have been calculated as a Level 21 Category VI, 77 to 96 months.

At the sentencing hearing, the defendant continued to argue his objections. The District Court overruled both objections and calculated the Guideline range based upon a Total Offense Level of 29 and a criminal history category of VI to be 155 to 188 months. Sent. Tr. pp. 18-19. The Court sentenced Wright to a sentence of 151 months between the two counts

(running partially concurrent and partially consecutively), the low end of the Guideline range. Sent. Tr. pp. 38-39. Wright appealed to the United States Court of Appeals for the Eighth Circuit which affirmed the District Court's ruling. Wright now appeals that decision.

## REASONS FOR GRANTING THE PETITION

### 1. **The Government's Approach is Inconsistent with the Directives and Guidelines which would Inevitably Lead to Dissimilar Sentences for Similarly Situated Defendants**

This Court should grant review in this case to provide guidance to lower courts regarding sentencing based on the violation of state statute which has changed between conviction and sentencing.

Here, the district court incorrectly calculated the defendant's base offense level. The district court wrongly concluded that one of Wright's prior convictions counted as a controlled substance offense under § 2K2.1(a)(1), resulting in an increase to his base offense level. The relevant Iowa Code Chapter 124 has changed since his conviction in 2018. Additionally, the district court erred when it applied a four-level enhancement under §2K2.1(b)(6)(B) because Iowa Code § 724.2(1) changed since his 922(g) offenses were committed, decriminalizing the crime of "carrying weapons".

18 U.S.C. § 3553(a)(4)(A)(ii) ordinarily mandates that the Court is to use the version of guidelines that is in effect at the time of defendant's sentencing. This was recognized in *United States v. Bautista*, 989 F.3d 698 (9<sup>th</sup> Cir. 2021), *United States v. Abdulaziz*, 998 F.3d 519 (1<sup>st</sup> Cir. 2021), and *United States v. Hope*, 28 F.4<sup>th</sup> 487 (4<sup>th</sup> Cir. 2022). Appellant argues that the Government's proposed course of action would in effect create two separate classes of cases, for which a previous conviction for precisely the same conduct could lead to vastly different calculations of criminal history in a

subsequent federal prosecution. The way to avoid that is to evaluate the prior conviction under the law at the time of the federal sentencing. To do otherwise goes against the core tenant and purpose of the Sentencing Guidelines: that similarly situated defendants receive similar sentences. *See* 18 U.S.C. § 3553(a)(6); 28 U.S.C. § 911(b)(1)(B).

This would allow a court to avoid unjust disparity and ensure consistent sentences between similarly situated defendants is for the Court to condition whether a prior offense qualifies as a controlled substance offense under the guidelines upon the State law as it stands today, not the State law as it stood at the time of the previous conviction. As it stands, the government's approach simply creates more inconsistency than it cures, whereas the Appellant's proposed interpretation is consistent with the rule that the Court use the version of the Guidelines in effect at the time of the defendant's sentencing, and reconcilable with the interpretation set forth in *Henderson*.

This is precisely what *Bautista*, *Abdulaziz*, and *Hope* stand for in this context: the proposition that, regardless of whether the Court uses state or federal law to determine if a prior conviction qualifies as a "controlled substance" for purposes of §2K2.1, it is the analysis of the prior offense as it stands at the time of sentencing which controls, not the definition of "controlled substance" at the time of the previous conviction.

Further, the idea that Mr. Wright's sentence was increased by 4 levels based upon the claim that he possessed the firearm in connection with another offense, an offense that had been repealed due to Second Amendment concerns, is perplexing. True, at the time of the offense there was a criminal law in Iowa making it a crime to carry or transport in a vehicle a concealed weapon. But, that law was repealed by the Iowa legislature several months after the conduct and prior to the federal sentencing proceeding. At the time Wright was sentenced the crime that substantially increased his sentence had been repealed and was not in effect, yet Wright's sentence was increased by four levels due to that repealed statute being revived in his federal sentencing where the guidelines and law in effect when sentenced should have been controlling.

### **CONCLUSION**

This case presents a good opportunity for the Court to address what law should apply at the time of the federal sentencing in two contexts: 1. How should a prior conviction be analyzed when the statutes concerning that conviction have been modified to decriminalize certain conduct that may have precipitated the prior conviction; and 2. When determining whether an offense was committed in connection with another State offense for a guideline enhancement, is the court able to revive a repealed State statute to apply that enhancement. Therefore, Mr. Wright asks this court to grant certiorari.

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June 26, 2023.