

No. 24-_____

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

MARCUS BENNETT,

Petitioner

v.

UNITED STATES OF AMERICA,

Respondent

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Sixth Circuit

PETITION FOR A WRIT OF CERTIORARI

Spencer S. Cowan
TAFT STETTINIUS & HOLLISTER LLP
425 Walnut Street, Suite 1800
Cincinnati, OH 45202
Phone: (513) 357-9464
Fax: (513) 381-0205
scowan@taftlaw.com

Counsel for Petitioner Marcus Bennett

QUESTION PRESENTED

Whether the drug-house sentencing enhancement applies with no evidence that the defendant maintained, held a possessory interest in, or otherwise controlled the alleged drug house.

PARTIES TO THE PROCEEDING

Petitioner Marcus Bennett is an individual. Respondent is the United States of America.

STATEMENT OF RELATED PROCEEDINGS

United States v. Bennett, No. 22-5142 (6th Cir.) (opinion issued and judgment entered Mar. 6, 2024)

United States v. Bennett, 3:17-cr-00032 (W.D. Ky.) (final judgment entered Feb. 18, 2022)

TABLE OF CONTENTS

OPINIONS BELOW.....	3
JURISDICTION	3
STATUTORY PROVISION INVOLVED	3
STATEMENT OF THE CASE	4
A. Factual Background	4
B. The Sixth Circuit’s Decision	6
REASONS FOR GRANTING THE PETITION	7
A. The Sentencing Guidelines confirm that for the drug-house enhancement to apply, the defendant must have maintained the drug house.....	7
B. Federal appellate courts agree that some indicia of control must exist for the drug-house enhancement to apply, if the defendant does not own or rent the premises	9
C. The Sixth Circuit’s decision conflicts with the text of the Sentencing Guidelines’ text and appellate court decisions applying the drug- house enhancement	10
CONCLUSION.....	13

Appendix

Appendix A:	Order in the United States Court of Appeals for the Sixth Circuit (Mar. 6, 2024)	Pet. App’x 1
Appendix B:	Judgment in a Criminal Case (Feb. 18, 2022)	Pet. App’x 21
Appendix C:	Sentencing Hearing Transcript (Feb. 18, 2022)	Pet. App’x 29

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>United States v. Bennett</i> , No. 22-5142	3
<i>United States v. Carter</i> , 834 F.3d 259 (3d Cir. 2016).....	9
<i>United States v. Climer</i> , 591 F. App'x 403 (6th Cir. 2014).....	9
<i>United States v. Flores-Olaque</i> , 717 F.3d 526 (7th Cir. 2013)	9
<i>United States v. Hernandez</i> , 721 F. App'x 479 (6th Cir. 2018).....	9, 10
<i>United States v. Johnson</i> , 737 F.3d 444 (6th Cir. 2013).....	8
<i>United States v. Ledezma</i> , 26 F.3d 636 (6th Cir. 1994)	8
<i>United States v. Whiteside</i> , 747 F. App'x 387 (6th Cir. 2018).....	10
Statutes	
21 U.S.C. § 841 (b)(1)(B)	5
21 U.S.C. § 846	5
28 U.S.C. § 1254(1)	3
U.S.S.G. § 2D1.1	<i>passim</i>

PETITION FOR A WRIT OF CERTIORARI

Marcus Bennett respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit and resolve a vital question about the drug-house sentencing enhancement. That enhancement imposes a two-level increase for a defendant who “maintained a premises for the purpose of manufacturing or distributing a controlled substance.” U.S.S.G. § 2D1.1(b)(12). This case turns on what it means to “maintain” a premises—and whether the mere fact that drugs were stored in a residence is enough to trigger the sentencing enhancement’s application.

Bennett’s arrest followed a prolonged undercover narcotics investigation, during which law enforcement used a confidential informant to purchase heroin from Bennett. (Pet. App’x 1.) During that investigation, law enforcement executed a search warrant on a nearby home (“Gilligan Street”), where Bennett’s girlfriend, Juliyah Young, resided. Law enforcement recovered about 400 grams of heroin from Gilligan Street.

Bennett did not own, lease, or control access to Gilligan Street. Indeed, Bennett did not even have a key to Gilligan Street. Bennett did not control Ms. Young’s access to Gilligan Street or otherwise guard Gilligan Street. No other indicia of maintenance or control exist.

Nonetheless, Bennett was convicted on a lone count of conspiracy to possess heroin with the intent to distribute, and the government advocated for the two-level drug house enhancement, based on the drugs recovered at Gilligan Street. The trial court applied the drug-house enhancement, and the Sixth Circuit affirmed the sentence.

This case therefore raises the question: can a trial court apply the drug-house enhancement simply because drugs were recovered from a residence, even if the defendant did not maintain that residence? The answer, of course, is *no*. Applying the drug-house enhancement without regard to whether the defendant owned or controlled the drug house effectively rewrites the enhancement and subjects defendants to longer sentences for conduct that the Sentencing Guidelines do not proscribe. This Court should grant Bennett's petition to clarify this important point.

OPINIONS BELOW

The Sixth Circuit’s opinion, *United States v. Bennett*, No. 22-5142, appears in the Appendix (“Pet. App’x”) at Pet. App’x 1. The trial court entered judgment on February 18, 2022, a copy of which appears at Pet. App’x 21. The trial court conducted a sentencing hearing on February 18, 2022; an unreported transcript of the sentencing hearing appears at Pet. App’x 29.

JURISDICTION

The Sixth Circuit entered judgment on March 6, 2024. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISION INVOLVED

United States Sentencing Guideline § 2D1.1(b)(12) applies to anyone who “maintain[s] a premises for the purpose of manufacturing or distributing a controlled substance.”

STATEMENT OF THE CASE

A. Factual Background

This case arises from a federal investigation of Marcus Bennett (“Bennett”) and his brother, Eric, related to the February 2016 shooting of a United States Postal Service letter carrier in Louisville, Kentucky. (Pet. App’x 2.) The federal investigation morphed into an undercover narcotics investigation, through which a confidential informant allegedly made several controlled drug buys from Bennett. (*Id.*) Most of these controlled drug buys occurred near a bar that Bennett and his cousin operated.

While law enforcement officers were surveilling Bennett, they obtained a search warrant for Gilligan Street, next to that bar. (*Id.*) Juliyah Young, Bennett’s girlfriend, resided there. (*Id.*) Law enforcement also obtained search warrants at the bar and at Bennett’s home. (*Id.*)

Upon executing the warrant, law enforcement recovered about 400 grams from Gilligan Street but recovered no drugs from the bar or Bennett’s home. (*Id.*) Importantly, Bennett did not own Gilligan Street, reside at Gilligan Street, control access to Gilligan Street, or even have a key to enter Gilligan Street. (*Id.* at 2; 63.)

Law enforcement ultimately arrested Bennett and charged him with several offenses related to the letter carrier’s shooting, as well as conspiracy

to possess heroin with the intent to distribute. *See* 21 U.S.C. §§ 846, 841(b)(1)(B). At trial, the jury acquitted Bennett on all charges related to the shooting but convicted Bennett on the lone drug charge. (Pet. App’x 1.)

Bennett’s presentence report included a two-level enhancement for maintaining a drug house under U.S.S.G. § 2D1.1(b)(12). Bennett objected to the application of this enhancement.

Ten months after the jury trial ended, the trial court held a sentencing hearing. (Pet. App’x 29.) The trial court acknowledged that Bennett “was not the owner nor tenant of [the] Gilligan Street residence, and it has been inferred that he did not have a key to enter the home.” (*Id.* at 63.) The trial court even remarked, “[t]here’s no evidence to suggest that [Bennett] ever lived there, and I don’t know of any evidence that showed any personal clothing or anything like that was found.” (*Id.*)

Even so, the trial court imposed the two-level enhancement under U.S.S.G. § 2D1.1(b)(12), based on the government’s argument at sentencing and the trial court’s own “memory of the testimony in the case.”¹ (*Id.* at

¹ At the February 2022 sentencing hearing, the government also relied on its *memory* of the June 2021 trial testimony, rather than the trial transcripts themselves. The government stated: “[m]y *recollection* of Ms. Young’s testimony was that . . . [Bennett] allowed her to stay [at the Gilligan Street residence] from time to time. I don’t think it’s fair to say that she was residing at that Gilligan Street address.” (Pet. App’x 40.)

63.) But the trial court’s memory of the trial testimony was imperfect. At sentencing, the trial court recalled that Ms. Young testified that Bennett controlled access to Gilligan Street and allowed her to stay at the Gilligan Street residence (*Id.* at 63–64.) Young said no such thing.

In the end, the trial court sentenced Bennett to 168 months in prison. (*Id.* at 23.) Bennett remains incarcerated.

B. The Sixth Circuit’s Decision

Bennett appealed his conviction and the application of the drug-house enhancement to the Sixth Circuit. The Sixth Circuit acknowledged that the trial court “erroneously stated” two key components of Ms. Young’s testimony—*i.e.*, that (1) she testified that the drugs from Gilligan Street belonged to Bennett; and (2) Bennett allowed her to stay at Gilligan Street. (Pet. App’x 11.) The Sixth Circuit acknowledged that Ms. Young said no such thing.

Still, the Sixth Circuit held that the trial court did not err in applying the drug-house enhancement because the record supported its application. (*Id.* at 11.) The Sixth Circuit noted that the government “proved by a preponderance of the evidence that the heroin found at the Gilligan Street house was Marcus’s and that he stored it there prior to distribution.” (*Id.*)

Even so, the Sixth Circuit identified no evidence to suggest that Bennett *maintained* or *controlled* Gilligan Street.

REASONS FOR GRANTING THE PETITION

The Sixth Circuit erroneously affirmed the trial court’s application of the drug-house enhancement, despite the total lack of evidence that Bennett maintained, held a possessory interest in, or controlled access to Gilligan Street. The Sixth Circuit’s decision effectively rewrites the sentencing enhancement to eliminate the “maintenance” requirement. The outcome is clear: criminal defendants will carry two more points on their guidelines calculation (and face up to two extra years in prison), simply by possessing drugs that were once inside a residence. This Court should grant certiorari to reverse the Sixth Circuit’s extratextual reading of the sentencing guidelines.

A. The Sentencing Guidelines confirm that for the drug-house enhancement to apply, the defendant must have *maintained* the drug house.

Start with the text. The sentencing enhancement applies if the defendant “**maintained a premises** for the purpose of manufacturing or distributing a controlled substance.” U.S.S.G. § 2D1.1(b)(12) (emphasis added). It therefore applies to anyone who “(1) knowingly (2) **opens or maintains** any place (3) for the purpose of manufacturing or distributing a

controlled substance.” *United States v. Johnson*, 737 F.3d 444, 447 (6th Cir. 2013) (emphasis added). The government carries the burden “of establishing the factors supporting the enhancement by a preponderance of the evidence.” *United States v. Ledezma*, 26 F.3d 636, 644 (6th Cir. 1994).

The Sentencing Commission’s notes also identify several factors that may warrant the two-level enhancement. According to the Sentencing Commission, the trial court should consider whether the defendant “held a possessory interest in (*e.g.*, owned or rented) the premises and [] the extent to which the defendant controlled access to, or activities at, the premises.” U.S.S.G. § 2D1.1, Application Note 17.

None of those factors exist here. Bennett did not own, lease, or control access to Gilligan Street. Indeed, Bennett did not even have a key to Gilligan Street. Bennett did not control Ms. Young’s access to Gilligan Street or otherwise guard Gilligan Street. And Bennett did not direct any activities at Gilligan Street. There is no record evidence to justify the enhancement; the Sixth Circuit instead rewrote the enhancement to affirm the trial court’s sentence.

B. Federal appellate courts agree that some indicia of control must exist for the drug-house enhancement to apply, if the defendant does not own or rent the premises.

Federal appellate courts agree that some indicia of control must exist for the drug-house enhancement to apply, if the defendant does not own or rent the premises. Thus, courts have affirmed a trial court's application of the drug-house enhancement when the government presents evidence that the utilities at the drug house were in the defendant's name, *United States v. Climer*, 591 F. App'x 403, 414 (6th Cir. 2014), or when the defendant had "access to the site and was in control of it during each delivery" of marijuana, *United States v. Hernandez*, 721 F. App'x 479, 484 (6th Cir. 2018).

An individual may also maintain a drug house if he "exercises control over [the premises], and for a sustained period of time, uses those premises to manufacture, store, or sell drugs, or directs others to those premises to obtain drugs." *United States v. Flores-Olague*, 717 F.3d 526, 532 (7th Cir. 2013). And even if there is no ownership or leasehold interest connecting the defendant to the premises, courts may consider factors such as "furnishing the site, repairing the site, supervising, protecting, supplying food to those at the site, and continuity." *United States v. Carter*, 834 F.3d

259, 262 (3d Cir. 2016) (quoting *United States v. Jones*, 778 F.3d 375, 384 (1st Cir. 2015)).

But there are limits to the enhancement’s applicability—particularly if the defendant has no legal interest in the premises. *United States v. Whiteside*, 747 F. App’x 387, 394 (6th Cir. 2018) (vacating sentence because drug-house enhancement did not apply). For the enhancement to apply, the government cannot simply show that distribution occurred at the premises, *id.*, or that the defendant was a mere casual visitor to the premises. *Hernandez*, 721 F. App’x at 484. “Otherwise, the law would punish someone twice for the same act,” and the trial court would effectively read the word, “maintained” out of the guideline. *Id.*

The Sixth Circuit did just that here. It affirmed the trial court’s sentence simply because drugs were recovered from a home, without considering whether Bennett had anything to do with that home.

C. The Sixth Circuit’s decision conflicts with the text of the Sentencing Guidelines’ text and appellate court decisions applying the drug-house enhancement.

The Sixth Circuit’s decision conflicts with the text of the drug-house enhancement and the appellate court decisions that interpret and apply the enhancement. Here, the Sixth Circuit affirmed the trial court’s application

of the two-level enhancement—even though there was no evidence that Bennett maintained or otherwise controlled Gilligan Street.

At sentencing, the trial court acknowledged that Bennett (1) was not the owner nor tenant of Gilligan Street; (2) did not have a key to enter the home; (3) did not live at Gilligan Street; and (4) had no personal clothing or effects at Gilligan Street. In other words, Bennett lacked a possessory interest in—and could not control access to—Gilligan Street. That, of course, aligns with the evidence adduced at trial.

Instead, the government *relied on its memory* of the June 2021 trial testimony, rather than the transcripts themselves. The government stated: “[m]y *recollection* of Ms. Young’s testimony was that . . . [Bennett] allowed her to stay [at the Gilligan Street residence] from time to time. I don’t think it’s fair to say that she was residing at that Gilligan Street address.” (Pet. App’x 40.)

Crediting the government’s argument at sentencing and “[his] memory of the testimony in the case,” the trial court applied the two-level enhancement. (*Id.* at 63.) The trial court recollected that Ms. Young testified that Bennett allowed her to stay at the Gilligan Street residence. (*Id.* at 63–64.) But Ms. Young said no such thing. Ms. Young *never*

testified that Bennett controlled her access to the Gilligan Street residence or permitted her to stay there.

Because there is no evidence that Bennett owned, maintained, or controlled the Gilligan Street residence, the trial court erred by applying the two-level sentencing enhancement under U.S.S.G. § 2D1.1(b)(12). The Sixth Circuit then compounded that error by affirming the sentence—even though it acknowledged the trial court’s mistaken recollection of the evidence adduced at trial.

The Sixth Circuit concedes that there is no evidence that Bennett owned, leased, or resided at Gilligan Street. Even so, the Sixth Circuit held that the drug-house enhancement should apply because the government proved by a preponderance of the evidence that “the heroin found at the Gilligan Street house was Marcus’s and that he stored it there prior to distribution.” (*Id.* at 11.) Under the Sixth Circuit’s view, the drug-house enhancement should apply whenever drugs are recovered from a residence. But that rewrites the drug-house enhancement. Whether heroin was stored or recovered from a residence *is not evidence* that the defendant maintained the residence as a drug house.

If there is no evidence that the defendant owned or leased the residence (as is the case here), there must be some indicia of de facto

control. Otherwise, the drug-house enhancement would apply to any defendant caught possessing drugs that came from a home. That overinclusive interpretation is irreconcilable with the Sentencing Guidelines' text and warrants correction from this Court.

CONCLUSION

This Court should grant Bennett's petition to correct the Sixth Circuit's error and clarify the indicia of maintenance and control that justify the drug-house enhancement.

Respectfully submitted,

Spencer S. Cowan

Counsel of Record

TAFT STETTINIUS & HOLLISTER LLP

425 Walnut Street, Suite 1800

Cincinnati, OH 45202

Phone: (513) 357-9464

Fax: (513) 381-0205

scowan@taftlaw.com

Counsel for Petitioner Marcus Bennett