

24-6817

NO.

ORIGINAL

Supreme Court, U.S.  
FILED

FEB 24 2025

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

Justin Byles

(Your Name)

— PETITIONER

United States District Court for  
Western District of Texas

RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United State Court of Appeals 5th Circuit

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Justin Byles

(Your Name)

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Odessa, Tx 79764

(City, State, Zip Code)

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### QUESTION(S) PRESENTED

When A previous State conviction for a "serious drug offense" Is facially Overbroad, and prohibits distribution of drugs that are not listed in the Federal Controlled Substance Act Be considered a guideline enhancement The circuits Are split.

## LIST OF PARTIES

☒ All parties appear in the caption of the case on the cover page.

☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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## STATUTES AND RULES

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## OTHER Cases

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IN THE  
SUPREME COURT OF THE UNITED STATES  
  
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

**OPINIONS BELOW**

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☐ reported at \_\_\_\_\_; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

The opinion of the United States district court appears at Appendix \_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix \_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

The opinion of the \_\_\_\_\_ court appears at Appendix \_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

## JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was NOVEMBER 26, 2024.

☒ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_\_\_ A \_\_\_\_.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was \_\_\_\_\_.  
A copy of that decision appears at Appendix \_\_\_\_\_.

☐ A timely petition for rehearing was thereafter denied on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_\_\_ A \_\_\_\_.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

**CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

18. U.S.C. 922(g)(1)

It shall be unlawful for any person who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year to own, manufacture, transport, or receive any firearms in interstate or foreign commerce.



## STATEMENT OF THE CASE

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Justin Byles Challenges his 63-month Sentence, Imposed following his guilty-plea conviction for felon in possession of a Firearm in violation of 18 U.S.C. 922(g)(1), contesting the district court's Application of a Controlled-Substance-Offense enhancement under Sentencing Guideline 2K2.1(a)(4). Byles maintains his 2018 Oklahoma conviction for possession with Intent to distribute Marijuana (OKIA, STAT. ANN tit 63 2-401(A)(1)(B)(2)) is not a controlled substance offense as defined in Guideline 4B1.2(b). Byles contends that the district court Erred in Applying the 2K2.1 Enhancement Because Oklahoma drug offenses ARE OverBoard as they criminalize possession of drugs not listed in the Federal Controlled Substance Act (CSA).

## REASONS FOR GRANTING THE PETITION

The District Court imposed an illegal sentence by erroneously applying the Guideline enhancement 2K1, "when a issue or claim is properly before the court the court is not limited to the particular legal theories advanced by parties, but rather retains the independent power to identify and apply construction of governing law." Kamen v Kempel Fin Services Inc 500 U.S. 90. The 5th Circuit courts already determined that the statute in question (Oklahoma Statute 63§ 2-401(A)(1)(B)(2)) is facially overbroad. see Vazquez v Sessions 885 F.3d 862 (5th circuit 2018). It requires no "legal imagination" Gonzales 549 U.S. at 193 to see that Oklahoma law forbade distribution of at least 2 substances that are not federally controlled substances under the CSA. (Salvia Divinorum). The government wants Byles to point to a actual case where someone was prosecuted with one of the drugs not federally controlled. In Tittes 852 F.3d at 1274 the government argued that the defendant was required to come forward with a "case in which Oklahoma has prosecuted someone under [the purported ACCA predicate statute] for pointing a firearm in obvious test". That court said it was enough that the statute-explicitly "Reaches conduct undertaken for purposes of 'whimsy, humor or prank'". The plain language of 63-2401(A)(1) expressly criminalized drugs that were not federally controlled and thus falls "outside the ACCA's ambit" see United States v AS extra 877 F.3d 935 (Applying this aspect of Tittes in the context of a sentencing-guideline enhancement). "If one can commit the state offense by conduct that is not a 'serious drug offense' then the conviction of the state can not be predicate offense for the ACCA". Cantu v United States 964 at 924 (10th circuit). "In the 10th circuit for purposes of a realistic probability test a defendant need not to come forward with instances of a actual prosecution when the plain language of the statute proscribes the conduct at issue". Tittes 852 F.3d at 1274. There not need to be a In-circuit case dealing with the precise state statute at issue if there is a case that sets forth a principle clearly generalizable to the subject statute". Cantu 964 at 924. "The Law on this issue is not well-settled" Vazquez v Sessions 885 F.3d 862 (5th circuit 2018). Other circuits are split with this issue also.

⑥ The Cantu Panel Stressed that "the drugs involved in Cantu's] State prosecutions were in the same category of drugs (OK. STAT. 2-401(B)(2)) as drugs Oklahoma controlled that have not been controlled under Federal law. See SWABY v Yates 847 F.3d 62 (1st Cir 2017) (Holding that the Realistic Probability test does not apply where the drugs schedules are not a categorical match). Matthews v Barr 927 F.3d 606 (2nd Cir 2019) (Applying the Realistic Probability test "when a statute is not facially overbroad"). Singh v Attorney Gen 839 F.3d 273, 286 (3d Cir) (The BIA erred in a 'Realistic Probability' inquiry because here, the elements of the crime of conviction are not the same as the elements of the generic federal offense and the Supreme Court has never conducted a 'Realistic Probability' inquiry in such a case". Gordon v Barr 965 F.3d 252, 260 (4th Cir 2020) (When the state, through plain statutory language, has defined the reach of a state statute to include conduct that the federal offense does not the categorical analysis is complete; there is no categorical match") Meadley - Robles v Gonzales 226 F. App'x 364, 372 (6th Cir 2007) (Holding that the government's legal-magination argument fails because "it requires us to ignore the clear language" of the statute). Aguiar - Zuniga v Garland 37 F.4th 446 (7th Cir 2022). (On Appeal the government wisely concedes that courts 1st apply the categorical approach and look to Realistic Probability only if the statute is ambiguous). United States v Dyer 90 F.4th 941, 946 (8th Cir 2024). (We have already held that "when the statute's reach is clear on its face" no case citation is required"). United States v Grisel 488 F.3d 844, 850 (9th Cir 2007) (en banc) (where a state explicitly defines a crime more broadly than the generic definition, no "legal imagination" is required to hold that a realistic probability exists that the state will apply its statute to conduct that falls outside the generic definition of the crime". United States v Tithes 852 F.3d 1257 (10th Cir 2017) (collecting other cases for the proposition that the Realistic Probability test need not apply to facially overbroad

Statutes). SAid V U.S. Att Gen 28 F. 4<sup>th</sup> 1328, 1332 (11<sup>th</sup> Cir 2022) "A litigant can use facially Over Board Statutory Text to Meet the Burden of Showing the Realistic probability that state ~~LAWS~~ LAWS covers more conduct than The Federal. Without the Guidline enactment Byles' correct Sentence should Be within his Guidlines of 30-36 months Instead of the 63-month sentence. Byles Should Be Re-Sentenced.

⑧.

For the foregoing reasons, Byles Respectfully Requests  
that this Court issue a writ of certiorari to Review  
the Judgment of the United State Court of Appeals 5th Circuit.

#### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Justin Byles

Date: February 16, 2025