

24-6817

ORIGINAL

Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

Justin Byles — PETITIONER
(Your Name)

United States District Court for
Western District of Texas RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States 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)

307 Alabama #30
(Address)

Odessa, TX 79764
(City, State, Zip Code)

432-803-0590
(Phone Number)

QUESTION(S) PRESENTED

When A previous State conviction for a "serious drug offense" IS
facially OverBoard, and Prohibits distribution of drugs that
are not listed In the Federal Controlled substance Act. Be considered
a Guidline enhancment 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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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 is unpublished.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 is unpublished.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 is unpublished.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 is unpublished.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

4 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 marijuanna (OKLA. 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 overbroad 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." Karen v. Kemper 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 overboard. See Kazarez 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. (SA 11001 A, Scheduling Division). The government wants Byles to point to a actual case where someone was prosecuted with one of the drugs not Federally controlled. In Titties 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. Bexar 877 F.3d 935 (Applying this aspect of Titties 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. Titties 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" Kazarez 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 (or, 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 66 (2nd Cir 2019) (applying the realistic probability test "[w]hen 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") Mendler-Robles v Gonzales 226 F. App'x 564, 572 (6th Cir 2007) (holding that the government's legal imagination argument fails because "it requires us to ignore the clear language" of the statute). Aguilore-Zuniga v Garland 37 F.4th 446, 450 (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 Daye 90 F.4th 941, 946 (8th Cir 2024). (We have already held that "when the state'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 Tittes 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 U.S. Att'n Gen 28 F.4th 1328, 1332 (7th Cir 2022) "A litigant can use facially OverBoard statutory text to meet the burden of showing the realistic probability that state ~~law~~ HAWS covers more conduct than the federal. Without the guideline enactment Byles' correct sentence should be within his guidelines of 30-36 months instead of the 63-month sentence. Byles should be re-sentenced.

For the foregoing reasons, Byles Respectfully requests that this Court issue a Writ of Certiorari to review the Judgment of the United States Court of Appeals 5th Circuit.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Justin Byles

Date: February 16, 2025