

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

CARLOS EDWARD THURMAN, Jr.,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

- I. Whether the district court clearly erred by applying the USSG § 2D1.1(b)(1) firearm enhancement?
- II. Whether general application of the USSG § 2D1.1(b)(1) firearm enhancement and BOP policy violate equal protection and Second Amendment principles?

LIST OF ALL PARTIES TO THE PROCEEDINGS

Petitioner/Appellant/Defendant – Carlos Edward Thurman, Jr.

Respondent/Appellee/Plaintiff – United States of America

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SUPREME COURT OF THE UNITED STATES

CARLOS THURMAN

PETITIONER

V.

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RESPONDENT

**PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF
THE UNITED STATES**

Carlos Edward Thurman, Jr., by court-appointed counsel, respectfully requests that a Writ of Certiorari issue to review the unpublished opinion of the United States Court of Appeals for the Sixth Circuit in the case of *United States v. Carlos Edward Thurman, Jr.*, No. 24-5020, filed on January 28, 2025 and attached to this Petition as Appendix B.

OPINIONS BELOW

Mr. Thurman's appeal to the Sixth Circuit was taken from the Judgment entered following his conviction for involvement in a narcotics conspiracy. *See* Appendix A. On January 28, 2025, the Sixth Circuit issued an unpublished opinion affirming Mr. Thurman's conviction and sentence. *See* Appendix B. This petition for a writ of certiorari now follows.

JURISDICTION

The Sixth Circuit issued an unpublished opinion affirming Mr. Thurman's conviction and sentence on January 28, 2025. *See* Appendix B. Mr. Thurman invokes this Court's jurisdiction pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. amend. II: “A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.”

U.S. Const. amend. V: “No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.”

STATEMENT OF THE CASE

On January 9, 2023, Mr. Thurman pleaded guilty to participating in a narcotics conspiracy. *See* [R. 169: Minute Entry for Rearrangement, Page ID # 591]; [R. 51: Superseding Indictment, Page ID # 218-35]. This case is about the district court's erroneous application of a firearm enhancement pursuant to USSG § 2D1.1(b)(1) and its impact on Mr. Thurman as he serves his sentence.

Following his guilty plea, the United States Probation Office (USPO) prepared Mr. Thurman's Pre-Sentence Investigation Report (PSR) and applied the firearm enhancement because: (1) "several individuals provided statements" that Mr. Thurman's "co-defendant Mario Baker frequently carried a firearm while distributing narcotics"; (2) law enforcement "seized two handguns" while searching co-defendant Romeo Richardson's residence; and (3) police recovered two additional firearms at residences in Cincinnati, Ohio "associated with" Mr. Thurman. [R.254: Sealed PSR, Page ID # 884, Paragraph 32]; *id.* at Page ID # 908. More specifically, a .380 Lorcin pistol was seized at a residence on Glen Este Place and a Rohm RG14 .22 caliber revolver was discovered at a residence on Bettman Drive in Cincinnati. *Id.*

At sentencing, co-defendant Mario Baker acknowledged that he possessed firearms during the conspiracy period. However, Mr. Baker did not testify that Mr. Thurman ever saw him with or knew he was in possession of a firearm. [R. 288:

Transcript, Sentencing, Page ID # 1110-11]; *id.* at Page ID # 1176, Lines 16-17.

Mr. Baker said the Glen Este Place residence belonged to Mr. Thurman's grandparents, and he never went inside. *Id.* at Page ID # 1112. The location on Bettman Drive belonged to "a girl" Mr. Thurman "knew." *Id.* at Page ID # 1113, Line 17. Mr. Baker occasionally went into that residence to obtain drugs from Mr. Thurman. *Id.* at Page ID # 1114-15.

FBI Task Force Officer (TFO) Mark Stidham testified about the execution of search warrants at Bettman and Glen Este. *Id.* at Page ID # 1119. TFO Stidham recalled a female at the Bettman Drive residence confirming Mr. Thurman stayed there overnight, but he did not live there. *Id.* at Page ID # 1124. Officers found a firearm in a sock in a bedroom at that location. *Id.* at Page ID # 1126, Lines 13-15. Law enforcement found "multiple firearms" at the home on Glen Este, but only one was seized—the Lorcin pistol. *Id.* at Page ID # 1128. The "other firearms were claimed by someone else and left there[.]" *Id.* at Page ID # 1129, Lines 6-8. Stidham said another agent asked the occupants of the residence about the Lorcin, and "they did not recognize" it. *Id.* at Lines 11-18.

On cross-examination, TFO Stidham agreed Mr. Thurman was not the owner or legal occupant of either residence. *Id.* at Page ID # 1142. Stidham also confirmed law enforcement never observed Mr. Thurman in possession of firearms throughout the course of their months-long investigation. *Id.* at Page ID # 1143,

Lines 22-24. Stidham knew Mr. Thurman's grandparents lived at the Glen Este Place residence and recalled locating an old rifle during the search, but he said he was unaware Mr. Thurman's grandfather collected similar old items like the Lorcin pistol discovered by police. *Id.* at Page ID # 1144-45; *id.* at Page ID # 1147.

Stidham noted that no witnesses ever mentioned Mr. Thurman being in possession of guns. Nor did any photographs or other evidence collected during the investigation establish Mr. Thurman had ever been in possession of the Lorcin or any other firearm. *Id.* at Page ID # 1145-46.

The final witness at sentencing was Mr. Thurman's father. *Id.* at Page ID # 1154. He grew up at the Glen Este Place address and discussed his father's deteriorating mental acuity. *Id.* He said Mr. Thurman stayed with his grandparents at Glen Este on occasion, but he did not live there. *Id.* at Page ID # 1156. He also testified that he observed an old pistol in a dining room drawer years prior to the search of the residence. *Id.* at Page ID # 1158; *id.* at Page ID # 1161.

In discussing the USSG § 2D1.1(b)(1) enhancement, the district court noted that a weapon must be either actually or constructively possessed. *Id.* at Page ID # 1171, Lines 6-16. The Court said there had been no testimony that anyone had ever seen Mr. Thurman in actual possession of firearms. *Id.* at Lines 11-18.

The government argued the enhancement could still apply because it was “reasonable” for Mr. Thurman to infer that Mr. Baker possessed firearms during the conspiracy. *Id.* at Page ID # 1172, Lines 18-21. Despite Mr. Thurman’s father’s testimony, the government also said the enhancement was appropriate because Mr. Thurman lived at Glen Este Place, and firearms were located there. *Id.* at Page ID # 1173. The government conceded that “nobody saw” Mr. Thurman “with those guns[,]” but insisted it did not matter because they were kept in a residence where investigators believed drugs and drug proceeds were stored. *Id.* at Lines 24-25.

The defense emphasized that Mr. Baker testified and said nothing about seeing Mr. Thurman with a firearm despite their frequent dealings throughout the conspiracy period. *Id.* at Page ID # 1177. Nor did any other witness claim to have seen Mr. Thurman in possession of guns. *Id.* at Lines 19-21. The defense also argued Mr. Thurman has no history of being a felon in possession of firearms and that witness testimony suggested the firearm found at Glen Este Place had been there for years. *Id.* at Page ID # 1177-79.

The district court ultimately applied the enhancement. The court noted that Mr. Baker admitted he was in possession of firearms during the conspiracy period, but there was no evidence that he “possessed...and showed a firearm to Mr. Thurman during their mutual drug transactions over this four – or five-month

period.” *Id.* at Page ID # 1180, Lines 7-9. Despite those circumstances, the court still found it was reasonably foreseeable to Mr. Thurman that Mr. Baker possessed firearms within the scope of their jointly undertaken criminal activity. *Id.* at Page ID # 1183.

More confusing, the district court also said the enhancement would apply based on the firearms found at Bettman Drive and Glen Este Place. *Id.* at Page ID # 1181-82. Despite making no specific finding that Mr. Thurman even knew the firearms were present at those locations, the court said USSG § 2D1.1(b)(1) was triggered because it could not “conclude it was clearly improbable that [Mr. Thurman’s] constructive possession of either of those firearms was connected with his” drug trafficking. *Id.* at Page ID # 1182, Lines 12-15. Mr. Thurman was sentenced to 210 months of incarceration. *Id.* at Page ID # 1183, Lines 22-25; *id.* at Page ID # 1186, Lines 19-21; *id.* at Page ID # 1201, Lines 21-24. BOP policy prohibits Mr. Thurman from earning time credits under the First Step Act because the court applied the firearm enhancement. *See* 28 C.F.R. § 550.55(b)(5)(ii)

The Sixth Circuit denied Mr. Thurman’s direct appeal, concluding he had constructive possession of the weapons found at Bettman Drive and Glen Este Place because he exercised “dominion over” each residence. Appendix B, Pages 6-7. Like the district court, the Sixth Circuit said the firearm enhancement applied because Mr. Thurman failed to show it was “clearly improbable” the guns “were

connected to his drug dealing.” Appendix B, Pages 6-7. It did not mention Mr. Baker’s possession of firearms during the conspiracy period.

On January 17, 2025, former President Joseph R. Biden Jr. signed an executive order commuting Mr. Thurman’s 210-month sentence to a term of 140 months. *See* [R. 301: Executive Grant of Clemency, Page ID # 1264].

REASONS FOR GRANTING THE WRIT

I. The district court clearly erred by applying the USSG § 2D1.1(b)(1) firearm enhancement.

When a defendant is convicted of a drug-related offense, USSG § 2D1.1(b)(1) authorizes district courts to apply a two-level enhancement “[i]f a dangerous weapon (including a firearm) was possessed.” For the enhancement to be included at sentencing, “the government must establish that (1) the defendant actually or constructively possessed the weapon, and (2) such possession was during the commission of the offense.” *United States v. West*, 962 F.3d 183, 187 (6th Cir.2020) (citing *United States v. Hill*, 79 F.3d 1477, 1485 (6th Cir.1996)).

Constructive possession of a firearm “requires both knowledge of” the weapon “and the intent to control it.” *United States v. Allen*, 43 F.4th 901, 910 (8th Cir.2022) (citing *United States v. Gilmore*, 968 F.3d 883, 886 (8th Cir.2020)). *See also, e.g., United States v. Wiltshire*, 568 Fed.Appx. 135, 140 (3rd Cir.2014) (constructive possession requires proof defendant “knew of the existence and his

possession” of the firearm); *United States v. Kurns*, 129 F.4th 589, 596-97 (9th Cir.2025) (citing *United States v. Terry*, 911 F.2d 272, 278 (9th Cir.1990)).

To show that possession of a firearm by one co-conspirator is attributable to another through relevant conduct, the government must prove by a preponderance of the evidence that it was reasonably foreseeable to the defendant that his co-conspirator would possess a firearm. *United States v. Woods*, 604 F.3d 286, 290 (6th Cir.2010). Various circuits have “explicitly rejected the fiction that a firearm’s presence always will be foreseeable to persons participating in illegal drug” activity. *United States v. Barron*, 940 F.3d 903, 912 (6th Cir.2019) (citing *United States v. Catalan*, 499 F.3d 604, 607 (6th Cir.2007) (citing *United States v. Cochran*, 14 F.3d 1128, 1132 (6th Cir.1994) (citing *United States v. White*, 875 F.2d 427, 429-33 (4th Cir.1989)))).

The district court clearly erred in this case. The record contains no evidence confirming that Mr. Thurman knew firearms were present at the Bettman Drive and Glen Este Place residences. A defendant cannot constructively possess a firearm without knowing of its existence and presence. *See Allen*, 43 F.4th at 910; *Wiltshire*, 568 Fed.Appx. at 140; *Kurns*, 129 F.4th at 596-97. The government offered no testimony or other proof establishing that Mr. Thurman was even aware of the firearms found at Bettman and Glen Este, much less than he intended to

exercise control over them. Constructive possession cannot be established without such evidence.

Making matters worse, the district court failed to make any factual findings about whether Mr. Thurman knew firearms were at those locations. This error violates Rule 32(i)(3)(B) and confirms the court could not have properly applied the firearm enhancement based on Mr. Thurman's supposed constructive possession of the guns at issue. *See Gall v. United States*, 552 U.S. 38, 50 (2007) (district court must "adequately explain chosen sentence to allow for meaningful appellate review"); *United States v. Rodriguez*, 482 Fed.Appx. 231, 237-38 (9th Cir.2012) (district court's failure to make requisite factual findings before imposing enhancement required remand). It also undermines the Sixth Circuit's conclusion that the enhancement was properly applied because Mr. Baker exercised "dominion and control" over the Bettman and Glen Este residences. Appendix B, Pages 6-7. Without proof that he was aware firearms were present in those locations, Mr. Thurman's alleged control over the premises is irrelevant.

Co-defendant Mario Baker's testimony about his own possession of firearms was also insufficient to apply the enhancement. As the district court and the government each acknowledged, Mr. Baker said nothing about Mr. Thurman having any awareness of his possession of firearms during the conspiracy. *See* [R. 288: Transcript, Sentencing, Page ID # 1180, Lines 7-9]; *id.* at Page ID # 1173,

Lines 24-25. As a result, the district court's finding that Mr. Baker's possession was reasonably foreseeable to Mr. Thurman is unsupported by the record. Instead, the court apparently presumed Mr. Thurman must have been aware that Mr. Baker possessed a gun in furtherance of the conspiracy simply because they had engaged in drug transactions together. *See id.* at 1183. Such an assumption was impermissible. *See Barron*, 940 F.3d at 912 (citing *Catalan*, 499 F.3d at 607 (citing *Cochran*, 14 F.3d at 1132 (citing *White*, 875 F.2d at 429-33 (4th Cir.1989))))). This likely explains why the Sixth Circuit made no mention of Mr. Baker's gun possession in its opinion. *See* Appendix B, Pages 6-7.

Mr. Thurman understands a "district court's finding that a defendant possessed a firearm during a drug crime is a factual finding subject to the clearly erroneous standard of review." *United States v. Benson*, 591 F.3d 491, 504 (6th Cir.2010) (citing *United States v. Darwich*, 337 F.3d 645, 664 (6th Cir.2003)). The record in this case meets that standard. Mr. Thurman believes full consideration of the "entire evidence" will leave this Court "with the definite and firm conviction that a mistake has been committed[.]" *West*, 962 F.3d at 187 (citing *United States v. Orlando*, 363 F.3d 596, 603 (6th Cir.2004)). For those reasons, he asks the Court to grant his petition in order to vacate application of the USSG § 2D1.1(b)(1) firearm enhancement in his case.

II. General application of the USSG § 2D1.1(b)(1) firearm enhancement and related BOP policy violate equal protection and Second Amendment principles.

This Court recently has reiterated that “the right to keep and bear arms is among the fundamental rights necessary to our system or ordered liberty.” *United States v. Rahimi*, 602 U.S. 680, 690 (2024) (citing *McDonald v. Chicago*, 561 U.S. 742, 778 (2010)). *See also, e.g., New York State Rifle & Pistol Assn., Inc. v. Bruen*, 597 U.S. 1 (2022); *District of Columbia v. Heller*, 554 U.S. 570, 626 (2008). “[T]he enshrinement of constitutional rights necessarily takes certain policy choices off the table.” *Heller*, 554 U.S. at 636.

In 2018, Congress enacted the First Step Act (FSA), Pub. L. No. 115-391, 132 Stat. 5194. Among other reforms, the FSA includes a provision directing the Attorney General to provide incentives and rewards for prisoners to participate in “evidence-based recidivism reduction” programming. 18 U.S.C. § 3632. The FSA allows inmates to earn time credits by successfully participating in certain anti-recidivism programs or productive activities. *See* 18 U.S.C. § 3632(d)(4). The time credits are applied toward pre-release custody or supervised release. *Id.* at § 3632(d)(4)(C). However, prisoners who are “serving a sentence for a conviction” for certain enumerated offenses are ineligible to earn FSA time credits. *Id.* at § 3632(d)(4)(D).

Mr. Thurman's conspiracy conviction under 21 U.S.C. § 846 is not an excluded offense. *Id.* Yet the Bureau of Prisons (BOP) has concluded that a 2016 provision in the Code of Federal Regulations categorically prohibits all defendants who receive a firearm enhancement under USSG § 2D1.1(b)(1) from earning time credits under the FSA. *See* 28 C.F.R. § 550.55(b)(5)(ii). *Compare Lopez v. Davis*, 531 U.S. 230, 244 (2001) (BOP may categorically exclude incarcerated individuals from RDAP eligibility based on their "prior involvement with firearms, in connection with the commission of a felony"); 18 U.S.C. § 3621(e)(2)(B) ("The period a prisoner convicted of a nonviolent offense remains in custody after successfully completing a treatment program may be reduced by the Bureau of Prisons[.]").

Mr. Thurman is currently in BOP custody completing his 140-month sentence. He is eager to take advantage of the rewards and incentives mandated by Congress in the FSA. But contrary to important constitutional principles, the BOP will not allow Mr. Thurman to do so because his grandfather stored a firearm in a drawer in the dining room of his home. This result improperly prevents Mr. Thurman from receiving equal treatment under the law and unconstitutionally discourages citizens like Mr. Thurman's grandfather from exercising their fundamental "right to keep and bear arms." *Rahimi*, 602 U.S. at 690. *See also United States v. Missouri*, 114 F.4th 980, 983 (8th Cir.2024) (citing Second

Amendment Preservation Act, Mo. Rev. Stat. §§ 1.410-1.485 (2021)) (discussing Missouri law prohibiting government action “that might be reasonably expected to create a chilling effect on the purchase or ownership of [firearms] by law-abiding citizens”) (certiorari petition No. 24-796 docketed January 27, 2025).

The time has come for this Court to intervene. This case offers the Court a unique opportunity to address an important policy issue that clearly implicates the Second Amendment and due process rights of numerous citizens, incarcerated or otherwise. The United States Sentencing Commission has directed district courts to presume the firearm enhancement under USSG § 2D1.1(b)(1) should apply based merely on the presence of a firearm. *See* USSG § 2D1.1, comment. (n.11(A)) (“The enhancement should be applied if the weapon was present, unless it is clearly improbable that the weapon was connected with the offense.”). We know possession as a matter of law “requires both knowledge of” the weapon “and the intent to control it[,]” yet the BOP categorically excludes inmates like Mr. Thurman from earning time credits based solely on application of this enhancement. *Allen*, 43 F.4th at 910. Mr. Thurman’s injury is not theoretical or qualified—BOP policy guarantees it.

Congress mentioned nothing about the firearm enhancement in the FSA, yet the BOP’s policy choice categorically undermines the liberty interests of individuals like Mr. Thurman every day. As this Court has noted, the days of

agency deference are over, *see Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), and “the enshrinement of constitutional rights necessarily takes certain policy choices off the table.” *Heller*, 554 U.S. at 636. The Court should grant certiorari to vindicate Mr. Thurman’s rights. The Court also should grant certiorari to protect the Second Amendment interests of law-abiding citizens like Mr. Thurman’s grandfather.

CONCLUSION

For the foregoing reasons, Mr. Thurman respectfully requests this Court grant his petition for the issuance of a writ of certiorari for the purpose of vacating the two-level firearm enhancement applied by the district court at sentencing.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Jarrod J. Beck, counsel for Petitioner Carlos Edward Thurman, Jr., do hereby certify that the original and ten copies of this Petition for Writ of Certiorari were mailed to the Office of the Clerk, Supreme Court of the United States, Washington, DC 20543. I also certify that a true copy of the Petition was served by mail with first-class postage prepaid upon Anthony Bracke, Assistant United States Attorney, 207 Grandview Drive, Suite 400, Fort Mitchell, Kentucky 41017.

This 28th day of April, 2025.

JARROD J. BECK

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