
CASE NO. _____

IN THE

Supreme Court of the United States

October 2024 Term

JODY D. OWENS

Petitioner,

vs.

UNITED STATES OF AMERICA

Respondent.

On Petition for a Writ of Certiorari
to the Eighth Circuit Court of Appeals

PETITION FOR WRIT OF CERTIORARI

Submitted By:



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QUESTION PRESENTED

The question presented is “Whether the definition of a ‘controlled substance offense’ in United States Sentencing Guideline (“U.S.S.G.”) U.S.S.G. § 4B1.2(b) only covers offenses involving substances controlled by the federal Controlled Substances Act (“CSA”)(21 U.S.C. § 801 et seq.), or whether the definition also applies to offenses involving substances controlled by applicable state law”. United States Sentencing Commission, Notice of Proposed Amendments to Sentencing Guidelines, Policy Statements, and Commentary, 88 Fed. Reg. 7180, 7180-7234 (Feb. 2, 2023); 90 Fed. Reg. 128-39 (Jan. 2, 2025). This issue has been addressed by this Court and the issue was addressed in the United States Sentencing Commission’s published amendments for the amendment cycle ending May 1, 2025; however, the issue is still unresolved. *Guerrant v. United States*, 142 S.Ct. 640 (Mem) (2022); Proposed Amendments to the Sentencing Guidelines December 19, 2024 https://www.ussc.gov/sites/default/files/pdf/amendment-process/reader-friendly-amendments/20241230_rf_proposed.pdf. The Commission’s amendments would revise the definition of “controlled substance offense” to exclude state drug offenses from the scope of its application by listing specific federal statutes relating to drug offenses. 88 Fed. Reg. 7180, 7180-7234 (Feb. 2, 2023); 90 Fed. Reg. 128-39 (Jan. 2, 2025). These amendments become effective on November 1, 2025, unless Congress takes action to disapprove them. United States Sentencing Commission, New Release, December 19, 2024. <https://www.ussc.gov/about/news/press-releases/december-19-2024>.

PARTIES TO THE PROCEEDINGS

Appointed Counsel, CJA Attorney, Phillip R. Dormeyer, 107 S. Broadview St., Cape Girardeau, Missouri 63703 represented Petitioner, Jody D. Owens, in the lower court proceedings, and Counsel Dormeyer also represents Mr. Owens in this proceeding. United States Attorney, Sayler A. Fleming, Thomas Eagleton Courthouse, 111 South 10th Street, Saint Louis, Missouri 63102, and Assistant United States Attorneys, Paul W. Hahn and John N. Koester, Jr., 555 Independence Street, Third Floor, Cape Girardeau, Missouri 63703 represented the United States of America in this case.

DIRECTLY RELATED PROCEEDINGS

This case arises from the following proceedings:

- *United States of America vs. Jody D. Owens*, 1:22-cr-00046-1 MTS, (E.D. Mo.) (criminal proceeding), Judgment entered August 20, 2024.
- *United States of America vs. Jody D. Owens*, 24-2720 (8th Cir.) (direct criminal appeal), Judgment Summarily Affirmed under Eighth Circuit Rule 47A on January 24, 2025.
- *United States of America vs. Jody D. Owens*, 24-2720 (8th Cir.) (direct criminal appeal), Order Denying Petition for Panel Rehearing and Petition for En Banc Rehearing entered February 26, 2025.
- *United States of America vs. Jody D. Owens*, 24-2720 (8th Cir.) (direct criminal appeal), Order Denying Motion to Stay Mandate entered April 2, 2025.
- *United States of America vs. Jody D. Owens*, 24-2720 (8th Cir.) (direct criminal appeal), Mandate issued April 2, 2025.

There are no other proceedings related to this case within the meaning of Rule 14.1(b)(iii).

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PETITION FOR WRIT OF CERTIORARI

Petitioner, Jody D. Owens, respectfully seeks a Writ of Certiorari to review a Judgment of the United States Court of Appeals for the Eighth Circuit.

CITATIONS TO PRIOR JUDGMENTS AND ORDERS

- *United States of America vs. Jody D. Owens*, 1:22-cr-00046-1 MTS, (E.D. Mo.) (criminal proceeding), Judgment entered August 20, 2024.
- *United States of America vs. Jody D. Owens*, 24-2720 (8th Cir.) (direct criminal appeal), Judgment Summarily Affirmed under Eighth Circuit Rule 47A on January 24, 2025.
- *United States of America vs. Jody D. Owens*, 24-2720 (8th Cir.) (direct criminal appeal), Order Denying Petition for Panel Rehearing and Petition for En Banc Rehearing entered February 26, 2025.
- *United States of America vs. Jody D. Owens*, 24-2720 (8th Cir.) (direct criminal appeal), Order Denying Motion to Stay Mandate entered April 2, 2025.
- *United States of America vs. Jody D. Owens*, 24-2720 (8th Cir.) (direct criminal appeal), Mandate issued April 2, 2025.

The foregoing referenced Judgments and Orders are reproduced in the Appendix to this Petition at Pet. App. A001 - A017.

JURISDICTION

The United States District Court for the Eastern District of Missouri entered its Judgment on August 20, 2024. Pet. App. A001; Dist. Ct. ECF No. 75. The Eighth Circuit Court of Appeals summarily affirmed the District Court Judgment on direct appeal on January 24, 2025. Pet. App. A010. Petitioner filed a timely Petition for Rehearing and for Rehearing En Banc., and the Eighth Circuit denied those Petitions on February 26, 2025. Pet. App. A012. Petitioner filed a timely Motion to Stay the Mandate, and the Eighth Circuit denied that Motion and issued the Mandate on April 2, 2025. Pet. App. A014-16. Petitioner timely files this Petition for Writ of Certiorari by electronic filing and by mailing on May 23, 2025. The District Court had jurisdiction under 18 U.S.C. § 3231, the Court of Appeals had jurisdiction under 28 U.S.C. § 1291, and Petitioner now invokes this Court's jurisdiction pursuant to 28 U.S.C. § 1254(1).

**RELEVANT CONSTITUTIONAL PROVISIONS, CASELAW, AND UNITED
STATES SENTENCING GUIDELINES (“U.S.S.G”)**

1. *Fifth Amendment’s Due Process Clause*, U.S. Const. amend. 5.
2. *Fourteenth Amendment’s Due Process Clause*, U.S. Const. amend. 14.
3. *Taylor v. United States*, 495 U.S. 575 (1990).
4. U.S.S.G. § 2K2.1. Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition
 - (a) Base Offense Level (Apply the Greatest):
 - (2) 24, if the defendant committed any part of the instant offense subsequent to sustaining at least two felony convictions of either a crime of violence or a controlled substance offense.
5. U.S.S.G. § 4B1.2(b) defines a “controlled substance offense” as follows:
 - (b) Controlled Substance Offense.—The term "controlled substance offense" means an offense under federal or state law, punishable by imprisonment for a term exceeding one year, that—
 - (1) prohibits the manufacture, import, export, distribution, or dispensing of a controlled substance (or a counterfeit substance) or the possession of a controlled substance (or a counterfeit substance) with intent to manufacture, import, export, distribute, or dispense.
6. United States Sentencing Commission, Notice of Proposed Amendments to Sentencing Guidelines, Policy Statements, and Commentary, 88 Fed. Reg. 7180, 7180-7234 (Feb. 2, 2023); 90 Fed. Reg. 128-39 (Jan. 2, 2025).

STATEMENT OF THE CASE

This proceeding involves a conflict between Eighth Circuit precedent and the authoritative decisions of other United States Courts of Appeals that have addressed the same issue. The issue is “whether the definition of a ‘controlled substance offense’ in United States Sentencing Guidelines (“U.S.S.G.”) under U.S.S.G. § 4B1.2(b) only covers offenses involving substances controlled by the federal Controlled Substances Act (“CSA”)(21 U.S.C. § 801 et seq.) (“United States Code”), or whether the definition also applies to offenses involving substances controlled by applicable state law”. Federal Register, Volume 88 Issue 22 (Thursday, February 2, 2023), 88 FR 7180. “The Second and Ninth Circuits have held that ‘controlled substance offense’ only includes offenses involving substances controlled by federal law (the CSA), not offenses involving substances that a state's schedule lists as a controlled substance, but the CSA does not” *Id.* “By contrast, the Fourth, Seventh, Eighth, and Tenth Circuits have held that a state conviction involving a controlled substance that is not identified in the CSA can qualify as a ‘controlled substance offense’ under the guidelines.” *Id.*

In Owens’ case, the application of the Second and Ninth Circuit approach equates to a guidelines range of 37-46 months, versus the Eighth Circuit approach, which charges 100-120 months due to two Missouri cocaine convictions, which were categorically excluded by the trial court as predicates for purposes of the Armed Career Criminal Act (“ACCA”), pursuant to Eighth Circuit precedent in *United States v. Anthony Myers*, Case No. 21-3443 (8th Cir.2022).

The application of the different approaches among circuits creates sentencing disparities among similarly situated defendants and is unfair and unequal treatment under the law.

Pursuant to the Eighth Circuit precedent, which bound the district court, Owens was sentenced to the low end of the guidelines range in the amount of 100 months of incarceration. Pet. App. A001; (Judgment, (R. Doc. 75)). If the Second and Ninth Circuit approach, or the Sentencing Commission's proposed amendments defining a controlled substance offense had been applied and available at sentencing, Owens guidelines range would have started at 37 months.

Owens seeks review of a criminal Judgment and sentence of the United States Court of Appeals for the Eighth Circuit. The basis for federal jurisdiction in this Court is pursuant to 28 U.S.C. § 1254(1).

ARGUMENT

In Owens' case, the district court found that two Missouri cocaine convictions counted as controlled substance offenses under U.S.S.G. § 4B1.2(b) and U.S.S.G. § 2K2.1(a)(2) to enhance Owens' sentence to a base offense level of 24, while at the same time, the district court did not count those convictions as predicate offenses under the Armed Career Criminal Act pursuant to *United States v. Anthony Myers*, which is Eighth Circuit precedent.¹ The application of Eighth Circuit precedent dramatically increases Owens' base offense level, which consequently increases his term of incarceration at the low end of the Guidelines from 37 to 100 months. This increase of 63

¹ *United States v. Anthony Myers*, Case No. 21-3443 (8th Cir. 2022);(PSR, (R.Doc. 72).

months substantially affects Mr. Owens' Constitutional rights because, based on his geographical location at sentencing, he received a higher sentence. This situation restrains Owens' life, liberty, the right to equal protection under the law, and his right to due process under the Fifth and Fourteenth Amendments.

Tragically, due to the status of the law, any potential remedy for Mr. Owens is on hold. Because the expiration of the period for Congressional action on the Commission's proposed amendments on November 1, 2025, this matter is on hold. During this time, Mr. Jody D. Owens, and many other similarly situated defendants are stuck in limbo and their Constitutional rights are placed on pause. This Court has the power to preserve the rights of the citizens of the United States and to enforce that the law is applied fairly and equally.

"EQUAL JUSTICE UNDER LAW" - These words, written above the main entrance to the Supreme Court Building, express the ultimate responsibility of the Supreme Court of the United States." "As the final arbiter of the law, the Court is charged with ensuring the American people the promise of equal justice under law and, thereby, also functions as guardian and interpreter of the Constitution."²

This Court has the power to enter Judicial Order before November 1, 2025, to declare the application of U.S.S.G. § 4B1.2(b) in Mr. Owens' case unconstitutional in violation of this Court's holding in *Taylor v. United States*, 495 U.S. 575 (1990). Owens' Missouri cocaine convictions should have been categorically excluded from his enhancing his sentence under the Sentencing Guidelines.

² Supreme Court of the United States, About the Court

<https://www.supremecourt.gov/about/about.aspx#:~:text=The%20Court%20is%20the%20highest%20tribunal%20in,as%20guardian%20and%20interpreter%20of%20the%20Constitution.>

Additionally, this Court may Order retroactive application of its Judicial Order to preserve the Constitutional rights of each affected Defendant.

Owens argued below, and he argues here, that his Missouri cocaine convictions are excluded as controlled substances offenses pursuant to *United States v. Anthony E. Myers*, Case No. 21-3443 (8th Cir. 2022), which held that prior cocaine convictions under Mo. Rev. Stat. Sec. 195.211 [are] not a serious drug offense[s] for purposes of imposing a sentencing enhancement under the Armed Career Criminal Act.

Owens argues that his case involves an issue of exceptional importance because if he had been sentenced in the Second or Ninth Circuits, his sentence would have been 37 months, which would have been exceptionally lower than the 100 months he received in the Eighth Circuit. This issue impacts the substantial rights of Owens and other similarly situated defendants in other circuits.

The Eighth Circuit believes its decisions in *United States v. Henderson*, 11 F.4th 713 (8th Cir. 2021), *United States v. Perez*, 46 F.4th 691 (8th Cir. 2022), *United States v. Gordon*, 111 F.4th 899, 2024 (8th Cir. 2024) compel this result.

The proposed amendments of the United States Sentencing Commission favor Owens' argument that "controlled substance offenses" only covers offenses involving substances controlled by the federal Controlled Substances Act.

Based on Justice Sotomayor's statements in *Guerrant v. United States*, 142 S.Ct. 640, 211 L.Ed.2d 522 (Mem) (2022), this issue involves a question of exceptional importance. The issue in *Guerrant* pertained to the proper definition of "controlled substance offense" under U.S.S.G. § 4B1.2(b). *Id.* Justice Sotomayor acknowledged that there is "a split among the Courts of Appeals over the proper definition of a

'controlled substance offense' and held that "[t]he Guidelines do not define the term 'controlled substance'." *Id.* The Court found that "[t]he Second and Ninth Circuits have turned to federal law to define the term: In those Circuits, a defendant has committed a controlled substance offense only if the offense involved a substance listed in the [CSA]." *Id.* Owens argues in favor of the Second and Ninth Circuits approach and the proposed amendments to U.S.S.G. § 4B1.2(b).

Justice Sotomayor held that "[t]he First and Fifth Circuits have not directly resolved the question, but have indicated agreement with [the Second and Ninth Circuit] approach." *Id.* The Court also found "[i]n contrast, the Fourth Circuit, . . . along with the Seventh, Eighth, and Tenth Circuits, defines what qualifies as a 'controlled substance' based on the relevant state law." *Id.*

Justice Sotomayor stated "Defendants in those Circuits therefore qualify as career offenders for federal sentencing purposes even if their only prior offenses involved substances not prohibited under federal law. As a result, they are subject to far higher terms of imprisonment for the same offenses as compared to defendants similarly situated in the Second or Ninth Circuits." *Id.* at 640-41.

Justice Sotomayor concluded by saying that "[i]t is the responsibility of the Sentencing Commission to address this division to ensure fair and uniform application of the Guidelines." *Id.*

Due to the current status of the law, this Court should resolve this question of exceptional importance and resolve the circuit split due to the impact of this issue on

defendants nationwide, and due to the sentencing disparities, which violates equal protection under the law.

Citations to cases conflicting with Eighth Circuit precedent in defining a controlled substance under U.S.S.G. § 4B1.2(b) include: United States v. Bautista, 989 F.3d 698, 702-704 (CA9 2021); United States v. Townsend, 897 F.3d 66, 68, 71 (CA2 2018); See United States v. Crocco, 15 F.4th 20, 23–25 (CA1 2021) (describing reference to federal law as "appealing" and reference to state law as "fraught with peril"); United States v. Gomez-Alvarez, 781 F.3d 787, 792–794 (CA5 2015) (relying on the CSA to interpret the term "controlled substance" in USSG § 2L1.2). *Guerrant* at 142 S. Ct. 640-41, FN * (Mem)(2022); 88 FR 7180. "The Sixth and Eleventh Circuits have issued internally inconsistent decisions on the question. See *United States v. Solomon*, 763 Fed. Appx. 442, 447 (CA6 2019) (noting inconsistency in past opinions); *United States v. Stevens*, 654 Fed. Appx. 984, 987 (CA11 2016) (federal law); *United States v. Peraza*, 754 Fed. Appx. 908, 909–910 (CA11 2018) (state law)". *Id.*

CONCLUSION

WHEREFORE, Petitioner requests that this Court grant his Petition for a Writ of Certiorari. Petitioner further requests that the Court temporarily hold his Petition under advisement pending November 1, 2025, and the outcome to the proposed amendments to U.S.S.G. § 4B1.2(b), including the definition of controlled substance offense, and to determine whether the amendment is made retroactive; and, for such

other and further relief deemed just and proper in the circumstances by this Honorable Court.

Respectfully submitted,



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