No. _____

IN THE

Supreme Court of the United States

QUINTIN FERGUSON,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

PETITION FOR A WRIT OF *CERTIORARI*

THOMAS W. PATTON
Federal Public Defender

DANIEL HILLIS
Assistant Federal Public Defender
Counsel of Record

OFFICE OF THE FEDERAL PUBLIC DEFENDER
600 E. Adams Street, 3rd Floor
Springfield, Illinois 62701
Phone: (217) 492-5070
Email: dan_hillis@fd.org
Counsel for Petitioner

QUESTION PRESENTED

The Seventh Circuit decided Quintin Ferguson's 18 U.S.C. § 844(i) arson conviction was a crime of violence that subjected him to United States Sentencing Guidelines (U.S.S.G.) § 4B1.1(a) penalty. However, § 844(i) is overbroad. It requires that a defendant "maliciously damages or destroys, or attempts to damage or destroy, by means of fire or an explosive, any building, vehicle, or other real or personal property used in interstate or foreign commerce or in any activity affecting interstate or foreign commerce". By comparison, common law arson and statutory versions used by most states require that the property affected by arson: belong to another person; or that the property was damaged, etc. by its owner to collect insurance proceeds. Mr. Ferguson argued on appeal that § 844(i) arson was categorically overbroad relative to common law arson and states statutory versions of arson.

Did the Seventh Circuit err by concluding Mr. Ferguson's § 844(i) arson conviction was not overbroad?

LIST OF PARTIES

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

RELATED PROCEEDINGS

United States Court of Appeals (7th Cir.):

United States v. Ferguson, No. 24-1130, (March 17, 2025).

United States District Court (N.D. Ind.):

United States v. Ferguson, No. 3:21-cr-00030-DRL-MGG-1, (January 22, 2024).

TABLE OF CONTENTS

INDEX TO APPENDIX

TABLE OF AUTHORITIES CITED

Cases

Statutes

Other Authorities

PETITION FOR WRIT OF *CERTIORARI*

Petitioner Quintin Ferguson respectfully petitions for a writ of *certiorari* to review the judgment of the United States Court of Appeals for the Seventh Circuit.

DECISIONS BELOW

The Seventh Circuit's opinion is published. (App. 1a–8a). The district court's judgment is unpublished. (App. 10a–15a).

JURISDICTION

The Seventh Circuit entered judgment on March 17, 2025. (App. 9a). Neither side petitioned for rehearing. This petition is filed within 90 days of the judgment. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY AND GUIDELINE PROVISION INVOLVED

Title 18 U.S.C. § 844(i) states:

> Whoever maliciously damages or destroys, or attempts to damage or destroy, by means of fire or an explosive, any building, vehicle, or other real or personal property used in interstate or foreign commerce or in any activity affecting interstate or foreign commerce shall be imprisoned for not less than 5 years and not more than 20 years, fined under this title, or both . . .

United States Sentencing Guidelines (U.S.S.G.) § 4B1.1(a) provides:

> A defendant is a career offender if (1) the defendant was at least eighteen years old at the time the defendant committed the instant offense of conviction; (2) the instant offense of conviction is a felony that is either a crime of violence or a controlled substance offense; and (3) the defendant has at least two prior felony convictions of either a crime of violence or a controlled substance offense.

U.S.S.G. § 4B1.2 provides:

> (a) Crime of Violence.—The term "crime of violence" means any offense under federal or state law, punishable by imprisonment for a term exceeding one year, that—
>
> (1) has as an element the use, attempted use, or threatened use of physical force against the person of another; or
>
> (2) is murder, voluntary manslaughter, kidnapping, aggravated assault, a forcible sex offense, robbery, arson, extortion, or the use or unlawful possession of a firearm described in 26 U.S.C. § 5845(a) or explosive material as defined in 18 U.S.C. § 841(c).

INTRODUCTION

The case involves an application of the categorical approach where the Seventh Circuit decided 18 U.S.C. § 844(i) is a crime of violence that made Quintin Ferguson a career offender. A district judge in the Northern District of Indiana previously held Mr. Ferguson's § 844(i) offense and his prior convictions made him a career offender, so it imposed a 240-month sentence. Absent the career offender designation, Mr. Ferguson would have had a lower total adjusted offense level (26 compared to 32) and a lower criminal history category (V instead of VI) that would have resulted in a 110-137 month Guidelines range.

The Seventh Circuit erred in two critical ways in rejecting Mr. Ferguson's overbreadth challenge. First, when the court defined generic arson, it used an abbreviated version of the crime that includes the burning or exploding of any property---including property that a defendant owns. (App. 3a). That tightly limited view of arson is inconsistent with the weight of authority. Second, when the Seventh Circuit looked to how the various states defined arson at the time the Guidelines took effect, the Seventh Circuit focused only on what the states listed as

arson's elements and did not account for any affirmative defense that would prevent a defendant from being convicted of arson. (App. 4a-5a).

This will not be the last time a § 844(i) conviction will be treated as a career offender predicate despite the conviction being overbroad compared to common law arson and state arson statutes. Just like Mr. Ferguson has been wrongly subjected to a career offender enhancement, other defendants with qualifying predicates and a § 844(i) conviction will suffer the same fate---spending untold extra years in federal prisons.

Mr. Ferguson's case shows why it is important for this Court to address his issue. A sentence that rests on the misapplication of the categorical approach is unlawful. This Court should weigh in to correct the error and guide other courts who might also find § 844(i) to be grounds for a career offender sentence.

STATEMENT OF THE CASE

I. The Categorical Approach

Under the categorical approach, courts do not look at the underlying facts of a defendant's prior conviction. *Descamps v. United States*, 570 U.S. 254, 263 (2013). Courts look solely to whether the elements of the crime of conviction match the elements of the federal recidivism statute. *Taylor v. United States*, 495 U.S. 575, 600 (1990). "If, and only if, the elements of the state law mirror or are narrower than the federal statute can the prior conviction qualify" as a predicate offense. *United States v. Ruth*, 966 F.3d 642, 646 (7th Cir. 2020) *(*internal quotation omitted).

II. The District Court Proceedings

Mr. Ferguson pled guilty to federal arson in violation of § 844(i). (R.86). At his sentencing, Mr. Ferguson objected to being designated an armed career criminal. (R.120; R.137). The district court overruled the objection, found him to be a career offender, and imposed a 240-month sentence. (App. 10a–11a [R.122]). Had Mr. Ferguson prevailed on his objection, he would have had a 110-137 month imprisonment range under the Guidelines.

III. The Seventh Circuit's Opinion

On appeal, Mr. Ferguson continued to challenge the career offender determination. (App. 2a). He contended that a federal arson conviction under § 844(i) was overbroad relative to common law arson and state arson statutes. Mr. Ferguson pointed out how the federal statute allows for a conviction when a defendant burns or causes his own property to explode. Since common law arson

and state statutes require that the property either belong to a person other than the defendant or that the defendant targeted his own property for an insurance payout, § 844(i) was overbroad per the categorical approach and could not serve as an ACCA predicate.

The Seventh Circuit rejected Mr. Ferguson's argument.

REASONS FOR GRANTING THE PETITION

Few things have such a serious impact on a defendant's sentence as the career offender Guideline. In Mr. Ferguson's case, his career offender status yielded a 210-262 month Guidelines range capped by § 833(i)'s 240-month statutory maximum. Without the career offender designation, Mr. Ferguson's range would have been 110-137.

This Court's intervention is needed to correct Mr. Gerguson's sentence. Intervention will also help inform other courts who will consider how to assess § 844(i) convictions in relation to the career offender Guideline. Another chapter in Supreme Court categorical approach jurisprudence will aid lower courts who time and again face questions of career offender eligibility. Keeping Mr. Ferguson's sentence unchanged will cause him to serve unnecessary time in prison and portends the same unfair result for others like him.

I. A Short Background About the Career Offender Guideline

The United States Sentencing Commission establishes sentencing guidelines for federal defendants. See *Molina-Martinez v. United States*, 578 U.S. 189, 192 (2016). The Guidelines consist of an offense level (based on the defendant's instant conviction(s) and relevant conduct) and criminal-history score (tallied from the

defendant's prior criminal convictions). See *Rosales-Mireles v. United States*, 585 U.S. 129, 133–34 (2018). When the offense level and criminal-history score are combined, the sentencing court gets an advisory Guidelines sentencing range of anywhere from 0–6 months to life in prison. See U.S.S.G. Ch. 5 Pt. A. In part, the Guidelines aim to achieve uniformity in sentencing by recommending similar sentences for similarly situated defendants. See *Molina-Martinez*, 578 U.S. at 192 (citing *Rita v. United States*, 551 U.S. 338, 349 (2007)).

The U.S. Sentencing Commission's power to create the Guidelines comes from Congress. 28 U.S.C. §§ 991, 994(a); *Mistretta v. United States*, 488 U.S. 361, 367 (1989). Among other things, Congress has directed the commission to increase the guideline ranges for certain career offenders. Pertinent here, Congress instructed the commission to "assure that the guidelines specify a sentence to a term of imprisonment at or near the maximum term authorized" for certain defendants convicted of specific federal crimes of violence or drug offenses. 28 U.S.C. § 994(h). Congress said that this provision should apply, among other things, when a defendant "has previously been convicted of two or more prior felonies, each of which is—(A) a crime of violence; or (B) an offense described in section 401 of the Controlled Substances Act (21 U.S.C. § 841), sections 1002(a), 1005, and 1009 of the Controlled Substances Import and Export Act (21 U.S.C. §§ 952(a), 955, and 959), and chapter 705 of title 46." 28 U.S.C. § 994(h)(2).

The commission responded to the mandate of § 994(h) by creating the career-offender Guideline. See U.S.S.G. § 4B1.1. As directed in § 994(h), the Guideline

applies to certain defendants sentenced for federal crimes of violence or controlled substance offenses. U.S.S.G. § 4B1.1(a). Among the convictions necessary for career offender status, the commission enumerated "arson" as a crime of violence but the Guideline did not define the term. See U.S.S.G. § 4B1.2(a)(2).

II. This Case Reveals How Lower Courts Continue to Misapply the Categorical Approach.

"At common law, arson was the malicious and voluntary or willful burning of another's house, or dwelling house, or outhouse appurtenant to or a parcel of the dwelling house or within the curtilage." 5 Am. Jur. 2d Arson and Related Offenses § 1 (footnotes omitted). In *Ferguson*, the Seventh Circuit defined "generic arson" to resolve the career offender dispute, but enlarged arson beyond the common law definition and what the Model Penal Code (MPC) and various states would consider arson. (App. 3a).

Relying on *United States v. Misleveck*, 735 F.3d 983, 988 (7th Cir. 2013), and *United States v. Gamez*, 89 F.4th 608, 610 (7th Cir. 2024), *Ferguson* defined generic arson as "'the intentional or malicious burning of any property'" (App. 3a) (quoting same). *Ferguson* said generic arson "does not limit coverage to the burning of a stranger's property plus the burning of one's own property to defraud an insurer". (App. 3a).

The Seventh Circuit's truncated definition is inconsistent with the method taken by *Begay v. United States*, 553 U.S. 137, 145 (2008). *Begay* looked to the MPC for a generic definition of an offense. Although *Begay* was focused on the definition of burglary, *Begay* explicitly referenced MPC § 220.1's definition of arson to

illustrate how the MPC informs a court's effort to find an offense's generic definition. *Id*. Importantly, the MPC's definition of arson includes an insurance proviso. See MPC § 220.1. Only by seeking an insurance payout for maliciously burning one's own property does a weekend grill master become an arsonist for incinerating food.

Also, *Ferguson* case tried to solidify its expansive arson definition by mentioning how the various states define the offense. (App. 3a-4a). *Ferguson* said:

> When the Sentencing Guidelines were adopted in 1987, and when the career-offender guideline was added in 1989, did state laws defining arson require proof that a person who maliciously burned his own property did so in order to collect insurance? Did they require proof that the property belonged to another? Both answers are no.

(App. 5a).

Ferguson concluded that only North Dakota (see N.D. CENT. CODE § 12.1-21-01 (1979)) and Wisconsin (WIS. STAT. § 943.02 (1977)) followed the Model Penal Code's view that arson was the burning of one's own property "only when the goal was to collect insurance proceeds", while other forty-eight states "all treated arson as encompassing the burning of one's own property for reasons unrelated to the collection of insurance". *Id*.

Respectfully, Indiana law at the time the Guidelines took effect said arson was the burning of property that belonged to another. See IND. CODE § 35-43-1-1 (1982). The District of Columbia (see D.C. CODE § 22-301, *et seq*. (1965), Ohio (see OHIO REV. CODE ANN. § 2902.03(2) (1982), Oklahoma (OKLA. STAT tit. 21 § 1403 (B) (1979), Pennsylvania (see PA. CONS. STAT. § 3301(c)(3) (1982), TEX.

PENAL CODE ANN. § 28.02(a)(2)(B) (1981), Utah (see UTAH CODE ANN. § 76-6-102(1)(a)(b) (1986), VT. STAT. ANN. tit. 13 § 506 (1981), Virginia (VA. CODE ANN. § 18.2-81 (1981), and Washington (WASH. REV. CODE § 9A.48.020 (1991) have arson definitions that align with North Dakota and Wisconsin.

Moreover, most of the forty-eight states' arson statutes are cabined by affirmative defenses. Alaska's says that a defendant may burn property belonging to the defendant if the defendant does it for a lawful purpose. See ALASKA STAT. § 11.46.410 (b) (1978). California has an affirmative defense that states "arson of property does not include one burning or causing to be burned his or her own personal property unless there is an intent to defraud or there is injury to another person or another person's structure, forest land or property". See CAL. PENAL CODE § 451 (1986). Other jurisdictions are similar. See DEL. CODE ANN. tit. 11, § 801, *et seq*. (1972) (same); GA. CODE ANN. § 16-7-61 (1985) (property owner's consent is a defense to arson); IDAHO CODE § 18-802 (1972) (may burn own property if one lacks "the intent to deceive or harm any insurer"); ILL. REV. STAT. ch. 38 § 20-1, *et seq*. (1985) (similar); IOWA CODE § 712.1, *et seq*. (1984) (similar); KAN. STAT. ANN. § 21-3718 (1969) (similar); KY. REV. STAT. ANN. § 513.020, *et seq*. (1982) (similar); LA. STAT. ANN. §14:52 (1985) (similar); MICH. COMP. LAWS § 750.72 (1945) (similar); MISS. CODE ANN.§ 97-17-11 (1986) (similar); NEB. REV. STAT. § 28-502, *et seq*. (1981); N.J.STAT. ANN. § 2C:17-1 (3) (1981) (similar); N.M. STAT. ANN. § 30-17-5(3) (1970) (similar); N.Y. PENAL LAW § 150.20 (McKinney

1979) (affirmative defense if defendant solely owned property or owner consented to defendant's conduct which had a lawful purpose).

Ferguson did not account for the foregoing things and that was a misstep. (App. 5a). Although an affirmative defense is not part of a crime's elements, a valid affirmative defense prevents an arson conviction notwithstanding proof of the crime's elements. Accordingly, affirmative defenses must be accounted for when determining if a crime is a categorical match for career offender purposes. Add the affirmative defense to the various states' conception of arson and the majority of the fifty states, plus the District of Columbia, align their views with Mr. Ferguson's.

III. This Case is an Excellent Vehicle to Address the Issue.

Ferguson presents a significant issue that requires this Court's clarification. With the advent of the categorical approach, lower courts must engage in often-times complex analysis as well as extensive canvasing of authority to derive generic definitions of an offense. This case demonstrates why this Court has to provide further guidance at least in regards to affirmative defenses. Setting a correct process is a matter of national importance. Federal arson convictions under § 844(i) and other crimes will continue to press for assessment under the career offender Guideline and mistakes lead to seriously incorrect Guideline ranges. The clear and well-developed record in this case and the absence of procedural problems that could complicate resolution are additional reasons why Mr. Ferguson's case is an excellent vehicle for *certiorari*,

CONCLUSION

Respectfully, Mr. Ferguson requests this Court to grant his petition for a writ of *certiorari*.

Respectfully submitted,

Thomas W. Patton
Federal Public Defender

s/ *Daniel Hillis*
DANIEL HILLIS
Assistant Federal Public Defender
Counsel of Record
Office of the Federal Public Defender
600 E. Monroe Street, 3rd Floor
Springfield, Illinois 62701
Phone: (217) 492-5070
Email: dan_hillis@fd.org
Counsel for Petitioner

June 13, 2025