No. __-_____

SUPREME COURT OF THE UNITED STATES

Christopher Ellis,

Petitioner,

Vs.

The United States,

Respondent.

On Petition for a Writ of Certiorari to
the United States Courts of Appeals
for the Eighth Circuit

PETITION FOR A WRIT OF CERTIORARI

Charles D. Paul
Counsel of Record
NIDEY ERDAHL MEIER & ARAGUÁS, PLC
425 2nd Street SE, Suite 1000
Cedar Rapids, IA 52401
Tel.: (319) 369-0000
Fax: (319) 369-6972
E-mail: cpaul@eiowalaw.com

Bryan S. Mugge
NIDEY ERDAHL MEIER & ARAGUÁS, PLC
E-mail: Bmugge@eiowalaw.com

Counsel for Petitioner

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QUESTION PRESENTED

I. Whether the term "controlled substance" in the career offender guideline refers exclusively to substances listed in the federal Controlled Substances Act, or whether it includes broader state-law definitions.

LIST OF PARTIES

The caption of the case accurately reflects all parties to the proceeding before this Court.

RELATED PROCEEDINGS

The following proceedings are directly related to this case within the meaning of Rule 14.1(b)(iii):

United States District Court (S.D. Iowa):

United States v. Christopher Jerome Ellis, No. 3:23-cr-00003-RGE-SBJ (October 10, 2023)

United States Court of Appeals (8th Cir.):

United States v. Ellis, 129 F.4th 1075 (8th Cir. 2025) (Judgment on February 25th, 2025) (Petition for rehearing en banc denied on May 2, 2025)

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PETITION FOR WRIT OF CERTIORARI

Petitioner Christopher Ellis prays that a writ of certiorari be granted to review the judgment of the Eighth Circuit Court of Appeals entered on February 25, 2025.

OPINIONS BELOW

The Eighth Circuit affirmed the district court's decision in a published decision, available at *United States v. Ellis*, 129 F.4th 1075 (8th Cir. 2025). The opinion is reproduced in the appendix to this petition at Pet. App. p. 10a.

JURISDICTION

The United States Court of Appeals for the Eighth Circuit entered judgment in Mr. Ellis's case on February 25, 2025. Pet. App. p. 8a. This Court has jurisdiction under 28 U.S.C. § 1254(1).

SECTIONS OF LAW INVOLVED

USSG §4B1.1

(a) 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.

USSG §4B1.2(b) defines a "controlled substance offense" as follows:

The term "controlled substance offense" means an offense under federal or state law, punishable by imprisonment for a term exceeding one year, that 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.

STATEMENT OF THE CASE

Currently pending before this Court is the Petition for Certiorari filed by Christopher Ellis, which presents a critical and recurring question of federal sentencing law: What is the proper definition of a "controlled substance" for purposes of applying the career offender enhancement under U.S.S.G. § 4B1.1?

The federal courts of appeals are deeply divided on this issue, leading to a circuit split that has only widened over the past decade. Only this Court can resolve the conflict and ensure uniform application of the Sentencing Guidelines in federal courts nationwide.

On January 11, 2023 a six count indictment was filed in the Southern District of Iowa charging Christopher Ellis and four others for their role in participating in a drug conspiracy. (R. Doc. 218 at 5). The two charges against the defendant were Count 1, Conspiracy to Distribute 50 Grams or More of Actual Methamphetamine and 100 Grams or More of a Mixture and Substance Containing Heroin, in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(A), 841(b)(1)(B), 841(b)(1)(C), 846; and Count 2, Distribution of Heroin Near a School, in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(C), 860. (R. Doc. 218 at 5).

On June 9, 2023, the defendant pled guilty to Count One of the indictment and the government moved to dismiss Count Two of Distribution Near a School Zone. (R. Doc. 218 at 5). As part of the plea agreement, the defendant waived his right to appeal the conviction in this case, however, the agreement expressly stated that he could appeal any sentence imposed by the court. (R. Doc. 111 at 10).

Additionally, as part of the plea deal, the government moved for a reduction of the sentence under acceptance of responsibility. (R. Doc. 218 at 6).

The final presentence investigation report (PSIR) filed on September 28, 2023 calculated the defendant's base offense level as 34 and his criminal history category as category V. (R. Doc. 218 at 38). The government moved to apply the career criminal enhancement, which the defendant contested.

In 2015, Defendant received his first qualifying controlled substance conviction. (R. Doc. 218 at 13). Defendant's second controlled substance violation occurred in Iowa on February, 6, 2017 for the intent to deliver marijuana in violation of Iowa law. (R. Doc. 218 at 15). Defendant received a five-year sentence of imprisonment and was paroled in July of 2019. *Id*.

Defendant raised the argument that his 2017 Iowa conviction should not count as a qualifying conviction because the 2017 Iowa code prohibited a broader range of substance than the then-current federal controlled substance act. He argued that because hemp was legalized in the farm bill in 2018, his 2017 conviction should not count because at that time the state prohibited hemp under its definition of marijuana.

The court rejected the argument and found that the defendant had two previous convictions for controlled substance offenses and was a career offender. (Sen. Tr. at 11:16-19).

Defendant's career criminal designation pushed his base offense level to 37 and criminal history category to category VI. (R. Doc. 218 at 38). The government

moved for the third level of acceptance of responsibility, and this resulted in a final offense level of 34. This resulted in a guideline range of 262-327 months imprisonment. *Id.*

On October 10, 2023, the sentencing judge varied downward and sentenced Defendant to a period of 200 months imprisonment.

On direct appeal, the Eighth Circuit relied on precedent that found controlled substance, as used under Guideline § 4B1.2(b), can be defined by state or federal law. Defendant argued that this precedent directly conflicted with past precedent and the earlier caselaw should be followed as a result. The Eighth Circuit, not swayed by this argument, found that they were required to follow the Eighth Circuit's precedent in *United States v. Henderson*. 11 F.4th 713 (8th Cir. 2022).

On February 25, 2025 the Eighth Circuit denied Defendant's appeal and enbanc review was subsequently denied on May 02, 2025.

REASONS FOR GRANTING THE WRIT

I. Clear guidance regarding the definition for a “controlled substance” under U.S.S.G § 4B1.1 is required to resolve the current circuit split.

The career offender enhancement under U.S.S.G. § 4B1.1 is among the most severe provisions within the federal sentencing guidelines. Section 4B1.1 drastically elevates a defendant's sentencing exposure by raising the offense level and mandates a criminal history category VI, the highest possible category. By design, this guideline targets repeat offenders, specifically individuals with two or more prior felony convictions for either a “crime of violence” or “controlled substance offense.” Career offenders on average receive a 15% longer sentence than other offenders.

To trigger the career offender designation, a defendant must have at least two prior felony convictions for either a "crime of violence" or a "controlled substance offense." U.S.S.G. § 4B1.1(a). The Guidelines define a "controlled substance offense" as violations of either state or federal laws that involve the manufacture, importation, distribution, or possession with intent to distribute a controlled substance. U.S.S.G. § 4B1.2(b). Critically, however, the Guidelines do not define the term "controlled substance.”

The central issue here is straightforward yet critically important: whether the definition of "controlled substance" under U.S.S.G. § 4B1.2(b) is determined exclusively by reference to federal law or whether it can be dependent upon state-law definitions.

When determining whether a prior conviction qualifies as a career offender predicate, courts employ the categorical approach. The categorical approach compares the elements of the prior offense, as it existed at the time of conviction, with the Guidelines description of "controlled substance offense." The conviction qualifies as a predicate only if every possible violation of the statute fits within § 4B1.1 enhancement definition. *Descamps v. United States*, 570 U.S. 254, 261(2013).

Courts differ on this approach when they compare the states elements of controlled substance to the guidelines definition because the guidelines lack a definition for controlled substance.

One line of circuits has found that the guidelines explicitly reference offenses under state law, thereby making the guideline definition include the substances made illegal under state law. *See United States v. Ruth*, 966 F.3d 642, 654 (7th Cir. 2020). Under this view, the state and guideline definitions are treated as identical, so a state conviction can never be broader than the guideline definition of a controlled substance.

The other Circuits have found that the guidelines lack a definition for controlled substance and this creates ambiguity. *See United States v. Townsend*, 897 F.3d 66 (2d Cir. 2018). These courts have indicated that this definition cannot hinge on state law because the Supreme Court has stated "the application of a federal law does not depend on State law unless Congress plainly indicates otherwise." *Jerome v. United States*, 318 U.S. 101, 104 (1943). These courts have held the Controlled Substance Act (hereinafter "CSA") must define the guidelines

because this definition is the most consistent with Supreme Court precedent and the Guidelines as a whole. 21 U.S.C. § 801 et seq.; *See also United States v. Townsend*, 897 F.3d 66 (2d Cir. 2018).

II. Some circuits correctly refer to the federal law when determining the definition of controlled substance under the career criminal guidelines.

Several Circuit Courts have held that the definition of a "controlled substance" under the Guidelines must be determined by reference to the federal CSA as it exists at the time of sentencing for the federal offense. *See Townsend*, 897 F.3d 66; *United States v. Gomez-Alvarez*, 781 F.3d 787, 793–94 (5th Cir. 2015); *United States v. Bautista*, 989 F.3d 698, 703 (9th Cir. 2021); *United States v. Abdulaziz*, 998 F.3d 519 (1st Cir. 2021).

One of the leading case on this split is *United States v. Townsend*. 897 F.3d 66 (2d Cir. 2018). In interpreting § 4B1.2(b), the court emphasized that although the Guidelines define a "controlled substance offense" as an offense "under federal or State law," that language refers to the source of the law, not to the substance itself. *Id*. at 71. There, the Second Circuit held that a "controlled substance offense" under U.S.S.G. § 4B1.2(b) requires the substance to be controlled under federal law, specifically the CSA. *Id*. at 74–75. The *Townsend* court reached this holding after acknowledging the *Jerome* presumption, which states "the application of a federal law does not depend on State law unless Congress plainly indicates otherwise." *Id*. at 71 (*citing Jerome v. United States*, 318 U.S. 101, 104 (1943)).

The Second Circuit supported this holding, stating "the Supreme Court has rejected attempts to impose enhanced federal punishments on criminal defendants in light of a state conviction" *Townsend* at 71; *See generally, Taylor v. United States, 495 U.S. 575, 579* (1990) (holding that for purposes of career offender determination burglary has a generic, uniform definition not dependent on how a particular State defines the offense); *See also Esquivel-Quintana v. Sessions*, 137 S. Ct. 1562, 1570 (2017) (rejecting the government's argument that "sexual abuse of minor" as an aggravated felony under the immigration laws means whatever the State defines it to mean as this definition "turns the categorical approach on its head by defining the generic federal offense of sexual abuse of a minor as whatever is illegal under the particular law of the State where the defendant was convicted").

The Circuit further explained, if the Sentencing Commission intended to include substances controlled only under state law, the definition would have stated "a controlled substance under federal or state law"—but it does not. *Townsend* at 70 (quoting U.S.S.G. § 4B1.2(b)).

Further, when interpreting § 4B1.2, the Ninth Circuit reasoned that the Guidelines' goal of sentencing uniformity supported using the Controlled Substances Act to define "controlled substances,"

> We have interpreted the term "controlled substance" as used in the Guidelines to mean a substance listed in the Controlled Substances Act ("CSA"), 21 U.S.C. § 801 et seq. As we noted in *Leal-Vega*, construing the phrase in the Guidelines to refer to the definition of "controlled substance" in the CSA—rather than to the varying definitions of "controlled substance" in the different states—furthers uniform

> application of federal sentencing law, thus serving the stated goals of both the Guidelines and the categorical approach.

Bautista, 989 F.3d at 702 (*citing United States v. Leal-Vega*, 680 F.3d 1160 (9th Cir. 2012)).

The Fifth Circuit adopted the Ninth Circuit's reasoning, concluding that the Controlled Substances Act defines which offenses constitute predicates for sentence enhancements. *Gomez-Alvarez*, 781 F.3d at 793–94.[1] This Circuit reasoned that "interpreting 'controlled substance'" to include state-only substances would undermine the uniformity required by federal sentencing law, as emphasized in *Taylor v. United States*. *Id.*; *See also* 495 U.S. 575, 590–91 (1990); *Gomez-Alvarez* at 794.

Finally, the First Circuit has followed this line of cases and held that the term "controlled substance offense" in U.S.S.G. § 2K2.1(a)(2) must be interpreted in light of the federal CSA as it exists at the time of the defendant's federal sentencing. *United States v. Abdulaziz*, 998 F.3d 519, 531 (1st Cir. 2021). The court rejected the government's argument that the relevant version of the CSA is the one in effect at the time of the prior conviction, explaining that while the elements of the prior conviction are fixed at that time, the criteria for what qualifies as a "controlled substance offense" are defined by the Guidelines in effect at sentencing. *Id*.

[1] Although *Gomez–Alvarez* interpreted "drug trafficking offense" under § 2L1.2 rather than "controlled substance offense" in § 4B1.2, this distinction is immaterial because both provisions define the terms identically. *See United States v. Bautista*, 989 F.3d 698, 702 (9th Cir. 2021) ("The relevant text in the two provisions is identical.")

Had Mr. Ellis been tried in any of the above circuits, his Guidelines' range would have been significantly lower than what he received in the Eighth Circuit.

III. Several circuits use state law in their reading that the career criminal guidelines is defined under either Federal or State Law

Aside from the Eighth Circuit, six circuits have found that the text of § 4B1.2 incorporates state definitions of "controlled substances." *See United States v. Henderson* 11 F.4th 713 (8th Cir. 2022); *United States v. Ward*, 972 F.3d 364, 374 (4th Cir. 2020); *Ruth*, 966 F.3d at 654; *United States v. Jones*, 15 F.4th 1288, 1294 (10th Cir. 2021); *United States v. Lewis*, 58 F.4th 764 (3rd Cir. 2023); *United States v. Dubois*, 94 F.4th 1284 (11th Cir. 2024); *United States v. Jones*, 81 F.4th 591 (6th Cir. 2023).

The Fourth Circuit found the guidelines explicitly reference state offense. In *United States v. Ward*, the court found, "the term 'controlled substance offense' means an offense under federal or state law. § 4B1.2(b). Thus, the Commission has specified that we look to either the federal or state law of conviction to define whether an offense will qualify." 972 F.3d 364, 374 (4th Cir. 2020), cert denied, 141 S. Ct. 2864 (2021).

The Tenth, Third, and Sixth Circuit all found that the plain language of the guideline includes both state and federal definitions of a controlled substance. *Jones*, 15 F.4th at 1294; *Jones*, 81 F.4th 591; *Lewis*, 58 F.4th at 769. The Tenth Circuit stated, "the phrase 'under federal or state law' modifies the entire provision, including the definition of a controlled substance." *Jones*, 15 F.4th at 1292.

Most recently, the Eleventh Circuit agreed, stating "as a matter of ordinary language, if state law can define what qualifies as a controlled substance offense, 'it follows that it can also define what drugs are controlled substances.'" *Dubois*, 94 F.4th at 1299 (*citing Lewis*, 58 F.4th at 769).

The Seventh Circuit came to the same result though a different approach. This circuit looked at the natural meaning of controlled substance. *Ruth*, 966 F.3d 642. The court determined the natural definition of a "controlled substance is generally understood to be 'any of a category of behavior-altering or addictive drugs, as heroin or cocaine, whose possession and use are restricted by law." *Id.* at 654. The Circuit stated, "we see no textual basis to engraft the federal Controlled Substance Act's definition of 'controlled substance' into the career-offender guideline." *Id*. This circuit has chosen to look to the dictionary when defining controlled substance.

IV. The Second Circuit is correct under their interpretation of § 4B1.1 and should be followed uniformly.

The 2017 Iowa law defined marijuana one way and federal law defines "Marihuana" differently, specifically excluding parts of the plant that were included in the Iowa definition. *See* 21 U.S.C. § 802(16). The Eighth Circuit held that this does not affect anything because the state's definition was plainly included. *Henderson*. 11 F.4th 713. This is wrong because 1) the plain language of the statute does not indicate the guidelines reference state law and thus federal law controls;

and 2) the guidelines goal of preventing disparities and promoting uniformity are at odds with the Eighth Circuit's interpretation.

First, under the "*Jerome* presumption" courts "generally assume, in the absence of a plain indication to the contrary, that Congress when it enacts a statute is not making the application of the federal act dependent on state law." *Jerome*, 318 U.S. at 104. Here, the plain language of the statute does not have plain indication that the definition for controlled substances references state law. If it were plain, then there would not be a growing circuit split on this very issue.

The Second Circuit correctly pointed out in *Townsend* that the plain language of the statute does not indicate that controlled substance includes state and federally defined controlled substance. The guideline definition of controlled substance offense states:

> (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;

U.S.SG. §4B1.2(b). The plain reading of the statute indicates that the term "under federal or state law" refers to the offense, not to the controlled substance.

The Second Circuit stated that had the courts intended to include state controlled substances in the definition then they should have stated "a controlled substance under state or federal law" not "an offense under state or federal law."

See generally Townsend, 897 F.3d 66. The court stated, "It may be tempting to transitively apply the 'or state law' modifier from the term 'controlled substance offense' to the term 'controlled substance.' But to do so would undermine the presumption that federal standards define federal sentencing provisions." *Townsend*, 897 F.3d at 70.

Furthermore, this Court has been hesitant to apply state law to interpret federal definitions. In Taylor, this court stated,

> It seems to us to be implausible that Congress intended the meaning of "burglary" for purposes of § 924(e) to depend on the definition adopted by the State of conviction. That would mean that a person convicted of unlawful possession of a firearm would, or would not, receive a sentence enhancement based on exactly the same conduct, depending on whether the State of his prior conviction happened to call that conduct "burglary."

495 U.S. at 590–91. The guidelines and statutes support this reading because one of the main goals of the guidelines is to prevent sentencing disparities. Sentencing judges are tasked by Congress in 18 U.S.C. § 3553(a)(6) to avoid "unwarranted sentence disparities." U.S. Sent'g Comm'n Guidelines Manual 2-3 (2024). This Court has stated, "Congress sought to diminish unwarranted sentencing disparity. It sought a Guidelines system that would bring about greater fairness in sentencing through increased uniformity." *Rita v. United States*, 551 U.S. 338, 354 (2007).

Under the Eighth Circuit's method, two defendants with identical past conduct could now be sentenced differently based entirely on where that past conduct took place. This is the exact opposite of what the guidelines intended.

This Court recently dealt with a similar issue in the context of immigration law. This Court recently rejected the government's argument that the term "sexual abuse of a minor" should be interpreted based on state's definition. *See Esquivel-Quintana*, 581 U.S. 385. This Court stated, "The Government's definition turns the categorical approach on its head by defining the generic federal offense of sexual abuse of a minor as whatever is illegal under the particular law of the State where the defendant was convicted." *Id*. at 393.

Here, the Eighth Circuit's approach amplifies these disparities by allowing the state to define federal law. If the states can define a controlled substance, what is stopping them from making salt a controlled substance? This was never intended by the guidelines, but under the reasoning in some circuits, this would be a qualifying conviction.

Further, if the Eighth Circuits reasoning is correct then it leads to unintended consequences. The term "controlled substance" is in the second line, the same line that prohibits intent to distribute. Under the current line of caselaw, the state's definition for intent to distribute would be controlling if they had one. This means a state could classify all drug possession offenses as intent to deal if the person had more than 1 gram of narcotics on them. This would count as a controlled substance offense under the Eighth Circuit's method because the state's definition can be narrower than the federal definition.

Under the Second Circuit's approach, this could not occur because the guidelines definition of intent to distribute would be narrower than the states

definition. This approach is in line with Supreme Court precedent, the plain language of the statute, and the guidelines as a whole. Therefore, the court should find the Second Circuit's approach is correct.

V. This issue requires review before this Court.

This case is the perfect opportunity for this Court to solve the circuit split and bring this decades long split to an end. Mr. Ellis's case is an ideal vehicle because this case deals exclusively with this interpretation under the categorial approach. There are no procedural errors or defects that prevent this Court from addressing this question.

This issue has been raised to this Court multiple times over the past decade, but the court has declined to take this issue, and the circuit split has continued to grow as the remaining undecided circuits choose a side. *See Ward*, 972 F.3d 364, 374 (4th Cir. 2020), cert denied, 141 S. Ct. 2864 (2021); *see also Ruth*, 966 F.3d 642, 654 (7th Cir. 2020), cert. denied, 141 S. Ct. 1239 (2021).

Further, the Sentencing Commission is not correcting this error, even though they know of its existence. *See generally*, U.S. Sentencing Comm'n, Proposed Amendments to the Sentencing Guidelines, p. 92 (Apr. 5, 2023).[2] This error is not addressed in either the changes to the 2025 guidelines, nor the proposed change for the following guidelines. *See generally*, U.S. Sentencing Comm'n, Adopted

[2] *available at* https://www.ussc.gov/sites/default/files/pdf/amendment-process/reader-friendly-amendments/20230405_prelim-RF.pdf.

Amendments (Nov. 1, 2025).[3] Since this issue has been around for over a decade and the Commission has not touched it in over two years, this Court must provide a reasonable interpretation of the law.

This entrenched circuit split is producing stark and unjust sentencing disparities that profoundly affect defendants' lives and undermine the core objectives of the Guidelines. Only this Court can resolve the confusion and restore uniformity to the federal sentencing framework. As this Court reaffirmed in *Kisor v. Wilkie*, 139 S. Ct. 2400 (2019), the reasonable interpretation of federal regulations, such as the Sentencing Guidelines, rests squarely with the judiciary. The time has come for this Court to provide clarity and ensure that federal sentencing does not hinge on the happenstance of geography.

[3] *available at https://www.ussc.gov/sites/default/files/pdf/amendment-process/official-text-amendments/202505_Amendments.pdf*.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be granted.

Respectfully submitted,

/s/ Charles D. Paul
Charles D. Paul (AT0014293)
Nidey Erdahl Meier & Araguás PLC.
425 2nd St. SE, Suite 1000
Cedar Rapids, Iowa 52401
(319) 369-0000
cpaul@eiowalaw.com
Counsel Of Record

/s/ Bryan Mugge
Bryan S. Mugge (AT0015299)
Associate Attorney
Nidey Erdahl Meier & Araguás PLC.
425 2nd St. SE, Suite 1000
Cedar Rapids, Iowa 52401
(319) 369-0000