

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

JAMES DELAROSA BORDEN — PETITIONER
(Your Name)

vs.

UNITED STATES AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

James Delarosa Borden
(Your Name)

P.O. Box 8000
(Address)

Bradford, PA 16701
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

1 SEE *CF. CLASS V. UNITED STATES*, 137 S. Ct. 1065, 197 L. Ed. 2d 175 (2017) (mem.) (granting certiorari in a case presenting the question: "Whether a guilty plea inherently waives a defendant's right to challenge the constitutionality of his statute of conviction.")

2 Whether the Eighth Circuit erred in finding that Borden is a career offender.

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:

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION.....	
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	
STATEMENT OF THE CASE	5
REASONS FOR GRANTING THE WRIT	7
CONCLUSION.....	8

INDEX TO APPENDICES

APPENDIX A

Lower Court's (8th Cir.) Opinion

APPENDIX B

APPENDIX C

APPENDIX D

APPENDIX E

APPENDIX F

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

Class v United States, 137 S.Ct. 1065, 147 L. Ed. 2d 175 (2017)	
Anders v California, 386 U.S. 738 (1967)	
Baxter v. United States, 966 F.2d 387, 389 (8th Cir. 1992)	
United States v. Callaway, 762 F.3d 754, 759 (8th Cir. 2014)	
United States v. House, No. 16-1691, 2017 WL 2807338	
United States v. Lamb, 847 F.3d 928, 930 (8th Cir. 2017)	
Penson v. Ohio 488 U.S. 75 (1988)	
United States v. Mathis 136 S.Ct. 2243, 195 L. Ed. 2d 2017	

STATUTES AND RULES

OTHER

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 No. 16-2570; 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☐ is unpublished.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 7/26/2017.

☐ 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: 9/21/17, and a copy of the order denying rehearing appears at Appendix B.

☐ 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

Fifth Amendment right

STATEMENT OF THE CASE

James Delarosa Borden directly appeals his conviction and sentence upon his guilty plea to drug charges, after the district court denied his motion to dismiss the indictment pursuant to purported violations of his rights under the Interstate Agreement on Detainers Act (IADA). His counsel moved for leave to withdraw, and filed a brief under *Anders v. California*, 386 U.S. 738 (1967).

We conclude that the district court did not err in denying Borden's motions to dismiss the indictment, because he waived his right to assert IADA violations when he pleaded guilty. See *Baxter v. United States*, 966 F.2d 387, 389 (8th Cir. 1992) (by pleading guilty, defendant waived his right to assert IADA violations). We further conclude that the district court did not plainly err in finding-- for purposes of the career-offender enhancement that the Michigan armed-robbery conviction qualified as a crime of violence and that the Michigan possession-with-intent-to-distribute conviction qualified as a controlled-substance offense. See *United States v. Callaway*, 762 F.3d 754, 759 (8th Cir. 2014) (procedural errors not objected to at sentencing are reviewed for plain error); cf. *United States v. House*, No 16-1691, 2017 WL 2807338, at *3-4 (6th Cir. June 14 2017) (Michigan possession-with-intent-to-distribute conviction was controlled-substance offense for purposes of career offender enhancement); *United States v. Lamb*, 847 F.3d 928, 930 (8th Cir. 2017) (Michigan unarmed robbery convictions were violent felonies under Armed Career Criminal Act).

Furthermore, we have independently reviewed the record under *Person v. Ohio*, 488 U.S. 75 (1988) and have found no non-frivolous issues for appeal. Accordingly, we grant counsel's motion, deny Borden's motion, and we affirm.

REASONS FOR GRANTING THE PETITION

Borden does not have the requisite convictions to qualify as a career offender pursuant to U.S.S.G. § 4B1.1 and that as a result his sentencing guideline range was miscalculated. Borden was convicted in the third Circuit Court of Michigan of armed robbery and convicted in the Twenty First Judicial Circuit of Missouri of robbery in the first degree. Borden was convicted in the Fourth Circuit Court of Michigan of possession with intent to deliver less than 50 grams of cocaine. Borden contends that this statute criminalizes more than just those acts that would constitute a generic controlled substance offense under U.S.S.G. § 4B1.2 (b), and does so in a manner that involves multiple means of committing a single element. The base of contention on Mathis v. United States, 136 S.Ct. 2243, 195 L. Ed. 2d 604 (2016) a case in which the United States Supreme Court held that Iowa's burglary statute included a location element of the offense that exceeded the breadth of that element of generic burglary, and as a result such a conviction cannot give rise to a sentence enhancement under the career offender. The relevant inquiry for the Court was whether the statute at issue set forth alternative elements of the offense, or alternative means of committing the offense.

Borden prior robbery convictions does not satisfy the "physical force" element required to treat a conviction as a crime of violence under U.S.S.G. § 4B1.2 (1). They do not have element "the use, attempted use, threatened use of physical force against the person of another."

Therefore Petitioner request this court grant Certiorari for the reasoning stated.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Jamer Delaosa Borders

Date: 12.18.17