

IN THE SUPREME COURT OF THE UNITED STATES

JACKLIN CHERAMY, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether petitioner's prior convictions under state drug laws were for "controlled substance offense[s]" under Sentencing Guidelines §§ 2K2.1(a)(2) and 4B1.2(b) (2021).

PARTIES TO THE PROCEEDING

Petitioner is Jacklin Cheramy.

Respondent is the United States of America.

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No. 25-6756

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OPINION BELOW

The opinion of the court of appeals (Pet. App. A1-A8¹) is available at 2025 WL 3121871.

JURISDICTION

The judgment of the court of appeals was entered on November 7, 2025. The petition for a writ of certiorari was filed on February 5, 2026. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

¹ The appendix to the petition for a writ of certiorari is not consecutively paginated. This brief treats the appendix as if it were consecutively paginated, with the first page of the court of appeals' opinion as page one (A1).

STATEMENT

Following a guilty plea in the United States District Court for the Southern District of Florida, petitioner was convicted on one count of possessing a firearm following a felony conviction, in violation of 18 U.S.C. 922(g)(1), and one count of aggravated identity theft, in violation of 18 U.S.C. 1028A(a)(1). Am. Judgment 1. The district court sentenced petitioner to 108 months of imprisonment, to be followed by three years of supervised release. Id. at 2-3. The court of appeals affirmed. Pet. App. A1-A8.

1. In 2021, police received a report that petitioner had raped his former romantic partner in his apartment. Presentence Investigation Report (PSR) ¶¶ 8-14. Police executed a search warrant on the apartment and found two firearms belonging to petitioner and 35 credit cards belonging to other people. PSR ¶¶ 15-16.

A federal grand jury in the Southern District of Florida charged petitioner with one count of possessing a firearm following a felony conviction, in violation of 18 U.S.C. 922(g)(1); one count of fraud in connection with access devices, in violation of 18 U.S.C. 1029(a)(3); and one count of aggravated identity theft, in violation of 18 U.S.C. 1028A(a)(1).² Indictment 1-2.

² Petitioner was also charged with several state offenses, including armed sexual battery. PSR ¶ 19.

Petitioner pleaded guilty to the felon-in-possession and identity-theft offenses. Am. Judgment 1.

2. In preparation for sentencing, the Probation Office determined that petitioner had "at least two felony convictions of a controlled substance offense" and therefore qualified for a higher base offense level under Sentencing Guidelines § 2K2.1(a)(2) (2021). PSR ¶ 25. Section 2K2.1 incorporates by reference the definition of "controlled substance offense" in Sentencing Guidelines § 4B1.2(b) (2021). See Sentencing Guidelines § 2K2.1, comment. (n.1) (2021).

Section 4B1.2(b), in turn, defines the term as

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.

Sentencing Guidelines § 4B1.2(b) (2021). The Probation Office identified three prior convictions, each of which was entered in 2008 for conduct that occurred in 2006, as satisfying that definition: a conviction for selling and possessing with intent to sell cocaine, in violation of Fla. Stat. § 893.13 (2006); a conviction for trafficking cocaine, in violation of Fla. Stat. § 893.135 (2006); and a conviction for possessing marijuana with intent to sell, in violation of Fla. Stat. § 893.13 (2006). PSR ¶¶ 25, 37-38.

Petitioner objected to the enhancement, arguing that none of those prior convictions in fact qualified as convictions for a controlled substance offense. D. Ct. Doc. 25, at 2-9 (Aug. 28, 2022). Petitioner observed that at the time of his crimes, the State's definition of cocaine included ioflupane, and the State's definition of marijuana included hemp, whereas both the federal controlled substance schedules and the State's own controlled substance laws had been amended since the time of his convictions to exclude both ioflupane and hemp. Ibid.

The district court overruled petitioner's objection and applied the base offense level specified in Section 2K2.1(a)(2). Sent. Tr. 11-12. The court accordingly calculated an advisory Guidelines range for the felon-in-possession count of 84-105 months of imprisonment. Id. at 58. It sentenced petitioner to consecutive terms of 84 months of imprisonment on the felon-in-possession count and 24 months of imprisonment on the identity-theft count. Am. Judgment 1-2.

3. The court of appeals affirmed in an unpublished decision. Pet. App. A1-A8. The court rejected petitioner's argument that, because "neither ioflupane I123 nor hemp were controlled by the federal" Controlled Substances Act (CSA), 21 U.S.C. 801 et seq., at the time of his federal sentencing, none of his prior Florida convictions qualified as a controlled substance offense under Section 4B1.2(b). Pet. App. A8 (citation omitted). Applying its precedent, the court explained that, for purposes of

the Sentencing Guidelines, a controlled substance offense is one that involves “a drug regulated by state law at the time of the conviction, even if it is not federally regulated, and even if it is no longer regulated by the state at the time of federal sentencing.” Ibid. (quoting United States v. Dubois, 94 F.4th 1284, 1300 (11th Cir. 2024), vacated on other grounds, 145 S. Ct. 1041 (2025)).

ARGUMENT

Petitioner renews his contention (Pet. 5-11) that his prior Florida cocaine and marijuana offenses are not “controlled substance offense[s]” under Sentencing Guidelines §§ 2K2.1(a)(2) and 4B1.2(b) (2021) because at the time that he was sentenced for his federal crime, the federal controlled substances schedules did not include either ioflupane or hemp. The court of appeals correctly rejected petitioner’s Guidelines claim, and the question presented involves only the interpretation of the Sentencing Guidelines, and thus does not warrant this Court’s review. This Court has recently and repeatedly denied petitions presenting similar claims. It should follow the same course here.

1. As an initial matter, petitioner does not address the court of appeals’ recognition (Pet. App. A6-A7) that the classification of a state offense as a “controlled substance offense” under Sentencing Guidelines § 4B1.2 does not involve a comparison between state and federal laws. Contrary to his

assertion, the court below did not “hold[] that a prior state drug trafficking offense must be judged under the categorical approach with the federal ‘controlled substance’ offense,” Pet. 5, but instead has observed that “a ‘controlled substance’ under U.S.S.G § 4B1.2’s definition of ‘controlled substance offense’ is, for prior state offenses, a drug regulated by state law * * * , even if it is not federally regulated,” Pet. App. A7 (emphasis added; brackets omitted). And for reasons explained in the government’s brief in opposition in White v. United States, No. 25-6906 (Apr. 27, 2026) (White Br. in Opp.), a copy of which is being served on petitioner, that observation was correct. See id. at 9-13. Thus, to the extent that petitioner’s argument relies on the controlled substances schedules in the federal CSA (see, e.g., Pet. 10), it rests on an incorrect premise.

To the extent that petitioner may be claiming that his prior Florida offenses are not controlled substance offenses because Florida itself removed iofluplane and hemp from its own definitional laws after he was convicted, his focus on state law at the time of his federal sentencing is incorrect. As the government has explained in its brief in opposition in Nelson v. United States, No. 25-6622 (Apr. 16, 2026) (Nelson Br. in Opp.), a copy of which is being served on petitioner, determining whether a prior conviction involved a controlled substance under Section 4B1.2(b) looks to the definitions in effect at the time of the

prior crime. See id. at 9-11. Although Nelson involved a prior conviction under federal law, rather than state law (and thus a comparison between different versions of the federal schedule rather than different versions of the state controlled-substance schedule), the same logic is applicable here.

Petitioner's prior cocaine and marijuana offenses were therefore correctly classified as controlled substance offenses. The term "controlled substance offense" in Section 4B1.2 is defined to include "an offense under * * * state law * * * 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." Sentencing Guidelines § 4B1.2(b) (2021). Here, petitioner's relevant prior drug convictions were for (1) selling and possessing with intent to sell cocaine, in violation of Fla. Stat. § 893.13(1)(a) (2006); (2) trafficking cocaine, in violation of Fla. Stat. § 893.135(1)(b) (2006); and (3) possessing with intent to sell marijuana, in violation of Fla. Stat. § 893.13(1)(a) (2006). C.A. App. 43-51, 64-69; PSR ¶¶ 37-38. Because cocaine and marijuana are substances whose use was restricted by Florida law at the time of his conviction, those substances fall squarely within the meaning of "controlled substance," namely, "any of a category of behavior-altering or addictive drugs, as heroin or

cocaine, whose possession and use are restricted by law.’” United States v. Ruth, 966 F.3d 642, 654 (7th Cir. 2020) (quoting The Random House Dictionary of the English Language 443 (2d ed. 1987)), cert. denied, 141 S. Ct. 1239 (2021).

2. Although the federal courts of appeals are not uniform on either the relevance of federal analogues or the issue of timing in classifying a prior offense as a controlled substance offense under Sentencing Guidelines § 4B1.2(b), the government’s briefs in opposition in White and Nelson explain why review of those issues is unwarranted. White Br. in Opp. at 6-9, 13-14; Nelson Br. in Opp. at 6-9, 11-12. And the Court has repeatedly denied petitions for writs of certiorari challenging the application of Section 4B1.2(b). See White Br. in Opp. at 6 & n.*; Nelson Br. in Opp. at 12 & n.1.

The interpretation of Section 4B1.2(b) is an issue of Sentencing Guidelines interpretation and thus a matter for the Sentencing Commission -- which can amend the Guidelines to eliminate any conflict or correct any error -- not this Court. See Braxton v. United States, 500 U.S. 344, 347-349 (1991); White Br. in Opp. at 6-9; Nelson Br. in Opp. at 6-9. The Sentencing Commission has devoted considerable attention to Section 4B1.2’s definition of controlled substance offense, and has considered specific proposals to address the issues implicated here. See U.S. Sent. Comm’n, Proposed Amendments to the Sentencing

Guidelines 43-50 (Jan. 30, 2026), https://www.ussc.gov/sites/default/files/pdf/amendment-process/reader-friendly-amendments/202602_rf-proposed.pdf. Accordingly, the Commission “should have the opportunity to address this issue in the first instance.” Longoria v. United States, 141 S. Ct. 978, 979 (2021) (statement of Sotomayor, J., respecting the denial of certiorari) (discussing another Guidelines issue) (citing Braxton, 500 U.S. at 348); see Guerrant v. United States, 142 S. Ct. 640, 640-641 (2022) (statement of Sotomayor, J., respecting the denial of certiorari) (similar for issue of whether controlled substance offense must involve a substance listed on the federal schedules to qualify under the Guidelines).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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