25-6867 ORIGINAL

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

Richard Henry Kayian — PETITIONER
(Your Name)

vs.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

Richard Henry Kayian
(Your Name)

FCI Fort Dix
PO Box 2000
(Address)

Joint Base MDL, NJ 08640
(City, State, Zip Code)

(609) 723-1000
(Phone Number)

QUESTION(S) PRESENTED

1. whether a prior state conviction for simple possession of 1.5 grams of cocaine - punished with probation only - qualities as a "serious drug felony" predicate under 21 U.S.C. §851, in light of the First Step Act's exclusion of minor offenses from enhancement eligibility and Florida's statutory reforms deeming such conduct non-felonious. Cf. United States v. Taylor, 142 S. Ct. 2015 (2022)(vacating career-offender status for attempted possession).

2. Whether, under Apprendi v. New Jersey, 530 U.S. 466 (2000), United States v. Booker, 543 U.S. 220 (2005), Alleyne v. United States, 570 U.S. 99 (2013), Woods v. United States, 590 U.S. 545 (2020), and Erlinger v. United States, 144 S. Ct. 993 (2024), the Fifth and Sixth Amendments permit sentencing based on judicially found drug purity and quantity (here, 5kg of "ice" methamphetamine at 100.5% purity per unreliable lab report) exceeding the jury's 500-gram mixture verdict, effectively mandating a sentence 4x the advisory range.

3. Whether a Guidelines offense level of 44 - driven by uncharged judicial findings on drug type, purity, role and money laundering never submitted to the jury - yields a substantively unreasonable sentence under Booker, where the statutory maximum absent enhancements were 20 years; and if that sentence is constitutionally valid.

LIST OF PARTIES

[XX] 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:

RELATED CASES

United States v. Richard Henry Kayian, 1:16-cr-00041-JPJ-1, Western District of Virginia, Abingdon Division (judgment entered 5 July 2018).

United States v. Kayian, No. 18-4489, United States Court of Appeals for the Fourth Circuit (Termed 6 March 2019).

United States v. Kayian, No. 20-7904, United States Court of appeals for the Fourth Circuit (Termed 28 June 2021).

In re: Richard Kayian, No. 24-247, United States Court of Appeals for the Fourth Circuit (Termed 15 November 2024).

United States v. Kayian, No. 24-6681, United States Court of Appeals for the Fourth Circuit (Termed 16 June 2025).

TABLE OF AUTHORITIES CITED

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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

[X] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

[X] reported at 2025 U.S. App. LEXIS 14790, 2025 LX 197990; 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 B to the petition and is

[X] reported at 2020 U.S. Dist. LEXIS 219155; 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

[X] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was 16 June 2025.

[X] 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: _____, 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. § 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

The relevant statutory provisions (18 U.S.C. §§ 841(b)(1)(A), (C), (E)) are set forth in the appendix. Pet. App. C

STATEMENT OF THE CASE

The case arises from a 2016 grand jury indictment, charging Petitioner with conspiracy to distribute 500 grams of more of a methamphetamine mixture, 21 U.S.C. §841, 846, 846(b)(1)(B)(iii), plus money laundering, 18 U.S.C. §1956.

After a jury trial convicted Petitioner solely on the conspiracy count- explicitly finding only a 500-gram mixture, with no verdict on "ice" purity or quantities beyond 500 grams - Petitioner received a 324-month sentence. His attorney filed an Anders brief, resulting in the District Court's denial of direct appeal. In November 2020, Petitioner filed a §2255 motion to vacate, set aside, or correct his sentence under 28 U.S.C. §2255, challenging (i) the use of his 1997 Florida cocaine possession charge as a §851 predicate, (ii) laboratory results and Speedy Trial violations, and (iii) sufficiency of evidence justifying warrants and wiretaps.

At trial, the jury convicted Petitioner of conspiring to distribute 500 grams of a mixture containing methamphetamine, despite the absence of a jury finding that the offense involved "ice", or quantities beyond 500 grams. Had Petitioner been senced on that verdict, his base offense level would have been 30. With acceptance of responbility, it would have been reduced to 27, producing an advisory sentencing range of approximately 70 to 87 months (6 to 7 years), with a statutory maximum of 20 years absent a §851 enhancement.

At sentencing, the District Court made judicial findings under a preponderance standard:

> That the offense involved 5 kilograms of "ice" methamphetamine; that Petitioner acted as an organizer/manager (§3B1.1)(+4); and that a money laundering enhancement applied (§2S1.1)(+2).

These drove his offense level to 44 and, with the §851 predicate, a Guidelines range of life - yielding 324 months, over 4-times the jury-based range.

This split the 4th Circuit from the 9th Circuit on purity findings (see United States v. Thomas, 822 F.3d 460 (9th Cir. 2016)(requiring jury findings for purity enhancements)) and undermined First Step Act reforms excluding minor predicates like Petitioner's Florida conviction (Fla. Stat. §893.13(6)(a), max 1 year but probated). The Fourth Circuit affirmed in an unpublished per curiam opinion, perpetuating a circuit split on §851's "serious felony" threshold. See United States v. Norman, 890 F.3d 318 (4th Cir. 2020)(excluding some minors) contra United States v. Johnson, 932 F.3d 966 (D.C. Cir. 2019)(including probation only offenses).

The Las Vegas laboratory report used to justify the "ice" classification claimed that the methamphetamine was 100.5% pure. Such a result is scientifically impossible and raises serious concerns about the reliability of the purity determination. The sentencing court relied on this questionable evidence to classify the drugs as "ice" methamphetamine, dramatically raising the base offense level.

These judicial findings increased Petitioner's offense level from 30 (for 500 grams of a minxutre) to 44, where the U.S. Sentencing Guidelines expressly cap offense levels at 43.

Under the First Step Act and current Florida state law, such a minor possession conviction does not qualify as a "serious drug felony". The result was a sentence nearly four times higher than the lawful range based on the jury's verdict.

REASONS FOR GRANTING THE PETITION

I. The 1996 Florida Conviction Should Not Be Used as a Predicate Offense

The Court of Appeals' decision conflicts with Alleyne v. United States, 570 U.S. 99 (2013), which held that any fact that increases a mandatory minimum sentence must be submitted to a jury. In Petitioner's case, the classification of his 1996 Florida conviction as a predicate offense increased his mandatory minimum sentence, yet this was done without the necessary jury findings. Such an enhancement violates Petitioner's constitutional rights under the Sixth Amendment.

Further, in United States v. Booker, 543 U.S. 220 (2005), this Court ruled that the sentencing guidelines are advisory, and sentencing enhancements based on prior convictions must be supported by a jury determination. Here, the use of Petitioner's 1996 conviction as a predicate offense, without a jury finding that it met the required legal standards, violated this principle. Additionally, Wooden v. United States, 142 S. Ct. 1063 (2022), emphasized that prior convictions must be scrutinized to ensure they meet specific criteria before being used to enhance sentences.

More recently, Erlinger v. United States, 602 U.S. 219 (2024) held that judicial factfinding by a preponderance of evidence that a defendant has three ACCA predicate convictions committed on different occasions violates the Fifth Amendment guarantee of Due Process of Law and the Sixth Amendment guarantee to a jury trial. 602 U.S. at 833-34. Such a determination must be made "by a unanimous jury beyond a reasonable doubt" See Id. at 834.

The 1996 conviction carried a sentence of probation, and would not

qualify as a "serious drug felony" today, which was used to trigger a §851 enhancement in Petitioner's case. This exemplifies the inequities Congress intended to eliminate through the First Step Act.

Given these precedents, the Court of Appeals erred in upholding the sentencing enhancement based on the 1996 Florida conviction, as it was not subjected to the necessary jury review, which is now necessary to correct these errors and restore uniformity to federal sentencing.

II. Petitioner's Conviction Involved Conspiracy to Distribute Methamphetamine Mixture, Not "Ice"

The distinction between methamphetamine mixture and "ice" is crucial for sentencing purposes. In Apprendi v. New Jersey, 530 U.S. 466 (2000), the Court emphasized the importance of distinguishing between difference forms of controlled substances, as they carry significantly different penalties. In Petitioner's case, the conviction specifically involved a conspiracy to distribute methamphetamine mixture. There was no indication that the methamphetamine involved was the more potent form of "ice", which has a higher threshold for enhancements.

Under Wooden v. United States, 142 S. Ct. 1063 (2022), this Court clarified that when applying sentencing enhancements based on prior convictions, the type of substance involved is a critical factor. In this case, the sentencing court erroneously treated the methamphetamine as through it were "ice", which resulted in an inflated sentence. Had the court sentenced Petitioner on the jury's verdict, his Guideline range would have been 70 to 87 months. Instead, judicial findings raised his exposure to 27 years. This

20-year sentencing disparity underscores the unconstitutional nature of the sentence. This was contrary to the principles of sentencing fairness set out in Erlinger v. United States, 542 U.S. 424 (2004), which mandates careful consideration of the substance type when determining the applicability of sentencing enhancements.

Therefore, Petitioner's sentence should not have been enhanced based on the mistaken equivalence of methamphetamine with "ice".

III. Petitioner's Total Offense Level of 44 Exceeded the Guidelines Maximum of 43.

Petitioner's offense level was calculated to be 44, which is above the maximum level of 43, and was based on judicial findings and not jury findings. The quantity of drugs attributed to Petitioner was never submitted to the jury, and conflicts with the jury findings of meth-mixture and not "ice", rendering a much higher sentence, in violation of Booker, than had the court sentenced Petitioner based on jury findings.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Date: October 30, 2025