

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 2025

NAMIR WHITE,

Petitioner,

v.

UNITED STATES OF AMERICA

Respondent.

On Petition for A Writ of Certiorari
To the United States Court of Appeals
For the Third Circuit

PETITION FOR A WRIT OF CERTIORARI

RICHARD COUGHLIN
Rcoughlinpa24@gmail.com

Richard Coughlin, Esq. LLC
113 North Lambert Street
Philadelphia, PA 19103
Tel: (973) 536-9379

QUESTION PRESENTED FOR REVIEW

Under the federal Sentencing Guidelines § 2K2.1(a)(2), a defendant previously convicted of a “controlled substance offense” is subject to a sentencing enhancement. The Guidelines define “controlled substance offense” as “an offense under federal or state law * * * that prohibits the manufacture, import, export, distribution, or dispensing of a *controlled substance*.” U.S.S.G. § 4B1.2(b) (emphasis added); *see id.* § 2K2.1 application note 1. The Guidelines do not, however, define “controlled substance.”

When a federal defendant is subject to a controlled substance enhancement under the Sentencing Guidelines, does the term “controlled substance” in the Sentencing Guidelines refer only to those substances controlled under federal law or also include substances controlled under state law?

PARTIES TO THE PROCEEDING

The parties to the proceeding in the court whose judgment is sought to be reviewed are as follows:

1. United States of America
2. Namir White

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
PARTIES TO THE PROCEEDING.....	ii
TABLE OF CONTENTS... ..	iii
TABLE OF AUTHORITIES.....	iv
PETITION FOR A WRIT OF CERIORARI.....	1
OPINION BELOW	1
JURISDICTION	1
PARTIES TO THE PROCEEDINGS.....	2
RELEVANT GUIDELINES PROVISIONS	2
STATEMENT OF THE CASE.....	2
REASONS FOR GRANTING THE PETITION	3
I. Certiorari is warranted because the Courts of Appeals are divided over whether the Sentencing Guidelines’ definition of “controlled substance” includes substances controlled only by state law and while the Sentencing Commission has included proposed amendments to address the issue in 2026, there is no certainty that an amendment will be adopted to resolve the conflict.	
CONCLUSION.....	9
APPENDIX.....	App. 1-33
Opinion of the United States Court of Appeals for the Third Circuit: <i>United States v. White</i> , Docket No. 22-1179 (not precedential).....	App. 1

(August 31, 2023).....	App. 14
Order denying petition for panel rehearing (January 20, 2026).....	App. 33

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page</u>
<i>Aurelien v. United States</i> , 144 S.Ct. 353 (2023) (Mem)	4
<i>Burgess v. United States</i> , 553 U.S. 124 (2008)	5
<i>Demont v. United States</i> , 144 S.Ct. 281 (2023) (Mem).....	4
<i>Gall v. United States</i> , 552 U.S. 38 (2007)	7
<i>Lewis v. United States</i> , 144 S.Ct. 489 (2023) (Mem)	4
<i>Molina-Martinez v. United States</i> , 578 U.S. 189 (2016)	7
<i>Taylor v. United States</i> , 495 U.S. 515 (1990).....	5
<i>United States v. Bautista</i> , 989 F.3d 698 (9 th Cir. 2021)	6
<i>United States v. Crocco</i> , 15 F.4th 20 (1 st Cir. 2021)	7
<i>United States v. Dubois</i> , 94 F.4th 1284 (11 th Cir. 2024)	7
<i>United States v. Gomez-Alvarez</i> , 781 F.3d 787 (5 th Cir. 2015)	7
<i>United States v. Henderson</i> , 11 F.4th 713 (8 th Cir. 2021).....	7
<i>United States v. Jones</i> , 81 F.4th 591 (6 th Cir. 2023).....	7
<i>United States v. Jones</i> , 15 F.4th 1288 (10 th Cir. 2021)	7
<i>United States v. Lewis</i> , 58 F.4th 764 (3 ^d Cir. 2023).....	<i>passim</i>
<i>United States v. Myrick</i> , Crim. No. 19-354, 2023 WL 2351693 (E.D. Pa. March 3, 2023)	5
<i>United States v. Ruth</i> , 966 F.3d 642 (7 th Cir. 2020)	7

United States v. Townsend, 897 F.3d 66 (2d Cir. 2018)..... 6

United States v. Vance, Crim. No. 23-34, 2025 WL 2777382 (W.D. Pa. September 23, 2025)..... 5

United States v. Ward, 972 F.3d 364 (4th Cir. 2020).. 7, 8

Wiggins v. United States, 145 S.Ct. 2621 (2025)..... 4

Statutes

18 U.S.C. § 641..... 3

18 U.S.C. § 922(a)(1)(A)..... 3

18 U.S.C. § 922(g)(1)..... 2

18 U.S.C. § 924(c)(1)(A)(i)..... 3

18 U.S.C. § 1951..... 3

18 U.S.C. § 3231..... 1

18 U.S.C. § 3742..... 2

21 U.S.C. § 802(9)..... 6

21 U.S.C. § 802(16)..... 6

21 U.S.C. § 802(17)..... 6

21 U.S.C. § 802(41)..... 6

21 U.S.C. § 802(44)..... 5, 6

28 U.S.C. § 991(b)(1)(B)..... 7

28 U.S.C. § 1254(1)..... 1

28 U.S.C. § 1291..... 2

35 Pa. Stat. § 780-104(1)(ii)..... 6

35 Pa. Stat. § 780-104(2)(i)(4)..... 6

Sentencing Guidelines

U.S.S.G. § 2K2.1(a)(2)..... 2, 3

U.S.S.G. § 2K2.1, cmt. n. 1..... 2

U.S.S.G. § 4B1.2(b)..... 2, 3, 4, 5

Other Authorities

Lewis v. United States, No. 23-198, Petition for Certiorari,
2023 WL 5753604 (Aug. 31, 2023) 4

U.S. Sentencing Comm'n, *Amendments to the Sentencing Guidelines*
(May 2023) 8

U.S. Sentencing Comm'n, *Final Priorities for Amendment Cycle* (Oct. 2022) 8

U.S. Sentencing Comm'n, *Proposed 2026 Amendments to the Federal*
Sentencing Guidelines Published January 30, 2026 (January 2026) 8

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 2025

NAMIR WHITE,

Petitioner,

v.

UNITED STATES OF AMERICA

Respondent.

PETITION FOR A WRIT OF CERTIORARI

Petitioner Namir White respectfully requests that the Court issue a writ of certiorari to review the judgment of the United States Court of Appeals for the Third Circuit entered on December 18, 2025, in the captioned matter.

OPINION BELOW

The decision of the United States Court of Appeals for the Third Circuit was memorialized in an unpublished opinion: *United States v. White*, Docket No. 22-1179 (3d Cir. 2024). The opinion is attached at Appendix 1-13. (“App.”)

JURISDICTION

The District Court had jurisdiction under 18 U.S.C. § 3231 and entered

judgment on January 26, 2022. The Third Circuit had jurisdiction under 18 U.S.C. § 3742 and 28 U.S.C. § 1291, and entered judgment on December 18, 2025. App. 1-13. This Court has jurisdiction under 28 U.S.C. § 1254(1).

PARTIES TO THE PROCEEDINGS

The caption of the case in this Court contains the names of all parties to this proceeding, namely, Petitioner, Namie White, and respondent, the United States.

RELEVANT GUIDELINES PROVISIONS

U.S.S.G. § 2K2.1(a)(2) provides in relevant part: Base Offense Level (Apply the Greatest): * * * (2) 24, if - (A) the defendant committed any part of the instant offense subsequent to sustaining at least two felony convictions of either a crime of violence or a controlled substance offense.

Application note 1 to U.S.S.G. § 2K2.1 provides in relevant part:

“Controlled substance offense” has the meaning given that term in § 4B1.2(b) and Application Note 1 of the Commentary to § 4B1.2 (Definitions of Terms Used in Section 4B1.1).

U.S.S.G. § 4B1.2(b) provides:

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

Petitioner Namir White was charged with and convicted by a jury of multiple counts of illegal possession of firearms by a convicted felon, under 18 U.S.C. § 922(g)(1), as well as one count each of Hobbs Act Robbery, in violation

of 18 U.S.C. §1951, using and carrying a firearm during and in relation to a crime of violence, in violation of 18 U.S.C. §924(c)(1)(A)(i), theft of government property, in violation of 18 U.S.C. § 641, and dealing in firearms without a license, in violation of 18 U.S.C. § 922(a)(1)(A).

Mr. White faced an advisory Guidelines range for the firearms charges of 210 to 262 months based on a total offense level 33 and criminal history category V. In addition, his conviction for using and carrying a firearm during and in relation to a crime of violence exposed him to a mandatory consecutive sentence of 60 months, resulting in a total sentencing range of 270 to 322 months. After application of a combination of departure and variance, Mr. White was sentenced to a prison term of 180 months. In the district court he did not contest the use of his prior Pennsylvania heroin and cocaine distribution convictions to increase his advisory guideline range under § 2K2.1(a)(2), but on appeal he argued that it was plain error for the court to do so because his prior Pennsylvania heroin and cocaine distribution convictions did not meet the definition of “controlled substance offense” under U.S.S.G. § 4B1.2(b). The Third Circuit rejected this argument, finding that the decision in *United States v. Lewis*, 58 F.4th 764 (3d Cir. 2023), decided after White’s opening brief was filed, established that § 4B1.2(b)’s definition of “controlled substance offense” properly included convictions under state law and foreclosed Mr. White’s argument on appeal. App. 6-7. In *Lewis*, the Third Circuit held that the term “controlled substance” as used in the Sentencing Guidelines refers to

a “drug regulated by either state or federal law” so the fact that a state statute criminalized conduct that was not subject to federal prosecution was of no moment. 58 F.4th at 771. On January 20, 2026, White filed a petition for panel rehearing on a separate issue, i.e., the denial of his motion to join a point raised on behalf of his co-defendant. App. 10-11 n. 7. The petition was denied on February 10, 2026.

REASONS FOR GRANTING THE PETITION

Certiorari is warranted because the Courts of Appeals are divided over whether the Sentencing Guidelines’ definition of “controlled substance” includes substances controlled only by state law and while the Sentencing Commission has included proposed amendments to address the issue in 2026, there is no certainty that an amendment will be adopted to resolve the conflict.

The question raised in Mr. White’s petition for a writ of certiorari has been raised before this Court in numerous prior petitions. *See e.g., Wiggins v. United States*, 145 S.Ct 2621, 2622 (2025) (Statement of Sotomayer, J., respecting denial of certiorari and noting that “while the Commission has since acknowledged the split. . . it has not resolved it.”) (citing *Guerrant v. United States*, 146 S. Ct. 640, 641 (2022) (statement of Sotomayer, J., respecting denial of certiorari) (collecting cases)); *Lewis v. United States*, No. 23-198 (June 6, 2023); *Demont v. United States*, No. 22-7904 (Aug. 30, 2023); *Aurelien v. United States*, No. 23-5236 (Oct. 30, 2023). Mr. White’s petition for certiorari relies upon and adopts the same legal arguments raised in Point II of Jamar Lewis’s petition for certiorari. *See Lewis v. United States*, No. 23-198, Petition for Certiorari, 2023 WL

5753604, at App.18-23. As argued in *Lewis* with respect to prior New Jersey state convictions, Mr. White contends that his two prior Pennsylvania state convictions for cocaine and heroin distribution did not meet the definition of “controlled substance offense” under U.S.S.G. § 4B1.2(b) because Pennsylvania state law defines cocaine and heroin more broadly than the Federal Controlled Substances Act. Indeed, in the slightly different context of Armed Career Criminal Act (ACCA) prosecutions, courts in the Third Circuit have determined that the Pennsylvania controlled substance statute as it relates to both cocaine and heroin allow for convictions for substances that would not be subject to prosecution under the federal Controlled Substances Act and did not, therefore, qualify as “serious drug offense[s]” for ACCA purposes. *See e.g. United States v. Myrick*, Criminal No. 19-354, 2023 WL 2351693 *2-4 (E.D. Pa. March 2, 2023) (cocaine and heroin); *United States v. Vance*, Criminal No. 24-34, 2025 WL 2777382 8 2-4 (W.D. Pa. September 23, 2025) (cocaine).

Guidelines Section 4B1.2(b) provides:

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 counterfeit substance) with intent to manufacture, import, export, distribute, or dispense.

To determine whether the state statute under which a defendant was convicted is a “controlled substance offense,” a court must compare the elements of the state statute with the federal Controlled Substance Act. The comparison allows the court to determine whether the state statute is broader, narrower, or the same as its

federal counterpart. *See, e.g., Taylor v. United States*, 495 U.S. 515, 599 (1990).

It is Mr. White's position that the federal counterpart -- section 802(44) of the Controlled Substances Act -- provides the exclusive definition of "controlled substance offense." *Burgess v. United States*, 553 U.S. 124, 133 (2008). Section 802(44) of Title 21 states: "The term 'controlled substance offense' means an offense that is punishable by imprisonment for more than one year under any law of the United States or of a State or foreign country that prohibits or restricts conduct relating to narcotic drugs, marihuana, anabolic steroids, or depressant or stimulant substances." Other subsections define each substance group. *See* 21 U.S.C. § 802(17) (defining "narcotic drug"); § 802(16) (defining "marihuana"); § 802(41) (defining "anabolic steroid"); § 802(9) (defining "depressant or stimulant substance").

Mr. White maintained on appeal that prior to applying the sentencing enhancement, the district court should have determined whether there was a categorical match between 35 Pa. Stat. § 780-104(2)(i)(4) and 35 Pa. Stat. § 780-104(1)(ii). Doing so would have revealed a categorical mismatch between the Pennsylvania statutes and § 802 of the federal Controlled Substances Act because the Pennsylvania statutes define cocaine and heroin more broadly than § 802 to include positional isomers. *Id.*

After Mr. White filed his opening appeal brief, however, the Third Circuit held that a "controlled substance" under § 4B1.2(b) includes drugs regulated by either state or federal law. *Lewis*, 58 F.4th at 771. App. 6-7. The court concluded therefore that "[u]nder *Lewis*, White's claim cannot succeed."

The decision in *Lewis*, however, is in conflict with other circuits on this exact issue. Three circuits hold that "controlled substance" refers to only those substances controlled under federal law. *United States v. Townsend*, 897 F.3d 66, 74-75 (2d Cir. 2018); *United States v. Bautista*, 989 F.3d 698, 702 (9th Cir. 2021); *United States v. Gomez-Ivarez*, 781 F.3d 787, 793-794 (5th Cir. 2015). Additionally, the First Circuit has noted the clear circuit split and signaled its agreement with the Second, Fifth, and Ninth Circuits. *United States v. Crocco*, 15 F.4th 20, 22 (1st Cir. 2021).

Seven circuits, including the Third Circuit, hold that "controlled substance" is one regulated by either federal or state law. *Lewis*, 58 F.4th at 769; *United States v. Dubois*, 94 F.4th 1284, 1296 (11th Cir. 2024); *United States v. Jones*, 81 F.4th 591, 599 (6th Cir. 2023); *United States v. Jones*, 15 F.4th 1288, 1291-96 (10th Cir. 2021); *United States v. Henderson*, 11 F.4th 713, 717-719 (8th Cir. 2021); *United States v. Ward*, 972 F.3d 364, 372-374 (4th Cir. 2020); *United States v. Ruth*, 966 F.3d 642, 651-654 (7th Cir. 2020). These courts emphasize the Guidelines' textual reference to an *offense* under state law and the lack of an explicit cross-reference to the CSA in the Guidelines.

This persistent circuit split undermines the very purpose of the Sentencing Guidelines. Congress tasked the Sentencing Commission with eliminating unwarranted sentencing disparities” for those “found guilty of similar criminal conduct.” 28 U.S.C. § 991(b)(1)(B). Consistent with that goal, the Commission's Guidelines play a “central role in sentencing.” *Molina-Martinez v. United States*, 578 U.S. 189, 191 (2016). “[D]istrict

courts must begin their analysis with the Guidelines and remain cognizant of them throughout the sentencing process.” *Gall v. United States*, 552 U.S. 38, 50 n.6 (2007).

But allowing this circuit split to persist creates the very discrepancies the Guidelines seek to avoid. Today, a defendant being federally sentenced in two-thirds of the circuits could receive a significantly longer sentence based solely on the location of his criminal conduct. The Guidelines should not treat a defendant differently “simply because they were lucky enough to commit” their federal offense “on the right side of the border”-or unlucky enough to commit it on the wrong side. *United States v. Ward*, 972 F.3d 364, 381 (4th Cir. 2020) (Gregory, C.J., concurring in judgment).

The Sentencing Commission identified this issue as a priority to resolve during the 2023 amendment cycle, and yet it expressly declined to weigh in at that time. *Compare* U.S. Sentencing Comm'n, *Final Priorities for Amendment Cycle 3* (Oct. 2022), with U.S. Sentencing Comm'n, *Amendments to the Sentencing Guidelines 55* (May 2023). Instead, the Commission allowed the split to persist and has only now included proposed amendments to address this issue as part of the 2026 amendment cycle. *See* U.S. Sentencing Comm'n, *Amendments to the Sentencing Guidelines* (January 30, 2026). There is, of course, no guarantee that an amendment will be adopted, and given the years of delay and lack of certainty, this Court should resolve the issue in the event the Sentencing Commission fails to do so.

CONCLUSION

For the foregoing reasons, Petitioner Namir White respectfully requests that the Court grant his Petition for a Writ of Certiorari.

Respectfully submitted,

s/ Richard Coughlin

RICHARD COUGHLIN, ESQ.

Counsel of Record

Richard Coughlin, Esq., LLC

113 North Lambert Street

Philadelphia, PA 19103

(973) 536-9379

Counsel for Petitioner

Namir White

Dated: February 20, 2026