

25-7152

No. _____

ORIGINAL

JAN 20 2026

OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

De Andre Owens — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

SEVENTH CIRCUIT COURT OF APPEALS

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

De Andre L. Owens BOP Reg. 14748-025
(Your Name)

FCI WILLIAMSBURG, P.O. Box 340
(Address)

Salters, SC 29590
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

WHETHER A CIRCUIT SPLIT REGARDING THE DEFINITION OF CONTROLLED SUBSTANCE OFFENSE UNDER 4B1.1(a) AND 4B1.2(b) OF THE SENTENCING GUIDELINES SHOULD BE STANDARDIZED AS TO INCLUDING STATE CONVICTIONS INVOLVING SUBSTANCES NOT PROHIBITED BY FEDERAL LAW, AS THE SENTENCING COMMISSION WOULD NOT ADDRESS THIS DIVISION TO ENSURE FAIR AND UNIFORM APPLICATION OF THE GUIDELINES.

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:

Supreme Court of the United States

1 First Street, NE

Washington, DC 20543

* * * * *

Solicitor General of the United States

950 Pennsylvania Ave, NW ; Rm 5614

Washington, DC 20530

RELATED CASES

United States v. Dubois, 94 F.4th 1284, 1294-1296 (CA11 2024)

United States v. Lewis, 58 F.4th 764 (CA3, 2023)

United States v. Minor, 121 F.4th 1085, 1089-1090 (CA5 2024)

United States v. House, 31 F.4th 745, 752-753 (CA9 2022)

Guerrant v. United States, 595 U.S. ____, 142 S.Ct. 640, 211 L.Ed 2d 522 (2022)

Wiggins v. United States, 145 S.Ct. 2621; 222 L.Ed. 2d 1148 (2025)

United States v. Ruth, 966 F.3d 642 (CA7, 2020)

United States v. Townsend, 897 F.3d 66, 71 (CA2, 2018)

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United States v. Ruth, 966 F.3d 642 (CA7, 2020)	
United States v. Tovar, 88 F.4th 720, 725 (CA7, 2023)	
Decamps v. United States, 570 U.S. 254, 257 (2013)	
United States v. Ward, 972 F.3d 364, 372 (CA4, 2020)	
United States v. Smith, 681 Fed. Appx. 483, 489 (CA6, 2017)	
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28 U.S.C. 994(f)	

OTHER

United States v. Bautista, 982 F.3d 563, 567 (CA9, 2020)	
United States v. Townsend, 897 F.3d 66, 71 (CA7, 2018)	
United States v. Gomez-Alvarez, 781 F.3d 787, 793 (CA5, 2015)	
United States v. Henderson, 11F.4th 713, 718-19 (CA8, 2021)	
United States v. Jones, 15 F.4th 1288, 1292 (CA10, 2021)	
United States v. Leal-Vega, 680 F.3d 1160, 1166 (CA9, 2012)	

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 _____; 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

reported at Sentencing Transcript, July 9, 2024; 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 December 19, 2025.

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

28 U.S.C. 994(i)(1)

18 U.S.C. 2341

28 U.S.C. 994(f)

career offender Sentencing Guidelines - Sentencing ^{U.S.} Commission -

STATEMENT OF THE CASE

This case began in 2022, involves allegations that Mr. Owens sold a confidential informant methamphetamine while on pretrial release and later attempted to pay off the informant not to testify. On April 19, 2022, Mr. Owens was charged with distributing a mixture and substance containing methamphetamine on March 15, 2022 in violation of 21 U.S.C. 841(a)(1). On July 28, 2023, the government obtained a superseding indictment and amended Count 1 to add Mr. Owens had distributed five grams or more of methamphetamine in violation of 21 U.S.C. 841(b)(1)(B) and had previously been convicted of a serious violent felony (Count 1)(R. 62). The superseding indictment also added the charge of witness tampering in violation of 18 U.S.C. 1512(b)(1) and (4)(Count 2) (R.62). The government filed a notice pursuant to 21 U.S.C. 851 on September 20, 2023, indicating Mr. Owens's prior conviction qualified as a serious violent felony under 21 U.S.C. 802(58) and raised his statutory sentencing range.

Jury trial began on February 6, 2024 (R. 154). The Jury convicted Owens on both Counts. The U.S. Probation office prepared a joint PSR on April 8, 2024 (R. 173), and determined that Mr. Owens qualified as a career offender because he had a prior conviction for a crime of violence (attempted armed robbery) and a prior conviction for a drug trafficking offense (manufacture / delivery of cocaine). (R. 173, p. 12). Both of these convictions occurred in Illinois (P. 173, p. 13, 14). The career offender base offense level was 37 (R. 173, p.12). Mr. Owens's applicable guidelines range was 360 months to life (R. 173, p.21). Without the career offender guidelines, Mr. Owens's offense level would be 35, his criminal history Category VI, and the guidelines range 292 to 365 months.

Counsel on the PSR objection in the Sentencing Memorandum and argued that Mr. Owens' 2007 conviction in Illinois for manufacture / delivery of cocaine should not be considered a predicate offense based on the argument made in *United States v. Ruth*, 966 F.3d 642 (CA 7, 2020)(R. 195, p.5). Counsel acknowledged the Seventh Circuit precedent held otherwise, but noted the Circuit split on the issue.

On July 9, 2024 (R. 199), the district court imposed a sentence of 360 months on each Count 1 and Count 2, running concurrently. Petitioner appealed to the Seventh Circuit and argued his prior Illinois Cocaine conviction should not be a predicate offense for career offender purposes for the same arguments made in "Ruth" regarding the overbreadth of Illinois definition of cocaine, as *Ruth* was wrongly decided as to its application of the career offender guidelines for the reasons stated below,

REASONS FOR GRANTING THE PETITION

To determine whether a defendant's prior crime qualifies as a Controlled Substance Offense, this Court employed the "categorical approach" where the Court focus is solely on whether the elements of the crime of conviction sufficiently match the elements of [the] generic controlled substance offense. *Mathis v. United States*, 579 U.S. 500, 504 (2016).

The Circuits have reached different conclusions on whether such offenses must involve a prohibited drug under state law, or either. See *Guerrant v. United States*, 595 U.S. ____, 142 S.Ct. 640, 211 L.Ed2d 522 (2022)(Statement of Sotomayor, J. respecting denial of Certiorari)(Slip op. at 1-2)(collecting cases).

Yet while the Sentencing Commission has since acknowledged the Circuit Split, see, e.g., 87 Fed. Reg. 60439 (2022), it has not resolved it. Nor, it seems, does it plan to do so in the 2025-2026 amendment cycle. See Federal Register Notice of Proposed 2025-2026 Priorities (June 9, 2025). In the meantime, the disagreement among the Circuits has deepened. See, e.g., *United States v. Dubois*, 94 F.4th 1284, 1294-1296 (CA11 2024)(holding that a state-law drug offense counts); *United States v. Lewis*, 58 F.4th 764 (CA3 2023)(same); *United States v. Minor*, 121 F.4th 1085, 1089-1090 (CA5 2024)(holding that state-law offense only if it is a categorical match for a federal offense); *United States v. House*, 31 F.4th 745, 752-753 (CA9 2022)(same). This issue is an important one whether the term controlled substance offense refers to a controlled substance under state or federal law (or both) can determine whether certain defendants will qualify as a career offender under the guidelines. See 4B1.1(a) and therefore face higher sentencing ranges. *Guerrant*, 595 U.S., at ____ (2022); see also *Wiggins v. United States*, 145 S.Ct. 2621; 222 L.Ed. 2d 1148 (2025).

In the case at bar, in conformity with circuit precedent, the district court and the Seventh Circuit Court of Appeals considered petitioner's Illinois conviction

for manufacture / deliver cocaine as a controlled substance offense pursuant to the sentencing guidelines. *United States v. Ruth*, 966 F. 3d 642 (7th Cir. 2020). "Ruth" concluded that the Sentencing Guidelines definition of a controlled substance offense includes substances controlled under either federal or state law-not only merely those substances prohibited federally. *Id.* at 654. Petitioner asserts that his prior Illinois cocaine conviction should not be a predicate offense for career offender purposes for the same arguments made in "Ruth" regarding the overbreadth of Illinois^W definition of cocaine. *Ruth*, 966 F.3d at 647-48. Accordingly, "Ruth" rejected the argument that a drug s federal definition exclusively dictates its status as a controlled substance under U.S.S.G. 4B1.2.

Since *Ruth* was decided, the Seventh Circuit has repeatedly declined requests for it to revisit its decision in "Ruth." See *United States v. Trovar*, 88F. 4th 720, 725 (7th Cir. 2023); *United States v. Ramirez*, 52 F.4th 705, 712, 712 n.19 (7th Cir. 2022)(collecting cases). Accordingly, "Ruth" stands in discordance with this Court's precedents, because "[t]he prior conviction qualifies as [a career offender enhancement] predicate only if the statute's elements are the same as, or narrower than, those of the generic offense". *Decamps v. United States*, 570 U.S. 254, 257 (2013).

As the Sentencing Commission did not resolve the Circuit Split, Petitioner requests from this Honorable Court to address the issue and restore uniformity simply because two defendants whose criminal histories include identical drug offenses and who commit the same federal crime will be subject to significantly different sentencing ranges based solely on geography. Yet in our federal system, a defendant's location should not determine the severity of his punishment. "Wiggins, 145 S.Ct. 2621 (2025)".

For the Seventh Circuit s decision in "Ruth" was an outlier and remains an outlier. See *Ruth*, 966 F.3d at 653 (recognizing that the weight of authority has concluded that controlled substance in USSG 4B1.2(b) refers to the federal definition). The Circuit split on this issue falls into several categories.

First, the Fourth Circuit has adopted the minority position, which defines "controlled substance" to include any substances controlled by any jurisdiction. *United States v. Ward*, 972 F.3d 364, 372 (4th Cir. 2020). The Sixth and Eleventh Circuits appear to have adopted a similar approach. See *United States v. Smith*, 681 Fed. Appx. 483, 489 (6th Cir. 2017); *United States v. Peraza*, 754 Fed. Appx. 908, 910 (11th Cir. 2018). The Fourth Circuit relied on the "ordinary meaning" of "controlled substance", to mean that if the substance was controlled by the state, it qualifies as a controlled substance by definition. *Ward*, 972 F.3d at 372-74.

The Fourth Circuit's reading of "controlled substance" effectively turns the categorical approach on its head or, rather, renders superfluous the reference to controlled substances. indeed, any conviction for distribution, manufacture, or possession with intent to manufacture a substance under state law requires by definition that the state at issue regulate or control the substance. See U.S.S.G. 4B1.2(b); see also *Ward*, 972 F.3d at 483 (Gregory, C.J. concurring in judgment), citing *Esquivel-Quitana v. Sessions*, 137 S.Ct. 1562, 1570 (2017). This creates precisely the type of inconsistencies that the federal Sentencing Guidelines and the categorical approach are designated to prevent. *Ward*, 972 F.3d at 383-84 (Gregory, C.J. concurring in judgment).

Second, five circuits have considered the meaning of "controlled substance" as used in the sentencing guidelines and have concluded that this phrase refers only to substances enumerated by the Controlled Substance Act. See *United States v. Bautista*, 982 F.3d 563, 567 (9th Cir. 2020)(holding that a defendant's prior conviction under Arizona marijuana law was overly broad to be considered a "controlled substance offense" under U.S.S.G. 2K2.1(a)(4)(A)). The Second, Fifth, Eighth, and Tenth Circuits have all similarly held that defining "controlled substance as any substance controlled by state statute risks unwarranted disparities. *United States v. Townsend*, 897 F.3d 66, 71 (2d Cir. 2018). *United States v. Gomez-Alvarez*, 781 F.3d 787, 793 (5th Cir. 2015); *United States v. Henderson*,

11F.4th 713, 718-19 (8th Cir. 2021); United States v. Jones, 15 F.4th 1288, 1292 (10th Cir. 2021); United States v. Leal-Vega, 680 F.3d 1160, 1166 (CA9, 2012).

The Seventh Circuit's decision in "Ruth" appears to adhere to the categorical approach by determining whether a defendant's prior state-law conviction was, categorically, a conviction related to "any category of behavior altering or addictive drugs, as heroin or cocaine, whose possession and use are restricted by law", and it eschews the ready definition provided by federal law under the Controlled Substance Act that the majority of Circuits have adopted. Ruth, 966 F.3d at 654. Thus, the split among the circuits to address this issue has created a wide disparity in sentences imposed for similar criminal offenses committed by similar offenders. U.S.S.G. 1A1.3.

The reading of the original definition of "controlled substance offense" is corroborated by 28 U.S.C. 994. As the Tenth Circuit observed in "Jones", the language of 994(a) and 994(h) makes clear that "Congress gave the Commission discretion to include state-law controlled-substance offenses, involving substances not found in the CSA, within the definition of "Controlled Substance Offense" under 4B1.2(b)". Jones, 15 F.4th at 1295. Further, 28 U.S.C. 994(i)(1) counsels the Commission to "assure that the guidelines specify a substantial term of imprisonment for categories of defendants in which the defendant has a history of two or more prior federal, state, or local felony convictions for offenses committed on different occasions". And that is exactly where the "Ruth" test is both over- and under- inclusive and not consistent with the statutory mandate under 28 U.S.C. 994(i)(1) to include state-law controlled substance convictions in the career offender provision.

1 - THE "RUTH" TEST IS BOTH OVER- AND UNDER -INCLUSIVE :

Though the standard enumerated in "Ruth" appears, at first, to correct the problems attendant to the Fourth Circuit's approach by providing a definition of controlled substance to measure against, in practice it is liable to create

anomalous results. The very substance that "Ruth" purported to cover, non-psychoactive positional isomer cocaine, fails the "natural meaning" test, because it does not affect behavior. By contrast, "Ruth" appears to include prior convictions for trafficking in unstamped cigarettes, since nicotine is addictive and alters behavior. See 18 U.S.C. 2341, et seq.; see also National Institutes of Health-National Institute on Drug Abuse, "Tobacco, Nicotine, and E-cigarette Research Report", available at: <http://nida.nih.gov/publications/research-reports/tobacco-nicotine-e-cigarettes/nicotine-addictive> (last visited April 13, 2025). It is unlikely that the Sentencing Commission meant for its text to include cigarettes and exclude Illinois Cocaine.

2 - THE SUPREME COURT SHOULD SOLVE THE CIRCUIT'S DIVIDE AND CREATE UNIFORMITY AMID THE SECOND CIRCUIT'S RULE IN "TOWNSEND":

The "Townsend" decision is the best reading of 4B1.2(b) of the guidelines: If a substance is not listed in the Controlled Substances Act, it is not as "Controlled Substance" is the best reading of Townsend, 897 F.3d at 73 ("In other words, a State Statute that punishes conduct not criminalized by federal law cannot affect the Guidelines calculations."). Not only is it supported by the text and structure of the guidelines, but it provides sentencing courts with a simple, clear, consistent metric by which to assess prior convictions.

"Townsend" promotes uniformity among federal courts and reduces unfair surprise. By limiting 4B1.2(b) to substances in the Controlled Substances Act, "Townsend" puts the federal government - not states or any other Jurisdiction - in control over how the Sentencing Guidelines are applied. This role adheres to the presumption for uniformity:

"[e] must 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. That assumption is based on the fact that the application of federal legislation is nationwide and at times on the fact that the federal program would be impaired if

state law were to control. When it comes to federal criminal laws such as the present one, there is a consideration in addition to the desirability of uniformity in application which supports the general principle."

Jerome v. United States, 318 U.S. 101, 104 (1943). The Jerome presumption applies here, the Second Circuit explained, because "if there is any doubt, it is the interest of the state sovereign that must give way because, after all, the Guidelines punish violations of federal law". *Townsend*, 897 F.3d at 71. Thus, federal law serves as an "interpretive anchor" when there is ambiguity in construing a term of art used in the guidelines. *Ward*, 972 F.3d at 381 (Gregory, C.J., concurring in Judgment).


Similarly, adopting analogous federal statutory definitions when the guidelines are silent prevents unfair surprise from ad hoc guidelines interpretation. The Townsend rule provides a straightforward interpretation that makes sense of an initially opaque provision. As the Supreme Court held in *Kisor*, "hard interpretive conundrums, even relating to complex rules, can often be solved." *Kisor v. Wilkie*, 139 S.Ct. 2400, 2415 (2019). But for predictable solutions, courts must use consistent procedures; when used well, the guidelines "provide certainty and fairness" in sentencing, to "avoi[d] unwarranted sentencing disparities". *Rita v. United States*, 551 U.S. 338, 348 (2007), quoting 28 U.S.C. 994(f) and 18 U.S.C. 3553(a).

Defendants are surprised when, after their conduct, their guidelines are subsequently determined by a dictionary, rather than any body of positive law. Dictionaries should be a last resort. *United States v. Costello*, 666 F.3d 1040, 1043 (7th Cir. 2012)("[d]ictionaries must be used as sources of statutory meaning only with great caution"); *Cabell v. Makham*, 148 F.2d 737, 739 (2d Cir. 1945) (hand, J.)(explaining that ordinary meaning is often reliable, "[b]ut it is one of the surest indexes of a mature and developed jurisprudence not a make a fortress out of the dictionary").

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

De André L. Owens 

Date: January 20, 2026