

No. \_\_\_\_\_

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IN THE SUPREME COURT OF  
THE UNITED STATES

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KEITH WYCHE,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

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

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PETITION FOR WRIT OF CERTIORARI

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## QUESTIONS PRESENTED FOR REVIEW

1. Whether the Due Process Clause permits imposition of 21 U.S.C. § 841(b)(1)(C)'s mandatory "results in death/serious physical injury" sentencing enhancement — equivalent in severity to homicide punishment — absent proof that the defendant acted with at least recklessness as to the risk of death/serious physical injury.

2. Whether the Due Process Clause permits the "but for" causation for death/serious physical injury under 21 U.S.C. 841 (b) (1) (C) to be established without proof that the substance charged in the Indictment (Fentanyl) was the cause of the serious physical injury or, in the case of death, without proof that such substance caused death absent being combined with other substances.

## **LIST OF PARTIES AND RELATED CASES**

The parties to this proceeding are the Petitioner, Keith Wyche and the Respondent, United States of America.

In the United States District Court in the Eastern District of New York (18-CR-561 (DLI)), the Petitioner was tried before a jury together with Co-Defendant, Oneil Allen a.k.a. Allen Oneil (“Allen”). A third Defendant, Kyron Graham pled guilty prior to trial and judgment was imposed against him on November 18, 2019.

In the United States Court of Appeals for the Second Circuit (24-2579 and 24-2581 (CON)), both Petitioner and Allen appealed and a single Summary Order was issued with respect to both.

Upon information and belief, Allen has filed a Petition with this Court seeking a Writ of Certiorari on grounds and issues different than those set forth herein.

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## **PETITION FOR WRIT OF CERTIORARI**

Petitioner, Keith Wyche, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit.

### **OPINIONS BELOW**

The opinion of the United States Court of Appeals for the Second Circuit is a Summary Order unpublished and appearing at Appendix A. United States v. Wyche, 2025 U.S. App. Lexis 30350, 2025 WL 3239763 (2d Cir. Nov. 20, 2025)

The judgment of the United States District Court for the Eastern District of New York (Irizarry, J.) is unpublished and appears at Appendix B.

### **JURISDICTION**

The judgment of the Court of Appeals for the Second Circuit was entered on November 20, 2025. After denial of the co-defendant's petition for rehearing *en banc* on January 28, 2025, the mandate issued February 4, 2026.

This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

### **CONSTITUTIONAL PROVISION INVOLVED**

The Fifth Amendment to the United States Constitution provides in relevant part:

“No person shall ... be deprived of life, liberty, or property, without Due Process of law.”

## STATEMENT OF THE CASE

Petitioner was convicted after a jury trial in the Eastern District of New York of narcotics offenses under 21 U.S.C. § 841(a)(1), including two enhanced counts under § 841(b)(1)(C): one enhanced count based on the allegation that the distribution of controlled substances resulted in death of another, and the other enhanced count based on the allegation that the distribution of controlled substances resulted in serious bodily injury of another.

The prosecution's theory was that Petitioner participated in a drug distribution network operating on Staten Island, New York and that one purchaser later died, and another overdosed, after ingesting controlled substances obtained from that network through alleged transactions.

At trial, the prosecution relied on a combination of cooperating witness testimony, unrelated controlled purchases, cell-site location data, general text message communications, and expert testimony. The prosecution's causation theory rested on the statutory "death resulting" and "serious bodily injury resulting" provisions of 21 U.S.C. § 841 (b) (1) (C) and required proof only that death and serious bodily injury followed from ingestion of controlled substances linked through solely by way of the "but-for" causation framework.

With respect to the death, the forensic medical evidence indicated the presence of multiple controlled substances in the decedent's system, and experts testified that it could not be determined that Fentanyl, as charged, was the but-for cause of death since more than one substance, or a combination of those substances, could have contributed to the fatal outcome. Similarly, with respect to the serious bodily injury,

the experts testified that based upon revival by Narcan it could not be determined that Fentanyl, as charged, was the but-for cause of the overdose, only that it was caused by some opioid. No separate instruction as to foreseeability, recklessness, or intent as to death/serious bodily injury was submitted to the jury which made no separate finding as to such *mens rea*.

The jury convicted Petitioner on all counts, and the district court imposed a 480-month sentence, including the mandatory enhancement under § 841(b)(1)(C).

The Court of Appeals affirmed in a published Summary Order.

#### **STATEMENT OF LOWER COURT JURISDICTION**

The District Court had jurisdiction under 18 U.S.C. § 3231. The Court of Appeals had jurisdiction under 28 U.S.C. § 1291 and 18 U.S.C. § 3742(a).

#### **REASONS FOR GRANTING THE WRIT**

**I. This case presents unresolved Due Process questions at the core of criminal punishment.**

This case presents recurring and unresolved constitutional questions: whether the Due Process Clause permits the imposition of mandatory and significantly enhanced punishment based solely on a resulting death or serious bodily injury, without any requirement that the defendant acted with a culpable mental state as to that result; and whether Due Process permits a conviction without sufficient proven nexus between the charged substance and the injury outcomes.

Section 841(b)(1)(C)'s "death or serious bodily injury results" provision transforms a drug distribution offense into a sentencing mandate of 20-years to life imprisonment, equivalent in severity to homicide punishment. As applied here, that structure produced two concurrent 40-year sentences despite the absence of any jury finding that petitioner acted with intent, recklessness, or foreseeability as to death or serious bodily injury and without sufficient nexus proven between the charged substance and the injury outcomes.

In Burrage v. United States, 571 U.S. 204 (2014), this Court held that the application of the mandated and significant sentencing enhancement of § 841 (b) (1) (C) requires proof of but-for causation. The problem is that Burrage addressed only the causal threshold necessary to trigger this significant enhancement. It did not decide whether Due Process permits such severe punishment to be imposed based solely on causation, without any culpable mental state as to the resulting harm or without sufficient nexus proven between the charged substance and the outcome (which also relates to the absence of a requirement concerning intent, culpability, or foreseeability).

Accordingly, Burrage confirms that the "death or serious bodily injury results" requirement functions as an element that must be proven beyond a reasonable doubt, while leaving open the constitutional question presented here: whether Due Process permits the subject significantly enhanced punishment based solely on but-for causation, without any requirement of culpability as to the resulting harm or nexus to the charged substance.

As a threshold matter, Burrage made equally clear what causation requires—and what it does not:

“‘result from’ use of the unlawfully distributed drug, not from a combination of factors to which drug use merely contributed. Congress could have written § 841 (b) (1) (C) to impose a mandatory minimum when the underlying crime ‘contributes to’ death or serious bodily injury, or adopted a modified causation test tailored to cases involving concurrent causes, as five States have done . . . . It chose instead to use language that imports but-for causality. Especially in the interpretation of a criminal statute subject to the rule of lenity, see Moskal v. United States, 498 U.S. 103, 107-108 (1990), we cannot give the text a meaning that is different from its ordinary accepted meaning, and that disfavors the defendant” Burrage at 216; See also 218-219.

Respectfully, the Courts below, as have many Courts in Districts and Circuits throughout the Nation, misconstrued the dictates of this Court’s ruling in Burrage. Rather than relying upon Congress to revise the statute, as was required by this Court’s ruling, they have interpreted this Court’s decision in such a manner as to permit a conviction, as herein, based upon evidence that a combination of factors and drugs was the cause of the death and/or that the charged drug (here, Fentanyl) was one of many drugs that might have possibly caused serious bodily injury.

This question recurs in federal prosecutions nationwide and goes to the specific federal question addressed in Burrage: Whether the defendant may be convicted under the “death results” and/or “serious bodily injury” results provisions of the law when the use of the controlled substance was merely a “contributing cause” of injury. Across federal courts, this has produced application of a non-uniform causation standard within complex overdose cases involving mixed substances and competing expert testimony, reinforcing the need for this Court’s clarification of the statute and

its prior ruling in Burrage. This has produced doctrinal inconsistency in application, particularly where courts differ on how attenuated, causal chains must be, before applying the § 841(b)(1)(C) sentencing enhancement, and whether intervening causes or multiple-drug toxicology break the chain of liability. The result is an on-going and emerging inconsistency in how Burrage is operationalized in federal courts, leaving the due process question of culpability entirely unresolved.

Though this Court's precedents leave unresolved the interaction between outcome-based punishment and culpability requirements, its precedents establish a consistent doctrinal structure based on three settled principles:

1. Criminal punishment is ordinarily grounded in culpability rather than mere result. Morissette v. United States 342 U.S. 246 (1952); Staples v. United States, 511 U.S. 600 (1994).
2. Any fact that increases punishment is constitutionally significant and must be treated as an element, submitted to a jury, and proved beyond a reasonable doubt. Apprendi v. New Jersey, 530 U.S. 466 (2000); Alleyne v. United States, 570 U.S. 99 (2013).
3. Courts should not interpret criminal statutes to dispense with *mens rea* and impose severe penalties absent clear congressional intent. Rehaif v. United States, 588 U.S. 225 (2019); Elonis v. United States, 575 U.S. 723 (2015).

What these cases do not resolve is how those principles apply where a statutory sentencing scheme imposes significantly enhanced punishment based solely on a resulting death or serious bodily injury established by but-for causation, without any requirement of foreseeability, recklessness, or culpable mental state as to that result.

Taken together, these decisions reflect a consistent structural principle: when a fact dramatically increases punishment—particularly one that transforms the

character of the offense—Due Process requires a meaningful connection between that punishment and the defendant’s culpability.

Section 841(b)(1)(C), as applied in this case and so many others nationwide, breaks that connection. Although the resulting death or serious bodily injury is treated as an element for purposes of increasing punishment, no culpable mental state is required as to that element and no nexus to the charged substance is required—the trigger is the outcome alone. The result is a mandate in which significantly enhanced punishment is imposed based solely on outcome.

Following Burrage, lower courts have treated but-for causation as the exclusive limiting principle, even in cases involving mixed-drug overdoses, uncertain toxicology, or attenuated causal chains. At times, like that of the “serious bodily injury” count here, courts have even permitted the application of the sentencing enhancement without articulable nexus of fact to the controlled substance alleged in the Indictment. In doing so, they have imposed severe punishment without addressing whether Due Process requires any culpability as to the resulting death or injury.

This question recurs in federal prosecutions nationwide and carries exceptional importance. Section 841(b)(1)(C) is routinely invoked in cases arising from the opioid crisis, exposing defendants to mandatory sentences of twenty years to life based solely on an unintended result, as here, where the District Court imposed a 40-year prison sentence. Yet, this Court has never decided whether such

punishment is constitutionally permissible absent proof of intent, recklessness, or foreseeability as to death or serious bodily injury.

This case clearly presents that question.

Courts have sometimes analogized § 841(b)(1)(C)'s "death or serious bodily injury results" provision to the felony-murder rule. That analogy underscores—rather than resolves—the constitutional problem.

Felony murder is a historically defined category of homicide developed within a doctrinal framework that incorporates limiting principles tied to culpability. This Court has made clear that even in that context, the most severe punishments require a meaningful connection between culpability and the resulting death. See Enmund v. Florida 458 U.S. 782, 801 (1982) ("punishment must be tailored to [the defendant's] personal responsibility and moral guilt"); Tison v. Arizona, 481 U.S. 137, 158 (1987) (requiring at least reckless indifference and major participation for the most severe penalties).

Section 841(b)(1)(C), by contrast, is not a homicide statute and incorporates none of those limiting principles. It does not require contemporaneous dangerous conduct, foreseeability, reckless indifference, or any culpable mental state as to death or serious bodily injury. Instead, it imposes homicide-level punishment based solely on a resulting death or injury established through but-for causation.

The analogy therefore fails on its own terms. Even doctrines that permit liability for unintended death impose constraints linking punishment to culpability

and the dangerousness of the underlying conduct. Section 841(b)(1)(C), as applied, does not.

If anything, the Court's felony-murder precedents confirm the constitutional concern: where punishment approaches the severity of homicide, Due Process requires a meaningful culpability limitation.

Furthermore, § 841(b)(1)(c)'s "death resulting" and "serious bodily injury resulting" provisions operate as an element increasing punishment but lack any accompanying *mens rea* requirement. Under Apprendi v. New Jersey, 530 U.S. 466 (2000), and Alleyne v. United States, 570 U.S. 99 (2013), any fact that increases the prescribed range of punishment or triggers a mandatory minimum must be treated as an element of the offense and proved to a jury beyond a reasonable doubt.

The "death resulting" and "serious bodily injury resulting" provisions in § 841(b)(1)(C) satisfy that definition. They are factual predicates that transform a drug distribution offense into a mandatory minimum sentence equivalent in severity to homicide punishment.

Since Burrage, courts have treated § 841(b)(1)(C)'s "death results" and "serious bodily injury results" provisions as satisfied by but-for causation alone, without requiring any finding of foreseeability, recklessness, or intent as to death or injury. The result is a federal sentencing mandate in which significantly enhanced punishment is imposed without any jury finding of culpability directed at the fatal outcome, leaving a constitutionally significant gap between punishment and moral blameworthiness that this Court has not addressed.

Yet, unlike traditional offense elements, the statute is applied in a manner that imposes no corresponding mental state requirement as to the resulting death or injury. It does not require foreseeability, recklessness, or intent as to death or injury, nor does it require the jury to make any such finding, and it does not require proof of a nexus between the charged substance and the outcome.

Other holdings make the Court's culpability requirements clear:

"Unqualified acceptance of strict liability offenses is generally disfavored." United States v. U.S. Gypsum Co., 438 U.S. 422, 437–38 (1978).

"American criminal law has long considered a defendant's intention... to be critical to the degree of criminal culpability." Enmund v. Florida, 458 U.S. 782, 798 (1982).

Accordingly, this Petition asks the Court to resolve the gap left where Burrage declined to address culpability or foreseeability.

This Court's modern criminal jurisprudence underscores the constitutional importance of culpability and the limits on punishment, while leaving unresolved whether Due Process permits significantly enhanced punishment to rest solely on result without any culpable mental state as to that result.

In Burrage v. United States, 571 U.S. 204 (2014), this Court held that "but-for causation" is required before § 841(b)(1)(C)'s enhancement applies. The Court emphasized the extraordinary consequences triggered by that finding, including the transformation of a drug distribution offense into the functional equivalent of homicide-level punishment.

Critically, Burrage resolved only causation, not culpability. The Court held that:

“The language of § 841(b)(1)(C) requires that the death result from the use of the drug distributed by the defendant.” *Id.* at 210.

However, Burrage expressly did not address whether Due Process requires any mental state—intent, recklessness, or foreseeability—as to the death or injury itself. That question remains open. Thus, Burrage confirms that “death resulting” and “serious bodily injury resulting” are elements that dramatically increase punishment, but it leaves unresolved whether Due Process permits those elements to operate without any culpability requirement.

This Court’s decisions in Rehaif v. United States, 588 U.S. 225 (2019), and Ruan v. United States, 597 U.S. 450 (2022), reinforce the principle that statutory silence as to *mens rea* raises serious constitutional concerns where severe punishment is at stake. Likewise, Apprendi and Alleyne confirm that facts increasing punishment must be treated as elements requiring full constitutional protection.

Yet none of these cases resolves whether causation alone—without culpability as to death or serious bodily injury—satisfies Due Process where the penalty imposed is indistinguishable from intentional homicide offenses.

The result is a structural anomaly: a fact that increases punishment to a constitutionally significant degree is treated as an element for Sixth Amendment purposes, but is not accompanied by any culpability requirement for Due Process purposes.

**II. The questions presented are recurring, exceptionally important, and clearly presented in this case.**

The “death or serious bodily injury results” enhancement under § 841(b)(1)(C) is routinely invoked in federal prosecutions arising from the opioid crisis, exposing defendants to mandatory sentences of twenty years to life based solely on an unintended result. Because the statute requires only but-for causation, it applies across a wide range of circumstances, including mixed-substance overdoses, uncertain toxicology, intervening conduct, and temporally attenuated distribution.

As currently applied, the statute produces mandatory, and significantly enhanced, punishment without regard to foreseeability, intent, or moral blameworthiness or proof of a sufficient nexus between the charged substance and the outcome.

The result is a recurring federal sentencing mandate in which severe punishment turns on outcome alone.

This case squarely presents that question. Petitioner received a 40-year sentence based solely on a finding that drug distribution was a but-for cause of death and serious bodily injury. The jury was not required to find, and did not find, any culpable mental state as to the resulting harm.

Lower courts have uniformly upheld § 841(b)(1)(C) upon proof of but-for causation, but they have not meaningfully addressed whether Due Process requires a culpable mental state as to the resulting harm. Instead, they have relied on statutory structure or analogy to felony-murder doctrine, without engaging the

constitutional question presented here. This uniformity reflects not resolution of the issue, but the absence of controlling guidance from this Court.

This Court has repeatedly granted certiorari to resolve foundational constitutional questions even absent a circuit split where lower courts lack governing doctrinal clarity. This is such a case.

This is an ideal vehicle for review. The issue was preserved and passed upon below, and its resolution does not depend on disputed facts or reconsideration of the jury's causation finding. The question is purely legal: whether Due Process permits the imposition of significantly enhanced punishment based solely on causation without any requirement of culpability as to the resulting death or serious bodily injury and whether Due Process permits a conviction without sufficient proven nexus between the charged substance and the injury outcomes.

Even assuming *arguendo* that the record contains evidence suggesting awareness of overdose risk, the post-Burrage application of § 841(b)(1)(C) does not currently require proof of any specific degree of foreseeability, recklessness, or intent as to death or serious bodily injury, and the jury was not instructed to make any such finding. Those considerations are therefore not probative of the constitutional questions, which arises from the statute's structure itself.

That structural feature of § 841(b)(1)(C) makes this case a particularly suitable vehicle for resolving the questions left open by this Court's precedents and the interpretation of those precedents by lower courts. The case is also representative of

a paradigmatic § 841(b)(1)(C) prosecution arising from the opioid crisis, and the issue will only grow more pressing as such prosecutions continue nationwide.

Resolution of the questions presented would not require invalidating § 841(b)(1)(C); it would require only clarification of the constitutional minimum required when Congress authorizes severe punishment based on a resulting death or serious bodily injury.

Absent this Court's intervention, federal courts will continue to impose significantly enhanced punishment based solely on outcome, without guidance on the Due Process limits governing the relationship between punishment and culpability and the nexus between the charged substance and the injury outcomes.

### CONCLUSION

This case presents recurring and unresolved constitutional questions: whether the Due Process Clause permits mandatory, significantly enhanced punishment to be imposed based solely on an unintended death or serious bodily injury, without any requirement of culpability as to that result or sufficient nexus between the charged substance and the injury outcomes.

This Court's precedents strongly suggest constitutional limits on such outcome-based punishment, but the questions remain unsettled. Respectfully, the instant Petition should, for the reasons set forth above, therefore, be granted.

Respectfully submitted,



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