No. __________

In the Supreme Court of the United States

DALE GANAWAY LUCAS, JR.,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

On Petition For A Writ Of Certiorari
To The United States Court of Appeals for the Eighth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Whether the categorical approach must be used to determine if a defendant's prior state controlled substance offense is a career offender under controlled substance offense under U.S.S.G. § 4B1.2(b)(1)?

PARTIES TO THE PROCEEDING

Dale Ganaway Lucas, Jr., Petitioner

The United States of America, Respondent

RELATED PROCEEDINGS

I. *United States v. Dale Ganaway Lucas, Jr.*, S.D. Iowa No. 3:23-cr-00064-SMR-SBJ; Judgment entered July 16, 2024

II. *United States v. Dale Ganaway Lucas, Jr.*, Eighth Circuit Court of Appeals No. 24-2561; Judgment entered January 27, 2026; Petition for Rehearing/Rehearing en Banc Denied February 27, 2026

TABLE OF CONTENTS

APPENDIX

TABLE OF AUTHORITIES

U.S. Supreme Court Cases

Court of Appeals Cases

Statutes

Rules

OPINIONS BELOW

On January 27, 2026, the Eighth Circuit affirmed the district court for the Southern District of Iowa's determination of the career offender sentencing guidelines pursuant to U.S.S.G. § 4B1.1 and 4B1.2. *United States v. Lucas*, No. 24-2561, 2026 WL 202537 (8th Cir. Jan. 27, 2026). The petition for further review was denied. *United States v. Lucas*, No. 24-2561 (February 27, 2026).

JURISDICTION

Jurisdiction of the district court was pursuant to 18 U.S.C. § 3231. Jurisdiction of the Eighth Circuit was pursuant to 28 U.S.C. § 1291. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

SENTENCING GUIDELINES PROVISIONS

U.S.S.G. § 4B1.1(a)

A defendant is a career offender if (1) the defendant was at least eighteen years old at the time the defendant committed the instant offense of conviction; (2) the instant offense of conviction is either a crime of violence or a controlled substance offense; and (3) the defendant has at least two prior felony convictions of either a crime of violence or a controlled substance offense.

U.S.S.G. § 4B1.2(b)

Controlled Substance Offense. —The term "controlled substance offense" means an offense under federal or state law, punishable by imprisonment for a term exceeding one year, that--

(1) 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; or

(2) is an offense described in 46 U.S.C. § 70503(a) or § 70506(b).

STATEMENT OF THE CASE

Lucas pleaded guilty to one count of conspiracy to distribute cocaine in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(B), and 846, with an enhancement for prior conviction of a serious drug felony under 21 U.S.C. § 851. Prior to sentencing, the PSR writer determined that Lucas was a "career offender" under U.S.S.G. §§ 4B1.1 and 4B1.2, based on two prior drug felony convictions.

Lucas objected that one of these prior drug felonies could not count as a career offender predicate offense because, applying the categorical approach, he was not convicted of a controlled substance offense as defined by federal law. Specifically, in 2014, Lucas was convicted of one count of unlawful possession with intent to distribute a controlled substance in violation of 720 Il. C.S. § 570/401(c)(2), a class 1 felony. In other contexts, the Eighth Circuit has acknowledged that the Illinois controlled substance at issue is *not* a categorical match for the federal Controlled Substance Act (CSA), because Illinois criminalizes *more* substances than the CSA. *See United States v. Oliver*, 987 F.3d 794, 807 (8th Cir. 2021) (citing *United States v. Ruth*, 996 F.3d 642, 645-47 (7th Cir. 2020)). But the Eighth Circuit does not use the categorical approach to determine whether prior state controlled substance offenses are predicate offenses under the career offender guidelines. *United States v. Henderson*, 11 F.4th 713 (8th Cir. 2021).

Relying on *Henderson*, the District Court overruled Lucas' objection to the career offender guidelines and determined that his guidelines' sentencing range was 262 to 327 months' imprisonment. (Sent. Tr. 10:5-20; App. 12). Citing a policy disagreement with the sentencing guidelines as applied to drug cases, as well as significant mitigating factors, the Court ultimately imposed a sentence of 180 months' imprisonment. (*Id.* at 23:2-25; App. 13).

On appeal, Lucas argued that *Henderson* should be overruled as it is on the wrong side of a circuit split. The panel did not acknowledge the circuit split and declined to break precedent. *Lucas*, 2026 WL 202537 at *1 (App. 17). The petition for rehearing en banc was denied. (App. 20).

REASONS RELIED ON FOR ALLOWANCE OF THE WRIT

A United States Court of Appeals has entered a decision conflicting with decisions of other United States Courts of Appeals.

Henderson held that the categorical approach is not necessary to determine whether a prior conviction qualifies as a federal controlled substance offense under the career offender sentencing guidelines. 11 F.4th at 718 ("There is no requirement that the particular substance underlying the state offense is also controlled under a distinct federal law."). The Fourth[1] and Seventh[2] Circuits have reached the same conclusion. The Second,[3] Fifth,[4] and Ninth[5] Circuits have reached the opposite conclusion, requiring the categorical approach to determine whether a state controlled substance violation categorically matches a violation under the CSA.

Henderson's reasoning is not consistent with this Court's history of requiring

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[1] *United States v. Ward*, 972 F.3d 364, 371-72 (4th Cir. 2020).

[2] *Ruth*, 966 F.3d at 654.

[3] *United States v. Townsend*, 897 F.3d 66, 71 (2d Cir. 2018).

[4] *United States v. Gomez-Alvarez*, 781 F.3d 787, 792-93 (5th Cir. 2015).

[5] *United States v. Leal-Vega*, 680 F.3d 1160, 1166 (9th Cir. 2012).

a categorical approach and is on the wrong side of a circuit split. The *Henderson* approach allows state statutes to control federal sentencing outcomes in a non-uniform, illogical, and unjust way. This Court should grant the petition for writ of certiorari and resolve the circuit split.

1. **The categorical approach is an essential element of uniform – and therefore fair – sentencing enhancements.**

This Court has required the categorical approach where uniformity is essential to fairness. *Taylor v. United States*, 495 U.S. 575, 591, 601 (1990) (Congress surely did not intend the "odd result" of sentencing enhancements varying from state to state based on the state definition of a crime); *see also Jerome v. United States*, 318 U.S. 101, 104 (1943) (presumption that federal law does not depend on state law unless specifically indicated by Congress).

This Court cited fairness in concluding that the categorical approach must be used when determining statutory sentencing enhancements under the CSA and the Armed Career Criminal Act (ACCA). *Taylor*, 495 U.S. at 601 (the categorical approach averts the "potential unfairness of a factual approach."); *Descamps v. United States*, 570 U.S. 254, 269 (2013) (determining which crime the defendant *could* have convicted under a factual approach "is exactly the differential treatment we thought Congress, in enacting ACCA, took care to prevent."). Fairness compelled this Court to apply the categorical approach to determine whether predicate offenses were "aggravated felonies" for immigration purposes. *Moncrieffe v. Holder*, 569 U.S. 184, 201 (2013) ("[T]wo noncitizens, each "convicted of" the same offense, might obtain different aggravated felony determinations depending on what evidence remains available or how it is perceived by an individual immigration judge. The categorical approach was designed to avoid this 'potential unfairness.'" (citation omitted)). If the categorical approach is not used, defendants who have committed the same predicate offense will have vastly different sentences.

The "fairness" approach is not a creation of the judiciary: throughout history, "Congress generally took a categorical approach to [defining] predicate offenses." *Taylor*, 495 U.S. at 601. The categorical approach arises naturally from statutory interpretation. *United States v. Davis*, 588 U.S. 445, 455-57 (2019) (the use of the word "offense in a predicate conviction statute triggers an inquiry into the generic crime of conviction, rather than an inquiry into the specific conduct of the defendant before the court); *Taylor*, 495 U.S. at 600 ("Congress intended the sentencing court to look only to the fact that the defendant had been convicted of crimes falling within certain categories, and not to the facts underlying the prior conviction.").

Using an approach other than the categorical approach also raises logistical concerns. In *Taylor*, the Supreme Court observed that the "practical difficulties and potential unfairness" of looking at the factual record of a defendant's conviction, rather than the statute of conviction, "are daunting." 495 U.S. at 601. Looking at the facts surrounding a defendant's offense, rather than the definition of the statutory offense, raises the prospect of mini-trials over long-resolved offenses at every federal sentencing hearing. *Id.* at 601-02. Nor is it satisfactory to simply allow the words used by the states to describe a particular offense to control whether a prior conviction is a predicate offense in the federal courts, because this would lead to arbitrary sentencing enhancements. *Id.* at 590-91 ("It seems to us to be implausible that Congress intended the meaning of 'burglary' for purposes of § 924(e) to depend on the definition adopted by the State of conviction. That would mean that a person convicted of unlawful possession of a firearm would, or would not, receive a sentence enhancement based on exactly the same conduct, depending on whether the State of his prior conviction happened to call that conduct 'burglary.'"); *see also Jerome*, 318 U.S. 101 (presumption that federal law does not depend on state law unless specifically indicated by congress).

For these reasons, the Second, Fifth, and Ninth Circuits have already concluded that the modified categorical approach should be applied to determine whether state controlled substance offenses qualify for the guidelines career offender enhancement. *See Townsend*, 897 F.3d at 71; *Gomez-Alvarez*, 781 F.3d 787; *Leal-Vega*, 680 F.3d 1160. *Townsend* recognized the Supreme Court's trend toward requiring uniformity in federal sentencing issues:

> [S]ince *Jerome* was decided the Supreme Court has rejected attempts to impose enhanced federal punishments on criminal defendants in light of a state conviction, when those attempts do not also ensure that the conduct that gave rise to the state conviction justified imposition of an enhancement under a uniform federal standard. *See Taylor v. United States*, 495 U.S. 575, 579, 590-91 (1990) (rejecting argument that "burglary" in Armed Career Criminal Act means "burglary" however a state chooses to define it); *Esquivel-Quintana v. Sessions*, 581 U.S. 385, 392-93 (2017) (rejecting argument that "sexual abuse of a minor" encompasses all state statutory rape convictions regardless of the state's age of consent, because that definition "turns the categorical approach on its head by defining the generic federal offense of sexual abuse of a minor as whatever is illegal under the particular law of the State where the defendant was convicted"). These decisions reinforce the idea that imposing a *federal* sentencing enhancement under the Guidelines

> requires something more than a conviction based on a state's determination that a given substance should be controlled.

897 F.3d at 71. Put another way, if a state's definition of "controlled substance" determine whether the guidelines enhancement applies, then the application of the federal sentencing guidelines will lose uniformity, resulting in arbitrary and unwarranted sentencing disparities. This is contrary to the presumption that federal law should define a just punishment for a federal offense. *Id.* ('[F]ederal law is the interpretive anchor to resolve the ambiguity at issue here.").

With that background, *Henderson* is poorly reasoned. *Henderson* pointed out that the ACCA explicitly[6] ties the prior conviction analysis to the CSA, requiring the categorical approach. *See Henderson*, 11 F.4th at 717 (citing *Oliver*, 987 F.3d 794 and 18 U.S.C. § 924(e)(2)). It then concluded that § 4B1.2(b)'s reference to "an offense under . . . state law" did not require the categorical approach in the absence of an explicit reference to the CSA. *Id.* at 718. But *Henderson ignored* the fact that the modified categorical approach also applied to enhancements under 21 U.S.C. § 802(44), for prior convictions for "felony drug offense[s]... under any law of the United States or of a State or foreign country that prohibits or restricts conduct relating to narcotic drugs, marijuana, anabolic steroids, or depressant or stimulant substances."[7]

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[6] "[T]he term 'serious drug offense' means . . . an offense under State law, involving . . . a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), for which a maximum term of imprisonment of ten years or more is prescribed by law." 18 U.S.C. § 924(e)(2)(A)(ii).

[7] Prior to the 2019 amendments to the CSA, 21 U.S.C. § 841(b) provided enhanced mandatory minimum sentences for any defendant convicted of a "prior felony drug offense." The 2019 amendments changed this language to "serious drug felonies," defined with specific reference to the federal controlled substance act for maximum

See, e.g. United States v. Elder, 900 F.3d 491, 500-01 (7th Cir. 2018); *United States v. Ocampo-Estrada*, 873 F.3d 661, 667-69 (9th Cir. 2017); *United States v. Brown*, 500 F.3d 48, 59 (1st Cir. 2007); *United States v. Nelson*, 484 F.3d 257, 261 and n.3 (4th Cir. 2007); *United States v. Curry*, 404 F.3d 316, 319-20 and n.6 (5th Cir. 2005) (all applying the categorical approach to prior felony convictions under the CSA). Section 802(44) and USSG § 4B1.2(b) are virtually indistinguishable from each other and should be interpreted consistently.

The *Henderson* panel also failed to offer a convincing reason why the Court applied the modified categorical approach in previous guidelines interpretation cases but declined to do so here. 11 F.4th at 717-18 (acknowledging but not distinguishing *United States v. Sanchez-Garcia*, 642 F.3d 658 (8th Cir. 2011). *Sanchez-Garcia* used the categorical approach to determine whether the defendant's prior conviction met the definition of a federal controlled substance offense. 642 F.3d at 661-62. The issue was what documents the Court could review to determine whether Mr. Sanchez-Garcia was convicted of a matching controlled substance offense, not whether the categorical approach was appropriate for resolving guidelines questions. *Id.* The Eighth Circuit regularly uses the categorical approach to determine whether state offenses are predicate offenses under the various sentencing guidelines. *See, e.g.*

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clarity. Both *Henderson* and *Oliver* discuss the categorical approach with respect to the definition of "serious drug felony" rather than "felony drug offense." However, the amendment did not change the requirement to use the categorical approach to determine whether a prior conviction qualifies a defendant for an enhanced sentence, and the distinction between a "serious drug felony" and a "felony drug offense" does not compel a different result.

United States v. Daye, 90 F.4th 941 (8th Cir. 2024) (whether arson was a violent offense under USSG § 4B1.2); *United States v. Roblero-Ramirez*, 716 F.3d 1122 (8th Cir. 2013) (whether manslaughter a state manslaughter conviction is a crime of violence as defined in USSG § 2L1.2(b)(1)(A)(ii)). There is no principled reason to require the categorical approach in interpreting some guidelines, and not others.

2. There is no reason to treat guideline predicate offense enhancements differently from statutory predicate enhancements.

The Eighth Circuit has acknowledged that applying the categorical approach to compare state and federal controlled substances is mandatory in other contexts. *See Oliver*, 987 F.3d at 807 (8th Cir. 2021) (categorical approach used to compare a state controlled substance to a federal controlled substance for the purpose of determining whether the state offense qualified as a serious drug felony under 21 U.S.C. § 802(58) and 18 U.S.C. § 924(e)(2)). As discussed above, the Eighth Circuit also uses the categorical approach to determine whether a predicate offense results in a guidelines sentencing enhancement. *See, e.g. Sanchez-Garcia*, 642 F.3d 658; *Daye*, 90 F.4th 941; *Roblero-Ramirez*, 716 F.3d 1122.

Henderson is the exception. *Henderson* acknowledged the use of the categorical approach to determine whether predicate offenses resulted in guidelines sentencing enhancements – but then declared that the meaning of "controlled substance offense" in U.S.S.G. § 4B1.2(b) encompasses any substance that may be controlled under federal *or* state law. 11 F.4th at 716 ("[W]e apply a categorical approach that looks to the statutory definition of the prior offense."); 719 (upholding the enhancement where the conviction violated state, but not federal controlled substance law). *Henderson* adopts a procedure whereby any state controlled substance offense – regardless of whether the offense is federally controlled – may carry significant federal consequences.

This interpretation is not supported by the text of the sentencing guidelines and undermines the preference for a uniform application of federal law. States are free to, and often do, control substances that are not federally scheduled. For example, Louisiana has enacted laws that classify Mifepristone, Misoprostol, and Tramadol as controlled substances,[8] but those substances are not federally scheduled. Some states have completely banned substances that are not federally controlled at all, such as Kratom (mitragynine)[9] and Gabapentin.[10] The state of Arkansas even has an entire "Schedule VI," controlled substances section, that includes substances like Salvia Divinorum,[11] a substance that is not listed under current federal drug scheduling. Defendants from Louisiana, Alabama, Kentucky, Virgina, and Utah could all qualify as career offenders, despite engaging in conduct that the federal government does not criminalize.

There is no textual support for this result. U.S.S.G. § 4B1.2(b)(1) defines a "controlled substance offense" as:

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[8] La. Stat. Ann. § 40:964.

[9] La. Stat. Ann. § 40:964; Ala. Code § 20-2-23(b)(4)(a); 5 Code Ark. R. Pt. 22.

[10] 902 Ky. Admin. Regs. § 55:015E(4)(2); Va. Code Ann. § 54.1-3454; Utah Code Ann. § 58-37-4.

[11] Ark. Code Ann. § 5-64-215.

> 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 [said substance].

U.S.S.G. § 4B1.2(b)(1) (cleaned up). But the United States Sentencing Commission was not writing on a blank slate when it wrote U.S.S.G. § 4B1.2(b)(1). Congress directed the Commission to "assure that the guidelines specify a sentence to a term of imprisonment at or near the maximum term" for a defendant who

> (1) Has been convicted of a felony that is –
>
> (A) a crime of violence; or
>
> (B) an offense described in section 401 of the Controlled Substance Act (21 U.S.C. 841), sections 1002(a), 1005, and 1009 of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 955, and 959), and chapter 705 of title 46; and
>
> (2) has previously been convicted of two or more prior felonies, each of which is –
>
> (A) a crime of violence; or
>
> (B) an offense described in section 401 of the Controlled Substance Act (21 U.S.C. 841), sections 1002(a), 1005, and 1009 of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 955, and 959), and chapter 705 of title 46.

28 U.S.C. § 994(h); *see also* US.S.G. § 4B1.1, Background Commentary (indicating the Commission enacted the career offender sentencing guidelines as directed Congress in 28 U.S.C. § 994(h), as well as §§ 994(a)-(f), (o), and (p)); U.S.S.G. § 4B1.2(2) & app. n. 2 (1987)).

Following this direction, the original career offender sentencing guidelines called for an application of the categorical approach: "'Controlled substance offense' means any of the federal offenses identified in the statutes referenced in § 4B1.2, or *substantially equivalent* state offenses." *Id.* (emphasis added). In 1989, the guidelines were amended to move the direction to include substantially equivalent state offenses from the commentary to the text of the rule. U.S.S.G § 4B1.2, Commentary, 1989 amendments. But the commentary does not indicate that the Sentencing Commission intended to change how the rule was applied. Considering that 28 U.S.C. § 994(h) called for a sentence near the statutory maximum for defendants that had two or more *federal* controlled substance convictions, a categorical approach comparing state controlled substance convictions to the federal Controlled Substance Act makes sense. Only those convictions that were severe enough to trigger federal penalties – even if prosecuted by the state – would prompt a sentence "at or near the statutory maximum."

This also explains why the Sentencing Commission did not define the term "felony controlled substance offense" in § 4B1.2 – it was already defined elsewhere. Prior to the 2019 First Step Act Amendments, predicate offenses for statutory mandatory minimum purposes were defined by 21 U.S.C. § 802(44):

> The term 'felony drug 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, marijuana, anabolic steroids, or depressant or stimulant substances.

21 U.S.C. § 802(44). Courts applying enhancements for prior drug felonies understood this to mean they must compare the State definition of a controlled substance to the federal definition of "narcotic drugs, marijuana, anabolic steroids, or depressant or

stimulant substances."[12] There is no reason to interpret § 4B1.2 – which calls for an enhancement following two convictions for felony state or federal drug offenses – differently from § 802(44). The Sentencing Commission, like Congress, is presumed to legislate with a background understanding of the existing legal landscape.

Despite this history, *Henderson* defined "controlled substance" in § 4B1.2(b)(1) as broadly as possible, relying on 28 U.S.C. § 994(i)'s reference to state and federal felony convictions to support its conclusion that the categorical approach was not required. 11 F.4th at 717 ("Consistent with 28 U.S.C. § 994(i)(1), the term 'controlled substance offense' is defined in § 4B1.2(b) as 'an offense under federal or state law…'"). But § 994(i) has nothing to do with the career offender guidelines. Instead, it directs the Sentencing Commission on Congress's priorities for scoring prior criminal offenses (under U.S.S.G. §§ 4A1.1 and 4A1.2) to "assure that the guidelines specify a substantial term of imprisonment" for defendants with "a history of two or more prior Federal, State, or local felony convictions for offenses committed on different occasions." 28 U.S.C. § 994(i)(1). Calculating criminal history scores under §§ 4A1.1 and 4A1.2 does not need a categorical approach, because criminal history points are allocated based on the length of the sentence, and how long ago the sentence was imposed or served. With only a few exceptions delineated under U.S.S.G. § 4A1.2(c)(1), all prior "sentences" are counted, rather than all prior "convictions." The *Henderson* panel's reliance on § 994(i)(1) is misplaced.

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[12] *See, e.g. Elder*, 900 F.3d at 500-01; *Ocampo-Estrada*, 873 F.3d at 667-69; *Brown*, 500 F.3d at 59; *Nelson*, 484 F.3d at 261 and n.3; *Curry*, 404 F.3d at 319-20 and n.6.

Finally, *Henderson* rejected the importance of the *Jerome* presumption that federal law does not depend on state law unless specifically indicated by Congress. *Henderson*, 11 F.4th at 719. While it is correct that the U.S. Supreme Court has never cited the *Jerome* case in requiring the categorical approach for guidelines sentencing enhancements, this misses the point: requiring a categorical approach comparing the state drug offense with federal drug offenses is consistent with the plain language of the sentencing guidelines and reference statutes, and serves the exact same purpose as applying the categorical approach to statutory sentencing enhancements. The federal system is meant to be uniform nationwide. Allowing the states to determine which controlled substances are dangerous enough to require sentences "at or near" the federal statutory maximum cedes federal control over federal sentencing.

3. **Lucas and defendants like him are harmed by the application of the career offender guidelines to his case.**

Ultimately, the District Court expressed a policy disagreement on the career offender guidelines and varied downwards significantly. The this Court should not take this to mean that Lucas was not prejudiced by the application of the career offender guidelines in his case. "[A]n error resulting in a higher range than the Guidelines provide usually establishes a reasonable probability that a defendant will serve a prison sentence that is more than 'necessary' to fulfill the purposes of incarceration. *Rosales-Mireles v. United States*, 585 U.S. 129, 130 (2018). Therefore, "[w]hen a defendant is sentenced under an incorrect Guidelines range – whether or not the defendant's ultimate sentence falls within the correct range – the error itself can, and most often will, be sufficient to show a reasonable probability of a different outcome absent the error." *Molina-Martinez v. United States*, 578 U.S. 189, 198 (2016).

The District Court anchored Lucas' sentence in between his guidelines sentencing range *with* the career offender enhancement, and without the career offender enhancement. (Sent. Tr. 23:14-22; App. 13). Although the Court believed that the career offender enhancement overstated Lucas' culpability (Sent. Tr. 23:3-13; App. 13), it was still instrumental in determining the final sentence. Importantly, the Court did not frame the final sentence as appropriate "if *Henderson* were wrongly decided or overturned." The career offender enhancement had a measurable impact on Lucas' sentence – an impact that ought to be reversed.

CONCLUSION

Henderson is on the wrong side of a circuit split that calls for this Court's intervention. Guideline predicate offenses should be treated the same way statutory predicate offenses are treated – by applying the categorical approach. Requiring a uniform application of the categorical approach to predicate offenses prevents defendants, like Lucas, from receiving unreasonable sentences. The Petition for Writ of Certiorari should be granted.

RESPECTFULLY SUBMITTED,

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