

No. USCA8- No. 23-1593

25-7699

No: 25A535

ORIGINAL

Supreme Court, U.S.
FILED

JAN - 8 2026

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

Shawn Russell Sorensen — 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 Eighth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Shawn Russell Sorensen
(Your Name)

P.O. Box 1000
(Address)

Leavenworth, Kansas 66048
(City, State, Zip Code)

N/A
(Phone Number)

RECEIVED

FEB 18 2026

OFFICE OF THE CLERK
SUPREME COURT, U.S.

QUESTION(S) PRESENTED

1. WHETHER A PANEL FOR THE EIGHTH CIRCUIT COURT OF APPEALS ERRED IN DETERMINING THAT SORENSEN'S TWO PRIOR STATE CONVICTIONS QUALIFIED AS FELONY DRUG OFFENSES FOR THE PURPOSES OF THE ENHANCEMENT OF § 851 IMPOSED LIFE SENTENCE.
2. WHETHER SORENSEN'S TWO PRIOR STATE CONVICTIONS QUALIFY AS FELONY DRUG OFFENSES FOR THE PURPOSE OF § 841. ARE THE TWO STATE CONVICTIONS OVERBROAD AS A RESULT OF STATE DRUG SCHEDULES? IF SO, ARE THE TWO STATE STATUTES INDIVISIBLE?

LIST OF PARTIES

- [x] 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

Shawn Russell Sorensen v United States of America, 2025 U.S. App. LEXIS 20744; No: 23-1593 (8th Cir. August 13, 2025); On Appeal from U.S. District Court for the District of South Dakota - Southern District (4:19-cv-04190-KES), Sorensen v United States, 138 F.4th 1096, 2025 U.S. App. LEXIS 13319 (June 2, 2025)

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION.....	
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	
STATEMENT OF THE CASE	
REASONS FOR GRANTING THE WRIT	
CONCLUSION.....	

INDEX TO APPENDICES

APPENDIX A - Shawn Russell Sorensen v United States, 2023 U.S.
Dist. LEXIS 17676; 2023 LX 46535 Feb. 1, 2023)

APPENDIX B - Shawn Russell Sorensen v United States, 138 F.4th 1096
2025 U.S. App. LEXIS 13319; LX 137748 (June 5, 2025)

APPENDIX C - Shawn Russell Sorensen v United States, 2025 U.S. App.
LEXIS 20744; 2025 LX 392134 (August 13, 2025)

APPENDIX D

APPENDIX E

APPENDIX F

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

Romero-Millian, 507 P.3d at 1003

State v Burkman, 281 N.W.2d 436, 439 (S.D. 1979)

STATUTES AND RULES

South Dakota Codified Laws § 22-42-5

Arizona Revised Statutes § 13-3407 (2008)

21 U.S.C. §§ 841(b)(1)(A) and 802(44)

21 U.S.C. § 851

OTHER

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 B to the petition and is

☒ reported at 138 F.4th 1096 (June 2, 2025); 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 A to the petition and is

☒ reported at 2023 U.S. Dist. LEXIS 17676 (Feb.1,23) 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 June 1, 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: August 13, 2025, 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 Jan. 10, 2026 (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

STATEMENT OF THE CASE

Shawn Russell Sorensen, filed a motion to vacate, set aside, or correct his sentence under 28 U.S.C. § 2255. Docket 1.1 the government moved to dismiss, and the court dismissed all of Sorensen's claims except one: Sorensen's claim of ineffective assistance of counsel claim for failure to investigate potential witness Larry Kuhnert. An evidentiary hearing was held on the matter. Magistrate Judge issued a Report & Recommendation recommending that the court dismiss Sorensen's remaining claim because he could not meet the burden of showing his lawyers deficient representation nor could he show prejudice. Sorensen filed several factual and legal objections. On February 1, 2025, the court of appeals panel denied the review from the granted certificate of appealability. A timely petition for rehearing or rehearing en banc was denied on August 13, 2025.

Petitioner filed a timely writ of certiorari to the United States Supreme Court.

REASONS FOR GRANTING THE PETITION

Petitioner states a fact, that Sorensen's prior state convictions for two "felony drug offense[s]:

- A. possession of a controlled substance in violation of South Dakota Codified Laws § 22-42-5, and possession of dangerous drugs (methamphetamine) in violation of Arizona Revised Statutes § 13-3407 (2008).

Petitioner assertion is that the Eighth Circuit erred in the denial of Appeal that was before them. As previously stated by the Eighth Circuit panel there was No precedent authority recognizing the presented argument. Petitioner states that the state convictions do not qualify as felony drug offenses for the purposes of § 841(a) because as stated to the in the appeal (1) state statutes which they are predicated on are overbroad as a result of the corresponding state drug schedules, which include substances that are not included in the federal drug schedules, and (2) statutes are indivisible, meaning the modified categorical approach does not apply. 1

ARIZONA § 13-3407

Petitioner's assertion is that Arizona statute § 13-3407 reads as follows "danerous drugs" which includes methamphetamine, but, also has different conviction and sentencing schemes based on the underlying "dangerous drug." The Court of Appeals for the Eighth Circuit made

1 The parties did not dispute the facts that both the Arizona and South Dakota statutes are overbroad, meaning both statutes criminalize the possession of substances that the federal ststute does not.

finding that although overbroad, is divisible. The Court utilized a modified categorical approach, examining Arizona documents which demonstrate the state conviction was for methamphetamine. Then they determined that methamphetamine was a federally controlled substance and predicate drug offense under 21 U.S.C. §§841(b)(1)(A) and 802(44).

Petitioner contends that the Arizona statute § 13-3407 is indivisible and lay[s] out alternative ways of satisfying a single locational element." Petitioner asserts that the Arizona statute 13-3407 provide different means of committing various drug offenses, all completely different. The Eighth Circuit found that Arizona Supreme Court explained Arizona had "long-standing precedent of allowing multiple convictions for contemporaneous violations of § 13-3408 involving multiple narcotic drugs." Romero-Millan, 507 P.3d at 1003. The Eighth Circuit Court of Appeals based its decision the Arizona Supreme Court ruling pursuant to Arizona § 13-3408, not 13-3407. Although the language is similar in nature it is not identical and has different elements. Then stated "given the analysis of the state's highest court, and nearly identical structure of §§ 13-3407 and 13-3408, we conclude that the Arizona statute underlying Sorensen's conviction, while overbroad, is divisible.

Petitioner asserts this ruling was wrong and that the Arizona statute 13-3407 is factual overbroad as determined and indivisible. Being indivisible cannot serve as a predicate offense for application of U.S.C. §§ 841(b)(1)(A) or 851.

SOUTH DAKOTA CODIFIED LAWS § 22-42-5

Petitioner's assertion that "controlled drug or substance" is defined in separate statute, § 22-42-1, the type of drug constitutes alternative

means of violating the statute, not alternative elements. Does this make the statute indivisible? Sorensen's believes it does!

Although the South Dakota Supreme Court recognizes a defendant can be charged with multiple counts under § 22-42-5 when they possess different controlled substances at one time. and that they can be charged under the same statute, those counts do not function as a single act of possession. State v Burkman, 281 N.W.2d 436, 439 (S.D. 1979) (Affirming conviction where defendant charged with four separate counts under § 22-42-5 based on a single possession transaction of four different substances and holding that "each count is treated as if it were separate"). Does the state holdings meet the federal constitutional rights of Sorensen to be held liable for each controlled substance in a separate count of the indictment. If so, then § 22-42-5 is indivisible and inapplicable for §§ 841(b)(1)(A) and 851 application. Sorensen asserts this reasoning and this case must be remanded back to the district court for removal of the enhanced life sentences. Where the state statutes are overbroad and indivisible the analysis ends, and a conviction under those statutes cannot qualify as a categorical match to the federal definition. (See United States v. Kinney, 888 F.3d 360, 365 (8th Cir. 2018); "If the state offense sweeps more broadly or punishes more conduct than the federal definition, the conviction does not qualify as a predicate offense." Id. Where state statute is unambiguously broader than federal law, the categorical analysis ends with the text of the statutes. See Gonzalez v Wilkinson, 990 F.3d 654, 660-61 (8th Cir. 2021)

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Shawn R. Sorensen

Date: January 8, 2026