

NO:

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2025

MARKELL COLEMAN,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

In *Brown v. United States*, 602 U.S. 101 (2024), this Court held that whether a prior state drug trafficking conviction qualified as a predicate under the Armed Career Criminal Act in a federal prosecution required a review of the state conviction at the time of the conviction. However, this Court expressly left open the question of whether a federal sentencing court must review the state conviction at the time of the federal sentencing, rather than at the time of the conviction, for a recidivist enhancement under the United States Sentencing Guidelines given the requirement that the Sentencing Guidelines in effect at sentencing must be applied.

The First Question Presented here is:

Whether, consistent with federal statute mandating the application of the United States Sentencing Guidelines in effect at the time of sentencing, a sentencing court must look to the validity of a state prior at the time of federal sentencing to determine whether the state conviction qualifies as a predicate offense for a recidivist sentencing enhancement under the United States Sentencing Guidelines?

This Court recently granted a petition for a writ of certiorari on the question of “whether the Second and Fourteenth Amendments guarantee the right to possess AR-15 platform and similar semiautomatic rifles.” *Viramontes v. Cook County*, No. 25-238 (June 30, 2026), see also *Grant v. Higgins*, No. 25-566 (June 30, 2026). Mr. Coleman entered a plea of guilty to a charge of possession of an unregistered machinegun. Factually, Mr. Coleman was in possession of a small metal object known as a conversion device which allows an AR-15 semi-automatic assault rifle to fire ten shots with one pull of a trigger.

The Second Question Presented here is:

Whether the Second and Fourteenth Amendments guarantee the right to possess an AR-15 platform semiautomatic rifle outfitted with a conversion device or a conversion device which allows an AR-15 platform semiautomatic rifle to shoot ten times with a single pull of the trigger?

INTERESTED PARTIES

Markell Coleman, Petitioner

United States of America, Respondent

RELATED PROCEEDINGS

United States District Court (S.D. Fla.):

United States v. Markell Coleman, No. 24-cr-80108-AMC
(S.D. Fla. February 19, 2025)

United States Court of Appeals (11th Cir.):

United States v. Markell Coleman, No. 25-10693
(11th Cir. May 4, 2026)

TABLE OF CONTENTS

QUESTION PRESENTED FOR REVIEW	i
INTERESTED PARTIES	iii
RELATED PROCEEDINGS.....	iii
TABLE OF AUTHORITIES	v
PETITION.....	1
OPINION BELOW.....	1
STATEMENT OF JURISDICTION	2
STATUTORY AND OTHER PROVISIONS INVOLVED	2
STATEMENT OF THE CASE.....	3
STATEMENT OF FACTS	7
REASONS FOR GRANTING THE WRIT	9
 This Court must resolve a clear inter-circuit split on the question of whether a state prior conviction should be viewed, under the categorical approach, at the time of the commission of the state offense or at the time of the federal sentencing to determine whether the state prior conviction qualifies as a predicate “controlled substance offense” in order to enhance the federal sentence under the United States Sentencing Guidelines.....	
	9
 This Court recently granted a petition for a writ of certiorari on the question of “whether the Second and Fourteenth Amendments guarantee the right to possess AR-15 platform and similar semiautomatic rifles.” <i>Viramontes v. Cook County</i> , No. 25-238 (June 30, 2026), see also <i>Grant v. Higgins</i> , No. 25-566 (June 30, 2026). A decision in those cases will affect whether the district court had jurisdiction to prosecute, convict, and sentence Mr. Coleman.	
	19
CONCLUSION.....	21

Appendix

Decision of the Court of Appeals for the Eleventh Circuit, <i>United States v. Markell Coleman</i> , 25-10693 (11th Cir. May 4, 2026).....	A-1
Judgment in a Criminal Case, <i>United States v. Markell Coleman</i> , 24-cr-80108-AMC (S.D. of Fla. February 19, 2025)	A-2

TABLE OF AUTHORITIES

CASES:

Borden v. United States,

593 U.S. 420 (2021) 17

Brown v. United States,

602 U.S. 101 (2024) 5, 10-13

Dubois v. United States,

145 S. Ct. 1041 (2025) 12, 13

Grant v. Higgins,

No. 25-566 (June 30, 2026) 18, 19

Reed v. Goertz,

598 U.S. 230 (2023) 19

Rosales-Mireles v. United States,

585 U.S. 129 (2018) 18

Rutherford v. United States,

146 S. Ct. 1320 (2026) 15

United States v. Abdulaziz,

998 F.3d 519 (1st Cir. 2021) 12, 13

United States v. Bailey,

37 F.4th 467 (8th Cir. 2022) 12, 13

United States v. Bautista,

989 F.3d 698 (9th Cir. 2021) 12

<i>United States v. Clark,</i>	
46 F.4th 404 (6th Cir. 2022)	12, 13
<i>United States v. Coleman,</i>	
2026 WL 1210249 (11th Cir. May 4, 2026) (unpublished)	11, 12, 17
<i>United States v. Cotton,</i>	
535 U.S. 625 (2002)	19
<i>United States v. Drake,</i>	
126 F.4th 1242 (6th Cir. 2025)	13
<i>United States v. Dubois,</i>	
94 F.4th 1284 (11th Cir. 2024)	6, 11-14, 17
<i>United States v. Dubois (Dubois II),</i>	
139 F.4th 887 (11th Cir. 2025)	12, 13
<i>United States v. Gibson,</i>	
55 F.4th 153 (2d Cir. 2022)	12
<i>United States v. Gomez-Alvarez,</i>	
781 F.3d 787 (5th Cir. 2015)	16
<i>United States v. Gordon,</i>	
111 F.4th 899 (8th Cir. 2025)	13, 14
<i>United States v. Hemani,</i>	
146 S. Ct. 1677 (2026)	19
<i>United States v. Leal-Vega,</i>	
680 F.3d 1160 (9th Cir. 2021)	16

<i>United States v. Lewis,</i>	
58 F.4th 764 (3d Cir. 2023)	13, 14
<i>United States v. Minor,</i>	
121 F.4th 1085 (5th Cir. 2024)	11, 14
<i>United States v. Moran-Stenson,</i>	
115 F.4th 11 (1st Cir. 2024)	13
<i>United States v. Nelson,</i>	
151 F.4th 577 (4th Cir. 2025)	13
<i>United States v. Perez,</i>	
46 F.4th 691 (8th Cir. 2022)	12
<i>United States v. Rahimi,</i>	
602 U.S. 680 (2024)	11
<i>United States v. Sanchez-Garcia,</i>	
642 F.3d 658 (8th Cir. 2011)	16
<i>United States v. Townsend,</i>	
897 F.3d 66 (2d Cir. 2018)	16
<i>United States v. Waiters,</i>	
2024 WL 2797919 (11th Cir. 2024)	13
<i>Viramontes v. Cook County,</i>	
No. 25-238 (June 30, 2026)	18, 19

STATUTORY AND OTHER AUTHORITY:

18 U.S.C. § 922(g)(1)	3
18 U.S.C. § 924(a)(8)	3
18 U.S.C. § 924(e).....	6
18 U.S.C. § 3553(a)(4)(A)(ii)	2, 10, 14, 15
18 U.S.C. § 3553(a)(6)	18
18 U.S.C. § 3742.....	2
18 U.S.C. § 3742(g)	2
21 C.F.R. § 1308.12(b)(4)(ii).....	17
26 U.S.C. § 5841.....	3
26 U.S.C. § 5845(a)	3, 4, 16
26 U.S.C. § 5845(B).....	3, 16
26 U.S.C. § 5845(b)	8
26 U.S.C. § 5861(d)	3
26 U.S.C. § 5871.....	3
28 U.S.C. § 1254(1)	2
28 U.S.C. § 1291.....	2
Fla. Stat. § 893.02(4) (2016)	16
Fla. Stat. § 893.03.....	16
Fla. Stat. § 893.03(2)(a)(4) (2016)	17
Fla. Stat. § 893.13(1) (2016)	16
Part III of the Rules of the Supreme Court of the United States.....	2

SUP. CT. R. 13.1	2
U.S.S.G. § 2K2.1	4, 5, 15, 16
U.S.S.G. § 2K2.1(a)(1).....	4, 16
U.S.S.G § 2K2.1(a)(1)(2024)	3
U.S.S.G. § 2K2.1(a)(2).....	15, 17
U.S.S.G. § 2K2.1(a)(4).....	4
U.S.S.G. § 3E1.1.....	4
U.S.S.G. § 4B1.1.....	4, 5,
U.S.S.G. § 4B1.1(a)	5
U.S.S.G. § 4B1.1(b)	5
U.S.S.G. § 4B1.1(b)(5).....	5
U.S.S.G. § 4B1.2.....	16
U.S.S.G. § 4B1.2(b)	16
U.S.S.G. § 4B1.2(b)(1)	3

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PETITION FOR WRIT OF CERTIORARI

Mr. Markell Coleman respectfully petitions the Supreme Court of the United States for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit, rendered and entered in case number 25-10693 in that court on May 4, 2026, which affirmed the judgment and commitment of the United States District Court for the Southern District of Florida.

OPINION BELOW

A copy of the decision of the United States Court of Appeals for the Eleventh Circuit, which affirmed the judgment and commitment of the United States District Court for the Southern District of Florida, is contained in the Appendix (A-1).

STATEMENT OF JURISDICTION

Jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1) and PART III of the RULES OF THE SUPREME COURT OF THE UNITED STATES. The decision of the court of appeals was entered on May 4, 2026. This petition is timely filed pursuant to SUP. Ct. R. 13.1. The district court had jurisdiction because petitioner was charged with violating federal criminal laws. The court of appeals had jurisdiction pursuant to 28 U.S.C. § 1291 and 18 U.S.C. § 3742, which provide that courts of appeals shall have jurisdiction for all final decisions of United States district courts.

STATUTORY AND OTHER PROVISIONS INVOLVED

Petitioner intends to rely on the following federal statute and sections from the United States Sentencing Guidelines:

18 U.S.C. § 3553(a)(4)(A)(ii):

(a) Factors to be considered in imposing a sentence, --

The Court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection. The court, in determining the particular sentence to be imposed, shall consider –

(4) the kinds of sentence and the sentencing range established for --

-

(A) the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines –

(ii) that, except as provided in section 3742(g), are in effect on the date the defendant is sentenced

U.S.S.G. § 2K2.1(a)(1)(2024):

Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition

(a) Base Offense Level

(1) **26**, if (A) the offense involved a (i) semiautomatic firearm that is capable of accepting a large capacity magazine; or (ii) firearm that is described in 26 U.S.C. § 5845(a); and (B) if 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;

U.S.S.G. § 4B1.2(b)(1):

“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

Course of Proceedings and Disposition in the District Court

On August 29, 2024, a grand jury in the Southern District of Florida filed a two-count indictment charging Mr. Coleman with: knowingly possessing a firearm and ammunition after previously being convicted of a felony, in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(8) (Count 1); and knowingly possessing a machinegun conversion device which was not registered as required by 26 U.S.C. § 5841, in violation of 26 U.S.C. § 5861(d) and 5871. DE 12: 1-2.

On October 15, 2024, Mr. Coleman pled guilty to Count 2 pursuant to a plea

agreement. DE 19, 22. In return, the government agreed to dismiss Count 1 and to move pursuant to U.S.S.G. § 3E1.1 for a three-level reduction in Mr. Coleman's offense level for acceptance of responsibility. DE 22: 1-3.

On November 27, 2024, a Presentence Investigation Report (PSI) calculated Mr. Coleman's guideline imprisonment range to be 92 to 115 months. PSI, ¶ 79. The PSI determined that Mr. Coleman had two prior Florida drug convictions, each of which qualified as a "controlled substance offense." PSI, ¶ 22. One of those drug convictions was for the sale of cocaine within 1000 feet of a school, in Palm Beach County Case No. 2015-CF-12161; the other was for sale of marijuana in Palm Beach County Case No. 2020-CF-4951. *Id.* The PSI's conclusion that Mr. Coleman had two controlled substance offenses not only increased Mr. Coleman's base offense level under U.S.S.G. § 2K2.1 by six levels to level 26 but also qualified him as a career offender under U.S.S.G. § 4B1.1, thereby increasing his criminal history from IV to VI. PSI, ¶¶ 22, 28.

Specifically, the PSI determined that Mr. Coleman's base offense level to be 26 under U.S.S.G. § 2K2.1(a)(1). PSI, ¶ 22. That guideline states that the base offense is 26 that if the offense involved a "firearm that is described in 26 U.S.C. § 5845(a)" and "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." U.S.S.G. § 2K2.1(a)(1). However, if the defendant had only one prior conviction for a "controlled substance offense" rather than two, the base offense level is 20. U.S.S.G. § 2K2.1(a)(4).

In addition, the PSI determined that Mr. Coleman was a career offender under U.S.S.G. § 4B1.1 because he was convicted of the same two Florida drug offenses. PSI, ¶ 28. A defendant is a career offender if (1) he was at least 18 years old at the time of the instant offense, (2) the instant offense “is a felony that 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. § 4B1.1(a). The offense level for a career offender would be 24 because Mr. Coleman’s instant offense had a statutory maximum term of imprisonment of 10 years. See PSI, ¶ 26 (citing U.S.S.G. § 4B1.1(b)(5)). However, the PSI concluded that because the otherwise applicable offense level of 26 is greater, then that offense level applies. PSI, ¶ 26 (citing U.S.S.G. § 4B1.1(b)). Moreover, Mr. Coleman had seven criminal history points for a criminal history category of IV. PSI ¶ 42. However, because the PSI concluded that he was a career offender, it increased his criminal history to category VI. PSI, ¶ 43. Mr. Coleman received a three-level reduction for acceptance of responsibility. The enhancement thus raised Mr. Colman’s offense level from 17 (20-3) to 23 (26-3). That, in turn, raised his advisory sentencing range from 37 to 46 months (17 and IV) to 92 to 115 months (23 and VI).

On December 18, 2024, Mr. Coleman timely filed objections to the PSI, arguing that his prior Florida conviction for sale of cocaine is not a “controlled substance offense,” and therefore should not be used to increase his base offense level under U.S.S.G. § 2K2.1 or qualify him as a career offender under U.S.S.G. § 4B1.1. DE 28: 1-3. Specifically, Mr. Coleman argued that in *Brown v. United States*, 602 U.S. 101

(2024), the Supreme Court held “that a state court conviction counts as an [Armed Career Criminal Act, 18 U.S.C. § 924(e)] predicate if it involved a drug on the federal schedules at the time of that conviction.” DE 28: 1. He argued that the same rationale applies to whether a prior state conviction should qualify as a controlled substance offense under the Sentencing Guidelines. *Id.* at 1-2.

Mr. Coleman noted that his Florida sale of cocaine conviction occurred on October 2, 2015, at a time when the Florida cocaine definition included ioflupane while the federal definition did not. *Id.* at 2 (noting that the federal government descheduled ioflupane on August 11, 2015, and Florida did not do so until July 1, 2017). Accordingly, Mr. Coleman argued, his prior Florida cocaine conviction should not be used to enhance his base offense level or qualify him as a career offender. *Id.* at 2. In making those objections, Mr. Coleman recognized that this Court had recently held in *United States v. Dubois*, 94 F.4th 1284, 1294-1296 (11th Cir. 2024), that for Sentencing Guidelines purposes, the state and federal definitions for a controlled substance offense need not match, and that the state definition controlled.

Mr. Coleman also moved for a downward variance on the grounds that his prior convictions were for minor drug sales and should not be used to enhance his base offense level. *Id.* at 3-4. In support of his objections, on February 14, 2025, Mr. Coleman filed a “Sentencing Submission” for the district court’s consideration. DE 37. The submission contained exhibits and the sentencing transcript from a sentencing held three weeks earlier in another criminal case before the same district judge. *See* DE 37-1, 37-2, & 37-3.

Disposition in the District Court

The district court sentenced Mr. Coleman on February 18, 2025. DE 28. The district court overruled Mr. Coleman's objections and imposed a 92-month term of imprisonment – the low end of the advisory guideline range. *Id.* It also denied Mr. Coleman's request for a downward variance. *Id.*

Statement of Facts

On February 2, 2023, West Palm Beach Police Department detectives located Mr. Coleman and took him in custody pursuant to a state search warrant which determined the probable cause existed to obtain a DNA sample for comparison purposes with evidence seized in another case. DE 23: 2. Pursuant to the search warrant, Mr. Coleman was transported to the West Palm Beach Police Department for the collection of his DNA. *Id.* at 2-3.

Prior to transporting Mr. Coleman, one of the detectives searched him pursuant to police policy and located two cellular phones and a black, triangularly shaped metal device, which the detective recognized as a machinegun conversion that could be used to mechanically alter a legal semi-automatic AR-15 style firearm to fire fully automatically as a machinegun. *Id.* at 3. After the detectives obtained DNA samples from Mr. Coleman, he was released, but the black triangular device was sent to the ATF Firearm & Ammunition Technology Division (FATD) for examination. *Id.*

An examiner at FATD examined the black device and determined that the device was a part “designed intended solely and exclusively for use in converting a

AR-15 variant rifle into a machinegun, and that therefore, [the device] is a ‘machinegun’ as defined in 26 U.S.C. § 5845(b).” *Id.* The examiner also installed the device into a semi-automatic AR-15 rifle and the firearm thereafter fired ten rounds automatically by a single function of the trigger. *Id.* at 3-4.

An ATF custodian of records searched the National Firearms Registration and Transfer Records check determined that no Title 26 firearms were lawfully registered to Mr. Coleman. *Id.* at 4. Moreover, the machinegun bore no manufacturer’s name or serial number so it could not have been legally registered in any event. *Id.*

An ATF Task Officer was granted state search warrants for Mr. Coleman’s phones. *Id.* One phone contained numerous images and videos of Mr. Coleman, as well as an image of the machinegun conversion device in the open palm of a hand. *Id.* A fingerprint examiner determined that the fingerprints of the person holding the device matched those of Mr. Coleman. *Id.*

The same ATF Task Force Officer also discovered a number of text messages related to the sale of the machinegun-conversion device. *Id.* at 4-5. The Task Force Officer also indicated that in those messages, Mr. Coleman referred to the device using language about converting a semi-automatic firearm into a fully automatic machinegun. *Id.* at 5. Also, from those messages it appeared that Mr. Coleman was attempting to sell the conversion device. *Id.*

REASONS FOR GRANTING THE WRIT

- I. **This Court must resolve a clear inter-circuit split on the question of whether a state prior conviction should be viewed, under the categorical approach, at the time of the commission of the state offense or at the time of the federal sentencing to determine whether the state prior conviction qualifies as a predicate “controlled substance offense” in order to enhance the federal sentence under the United States Sentencing Guidelines.**

This Court has held that for purposes of a federal recidivist statute, a prior state conviction must be examined under the categorical approach at the time of the commission of the state offense to see if it qualifies as a qualifying predicate. However, this Court expressly left open the question of whether, for purposes of a sentencing enhancement under the federal Sentencing Guidelines, a state prior must be examined under the categorical approach at the time of the commission of the state offense or at the time of the federal sentencing. An inter-circuit exists with almost an equal number of circuits holding that a prior state drug trafficking offense must be compared under the categorical approach with the federal “controlled substance” offense at the time of the federal sentencing to determine whether it is a qualifying prior for purposes of a sentencing enhancement under the United States Sentencing Guidelines and the other half, including the Eleventh Circuit holding that a prior state drug trafficking offense must be judged under the categorical approach with the

federal “controlled substance” offense at the time of the commission of the state offense to determine whether it is a qualifying prior for purposes of a sentencing enhancement under the United States Sentencing Guidelines. This Court must settle the large and entrenched inter-circuit conflict.

In *Brown v. United States*, 602 U.S. 101 (2024), this Court held that, in determining whether, applying the categorical approach, a state drug conviction qualified as a “controlled substance” offense for purposes of a sentencing enhancement under the Armed Career Criminal Act (ACCA), a sentencing court was required to evaluate the state conviction at the time of the state conviction. *Id.* at 123. Specifically, this Court held that “a state drug conviction counts as an ACCA predicate if it involved a drug on the federal schedule at the time of that offense.” *Id.* However, in a footnote, this Court suggested that the decision might be different in evaluating whether a state conviction qualified as a predicate offense under the United States Sentencing Guidelines in light of the statutory mandate that a sentencing court apply the Guidelines in effect at the time of sentencing:

Brown also likens his interpretation to the “ordinary practice” of applying Guidelines sentencing enhancements as they exist at sentencing . . . But there is a reason to doubt that the Guidelines practice is relevant here. That is because **Congress has expressly directed courts to apply the Guidelines “in effect on the date the defendant is sentenced.”** 18 U.S.C. § 3553(a)(4)(A)(ii). ACCA contains no similar instruction.

See id. at 120 fn7 (emphasis added).

Following this Court’s decision in *Brown*, the Fifth Circuit addressed the question left open in *Brown*: in applying the categorical approach to determine

whether a state conviction qualified as a predicate offense under the United States Sentencing Guidelines, does a federal sentencing court look at the offense at the time of commission or at the time of the federal sentencing. *United States v. Minor*, 121 F.4th 1085 (5th Cir. 2024). The Fifth Circuit, in pertinent part, examined how this Court’s decision in *Brown* informed its analysis on that question. *Id.* at 1091-1093. Applying the analysis of *Brown*, including footnote seven which distinguished the ACCA from the Sentencing Guidelines, the Fifth Circuit concluded that a prior state drug conviction would be evaluated, under the categorical approach, at the time of the federal sentencing to see if it qualified as a “controlled substance” offense for purposes of a sentencing enhancement under the Sentencing Guidelines. *Id.*

In contrast, the Eleventh Circuit’s holding that, under the categorical approach, a prior state drug conviction would be evaluated at the time of the commission of the state offense to see if it qualified as a “controlled substance” offense for purposes of a sentencing enhancement under the Sentencing Guidelines failed to take this Court’s decision in *Brown* into account at all. Here, the Eleventh Circuit held that it was bound by its prior precedent, *United States v. Dubois (Dubois I)*, 94 F.4th 1284 (11th Cir. 2024), holding that a prior state drug conviction must be evaluated at the time of the commission of the state offense to see if it qualified as a “controlled substance” offense for purposes of a sentencing enhancement under the Sentencing Guidelines. *United States v. Coleman*, 2026 WL 1210249 at *2 (11th Cir. May 4, 2026) (unpublished). This Court remanded *Dubois* back to the Eleventh Circuit in light of this Court’s decision in *United States v. Rahimi*, 602 U.S. 680

(2024). *See Dubois v. United States*, 145 S. Ct. 1041, 1042 (2025). However, on remand, the Eleventh Circuit simply reinstated its prior opinion with regard to the controlled substance offenses. *See United States v. Dubois (Dubois II)*, 139 F.4th 887, 894 (11th Cir. 2025). The Eleventh Circuit relied on its holding in *Dubois I* to deny Mr. Coleman’s claim on appeal. *Coleman*, 2026 WL 1210249 at *2.

Dubois I was decided March 5, 2024, prior to this Court’s decision in *Brown*. *See Dubois*, 94 F.4th at 1284. Thus, that decision could not have relied on this Court’s analysis and reasoning in *Brown*. Although *Dubois II* was decided after *Brown*, that opinion made no mention of this Court’s decision in *Brown* and said nothing about the issue except to reinstate *Dubois I*. *See Dubois II*, 139 F.4th at 894.

That post-*Brown* split simply further entrenched the split that previously existed on the question:

- In 2021, the **First** and **Ninth Circuits** both adopted a time-of-sentencing rule. *See United States v. Abdulaziz*, 998 F.3d 519, 523 (1st Cir. 2021); *United States v. Bautista*, 989 F.3d 698, 703 (9th Cir. 2021).
- The split quickly emerged in 2022 when the **Sixth Circuit** rejected the First and Ninth Circuit holdings and adopted a time-of-prior-conviction rule. *See United States v. Clark*, 46 F.4th 404, 412–13 (6th Cir. 2022).
- Also in 2022, the **Eighth Circuit** adopted a time-of-prior conviction rule for the Guidelines (despite adopting a time-of-federal-offense rule for ACCA). *See United States v. Perez*, 46 F.4th 691, 699–701 (8th Cir. 2022) (citing *United States v. Bailey*, 37 F.4th 467, 469–70 (8th Cir. 2022)).
- Later that same year, **Second Circuit** rejected a time-of-prior-conviction rule (though it did so without deciding whether to adopt a time-of-federal-offense rule or a time-of-federal-sentencing rule). *See United States v. Gibson*, 55 F.4th 153, 165–66 (2d Cir. 2022), *denying gov’t pet. for panel rehearing*, 60 F.4th 720 (2d Cir. 2023).

- In 2023, the **Third Circuit** adopted a time-of-prior-conviction rule, following the Sixth and Eighth Circuits and “respectfully disagree[ing]” with the time-of-sentencing rule adopted by the First and Ninth Circuits. *See United States v. Lewis*, 58 F.4th 764, 771–73 (3d Cir. 2023).
- In March 2024, the **Eleventh Circuit** likewise adopted a time-of-prior conviction rule and rejected a time-of-sentencing rule. *See United States v. Dubois*, 94 F.4th 1284, 1298–1300 (11th Cir. 2024), *vacated* 145 S. Ct. 1041 (2025), *reinstated* 139 F.4th 887, 889 (11th Cir. 2025).

Then came this Court’s May 2024 decision in *Brown*, which both solidified and deepened the circuit split. *Brown* solidified the split because footnote 7 did not resolve the timing question under the Guidelines. So absent any “directive from the Supreme Court” on that question, *United States v. Nelson*, 151 F.4th 577, 584 (4th Cir. 2025), *Brown* did not disturb any of the pre-existing circuit precedents. *See, e.g., United States v. Drake*, 126 F.4th 1242, 1245–46 (6th Cir. 2025) (reaffirming *Clark* post-*Brown*); *United States v. Gordon*, 111 F.4th 899, 901 & n.4 (8th Cir. 2025) (reaffirming *Bailey*); Pet. App. A-1 at 3, 7–8 (CA11) (reaffirming *Dubois*; decision below); *United States v. Waiters*, 2024 WL 2797919, at *5–6 (11th Cir. 2024) (same); *United States v. Moran-Stenson*, 115 F.4th 11, 19, 22 (1st Cir. 2024) (reaffirming *Abdulaziz*).

Brown also deepened the split because two additional courts of appeals have since reached opposite conclusions post-*Brown*. Adopting a time-of-prior-conviction rule, the **Fourth Circuit** has held that, notwithstanding footnote 7, *Brown* did not require a time-of-sentencing rule for the Guidelines. *See Nelson*, 151 F.4th at 582–84. By contrast, the **Fifth Circuit** has held that, notwithstanding *Brown*’s adoption of a time-of-prior-conviction rule for ACCA, *Brown* did not bar a time-of-sentencing

rule for the Guidelines, and the court squarely adopted that rule over Judge Duncan’s dissent. *See United States v. Minor*, 121 F.4th 1085, 1091–93 (5th Cir. 2024).

The courts of appeals have widely acknowledged this conflict. *See, e.g., Gordon*, 111 F.4th at 901 (“There is a circuit split on this Guidelines issue . . . , but the Supreme Court has not addressed” it); *Dubois*, 94 F.4th at 1298 (“Our sister circuits are split on this timing question.”); *Lewis*, 58 F.4th at 711 (“This question too has divided the courts of appeals.”). And Judge Duncan has urged this Court to resolve it post-*Brown*. *See Minor*, 121 F.4th at 1095 (Duncan, J., dissenting) (“As the majority points out, the circuits are deeply split over whether the correct approach . . . is time-of-conviction or time-of sentencing. Our court has now picked a side. Hopefully, the Supreme Court will soon settle the matter.”). The Court should accept that invitation. This petition thus presents a clear inter-circuit split on an important question which has the potential to affect numerous federal criminal defendants throughout the United States.

In addition, this conflict must be resolved by this Court and not by the Sentencing Commission. Congress has mandated that a sentencing court must apply the Sentencing Guidelines that “are in effect on the date the defendant is sentenced.” 18 U.S.C. § 3553(a)(4)(A)(ii). Given that express statutory limitation, the Sentencing Commission is not free to create a system that would run afoul of the limitation that a sentencing court must apply the Sentencing Guidelines that “are in effect on the date the defendant is sentenced.” As this Court recently made clear, “the [Sentencing] Commission’s policy statements must be consistent with the

governing statute . . . and courts have a duty to independently interpret the statute and effectuate the will of Congress.” *Rutherford v. United States*, 146 S. Ct. 1320, 1334 (2026) (internal citations and quotation marks omitted). Accordingly, only this Court can decide whether the federal statute, 18 U.S.C. § 3553(a)(4)(A)(ii), mandates that, for purposes of a sentencing enhancement under the federal Sentencing Guidelines, a state prior must be examined under the categorical approach at the time of the commission of the state offense or at the time of the federal sentencing.

A resolution of that inter-circuit conflict in favor of Mr. Coleman would have a substantial effect on his sentence. Here, Mr. Coleman’s sentence was enhanced pursuant to U.S.S.G. § 2K2.1(a)(2) based on the conclusion that he had two prior convictions for a “controlled substance” offense. Although at the time of the commission of those two state offenses, those convictions qualified as “controlled substance” offenses, it is clear that at the time of his federal sentencing, those two prior state convictions no longer qualified as “controlled substance” offenses under the Sentencing Guidelines. The difference to Mr. Coleman is a six-level difference that enhanced his Base Offense Level from a level 20 to a level 26. The enhancement also raised his criminal history category from a category IV to a category VI.

Section 2K2.1(a)(2) of the United States Sentencing Guidelines provides:

§ 2K2.1 Unlawful Receipt, Possession, or Transportation of Firearms
or Ammunition; Prohibited Transactions Involving Firearms or
Ammunition

(a) Base Offense Level

(1) **26**, if (A) the offense involved a (i) semiautomatic firearm

that us capable of accepting a large capacity magazine; or (ii) firearm that is described in 26 U.S.C. § 5845(a); and (B) 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;

U.S.S.G. § 2K2.1(a)(1). The applicable Commentary refers the definition of controlled substance offense to the definition found in Note one of the Commentary to U.S.S.G. § 4B1.2. U.S.S.G. §2K2.1 Comment n.1. Section 4B1.2 defines a “controlled substance offense:”

“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.”

U.S.S.G. § 4B1.2(b) 2021. The term “controlled substance” under § 4B1.2 refers only to those substances that are federally controlled. *United States v. Townsend*, 897 F.3d 66, 72 (2d Cir. 2018); *United States v. Gomez-Alvarez*, 781 F.3d 787, 793-94 (5th Cir. 2015), *United States v. Leal-Vega*, 680 F.3d 1160, 1166-67 (9th Cir. 2021); *United States v. Sanchez-Garcia*, 642 F.3d 658, 661-62 (8th Cir. 2011).

Mr. Coleman’s federal sentence was enhanced under U.S.S.G. § 2K2.1(a)(1) based on a 2015 Florida conviction for sale of cocaine. As the Eleventh Circuit summarized in Mr. Coleman’s appeal:

At the time that Coleman committed his offense, Florida law prohibited the sale of a “controlled substance,” View more Negative Treatments Fla. Stat. §§ 893.13(1) (2016), which was defined as “any substance named or described in Schedules I-V of § 893.03,” *id.* § 893.02(4) (2016).

Florida's list of controlled substances included “[c]ocaine or ecgonine, including any of their stereoisomers, and any salt, compound, derivative, or preparation of cocaine or ecgonine.” *Id.* § 893.03(2)(a)(4) (2016). It is of no moment, therefore, that the federal government removed ioflupane—a stereoisomer of cocaine—from its drug schedules in September 2015. *See Removal of [¹²³I]Ioflupane From Schedule II of the Controlled Substances Act*, 80 Fed. Reg. 54715 (Sep. 11, 2015) (codified at 21 C.F.R. § 1308.12(b)(4)(ii)). All that matters is that Florida prohibited the sale of cocaine and *any* of its stereoisomers at the time that Coleman committed his offense. *See Dubois I*, 94 F.4th at 1296–98.

United States v. Coleman, 2026 WL 1210249 at *2 (11th Cir. May 4, 2026).

Thus, at the time of his state offenses, Florida defined cocaine to include ioflupane. However, at the time of his federal sentencing, ioflupane was not considered a “controlled substances” under federal law.

Under the categorical approach, a court must presume that the prior conviction rested upon nothing more than the least of the acts criminalized or the least culpable conduct. *See Borden v. United States*, 593 U.S. 420, 424 (2021). Thus, if Mr. Coleman’s prior conviction is judged at the time of the federal sentencing, then his Florida conviction is broader than the federal definition of a “controlled substance” offense and his prior conviction in Florida for sale of cocaine does not qualify as predicate priors under U.S.S.G. § 2K2.1(a)(2). *See id.* A resolution of the inter-circuit conflict holding that, as the Fifth Circuit and other circuits have held, that in applying the categorical approach on the question of whether a prior state conviction qualifies as a predicate conviction for a sentencing enhancement under the Sentencing Guidelines is judged at the time of the federal sentencing, would thus have a

substantial effect on Mr. Coleman's sentence.

The Sentencing Guidelines were created to provide greater uniformity in federal sentencing. *See Rosales-Mireles v. United States*, 585 U.S. 129, 130-131 (2018). In fact, Congress mandates that sentencing courts are required to avoid unwarranted sentencing disparities between similarly situated defendants convicted of similar offenses. *See* 18 U.S.C. § 3553(a)(6). Yet, this entrenched inter-circuit split does the exact opposite by perpetuating those kinds of unwarranted sentencing disparities. Given the continued injustice inflicted upon federal defendants by virtue of the inter-circuit split and given that only this Court, and not the United States Sentencing Commission, can resolve that split, Mr. Coleman respectfully requests that this Court grant his petition for a writ of certiorari to the Eleventh Circuit to resolve this split.

II. This Court recently granted a petition for a writ of certiorari on the question of “whether the Second and Fourteenth Amendments guarantee the right to possess AR-15 platform and similar semiautomatic rifles.” *Viramontes v. Cook County*, No. 25-238 (June 30, 2026), see also *Grant v. Higgins*, No. 25-566 (June 30, 2026). A decision in those cases will affect whether the district court had jurisdiction to prosecute, convict, and sentence Mr. Coleman.

Mr. Coleman entered a plea of guilty to a charge of possession of an unregistered machinegun. Factually, Mr. Coleman was in possession of a small metal object known as a conversion device which allows an AR-15 semi-automatic assault rifle to fire of ten shots instead of a single shot with one pull of the trigger. This Court

recently granted a petition for a writ of certiorari on the question of “whether the Second and Fourteenth Amendments guarantee the right to possess AR-15 platform and similar semiautomatic rifles.” *Viramontes v. Cook County*, No. 25-238 (June 30, 2026), see also *Grant v. Higgins*, No. 25-566 (June 30, 2026). A decision on that question by this Court would also likely determine whether Mr. Coleman’s prosecution in this case violated his Constitutional rights under the Second Amendment. If his prosecution in the instant case violated his rights under the Second Amendment, it would mean that the district court lacked jurisdiction to convict Mr. Coleman. See *United States v. Hemani*, 146 S. Ct. 1677, 1694 (2026). Although Mr. Coleman did not raise that challenge to the district court’s jurisdiction below, the well-established law in this Court makes it clear that such a challenge to the district court’s subject matter jurisdiction is never waived or forfeited and can be raised at any time. See *United States v. Cotton*, 535 U.S. 625, 630 (2002). As such, Mr. Coleman respectfully requests that this Court hold this petition in abeyance pending this Court’s resolution of *Viramontes* and *Grant*. See *Reed v. Goertz*, 598 U.S. 230, 259 (2023) (Alito, J. dissenting) (noting that this Court will often hold petitions that raise similar issues as cases pending before the Court and subsequently “grant the petition, vacate the decision below, and remand the case for reconsideration in light of the decision [the Court has] handed down.”)

CONCLUSION

Based upon the foregoing petition, the Court should grant a writ of certiorari to the Court of Appeals for the Eleventh Circuit.

Respectfully submitted,

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