

No. _____

IN THE
Supreme Court of the United States

AKEEM ASAD,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Defendants who have two prior felony convictions for “controlled substance offense[s]” qualify as career offenders under the federal Sentencing Guidelines. In the First, Second, Fifth, and Ninth Circuits, a conviction counts as a “controlled substance offense” only if the conduct involved a substance listed in the federal Controlled Substances Act. In the Third, Fourth, Sixth, Seventh, Eighth, Tenth, and Eleventh Circuits, a conviction counts as a “controlled substance offense” even if it involves a state-controlled substance that is legal under federal law. The questions presented are:

I. Is the Seventh Circuit on the wrong side of a circuit split when it construes the term “controlled substance offense” under § 4B1.2(b) of the Sentencing Guidelines to include state convictions, even when those convictions involve substances that are not outlawed by federal law?

II. To the extent that *Braxton v. United States*, 500 U.S. 344, 348 (1991), describes a general rule of abstention from granting certiorari to interpret the Sentencing Guidelines, should *Braxton* be overruled?

LIST OF PARTIES

Akeem Asad (petitioner); and

United States of America (respondent).

RELATED PROCEEDINGS

United States Court of Appeals (7th Cir.):

United States v. Asad, No. 24-2518 (May 5, 2026).

United States District Court (N.D. Ill.):

United States v. Asad, No. 1:17-CR-00040(2) (August 27, 2024).

TABLE OF CONTENTS

QUESTIONS PRESENTED	i
LIST OF PARTIES	ii
RELATED PROCEEDINGS	ii
TABLE OF CONTENTS	iii
INDEX TO APPENDIX	v
TABLE OF AUTHORITIES CITED	vi
PETITION FOR WRIT OF CERTIORARI	1
DECISIONS BELOW	1
JURISDICTION	1
STATUTORY AND SENTENCING GUIDELINES PROVISIONS INVOLVED	1
INTRODUCTION	4
STATEMENT OF THE CASE	8
I. Background on the career-offender guideline	8
II. The district court proceedings in this case	11
III. The Seventh Circuit’s decision	14
REASONS FOR GRANTING THE PETITION	16
I. This case involves a well-developed circuit split.	17
A. Four circuits rely on federal law alone to define “controlled substance offense.”	17
B. Seven circuits define “controlled substance offense” to include state crimes involving substances that are legal under federal law.	18
II. The Seventh Circuit is on the wrong side of the split.	20
A. <i>Ruth</i> and similar cases construe the guidelines in a way that assumes that the Sentencing Commission exceeded its congressional mandate	20
B. The First, Second, Fifth, and Ninth Circuits have the stronger textual reading.	21

C.	Broader policy considerations favor the categorical- approach side of the split.	24
III.	Resolution of this split is necessary to avoid unfair disparities in sentencing.....	25
IV.	This Court cannot rely on the Sentencing Commission to resolve the split.....	29
V.	To the extent that <i>Braxton</i> is a barrier to certiorari, this Court should overrule <i>Braxton</i>	32
VI.	This case is an excellent vehicle.....	34
CONCLUSION		38

INDEX TO APPENDIX

Appendix A	Decision of the U.S. Court of Appeals for the Seventh Circuit	1a
Appendix B	Judgment in a Criminal Case, August 27, 2024.....	4a
Appendix C	Sentencing Transcript, August 27, 2024.....	12a

TABLE OF AUTHORITIES CITED

Cases

<i>Batterton v. Francis</i> , 432 U.S. 416 (1977).....	20
<i>Braxton v. United States</i> , 500 U.S. 344 (1991)	i, 6, 7, 32, 33
<i>Curtis Harris v. United States</i> , No. 24-7335 (U.S. May 23, 2025)	28
<i>Descamps v. United States</i> , 570 U.S. 254 (2013)	10
<i>Dubois v. United States</i> , 145 S. Ct. 1041, <i>reinstated</i> , 139 F.4th 887 (11th Cir. 2025).....	19
<i>Early v. United States</i> , 502 U.S. 920 (1991)	31
<i>Esquivel-Quintana v. Sessions</i> , 581 U.S. 385 (2017)	23
<i>Gall v. United States</i> , 552 U.S. 38 (2007)	24
<i>Groff v. DeJoy</i> , 600 U.S. 447 (2023)	34
<i>Guerrant v. United States</i> , 142 S. Ct. 640 (2022)	5, 7, 20, 25, 26, 28, 29, 33
<i>Hewitt v. United States</i> , 145 S. Ct. 2165 (2025)	34
<i>Jerome v. United States</i> , 318 U.S. 101 (1943).....	22
<i>Longoria v. United States</i> , 141 S. Ct. 978 (2021).....	31, 33
<i>Loper Bright Enters. v. Raimondo</i> , 603 U.S. 369 (2024)	20
<i>McClinton v. United States</i> , 143 S. Ct. 2400 (2023)	31, 33
<i>Michigan v. Long</i> , 463 U.S. 1032 (1983)	34
<i>Mistretta v. United States</i> , 488 U.S. 361 (1989)	8, 24
<i>Molina-Martinez v. United States</i> , 578 U.S. 189 (2016).....	8, 24
<i>Rita v. United States</i> , 551 U.S. 338 (2007)	8

<i>Rosales-Mireles v. United States</i> , 585 U.S. 129 (2018).....	8
<i>State v. Asad</i> , No. 69DU-CR-14-4400 (Minn. 6th Dist. Jan. 27, 2017).....	11
<i>State v. Asad</i> , No. 69DU-CR-14-648 (Minn. 6th Dist. Mar. 5, 2015).....	11
<i>Taylor v. United States</i> , 495 U.S. 575 (1990).....	10, 23, 24
<i>United States v. Bautista</i> , 989 F.3d 698 (9th Cir. 2021)	4, 10, 17
<i>United States v. Crocco</i> , 15 F.4th 20 (1st Cir. 2021)	18, 26
<i>United States v. Dubois</i> , 94 F.4th 1284 (11th Cir. 2024)	19, 21, 25
<i>United States v. Fulcar</i> , -- F.4th --, No. 24-1524, 2026 WL 1948536 (1st Cir. July 6, 2026).....	4, 17, 25
<i>United States v. Gomez-Alvarez</i> , 781 F.3d 787 (5th Cir. 2015).....	18
<i>United States v. Henderson</i> , 11 F.4th 713 (8th Cir. 2021)	19
<i>United States v. Jones</i> , 15 F.4th 1288 (10th Cir. 2021).....	19
<i>United States v. Jones</i> , 81 F.4th 591 (6th Cir. 2023).....	19, 25
<i>United States v. LaBonte</i> , 520 U.S. 751 (1997).....	20, 21
<i>United States v. Leal-Vega</i> , 680 F.3d 1160 (9th Cir. 2012)	18
<i>United States v. Lewis</i> , 58 F.4th 764 (3d Cir. 2023).....	18, 25
<i>United States v. Minor</i> , 121 F.4th 1085 (5th Cir. 2024).....	4, 17, 25
<i>United States v. Owen</i> , 51 F.4th 292 (8th Cir. 2022).....	4, 14, 36
<i>United States v. Ruth</i> , 966 F.3d 642 (7th Cir. 2020)	5, 10, 18, 19, 20, 23, 35, 36, 37
<i>United States v. Tovar</i> , 88 F.4th 720 (7th Cir. 2023)	14, 25
<i>United States v. Townsend</i> , 897 F.3d 66 (2d Cir. 2018)	4, 17, 18, 22, 23
<i>United States v. Turner</i> , 55 F.4th 1135 (7th Cir. 2022)	37

<i>United States v. Ward</i> , 972 F.3d 364 (4th Cir. 2020)	19, 24
<i>Wiggins v. United States</i> , 145 S. Ct. 2621 (2025)	6, 7, 25, 26, 29, 30, 33
<i>Yee v. City of Escondido</i> , 503 U.S. 519 (1992)	37

Statutes

21 U.S.C. § 802.....	2, 14, 36
21 U.S.C. § 812.....	2, 14, 36
21 U.S.C. § 841.....	1, 9, 20, 35, 37
21 U.S.C. § 952.....	1, 9, 21
21 U.S.C. § 955.....	1, 9, 21
21 U.S.C. § 959.....	1, 9, 21
28 U.S.C. § 1254.....	1
28 U.S.C. § 991.....	8
28 U.S.C. § 994.....	1, 8, 9, 21, 31
46 U.S.C. § 705.....	1, 9, 21
46 U.S.C. § 70503.....	2, 22
46 U.S.C. § 70506.....	2, 22
MINN. STAT. § 152.01	3, 14, 36
MINN. STAT. § 152.021	3, 11, 12, 36
MINN. STAT. § 152.022	3, 11, 12, 36

Other Authorities

<i>Controlled substance</i> , The Random House Dictionary of the English Language (2d ed. 1987)	18
Federal Register Notice of Proposed 2025–2026 Priorities (June 9, 2025), https://www.ussc.gov/policymaking/federal-register-notices/federal-register-notice-proposed-2025-2026-priorities	30
Federal Register Notice of Proposed 2026–2027 Priorities (June 12, 2026), https://www.ussc.gov/policymaking/federal-register-notices/federal-register-notice-proposed-2026-2027-priorities	30
Final Priorities for Amendment Cycle, 87 Fed. Reg. 67756 (Nov. 9, 2022).....	29
Final Priorities for Amendment Cycle, 89 Fed. Reg. 66176 (Aug. 14, 2024).....	29
Final Priorities for Amendment Cycle, 90 Fed. Reg. 39263 (Aug. 14, 2025).....	30
Final Priorities for Amendment Cycle, 88 Fed. Reg. 60536 (Sep. 1, 2023)	29
Press Release, <i>Acting Chair Judge Charles Breyer, Incoming Chair Judge Carlton W. Reeves Applaud Senate Confirmation of New Commissioners</i> , U.S. Sentencing Commission (Aug. 5, 2022), https://www.ussc.gov/about/news/press-releases/august-5-2022	29
Proposed Priorities for Amendment Cycle, 87 Fed. Reg. 60439 (Oct. 5, 2022)	25
Sentencing Guidelines for United States Courts, 90 Fed. Reg. 128 (Jan. 2, 2025)...	30
Sentencing Guidelines for United States Courts, 90 Fed. Reg. 19798 (May 9, 2025)	30

U. S. Sentencing Commission, Organization, https://www.ussc.gov/about/who-we-are/organization	31
U.S.S.G. § 1B1.2.....	32
U.S.S.G. § 4B1.1.....	2, 4, 9, 11, 12, 16
U.S.S.G. § 4B1.2.....i, 2, 4, 9, 10, 16, 17, 19, 21, 22, 23, 28, 30, 31, 35, 37	
U.S.S.G. Ch. 1	24
U.S.S.G. Ch. 5	8, 11, 12
United States Sentencing Commission’s Interactive Data Analyzer, https://ida.ussc.gov/	27

PETITION FOR WRIT OF CERTIORARI

Petitioner Akeem Asad respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit.

DECISIONS BELOW

The Seventh Circuit's opinion (App. 1a–3a) is unpublished but available on Westlaw at 2026 WL 1230532. The district court's judgment (App. 4a–11a) and the sentencing transcript (App. 12a–72a) are unpublished.

JURISDICTION

The Seventh Circuit entered judgment on May 5, 2026. (App. 1a.) Neither side petitioned for rehearing. This petition is filed within 90 days of the May 5, 2026 judgment. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY AND SENTENCING GUIDELINES PROVISIONS INVOLVED

28 U.S.C. § 994(h) provides, in relevant part:

The [United States Sentencing] Commission shall assure that the guidelines specify a sentence to a term of imprisonment at or near the maximum term authorized for categories of defendants in which the defendant is eighteen years old or older and—

(1) has been convicted of [specific felonies]; 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 Substances 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.

United States Sentencing Guidelines (U.S.S.G.) § 4B1.1(a) provides:

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 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.

United States Sentencing Guidelines (U.S.S.G.) § 4B1.2(b) provides:

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).

The Federal Controlled Substances Act, at 21 U.S.C. § 812, Schedule II(a)(4), outlaws and defines cocaine-related products as:

coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed; cocaine, its salts, optical and geometric isomers, and salts of isomers; ecgonine, its derivatives, their salts, isomers, and salts of isomers; or any compound, mixture, or preparation which contains any quantity of any of the substances referred to in this paragraph.

The same act further defines isomers, at 21 U.S.C. § 802(14), in relevant part:

As used in schedule II(a)(4), the term “isomer” means any optical or geometric isomer.

During the relevant time period, at MINN. STAT. § 152.01, subd. 3a (effective May 25, 2011 to July 31, 2016), Minnesota law defined cocaine as:

“Cocaine” means coca leaves and any salt, compound, derivative, or preparation of coca leaves, including cocaine and ecgonine, the salts and isomers of cocaine and ecgonine, and the salts of their isomers and any salt, compound, derivative, or preparation thereof that is chemically equivalent or identical with any of those substances, except decocainized coca leaves or extraction of coca leaves, which extractions do not contain cocaine or ecgonine.

During the relevant time period, at MINN. STAT. § 152.021, subd. 1 (1) (effective May 25, 2011 to July 31, 2016), Minnesota law defined a controlled substance crime in the first degree, as:

on one or more occasions within a 90-day period the person unlawfully sells one or more mixtures of a total weight of ten grams or more containing cocaine, heroin, or methamphetamine.

During the relevant time period, at MINN. STAT. § 152.022, subd. 1 (1) (effective May 25, 2011 to July 31, 2016), Minnesota law defined a controlled substance crime in the second degree, as:

on one or more occasions within a 90-day period the person unlawfully sells one or more mixtures of a total weight of three grams or more containing cocaine, heroin, or methamphetamine.

INTRODUCTION

The case implicates a deep circuit split, in which every geographic circuit apart from the D.C. Circuit has already weighed in. A district judge in the Northern District of Illinois ruled that Akeem Asad was a career offender and sentenced him to 143 months for a racketeering conspiracy and distribution of drugs. But if Asad had been sentenced in New York, California, or Texas instead of Chicago, he would not be considered a career offender. And as a result, his sentence would have been significantly shorter.

The First, Second, Fifth, and Ninth Circuits all use a categorical approach that looks at federal law to determine whether a prior conviction counts as a predicate “controlled substance offense” under §§ 4B1.1(a) and 4B1.2(b) of the Sentencing Guidelines. In those circuits, a state drug conviction is a controlled substance offense only if the offense necessarily involved a substance listed in the federal Controlled Substances Act. *See United States v. Fulcar*, -- F.4th --, No. 24-1524, 2026 WL 1948536, at *12 (1st Cir. July 6, 2026); *United States v. Minor*, 121 F.4th 1085, 1089 (5th Cir. 2024); *United States v. Bautista*, 989 F.3d 698, 702–704 (9th Cir. 2021); *United States v. Townsend*, 897 F.3d 66, 68, 71 (2d Cir. 2018). Asad has prior Minnesota convictions for sale of “cocaine, heroin, or methamphetamine,” but those convictions don’t count for career-offender status in circuits that apply the categorical approach because Minnesota’s definition of cocaine is categorically broader than the federal definition. *See United States v. Owen*, 51 F.4th 292, 295 (8th Cir. 2022) (recognizing that Minnesota law is broader than federal definition).

Bad luck for Asad that he lives in the Seventh Circuit, where courts do not use federal law to define “controlled substances” within the meaning of the career-offender guideline. Instead, the Seventh Circuit construes the term “controlled substance offense” broadly to include state crimes involving “any of a category of behavior-altering or addictive drugs,” regardless of whether those same drugs are legal under federal law. *United States v. Ruth*, 966 F.3d 642, 654 (7th Cir. 2020). Similar rules apply in the Third, Fourth, Sixth, Eighth, Tenth, and Eleventh Circuits. The upshot is that Asad became a career offender with a guideline sentencing range more than double what it would have been in other parts of the country.

This case is not the first time this Court has been asked to address this circuit split. Four years ago, this Court denied a similar petition for certiorari in *Guerrant v. United States*, 142 S. Ct. 640 (2022) (Sotomayor, J., statement respecting denial of certiorari). But Justice Sotomayor, joined by Justice Barrett, wrote separately to highlight the importance of the split: Defendants like Asad are “subject to far higher terms of imprisonment for the same offenses as compared to defendants similarly situated in the Second or Ninth Circuits.” *Id.* at 640. At the time, the justices noted that the United States Sentencing Commission lacked the quorum necessary to resolve the split. *Id.* at 640–41. They voted to deny certiorari with the hope that the commission would address this issue once it regained a quorum. *Id.*

Even after regaining a quorum, however, the commission did not amend the provision. Accordingly, Justice Sotomayor, again joined by Justice Barrett, once again issued a statement with respect to this circuit split. *Wiggins v. United States*, 145 S. Ct. 2621 (2025). Justice Sotomayor again urged the Sentencing Commission to resolve this important issue, lamenting that the commission had signaled that it did not plan to take up the issue in the 2025–2026 amendment cycle. *Id.* at 2622. She added: “If the Commission does not intend to resolve the split, it should provide an explanation so that this Court can decide whether to address the issue and restore uniformity.” *Id.*

Unfortunately, the commission has again signaled that it does not intend to resolve the split. Once again, this issue does not appear in the commission’s proposed priorities for the upcoming amendment cycle. The split will likely remain active for the foreseeable future. And as time goes on, the need for this Court’s intervention to resolve the split becomes clearer.

Asad’s case demonstrates why the split is important for this Court to address. Asad’s career-offender status increased his guidelines range from 70–87 months to 188–235 months. The district court then explicitly relied on the guidelines to choose an appropriate sentence, meaning that the lower guidelines that Asad would have received in another circuit would have also resulted in a lower final sentence. This disparity should not depend upon geography. This Court should weigh in.

In the past, this Court has cited *Braxton v. United States*, 500 U.S. 344, 348 (1991), as a reason to not take up this and other issues involving the Sentencing

Guidelines. *See Wiggins*, 145 S. Ct. at 2622; *Guerrant*, 142 S. Ct. at 641. To the extent that this Court has interpreted *Braxton* to hold that this Court should abstain from granting certiorari to resolve circuit splits over interpretation of the guidelines, this Court should overrule *Braxton*. This case demonstrates why the *Braxton* rule is unworkable: The commission has proved unwilling and unable to resolve a deeply entrenched circuit split, which continues to create disparate effects based solely on geography.

STATEMENT OF THE CASE

I. Background on the career-offender guideline

The United States Sentencing Commission establishes sentencing guidelines for federal defendants. *Molina-Martinez v. United States*, 578 U.S. 189, 192 (2016). The guidelines are composed of two basic parts: an offense level, calculated from the details of the defendant’s relevant conduct; and a criminal-history score, calculated from the defendant’s prior criminal history. *Rosales-Mireles v. United States*, 585 U.S. 129, 133–34 (2018). When the offense level and criminal-history score are combined, the sentencing court gets an advisory sentencing range of anywhere from 0–6 months to life in prison. *See* U.S.S.G. Ch. 5 Pt. A. One purpose of these guidelines is to achieve uniformity in sentencing; the guidelines are meant to recommend similar sentences for similarly situated defendants. *Molina-Martinez*, 578 U.S. at 192 (citing *Rita v. United States*, 551 U.S. 338, 349 (2007)).

Ultimately, the commission’s power to create these guidelines comes from Congress. 28 U.S.C. §§ 991, 994(a); *Mistretta v. United States*, 488 U.S. 361, 367 (1989). And among other things, Congress has directed the commission to increase the guidelines ranges for certain career offenders. As relevant here, Congress instructed the commission to “assure that the guidelines specify a sentence to a term of imprisonment at or near the maximum term authorized” for certain defendants convicted of specific federal crimes of violence or drug offenses. 28 U.S.C. § 994(h). Congress said that this provision should apply, among other

things, when a defendant “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 Substances 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)(2).

The commission responded to the mandate of § 994(h) by creating the career-offender guideline. *See* U.S.S.G. § 4B1.1. Just as directed in § 994(h), the guideline applies to certain defendants sentenced for federal crimes of violence or controlled substance offenses. U.S.S.G. § 4B1.1(a). But the commission used its own terminology to define the prior convictions necessary for career-offender status. Rather than use the list of federal drug offenses provided in § 994(h), the guideline says that a defendant can qualify as a career offender if the defendant has two prior convictions for a “controlled substance offense.” U.S.S.G. § 4B1.1(a).

Another guideline further defines “controlled substance offense” to include “an offense under federal or state law ... 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). The guidelines do not define “controlled substance,” however, and federal circuits are split on how to define the term as it applies to state offenses.

Some circuits turn to federal law, reasoning that a state drug conviction is a predicate “controlled substance offense” only if it involves a substance that is also

illegal under the Controlled Substances Act. *See, e.g., United States v. Bautista*, 989 F.3d 698, 702 (9th Cir. 2021). These circuits use the “categorical approach,” under which a court looks at a state’s statutory definition for an offense to see if it is the same or narrower than its federal counterpart. *Id.* at 704. Under the categorical approach, courts do not look at the underlying facts of a defendant’s prior conviction. *Descamps v. United States*, 570 U.S. 254, 263 (2013). Instead, courts look solely to whether the elements of the crime of conviction match the elements of the federal recidivism statute. *Taylor v. United States*, 495 U.S. 575, 600 (1990). “If, and only if, the elements of the state law mirror or are narrower than the federal statute can the prior conviction qualify” as a predicate offense. *United States v. Ruth*, 966 F.3d 642, 646 (7th Cir. 2020) (internal quotation omitted).

Other circuits, including the Seventh where this case originates, reject the use of a categorical approach tied to the Controlled Substances Act when applying § 4B1.2(b)’s definition of “controlled substance.” The Seventh Circuit has construed § 4B1.2(b) to include not only federally outlawed substances, but also any state crime involving “any of a category of behavior-altering or addictive drugs” regardless of whether those same drugs are illegal under federal law. *Id.* at 654. This means that a defendant who previously distributed a substance that is federally legal but banned at the state level may nonetheless qualify as a career offender in the Seventh Circuit. The same defendant would not be a career offender in the Ninth Circuit.

Regardless of the circuit, however, career-offender status carries grave consequences under the guidelines. The defendant is automatically assigned to the highest criminal-history category and subject to an enhanced offense level based on the statutory maximum sentence. U.S.S.G. § 4B1.1(b). In general, the career-offender guideline is designed so that the recommended sentence will usually be near or at the maximum sentence. *Compare* U.S.S.G. § 4B1.1(b) *and* U.S.S.G. Ch. 5 Pt. A.

II. The district court proceedings in this case

Akeem Asad pleaded guilty to a racketeering conspiracy and possession with intent to distribute various controlled substances. (R. 565.) The background relevant to this appeal is that the government connected Asad and his brother to a street gang in Chicago. (R. 679 ¶¶ 10, 11.) While his brother ran the gang's overall narcotics operation, Akeem went to Minnesota to deal drugs. (R. 679 ¶¶ 12–13.)

Minnesota authorities had already charged Akeem and obtained convictions in two state drug cases. In the first, Akeem pleaded guilty to aiding and abetting a controlled substance crime in the first degree, in violation of Minnesota Statute § 152.021, subd. 1 (1). *State v. Asad*, No. 69DU-CR-14-648 (Minn. 6th Dist. Mar. 5, 2015). In the second state case, Akeem pleaded guilty to four counts of a controlled substance crime in the first degree, again in violation of § 152.021, subd. 1 (1), plus two counts of controlled substance crime in the second degree under Minnesota Statute § 152.022, subd. 1 (1). *State v. Asad*, No. 69DU-CR-14-4400 (Minn. 6th Dist. Jan. 27, 2017). All these state convictions invoked a statutory bar against selling

“cocaine, heroin, or methamphetamine.” MINN. STAT. §§ 152.021, subd. 1 (1) & 152.022, subd. 1 (1).

After Asad’s Minnesota convictions, federal authorities brought their own racketeering charges. (R. 89.) The government pointed to the Minnesota convictions as part of the racketeering conspiracy, along with other alleged drug activity that was not covered by those convictions. (R. 679 ¶¶ 17–19, 67–68.)

As part of a plea agreement, the government noted its intention to seek a career-offender enhancement under § 4B1.1 of the Sentencing Guidelines. (R. 565 ¶ 9.d.i.) A probation officer agreed that the enhancement applied, identifying Asad’s two Minnesota drug convictions as “controlled substance offenses” that qualified as predicate offenses. (R. 679 ¶¶ 67–68; R. 764 ¶ 18.) The presentence investigation report showed that without the career-offender enhancement, Asad would have had a final guidelines range of 70 to 87 months’ imprisonment.¹ But with the career-offender enhancement, Asad’s final offense level jumped from 20 to 31, and his guidelines range jumped from 70–87 months to 188–235 months. (R. 764 ¶¶ 19–23.)

Trial counsel objected to the career-offender enhancement, arguing that the Minnesota convictions were part of the racketeering activity currently at issue, and so should not also count as previous predicate offenses for career-offender purposes. (R. 788 at 3–8.) The government responded by pointing out that the guidelines

¹ Without the enhancement, Asad would have an adjusted offense level of 23 minus 3 for acceptance of responsibility. (R. 764 ¶¶ 16, 20–21.) When combined with his criminal-history score of VI (PSR ¶ 70), a final offense level of 20 would have resulted in a guidelines range of 70 to 87 months’ imprisonment. U.S.S.G. Ch. 5 Pt. A.

considered the Minnesota convictions to be prior sentences, even if they overlapped with the current prosecution. (R. 789 at 6–8.) The district court adopted the probation officer’s calculations, including the career-offender enhancement, and applied a guidelines range of 188 to 235 months. (App. 24a–25a.)

In choosing a sentence, the court relied on the guidelines range and noted that the probation office recommended a bottom-of-the-guidelines sentence of 188 months. (App. 64a.) The court agreed that 188 months was appropriate, while also adopting the parties’ stipulation to subtract 45 months as informal credit for time that Asad spent in Minnesota custody (and for which the Bureau of Prisons would not otherwise count as credit). (App. 65a.) The court rejected counsel’s request to disregard the career-offender enhancement. (App. 65a–66a.)

Although the final judgment reflects a below-guidelines sentence of 143 months to incorporate informal credit, the court made clear that its sentence was chosen to be “at the low end of the guideline range.” (App. 66a.) The written judgment itself explained that:

the sentence imposed credits the defendant with 45 months spent in state custody on related state cases on the expectation that those 45 months would not be credited by BOP as time served on this sentence. In other words, the sentence in this case would have been 188 months (the low end of the Guideline range) but for the crediting of those 45 months by the Court.

(App. 5a.)

III. The Seventh Circuit's decision

On appeal, Asad preserved his claim that he should not be considered a career offender. (App. 2a.) He argued that the Minnesota drug statutes were categorically broader than the federal Controlled Substances Act, because Minnesota outlawed salts and isomers of cocaine that were legal under federal law. *Compare* MINN. STAT. § 152.01, subd. 3a *with* 21 U.S.C. § 812, Schedule II(a)(4) *and* 21 U.S.C. § 802(14). (App. 2a–3a.) Therefore, using the categorical approach applied in several other circuits, Asad maintained that the Minnesota convictions should not qualify as controlled substance offenses under the guidelines. (App. 2a.) Indeed, the Eighth Circuit had already recognized that the same statute was overbroad in the context of the Armed Career Criminal Act. *See United States v. Owen*, 51 F.4th 292, 295 (8th Cir. 2022).

Asad recognized, however, that his argument was foreclosed by binding circuit precedent. (App. 2a.) He also recognized that the Seventh Circuit had repeatedly declined requests to switch sides in this circuit split. *See, e.g., United States v. Tovar*, 88 F.4th 720, 725 (7th Cir. 2023). He thus preserved his claims solely for purposes of seeking certiorari. (App. 2a.)

The Seventh Circuit affirmed, applying its circuit rule that the term “controlled substance” includes offenses involving state-controlled offenses, regardless of whether those substances are legal under federal law. (App. 2a–3a.) Nonetheless, the appellate court recognized that the Minnesota statutes were indeed broader than their federal counterparts, because Minnesota outlawed salts

and isomers of cocaine, “many of which are legal under federal law.” (App. 3a.) The court further recognized that acceptance of Asad’s argument would “dramatically reduce his sentencing range.” It noted that Asad had preserved his argument for further review. (App. 3a.)

REASONS FOR GRANTING THE PETITION

Within the federal Sentencing Guidelines, few provisions can have as dramatic an effect on a defendant's sentence as the career-offender provisions of § 4B1.1. In this case, for example, the district court's conclusion that Asad is a career offender increased his guidelines range from 70 to 87 months to 188 to 235 months.

This important provision of the guidelines works differently depending on where in the country a defendant is sentenced. The circuits are deeply misaligned over how to apply § 4B1.2(b)'s definition of "controlled substance offense," which is incorporated into § 4B1.1. And despite this Court's hope that the sentencing commission would amend the guidelines to address the circuit split, the commission has shown an unwillingness to do so. Defendants like Asad, who would not be a career offender in other circuits, meanwhile receive much higher sentences because of differences in circuit law.

This Court's intervention is needed to bring uniformity to federal sentencing, and Asad's case is the ideal vehicle. He is a defendant who is a career offender under the laws of some circuits but not others. And his case is one in which the career-offender guideline drastically alters the sentence. At the same time, he is not alone. As demonstrated by the frequent petitions for certiorari filed raising this issue, many defendants are in the same position as Asad. Allowing the split to fester will only continue these geographic disparities and undermine the guidelines' goal of consistency in sentencing.

I. This case involves a well-developed circuit split.

A. Four circuits rely on federal law alone to define “controlled substance offense.”

Four circuits have endorsed the use of the categorical approach to determine whether a prior state conviction counts as a “controlled substance offense.” In these circuits, a criminal defendant’s prior drug convictions count as predicate offenses only if they necessarily involved a substance outlawed by federal law.

The First, Second, Fifth, and Ninth Circuits have all held explicitly that the federal Controlled Substances Act controls the definition of “controlled substance” under § 4B1.2(b). *United States v. Fulcar*, -- F.4th --, No. 24-1524, 2026 WL 1948536, at *12 (1st Cir. July 6, 2026); *United States v. Townsend*, 897 F.3d 66 (2d Cir. 2018); *United States v. Minor*, 121 F.4th 1085, 1089 (5th Cir. 2024); *Bautista*, 989 F.3d at 702. These circuits also all use the categorical approach: A state crime is not a controlled substance offense if the state statute defines outlawed substances more broadly than the federal Controlled Substances Act. *Bautista*, 989 F.3d at 704.

To reach this conclusion, these circuits relied on the text of the guideline, which refers to “an offense under federal or state law” involving a “controlled substance.” U.S.S.G. § 4B1.2(b). As the Second Circuit explained, if this language were meant to be aimed at all federal *and* state controlled substances, then the provision “should read ‘... a controlled substance *under federal or state law*.’ But it does not.” *Townsend*, 897 F.3d at 70 (alteration and emphasis in original). This conclusion is bolstered by the presumption that federal laws should not depend on

state law unless the drafter plainly indicates otherwise. *Id.* at 71. The categorical approach also achieves the guidelines’ goal of uniformity in sentencing, unlike a rule that defers to state definitions of controlled substances that leads to inconsistency from state to state. *Id.*; *United States v. Gomez-Alvarez*, 781 F.3d 787, 793 (5th Cir. 2015) (citing *United States v. Leal-Vega*, 680 F.3d 1160, 1166 (9th Cir. 2012)).

B. Seven circuits define “controlled substance offense” to include state crimes involving substances that are legal under federal law.

The Seventh Circuit, and six other circuits, have taken a path “fraught with peril.” *United States v. Crocco*, 15 F.4th 20, 22 (1st Cir. 2021). Relying on a common understanding of “controlled substance,” the Seventh Circuit construed the term to include “any of a category of behavior-altering or addictive drugs” regardless of whether those same drugs are illegal under federal law. *Ruth*, 966 F.3d at 654 (quoting *Controlled substance*, The Random House Dictionary of the English Language (2d ed. 1987)). The Seventh Circuit noted that its position was, at the time, on the minority side of a circuit split. *See id.* at 653 (“the weight of authority favors *Ruth*”). But it nonetheless reasoned that its decision was dictated by related circuit precedent involving the career-offender guideline. *Id.* at 654.

After the Seventh Circuit’s decision in *Ruth*, the Third, Fourth, Sixth, Eighth, Tenth, and Eleventh circuits all published decisions adopting similar rules. *See United States v. Lewis*, 58 F.4th 764, 769 (3d Cir. 2023) (relying on same dictionary definition as Seventh Circuit); *United States v. Ward*, 972 F.3d 364, 373

(4th Cir. 2020) (“Like the Seventh Circuit, we see no textual basis to engraft the federal Controlled Substances Act’s definition of ‘controlled substance’ into the career-offender guideline.”) (cleaned up and internal citation omitted); *United States v. Jones*, 81 F.4th 591, 598 (6th Cir. 2023) (“The Guidelines don’t define ‘controlled substance,’ so we look to its ordinary meaning: ‘a drug regulated by law.’”); *United States v. Henderson*, 11 F.4th 713, 718 (8th Cir. 2021) (agreeing with *Ruth* that the guideline is “most plainly read to ‘include state-law offenses related to controlled or counterfeit substances’”); *United States v. Jones*, 15 F.4th 1288, 1292 (10th Cir. 2021) (“§ 4B1.2(b)’s controlled-substance-offense definition necessarily applies to and includes state-law controlled-substance offenses”); *United States v. Dubois*, 94 F.4th 1284, 1296 (11th Cir. 2024) (“A drug regulated by state law is a ‘controlled substance’ for state predicate offenses, even if federal law does not regulate that drug”), *vacated on other grounds Dubois v. United States*, 145 S. Ct. 1041, *reinstated*, 139 F.4th 887, 889 (11th Cir. 2025).

All seven circuits on this side of the split have emphasized that § 4B1.2(b) does not cross-reference the Controlled Substances Act. *Ruth*, 966 F.3d at 651–52. And textually, when reviewing § 4B1.2(b)’s definition of “controlled substance offense,” these courts have focused on the phrase “an offense under federal or state law” rather than the unmodified term “controlled substance.” *Dubois*, 94 F.4th at 1296.

These cases demonstrate a clear-cut disagreement among the circuits. As a result, defendants sentenced within the seven circuits that do not rely on federal

law to define the term “controlled substance” are “subject to far higher terms of imprisonment for the same offenses as compared to defendants similarly situated in the Second or Ninth Circuits.” *Guerrant v. United States*, 142 S. Ct. 640, 641 (2022) (Sotomayor, J., statement respecting denial of certiorari).

II. The Seventh Circuit is on the wrong side of the split.

In the Seventh Circuit, the result of this case was dictated by the Seventh Circuit’s prior decision in *Ruth*. The *Ruth* decision is wrong, as are the decisions of other circuits that look to state-law definitions of controlled substances, for at least three reasons.

A. *Ruth* and similar cases construe the guidelines in a way that assumes that the Sentencing Commission exceeded its congressional mandate.

When Congress delegates interpretive authority to an agency, that agency’s construction of the statute must remain within the scope of authority delegated by Congress. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 394–95 (2024) (citing *Batterton v. Francis*, 432 U.S. 416, 425 (1977)). For the Sentencing Guidelines, this means that statutory authority must prevail whenever a guideline conflicts with a statute. The Sentencing Commission’s “discretion ... must bow to the specific directives of Congress.” *United States v. LaBonte*, 520 U.S. 751, 757 (1997).

Here, Congress directed the Sentencing Commission to apply career-offender status to defendants with two or more prior felonies for a “crime of violence” or:

an offense described in section 401 of the Controlled Substances 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). In other words, when deciding what types of prior drug convictions should count as predicate offenses, Congress enumerated specific federal offenses. This Court should presume that “Congress said what it meant.” *LaBonte*, 520 U.S. at 757. Only federally outlawed drug-related conduct should qualify for career-offender status.

The categorical approach endorsed by the First, Second, Fifth, and Ninth Circuits construes the term “controlled substance offense” so that it hews closely to the federally outlawed conduct listed in § 994(h). But the Seventh Circuit construes the term broadly enough to include conduct that falls outside of Congress’s directions. The Seventh Circuit’s interpretation assumes the Sentencing Commission exercised authority beyond the scope delegated to it. Either the Seventh Circuit is wrong, or the guideline should be invalidated.

B. The First, Second, Fifth, and Ninth Circuits have the stronger textual reading.

Many of the courts that have construed § 4B1.2(b) to include state-defined substances have focused on the part of the definition that says “an offense under federal or state law.” *E.g.*, *Dubois*, 94 F.4th at 1296 (quoting U.S.S.G. § 4B1.2(b)). Focusing on that phrase alone is myopic. Here, for context, is the full guideline definition for “controlled substance offense”:

(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).

U.S.S.G. § 4B1.2(b).

As the Second Circuit explained, if this language were meant to be aimed at all federal and state controlled *substances*, then the provision “should read ‘... a controlled substance *under federal or state law*.’” *Townsend*, 897 F.3d at 70 (alteration and emphasis in original). Although the guideline explains that “offense” means both federal and state conviction, the guideline does not provide a similar clarification for “controlled substance.” No modifier was included in subsection (1) of the definition to suggest that courts should look to state definitions for controlled substances as well as federal definitions.

At minimum, the absence of any clarification about what “controlled substances” qualify gives rise to an “ambiguity.” *Id.* at 71. And in light of this ambiguity, courts should apply the longstanding presumption that the application of federal law does not depend on state law unless the drafter plainly indicates otherwise. *Jerome v. United States*, 318 U.S. 101, 104 (1943). In the criminal context, this Court has repeatedly applied this presumption to ensure that federal provisions based on prior state convictions are construed so that any predicate

offenses are assessed against a concrete federal definition. *See, e.g., Taylor*, 495 U.S. at 579, 590–91 (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, 393 (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 would turn on “whatever is illegal under the particular law of the State where the defendant was convicted”). Consistent with this Court’s precedents, the Second Circuit’s reading of the guideline ensures that defendants’ criminal histories are subject to a “uniform federal standard.” *Townsend*, 897 F.3d at 71.

The courts that disagree with this interpretation, like the Seventh Circuit, have argued that § 4B1.2(b) does not contain an explicit cross-reference to the Controlled Substances Act. *Ruth*, 966 F.3d at 651. But this reasoning “has it backwards.” *Townsend*, 897 F.3d at 70. Silence on whether to use federal or state law generally means that the commission meant to incorporate federal law only. As this Court previously explained regarding statutory construction, “we do not interpret Congress’ omission of” certain language to mean “that ... Congress intended to abandon its general approach of using uniform categorical definitions to identify predicate offenses.” *Taylor*, 495 U.S. at 591. The First, Second, Fifth, and Ninth Circuits properly read the guideline with respect to the general approach of using uniform categorical definitions. The Seventh Circuit does not.

C. Broader policy considerations favor the categorical-approach side of the split.

Congress passed the Sentencing Reform Act to address the “[s]erious disparities” that were “common” under the old federal sentencing scheme. *Mistretta*, 488 U.S. at 365–67. As part of the act’s reforms, the Sentencing Guidelines were invented to bring consistency to sentencing. *Molina-Martinez*, 578 U.S. at 192. The Sentencing Commission likewise recognizes its mission to promulgate guidelines that achieve uniformity and proportionality in sentencing. U.S.S.G. Ch. 1, Pt. A, Subpt. 1. And, even though the guidelines are no longer mandatory, this Court has recognized the vital role they play in maintaining fairness in sentencing nationwide. *See Gall v. United States*, 552 U.S. 38, 49 (2007) (“As a matter of administration and to secure nationwide consistency, the Guidelines should be the starting point and the initial benchmark.”).

The Seventh Circuit’s interpretation of the career-offender guideline undermines these goals by allowing career-offender status to vary state to state. Or as Chief Judge Gregory emphasized in his concurring opinion in *Ward*, while rejecting the majority’s adoption of the same rule as the Seventh Circuit: “Whereas the categorical approach was intended to prevent inconsistencies based on state definitions of crimes, the majority’s approach creates them.” *Ward*, 972 F.3d 364, 383–84 (Gregory, C.J., concurring) (citing *Taylor*, 495 U.S. at 588). A fair and uniform sentencing scheme cannot exist if the guidelines rely on individual states to come up with their own, inconsistent definitions of controlled substances.

III. Resolution of this split is necessary to avoid unfair disparities in sentencing.

In 2022, Justice Sotomayor noted that defendants in the Fourth, Seventh, Eighth, and Tenth Circuits “are subject to far higher terms of imprisonment for the same offenses as compared to defendants similarly situated in the Second or Ninth Circuits.” *Guerrant*, 142 S. Ct. at 640 (Sotomayor, J., statement respecting denial of certiorari). At the time, the Sentencing Commission lacked the quorum to address the split, but Justice Sotomayor hoped that the commission would resolve the issue in the “near future.” *Id.* at 641. The commission later gained its quorum and acknowledged the split. *See* Proposed Priorities for Amendment Cycle, 87 Fed. Reg. 60439 (Oct. 5, 2022). But the commission declined to resolve the issue. “In the meantime, the disagreement among the Circuits over the proper definition of a ‘controlled substance offense’ has not only persisted, but deepened.” *Wiggins v. United States*, 145 S. Ct. 2621, 2622 (2025) (Sotomayor, J., statement respecting denial of certiorari).

Since *Guerrant*, circuit courts published new opinions on both sides of the split. *See Minor*, 121 F.4th 1085; *Dubois*, 94 F.4th 1284; *Jones*, 81 F.4th 591; *Lewis*, 58 F.4th 764. Other courts like the Seventh Circuit, which had already taken a position, doubled down. *See, e.g., United States v. Tovar*, 88 F.4th 720, 725 (7th Cir. 2023). And the split has further deepened after *Wiggins*. Just this month, the First Circuit formally joined the federal-law-alone side of the split. *Fulcar*, 2026 WL 1948536, at *12. (Before *Fulcar*, the First Circuit had approvingly cited the same

rule but not taken a formal position. *See Crocco*, 15 F.4th at 22.) Federal defendants remain, and will remain for the foreseeable future, “subject to significantly different sentencing ranges based solely on geography.” *Wiggins*, 145 S. Ct. at 2622.

Statistics from the Sentencing Commission confirm what Justice Sotomayor warned about in *Guerrant* and *Wiggins*. Circuits that use both federal *and* state definitions of “controlled substance” apply the career-offender guideline at a much higher rate than other circuits:

Application of Career-Offender Status in FY2025²

Circuit	Definition of “controlled substance” under 4B1.2(b)	Defendants	Career Offenders	Percentage given career-offender status
1st	Federal Only	1,903	42	2.21%
2nd	Federal Only	2,806	36	1.28%
3rd	Federal and State	2,222	97	4.37%
4th	Federal and State	4,183	120	2.87%
5th	Federal Only	21,723	88	0.41%
6th	Federal and State	4,310	190	4.41%
7th	Federal and State	2,112	104	4.92%
8th	Federal and State	4,611	215	4.66%
9th	Federal Only	10,993	104	0.95%
10th	Federal and State	5,853	73	1.25%
11th	Federal and State	5,543	136	2.45%
1st, 2nd, 5th, & 9th combined	Federal Only	37,425	270	0.72%
3rd, 4th, 6th, 7th, 8th, 10th, & 11th combined	Federal and State	28,834	935	3.24%

² The data for this chart, and for the subsequent charts, was drawn from the United States Sentencing Commission’s Interactive Data Analyzer, available at: <https://ida.ussc.gov/> (last visited, as were other websites cited in this petition, on July 30, 2026).

Here is a summary of the same data, presented in another way:

Federal Law Only

Circuit	Percentage career offender
1st	2.21%
2nd	1.28%
5th	0.41%
9th	0.95%
All circuits:	<u>0.72%</u>

Federal and State Law

Circuit	Percentage career offender
3rd	4.37%
4th	2.87%
6th	4.41%
7th	4.92%
8th	4.66%
10th	1.25%
11th	2.45%
All circuits:	<u>3.24%</u>

In other words, defendants are about *four and a half times* more likely to be designated a career offender if sentenced in a circuit that uses both federal and state law to define a “controlled substance” under § 4B1.2(b). The previous fiscal year showed similar trends.³ To be sure, the controlled substances definition is not the only factor in play (as demonstrated by outliers like the First Circuit and the Tenth Circuit). But these statistics nonetheless show that this circuit split has a real effect. The Sentencing Guidelines were intended to avoid this type of disparity from circuit to circuit. Allowing the split to continue will only undermine that goal of consistency through “direct and severe consequences for defendants’ sentences.” *Guerrant*, 142 S. Ct. at 641.

³ See Petition for Certiorari at 22–23, *Curtis Harris v. United States*, No. 24-7335 (U.S. May 23, 2025) (citing Sentencing Commission’s Interactive Data Analyzer) (In Fiscal Year 2025, courts applying federal law applied career-offender enhancement in only 0.80% of cases, while courts applying federal and state law imposed it in 2.72% of cases).

The lower courts will not resolve the split on their own. Every geographic circuit apart from the D.C. Circuit has already taken a position. And as mentioned above, both sides have gained new opinions since this Court first recognized the problem in *Guerrant*. Absent this Court’s intervention, the disparate treatment of defendants based on geography will continue.

IV. This Court cannot rely on the Sentencing Commission to resolve the split.

In 2022, Justice Sotomayor explained that the Sentencing Commission has a “responsibility” to address circuit splits involving the guideline, and that this Court would defer to the commission before intervening on this issue. *Guerrant*, 142 S. Ct. at 640–41 (Sotomayor, J., statement respecting denial of certiorari). She expressed hope that the Commission would resolve the question once it regained a quorum. *Id.* at 641. Three years later, Justice Sotomayor, again joined by Justice Barrett, again urged the Sentencing Commission to resolve this issue now that it has a quorum. *Wiggins*, 145 S. Ct. at 2622.

These pleas have fallen on deaf ears. Despite having a quorum for nearly four years,⁴ the commission shows no interest in resolving this issue. For the first three years it had a quorum, the commission declared it a “priority” to amend the definition of “controlled substance offense.”⁵ But it kept failing to act on this

⁴ See Press Release, *Acting Chair Judge Charles Breyer, Incoming Chair Judge Carlton W. Reeves Applaud Senate Confirmation of New Commissioners*, U.S. Sentencing Commission (Aug. 5, 2022), <https://www.ussc.gov/about/news/press-releases/august-5-2022>

⁵ See Final Priorities for Amendment Cycle, 87 Fed. Reg. 67756 (Nov. 9, 2022); Final Priorities for Amendment Cycle, 88 Fed. Reg. 60536 (Sep. 1, 2023); Final Priorities for Amendment Cycle, 89 Fed. Reg. 66176 (Aug. 14, 2024).

priority. And despite numerous other amendments to the guidelines during this time, the definition of “controlled substance offense” remained the same.

The commission came closest to resolving the split in December 2024, when it finally issued a *proposed* amendment that would have redefined “controlled substance offense” to encompass only specific federal drug statutes.⁶ But without explanation, the commission later rescinded this proposal. The 2025 amendments to the guidelines again included no update to the definition of “controlled substance offense” under § 4B1.2(b). *See* Sentencing Guidelines for United States Courts, 90 Fed. Reg. 19798 (May 9, 2025).

After the failed 2024–2025 proposal, the commission stopped showing any interest in considering the issue. During the 2025–2026 amendment cycle, for the first time in years, the commission didn’t even cite the definition of “controlled substance offense” as a priority. *Wiggins*, 145 S. Ct. at 2622 (citing Federal Register Notice of Proposed 2025–2026 Priorities (June 9, 2025), <https://www.ussc.gov/policymaking/federal-register-notices/federal-register-notice-proposed-2025-2026-priorities>). *See also* Final Priorities for Amendment Cycle, 90 Fed. Reg. 39263 (Aug. 14, 2025). Nor does the commission plan to address the split in 2026–2027 amendment cycle. *See* Federal Register Notice of Proposed 2026–2027 Priorities (June 12, 2026), <https://www.ussc.gov/policymaking/federal-register-notices/federal-register-notice-proposed-2026-2027-priorities>.

⁶ *See* Sentencing Guidelines for United States Courts, 90 Fed. Reg. 128 (Jan. 2, 2025).

Even worse, the commission recognizes in its most recent notice of proposed priorities that it might again lose its quorum during this term, thus barring any possible amendment. *Id.* The commission already has two of its seven seats vacant.⁷ If the number of commissioners drops below the four votes necessary to pass amendments, then the commission would not be able to resolve this issue even if it wanted. *See* 28 U.S.C. § 994(a).

Waiting for the Sentencing Commission no longer makes sense. In the past, this Court has deferred on issues related to the guidelines so that the commission can “have the opportunity to address [the] issue in the first instance.” *Longoria v. United States*, 141 S. Ct. 978, 979 (2021) (Sotomayor, J., respecting the denial of certiorari). Here, however, the commission has already had the opportunity to amend § 4B1.2(b) and chosen not to take that opportunity. When the commission shows that it “chooses not to act” on an issue of importance, this Court has the duty to step in. *McClinton v. United States*, 143 S. Ct. 2400, 2403 (2023) (Sotomayor, J., respecting the denial of certiorari). *See also* *Early v. United States*, 502 U.S. 920, 920 (1991) (White, J., dissenting from denial of certiorari) (urging review where the commission “has not addressed” a “recurring issue”).

Considering the commission’s failure to act and the dramatic impact of this split on defendants like Asad, this Court should step in. A prompt resolution would

⁷ See U.S. Sentencing Commission, Organization, <https://www.ussc.gov/about/who-we-are/organization>.

ensure that justice is applied consistently, and that the integrity of the federal sentencing process is restored.

V. To the extent that *Braxton* is a barrier to certiorari, this Court should overrule *Braxton*.

In *Braxton*, this Court granted certiorari to address a circuit split over whether a stipulation to a higher offense under U.S.S.G. § 1B1.2(a) required a formal plea agreement. 500 U.S. at 347. After this Court granted certiorari, however, the Sentencing Commission proposed an amendment to resolve the split. *Id.* at 348. Noting that Congress had given the commission the duty to revise the guidelines, plus the “unusual explicit *power*” to make amendments retroactive, this Court saw reason “to be more restrained and circumspect in using our certiorari power as the primary means of resolving such conflicts.” *Id.* This Court decided *Braxton* on other grounds, while choosing not to resolve the split over guideline interpretation. *Id.* at 348–49.

This Court should not construe *Braxton* as a barrier to certiorari in this case. *Braxton* involved a situation in which the commission had “already undertaken a proceeding that will eliminate circuit conflict.” *Id.* at 348-49. This case is the opposite. Despite this Court’s repeated urging, the commission has not resolved the conflict. The commission has not indicated that it plans to resolve the conflict. And if the commission loses its quorum, the commission will not have power to resolve the conflict. Nothing in *Braxton* suggests a rule to abstain from granting certiorari

in this context, nor in any other case in which the commission has not already indicated a pending amendment.

Nonetheless, this Court has repeatedly cited *Braxton* when denying certiorari to resolve circuit splits over interpretation of the Sentencing Guidelines. *E.g.*, *Wiggins*, 145 S. Ct. at 2622; *Guerrant*, 142 S. Ct. at 641; *Longoria v. United States*, 141 S. Ct. 978, 979 (2021). And even when not citing *Braxton*, this Court has cited a general principle of deferring to the commission to resolve guidelines issues in lieu of certiorari. *E.g.*, *McClinton*, 143 S. Ct. 2400, 2403 (2023).

To the extent that this Court has interpreted *Braxton* as describing a general rule of abstention from granting certiorari to interpret the Sentencing Guidelines, that rule should be reconsidered. The *Braxton* Court's decision to abstain in that case was a prudential one limited to the specific circumstances. A guidelines amendment was already inevitable and would abrogate any judicial interpretation. *Braxton*, 500 U.S. at 348–49. And because the *Braxton* Court was already reversing the court of appeals on other grounds, any ruling on how to interpret the guidelines would have had no effect on the outcome of the case. *Id.* at 349. Accordingly, a ruling on the circuit split at issue in *Braxton* would have been irrelevant to both future defendants *and* the parties at issue. Plowing ahead to issue an opinion anyway for purely academic reasons would have been a waste of judicial resources. The same is not true here.

Moreover, the broader reasons that *Braxton* gave for deferring to the Sentencing Commission are not unique to the guidelines. The *Braxton* Court cited

the commission’s duty to revise the guidelines and power to make amendments retroactive. But the same could be said about Congress’s relation to the federal code. Congress similarly amends statutes in response to judicial interpretations and circuit splits, *see, e.g., Groff v. DeJoy*, 600 U.S. 447, 458 (2023) (describing amendments to Title VII), and Congress similarly has the power to make retroactive sentencing changes, *see, e.g., Hewitt v. United States*, 145 S. Ct. 2165, 2177 (2025) (describing First Step Act). Yet this Court does not abstain from hearing disputes about interpretation of federal statute. The guidelines should be no different.

“[I]t cannot be doubted that there is an important need for uniformity in federal law.” *Michigan v. Long*, 463 U.S. 1032, 1040 (1983). This case implicates a dire lack of uniformity at the core of the Sentencing Guidelines. This Court should step in.

VI. This case is an excellent vehicle.

This case provides a clear example of why the circuit split matters. Asad would not be a career offender in the First, Second, Fifth, or Ninth Circuits. But he is a career offender in the Seventh Circuit, as he would be in the Third, Fourth, Sixth, Eighth, Tenth, and Eleventh Circuits. And the effect of the career-offender guideline is especially stark for Asad: Based solely on the circuit law that applied at sentencing, his guidelines range jumped from 70 to 87 months to 188 to 235 months. The sentencing court then explicitly relied on the guidelines to impose a sentence based on “the low end of the Guideline range.” (App. 5a.) But the “low end” would

have been almost 10 years shorter had Asad committed his offense in New York, Texas, or California.

Seventh Circuit precedent aptly demonstrates why Asad would not have been a career offender if the Seventh Circuit were on the other side of the split. This petition has discussed at length the Seventh Circuit's holding in *Ruth* that "controlled substance offenses" includes convictions under state statutes that outlaw substances not criminalized under federal law. *Ruth*, 966 F.3d at 648. But the *Ruth* court actually resolved *two* issues related to a defendant's prior state drug conviction: (1) did the prior conviction count as a predicate "controlled substance offense" under § 4B1.2(b); and (2) did it count as a "felony drug offense" for a statutory enhancement under 21 U.S.C. § 841(b)(1)(C). The court came to opposite conclusions for each question, after applying different tests for each enhancement.

The defendant in *Ruth* had a prior Illinois conviction for possession with intent to deliver cocaine. *Id.* at 644. But Illinois defines cocaine to include its positional isomers, whereas the federal definition covers only cocaine's optical and geometric isomers. *Id.* The defendant thus argued that the Illinois offense was overbroad and should not count as a predicate conviction for a sentencing enhancement. Regarding the statutory enhancement under § 841(b)(1)(C), the Seventh Circuit agreed. The court used the categorical approach to conclude that Illinois's cocaine definition is broader than its federal counterpart, and therefore Illinois cocaine convictions cannot count as a "felony drug offense." *Id.* at 646–51. When it came to the career-offender guideline, however, the court ruled that the

same categorical approach did not apply because the guideline was written broadly enough to include both federal and state drug definitions. *Id.* at 651–54. The same Illinois conviction, while not a “felony drug offense,” was a “controlled substance offense” according to the Seventh Circuit.

Asad’s prior Minnesota convictions closely mirror the Illinois conviction at issue in *Ruth*. Like the defendant in *Ruth*, the statutes underlying Asad’s prior convictions outlawed the distribution of “cocaine.” MINN. STAT. § 152.021, subd. 1 (1); 152.022, subd. 1 (1). And like Illinois, Minnesota defines “cocaine” more broadly than the federal definition so that it includes not only cocaine but also “the salts and isomers of cocaine and ecgonine, and the salts of their isomers and any salt, compound, derivative, or preparation thereof that is chemically equivalent or identical with any of those substances.” MINN. STAT. § 152.01, subd. 3a. Cocaine has multiple isomers, and the Minnesota statute “bans them all.” *United States v. Owen*, 51 F.4th 292, 295 (8th Cir. 2022). Federal law, in contrast, criminalizes only two specific isomers: “optical and geometric isomers.” *Id.* (citing 21 U.S.C. §§ 802(14), 812, sched. II(1)(4)). So, like the cocaine conviction at issue in *Ruth*, Minnesota cocaine convictions are categorically overbroad in that they encompass a larger variety of chemical isomers. *Id.* The Seventh Circuit has shown how it would analyze these cocaine isomers using Asad’s requested test. *Ruth*, 966 F.3d at 650.

Lest there be any doubt, however, the Eighth Circuit has also held in the context of the Armed Career Criminal Act that Minnesota’s definition of cocaine renders the relevant state statutes overbroad. *Owen*, 51 F.4th at 296. And, in the

opinion below, the Seventh Circuit likewise recognized that Asad's statute of conviction encompassed substances that were legal under federal law. Asad would have no trouble challenging his career-offender status if the Seventh Circuit (like the First, Second, Fifth, or Ninth Circuits) used the same test for § 4B1.2(b) that courts use for § 841(b)(1)(C) or the Armed Career Criminal Act.

One final note: This Court should not be concerned that, during the appellate proceedings below, the parties squabbled over whether Asad had preserved or forfeited his request to apply the categorical approach. (App. 2a.) The government was wrong about any forfeiture. Asad objected to the enhancement in the district court and, although he did not explicitly argue that Seventh Circuit precedent should be overturned, he is allowed on appeal to expand upon the arguments in support of his claim. *Yee v. City of Escondido*, 503 U.S. 519, 534–35 (1992).

Even if Asad had forfeited his claim, however, any dispute about preservation was academic. If the Seventh Circuit had been on the other side of the split, Asad would have been entitled to relief regardless of whether the standard of review was *de novo* or plain error. The Seventh Circuit has repeatedly granted plain-error relief on categorical-approach claims, even when (as here) the defendant relies on technical arguments about isomers of drugs. *See Ruth*, 966 F.3d at 650 (granting plain-error relief to vacate § 841(b)(1)(C) enhancement because Illinois's cocaine definition includes additional isomers); *United States v. Turner*, 55 F.4th 1135, 1142 (7th Cir. 2022) (holding that court plainly erred by relying on prior state drug conviction, which was overbroad under categorical approach, to enhance sentence).

The only barrier to Asad obtaining relief on appeal was the Seventh Circuit's position in the circuit split. And on that front, the Seventh Circuit's position is wrong.

CONCLUSION

For the foregoing reasons, this Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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July 31, 2026