

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

CHRISTOPHER ERSKINE, a.k.a. Beagle, Petitioner,

v.

UNITED STATES OF AMERICA, Respondent.

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

PETITION FOR WRIT OF CERTIORARI

Beverly Van Ness (NY 1409416)
Attorney-at-Law
5 Union Square West
Frnt 1 #1347
New York, NY 10003
Tel. (917) 456-6918
bvanness.law@gmail.com

Attorney for Petitioner CHRISTOPHER ERSKINE

QUESTION PRESENTED

Whether a New York State youthful offender adjudication, which sets aside and replaces the defendant's conviction, can be counted as a predicate conviction for career offender purposes under Federal Sentencing Guideline U.S.S.G. § 4B.1.

PARTIES TO THE PROCEEDING AND RELATED CASES

Petitioner Christopher Erskine was a defendant in the district court (E.D.N.Y. Docket No. 18-cr-561 [DLI]), and appellee in the court of appeals. Other defendants in the district court were:

Caswell Senior, aka Casanova; Walter Luster, Shells; Naya Austin, aka Baby; Deshawn Thomas, aka Don; Brandon Nieves, aka Untouchable Dot; Dezon Washington, aka Blakk; Robert Woods, aka Blakk Rob; Stephen Hugh, aka Chino; Jordan Ingram, Flow; Shanay Outlaw, aka Easy; Isaiah Santos, aka Zay; Roberta Sligh, aka Trouble; Brinae Thornton, aka Luxury; Jamal Trent, aka Trap Smoke; Jarrett Crisler, Jr., aka Jayecce, Jr.; Donavan Gillard, aka Donnie Love; Brandon Soto, aka Stacks; Dwight Reid, aka Dick Wolf; and Ahmed Walker, aka Ammo.

Petitioner was tried together with Dwight Reid, but the two cases were not docketed together for argument on appeal. Co-defendant Deshawn Thomas was petitioner's sole co-appellant, but Mr. Thomas's conviction was based on a plea of guilty.

Respondent is the United States of America, in both the district court and on appeal to the court of appeals. The issue raised in this Petition for *certiorari* pertains to Petitioner Erskine alone.

TABLE OF CONTENTS

QUESTION PRESENTED	i
PARTIES TO THE PROCEEDING AND RELATED CASES	ii
TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES.....	v
OPINION BELOW	1
JURISDICTIONAL STATEMENT	1
STATUTORY PROVISION INVOLVED	1
INTRODUCTION	2
STATEMENT OF THE CASE.....	3
A. Proceedings Below	3
B. Statement of Relevant Facts	3
1. The Trial Evidence and Verdict	3
2. Sentencing	8
2. The Court of Appeals’ Opinion	9
REASONS FOR GRANTING THE PETITION.....	10
I. THE SECOND CIRCUIT’S AFFIRMANCE OF PETITIONER’S STATUS AS A CAREER OFFENDER IS AT ODDS WITH THIS COURT’S PRONOUNCEMENTS OF BASIC PRINCIPLES OF STATUTORY CONSTRUCTION.....	10

II.	THE ISSUE PRESENTED BY THIS PETITION IS AN IMPORTANT ONE AND SHOULD BE ADDRESSED	15
III.	IN THE ALTERNATIVE, SUMMARY REVERSAL OF PETITIONER’S SENTENCE IS WARRANTED.....	17
	CONCLUSION.....	17

APPENDIX

	Summary Order of the Court of Appeals for the Second Circuit, dated June 2, 2026, in <u>United States v. Erskine</u> (published sub nom. <u>United States v. Senior</u> , 2026 U.S. App. Lexis 15732; 2026 WL 1552361	1A
	Lexis search list for cases within the Second Circuit containing phrases “youthful offender” and “career offender”	1B
	Quick Facts report on career offenders for FY 25, published by the United States Sentencing Commission	1C
	Lexis search list for cases within the Second Circuit containing phrase “career offender,” first ten citations (p. 1 of 141) of 1408 since 1989	1D
	Lexis search list for cases within the Second Circuit containing phrase “youthful offender” within 25 of “New York,” first ten citations (p. 1 of 19) of 186 since 1989	1E

TABLE OF AUTHORITIES

CASES

<u>Carr v. United States</u> , 560 U.S. 438 (2010)	13
<u>In re Devison-Charles</u> , 22 I&N Dec. 1362 (B.I.A. 2000)	15
<u>Klein v. Martin</u> , 607 U.S. 213 (2026) (<i>per curiam</i>)	20
<u>Mays v. Hines</u> , 592 U.S. 385 (2021) (<i>per curiam</i>)	20
<u>Pavan v. Smith</u> , 582 U.S. 563 (2017) (<i>per curiam</i>)	20
<u>Perrin v. United States</u> , 444 U.S. 37 (1979)	12
<u>Spears v. United States</u> , 555 U.S. 261 (2009) (<i>per curiam</i>)	17
<u>United States v. Felder</u> , 760 Fed. Appx. 74 (2d Cir. 2019)	12, 15
<u>United States v. Gibson</u> , 135 F.3d 257 (2d Cir. 1998)	13
<u>United States v. Jones</u> , 415 F.3d 256 (2d Cir. 2005)	10, 11, 15
<u>United States v. Maria</u> , 186 F.3d 65 (2d Cir. 1999)	14
<u>United States v. Mason</u> , 692 F.3d 178 (2d Cir. 2012)	13
<u>United States v. Pedragh</u> , 225 F.3d 240 (2d Cir. 2000)	2, 14
<u>United States v. Roberts</u> , 442 F.3d 128 (2d Cir. 2006)	13
<u>United States v. Sellers</u> , 784 F.3d 876 (2d Cir. 2015)	11, 12, 17
<u>United States v. Watts</u> , 519 U.S. 148 (1997) (<i>per curiam</i>)	17
<u>United States v. Wilson</u> , 503 U.S. 329 (1992)	13

<u>Wallace v. Gonzales</u> , 463 F.3d 135 (2d Cir. 2006)	15
--	----

STATUTES AND GUIDELINES

28 U.S.C. § 1254	1
U.S.S.G. § 2K2.1(a)	2, 14
U.S.S.G. § 4B1.1(a)	2, 10, 11, 13, 16
U.S.S.G. § 4B1.2(e)	10
New York C.P.L. § 720.10(4)	12
New York C.P.L. § 720.20(1)	11, 12
New York C.P.L. § 720.20(3)	12
New York C.P.L. § 720.35(1).....	12

OTHER AUTHORITIES

United States Sentencing Commission, “Quick Facts: Career Offenders,” available https://www.ussc.gov/sites/default/files/pdf/research-and- publications/quick-facts/Career_Offenders_FY25.pdf	16
---	----

PETITION FOR WRIT OF CERTIORARI

Petitioner Christopher Erskine respectfully petitions for a writ of certiorari to review the decision of the United States Court of Appeals for the Second Circuit affirming his federal conviction of racketeering conspiracy, possession with intent to distribute crack cocaine, and narcotics conspiracy, for which he was sentenced to concurrent terms of 420 months' imprisonment as a career offender.

OPINION BELOW

The opinion of the Court of Appeals (Appendix [“App.”] 1A) is reported sub nom. United States v. Senior, 2026 U.S. App. Lexis 15732; 2026 WL 1552361 (2d Cir. June 2, 2026).

JURISDICTIONAL STATEMENT

The Court of Appeals issued its opinion and entered judgment on June 2, 2026 (App. 1A).

This Court has jurisdiction under 28 U.S.C. § 1254.

STATUTORY PROVISION INVOLVED

United States Sentencing Guideline section 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.

INTRODUCTION

This case presents the opportunity for the Court to address an important issue of statutory construction: whether the career offender sentencing guideline, U.S.S.G. § 4B1.1(a), which requires, as a condition, that the defendant “has” two qualifying predicate convictions, permits using a conviction that has been set aside and replaced by a New York court’s youthful offender adjudication. The verb “has” is present tense. Thus, at the time he is sentenced in federal court, the defendant’s underlying conviction no longer exists, he no longer “has” it. If the Sentencing Commission had intended the court to consider all of defendant’s prior convictions, however brief their existence, it could easily have used the past tense “had” or some other clarifying language. This is what it did in the text of U.S.S.G. § 2K2.1(a)(1), (2), which mandates specific base offense levels for a firearms crime if the defendant committed it “subsequent to sustaining at least two felony convictions of either a crime of violence or a controlled substance offense” -- namely, if he “had” at least two such prior convictions prior to commission of the firearm offense. United States v. Pedragh, 225 F.3d 240, 245-46 (2d Cir. 2000).

STATEMENT OF THE CASE

A. Proceedings Below

Petitioner Christopher Erskine and his co-defendant at trial, Dwight Reid, were charged with racketeering conspiracy, narcotics conspiracy, and related offenses, based on their membership in a group called The Untouchable Gorilla Stone Nation. The group principally operated in New York State, and it had a presence within New York's prison system.

Petitioner unsuccessfully raised several challenges to his conviction and sentence on direct appeal, but his petition to this Court concerns only one: his classification as a career offender at sentencing based on two prior convictions. One was an offense committed in New York State in 2001, when Petitioner was 18, which resulted in a youthful offender adjudication.

B. Statement of Relevant Facts

1. The Trial Evidence and Verdict

The indictment charged that Gorilla Stone was a racketeering enterprise engaged in acts of murder, wire fraud, unemployment document fraud and distribution of controlled substances. It principally operated in New York State, including upstate, with a structure of eight "caves." Each cave had a Godfather, a High, a Low, numbers Five, Four, Three, Two and One, and other members below

them (see 861-63).¹ The group had a presence in New York's prison system, with a "prison lineup" with the same caves as the "street lineup" (863, 898). The time span alleged for the racketeering and narcotics conspiracy counts (one and two) was 2004 to the present.

The principal government witness was cooperator Walter Luster, a/k/a Shells. He joined Gorilla Stone in 2004, the same year it was started by co-defendant Dwight Reid, a/k/a Wolf. Luster met Reid when both were incarcerated (866, 898-99, 909). Wolf was and remained the undisputed leader of the group, operating it from prison during relevant times covered in the indictment. Reid was not only the godfather in the prison system, he also controlled what went on in the streets -- he was the "Godfather over all" (863-64). Petitioner, a/k/a Beagle, was the street co-godfather of the Gorilla Stone Reign cave, known also as Smokes. Petitioner was also the Sun of the streets, which purportedly signified he controlled all members not in jail. Reid was over Petitioner and had the final word on everything (938, 943-44).

There was evidence that Petitioner's status was lower than the government maintained. This included recordings in mid-September, 2020, showing that some

¹ Numbers without prefix refer to the trial minutes, "GX" refers to government exhibits introduced at trial, and "App." refers to the pages of Petitioner's appendix to this petition.

people were questioning Petitioner's authority, including Luster (see GX 119-T, 121-T, 122-T, 123-T; see also GX 111-T, pp. 6-7 [if Reid will not listen to Petitioner, he will give the Sun title back]). Moreover, Petitioner was not mentioned in any gang activities before 2018. Luster testified that in that time period, a man named Kasper "was [Reid's] right-hand man" (1366). Reid's prison visitor logs showed visits from 6/26/17 to 12/26/20 (GX 2003). Petitioner saw Reid only three times during this 3 1/2-year period, on 12/23/17, 2/17/18 and 6/28/19 (id., p. 4). Luster visited Reid 60 times (pp. 7-9), and another member, DeShawn Thomas, a/k/a Don (GX 4), visited 29 times (pp. 16-18).

Four categories of racketeering activity were alleged in the indictment: murders and attempted murders, drug distribution, wire fraud (based on a 501(c) non-profit started by Petitioner), and a fraudulent scheme to obtain unemployment benefits. As discussed below, during the seven days evidence was presented at trial, Petitioner was mentioned in connection with very little criminal activity. Most allegations were based on uncorroborated testimony by Luster.

Petitioner was not accused of committing any violent acts himself, and was only peripherally connected to three. The first was an assault committed by Robert Woods. There was no proof Petitioner had any foreknowledge of this attack or involvement in it. Luster testified that Woods assaulted the victim as a favor to

another gang member named “Don V,” with whom Woods was “very close.”

Petitioner’s link, per Luster’s testimony alone, was that he and the head of Woods’ cave, Wise, allegedly promoted Woods because of this assault (1053-54, 1101). But Luster acknowledged that Petitioner’s position in Gorilla Stone did not require him to approve promotions in the street lineup (1006, 1076-77).

The second violent act Petitioner was linked to was a drive-by shooting committed by Stephen Hugh, a low-level Gorilla Stone member, against a rival gang (no one was injured) (638-55). This was in retaliation for Hugh being robbed by rival gang members several weeks earlier (1094-95). There was no direct evidence that Petitioner talked to Hugh about the need to take action; Hugh’s phone, which was seized on his arrest, showed no contact between the two before or after the shooting (see GX 1304 thru 1306, 1309). That Petitioner provided the impetus for this violent act was impeached by numerous items of evidence (see Petitioner’s opening brief on appeal, Case No. 24-3202, pp. 6-9).

The final act of violence linked to Petitioner rested, again, on cooperator Luster: Petitioner allegedly ordered Luster to assemble a sizeable Gorilla Stone crew to shoot rival gang members in the Soundview neighborhood. This was the result of trouble that Reid, the head of Gorilla Stone, had had with the rival gang in prison. But the record established that this trouble arose long after the date

Petitioner issued his call to arms against the same gang – a date Luster particularly remembered (1146-49, 1153). Further, there was no evidence that any “shooters” were tapped for the mission, and no evidence that any violence between the two gangs occurred in Soundview at any time.

With respect to two other categories of racketeering activity alleged by the government, Petitioner was not implicated in the fraudulent unemployment benefits scheme. The government maintained that an unrelated 501(c) corporation that Petitioner set up was a front for coopting donations and grants for personal use. This was vigorously disputed by the defense (Petitioner’s brief on appeal, pp. 16-18), and there was no evidence that the corporation actually received any money.

The final category was drug-dealing. There was proof of 12 controlled sales of cocaine by other gang members, monitored by law enforcement; Petitioner was alleged to be involved in two (Petitioner’s brief on appeal, pp. 10-13). Luster claimed, without corroboration, that he once bought 500 grams of cocaine from Petitioner for \$18,000. This was in Petitioner’s apartment (1038-39, 1107-08, 1110). Luster had been to Petitioner’s residence “plenty of times” (1039-40). This claim was materially impeached, as were other uncorroborated allegations Luster made concerning Petitioner’s narcotics activities (Petitioner’s brief on appeal, pp. 13-16).

After lengthy deliberations, the jury convicted Petitioner of racketeering and

narcotics conspiracy and a substantive drug-selling count (one of the controlled buys law enforcement had monitored). The jurors acquitted Petitioner of a 924(c) gun count (1754-81).

2. Sentencing

Petitioner maintained on appeal that his guidelines range was 168 to 210 months, based on a total offense level of 32 and category IV level for criminal history. He challenged the district court's imposition of an additional two levels each for Petitioner's involvement in Hugh's drive-by shooting, discussed above, and for maintaining a drug-selling premises. The latter rested on Luster's claim that he had purchased cocaine from Petitioner inside the latter's apartment, which he shared with his girlfriend and children.

Irrespective of these and other findings, the district court's guidelines floor for sentencing purposes was the career offender range in U.S.S.G. § 4B1.1(b): offense level 37 and criminal history category VI, yielding a range of 360 months to life. The career offender designation was based on two prior felony convictions. One was for attempted robbery in the second degree, committed by Petitioner in 2001 when he was 18, for which he received a New York youthful offender adjudication and an initial probationary sentence. The other was a drug offense committed in Pennsylvania in 2011 when Petitioner was 28 (he was 37 when

arrested in this case).

Rejecting all defense arguments, the district court sentenced Petitioner to concurrent terms of 420 months on each count of conviction.

The particulars of the sentencing factors the court did and did not consider, and the disputes it resolved against the defense, are catalogued in Petitioner's opening brief on appeal, with supporting record citations, at pp. 52-58. The only issue presented for this Court's consideration is the validity of counting Petitioner's youthful offender adjudication as a predicate felony for career offender purposes. He challenged that finding on appeal, arguing that such an adjudication does not qualify as a matter of law, while recognizing that the argument was foreclosed by Second Circuit case law. The issue was thus presented to preserve it for this Court's review (see Petitioner's opening brief on appeal, Point V, pp. 59-60).

3. The Court of Appeals' Opinion

The Second Circuit rejected all of Petitioner's claims of trial and sentencing error and affirmed his judgment of conviction (see App. 1A). With respect to the argument that a New York State youthful offender adjudication is not a qualifying predicate for a career offender finding, the Court of Appeals summarily dismissed it, citing its opinion in United States v. Jones, 415 F.3d 256, 263–64 (2d Cir. 2005) (App. at 14A).

REASONS FOR GRANTING THE PETITION

I. THE SECOND CIRCUIT’S AFFIRMANCE OF PETITIONER’S STATUS AS A CAREER OFFENDER IS AT ODDS WITH THIS COURT’S PRONOUNCEMENTS OF BASIC PRINCIPLES OF STATUTORY CONSTRUCTION.

A career offender designation has three components: (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. U.S.S.G. § 4B1.1(a) (emphasis added). In United States v. Jones, 415 F.3d 256 (2d Cir. 2005), the Court of Appeals held that a youthful offender adjudication in New York State could be used to sustain a career offender designation. The court focused on the definition of a “prior felony conviction” in U.S.S.G. § 4B1.2 (e) (4): “a prior adult federal or state conviction for an offense punishable by death or imprisonment for a term exceeding one year, regardless of whether such offense is specifically designated as a felony and regardless of the actual sentence imposed.” 415 F.3d at 260-64. It noted that New York law requires a youth to be convicted of a felony as “a prerequisite to a youthful offender adjudication.” Id., at 264, citing N.Y. Crim. Proc. Law § 720.20(1).

In this case, Petitioner acknowledged Jones on appeal, but also noted a

subsequent Second Circuit opinion holding that a youthful offender adjudication does not constitute a prior adult conviction for purposes of the Armed Career Criminal Act (“ACCA”), 18 U.S.C. § 924(e)(1). Relying on related definitional language in § 921(a)(20), which specifically excludes convictions that have been “set aside,” the court of appeals noted that a youthful offender adjudication in New York “sets aside” the conviction it replaces, and therefore cannot be a qualifying ACCA predicate. See United States v. Sellers, 784 F.3d 876, 882-87 (2d Cir. 2015).

Addressing the third component of a career offender designation, Petitioner argued on appeal that, like the ACCA, the career offender guideline also has a temporal requirement: it only applies where “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)(3) (emphasis added). Clearly, “has” means at the time he is sentenced as a career offender; the tense used is current, the definition does not say “has or had.” Petitioner surveyed pertinent New York law, acknowledging that a conviction is “a prerequisite to a YO adjudication. See N.Y. Crim. Proc. Law § 720.20(1). But ‘[a] youthful offender adjudication is not a judgment of conviction for a crime or any other offense.’ N.Y. Crim. Proc. Law § 720.35(1).” Sellers, 784 F.3d at 885-86 (emphasis added). That is because a youthful offender finding is “substituted for the conviction of an eligible youth,” N.Y. Crim. Proc. Law §

720.10(4) (emphasis added); the conviction is “deemed vacated and replaced by a youthful offender finding,” N.Y. Crim. Proc. Law § 720.20(3) (emphasis added).

The court of appeals rejected Petitioner’s temporal argument, without discussion, on constraint of its prior opinion in Jones (see App. at 14a), even though the argument had not been presented in Jones. However, it was in United States v. Felder, 760 Fed. Appx. 74, 77 (2d Cir. 2019). See Felder’s brief on appeal, Case No. 17-2503, Dkt. No. 47, pp. 30-35. The result was the same as here: summary rejection on constraint of Jones; Felder’s petition for rehearing en banc (Dkt. No. 98) met the same fate (see order, Dkt. 101).

Since the Court of Appeals continues to avoid the temporal claim, this Court should address and resolve the matter. Petitioner’s argument begins with “[a] fundamental canon of statutory construction . . . that, unless otherwise defined, words will be interpreted as taking their ordinary, contemporary, common sense meaning.” Perrin v. United States, 444 U.S. 37, 42 (1979). This principle applies when construing the text of a sentencing guideline. See United States v. Mason, 692 F.3d 178, 182 (2d Cir. 2012).

As noted, an individual cannot be designated a career offender unless he “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). “Has” is the “present tense third-person

singular of have.” <https://www.merriam-webster.com/dictionary/has>. It “indicate[s] possession in the present tense (describing events that are currently happening).” <https://www.thesaurus.com/articles/has-vs-have>. “Congress’ use of a verb tense is significant in construing statutes,” United States v. Wilson, 503 U.S. 329, 333 (1992), and, “[c]onsistent with normal usage,” this Court has “frequently looked to Congress’ choice of verb tense to ascertain a statute’s temporal reach.” Carr v. United States, 560 U.S. 438, 447-48 (2010). The Sentencing Guidelines, too, are subject to the “basic rules of statutory construction . . . giv[ing] all terms . . . their ordinary meanings unless there are persuasive reasons not to do so.” United States v. Roberts, 442 F.3d 128, 129 (2d Cir. 2006). They are interpreted “to give effect to the intent of the Sentencing Commission.” United States v. Gibson, 135 F.3d 257, 261 (2d Cir. 1998).

If the Commission had intended all prior convictions to count as career offender predicates, it could have written § 4B1.1(a) in the past tense: the defendant had at least two prior qualifying felony convictions. This is what it did in U.S.S.G. § 2K2.1(a)(1), (2), which designates specific base offense levels for a firearms crime if the defendant committed it “subsequent to sustaining at least two felony convictions of either a crime of violence or a controlled substance offense” -- namely, if he “had” at least two such prior convictions prior to commission of the

firearm offense. United States v. Pedragh, 225 F.3d 240, 245-46 (2d Cir. 2000). The court of appeals noted that “[i]f the Sentencing Commission had intended a sentencing judge to consider convictions sustained prior to sentencing, it could easily have used the present tense ‘has,’ or otherwise made its intention clear.” Id., at 246.

The converse is equally true: if the Commission wanted the sentencing judge to consider all of the defendant’s prior convictions for career offender purposes, even those that had been replaced by a youthful offender adjudication, it could have used the past tense “had.” Instead, it focused the court on those convictions the defendant currently had, not those he had previously sustained but no longer existed. It used the present tense “has,” and this verb choice must be respected. “The Commission meant what it said and said what it meant.” United States v. Maria, 186 F.3d 65, 71 (2d Cir. 1999).

Since Petitioner’s 2001 attempted robbery conviction has been set aside and replaced by a youthful offender adjudication, it cannot be considered as a career offender predicate. He no longer “has” this conviction. Notably, this analysis has been adopted by the Board of Immigration Appeals, which does not count a New York youthful offender adjudication as a “conviction” that can justify a non-citizen’s deportation. See Wallace v. Gonzales, 463 F.3d 135, 138 (2d Cir. 2006),

citing In re Devison-Charles, 22 I&N Dec. 1362, 1366-68 (B.I.A. 2000).

II. THE ISSUE PRESENTED BY THIS PETITION IS AN IMPORTANT ONE AND SHOULD BE ADDRESSED.

Because prosecutions ending in a youthful offender finding are sealed in New York State, it is impossible to determine how many felony convictions that would qualify as career offender predicates have been set aside and replaced by youthful offender adjudications. However, a simple Lexis search for cases within the Second Circuit show a total of 51 for opinions which contain the phrases “youthful offender” and “career offender” (see case list, App. 1B). The list is obviously incomplete, as it does not capture Petitioner’s appellate decision since the court of appeals did not include both phrases in its opinion. The list also excludes cases where the defendant did not challenge the career offender designation in light of United States v. Jones (2005) and United States v. Felder (2019), supra, or those where an appeal was not taken because of an appellate waiver or for some other reason.

In fiscal year 2025, 1211 individuals were found to be career offenders nationwide, consistent with similar numbers in each of the four preceding years. In that 2025 group, the defendant’s sentence was increased in 91% of these cases because of the career offender finding. See https://www.ussc.gov/sites/default/files/pdf/research-and-publications/quick-facts/Career_Offenders_FY25.pdf (App.

1C). Depending on a criminal defendant's criminal history, his or her criminal offender status in any federal district can be based on a youthful offender adjudication. Within the Second Circuit, a Lexis search has found the phrase "career offender" in 1408 decisions since 1989 (see App. 1D, which includes the first ten citations, p. 1 of 141). A similar search for "youthful offender w/25 New York" (to exclude Y.O. cases from other states) reveals 186 decisions (see App. 1E, which includes the first ten citations, p. 1 of 19).

Although it is impossible to determine how many career offender findings have included a New York youthful offender adjudication as a predicate, neither status – career offender and youthful offender – is a rarity. On the contrary. Thus, the issue is a significant one, and this Court's resolution of it will reach far beyond Petitioner's individual case.

III. IN THE ALTERNATIVE, SUMMARY REVERSAL OF PETITIONER'S SENTENCE IS WARRANTED.

The issue presented is a pure question of law, with no disputed facts. The principles of statutory construction on which Petitioner's argument rests are well-settled: the Sentencing Commission chose the present tense "has" in U.S.S.G. § 4B1.1(a) -- the defendant "has at least two prior [qualifying] felony convictions" -- and a conviction is set aside and replaced by a youthful offender adjudication under New York's youthful offender legislation, as the Second Circuit expressly

acknowledged in United States v. Sellers, *supra*, 784 F.3d 876. 885-87. The court of appeals' decision to count a set-aside conviction for criminal offender purposes in this case is clearly erroneous. Under these circumstances, summary reversal would be appropriate. See Spears v. United States, 555 U.S. 261 (2009) (*per curiam*); United States v. Watts, 519 U.S. 148 (1997) (*per curiam*); see also, e.g., Klein v. Martin, 607 U.S. 213 (2026) (*per curiam*); Mays v. Hines, 592 U.S. 385 (2021) (*per curiam*); Pavan v. Smith, 582 U.S. 563 (2017) (*per curiam*). This would afford justice to Petitioner, and ensure that the Second Circuit's opinion is not followed by that court or any other.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be granted.

Respectfully submitted,

Beverly Van Ness

Dated: August 28, 2026

BEVERLY VAN NESS
Attorney-at-Law
Counsel for Petitioner
Christopher Erskine

APPENDIX

Summary Order of the Court of Appeals for the Second Circuit, dated June 2, 2026, in <u>United States v. Erskine</u> (published sub nom. <u>United States v. Senior</u> , 2026 U.S. App. Lexis 15732; 2026 WL 1552361	1A
Lexis search list for cases within the Second Circuit containing phrases “youthful offender” and “career offender”	1B
Quick Facts report on career offenders for FY 25, published by the United States Sentencing Commission	1C
Lexis search list for cases within the Second Circuit containing phrase “career offender,” first ten citations (p. 1 of 141) of 1408 since 1989	1D
Lexis search list for cases within the Second Circuit containing phrase “youthful offender within 25 of “New York,” first ten citations (p. 1 of 19) of 186 since 1989	1E