

No. _____

IN THE
**SUPREME COURT
OF THE UNITED STATES**

NAAJEH SAYYID TORRES,
Petitioner

v.

UNITED STATES OF AMERICA,
Respondent

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

PETITION FOR WRIT OF CERTIORARI

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September 29, 2026

QUESTION PRESENTED

Under the U.S. Sentencing Guidelines §4B1.1 (Career Offender), a defendant receives an enhanced sentencing range if he “has at least two prior felony convictions of either a crime of violence or a controlled substance offense.” The Guidelines define “controlled substance offense” as “an offense under federal or state law ... 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.” U.S.S.G. §4B1.2(b) (emphasis added). The Guidelines, however, do not define “controlled substance.”

When a federal defendant is subject to this Sentencing Guidelines enhancement, does the term “controlled substance” refer to substances controlled under federal law, or does it also include substances controlled only under state law?

PARTIES TO THE PROCEEDING

Petitioner, the defendant-appellant below, is Naajeh Sayyid Torres.

Respondent, the appellee below, is the United States of America.

RELATED PARTIES AND PROCEEDINGS

Undersigned is aware of none.

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PETITION FOR WRIT OF CERTIORARI

The petitioner, Naajeh Sayyid Torres, petitions this Court for a writ of certiorari to review the final order of the Court of Appeals for the Third Circuit in 3d Cir. No. 25-2842.

OPINIONS BELOW

The opinion of the Third Circuit is unreported at *United States v. Naajeh Sayyid Torres*, 3d Cir. Nos. 25-2842 & 25-2865 (3d Cir. July 1, 2026) (non-precedential), and included at Petition Appendix (“Pet. App.”) 1a-8a.

JURISDICTION

The Court of Appeals affirmed Petitioner’s conviction and sentence on July 1, 2026. Pet. App. 1a-8a. Judgment was entered the same day. Pet. App. 9a.

This petition for writ of certiorari is due on September 29, 2026. Supreme Court Rule 13.1.

This Court has jurisdiction over this timely filed petition under 28 U.S.C. §1254(1).

U.S. SENTENCING GUIDELINES PROVISIONS

[U.S.S.G.] §4B1.1. Career Offender

(a) A defendant is a career offender if (1) the defendant was at least eighteen years old at the time the defendant committed the instant offense of conviction; (2) the instant offense of conviction is 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) (2024).

[U.S.S.G.] §4B1.2. Definitions of Terms Used in Section 4B1.1

(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) (2024).

STATEMENT OF THE CASE

A. Legal Framework

At sentencing, criminal defendants with certain prior convictions for “controlled substance offense[s]” are subject to enhanced penalties. *E.g.*, U.S.S.G. §4B1.1(a), (b). The Sentencing Guidelines define a “controlled substance offense” as:

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) (2024). The Guidelines do not define the term “controlled substance.”

To determine whether a prior conviction qualifies as a predicate offense, courts apply the “categorical approach.” *See Taylor v. United States*, 495 U.S. 575, 598-599 (1990). Under the categorical approach, the facts of the predicate offense are irrelevant. Instead, the categorical approach compares the elements of a predicate offense to a generic comparator, such as a generic offense or “some other criterion,” to determine whether the predicate is a categorical match. *Shular v. United States*, 589 U.S. 154, 157-58 (2020). For example, in the ACCA¹ context, “[a] state drug offense counts as an ACCA predicate only if the State's definition of the drug in

¹ 18 U.S.C. §924(e)

question ‘matche[s]’ the definition under federal law.” *Brown v. United States*, 602 U.S. 101, 106 (2024) (citing *Shular*, 589 U.S. at 158).

The purpose of the categorical approach—and the reason courts use a standard comparator across all cases—is to ensure “that all defendants whose convictions establish the same facts will be treated consistently, and thus predictably, under federal law.” *Moncrieffe v. Holder*, 569 U.S. 184, 205 n.11 (2013). The categorical approach thus reflects the longstanding presumption that “federal laws are not to be construed so that their application is dependent on state law.” *Taylor*, 495 U.S. at 591 (citing *Dickerson v. New Banner Inst.*, 460 U.S. 103, 119-120 (1983)).

B. Procedural History

Petitioner Torres pled guilty to federal drug-trafficking charges under 21 U.S.C. §841(a)(1). Pet. App. 2a. At sentencing, Mr. Torres faced an enhanced Sentencing Guidelines range as a Career Offender because he had one prior federal drug-trafficking conviction and one prior state-court drug-trafficking conviction. *Id.*

“Because he was at least eighteen years old at the time of the [instant] offenses and had two prior felony convictions for controlled substance offenses—the prior federal drug conviction and a prior state drug conviction—Torres was designated a career offender under U.S.S.G. § 4B1.1(b)(1).” Pet. App. 2a. This “triggered a base offense level of thirty-seven and a criminal history category of VI, resulting in a Guidelines range of 262 to 327 months’ imprisonment.” *Id.*

Mr. Torres challenged his Career Offender enhancement. Pet. App. 3a n.1.² Mr. Torres’s counsel objected that his prior Pennsylvania state-court conviction for delivery/possession with intent to deliver Marijuana or Heroin should not meet the definition of a “controlled substance offense” under U.S.S.G. §4B1.2(b), because Pennsylvania law defined Marijuana and Heroin more broadly than federal law.³ But, Mr. Torres acknowledged his challenge was foreclosed by circuit precedent *United States v. Lewis*, 58 F.4th 764, 768-69, 771 (3d Cir. 2023). Pet. App. 6a.⁴ Without the Career Offender enhancement under §4B1.1(b), Mr. Torres’s Guidelines range would have been 100 to 125 months’ imprisonment. PSR Addendum (R.Doc. 50), p.2.

The District Court overruled Mr. Torres’s objection,⁵ calculated Guidelines range 262-327 months, and “varied downward and sentenced him to 180 months’ imprisonment followed by eight years’ supervised release.” Pet. App. 2a.

² Appellate Appendix Appx43 n.1 (Defense Sentencing Memorandum), Appx61 (Sent. Tr. 13), PSR Addendum (R.Doc. 50 in 3:24-cr-00110), PSR ¶¶ 24, 30-31.

³ *Id.*

⁴ *Id.*

⁵ Appx61 (Sent. Tr. 13).

REASONS FOR GRANTING THE PETITION

The question raised in Mr. Torres’s petition has been raised before this Court in numerous prior petitions. *See, e.g., Coleman v. United States*, No. 26-5221 (petition filed July 31, 2026); *Wiggins v. United States*, No. 24-6410 (petition filed Dec. 23, 2024); *Manning v. United States*, No. 23-6499 (petition filed Jan. 10, 2024); *Lewis v. United States*, No. 23-198 (petition filed Aug. 31, 2023); *Demont v. United States*, No. 22-7904 (petition filed June 27, 2023); *Aurelien v. United States*, No. 23-5236 (petition filed July 25, 2023). The Government filed briefs in opposition in *Wiggins* and *Demont*. *See Wiggins*, No. 24-6410 (May 7, 2025); *Demont*, No. 22-7904 (Aug. 30, 2023). Certiorari has not been granted yet on this issue.

Mr. Torres’s petition relies upon and adopts the same legal arguments raised in Jamar Lewis’s petition for writ of certiorari. *See* Petition for Writ of Certiorari, at 13-32, *Lewis v. United States*, No. 23-198 (filed Aug. 31, 2023).

Specifically, Mr. Torres’s 2014 Pennsylvania state-court offense for delivery/possession with intent to deliver⁶ is not a “controlled substance offense” under U.S.S.G. §4B1.2(b), because Pennsylvania law defines Marijuana and Heroin more broadly than the federal Controlled Substances Act, 21 U.S.C. §801, *et seq.* It is Mr. Torres’s position that, to determine whether the state statute under which a defendant was convicted is a “controlled substance offense,” a court must compare the elements of the state statute with the federal Controlled Substance Act. Such comparison allows the court to determine whether the state statute is broader,

⁶ PSR ¶30.

narrower, or the same as its federal counterpart. *Cf. Brown*, 602 U.S. at 106 (“[a] state drug offense counts as an ACCA predicate only if the State's definition of the drug in question ‘matche[s]’ the definition under federal law”).

Under such comparison, the substances involved in Mr. Torres’s prior Pennsylvania conviction (Marijuana and Heroin) were defined broader than the federal Controlled Substances Act.

On Marijuana, Pennsylvania criminalizes more substances as Marijuana than federal law does, and Pennsylvania law does not exclude “hemp” from Marijuana. Pennsylvania Marijuana/Marihuana “consists of all forms, species and/or varieties of the genus *Cannabis sativa* L., whether growing or not...” 35 P.S. §780-102(b) (“MARIHUANA”) (2014). Pennsylvania marijuana encompasses all species within the genus *Cannabis*—“including the species *Cannabis sativa*, *Cannabis indica*, and *Cannabis ruderalis*.” *Commonwealth v. Waddell*, 61 A.3d 198, 203 n.3 (Pa. Super. 2012). And Pennsylvania Marijuana does not exclude “hemp.” *See* 35 P.S. §780-102(b) (“MARIHUANA”) (2014); *id.* (2025).

Federal law, by contrast, has excluded “hemp” from Marijuana ever since the Agriculture Improvement Act of 2018, which amended §802(16)’s definition of “marihuana” to exclude “hemp,” effective December 20, 2018. *See* Public Law 115-334, §12619; 132 Stat. 5018 (12/20/2018). *Compare* 21 U.S.C. §802(16) (2017), *with id.* (2018).

On Heroin, Pennsylvania criminalizes more substances as Heroin than federal law does. Federal Heroin encompasses heroin and its optical isomer. The federal

“narcotic drug” definition includes “Opium, opiates, derivatives of opium and opiates, including their isomers.” 21 U.S.C. §802(17)(A) (2014). “Isomer” “means the optical isomer, except as used in schedule I(c) and schedule II(a)(4).” 21 U.S.C. §802(14) (2014). Federal Heroin is located in Schedule I(b). 21 U.S.C. §812, Schedule I(b)(10) (2014). Thus, federal Heroin encompasses Heroin and its optical isomer.

Pennsylvania law, in contrast, identifies Heroin as including all isomers without limitation:

(ii) Any of the following opium derivatives, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

...

10. Heroin.

35 P.S. §780-104(1)(ii) (2014). Pennsylvania law does not limit the definition of “isomer” elsewhere. *See* 35 P.S. §780-102 (Definitions) (2014). Thus, all isomers of Heroin are encompassed within Pennsylvania Heroin, while federal Heroin encompasses only Heroin and its optical isomer.

But the Third Circuit held these differences do not matter under the U.S. Sentencing Guidelines. Pet. App. 6a. The Third Circuit has held that a “controlled substance” under §4B1.2(b) includes drugs regulated by either federal *or state law*. *See Lewis*, 58 F.4th at 768-69, 771. Thus, it is “irrelevant that the [state] statute under which [Mr. Torres] was convicted defined ‘marijuana’ more broadly than federal law.” *See id.* at 771. It is likewise irrelevant that Pennsylvania statute defines Heroin more broadly than federal law, too. *See id.*

There is a deeply entrenched circuit split on this issue. Indeed, two Justices of this Court have acknowledged the circuit split and have implored the U.S. Sentencing Commission to act. *See Wiggins v. United States*, No. 24-6410, 145 S. Ct. 2621, 2622 (June 30, 2025) (Sotomayor, J., statement respecting denial of certiorari)

Three circuits hold that “controlled substance” refers to only those substances controlled under federal law; thus, the categorical approach is applied to determine if the state-law substance in defendant’s prior conviction matches the definition of a federal controlled substance. *United States v. Townsend*, 897 F.3d 66, 74-75 (2d Cir. 2018); *United States v. Gomez-Alvarez*, 781 F.3d 787, 793-94 (5th Cir. 2015); *United States v. Minor*, 121 F.4th 1085, 1089-90 (5th Cir. 2024); *United States v. Bautista*, 989 F.3d 698, 702 (9th Cir. 2021); *United States v. House*, 31 F.4th 745, 752-53 (9th Cir. 2022). Additionally, the First Circuit has noted the clear circuit split and signaled its agreement with the Second, Fifth, and Ninth Circuits. *United States v. Crocco*, 15 F.4th 20, 22-23 (1st Cir. 2021). The First Circuit has explained that defining controlled substances based on federal law “is appealing,” while the contrary approach is “fraught with peril.” *Id.* Federal “courts cannot blindly accept anything that a state names or treats as a controlled substance.” *Id.* Otherwise, the courts would “turn the categorical approach on its head by defining a controlled substance offense as whatever is illegal under the particular law of the State where the defendant was convicted.” *Id.* (cleaned up).

On the other hand, seven circuits, including the Third Circuit, hold that “controlled substance” refers to drugs regulated by federal *or state* law; because a

“controlled substance” is one regulated by state law, even if not regulated by federal law, no comparison to federal law is required. *See Lewis*, 58 F.4th at 768-69, 771 (collecting cases); *United States v. Ward*, 972 F.3d 364, 372-74 (4th Cir. 2020); *United States v. Jones*, 81 F.4th 591, 599 (6th Cir. 2023); *United States v. Ruth*, 966 F.3d 642, 651-54 (7th Cir. 2020); *United States v. Henderson*, 11 F.4th 713, 717-19 (8th Cir. 2021); *United States v. Jones*, 15 F.4th 1288, 1291-96 (10th Cir. 2021); *United States v. Dubois*, 94 F.4th 1284, 1296 (11th Cir. 2024).⁷

This persistent circuit split undermines the very purpose of the U.S. Sentencing Guidelines. Congress tasked the Sentencing Commission with eliminating “unwarranted sentencing disparities” for those “found guilty of similar criminal conduct.” 28 U.S.C. §991(b)(1)(B). Consistent with that goal, the Commission’s Sentencing Guidelines play a “central role in sentencing.” *Molina-Martinez v. United States*, 578 U.S. 189, 191 (2016). “[D]istrict courts must begin their analysis with the Guidelines and remain cognizant of them throughout the sentencing process.” *Gall v. United States*, 552 U.S. 38, 50 n.6 (2007).

But allowing this circuit split to persist creates the very discrepancies the Guidelines seek to avoid. Today, a defendant being federally sentenced in two-thirds of the circuits could receive a significantly longer sentence based solely on the location of his criminal conduct. The Guidelines should not treat a defendant differently

⁷ Opinion reinstated after remand from the Supreme Court, *United States v. Dubois*, 139 F.4th 887, 894 (11th Cir. 2025), as observed in *United States v. Coleman*, No. 25-10693, 2026 U.S. App. LEXIS 12853, at **3-4, 2026 WL 1210249 (11th Cir. 2026) (unpublished per curiam).

“simply because they were lucky enough to commit” their federal offense “on the right side of the border” or unlucky enough to commit it on the wrong side. *Ward*, 972 F.3d at 381 (Gregory, C.J., concurring in judgment).

“It remains ‘the responsibility of the Sentencing Commission to address this division to ensure fair and uniform application of the Guidelines.’” *Wiggins*, 145 S. Ct. at 2622 (citing, in turn, *Braxton v. United States*, 500 U.S. 344, 348 (1991)). Since 2022, the Sentencing Commission has been aware of this issue, but has not weighed in, much less resolved it. *See id.*

This Court should not wholly abrogate its solemn constitutional “duty” “to say what the law is” just because the law in question is the Sentencing Guidelines. *Marbury v. Madison*, 5 U.S. 137, 177 (1803). Instead, this Court allows the Sentencing Commission the chance to rectify circuit splits in the first instance. A full quorum of Commissioners has now had not one, but four, amendment cycles to rectify this entrenched circuit split but has not done so. Thus, this Court should step in: “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.” *Wiggins*, 145 S. Ct. at 2622.

This case presents an ideal vehicle. The issue is preserved.⁸ The issue affects the outcome: Mr. Torres’s Career Offender Guidelines range was 262-327. Pet. App. 2a. If his Career Offender objection were sustained, his Guidelines range would have

⁸ Appellate Appendix Appx43 n.1 (Defense Sentencing Memorandum), Appx61 (Sent. Tr. 13), PSR Addendum (R.Doc. 50 in 3:24-cr-00110), PSR ¶¶ 24, 30-31.

been 100-125 months,⁹ well below his imposed sentence of 180 months' imprisonment. Pet. App. 2a. And the procedural history here is non-complex. This circuit split is cleanly presented for this Court's disposition.

CONCLUSION

For all these reasons, Petitioner humbly asks this Honorable Court grant his petition for a writ of certiorari.

Respectfully submitted,
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⁹ PSR Addendum (R.Doc. 50), p.2.