

No. _____

In the Supreme Court of the United States

JAMES DERNES MIMS, JR.,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

Julia L. O'Connell
Office of the Federal Public
Defender
Northern District of
Oklahoma

Jared T. Guemmer
Counsel of Record
Office of the Federal Public
Defender
Northern District of
Oklahoma
1 West 3rd Street
Suite 1225
Tulsa, Oklahoma 74103
(918) 581-7656
Jared_Guemmer@fd.org

Counsel for Petitioner

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QUESTION PRESENTED

This case concerns the propriety of a District Court applying a four-level enhancement under what is, today, U.S.S.G. § 2K2.1(b)(7)(B). That enhancement applies when a defendant possesses a firearm in furtherance of any other felony offenses. It was undisputed that Mr. Mims committed the felony of Third-Degree Burglary, as defined by Oklahoma law, which involves breaking into and entering a vehicle with the intent to steal or commit some other crime therein. This crime does not satisfy the definition of generic burglary.

In breaking into a truck, Mr. Mims found and took a handgun and then left the area. Thus, Mr. Mims's possession of a firearm in the course of any other felony occurred only in the sense that he found a firearm while committing that other felony and took it with him. The firearm was the fruit of a felonious act, but it played no other role in the offense. The Commentary to U.S.S.G. § 2K2.1 specifically explains that the four-level enhancement applies to the discovery of, and taking of, a firearm during another felony when the other felony "is burglary."

The Commentary is silent as to whether the discovery of, and taking of, a firearm will always satisfy the four-level enhancement, even when a defendant commits a felony other than generic burglary.

The question presented is:

Does the plain language of the Commentary to U.S.S.G. § 2K2.1(b)(7)(B) limit certain applications of the four-level enhancement to when the other felony offense "is burglary"?

PARTIES TO THE PROCEEDINGS

Petitioner is James Dernest Mims Jr., and he was the defendant and appellant in the proceedings below. Respondent is the United States of America, and it was the plaintiff and appellee in the proceedings below.

RELATED PROCEEDINGS

The following proceedings are directly related to this petition:

District Court (*United States v. Mims*, Case No. 24-CR-00334-JDR):

On August 22, 2025, the United States District Court for the Northern District of Oklahoma entered its Amended Judgment in a Criminal Case, sentencing Mr. Mims to 46 months in the custody of the Bureau of Prisons. (Pet. App., at a017–a024).

United States Court of Appeals for the Tenth Circuit (Case No. 25-5139):

Mr. Mims appealed his sentence and challenged the propriety of a four-level enhancement under U.S.S.G. § 2K2.1(b)(7)(B). On July 28, 2026, the United States Court of Appeals for the Tenth Circuit affirmed the District Court’s ruling. The Tenth Circuit’s published opinion may be accessed at 182 F.4th 1288 (10th Cir. 2026). (*See* Pet. App., at a002–a016)

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PETITION FOR WRIT OF CERTIORARI

James Derneſt Mims, Jr., reſpectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Tenth Circuit in this caſe.

OPINION BELOW

The Order and Judgment of the Tenth Circuit is a published decision that may be accessed at 182 F.4th 1288 (10th Cir. 2026). (Pet. App., a002–a016). A transcript excerpt of the District Court’s decision overruling Mr. Mims’s objection to the application of a four-level enhancement under U.S.S.G. § 2K2.1 is reproduced in the appendix. (Pet. App., at a026–a028).

JURISDICTION

The Tenth Circuit entered judgment on July 28, 2026. Petitioner did not seek rehearing. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S.S.G. § 2K2.1(b)(7)(B) states:

If the defendant . . . used or possessed any firearm or ammunition in connection with another felony offense . . . increase by 4 levels.

Commentary Note 13 to U.S.S.G. § 2K2.1 states:

(A) In General.—Subsections (b)(7)(B) and (c)(1) apply if the firearm or ammunition facilitated, or had the potential of facilitating, another felony offense or another offense, respectively.

(B) Application When Other Offense is Burglary or Drug Offense.—Subsections (b)(7)(B) and (c)(1) apply[:]

(i) in a case in which a defendant who, during the course of a burglary, finds and takes a firearm, even if the defendant did not engage in any other conduct with that firearm during the course of the burglary; and

(ii) in the case of a drug trafficking offense in which a firearm is found in close proximity to drugs, drug-manufacturing materials, or drug paraphernalia.

In these cases, application of subsections (b)(7)(B) and, if the firearm was cited in the offense of conviction, (c)(1) is warranted because the presence of the firearm has the potential of facilitating another felony offense or another offense, respectively.

INTRODUCTION

Mr. Mims broke into a truck and stole a firearm. As a result, when he was later charged with being a felon in possession of a firearm, he received two notable enhancements to his offense level when the presentence report calculated his Guidelines range under the United States Sentencing Guidelines. First, he received an additional two offense levels for being in possession of a stolen firearm. Second, he received an additional four offense levels for possessing the firearm in furtherance of another felony offense. Mr. Mims objected to this second enhancement.

The other felony offense Mr. Mims committed (and which he purportedly possessed this firearm in furtherance of committing) was the act of breaking into a truck and stealing the very firearm he was charged with possessing. Mr. Mims was given a four-level enhancement for committing another felony offense and, during that offense, finding and taking a firearm with him. The firearm played no role in the offense beyond its being the fruit of the felonious conduct.

Given that Mr. Mims found and took the firearm with him, as fruits of his criminal act, the firearm played no role in the commission of the offense itself. Moreover, there was no evidence presented that Mr. Mims utilized the firearm as he departed the scene.

Commentary Note 13 to U.S.S.G. § 2K2.1 specifically contemplates a scenario in which a firearm is found during another crime and taken. However, that scenario is limited to when the other felony offense “is burglary.” U.S.S.G. § 2K2.1 n.13. The Commentary Note was added in the 2006 Amendments to the Sentencing Guidelines

Manual. The explanations supporting the 2006 Amendments support a conclusion that the Sentencing Commission did not intend for the four-level enhancement to apply to all felony offenses in which a firearm was found, taken, and played no further role in the offense beyond being fruits of the felony: “[T]he amendment provides that in burglary offenses, these provisions apply to a defendant who takes a firearm during the course of the burglary, even if the defendant did not engage in any other conduct with that firearm during the course of the burglary.” Sentencing Guidelines for United States Courts, 71 FR 28063-1, at *28071 (May 15, 2006); *see* U.S.S.G. supp. app. C, amend. 691 (“Reason for Amendment”). Had the Sentencing Commission intended a broader application of the four-level enhancement, it would not have limited its Commentary (nor its explanation for the changes) to burglary offenses.

Mr. Mims respectfully asks this Court to grant his Petition for a Writ of Certiorari and resolve the question of whether U.S.S.G. § 2K2.1(b)(7)(B)’s four-level enhancement for possession of a firearm in furtherance of another felony offense applies to any felony offense during which a firearm was obtained, taken, or stolen, even if the defendant did not in engage in any other conduct with that firearm during the course of the offense.

STATEMENT

On October 23, 2024, in Northern District of Oklahoma Case No. 24-CR-334-JDR, the United States charged James Derneest Mims, Jr., by Indictment with two counts: Count One alleged Mr. Mims possessed a firearm while being a convicted felon in violation of 18 U.S.C. § 922(g)(1), and Count Two alleged Mr. Mims possessed a stolen firearm in violation of 18 U.S.C. § 922(j). Count Two alleged that Mr. Mims's possessed a stolen Kimber Model R7 Mako, 9mm caliber pistol, which is among the firearms listed in Count One. Mr. Mims entered a guilty plea to both counts, without the benefit of a plea agreement, on December 11, 2024.

The NDOK Probation Office produced a Presentence Investigation Report and Paragraph 4 of that PSR stated that, following a report of a burglary of an automobile, law enforcement viewed surveillance footage and that a suspect matching a description of Mr. Mims "was seen on surveillance . . . entering the victim's unlocked Dodge Ram pickup," and that Mr. Mims "stole a Kimber R7 Mako, 9mm firearm (SN: Z06989)," along with a tool bag, batteries, and a jumper pack. According to Paragraph 5, an inventory search of Mr. Mims's vehicle following his arrest during a traffic stop revealed the firearm and other contraband.

Based on the circumstances above, the PSR stated that U.S.S.G. § 2K2.1 provided the basis to calculate Mr. Mims's Sentencing Guidelines range. The PSR determined that Mr. Mims's Base Offense Level was 14, that he received a two-level enhancement for possessing a stolen firearm under U.S.S.G. § 2K2.1(b)(4)(A), and

that he should receive a four-level enhancement under U.S.S.G. § 2K2.1(b)(7)(B).¹ Thus, Mr. Mims's Adjusted Offense Level was 20 and, following application of the three-level downward adjustment for acceptance of responsibility, Mr. Mims's Total Offense Level was 17. Due to a Criminal History Category of V, the PSR concluded that Mr. Mims's Sentencing Guidelines range was 46–57 months.

In support of its application of the four-level enhancement under U.S.S.G. § 2K2.1(b)(7)(B), the PSR cited Application Note 13(B) to state that the enhancement applies “in a case in which a defendant who, during the course of a burglary, finds and takes a firearm, even if the defendant did not engage in any other conduct with that firearm during the course of the burglary.” The PSR then explained that Mr. Mims “stole the firearm he possessed a day prior for which he was identified by surveillance video. He was later indicted for 3rd Degree Burglary in Tulsa County District Court, Case No. 2025-27, which is still pending disposition.”

¹ At the time of Mr. Mims's sentencing, the provision establishing the four-level enhancement was U.S.S.G. § 2K2.1(b)(6)(B). In the most current version of the Sentencing Guidelines Manual, it is § 2K2.1(b)(7)(B). This Petition uses the current Section number. Similarly, at the time of Mr. Mims's sentencing, the relevant Application Note was Note 14; in the current Sentencing Guidelines manual, it is now Application Note 13. This Petition references the most current Application Note number.

In response to an objection by Mr. Mims, the PSR addendum stated, in relevant part:

[T]he burglary committed by Mims the day prior to his arrest for the instant offenses constitutes ‘another felony offense’ to which the Kimber 9mm pistol was stolen. Applying the plain language from USSG §2K2.1(b)(7)(B) and Application Note [13](B), the four-level enhancement is applicable in Mims’s case as the firearm was stolen during a burglary, a felony offense under Okla. Stat. tit. 21 § 1435(B), and is relevant conduct pursuant to USSG §1B1.3.

Mims’s objection based on the generic term of Oklahoma burglary and his *Mathis v. United States*, 579 U.S. 500 (2016) analysis is not relevant for purposes of the application of USSG §2K2.1(b)(7)(B) because Oklahoma third degree burglary is a felony offense and that, in and of itself, satisfies the underlying felony offense to which the firearm was connected. Accordingly, the presentence investigation report will remain unchanged.

Mr. Mims submitted written objections to the District Court explaining, first, that the firearm providing the basis of the four-level enhancement was “the fruit of the purported burglary rather than one that he brought with him,” and second, that Oklahoma’s Third-Degree Burglary statute does not satisfy the definition of generic burglary. The District Court overruled Mr. Mims’s objection. Its reasoning, set forth in the Appendix, mirrors that of the PSR addendum. (*See* Pet. App., at a028).

The District Court subsequently sentenced Mr. Mims to 46 months in custody of the Bureau of Prisons, which is the bottom of the Guidelines range.

On appeal, the Tenth Circuit issued a published opinion affirming the District Court’s ruling. (Pet. App., at a002–a016). The Tenth Circuit issued its opinion on July 28, 2026.

REASONS FOR GRANTING THE PETITION

This Court should grant the Petition for Writ of Certiorari so that it may correct an error in the application of the Commentary’s plain language.

As this Court has explained, the Commentary to the United States Sentencing Guidelines “that interprets or explains a guideline is authoritative unless it violates the Constitution or a federal statute, or is inconsistent with, or a plainly erroneous reading of, that guideline.” *Stinson v. United States*, 508 U.S. 36, 38 (1993). While that ruling is currently up for consideration in this Court’s pending case, *Beaird v. United States*, 2025 WL 1410410 (5th Cir, May 15, 2025), *cert. granted*, 146 S.Ct. 2553, 224 L.Ed. 2d 496 (April 20, 2026), (No. 25-5343), it remains the law of the land unless this Court rules otherwise.

Section 2K2.1(b)(7)(B) states: “ If the defendant . . . used or possessed any firearm or ammunition in connection with another felony offense . . . increase by 4 levels. If the resulting offense level is less than level 18, increase to level 18.”

Commentary Note 13 to Section 2K2.1 provides the following clarifications:

(A): In General.—Subsections (b)(7)(B) and (c)(1) apply if the firearm or ammunition facilitated, or had the potential of facilitating, another felony offense or another offense, respectively.

(B): Application When Other Offense is Burglary or Drug Offense.—Subsections (b)(7)(B) and (c)(1) apply (i) in a case in which a defendant who, during the course of a burglary, finds and takes a firearm, even if the defendant did not engage in any other conduct with that firearm during the course of the burglary; and (ii) in the case of a drug trafficking offense in which a firearm is found in close proximity to drugs, drug-manufacturing materials, or drug paraphernalia. In these cases, application of subsections (b)(7)(B) and, if the firearm was cited in the offense of conviction, (c)(1) is warranted because the presence of

the firearm has the potential of facilitating another felony offense or another offense, respectively.

The first clarification, found in Part (A), seems to demonstrate that the enhancement would not apply if the firearm were merely the fruit of the other felonious conduct. This is because a firearm cannot facilitate, or have the potential to facilitate, that felonious conduct when it was simply obtained as a result of the conduct. But then the second clarification, found in Part (B), comes into play. When the other felony offense “is burglary” the enhancement applies where a defendant, during the course of said burglary, “finds and takes a firearm, even if the defendant did not engage in any other conduct with that firearm during the course of the burglary.” U.S.S.G. § 2K2.1, n. 13(B). As Part (B) further explains, the enhancement is warranted in these cases because it has been determined that “the presence of the firearm has the potential of facilitating another felony offense. . . .” *Id.*

Taking the Commentary at face-value, the enhancement does not generally apply where a firearm is found and taken during the course of other felonious conduct because it does not facilitate, or have the potential to facilitate, that felonious conduct. However, when the other felony offense “is burglary,” a firearm that is found and taken during the course of the burglary does trigger the enhancement, even if the firearm played no further role in the felonious conduct, because the Commission has determined that the firearm does pose a risk of facilitating the offense. And rationally, this makes sense. Burglaries are uniquely dangerous crimes because they involve “an unlawful or unprivileged entry into, or remaining in, a building or other structure, with intent to commit a crime.” *United States v. Taylor*, 495 U.S. 575, 598 (1990).

Such crimes pose a great risk that the perpetrator will be discovered in the structure (such as a home) and that violence will ensue. When the perpetrator discovers a firearm while committing a burglary, they are greatly incentivized to utilize that firearm against the homeowner or other person who discovered their presence. That same risk is not present in other felonious acts; perpetrators are not practically trapped like rats in a cage when discovered committing offenses other than burglaries. They are less likely to immediately resort to violence to effectuate their escape.

The Sentencing Commission’s explanation for adding this Commentary also supports this understanding:

The amendment, adopting the language from *Smith v. United States*, 508 U.S. 223 (1993), provides at Application Note [13] that the provisions apply if the firearm facilitated, or had the potential of facilitating, another felony offense or another offense, respectively. Furthermore, the amendment provides *that in burglary offenses*, these provisions apply to a defendant who takes a firearm during the course of the burglary, even if the defendant did not engage in any other conduct with that firearm during the course of the burglary. In addition, the provisions apply in the case of a drug trafficking offense in which a firearm is found in close proximity to drugs, drug manufacturing materials, or drug paraphernalia. The Commission determined that application of these provisions is warranted in these cases because of the potential that the presence of the firearm has for facilitating another felony offense or another offense.

Sentencing Guidelines for United States Courts, 71 FR 28063-1, at *28071 (May 15, 2006); *see* U.S.S.G. supp. app. C, amend. 691 (“Reason for Amendment”).² Had the

² Amendment 691, pertaining to the amendment of U.S.S.G. § 2K2.1, is available in a “reader friendly” form on the Sentencing Commission’s website: https://www.ussc.gov/sites/default/files/pdf/amendment-process/reader-friendly-amendments/20060518_RF_Amendments_0.pdf (last accessed October 20, 2026).

Commission intended for the enhancement to apply *every time* a defendant finds and takes a firearm during the course of committing another felony offense, then it would not have limited its Commentary to burglaries. It specifically calls out burglaries, describes a scenario in which a defendant finds and takes a firearm, but in no other way utilizes said firearm, and it declares that the enhancement will apply nonetheless because the Commission determined those cases created too great a risk that the firearm would be used. Under not only the plain language of the Commentary, but also under the intent of the Commission as demonstrated by the Commission's explanation, the enhancement applies in these circumstances when the other offense "is burglary," not in every offense.

Oklahoma Third-Degree Burglary does not constitute "burglary" within the meaning of the Guidelines. The name of the crime does not define the crime. Burglary goes undefined in the Guidelines, thus the Commission must have had in mind generic burglaries. Again, this conclusion is rational based upon the Commission's explanation for why the Commentary was created at all. The following is the statutory definition of Oklahoma Third-Degree Burglary:

Every person who breaks and enters, climbs under, or uses any jack stands or any other item to raise any automobile, truck, trailer or vessel of another, in which property is kept, with intent to: Steal any property therein; Steal any property attached thereto; or commit any felony, is guilty of burglary in the third degree.

21 Okla. Stat. 1435(B) (2024). In *Mathis v. United States*, this Court rejected Iowa's burglary statute, holding it did not satisfy the standard for generic burglary: "The generic offense requires unlawful entry into a building or other structure. Iowa's

statute, by contrast, reaches a broader range of places: any building, structure, or land, water, or air vehicle.” 579 U.S. 500, 507 (2016) (internal citations, brackets, and quotation marks omitted). That holding alone is sufficient to demonstrate that Oklahoma Third-Degree Burglary fails to satisfy the definition of generic burglary.

This case is a strong candidate for granting the Petition and considering this issue. Mr. Mims has fully preserved his claims throughout the case. The decision below is published, binding precedent in the Tenth Circuit moving forward. Factually, Mr. Mims’s case unambiguously demonstrates he did not commit a generic burglary. Therefore, there are no impediments to this Court’s ability to resolve the question placed before it.

CONCLUSION

For the reasons stated herein, this Court should grant the Petition for Writ of Certiorari and set a schedule for merits briefing in this matter.

Respectfully submitted,

Julia L. O’Connell
Office of the Federal Public Defender
Northern District of Oklahoma

Jared T. Guemmer
Counsel of Record
Office of the Federal Public Defender
Northern District of Oklahoma

1 West 3rd Street
Suite 1225
Tulsa, OK 74103
(918) 581-7656
Jared_Guemmer@fd.org

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