No. 26-____

In the Supreme Court of the United States

JEFFREY I. BATTLE,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

Louis E. Grube, Esq.
Counsel of Record
Joseph Shell, Esq.
Victoria L. DeLaney, Esq.
FLOWERS & GRUBE
Terminal Tower, 40th Floor
50 Public Square
Cleveland, Ohio 44113
(216) 344-9393
leg@pwfco.com

Counsel for Petitioner Jeffrey I. Battle

QUESTIONS PRESENTED

Petitioner Jeffrey I. Battle's prison term was longer than it should have been because of a prior conviction for simple marijuana possession. He argued his low-level offense should have been excluded from his criminal history calculation under United States Sentencing Guidelines ("U.S.S.G.") § 4A1.2(c). The text of that guideline asks whether his offense was "similar to" a list of exemplary crimes. Misdemeanor or petty offenses do not count as criminal history if the broadly stated similarity standard is met. Yet the United States Court of Appeals for the Sixth Circuit has examined whether prior marijuana-possession offenses count as criminal history based upon the commentary to the guidelines, which appeals to "common sense" and offers "relevant factors" that courts should consider, notwithstanding the guidelines' text. Even accepting in past decisions that a majority of those relevant factors reveal that marijuana possession is similar to offenses excluded from one's criminal history, the Sixth Circuit has consistently held that marijuana-possession offenses count, effectively applying a standard of strict equivalence, not similarity.

As the Court considers whether deference to the commentary to the sentencing guidelines is owed, or even permitted, this case serves as an important companion. *See Beaird v. United States*, No. 25-5343. Battle asks the Court to consider: (1) is the "similar to" standard in § 4A1.2(c) met when offenses share characteristics, or only when they are the same in all relevant respects; and (2) is simple possession of marijuana "similar to" the other low-level *mala prohibita* offenses listed in § 4A1.2(c)(1) & (2)?

PARTIES TO THE PROCEEDING

Petitioner is Jeffrey I. Battle, a citizen of the United States of America. Respondent is the United States of America.

RELATED PROCEEDINGS

United States v. Battle, 6th Cir. No. 25-3723, judgment Aug. 3, 2026.

United States v. Battle, N.D. Ohio No. 4:24-CR-314, judgment Aug. 26, 2025.

TABLE OF CONTENTS

QUESTIONS PRESENTED i

PARTIES TO THE PROCEEDING ii

RELATED PROCEEDINGS ii

INDEX TO APPENDICES iv

TABLE OF AUTHORITIES v

OPINIONS BELOW 1

STATEMENT OF JURISDICTION 1

STATUTORY PROVISIONS INVOLVED 1

INTRODUCTION 3

STATEMENT OF THE CASE 4

REASONS TO GRANT THE PETITION 7

I. The Court should consider whether U.S.S.G. § 4A1.2(c) adopted a broad standard of similarity inconsistent with the "common sense approach" defined by the rule's commentary. 7

A. The Sixth Circuit has followed the comments to the guidelines over the plain text of U.S.S.G. § 4A1.2(c) 7

B. Under a broad similarity standard, mere possession of marijuana is much like the offenses listed in U.S.S.G. § 4A1.2(c). 9

C. The plain-error review conducted below can be done again based upon this Court's decision about the text of U.S.S.G. § 4A1.2(c). 16

CONCLUSION 16

INDEX TO APPENDICES

Appendix A: Opinion and Judgment of the United States Court of Appeals for the Sixth Circuit (Aug. 3, 2026) 1a

Appendix B: Judgment of the United States District Court for the Northern District of Ohio (Aug. 26, 2025) 12a

TABLE OF AUTHORITIES

Cases

District of Columbia v. Colts,
282 U.S. 63 (1930) 11, 12

Kentucky v. U.S. Env't Prot. Agency,
123 F.4th 447 (6th Cir. 2024) 10

Moore v. Illinois,
434 U.S. 220 (1977) 16

Moore v. United States,
429 U.S. 20 (1976) 16

United States v. Battle,
2026 WL 2228004 (6th Cir. Aug. 3, 2026) 1

United States v. Choice,
201 F.3d 837 (6th Cir. 2000) 10

United States v. Collins,
600 F. App'x 433 (6th Cir. 2015) 7, 8, 11, 12

United States v. Edward Rose & Sons,
384 F.3d 258 (6th Cir. 2004) 10

United States v. Miller,
734 F.3d 530 (6th Cir. 2013) 10

United States v. Pearce,
2024 WL 3458085 (6th Cir. July 18, 2024) 9

United States v. Sands,
948 F.3d 709 (6th Cir. 2020) 9

United States v. Stubblefield,
265 F.3d 345 (6th Cir. 2001) 7

United States v. Tatum,
743 F. App'x 589 (6th Cir. 2018) 8, 9

Statutes

21 U.S.C. § 841 4

28 U.S.C. § 1254 1

Ariz. Rev. Stat. § 3-906 14

Ariz. Rev. Stat. § 3-907 14

Ariz. Rev. Stat. § 9-499 15

Ariz. Rev. Stat. § 13-1502 13

Ariz. Rev. Stat. § 13-1807 13

Ariz. Rev. Stat. § 13-2907.01 13

Ariz. Rev. Stat. § 13-3214 13

Ariz. Rev. Stat. § 13-3304 13

Ariz. Rev. Stat. § 13-3405 13

Ariz. Rev. Stat. § 17-309 14

Ariz. Rev. Stat. § 25-511 13

Ariz. Rev. Stat. § 28-693 13

Ariz. Rev. Stat. Title 36 15

Maricopa County, Abatement Ord. No. P-11 15

Sentencing Reform Act of 1984, Pub. L. No. 98-473, Tit. II, Ch. II, 98 Stat. 1987 ..... 9, 15

Sentencing Guidelines

U.S.S.G. § 4A1.1 ..... 3, 5

U.S.S.G. § 4A1.2 ..... 1, 3, 4, 7-16

U.S.S.G. § 4A1.3 5

U.S.S.G. § 4C1.1 ..... 4, 5

Secondary Sources

Aina, et al., *Genetic Diversity, Population Structure, and Cannabinoid Variation in Feral Cannabis Sativa Germplasm from the United States*, 15 NATURE: SCI. REPS., Article No. 20423 (July 1, 2025) 14

22 Corpus Jurus Secundum, *Criminal Law: Substantive Principles* (2025) 11

Felson et al., *How and Why Have Attitudes About Cannabis Legalization Changed So Much?*, 78 SOC. SCI. RSCH. 12 (2019) 12

1 Wayne R. LaFave, *Substantive Crim. L.* (3d ed. 2025) 11, 12

Similar, Webster's Third New Int'l Dictionary of the English Language Unabridged (1961). 12

Similar, Webster's Online Dictionary (2025) 12

OPINIONS BELOW

The United States Court of Appeals for the Sixth Circuit issued the decision below on August 3, 2026. This decision is unpublished. Pet. App. 1a; *United States v. Battle*, 2026 WL 2228004 (6th Cir. Aug. 3, 2026).

The United States District Court for the Northern District of Ohio issued its judgment on Aug. 26, 2025. This judgment is unpublished. Pet. App. 12a

STATEMENT OF JURISDICTION

The United States Court of Appeals for the Sixth Circuit issued the decision below on August 3, 2026. This Court's jurisdiction is drawn from 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The version of U.S.S.G. § 4A1.2(c) in effect when Battle was sentenced states:

> Sentences for all felony offenses are counted. Sentences for misdemeanor and petty offenses are counted, except as follows:
>
> (1) Sentences for the following prior offenses and offenses similar to them, by whatever name they are known, are counted only if (A) the sentence was a term of probation of more than one year or a term of imprisonment of at least thirty days, or (B) the prior offense was similar to an instant offense:
>
> Careless or reckless driving
> Contempt of court
> Disorderly conduct or disturbing the peace
> Driving without a license or with a revoked or suspended license
> False information to a police officer
> Gambling
> Hindering or failure to obey a police officer
> Insufficient funds check
> Leaving the scene of an accident
> Non-support

Prostitution
Resisting arrest
Trespassing.

(2) Sentences for the following prior offenses and offenses similar to them, by whatever name they are known, are never counted:

Fish and game violations
Hitchhiking
Juvenile status offenses and truancy
Local ordinance violations (except those violations that are also violations under state criminal law)
Loitering
Minor traffic infractions (e.g., speeding)
Public intoxication
Vagrancy.

INTRODUCTION

The Court should consider whether district courts must utilize the similarity standard set by the text of U.S.S.G. § 4A1.2(c) or the common-sense standard proposed by the commentary to that section. It is also worth examining whether petty marijuana-possession convictions like the one counted against Battle at sentencing should be excluded from criminal-history scores under U.S.S.G. § 4A1.2(c) given how the times have changed. The world has evolved drastically since the judiciary began considering how to apply U.S.S.G. § 4A1.2(c) to prior marijuana offenses. Marijuana is now legal or decriminalized in forty-one states and the District of Columbia. MADD, *States Where Weed Is Legal: Laws By State*, https://madd.org/blogs/states-where-weed-is-legal/ (accessed Nov. 2, 2026). The Sixth Circuit has nevertheless continued to rely on its decisions pre-dating that societal shift without considering those changed circumstances or the plain meaning of the term "similar" under U.S.S.G. § 4A1.2(c).

The time has come for this Court to grapple with this provision's plain meaning and recognize that marijuana possession is "similar to" several, if not all, of the other low-level *mala prohibita* offenses listed in U.S.S.G. § 4A1.2(c). Given the sheer volume of marijuana possession offenses committed by otherwise-law-abiding citizens in the past, rulings like the one below threaten the taxpayers' hard-earned resources. If federal prison sentences become longer in the aggregate, our nation pays the unnecessary price.

Simple marijuana possession was the only prior offense for which a point was added to Battle's criminal-history score under U.S.S.G. § 4A1.1(c). As a result, he was

unable to benefit in this case from the 'zero-point offender' provision of U.S.S.G. § 4C1.1(a). The resulting two-level reduction, if applied here, would have diminished the applicable sentencing range from 210–262 months to 168–210 months. Given that the district court sentenced Battle to a prison term near the bottom of the higher range, it stands to reason that Battle would have saved months, if not years, in prison if his prior conviction did not count for sentencing purposes. Yet the government will pay for him to remain imprisoned for that time merely because he once possessed a very small amount of marijuana. His case demonstrates how high the stakes are for those who have broken laws that, as a matter of societal progress, don't matter enough to justify treating them so seriously any longer. Insofar as the textually supported similarity standard found in U.S.S.G. § 4A1.2(c) would justify shorter sentences for those who have done nothing more than possess a little marijuana, even if not the "common sense" approach offered by the commentary would not, this case presents a worthy vehicle to decide the issues presented.

STATEMENT OF THE CASE

In September 2024, Battle was indicted on a single count of possession with intent to distribute methamphetamine, prohibited under 21 U.S.C. §§ 841(a)(1) and (b)(1)(A). Indictment, R. 15, PageID#:48–49. A few months later, Battle requested that a presentencing interview be conducted before he decided on a potential plea to the indictment, which the district court granted. Motion for Pre-Plea PSI, R. 18, PageID#:62–63; *see also* Pre-Plea Presentence Investigation Report, R. 20, PageID#:66–86. On April 23, 2025, Battle entered an "open plea" of guilty to the

indictment. Plea Transcript, R. 37, PageID#:248, 250–51. He admitted guilt without a deal and "did not cooperate" with the government. Sentencing Transcript, R. 33, PageID#:215. After a colloquy, the District Court accepted Battle's plea of guilty. Plea Transcript, R. 37, PageID#:251–72.

Battle's final PSR was filed July 17, 2025, and it noted several relevant objections. PSR, R. 25, PageID#:116–43. Pertinent here, he objected to the addition of one point within his criminal-history computation under U.S.S.G. § 4A1.1(c). *Id.*, PageID#:125–26, 141; *see* Battle's Sentencing Memorandum, R. 27, PageID#:150–51 ("Battle should satisfy the requirements of U.S.S.G. § 4C1.1(a), and thus be subject to the adjustment for zero-point offenders."). Although trial counsel mistakenly framed this objection in terms of a request for "a downward departure" through "note 3" to U.S.S.G. § 4A1.3, counsel's ultimate point was correct: "If the defendant is at zero criminal history points, he is entitled to a two-point reduction under 4C1.1." PSR, R. 25, PageID#:141. In response, the PSR stated that because "the defendant has a criminal history category of I, the guidelines prohibit a downward departure." *Id.*

At Battle's sentencing hearing on August 26, 2025, trial counsel reiterated the objection to Battle's being assessed one criminal-history point, arguing that "he should be a zero-point offender and not a one-point." Sentencing Transcript, R. 33, PageID#:206–07. The district court agreed "that the record does not show anything other than personal use of marijuana in the offense in paragraph 35" of the PSR. *Id.*, PageID#:207–08. But the court overruled the objection because it was framed in terms of a downward departure:

> I understand that he would like the additional two-level reduction for being a zero-point offender, but the departure he seeks does not erase the point that this conviction scores in the calculation of the criminal history. It just allows the Court to adjust the Criminal History Category itself.

Id., PageID#:208.

The government recognized Battle's "acceptance of responsibility," which led to a three-point reduction in his offense level. *Id.*, PageID#:211–12; PSR, R. 25, PageID#:123. His "total offense level" was "37, which with a Criminal History Category of I yields a guideline range of 210 to 262 months," subject to a "mandatory minimum sentence" of "120 months." *Id.*, PageID#:212. The district court reflected on data from "the Sentencing Commission" showing that "from 2020 through 2024, there were 331 defendants with the same guideline profile as Mr. Battle," and that "all received a sentence of imprisonment," averaging "146 months." *Id.*, PageID#:225.

Yet the district court sentenced Battle to a prison term of 216 months. *Id.*, PageID#:226. He was ordered to spend ten years on supervised release thereafter. *Id.* The potential fine was waived. *Id.*, PageID#:227. After Battle's right to appeal was explained to him, trial counsel again argued that "the level that [Battle] wound up at is against what the Sentencing Guidelines are, and we'll let the Sixth Circuit sort that out." *Id.*, PageID#:230–31.

Battle timely filed his notice of appeal on September 8, 2025, seeking review in the United States Court of Appeals for the Sixth Circuit. Notice of Appeal, R. 32, PageID#:192–93. After briefing, the court of appeals affirmed. Reflecting on his argument that "the district court should not have added a criminal history point for

his marijuana conviction because it is like one of the offenses in § 4A1.2(c)(1) or § 4A1.2(c)(2)," the court ruled that he "did not raise this objection below." Below at 6a–7a. On plain-error review, the court rejected Battle's request for relief.

REASONS TO GRANT THE PETITION

I. The Court should consider whether U.S.S.G. § 4A1.2(c) adopted a broad standard of similarity inconsistent with the "common sense approach" defined by the rule's commentary.

A. The Sixth Circuit has followed the comments to the guidelines over the plain text of U.S.S.G. § 4A1.2(c).

Prior Sixth Circuit decisions have failed to follow a broad standard of similarity, which the plain text of U.S.S.G. § 4A1.2(c) requires. Originally, the Sixth Circuit simply declared without analysis that "the exceptions set forth in § 4A1.2(c) do not apply" when a low-level marijuana offense is at issue. *United States v. Stubblefield*, 265 F.3d 345, 347 (6th Cir. 2001). Fourteen years later, in *United States v. Collins*, 600 F. App'x 433 (6th Cir. 2015), the court harkened back to *Stubblefield* but, this time, read past the text to the Guidelines' comments. *Collins*, 600 F. App'x at 435–36. Facing an argument comparing minor misdemeanor marijuana possession to a minor traffic infraction or disorderly conduct, the Court adopted "a 'common sense approach' in determining whether" U.S.S.G. § 4A1.2(c) applied, which the comments suggested involved evaluating five factors: (1) "a comparison of punishments imposed for the listed and unlisted offenses"; (2) "the perceived seriousness of the offense as indicated by the level of punishment"; (3) "the elements

of the offense"; (4) "the level of culpability involved"; and (5) "the degree to which the commission of the offense indicates a likelihood of recurring criminal conduct." *Id.* at 436. The first two cut in favor of applying the exception as of 2015. *Id*. And the court noted a lack of "data on whether the recidivism rate for minor traffic infractions (such as speeding) is any lower than the recidivism rate for minor misdemeanor possession of marijuana—indeed, common experience would likely suggest that it is probably just as high." *Id.* But "different elements" and "different levels of culpability" between marijuana possession and traffic infractions or disorderly conduct led the Sixth Circuit to treat them differently. *Id*. "Offenses which have a mens rea element typically carry with them a higher level of culpability than those that do not." *Id*. So, despite other similarities, that difference led the court to hold that prior marijuana possession did not fall within U.S.S.G. § 4A1.2(c).

Three years later, in *United States v. Tatum*, 743 F. App'x 589 (6th Cir. 2018), the Sixth Circuit stayed the course. Recounting the path of the law so far, the *Tatum* panel explained that its precedent "strongly indicates that a minor marijuana possession conviction . . . counts as a prior sentence in calculating a defendant's criminal history." *Id.* at 593. Here, the Sixth Circuit again followed *Stubblefield*, *Collins*, and *Tatum,* deciding that under the supposed plain-error posture of the case, Battle could not "show that any error was 'obvious or clear.'" Below at 7a (quoting *Collins*, 600 F. App'x at 437). Still, the court recognized that Battle argued his case was "different," particularly because "many states have legalized marijuana possession" since *Tatum* and "the state where Battle committed the possession

offense (Arizona) is one of these." Below at 7a. The panel understood that Battle "contends that marijuana possession is no longer a serious offense and is *now* like the offenses listed in § 4A1.2(c)." *Id*. Yet it rejected Battle's argument because it had "decid[ed] this issue against . . . defendants raising" similar arguments in unpublished decisions from 2023, 2024, and 2025. *Id.*

At no point did the Sixth Circuit grapple with Battle's argument that the text of U.S.S.G. § 4A1.2(c), unlike the comments, adopts a simple standard of broad similarity at odds with the more specific factors in the commentary to that section. This Court is currently considering in *Beaird v. United States*, No. 25-5343, whether courts must give deference to the Guidelines' commentary when applying them. The petitioner in that case has argued that any degree of deference to the commentary is inconsistent with the Sentencing Reform Act of 1984 ("SRA"), Pub. L. No. 98-473, Tit. II, Ch. II, 98 Stat. 1987, and the separation of powers. Battle's case is an example of why the text must control over the comments.

B. Under a broad similarity standard, mere possession of marijuana is much like the offenses listed in U.S.S.G. § 4A1.2(c).

Presuming that the Court agrees with the petitioner in *Beaird*, the Sixth Circuit's commentary-bound ruling on the meaning of U.S.S.G. § 4A1.2(c) is wrong. Even that court has previously held that it is proper to apply the Guidelines in accordance with "'the traditional canons of statutory interpretation.'" *United States v. Pearce*, 2024 WL 3458085, *9 (6th Cir. July 18, 2024) (quoting *United States v. Sands*, 948 F.3d 709, 713 (6th Cir. 2020)). Thus, "'[t]he language . . . is the starting

point for interpretation, and it should also be the ending point if the plain meaning of that language is clear.'" *United States v. Miller*, 734 F.3d 530, 540 (6th Cir. 2013) (quoting *United States v. Choice*, 201 F.3d 837, 840 (6th Cir. 2000)). A court may of course refer to dictionary definitions to ascertain the plain meaning of a provision's language. *United States v. Edward Rose & Sons*, 384 F.3d 258, 263 (6th Cir. 2004) (relying on common English dictionaries to define a statutory term). Additionally, when a court interprets a provision that lists specific items and a catchall phrase, it should "interpret the catchall as falling within the same class as the specific items." *Kentucky v. U.S. Env't Prot. Agency*, 123 F.4th 447, 460 (6th Cir. 2024).

In other words, when deciding whether Battle's marijuana-possession offense is "similar to" the offenses listed in U.S.S.G. § 4A1.2(c)(1) or (2), the Sixth Circuit should have first decided what the term "similar" means. Then, by reference to the other offenses listed in § 4A1.2(c), it should have considered generally whether marijuana possession is "within the same class." *Kentucky*, 123 F.4th at 460.

Start with the term "similar to," which is shared between both subsections of § 4A1.2(c). U.S.S.G. § 4A1.2(c)(1) & (2). One thing is "similar" to another if they both share "characteristics in common." *Similar, Webster's Third New Int'l Dictionary of the English Language Unabridged* (1961); *accord Similar, Webster's Online Dictionary*, https://www.merriam-webster.com/dictionary/similar (2025) (same). Applying this definition, if a marijuana-possession offense shares "characteristics in common" with the other offenses listed in U.S.S.G. § 4A1.2(c)(1) & (2), then the court of appeals need not go any further. The section's plain language dictates that Battle

should not have received criminal-history points for his marijuana-possession conviction. The few minor differences relied upon in *Stubblefield*, *Collins*, and *Tatum* should not have mattered. The broad similarity standard contemplated by the guidelines' text asks instead whether there are general commonalities between the compared offenses.

Battle made several arguments below about why his marijuana offense shared many characteristics with the others listed in U.S.S.G. § 4A1.2(c)(1) & (2). The Sixth Circuit instead followed its precedents, which applied the factors in the guidelines' commentary. But *Collins*, 600 F. App'x 433, and the decisions that followed it highlighted minor differences between marijuana possession and the lists of crimes in U.S.S.G. § 4A1.2(c)(1) & (2). This was a standard of perfect equivalence, not general similarity. Indeed, the fact that some of the factors addressed in *Collins* demonstrated similarity should have ended the inquiry under the similarity standard Battle now asks the Court to adopt.

On a general level, the offenses listed in § 4A1.2(c) share one characteristic: they almost all are *mala prohibita* offenses. *See* 1 Wayne R. LaFave, *Substantive Crim. L.*, § 1.6(b) (3d ed. 2025) (listing as *mala prohibita* "driving on a suspended or revoked license," "driving over the speed limit," "keeping slot machines," and "false notarization of a document"); *see also* 22 Corpus Jurus Secundum, *Criminal Law: Substantive Principles*, § 11 (2025). They are wrong because they are prohibited by statute, not because they represent "such obvious depravity" so as to "shock the general moral sense." *District of Columbia v. Colts*, 282 U.S. 63, 73 (1930).

While marijuana possession may have once been *malum in se*, recent developments have shifted society's perception of the offense. It is now firmly *malum prohibitum*. "Over the last three decades public opinion swung from three-to-one against to two-to-one in favor of legalizing cannabis." Felson et al., *How and Why Have Attitudes About Cannabis Legalization Changed So Much?*, 78 SOC. SCI. RSCH. 12, 23 (2019); *see also* LaFave, *supra*, § 1.6(b) n.41. This is not unusual—as social perceptions change, crimes shift from being moral wrongs to practical, statutory wrongs.

For example, in 1930, this Court described reckless driving as "obvious depravity." *Colts*, 282 U.S. at 73. While perhaps descriptively accurate of public attitudes in the 1930s, that conception has not stood the test of time. Public views shifted drastically as automobiles became safer and more common. *See* LaFave, *supra*, § 1.6(b) (listing "driving over the speed limit," "failure to yield the right of way," "leaving the scene of an accident," "failure to wear a seat belt," and "driving under the influence of intoxicants" as *mala prohibita*). So, at a general level, a marijuana-possession offense is *malum prohibitum* just like the other offenses listed in U.S.S.G. § 4A1.2(c)(1). It is a crime because it has been criminalized, not because it is a clear and objective moral wrong recognized throughout society.

Given that history, and the text of U.S.S.G. § 4A1.2(c), the Sixth Circuit's emphasis on *mens rea* is beside the point. *See Collins*, 600 F. App'x at 436. But if *mens rea* matters, almost all of the offenses in § 4A1.2(c) still require the government to

prove some low level of culpability—i.e., a *mens rea* demonstrating less culpability than 'intentional' or 'purposeful.'

Arizona's state laws, for instance, are replete with such examples. A person "who drives a vehicle in **reckless disregard** for the safety of persons or property is guilty of reckless driving." Ariz. Rev. Stat. § 28-693(A) (emphasis added). It is unlawful "to **knowingly** make to a law enforcement agency . . . a false, fraudulent or unfounded report or statement." *Id.* § 13-2907.01(A) (emphasis added). With exceptions for "amusement or regulated gambling," a person "commits benefiting from gambling if he **knowingly** obtains any benefit from gambling." *Id.* § 13-3304(A) (emphasis added). A person commits "issuing a bad check if the person issues or passes a check **knowing** that the person does not have sufficient funds in or on deposit with the bank." *Id.* § 13-1807(A) (emphasis added). A parent commits "[f]ailure of parent to provide for child" if they "**knowingly** fail[] to furnish reasonable support for the parent's child." *Id.* § 25-511(A) (emphasis added). It is "unlawful for a person to **knowingly** engage in prostitution." *Id.* § 13-3214(A) (emphasis added). And "[a] person commits criminal trespass in the third degree by . . . **[k]nowingly** entering or remaining unlawfully on any real property after a reasonable request to leave." *Id.* § 13-1502 (emphasis added). Marijuana possession fits neatly into this framework, too. Under Arizona law, "a person shall not **knowingly** . . . [p]ossess or use marijuana." *Id.* § 13-3405 (emphasis added).

Thus, the marijuana-possession offense that Battle was convicted of shares two characteristics with almost all of the other offenses listed in U.S.S.G. § 4A1.2(c): it is

mala prohibita and punishable only if the state proves a lower *mens rea* than required for more serious crimes.

Marijuana possession is also strikingly similar to some of the crimes listed in § 4A1.2(c)(2). Marijuana is a naturally occurring plant that can be found in the wild "growing in disturbed, nutrient-rich lands including pastures, feed lots, farmyards, cultivated field borders, open woods, flood plains, dumpsites, roadsides, and railroad rights-of-way." Aina, et al., *Genetic Diversity, Population Structure, and Cannabinoid Variation in Feral Cannabis Sativa Germplasm from the United States*, 15 NATURE: SCI. REPS., Article No. 20423, at 2 (July 1, 2025). This makes its prohibition quite like a "[f]ish and game" violation. *See* U.S.S.G. § 4A1.2(c)(2). In Arizona, it is unlawful to "transport or possess any protected native plant taken from the original growing site." Ariz. Rev. Stat. § 3-906(A). The law even imposes special prohibitions on the possession of a specific plant, the "saguaro cactus (cereus giganteus)." *Id.* § 3-906(B). It is "unlawful for a person to take, transport or possess such a plant for its by-products, fiber or wood." *Id.* § 3-907. Arizona's fish-and-game laws contain myriad possession offenses: "[I]t is unlawful for a person to . . . [t]ake, possess, transport, release, buy, sell or offer or expose for sale wildlife" except as expressly provided by statute. *Id.* § 17-309(A)(2). Thus, like a "[f]ish and game" violation, a person violates marijuana-possession laws by simply having a naturally occurring, wild-growing, substance in their hands. U.S.S.G. § 4A1.2(c)(2).

Consider further the similarities between a marijuana-possession offense and an abatement offense established by "[l]ocal ordinance." *See* U.S.S.G. § 4A1.2(c)(2).

Maricopa County, Arizona, where Battle was convicted of marijuana possession, has enacted an abatement ordinance to control what items people may possess on their property. Maricopa County, Abatement Ord. No. P-11, § 205(a), https://www.maricopa.gov/2271/Ordinances-Regulations-and-Codes. Like a marijuana-possession offense, an abatement offense under the Maricopa County ordinance is a crime of simple possession. The ordinance forbids a person in "possession or control" of property from having "rubbish, trash, weeds, filth, [or] debris" on their property or the sidewalk connected to it. *Id.* §§ 302, 205(a). And, like a marijuana-possession offense, failure to comply with the ordinance is a misdemeanor. *Id.* § 206(a). While the authority to enact such ordinances is provided by state statute, *see* Ariz. Rev. Stat. § 9-499, abatement violations are not "also violations under state criminal law." U.S.S.G. § 4A1.2(c)(2). Both marijuana-possession offenses and abatement offenses are styled as "public health" and "safety" measures. *See* Ord. No. P-11, § 101; Ariz. Rev. Stat. Title 36 (grouping chapters as "Public Health and Safety" measures and including the marijuana-possession offense in § 36-2853). Though these measures target different activity, they share essential characteristics and are "similar to" one another. U.S.S.G. § 4A1.2(c).

These commonalities are enough to meet a standard of similarity. The Sixth Circuit's perfect-equivalence standard, drawn from the factors proposed in the commentary as common sense, set the bar far higher than Congress approved when the Guidelines were submitted under the SRA.

C. The plain-error review conducted below can be done again based upon this Court's decision about the text of U.S.S.G. § 4A1.2(c).

The government will likely respond that a plain-error case presents a poor vehicle for determining the issue raised. But the questions presented are legal, not factual or case-specific. And they were necessary to answer even under the plain-error standard. *See* below at 7a. Whether or not relief was appropriate below, the outcome of the plain-error analysis belonged to the Sixth Circuit. With answers to the textual questions Battle raises here, the Sixth Circuit can take a second look on remand. And that is consistent with this Court's practice of deciding the legal question presented before remanding, if necessary, for a decision on whether any error might require reversal. *See, e.g.*, *Moore v. Illinois*, 434 U.S. 220, 232 (1977); *Moore v. United States*, 429 U.S. 20, 23 (1976).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Louis E. Grube, Esq.
Counsel of Record
Joseph Shell, Esq.
Victoria L. DeLaney, Esq.
FLOWERS & GRUBE

Counsel for Petitioner Jeffrey I. Battle