



NYU | LAW

MOOT COURT BOARD

United States,
Appellant,

-against-

Harrison Lee,
Appellee.

Memorandum of Law

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QUESTIONS PRESENTED

- (1) Whether the definition of a “controlled substance offense” in U.S. Sentencing Guidelines Manual section 4B1.2(b), for the purposes of enhancing a firearms offense, refers only to federal controlled substance offenses as listed in the Controlled Substances Act or to both federal and state-controlled substance offenses.
- (2) Whether a conviction for “harboring” an undocumented immigrant under 8 U.S.C. § 1324(a)(1) requires specific intent to help that immigrant evade immigration authorities or mere substantial facilitation of their evasion.

STATEMENT OF FACTS

Harrison Lee owns a clothing and alteration shop named All-Star Tailors in the Twin Bridges area of New Galway City. He founded All-Star Tailors in 2002 and has owned and operated it since. All-Star Tailors was known around New Galway as a small business with efficient results and cheap costs, and it was discovered that this was in no small part due to Lee’s exploitation of undocumented immigrants.

On January 17, 2021, two officers of the New Galway Police Department (“NGPD”), Officer Asif Chatterjee and Officer Nathaniel Fitzgerald, observed a suspicious person entering All-Star Tailors. They sought advice from their supervisor, Sergeant Scott Chang, who knew All-Star Tailors was owned by Lee, who he knew had a criminal record and was the subject of investigations for narcotics distribution and illegal gambling. Chang acquired a search warrant, but the officers did not find narcotics or gambling inside the shop. However, they did find a discreet trapdoor to the basement, which was a living space for eleven undocumented immigrants. They also found three firearms, which Lee could not own due to his previous felony conviction. Lee, who lives above All-Star Tailors, was awoken by the commotion and arrested upon going downstairs to investigate.

Lee’s previous conviction was a felony for which he was sentenced to forty-six months in prison. Lee was convicted in 1991 (when he was nineteen years old) for possessing counterfeit heroin, which is a “controlled substance” under New Galway State Controlled Substance Guidelines § 14.6(b), but not under the federal Controlled Substances Act (“CSA”). Lee, as a convicted felon, is prohibited from owning or possessing firearms. In addition, the National Firearms Act of 1934 prohibits possession of a nine-millimeter machine pistol unless the owner has a permit. Lee does not have a permit and is barred from obtaining one due to his felony conviction.

The case was removed to the District Court for the Eastern District of New Galway. During trial testimony, one of the immigrants apprehended in All-Star Tailors stated that Lee forbade them from leaving the building for long periods of

time, only allowed them to go outside individually, and warned them not to be seen. Officer Chatterjee testified that none of the investigating officers could readily tell there were living quarters in the basement, let alone living quarters for eleven people. Furthermore, due to Lee's previous conviction, the prosecutor added a sentence enhancement under U.S. Sentencing Guidelines Manual ("Guidelines") section 4B1.2(b) into any plea deal being offered. A sentence enhancement is applicable in a firearms crime when the defendant has committed a previous "controlled substance" offense. Lee contests the application of the sentence enhancement, as his previous conviction was for a New Galway state offense, which was for a controlled substance that is not listed as a controlled substance under the CSA.

PROCEDURAL POSTURE

Lee was charged with harboring undocumented immigrants in violation of 8 U.S.C. § 1324(a)(1). In addition, he was charged with violating 18 U.S.C. § 922(g)(1) and 18 U.S.C. § 922(o)(1) for illegally possessing firearms, although those charges are not disputed in this case. Lee elected for a bench trial to be held. The prosecution presented Lee with a plea bargain, which included a sentence enhancement, under Guidelines section 4B1.2(b), stemming from Lee's controlled substance offense.

Lee challenged the addition of the sentence enhancement to the plea deal as well as the Government's proposed definition of "harboring." The district court ruled in favor of the Government.

On the issue of the sentence enhancement, the district court held that the statute unambiguously includes state law definitions of "controlled substance" when considering whether a controlled substance offense triggers a sentence enhancement. Furthermore, the district court held that Lee's conduct is identical *in substance* to what the federal statute aims to punish. Even if Lee's crime was not exactly identified under federal law, his conduct was the type of conduct that inspired the statute.

Regarding the definition of "harboring," the district court held that harboring laws have evolved to prohibit a broad range of activity and are not limited to activity that is historically associated with smuggling. In addition, the district court aimed to avoid creating an overly narrow definition of "harboring" that would increase the difficulty of conviction.

Lee appealed the Court of Appeals for the Fourteenth Circuit, which reviewed the case de novo and reversed in favor of Lee. The Fourteenth Circuit held that Guidelines section 4B1.2(b) is ambiguous, and that in such cases, courts must presume federal definitions prevail unless the statute expressly includes state definitions as well. The panel also held that including state law definitions will result in inconsistent sentencing that varies by jurisdiction.

Regarding the definition of “harboring,” the Fourteenth Circuit reasoned that the word change from the previous statute to the current one is too minimal to warrant a change in definitions, and that an overly broad definition will result in misuse of the statute.

In response, the Government filed a petition for a rehearing en banc, which was granted. The Court will rehear the questions of law de novo.

SUMMARY

For the first question, the parties must argue whether, for the purpose of enhancing a firearms offense due to a prior controlled substance offense, the definition of “controlled substance offense” includes only those listed in the CSA or in both the CSA and state laws. In particular, the question of whether state law is relevant refers to controlled substances that are outlawed under state law but not under federal law. Courts disagree over whether the “offense under federal or state law” mentioned in Guidelines section 4B1.2(b) must be for a controlled substance under the CSA.

Appellee will argue that the violation of a state law with a definition of “controlled substance” broader than the definition given by the CSA does not constitute a “controlled substance offense” for the purposes of sentence enhancement under the Guidelines. Appellant will contend that violating a state-controlled substance law is sufficient to constitute a violation of the CSA, regardless of definitional compatibility between the state law and the CSA.

For the second question, the parties must argue what mens rea is appropriate when trying a defendant for harboring an undocumented immigrant in violation of 8 U.S.C. § 1324(a)(1). The question will heavily rely on the statute’s definition of “harboring.” Both sides will primarily rely on legal dictionary definitions of “harboring,” as well as case law illustrating how the word has previously been defined.

Appellee will argue that the mens rea requirement for “harboring” includes the specific intent to shield and evade. Appellant will argue that the legislative history of the statute indicates that “harboring” entails any action that facilitates an immigrant’s staying in the United States illegally and conceals them from authorities.

DISCUSSION

I. The Definition Issue.

For this question, the parties will argue whether the definition of “controlled substance offense” includes only those listed in the CSA or also includes state laws. The parties will dispute the correct interpretation of Guidelines section 4B1.2(b) and whether to apply the categorical approach. The categorical approach is where the

court, in considering whether an offense is a predicate offense, only considers “the fact of conviction and the statutory definition of the predicate offense, rather than to the particular underlying facts.” *Taylor v. United States*, 495 U.S. 575, 576 (1990). Under a categorical approach, the actual *conduct* resulting in conviction does not matter; what matters is the *statutes* under which the conviction was made.

A. There Is a Circuit Split Regarding the Correct Interpretation of the Statute.

Section 4B1.2(b) of the Guidelines permits a sentence enhancement for “controlled substance” offenses, including for offenses involving controlled substances listed under the CSA. The Second, Fifth, Eighth, and Ninth Circuits have held that only federally controlled narcotics trigger a sentencing enhancement, and that state laws are inapplicable in these cases as they are categorically incompatible with federal laws. *See United States v. Townsend*, 897 F.3d 66, 71 (2d Cir. 2018); *United States v. Gomez-Alvarez*, 781 F.3d 787, 794 (5th Cir. 2015); *United States v. Sanchez-Garcia*, 642 F.3d 658, 661-62 (8th Cir. 2011); *United States v. Bautista*, 989 F.3d 698, 702 (9th Cir. 2021).

Notably, the Second Circuit established a presumption that the application of federal law does not depend on state law unless “Congress plainly indicates otherwise.” *Townsend*, 897 F.3d at 71. This presumption originated from *Jerome v. United States*, 318 U.S. 101, 104 (1943). In *Jerome*, the Court reasoned that “when Congress has desired to incorporate state laws in other federal penal statutes, it has done so by specific reference or adoption.” *Id.* at 106. This ensures uniform application of the relevant law and avoids imposing different penalties on defendants in different jurisdictions. *Townsend*, 897 F.3d at 71 (“[T]he Guidelines should be applied uniformly to those convicted of federal crimes irrespective of how the victim happens to be characterized by its home jurisdiction.”). The court in *Townsend* held that “it is the interest of the state sovereign that must give way because, after all, the Guidelines punish violations of federal law.” *Id.* The court in *Bautista* adopted similar reasoning. *See Bautista*, 989 F.3d at 702 (“[C]onstruing the phrase in the Guidelines to refer to the definition of ‘controlled substance’ in the CSA—rather than to the varying definitions of ‘controlled substance’ in the different states—further uniform application of federal sentencing law, thus serving the stated goals of both the Guidelines and the categorical approach.”).

The Second, Fifth, Eighth, and Ninth Circuits hold that applying the categorical approach means the state-controlled substance offense must also be an offense under the CSA. *See Townsend*, 897 F.3d at 71 (holding that “the application of a federal law does not depend on state law unless Congress plainly indicates otherwise”); *Gomez-Alvarez*, 781 F.3d at 794 (“[T]he government must establish that the substance underlying that conviction is covered by the CSA.”); *Sanchez-Garcia*, 642 F.3d at 661 (“This court uses the categorical approach to determine whether a

sentencing enhancement is triggered.”); *Bautista*, 989 F.3d at 702 (“We have interpreted the term ‘controlled substance’ as used in the Guidelines to mean a substance listed in the Controlled Substances Act.”). These circuits hold that status as a controlled substance under state law alone is insufficient for the purposes of sentencing enhancement Guidelines section 4B1.2(b).

However, there is also a modified categorical approach, under which, despite an overbroad state law, a guilty plea to a state law offense can still be deemed sufficient in relation to a federal offense. *Shepard v. United States*, 544 U.S. 13, 16 (2005). The modified categorical approach applies if “a divisible statute, listing potential offense elements in the alternative, renders opaque which element played a part in the defendant’s conviction.” *Id.* The court may consider “the statutory definition, charging document, written plea agreement, transcript of plea colloquy, and any explicit factual finding by the trial judge to which the defendant assented,” but no other factors. *Id.*

Further, the Fourth, Sixth, and Seventh have held that the state statute need not be identical to, or a component of, the CSA. The Fourth Circuit, for instance, looks not at what substances are prohibited by a state law but rather what the punishment is, holding that the state offense must be punishable by at least a year’s imprisonment and prohibit the manufacture, import, export, distribution, or dispensing of a controlled substance. *United States v. Ward*, 972 F.3d 364, 370 (4th Cir. 2020). The Sixth Circuit held that “there is no requirement that the particular controlled substance underlying a state conviction also be controlled by the federal government.” *United States v. Sheffey*, 818 Fed. Appx. 513, 519 (6th Cir. 2020). The Sixth and Seventh Circuits heavily relied on the plain language of the statute in their decisions and each held that the state statute was divisible. *Id.*; *United States v. Ruth*, 966 F.3d 642, 654 (7th Cir. 2020).

B. Appellant Will Argue the Statute Is Unambiguous.

Appellant will argue that Guidelines section 4B1.2(b)’s plain language is clear. While Appellee will contend that it is unclear if Congress wanted federal law to control, Appellant could argue the same to support its side. *Id.* at 649. The parties will focus on the presence of the word “or” in the statute. *Ward*, 972 F.3d at 372.

Further, Appellant will argue that, with the exception of the definition of a “controlled substance,” the state law and the federal law both are intended to regulate drugs and have penalties of a year or more in prison. *Id.* at 381. Appellant can also bring up how, even if the statute is not clear, that would just mean that Congress declined to explicitly state that federal law controls. *United States v. Mills*, 485 F.3d 219, 223 (4th Cir. 2007) (holding that the Sentencing Commission’s failure to directly reference a federal statute indicates that the definition of the term may differ from the definition presented by said statute). While Appellee will argue that his position ensures the uniform application of law, Appellant will respond that the Sentencing

Commission has the “authority to modify the guidelines in order to ‘avoid unwarranted sentencing disparities.’” *Id.* at 225.

Appellant may also note how state laws are already relevant to this question, as the second portion of the statute—“punishable by imprisonment for a term exceeding one year”—takes into account state law offenses punishable by one or more years. Guidelines § 4B1.2(b).

C. Appellant May Argue a Crime’s Substance Should Matter.

Appellant will elaborate upon this argument by mentioning that the purpose of the Sentencing Guidelines is to “ensure that ‘substantial prison terms’ are imposed ‘on repeat violent offenders and repeat drug traffickers.’” *Id.* Appellant will argue that, given the statute’s intended effect, including state law definitions will “avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct.” *Id.* at 226.

The Fourth Circuit used this logic, explaining that, “without consideration of the individual’s underlying conduct,” a state conviction is a “categorical ‘match’ to the federal definition” so long as the elements “correspond in substance.” *Cucalon v. Barr*, 958 F.3d 245, 250 (4th Cir. 2020). Appellant will argue that this ensures the federal statute fulfills its intended purpose, and that the substance of Lee’s conduct is precisely what the federal statute seeks to prohibit, despite slight differences.

D. Appellee Will Argue the Statute Is Ambiguous.

Appellee will argue Guidelines section 4B1.2(b) is ambiguous and the *Jerome* presumption applies, so the court should presume that the statute refers to federal law unless Congress plainly intended otherwise. *Jerome*, 318 U.S. at 104. In *Townsend*, the court noted that “[t]o include substances controlled under only state law, the definition should read ‘. . . a controlled substance *under federal or state law.*’ But it does not.” *Townsend*, 897 F.3d at 70. The *Townsend* court stated that the statute does not unambiguously state whether it is state laws that are applicable or state definitions of “controlled substance.” As such, it held that Congress failed to plainly indicate that “the application of a federal law does not depend on state law.” *Id.* at 71. Appellee will argue that the statute at issue is similarly ambiguous, compelling the court to respect the *Jerome* presumption.

E. Appellee Will Warn Against Inconsistent Sentencing.

Further, Appellee can make the policy argument that federal guidelines are intended to apply evenly across the country. *Id.* Appellee will contend that only using the CSA’s definition “furthers uniform application of federal sentencing law, thus serving the stated goals of both the Guidelines and the categorical approach.” *Bautista*, 989 F.3d at 702. In justifying the categorical approach, Appellee will argue

the importance of “uniform, categorical definitions to capture all offenses of a certain level of seriousness that involve violence or an inherent risk thereof, and that are likely to be committed by career offenders, regardless of technical definitions and labels under state law.” *Taylor*, 495 U.S. at 590.

In this case, two of New Galway’s neighboring states, Abernack and Franksylvania, do not list counterfeit heroin as a controlled substance, meaning taking into account state-controlled substance lists would result in inconsistent sentencing depending on which of the three states one is convicted in. Appellee will argue this is a clear violation of *Taylor*, as it will create variable application of a federal statute. *See id.*

II. The Specific Intent Issue Regarding “Harboring.”

For this question, the parties will dispute which mens rea is appropriate when trying a defendant for harboring an undocumented immigrant in violation of 8 U.S.C. § 1324(a)(1). The question will heavily rely on the definition of “harboring,” which the parties will determine using statutory interpretation, congressional intent, and historical usage.

A. There Is a Circuit Split Regarding the Correct Mens Rea Requirement for “Harboring” in the Statute.

The main interpretation issue is whether “harboring” entails *intending to* substantially facilitate a migrant remaining in the country illegally and preventing authorities from detecting them or simply engaging in conduct that *tends to* prevent detection. *United States v. Yun Zheng*, 87 F.4th 336, 341 (6th Cir. 2023). This is a three-way circuit split; the Eleventh Circuit uniquely holds that a defendant must only have “knowingly concealed, harbored, or shielded [the migrant] from detection.” *United States v. Dominguez*, 661 F.3d 1051, 1063 (11th Cir. 2011). This is a higher standard than *tending to* but lower than *intending to*.

In *Yun Zheng*, the court noted that the statute’s predecessor, the Immigration and Nationality Act of 1952, “required the government to prove that a defendant ‘willfully or knowingly’ harbored or attempted to harbor an illegal noncitizen from detection,” in contrast to the current statute, which requires “a ‘knowing or in reckless disregard’ mens rea.” *Yun Zheng*, 87 F.4th at 342. The court reasoned that “even though the statute does not define ‘harbor,’ the statute’s history indicates that Congress does not require the government to prove that a defendant acted intentionally.” *Id.*

The Fifth Circuit holds that “section 1324 does not prohibit only smuggling-related activity, but also activity tending substantially to facilitate an alien’s remaining in the United States illegally.” *United States v. Cantu*, 557 F.2d 1173, 1180 (5th Cir. 1977) (internal quotation marks omitted). The Fifth Circuit also holds that

the words “harbor, shield, or conceal” have a “connotation that something is being hidden from detection,” and that conduct that goes “beyond mere employment” constitutes “harboring.” *United States v. Varkonyi*, 645 F.2d 453, 456, 459 (5th Cir. 1981). The Eleventh Circuit similarly holds that “willful conduct is not required to violate” the statute. *Dominguez*, 661 F.3d at 1069.

Other circuits have a tougher mens rea requirement, requiring that the defendant concealed undocumented immigrants with the *intention* of concealing them “from the authorities.” *United States v. McClellan*, 794 F.3d 743, 749 (7th Cir. 2015). The Ninth Circuit holds that the statute is violated only if the “defendant intended to violate immigration laws.” *United States v. You*, 382 F.3d 958, 965 (9th Cir. 2004).

B. Appellant Will Argue that Harboring Requires Intent.

Appellant will cite cases that hold that harboring requires only substantial facilitation of “an alien’s remaining in the United States illegally and to prevent government authorities from detecting his unlawful presence.” *United States v. Ozelik*, 527 F.3d 88, 99 (3d Cir. 2008). Appellant may also argue that convictions for violating section 1324 “generally involve defendants who provide illegal aliens with affirmative assistance.” *Id.*

Appellant, like Appellee, will argue that history is on their side. While Appellee will cite the history of the word “harbor” and its relationship with smuggling, Appellant will bring up the same, noting that the enactment of section 1324 was intended to prohibit activity “tending substantially to facilitate an alien’s ‘remaining in the United States illegally.’” *Cantu*, 557 F.2d at 1180. Appellant will argue that section 1324 was intended to supersede, not merely update, previous legislation criminalizing trafficking, and Appellee’s intent analysis is outdated.

Appellant may note how “the purpose of the Act was ‘to strengthen the law generally in preventing aliens from entering *or remaining* in the United States illegally.’” *United States v. Lopez*, 521 F.2d 437, 440 (2d Cir. 1975). With this logic, the *Lopez* court separates “harboring” from criminal actions related to smuggling. *Id.* The Second Circuit elaborates further in *Kim* and *Vargas-Cordon*, expressly defining harboring as “conduct tending substantially to facilitate an alien’s remaining in the United States illegally and to prevent government authorities from detecting his unlawful presence.” *United States v. Myung Ho Kim*, 193 F.3d 567, 574 (2d Cir. 1999); *United States v. Vargas-Cordon*, 733 F.3d 366, 380 (2d Cir. 2013).

Appellant will argue that this means section 1324 is more applicable to present-day immigration issues, which have required a new statute that goes further than the previous one and has a lower mens rea requirement. Appellant may cite several examples of changed wording that could indicate a lower mens rea requirement, such as the phrase “knowing or . . . reckless disregard.” *Yun Zheng*, 87 F.4th at 342. Appellant will cite these as examples of Congress acknowledging the

need for a broader law, warranting the superseding of the historical definition of “harboring.”

C. Appellant Will Warn Against an Overly Narrow Interpretation.

Finally, Appellant may raise a policy argument that an overly specific requirement will make it hard for the government to enforce the statute. The Supreme Court has previously held that, while courts must take care to avoid creating overly broad case law, courts must take equal care to avoid narrowing a statute so severely that it fails to serve its purpose. *See Lamar v. United States*, 241 U.S. 103, 112 (1916) (“[A] penal statute is not to be enlarged by interpretation, but also . . . is not to be narrowed by construction so as to fail to give full effect to its plain terms as made manifest by its text and its context.”).

Appellant will argue that, while over-enforcement of section 1324 is regrettable, the Court must not be so swayed by such misuse as to render the statute weak and overly narrow. Indeed, while cases such as *Costello* unfortunately criminalized clearly innocent defendants, Appellant will differentiate *Costello* from the present case by noting Appellee’s sophisticated and criminal treatment of the eleven undocumented immigrants found in his basement. *United States v. Costello*, 666 F.3d 1040 (7th Cir. 2012).

D. Appellee Will Argue the History of the Word “Harboring” Shows It Requires Intent.

Appellee will argue that the specific intent to shield and help evade is more consistent with congressional intent and the legal history of the word “harboring.” Additionally, the choice of the word “harboring” implies an intent to evade authorities. The court in *McClellan* noted that legislation against harboring “grew out of the prohibition of smuggling aliens into the United States.” *McClellan*, 794 F.3d at 749. The word “harboring” also appears in several anti-trafficking laws, as even *Lopez* notes that the criminalization of harboring undocumented immigrants just ten years after the criminalization of trafficking them. *Lopez*, 521 F.2d at 439 (holding that “harboring” has no mens rea requirement, but nonetheless acknowledging that in 1907, Congress prohibited by statute “simply the smuggling or unlawful bringing” of immigrants into the United States, but then in 1917 amended said statute to also prohibit “concealment or harboring”). Appellee will argue that, despite the word change, there is no reason to believe the historical prohibition of harboring as a means to prevent smuggling has changed as well.

Further, Appellee may note that this word change is insufficient to presume a change in mens rea requirements. Appellee will argue that “legislative history does not . . . support the government’s argument that Congress intended to dispense with a mens rea requirement” *United States v. Nguyen*, 73 F.3d 887, 893 (9th Cir. 1995). Due to this, the Court cannot accept a mens rea that differs from historical

precedent. *United States v. United States Gypsum Co.*, 438 U.S. 422, 438 (1978) (“[F]ar more than the simple omission of the appropriate phrase from the statutory definition is necessary to justify dispensing with an intent requirement.”).

Appellee may also note that when the mens rea requirement is ambiguous, the court should favor the most lenient interpretation. *Nguyen*, 73 F.3d at 891.

Finally, Appellee could bring up a policy argument, alleging that conduct not intended to harbor could become criminalized, such as cohabitating with an undocumented immigrant. *Costello*, 666 F.3d at 1041.

E. Appellee Will Warn Against an Overly Broad Interpretation.

Appellee will argue that a mens rea requirement that is too broad will result in clearly innocent people being charged with harboring. The Supreme Court has warned against this as well, noting that courts must not inadvertently “criminalize a broad range of apparently innocent conduct.” *Liparota v. United States*, 471 U.S. 419, 426 (1985).

Appellee may note an unjust Seventh Circuit decision involving a defendant charged with harboring her boyfriend, an undocumented immigrant. *See Costello*, 666 F.3d at 1042. In this case, the defendant was simply being supportive in a manner that is typical of couples and was clearly not intentionally trying to help her boyfriend evade authorities. Appellee may warn of cases such as this, even if Appellee’s present case is significantly different from *Costello*.

CONCLUSION

Regarding the first question on the applicable definition of “controlled substance,” Appellee will argue that a state law “controlled substance” violation—when that state’s definition is broader than that of the CSA—does not constitute a “controlled substance offense” for the purposes of sentence enhancement under the Guidelines. Appellee will cite the CSA’s lack of specification and the definition’s ambiguity to argue that the *Jerome* presumption applies, and that the federal definition controls since the CSA is a federal statute. Furthermore, Appellee will stress that, if state law definitions were held to be controlling, the resulting application of the CSA would not be uniform. Appellee will stress that differing state law definitions of “controlled substance” mean that a federal statute would be applied differently depending on jurisdiction. Appellee will argue this is inequitable, and likely against Congressional intent, as the same action in two different states could result in a sentence disparity of several years.

In response, Appellant will argue that violating a state-controlled substance law is sufficient to constitute a violation of the CSA, regardless of definitional overlap between the state law and the CSA. Appellant will note that the statute uses the

phrase “federal or state law” and does not explicitly restrict the definition of “controlled substance” to the federal definition, despite the Sentencing Commission being capable of writing the statute to say so. In addition, the Sentencing Commission has had time to modify the statute yet has not. Appellant may also reference the statute’s purpose of ensuring that dangerous repeat offenders are appropriately penalized to a greater extent. Despite the differences in definitions between states, Appellant may argue that including state law definitions ensures that people guilty of similar conduct, namely, violating a controlled substance law, are sentenced accordingly.

Regarding the second question on the harboring of undocumented immigrants, Appellee will argue the mens rea requirement for “harboring” includes the specific intent to shield and evade. Appellee will contend that legislative history indicates that the definition of “harboring” was intended to outlaw smuggling. In particular, Appellee will note how the word “harboring” appears largely in anti-trafficking laws. Appellee can also advise that adopting an overly broad definition of “harboring” may outlaw innocent activity that clearly does not constitute harboring. Finally, Appellee may argue that, when a word has an ambiguous meaning, the most lenient definition should be applied.

In response, Appellant will argue that legislative history indicates that “harboring” entails any action that facilitates an immigrant’s staying in the United States illegally and conceals them from authorities. Appellant will justify this definition by mentioning how section 1324 was intended to prohibit activity that tends to facilitate an immigrant’s unlawful presence in the United States, regardless of whether there is specific intent. Appellant will also contend that previous legislation targeted trafficking, and that the fact that the superseding statute uses different language indicates that the mens rea requirement should not be the same. Finally, Appellant can argue that an overly specific mens rea will be difficult to prove, as defendants who clearly concealed undocumented immigrants can claim they did not intend for them to evade authorities.