



 NYU | LAW

# MOOT COURT BOARD

United States,  
Appellant,

-against-

Harrison Lee,  
Appellee.

Record

Prepared by: Larry Cai

Principally Edited by: Michelle Slezingler  
& Nathaniel Berman

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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 to only 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.

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW GALWAY

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United States,

*Plaintiff,*

-against-

Harrison Lee,

*Defendant.*

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Docket No. 23-ML-1988

OPINION AND ORDER

Jackson, J.:

**BACKGROUND**

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 New Galway Police Department ("NGPD") officers, Asif Chatterjee and Nathaniel Fitzpatrick, were patrolling along Van Buren Street in the Twin Bridges area around 3:00 am. They noticed a person sitting in front of All-Star Tailors smoking a cigarette. Upon the person noticing the officers, he immediately stood up and hurriedly entered the business. Officers Chatterjee and Fitzpatrick found this suspicious and reported the encounter to their supervisor, Sergeant Scott Chang. Sergeant Chang knew that the business belonged to Harrison Lee, who he knew had contacts with a local gang, the Eighth Street Tyrants, and had a criminal record that included a controlled substance offense. Chang immediately suspected gang- and narcotics-related activity.

Chang quickly obtained a search warrant and, along with four other officers, arrived on the scene to execute it. The seven officers entered All-Star Tailors and found it empty, until one of them located a door leading downstairs, where they found several disorganized and makeshift rooms with mattresses. Inside these rooms were eleven residents, who were identified as being in the country unlawfully.

The conditions of the rooms were nothing short of destitute. An officer testified that the lower level looked like a cross between a dormitory, a prison, and a trash heap. None of the eleven employees could speak, read, or write English. During questioning, through a translator, the employees stated that they worked twelve-hour shifts with no breaks and resided within the lower-level rooms.

Inside All-Star Tailors, the NGPD officers also found three firearms: a .45 caliber semi-automatic handgun, a .357 revolver, and a 9-millimeter machine pistol. Lee had previously been convicted of violating a state-controlled substance law, 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 the possession of counterfeit heroin, which is a “controlled substance” under New Galway state law, but not under the federal Controlled Substances Act (“CSA”). As a convicted felon, Lee is prohibited from owning or possessing firearms. In addition, the National Firearms Act of 1934 prohibits possessing a 9-millimeter machine pistol, unless the owner has a permit. Lee does not have any such permit and is barred from obtaining one due to his felony conviction.

Upon further questioning by the NGPD, the undocumented immigrants in All-Star Tailors stated they had been instructed by Lee to avoid leaving the building for longer than thirty minutes at a time and to avoid contact with “important people.”

## **DISCUSSION**

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) for illegally possessing firearms. Lee waived his right to a jury trial, electing for a bench trial. The Government presented Lee with a plea bargain, which includes a sentence enhancement stemming from Lee’s controlled substance offense. Lee now challenges the sentence enhancement, arguing that the controlled substance offense, being under state law, does not constitute a controlled substance offense under 21 U.S.C. § 802, the CSA.

Further, Lee contests the Government’s proposed requirements for violating 8 U.S.C. § 1324(a)(1). The Government urges the Court to define “harboring,” for the purposes of the statute, as “conduct substantially tending to facilitate a noncitizen’s remaining in the United States illegally.” Meanwhile, Lee argues that “harboring” is defined as “concealing noncitizens with the intention of concealing them from the authorities.”

### **I. Either Federal or State Law Will Satisfy United States Sentencing Guidelines Manual Section 4B1.2(b).**

We explore the issue relating to Lee’s prior controlled substance offense first. Counterfeit heroin is not listed as a controlled substance under the CSA. It is, however, listed as such under New Galway state laws. *See* N.G. Penal Code § 14.6(b) (West 2024). Under a categorical approach, Lee’s conviction for possession of counterfeit heroin would not constitute a controlled substance offense, as the

categorical approach requires the entirety of the state law offense to be included among possible federal law offenses.

Lee argues the Court should adopt this approach because the presumption from *Jerome v. United States* applies and congressional intent regarding state law applicability must be expressly stated. *See* 318 U.S. 101, 106 (1943) (“[W]hen Congress has desired to incorporate state laws in other federal penal statutes, it has done so by specific reference or adoption.”). Specifically, Lee contends that the relevant section of the U.S. Sentencing Guidelines Manual (“Guidelines”) simply states “controlled substance,” Guidelines § 4B1.2(b) (U.S. Sent’g Comm’n 2023), not “controlled substance *under federal or state law*.” Lee also argues that considering state law definitions of the term “controlled substance” will result in inconsistent application of sentence enhancements.

Section 4B1.2(b) of the Guidelines states:

(b) 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).

This Court finds Lee’s argument that it is ambiguous unpersuasive. The statute clearly contains the word “or” between “federal” and “state,” which the Fourth Circuit also noted. *See United States v. Ward*, 972 F.3d 364, 372 (4th Cir. 2020) (holding that an interpretation that leaves out state offenses that do not define “controlled substances” the same way as federal laws “ignores the plain meaning” of the statute). The term “federal or state” clearly states that *either* federal or state law is applicable. If only state law applied to this statute when it was entirely covered by federal law, the phrase “federal or state law” would be redundant. It strains the imagination to conclude that “federal or state law” is supposed to mean “federal law.”

Furthermore, as the Fourth Circuit highlights, the rest of the statute heavily relies on state law, indicating that to deemphasize state law is illogical and inconsistent. *See id.* The second half of the statute states that the relevant offense must be “punishable by imprisonment for a term exceeding one year.” Guidelines § 4B1.2(b). The *Ward* court noted that when determining whether the

potential penalty element is satisfied, courts look “to see how the state law defining that offense defines the punishment and the prohibited conduct . . . .” 972 F.3d at 372. Even if this Court ignored the statute’s references to federal law it would still look to the law of the jurisdiction where Defendant was convicted in determining whether his offense is punishable by one year or more and targets the relevant conduct (manufacturing, importing, distributing, possessing, etc.). Lee asks this Court to disregard New Galway’s definition of a “controlled substance” when applying a statute that nonetheless relies heavily on New Galway’s sentencing guidelines.

## **II. The Statute Is Intended to Combat the Illegal Drug Trade, in Which Lee Engaged.**

This Court must also consider the statute’s purpose. Lee argues that the sentence enhancement is meant to apply consistently across the nation. However, this ignores the main aim of the sentence enhancement: to ensure that repeat, dangerous offenders and drug traffickers are taken off the streets. *See United States v. Mills*, 485 F.3d 219, 225 (4th Cir. 2007).

Lee is not a model citizen. In addition to his previous conviction for trafficking counterfeit heroin, he has a significant history of suspected gang activity. His current charges pertain to the possession of firearms, none of which he is allowed to own due to his felony conviction and one of which he would not be allowed to own even without said conviction. Finally, Lee was essentially running a sweatshop, which he kept profitable by exploiting undocumented immigrants living in the squalid basement of his business. Lee is the exact type of person the sentencing enhancement is supposed to keep locked up.

While the federal government may not have foreseen counterfeit heroin as an issue as New Galway did, Lee’s conduct is of the precise kind the federal law intends to punish, notwithstanding the substance involved. In cases in which a state offense “‘corresponds in substance’ to the generic definition” of the federal offense, the state conviction is a categorical match to the federal definition. *United States v. Dozier*, 848 F.3d 180, 187 (4th Cir. 2017). This is the case if the relevant elements “are no broader than those of the generic offense.” *Id.* If the state statute covers a “‘broader swath of conduct’ than the federal definition,” a categorical match does not exist. *Id.*

While Lee’s conduct might *technically* be ever so slightly different than what is prohibited under federal law, his crimes are effectively the very ones the federal law protects against. The federal law prohibits illegally trading drugs, which Lee did.

## **III. “Harboring,” as the Term is Used in 8 U.S.C. § 1324(a)(1), Has No Intent Requirement.**

Lee also challenges the Government’s proposed definition of “harboring,” arguing for a stricter mens rea requirement. Specifically, the Government proposes

defining “harboring” as “conduct tending substantially to facilitate a noncitizen’s remaining in the United States illegally and to prevent government authorities from detecting his unlawful presence.” Meanwhile, Lee proposes defining “harboring” as “conduct *intending* to facilitate a noncitizen’s remaining in the United States illegally and to prevent government authorities from detecting his unlawful presence.” The difference implicates whether Lee specifically *had the intention* to hide the immigrants in his business and prevent their detection, or just happened to do so.

Lee notes that, historically, “harboring” has been used to prohibit activities related to smuggling and trafficking. *See United States v. McClellan*, 794 F.3d 743, 749 (7th Cir. 2015). However, this fails to acknowledge evolving issues within the immigration system. The Second Circuit convincingly demonstrates how laws adjust to events, holding that a major purpose of § 1324’s predecessor, the Immigration and Nationality Act of 1952 (“INA”), was “to strengthen the law generally in preventing [noncitizens] from entering or *remaining* in the United States illegally.” *United States v. Lopez*, 521 F.2d 437, 440 (2d Cir. 1975) (quoting H. Rep. No. 1377, 82d Cong., 2d Sess.). As such, the Second Circuit finds that a more modern definition of “harboring” would be “conduct tending substantially to facilitate [a noncitizen’s] remaining in the United States illegally and to prevent government authorities from detecting his unlawful presence.” *United States v. Kim*, 193 F.3d 567, 574 (2d Cir. 1999).

Additionally, the Second Circuit acknowledges that the replacement of the INA’s harboring provision with § 1324 coincided with new concerns related to immigration. *Lopez*, 521 F.2d at 440–41 (characterizing the change as a congressional effort to “remedy the deficiencies” and target behavior beyond smuggling). A new definition of “harboring” answered these concerns by prohibiting activities beyond typical smuggling, which is warranted given that convictions under § 1324 “generally involve defendants who provide [noncitizens] with affirmative assistance . . .” *United States v. Ozelik*, 527 F.3d 88, 99 (3d Cir. 2008).

The Fifth Circuit likewise recognizes that § 1324 adds to already prohibited activities, noting that the statute “does not prohibit only smuggling-related activity, but also activity ‘tending substantially to facilitate [a noncitizen’s] remaining in the United States illegally.’” *United States v. Cantu*, 557 F.2d 1173, 1180 (5th Cir. 1977). For these reasons, this Court is unpersuaded by Lee’s appeal to history.

However, legislative history is still instructive. The INA “required the government to prove that a defendant ‘willfully or knowingly’ harbored or attempted to harbor an illegal noncitizen from detection.” *United States v. Yun Zheng*, 87 F.4th 336, 342 (6th Cir. 2023). This is worded quite differently than the current statute, § 1324, which requires that the defendant have “a ‘knowing or in reckless disregard’ mens rea.” *Id.*

#### IV. Requiring an Intent Element in U.S.C. § 1324(a)(1) Would Make the Statute Overly Specific.


Lee relies on an outdated definition of “harboring.” The INA initially made it a felony to “willfully or knowingly . . . harbor any alien.” 8 U.S.C. § 1324(a)(3) (1953). In 1986, Congress amended the statute, lowering the mens rea to “knowing[ly] or . . . reckless[ly].” 8 U.S.C. § 1324(a)(1)(A)(iii). This amendment shows intent to displace the prior mens rea interpretation. *See Yun Zheng*, 87 F.4th at 342.

While courts must take care to avoid creating overly broad caselaw, 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.”). This Court recognizes that Lee’s conduct is the exact type of activity this statute is intended to prohibit, and in a case of such “aptness,” the Court must avoid “destroying the statute” by narrowing it. *See United States v. Corbett*, 215 U.S. 233, 243 (1909) (“[A] meaning which is within the text and within its clear intent is not to be departed from because, by resorting to a narrow and technical interpretation of particular words, the plain meaning may be distorted and the obvious purpose of the law be frustrated.”).

#### CONCLUSION

Harrison Lee’s challenge to the presumed sentencing enhancement added upon the plea bargain is **DENIED**. This Court also holds that Lee will be tried under the Government’s proposed definition of “harboring.”

IT IS SO ORDERED.

/s/   
Hon. Henry Jackson, Jr.  
United States District Judge

Dated: June 20, 2023.



IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW GALWAY

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United States,

*Plaintiff,*

v.

Harrison Lee,

*Defendant.*

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NOTICE OF APPEAL

23-ML-1988

NOTICE IS GIVEN that Harrison Lee appeals to the Court of Appeals for the Fourteenth Circuit the decision by the District Court for the Eastern District of New Galway rendered on June 20, 2023, and entered on June 20, 2023.



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Kyle A. Volpe, Esq.  
Attorney for Defendant  
New Galway Federal Defenders  
205 13th Avenue  
New Galway City, New Galway 00337

CERTIFICATE OF SERVICE

I hereby certify that a copy hereof has been furnished to Plaintiff's counsel by electronic service on this 26th day of June 2023.



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Kyle A. Volpe, Esq.  
Attorney for Defendant

In the  
**United States Court of Appeals**  
For the Fourteenth Circuit

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SEPTEMBER TERM 2024  
No. 24-9835-cv

Harrison Lee,

*Defendant-Appellant,*

v.

United States,

*Plaintiff-Appellee.*

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW GALWAY

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ARGUED: SEPTEMBER 6, 2024  
DECIDED: OCTOBER 13, 2024

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Before: DELLUMS, CHAVEZ, MINETA, *Circuit Judges.*

Dellums, *Circuit Judge:*

**INTRODUCTION**

Defendant-Appellant Harrison Lee has been charged with unlawful possession of firearms under 18 U.S.C. § 922(g)(1) and § 922(o)(1), as well as harboring undocumented immigrants under 8 U.S.C. § 1324(a)(1). Appellant has a previous felony conviction for possession of a controlled substance that is prohibited under state law. Appellant claims that because this conviction did not involve a federally controlled substance, it does not constitute a “controlled substance offense” under the U.S. Sentencing Guidelines Manual (“Guidelines”) section 4B1.2(b). Appellee

contends that the conviction constitutes a “controlled substance offense” under section 4B1.2(b), thus triggering a sentence enhancement.

Furthermore, Appellant contends that the applicable definition of harboring an undocumented immigrant under 8 U.S.C. § 1324(a)(1) is “conduct *intending* to facilitate [a noncitizen’s] remaining in the United States illegally and to prevent government authorities from detecting his unlawful presence.” Appellee conversely argues that harboring involves “conduct *tending* substantially to facilitate [a noncitizen’s] remaining in the United States illegally and to prevent government authorities from detecting his unlawful presence.”

This Court finds for Appellant on both questions, holding that, for the purposes of sentencing enhancements under Guidelines section 4B1.2(b), a “controlled substance offense” refers to a substance identified as a “controlled substance” under federal law, and that a substance only identified as a “controlled substance” under state law does not suffice. We also hold that the applicable definition of “harboring” is “conduct *intending* to facilitate [a noncitizen’s] remaining in the United States illegally and to prevent government authorities from detecting his unlawful presence.”

For the reasons below, we find that the district court erred, and the decision of the district court is **REVERSED** and **VACATED**. The case is **REMANDED** for further proceedings consistent with this opinion.

### **BACKGROUND**

On January 17, 2021, Appellant was arrested in his business, All-Star Tailors, by the New Galway Police Department (“NGPD”). Within the business, NGPD officers found three firearms, including an automatic handgun. They also detained eleven employees and uncovered sleeping quarters in the basement. The officers discovered that all eleven employees were in the country illegally, and upon further questioning found that they worked and lived on the business’s premises.

Appellant was charged with violating 18 U.S.C. § 922(g)(1), 18 U.S.C. § 922(o)(1), and 8 U.S.C. § 1324(a)(1). Appellee contends that Appellant is eligible to receive an enhanced sentence under Guidelines section 4B1.2(b), if found guilty of violating 18 U.S.C. § 922. Further, Appellee and Appellant argue for different definitions of “harboring” for the purposes of 8 U.S.C. § 1324(a)(1), particularly regarding the mens rea requirement. The district court decided in favor of Appellee, holding that state law convictions for controlled substance offenses are sufficient to trigger a sentence enhancement under section 4B1.2(b), regardless of whether the offense involves a controlled substance under federal definitions. The district court also found that the definition of “harboring” is “conduct *tending* substantially to facilitate [a noncitizen’s] remaining in the United States illegally and to prevent government authorities from detecting his unlawful presence.”

On review, we overturn the district court's holding and find in favor of Appellant. We review the questions of law in this case de novo.

## **DISCUSSION**

At the heart of this case are the definitions of core terms in Guidelines section 4B1.2(b) and 8 U.S.C. § 1324(a)(1). Appellant is charged with violating 18 U.S.C. § 922(g)(1) (the possession of a firearm by a felon) and 18 U.S.C. § 922(o)(1) (the possession of a machine gun without proper permits).

### **I. United States Sentencing Guidelines Manual Section 4B1.2(b) Is Ambiguous Regarding the Term “Controlled Substance Offense.”**

Appellant's previous controlled substance offense was for possession of counterfeit heroin, which is not listed as a controlled substance under federal law but is listed as a controlled substance under New Galway law. *See* N.G. Penal Code § 14.6(b) (West 2024). Guidelines section 4B1.2(b) reads:

The term “controlled substance offense” means an offense under federal or state law, punishable by imprisonment for a term exceeding one year . . . .

Appellee argues that this statute is unambiguous and that the inclusion of the word “or” signifies that a drug that is a controlled substance under *either* federal or state law suffices for this sentence enhancement. The district court agreed with Appellee, citing the Fourth Circuit's opinion that the phrase “federal or state law” clearly signals that both federal *and* state law are relevant here. *United States v. Ward*, 972 F.3d 364, 372 (4th Cir. 2020) (refusing to limit section 4B1.2(b) to just those state offenses that define “controlled substance” identically to federal law).

However, section 4B1.2(b) defines a “controlled substance *offense*” as “an *offense* under federal or state law.” (emphasis added), *See United States v. Townsend*, 897 F.3d 66, 70 (2d Cir. 2018) (discussing alternative 4B1.2(b) wordings). We are confident that the statute includes convictions in state courts such as Appellant's. There are at least two possible readings of the phrase: (1) state law offenses only satisfy this statute if the controlled substance is also a controlled substance under federal law; or (2) all state law offenses satisfy this statute, regardless of whether the controlled substance is also a controlled substance under federal law. The statute is ambiguous with respect to these two options.

Due to the ambiguity of the statute, we are compelled towards the *Jerome* presumption—that a federal statute depends only on federal law unless plainly intended to also depend on state law. *Jerome v. United States*, 318 U.S. 101, 104

(1943). As we are not certain whether state law definitions are applicable, giving them substance would violate controlling precedent.

## **II. Ignoring the Categorical Approach Will Result in Inconsistent Sentencing for the Same Crimes.**

We also seek to avoid inconsistent sentencing. Specifically, we are concerned that by holding that state law definitions apply, different jurisdictions will have different “controlled substances” for the purposes of this statute. Appellant’s prior conviction was for possession of counterfeit heroin, which is a controlled substance in New Galway. However, counterfeit heroin is *not* a controlled substance in the states of Abernack or Franksylvania, which border New Galway. Aber. Penal Code § 10002.4(d) (McKinney 2024); Frank. Crim. L. § 1995 (West 2024). To recognize each state’s controlled substance definition for the purposes of this statute would mean someone previously caught trafficking counterfeit heroin would be eligible for a sentence enhancement in New Galway, but not in Abernack or Franksylvania.

Indeed, our sister circuits have recognized that federal guidelines are intended to apply evenly across the country. *See, e.g., United States v. Townsend*, 897 F.3d 66, 71 (2d Cir. 2018); *United States v. Bautista*, 989 F.3d 698, 702 (9th Cir. 2021). This respects a vital aspect of federal laws, maintaining “uniform, categorial definitions to capture all offenses of a certain level of seriousness . . . regardless of technical definitions and labels under state law.” *Taylor v. United States*, 495 U.S. 575, 590 (1990).

This Court aims to avoid the inequitable situation in which a federal law has different consequences within different jurisdictions and recognizes that controlling precedent touts the importance of uniformity in federal laws. Thus, we hold that a controlled substance offense under state law only triggers the Guidelines section 4B1.2(b) sentence enhancement if the controlled substance involved in the state law offense is also a controlled substance under federal law.

## **III. “Harboring,” as Used in U.S.C. § 1324(a)(1), Must Include Intent.**

We now explore the mens rea requirement for the crime of “harboring” under 8 U.S.C. § 1324(a)(1). Appellant argues “harboring” comprises “conduct *intending* to facilitate [a noncitizen’s] remaining in the United States illegally and to prevent government authorities from detecting his unlawful presence.” Appellee contends that “harboring” is “conduct *tending substantially* to facilitate [a noncitizen’s] remaining in the United States illegally and to prevent government authorities from detecting his unlawful presence.”

Both definitions involve helping a noncitizen—in this case the eleven noncitizens in All-Star Tailors—remain in the country illegally and evade authorities.

The question is whether Appellant must have knowingly sought that result, or simply acted in a manner likely to bring about that result.

We find the district court’s reasoning unpersuasive. Despite revisions to the Immigration and Nationality Act of 1952, the word “harboring” still implies an intent to evade authorities. See *United States v. McClellan*, 794 F.3d 743, 750–51 (7th Cir. 2015). A simple word change does not void the entire history of a word that has appeared in numerous laws, nor does it necessarily indicate a loosening of mens rea requirements. The Seventh Circuit in *McClellan* noted that legislation against harboring “grew out of the prohibition of smuggling [noncitizens] into the United States.” *Id.* at 749 (quoting *United States v. Costello*, 666 F.3d 1040, 1045 (7th Circuit 2012)). While the exact wording has been changed, we see no indication that the goal of prohibiting the harboring of noncitizens—to prevent smuggling—has changed.

#### **IV. An Overly Broad Definition of “Harboring” Will Criminalize Innocent Conduct.**

Appellant also argues that dispensing with the intent requirement for harboring will cast a wide net that will target actions § 1324 is not intended to criminalize. Courts must take care to not “criminalize a broad range of apparently innocent conduct.” *Liparota v. United States*, 471 U.S. 419, 426 (1985).

By accepting a definition of “harboring” that does not include a specific intent mens rea, we would risk this statute being used to charge people for innocent conduct such as dropping someone off at the train station or hosting someone for one night, so long as they know the person they are helping is undocumented.

This Court seeks to avoid creating overly broad caselaw that may be used in a manner that Congress did not intend, and in ways this Court cannot predict. Regardless of whether Appellant is guilty of harboring undocumented immigrants, the definition under which he is tried should avoid inadvertently creating a catchall charge that prohibiting any association with undocumented immigrants.

### **CONCLUSION**

For the reasons above, we **REVERSE** the district court's decision regarding the definition of a "controlled substance offense" in Guidelines section 4B1.2(b) and the definition of "harboring" in 8 U.S.C. § 1324(a)(1) and **REMAND** the case to the district court for further proceedings consistent with this opinion.

IT IS SO ORDERED.

/s/ Vernon Dellums  
Hon. Vernon R. Dellums  
United States Circuit Judge

Dated: October 13, 2024  
New Galway City, New Galway

In the  
**United States Court of Appeals**  
For the Fourteenth Circuit

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OCTOBER TERM 2024  
No. 24-9835-cv

United States,

*Plaintiff-Appellant,*

v.

Harrison Lee,

*Defendant-Appellee.*

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW GALWAY

---

FILED ON: OCTOBER 18, 2024

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Before: SHAW, *Chief Judge*; DELLUMS, CHAVEZ, MINETA, TERRY, HAMILTON, ADAMS,  
WRIGHT, AND CALUGAS, *Circuit Judges*.

**ORDER**

Appellant's petition for rehearing en banc and the response thereto were circulated to the full court. Thereafter, a majority of the judges eligible to participate voted in favor of the petition. Upon consideration of the foregoing, it is

ORDERED that the petition be granted and the Court's judgment filed October 13, 2024, be vacated. This case will be reheard by the Court sitting en banc. It is

FURTHER ORDERED that the parties brief the following questions:

- 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 to only 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.

UNITED STATES COURT OF APPEALS  
FOR THE FOURTEENTH CIRCUIT

United States,	:	
	:	
Appellant,	:	
	:	
-against-	:	ORDER SETTING BRIEFING
	:	SCHEDULE FOR EN BANC REVIEW
Harrison Lee,	:	
	:	
Appellee.	:	No. 24-9835-cv
	:	

The parties are directed to file briefs addressing 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 to only federal controlled substance offenses as listed in the Controlled Substances Act or to both federal and state-controlled substance offenses.

The parties are also directed to file briefs addressing whether a conviction of “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.

Appellant’s brief is to be filed with the Clerk and served upon opposing counsel on or before noon, November 18, 2024. Appellee is to file its response on or before noon, December 18, 2025.

FOR THE COURT:  
Elijah Baker, Clerk of Court

Dated: October 18, 2024.  
New Galway City, New Galway

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW GALWAY

Trial Transcript  
June 7, 2023  
23-ML-1988  
United States v. Harrison Lee

Assistant United States Attorney: Kimberly Clarke  
New Galway Federal Defender: Kyle Volpe  
Interpreter: Ying Chao  
Before the Honorable Judge Henry Jackson, Jr.

MS. CLARKE: Good morning, Mr. Phan.

Mr. Phan: Hello.

Q: Mr. Phan, prior to January 17, 2021, what was your occupation?

A: I worked at a tailor near Twin Bridges on Van Buren Street. I sewed clothes.

Q: What was the name of this tailor?

A: All-Star Tailors.

Q: And who owned All-Star Tailors?

A: Lee.

Q: Harrison Lee?

A: Yes.

Q: Was he also your employer?

A: Yes.

Q: How did you start working for Mr. Lee?

A: I started working for Lee after I came to the United States.

Q: And how did you come to the United States?

A: I paid some people to help bring me in.

Q: Did you enter the United States illegally?

MR. VOLPE: Objection for vagueness.

THE COURT: Sustained. Please be more specific Ms. Clarke.

Q: Did you arrive through an airport or an official immigration channel?

A: No. I arrived on a boat, and they snuck me into a van. When I exited the van, I was in Twin Bridges.

Q: Once you arrived in the United States, how did you find work at All-Star Tailors?

A: The man who drove me to Twin Bridges introduced me to Lee.

Q: I see. And where did you live prior to January 17, 2021?

A: In the basement of the tailor shop.

Q: Is that also where all your coworkers lived?

A: Yes.

Q: And did Harrison Lee know you lived there?

A: Yes.

Q: And did he maintain the basement specifically to use as somewhere for you to live?

MR. VOLPE: Objection for vagueness.

THE COURT: Sustained.

Q: Was the basement always somewhere people would live and sleep?

A: Yes.

Q: Were there any windows or ways to see outside?

A: No.

Q: How did you and your coworkers eat?

A: Lee brought us food, but he would make us go hungry if we didn't work hard enough.

Q: He punished you with starvation?

MR. VOLPE: Objection for relevance. This is clearly hearsay.

THE COURT: Overruled.

A: Yes.

Q: Were you ever allowed to leave?

A: Only sometimes at night and alone. He also told us never to go far and to avoid people. We also needed his permission to leave.

Q: In the early morning of January 17, 2021, you went outside?

A: Yes.

Q: Was that the night you were seen by two members of the New Galway Police Department?

A: Yes.

Q: Did you run back into All-Star Tailors?

A: Yes.

Q: Why did you run back into All-Star Tailors?

MR. VOLPE: Objection for speculation.

THE COURT: Sustained. Reword the question.

Q: Did Mr. Lee ever warn you about police officers?

A: Yes.

Q: Why do you think he did that?

MR. VOLPE: Objection for vagueness and speculation.

THE COURT: Sustained. Ms. Clarke, this is not a deposition. Ask a different question.

Q: Did Mr. Lee ever advise you or your coworkers to remain out of sight?

A: Yes.

Q: No further questions, Your Honor.

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW GALWAY

Trial Transcript  
June 7, 2023  
23-ML-1988  
United States v. Harrison Lee

Assistant United States Attorney: Kimberly Clarke  
New Galway Federal Defender: Kyle Volpe  
Interpreter: None  
Before the Honorable Judge Henry Jackson, Jr.

MS. CLARKE: Good afternoon, Officer Chatterjee.

Officer Chatterjee: Afternoon.

Q: What do you do for work, Officer Chatterjee?

A: I'm a police officer for the New Galway Police Department.

Q: How long have you worked for the NGPD?

A: By next month, it'll have been seven years.

Q: Are you from New Galway?

A: Yes. I grew up in Sunrise Park.

Q: On the early morning of January 17, 2021, what were you doing?

MR. VOLPE: Objection for vagueness.

THE COURT: Overruled.

A: I was on patrol. Back then I was stationed over in Twin Bridges.

Q: Were you with another officer?

A: Yeah, I was with Nate Fitz. Officer Fitzpatrick.

Q: During that patrol, did you and Officer Fitzpatrick notice anything suspicious?

MR. VOLPE: Objection for speculation.

THE COURT: Overruled.

A: Yeah, we were on foot around Van Buren Street, and we made eye contact with someone taking a smoke. The moment we did, he bolted into a tailor shop.

Q: Which tailor shop?

A: All-Star Tailors.

Q: Did you go in after him?

A: No, we phoned it in to Sergeant Chang.

Q: And what did Sergeant Chang do in response to that?

A: Sergeant Chang told us he knew about the tailor shop and that the dude who owned it was a well-known gangster who was suspected of being involved in narcotics and illegal gambling dens. Sarge works a lot with the counter-gang guys.

Q: What happened after that?

A: Sergeant Chang said we had probable cause, and maybe thirty minutes later he shows up with a search warrant and some other guys. Then we executed the warrant.

Q: What did you find within All-Star Tailors?

MR. VOLPE: Objection.

THE COURT: Overruled.

A: At first, we just found a bunch of sewing machines and ironing racks and mannequins and all that stuff. Then I noticed a trapdoor in the floor.

Q: Was it clearly visible?

A: No. It was barely noticeable. No way I would have seen it if we weren't looking for it.

Q: Where did the trapdoor lead?

A: Downstairs.

Q: What did you find down there?

A: Eleven suspects. None of them spoke English, but we had a guy who could translate, and we found out they worked upstairs and lived downstairs.

Q: Did you expect to find them?

A: Not one bit. From the outside Officer Fitzpatrick and I couldn't even tell there was a basement, let alone one with eleven people in it. We couldn't even hear or see anything when we were inside the building. Not until I found the trapdoor.

Q: Did you find anything else during the search?

MR. VOLPE: Objection for speculation.

THE COURT: Overruled. It's not speculation if all parties know what else they found, Mr. Volpe. Continue, Officer.

A: We didn't find what we were actually looking for, but we did find three firearms.

Q: What kinds?

A: A forty-five caliber semi-automatic handgun, a three-five-seven revolver, and a nine-millimeter automatic handgun.

Q: Did you find Mr. Lee on the premises?

A: Sort of. He lived upstairs in the same building. I guess he heard the commotion because he walked right in on us. We arrested him right there for unlawful possession of the firearms.

Q: No further questions, Your Honor.

**NEW GALWAY STATE CONTROLLED SUBSTANCE GUIDELINES**  
**Section 14 (Amended 2006)**

14: Under New Galway state law, the following are considered to be controlled substances:

\*       \*       \*

14.6(a): Heroin, or diacetylmorphine or diamorphine, including both solid and liquid forms of any concentration of heroin;

14.6(b): Counterfeit heroin, or any substance that a reasonable person would consider to resemble heroin, including both solid and liquid forms;

SUPERIOR COURT OF THE STATE OF NEW GALWAY

IN THE NAME OF THE PEOPLE OF THE STATE OF NEW GALWAY TO ANY  
LAW ENFORCEMENT OFFICER OR POLICE OFFICER OF NEW GALWAY

**SEARCH WARRANT**

Proof by affidavit having been made this day before me by Sergeant Scott Chang of the New Galway Police Department that there is reasonable cause to believe that the property described below:

**Is evidence of crime or is evidence of criminal activity.**

You are therefore commanded within a reasonable time and in no event later than seven days from the issuance of this search warrant to search the following property for: **evidence of unlawful possession of narcotics, evidence of intent to distribute narcotics, and evidence of illegal gambling.**

At: **852 Van Buren Street, New Galway City, New Galway, 00389**, and which is occupied and/or in the possession of:

**Harrison Lee.**

You are further commanded if you find any such property or any part thereof to bring it, and when appropriate, the persons in whose possession it is found before the NEW GALWAY DIVISION of the SUPERIOR COURT DEPARTMENT.

January 17, 2021

Date Issued



Signature of Judge

Derrick J. Blackburn

Printed Name of Judge



**New Galway Police Department  
86 Police Square, New Galway City,  
New Galway, 00337**

**AFFIDAVIT IN SUPPORT OF A SEARCH WARRANT**

I, Scott H. Chang, am a duly sworn officer in the City of New Galway, holding this position for approximately ten years.

An administrative search warrant is requested for the property located at:

**852 Van Buren Street, New Galway City, New Galway, 00389.**

The purpose of this warrant is to investigate the property for evidence of crime or criminal activity.

This building is owned by: **Harrison Lee.**

At approximately 3 AM this morning, two officers under my supervision, Officer Nathaniel Fitzpatrick and Officer Asif Chatterjee, reported a suspicious person hurriedly entering the building located at this address.

I am aware the building located at this address is owned by Harrison Lee, who has a previous criminal conviction for violating the New Galway State Controlled Substance Guidelines section 14.6(b) for the possession of counterfeit heroin. He is currently the subject of several investigations by the NGPD Anti-Gang Task Force and the NGPD Narcotics Enforcement Division.

Based on these facts, we ask that this court issue said administrative warrant.

Signed and submitted under the penalties of perjury.

  
\_\_\_\_\_  
Sgt. Scott H. Chang  
New Galway Police Department

January 17, 2021

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW GALWAY

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The People of the  
State of New Galway,

Plaintiff,

-against-

Harrison Lee,

Defendant.

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NOTICE OF REMOVAL

TO THE HONORABLE CLERK OF THE DISTRICT COURT FOR THE EASTERN  
DISTRICT OF NEW GALWAY,

NOTICE IS GIVEN that the above action is removed pursuant to 28 U.S.C.  
§ 1455 from the Superior Court for the State of New Galway to the Eastern District  
of New Galway, on the following grounds:

- (1) Defendant Harrison Lee has been charged under federal statutes 8 U.S.C.  
§ 1324(a)(1), 18 U.S.C. § 922(g)(1), and 18 U.S.C. § 922(o)(1).
- (2) Defendant Harrison Lee has a previous conviction for possession of a  
controlled substance under New Galway state law, and thus may be a  
career offender under United States Sentencing Commission Guidelines.
- (3) Defendant Harrison Lee has not been charged under a state law statute  
herein.

IT IS SO ORDERED this 25th day of February 2021.



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Judge Sofia Itliong-Aquino  
Superior Court of the State of New Galway