No. 18-6979

IN THE
Supreme Court of the United States

LEWIS CARNELL JACKSON,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

REPLY TO BRIEF IN OPPOSITION

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INTRODUCTION

The United States classifies a feature of this case as a bug. Mr. Jackson's petition allows this Court to address the growing circuit split over the interaction between the word "use" in ACCA's Force Clause and the mens rea element of various state assault crimes. And it allows this Court to provide necessary guidance on the deference that federal courts must show to state courts when interpreting the elements of state offenses. By granting review, this Court can address both the statutory interpretation issue over the word "use" at the heart of the circuit split and the federalism issue regarding federal court interpretations of state law that underlies the dispute.

Despite repeated pleading from this Court to enact a better system, Congress continues to impose its harshest sentencing penalties via recidivist enhancements that ask federal courts to place state crimes into categorical boxes that often have

little or no relation to the elements of the crimes themselves. Federal courts must attempt to divine the meaning of state statutes through interpreting state supreme court cases that neither ask nor answer the questions in which the federal court is interested. Unsurprisingly, the lower federal courts have expressed repeated frustration over the difficulty of this task. Without guidance from this Court on how federal courts should interpret ambiguous state law, courts and litigants are left with unnecessary uncertainty regarding whether certain prior convictions qualify as recidivist predicates. And the courts run the risk of upsetting the delicate federalism balance by responding to the ambiguity by substituting their opinions for the opinions of the state courts.

This case presents the proper vehicle for addressing both of the issues that Mr. Jackson's petition raises. First, Mr. Jackson argued the issue of the required mens rea in the district court and the Fourth Circuit, both courts ruled on the issue, and it is preserved for this Court's review. Second, North Carolina lacks a certification statute, so the Fourth Circuit has no ability to certify ambiguous questions of state law to the North Carolina Supreme Court. And North Carolina's Supreme Court has defined the mens rea element of its assault crimes in an indirect way that has resulted in the Fourth Circuit simply substituting its judgment for that of the North Carolina courts. This crime, from this state, gives this Court the best opportunity to provide guidance on how to interpret ambiguous state law in the context of ACCA and other statutes relying on state predicate convictions. It should grant the petition.

ARGUMENT

A. A circuit split exists on the question at the heart of this petition.

The government agrees with Mr. Jackson that the federal circuit courts disagree over the mens rea required for a predicate conviction to involve the "use" of force under ACCA's force clause. Gov't Br. in Opp. at 8. Mr. Jackson's case presents the proper vehicle for resolving this circuit split because he argued in both the district and circuit court that North Carolina assault with a deadly weapon with intent to kill does not have, as an element, the mens rea necessary to qualify as an ACCA predicate under the Force Clause. Both courts addressed and rejected this argument, and it is thus ripe for this Court's review.

The government notes that this Court denied certiorari to a petition raising the same question in *Haight v. United States*, No. 18-370. Gov't Br. in Op. at 9. That case, however, had a significant vehicle problem; Justice Kavanaugh wrote the opinion for the court of appeals, making his recusal from this Court's review of the opinion likely. Gov't Br. in Op. in *Haight* at 14-15. This Court's rejection of Mr. Haight's petition does not indicate that the question is either unimportant or inappropriate for this Court's review.

Indeed, this Court's review is needed because the circuits will not resolve this split without intervention from this Court. The issue is one of pure statutory interpretation of a criminal statute. No agency can issue or amend regulations to resolve this question. And, as this Court is well aware, Congress has expressed no interest in amending ACCA to clarify ambiguous language or resolve conflicting

circuit court opinions. This Court's review is necessary to ensure uniform application of ACCA.

B. **The federal circuit courts need this Court to establish a framework for interpreting ambiguous state law in the context of federal recidivist sentencing statutes.**

As Mr. Jackson's petition and the government's brief in opposition both acknowledge, another important question lurks underneath the question presented by this petition: how do lower federal courts interpret state law to determine whether state crimes categorically qualify as recidivist predicates under federal law. The question is not merely academic. Congress uses recidivist enhancements to drive federal sentencing law. In so doing, it expects courts to take the "general approach of using uniform categorical definitions to identify predicate offenses." *Taylor v. United States*, 495 U.S. 575, 591 (1990). But that approach has proven much easier said than done, and the lower federal courts have found themselves stymied by the difficult task of trying to find the federal meaning of state crimes.

Generally, this Court defers to the circuit courts on matters of interpreting state law. *See* Gov't Br. in Op. at 8 (citing *Elk Grove Unified School Dist. v. Newdow*, 542 U.S. 1 16 (2004); *Bowen v. Massachusetts*, 487 U.S. 879, 908 (1988)). That deference is not, however, an inexorable command, but merely a "custom" which recognizes the reality that circuit courts often "possess[] greater familiarity with [state] law." *Elk Grove Unified Sch. Dist. v. Newdow*, 542 U.S. 1, 16 (2004) (internal citation omitted). That deference makes no sense here, where the lower

federal courts themselves acknowledge the difficulty inherent in the task Congress has assigned them.

The circuit courts are not merely attempting to interpret state law. They are attempting instead to fit the square pegs of various state laws into the round holes created by ACCA and other categorical recidivist statutes. They are reading state supreme court opinions to try and find the answers to questions that the state supreme courts are not asking. And they need this Court's help.

In determining whether New York attempted second-degree robbery qualifies as a predicate "crime of violence" under the career offender guideline, the First Circuit explained

> As has become common in cases of this type, we must address a number of complexities regarding the particularities of state law to resolve the issues on appeal. And, as has also become common in cases of this type, such complexities of state law in turn raise additional questions -- knotty in themselves -- about the requirements of the federal provision that seeks to identify those offenders whose past violence warrants the imposition of an enhanced sentence.

United States v. Steed, 879 F.3d 440, 443 (1st Cir. 2018).

In reaching its conclusion, the First Circuit had to wade through a thicket of New York Court of Appeals and intermediate appellate court cases that, depending on the party making the argument, could be read to support either party's position. *Id.* at 445-51. This confusion is unsurprising considering that the New York appellate courts were not attempting to answer questions about the ACCA or career offender force clause when interpreting New York law. And the First Circuit is no better positioned than any other federal court to resolve "complexities of state law"

resulting from conflicting precedents simply because its geographic reach happens to cover New York.

Other circuits fare no better. The Sixth Circuit: "The application of the [New York robbery] statute is uncertain, to say the least. On the question of force, the statute has been interpreted all over the place. The various umpires have different 'strike zones.' As applied, the meaning of the statute is ambiguous." *Perez v. United States*, 885 F.3d 984, 992 (6th Cir. 2018) (Merritt, J. dissenting). The federal courts, of course, lack the authority to definitively construe state law. *Johnson v. Fankell*, 520 U.S. 911, 916 (1997). Here, the federal courts are having trouble simply interpreting state law without needed guidance from this Court.

New York is not alone in this regard. The Ninth Circuit, in certifying a question about the divisibility of a Nevada statute to the Nevada Supreme Court, noted that binding state precedents concerning the statute "seemingly stand in conflict." *United States v. Figueroa-Beltran*, 892 F.3d 997, 1003 (9th Cir. 2018). It confronted the identical issue regarding Oregon robbery, determining that Oregon state case law and its uniform criminal jury instructions "seemingly stand in conflict when considering whether Robbery I and Robbery II are divisible." *United States v. Lawrence*, 905 F.3d 653, 659 (9th Cir. 2018). It certified the question to the Oregon Supreme Court. *Id.* The Ninth Circuit was simply unable to resolve these questions of state law based on the sparse framework that this Court has provided to lower federal courts to help interpret state law.

This Court's guidance is necessary to protect the sovereignty of the states and their right to interpret their own statutes. "Over more than 200 years, federal courts have respected a state supreme court's authority to interpret state statutes." *United States v. Fogg*, 836 F.3d 951, 962 (2016) (Bright, J. dissenting). The circuit courts, however, are sometimes responding to ambiguities in state law by simply substituting their judgment for that of the state courts. *Id.* (Bright, J. dissenting) (criticizing the panel majority for ignoring the Minnesota Supreme Court). As Judge Bright noted in dissent, "[w]e should not need further clarification from the Supreme Court" to understand how to categorically interpret state laws in relation to federal recidivist enhancements. But we do.

CONCLUSION

For these reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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