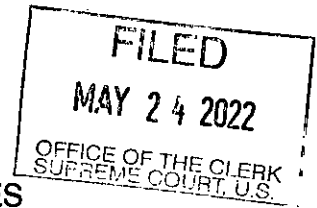


21-8062

No. \_\_\_\_\_

ORIGINAL



\_\_\_\_\_  
IN THE

SUPREME COURT OF THE UNITED STATES  
\_\_\_\_\_

BRYANT LOVE

— PETITIONER

(Your Name)

vs.

UNITED STATES OF AMERICA

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Seventh Circuit Court of Appeals

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Bryant Love

(Your Name)

71 W. Van Buren St.

(Address)

Chicago, IL 60605

(City, State, Zip Code)

n/a

(Phone Number)

## Question Presented

When applying the categorical and modified categorical approach sentencing courts are instructed to use a states statutory definition of it's elements to determine if the statute "meets the definition of "violent felony," in 18 U.S.C. 924(e)(2)(B)(i); Armed Career Criminal Act."

The Question Presented is:

When a state statutory definition is found to be ambiguous by the state supreme court, can a sentencing court apply a federal sentencing enhancement to a offenders sentence using the ambiguous definition ?

Put alternatively, must a sentencing court give deference to a state supreme courts' interpretation of it's statutory definition clarifying that definition when applying federal sentencing enhancements such as the ACCA ?

## LIST OF PARTIES

☒ All parties appear in the caption of the case on the cover page.

☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

## RELATED CASES

\* United States v Stinson, No. 1:15-cr-26-TLS, U.S. District Court for the Northern District of Indiana, Judgement entered April 22, 2019

\* United States v Stinson, No: 19-2544, U.S. Court of Appeals for the seventh circuit, Judgement entered Aug 5, 2021

## TABLE OF CONTENTS

OPINIONS BELOW .....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED .....	3
STATEMENT OF THE CASE .....	5
REASONS FOR GRANTING THE WRIT .....	6
CONCLUSION.....	11

## INDEX TO APPENDICES

APPENDIX A    Decision of the United States Court of Appeals for  
the seventh circuit

APPENDIX B    Decision of the United States District Court for  
the Northern District of Indiana

APPENDIX C    Denial of a timely filed petition for rehearing by  
the United States Court of Appeals for the seventh circuit

APPENDIX D

APPENDIX E

APPENDIX F

## TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Descamps v United States 570 U.S. 254 (2013).....	passim
Gonzales v Duenas-Alvarez 549 U.S. 183 (2007).....	pg. 10
Googing v Wilson 405 U.S. 518 (1972).....	pg. 9
Curtis Johnson v United States 559 U.S. 133 (2010).....	pg. 7
Samuel Johnson v United states 576 U.S. 591 (2015).....	pg. 9
Mathis v United States 136 S. Ct. 2243 (2016).....	passim
Rust v sullivan 500 U.S. 173 (1991).....	pg. 9
Taylor v United states 495 U.S. 575 (1990).....	pg. 7
united States v Glispie 943 F.3d 358 (7th Cir. 2019).....	pg. 8

## STATUTES AND RULES

!* U.S.C. 924(e).....	passim
Amendment 5 Criminal actions-Provisions concerning-	
Due Process of law.....	pg. 3,9
Constitutional Doubt Canon.....	pg. 9

## OTHER

Bailey v Ind., 979 N.E. 2d 133, 141 (ind 2012).....	pg. 7
Ind Code 35-42-2-1.....	passim
Ind Code 35-31.5-29.....	pg. 6,7

IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

**OPINIONS BELOW**

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☒ reported at 7 F.4th 674; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☒ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix \_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

The opinion of the \_\_\_\_\_ court appears at Appendix \_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

## JURISDICTION

☒ ] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was Aug. 6, 2021.

☐ ] No petition for rehearing was timely filed in my case.

☒ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: Oct. 4, 2021, and a copy of the order denying rehearing appears at Appendix C.

☐ ] An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ ] For cases from **state courts**:

The date on which the highest state court decided my case was \_\_\_\_\_.  
A copy of that decision appears at Appendix \_\_\_\_\_.

☐ ] A timely petition for rehearing was thereafter denied on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

☐ ] An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendment 5 Criminal actions-Provisions concerning-Due process of law and just compensation clauses

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger: nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law, nor shall private property be taken for public use, without just compensation

924(e)(1) In the case of a person who violates section 922(g) of this title [18 USCS 922(g)] and has three previous convictions by any court referred to in section 922(g)(1) of this title [18 USCS 922(g)(1)] for a violent felony or a serious drug offense, or both committed on occasions different from one another, such person shall be fined under this title and imprisoned not less than fifteen years, and notwithstanding any other provision of law, the court shall not suspend the sentence of, or grant a probationary sentence to, such person with respect to the conviction under section 922(g) [18 USCS 922(g)].

(2) As used in this subsection--

(A) the term "serious drug offense" means--

(i) an offense under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and



Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46 [46 USCS 70501 et seq.], for which a maximum term of imprisonment of ten years or more is prescribed by law; or

(ii) an offense under State law involving the manufacture or distribute, a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), for which a maximum term of imprisonment of ten years or more is prescribed by law;

(B) the term "violent felony" means any crime punishable by imprisonment for a term exceeding one year, or any act of juvenile delinquency involving the use or carrying of a firearm, knife or destructive device that would be punishable by imprisonment for such term if committed by an adult, that--

(i) has as an element the use, attempted use, or threatened use of physical force against the person of another; or

(ii) is burglary, arson, or extortion, involves use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury to another; and

(C) the term "conviction" includes a finding that a person has committed an act of juvenile delinquency involving a violent felony.

## STATEMENT OF THE CASE

Offender Bryant Love entered a plea of guilty without the benefit of a agreement with the government to three (3) counts of distribution of, and or possession with intent to distribute, cocaine base, under 21 U.S.C. 841(a), and one (1) count of being a felon in possession of a firearm, 18 U.S.C. 922(g). [DE 107]. The PSR determined that Mr. Love was subject to sentencing as an Armed Career Criminal pursuant to 18 U.S.C. 924(e). [DE 115]. Mr. Love's sentencing hearing was held on June 15, 2020., and the district court ruled that Mr. Love's prior conviction of Indiana's battery resulting in "bodily injury," Ind Code 35-42-2-1(a)(2)(A), did not categorically fit the federal definition of a "violent felony," and decided Mr. Love did not qualify as a Armed Career Criminal under 18 U.S.C. 942(e)(2)(B)(i), and sentenced him to 96 months imprisonment, which was above Mr. Love's guidelines by several years. Mr. Love obtusely appealed the district courts sentence. The government cross-appealed the district courts decision that Mr. Love's conviction under Ind Code 35-42-2-1(a)(2)(A), did not qualify him as a armed career criminal. On Aug. 6, 2021., the seventh circuit court of appeals reserved the district courts decision finding that Indiana's statutory definition of "bodily injury," categorically qualified the statute as a "violent felony," using only the statutory definition that was found to be ambiguous by the Indiana supreme court without giving deference to the Indiana supreme courts interpretation of its statutory definition. Mr. Love filed a petition for rehearing stating the argument above and was denied on Oct. 4, 2021 by the seventh circuit court of appeals.

## REASON FOR GRANTING THE PETITION

The seventh circuit court of appeals decision is in direct conflict with several United States Supreme Court rulings.

The seventh circuits decision to reverse the district court's determination that mr. Love's prior conviction under Ind. Code 35-42-2-1(a)(2)(A), battery resulting in "bodily injury" statute did not categorically qualify as a "violent felony," under the ACCA, conflicts with this Courts decisions. When a sentencing court determines whether or not a prior conviction can serve as an ACCA predicate the relevant statute has to have the same elements as the "generic" ACCA crime or defines the crime more narrowly. But, if the statute sweeps more broadly than the generic crime, ~~ia conviction under that law cannot count as an ACCA predicate.~~ Because Indiana supreme court defines its "bodily injury" element in its battery statute more broadly than the generic crime it can not serve as a ACCA predicate.

Sentencing courts employ the modified categorical approach when a statute is divisible to determine whether a prior felony satisfies the elements clause. Mathis v United States, 136 S.Ct. 2243 (2016); also see Descamps v United States, 570 U.S. 254 (2013). The goal of the categorical analysis is to ascertain whether the state criminal statute at issue fits the generic federal definition.

Here in relevant part Ind Code ~~35-42-2-1~~ reads:

(a) a person who knowingly or intentionally touches another person in a rude, insolent, or angry manner commits battery, a class B misdemeanor. However the offense is:

(a)(1) a class A misdemeanor if it results in "bodily injury."  
(2) a class D felony if it results in "bodily injury" to:  
(A) a law enforcement officer or a person summoned and directed by  
a law enforcement officer while the officer is engaged in the  
execution of the officer's official duty...Ind Code 35-42-2-1(a)(2)(A).

Indiana (then and now) defines "bodily injury" as "any impairment  
of physical condition, including physical pain." Ind Code 35-31.5-  
2-29. see footnote

The Indiana supreme court found the statutory definition of it's  
"bodily injury" element contained in Ind Code 35-42-2-1(a) to be  
ambiguous, as well as distinguishable from all but North Dakota,  
rendering a clarifying opinion. There the court acknowledged its  
interpretation provides no guidance on an ordinary case and it  
invited a victim to say "it hurt" when, in actuality, it did not  
thus enhancing an offender's punishment. see *Bailey v Ind.*, 979 N.E.  
2d 133, 141 (Ind 2012).

In *Taylor*, 495 U.S. 575 (1990), the Court held that a sentencing  
court may look only to the statutory definition, i.e., the elements  
of an offender's prior conviction. However, in *Johnson*, 559 U.S. 133  
(2010), the Court determined that a state crime for the purposes  
of the ACCA, federal courts look to, and are constrained by, state  
courts' interpretations of state law. 559 at 138. The Court has  
relied explicitly on statutory interpretations by state supreme  
courts in applying the categorical and modified categorical approaches.  
see *Mathis*, 136 S. Ct. 2243 (2016).

The seventh circuit has acknowledged that the Supreme Court, as well as there circuit precedent has relied explicitly on statutory interpretations by state supreme courts in applying the categorical analysis. *United States v Glispie*, 943 F.3d 358 (7th Cir. 2019)(To the extent that a statutory definition of a prior offense has been interpreted by the states highest courts that interpretation constrains the federal courts' analysis of the elements of state law). The seventh circuit court of appeals did not adhere to Supreme Court, nor its own precedent recognizing the use of judicial interpretation when determining Mr. Love's prior conviction of Ind Code 35-42-2-1(a)(2)(A), qualifies as a "violent felony," for federal sentencing purposes.

The Court addressing a question it has "expressly reserved" will ensure a offenders due process of law, and the uniform application of federal law across the nation.

The Court when addressing the now familiar "modified categorical approach," in *Descamps* expressly reserved the question whether, in determining a crimes elements, sentencing courts should take account not only of the relevant statute's text, but of judicial rulings interpreting it. *descamps*, 570 U.S. at 275. Leaving this question unanswered has lead to the arbitrary and in-consistent application of federal sentencing enhancements such as the ACCA. Offenders that are similiarly situated can recieve vastly different sentences i.e., mandatory minuims at the courts discretion soley because it can choose in applying a states statutory definition of its elements; or instead the judicial interpretation of that definition.

Without any legally fixed standard by this Court, lower courts are free to decide between whichever aligns with the view of the court sentencing the offender, statutory definition, or judicial interpretation inviting arbitrary enforcement. Not only does this conflict with the categorical method's rational to avoid inconsistencies in applying uniformity in federal sentencing, but also produces more unpredictability and arbitrariness than Due Process Clause tolerates. Like with any law, to comply with due process it must not be "so standardless" that it invites arbitrary enforcement. *Johnson*, 576 U.S. 591 (2015). Congress enacted the ACCA to ensure that offenders could be subject to enhanced penalties-i.e., longer prison sentences in a fair and uniform way across the country. see *Descamps* 570 U.S. 254 (2013).

The Court has inferred in several decisions that deference is given to a state supreme court's interpretation of its statutory element, and the constitutional doubt canon suggests courts should construe ambiguous statutes to avoid the need even to address serious questions about the constitutionality. *Rust v. Sullivan*, 500 U.S. 173 (1991). Indiana supreme court clarified its "bodily injury" statutory definition (Ind Code 35-31.5-2-29 (2012)), in accordance with the constitutional doubt canon. As the Court noted no person can properly be convicted under a statute until it is given a narrowing or clarifying construction. *Gooding v. Wilson*, 405 U.S. 518 (1972). This is also true when applying the categorical and modified categorical approaches reasoning of uniformity and consistency in federal sentencing.

The seventh circuit court of appeals arbitrary decided to use Indiana's statutory definition without analyzing, consulting, or giving deference to the Indiana supreme courts interpretation of its statutory definition, when deciding Indiana's "bodily injury" element qualified Indiana's battery statute as a "violent felony," under the "modified categorical approach. A state statute should not "be treated as if it is narrower than it plainly is." Indiana's "bodily injury" element as interpreted by its supreme court covers conduct outside the scope of the federal generic definition of the offense. see *Gonzales v. Duenas-Alvarez*, 549 U.S. 183 (2007).

\*footnote\* Indiana has a heightened level of battery-class C felony -for rude, insolent, or angry touching resulting in "serious bodily injury." Ind Code 35-42-2-1(a)(3).

### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Bryant Fox

Date: May 18 2022