No. 21-8191

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IN THE SUPREME COURT OF THE UNITED STATES

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MICHAEL CHRISTIAN TINLIN, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

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ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

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# BRIEF FOR THE UNITED STATES IN OPPOSITION

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## QUESTIONS PRESENTED

1. Whether a Texas conviction for burglary of a habitation, in violation of Texas Penal Code Ann. § 30.02(a) (West 2019), constitutes a conviction for "burglary" under the Armed Career Criminal Act of 1984, 18 U.S.C. 924(e)(2)(B)(ii).

2. Whether an Iowa conviction for domestic abuse assault with intent to inflict serious injury on another, in violation of Iowa Code § 708.2(1) and 708.2A(2)(c) (2022), constitutes a conviction for a crime of violence under Sentencing Guidelines § 4B1.2 (2018).

3. Whether an Iowa conviction for assault with intent to inflict serious injury on another, in violation of Iowa Code § 708.2(1) (2022), constitutes a conviction for a crime of violence under Sentencing Guidelines § 4B1.2 (2018).

ADDITIONAL RELATED PROCEEDINGS

United States District Court (N.D. Iowa):

United States v. Hutchinson, No. 19-cr-00129 (Sept. 29, 2020)

United States v. Wheat, No. 20-cr-3031 (June 25, 2021)

United States District Court (S.D. Iowa):

United States v. Tinlin, No. 19-cr-00224 (Aug. 21, 2020)

United States Court of Appeals (8th Cir.):

United States v. Tinlin, No. 20-2862 (Dec. 15, 2021)

United States v. Hutchinson, No. 20-3116 (Mar. 3, 2022)

United States v. Wheat, No. 21-2531 (Mar. 10, 2022)

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## OPINIONS BELOW

The opinion of the court of appeals in petitioner Hutchinson's case (Pet. App. 15-25) is published at 27 F.4th 1323. The opinion of the court of appeals in petitioner Tinlin's case (Pet. App. 36-38) is published at 20 F.4th 426. The opinion of the court of appeals in petitioner Wheat's case (Pet. App. 53-54) is unreported but is available at 2022 WL 714886.

## JURISDICTION

The judgment of the court of appeals in Hutchinson's case was entered on March 3, 2022, and a petition for rehearing was denied on April 8, 2022 (Pet. App. 28).

The judgment of the court of appeals in Tinlin's case was entered on December 15, 2021, and a petition for rehearing was denied on January 18, 2022 (Pet. App. 41). On April 5, 2022, Justice Kavanaugh extended the time within which petitioner Tinlin was permitted to file a petition for a writ of certiorari to and including May 18, 2022. On May 10, 2022, Justice Kavanaugh further extended the time Tinlin was permitted to file a petition for a writ of certiorari to and including June 17, 2022.

The judgment of the court of appeals in Wheat's case was entered on March 10, 2022. On May 31, 2022, Justice Kavanaugh extended the time within which petitioner Wheat was permitted to file a petition for a writ of certiorari to and including July 8, 2022.

A joint petition for a writ of certiorari for all three petitioners was filed on June 16, 2022. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

## STATEMENT

Following a guilty plea in the United States District Court for the Northern District of Iowa, petitioner Hutchinson was convicted of possessing a firearm following a felony conviction, in violation of 18 U.S.C. 922(g)(1) and (3), and 924(e)(1). Pet. App. 3. The district court sentenced him to 180 months of imprisonment, to be followed by three years of supervised release. Id. at 4-5. The court of appeals affirmed. Id. at 15-25.

Following a guilty plea in the United States District Court for the Southern District of Iowa, petitioner Tinlin was convicted of conspiring to distribute 500 grams or more of methamphetamine, in violation of 21 U.S.C. 841(a)(1) and (b)(1)(A), and 846, and possessing a firearm in furtherance of a drug-trafficking crime, in violation of 18 U.S.C. 924(c)(1)(A)(i). Pet. App. 29. The district court sentenced him to 300 months of imprisonment, to be followed by five years of supervised release. Id. at 30-31. The court of appeals affirmed. Id. at 36-38.

Following a guilty plea in the United States District Court for the Northern District of Iowa, petitioner Wheat was convicted on two counts of possessing a firearm as a prohibited person, in violation of 18 U.S.C. 922(g)(3) and (8), and 924(a)(2). Pet. App. 42. The district court sentenced him to 52 months of imprisonment, to be followed by two years of supervised release. Id. at 43-44. The court of appeals affirmed. Id. at 53-54.

1. a. On October 12, 2019, in Cedar Rapids, Iowa, officers conducted a traffic stop of Hutchinson, searched him, and found a pistol and ammunition in his jeans pocket. Pet. App. 16. Hutchinson later pleaded guilty to possessing a firearm following a felony conviction, in violation of 18 U.S.C. 922(g)(1) and (3). Pet. App. 15.

The Probation Office determined that Hutchinson qualified for sentencing under the Armed Career Criminal Act of 1984 (ACCA), 18

U.S.C. 924(e)(1), based on three prior convictions for burglary of a habitation in violation of Texas Penal Code Ann. § 30.02(a) (West 2019).[1] See Pet. App. 16; Hutchinson Presentence Investigation Report (PSR) ¶¶ 17, 25, 26, 29, 86. The ACCA increases the penalty for unlawful firearm possession to a term of 15 years to life if the defendant has "three previous convictions * * * for a violent felony or a serious drug offense" committed on separate occasions, and defines "violent felony" to include, inter alia, any crime punishable by more than one year that "is burglary, arson, or extortion, [or] involves use of explosives." 18 U.S.C. 924(e)(1) and (2)(B)(ii).

Hutchinson objected to his ACCA classification on the theory that Texas's burglary statute is indivisible and that Texas Penal

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[1] All references in this brief to Section 30.02 are to the current (2019) edition of the Texas Penal Code Annotated. Although the statute has been amended since Hutchinson's offenses in 1997 and 2008, those amendments are not directly relevant to Hutchinson's case. Section 30.02(a) currently provides:

> (a) A person commits an offense if, without the effective consent of the owner, the person:
>
> (1) enters a habitation, or a building (or any portion of a building) not then open to the public, with intent to commit a felony, theft, or an assault; or
>
> (2) remains concealed, with intent to commit a felony, theft, or an assault, in a building or habitation; or
>
> (3) enters a building or habitation and commits or attempts to commit a felony, theft, or an assault.

Tex. Penal Code Ann. § 30.02(a).

Code Ann. § 30.02(a)(3) does not contain the "specific intent" element required for ACCA "generic" burglary under Taylor v. United States, 495 U.S. 575 (1990). Pet. App. 16. In Taylor, this Court held that generic burglary is the "unlawful or unprivileged entry into, or remaining in, a building or other structure, with intent to commit a crime." 495 U.S. at 598; see id. at 599. The district court rejected Hutchinson's argument and determined that his Texas burglary convictions qualified as ACCA predicates because Section 30.02(a)(3) has "an inherent specific intent requirement." Pet. App. 17. The court relied on the Fifth Circuit's decision in United States v. Herrold, 941 F.3d 173 (2019) (en banc), cert. denied, 141 S. Ct. 273 (2020), which had explained that burglary under Texas Code Ann. § 30.02(a)(3) constitutes generic burglary for purposes of the ACCA. Pet. App. 17.

b. The court of appeals affirmed. Pet. App. 15-25.

The court of appeals agreed with the district court that Texas Penal Code Ann. § 30.02(a) is indivisible, and it determined that Section 30.02(a)(3) inherently requires the government to prove that the defendant had the intent to cause a specific unlawful result after a non-consensual entry. Pet. App. 19-20. The court observed that "the Texas Court of Criminal Appeals has made plain that the Texas burglary statute requires a specific intent to commit [a] crime" within the habitation burglarized. Pet. App. 20; see id. at 20-21 (citing Jacob v. State, 892 S.W.2d 905, 909

(Tex. Crim. App. 1995) (en banc), and DeVaughn v. State, 749 S.W.2d 62, 65 (Tex. Crim. App. 1988) (en banc)). The court also observed that the Fourth and Fifth Circuits had determined that Texas burglary of a habitation is a categorical match for generic burglary. Id. at 19 (citing United States v. Pena, 952 F.3d 503, 510-511 (4th Cir. 2020); Herrold, 941 F.3d at 179).

The court of appeals explained in particular that the Fifth Circuit's decision in Herrold had found that "Texas law rejects [the] no-intent interpretation." Pet. App. 19. And the court of appeals rejected Hutchinson's contention that other Texas decisions show that Section 30.02(a)(3) lacks the requisite intent for generic burglary. Id. at 20-21. The court stated that "Hutchinson has not demonstrated a 'realistic probability' that Texas Penal Code Ann. § 30.02(a)(3) encompasses 'conduct that falls outside the generic definition' of burglary." Id. at 20 (quoting Gonzalez v. Wilkinson, 990 F.3d 654, 659 (8th Cir. 2021), in turn quoting Gonzales v. Duenas-Alvarez, 549 U.S. 183, 193 (2007)).

Judge Kelly dissented. Pet. App. 21-25. In her view, Section 30.02(a)(3) is "broader on its face than generic burglary," id. at 22; Texas case law does not show otherwise, id. at 23-24; and the realistic-probability test is inapplicable where a state statute is overbroad on its face, id. at 23, 25.

2. a. On November 8, 2019, patrol officers in Des Moines, Iowa, responded to a single-vehicle accident. Tinlin PSR ¶ 11.

When they arrived on the scene, the vehicle was unoccupied and a bystander pointed to Tinlin, who was walking nearby. Ibid. Tinlin fled as officers approached him. Ibid. When officers eventually apprehended him, Tinlin was carrying a backpack containing a stolen handgun, ammunition, methamphetamine, other drugs, and drug paraphernalia, including two digital scales. Id. ¶ 12.

Tinlin pleaded guilty to conspiring to distribute 500 grams or more of methamphetamine, in violation of 21 U.S.C. 846; and possessing a firearm in furtherance of a drug-trafficking offense, in violation of 18 U.S.C. 924(c). Pet. App. 36. In calculating Tinlin's advisory Sentencing Guidelines range, the district court determined that Tinlin qualified as a career offender under Sentencing Guidelines § 4B1.1(a) (2018) based in part on two prior convictions for a "crime of violence." Pet. App. 37; see Tinlin PSR ¶ 28.[2] In what is sometimes referred to as the "elements clause," Sentencing Guidelines § 4B1.2 states that a conviction qualifies as a "crime of violence" if it is an "offense under federal or state law, punishable by imprisonment for a term exceeding one year," that "has as an element the use, attempted use, or threatened use of physical force against the person of another." Sentencing Guidelines § 4B1.2(a)(1). The district court varied downward from the advisory range of 322 to 387 months to

[2] References in this brief to the Sentencing Guidelines are to the 2018 Guidelines Manual.

impose a sentence of 300 months of imprisonment. Pet. App. 37; see Tinlin PSR ¶ 113.

b. The court of appeals affirmed. Pet. App. 36-38. On appeal, Tinlin argued that he should not have been classified as a career offender on the theory that because Iowa law defines "[s]erious injury" to include a "[d]isabling mental illness," Iowa Code § 702.18(1)(a) (emphasis omitted), his prior Iowa conviction for domestic abuse assault with intent to cause serious injury to another, in violation of Iowa Code §§ 708.2(1) and 708.2A(2)(c), does not satisfy the elements clause of Sentencing Guidelines § 4B1.2. The court of appeals rejected that argument. Pet. App. 37-38.

The court of appeals explained that the Iowa offense requires proof that an offender "(1) committed an assault against a person with an enumerated domestic relationship to the offender, and (2) did so with intent to inflict serious injury upon another, or used or displayed a dangerous weapon in connection with the assault." Pet. App. 37 (citation omitted). The court explained that the classification of Tinlin's domestic abuse crime followed from its decision in United States v. Quigley, 943 F.3d 390 (8th Cir. 2019), which had found that the Iowa offense of assault with intent to inflict serious injury under Iowa Code § 708.2(1) -- which it saw "no non-fanciful, non-theoretical manner in which to commit * * * without at least threatening use of physical force,"

Quigley, 943 F.3d at 395 (citation omitted) -- is a crime of violence under the elements clause. See Pet. App. 38. The court explained that Tinlin's domestic-assault crime likewise "required an assault committed with intent to inflict serious injury," which necessitates "at least a threatened use of physical force." Ibid.

3. On April 27, 2019, police officers in Fort Dodge, Iowa, conducted a traffic stop of a vehicle driven by Wheat. Wheat PSR ¶ 5. During the stop, officers smelled alcohol and marijuana. Ibid. Officers searched the vehicle and found a loaded handgun, marijuana and cocaine, and a digital scale. Ibid. At the time, Wheat was subject to a restraining order that prohibited him from possessing a firearm, which was based on a finding that Wheat presented a credible threat to the physical safety of an intimate partner. Id. ¶ 6.

On May 30, 2020, police in Fort Dodge, Iowa, were dispatched to reports of a fight in progress. Wheat PSR ¶ 7. When they arrived, officers learned that Wheat, who was intoxicated, had pointed a firearm at Dominick Altman and threatened to kill her. Ibid. Police recovered a firearm from under Wheat's front passenger seat and also found marijuana scattered in the center console of his vehicle. Ibid.

Wheat pleaded guilty to two counts of possessing a firearm as a prohibited person, in violation of 18 U.S.C. 922(g)(3) and (8) and 924(a)(2). Pet. App. 42. The Probation Office determined

that under Sentencing Guidelines § 2K2.1, Wheat's base offense level was 20 because he committed those offenses after a felony conviction for assault with intent to inflict serious injury on another under Iowa Code Ann. § 708.2(1), which it observed was a crime of violence under Sentencing Guidelines § 4B1.2(a). Wheat PSR ¶¶ 12, 26. Wheat objected to the classification of his Iowa offense as a crime of violence, but the district court overruled the objection. Pet. App. 50-51; Wheat PSR ¶ 26.

The court of appeals affirmed based on Quigley, which had considered the same Iowa crime. Pet. App. 53-54.

ARGUMENT

Petitioners contend (e.g., Pet. 25) that the court of appeals incorrectly classified state crimes with "plainly overbroad statutory language" as violent felonies under the ACCA or crimes of violence under the advisory Sentencing Guidelines. The court of appeals correctly affirmed their sentences, and its decisions do not implicate any conflict warranting this Court's review. This Court has repeatedly and recently denied petitions for writs of certiorari raising similar arguments,[3] and the same result is warranted here.

[3] See, e.g., Alexis v. Barr, 141 S. Ct. 845 (2020) (No. 20-11); Herrold v. United States, 141 S. Ct. 273 (2020) (No. 19-7731); Eady v. United States, 140 S. Ct. 500 (2019) (No. 18-9424); Hilario-Bello v. United States, 140 S. Ct. 473 (2019) (No. 19-5172); Bell v. United States, 140 S. Ct. 123 (2019) (No. 19-39); Luque-Rodriguez v. United States, 140 S. Ct. 68 (2019) (No. 19-

1. As a general matter, to determine whether a prior conviction supports a sentencing enhancement like the one in the ACCA or the Sentencing Guidelines, courts employ a "categorical approach" under which they compare the definition of the state offense with the definition of the relevant generic (or federal) offense. E.g., Mathis v. United States, 579 U.S. 500, 504 (2016). In evaluating the definition of a state offense, courts must look to the "interpretation of state law" by the State's highest court. Curtis Johnson v. United States, 559 U.S. 133, 138 (2010). If the definition of the state offense is broader than the relevant generic definition, the prior state conviction does not qualify. Mathis, 579 U.S. at 504.

This Court has cautioned, however, that the categorical approach "is not an invitation to apply 'legal imagination' to the state offense; there must be 'a realistic probability, not a theoretical possibility, that the State would apply its statute to conduct that falls outside'" the generic definition. Moncrieffe v. Holder, 569 U.S. 184, 191 (2013) (quoting Gonzalez v. Duenas-

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5732); Frederick v. United States, 139 S. Ct. 1618 (2019) (No. 18-6870); Lewis v. United States, 139 S. Ct. 1256 (2019) (No. 17-9097); Vega-Ortiz v. United States, 139 S. Ct. 66 (2018) (No. 17-8527); Rodriguez Vazquez v. Sessions, 138 S. Ct. 2697 (2018) (No. 17-1304); Gathers v. United States, 138 S. Ct. 2622 (2018) (No. 17-7694); Espinoza-Bazaldua v. United States, 138 S. Ct. 2621 (2018) (No. 17-7490); Green v. United States, 138 S. Ct. 2620 (2018) (No. 17-7299); Robinson v. United States, 138 S. Ct. 2620 (2018) (No. 17-7188); Vail-Bailon v. United States, 138 S. Ct. 2620 (2018) (No. 17-7151).

Alvarez, 549 U.S. 183, 193 (2007)); see Taylor v. United States, 495 U.S. 575, 602 (1990) (holding that the categorical approach is satisfied if the "statutory definition [of the prior conviction] substantially corresponds to [the] 'generic' [definition]"); see also Quarles v. United States, 139 S. Ct. 1872, 1880 (2019) ("[T]he Taylor Court cautioned courts against seizing on modest state-law deviations from the generic definition of burglary.").

Petitioners contend the Fifth and Eighth Circuits, in contrast to others, apply the realistic-probability inquiry to apply ACCA or Guidelines classifications "even when the elements of a [state] statue are plainly overbroad." Pet. 5; see Pet. 17-20. To the extent any disagreement exists, these cases do not implicate it. In Hutchinson's case, the court of appeals correctly determined that a conviction for burglary of a habitation under Texas Penal Code Ann. § 30.02(a) constitutes a conviction for "generic" burglary under Taylor, and thus a "violent felony" under the ACCA, based on authoritative decisions of the Texas courts. The court cited decisions from the Texas Court of Criminal Appeals confirming that the Texas burglary statute -- including its Section 30.02(a)(3) variant -- satisfies the mens rea component of generic burglary because it "requires a specific intent to commit [a] crime." Pet. App. 20; see id. at 21 (citing DeVaughn v. State, 749 S.W.2d 62, 65 (Tex. Crim. App. 1988) (en banc)); and Jacob v. State, 892 S.W.2d 905, 909 (Tex. Crim. App. 1995) (en banc)); see

Quarles, 139 S. Ct. at 1877 ("[B]urglary occurs for purposes of § 924(e) if the defendant forms the intent to commit a crime at any time during the continuous event of unlawfully remaining in a building or structure.") (emphasis omitted).

Contrary to petitioners' assertion (Pet. 20), the decision in Hutchinson's case does not rest on the proposition that a state statute's overbroad text is insufficient to show that a state statute covers more conduct than its "generic" counterpart. Instead, the court of appeals followed an authoritative interpretation of the Texas burglary statute by the State's highest criminal court. Pet. App. 20-21 (quoting DeVaughn, 749 S.W.2d at 65; and citing Jacob, 892 S.W.2d at 909). That state judicial construction, which federal courts are bound to follow, refuted petitioner's "no-intent interpretation" of the statute. Ibid.; see generally Curtis Johnson, 559 U.S. at 138 (federal courts are "bound by [a state supreme court's] interpretation of state law, including its determination of the elements of" the offense). The court's observation that "cases relied on by Hutchinson" did "not demonstrate[] a 'realistic probability' that Texas Penal Code Ann. § 30.02(a)(3) encompasses 'conduct that falls outside the generic definition' of burglary," Pet. App. 20 (citations omitted), simply confirmed the court's understanding of the state statute, which accorded with the Fourth and Fifth Circuits', see id. at 19.

Similarly, the circuit precedent on which the court of appeals relied in Tinlin's and Wheat's cases, United States v. Quigley, 943 F.3d 390 (8th Cir. 2019), does not stand for the proposition that an unambiguously overbroad statute should be narrowed to fit a generic federal definition unless the defendant can show a reasonable probability of prosecutions for nongeneric conduct. Although the court in Quigley explained that "[m]ere speculation" that Iowa's assault crime "could be applied to conduct not involving physical force does not take the offense outside the scope of the force clause," and found no "'realistic probability'" of such applications, it did not find the statute facially overbroad. Id. at 394 (citation omitted). In particular, it did not express the view that the terms "assault" and "serious injury," used in combination in the context of the particular Iowa statute at issue, would otherwise be understood to encompass conduct that involves no physical force, or threat of such force, at all. Ibid.

The joint petition thus errs in simply taking as a given that the court of appeals employed a realistic probability analysis to flout plain statutory text. It does not meaningfully engage with the Texas decisional law at issue in Hutchinson's case, nor does it include any meaningful analysis of whether Tinlin's and Wheat's implausibly broad construction of the Iowa assault offense is unambiguously required. And any such statute-specific arguments are not an appropriate basis for this Court's review. Cf.

Bowen v. Massachusetts, 487 U.S. 879, 908 (1988) ("We have a settled and firm policy of deferring to regional courts of appeals in matters that involve the construction of state law."). Instead, because the question presented -- on which petitioners at most suggest intracircuit tension that would be best addressed by the court of appeals itself, see Pet. 22-24; Wisniewski v. United States, 353 U.S. 901, 902 (1957) (per curaim) -- is not squarely presented in these cases, further review in this Court is unwarranted.

2. Certiorari is moreover unwarranted for the further reason that none of the petitions here is a suitable vehicle for considering the question presented. Hutchison -- the only petitioner with a statutory claim -- rests his request for this Court's review on a predicate offense that (i) is categorically a violent felony based on the interpretation of Texas courts; (ii) over which there is no division in the courts of appeals; and (iii) whose classification this Court has repeatedly declined to review.[4]

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[4] See, e.g., Stringer v. United States, 142 S. Ct. 2845 (2022) (No. 21-7907); Aguilera v. United States, 142 S. Ct. 2665 (2022) (No. 21-7483); Bell v. United States, 142 S. Ct. 2662 (2022) (No. 21-7451); Penny v. United States, 142 S. Ct. 1689 (2022) (No. 21-7333); Adams v. United States, 142 S. Ct. 147 (2021) (No. 20-8082); Smith v. United States, 141 S. Ct. 2525 (2021) (No. 20-6773); Lister v. United States, 141 S. Ct. 1727 (2021) (No. 20-7242); Webb v. United States, 141 S. Ct. 1448 (2021) (No. 20-6979); Wallace v. United States, 141 S. Ct. 910 (2020) (No. 20-5588); Herrold, 141 S. Ct. 273 (2020) (No. 19-7731).

Tinlin's and Wheat's cases, in turn, concern the application of the Sentencing Guidelines, which this Court typically does not review because the Sentencing Commission can amend the Guidelines to eliminate any conflict or correct any error. See Braxton v. United States, 500 U.S. 344, 347-349 (1991). Congress has charged the Commission with "periodically review[ing] the work of the courts" and making "whatever clarifying revisions to the Guidelines conflicting judicial decisions might suggest." Id. at 348; see 28 U.S.C. 994(o) and (u); United States v. Booker, 543 U.S. 220, 263 (2005) ("The Sentencing Commission will continue to collect and study appellate court decisionmaking. It will continue to modify its Guidelines in light of what it learns, thereby encouraging what it finds to be better sentencing practices."). Review by this Court of Guidelines decisions is particularly unwarranted in light of Booker, which rendered the Guidelines advisory only. 543 U.S. at 245.

No sound reason exists to depart from the Court's usual practice here. The Commission has devoted considerable attention in recent years to the "statutory and guideline definitions relating to the nature of a defendant's prior conviction," including the Guidelines' definition of a "crime of violence." 81 Fed. Reg. 37,241, 37,241 (June 9, 2016). In 2016, the Commission amended the definition of a "crime of violence" in Section 4B1.2(a), see Sentencing Guidelines App. C Supp., Amend. 798 (Aug.

1, 2016), and it eliminated an analogous "crime of violence" provision in Section 2L1.2, see Sentencing Guidelines App. C Supp., Amend. 802 (Nov. 1, 2016).

The Commission also continues to study "the impact of such definitions on the relevant statutory and guideline provisions" and to work "to resolve conflicting interpretations of the guidelines by the federal courts." 81 Fed. Reg. at 37,241; see 83 Fed. Reg. 30,477, 30,477-30,478 (June 28, 2018). Accordingly, as petitioners do not dispute, the Commission would be able to address the question presented in Tinlin's and Wheat's cases. See Guerrant v. United States, 142 S. Ct. 640, 640-641 (2022) (statement of Sotomayor, J., joined by Barrett, J., respecting the denial of certiorari). The Commission currently has a quorum. See U.S. Sent. Comm'n, Organization, https://www.ussc.gov/about/who-we-are/organization.

3. Petitioners' suggestion in supplemental filings that this Court remand or summarily reverse in light of United States v. Taylor, 142 S. Ct. 2015 (2022), is misplaced. In that decision, which was issued shortly after the petition was filed, this Court declined to apply realistic-probability analysis in the determination of whether a federal statute that the Court had construed "not [to] require proof of any of the elements" required by the elements clause in 18 U.S.C. 924(c)(3)(A) could nevertheless fit within that clause. Taylor, 142 S. Ct. at 2025. As petitioners

recognize (Pet. Second Supp. Br. 1), the court below has already explained -- in determining the generic status of a state statute similar to the ones at issue in Tinlin's and Wheat's cases -- that this Court's discussion expressly distinguished the analysis of state statutes, which presents a "federalism concern" that justifies "consult[ing] how a state court would interpret its own State's laws." Taylor, 142 S. Ct. at 2025; see United States v. Bragg, 44 F.4th 1067, 1076 (8th Cir. 2022). Moreover, petitioners' supplemental contentions rest on the premise that the state statutes in their cases are facially overbroad. As discussed above, that premise is unsound.

## CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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