

No. _____

IN THE
Supreme Court of the United States

RICHARD SANSBURY,
Petitioner,
v.

UNITED STATES OF AMERICA,
Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

The meaning of “abducted” as used in United States Sentencing Guideline § 2B3.1(b)(4) and elsewhere throughout the Sentencing Guidelines is the subject of an entrenched circuit split. The Guidelines apply a four-level enhancement if a victim is “abducted” during a robbery and defines “abducted” to mean “that a victim was forced to accompany an offender to a different location.” The Sixth, Seventh, and Eleventh Circuits have held that a victim is not “abducted” if the defendant physically moves the victim from one area of the premises that is the target of the robbery (for example, a bank or store) to another area within that same premises. The Third, Fourth, Fifth, and Tenth Circuits have held, to the contrary, that a victim is “abducted” if the defendant merely physically moves the victim from one room to another room within the same building, or even from one part of a room to another part of that same room.

The question presented is: Does the Fifth Circuit’s interpretation of the term “abducted” conflict with the ordinary meaning of the term and with the Guidelines’ definition’s requirement of movement to “a different location”?

RELATED PROCEEDINGS

The following proceedings are directly related to this case:

- *United States v. Richard Sansbury*, No. 2:19-cr-145-1, U.S. District Court for the Eastern District of Louisiana. Judgment entered February 22, 2022.
- *United States v. Richard Sansbury*, No. 22-30114, U.S. Court of Appeals for the Fifth Circuit. Judgment entered May 1, 2023 (1a-5a). Petition for Rehearing En Banc denied on June 8, 2023 (6a).

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

PETITION FOR WRIT OF CERTIORARI

Petitioner Richard Sansbury respectfully asks this Court to review the decision of the U.S. Court of Appeals for the Fifth Circuit.

JUDGMENT AT ISSUE

The Fifth Circuit issued its judgment affirming Mr. Sansbury's sentence on May 1, 2023. The Fifth Circuit's decision is attached in the Appendix (1a-5a), along with the order denying rehearing en banc (6a).

JURISDICTION

The Fifth Circuit issued its decision May 1, 2023. App'x at 1a. Mr. Sansbury filed a timely petition for rehearing en banc, which was denied June 8, 2023. App'x at 6a. Thus, this petition is timely. This Court has jurisdiction under 28 U.S.C. § 1254(1).

SENTENCING GUIDELINES INVOLVED

United States Sentencing Guideline (U.S.S.G.) § 2B3.1 provides, in relevant part:

(b) Specific Offense Characteristics

...

(4) (A) If any person was abducted to facilitate commission of the offense or to facilitate escape, increase by 4 levels; or **(B)** if any person was physically restrained to facilitate commission of the offense or to facilitate escape, increase by 2 levels.

Application Note 1 in the commentary to U.S.S.G. § 1B1.1 provides, in relevant part:

1. The following are definitions of terms that are used frequently in the guidelines and are of general applicability (except to the extent expressly modified in respect to a particular guideline or policy statement):

(A) “Abducted” means that a victim was forced to accompany an offender to a different location. For example, a bank robber’s forcing a bank teller from the bank into a getaway car would constitute an abduction.

...

(L) “Physically restrained” means the forcible restraint of the victim such as by being tied, bound, or locked up.

STATEMENT OF THE CASE AND PROCEEDINGS

On June 17, 2019, Petitioner Richard Sansbury and co-defendant Alan Parson entered a CVS pharmacy in New Orleans, armed with weapons. Upon entering the store, Mr. Parson and Mr. Sansbury restrained two employees to prevent interference with the robbery. Mr. Parson ordered the pharmacist to the ground and restrained him with zip-ties. Meanwhile, Mr. Sansbury forced the cashier to the store's restroom and zip-tied his hands together. Mr. Sansbury then joined Mr. Parson in the pharmacy area, where the two loaded prescription drugs into a bag. Police arrived as the two were leaving, and, after a brief standoff and exchange of gunfire, both men were apprehended.

Mr. Sansbury pleaded guilty to violating 18 U.S.C. § 2118(a), which prohibits robberies of controlled substances, as well as to discharging a firearm in relation to a crime of violence, in violation of § 924 (c)(1)(A)(iii). U.S. Probation prepared a Presentence Report (PSR) applying U.S.S.G. § 2B3.1—the robbery Sentencing Guideline. Relevant here, Probation assessed an enhancement under § 2B3.1(b)(4), which raises a defendant's base offense level:

- (A) by four points “[i]f any person was *abducted* to facilitate commission of the offense or to facilitate escape” or
- (B) by two points “if any person was *physically restrained* to facilitate commission of the offense or to facilitate escape.”

Id. (emphasis added).

The Guidelines' commentary and relevant definitions of "abducted" and "physically restrained" clarify the distinction between those categories of conduct. The commentary explains that the two-point "physical restraint" enhancement applies to robberies where a victim "was physically restrained by being tied, bound, or locked up." § 2B3.1 at cmt. (backg'd). By contrast, the four-point "abduction" enhancement applies when "a victim was forced to accompany an offender to a different location," for example, if a robber "forc[ed] a bank teller from the bank into a getaway car." § 1B1.1 cmt. n.1(A); § 2B3.1 at cmt. (backg'd) (incorporating § 1B1.1's "abducted" definition).

Over defense objection, Probation assigned Mr. Sansbury the four-point "abduction" enhancement, rather than the lesser "restraint" penalty. Probation reasoned that Mr. Sansbury "abducted" the cashier because, "[d]uring and in furtherance of the robbery, [he] proceeded to the cashier area and forced the cashier (Victim-1) into the restroom, and zip-tied his hands together." Relying on Fifth Circuit caselaw holding that even the most minimal forced movement of victims qualifies as an "abduction," Probation explained:

The defendant and his coconspirator ensured the victims' compliance and prevented the victims from leaving the location by moving one of the victims from one area to another and binding both victims' hands and feet. The restraint and movement of the victims were for the facilitation of the offense.

At Mr. Sansbury's sentencing, the district court agreed that Fifth Circuit caselaw required "abduction" to be "interpreted flexibly" and compelled a finding that Mr. Sansbury "abducted the victim within the meaning of the guidelines when he forced the victim to relocate from the cashier area to a bathroom where he zip-tied

the victim’s hands.” The district court then imposed a within-Guidelines sentence of 241 months.

In a published opinion issued following oral argument, the Fifth Circuit affirmed. *United States v. Sansbury*, 66 F.4th 612, 615 (5th Cir. 2023). The court reasoned that, under Fifth Circuit caselaw, an “abduction enhancement is proper ‘even though the victim remained within a single building’” and concluded that Mr. Sansbury had “abducted” the cashier because he “forced the cashier from the cashier’s area at the front of the store to the restroom.” *Id.* at 615 (quoting *United States v. Johnson*, 619 F.3d 469, 472 (5th Cir. 2010)).

Mr. Sansbury filed a timely petition for rehearing en banc, seeking review of the Fifth Circuit ruling on his challenge to application of the abduction enhancement. The Fifth Circuit denied the petition. *See* App’x at 6a.

REASONS FOR GRANTING THE PETITION

For U.S.S.G. § 2B3.1’s “abduction” enhancement to apply, the Guidelines require that a victim be “forced to accompany an offender to a different location,” such as when an employee is taken from a bank to a getaway car to facilitate a robber’s escape. § 1B1.1 cmt. n.1(A); § 2B3.1(b)(4)(A) & cmt. (backg’d). The Guidelines reasonably distinguish that extreme act from the still-serious (though relatively less extreme) act of “physically restrain[ing]” a victim, defined as “forcible restraint of the victim such as by being tied, bound, or locked up.” § 2B3.1(b)(4)(B). The defendant in this case zip-tied a cashier’s hands, confined him in the store’s restroom, left him there, and carried on with the robbery. That act was “restraint,” not “abduction,” under the plain meaning of those terms and the Guidelines’ definitions.

Currently, however, numerous circuits’ precedents compel a finding of abduction, not mere restraint. As illustrated by the opinion in this case, application of the “abduction” enhancement has become unmoored from that term’s plain meaning. The result has been unnecessary confusion as well as conflation of the “abducted” enhancement with the adjacent, yet distinct, “physically restrained” penalty. Specifically, the Fifth Circuit’s interpretation has rendered meaningless the Guidelines’ clear directive that, for the abduction enhancement to apply, a victim must have been “forced to accompany an offender *to a different location*.” § 1B1.1 cmt. n.1(A) (emphasis added). Contrary to that context and the common understanding of the word “abduction,” the Fifth Circuit’s precedent obliges a finding of “abduction” based on even trivial forced movement of a victim from any area to another within a

single robbery location. That includes, as here, even minimal movement required to “lock up” a victim in a spot feet away from where he initially stood.

This problem is not unique to the Fifth Circuit. There is a deep circuit split concerning application of the abduction enhancement. At least three other circuits—the Sixth, Seventh, and Eleventh—adhere to an interpretation of the enhancement that comports with the plain meaning of the word “abducted,” correctly interprets the words “different location” in context, and avoids conflating the term “abducted” with the term “physically restrained.” The Third, Fourth, and Tenth Circuits, on the other hand, are aligned with the Fifth Circuit in applying the abduction enhancement based on even trivial movements within the same location.

This Court should resolve the circuit split, which is leading to confusion and disparate sentencing based solely on geography. And this Court should reject the Fifth Circuit’s approach in favor of the more textually faithful approach employed by the Sixth, Seventh, and Eleventh Circuits. The status quo in the Third, Fourth, Fifth, and Tenth Circuits intrudes on the Sentencing Commission’s role and frustrates the Guidelines’ purpose of establishing a graduated sentencing enhancement scheme. This Court’s review is especially warranted because the current circuit split is not only the source of confusion and inconsistency in sentencing but is also broadly impactful, as it involves the proper interpretation of a term used frequently throughout the Guidelines.

I. There is an entrenched circuit split concerning the “abducted” enhancement.

As described by courts and commentators, there is a clear “split of authority” over proper application of the abduction enhancement, most notably, “whether the forced movement of victims from one room or area to another room or area within the same building constitutes an abduction[.]” *United States v. Archuleta*, 865 F.3d 1280, 1285 (10th Cir. 2017).¹ To varying degrees, some circuits hold that such movement does qualify as “abduction,” employing what is termed the “flexible” approach. *Id.*² In practice, that approach has resulted, not in flexibility, but in reflexive and mechanical analysis that bears little connection to the conduct that this enhancement was intended to capture.

That is particularly true in the Fifth Circuit, which has repeatedly held that *any* forcible movement of a victim, no matter how slight, from one physical spot in the robbery location to another constitutes an “abduction,” regardless of context. For example, the Fifth Circuit has found that “abduction” occurred when, during the

¹ See also Sabrina Jemail, Location, Location, Location: The Federal Sentencing Guidelines’ Abduction Enhancement and the Meaning of “Different Location”, 90 U. Cin. L. Rev. 1042 (2022); Caleb Peery, How Far Is Too Far: An Analysis of the Abduction Sentencing Enhancement As Applied in Robbery Cases, 29 Geo. Mason L. Rev. 875 (2022); Madeline A. Rock, United States v. Hill: Determining What Constitutes A “Different Location” in an Abduction Enhancement for Robbery, 45 Am. J. Trial Advoc. 223 (2021); Adam Manaa, Defining “Different”—How Distinctive Methods of Textual Interpretation Led to the Abduction Enhancement Circuit Split, 2022 Pepp. L. Rev. 1 (2022); Alex Leroy, Federal Sentencing: The Need for A New Test for the Abduction Enhancement in the Context of Robbery, 125 W. Va. L. Rev. 725 (2022); Tyler Kitzmiller, Redefining Physical Restraint to Ensure Consistency in Its Application As A Federal Sentence Enhancement, 2021 Mich. St. L. Rev. 1247 (2021); Rebekah Nickerson, Examining the Need for A Unified Theory Among the U.S. Federal Circuits in the Application of the Sentencing Enhancement of Abduction in Crimes of Robbery, 49 U. Balt. L. Rev. 417 (2020).

² See, e.g., *United States v. Reynos*, 680 F.3d 283, 290 (3d Cir. 2012); *United States v. Osborne*, 514 F.3d 377, 390 (4th Cir. 2008); *United States v. Hawkins*, 87 F.3d 722, 727-28 (5th Cir. 1996).

robbery of a Domino's, a robber "forced the victim to move around a food-preparation table in a single large, open-concept room" and then forced her to "open a safe underneath the counter," reasoning that the term "location" can be "used in reference to a single point where a person is standing." *United States v. Camacho*, No. 21-20075, 2021 WL 5913303, at *1 (5th Cir. Dec. 14, 2021).

The Fifth Circuit has also repeatedly found abduction when employees were forced to move from the front of a store to the back. *See, e.g., United States v. Buck*, 847 F.3d 267, 276-77 (5th Cir. 2017); *United States v. Wright*, 845 F. App'x 334, 338-39 (5th Cir. 2021); *United States v. Love*, No. 20-20615, 2021 WL 5504745, at *1 (5th Cir. Nov. 23, 2021). And the Fifth Circuit routinely finds "abduction" when robbers escort bank employees to vaults, teller drawers, or cash machines, even those located within the same room where the victims initially were found. *See, e.g., United States v. Alexander*, 809 F. App'x 269 (5th Cir. 2020); *United States v. Bonner*, 575 F. App'x. 250, 251 (5th Cir. 2014); *United States v. Smith*, 822 F.3d 755, 764 (5th Cir. 2016) (collecting cases).³

Caselaw from other circuits employing this approach produces similar results. The Third Circuit has found an abduction when a defendant forced employees of an 803-square-foot pizza shop to walk 34 feet from the bathroom to the register. *Reynos*, 680 F.3d at 290. The Fourth Circuit found an abduction when a defendant moved

³ *See also United States v. Kiel*, 658 F. App'x 701, 714 (5th Cir. 2016) (forced bank employees to leave individual offices and remain in the lobby during robbery); *Hawkins*, 87 F.3d at 726-28 (forced victim 40-50 feet across parking lot).

employees from a store's pharmacy to the front door. *Osborne*, 514 F.3d at 390. The Tenth Circuit found an abduction when a defendant moved bank employees from the lobby and teller area to the vault area. *Archuleta*, 865 F.3d at 1288-89.

The Sixth, Seventh, and Eleventh Circuits have reasonably rejected this so-called "flexible" approach, instead applying an interpretation of "abducted" that comports with the term's plain meaning, gives effect to each element of the Guidelines' definition (including its requirement that a victim be moved to "a different location"), and avoids conflating "abducted" with "physically restrained." *See United States v. Hill*, 963 F.3d 528 (6th Cir. 2020) (Murphy, J.); *United States v. Whatley*, 719 F.3d 1206, 1221-23 (11th Cir. 2013) (W. Pryor, J.); *United States v. Eubanks*, 593 F.3d 645, 652-54 (7th Cir. 2010) (Simon, J.). Further, there is sharp disagreement within circuits that treat "abduction" similarly to the Fifth Circuit. *See, e.g., Archuleta*, 865 F.3d at 1292-95 (10th Cir.) (Seymour, J., dissenting in part) ("The majority . . . adopts an incoherent test for determining whether a person qualifies for the abduction enhancement[.]"); *Reynos*, 680 F.3d at 292-96 (3d Cir.) (Ambro, J., dissenting) ("[T]here is little to support the finding of a different location when only one small building or site is involved, and/or when only a short distance is traveled[.]").

For the reasons discussed in those opinions and described herein, the Sixth, Seventh, and Eleventh Circuits have the better view of the law.

II. The Fifth Circuit’s approach conflicts with the ordinary meaning of “abducted” and misapplies the “different location” requirement.

The Fifth Circuit’s treatment of the “abduction” enhancement fundamentally conflicts with the text of the Guidelines’ definition and the term’s plain meaning. The Guidelines define “abducted” as “forc[ing] [a victim] to accompany an offender to a different location,” such as “forcing a bank teller from the bank into a getaway car.” § 1B1.1 cmt. n.1(A). Thus, unlike its definition of “physically restrained,” the Guidelines’ “abducted” definition includes two key concepts: “forced accompaniment” and “a different location.”

The Guidelines’ definition of “abducted” comports with the term’s common usage, as confirmed by Judge Pryor’s survey in *Whatley*:

The Oxford English Dictionary defines “abducted” as “led or carried away improperly, kidnapped.” And Black’s Law Dictionary defines abduction as “[t]he act of leading someone away by force or fraudulent persuasion” and notes that it is loosely defined as kidnapping.

719 F.3d at 1222-23 (quoting 1 Oxford English Dictionary 14 (1961); Black’s Law Dictionary (9th ed. 2009)).

Thus, as the Guidelines’ graduated enhancement structure recognizes, the relatively more extreme act of abduction to a different location is fundamentally different from the relatively less extreme act of restraining a victim at the robbery site to prevent interference. Although the act of restraining may require some temporary physical proximity to and forced movement of the victim by the defendant, one nonetheless would not ordinarily say that forcing someone into a bathroom mere feet away from his workstation and leaving him there alone qualifies as “abducting” him.

Instead, Mr. Sansbury’s conduct here corresponds with both the Guidelines’ definition and the plain meaning of “physically restrained.” To “restrain” is “to prevent [someone] from doing. . . something,” “to limit, restrict, or keep under control,” “to moderate or limit the force, effect, development, or full exercise of,” or “to deprive [someone] of liberty.” *Restrain*, Merriam-Webster Collegiate Dictionary (11th ed. 2016). Put another way, “restrain” means “[t]o hold, fasten, or secure so as to prevent or limit movement.” *Restrain*, The American Heritage Dictionary of the English Language 5th ed. 2022). Thus, the Guidelines logically include the act of “locking up” under the category of physical restraint, not abduction.

Nor does the conduct in this case qualify as forced accompaniment *to a different location*, as that phrase is used in this context. Indeed, the Third, Fourth, Fifth, and Tenth Circuits’ failure to contextualize the phrase “different location” is the primary cause of confusion and conflict over the abduction enhancement’s application. As discussed above, the Fifth Circuit holds that mere relocation of a victim from one area of a robbery site to another area of that same site—sometimes only feet apart—satisfies the “different location” element. The Sixth, Seventh, and Eleventh circuits all have soundly rejected that understanding, reasonably holding that “one area in a robbed store or bank generally will not qualify as a ‘different location’ from another area of that same store or bank” in this context. *Hill*, 963 F.3d at 532.

As Judge Murphy explained in *Hill*: “Depending on how the phrase is used, ‘different location’ could mean a site as far away as the moon or as close as a hair’s breadth.” *Id.* Accordingly, courts “must examine the whole text and structure to

decide how a ‘normal speaker of English’ would understand the words ‘different location’ in the ‘circumstances in which they were used.’” *Id.* at 533 (quoting Oliver Wendell Holmes, *The Theory of Legal Interpretation*, 12 Harv. L. Rev. 417, 417-18 (1899)).

In this context, Judge Murphy concluded, forcing a victim to accompany the robber to a “different location” will generally mean more than mere forced movement from one spot to another at the robbery site, because the word “abduct” as commonly understood “conveys more movement than from a sales floor to a back room”:

When individuals describe the “location” that has been robbed, they typically refer to the store, bank, or business that was robbed. Ordinary speakers would say that a person robbed the “Universal Wireless” more readily than they would say that the person robbed the “sales floor” of the Universal Wireless. So in this context of victims in a store or bank being robbed, the store or bank is the most natural “location.”

Id. at 534-35. Thus, the Sixth Circuit rejected application of the abduction enhancement when robbers forced victims from a sales floor to a back room in order to tie them up.

In *Whatley*, Judge Pryor urged similar analysis: “The ordinary meaning of the term ‘different location’ would not apply to each individual office or room in a local branch of a bank. Instead, the bank would be treated as a single location, as it is in the example provided by the guidelines in which an abduction occurs when an employee is taken from a bank to a getaway car to facilitate the bank robber’s escape.”

719 F.3d at 1206. Accordingly, the Eleventh Circuit rejected application of the abduction enhancement because the defendant “never forced any of the employees to leave the bank, he did not force them to accompany him to a different location, and

he cannot be said to have abducted them.” *Id.*; *see also Eubanks*, 593 F.3d at 652 (forcing employee to back of store to retrieve surveillance video is not abduction).

To hold otherwise not only ignores the context in which “different location” is used, but also “risk[s] reading [that requirement] out of the definition altogether.” *Hill*, 963 F.3d at 534. The Guidelines already require that abduction include forced accompaniment, which “itself denotes *some* movement,” even absent a separate “different location” requirement. *Id.* (emphasis added). By interpreting “different location” at a higher level of generality than minimal forced movement, one “ensure[s] that the phrase has independent meaning.” *Id.* (quotation marks omitted).

The Sixth, Seventh, and Eleventh Circuits’ interpretation also comports with this Court’s decision in *Whitfield v. United States*, which examined similar “forced to accompany” language in the bank robbery statute. 574 U.S. 265 (2015). Although that statute does not use the term “abduct,” it does establish higher penalties for defendants who “force[d] any person to *accompany*” them during a robbery. 18 U.S.C. § 2113(e) (emphasis added). Importantly though, unlike the Guidelines’ “abducted” definition, the bank robbery statute does not require accompaniment to a *different location*. Nonetheless, this Court held that, while the word “accompany” alone does not “connote movement over a substantial distance,” it *does* require more than “minimal movement—for example, the movement of a bank teller’s feet when the robber grabs her arm.” *Whitfield*, 574 U.S. at 267-68. The Court listed, as an example of the type of accompaniment covered by the statute, a robber forcing a victim to

accompany him “over a relatively short distance . . . from one area within a bank to the vault.” *Id.* At 267 (quotation marks omitted).

In other words, forcible accompaniment already requires movement. Thus, the Guidelines’ “different location” requirement must add something more: “If the Sentencing Commission meant for . . . short movement to count, it had no reason to add the phrase ‘different location.’” *Hill*, 963 F.3d at 534.

III. The Fifth Circuit’s approach eliminates the Guidelines’ distinction between “abducted” and “physically restrained.”

The overall enhancement scheme also informs each word’s meaning: “[W]ords are given meaning by their context, and context includes the purpose of the text.” Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 56 (2012). Thus, “the resolution of ambiguity or vagueness that achieves a statute’s purpose should be favored over the resolution that frustrates its purpose.” *Id.* Here, the relevant context also undermines the Fifth Circuit’s approach to abduction.

The robbery Guideline logically establishes a graduated enhancement scheme. That structure rightly penalizes defendants who physically restrain victims more than those who do not, applying a two-level enhancement when a victim is “tied, bound, or locked up.” The Guidelines reserve even higher penalties for defendants who engage in the more extreme and dangerous act of abduction, meaning those who force victims to accompany them to a different location. That too makes sense. Part of the reason for this enhancement is the increased danger inherent in a victim being taken to a different location with the defendant—danger that is absent when a robber

simply forces a victim to remain alone in a particular area of the robbery site throughout the course of the crime. *See Osborne*, 514 F.3d at 390.

“Preserve[ing] a distinction” between restraint and abduction thus is necessary to effectuate the purpose of the graduated enhancement structure. *Whatley*, 719 F.3d at 1223. That means avoiding “interpret[ing] the abduction enhancement to apply to” conduct that is better understood as constituting physical restraint. *Id.* As Judge Murphy explained in *Hill*, “movements within a store typically will occur whenever a robber ‘physically restrains’ a victim[.]” 963 F.3d at 532. That is particularly true when a victim is “locked up,” since, as here, robbery victims often will be found in an open area when the crime commences, like a lobby or cashier station, where it would not be possible to lock them up. Thus, “[t]reating the movement typically associated with [the] physical-restraint enhancement as automatically triggering the . . . abduction enhancement would blur the distinction between physical restraint and abduction.” *Id.* at 535 (quotation marks omitted).

By contrast, the Fifth Circuit’s current approach renders the “locked up” portion of the “physically restrained” definition superfluous. *See* Scalia & Garner, *supra*, at 174 (“[E]very word and every provision is to be given effect,” and “[n]one should needlessly be given an interpretation that causes it to duplicate another provision or to have no consequence.”). Under the Fifth Circuit’s approach, it is hard to imagine what act constitutes physical restraint through “lock[ing] up” without automatically rising to abduction, due to the forced movement that task necessarily entails.

The Fifth Circuit's own cases applying the restraint enhancement illustrate these points. That court and others "have held that physical restraint enhancements are appropriate in cases where defendants force their victims *to move into confined spaces at gunpoint and instruct the victims not to leave.*" *United States v. Garcia*, 857 F.3d 708, 712 (5th Cir. 2017) (emphasis added) (collecting cases). For example, the Fifth Circuit deemed the physical restraint enhancement appropriate when defendants "escorted . . . casino employees to the casino manager's office at gunpoint and instructed them not to leave." *United States v. Frank*, 223 F. App'x 412, 413 (5th Cir. 2007); *see also United States v. Carter*, 410 F.3d 942, 954 (7th Cir. 2005) (restraint enhancement applied when robber forced teller from vault to teller drawer); *United States v. Nelson*, 137 F.3d 1094, 1112 (9th Cir. 1998) ("[O]rder[ing] a jewelry store employee and customer to the back room at gunpoint . . . constitutes physical restraint.").

In other words, the Fifth Circuit's caselaw already logically recognizes that the type of conduct here is, in fact, physical restraint. Applying the abduction enhancement to facts materially identical to those treated as physical restraint destroys the distinction between these purposely separate enhancements and creates unwarranted sentencing disparities among defendants who engage in materially indistinguishable conduct.

IV. This case provides an ideal vehicle to address the issue presented and resolve the circuit split.

The "abduction" question arises frequently and will continue to cause unnecessary confusion and unwarranted sentencing disparities until resolved by this

Court. Indeed, one-fifth of robbery offenders receive an enhancement for either abduction or physical restraint.⁴ Moreover, numerous other Guidelines incorporate the same “abducted” enhancement, meaning the interpretation of the term in § 2B3.1 affects a broader class than robbery defendants alone. *See* § 2A3.1(b)(5) (sexual abuse); § 2A4.1(b)(7) (kidnapping, abduction, unlawful restraint); § 2B3.2(b)(5)(A) (extortion); § 2E2.1(b)(3)(A) (extorting lines of credit). The Guidelines also incorporate abduction into a broadly applicable departure provision. *See* § 5K2.4 (policy statement regarding abduction and unlawful restraint).

As demonstrated by the entrenched circuit split, as well as the significant number of judicial opinions and scholarly commentary addressing the enhancement, this issue has percolated in the Courts of Appeals and is ripe for resolution. Mr. Sansbury’s case represents an excellent vehicle for this Court to resolve the conflict. The facts surrounding Mr. Sansbury’s conduct are straightforward and not in dispute, and the proper application of the abduction enhancement was argued in the district court and preserved for appeal. Without correction from this Court, numerous Courts of Appeals will continue to construe the abduction enhancement in a manner that is plainly contrary to its text, in the process intruding on the role of the Sentencing Commission and frustrating, rather than effectuating, the Guidelines’ purpose of a graduated sentencing enhancement scheme.

⁴ U.S. Sentencing Comm’n, *Federal Robbery: Prevalence, Trends, and Factors in Sentencing*, at 7 (Aug. 2022), available at https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2022/20220818_Robbery.pdf.

CONCLUSION

Petitioner Richard Sansbury respectfully asks this Court to grant certiorari on the question presented.

Respectfully submitted,

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