No. _____

IN THE

Supreme Court of the United States

BRIAN JONES,
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

Petitioner Brian Jones pleaded guilty to violating the federal carjacking statute, 18 U.S.C. § 2119, but the facts of his case were far from a typical "carjacking." Mr. Jones and the victim were friends, and they were riding in the victim's car together because the victim was helping Mr. Jones move. However, while en route to their destination, the victim took a detour to a house where other people attacked and robbed Mr. Jones. When he returned to the car, Mr. Jones began arguing with the victim as they continued their drive, believing that his friend set him up to be ambushed. Mr. Jones eventually told the victim to stop at an intersection in his neighborhood, and they both exited the car. Then, as the victim began to retrieve Mr. Jones's belongings from the trunk, Mr. Jones abruptly attacked him as retribution for what transpired. After the assault, Mr. Jones took the victim's keys, drove his car away from the scene, and abandoned it several blocks away after attempting to destroy it. The Fifth Circuit affirmed Mr. Jones's carjacking conviction, holding that § 2119's intent requirement "does not mandate that a defendant intend to kill or cause serious injury *in furtherance of* taking a vehicle." App'x at 5a. Thus, according to the Fifth Circuit, it made no difference whether Mr. Jones's clear intent and motivation in the assault was personal and unrelated to taking the car.

The question presented is: Does a conviction for carjacking by "force and violence" under 18 U.S.C. § 2119 require that the force and violence be employed, with the requisite intent to seriously harm or kill, for the purpose of taking a vehicle?

RELATED PROCEEDINGS

The following proceedings are directly related to this case:

- *United States v. Brian Jones*, No. 2:19-CR-35-8, U.S. District Court for the Eastern District of Louisiana. Judgment entered April 27, 2022.
- *United States v. Brian Jones*, No. 22-30270, U.S. Court of Appeals for the Fifth Circuit. Judgment entered July 28, 2023 (1a-16a).

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

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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 Brian Jones respectfully asks this Court to issue a writ of certiorari to review the decision of the U.S. Court of Appeals for the Fifth Circuit in his case.

JUDGMENT AT ISSUE

The Fifth Circuit issued its published decision affirming Mr. Jones's judgment on July 28, 2023. The Fifth Circuit's decision is attached as the Appendix (1a-16a) and is also available at 75 F.4th 502.

JURISDICTION

The Fifth Circuit entered judgment on July 28, 2023. This petition is being filed within 90 days after the entry of judgment, in accordance with S. Ct. R. 13. This Court has jurisdiction under 28 U.S.C. § 1254(1).

FEDERAL STATUTE INVOLVED

18 U.S.C. § 2119 provides, in relevant part:

> Whoever, with the intent to cause death or serious bodily harm takes a motor vehicle . . . from the person or presence of another by force and violence or by intimidation . . . shall—
>
> …
>
> (2) if serious bodily injury . . . results, be fined under this title or imprisoned not more than 25 years, or both[.]

STATEMENT OF THE CASE AND PROCEEDINGS

Petitioner Brian Jones pleaded guilty to violating the federal carjacking statute, 18 U.S.C. § 2119, and to discharging a firearm during and in relation to that offense, in violation of 18 U.S.C. § 924(c)(1)(A)(iii). The undisputed facts underlying those charges are as follows:

Mr. Jones and the victim (Z.S.) were friends who lived in Metairie, Louisiana. On October 30, 2017, Mr. Jones asked Z.S. to help him move out of his apartment in Metairie back to the Hollygrove neighborhood in New Orleans, where he was originally from, because he was being evicted. Z.S. agreed, drove to Mr. Jones's apartment in his mother's car, and helped Mr. Jones load his belongings into the car.

Prior to the move, and unbeknownst to Mr. Jones, Z.S. was contacted by two people (K.B. and G.B.) who had purchased heroin from Mr. Jones earlier that day and determined it was fake or bad. They knew Z.S. was helping Mr. Jones move and asked Z.S. to bring him to K.B.'s house. Z.S. complied. After picking up Mr. Jones, Z.S. drove to K.B.'s house with Mr. Jones in tow. Upon their arrival, G.B. and K.B. confronted Mr. Jones about the drugs and assaulted him.

After returning to the vehicle, Mr. Jones began arguing with Z.S. about the ambush. They drove to Hollygrove, and Mr. Jones told Z.S. to stop at an intersection, where they both exited the vehicle. Z.S. opened the hatchback of the car to begin unloading Mr. Jones's belongings and then felt a strike at the back of his head. When he turned around, he saw Mr. Jones holding a firearm. Z.S. turned to run, heard several gunshots, and fell into a ditch. Mr. Jones approached Z.S. and fired the gun

into Z.S.'s spine, causing him to become paralyzed. He then put the gun to Z.S.'s head and pulled the trigger, but no round fired. At that point, Mr. Jones took Z.S.'s car keys from his pocket and told him, "Y'all pick the wrong day to f*** with me." Mr. Jones entered and started Z.S.'s vehicle, purposely drove over Z.S.'s legs and torso, and abandoned the car about eight blocks away after spraying it with bleach and attempting to burn it.

Based on the above incident, Mr. Jones was charged with federal carjacking, in violation of § 2119, and possessing a firearm during and in relation to that crime, in violation of § 924(c)(1)(A)(iii). He pleaded guilty to both charges. The district court accepted his plea and ultimately sentenced him to an aggregate sentence of 30 years of imprisonment for those offenses.

Mr. Jones timely appealed his judgment, arguing (in relevant part) that the district court plainly erred in accepting his guilty plea to the carjacking and § 924(c) offenses without an adequate factual basis. In particular, Mr. Jones argued that Supreme Court and Fifth Circuit precedent clearly establish that the federal carjacking statute requires specific intent to harm or kill a person *in connection with* taking the person's car. *See Holloway v. United States*, 526 U.S. 1, 8, 12 (1999); *United States v. Harris*, 420 F.3d 467, 471–72 (5th Cir. 2005). Because the undisputed facts showed that neither Mr. Jones's intent to seriously harm or kill Z.S., nor the force he employed in furtherance of that intent, had any nexus to his subsequent taking of the victim's car, Mr. Jones argued that his conduct did not satisfy the elements of a federal carjacking offense.

The Fifth Circuit disagreed. *See* App'x at 4a–9a. In a published decision, the court held that "[s]ection 2119's intent requirement does not mandate that a defendant intend to kill or cause serious injury *in furtherance of* taking a vehicle." *Id.* at 5a (emphasis in original). The court rejected Mr. Jones's argument that the use of force and intent to harm must be directed to the purpose of taking the vehicle. Instead, the Fifth Circuit read this Court's decision in *Holloway* as providing an "all-encompassing unconditional intent" element for § 2119 that requires no nexus in *purpose* between the offender's use of force or intent to harm the victim and the taking of the victim's vehicle. *Id.* at 6a.

REASONS FOR GRANTING THE PETITION

The federal carjacking statute "is aimed at providing a federal penalty for a particular type of robbery." *Holloway*, 526 U.S. at 8. "Congress was concerned about persons who used force or intimidation *to steal* motor vehicles." *United States v. Applewhaite*, 195 F.3d 679, 685 (3d Cir. 1999) (emphasis added). "The statute's *mens rea* component thus modifies the act of 'tak[ing]' the motor vehicle." *Holloway*, 526 U.S. at 8. "It directs the factfinder's attention to the defendant's state of mind at the precise moment he demanded or took control over the car 'by force and violence or by intimidation.'" *Id.* In *Holloway*, this Court held that "[t]he intent requirement of § 2119 is satisfied when the Government proves that at the moment the defendant demanded or took control over the driver's automobile the defendant possessed the intent to seriously harm or kill the driver if necessary *to steal the car* (or, alternatively, if unnecessary to steal the car)." *Id.* at 12 (emphasis added).

The Fifth Circuit has now held that "[s]ection 2119's intent requirement does not mandate that a defendant intend to kill or cause serious injury *in furtherance of* taking a vehicle." App'x at 5a (emphasis in original). That precedential holding conflicts with decisions of other federal Courts of Appeals. It also clearly violates the plain text of § 2119 and this Court's holding in *Holloway*. This Court should grant certiorari to resolve this circuit conflict and clarify § 2119's *mens rea* requirement.

I. The Fifth Circuit's published decision conflicts with decisions of other Courts of Appeals.

Section 2119 makes it a federal crime to steal a vehicle from the presence of the victim "by force and violence or by intimidation," with the intent to cause death

or serious bodily harm. In *Holloway*, this Court made clear that the carjacker's intent can be conditional—he still violates the statute if his willingness to seriously harm or kill the victim is contingent upon the victim's resistance and thus the necessity of harm or death to accomplish the taking. *See* 526 U.S. at 12. But, as the Third Circuit has recognized, in all cases, the force or threat (and the "evil intent" behind it) must be "employed *in furtherance of the taking of the car*," else "there is no carjacking within the meaning of 18 U.S.C. § 2119." *Applewhaite*, 195 F.3d at 686.

In *Applewhaite*, the Third Circuit found insufficient evidence to satisfy § 2119's scienter requirement based on analogous circumstances to Mr. Jones's case. There, the defendant attacked the victim for personal reasons, having nothing to do with the victim's car, and then drove the car away from the scene after incapacitating him. 195 F.3d at 682–83. Based on that evidence, the Third Circuit held that it was "clear that the required scienter was never established," explaining:

> Although the defendants clearly intended to seriously harm or kill [the victim], neither their evil intent, nor the force they employed in furtherance of it, had any nexus to the subsequent taking of his van. The force was employed in an attempt to harm [the victim]. It was not used to take his van.
>
> It is, of course, uncontested that [the victim's] van was taken after he was violently assaulted. But that does not establish that the force was used to get control of his van. Even when this record is viewed in the light most favorable to the government, it is clear that the prosecution failed to establish the required nexus between the assault and the taking. Rather, the record establishes that the van was taken as an afterthought . . . That is not sufficient to establish the intent required under § 2119.

Id. at 685.

The same is true here. The record shows that while Mr. Jones "clearly intended to seriously harm or kill [Z.S.], neither [his] evil intent, nor the force [he] employed in furtherance of it, had any nexus to the subsequent taking of [Z.S.'s car]." *See id.* In other words, the force clearly was not used *to take or get control* of the car. Mr. Jones attacked Z.S. for personal reasons—*i.e.*, as retribution for driving Mr. Jones to an ambush—and subsequently took the car from the scene in an effort to destroy it. This was a violent assault and a subsequent car theft, not a federal carjacking within the meaning of § 2119. The Fifth Circuit's contrary decision clearly conflicts with the Third Circuit's holding in *Applewhaite*.

The Fifth Circuit's decision also conflicts with Eleventh Circuit precedent, which holds that the carjacking statute requires a substantive connection of *purpose* between the use of deadly force and intent to kill a victim, on the one hand, and the theft of the victim's vehicle, on the other. *See United States v. LeCroy*, 441 F.3d 914, 923 (11th Cir. 2006). In *LeCroy*, the Eleventh Circuit considered a sufficiency challenge to a carjacking conviction where the defendant assaulted, raped, and killed a woman before taking her keys and leaving in her car. *Id.* at 919–20. On appeal, the defendant argued that "there was insufficient evidence that the force exerted against [the victim] was employed in furtherance of the carjacking[.]" *Id.* at 924.

The Eleventh Circuit agreed in *LeCroy* that the statute requires such a nexus, explaining: "If, as [the defendant] contends, there was no connection between the murder and the theft of the car, then he would have been entitled to an acquittal because [the victim's vehicle] would not have been taken 'from the person or presence

of another by force and violence or intimidation.'" 441 F.3d at 923. However, the court affirmed the defendant's carjacking conviction based on its conclusion that "there was ample evidence that [the defendant] formulated the intent to steal the car *prior to exerting the force* against [the victim], and that *the force was employed in furtherance of taking the car*." *Id.* at 924 (emphasis added). In other words, the required nexus between the force, the intent, and the taking of the car was present. Specifically, the evidence showed that the defendant "was planning to escape his supervised probation and escape the country," that he had a "need for a car," and that "the only item taken from [the victim's] house as part of [the defendant's] assault upon her was a set of keys" to the car. *Id.* Based on that evidence, the Eleventh Circuit concluded that "a reasonable jury could find that the force was exerted against [the victim] *in order to obtain her keys and carjack the car*." *Id.* (emphasis added); *see also id.* at 924–95 ("A reasonable jury could find that [the defendant] entered the [victim's] home, lay in wait for her to return, and assaulted and killed her *to get her keys and steal the car*." (emphasis added)); *id.* at 925 ("[T]he jury could find that the force was being exerted pursuant to an intent to steal the vehicle and in furtherance of the carjacking.").

On appeal, Mr. Jones argued that the Fifth Circuit previously adopted the Third Circuit's reasoning in *Applewhaite* in the Fifth Circuit's *Harris* decision. In *Harris*, the Fifth Circuit reversed a carjacking conviction when it was "uncontested that [the defendant] took [the victim's] car" after shooting him outside of it, noting that those facts did "not establish that the force was *used to get control of the car*." 420 F.3d at 474 (quoting *Applewhaite*, 195 F.3d at 685) (emphasis added). "Thus, [in

Harris] just as in *Applewhaite*, 'the prosecution failed to establish the required nexus' between the intent to kill or harm and the taking of the car." *Id.* (quoting *Applewhaite*, 195 F.3d at 685).

In the Fifth Circuit's decision in this case, the court disclaimed any prior adoption of *Applewhaite*. App'x at 6a n.2. Addressing that case only in a footnote, the Fifth Circuit stated:

> Nowhere has this Court held, or adopted the *Applewhaite* reasoning to hold, that evidence must prove that the defendant's intent to kill was not only contemporaneous with the taking of the car, but also conditional on that action being necessary to, or for the purpose of, the taking of the car. Such a holding would be inconsistent with the Supreme Court's mandates that the carjacking statute must be construed "to cover both the conditional and the unconditional species of wrongful intent."

Id. (quoting *Holloway*, 526 U.S. at 9). The Fifth Circuit thus misconstrued this Court's holding in *Holloway* as extending the carjacking statute to reach car thefts committed after assaults, even when there is no connection between the violence and theft. This was error. The Fifth Circuit's holding, based on its misreading of *Holloway*, is inconsistent with the text of §2119, which clearly requires such a nexus.

While the Fifth Circuit stated that "other circuits agree" with its interpretation of *Holloway*, *see id.*, the cases it cited do not support that position. Instead, they further illustrate the deeply entrenched circuit conflict over the proper interpretation of § 2119's scienter requirement and this Court's holding in *Holloway*.

For example, in *United States v. Felder*, 993 F.3d 57 (2d Cir. 2021), the defendant carjacked two cabs by hailing the cars, directing the drivers to a location, pointing a gun at the drivers, and ordering them out of the cars. *Id.* at 62. On both

occasions, the defendant shot and killed the driver, even after one driver was dragged out of the vehicle (making it unnecessary to kill him to effectuate the carjacking). *Id.* The defendant challenged a jury instruction articulating the statute's *mens rea* as requiring a finding that, "at the moment the Defendant . . . demanded or took control of the vehicle, the Defendant possessed the intent to seriously harm or kill the driver if necessary to steal the car *or for any other reason*." *Id.* at 64 (emphasis in original). The Second Circuit affirmed. *Id.* at 68. However, it did not reject *Applewhaite*'s holding but, instead, distinguished that case. The court explained that the problem in *Applewhaite* "was not with the conditionality" of the defendant's intent "but, rather, with the lack of a nexus between the defendant's violence and his taking of the victim's van." *Id.* at 67. The court elaborated:

> [In *Applewhaite*,] no record evidence existed to show that, at the moment he used force and violence against the victim, the defendant had any intention of taking the victim's car. Instead, the defendant used force and violence 'solely for the purpose of bludgeoning' his victim; he took the vehicle 'as an afterthought in an attempt to get [the victim's] limp body away from the crime scene.' In this factual context, the Third Circuit observed that 'under *Holloway*, unless the threatened or actual force is employed in furtherance of the taking of the car, there is no carjacking within the meaning of 18 U.S.C. § 2119.' The court nowhere held that *when a defendant does take a vehicle by force and violence*, his murderous or injurious intent must be necessary to achieve the taking.
>
> Felder's case is distinguishable from *Applewhaite* in that, here, the two stolen cabs were plainly carjacked by means of force and violence or intimidation. Specifically, Felder demanded each cab at the point of his gun. *Holloway* makes plain that, *where a vehicle is thus demanded or taken*, a defendant is guilty of carjacking under § 2119 if he simultaneously possessed the intent to seriously harm or kill the driver.

Id. (citations omitted) (emphases added).

Similarly, in *United States v. Perry*, 381 F. App'x 252 (4th Cir. 2010), the Fourth Circuit distinguished *Applewhaite* from a case in which the defendant threatened the victim when he "used a gun to demand entry into her car and to force her to continue driving, and continually stated he was going to kill her." *Id.* at 255. The defendant argued on appeal that the evidence was insufficient to support a carjacking conviction because his intent to harm the victim "had nothing to do with the car itself." *Id.* at 254. The Fourth Circuit rejected that argument, concluding that "a defendant who possesses the intent to kill or seriously harm the driver of a vehicle may be convicted of carjacking, even if his intent to harm is unrelated to the carjacking, so long as his intent is formed when he takes control of the vehicle and he satisfies § 2119's other elements." *Id.* The court further explained that *Applewhaite* "is not contrary to [its] conclusion" because, in that case, "there was no nexus between the assault on the victim and the subsequent taking of his van." *Id.* In contrast, the defendant in *Perry* "possessed the requisite intent at the moment he took control over [the victim's] car" by threats, which the court deemed sufficient under § 2119. *Id.*

In *United States v. Washington*, 702 F.3d 886 (6th Cir. 2012)—also cited by the Fifth Circuit—the Sixth Circuit stated that *Applewhaite* and *Harris* "hold that, in order to satisfy the intent requirements of the statute, the defendant must intend harm *in order to* complete the theft of the car." *Id.* at 892 (emphasis in original). The court found that standard to be satisfied by evidence specifically corroborating the victim's testimony "that the defendants intended to harm him in order to steal his property, including his car." *Id.*; *see also United States v. Holman*, 446 F. App'x 757,

761 (6th Cir. 2011) (finding *Applewhaite* distinguishable from another carjacking case "because the evidence [in *Applewhaite*] supported that the intent to kill was part of an attempted murder plot, not a carjacking"). The Sixth Circuit's caselaw thus also contradicts the decision in this case—including the Fifth Circuit's own interpretation of its prior precedent in *Harris*—further illustrating the confusion and conflict that has arisen over the proper reading of § 2119's *mens rea* requirement.

The Fifth Circuit's precedential holding conflicts with the Third and Eleventh Circuit's decisions in *Applewhaite* and *LeCroy*, and it illuminates the broader circuit conflict that exists over the scienter required for a conviction under § 2119 and the correct interpretation of this Court's holding in *Holloway*. This Court's intervention is thus necessary to bring uniformity to the federal Courts of Appeals.

II. The Fifth Circuit's decision is wrong and conflicts with the plain text of § 2119 and this Court's decision in *Holloway*.

This Court should also grant certiorari in this case because the Fifth Circuit's precedential decision clearly is wrong and violates the plain text of § 2119 as well as this Court's interpretation of the statute in *Holloway*. Section 2119, like other robbery statutes, criminalizes the act of taking property from another person by means of "force and violence or by intimidation." To violate the federal statute, the carjacker must also have the "intent to cause death or serious bodily harm." § 2119. That intent can be conditional, in that the carjacker will only seriously harm or kill the victim *if necessary* to steal the car, or it can be unconditional, in that the carjacker intends to seriously harm or kill the victim "even if not necessary *to complete a carjacking*." *See Holloway*, 526 U.S. at 8–9 (emphasis added). But, in all cases, the "force and violence"

exerted against the victim, and the "evil intent" behind it, must be directed to the goal of *taking the vehicle*, as at least the Third and Eleventh Circuits have correctly recognized. *See Applewhaite*, 195 F.3d at 685–86; *LeCroy*, 441 F.3d at 923–24.

This Court, in *Holloway*, made it clear that § 2119 requires a nexus between the force or threat, the intent to harm or kill, and the taking of the car: "The statute's *mens rea* component thus modifies the act of 'tak[ing]' the motor vehicle. It directs the factfinder's attention to the defendant's state of mind at the precise moment he demanded or took control over the car 'by force and violence or by intimidation.'" *Holloway*, 526 U.S. at 8. As the Court explained, § 2119 "essentially is aimed at providing a federal penalty *for a particular type of robbery*." *Id*. (emphasis added). Therefore, the use of "force and violence" or threats must occur contemporaneously with, and be in furtherance of, the taking of the vehicle for there to be a carjacking at all, and—"at [that] precise moment"—the offender must have the requisite intent to seriously harm or kill the victim for it to violate the federal carjacking statute. *Id.*

The Fifth Circuit failed to recognize that these elements are inherently intertwined, incorrectly reading *Holloway* to permit federal carjacking convictions where there is no nexus whatsoever between a defendant's assault of a victim and subsequent "taking" of that victim's vehicle from the location of the assault. As a result, the court issued a precedential decision that improperly expands the federal carjacking statute to apply to highly localized crimes of assaults, murders, and thefts, impinging on the traditional police powers of the States. This Court's intervention is needed to correct course.

CONCLUSION

For the foregoing reasons, Petitioner Brian Jones respectfully asks this Court to grant certiorari on the important and divisive question presented.

Respectfully submitted,

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