No. 22-_____

In the
Supreme Court of the United States

Nardino Colotti, Alex Rudaj, Prenka Ivezaj,
Nikola Dedaj, and Angelo DiPietro,
Petitioners,

-v.-

United States of America,
Respondent.

On Petition for a Writ of Certiorari to
The United States Court of Appeals
For the Second Circuit

PETITION FOR A WRIT OF CERTIORARI

Michael S. Schachter
Ravi Chaderraj
Willkie Farr & Gallagher LLP
787 7th Avenue
New York, NY 10019
Tel.: (212) 728-8102
Rchanderraj@willkie.com
Counsel to Prenka Ivezaj

Anthony DiPietro
Law Offices of Anthony DiPietro, P.C.
15 Chester Avenue
White Plains, NY 10601
Tel.: (914) 948-3242
dipietrolaw@yahoo.com
Counsel to Angelo DiPietro

Edward S. Zas
Counsel of Record
Sarah Baumgartel
Federal Defenders of New York, Inc.
52 Duane Street, 10th Floor
New York, NY 10007
Tel.: (212) 417-8742
Edward_Zas@fd.org
Counsel to Nardino Colotti,
Alex Rudaj, and Nikola Dedaj

QUESTIONS PRESENTED

The Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. § 1962(c), outlaws participating in an "enterprise" through "a pattern of racketeering activity." RICO defines "racketeering activity" to include any act "indictable" under certain enumerated federal statutes, *id.* § 1961(1)(B), and "any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or dealing in a controlled substance … which is chargeable under State law and punishable by imprisonment for more than one year," *id.* § 1961(1)(A).

The questions presented are:

1. Does § 1961(1)(A) of RICO incorporate—and thereby require the Government to plead and prove beyond a reasonable doubt—the elements of specific state-law offenses charged as "racketeering activity," as the Second Circuit holds, or does this provision reference only generic categories of offenses, as the Third, Fifth, Sixth, Eighth, and Eleventh Circuits hold?

2. Is RICO's "racketeering activity" element "divisible," such that courts may use the "modified categorical approach" and consider the individual racketeering acts proven in a particular case to determine if the defendant's RICO violation qualifies as an 18 U.S.C. § 924(c) "crime of violence," as the Second and Third Circuits hold, or are these various acts

merely different "means" of committing the single, indivisible element of "racketeering activity," as the Fourth and Fifth Circuits hold?

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Federal Cases

Federal Statutes

State Statutes

Other Authorities

PETITION FOR A WRIT OF CERTIORARI

Petitioners respectfully seek a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit affirming the denial of their motions to vacate, set aside, or correct their sentences under 28 U.S.C. § 2255.

RELATED PROCEEDINGS

The proceedings directly related to this petition, listed in reverse chronological order, are:

1. *Nardino Colotti, Alex Rudaj, Prenka Ivezaj, Nikola Dedaj, Angelo DiPietro v. United States*, Nos. 21-932(L), 21-937(Con), 21-950 (Con), 21-992(Con), and 21-1548(Con) (consolidated) (2d Cir.), consolidated judgment entered on June 21, 2023; and
2. *Alex Rudaj, Nikola Dedaj, Nardino Colotti, Prenka Ivezaj, and Angelo DiPietro v. United States*, Nos. 04 Cr 1110 (DLC), 11 Cv 1782 (DLC), 11 Cv 1510 (DLC), 11 Cv 1402 (DLC), 11 Cv 1556 (DLC), 20 Cv 4889 (DLC) (S.D.N.Y.), judgment entered on March 29, 2021; and
3. *Alex Rudaj v. United States*, Nos. 16-1650, 16-2452 (consolidated) (2d Cir.), judgment entered on June 23, 2020; and
4. *Angelo DiPietro v. United States*, Nos. 16-1646, 16-2461 (consolidated) (2d Cir.), judgment entered on June 23, 2020; and

5. *Nardino Colotti v. United States*, Nos. 16-1649, 16-2455 (consolidated) (2d Cir.), judgment entered on June 23, 2020; and
6. *Nikola Dedaj v. United States,* Nos. 16-1676, 16-2456 (consolidated) (2d Cir.), judgment entered on June 23, 2020; and
7. *Prenka Ivezaj v. United States*, Nos. 16-1580, 16-2450 (consolidated) (2d Cir.), judgment entered on June 23, 2020; and
8. *Alex Rudaj v. United States*, No. 14-139 (2d Cir.), judgment entered on July 10, 2014; and
9. *Angelo DiPietro v. United States*, No. 12-10801 (U.S.), judgment entered on October 7, 2013; and
10. *Nikola Dedaj v. United States*, No. 12-753 (U.S.), judgment entered on January 22, 2013; and
11. *Angelo DiPietro v. United States,* No. 12-2083 (2d Cir.), judgment entered September 27, 2012; and
12. *Nardino Colotti v. United States*, No. 12-2308 (2d Cir.), judgment entered on September 24, 2012; and
13. *Nikola Dedaj v. United States*, No. 12-2285 (2d Cir.), judgment entered on September 24, 2012; and
14. *Prenka Ivezaj v. United States*, No. 12-2298 (2d Cir.), judgment entered on August 14, 2012; and

15. *Alex Rudaj v. United States*, No. 12-258 (2d Cir.), judgment entered on August 3, 2012; and
16. *Alex Rudaj v. United States*, No. 12-418 (2d Cir.), judgment entered on March 30, 2012; and
17. *Alex Rudaj v. United States*, Nos. 11-2477, 11-2862, 11-2509 (consolidated) (2d Cir.), judgment entered on Nov. 23, 2011; and
18. *United States v. Angelo DiPietro*, No. 10-40 (2d Cir.), judgment entered on June 29, 2010; and
19. *Nardino Colotti v. United States*, No. 09-917 (U.S.), judgment entered March 8, 2010; and
20. *Nikola Dedaj v. United States*, No. 09-919 (U.S.), judgment entered on March 8, 2010; and
21. *Prenka Ivezaj v. United States*, No. 09-916 (U.S.), judgment entered on March 8, 2010; and
22. *United States v. Prenka Ivezaj, Nardino Colotti, Alex Rudaj, Angelo DiPietro, and Ljusa Nuculovic*, Nos. 06-3112, 06-3275, 06-3296, 06-3339, 06-3372, 06-5908 (consolidated) (2d Cir.), judgment entered on June 11, 2009; and
23. *Angelo DiPietro v. United States*, No. 08-8725 (U.S.), judgment entered on March 23, 2009.

OPINIONS AND ORDERS BELOW

The Second Circuit's opinion (Pet. App. 1a-36a[1]) is reported at 71 F.4th 102. The Second Circuit's orders denying petitioners' requests for panel rehearing or rehearing en banc (Pet. App. 67a-69a) are unreported. The district court's opinion and order denying petitioners' motions to vacate, set aside, or correct their sentences (Pet. App. 38a-66a) is reported at 529 F. Supp. 3d 290.

JURISDICTION

The Second Circuit issued its judgment on June 21, 2023, and denied timely petitions for rehearing on September 11, 2023. This Court has jurisdiction under 28 U.S.C. § 1254(1). The Circuit had jurisdiction under 28 U.S.C. §§ 1291 and 2253. The district court had jurisdiction under 28 U.S.C. § 2255.

RELEVANT STATUTORY PROVISIONS

Section 1961 of title 18, U.S.C., provides in relevant part:

> As used in this chapter—
>
> **(1)** "racketeering activity" means **(A)** any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or dealing in a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act), which is chargeable

[1] "Pet. App." refers to the appendix to this petition.

under State law and punishable by imprisonment for more than one year; **(B)** any act which is indictable under any of the following provisions of title 18, United States Code: Section 201 (relating to bribery), section 224 (relating to sports bribery), sections 471, 472, and 473 (relating to counterfeiting), section 659 (relating to theft from interstate shipment) if the act indictable under section 659 is felonious, section 664 (relating to embezzlement from pension and welfare funds), sections 891-894 (relating to extortionate credit transactions), section 932 (relating to straw purchasing), section 933 (relating to trafficking in firearms), section 1028 (relating to fraud and related activity in connection with identification documents), section 1029 (relating to fraud and related activity in connection with access devices), section 1084 (relating to the transmission of gambling information), section 1341 (relating to mail fraud), section 1343 (relating to wire fraud), section 1344 (relating to financial institution fraud), section 1351 (relating to fraud in foreign labor contracting), section 1425 (relating to the procurement of citizenship or nationalization unlawfully), section 1426 (relating to the reproduction of naturalization or citizenship papers), section 1427 (relating to the sale of naturalization or citizenship papers), sections 1461-1465 (relating to obscene matter), section 1503 (relating to obstruction of justice), section 1510 (relating to obstruction of criminal investigations), section 1511 (relating to the obstruction of State or local law enforcement), section 1512 (relating to tampering with a witness, victim, or an informant), section 1513 (relating to retaliating against a witness, victim, or an informant), section 1542 (relating to false statement in application and use of passport), section 1543 (relating to forgery or false use of passport), section 1544 (relating to misuse of passport), section 1546 (relating to fraud and misuse of visas, permits, and other documents), sections 1581-1592 (relating to peonage, slavery, and trafficking in persons), sections 1831 and 1832 (relating to economic espionage and theft of trade secrets), section 1951 (relating to interference with commerce, robbery, or extortion), section 1952 (relating to racketeering), section 1953 (relating to interstate transportation of wagering paraphernalia), section 1954 (relating to unlawful welfare fund payments), section 1955 (relating to the prohibition of illegal gambling businesses), section 1956 (relating to the laundering

of monetary instruments), section 1957 (relating to engaging in monetary transactions in property derived from specified unlawful activity), section 1958 (relating to use of interstate commerce facilities in the commission of murder-for-hire), section 1960 (relating to illegal money transmitters), sections 2251, 2251A, 2252, and 2260 (relating to sexual exploitation of children), sections 2312 and 2313 (relating to interstate transportation of stolen motor vehicles), sections 2314 and 2315 (relating to interstate transportation of stolen property), section 2318 (relating to trafficking in counterfeit labels for phonorecords, computer programs or computer program documentation or packaging and copies of motion pictures or other audiovisual works), section 2319 (relating to criminal infringement of a copyright), section 2319A (relating to unauthorized fixation of and trafficking in sound recordings and music videos of live musical performances), section 2320 (relating to trafficking in goods or services bearing counterfeit marks), section 2321 (relating to trafficking in certain motor vehicles or motor vehicle parts), sections 2341-2346 (relating to trafficking in contraband cigarettes), sections 2421-24 (relating to white slave traffic), sections 175-178 (relating to biological weapons), sections 229-229F (relating to chemical weapons), section 831 (relating to nuclear materials), **(C)** any act which is indictable under title 29, United States Code, section 186 (dealing with restrictions on payments and loans to labor organizations) or section 501(c) (relating to embezzlement from union funds), **(D)** any offense involving fraud connected with a case under title 11 (except a case under section 157 of this title), fraud in the sale of securities, or the felonious manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act), punishable under any law of the United States, **(E)** any act which is indictable under the Currency and Foreign Transactions Reporting Act, **(F)** any act which is indictable under the Immigration and Nationality Act, section 274 (relating to bringing in and harboring certain aliens), section 277 (relating to aiding or assisting certain aliens to enter the United States), or section 278 (relating to importation of alien for immoral purpose) if the act indictable under such section of such Act was committed for the purpose of financial gain, or

(G) any act that is indictable under any provision listed in section 2332b(g)(5)(B);

(2) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, any political subdivision, or any department, agency, or instrumentality thereof; …

(4) "enterprise" includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity;

(5) "pattern of racketeering activity" requires at least two acts of racketeering activity, one of which occurred after the effective date of this chapter and the last of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity ….

Section 1962 of title 18, U.S.C., provides:

(a) It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt in which such person has participated as a principal within the meaning of section 2, title 18, United States Code, to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce. A purchase of securities on the open market for purposes of investment, and without the intention of controlling or participating in the control of the issuer, or of assisting another to do so, shall not be unlawful under this subsection if the securities of the issuer held by the purchaser, the members of his immediate family, and his or their accomplices in any pattern or racketeering activity or the collection of an unlawful debt after such purchase do not amount in the aggregate to one percent of the outstanding securities of any one class, and do not confer, either in law or in fact, the power to elect one or more directors of the issuer.

> **(b)** It shall be unlawful for any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.
>
> **(c)** It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.
>
> **(d)** It shall be unlawful for any person to conspire to violate any of the provisions of subsection (a), (b), or (c) of this section.

Section 924(c)(1)(A) of title 18, U.S.C., provides:

> **(c)(1)(A)** Except to the extent that a greater minimum sentence is otherwise provided by this subsection or by any other provision of law, any person who, during and in relation to any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime that provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) for which the person may be prosecuted in a court of the United States, uses or carries a firearm, or who, in furtherance of any such crime, possesses a firearm, shall, in addition to the punishment provided for such crime of violence or drug trafficking crime—
>
> **(i)** be sentenced to a term of imprisonment of not less than 5 years;
>
> **(ii)** if the firearm is brandished, be sentenced to a term of imprisonment of not less than 7 years; and
>
> **(iii)** if the firearm is discharged, be sentenced to a term of imprisonment of not less than 10 years.

Section 924(c)(3) of title 18, U.S.C., provides:

> **(3)** For purposes of this subsection the term "crime of violence" means an offense that is a felony and—
>
> **(A)** has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or
>
> **(B)** that by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

STATEMENT OF THE CASE

A. Introduction

The circuits are sharply divided over the elements of a Racketeer Influenced and Corrupt Organizations Act (RICO) offense, and the related question whether a criminal violation of RICO can qualify as a "crime of violence" under 18 U.S.C. § 924(c)(3)(A). This case presents an ideal opportunity for this Court to resolve this division over these two important and recurring questions of federal law, which the Second Circuit has answered erroneously.

RICO, 18 U.S.C. § 1961(1), defines "racketeering activity" to mean, in addition to any act "indictable" under a long list of enumerated federal statutes, *id.* § 1961(1)(B), "any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter or dealing in a controlled substance or listed chemical … which is chargeable

under State law and punishable by imprisonment for more than one year," *id.* § 1961(1)(A). Five circuits—the Third, Fifth, Sixth, Eighth, and Eleventh—hold that RICO's references to these state crimes serve only a "definitional purpose;" "they merely define the types of [state criminal] activity that may constitute predicate acts pursuant to the federal RICO statute." *Williams v. Stone*, 109 F.3d 890, 895 (3d Cir. 1997). Thus, these circuits hold, RICO does not incorporate—and the Government therefore need not prove—the specific statutory elements of a state crime as defined by the state in which racketeering activity occurred. *See, e.g.*, *Williams*, 109 F.3d at 895; *United States v. Welch*, 656 F.2d 1039, 1058-59 (5th Cir. 1981); *Johnson v. United States*, 64 F.4th 715, 721-22 (6th Cir. 2023); *United States v. Kehoe*, 310 F.3d 579, 588 (8th Cir. 2002); *United States v. Watchmaker*, 761 F.2d 1459, 1469 (11th Cir. 1985).

The Second Circuit holds the opposite. It holds that RICO *does* incorporate—and thus requires the Government to plead and prove beyond a reasonable doubt—the "precise elements" of "particular … state offenses" as defined by the relevant state's penal code when the Government wishes to charge those state crimes as RICO racketeering acts. *United States v. Martinez*, 991 F.3d 347, 358 (2d Cir. 2021); *see also United States v. Laurent*, 33 F.4th 63, 89 (2d Cir. 2022) ("RICO requires that the specific crimes constituting the 'pattern' of the racketeering enterprise be identified in the

charging instrument and proven beyond a reasonable doubt."); *Colotti v. United States*, 71 F.4th 102, 111 (2d Cir. 2023) (decision below) (holding that, under *Martinez* and *Laurent*, the predicate racketeering act incorporated into RICO here was "New York larceny by extortion," not "extortion" defined generically); *United States v. Carrillo*, 229 F.3d 177, 183 (2d Cir. 2000) (concluding that RICO requires the Government to prove "the elements of the [state] offense as defined by state law").

The circuits are also divided—two-to-two—over the related question whether a criminal violation of RICO can qualify as a "crime of violence" under 18 U.S.C. § 924(c). A crime is a "crime of violence" only if, as a categorical matter, it is a felony that "has as an element the use, attempted use, or threatened use of physical force against the person or property of another." § 924(c)(3)(A). RICO has no such element—it can be violated in myriad ways that do not entail any force whatsoever. Nevertheless, the Second and Third Circuits hold that RICO is divisible, supposedly allowing courts to apply the modified categorical approach and look beyond the statute's elements to determine which underlying acts of "racketeering activity" the defendant committed in a particular case. The Fourth and Fifth Circuits hold the opposite: they recognize that RICO's definition of "racketeering activity" is not divisible because it merely "lists the *means*—the alternative methods," of violating RICO, not elements of separate RICO

crimes. *United States v. Simmons*, 11 F.4th 239, 260 (4th Cir. 2021); *see also United States v. McClaren*, 13 F.4th 386, 413 (5th Cir. 2021).

This case presents an excellent vehicle for resolving these circuit splits because the questions are not only cleanly presented but also dispositive: if RICO incorporates only generic definitions of state crimes, not the elements of the New York extortion statute in particular, or if RICO is not "divisible," then petitioners' RICO offense would not qualify as a § 924(c) "crime of violence," and their § 924(c) convictions could not stand.

The Second Circuit's holdings are also wrong. As the Government itself has recognized, RICO does not incorporate the elements of specific state criminal statutes. *See* U.S. Dep't of Justice, Staff of the Organized Crime and Gang Section, *CRIMINAL RICO: 18 U.S.C. §§ 1961-1968, A Manual for Federal Prosecutors* at 28 (6th rev. ed. May 2016) ("*RICO Manual*") (concluding that "Congress intended the state offenses referenced in Section 1961(1)(A) to identify 'generically' the kind of conduct proscribed by RICO"); *id.* (stating that "Section 1961(1) was intended to only identify 'generically' the kind of conduct proscribed by RICO for definitional purposes"). Indeed, both the Senate and House Reports regarding RICO explained that "[t]he state offenses are included by *generic designation*." S. Rep. No. 91-617, at 158 (1969) (emphasis added); H.R. Rep. No. 1549, 91st Cong. 2d Sess., at 56 (1970).

Nor is a violation of § 1962(c) a divisible offense that can qualify as a "crime of violence." Again, as the Government itself has determined,"[b]y definition, RICO is not a crime of violence: it is not 'an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another.'" *RICO Manual* at 463 (quoting 18 U.S.C. § 16(a)). The Second Circuit errs in holding otherwise.

B. Legal Background: RICO, Crimes of Violence, and the "Categorical Approach"

1. This case involves the intersection of two exceptionally important and frequently invoked federal laws: RICO, 18 U.S.C. §§ 1961-1968, and 18 U.S.C. § 924(c). RICO prohibits, *inter alia*, conducting or participating in an "enterprise" through a "pattern" of "racketeering activity." 18 U.S.C. § 1962(c). As relevant here, "pattern" means "at least two acts of racketeering activity." *Id.* § 1961(5). "Racketeering activity" means any act "indictable" under a long list of specifically enumerated federal statutes (such as 18 U.S.C. § 201, relating to bribery, 18 U.S.C. § 1341, relating to mail fraud, and many others), *see* 18 U.S.C. § 1961(1)(B), and "any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or dealing in a controlled substance or listed chemical … which is chargeable under State law and punishable by imprisonment for more than one year," *id.* § 1961(1)(A).

RICO proscribes three substantive violations, as well as conspiracy to commit those offenses. 18 U.S.C. § 1962(a)-(d). To establish the substantive violation relevant here, § 1962(c), the Government must prove: (a) the existence of an enterprise; (b) that the enterprise affected interstate commerce; (c) that the defendant was employed by or associated with the enterprise and participated, either directly or indirectly, in the conduct of the affairs of the enterprise; and (d) that the defendant participated through a pattern of racketeering activity, *i.e.*, through the commission of at least two racketeering acts listed in 18 U.S.C. § 1961(1). *See, e.g.*, *Boyle v. United States*, 556 U.S. 938, 943-44 (2009); *Salinas v. United States*, 522 U.S. 52, 62-63 (1997); *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 496 (1985).

2. The other federal statute involved here, 18 U.S.C. § 924(c)(1), makes it a crime, as relevant, to use, carry, or possess a firearm in relation to any "crime of violence" for which the person "may be prosecuted in a court of the United States."

Section 924(c)(3) sets forth two definitions of a "crime of violence." The only one that remains valid, § 924(c)(3)(A) (known as "the force clause" or "the elements clause"), defines a "crime of violence" as any felony that "has as an element the use, attempted use, or threatened use of physical force against the person or property of another." *See United States v. Davis*, 139

S. Ct. 2319, 2336 (2019) (holding unconstitutional the alternative definition of "crime of violence," contained in § 924(c)(3)(B)).

3. To determine if an offense qualifies as a "crime of violence" for purposes of § 924(c) (and similarly worded statutes), courts do not consider the facts. Instead, courts apply the "categorical approach" or, in a "narrow range of cases," the "modified categorical approach." *Descamps v. United States*, 570 U.S. 254, 260-61 (2013); *see also United States v. Taylor*, 142 d. Ct. 2015, 2020 (2022) (applying the categorical approach to decide whether attempted Hobbs Act robbery qualified as a "crime of violence"); *Davis*, 139 S. Ct. at 2336 (rejecting a "case-specific approach" that would examine a defendant's actual conduct to decide whether an offense qualifies as a "crime of violence").

The categorical approach applies to "indivisible" statutes, those that set out "a single, indivisible set of elements" that define a unitary crime. *Descamps*, 570 U.S. at 258. It asks whether the elements of the offense "necessarily" require "the use, attempted use, or threatened use of physical force." *Borden v. United States*, 141 S. Ct. 1817, 1822 (2021). Courts may not consider how the crime is typically committed or "how any particular defendant may commit the crime." *Taylor*, 142 S. Ct. at 2020. "The only relevant question is whether the federal felony at issue always requires the

government to prove—beyond a reasonable doubt, as an element of its case—the use, attempted use, or threatened use of force." *Id.*

In a "narrow range of cases," when a conviction is for violating a so-called "divisible statute," courts may employ a variant of this categorical method—known as the "modified categorical approach." *Descamps*, 570 U.S. at 261. A divisible statute lists "potential offense elements in the alternative," and thus creates "multiple, alternative versions of the crime." *Id.* at 257, 262. Because the statute sets forth multiple crimes, it is not possible to determine by reference to the statute alone if the defendant was convicted of a "crime of violence." *See id.* Accordingly, the modified categorical approach allows courts to look to certain documents like the indictment, jury instructions, and verdict sheet (so-called "*Shepard* documents," *see Shepard v. United States*, 544 U.S. 13 (2005)) for the sole purpose of determining which of the statute's alternative elements "formed the basis of the defendant's … conviction." *Descamps*, 570 U.S. at 262. From there, a court applies the usual categorical approach to that offense to determine whether it is a "crime of violence." *Id.*

In *Mathis v. United States*, 579 U.S. 500, 517 (2016), this Court clarified that to determine whether an "alternatively phrased statute" is indivisible (thus requiring use of the categorical approach) or divisible (allowing use of the modified categorical approach), courts must decide whether the alternatives in the statute are "means" or "elements." Statutory

alternatives are "means," and do not create a divisible statute, if they are merely "alternative methods of committing one offense." *Id.* Statutory alternatives are "elements," and the statute is divisible, if the jury must unanimously find them beyond a reasonable doubt in every case to convict. *Id.* at 506.

C. Petitioners' Convictions and Appeals

In 2006, petitioners were convicted at trial of several offenses, including violations of 18 U.S.C. §§ 1962(c) and 924(c). *See Colotti,* 71 F.4th at 106; *United States v. Ivezaj*, 568 F.3d 88, 91 (2d Cir. 2009). Their RICO offense, § 1962(c), was the sole "crime of violence" underlying the § 924(c) counts. *Colotti*, 71 F.4th at 106. This RICO offense, in turn, was predicated, as relevant here, on "act[s] or threat[s] involving … extortion … which is chargeable under State law," § 1961(1)(A), to wit, second-degree grand larceny by extortion, N.Y. Penal Law §§ 155.05 and 155.40, and conspiracy or attempt to commit second-degree grand larceny by extortion. *Colotti*, 71 F.4th at 106.

Petitioners filed direct appeals of their convictions, which were affirmed by the Second Circuit in 2009. *See Ivezaj*, 568 F.3d at 90. Among other arguments, petitioners contended that their RICO offense did not qualify as a "crime of violence" for purposes of § 924(c). *Id.* at 95-96. The

Circuit rejected this argument (*id.*), and this Court denied certiorari, 559 U.S. 998 (2010).

In 2011, petitioners moved under 28 U.S.C. § 2255 to vacate their convictions based, *inter alia*, on the ineffective assistance of counsel. *See Colotti*, 71 F.4th at 106. These petitions were denied. *Id.*

Following this Court's decisions in *Johnson v. United States*, 576 U.S. 591 (2015), and *Davis*, 139 S. Ct. at 2336, petitioners again moved under 28 U.S.C. § 2255 to vacate their § 924(c) convictions, asserting that their RICO offense did not categorically qualify as a "crime of violence." *See Colotti*, 71 F.4th at 106. They sought and received permission to file successive § 2255 petitions. *Id.*

Petitioners argued that their RICO offense, § 1962(c), is not a "crime of violence" for purposes of § 924(c) because it does not have an element requiring the use, attempted use, or threatened use of physical force against the person or property of another. *Colotti*, 71 F.4th at 108-11. Petitioners specifically argued that RICO is a single, indivisible offense and that the modified categorical approach could not apply because RICO's various potential racketeering predicates are all different means of committing a single RICO violation—not alternative elements of different or divisible RICO crimes. *Id.* As part of this claim, petitioners maintained that, though RICO allows certain acts "chargeable under State law," such as bribery and

extortion, to serve as racketeering acts, RICO does not thereby incorporate the specific elements of these state crimes as defined by a particular state's penal code. Rather, RICO's references to state crimes such as "extortion" are simply to the generic meaning of those crimes. Thus, applying the categorical approach, § 1962(c) does not categorically qualify as a "crime of violence" because extortion, defined generically, does not have an element involving the use, attempted use, or threatened use of "physical force."

The district court and Second Circuit rejected these arguments. The Second Circuit held that petitioners' RICO offense is a "crime of violence." *Colotti*, 71 F.4th at 119. Citing the Circuit's prior decisions in *Laurent*, 33 F.4th 63, and *Martinez*, 991 F.3d 347, the court ruled that RICO is divisible, and is therefore subject to the modified categorical approach, and incorporates the specific elements of state criminal statutes—in this case, the New York larceny-by-extortion statute invoked by the Government. *See Colotti*, 71 F.4th at 111.

Based on this ruling, the Circuit examined New York's definition of second-degree grand larceny by extortion, N.Y. Penal Law § 155.40(2), the only "racketeering act" under RICO that the Government claimed still qualifies as a "crime of violence" after *Davis*. *Colotti*, 71 F.4th at 111. The Circuit determined that this state offense is itself divisible and that, in petitioners' case, it categorically qualifies as a crime of violence. *Id.*

To summarize: the Circuit held that (1) RICO's "racketeering activity" element is divisible, thereby rendering § 1962(c) subject to the modified categorical approach; (2) RICO, when based on state crimes, incorporates the specific elements of state offenses as defined by the penal law of the state in which the racketeering acts occurred; and (3) petitioners' New York extortion offense qualified categorically as a crime of violence, and therefore allowed petitioners' RICO offense to be treated as a crime of violence. On these bases, the Circuit declined to reverse petitioners' § 924(c) convictions, for which they must each serve an extra seven years in prison.

Petitioners timely moved for rehearing or rehearing en banc, but the Circuit denied rehearing without comment. Pet. App. 67a-69a.

REASONS FOR GRANTING THE PETITION

The Court should grant this petition for four reasons. First, the circuits are divided over (1) the elements of a RICO offense premised on acts or threats involving certain conduct "chargeable under State law," § 1961(1)(A); and (2) whether RICO's "racketeering activity" element is divisible, such that a violation of § 1962(c) can sometimes qualify as a "crime of violence." Second, these are important and recurring questions of federal law that warrant prompt resolution. Third, this case is an excellent vehicle to resolve these circuit conflicts because the issues are preserved, cleanly presented, and outcome-determinative. And finally, the Second Circuit's holdings on these

questions are wrong and inconsistent with the relevant statutes and this Court's precedents.

I. The circuits are divided over RICO's elements and the statute's divisibility.

A. The circuits are split over whether RICO incorporates the elements of state penal codes or only references generic offense categories.

1. The circuits are divided over the elements of a RICO violation predicated on state offenses. Five circuits hold that § 1961(1)(A) does not incorporate the elements of state crimes as defined by a particular state's penal law. Instead, according to these circuits, that section simply references generic categories of criminal conduct that can give rise to a federal racketeering violation.

This is the law in the Third, Fifth, Sixth, Eighth, and Eleventh Circuits. These circuits hold that § 1961(1)(A) was intended to identify the general categories of state criminal conduct that constitute "racketeering activity" ("any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or dealing in a controlled substance"), not to incorporate into RICO the specific elements of the various (and often inconsistent) state penal codes.[2] *See Williams*, 109

[2] This used to be the law in the Second Circuit as well. In *United States v. Bagaric*, the Circuit held that § 1961(1)(A) incorporated only "generic definitions of murder, arson, and extortion," and not "the elements of the

F.3d at 895 (collecting Third Circuit authorities); *Welch*, 656 F.2d at 1058-59); *Johnson,* 64 F.4th at 721-22; *Kehoe*, 310 F.3d at 588; *Watchmaker*, 761 F.2d at 1469.

As the Eighth Circuit puts it, "'RICO's allusion to state crimes was not intended to incorporate elements of state crimes' into the RICO statute. … Rather, RICO's reference to state crimes identifies 'the type of generic conduct which will serve as a RICO predicate and satisfy RICO's pattern requirement.'" *Kehoe*, 310 F.3d at 588 (citation omitted).

The Eleventh Circuit similarly explains that RICO's references to state law merely "identify generally the kind of activity made illegal by the federal statute. … [T]he state law reference is not employed to provide the specific terms of the charge. The state law citation merely serves to indicate 'the type of serious conduct contemplated by the RICO statute as actionable as an act of racketeering.'" *Watchmaker*, 761 F.2d at 1469 (citations omitted); *see also United States v. Salinas*, 564 F.2d 688, 690 (5th Cir. 1977) ("Courts

---

penal codes of the various states where acts of racketeering occurred." 706 F.2d 42, 62-63 (2d Cir. 1983) (adding that RICO's "references to state law serve a definitional purpose, to identify generally the kind of activity made illegal by the federal statute"), *abrogated on other grounds by Nat'l Org. for Women, Inc. v. Scheidler*, 510 U.S. 249 (1994); *accord United States v. Coonan*, 938 F.2d 1553, 1564 (2d Cir. 1991). But more recent circuit decisions have abandoned *Bagaric* and squarely hold that § 1961(1)(A) incorporates specific state-law elements. *See* text, p. 24, *infra*.

construing the racketeering statutes have found that the references to state law serve a definitional purpose, to identify generally the kind of activity made illegal by the federal statute.").

As a result, in these circuits, to establish a RICO violation predicated on state crimes, the Government need only establish the generic offense conduct akin to that included in § 1961(1)(A); the Government is not required to prove the specific elements of the state crime as defined by the state in which the alleged racketeering activity occurred. *See, e.g.*, *Johnson*, 64 F.4th at 721-22 (affirming a RICO conviction where the jury found that the defendant agreed to a "racketeering act of robbery," but the jury was not charged on, and did not find, the specific elements of the state robbery offense); *United States v. Tolliver*, 61 F.3d 1189, 1208-09 (5th Cir. 1995) (upholding a RICO conviction where the court instructed the jury on the "generic definition of murder" and not the elements of murder under Louisiana law because "federal courts typically require only a 'generic' definition of the underlying state crime in a RICO charge"), *vacated on other grounds by Moore v. United States*, 519 U.S. 802 (1996); *Welch*, 656 F.2d at 1058-59 (upholding a RICO conviction predicated on state bribery allegations because, regardless whether defendant's conduct violated a particular state statute, it was "the type of serious conduct contemplated by the RICO statute as actionable as an act of racketeering").

2. The Second Circuit disagrees with these circuits. In multiple recent precedential decisions, including here, the Second Circuit has held that § 1961(1)(A) incorporates the state penal-code elements of alleged state offenses, meaning that "RICO violations require the indictment to charge, the government to prove, and the jury to find beyond a reasonable doubt, the *precise elements of particular federal or state offenses*." *Martinez*, 991 F.3d at 358 (emphasis added); *see also Laurent*, 33 F.4th at 89 ("RICO requires that the specific crimes constituting the 'pattern' of the racketeering enterprise be identified in the charging instrument and proven beyond a reasonable doubt."); *United States v. Pastore*, 83 F.4th 113, 119 (2d Cir. 2023) (holding, based on *Martinez* and *Laurent*, that, because the Violent Crimes in Aid of Racketeering statute (VICAR), 18 U.S.C. § 1959, "complements RICO," it too incorporates the specific elements of state crimes); *United States v. Davis*, 74 F.4th 50, 53-54 (2d Cir. 2023) (same).

3. This split means that the elements of a RICO violation vary across the country—and, in the Second Circuit, even from case to case. In at least five circuits, the Government can establish the "racketeering activity" element of RICO simply by proving any "act or threat involving" a generic criminal offense "chargeable under State law" (e.g., murder, robbery, extortion). § 1961(A)(1). But in the Second Circuit, the Government must plead and prove the "precise elements" of state crimes as defined by a

particular state. *Martinez*, 991 F.3d at 358. The elements of a federal RICO violation in the Second Circuit are thus different than in at least five other circuits, and even vary from trial to trial (depending on the penal law of the state in which the racketeering activity took place). Thus, the meaning of RICO—an important federal statute that applies in civil as well as criminal cases—now depends on the happenstance of geography and the vagaries of 50 different state penal codes.

B. The circuits are also divided over RICO's divisibility.

1. The circuits also disagree over whether RICO is a "divisible" statute for purposes of the categorical approach. In several precedential opinions, including here, the Second Circuit has held that RICO is divisible down to the individual racketeering acts committed by a particular defendant: if any one of those acts qualifies as a "crime of violence"—even if it is only a state crime, not a crime that "may be prosecuted in a court of the United States," as § 924(c)(1)(A) requires—then the overall RICO offense itself qualifies as a "crime of violence." *See Colotti*, 71 F.4th at 109; *Laurent*, 33 F.4th at 88-89; *Ivezaj*, 568 F.3d at 96. That means that a substantive federal RICO violation sometimes qualifies as a "crime of violence," and sometimes does not, depending on the specific facts of each case.

The Third Circuit agrees. According to the Third Circuit, "RICO, in particular Section 1962(c), is [a] divisible statute." *United States v. Williams*,

898 F.3d 323, 333 (3d Cir. 2018) (applying the "modified categorical approach" to rule that the defendant's particular RICO conviction qualified as a "controlled substance offense" because the "predicate acts" forming the basis for the RICO conviction satisfied the definition of a "controlled substance offense").

2. These precedents conflict with decisions by the Fourth and Fifth Circuits. In *Simmons*, 11 F.4th at 260, the Fourth Circuit held that RICO's definition of "racketeering activity," § 1961(1), is *not* divisible, for it merely "lists the *means*—the 'alternative methods'"—of violating RICO, not "elements" of separate and divisible RICO crimes. Accordingly, the Fourth Circuit held that this Court's precedent "requires that [the] categorical analysis consider *the entire class* of qualifying racketeering acts, not just the specific ones that [the defendants] committed in this case." *Id.*

The Fourth Circuit's view aligns with that of the Fifth Circuit. In *McClaren*, 13 F.4th at 413, the Fifth Circuit held that the standard categorical approach applies to RICO because the statute is not "severable"—*i.e.*, not divisible—and does not invariably require proof of violence: "the specific finding by the jury that Defendants committed a crime of violence in this case is irrelevant [because] the statute itself does not require a crime of violence."

3. Thus, the circuits are evenly divided over whether RICO is a divisible statute subject to the modified categorical approach and, therefore, whether courts may consider the defendant's particular racketeering acts to determine if his (or her) RICO violation qualifies as a "crime of violence."

II. This Court should decide the elements of a RICO offense and whether RICO is a "divisible" statute.

1. It is exceptionally important for this Court to resolve the circuit split over the elements that must be proven when a RICO violation is premised on acts "chargeable under State law." § 1961(1)(A). RICO litigation is common in both civil and criminal cases, especially within the Second Circuit. *See Eur. Cmty. v. RJR Nabisc*o, Inc., 783 F.3d 123, 128 (2d Cir. 2015) (Jacobs, J., dissenting from the denial of rehearing in banc) (noting "[t]he frequency of RICO litigation in this Circuit"). Moreover, this Court has repeatedly intervened to resolve splits over RICO's elements, thus recognizing both the statute's importance and the need for uniform interpretation. *E.g.*, *Boyle,* 556 U.S. at 940-41 (addressing the meaning of a RICO "association-in-fact enterprise"); *Bridge v. Phoenix Bond & Indem. Co.*, 553 U.S. 639, 641-42 (2008) (addressing "the substantial question" whether a civil RICO claim premised on mail fraud requires reliance on the defendant's misrepresentations); *Anza v. Ideal Steel Supply Corp.*, 547 U.S. 451, 453 (2006) (addressing RICO's "proximate cause" requirement); *Salinas*, 522 U.S.

at 54 (addressing the elements of RICO conspiracy); *Scheidler*, 510 U.S. at 252 (addressing whether RICO requires proof that either the racketeering enterprise or the predicate racketeering acts were motivated by an economic purpose); *H.J. Inc. v. Nw. Bell Tel. Co.*, 492 U.S. 229, 232 (1989) (addressing "what conduct meets RICO's pattern [of racketeering activity] requirement"); *Sedima,* 473 U.S. at 481 (addressing whether a RICO plaintiff must allege a "racketeering injury" and plead that the defendants had been convicted of the claimed predicate acts); *United States v. Turkette*, 452 U.S. 576, 578 (1981) (addressing the scope of a RICO "enterprise"). Despite these efforts, however, the elements of RICO remain opaque when, as here, state crimes constitute the alleged "racketeering activity." And while most of this Court's RICO cases arose in the civil context, RICO also carries substantial criminal penalties, making the question presented here especially significant.

2. No less important is the related question whether RICO's "racketeering activity" element is divisible, and thus whether a violation of § 1962(c) can qualify as a "crime of violence." The Government regularly charges substantive RICO violations as predicates for § 924(c) counts. And a § 924(c) conviction triggers a mandatory consecutive term of imprisonment ranging from at least five years up to life. *E.g.*, *United States v. Shabazz*, 564 F.3d 280, 289 (3d Cir. 2009). Accordingly, this Court's resolution of the

divisibility question could affect the liberty of many criminal defendants, as well as the Government's charging decisions in future cases.

3. Further, the continued uncertainty regarding the divisibility of RICO is unacceptable. It subjects similarly situated defendants to different treatment based solely upon the jurisdiction in which they find themselves. Consider a defendant who used a gun during a substantive RICO offense that involved violent racketeering acts under state law. This defendant would not be guilty of violating § 924(c) in the Fourth or Fifth Circuits because those courts treat the "racketeering activity" element of RICO as indivisible. But that same defendant would be guilty of violating § 924(c) in the Second and Third Circuits, resulting in a potential life sentence.

III. This case presents an excellent vehicle to resolve these conflicts.

This case offers an ideal opportunity to resolve these circuit splits. First, the questions are preserved and the facts undisputed. Petitioners have consistently asserted the arguments raised here: that their RICO offense does not qualify as a "crime of violence" for purposes of § 924(c) because RICO is not divisible down to individual racketeering acts and, even if it were, courts would consider only the elements of the generic racketeering offense and not the idiosyncratic elements of a particular state statute. Petitioners' original, direct appeal asserted that their RICO offense was not a "crime of violence."

Petitioners then renewed their arguments in their habeas motions to the district and circuit courts, and in their petitions for rehearing. The Circuit ruled against petitioners on the merits. And petitioners' claims involve purely legal, statutory construction questions, where there are no relevant facts in dispute and no procedural complexities that could muddy this Court's review.

Second, each of these issues is outcome-determinative. If this Court grants review and decides that RICO's "racketeering activity" element is not divisible, petitioners' RICO offense—the sole predicate for the § 924(c) counts—would not qualify as a "crime of violence," and petitioners would be entitled to reversal of their § 924(c) convictions and consecutive sentences. Similarly, if the Court were to grant review and hold that § 1961(1)(A) refers to state offenses defined generically and does not incorporate the precise elements of state crimes as defined in a particular state's penal code, petitioners would likewise be entitled to relief. Though the Second Circuit ruled that petitioners' violation of a specific New York extortion statute categorically qualifies as a "crime of violence," generic "extortion" does not. As this Court has held, generic extortion means "obtaining something of value from another with his consent induced by the wrongful use of force, fear, or threats." *Scheidler v. Nat'l Org. for Women, Inc.,* 537 U.S. 393, 410 (2003). Thus, generic extortion does not require the actual, attempted, or threatened "use of physical force." It can be committed, for example, by a non-violent

threat to cause purely economic harm or damage someone's reputation by disclosing information. *See, e.g.*, *United States v. Jackson*, 180 F.3d 55, 68-72 (2d Cir.), *reh'g granted*, 196 F.3d 383 (2d Cir. 1999). Thus, like Hobbs Act extortion, it is not categorically a crime of violence. *See, e.g.*, *Capozzi v. United States*, 531 F. Supp. 3d 399, 404 (D. Mass. 2021) (collecting cases so holding).

IV. The Second Circuit's holdings are wrong.

Given the importance of the questions presented and the circuit conflict, certiorari is warranted regardless which side of the splits is correct. But the fact that the Second Circuit's positions are erroneous makes review especially appropriate.

1. Preliminarily, a violation of § 1962(c) is not a "crime of violence" under the standard categorical approach. Under that approach, "[t]he only relevant question is whether [§ 1962(c)] always requires the government to prove—beyond a reasonable doubt, as an element of its case—the use, attempted use, or threatened use of force." *Taylor*, 142 S. Ct. at 2020. Section 1962(c) fails that test, as the Government itself has recognized. *See RICO Manual* at 463. The statute's elements—an enterprise affecting interstate or foreign commerce, the defendant's association with that enterprise, and a pattern of racketeering activity—do not invariably require proof of an element involving force. RICO defines "racketeering activity" broadly to

include a wide variety of state and federal crimes that need not involve any violence or force whatsoever, including, *inter alia*, transportation of stolen property, bribery, embezzlement, gambling offenses, offenses relating to fraudulent conduct, and unlawful procurement of immigration documents. *See* § 1961(1). The categorical approach functions as an "on-off switch," *Descamps*, 570 U.S. at 268: An offense either is, or is not, a "crime of violence." *See Taylor*, 142 S. Ct. at 2020 (holding that the "only relevant question" is what the Government "always" must prove). Yet under the Second Circuit's erroneous approach, the same federal crime—a violation of § 1962(c)—sometimes will, and sometimes will not, qualify, depending on defendants' factual conduct and the availability of court records establishing which predicate acts were found proven. That result runs headlong into decades of this Court's categorical-approach jurisprudence. *E.g., Taylor v. United States*, 495 U.S. 575, 601 (1990) (rejecting the notion "that a particular crime might sometimes count [as a 'violent felony'] and sometimes not depending on the facts of the case").

2. Nor is RICO's "pattern of racketeering activity" element divisible. While RICO defines "racketeering activity" to include broad categories of criminal conduct "chargeable under State law," the listed conduct merely describes different ways or "means" of engaging in "racketeering activity," not elements of separate RICO offenses. *Simmons*, 11 F.4th at 259-60. Thus, the

statute cannot be held divisible under this Court's cases. *E.g.*, *Mathis*, 579 U.S. at 517.

Moreover, nothing in RICO's text, structure, or history indicates that Congress intended to create an infinite number of distinct and divisible § 1962(c) offenses with chameleon-like elements that change from case to case depending on which state's penal code is invoked. On the contrary, RICO was Congress's effort to create a single, indivisible federal crime—a violation of the federal racketeering laws—that can be committed in myriad ways. *See, e.g.*, *United States v. Luong*, 393 F.3d 913, 917 (9th Cir. 2004) (holding that "RICO criminalizes structural conduct that is separate and apart from the predicate offenses"); *United States v. Wallen*, 953 F.2d 3, 5-6 (1st Cir. 1991) ("Although it may encompass a number of underlying acts, a RICO conviction is for a single offense."); *United States v. Yarbrough*, 852 F.2d 1522, 1531 (9th Cir. 1988) (holding that RICO sets forth "one federal crime—violation of the federal racketeering laws"). Thus, because it creates only one federal crime with a fixed set of elements, § 1962(c) is not divisible. *See Mathis*, 579 U.S. at 506 (holding that statutory alternatives are "means," and do not create a divisible statute, if they are merely "alternative methods of committing one offense").

4. The Second Circuit's approach also leads to unfair and arbitrary results inconsistent with the categorical approach. Unless the jury returned a

special verdict in a RICO case, it will often be impossible to know which predicate acts of racketeering activity were found "proven." And the use of special verdicts in criminal cases, including RICO cases, is not required. *See, e.g.*, *United States v. Applins*, 637 F.3d 59, 82 (2d Cir. 2011); *United States v. Ogando*, 968 F.2d 146, 149 (2d Cir. 1992).

Applying the modified categorical approach to RICO will thus lead to arbitrary consequences and unwarranted disparities. Suppose, for example, that in 2000 Smith and Jones were convicted in separate trials of using of a gun during a substantive RICO offense alleging six racketeering acts: four acts of state-law bribery and two acts of state-law murder. In Smith's case, no special verdict was used; the jury only said "guilty." But in Jones's case, the jury returned a special verdict finding all six racketeering acts "proven." Under the Second Circuit's approach, Jones would be guilty of using a gun during a "crime of violence," but not Smith—even though their criminal conduct may have been identical. Such a disparate outcome—based solely on the happenstance of whether the trial court used a special verdict, at a time when no one could have anticipated that the choice would have any future significance—is exactly what the categorical approach is supposed to prevent. *See Descamps*, 570 U.S. at 267 (reiterating that the categorical approach "averts 'the practical difficulties and potential unfairness of a factual approach'") (quoting *Taylor*, 495 U.S. at 601); *Moncrieffe v. Holder*, 569 U.S.

184, 200 (2013) (rejecting a "circumstance-specific approach" because it "would require the sort of post hoc investigation into the facts of predicate offenses that we have long deemed undesirable").

***

In sum, this Court's intervention is urgently needed. "RICO is one of the most confusing crimes ever devised by the United States Congress." *Casey v. Dep't of State*, 980 F.2d 1472, 1477 (D.C. Cir. 1992) (citing *H.J. Inc.*, 492 U.S. at 252-56 (Scalia, J., concurring)). After more than 50 years of litigation, the statute's elements continue to confuse and divide the lower courts. Similarly, determining whether (or when) a RICO violation can qualify as a § 924(c) "crime of violence" presents "a complex and vexing question," as the Second Circuit itself has acknowledged. *Martinez*, 991 F.3d at 359. But the need for authoritative answers is evident. Only this Court can provide them.

CONCLUSION

A writ of certiorari should be granted.

Respectfully submitted,

Edward S. Zas
Counsel of Record
Sarah Baumgartel
Federal Defenders of New York, Inc.
52 Duane Street, 10th Floor
New York, New York 10007
Tel.: (212) 417-8742
Edward_Zas@fd.org

Counsel to Nardino Colotti, Alex Rudaj, and Nikola Dedaj

Michael S. Schachter
Ravi Chanderraj
Willkie Farr & Gallagher LLP
787 7th Avenue
New York, NY 10019
Tel.: (212) 728-8102
rchanderraj@willkie.com

Counsel to Prenka Ivezaj

Anthony DiPietro
Law Offices of Anthony DiPietro, P.C.
15 Chester Avenue
White Plains, NY 10601
Tel. (914) 948-3242
dipietrolaw@yahoo.com

Counsel to Angelo DiPietro