No.

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2023

CLIFFORD LAINES, JR.,
***Petitioner*,**

v.

UNITED STATES OF AMERICA,
***Respondent*.**

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The Armed Career Criminal Act, or "ACCA," mandates at least fifteen years' imprisonment for federal firearm offenses where the defendant has three prior convictions for a "violent felony" or a "serious drug offense." 18 U.S.C. § 924(e)(1). "[S]erious drug offense" includes certain state controlled-substance offenses "for which a maximum term of imprisonment of ten years or more is prescribed by law." *Id.* § 924(e)(2)(A)(ii).

The Fourth and Sixth Circuits have construed "maximum term of imprisonment . . . prescribed by law" to mean the highest sentence that the particular defendant actually faced under the then-applicable state-sentencing regime. In this regard, these circuits account for any state-sentencing law shown in the record of conviction to have governed that defendant's sentence calculation. And importantly, this Court has employed this approach in at least one "serious drug offense" decision. The Eleventh Circuit, however, has expressly rejected this approach. It looks only to the statutory maximum sentence for offenses of the kind committed by the defendant.

These competing approaches beg an important federal question:

Does "maximum term of imprisonment . . . prescribed by law"—as used in the Armed Career Criminal Act to define "serious drug offenses" that are predicated on prior state convictions—refer to the statutory maximum sentence that the underlying state offense carried, or the highest sentence that the particular defendant actually could have received under the then-applicable state-sentencing regime?

PARTIES TO THE PROCEEDINGS

The case caption contains the names of all parties to the proceedings.

RELATED PROCEEDINGS

The following proceedings are directly related to this petition:

- *United States v. Laines*, No. 18-cr-20980 (S.D. Fla.) (judgment entered July 30, 2020).
- *United States v. Laines*, Nos. 20-12907-BB, 21-11535-BB (11th Cir.) (judgment entered June 6, 2023; rehearing, after filing extension granted, denied Nov. 2, 2023).

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PETITION FOR A WRIT OF CERTIORARI

Petitioner, Mr. Clifford Laines, Jr., respectfully petitions for a writ of certiorari to review a judgment of the United States Court of Appeals for the Eleventh Circuit.

OPINION BELOW

The Eleventh Circuit judgment to be reviewed was rendered on June 6, 2023. The supporting opinion is published at 69 F.4th 1221 (2023), and reproduced herein as Appendix ("App.") A-1. The district court did not issue a written opinion in this case.

STATEMENT OF JURISDICTION

Mr. Laines brings this petition following the Eleventh Circuit's rendition of a final judgment. This Court therefore has jurisdiction under 28 U.S.C. § 1254(1).

This petition is timely. Following the Eleventh Circuit's issuance of the opinion below, Mr. Laines moved for rehearing. The Eleventh Circuit denied the motion by order dated November 2, 2023, which made any petition for a writ of certiorari due by January 31, 2024. Under SUP. CT. R. 13.5, Mr. Laines requested an extension of this deadline. This Court granted thirty additional days, thereby extending the petition deadline to March 1, 2024.

STATUTORY PROVISION INVOLVED

> **(e)(1)** In the case of a person who violates section 922(g) of this title and has three previous *convictions* by any court referred to in section 922(g)(1) of this title for a violent felony or a *serious drug offense*, or both, committed on occasions different from one another, such person shall be fined under this title and imprisoned not less than fifteen years, and, notwithstanding any other provision of law, the court shall not suspend the sentence of, or grant a probationary sentence to, such person with respect to the conviction under section 922(g).
>
> **(2)** As used in this subsection--
>
> **(A)** the term "serious drug offense" means--
>
> . . . .
>
> **(ii)** an offense under State law, involving manufacturing, distributing, or possessing with intent to manufacture or distribute, a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), *for which a maximum term of imprisonment of ten years or more is prescribed by law*[.]

18 U.S.C. § 924(e)(1), (2)(A)(ii) (emphasis added).

INTRODUCTION

This petition presents an important question of statutory interpretation. At bottom, it turns upon ACCA's meaning of "maximum term of imprisonment . . . prescribed by law" for a defendant's prior state offense. 18 U.S.C. § 924(e)(2)(A)(ii). And more specifically, it is whether courts must look solely to the statutory maximum sentence for the category of state offenses at issue.

In the published decision below, the Eleventh Circuit answered this question affirmatively. But at least two different circuits have ruled otherwise. They instead account for any state sentencing law that would have been relevant to the particular defendant's sentence calculation, including applicable restrictions on the state court's authority to impose a statutory maximum sentence. Tellingly, this approach fits squarely within the holdings of *United States v. Rodriquez*, 553 U.S. 377 (2008), and *Carachuri-Rosendo v. Holder*, 560 U.S. 563 (2010).

Thus, this Court's review is urgently needed. The government has acknowledged that interpretation of § 924(e)(2)(A)(ii) is "important" and "recurring." The two-to-one split is deeply entrenched, which means that countless defendants in the Eleventh Circuit and Florida in particular—ACCA's ground zero—will receive a mandatory fifteen-year sentence based on geography alone. The split, moreover, derives from the circuits' confusion about the extent to which this Court's decisions in *Rodriquez* and *Carachuri-Rosendo* control the meaning of § 924(e)(2)(A)(ii).

The question presented here has evaded review for years. This case now provides the ideal opportunity for the Court finally to resolve the question and give courts around the country much needed guidance in § 924(e)(2)(A)(ii) cases.

STATEMENT OF THE CASE

I. Proceedings in the district court.

In February 2020, a five-count Second Superseding Indictment was filed against Mr. Laines. *United States v. Laines*, No. 18-cr-20980 (S.D. Fla.) (hereinafter, "S.D. Fla.") ECF No. 47. Counts 1 through 3 each charged possession of a firearm and ammunition by a convicted felon, in violation of 18 U.S.C. § 922(g)(1); Count 4 charged possession with intent to distribute a controlled substance, in violation of 21 U.S.C. § 841(a)(1); and Count 5 charged possession of a firearm in furtherance of a drug trafficking crime, in violation of 18 U.S.C. § 924(c)(1)(A)(i). S.D. Fla. ECF No. 47. A petit jury found Mr. Laines guilty of Counts 1, 3, 4, and 5, but returned a verdict of not guilty as to Count 2. S.D. Fla. ECF No. 96.

In its Presentence Investigation Report, S.D. Fla. ECF No. 121 (hereinafter, "PSR"), the United States Probation Office recommended that Mr. Laines's sentence be calculated using the base offense level of 22 under U.S.S.G. § 2K2.1. PSR ¶ 30. This was because one of the felon-in-possession offenses for which he was convicted "involved a semiautomatic firearm capable of accepting a large capacity magazine," and also because Mr. Laines committed that offense "subsequent to sustaining at least one felony conviction of . . . a crime of violence . . . ." *Id.* ¶ 30 (citing U.S.S.G. § 2K2.1(a)(3)(A)(i), (B)). The PSR added two levels for the specific offense

characteristic of involvement of a stolen firearm, under U.S.S.G. § 2K2.1(b)(4)(A). *Id.* ¶ 31. From this, the PSR computed Mr. Laines's adjusted offense level as 24. *Id.* ¶ 35.

The PSR, however, states that Mr. Laines "was convicted of possession with intent to sell a controlled substance in [Florida] Docket No. F8946370"—based on Mr. Laines 1991 conviction in Florida for possession with intent to sell cocaine, in violation of Fla. Stat. § 893.13(1)(a)1 (1991). PSR ¶¶ 36, 40. The PSR further states that this conviction is a "prior conviction[] for a . . . serious drug offense[]." *Id.* ¶ 36. Also, it states that Mr. Laines "possessed a firearm or ammunition in connection with a controlled substance offense." *Id.* Thus, the PSR concludes, Mr. Laines "is an armed career criminal pursuant to [U.S.S.G.] § 4B1.4(a) because he is subject to an enhanced sentence under" ACCA. PSR ¶ 36. These conclusions resulted in a recommended total offense level of 34. *Id.* ¶¶ 36, 38 (citing U.S.S.G. § 4B1.4(a), (b)(3)(A)).

The PSR computed only three criminal history points, which would have established a criminal history category of II. But based on its conclusion that Mr. Laines "is an armed career criminal," the PSR states that "his criminal history category shall be IV" pursuant to U.S.S.G. § 4B1.4(c)(3). PSR ¶ 47. With this criminal history category and the total offense level of 34, the PSR recommended an imprisonment range of 210-to-262 months for Counts 1, 3, and 4. *Id.* ¶ 87.

During the sentencing hearing, without objection, the district court accepted this range. S.D. Fla. ECF No. 135:19-20. The district court imposed a total sentence of 300 months' imprisonment as follows: 230 months for Counts 1 and 3, running concurrently; 240 months for Count 4, running concurrently with Counts 1 and 3; and

60 months for Count 5, running consecutively to the other three counts; followed by 60 months' supervised release as to all counts, to run concurrently. S.D. Fla. ECF No. 129.

II. Proceedings in the court of appeals.

Mr. Laines timely appealed, S.D. Fla. ECF No. 130; S.D. Fla. ECF No. 160, challenging his convictions and the unlawful enhancement of his sentence. Mr. Laines argued that his prior cocaine-related conviction under Fla. Stat. § 893.13 was not a "serious drug offense" conviction that could have supported the sentence enhancement under ACCA and the Armed Career Criminal Sentencing Guideline. *United States v. Laines*, Nos. 20-12907-BB, 21-11535-BB (11th Cir.) (hereinafter, "11th Cir.) ECF No. 17-1:70-85. This was so, he reasoned, because the Florida statutes under which he was convicted defined "cocaine" more broadly than the federal definition of cocaine. *Id.* at 70-75, 85-86.

Mr. Laines argued that his prior Florida conviction was not a "serious drug offense" conviction for an additional reason: under this Court's precedent, the "maximum term of imprisonment . . . prescribed by law" for the conviction was not at least ten years, as § 924(e)(2)(A)(ii) of ACCA requires. 11th Cir. ECF No. 17-1:75. He reasoned that Florida's sentencing scheme at the time capped the "permitted" imprisonment term for Mr. Laines's Florida conviction at three-and-a-half years. *Id.* at 80-84. The government never identified evidence that the Florida court provided written reasons for an upward departure, which Florida law would have required to

enhance Mr. Laines's sentence to ten years. *Id.* at 81. And so, Mr. Laines never actually faced a ten-year imprisonment sentence. *Id.* at 85.

The government never disputed that Mr. Laines could have received, at most, only the three-and-a-half-years permitted imprisonment term under Florida at the time. 11th Cir. ECF No. 27:26-27, 72-74. It simply contended that, to determine the "maximum term of imprisonment . . . prescribed by law," 18 U.S.C. § 924(e)(2)(A)(ii), Eleventh Circuit precedent mandated that the court of appeals look solely to the "statutory maximum" for the "category" of Mr. Laines's Florida offense. 11th Cir. ECF No. 27:74. And because the applicable statutory maximum imprisonment term was fifteen years, the government argued that the sentence prescribed for Mr. Laines's prior Florida conviction "plainly satisfies" ACCA's ten-year requirement. *Id.*

Following oral argument, the Eleventh Circuit published its opinion affirming Mr. Laines's convictions and sentence. App. A-1. A majority of the panel rejected Mr. Laines's arguments and held that he failed to establish that the district court plainly erred in classifying his prior Florida offense as a serious drug offense and applying the imprisonment range calculated under the corresponding guideline. *United States v. Laines,* 69 F.4th 1221, 1232-35 (11th Cir. 2023). It reasoned that a prior panel already held that violations of Fla. Stat. § 893.13 qualify as "serious drug offenses" for ACCA purposes. *Laines*, 69 F.4th at 1233. Additionally, Mr. Laines neither objected to his classification as an armed career criminal, nor identified any decision holding that Florida's definition of cocaine is overbroad. *Id.* at 1234.

Judge Rosenbaum dissented in this regard. *Id.* at 1235-43 (Rosenbaum, J., dissenting). In her opinion, she first "explain[s] why the government bore the burden to establish that [Mr.] Laines's Florida cocaine-trafficking conviction qualifies as a predicate crime under ACCA and how it failed to do so." *Id.* at 1235. She then "shows that the government's failure to establish that [Mr.] Laines's conviction serves as a predicate crime under ACCA caused plain error requiring remand for a new sentencing." *Id.*

The Eleventh Circuit denied Mr. Laines's subsequent motion for rehearing. 11th Cir. ECF No. 79; 11th Cir. ECF No. 80. The order denying the motion issued on November 2, 2023. App. A-2.

This timely petition follows.

REASONS FOR GRANTING THE PETITION

I. The Court should clarify the controlling analysis for determining the "maximum term of imprisonment . . . prescribed by law" for a defendant's prior state offense, within the meaning of the Armed Career Criminal Act's "serious drug offense" definition.

A. Circuits are squarely divided—at least two to one—about how they should determine the maximum imprisonment term that state law prescribed.

1. The Fourth and Sixth Circuits consider all relevant state sentencing laws.

These circuits consult each state law that, based on facts in the record of conviction, would have governed the calculation of the particular defendant's sentence. Then, applying these laws, the circuits identify the highest imprisonment term that the defendant could have actually received under the circumstances.

In *United States v. Rockymore*, 909 F.3d 167 (6th Cir. 2018), the Sixth Circuit followed this approach in holding that two prior Tennessee convictions for felony delivery of cocaine were not "serious drug offense" convictions. Various provisions of the Tennessee Criminal Sentencing Reform Act compelled this holding. *Id.* at 169-70. Specifically, sentencing in Tennessee "start[s] with" a "felony-based statute." *Id.* at 169. This statute "classifies felonies" and assigns each class minimum and maximum "authorized sentences." *Id.* (citing Tenn. Code Ann. §§ 40-35-111, 40-35-210(a)). A "range-based statute" then "narrows those sentences into 'Ranges' that correspond with the defendant's prior record." *Id.* (citing Tenn. Code Ann. § 40-35-112). These narrowed "ranges are mandatory," and the trial court cannot sentence the defendant above his calculated range absent, among other things, judicial "find[ings] beyond a

reasonable doubt that the defendant belongs in a higher range." *Id.* at 169-70 (citing Tenn. Code Ann. §§ 40-35-106(c), 40-35-202, 40-35-210(c)).

Given this "criminal sentencing scheme," the Sixth Circuit rejected argument that "the felony-based statute alone set[] [Rockymore's] 'maximum term of imprisonment'" for ACCA purposes. *Id.* Emphasizing that "a serious drug offense requires a 'maximum term of imprisonment . . . prescribed by *law*,'" the court of appeals noted that "we must look at all the relevant 'law' that Tennessee applies to sentencing." *Id.* at 170 (emphasis in original) (first quoting 18 U.S.C. § 924(e)(2)(A)(ii); then citing *United States v. Rodriquez*, 553 U.S. 377, 382-83 (2008)). "And both the felony-based statute and the range-based statute set out the relevant 'law,'" it held. *Id.* This was so because the range-based statute "work[s] in concert" with the federal-based statute, while "directly link[ing] a defendant's criminal history with the maximum sentence that the defendant can receive." *Id.* at 169, 171.

The Fourth Circuit followed the same approach in reversing the ACCA-enhanced sentence challenged in *United States v. Newbold*, 791 F.3d 455 (4th Cir. 2015). The disputed ACCA predicate was Newbold's prior North Carolina conviction for felony possession with intent to sell and deliver a controlled substance. *Id.* at 462. Ultimately, the Fourth Circuit held that this offense was not a "serious drug offense" because Newbold's "maximum term of imprisonment" did not satisfy ACCA's ten-year threshold under the circumstances. *Id.* at 456, 461-64.

In reaching this holding, the Fourth Circuit examined North Carolina's "sentencing regime" at the time of Newbold's state conviction. *Id.* at 461. The Fair

Sentencing Act grouped each North Carolina felony into a "class," which was assigned both a "baseline, 'presumptive' term of imprisonment" and a "maximum, aggravated term of imprisonment." *Id.* (first citing N.C. Gen. Stat. § 15A-1340.4 (1983) (repealed 1994); then citing N.C. Gen. Stat. § 14-1.1 (1981) (repealed 1994)). In no case could a trial court sentence the defendant above his presumptive term without first "finding and recording" aggravating factors. *Id.* (citing N.C. Gen. Stat. § 15A-1340.4(b)).

From this regime, the Fourth Circuit determined that the "controlling inquiry" centered on "the maximum possible sentence that the *particular* defendant could have received" under the Act. *Id.* at 461-62 (emphasis in original) (footnote and citation omitted). This inquiry, it instructed, "requires examination" of not just that defendant's offense class, but also "the applicability of the aggravated sentencing range." *Id.* at 462 (footnote and citation omitted). And if "there are no aggravating factors," then the defendant's presumptive term would constitute "the maximum applicable punishment." *Id.*

2. By contrast, the Eleventh Circuit looks simply to the statutory maximum sentence for the underlying offense.

The Eleventh Circuit's approach for determining the "maximum term of imprisonment" that a state "prescribed" for a defendant's prior state conviction is far-more streamlined. It is, as *Rockymore* says, "as simple as reading one provision of [the state]'s criminal code." *See* 909 F.3d at 169 (rejecting this notion with respect to Tennessee law).

As the decision below shows, the Eleventh Circuit looked *solely* to the statutory maximum sentence for state offenses of the kind at issue. *See United States v. Laines*,

69 F.4th 1221, 1233 (11th Cir. 2023). This "offense-based" approach, in effect, focuses on "'the maximum *aggravated* sentence that could be imposed for th[e] crime upon a defendant with the worst possible criminal history.'" *See Rockymore*, 909 F.3d at 171; *Newbold*, 791 F.3d at 462 (alteration and emphasis in original) (quoting *United States v. Harp*, 406 F.3d 242, 246 (4th Cir. 2005)). Meanwhile, the Eleventh Circuit expressly rejected an "offender-based" approach, like that in the Fourth and Sixth Circuits. *See Rockymore*, 909 F.3d at 171; *Newbold*, 791 F.3d at 462. *See also Laines*, 69 F.4th at 1233 ("expressly reject[ing] Laines's argument that" the court "must look to the sentence that the particular defendant could have received under the [state] sentencing guidelines").

The decision below therefore "conflict[s] with decisions of []other United States court[s] of appeals on the same important matter." *See* SUP. CT. R. 10(a). This conflict warrants review. *See id.* Indeed, the Court has granted review to resolve ACCA splits that are shallower than the two-to-one split here. *See Shular v. United States*, 140 S. Ct. 779, 784 (2020) (resolving one-to-one split between the Ninth and Eleventh Circuits).

B. Relatedly, the Eleventh Circuit's approach for determining the "maximum term of imprisonment . . . prescribed by law" conflicts with *Rodriquez* and *Carachuri-Rosendo*.

1. *Rodriquez*—a "serious drug offense" decision—establishes that this language contemplates all state laws that were relevant to the particular defendant's sentence calculation.

In *Rodriquez*, this Court employed a "straightforward application" of ACCA's language in deciding whether any of the sentences for a trio of Washington State convictions satisfied the ten-year threshold for "serious drug offenses." 553 U.S. at 384. At issue were two sentencing provisions of the Revised Code of Washington: one imposed a five-year maximum imprisonment term for first-time drug offenses, and the other doubled this maximum for any subsequent offense. *Id.* at 381. The lower courts believed they could not consider the latter, "recidivist" provision in determining the maximum sentence for Rodriquez's three prior convictions in Washington for delivery of a controlled substance. *Id.* at 380, 382.

This Court disagreed. Looking first to the text of ACCA's "serious drug offense" definition, it identified several "key" terms. *Id.* at 383 (quoting 18 U.S.C. § 924(e)(2)(A)(ii)). "Law" was one of them. *Id.* The Court then turned to the record in Rodriquez's case. The sentencing order reflected that Rodriquez was thrice convicted for conduct from separate dates. *Id.* at 380-81. The judgment for each conviction listed the maximum imprisonment term "as 'ten years.'" *Id.* at 381. On these facts, the Court held that Washington's recidivist provision "set out" part of the "relevant 'law'" for Rodriquez's case. *Id.* at 382-83. And because that provision "prescribed" a ten-year

maximum term for Rodriquez's second and third offenses, it further held that those two offenses qualified as "serious drug offenses" under ACCA. *Id.* at 383, 393.

2. *Carachuri-Rosendo* clarifies that, under *Rodriquez*, whether a state sentencing law is relevant to a "maximum term of imprisonment" inquiry depends upon the existence of facts that would have been necessary to trigger that law.

Though the "record of conviction" supported the government's "serious drug offense" claim in *Rodriquez*, the Court later acknowledged that the record might not always support allegations that a prior state conviction carried a sentence of at least ten years' imprisonment.

According to *Carachuri-Rosendo v. Holder*, 560 U.S. 563 (2010), in *Rodriquez* this Court "specifically observed that 'in those cases in which the records that may properly be consulted do not show that the defendant faced the possibility of a recidivist enhancement, it may well be that the Government will be precluded from establishing that a conviction was for a qualifying offense.'" *Carachuri-Rosendo*, 560 U.S. at 577 n.12 (quoting *Rodriquez*, 553 U.S. at 389). A "recidivist finding giving rise to a 10-year sentence" must be "apparent from the sentence itself, or appear[] []either as part of the 'judgment of conviction' []or the 'formal charging document.'" *Id.* (quoting *Rodriquez*, 553 U.S. at 389). Otherwise, "the Government will not have established that the defendant had a prior conviction for which the maximum term of imprisonment was 10 years or more (assuming the recidivist finding is a necessary precursor to such a sentence)." *Id.*

And so, where state law requires certain findings to elevate the sentence for a prior state conviction to the ten-year threshold for "serious drug offenses," *Rodriquez* and *Carachuri-Rosendo* mandate that each finding must be "a part of the record of conviction." *Id.* (citing *Rodriquez*, 553 U.S. at 389). And if the record lacks evidence of such findings, then they "c[annot] set the 'maximum term of imprisonment'" for ACCA purposes. *Id.* (citing *Rodriquez*, 553 U.S. at 389) (describing these rules as *Rodriquez*'s holding).

3. Meanwhile, *Carachuri-Rosendo* rejects a "hypothetical approach," which assumes the existence of facts that would have been necessary to trigger a state sentencing law.

Extending these principles to the immigration context, in *Carachuri-Rosendo* this Court rejected argument that it merely could assume a defendant actually faced a certain maximum sentence under state law where the record of conviction lacks findings that would have been necessary, under that law, to authorize such a sentence.

Carachuri-Rosendo arose under the Immigration and Nationality Act. This Act authorizes any noncitizen who is subject to removal from the United States to seek discretionary cancellation of removal, so long as he "has not been convicted of any aggravated felony." *Id.* at 566-67 (citing 8 U.S.C. § 1229b(a)(3)). Carachuri-Rosendo faced removal after committing two misdemeanor drug-possession offenses in Texas, the first involving two ounces of marijuana and the second involving a single Xanax pill. *Id.* at 566, 570-71.

Central to the Court's holding that the second Texas offense was not an "aggravated felony" was the question of whether that offense was "punishable as a felony under *federal law*." *Id.* at 567-69 (emphasis in original). Under federal law, a "felony is a crime for which the 'maximum term of imprisonment authorized' is 'more than one year.'" *Id.* at 567 (footnote omitted) (quoting 18 U.S.C. § 3559(a)). A prior state drug offense may qualify as "an 'aggravated felony' for immigration law purposes," but only if it carried a sentence of more than one year's imprisonment. *Id.* at 569 (citing *Lopez v. Gonzales*, 549 U.S. 47, 56 (2006)). *See also* 18 U.S.C. § 3559(a). Thus, the dispositive issue was whether Carachuri-Rosendo, with his second Texas offense, had been "convicted" of a state offense that was "punishable" by over a year of imprisonment.

The Court held that he had not. It noted the ten-day jail sentence for the second offense. *Carachuri-Rosendo*, 560 U.S. at 566. It also noted that Texas law would have authorized enhancement of this sentence beyond one year, the threshold for federal felonies, had the state proved that Carachuri-Rosendo's first and second offenses were "offense[s] of a similar class." *Id.* at 571. But the state had declined to charge him as a recidivist and seek enhancement based on his criminal history. *Id.* at 571, 582. Therefore, the Court could not conclude that Carachuri-Rosendo ever faced more than a year of imprisonment for immigration law purposes because, in the first instance, the "record of conviction" lacked the requisite "finding of recidivism." *Id.* at 576, 582.

The government contended that Carachuri-Rosendo's second Texas offense nonetheless qualified as a federal felony. *Id.* at 570. This was so, it argued, "because

had Carachuri-Rosendo been prosecuted in federal court instead of state court, he *could have been* prosecuted as a felon and received a 2-year sentence based on the fact of his prior simple possession offense." *Id.* (emphasis in original).

The Court rejected this "hypothetical approach" for various reasons. *Id.* at 576. The approach, it explained, ignores the "text and structure of the relevant statutory provisions." *Id.* at 581. These provisions indicate that the "conviction itself"—and not "what might have or could have been charged"—is the "relevant statutory hook." *Id.* at 576, 580. A hypothetical approach also ignores the "conduct actually punished by the state offense." *Id.* at 580. It focuses on facts "that could have . . . serve[d] as the basis for the state conviction and punishment." *Id.* But as the relevant provisions show, a defendant must "have been *actually convicted* of a crime" for which a state "authorized" more than one year of imprisonment. *Id.* at 576, 582 (emphasis in original) (quoting 18 U.S.C. § 3559(a)(5)). Additionally, the Court disagreed that *Rodriquez* supported the government's hypothetical approach. *Id.* at 577 n.12 (citing *Rodriquez*, 553 U.S. at 389).

In concluding, the Court rejected the notion that a "mere possibility that the defendant's conduct, coupled with facts outside of the record of conviction, could have authorized" more than one year's imprisonment, satisfies federal law's "command that a noncitizen be 'convicted of a[n] aggravated felony' before he losses the opportunity to seek cancellation of removal." *Id.* at 582 (quoting 8 U.S.C. § 1229b(a)(3)).

4. The Eleventh Circuit's divergence from these decisions warrants review.

Certiorari review is appropriate where "a United States court of appeals . . . has decided an important federal question in a way that conflicts with relevant decisions of this Court." SUP. CT. R. 10(c). These are precisely the circumstances here.

Rodriquez and *Carachuri-Rosendo* bear the requisite relevancy. *See id.* *Rodriquez*, in particular, and the decision below turned upon the meaning of the same clause within the same ACCA provision. And both decisions involved analysis of state sentencing laws to determine the "maximum term of imprisonment" that a state had "prescribed" for a defendant's prior conviction there. *See* 18 U.S.C. § 924(e)(2)(A)(ii).

With respect to the sentencing laws at issue below, as of the early-Eighties, Florida grouped its felonies into "offense categories" and scored a "presumptive" or "recommended" range for a given defendant's "primary offense." *Miller v. Florida*, 482 U.S. 423, 425-26 (1987). This range was calculated using various factors, such as any additional offenses charged in the case, the nature of the victim's injuries, and the defendant's prior record. *Id.* at 426. The recommended range "was 'assumed to be appropriate for the composite score of the offender.'" *Id.* (quoting Fla. R. Crim. P. 3.701(d)(8) (1983)). The trial court was "obligated" to select a sentence from the defendant's recommended range unless the court provided "clear and convincing reasons in writing" to depart above the range. *Id.*; *Williams v. Florida*, 500 So. 2d 501, 502 (Fla. 1986) (first citing Fla. Stat. § 921.001(4) (1985); then citing Fla. R. Crim. P. 3.701(d)(11)).

By the late-Eighties, Florida had eliminated this "clear and convincing" standard and established "permitted ranges," which enabled trial courts to slightly increase "the severity of a recommended sentence" without written reasons. *Florida R. of Crim. P. Re: Sentencing Guidelines (R. 3.701 & 3.988)*, 522 So. 2d 374, 375 (Fla. 1988) (per curiam). But it still required that "[a]ny sentence outside of the permitted guideline range must be accompanied by a written statement delineating the reasons for the departure." *Id.* at 378 (Barkett, J., concurring in part) (quoting Fla. R. Crim. P. 3.701(d)(11)). This scheme had "the force and effect of law" and remained the "law" in Florida until years after the Florida conviction at issue in Mr. Laines's appeal. *Miller*, 482 U.S. at 435. *See* PSR ¶¶ 36, 40 (basing ACCA enhancement on 1991 conviction in Florida criminal docket No. F8946370); Criminal Punishment Code, Fla. Stat. § 921.002 (1998) (applies to all noncapital felonies committed after September 1998).

Importantly, it was undisputed that Mr. Laines faced a maximum "permitted" imprisonment term of only three-and-a-half years. *Compare* 11th Cir. ECF No. 17-1:75, 80-84, *with* 11th Cir. ECF No. 27:26-27, 72-74. *See Rodriquez*, 553 U.S. at 380-81 (reviewing the record of conviction to determine which state laws were "relevant" under ACCA). So, under *Rodriquez* and *Carachuri-Rosendo*, Florida law that mandated written justification for upward sentence departures "set out" the "relevant 'law'" "[f]or present purposes." *See Rodriquez*, 553 U.S. at 382-83. And a "finding" of the Florida court's reasons to depart at least six-and-a-half years above Mr. Laines's highest permitted term would have been a "necessary precursor" to concluding that

Mr. Laines's actually faced ten years of imprisonment. *See Carachuri-Rosendo*, 560 U.S. at 577 n.12; *Florida R. of Crim. P. Re: Sentencing Guidelines*, 522 So. 2d at 378 (Barkett, J., concurring in part); Fla. R. Crim. P. 3.701(d)(11).

Further, this finding could not rest upon "facts outside of the record of conviction" that, "hypothetically speaking," "could have . . . serve[d] as the basis for" an enhancement. *See Carachuri-Rosendo*, 560 U.S. at 576, 580, 582. *Rodriquez* and *Carachuri-Rosendo* instead dictate that the Florida court's written justification must have been "a part of the record of conviction." *See id.* at 577 n.12. *See also Rodriquez*, 553 U.S. at 389. And if evidence of such justification was absent, then any unexpressed desire there may have been to enhance Mr. Laines's sentence could not "giv[e] rise to a 10-year sentence" for ACCA purposes. *See Carachuri-Rosendo*, 560 U.S. at 577 n.12. The upshot is that "the Government will not have established that th[is] defendant had a prior conviction for which the maximum term of imprisonment was 10 years or more." *See id. See also Rodriquez*, 553 U.S. at 389.

The Eleventh Circuit "expressly" refused to apply these principles in deciding whether Florida law "prescribed" a "maximum term of imprisonment" of at least ten years for the state conviction disputed below. *Laines*, 69 F.4th at 1233. Again, it relied exclusively upon the "statutory maximum" sentence that Florida had designated for offenses of the kind committed by Mr. Laines. *Id.* In doing so, it decided that his prior Florida offense was a "serious drug offense" "in a way that conflicts with [the] relevant decisions" in *Rodriquez* and *Carachuri-Rosendo*. *See* SUP. CT. R. 10(c).

C. These issues are important and therefore merit review.

1. The issues are recurring and deeply rooted.

As the government acknowledged in a prior case before this Court, interpretation of § 924(e)(2)(A)(ii) "is important because state drug offenses are frequently recurring ACCA predicates." *Shular v. United States*, No. 18-6662, Br. for U.S. 13 (Feb. 13, 2019).

That that case involved a different clause of § 924(e)(2)(A)(ii) is of no moment here, especially because the Eleventh Circuit is the national epicenter for ACCA cases. According to recent data from the United States Sentencing Commission, the Eleventh Circuit accounted for nearly a quarter (24.4%) of all ACCA cases in 2019. And the three federal districts in Florida accounted for 14.8% of all such cases—with the Southern District, where Mr. Laines was prosecuted, in the top five along with the Middle District. Federal Armed Career Criminals: Prevalence, Patterns, and Pathways, U.S. Sentencing Comm'n 20 (Mar. 2021). Given that the Eleventh Circuit and Florida account for such a large swath of ACCA cases, it is critical to resolve splits where the Eleventh Circuit has taken a side in the debate.

What's more, Florida cocaine offenses like Mr. Laines's are perhaps the most common ACCA predicate of all in the Eleventh Circuit. After all, Fla. Stat. § 893.13 is the flagship drug statute in Florida, a state with over 20 million people where drug offenses are routinely enforced.[1] Since the Eleventh Circuit first held in *United States*

[1] *See* Florida Drug Offense Arrests, Fla. Dep't Law Enforcement, *available at* https://www.fdle.state.fl.us/CJAB/UCR/Individual-Crime/Arrests/Society.aspx (last visited Feb. 29, 2024) (page 2 of 9 reports over 100,000 drug arrests every year between 1998 and 2019).

v. Smith, 775 F.3d 1262 (11th Cir. 2014), that Florida cocaine offenses qualified under ACCA and the Guidelines, that court has upheld enhancements based on § 893.13 in well over 100 reported decisions (which are under-representative). *See Curry v. United States*, No. 20-7284, Pet. App. F 72a-80a (Feb. 24, 2021) (cataloguing 129 such decisions through January 2021, including 74 ACCA cases).

And these proceedings are not the first to bring to this Court's attention the circuit split concerning the controlling analysis for "maximum term of imprisonment" inquiries. At least two other petitioners previously did so. *See Gardner v. United States*, No. 22-5895, Pet. Writ Cert. i (Oct. 20, 2022); *McCoy v. United States*, No. 15-186, Pet. Writ Cert. i (Aug. 11, 2015) (second question presented about using "predicate state offenses with presumptive maximum sentences of less than 10 years to enhance McCoy's federal sentence"). The Court did decline to grant review in those instances—but as a result, the circuit split has since become further entrenched.

Fourth and Eleventh Circuit decisions illustrate this point. In *Newbold*, for instance, the Fourth Circuit could not conclude that Newbold's prior North Carolina conviction was "punishable by ten years." 791 F.3d at 463. Applicable North Carolina law required the state trial court to provide written findings of aggravating factors in order to enhance Newbold's maximum "presumptive" imprisonment term of three years to the "maximum, aggravated term" of ten years. *Id.* at 462-63. Turning to the record of conviction before it, the Fourth Circuit encountered "simply nothing to support the idea that Newbold ever faced more than the presumptive term of three years." *Id.* at 463. Specifically, neither the North Carolina judgment nor the plea

transcript revealed findings or admissions of any aggravating factor. *Id.* The Fourth Circuit therefore held that Newbold's prior conviction did not qualify as a "serious drug offense" conviction under ACCA. *Id.* at 464.

Since *Newbold* and this Court's denial McCoy's writ petition, the Fourth Circuit has continued using this record-driven approach to review ACCA-enhanced sentences predicated on alleged "serious drug offenses." *See, e.g.*, *United States v. Cornette*, 932 F.3d 204, 215-16 (4th Cir. 2019) (citing *Newbold*, 791 F.3d at 461-63) (holding that a prior drug-offense conviction in North Carolina was not a "serious drug offense" under ACCA because Cornette could not have received ten years' imprisonment "without a finding of aggravating factors on the record," and there were none).

And interestingly, the government itself has conceded sentencing errors under *Newbold*. *See United States v. Forte*, 629 F. App'x 488, 492-93 (4th Cir. Nov. 4, 2015) (vacating ACCA-enhanced sentence and remanding for resentencing where government "acknowledge[d]" that certain of Forte's prior North Carolina convictions were not "serious drug offense" convictions "under *Newbold* because Forte received the presumptive sentence of three years' imprisonment for each offense and nothing in the PSR indicates the existence of any aggravating factors that would have exposed Forte to more than the presumptive range of imprisonment"); *United States v. Hope*, No. 5:06-CR-00167-F-1, 2016 WL 11600819, at *1-2 (E.D.N.C. Jan. 13, 2016) (granting habeas relief and ordering resentencing without the original ACCA

enhancement "in light of" government concessions that "Hope's argument under *Newbold* has merit").

Meanwhile, the Eleventh Circuit has repeatedly rejected argument that, to determine the "maximum term of imprisonment . . . prescribed by law," it "must look to the sentence that the particular defendant could have received under [state] sentencing guidelines instead of the statutory maximum." *Laines*, 69 F.4th at 1233 (citing *United States v. Gardner*, 34 F.4th 1283, 1288, 1289 n.3 (11th Cir. 2022)). *See Gardner*, 34 F.4th at 1284, 1288 ("[a]pplying the categorical approach required by" *McCarthy v. United States*, 135 F.3d 754 (11th Cir. 1998) (per curiam), the panel held that it "look[s] to the maximum statutory sentence for Garner's drug offenses, not the high end of his presumptive sentencing range" under Alabama law); *McCarthy*, 135 F.3d at 757 (holding that ACCA's "definition of 'serious drug offense' employs a categorical approach" under which the "[t]he only true maximum sentence for the offense category is the statutory maximum," and therefore rejecting "McCarthy's suggestion that we look to the particular facts of his prior convictions and sentences").

So while the question presented here has thus far evaded review and resolution, this case presents an opportunity for the Court finally to provide courts around the country much-needed guidance in § 924(e)(2)(A)(ii) cases. Indeed, such clarity would allay the courts' confusion about how and to what extent *Rodriquez* and *Carachuri-Rosendo* should control those cases.

2. Circuits' confusion about the import of *Rodriquez* and *Carachuri-Rosendo* underscores the need for review.

As indicated above, the Eleventh Circuit has twice held that decisions like *Rodriquez* do not require it to follow an offender- or record-based approach in reviewing "serious drug offense" claims. *Laines*, 69 F.4th at 1233; *Gardner*, 34 F.4th at 1289 & n.3 (distinguishing *Rodriquez* and *Carachuri-Rosendo*).

Two other circuits—at a minimum—have held otherwise. In the Seventh Circuit, for example, the prevailing rule before *Rodriquez* was that "maximum term of imprisonment," as used in ACCA's "serious drug offense" definition, referred to the "'maximum for the crime of conviction.'" *United States v. Lockett*, 782 F.3d 349, 352 (7th Cir. 2015) (quoting *United States v. Perkins*, 449 F.3d 794 (7th Cir. 2006)). Then, in *Lockett*, the Seventh Circuit acknowledged that "*Rodriquez* adds an evidentiary hurdle" to this rule. *Id.* (citing *Rodriquez*, 553 U.S. at 388-89).

The Fourth Circuit followed suit. Originally, its prevailing rule was that a prior state conviction "could be considered punishable by ten years if the sentencing law allowed for the possibility of *any* defendant—such as a defendant with the worst possible criminal history—to be sentenced to ten years' imprisonment for the same crime . . . ." *Newbold*, 791 F.3d at 457 (emphasis in original). With the issuance of *Carachuri-Rosendo*, however, this rule is "now[ ]defunct." *Id.* The "controlling inquiry" presently in the Fourth Circuit is "the maximum possible sentence that the *particular* defendant could have received"—"given his particular offense," "his particular criminal history," and the "applicability" of the aggravated sentence calculated for him. *Id.* at 462 (emphasis in original) (footnote and citation omitted).

What's more, the Fourth Circuit now adheres to *Carachuri-Rosendo*'s "teach[ing]" that it "may not measure a defendant's maximum punishment based on a hypothetical charge, a hypothetical criminal history, or other facts outside the record of conviction." *Id.* at 463 (internal quotation marks omitted) (first quoting *United States v. Valdovinos*, 760 F.3d 322, 327 (4th Cir. 2014); then citing *United States v. Simmons*, 649 F.3d 237 (4th Cir. 2011) (en banc); and then citing *Carachuri-Rosendo v. Holder*, 560 U.S. 563 (2010)).

Rockymore also is instructive. It does not expressly mention *Rodriquez* and *Carachuri-Rosendo*'s "teach[ings]." *See id.* But the Sixth Circuit undoubtedly applied them in holding that the sentences for two prior Tennessee convictions fell "short of the ten-year maximum required for a 'serious drug offense' under the ACCA." *Rockymore*, 909 F.3d at 170. Recall, for Rockymore, Tennessee law had set six-year-maximum sentences that could not be enhanced absent certain findings that supported a higher sentence. *Id.* at 169-70. And because nothing in the record of conviction reflected those findings, the Sixth Circuit concluded that Rockymore faced only the six-year-maximum sentence for each conviction. *Id.* at 170.

3. Geography, alone, will produce disparate sentencing.

Take Rockymore and Mr. Laines, for instance. Assume that Mr. Laines committed the very same Tennessee offense, and under the very same circumstances, as Rockymore. Also assume that Mr. Laines was convicted on the same date as Rockymore, and that they had similar prior records at the time. Finally, assume that

the Tennessee court never provided findings necessary to enhance Mr. Laines's sentence, as in *Rockymore*.

Under these circumstances, Mr. Laines's Tennessee offense would have carried a statutory maximum sentence of fifteen years' imprisonment, but he also would have actually faced the "narrow[ed]" maximum term of only six years—like Rockymore. *See Rockymore*, 909 F.3d at 169-70. Rockymore, however, evaded ACCA enhancement solely because the government prosecuted his federal firearm offense within a circuit that—contrary to the location Mr. Laines's prosecution—had embraced an "offender-based" reading of ACCA. *See id.* at 171.

D. This case is ideal for review.

This is so for several reasons. Factually, this case implicates the conflicts discussed above. As in cases like *Newbold*, *Cornette*, and *Rockymore*, the government never presented record evidence from Mr. Laines's Florida case that would have been necessary to "giv[e] rise to a 10-year sentence." *See Carachuri-Rosendo*, 560 U.S. at 577 n.12.

Procedurally, it is true that Mr. Laines advanced his "serious drug offense" claim for the first time on appeal. But ruling in Mr. Laines's favor here would make the Eleventh Circuit's affirmance of his ACCA-enhanced sentence plainly erroneous. Indeed, the PSR identified only three predicates for Mr. Laines's ACCA enhancement—the prior Florida conviction being one. PSR ¶ 36. Without the Florida predicate, the ACCA enhancement cannot stand. Furthermore, removal of the enhancement would result in a two-level reduction of his criminal history category,

thus reducing it to a category II and driving down the advisory sentencing range. *See id.* ¶ 47. These are precisely the circumstance that generally require relief, including resentencing, even on plain-error review. *See Molina-Martinez v. United States*, 578 U.S. 189, 201 (2016). *Cf. Rosales-Mireles v. United States*, 585 U.S. 129, 140 (2018) ("The risk of unnecessary deprivation of liberty particularly undermines the fairness, integrity, or public reputation of judicial proceedings in the context of a plain Guidelines error . . . .").

Finally, the decision below is wrong. This "Court has explained many times over many years that, when the meaning of the statute's terms is plain, [its] job is at an end. The people are entitled to rely on the law as written, without fearing that courts might disregard its plain terms based on some extratextual consideration." *Bostock v. Clayton Cnty., Ga.*, 590 U.S. 644, 673-74 (2020).

The text of § 924(e)(2)(A)(ii) contemplates that courts might need to look beyond statutory maximum sentences for offenses of the kind committed by defendants. This is especially true here. As *Rodriquez* holds, the provision's "prescribed by law" clause is "key." 553 U.S. at 382-83. Given this Court's holding in *Miller* that Florida's sentencing guidelines scheme at the time of Mr. Laines's Florida conviction had "the force and effect of law," 482 U.S. at 435, § 924(e)(2)(A)(ii)'s plain meaning undoubtedly encompasses this scheme. *See Bostock*, 590 U.S. at 673-74. More specifically, as demonstrated above, Florida law that (1) prescribed Mr. Laines's "permitted" maximum sentence of only three-and-a-half years while (2) prohibiting enhancement without written justification from the trial court, "set[s] out" the

"relevant 'law'" "[f]or present purposes." *See Rodriquez*, 553 U.S. at 382-83. And because the government never presented record evidence of such justification, it could not "have established that th[is] defendant had a prior conviction for which the maximum term of imprisonment was 10 years or more." *See Carachuri-Rosendo*, 560 U.S. at 577 n.12.

To be certain, in *McCarthy*, even the Eleventh Circuit expressly acknowledged that "[i]t is of course true that the Florida state sentencing guidelines are 'prescribed by law.'" 135 F.3d at 756 n.2. The *McCarthy* panel, however, believed that this Court's decision in *Taylor v. United States*, 495 U.S. 575 (1990), compelled it to "look to the maximum sentence for the offense category in which the particular predicate offense falls, not the particular sentence received by the defendant or the particular facts of the defendant's crime." *McCarthy*, 135 F.3d at 757. But as this Court later observed in *Rodriquez*: "We see no connection, however, between the issue in *Taylor* (the meaning of the term 'burglary' in § 924(e)(2)(B)(ii)) and the issue here (the meaning of the phrase 'maximum term of imprisonment . . . prescribed by law' under § 924(e)(2)(A)(ii))." 553 U.S. at 387. The *McCarthy* panel's reliance on *Taylor* was therefore misplaced.

II. Alternatively, given the potential effect of this Court's decision in *Jackson*, the Court should hold this petition pending its *Jackson* decision.

In *Jackson v. United States*, No. 21-13963, this Court granted review to decide whether ACCA's "serious drug offense" definition incorporates the federal drug schedules that were in effect at the time of a federal firearm offense, or the schedules that were in effect at the time of the prior state drug offense. In *Jackson*, as here, the government enhanced Jackson's federal sentence under ACCA on the basis that his prior cocaine-related offenses under Fla. Stat. § 893.13 were "serious drug offenses." *United States v. Jackson*, No. 21-13963, ECF No. 8:18 (Oct. 28, 2021). Challenging the enhancement on appeal, Jackson argued that neither § 893.13 offense was a qualifying predicate because those offenses were categorically overbroad. *Id.* This was so, Jackson reasoned, because conduct involving ioflupane I^{123}, a derivative of cocaine, *was* criminalized by Florida and federal law at the time of the § 893.13 offenses but had become exempted from federal prosecution by the time of his federal firearm offense. *Id.* Thus, Jackson would prevail in eliminating his ACCA enhancement if the Court adopts his time-of-federal-offense interpretation of § 924(e)(A)(2)(ii).

The same holds true for Mr. Laines. Like Jackson's circumstances, conduct involving ioflupane I^{123}—while a Florida crime and a federal crime in 1989 when Mr. Laines committed his cocaine-related offense, PSR ¶ 40—was exempted from federal prosecution at the time of his federal firearm offense. Under Jackson's position, then, Mr. Laines's § 893.13 offense would not qualify as an ACCA predicate.

Thus, should the Court be inclined to deny this petition with respect to the question presented, Mr. Laines asks that the Court hold the petition pending its decision in *Jackson*.

CONCLUSION

For the foregoing reasons, the Court should grant this petition for a writ of certiorari. Otherwise, at a minimum, it should hold the petition pending its decision in *Jackson*.

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