No. _____

IN THE
Supreme Court of the United States

COLTON BAGOLA,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

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PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

1. Whether first-degree murder, under 18 U.S.C. § 1111, qualifies as a "crime of violence" under the force clause in 18 U.S.C. § 924(c)(3)(A).

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

RELATED PROCEEDINGS

United States v. Colton Bagola, No. 5:20-cr-50012, United States District Court for the District of South Dakota. Judgment entered July 11, 2023.

United States v. Colton Bagola, No. 23-2689, United States Court of Appeals for the Eighth Circuit. Judgment entered July 19, 2024.

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PETITION FOR A WRIT OF CERTIORARI

Colton Bagola respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit.

OPINIONS BELOW

The opinion of the court of appeals (App. 1a-8a) is reported at 108 F.4th 722 (8th Cir. 2024). The district court's relevant ruling is unpublished.

JURISDICTION

The court of appeals entered judgment on July 19, 2024. *See* App. 38a. Bagola received an extension of time to file a petition for rehearing. The court of appeals denied his timely petition for rehearing *en banc* on September 30, 2024. App. 37a. On December 12, 2024, Justice Kavanaugh extended the time within which to file a petition for a writ of certiorari to and including February 13, 2025. This petition is timely filed under Rule 13.3. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

18 U.S.C. § 1111 provides:

> (a) Murder is the unlawful killing of a human being with malice aforethought. Every murder perpetrated by poison, lying in wait, or any other kind of willful, deliberate, malicious, and premeditated killing; or committed in the perpetration of, or attempt to perpetrate, any arson, escape, murder, kidnapping, treason, espionage, sabotage, aggravated sexual abuse or sexual abuse, child abuse, burglary, or robbery; or perpetrated as part of a pattern or practice of assault or torture against a child or children; or perpetrated from a premeditated design unlawfully and maliciously to effect the death of any human being other than him who is killed, is murder in the first degree.
>
> Any other murder is murder in the second degree.

18 U.S.C. § 924(c) provides in relevant part:

> (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.
>
> . . .

(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

INTRODUCTION

In the wake of this Court's holding in *Borden v. United States*, 593 U.S. 420 (2021) that offenses committed recklessly cannot qualify under the force clause, the courts of appeals have issued conflicting opinions on whether mental states that fall between ordinary recklessness and knowledge can qualify under the force clause. These conflicting opinions have resulted in a circuit split regarding whether first-degree murder under 18 U.S.C. § 1111 always qualifies as a crime of violence under 18 U.S.C. § 924(c)(3)(A). *Compare United States v. Jackson*, 32 F.4th 278. 285 (4th Cir. 2022) (holding felony murder cannot qualify as a crime of violence) *and United States v. States*, 72 F.4th 778, 791, n.11 (7th Cir. 2023) (noting felony murder does not categorically include the use of force), *with Janis v. United States*, 73 F.4th 628, 631-32, 636 (8th Cir. 2023), *cert. denied*, 144 S. Ct. 1019 (2024) (holding that the "malice aforethought" element of federal second-degree murder does satisfy the force clause) *and* App. 8a.

Consideration by this Court is necessary to resolve whether first-degree murder qualifies as a "crime of violence" under the force clause of § 924(c)(3)(A). The status of federal first-degree murder under the force clause is an important question of federal law. This Court should grant certiorari and resolve this question.

STATEMENT OF THE CASE

This petition arises out of Bagola's conviction for first-degree murder in violation of 18 U.S.C. §§ 1111(a) and 1153, and discharging a firearm in relation to a crime of violence in violation of 18 U.S.C. § 924(c)(1)(A)(iii). Bagola argued that the crime of first-degree murder, as defined in 18 U.S.C. § 1111 is not a "crime of violence" for purposes of 18 U.S.C. § 924(c)(1)(A)(iii). Dist. Ct. Dkt. 200, at 2-8; Dist. Ct. Dkt. 215, at 7-8; Dist. Ct. Dkt. 234, at 4-5.[1] The district court rejected Bagola's arguments, finding that first-degree murder "has as an element 'the use . . . of physical force against the person . . . of another.' " App. 33a (citations omitted). After conviction by a jury, Bagola was sentenced to life in prison on the first-degree murder count and 10 years on the § 924(c) count, to run consecutively. Dist. Ct. Dkt. 254, at 1-2.

On appeal, a panel of the Eighth Circuit Court of Appeals affirmed. App. 8a. The court of appeals concluded that the rationale of its prior opinion in *Janis*, which held that homicides committed with malice aforethought always involve the use of force against the person or property of another, controlled. *Id.* "First-degree murder, like its second-degree counterpart, also requires malice aforethought and always involves 'consciously directed' force and thus constitutes a 'crime of violence' under § 924(c)'s force clause." *Id.* (cleaned up). The court of appeals had jurisdiction under 28 U.S.C. § 1291.

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[1] All citations to "Dist. Ct. Dkt." are to the docket in *United States v. Colton Bagola*, No. 5:20-cr-50012 (D.S.D.).

Bagola timely filed a petition for rehearing *en banc*. The court of appeals denied his petition in a summary order. App. 37a. This petition for a writ of certiorari follows.

REASONS FOR GRANTING THE PETITION

This case involves an important question of federal law that should be settled by this Court—does federal first-degree murder qualify as a "crime of violence" under the force clause in 18 U.S.C. § 924(c)(3)(A)? The status of federal first-degree murder as a crime of violence is an important question for people in Indian country and other federal enclaves. Further, the status of first-degree murder as a crime of violence is an important question in a variety of contexts of federal law. The Court should grant the petition for a writ of certiorari to resolve the important question raised by this case.

I. The issue of whether federal first-degree murder qualifies as a "crime of violence" raises important questions of federal law.

The federal murder statute defines "murder" as "the unlawful killing of a human being with malice aforethought." 18 U.S.C. § 1111(a). First-degree murder is:

> Every murder perpetrated by poison, lying in wait, or any other kind of willful, deliberate, malicious, and premeditated killing; or committed in the perpetration of, or attempt to perpetrate, any arson, escape, murder, kidnapping, treason, espionage, sabotage, aggravated sexual abuse or sexual abuse, child abuse, burglary, or robbery; or perpetrated as part of a pattern or practice of assault or torture against a child or children; or perpetrated from a premeditated design unlawfully and maliciously to effect the death of any human being other than him who is killed . . . .

Id. Second-degree murder is the catchall: "Any other murder is murder in the second degree." *Id.*

A. In *Taylor* and *Borden*, this Court explained the standards for determining a "crime of violence."

To qualify as a "crime of violence" under § 924(c), first-degree murder must have "as an element the use, attempted use, or threatened use of physical force against the person or property of another." 18 U.S.C. § 924(c)(3)(A). In *Taylor*, this Court explained application of the "categorical approach" to the "elements clause," where "[t]he *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." *United States v. Taylor*, 596 U.S. 845, 850 (2022) (emphasis added). According to *Taylor*, the only relevant inquiry here is whether or not 18 U.S.C. § 1111 requires *as an element* the use, attempted use, or threatened use of force. If that crime can be committed with the *mens rea* of mere "recklessness," then it fails to meet the elements clause and is not considered a "crime of violence" under the remaining definition of that term and the categorical approach governs this inquiry. *Borden,* 593 U.S. at 423-24 (plurality opinion).[2]

[2] *Borden* specifically addressed the force clause of the Armed Career Criminal Act. However, this Court "has long understood similarly worded statutes to demand similarly categorical inquiries," and applies the same analysis to § 924(c). *See Taylor*, 596 U.S. at 850.

In *Borden*, this Court held that an offense that can be committed recklessly does not qualify under the force clause. Under the *Borden* plurality opinion, the term "against" requires targeting or consciously directing force at another:

- "The phrase 'against another,' when modifying the 'use of force,' demands that the perpetrator *direct his action at, or target, another individual*." *Id.* at 429 (plurality opinion) (emphasis added).

- "Reckless conduct is not *aimed* in that prescribed manner." *Id.* (emphasis added).

- "Borden's view of 'against,' as introducing the *conscious object (not the mere recipient) of the force*, is the right one given the rest of the elements clause." *Id.* at 430 (emphasis added).

- "It is . . . the pairing of volitional action with the word 'against' that produces its *oppositional or directed meaning*—and excludes recklessness from the statute." *Id.* at 435 (emphasis added).

- " '[A]gainst the person of another,' when modifying the 'use of physical force,' introduces that action's *conscious object*." *Id.* at 443 (emphasis added).

- "So it excludes conduct, like recklessness, that is not *directed or targeted at another*." *Id.* (emphasis added)

Justice Thomas supplied the fifth vote, basing his conclusion on the "use of force" language alone. *Id.* at 445-49 (Thomas, J., concurring). In his view, "a crime that can be committed through mere recklessness does not have as an element the 'use of physical force' because that phrase 'has a well-understood meaning applying only to intentional acts designed to cause harm.' " *Id.* at 446 (quoting *Voisine v. United States*, 579 U.S. 686, 713 (2016) (Thomas, J., dissenting)).

B. The application of *Borden* to first-degree murder under 18 U.S.C. § 1111 has resulted in a circuit split.

In applying *Borden*, the circuit courts have reached different conclusions on whether first-degree murder, under 18 U.S.C. § 1111, always qualifies as a crime of violence. *Compare Jackson*, 32 F.4th at 285-86 (holding federal murder is divisible and felony murder cannot qualify as a crime of violence) *and States*, 72 F.4th at 791, n.11 (noting felony murder does not categorically involve the use of force), *with* App. 8a (applying *Janis* to hold that federal first-degree murder always qualifies under the force clause).

1. Eighth Circuit

Federal murder is a homicide committed with a mental state of "malice aforethought." 18 U.S.C. § 1111(a). In *Janis*, the Eighth Circuit addressed the "malice aforethought" element of federal second-degree murder and found that it satisfies the force clause:

> The history and definition of "malice aforethought" demonstrate that federal second-degree murder satisfies § 924(c)'s force clause. *The phrase "malice aforethought" necessarily denotes the oppositional conduct that the force clause requires: "an intent willfully to act in callous and wanton disregard of the consequences to human life."* This requires "more risk and culpability" than the standard of "willful disregard of the likelihood" of harm. Second-degree murder is thus a crime of violence.

Janis, 73 F.4th at 632 (emphasis added) (internal citations omitted). The court found that the formulation of extreme recklessness for second-degree murder "is close to knowledge and far from ordinary recklessness." *Id.* at 633 (discussing *United States v. Black Elk*, 579 F.2d 49, 51 (8th Cir. 1978) (per curiam)). As the

Janis court noted, it joined all the other circuits to address the issue in holding that malice aforethought in second-degree murder qualifies as a crime of violence under the force clause. *Id.* at 634 (citing cases); *see also United States v. Kepler*, 74 F.4th 1292, 1307 (10th Cir. 2023).

In Bagola's appeal, the Eighth Circuit determined that *Janis*'s holding regarding "malice aforethought" in the second-degree murder context extends to and controls the analysis of "malice aforethought" in first-degree murder context.

> This case is controlled by our decision in *Janis*. There, we ruled that "[h]omicides committed with malice aforethought involve the 'use of force against the person or property of another[.]' " *Janis*, 73 F.4th at 636 (quoting 18 U.S.C. § 924(c)(3)(A)). *Janis* concluded, "[m]alice aforethought, murder's defining characteristic, encapsulates the crime's violent nature" and renders second-degree murder a crime of violence. *Id.* That conclusion controls here. *First-degree murder*, like its second-degree counterpart, also requires malice aforethought and *"always* involves 'consciously directed' force and thus constitutes a 'crime of violence' under § 924(c)'s force clause." *Id.* at 631 (quoting *Borden* [ ], 593 U.S. [at] 431, 141 S. Ct. 1817, 210 L.Ed.2d 63 (2021) (plurality opinion)). Federal premeditated first-degree murder is categorically a "crime of violence."

App. 8a (emphasis added). Thus, *Janis* and *Bagola* hold that *all* murders involve the use of force, because the "malice aforethought" element categorically involves the use of consciously directed force.

2. Fourth and Seventh Circuits

In contrast, other circuit courts have found that federal felony murder, under 18 U.S.C. § 1111, does not qualify as a crime of violence. In *Jackson*, the Fourth Circuit stated:

> Felony murder cannot qualify as a "crime of violence" because it requires only the mens rea necessary to attempt or complete the

> underlying felony (i.e., arson, escape, etc.). That mens rea is not more than recklessness and thus, does not satisfy *Borden*.

32 F.4th at 285. Similarly, the Seventh Circuit noted, "[f]elony murder, in contrast, does not categorically involve the use of force within the meaning of § 924(c)." *States*, 72 F.4th at 791, n.11.

Bagola respectfully submits that consideration by this Court is appropriate to resolve the circuit split regarding whether first-degree murder under 18 U.S.C. § 1111 is always a crime of violence. This is a significant issue of federal law that should be resolved by this Court.

II. The decision below was wrongly decided.

Contrary to the Eighth Circuit's finding below, the "malice aforethought" element of first-degree murder does not always involve the use of force. This Court has recognized that the felony murder rule under 18 U.S.C. § 1111 punishes unintended homicides. *See Dean v. United States*, 556 U.S. 568 (2009). This idea comes from common law principles: "[I]f any accidental mischief happens to follow from the performance of . . . any thing *unlawful*, and a consequence ensues which he did not foresee or intend, as the death of a man or the like, his want of foresight shall be no excuse . . . ." *Id.* at 575-76 (quoting 4 W. Blackstone, Commentaries on the Laws of England 26-27 (1769)). Thus, even accidental, unintended death is punishable as federal felony murder under 18 U.S.C. § 1111.

As discussed above, the circuit courts have reached differing conclusions on the issue of whether a first-degree murder is always a crime of violence under the force clause of § 924(c)(3)(A). The Eighth Circuit's conclusion, in Bagola's case, that

the "malice aforethought" element of 18 U.S.C. § 1111 "*always* involves 'consciously directed' force," App. 8a (quoiting *Janis*, 73 F.4th at 631) (emphasis added), is incompatible with this Court's analysis in *Dean*. The Eighth Circuit's analysis fails to consider the less directed or intentional states that would support a felony murder conviction, as referenced in *Dean*.

As the *Jackson* court explained, felony murder, "cannot qualify as a 'crime of violence' because it requires only the mens rea necessary to attempt or complete the underlying felony (i.e., arson, escape, etc.). That mens rea is not more than recklessness and thus, does not satisfy *Borden*." *Jackson*, 32 F.4th at 285; *see also States*, 72 F.4th at 791, n.11. The *Jackson* court's analysis is consistent with this Court's precedent in *Dean*, to that extent, and leads the correct conclusion regarding felony murder as a crime of violence. Therefore, the Eighth Circuit's analysis of the force clause as it relates to first-degree murder under 18 U.S.C. § 1111 should be rejected.

III. This Court should find that first-degree murder under 18 U.S.C. § 1111 is not categorically a crime of violence.

Because some first-degree murders under 18 U.S.C. § 1111 do not qualify as "crimes of violence," *no* murders under 18 U.S.C. § 1111 qualify as "crimes of violence," if the statue describes alternative means committing the crime, rather than alternative elements of separate crimes. As this Court explained in *Mathis*, "it is impermissible for 'a particular crime [to] sometimes count towards enhancement and sometimes not, depending on the facts of the case.' " *Mathis v. United States*, 579 U.S. 500, 510 (2016) (quoting *Taylor*, 495 U.S. at 601); *see also Descamps v.*

United States, 570 U.S. 254, 267-68 (2013) (discussing *Taylor*). Bagola contends that 18 U.S.C. § 1111 describes a single, indivisible crime, first-degree murder, with alternative factual means of committing it, as opposed to alternative elements of several separate crimes, *e.g.,* the crime of "felony murder" and the crime of "premeditated murder." *See cf. Mathis*, 579 U.S. at 506 (citing *Schad v. Arizona*, 501 U.S. 624 (1991) (plurality opinion)). Therefore, because it is an indivisible crime, and because the factual alternative of felony first-degree murder does not require the use of force, first-degree murder is not a crime of violence under the categorical approach.

Admittedly, the *Jackson* court considered this issue and found that the statute is divisible, not indivisible, leading to application of the modified categorical approach. *Jackson*, 32 F.4th at 285-87; *see also States,* 72 F.4th at 791. While the Fourth and Seventh circuits correctly determined that felony murder does not categorically require the use of force, they erred in their analysis of the divisibility of 18 U.S.C. § 1111 and application of the modified categorical approach. *Jackson*'s analysis is flawed because it provides a very narrow reading of *Schad v. Arizona*, 501 U.S. 624 (1991), without significant analysis of that decision, and fails to correctly apply *Schad*'s principles to the divisibility question.

A. The common law roots of 18 U.S.C. § 1111 establish that federal first-degree murder is a single, indivisible crime.

This Court's precedents discussing first-degree murder illustrate that 18 U.S.C. § 1111 is an indivisible crime, with alternative factual means of committing it. In *Schad,* the plurality explained that the various forms of first-degree murder

represent "alternative means," echoing the common law's treatment of them as different "aspects" of the "single concept" of "malice aforethought." *Schad*, 501 U.S. at 640 (plurality opinion).

> At common law, murder was defined as the unlawful killing of another human being with "malice aforethought." The intent to kill and the intent to commit a felony were *alternative aspects of the single concept* of "malice aforethought." Although American jurisdictions have modified the common law by legislation classifying murder by degrees, *the resulting statutes* have in most cases retained premeditated murder and some form of felony murder (invariably including murder committed in perpetrating or attempting to perpetrate a robbery) as *alternative means* of satisfying the mental state that first-degree murder presupposes. Indeed, the language of the Arizona first-degree murder statute applicable here *is identical in all relevant respects* to the language of the first statute defining murder by differences of degree, *passed by the Pennsylvania Legislature in 1794*.

Schad, 501 U.S. at 640-41 (emphasis added) (citations omitted). In other words, the common law treated all forms of "malice aforethought" killings as a single, unified crime of "murder." That unity was maintained in subsequent murder by differences of degree statutes, beginning with the 1794 Pennsylvania statute. *Id.* at 641.

As noted by Justice Scalia in his concurring opinion, the same 1794 Pennsylvania statue that was "copied" by Arizona, was also "copied" by the United States when it enacted 18 U.S.C. § 1111. *Id.* at 649 (Scalia, J., concurring in part). Justice Scalia explained that not only the Arizona statute at issue in *Schad*, but also 18 U.S.C. § 1111, define a "single crime" of first-degree murder, which originated with the 1794 Pennsylvania statute. *Id.* ("That [1794 Pennsylvania] statute was widely copied, and down to the present time *the United States* . . . [has] a *single crime of first-degree murder* that can be committed by killing in the course

of a robbery *as well as* premeditated killing. *See e.g.* 18 U.S.C. § 1111 . . . ." (emphasis added)).

Given this history, legislatures that "copied" the 1794 Pennsylvania statute, including Congress, adopted the "single crime of first-degree murder" principle. Both the Arizona and federal statutes are interpreted in the same way, because of their common lineage from the 1794 Pennsylvania statute, which provided a "single crime of first-degree murder." *Id.* at 649 (Scalia, J., concurring in part). In other words, 18 U.S.C. § 1111, like its Arizona sibling, is indivisible due to its legislative lineage.

As noted by Justice Scalia, the dissenting opinion in *Schad* argued for a "subdivision" of first-degree murder into multiple crimes, which he and the plurality rejected. *Id.* at 649. The conclusion that first-degree murder is divisible tacitly applies the *Schad* dissent's "subdivision" view. In other words, *Jackson*'s conclusion that first-degree murder under 18 U.S.C. § 1111 is divisible adopts the *Schad* dissent's "subdivision" rationale. Therefore, that conclusion should be rejected as incompatible with the legislative history of 18 U.S.C. § 1111 and *Schad*'s holding.

B. In practice, first-degree murder is a treated as a single, indivisible crime.

Justice Scalia also supported the "single crime" view of first-degree murder by recognizing the long-established practice of allowing juries to consider both felony murder and premeditated murder as a single count in their deliberations. *See Schad*, 501 U.S. at 648-52 (Scalia, J., concurring). Juries presented with a single count of murder, which might be either "premeditated" or "felony," do not need to

unanimously determine which mode of first-degree murder was committed. He explained:

> As the plurality observes, it has long been the general rule that when a *single crime* can be committed in various ways, *jurors need not agree upon the mode of commission*. That rule is not only constitutional, *it is probably indispensable in a system that requires a unanimous jury verdict to convict*. When a woman's charred body has been found in a burned house, and there is ample evidence that the defendant set out to kill her, it would be absurd to set him free because six jurors believe he strangled her to death (and caused the fire accidentally in his hasty escape), while six others believe he left her unconscious and set the fire to kill her. While that seems perfectly obvious, it is also true, as the plurality points out, *see ante*, at 2497–2498, that one can conceive of novel "umbrella" crimes (a felony consisting of either robbery or failure to file a tax return) where permitting a 6–to–6 verdict would seem contrary to due process.

Id. at 649-50 (Scalia, J., concurring) (emphasis added) (citations omitted).

Because jurors do not need to reach unanimity regarding *which* of the two means or modes of killing support the "single crime" of first-degree murder, they only need to all agree that the death was accomplished by one of the means referenced in 18 U.S.C. § 1111, regardless of the breakdown of the jury's interpretation of the facts. Therefore, as a matter of unanimity of the jury verdict, under the Sixth Amendment, the "means" of accomplishing the crime of first-degree murder are *indivisible* from each other, according to Justice Scalia's analysis.

C. A finding that 18 U.S.C. § 1111 is divisible is incompatible with *Schad*.

Because 18 U.S.C. § 1111 describes a "single crime of first degree-murder that can be committed" in various ways, *Schad*, 501 U.S. at 649, the constitutional requirement of jury unanimity renders the statute's various means of committing

the crime indivisible. This conclusion follows from both the legislative history of the statute as well as its application. Any distinction between premeditated and felony murder in the statutory language is not an *element* of the crime charged, but simply alternative "means" or "modes of commission." Therefore, a finding that first-degree murder under 18 U.S.C. § 1111 is divisible is incompatible with *Schad*'s reasoning.

The Court should grant certiorari to make clear that first-degree murder is not divisible and does not qualify as a "crime of violence" under the "elements clause" of § 924(c), even though it may have qualified under the unconstitutional "residual clause." *Cf. Borden* 593 U.S. at 446-47 (Thomas, J., concurring) (explaining that while the statute at issue in *Borden* did not qualify under the force clause, it would have qualified under the residual clause).

IV. The Court should act now to address the question presented.

The status of federal first-degree murder as a crime of violence is an important question for people in Indian country and other federal enclaves. Moreover, the status of "malice aforethought" under the force clause is an important question in various contexts of federal law. Identical or nearly identical force clauses are found throughout the federal code and Sentencing Guidelines, *e.g.*, the Armed Career Criminal Act (18 U.S.C. § 924(e)(2)(B)(i)), mandatory life sentences for serious violent felonies (18 U.S.C. § 3559(c)(2)(F)(ii)), the Mandatory Victim Restitution Act (18 U.S.C. § 3663A(c)(1)(A)(i) (incorporating definition of "crime of violence" from 18 U.S.C. § 16)), the Bail Reform Act (18 U.S.C. § 3142(f)(1)(A)), the Immigration and Nationality Act (8 U.S.C. § 1101(a)(43)(F) (incorporating § 16)),

and the Sentencing Guideline provisions for career offenders and firearms offenses (USSG § 4B1.2(a)(1); USSG § 4B1.1; USSG § 2K2.1(a)).

The question of whether federal first-degree murder qualifies as a crime of violence is an important question of federal law that should be addressed by this Court.

V. This case is an ideal vehicle for the question presented.

This case squarely presents the issue of whether federal first-degree murder qualifies as a "crime of violence" under the force clause in § 924(c)(3)(A). If it does, Bagola's motion for judgment of acquittal on his § 924(c) count was properly denied. If it does not, Bagola's § 924(c) conviction and sentence were entered in violation of his due process rights. This case is an ideal vehicle for the question presented.

CONCLUSION

The petition for a writ of certiorari should be granted.

Dated this 12th day of February, 2025.

Respectfully submitted,

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