No. 24-1183

In the Supreme Court of the United States

ANTONIO LAMONT LIGHTFOOT, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether petitioner's prior Michigan conviction for assaultive bank robbery, Mich. Comp. Laws Ann. § 750.531, qualifies as a "serious violent felony" under 18 U.S.C. 3559(c).

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-28a) is reported at 119 F.4th 353. A prior opinion of the court of appeals is not published in the Federal Reporter but is reprinted at 84 Fed. Appx. 292. Another prior opinion of the court of appeals (Pet. App. 46a-50a) is not published in the Federal Reporter but is reprinted at 6 Fed. Appx. 181. The order of the district court (Pet. App. 31a-45a) is reported at 554 F. Supp. 3d 762.

JURISDICTION

The judgment of the court of appeals was entered on October 18, 2024. A petition for rehearing was denied on December 16, 2024 (Pet. App. 63a). On March 5, 2025, the Chief Justice extended the time within which to file a petition for a writ of certiorari to and including May 15, 2025, and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the District of Maryland, petitioner was convicted of bank robbery, in violation of 18 U.S.C. 2113, and brandishing a firearm during and in relation to a crime of violence, in violation of 18 U.S.C. 924(c). C.A. App. 19. He was sentenced to life imprisonment on the bank-robbery count, and a consecutive seven-year prison term on the firearm-brandishing count, to be followed by five years of supervised release. *Id.* at 20-21. The court of appeals affirmed. Pet. App. 46a-50a.

After his initial collateral challenges to his conviction were unsuccessful, petitioner received authorization to file a successive motion under 28 U.S.C. 2255 to vacate his sentence, in which he challenged the imposition of a mandatory life sentence under 18 U.S.C. 3559(c) for his bank-robbery conviction. See Pet. App. 3a. The district court denied that motion, and the court of appeals affirmed. *Id.* at 1a-28a, 31a-45a.

Petitioner later moved for a reduction in his term of imprisonment under 18 U.S.C. 3582(c)(1). See Pet. App. 29a. The district court granted that motion and reduced petitioner's custodial sentence to time served plus two days. *Id.* at 29a-30a. Petitioner is no longer in the custody of the Federal Bureau of Prisons (BOP).

1. On September 14, 1999, petitioner robbed a bank in Camp Springs, Maryland, of more than $8000 by brandishing a semi-automatic handgun and demanding money. Pet. App. 32a. Petitioner and his getaway driver were apprehended a short time later, after leading police officers on a high-speed chase. *Id.* at 46a-47a.

A federal grand jury in the District of Maryland returned an indictment charging petitioner with bank robbery, in violation of 18 U.S.C. 2113, and brandishing

a firearm during and in relation to a crime of violence, in violation of 18 U.S.C. 924(c)(1)(A). C.A. App. 14-15. A jury found petitioner guilty on both counts. Pet. App. 2a, 46a-47a.

2. A federal bank-robbery conviction ordinarily carries a statutory maximum sentence of 20 years of imprisonment. 18 U.S.C. 2113(a). But bank robbery qualifies as a "serious violent felony" under Section 3559(c), which provides that a person convicted of a serious violent felony "shall be sentenced to life imprisonment if," among other things, he has been convicted "on separate prior occasions" of "2 or more serious violent felonies," 18 U.S.C. 3559(c)(1)(A)(i).

The statutory definition of a "serious violent felony" includes:

> (i) a Federal or State offense, by whatever designation and wherever committed, consisting of * * * robbery * * * [and other enumerated offenses]; and
>
> (ii) any other offense punishable by a maximum term of imprisonment of 10 years or more that has as an element the use, attempted use, or threatened use of physical force against the person of another.

18 U.S.C. 3559(c)(2)(F). Here, the government noticed its intent to seek a mandatory life sentence under Section 3559(c) based on (1) petitioner's 1985 conviction for armed bank robbery in Virginia; and (2) his two 1990 convictions for armed bank robberies in Michigan. Pet. App. 2a & n.1; C.A. App. 17-18; see 18 U.S.C. 3559(c)(4).

Applying Section 3559(c), the district court sentenced petitioner to a term of life imprisonment on the federal bank-robbery count and to a consecutive, seven-year prison term on the firearm-brandishing count. Pet. App. 53a-54a. The court also ordered a five-year term of

supervised release. *Id.* at 55a. The court of appeals affirmed. *Id.* at 46a-50a.

3. Petitioner's initial collateral challenges to his convictions and sentence were unsuccessful. Pet. App. 3a. In 2016, the court of appeals authorized petitioner to file a successive motion under 28 U.S.C. 2255 to vacate his sentence based on *Samuel Johnson* v. *United States*, 576 U.S. 591 (2015), which held that the residual clause of the definition of a "violent felony" in the Armed Career Criminal Act of 1984, 18 U.S.C. 924(e)(2)(B), was unconstitutionally vague. C.A. App. 26-27.

In his successive Section 2255 motion, petitioner contended that his mandatory life sentence under Section 3559(c) should be vacated because the residual clause of the "serious violent felony" definition, 18 U.S.C. 3559(c)(2)(F)(ii), was similarly void for vagueness. C.A. App. 28-30. Petitioner maintained that, without the residual clause, a bank-robbery offense under Michigan Law, Mich. Comp. Laws Ann. § 750.531, is not a serious violent felony because it does not satisfy either the "enumerated offenses clause" (18 U.S.C. 3559(c)(2)(F)(i)) or the "force clause" (18 U.S.C. 3559(c)(2)(F)(ii)). C.A. App. 38-40, 66-69.

The district court denied petitioner's motion. Pet. App. 31a-45a. The court determined that the Michigan bank-robbery statute, Mich. Comp. Laws Ann. § 750.531, is divisible as between the assaultive and non-assaultive versions of the offense and concluded that petitioner was convicted of assaultive bank robbery. Pet. App. 35a-42a. The court then found that assaultive bank robbery is a serious violent felony because it matches the definition of robbery in the enumerated-offenses clause, 18 U.S.C. 3559(c)(2)(F)(i). See Pet. App. 43a ("Assaultive bank robbery, like robbery as defined in

[Section] 3559(c), is achieved by a 'taking' employing 'force' or 'violence,' or by 'putting in fear' another person."). The court did not address whether Michigan assaultive bank robbery alternatively satisfies the force clause. *Id.* at 45a n.5.

4. The court of appeals granted a certificate of appealability and affirmed the denial of petitioner's successive Section 2255 motion. Pet. App. 4a-19a.

The court of appeals agreed that the Michigan bank-robbery statute is divisible and that the charging documents showed that petitioner had been convicted of assaultive bank robbery. Pet. App. 5a-12a. Looking to its precedent, the court observed that an offense qualifies as robbery under Section 3559(c)(3)(A) if it involves "a taking from another by force and violence, or by intimidation." *Id.* at 13a (quoting *United States* v. *Willie Johnson*, 915 F.3d 223, 233 (4th Cir.), cert. denied, 140 S. Ct. 268 (2019)).

The court of appeals explained that Michigan assaultive bank robbery satisfies that requirement, because a conviction under the state statute "involves an intended taking from another by acts that 'confine, maim, injure or wound, or attempt, or threaten [to do so],' or 'put in fear any person for the purpose of stealing' or compel or attempt to compel a person 'by intimidation.'" Pet. App. 14a (quoting Mich. Comp. Laws Ann. § 750.531).[1] The

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[1] In full, Michigan's statute defines assaultive bank robbery to occur whenever:

> [a]ny person who, with intent to commit the crime of larceny, or any felony, shall confine, maim, injure or wound, or attempt or threaten to [do so], or shall put in fear any person for the purpose of stealing from any building, bank, safe, or other depository of money, bond or other valuables, or shall by intimidation, fear or threats compel, or attempt to compel any person to

court found that such conduct amounts to "a taking from another by force or violence or by intimidation or putting in fear." *Ibid.*

The court of appeals rejected petitioner's assertion that because assaultive bank robbery "can be accomplished by confining another," it includes conduct such as "merely locking someone in a room" without force or intimidation. Pet. App. 15a (citations omitted). The court found that petitioner's reading of the statute "cannot be squared with Michigan law." *Ibid.* The court noted that when the Michigan statute was enacted in 1877, the term "'confine' meant much the same thing as it does today: to restrain or imprison, whether 'by threats of violence with a present force, or by physical restraint of the person.'" *Ibid.* (quoting *Confinement*, Black's Law Dictionary (1st ed. 1891)). And while the court accepted that "[v]iewing the term in isolation, it may not necessarily require force or threat of force against a person," the court explained that "the context of Michigan's robbery jurisprudence strongly suggests that robbery by confinement requires force or intimidation, just like all the other assaultive acts listed in the bank robbery statute." *Ibid.*

The court of appeals explained that "Michigan courts instruct that 'the assaultive offense of bank robbery requires the use of force or intimidation against another person.'" Pet. App. 15a (brackets, citation, and ellipses omitted) (quoting *People* v. *Douglas*, 478 N.W.2d 737, 739 (Mich. Ct. App. 1991) (per curiam)). It observed that Michigan cases "consistently describe assaultive

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disclose or surrender the means of opening any building, bank, safe, vault or other depository of money, bonds, or other valuables.

Mich. Comp. Laws Ann. § 750.531.

bank robbery as involving 'assaultive conduct against a person.'" *Id.* at 15a-16a (citation omitted); see *id.* at 16a (citing Michigan decisions). And it found that petitioner's "suggestion that assaultive bank robbery could be accomplished by confining a person without force or intimidation sits uneasily with Michigan's conception of robbery generally and assaultive bank robbery more specifically." *Ibid.*

The court of appeals added that "[p]erhaps that is why [petitioner] has not identified any case where confinement without force or fear was the basis of an assaultive bank robbery conviction." Pet. App. 16a. And in response to petitioner's contention that the "'plain language' of the statute 'criminaliz[ing] the act of confining another'" inherently encompasses conduct outside the scope of Section 3559(c)'s definition of a predicate offense, the court explained that the Section 3559(c) definition "does not exclude robbery by confinement" as such, but instead "excludes takings accomplished without force or violence or by intimidation or putting in fear." *Id.* at 17a (citation omitted). The court stated that petitioner "therefore * * * must do more than show * * * that it is 'theoretical[ly] possib[le]' to prosecute such conduct under the statute, * * * [h]e must show a 'realistic probability' that the State would apply its assaultive bank robbery statute to the hypothesized non-assaultive conduct." *Ibid.* (quoting *Moncrieffe* v. *Holder*, 569 U.S. 184, 206 (2013)).

The court of appeals explained that this case differed from circuit precedent under which "'the plain language of [a] statute, supported by decisions of [the state] courts and [legislature,] made clear that'" the state crime encompassed conduct that went beyond the bounds of the federal definition of a predicate offense. Pet. App.

18a (brackets omitted) (discussing *Gordon* v. *Barr*, 965 F.3d 252 (4th Cir. 2020)). The court observed that petitioner had cited "no Michigan judicial decisions or Michigan laws in support of his capacious construction of 'confine.'" *Ibid.* And it emphasized that the statutory text did not "resolve the question" in petitioner's favor "by referring, for example, to 'confinement by deceit' or even 'confinement by any means.'" *Ibid.*

"Instead," the court of appeals found, "Michigan courts have consistently interpreted assaultive bank robbery, like other forms of robbery, to 'require the use of force or intimidation against another person,' with no exception ever uttered for robbery by confinement." Pet. App. 18a-19a (quoting *Douglas*, 478 N.W.2d at 739). And the court emphasized that its reading of Michigan law "accords with the statutory context, where 'confine' is listed alongside 'maim, injure, or wound,' 'put in fear,' and compel 'by intimidation, fear or threats.'" *Id.* at 19a (quoting Mich. Comp. Laws Ann. § 750.531).[2]

Judge Benjamin dissented. Pet. App. 20a-28a. Relying in part on an unpublished state-court decision, she took the view that Michigan assaultive bank robbery encompasses conduct that goes beyond the definition of a serious violent felony under Section 3559(c). *Id.* at 26a.

5. Petitioner subsequently filed a motion for reduction in his term of imprisonment under 18 U.S.C. 3582(c)(1), which the government did not oppose. See D. Ct. Doc. 150 (Mar. 3, 2025); D. Ct. Doc. 152 (May 9, 2025). On May 14, 2025, the district court granted petitioner's motion and reduced his total prison sentence to time

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[2] In light of its determination that the Michigan crime qualified as a Section 3559(c) predicate under the enumerated-offenses clause, the court of appeals, like the district court, did not address the force clause. Pet. App. 12a.

served plus two days, leaving unchanged his five-year term of supervised release. Pet. App. 29a-30a. Petitioner has been released from the custody of the BOP. See BOP, *Find an inmate*, https://www.bop.gov/inmateloc/ (inmate register number 07750-016).

ARGUMENT

Petitioner contends (Pet. 10-34) that the decision below deepens a conflict in the circuits over how to apply the categorical approach when the plain language of the state statute defines a predicate offense more broadly than the relevant federal definition. Further review is not warranted. The court of appeals correctly determined that neither "the plain text" nor interpretive "jurisprudence" extends Michigan's assaultive-bank-robbery offense beyond the ambit of federal robbery. Pet. App. 15a, 18a. The decision below thus does not implicate the conflict asserted by petitioner. This Court has recently and repeatedly denied petitions raising similar issues,[3] and the same result is appropriate here. Indeed, given petitioner's recent release from prison, this case would be an especially poor vehicle for considering the issue.

1. As a general matter, to determine whether a prior conviction supports a sentencing enhancement like the one in 18 U.S.C. 3559(c), courts employ a "categorical

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[3] See, *e.g.*, *Zuniga-Ayala* v. *Garland*, 145 S. Ct. 768 (2024) (No. 24-103); *Bragg* v. *United States*, 143 S. Ct. 1062 (2023) (No. 22-6130); *Tinlin* v. *United States*, 143 S. Ct. 1054 (2023) (No. 21-8191); *Womack* v. *United States*, 143 S. Ct. 468 (2022) (No. 22-5892); *Croft* v. *United States*, 142 S. Ct. 347 (2021) (No. 21-297); *Capelton* v. *United States*, 141 S. Ct. 927 (2020) (No. 20-6122); *Alexis* v. *Barr*, 141 S. Ct. 845 (2020) (No. 20-11); *Vetcher* v. *Barr*, 141 S. Ct. 844 (2020) (No. 19-1437); *Burghardt* v. *United States*, 140 S. Ct. 2550 (2020) (No. 19-7705); *Eady* v. *United States*, 140 S. Ct. 500 (2019) (No. 18-9424).

approach," under which they compare the state offense with the relevant federal definition. *E.g.*, *Mathis* v. *United States*, 579 U.S. 500, 504 (2016). If the state statute in question lists multiple alternative elements, it is "divisible" into different offenses, and a federal court may apply the "modified categorical approach." *Id.* at 505 (citations omitted). Under that approach, a court may "look[] to a limited class of documents (for example, the indictment, jury instructions, or plea agreement and colloquy) to determine what crime, with what elements, [the] defendant" was found to have committed. *Ibid.* And under both the traditional categorical approach and the modified categorical approach, if the definition of the state offense is broader than the relevant generic (or federal) definition, the prior state conviction does not qualify. *Id.* at 504.

Petitioner does not challenge the court of appeals' determinations that Michigan's bank-robbery statute, Mich. Comp. Laws Ann. § 750.531, is divisible and that his prior convictions under that statute were for assaultive bank robbery. Pet. App. 5a-12a; see Pet. 9 n.7. Nor does petitioner dispute that the definition of the relevant enumerated offense here—"robbery (as described in section 2111, 2113, or 2118)" of Title 18, 18 U.S.C. 3559(c)(1)(F)(i)—is satisfied by the taking or attempted taking of something of value "by force and violence, or by intimidation." *United States* v. *Willie Johnson*, 915 F.3d 223, 230 (4th Cir.) (quoting 18 U.S.C. 2111), cert. denied, 140 S. Ct. 268 (2019); see Pet. 28. And the court correctly concluded that, even in its least culpable form, Michigan assaultive bank robbery satisfies the definition of federal robbery in the enumerated-offenses clause, 18 U.S.C. 3559(c)(2)(F)(i). Pet. App. 14a-17a.

The Michigan statute requires "an intended taking from another by acts that 'confine, maim, injure or wound, or attempt, or threaten [to do so],' or 'put in fear any person for the purpose of stealing' or compel or attempt to compel a person 'by intimidation.'" Pet. App. 14a (quoting Mich. Comp. Laws Ann. § 750.531). The Michigan Supreme Court has consistently held that "Michigan's concept of robbery is larceny 'with the additional element of violence or intimidation.'" *Id.* at 16a (quoting *People* v. *Chamblis*, 236 N.W.2d 473, 481 (Mich. 1975), overruled on other grounds by *People* v. *Cornell*, 646 N.W.2d 127 (Mich. 2002)); see, *e.g.*, *People* v. *Yeager*, 999 N.W.2d 490, 500 (Mich. 2023) (citing "the use of force" as the element distinguishing robbery from larceny) (quotation marks and emphasis omitted); *People* v. *Williams*, 814 N.W.2d 270, 279-280 & n.45 (Mich. 2012) (describing "the understanding, long recognized in Michigan, that the greater social harm perpetuated in a robbery is the use of force rather than the actual taking of another's property"); see also *People* v. *Douglas*, 478 N.W.2d 737, 739 (Mich. Ct. App. 1991) (per curiam) (instructing that "the assaultive offense of bank robbery * * * require[s] the use of force or intimidation against another person"); *People* v. *Campbell*, 418 N.W.2d 404, 406-407 (Mich. Ct. App. 1987) (per curiam) (concluding that the language of the assaultive-bank-robbery provision "makes it clear that the prohibited conduct is the *threatening* or *injuring* of another in order to take money").[4]

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[4] The dissent below relied on an unpublished decision of the Michigan Court of Appeals, which states that, under Mich. Comp. Laws Ann. § 750.531, "there is no requirement that a defendant actually threaten a bank teller with harm." *People* v. *Madison*, No. 316580, 2014 WL 4495223, at *2 (Mich. Ct. App. Sept. 11, 2014) (per curiam);

Notwithstanding those precedents, petitioner argues that Michigan assaultive bank robbery is broader that Section 3559(c)'s definition of robbery, on the theory that the Michigan statute "criminalizes larceny committed through 'confinement,'" which allegedly encompasses "nonviolent conduct." Pet. 22-23 (citations omitted). But as the court of appeals correctly determined, that interpretation runs counter to both the statutory text and the state-court decisions interpreting it. As recounted in the decision below, when the Michigan statute was enacted in 1877, the term "'confine'" meant "to restrain or imprison, whether by threats of violence with a present force or by physical restraint of the person." Pet. App. 15a (citation omitted). Context shows that the term as used in the Michigan statute requires assaultive conduct, as the statute lists "'confine' * * * alongside 'maim, injure, or wound,' 'put in fear,' and compel 'by intimidation, fear, or threats.'" *Id.* at 19a; see *Fischer* v. *United States*, 603 U.S. 480, 487 (2024) ("[T]he canon of *noscitur a sociis* teaches that a word is 'given more precise content by the neighboring words with which it is associated'" and thereby "'avoid[s] ascribing to one word a meaning so broad that it is inconsistent with' 'the company it keeps.'") (citations omitted). And as noted above, "Michigan's robbery jurisprudence strongly suggests that robbery by confinement requires force or intimidation, just like all the other assaultive acts listed in the bank robbery statute." Pet. App. 15a; accord *United States* v. *Lucas*, 736 Fed.

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see Pet. App. 24a (Benjamin, J., dissenting). But the court went on to find sufficient evidence that the defendant's actions constituted "an implied threat" to the bank teller. See *Madison*, 2014 WL 4495223, at *2; see also Pet. App. 19a n.5 (explaining why the dissent's reliance on *Madison* was misplaced).

Appx. 593, 596-597 (6th Cir. 2018) (finding that confinement under Mich. Comp. Laws Ann. § 750.531 carries at least an implicit threat of violent physical force).

2. Petitioner asserts (Pet. 10-25) a conflict among the circuits about the application of this Court's requirement of "a realistic probability, not a theoretical possibility, that the State would apply its statute to conduct that falls outside" the federal definition. *Gonzales* v. *Duenas-Alvarez*, 549 U.S. 183, 193 (2007). He contends (Pet. 19) that, in the Fifth Circuit's view, a defendant must identify a case in which the State has applied the statute to nonqualifying conduct "even when the statute by its plain language criminalizes broader conduct than the relevant federal definition." And he claims (Pet. 13) that, in contrast, the First, Second, Third, Sixth, Seventh, Eighth, Ninth, Tenth, and Eleventh Circuits have held that when the "plain language" of the predicate state offense covers non-qualifying conduct, "the 'realistic probability' test need not be considered or by definition is satisfied."

This case does not implicate the asserted conflict. Here, the court of appeals did not conclude that, by its "plain language," Pet. 19, Michigan's assaultive-bank-robbery statute was broader than federal robbery. Instead, it found that both the statutory text and relevant state-court decisions support a definition of Michigan assaultive bank robbery that fits the federal definition in Section 3559(c). See Pet. App. 14a-19a. The court of appeals thus had no occasion to decide that a defendant convicted under a facially overbroad statute must show that the State actually prosecutes conduct beyond the federal definition.

Indeed, the Fourth Circuit has previously stated that, "when the [S]tate, through plain statutory language, has defined the reach of a state statute to include conduct that

the federal offense does not, the categorical analysis is complete; there is no categorical match." *Gordon* v. *Barr*, 965 F.3d 252, 260 (4th Cir. 2020). The decision below expressly recognized that precedent, and did not disagree with it. See Pet. App. 17a-18a. But in this case, the court of appeals found, *inter alia*, that the plain text was *not* dispositive in petitioner's favor. *Id.* at 18a.

The court below thus already applies the rule urged by petitioner; that rule simply did not yield his desired result in this case. Contrary to his assertions (Pet. 22-25), petitioner was not required to provide evidence of actual prosecutions that would plainly be covered by the text of the Michigan statute. Instead, the court of appeals made clear that prosecutions of the sort that petitioner posited would *not* plainly be covered by the statute—indeed, it appeared that they would not be covered at all. Petitioner "cite[d] no Michigan judicial decisions or Michigan laws in support of his capacious construction of 'confine,'" which ran counter to both statutory context and Michigan decisional law. Pet. App. 18a. And he could not show, either that way or through actual prosecutions, "a 'realistic probability' that the State would apply its assaultive bank robbery statute to the hypothesized non-assaultive conduct." *Id.* at 17a (citation omitted).[5]

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[5] Petitioner errs in suggesting that the court of appeals improperly relied on state-court decisions interpreting the state statute. See, *e.g.*, Pet. 24 (asserting that the court of appeals "made the equivalent of an '*Erie* guess' as to how the Michigan courts likely would limit the scope of a state statute"). Considering "how a state court would interpret its own State's laws" accords due "respect" to the role of "state courts as the final arbiters of state law in our federal system." *United States* v. *Taylor*, 596 U.S. 845, 859 (2022); see generally *Curtis Johnson* v. *United States*, 559 U.S. 133, 138 (2010) (federal courts are "bound by [a state supreme court's] interpretation

3. In any event, this case would be a poor vehicle for addressing the question presented, because petitioner's claim challenged only the custodial sentence for his bank-robbery offense. See D. Ct. Doc. 81-1, at 1 (Apr. 9, 2020). He has already received a reduction in his term of imprisonment that has resulted in his release from prison. See p. 9, *supra*. The only remaining portion of petitioner's sentence is his five-year term of supervised release, Pet. App. 55a, which he did not challenge below, see Pet. C.A. Br. 5. Thus, whether or not his challenge to his bank-robbery sentence is technically moot, he has already received the relief he sought in this litigation. Further review in this case is not warranted.

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of state law, including its determination of the elements of" the offense). And to the extent petitioner simply disagrees with the court of appeals' reading of Michigan decisions, that state-law question does not warrant this Court's review. See *Bowen* v. *Massachusetts*, 487 U.S. 879, 908 (1988) ("We have a settled and firm policy of deferring to regional courts of appeals in matters that involve the construction of state law.").

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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