No. _____

In the
Supreme Court of the United States

José M. Rojas-Tapia,

Petitioner,

v.

United States of America,

Respondent.

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

Petition for Writ of Certiorari

Rachel Brill
Federal Public Defender, District of Puerto Rico

Franco L. Pérez-Redondo
Kevin E. Lerman
Counsel of Record
Robert Fitzgerald
Assistant Federal Public Defenders

241 F.D. Roosevelt Ave.
San Juan, PR 00918
(787) 281-4992

Counsel for Petitioner

QUESTIONS PRESENTED

I. Does aiding and abetting a mail offense pursuant to 18 U.S.C. § 2114(a) constitute a crime of violence for purposes of serving as a predicate offense under 18 U.S.C. § 924(c)?

II. Does an appellate court apply de novo review or clear error review to a district court's determination of the crime of conviction under the modified categorical approach?

LIST OF PARTIES

José M. Rojas-Tapia, Petitioner, was the petitioner-appellant below.

United States of America, Respondent, was the respondent-appellee below.

LIST OF RELATED PROCEEDINGS

United States District Court for the District of Puerto Rico:

United States v. Rojas-Tapia, 99-cr-309-3 (D.P.R.)
- Judgment entered October 10, 2001
- Amended judgment entered January 19, 2005

United States v. Rojas-Tapia, 99-cr-385-1 (D.P.R.)
- Judgment entered October 10, 2001
- Amended judgment entered January 19, 2005

Rojas-Tapia v. United States, No. 17-cv-1758 (D.P.R.)
- Judgment entered May 1, 2020

Rojas-Tapia v. United States, No. 17-cv-1759 (D.P.R.)
- Judgment entered July 13, 2020

United States Court of Appeals for the First Circuit:

United States v. Rojas-Tapia, Nos. 01-2637, 01-2638 (1st Cir.)
- Judgment vacating and remanding to correct supervised release conditions entered November 19, 2024

Rojas-Tapia v. United States, Nos. 20-1514, 20-1735 (1st Cir.)
- Opinion affirming judgments entered March 3, 2025
- Order denying petition for rehearing entered July 9, 2025

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

PETITION FOR WRIT OF CERTIORARI

José Rojas-Tapia petitions the Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the First Circuit.

OPINIONS BELOW

The First Circuit's published opinion is reported at *Rojas-Tapia v. United States*, 130 F.4th 241 (1st Cir. 2025), and reproduced at App. 2a. The order denying rehearing en banc is reproduced at App. 1a.

JURISDICTION

The First Circuit filed its opinion on March 3, 2025. App. 2a. After Mr. Rojas filed a timely petition for rehearing, the court denied it on July 9, 2025. App. 1a. On October 10, 2025, Justice Jackson extended the time within which to file a petition for writ of certiorari up to and including December 6, 2025. *See* Supreme Court Rule 13.5. The instant petition for writ of certiorari is timely filed, and this Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

The Fifth Amendment states that "[n]o person shall ... be deprived of life, liberty, or property, without due process of law."

18 U.S.C. § 2114(a) provides:

> Assault.—A person who assaults any person having lawful charge, control, or custody of any mail matter or of any money or other property of the United States, with intent to rob, steal, or purloin such mail matter, money, or other property of the United States, or robs or attempts to rob any such person of mail matter, or of any money, or other property of the United States, shall, for the first offense, be imprisoned not more than ten years; and if in effecting or attempting to effect such robbery he wounds the person having custody of such mail, money, or other property of

> the United States, or puts his life in jeopardy by the use of a dangerous weapon, or for a subsequent offense, shall be imprisoned not more than twenty-five years.

18 U.S.C. § 924(c)(1)(A) criminalizes conduct where an individual, "during and in relation to any crime of violence..., uses or carries a firearm, or who, in furtherance of any such crime, possesses a firearm." The statute defines "crime of violence" as a crime that:

> (A) has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or
>
> (B) that by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

18 U.S.C. § 924(c)(3).

INTRODUCTION

This case presents two cert-worthy questions about the categorical approach that have produced outright conflict in the courts of appeals. Both turn on 18 U.S.C. § 2114(a), a federal statute intended to protect mail carriers and others having lawful charge, control, or custody of mail, money, or other property of the United States. The statute has remained materially unchanged for more than a century and now frequently serves as a predicate "crime of violence" under 18 U.S.C. § 924(c).

The first question is whether, and on what theory, § 2114 qualifies as a "crime of violence" under § 924(c)(3)(A). Although each court to consider the question has determined that some version of § 2114(a) satisfies the elements clause of § 924(c)(3), they have reached that conclusion by adopting mutually

inconsistent readings of the statute's structure. One court treats § 2114(a) as divisible into six separate offenses; another identifies only two elements in the aggravated form; a third understands that clause to add a single additional element; a fourth reads it as containing two distinct aggravators. And the First Circuit below declined to commit to whether the aggravated form contains one, two, or three elements. The result is that a single federal robbery statute now means different things in different circuits.

The second question is whether an appellate court reviews de novo, or only for clear error, a district court's identification of the offense of conviction under the modified categorical approach. In this case, the First Circuit became the first court of appeals to adopt clear-error review, overruling its own precedent and breaking from the uniform practice of other circuits that treat the issue as a legal question reviewed de novo. The First Circuit's shift rests on a misreading of *Pereida v. Wilkinson*, 592 U.S. 224 (2021), an immigration case that expressly distinguished criminal proceedings from removal proceedings in which "Sixth Amendment concerns are not present." *Id.* at 242.

These questions warrant this Court's intervention. The meaning of § 2114(a) and the standard of review for predicate-offense determinations recur across federal criminal dockets and carry real sentencing consequences. Whether defendants face additional years in prison should turn on uniform law, not geography.

STATEMENT OF THE CASE

In 1999, the government charged Mr. Rojas in two cases for violating the "Assault" provision of 18 U.S.C. § 2114 based on his involvement in two incidents at

post offices in Puerto Rico. Because a firearm was used during the incidents, the government also charged him with violating 18 U.S.C. § 924(c), which criminalizes the use of a firearm during a "crime of violence." Pursuant to a plea agreement, Mr. Rojas pleaded guilty to all charges. The district court sentenced him to concurrent terms of imprisonment of 262 months for the § 2114 offenses and consecutive terms of imprisonment of 300 months and 120 months for the § 924(c) offenses, for a total of 682 months (56 years, 10 months). Mr. Rojas did not appeal.

After this Court decided *Johnson v. United States*, 576 U.S. 591, 597 (2015), striking the residual clause in 18 U.S.C. § 924(e)(2)(B)(ii) as unconstitutionally vague, Mr. Rojas sought relief under 28 U.S.C. § 2255. He argued that a violation of § 2114(a) did not qualify as a predicate crime of violence under § 924(c) absent the residual clause in § 924(c)(3)(B). While his motion was pending, this Court decided *United States v. Davis*, 588 U.S. 445, 448 (2019), holding the residual clause in § 924(c)(3)(B) was unconstitutionally vague.

The district court denied relief. According to the district court, the § 2114(a) offense underlying each § 924(c) conviction qualified as a "crime of violence" under the force clause of § 924(c)(3)(A).

The First Circuit affirmed. The court held the disjunctive phrasing in § 2114(a)'s aggravated offense did not constitute alternative means of a single element. *Rojas-Tapia*, 130 F.4th at 250-52. And the court held that an appellate court reviews only for clear error the district court's identification of the offense of conviction under the modified categorical approach. *Id.* at 247-48.

LEGAL BACKGROUND

With roots tracing back to the formative years of the nation, 18 U.S.C. § 2114(a) "had its genesis as a law to protect mail carriers from assault and robbery of mail matter." *García v. United States*, 469 U.S. 70, 75 (1984); *see United States v. Bryant*, 949 F.3d 168, 175 (4th Cir. 2020) (tracing § 2114(a)'s origins to an Act of the Second Congress in 1792). And since the 1790s, the law has identified an aggravated form of the offense, which included the same three statutory alternatives as exist today. *Bryant*, 949 F.3d at 175. Other than recodification, § 2114(a) has "read essentially the same" since 1909. *Id.* at 176-77.

Under 18 U.S.C. § 924(c), any person who uses or carries a firearm "during and in relation to any crime of violence" is subject to punishment. Congress defined a "crime of violence" as "an offense that is a felony" and:

> (A) has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or
>
> (B) that by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

18 U.S.C. § 924(c)(3).

This Court struck the second clause, known as the "residual clause," in *Davis*, 588 U.S. at 470, on the ground that it was unconstitutionally vague. Thus, only the first clause, known as the "elements clause" or "force clause," remains.

To determine whether a crime falls within the elements clause, courts apply the categorical approach and ask whether the elements of the statute of conviction meet the federal definition of a "crime of violence." *See Mathis v. United States*, 579

U.S. 500, 504 (2016); *Taylor v. United States*, 495 U.S. 575, 602 (1990). "If any—even the least culpable—of the acts criminalized do not entail that kind of force, the statute of conviction does not categorically match the federal standard, and so cannot serve as ... [a] predicate" felony. *Borden v. United States*, 593 U.S. 420, 424 (2021) (plurality opinion).

Where a statute of conviction contains disjunctive phrasing, a court must engage in a "threshold inquiry" and determine whether the statute contains alternative elements or alternative means. *Mathis*, 579 U.S. at 512, 517. If the statute contains alternative elements, the statute is "divisible," and the court may engage in a modified categorical approach, looking to "a limited class of documents (for example, the indictment, jury instructions, or plea agreement and colloquy) to determine what crime, with what elements, a defendant was convicted of." *Id.* at 505-06. But if the statute contains alternative means, the statute is indivisible. Under those circumstances, a district court looks to the least-culpable conduct criminalized and determines whether it meets the federal definition of a crime of violence. *Id.* at 516 (explaining "a court may not look behind the elements of a generally drafted statute to identify the means by which a defendant committed a crime").

REASONS FOR GRANTING THE PETITION

Certiorari is warranted for two reasons. First, the decision below deepens a mature and intractable split over the structure and meaning of § 2114(a), a federal statute that recurs in § 924(c) and career-offender litigation nationwide. Second, the First Circuit's adoption of clear-error review for predicate-offense determinations

under the modified categorical approach creates a sharp conflict with every other court of appeals and is based on a misreading of this Court's decision in *Pereida*. Resolving both questions is essential to ensuring consistent application of federal law, safeguarding individuals from unwarranted charges and sentencing enhancements, and restoring coherence to the categorical-approach framework.

I. The circuits are divided on how to interpret 18 U.S.C. § 2114(a) in determining whether it can serve as a crime-of-violence predicate, and the First Circuit's decision deepens that divide.

The circuits are split on the interpretation of 18 U.S.C. § 2114(a). Although each circuit to consider whether § 2114(a) constitutes a crime of violence has answered affirmatively, they have reached that bottom-line result only by adopting incompatible readings of the statute that cast significant doubt on the correctness of that determination. The fracture is now too deep for lower courts to resolve without this Court's guidance.

Before the First Circuit, the parties agreed that § 2114(a) is divisible into two offenses—a simple form and an aggravated form—separated by a semicolon. *Rojas-Tapia*, 130 F.4th at 249. The parties disagreed, however, about whether the aggravated form is further divisible. Mr. Rojas argued that the statutory alternatives of the aggravated form of the offense—wounding, putting a mail carrier's life in jeopardy by the use of a dangerous weapon, and a committing a subsequent simple mail robbery—constituted means of violating the statute, not separate elements. And, because the simple form does not require the use or attempted use of force, he argued, the aggravated form cannot be a crime of violence if it can be committed by repeated commission of the simple form.

The First Circuit rejected Mr. Rojas's contention that the three statutory alternatives were means of a single element. *Rojas-Tapia*, 130 F.4th at 249. But the court stopped short of identifying the three as elements. Instead, the court equivocated: wounding and placing a postal worker's life in jeopardy could be either alternative means of a single offense or distinct elements. And the recidivist provision could be either an element or merely a sentencing factor. The decision left open whether the aggravated form contained one, two, or three elements. The First Circuit's certainty that the three alternatives in the aggravated form of § 2114(a) were not means is undermined by its wavering as to the nature of the three and their relationship to each other. At a minimum, the First Circuit's hedging fails to satisfy this Court's "demand for certainty" in this context. *Mathis*, 579 U.S. at 519.

The circuits have reached markedly different conclusions about § 2114's structure. The Second Circuit holds that § 2114(a) "is divisible into multiple distinct offenses"—a simple form divisible into three offenses and an aggravated form divisible into three more. *Pannell v. United States*, 115 F.4th 154, 160 (2d Cir. 2024). In the Second Circuit's view, the statute is divisible into a simple form (or "base offense") and an aggravated form, and both forms are further divisible into three offenses each. *Id.* at 160-61. The Fourth Circuit appears to view the aggravated form as having only two elements and has not addressed whether the simple form is further divisible. *See United States v. Bryant*, 949 F.3d 168, 174 (4th Cir. 2020). The Sixth Circuit, meanwhile, treats the aggravated form as containing a single "additional element—'wound[ing]' the victim or putting the victim's 'life in jeopardy by the use of a dangerous weapon.'" *Knight v. United States*, 936 F.3d 495,

498-99 (6th Cir. 2019). The Seventh Circuit has identified both simple and aggravated forms of the offense. *United States v. Enoch*, 865 F.3d 575, 580 (7th Cir. 2017). The court did not recognize the recidivist alternative in the aggravated form and was not precise as to whether the remainder of the aggravated form involved one or two elements. *Id.* at 581. The Ninth Circuit has concluded that the statute is divisible into two forms—simple and aggravated—and that the aggravated form of the offense is further divisible into three separate offenses containing "substantively different elements." *United States v. Buck*, 23 F.4th 919, 925, 927 (9th Cir. 2022).

Given these various interpretations of § 2114(a) along with the reasons Mr. Rojas advanced below (punctuation, disjunctive statutory text, same punishment for each alternative, history of statute, quick peek at *Shepard* documents), the better reading of § 2114(a) recognizes the statute contains two offenses—simple and aggravated—and that neither is divisible further. Under that reading, a conviction under § 2114(a) is not a crime of violence.

The "uniformity and consistency of federal criminal law" are critically important aspects of a fair criminal justice system. *Tafflin v. Levitt*, 493 U.S. 455, 465 (1990) (recognizing "danger of inconsistent application of federal criminal law"). The current disarray presents an unacceptable "danger of inconsistent application of federal criminal law." *Id.* at 464-65. This Court should grant this petition and reach the merits of this issue.

II. The First Circuit's adoption of clear-error review for modified categorical approach determinations creates a circuit split and warrants certiorari.

Even if § 2114(a) is divisible into separate aggravated offenses and the modified categorical approach applies, the First Circuit's adoption of clear-error review warrants certiorari. The First Circuit now stands alone among the circuits in applying clear-error review to determine which statutory alternative formed the basis of conviction under the modified categorical approach. Every other circuit continues to apply de novo review—even in cases decided after this Court's decision in *Pereida*. *See, e.g.*, *United States v. Fields*, 53 F.4th 1027, 1043 (6th Cir. 2022); *Walcott v. Garland*, 21 F.4th 590, 593, 598 (9th Cir. 2021). The First Circuit's departure from uniform nationwide practice creates the very type of direct conflict on an important federal question that warrants this Court's intervention under Supreme Court Rule 10(a).

A. The First Circuit's decision departs from its own precedent and the uniform rule of other circuits.

The shift in the First Circuit occurred in the case below. *See Rojas-Tapia*, 130 F.4th at 247-48; *see also Forteza-García v. United States*, 130 F.4th 18, 22 (1st Cir. 2025). Before *Rojas-Tapia*, the First Circuit, like every other circuit, applied de novo review to a district court's identification of the offense of conviction under the modified categorical approach. *See United States v. Brown*, 631 F.3d 573, 577 (1st Cir. 2011). In *Brown*, the First Circuit observed that determining "[w]hether a prior conviction qualifies as a predicate offense" is a question of law reviewed de novo. *Id.* at 577. Consistent with *Shepard v. United States*, 544 U.S. 13, 20-21 (2005), and

this Court's categorical approach cases, the First Circuit explained that identifying the particular crime of conviction required "consult[ing] only a restricted set of *Shepard*-approved sources." *Id.* The court did not divide the inquiry into legal versus factual components, and it did not defer to a district court's parsing of the same judicial documents. It reviewed those records, without deference, and identified the predicate offense itself.

The First Circuit abandoned that rule in this case. It now holds that identifying the specific offense of conviction under a divisible statute is a question of fact reviewed only for clear error. *Rojas-Tapia*, 130 F.4th at 247-48. This new rule conflicts with the First Circuit's own precedent in *Brown*, with decisions from every other circuit to address the question, and with this Court's categorical approach jurisprudence. *See Fields*, 53 F.4th at 1043; *Walcott*, 21 F.4th at 598; *United States v. Irons*, 849 F.3d 743, 747 n.4 (8th Cir. 2017) ("[W]e apply de novo the modified categorical approach without reference to the underlying facts of [the defendant's] conviction.").

B. *Pereida* provides no basis for the First Circuit's departure.

The First Circuit justified its departure by invoking a single sentence from *Pereida*: that "ask[ing] what crime the defendant was convicted of committing is to ask a question of fact." 592 U.S. at 238; *see Rojas-Tapia*, 130 F.4th at 247-48 (concluding that *Pereida* "foreclose[s]" the argument that identifying what offense a defendant was convicted of is a legal question subject to de novo review, because *Pereida* held that this question is one of fact). But that language arose in a fundamentally different context—civil removal proceedings under the Immigration

and Nationality Act (INA)—and addressed burden allocation, not the standard of appellate review. The First Circuit's reading stretches *Pereida* far beyond its domain.

Pereida itself forecloses the First Circuit's reliance on it. The Court emphasized that criminal categorical-approach cases operate under "different instructions," and specifically noted that "Sixth Amendment concerns are not present" in the immigration setting. *Pereida*, 592 U.S. at 240 n.7. In the criminal setting, the "categorical approach demands certainty from the government" whereas "the INA's demands it from the" noncitizen seeking relief from removal. *Id.* These frameworks cannot simply be transposed. The First Circuit inverted *Pereida*'s caution and imported an ambiguity-tolerating civil rule into a criminal setting, an area where certainty is constitutionally required.

Moreover, *Pereida*'s observation that identifying a conviction poses a "question of fact" arose in the context of determining who bears the burden of proof when *Shepard* records are inconclusive. *Pereida* says nothing about whether appellate courts must defer to district courts when reviewing the same records. The "fact" versus "law" label addressed burden allocation, not appellate deference. Conflating the two distorts *Pereida* and conflicts with this Court's Sixth Amendment framework. *See infra* Section II.E.

C. Other circuits continue to apply de novo review after *Pereida*.

Since *Pereida*, the circuits have continued to review modified-categorical-approach determinations de novo. In *Fields*, the Sixth Circuit cited *Pereida* while

still applying de novo review, explaining that "[s]ometimes *we* must first ask a factual question: 'what was [the] crime of conviction?'" 53 F.4th at 1043 (emphasis added). The court's use of "we"—rather than deferring to the district court—confirms that the appellate court conducts this inquiry independently. Similarly, in *Walcott*, the Ninth Circuit cited *Pereida* and applied de novo review to a district court's modified-categorical-approach determination. No circuit besides the First has read *Pereida* to require clear-error review.

D. De novo review follows from the nature and purpose of the modified categorical approach.

The modified categorical approach draws from two conceptually linked inquiries: (1) whether the statute is divisible into alternative elements and (2) which specific alternative formed the basis of the defendant's conviction. *See Mathis*, 579 U.S. at 517-19; *Shepard*, 544 U.S. at 20-21. Both inquiries rely on the same limited set of judicially noticeable materials—indictments, plea agreements, plea colloquies, jury instructions, and the like. Both serve the same constitutional function of limiting judicial factfinding to avoid Sixth Amendment concerns. And neither involves live testimony or credibility determinations. Both are exercises in legal interpretation of judicial records.

The First Circuit conceded as much with respect to divisibility. It recognized that the "threshold inquiry" whether a statute lists elements or means is a legal determination subject to de novo review. *Rojas-Tapia*, 130 F.4th at 247. But the court then announced a different standard for the second part of the inquiry—identifying the specific offense of conviction—holding that this latter determination

involves factual findings subject to clear-error review. *Id.* at 247-48. This bifurcation is arbitrary. Both inquiries involve parsing the same *Shepard* documents. If the first requires de novo review, so must the second.

The nature of *Shepard*-document review confirms that de novo review is appropriate. A district court does not hear witnesses or evaluate credibility when applying the modified categorical approach. It interprets judicial records, just as appellate courts do. As Judge Wilkinson observed when concurring in the Fourth Circuit:

> [T]he classic indicia of trial court fact finding are absent . . . . The trial court heard no witnesses and made no credibility findings. It examined no physical or forensic evidence. It engaged in no trial management function. Instead, the trial and appellate courts are on a parity and ha[ve] before them the same judicially approved charging statements.

United States v. Foster, 674 F.3d 391, 394 (4th Cir. 2012), as amended (Mar. 8, 2012) (Wilkinson, J., concurring).

With respect to the standard of review, Judge Wilkinson noted that "the parity before us ordinarily suggests something more akin to de novo review." *Id.* In other contexts, where the district court's lens is no better than that of the appellate court, review is frequently de novo. *See McDonough v. Aetna Life Ins. Co.*, 783 F.3d 374, 379 (1st Cir. 2015) ("Because both trial and appellate courts are tasked to inspect the claims administrator's actions through the same lens, our review of the district court's approval or rejection of a benefits-termination decision is de novo."); *In re Cannon*, 277 F.3d 838, 849 (6th Cir. 2002) ("Because we find ourselves in

essentially the same position as the district court in reviewing the bankruptcy court's decision, we accord no deference to the district court's decision.").

Importantly, a district court may only consider a "limited class of documents" from the record in identifying the prior offense. *Mathis*, 579 U.S. at 505. This limited inquiry is akin to taking judicial notice: a judge examining *Shepard* documents does not resolve disputed facts or weigh competing evidence but rather determines the contents of official court records whose accuracy cannot reasonably be questioned. *See Massachusetts v. Westcott*, 431 U.S. 322, 323 n.2 (1977) (citing Fed. R. Evid. 201)).

The practice of multiple circuits further confirms this understanding. At least four circuits—the First, Third, Sixth, and Tenth—have permitted consideration of *Shepard* documents on appeal that were not presented to the district court, on the ground that appellate courts may take judicial notice of such records. In *United States v. Ferguson*, 681 F.3d 826, 833 (6th Cir. 2012), the Sixth Circuit judicially noticed *Shepard* documents for the first time on appeal to ascertain facts regarding the prior conviction, and it affirmed on de novo review after independently concluding that those documents supported the district court's sentencing enhancement. The First Circuit itself followed a similar approach in *United States v. Farrell*, 672 F.3d 27, 30 (1st Cir. 2012), using *Shepard* documents, which the government had submitted for the first time on appeal, to determine the predicate offense under the ACCA. The Third Circuit in *Volek* took judicial notice of *Shepard* materials submitted by the government on appeal, reasoning that "it would be pointless to remand the case simply to have the District Judge take notice of that

which we may notice ourselves." *United States v. Volek*, 796 F. App'x 123, 126 & n.14 (3d Cir. 2019) (unpublished) (quoting *United States v. Remoi*, 404 F.3d 789, 793 n.1 (3d Cir. 2005)). And, in *Thrasher*, the Tenth Circuit took judicial notice of state-court judgments attached to the government's appellate brief and independently reviewed them to determine whether the defendant's prior convictions qualified as ACCA predicates. *United States v. Thrasher*, 816 F. App'x 253, 259 (10th Cir. 2020) (unpublished). This appellate practice of reviewing *Shepard* documents de novo, even for the first time on appeal, is irreconcilable with deferential clear-error review.

E. Clear-error review undermines the Sixth Amendment framework and risks insulating categorical approach errors.

The First Circuit's contrary rule not only departs from uniform nationwide practice, but it also conflicts with the Sixth Amendment framework underlying this Court's categorical approach jurisprudence. To avoid "serious Sixth Amendment concerns," the judicial role is limited to determining "what crime, with what elements, the defendant was convicted of." *Mathis*, 579 U.S. at 511-12. Facts relating to how the offense was committed are "irrelevant." *Id.* at 513. This limitation exists precisely because enhanced sentences based on prior convictions represent an "unusual and 'arguable' exception" to the rule that facts increasing a defendant's prior sentence must be found by a jury. *Pereida*, 592 U.S. at 238. When the categorical approach "demands certainty," *Mathis*, 579 U.S. at 519, a deferential standard of review is inappropriate. And clear-error review is highly deferential, satisfied only if upon whole-record review the reviewing court is left with a strong,

unyielding belief that a mistake has been made. Applying that heightened standard risks insulating the type of categorical approach error this Court has repeatedly corrected. *See Mathis*, 579 U.S. at 519; *Shepard*, 544 U.S. at 21.

F. The stakes are significant, and certiorari is warranted.

The modified categorical approach governs not only § 924(c) cases but also sentencing under the ACCA, the Sentencing Guidelines, and numerous federal recidivist provisions. The standard of review thus determines outcomes nationwide. The First Circuit has adopted a rule inconsistent with its own precedent, contrary to other circuits, and at odds with this Court's instructions. At a minimum, the circuit split and the importance of the question warrant this Court's intervention.

CONCLUSION

For the reasons above, this Court should grant the petition for writ of certiorari.

Dated this 5th day of December, 2025.

Respectfully submitted,

Rachel Brill
Federal Public Defender

Franco L. Pérez-Redondo
Robert Fitzgerald
Assistant Federal Public Defenders

/s/ Kevin Lerman
Kevin E. Lerman
Counsel of Record
Assistant Federal Public Defender