

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

JONATHAN WAYNE LANAUTE,

Petitioner,

versus

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether a defendant challenging a prior state conviction under the crime-of-violence force clause must produce an actual state-court decision applying a facially overbroad statute to non-generic conduct—as the Fifth Circuit alone requires—or whether the statutory text and elements suffice to demonstrate overbreadth—as every other circuit holds?

PARTIES TO THE PROCEEDING

Petitioner is Jonathan Wayne Lanaute, who was the Defendant-Appellant in the court below. Respondent, the United States of America, was the Plaintiff-Appellee in the court below.

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The opinion of the United States Court of Appeals for the Fifth Circuit affirming petitioner's conviction and sentence can be found at *United States v. Lanaute*, 169 F.4th 641 (5th Cir. 2026), and is set forth at Pet. App. 001.

JURISDICTION

The judgment of the court of appeals was entered on March 12, 2026. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Section 4B1.2(a) of the United States Sentencing Guidelines defines “crime of violence,” in relevant part, through the following force clause:

(a) Crime of Violence.—The term “crime of violence” means any offense under federal or state law, punishable by imprisonment for a term exceeding one year, that— (1) has as an element the use, attempted use, or threatened use of physical force against the person of another.

The Armed Career Criminal Act, 18 U.S.C. § 924(e)(2)(B)(i), employs an identical force clause to define a “violent felony.” Louisiana defines armed robbery as “the taking of anything of value belonging to another from the person of another or that is in the immediate control of another, by use of force or intimidation, while armed with a dangerous weapon.” LA. REV. STAT. § 14:64(A).

INTRODUCTION

A defendant’s federal sentence should not depend on the publishing practices of state courts. Yet that is precisely what the Fifth Circuit’s outlier rule requires. Standing alone among the federal courts of appeals, the Fifth Circuit demands that defendants produce “actual cases” proving that state statutes mean what their text plainly says—even when the statutory language criminalizes conduct beyond the federal generic offense.

Under *Borden v. United States*, 593 U.S. 420 (2021) (plurality opinion), a crime that can be committed recklessly cannot qualify as a crime of violence under the force clause, because that clause requires the “active employment of force against another person.” *Id.* at 445. Petitioner Jonathan Lanaute received a career-offender enhancement based on two prior Louisiana convictions for armed robbery and attempted armed robbery, both general-intent Louisiana offenses that can be committed recklessly or negligently. The Fifth Circuit nonetheless affirmed, reasoning that Lanaute had failed to produce a Louisiana case applying the armed robbery statute to merely reckless conduct. As the panel put it, what was “needed to settle the question is a Louisiana case upholding a conviction for the particular crime—here, armed robbery—based on a mens rea of recklessness or negligence.”

That reasoning rested on an outlier rule. Lanaute’s predicate is, by the Louisiana Supreme Court’s classification, a general-intent offense, and under the Fifth Circuit’s own decision in *United States v. Garner*, 28 F.4th 678 (5th Cir. 2022), Louisiana general-intent crimes reach reckless and negligent conduct. The predicate

is therefore categorically overbroad; only the “actual case” requirement preserved the enhancement.

This ruling perpetuates a circuit split that has festered for years. Every other circuit to address the issue has rejected the Fifth Circuit’s approach, holding that facial overbreadth demonstrated by statutory text is enough to establish that a state offense is non-generic. This Court has twice said as much. In *United States v. Justin Taylor*, 596 U.S. 845 (2022), the Court rejected the very demand the Fifth Circuit imposes, explaining that the categorical approach “doesn’t ask whether the crime is sometimes or even usually associated” with force, and that requiring a defendant to catalog the government’s prosecutorial habits is both atextual and unworkable. And in *Brown v. United States*, 602 U.S. 101 (2024), the Court recognized a facial mismatch between a state drug statute and the federal schedules “even though it is highly unlikely that any” actual case existed, noting that the government had identified “no case reports.” *Id.* at 109-10.

The conflict also reflects a fundamental disagreement about basic principles of statutory interpretation. When a statute’s text is unambiguous, courts ordinarily look no further. The Fifth Circuit’s rule flips that principle on its head, requiring defendants to prove through “actual cases” that facially overbroad statutes have been applied as written. The result is a nationwide inconsistency in the administration of federal criminal law: defendants in Texas, Louisiana, and Mississippi face enhanced sentences that would be vacated anywhere else. The time has come to resolve this

important question and restore uniformity to an area that affects thousands of cases each year.

STATEMENT OF THE CASE

On May 3, 2024, Lanaute, who suffered from longstanding mental health and substance abuse disorders, robbed United Community Bank in the Middle District of Louisiana, taking approximately \$20,000. He approached a cashier and passed her a threatening note demanding money. While Mr. Lanaute did not have a firearm or other weapon, the cashier believed he might have a firearm because of the way he held his hand underneath his hoodie. He later fled from officers in his vehicle before crashing and being arrested. ROA.126-29.

The presentence report applied the career-offender enhancement under U.S.S.G. § 4B1.1(a), which raised Lanaute's total offense level from 23 to 29 and his criminal history category from V to VI. The enhancement rested on two prior Louisiana convictions: a 2008 conviction for armed robbery under LA. REV. STAT. § 14:64, and a 2019 conviction for attempted armed robbery under LA. REV. STAT. §§ 14:27, 64. With the enhancement, Lanaute's advisory range was 151 to 188 months. ROA.228.

Lanaute objected to the career-offender designation, arguing that Louisiana armed robbery is not a crime of violence under the force clause because, as a general-intent offense under Louisiana law, it does not require the intentional use or threat of force. The district court overruled the objection and sentenced Lanaute to 151 months' imprisonment and three years' supervised release—the bottom of the enhanced range. Pet. App. 009; ROA.95.

The Fifth Circuit affirmed in a published opinion. Reviewing the crime-of-violence determination de novo, the panel agreed that Louisiana armed robbery is a general-intent crime, citing *State v. Smith*, 23 So. 3d 291, 297 (La. 2009) (“Under present law, armed robbery is a general intent, not specific intent, crime.”). Pet. App. 005. The panel did not dispute that, under *Borden*, an offense that can be committed recklessly cannot qualify as a crime of violence under the force clause. Pet. App. 003.

The panel held, however, that even though Louisiana armed robbery is a general-intent crime—that can be committed without intentional conduct under both Louisiana statutory law and Louisiana Supreme Court precedent—Lanaute still was required to produce “a Louisiana case upholding a conviction for the particular crime—here, armed robbery—based on a mens rea of recklessness or negligence.” Pet. App. 005 (citing *United States v. King*, 155 F.4th 341, 346 (5th Cir. 2025)). Finding the Louisiana decisions Lanaute cited insufficient to meet that “actual case” standard from *United States v. Castillo-Rivera*, 853 F.3d 218 (5th Cir. 2017) (en banc), the panel concluded that Lanaute had not shown a “realistic probability” that Louisiana would apply its armed robbery statute to merely reckless or negligent acts, and it affirmed. Pet. App. 007. Because it resolved the case under the force clause, the panel did not reach the enumerated-offense clause. Pet. App. 008.

REASONS FOR GRANTING THE WRIT

I. The courts of appeals are irreconcilably split on a fundamental question of federal criminal law

The circuits are deeply and intractably divided over whether a defendant must produce “actual cases” showing state-court application of a facially overbroad statute when challenging a prior conviction under the categorical approach. The Fifth Circuit stands alone in requiring such evidence; every other circuit to address the question has rejected the burden.

A. The Fifth Circuit’s outlier position

The Fifth Circuit’s rule originated in *United States v. Castillo-Rivera*, 853 F.3d 218 (5th Cir. 2017) (en banc), a closely divided *en banc* decision holding that defendants must point to “actual cases” showing that state courts have applied a statute in a non-generic manner—even when the statute’s text is facially broader than the federal generic offense. *Id.* at 223. Under that rule, “without supporting state case law, interpreting a state statute’s text alone is simply not enough to establish the necessary ‘realistic probability.’” *Id.* The court held there is “no exception to the actual case requirement . . . where a court concludes a state statute is broader on its face.” *Id.*

The decision below shows how the rule operates. Although Louisiana armed robbery is a general-intent offense, and although a recklessly committed offense cannot qualify under *Borden*, the panel affirmed Lanaute’s enhanced sentence solely because he could not produce a Louisiana decision applying the armed robbery statute to reckless conduct.

B. Every other circuit rejects the Fifth Circuit’s approach

Every other regional circuit to confront the question has refused to require an actual case where the statute is facially broader than the federal standard. As the Fourth Circuit explained, “when the state, 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”; the burden does not shift to the defendant to “find a case.” *Gordon v. Barr*, 965 F.3d 252, 260 (4th Cir. 2020). The en banc Ninth Circuit put it bluntly: “Where . . . a state statute explicitly defines a crime more broadly than the generic definition, no ‘legal imagination’ is required to hold that a realistic probability exists the state statute’s greater breadth is evident from its text.” *United States v. Grisel*, 488 F.3d 844 (9th Cir. 2007) (en banc) (internal citations omitted).

The First, Second, Third, Sixth, Seventh, Tenth, and Eleventh Circuits have all aligned with this approach. *See Da Graca v. Garland*, 23 F.4th 106, 113 (1st Cir. 2022); *Swaby v. Yates*, 847 F.3d 62, 66 (1st Cir. 2017); *Hylton v. Sessions*, 897 F.3d 57, 63–64 (2d Cir. 2018); *Singh v. Att’y Gen.*, 839 F.3d 273, 286 n.10 (3d Cir. 2016); *United States v. Cervenak*, 135 F.4th 311, 326 (6th Cir. 2025) (en banc); *Aguirre-Zuniga v. Garland*, 37 F.4th 446, 450 (7th Cir. 2022); *United States v. Titties*, 852 F.3d 1257, 1274–75 (10th Cir. 2017); *Aspilaire v. U.S. Att’y Gen.*, 992 F.3d 1248, 1255 (11th Cir. 2021). Even the Eighth Circuit, once thought to share the Fifth Circuit’s view, has realigned with the majority. *See Gonzalez v. Wilkinson*, 990 F.3d 654, 657–61 (8th Cir. 2021) (rejecting any need to show how the state applied a statute where

its text covers the conduct, because *Duenas-Alvarez* makes “no reference to the state’s enforcement practices”).

C. The split is acknowledged, entrenched, and produces arbitrary results

This one-versus-all conflict is neither subtle nor likely to resolve on its own. The Second Circuit has observed that “[o]ther circuits have registered nearly unanimous disagreement with the approach” taken by the Fifth Circuit. *Hylton*, 897 F.3d at 65. The Fifth Circuit has repeatedly reaffirmed *Castillo-Rivera* despite sharp criticism from its own judges. *See Castillo-Rivera*, 853 F.3d at 239–41 (Dennis, J., dissenting) & 243–44 (Higginson, J., concurring in part and dissenting in part); *Alexis v. Barr*, 960 F.3d 722, 731–34 (5th Cir. 2020) (Graves, J., concurring) (“the realistic probability test and ‘actual case’ requirement are simply illogical and unfair”). The decision below—a published opinion reaffirming the rule in yet another Louisiana case—confirms that only this Court can resolve the conflict.

The arbitrariness is stark. A defendant convicted under the same Louisiana statute would have his enhancement vacated in the other circuits but upheld in the Fifth—not because the law differs, but because of conflicting interpretations of *Duenas-Alvarez*. Had Lanaute’s prior convictions been examined in any other circuit, they would not support his career-offender designation.

II. The Fifth Circuit’s “actual case” requirement contradicts this Court’s precedent and sound principles of statutory interpretation

The Fifth Circuit’s approach is not merely an outlier; it is wrong. The “actual case” requirement cannot be squared with this Court’s decisions, with the text-based premise of the categorical approach, or with ordinary rules of statutory interpretation.

A. *Taylor* forecloses the Fifth Circuit’s approach

In *United States v. Justin Taylor*, 596 U.S. 845 (2022), the Government argued that a defendant must present evidence about prosecutorial practices to prove a statute’s scope. This Court’s response was unequivocal:

Put aside the oddity of placing a burden on the defendant to present empirical evidence about the government’s own prosecutorial habits. Put aside, too, the practical challenges such a burden would present in a world where most cases end in plea agreements, and not all of those cases make their way into easily accessible commercial databases.

Id. at 857. The Court continued with what can only be read as a repudiation of the Fifth Circuit’s approach: the elements clause “doesn’t ask whether the crime is sometimes or even usually associated with” force; “[i]t asks whether the government must prove, as an element of its case, the use, attempted use, or threatened use of force.” *Id.* at 857–58. Where the statutory elements do not require force, “[t]hat ends the inquiry.” *Id.* at 859. The Fifth Circuit’s demand for “actual cases” directly conflicts with that holding.

B. *Brown* confirms that facial overbreadth ends the inquiry without an actual case

Two years later, *Brown v. United States*, 602 U.S. 101 (2024), confirmed the point. There, the Court analyzed whether state drug convictions matched the federal schedules and recognized a facial mismatch “even though it is highly unlikely that any” actual case had ever been based on the overbroad substance, observing that the Government had identified “no case reports.” *Id.* at 109–10. The Court’s analysis would make no sense if a defendant first had to produce an actual case before a facially overbroad statute could be treated as overbroad. *Brown* thus illustrates the very method the Fifth Circuit rejects: comparing texts, not cataloguing prosecutions. And because the career-offender Guidelines are applied “in effect on the date the defendant is sentenced,” *id.* at 120 n.7, the textual comparison controls here.

C. The requirement misreads *Duenas-Alvarez*

The Fifth Circuit’s rule rests on a misreading of *Gonzales v. Duenas-Alvarez*, 549 U.S. 183 (2007). There, the California statute’s text closely matched the generic federal definition of theft, and the defendant sought to prove overbreadth through a *speculative* theory of judicial construction. *Id.* at 190–91. In that narrow setting—where text matched and only “legal imagination” supplied the asserted breadth—the Court required proof of a “realistic probability” through actual cases. *Id.* at 193. *Duenas-Alvarez* never suggested that requirement applies when the statutory text itself is broader than the generic offense. As this Court later explained, the realistic-probability inquiry mattered there because “the elements of the relevant state and federal offenses clearly overlapped and the only question . . . was whether state courts

also applied the statute in a special (nongeneric) manner.” *Justin Taylor*, 596 U.S. at 859. The Fifth Circuit has inverted that logic, using a tool meant to curb “legal imagination” to instead require proof that facially non-generic statutes mean what they say.

D. The categorical approach compares elements, not enforcement patterns

This Court has consistently emphasized that the categorical approach “involves, and involves only, comparing elements.” *Mathis v. United States*, 579 U.S. 500, 519 (2016). It “does not care about” facts. *Id.* It asks what a jury was “actually required to find” to convict, *Arthur Taylor v. United States*, 495 U.S. 575, 602 (1990), and examines the least of the acts criminalized by the statute, not the least culpable acts ever prosecuted, *Moncrieffe v. Holder*, 569 U.S. 184, 190–91 (2013). The classic examples are all text-based: the Massachusetts burglary statute in *Shepard* was non-generic because it facially reached “boats and cars,” 544 U.S. 13, 17 (2005); the Iowa statute in *Mathis* because it facially reached any “land, water, or air vehicle,” 579 U.S. at 507; and the Kansas drug statute in *Mellouli* because it reached “at least nine substances not included in the federal lists,” 575 U.S. 798, 802 (2015). This Court never demanded proof that Massachusetts had prosecuted a boat burglar. The facial overbreadth of the text sufficed. The Fifth Circuit’s rule, by demanding proof of enforcement, improperly shifts the inquiry from elements to prosecutorial habits.

III. The “actual case” requirement is independently untenable because it is arbitrary and raises serious constitutional concerns

A. The rule makes federal sentencing turn on the fortuity of state reporting

By tethering federal sentencing consequences to whether a particular state prosecution happens to have generated a published, accessible decision, the Fifth Circuit’s rule produces exactly the “unpredictability and arbitrariness” this Court has condemned. *United States v. Davis*, 588 U.S. 445, 452 (2019). The “majority of criminal cases are resolved without a written judicial decision or by plea bargain, . . . which means that citable state decisions are only available in a very small percentage of prosecutions.” *Alexis*, 960 F.3d at 728–29. Two defendants convicted under identically worded statutes can thus receive different federal sentences based solely on the happenstance of state reporting practices—an outcome akin to the “grave uncertainty” that led this Court to strike down the residual clause as unconstitutionally vague. *Johnson v. United States*, 576 U.S. 591, 597 (2015). As this Court has put it, “crimes are supposed to be defined by the legislature, not by clever prosecutors riffing on equivocal language.” *Dubin v. United States*, 599 U.S. 110, 129–30 (2023).

B. Treating prior prosecutions as sentencing “evidence” raises Fifth and Sixth Amendment concerns

The rule is also in tension with this Court’s Sixth Amendment jurisprudence. The Fifth Circuit has candidly described the cases a defendant must marshal to “satisfy the realistic-probability test” as “more like evidence than law.” *Alejos-Perez v. Garland*, 93 F.4th 800, 806 (5th Cir. 2024). But a sentencing court conducting the

categorical inquiry may use prior-conviction records only for the “limited function” of “determining the fact of a prior conviction and the then-existing elements of that offense.” *Erlinger v. United States*, 602 U.S. 821, 839 (2024); *see Shepard v. United States*, 544 U.S. 13, 25 (2005); *Alleyne v. United States*, 570 U.S. 99, 104 (2013). Converting the elements comparison into a judicial search for enforcement “evidence”—evidence that can add years to a sentence yet is never found by a jury—pulls the categorical approach away from the law-based inquiry the Constitution requires.

IV. The question presented is exceptionally important and this case is an ideal vehicle

A. The split affects thousands of cases across multiple areas of federal law

The categorical approach governs not only the career-offender Guideline at issue here, U.S.S.G. §§ 4B1.1, 4B1.2, but also the Armed Career Criminal Act, 18 U.S.C. § 924(e); the “crime of violence” definition in 18 U.S.C. § 16; and the immigration laws’ “aggravated felony” determinations, 8 U.S.C. § 1101(a)(43). Each application of the Fifth Circuit’s outlier rule deepens the conflict and multiplies the number of defendants whose sentences turn on geography rather than legal merit. The question is one of recurring, nationwide importance.

B. Louisiana armed robbery is a general-intent offense that can be committed recklessly, so only the actual-case requirement sustains the enhancement

Louisiana armed robbery is, by the Louisiana Supreme Court’s own classification, a general-intent offense. *State v. Smith*, 23 So. 3d 291, 297 (La. 2009) (“Under present law, armed robbery is a general intent, not specific intent, crime.”).

That classification is dispositive. Louisiana general-intent crimes “can be committed negligently or recklessly,” *United States v. Garner*, 28 F.4th 678, 682 (5th Cir. 2022), because the State’s general-intent standard “is totally unconcerned with the defendant’s state of mind,” so that “reckless or even negligent states of mind can satisfy Louisiana’s general intent standard,” *id.* at 683. Because a recklessly committed offense cannot satisfy the force clause, *Borden*, 593 U.S. at 445, Louisiana armed robbery is categorically broader than the Guidelines’ crime of violence. *See also United States v. Campbell*, 156 F.4th 1019 (10th Cir. 2025) (finding that Oklahoma armed robbery is not a crime of violence under the force clause because it is a general intent crime that can be committed recklessly under Oklahoma law).

The Fifth Circuit has not seriously contested these premises. It accepts that armed robbery is a general-intent offense and that, under *Garner*, Louisiana’s general-intent standard is satisfied by recklessness or negligence; it declined to hold armed robbery overbroad for a single reason—its insistence, under *Castillo-Rivera*, on a Louisiana decision expressly upholding an armed-robbery conviction “based on a mens rea of recklessness or negligence.” *United States v. King*, 155 F.4th 341, 346 (5th Cir. 2025). That insistence is the outlier rule this petition challenges. Set it aside—as every other circuit would—and Louisiana armed robbery is not a crime of violence, and Lanaute’s career-offender enhancement cannot stand.

C. The question is outcome-determinative and is cleanly presented on *de novo* review

This case presents the question in an unusually clean posture. Unlike the petitioners in *United States v. Porterie*, 2025 WL 457999 (5th Cir. Feb. 11, 2025)

(unpublished), *United States v. Sereal*, 153 F.4th 493 (5th Cir. 2025), and *King*—each of whom raised the issue for the first time on appeal and was confined to plain-error review—Lanaute preserved his objection, and the Fifth Circuit reviewed the crime-of-violence determination *de novo*. That distinction matters. In *King*, the Fifth Circuit declined to extend *Garner* to armed robbery precisely because, on plain-error review, the question was “subject to reasonable dispute” absent an explicit actual case. 155 F.4th at 344, 346. The panel below carried that plain-error-derived “actual case” gloss into a case governed by *de novo* review—the very posture in which the merits of the categorical question are to be decided. The question is therefore squarely and outcome-determinatively presented: if the actual-case requirement does not apply, Lanaute’s prior convictions cannot support the enhancement, and his 151-month sentence—at the bottom of a range 67 months above the correct one—must be vacated.

CONCLUSION

For more than five years, the Fifth Circuit has stood alone in requiring defendants to produce “actual cases” proving that facially overbroad state statutes mean what their text plainly says. That outlier position contradicts this Court's precedent, violates fundamental principles of statutory interpretation, and produces arbitrary results based on geographic luck and state-court publishing practices. The petition for a writ of certiorari should be granted.

Respectfully submitted this June 10, 2026,

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