

No. 25-936

---

---

**In the Supreme Court of the United States**

---

NADARIUS BARNES, PETITIONER

*v.*

UNITED STATES OF AMERICA

---

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

---

**BRIEF FOR THE UNITED STATES IN OPPOSITION**

---

D. JOHN SAUER

*Solicitor General*

*Counsel of Record*

A. TYSEN DUVA

*Assistant Attorney General*

JAVIER A. SINHA

*Attorney*

*Department of Justice*

*Washington, D.C. 20530-0001*

*SupremeCtBriefs@usdoj.gov*

*(202) 514-2217*

---

---

**QUESTION PRESENTED**

Whether petitioner is entitled to claim on appeal that his conduct did not violate 18 U.S.C. 924(c), notwithstanding his unconditional guilty plea to a violation of Section 924(c).

**PARTIES TO THE PROCEEDING**

Petitioner (defendant-appellant below) is Nadarius Barnes.

Respondent (plaintiff-appellee below) is the United States.

**ADDITIONAL RELATED PROCEEDING**

United States Court of Appeals (10th Cir.):

*United States v. Butler*, No. 24-3067 (June 26, 2025)

**TABLE OF CONTENTS**

	Page
Opinion below.....	1
Jurisdiction.....	1
Statement .....	1
Argument.....	6
Conclusion .....	15

**TABLE OF AUTHORITIES**

Cases:

<i>Aquart v. United States</i> , 145 S. Ct. 1071 (2025) .....	6
<i>Blackledge v. Perry</i> , 417 U.S. 21 (1974) .....	7
<i>Borden v. United States</i> , 593 U.S. 420 (2021).....	3, 14
<i>Brady v. United States</i> , 397 U.S. 742 (1970).....	6
<i>Class v. United States</i> , 583 U.S. 174 (2018) .....	5, 7-9
<i>Grzegorzcyk v. United States</i> :	
997 F.3d 743 (7th Cir. 2021),	
cert. denied, 142 S. Ct. 2580 (2022) .....	5, 7
142 S. Ct. 2580 (2022) .....	8
<i>Jackson v. United States</i> , 142 S. Ct. 513 (2021).....	6
<i>Malik v. United States</i> , 589 U.S. 1210 (2020) .....	6
<i>Masilotti v. United States</i> , 574 U.S. 1078 (2015).....	6
<i>Menna v. New York</i> , 423 U.S. 61 (1975).....	7
<i>Morrison v. National Austl. Bank Ltd.</i> ,	
561 U.S. 247 (2010) .....	9
<i>Newman v. United States</i> , 145 S. Ct. 163 (2024).....	15
<i>Ricketts v. Adamson</i> , 483 U.S. 1 (1987) .....	10
<i>Steel Co. v. Citizens for a Better Env't</i> ,	
523 U.S. 83 (1998) .....	8
<i>Stewart v. United States</i> , 538 U.S. 908 (2003) .....	6
<i>Supervisors v. Stanley</i> , 105 U.S. 305 (1882) .....	14
<i>Tollett v. Henderson</i> , 411 U.S. 258 (1973).....	6

IV

Cases—Continued:	Page
<i>United States v. Al Hedaithy</i> , 392 F.3d 580 (3d Cir. 2004), cert. denied, 544 U.S. 978 (2005).....	12
<i>United States v. Broce</i> , 488 U.S. 563 (1989).....	6-9
<i>United States v. Brown</i> , 752 F.3d 1344 (11th Cir. 2014) .....	14
<i>United States v. Brown</i> , 875 F.3d 1235 (9th Cir. 2017) .....	13
<i>United States v. Butler</i> , 141 F.4th 1136 (10th Cir. 2025), cert. denied, No. 25-863 (Feb. 23, 2026).....	14, 15
<i>United States v. Cothran</i> , 302 F.3d 279 (5th Cir. 2002) .....	13, 14
<i>United States v. Cotton</i> , 535 U.S. 625 (2002) .....	5, 6, 8-10
<i>United States v. De Vaughn</i> : 694 F.3d 1141 (10th Cir. 2012), cert. denied, 569 U.S. 976 (2013) .....	5, 8, 11
569 U.S. 976 (2013) .....	6
<i>United States v. Delgado-Garcia</i> , 374 F.3d 1337 (D.C. Cir. 2004), cert. denied, 544 U.S. 950 (2005) .....	11
<i>United States v. George</i> , 676 F.3d 249 (1st Cir. 2012) .....	11, 12
<i>United States v. Gonzalez-Mercado</i> , 402 F.3d 294 (1st Cir. 2005) .....	11
<i>United States v. Jones</i> , 75 F.4th 502 (5th Cir.), cert. denied, 144 S. Ct. 515 (2023) .....	13
<i>United States v. Kendall</i> , 876 F.3d 1264 (10th Cir. 2017), cert. denied, 584 U.S. 945 (2018).....	3, 15
<i>United States v. Meacham</i> , 626 F.2d 503 (5th Cir. 1980).....	14

Cases—Continued:	Page
<i>United States v. Muresanu</i> , 951 F.3d 833 (7th Cir. 2020) .....	11
<i>United States v. Peter</i> , 310 F.3d 709 (11th Cir. 2002) .....	13, 14
<i>United States v. Pittman</i> , 125 F.4th 527 (4th Cir. 2025) .....	5
<i>United States v. Porter</i> , 933 F.3d 226 (3d Cir. 2019) .....	12
<i>United States v. Reasor</i> , 418 F.3d 466 (5th Cir. 2005).....	13
<i>United States v. Rosa-Ortiz</i> , 348 F.3d 33 (1st Cir. 2003) .....	11
<i>United States v. Rubin</i> , 743 F.3d 31 (2d Cir. 2014) .....	11
<i>United States v. Scruggs</i> : 714 F.3d 258 (5th Cir.), cert. denied, 571 U.S. 889 (2013) .....	11, 13
571 U.S. 889 (2013) .....	6
<i>United States v. St. Hubert</i> , 909 F.3d 335 (11th Cir. 2018), cert. denied, 586 U.S. 1256 (2019), and 509 U.S. 985 (2020), abrogated on other grounds by <i>United States v.</i> <i>Taylor</i> , 596 U.S. 845 (2022).....	13, 14
<i>United States v. Torres</i> , No. 24-1042, 2025 WL 1275773 (3d Cir. May 2, 2025) .....	12
<i>United States v. Turner</i> , 94 F.4th 739 (8th Cir.), cert. denied, 145 S. Ct. 216 (2024) .....	11
<i>United States v. Velasco-Medina</i> , 305 F.3d 839 (9th Cir. 2002), cert. denied, 540 U.S. 1210 (2004).....	11
<i>Vanwinkle v. United States</i> , 645 F.3d 365 (6th Cir. 2011) .....	11
Statutes, rules, and guidelines:	
18 U.S.C. 2.....	2, 3

VI

Statutes, rules, and guidelines—Continued:	Page
18 U.S.C. 111 .....	15
18 U.S.C. 111(a)(1).....	1, 3
18 U.S.C. 111(b) .....	1, 3, 4, 8, 14, 15
18 U.S.C. 924(c).....	3-6, 8, 14, 15
18 U.S.C. 924(c)(1)(A)(iii).....	2, 3
18 U.S.C. 924(c)(3)(A).....	3
Fed. R. Crim. P:	
Rule 11(a)(2).....	10
Rule 12(b)(3)(B) (2000).....	12
Rule 12 advisory committee’s note (2014 Amendment) .....	12
United States Sentencing Guidelines	
§ 3E1.1, comment. (n.2).....	10

**In the Supreme Court of the United States**

---

No. 25-936

NADARIUS BARNES, PETITIONER

*v.*

UNITED STATES OF AMERICA

---

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

---

**BRIEF FOR THE UNITED STATES IN OPPOSITION**

---

**OPINION BELOW**

The opinion of the court of appeals (Pet. App. 1a-12a) is reported at 141 F.4th 1156.

**JURISDICTION**

The judgment of the court of appeals was entered on June 25, 2025. A petition for rehearing was denied on October 7, 2025 (Pet. App. 13a). On November 20, 2025, Justice Gorsuch extended the time within which to file a petition for a writ of certiorari to and including February 4, 2026, 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 guilty plea in the United States District Court for the District of Kansas, petitioner was convicted on one count of forcibly assaulting a federal officer, in violation of 18 U.S.C. 111(a)(1) and (b), and one count of

discharging a firearm during and in relation to a crime of violence, in violation of 18 U.S.C. 924(c)(1)(A)(iii) and 2. Pet. App. 14a-15a. The district court sentenced petitioner to 156 months of imprisonment, to be followed by five years of supervised release. *Id.* at 16a-17a. The court of appeals affirmed. *Id.* at 1a-12a.

1. On August 3, 2020, Kansas City police officers responded to a drive-by shooting at the Kansas City, Kansas, home of two brothers, G'Ante and Zarion Butler. Pet. App. 2a. The brothers were affiliated with a gang called the "Tasha Gang"; another Tasha Gang affiliate was injured during the shooting. *Ibid.* Law enforcement identified the suspected shooter as Isaiah Shields, who was a member of the rival "BBUx2 Gang." *Ibid.* That evening, several Kansas City officers and federal agents drove to Shields's home, where they took Shields into custody and then executed a search warrant on the home. *Ibid.*

At 11:20 p.m. that night, while exiting Shields's residence, the officers were fired upon by multiple shooters from an alley west of the home. Pet. App. 2a. One federal agent was struck in his hand by a bullet, and a civilian was shot and injured in both hands. *Ibid.* Police vehicles and nearby homes were also damaged by the gunfire. *Ibid.* Over 100 shell casings were found in the nearby alley. *Id.* at 3a.

Officers suspected that five individuals associated with the Tasha Gang, including petitioner, were responsible for the shooting at Shields's house, which they believed to have been in retaliation for the BBUx2 Gang's earlier shooting at the Butler home. Pet. App. 3a. Zarion Butler was later arrested in connection with the shooting. *Ibid.* After receiving *Miranda* warnings,

Butler confirmed that petitioner was among the Tasha Gang members who carried out the shooting. *Ibid.*

2. A federal grand jury in the District of Kansas returned an indictment charging petitioner with forcibly assaulting a federal officer, in violation of 18 U.S.C. 111(a)(1), 111(b), and 2, and discharging a firearm during and in relation to a crime of violence, in violation of 18 U.S.C. 924(c)(1)(A)(iii) and 2. C.A. ROA 43-44.

Petitioner and his codefendants moved to dismiss the Section 924(c) charge on the theory that it failed to state an offense. C.A. ROA 48-59. They argued that the offense of forcibly assaulting an officer under 18 U.S.C. 111(b) is not a “crime of violence” for purposes of Section 924(c) because it does not 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); see C.A. ROA 49, 55-57. They acknowledged that the Tenth Circuit had “held that § 111(b) is a crime of violence” in *United States v. Kendall*, 876 F.3d 1264, 1271 (10th Cir. 2017), cert. denied, 584 U.S. 945 (2018). C.A. ROA 48. But they contended that “*Kendall* does not survive” this Court’s decision in *Borden v. United States*, 593 U.S. 420 (2021). C.A. ROA 48.

The district court denied the motion, explaining that *Borden* “has no bearing on *Kendall*.” C.A. ROA 186; see *id.* at 183-188. The court recognized that, under *Borden*, “offenses with a minimum *mens rea* of ordinary recklessness do not have as an element the ‘use, attempted use, or threatened use of physical force against the person of another,’” and thus do not qualify as crimes of violence under Section 924(c). *Ibid.* (citation omitted). But the court observed that *Borden* is inapposite to Section 111(b) because the Section 111(b) of-

fense “cannot be committed with a *mens rea* of ordinary recklessness.” *Id.* at 187.

3. Petitioner unconditionally pleaded guilty to both counts of the indictment without a plea agreement. Pet. App. 14a; see 1 C.A. Supp. ROA 4-10. During his plea colloquy, petitioner stated that he had been provided with a copy of the indictment, understood the charges against him, had reviewed those charges with his attorney, and had voluntarily agreed to plead guilty. 2 C.A. Supp. ROA 6-7. The district court explained to petitioner that the Section 924(c) count identified forcible assault on federal officers as the predicate crime of violence and asked petitioner whether he “in fact” violated Section 924(c). *Id.* at 19; see *id.* at 18-19. Petitioner responded in the affirmative. *Id.* at 19.

The district court found that petitioner’s plea was “knowingly and voluntarily made and supported by an independent basis in fact,” and accepted petitioner’s unconditional guilty plea. 2 C.A. Supp. ROA 21. The court sentenced petitioner to 156 months of imprisonment, to be followed by five years of supervised release. Pet. App. 16a-17a.

4. The court of appeals affirmed. Pet. App. 1a-12a. On appeal, petitioner reraised his theory, which the district court had rejected prior to his entry of a guilty plea to a Section 924(c) offense, that a Section 111(b) offense is not a crime of violence under *Borden* and so he did not violate Section 924(c). The court of appeals observed that petitioner’s unconditional guilty plea had relinquished his challenge to his Section 924(c) conviction. *Id.* at 6a-9a.

The court of appeals explained that “[i]t is well-established that ‘a voluntary and unconditional guilty plea waives all non-jurisdictional defenses.’” Pet. App.

6a (quoting *United States v. De Vaughn*, 694 F.3d 1141, 1145 (10th Cir. 2012), cert. denied, 569 U.S. 976 (2013)). The court noted that “[t]here are a few narrow exceptions for constitutional claims including ‘due process claims for vindictive prosecution and double jeopardy claims that are evident from the face of the indictment’” and “challenges asserting that the statute of conviction is unconstitutional.” *Id.* at 7a (quoting *De Vaughn*, 694 F.3d at 1146; citing *Class v. United States*, 583 U.S. 174, 181-183 (2018)). But the court observed that petitioner’s challenge to his Section 924(c) conviction was “a statutory interpretation argument” that did “not fall into any of these categories.” *Id.* at 7a-8a.

The court of appeals acknowledged that in earlier decisions, it had reasoned that a guilty plea does not preclude claims that the admitted conduct does not constitute the admitted crime, on the premise that such challenges are “jurisdictional in nature.” Pet. App. 7a (citing cases). But the court observed that it had abandoned that approach after this Court’s decision in *United States v. Cotton*, 535 U.S. 625, 630 (2002), which held that “indictment defects are not jurisdictional because they ‘do not deprive a court of its power to adjudicate a case.’” Pet. App. 8a (quoting *Cotton*, 535 U.S. at 630); see *De Vaughn*, 694 F.3d at 1149 n.4. The court noted that the Fourth and Seventh Circuits had also “recently held that unconditional guilty pleas waive similar challenges to convictions.” Pet. App. 8a (citing *Grzegorzcyk v. United States*, 997 F.3d 743, 745-748 (7th Cir. 2021), cert. denied, 142 S. Ct. 2580 (2022); *United States v. Pittman*, 125 F.4th 527, 530-531 (4th Cir. 2025)).

## ARGUMENT

Petitioner contends (Pet. 12-23) that he is entitled to challenge his conviction under 18 U.S.C. 924(c) notwithstanding his unconditional guilty plea. This Court has repeatedly denied review of other petitions that, like this one, allege a conflict involving the application of this Court’s decision in *United States v. Cotton*, 535 U.S. 625 (2002). See, e.g., *Aquart v. United States*, 145 S. Ct. 1071 (2025) (No. 24-5754); *Jackson v. United States*, 142 S. Ct. 513 (2021) (No. 21-6034); *Malik v. United States*, 589 U.S. 1210 (2020) (No. 19-6087); *Masilotti v. United States*, 574 U.S. 1078 (2015) (No. 14-565); *Scruggs v. United States*, 571 U.S. 889 (2013) (No. 13-206); *De Vaughn v. United States*, 569 U.S. 976 (2013) (No. 12-7537); *Stewart v. United States*, 538 U.S. 908 (2003) (No. 02-1165). The Court should follow the same course here.

1. a. An unconditional guilty plea, by its nature, forecloses inquiry into the merits of most claims challenging a defendant’s conviction. That is because a plea “is more than a confession which admits that the accused did various acts.’ It is an ‘admission that he committed the crime charged against him.’” *United States v. Broce*, 488 U.S. 563, 570 (1989) (citations omitted); see *Brady v. United States*, 397 U.S. 742, 748 (1970) (“[T]he plea is more than an admission of past conduct; it is the defendant’s consent that judgment of conviction may be entered without a trial.”). By voluntarily choosing to plead guilty, a defendant relinquishes his right to litigate most of the “possible defenses” that he might have otherwise pursued at trial or on appeal. See *Tollett v. Henderson*, 411 U.S. 258, 268 (1973).

This Court has recognized only narrow exceptions to that general principle for certain claims that “would ex-

tinguish the government’s power to ‘constitutionally prosecute’ the defendant if the claim were successful.” *Class v. United States*, 583 U.S. 174, 183 (2018) (quoting *Broce*, 488 U.S. at 575). In *Blackledge v. Perry*, 417 U.S. 21 (1974), the Court held that defendants who pleaded guilty could nevertheless challenge their convictions based on preplea claims of unconstitutionally vindictive prosecution. *Id.* at 30. In *Menna v. New York*, 423 U.S. 61 (1975) (per curiam), the Court held that a double-jeopardy claim could likewise go forward. *Id.* at 63. And most recently, in *Class*, this Court held that a defendant’s guilty plea does not inherently preclude a challenge to the constitutionality of the statute of conviction. 583 U.S. at 181.

A claim that a defendant’s offense conduct is not covered by his statute of conviction does not fall within that narrow category of exceptions. Such a claim is grounded in “statutory construction,” not “constitutional immunity from prosecution.” *Grzegorzcyk v. United States*, 997 F.3d 743, 748 (7th Cir. 2021), cert. denied, 142 S. Ct. 2580 (2022). Accordingly, a claim that the statute of conviction should not be interpreted to cover particular conduct does not go to “the government’s power to ‘constitutionally prosecute’ the defendant.” *Class*, 583 U.S. at 183 (citation omitted). To the contrary, a defendant who claims that his statute of conviction does not cover his conduct is essentially claiming that he is innocent of the offense to which he pleaded guilty. Such a claim “would contradict the ‘admissions necessarily made upon entry of a voluntary plea of guilty.’” *Ibid.* (quoting *Broce*, 488 U.S. at 573-574). By its very nature, a “valid guilty plea relinquishes” such a claim. *Ibid.*

b. The court of appeals correctly applied those principles here to find that petitioner’s unconditional guilty

plea precluded his challenge to his conviction for discharging a weapon during a crime of violence under 18 U.S.C. 924(c). Pet. App. 6a-9a. On appeal, petitioner reraised his claim, rejected by the district court prior to the plea, that his forcible assault of a federal officer in violation of 18 U.S.C. 111(b) was not a “crime of violence” for purposes of a conviction under Section 924(c). See Pet. App. 6a. The court of appeals correctly recognized that adopting that argument “would contradict the ‘admissions necessarily made’ in his plea,” *id.* at 9a (quoting *Class*, 583 U.S. at 183)—specifically, his “admission that he committed the crime charged against him,” *Broce*, 488 U.S. at 570. And it likewise correctly recognized that “[s]uch challenges do not fit within the narrow category of claims which are not waived by a guilty plea.” Pet. App. 9a (citing *United States v. De Vaughn*, 694 F.3d 1141, 1145-1146 (10th Cir. 2012), cert. denied, 569 U.S. 976 (2013)); cf. *Grzegorzcyk v. United States*, 142 S. Ct. 2580 (2022) (statement of Kavanaugh, J., joined by four other Justices, respecting the denial of certiorari) (noting that the court of appeals in that case had “correctly concluded that the defendant’s unconditional guilty plea precluded any argument based on the new caselaw”).

The court of appeals also correctly explained that this Court’s decision in *Cotton*, *supra*, forecloses the contention that petitioner’s challenge is a “jurisdictional” challenge that cannot be relinquished. Pet. App. 7a. In *Cotton*, the Court explained that the term “jurisdiction” means “the courts’ statutory or constitutional power to adjudicate the case.” 535 U.S. at 630 (quoting *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 89 (1998)) (emphasis omitted). And it made clear that “defects in an indictment do not deprive a court of its power to ad-

judicate a case.” *Ibid.* Instead, an objection that “the indictment does not charge a crime against the United States goes only to the merits of the case.” *Id.* at 630-631 (citation omitted); see *Morrison v. National Austl. Bank Ltd.*, 561 U.S. 247, 254 (2010) (“[T]o ask what conduct [a statute] reaches is to ask what conduct [it] prohibits, which is a merits question.”).

c. Petitioner’s counterarguments lack merit. Petitioner asserts (Pet. 7) that in the early-to-mid-twentieth century, courts “regularly entertained arguments that the facts admitted by a guilty plea did not satisfy the statutory elements of the offense.” But to the extent that may be so, he acknowledges (Pet. 8) that at least “some federal courts” explicitly “recast” that practice “in ‘jurisdictional’ terms,” and he does not show that other courts understood the practice differently. As explained above, an understanding premised on the “jurisdictional” nature of such claims cannot survive *Cotton*. And petitioner additionally fails to engage with this Court’s subsequent case law, never citing *Broce* or *Brady* or attempting to square his theory with those decisions. See *Class*, 583 U.S. at 183 (reaffirming *Broce*).

Petitioner also contends (Pet. 22) that it is “nonsensical” to expect defendants to “refuse to plead guilty” in order to preserve the argument “that the conduct alleged in the indictment is not a crime at all.” But it makes perfect sense to require that defendants who wish to maintain their innocence of a particular crime must not unconditionally plead guilty to that crime. By entering a guilty plea, a defendant does not “simply stat[e] that he did the discrete acts described in the indictment”; he “admit[s] guilt of a substantive crime.” *Broce*, 488 U.S. at 570; see Pet. App. 45a (petitioner’s agreement that “I am ‘GUILTY’ and do not believe I am

innocent”). A defendant who wishes to preserve a claim that his conduct did not violate the statute can seek to enter a conditional plea, see Fed. R. Crim. P. 11(a)(2), or else can preserve his rights through a bench trial on stipulated facts. Cf. Sentencing Guidelines § 3E1.1, comment. (n.2) (expressly acknowledging the possibility of an acceptance-of-responsibility adjustment to the guidelines range in such cases).

Petitioner errs in asserting (Pet. 19) that the decision below would render express appeal waivers in written plea agreements “utterly superfluous.” See Pet. 19-20. An unconditional guilty plea inherently relinquishes most challenges to a defendant’s conviction, but a defendant can waive the ones that remain, such as a double-jeopardy claim. See, e.g., *Ricketts v. Adamson*, 483 U.S. 1, 9-10 (1987) (upholding plea agreement’s waiver of right to raise double-jeopardy defense). And he may also waive rights with respect to his sentence. See generally U.S. Br., *Hunter v. United States*, No. 24-1063 (Jan. 14, 2026).

2. Petitioner asserts (Pet. 12-19) that the decision below conflicts with the decisions of other courts of appeals. The asserted conflict is overstated and does not warrant this Court’s review. The vast majority of the courts of appeals to have considered the issue have properly read *Cotton* as holding that defects in an indictment “do not deprive a court of its power to adjudicate a case,” 535 U.S. at 630, without distinguishing between whether the alleged defect was an omission of a factual allegation or some other failure to properly state

a claim.\* And his specific assertions of a circuit conflict are overstated and do not warrant this Court’s review.

Petitioner asserts (Pet. 13) that the First Circuit held otherwise in *United States v. Rosa-Ortiz*, 348 F.3d 33 (2003). There, the court found that the defendant’s unconditional guilty plea “did not waive his right to argue that he has been imprisoned for conduct that Congress did not proscribe in the crime charged,” because that was a “jurisdictional challenge[.]” *Id.* at 36. The court did not mention, let alone attempt to distinguish, this Court’s decision in *Cotton*. And subsequently, the First Circuit has both distinguished and questioned the continuing validity of *Rosa-Ortiz*.

Two years later, in *United States v. Gonzalez-Mercado*, 402 F.3d 294 (2005), the First Circuit found that a defendant’s unconditional guilty plea precluded his argument that his conduct “does not amount to a violation of the statute of conviction” and that “the district court lacked jurisdiction to convict him,” *id.* at 300, rejecting his reliance on *Rosa-Ortiz*, *id.* at 300-301. And in *United States v. George*, 676 F.3d 249 (2012), the First Circuit identified *Rosa-Ortiz* as a “paradigmatic example” of a court using the term “jurisdiction” in a “less than meticulous” manner, and again distinguished it.

---

\* See *United States v. George*, 676 F.3d 249, 259-260 (1st Cir. 2012); *United States v. Rubin*, 743 F.3d 31, 36-38 (2d Cir. 2014); *United States v. Scruggs*, 714 F.3d 258, 262-264 (5th Cir.), cert. denied, 571 U.S. 889 (2013); *Vanwinkle v. United States*, 645 F.3d 365, 368-369 (6th Cir. 2011); *United States v. Muresanu*, 951 F.3d 833, 837-839 (7th Cir. 2020); *United States v. Turner*, 94 F.4th 739, 742 (8th Cir.), cert. denied, 145 S. Ct. 216 (2024); *United States v. Velasco-Medina*, 305 F.3d 839, 845-846 (9th Cir. 2002), cert. denied, 540 U.S. 1210 (2004); *De Vaughn*, 694 F.3d at 1147; *United States v. Delgado-Garcia*, 374 F.3d 1337, 1341-1342 (D.C. Cir. 2004), cert. denied, 544 U.S. 950 (2005).

*Id.* at 259 (citation omitted). Those subsequent decisions undercut petitioner’s contention that the First Circuit has charted a different course from its sister circuits—or that the First Circuit would have reached a different conclusion in petitioner’s case.

Petitioner’s reliance (Pet. 14) on the Third Circuit’s decision in *United States v. Al Hedaithy*, 392 F.3d 580 (2004), cert. denied, 544 U.S. 978 (2005), is similarly misplaced. The court there stated that the then-current Federal Rule of Criminal Procedure 12(b)(3)(B) (2000) “permit[s] a defendant who enters an unconditional guilty plea to argue on appeal that the specific facts alleged in the charging document do not amount to a criminal offense.” *Al Hedaithy*, 392 F.3d at 586. At the time, Rule 12(b)(3)(B) provided that “at any time while the case is pending, the court may hear a claim that the indictment or information fails to invoke the court’s jurisdiction or to state an offense.” Fed. R. Crim. P. 12(b)(3)(B) (2000).

That language was subsequently removed from the Rule in light of this Court’s decision in *Cotton*. See Fed. R. Crim. P. 12 advisory committee’s note (2014 Amendment). The Third Circuit has subsequently held that “whether a claim survives an unconditional guilty plea depends on whether the claim is constitutionally relevant to the defendant’s conviction.” *United States v. Porter*, 933 F.3d 226, 229 (2019). And it has determined in an unpublished decision that a defendant “waived his challenges to non-constitutional defects in the indictment by entering an unconditional guilty plea.” *United States v. Torres*, No. 24-1042, 2025 WL 1275773, at \*3 (3d Cir. May 2, 2025). Those developments undercut petitioner’s suggestion that the Third Circuit would re-

solve his statutory claim differently from the court of appeals below.

Although the Fifth Circuit has concluded that a guilty plea did not preclude a defendant from arguing on appeal that “the facts set forth in the record do not constitute a federal crime,” *United States v. Jones*, 75 F.4th 502, 508, cert. denied, 144 S. Ct. 515 (2023), it cited a decision that relied solely on pre-*Cotton* precedent, see *ibid.* (quoting *United States v. Reasor*, 418 F.3d 466, 470 (5th Cir. 2005)). And its post-*Cotton* decisions have recognized that “standard waiver principles apply to defects in the indictment,” and thus challenges to the indictment are relinquished by an unconditional guilty plea. *United States v. Cothran*, 302 F.3d 279, 283 (5th Cir. 2002); see *United States v. Scruggs*, 714 F.3d 258, 263 (5th Cir.), cert. denied, 571 U.S. 889 (2013). To the extent that the Fifth Circuit’s cases exhibit an internal disagreement over the proper application of *Cotton*, that court should decide the issue in first instance.

While petitioner notes (Pet. 13) that in *United States v. Brown*, 875 F.3d 1235, 1238 (2017), the Ninth Circuit concluded that an unconditional guilty plea did not preclude a defendant’s claim that the facts of his case fell outside the statute of conviction, on the premise that the defendant’s claim “qualif[ied] as jurisdictional,” *ibid.*, the court did not cite, let alone distinguish *Cotton*. Petitioner also asserts (Pet. 13-14) that the decision below conflicts with the Eleventh Circuit’s decision in *United States v. St. Hubert*, 909 F.3d 335 (2018), cert. denied, 586 U.S. 1256 (2019), and 509 U.S. 984 (2020), abrogated on other grounds by *United States v. Taylor*, 596 U.S. 845 (2022). In *St. Hubert*, the court stated that it was “bound by [its] circuit precedent” in *United States v. Peter*, 310 F.3d 709 (11th Cir. 2002) (per curiam), to con-

clude that the defendant's unconditional guilty plea did not preclude a statutory challenge. *St. Hubert*, 909 F.3d at 343. *Peter* had held that "a district court is without jurisdiction to accept a guilty plea to" conduct that does not qualify as a statutory offense. 310 F.3d at 713.

But the Eleventh Circuit has subsequently described *Peter* as a "specific and narrow" exception to *Cotton*. *United States v. Brown*, 752 F.3d 1344, 1353 (2014). And the court has suggested that it harbors some doubt on *Peter*'s continuing viability, noting that *Peter* relied on precedent from when it was part of the Fifth Circuit (*United States v. Meacham*, 626 F.2d 503 (5th Cir. 1980)) that the Fifth Circuit itself has since overruled. *St. Hubert*, 909 F.3d at 343 n.5 (citing *Cothran*, 302 F.3d at 283). In light of those developments, any disagreement between the Tenth and Eleventh Circuits on the proper application of *Cotton* has become increasingly narrow and does not warrant the Court's review in this case.

3. At all events, this case is not a suitable vehicle for resolving the question presented because a decision in petitioner's favor would have no effect on his conviction. See *Supervisors v. Stanley*, 105 U.S. 305, 311 (1882) (explaining that this Court does not grant a writ of certiorari to "decide abstract questions of law \* \* \* which, if decided either way, affect no right" of the parties). Petitioner's underlying contention is that 18 U.S.C. 111(b) is not a "crime of violence" under Section 924(c) after this Court's decision in *Borden v. United States*, 593 U.S. 420 (2021). The Tenth Circuit expressly rejected that argument in *United States v. Butler*, 141 F.4th 1136 (2025), cert. denied, No. 25-863 (Feb. 23, 2026), a case arising out of the same facts as this case.

*Butler* explained that the court had previously held in *United States v. Kendall*, 876 F.3d 1264 (10th Cir. 2017), cert. denied, 584 U.S. 945 (2018), that Section 111(b) is a crime of violence. *Butler*, 141 F.4th at 1150. After careful analysis, the court then reaffirmed that “*Kendall* remains good law after *Borden*.” *Ibid*. Accordingly, even if this Court were to hold that petitioner may pursue his Section 924(c) claim notwithstanding his unconditional guilty plea, he necessarily would not obtain relief in the Tenth Circuit under binding precedent. See *Newman v. United States*, 145 S. Ct. 163 (2024) (denying a petition for a writ of certiorari challenging the Tenth Circuit’s understanding of Section 111’s mens rea).

#### CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

D. JOHN SAUER  
*Solicitor General*  
A. TYSEN DUVA  
*Assistant Attorney General*  
JAVIER A. SINHA  
*Attorney*

MAY 2026