

No.

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

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MARIO DELAINE,  
PETITIONER,

*v.*

UNITED STATES OF AMERICA,  
RESPONDENT.

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

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**PETITION FOR A WRIT OF CERTIORARI**

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### QUESTION PRESENTED

Under the elements clause of the Armed Career Criminal Act (ACCA), 18 U.S.C. § 924(e)(2)(B)(i), a crime is a “violent felony” if it “has as an element the use, attempted use, or threatened use of physical force against the person of another.” In *Borden v. United States*, 593 U.S. 420 (2021), this Court held that the elements clause excludes crimes that can be committed with a *mens rea* of recklessness. *Id.* at 423 (plurality opinion); *see id.* at 446 (Thomas, J., concurring in the judgment). Since *Borden*, however, courts of appeals have split on whether the ACCA’s *mens rea* requirement is satisfied by crimes that merely require a knowing or intentional act, without any requirement of knowledge or intent regarding injury to “the person of another.”

The Ninth and Tenth Circuits hold that an offense does not meet the elements clause unless it requires a defendant to cause physical pain or injury to another person with a *mens rea* more culpable than recklessness. The Seventh and Eleventh Circuits, by contrast, hold that the elements clause is satisfied by *any act* committed with a *mens rea* more culpable than recklessness—regardless of whether the defendant intended to cause physical pain or injury to another person or knew that such harm would result. The Sixth Circuit adopted the same position in the decision below.

The question presented is:

Whether an offense that requires an intentional act, but no *mens rea* as to the resulting physical pain or injury, qualifies as a “violent felony” under ACCA’s elements clause.

## II

### **PARTIES TO THE PROCEEDING**

Petitioner Mario Delaine was the defendant in the district court and the appellant in the Sixth Circuit. Respondent United States of America was the plaintiff in the district court and the appellee in the Sixth Circuit.

### III

#### RELATED PROCEEDINGS

This case arises from these proceedings:

- *United States v. Mario Delaine*, No. 1:23-cr-69 (E.D. Tenn. May 15, 2025) (rejecting argument that Petitioner's conviction under Fla. Stat. § 784.041 does not qualify as a violent felony for purposes of the Armed Career Criminal Act and sentencing Petitioner to imprisonment of 188 months);
- *United States v. Mario Delaine*, No. 25-5465 (6th Cir. Apr. 2, 2026) (affirming judgment); and
- *United States v. Mario Delaine*, No. 25-5465 (6th Cir. May 22, 2026) (denying rehearing en banc)

There are no other proceedings in state or federal trial or appellate courts, or in this Court, directly related to this case within the meaning of this Court's Rule 14.1(b)(iii).

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**PETITION FOR A WRIT OF CERTIORARI**

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Petitioner Mario Delaine respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit.

**OPINIONS BELOW**

The opinion of the court of appeals is reported at 171 F.4th 880 (6th Cir. 2026). Pet.App.2a-31a. The district court's bench decision at petitioner's sentencing is unpublished but reproduced at Pet.App.45a-90a.

**JURISDICTION**

The judgment of the court of appeals was entered on April 2, 2026. On May 22, 2026, the court denied rehearing en banc. Pet.App.1a. This Court has jurisdiction under 28 U.S.C. § 1254(1).

**STATUTORY PROVISIONS INVOLVED**

18 U.S.C. § 922(g) states in relevant part:

It shall be unlawful for any person—

(1) who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year ... to ... possess in or affecting commerce, any firearm or ammunition....

18 U.S.C. § 924(e)(1) states:

In the case of a person who violates section 922(g) of this title and has three previous convictions by any court referred to in section 922(g)(1) of this title for a violent felony or a serious drug offense, or both, committed on occasions different from one another, such person shall be fined under this title and imprisoned not less than fifteen years, and, notwithstanding any other provision of law, the court shall not suspend the sentence of, or grant a probationary sentence to, such person with respect to the conviction under section 922(g).

18 U.S.C. § 924(e)(2)(B) states:

[T]he term “violent felony” means any crime punishable by imprisonment for a term exceeding one year, or any act of juvenile delinquency involving the use or carrying of a firearm, knife, or destructive device that would be punishable by imprisonment for such term if committed by an adult, that—

(i) has as an element the use, attempted use, or threatened use of physical force against the person of another....

Fla. Stat. § 784.041(1) states:

A person commits felony battery if he or she:

- (a) Actually and intentionally touches or strikes another person against the will of the other; and
- (b) Causes great bodily harm, permanent disability, or permanent disfigurement.

#### STATEMENT

This case is an ideal vehicle to resolve a recurring and important conflict regarding the Armed Career Criminal Act (ACCA). ACCA mandates a 15-year minimum sentence for defendants with at least three previous convictions for a “violent felony.” To qualify as a violent felony under ACCA’s elements clause, an offense must require a minimum degree of force and a minimum degree of intent. The requisite force is force capable of causing physical pain or injury to another person. And the requisite intent, as a plurality of the Court held in *Borden v. United States*, 593 U.S. 420 (2021), is a *mens rea* more culpable than recklessness.

Since *Borden*, the circuits have split on what, exactly, a defendant must intend to accomplish with a *mens rea* more culpable than recklessness. In two circuits—the Ninth and Tenth—the *mens rea* requirement attaches to both the act and the resulting physical pain or injury to another person. Thus, an offense does not fall within the elements clause unless it requires the defendant to cause physical pain or injury to another person with a *mens rea* more culpable than recklessness. But three circuits reject this rule. The Seventh and Eleventh Circuits, along with the Sixth Circuit below, all hold that the elements clause merely requires that *any act* be committed with a *mens rea* more culpable than recklessness—regardless of whether the defendant intended to use force capable of causing physical pain or injury to another person, or knew that such harm might result from the use of force.

These different rules yield starkly different results on the same set of facts. This case is a perfect example. Petitioner has a prior conviction for Florida felony battery, an offense which requires (1) an intentional act of simple battery that (2) causes great bodily harm. The statute can therefore be violated by a simple non-consensual touch that results in *accidental injury*. A commuter who intentionally shoves past another rider to exit a crowded subway car, thereby knocking her into a metal pole and fracturing her wrist, has committed a “violent felony” and faces a fifteen-year minimum in the Sixth Circuit. But in the Ninth and Tenth Circuits, this offense is not a violent felony. The government recognized as much below. It urged the Sixth Circuit to reject those circuits’ rule, and the Sixth Circuit did just that. Only this Court can resolve this intractable division.

The conflict between the circuits is too important to ignore. Whether ACCA applies carries enormous consequences: ACCA imposes one of the harshest mandatory penalties in the Federal Criminal Code, turning a 15-year statutory maximum into a statutory minimum. And the question presented implicates a recurring statutory structure across several States that pairs an intentional act with a result-based injury enhancement requiring no *mens rea*. Geography should not dictate whether someone spends an extra decade behind bars.

This case, in short, is an ideal candidate for review. It presents a clean question of federal law on which the courts of appeals are divided. That question is dispositive, has substantial practical implications for all ACCA cases, and arises often. The Court should grant the petition.

### A. Legal Background

1. Congress enacted ACCA to address the “special danger created when a particular type of offender—a violent criminal or drug trafficker—possesses a gun.” *Begay v. United States*, 553 U.S. 137, 146 (2008). To that end, ACCA enhances sentences for felon-in-possession convictions under 18 U.S.C. § 922(g). A 15-year minimum sentence applies to any defendant with three or more previous convictions for a “violent felony.” 18 U.S.C. § 924(e)(1). And an offense qualifies as a “violent felony” under the elements clause only if it “has as an element the use, attempted use, or threatened use of physical force against the person of another.” *Id.* § 924(e)(2)(B)(i).

The categorical approach determines whether an offense satisfies the elements clause. *See, e.g., Stokeling v. United States*, 586 U.S. 73, 88 (2019). Under that method, “the facts of a given case are irrelevant,” and the appropriate inquiry is whether the least culpable conduct criminalized by the statute meets the elements clause. *Borden*, 593 U.S. at 424 (plurality opinion). “[T]hat means asking whether a state offense necessarily involves the defendant’s ‘use, attempted use, or threatened use of physical force against the person of another.’” *Id.* (quoting 18 U.S.C. § 924(e)(2)(B)(i)).

2. This Court has interpreted the elements clause to require both a minimum degree of force and a minimum degree of intent.

Start with force. In *Johnson v. United States*, 559 U.S. 133 (2010), this Court held that “in the context of a statutory definition of ‘violent felony,’ the phrase ‘physical force’ means *violent* force—that is, force capable of causing physical pain or injury to another person.” *Id.* at 140. “Thus, although ‘the merest touching’ is not violent force,

any force that actually causes injury or death is.” *Delligatti v. United States*, 604 U.S. 423, 432 (2025) (quoting *Stokeling*, 586 U.S. at 83).

This Court applied this framework to Florida’s simple battery statute in *Johnson*. As the Court explained, a defendant commits simple battery by “actually and intentionally touch[ing] or strik[ing] another person against the will of the other.” *Johnson*, 559 U.S. at 134 (alteration adopted) (quoting Fla. Stat. § 784.03(1)(a)). And “the element of ‘actually and intentionally touching’ . . . is satisfied by *any* intentional physical contact, ‘no matter how slight.’” *Id.* at 138 (quoting *State v. Hearn*, 961 So. 2d 211, 218 (Fla. 2007)). Such slight force, this Court held, does not qualify as “violent force” under the elements clause.

This Court later held that the elements clause requires not just force, but also intent. In *Borden*, a fractured Court held that an offense does not “count as a ‘violent felony’ if it requires only a *mens rea* of recklessness.” 593 U.S. at 423 (plurality opinion); *see id.* at 446 (Thomas, J., concurring in the judgment).

The plurality grounded this holding in the statutory phrase the “use of physical force against the person of another.” *See id.* at 430 (plurality opinion). The term “use of force,” explained the plurality, “denotes volitional conduct.” *Id.* at 431. And the word “against” “introduc[es] the conscious object (not the mere recipient) of the force.” *Id.* at 430. It followed that “[t]he ‘against’ phrase indeed sets out a *mens rea* requirement—of purposeful or knowing conduct.” *Id.* at 434.

“Were there any doubt about the elements clause’s meaning,” the plurality continued, “context and purpose would remove it.” *Id.* at 437. Quoting *Johnson*, the plurality observed that the term “violent felony” connotes “a

narrow ‘category of violent, active crimes.’” *Id.* at 438 (quoting 559 U.S. at 140). Such crimes “are best understood to involve not only a substantial degree of force, but also a purposeful or knowing mental state—a deliberate choice of wreaking harm on another, rather than mere indifference to risk.” *Id.* at 438.

Justice Thomas concurred in the judgment. He “rest[ed] [his] analysis instead on a separate phrase: ‘use of physical force.’” *Id.* at 446 (Thomas, J., concurring in the judgment). That phrase, Justice Thomas explained, “has a well-understood meaning applying only to intentional acts designed to cause harm.” *Id.* (quoting *Voisine v. United States*, 579 U.S. 686 (2016) (Thomas, J., dissenting)). He thus concluded that “[t]he elements clause does not encompass” a statute that “could be violated through mere recklessness,” notwithstanding his view that such an offense could still fall under ACCA’s residual clause. *See id.* at 446-47.

3. This Court’s interpretation of ACCA’s elements clause applies with equal force in other contexts. Indeed, the categorical approach is a “by-now-familiar method, applicable in several statutory contexts.” *Id.* at 424 (plurality opinion). Other statutes and the Sentencing Guidelines both employ definitions “almost identical to the elements clause” to “mark[] out a category of crimes” that can lead to enhanced punishment. *Id.* at 426; *see* 18 U.S.C. § 16(a) (defining “crime of violence” under the Immigration and Nationality Act); 18 U.S.C. § 924(c)(3) (defining “crime of violence” under firearms statute); U.S.S.G. § 4B1.2 (defining “crime of violence” for purposes of the “career offender” enhancement under the Sentencing Guidelines). When interpreting these provisions, this Court has routinely looked to cases interpreting ACCA’s elements clause. *See, e.g., Delligatti*, 604 U.S. at 431-32 (citing *Stokeling*, 586 U.S. at 83-84). The converse is also

true: cases addressing these identical definitions have informed this Court’s interpretation of ACCA’s elements clause. *See, e.g., Borden*, 593 U.S. at 427-28 (plurality opinion) (citing *Leocal v. Ashcroft*, 543 U.S. 1 (2004)).

### **B. Factual and Procedural History**

1. In August 2023, the government indicted petitioner for possessing a firearm as a felon in violation of 18 U.S.C. § 922(g)(1). Pet.App.4a; D.Ct. Dkt. 1. The government sought an enhanced sentence under 18 U.S.C. § 924(e)(1) based on three prior convictions: (1) Florida felony battery from 2009; (2) Florida aggravated assault with a firearm from 2012; and (3) Ohio domestic violence from 2019. Pet.App.4a. Petitioner pleaded guilty to the firearm offense but preserved his right to challenge that his convictions qualified as “violent felonies” under ACCA. Pet.App.4a.

2. Before the district court, as relevant here, petitioner contended that his Florida felony battery conviction was not a “violent felony” under the elements clause. Pet.App.4a-5a. Under Florida law, “[a] person commits felony battery if he or she: (a) Actually and intentionally touches or strikes another person against the will of the other; and (b) Causes great bodily harm, permanent disability, or permanent disfigurement.” Fla. Stat. § 784.041(1). Petitioner argued that this statute does not satisfy the elements clause under *Borden* because the statute merely requires a volitional act, not that the defendant have a more-than-reckless *mens rea* that great bodily harm will result. Pet.App.54a. Petitioner also argued that his two other convictions were not violent felonies, either. Pet.App.8a.

The district court rejected petitioner’s arguments as to all three convictions. Pet.App.76a-77a. For Florida felony battery, the court reasoned that the offense “requires

an intent to use force” and thus falls within the elements clause. Pet.App.76a. The court then applied ACCA’s 15-year mandatory minimum, and ultimately sentenced petitioner to 188 months’ imprisonment. Pet.App.85a. Without ACCA, petitioner’s guidelines range would have been 41 to 51 months. Pet. C.A. Br. 7.

3. The Sixth Circuit affirmed. For Florida felony battery, the court recognized that the first element—simple battery—falls short of *Johnson*’s requirement of force capable of causing physical pain or injury to another person. Pet.App.19a. But the court reasoned that the second element “requires ‘great bodily harm, permanent disability, or permanent disfigurement’ in every case,” and “‘any force that actually causes injury’ qualifies as violent force.” Pet.App.19a (first quoting Fla. Stat. § 784.041(1)(b); then quoting *Delligatti*, 604 U.S. at 432). The Sixth Circuit thus held that Florida felony battery meets the force component of the elements clause. Pet.App.19a.

The court then turned to the intent component. Petitioner again argued that “a mere volitional act doesn’t cut it,” since “[t]he elements clause covers only crimes where force is paired with a *mens rea* above ordinary recklessness.” Pet. C.A. Br. 33-34. Applying that rule to Florida felony battery, petitioner contended that the intentional act (the first element, simple battery) did not suffice under *Borden*—the statute would *also* need to require intent as to the second element (causation of harm) to fall within the elements clause. Pet. C.A. Br. 32-37.

The Sixth Circuit disagreed. Pet.App.20a. Because the Florida statute “requires the defendant to ‘*intentionally* touch or strike’ the victim,” the court reasoned, “the statute has more than ‘a *mens rea* of recklessness’ and thus counts as a violent felony under the elements clause.” Pet.App.19a-20a (alterations adopted) (first quoting Fla.

Stat. § 784.041(1)(a); then quoting *Borden*, 593 U.S. at 445 (plurality opinion)). The court thus held that a mere volitional act satisfied *Borden*, regardless of whether the defendant intended to use force capable of causing physical pain or injury to another person. Pet.App.24a-25a.

The Sixth Circuit attempted to ground its holding in both *Borden*’s plurality opinion and concurrence. Starting with the plurality, it concluded that “[n]owhere did the opinion suggest that the defendant must also intend (or know of) the injury that this force causes.” Pet.App.21a. Then, turning to Justice Thomas’s concurrence, the court conceded that it “suggested that the phrase ‘use of physical force’ alone had ‘a well-understood meaning applying only to intentional acts *designed to cause harm*.’” Pet.App.21a (quoting *Borden*, 593 U.S. at 446 (Thomas, J., concurring in the judgment)). The Sixth Circuit suggested, however, that because Justice Thomas in past cases “seemingly had a more lenient understanding of ‘harm’ and ‘force’ than did the plurality,” “he would undoubtedly hold” that Florida’s felony battery qualifies as a violent felony. Pet.App.22a, 24a.

4. The Sixth Circuit denied rehearing en banc on May 22, 2026. Pet.App.1a.

#### REASONS FOR GRANTING THE PETITION

This case is the ideal vehicle for resolving a clear circuit split on an important and recurring question of federal criminal law that demands national uniformity. In *Borden*, this Court held that the elements clause reaches only offenses with a *mens rea* more culpable than recklessness. But the circuits have sharply divided on what the object of that *mens rea* requirement must be. Two circuits hold that the requisite *mens rea* attaches both to the use of force and to the resulting harm. That means an offense does not fall under the elements clause unless it

requires a defendant to cause harm to another person with a *mens rea* more culpable than recklessness. Three circuits disagree, including the Sixth Circuit below. They employ a volitional-act rule, asking only whether an offense requires that *any act* be committed with a *mens rea* more culpable than recklessness—regardless of whether the defendant intended to cause physical pain or injury to another person or knew that such harm might result. The circuits are therefore split on the question presented: whether an offense that requires an intentional act, but no *mens rea* as to the resulting physical pain or injury, qualifies as a “violent felony” under ACCA’s elements clause.

That split was outcome determinative below, and it resulted in petitioner receiving a mandatory minimum 15-year sentence when his guidelines range was otherwise 41 to 51 months. And petitioner’s case is hardly unique. Only this Court can resolve the split and prevent geographic happenstance from dictating the length of a defendant’s sentence.

#### **I. The Circuits Are Divided on the Question Presented**

As the government acknowledged below, the circuits are split on whether ACCA’s elements clause encompasses offenses that do not require the defendant to cause physical pain or injury to another person with a *mens rea* more culpable than recklessness.

1. The Ninth and Tenth Circuits hold that an offense does not fall within ACCA’s elements clause unless it requires the defendant to intend to cause physical pain or injury to another person or know that such a result may follow from the application of force.

Start with the Ninth Circuit. In *United States v. Gomez*, the Ninth Circuit held that, “[f]ollowing *Borden*, the elements clause is satisfied only by crimes that require uses of force with a *mens rea* more culpable than

recklessness.” 165 F.4th 1199, 1208 (9th Cir. 2026) (en banc), *cert. denied on other grounds*, No. 25-7193 (May 18, 2026). The court then applied that rule to a California conviction for assault with a deadly weapon other than a firearm. *Id.* at 1207 (addressing Cal. Penal Code § 245(a)(1)). A conviction required only “[1] an intentional act and [2] actual knowledge of those facts sufficient to establish that the act by its nature will probably and directly result in the application of physical force against another.” *Id.* at 1208 (quoting *People v. Williams*, 29 P.3d 197, 204 (Cal. 2001)). But the standard “d[id] not require a subjective awareness of the risk that an injury might occur.” *Id.* at 1210 (alteration adopted) (quoting *Williams*, 29 P.3d at 204). Therefore, the offense did not “require an intent to apply force,” nor “an intent to cause harm; it merely require[d] an intent to do an act that results in harm.” *Id.* at 1208-09 (citation omitted). The en banc court held that this offense falls outside the elements clause in the Sentencing Guidelines, and “overrule[d] [its] pre-*Borden* decisions” to the contrary. *Id.* at 1210.

*Gomez* tracks the result the Ninth Circuit reached in an earlier, unpublished decision. In *United States v. Vega*, 2023 WL 4858148 (9th Cir. July 31, 2023), the court confronted Idaho felony domestic battery with traumatic injury, which requires “[1] an unconsented intentional touching that [2] happens to result in a minor physical injury.” *Id.* at \*1 (addressing Idaho Code § 18-918(2)). For this offense to fall within the Sentencing Guidelines’ elements clause, the Ninth Circuit reasoned, the *mens rea* requirement would have to extend to not just the first element (simple battery), but also the second (resulting physical injury). *See id.* But the offense did not “involve at least some awareness that the use of force will cause harm,” so the offense “lack[ed]” what *Borden* “requires.” *Id.* And district courts got the message: “a result-oriented addition to simple battery” does not satisfy *Borden*.

See *United States v. Manzon*, 2023 WL 7386866, at \*7 (D. Idaho Nov. 8, 2023) (addressing Idaho Code § 18-907(a)).

The Tenth Circuit has adopted the same interpretation of *Borden*. In *United States v. Sjodin*, 139 F.4th 1188 (10th Cir. 2025), the court addressed a different section of the same California assault statute that the Ninth Circuit addressed in *Gomez*. See *id.* at 1202-04 (addressing Cal. Penal Code § 245(a)(2)). “The least culpable conduct,” the Tenth Circuit observed, “does not require an intent to apply force to another person,” and “a defendant can be guilty ... even when he lacks ‘a specific intent to cause injury or a subjective awareness of the risk that an injury might occur.’” *Id.* at 1203 (quoting *Williams*, 29 P.3d at 204). That meant the “mens rea sweeps too broadly.” *Id.* A conviction does not satisfy the elements clause if it “merely requires an intent to do the act that results in harm,” since “mere volition does not prove the intent to apply force to another person.” See *id.*

2. Three other circuits—the Seventh and Eleventh, plus the Sixth Circuit below—have confronted nearly identical offenses. But they apply a diametrically different rule and reach diametrically different results.

The Seventh Circuit has twice addressed Indiana’s felony battery statute, which requires only (1) “knowingly or intentionally touch[ing] another person in a rude, insolent, or angry manner”; and (2) resulting “bodily injury” to certain individuals. *United States v. Love*, 7 F.4th 674, 678-79 (7th Cir. 2021) (quoting Ind. Code § 35-42-2-1(a)(2)(A) (2013)). Before *Borden*, the court held that this offense falls within the elements clause. *Id.* at 681. And the court rejected arguments that “no state crime can be a violent felony unless the person intends not only the use of force but also the injury caused by that force.” *Douglas v. United States*, 858 F.3d 1069, 1071 (7th Cir. 2017). After

*Borden*, the court refused to reconsider. In an unpublished decision, the court held that if a defendant “was convicted of acting ‘knowingly or intentionally,’” the conviction “satisfie[s] the mental state that *Borden* demands,” “regardless of whether his objective was to inflict serious bodily injury.” *United States v. Howard*, 2022 WL 10966513, at \*2 (7th Cir. Oct. 19, 2022).

The same pattern played out in the Eleventh Circuit. Twice, the court has addressed Florida felony battery, which is functionally identical to Indiana and Idaho felony battery: the offense requires only (1) an act of “[a]ctually and intentionally touch[ing] or strik[ing] another person against the will of the other” that (2) “[c]auses great bodily harm, permanent disability, or permanent disfigurement.” Fla. Stat. § 784.041(1). Before *Borden*, the Eleventh Circuit “h[eld] that Florida felony battery does categorically qualify as a crime of violence” under the elements clause in the Sentencing Guidelines. *United States v. Vail-Bailon*, 868 F.3d 1293, 1295 (11th Cir. 2017) (en banc). And the court recently “conclude[d] that *Borden* did not abrogate” that holding. *United States v. Sheely*, --- F.4th ---, 2026 WL 2349505, at \*1 (11th Cir. Aug. 13, 2026). Because felony battery “requires an intentional act to use physical force against the victim that is capable of causing physical pain or injury,” the Eleventh Circuit reasoned, the offense poses no *mens rea* problem under *Borden*. *Id.* at \*6. The court thus hewed to its pre-*Borden* decision in *Vail-Bailon*, despite one judge recognizing that “under Justice Thomas’s reasoning, Florida felony battery would *not* qualify as a ‘crime of violence’ under the Sentencing Guidelines, and *Vail-Bailon* would be abrogated,” *id.* (Rosenbaum, J., concurring) (emphasis added).

The Sixth Circuit deepened this split in the decision below. For Florida felony battery, the court acknowledged that the *mens rea* requirement applies to only the

first element—actually and intentionally touching or striking another person against their will, *i.e.*, simple battery—which does not, standing alone, involve the requisite force under the elements clause. Pet.App.19a (citing *Johnson*, 559 U.S. at 139). But the court rejected petitioner’s argument that, to meet the elements clause, the *mens rea* requirement would need to extend to the second element as well. Pet.App.20a. It was enough that the statute required *some* volitional act; it did not matter whether any mental state was required with respect to the element of causing bodily harm, permanent disability, or permanent disfigurement. Pet.App.24a-25a.

3. In light of the above disagreement, the government twice urged the Sixth Circuit to reject the Ninth and Tenth Circuits’ approach, claiming that “those out-of-circuit decisions incorporate the intent-to-harm view of *Borden* which this Court expressly rejected.” U.S. C.A. Br. 20; *see* C.A. Dkt. 29, at 1. The Sixth Circuit then acknowledged the direct conflict between its decision and the Ninth Circuit’s decision in *Vega*. Pet.App.25a. And “if the reasoning of neither [*Borden*] opinion control[led]” under *Marks v. United States*, 430 U.S. 188 (1977), the Sixth Circuit added, “we would follow the decisions of the Seventh and Eleventh Circuits that have already answered the question.” Pet.App.24a (first citing *Vail-Bailon*, 868 F.3d at 1299-1308; then citing *Douglas*, 858 F.3d at 1071-72).

The Ninth Circuit has similarly noted the tension between its approach and the Sixth Circuit’s. In a recent decision, the court directly acknowledged the conflict between *Vega* and the decision below. *United States v. Lopez*, --- F.4th ---, 2026 WL 2165840, at \*4 n.5 (9th Cir. July 28, 2026). And while the Ninth Circuit suggested it had not “resolve[d] th[e] debate” over whether intent to harm is required under *Borden*, *id.*, the Ninth Circuit

made clear that “to qualify as a categorical ‘crime of violence,’ an offense must require a mens rea greater than recklessness *both* as to the use of force sufficient to cause pain or injury and to the fact that the use of force is directed at another person,” *id.* at \*4 (emphasis added). The court thus held that California Penal Code § 273.5 does not satisfy the elements clause because the statute merely requires an intentional “assaultive act,” but no “intent to cause injury.” *Id.* at \*6. Florida felony battery has a similar defect: it does not categorically require “a mens rea greater than recklessness ... as to the use of force sufficient to cause pain.” *Id.* at \*4. Petitioner’s conviction would thus not be a “violent felony” in the Ninth Circuit.

The Sixth Circuit similarly tried to downplay the conflict with the Ninth Circuit’s approach. But the conflict remains apparent. The Sixth Circuit claimed that its rule, like *Gomez*, “require[s] the use of force to satisfy the applicable state-of-mind requirement.” Pet.App.25a. But that observation states the courts’ respective rules at far too high a level of generality. *Gomez* was clear that a statute would flunk the Ninth Circuit’s test if it “merely requires an intent to do an act that results in harm,” not “an intent to cause harm” or “an intent to apply force.” See 165 F.4th at 1208-09. That description fits Florida felony battery to a T. The result in the Tenth Circuit would be equally straightforward: Florida felony battery would not count because it “merely requires an intent to do the act that results in harm,” and “mere volition does not prove the intent to apply force to another person.” *Sjodin*, 139 F.4th at 1203. Perhaps for that reason, the Sixth Circuit’s opinion did not even mention the Tenth Circuit, despite both parties briefing the issue. Pet. C.A. Br. 36-37; U.S. C.A. Br. 19-21.

In short, contrary to the Sixth Circuit’s claim, petitioner’s case manifestly would have turned out differently in the Ninth and Tenth Circuits.

**II. The Question Presented is Exceptionally Important, Constantly Recurring, and Squarely Presented**

1. The question presented has profound consequences. Indeed, this Court frequently has granted certiorari to determine when ACCA’s sentencing enhancement applies. *See, e.g., Shular v. United States*, 589 U.S. 154 (2020); *Borden v. United States*, 593 U.S. 420 (2021); *Wooden v. United States*, 595 U.S. 360 (2022); *Brown v. United States*, 602 U.S. 101 (2024); *Erlinger v. United States*, 602 U.S. 821 (2024). ACCA imposes one of the harshest mandatory penalties in the Federal Criminal Code. For a typical Section 922(g) felon-in-possession conviction, a 15-year sentence is the statutory ceiling. *See* 18 U.S.C. §§ 922(g)(1), 924(a)(8). And the actual sentence is often far lower: in 2025 the average sentence for offenders convicted of violating Section 922(g) but not sentenced under ACCA was 70 months. U.S. Sent’g Comm’n, *Quick Facts: 18 U.S.C. § 922(g) Firearms Offenses* (2025), [bit.ly/4wrlaKk](https://bit.ly/4wrlaKk). But when ACCA applies, fifteen years becomes the statutory floor. *See* 18 U.S.C. §§ 922(g)(1), 924(e)(1). And the average sentence imposed skyrockets to 192 months—nearly three times as long as the average sentence for offenders whose prior offenses do not fall under ACCA. U.S. Sent’g Comm’n, *supra*.

Petitioner’s own sentence demonstrates the high stakes of the question presented. Had he been sentenced in the Ninth or Tenth Circuits, his Florida felony battery conviction would not have qualified as a “violent felony” under ACCA, and his guidelines range would have been 41 to 51 months. Pet. C.A. Br. 7. But because he was sentenced in the Sixth Circuit, his felony battery conviction

qualified as an ACCA predicate, and he received a sentence of 188 months. Pet.App.85a. Absent this Court’s intervention, petitioner will spend more than an extra decade in prison. And even after his release, the lasting label of “armed career criminal” will jeopardize his ability to reintegrate into society.

2. Petitioner’s case is hardly an anomaly. The decision below risks imposing one of the harshest mandatory penalties on a large class of defendants. Consider Florida felony battery alone. Felony battery is one of the most frequently charged offenses in Florida; the State reports that over the past decade, there have been over 40,000 convictions. Fla. Dep’t of Law Enf’t, *Criminal History Reports*, [bit.ly/4vbd33c](https://bit.ly/4vbd33c) (spreadsheet for battery). Because the statute criminalizes someone who “[a]ctually and intentionally touches” another so long as it results in sufficient injury, it sweeps in a wide range of conduct—even a “tap on the shoulder without consent” could “establish[] a violation” if it happens to result in sufficient injury. *Johnson*, 559 U.S. at 138 (alteration adopted) (quoting *Hearns*, 961 So. 2d at 219).

But the question presented does not simply ask this Court to resolve a single State’s statutory quirk. The question presented implicates a recurring statutory structure. Just like Florida, several States have enacted assault or battery statutes that pair (A) an intentional or knowing act with (B) a result-based injury enhancement that does not require proof that the defendant intended, knew, or even consciously disregarded a risk of injury. In other words, these statutes require a culpable *mens rea* as to an action, but do not require any separate *mens rea* as to the resulting injury. The California assault with a deadly weapon statute, as well as the Idaho and Indiana

felony battery statutes, fit this same mold. *Supra* pp. 12-13. So do other statutes in other states.<sup>1</sup>

This Court should clarify whether those sprawling offenses qualify under ACCA’s elements clause after *Borden*. If such offenses qualify as ACCA predicates in some circuits but not others, the application of ACCA’s mandatory minimum will turn solely on where federal prosecutors bring a Section 922(g) charge. When the difference is an extra decade in prison, geographic happenstance should not be the deciding factor.

3. This case is the ideal vehicle to resolve this important and recurring issue. Petitioner cleanly presented the question whether *Borden*’s *mens rea* requirement attaches to the resulting harm, or whether it is enough that the defendant intentionally made the underlying contact. Pet.App.54a; Pet. C.A. Br. 30-37. And both courts below squarely rejected his argument. Pet.App.25a, 76a.

Those decisions were outcome determinative. The government needed all three of petitioner’s prior convictions—including his Florida felony battery conviction—to qualify as “violent felony” predicates to trigger ACCA’s

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<sup>1</sup> See Minn. Stat. § 609.221, subd. 1 (defining first-degree assault to include “assault[ing] another and inflict[ing] great bodily harm”); *State v. Dorn*, 887 N.W.2d 826, 830-31 (Minn. 2016) (observing that, “[i]n Minnesota, the separate crime of battery has been incorporated into the definition of assault” and holding that the assault statute requires “only an intent to do the prohibited physical act of committing a battery,” not “the intent to do some amount of harm”); see also Iowa Code §§ 708.1(2)(a), 708.2(5) (defining felony assault to include an act “intended to result in physical contact which will be insulting or offensive to another” and that “causes serious injury” even “without the intent to inflict serious injury”); Tenn. Code §§ 39-13-101(a)(3), 39-13-102(a)(1)(A)(i) (defining aggravated assault to include “intentionally or knowingly caus[ing] [extremely offensive or provocative] physical contact” and that “[r]esults in serious bodily injury to another”).

mandatory minimum. The government did not dispute that if the Sixth Circuit applied the Ninth and Tenth Circuits’ “intent-to-harm” understanding of *Borden* to Florida’s felony battery statute, petitioner would not qualify for ACCA’s mandatory minimum sentence. *See* U.S. C.A. Br. 1, 17-21. To prevent other circuits from repeating the Sixth Circuit’s error when applying ACCA to various state criminal statutes, this Court should address this exceptionally important question now.

### III. The Decision Below Is Wrong

The Sixth Circuit’s volitional-act rule squarely conflicts with ACCA’s text and purpose. This Court should not allow that serious misinterpretation to stand.

1. The plain text of ACCA’s elements clause encompasses only offenses that require a defendant to cause physical pain or injury to another person with a *mens rea* more culpable than recklessness. To qualify as a “violent felony,” an offense must require “the use, attempted use, or threatened use of physical force against the person of another.” 18 U.S.C. § 924(e)(2)(B)(i). This Court has already held that “physical force” means “*violent* force—that is, force capable of causing physical pain or injury to another person,” *Johnson*, 559 U.S. at 140, and that “[o]ffenses with a *mens rea* of recklessness do not qualify as violent felonies under ACCA,” *Borden*, 593 U.S. at 445 (plurality opinion); *see id.* at 446 (Thomas, J., concurring in the judgment). Read together, *Johnson* and *Borden* require the relevant *mens rea* to attach not only to the antecedent physical act that later results in pain or injury, but to the pain or injury itself.

The *Borden* plurality grounded its holding in the familiar hierarchy of mental states, in which the level of culpability turns on the defendant’s awareness that his conduct will bring about the relevant element of the crime—

here, harm. *Id.* at 426-27; *see* Model Penal Code § 2.02(2). ACCA reaches only crimes that “involve not only a substantial degree of force, but also a purposeful or knowing mental state—a *deliberate choice of wreaking harm on another*, rather than mere indifference to risk.” *Borden*, 593 U.S. at 438 (plurality opinion) (emphasis added). “Recklessness and negligence are less culpable mental states because they instead involve insufficient concern with a risk of injury.” *Id.* at 427. As the Ninth Circuit recognized, “[r]unning through *Borden*, therefore, is the assumption that someone who commits a violent felony possesses some awareness that their action will harm another.” *Vega*, 2023 WL 4858148, at \*2.

The Sixth Circuit tried to evade that reasoning by dismissing *Borden*’s requirement that an offense demand a person act “with full awareness of consequent harm” as mere background rather than binding interpretation. Pet.App.20a-21a (quoting *Borden*, 593 U.S. at 426 (plurality opinion)). But the plurality’s discussion of *mens rea* supplied the very foundation of its holding. The Court’s examples make that plain: the driver who sees a pedestrian and “plows ahead” acts knowingly, while the driver who blows through a red light without seeing anyone acts, at most, recklessly. *Borden*, 593 U.S. at 432 (plurality opinion). The distinction is not whether the driver’s movement was volitional. It is whether the driver was aware that his force was directed at another person in a manner capable of causing physical pain or injury.

The Sixth Circuit’s rule also fails under Justice Thomas’s *Borden* concurrence. Supplying the fifth vote, Justice Thomas concluded that the elements clause covers only “intentional acts designed to cause harm.” *Id.* at 446 (Thomas, J., concurring in the judgment) (citation omitted). An intentional touch that happens to cause injury is plainly not an act “designed to cause harm.”

Applying the Sixth Circuit’s rule to Florida felony battery exposes the Sixth Circuit’s error. By assessing *mens rea* solely with respect to the statute’s conduct element, the Sixth Circuit’s rule collapses the distinction between more-than-reckless contact and more-than-reckless *violent force*. This produces the very result that *Borden* forbids: punishing an offender for a “violent felony” even though he lacked any awareness that his conduct would inflict violent force on another person.

2. The Sixth Circuit’s rule also undermines the careful design of ACCA. “Were there any doubt about the elements clause’s meaning, context and purpose would remove it.” *Id.* at 437 (plurality opinion). As this Court has repeatedly cautioned, “we cannot forget that we ultimately are determining the meaning of the term ‘crime of violence.’” *Leocal*, 543 U.S. at 11; *see Borden*, 593 U.S. at 437-38 (plurality opinion) (same for “violent felony”); *Johnson*, 559 U.S. at 140 (same). “Congress enacted ACCA ... to address the special danger created when a particular type of offender—a violent criminal—possesses a gun.” *Borden*, 593 U.S. at 438 (plurality opinion) (cleaned up). Consistent with that aim, this Court has “construed the definitions at issue to mark out a narrow ‘category of violent, active crimes.’” *Id.* (quoting *Johnson*, 559 U.S. at 140).

The Sixth Circuit’s approach erases that limitation. Under its rule, an offense qualifies as an ACCA predicate regardless of the defendant’s awareness of the risk of harm his conduct posed. That overbroad construction sweeps in conduct “‘far removed’ from the ‘deliberate kind of behavior associated with violent criminal use of firearms.’” *Id.* at 439 (quoting *Begay*, 553 U.S. at 147). Take, for instance, a bar patron who pokes a stranger in the chest. Unbeknownst to the patron, the stranger has a heart device that is dislodged with the poke, and the

stranger ultimately suffers cardiac issues and permanent disability. Or a park employee who intentionally grabs a visitor's arm to prevent entry into a prohibited area. The visitor, who has osteoporosis, suffers a bone fracture. The bar patron's and park employee's acts are intentional and ultimately cause "great bodily harm," thereby qualifying as ACCA predicates under the Sixth Circuit's rule. But neither person acted "with full awareness of consequent harm" that his application of force would inflict on another person. *See id.* at 426. This conduct plainly bears no resemblance to the "special danger" created when a violent criminal possesses a gun. *See Begay*, 553 U.S. at 146.

Allowing this misinterpretation of ACCA's elements clause to stand will "blur the distinction between the 'violent' crimes Congress sought to distinguish for heightened punishment and other crimes." *Leocal*, 543 U.S. at 11. Review by this Court is the only means to address this problem and ensure defendants are not subjected to enhanced sentences for offenses ACCA was never designed to reach.

### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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