

NO:

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2025

NIGEL RICHARDSON,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

HECTOR A. DOPICO
Federal Public Defender
Brenda G. Bryn
Assistant Federal Public Defender
Counsel of Record
One East Broward Blvd., Suite 1100
Fort Lauderdale, Florida 33301-1100
Telephone No. (954) 356-7436
Counsel for Petitioner

QUESTION PRESENTED FOR REVIEW

Whether the Eleventh Circuit’s recent iteration of its “prior panel precedent rule”—which requires rigid adherence to prior circuit precedent, even if the prior precedent indisputably did not apply a new “mode of analysis” dictated by an intervening decision of this Court—contravenes well settled principles of vertical *stare decisis*, and denies Eleventh Circuit defendants their statutory right to appeal and due process of law, in conflict with the approach of other circuits.

INTERESTED PARTIES

Pursuant to Sup. Ct. R. 14.1(b)(i), Petitioner submits that there are no parties to the proceeding other than those named in the caption of the case.

Petitioner Nigel Richardson was the defendant in the district court and appellant below.

Respondent United States of America was the plaintiff in the district court and appellee below.

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PETITION FOR WRIT OF CERTIORARI

Nigel Richardson (“Petitioner”) respectfully petitions this Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit.

OPINION BELOW

The Eleventh Circuit’s opinion affirming Petitioner’s convictions and sentence, *United States v. Richardson*, 2026 WL 949150 (11th Cir. Apr. 8, 2026), is included in the Appendix A-1.

STATEMENT OF JURISDICTION

Jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1) and Part III of the Rules of the Supreme Court of the United States.

This petition is timely filed pursuant to Supreme Court Rules 13(3) and 13.1.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. amend. V (Due Process Clause)

No person shall . . . be deprived of life, liberty, or property, without due process of law . . .

18 U.S.C. § 3742(a)

The defendant may file a notice of appeal in the district court for review of an otherwise final sentence if the sentence—

(1) was imposed in violation of law . . .

18 U.S.C. 1951. Interference with commerce by threats or violence

(a) Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires to so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined under this title or imprisoned not more than twenty years, or both.

(b) As used in this section—

(1) The term “robbery” means the unlawful taking or obtaining of personal property from the person or in the presence of another, against his will, by means of actual or threatened force, or violence, or fear of injury, immediate or future, to his person or property, or property in his custody or possession, or the person or property of a relative or member of his family or of anyone in his company at the time of his taking or obtaining.

18 U.S.C. § 924 (2008). Penalties

(c)(1)(A) Except to the extent that a greater minimum sentence is otherwise provided by this subsection or by any other provision of law, any person who, during and in relation to any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime that provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device)

for which the person may be prosecuted in a court of the United States, uses or carries a firearm, or who, in furtherance of any such crime, possesses a firearm, shall, in addition to the punishment provided for such crime of violence or drug trafficking crime –

(i) be sentenced to a term of imprisonment of not less than 5 years;

(ii) if the firearm is brandished, be sentenced to a term of imprisonment of not less than 7 years; and

(iii) if the firearm is discharged, be sentenced to a term of imprisonment of not less than 10 years.

(c)(1)(C) In the case of a second or subsequent conviction under this subsection, the person shall –

(i) be sentenced to a term of imprisonment of not less than 25 years . . .

(c)(3) For purposes of this subsection, the term “crime of violence” means an offense that is a felony and –

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

(B) that by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense. . . .

(o) A person who conspires to commit an offense under subsection (c) shall be imprisoned for not more than 20 years, fined under this title, or both . . .

STATEMENT OF THE CASE

The Proceedings in the District Court

On May 16, 2019, a federal grand jury charged Petitioner with five crimes resulting from robberies on June 19 and 25, 2018. Based on the June 19th robbery, the grand jury charged Petitioner with Hobbs Act robbery in violation of 18 U.S.C. §1951(a) (Count 1); using, carrying, and brandishing a firearm during a “crime of violence,” namely, the Hobbs Act robbery in Count 1, in violation of 18 U.S.C. §§ 924(c)(1)(A), (A)(iii), and 2 (Count 2); and that Petitioner also possessed a firearm in and affecting interstate and foreign commerce, having previously been convicted of a crime punishable by imprisonment for a term exceeding one year, and did so knowingly,” in violation of 18 U.S.C. § 922(g)(1) (Count 5). Based on the June 25th robbery, the grand jury charged Richardson with an additional violation of § 1951(a) (Count 3); and another § 924(c) brandishing count predicated on the Count 3 Hobbs Act robbery (Count 4).

Petitioner proceeded to trial on all counts.

With regard to Counts 1-4, at the government’s request, the district court delivered the 11th Circuit pattern Hobbs Act robbery instruction (O70.3), which defines robbery as taking “property against the victim’s will by using actual or threatened force or violence or causing the victim to fear harm either immediately or in the future.” The instruction specifically defined “property” to include “money, tangible things, or value, and intangible rights that are a source of income or wealth,” and “fear” to include “the fear of financial loss as well as fear of physical violence.”

With regard to Counts 2 and 4, the § 924(c) counts, the court told the jury Counts 1 and 3 charged a “violent crime.”

The jury found Petitioner guilty of all counts, as charged. And the court sentenced him to 24 months concurrent on Counts 1, 3, and 5; followed by 168 months consecutive on Counts 2 and 4; followed by 5 years supervised release.

Petitioner’s Appeal to the Eleventh Circuit

On appeal, Petitioner argued *inter alia* that the Court should find Hobbs Act robbery was not a predicate “crime of violence” for purposes of 18 U.S.C. §924(c), and vacate Petitioner’s Count 2 and 4 convictions for lack of jurisdiction. He argued that given that *United States v. Taylor*, 596 U.S. 845, 857-59 (2022) explicitly rejected and therefore abrogated the “realistic probability” test from *Gonzalez v. Duenas-Alvarez*, 549 U.S. 183, 193 (2007), which the Eleventh Circuit applied in *United States v. St. Hubert*, 909 F.3d 335, 350 (11th Cir. 2018) in finding Hobbs Act robbery was categorically a “crime of violence.” Moreover, he argued, the Eleventh Circuit pattern instruction defining Hobbs Act robbery is clear that the “taking” in the offense can be of “intangible” as well as tangible rights, which can occur by causing/threatening either “financial loss” or “physical violence”—which means the offense is not categorically violence.

In its Answer Brief, the government rightly conceded *Taylor* had expressly rejected *St. Hubert*’s “realistic probability” methodology, but minimized the jurisprudential significance of that rejection by arguing *In re St. Fleur*, 824 F.3d 1337 (11th Cir. 2016) “is the relevant prior precedent, and *Fleur* did not rely on the realistic probability’ rationale;” thus, “the demise of the ‘realistic probability’ rationale” did not strengthen Petitioner’s position. According to the government, it simply did not matter whether Petitioner’s arguments concerning the categorical approach after *Taylor*, and the overbroad nature of Hobbs Act robbery given the Eleventh Circuit pattern instruction, were made to the *Fleur* panel, because in the Eleventh Circuit there is “no overlooked reasons” exception to the prior-panel-precedent rule.

In his Reply Brief, Petitioner disagreed with that reading of Eleventh Circuit precedent, noting that in *United States v. Jackson*, 55 F.4th 846 (11th Cir. 2022), *aff'd sub nom Brown v. United States*, 602 U.S. 101 (2024), the Eleventh Circuit had clarified that “[q]uestions which merely lurk in the record, neither brought to the attention of the court nor ruled upon, are not to be considered as having been so decided as to constitute precedents.” *Id.* at 853 (citing cases). And according to that clarification, he argued, *Fleur* had *no* preclusive force or effect on questions neither raised nor answered in that case—which included questions as to proper application of the categorical approach under controlling Supreme Court precedents, and the significance of the terms of the Eleventh Circuit pattern Hobbs Act robbery instruction under the categorical approach.

To the extent the government claimed as a fallback in its brief that *Fleur* was “consistent with *Taylor*” by “focus[ing] on the elements,” Petitioner argued that was *also* wrong. He explained that this Court was clear in *Mathis v. United States*, 579 U.S. 500, 508-095, 517-19 (2016) that a court cannot determine “elements” from the face of a disjunctively-worded statute. And in *United States v. Lockett*, 810 F.3d 1262, 1270-71 (11th Cir. 2016), the Eleventh Circuit had correctly applied *Descamps v. United States*, 570 U.S. 254 (2013) in confirming that the breadth of an “element” is determined by caselaw and model jury instructions. He argued that *Taylor* built upon—and was consistent with—*Moncrieffe*, *Descamps*, *Lockett*, and *Mathis*. And he emphasized that *Fleur* indisputably did *not* consider the categorical approach dictates of these precedents. As such, he explained, *Fleur* can have no preclusive force and effect on proper application of the categorical approach in a §924(c) case post-*Taylor*, or on the significance of the terms of the Eleventh Circuit pattern Hobbs Act robbery instruction under *Taylor*’s clarification of the categorical approach.

The Eleventh Circuit's Decision in *Solomon*

Although the Eleventh Circuit heard oral argument in Petitioner's case on January 31, 2025 where the parties disputed the impact of *Fleur*, prior to rendering a decision over a year later the Eleventh Circuit rejected Petitioner's same argument in *United States v. Solomon*, 136 F.4th 1310 (11th Cir. May 15, 2025). In *Solomon*, the Eleventh Circuit agreed with Petitioner's same argument here that *Taylor* had "expressly abrogated" "our previous precedent in *St. Hubert*." *Id.* at 1321. But it found the "subsequent publication of [*United States v.*] *Wiley*[, 78 F.4th 1355 (11th Cir. 2023)] render[ed] that point without merit," and *St. Hubert*'s abrogation of the "realistic probability methodology" failed to "advance the appellants' cause," *id.*, for several reasons. As a threshold matter, it explained, *Wiley* stated "*Taylor* did not disturb our holding [in *Fleur*] that completed Hobbs Act robbery is a crime of violence," and "[u]nder our prior-panel-precedent rule, we may not diverge from that position here." *Id.* at 1320-21. While acknowledging that under the Circuit's "prior-panel-precedent rule," "a prior panel's holding is binding on all subsequent panels unless and until it is overruled or undermined to the point of abrogation by the Supreme Court or by this [C]ourt sitting *en banc*," and citing as support, *United States v. Archer*, 531 F.3d 1347, 1352 (11th Cir. 2008), the court in *Solomon* detailed the very high standard for "abrogation" in the Circuit, even by an intervening Supreme Court precedent, stating:

"To constitute an 'overruling' for the purposes of the prior panel precedent rule, the Supreme Court decision 'must be clearly on point.'" *United States v. Kaley*, 579 F.3d 1246, 1255 (11th Cir. 2009) (quoting *Garrett v. Univ. of Ala. at Birmingham Bd. of Trs.*, 344 F.3d 1288, 1292 (11th Cir. 2003)). "In addition to being squarely on point, the doctrine of adherence to prior precedent also mandates that the intervening Supreme Court case actually abrogate or directly conflict with, as opposed to merely weapon, the holding of the prior panel." *Id.* at 1255. In other words, "[e]ven if the reasoning of an intervening high court decision is at odds with a prior appellate court decision, that does not provide the appellate court with a basis for departing from the prior decision." *United States v. Vega-Castillo*, 540

F.3d 1235, 1237 (11th Cir. 2008).

Solomon, 136 F.4th at 1318 (emphasis added).

The Eleventh Circuit then continued with additional reasons *Taylor*’s abrogation of *St. Hubert* made no difference here, and deference to *Wiley* (which deferred to *Fleur*) resolved the case and mandated affirmance:

First, it explained, in “*Fleur*, we held that ‘the elements of ... §1951 robbery, as replicated in [Fleur’s] indictment, require the use, attempted use, or threatened use of physical force,” 824 F.3d at 1341, and reiterated the same in *Wiley*, 78 F.4th at 36-64.”

Second, it explained, although the appellants “point to our pattern jury instructions” under which the “least culpable conduct” is a “threat of financial harm,” “jury instructions are not binding law, *United States v. Carter*, 776 F.3d 1309, 1324 (11th Cir. 2015), and our cases—both before and after *Taylor*—say that Hobbs Act robbery cannot be accomplished without the use attempted use, or threatened use of force.” 136 F.4th at 1321.

Finally, it explained, the fact that the *Wiley* panel did not consider the language of the pattern instruction the appellants emphasized did not render *Wiley* non-precedential on that point under *United States v. Jackson*, 55 F.4th 846, 853 (11th Cir. 2022), because the appellants had simply raised a new argument—not a new issue—and the Court had “categorically rejected an overlooked reason or argument exception to the prior-panel-precedent rule.” *Id.* (citing *In re Lambrix*, 776 F.3d 789, 794 (11th Cir. 2015)).

Thus, the panel concluded, “none of the appellants’ arguments move the needle and *Wiley* controls;” “Hobbs Act robbery remains a crime of violence;” and “there is no jurisdictional defect in the appellants’ §924(c) convictions arising from those Hobbs Act robberies.” *Id.* at 1321.

When the government filed a Rule 28(j) letter advising Petitioner’s panel of *Solomon*, undersigned counsel responded that although *Solomon* had indeed rejected the same challenge as Petitioner had raised in Issue I to his § 924(c) conviction predicated on Hobbs Act robbery, counsel (who also represented Mr. Solomon) would be seeking rehearing en banc on that issue, and the prior-panel-precedent rule did not apply in en banc proceedings.

The petition for rehearing en banc in *Solomon*, and its denial

Solomon thereafter sought review of his panel’s ruling by the full Eleventh Circuit by seeking rehearing en banc on the following questions:

I. Can *In re Saint Fleur*, 824 F.3d 1337 (11th Cir. June 8, 2016)—and subsequent decisions like *United States v. Wiley*, 78 F.4th 1355 (11th Cir. 2023) adhering to *Fleur* under the “prior-panel-precedent rule”—remain binding precedent in this Circuit if the *Fleur* panel demonstrably and admittedly did not apply the categorical approach in analyzing whether Hobbs Act robbery was a “crime of violence” within 18 U.S.C. § 924(c)(3)(A)?

II. After the clarification of the categorical approach in *Mathis v. United States*, 579 U.S. 500 (2016) and *United States v. Taylor*, 596 U.S. 845 (2022), and given the language of this Circuit’s pattern instruction on Hobbs Act robbery, 18 U.S.C. §1951(b)(1), which advises juries that the offense may be committed by *causing fear of financial loss without physical violence*, is Hobbs Act robbery categorically a “crime of violence” for § 924(c)(3)(A)?

As a threshold matter, Solomon noted, the “prior panel precedent rule” did not bind the full Court in en banc proceedings. And he asked the full Court to declare definitively that the “crime of violence” approach of *Fleur* (and *Wiley* which had reflexively followed *Fleur*) had been abrogated by this Court’s reasoning in its post-*Fleur* decisions in *Mathis*, 579 U.S. at 518-19, and *United States v. Davis*, 588 U.S. 445, 456-57 (2019)

Notably, in the Appendix to his petition, Solomon attached an unpublished subsequent order by the *Fleur* panel, *In re Fleur*, No. 16-14022 (11th Cir. July 22, 2016) (“*Fleur II*”), which

he explained, confirmed that the *Fleur* panel majority did not apply the categorical approach in holding Hobbs Act robbery was a “crime of violence” for § 924(c)(3)(A), because:

In its view, the categorical approach simply did not apply to 18 U.S.C. § 924(c). While admittedly, there were conflicting views on that point—at least vis-à-vis § 924(c)’s residual clause—for a brief period in this Circuit, subsequent Circuit and Supreme Court authority have proven the view of the *Fleur* panel majority that the categorical approach does not govern the “crime of violence” determination in § 924(c), decidedly wrong.

A telltale sign the *Fleur* panel majority did not apply the categorical approach is that neither the word “categorically” nor the term “categorical approach” appears anywhere in the opinion. Rather, the majority found the language of the disjunctively-worded Hobbs Act robbery statute, 18 U.S.C. § 1951(b)(1), which was “replicated in [Fleur’s] indictment” (which charged robbery “by means of actual or threatened force, or violence, or fear of injury”), *itself* confirmed Fleur’s underlying offense “require[d] the use, attempted use, or threatened use of physical force ‘against the person or property of another,’ and as such met the elements clause ‘definition of a crime of violence under § 924(c)(3)(A).’” 824 F.3d at 1341.

In so reasoning, the *Fleur* panel did not yet have the Supreme Court’s guidance in *Mathis*. *Mathis* explained the difference between “elements” and “means,” and set forth a precise methodology for distinguishing between the two in a disjunctively-worded statute—a methodology necessary for correct application of the categorical approach to a statute like § 1951(b)(1). *See* 579 U.S. at 519 (noting that an indictment that tracks all of the words in a statute, and correlative jury instructions that reference all alternatives, is “as clear an indication as any that each alternative is only a possible means of commission, not an element that the prosecutor must prove to a jury beyond a reasonable doubt”).

The *Fleur* panel did precisely what *Mathis* prohibited two weeks later. Specifically, it presumed every word in a disjunctively-worded statute was an “element,” and the mere “replication” of the statutory term “force” in Fleur’s indictment was dispositive of the “crime of violence” determination in § 924(c)(3)(A). It did not determine as a threshold matter whether “force” was a “means” or an “element,” or base its “crime of violence” determination on the least culpable “means” of violating § 1951(b)(1), after considering jury instructions. *Mathis* plainly abrogated the surface-level mode of analysis in *Fleur*.

After *Mathis* clarified proper application of the categorical approach to a statute like § 1951(a) and (b)(1), Fleur filed a second (counseled) application to file a successive § 2255, pointing out the inconsistency between the panel’s “crime of violence” approach, and the categorical approach dictated by both *Descamps v. United States*, 570 U.S. 254 (2013), and *Mathis*. And notably, in rejecting this second application, the panel majority was clear that it believed the “categorical

approach” simply did **not** govern the “crime of violence” determination for **either** clause in § 924(c)(3). See Appendix B, *In re Fleur*, No. 16-14022, at 10-11 (11th Cir. July 22, 2016)(“*Fleur II*”)(subsequent order rejecting *Descamps* and *Mathis* as “inapposite” decisions, because “many of the reasons proffered by the Supreme Court for employing a categorical approach to state court convictions in ACCA cases simply do not apply in the § 924(c) context where the § 924(c) offense and its federal companion conviction are in the same federal indictment, and both charges are before the same judge;” thus “***Descamps* and *Mathis* do not apply to our previous June 8, 2016 order, let alone render that order clearly erroneous**”); see also *id.* at 11 n. 4 (rejecting as “incorrect” the assertion in *Fleur*’s second, counseled petition that “this Court is bound to apply the same categorical approach used in ACCA cases to determine whether a conviction for Hobbs Act robbery qualifies as a crime of violence under § 924(c)”). ...

There can be no dispute from the above that the *Fleur* panel majority wrongly believed—and articulated expressly in *Fleur II*—that the “categorical approach” did **not** apply to § 924(c)’s elements clause. *Mathis* and *Descamps* were not “inapposite,” as the *Fleur II* panel declared. Rather, these precedents directly controlled the required categorial analysis under §924(c)(3)(A), which *Fleur* failed to perform. As such, the Court should declare *Fleur*, and any panel decisions like *Wiley* adhering to *Fleur*’s wrong mode of elements clause analysis, abrogated without either binding or persuasive force at this time.

Petition for Rehearing En Banc, *United States v. Solomon*, DE 112-1:11-18 (11th Cir. June 5, 2025) (Appendix A-4 hereto).

As Petitioner argued in his en banc petition, but the full Eleventh Circuit ignored without dissent, if there even *could* have still been doubt among some Eleventh Circuit judges after *Ovalles v. United States*, 905 F.3d 1300, 1302 (11th Cir. 2018) (en banc) and *United States v. St. Hubert*, 909 F.3d 335, 347-51 (11th Cir. 2018) as to whether the “categorical approach” governed § 924(c)’s elements clause,

it was laid to rest by *United States v. Davis*, 588 U.S. 445 (2019). See *id.* at 456 (noting “everyone agrees that, in connection with the elements clause [in § 924(c)(3)(A)], the term ‘offense’ carries” the generic meaning, rather than referring to the offender’s specific acts). Notably, almost immediately after *Davis* overruled [*Ovalles*—confirming the categorical approach applied to both clauses of § 924(c)(3), and declaring §924(c)(3)(B) unconstitutionally vague, see 588 U.S. at 453-71—the Court reaffirmed in *Brown v. United States*, 942 F.3d 1069, 1075 (11th Cir. 2019) that “*We apply the categorical approach when determining whether an offense constitutes a ‘crime of violence’ under the elements clause*” in §

924(c)(3)(A). *Id.* at 1075.

(Emphasis added).

On July 9, 2025, the Eleventh Circuit denied rehearing en banc. No judge in regular active service on the court dissented or even requested that the court be polled. *United States v. Solomon*, No. 22-11488, DE 117-2 (11th Cir. July 9, 2025).

Solomon thereafter sought certiorari on the same issue raised herein, but the Court denied certiorari. *Solomon v. United States*, ___ S.Ct. ___, 2026 WL 79892 (Jan. 12, 2026) (No. 25-6089).

The Eleventh Circuit’s Decision in Petitioner’s Case Following *Solomon*

On April 18, 2026, the Eleventh Circuit affirmed Petitioner’s convictions on all grounds. With specific regard to his challenge to his §924(c) convictions based upon *Taylor*’s abrogation of *St. Hubert*’s “realistic probability” test, the court found Fleur binding. It stated:

[T]he question is whether—to convict a person of Hobbs Act robbery—the government must prove, beyond a rea-sonable doubt, that the person used, attempted to use, or threat-ened to use physical force as required by section 924(c).

We answered that question in *In re Saint Fleur*, 824 F.3d 1337 (11th Cir. 2016). There, we held that a “conviction for Hobbs Act robbery . . . clearly qualifies as a ‘crime of violence’ under the use-of-force clause in [section] 924(c)(3)(A)” because “the elements of . . . [section] 1951 robbery require the use, attempted use, or threatened use of physical force ‘against the person or property of another.’” *Id.* at 1340–41 (quoting 18 U.S.C. § 924(c)(3)(A)). *Saint Fleur* directly connected the Hobbs Act robbery elements, “as replicated in the indictment,” to the definition of a crime of violence. *Id.* at 1341. Twice after *Saint Fleur* we reaffirmed that Hobbs Act robbery was a crime of violence. *See In re Colon*, 826 F.3d 1301, 1305 (11th Cir. 2016) (holding that aiding and abetting Hobbs Act robbery is a crime of violence); *United States v. St. Hubert*, 909 F.3d 335, 345–46 (11th Cir. 2018) (holding that Hobbs Act robbery is a crime of violence under our binding precedent in *Saint Fleur* and *Colon*).

Richardson, as he must, acknowledges these decisions. But, he argues, our holdings that Hobbs Act robbery is a crime of violence under the elements clause did not

survive the Supreme Court’s decision in *Taylor*. We considered—and rejected—the same argument in *United States v. Solomon*, 136 F.4th 1310 (11th Cir. 2025). There, we explained that “our cases—both before and after *Taylor*—say that Hobbs Act robbery cannot be accomplished with-out the use, attempted use, or threatened use of force.” *Id.* at 1321. To reach that conclusion, we relied on *United States v. Wiley*, 78 F.4th 1355 (11th Cir. 2023), which explained that the Supreme Court’s analysis in *Taylor* was limited to attempted Hobbs Act robbery. *Solomon*, 136 F.4th at 1319–20; *see Wiley*, 78 F.4th at 1363–65. Thus, the *Wiley* court said, aiding and abetting a Hobbs Act robbery was a crime of violence “because *Taylor* did not disturb our holding that completed Hobbs Act robbery is a crime of violence.” *Wiley*, 78 F.4th at 1365. Following *Wiley*, *Solomon* reaffirmed that our earlier holding—that a completed Hobbs Act robbery was categorically a crime of violence under the elements clause—was still good law post-*Taylor*. *Solomon*, 136 F.4th at 1321. Indeed, in a supplemental authority letter, Richardson concedes that *Solomon* “rejected the same challenge” he raises here. We agree that it did.

2026 WL 949150, at *6.

REASONS FOR GRANTING THE WRIT

The Eleventh Circuit’s current iteration of its “prior panel precedent rule” contravenes well-settled principles of *stare decisis* and denies Eleventh Circuit defendants their statutory right to appeal and due process of law, in conflict with this Court’s precedents and the approaches of other circuits.

It has long been the rule in the Eleventh Circuit, dating back to the days when the Eleventh Circuit was part of the Fifth Circuit, that a prior panel’s holding in a published precedential decision is binding on all subsequent panels “unless and until it is overruled or undermined to the point of abrogation” by the en banc court, or by an intervening decision of this Court “that changes the law.” *See Wilson v. Taylor*, 658 F.2d 1021, 1034 (5th Cir. Unit B 1981). That is because, as the Eleventh Circuit explained in *United States v. Contreras*, 667 F.2d 976 (11th Cir. 1982), an appellate court’s “first duty” is to “follow the dictates of the United States Supreme Court.” *Id.* at 979. And indeed, while the Eleventh Circuit thereafter specified that the intervening decision of this Court must be “clearly on point” to constitute an overruling under its “prior panel precedent

rule,” *Garrett v. Univ. of Ala. at Birmingham Bd. of Trs.*, 344 F.3d 1288, 1292 (11th Cir. 2003), in *United States v. Archer*, 531 F.3d 1347 (11th Cir. 2008) the Eleventh Circuit clarified that whenever this Court sets forth a new “mode of analysis,” its decision is indeed “clearly on point” and “undermines to the point of abrogation” prior circuit precedent analyzing the same or even related legal questions under a different “mode of analysis.” *Id.* at 1352.

Not only in *Archer*, but in many subsequent cases as well, the Eleventh Circuit acknowledged abrogation of a prior panel precedent by an intervening decision of this Court, *without* requiring complete identity of the issues or statutes.¹ Indeed, *Archer* and its progeny have confirmed that all that is required for an intervening decision of this Court to be “clearly on point” is that—as was the case with both *Mathis v. United States*, 579 U.S. 500 (2016) and *United States v. Davis*, 588 U.S. 445 (2019) here—the intervening decision of this Court dictates a different “mode of analysis” from that applied by the panel in the circuit precedent. *See Archer, id.* (finding *Begay v. United States*, 553 U.S. 137 (2008) “clearly on point,” and that it had undermined *United States v. Gilbert*, 138 F.3d 1371 (11th Cir. 1998) “to the point of abrogation,” even though *Gilbert* involved a different prior, and the Guidelines rather than the ACCA); *Dawson v. Scott*, 50 F.3d 884, 892 n. 20 (11th Cir. 1995) (finding prior panel decision in *Johnson v. Smith*, 696 F.2d 1334 (11th Cir. 1983) no longer controlled, and had been abrogated, because it failed to defer to an administrative agency’s reasonable interpretation of a statute as required by two later decisions of the Supreme Court); *United States v. Howard*, 742 F.3d 1334, 1343-1345 (11th Cir. 2014) (holding “[t]wo crucial aspects of our decision in [*United States v.*] *Rainer*, [616 F.3d 1212 (11th Cir.

¹ *See, e.g., Santiago-Lugo v. Warden*, 785 F.3d 467, 474 n. 4 (11th Cir. 2015) (finding separate Supreme Court decisions abrogated a prior habeas precedent, even though one of the intervening decisions dealt with a different section of the habeas statute, and the other involved a different statute altogether); *United States v. Lopez*, 562 F.3d 1309, 1312 (11th Cir. 2009) (holding a prior panel decision finding criminal filing deadlines were jurisdictional had been abrogated by an intervening decision of the Supreme Court dealing with civil filing deadlines).

2010)], are no longer tenable after *Descamps* [*v. United States*, 570 U.S. 254 (2013)]”); *see also Babb v. Sec’y, Dep’t of Veterans Affairs*, 992 F.3d 1193, 1196 (11th Cir. 2021) (holding an intervening Supreme Court decision undermined prior precedent “to the point of abrogation and the standard that the Court articulated there now controls”).

But indeed, a different—inconsistent and far more rigid—line of abrogation precedents began to gain momentum within the Eleventh Circuit *after Archer*, with the arrival of *United States v. Vega-Castillo*, 540 F.3d 1235, 1239 (11th Cir. 2008) (holding that under the “prior panel precedent rule,” prior precedent remains binding if the Supreme Court “never discussed” the circuit precedent and did not “otherwise comment[] on” the precise issue before the prior panel). According to *Vega-Castillo*, “[t]here is a difference between the holding in a case and the reasoning that supports that holding.” *Id.* at 1237. And significantly, *Vega-Castillo* held, “[e]ven if the reasoning of an intervening high court decision is at odds with a prior appellate decision, that does not provide the appellate court with a basis for departing from its prior decision.” *Id.* (emphasis added).

Notably, although the Eleventh Circuit, in *Solomon*, mentioned *Archer* in articulating the basic rule that a prior panel’s decision remains binding “unless and until it is undermined to the point of abrogation” by this Court, it disregarded *Archer*’s clarification that an intervening decision from this Court that changes the “mode of analysis” is “clearly on point” and abrogates a contrary circuit precedent. *Id.* at 1352. Instead, as has been the case with many recent published decisions of the Eleventh Circuit—including *United States v. Dubois*, 139 F.4th 887, 893 (11th Cir. 2025) (refusing to follow the Court’s new Second Amendment framework in *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1 (2022)), and instead continuing to follow pre-*Bruen* circuit precedent in evaluating an as-applied challenge to 18 U.S.C. § 922(g)(1))—the *Solomon* panel

followed the more restrictive rule of *Vega-Castillo*. And based on *Vega-Castillo*, the panel held, it was *not* enough for abrogation that this Court in *Mathis* dictated a complete change in “reasoning” or “mode of analysis” than was applied in *Fleur*.

Notably, in *Dubois*, and many other recent cases in which Eleventh Circuit panels have justified their disregard of this Court’s intervening precedents under *Vega-Castillo*, appellants have sought rehearing en banc, urging the full court to resolve this intra-circuit conflict and hold consistently with its original rule in *Archer*, that a new “mode of analysis” is indeed sufficient for abrogation. But the Eleventh Circuit has refused. And since, as detailed below, no other circuit applies its “prior panel precedent rule” in this manner, to avoid following the dictates of this Court when it changes the “mode of analysis,” there is a fully-entrenched circuit conflict at this point.

A. The Eleventh Circuit’s new iteration of its “prior panel precedent rule” conflicts with the approach of other circuits.

While every circuit recognizes an exception to the force of prior circuit precedent for an “intervening” Supreme Court decision, although they differ somewhat “in how much the earlier decision must be undermined before it can be overruled,” Joseph Mead, “*Stare Decisis in the Inferior Courts of the United States*,” 12 Nev. Law Journal 787 (2012), *no* circuit’s rule is as rigid as the Eleventh Circuit’s. Indeed, the Eleventh Circuit’s complete deference to prior panel precedent, even in the face of an *intervening* decision of this Court that clarifies the directly-applicable methodology, demonstrably conflicts with the approach of every other circuit, all of which rightly heed well-settled principles of vertical *stare decisis*.

The First Circuit, unlike the Eleventh, does not require that the intervening decision of this Court be “directly controlling;” it need only “offer a sound reason for believing that the former panel, in light of fresh developments, would change its collective mind.” *United States v. Tavares*, 843 F.3d 1, 11 (1st Cir. 2016) (citing *United States v. Pires*, 642 F.3d 1, 9 (1st Cir. 2011)).

The Second Circuit likewise does not require that the intervening decision “address the precise issue already decided by [the] court,” but simply that the decision of this Court “casts doubt on [the circuit's] controlling precedent” due to some “conflict, incompatibility, or ‘inconsisten[cy]’ between th[e] Circuit's precedent and the intervening Supreme Court decision.” *United States v. Afriyie*, 27 F.4th 161, 168 (2d Cir. 2022); *In re Arab Bank, PLC Alien Tort Statute Litig.*, 808 F.3d 144, 154 (2d Cir. 2015). And notably, that occurs in the Second Circuit if the intervening decision of this Court simply “*undermines the rationale* of the prior panel.” *Packer on behalf of 1-800-Flowers.Com, Inc. v. Ragin Capital Management, LLC*, 105 F.4th 46, 54 (2d Cir. 2024) (emphasis added). Notably, the Second Circuit also “permits a panel that believes an intervening Supreme Court decision has abrogated a prior decision to present that view to the active judges, and in the absence of objection, disregard the prior decision.” *McCullough v. World Wrestling Entertainment, Inc.*, 838 F.3d 201 (2d Cir. 2016).

The Third Circuit requires only that the intervening decision of this Court “casts doubt” on a prior interpretation of the circuit, and will find abrogation when this Court’s approach “diverges significantly” than that in a prior circuit precedent. *In re Krebs*, 527, 87 (3d Cir. 2008).

The Fourth Circuit finds it sufficient if the intervening decision of this Court simply “affects precedent relevant to a case pending on appeal.” *United States v. Smithers*, 92 F.4th 237 (4th Cir. 2024). *See, e.g., United States v. Dinkins*, 928 F.3d 349, 357-58 (4th Cir. 2019) (to the extent the outcome of a circuit ACCA case holding a prior North Carolina robbery predicate conflicted with the new elements clause analysis in *United States v. Stokeling*, 586 U.S. 173 (2019), notwithstanding the different language North Carolina used to describe its robbery offense, the prior circuit precedent was abrogated by *Stokeling*).

While the Fifth Circuit applies what it terms a “rule of orderliness,” pursuant to which the

intervening decision of this Court must “be unequivocal” in its overruling of prior precedent, and emphasizes that is “not a mere ‘hint’ of how the Court might rule in the future,” *Mercado v. Lynch*, 823 F.3d 276, 279 (5th Cir. 2016); *United States v. Boche-Perez*, 755 F.3d 327 (5th Cir. 2014), ultimately this is a distinction without a meaningful difference. For indeed, the Fifth Circuit holds quite clearly that an intervening decision of this Court has “unequivocally overruled” prior precedent by dictating a “changed analysis” that “fundamentally changes the focus of the relevant analysis.” *Texas v. United States*, 126 F.4th 392, 106-07 (5th Cir. 2025). And that is precisely what occurred with the intervening decision in *Mathis* here.

The Sixth Circuit likewise does not require the intervening decision of this Court to be “precisely on point,” if its “legal reasoning is directly applicable,” and “requires modification of [a] prior decision.” *United States v. Elbe*, 774 F.3d 885, 891 (6th Cir. 2014); *The Northeast Ohio Coalition for the Homeless v. Husted*, 831 F.3d 686, 720- 721 (6th Cir. 2016) (and cases cited therein); *RLR Investments, LLC v. City of Pigeon Forge, Tennessee*, 4 F.4th 380 (6th Cir. 2021) (abrogation occurs if the intervening Supreme Court decision “mandates modification” of the prior circuit decision).

The Seventh Circuit holds that if an intervening decision of this Court simply “unsettles our precedent, it is the ruling of the Court that sits on 1 First Street that must carry the day.” *United States v. Wahi*, 850 F.3d 296 (7th Cir. 2017).

The Eighth Circuit, like several of the others, requires only that this Court have rendered a decision that “casts into doubt” or “undermines” the prior decision.” *United States v. Anderson*, 771 F.3d 1064, 1067 (8th Cir. 2014).

The Ninth Circuit may initially appear somewhat different in requiring that the intervening decision be “clearly irreconcilable” with prior circuit authority. *Miller v. Gammie*, 335 F.3d 889,

893 (en banc). However, when the intervening decision of this Court has “taken an approach that is fundamentally inconsistent with *the reasoning* of [the court’s] earlier circuit authority, *id.* at 892, the Ninth Circuit holds that “[i]s enough” to render the decisions “clearly irreconcilable” with one another. *Langere v. Verizon Wireless Servs., LLC*, 983 F.3d 1115 (9th Cir. 2020) (emphasis added). Indeed, “clear irreconcilability” occurs in the Ninth Circuit when “the reasoning or theory of intervening Supreme Court precedent” is irreconcilable with the reasoning or theory of prior Circuit precedent. *See Coria v. Garland*, 114 F.4th 994, 1008-09 (9th Cir. 2024) (and cases cited therein); *Kohn v. State Bar of California*, 119 F.4th 693, 698 (9th Cir. 2024) (intervening Supreme Court decision dictating claim-by-claim analysis, was “clearly irreconcilable” with prior panel precedent’s categorical holding). That is directly contrary to the Eleventh Circuit’s rule in *Vega-Castillo*.

The Federal Circuit, like many others, holds that issues determined by an intervening decision of this Court “need not be identical to be controlling,” and it is sufficient that the intervening decision has “undercut the theory or reasoning underlying [the prior circuit precedent in such a way that the cases are clearly irreconcilable.” *Blue Cross and Blue Shield of Kansas City Welfare Benefit Plan v. United States*, 173 Fed. Cl. 132, 150 (Fed. Cir. 2024) (citing *Troy v. Samson Mfg. Corp.*, 758 F.3d 1322, 1326 (Fed. Cir. 2014)). In fact, the Federal Circuit has agreed with all of the above circuits, by clarifying—citing Antonin Scalia, *The Rule of Law as a Law of Rules*, 56 U. Chi. L. Rev. 1175, 1177 (1989)—that lower courts are “bound not only by the holdings of higher courts’ decisions but also by their ‘mode of analysis.’” *Troy, id.*

Only one circuit other than the Eleventh—namely, the Tenth—has a strict standard for abrogation that has permitted it refuse to apply a new “mode of analysis” dictated by this Court. Specifically, the Tenth Circuit holds, it must continue to follow its prior precedent, unless the

intervening decision of this Court “indisputably and pellucidly abrogates” that prior precedent. *Vincent v. Garland*, 80 F.4th 1197, 1200 (10th Cir. 2023) (refusing to apply *Bruen*’s Second Amendment methodology in § 922(g)(1) cases, like the Eleventh Circuit’s decision in *Dubois*, and instead following pre-*Bruen* precedent). But indeed, while the Tenth Circuit has come to the same conclusion as the Eleventh Circuit in *Dubois*, its “indisputably and pellucidly abrogates” standard is *not* the same as the rule of *Vega-Castillo* which squarely rejects a change in reasoning or the “mode of analysis” as a basis for finding abrogation. Notably, neither the Tenth Circuit nor any other circuit, has refused to follow *Mathis*, *Davis*, and the “categorical approach” in determining whether a predicate offense is a “crime of violence” within the elements clause of § 924(c).

As demonstrated above, the overwhelming majority of the circuits recognize that an intervening decision of this Court need *not* be on “all fours” factually or legally to have undermined a prior precedent to the point of abrogation, and relieve a subsequent panel from following it. Rather, the intervening decision must simply dictate a different “mode of analysis” applicable to the issue before the lower court. And that is precisely what occurred here. Had Petitioner appealed his sentence in the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, D.C., or Federal Circuits, every one of these courts would have applied the new “mode of analysis” dictated by this Court’s intervening decisions in *Mathis* and *Davis*—and *not* continued to follow the ill-reasoned *Fleur*—particularly now *knowing* the *Fleur* panel majority conceded it had *not* applied the “categorical approach” in determining whether Hobbs Act robbery was a “crime of violence” within the elements clause of § 924(c).

B. The Eleventh Circuit’s current iteration of its “prior panel precedent rule” not only rejects the well-settled principle of vertical *stare decisis*, but denies defendants their statutory right to appeal and procedural due process

While “[l]ower court judges may sometimes disagree with this Court’s decisions,” as a

matter of vertical *stare decisis* “they are never free to defy them.” *National Institutes of Health v. American Public Health Ass’n*, 606 U.S. ___, 145 S.Ct. 2658, 2663 (Aug. 21, 2025) (Gorsuch, J., joined by Kavanaugh, J., concurring in part and dissenting in part). And here, the Eleventh Circuit—in its rigid adherence to *Fleur* in reliance on its overly-rigid iteration of its “prior panel precedent” rule in *Vega-Castillo*—not only thumbed its nose at this Court’s intervening precedents in *Mathis* and *Davis* in a manner that no other circuit has done; it denied Petitioner his statutory right to appeal, and procedural due process. The Court should grant the petition, and reverse the decision below for all of these reasons.

Petitioner had a statutory right to appeal his sentence, and Congress gave the Eleventh Circuit jurisdiction over that appeal in 18 U.S.C. § 3742. The Eleventh Circuit did not have discretion to refuse to exercise that jurisdiction. *See Sprint Communications v. Jacobs*, 134 S. Ct. 584, 588 (2013) (“In the main, federal courts are obliged to decide cases within the scope of federal jurisdiction.”); *Colorado River Water Conservation District v. United States*, 424 U.S. 800, 813-17 (1976) (holding that “[a]bstention from the exercise of federal jurisdiction is the exception, not the rule” because of “the virtually unflagging obligation to exercise the jurisdiction given them”).

For Petitioner to truly have a statutory right to appeal his sentence, consistent with the Due Process Clause, his appeal must, at a minimum, afford him a meaningful opportunity to formulate arguments and have them considered by a neutral and detached court. That is why the right to an attorney on appeal is guaranteed—to assure a meaningful appeal. *See generally Evitts v. Lucey*, 469 U.S. 387, 396 (1985) (“A first appeal as of right ... is not adjudicated in accord with due process of law if the appellant does not have the effective assistance of an attorney.”) Moreover, the statutory right to appeal entails the right to develop and present a complete argument and to have it considered by the appellate court. And that right is hollow if the appellate court may simply

refuse to consider the arguments on the authority of a judge-made, overly-rigid iteration of the circuit's "prior panel precedent rule."

While the appellate court's obligation to exercise jurisdiction entails a duty to consider every argument that has not been waived, the Eleventh Circuit's precedential decision in *Solomon*, followed below, effectively holds that the *pro se* petitioner in *Fleur*—who sought permission to file a successive § 2255 application on a standardized form limiting space for argument; which was denied in 30 days; and he had no right to appeal the Eleventh Circuit's adverse determination even after *Mathis* confirmed the error in the *Fleur* panel's reasoning—essentially waived Petitioner's "categorical approach" argument *for him* by not anticipating *Mathis*.

That cannot be the law. But that is not only because no other circuit issues precedential merits decisions like *Fleur* on these truncated procedures. *See St. Hubert v. United States*, 590 U.S. 984, 987-88 (June 8, 2020) (No. 19-5267) (Statement of Sotomayor, J., respecting the denial of certiorari) (noting that the Eleventh Circuit "is significantly out of step with other courts in how it approaches applications seeking authorization to file second or successive habeas petitions," by publishing "far more of its orders denying authorization" based on "minimal briefing," and "[m]aking matters worse, the court often decides the merits ... when the statutory question at the preliminary authorization stage is simply whether the applicant has 'ma[de] a prima facie showing'"). In addition, there is a more significant due process problem with the Eleventh Circuit's adhering to *Fleur* over *Mathis* and *Davis*, than there was with the Eleventh Circuit publishing its orders at the authorization stage of successive § 2255 petitions (the due process issue in *St. Hubert*). There, as Justice Sotomayor recognized, the issue was simply horizontal *stare decisis*—the Eleventh Circuit's rule "implicate[d] not this Court's practices but the precedential weight another court grants to its own opinions." *Id.* at 1730. But here a petitioner has come before this Court,

again challenging the Eleventh Circuit’s refusal to disengage from *Fleur*, and his issue precisely “implicates ... this Court’s practices.” *Id.*

This Court has refused to second-guess a court of appeals’ “procedural rules” so long as they do not implicate substantive rights. As Justice Kagan, joined by Justices Ginsburg and Breyer wrote respecting the denial of certiorari in *Joseph v. United States*, 574 U.S. 1038 (2014): “The courts of appeals have wide discretion to adopt and apply ‘procedural rules governing the management of litigation,’ *Thomas v. Arn*, 474 U.S. 140 146 (1985), “[b]ut that discretion is not unlimited. Procedural rules of course must yield to constitutional and statutory requirements.” *Id.* at 148.” And here, the Eleventh Circuit’s iteration of its “prior panel precedent rule” in *Solomon* violates defendant’s statutory right to appeal and constitutional right to procedural process on appeal. Quite unlike the mere “procedural rule” at issue in *Joseph*, the preclusive “prior panel precedent rule” applied by the Eleventh Circuit below was one of crucial substance. It goes to the very foundation of our federal court system of law: the principle of vertical *stare decisis*. And it denies Eleventh Circuit defendants the Fifth Amendment’s fundamental guarantee of due process on appeal.

Notably, by affording *Fleur* preclusive effect in Petitioner’s direct criminal appeal—when the full Eleventh Circuit was aware from the *Solomon* petition for rehearing en banc that the *Fleur* panel chose *not* to apply the “categorical approach,” based on a misunderstanding of the law thereafter clarified by *Mathis* and *Davis*—the Eleventh Circuit violated Petitioner’s procedural due process rights both under the framework established in *Mathews v. Eldridge*, 424 U.S. 319 (1976), and under this Court’s issue-preclusion precedents. In discussing the doctrine of issue preclusion, this Court has repeatedly held “[i]t is a violation of due process for a judgment to be binding on a litigant who was not a party or a privy and therefore has never had an opportunity to be heard.”

Parklane Hosiery Co., Inc. v. Shore, 439 U.S. 322, 327 n.7 (1979). Because “[t]he opportunity to be heard is an essential requisite of due process of law in judicial proceedings,” *Richards v. Jefferson Cnty., Ala.*, 517 U.S. 793, 798 n.4 (1996), “[a] judgment or decree among parties to a lawsuit resolves issues as among them, but it does not conclude the rights of strangers to those proceedings.” *Martin v. Wilks*, 490 U.S. 755, 762 (1989). “This rule is part of our deep-rooted historic tradition that everyone should have his own day in court.” *Id.* (quotation omitted). And indeed, as explained by then-Judge Amy Coney Barrett in *Stare Decisis and Due Process*, 74 U. Colo. L. Rev. 1011 (2003), the same due process problem that can arise with issue preclusion, arises when the doctrine of *stare decisis* is applied rigidly, with no possibility of error-correction. *See id.* at 1013-14, 1043-47, 1060-61.

Solomon attempted error correction in the rightful manner: by seeking en banc review by from the Eleventh Circuit. He asked the full Court to recognize that *Fleur* did not apply the categorical approach and declare *Fleur* (and any panel decisions like *Wiley* reflexively following *Fleur*) definitively abrogated by *Mathis*. But the Eleventh Circuit refused. Indeed, not one member of the Court cared to rethink this long-cited precedent, which Solomon proved—with the *Fleur* panel’s own words in a subsequent order—had not applied the categorical approach, contrary to *Mathis* and *Davis*, 588 U.S. at 456.

The denial of rehearing en banc in *Solomon* has confirmed that the Eleventh Circuit is entrenched in its decision to apply its “prior panel precedent” rule in an overly-rigid and unconstitutional manner, unlike any other circuit. This Court’s intervention is vital not only to prevent this far-reaching perversion of the “prior panel precedent rule,” which denies Eleventh Circuit defendants their right to due process and their statutory right to appeal, but also to relieve Eleventh Circuit defendants from the burden of the clearly-flawed decision in *Fleur*. Finally, as

is clear from the many other contexts in which the Eleventh Circuit has used the *Vega-Castillo* formulation of the “prior panel precedent rule” to avoid following the dictates of this Court, the Eleventh Circuit’s overly-restrictive articulation of its “prior panel precedent rule” has broad implications for defendants in the Eleventh Circuit far beyond the discrete issue based on the erroneously-reasoned decision in *Fleur*, that Petitioner has raised here.

CONCLUSION

For the foregoing reasons, the petition should be granted.

Respectfully submitted,

HECTOR A. DOPICO
FEDERAL PUBLIC DEFENDER

By: s/Brenda G. Bryn
Brenda G. Bryn
Assistant Federal Public Defender
Counsel for Petitioner

Fort Lauderdale, Florida
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