

No. _____

IN THE
Supreme Court of the United States

WHITFIELD LELAND, III,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

To determine whether a prior state conviction qualifies as a predicate under the Armed Career Criminal Act (ACCA), federal courts apply the categorical approach. Under that approach, federal courts identify the elements of the state offense. To do so, they must consult state court decisions interpreting the state statute. This case involves the following, recurring scenario: after the defendant's prior state conviction, a state court issues a decision changing the scope of the offense elements in a manner that would affect whether the offense qualifies under the Armed Career Criminal Act.

The question presented is:

To determine the elements of a prior state conviction for purposes of applying ACCA's categorical approach, should federal courts consult the most recent, authoritative state court decisions (as the Eleventh Circuit holds), or the state court decisions in place at the time of the defendant's prior conviction (as at least two other circuits hold)?

PARTIES INVOLVED

The parties involved in this action are Whitfield Leland, III, and the United States of America.

There are no public corporations involved in the instant case.

RELATED PROCEEDINGS

The following proceedings are related under this Court's Rule 14.1(b)(iii):

- *United States v. Leland*, No. 25-12739 (11th Cir. Apr. 8, 2026);
- *United States v. Leland*, No. 4:24-cr-00044 (N.D. Fla. July 24, 2025).

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For the Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

Whitfield Leland respectfully petitions the Supreme Court of the United States for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit.

OPINION BELOW

The decision of the United States Court of Appeals for the Eleventh Circuit, *United States v. Leland*, No. 25-12739, 2026 WL 946400 (11th Cir. 2026) (unpublished), and is attached as Appendix A to this Petition.

JURISDICTION

The Court of Appeals filed its decision in this matter on April 8, 2026. Petitioner did not move for rehearing. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The Armed Career Criminal Act, 18 U.S.C. § 924(e), provides in full:

- (1) 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).
- (2) As used in this subsection—

 - (A) the term “serious drug offense” means—

 - (i) an offense under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46 for which a maximum term of imprisonment of ten years or more is prescribed by law; or
 - (ii) an offense under State law, involving manufacturing, distributing, or possessing with intent to manufacture or distribute, a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), for which a maximum term of imprisonment of ten years or more is prescribed by law;
 - (B) the 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; or
 - (ii) is burglary, arson, or extortion, involves use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury to another; and
 - (C) the term “conviction” includes a finding that a person has

committed an act of juvenile delinquency involving a violent felony.

INTRODUCTION

To determine whether a prior state conviction qualifies as a predicate under the Armed Career Criminal Act (ACCA), federal courts apply the “categorical approach.” Under that familiar approach, federal courts must identify the elements of the state offense. To do so, they must consult state court decisions interpreting the statute of conviction. But sometimes a state court will issue a decision that changes the scope of the elements *after* the defendant’s prior state conviction. In that scenario, do federal courts consult the latest state court decision, or do they consult the state court decisions that were in effect at the time of the defendant’s prior state conviction? The answer can determine whether the prior conviction qualifies under ACCA.

This case illustrates the point. Petitioner was subject to the ACCA’s 15-year mandatory minimum based in part on a Florida aggravated assault conviction from 2011. At that time, some Florida intermediate appellate courts had held that Florida assault could be committed recklessly, and this Court has held that reckless offenses are not ACCA predicates. However, in 2022 the Florida Supreme Court held for the first time that Florida assault could *not* be committed recklessly. Although that 2022 decision post-dated Petitioner’s prior conviction, the Eleventh Circuit relied on it, reasoning that the decision explained what the Florida assault statute had “always meant.” As a result, Petitioner was not permitted to rely on any Florida intermediate appellate decisions from the time of his prior state conviction. The Sixth Circuit adopted the same methodology.

Several circuits have employed a contrary practice. The First and Fourth Circuits have squarely held that federal courts must consult state court decisions pre-dating the defendant's prior state conviction. The Fifth and Eighth Circuits have done so as well (though the former's decision was vacated on other grounds and the latter's arose under the Guidelines). And, most recently, the Seventh Circuit expressly disagreed with the Eleventh Circuit, instead holding that a Florida aggravated assault conviction, which pre-dated the Florida Supreme Court's 2022 decision, was not a proper ACCA predicate offense.

This Court should resolve the circuit conflict. The Court has repeatedly recognized that geography alone should not determine whether defendants are subject to ACCA's harsh penalty. The Court has repeatedly granted review to resolve circuit splits over ACCA out of the Eleventh Circuit and Florida in particular—ACCA's national epicenter. The Court should adhere to that practice here, especially given that the Eleventh and Sixth Circuits have adopted an outlier position expansively interpreting ACCA, and have done so in the context of one of the most common ACCA predicates. More broadly, the question presented will also affect whether various state offenses satisfy numerous federal recidivism provisions—from the Sentencing Guidelines to the mandatory-life three-strikes statute—all of which are governed by the same categorical approach.

Furthermore, the Eleventh and Sixth Circuit's decisions contravene this Court's ACCA precedent. This Court has made abundantly clear that federal courts must look to the law in effect at the time of the prior state conviction. That

precedent controls here. And the Eleventh Circuit’s contrary reasoning—that a state supreme court decision tells us what the statute has “always meant”—is contrary to the categorical approach.

Finally, there are serious due process concerns surrounding the analytical approach of the Eleventh and Sixth Circuits. Judicial decisions which post-date a prior offense risk broadening the substantive elements of a prior offense and increasing one’s criminal liability. This Court has previously held that judicial expansion of a criminal statute which is then applied retroactively is a violation of due process. One cannot be expected to anticipate a change in the law that might increase the serious nature of their offense as well as their criminal liability for prior offenses. Allowing this enlargement of criminal liability violates both prohibitions against *ex post facto* laws and the Due Process Clause.

STATEMENT

A. Legal Background

1. Where a defendant is convicted of being a felon in possession of a firearm under 18 U.S.C. § 922(g)(1), he is ordinarily subject to a statutory *maximum* penalty of 15 years. For defendants like Petitioner who were convicted before June 25, 2022, the statutory maximum is even lower: 10 years. *See* Bipartisan Safer Communities Act, Pub. L. No. 117-59, 136 Stat. 1313, 1329 § 1204(c) (2022) (codified at 18 U.S.C. § 924(a)(8)). However, as this Court is aware, ACCA mandates a *minimum* sentence of 15 years where the defendant has three “previous convictions” for a “violent felony” or a “serious drug offense.” 18 U.S.C. § 924(e).

Under ACCA, a “violent felony” is a felony that: “(i) has as an element the use, attempted use, or threatened use of physical force against the person of another; or (ii) is burglary, arson, or extortion, involves use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury to another.” 18 U.S.C. § 924(e)(2)(B). The definitions in subsection (ii) are not at issue: this case does not involve one of the former enumerated offenses; and this Court invalidated the latter “residual clause” in (*Samuel*) *Johnson v. United States*, 576 U.S. 591 (2015). Rather, this case involves the definition in subsection (i), also known as the “elements clause.”

In *Borden v. United States*, 593 U.S. 420 (2021), the Court held that offenses with a *mens rea* of recklessness do not qualify as “violent felonies” under ACCA’s elements clause. The Court explained that reckless offenses do not require the “use of physical force against the person of another.” *See id.* at 429–45 (plurality op.); *id.* at 446–47 (Thomas, J., concurring in the judgment). That particular case involved a prior conviction for aggravated assault under Tennessee law. *Id.* at 424–25.

2. This particular case involves a prior conviction for aggravated assault under Florida law. In Florida, “[a]n ‘assault’ is an intentional, unlawful threat by word or act to do violence to the person of another, coupled with an apparent ability to do so, and doing some act which creates a well-founded fear in such other person that such violence is imminent.” Fla. Stat. § 784.011(1). While simple assault is a misdemeanor, Fla. Stat. § 784.011(2), aggravated assault is a felony, Fla. Stat. § 784.021(2). And “[a]n ‘aggravated assault’ is an assault: (a) With a deadly weapon

without intent to kill; or (b) With an intent to commit a felony.” Fla. Stat. § 784.021(1).

The Eleventh Circuit has long held that Florida aggravated assault qualifies as a “violent felony” under ACCA’s elements clause. That court first reached that conclusion in *Turner v. Warden Coleman FCI (Medium)*, 709 F.3d 1328 (11th Cir. 2013). In *Turner*, however, the court simply relied on the language of Florida’s assault statute—without asking how Florida courts had interpreted it. *See id.* at 1337-38. That was a key oversight at the time because some Florida intermediate appellate courts had held that assault could be committed recklessly. And the Eleventh Circuit had already held that reckless offenses did not satisfy the (identical) elements clause in the Guidelines. *See United States v. Palomino Garcia*, 606 F.3d 1317, 1334–36 (11th Cir. 2010).

Despite that analytical omission, the Eleventh Circuit repeatedly reaffirmed *Turner*’s holding over the next decade. In *United States v. Golden*, 854 F.3d 1256 (11th Cir. 2017), for example, the Eleventh Circuit observed that some judges on that court suggested that *Turner* was wrongly decided. *Id.* at 1257 (citing *In re Hunt*, 835 F.3d 1277, 1288 (11th Cir. 2016) (Jill Pryor, J., joined by Wilson and Rosenbaum, JJ., concurring)). But applying its prior panel precedent rule, the court explained that “even if *Turner* is flawed, that does not give us, as a later panel, the authority to disregard it.” *Id.* Writing separately, Judge Jill Pryor explained that *Turner* was wrongly decided because Florida intermediate appellate courts had held that aggravated assault could be committed recklessly; and, in the absence of a

Florida Supreme Court decision, those opinions controlled. *See id.* at 1258–60 & n.4 (Jill Pryor, J., concurring in result). She therefore urged the Eleventh Circuit to convene en banc and overrule *Turner*. *Id.* at 1259-60. However, the full court never did so. Rather, it continued to apply *Turner* and uphold sentencing enhancements that were based on prior Florida aggravated assault convictions. *See, e.g., United States v. Gary*, 74 F.4th 1332, 1334-36 (11th Cir. 2023) (ACCA); *United States v. Caple*, 830 F. App’x 632, 633 (11th Cir. 2020) (Guidelines); *United States v. Hughes*, 688 F. App’x 889, 889-90 (11th Cir. 2017) (ACCA and Guidelines).

Following this Court’s decision in *Borden*, the Eleventh Circuit declined to rely so uncritically on *Turner*. In *Somers v. United States*, 15 F.4th 1049 (11th Cir. 2021), the court acknowledged that Florida intermediate appellate courts had reached different conclusions about whether Florida assault could be committed recklessly. *See id.* at 1054–56. The Eleventh Circuit therefore certified related state-law *mens rea* questions for resolution to the Florida Supreme Court. *Id.* at 1056. In response, the Florida Supreme Court held that the Florida assault statute required a specific intent to threaten violence and therefore “cannot be accomplished via a reckless act.” *Somers v. United States*, 335 So.3d 887, 892–93 (Fla. 2022).

After the Florida Supreme Court’s decision, the Eleventh Circuit again held that Florida aggravated assault qualified under ACCA’s elements clause. *Somers v. United States*, 66 F.4th 890, 896 (11th Cir. 2023). The court explained that, because the Florida Supreme Court had clarified that a “reckless act will not suffice,” “*Borden* poses no problem to Somers’s ACCA-enhanced sentence.” *Id.* at 895. Most importantly here, the court added this reasoning: “When the Florida Supreme

Court interprets a statute, it tell us what that statute always meant.’ Somers cannot rely on earlier decisions of Florida’s intermediate courts of appeal to avoid this clear holding.” *Id.* at 896 (cleaned up) (quoting *United States v. Fritts*, 841 F.3d 937, 943 (11th Cir. 2016) and citing *Rivers v. Roadway Express, Inc.*, 511 U.S. 298, 312–13 (1994)).

One year later this Court issued its own decision in *United States v. Brown*, 602 U.S. 101 (2024). There the Court considered the “serious drug felony” component of ACCA and whether, when applying the categorical approach, it should look to the state law in effect when the prior offense was committed or if it should consider the elements when the federal felon in possession offense occurred. *Id.* at 105. A 6-3 majority of the Court held that ACCA requires a backward-looking inquiry, relying on the elements as they existed at the time of the prior state offense, and not those in effect at the time of the later federal offense. *Id.* at 123. In doing so the Court relied heavily on its prior decision in *McNeill v. United States*, 563 U.S. 816 (2011), which likewise treated ACCA’s predicate-offense inquiry as historical. *Id.* at 111.

B. Proceedings Below

1. Petitioner, Whitfield Leland, pled guilty to one count each of Hobbs Act robbery, brandishing a firearm during a crime of violence, and being a felon in possession of a firearm.

Although Petitioner would have ordinarily faced a 15-year statutory maximum penalty on the felon in possession charge, the probation office prepared a pre-sentence investigation report (PSR) and determined that he was subject to

ACCA's 15-year mandatory minimum. That determination was based on three prior Florida convictions, one of which was for aggravated assault with a deadly weapon occurring in 2011. (PSR ¶ 38). Not only did the ACCA enhancement trigger the 15-year mandatory minimum, but the ACCA designation also increased his guidelines range from 63 to 78 months, to 180 to 210 months' imprisonment. (See PSR ¶¶ 37-41, 68, 70, 119). Because Petitioner was also subject to a 7-year mandatory consecutive sentence on his § 924(c) offense, the applicable guidelines was 264 to 294 months' imprisonment. (PSR ¶ 119). Ultimately, he was subject to a 22-year statutory minimum sentence. (PSR ¶¶ 117, 118).

Petitioner objected to the ACCA designation. Dist. Ct. ECF No. 41. As relevant here, he argued that the Eleventh Circuit applied the incorrect analysis in *Somers*, 66 F.4th 890, when it determined a Florida aggravated assault could not be committed recklessly and therefore is a proper ACCA predicate. *Id.* at 2. Petitioner encouraged the sentencing court to apply the backward-looking method employed by *Anderson*, 99 F.4th 1106 (7th Cir. 2024), to determine what the elements of the offense were at the time of his conviction in 2011, rather than the Florida Supreme Court's opinion in 2022. *Id.*

At sentencing, Petitioner reiterated his written objections, but the district court overruled them on the ground that, under "the law in this circuit," his prior convictions "do qualify as [ACCA] predicates." Dist. Ct. ECF No. 45 at 3, 10. The court thereafter sentenced him to ACCA's 15-year mandatory minimum, followed by the 7-year mandatory consecutive sentence. *Id.* at 9; App. 9a.

2. On appeal, Petitioner reiterated his argument that Florida aggravated assault did not qualify under ACCA's elements clause and this Court's decision *Borden*. Again, he emphasized that Florida intermediate appellate court decisions had held that the offense could be committed recklessly. *See* Pet. C.A. Br. 18-19. Petitioner encouraged the Eleventh Circuit to consider *Anderson*, and to apply this Court's recent decision in *Brown*. *Id.* at 21-23. Petitioner noted that "[u]nder *Brown*, just as later changes to federal law could not retroactively disqualify predicate drug offenses, later classifications by the Florida Supreme Court – such as those in *Somers* – cannot retroactively validate convictions that, at the time, may have been obtained under a now-invalid standard." *Id.* at 22.

The court of appeals affirmed. App. A. The Eleventh Circuit held that Petitioner's Florida aggravated assault convictions qualified under ACCA's elements clause. App. 5a-7a. The court of appeals applied the categorical approach, which required it to identify the "least culpable conduct" encompassed by the elements of the offense. App. 4a-5a. Although Petitioner argued that his Florida aggravated assault conviction could have been committed recklessly, the court rejected that argument stating "[t]he Florida Supreme court has told us unambiguously that assault under Florida law requires a *mens rea* of at least knowing conduct; it cannot be committed recklessly." *Id.* at 5a (quoting *Somers*, 66 F.4th at 890 (citing *Somers*, 355 So.3d at 892)).

The court then rejected Petitioner's claim that the decision of the Florida Supreme Court, because it post-dated his Florida aggravated assault conviction, was contrary to this Court's decision in *Brown*. *Id.* Petitioner urged the court to

adopt the backward-looking approach, looking at the state of the law in effect at the time of Petitioner’s actual offense. *Id.* at 6a. The court rejected this idea however, noting that *Brown* was not on point because it dealt with “a legislative amendment, rather than a judicial statutory interpretation of a state statute.” *Id.* (citing *Brown*, 602 U.S. at 105-06).

REASONS FOR GRANTING THE PETITION

The circuits are divided on the ACCA question presented. Five circuits have issued published opinions holding that federal courts must consult state court decisions pre-dating the defendant’s prior state conviction. Only the Eleventh and Sixth Circuits have held that federal courts must consult a subsequent state court decision. Their practice not only risks broadening criminal elements in a way in which defendants could not have predicted, but also their liability for a crime committed in the past. Doing so violates the Due Process Clause.

This Court should resolve the conflict. Otherwise, geography alone will determine whether various state convictions will satisfy the ACCA and other federal recidivism provisions. This case presents a clean vehicle to resolve the conflict. And the approach of the Eleventh and Sixth Circuits approach contravenes this Court’s precedent and the categorical approach.

I. The circuits are divided on the question presented.

To determine whether a prior conviction satisfies ACCA’s elements clause, federal courts apply the “categorical approach”—looking only to the elements of the prior conviction, not the facts. *See, e.g., Mathis v. United States*, 579 U.S. 500, 509–12 (2016). And the elements of a prior state conviction are determined by state law,

including decisions by state courts. *See, e.g., Stokeling v. United States*, 586 U.S. 73, 85–86 (2019); (*Curtis Johnson v. United States*, 559 U.S. 133, 138 (2010)). The circuits are divided however, on which state court decisions federal courts should consult.

1. The Eleventh and Sixth Circuits look to the most recent, authoritative state court decision—even if that decision came after the defendant’s prior state conviction.

a. As explained, the Eleventh Circuit in *Somers* rejected the defendant’s *Borden* challenge to Florida aggravated assault. The Eleventh Circuit held that Florida aggravated assault satisfied ACCA’s elements clause based on the Florida Supreme Court’s 2022 decision holding that the offense could not be committed recklessly. *Somers*, 66 F.4th at 895–96. It did not matter to the Eleventh Circuit that the Florida Supreme Court’s decision post-dated the defendant’s prior conviction. And, it did not matter that earlier decisions of Florida’s intermediate courts of appeals had held that recklessness sufficed. *Id.* at 896. That was so, according to the Eleventh Circuit, because “[w]hen the Florida Supreme Court interprets a statute, it tells us what that statute always meant.” *Id.* (cleaned up; quotation omitted).

This has been the law in the Eleventh Circuit for nearly a decade. In *Somers*, the Eleventh Circuit quoted its 2016 decision in *Fritts*. There, the Eleventh Circuit held that a 1997 Florida Supreme Court decision interpreting the elements of Florida robbery “tells us what that statute always meant.” 841 F.3d at 943. To support that proposition, *Fritts* (like *Somers*) relied on *Rivers*, 511 U.S. at 312–13, which employed that reasoning in the context of a federal civil statute. *Id.* Thus,

Fritts held that the Florida Supreme Court’s decision authoritatively interpreting the Florida robbery statute controlled that ACCA case, even though that decision post-dated the defendant’s prior conviction. *Id.* at 938–39.

b. Several Eleventh Circuit Judges have disagreed with this approach.

i. In *United States v. Seabrooks*, 839 F.3d 1326 (11th Cir. 2016), a Florida robbery case, the Eleventh Circuit included as dicta the same language that would later appear as part of the *Fritts* holding. *Id.* at 1344; *see id.* at 1346 (Baldock, J., concurring in part and in the judgment) (declining to join that part of the opinion).

Writing separately, Judge Martin acknowledged that it was “generally true that when a court interprets a statute it tells us what the statute has always meant.” *Id.* at 1351 n.5 (Martin, J., concurring in the judgment). But, she added, that principle did not apply in the ACCA context because “our interest is not about divining the true meaning of [the Florida statute]. Rather, our interest is in understanding what conduct could have resulted in Mr. Seabrooks’s 1997 convictions under the statute, even if Florida courts were misinterpreting the statute at that time.” *Id.* And, to do so, she explained that this Court’s decision in *McNeill* required federal courts to look to judicial decisions in effect at the time of the defendant’s prior conviction. *Id.* at 1351. She added that those judicial decisions showed how people “in the real world” were being prosecuted at that time. *Id.*

ii. A few years later, the Eleventh Circuit applied *Fritts* in *Welch v. United States*, 958 F.3d 1093, 1098 (11th Cir. 2020). Writing separately, Judge

Rosenbaum lodged the same criticism as Judge Martin, opining that *Fritts* “went too far” by declining to “look[] to the state of the law as it actually existed in Florida’s district courts when Fritts had been convicted.” *Id.* at 1100 (Rosenbaum, J., concurring). She acknowledged that “the Florida Supreme Court has the final say in interpreting Florida’s statutes” and may “nullif[y] any lower [Florida] court precedent” that existed. *Id.* “But,” she added, “that does not mean that those decisions never happened, or that individuals were not convicted of robbery in those districts having used less force than” what the Florida Supreme Court “eventually required.” *Id.*

The *Fritts* approach, she explained, leads to “absurd results” and “torpedoes the rationale of the categorical approach.” *Id.* at 1100–01. She concluded: “*Fritts*’s blind allegiance to an interpretation of the Florida robbery statute that was not, as a matter of fact, uniformly applied before the Florida Supreme Court issued [its decision] creates the very real possibility that it will keep defendants in prison for extended sentences based entirely on a legal fiction. That makes no sense. We live in the real world. And in the real world, whatever the Florida Supreme Court decided in 1997 that the Florida robbery statute ‘always’ meant cannot change the fact that, before [that decision], at least some of Florida’s intermediate courts of appeals applied the Florida robbery statute to cover” conduct that would not satisfy ACCA. *Id.* at 1101–02.

iii. Less than a month ago, the Eleventh Circuit again rejected the backward-looking approach, this time in a Guidelines case. *United States v.*

Pinkston, 177 F.4th 1309 (11th Cir. 2026). The court concluded that based on *Somers*, the defendant’s prior Florida aggravated assault conviction was in fact a career offender predicate. *Id.* at 1315. Judge Abudu wrote a concurrence in order to “express concern with allowing a defendant’s prior conviction to be upgraded to a qualifying crime of violence based on subsequent and contrary judicial decisions.” *Id.* at 1317-18 (Abudu, J., concurring). Judge Abudu explained that in order to qualify as an enhancement predicate, a prior offense “must have qualified as a crime of violence at the time the defendant committed it.” *Id.* (citing *McNeill*, 563 U.S. at 821-22).

c. The Sixth Circuit adopted the Eleventh Circuit’s approach in *United States v. Delaine*, 171 F.4th 880 (6th Cir. 2026). There, the defendant’s ACCA status also rested, in part, on a 2012 Florida conviction for aggravated assault. *Id.* at 886. The defendant argued that the recent Florida Supreme Court decision in *Somers*, 355 So. 3d 887 (Fla. 2022), could not establish the elements of his own offense, which pre-dated the decision. *Id.* Instead, he urged the court to consider the interpretation of some of Florida’s intermediate appellate courts at the time of his conviction -- which allowed juries to convict based on reckless conduct -- when deciding whether his aggravated assault conviction was in fact a violent felony as defined by the ACCA. *Id.*

The court rejected this approach however, noting “[c]ourts presume that a decision interpreting a law ‘applies retroactively’ because the decision reveals what the law *always* meant (both before and after the decision).” *Id.* at 887 (emphasis in

original) (citing *DIRECTV, Inc. v. Imburgia*, 577 U.S. 47 56 (2015); cleaned up).

Based on the Florida Supreme Court’s decision in *Somers*, the court concluded that the defendant’s prior aggravated assault conviction was a violent felony. *Id.* at 886.

2. Meanwhile, the First and Fourth Circuits have taken a contrary approach.

a. In *United States v. Faust*, 853 F.3d 39 (1st Cir. 2017), the First Circuit vacated and remanded an ACCA sentence that was predicated in part on a prior Massachusetts conviction for assault and battery on a police officer. *See id.* at 55–60. In determining whether that offense was overbroad vis-à-vis ACCA’s elements clause, the First Circuit declined to rely on a state court decision post-dating the defendant’s prior conviction or to predict how the state supreme court might resolve the issue in the future. *Id.* at 57–58. Relying heavily on this Court’s decision in *McNeill*, the First Circuit instead asked “what the law was at the time of his [prior] conviction.” *Id.* at 57; *see id.* (explaining that this Court in “*McNeill* pointed to its previous ACCA cases, which looked to the versions of state law that were current at the time of the defendant’s convictions, not at the time of the Court’s decision”).

b. In *United States v. Cornette*, 932 F.3d 204 (4th Cir. 2019), the Fourth Circuit adopted the same approach. Also citing *McNeill*, the Fourth Circuit asked “whether, at the time of Cornette’s conviction in 1976,” the Georgia burglary statute was overbroad. *Id.* at 213. Holding that it was, the Fourth Circuit found dispositive an intermediate appellate court decision pre-dating the defendant’s conviction that adopted an overbroad definition of burglary. *Id.* at 214 (“Thus, when Cornette was convicted, Georgia’s definition of burglary criminalized a broader range of conduct

than the generic definition of burglary we use for ACCA purposes.”). The Fourth Circuit refused to consider a state supreme court decision to the contrary because it “was not decided until 1977, whereas Cornette was convicted in 1976.” *Id.* “That being so,” the court explained, the intermediate appellate court decision was “the binding interpretation of Georgia law at the time of Cornette’s conviction.” *Id.* In reaching this conclusion, the Fourth Circuit observed that its backward-looking approach “comports with other circuits that have considered the question,” citing the First Circuit’s decision in *Faust* and the Eighth Circuit decision discussed below. *Id.* at 215.

c. Two more circuits have adopted the same backward-looking approach.

i. In *United States v. Vickers*, 967 F.3d 480 (5th Cir. 2020), the Fifth Circuit held that the defendant’s prior Texas conviction for felony murder qualified under ACCA’s elements clause. Although the defendant relied on a state court decision holding that the offense could be committed negligently, the Fifth Circuit deemed that decision “inapplicable here because it was decided in 2007, more than 20 years after Vickers’s conviction.” *Id.* at 486. Relying on this Court’s decision in *McNeill*, the Fifth Circuit would “consider only the state law as it existed at the time of Vickers’s 1982 murder conviction.” *Id.* Thus, the Fifth Circuit relied instead on a 1977 judicial decision, that occurred before the 2007 state court decision, which established that felony murder required a mental state of recklessness or higher. *Id.* at 486–87. Because the Fifth Circuit’s precedent at the time provided that recklessness sufficed for the elements clause, this Court later issued a GVR in

Vickers in light of the decision in *Borden*. *Vickers v. United States*, 141 S. Ct. 2783 (2021) (mem). Thus, while the Fifth Circuit’s decision was vacated, it was vacated on other grounds. And, there is no reason to believe that the Fifth Circuit would not continue to follow *Vickers*’ approach.

ii. In *United States v. Roblero-Ramirez*, 716 F.3d 1122 (8th Cir. 2013), the Eighth Circuit adopted the same approach to hold that the defendant’s 2006 Nebraska manslaughter conviction did not qualify as a “crime of violence” under the Sentencing Guidelines. The Eighth Circuit explained that, from 1994 until 2011, Nebraska courts did not require an intent to kill. *Id.* at 1126–27. As a result, the Eighth Circuit could not “conclude Roblero–Ramirez’s Nebraska manslaughter conviction, as interpreted by the Nebraska Supreme Court at the time,” qualified under the Guidelines. *Id.* at 1127. Although the Nebraska Supreme Court later reinstated an intent requirement, which likely would have qualified under the Guidelines, the Eighth Circuit declined to consider that state supreme court decision because its “interpretation was not Nebraska law when Roblero-Ramirez was convicted in 2006.” *Id.* There is no reason to believe that the Eighth Circuit would not follow this same backwards-looking approach in the ACCA context as well.

d. Finally, there is the Seventh Circuit’s most recent decision in *United States v. Anderson*, 99 F.4th 1106 (7th Cir. 2024). The Seventh Circuit employed a somewhat different rationale than the four circuits above. But, it expressly disagreed with the Eleventh Circuit’s holding in *Somers* and squarely held that Florida aggravated assault does not qualify under ACCA’s elements clause.

Applying plain-error review, the Seventh Circuit expressly disagreed with the Eleventh Circuit’s reasoning in *Somers* that “the Florida Supreme Court’s decision in *Somers* ‘tells us what the statute always meant.’” *Id.* at 1112. That was so, the Seventh Circuit explained, because “the Eleventh Circuit did not address Florida’s approach to statutory interpretation.” *Id.* And, under that state-law approach, the Florida Supreme Court’s decision in *Somers* did “not announce a retroactive change in the law.” *Id.* at 1111. As a result, the Seventh Circuit looked to earlier Florida intermediate appellate court decisions holding that Florida assault could be committed recklessly. *Id.* at 1111–12. It concluded that Florida aggravated assault did not qualify as a “violent felony” under ACCA. *Id.* at 1112–13. This decision direct conflicts with the Eleventh Circuit’s decision in *Somers*.

II. The question presented warrants review.

1. This Court should grant certiorari to resolve the above circuit conflict on the ACCA question presented. In light of that conflict, geography alone now determines whether federal firearm defendants will face ACCA’s 15-year mandatory minimum penalty. This Court has never allowed the arbitrariness of geography to determine whether people are subject to ACCA’s harsh penalty. This explains why ACCA cases have become a fixture of the Court’s docket. Indeed, resolving circuit splits over ACCA has become an annual event. *See, e.g., Delligatti v. United States*, 604 U.S. 423 (2025); *Brown v. United States*, 602 U.S. 101 (2024); *Wooden v. United States*, 595 U.S. 360, 365 & nn.1–2 (2022); *Borden v. United States*, 593 U.S. 420, 425 & nn.1–2 (2021); *Shular v. United States*, 589 U.S. 154, 160 (2020); *Quarles v. United States*, 587 U.S. 645, 649 (2019); *Stokeling v. United States*, 586

U.S. 73 (2019); *United States v. Stitt*, 586 U.S. 27, 31 (2018).

In light of the untenable sentencing disparities, the government itself has previously acquiesced to certiorari when faced with circuit splits over ACCA. *See, e.g., Delligatti*, Br. for U.S. 8, 16–18, 2024 WL 1956647 (U.S. No. 23-825) (May 1, 2024); *Jackson v. United States*, Br. for U.S. 9, 11–13 (U.S. No. 22-6640) (Mar. 24, 2023); *Shular*, Br. for U.S. 5–6, 10–14, 2019 WL 4750019 (U.S. No. 18-6662) (Feb. 13, 2019). Moreover, the Court has granted review to resolve ACCA circuit conflicts that are shallower than the conflict here. For example, the Court has previously granted review in two ACCA cases—both out of the Eleventh Circuit and Florida—where the circuit conflict was just 1–1. *See Shular*, 589 U.S. at 760 (resolving split between the Ninth and Eleventh Circuits); *Stokeling*, U.S. Br. in Opp. 14, 16–17, 2017 WL 8686119 (No. 17-5554) (Dec. 13, 2017) (arguing—unsuccessfully—that an admitted 1–1 split between the Ninth and Eleventh Circuits was too “shallow” to warrant review). And, beyond ACCA, it is not uncommon for the Court to grant review in federal criminal cases to resolve 1–1 circuit conflicts. *See, e.g., Greer v. United States*, 593 U.S. 503, 507 (2021); *Nichols v. United States*, 578 U.S. 104, 108 (2016).

2. Resolving the split in this case is especially important because the misapplication of retroactivity principles can violate defendants’ due process rights. Judge Abudu recognized this risk in her *Pinkston* concurrence, highlighting that the current practice of the Eleventh Circuit could “present[] serious due process and equal protection concerns.” *Pinkston*, 177 F.4th at 1319.

The Eleventh Circuit’s approach expanded the Florida aggravated assault statute and changed the substantive elements of Petitioner’s prior conviction. According to this court, “an unforeseeable judicial enlargement of a criminal statute, operates precisely like an *ex post facto* law, such as Art. I, § 10, of the Constitution forbids.” *Bouie v. City of Columbia*, 378 U.S. 347, 354 (1964) (cleaned up). And, the Court noted, that if a state legislature is barred from passing such laws by the *Ex Post Facto* Clause, then “it must follow that a State Supreme Court is barred by the Due Process Clause from achieving precisely the same result by judicial construction.” *Id.*

III. This case is an ideal vehicle.

This case presents a clean procedural vehicle to resolve the question presented.

1. To begin, there can be no dispute that Petitioner properly preserved his argument in the courts below. In his written PSR objection in the district court he argued that his prior Florida aggravated assault conviction did not satisfy ACCA’s elements clause under this Court’s decision in *Borden* because at the time of his prior offense, it could have been committed recklessly. Dist. Ct. ECF No. 41 at 2-4. He reaffirmed that argument at sentencing. Dist. Ct. ECF No. 56 at 5-6. And then again on appeal. Pet. C.A. Br. 8-16. Accordingly, the Eleventh Circuit expressly reviewed his argument *de novo*. App. 4a. Because Petitioner preserved his argument, there is no risk that plain-error review would obstruct this Court’s ability to decide the question presented.

Similarly, because this case arises on direct appeal rather than collateral review under 28 U.S.C. § 2255, there are no procedural impediments to review. And

because this case arises under ACCA rather than the Guidelines, the Commission could not resolve the split. *See Braxton v. United States*, 500 U.S. 344, 347–49 (1991).

2. The lower courts, moreover, rejected Petitioner’s argument based solely on circuit precedent. In denying the objection, the district court noted “I’m bound by *Somers*. And so having overruled that objection, I find that [Petitioner does] qualify for the [ACCA] enhancement.” Dist. Ct. ECF No. 56 at 7. And the Eleventh Circuit likewise held that Petitioner’s argument was foreclosed. App. 5a. Specifically, the court of appeals declined to apply any backwards-looking approach, instead relying on *Somers*, which held that Florida aggravated assault qualified under ACCA’s elements clause notwithstanding *Borden*. *Id.* at 6a (citing *Somers*, 66 F.4th at 895–96). As explained above, *Somers* reached that conclusion because, although some Florida intermediate appellate courts previously held that Florida aggravated assault could be committed recklessly, the Florida Supreme Court had recently held that it could not.

3. The question presented is otherwise dispositive here. Neither the district court nor the Eleventh Circuit identified any alternative ground to uphold the ACCA enhancement. Indeed, the district court noted that the Florida aggravated assault conviction was necessary to apply the ACCA enhancement. Dist. Ct. ECF No. 56 at 5. In addition to being case dispositive, the question presented will have a major practical effect on Petitioner’s liberty. Were he to prevail in this Court, he would face a statutory maximum sentence of 15 years rather than a

mandatory minimum sentence of 15 years on the felon in possession charge. And his guideline range would be even lower: 63 to 78 months, plus the mandatory 7-year consecutive sentence for his § 924(c) offense. (PSR ¶¶ 38, 119). Thus, the question presented is not only dispositive but has major consequences for Petitioner himself.

IV. The decision below is wrong.

The Eleventh Circuit’s approach conflicts with this Court’s precedent.

1. In *McNeill*, 563 U.S. 816 (2011), the Court interpreted ACCA’s definition of a “serious drug offense” in § 924(e)(2)(A)(ii). Under that definition, a state drug offense qualifies if, *inter alia*, “a maximum term of imprisonment of ten years or more is prescribed by law” for the offense. In that case, the maximum term of imprisonment was ten years at the time of the defendant’s prior state conviction, but the state later reduced the maximum term of imprisonment to less than ten years. *Id.* at 818. This Court held that the relevant maximum term of imprisonment under ACCA “is the maximum sentence applicable to his offense when he was convicted of it.” *Id.* at 817–18; *see id.* at 825 (restating this holding).

The Court reasoned that “[t]he plain text of ACCA” required that result because it was concerned with determining whether a “previous conviction” was for a serious drug offense. *Id.* at 820 (brackets omitted). And “[t]he only way to answer this backward-looking question is to consult the law that applied at the time of that conviction.” *Id.* The Court explained that it had already done this in an earlier ACCA case involving the same “serious drug offense” definition, where it looked to

the “version of state law ... ‘that [the defendant] was convicted of violating.’” *Id.* (citing *United States v. Rodriguez*, 553 U.S. 377, 380–81 (2008)). The Court added that although ACCA’s definition used the present tense (“is prescribed by law”), that did not overcome “the fact that ACCA is concerned with convictions that have already occurred.” *Id.* Therefore, whether a conviction qualifies as an ACCA predicate “can only be answered by reference to the law under which the defendant was convicted.” *Id.*

McNeill continued that its conclusion was supported by the Court’s “violent felony” precedents too. The Court observed that, to ascertain the elements in *Taylor v. United States*, 495 U.S. 575 (1990), it “turned to the version of state law that the defendant was actually convicted of violating,” even though there had been a “subsequent change in state law.” *Id.* at 821 (citing *Taylor*, 495 U.S. at 578 n.1, 602). And the Court likewise observed that in *James v. United States*, 550 U.S. 192 (2007), it “looked to the versions” of state law “that were in effect ‘at the time of James’ 1993 state conviction.’” *Id.* (citing *James*, 550 U.S. at 197) (brackets omitted). “Having repeatedly looked to the historical statute of conviction in the context of violent felonies,” the Court saw “no reason to interpret ‘serious drug offenses’ in the adjacent section of the same statute any differently.” *Id.* at 822 (brackets omitted). *McNeill* and the ACCA precedents cited therein establish that to ascertain the elements and statutory maximum of a prior state offense, ACCA requires courts to consult state law in effect at the time of the prior conviction.

As discussed above, the Court recently reaffirmed—and extended—that understanding in *Brown*, 602 U.S. 101 (2024). *Brown* held that the reference to a

“controlled substance” in ACCA’s “serious drug offense” definition referred to substances that were controlled at the time of the prior state conviction, not at the time of the later federal firearm offense or sentencing. *Id.* at 108, 123. To reach that conclusion, the Court repeatedly relied on *McNeill*’s “backward-looking” examination.” *Id.* at 111 (quoting *McNeill*, 563 U.S. at 820); *see id.* (“as we explained in *McNeill*, ACCA requires sentencing courts to examine the law as it was when the defendant violated it, even if that law is subsequently amended.”); *id.* at 114–15 (explaining that *McNeill* rejected the argument that a “subsequent change in state law” could effectively “erase the earlier conviction”) (quotation omitted); *id.* at 119–20 (explaining that *McNeill* “held that [ACCA] requires a historical inquiry into the state law at the time of that prior offense.”).

The Eleventh Circuit’s approach is irreconcilable with this Court’s precedent. Rather than consult state law in effect at the time of a defendant’s prior state conviction, the Eleventh Circuit consults the most recent, authoritative state court decision interpreting the elements of the offense—even where that decision post-dates a defendant’s prior state conviction. In this case, for example, the Eleventh Circuit relied on the Florida Supreme Court’s 2022 decision in *Somers* to ascertain the elements of Florida aggravated assault, even though that decision long post-dated Petitioner’s 2011 assault conviction. *See* App. 4a, 5a (applying *Somers*); *Somers* 66 F.4th at 895–96 (“The Florida Supreme Court has told us unambiguously that assault under Florida law ... cannot be committed recklessly.”). The court denied any application of *Brown* to Petitioner’s case, deciding *Brown* and its analysis was distinguishable because it “concerned a legislative amendment, rather

than a judicial statutory interpretation.” *Id.* at 5a-6a. *Brown*, therefore, did not “undermine or overrule *Somers*” and was inapplicable.

2. The Eleventh Circuit expanded on this distinction in its more recent decision in *Pinkston*, where it considered the almost identical elements clause of the Guidelines. *Pinkston*, 177 F.4th 1309.

There, the court again declined to apply *Brown*, this time explaining that intervening interpretive judicial decisions do not change the law. *Id.* at 1315. In doing so, the Eleventh Circuit relied on *Rivers*, 511 U.S. 298. *Rivers* is inapposite. In *Rivers*, this Court articulated the following proposition of federal statutory interpretation: “It is this Court’s responsibility to say what a statute means, and once the Court has spoken, it is the duty of other courts to respect that understanding of the governing rule of law. A judicial construction of a statute is an authoritative statement of what the statute meant before as well as after the decision of the case giving rise to that construction.” 511 U.S. at 312-13. In other words: “when this Court construes a statute, it is explaining its understanding of what the statute has meant continuously since the date when it became law.” *Id.* at 313 n.12. However, this proposition does not apply in the context of this case for two independent reasons.

First, *Rivers* involved a federal statute, whereas this case involves a state statute. And while this Court is the final arbiter of federal statutes, “state courts [are] the final arbiters of state law in our federal system.” *United States v. Taylor*, 596 U.S. 845, 859 (2022). It follows that, “because we are dealing with a Florida

statute, we must apply Florida’s rules of statutory construction,” including its rules about when judicial decisions interpreting Florida statutes apply retroactively. *Anderson*, 99 F.4th at 1111. However, as the Seventh Circuit explained in *Anderson*, “the Eleventh Circuit did not address Florida’s approach to statutory interpretation.” *Id.*

In that regard, Florida does not follow *Rivers*’ federal rule. Instead, “the Florida Supreme Court held that “all decisions of th[at] Court disagreeing with a statutory construct previously rendered by a district court constitute ‘changes’ in the applicable law from the law at the time of conviction,” and such “court-initiated ‘changes’ in the law do not apply retroactively unless the court states that the change satisfies a three-part test.” *Id.* (quoting *Florida v. Barnum*, 921 So.2d 513, 518 (Fla. 2005)). Because the Florida Supreme Court’s decision in *Somers* did not satisfy that state-law three-part test, it did “not announce a retroactive change in the law.” *Id.*

Second, even if Florida did follow the *Rivers* rule, that rule still would not apply here. The Eleventh Circuit reasoned that, although the Florida Supreme Court issued its *Somers* decision about Florida assault in 2022, that decision “tells us what that statute always meant.” *Somers*, 66 F.4th at 896 (cleaned up). The problem with this reasoning is that courts in the ACCA context are not tasked with determining what the state statute theoretically meant when the defendant was convicted. Rather, they are tasked with determining the least culpable conduct that actually could have been prosecuted under the state statute when the defendant was convicted. *See, e.g., Borden*, 593 U.S. at 441–42 (plurality op.) (citing *Moncrieffe*

v. Holder, 569 U.S. 184, 190–91 (2013)); (*Curtis*) *Johnson*, 559 U.S. at 137. The Eleventh Circuit itself recognized in this case that ascertaining the “least culpable conduct” is part of the categorical approach that federal courts must apply in the ACCA context. App. 4a.

Under the Eleventh Circuit’s approach, however, it would not matter if the defendant actually could have been—or even if he in fact was—prosecuted for conduct that did not satisfy ACCA’s federal definitions. “This outcome torpedoes the rationale of the categorical approach.” *Welch*, 958 F.3d at 1101 (Rosenbaum, J., concurring). Indeed, it “creates the very real possibility that it will keep defendants in prison for extended sentences based entirely on a legal fiction. That makes no sense. We live in the real world. And in the real world, whatever the Florida Supreme Court decided” in 2022 that the Florida assault had “‘always’ meant cannot change the fact that, before [that decision], at least some of Florida’s intermediate courts of appeals applied the Florida [assault] statute to cover” reckless conduct. *Id.* at 1102.

Here, the Eleventh Circuit erroneously made no effort to ascertain the state of Florida law—as it actually existed on the ground—at the time of Petitioner’s prior Florida aggravated assault convictions. Thus, the decision below should be vacated.

CONCLUSION

For the reasons stated above, the Court should grant the writ.

Respectfully submitted,

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