No. 26-5125

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

REPLY BRIEF FOR PETITIONER

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REPLY BRIEF FOR PETITIONER

This case involves an acknowledged circuit split over an important and recurring question: When a court determines the elements of a prior conviction for purposes of applying the Armed Career Criminal Act (ACCA), must the court limit its inquiry to the law as it stood at the time of the prior conviction or may the court consider the law in place at the time it rules? Four courts of appeals—the Fourth, Fifth, Seventh, and Eighth Circuits—have adopted the former rule. The Eleventh Circuit has adopted the latter, rejecting the "backward-looking" approach of its sister circuits. Pet. App. 6a. Members of the Eleventh Circuit recognize this conflict, *United States v. Pinkston*, 177 F.4th 1309, 1315 (11th Cir. 2026), *petition for cert. pending,* No. 26-5872 (filed Oct. 13, 2026) (Pryor, C.J., concurring); *id.* at 1318 (Abudu, J., concurring), as do its sister circuits, *United States v. Delaine*, 171 F.4th 880, 888 (6th Cir. 2026), *petition for cert. pending,* No. 26-231 (filed Aug. 20, 2026).

The government cannot meaningfully dispute the conflict on the question presented, so it tries to move the target. In its view (at 12-13), even a court that applies a backward-looking approach would not have "clearly" reached a different result here because the law was not "settled" at the time of Mr. Leland's conviction for aggravated assault. The government is wrong, and that offense-specific question is the subject of an independent circuit split. *See infra* at 7. But more fundamentally, the government's argument is irrelevant to the broader split on the question presented. The Eleventh Circuit did not consider the state of the law when Mr. Leland was convicted, because the court does not "look[] to the law at the time of [the

defendant's] conviction." *Pinkston*, 177 F.4th at 1319 (Abudu, J., concurring). The court instead asks whether, "in light of *new* decisional law, the offense *now* qualifies as a crime of violence." *Id.* (emphasis added). The court's approach squarely conflicts with that of its sister circuits.

This Court's review is warranted now. The government does not dispute this is a clean vehicle to resolve question presented, which goes to the heart of the categorical approach. *See* Pet. 22-25. An ACCA enhancement imposes a 15-year mandatory minimum on a defendant who would otherwise face a 15-year statutory maximum. 18 U.S.C. §§ 924(a)(8), (e)(1). Whether a defendant faces that mandatory sentence should not depend on the federal circuit in which his sentence is imposed. This Court should grant the petition.

I. The circuit split is real and warrants this Court's review.

A. The courts of appeals are divided on the proper methodology for identifying the elements of a prior conviction for purpose of the ACCA.

The courts of appeals are divided over how to determine the elements of a defendant's prior conviction for the purpose of applying the ACCA's categorical approach. *See* Pet. 13-21. The government's assertion (at 12) that "[n]o such methodological conflict exists" cannot be squared with how the courts of appeals themselves describe the law. The Eleventh Circuit consults the most recent, authoritative decision interpreting the state law, even when that decision departs from those in place when the defendant was convicted. *See* Pet. 14-17. The Fourth, Fifth, Seventh, and Eighth Circuits limit the analysis to decisions in place when the

defendant was convicted. *See* Pet. 18-21. This Court should grant certiorari to resolve the split.

1. The Eleventh Circuit has rejected a "'backward-looking' examination" that would make its determination "depend on the date of conviction." Pet. App. 5a-6a. Below, the court relied on a 2022 Florida Supreme Court decision to conclude that Mr. Leland's 2011 Florida conviction for aggravated assault qualified as an ACCA violent felony. Pet. App. 5a-7a (applying *Somers v. United States*, 66 F.4th 890, 896 (11th Cir. 2023), which relied on *Somers v. United States*, 355 So. 3d 887, 892-893 (Fla. 2022)). The court expressly declined to consider Florida appellate decisions in place when Mr. Leland was convicted in 2011 that permitted aggravated assault convictions based on recklessness—an interpretation that would make the offense ineligible as an ACCA predicate under *Borden v. United States*, 593 U.S. 420 (2021). *See* Pet. 9; *see also LaValley v. State*, 633 So. 2d 1126, 1127 (Fla. Dist. Ct. App. 1994) (explaining "'willful and reckless disregard for the safety of others' could substitute for proof of intentional assault on the victim" (quoting *Kelly v. State*, 552 So. 2d 206, 208 (Fla. Dist. Ct. App. 1989))).

The Eleventh Circuit's approach conflicts with that of at least four other circuits, which limit their analysis to the law as it stood when the defendant was convicted, even when the State's highest court later adopted a different interpretation of the statute. *See United States v. Cornette*, 932 F.3d 204, 213 (4th Cir. 2019); *United States v. Vickers*, 967 F.3d 480, 486 (5th Cir. 2020), *cert. granted, judgment vacated on other grounds,* 141 S. Ct. 2783 (2021); *United States v. Anderson*, 99 F.4th 1106,

1111-1112 (7th Cir. 2024); *United States v. Roblero-Ramirez*, 716 F.3d 1122, 1126-1127 (8th Cir. 2013). The First Circuit has suggested that it might do the same. *See United States v. Faust*, 853 F.3d 39, 57 (1st Cir. 2017).

The courts of appeals recognize this conflict. In *United States v. Pinkston*, Chief Judge Pryor wrote separately to defend the court's approach against that of the Seventh Circuit, which had "expressly disagreed with *Somers*," and that of the "three other circuits [that] have reached incompatible conclusions." 177 F.4th at 1315 (W. Pryor, C.J., concurring) (citing *Anderson*, 99 F.4th at 1112; *Cornette*, 932 F.3d at 214; *Vickers*, 967 F.3d at 486; and *Roblero-Ramirez*, 716 F.3d at 1127). Judge Abudu, by contrast, wrote separately to advocate for "an approach [that] is consistent with [the court's] sister circuits"—*i.e.*, an approach that "assess[es] whether a defendant committed a qualifying crime of violence by looking to the law at the time of his conviction instead of asking whether, in light of new decisional law, the offense now qualifies as a crime of violence." *Id.* at 1319 (Abudu, J., concurring). The Sixth Circuit has likewise recognized this divide and suggested that it would reject the "backward-looking framework" that its sister circuits apply. *See Delaine*, 171 F.4th at 887-888 (observing the First, Fourth, Fifth, Seventh, and Eighth Circuits apply a "backward-looking framework" when "the judiciary departs from a prior interpretation of an unamended law after the defendant's prior conviction").

That conflict warrants review and, contra the government (at 6), implicates a question of substantial significance to federal criminal law. The underlying methodological question arises whenever the judiciary adopts a new interpretation of

a criminal statute after a defendant's conviction. And the stakes are substantial: Misapplying the enhancement can convert a 15-year statutory maximum to a 15-year mandatory minimum. Whether that enhancement applies should not depend on geography.

2. Despite the courts of appeals' irreconcilable approaches, the government disputes (at 12-13) whether courts of appeals—other than the Seventh Circuit—"would clearly" have reached a different result in this case, because (it says) the law was not "settled" in the defendant's favor at the time of his conviction. That argument is doubly flawed.

First, the backward-looking approach endorsed by the Fourth, Fifth, and Eighth Circuits does not turn on whether pre-conviction state law was settled. Each of those courts has held, without qualification, that it must determine the elements of a prior conviction by looking to the law as it stood at the time of conviction. *See* Pet. 13-21. In *United States v. Cornette*, for example, the Fourth Circuit relied on a decision from Georgia's intermediate appellate court to conclude that, "at the time of [the defendant's] conviction," Georgia's definition of burglary was broader than generic burglary under ACCA. 932 F.3d at 213 (citing *McNeill v. United States*, 563 U.S. 816, 820 (2011)). In so holding, the Fourth Circuit declined to consider a contrary decision of the Supreme Court of Georgia issued the following year. *Id.* at 214.

Had the Eleventh Circuit followed the approach of its "sister circuits," *Pinkston*, 177 F.4th at 1315 (W. Pryor, C.J., concurring), it thus would have limited its analysis to Florida "law at the time of [Mr. Leland's] conviction," *Cornette*, 932

F.3d at 214. The court could not have consulted the Florida Supreme Court's decision in *Somers*—a case that "was not decided until [2022], whereas [Mr. Leland] was convicted in [2011]"—and instead would have needed to "turn to the state's intermediate appellate courts." *Id.* The Eleventh Circuit, however, refused to do so: It has held that a defendant "cannot rely on earlier decisions of Florida's intermediate courts of appeal" if the state supreme court decision later reaches a different result. *Somers*, 66 F.4th at 896.

It is therefore beside the point whether, as the government suggests, decisions from "Florida's intermediate appellate courts" at the time of Mr. Leland's conviction might support its understanding of Florida aggravated assault. Br. in Opp. 14 (quoting *Somers* v. *United States*, 15 F.4th 1049, 1054 (11th Cir. 2021)). What matters is that the Eleventh Circuit refused to consult those decisions. To the extent the government means to suggest that it can prevail under a backward-looking approach, its arguments are best directed for remand.

Second, and in any event, Mr. Leland would prevail under a backward-looking approach, as the Seventh Circuit has held. *Anderson,* 99 F.4th at 1111-1112. The Seventh Circuit, unlike the Eleventh Circuit, looks to judicial interpretations "at the time of the offense to determine whether a crime is a violent felony under ACCA." *Id.* at 1111. Using that approach, the Seventh Circuit determined Florida aggravated assault was not a violent felony under ACCA, notwithstanding the Florida Supreme Court's intervening decision in *Somers*. *Id.* That decision, the Seventh Circuit explained, did not control "how the statute was applied *at the time*." *Id.* (emphasis

added). Instead, the Seventh Circuit looked to "decisions from the Florida appellate courts" and concluded "there was a realistic probability that courts would punish conduct that included recklessness. *See id.* at 1112-1113. The Seventh Circuit found a "realistic probability" notwithstanding "conflicting decisions" regarding whether Florida aggravated assault required "specific intent to do violence." *See id.* (citation omitted). The result here is even more straightforward, as Mr. Leland was convicted in a district where the appellate court had expressly rejected a "specific intent" requirement for aggravated assault. *See Bass v. Florida*, 232 So. 2d 25, 27 (Fla. Dist. Ct. 1970).

B. The courts of appeals are also divided on whether Florida aggravated assault qualifies as a violent felony.

This case highlights the methodological conflict among the courts of appeals, which have also reached divergent conclusions about whether the specific predicate at issue here—Florida aggravated assault—can serve as an ACCA predicate. The government acknowledges the conflict (at 12, 14) between the Eleventh and Seventh Circuit on that question. *Compare* Pet. App. 6a, *with Anderson*, 99 F.4th at 1111-1112. The Sixth Circuit recently joined the Eleventh Circuit's side of the split in *Delaine*—a decision that the government ignores entirely in its brief in opposition. *See Delaine*, 171 F.4th at 888-889.

That conflict itself would warrant review. Today, an identical Florida conviction could trigger ACCA's 15-year mandatory minimum if the defendant is sentenced in Florida or Michigan but not if he is sentenced in Illinois. This Court has previously granted review to address a conflict as to whether a particular Florida

offense can serve as an ACCA predicate. *See Stokeling v. United States*, 586 U.S. 73 (2019). The case for review is even stronger here, where the disparate results implicate a broader conflict among the courts of appeals as to the proper inquiry under the ACCA. *See supra* at 2.

In any event, the government's attempt (at 6) to minimize the offense-specific conflict as "an issue of diminishing importance" fails. Contrary to the government's claim (at 5), the dispute is not limited to convictions for Florida aggravated assault from "the early 2000s." Under the Seventh Circuit's approach, Florida aggravated assault would not qualify as an ACCA predicate from at least 1989 (when *Kelly* was decided) to 2022 (when the Florida Supreme Court decided *Somers*). The conflict therefore affects the status of decades of convictions for one of Florida's most commonly charged violent felonies—an offense committed tens of thousands of times each year.*

II. The decision below is wrong.

On the merits, the government hardly defends the decision below on its own terms. Because the Florida Supreme Court's decision held that Florida aggravated assault cannot be committed with a mens rea of recklessness, the government contends (at 9-10) the Eleventh Circuit applied that "definitive interpretation" to Mr.

* According to the FBI, more than 55,000 aggravated assaults in Florida in 2019 alone. *See* "Crime in the United States," Fed. Bureau of Investigation (2019), https://ucr.fbi.gov/crime-in-the-u.s/2019/crime-in-the-u.s.-2019/topic-pages/tables/table-22.

Leland's 2011 conviction as an "explication of the plain text of the Florida statute, as it existed at the time of petitioner's crime."

But even if the Florida Supreme Court's 2022 decision explains what the statute "always meant," Br. in Opp. 9 (quotation marks omitted), that does not determine what a prior conviction under the statute "necessarily involve[d]," *Borden*, 593 U.S. at 424. A later decision disapproving earlier interpretations "does not mean that those decisions never happened, or that individuals were not convicted" under them. *Welch v. United States*, 958 F.3d 1093, 1100 (11th Cir. 2020) (Rosenbaum, J., concurring). Instead, what matters is "what conduct could have resulted in [a defendant's] convictions under the statute, even if Florida courts were misinterpreting the statute at that time." *United States v. Seabrooks*, 839 F.3d 1326, 1351 n.5 (11th Cir. 2016) (Martin, J., concurring in the judgment). The question, then, is whether the ACCA directs a federal court to determine the elements of a prior conviction based on the law in effect when the defendant was convicted or at the time the federal court rules.

This Court has already answered that question. *See* Pet. 25-30. ACCA poses a "backward-looking question," and "[t]he only way to answer" it is to "consult the law that applied at the time of that conviction." *McNeill*, 563 U.S. at 820. Sentencing courts must "examine the law as it was when the defendant violated it, even if that law is subsequently amended." *Brown v. United States*, 602 U.S. 101, 111 (2024). That is true both as a matter of statutory interpretation and to avoid "serious due

process and equal protection concerns," *Pinkston*, 177 F.4th at 1319 (Abudu, J., concurring); *see* Pet. 22-23,—concerns the government does not address at all.

The government's only response (at 10-11) is that *McNeill* and *Brown* involved "changes to the statutory scheme," whereas this case "involves only the application of the definitive interpretation of the plain text of a state statute." But nothing in those decisions limits the ACCA's backward-looking inquiry to statutory text. *McNeill* grounded its holding in this Court's violent felony precedents, which "turned to the version of state law that the defendant was actually convicted of violating." 563 U.S. at 821. When Mr. Leland was convicted, that law included Florida appellate decisions permitting aggravated assault convictions based on recklessness.

In a last-ditch effort, the government attempts (at 10-11) to characterize the petition as a disagreement about the application of Florida law rather than the ACCA. That contention misses the point. Mr. Leland does not dispute that *Somers* authoritatively construes Florida's assault statute going forward. But it is "the decisions from Florida appellate courts [that] tell us how the statute was applied *at the time*" of his conviction. *Anderson*, 99 F.4th at 1112 (emphasis added). The Eleventh Circuit, however, never reached the question whether Florida courts interpreted aggravated assault to include recklessness at the time of Mr. Leland's offense. This Court should require that it do so.

III. This case is an ideal vehicle to resolve the important question presented.

The government does not dispute that this case is an ideal vehicle to resolve the question presented. *See* Pet. 23-25. Mr. Leland preserved his argument at every

stage, and the court of appeals rejected it solely based on *Somers*. Pet. App. 4a-7a. Without the aggravated assault conviction, Mr. Leland would lack the three predicates the ACCA requires, and his Guidelines range would have been 63 to 78 months rather than 180 to 210 months. Pet. 11, 24-25.

The government observes (at 6) that this Court has previously denied certiorari in two cases presenting the same question. In each case, however, the government raised serious vehicle issues that are not present here. In *Perrin v. United States*, the government argued the case was a "poor vehicle" because the court of appeals "reviewed his claim only for plain error." *See* U.S. Br. in Opp. at 9, 145 S. Ct. 2685 (2025) (No. 24-6396). In *Harris v. United States*, the government argued the petitioner would not have prevailed even under the Seventh Circuit's approach because his convictions were entered in Florida districts whose appellate courts had required specific intent. U.S. Br. in Opp. at 12, 145 S. Ct. 1904 (2025) (No. 24-5776). Here, by contrast, the government offers no comparable objection. It does not dispute that Mr. Leland would prevail in the Seventh Circuit, nor identify any other vehicle problem that would impede this Court's review.

* * *

The courts of appeals are in open conflict on how to apply one of the harshest sentencing enhancements in federal criminal law. Only this Court can ensure the uniform application of the ACCA, and the government provides no sound reason to postpone review.

CONCLUSION

The Court should grant the petition for certiorari.

Respectfully submitted,

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