

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

KENRIC W. YOUNG,

Petitioner,

versus

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

CRISTIE GAUTREAUX GIBBENS
Federal Public Defender
Middle and Western Districts of
Louisiana
102 Versailles Boulevard, Suite 816
Lafayette, Louisiana 70501
Telephone: (337) 262-6336

Attorney for the Petitioner

QUESTION PRESENTED

Whether a defendant challenging a prior state conviction under the controlled substances definitions must produce actual state court decisions (i.e., show reasonable probability of prosecution) showing non-generic application of a facially overbroad statute—as the Fifth Circuit alone requires—or whether the statutory text suffices to demonstrate overbreadth—as every other circuit holds?

LIST OF PARTIES PURSUANT TO RULE 14.1(b)

Petitioner: Kenric W. Young

Respondent: United States of America

TABLE OF CONTENTS

QUESTION PRESENTED	2
LIST OF PARTIES PURSUANT TO R.14.1(b).....	2
TABLE OF CONTENTS	3
APPENDIX INDEX	4
TABLE OF AUTHORITIES	5
OPINIONS BELOW	7
JURISDICTION.....	7
STATUTORY PROVISIONS INVOLVED	7
INTRODUCTION	8
STATEMENT OF THE CASE.....	10
A. Factual and Procedural Background	10
B. The Fifth Circuit Proceedings	11
REASONS FOR GRANTING THE WRIT	12
I. THE COURTS OF APPEALS ARE IRRECONCILABLY SPLIT ON A FUNDAMENTAL QUESTION OF FEDERAL CRIMINAL LAW	12
A. The Fifth Circuit’s Outlier Position	12
B. Every Other Circuit Rejects the Fifth Circuit’s Approach	13
C. The Split Creates Arbitrary Results and Is Acknowledged and Entrenched	15
II. THE FIFTH CIRCUIT’S “ACTUAL CASE” REQUIREMENT CONTRADICTS THIS COURT’S PRECEDENT AND SOUND PRINCIPLES OF STATUTORY INTERPRETATION.....	16

A.	This Court’s Recent Decision in <i>Justin Taylor</i> Forecloses the Fifth Circuit’s Approach.....	17
B.	The “Actual Case” Requirement Misreads <i>Duenas-Alvarez</i>	18
C.	The Rule Violates Basic Principles of Statutory Interpretation.....	18
D.	The Categorical Approach Focuses on Elements, Not Enforcement Patterns or Facts	19
III.	THE QUESTION PRESENTED IS OF EXCEPTIONAL IMPORTANCE AND WARRANTS IMMEDIATE REVIEW	21
A.	The Circuit Split Affects Thousands of Cases Across Multiple Areas of Federal Law	21
B.	The Fifth Circuit’s Rule Imposes an Unfair and Often Impossible Burden	22
C.	The Legal Question Is Cleanly Presented.....	22
CONCLUSION		23

APPENDIX INDEX

Fifth Circuit Opinion, May 1, 2026.....	App. 01
District Court Judgment, March 26, 2025.....	App. 07july

TABLE OF AUTHORITIES

<i>Alexis v. Barr</i> , 960 F.3d 722 (5th Cir. 2020).....	16
<i>Arthur Taylor v. United States</i> , 495 U.S. 575 (1990).....	8, 10, 19
<i>Bedroc Ltd. v. United States</i> , 541 U.S. 176 (2004).....	18
<i>Betansos v. Barr</i> , 928 F.3d 1133 (9th Cir. 2019)	22
<i>Descamps v. United States</i> , 470 U.S. 254 (2013)	8
<i>Gonzales v. Duenas-Alvarez</i> , 549 U.S. 183 (2007)	15-16, 22
<i>Gordon v. Barr</i> , 965 F.3d 252 (4th Cir. 2020).....	13
<i>Hylton v. Sessions</i> , 897 F.3d 57 (2d Cir. 2018).....	14,16
<i>Mathis v. United States</i> , 579 U.S. 500 (2016)	8, 19
<i>Mellouli v. Lynch</i> , 575 U.S. 798 (2015).....	19
<i>Mendieta-Robles v. Gonzales</i> , 226 F. App'x 564 (6th Cir. 2007) (unpublished).....	15
<i>Moncrieffe v. Holder</i> , 569 U.S. 184 (2013).....	19
<i>Mowlana v. Lynch</i> , 803 F.3d 923 (8th Cir. 2015)	15
<i>Ramos v. Att’y Gen.</i> , 709 F.3d 1066 (11th Cir. 2013).....	15
<i>Shepard v. United States</i> , 544 U.S. 13 (2005)	19
<i>Singh v. Attorney General</i> , 839 F.3d 273 (3d Cir. 2016).....	14
<i>Swaby v. Yates</i> , 847 F.3d 62 (1st Cir. 2017).....	14
<i>United States v. Arayatanon</i> , 980 F.3rd 444 (5th Cir. 2020).....	8
<i>United States v. Castillo-Rivera</i> , 853 F.3d 218 (5th Cir. 2017) (en banc).....	12-16
<i>United States v. Gomez-Alvarez</i> , 781 F.3rd 787 (5th Cir. 2015)	8
<i>United States v. Grisel</i> , 488 F.3d 844 (9th Cir. 2007) (en banc).....	14

<i>United States v. Justin Taylor</i> , 596 U.S. 845 (2022).....	17
<i>United States v. Stitt</i> , 586 U.S. 27 (2018)	14
<i>United States v. Titties</i> , 852 F.3d 1257 (10th Cir. 2017)	14
<i>Van Cannon v. United States</i> , 890 F.3d 656 (7th Cir. 2018)	14

STATUTES

8 U.S.C. § 1101(a)(43)	21
18 U.S.C. § 16.....	21
21 U.S.C. § 802(6)	7-8, 11
21 C.F.R. 1308.12(B)(4)	7, 9
U.S.S.G. § 2K2.4(b)	8
U.S.S.G. § 2L1.2.....	10
U.S.S.G. § 4B1.1.....	11, 21
U.S.S.G. § 4B1.2.....	7, 11, 21
LA. REV. STAT. 40:964	9
LA. REV. STAT. 40:967	8
80 Fed. Reg. 54715-01.....	9

OTHER AUTHORITIES

J. Turner, <i>Transparency in Plea Bargaining</i> , 96 Notre Dame L. Rev. 973 (2021) ...	17
2016 La. Sess. Law Serv. Act 62 (H.B. 688).....	9

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit affirming petitioner's conviction and sentence can be found at *United States v. Young*, No 25-30187, 2026WL1195827 (5th Cir. May 1, 2026) (unpublished), and is set forth at Pet. App. 001.

JURISDICTION

The judgment of the court of appeals was entered on May 1, 2026. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

The Career Offender Guideline, § 4B1.2(b), has the following “controlled substance offense” definition:

an offense under federal or state law, punishable by imprisonment for a term exceeding one year, that prohibits the manufacture, import, export, distribution, or dispensing of a controlled substance (or a counterfeit substance) or the possession of a controlled substance (or a counterfeit substance) with intent to manufacture, import, export, distribute, or dispense.

The Controlled Substance Act (“CSA”), 21 U.S.C. § 802(6), defines “controlled substance” as “a drug or other substance, or immediate precursor, included in schedule I, II, III, IV, or V of part B of this subchapter.” 21 U.S.C. § 802(6). The CSA expressly excludes the cocaine-derivative substance Ioflupane from its definition of cocaine and related substances. 21 C.F.R. § 1308.12(b)(4); 80 Fed. Reg. 54715-01.

INTRODUCTION

A defendant’s federal sentence should not depend on the publishing practices of state courts. Yet that is precisely what the Fifth Circuit’s outlier rule requires. Standing alone among the federal courts of appeals, the Fifth Circuit demands that defendants produce “actual cases” proving that state statutes mean what their text plainly says—even when the statutory language unambiguously criminalizes conduct beyond the federal generic offense.

The “categorical approach” is used to determine whether a prior conviction qualifies as a “controlled substance offense” under § 4B1.2(b). *Mathis v. United States*, 579 U.S. 500, 504 (2016). Under the categorical approach, a district court looks to the elements of a prior offense, rather than to the facts underlying the conviction, when classifying a prior offense for sentence enhancement purposes. *Arthur Taylor v. United States*, 495 U.S. 575, 602 (1990). The categorical approach calls for the courts to “compare the elements of the statute forming the basis of the defendant’s conviction with the elements of the ‘generic’ crime—*i.e.*, the offense as commonly understood.” *Descamps v. United States*, 570 U.S. 254, 257 (2013).

Under *United States v. Gomez-Alvarez*, 781 F.3d 787, 793-94 (5th Cir. 2015) the Fifth Circuit held that to determine whether a substance is a controlled substance offense, requires proof that the substance in the prior conviction is covered by the CSA.¹ Petitioner had two prior convictions under La. R.S. 40:967 for distribution of

¹ U.S.S.G. § 2L1.2 and U.S.S.G. § 4B1.2 have similar definitions and therefore the cases discussing those definitions are cited interchangeably. *United States v. Arayatanon*, 980 F.3d 444, 453 n.8 (5th Cir. 2020).

a Schedule II substance, which was cocaine. At the time of those two prior convictions, Louisiana defined cocaine more broadly than the CSA, by including Ioflupane in the Louisiana definition, while the CSA expressly excluded Ioflupane. 21 C.F.R. § 1308.12(b)(4); 80 Fed. Reg. 54715-01.² Nonetheless, the Fifth Circuit upheld Petitioner’s career offender sentence, reasoning that he failed to show any “realistic probability” that Louisiana would prosecute someone for distributing Ioflupane.

This ruling perpetuates a circuit split that has festered for years. Every other circuit to address the issue has rejected the Fifth Circuit’s approach, holding that facial overbreadth demonstrated by statutory text is sufficient to establish that a state offense is non-generic. The split affects thousands of defendants nationwide and creates arbitrary results based on the happenstance of geographic prosecution and the vagaries of state court publishing practices.

The conflict also reflects a fundamental disagreement about basic principles of statutory interpretation. When a statute’s text is unambiguous, courts typically look no further—they do not require extrinsic evidence that the statute means what it says. Yet the Fifth Circuit’s rule flips this principle on its head, requiring defendants to prove a “realistic probability” of prosecution under the overbroad definition.

² Louisiana did not amend its law until 2016 to exclude that substance from the definition’s reach. *See* La. R.S. § 40:964, Schedule II(A)(4) (current) (“Coca leaves, and any salt, compound, derivative, or preparation of coca leaves (including cocaine ecgonine and their salts, isomers, derivatives and salts of isomers and derivatives), and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, *except that the substances shall not include: . . . Ioflupane, with and without radioisotopes.*” (emphasis added)); *see also* 2016 La. Sess. Law Serv. Act 62 (H.B. 688) (WEST) (adding language exempting Ioflupane).

This untenable split creates a nationwide inconsistency in the application of federal criminal law that begs the Court's intervention. Defendants face wildly different outcomes based solely on which circuit hears their case, not on the merits of their claims. Meanwhile, the Fifth Circuit's rule imposes a near insurmountable burden on defendants by forcing them to show a realistic probability that the State would prosecute someone, which would essentially require the defendants to find published decisions in an era where most criminal cases end in plea agreements and many state court decisions are neither published nor easily accessible.

The question presented goes to the heart of the categorical approach this Court established in *Arthur Taylor v. United States*, 495 U.S. 575 (1990), and refined in subsequent decisions. It affects not only the federal sentencing guidelines, but also the ACCA, immigration law, and other federal statutes that employ categorical analysis. The time has come to resolve this important question of federal law and restore uniformity to an area that affects thousands of cases each year.

STATEMENT OF THE CASE

A. Factual and Procedural Background

On December 2, 2024, the petitioner pled guilty to one count of possession with intent to distribute methamphetamine and one count of possession of a firearm in furtherance of a drug trafficking crime. ROA.151. A preliminary presentence report (PSR) issued, finding that Young was a career offender because he was over 18 years old when he committed the charged offense, the instant offenses were controlled substance offenses, and he had a prior conviction for possession with intent to and a

prior conviction for distribution of schedule II controlled dangerous substances. The PSR based Young's status as a career offender on:

26. On October 12, 2012, in the First Judicial District Court for Caddo Parish, Louisiana, the defendant entered a plea of guilty to the charge of Possession with Intent to Distribute Schedule II CDS in docket number 309130. He was sentenced on the same date to five years hard labor.

27. On June 22, 2017, in the First Judicial District Court for Caddo Parish, Louisiana the defendant entered a plea of guilty to the charge of Distribution of Schedule II CDS in docket number 348072. He was sentenced on the same date to four years hard labor.

ROA.345.

Applying the career offender guideline, the Young's applicable guideline range was 322 to 387 months (criminal history category VI, Count 1 adjusted offense level 34 resulting in a range of 262-327 plus the mandatory minimum sentence on Count 2 of 60 months, for a total of 322 to 387 months). ROA.384. He was sentenced to 322 months. Pet. App. 03.

B. The Fifth Circuit Proceedings

Young appealed to the Fifth Circuit and argued that assuming his 2012 Louisiana conviction was for possession with intent to distribute cocaine, that offense was not a "controlled substance offense" for career offender purposes because the Louisiana definition was broader than the CSA definition of cocaine. The Fifth Circuit panel did not contradict Young's argument that the Louisiana statute was categorically broader than the federal one; instead, the panel held that "any error is

not clear or obvious because [Young] has not shown a realistic probability that Louisiana would prosecute someone for distributing Ioflupane or established that he is not required to make that showing. *United States v. Castillo-Rivera*, 853 F.3d 218 (5th Cir. 2017) (en banc)” Pet. App. 02. The panel affirmed Young’s sentence.

REASONS FOR GRANTING THE WRIT

I. THE COURTS OF APPEALS ARE IRRECONCILABLY SPLIT ON A FUNDAMENTAL QUESTION OF FEDERAL CRIMINAL LAW

The circuits are deeply and intractably divided on whether defendants must produce “actual cases” or a “realistic probability of prosecution” showing state court application of facially overbroad statutes when challenging prior convictions under categorical analysis. The Fifth Circuit requires such evidence, while every other circuit to address the question has rejected this nearly insurmountable burden.

A. The Fifth and Sixth Circuit’s Outlier Position

The Fifth Circuit’s rule originated in *United States v. Castillo-Rivera*, 853 F.3d 218 (5th Cir. 2017) (en banc), a closely divided *en banc* decision that held that defendants must point to “actual cases” showing state courts have applied statutes in a non-generic manner—even when the statute’s text is facially broader than the federal generic offense. *Id.* at 223. Under this rule, “without supporting state case law, interpreting a state statute’s text alone is simply not enough to establish the necessary ‘realistic probability.’” *Id.*

The decision below exemplifies how this rule operates in practice. Despite the uncontested fact that Louisiana’s definition of cocaine, which included Ioflupane, was broader than the CSA, the panel affirmed Petitioner’s career offender sentence because he could not show that there was a realistic probability that the State would prosecute someone for the distributing Ioflupane.

B. Every Other Circuit Rejects the Fifth Circuit’s Approach

The Fifth Circuit’s position has been explicitly rejected by every other circuit to confront the issue. As the Fourth Circuit accurately observed in *Gordon v. Barr*, 965 F.3d 252 (4th Cir. 2020), “when the state, through plain statutory language, has defined the reach of a state statute to include conduct that the federal offense does not, the categorical analysis is complete.” *Id.* at 260. The burden does not shift to the defendant to “find a case” applying the statute in the manner its text plainly authorizes. *Id.*

Gordon was convicted of “willful discharge of ‘any firearm’” under Virginia law. *Id.* at 254. He argued this did not qualify as a federal firearm offense because Virginia’s statute included “antique firearms” excluded from the federal definition. *Id.* The Fourth Circuit agreed without requiring Gordon to identify an actual prosecution involving an antique firearm. *Id.* The Fourth Circuit noted that this approach “is in accord with analyses conducted by our sister circuits”—though not with the Fifth Circuit. *See id.* at 260-61 & n.9 (collecting cases and contrasting them with *Castillo-Rivera*).

The *en banc* Ninth Circuit put it even more bluntly: “Where . . . a state statute explicitly defines a crime more broadly than the generic definition, no ‘legal imagination’ is required to hold that a realistic probability exists that the state will apply its statute to conduct that falls outside the generic definition of the crime. The state statute’s greater breadth is evident from its text.” *United States v. Grisel*, 488 F.3d 844 (9th Cir. 2007) (en banc) (citation omitted), *abrogated on other grounds by United States v. Stitt*, 586 U.S. 27 (2018).

The First, Second, Third, Sixth, Seventh, Tenth, and Eleventh Circuits have also all aligned with this common-sense approach. *See Swaby v. Yates*, 847 F.3d 62, 66 (1st Cir. 2017) (First Circuit holding that where the statutory language “clearly does apply more broadly than the federally defined offense,” then the statute is non-generic); *Hylton v. Sessions*, 897 F.3d 57, 63-64 (2d Cir. 2018) (a defendant need not point to actual examples “when the statutory language itself . . . creates the realistic probability”); *Singh v. Attorney General*, 839 F.3d 273, 286 n.10 (3d Cir. 2016) (The Third Circuit holding that the “realistic probability” test comes into play only when “the relevant elements” of the state crime and the generic definition are “identical”); *Mendieta-Robles v. Gonzales*, 226 F. App’x 564, 572 (6th Cir. 2007) (unpublished) (refusing to “ignore the clear language” of the state statute); *Van Cannon v. United States*, 890 F.3d 656, 663 (7th Cir. 2018) (if the state statute “cover[s] a broader swath of conduct,” the offense is non-generic); *United States v. Titties*, 852 F.3d 1257, 1274-75 & n.23 (10th Cir. 2017) (Tenth Circuit finding “no persuasive reason why we should ignore [the] plain language to pretend the statute is narrower than it is” when

no example case exists); *Ramos v. Att’y Gen.*, 709 F.3d 1066, 1071-72 (11th Cir. 2013) (“*Duenas-Alvarez* does not require [an actual case] showing when the statutory language itself . . . creates the ‘realistic probability’”).

Even the Eighth Circuit, which at the time of *Castillo-Rivera* seemed to share the Fifth Circuit’s view, *see generally Mowlana v. Lynch*, 803 F.3d 923, 925 (8th Cir. 2015), has clarified its position and aligned itself with the majority. *See Gonzalez v. Wilkinson*, 990 F.3d 654, 657-61 (8th Cir. 2021) (rejecting the need for defendants to provide evidence regarding how the state applied a statute because “the Supreme Court’s opinion in *Duenas-Alvarez* makes no reference to the state’s enforcement practices or to how often prohibited conduct is prosecuted”).

C. The Split Creates Arbitrary Results and Is Acknowledged and Entrenched

This one-versus-all circuit split creates profound and systemic unfairness. Defendants face wildly different outcomes based solely on geography rather than legal merit. A defendant convicted under the same Louisiana statute would have his sentence vacated in the Fourth Circuit but upheld in the Fifth Circuit—not because the law differs, but because of conflicting judicial interpretations of *Duenas-Alvarez*. Had Sereal been charged with possessing this firearm outside of the Fifth Circuit, he would not be serving an enhanced sentence. The arbitrary nature of these results is particularly stark given that the underlying legal question is often identical. State statutes with facially overbroad language present the same interpretive issue regardless of which circuit reviews them. Yet the Fifth Circuit’s outlier approach

means defendants in Texas, Louisiana, and Mississippi face enhanced sentences that would be vacated elsewhere.

This is not a subtle disagreement susceptible to harmonization. The circuits have explicitly acknowledged their differences and show no signs of converging. The Second Circuit specifically noted that “[o]ther circuits have registered nearly unanimous disagreement with the approach” taken by the Fifth Circuit. *Hylton*, 897 F.3d at 65. The Fifth Circuit has repeatedly reaffirmed³ *Castillo-Rivera* despite sharp criticism from its own judges, and the denial of a recent *en banc* petition on this issue *see* without recorded dissent demonstrates that the Fifth Circuit does not intend to revisit its outlier position. Meanwhile, the practical impact continues to grow. The categorical approach applies not only to the federal sentencing guidelines, but also to the ACCA, to immigration law, and numerous other federal statutes. Each application of the conflicting approaches deepens the split. Only this Court can resolve this fundamental disagreement about the scope of *Duenas-Alvarez* and restore uniformity to federal criminal law.

II. THE FIFTH CIRCUIT'S “ACTUAL CASE” REQUIREMENT CONTRADICTS THIS COURT’S PRECEDENT AND SOUND PRINCIPLES OF STATUTORY INTERPRETATION

The Fifth Circuit’s approach is not merely an outlier position—it is fundamentally wrong. The “actual case” requirement contradicts this Court’s

³ Even within the Fifth Circuit, the excessively strict interpretation of *Duenas-Alvarez* is controversial. *Castillo-Rivera*, 853 F.3d at 239-41 (Dennis, J., dissenting) & 243-44 (Higginson, J., concurring in part and dissenting in part) (“Although I have applied the ‘realistic-probability’ test announced in *Duenas-Alvarez*, I agree with Judge Dennis’s dissenting opinion that this added showing is unnecessary when a state statute is facially broader than its federal analog.”); *Alexis v. Barr*, 960 F.3d 722, 731-34 (5th Cir. 2020) (Graves, Jr., J., concurring) (“the realistic probability test and ‘actual case’ requirement are simply illogical and unfair...”) & 734-36 (Dennis, J., dissenting).

precedent, violates basic principles of statutory interpretation, and creates an unjust burden that Congress never intended.

A. This Court's Recent Decision in *Justin Taylor* Forecloses the Fifth Circuit's Approach

This Court's decision in *United States v. Justin Taylor*, 596 U.S. 845 (2022), definitively rejected the type of empirical inquiry the Fifth Circuit demands. In *Justin Taylor*, the government argued that defendants must present evidence about prosecutorial practices to prove a statute's scope. This Court's response was unequivocal:

Put aside the oddity of placing a burden on the defendant to present empirical evidence about the government's own prosecutorial habits. Put aside, too, the practical challenges such a burden would present in a world where most cases end in plea agreements, and not all of those cases make their way into easily accessible commercial databases.

Id. at 857 (citing J. Turner, *Transparency in Plea Bargaining*, 96 Notre Dame L. Rev. 973, 974, 978-981 (2021)).

The Court continued with what can only be described as a direct repudiation of the Fifth Circuit's approach:

An even more fundamental and by now familiar problem lurks here. The government's theory cannot be squared with the statute's terms. [The elements clause] doesn't ask whether the crime is *sometimes* or even *usually* associated with * * * force * * *. It asks whether the government must prove, as an *element* of its case, the use, attempted use, or threatened use of force.

Id. at 857-58. (emphasis in original).

Justin Taylor made clear that elements clause analysis is textual, not empirical. Where statutory elements do not overlap with federal requirements,

“[t]hat ends the inquiry.” *Id.* at 859. The Fifth Circuit's demand for “actual cases” directly conflicts with this holding.

B. The “Actual Case/Reasonable Probability” Requirement Misreads *Duenas-Alvarez*

The Fifth Circuit’s interpretation of *Gonzales v. Duenas-Alvarez*, 549 U.S. 183 (2007), stretches that decision far beyond its original scope. *Duenas-Alvarez* involved a California statute whose text closely resembled the federal generic definition of theft. 549 U.S. at 187, 189. The defendant argued that California’s judicial interpretation of aiding and abetting liability was broader than other states’, transforming an otherwise generic-looking statute into a non-generic one. *Id.* at 190–91. In that narrow context—where statutory text matched the generic definition and the defendant sought to prove overbreadth through speculative judicial construction—the Court required proof of “realistic probability” through actual cases. *Id.* at 193. But *Duenas-Alvarez* never suggested this requirement applies when statutory text itself is facially broader than the generic offense.

The Fifth Circuit has inverted *Duenas-Alvarez*’s logic. Instead of preventing defendants from using “legal imagination” to transform generic-looking statutes, it requires defendants to produce “actual cases” proving that facially non-generic statutes mean what they plainly say. This reading contradicts fundamental interpretive principles.

C. The Rule Violates Basic Principles of Statutory Interpretation

When statutory text is unambiguous, the interpretive inquiry ordinarily ends there. *Bedroc Ltd. v. United States*, 541 U.S. 176, 183 (2004). Courts do not require

extrinsic evidence to prove that clear language means what it says. Yet the Fifth Circuit’s rule does exactly that, demanding “actual cases” even when state statutes are facially broader than federal generic offenses.

This approach also creates an improper presumption that state statutes conform to federal definitions until proven otherwise—a presumption found nowhere in this Court’s categorical approach jurisprudence. The categorical approach asks what juries were “actually required to find” to convict, *Arthur Taylor*, 495 U.S. at 602, not what prosecutors typically charge or courts usually decide.

D. The Categorical Approach Focuses on Elements, Not Enforcement Patterns or Facts

This Court has consistently emphasized that the categorical approach “involves, and involves only, comparing elements.” *Mathis v. United States*, 579 U.S. 500, 521 (2016). It “does not care about” facts. *Id.* The approach asks what juries were “actually required to find” to convict, *Arthur Taylor*, 495 U.S. at 602, and examines “the least of the acts criminalized” by statute, not the least culpable acts ever prosecuted, *Moncrieffe v. Holder*, 569 U.S. 184, 190-91 (2013).

Classic examples from this Court’s precedent illustrate this text-focused approach. The Massachusetts burglary statute in *Shepard v. United States* was non-generic because it applied to “boats and cars” on its face. 544 U.S. 13, 17 (2005). The Iowa burglary statute in *Mathis* was also non-generic because it facially included “a broader range of places” than generic burglary, including any “land, water, or air vehicle.” 579 U.S. at 519. The Kansas drug statute in *Mellouli v. Lynch* did not “relate

to” controlled substances because the statute applied to “at least nine substances not included in the federal lists.” 575 U.S. 798, 802 (2015).

Notably, none of these cases required examination of state enforcement practices. This Court never demanded proof that Massachusetts had actually prosecuted boat burglars, that Iowa had actually charged vehicle burglary, or that Kansas had actually prosecuted defendants for possessing the nine additional substances. The facial overbreadth evident from the statutory text was sufficient.

The Fifth Circuit's “actual case” requirement fundamentally contradicts this element-focused approach. By demanding proof of how state courts have applied statutes in practice, the rule improperly shifts focus from statutory elements to factual enforcement patterns. This shift violates the basic principle that categorical analysis involves comparing legal definitions, not investigating prosecutorial habits or judicial enforcement trends.

The practical problems with requiring empirical evidence about enforcement are severe and precisely what this Court warned against in *Justin Taylor*. Most criminal prosecutions end in plea agreements that generate no published opinions. Even when appellate decisions exist, they rarely address the mental state issues relevant to categorical analysis because such issues are typically legally irrelevant under state law. Requiring defendants to locate published decisions addressing hypothetical applications of statutes creates a nearly impossible evidentiary burden that Congress never intended and that undermines the entire purpose of the categorical approach.

III. THE QUESTION PRESENTED IS OF EXCEPTIONAL IMPORTANCE AND WARRANTS IMMEDIATE REVIEW

The circuit split on the “actual case/reasonable probability” requirement affects thousands of federal defendants and creates systemic unfairness in the application of federal criminal law. The question’s importance extends far beyond the federal sentencing guidelines context, affecting the ACCA, immigration law, and other federal statutes employing categorical analysis.

A. The Circuit Split Affects Thousands of Cases Across Multiple Areas of Federal Law

This case presents an ideal vehicle for resolving a circuit split that has broad implications nationwide. The conflict extends far beyond the federal sentencing guidelines context, affecting virtually every federal statute that employs categorical analysis. The stakes could not be higher: thousands of defendants face dramatically different outcomes based solely on the geographic happenstance of where they are prosecuted.

The scope of this interpretive disagreement is breathtaking. The categorical approach governs not only career offender enhancements under § 4B1.1, but also ACCA cases, immigration law’s “aggravated felony” determinations under 8 U.S.C. § 1101(a)(43), and various federal criminal statutes defining “crime of violence” under 18 U.S.C. § 16. Each application of the Fifth Circuit’s outlier rule deepens existing inequities and multiplies the injustice.

B. The Fifth Circuit’s Rule Imposes an Unfair and Often Impossible Burden

The Fifth Circuit’s “actual case” requirement imposes a burden that is both fundamentally unfair and often practically impossible to satisfy. Most criminal prosecutions end in plea agreements that generate no published appellate decisions. *See Betansos v. Barr*, 928 F.3d 1133, 1146-47 (9th Cir. 2019) (finding that “nearly all” criminal cases “are resolved through plea bargains,” which “are not published, nor are they readily accessible for review.”). State court databases remain incomplete, and many relevant decisions are never published or made easily accessible.⁴ The result is an arbitrary system where defendants’ fates depend not on legal merit but on the publishing practices of state courts and the resources available for exhaustive case research.

C. The Legal Question Is Cleanly Presented

This case presents the circuit split in its clearest form. Louisiana definition of cocaine, which includes Iflupane, is broader than the CSA, which expressly omits Iflupane. This clean presentation allows the Court to address the core interpretive disagreement without becoming mired in factual disputes or tangential legal issues. Should this Court overrule the Fifth Circuit’s “actual case/reasonable probability” requirement, Young’s 2012 possession with intent to distribute cocaine conviction would no longer be predicate offenses under the sentencing guidelines.

⁴ As the Eighth Circuit recently explained, defendants often “have no incentive, and likely no ability” to generate reported decisions on issues that, while authorized by statute, become legally irrelevant under state law. *Gonzalez*, 990 F.3d at 661 n.2. The same court recognized that even when states have prosecuted conduct falling outside the federal definition, “it is unclear whether this fact would be documented” in any accessible decision. *Id.*

CONCLUSION

For more than five years, the Fifth Circuit has stood alone in requiring defendants to produce “actual cases” proving that facially overbroad state statutes mean what their text plainly says. This outlier position contradicts this Court’s precedent, violates fundamental principles of statutory interpretation, and creates arbitrary results based on geographical luck and state court publishing practices.

The circuit split is acknowledged, entrenched, and affects thousands of cases each year. It creates systemic unfairness in federal criminal law and undermines the uniform administration of justice. The question presented goes to the heart of the categorical approach and requires this Court’s authoritative resolution. The petition for a writ of certiorari should be granted.

Respectfully submitted on July 23, 2026,

REBECCA L. HUDSMITH
Federal Public Defender

BY: *s/ Cristie Gautreaux Gibbens*
CRISTIE GAUTREAUX GIBBENS
Federal Public Defender
Middle and Western Districts of Louisiana
102 Versailles Boulevard, Suite 816
Lafayette, Louisiana 70501
Telephone: (337) 262-6336

Attorney for the Petitioner