

No. _____

**IN THE SUPREME COURT OF
THE UNITED STATES**

OCTOBER TERM 2026

TRASHAWN LAMAR ALEXANDER

Petitioner

v.

UNITED STATES OF AMERICA

Respondent

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

PETITION FOR WRIT OF CERTIORARI

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October 5, 2026

QUESTION PRESENTED

Whether allegations of brandishing or discharge, examples of firearm use, and general directions to decide only the charged crimes beyond a reasonable doubt satisfy the constitutional requirement to submit the aggravating element when the express directions for conviction require only use or carrying of a firearm during and in relation to the charged robbery.

PARTIES TO THE PROCEEDING

A list of all parties to the proceeding in the court whose judgment is the subject of this petition is provided below. If a party is a corporation with a stock ticker symbol, that symbol is also included.

1. Trashawn L. Alexander. Petitioner
2. Atorius Marquis Williams. Codefendant
3. Demonta Daniels. Codefendant
4. United States of America. Respondent

Petitioner Mr. Alexander is the sole person with an interest in this appeal. Codefendant's Atorius Williams and Demonta Daniels have no interest in this Petition.

RELATED PROCEEDINGS

United States v. Alexander, No. 6:20-CR-00155-5, United States District Court for the Western District of Texas, Waco Division. Judgment entered September 27, 2024.

United States v. Williams, No. 24-50745, consolidated with *United States v. Alexander*, No. 24-50769, United States Court of Appeals for the Fifth Circuit. Judgment entered June 2, 2026; panel rehearing and rehearing en banc denied July 6, 2026.

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United States v. Alexander, No. 6:20-CR-00155-5, United States District Court, Western District of Texas, Waco Division.

United States v. Williams, No. 24-50745 c/w No. 24-50769, 2026 U.S. App. LEXIS 15864 (5th Cir. June 2, 2026) (unpublished).

United States v. Williams, No. 24-50745 c/w No. 24-50769 (5th Cir. July 6, 2026) (order denying rehearing as to Alexander).

**IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI**

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit appears at Appendix A. The opinion is unpublished. *United States v. Williams*, No. 24-50745 c/w No. 24-50769, 2026 U.S. App. LEXIS 15864 (5th Cir. June 2, 2026).

JURISDICTION

The judgment affirming Alexander's convictions and sentences was entered on June 2, 2026. *United States v. Williams*, No. 24-50769, 2026 U.S. App. LEXIS 15864, at *2–4 (5th Cir. June 2, 2026). Panel rehearing was denied on July 6, 2026. *United States v. Williams*, 24-50769 (5th Cir. July 6, 2026, order). This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. CONST. amend. V.

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

U.S. CONST. amend. VI.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

18 U.S.C. § 2.

- (a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.
- (b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal.

18 U.S.C. § 924(c)(1)(A).

Except to the extent that a greater minimum sentence is otherwise provided by this subsection or by any other provision of law, any person who, during and in relation to any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime that provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) for which the person may be prosecuted in a court of the United States, uses or carries a firearm, or who, in furtherance of any such crime, possesses a firearm, shall, in addition to the punishment provided for such crime of violence or drug trafficking crime—

- (i) be sentenced to a term of imprisonment of not less than 5 years;
- (ii) if the firearm is brandished, be sentenced to a term of imprisonment of not less than 7 years; and
- (iii) if the firearm is discharged, be sentenced to a term of imprisonment of not less than 10 years. 18 U.S.C. § 924(c)(1)(A).

18 U.S.C. § 924(c)(4).

For purposes of this subsection, the term 'brandish' means, with respect to a firearm, to display all or part of the firearm, or otherwise make the presence of the firearm known to another person, in order to intimidate that person, regardless of whether the firearm is directly visible to that person.

Fed. R. Crim. P. 30(d).

A party who objects to any portion of the instructions or to a failure to give a requested instruction must inform the court of the specific objection and the grounds for the objection before the jury retires to deliberate. An opportunity must be given to object out of the jury's hearing and, on request, out of the jury's presence. Failure to object in accordance with this rule precludes appellate review, except as permitted under Rule 52(b).

Fed. R. Crim. P. 52(b).

A plain error that affects substantial rights may be considered even though it was not brought to the court's attention.

STATEMENT OF THE CASE

The United States District Court for the Western District of Texas had jurisdiction under 18 U.S.C. § 3231 because the indictment charged offenses against the laws of the United States.

A. The charges, instructions, and verdict.

Alexander was tried with two co-defendants on charges arising from a racketeering conspiracy and robberies in Temple, Texas. *United States v. Williams*, 2026 U.S. App. LEXIS 15864, at *2–4 (5th Cir. June 2, 2026). Count Six of the second superseding indictment charged Alexander with brandishing a firearm during and in relation to the January 8, 2018 robbery of E.R., in violation of 18 U.S.C. §§ 2 and 924(c)(1)(A)(ii). Count Eight charged him with discharging a firearm during and in relation to the June 11, 2019 robbery of R.H., in violation of 18 U.S.C. §§ 2 and 924(c)(1)(A)(iii). ROA.24-50769.162–64.

The charge repeated the brandishing and discharge allegations, but the instructions governing conviction required the underlying robbery and knowing use or carrying of a firearm during and in relation to it. ROA.24-50769.505–06, 511–12. The definition of use included brandishing

and firing, as well as bartering, striking, referring to the firearm, and attempting to fire it. ROA.24-50769.506, 511–12. Carrying was an independent alternative and included transportation on the person or in a vehicle in relation to the crime. ROA.24-50769.506, 512. The aiding-and-abetting instructions likewise identified the underlying firearm offense as use or carrying. ROA.24-50769.506–07, 512–13. The jury returned guilty verdicts. ROA.24-50769.516–24. The verdicts on Counts Six and Eight referred to the offenses charged in the indictment without separately identifying brandishing or discharge. ROA.24-50769.524.

B. The postverdict challenge and sentencing.

Alexander first raised the instructional omission after the verdict, arguing that the instructions required only use or carrying and requesting treatment of the lesser firearm offense. ROA.24-50769.535–38. The trial court denied that request without prejudice to raising it at sentencing. ROA.24-50769.551–52.

At sentencing, Alexander argued that the jury's findings supported five-year minimums rather than the increased minimums for brandishing and discharge. ROA.24-50769.2177. The trial court overruled the objection

and applied ranges of seven years to life on Count Six and ten years to life on Count Eight. ROA.24-50769.2179–82. It imposed life imprisonment on each firearm count, consecutive to all other counts. ROA.24-50769.561, 2191–92. Judgment was entered September 27, 2024, and Alexander appealed September 30. ROA.24-50769.560–66.

C. *The decision below.*

The panel held that the postverdict objection did not preserve the instructional challenge and applied plain-error review. *Williams*, 2026 U.S. App. LEXIS 15864, at *6–7 & nn.3–6. It treated the sentencing issue as part of the judgments under review rather than addressing it separately. *Id.* at *5 n.2.

The panel concluded that the firearm instructions "were not plainly erroneous." *Id.* at *8. The lower court relied on the general directions concerning proof of the charged crimes, the restriction to indicted conduct, and the charge's recitation of the brandishing and discharge allegations. *Id.* Further, the panel discussed brandishing and firing as examples of active employment within the definition of use, while acknowledging that

the instructions did not define brandishing or discharge and that the stated elements required use or carrying. *Id.* at *9.

Reading the charge as a whole, the panel concluded that reversal was unwarranted because the jury had been told that the defendants were on trial only for indicted conduct and that the indictment alleged brandishing and discharge. *Id.* at *9–10. The panel declined to exercise discretion to reverse. *Id.* at *10.

REASONS FOR GRANTING THE PETITION

Review is warranted to resolve a conflict in the circuits' treatment of omitted elements. SUP. CT. R. 10(a). The question is whether an accusation and a description of possible firearm use can supply a finding that the jury instructions do not require. Here, the panel relied on indictment allegations and the definition of firearm use to reject Alexander's omission challenge. *Williams*, 2026 U.S. App. LEXIS 15864, at *8–10. This has been found insufficient in other circuits. See *United States v. Kearney*, 150 F.4th 1328, 1335 (10th Cir. 2025); *United States v. Mack*, 729 F.3d 594, 607–08 (6th Cir. 2013).

A. The disputed finding determines the applicable mandatory minimum.

Brandishing and discharge increase the minimum punishment beyond that authorized for use or carrying alone. 18 U.S.C. § 924(c)(1)(A)(i)–(iii). The conflict over submission concerns the jury findings necessary to authorize the increased minimums. *Alleyne v. United States*, 570 U.S. 99, 111–113, 117 (2013). A judge's additional brandishing finding cannot replace the jury determination necessary for the increased minimum. *Id.* at 117. The constitutional requirement remains even when

the sentence imposed was also available within the unaggravated range. *Id.* at 115–116. The increased minimum changes the legally prescribed punishment; the availability of the same sentence under both ranges does not eliminate the jury's responsibility to find the aggravating element. *Id.*

The instructions for Counts Six and Eight recited allegations of brandishing and discharge but authorized conviction upon findings of the underlying robbery and knowing use or carrying of a firearm during and in relation to it. ROA.24-50769.505–06, 511–12. The verdict form did not separately resolve brandishing or discharge. ROA.24-50769.524. Instead, the panel decision below relied on the surrounding allegations, general directions, and definition of use to reject the instructional challenge. *Williams*, 2026 U.S. App. LEXIS 15864, at *8–10.

B. The decisions conflict over what submits an element to the jury.

The decision below conflicts with decisions holding that references to an element elsewhere in the charge do not cure an instruction permitting conviction without finding that element. *Compare Williams*, 2026 U.S. App. LEXIS 15864, at *8–10, with *Kearney*, 150 F.4th at 1335; *Mack*, 729 F.3d at 607–08. The jury may hear those acts alleged or listed as ways to

use a firearm, yet be told it can convict for carrying the gun. A conviction may follow without the jury actually deciding whether the gun was brandished or fired. *Compare Williams*, 2026 U.S. App. LEXIS 15864, at *8–10, with *Kearney*, 150 F.4th at 1335; *Mack*, 729 F.3d at 607–08. Below, the Fifth Circuit relied on parts of the charge to reject the missing-element claim:

- The charge repeated the indictment's allegations of brandishing and discharge. *Williams*, 2026 U.S. App. LEXIS 15864, at *8, *10.
- The jury was told to decide whether the government proved the charged crimes beyond a reasonable doubt. *Id.* at *8.
- The definition of firearm use included brandishing and firing. *Id.* at *9.

The panel considered those passages together and held the instructions "not plainly erroneous." *Id.* at *8–10.

1. Repeated indictment allegations.

The panel below relied on the charge's repetition of the brandishing and discharge accusations. *Williams*, 2026 U.S. App. LEXIS 15864, at *8, *10. However, the Tenth Circuit rejected reading the indictment as a cure

for an omitted element. The government conceded that the conspiracy instructions omitted deceitful or dishonest means but argued that the indictment recital supplied what was missing. The court rejected that argument because the necessary legal instruction remained absent. *Kearney*, 150 F.4th at 1334–35.

2. *The reasonable-doubt instruction.*

The panel relied on the general reasonable-doubt instruction as one reason for upholding the charge. *Williams*, 2026 U.S. App. LEXIS 15864, at *8 (where the jury was told to decide whether the government had "proved beyond a reasonable doubt that the defendants are guilty of any of the crimes charged"). However, the general reasonable-doubt instruction does not cure the jury-charge error. *Francis v. Franklin*, 471 U.S. 307, 319–20 (1985) (holding that a reasonable doubt instruction did not correct an unlawful presumption). Here, the panel acknowledged that the stated firearm elements required use or carrying. *Williams*, 2026 U.S. App. LEXIS 15864, at *9. Here, jurors could find use or carrying proved beyond a reasonable doubt without deciding whether the firearm was brandished or discharged. *Id.* at *8–9; *cf. Francis*, 471 U.S. at 319–20.

3. *The definition of firearm use.*

The panel relied in part on the definition of firearm use to reject Alexander's claim that the jury instructions failed to require a finding of brandishing for Count Six or discharge for Count Eight.

The definition in the instant case listed brandishing and firing, although the elements instruction permitted conviction for use or carrying. *Williams*, 2026 U.S. App. LEXIS 15864, at *9–10. Petitioner's Count Six instructions allowed conviction for use or carrying without requiring the jury to find brandishing. ROA.24-50769.505. Brandishing also appeared in the indictment allegations and as one possible form of firearm use. ROA.24-50769.505–06. The panel relied on those references when rejecting the claim that the instructions omitted the brandishing element. *Williams*, 2026 U.S. App. LEXIS 15864, at *8–10.

Two other circuits have faced the same instructional problem. In those prosecutions, brandishing was alleged in the indictment and included in the definition of use, yet the instructions allowed conviction for use or carrying without requiring a brandishing finding. *Mack*, 729 F.3d at 607; *United States v. Lara-Ruiz*, 721 F.3d 554, 558 (8th Cir. 2013).

Those features did not cure the missing requirement. In both prosecutions, the jury instructions listed brandishing as one possible form of firearm use, but allowed conviction without requiring a brandishing finding. *Mack*, 729 F.3d at 607; *Lara-Ruiz*, 721 F.3d at 558. The sentencing judges then found brandishing to impose the higher mandatory minimum. *Id.* Both circuits found error because the increased minimum depended on a finding the jury had not been required to make. *Id.* Mentioning brandishing in the definition of use did not supply that requirement. *Id.*

Here, the panel relied on the references to brandishing in the charge as a reason to reject the missing-element claim. But the question is whether the instructions required the jury to find brandishing, not simply whether the charge mentioned it. This Court should grant certiorari to resolve whether an allegation and a definition listing brandishing can satisfy the required jury determination when the instructions permit conviction without finding brandishing. SUP. CT. R. 10(a).

4. *The charge as a whole.*

Instructions must be evaluated in the context of the entire charge. *Jones v. United States*, 527 U.S. 373, 391 (1999). Applying that rule does

not eliminate the conflict. The jury had to read the allegations, definitions, and general directions together with the operative instruction authorizing conviction for use or carrying. *Williams*, 2026 U.S. App. LEXIS 15864, at *8–10. A juror could follow all those directions, find carrying proved beyond a reasonable doubt, and return a guilty verdict without deciding whether the firearm was brandished or discharged. The surrounding references therefore did not necessarily supply the missing finding.

An indictment alleging brandishing and a definition of use including brandishing did not cure an elements instruction requiring only use or carrying; the omission remained clear error. *Mack*, 729 F.3d at 607. Here, the allegations, general directions concerning the charged conduct, and definition of use supported the conclusion that instructions requiring only use or carrying were "not plainly erroneous." *Williams*, 2026 U.S. App. LEXIS 15864, at *8–10. The conflict concerns whether those references supply the omitted requirement: one decision recognized error despite them, while the decision below relied on them to reject the claim. Compare *Mack*, 729 F.3d at 607, with *Williams*, 2026 U.S. App. LEXIS 15864, at *8–10. Review is warranted to resolve whether such references satisfy the

jury-finding requirement when the elements instruction permits conviction without a brandishing finding. SUP. CT. R. 10(a).

C. Conclusion.

These decisions give conflicting answers to the same question: whether allegations and definitions mentioning brandishing cure an instruction permitting conviction without a brandishing finding. Those references left an omitted element in one decision but supported rejection of the omission claim below. *Compare Mack*, 729 F.3d at 607, with *Williams*, 2026 U.S. App. LEXIS 15864, at *8–10. The conflict determines what the jury must find before an increased mandatory minimum is authorized. *Alleyne*, 570 U.S. at 111–113, 117. This Court should grant certiorari to establish a uniform rule governing that jury determination. SUP. CT. R. 10(a).

Respectfully submitted,

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