

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

TERRANCE PEARSON,

Petitioner,

- v -

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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QUESTIONS PRESENTED

18 U.S.C. § 924(c) punishes a person who “uses or carries” a firearm “during and in relation to” a crime of violence, or who “possesses” one “in furtherance of” such a crime, with a mandatory consecutive minimum sentence of five, seven, or ten years. The Ninth Circuit affirmed a ten-year mandatory consecutive minimum sentence for a defendant who was held liable for a co-conspirator’s use of a firearm under *Pinkerton v. United States*, 328 U.S. 640 (1946). The questions presented are:

- I. Whether a defendant may be convicted under 18 U.S.C. § 924(c) on Pinkerton liability alone, because a co-conspirator used, carried, or possessed a firearm in a way the defendant could reasonably have foreseen, without proof that the defendant himself had the intent and advance knowledge that *Rosemond v. United States*, 572 U.S. 65 (2014), requires for accomplice liability under the same statute?
- II. Whether a jury instruction that permits conviction under *Pinkerton* if “at least one conspirator” committed every element of the offense, without requiring unanimity as to which conspirator or which robbery, violates the Sixth Amendment?

LIST OF PARTIES

The parties to the proceeding are:

Terrance Pearson, Petitioner

United States of America, Respondent

Petitioner's co-defendant, Kaleb Williams, currently has a case pending before the Ninth Circuit Court of Appeals, No. 24-4136.

LIST OF DIRECTLY RELATED PROCEEDINGS

1. United States District Court for the Central District of California, *United States v. Terrance Pearson*, 21cr00065-FLA-4. The district court entered the judgment on December 19, 2024 and amended judgment on December 20, 2024. *See* Pet. App. A and B.
2. United States Court of Appeals for the Ninth Circuit, *United States v. Terrance Pearson*, No. 24-7672, Memorandum Decision filed April 21, 2026. *See* Pet. App. C.
3. United States Court of Appeals for the Ninth Circuit, *United States v. Terrance Pearson*, No. 24-7672, Order denying petition for panel rehearing and hearing en banc on July 15, 2026. *See* Pet. App. D.

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Petitioner, Terrance Pearson, respectfully petitions for a writ of certiorari to review the memorandum decision of the United States Court of Appeals for the Ninth Circuit issued on April 21, 2026.

OPINION AND ORDERS BELOW

In an unpublished memorandum decision, the United States Court of Appeals for the Ninth Circuit affirmed the conviction and sentence imposed by the district court. *United States v. Pearson*, No. 24-7672, 2026 WL 1079021 (9th Cir. Apr. 21, 2026). *See* Pet. App. C. On July 15, 2026, the Ninth Circuit entered an order denying petitioner’s petition for panel rehearing and rehearing en banc. *See* Pet.

App. D. The district court's judgment and amended judgment are reproduced at Pet. App. A and B.

JURISDICTION

The Court of Appeals issued a memorandum decision on April 21, 2026. On May 1, 2026, Mr. Pearson filed a request for a 45-day extension of time to file the petition for rehearing, which the Ninth Circuit granted on May 5, 2026. On June 22, 2026, petitioner filed a petition for panel rehearing and rehearing en banc, which the Ninth Circuit denied on July 15, 2026. This petition is timely under Supreme Court Rules 13.1 and 13.3 because it is filed within 90 days of the order denying rehearing; the deadline is October 13, 2026. The Court has jurisdiction under 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

18 U.S.C. § 924(c)(1)(A) provides in relevant part:

[A]ny person who, during and in relation to any crime of violence or drug trafficking crime . . . 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)(3)(A) defines “crime of violence” as a felony that “has as an element the use, attempted use, or threatened use of physical force against the person or property of another.”

The Sixth Amendment provides in relevant part: “In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury”

STATEMENT OF THE CASE

Petitioner Terrance Pearson received a mandatory ten-year consecutive sentence under 18 U.S.C. § 924(c) for a firearm he is not alleged to have carried, used, or possessed. The government’s theory, accepted by the jury under a *Pinkerton* instruction, was that a co-conspirator’s firearm use could be attributed to him because it was reasonably foreseeable. Under *Rosemond*, attributing that use to him as an accomplice would have required proof that he knew in advance that a confederate would be armed.

A. The offense and trial.

Petitioner was one of several defendants charged in the Central District of California in No. 2:21-cr-00065-FLA with a series of robberies, including a robbery of a Party City store. [4-ER 680-702.]¹ The indictment charged petitioner in three

¹“ER” refers to the Excerpts of Record filed in the Ninth Circuit, and “CR” to the district court docket.

counts: 18 U.S.C. § 1951(a), Conspiracy to Interfere with Commerce by Robbery (Count 4); 18 U.S.C. § 1951(a), Interference with Commerce by Robbery (Count 5); and 18 U.S.C. § 924(c), Using, Possessing, Brandishing, and Discharging a Firearm During and in Relation to a Crime of Violence (Count 6). [4-ER-680.] Count 6 identified Count 5 as the predicate crime of violence. [4-ER-696.] A co-conspirator, not Petitioner, possessed and used the firearm. [2-ER 290.] At trial, Petitioner conceded that he would likely be found guilty of at least one robbery, but contested the scope of the conspiracy and whether the use of a firearm was foreseeable to him. [2-ER 143.]

Over objection, the district court instructed the jury that Hobbs Act robbery is a crime of violence and that Petitioner could be found guilty on the § 924(c) count under *Pinkerton* if a co-conspirator committed the offense in furtherance of the conspiracy and it was reasonably foreseeable to him. [4-ER-555-58, 5-ER 831-34.] The jury convicted on all counts. [CR-279.]

B. Sentencing.

The district court sentenced Petitioner to 183 months, which included the ten-year (120 month) consecutive term required by § 924(c)(1)(A)(iii), and [63] months on the robbery counts. [1-ER 2-13.]

C. The Ninth Circuit’s decision.

A panel of the Ninth Circuit (Callahan, Bumatay, and Tung, JJ.) affirmed in an unpublished memorandum disposition. Pet. App. C.

On the *Pinkerton* question, which the panel reviewed de novo, the court stated only that it “has held that Pinkerton liability applies to § 924(c) counts,” citing *United States v. Henry*, 984 F.3d 1343, 1355 (9th Cir. 2021), and that a Hobbs Act robbery conviction supports a § 924(c) conviction under *Pinkerton* “when the government proves at least one conspirator committed all the elements of the offense, including mens rea and use of force.” Pet. App. C at 4–5 (citing *Johnson v. United States*, 139 F.4th 830, 838–39 (9th Cir. 2025)). Because the jury found that at least one conspirator committed every element of the Hobbs Act robbery charge, the court found no error. Pet. App. C at 5.

D. Rehearing.

Petitioner sought panel rehearing and rehearing en banc. He argued that *Henry* and *Johnson* cannot be reconciled with this Court’s decisions in *Rosemond*, *Davis*, *Taylor*, and *Borden v. United States*, 593 U.S. 420 (2021), and that the *Pinkerton* instructions failed to guarantee unanimity. The petition acknowledged that *Johnson* is a published decision rejecting his *Pinkerton*

argument, and so asked for en banc review. No judge requested a vote, and the panel unanimously denied the petition. Pet. App. D.

This petition follows.

REASONS FOR GRANTING THE PETITION

The Ninth Circuit has held, in published decisions, that a defendant may be convicted of a § 924(c) offense, and sentenced to a ten-year mandatory minimum, because a co-conspirator used a firearm in a way the defendant could foresee. That holding sits uneasily with *Rosemond* and is in tension with the elements only approach of *Davis* and *Taylor*. This Court has not resolved the question, and it arises frequently in multi-defendant robbery, drug, and gang prosecutions.

- I. Whether *Pinkerton* liability can support a § 924(c) conviction is an important, unresolved question that the Ninth Circuit has answered in tension with *Rosemond*, *Davis*, and *Taylor*.**
 - A. Section 924(c) punishes a person’s own use, carrying, or possession of a firearm, and *Rosemond* holds that accomplice liability under it requires advance knowledge.**

Section 924(c)(1)(A) applies to “any person who . . . uses or carries a firearm, or who, in furtherance of any such crime, possesses a firearm.” The text is personal: it reaches the “person who” uses, carries, or possesses the firearm. The mandatory minimum then escalates, from five to seven to ten years, according to whether the firearm was possessed, brandished, or discharged. 18 U.S.C. §

924(c)(1)(A)(i)–(iii); *see Alleyne v. United States*, 570 U.S. 99, 115 (2013)

(brandishing is an element that must be found by the jury); *id.* (same for any fact that raises a mandatory minimum).

In *Rosemond v. United States*, 572 U.S. 65 (2014), this Court addressed how far that personal text stretches to reach someone who did not personally use the gun. It held that a defendant is liable as an aider and abettor of a § 924(c) offense only if he intended to facilitate the whole offense, and that for the firearm element this requires advance knowledge that a confederate would be armed, knowledge acquired at a time when the defendant could still walk away. *Rosemond* required that showing because the defendant’s intent must reach the entire § 924(c) offense, and the firearm is what converts a predicate crime into a § 924(c) offense with a heavy mandatory sentence. *Rosemond*, 572 U.S. at 77-78.

The *Pinkerton* instruction given here requires none of that. Under *Pinkerton v. United States*, 328 U.S. 640, 647–48 (1946), a conspirator is liable for a co-conspirator’s substantive offense if it was committed in furtherance of the conspiracy and was reasonably foreseeable. That is a foreseeability standard, closer to negligence than to the intent and knowledge *Rosemond* demands. Under the Ninth Circuit’s rule, a defendant who lacks the advance knowledge that would make him an accomplice can nonetheless be convicted of the same offense, and receive the same mandatory minimum, by a different route. *United States v.*

Henry, 984 F.3d 1343, 1355 (9th Cir. 2021); Pet. App. C at 5. The government will respond that agreeing to join the conspiracy itself supplies culpability. But an agreement to commit a robbery is not an agreement that a confederate will carry or use a gun, and *Rosemond* requires the latter. *Rosemond* concerned aiding and abetting, and this Court has not had occasion to decide whether *Pinkerton* can do what *Rosemond* does not permit aiding-and-abetting liability to do.

This case shows the consequence. Petitioner did not use, carry, or possess the firearm, and he maintains he had no advance knowledge that anyone would be armed. [2-ER-143.] Yet he was sentenced to the ten-year minimum that attaches to the person who actually discharged the firearm. Section 924(c) does not say that a conspirator is punishable as though he had personally used, carried, or possessed a firearm because someone else’s use was foreseeable, and this Court has repeatedly read the statute according to its terms. See *Davis*, 588 U.S. at 448-49, 461-65.

B. The Ninth Circuit’s reasoning treats the defendant’s own culpability as irrelevant to the elements of § 924(c).

The Ninth Circuit’s rule is that a § 924(c) conviction may rest on *Pinkerton* when “the government proves at least one conspirator committed all the elements of the offense, including mens rea and use of force.” Pet. App. C at 5 (citing *Johnson v. United States*, 139 F.4th 830, 838–39 (9th Cir. 2025)). *Johnson* reasoned that *Taylor* asks only whether force is an element of the predicate

offense, not whether the defendant personally used force; that *Borden v. United States*, 593 U.S. 420 (2021), is satisfied because the co-conspirator who used force had the required mental state; and that the concerns in *Alfred v. Garland*, 64 F.4th 1025 (9th Cir. 2023) (en banc), about accomplice liability do not carry over. 139 F.4th at 839-40.

That reasoning addresses a different question. *Taylor* and *Borden* concern what the predicate offense requires. The question here is what the government must prove about the defendant before he is exposed to § 924(c)’s mandatory minimums. On the Ninth Circuit’s view, the only mental state that matters is the co-conspirator’s; the defendant’s own state of mind regarding force and the firearm drops out, leaving only foreseeability. A plurality of this Court in *Borden*, construing the similar “against the person of another” language in the elements clause of the Armed Career Criminal Act, concluded that the language requires purposeful or knowing conduct and not mere recklessness; *Rosemond* likewise demands advance knowledge of the firearm. The Ninth Circuit’s rule asks for less than either, and reaches a defendant whom no one proved had the culpable mental state with respect to the firearm.

C. The question is recurring and important, and only this Court can resolve it.

Pinkerton instructions are routine in multi-defendant robbery, drug, and gang prosecutions, which are also the cases in which § 924(c) counts are most often stacked. For defendants convicted on that theory, the difference between a conviction under *Pinkerton* and an acquittal can be a decade of mandatory imprisonment that no judge can reduce below the mandatory minimum. *See e.g. United States v. Hare*, 820 F.3d 93, 104-05 (4th Cir. 2016); *United States v. Gillespie*, 27 F.4th 934, 941-42 (4th Cir. 2022); *United States v. Edmond*, 815 F.3d 1032, 1047 (6th Cir. 2016); *United States v. Adams*, 789 F.3d 713, 714-15 (7th Cir. 2015); *United States v. Henry*, 984 F.3d 1343, 1355-57 (9th Cir. 2021). Other circuits have likewise applied *Pinkerton* to § 924(c), and Petitioner is aware of no court of appeals that has held otherwise. The Ninth Circuit has now twice adopted *Henry*'s rule in published decisions, and it denied en banc review here without a called vote. Pet. App. D. Because the published rule binds Ninth Circuit panels and district courts, further percolation within the circuit is not possible. The question is an important one of federal law that “has not been, but should be, settled by this Court.” Sup. Ct. R. 10(c). The Ninth Circuit's answer also conflicts with the logic of this Court's relevant decisions.

D. This case is a clean vehicle.

The panel reviewed the *Pinkerton* instruction de novo and resolved the question on the merits, citing *Henry* and *Johnson*. Pet. App. C at 4–5. Petitioner objected to the instruction, and the panel did not rest on forfeiture, plain error, or harmlessness. [4-ER-555–58, 5-ER-831-34.] The practical stakes are plain: 120 of Petitioner’s 183 months, roughly two-thirds of his total sentence, are the consecutive § 924(c) term, and without the *Pinkerton* theory the government would have had to prove Petitioner’s own culpable connection to the firearm. [1-ER-2-13.]

II. A jury instruction that permits conviction under *Pinkerton* if “at least one conspirator” committed every element of the offense, without requiring unanimity as to which conspirator or which robbery, violates the Sixth Amendment.

The instructions also raise a related unanimity problem. In a case with several alleged co-conspirators and several robberies, the *Pinkerton* instruction permitted conviction if “at least one conspirator” committed every element, without requiring the jury to agree on which conspirator or which robbery. A jury must unanimously agree to convict, U.S. Const. amend. VI; *Ramos v. Louisiana*, 590 U.S. 83 (2020), on each element of a federal offense, and, where the statute so provides, on the specific violations that make up the offense. *See Richardson v. United States*, 526 U.S. 813, 817–24 (1999). Because that issue is bound up with

whether Pinkerton can support § 924(c) liability at all, the Court may address it together with the question presented or leave it for remand.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be granted.

Dated: October 9, 2026

Respectfully submitted,

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