

NO:

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2026

CHRISTOPHER PINKSTON,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

Federal sentencing courts often must determine whether a defendant's prior state conviction qualifies as a predicate offense for recidivist enhancements—such as the Career-Offender Guideline (U.S.S.G. §4B1.1) or the Armed Career Criminal Act (ACCA). This case presents the recurrent and important issue that arises when a state supreme court issues a decision that changes the scope of a predicate offense in a way that would alter whether that prior conviction qualifies as a career-offender predicate at a later federal sentencing.

The question presented for review is:

Whether, when applying the Career Offender enhancement (U.S.S.G. §4B1.1), a federal sentencing court must determine a prior state conviction's qualification as a predicate offense by reference to state decisional law as it existed at the time of the prior offense, or whether it may instead rely on a later authoritative state court decision that reinterprets the scope of the prior offense.

INTERESTED PARTIES

Interested parties of the case are as follows:

Christopher Pinkston, Petitioner

United States of America, Respondent.

RELATED PROCEEDINGS

United States District Court (S.D. Fla.):

United States v. Pinkston, No. 21-cr-20194-WPD

(S.D. Fla. Sept. 30, 2021)

United States Court of Appeals (11th Cir.):

United States v. Pinkston, No. 21-13391

(June 12, 2026)

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PETITION FOR WRIT OF CERTIORARI

Christopher Pinkston 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, rendered and entered in case number 21-13391, in that court on June 12, 2026, which affirmed the judgment and commitment of the United States District Court for the Southern District of Florida.

OPINION BELOW

A copy of the decision of the United States Court of Appeals for the Eleventh Circuit, which affirmed the judgment and commitment of the United States District Court for the Southern District of Florida, is contained in the Appendix (A-1).

STATEMENT OF JURISDICTION

Jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1) and PART III of the RULES OF THE SUPREME COURT OF THE UNITED STATES. The decision of the court of appeals was entered on June 12, 2026. A 30-day extension was granted by the Court for the filing of this petition. October 12, 2026, was a federal holiday. The petition is timely filed pursuant to SUP. CT. R. 13.1, 29, and 30. The district court had jurisdiction because petitioner was charged with violating federal criminal laws. The court of appeals had jurisdiction pursuant to 28 U.S.C. § 1291 and 18 U.S.C. § 3742, which provide that courts of appeals shall have jurisdiction for all final decisions of United States district courts.

STATUTORY AND OTHER PROVISIONS INVOLVED

Petitioner intends to rely on the following guideline and statutory provisions:

Career Offender Enhancement U.S.S.G. §4B1.1 (2021)

- (a) A defendant is a career offender if (1) the defendant was at least eighteen years old at the time the defendant committed the instant offense of conviction; (2) the instant offense of conviction is a felony that is either a crime of violence or a controlled substance offense; and (3) the defendant has at least two prior felony convictions of either a crime of violence or a controlled substance offense. . . .
The term “crime of violence” means any offense under federal or state law, punishable by imprisonment for a term exceeding one year, that

- (1) has as an element the use, attempted use, or threatened use of physical force against the person of another, ...

*

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*

U.S.S.G. §4B1.1 (2021).

Fla. Stat. §784.011 (2020)

- (1) An “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 (2020)

- (1) An “aggravated assault” is an assault: (a) With a deadly weapon without intent to kill; or (b) With an intent to commit a felony.

INTRODUCTION

Petitioner presents a recurring and important question about how federal courts should determine whether a prior state conviction qualifies as a predicate offense for recidivist enhancements—here, the Career-Offender Guideline, U.S.S.G. §§4B1.1, 4B1.2. The precise question is whether a federal sentencing court must assess the elements of a prior state conviction by reference to the decisional law that governed at the time of that conviction, or may instead treat a later authoritative state court reinterpretation as having “always” defined the offense for purposes of a subsequent federal sentencing. The Eleventh Circuit adopted the latter approach, relying on the Florida State Supreme Court decision of *Somers v. United States*, 355 So. 3d 887 (Fla. 2022) and the federal principles expressed in *Rivers v. Roadway Express, Inc.*, 511 U.S. 298 (1994), to treat petitioner’s 2020 Florida aggravated assault conviction as a qualifying predicate. By contrast, this Court’s precedents require a backward-looking, historical inquiry (*see McNeill v. United States*, 563 U.S. 816 (2011); *Brown v. United States*, 602 U.S. 101 (2024)), and several circuits have applied that approach. Because the Eleventh Circuit’s published decision entrenches a clear circuit conflict, undermines the categorical approach governing recidivist enhancements, and risks the disparate imposition of materially harsher federal punishment based on post-conviction state court reinterpretations of a criminal offense, this Court’s review is warranted to restore uniformity and to protect defendants’ due process and equal protection interests.

STATEMENT OF THE CASE

Petitioner Christopher Pinkston (“Pinkston”) was convicted of two counts of federal bank robbery in violation of 18 U.S.C. §2113(a) pursuant to a plea agreement with the government. On September 29, 2021, Pinkston was sentenced as a career offender to 160 months imprisonment.

For Pinkston’s case, the United States Probation Office prepared a presentence investigation report (PSI). That report determined that Pinkston’s unenhanced sentence for the bank robberies was based on a guideline level of 23 (base offense level 26 minus 3 points for acceptance), and a criminal history category IV, for a range of 70-87 months imprisonment. However, the PSI also found that Pinkston qualified for the career offender enhancement under U.S.S.G. §§4B1.1, 4B1.2. It based this enhancement on the instant bank robbery convictions as well as a prior 2006 federal bank robbery case and a prior 2020 conviction for Florida aggravated assault with a deadly weapon pursuant to Fla. Stat. §784.021(1)(A). Under the career offender, Pinkston’s total offense level rose to 29 (base offense level 32 minus 3 points for acceptance), and the criminal history category rose to level VI, for a sentencing range of 151-188.

Pinkston filed objections to the PSI. He argued that neither the bank robbery convictions nor the Florida aggravated assault conviction qualified as career offender predicates. He argued that these offenses had a *mens rea* of recklessness (or less), which precluded them from qualifying as career offender predicates under *Borden v.*

United States, 593 U.S. 420 (2021). The court overruled Pinkston’s objections and imposed the career offender enhancement, imposing a mid-level sentence of 160 months.

The Appeal. Pinkston timely appealed. As relevant to this Petition, he continued to argue against the 2020 aggravated assault conviction as a qualifying prior predicate for his career offender enhancement pursuant to *Borden*. While his appeal was pending, the Eleventh Circuit certified questions to the Florida Supreme Court in *Somers v. United States*, 15 F.4th 1049 (11th Cir. 2021) (Somers I)—an ACCA case that also had challenges to a Florida aggravated assault predicate. The questions asked what level of *mens rea* applied for a conviction under Florida’s aggravated assault offense, given that Florida’s intermediate appellate courts had differing opinions on the subject. In 2022, the Florida Supreme Court determined that the aggravated assault offense required a knowing *mens rea*. *Somers v. United States*, 355 So.3d 887 (Fla. 2022) (“Somers II”). Relying on *Somers II*, the Eleventh Circuit held that all Florida aggravated assault convictions—regardless of when committed—categorically qualified as ACCA predicates, a holding that directly impacted the identical inquiry under the career offender guideline here. *Somers v. United States*, 66 F.4th 890 (11th Cir. 2023) (“Somers III”).

Subsequently, this Court issued *Brown v. United States*, 602 U.S. 101 (2024), which found that ACCA’s text required a backward-looking approach to evaluate whether state drug crime predicates matched federal drug crimes based on the

federal drug schedules in effect when the defendant committed the state offense, not on subsequently amended versions. *Brown*, 602 U.S. at 111, *citing McNeill v. United States*, 563 U.S. 816, 823 (2011).

Mr. Pinkston argued that, in light of *Brown* and the career offender's text which called for a backward-looking approach, the decisional law at the time he committed the state offense determined whether the state offense qualified as a predicate under the career offender guideline in a later federal sentencing. He also cited to other federal circuit courts that agreed that state decisional law at the time the state offense was committed was what governed for the subsequent application of federal recidivist enhancements. *United States v. Anderson*, 99 F.4th 1106 (7th Cir. 2024); *United States v. Faust*, 853 F.3d 39, 58 (1st Cir. 2017); *United States v. Cornette*, 932 F.3d 204, 215 (4th Cir. 2019); *United States v. Vickers*, 967 F.3d 480 (5th Cir. 2020); *United States v. Roblero-Ramirez*, 716 F.3d 1122 (8th Cir. 2013).

Thus, Pinkston argued that the aggravated assault offense which he committed in 2020 could not qualify as a predicate because Florida's caselaw at that time rendered the least culpable conduct as only requiring recklessness in violation of *Borden*. He further argued that the Florida Supreme Court's case of *Somers II*, which changed the aggravated assault offense to one requiring a knowing intent in 2022, could not retroactively transform his prior conviction into a qualifying predicate for the career offender enhancement. He argued that such retroactive application not only conflicted with the career offender's text, *Brown* and other federal circuits,

but it was also inconsistent with the categorical approach and raised significant due process and equal protection issues.

In a published opinion, the Eleventh Circuit denied Pinkston's sentencing challenges to the career offender guideline. *United States v. Pinkston*, 177 F.4th 1309 (11th Cir. 2026). It held that *Somers II* applied to Pinkston's aggravated assault conviction which made that offense a qualifying career offender predicate. The Eleventh Circuit found pursuant to *Rivers v. Roadway Express*, 511 U.S. 298, 312-13 (1994), that *Somers II* stated what the law "always meant." *Pinkston*, 177 F.4th at 1315. Thus, the Eleventh Circuit stated that it was applying the required historical analysis, although through the filter of *Rivers*, to find that the aggravated assault offense "always" required a knowing intent, and thus, was always a proper predicate for the career offender guideline. *Id.*

In a special concurrence, Chief Judge Pryor recognized that its approach of using *Rivers* in lieu of an actual historical analysis of the prior predicate's elements was in conflict with four other federal circuits and Florida law governing statutory construction. *Pinkston*, 177 F.4th at 1315-1317 (Pryor, C.J., concurring). However, he deemed these other circuits and Florida courts to be wrong, because they did not apply the *Rivers* "always-meant" principle to the historical analysis. *Id.* Moreover, he stated that the errors in Florida caselaw that found recklessness were mere errors of state law that only state courts could correct. *Id.* at 1316.

Judge Abudu filed a separate concurrence, ultimately joining the panel in

denying relief due to the geography of where Pinkston sustained his aggravated assault conviction. However, she emphasized that the federal circuit split on this issue was worthy of consideration because it implicated the core of both recidivist enhancements and the categorical approach which aimed to evaluate a defendant's culpability at the time of the predicate conviction and determine, specifically, what a defendant was convicted of or pled guilty to. *Pinkston*, 117 F.4th at 1318 (Abudu, J., concurring). Furthermore, Judge Abudu warned that the Eleventh Circuit's retroactive approach triggered due process and equal protection concerns by risking the imposition of a harsher federal punishment than the law could have imposed upon the defendant at the time of his prior conviction. *Id.* at 1318–19, citing *Schriro v. Summerlin*, 542 U.S. 348, 352 (2004). Despite these compounding constitutional and structural concerns, the panel affirmed Petitioner's career offender enhancement. This timely petition follows.

REASONS FOR GRANTING THE WRIT

Petitioner respectfully submits that certiorari should be granted to resolve the question presented: whether federal courts must assess whether a prior state conviction qualifies as a predicate for the career offender recidivist enhancement by reference to the decisional law in effect at the time of the prior conviction or may instead treat a later state court reinterpretation as having “always” defined the offense. This issue has produced an entrenched circuit split, with the Eleventh and Sixth Circuits applying post-conviction state court interpretations, while five other circuits apply a backward-looking, historical inquiry. The Eleventh Circuit’s approach—treating later state supreme court interpretations as if they “always” governed—rests on an inferior and incorrect legal premise that conflicts with this Court’s precedents and the categorical method. The question is exceptionally important because it governs frequently recurring recidivist enhancement determinations, produces stark, geography-based sentencing disparities, and implicates serious due process and equal protection concerns. This case is an ideal vehicle to resolve the dispute: the issue was preserved below, the Eleventh Circuit issued a published opinion applying the contested rule, and the career offender enhancement produced substantial, concrete sentencing consequences.

I. Legal Background.

A. The Career Offender Enhancement.

The career offender enhancement is a severe provision reserved for a strictly

defined group of recidivist offenders. Its application can materially increase the resulting imprisonment range. Because of its harsh consequences, the guidelines restrict the classification, requiring courts to carefully evaluate a defendant's eligibility before applying the enhancement.

To qualify for this enhancement, the Guidelines specify that a defendant must meet the following criteria: the defendant was at least eighteen at the time of the instant offense; the instant felony is a “crime of violence” or controlled substance offense; and the defendant has at least two prior convictions that were crimes of violence or controlled substance offenses, or a combination of both. U.S.S.G. §4B1.1 (2021). As relevant to this certiorari petition, the career offender enhancement defines a “crime of violence” through its “elements clause” as, “any offense under federal or state law, punishable by imprisonment for a term exceeding one year, that has as an element the use, attempted use, or threatened use of physical force against the person of another. . . .” U.S.S.G. §4B1.2 (2021).

This Court in *Borden*, 593 U.S. 420, further defined the elements’ clause by holding in the context of ACCA, that offenses with a reckless *mens rea* did not qualify. It found that the requirement for the “use . . . of physical force against the person of another,” indicated a knowing or deliberate intent which could not be satisfied through mere indifference to risk through recklessness. *Borden*, 593 U.S. at 429–34 (plurality); *id.* at 446–47 (Thomas, J., concurring). *Borden’s* reasoning applies equally to the Career Offender elements clause because the ACCA and the Guidelines

use virtually identical language, and courts have applied Supreme Court ACCA decisions to the Guidelines' definition of "crime of violence." See, e.g., *United States v. Ochoa*, 941 F.3d 1074, 1107 (11th Cir. 2019).

To determine whether a prior conviction satisfies the requirements of the 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).

Following *Borden*, this Court in *Brown*, addressed whether a prior state conviction qualified as an ACCA predicate based on the law in effect at the time of the state offense or at the time of a subsequent federal sentencing. 602 U.S. 101, 111. Analyzing this issue in the context of state drug crimes, and relying on *McNeill v. United States*, 563 U.S. 816 (2011) this Court held that ACCA's text demanded a backward-looking, historical inquiry into the law at the time of the prior state offense. The Court reasoned that subsequent changes to a drug offense could not erase the historical reality of its prior conviction, as ACCA sought to determine what a defendant's criminal history revealed about his "culpability and dangerousness." *Id.* at 1200. Accordingly, *Brown* held that ACCA requires a "backward-looking examination" fixed to the time of conviction, rather than an evaluation altered by

later legal developments. *Id.* at 1205.

B. Florida's Aggravated Assault Offense.

Although the Eleventh Circuit has long classified Florida aggravated assault as an elements' clause predicate, this Court's *Borden* decision reignited the debate over its qualification. 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). Simple assault is a misdemeanor while aggravated assault is a felony. Fla. Stat. §§784.011(2), 784.021(2). As relevant to this petition, an "aggravated assault" is an assault with a deadly weapon without an intent to kill. Fla. Stat. §784.021(1).

Prior to *Borden*, the Eleventh Circuit held in *Turner v. Warden Coleman FCI*, 709 F.3d 1328, 1337-39 (11th Cir. 2013), that Florida aggravated assault was a "violent felony" under the ACCA's elements clause. However, *Turner* was flawed because it relied exclusively on the face of the statute without accounting for state court interpretations. This oversight was critical; at the time, Florida's intermediate appellate courts were split, with many holding that aggravated assault could be committed recklessly and others requiring a knowing *mens rea*. *Turner's* failure to contend with the *mens rea* issue put it at risk of violating other Eleventh Circuit precedent which held that recklessness was not sufficient for an elements' clause predicate under the career offender guideline, *United States v. Palomino Garcia*, 606

F.3d 1317, 1334-36 (11th Cir. 2010). Nonetheless, the Eleventh Circuit clung to *Turner* under its prior panel precedent rule despite rumblings that it was wrongly decided. See *United States v. Golden*, 854 F.3d 1256, 1257-60 & n.4 (Jill Pryor, J., concurring) (urging full court to rehear and overturn *Turner en banc*).

After *Borden*, the Eleventh Circuit reconsidered *Turner*'s approach. In *Somers I*, the court recognized divergent rulings among Florida's intermediate appellate courts regarding the proper *mens rea* standard for aggravated assault. 15 F.4th at 1054-56. Therefore, it certified state-law *mens rea* questions to the Florida Supreme Court. See *id.* The Florida Supreme Court answered by holding that Florida aggravated assault required a knowing *mens rea*. *Somers II*, 335 So.3d at 892-93. However, *Somers II* was silent about whether its decision applied to aggravated assault convictions that were already final.

Following *Somers II*, the Eleventh Circuit reaffirmed that Florida aggravated assault qualified as a violent felony under the ACCA's elements clause. *Somers III*, 66 F.4th at 896. Because the Florida Supreme Court held that a "reckless act [would] not suffice" for the offense, the Eleventh Circuit panel concluded that "*Borden* pose[d] no problem to *Somers*' ACCA-enhanced sentence." *Id.* at 895. Crucially, the court rejected the defendant's reliance on earlier, conflicting state decisions, emphasizing that when a state supreme court interprets a statute, "it tells us what that statute always meant." *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)). As a result, the Eleventh Circuit rejected *Somers*' reliance

on Florida decisions that had previously approved of the reckless *mens rea* standard. *See id.* Accordingly, it upheld the ACCA enhancement.

One year later this Court's *Brown* decision issued. 602 U.S. 101. 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.

II. The Circuits are Divided on the Question Presented

The Eleventh Circuit's decision in *Somers III* which was applied to Petitioner's case perpetuates a circuit split regarding whether state decisional law interpreting prior state predicate offenses should be consulted based on the date of the original offense or based on the date of a subsequent federal sentencing. The Eleventh and Sixth Circuits have held that federal courts must consult subsequent state court decisions. In contrast, five circuits have issued published opinions holding that federal courts must consult state court decisions that govern at the time of the defendant's prior state conviction. This Court should intervene to resolve the circuit split.

A. The Eleventh and Sixth Circuits Consult Subsequent State Supreme Court Decisions —Even if Those Decisions Come After the Defendant’s Prior State Conviction.

The Eleventh Circuit’s decision in Petitioner’s case permits a finalized criminal conviction to be retroactively recharacterized based on a later state court reinterpretation of the statute under which the defendant was convicted. Although Petitioner’s aggravated assault conviction was adjudicated under Florida decisional law when that law included convictions based on a *reckless* mens rea, the Eleventh Circuit treated the subsequent Florida Supreme Court decision in *Somers II*—adopting a *knowing* mens rea—as if it had always definitively defined the offense. In so doing, the court relied on this Court’s decision in *Rivers v. Roadway Express*, 511 U.S. 298, 312-13 (1994), taken out of its civil context, to justify transforming Petitioner’s past conduct to a new legal status for purposes of the career offender enhancement.

This approach conflicts with the unique concerns animating recidivist enhancements and runs counter to the Eleventh Circuit judges’ own criticisms in *United States v. Seabrooks*, 839 F.3d 1326 (11th Cir. 2016); and *Welch v. United States*, 958 F.3d 1093, 1098 (11th Cir. 2020). Those criticisms rightly emphasize that recidivist questions require attention to the state of the law at the time of conviction and to how courts actually prosecuted the offense then. *Seabrooks*, 839 F.3d at 1351 (Martin, J., concurring)) (explaining that ACCA was not about divining the current meaning of the Florida predicate offense; rather, ACCA sought to determine what

least culpable conduct could have resulted in the defendant’s prior convictions at the time of those convictions); *Welch*, 958 F.3d 1093, 1100–01 (Rosenbaum, J., concurring) (although state supreme courts unquestionably had power to nullify lower court precedent, treating subsequent supreme court decisions as though they had always existed “torpedoe[d]” the rationale of the categorical approach.). By treating *post hoc* supreme court interpretations as if they “always” governed, the Eleventh Circuit risks imposing enhanced sentences based on a legal fiction—undermining the categorical approach and raising serious due process and equal protection problems.

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 pre-*Somers* Florida conviction for aggravated assault. *Id.* at 886. The defendant argued that the Florida Supreme Court’s *Somers II* decision could not establish the elements of his own offense, which pre-dated the decision. *Id.* Instead, he urged the court to consider the state of the law as it existed when he was convicted of the aggravated assault offense, including the several Florida intermediate appellate courts that sustained convictions based on a reckless *mens rea*. *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 II*, the court concluded that the defendant’s prior aggravated assault conviction was a violent felony. *Id.* at 886.

B. Five Other Circuits Have Taken a Contrary Approach.

1. The Eighth Circuit

The Eighth Circuit has taken the opposite approach to the Eleventh and Sixth Circuits in the context of the guidelines in *United States v. Roblero-Ramirez*, 716 F.3d 1122 (8th Cir. 2013). In *Roblero-Ramirez*, the defendant was charged in 2011, with illegal reentry after a prior aggravated felony conviction (Nebraska manslaughter) in violation of 8 U.S.C. §1326(a) and (b)(2); U.S.S.G. §2L1.1. *Roblero-Ramirez*, 716 F.3d at 1124. The prior manslaughter felony was committed in 2006. *Id.* At that time, Nebraska law did not require an intent to kill for a manslaughter conviction. *Id.* at 1126-27. By *Roblero-Ramirez*’s federal sentencing in 2011, however, the Supreme Court of Nebraska had found that an intent to kill without malice was required for a manslaughter conviction. *Id.* at 1127. Based on the 2011 Nebraska Supreme Court decision requiring intent, the district court imposed a 16-point “aggravated felony” enhancement on *Roblero-Ramirez*. *Id.* at 1124. On appeal, the Eighth Circuit reversed, finding that 2006 Nebraska manslaughter law governed. *Id.* at 1127. Since the 2006 law did not require an intent to kill, the *mens rea* of the 2006 manslaughter conviction was deficient and prevented it from qualifying as an aggravated felony under the guidelines. *Id.* at 1127. Thus, the 16-point

aggravated felony enhancement was erroneous and reversal was required. *Id.*

2. The First and Fourth Circuits

Similarly, the First and Fourth Circuits have applied the non-fictional backward-looking approach in ACCA cases. 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 law enforcement 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. *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”).

Likewise 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’s decision in *Roblero-Ramirez*. *Id.* at 215.

3. The Fifth Circuit.

The Fifth Circuit also employed the same non-fictional backward-looking approach in *United States v. Vickers*, 967 F.3d 480 (5th Cir. 2020). In *Vickers*, 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.

4. The Seventh Circuit

Consistent with the four circuits above, the Seventh Circuit also employed a non-fictional backward-looking approach under ACCA in *United States v. Anderson*, 99 F.4th 1106 (7th Cir. 2024). In *Anderson*, the Seventh Circuit expressly rejected the Eleventh Circuit’s *Somers III* approach in a case involving the same predicate of Florida aggravated assault. *Anderson*, 99 F.4th at 1112-13. Citing to *McNeill*, the Seventh Circuit agreed that the initial inquiry was whether “the law at the time of [the defendant’s] conviction was broader than the corresponding federal law.” *Anderson*, 99 F.4th at 1110. It further noted that at the time of Anderson’s prior aggravated assault conviction in 2001, Florida intermediate appellate courts were split on what level of intent was necessary to sustain a conviction. *Id.* at 1110-11. It recognized that the Florida Supreme Court resolved this split in *Somers II* (2022), and that the Eleventh Circuit deemed that resolution to “tells us what the [aggravated assault] statute always meant.” *Id.* at 1110, 1112. However, the Seventh Circuit employed Florida rules regarding statutory construction and found

that *Somers II* was a “change” in the law that was not retroactive. *Id.* at 1111. The Seventh Circuit acknowledged that its holding directly conflicted with the Eleventh Circuit’s ruling on the issue, but the Seventh Circuit found the Eleventh Circuit’s *Somers III* decision was flawed because it failed to “address Florida’s approach to statutory interpretation.” *Id.* Under that approach, *Somers II* did not have retroactive effect, and therefore, prior aggravated assault convictions had to be assessed through a historical inquiry that gauged Florida law as it existed at the time of the defendant’s prior conviction. *Id.* at 1111. Reviewing the split in Florida law that existed in 2001, the Seventh Circuit further found that the least culpable conduct at that time for aggravated assault included reckless conduct. *Id.* at 1112. Accordingly, it reversed the defendant’s ACCA enhancement in direct conflict with the Eleventh Circuit’s *Somer’s III* ruling.

III. The Eleventh Circuit’s Retroactive Approach is Wrong.

The Eleventh Circuit’s decision in Petitioner’s case rests on the wrong side of the entrenched circuit split, and it should be corrected by this Court to restore a uniform, historically-grounded approach to assessing prior convictions for federal recidivist enhancements. Under this Court’s controlling precedents, ACCA’s inquiry into whether a prior state conviction counts as a predicate offense is inherently backward-looking—it requires reference to the law as it existed at the time of the prior conviction. For example, this Court’s foundational *McNeill* decision held that where a state changed a statutory maximum after a defendant’s conviction, the

“relevant maximum term of imprisonment” under ACCA was the maximum that “was applicable to [the defendant’s] offense when he was convicted of it.” 563 U.S. at 817–18, 825. *McNeill* explained that ACCA’s plain text, which asked whether a “previous conviction” was for a “serious drug offense,” could only be answered by consulting the law that applied at the time of that conviction. *Id.* at 820. That approach was consistent with this Court’s earlier violent-felony decisions, which likewise examined the version of state law in effect when the defendant was actually convicted. See *James v. United States*, 550 U.S. 192, 197 (2007); *Taylor v. United States*, 495 U.S. 575, 602 (1990). Due to their similar text, the ACCA’s backward-looking approach applies equally to the Career Offender Guidelines.

This Court reaffirmed *McNeill*’s historical inquiry in its recent *Brown* decision, which held that ACCA’s reference to a “controlled substance” was limited to substances controlled at the time of the prior state conviction—not at the later federal sentencing. *Id.*, 602 U.S. at 108, 123. *Brown* repeatedly relied on *McNeill*’s “‘backward-looking’ examination,” emphasizing that 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 111, 114–15, 119–20.

The Eleventh Circuit’s contrary approach cannot be reconciled with these authorities. Instead of looking to state law as it existed at the time of conviction, the Eleventh Circuit asks what the state statute means today by consulting the most recent authoritative state court interpretation—even where that interpretation post-

dates the defendant's prior conviction. In this case the court relied on the Florida Supreme Court's 2022 decision in *Somers II* to define the elements of Florida aggravated assault, despite Petitioner's 2020 conviction. Distinguishing *Brown* as a case involving legislative amendments rather than judicial interpretations, the Eleventh Circuit relied on *Rivers* to hold that *Somers II* still applied to the Petitioner's case.

However, the Eleventh Circuit's reliance on *Rivers* was misplaced. *Rivers* articulated a federal rule—when this Court construed a federal statute, its construction declared what the statute has meant since its enactment. *Id.* at 312–13. But *Rivers* does not control when a federal court must apply a state statute; state courts are the final arbiters of state law, and federal courts must apply state rules governing retroactivity of judicial decisions. *See United States v. Taylor*, 596 U.S. 845, 859 (2022). The Eleventh Circuit failed to address Florida's own approach to retroactivity, under which decisions of the Florida Supreme Court that disagree with prior district court constructions do not automatically apply retroactively unless the state court satisfies a three-part test. *Anderson*, 99 F.4th at 1111 (discussing *Florida v. Barnum*, 921 So.2d 513 (Fla. 2005)). Because *Somers II* did not satisfy that Florida test, it did not announce a retroactive change in the law and could not be used to recharacterize an earlier conviction.

Even putting aside Florida's retroactivity rules, the Eleventh Circuit's reliance on *Rivers* was misplaced. *Rivers* was a civil dispute that did not share the same due

process and equal protection concerns that are inherent in criminal actions. Moreover, the Eleventh Circuit’s extension of *Rivers* into the criminal recidivist realm does not work because it conflicts with the categorical approach and the overall operation of recidivist enhancements. The recidivist enhancements asks what conduct the state statute *actually* criminalized at the time of conviction—the least culpable conduct that could have been prosecuted—rather than a precise account of what the statute means today. *See, e.g., Borden*, 593 U.S. at 441–42 (plurality) (citing *Moncrieffe v. Holder*, 569 U.S. 184, 190–91 (2013)); *Johnson v. United States*, 559 U.S. 133, 137 (2010). By adopting a *post hoc* judicial construction that purports to tell federal courts what the statute “always meant,” *Somers II* and the Eleventh Circuit’s application of it, permit federal enhancements based on a redefinition of state law that did not govern the defendant at the time of his original conviction. That approach undermines the categorical method and the fundamental premise of recidivist enhancements: federal enhancements must rest on the state law offense as it existed when the defendant was convicted. In light of the above: the rule in *McNeill* and *Brown* for a backward-looking analysis, the misapplication of *Rivers*, Florida’s own retroactivity principles, and the Eleventh Circuit’s departure from the categorical inquiry—the Court should intervene to resolve the circuit split and correct the Eleventh Circuit’s erroneous approach.

IV. The Court Should Intervene in this Important Issue.

This issue presented urgently warrants the Court's review because it arises frequently in recidivist sentencings and produces stark, geography-based disparities in the imposition of severe federal penalties. Whether a defendant's prior conviction counts as a predicate for a Career Offender or ACCA enhancement often turns on which version of state law a federal court consults. Because recidivist enhancements produce large guideline increases and substantially longer imprisonment ranges, the circuit split transforms identical prior offenses into dramatically different federal consequences depending solely on where the defendant is sentenced. That geographic disparity undermines the uniform administration of federal criminal law and invites arbitrariness.

This Court has repeatedly intervened to remedy the non-uniform application of substantial recidivist enhancements across the circuits. It has granted review in numerous ACCA and related federal criminal cases where divergent circuit interpretations produced significant sentencing disparities. *See e.g., Brown*, 602 U.S. 101; *Wooden v. United States*, 595 U.S. 360, 365 & nn. 1-2 (2022); *Borden*, 593 U.S. at 425 & nn. 1-2. The government has itself sought certiorari in such conflicts, and the Court has historically granted review in acknowledgment of the important role that recidivist enhancements play in federal sentencing.

Moreover, the constitutional and practical stakes are high. The Eleventh Circuit's retroactive application of a later state court ruling can effectively

recharacterize finalized convictions and subject defendants to harsher punishment than state law permitted at the time of conviction. This not only frustrates the operation of the categorical approach which this Court has developed over decades, but the unique retroactivity issues inherent in this approach also raises serious due process and equal protection concerns. The Court's intervention is therefore essential to protect defendants, ensure consistent sentencing, and preserve constitutional protections.

V. This Case is an Ideal Vehicle.

This case is an ideal vehicle for resolving the question presented. The Eleventh Circuit issued a published, precedential opinion that squarely addresses whether federal courts applying recidivist enhancements must look to state decisional law as it existed at the time of the prior conviction or may instead apply later state court interpretations. Additionally, Petitioner preserved this issue below: he timely objected to the career-offender enhancement in the district court, argued that his 2020 Florida aggravated assault conviction could not serve as a predicate under *Borden* because Florida caselaw at the time allowed for a reckless *mens rea*, and he renewed the argument on appeal, expressly relying on *Brown* and circuit authority favoring a backward-looking approach. The Eleventh Circuit's published opinion applied *Somers II* retroactively, based on a misapplication of this Court's *Rivers* case. The end result was to recharacterize Petitioner's finalized 2020 conviction to his detriment. The accompanying concurrences in Petitioner's case acknowledged the

deep circuit split and attendant due process and equal protection concerns with the Eleventh Circuit's approach, demonstrating the importance of the dispute. Finally, the outcome here produced substantial and concrete consequences—the career-offender enhancement increased Petitioner's guideline range from 70–87 months to 151–188 months, producing a 160-month sentence—showing the practical stakes and making this case a suitable vehicle for this Court's resolution. In light of the above, certiorari review is warranted.

CONCLUSION

Based upon the foregoing petition, the Court should grant a writ of certiorari to the Court of Appeals for the Eleventh Circuit.

Respectfully submitted,

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