No. _____

IN THE

Supreme Court of the United States

CHARLES ROY,
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

CLAUDE J. KELLY
FEDERAL PUBLIC DEFENDER
EASTERN DISTRICT OF LOUISIANA

SAMANTHA J. KUHN
ASSISTANT FEDERAL PUBLIC DEFENDER
Counsel of Record
500 POYDRAS STREET, SUITE 318
HALE BOGGS FEDERAL BUILDING
NEW ORLEANS, LOUISIANA 70130
(504) 589-7930
SAMANTHA_KUHN@FD.ORG

COUNSEL FOR PETITIONER

QUESTION PRESENTED

Whether, under the categorical approach, a defendant must always produce an actual case to demonstrate a state statute's overbreadth, even when the state statute is facially broader than the federal standard.[1]

[1] This case presents the same question raised in *United States v. Augillard*, No. 26-476, which is currently pending review by the Court (petition filed October 6, 2026).

PARTIES TO THE PROCEEDING

Petitioner Charles Roy was the defendant in the United States District Court for the Eastern District of Louisiana and the appellant in the U.S. Court of Appeals for the Fifth Circuit.

Respondent United States of America was the plaintiff in the District Court and the appellee in the Fifth Circuit.

RELATED PROCEEDINGS

The following proceedings are directly related to this case:

- United States Supreme Court: *Charles Roy v. United States*, Application No. 26A367. Order granting extension of time to file a petition for writ of certiorari entered September 18, 2026.
- United States Court of Appeals for the Fifth Circuit: *United States v. Roy*, No. 25-30285. Judgment entered July 1, 2026.
- United States District Court for the Eastern District of Louisiana: *United States v. Charles Roy*, No. 2:21-cr-082. Judgment entered May 8, 2025.

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JUDGMENT AT ISSUE

On July 1, 2026, a panel of the U.S. Court of Appeals for the Fifth Circuit affirmed Petitioner's judgment. A copy of the unpublished opinion is attached as the Appendix (1a–2a) and is also available on Westlaw at 2026 WL 1896208.

JURISDICTION

This Court has jurisdiction under 28 U.S.C. § 1254(1). The Fifth Circuit entered its decision on July 1, 2026. App. 1a–2a. The Honorable Samuel A. Alito, Jr., granted a timely filed application for an extension of time to file this petition for a writ of certiorari, extending the deadline to October 29, 2026 (26A367). This petition for a writ of certiorari is timely filed on October 29, 2026.

STATUTORY AND GUIDELINE PROVISIONS INVOLVED

Section 4B1.2(a) of the United States Sentencing Guidelines defines "crime of violence," in relevant part, as follows:

> (a) Crime of Violence.—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. . . .

Louisiana defines simply robbery as:

> the taking of anything of value belonging to another from the person of another or that is in the immediate control of another by use of force or intimidation but not armed with a dangerous weapon.

LA. REV. STAT. § 14:65(A).

STATEMENT OF THE CASE

This petition presents a longstanding circuit split over the proper application of the categorical approach. In both criminal and immigration law, courts use the categorical approach to determine whether an individual's prior conviction qualifies for certain federally defined sentencing enhancements or immigration consequences. *See, e.g.*, *Descamps v. United States*, 570 U.S. 254, 257 (2013); *Pereida v. Wilkinson*, 592 U.S. 224, 233 (2021). To determine whether a prior conviction is a valid predicate, courts must "compare the elements of the statute forming the basis of the [prior] conviction" with the federal standard. *Descamps*, 570 U.S. at 257. If the statute is broader than the federal standard, the prior conviction does not qualify. *Id.*

In conducting this inquiry, courts must "look only to the fact of conviction and the statutory definition of the prior offense" of conviction—*i.e.*, the elements that the jury was required to find, or the defendant was required to admit, for a conviction. *Taylor v. United States*, 495 U.S. 575, 602 (1990). "If any—even the least culpable—of the acts criminalized" by the statute fall outside of the federal definition, the "statute of conviction does not categorically match the federal standard" and cannot serve as a predicate. *Borden v. United States*, 593 U.S. 420, 424 (2021) (plurality opinion); *see also Esquivel-Quintana v. Sessions*, 581 U.S. 385, 390 (2017).

There is currently at 10-1 circuit split over how to apply the categorical approach to facially overbroad state statutes. Ten circuits hold that when a state statute is facially broader than the federal comparator, that ends the inquiry, and the

prior conviction cannot serve as a predicate.[2] The Fifth Circuit alone requires a defendant to produce evidence of an actual prosecution of the broader conduct, even when the statute is, by definition, broader than the federal standard. *United States v. Augillard*, 187 F.4th 352, 360 (5th Cir. 2026) (Elrod, C.J., and Higginson, J., dissenting from the denial of reh'g en banc) ("[W]e are alone in a 10-1 circuit split. Every other regional circuit has rejected an 'actual case' requirement when a state statute is on its face broader than its federal counterpart."). In Petitioner's case, the Fifth Circuit relied on this outlier rule to affirm the district court's application of a severe "career offender" Sentencing Guideline enhancement. App. 2a.

This circuit split is the source of severe and unwarranted disparities in criminal sentencing, with similarly situated defendants facing vastly different Guidelines ranges based solely on their geographical location. The Fifth Circuit recently declined the opportunity to reconsider its outlier rule en banc, with four judges voting in favor of rehearing and thirteen against. *Augillard*, 187 F.4th at 352. Intervention by this Court is therefore necessary to resolve the conflict.

I. Legal Background.

In every federal sentencing, the district court must begin "by correctly calculating the applicable Guidelines range" under the U.S. Sentencing Guidelines. *Gall v. United States*, 552 U.S. 38, 49 (2007); *see also* 18 U.S.C. § 3553(a)(4). As this

[2] *See, e.g.*, *Da Graca v. Garland*, 23 F.4th 106, 113 (1st Cir. 2022); *Hylton v. Sessions*, 897 F.3d 57, 63 (2d Cir. 2018); *Salmoran v. Att'y Gen.*, 909 F.3d 73, 81–82 (3d Cir. 2018); *Gordon v. Barr*, 965 F.3d 252, 260 (4th Cir. 2020); *United States v. Cervenak*, 135 F.4th 311, 326 (6th Cir. 2025); *Aguirre-Zuniga v. Garland*, 37 F.4th 446, 450 (7th Cir. 2022); *Gonzalez v. Wilkinson*, 990 F.3d 654, 660 (8th Cir. 2021); *Lopez-Aguilar v. Barr*, 948 F.3d 1143, 1147 (9th Cir. 2020); *United States v. Titties*, 852 F.3d 1257, 1274–75 (10th Cir. 2017); *Aspilaire v. Att'y Gen.*, 992 F.3d 1248, 1255 (11th Cir. 2021).

Court has explained, "[t]he post-*Booker* federal sentencing scheme aims to achieve [national] uniformity by ensuring that sentencing decisions are anchored by the Guidelines and that they remain a meaningful benchmark through the process of appellate review." *Peugh v. United States*, 569 U.S. 530, 541 (2013); *see also Kimbrough v. United States*, 552 U.S. 85, 107 (2007) ("[I]t is unquestioned that uniformity remains an important goal of sentencing" post-*Booker*.); *Molina-Martinez v. United States*, 578 U.S. 189, 198 (2016) ("The Court has made clear that the Guidelines are to be the sentencing court's 'starting point and ... initial benchmark.'" (quoting *Gall*, 552 U.S. at 49)). Sentencing judges "*must* begin their analysis with the Guidelines and remain cognizant of them throughout the sentencing process." *Peugh*, 569 U.S. at 541 (emphasis added).

The Guidelines range is based on a defendant's criminal history category, which is generally dictated by the number, severity, and recency of prior convictions, and his offense level, which is generally driven by his specific offense conduct. However, the Guidelines include a harsh "career offender" enhancement that can dramatically increase a defendant's offense level, criminal history category, and resulting Guidelines range far above the range that would otherwise apply. *See* U.S.S.G. § 4B1.1. To qualify for the career offender enhancement, the defendant must have "at least two prior felony convictions for either a crime of violence or a controlled substance offense," and the instant offense must also be "either a crime of violence or a controlled substance offense." § 4B1.1(a)(2)–(3).

U.S.S.G. 4B1.2(a)(1) defines "crime of violence" 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[.]" This definition is sometimes referred to as the "force clause." *See United States v. Garner*, 28 F.4th 678, 681 (5th Cir. 2022). To determine whether a prior conviction qualifies as a "crime of violence" under the force clause, courts must apply the categorical approach, looking "only to the statutory definitions—*i.e.*, the elements—of a defendant's prior offense[], and not to the particular facts underlying [the] conviction[]." *Id*. "[I]f the relevant statute encompasses prohibited behavior that is not within the plain, ordinary meaning of the enumerated offense, the conviction is not a crime of violence as a matter of law." *United States v. Lara-Martinez*, 836 F.3d 472, 475 (5th Cir. 2016) (quotation marks and citation omitted omitted).

In 2021, this Court held that an offense that can be committed recklessly does not categorically require the "use of physical force against the person of another." *Borden*, 593 U.S. at 429. The Court explained: "The phrase 'against another,' when modifying the 'use of force,' demands that the perpetrator direct his action at, or target, another individual." *Id.* "Reckless conduct is not aimed in that prescribed manner." *Id.* Accordingly, this Court made clear in *Borden* that the force clause does not include "offenses criminalizing reckless conduct." *Id*.

Following *Borden*, the Fifth Circuit held in a published decision that "reckless or even negligent states of mind can satisfy Louisiana's general intent standard." *Garner*, 28 F.4th at 683. The court analyzed the "three levels of criminal culpability"

under the Louisiana Criminal Code and—noting that the terms have "specialized meanings in Louisiana law"—explained that Louisiana's definition of "general intent is totally unconcerned with the defendant's state of mind." *Id.* Instead, general intent "focuses upon the objective activity of the defendant and its probable consequences." *Id.* "Thus, reckless or even negligent states of mind can satisfy Louisiana's general intent standard, so long as a reasonable person would know that the criminal consequences would result from the defendant's actions." *Id.*

In *Garner*, the Fifth Circuit thus held that aggravated assault with a firearm under Louisiana law is not a crime of violence because "it is a general intent crime," and, "[a]s such, it can be committed with reckless intent, or by mere negligence, because the defendant's state of mind is irrelevant under the standard." *Id.* (cleaned up). Thus, under binding circuit precedent, Louisiana offenses that only require "general intent" are categorically broader than the force clause because, by definition, they "can be committed with reckless intent, or by mere negligence." *See id.*

II. Proceedings Below.

Petitioner pleaded guilty in federal court to: possession with intent to distribute controlled substances (Count 1); possession of a firearm as a convicted felon (Count 2); and possession of a firearm in furtherance of a drug trafficking crime (Count 3). The written factual basis submitted in support of his plea stated that officers stopped and arrested Petitioner on an outstanding warrant and, during a search of his backpack, found 50.88 grams of a substance that tested positive for fentanyl and heroin, as well as a handgun. Based on Petitioner's offense conduct and prior convictions, his Sentencing Guidelines range on Counts 1 and 2 should have

been 57 to 71 months.[3] However, because the district court determined that Petitioner qualified for the "career offender" enhancement under § 4B1.1, his Guidelines range skyrocketed to 262 to 327 months.

In applying the career offender enhancement, the district court relied in part on Petitioner's prior conviction for simple robbery in Louisiana. Under Louisiana law, "simple robbery" is "the taking of anything of value belonging to another from the person of another or that is in the immediate control of another by use of force or intimidation[.]" La. R.S. § 14:65. Petitioner objected to the enhancement, arguing that Louisiana simple robbery is not a "crime of violence" because it is a "general intent" crime. *See State v. Davis*, 111 So.3d 100, 103 (La. Ct. App. 2012) ("Simple robbery is a general intent crime."). Citing this Court's decision in *Borden* and the Fifth Circuit's binding precedent in *Garner*, Petitioner argued that Louisiana general intent crimes are, by definition, broader than the force clause because they can be committed with reckless, or even negligent, intent.

The district court overruled Petitioner's objection and applied the career offender enhancement. The court sentenced him to 100 months on Counts 1 and 2—a downward variance from the career offender Guidelines range, but still significantly higher than his correct range without the enhancement. Petitioner timely appealed.

On appeal to the Fifth Circuit, Petitioner argued that straightforward application of *Borden*, *Garner*, and Louisiana caselaw defining "simply robbery" as a general intent crime establishes that Petitioner's conviction is categorically broader

[3] Count 3 carried a mandatory, consecutive 60-month term, pursuant to 18 U.S.C. § 924(c).

than the force clause and therefore cannot serve as a career offender predicate. "Simple robbery" is defined as a "general intent" crime under Louisiana law, *see Davis*, 111 So.3d at 103; binding circuit precedent holds that "reckless or even negligent states of mind can satisfy Louisiana's general intent standard," *Garner*, 28 F.4th at 683; and this Court held in *Borden* that the force clause does not include "offenses criminalizing reckless conduct," 593 U.S. at 429. Thus, the state statute is, by definition, broader than the federal force clause.

Nonetheless, the Fifth Circuit affirmed the enhancement. Relying on its outlier "actual case" requirement, the court held that Petitioner failed to show "a 'realistic probability' that Louisiana would apply its simple robbery statute to reckless or negligent acts"—notwithstanding the undisputed fact that the state offense, by definition, encompasses reckless conduct. App. 2a (quoting *United States v. Castillo-Rivera*, 853 F.3d 218, 222 (5th Cir. 2017) (en banc)).[4]

REASONS FOR GRANTING THE PETITION

This petition raises the same issue presented in *Augillard*: whether, under the categorical approach, a defendant must always produce an actual case to demonstrate a state statute's overbreadth, even when the state statute is facially broader than the federal standard. In *Augillard*, the Fifth Circuit denied a petition for rehearing en

[4] Notably, Petitioner did identify three Louisiana state cases in which defendants were convicted of robbery after committing thefts *without* using or threatening force against the victim. *See State v. Robinson*, 713 So.2d 828, 830–31 (La. App. 5th Cir. 1998), and *State v. Johnson*, 60 So.3d 43, 45 (La. App. 5th Cir. 2011), and *State v. Smith*, 23 So.3d 291, 292–93 (La. 2009). In each of those cases, the state court found robbery's "force or intimidation" element satisfied merely because the victim *felt* intimidated, or the *situation* was "intimidating." The Fifth Circuit did not address these cases in detail, instead simply holding that they "fall short." App. 2a.

banc in a 13-4 vote, making "unmistakably clear that the Court's intervention is necessary to remedy the arbitrary disparities in criminal and immigration cases that flow from the Fifth Circuit's outlier rule." Pet. for Writ of Certiorari at 9, *Augillard v. United States*, No. 26-476 (Oct. 6, 2026). Additionally, *Augillard* presents an ideal vehicle to resolve the persistent circuit split over this issue, as explained in that petition. The Court should therefore grant review in *Augillard*, hold this petition pending disposition of that case, and then resolve this petition accordingly.

CONCLUSION

For the foregoing reasons, Petitioner Charles Roy respectfully asks this Court to hold his petition pending the Court's disposition of *Augillard* and then resolve his petition consistent with the Court's decision in that case. Alternatively, the Court should grant this petition for a writ of certiorari.

Respectfully submitted,

CLAUDE J. KELLY
FEDERAL PUBLIC DEFENDER
EASTERN DISTRICT OF LOUISIANA

/s/ Samantha Kuhn
SAMANTHA J. KUHN
ASSISTANT FEDERAL PUBLIC DEFENDER
Counsel of Record
500 Poydras Street, Suite 318
Hale Boggs Federal Building
New Orleans, Louisiana 70130
(504) 589-7930
samantha_kuhn@fd.org

Counsel for Petitioner

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