No. 24-1183

IN THE
Supreme Court of the United States

ANTONIO LAMONT LIGHTFOOT,

Petitioner,

v.

UNITED STATES,

Respondent.

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

REPLY BRIEF OF PETITIONER

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INTRODUCTION

The Brief of the United States in Opposition ("Opp.") asserts that the decision below does not implicate the split in the circuits regarding how the categorical approach applies when the plain language of the predicate offense extends to conduct beyond the federal definition to which it is being compared. That assertion is demonstrably wrong. Notwithstanding the absence of any definitive Michigan law narrowing the definition of "confinement" to something less than its plain meaning, the Fourth Circuit predicted that Michigan courts would give the statute a narrowing construction. Nine other circuits would have refused to engage in that exercise. This case is a good vehicle for the Court to resolve a deep circuit split on a critically important issue.

ARGUMENT

I. By its plain meaning the Michigan statute extends to non-violent confinement and so is not a categorical match for robbery.

The Government attempts to make much of the fact that "Michigan's concept of robbery is larceny 'with the additional element of violence or intimidation.'" Opp. at 11 (quoting *People v. Chamblis*, 36 N.W.2d 473, 481 (Mich. 1975)). But it is irrelevant that Michigan follows the hornbook generic definition of "robbery." The question presented is whether the elements of Michigan assaultive bank robbery, an offense created and defined by statute, extend beyond the classic definition to include non-violent conduct.

The starting point of analysis must be the language of the assaultive bank robbery statute, which extends to a taking by "confinement." Contrary to the Government's assertions, the concept of "confinement" does not require violence or intimidation. Indeed, the Fourth Circuit majority acknowledged that the term "confine . . . in isolation . . . may not necessarily require force . . . against a person." Pet. App. at 15a.

Nor does the Government point to any Michigan case holding that assaultive bank robbery cannot be committed by non-violent confinement. The Michigan Supreme Court cases on which the Government relies are not at all on point; they merely recite the familiar generic distinction between robbery and larceny. *See Chamblis*, 236 N.W.2d at 481, *overruled by People v Cornell*, 646 N.W. 2d 127 (Mich. 2002); *People v. Yaeger*, 999 N.W.2d 490, 500 (Mich. 2023); *People v. Williams*, 814 N.W.2d 270, 279-80 & n.45 (Mich. 2012). And the Michigan Court of Appeals cases the Government cites speak generically about assaultive bank robbery but do not address (or even discuss) confinement as a means of committing the crime. *See People v. Douglas*, 478 N.W.2d 737 (Mich. Ct. App. 1991); *People v. Campbell*, 418 N.W.2d 404 (Mich. Ct. App. 1987). Judge Benjamin's dissent below cites other authorities for the reasonable conclusion that assaultive bank robbery does extend to larceny by non-violent confinement. Pet. App. at 20a–28a. The bottom line is that there is no definitive Michigan law on point.

Judge Benjamin's dissent below and the Petition also provide multiple examples of how a taking by

non-violent confinement could satisfy the elements of assaultive bank robbery. *See id*. at 27a–28a; Pet. at 28-29. Tellingly, the Government does not argue that these examples fail to satisfy the elements of assaultive bank robbery, nor does it argue that the examples are fanciful; the Government just ignores them. The Government's silence reflects that the plain meaning of "confinement" readily extends to non-violent confinement.

Moreover, the Fourth Circuit majority acknowledged that it was not simply applying the plain meaning of the assaultive bank robbery statute. Instead, it expressly held that, "[t]o defeat the categorical comparison between the state and federal robbery offenses, . . . Lightfoot must do more than show that his hypothesized minimum conduct fits within the four corners of the state statute." Pet. App. at 17a.

As shown in the Petition, the Fourth Circuit then offered its own interpretation of the statute, predicting that Michigan courts would limit the scope of the "confinement" language of the assaultive bank robbery statute to something narrower than its plain meaning. Pet. at 24. The Fourth Circuit did not suggest that there is any definitive Michigan case on point but rather made what amounted to an "*Erie* guess" as to how Michigan courts would rule on an undecided issue of state law. *Id*.

Because the plain meaning of the Michigan assaultive bank robbery statute extends to non-violent confinement, and because there is no definitive Michigan authority narrowing the plain meaning of the statute, the Fourth Circuit's holding that there is

a categorical match is contrary to this Court's precedents regarding the categorical approach. *See* Pet. at 30–31. As explained in the Petition, again with no response by the Government, the Fourth Circuit's approach is especially problematic because if a federal court's prediction of how state courts will rule turns out to be incorrect, the legality of multiple defendants' sentences will need to be revisited. *See, e.g.*, *Welch v. United States*, 578 U.S. 120, 131 (2016) (holding that *Johnson v. United States*, 576 U.S. 591 (2015), striking down the residual clause of the Armed Career Criminal Act, was retroactive in cases on collateral review).

II. The decision below exacerbates a circuit split on how to apply the categorical approach in cases in which the plain language of the asserted predicate offense extends beyond the scope of the federal definition to which it is being compared.

Contrary to the Government's argument, the decision below implicates and in fact deepens a circuit split regarding how the categorical approach should be applied where the plain language of the asserted predicate offense extends beyond the scope of the federal definition to which it is being compared.

The Government does not dispute that nine circuits have held that when the plain language of the asserted predicate state crime extends to conduct falling outside the relevant federal definition there is no categorical match, with no further analysis needed. Pet. at 13-19. These courts reason that when the elements of the state crime by their plain language extend to conduct outside the relevant federal

definition, the "realistic probability" test need not be considered or, by definition, is satisfied. *Id*.

This case would have come out differently in those circuits. As shown above, the plain language of the Michigan assaultive bank robbery statute extends to non-violent confinement. There is no definitive Michigan authority narrowing the plain meaning of the statute. And there are non-fanciful examples of how the crime could be committed by non-violent means. In those nine other circuits, there would be no categorical match, and Mr. Lightfoot would not have been subject to the three-strikes law sentencing enhancement.

The Fifth Circuit takes a contrary approach. There, where the plain meaning of the alleged predicate offense extends beyond the federal definition to which it is being compared, the defendant must show an actual case in which the state has prosecuted the broader conduct. Pet. at 19-21.

The Government contends that the Fourth Circuit approach is no different than that of the majority of circuits, and that the Fourth Circuit "already applies the rule urged by petitioner." Opp. at 14. Not so. The Fourth Circuit decision here broadens the split by adopting a third approach under which a federal court may itself adopt a narrowing interpretation of the alleged predicate offense, notwithstanding the absence of any definitive state law narrowing the plain language of the statute. Regardless of how one characterizes the Fourth Circuit approach, it unquestionably conflicts with that taken by a majority of the circuits in which the fact that the Michigan assaultive bank robbery statute by its plain language

extends to non-violent confinement would mean there is no categorical match, full stop.

III. The issue presented is of critical importance.

The Government does not even attempt to respond to Mr. Lightfoot's showing that the issue presented is of critical importance. There is no colorable argument to the contrary. District courts apply the categorical approach and the realistic probability test every day, and like Mr. Lightfoot, defendants routinely receive enhanced sentences that would not be imposed in another circuit. The Government's assertion that this Court has denied review in multiple cases raising this issue demonstrates how frequently the issue arises and reinforces the need to resolve it. Opp. at 9.

IV. This case is a good vehicle to resolve the issue presented.

Without affirmatively stating that the case is moot, but implying that it is, the Government asserts in cursory fashion that this case is a poor vehicle to decide the question presented. The Government is wrong. Mr. Lightfoot still has a legally cognizable interest in the case's outcome, and it is a good vehicle because it directly raises the issue presented.

This case remains a live controversy. Mr. Lightfoot's liberty continues to be restrained because of the original April 25, 2000, judgment entered against him, which imposed a five-year term of supervised release. Pet. App. at 51a-62a. It is true that Mr. Lightfoot was fortunate to receive an alternative form of relief from his sentence of Life

Imprisonment in May 2025 under the Modification of an Imposed Term of Imprisonment statute, 18 U.S.C. § 3582(c)(1)(A)(i). Nevertheless, the May 14, 2025, Order modifying his custodial sentence left the original five-year term of supervised release intact and unaltered. Pet. App. at 30a. ("All terms and conditions of the five-year term of supervised release will remain in full force and effect.").

The five-year term of supervised release was part of the original Count One judgment that Mr. Lightfoot's Section 2255 petition challenged. The Government is incorrect in asserting that Mr. Lightfoot did not challenge this portion of his sentence. Mr. Lightfoot's motion to vacate the sentence states in the first line that he moves "to set aside the judgment in this case on Count One pursuant to 28 U.S.C. § 2255." Supplemental Motion to Vacate Sentence at 1, *United States v. Lightfoot*, No. 8:99-cr-00409 (D. Md. Apr. 9, 2020), Dkt. No. 81-1. The judgment entered on Count One was: Life Imprisonment; 5 years Supervised Release; $100.00 Special Assessment. Pet. App. at 51a-62a.

If the Court rules in his favor here, Mr. Lightfoot's case will return to the district court for resentencing. There, the judge will be authorized to reduce his term of supervised release. *See e.g.*, *United States v. Ketter*, 908 F.3d 61, 66 (4th Cir. 2018); *United States v. Solano-Rosales*, 781 F.3d 345, 355 (6th Cir. 2015); *United States v. Melendez*, 16 F.4th 315 (1st Cir. 2021). The supervised release statutory range for his conviction under 18 U.S.C. § 924(c) is 0-5 years, *see* 18 U.S.C. § 3583(b)(1), with the advisory guideline range

being 3-5 years. *See* U.S. Sent'g Guidelines Manual § 5D1.2(a)(1) (U.S. Sent'g Comm'n 2024).

Though less grave than a sentence of imprisonment, supervised release is a "restriction on liberty." *Reno v. Koray*, 515 U.S. 50, 59 (1995). Because of the reciprocal relationship between a prison sentence and a term of supervised release, even when a prison term has ceased, a defendant serving a term of supervised release has a "legally cognizable interest in the outcome" of a challenge to his sentence. *Ketter*, 908 F.3d at 66 (quoting *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91 (2013)).

Mr. Lightfoot remains constrained by the original judgment against him, and his controversy in this Court remains live. This case is important to Mr. Lightfoot, as well as a good vehicle to correct a circuit split that threatens the uniformity of our criminal justice system.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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