No.

IN THE
Supreme Court of the United States

ANTONIO LAMONT LIGHTFOOT,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The three-strikes law, 18 U.S.C. § 3559(c), mandates a life sentence for a defendant convicted of a "serious violent felony" if the defendant has two prior convictions for "serious violent felonies," defined to include a list of enumerated offenses. This Court uses the "categorical approach" to determine whether a state conviction qualifies as a predicate offense under federal laws with this type of formulation. The question presented, on which the circuits are deeply split, is:

Whether there is a categorical mismatch when the elements of the predicate state offense, by their plain language, criminalize conduct outside the enumerated offense, with no further inquiry required or permitted.

RELATED PROCEEDINGS

The following proceedings are directly related to this case within the meaning of Rule 14.1(b)(iii):

- *United States v. Lightfoot*, No. 21-7447, U.S. Court of Appeals for the Fourth Circuit. Judgment entered October 18, 2024.

- *United States v. Lightfoot*, Nos. PJM 99-0409; PJM 16-1915, U.S. District Court for the District of Maryland. Judgment entered August 12, 2021.

- *United States v. Lightfoot*, No. 00-4357, U.S. Court of Appeals for the Fourth Circuit. Judgment entered March 28, 2001.

- *United States v. Lightfoot*, No. PJM 99-0409, U.S. District Court for the District of Maryland. Judgment entered April 25, 2000.

- *United States v. Lightfoot*, No. 99-cr-0409-ABA, U.S. District Court for the District of Maryland. Entered May 14, 2025.

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The opinion of the United States Court of Appeals for the Fourth Circuit below is reported at 119 F.4th 353 (4th Cir. 2024). Pet. App. 1a-28a. The opinion of the United States District Court for the District of Maryland is reported at 554 F. Supp. 3d 762 (D. Md. 2021). Pet. App. 31a-45a.

The opinion of the United States Court of Appeals for the Fourth Circuit in the prior related case is reported at 6 F. App'x 181 (4th Cir. 2001), Pet. App. 46a-50a, and the decision of the United States District Court for the District of Maryland from which that appeal was taken is unreported. Pet. App. 51a-62a.

JURISDICTION

The United States Court of Appeals for the Fourth Circuit entered judgment on October 18, 2024. Pet. App. 1a. The Court of Appeals denied a timely petition for rehearing on December 16, 2024. Pet App. 63a. On March 5, 2025, the Chief Justice granted an application to extend the time to file a petition for a writ of certiorari to May 15, 2025. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

The statutory provisions at issue, 18 U.S.C. § 3559(c)(1)-(2) and MCL § 750.531, are reprinted in the appendix. Pet. App. 64a-68a.

STATEMENT

The Fourth Circuit's decision in this case deepens a circuit split regarding the proper application of the "categorical approach," the test used to determine whether a prior conviction qualifies as a predicate offense under federal laws. Nine circuits hold that when the elements of a state crime, by their plain language, extend to conduct outside of the elements of the relevant federal definition of the crime, there is no categorical match, with no further inquiry necessary or permissible. In contrast, the Fifth Circuit requires the defendant in all cases to show that the state in fact prosecutes conduct outside the elements of the enumerated offense, even when the plain language of the state statute criminalizes conduct that is broader than that encompassed under the enumerated offense. The Fourth Circuit follows a middle ground approach that puts federal courts in the business of predicting whether state courts would limit the plain meaning of state statutes.

This divergence in approaches has significant consequences. It results in defendants facing different criminal liabilities, sentencing enhancements, and immigration consequences, depending on where an action is heard. This Court should grant review to resolve this conflict.

I. Legal Background

The federal three-strikes statute, 18 U.S.C. § 3559(c)(1), mandates a life sentence for a person convicted of a "serious violent felony" on three separate occasions. Pet. App. 64a. The three-strikes statute identifies three categories of "serious violent

felon[ies]." The first consists of offenses that qualify as one of several enumerated offenses (the enumerated clause). Pet. App. 66a. The second includes any offense that meets the parameters of the "force clause"—namely, an offense that is "punishable by a maximum term of imprisonment of 10 years or more that has as an element the use, attempted use, or threatened use of physical force against the person of another." *Id.* The third category encompasses any offense that falls within the "residual clause," which covers any offense "that, by its nature, involves a substantial risk that physical force against the person of another may be used in the course of committing the offense." *Id.*

Here, only the first category—offenses falling within the enumerated offenses—is at issue.[1]

Robbery, one of the enumerated offenses in the three-strikes statute, is defined "as described in [18 U.S.C. §§] 2111, 2113, or 2118." Pet. App. 66a. The three referenced statutes define maritime or

[1] The Fourth Circuit did not rely on the force clause, and force is not an element of Michigan bank robbery for the reasons explained below. *See infra* pp. 28–29. The Government has conceded that § 3559(c)'s residual clause is likely void for vagueness under *Johnson v. United States*, 576 U.S. 591, 595–97 (2015) (holding the residual clause in the Armed Career Criminal Act ("ACCA") void for vagueness).

territorial robbery (§ 2111),[2] bank robbery (§ 2113),[3] and robbery of a controlled substance (§ 2118).[4] All three federal robbery offenses criminalize efforts to take from another by "force," "violence," or "intimidation."

A prior conviction qualifies as a "serious violent felony" under the enumerated clause if the defendant was convicted of one of the offenses listed in the clause. This Court has consistently held that statutes establishing similar schemes mandate an application of the categorical approach to determine whether a state court conviction qualifies as one of the enumerated offenses. *Descamps v. United States*, 570 U.S. 254, 257 (2013) ("The Armed Career Criminal Act (ACCA or Act), increases the sentences of certain federal defendants who have three prior convictions 'for a violent felony,' . . . . To determine whether a past conviction is for one of those crimes, courts use what has become known as the 'categorical

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[2] "Whoever, within the special maritime and territorial jurisdiction of the United States, by force and violence, or by intimidation, takes or attempts to take from the person or presence of another anything of value, shall be imprisoned[.]" 18 U.S.C § 2111.

[3] "Whoever, by force and violence, or by intimidation, takes, or attempts to take, from the person or presence of another . . . any property or money or any other thing of value belonging to . . . any bank, credit union, or any savings and loan association . . . [s]hall be fined[.]" 18 U.S.C. § 2113(a).

[4] "Whoever takes or attempts to take from the person or presence of another by force or violence or by intimidation any material or compound containing any quantity of a controlled substance . . . [shall] be fined under this title or imprisoned[.]" 18 U.S.C. § 2118(a).

approach[.]"'(citations omitted)); *Taylor v. United States*, 495 U.S. 575, 600 (1990) (felon in possession); *Moncrieffe v. Holder*, 569 U.S. 184, 190 (2013) (Immigration and Nationality Act).

Following these precedents, lower courts have applied the "categorical approach" to determine whether a state offense constitutes an enumerated offense under 18 U.S.C. § 3559(c)(2)(F)(i). *See, e.g.*, *United States v. Johnson*, 915 F.3d 223, 228 (4th Cir. 2019) ("Statutes requiring application of a categorical approach may be worded differently, but the ultimate inquiry remains the same."); *United States v. Pemberton*, 85 F.4th 862, 866 (7th Cir. 2023); *United States v. Pavulak*, 700 F.3d 651, 672 (3d Cir. 2012) (holding that § 3559 requires a "district judge to evaluate whether the 'elements of the statutory state offense,' not 'the specific facts' underlying the defendant's prior conviction," constitute an enumerated offense); *United States v. Doss*, 630 F.3d 1181, 1196 (9th Cir. 2011).

Under the categorical approach, a court must "focus solely on whether the elements of the crime of conviction sufficiently match the elements of [the federal definition], while ignoring the particular facts of the case." *Mathis v. United States*, 579 U.S. 500, 504 (2016). Courts "must presume that the conviction 'rested upon [nothing] more than the least of th[e] acts' criminalized, and then determine whether even those acts are encompassed by" the definition in the federal sentencing enhancement. *Moncrieffe*, 569 U.S. at 190–91 (alterations in original).

The Court has cautioned, however, that this "focus on the minimum conduct criminalized by the state statute is not an invitation to apply 'legal imagination' to the state offense[.]" *Moncrieffe*, 569 U.S. at 191 (quoting *Gonzalez v. Duenas-Alvarez*, 549 U.S. 183, 193 (2007)). Instead, "there must be 'a realistic probability, not a theoretical possibility, that the State would apply its statute'" to that conduct. *Id.* (quoting *Duenas-Alvarez*, 549 U.S. at 193).

At the same time, the Court has stressed that, even under the realistic probability test, the focus is on the "elements" of the state offense, and not on how the offense is "normally committed or usually prosecuted". *United States v. Taylor*, 596 U.S. 845, 858 (2022). That focus on the elements avoids the "oddity" of "placing a burden on the defendant to present empirical evidence about the government's own prosecutorial habits." *Id.* at 857. Burdening the defendant to find a case where a person was prosecuted for conduct falling outside the relevant federal definition poses "practical challenges" because "not all of those cases make their way into easily accessible commercial databases." *Id.*

In short, when the elements of the predicate state offense are "broader than" the offense enumerated in the federal statute, the categorical approach is not satisfied, full stop. *Mathis*, 579 U.S. at 509.

II. Factual Background

In 2000, Mr. Lightfoot was convicted in the District Court of Maryland of bank robbery in violation of 18 U.S.C. § 2113, and of using a firearm during a crime

of violence in violation of 18 U.S.C. § 924(c). Pet. App. 2a. According to the government, Mr. Lightfoot already had two prior convictions for "serious violent felonies"—a 1985 conviction for armed bank robbery in Virginia and a 1990 conviction for assaultive bank robbery in Michigan. On that basis, the government argued that the Maryland bank robbery conviction was Mr. Lightfoot's third strike under § 3559(c). The District Court agreed and accordingly imposed a mandatory life sentence. Pet. App. 47a. The Fourth Circuit affirmed the conviction. *Id.*

Following this Court's decision in *Johnson v. United States*, 576 U.S. 591 (2015), holding the residual clause of the ACCA to be unconstitutionally vague, the Fourth Circuit authorized Mr. Lightfoot to file a successive 28 U.S.C. § 2255 motion to argue that his prior convictions did not constitute serious violent felonies under § 3559(c). Pet. App. 3a. Mr. Lightfoot accordingly moved under § 2255 to vacate his sentence, arguing that his 1990 Michigan conviction for assaultive bank robbery did not qualify as a "serious violent felony" under § 3559(c)'s force or enumerated clauses. *Id.*

The Michigan statute provides, in relevant part, that "[a]ny person who, with intent to commit the crime of larceny . . . shall confine . . . or threaten to confine . . . any person for the purpose of stealing from any building, bank, safe or other depository" shall be guilty of a felony.[5] Pet. App. 68a. Mr. Lightfoot

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[5] The full text of MCL § 750.531 provides:

> Bank, safe and vault robbery–Any person who, with intent to commit the crime of larceny, or any felony, shall confine,

argued that this offense does not categorically fall within the enumerated crime of robbery because the Michigan statute includes robbery through "confinement," whereas the enumerated federal robbery statutes require the use of force, violence, or intimidation.[6] Pet. App. 15a. The District Court denied the motion. Pet. App. 31a.

The Fourth Circuit affirmed. It acknowledged that the term "'confine,' . . . in isolation . . . may not necessarily require force or threat of force against a person," yet at the same time asserted that "robbery as Congress described it in the enumerated offenses clause does not exclude robbery by confinement." Pet. App. 15a-17a. Rather than give "confinement" its typical plain meaning, which encompasses both violent and nonviolent confinement, the Fourth

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maim, injure or wound, or attempt, or threaten to confine, kill, maim, injure or wound, or shall put in fear any person for the purpose of stealing from any building, bank, safe or other depository of money, bond or other valuables, or shall by intimidation, fear or threats compel, or attempt to compel any person to disclose or surrender the means of opening any building, bank, safe, vault or other depository of money, bonds, or other valuables, or shall attempt to break, burn, blow up or otherwise injure or destroy any safe, vault or other depository of money, bonds or other valuables in any building or place, shall, whether he succeeds or fails in the perpetration of such larceny or felony, be guilty of a felony, punishable by imprisonment in the state prison for life or any term of years.

[6] Mr. Lightfoot also argued in the district court that without the residual clause, Michigan bank robbery does not qualify as a "serious violent felony," because it neither satisfies the "enumerated offenses clause" nor the "force clause." Pet. App. 3a.

Circuit held that Mr. Lightfoot "must show a 'realistic probability' that the State would apply its assaultive bank robbery statute" to takings accomplished through nonviolent confinement. Pet. App. 17a. Because "[Mr.] Lightfoot cite[d] no Michigan judicial decisions or Michigan laws in support of his capacious construction of 'confine,'" the Court of Appeals reasoned, "the possibility that Michigan would punish under this statute a larceny committed without force or putting in fear remains purely hypothetical." Pet. App. 19a.[7]

Judge Benjamin dissented. She noted that "confinement, by its plain meaning, does not require force, violence, or intimidation." Pet. App. 25a (Benjamin, J., dissenting). She then explained that a defendant "need not prove that realistic probability here, where the [state] statute explicitly proscribes nonviolent and nonthreatening conduct[.]" *Id.* In other words, Michigan assaultive bank robbery does not constitute a "serious violent felony," because confinement does not require force, violence, or

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[7] The Fourth Circuit also held that MCL § 750.531 is divisible into the assaultive crime of bank robbery and the non-assaultive crime of safe breaking. Pet. App. 10a. Then, because the statute was divisible, the court applied the "modified categorical approach" under *Descamps*, 570 U.S. at 257. Pet. App. 6a. That approach allows the court to look at a defendant's actual charging documents "to determine which alternative formed the basis of the defendant's prior conviction." *Descamps*, 570 U.S. at 257. Based on Mr. Lightfoot's charging documents, the Fourth Circuit concluded that he had been convicted of "assaultive bank robbery." Pet. App. 11a-12a. This petition does not seek review of the Fourth Circuit's holding that the statute is divisible. However, Mr. Lightfoot does not concede that the Fourth Circuit correctly decided that issue.

intimidation, and there is no need to show a "realistic probability" of prosecution because "confine[ment]" is included in the plain language of the state statute. Pet. App. 20a-28a.

The Fourth Circuit denied Mr. Lightfoot's petition for rehearing. Pet. App. 63a.[8]

REASONS FOR GRANTING THE PETITION

The Fourth Circuit's decision deepens a circuit split on how to apply the categorical approach in situations in which the plain language of the state statute defines the asserted predicate offense in a

[8] On May 14, 2025, as this petition was being finalized, the District Court granted Mr. Lightfoot's motion for compassionate release, reducing his sentence pursuant to 18 U.S.C. § 3582(c)(1)(A)(i) to time served plus two days. Although Mr. Lightfoot will be released in the next few days, this case is not moot because the order reducing his term of imprisonment did not reduce Mr. Lightfoot's term of supervised release. The order states that "[a]ll terms and conditions of the five-year term of supervised release will remain in full force and effect." Pet. App. 29a. Under this Court's precedents, a case becomes moot only "when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome." *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91 (2013) (internal quotation marks omitted). Here, Mr. Lightfoot's challenge to his sentence is not moot because "[a]lthough the underlying prison sentence has been served, a case is not moot when an associated term of supervised release is ongoing, because on remand a district court *could* grant relief to the prevailing party in the form of a shorter period of supervised release." *United States v Ketter*, 908 F.3d 61, 65–66 (4th Cir. 2018) (noting that in so holding the Fourth Circuit was joining eight of its sister circuits in adopting the unitary sentence approach).

manner that criminalizes conduct beyond the scope of the relevant federal definition.

Nine circuits have held that in such circumstances, there is no categorical match, and the defendant need not identify a case in which the state has prosecuted the broader conduct. These courts reason that when the plain meaning of the state statute criminalizes conduct beyond the scope of the relevant federal definition, the realistic probability test does not come into play, either because it is not relevant or because it is by definition satisfied. In contrast, the Fifth Circuit has repeatedly held (including in an en banc decision) that a defendant must point to an actual prosecution in all cases, regardless of the plain language of the state statute.

The Fourth Circuit's approach falls between these poles. Like the Fifth Circuit, the Fourth Circuit rejects the majority view that if a state criminal statute by its plain language extends to conduct falling outside the elements of the enumerated offense, there is no categorical match, period. At the same time, unlike the Fifth Circuit, the Fourth Circuit does not always require the defendant to identify a specific case in which conduct outside the enumerated offense has been prosecuted. Instead, it holds that a defendant must show an actual prosecution, legislative act, or judicial decision showing that the state would apply the offense to conduct outside the enumerated offense. Pet. App. 17a-18a.

In applying that approach in the decision below, the Fourth Circuit made what in substance was no

different than an "*Erie* guess" as to how Michigan courts would interpret the assaultive bank robbery statute. Specifically, despite the absence of any Michigan decision so holding, the Fourth Circuit concluded that Michigan would limit the assaultive bank robbery statute to conduct involving force or intimidation. As the dissent noted, the majority reached this conclusion notwithstanding that the ordinary meaning of "confinement" does not require force or intimidation (as the majority acknowledged) and that there are Michigan lower court decisions supporting that the assaultive bank robbery statute extends to conduct not involving force or intimidation. Pet. App. 24a-28a (Benjamin, J., dissenting).

This split means that identically situated defendants will receive drastically different sentencing outcomes depending on the circuit in which they are sentenced. Defendants convicted of the same federal crime with identical prior convictions may be subject to mandatory life imprisonment in the Fourth and Fifth Circuits but not in the First, Second, Third, Sixth, Seventh, Eighth, Ninth, Tenth, and Eleventh Circuits. This Court should grant review to resolve the issue of how the categorical approach should be applied when the plain language of the predicate offense criminalizes conduct beyond the scope of the relevant federal definition.

I. 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 relevant federal definition to which it is being compared.

Circuit courts are split on whether, under the categorical approach, when the plain language of the predicate offense criminalizes conduct outside the relevant federal definition, a defendant must identify an instance in which the state has actually applied the broader meaning. The Fourth Circuit's decision in this case deepens this split.

A. The First, Second, Third, Sixth, Seventh, Eighth, Ninth, Tenth, and Eleventh Circuits have held that, when the plain language of the predicate offense criminalizes conduct outside the relevant federal definition, there is no categorical match.

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. 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. Either way, the defendant is not obligated to identify an

instance in which the state has applied the broader meaning.

In *Da Graca v. Garland*, 23 F.4th 106 (1st Cir. 2022), the First Circuit held that a state statute prohibiting any person from driving "a vehicle, not his or her own . . . with intent temporarily to deprive the owner or lessee of his or her possession of the vehicle" did not categorically match the federal definition of generic theft because the state offense criminalized "joyriding." *Id.* at 108, 112–14. The court explicitly rejected the argument that the defendant had to show "actual cases" in which the state had enforced this statute against conduct like joyriding. *Id.* at 113. As the court explained, "there is no actual case requirement where a statute is facially broader than its generic counterpart." *Id.* Since the state statute's text was "plainly overbroad," it was "not a categorical match to the generic definition of theft." *Id.* at 114.

Similarly, in *Hylton v. Sessions*, 897 F.3d 57 (2d Cir. 2018), the Second Circuit held that a state drug-trafficking offense did not categorically match the enumerated federal drug-trafficking offense. *Id.* at 63. The federal offense criminalized trafficking over thirty grams of marijuana. *Id.* at 62. The state offense criminalized trafficking twenty-five grams or more. *Id.* at 63. Because the state offense criminalized more conduct than the federal offense, there was no categorical match. *Id.* The court made clear that there is no "realistic probability" requirement "when the statutory language itself, rather than the application of legal imagination to that language, creates the realistic probability that a state would apply the statute to conduct beyond the

generic definition." *Id.* (quoting *Ramos v. U.S. Att'y Gen.*, 709 F.3d 1066, 1072 (11th Cir. 2013)).

The Third Circuit, in a recent en banc decision, has taken the same approach, "limit[ing] the realistic-probability analysis to instances in which the elements of the state crime and the federal offense were identical." *Ndungu v. Att'y Gen. U.S.*, 126 F.4th 150, 168 (3d Cir. 2025) (en banc). There, the issue presented was whether the defendant was subject to deportation based on having been convicted of "two crimes involving moral turpitude." *Id.* at 157. The Board of Immigration Appeals held that the state law felony of fleeing-or-eluding law enforcement was categorically a crime involving moral turpitude. *Id.* at 163. It reasoned that there was no realistic probability that the state would apply the felony to conduct not involving moral turpitude—even though the statue on its face was not so limited. *Id.* at 168. The Third Circuit reversed, holding that the Board erred by applying "realistic-probability considerations as a means of arriving at a categorical match—not to negate or preserve a preexisting match." *Id.*

The en banc Sixth Circuit recently joined the majority approach. In *United States v. Cervenak*, 135 F.4th 311 (6th Cir. 2025) (en banc), it held that Ohio robbery did not categorically match the definition of "crime of violence" in the career-offender guideline, U.S.S.G § 4B1.1 (2021). *Id.* at 323. This guideline creates a sentence enhancement for defendants who have committed three "crime[s] of violence." *Id.* Like the three-strikes statute, the guideline defines "[c]rime of violence" to include an offense on an enumerated list of offenses. *Id.* at 320. The question

was whether Ohio robbery categorically matched two of the enumerated offenses, robbery and extortion. *Id.*

After comparing the elements of Ohio robbery to the generic definitions of robbery and extortion, the court held there was no categorical match. *Id.* at 326, 331. The court rejected the government's argument that the defendant needed to show a "realistic probability" that the Ohio statute would be applied as broadly as its plain language, holding that "a defendant need not provide caselaw when they can point to the text of the state statute." *Id.* at 326.

The Seventh Circuit followed the same approach in *Aguirre-Zuniga v. Garland*, 37 F.4th 446 (7th Cir. 2022). There, the court held that a state statute criminalizing both optical and positional isomers of methamphetamine[9] did not categorically match the corresponding federal offense that criminalized only optical isomers. *Id.* at 453. In doing so, the court explicitly rejected the argument that a defendant must "satisfy the realistic probability test" if the state statute plainly criminalizes more conduct than its federal counterpart. *Id.* at 450. The court explained that, if the "statute is overbroad on its face under the categorical approach, the inquiry ends." *Id.* It held that only "[i]f the plain language of the state statute

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[9] "An 'isomer' is a substance that is '[c]omposed of the same elements in the same proportions, and having the same molecular weight, but forming different substances, with different properties (owing to the different grouping or arrangement of the constituent atoms).' Methamphetamine has optical and positional isomers, and methamphetamine itself exists in two isomeric forms, l-methamphetamine and d-methamphetamine[.]" *Aguirre-Zuniga*, 37 F.4th at 452 (citations omitted).

is ambiguous," do courts "turn to the 'realistic probability' test." *Id.* at 450 (quoting *Hylton v. Sessions*, 897 F.3d 57, 63 (2d Cir. 2018); *Salmoran v. Att'y Gen. U.S.*, 909 F.3d 73, 81–82 (3d Cir. 2018)). The Eighth Circuit adopted the same approach in *Gonzalez v. Wilkinson*, 990 F.3d 654 (8th Cir. 2021). In that case, the court held that a state law prohibiting possession of twenty grams or less of cannabis criminalized more conduct than the federal controlled substance law because the federal offense exempted the "mature stalks" of the plant and "oil or cake made from the seeds of the plant," while the state offense covered all forms of cannabis. *Id.* at 658. The court rejected the government's argument that the defendant must identify cases in which people were "prosecuted for possessing stalks of marijuana." *Id.* at 659. "[W]hen the statute's reach is clear on its face, it takes no 'legal imagination' or 'improbable hypotheticals' to understand how it may be applied and to determine whether it covers conduct an analogous federal statute does not." *Id.* at 660. In short, the "realistic probability" language does not require defendants to prove "that unambiguous laws really mean what they say." *Id.*

The Ninth Circuit has also adopted this approach. In *Chavez-Solis v. Lynch*, 803 F.3d 1004 (9th Cir. 2015), the court held that California's child-pornography statute criminalized possession of a broader set of images than the corresponding federal offense. *Id.* at 1008–09. In doing so, the court rejected the government's argument that the defendant was obliged to show a "realistic probability" that anyone would be prosecuted for conduct that violated the state but not the federal law. *Id.* at 1009–10. The

court held that, when a state statute's "'greater breadth is evident from its text,' a [defendant] need not point to an actual case applying the statute of conviction in a nongeneric manner." *Id.* at 1010 (quoting *United States v. Grisel*, 488 F.3d 844, 850 (9th Cir. 2007)). Defendants can "simply rely on the statutory language to establish the statute as overly inclusive." *Id.* (internal quotation marks omitted).

Similarly, in *United States v. Titties*, 852 F.3d 1257 (10th Cir. 2017), the Tenth Circuit held that a state law criminalizing pointing firearms for "whimsy, humor or prank" did not categorically involve the "use, attempted use, or threatened use of physical force." *Id.* at 1273. The court rejected the government's argument that the defendant was required to identify a case in which the state had prosecuted someone "for pointing a firearm in obvious jest." *Id.* at 1274. It held that when "the statute lists means to commit a crime that would render the crime non-violent under the ACCA's force clause, any conviction under the statute does not count as an ACCA violent felony." *Id.* at 1275.

The Eleventh Circuit likewise has adopted this approach. In *Said v. United States Attorney General*, 28 F.4th 1328 (11th Cir. 2022), the court held that a state drug conviction does not "relat[e] to a controlled substance" as defined by federal law when "not all substances that it proscribes are federally controlled." *Id.* at 1333. The court clarified that while the "simplest way for an offender to show [a] realistic probability is to 'point to a case' in which the state statute was used to prosecute such conduct[,]" the court "rejected the government's argument that the

offender must always 'point to a case[.]'" *Id.* at 1331 (quoting *Ramos v. U.S. Att'y Gen.*, 709 F.3d 1066, 1071–72 (11th Cir. 2013)). Instead, "a litigant can use facially overbroad statutory text to meet the burden of showing the realistic probability that the state law covers more conduct than the federal [definition]." *Id.* at 1332.

In all nine of these circuits, when the asserted predicate offense on its face reaches conduct not covered by the relevant federal definition, there is no categorical match, period. Had Mr. Lightfoot been convicted in one of these circuits, he would not have received the mandatory sentence of life imprisonment he received in the Fourth Circuit.

B. In the Fifth Circuit, even when a state offense by its plain language criminalizes conduct outside the relevant federal definition, the defendant must identify an actual case applying the state law more broadly than the relevant federal offense.

In direct conflict with the nine circuits discussed above, the Fifth Circuit has repeatedly held (including en banc) that even when the state statute by its plain language criminalizes broader conduct than the relevant federal definition, a defendant must still identify an actual case in which the state has applied the statute to the broader conduct.

The Fifth Circuit adopted this approach in *United States v. Castillo-Rivera*, 853 F.3d 218 (5th Cir. 2017) (en banc). In that case, the court considered whether a defendant's state conviction for possessing a firearm

after being convicted of a felony constituted an "aggravated felony" under U.S.S.G. § 2L1.2(b)(1)(C). The sentencing guideline at issue cross-references to a statute defining "aggravated felony" to include "any offense described in 18 U.S.C. § 922(g)(1)[.]" *Castillo-Rivera*, 853 F.3d at 220. Section 922(g) prohibits felons from "ship[ping] or transport[ing] in interstate or foreign commerce, or possess[ing] in or affecting commerce, any firearm or ammunition[.]" 18 U.S.C. § 922(g)(1). The defendant argued that his state conviction failed the categorical test because the state statute explicitly adopted definitions of "felony" and "firearm" that were "broader than their federal counterparts" in § 922. *Id.* at 222.

The Fifth Circuit rejected this argument. *Id.* While acknowledging that "the Texas statute's definition[s]" were "plainly broader than [their] federal counterpart[s]," it concluded that even when "a state statute is broader on its face" than the corresponding federal offense, there is "no exception to the actual case requirement." *Id.* at 223. Accordingly, the court held the defendant "must *at least* point to his own case or other cases *in which the state courts in fact did apply the statute in the special (nongeneric) manner for which he argues*." *Id.* (quoting *Duenas-Alvarez*, 549 U.S. at 193 (emphases added)). "In short, without supporting state case law, interpreting a state statute's text alone is not enough to establish the necessary 'realistic probability.'" *Id.* at 223. Based on this reasoning, the court held that the defendant's state conviction counted as an "aggravated felony." *Id.* at 226. Subsequent cases in the Fifth Circuit consistently follow this approach. *See, e.g.*, *Alejos-Perez v. Garland*, 93 F.4th 800, 805

(5th Cir. 2024); *Ponce v. Garland*, 70 F.4th 296, 300–02 (5th Cir. 2023); *Vetcher v. Barr*, 953 F.3d 361, 367–68 (5th Cir. 2020).

The Fifth Circuit has not retreated from this position, notwithstanding the weight of authority against it. Just recently, in *United States v. Porterie*, No. 22-30457, 2025 WL 457999 (5th Cir. Feb. 11, 2025), the court considered whether a defendant's conviction for Louisiana aggravated battery qualified as a "violent felony" under the ACCA. *Id.* at *1–2. The defendant argued that it does not, because a crime must have a *mens rea* beyond recklessness to qualify as an ACCA predicate crime, whereas Louisiana aggravated battery is a general intent crime that can be committed with reckless or negligent states of mind. *Id.* at *3–6.

The Fifth Circuit rejected the defendant's argument. Although the court agreed that Louisiana aggravated battery can be committed recklessly, it required proof that there is a "realistic probability" that the State would prosecute conduct outside the generic definition of a crime. *Id.* at *4. Specifically, the court "required an actual case demonstrating incompatibility between the state law and the federal generic definition." *Id.* (explaining that "without supporting state case law, interpreting a state statute's text alone is simply not enough to establish the necessary 'realistic probability'").

C. In the Fourth Circuit, when a state criminal statute by its plain language extends to conduct outside the relevant federal offense, the defendant must point to an actual prosecution, legislative act, or judicial decision to show that the state likely would apply its statute to that conduct.

The Fourth Circuit has taken a third approach that falls between the test developed by the Fifth Circuit and that followed by the other circuits. Unlike the Fifth Circuit, the Fourth Circuit has held that when the state statute by its plain language criminalizes conduct outside of the relevant federal offense, the defendant need not show a specific case in which the state has prosecuted that conduct. However, unlike in the other circuits having decided the issue, that is not the end of the inquiry in the Fourth Circuit. Instead, absent evidence of an actual prosecution, the Fourth Circuit requires the defendant to point to judicial decisions, legislative history, or other state law to show that it is likely that the state would apply its statute to conduct outside the federal offense. In substance, the Fourth Circuit permits the federal court to decide for itself with no state court decision on point whether the state courts would place limitations on the meaning of the statute not apparent from the language of the statute itself.

The decision below reflects this approach. As defined in § 3559, the enumerated offense of robbery requires the use of "force and violence, or . . . intimidation." Pet. App. 13a. The state offense for which Mr. Lightfoot was convicted, however, criminalizes larceny committed through

"confinement." Pet. App. 68a. The Fourth Circuit majority acknowledged that the term "'[c]onfine,' . . . in isolation . . . may not necessarily require force or threat of force against a person." Pet. App. 15a. And the dissent convincingly demonstrated that the plain meaning of "confinement" extends to nonviolent conduct. Pet. App. 24a-25a (Benjamin, J., dissenting) (noting that "confinement, by its plain meaning, does not require force, violence, or intimidation"); *see also* Black's Law Dictionary (1st ed. 1891) (defining "confinement" as "either a moral or a physical restraint"); *Confinement*, An American Dictionary of the English Language (1865) (defining "confinement" as "any restraint of liberty by force or other obstacle, or by necessity").[10]

In most circuits, this facial mismatch between the elements of the Michigan crime and the enumerated offense would mean there was no categorical match, with no further inquiry permitted. The realistic probability test would not come into play because, as the en banc Sixth Circuit put it just last month, "a defendant need not provide caselaw when they can point to the text of the state statute." *Cervenak*, 135 F.4th at 326. Or, as the en banc Third Circuit similarly stated as a bright line rule, it is "not permissible" to rely on realistic probability test as "a means of arriving at a categorical match" when the elements on their face are not identical. *Ndungu*, 126 F.4th at 168.

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[10] These dictionaries define "confine" as it was used when the Michigan bank robbery statute was enacted. *See* 1877 Mich. Pub. Acts 86, No. 111, *as codified at* MCL § 16748 (1929).

Yet, the Fourth Circuit refused to apply the plain meaning of the words of the Michigan statute. Instead, the court of appeals predicted that Michigan courts and prosecutors would give "confinement" a narrower reading than its plain meaning, with nothing to go on but the federal court's prediction as to how Michigan courts might rule and how Michigan prosecutors might act. In substance, the court made the equivalent of an "*Erie* guess" as to how the Michigan courts likely would limit the scope of a state statute so as not to apply it to conduct falling within its plain language. On that basis, the court held that Mr. Lightfoot was obligated to establish "a 'realistic probability' . . . that the State would apply its assaultive bank robbery statute" to nonviolent confinement. Pet. App. 17a. Because "[Mr.] Lightfoot ha[d] not identified any case where confinement without force or fear was the basis of an assaultive bank robbery conviction" and "cite[d] no Michigan judicial decisions or Michigan laws in support of his capacious construction of 'confine,'" the Fourth Circuit held that his prior conviction under the Michigan statute qualified as a serious violent felony. Pet. App. 18a.

The Fourth Circuit distinguished its prior decision in *Gordon v. Barr*, 965 F.3d 252 (4th Cir. 2020), which involved a different "*Erie* guess." In that case, the Fourth Circuit held that there was a categorical mismatch between a Virginia state statute criminalizing firing "any firearm" in a public place and a federal offense applying to a "firearm," defined to exclude antique firearms. *Id.* at 254–55. Although the defendant could not cite any case in which Virginia had prosecuted anyone for discharging an

antique firearm, the Fourth Circuit held that there was no categorical match because "the plain language of [the statute], supported by decisions of Virginia's courts and actions of the General Assembly, ma[d]e clear that discharge of an antique firearm is conduct prohibited under that statute," not merely a theoretical possibility. *Id.* at 260. In substance, just as in the decision below, the Fourth Circuit based the decision about whether to apply an enhanced federal sentence on a federal court's prediction as to how a state court would likely interpret a state statute. *See id.*

II. Mr. Lightfoot's conviction does not qualify as a "serious violent felony" under § 3559(c).

Review is also warranted here because the decision below is wrong.

A. The Fourth Circuit erred in holding that when a state offense criminalizes conduct outside the relevant federal definition through its plain language, the defendant still must identify a case in which the state has applied the statute to the broader conduct.

Section 3559 mandates a life sentence if a defendant has three convictions for "offenses" that qualify as one of the enumerated offenses in § 3559(c)(2)(F)(i). That statutory scheme mandates application of the categorical approach to determine whether a predicate offense qualifies as one of the enumerated offenses. *Mathis*, 579 U.S. at 504–05.

This Court has been crystal clear as to how to apply the categorical approach. Specifically, an earlier conviction will qualify as an enumerated offense only if the least culpable facts that would constitute that offense fall within the enumerated crime. *See Taylor v. United States*, 495 U.S. 575, 600 (1990) (holding that the "formal categorical approach" requires "looking only to the statutory definitions of the prior offenses, and not to the particular facts underlying those convictions"). As the Court put it in the context of an ACCA case: "We have often held, and in no uncertain terms, that a state crime cannot qualify as an ACCA predicate if its elements are broader than those of a listed generic offense." *Mathis*, 579 U.S. at 509.

Difficulty may arise in applying the categorical approach when there is no one-to-one correspondence between a state criminal statute and the relevant federal definition because of imprecise statutory language or inconsistent "technical definitions and labels under state law." *Taylor*, 495 U.S. at 590.

This Court's decision in *Gonzales v. Duenas-Alvarez*, 549 U.S. 183 (2007), provides an illustration. There, the Court considered whether violation of a California vehicle theft statute that criminalized aiding and abetting vehicle theft constituted a "theft offense" as used in an immigration statute under the categorical approach. The Court had little difficulty in concluding that "generically speaking the law treats aiders and abettors during and before the crime the same way it treats principals." *Id.* at 190. Nonetheless, the defendant argued that under a peculiarity of California law, a defendant can be

criminally liable for conduct he did not intend, giving an example of a person who bought liquor for an underage drinker being held "criminally responsible for that young drinker's later (unforeseen) reckless driving." *Id.* at 191.

In the context of that kind of fanciful hypothetical, the Court held that "to find that a state statute creates a crime outside the generic definition of a listed crime in a federal statute requires more than the application of legal imagination to a state statute's language." *Id.* at 193. There must be a "realistic probability, not a theoretical possibility, that the State would apply its statute to conduct that falls outside the generic definition of a crime." *Id.*

This Court has stressed, however, that the focus of the realistic probability test remains on the "elements" of the state offense, not how the crime is "normally committed or usually prosecuted." *Taylor*, 596 U.S. at 858. Thus, the categorical test is not satisfied if the elements of the predicate state offense are "broader than" the offense enumerated in the federal statute. *Mathis*, 579 U.S. at 509.

As most circuits have held, the realistic probability test should not come into play (or necessarily is satisfied) when, by its plain language, the asserted predicate offense criminalizes conduct outside the relevant federal definition. In such situations, the mismatch between the state statute and the federal statute is not a consequence of using "legal imagination" to conceive of farfetched ways in which prosecutors might apply the state statute. Instead, the text of the state statute itself creates the

mismatch by including a *category of conduct* that is not covered by the relevant federal definition.

B. Because by its plain language the Michigan statute extends to nonviolent "confinement," it is not a categorical match for robbery.

The federal robbery statutes enumerated in § 3559 all include as an element the use of force, violence or intimidation. *Stokeling v. United States*, 586 U.S. 73, 77–78 (2019). In contrast, the Michigan statute specifically identifies "confinement," with no modifying description, as one of the means by which the crime may be committed. As shown above, under its plain and normal meaning, "confinement" does not necessarily involve the use of force, violence or intimidation. *See* Black's Law Dictionary (1st ed. 1891) (defining "confinement" as "either a moral or a physical restraint").

Indeed, as noted above, the Fourth Circuit itself acknowledged that the term "'[c]onfine,' . . . in isolation . . . may not necessarily require force or threat of force against a person." Pet. App. 15a. In nine circuits that acknowledgement would mean that there is no categorical match, with no further inquiry necessary or permissible.

Not surprisingly, considering the plain meaning of "confinement," it is easy to come up with examples of how one could use nonviolent confinement to commit larceny, and thereby violate the Michigan statute. Judge Benjamin provided one example in her dissent, describing a hotel staff member locking the door to a

balcony on which a hotel guest is reading, and stealing the guest's money without the guest ever being aware of the confinement. Pet. App. 27a-28a (Benjamin, J., dissenting).

Or the nonviolent confinement could be accomplished by trickery or deceit: A person could invite a neighbor over for drinks, step out to "take a call," lock the door, and slip across the street to steal the neighbor's money or property. A car salesman could take a customer's keys, invite the customer to wait in the lounge without disclosing that the door to the lounge is set to lock when closed, and steal the car. Or a bank customer could observe a teller step into a back room, momentarily leaving her cash door open, then lock the door to the room and abscond with the cash. It requires no legal imagination to come up with examples of robbery through nonviolent confinement.

The Fourth Circuit stated the essence of its holding as follows: "To defeat the categorical comparison between the state and federal robbery offenses, therefore, Lightfoot must do more than show that his hypothesized minimum conduct fits within the four corners of the state statute[.]" Pet. App. 17a. According to the Fourth Circuit, even when the state statute on its face criminalizes conduct beyond that which falls within the relevant federal definition, a defendant still must show a "realistic probability" that the state would apply its statute as written. That rationale cannot be reconciled with this Court's repeated holdings that when the elements of the state crime on its face are broader than the relevant federal definition, there would be no categorical match,

period, end of discussion. *See Mathis*, 579 U.S. at 509; *Taylor*, 596 U.S. at 858–59 (holding that the Court will not ask whether a state court applies a statute in a "nongeneric" manner unless the elements of the predicate and enumerated offense "clearly overlap[]"). When the ordinary meaning of a statute's language encompasses nonviolent conduct, the fact that a crime can (or even usually) be committed violently does not alter the plain meaning of the text.[11]

In substance, the Fourth Circuit based its decision on a prediction that a Michigan court would interpret the term "confinement" as used in the statute not to have its usual meaning, but instead to be limited to violent confinement. But that is no more than a federal court's guess as to how a state court would interpret a state statute. As the dissent shows, there are certainly strong arguments that Michigan courts would interpret "confinement" to mean "confinement" in accordance with its plain meaning. Pet. App. 24a-25a (Benjamin, J., dissenting) ("[C]onfinement, by its plain meaning, does not require force, violence, or intimidation."). It is also foreseeable that a Michigan prosecutor would bring charges based on the plain meaning of "confinement." Indeed, because 90% to 95% of prosecutions result in plea bargains with no

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[11] To illustrate, suppose that the statute's confinement elements were contained in a separately enumerated crime—call it "Takings by Confinement." There would be no question that the plain text of such a statute would not require "force and violence, or intimidation." Because the categorical approach is based on plain statutory text, courts should give the confinement elements in MCL § 750.531 the *exact* same reading. Confinement, in any statute, by its ordinary meaning does not require force, violence, or intimidation.

reported decision, *see* LINDSEY DEVERS, PH.D., BUREAU OF JUST. ASSISTANCE, U.S. DEP'T OF JUST., PLEA AND CHARGE BARGAINING, RESEARCH SUMMARY 1 (2011), for all anyone knows, a Michigan prosecutor has brought such a charge.

But this is not a civil case in which a federal court may appropriately make an "*Erie* guess" as to how a state court would decide an issue. The critical point is not whether the Fourth Circuit's prediction of how a Michigan court might rule is likely to be right or wrong. The point is that the Michigan statute by its plain meaning extends to conduct outside the relevant federal definition, and no state court has decided that the statute should be read more narrowly. And ultimately a Michigan court could very well read the statute to mean what it says, or a Michigan prosecutor could bring a case based on the statute's plain language (if that has not already happened in an unreported case). The "realistic probability" test was never intended to allow federal courts to impose sentencing enhancements based on their predictions of how state courts would rule on debatable issues of state law.

It is especially problematic to go down the road of interpreting state statutes to be more limited than indicated by their plain language because if the interpretation ends up being incorrect, a multitude of federal sentences will likely become illegal and open to correction. That is, under the "realistic probability" test, a subsequent state court decision applying the state statute more broadly than the federal court predicted, will mean that a defendant was erroneously subjected to a sentence enhancement. Indeed, under

the rationale of the "realistic probability" test, a decision by a single prosecutor to bring charges for a non-violent confinement would mean that the sentence enhancement was not appropriate.[12] *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 ACCA, was retroactive in cases on collateral review).

Michigan's inclusion of confinement in the statutory text on its face creates a categorical mismatch between the predicate state offense and the enumerated federal robbery offense. Thus, Michigan bank robbery does not correspond to an offense in the enumerated clause. For the same reasons, Michigan bank robbery also does not categorically satisfy the

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[12] A recent Eighth Circuit case, *United States v. Donath*, 107 F.4th 830 (8th Cir. 2024), illustrates the problems federal courts encounter when they go down the road of guessing about how state courts would rule on state law issues. There, the defendant argued that at an Iowa appellate court decision, *State v. Hauck*, 908 N.W.2d 880 (Iowa Ct. App. 2017) (unpublished table decision), demonstrated that it is possible under Iowa law to assault another person without so much as threatened use of force. On that basis, the defendant asserted that his prior conviction for assaulting a correctional officer was not a "crime of violence," defined as a crime having as an element use or threatened use of physical force, under the categorical approach. The Eighth Circuit held that it was bound by a prior pre-*Hauck* Eighth Circuit decision holding that assaulting an officer is a "crime of violence," notwithstanding that the defendant in the prior case did not cite *Hauck* and the prior decision did not discuss it. Because state law governs what conduct is encompassed by state criminal statutes, the Eighth Circuit decision makes no sense—its rationale results in criminal punishment under a federal statute a defendant did not violate—and illustrates the severe problems inherent in federal courts basing criminal sentences on guesses about state law.

requirements of the force clause. Because there is a categorical mismatch between the state offense and the relevant federal definition, that should be the end of the inquiry.

III. The question presented is of critical importance.

The issue presented is a recurring and important one. Eleven courts of appeals have had to address the issue, and they do not agree on how it should be resolved. In an understatement, the Third Circuit observed that the "realistic probability" language "has caused some confusion in the courts of appeals." *Salmoran v. Attorney General United States*, 909 F.3d 73, 81 (3d Cir. 2018).

District courts apply the categorical approach and the realistic probability test on a daily basis. Differences in the understanding of those doctrines can be of immense consequence to defendants. As with Mr. Lightfoot, the conflict between the approach taken by the Fourth and Fifth Circuits, on the one hand, and the nine circuits in the majority, on the other, can be the difference between receiving mandatory life imprisonment and receiving a much less severe sentence. Identically situated defendants receive vastly different sentences depending on the circuit in which the sentencing court sits. Had Mr. Lightfoot been sentenced in a court in one of the nine majority circuits, he would not have received a life sentence.

The categorical approach has been used to interpret definitions throughout federal statutes in

provisions containing mandatory sentencing enhancements. In addition to its application to "serious violent felonies" under the three strikes law this Court has held that the categorical approach applies to the definitions of "misdemeanor crime of domestic violence" in 18 U.S.C. § 921(a)(33)(A), and "crime of violence" in 18 U.S.C. § 16 and 18 U.S.C. § 924(c)(3). *See United States v. Castleman*, 572 U.S. 157, 168 (2014); *United States v. Davis*, 588 U.S. 445, 453–60 (2019); *Sessions v. Dimaya*, 584 U.S. 148, 153–54 (2018). Additionally, the categorical approach is frequently utilized by courts when determining whether a noncitizen's criminal conviction triggers grounds for removal under federal immigration statutes. *See, e.g.*, *Moncrieffe*, 569 U.S. at 191. The categorical approach's breadth of applications in criminal sentencing beyond the three-strikes law further demonstrates a need for this Court to standardize jurisprudence in this area, to ensure that similarly situated persons in different circuits do not unjustly receive disparate outcomes.

Finally, as explained above, the Fourth Circuit's error in holding that the "realistic probability" test authorizes federal courts to base sentencing enhancements on their prediction that state courts would not read a state statute as written and instead would adopt a narrowing construction, could lead to a slew of § 2255 motions if a Michigan court or prosecutor ever takes a different view than the one held by the Fourth Circuit.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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May 15, 2025

APPENDIX

TABLE OF APPENDICES

APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT, FILED OCTOBER 18, 2024

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-7447

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

v.

ANTONIO LAMONT LIGHTFOOT,

Defendant—Appellant.

Appeal from the United States District Court for the District of Maryland, at Greenbelt. Peter J. Messitte, Senior District Judge. (8:99-cr-00409-PJM-1; 8:16-cv-01915-PJM)

Before AGEE, RUSHING, and BENJAMIN, Circuit Judges.

Affirmed by published opinion. Judge Rushing wrote the majority opinion, in which Judge Agee joined. Judge Benjamin wrote a dissenting opinion.

Filed October 18, 2024
Argued: September 20, 2023 Decided: October 18, 2024

Appendix A

RUSHING, Circuit Judge:

Antonio Lamont Lightfoot is serving a life sentence under 18 U.S.C. § 3559(c), the federal "three-strikes" law. As relevant here, that law mandates a life sentence after a third conviction for a "serious violent felony." *Id.* Lightfoot moved to vacate his sentence pursuant to 28 U.S.C. § 2255, contending that his conviction for Michigan bank robbery—his second strike—no longer qualifies as a serious violent felony. The district court rejected that argument and denied his motion. We affirm.

I.

In 2000, a jury in the District of Maryland convicted Lightfoot of bank robbery, in violation of 18 U.S.C. § 2113, and using a firearm during and in relation to a crime of violence, in violation of 18 U.S.C. § 924(c). The Government informed the district court that Lightfoot had two prior convictions for serious violent felonies: a 1985 conviction for an armed bank robbery in Virginia and a 1990 conviction for armed bank robberies in Michigan.[1] The Maryland bank robbery, therefore, was Lightfoot's third strike, and the district court sentenced him to mandatory life imprisonment for that offense, *see* 18 U.S.C. § 3559(c)(1)(A)(i), and a consecutive seven years' imprisonment for using a firearm. Lightfoot appealed, and we affirmed his

1. Lightfoot was convicted of two counts of Michigan bank robbery after he robbed the same bank on two separate occasions. These two convictions count as only one strike, however, because Lightfoot was convicted for both robberies on the same day. *See* 18 U.S.C. § 3559(c)(1)(B).

convictions and sentence. *United States v. Lightfoot*, 6 Fed. Appx. 181 (4th Cir. 2001). His subsequent collateral challenges were unsuccessful.

In 2015, the Supreme Court held that the "residual clause" of the "violent felony" definition in the Armed Career Criminal Act (ACCA) was unconstitutionally vague. *Johnson v. United States*, 576 U.S. 591, 135 S. Ct. 2551, 2557, 192 L. Ed. 2d 569 (2015); *see* 18 U.S.C. § 924(e)(2)(B). The Court subsequently applied that rule retroactively to cases on collateral review. *Welch v. United States*, 578 U.S. 120, 136 S. Ct. 1257, 1265, 194 L. Ed. 2d 387 (2016). In response, Lightfoot sought and received permission to file a successive § 2255 motion. He argued that the residual clause of the "serious violent felony" definition in 18 U.S.C. § 3559(c) was similarly void for vagueness. While Lightfoot's motion was pending, the Supreme Court applied *Johnson* to invalidate the residual clauses of two other federal statutes, and Lightfoot supplemented his motion to incorporate those decisions. *See Sessions v. Dimaya*, 584 U.S. 148, 138 S. Ct. 1204, 1210, 200 L. Ed. 2d 549 (2018); *United States v. Davis*, 588 U.S. 445, 139 S. Ct. 2319, 2336, 204 L. Ed. 2d 757 (2019).

In the district court, Lightfoot argued that, without the residual clause, Michigan bank robbery is not a serious violent felony because it does not satisfy either remaining clause of that definition, the "enumerated offenses clause" or the "force clause." The district court disagreed and denied Lightfoot's motion. The court held that Michigan bank robbery is a divisible offense and Lightfoot was convicted of the assaultive version, which

is a serious violent felony under the enumerated offenses clause. *United States v. Lightfoot*, 554 F. Supp. 3d 762, 768, 770 (D. Md. 2021).

Lightfoot appealed, and this Court granted a certificate of appealability to address "whether Michigan bank robbery, Mich. Comp. Laws § 750.531, qualifies as a serious violent felony for purposes of 18 U.S.C. § 3559(c) (the federal three-strikes law)." J.A. 188. We consider this legal question de novo. *United States v. Johnson*, 915 F.3d 223, 227 (4th Cir. 2019).

II.

The three-strikes law mandates a life sentence for a defendant convicted of a "serious violent felony" in federal court if, "on separate prior occasions," that defendant has been convicted in state or federal court of "2 or more serious violent felonies." 18 U.S.C. § 3559(c)(1)(A). The term "serious violent felony" means:

> (i) a Federal or State offense, by whatever designation and wherever committed, consisting of . . . robbery (as described in section 2111, 2113, or 2118); [other enumerated crimes]; or attempt, conspiracy, or solicitation to commit any of the above offenses; and
>
> (ii) any other offense punishable by a maximum term of imprisonment of 10 years or more that has as an element the use, attempted use, or threatened use of physical force against the

> person of another or that, by its nature, involves a substantial risk that physical force against the person of another may be used in the course of committing the offense.

Id. § 3559(c)(2)(F). Clause (i) is known as the "enumerated offenses clause," while (ii) contains the "force" and "residual" clauses. The Government concedes that the residual clause is unconstitutionally vague. So we must determine whether Lightfoot's Michigan bank robbery offense qualifies as a serious violent felony under the enumerated offenses clause or the force clause.

A.

At the outset, the parties dispute what Michigan crime we should be analyzing. The Government contends that Michigan's bank robbery statute is divisible into two offenses and that Lightfoot was convicted of the more serious crime, assaultive bank robbery. Lightfoot argues that the statute is indivisible and so we must assess the least culpable conduct covered by the entire law.

1.

Section 3559(c) asks whether the federal or state "offense," not the defendant's actions, consists of an enumerated offense or has force as an element. We therefore "apply a 'categorical approach,'" *Johnson*, 915 F.3d at 228, which requires that "we counterintuitively ignore . . . the defendant's actual conduct" and instead assess "whether the most innocent conduct that the law

criminalizes" satisfies the definition of a serious violent felony, *United States v. Allred*, 942 F.3d 641, 648 (4th Cir. 2019) (internal quotation marks omitted).

When the statute at issue is divisible, we apply a modified categorical approach. "Divisible statutes set forth 'multiple, alternative versions of the crime,' with distinct elements, while indivisible statutes merely set out different means of completing the crime." *United States v. Jackson*, 32 F.4th 278, 284 (4th Cir. 2022) (quoting *Descamps v. United States*, 570 U.S. 254, 257, 133 S. Ct. 2276, 186 L. Ed. 2d 438 (2013)). "Elements, as contrasted with means, are the 'constituent parts of a crime's legal definition' that the 'prosecution must prove to sustain a conviction' and which 'the jury must find beyond a reasonable doubt to convict the defendant.'" *Allred*, 942 F.3d at 648 (quoting *Mathis v. United States*, 579 U.S. 500, 136 S. Ct. 2243, 2248, 195 L. Ed. 2d 604 (2016)). Under the modified categorical approach, a court may consult a limited set of record documents "for the sole purpose of determining 'what crime, with what elements, a defendant was convicted of.'" *Id.* (quoting *Mathis*, 136 S. Ct. at 2249). Once the court has "isolated the specific crime underlying the defendant's conviction, it must then apply the categorical approach to that crime to determine if it constitutes" a serious violent felony. *Id.*

2.

In assessing divisibility, we begin with the text of the Michigan law. *See United States v. Cornette*, 932 F.3d 204, 211 (4th Cir. 2019). It states:

> Any person who, with intent to commit the crime of larceny, or any felony, shall confine, maim, injure or wound, or attempt, or threaten to [do so], or shall put in fear any person for the purpose of stealing from any building, bank, safe, or other depository of money, bond or other valuables, or shall by intimidation, fear or threats compel, or attempt to compel any person to disclose or surrender the means of opening any building, bank, safe, vault or other depository of money, bonds, or other valuables, or shall attempt to break, burn, blow up or otherwise injure or destroy any safe, vault or other depository of money, bonds or other valuables in any building or place, shall, whether he succeeds or fails in the perpetration of such larceny or felony, be guilty of a felony, punishable by imprisonment in the state prison for life or any term of years.

Mich. Comp. Laws Ann. § 750.531. The law is not a model of clarity, but it bears several indicia of divisibility.

First, the statute is phrased disjunctively, using the word "or" to separate the different kinds of prohibited conduct. "When a criminal statute is phrased disjunctively it serves as a signal that it may well be divisible." *Allred*, 942 F.3d at 649; *see also Jackson*, 32 F.4th at 285-286.

Second, the statutory alternatives bar two significantly different categories of behavior. One prohibited category

of conduct involves harm or threats against *people*, punishing a person who:

> shall confine, maim, injure or wound, or attempt, or threaten to [do so], or shall put in fear any person for the purpose of stealing from any building, bank, safe, or other depository of money, bond or other valuables, or shall by intimidation, fear or threats compel, or attempt to compel any person to disclose or surrender the means of opening any building, bank, safe, vault or other depository of money, bonds, or other valuables.

Mich. Comp. Laws Ann. § 750.531. The other prohibited category involves harm exclusively to *property*, punishing a person who: "shall attempt to break, burn, blow up or otherwise injure or destroy any safe, vault or other depository of money, bonds or other valuables in any building or place." *Id.* The conduct involving harm to people "'differs so significantly' from that [causing] damage to property" as to strongly indicate that those statutory alternatives are not merely different means of committing the same crime. *Allred*, 942 F.3d at 650 (quoting *Chambers v. United States*, 555 U.S. 122, 126, 129 S. Ct. 687, 172 L. Ed. 2d 484 (2009)). In other words, "[t]hat the kind of conduct proscribed by the different formulations of [the crime] differs quite significantly suggests that, for purposes of our [serious violent felony] analysis, the different formulations should be treated as separate crimes warranting the use of the modified categorical approach." *United States v. Vinson*, 794 F.3d 418, 425 (4th Cir. 2015).

Third, the statute's people and property variants are akin to "fully functioning, stand-alone, alternative definitions of the offense itself." *Vinson*, 794 F.3d at 426 (emphasis omitted); *see also Allred*, 942 F.3d at 651. Unlike a nonexhaustive list of various acts or objects that satisfy one element of a crime, the statutory alternatives here are complete definitions of the crime, each with "its own unique set of elements." *Vinson*, 794 F.3d at 425; *cf. Cornette*, 932 F.3d at 211. This too indicates "that they operate as alternate definitions or elements for the offense . . . , not alternate means of committing the offense." *Vinson*, 794 F.3d at 426.

Extrinsic sources reinforce our textual conclusion. Michigan's model jury instructions provide alternate instructions for assaultive bank robbery (involving harm or threat to a person) and safe breaking (involving harm only to property). *See* Mich. Model Crim. Jury Instr. §§ 18.5, 18.6 (2006); *People v. Saunders*, No. 300128, 2012 Mich. App. LEXIS 705, 2012 WL 1367572, at *5 (Mich. Ct. App. Apr. 19, 2012) (using safe breaking jury instructions). This strongly suggests that the two statutory alternatives are different crimes with different elements, on which the jury must agree, rather than merely different means of accomplishing one crime, on which jurors could disagree yet nevertheless convict. *See Jackson*, 32 F.4th at 286-287 (finding jury instructions probative); *Allred*, 942 F.3d at 650-651 (same).

Michigan case law also supports this view. The Michigan Supreme Court has not opined on the subject, but the Michigan Court of Appeals has explained that

"[Section] 750.531 . . . encompasses two distinct offenses: the assaultive crime of bank robbery perpetrated by any of several enumerated means, and the nonassaultive crime of safe breaking." *People v. Douglas*, 191 Mich. App. 660, 478 N.W.2d 737, 738-739 (Mich. Ct. App. 1991); *see also People v. McMahon*, No. 302037, 2012 Mich. App. LEXIS 1407, 2012 WL 3020391, at *2 (Mich. Ct. App. July 24, 2012) ("The crime of bank robbery thus can be committed in two forms: the assaultive form of bank robbery, or the non-assaultive form of safe-breaking."). A leading treatise on Michigan criminal law reads the caselaw exactly this way. *See* 2 Gillespie Mich. Crim. L. & Proc. § 6:122 (3d ed.) ("The statute encompasses two distinct offenses: the assaultive crime of bank robbery perpetrated by any of several enumerated means, and the nonassaultive crime of safe breaking.").

Lightfoot insists that the Michigan Court of Appeals' decision in *People v. Ford* requires a contrary conclusion, seizing on the court's statement that "MCL 750.531 establishes only *one offense* that may be committed by *multiple means*." 262 Mich. App. 443, 687 N.W.2d 119, 126 (Mich. Ct. App. 2004). The district court correctly rejected that argument because the *Ford* court was not discussing the elements-versus-means dichotomy relevant to our divisibility analysis. The *Ford* court was resolving a double jeopardy challenge and made this statement in the context of affirming its precedent that "[t]he 'unit of prosecution' under MCL 750.531 is the bank, vault, or safe," such that the robbery of a single bank is "one offense" for double jeopardy purposes. *Ford*, 687 N.W.2d at 127; *see also id.* at 125-127 (discussing *People v. Shipe*,

190 Mich. App. 629, 476 N.W.2d 490 (Mich. Ct. App. 1991)); *Shipe*, 476 N.W.2d at 493 (holding that "a defendant cannot be convicted of more than one bank robbery offense for taking money from multiple tellers during one robbery of a single bank").

Analogizing to other instances where "a statute may be violated by multiple means, [yet] only one criminal offense is created," the *Ford* court noted that, under Michigan's first-degree murder statute, premeditated murder and felony murder arising from the death of the same victim constitute one "offense" for double jeopardy purposes. *Ford*, 687 N.W.2d at 126 (citing *People v. Bigelow*, 229 Mich. App. 218, 581 N.W.2d 744, 745-746 (Mich. Ct. App. 1998)). Obviously, that limitation does not prevent premeditated murder and felony murder from being different crimes defined by different elements within a divisible first-degree murder statute. *Cf. Jackson*, 32 F.4th at 285 (finding federal first-degree murder statute divisible between premeditated and felony murder). Indeed, like the district court here, the Sixth Circuit has concluded that Section 750.531 is divisible and that *Ford* does not dictate otherwise. *See United States v. Goodson*, 700 Fed. Appx. 417, 422 (6th Cir. 2017); *see also United States v. Lucas*, 736 Fed. Appx. 593, 596 (6th Cir. 2018) (relying on *Goodson*'s divisibility analysis).

Because Section 750.531 is divisible, we can consult Lightfoot's charging documents "to determine which alternative formed the basis of [his] prior conviction." *Descamps*, 570 U.S. at 257. Those documents show that Lightfoot was twice convicted of assaultive bank robbery.

See J.A. 127-129, 132-133 (Lightfoot "did with the intent to commit the crime of robbery, put in fear" two victims "for the purpose of stealing money from a bank"). Therefore, assaultive bank robbery is the offense we must compare to the serious violent felony definition.

B.

We turn now to whether Michigan assaultive bank robbery is a serious violent felony under the federal three-strikes law. Because, like the district court, we conclude that it qualifies under the enumerated offenses clause, we do not analyze the force clause.

1.

Under the enumerated offenses clause, a serious violent felony includes "a Federal or State offense, by whatever designation and wherever committed, consisting of . . . robbery (as described in section 2111, 2113, or 2118)." 18 U.S.C. § 3559(c)(2)(F)(i). The referenced federal offenses are maritime or territorial robbery (Section 2111), bank robbery (Section 2113), and robbery of a controlled substance (Section 2118).

As we have previously explained, "Congress could hardly have been clearer in the text of the statute that § 3559(c)'s enumerated clause should be understood broadly." *Johnson*, 915 F.3d at 229. It listed more than a dozen distinct types of criminal offenses—including robbery—and used broad language "meant to capture a wide variety of state and federal offenses." *Id.* (contrasting

Section 3559(c) with ACCA). The clause's inclusivity is "nowhere truer than for robbery," because Congress provided case-specific carve-outs (unavailable for other enumerated offenses) for robberies that did not result in serious bodily injury or involve a dangerous weapon.[2] *Id.*; *see* 18 U.S.C. § 3559(c)(3)(A). Because Congress "has already provided a fact-based escape hatch," "courts must be especially cautious in carving [additional] exceptions to § 3559(c) for the various state robbery offenses." *Johnson*, 915 F.3d at 229.

Accordingly, when assessing whether a prior robbery offense qualifies as a serious violent felony under the enumerated offenses clause, courts "look to the essential nature of [the] crime." *Id.* We do not attempt to match a state crime to its federal counterpart element-by-element, nor do we attempt to divine a "generic" version of the enumerated offense. Rather, we ask if the state offense "reflects the essence of robbery as Congress described it in § 3559(c)." *Id.* at 230.

The essence of robbery in the federal statutes referenced by the enumerated offenses clause "is a taking from another by force and violence, or by intimidation." *Id.* at 233. State statutes may vary in the words they use and level of specificity they provide. But a state robbery statute that involves taking from another by force or putting in fear is covered, regardless of "minor definitional tweaks or wrinkles in individual jurisdictions." *Id.* at 229.

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2. Lightfoot's Michigan bank robbery convictions do not qualify for these exceptions.

For example, all three listed federal robbery statutes require a taking or attempted taking "from the person or presence of another." *See* 18 U.S.C. §§ 2111, 2113, 2118. But in *Johnson*, we concluded that state robbery statutes without "a presence requirement" are not excluded from qualifying as serious violent felonies if they "do share with the referenced federal statutes the essential elements of taking from another by force and violence, or by intimidation." 915 F.3d at 232.

2.

Applying this standard, Michigan assaultive bank robbery reflects the essence of federal robbery. It involves an intended taking from another by acts that "confine, maim, injure or wound, or attempt, or threaten [to do so]," or "put in fear any person for the purpose of stealing" or compel or attempt to compel a person "by intimidation, fear or threats." Mich. Comp. Laws Ann. § 750.531. While there are differences between the federal robbery statutes and Michigan's statute, the State need not "cut-and-paste federal verbiage into [its] state law" for the state offense to share the essential characteristics of those federal robbery offenses. *Johnson*, 915 F.3d at 231. The essence of both Michigan assaultive bank robbery and the enumerated federal offenses is a taking from another by force or violence or by intimidation or putting in fear.[3]

3. The enumerated offenses clause includes "attempt, conspiracy, or solicitation to commit" robbery, 18 U.S.C. § 3559(c)(2)(F)(i), so Michigan's inclusion of overt acts done for the purpose of stealing that fall short of completed robbery does not push its statute outside the bounds of the clause.

Lightfoot's only counterargument is that assaultive bank robbery "can be accomplished by confining another," for example, "by merely locking someone in a room," which he claims would not require force or intimidation. Reply Br. 23-24; Oral Arg. 14:45-15:08, 20:34-20:48. The dissent, similarly, hypothesizes a robbery accomplished by confinement through deceit. With respect, these hypotheticals cannot be squared with Michigan law.

When the Michigan legislature enacted this bank robbery statute in 1877,[4] "confine" meant much the same thing as it does today: to restrain or imprison, whether "by threats of violence with a present force, or by physical restraint of the person." *Confinement*, Black's Law Dictionary (1st ed. 1891); *Confinement*, Walker & Webster Combined Dictionary of the English Language (1877) ("[r]estraint; imprisonment"); *Confine*, Worcester Dictionary of the English Language (1877) ("to restrain"; "to imprison"). Viewing the term in isolation, it may not necessarily require force or threat of force against a person. But the context of Michigan's robbery jurisprudence strongly suggests that robbery by confinement requires force or intimidation, just like all the other assaultive acts listed in the bank robbery statute.

Michigan courts instruct that "the assaultive offense of bank robbery . . . require[s] the use of force or intimidation against another person." *Douglas*, 478 N.W.2d at 739. They consistently describe assaultive

4. *See* 1877 Mich. Pub. Acts 86, No. 111, *as codified at* Mich. Comp. Laws § 16748 (1929).

bank robbery as involving "assaultive conduct against a person." *People v. Clemons*, No. 291434, 2010 Mich. App. LEXIS 1247, 2010 WL 2629880, at *7 (Mich. Ct. App. July 1, 2010); *see also Ford*, 687 N.W.2d at 127. This is unsurprising, because like many jurisdictions, Michigan's concept of robbery is larceny "with the additional element of violence or intimidation." *People v. Chamblis*, 395 Mich. 408, 236 N.W.2d 473, 481 (Mich. 1975), *overruled on other grounds by People v. Cornell*, 466 Mich. 335, 646 N.W.2d 127, 139-140 (Mich. 2002); *see also People v. Williams*, 491 Mich. 164, 814 N.W.2d 270, 279-280 (Mich. 2012) ("[T]he greater social harm perpetrated in a robbery is the use of force rather than the actual taking of another's property. . . . Robbery, while containing elements of theft of property, is primarily an assaultive crime." (internal quotation marks omitted)); *People v. Yeager*, 511 Mich. 478, 999 N.W.2d 490, 500 (Mich. 2023) (identifying "the use of force" as the difference between larceny and robbery). Lightfoot's suggestion that assaultive bank robbery could be accomplished by confining a person without force or intimidation sits uneasily with Michigan's conception of robbery generally and assaultive bank robbery more specifically.

Perhaps that is why Lightfoot has not identified any case where confinement without force or fear was the basis of an assaultive bank robbery conviction under Section 750.531. This omission is telling, because when a defendant asserts that certain minimum conduct would sustain a conviction for a state crime, he "must 'demonstrate that the State actually prosecutes the relevant offense in cases' in the manner [he] claims." *United States v. Battle*,

927 F.3d 160, 164 (4th Cir. 2019) (quoting *Moncrieffe v. Holder*, 569 U.S. 184, 206, 133 S. Ct. 1678, 185 L. Ed. 2d 727 (2013)); *see also Moncrieffe*, 569 U.S. at 191 ("[O]ur focus on the minimum conduct criminalized by the state statute is not an invitation to apply legal imagination to the state offense." (internal quotation marks omitted)).

Lightfoot asserts that he need not show a "realistic probability" that bank robbery committed by confining a person without force or intimidation would actually be punished as assaultive bank robbery because the "plain language" of the statute "criminalizes the act of confining another." Reply Br. 26. But the essence of robbery as Congress described it in the enumerated offenses clause does not exclude robbery by confinement. It excludes takings accomplished without force or violence or by intimidation or putting in fear. To defeat the categorical comparison between the state and federal robbery offenses, therefore, Lightfoot must do more than show that his hypothesized minimum conduct fits within the four corners of the state statute, i.e., that it is "theoretical[ly] possib[le]" to prosecute such conduct under the statute. *Moncrieffe*, 569 U.S. at 206. He must show a "realistic probability" that the State would apply its assaultive bank robbery statute to the hypothesized non-assaultive conduct. *Id.*; *cf. United States v. Taylor*, 596 U.S. 845, 142 S. Ct. 2015, 2024-2025, 213 L. Ed. 2d 349 (2022).

That's why this case is not like *Gordon v. Barr*, 965 F.3d 252 (4th Cir. 2020), on which Lightfoot relies. In *Gordon*, the Court found a categorical mismatch between a Virginia statute prohibiting the willful discharge of "any

firearm" in a public place and a federal offense applying to "a firearm," defined to exclude antique firearms. 965 F.3d at 254-255. After consulting "later acts of Virginia's legislature" and "decisions of its appellate courts," we concluded that "any firearm" within the Virginia statute did in fact prohibit willful discharge of antique firearms. *Id.* at 254; *see also id.* at 258-259. Gordon's failure to cite a case explicitly applying the statute to an antique firearm did not defeat his argument because "the plain language of [the statute], supported by decisions of Virginia's courts and actions of the General Assembly, ma[d]e clear that discharge of an antique firearm is conduct prohibited under that statute," not merely a theoretical possibility. *Id.* at 260.

By contrast, Lightfoot cites no Michigan judicial decisions or Michigan laws in support of his capacious construction of "confine." Nor does the plain text resolve the question by referring, for example, to "confinement by deceit" or even "confinement by any means." This contrasts with the cases from other circuits on which Lightfoot relies. *Cf., e.g., Harrington v. United States*, 689 F.3d 124, 130 (2d Cir. 2012) (discussing a Connecticut law defining "restrain" to include restricting a person's movement by "deception"); *United States v. Gilbert*, 464 F.3d 674, 677 (7th Cir. 2006) (discussing an Indiana statute prohibiting "remov[ing] another person, by fraud"). In short, unlike *Gordon*, here we have no indication that "confine" should be read to the theoretical limit that Lightfoot proposes.

Instead, as previously explained, Michigan courts have consistently interpreted assaultive bank robbery, like other forms of robbery, to "require the use of force or intimidation against another person," with no exception

ever uttered for robbery by confinement. *Douglas*, 478 N.W.2d at 739; *see also Chamblis*, 236 N.W.2d at 481. That accords with the statutory context, where "confine" is listed alongside "maim, injure, or wound," "put in fear," and compel "by intimidation, fear or threats." Mich. Comp. Laws Ann. § 750.531. The possibility that Michigan would punish under this statute a larceny committed without force or putting in fear remains purely hypothetical.[5]

III.

In conclusion, Michigan's bank robbery statute encompasses two divisible offenses. Lightfoot was convicted of assaultive bank robbery, the essence of which is the same as that of the federal robbery offenses in the enumerated offenses clause: "a taking from another by force and violence, or by intimidation." *Johnson*, 915 F.3d at 233. His Michigan assaultive bank robbery conviction therefore qualifies as a serious violent felony under the federal three-strikes clause and continues to support his life sentence. The judgment of the district court is

AFFIRMED.

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5. The dissent relies on an unpublished decision from the Michigan Court of Appeals for the proposition that a robber need not "'actually threaten a bank teller with harm.'" Dissenting Op. at 21 (quoting *People v. Madison*, No. 316580, 2014 Mich. App. LEXIS 1676, 2014 WL 4495223, at *2 (Mich. Ct. App. Sept. 11, 2014)). That accords with our analysis, which does not depend on an express threat of physical harm. In that case, the court found the evidence sufficient to prove that the bank teller was put in fear by the "implied threat" the defendant's actions communicated. *Madison*, 2014 Mich. App. LEXIS 1676, 2014 WL 4495223, at *2.

DEANDREA GIST BENJAMIN, Circuit Judge, dissenting:

I would reverse the denial of Lightfoot's 28 U.S.C. § 2255 motion because Michigan assaultive bank robbery ("assaultive bank robbery"), in its least culpable form, is not a serious violent felony under the federal three-strikes law. *See* 18 U.S.C. § 3559(c)(1). Therefore, Lightfoot's assaultive bank robbery convictions are not a "strike" against him sufficient to sustain his mandatory life sentence. Because the majority holds the opposite—that assaultive bank robbery is *categorically* a serious violent felony—I must respectfully dissent.

I.

Under the three-strikes law, a person convicted in federal court "of a serious violent felony shall be sentenced to life imprisonment" if that person has already been convicted "on separate prior occasions" of at least two serious violent felonies. 18 U.S.C. § 3559(c)(1)(A)(i). Relevant here, a "serious violent felony" is

> (i) a Federal or State offense, by whatever designation and wherever committed, consisting of . . . robbery (as described in section 2111, 2113, or 2118) **[the "enumerated offenses clause"]** . . . and
>
> (ii) any other offense punishable by a maximum term of imprisonment of 10 years or more that has as an element the use, attempted

> use, or threatened use of physical force against the person of another **[the "force clause"]**
>
> . . . .

Id. § 3559(c)(2)(F)(i)-(ii). For a robbery statute to amount to a serious violent felony under these clauses, it must involve the use or threat of physical force. *See id.*; *see also infra* Part II.

In 1990, Lightfoot was twice convicted of assaultive bank robbery under Michigan law.* That statute provides:

> Any person who, with intent to commit the crime of larceny, or any felony, shall confine, maim, injure or wound, or attempt, or threaten to confine, kill, maim, injure or wound, or shall put in fear any person for the purpose of stealing from any building, bank, safe or other depository of money, bond or other valuables, or shall by intimidation, fear or threats compel, or attempt to compel any person to disclose or surrender the means of opening any building, bank, safe, vault or other depository of money,

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* I assume without deciding that the Michigan bank robbery statute is divisible, as the majority holds. Maj. Op. at 10. That is, it consists of two, alternative versions of a single crime: safecracking and assaultive bank robbery. *See* Mich. Comp. Laws Ann. § 750.531. Because Lightfoot was convicted of assaultive bank robbery, I analyze whether that version of the crime meets the serious violent felony definition. *See* Maj. Op. at 10.

> bonds, or other valuables, . . . shall, whether he succeeds or fails in the perpetration of such larceny or felony, be guilty of a felony, punishable by imprisonment in the state prison for life or any term of years.

Mich. Comp. Laws Ann. § 750.531.

To determine whether that offense is a serious violent felony, we use the categorical approach, as the majority explains. Maj. Op. at 5. Under that approach, we do not consider Lightfoot's underlying conduct but instead focus on the elements of his crime. *See Mathis v. United States*, 579 U.S. 500, 504, 136 S. Ct. 2243, 195 L. Ed. 2d 604 (2016). We then ask whether that crime—here, assaultive bank robbery—matches the crimes described in the enumerated offenses clause or the force clause. "If any—even the least culpable—of the acts criminalized does not require the kind of conduct" that those clauses contemplate, then it is not a serious violent felony. *United States v. Redd*, 85 F.4th 153, 162 (4th Cir. 2023) (internal quotation marks omitted).

II.

In my view, assaultive bank robbery, *in its least culpable form*, can be accomplished without the use or threat of physical force. Therefore, it is not a serious violent felony under the enumerated offenses clause or the force clause.

Appendix A

A.

First, assaultive bank robbery is not a serious violent felony under the enumerated offenses clause. That clause defines a serious violent felony as "a Federal or State offense, by whatever designation and wherever committed, consisting of," for our purposes, "robbery (as described in section 2111, 2113, or 2118 [of Title 18])." 18 U.S.C. § 3559(c)(2)(F)(i). The enumerated federal robbery statutes are 18 U.S.C. § 2111 (maritime and territorial robbery), § 2113 (bank robbery), and § 2118 (robbery of a controlled substance). Each requires "a taking from another by force and violence, or by intimidation." *United States v. Johnson*, 915 F.3d 223, 233 (4th Cir. 2019).

The majority concludes that assaultive bank robbery shares those "essential characteristics of [the] federal robbery offenses" and is therefore a categorical match. Maj. Op. at 12. In doing so, it relies on *United States v. Johnson*, 915 F.3d 223 (4th Cir. 2019), but that case is distinguishable. There, the court held that a New York robbery offense is a serious violent felony under the three-strikes law's enumerated offenses clause. *Johnson*, 915 F.3d at 233. The New York offense bans the forcible stealing of property. N.Y. Penal Law § 160.05. Forcible stealing under New York law requires the "use[] or threat[] [of] the immediate use of physical force upon another person." *Id.* § 160.00. The court reasoned that "the essence of robbery in New York," then, "is just the same as that of the [enumerated] federal robbery statutes . . . which is a taking from another by force and violence, or by intimidation." *Johnson*, 915 F.3d at 233.

The same is not true here. Unlike the enumerated federal robbery offenses, assaultive bank robbery has no requirement of force, violence, or intimidation. It can be committed simply by putting someone in fear, or as Lightfoot notes, confining another. *See* Mich. Comp. Laws Ann. § 750.531. If the Michigan legislature intended for those actions to require force, violence, or intimidation, it would have said so, as it did later in the statute. *See id.* ("shall *by intimidation, fear or threats* compel") (emphasis added).

True, Michigan courts generally describe assaultive bank robbery as involving "assaultive conduct against a person." Maj. Op. at 14 (internal quotation marks omitted). But not always. In analyzing the language "put in fear," for instance, the Michigan Court of Appeals held that under the assaultive bank robbery statute, "*there is no requirement that a defendant actually threaten a bank teller with harm*." *People v. Madison*, Docket No. 316580, 2014 Mich. App. LEXIS 1676, 2014 WL 4495223, at *2 (Mich. Ct. App. Sept. 11, 2014) (emphasis added). The court reasoned that "the plain language" of the statute does not demand a showing of "intimidation or threats." *Id.* Rather, "it is enough to show that [the] defendant put in fear any person for the purpose of stealing"—just what the statute says. *Id.*; *see* Mich. Comp. Laws Ann. § 750.531; *see also United States v. Goodson*, 700 F. App'x 417, 423 (6th Cir. 2017) ("Under Michigan law, it is not necessary to use threats or intimidation to place someone in fear.").

The same analysis applies to "confine[ment]." Mich. Comp. Laws Ann. § 750.531. Like putting someone in

fear, confinement, by its plain meaning, does not require force, violence, or intimidation. *See Confinement*, Black's Law Dictionary (1st ed. 1891) (defining "confinement" as "either a moral or a physical restraint"); *Confinement*, An American Dictionary of the English Language (1865) (defining "confinement" as "any restraint of liberty by force or other obstacle, or by necessity").

The majority faults Lightfoot for "not identify[ing] any case where confinement without force or fear was the basis of an assaultive bank robbery conviction under Section 750.531." Maj. Op. at 14. And the majority is correct that "there must be a realistic probability, not a theoretical possibility, that the minimum conduct would actually be punished under the statute." *United States v. Allred*, 942 F.3d 641, 648 (4th Cir. 2019) (internal quotation marks omitted).

But Lightfoot need not prove that realistic probability here, where the statute explicitly proscribes nonviolent and nonthreatening conduct, and the Michigan Court of Appeals confirmed that assaultive bank robbery requires no such conduct. *See Madison*, 2014 Mich. App. LEXIS 1676, 2014 WL 4495223, at *2; *see also Gordon v. Barr*, 965 F.3d 252, 260 (4th Cir. 2020) ("[W]hen the state, through plain statutory language, has defined the reach of a state statute to include conduct that the federal offense does not . . . there is no categorical match."); *Hylton v. Sessions*, 897 F.3d 57, 63 (2d Cir. 2018) ("The realistic probability test is obviated by the wording of the state statute, which on its face extends to conduct beyond the definition of the corresponding federal offense."); *United States v. Titties*,

852 F.3d 1257, 1274-75 (10th Cir. 2017) (because of the plain statutory text, "no legal imagination is required to see that the threatened use of physical force is not necessary for a conviction under [the statute]").

Because assaultive bank robbery "sweeps more broadly and criminalizes more conduct" than the enumerated federal robbery statutes, it is not a serious violent felony under the enumerated offenses clause. *Omargharib v. Holder*, 775 F.3d 192, 196 (4th Cir. 2014) (internal quotation marks omitted).

B.

Nor is assaultive bank robbery a serious violent felony under the force clause. The force clause defines a "serious violent felony" as any offense "that has as an element the use, attempted use, or threatened use of physical force against the person of another." 18 U.S.C. § 3559(c)(2)(F)(ii). And "physical force" means intentional violence. *Redd*, 85 F.4th at 161-62.

The Michigan Court of Appeals has already clarified that assaultive bank robbery by putting someone in fear does not require "intimidation or threats," let alone the use or attempted use of physical force. *Madison*, 2014 Mich. App. LEXIS 1676, 2014 WL 4495223, at *2.

The same is true of confinement, which can be effectuated through nonviolent and nonthreatening means, including deceit. *See, e.g., United States v. Picazo-Lucas*, 821 F. App'x 335, 338-41 (5th Cir. 2020) (federal

Hostage Taking Act does not have as "'an element the use, attempted use, or threatened use of physical force'" because seizing or detaining someone can be accomplished through deception); *Harrington v. United States*, 689 F.3d 124, 130-31 (2d Cir. 2012) (Connecticut unlawful restraint statute, which criminalizes "restrain[ing] another" in a way that exposes that person "to a substantial risk of physical injury," does not have "'an element the use, attempted use, or threatened use of physical force'"); *United States v. Gilbert*, 464 F.3d 674, 677 (7th Cir. 2006) (Indiana criminal confinement statute does not require physical force or threat of force, even though it "likely is used to effectuate the restraint in most instances"); *United States v. Stapleton*, 440 F.3d 700, 701, 703 (5th Cir. 2006) (Louisiana crime of false imprisonment while armed with a dangerous weapon does not have an "'element the use, attempted use, or threatened use of physical force'" because it "requires only that the offender intentionally confine or detain the victim without consent," which could include "deception or trickery").

Consider a hypothetical. Suppose a hotel guest is reading on her balcony when a staff member enters the room. He explains he is there to fix a maintenance issue. He closes the balcony door and surreptitiously locks it, thereby "confin[ing]" her. Mich. Comp. Laws Ann. § 750.531. He then steals her valuables before opening the door to tell her the issue is resolved. Or suppose at some point, the guest becomes aware she is confined on the balcony. She tries to alert the staff member, but he flees with her valuables. Either way, his conduct does not involve the "use, attempted use, or threatened use of

physical force against the person of another." 18 U.S.C. § 3559(c)(2)(F)(ii). Yet he would still be guilty of assaultive bank robbery: (1) "with intent to commit the crime of larceny, or any felony" (2) he "confine[d]" a hotel guest on the balcony (3) "for the purpose of stealing from any building, bank, safe or other depository of money, bond or other valuables." Mich. Comp. Laws Ann. § 750.531.

In its least culpable form, assaultive bank robbery does not require "the use, attempted use, or threatened use of physical force against the person of another." 18 U.S.C. § 3559(c)(2)(F)(ii). Thus, it is not a serious violent felony under the force clause.

III.

For these reasons, Lightfoot's assaultive bank robbery convictions do not qualify as serious violent felonies under the federal three-strikes law. Accordingly, I would reverse the judgment of the district court, vacate Lightfoot's life sentence, and remand for resentencing.

APPENDIX B — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND, FILED MAY 14, 2025

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

No. 99-cr-0409-ABA

UNITED STATES OF AMERICA

v.

ANTONIO LAMONT LIGHTFOOT

Filed May 14, 2025

ORDER

Upon consideration of the Unopposed Motion for a Reduced Sentence Pursuant to 18 U.S.C. § 3582(c)(1)(A)(i) filed by Antonio Lamont Lightfoot (ECF No. 152), and given that the Government does not oppose granting sentencing relief, the Court finds that Mr. Lightfoot has presented "extraordinary and compelling reasons warrant[ing]" a sentence reduction, 18 U.S.C. § 3582(c)(1)(A), that "are of similar gravity" to those listed in U.S.S.G. § 1B1.13(b). U.S.S.G. § 1B1.13(b)(5). The Court has considered "the factors set forth in section 3553(a) to the extent they are applicable" and determined that the relief sought is appropriate. 18 U.S.C. § 3582(c)(1)(A).

Therefore, it is hereby ORDERED that:

1. Mr. Lightfoot's motions for a reduced sentence pursuant to 18 U.S.C. § 3582(c)(1)(A)(i) (ECF Nos. 150 & 152) are GRANTED;

2. Mr. Lightfoot's sentence is reduced to time served plus two days (such that Mr. Lightfoot shall be released effective May 16, 2025);

3. All terms and conditions of the five-year term of supervised release will remain in full force and effect; and

4. An Amended Judgment & Commitment Order shall issue.

Date: May 14, 2025

/s/
Adam B. Abelson
United States District Judge

APPENDIX C — MEMORANDUM OPINION OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND, FILED AUGUST 12, 2021

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Criminal No. PJM 99-0409
Civil No. PJM 16-1915

UNITED STATES OF AMERICA,

v.

ANTONIO LAMONT LIGHTFOOT,

Defendant.

August 12, 2021, Decided
August 12, 2021, Filed

MEMORANDUM OPINION

Antonio Lamont Lightfoot is serving a mandatory life sentence under 18 U.S.C. § 3559(c)—the federal "three-strikes" law—after a jury found him guilty, of Bank Robbery in violation of 18 U.S.C. § 2113(d) (Count One) and Use of a Firearm During and in Relation to a Crime of Violence in violation of 18 U.S.C. § 924(c) (Count Two). Pursuant to 28 U.S.C. § 2255, he now seeks to vacate the mandatory life sentence entered against him, contending that he does not have the requisite convictions to sustain a § 3559(c) sentence. For the following reasons, his Motion is **DENIED**.

Appendix C

I.

On September 14, 1999, Lightfoot robbed a BB&T Bank in Camp Springs, Maryland, by waving a 9-millimeter semi-automatic handgun and demanding money from the teller. After fleeing with approximately $8,000 cash, he and his accomplice led a high-speed chase until they crashed in a residential neighborhood where they were apprehended by police.

On September 22, 1999, Lightfoot was charged in a two-count Indictment with Bank Robbery and Use of a Firearm During and in Relation to a Crime of Violence. Lightfoot pled not guilty and has maintained his innocence ever since. Before trial, the Government filed an information notifying the Court that Lightfoot had two prior "serious violent felony" convictions for armed bank robbery in 1985 and 1990—making him eligible for a mandatory life sentence under § 3559(c). Lightfoot nevertheless proceeded to trial and was convicted on both counts.

At sentencing, the Court adopted the factual findings and advisory Sentencing Guidelines recommended in the Presentence Report, which deemed Lightfoot a career offender under U.S.S.G. § 4B1.1. Lightfoot was assigned an offense level of 34 and a criminal history category of VI, resulting in a Guidelines range of 262 to 327 months imprisonment. As contended by the Government, Lightfoot's prior convictions triggered a mandatory life sentence under § 3559(c). His conviction in this case was his "third-strike." In consequence, the Court imposed a

life sentence as to Count One. On Count Two, the Court imposed a consecutive 7-year sentence, as was statutorily required. On direct appeal, Lightfoot's conviction and sentence were affirmed by the U.S. Court of Appeals for the Fourth Circuit. *See United States v. Lightfoot*, 6 F. App'x 181 (4th Cir. 2001).

In the years since, Lightfoot has challenged his conviction and sentence on different occasions. *See* ECF Nos. 41, 58-59. In 2016, he received authorization from the Fourth Circuit to file a successive § 2255 motion in light of *Johnson v. United States*, 576 U.S. 591, 135 S. Ct. 2551, 192 L. Ed. 2d 569 (2015). That Motion is now ripe.

II.

Lightfoot contends that his mandatory life sentence must be vacated because one of his prior convictions—specifically, the 1990 conviction[1] for Bank, Safe and Vault Robbery in violation of Michigan Consolidated Laws ("MCL") § 750.531—no longer qualifies as a "serious violent felony" under § 3559(c). In other words, he says, he no longer has "three-strikes."[2]

---

1. In 1990, Lightfoot was convicted of two different bank robberies under MCL § 750.531. However, they are only scored as one conviction because he was sentenced on the same day without an intervening arrest.

2. He also originally challenged his career offender designation under the Guidelines. However, he has apparently abandoned that argument following *United States v. Rumph*, 824 F. App'x 165, 168 (4th Cir. 2020). *See* ECF No. 91 at 17 n.6.

Appendix C

The federal three-strikes law punishes recidivists by imposing mandatory life sentences following a defendant's third conviction for a "serious violent felony." The statute defines a serious violent felony as:

> (i) a Federal or State offense, by whatever designation and wherever committed, consisting of . . . robbery (as described in section 2111, 2113, or 2118); . . . or attempt, conspiracy, or solicitation to commit any of the above offenses; and
>
> (ii) any other offense punishable by a maximum term of imprisonment of 10 years or more that has as an element the use, attempted use, or threatened use of physical force against the person of another or that, by its nature, involves a substantial risk that physical force against the person of another may be used in the course of committing the offense.

18 U.S.C. § 3559(c)(2)(F)(i)-(ii). Subsection (i) contains what is referred to as the "enumerated offenses" clause, while subsection (ii) contains the "force" and "residual" clauses.

Lightfoot argues that vacatur of his life sentence is necessary because § 3559(c)'s residual clause is unconstitutionally vague under *Johnson* and its progeny. The Government apparently concedes as much but instead argues that MCL § 750.531(1) is an enumerated

offense and (2) has as an element the use, attempted use, or threatened use of physical force against another. Lightfoot, of course, staunchly opposes both propositions. Thus, the issue to be decided is whether MCL § 750.531 qualifies as a serious violent felony under either clause.

A.

To determine whether a crime is a serious violent felony under 18 U.S.C. § 3559(c), courts are directed to apply the "categorical approach." *United States v. Johnson*, 915 F.3d 223, 228 (4th Cir. 2019) ("*Johnson II*"). Under that approach, an offense will only qualify if all criminal conduct proscribed by the statute of conviction—including the most innocent conduct—matches or is narrower than § 3559(c)'s definition (*i.e.*, the enumerated offenses or force clauses). *Descamps v. United States*, 570 U.S. 254, 257, 133 S. Ct. 2276, 186 L. Ed. 2d 438 (2013). In this undertaking, courts may only reference the elements of the offense, not the particular facts underlying it. *Id.* at 261. The court simply lines up the elements to see if they present a categorical match. *Id.*

A slightly different analysis—the modified categorical approach—applies when a statute is "divisible." *Id.* at 261-62. This occurs where the statute includes "multiple alternative elements (thus creating multiple versions of a crime), as opposed to multiple alternative means (of committing the same crime)." *Omargharib v. Holder*, 775 F.3d 192, 198 (4th Cir. 2014). Where there are multiple versions of the crime, "a later sentencing court cannot tell, without reviewing something more, if the defendant's

conviction was for" one or the other alternative. *Descamps*, 570 U.S. at 262; *see also Mathis v. United States*, 136 S. Ct. 2243, 2249, 195 L. Ed. 2d 604 (2016). Accordingly, the modified categorical approach permits the Government to produce a limited number of documents demonstrating which version of the crime was committed, including the "charging document, written plea agreement, transcript of plea colloquy, and any explicit factual finding by the trial judge to which the defendant assented." *Shepard v. United States*, 544 U.S. 13, 16, 125 S. Ct. 1254, 161 L. Ed. 2d 205 (2005). The court then determines "which of [the] statute's alternative elements formed the basis of the defendant's prior conviction." *Descamps*, 570 U.S. at 262. The categorical approach is applied to compare the appropriate offense of conviction with the definition of serious violent felony.

B.

The parties sharply disagree whether MCL § 750.531 is divisible in nature. According to the Government, the statute creates alternative elements proscribing different versions of the crime: (1) assaultive bank robbery and (2) safecracking. Lightfoot, on the other hand, contends that the statute lists only multiple means of committing the same crime and is therefore indivisible.

Contributing to their disagreement is the statutory text of MCL § 750.531, which is hardly a model of clarity. It provides that:

> Any person who, with intent to commit the crime of larceny, or any felony, ***shall confine, maim, injure or wound, or attempt, or threaten to confine, kill, maim, injure or wound***, or ***shall put in fear any person*** for the purpose of stealing from any building, bank, safe or other depository of money, bond or other valuables, or ***shall by intimidation, fear or threats compel***, or attempt to compel any person to disclose or surrender the means of opening any building, bank, safe, vault or other depository of money, bonds, or other valuables, or ***shall attempt to break, burn, blow up or otherwise injure or destroy any safe, vault or other depository of money, bonds or other valuables in any building or place***, shall, whether he succeeds or fails in the perpetration of such larceny or felony, be guilty of a felony, punishable by imprisonment in the state prison for life or any term of years.

Id. (emphasis added). By the Government's interpretation, the disjunctive assaultive conduct described in the statute is divisible from the safecracking conduct. *See United States v. Alfred*, 942 F.3d 641, 649 (4th Cir. 2019) ("When a criminal statute is phrased disjunctively it serves as a signal that it may well be divisible." (citing *United States v. Cornette*, 932 F.3d 204, 211-12 (4th Cir. 2019)). For Lightfoot, the two forms of conduct are one and the same.

When deciding whether a statute's components are different elements (divisible) as opposed to different means

(indivisible), courts are directed to consult "authoritative sources of state law." *Mathis*, 136 S. Ct. at 2256. Doing so here reveals considerable authority favoring divisibility.

Indeed, Michigan appellate courts, Michigan's model jury instructions, and a leading Michigan treatise on criminal law support the Government's interpretation of MCL § 750.531. *See, e.g., People v. Campbell*, 165 Mich. App. 1, 418 N.W.2d 404, 406 (Mich. Ct. App. 1987) ("The bank robbery statute encompasses two distinct offenses, namely bank robbery involving assaultive conduct and safecracking."); *People v. Witt*, 140 Mich. App. 365, 364 N.W.2d 692, 695 (Mich. Ct. App. 1985) ("a plain reading of the statute discloses that it encompasses two distinct offenses, namely, bank robbery involving assaultive conduct and safecracking"); *People v. Douglas*, 191 Mich. App. 660, 478 N.W.2d 737, 739 (Mich. Ct. App. 1991) ("Unlike the assaultive offense of bank robbery and the other offenses listed in the robbery crime list, safe breaking does not require the use of force or intimidation against another person, or even the presence of another person."); *People v. Keller*, No. 189558, 1996 Mich. App. LEXIS 2064, 1996 WL 33357009, at *1 (Mich. Ct. App. Oct. 1, 1996) ("[MCL § 750.531] encompasses two distinct offenses; the assaultive crime of bank robbery perpetrated by any of the several enumerated means, and the nonassaultive crime of safe breaking" (citation omitted)); Mich. Model Crim. Jury Instr. §§ 18.5-18.6 (2006) (providing alternate instructions for assaultive bank robbery and safecracking); 4 Gillespie Mich. Crim. L. & Proc. § 131:29 (2d ed.) ("The statute encompasses two distinct offenses: the assaultive crime of bank robbery

perpetrated by any of several enumerated means, and the nonassaultive crime of safe breaking."). Not only are state authorities generally in agreement; two panels of the U.S. Court of Appeals for the Sixth Circuit—where Michigan is located—have reached the same conclusion. *See United States v. Lucas*, 736 F. App'x 593, 596 (6th Cir. 2018) ("Therefore, as this court has recently found . . . 'the Michigan bank robbery statute contemplates multiple alternative elements,' and the statute is divisible into these two separate offenses." (quoting *United States v. Goodson*, 700 F. App'x 417, 422 (6th Cir. 2017)). The weight of these authorities tips decidedly towards divisibility.

Lightfoot seeks to discredit a case relied on by the Government, *People v. Campbell*, which found that MCL § 750.531 encompasses the distinct crimes of assaultive bank robbery and safecracking. *Campbell*, 418 N.W.2d at 406. In Lightfoot's view, *Campbell* is no longer good law after a contrary finding by a different panel of Michigan's Court of Appeals—its intermediate appellate court. That case, *People v. Ford*, provides Lightfoot with arguably supportive dicta, to wit, MCL § 750.531 "establishes only *one offense* that may be committed by *multiple means*." 262 Mich. App. 443, 687 N.W.2d 119, 126 (Mich. Ct. App. 2004). For Lightfoot, this definitively answers whether MCL § 750.531 is divisible.

Because much of Lightfoot's divisibility argument hinges on *Ford*, an extended discussion of the case is warranted. In *Ford*, the defendant challenged a conviction for safe robbery and armed robbery, arguing that the dual conviction violated double jeopardy under state and

federal law. 687 N.W.2d at 121. At the time, Michigan applied a non-elements-based test that looked to whether the two statutes protected the same "social norm." *Id.* at 124. By its embrace of the "social norms" test, Michigan appeared to repudiate the federal standard set forth in *United States v. Blockburger*, which required that each crime contain an element the other does not *Id.* at 123. Thus, while a *Blockburger* analysis may be relevant in distinguishing between elements and means, the same is not necessarily true for Michigan's social norms test.

Although *Ford* discusses both the social norms and *Blockburger* tests, Lightfoot reads the case as only addressing the latter. Where *Ford* states—in *dicta*—that MCL § 750.531 "establishes only *one offense* that may be committed by *multiple means*" Lightfoot takes that to mean that it must be indivisible. That interpretation might make sense if the quoted language actually addressed the elements-based *Blockburger* test. But *Ford* speaks only to whether the statutes protect the same "social norms," concluding that "the bank robbery statute . . . has its core and focus on the attempted theft of property from a bank, safe, vault, or other depository. The 'unit of prosecution' under MCL § 750.531 is the bank, vault, or safe." 687 N.W.2d at 127. These are not the indicia of an elements-based inquiry; nor is there any discussion in *Ford* of the "elements vs. means" dichotomy relevant to divisibility. More importantly, when *Ford* finally addresses the *Blockburger* test, it merely finds that "the offense of armed robbery contains elements never required to prove

bank, safe, or vault robbery," and vice versa.[3] 687 N.W.2d at 128. Accordingly, *Ford's* passing reference to "means" does not end the inquiry, and the Court must go beyond it.[4]

The Court finds that, while Lightfoot has identified some inconsistency in Michigan's intermediate appellate courts regarding whether MCL § 750.531 encompasses two distinct offenses, the majority of case law and academic sources support divisibility. When state law fails to provide a "definitive" answer to the divisibility/indivisibility question, the Supreme Court has instructed courts to "peek" at a select number of documents, including a defendant's charging instruments. *Mathis*, 136 S. Ct. at 2257 ("an indictment . . . could indicate, by referencing one alternative term to the exclusion of all others, that the statute contains a list of elements, each one of which goes toward a separate crime"). Here the Government has complied with that directive and has provided copies of Lightfoot's criminal complaints from his 1990 conviction. Those complaints reveal that "Defendant [Lightfoot] . . . did with the intent to commit the crime of robbery, put in fear ANDREA WALL for the purpose of stealing money from a bank; contrary to MCL 750.531," and "Defendant [Lightfoot] . . . did with the intent to commit the crime of robbery, put in fear JENNIFER COLLIER for the

3. For these reasons, *People v. Clemons*, is of limited relevance because it simply relied on *Ford's dicta*. No. 291434, 2010 Mich. App. LEXIS 1247, 2010 WL 2629880, at *8 (Mich. Ct. App. 2010).

4. The Court is not persuaded by Lightfoot's demand that "this Court must accept [*Ford's*] holding that Michigan bank robbery is an indivisible statute." ECF No. 91 at 6.

purpose of stealing money from a bank; contrary to MCL 750.531." ECF No. 85-1. The inclusion of "put in fear" to the exclusion of all other elements— namely, the elements of safecracking—further indicates that MCL § 750.531 is divisible in two parts: (1) assaultive bank robbery and (2) safecracking.

The Court therefore finds the modified categorical approach applicable. Looking at the *Shepard* documents provided by the Government, there is little doubt that Lightfoot was convicted of assaultive bank robbery under MCL § 750.531. The Court therefore proceeds to compare the elements of assaultive bank robbery with § 3559(c)'s definition of serious violent felony.

III.

Lightfoot begins by arguing that even if the Michigan statute is divisible, MCL § 750.531 is neither an enumerated offense nor does it contain an element of force. In response, the Government argues that MCL § 750.531 is indeed an enumerated offense, namely, "robbery (as described in section 2111, 2113, or 2118)." 18 U.S.C. § 3559(c)(2)(F)(i). The Court agrees with the Government.

A.

The Fourth Circuit has provided comprehensive guidance for determining whether a given offense matches "robbery" as enumerated in § 3559(c). *See Johnson II*, 915 F.3d at 230. When comparing the crime of conviction (here, assaultive bank robbery) with "robbery" under § 3559(c),

the Fourth Circuit has instructed courts to bear in mind that "Congress could hardly have been clearer in the text of the statute that § 3559(c)'s enumerated clause should be understood broadly," and "points decidedly towards inclusivity." *Johnson II*, 915 F.3d at 229. Because § 3559(c) exempts only specific robberies from its definition, *Johnson II* advises that "courts must be especially cautious in carving exceptions to § 3559(c) for the various state robbery offenses. Congress has already provided a fact-based escape hatch; courts are not at liberty to create additional ones." *Id.* The Fourth Circuit has reiterated that so long as a statute fits the "essence" of robbery—that is, a "taking" accomplished "by force and violence, or by intimidation"—there is a categorical match. *Id.* at 230-231; *see also* 18 U.S.C. § 2113(a) (proscribing a taking "by force and violence, or by intimidation").

B.

With these precepts in mind, the Court concludes that assaultive bank robbery under MCL § 750.531 clearly "reflects the essence of robbery as Congress described it in § 3559(c)." *Johnson II*, 915 F.3d at 230. Assaultive bank robbery, like robbery as defined in § 3559(c), is achieved by a "taking" employing "force" or "violence," or by "putting in fear" another person. That assaultive bank robbery uses "different words to prohibit the same conduct-fear as opposed to *intimidation*—"poses no barrier to a match in the § 3559(c) context." *Johnson II*, 915 F.3d at 231.

Lightfoot attempts to escape this conclusion by arguing that assaultive bank robbery can be violated by

confining another without force, violence, or intimidation. ECF No. 91 at 11. He poses a somewhat far-fetched scenario of a bank robber locking the door behind bank tellers— thereby confining them without "physical force or threat of physical force." *Id.* at 12. While that fact partern may be theoretically possible, it is highly doubtful that Michigan would apply MCL § 750.531 and uphold a conviction based on such conduct. *Moncrieffe v. Holder*, 569 U.S. 184,191, 133 S. Ct. 1678, 185 L. Ed. 2d 727 (2013). As the U.S. Supreme Court has held, the "focus on the minimum conduct criminalized by the state statute is not an invitation to apply 'legal imagination' to the state offense." *Id.* Perhaps more importantly, Lightfoot's hypothetical non-violent violation of assaultive bank robbery is at odds with the Supreme Court of Michigan's own understanding of "robbery" as a crime:

> Robbery is committed *only* when there is larceny from the person, *with the additional element of violence or intimidation.* Perkins on Criminal Law (2d ed.), pp. 279, 281. We are committed to the view that the crime of larceny from the person embraces the taking of property in the possession and immediate presence of the victim. *People v. Gould*, 384 Mich. 71, 179 N.W.2d 617 (1970). If such taking be by force and threat of violence, it is robbery, and hence every robbery would necessarily include larceny from the person and every armed robbery would necessarily include both unarmed robbery and larceny from the person as lesser included offenses.

People v. Chamblis, 395 Mich. 408, 236 N.W.2d 473, 481 (Mich. 1975) (emphasis added), *overruled on other grounds by People v. Cornell*, 466 Mich. 335, 646 N.W.2d 127 (Mich. 2002); *accord People v. Williams*, 491 Mich. 164, 814 N.W.2d 270, 279-80 (Mich. 2012) ('[T]he greater social harm perpetrated in a robbery is the use of foree rather than the actual taking of another's property.").

In sum, assaultive bank robbery—Lightfoot's crime of conviction under Michigan law— matches the definition of robbery as an enumerated offense under § 3559(c).[5] It therefore constitutes a serious violent felony within the meaning of the federal three-strikes law such that Lightfoot's sentence remains as valid today as it was when he was originally sentenced in 2000.

CONCLUSION

For the foregoing reasons, Lightfoot's Motion to Vacate Sentence is **DENIED**.

A separate Order will **ISSUE**.

/s/ Peter J. Messitte
PETER J. MESSITTE
UNITED STATES
DISTRICT JUDGE

August 12, 2021

5. Having determined that the assaultive form of MCL § 750.531 is an enumerated offense, the Court declines to address whether it would also satisfy the force clause.

APPENDIX D — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT, DATED MARCH 28, 2001

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 00-4357

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

ANTONIO LAMONT LIGHTFOOT,

Defendant-Appellant.

February 28, 2001, Submitted
March 28, 2001, Decided

OPINION

PER CURIAM:

Antonio Lamont Lightfoot appeals his convictions of bank robbery in violation of 18 U.S.C.A. § 2113 (West 2000) and brandishing a firearm during and in relation to a crime of violence in violation of 18 U.S.C.A. § 924(c) (West 2000).

Lightfoot was arrested moments after the conclusion of a vehicle pursuit that began with the report of the

robbery of the Branch Bank and Trust located in Camp Springs, Maryland, on September 14, 1999. During the pursuit, an individual subsequently identified as Lightfoot was observed as the passenger in the getaway vehicle. After the vehicle crashed, the driver was quickly apprehended, but the passenger fled. Shortly thereafter, however, Lightfoot was discovered in a yard that was located within two blocks of the crash site but over fifteen miles from his home. After Lightfoot's apprehension, police discovered a bag containing the missing money and a sweatshirt similar to that worn by the robber in a tree in the yard in which Lightfoot had been found. Lightfoot was convicted after a jury trial.

On appeal, Lightfoot contends that the district court erred in admitting evidence of his prior bank robbery convictions under Federal Rule of Evidence 404(b); that the court erred in admitting the expert testimony of an FBI agent concerning the comparison of bank surveillance photographs and physical evidence seized; and that the court erred in denying his motion for a judgment of acquittal that was based on the sufficiency of the evidence. Finding no error, we affirm.

Evidence was admitted at trial in the form of a stipulation that Lightfoot had been convicted of armed bank robbery in 1985 and 1990, and that these crimes were committed using a handgun. Evidence of other crimes is not admissible to prove bad character or criminal propensity. Fed. R. Evid. 404(b). Such evidence is admissible, however, to prove "motive, opportunity, intent, preparation, plan, knowledge, identity, or absence

of mistake or accident." *Id.; see United States v. Queen*, 132 F.3d 991, 994-95 (4th Cir. 1997). We review a district court's determination of the admissibility of evidence under Rule 404(b) for abuse of discretion, applying a four-factor analysis. *Id.* at 995, 997. A district court will not be found to have abused its discretion unless its decision to admit evidence under Rule 404(b) was arbitrary or irrational. *See United States v. Haney*, 914 F.2d 602, 607 (4th Cir. 1990) (upholding admission of evidence of similar prior bank robberies). Limiting jury instructions explaining the purpose for admitting evidence of prior acts and advance notice of the intent to introduce prior act evidence provide additional protection to defendants. *See Queen*, 132 F.3d at 997. Evidentiary rulings are also subject to review for harmless error under Federal Rule of Criminal Procedure 52, and will be found harmless if the reviewing court can conclude "without stripping the erroneous action from the whole, that the judgment was not substantially swayed by the error." *United States v. Brooks*, 111 F.3d 365, 371 (4th Cir. 1997) (quoting *United States v. Heater*, 63 F.3d 311, 325 (4th Cir. 1995)).

Our review of the record in this case convinces us that the trial court did not abuse its discretion in admitting the stipulation of Lightfoot's prior convictions as relevant to the issues of identity and intent. Furthermore, even if the court erred, the error was harmless in light of the strong circumstantial evidence of Lightfoot's guilt.

The district court also admitted, over Lightfoot's objection, expert testimony by an FBI agent on the comparison of articles seized from the getaway vehicle

and the yard near Lightfoot's arrest with video images of articles worn or used by the robber from the bank video surveillance system. Lightfoot argues that the agent's testimony was not helpful to the jury because it did not involve observations that a lay person was incapable of making, and therefore the testimony was erroneously admitted. We review a district court's decision to admit expert testimony for an abuse of discretion. *See Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 152, 143 L. Ed. 2d 238, 119 S. Ct. 1167 (1999). Before allowing expert testimony, the district court must determine that the testimony is both reliable, or scientifically valid; and relevant, that it will assist the trier of fact in understanding or determining a fact in issue in the case. *See Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 592-93, 125 L. Ed. 2d 469, 113 S. Ct. 2786 (1993). Here, we conclude that the district court, after conducting extensive voir dire of the witness, properly admitted his testimony.

At the close of the Government's case, Lightfoot moved for judgment of acquittal, contending that the evidence was insufficient to establish his guilt of either count of the indictment. On appeal, he alleges that the denial of this motion was error. A jury's verdict must be upheld on appeal if there is substantial evidence in the record to support it. *See Glasser v. United States*, 315 U.S. 60, 80, 86 L. Ed. 680, 62 S. Ct. 457 (1942). In determining whether the evidence in the record is substantial, we view the evidence in the light most favorable to the government, and consider whether there is evidence that a reasonable finder of fact could accept as adequate and sufficient to support a conclusion of a defendant's guilt beyond a reasonable

doubt. *United States v. Burgos*, 94 F.3d 849, 862 (4th Cir. 1996) (en banc). In evaluating the sufficiency of the evidence, we do not review the credibility of the witnesses and assume that the jury resolved all contradictions in the testimony in favor of the government. *See United States v. Romer*, 148 F.3d 359, 364 (4th Cir. 1998), *cert. denied*, 525 U.S. 1141, 143 L. Ed. 2d 41, 119 S. Ct. 1032 (1999). Although the evidence of Lightfoot's guilt was largely circumstantial, it was very persuasive. Viewing that evidence in the light most favorable to the Government, we are convinced that it is more than sufficient to sustain the jury's findings.

Accordingly, we affirm Lightfoot's convictions and sentence. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED

APPENDIX E — TRIAL ORDER OF THE UNITED STATES DISTRICT COURT, D. MARYLAND, DATED APRIL 25, 2000

2000 WL 35621664 (D.MD.) (TRIAL ORDER)
UNITED STATES DISTRICT COURT,
D. MARYLAND

UNITED STATES OF AMERICA,

v.

ANTONIO LIGHTFOOT.

No. PJM-99-0409.
April 25, 2000.

Judgment in a Criminal Case (For Offenses Committed on or After November 1, 1987)

Defendant's Attorney: Paul Dewolfe.

Assistant U.S. Attorney: Ronald Tenpas.

Peter J. Messitte, United States District Judge.

THE DEFENDANT:

☐ pleaded guilty to count(s) .....

☐ pleaded nolo contendere to count(s) _____, which was accepted by the court.

Appendix E

X was found guilty on count(s) 1 & 2 after a plea of not guilty.

Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
18:2113(a),(d) & (f)	Bank Robbery	September 14, 1999	1
18.924(c)	Use of a Firearm During and in relation to a crime of violence	September 14, 1999	2

The defendant is adjudged guilty and sentenced as provided in pages 2 through 5 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) .....

☐ Count(s) _____ (is)(are) dismissed on the motion of the United States.

IT IS FURTHER ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution. costs, and special assessments imposed by this judgment are fully paid.

Appendix E

Defendant's SSN: XXX-XX-XXXX

Defendant's Date of Birth: XX/XX/66

Defendant's U.S.M. No.: 07750-016

Defendant's Residence Address:

5628 Whitfield Chapel Road

Lanham, MD

Defendant's Mailing Address:

SAME AS ABOVE

Name of Court Reporter: SIMPKINS

APRIL 21, 2000

Date of Imposition of Judgment

<<signature>>

PETER J. MESSITTE

UNITED STATES DISTRICT JUDGE

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a

total term of Life as to count 1. As to count 2 - 7 years to run consecutive to count 1.

☐ The court makes the following recommendations to the Bureau of Prisons:

X The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:
☐ at _____ a.m./p.m. on. . . . . .

☐ as notified by the United States Marshal.

The defendant shall surrender, at his/her own expense, to the institution designated by the Bureau of Prisons at the date and time specified in a written notice to be sent to the defendant by the United States Marshal. If the defendant does not receive such a written notice, defendant shall surrender to the United States Marshal:
☐ before 2 p.m. on . . . . . .

defendant who fails to report either to the designated institution or to the United States Marshal as [text illegible]rected shall be subject to the penalties of Title 18 U.S.C. § 3146. If convicted of an offense while on release, the defendant shall be subject to the penalties set forth in 18 U.S.C. § 3147. For violation of a condition of release, the defendant shall be subject to the sanctions set forth in Title 18 U.S.C. § 3148. Any bond or property posted may be forfeited and judgment entered against the defendant and the surety in the full amount of the bond.

Appendix E

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____ at _____, with a certified copy of this Judgment.

. . . . . .

UNITED STATES MARSHAL

By: . . . . . .

DEPUTY U.S. MARSHAL

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of 5 years as to count 1.

The defendant shall comply with all of the following conditions:

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

STATUTORY CONDITIONS OF SUPERVISED RELEASE

The defendant shall not commit any federal, state or local crime.

In any felony case, the defendant shall not possess a firearm as defined in 18 U.S.C. § 921.

The defendant shall not illegally use or possess a controlled substance.

The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as directed by the probation officer.

☐ The above drug testing condition is suspended based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)

If this judgment imposes any criminal monetary penalty, including special assessment, fine, or restitution, it shall be a condition of supervised release that the defendant pay any such monetary penalty that remains unpaid at the commencement of the term of supervised release in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment. The defendant shall notify the court of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay restitution, fines, or special assessments.

STANDARD CONDITIONS OF SUPERVISION

1) The defendant shall not leave the judicial district without the permission of the court or probation officer;

2) The defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;

3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer:

4) The defendant shall support his or her dependents and meet other family responsibilities;

5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;

6) The defendant shall notify the probation officer ten days prior to any change in residence or employment;

7) The defendant shall refrain from excessive use of alcohol;

8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;

9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any persons convicted of a felony unless granted permission to do so by the probation officer;

10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;

11) The defendant shall notify the probation officer within 72 hours of being arrested or questioned by a law enforcement officer;

12) The defendant shall notify the probation officer within 72 hours of being charged with any offense, including a traffic offense,

13) The defendant shall not enter into any agreement to act as an informer or special agent of a law enforcement agency without the permission of the court;

14) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendants's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

CRIMINAL MONETARY PENALTIES

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth on Sheet 5. Part B.

	Asessment	**Fine**	**Restitution**
Totals:	$ 200.00	$	

☐ If applicable, restitution amount ordered pursuant to plea agreement . . . . . .

Appendix E

FINE

The defendant shall pay interest on any fine of more than $2,500, unless the fine is paid in full before the 15th day after the date of judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 5, Part B may be subject to penalties for default and delinquency pursuant to 18 U.S.C. § 3612(g).

☐ The court has determined that the defendant does not have the ability to pay a fine; therefore, a fine is waived.

☐ The court has determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ The interest requirement is waived.

☐ The interest requirement is modified as follows:

RESTITUTION

☐ The determination of restitution is deferred until _____. An Amended Judgment in a Criminal Case will be entered after such determination.

☐ The defendant shall make restitution to the following payees in the amounts listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportional payment unless specified otherwise in the priority order or percentage payment column below.

Appendix E

Name of Payee	Amount of Restitution Ordered	Priority Order or Percentage of Payment

STATEMENT OF REASONS

X The court adopts the factual findings and guideline application in the presentence report. OR

☐ The court adopts the factual findings and guideline application in the presentence report except (see attachment. if necessary):

Guideline Range Determined by the Court (before departures):

Total Offense Level: 34

Criminal History Category: VI

Imprisonment Range: Ct. 1 - Mandatory Life; Ct. 2 - no less than 7 years consecutive

Supervised Release Range: 3- 5 years

Fine Range: $ 17.500.00 to $ 175,000.00

X Fine waived or below the guideline range because of inability to pay.

Total Amount of Restitution: $ 0

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Restitution is not ordered (or only partial restitution is ordered) because:

For all offenses regardless of when committed:

☐ Consideration of restitution not mandated by statute and not appropriate under facts of the case

☐ No identifiable victim has suffered physical injury or pecuniary loss

☐ Other (see attachment, if necessary)

For offenses committed prior to April 24, 1996 ☐

☐ Financial circumstances of the defendant

☐ Disproportionate complication/prolongation of the sentencing process

For offenses against property committed on or after April 24, 1996:

☐ Excessively large number of identifiable victims

☐ Disproportionate complication/prolongation of the sentencing process

For offenses committed on or after April 24, 1996 other than crimes of violence or offenses against property or relating to tampering with consumer products:

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☐ Financial circumstances of the defendant

☐ The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by the application of the guidelines.

OR

X The sentence is within the guideline range, that range exceeds 24 months, and the sentence is imposed for the following reason(s):

☐ The sentence departs from the guideline range:

☐ upon motion of the government, as a result of defendant's substantial assistance.

☐ for the following specific reason(s):

APPENDIX F — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT, FILED DECEMBER 16, 2024

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-7447
(8:99-cr-00409-PJM-1)
(8:16-cv-01915-PJM)

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

ANTONIO LAMONT LIGHTFOOT,

Defendant-Appellant.

FILED: December 16, 2024

ORDER

The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 35 on the petition for rehearing en banc.

Entered at the direction of the panel: Judge Agee, Judge Rushing, and Judge Benjamin.

For the Court

/s/ Nwamaka Anowi, Clerk

APPENDIX G — RELEVANT STATUTORY PROVISIONS

18 U.S.C.A. § 3559

§ 3559. Sentencing classification of offenses

(c) Imprisonment of certain violent felons.--

(1) Mandatory life imprisonment.--Notwithstanding any other provision of law, a person who is convicted in a court of the United States of a serious violent felony shall be sentenced to life imprisonment if--

(A) the person has been convicted (and those convictions have become final) on separate prior occasions in a court of the United States or of a State of--

(i) 2 or more serious violent felonies; or

(ii) one or more serious violent felonies and one or more serious drug offenses; and

(B) each serious violent felony or serious drug offense used as a basis for sentencing under this subsection, other than the first, was committed after the defendant's conviction of the preceding serious violent felony or serious drug offense.

(2) Definitions.--For purposes of this subsection--

(A) the term "assault with intent to commit rape" means an offense that has as its elements engaging in physical contact with another person or using or brandishing a weapon against another person with intent to commit aggravated sexual abuse or sexual abuse (as described in sections 2241 and 2242);

(B) the term "arson" means an offense that has as its elements maliciously damaging or destroying any building, inhabited structure, vehicle, vessel, or real property by means of fire or an explosive;

(C) the term "extortion" means an offense that has as its elements the extraction of anything of value from another person by threatening or placing that person in fear of injury to any person or kidnapping of any person;

(D) the term "firearms use" means an offense that has as its elements those described in section 924(c) or 929(a), if the firearm was brandished, discharged, or otherwise used as a weapon and the crime of violence or drug trafficking crime during and relation to which the firearm was used was subject to prosecution in a court of the United States or a court of a State, or both;

(E) the term "kidnapping" means an offense that has as its elements the abduction, restraining, confining, or carrying away of another person by force or threat of force;

(F) the term "serious violent felony" means--

(i) a Federal or State offense, by whatever designation and wherever committed, consisting of murder (as described in section 1111); manslaughter other than involuntary manslaughter (as described in section 1112); assault with intent to commit murder (as described in section 113(a)); assault with intent to commit rape; aggravated sexual abuse and sexual abuse (as described in sections 2241 and 2242); abusive sexual contact (as described in sections 2244(a)(1) and (a)(2)); kidnapping; aircraft piracy (as described in section 46502 of Title 49); robbery (as described in section 2111, 2113, or 2118); carjacking (as described in section 2119); extortion; arson; firearms use; firearms possession (as described in section 924(c)); or attempt, conspiracy, or solicitation to commit any of the above offenses; and

(ii) any other offense punishable by a maximum term of imprisonment of 10 years or more that has as an element the use, attempted use, or threatened use of physical force against the person of another or that, by its nature, involves a substantial risk that physical force against the person of another may be used in the course of committing the offense;

(G) the term "State" means a State of the United States, the District of Columbia, and a

commonwealth, territory, or possession of the United States; and

(H) the term "serious drug offense" means--

(i) an offense that is punishable under section 401(b)(1)(A) or 408 of the Controlled Substances Act (21 U.S.C. 841(b) (1)(A), 848) or section 1010(b)(1)(A) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b)(1) (A)); or

(ii) an offense under State law that, had the offense been prosecuted in a court of the United States, would have been punishable under section 401(b)(1)(A) or 408 of the Controlled Substances Act (21 U.S.C. 841(b)(1)(A), 848) or section 1010(b)(1)(A) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b)(1)(A)).

Appendix G

THE MICHIGAN PENAL CODE (EXCERPT)
Act 328 of 1931

750.531 Bank, safe and vault robbery.

Sec. 531. Bank, safe and vault robbery—Any person who, with intent to commit the crime of larceny, or any felony, shall confine, maim, injure or wound, or attempt, or threaten to confine, kill, maim, injure or wound, or shall put in fear any person for the purpose of stealing from any building, bank, safe or other depository of money, bond or other valuables, or shall by intimidation, fear or threats compel, or attempt to compel any person to disclose or surrender the means of opening any building, bank, safe, vault or other depository of money, bonds, or other valuables, or shall attempt to break, burn, blow up or otherwise injure or destroy any safe, vault or other depository of money, bonds or other valuables in any building or place, shall, whether he succeeds or fails in the perpetration of such larceny or felony, be guilty of a felony, punishable by imprisonment in the state prison for life or any term of years.

History: 1931, Act 328, Eff. Sept. 18, 1931;—CL 1948, 750.531.

Former law: See section 1 of Act 111 of 1877, being How., § 9121; CL 1897, § 506; CL 1915, § 15229; and CL 1929, § 16748.