

NO: 17-6374

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2017

ARMANDO RIVERA,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

REPLY BRIEF FOR PETITIONER

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QUESTION PRESENTED FOR REVIEW

Whether reasonable jurists could debate whether Mr. Rivera was denied his due process rights under the Fifth Amendment to the United States Constitution when he was sentenced as an armed career criminal to a 188-month term of imprisonment pursuant to 18 U.S.C. §924(e) for possessing a gun after three Florida state armed robbery convictions, where such offenses are not violent felonies after *Johnson v. United States*, 576 U.S. ___, 135 S. Ct. 2551 (2015)?

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REPLY BRIEF FOR PETITIONER

The government concedes (BIO at 6, 14, 17) that the Eleventh and Ninth Circuits are split on whether Florida robbery qualifies as an ACCA violent felony. However, it asserts that this conflict does not warrant this Court's review because it involves the interpretation of "a specific state law" and lacks "broad legal importance." BIO at 6. Both assertions are wrong.

I. The Circuits Are Divided on a Question of Federal Law

Contrary to the government's suggestion, the Eleventh and Ninth Circuits are in agreement about Florida law. They agree that to commit robbery, there must be "force sufficient to overcome a victim's resistance." *Robinson v. State*, 692 So.2d 883, 886-87 (Fla. 1997). And they agree that "[t]he degree of force used is *immaterial*," as long as it is "sufficient to overcome the victim's resistance." *Montsdoca v. State*, 93 So. 157, 159 (Fla. 1922) (emphasis added). See *United States v. Fritts*, 841 F.3d 937, 943-944 (11th Cir. 2016) (citing *Robinson* and *Montsdoca* as authoritative); *United States v. Geozos*, 870 F.3d 890, 900-901 (9th Cir. 2017) (same).

The parties likewise agree that this is the governing legal standard in Florida. See BIO at 9, 17. Thus, there is no dispute about the degree of force required to support a robbery conviction under Florida law. Rather, the disagreement lies in whether the force necessary to overcome the victim's resistance is categorically "physical force" under the ACCA's elements clause in 18 U.S.C. §924(e)(2)(B)(i). And, "[t]he meaning of 'physical force' in §924(e)(2)(B)(i) is a question of federal law, not state law." *Curtis Johnson v. United States*, 559 U.S.

133, 138 (2010).

The government does not dispute that in order to resolve that federal question, the Court must look to the “least culpable conduct” punishable as robbery in Florida, and intermediate appellate decisions illustrate the type of conduct so punishable. *See* BIO at 10-13 (consulting state decisional law to determine least culpable conduct). And the government acknowledges (BIO at 11-12) that “overcoming resistance” can involve no more than a “tug-of-war” over a purse, as in *Benitez-Saldana v. State*, 67 So.3d 320 (Fla. 2nd DCA 2011); bumping a victim from behind, as in *Hayes v. State*, 780 So.2d 918 (Fla. 1st DCA 2011); or removing money from a victim’s clenched fist, as in *Sanders v. State*, 769 So.2d 506 (Fla. 5th DCA 2000) and *Winston Johnson v. State*, 612 So.2d 689, 690 (Fla. 1st DCA 1993). The only dispute, then, is whether the type of force described in these cases amounts to “physical force,” which this Court has defined as “*violent force*.” *Curtis Johnson*, 599 U.S. at 140. And that is purely a question of federal law, not state law. *Id.* at 138.

Given that the question here is one of federal law, this case is even more compelling than the question reviewed in *Curtis Johnson*. When the Court granted certiorari in *Curtis Johnson*, there was no clear or acknowledged circuit split on whether Florida simple battery satisfied the elements clause. *See* Brief in Opposition, *Johnson v. United States*, 2008 WL 5661843 at **8-10 (Dec. 24, 2008). Instead, the circuits broadly disagreed on whether conduct common to many state battery offenses – *i.e.*, a *de minimis* touching – qualified as “physical force” under the elements clause. Similar to the broad disagreement addressed in *Curtis*

Johnson, the circuits currently disagree on whether the conduct common to many state robbery offenses – *e.g.*, bumping, grabbing, or minor struggling – satisfies the definition of “physical force.” That there is also a clear circuit split on the precise state offense here (Florida robbery) makes review of the federal question presented vital to assure identically-situated defendants are not treated differently.

II. The Federal Question Dividing the Circuits Warrants Review

Although the question presented is one of federal law that admittedly divides the circuits, the government nonetheless insists that review is not warranted. Its assertions do not withstand scrutiny. The circuit conflict should be resolved.

1. As an initial matter, the government points out (BIO at 17) that the Court has recently denied several petitions raising the same question presented here. But, in the very same paragraph, the government acknowledges that these petitions were all denied *before* the Ninth Circuit’s conflict-creating decision in *Geozos*. The Eleventh Circuit has followed its precedential decision in *Fritts* in scores of cases and shown no interest in reconsidering *Fritts* en banc. Moreover, the government declined to seek rehearing or certiorari in *Geozos*. Thus, moving forward, geography alone will determine whether a Florida robbery offense satisfies the ACCA’s elements clause. Geography will determine whether certain federal defendants will be subject to an enhanced mandatory minimum penalty of 15 years, 18 U.S.C. §924(e), as opposed to the otherwise-applicable 10-year maximum, 18 U.S.C. §924(a)(2). Only this Court can resolve that untenable disparity.

2. In addition to providing guidance to district courts across the nation, the issue of whether a Florida conviction for robbery is a “violent felony” is itself important and worthy of resolution. The government asserts that Florida robbery’s status as a violent felony lacks broad national importance. (BIO at 18). But statistical data refutes that assertion. At present, there are numerous certiorari petitions – from the Eleventh Circuit and one from the Fourth Circuit – raising this issue.¹ That does not include the numerous petitions that were filed and denied before *Geozos*. Nor does it include the petitions that will be filed absent immediate intervention by this Court. Indeed, now that there is a direct circuit conflict on whether Florida robbery is a violent felony, the Court can expect an avalanche of petitions presenting the question.

Federal sentencing data supports that prediction. Following the invalidation of the ACCA’s residual clause in *Samuel Johnson v. United States*, 576 U.S. ___, 135 S. Ct. 2551 (2015), Florida has truly become the ACCA epicenter of the country. While the total number of ACCA sentences nationally has decreased somewhat

¹For the Eleventh Circuit petitions, see *Stokeling v. United States*, No. 17-5554 (petition filed Aug. 4, 2017); *Davis v. United States*, No. 17-5543 (petition filed Aug. 8, 2017); *Phelps v. United States*, No. 17-5745 (petition filed Aug. 24, 2017); *Conde v. United States*, No. 17-5772 (petition filed Aug. 24, 2017); *Williams v. United States*, No. 17-6026 (petition filed Sept. 14, 2017); *Everette v. United States*, No. 17-6054 (petition filed Sept. 18, 2017); *Jones v. United States*, No. 17-6140 (petition filed Sept. 25, 2017); *James v. United States*, No. 17-6271 (petition filed Oct. 3, 2017); *Middleton v. United States*, No. 17-6276 (petition filed Oct. 3, 2017); *Shotwell v. United States*, No. 17-6540 (petition filed Oct. 17, 2017); *Mays v. United States*, No. 17-6664 (petition filed Nov. 2, 2017); *Hardy v. United States*, No. 17-6829 (petition filed Nov. 9, 2017); *Baxter v. United States*, No. 17-6991 (petition filed Dec. 4, 2017); *Pace v. United States*, No. 17-7140 (petition filed Dec. 18, 2017). For the Fourth Circuit petition, see *Orr v. United States*, No. 17-6577 (petition filed Oct. 26, 2017).

without the residual clause, the percentage of those sentences originating from the Eleventh Circuit has increased. U.S. Sentencing Comm’n, *Interactive Sourcebook*.² From 2013 through 2016, the Eleventh Circuit accounted for the most ACCA sentences by far in the country – approximately 25% of the total each year – with the three Florida Districts accounting for at least 75% of the ACCA cases in the Eleventh Circuit and 20% of the national total. *Id.* And, while 2017 statistics are not yet available, the Commission has confirmed that there were still over 300 ACCA sentences imposed in 2017, U.S. Sentencing Comm’n, *Quick Facts: Mandatory Minimum Penalties 2* (2017), with the Southern District of Florida remaining among the top five districts nationally in the number of felon in possession cases. U.S. Sent. Comm’n, *Quick Facts: Felon in Possession of a Firearm 1* (2017).

With such a substantial number of ACCA cases nationwide originating in Florida, many of them will inevitably involve Florida robbery. Indeed, Florida has had a consistently high robbery rate – with over 20,000 robberies committed every year for the last four decades.³ More generally, the Sentencing Commission found in a 2015 study that robbery followed only traffic offenses, larceny, burglary, and simple assault, as the most common prior offenses committed by armed career criminals nationally. U.S. Sent’g Comm’n, *Public Data Briefing: “Crime of Violence”*

²The Commission’s Interactive Sourcebook is available at <https://isb.ussc.gov/Login>. These statistics are based on data found under “All Tables and Figures,” in Table 22.

³<http://www.disastercenter.com/crime/flcrime.htm>.

and Related Issues.⁴ Of course, traffic offenses, larceny, and misdemeanor simple assaults will never qualify as “violent felonies.” And, after this Court’s recent clarification of the categorical approach and the elimination of the residual clause, many burglary offenses no longer qualify as ACCA predicates. *See, e.g., Descamps v. United States*, 570 U.S. 254 (2013) (California); *United States v. Esprit*, 841 F.3d 1235, 1240 (11th Cir. 2016) (Florida). As a result, robbery is now likely the most commonly-used ACCA predicate nationwide. And nowhere is that more true than in Florida. Given the sheer number of ACCA cases in the Eleventh Circuit, and the substantial number of those cases involving Florida robbery, the question presented here is of national importance for those reasons alone.

3. But this issue is by no means limited to the Eleventh Circuit. Florida has one of the most transient populations in the country.⁵ That means that people who commit crimes in Florida do not remain in Florida. The transient nature of Florida’s population, coupled with the substantial number of robbery offenses committed here, explains why federal courts around the country (not merely in the Eleventh Circuit) have already considered – and will continue to consider – whether Florida robbery satisfies the elements clause.

Geozos itself illustrates that wide range. The defendant there was sentenced as an armed career criminal in Anchorage, Alaska, based upon a prior Florida robbery. If that remote corner of the country is grappling with the issue, then no

⁴http://www.ussc.gov/sites/default/files/pdf/amendment-process/public-hearings-and-meetings/20151105/COV_briefing.pdf (Slide 30).

⁵City-Data.com/forum/city-vs-city/794683-whats-most-transient-state-6.html.

jurisdiction is immune. Moreover, courts in other jurisdictions have also concluded that Florida robbery is not a violent felony. *See, e.g., United States v. Lee*, 2016 WL 1464118 at **6-7 (W.D.N.Y. Apr. 12, 2016) (holding that Florida conviction for armed robbery was not a violent felony and therefore, cannot be an ACCA predicate). But while the Ninth Circuit and some district courts have carefully surveyed Florida law, others have reflexively followed the home-circuit decision in *Fritts*. *See, e.g., United States v. Orr*, 685 F. App'x 263, 265-66 (4th Cir. 2017) (arising out of North Carolina); *Gardner v. United States*, 2017 WL 1322150 at *2 (E.D. Tenn. Apr. 10, 2017); *Wright v. United States*, 2017 WL 1322162 at *2 (E.D. Tenn. Apr. 10, 2017). If not corrected, *Fritts* will continue to prejudice defendants far and wide.

Now that the Eleventh and Ninth Circuits have taken opposing positions, other courts will simply line up behind one of them. For example, in *United States v. Garcia-Hernandez*, Case No. 17-3027 (*appeal docketed*, 8th Cir. Sept. 19, 2017), the Eighth Circuit is currently reviewing an ACCA sentence imposed by a North Dakota district court based on Florida robbery, where the district court reflexively followed *Fritts*. On appeal, the appellant has urged the Eighth Circuit to follow the Ninth Circuit's intervening decision in *Geozos*, and the government will likely ask the Eighth Circuit to follow *Fritts*. Because the Eighth Circuit and others like it will merely choose between those two opinions, further percolation is unnecessary. Given that nationwide uniformity in applying federal statutes is critical, this Court has frequently granted certiorari to resolve 1-1 splits regarding the interpretation

of such statutes. *See, e.g., Nichols v. United States*, 578 U.S. ___, 136 S. Ct. 1113, 1117 (2016); *Hall v. United States*, 566 U.S. 506, 511 & n.1 (2012).

The circuit conflict ultimately boils down to proper interpretation of the term “physical force” in §924(e)(2)(B)(i), as defined in *Curtis Johnson*. Only this Court can resolve the dispute about what its decision means. And, absent immediate resolution, defendants on the wrong side of the circuit split – not only those in the Eleventh Circuit, but those in other courts that follow *Fritts* – will continue to serve at least five additional years in prison beyond the statutory maximum. Timely petitions for collateral review filed after *Samuel Johnson* in such courts will continue to be incorrectly denied. And many more ACCA sentences predicated upon Florida robbery will become unchallengeable. This Court’s intervention is needed.

Resolution of the elements clause issue here will not only impact ACCA cases on direct and collateral review. It will extend to several important enhancements under the Sentencing Guidelines, which contain an identical elements clause. *See* U.S.S.G. §4B1.2(a)(1) (career offenders), §2K2.1 cmnt. n.1 (firearms), §2L1.2 cmnt. n.2 (immigration). And, if the Court declares 18 U.S.C. §16(b) unconstitutionally vague in *Sessions v. Dimaya* (No. 15-1498) (re-argued Oct. 2, 2017), then the question here could impact immigration cases as well, since the elements clause in 18 U.S.C. §16(a) is virtually identical to the ACCA’s. Both the Eleventh and Ninth Circuits have a substantial number of immigration cases on their civil and criminal dockets. And should *Dimaya* eliminate §16(b), *Geozos* and *Fritts* will compel district courts in those circuits to reach differing conclusions about whether aliens with

prior Florida robbery convictions were previously convicted of “aggravated felonies.”

4. Finally, resolving the question presented here will do more than resolve the intractable and far-reaching conflict on Florida robbery’s status as a violent felony. It will also provide much-needed guidance to the lower courts on how to apply *Curtis Johnson* to numerous other robbery offenses. As explained in the Petition (at 11-14) but ignored by the government, Florida is hardly unique in requiring an offender to “overcome victim resistance” to be found guilty of robbery. The “overcoming resistance” element in the Florida statute derives from the common law, and a majority of states have retained a similar element in their robbery offenses. Moreover, as explained in the Petition, many state courts – not only those in Florida – have interpreted an “overcoming resistance” element consistent with the common law.

On this point, the government acknowledges that the Fourth Circuit in *United States v. Gardner*, 823 F.3d 794 (4th Cir. 2016), and *United States v. Winston*, 850 F.3d 677 (4th Cir. 2017), as well as the Sixth Circuit in *United States v. Yates*, 866 F.3d 723 (6th Cir. 2017), correctly recognized that state courts in North Carolina, Virginia, and Ohio have all held that conduct such as bumping the victim, grabbing a victim’s hand or arm, and/or pulling the strap on a victim’s purse against only slight resistance, is not violent force. BIO at 14-15 (“In those cases, the degree of force required under state law was not sufficient to satisfy the ACCA’s elements clause”). However, the government asserts that the outcomes in these cases “arise not from any disagreement about the meaning of ‘physical force’ under

Johnson, but from differences in how States define robbery.” BIO at 14.⁶ Regardless of whether these cases exacerbate the conflict between the Ninth and Eleventh Circuits, they show that numerous states have similar robbery offenses.⁷ And because these offenses include “overcoming resistance” as an element, they can be committed by conduct similar to that which satisfies Florida’s “overcoming resistance” element – *e.g.*, bumping, grabbing, or pulling the strap on a purse. As a result, any decision by this Court would provide useful guidance to the lower courts on whether such minor uses of force satisfy *Curtis Johnson*’s definition of “violent force.”

Such guidance is necessary and overdue. Three decades have passed since Congress amended the ACCA to include two different “violent felony” definitions. And during that time, burglary and robbery have remained the most common offenses used for ACCA enhancements under those definitions. This Court has granted certiorari in multiple ACCA cases to address various state burglary offenses. *See e.g., Mathis v. United States*, 579 U.S. ___, 136 S. Ct. 2243 (2016); *Descamps*, 570 U.S. 254 (2013); *James v. United States*, 550 U.S. 192 (2007); *Taylor*

⁶Contrary to the government’s position, the offenses at issue in the other circuit cases cited in the BIO at 16, are *not* “similar” to the unarmed robbery offenses in Florida, North Carolina, Virginia, and Ohio. Nor has Petitioner ever claimed that they are similar.

⁷One offense strikingly similar to Florida’s robbery offense, which the Ninth Circuit has also considered (although the government has not), is Arizona robbery. *See United States v. Molinar*, 876 F.3d 953, 957-958 (9th Cir. 2017) (holding that an Arizona conviction for armed robbery is not a “crime of violence” under U.S.S.G. §4B1.2’s identically-worded elements clause because the statute’s “overpowering force” element does not require “violent force”); *United States v. Jones*, 877 F.3d 884, 888 (9th Cir. 2017) (*Molinar*’s holding applied equally to whether Arizona armed robbery was a “violent felony” under the ACCA’s elements clause).

v. United States, 495 U.S. 575 (1990). But this Court has never addressed whether a state robbery conviction satisfies the elements (or residual) clauses. That question looms large after elimination of the residual clause, since the elements clause has taken center stage in ACCA litigation. Indeed, in *Welch v. United States*, 578 U.S. ___, 136 S. Ct. 1257, 1268 (2016), this Court expressly left that question open. The time has come for a definitive resolution.

III. This Case is an Ideal Vehicle

Because the federal question here divides the circuits and is of national importance, the only question that remains is whether this case is an appropriate vehicle to decide it. It is. The single issue Mr. Rivera presents – whether “overcoming resistance” in a Florida robbery offense categorically involves the use of “violent force” as defined in *Curtis Johnson* – was pressed in the court of appeals. *See Rivera v. United States*, Case No. 17-13189, Application for Certificate of Appealability (11th Cir. July 17, 2017). The Eleventh Circuit ruled against him based on its precedential decision in *Fritts*. And resolution of the issue will be outcome-determinative, as Petitioner’s ACCA status depends upon his Florida robbery convictions.

ACCA status has serious practical consequences for Petitioner. There is an almost 6-year difference between his 188-month ACCA sentence, and the 120-month statutory maximum he would otherwise face. Moreover, resolving the issue here would affect numerous other Eleventh Circuit defendants erroneously serving 15-year sentences (and longer) because of *Fritts*.

Nor is it of any consequence that, as the government points out (BIO at 6, 19), Petitioner’s convictions predated *Robinson*. The 1989 conviction in *Fritts* and 1981 conviction in *Geozos* likewise predated *Robinson*, and that was irrelevant to the Eleventh Circuit’s determination that Florida robbery was a violent felony, and the Ninth Circuit’s contrary determination. Both circuits understood the “overcoming resistance” standard of *Robinson* to have always been the law in Florida. *Fritts*, 841 F.3d at 942-43; *Geozos*, 870 F.3d at 900-901. Indeed, that is why they analyzed pre-*Robinson* convictions under that standard.

As the government has argued in every post-*Fritts* case including this one (BIO at 8), it is settled law in the Eleventh Circuit now that *all* Florida robbery convictions “categorically” qualify as ACCA predicates, regardless of the date of conviction. Given that the court below cited *Fritts* in holding that *Robinson* made clear that Florida’s robbery statute had never included a mere snatching, and instead, had always required the “substantial degree of force” required by *Curtis Johnson*, Petitioner’s case presents an ideal vehicle in which to resolve the circuit conflict on the interpretation of *Curtis Johnson*. As such, the question of whether a Florida robbery categorically necessitates the use of “violent force” is squarely presented here. The Court should decide it.

IV. The Decision Below is Wrong

The decision below is wrong because *Fritts* is wrong. As explained by the Ninth Circuit in *Geozos*, “in focusing on the fact that Florida robbery requires a use of force sufficient to overcome the resistance of the victim, [the Eleventh Circuit]

has overlooked the fact that, if the resistance itself is minimal, then the force used to overcome that resistance is not necessarily violent force.” 870 F.3d at 901. The government does not dispute that *Fritts* overlooked that key point. Nor does it dispute that *Fritts* failed to consult the intermediate appellate decisions clarifying Florida’s “overcoming resistance” element. Those errors infected its conclusion.

The government nonetheless argues that the robbery conduct described in those intermediate appellate decisions constitutes “violent force” under *Curtis Johnson*. In so doing, it sweepingly asserts that any degree of “[f]orce sufficient to prevail in a physical contest for possession of the stolen item” is violent, since prevailing in a struggle “could not occur through ‘mere unwanted touching.’” BIO at 10. But that assertion is based on a misreading of *Curtis Johnson*. The only conduct the Court was asked to consider in that case was an unwanted touching. This Court did *not* hold that anything more than such a touching satisfies the elements clause.

The government also incorrectly suggests that conduct “capable” of causing *any* pain or injury is violent force. That test lacks a meaningful limit. While *Curtis Johnson* defined the term “physical force” as “*violent* force – that is, force capable of causing pain or injury to another person,” 559 U.S. at 140, the Court made clear that “violent force” was measured by the “degree” or “quantum” of force. *Id.* at 139, 140, 142 (referring to “substantial degree of force” involving “strength,” “vigor,” “energy,” “pressure,” and “power”). The government’s singular focus on the word “capable” ignores the explanation pervading the remainder of the opinion.

The only specific conduct *Curtis Johnson* mentioned as involving the requisite degree of force was a “slap in the face,” because the force used in slapping someone’s face would necessarily “inflict pain.” 559 U.S. at 143. But beyond that single example of a classic battery by striking, the Court did not mention any other category of conduct that would meet its new “violent force” definition. The government posits that “[f]orce sufficient to prevail in a physical contest for possession of the stolen item” is “equivalent to ‘a slap in the face.’” BIO at 10. But *Curtis Johnson* said no such thing. And bumping, grabbing, and unpeeling one’s fingers do not require the same violence or degree of force as a slap in the face.

The government’s position here is not only at odds with *Curtis Johnson*, but also with *United States v. Castleman*, 572 U.S. ___, 134 S. Ct. 1405 (2014). There, the Court adopted the broader common-law definition of “physical force” for purposes of 18 U.S.C. §922(g)(9)’s “misdemeanor crime of domestic violence,” rather than *Curtis Johnson*’s narrower “*violent* force” definition. 134 S. Ct. 1410. The Court reasoned that “domestic violence” encompasses a range of force broader than “violence *simpliciter*.” *Id.* at 1411 n.4 (emphasis in original). Particularly relevant here, the *Castleman* Court observed that “most physical assaults committed against women and intimates are relatively minor,” and include “pushing, grabbing, [and] shoving.” *Id.* at 1412 (citations omitted). The Court opined that such “[m]inor uses of force may not constitute ‘violence’ in the generic sense.” *Id.* The *Castleman* Court expounded on this point by distinguishing the Seventh Circuit’s decision in *Flores v. Ashcroft*, 350 F.3d 666, 670 (7th Cir. 2003), a case first cited by this Court in *Curtis*

Johnson, noting that it was “hard to describe . . . as ‘violence’” a “squeeze of the arm [that] causes a bruise.”

Castleman’s deliberate use of *Flores* suggests that the dividing line between violent and non-violent “force” lies somewhere between a slap to the face and a bruising squeeze of the arm. Under that view, certainly a “bump” (without injury) in *Hayes* would constitute similarly “minor,” and thus non-violent force. The same is true of unpeeling a victim’s fingers without injury (*Sanders*), an abrasion-causing grabbing of an arm during a tug-of-war (*Benitez-Saldana*), and the “slight injury” to the victim’s hand by grabbing money and tearing off a scab (*Winston Johnson*). Each of these “minor uses of force” was sufficient to overcome a victim’s resistance in a Florida robbery case. But just like the bruising squeeze to the arm discussed in *Castleman*, which actually resulted in a minor injury, they do not constitute “violence” in the generic sense. The government’s assumption that minor injuries are themselves proof of “violent force” is not supported by *Curtis Johnson*, *Castleman*, or real-world experience.

Finally, it is notable that Justice Scalia – writing only for himself – opined in *Castleman* that shoving, grabbing, pinching, and hair pulling would all meet the *Curtis Johnson* definition of “*violent force*” since (in his view) each action was “capable of causing physical pain or injury.” 134 S. Ct. 1421-1422 (Scalia, J., concurring in the judgment). Significantly, however, no other member of this Court joined that view. That is because such conduct – which requires more than an unwanted touch, but less than a painful slap to the face – entails only a minor use

of force. It thus lacks the degree of force necessary to qualify as violent. And because Florida robbery may unquestionably be committed by such conduct, it is not categorically a “violent felony” under the ACCA’s elements clause.

CONCLUSION

For the foregoing reasons, as well as those stated in the petition, the Court should grant the petition for a writ of certiorari.

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