RECORD NO. 17-6577

In The
Supreme Court of The United States

RICHARD ARTHUR ORR,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

SUPPLEMENTAL BRIEF OF PETITIONER

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Western District of North Carolina

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Supplemental Brief

Richard Orr submits this Supplemental Brief under Rule 15.8 to call the Court's attention to the decision in *United States v. Walton*, 881 F.3d 768 (9th Cir. Feb. 1, 2018), which highlights the recurring nature of the question presented by this case.

As explained in the Petition, the circuits disagree about whether a Florida robbery conviction satisfies the force clause of the Armed Career Criminal Act ("ACCA"). The government acknowledges a direct conflict on this issue, but contends that it is not broadly important because it affects only those with a prior Florida robbery conviction. BIO, at 5, 17. Orr, by contrast, contends that the conflict will have a widespread impact because, like Florida, a majority of states define robbery to require only the force necessary to overcome the victim's resistance, no matter how minimal.

The *Walton* decision illustrates Orr's point. The question there was whether Alabama robbery satisfies the ACCA's force clause. Like Florida, Alabama defines robbery using an overcomes-resistance standard. *See Walton*, 881 F.3d at 772-73; *see also* Orr's Pet. at 15 n.4 (including Alabama in survey of states that use overcomes-resistance standard). Thus, consistent with its prior decisions on Florida and Arizona statutes that employ the same standard, the Ninth Circuit held that the Alabama offense does not require "violent" force and, thus, does not satisfy the ACCA's force clause. *Walton*, 881 F.3d at 773-74 (applying *United States v. Molinar*, 876 F.3d 953 (9th Cir. Nov. 29, 2017) and *United States v. Jones*, 877 F.3d 884 (9th Cir. Dec. 15, 2017)); *see also* Orr's Reply at 6-7 (addressing *Molinar* and *Jones*).

That outcome would be different in other circuits. Although the Eleventh Circuit has not specifically addressed Alabama robbery yet, many district courts within the circuit have. And those courts uniformly hold that, because the offense "is substantially similar to the Florida robbery statute," the Eleventh Circuit's decisions on Florida robbery dictate the conclusion that Alabama robbery satisfies the ACCA's force clause. *See Senter v. United States*, 2018 WL 705526, at *2-3 (N.D. Ala. 2018); *see also Boykin v. United States*, 2018 WL 705523 (N.D. Ala. 2018); *Childs v. United States*, 2017 WL 4538923 (N.D. Ala. 2017); *Dunn v. United States*, 2017 WL 4472714 (N.D. Ala. 2017); *United States v. Rice*, 2017 WL 1247402 (N.D. Ala. 2017); *United States v. Freeman*, 2016 WL 4394172 (S.D. Ala. 2016).

* * *

This pattern of divergent outcomes will continue to play out, state by state and circuit by circuit, until this Court intervenes. Certiorari is warranted.

Respectfully submitted,

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