No. 17-6664

IN THE

Supreme Court of the United States

MICHAEL A. MAYS,

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 TO THE UNITED STATES' BRIEF IN OPPOSITION

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QUESTION PRESENTED

A Florida conviction for robbery may be committed using a minimal degree of force. The question presented here is whether reasonable jurists can debate whether such a conviction qualifies as a "violent felony" under the ACCA's elements clause.

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The government acknowledges that the Eleventh and Ninth Circuits are split on whether a Florida conviction for robbery qualifies as a "violent felony" under the ACCA. BIO at 6, 16. However, it asserts this conflict does not warrant this Court's review because it involves the interpretation of "a specific state law" and lacks "broad legal importance." *Id.* at 6. Neither assertion withstands scrutiny.

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

Contrary to the government's suggestion, the Eleventh and Ninth Circuits agree about Florida law. They agree that to commit a 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*," so 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, 943–44 (11th Cir. 2016) (citing *Robinson* and *Montsdoca* as authoritative); *United States v. Geozos*, 870 F.3d 890, 900–01 (9th Cir. 2017) (same). The parties likewise agree that this is the governing legal standard in Florida. *See* BIO at 8–9. Thus, there is no dispute "about the degree of force required to support a robbery conviction under Florida law." BIO at 16. Rather, the disagreement lies in whether the force necessary to overcome a victim's resistance is categorically "physical force" under the ACCA's elements clause—"a question of federal law, not state law." *Johnson v. United States*, 559 U.S. 133, 138 (2010) ("*Curtis Johnson*").

The parties agree that, to resolve that federal question, the Court must look to the least-culpable conduct punishable as robbery in Florida, which is illustrated here by intermediate appellate decisions. *See* BIO at 10–12 (consulting state decisional law to determine the least-

culpable conduct). And the parties also agree 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). *See* BIO at 10–12. Rather, the only dispute is whether the type of force described those cases amounts to "physical force," which this Court has defined as "*violent* force." *Curtis Johnson*, 599 U.S. at 140. Again, that is purely a question of federal law, not state law. *Id.* at 138.

Given that the question here is a question of federal law, this case is even more compelling than the question reviewed in *Curtis Johnson*. When this 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 conduct common to many state robbery offenses—*e.g.*, bumping, grabbing, or minor struggling—satisfies the "physical force" definition. But what makes this case more compelling (and this Court's review more important) is the fact that there is also a circuit split on the precise state offense here (Florida robbery), meaning that identically-situated defendants are being treated differently.

II. The Circuit Split Warrants this Court's Review

Although the question presented divides the circuits, the government incorrectly insists that review is not warranted.

1. As an initial matter, resolving the question here will not only resolve the conflict on Florida robbery, but will also provide much-needed guidance to the lower courts on how to apply *Curtis Johnson* to numerous other robbery offenses. As explained in Mr. Mays' petition, Florida is hardly unique in requiring an offender to "overcome a victim's resistance." Pet. at 7 (explaining that several state robbery offenses have an "overcoming resistance" element). 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 conduct such as bumping the victim, grabbing a victim's hand or arm, and/or pulling on a victim's purse strap against only slight resistance does not require the use of violent force. BIO at 13. The government asserts, however, that the outcomes in *Gardner*, *Winston*, and *Yates* "arise not from any disagreement about the meaning of 'physical force' under *Johnson*, but from differences in how States define robbery." BIO at 13–15.[1] But regardless of whether these cases exacerbate the circuit conflict on Florida robbery, they show that numerous states have similar robbery offenses. 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, pulling the strap on a purse, etc..[2] As a result, any decision

[1] Contrary to the government's suggestion, the state robbery offenses at issue in the other circuit cases cited in the BIO at 14–15 are *not* "similar" to the robbery offenses in Florida, North Carolina, Virginia, and Ohio. Nor does Mr. Mays claim they are.

[2] Indeed, one offense strikingly similar to Florida's robbery offense, which the Ninth Circuit has also considered, is Arizona robbery. *See United States v. Molinar*, 876 F.3d 953, 957–58 (9th Cir. 2017) (holding that an Arizona conviction for armed robbery is not categorically a "crime of violence" under USSG § 4B1.2's identically-worded elements clause because the statute's "overpowering force" elements does not require "violent force."); *United States v. Jones*, 877 F.3d 884, 888 (9th Cir. 2017) (holding that *Molinar* applies to whether an Arizona conviction for armed robbery is a "violent felony" under the ACCA's elements clause).

by this Court would undoubtedly provide useful guidance to the lower courts on whether such minor uses of force satisfy *Curtis Johnson*'s definition of "*violent* force."

Moreover, such guidance is necessary and overdue. Three decades have passed since Congress amended the ACCA to include two "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*, 136 S. Ct. 2243 (2016); *Descamps v. United States*, 570 U.S. 254 (2013); *James v. United States*, 550 U.S. 192 (2007); *Taylor v. United States*, 495 U.S. 575 (1990). But this Court has never addressed whether a state robbery conviction satisfies the elements clause. That question looms large after the invalidation of the residual clause, because the elements clause has taken center stage in ACCA litigation. Indeed, in *Welch v. United States*, this Court expressly left open the question presented here. 136 S. Ct. 1257, 1268 (2016). The time has come for a definitive resolution.

2. In addition to providing valuable guidance to district courts across the nations, the issue of whether a Florida conviction for robbery is a "violent felony" is by itself important and worthy of resolution. The government asserts that Florida robbery's status as a "violent felony" lacks broad national importance. But statistical evidence refutes that assertion. Currently, there are no less than fifteen pending certiorari petitions—fourteen from the Eleventh Circuit, and one from the Fourth Circuit—raising this issue.[3] That conservative figure does not include the

[3] For 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); *Conde v. United States,* No. 17-5772 (petition filed Aug. 24, 2017); *Phelps v. United States,* No. 17-5745 (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); *Rivera v. United*

numerous petitions filed and denied before *Geozos*.[4] Nor does it include the incalculable number of 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 will be inundated with petitions presenting this question.[5] Federal sentencing data supports that prediction. Following the invalidation of the ACCA's residual clause in *Samuel Johnson v. United States*, 135 S. Ct. 2551 (2015), Florida has become the ACCA epicenter of the country. While the total number of ACCA sentences nationally has somewhat decreased without the residual clause, the percentage of those sentences originating from the Eleventh Circuit has increased. U.S. Sentencing Comm'n, *Interactive Sourcebook*.[6] 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

States, No. 17-6374 (petition filed Oct. 12, 2017); *Shotwell v. United States*, No. 17-6540 (petition filed Oct.. 17, 2017); *Hardy v. United States,* No. 17-6829 (petition filed Nov. 9, 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).

[4] Notably, the government argues that this Court should deny Mr. Mays' petition since the Court has declined review of this issue in several pre-*Geozos* cases. BIO at 16. The Court's denials of those pre-conflict petitions should have no weight on whether to grant Mr. Mays' petition.

[5] Moreover, this newly-created conflict will not be resolved by the lower courts. The Eleventh Circuit has shown no interest in reconsidering *Fritts*, and the government declined to seek rehearing or certiorari in *Geozos*.

[6] The 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.

ACCA sentences imposed in 2017, U.S. Sentencing Comm'n, *Quick Facts: Mandatory Minimum Penalties* 2 (2017).

With such a substantial number of ACCA cases nationwide originating in Florida, many 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.[7] 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" and Related Issues*.[8] 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 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, it is likely that robbery is now 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 holds national importance for those reasons alone.

3. This issue, however, is not limited to the Eleventh Circuit. Florida has one of the most transient populations in the country.[9] The transient nature of Florida's population,

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[7] http://www.disastercenter.com/crime/flcrime.htm.

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

[9] City-Data.com/forum/city-vs-city/794683-whats–most-transient-state-6.html.

coupled with the substantial number of robbery offenses committed there, 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 prior Florida convictions for robbery and armed robbery. If that remote corner of the country is grappling with the issue, then no 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 a Florida conviction for armed robbery was not a "violent felony"). 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); *Gardner v. United States*, 2017 WL 1322150, 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, the Eighth Circuit is currently reviewing an ACCA sentence imposed by a North Dakota district court predicated upon Florida robbery, where the district court reflexively followed *Fritts*. On appeal, the appellant is urging the Eighth Circuit to follow *Geozos*. The government, on the other hand, 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. Indeed, 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*, 136 S. Ct. 1113, 1117 (2016); *Hall v. United States*,

566 U.S. 506, 511 & n.1 (2012).

The resolution of the elements clause issue here will not only impact ACCA cases on direct and collateral review, but also 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 this 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 may affect immigration cases, since the elements clause in 18 U.S.C. § 16(a) is virtually identical to the ACCA's. Should *Dimaya* eliminate § 16(b), *Geozos* and *Fritts* will compel district courts in the Ninth and Eleventh Circuits to come to differing conclusions about whether aliens with a Florida conviction for robbery have been convicted of an "aggravated felony."

As explained above, the circuit conflict boils down to the definition of "physical force" provided by this Court in *Curtis Johnson*. Only this Court can resolve that dispute. And, absent immediate resolution, defendants on the wrong side of the conflict—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 convictions for robbery will become unchallengeable. This Court's intervention is needed.

III. The Decision Below is Wrong

Intervention is also warranted because the Eleventh Circuit's decision in *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 the Eleventh Circuit's conclusion.

The government nonetheless argues that the robbery conduct described in those intermediate appellate decisions constitutes "violent force" under *Curtis Johnson*. In doing so, 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 9. But that assertion is based on a misreading of *Curtis Johnson*. The only conduct the Court was asked to consider in *Curtis Johnson* was an unwanted touching. However, 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, both before and after that definition, clarified 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 type of conduct that would categorically 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 9. But *Curtis Johnson* said no such thing. And bumping, grabbing, and unpeeling another's fingers do not require the same violence or degree of force as a slap in the face.

The government's position is not only at odds with *Curtis Johnson* but also with *United States v. Castleman*, 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" definition, rather than *Curtis Johnson*'s narrower "*violent* force" definition. 134 S. Ct. 1410. In coming to its holding, this 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 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 Court expounded on this point by distinguishing the Seventh Circuit's decision in *Flores v. Ashcroft*, 350 F.3d 666 (7th Cir. 2003), a case first cited by this Court in *Curtis Johnson*.

In *Flores*, the Seventh Circuit addressed whether an Indiana conviction for battery qualifies as a "crime of violence" under § 16's elements clause. 350 F.3d at 668–70. In holding that such a conviction did not qualify as a "crime of violence," the Seventh Circuit noted that it was "hard to describe . . . as 'violence'" "a squeeze of the arm [that] causes a bruise." 350 F.3d at 670. In *Curtis Johnson*, this Court cited *Flores* with approval when discussing the meaning of

"violent force." 559 U.S. at 140. Then, in *Castleman*, this Court referenced *Curtis Johnson*'s citation to *Flores*, suggesting that while such conduct may not constitute "violent force," it was "easy to describe" such a squeeze as meeting the common-law definition of "physical force." 134 S. Ct. at 1412.

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. On that view, certainly a "bump" without injury (*Hayes*) would constitute similarly "minor" and thus non-violent force. The same is also true of unpeeling a victim's fingers without injury (*Sanders*) and an abrasion-causing grab of an arm during a tug-of-war (*Benitez-Saldana*). Florida courts have found each of these "minor uses of force" sufficient to overcome a victim's resistance. But just like the bruising squeeze to the arm discussed in *Castleman*, these actions do not constitute "violence" in the generic sense. Thus, 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 *Curtis Johnson*'s definition of "*violent* force," since (in his view) each action was "capable of causing physical pain or injury." 134 S. Ct. at 1421–22 (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 force 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.

IV. This Case is an Ideal Vehicle

Because the federal question here divides the circuits and holds national importance, the only question that remains is whether this case is an appropriate vehicle to decide it. It is. The single issue Mr. Mays presents—*i.e.*, whether "overcoming resistance" in a Florida robbery offense categorically involves the use of "violent force" as defined in *Curtis Johnson*—was specifically pressed in the court of appeals. *See Mays v. United States*, Case No. 17-11861, Application for Certificate of Appealability at 13–17 (11th Cir. Mar. 25, 2017). The Eleventh Circuit rejected that argument based on *Fritts*. And resolution of that issue will be outcome-determinative for Mr. Mays, as his status as an armed career criminal depends upon his Florida conviction for robbery. That status has serious consequences for Mr. Mays. If Mr. Mays' 188-month ACCA sentence on count two is vacated, he would no longer have a mandatory minimum term of imprisonment on any of his three counts of conviction, and could receive, at most, only a statutory-maximum sentence of 120 months' imprisonment on count two (the 18 U.S.C. § 922(g)(1) count).[10] Moreover, resolving the issue here would affect numerous Eleventh Circuit defendants erroneously serving 15-year sentences (and longer) because of *Fritts*.

The government argues this case may be a poor vehicle to the extent there is a distinction between robberies committed before and after the Florida Supreme Court's 1997 decision in

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[10] The government argues this case would also be a "poor vehicle for review" because vacating Mr. Mays' 188-month sentence on count two would have no effect on his concurrent 188-month sentences on counts one and three. BIO at 18. The government, however, ignores that Mr. Mays' counts were grouped for purposes of calculating his guideline range, PSR ¶ 18, and that the 180-month mandatory minimum required by the ACCA on count two clearly influenced his sentences on counts one and three. Because the sentences on all three counts are interdependent, the district court on remand would have the discretion to revisit Mr. Mays' entire sentencing package. *United States v. Fowler*, 749 F.3d 1010, 1015 (11th Cir. 2014); *United States v. Miller*, 594 F.3d 172, 181–82 (3d Cir. 2010); *United States v. Bass*, 104 F. App'x 997, 999–1000 (5th Cir. 2004). Thus, the government is incorrect in its assertion that any relief Mr. Mays is afforded would only affect his sentence on count two.

Robinson. BIO at 17–18. However, the government's argument is a red herring. First, as the government acknowledges, Mr. Mays does not rely on any such distinction in this Court.[11] Second, as the government also acknowledges, the Eleventh Circuit addressed the issue and rejected any such distinction. *Fritts*, 841 F.3d at 943 ("When the Florida Supreme Court in *Robinson* interprets the robbery statute, it tells us what that statute always meant."). And third, and perhaps most important, the circuit split at issue here involves pre-*Robinson* robbery convictions evaluated under the *Robinson* standard—a 1989 conviction in *Fritts* and 1981 convictions in *Geozos*. Just like the individuals in those cases, Mr. Mays has a pre-*Robinson* conviction for robbery, which was evaluated under the *Robinson* standard. Thus, contrary to the government's suggestion, this case is an *ideal* vehicle for resolving the circuit split.

[11] In the circuit court, Mr. Mays argued that *Robinson* narrowed the scope of conduct proscribed by the robbery statute, and since his conviction was imposed prior to *Robinson*, *Robinson* should not be consulted when employing the categorical approach. *Mays*, Case No. 17-11861, Application for Certificate of Appealability at 9–13. Indeed, there remains uncertainty in the circuits as to whether post-conviction judicial interpretations of a statute should be consulted when employing the categorical approach. *See Geozos*, 870 F.3d at 899 n.8. However, as the *Geozos* court accurately recognized (and as Mr. Mays argued below), "the [Florida robbery] statute as construed post-*Robinson* is still too broad to qualify as a 'violent felony' under the [elements] clause." *Id.*; *Mays*, Case No. 17-11861, Application for Certificate of Appealability at 9–13.

CONCLUSION

For the reasons stated above and in his petition for writ of certiorari, Mr. Mays respectfully requests that this Court grant his petition.

Respectfully submitted,

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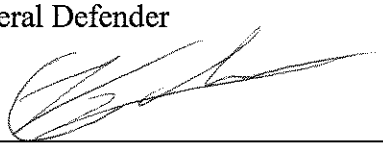

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