No. 17-7391

IN THE SUPREME COURT OF THE UNITED STATES

DARRYL REPRESS, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether petitioner's prior convictions for armed robbery, in violation of Fla. Stat. § 812.13 (1981), were convictions for "violent felon[ies]" under the elements clause of the Armed Career Criminal Act of 1984, 18 U.S.C. 924(e)(2)(B)(i).

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A1, at 1-3) is not published in the Federal Reporter but is available at 2017 WL 4570661. The order of the district court (Pet. App. A5, at 1-12) is not published in the Federal Supplement but is available at 2016 WL 10647253.

JURISDICTION

The judgment of the court of appeals was entered on October 13, 2017. The petition for a writ of certiorari was filed on January 9, 2018. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a guilty plea in the United States District Court for the Southern District of Florida, petitioner was convicted of possession of a firearm by a felon, in violation of 18 U.S.C. 922(g)(1) and 924(e). Pet. App. A3, at 1. He was sentenced to 188 months of imprisonment, to be followed by three years of supervised release. Id. at 2-3. The court of appeals dismissed petitioner's appeal. 13-13365 C.A. Order 1 (Oct. 7, 2014). Petitioner filed a motion to vacate his sentence under 28 U.S.C. 2255, which the district court denied. 13-cv-22799 D. Ct. Doc. 11, at 1-3 (Apr. 1, 2014). In 2016, the court of appeals granted petitioner authorization to file a second Section 2255 motion. 16-13597 C.A. Order 1-4 (July 1, 2016). The district court denied petitioner's second Section 2255 motion on the merits but granted a certificate of appealability (COA). Pet. App. A5, at 1-12. The court of appeals affirmed. Pet. App. A1, at 1-3.

1. On September 14, 2004, police officers conducting surveillance of a store in Miami, Florida, observed petitioner engage in various drug transactions. Presentence Investigation Report (PSR) ¶¶ 6-7. The following day, the officers observed petitioner take a firearm from his waistband and place it in a bag before leaving the premises. PSR ¶ 9. The officers subsequently seized the bag, which contained the firearm, over $1000 in cash, 112.1 grams of cocaine, and 84.7 grams of marijuana. Ibid.

A federal grand jury in the Southern District of Florida returned a four-count indictment charging petitioner with one count of possession of a firearm by a felon, in violation of 18 U.S.C. 922(g)(1) and 924(e); one count of possession with intent to distribute cocaine, in violation of 21 U.S.C. 841(a)(1) and (b)(1)(C); one count of possession with intent to distribute marijuana, in violation of 21 U.S.C. 841(a)(1) and (b)(1)(D); and one count of possession of a firearm in furtherance of a drug-trafficking crime, in violation of 18 U.S.C. 924(c)(1)(A)(i). Pet. App. A2, at 1-3. The government subsequently filed a superseding information charging petitioner with one count of possession of a firearm and ammunition by a felon, in violation of 18 U.S.C. 922(g)(1) and 924(e). 4-cr-20713 Superseding Information 1. Petitioner pleaded guilty to that charge. Pet. App. A3, at 1.

2. A conviction for violating Section 922(g)(1) has a default statutory sentencing range of zero to ten years of imprisonment. See 18 U.S.C. 924(a)(2). If, however, the offender has three or more convictions for "violent felon[ies]" or "serious drug offense[s]" that were "committed on occasions different from one another," then the Armed Career Criminal Act of 1984 (ACCA), 18 U.S.C. 924(e), specifies a statutory sentencing range of 15 years to life imprisonment. See 18 U.S.C. 924(e)(1); Custis v. United States, 511 U.S. 485, 487 (1994). The ACCA defines a "violent felony" as:

> any crime punishable by imprisonment for a term exceeding one year * * * that --
>
> (i) has as an element the use, attempted use, or threatened use of physical force against the person of another; or
>
> (ii) is burglary, arson, or extortion, involves use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury to another.

18 U.S.C. 924(e)(2)(B). The first clause of that definition is commonly referred to as the "elements clause," and the portion beginning with "otherwise" is known as the "residual clause." Welch v. United States, 136 S. Ct. 1257, 1261 (2016). In Curtis Johnson v. United States, 559 U.S. 133 (2010), this Court defined "physical force" under the ACCA's elements clause to "mean[] violent force -- that is, force capable of causing physical pain or injury to another person." Id. at 140.

The Probation Office classified petitioner as an armed career criminal under the ACCA based on his prior Florida convictions, including a 1982 conviction for armed robbery and a 1983 conviction for armed robbery. PSR ¶¶ 22, 31-32, 36. Petitioner did not object to that classification, and the district court sentenced him to 188 months of imprisonment. 4-cr-20713 Sent. Tr. 3, 6.

More than eight years later, petitioner filed a notice of appeal. 4-cr-20713 D. Ct. Doc. 69, at 1 (July 25, 2013). The government argued that the appeal was untimely, 13-13365 Gov't C.A. Br. 12-14, and the court of appeals dismissed the appeal, 13-13365 C.A. Order 1.

3. In 2013, petitioner filed a motion to vacate his sentence under 28 U.S.C. 2255. 13-cv-22799 D. Ct. Doc. 1, at 1 (Aug. 6, 2013). The district court denied the motion and declined to issue a COA. 13-cv-22799 D. Ct. Doc. 11, at 1-3.

4. In 2015, this Court held in Samuel Johnson v. United States, 135 S. Ct. 2551, that the ACCA's residual clause is unconstitutionally vague. Id. at 2557. The Court subsequently made clear that Samuel Johnson's holding is a substantive rule that applies retroactively. See Welch, 136 S. Ct. at 1265.

In 2016, the court of appeals granted petitioner leave to file a second Section 2255 motion. 16-13597 C.A. Order 1-4 (July 1, 2016). In his second 2255 motion, petitioner claimed that Samuel Johnson's invalidation of the residual clause meant that his prior Florida armed robbery convictions were not violent felonies. Pet. App. A4, at 3-11. The government responded that petitioner's claim was procedurally barred and that petitioner had failed to demonstrate that the district court had relied on the residual clause in sentencing him. 16-cv-22601 D. Ct. Doc. 9, at 5-7 (July 20, 2016). The government also argued that petitioner's prior Florida armed robbery convictions qualified as violent felonies under the ACCA's separate elements clause. Id. at 7-8.

The district court denied petitioner's motion. Pet. App. A5, at 1-12. Relying on circuit precedent, the court determined that petitioner's Florida armed robbery convictions qualified as violent felonies under the ACCA's elements clause. Id. at 8

(citing United States v. Dowd, 451 F.3d 1244, 1255 (11th Cir.), cert. denied, 127 S. Ct. 335 (2006)). The court nevertheless determined that "reasonable jurists" could find the issue "debatable" and granted a COA. Id. at 12. The court subsequently denied petitioner's motion to alter or amend the judgment. Pet. App. A7, at 1-6.

5. The court of appeals affirmed. Pet. App. A1, at 1-3. The court explained that, under circuit precedent, petitioner's Florida armed robbery convictions qualified as violent felonies under the ACCA's elements clause. Id. at 2-3 (citing United States v. Fritts, 841 F.3d 937 (11th Cir. 2016), cert. denied, 137 S. Ct. 2264 (2017)).

ARGUMENT

Petitioner contends (Pet. 9-29) that his prior convictions for Florida armed robbery are not violent felonies under the ACCA's elements clause. The court of appeals correctly determined otherwise. Although a shallow circuit conflict exists on the issue, that conflict does not warrant this Court's review because the issue is fundamentally premised on the interpretation of a specific state law and lacks broad legal importance. In any event, this case would be a poor vehicle for this Court's review because petitioner's Florida armed robbery convictions predate the enactment of a separate statute prohibiting "[r]obbery by sudden snatching," Fla. Stat. § 812.131 (1999), and petitioner asserted below that the relatively small and decreasing class of defendants

with such older robbery convictions could be viewed differently from defendants with more recent ones. Further review is not warranted.*

1. In United States v. Fritts, 841 F.3d 937, 943-944 (11th Cir. 2016), cert. denied, 137 S. Ct. 2264 (2017), the court of appeals correctly determined that Florida armed robbery, in violation of Fla. Stat. § 812.13, qualifies as a "violent felony" under the ACCA's elements clause, which encompasses "any crime punishable by imprisonment for a term exceeding one year" that "has as an element the use, attempted use, or threatened use of physical force against the person of another," 18 U.S.C. 924(e)(2)(B)(i).

a. Florida's robbery statute provides in relevant part that robbery is "the taking of money or other property * * * from the

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* Other pending petitions for writs of certiorari also present the question whether Florida robbery is a violent felony under the ACCA's elements clause. See, e.g., Stokeling v. United States, No. 17-5554 (filed Aug. 4, 2017); Conde v. United States, No. 17-5772 (filed Aug. 24, 2017); Williams v. United States, No. 17-6026 (filed Sept. 14, 2017); Everette v. United States, No. 17-6054 (filed Sept. 18, 2017); Jones v. United States, No. 17-6140 (filed Sept. 25, 2017); James v. United States, No. 17-6271 (filed Oct. 3, 2017); Middleton v. United States, No. 17-6276 (filed Oct. 3, 2017); Reeves v. United States, No. 17-6357 (filed Oct. 3, 2017); Rivera v. United States, No. 17-6374 (filed Oct. 12, 2017); Shotwell v. United States, No. 17-6540 (filed Oct. 17, 2017); Orr v. United States, No. 17-6577 (filed Oct. 26, 2017); Mays v. United States, No. 17-6664 (filed Nov. 2, 2017); Hardy v. United States, No. 17-6829 (filed Nov. 9, 2017); Wright v. United States, No. 17-6887 (filed Nov. 16, 2017); Baxter v. United States, No. 17-6991 (filed Dec. 4, 2017); Pace v. United States, No. 17-7140 (filed Dec. 18, 2017); Ballard v. United States, No. 17-7402 (filed Jan. 9, 2018).

person or custody of another" through the use of "force, violence, assault, or putting in fear." Fla. Stat. § 812.13(1) (1981); see id. § 812.13(2)(a) (providing for enhanced penalties "[i]f in the course of committing the robbery the offender carried a firearm or other deadly weapon"). Under the putting-in-fear prong, "the fear contemplated by the statute is the fear of death or great bodily harm." United States v. Lockley, 632 F.3d 1238, 1242 (11th Cir.) (brackets omitted) (quoting Magnotti v. State, 842 So. 2d 963, 965 (Fla. Dist. Ct. App. 2003)), cert. denied, 565 U.S. 885 (2011). Thus, "robbery under th[e] statute requires either the use of force, violence, a threat of imminent force or violence coupled with apparent ability, or some act that puts the victim in fear of death or great bodily harm." Id. at 1245.

In Robinson v. State, 692 So. 2d 883 (Fla. 1997), the Florida Supreme Court addressed "whether the snatching of property by no more force than is necessary to remove the property from a person who does not resist" satisfies the "force or violence element required by Florida's robbery statute." Id. at 884-885. The court surveyed Florida cases -- including McCloud v. State, 335 So. 2d 257 (Fla. 1976), Montsdoca v. State, 93 So. 157 (Fla. 1922), and various other appellate decisions dating back to 1903, see, e.g., Colby v. State, 35 So. 189 (Fla. 1903) -- and confirmed that "the perpetrator must employ more than the force necessary to remove the property from the person." Robinson, 692 So. 2d at 886. Rather, there must be both "resistance by the victim" and "physical

force [by] the offender" that overcomes that resistance. Ibid.; see also id. at 887 ("Florida courts have consistently recognized that in snatching situations, the element of force as defined herein distinguishes the offenses of theft and robbery.").

Under Curtis Johnson v. United States, 559 U.S. 133 (2010), "physical force" for purposes of the ACCA's elements clause requires "violent force -- that is, force capable of causing physical pain or injury to another person." Id. at 140. Such force might "consist * * * of only that degree of force necessary to inflict pain," such as "a slap in the face." Id. at 143. The degree of force required under Florida's robbery statute -- "physical force" necessary to "overcome" "resistance by the victim," Robinson, 692 So. 2d at 886 -- satisfies that standard. Force sufficient to prevail in a physical contest for possession of the stolen item is necessarily force "capable" of "inflict[ing] pain" equivalent to "a slap in the face," Curtis Johnson, 559 U.S. at 140, 143; Florida robbery could not occur through "mere unwanted touching," id. at 142. The court of appeals in Fritts thus correctly determined that Florida armed robbery is a violent felony under the ACCA's elements clause. 841 F.3d at 943-944.

b. Contrary to petitioner's contention (Pet. 25-26), this Court's decision in United States v. Castleman, 134 S. Ct. 1405 (2014), does not indicate otherwise. Citing a Seventh Circuit decision, the Court in Castleman suggested in passing that "a squeeze of the arm [that] causes a bruise" might be "hard to

describe . . . as 'violence.'" Id. at 1412 (brackets in original) (quoting Flores v. Ashcroft, 350 F.3d 666, 670 (2003)). The Court, however, expressly declined to decide whether "'a cut, abrasion, [or] bruise'" "necessitate[s] violent force, under [Curtis] Johnson's definition of that phrase." Id. at 1414 (citation omitted); see id. at 1413 (explaining that "[w]hether or not the causation of bodily injury necessarily entails violent force" is "a question we do not reach"). The only Member of the Court who reached that question was Justice Scalia, who determined that the infliction of such bodily injury necessarily entails violent force. Id. at 1416-1417 (Scalia, J., concurring in part and concurring in the judgment); see id. at 1421 (explaining that "'[h]itting, slapping, shoving, grabbing, pinching, biting, [and] hair pulling'" are all "capable of causing physical pain or injury") (citation omitted; brackets in original).

c. Petitioner contends (Pet. 10-11, 22-23) that the court of appeals ignored several Florida appellate decisions that he argues demonstrate that Florida robbery may involve no more than de minimis force. But those cases do not establish that Florida robbery may involve a degree of force less than the "physical force" required by the ACCA's elements clause.

In Montsdoca v. State, supra, the Florida Supreme Court stated that "[t]he degree of force used is immaterial," but only if "such force * * * is actually sufficient to overcome the victim's resistance." 93 So. at 159. Montsdoca involved the "violent or

forceful taking" of an automobile, whereby the defendants, under a false pretense of official authority, "grabbed" the victim "by both shoulders," "shook him," "ordered him to get out of the car," and demanded his money "under the fear of bodily injury if he refused." Ibid. Montsdoca thus involved a degree of force greater than de minimis.

In Mims v. State, 342 So. 2d 116 (Fla. Dist. Ct. App. 1977) (per curiam), the defendant "forced" the victim "into a car" and drove her "to a deserted area" where the defendant "grabbed" the victim's pocketbook. Id. at 117. When the victim "resist[ed]," the defendant "beat[]" her and "pushed [her] out of the car." Ibid. The force employed by the defendant in Mims was plainly "capable of causing physical pain or injury to another person" and would thus qualify as "physical force" under the ACCA's elements clause. Curtis Johnson, 559 U.S. at 140.

In Sanders v. State, 769 So. 2d 506 (Fla. Dist. Ct. App. 2000), the Florida intermediate appellate court affirmed the robbery conviction of a defendant who peeled back the victim's fingers from a clenched fist before snatching money out of his hand. Id. at 507. Bending back someone's fingers with force sufficient to overcome his efforts to keep hold of an object involves more than the "merest touching," Curtis Johnson, 559 U.S. at 139, and is "capable of causing physical pain or injury," id. at 140. Indeed, the court contrasted the force used in Sanders with the circumstances of a prior case, in which merely "touch[ing]

or brush[ing]" the victim's hand in the course of taking money had been deemed "insufficient to constitute the crime of robbery" under Florida law. 769 So. 2d at 507 (discussing Goldsmith v. State, 573 So. 2d 445 (Fla. Dist. Ct. App. 1991)).

In Benitez-Saldana v. State, 67 So. 3d 320 (Fla. Dist. Ct. App. 2011), the court determined that trial counsel rendered ineffective assistance by conceding that the defendant engaged in conduct -- namely, "a tug-of-war over the victim's purse" -- on which "a conviction for robbery may be based." Id. at 323. The victim testified that in the course of the tug of war, the defendant grabbed her arm, causing an abrasion. Id. at 322. The conduct in Benitez-Saldana thus involved a "degree of force necessary to inflict pain," not unlike "a slap in the face." Curtis Johnson, 559 U.S. at 143.

The remaining cases petitioner cites (Pet. 10-11, 23, 26) involved a similar degree of force. In Hayes v. State, 780 So. 2d 918 (Fla. Dist. Ct. App. 2001) (per curiam), the record reflected that the defendant "bumped" the victim with sufficient force that she would have fallen if not for the fact that "she was in between rows of cars when the robbery occurred." Id. at 919. In Rigell v. State, 782 So. 2d 440 (Fla. Dist. Ct. App. 2001), the defendant "yanked" a purse "from the victim's shoulder, causing her to feel sharp pain." Id. at 441. In Winston Johnson v. State, 612 So. 2d 689 (Fla. Dist. Ct. App. 1993), the defendant "used sufficient force" not only "to remove the money," but also "to cause slight

injury" to the victim's hand. Id. at 691. And in Santiago v. State, 497 So. 2d 975 (Fla. Dist. Ct. App. 1986), the defendant "tore two gold necklaces from around [the victim's] neck and departed the scene, leaving the victim with a few scratch marks and some redness around her neck." Id. at 976. In each of those cases, the defendant used "force capable of causing physical pain or injury to another person," Curtis Johnson, 559 U.S. at 140 -- in Hayes, force otherwise strong enough to cause the victim to fall; in Rigell, force causing actual physical pain; and in Winston Johnson and Santiago, force causing actual physical injury.

d. Petitioner also contends (Pet. 14-15, 24) that robbery as traditionally defined under the common law did not require any showing that the defendant used more than de minimis force. But this Court is "bound by the Florida Supreme Court's interpretation of state law, including its determination of the elements of" Florida robbery. Curtis Johnson, 559 U.S. at 138. And the Florida Supreme Court has rejected the view that "the degree of force used to snatch a victim's property from his person, even when the victim does not resist and is not injured, is sufficient to satisfy the force element of Florida's robbery offense." Robinson, 692 So. 2d at 886. That authoritative interpretation of Florida's robbery statute -- not petitioner's contentions regarding "[c]ommon law robbery," Pet. 15 -- governs whether his prior convictions qualify as "violent felon[ies]" under the ACCA.

2. Although a shallow conflict exists between the Ninth and Eleventh Circuits on whether Florida robbery in violation of Section 812.13 qualifies as a "violent felony" under the ACCA's elements clause, that conflict does not warrant this Court's review.

a. The outcomes in the cases petitioner identifies involving robbery under the laws of other States (Pet. 16-24) arise not from any disagreement about the meaning of "physical force" under Curtis Johnson, but from differences in how States define robbery.

Some courts of appeals have determined that a State's definition of robbery does not satisfy the ACCA's elements clause because "even de minimis contact" can constitute the force necessary to support a robbery conviction under the particular state statute at issue. United States v. Gardner, 823 F.3d 793, 803 (4th Cir. 2016). In Gardner, for example, the Fourth Circuit understood North Carolina law to require only that the "degree of force" be "sufficient to compel the victim to part with his property." Ibid. (citation omitted). In United States v. Winston, 850 F.3d 677 (2017), the Fourth Circuit understood Virginia law to require "only a 'slight' degree" of force, id. at 684 (citation omitted), a standard satisfied by a "defendant's act of 'physical jerking,' which was not strong enough to cause the victim to fall," id. at 685 (citation omitted). And in United States v. Yates, 866 F.3d 723 (2017), the Sixth Circuit understood Ohio law to require

only "nonviolent force, such as the force inherent in a purse-snatching incident or from bumping against an individual." Id. at 732; see United States v. Mulkern, 854 F.3d 87, 93-94 (1st Cir. 2017) (Maine robbery); United States v. Eason, 829 F.3d 633, 641-642 (8th Cir. 2016) (Arkansas robbery); United States v. Parnell, 818 F.3d 974, 978-980 (9th Cir. 2016) (Massachusetts armed robbery). In those cases, the degree of force required under state law was not sufficient to satisfy the ACCA's elements clause.

In other cases, such as Fritts, a court of appeals has determined that a State's definition of robbery does satisfy the ACCA's elements clause because the state statute at issue requires force greater than the de minimis amount necessary to remove the property from the person. Tellingly, for example, in United States v. Orr, 685 Fed. Appx. 263 (2017) (per curiam), petition for cert. pending, No. 17-6577 (filed Oct. 26, 2017), the Fourth Circuit -- which petitioner alleges (Pet. 16-19, 22, 24) to be in conflict with the Eleventh Circuit on the application of the ACCA's elements clause to robbery offenses like Florida's -- agreed with the Eleventh Circuit that Florida robbery is a violent felony under the ACCA after observing that "more than de minimis force is required under the Florida robbery statute." 685 Fed. Appx. at 265. In United States v. Harris, 844 F.3d 1260 (2017), petition for cert. pending, No. 16-8616 (filed Apr. 4, 2017), the Tenth Circuit relied on Colorado precedent stating that "the gravamen of the offense of robbery is the violent nature of the taking" to

conclude that the offense was a violent felony. Id. at 1267 (citation omitted). And other courts have reached similar state-statute-specific conclusions as to particular robbery offenses. See, e.g., United States v. Patterson, 853 F.3d 298, 302-305 (6th Cir.) (Ohio aggravated robbery), cert. denied, 138 S. Ct. 273 (2017); United States v. Doctor, 842 F.3d 306, 311-312 (4th Cir. 2016) (South Carolina robbery), cert. denied, 137 S. Ct. 1831 (2017); United States v. Duncan, 833 F.3d 751, 754-756 (7th Cir. 2016) (Indiana robbery); United States v. Priddy, 808 F.3d 676, 686 (6th Cir. 2015) (Tennessee robbery), abrogated on other grounds, United States v. Stitt, 860 F.3d 854, 855 (6th Cir. 2017) (en banc), petition for cert. pending, No. 17-765 (filed Nov. 21, 2017).

Because differences in state definitions of robbery explain why robbery in some States, but not others, is a "violent felony," the courts' decisions do not suggest any conflict warranting this Court's review. See Orr, 685 Fed. Appx. at 265 (distinguishing Florida robbery from North Carolina robbery, which was at issue in Gardner); cf. Winston, 850 F.3d at 686 ("The state courts of Virginia and North Carolina are free to define common law robbery in their respective jurisdictions in a manner different from that employed by federal courts in construing a federal statute.").

b. In United States v. Geozos, 870 F.3d 890 (2017), the Ninth Circuit held that Florida robbery is not a "violent felony." Id. at 901. The Ninth Circuit acknowledged that under Robinson,

"there must be resistance by the victim that is overcome by the physical force of the offender." Id. at 900 (quoting Robinson, 692 So. 2d at 886). But the Ninth Circuit read the Florida cases to mean that "the Florida robbery statute proscribes the taking of property even when the force used to take that property is minimal." Id. at 901. The Ninth Circuit recognized that its decision "put[] [it] at odds with the Eleventh Circuit," but it believed that the Eleventh Circuit had "overlooked the fact that, if the resistance itself is minimal, then the force used to overcome that resistance is not necessarily violent force." Ibid.

The shallow conflict does not warrant this Court's review. This Court has repeatedly denied petitions for writs of certiorari that raised the same issue of whether Florida robbery is a "violent felony." See United States v. Bostick, 675 Fed. Appx. 948 (11th Cir.) (per curiam), cert. denied, 137 S. Ct. 2272 (2017); United States v. McCloud, No. 16-15855 (11th Cir. Dec. 22, 2016), cert. denied, 137 S. Ct. 2296 (2017); Fritts, 841 F.3d 937, cert. denied, 137 S. Ct. 2264 (2017); United States v. Seabrooks, 839 F.3d 1326 (11th Cir. 2016), cert. denied, 137 S. Ct. 2265 (2017); United States v. Durham, 659 Fed. Appx. 990 (11th Cir. 2016) (per curiam), cert. denied, 137 S. Ct. 2264 (2017). Notwithstanding the narrow conflict created by the Ninth Circuit's recent decision in Geozos, supra, the same result is warranted here.

Although the issue of whether Florida robbery is a "violent felony" arises under the ACCA, it is fundamentally premised on the

interpretation of a specific state law. The Ninth and the Eleventh Circuits may disagree about the degree of force required to support a robbery conviction under Florida law, but as petitioner's discussion of state-court decisions demonstrates (Pet. 6, 10-11, 16-24, 26), that state-law issue turns on "Florida caselaw" (Pet. 11, 21). As such, the issue does not warrant this Court's review. See Elk Grove Unified Sch. Dist. v. Newdow, 542 U.S. 1, 16 (2004) ("Our custom on questions of state law ordinarily is to defer to the interpretation of the Court of Appeals for the Circuit in which the State is located."), abrogated on other grounds, Lexmark Int'l, Inc. v. Static Control Components, Inc., 134 S. Ct. 1377 (2014).

The question whether Florida robbery is a "violent felony" also does not present an issue of broad legal importance. The issue arises only with respect to defendants with prior convictions for Florida robbery. Accordingly, the issue is unlikely to recur with great frequency in the Ninth Circuit, which sits on the other side of the country. Should that prove to be incorrect, there will be ample opportunity for the government to seek further review in that circuit or in this Court. At this time, however, the issue is not of sufficient recurring importance in the Ninth Circuit to warrant this Court's review.

3. In any event, this case would be a poor vehicle for further review. In 1999, following petitioner's convictions for armed robbery under Section 812.13, the Florida legislature enacted a separate statute prohibiting "[r]obbery by sudden

snatching." Fla. Stat. § 812.131 (1999). Petitioner argued below that before that statute was enacted, robbery by sudden snatching was prosecuted as robbery under Section 812.13. Pet. App. A4, at 3-7. He thus contended that a "pre-1999" conviction under Section 812.13 does not satisfy the ACCA's elements clause. Id. at 3, 6. The court of appeals in Fritts rejected that contention, 841 F.3d at 942 n.7, and petitioner does not renew it in his petition. But to the extent that the dates of his Florida armed robbery convictions are relevant, further review in this case would affect only the relatively small category of defendants whose sentences depend on convictions for Florida robbery before Section 812.131 was enacted.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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