

IN THE SUPREME COURT OF THE UNITED STATES

SHANNON D. ROBINETT,
Petitioner,

v.

Case. No. _____

UNITED STATES OF AMERICA,
Respondent.

**MOTION TO EXPEDITE SOLICITOR GENERAL'S RESPONSE TO
THE PETITION FOR CERTIORARI**

Shannon Robinett requests that this Court expedite the Solicitor General's response to this petition for certiorari, directing it to respond on or before **May 10, 2018**. In support of this motion, Mr. Robinett states the following question:

I. Why this Court should expedite the Solicitor General's response.

In *Stokeling v. United States*, this Court granted certiorari on this issue:

Is a state robbery offense that includes "as an element" the requirement of "overcoming resistance" categorically a "violent felony" under the force clause in the Armed Career Criminal Act, 18 U.S.C. § 924(e)(2)(B)(i), if the offense has been specifically interpreted by state appellate courts to require only slight force to overcome resistance?

No. 17-5554, ___ S.Ct. ___ (Apr. 2, 2018).

As highlighted in detail in Mr. Robinett's petition for certiorari, the "overcoming resistance" robbery issue that this Court will analyze in *Stokeling* based on Florida state law, is not meaningfully distinguishable from the Missouri state law issue presented in this case. Thus, this Court should review the Eighth Circuit's recent *en banc* opinion in *Swopes* together with *Stokeling* on this "related issue", because it would help definitively resolve the circuit split, for the reasons explained more fully in Mr. Robinett's petition for certiorari. See Rule 27.3.

The Solicitor General's response is due thirty days after the petition for certiorari is filed pursuant to Rule 15.3, but frequently the government, understandably, obtains one or more continuances prior to filing any response. This case presents a unique situation where this process should be expedited.

The merits briefing schedule in *Stokeling* will be set in the short term future, and the case will likely be argued this Fall. Without an expedited response to Mr. Robinett's petition for certiorari by the government, this Court will not be able to distribute this case for conference until, at the earliest, September 24, 2018. By that time, merits briefing in *Stokeling* will likely be complete, and it would presumably be too late for this case's "related issue" to be argued together with *Stokeling*.

In order for this Court to have the opportunity to determine whether to grant the petition for certiorari in time for this case to be heard in conjunction on the "related issue" in *Stokeling*, this Court should order that the Solicitor General's response to Mr. Robinett's petition for certiorari be expedited.

II. The proposed expedited deadline will not prejudice the government.

Mr. Robinett's petition for certiorari is being filed contemporaneously with this motion, on April 17, 2018. Typically, the government's response would be due on May 17, 2018 pursuant to Rule 15.3; however, Mr. Robinett requests that the deadline be expedited by one week to Thursday, May 10, 2018. Mr. Robinett would then file his reply brief on Monday, May 14, 2018. This would allow the Court to distribute the case as early as on May 16, 2018, for the May 31, 2018, conference (or the June 7, June 14, or June 21 conference dates). The key is to provide this Court

the opportunity to make a determination whether to grant Mr. Robinett's petition for certiorari, so that the "related issue" may potentially be heard with *Stokeling*.¹

The government will not be prejudiced by expediting its response deadline to the petition for certiorari. This Court has already decided to hear the merits on a "related question" in *Stokeling*, and the Solicitor General indisputably already has a strong command on the salient issues involved in *Stokeling*. The same is true of this case, where the government was intricately involved in the *en banc* proceedings before the Eighth Circuit Court of Appeals, which led to that court's recent decision in *United States v. Swopes*, No. 16-1797, — F.3d —, 2018 WL 1525825 (8th Cir. Mar. 29, 2018) (*en banc*), which governed the outcome in this appeal.²

CONCLUSION

For the foregoing reasons, Mr. Robinett's motion to expedite Solicitor General's response to the petition for certiorari should be granted, and the government should be directed to file a response on or before **May 10, 2018**.

Respectfully submitted,

/s/ Dan Goldberg

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¹ The proposed dates herein are just proposals. Mr. Robinett would be open to other deadlines, or other proposals, that would afford this Court an opportunity to decide whether to grant the petition of certiorari to hear the "related issue" with *Stokeling*.

² *Swopes* was litigated by the United States Attorney's Office, Eastern District of Missouri. It is uncertain what, if any, role the Solicitor General's Office played in that case.