No. ____

IN THE

Supreme Court of the United States

EDWIN DESHAZIOR,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Under the Armed Career Criminal Act ("ACCA"), an offense is a "violent felony" if it, *inter alia*, "has an element the use, attempted use, or threatened use of physical force against another." 18 U.S.C. § 924(e)(2)(B)(i). In *Curtis Johnson v. United States*, 559 U.S. 133 (2010), this Court defined "physical force" as "violent force." *Id.* at 140. And it refused to afford "force" its common-law definition, which broadly includes indirect applications of force like poison. *Id.* at 139–42.

In *United States v. Castleman*, 572 U.S. __, 134 S. Ct. 1405 (2014), this Court interpreted a different elements clause defining the term "misdemeanor crime of violence." The Court re-affirmed *Curtis Johnson*, but found its "violent force" definition inapplicable due to material differences between the two statutes. In that context, the Court gave "force" its common-law meaning. *Id.* at 1410–13 & n.4. Later in the opinion, the Court stated that indirect applications of force, such as the use of poison, would constitute a "use of physical force." *Id.* at 1414–15.

Following *Castleman*, the circuits have divided on whether that reasoning about poison applies in the ACCA context, where force is defined by *Curtis Johnson* as "violent force," not by its common-law definition. The published decision below held that it does, contributing to what is now a fully mature circuit split.

The question presented is:

Whether an offense that may be committed through an indirect, non-violent application of force—such as the use of poison—has as an element the use, attempted use, or threatened use of physical force for purposes of the ACCA.

PARTIES TO THE PROCEEDINGS

The caption contains the names of all of the parties to the proceedings.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully seeks a writ of certiorari to review a decision of the United States Court of Appeals for the Eleventh Circuit.

OPINION BELOW

The Eleventh Circuit's opinion is published in the Federal Reporter at 882 F.3d 1352 and is also reproduced here as Appendix A. App. 1a.

JURISDICTION

The court of appeals issued its decision on February 20, 2018. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY AND LEGAL PROVISIONS INVOLVED

The Armed Career Criminal Act ("ACCA") defines "violent felony" as, *inter alia*, a felony 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).

In Florida, "'[s]exual battery' means oral, anal, or vaginal penetration by, or union with, the sexual organ of another . . . ." Fla. Stat. § 784.011(1)(h). "A person who commits sexual battery upon a person of 12 years of age or older, without that person's consent, and in the process thereof uses or threatens to use a deadly weapon . . . commits a life felony." Fla. Stat. § 784.011(3). "A weapon is a 'deadly weapon' if it is used or threatened to be used in a way likely to produce death or great bodily harm." Fla. Std. Jury Instr. (Crim.) 11.2.

STATEMENT OF THE CASE

This case presents the following question of federal sentencing law: do offenses that may be committed through an indirect application of force, such as poison, involve the "use of physical force" under the ACCA? The courts of appeals are divided on that question, as they themselves and the government have candidly acknowledged. And every circuit has now addressed it. That fully-mature conflict derives from confusion about the relationship between two of this Court's decisions. And the Fifth Circuit has already once rebuffed the government's efforts to undo the split that its precedent has created. Thus, absent intervention by this Court, criminal defendants with identical criminal histories will continue to receive disparate sentences based on geography. That disparity is particularly untenable, because the question frequently recurs: a wide variety of offenses may be committed by indirect applications of non-violent force, and criminal defendants routinely argue that such force does not satisfy the elements clause. That clause, moreover, is now the primary battleground in ACCA litigation given this Court's invalidation of the residual clause on vagueness grounds. This Court's review is warranted.

1. Petitioner pled guilty to a single count of being a felon in possession of a firearm and ammunition, in violation of 18 U.S.C. § 922(g)(1). The probation officer recommended that Petitioner receive an enhancement under the Armed Career Criminal Act ("ACCA"), which transforms the otherwise-applicable ten-year statutory maximum penalty, 18 U.S.C. § 924(a)(2), into a fifteen-year mandatory minimum penalty where the defendant has three "violent felonies" or "serious drug

offenses," 18 U.S.C. § 924(e). The probation officer relied on four Florida convictions to support the enhancement: aggravated battery; resisting with violence; sexual battery; and attempted sexual battery and kidnapping.

Petitioner objected that none of those convictions qualified as violent felonies, because they did not categorically have "as an element the use, attempted use, or threatened use of physical force." 18 U.S.C. § 924(e)(2)(B)(i). While circuit precedent foreclosed his contentions regarding aggravated assault and resisting with violence, there was no such precedent on the sexual battery and kidnapping offenses. As to the former offenses, which were for sexual battery (and attempted sexual battery) with a deadly weapon under Fla. Stat. § 784.011, he argued that they were categorically overbroad, because sexual battery required mere contact, and a deadly weapon was broadly defined to encompass poison, anthrax, or a chemical agent, which did not require any direct force at all. The district court overruled his objections, sustained the ACCA enhancement, and sentenced him to the fifteen-year mandatory minimum. App. 14a.

2. On appeal, Petitioner renewed his arguments that none of the ACCA predicates were violent felonies under the elements clause. He acknowledged that circuit precedent foreclosed his arguments as to the aggravated assault and resisting with violent convictions. However, he repeated his argument that his sexual battery convictions were categorically overbroad, because they could be committed by mere contact, and the deadly weapon element broadly encompassed poison and other toxic substances that did not require any direct physical force. In

response, the government argued that the two sexual battery offenses satisfied the elements clause, and along with the aggravated assault and resisting with violence convictions, were sufficient to sustain the ACCA enhancement. It abandoned any argument that Petitioner's kidnapping conviction was a violent felony.

3. Following oral argument, the court of appeals issued a published opinion affirming Petitioner's sentence. App. 1a. After reiterating that the aggravated assault and resisting with violence convictions qualified, the court concluded that so too did the sexual battery offenses. The court acknowledged that sexual battery could be committed by mere contact, App. 7a, and that the deadly weapon element broadly encompassed poison and toxic chemicals, App. 10a–11a. But the court rejected Petitioner's argument that such indirect applications of force do not constitute physical force. App. 11a. Relying on *United States v. Castleman*, 572 U.S. __, 134 S. Ct. 1405 (2014), the court reasoned that, while "[p]oisoning someone" or "'sloshing' bleach in a victim's face . . . may not involve the direct application of violent force," it "does not matter whether th[e] use of force occurs indirectly rather than directly" for purposes of the elements clause. *Id.* It sufficed that "the actor knowingly employs a device to indirectly cause physical harm," such as from a "chemical reaction." *Id.* Accordingly, the court concluded that Petitioner's sexual battery offenses satisfied the elements clause, and it expressly declined to address whether his kidnapping offense did as well. App. 11a–12a.

REASONS FOR GRANTING THE PETITION

I. THE CIRCUITS ARE DEEPLY AND OPENLY DIVIDED

In *Curtis Johnson v. United States*, 559 U.S. 133 (2010), this Court defined "physical force" in the ACCA as "violent force." In doing so, it refused to define "force" in that context by its broad common-law meaning, which includes even the slightest touching and indirect applications of force. *Id.* at 139–42.

In *United States v. Castleman*, 572 U.S. __, 134 S. Ct. 1405 (2014), this Court interpreted a different elements clause defining the term "misdemeanor crime of violence." The Court re-affirmed *Curtis Johnson*, but found its "violent force" definition inapplicable due to material differences between the statutes. In that context, the Court instead gave "force" its common-law meaning. *Id.* at 1410–13 & n.4. Later in the opinion, the Court stated that indirect applications of force, such as the use of poison, would constitute a "use of physical force." *Id.* at 1414–15.

Following *Castleman*, the circuits have divided on whether its indirect force/poison reasoning applies to the elements clause in the ACCA (and the Sentencing Guidelines). The published decision below squarely held that it does. With that decision, every circuit has now spoken on that question. And many of those courts, along with the government, have acknowledged that mature conflict.

1. In the Fifth Circuit, the law is well-settled that offenses requiring bodily harm or even death do not satisfy the elements clause under *Curtis Johnson*, because they "could be committed by poison, for example, which would not be [a] 'use of physical force.'" *United States v. Garcia-Perez*, 779 F.3d 278, 283–84 (5th

Cir. 2015) (citing cases). Following *Castleman*, that court definitively "rejected" the government's argument that *Castleman* overruled that circuit precedent. It correctly explained that "*Castleman*'s analysis is not applicable to the physical force requirement for a crime of violence," and thus it "does not disturb this court's precedent regarding the characterization of crimes of violence." *United States v. Rico-Mejia*, 859 F.3d 318, 321–23 (5th Cir. 2017).

Expressing "serious concern" about that ruling, the government petitioned for panel rehearing in *Rico-Mejia*, urging the court to delete the *Castleman* portion of its opinion on the ground that it "explicitly conflicts with *Castleman*'s interpretation and application as expressed by seven other Circuits." *Rico-Mejia*, No. 16-50022, U.S. Pet. Panel Rehearing, at 4 (5th Cir. Mar. 23, 2017); *see id.* at 2 (framing issue as "[w]hether this Court unnecessarily narrowed the scope of *Castleman* and, in doing so, created an inter-circuit . . . split"); *id.* at 6–7 (citing other circuit decisions); *id.* at 8 ("*Rico-Mejia* thus creates a Circuit split.").[1] Despite the government's petition, the Fifth Circuit declined to delete that portion of its opinion, thereby knowingly splitting from other circuits.

The Fifth Circuit, moreover, has since adhered to that post-*Castleman* precedent and openly acknowledged the circuit split. In *United States v. Reyes-Contreras*, 882 F.3d 113 (5th Cir. 2018), the court again rejected the government's argument that "indirect force is sufficient" under *Castleman*, reiterating that it had "already held that *Castleman* does not abrogate our decisions," and recognizing that

[1] The government's rehearing petition in *Rico-Mejia* is attached as Appendix C.

"[t]he government rightly points out that many circuits have rejected this view." *Id.* at 123–24. Judge Jones concurred in the judgment, emphasizing that "[e]very other circuit to address this issue has applied *Castleman*'s direct-indirect analysis in the 'crime of violence' or 'violent felony' context." *Id.* at 126–27 (concurring in the judgment) (citing cases). She suggested that, because "every other circuit" interpreted *Castleman* differently, and *Rico-Mejia* "did not acknowledge the circuit split," it was worth revisiting the issue. *Id.* at 127.

Following the panel opinion, the government petitioned for rehearing en banc in *Reyes-Contreras*, reiterating Judge Jones' observation that the Fifth Circuit's precedent was "in conflict with [*Castleman*] and every other circuit court on a question of exceptional importance." *Reyes-Contreras*, No. 16-41218, U.S. Pet. for Rehearing En Banc iii (5th Cir. Apr. 5, 2018); *see id.* at 16–17 (repeating same).[2] Notably, in citing the cases from the other circuits, the government cited the Eleventh Circuit's decision in this case. *Id.* at iii n.1, 11–12, 17 (citing *United States v. DeShazior*, 882 F.3d 1352 (11th Cir. 2018)). That petition remains pending.

2. As observed by Judge Jones and the government, and with the addition of the Eleventh Circuit's opinion in this case, every circuit other than the Fifth has reached the contrary conclusion: the indirect application of force, such as poison, satisfies the elements clause of the ACCA (and Guidelines) in light of *Castleman*. Several of the key decisions are listed below:

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[2] The government's rehearing petition in *Reyes-Contreras* is attached as Appendix D.

- *United States v. Ellison*, 866 F.3d 32, 37–38 (1st Cir. 2017) (opining that *Castleman*'s "logic" "undermined" defendant's argument that "threat to poison or withhold vital medicine" is not violent force);

- *United States v. Hill*, 832 F.3d 135, 142–44 (2d Cir. 2016) (concluding that "threatened *indirect* application of force" satisfied the elements clause based on the "reasoning in *Castleman* . . . that use of physical force can encompass acts undertaken to cause physical harm, even when the harm occurs indirectly (as with poisoning)");

- *United States v. Chapman*, 866 F.3d 129, 132–33 & n.4 (3d Cir. 2017) ("extend[ing] *Castleman*'s analysis" to the ACCA and concluding that "the use of physical force does not require that the person employing force *directly* apply harm") (emphasis in original);

- *United States v. Reid*, 861 F.3d 523, 528–29 (4th Cir. 2017) ("we conclude that ACCA's phrase 'use of physical force' includes force applied directly or indirectly," such as via poison, and *Castleman* abrogated contrary circuit precedent);

- *United States v. Verwiebe*, 874 F.3d 258, 261 (6th Cir. 2017) ("we have refused to draw a line between direct and indirect force," and "[w]e see no problem with the poison scenario" in light of *Castleman*);

- *United States v. Waters*, 823 F.3d 1062, 1066 (7th Cir. 2016) ("poisoning" and "withholding medicine causes physical harm, albeit indirectly, and thus qualifies as the use of force under *Castleman*");

- *United States v. Rice*, 813 F.3d 704, 706 (8th Cir. 2016) (concluding that "*Castleman* resolves the question" about indirect causation of injury and poisoning); *but see id.* at 706–08 (Kelly, J., dissenting) (opining that *Castleman* was inapplicable, and indirect applications of force, including "cancel[ling] an incompetent individual's insulin prescription, knowing her to be severely diabetic," would not be violent force);

- *Arellano Hernandez v. Lynch*, 831 F.3d 1127, 1131 (9th Cir. 2016) (poisoning "reasoning has been rejected by" *Castleman*); *United States v. Haldemann*, 664 Fed. App'x 820, 822 (9th Cir. 2016) ("whether that use of force occurs indirectly, rather than directly, . . . is of no consequence");

- *United States v. Ontiveros*, 875 F.3d 533, 536–38 (10th Cir. 2017) ("hold[ing] that *Castleman*'s logic applies to 'physical force' in the context of violent felonies," and "[t]o the extent that [prior precedent] holds that indirect force

is not an application of 'physical force,' that holding is no longer good law"), *cert. petition pending* (U.S. No. 17-8367) (filed Apr. 2, 2018);

- *United States v. Redrick*, 841 F.3d 478, 484 (D.C. Cir. 2016) (express "doubt" that "poison, an 'open flame,' or 'legal bacteria'" do not constitute physical force in light of *Castleman*).

Like the Fifth Circuit, some of these circuits have openly noted the conflict. *See, e.g.*, *Ontiveros*, 875 F.3d at 537 ("Almost every circuit that has looked at this issue has determined that *Castleman*'s logic is applicable to the 'physical force' requirement as used in a felony crime of violence," including a "[b]ut see" citation to *Rico-Mejia*); *United States v. Calvillo-Palacios*, 860 F.3d 1285, 1290 (9th Cir. 2017) (noting that "other circuits" recognize that "poisoning" is not violent force); *Rice*, 813 F.3d at 706 (noting that circuits had "reached differing conclusions" on "whether a person uses physical force in causing an injury through indirect means such as poisoning").

* * *

In sum, the circuit conflict is established and now fully mature. Every circuit has spoken on the issue, and there is no reason for further percolation. The Fifth Circuit already made a well-considered judgment in *Rico-Mejia* to create that split notwithstanding a government rehearing petition. If it does so yet again in *Reyes-Contreras*, the need for review by this Court will be imperative.

II. THE QUESTION PRESENTED IS RECURRING AND IMPORTANT

As the cases above reflect, and as the government itself has recognized, the question presented is a recurring one of "exceptional importance." *Reyes-Contreras*, U.S. Pet. for Rehearing En Banc, at iii, 18. Although *Castleman* has been on the

books for only four years, every circuit in the country has already addressed whether its reasoning extends to the violent felony/crime-of-violence context. This reflects that the question implicates a wide variety of offenses—namely, any offense that can be committed through an indirect application of force. And the reason there are already so many reported cases addressing that question is that defendants repeatedly use the poison example to argue that their offenses are overbroad. *See Calvillo-Palacios*, 860 F.3d at 1290 n.5 (describing "poisoning [a]s a prototypical example" used to illustrate non-violent force). The question is thus not only important but recurring. *Reyes-Contreras*, U.S. Pet. for Rehearing En Banc, at iv (describing question as "recurring"); *id.* at 20 (noting "the frequency [with which] this issue arises in a broad range of cases"). Absent resolution by this Court, defendants with the exact same criminal history will receive ACCA and Guideline enhancements everywhere but the Fifth Circuit.

More generally, the elements clause has now taken center stage in ACCA litigation following *Samuel Johnson v. United States*, 576 U.S. __, 135 S. Ct. 2551 (2015), which declared the residual clause void for vagueness. That clause had previously acted as a broad catchall under which many offenses qualified as violent felonies. Without the residual clause, however, the elements clause has become the primary battleground. Parties, probation officers, and lower courts are now routinely required to assess whether offenses satisfy that clause. Its meaning should be uniform across the nation. And one of the burning questions is whether it encompasses indirect applications of force, like poison.

III. THIS CASE IS AN EXCELLENT VEHICLE

For several reasons, this case is an excellent vehicle to decide that question.

1. As a procedural matter, this case arises both on direct appeal and in the ACCA context. While other cases may present a similar substantive question, not all will arise in that same ideal procedural posture and legal context. For example, some will arise on a post-conviction motion under 28 U.S.C. § 2255, which presents retroactivity issues. And some will arise under the Sentencing Guidelines, which contains an identical elements clause that can be amended and clarified by the Sentencing Commission pursuant to its periodic duty to revise the Guidelines. *See Braxton v. United States*, 500 U.S. 344, 348 (1991).

2. The question is also squarely presented here. In both the district court and in the court of appeals, Petitioner argued that his sexual battery offenses were categorically overbroad, because they did "not require the direct application of 'physical force,' such as poison, anthrax, or a chemical weapon." App. 10a–11a; *see* Pet. C.A. Br. 25–26; Pet. C.A. Reply Br. 10; Pet. Rule 28(j) Letter; DE 25:11–12 (PSI objections). The court of appeals expressly rejected that contention, holding that "it does not matter whether th[e] use of force occurs indirectly rather than directly." App. 11a. And, to do so, it relied heavily on, and quoted from, the *Castleman* reasoning. *Id.* Thus, the question was fully preserved in the courts below, and the court of appeals squarely resolved it in a published opinion after oral argument.

3. Resolution of that question, moreover, is dispositive of this case. The court of appeals did not provide any alternative ruling or basis for upholding

Petitioner's ACCA enhancement. While the court concluded that Petitioner had two other qualifying violent felonies (for aggravated assault and resisting with violence), it did not conclude that he had a third qualifying conviction without the sexual battery offenses. Nor could it: while the court expressly declined to address whether his Florida kidnapping conviction could supply that third predicate, App. 12a, other circuits have correctly recognized that it could not. *See United States v. Martinez-Romero*, 817 F.3d 917, 925 (5th Cir. 2016) ("Florida's kidnapping statute can be violated without the use of force," citing Florida cases); *United States v. Gonzalez-Perez*, 472 F.3d 1158, 1160–61 & n.2 (9th Cir. 2007) (similar). In fact, the government abandoned any contrary contention on appeal. U.S. C.A. Br. 8, 25–28. Thus, without the sexual-battery offenses, Petitioner would not be an armed career criminal, and he would be entitled to at least a five-year reduction to his sentence.

4. Finally, the Florida statute at issue here provides the Court with a clean vehicle to resolve the question. As the court below recognized, sexual battery in Florida can be committed only by "mere contact," which indisputably does not satisfy *Curtis Johnson*. App. 7a; *see United States v. Harris*, 608 F.3d 1222, 1226 & n.3 (11th Cir. 2010) (accepting government concession that non-aggravated sexual battery did not satisfy elements clause). And there is no dispute that, under Florida law, the "deadly weapon" component of Petitioner's offenses sweepingly includes any object that is "used or threatened to be used in a way likely to produce death or great bodily harm." App. 10a (quoting Fla. Std. Jury Instr. (Crim.) 8.4 & 11.2); *see Rudin v. State*, 182 So. 3d 724, 727 n.2 (Fla. 1st DCA 2015) (Bilbrey, J.,

concurring) (noting that "[m]any objects that are not readily apparent as deadly can be deadly weapons depending on the circumstances") (citing cases).

Illustrating its breadth, the court below acknowledged that toxic substances can be a deadly weapon. App. 10a–11a (citing *Smith v. State*, 969 So.2d 452, 454–55 (Fla. 1st DCA 2007)). The offense thus encompasses the unfortunately-common scenario of a sexual battery committed after lacing a victim's drink. In short, Florida law is clear, and the court of appeals properly accepted, that Petitioner's offenses could be committed by the indirect, non-violent use or threatened use of a poisonous/toxic substance. As a result, Petitioner's case squarely presents the question upon which the circuits are divided. And, had he been sentenced in the Fifth Circuit, he would have obtained relief.

IV. THE DECISION BELOW IS WRONG

Finally, the court of appeals erred by relying on *Castleman* to conclude that Petitioner's sexual battery offenses satisfied the elements clause of the ACCA.

In *Curtis Johnson*, the Court defined "physical force" in the ACCA's elements clause as "*violent* force—that is, force capable of causing physical pain or injury to another person." *Id.* at 140. The Court explained that violent force is measured by the degree or quantum of force used. It repeatedly referred to "violent force" as a "substantial degree of force" involving "strength," "vigor," "energy," "pressure," and "power." *Id.* at 139; *see id.* at 140 (even by itself, the word "violent" "connotes a substantial degree of force," but "[w]hen the adjective 'violent' is attached to the

noun 'felony,' its connotation of strong physical force is even clearer"); *id.* at 142 (violent force "connotes forces strong enough to constitutes 'power'").

Significantly, the Court in *Curtis Johnson* expressly declined to adopt the broader common-law definition of "force" for purposes of the ACCA. *Id.* at 139 ("The common law held this element of 'force' to be satisfied by even the slightest offensive touching. The question is whether the term "force" in 18 U.S.C. § 924(e)(2)(B)(i) has the specialized meaning that it bore in the common-law definition of battery. The Government asserts that it does. We disagree.") (internal citations omitted). Indeed, the Court took pains to explain that, because the elements clause in the ACCA was defining the term "violent felony," and the common-law definition of "force" derived from the misdemeanor context, the all-encompassing common-law definition would be a "comical misfit" in the ACCA context. *Id.* at 141–42, 145.

That same reasoning, however, led the Court to the opposite conclusion in *Castleman*. There, the Court was interpreting the elements clause in 18 U.S.C. § 921(a)(33)(A), which defined the term "misdemeanor crime of domestic violence" in 18 U.S.C. § 922(g)(9). As a result, and for other reasons too, the Court concluded that the common-law definition of force "fit perfectly" in that context: "The very reasons we gave [in *Curtis Johnson*] for rejecting that [common-law] meaning in defining a 'violent felony' are reasons to embrace it in defining a 'misdemeanor crime of domestic violence.'" *Id.* at 1410; *see id.* at 1410–13. The Court, however, made sure to re-affirm *Curtis Johnson*, noting that "[n]othing in today's opinion

casts doubt on" it, because "'domestic violence' encompasses a range of force broader than that which constitutes 'violence' *simpliciter*." *Id.* at 1411 n.4.

After defining force by its common-law definition, the Court then went on to conclude that the particular conviction in that case required common-law force and was thus a misdemeanor crime of violence. *Id.* at 1413–15. In so doing, the Court rejected the "reasoning that one can cause bodily injury without the 'use of physical force'—for example, by deceiving the victim into drinking a poisoned beverage, without making contact of any kind." *Id.* at 1414 (quotation marks and brackets omitted). That was so because, unlike violent force, "the common-law concept of 'force' encompasses even its indirect application," such that it "need not be applied directly to the victim." *Id.* (citations omitted). Thus, common-law force was employed "by administering a poison or by infecting with a disease, or even by resort to some intangible substance, such as a laser beam." *Id.* at 1414–15 (citation omitted). The Court went on to explain that such conduct also involved the "use" of such force. *Id.* at 1415 ("The 'use of force' in Castleman's example is not the act of sprinkling the poison; it is the act of employing poison knowingly as a device to cause physical harm. That the harm occurs indirectly, rather than directly (as with a kick or punch), does not matter.") (quotation marks and brackets omitted).

It is this reasoning that has been improperly taken out of context by the court below and the majority of the other circuits. They have imported it into the ACCA/Guidelines context. But, as was true here, many have done so without recognizing that *Castleman* was proceeding on the common-law definition of force,

which encompasses indirect applications such as poison. And *Curtis Johnson* expressly repudiated that common-law definition for the ACCA context. Instead, *Curtis Johnson* deliberately defined physical force as violent force, as measured by the substantial degree or quantum of force. And such force necessarily excludes non-violent indirect applications, such as the use of poison. Thus, *Castleman*'s reasoning turned on the very definition of "force" that *Curtis Johnson* rejected. By nonetheless importing that reasoning into the latter context, the court below and many others have improperly extended *Castleman* and diluted *Curtis Johnson*. Indeed, *Castleman* expressly reserved (twice) on whether the causation of bodily injury necessarily required "violent force." *Id.* at 1413–14. And because bodily injury may be caused by indirect applications of force, the Court's reservation on that issue further confirms that it did not mean to resolve whether such force is always violent force. The Court should decide that question here at long last.

CONCLUSION

For the foregoing reasons, the Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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