No. 18-5052

IN THE SUPREME COURT OF THE UNITED STATES

THOMAS CURETON, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the district court committed reversible plain error in determining that petitioner's interstate communication of a ransom demand, in violation of 18 U.S.C. 875(a), qualified as a "crime of violence" under 18 U.S.C. 924(c)(3).

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OPINIONS BELOW

The opinions of the court of appeals (Pet. App. 1-4, 9-10) are reported at 882 F.3d 714 and 887 F.3d 318, respectively. The order of the district court (Pet. App. 5-8) is unreported. Prior opinions of the court of appeals are reported at 739 F.3d 1032 and 845 F.3d 323.

JURISDICTION

The judgment of the court of appeals was entered on April 10, 2018. The petition for a writ of certiorari was filed on June 26, 2018. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the Southern District of Illinois, petitioner was convicted on one count of possession of a firearm by a felon, in violation of 18 U.S.C. 922(g)(1); three counts of distribution of cocaine base near a school, in violation of 21 U.S.C. 841(a)(1), (b)(1)(C), and 860; one count of interstate communication of a ransom demand, in violation of 18 U.S.C. 875(a); one count of attempted extortion, in violation of 18 U.S.C. 1951(a); and two counts of possession of a firearm in furtherance of a crime of violence, in violation of 18 U.S.C. 924(c). 10-cr-30106 D. Ct. Doc. 154, at 1 (Jan. 31, 2012); 10-cr-30200 D. Ct. Doc. 104, at 1 (Jan. 31, 2012); see 739 F.3d at 1034-1035. The district court sentenced petitioner to 744 months of imprisonment, to be followed by 12 years of supervised release. 10-cr-30106 D. Ct. Doc. 154, at 2-3; 10-cr-30200 D. Ct. Doc. 104, at 2-3.

The court of appeals vacated petitioner's conviction on one of the Section 924(c) counts and remanded for resentencing. 739 F.3d at 1045. On remand, the district court sentenced petitioner to 444 months of imprisonment, to be followed by 12 years of supervised release. 10-cr-30106 D. Ct. Doc. 220, at 2-3 (July 17, 2014); 10-cr-30200 D. Ct. Doc. 170, at 2-3 (July 29, 2014). The court of appeals vacated that sentence and remanded for another resentencing. 14-2576 C.A. Order (June 30, 2015). On remand, the district court again sentenced petitioner to 444 months of

imprisonment and 12 years of supervised release. 10-cr-30106 D. Ct. Doc. 247, at 3-4 (Nov. 16, 2015); 10-cr-30200 D. Ct. Doc. 201, at 2-3 (Nov. 16, 2015). The court of appeals affirmed. 845 F.3d at 328. This Court granted a petition for a writ of certiorari, vacated the court of appeals' judgment, and remanded the case for further consideration in light of Dean v. United States, 137 S. Ct. 1170 (2017). See 138 S. Ct. 66.

Following the remand from this Court, the court of appeals ordered a limited remand to the district court to permit that court to consider whether it would have imposed the same sentence in the earlier sentencing proceedings had it known (consistent with Dean) that it could have taken into account the statutory minimum 84-month sentence on the Section 924(c) count in determining the sentences on the other counts. Pet. App. 1-4. The district court confirmed that it would have imposed the same sentence. Id. at 5-8. The court of appeals affirmed. Id. at 9-10.

1. Between late 2009 and June 2010, petitioner sold crack cocaine to multiple customers. 739 F.3d at 1035-1036. In January 2010, law-enforcement agents found two guns, ammunition, and an electronic scale in an apartment where petitioner had conducted one of his drug transactions. Id. at 1035. Petitioner's fingerprints were on the scale and the bag containing the guns, and the apartment's occupant reported that petitioner had hidden those items in the apartment. Ibid.

During a drug sale on June 12, 2010, petitioner held one of his customers at gunpoint and demanded money. 739 F.3d at 1035-1036. The gun discharged during the robbery, causing no injuries, and petitioner left with over $9000 in cash that his customer had earned from a recent home sale. Ibid.; 11/9/15 Presentence Investigation Report (PSR) ¶¶ 39, 42-43. Two days later, police officers visited petitioner's apartment in connection with the robbery. 739 F.3d at 1036. Petitioner and his wife, LaQuita Cureton (LaQuita), were not home at the time, but LaQuita's brother, Demetrius Anderson, talked to the officers. Ibid. After the officers left, Anderson and LaQuita spoke by phone and agreed that Anderson's 18-year-old girlfriend, Ashley Lawrence, would bring $9000 in cash from the apartment to petitioner and LaQuita. Ibid. Lawrence later testified that she lost the money while walking to meet petitioner and LaQuita at a nearby park and called LaQuita as soon as she realized the money was missing. Ibid.

As Lawrence was retracing her steps to look for the cash, petitioner arrived and ordered Lawrence into a car. 739 F.3d at 1036. Petitioner took Lawrence to his friend's basement, punched her, and demanded to know where the money was. Ibid. When another search for the cash proved unsuccessful, petitioner and others took Lawrence behind a garage. Ibid.; PSR ¶ 54. Petitioner punched Lawrence repeatedly, broke her nose, kicked her, choked her, and tied her up. 739 F.3d at 1036; PSR ¶ 49. When LaQuita attempted to intercede, petitioner told LaQuita that Lawrence "had

his money and it was his right to hurt her." PSR ¶ 54. After that, LaQuita began participating in the psychological abuse of Lawrence. PSR ¶ 49. At one point, petitioner exposed one of Lawrence's breasts, pointed a knife to her nipple, and threatened to cut it off. Ibid. Petitioner later held a gun to Lawrence's head and threatened to shoot her. Ibid.; see 739 F.3d at 1036. At least six people watched or participated in petitioner's abuse of Lawrence, and some of them encouraged petitioner to kill her. PSR ¶ 49.

Under pressure from petitioner, Lawrence began making phone calls to family members to ask for money. 739 F.3d at 1036. Lawrence told her stepfather that she had taken $9000 from someone and would be killed if she did not have the money before sundown. PSR ¶ 60. Petitioner took the phone and told Lawrence's stepfather that he wanted Lawrence to repay $9000 she had stolen from him, but he hung up when Lawrence's stepfather threatened him. Ibid.; see 739 F.3d at 1036. When Lawrence reached her grandfather, petitioner again took the phone and told Lawrence's grandfather that Lawrence had stolen $9000 from him, and Lawrence's grandfather agreed to wire $4500 to secure Lawrence's release. PSR ¶ 59; see 739 F.3d at 1036.

2. a. In connection with petitioner's drug-trafficking activities, a federal grand jury charged petitioner with one count of possession of a firearm by a felon, in violation of 18 U.S.C. 922(g)(1); three counts of distribution of cocaine base near a

school, in violation of 21 U.S.C. 841(a)(1), (b)(1)(C), and 860; and one count of distribution of cocaine base, in violation of 21 U.S.C. 841(a)(1) and (b)(1)(C). 10-cr-30106 Second Superseding Indictment 1-3. In connection with the abduction and assault of Lawrence, a federal grand jury separately charged petitioner with one count of transmitting a ransom demand in interstate commerce, in violation of 18 U.S.C. 875(a); one count of attempted extortion, in violation of 18 U.S.C. 1951(a); and two counts of possession of a firearm in furtherance of a crime of violence (the ransom demand and the attempted extortion), in violation of 18 U.S.C. 924(c). 10-cr-30200 Superseding Indictment 1-3.

The two criminal cases were tried together, and the jury found petitioner guilty on all counts, except for one of the drug-distribution counts. 10-cr-30106 D. Ct. Doc. 154, at 1; 10-cr-30200 D. Ct. Doc. 104, at 1; see 739 F.3d at 1035, 1037. The district court sentenced petitioner to 744 months of imprisonment, consisting of concurrent terms of 360 months on the drug distribution counts, 120 months on the firearm count, and 240 months on the ransom-demand and attempted extortion counts, as well as consecutive sentences of 84 months on the first Section 924(c) count and 300 months on the second Section 924(c) count.*

* Section 924(c) imposes a minimum consecutive sentence of seven years of imprisonment if a firearm is brandished in furtherance of a crime of violence, 18 U.S.C. 924(c)(1)(A)(ii), and requires an additional minimum consecutive sentence of 25 years of imprisonment for each "second or subsequent conviction" under Section 924(c), 18 U.S.C. 924(c)(1)(C)(i). See Deal v. United States, 508 U.S. 129, 130-137 (1993).

10-cr-30106 D. Ct. Doc. 154, at 2; 10-cr-30200 D. Ct. Doc. 104, at 2; see 739 F.3d at 1037. The court noted that a 744-month sentence was within the advisory Sentencing Guidelines range. 1/30/12 Sent. Tr. 28, 32-33 (10-cr-30200); see id. at 7-10, 14, 21 (government describes Guidelines calculation and notes that any Guidelines sentence would "effectively [be] a life sentence"). The court told petitioner that it "would have given [him] a life sentence if the statute authorized it irrespective of what the guidelines provided for in this case" because petitioner was "a dangerous man" whose treatment of Lawrence and her family was "cold and vicious almost beyond description." Id. at 36-37; see id. at 37 ("[T]o tie a young woman up and kick, beat her, and threaten to cut her, and to bring other people in to frighten her, and then to call her family, [was] just a horrible, horrible, horrible experience for everyone involved.").

b. The court of appeals vacated petitioner's sentence and remanded for resentencing. 739 F.3d at 1046. The court stated that Section 924(c)(1) authorizes only one conviction for a single use of a single firearm during the commission of multiple predicate offenses. Id. at 1043-1044. Because both of petitioner's Section 924(c) convictions were based on the same use of the same firearm, the court determined that petitioner "may only stand convicted of one violation of § 924(c)." Id. at 1043. At that time, petitioner "d[id] not contest" that the predicate offenses underlying his Section 924(c) convictions -- the interstate communication of a

ransom demand and attempted extortion -- were both "crimes of violence" under Section 924(c). Id. at 1040.

On remand, the district court found that the court of appeals had vacated petitioner's conviction on the Section 924(c) count that identified attempted extortion as the predicate crime of violence. 10-cr-30200 D. Ct. Doc. 170, at 1; see 10-cr-30200 Superseding Indictment 2-3. The district court imposed the same sentences on the remaining counts, resulting in a new sentence of 444 months of imprisonment. 10-cr-30106 D. Ct. Doc. 220, at 2; 10-cr-30200 D. Ct. Doc. 170, at 2. During the resentencing proceeding, the court observed that petitioner "is a very dangerous man" who distributed drugs "near a grade school" and "beat [Lawrence] nearly to death." 7/16/14 Sent. Tr. at 34, 36. The court thus declined to reduce petitioner's sentence below his advisory Sentencing Guidelines range, stating that "the [Sentencing] Commission got it right" and that "the low end guideline sentence" of 444 months was "adequate" and would "protect the public." Id. at 39; see id. at 38-39.

c. Petitioner appealed again, challenging only the district court's imposition of certain standard conditions of supervised release. 14-2576 C.A. Order 2. The court of appeals vacated petitioner's sentence in its entirety and remanded for resentencing, finding that the district court had not adequately explained the need for each supervised-release condition. Ibid. On remand, the district court selected the same 444-month term of

imprisonment it had imposed at petitioner's previous resentencing. 10-cr-30106 D. Ct. Doc. 247, at 3; 10-cr-30200 D. Ct. Doc. 201, at 2. In explaining that sentence, the court observed that petitioner had committed an "incredibly serious set of crimes" and had "torture[d]" Lawrence. 11/13/15 Sent. Tr. 22-23. The court saw no "reason to vary from" the "low end guideline sentence" of 444 months of imprisonment, explaining that this sentence "appropriately reflects the seriousness of the offense," "provides just punishment," and "hopefully will address the issues of deterrence and protecting the public." Id. at 25-26.

3. a. Petitioner filed a third appeal, arguing for the first time that his remaining Section 924(c) conviction should be vacated on the theory that his interstate communication of a ransom demand, in violation of 18 U.S.C. 875(a), was not a "crime of violence" under 18 U.S.C. 924(c)(3). 15-3575 Pet. C.A. Br. (Pet. C.A. Br.) 16-32. Section 924(c)(3) defines a "crime of violence" as a felony that either "has as an element the use, attempted use, or threatened use of physical force against the person or property of another," 18 U.S.C. 924(c)(3)(A), or, "by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense," 18 U.S.C. 924(c)(3)(B). Petitioner contended that interstate communication of a ransom demand does not qualify as a crime of violence under Section 924(c)(3)(A). Pet. C.A. Br. 20-25. Petitioner further contended that Section 924(c)(3)(B) is

unconstitutionally vague in light of Johnson v. United States, 135 S. Ct. 2551 (2015), which held that the residual clause of the definition of a "violent felony" in the Armed Career Criminal Act of 1984, 18 U.S.C. 924(e)(2)(B)(ii), is void for vagueness. 135 S. Ct. at 2555, 2563; see Pet. C.A. Br. 25-31. Petitioner acknowledged that he had not raised these claims in the district court and thus could prevail only by satisfying a plain-error standard of review. Pet. C.A. Br. 17-18.

In its response brief, the government agreed that interstate communication of a ransom demand, in violation of 18 U.S.C. 875(a), does not categorically require the use or threat of physical force and thus would not qualify as a "crime of violence" under Section 924(c)(3)(A). 15-3575 Gov't C.A. Br. (Gov't C.A. Br.) 11-12. The government argued, however, that Johnson had not invalidated Section 924(c)(3)(B) and that a ransom-demand offense necessarily qualifies as a "crime of violence" under that provision. Id. at 15-21. After the government filed its response brief, the court of appeals held in another case that Section 924(c)(3)(B) is unconstitutionally vague in light of Johnson. United States v. Cardena, 842 F.3d 959, 995-996 (7th Cir. 2016), cert. denied, 138 S. Ct. 247 (2017).

b. The court of appeals affirmed, however, in petitioner's case, finding that petitioner had not satisfied the "demanding" plain-error standard of review. 845 F.3d at 324; see id. at 325-328.

In light of its precedent holding that Section 924(c)(3)(B) is unconstitutionally vague, the court of appeals focused on whether interstate communication of a ransom demand, in violation of 18 U.S.C. 875(a), qualifies as a crime of violence under Section 924(c)(3)(A). 845 F.3d at 326. The court acknowledged the government's "apparent concession" that a ransom-demand offense does not qualify as a crime of violence under Section 924(c)(3)(A), but the court disagreed with it. Ibid. In the court's view, it is "rather plain" that "a demand or request for ransom necessarily includes at least an implied threat that the kidnapper will use force against the captive if the demand is not satisfied." Ibid.

"In any event," the court of appeals continued, "[petitioner] loses on plain-error review if it is at least debatable whether the statute 'has as an element the . . . threatened use of physical force against the person . . . of another.'" 845 F.3d at 326-327 (quoting 18 U.S.C. 924(c)(3)(A)). The court observed that petitioner "ha[d] not cited case law that gives substantial support, let alone definitive support, to his side of the debate." Id. at 327. The court also observed that "Section 875(a) has been the subject of few reported decisions, but convictions under it have involved threats of deadly violence." Ibid. (citing cases). The court thus "s[aw] no plain error in the district court's judgment treating [petitioner's] crime of demanding a ransom as a 'crime of violence' under * * * § 924(c)(3)(A)." Ibid.

The court of appeals additionally determined that, "[e]ven if th[e foregoing] analysis were wrong," petitioner could not show plain error for "a second reason" -- "retaining the § 924(c) conviction based on the ransom demand does not affect his substantial rights." 845 F.3d at 327. The court explained that vacating petitioner's Section 924(c) conviction would not change his 360-to-720-month advisory Sentencing Guidelines range on the other counts. Ibid. "With an unchanged guideline range," the court stated, "the district court could readily impose the same 444-month sentence that it has already ruled twice is appropriate" and would remain "perfectly entitled to consider th[e] fact" that petitioner "threatened his victim with force with a gun literally to her head." Ibid. The court of appeals found that petitioner had provided "no reason to believe the district court would do anything different if [the court of appeals] were to remand once more." Ibid.

4. This Court granted a petition for a writ of certiorari, vacated the court of appeals' judgment, and remanded for further consideration in light of Dean, supra, which had held that, "when calculating an appropriate sentence for the predicate offense" for a Section 924(c) conviction, a sentencing court may properly consider the fact of the statutory minimum required under Section 924(c). 137 S. Ct. at 1178; see id. at 1176; 138 S. Ct. at 66. The court of appeals, in turn, ordered a limited remand of petitioner's case to the district court to allow that court to

"determine whether it would have imposed the same sentence" on petitioner in light of Dean. Pet. App. 4.

On remand, the district court confirmed that it would reimpose the same sentence in light of Dean. Pet. App. 6. The court explained that it had "earlier determined that [petitioner's] capacity for violence and depravity was extreme" and that petitioner "needed to be off the streets for as long as the law would permit," which the court had "determined to be 444 months imprisonment." Ibid. The court recited some of its past findings regarding petitioner's dangerousness, as well as similar findings by the district court judge who handled petitioner's original sentencing. Id. at 6-7. The court stated that it "still believes that [petitioner] is a very dangerous man" who would be likely to kill if faced with "another drug deal gone bad, a road rage incident or whatever sets off [his] anger." Id. at 7; see id. at 6-7. The court thus determined that petitioner's 444-month sentence is "sufficient but not greater than necessary" in light of the sentencing factors in 18 U.S.C. 3553(a) and that any other sentence would "be a travesty of justice." Pet. App. 7-8.

5. The court of appeals affirmed, explaining that the district court had "complied with the terms of [the] limited remand" and had found "no basis for reducing [petitioner's] sentence." Pet. App. 10. The court further noted that both district judges who had sentenced petitioner "focused on the

extraordinary viciousness of [his] crimes, including the kidnapping and torture of the woman who was his victim." Ibid.

ARGUMENT

Petitioner contends (Pet. 15-31) that his interstate communication of a ransom demand, in violation of 18 U.S.C. 875(a), did not qualify as a "crime of violence" under 18 U.S.C. 924(c)(3). Petitioner failed to preserve that claim in the district court, and, as the court of appeals determined, he cannot prevail under a plain-error standard of review. The decision below does not conflict with any decision of this Court or of another court of appeals. Further review is not warranted.

1. As petitioner acknowledged below, any appellate review of his Section 924(c)(3) claim is for plain error because he did not raise that claim in the district court. See Fed. R. Crim. P. 52(b); 845 F.3d at 326; Pet. C.A. Br. 17-18. On plain-error review, petitioner has the burden to establish (i) error that (ii) was "clear or obvious, rather than subject to reasonable dispute," (iii) "affected [his] substantial rights, which in the ordinary case means he must demonstrate that it 'affected the outcome of the district court proceedings,'" and (iv) "'seriously affect[ed] the fairness, integrity or public reputation of judicial proceedings.'" Puckett v. United States, 556 U.S. 129, 135 (2009) (citations omitted); see Rosales-Mireles v. United States, 138 S. Ct. 1897, 1904-1905 (2018); United States v. Dominguez Benitez, 542 U.S. 74, 81-82 (2004). "Meeting all four

prongs is difficult, 'as it should be.'" Puckett, 556 U.S. at 135 (quoting Dominguez Benitez, 542 U.S. at 83 n.9). The court of appeals correctly determined that petitioner failed to show an entitlement to plain-error relief, and that determination does not warrant this Court's review.

First, the court of appeals panel's unanimous rejection of the parties' joint view that interstate communication of a ransom demand does not qualify as a "crime of violence" under Section 924(c)(3)(A), see 845 F.3d at 327; Gov't C.A. Br. 11-12, suggests that any error is "subject to reasonable dispute," and thus not "clear or obvious." Puckett, 556 U.S. at 135. Petitioner identifies no court of appeals that has resolved the issue differently, or even addressed it. Petitioner errs in asserting (Pet. 18-19) that the question was resolved in Torres v. Lynch, 136 S. Ct. 1619 (2016), a case that he did not cite below, see Pet. C.A. Br. 20-25; 15-3575 Pet. C.A. Reply Br. 4-14. Although Torres cites Section 875(a) in a discussion of the types of state statutes that would not qualify as crimes of violence under 18 U.S.C. 16(a) (which is worded like Section 924(c)(3)(A)), see 136 S. Ct. at 1629, the classification of that federal offense was not the focus of briefing, argument, or decision in that case, which instead addressed the comparison of state crimes to their federal analogues in the definition of "aggravated felony" under the Immigration and Nationality Act, 8 U.S.C. 1101 et seq. See 136 S. Ct. at 1622-1623.

In any event, the court of appeals correctly determined that, even if petitioner could demonstrate clear or obvious error, he cannot satisfy the plain-error standard because "retaining the § 924(c) conviction based on the ransom demand does not affect his substantial rights." 845 F.3d at 327. Petitioner's Section 924(c) conviction carries a statutory minimum 84-month sentence, and his current 444-month term of imprisonment is composed of that sentence and the 360 months he is serving on his other convictions. See ibid. As the court of appeals explained, however, vacating petitioner's Section 924(c) sentence would not change the advisory Sentencing Guidelines range for his other offenses, which would remain 360 to 720 months. Ibid. If the district court were required to impose a new sentence on those remaining counts, it would be "perfectly entitled to consider" that petitioner "as a matter of fact threatened his victim with force with a gun literally to her head" and "could readily impose the same 444-month sentence that it has already ruled * * * appropriate." Ibid. (emphasis added). That sentence would still be within petitioner's advisory Guidelines range -- indeed, in the lower half of that range -- and is one that the court has repeatedly viewed as the proper punishment for his conduct. Ibid.; see Molina-Martinez v. United States, 136 S. Ct. 1338, 1345-1347 (2016) (noting that, although a Guidelines calculation error ordinarily affects substantial rights, it does not do so "when, despite

application of an erroneous Guidelines range, a reasonable probability of prejudice does not exist").

The record below indicates that, even without the Section 924(c) conviction, the district court would adhere to its imposition of a sentence of 444 months of imprisonment. The court of appeals has remanded petitioner's case to the district court three times, and each time the district court found that 444 months is the appropriate term of imprisonment for petitioner's crimes. See 7/16/14 Sent. Tr. 34-39; 11/13/15 Sent. Tr. 22-26; Pet. App. 6-8. The district court has been steadfast in its view that a 444-month sentence is commensurate to the seriousness of petitioner's crimes and the threat he posed to the public. See 7/16/14 Sent. Tr. 34, 36 (describing petitioner as "a very dangerous man" who distributed drugs "near a grade school" and "beat [Lawrence] nearly to death"); 11/13/15 Sent. Tr. 22-23 (observing that petitioner committed an "incredibly serious set of crimes" and "torture[d]" Lawrence); Pet. App. 6-7 (repeating those findings). During the most recent proceeding, the court stated that it "still believes that [petitioner] is a very dangerous man" who would be likely to kill if faced with "another drug deal gone bad, a road rage incident or whatever sets off [his] anger." Pet. App. 7. And the court found that imposing a sentence lower than 444 months would be a "travesty of justice." Id. at 7-8.

Petitioner gave the court of appeals "no reason to believe" that the district court would impose a lower sentence if the

Section 924(c) conviction were vacated, 845 F.3d at 327, and the petition for a writ of certiorari likewise does not ask the Court to review that factbound determination. See Pet. 11-12, 15-31. The court of appeals was thus correct to reject petitioner's plain-error challenge to his Section 924(c) conviction, and petitioner identifies no court of appeals that would have reached a different disposition on this record.

2. Petitioner contends (Pet. 23-31) that his Section 875(a) offense could qualify as a "crime of violence" only under Section 924(c)(3)(B), which he asserts is void for vagueness. On October 3, 2018, the United States filed petitions for writs of certiorari in United States v. Davis, No. 18-431, and United States v. Salas, No. 18-428, asking this Court to review whether Section 924(c)(3)(B) is unconstitutionally vague. As petitioner acknowledges (Pet. 23), however, the court of appeals shared his view that Section 924(c)(3)(B) is unconstitutionally vague and yet affirmed his Section 924(c) conviction under Section 924(c)(3)(A) on plain-error review. See 845 F.3d at 325-328. Accordingly, a ruling on the constitutionality of Section 924(c)(3)(B) could affect the outcome of petitioner's case only if this Court were also inclined to vacate the court of appeals' factbound determination that petitioner failed to establish reversible plain error under Section 924(c)(3)(A). Because that determination is correct, and does not itself warrant review, the petition for a writ of certiorari should be denied. If, however, the Court

believes that its consideration of the petitions in Davis and Salas might affect the resolution of this case, it could hold the petition for a writ of certiorari pending the disposition of the petitions in Davis and Salas, and then dispose of the petition here as appropriate.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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