

NO. _____

In The
Supreme Court of the United States

—◆—
TRON DAVIS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

—◆—
ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

—◆—
PETITION FOR WRIT OF CERTIORARI

—◆—
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QUESTION PRESENTED

1. Whether theft offenses requiring only minimal contact and no threat of violence satisfy the generic, contemporary meaning of robbery under the categorical approach to analyzing sentencing enhancements mandated by this Court in *Taylor v. United States*?

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IN THE
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TRON LAKEY DAVIS,
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v.

UNITED STATES OF AMERICA,
Respondent.

**On Petition for Writ of Certiorari to the
United States Court of Appeals for the Fourth Circuit**

PETITION FOR WRIT OF CERTIORARI

Petitioner Tron Davis respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit.

OPINION BELOW

The Fourth Circuit's opinion is unreported, but is available at 717 F. App'x 318, 2018 U.S. App. LEXIS 8284. Pet. App. 1a. The District Court's judgment is available at Pet. App. 7a.

JURISDICTION

The Fourth Circuit issued its opinion on April 2, 2018. Pet. App.1a. This Court's jurisdiction rests on 28 U.S.C. § 1254(1).

SENTENCING GUIDELINE PROVISION INVOLVED

Section 4B1.2(a) of the United States Sentencing Guidelines defines the term "crime of violence" as:

any offense under federal or state law, punishable by imprisonment for a term exceeding one year, that-

(1) has as an element the use, attempted use, or threatened use of physical force against the person of another, or

(2) is murder, voluntary manslaughter, kidnapping, aggravated assault, a forcible sex offense, **robbery**, arson, extortion, or the use or unlawful possession of a firearm described in 26 U.S.C. § 5845(a) or explosive material as defined in 18 U.S.C. § 841(c) .

U.S.S.G. § 4B1.2(a) (emphasis added).

STATEMENT OF THE CASE

On February 5, 2013, Mr. Davis was indicted by a grand jury in the Eastern District of North Carolina on two counts of distributing a quantity of marijuana in violation of 21 U.S.C. § 841(a)(1), three counts of possessing a firearm after having been convicted of a felony offense in violation of 18 U.S.C. § 922(g), one count of possessing a stolen firearm in violation of 18 U.S.C. § 922(j), and two counts of using and carrying a firearm during and in relation to a drug trafficking crime in violation of 18 U.S.C. § 924(c). CAJA 17-19¹. Mr. Davis signed a plea agreement and pled guilty to two counts in the indictment: distributing a quantity of marijuana as well as using and carrying a firearm during and in relation to a drug trafficking crime on August 17, 2012. CAJA 32-38.

During the arraignment, the Government provided a factual basis for the plea:

The factual basis will show that the confidential informant met Mr. Davis at his house where he purchased 7 grams of marijuana and they went to an apartment complex to pick up the firearm. When they arrived at the apartment complex, Mr. Davis went inside and retrieved the

¹ “CAJA” refers to the Joint Appendix filed in the U.S. Court of Appeals for the Fourth Circuit.

firearm or another individual retrieved the firearm, placed it into the C.I.'s trunk and then the C.I. proceeded to drive Mr. Davis home.

CAJA 29.

A United States probation officer prepared a pre-sentence report (“PSR”) and designated Mr. Davis as a career offender under U.S.S.G. § 4B1.1(c)(3), on the basis that he had been previously convicted in North Carolina of common law robbery and robbery with a dangerous weapon. CAJA 132. Mr. Davis objected to the career offender designation. CAJA 40, 135. Without the career offender designation, his advisory guideline range was 64 to 70 months imprisonment (offense level 4, criminal history category V, but adding the mandatory minimum of 60 months for the 18 U.S.C. § 924(c) conviction based on the presence of a firearm). However, the career offender override (because he was also convicted under 18 U.S.C. § 924(c)) elevated his advisory guideline range to 262 to 327 months imprisonment due to U.S.S.G. § 4B1.1(c)(3). CAJA 132.

At his first sentencing hearing on November 15, 2013, the district court rejected Mr. Davis’s challenge to his career offender enhancement and imposed a sentence of 300 months to be followed by a sentence of supervised release for the rest of his life. CAJA 74. Mr. Davis timely appealed, but, through counsel representing him at that time, voluntarily dismissed his appeal. Pet. App. 30a; CAJA 10.

On February 23, 2015, Mr. Davis filed a motion to vacate his sentence and conviction under 28 U.S.C. § 2255 based on an ineffective assistance of counsel claim, that his supervised release sentence was unlawful, as well as a claim that his career offender enhancement was erroneous. *Id.* The Government consented to Mr. Davis’s

judgment being vacated and re-entered so that he could file a timely direct appeal again. Pet. App. 22a, 28a; CAJA 12-13.

On his second direct appeal to the Fourth Circuit, Mr. Davis challenged whether his sentence was erroneously enhanced as a career offender in light of this Court's decision in *Johnson v. United States*, 135 S. Ct. 2551, 2563 (2015) (striking down as void for vagueness in violation of one's right to due process a statutory the residual clause under the Armed Career Criminal Act, 18 U.S.C. § 924(e)).

CAJA 90-95. He also challenged the sentence of lifetime supervised release as unlawful. *Id.* Due to this Court's decision in *Beckles v. United States*, 137 S. Ct. 886 (2017) (holding that a due process-based void for vagueness challenge only applies to statutes and not the Sentencing Guidelines), on April 7, 2017, the Fourth Circuit rejected Mr. Davis's challenge to his career offender enhancement but determined that his sentence of lifetime supervised release was unlawful and remanded the case back to the district court. Pet. App. 13a-14a; CAJA 12-13.

On remand, Mr. Davis challenged his career offender enhancement due to Amendment 798 to the Sentencing Guidelines that went into effect on August 1, 2016, while his case had been on appeal to the Fourth Circuit. CAJA 96-101. This amendment eliminated the residual clause under U.S.S.G. § 4B1.2's definition of a career offender. On June 1, 2017, the district court rejected Mr. Davis's challenge to the career offender enhancement by ruling that the mandate rule was inflexible and that the district court could not consider this change in the law during the re-sentencing hearing, and the district court entered its judgment on June 5, 2018. Pet.

App. 7a; CAJA 104-105. Mr. Davis timely appealed to the Fourth Circuit. Pet. App. 4a.

On appeal to the Fourth Circuit, Mr. Davis argued, among other things, that his prior conviction for North Carolina common law robbery did not qualify as generic robbery and, thus, did not qualify as a crime of violence under U.S.S.G. § 4B1.2, such that he was erroneously sentenced as a career offender and, under recognized exceptions to the mandate rule, it was reversible error for the district court to refuse to take into account the amendment to the definition of a career offender during the re-sentencing hearing. On April 2, 2018, the Fourth Circuit rejected this argument and affirmed the judgment of the district court claiming Mr. Davis could not show prejudice. Pet. App. 1a, 3a. The Fourth Circuit, relying on its recent decision in *United States v. Gattis*, 877 F.3d 150, 158 (4th Cir. 2017), held that North Carolina common law robbery, which the court acknowledged requires only “*de minimus* contact,” is nonetheless “subsumed within—and is a categorical match with—generic robbery”, and, therefore, Mr. Davis’s challenge to his career offender enhancement was foreclosed by precedent. Pet. App. 1a.

This petition followed.

REASONS FOR GRANTING THE PETITION

This case presents a broader, important question that lower courts struggle to answer. Numerous federal statutes, as well as the United States Sentencing Guidelines, have triggering mechanisms for when someone’s prior criminal conviction will impose a harsh result. The categorical approach to determining whether a prior

conviction will enhance a criminal sentence, or subject one to deportation from this country, is an enterprise that, in its ideal form, promotes the uniform application of federal law by rejecting an inquiry into the actual facts underlying the conviction and instead focusing solely on whether the elements of the prior conviction match the generic, contemporary version of the offense enumerated in the federal statute or United States Sentencing Guidelines provision being examined. Yet 28 years after this Court's decision in *Taylor v. United States* that defined the generic, contemporary meaning of burglary for purposes of the sentencing enhancement under the Armed Career Criminal Act, there is still no workable methodology in the lower courts for divining the generic, contemporary version of other offenses enumerated in various federal statutes as well as provisions within the Sentencing Guidelines.

More specific to this case, lower courts are conflicted as to what constitutes the generic, contemporary version of robbery. The federal courts of appeals are divided as to whether generic robbery requires more than minimal force as an element of the offense, and this Court should review that split to prevent further division among the lower courts. This Court should clarify the methodology used to determine the generic, contemporary version of an enumerated offense, since the lack of clarity results in disparities in a myriad of legal contexts. This case presents a proper vehicle for addressing the question presented, as the issue is fully preserved and well presented. Finally, the Fourth Circuit erred in determining that generic robbery requires only minimal force. Because of its erroneous determination, the Fourth Circuit did not address Mr. Davis's challenge to the district court's ruling that Mr.

Davis was not entitled to challenge his career offender sentencing enhancement in a second sentencing hearing—after a limited remand from his direct appeal—despite a favorable amendment to the Sentencing Guidelines that came into effect after his first sentencing hearing. Accordingly, Mr. Davis respectfully requests that this Court issue a writ of certiorari in this case.

I. THIS CASE PRESENTS AN IMPORTANT QUESTION THAT LOWER COURTS STRUGGLE TO ANSWER

The quest to identify the generic, contemporary definition of an offense that remains otherwise undefined by Congress under the categorical approach is a perplexing undertaking in an important and sweeping area of law. Federal criminal statutes and the United States Sentencing Guidelines subject people to enhanced penalties in instances where the person has a prior conviction that qualifies as a certain type of offense, usually a crime of violence or violent felony, under federal law. *See* 18 U.S.C. § 924(e) (mandatory minimum 15 year sentence under the Armed Career Criminal Act for 3 or more prior violent felony or serious drug offense convictions for someone who is accused of possessing a firearm after being convicted of a felony offense); *see also* 8 U.S.C. § 1326(b) (under the Immigration and Naturalization Act, statutory maximum punishments increase depending on the number and nature of the prior convictions for someone who is accused of unlawfully re-entering the United States after deportation).

This Court in *Taylor v. United States* mandated a categorical approach that looks to the statutory elements of a prior offense instead of the actual conduct underlying the offense when determining whether that offense qualifies for an

enhanced penalty in an effort to advance the uniform application of federal law and avoid disparities that would result from an actual conduct approach or by relying on the label that the state attached to the prior conviction. 495 U.S. 575 (1990). *Taylor* outlined the framework for the categorical approach, which in that case included a determination of whether a prior state offense conviction qualified as an enumerated (yet undefined) offense under the Armed Career Act and instructed that the generic, contemporary definition of the enumerated offense must first be determined. *Id.* at 598 (since the enumerated offense of burglary is undefined in 18 U.S.C. § 924(e)'s definition of a prior violent felony, establishing the generic, contemporary definition of burglary is required in order to determine whether a prior state court burglary conviction will trigger the enhancement). This Court looked to definitions from the majority of states, treatises, and the Model Penal Code as the methodology for arriving at the generic, contemporary definition of burglary. *Id.*

The categorical approach mandated in *Taylor* has influenced interpretations of similar terms well beyond the Armed Career Criminal Act. The categorical approach has been mandated as the framework for deciding the nature of prior convictions in both the criminal and administrative aspects of immigration law. *See, e.g., United States v. Torres-Diaz*, 438 F.3d 529 (5th Cir. 2006); *United States v. Romero-Hernandez*, 505 F.3d 1082 (10th Cir. 2007); 8 U.S.C. § 1104(a)(43) (defining “aggravated felony”); 18 U.S.C. § 16 (defining “crime of violence”). Courts have also applied the categorical approach when deciding whether a prior state conviction triggers a mandatory minimum sentence for someone accused of possessing

pornography depicting the sexual exploitation of a minor. *See, e.g., United States v. Simard*, 731 F.3d 156 (2d Cir. 2013).

Several years ago, the Fifth Circuit, sitting *en banc*, was confronted with having to define the generic, contemporary meaning of the age of consent for statutory rape under the Sentencing Guidelines, U.S.S.G. § 2L1.2, and expressed the difficulties it has faced in similar undertakings: “[d]eriving the generic, contemporary meaning of an offense category enumerated in the Guidelines is challenging because *Taylor* and its progeny do not specify whether we must use a particular method when engaging in *Taylor* analysis. For these reasons, we have found it difficult to apply *Taylor*’s categorical approach”, which include “methodological inconsistencies” in its precedents. *United States v. Rodriguez*, 711 F.3d 541, 549-550 (5th Cir. 2013) (*en banc*), *cert. denied*, *Rodriguez v. United States*, 2013 U.S. LEXIS 7998 (U.S., Nov. 4, 2013) (internal quotations omitted). The Fifth Circuit articulated these inconsistencies as sometimes employing a plain-language method based on dictionary definitions, while in other cases looking to definitions in various state codes, federal laws, the Model Penal Code, and criminal law treatises. *Id.* The Fifth Circuit went on to survey methodologies other circuits employ to identify the generic, contemporary definition of an offense under the categorical approach, and concluded that in various cases the First, Seventh, Eighth, and Tenth Circuits have applied the plain-meaning approach but that the Fourth Circuit veered from that approach and instead looked to the majority of state codes to determine the age of consent for purposes of the generic, contemporary definition of statutory rape. *Id.* at 551, n. 13. The D.C. and

Third Circuits have applied the multi-source approach looking to definitions in state codes, the Model Penal Code, and federal law to define the generic, contemporary meaning of offenses like kidnapping and murder. *Id.* at 553, n. 14. The 9th Circuit has employed two different methods to determine the generic, contemporary meaning of offenses depending on whether the categories reflect traditional offense categories defined at common law or non-traditional categories. *Id.*, n. 15.

Here, the specific issue is whether the elements of North Carolina common law robbery matches the generic, contemporary definition of robbery. Like burglary under the Armed Career Criminal Act that was the issue in *Taylor*, robbery is an enumerated—yet undefined—"crime of violence" under the career offender provision of the Sentencing Guidelines. U.S.S.G. § 4B1.2(a)(2). Application of the career offender provision results in significantly longer advisory imprisonment ranges. *See* U.S.S.G. § 4B1. 1; *accord Beckles v. United States*, 137 S. Ct. 886, 901 (2017) (Sotomayor, J., concurring in the judgment) (noting that "had the career offender Guideline *not* applied to Beckles, the Guidelines range calculated by the District Court would have been significantly lower"). Because application of the career offender provision substantially affects the sentencing range, the question of whether a prior state theft conviction qualifies as generic robbery and thus a "crime of violence" presents a significant issue at sentencing. To determine whether a prior state theft conviction qualifies as "robbery," courts must first, of course, understand what "robbery" means. For this reason, the definition of generic robbery proves critical.

Moreover, this critical issue of generic robbery is receiving ever-increasing scrutiny following the Sentencing Commission's elimination of the "residual clause" from the career offender provision in the wake of this Court's decision in *Johnson v. United States*, 135 S. Ct. 2551 (2015). Prior to *Johnson* and the elimination of the residual clause, robbery was not one of the specifically-enumerated crimes listed in the text of the career offender guideline. See U.S.S.G. § 4B1.2(a)(2) (2015); *United States v. Bell*, 840 F.3d 963, 968 (8th Cir. 2016). Instead, robbery and similar offenses typically qualified as crimes of violence under the residual clause. *Bell*, 840 F.3d at 968. Effective August 1, 2016, the Sentencing Commission amended the career offender guideline and eliminated the residual clause. The Commission also added robbery as an enumerated offense to the text of the career offender guideline. However, the Commission did not define "robbery." Without the residual clause, courts must now decide whether various state theft offenses categorically qualify as the enumerated offense of "robbery." Because the Sentencing Guidelines do not provide a standard generic definition of robbery, courts must decide for themselves what generic robbery entails. As demonstrated below in Section II, the circuit courts disagree on this issue. Specifically, the courts of appeals are divided as to whether generic robbery requires more than minimal force as an element of the offense. This Court should eliminate the disagreement by providing a uniform generic definition of robbery that the lower courts can apply.

II. THIS COURT SHOULD GRANT THE PETITION TO RESOLVE A CIRCUIT SPLIT

The federal courts of appeals are divided as to whether generic robbery requires more than minimal force. The Sixth Circuit Court of Appeals has determined that "the type of force contemplated by the generic definition of robbery is more than minimal." *United States v. Yates*, 866 F.3d 723, 733 (6th Cir. 2017). Likewise, the Fifth Circuit Court of Appeals has suggested that generic robbery require something more than minimal force. *See United States v. Santiesteban-Hernandez*, 469 F.3d 376, 380-81 (5th Cir. 2006), *abrogated on other grounds by United States v. Rodriguez*, 711 F.3d 541 (5th Cir. 2013). The Ninth Circuit Court of Appeals has come to the same conclusion. *United States v. Becerril-Lopez*, 541 F.3d 881, 891 (9th Cir. 2008) (adopting the Fifth Circuit's rationale from *Santiesteban-Hernandez*).

However, the Third Circuit has explicitly disagreed with this conclusion, finding that generic robbery requires only minimal force. *United States v. Graves*, 877 F.3d 494, 503 (3d Cir. 2017) (describing circuit split and holding "that generic robbery requires no more than de minimis force"). Less explicitly, the Seventh and Eleventh Circuits have implied that minimal force satisfies the elements of generic robbery. *United States v. Duncan*, 833 F.3d 751, 755-56 (7th Cir. 2016); *United States v. Lockley*, 632 F.3d 1238, 1244 (11th Cir. 2011).

The instant case deepens the division, with the Fourth Circuit determining that North Carolina common law robbery, which requires only minimal force, qualifies as generic robbery. *Gattis*, 877 F.3d at 160. Given the division among the lower federal courts, this Court's guidance is necessary to provide the courts with a

uniform definition of generic robbery. This Court should provide guidance now, before the split deepens further, resulting in additional unwarranted disparities among defendants sentenced in different circuits. *See* 18 U.S.C. § 3553(a)(6) (in sentencing, courts must consider "the need to avoid unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar conduct").

III. THIS CASE IS A PROPER VEHICLE

This case presents a proper vehicle for deciding the question presented. After a remand from his first appeal, Mr. Davis raised a challenge to the career offender sentencing enhancement at his re-sentencing hearing before the district court and specifically argued that his prior conviction for common law robbery did not constitute generic robbery. The classification of Mr. Davis's prior conviction as a crime of violence elevated his sentencing guideline range from 64 to 70 months of imprisonment to 262 to 327 months of imprisonment. This issue is properly preserved because Mr. Davis timely appealed, and the issue was both pressed to and passed upon by the Fourth Circuit, which denied Mr. Davis relief in an unpublished decision exclusively because of its prior decision in *Gattis*, 877 F.3d at 160, that the generic, contemporary definition of robbery categorically matched the elements of North Carolina common law robbery. Pet. App. 1a.

IV. THE FOURTH CIRCUIT ERRED IN HOLDING THAT GENERIC ROBBERY REQUIRES ONLY MINIMAL FORCE

The Fourth Circuit erred in concluding that Mr. Davis's prior North Carolina conviction for common law robbery qualifies as generic robbery. North Carolina common law robbery does not include physical force as an element of the offense. *See*,

e.g., *United States v. Graves*, 877 F.3d 494, 502 (3d Cir. 2017) ("North Carolina common law robbery requires only the use of *de minimis* force."); *United States v. Gardner*, 823 F.3d 793, 804 (4th Cir. 2016) ("[W]e conclude that the minimum conduct necessary to sustain a conviction for North Carolina common law robbery does not necessarily include the use, attempted use, or threatened use of 'force capable of causing physical pain or injury to another person,' as required by the force clause of the ACCA."). For this reason, North Carolina common law robbery is broader than generic robbery because, unlike generic robbery, it encompasses any theft that involves "even minimal contact" with the victim. *Gardner*, 823 F.3d at 803-04.

To determine whether a prior conviction qualifies as a generic crime of violence, the courts apply a categorical approach, focusing on "the fact of conviction and the statutory definition of the prior offense," rather than the conduct underlying the offense. *Taylor v. United States*, 495 U.S. 575, 602 (1990). The label used by the state is not dispositive. *Id.* at 589, 598. Once the court establishes the generic definition of the offense, the court decides whether the prior state conviction at issue categorically constitutes a conviction of the generic offense. *Mathis v. United States*, 136 S. Ct. 2243, 2248 (2016). A prior state conviction will qualify as a conviction for the generic offense only if the elements of the prior state conviction "are the same as, or narrower than, those of the generic offense," regardless of the defendant's actual conduct. *Id.*

This Court has never defined generic robbery. However, numerous circuits have recognized that generic robbery is "the misappropriation of property under

circumstances involving immediate danger to a person." *Yates*, 866 F.3d at 733 (emphasis added); accord *United States v. House*, 825 F.3d 381, 387 (8th Cir. 2016); *Santiesteban-Hernandez*, 469 F.3d at 380-81 (quoting Wayne R. LaFave, *Substantive Criminal Law* § 20.3 intro., (d)(2) (2d ed. 2003)). This "immediate danger" element "is what makes robbery deserving of greater punishment than that provided for larceny." *Santiesteban-Hernandez*, 469 F.3d at 380-81. According to LaFave, most states define robbery to require "that the taking be accomplished by means of force or putting in fear." LaFave, *supra*, § 20.3 intro. LaFave does not indicate how most states define "force"; however, in discussing this element, he further observes that in most jurisdictions, "robbery requires that the taking be done by means of violence or intimidation." *Id.* at § 20.3(d) (emphasis added). As the Sixth Circuit has observed, "[t]his mention of violence indicates that the type of force contemplated by the generic definition of robbery is more than minimal." *Yates*, 866 F.3d at 733.

The Model Penal Code likewise defines "robbery" in a way that excludes a theft committed using minimal force. Specifically, the Code provides that a person:

is guilty of robbery if, in the course of committing a theft, he: (a) inflicts serious bodily injury upon another; or (b) threatens another with or purposely puts him in fear of immediate serious bodily injury; or (c) commits or threatens immediately to commit any felony of the first or second degree.

Model Penal Code § 222.1. The Code further states that "the core of the robbery offense is the combination of theft and the fact or threat of injury." Model Penal Code, Part II, Volume II, at 98; see also *id.* at 95 ("Robbery is distinguished from ordinary larceny by the presence of the victim and the use or threat of violence.").

In contrast to the majority of jurisdictions and the Model Penal Code, a few states—like North Carolina—hold that the degree of force used during a robbery is "immaterial." *Gardner*, 823 F.3d at 803 (quoting *State v. Sawyer*, 224 N.C. 61, 29 S.E.2d 34 (1944)). In these states, a robbery conviction is possible even where the offender does not threaten the victim and uses only minimal force to take an item from the victim's possession. As explained in *Gardner*, the low threshold for common law robbery in North Carolina is illustrated by *State v. Chance*, 191 N.C. App. 252, 662 S.E.2d 405 (2008), where the unarmed defendant stole a carton of cigarettes by doing nothing more than "pushing the victim's hand off of [the] carton." *Gardner*, 823 F.3d at 803; *accord Graves*, 877 F.3d at 502 (citing *Chance* to conclude that "North Carolina common law robbery requires only the use of *de minimis* force").

In rejecting Mr. Davis's appeal, the Fourth Circuit relied primarily on LaFave to conclude that generic robbery requires only minimal force. Pet. App. 1a; *Gattis*, 877 F.3d at 156. Although the Fourth Circuit agreed that generic robbery is defined as "the misappropriation of property under circumstances involving immediate danger to the person," the circuit court erroneously concluded that such "danger" may be satisfied by the use of minimal force. *Id.* at 156-157. But LaFave confirms that only a minority of states define robbery broadly enough to cover such *de minimus* conduct: "The great weight of authority ... supports the view that there is not sufficient force to constitute robbery when the thief snatches the property from the owner's grasp so suddenly that the owner cannot offer any resistance to the taking." LaFave at § 20.3(d)(1). If state law permits a robbery conviction based on the fact pattern

described in *Chance*, where no threat of force was made, and the only force used was that necessary to remove the item from the unresisting owner's grasp, then the state's robbery offense is broader than the generic offense.

Thus, the Fourth Circuit erred in determining that the "danger" element of generic robbery may be satisfied by the use of minimal force. Instead, the Fourth Circuit should have concluded, as the Sixth Circuit has held, "that the type of force contemplated by the generic definition of robbery is more than minimal." *Yates*, 866 F.3d at 733. In contrast to generic robbery, as *Gardner* and *Chance* make clear, the offense of North Carolina common law robbery encompasses a theft during which the offender uses only minimal force. Such conduct does not require physical force or even the threat of physical force. The offense thus falls outside of the scope of generic robbery. Because North Carolina common law robbery criminalizes a broader scope of conduct than the generic crime, it is not categorically a crime of violence. The Fourth Circuit erred in rejecting Mr. Davis's challenge to the career offender enhancement he received. The Court should grant the petition.

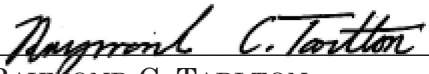
Even if the Court believes that plenary review is not warranted in Mr. Davis's case, it should hold the case pending disposition of another case in this Court that raises issues about the generic, contemporary definition of robbery. The Court is presently considering another petition. *See Stokeling v. United States*, No. 17-5554. If the Court ultimately rejects the determination of the generic, contemporary version of robbery, and the degree of force inherent in that definition, made by the Eleventh

Circuit Court of Appeals in that case, it should grant this petition, vacate the decision below, and remand for further proceedings.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,


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