No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

CHARLES LYNCH PETTIS

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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July 10, 2018

QUESTION PRESENTED

Is a state robbery offense categorically a "violent felony" under the Armed Career Criminal Act, 18 U.S.C. § 924(e)(2)(B)(i) (an offense that "has as an element the use, attempted use, or threatened use of physical force against the person of another"), if the offense requires only that the force be sufficient to overcome victim resistance? A materially similar question is pending before this Court in *Stokeling v. United States* (No. 17-5554), cert. grd., ___ U.S. ___, 2018 WL 1568030 (Apr. 2, 2018).

PARTIES TO THE PROCEEDINGS BELOW

Petitioner Charles Lynch Pettis was a defendant in the district court and an appellee in the Eighth Circuit.

Respondent the United States of America prosecuted the case in the district court and was the appellant in the Eighth Circuit.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Charles Lynch Pettis respectfully petitions for a writ of certiorari to issue to review the judgment of the United States Court of Appeals for the Eighth Circuit rendered in this case on April 27, 2018.

In the alternative, petitioner asks this Court to consider holding this case for disposition pending its decision in *Stokeling v. United States* (No. 17-5554), cert. grd., ___ U.S. ___, 2018 WL 1568030 (Apr. 2, 2018), and then granting certiorari, vacating the judgment of the United States Court of Appeals for the Eighth Circuit, and remanding the case for further proceedings in light of *Stokeling*.

OPINION BELOW

The opinion of the United States Court of Appeals for the Eighth Circuit vacating Mr. Pettis's non-ACCA sentence, and remanding for resentencing as an Armed Career Criminal, *United States v. Charles Lynch Pettis*, is published at 888 F.3d 962, and included in the Appendix at A-1.

The sentencing decision of the United States District Court for the District of Minnesota, *United States v. Charles Lynch Pettis*, is unreported at 2016 WL 5107035, and reproduced in the Appendix at A-8.

JURISDICTION

The United States Court of Appeals for the Eighth Circuit issued its opinion vacating Petitioner's sentence on April 27, 2018. This Court has jurisdiction

pursuant to 28 U.S.C. § 1254(1). The district court had jurisdiction pursuant to 18 U.S.C. § 1344.

STATUTES INVOLVED

Title 18 U.S.C. § 924 of the Armed Career Criminal Act provides:

> (e)(2) As used in this subsection - …
>
> > (B) the term 'violent felony' means any crime punishable by imprisonment for a term exceeding one year, …, that –
> >
> > > (i) has as an element the use, attempted use, or threated use of physical force against the person of another.

Minn. Stat. § 609.24 provides that Simple Robbery occurs when a person:

> having knowledge of not being entitled thereto, takes personal property from the person or in the presence of another and uses or threatens the imminent use of force against any person to overcome the person's resistance or powers of resistance to, or to compel acquiescence in, the taking or carrying away of the property.

Minn. Stat. § 609.245 provides that First Degree Aggravated Robbery occurs when:

> [w]hoever, while committing a robbery, is armed with a dangerous weapon or any article used or fashioned in a manner to lead the victim to reasonably believe it to be a dangerous weapon, or inflicts bodily harm upon another . . . . .

STATEMENT OF THE CASE

I. The Charges and Plea

On April 23, 2015, Charles Pettis and an accomplice were arrested after shots were fired into a house in Minneapolis, Minnesota. Mr. Pettis was charged with being a felon in possession of a firearm, in violation of 18 U.S.C. § 922(g)(1), and was alleged in the indictment to be an armed career criminal under 18 U.S.C. § 924(e). The armed career criminal charge was based on the Government's

allegation that Mr. Pettis has six predicate convictions, including convictions for three counts of Minnesota Simple Robbery, two counts of Minnesota First Degree Aggravated Robbery, and one count of Minnesota Second Degree Burglary. Mr. Pettis pleaded guilty on April 19, 2016, and appeared for sentencing on September 19, 2016.

II. Sentencing by the District Court

The primary dispute between Mr. Pettis and the Government before the District Court was whether the predicate offenses identified by the Government qualify as violent felonies under the Armed Career Criminal Act ("ACCA"). If the ACCA is applied to Mr. Pettis, the ten-year maximum sentence he faces for his conviction instead turns into a fifteen-year minimum sentence. A defendant is considered an armed career criminal under the ACCA if he has three or more predicate convictions for violent felonies or serious drug offenses. The District Court found only one of Mr. Pettis' prior convictions—his 2008 aggravated robbery conviction—qualified as a violent felony under the ACCA, and held that Mr. Pettis was not an armed career criminal. Appendix at A-9.

The District Court found that convictions for Minnesota simple robbery are not predicate offenses under the ACCA because "Minnesota's simple-robbery statute … does not require the government to prove that the defendant used a strong, substantial, or violent degree of force." Appendix at A-13. "Minnesota does not even require the defendant to use '*physical* force'—just 'force.'" *Id.* After reviewing decisions of Minnesota courts interpreting the simple robbery statute, the District Court found that "the slightest contact with the victim is enough to support a

conviction for simple robbery in Minnesota." *Id.* The District Court therefore held that convictions under Minnesota's simple robbery statute do not require the violent, physical force necessary to count as predicate offenses under the ACCA.

The District Court also held that Minnesota first-degree aggravated robbery is a divisible offense. Both ways of committing the offense involve the presence of an aggravating factor in the commission of a simple robbery: by being "armed with a dangerous weapon or any article used or fashioned in a manner to lead the victim to reasonably believe it to be a dangerous weapon" or by "inflict[ing] bodily harm upon another." Appendix at A-18 (quoting Minn. Stat. § 609.245, subd. 1). The District Court held that only the second of the two methods of committing first-degree aggravated robbery qualifies as a predicate offense for ACCA purposes. Appendix at A-19. Analyzing the underlying bases for the convictions for the two aggravated robbery convictions, the District Court found that the 2007 conviction was based on the first method, while the 2008 conviction was based on the second. The District Court thus held that Mr. Pettis's 2007 aggravated robbery conviction was not a predicate offense under the ACCA, while 2008 aggravated robbery conviction was a predicate offense under the ACCA.

Finding that Mr. Pettis did not qualify as an armed career criminal because he had not been convicted of three predicate offenses under the ACCA, the District Court sentenced Mr. Pettis to the ten-year statutory maximum for his conviction under 18 U.S.C. § 922(g)(1).

III. The Government's Appeal

The Government appealed the District Court's determination that Mr. Pettis's simple robbery, 2007 first-degree aggravated robbery, and burglary[1] convictions do not constitute predicate offenses under the ACCA. First, the Government argued that Minnesota's simple robbery and first-degree aggravated robbery statutes require a degree of force which satisfies the violent, physical force standard established in *Curtis Johnson v. United States*, 559 U.S. 133 (2010). Second, the Government argued that simple robbery must be a violent felony because fifth-degree assault is a lesser-included offense of simple robbery, and the Eighth Circuit "has already held that assault in violation of Minnesota law meets the *Curtis Johnson* definition of physical force."[2] Lastly, the Government argued that because first-degree aggravated robbery is a simple robbery committed under specific aggravating circumstances, and a simple robbery is a violent felony under the ACCA, all Minnesota first-degree aggravated robberies must be ACCA predicate offenses.

Mr. Pettis responded that the District Court had correctly understood and applied Minnesota state law cases interpreting Minnesota's simple robbery and

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[1] After the Government filed its appeal, the Eighth Circuit issued its opinion in *United States v. McArthur*, 850 F.3d 925 (8th Cir. 2017). The Government subsequently acknowledged Mr. Pettis's burglary conviction was not an ACCA predicate offense.

[2] In *United States v. Schaffer*, 818 F.3d 796 (8th Cir. 2016), the Eighth Circuit held that violations of Minnesota's felony domestic assault statute satisfy *Johnson*'s physical force standard. *Id.* at 798. Fifth degree assault, however, unlike felony domestic assault, is a misdemeanor crime, and therefore contrary to the government's argument cannot be a predicate offense under the ACCA.

first-degree aggravated robbery statutes. First, Mr. Pettis argued that Minnesota case law established that a conviction for simple robbery requires merely the use of "force" and not the violent, physical force required under *Curtis Johnson*. Second, Mr. Pettis argued that the District Court correctly found Minnesota first-degree aggravated robbery to be a divisible statute, which does not meet the *Curtis Johnson* force requirements under the use, attempted, or threatened use of a weapon variation of the crime.

Mr. Pettis argued that the Eighth Circuit's decisions in *United States v. Eason*, 829 F.3d 633, 640 (8th Cir. 2016) and *United States v. Bell*, 840 F.3d 963 (8th Cir. 2016) controlled the outcome of his case. In *Eason*, the Eighth Circuit held that Arkansas simple robbery was not a violent felony under the ACCA's force clause. The Arkansas simple robbery statute, like the Minnesota simple robbery statute, merely requires the use, or threatened imminent use, of "force." In fact, the Arkansas simple robbery statute requires that the force be "physical," while the Minnesota statute has no such requirement. *Compare* Minn. Stat. § 609.24, Ark. Code Ann. § 5-12-102. In *Bell*, the Eighth Circuit likewise held that Missouri's second degree robbery statute, which has a force requirement nearly identical to the force requirement in Arkansas' and Minnesota's simple robbery statutes, does not necessarily require the use of violent force as an element.

On April 27, 2018, the Eighth Circuit vacated Mr. Pettis's sentence and remanded the case for sentencing under the ACCA. Significantly, after the parties had submitted their briefs, but before the Eighth Circuit issued its opinion in the

case, the Eighth Circuit overruled *Bell* and held that the analysis in *Eason* does not apply to Minnesota's simple robbery statute. *See* Appendix at A-3–4, citing *United States v. Swopes*, 886 F.3d 668, 670, 671 (8th Cir. 2018) (en banc) (overruling *Bell*) and *United States v. Libby*, 880 F.3d 1011 (8th Cir. 2018) (holding *Eason* does not apply to Minnesota simple robbery convictions because the Arkansas robbery statute contemplated the threat of any quantum of force, Ark. Code Ann. § 5-12-102, while Minnesota's requires a threat of considerably more force). The Eighth Circuit stated that while *Libby* "arguably resolve[d]" Mr. Pettis's case, the *en banc* panel in *Swopes* "clarified the proper analysis for considering whether a statute requires violent force." Appendix at A-3.

Finally, the Eighth Circuit provided its analysis of Minnesota case law applying the Minnesota simple robbery statute. As instructed by *Swopes*, this analysis "emphasized two considerations for evaluating state caselaw: … (1) focus on the conduct at issue in the state court decision rather than isolated dicta and (2) focus more on the kind of force used–force capable of causing pain–rather than the degree of force or the resulting harm." Appendix at A-5. On that basis, the court disregarded clear statements from Minnesota courts that "[m]ere force suffices for the simple robbery statutes." *See id.* The court then addressed *State v. Nelson*, 297 N.W.2d 285 (Minn. 1980), concluding that the offense involved violent force because the type of force used was *capable* of inflicting pain— "even where the victim did not actually suffer pain or injury." *Id.* The Eighth Circuit therefore found that Mr. Pettis's three simple robbery convictions are predicate offenses under the

ACCA, and vacated his sentence and remanded for resentencing as an armed career criminal.

REASONS FOR GRANTING THE WRIT

I. The Circuits Are in Conflict Over How to Apply *Curtis Johnson*'s Violent, Physical Force Requirement to the Force Element of State Robbery Statutes

The force clause has created serious disagreement among the lower courts in how to classify state robbery offenses under the ACCA. In *Samuel Johnson v. United States* ("*Samuel Johnson*") this Court "acknowledged that the failure of 'persistent efforts . . . to establish a standard' can provide evidence of vagueness." 135 S. Ct. 2551, 2558 (2015) (citing *United States v. L. Cohen Grocery Co.*, 255 U.S. 81, 91, 41 (1921)). Here, as with the residual clause in *Samuel Johnson*, the force clause "has created numerous splits among the lower federal courts, where it has proved nearly impossible to apply consistently." *Id.*, 135 S.Ct. at 2560 (quotations omitted). Last year, the Tenth Circuit noted "in the last twelve months, eleven circuit-level decisions have reached varying results on this very narrow question [of whether robbery is a violent felony under the ACCA] — in examining various state statutes, five courts have found no violent felony and six have found a violent felony." *United States v. Harris*, 844 F.3d 1260, 1262 (10th Cir. 2017). Since *Harris*, the lower courts have continued to publish opinions creating an ever-changing landscape of predicate offenses, using different tests and diverging views of the violence (or lack thereof) present in the same fact patterns. "Experience is all the more instructive when the decision in question rejected a claim of unconstitutional vagueness." *Samuel Johnson*, 135 S.Ct. at 2562. The morass created by the force

clause is evinced by the four FRAP 28(j) filings prior to oral argument before the Eighth Circuit in this case, and the significant shifts in Eighth Circuit case law between the time of argument and the issuance of the Eighth Circuit's opinion.

The nature of the disagreement among the circuit courts is further evidence that application of the force clause is unconstitutionally vague. The circuits are not only split in their judgments of the minimum quantum of force required under the ACCA in light of this Court's holding in *Curtis Johnson v. United States*, 559 U.S. 133 (2010), but are also in disagreement over what analysis is required between reading the applicable state statute and rendering an opinion on whether it is a predicate offense. The depth and breadth of the disagreement among the circuits calls into doubt whether an ordinary person has fair notice of the conduct punishable under the ACCA's force clause. *See Samuel Johnson*, 135 S. Ct. at 2560 ("The most telling feature [of vagueness] … is not division about whether the residual clause covers this or that crime (even clear laws produce close cases); it is, rather, pervasive disagreement about the nature of the inquiry one is supposed to conduct and the kinds of factors one is supposed to consider.").

A. The Circuits are in conflict over whether to narrow a statute's language with *Moncrieffe*'s "realistic probability" test when the plain language of the statute's force element is broader than the violent, physical force required under *Curtis Johnson*.

This Court has held that the ACCA "mandates a formal categorical approach, looking only to the statutory definitions of the prior offenses, and not to the particular facts underlying those convictions," in determining whether a conviction qualifies as a predicate offense. *Taylor v. United States*, 495 U.S. 575, 600 (1990).

Despite frequent challenges seeking exceptions for consideration of the facts of predicate crimes, "[f]or more than 25 years, [this Court] ha[s] repeatedly made clear that application of ACCA involves, and involves only, comparing elements."[3] *Mathis v. United States*, 136 S. Ct. 2243, 2257 (2016).

Moncrieffe v. Holder is the touchstone decision from this Court in establishing that under the categorical approach, focus on the minimum conduct criminalized by the state statute is not an invitation to apply 'legal imagination' to the state offense; there must be 'a realistic probability, not a theoretical possibility, that the State would apply its statute to conduct that falls outside the generic definition of a crime.'" 569 U.S. 184, 191 (2013) (citing *Duenas-Alvarez*, 549 U.S. 183, 193 (2007)). This caution against "theoretical possibilities" has subsequently been adopted in varying ways by courts in applying the categorical approach to other statutes, including the ACCA.

But the Circuits are fundamentally split in their application of *Moncrieffe's* standard. The Eighth Circuit in *Swopes*—which was the basis for the Eighth Circuit's decision in this case—stated that a *Moncrieffe* inquiry into probability is an automatic step in assessing every conviction: "[A]pplying the categorical approach under the ACCA, we examine both the text of the statute and how the state courts have applied the statute." 886 F.3d at 671. "Before we conclude that a

[3] Under the modified categorical approach, courts may look at a limited class of documents related to the underlying conviction, but *only* for the purpose of determining the elements of the crime of conviction. *See Shepard v. United States*, 544 U.S. 13, 26 (2005).

state statute sweeps more broadly than the federal definition of violent felony, 'there must be a realistic probability, not a theoretical possibility,' that the statute encompasses conduct that does not involve use or threatened use of violent force." *Id.* (quoting *Moncrieffe*, 569 U.S. at 191).

Other Circuits, however, have considered and rejected this approach. The Tenth Circuit, for example, in *United States v. Titties*, rejected the argument that *Moncrieffe* requires defendants to cite a case where the statute in question was applied to facts that fall within the statute's plain language. 852 F.3d 1257, 12745 (10th Cir. 2017). In its analysis, the Tenth Circuit points to this Court's opinion in *Mathis*, noting that the Court "did not apply—or even mention—the 'realistic probability' test." *Titties*, 852 F.3d at 1275. Instead, as soon as the inquiry in *Mathis* found that the statute was broader than the type of conviction enhanceable under the ACCA, the case was resolved. 136 S.Ct. at 2251. Taking its cue from *Mathis*, the Tenth Circuit "did not seek or require instances of actual prosecutions for the means that did not satisfy the ACCA," stopping its inquiry after finding that the plain language of the convicting statute did not require the use of violent, physical force. *Titties*, 852 F.3d at 1275. The court noted its position was supported by "[p]ersuasive case law from other circuits," citing *Swaby v. Yates*, 847 F.3d 62, 66 (1st Cir. 2017), *Ramos v. U.S. Att'y Gen.*, 709 F.3d 1066, 1072 (11th Cir. 2013), *Jean-Louis v. Att'y Gen.*, 582 F.3d 462, 481 (3d Cir. 2009), *United States v. Grisel*, 488 F.3d 844, 850 (9th Cir. 2007) (en banc), and *United States v. Aparicio-Soria*, 740 F.3d 152, 158 (4th Cir. 2014) (en banc). *Titties*, 852 F.3d at 1275.

The Eighth Circuit's requirement that a defendant produce case law demonstrating the application of a statute in a non-violent fact pattern is fundamentally flawed. It impermissibly shifts the burden of proof on to the defendant. The prosecution bears the burden of proving that a defendant has convictions that qualify for sentencing under ACCA. *Samuel Johnson*, 135 S.Ct. at 2580.

The Eighth Circuit's requirement also assumes that state courts will have already been presented with cases involving fact patterns that test the edges of the force element. The categorical approach demands that courts consider the elements of the offense, and not the underlying facts. The method adopted by the Eighth Circuit would result in a shift in ACCA predicate status based on the facts of an unrelated case, with no change in the crime's statutory elements. Such an outcome cannot be reconciled with this Court's clear statements that the categorical approach does not turn on the facts of the underlying offense.

The Eighth Circuit's approach also relies on the assumption that state court cases will reflect the least of the conduct criminalized by a statute. This assumption is flawed in numerous respects. As a starting point, it is critical to recognize "the reality that criminal justice today is for the most part a system of pleas, not a system of trials" with "ninety-four percent of state convictions [being] the result of guilty pleas." *Lafler v. Cooper*, 566 U.S. 156, 170 (2012). Although some records remain available after conviction, "in cases where the defendant pleaded guilty, there often is no record of the underlying facts." *Taylor*, 495 U.S. at

601. Even when cases do go to trial, "[s]tatements of 'non-elemental fact' in the records of prior convictions are prone to error precisely because their proof is unnecessary." *Mathis*, 136 S. Ct. at 2253.

Aside from this approach's vulnerability to missing or flawed records, it overlooks the fact that the language of the statute influences the behavior of prosecutors and defendants even in the absence of case law testing edge cases. While the majority in *Swopes* disregards dicta, the dissent notes the powerful and potentially unseen influence dicta has in future cases. "[S]imply because a principle has been stated in dicta does not mean that lower courts will not rely on it when assessing a sufficiency-of-the-evidence argument; or that prosecutors will not rely on it when making charging decisions; or that defendants and their attorneys will not rely on it when deciding whether to plead guilty or go to trial." *Swopes*, 886 F.3d at 673 (Kelley, J., dissenting). Prosecutors have strong incentives to avoid trials or cases that may set undesirable precedent, while nevertheless continuing to charge conduct and accept pleas in cases that may not stand up to scrutiny if reviewed by the state's higher courts.

The circuit split over when and how to apply *Moncrieffe*'s "reasonable probability" test has, and will continue to, result in unwarranted disparities between similarly situated defendants without this Court's intervention.

II. The split over whether a robbery statute that requires force sufficient to "overcome victim resistance" satisfies the violent, physical force required under Curtis Johnson creates significant sentencing disparities between similarly situated defendants.

The current circuit split over whether force sufficient to "overcome victim resistance" satisfies the force clause must be resolved to put an end to the disparities faced by defendants convicted under identical or nearly identical statutes in different states. This Court has recognized the need to avoid such disparities in its previous cases interpreting the ACCA. *See, e.g.*, *Mathis*, 136 S. Ct. at 2258 (Kennedy, J., concurring) ("Congress also could not have intended vast sentencing disparities for defendants convicted of identical criminal conduct in different jurisdictions."); *Taylor*, 495 U.S. at 590-91 ("It seems to us to be implausible that Congress intended … that a person convicted of unlawful possession of a firearm would, or would not, receive a sentence enhancement based on exactly the same conduct, depending on [minor differences in state law.]").

Rather than inquiring whether the least of the conduct criminalized necessarily constitutes violent, physical force, the Eighth Circuit asks whether the *type* of force used *could* cause pain—an inquiry that does nothing to determine whether the force is violent in all applications. *Compare Curtis Johnson*, 559 U.S. at 137 (applying the ACCA as if each conviction "rested upon [nothing] more than the least of the[ ] acts [criminalized]"), *with Swopes*, 886 F.3d at 671 ("A blind-side bump, brief struggle, and yank—like the 'slap in the face' posited by [Curtis] Johnson, 559 U.S. at 143—involves a use of force that is *capable* of inflicting pain.")

(emphasis added).[4] The categorical approach requires courts to judge a crime based on the least culpable behavior criminalized by the statute. It is nonsensical to then turn around and allow judicial imagination to consider whether such conduct could inflict pain. *See* Appendix at A-5 (holding that an offense involved violent force where the force used was capable of inflicting pain, "even where the victim did not actually suffer pain or injury."). Certainly if the court cannot consider whether violence was in fact used in the commission of the offense, it cannot consider a crime violent based on force that was not actually used.

The confusion of the lower courts may be exacerbated by the examples provided by this Court in benchmarking violent and non-violent force. For example, in *Curtis Johnson*, the Court gave the much-quoted example that "a slap in the face" qualifies as violent, physical force. *Curtis Johnson*, 559 U.S. at 143. Yet the case cited in *Curtis Johnson* for the proposition that "in the context of a statutory definition of 'violent felony,' the phrase 'physical force' means violent force—that is, force capable of causing physical pain or injury to another person," is *Flores v. Ashcroft*—which itself holds that "a squeeze of the arm that causes a bruise…is hard to describe … as 'violence.'" 350 F.3d 666 (7th Cir. 2003). Although it is

[4] The Eighth Circuit recently held that the force clause of the ACCA was not unconstitutionally vague in *United States v. Pendleton*, No. 17-1527, __ F.3d __, 2018 WL 3322242 (8th Cir. July 6, 2018). Without further explaining its analysis, the *Pendleton* court stated that residual clause required assessment of a "judicially imagined 'ordinary case' of a crime", while "[t]he force clause, by contrast, permits the sentencing court to focus on statutory elements and to analyze whether those elements necessarily involve the use, attempted use, or threatened use of force." *Id.* at *7. This holding is contradicted by its instruction to imagine whether force is capable of causing pain, even if it did not. *See* Appendix at A-5.

possible for a slap in the face to inflict more pain than a squeeze of the arm which causes a bruise, it is not difficult to envision a slap to the face that involves less force than that necessary to bruise an arm.

III. This Court has granted certiorari on a subset of these issues in *Stokeling*

Currently pending on the Court's merits docket is the case *Stokeling v. United States*, which presents a materially similar question: whether a state robbery offense that includes the common law element of overcoming "victim resistance" is categorically a violent felony under the ACCA if the offense has been interpreted by state appellate courts to require only slight force to overcome the resistance. *See* Petition for a Writ of Certiorari at ii, Supreme Court Case No. 17-5554 (on appeal from the Eleventh Circuit). As a result, this Court should at a minimum hold this case pending *Stokeling* and then grant, vacate, and remand for further disposition consistent with this Court's decision.

As addressed more fully in the *Stokeling* certiorari petition, the Circuits are in conflict over whether a conviction for a state robbery offense that includes the element of overcoming victim resistance is categorically a violent felony under the ACCA. The element of overcoming victim resistance is a common requirement in state robbery statutes, traceable back to the definition of common law robbery. Petition for a Writ of Certiorari at 14, Supreme Court Case No. 17-5554. At common law, robbery required "violence," but not necessarily a "substantial degree of force." *Id.* at 15. Fact patterns showing a mere struggle for possession of the property were repeatedly held to fulfil this "violence" requirement. *Id.* at 16. The

violence requirement was also met if the property being taken was "so attached to the person or clothes as to create resistance, however slight." *Id.* at 17, citing 2 Bishop, Commentaries § 968.

In this case, as in *Stokeling*, the question is whether Minnesota's statutory requirement that the defendant use "force … to overcome the [victim]'s resistance" is sufficient to meet the violent, physical force threshold established in *Curtis Johnson* for ACCA predicate offenses. The analysis used in determining whether Mr. Pettis is an armed career criminal turns on the same considerations presenting to this Court in Stokeling's certiorari petition. For example, the Minnesota Supreme Court's holding in *Nelson* turns on whether the "defendant's use of force … cause[d] the victim to acquiesce in the taking of the property," 297 N.W.2d at 286, which is materially the same as *Stokeling's* focus on the phrase "overcome resistance."

This Court's disposition of *Stokeling* will be determinative of the legality of the application of the Armed Career Criminal Act in sentencing the Petitioner. Thus, at a minimum this Court should hold this Petition pending its decision in *Stokeling*, and then grant, vacate, and remand for further proceedings consistent with this Court's decision.

CONCLUSION

For the foregoing reasons, Petitioner Charles Lynch respectfully requests that this Court grant the petition for certiorari. In the alternative, petitioner asks this Court to consider holding this case for disposition pending its decision in *Stokeling v. United States*, and then granting certiorari, vacating the judgment of

the United States Court of Appeals for the Eighth Circuit, and remanding the case for further proceedings in light of *Stokeling*.

This the 10th day of July, 2018.

Respectfully submitted,

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