No. _____

IN THE SUPREME COURT OF THE UNITED STATES

RONALD RAY NORMAN,
also known as Ronnie Ray Norman,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

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PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

In Mathis v. United States, 136 S. Ct. 2243 (2016), this Court clarified the divisibility analysis that must be conducted when applying the categorical approach to prior state convictions underlying federal sentencing enhancements. Under Mathis, a statute of conviction that lists alternative elements that create multiple crimes is divisible—and thus subject to the modified categorical approach—whereas a statute that lists only multiple means of committing a single defined offense is indivisible. "Elements" are "the things the prosecution must prove to sustain a conviction," whereas "means" are the facts of "[h]ow a given defendant actually perpetrated the crime," which are "extraneous to the crime's legal requirements" and need not be found by a jury. Id. at 2248, 2251.

In Mathis, this Court held that to distinguish between elements and means in a state statute of conviction, federal sentencing courts should look to "authoritative sources of state law," such as "a state court decision [that] definitively answers the question" of whether a particular statutory alternative must be proven to a jury. See id. at 2256. The Court further explained that "the statute on its face may resolve the issue" in three ways. First, the "statutory alternatives [may] carry different punishments" and therefore must be elements under Apprendi v. New Jersey, 530 U.S. 466 (2000). Second, the statute may be drafted to offer "illustrative examples," and are therefore means of committing a crime. And third, the statute "may itself identify which things must be charged (and so are elements) and which need not be (and so are means)."

In the wake of Mathis, the federal courts of appeals are divided on what role the text of the statute plays in the divisibility inquiry. Seven circuits—the Second, Fourth, Sixth, Seventh, Eighth, Ninth, and D.C. Circuits—hew closely to the text-based analysis described in Mathis and require a statute's text to resolve the means-versus-elements question with certainty, by looking for unmistakable textual clues. Five circuits, including the Fifth Circuit in this case, have answered the means-versus-elements inquiry by simply reading the text of the statute and often drawing conclusions from the presence of the disjunctive "or." This approach takes its cue from the Court's earlier decision in Descamps v. United States, 570 U.S. 254 (2013), where the Court emphasized the disjunctive "or" when describing a hypothetical statute that involved alternative elements. See 570 U.S. at 257.

In light of the foregoing, the questions presented are:

QUESTIONS PRESENTED – (cont'd)

I. What role does the text of a statute play in the divisibility analysis under the categorical approach of the Armed Career Criminal Act?

II. Is the Texas offense of aggravated robbery, Texas Penal Code § 29.03(a), a "violent felony" under the Armed Career Criminal Act, 18 U.S.C. § 924(e)?

PARTIES TO THE PROCEEDINGS

All parties to petitioners' Fifth Circuit proceedings are named in the caption of the case before this Court.

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MISCELLANEOUS

PRAYER

Petitioner Ronald Ray Norman prays that a writ of certiorari be granted to review the judgment entered by the United States Court of Appeals for the Fifth Circuit.

OPINION AND ORDER BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit in petitioner's case is attached to this petition as Appendix A. The Fifth Circuit's order denying the petition for rehearing is attached to this petition as Appendix B.

JURISDICTION

The judgment and opinion was entered on July 30, 2018. See Appendix A. Mr. Norman's timely petition for rehearing was denied on August 21, 2018. See Appendix B. This petition is filed within 90 days after the date of that denial. This Court has jurisdiction under 28 U.S.C. § 1254(1). See Sup. Ct. R. 13.3.

STATUTORY PROVISIONS INVOLVED

1. The Armed Career Criminal Act ("ACCA"), 28 U.S.C. § 924(e), provides, in relevant part:

(e)(1) In the case of a person who violates section 922(g) of this title and has three previous convictions by any court referred to in section 922(g)(1) of this title for a violent felony or a serious drug offense, or both, committed on occasions different from one another, such person shall be fined under this title and imprisonment not less than fifteen years, and, notwithstanding any other provision of law, the court shall not suspend the sentence of, or grant a probationary sentence to, such person with respect to the conviction under section 922(g).

(2) As used in this subsection--

. . .

(B) the term "violent felony" means any crime punishable by imprisonment for a term exceeding one year, or any act of juvenile delinquency involving the use or carrying of a firearm, knife, or destructive device that would be punishable by imprisonment for such term if committed by an adult, that--

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

(ii) is burglary, arson, or extortion, involves use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury to another . . . .

STATUTORY PROVISIONS INVOLVED – (Cont'd)

2. Texas Penal Code § 29.02(a) (2014) provides:

§ 29.02. Robbery

(a) A person commits an offense if, in the course of committing theft as defined in Chapter 31 and with intent to obtain or maintain control of the property, he:

(1) intentionally, knowingly, or recklessly causes bodily injury to another; or

(2) intentionally or knowingly threatens or places another in fear of imminent bodily injury or death.

3. Texas Penal Code § 29.03(a) (2014) provides:

§ 29.03. Aggravated robbery

(a) A person commits an offense if he commits robbery as defined in Section 29.02, and he:

(1) causes serious bodily injury to another;

(2) uses or exhibits a deadly weapon; or

(3) causes bodily injury to another person or threatens or places another person in fear of imminent bodily injury or death, if the other person is:

(A) 65 years of age or older; or

(B) a disabled person.

STATEMENT OF THE CASE

On May 29, 2014, a federal grand jury returned a two-count indictment charging Petitioner Ronald Ray Norman with, having been convicted of three crimes punishable by imprisonment for a term exceeding one year, knowingly possessing ammunition (Count One) and a firearm (Count Two) , in violation of 18 U.S.C. §§ 922(g)(1) and 924(e)(1). On August 7, 2014, a jury found Mr. Norman guilty on both counts. On November 6, 2014, Mr. Norman was sentenced on each count to 252 months of imprisonment and five years of supervised release, to run concurrently, and a $100 special assessment on each count.

Mr. Norman timely appealed the district court's judgment. The Fifth Circuit held that the multiple convictions for simultaneous possession of ammunition and a firearm violated the Double Jeopardy Clause, and remanded with instructions for "the district court to dismiss one of the two convictions at the government's election and resentence on the remaining conviction. The conviction not dismissed is deemed affirmed." United States v. Norman, 628 Fed. Appx. 876, 880 (5th Cir. 2015) (unpublished).

On remand to the district court, Mr. Norman argued, in relevant part, that, in light of Samuel Johnson v. United States, 135 S. Ct. 2551 (2015), his Texas aggravated robbery conviction was not a "violent felony" for purposes of the Armed Career Criminal Act ("ACCA"), 18 U.S.C. § 924(e), and he was thus no longer subject to that statute's enhanced penalty provisions. At the resentencing hearing on January 22, 2016, the district court overruled Mr. Norman's objection and sentenced him to 235 months of imprisonment, five years of supervised release, and a $100 special assessment on Count Two, having previously granted the government's motion to dismiss Count One.

Mr. Norman timely appealed and reurged his challenge to the ACCA penalty enhancement, arguing that (1) Texas aggravated robbery is indivisible as to its alternative aggravating factors and (2) not all forms of Texas aggravated robbery have as an element the actual, attempted, or threatened use of physical force against the person of another. The Fifth Circuit affirmed the district court, relying on United States v. Lerma, 877 F.3d 628 (5th Cir. 2017), cert. denied, 138 S. Ct. 2585 (2018). See United States v. Norman, 733 Fed. Appx. 208 (5th Cir. 2018) (unpublished) (attached as Appendix A).

In Lerma, the Fifth Circuit disregarded Texas state court decisions on jury unanimity as "not helpful." See Lerma, 877 F.3d at 634 n.4. Instead, the court conducted its own analysis of the Texas statute's text, and concluded that Texas aggravated robbery was divisible into four separate crimes. Id. at 633-34 & 637. The court then narrowed the conviction to Texas aggravated robbery by "threatening someone with imminent bodily injury or death, or placing someone in fear of such, while using or exhibiting a deadly weapon in the course of committing theft with intent to obtain or maintain control of the property" and held that that offense "has as an element the threatened use of physical force against the person of another." Lerma, 877 F.3d at 635.

Mr. Norman timely filed a petition for panel rehearing on August 8, 2018, arguing that the panel should reconsider its reliance on the divisibility analysis in Lerma. The Fifth Circuit denied his petition for rehearing. See Order, United States v. Norman, No. 16-20088, ECF No. 138 (5th Cir. Aug. 21, 2018) (attached as Appendix B).

BASIS OF FEDERAL JURISDICTION IN THE UNITED STATES DISTRICT COURT

The district court had jurisdiction pursuant to 8 U.S.C. § 1329 and 18 U.S.C. § 3231.

REASONS FOR GRANTING THE PETITION

I. This Court's intervention is needed to resolve the division among the circuits, after *Descamps* and *Mathis*, over what role the text of a statute plays in the divisibility inquiry of the categorical approach.

In Mathis v. United States, 136 S. Ct. 2243 (2016), the Court provided guidance for lower courts about how to conduct the divisibility analysis of the categorical approach. Id. at 2256-57; see also Descamps v. United States, 570 U.S. 254, 260-66 (2013). Mathis clearly holds that in order for a statue to be divisible, it must set forth alternative "elements," and that elements are "the things the prosecution must prove to sustain a conviction." Mathis, 136 S. Ct. at 2248. Mathis emphasizes the primary role of state law in making the means-or-elements determination. When "a state court decision definitively answers the question" by making clear that "a jury need not agree" on the particular way an offense is committed, then "a [federal] sentencing judge need only follow what it says." Id. at 2256.

But Mathis further specified that the text of the statute may play a secondary role in the divisibility inquiry, in the absence of a dispositive state case on jury unanimity. Mathis offered three ways that "the statute on its face may resolve the issue." Id. First, the "statutory alternatives [may] carry different punishments" and therefore must be elements under Apprendi v. New Jersey, 530 U.S. 466 (2000). Mathis, 136 S. Ct. at 2256. Second, the statute may be drafted to offer "illustrative examples," which demonstrates that the alternatives are means of committing a single crime. Id. And third, the statute "may itself identify which things must be charged (and so are elements) and which need not be (and so are means)." Id.

A. Seven circuits have construed *Mathis* to require a statute's text to answer the means-versus-elements question with certainty.

Seven circuits have interpreted Mathis's text-based analysis as requiring that the statute's text definitively resolve the means-or-elements question. A good illustration of the Mathis approach comes from the Eighth Circuit's en banc decision in United States v. Naylor, 887 F.3d 397 (8th Cir. 2018) (en banc). Before the court was Missouri's second-degree burglary statute, which defined that offense to mean a person who "knowingly enters unlawfully or knowingly remains unlawfully *in a building or inhabitable structure* for the purpose of committing a crime therein." Naylor, 887 F.3d at 400 (quoting Mo. Rev. Stat. § 569.170) (emphasis added). The court had to decide whether "building" and "inhabitable structure" were means or elements.

A panel of the Eighth Circuit previously found that these alternatives were elements. See United States v. Sykes, 844 F.3d 712 (8th Cir. 2016), cert. granted, judgment vacated, 138 S. Ct. 1544 (2018), and overruled by Naylor, 887 F.3d 397. In doing so, the panel relied solely on the presence of the disjunctive "or" between "building" and "inhabitable structure." See Sykes, 844 F.3d at 715.

But the en banc court disagreed with the panel's approach, finding that the text "does little to guide our means-elements inquiry" for two reasons. Naylor, 887 F.3d at 401. First, the statute assigned the same punishment to both acts. Id. Second, the statute did "not identify which things must be charged and which things need not be." Id. As the concurring opinion explained: "The statutory text is unenlightening; by listing the terms in the alternative, the text merely raises the question whether the alternatives are means or

elements." Id. at 407 (Colloton, J., concurring in the judgment, joined by Wollman and Gruender, JJ.).

Another example of the Mathis approach comes from the Fourth Circuit. In United States v. Jackson, 713 Fed. Appx. 172 (4th Cir. 2017) (unpublished), the Fourth Circuit explained that "'mere use of the disjunctive "or" in the definition of a crime does not automatically render it divisible.'" 713 Fed. Appx. at 175 (quoting Omargharib v. Holder, 775 F.3d 192, 194 (4th Cir. 2014)). "Rather," the court continued, "only when the law requires that in order to convict the defendant the jury must unanimously agree that he committed a particular substantive offense contained within the disjunctively worded statute are we able to conclude that the statute contains alternative *elements* and not alternative *means*." Jackson, 713 Fed. Appx. at 175 (quoting United States v. Fuertes, 805 F.3d 485, 498 (4th Cir. 2015)) (emphasis in original).

Five other circuits—the Second, Sixth, Seventh, Ninth, and D.C. Circuits—have adopted the Mathis approach. The Second Circuit in Harbin v. Sessions, 860 F.3d 58 (2d Cir. 2017), found that the text of a New York statute prohibiting the unlawful sale of a controlled substance suggested that the legislature had created a single crime because (1) the text provided "no indication that the sale of each substance is a distinct offense"; (2) "the text does not suggest that a jury must agree on the particular substance sold"; and (3) the statute "prescribe[s] the same narrow range of penalties . . . no matter which controlled substance a defendant has sold." Harbin, 860 F.3d at 65.

In Richardson v. United States, 890 F.3d 616 (6th Cir. 2018), the Sixth Circuit determined that the text of Georgia's burglary statute "provides no help" because (1) the

text did not assign different punishments to the statutory alternatives and (2) the statute did not provide a non-exhaustive list of "illustrative examples." Id. at 622-23.

Likewise, the Seventh Circuit in United States v. Edwards, 836 F.3d 831 (7th Cir. 2016), focused on the examples from Mathis. The court found that the text of the Wisconsin burglary statute suggested that the subsections were "merely 'illustrative examples' of particular location types" and therefore means. Edwards, 836 F.3d at 937. That the alternatives all carried the same punishment buttressed the court's conclusion. Id. In another opinion, the Seventh Circuit described the text-based analysis under Mathis as a search for "unmistakable signals in the statute itself." United States v. Franklin, 895 F.3d 954, 959 (7th Cir. 2018).

The Ninth Circuit has also adopted the Mathis approach. See United States v. Robinson, 869 F.3d 933, 939 (9th Cir. 2017) (finding that, under Mathis, nothing in the text of the Washington second-degree assault statute clarifies whether the alternatives are means or elements because the statute does not specify what must be charged and what need not be charged, does not mention any jury unanimity requirements, and does not set different punishments for the alternatives); see also United States v. Arraiga-Pinon, 852 F.3d 1195, 1203 (9th Cir. 2017) (Thomas, C.J., concurring) (explaining that the text of the California statute "is not a clearly elemental statute, as described in Mathis," because it does not provide different punishments for different alternatives and does not explicitly establish that the alternatives are elements).

Finally, the D.C. Circuit has embraced the Mathis approach as well. See United States v. Sheffield, 832 F.3d 296, 315 (D.C. Cir. 2016) ("Nothing in the statutory text or

case law requires a jury, in convicting a defendant of attempted robbery, to first find that the defendant committed one of multiple alternative elements, one of which is a crime of violence under the elements clause."); see also United States v. Redrick, 841 F.3d 478, 482-83 (D.C. Cir. 2016) (holding that Maryland armed robbery is a separate crime from simple robbery because the statute assigns a greater penalty for robbery with a dangerous or deadly weapon than for simple robbery).

In sum, seven circuits have read Mathis to require that a statute's text resolve the means-versus-elements question with certainty, by looking in large part to the specific examples that Mathis itself provided.

B. Other circuits, taking their cue from *Descamps*, decide the means-versus-elements question by simply reading the text of the statute and often drawing conclusions from the presence of the disjunctive "or."

By contrast to the Mathis approach of seven circuits, five circuits resolve the means-versus-elements question by simply reading the text of the statute and often drawing conclusions from the presence of the disjunctive "or." For example, the Fifth Circuit in Lerma did not examine the Texas aggravated robbery statute for "unmistakable signals"[1] that the statutory alternatives were means or elements, such as the establishment of different punishments, the creation of a list of illustrative examples, or the designation of things that must or need not be charged. Rather, the Fifth Circuit reproduced the text of the statute, emphasized the words "and" and "or," and made a chart dividing the statute into four crimes. See Lerma, 877 F.3d at 633-34 & 636-37.

[1] Franklin, 895 F.3d at 959.

The First, Third, Tenth, and Eleventh Circuits have taken a similar approach to the role of text in the divisibility inquiry. In United States v. Tavares, 943 F.3d 1 (1st Cir. 2016), the First Circuit reproduced the text of the Massachusetts resisting-arrest statute and concluded that the offense "reads as a divisible statute" that defines multiple crimes. Tavares, 943 F.3d at 14. The Third Circuit in United States v. Ramos, 892 F.3d 599 (3d Cir. 2018), determined that the Pennsylvania second-degree aggravated assault statute was divisible into four offenses because the statute used "disjunctive language." Ramos, 892 F.3d at 609. Likewise, the Tenth Circuit in United States v. Taylor, 843 F.3d 1215 (10th Cir. 2016), reaffirmed that court's pre-Mathis decision in United States v. Mitchell, 653 Fed. Appx. 639 (10th Cir. 2016), which held that the alternatives of an Oklahoma statute were elements based solely on the statute's use of the word "or." Taylor, 843 F.3d at 1222 (emphasizing the word "or" between the alternatives); Mitchell, 653 Fed. Appx. at 643 (same).

Lastly, the Eleventh Circuit's decision in United States v. Gundy, 842 F.3d 1156 (11th Cir. 2016), which the Sixth Circuit expressly rejected in Richardson,[2] takes a similar view of a federal court's role in examining a state statute's text for divisibility purposes. The Eleventh Circuit began by recommitting to its pre-Mathis statement in United States v. Howard, 742 F.3d 1334, 1346 (11th Cir. 2014), that "sentencing courts should usually be able to determine whether a statute is divisible by simply reading its text." Gundy, 842 F.3d at 1166 (brackets and ellipsis omitted). Then, relying on the statute's "plain text," the

[2] Richardson, 890 F.3d at 623.

court concluded that the Georgia burglary statute contained elements because the alternatives were "stated in the alternative and in the disjunctive." Id. at 1167.

Because of this division among the circuits on this important question, the Court's intervention is necessary. In addition, the Court's intervention is necessary to resolve the tension between the Court's decisions in Descamps and Mathis. As the Sixth and Eleventh Circuits have recognized, some support for relying on disjunctive phrasing when conducting the divisibility inquiry can be found in the Court's decision in Descamps. See Richardson, 890 F.3d at 623 (quoting Descamps, 570 U.S. at 257); Gundy, 842 F.3d at 1167 (same). When explaining how the modified categorical approach can be used when a statute is divisible into elements, the Court in Descamps gave as an example a burglary statute that "involves entry into a building *or* an automobile. Descamps, 570 U.S. at 257 (emphasis in original). The Court emphasized the presence of the disjunctive "or," as did the Fifth Circuit in Lerma.

But in Mathis, the Court engaged in a more sophisticated analysis, disregarding the presence of the word "or" and focusing instead on state law. See Mathis, 136 S. Ct. at 2250. The Court in Mathis acknowledged the role the text of a statute can play in the divisibility inquiry, but suggested a stricter approach to the text than the Court had previously indicated in Descamps, by setting forth three ways in which a statute's text on its face would resolve the means-versus-elements inquiry with certainty. See Mathis, 136 S. Ct. at 2256 (a statute could assign different punishments to different alternatives, a statute could offer illustrative examples, or a statute could identify what must be charged or need not be charged). The Court's guidance is needed to determine whether the Mathis approach or the Descamps

approach is the proper method for analyzing a statute's text when conducting the divisibility inquiry under the categorical approach.

C. The Fifth Circuit's analytical method is flawed.

In Lerma, the Fifth Circuit concluded that the Texas aggravated robbery statute creates four crimes. See Lerma, 877 F.3d at 633-34. The court reached that conclusion "[b]ased on the language of the statute." Id. at 634. For example, the court found that "[o]n the face of the statute, the alternatives of 'using' a deadly weapon or 'exhibiting' a deadly weapon cannot be means because they are not listed as ways of satisfying a single element." Id. at 633.

Only after concluding that its own reading of the statute indicated that the alternatives were divisible as elements did the court turn to state law. And the court concluded that the state case law relied on by the defendant did not overcome the court's text-based conclusion. See id. at 634. The best example of this reasoning is the court's treatment of Woodard v. State, 294 S.W.3d 605 (Tex. App.—Houston [1st Dist.] 2009, pet. ref'd), as "not helpful." Lerma, 877 F.3d at 634 n.4. The state court in Woodard held that jury "unanimity as to the aggravating factors was not required, and the jury could convict appellant of aggravated robbery if each juror concluded that at least one of the aggravating factors of [Tex. Penal Code §] 29.03 was proved." 294 S.W.3d at 609. But the Fifth Circuit rejected the significance of that state court case, citing as its sole authority the court's own chart dividing the statutory alternatives into four crimes. See Lerma, 877 F.3d at 634 n.5.

There are at least two problems with the Fifth Circuit's analysis. First, it elevates the federal court's own reading of the text of the state statute over state court law. The Fifth

Circuit did not consider, from the perspective of the state court, how that court would go about answering the means-versus-elements question. Instead, the Fifth Circuit relied exclusively on its own judgment about a state statute based on the plain language of the text. This violates principles of federalism, which require federal courts to defer to state court decisions of state law. See, e.g., Curtis Johnson v. United States, 559 U.S. 133, 138 (2010) (federal courts are "bound by" state court interpretations of state law, including the state court's determination of the elements of a state statute). The Mathis-based approach of the Second, Fourth, Sixth, Seventh, Eighth, Ninth, and D.C. Circuits provides the proper deference to state courts on matters of state law. See Schad v. Arizona, 501 U.S. 624, 636 (1991) (plurality op.) (federal courts "are not free to substitute [their] own interpretations of state statutes for those of a State's courts") ; see also id. at 638 ("States must be permitted a degree of flexibility in defining" the elements of a crime).

Second, the Fifth Circuit's decision inappropriately shifts the burden to the defendant when the government is the party that bears the burden to meet the categorical approach's "demand for certainty." Mathis, 136 S. Ct. at 2257. Under the Descamps-based approach, the government can satisfy its burden by simply pointing to the disjunctive phrasing of the statute's text, see, e.g., Lerma, 877 F.3d at 633-34, despite the fact that disjunctively phrased statutes have been found to be indivisible, see, e.g., Mathis, 136 S. Ct. at 2249-50. Defendants then bear the burden to overcome that text-based conclusion. See Lerma, 877 F.3d at 633-34. The Mathis approach avoids this pitfall. By requiring the

government to point to "unmistakable signals"[3] in the statutory text, the Mathis approach correctly places the burden on the government to answer the means-versus-elements question with certainty.

Applying the Mathis approach to this case, nothing about the text of the Texas aggravated robbery statute resolves the means-versus-elements inquiry with the requisite certainty. All of the alternatives carry the same punishment. See Tex. Penal Code § 29.02(b) ("An offense under this section is a felony of the first degree."). The statute does not provide a list of illustrative examples by using an umbrella term or creating a non-exhaustive list. See Mathis, 136 S. Ct. at 2256 (citing United States v. Howard, 742 F.3d 1334, 1348 (11th Cir. 2014), and United States v. Cabrera-Umanzor, 728 F.3d 347, 353 (4th Cir. 2013)). And the statute itself does not specify which things must be charged or need not be charged. Mathis, 136 S. Ct. at 2256.

D. This petition raises an important question of federal sentencing law with significant consequences for criminal defendants in this case and other cases.

Years of imprisonment turn on the correct answer to the divisibility question presented by this case. The Fifth Circuit's holding in Lerma has the effect of dramatically increasing the sentences for criminal defendants under the Armed Career Criminal Act. The severe impact of the ACCA enhancement in Mr. Norman's case illustrates the importance of the issue. Without the ACCA enhancement, Mr. Norman's punishment exposure for the offense of felon in possession of a firearm would have been a maximum of 10 years in prison. See 18 U.S.C. §§ 922(g)(1) & 924(a)(2). But with the ACCA

[3] Franklin, 895 F.3d at 959.

enhancement, Mr. Norman faced a mandatory minimum sentence of 15 years, with a maximum term of life in prison. See 18 U.S.C. § 924(e)(1). Due to the very harsh consequences of the Fifth Circuit's erroneous decision concerning Texas aggravated robbery, this petition presents a question of great importance worthy of the Court's consideration.

II. The Court should hold this petition for *Stokeling v. United States.*

In United States v. Stokeling, 684 Fed. Appx. 870 (11th Cir. 2017) (unpublished), the Eleventh Circuit held that Florida robbery categorically qualifies as a violent felony under the ACCA's elements clause. This Court granted the petition for a writ of certiorari, which presents the following question:

> Is a state robbery offense that includes 'as an element' the common law requirement of overcoming 'victim resistance' categorically a 'violent felony' under the only remaining definition of that term in 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 has been specifically interpreted by state appellate courts to require only slight force to overcome resistance?

Petition for Writ of Certiorari at ii, Stokeling v. United States, 138 S. Ct. 1438 (2018) (No. 17-5554) (Aug. 4, 2017). The Court heard oral argument on October 9, 2018.

Because both Mr. Norman's case and Stokeling v. United States involve robbery and the ACCA, the Court's resolution of Stokeling may provide guidance for Mr. Norman's case. Accordingly, Mr. Norman requests that the Court hold his petition until Stokeling is resolved.

CONCLUSION

For the reasons stated above, this Court should grant the writ of certiorari to clarify the application of the divisibility analysis in the wake of Descamps and Mathis. Alternatively, the Court should hold the petition until the Court resolves Stokeling v. United States, No. 17-5554.

Date: November 19, 2018

Respectfully submitted,

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