

ORIGINAL

No. 18-7351

FILED
OCT 18 2018

OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE
SUPREME COURT OF THE UNITED STATES

Rahmad L. Geddes — PETITIONER
(Your Name)

vs.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Eighth Circuit Court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Rahmad Geddes
(Your Name)

P.O.Box 1000
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Oxford, WI 53952
(City, State, Zip Code)

(Phone Number)

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OGC/LITIGATION BRANCH

QUESTION(S) PRESENTED

- 1). Can a court of appeals sanction a lower courts depature from this court's well established percedents that effectively conflates the standard of reveiwing whether a prior conviction [REDACTED] to alter the statutory mandatory minimum and or [REDACTED] um penalty a defendaant is subjected to after conviction consistent with theis courts holdings made in Appreni and [REDACTED] yne, made to protect a defendant's Sixth Amendment rights?
- 2) Does it violate the Ex post Facto clause for a habeas court reviewing a sentencing Guidelines claim to make a hypothetical conclusion that it would have relied on the residual clause of the Guidelines to enhance a defendant's sentence because it [REDACTED] to make the requisit inquiry during the sentencing hear-[REDACTED] even though the Circuit had assumed the residual clause was vague prior to the defendant's sentencing and after the [REDACTED] commission amended the guidelines to exclude the residual clause?

LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

- ☐ reported at No Opinion was issued; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the United States district court appears at Appendix A to the petition and is

- ☐ reported at Not Known; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was [REDACTED]

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: July 25, 2018, and a copy of the order denying rehearing appears at Appendix B.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

TABLE OF AUTHORITIES CITED

CASES

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Alliyene v. United States, 197 Fed2d 145	8, 10.
Apprend v. New Jersey, 530 U.S. 466	8, 10
Begay	
Descamps v. United States, 570 U.S. — (2013)	2, 8.
Johnson v. United States, 559 U.S. 133 (2010)	2, 8, 9, 10
Mathis v. United States, 579 U.S. — (2016)	2, 8.
Taylor v. United States, 495 U.S. 575 (1990)	2, 8, 10
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U.S. v. Rico-Mejia, 859 F.3d 818 (5th Cir.)	10, 12
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U.S. v. Townsend, 224 F.Supp.3d 816 (Dist. Minn.)	2.
Vickers v. United States, 2018 U.S. Dist LEXIS 94719,	

STATUTES AND RULES

18 U.S.C.S. § 922(g)(1)
18 U.S.C.S. § 922(g)(8)
18 U.S.C.S. § 922(g)(9)
18 U.S.C.S. § 924(c)(3)(4)
18 U.S.C.S. § 924(e)(2)(B)(i)
18 U.S.C.S. § 16 (A)
18 U.S.C.S. § 3553(a)
18 U.S.C.S. § 3559(c)

OTHER

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Sixth Amendment: In all criminal prosecutions, the accused shall enjoy the right to a Speedy and public trial... and to be informed of the nature and cause of the accusation.

Ex post facto clause

STATEMENT OF THE CASE

Relevant to this instant action, on or about April 8, 2015, a Multy count superceding criminal indictment was returned in the District of Minnesota alleging violations of Title 18 USCS 1591 and 2(count 1); 18 USCS § 2241(count 2); and 18 USCS § 922(g)(1); and 924(e)(count 3)Dkt. Ent. 56. Mr. Geddes was named defendant in all counts on the advice of counsel Mr. Geddes exercised his right to have a jury determine his guilt or innocence. Mr. Geddes was subsequently found guilty of all counts.

Over certain objections advanced by his counsel not relevant to this petition on November 25, 2015, the district court imposed a sentence of 282 months imprisonment. The district court sentenced Mr. Geddes to 282 months imprisonment on both counts and ran those sentences current. The district court imposed a life term of probation and imposed no fine and no restitution.

A timely notice of appeal was filed on December 1, 2015, Dkt. Ent. 113. Only addressing three pretrial and posttrial motions along with a sufficiency of the evidence claim, relevant to counts 1s and 2s. a panel of this curcuit affirmed the judgment of the district court in all respect on Janurary 3, 2017. See USCA 15-3731. No petition for writ of certiorari was filed.

On July 10, 2017, Mr. Geddes filed a motion for post conviction relief pursuant to 28:2255 alleging that Trial counsel provided ineffective assistance by not challenging his conviction for sex trafficking as a qualifying instant offense for career offender purposes.as recommended by the presentence report. 2)Trial counsel was ineffective for his failure to challenge application of career offender application pursuant to USSG 4b1.1. 3)Trial counsel was ineffective for his failure to challenge Mr. Geddes' classification as an Armed Career Criminal pursuant to 18: 924(e). and 4) Appellate counsel was ineffective for failure to research the record and raise each of the previously mentioned grounds for relief.

On October 10, 2017, the Government filed its response arguing that the petition for post conviction relief should be denied because petitioner 1) was procedurally barred because he did not bring the issues on direct appeal, and because of the Supreme Courts holding in Beckles v. United States, 136 S.ct. 2510(2016). 2) that Mr. Geddes claims fails on the merits because "sex trafficking qualifies as a crime of violence, and that Minnesota's 5th degree assault conviction qualifies as a violent felony.

The Government in their response at page 10, concluded that Mr. Geddes appeared to concede that his Illinois conviction for home invasion, and his Sherburne county, Minnesota conviction for 1st degree assault qualify for enhancement purposes under the ACCA and the Career Offender provision.

Mr. Geddes, however has never made a concession with the government regarding any of his prior convictions qualifying for enhancement purposes. To the contrary Mr. Geddes asserted that his pretrial counsel was ineffective for not challenging and or conceding that the prior convictions qualified. Mr. Geddes also asserted that he has no usable qualifying predicate prior convictions for enhancement purposes under the ACCA or 4B1.1, pursuant to this court's holdings in Taylor, Curtis Johnson, Descamps, and Mathis.

The Government went on at page 11 of its response and encouraged the district court to rule against petitioner pursuant to the Eighth Circuit's holding in Schaffer, 818 F.3d 796, 798(2016), that Mr. Geddes' Minnesota's Fifth-degree assault conviction qualifies as a violent felony so as to alter his statutory minimum and maximum sentence pursuant to 18:924(e).

The Government's attorney specifically asserted that the Eighth Circuit's holding in Schaffer which concerned Minnesota's domestic assault statute-contains elements and definitions that are the same as those of Minnesota's Fifth-degree assault and that the decision in the district court of Minnesota by District Judge Susan R. Nelson in Townsend, 224 F.Supp. 3d 816, applied in Mr. Ge-

ddes' case.

Even though the district court's opinion was not binding on the Circuit and the Circuit's holding in Schaffer conflates the standard for reviewing whether a crime can be a violent felony for ACCA purposes, the district court on 11-02-2017, issued an order denying Mr. Geddes' motion for post-conviction relief.

the district court practically accepted every one of the government's reasonings and necessarily replicated the Government's conclusions.

The court in it's memorandum an opinion concluded that Mr. Geddes' prior convictions for home invasion and first-degree assault qualified for ACCA and career offender purposes without first making an independent analysis of whether either qualified under this court's precedents, even though, Mr. Geddes alleged that his trial counsel failed to dispute whether Mr. Geddes had the three requisite predicate offenses for the ACCA or the career offender classification. The court also made a hypothetical hindsight conclusion that it would have used the residual clause of the Guidelines to conclude that Mr. Geddes was a career offender, because it did not make a specific finding as to whether the predicate offense was categorically a crime of violence at the sentencing hearing. Dkt. Ent. 151, at 3.

The court disregarded making a conclusion of law or finding of fact regarding Mr. Geddes' claim that his attorney failed to bring challenges to the usage of his prior convictions for enhancement purposes against the presentence report or to the sentencing court. Even though Mr. Geddes specifically articulate in his motion that his trial counsel was ineffective for failing to challenge the priors and or conceding that they qualified.

Peculiarly, the reviewing court found that Mr. Geddes was "given a new lawyer for the purposes of filing a direct appeal to the Eighth Circuit, Id, at 151, at 3, a misapprehension because, cou-

nsel that was appointed to represent Mr. Geddes in the district court was the same attorney that represented Mr. Geddes in the court of appeals. Also a misrepresentaion made to force Mr. Geddes to assume responsibility for the failure to advance the claims in the regarding the applicability of the ACCA and the career offender provision in this case because he filed a pro se suppliment to his lawyer's brief on appeal that was considered by the court. Notwithstanding, the fact that the district court did not make a finding of fact or issue a conclusion of law regarding trial counsel's ineffectiveness regarding the same claims about the ACCA and career offender.

The court only sought to resolve whether Mr. Geddes' conviction for sex trafficking and fifth-degree assault qualified for enhancement purposes, the court did not, however, work to resolve whether the Illinois offense or the Sherburne county offense qualified, however, Mr. Geddes asserted that none of his prior convicitions were usable for enhancement purposes.

The court found that it would have relied on the residual clause of the career offender provision to determine whether Mr. Geddes' conviction for sex trafficking qualified for enhancement purposes even though the Eighth Circuit had percluded usage of the residual clause contained within the Guidelines prior to Mr. Geddes' sentencing hearing and subsequent to the sentencing Commissions amendment of the Guidelines to exclude the residual clause , and not withstanding the fact that the crime in which Mr. Geddes was convicted could be committed recklessly or negligently and not just knowingly and that the mens rea element could be satisfied without the jury determining either mens rea element beyond a reasonable doubt, percluding its use as a proper predicate offense under the residual clause under this courts holdings in Begay and Sykes.

The court also made conclusions of law regarding the usage of Mr. Geddes' prior conviction under Minnesota law for Fifth-degree assault. Material to this petition the court found that Minnesota's fifth-degree assault was a qualifying predicate offense for enhan-

cement purposes pursuant to the force clause of the Armed Career Criminal Act based on the Eighth Circuit's holding in Schaffer, 818 F. 3d 796(8th Cir. 2016).

In Schaffer the Eighth Circuit held that Minnesota's domestic violence statute was categorically a violent felony pursuant to the force clause of 18:924(e) based on this court's holding in United States v. Castleman, 134 S.ct 1405, 1415(2014). See Schaffer at 798.

The court in Schaffer expressly recognized that the Minnesota statute at issue "could be based on acts that do not amount to physical force." For example "by exposing someone to a deadly virus..." the court went on to reason, however, "that even though the act of poisoning a drink does not involve physical force, 'the act of employing poison knowingly as a device to cause physical harm does.'" Id.

The court went on to find that the similarities between the two statutes in Schaffer and the Minnesota fifth-degree assault rendered the fifth-degree assault categorically a violent felony under the force clause.

The district court also made a finding of fact regarding Mr. Geddes' claim regarding his appellate counsel's performance. The court asserted that "it is worth noting that Mr. Geddes did not challenge his ACCA or career-offender status in his pro se submissions to the court, and that his pro se submissions were acknowledged." Dkt. Ent. 151, at 9.

The court rendered a legal conclusion that "close scrutiny of the record before this court clearly establishes that Mr. Geddes' appellate counsel was not ineffective. Because Mr. Geddes' arguments in his petition bordered on meritless. Id. at 9.

The court did not, however, make an individualized assessment of whether Mr. Geddes' prior convictions under Illinois law or Minnesota law qualified for enhancement purposes, even though, Mr. Geddes

specifically articulated that they should have been challenged by his pretrial counsel. The court also failed to make a finding of fact regarding Mr. Geddes' claim that his pretrial counsel should not have conceded that the prior convictions were proper predicates for enhancement purposes and should have challenged the usage of the priors and the sex trafficking conviction.

The court also made a factual conclusion that regardless of the applicability of the ACCA or the career offender provision it would have still sentenced Mr. Geddes to two hundred and eighty-two months.

The court did not, however, make a particularized legal conclusion of how it would have supported an upward variance of nearly 140 months from the mandatory maximum sentence of 10 years pursuant to 18: 922(g)(1) if Mr. Geddes is not an armed career criminal and nearly 110 months from the statutory mandatory minimum of 180 months had Mr. Geddes been found to not have the requisite proper predicate offenses for career offender purposes. Dkt. Ent. 151, at 9-10.

Although the court articulated that it would not have sentenced Mr. Geddes to anything less because to do so would be disrespectful to the law, that finding does not specifically address the 3553(a) factors, notwithstanding the fact that if an independent inquiry into the prior conviction used to enhance Mr. Geddes' statutory maximum and minimum and Guideline sentencing range, would have made the findings needed to support its substantial departure of nearly 150 months, had the priors not been usable.

In its order denying Mr. Geddes' post conviction motion the court articulated that it believes Mr. Geddes did not make a substantial showing that he was denied a constitutional right, nor would the issues raised by Mr. Geddes be considered to be debatable amongst reasonable jurist and, consequently, the court refused to issue a certificate of appealability.

On 12-12-2017, Mr. Geddes filed a pro se notice of appeal and

request for certificate of appealability to the Eighth Circuit Court of Appeals.

Mr. Geddes asked two questions to the Circuit, both questions regarded whether the district court erred or alternatively abused its discretion when it denied Mr. Geddes' post conviction motion? Both claims regarded the district court's findings regarding the application of the ACCA and the career offender provision.

The Eighth Circuit Court of Appeals declined to issue a certificate of appealability and dismissed the appeal. After being granted an extension of time on 07-02-2018, Mr. Geddes filed a petition for rehearing and suggestion for rehearing en banc. On 07-25-2018, the Eighth Circuit refused to rehear Mr. Geddes' case or to take his case en banc.

Material to this petition Mr. Geddes asked the court of appeals to resolve misapprehensions of the law that were contained in the district court's memorandum and order denying Mr. Geddes' 2255.

Mr. Geddes specifically asserted that the district court used an erroneous standard of review when deciding whether Minnesota's fifth-degree assault statute was a proper predicate offense for enhancing Mr. Geddes' statutory maximum and minimum penalties. Mr. Geddes also asserted that none of his prior convictions were proper predicates for altering his statutory maximum and minimum penalties.

Lastly, Mr. Geddes asserted that the finding regarding the sex trafficking and the guidelines residual clause was in error because this court's holdings in *begay* and *Sykes* regarding negligent and recklessness crimes excluded that conviction from being considered for enhancement purposes, notwithstanding the fact that the court during the sentencing hearing failed to make a determination on the issue and then reviewed the claim under a provision of the guidelines that had been removed to prevent arbitrary sentencing.

The court of appeals refused to hear any of those arguments.

REASONS FOR GRANTING CERTIORARI

A) ERRONEOUS STANDARD OF REVIEW

i) This court has held that any fact that alters the statutory maximum for which a defendant can be sentenced, *Apprendi v. New Jersey*, 530 U.S. 466, or the statutory minimum sentence that a defendant can be sentenced to, *Alleyne*, 1976 LED2D 145, must be found by a jury beyond a reasonable doubt. That is not the case however, where the mere fact of a prior conviction is used to alter the mandatory maximum or minimum penalty.

This court, however, has had occasion to consider the nature of a "fact of conviction" that is used to alter the statutory maximum or minimum penalty when such a fact is used to ~~the~~ the statutory maximum or minimum sentence pursuant to the Armed Career Criminal Act. See *Taylor*, 495 U.S. 575, *Descamps*, 570 U.S. _____, and *Mathis*, 579 U.S. _____.

Material to this instant action is this court's holding in *Curtis Johnson v. United States*, 559 U.S. 133 (2010), this holding applies to the inquiry regarding whether a defendant's statutory maximum and minimum sentence can be altered pursuant to the "force clause" contained within the ACCA. The sole mode of inquiring as to whether a defendant's prior conviction can be included under the "force clause of 924(e) to be allowed to constitutionally enhance his statutory maximum and minimum penalty is articulated in *Curtis Johnson*, 559 U.S., at 12, and *Taylor*, 495 U.S. 575, 600-01.

The court in this case used the decision in *Castleman*, 134 S.Ct. 1405, to include Mr. Geddes' prior fifth-degree assault conviction. The district court's holdings conflates two "analytically distinct inquiries. The first inquiry is "whether a prior conviction is a "violent felony" pursuant to the "force clause" of 924(e)." And, the other "whether a conviction for misdemeanor domestic assault disqualifies an individual from possessing a firearm under 18:922 (g)(9)'s "physical force" requirement."

In *Castelman* this court directly contrasted the holding in *Johnson* from its holding regarding the "physical force" requirement in 18: 922(g)(9). Specifically, the court concluded "*Johnson* resolves this case in the government's favor-not, as the Sixth Circuit held, in *Castelman*. In *Johnson*, we considered whether a battery conviction was a "violent felony" under the ACCA, §924(e). As here ACCA defines such a crime as one that has as an element the use, attempted use, or threatened use of physical force, §924(e)(2)(b)(i). We begin by observing that at common law, the element of force in the crime of battery was "satisfied by even the slightest offensive touching." And we recognize the general rule that "a common law term of art should be given its established common law meaning," except "where that meaning does not fit." We declined to read the common-law meaning of force into ACCA's definition of violent felony," because we found it to be a comical misfit." ... "in defining violent felony, we held, the phrase physical force must mean violent force, *Johnson*, 559 U.S. at 140. But here (*Castelman*), the common-law meaning of force fits perfectly: the very reason gave for rejecting that meaning a violent felony are reasons to embrace it here. *Id.* at 1411.

A majority of this court's holding in *Castelman* was spent articulating that the terms "physical force" contained in 924(e) and 922(g) are not the same and are not to be interpreted interchangeably, nor can one interpretation be used to satisfy the inquiry used to determine that of the other.

In the instant case the district court drew a negative inference from the bodily injury specification within the Minnesota statute and reasoned that "even though the act of poisoning a drink does not involve physical force..." *Schaffer*, 818 F.3d 796, at 798, the court went on to *Castelman* for the proposition that "the harm occurs directly, rather than indirectly (as with a kick or punch), does not matter." *Castelman*, at 1415.

However, this court expressly rejected the proposition by the Government of drawing a negative inference from the presence of the "bodily injury" specification added in the phrase "physical force"

located in §922(g)(8) to satisfy §924(e)'s force clause. Curtis Johnson, 559 U.S. at 11-12.

This court created the categorical approach in Taylor as a means of protecting a defendant's Sixth Amendment right to have a jury determine beyond a reasonable doubt facts that increase a defendant's statutory mandatory maximum and minimum penalties. Mathis 579 U.S. at slip. op. 10.

However, the Eighth Circuit's refusal to rehear Mr. Geddes' case and correct the lower court's departure from this court's strict principles in Johnson sanctioned the lower court's ability to conflate the strict standards for altering a defendant's statutory minimum and maximum punishment in conflict with this court's holdings in Apprendi and Alleyne.

For example, in this case Mr. Geddes was subjected to a statutory punishment of 0 to 10 years imprisonment for the crime in which the grand jury returned the indictment 18:922(g)(1), and even though the Armed Career Criminal Act was charged in the indictment the court concluded that that was a finding that's made by the trial court and not an issue for the jury, even though, it alters Mr. Geddes' statutory punishment, because of the departure from this court's precedents the lower court relied on an erroneous standard of review and unconstitutionally altered Mr. Geddes' statutory minimum and maximum sentence to 15 years imprisonment to life imprisonment. Consequently Mr. Geddes was sentenced to 282 months imprisonment a sentence that doubled his otherwise statutory maximum and minimum penalties.

ii) The national importance of this case is also paramount. Every Circuit except for the Fifth Circuit, see U.S. v. Rico-Mejia, 859 F.3d 318, 322-23 (5th Cir.), has sanctioned the departure of the lower courts from this court's well established holdings regarding the "force clause" of 924(e) and the categorical approach as it applies to determining whether a crime can be considered a proper predicate offense under the "force clause" in Curtis Johnson and

allows for hundreds of defendants a year to be arbitrarily sentenced to hundreds of months in excess of their statutory mandatory minimum and maximum penalties and in 1/3 of the situations to life imprisonment due to the statutory minimum and maximum sentence being enhanced to 15 years to life pursuant to an unconstitutional expansion of this court's holdings sanctioned by the Court's of Appeals for the lower court's to circumvent a defendant's rights to have a jury not a judge make such determinations. The expansion of the force clause sanctioned by the court of appeals allows for the mandatory minimum and maximum penalties of 18:924(e) and (c), 18:16(b), and 18:3559(c) to be altered outside of the proscribed constitutional circumscriptions articulated by this court.

If this court does not exercise its supervisory powers to realign the lower courts with this court precedents on the issue lower courts will continue to work to unconstitutionally expand the "force clause" into the new "residual clause" and allow countless defendant's across the country to be unconstitutionally sentenced in excess of their indicted statutory mandatory minimums and maximum.

One of the most charged offenses under federal law is felon in possession of a firearm pursuant to 922(g)(1). The Government uses the statute to subject defendant's to much harsher sentences under the Armed Career Criminal Act and since this court voided the "residual clause" contained within the ACCA in 2015 lower courts and the Government have went into overdrive working to maintain the inflexibility of the Act. In Mathis the court recognized and corrected ill-facted attempts by the Government to extend the holdings of this court by implication. Mathis, at slip. op. 13.

There the court articulated to the Government and the lower courts, vicariously through Justice Breyer that this court's holdings are not to be extended by implication, that what this court's decisions says and means are one in the same. Id. at 13.

Mr. Geddes asserts that the only chance this court's constitutional holdings regarding the issue are preserved is if this court

grants this petition for writ of certiorari and allow the Government and lower courts to appreciate that "whether for the good or for ill" its holdings regarding the force clause of the ACCA "remains law. And that this court ~~will not~~ ^{will not} introduce inconsistency and arbitrariness into its ACCA decisions be here declining to follow its requirement and that everything this court has ever said about the ACCA force clause runs counter to the departure by the lower court's on the issue sanctioned by the court of appeals and that that alone is sufficient reason to reject it. Because ^{it} has a claim on the law. Mathis, at slip. op. 18 (coherence)

iii) ~~There~~ exist a split among the Court of Appeals on the issue presented in this petition. Compare the Fifth Circuit's opinion at United States v. Rico-Mejia, 859 F.3d 318 (5th Cir. 2017) and Vickers v. United States, 2018 U.S. Dist. LEXIS 94719. (Although the Government argued that the Supreme Court case United States v. Castleman, requires courts to find that crimes involve the use of physical force even when only indirect force will support a conviction, the magistrate judge recognized that the fifth circuit has continued to distinguish between crimes involving direct force and those involving indirect force after Castleman and continued to exclude crimes involving only indirect force from the definition of violent felony). Vickers, at *1.

"The magistrate judge correctly applied fifth circuit law even after Castleman the fifth circuit has continued to exclude crimes involving only indirect force from subsection 924(e)'s definition of violent felony. The court notes however that the Fifth Circuit is alone in taking this approach: The rest of the circuits to consider the matter have held that Castleman, abolished the distinction between direct and indirect force in force-clause cases..." Id at *1.

B) Mr. Geddes avers that although there is no law in this court's precedent's that expressly resolve this claim, Mr. Geddes notes that this court has held that the Guidelines can give rise to an ex post facto violation when the Guidelines are amended and the Guidelines manual used to sentence the defendant allows for

a harsher sentence than the amended version.

Mr. Geddes was sentenced after this courts holding in Johnson 2, that case voided the residual clause of 924(e) the Eighth Circuit along with every other Circuit, save for the Fifth Circuit voided the identical residual clause located at 4b1.2. And up until this time court's of appeals review guideline cases involving the residual clause for plain error.

When Mr. Geddes filed his 2255 the Sentencing Commission had amended the Guidelines to exclude the residual clause. Consequently, the district court in this case could never have use the residual clause to review whether Mr. Geddes' conviction qualified pursuant to the residual clause.

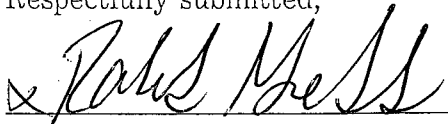
In this case the district court's usage of the residual clause conflated many distinct inquiries, because Begay and Sykes both disqualify Mr. Geddes' crime of conviction from enhancement consideration pursuant to the residual clause because it can be committed recklessly, and it is categorically broader than the force clause. This is the specific sort of situation where a court uses the residual clause arbitrarily to sustain an enhanced sentence, this was the exact reason the court voided the residual clause located in 924(e) it expressly concluded so.

Without the enhancement Mr. Geddes would have been sentenced to 15 years imprisonment.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: 10-18-2018