**IN THE**
**SUPREME COURT OF THE UNITED STATES**

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**No.: 18-7470**

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**CARL LEE WILLIAMS,**

Petitioner,

vs.

**UNITED STATES OF AMERICA,**

Respondent.

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

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# REPLY TO THE UNITED STATES' MEMORANDUM IN OPPOSITION

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## QUESTIONS PRESENTED FOR REVIEW

The Petition in this case presents the following questions:

1. Is federal carjacking *by way of intimidation* a crime of violence as defined in 18 U.S.C. § 924(c)(3)(A)'s force clause?

2. In light of *Sessions v. Dimaya*, 138 S.Ct. 1204 (2018), is the federal brandishing statute's residual clause (18 U.S.C. § 924(c)(3)(B)) unconstitutionally vague?

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For the reasons previously argued and below, the petition for certiorari should be granted.

## REPLY TO THE MEMORANDUM IN OPPOSITION

### I. Despite this Court's recent affirmance in *Stokeling v. United States* (No. 17-5554), Mr. Williams's petition should still be held pending this Court's final decisions in *United States v. Davis* (No. 18-431) and *Ovalles v. United States* (No. 18-8393).

#### A. Notwithstanding *Stokeling*, federal carjacking, when only committed by intimidation, cannot be treated as a crime of violence under the brandishing statute's "force clause".

Petitioner Williams acknowledges that after his petition was filed this Court decided *Stokeling v. United States*, 139 S.Ct. 544 (2019) (No. 17-5554), which found that any "force necessary to overcome a victim's resistance" ["'however slight' that resistance might be" (*id*. at 550)] satisfies § 924(e)'s similar force clause, and identifying "'hitting, slapping, shoving, grabbing, pinching, biting, and hair pulling'" as examples. Mr. Williams, however, argues that federal carjacking can be committed by mere "intimidation," which does not require any force, whatsoever, "to overcome a victim's resistance". *See* Pet. at 19-28.

While this Court has elected to deny certiorari for a number of cases that have also argued that the "least culpable" form of carjacking

(via mere "intimidation") cannot satisfy the brandishing statute's force clause, *see* Memo. in Opp. at 1-2 (citing eleven (11) cases), it is inconsistent with this Court's "categorical approach" to allow an offense – as a category – to be treated as a crime of violence under 924(c)(3)(A), when the statute's plain language allows it to be committed without a specific threat to use physical force. *See Moncrieffe v. Holder*, 133 S.Ct. 1678, 1684 (2013) (observing that, when applying the categorical approach, courts must presume the conviction "'rest[s] upon [nothing] more than the least of th[e] acts' criminalized") (quoting *(Curtis) Johnson v. United States*, 130 S.Ct. 1265, 1269 (2010) (holding, in the context of 924(e)'s very similarly worded force clause, that "the phrase 'physical force' means *violent* force – that is, force capable of causing physical pain or injury to another person" (*id.* at 1271) – and specifically observing (at 1270) that this is distinguished from an "emotional force" like pure intimidation)).

If *Stokeling* represents an intent to roll back *Curtis Johnson*, to allow "minimal force" to count as "violent force," the context of "minimal" is still important – since the Florida robbery statute analyzed in *Stokeling* requires any amount of force (however slight) that is able

to "overcome a victim's resistance." 139 S.Ct. at 550 (limiting the Court's explicit holding to "robbery offenses that require the criminal to overcome the victim's resistance").

Since federal carjacking does not have a "resistance overcoming" element, and, further, since federal carjacking can also be committed through mere "intimidation," Petitioner urges the Court to grant certiorari here, to clarify whether mere "intimidation" can satisfy 924(c)'s force clause in light of the differences between the federal carjacking statute and the Florida robbery statute analyzed in *Stokeling*.

### B. Because the decision below was affirmed on both the force clause and the residual clause, this Court's decisions in *United States v. Davis* (No. 18-431) and *Ovalles v. United States* (No. 18-8393) will impact this case, which favors holding this case until this Court decides those cases.

While the Government argues that *United States v. Davis*, *cert. granted*, No. 18-431 (oral argument scheduled for Apr. 17, 2019, to decide whether the brandishing statute's residual clause is constitutional in the wake of *Sessions v. Dimaya*, 138 S. Ct. 1204 (2018)), will not have an impact on this case, *see* Memo. in Opp. at 4, the fact remains that the Eleventh Circuit's decision below was not decided

solely on the basis of § 924(c)'s force clause. *See* Pet. Appx. at A 3 (affirming on dual grounds of force clause and residual clause); *see also* Pet. Appx. at C 9-11 (showing that the district court's ruling was also based on the same dual grounds). A denial of certiorari here, prior to this Court's pending decision in *Davis*, would therefore not serve to clarify or resolve (in a final way) the Eleventh Circuit's dual-grounds affirmance of the district court's dual-grounds denial of Mr. Williams' habeas motion.

This case came to this Court at about the same time as *Ovalles v. Unites States*, No. 18-8393 (petition filed March 8, 2019), which presents nearly identical issues (another habeas case, which addresses whether the federal brandishing statute's force clause captures (attempted) federal carjacking, and also whether the brandishing statute's residual clause is constitutional). Therefore, this case should be held pending this Court's decision in *Davis* and *Ovalles*.

## CONCLUSION

Petitioner Carl Lee Williams respectfully requests that this Court grant a writ of certiorari and reverse the Eleventh Circuit's decision below, with a holding: (a) that federal carjacking is not a categorical

crime of violence under 18 U.S.C. § 924(c)'s force clause; and (b) that 18 U.S.C. § 924(c)'s residual clause is unconstitutionally vague.

Alternatively, Petitioner Williams requests that his case be held pending this Court's decisions in *United States v. Davis* (No. 18-431) and *Ovalles v. United States* (No. 18-8393).

Respectfully submitted,

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