No. 18-9424

IN THE SUPREME COURT OF THE UNITED STATES

LAMAR EADY, JR., PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the court of appeals correctly denied a certificate of appealability (COA) on petitioner's claim that his prior conviction for felony battery, in violation of Fla. Stat. § 784.041 (2007), was not a "violent felony" under the elements clause of the Armed Career Criminal Act of 1984, 18 U.S.C. 924(e)(2)(B)(i).

2. Whether the Court should vacate the court of appeals' decision and remand petitioner's case for consideration of petitioner's new claim that conviction for possessing a firearm as a felon, in violation of 18 U.S.C. 922(g) and 924(e)(1), requires proof of knowledge of felon status, where petitioner neither raised that claim in his motion under 28 U.S.C. 2255 nor sought a COA on that issue.

ADDITIONAL RELATED PROCEEDINGS

United States District Court (S.D. Fla.)

United States v. Eady, No. 13-cr-20551 (Feb. 11, 2014)

Eady v. United States, No. 16-cv-21369 (Aug. 21, 2018)

United States Court of Appeals (11th Cir.)

United States v. Eady, No. 14-10592 (Nov. 6, 2014)

Eady v. United States, No. 18-14449 (Jan. 23, 2019)

Supreme Court of the United States

Eady v. United States, No. 14-8372 (Apr. 20, 2015)

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A1, at 1-3) is not published in the Federal Reporter. The orders of the district court (Pet. App. A6 and A7) are unreported.

JURISDICTION

The judgment of the court of appeals was entered on January 23, 2019. On March 29, 2019, Justice Thomas extended the time within which to file a petition for a writ of certiorari to and including May 23, 2019, and the petition was filed on May 22, 2019. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the Southern District of Florida, petitioner was convicted of possession of a firearm and ammunition by a felon, in violation of 18 U.S.C. 922(g)(1) and 924(e). Pet. App. A3, at 1. He was sentenced to 188 months of imprisonment, to be followed by five years of supervised release. Id. at 2-3. The court of appeals affirmed, 591 Fed. Appx. 711, and this Court denied a petition for a writ of certiorari, 135 S. Ct. 1847. Petitioner later filed a motion under 28 U.S.C. 2255 to vacate his sentence. Pet. App. A4, at 1-10. The district court denied the motion, Pet. App. A5, at 1-5, and denied petitioner's request for a certificate of appealability (COA), Pet. App. A6. The court of appeals likewise denied a COA. Pet. App. A1, at 1-3.

1. In June 2013, a police detective saw a man standing next to a parked car and holding an AR-15 long rifle. 591 Fed. Appx. at 713; Presentence Investigation Report (PSR) ¶ 3. After the detective ordered the man to drop his weapon, the man threw the rifle into the car's back seat and raised his hands. 591 Fed. Appx. at 713. When officers approached the car, they found petitioner and two other men seated inside. Ibid. A loaded Glock handgun was lying on the floor of the front passenger seat next to petitioner, and another loaded Glock handgun was under the front passenger seat. Ibid.; PSR ¶ 5. Both handguns and the AR-15 rifle had previously been reported stolen. PSR ¶ 7.

A federal grand jury charged petitioner with one count of possessing a firearm and ammunition as a felon, in violation of 18 U.S.C. 922(g). Pet. App. A2, at 1-2. Petitioner proceeded to trial, and the jury found him guilty. 591 Fed. Appx. at 713.

2. A conviction for violating 18 U.S.C. 922(g)(1) carries a default statutory sentencing range of zero to ten years of imprisonment. See 18 U.S.C. 924(a)(2). If, however, a defendant has at least three prior convictions for "violent felon[ies]" or "serious drug offense[s]" that were "committed on occasions different from one another," then the Armed Career Criminal Act of 1984 (ACCA), 18 U.S.C. 924(e), specifies a statutory sentencing range of 15 years to life imprisonment, 18 U.S.C. 924(e)(1). The ACCA defines a "violent felony" as an offense punishable by more than a year of imprisonment 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.

18 U.S.C. 924(e)(2)(B).

The first clause of that definition is commonly referred to as the "elements clause," and the portion beginning with "otherwise" is known as the "residual clause." See Welch v. United States, 136 S. Ct. 1257, 1261 (2016). In Curtis Johnson v. United States, 559 U.S. 133 (2010), this Court defined "physical force"

under the ACCA's elements clause to "mean[] violent force -- that is, force capable of causing physical pain or injury to another person," id. at 140 (emphasis omitted), such as "the force necessary to overcome a victim's physical resistance," Stokeling v. United States, 139 S. Ct. 544, 553 (2019).

The Probation Office classified petitioner as an armed career criminal under the ACCA based on three prior Florida convictions: a 2009 conviction for aggravated assault with a firearm, a 2009 conviction for strongarm robbery, and a 2010 conviction for felony battery. PSR ¶¶ 22, 26-28. Under the version of the Florida statute in place since 2007, "[a] person commits felony battery if he or she: (a) [a]ctually and intentionally touches or strikes another person against the will of the other; and (b) [c]auses great bodily harm, permanent disability, or permanent disfigurement." Fla. Stat. § 784.041(1) (2007). Over petitioner's objection, the district court determined that petitioner's conviction for felony battery qualified as a violent felony under the ACCA. 591 Fed. Appx. at 719; 13-cr-20551 D. Ct. Doc. 124, at 3-8 (Jan. 28, 2014). The court sentenced petitioner to 188 months of imprisonment, to be followed by five years of supervised release. Pet. App. A3, at 2-3.

3. The court of appeals affirmed. 591 Fed. Appx. at 713-720. As relevant here, the court rejected petitioner's contention that his conviction for Florida felony battery is not a violent felony under the ACCA. Id. at 719-720. The court

determined that such a conviction satisfies the ACCA's elements clause because the Florida felony-battery statute requires the offender to use "force capable of causing physical pain or injury." 591 Fed. Appx. at 719 (quoting Curtis Johnson, 559 U.S. at 140). The court also found, in the alternative, that petitioner's felony-battery conviction "certainly meets the requirements of the residual clause." Id. at 719-720.

4. a. In 2015, this Court held in Samuel Johnson v. United States, 135 S. Ct. 2551, that the ACCA's residual clause is unconstitutionally vague. Id. at 2557. The Court has subsequently made clear that the holding of Samuel Johnson is a substantive rule that applies retroactively. See Welch, 136 S. Ct. at 1265. Following this Court's decision in Samuel Johnson, petitioner filed a motion under 28 U.S.C. 2255 to vacate, set aside, or correct his sentence. Pet. App. A4, at 1-10. In the motion, petitioner contended that Samuel Johnson's invalidation of the residual clause meant that his prior conviction for felony battery did not qualify as a violent felony under the ACCA. Id. at 3-9.

While petitioner's motion was pending, the court of appeals issued its en banc decision in United States v. Vail-Bailon, 868 F.3d 1293 (11th Cir. 2017), cert. denied, 138 S. Ct. 2620 (2018). In Vail-Bailon, the en banc court determined that Florida felony battery categorically qualifies as a "crime of violence" under a definition in the Sentencing Guidelines that is worded identically to the ACCA's elements clause. 868 F.3d at 1299, 1308.

The en banc court in Vail-Bailon first explained that this Court's decision in Curtis Johnson "articulates the standard [the court of appeals] should follow in determining whether an offense calls for the use of physical force, and th[e] test is whether the statute calls for violent force that is capable of causing physical pain." Vail-Bailon, 868 F.3d at 1302. The court declined to adopt the defendant's alternative definition of force that is "likely to cause" injury, which was based not on any language in Curtis Johnson itself, but was instead a gloss on "words found in a cited circuit court decision." Id. at 1301. "Indeed," the court observed, "to [its] knowledge, no court has ever defined physical force to mean force that is 'likely to cause pain.'" Ibid.

The en banc court next determined that, "[b]y its plain terms, felony battery in violation of Florida Statute § 784.041 requires the use of physical force as defined by Curtis Johnson." Vail-Bailon, 868 F.3d at 1303. The court explained that Florida felony battery requires the intentional use of force "that causes the victim to suffer great bodily harm" and that such force is necessarily "capable of causing pain or injury." Ibid. The court also observed that Florida courts have repeatedly held that felony battery "'cannot be committed without the use of physical force or violence,'" under a definition of "physical force" that requires "more than mere touching." Id. at 1304 (quoting Dominguez v. State, 98 So. 3d 198, 200 (Fla. Dist. Ct. App. 2012)); see id. at 1303-1304. The court accordingly found that Florida law foreclosed

the defendant's argument that "it is possible for an offender to violate Florida Statute § 784.041 by engaging in conduct that consists of no more than a slight touch or nominal contact." Id. at 1305.

The en banc court then rejected the defendant's efforts to portray the Florida statute more broadly, which involved postulating "farfetched hypotheticals" involving "relatively benign conduct combined with unlikely circumstances and a bizarre chain of events that result in an unforeseeable injury" -- for example, tapping someone who is startled and falls down a staircase; tickling someone who falls out of a window; or applying lotion to the skin of someone who has an unknown but severe allergy. Vail-Bailon, 868 F.3d at 1305-1306. The court found "no support in Florida law for the idea" that Florida felony battery "is designed to criminalize the conduct described in the proffered hypotheticals." Id. at 1306. It also noted that the defendant had not "shown that prosecution under Florida Statute § 784.041 for the conduct described in the hypotheticals is a realistic probability." Ibid.

b. After the en banc decision in Vail-Bailon, the magistrate judge in petitioner's case issued a report and recommendation that his Section 2255 motion be denied. Pet. App. A5, at 1-5. The magistrate judge explained that, in Vail-Bailon, the en banc court of appeals had "decid[ed] the very issue" presented in petitioner's motion and made it "clear" that

petitioner's conviction for felony battery was a violent felony under the ACCA. Id. at 4. Over petitioner's objections, the district court adopted the magistrate judge's report and recommendation and denied the Section 2255 motion. Pet. App. A6. And the court declined to issue a COA, finding that petitioner had "failed to demonstrate the deprivation of a [f]ederal constitutional right" and that "the issues are not taken in good faith." Pet. App. A7.

5. Petitioner applied to the court of appeals for a COA on a single question: whether the district court should have granted petitioner's Section 2255 motion and vacated his ACCA-enhanced sentence on the theory that his felony-battery conviction no longer qualifies as a violent felony under the ACCA. Pet. C.A. Mot. for COA 3 (Nov. 8, 2018).

The court of appeals denied petitioner's request for a COA in an unpublished, single-judge order. Pet. App. A1, at 3. The court determined that "reasonable jurists would not debate the district court's determination that [petitioner]'s § 2255 motion be denied." Ibid. In light of its en banc decision in Vail-Bailon, the court of appeals explained, "Florida felony battery clearly qualifies as a violent felony under the elements clause of the ACCA." Ibid. (citing United States v. Lockley, 632 F.3d 1238, 1243 n.5 (11th Cir.), cert. denied, 565 U.S. 885 (2011), for the proposition that the court of appeals "applies the same analysis

for both ACCA violent felonies and crimes of violence under the Sentencing Guidelines").

ARGUMENT

Petitioner contends (Pet. 12-27) that his prior Florida conviction for felony battery does not qualify as a "violent felony" under the ACCA's elements clause, 18 U.S.C. 924(e)(2)(B)(i). The court of appeals correctly denied a COA on that question, and its decision does not conflict with any decision of this Court or another court of appeals. This Court has recently and repeatedly denied petitions for writs of certiorari raising similar questions, and further review is likewise unwarranted here.

Petitioner additionally requests (Pet. 10-12) that this Court grant the petition for a writ of certiorari, vacate the decision of the court of appeals, and remand for further proceedings (GVR) in order for the court of appeals to consider petitioner's new claim that his conviction for possessing a firearm and ammunition as a felon, in violation of 18 U.S.C. 922(g) and 924(e)(1), is infirm in light of Rehaif v. United States, 139 S. Ct. 2191 (2019), because the courts below did not recognize that knowledge of status is an element of that offense. Petitioner did not raise that claim at trial, on direct appeal, or during the proceedings below on his motion under 28 U.S.C. 2255, and he does not contend that the reasoning of the decision below is erroneous in light of Rehaif. Accordingly, a GVR is unwarranted.

1. A federal prisoner seeking to appeal the denial of a motion to vacate his sentence under 28 U.S.C. 2255 must obtain a COA. 28 U.S.C. 2253(c)(1)(B). To obtain a COA, a prisoner must make "a substantial showing of the denial of a constitutional right," 28 U.S.C. 2253(c)(2) -- that is, a "showing that reasonable jurists could debate whether" a constitutional claim "should have been resolved in a different manner or that the issues presented were 'adequate to deserve encouragement to proceed further.'" Slack v. McDaniel, 529 U.S. 473, 484 (2000) (citation omitted).

Contrary to petitioner's contention, the court of appeals did not "misappl[y]" that standard. Pet. 25 (emphasis omitted). Although "[t]he COA inquiry * * * is not coextensive with a merits analysis," Buck v. Davis, 137 S. Ct. 759, 773 (2017), the Court has made clear that a prisoner seeking a COA must still show that jurists of reason "could conclude [that] the issues presented are adequate to deserve encouragement to proceed further," ibid. (citation omitted). Here, petitioner's claim that his prior Florida felony-battery conviction could qualify as an ACCA predicate only by resort to the now-invalidated residual clause did not "deserve encouragement to proceed further," ibid. (citation omitted), given that his argument was squarely foreclosed by the en banc court of appeals' decision in United States v. Vail-Bailon, 868 F.3d 1293 (11th Cir. 2017), cert. denied, 138 S. Ct. 2620 (2018).

2. The en banc court of appeals in Vail-Bailon correctly determined that Florida felony battery qualifies as a "crime of violence" under a Sentencing Guidelines provision that is worded identically to the ACCA's elements clause, because that offense "has as an element the use, attempted use, or threatened use of physical force," 18 U.S.C. 924(e)(2)(B)(i).

a. In Curtis Johnson v. United States, 559 U.S. 133 (2010), this Court held that an offender uses "physical force" for purposes of the ACCA, 18 U.S.C. 924(e)(2)(B)(i), when he uses "violent force -- that is, force capable of causing physical pain or injury to another person." 559 U.S. at 140; see Sessions v. Dimaya, 138 S. Ct. 1204, 1220 (2018) (noting that "this Court has made clear that 'physical force' means 'force capable of causing physical pain or injury'") (quoting Curtis Johnson, 559 U.S. at 140). The Court concluded that the offense at issue in Curtis Johnson itself -- simple battery under Florida law, which requires only intentional touching and may be committed by "[t]he most 'nominal contact,' such as a 'tap on the shoulder without consent'" -- does not categorically require such force. 559 U.S. at 138 (quoting State v. Hearns, 961 So. 2d 211, 219 (Fla. 2007)) (brackets and ellipsis omitted).

Application of Curtis Johnson's definition of "force" to the different offense at issue here, however, yields a different result. In contrast to the offense at issue in Curtis Johnson, Florida felony battery requires not only that an offender

intentionally touch or strike another person against that person's will, but also that the offender "[c]ause[] great bodily harm, permanent disability, or permanent disfigurement." Fla. Stat. § 784.041(1)(b) (2007). Because Florida felony battery requires force that actually causes great bodily injury, it necessarily requires "force capable of causing physical pain or injury" under Curtis Johnson, 559 U.S. at 140 (emphasis added).

The en banc court of appeals in Vail-Bailon thus correctly determined that under "the plain language of Curtis Johnson" and its "definition of physical force," Florida felony battery has the "use of physical force" as an element. 868 F.3d at 1302. And this Court has recently and repeatedly declined to review questions about whether Florida felony battery is a violent felony under the ACCA's elements clause or a crime of violence under the Sentencing Guidelines. See Lewis v. United States, 139 S. Ct. 1256 (2019) (No. 17-9097); Makonnen v. United States, 139 S. Ct. 455 (2018) (No. 18-5105); Flowers v. United States, 139 S. Ct. 140 (2018), (No. 17-9250); Solis-Alonzo v. United States, 139 S. Ct. 73 (2018) (No. 17-8703); Gathers v. United States, 138 S. Ct. 2622 (2018) (No. 17-7694); Green v. United States, 138 S. Ct. 2620 (2018) (No. 17-7299); Robinson v. United States, 138 S. Ct. 2620 (2018) (No. 17-7188); Vail-Bailon v. United States, 138 S. Ct. 2620 (2018) (No. 17-7151).

b. Petitioner contends (Pet. 12-25) that the courts of appeals are divided over the showing required under Gonzales v.

Duenas-Alvarez, 549 U.S. 183 (2007), to establish a "realistic probability" that a State "would apply its statute to conduct that falls outside" a particular federal definition, id. at 193. This Court has recently denied petitions for writs of certiorari raising similar arguments, see, e.g., Lewis, supra (No. 17-9097); Vega-Ortiz v. United States, 139 S. Ct. 66 (2018) (No. 17-8527); Rodriguez Vazquez v. Sessions, 138 S. Ct. 2697 (2018) (No. 17-1304); Gathers, supra (No. 17-7694); Espinoza-Bazaldua v. United States, 138 S. Ct. 2621 (2018) (No. 17-7490); Green, supra (No. 17-7299); Robinson, supra (No. 17-7188); Vail-Bailon v. United States, supra (No. 17-7151), and it should do the same here. The court of appeals in Vail-Bailon did not apply Duenas-Alvarez in a way that implicates any circuit division.

As a general matter, to determine whether a prior conviction supports a sentencing enhancement like the one provided in the ACCA, courts employ a "categorical approach" under which they compare the definition of the state offense with the relevant federal definition. See, e.g., Mathis v. United States, 136 S. Ct. 2243, 2248 (2016). In evaluating the definition of a state offense, courts must look to the "interpretation of state law" by the State's highest court. Curtis Johnson, 559 U.S. at 138. If the definition of the state offense is broader than the relevant federal definition, the prior state conviction does not qualify. Mathis, 136 S. Ct. at 2248. This Court has cautioned, however, that the categorical approach "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 federal definition. Moncrieffe v. Holder, 569 U.S. 184, 191 (2013) (quoting Duenas-Alvarez, 549 U.S. at 193); see Taylor v. United States, 495 U.S. 575, 602 (1990) (holding that the categorical approach is satisfied if the "statutory definition [of the prior conviction] substantially corresponds to [the] 'generic' [definition]"); see also Quarles v. United States, 139 S. Ct. 1872, 1890 (2019) ("[T]he Taylor Court cautioned courts against seizing on modest state-law deviations from the generic definition of burglary.").

Petitioner contends (Pet. 12-18) that the courts of appeals have divided over the application of Duenas-Alvarez's "realistic probability" test. He asserts (Pet. 15-17) that, in the Fifth Circuit's view, a defendant establishes the requisite probability only by demonstrating that the State actually prosecutes the nonqualifying conduct under the relevant statute. In contrast, according to petitioner (Pet. 13-15), the First, Second, Third, Sixth, Ninth, and Tenth Circuits have taken the position that the "realistic probability" test is satisfied if a state statute on its face describes an offense that is broader than the relevant federal definition.

To the extent that any such division exists, this case does not implicate it. The decision below merely followed the en banc

decision in Vail-Bailon. Pet. App. A1, at 3. And in Vail-Bailon, the Eleventh Circuit explained that, "[b]y its plain terms, felony battery in violation of Florida Statute § 784.041 requires the use of physical force as defined by Curtis Johnson." 868 F.3d at 1303. In other words, the court in Vail-Bailon determined that the state statute was not overbroad on its face. See id. at 1302-1303. The court then bolstered its application of Curtis Johnson by looking to Florida case law, explaining that its determination was consistent with state decisions applying the Florida felony battery statute only to actions taken with sufficient physical force or violence. See id. at 1303-1304. Only then did the court reject the defendant's counterargument that the Florida felony battery statute could be "applied to penalize freak accidents," id. at 1306, observing that Florida law does not appear to cover such "freak accidents" at all, ibid. See Gov't C.A. En Banc Br. at 44-46, Vail-Bailon, supra (No. 15-10351) (explaining that Florida limits offenses based on proximately caused injuries) (citing, e.g., Tipton v. State, 97 So. 2d 277, 281 (Fla. 1957)).

The Eleventh Circuit's decision in Vail-Bailon thus did not hold that "the scope of a predicate offense can be ascertained only by examining the particular facts contained in the universe of reported cases," as petitioner asserts (Pet. 20). Indeed, petitioner acknowledges (Pet. 17 & n.3) that prior Eleventh Circuit decisions had stated that an overbroad statute itself can create a realistic probability of prosecution under Duenas-Alvarez. See,

e.g., Vassell v. United States Attorney Gen., 839 F.3d 1352, 1362 (11th Cir. 2016). Vail-Bailon did not adopt the contrary view.*

Accordingly, the decision here does not implicate any disagreement among other circuits involving the application of Duenas-Alvarez to statutes that are overbroad on their face. And for similar reasons, the resolution of the Duenas-Alvarez question in petitioner's favor would not change the outcome of the case, because the decisions in both Vail-Bailon and in this case rest in the first instance on a straightforward application of Curtis Johnson to the text of the Florida felony battery statute.

3. Petitioner separately requests (Pet. 10-12) that this Court grant the petition for a writ of certiorari, vacate the decision of the court of appeals, and remand for further proceedings in order for the court of appeals to consider whether his conviction for possession of a firearm and ammunition by a felon, in violation of 18 U.S.C. 922(g)(1) and 924(e), is infirm in light of Rehaif, supra, which held that the mens rea of knowledge for that crime applies "both to the defendant's conduct and to the defendant's status." 139 S. Ct. at 2194. That course is not warranted here.

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* Petitioner notes (Pet. 21-22) that one Board of Immigration Appeals decision suggested that Vail-Bailon "implicitly reject[ed]" the Eleventh Circuit's prior decisions applying Duenas-Alvarez. Pet. 22 (citation omitted); see In re Aspilaire, 2017 WL 5377562, at *5 (B.I.A. Sept. 18, 2017). But a suggestion in a parenthetical in an unpublished Board of Immigration Appeals decision is not an authoritative source of Eleventh Circuit law.

As petitioner acknowledges (Pet. 11), he is raising such a challenge to his conviction for the first time in his petition for a writ of certiorari seeking review of the denial of a COA from the denial of his collateral attack on his conviction. Petitioner did not argue at trial or on direct appeal that a conviction under Sections 922(g)(1) and 924(e) requires proof that the defendant "knew he was a convicted felon at the time of the firearm and ammunition possession." Ibid. Petitioner also did not include such a claim in his motion for collateral relief under 28 U.S.C. 2255, which argued only that his ACCA sentence is improper on the theory that his conviction for Florida felony battery is not a violent felony. See Pet. App. A4, at 3. Nor did petitioner ask the court of appeals for a COA on a Rehaif-related question, see C.A. Mot. for COA 3 (Nov. 8, 2018), and he does not contend now that the court of appeals erred in failing to issue such a COA sua sponte. Indeed, any such contention would be misplaced: a Section 2255 movant cannot obtain a COA, and appellate review, on an issue that he did not raise in his Section 2255 motion. See 28 U.S.C. 2253(c)(3); Slack, 529 U.S. at 484 (COA requires a showing that "the district court's assessment of the * * * claims [was] debatable or wrong"). And petitioner does not identify a procedural basis for the courts below to consider his Rehaif argument on remand, where he neither included that claim in his Section 2255 motion nor sought a COA on the issue.

This Court's "traditional rule * * * precludes a grant of certiorari * * * when 'the question presented was not pressed or passed upon below.'" United States v. Williams, 504 U.S. 36, 41 (1992) (citation omitted); see, e.g., Zobrest v. Catalina Foothills Sch. Dist., 509 U.S. 1, 8 (1993); Adickes v. S. H. Kress & Co., 398 U.S. 144, 147 n.2 (1970). While this Court does sometimes GVR even when a petitioner has not presented a claim below that an intervening decision has validated, the Court has typically done so in cases where the petitioner's conviction did not become final before the intervening decision. See Griffith v. Kentucky, 479 U.S. 314, 328 (1987). No similar relief is warranted here. See United States v. Addonizio, 442 U.S. 178, 184 (1979).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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