EXHIBIT A

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 18-14449-F

LAMAR EADY, JR.,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

Appeal from the United States District Court
for the Southern District of Florida

ORDER:

On November 13, 2013, Lamar Eady was found guilty of possession of a firearm as a convicted felon, in violation of 18 U.S.C. § 922(g)(1). The probation officer who prepared Eady's presentence investigation report ("PSI") determined that he was an armed career criminal, which, if the sentencing judge so found, subjected him to a minimum of 15 years' imprisonment, based on the following Florida convictions: (1) aggravated assault, (2) strongarm robbery, and (3) felony battery. The sentencing judge agreed with the PSI's findings and sentenced Eady to 188 months' imprisonment. This Court affirmed Eady's conviction and sentence.

On April 15, 2016, Eady filed the instant 28 U.S.C. § 2255 motion to vacate his sentence. In his § 2255 motion, Eady contended that he was no longer an armed career criminal because his felony battery conviction did not qualify as a violent felony or serious drug offense under the

elements clause of the Armed Career Criminal Act ("ACCA"), and the ACCA's residual clause was struck down as unconstitutionally vague in *Johnson v. United States*, 135 S. Ct. 2551 (2015).

A magistrate judge issued a report and recommendation ("R&R"), recommending that Eady's § 2255 motion be denied. The magistrate judge concluded that Eady's conviction for felony battery qualified as a crime of violence under the ACCA elements clause because, in *United States v. Vail-Bailon*, 868 F.3d 1293 (11th Cir. 2017) (en banc), this Court held that "Florida felony battery does categorically qualify as a crime of violence" under the identical elements clause found in the United States Sentencing Guidelines. Over Eady's objections, the district court adopted the R&R, denied Eady's § 2255 motion, and denied Eady a certificate of appealability ("COA"). Eady filed a notice of appeal and now moves this Court for COA.

In order to obtain a COA, a movant must make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). The movant satisfies this requirement by demonstrating that "reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong," or that the issues "deserve encouragement to proceed further." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quotations omitted).

Under the ACCA, a defendant is subject to a mandatory-minimum term of imprisonment of 15 years where that defendant has been previously convicted 3 times of "a violent felony or a serious drug offense, or both, committed on occasions different from one another." 18 U.S.C. § 924(e)(1). The ACCA defines the term "violent felony" as any crime punishable by a term of imprisonment exceeding one year 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 prong of this definition is sometimes referred to as the "elements clause," while the second prong contains the "enumerated crimes clause" and, finally, what is commonly called the "residual clause." *United States v. Owens*, 672 F.3d 966, 968 (11th Cir. 2012). The Supreme Court in *Johnson* held that the residual clause of the ACCA is unconstitutionally vague because it creates uncertainty about how to evaluate the risks posed by a crime and how much risk it takes to qualify as a violent felony. *Johnson*, 135 S. Ct. at 2557–58, 2563.

In *Vail-Bailon*, this Court addressed whether felony battery in Florida necessarily requires the use of physical force, and, thus, categorically qualifies as a crime of violence under the elements clause of U.S.S.G. § 2L1.2. Applying the definition of "physical force" that the Supreme Court used in *Johnson v. United States*, 559 U.S. 133 (2010) ("*Curtis Johnson*"), to assess whether Florida's simple battery statute was a crime of violence under the ACCA, this Court found that Florida felony battery was a crime of violence under the elements clause of § 2L1.2. *Vail-Bailon*, 868 F.3d at 1308.

Here, reasonable jurists would not debate the district court's determination that Eady's § 2255 motion be denied. In light of this Court's decision in *Vail-Bailon*, Florida felony battery clearly qualifies as a violent felony under the elements clause of the ACCA. *See United States v. Lockley*, 632 F.3d 1238, 1243 n.5 (11th Cir. 2011) (stating that this Court applies the same analysis for both ACCA violent felonies and crimes of violence under the Sentencing Guidelines). Thus, Eady's motion for a COA is DENIED.

/s/ Robin S. Rosenbaum
UNITED STATES CIRCUIT JUDGE