No._____

In The

Supreme Court of the United States

WILLIE JOHNSON,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the categorical approach permits a court to compare "the essence" of a prior state crime of conviction to the "essential nature" of a specifically enumerated list of offenses.

2. Whether the enumerated list of offenses in the federal three-strikes law, 18 U.S.C. § 3559, are defined by the specifically listed federal statutes or Congress' intent to broadly include anything within the "essential nature" of the listed offenses.

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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PETITION FOR WRIT OF CERTIORARI

Petitioner Willie Johnson respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit in this case.

DECISION BELOW

The Fourth Circuit's opinion in this case is reported at 915 F.3d 233 and is reprinted at App. 1a-21a. The judgment of the district court is reprinted at App. 45a. The unpublished reasoning of the district court is reflected in the sentencing transcript at App. 23a.

JURISDICTION

The judgment of the court of appeals was entered on February 6, 2019. On April 17, 2019, Chief Justice Roberts extended the time to file a petition for a writ of certiorari to and including July 3, 2019. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

RELEVANT STATUTORY PROVISION

18 U.S.C. § 3559(c) provides, in relevant part:

> (c) Imprisonment of Certain Violent Felons.—
>
> (1) Mandatory life imprisonment.—Notwithstanding any other provision of law, a person who is convicted in a court of the United States of a serious violent felony shall be sentenced to life imprisonment if—
>
> > (A) the person has been convicted (and those convictions have become final) on separate prior occasions in a court of the United States or of a State of—
> >
> > > (i) 2 or more serious violent felonies; or

(ii) one or more serious violent felonies and one or more serious drug offenses; and

(B) each serious violent felony or serious drug offense used as a basis for sentencing under this subsection, other than the first, was committed after the defendant's conviction of the preceding serious violent felony or serious drug offense.

(2) Definitions.—For purposes of this subsection—

. . . .

(F) the term "serious violent felony" means—

(i) a Federal or State offense, by whatever designation and wherever committed, consisting of murder (as described in section 1111); manslaughter other than involuntary manslaughter (as described in section 1112); assault with intent to commit murder (as described in section 113(a)); assault with intent to commit rape; aggravated sexual abuse and sexual abuse (as described in sections 2241 and 2242); abusive sexual contact (as described in sections 2244(a)(1) and (a)(2)); kidnapping; aircraft piracy (as described in section 46502 of Title 49); robbery (as described in section 2111, 2113, or 2118); carjacking (as described in section 2119); extortion; arson; firearms use; firearms possession (as described in section 924(c)); or attempt, conspiracy, or solicitation to commit any of the above offenses; and

(ii) any other offense punishable by a maximum term of imprisonment of 10 years or more that has as an element the use, attempted use, or threatened use of physical force against the person of another or that, by its nature, involves a substantial risk that physical force against the person of another may be used in the course of committing the offense;

STATEMENT

Certiorari is warranted to resolve two growing divides in the lower courts. First, the Fourth Circuit contravened this Court's precedent, and departed from the other courts of appeals, when it claimed to apply the categorical approach to compare a New York robbery conviction to enumerated federal offenses in 18 U.S.C. § 3559(c), but instead did just the opposite. Second, the court of appeals created a specific split with the Tenth Circuit court of appeals and several district courts in the Ninth Circuit over the appropriate way to interpret the enumerated offenses listed in 18 U.S.C. § 3559(c). Interpretation of this statutory provision is of greater importance now than ever because serious violent felonies as defined under § 3559(c) newly act to enhance applicable mandatory minimum sentences under 21 U.S.C. § 841. *See* First Step Act of 2018, Pub. L. No. 115-015, 132 Stat. 5208, 5238 (Dec. 21, 2018).

The Fourth Circuit ultimately concluded that because Petitioner would still be subject today to mandatory life imprisonment under the federal three-strikes law, 18 U.S.C. § 3559(c), it was therefore reasonable for the district court to continue relying on a sentencing agreement from 1999 that was based on subsequently invalidated conclusions that Petition was an armed career criminal and a career offender. Where a statute applies enhanced statutory penalties based on a defendant's qualifying prior conviction, courts have uniformly held that the categorical approach applies. But in this case, the Fourth Circuit did not evaluate

whether elements of the prior conviction are a categorical match for any of the enumerated offenses. Instead, the panel ignored the significance of the three separately enumerated federal robbery offenses in § 3559(f)(1) and instead relied upon "congressional intent" to understand the enumerated clause "broadly" to cover the "essential nature" of the crime of robbery – a new omnibus offense that was broader than, and distinguishable from, generic robbery. In so doing, the Fourth Circuit explicitly overlooked "minor definitional tweaks or wrinkles in individual jurisdictions" and compared the "essence" of New York robbery to the "essential nature" of robbery that Congress intended to include in § 3559(c). This is in conflict with how this Court and every other Circuit applies the categorical approach.

The resulting interpretation of the enumerated offense clause in § 3559 also creates a specific split with the Tenth Circuit's interpretation of the same. In *United States v. Leaverton*, the Tenth Circuit correctly compared Oklahoma manslaughter to the federal generic definition of manslaughter. 895 F.3d 1251 (10th Cir. 2018). In Petitioner's case, the Fourth Circuit rather than compare the elements of the New York robbery statute to the specifically enumerated federal statutes, the Fourth Circuit found support in the prefatory language "a Federal or State offense, by whatever designation and wherever committed" as it showed an intent to broadly include all offenses that were part of the "essential nature" of the crime of robbery which encompassed more behavior than even generic federal robbery. Two different California district courts have disagreed and applied the

Tenth Circuit's approach comparing the California robbery offenses at issue to the specifically enumerated federal offenses. Because Congress has added increased mandatory minimum sentences under the Controlled Substances Act where a defendant has a "serious violent felony" as defined in § 3559(c), the significance of this split will only increase as defendants, prosecutors, and lower courts try to determine a defendant's exposure and sentence under one of the most commonly used federal statutes of prosecution.

This Court's review is necessary to resolve these conflicts over (1) whether the categorical approach can include an analysis of congressional intent to determine the "essential nature" of a crime instead of the elements of specifically listed federal offenses; and (2) the appropriate interpretation of the enumerated offense clause of 18 U.S.C. § 3559.

A. Procedural Background in the District Court

In November of 2002, Petitioner entered into a plea agreement in the middle of trial. App 4a. As part of that agreement, he pled guilty to conspiracy to commit bank robbery, armed bank robbery, brandishing a firearm during a crime of violence, and being a felon in possession of a firearm while having three previous convictions for a violent felony offense. App. 4a-5a. Petitioner agreed that a sentence of 300 months would be appropriate – the statutory maximum for his bank robbery offense because at the time the residual clause of ACCA made it uncontestable that he was an armed career criminal and subject to a 180-month mandatory minimum for that offense. App. 5a. In addition, Petitioner was

unquestionably a career offender and subject to the resulting mandatory guideline range of 262 to 327 months. *Id.* For these reasons, Petitioner's agreement to a sentence of 300 months in his plea agreement was a sentence in the middle of his guideline range.

As part of his plea agreement, the Government agreed to dismiss a notice of enhanced penalties that may have triggered mandatory life imprisonment under 18 U.S.C. § 3559(c)(1). App. 4a-5a. No judgment was ever made by the district court at the time about whether Petitioner was subject to mandatory life because the notice was dismissed. However, because § 3559(c) also contains a residual clause, he likely would have been subject to this severe penalty. The district court adopted the plea agreement of the parties and sentenced Petitioner to 420 months—300 months for his ACCA violation and bank robbery convictions, and a consecutive 120-month sentence for his violation of 18 U.S.C. § 924(c). App. 5a.

After this Court held that the residual clause of the ACCA was unconstitutionally vague in violation of the due process clause of the Fifth Amendment to the United States Constitution, *United States v. Johnson*, 135 S. Ct. 2551 (2015), Petitioner filed a motion under 28 U.S.C. § 2255 asking that his ACCA sentence be vacated. App 5a. The district court agreed that without the unconstitutional residual clause, Petitioner no longer had three qualifying prior convictions. App. 6a. In particular, the district court agreed that Petitioner's prior New York robbery conviction must be assumed to be third-degree New

York robbery which could be committed without the violent force. *Id.* The district court ordered Mr. Johnson to be resentenced on all counts in accordance with the sentencing package doctrine. *Id.*

In preparation for Mr. Johnson's resentencing hearing on May 14, 2018, the United States Probation Office recalculated Petitioner's sentencing guidelines without the armed career criminal mandatory minimum sentence or guideline enhancement, and further determined that the career offender sentencing enhancement likewise no longer applied to Petitioner. *Id.* As a result, Petitioner's amended advisory guideline range was 130 to 162 months—fully half of his previous mandatory guideline range of 262 to 327 months. *Id.*

The district court rejected Petitioner's argument that his sentence of 300 months for the bank robbery count should be reduced because he would still be subject to mandatory life under § 3559 absent his plea agreement and found it was appropriate to resentence Petitioner based on the sentence he had agreed to in that plea agreement. App. 7a. In so holding, the district court rejected Petitioner's argument that his plea agreement was based on his eligibility under ACCA and the career offender mandatory guideline range. *Id.* The result was a finding that Petitioner's New York third-degree robbery conviction did not qualify as a predicate offense for ACCA, or the career offender guideline, but that it did qualify under the enumerated offense clause of 18 U.S.C. § 3559(c). *Id.* Reimposing "the parties' prior recommended sentence" was necessary to

"honor[] the original plan . . . [that] the parties agreed to." App. 7a-8a. Petitioner timely appealed to the Fourth Circuit.

B. The Fourth Circuit Decision Below

The Fourth Circuit upheld the district court's sentencing decision because it agreed that third-degree New York robbery counted under the enumerated offense clause of is not an enumerated offense under of 18 U.S.C. § 3559. App. 8a. Because "New York robbery counts as an enumerated robbery offense . . . Johnson thus continued to receive the benefit of his original bargain." App. 8a. In coming to this conclusion, the court said it applied the categorical approach to determine if the New York robbery statute was a categorical match for the three enumerated robbery offenses in § 3559 (18 U.S.C. § 2111 (robbery in special maritime and territorial jurisdiction), 18 U.S.C. § 2113 (bank robbery and incidental crimes), or 18 U.S.C. § 2118 (controlled substance robbery)). In actuality, the panel looked to "congressional intent" to cover a broad group of offenses, and ignored "minor definitional tweaks or wrinkles in individual jurisdictions" to instead focus on the "essential nature" of the crime. App. 10a-11a.

Second, the panel effectively rewrote the enumerated offense clause to remove the significance of the specifically identified federal offenses. The panel looked to the prefatory language in the statute that explained that a "serious violent felony" includes "a Federal or State offense, by whatever designation and wherever committed" and noted "[t]his broad language has no counterpart in

ACCA, and was no doubt meant to capture a wide variety of state and federal offenses." App. 11a. As a result, the panel concluded that "[a] straightforward interpretation of this language calls upon courts to look to the essential nature of a crime, not to minor definitional tweaks of wrinkles in individual jurisdictions." *Id*. The court also found relevant that § 3559(c) referenced other federal robbery offenses using the words "described in" rather than "defined in" to support its conclusion that Congress meant to include the broadest possible definition of robbery. App. 11a-12a.

Finally, the panel dismissed the Petitioner's argument that New York robbery differed significantly from the federal robbery statutes identified in § 3559(c) because it lacked a presence requirement—something that all of the enumerated federal robbery statutes required. App. 16a-18a. "To rule otherwise would assume that Congress, through inclusive language, somehow meant to exclude the robbery statutes of almost twenty different states which may not have a presence requirement, but which do share with the referenced federal statutes the essential elements of taking from another by force and violence, or by intimidation." App. 17a.

REASONS FOR GRANTING THE PETITION

The Fourth Circuit's decision below created and exacerbated circuit conflict over the correct application of the categorical approach in general, and the interpretation of the § 3559(c) enumerated offense clause in specific.

First, the Fourth Circuit has fundamentally altered the nature of the categorical approach, creating a fracture with this Court's existing precedent and that from the other circuits on how the categorical approach is applied. When a statute requires the categorical approach, a court must evaluate whether "the state statute defining the crime of conviction" categorically matches a listed offense. *Moncrieffe v. Holder*, 569 U.S. 184, 191 (2013). In examining the prior state conviction, the court must "presume that the conviction rested upon [nothing] more than the least of th[e] acts criminalized and then determine whether even those acts are encompassed by the generic federal offense" referenced in the federal statute. *Id.* (internal quotations omitted). The Fourth Circuit decision compared the "essence" of New York robbery with the "essence of robbery as Congress described it in §3559(c)" and the "essential nature" of robbery. Left to stand, the panel opinion guts the categorical approach entirely and would undermine any predictability in what offenses qualify for sentence enhancements across a variety of statutes and sentencing guidelines. This directly impacts the ability of parties to successfully negotiate plea agreements.

Second, the Fourth Circuit opinion creates a conflict with how the Tenth Circuit has interpreted the enumerated offense clause of § 3559(c). Only the Tenth Circuit and Fourth Circuit have had the occasion to consider whether the categorical approach applies to § 3559(c) and both have concluded that it does—but they split on the relevant baseline of what is included in the enumerated offense

clause. *Cf.* App. 10a-12a with *United States v. Leaverton*, 895 F.3d 1251 (2018). The Tenth Circuit found that the federal generic offense of manslaughter was included and compared a state predicate to that federal generic offense, and found that the state offense was broader and therefore did not qualify. *Leaverton*, 895 F.3d at 1256-57. In contrast, the Fourth Circuit found that specifically enumerated federal robbery statutes were not akin to the generic offense of robbery but invoked an even broader definition—the "essential nature" of robbery with no clear limitations. App. 11a. Two different district courts in California have since taken the opposite approach of the Fourth Circuit, instead following the Tenth Circuit, comparing California robbery predicates to the specifically enumerated federal robbery offenses. *United States v. Minjarez*, 374 F.Supp.3d 977 (E.D. Cal. March 14, 2019); *Morrison v. United States*, No. 95-cr-708, 2019 WL 2472520 (S.D. Cal. June 12, 2019). The significance of this split will only increase now that Congress has amended the Controlled Substances Act to allow prior convictions for a "serious violent felony" to increase the applicable mandatory minimums, and tied the operative definition to 18 U.S.C. § 3559(c)(2).

A. This Court Should Resolve the Split Created by the Fourth Circuit as to Whether a Reviewing Court May Look Beyond the Elements of an Offense When Applying the Categorical Approach

This Court has "repeatedly held, and in no uncertain terms" that a prior state conviction cannot qualify as predicate to enhance a sentence "if its elements are broader than those of a listed generic offense." *Mathis v. United States*, 136 S. Ct.

2243 (2016). It is imperative that courts correctly apply the categorical approach when comparing a prior state conviction to the offenses enumerated in a federal statute because "allow[ing] a sentencing judge to go any further would raise serious Sixth Amendment concerns because only a jury, not a judge, may find facts that increase the maximum penalty." *Id.* at 2246. Where a state statute has multiple alternative elements, a sentencing court may look at a limited class of documents to determine what crime, with what elements, the defendant was convicted of. *Id.* Even in this scenario, the ultimate goal is to compare the crime the defendant was convicted of with the relevant generic offense. *Id.*

The categorical approach has come under fire for producing counter-intuitive conclusions about what offenses count as crimes of violence. The author of the panel opinion below previously concurred in another case to "express a general concern that the categorical approach to predicate crimes of violence is moving beyond what the Supreme Court originally anticipated" and to urge that the "categorical approach should be adapted to return to sentencing courts a greater measure of their historical discretion" because a "rigid categorical approach" has done damage to congressional intent. *United States v. Doctor*, 842 F.3d 306, 312-13, 317 (4th Cir. 2016) (Wilkinson, J., concurring); *see also United States v. Battle*, __F.3d__, 2019 WL 2426493, *2 n.2 (4th Cir. 2019) ("Through the *Alice in Wonderland* path known as the 'categorical approach,' we must consider whether Battle's assault of a person with the intent to murder is a crime of violence. . . .We

must look not to what Battle actually did. Instead, we must turn away from the facts of this case and consider how assault with intent to murder could realistically be committed in situations that have nothing to do with Battle"). And this Court very recently rejected the Government's attempt to abandon the categorical approach in its entirety in *United States v. Davis*, No. 18-431 __ S.Ct. __ (2019)—reaffirming that the categorical approach continues to apply to evaluate qualifying predicate offenses under 18 U.S.C. § 924(c).

Therefore, the panel decision below stands in stark contrast to the clear case law concerning application of the categorical approach. Like so many other statutes that apply recidivist penalties, 18 U.S.C. § 3559 is familiarly divided into an enumerated offense clause, a force clause, and a residual clause. The enumerated offense clause § 3559(c)(2)(F)(i) includes:

> a Federal or State offense, by whatever designation and wherever committed, consisting of murder (as described in section 1111); manslaughter other than involuntary manslaughter (as described in section 1112); assault with intent to commit murder (as described in section 113(a)); assault with intent to commit rape; aggravated sexual abuse and sexual abuse (as described in sections 2241 and 2242); abusive sexual contact (as described in sections 2244 (a)(1) and (a)(2)); kidnapping; aircraft piracy (as described in section 46502 of Title 49); robbery (as described in section 2111, 2113, or 2118); carjacking (as described in section 2119); extortion; arson; firearms use; or attempt, conspiracy, or solicitation to commit any of the above offenses.

The panel correctly found that the categorical approach was required to determine if a prior state offense qualified as a listed federal offense. But then the panel created a new test entirely by finding that the prior state offense should be

compared not to generic robbery, and not to the elements of the three specifically delineated federal robbery offenses, but instead to the "essential nature" of robbery "understood broadly." App. 10a. This new "essential nature" of robbery "understood broadly" has no contours other than to focus on "the essence of robbery as Congress described it in § 3559(c)." App. 13a. The Fourth Circuit found determinative that § 3559(c) included "prefatory language of greater rather than lesser inclusion" and that the enumerated robbery offenses reference federal robbery offenses using the words "described in" rather than "defined in." App. 11a. Finally, the court looked at the overlapping elements from the three listed federal offenses to create an omnibus general robbery offense that lacked any jurisdictional predicate offenses. This ignored both the fact that Congress listed some federal robbery statutes and not others (such as Hobbs Act Robbery under 18 U.S.C. § 1951) and the fact that Congress chose to list specific federal robbery statutes instead of using just the word "robbery," which it what Congress chose to do with other crimes such as kidnapping, extortion, and arson.

After this extended analysis, the Fourth Circuit determined that the "essence" of the federal robbery offenses Congress meant to conclude was "theft or attempted theft by use of force." App. 14a. Even though this would appear to mirror the generic definition of robbery, the panel was clear to find that this was *not* the case. App. 15a. This was a significant deviation considering the Second Circuit had already held that the underlying prior in this case, New York third-

degree robbery, was not a categorical match for the generic offense of robbery because it lacked a "presence requirement." *United States v. Pereira-Gomez*, 903 F.3d 115, 161 (2d Cir. 2018). Nevertheless, by redefining the categorical approach, the Fourth Circuit came to a significantly different conclusion. By overlooking the specific jurisdictional requirements within the specifically listed federal statutes and creating an omnibus robbery offense that was broader and distinguishable from generic robbery, the panel could conclude that "§ 3559(c) describes robbery with sufficient breadth to include New York robbery." App. 15a.

The result of the Fourth Circuit's gutting of the categorical approach is dangerously close to reproducing the due process concerns inherent to vague laws. The panel's comparison of the "essence" of New York robbery to the "essential nature" of robbery provides no reliable way to determine which offenses qualify as serious violent felonies for any statute that requires the categorical approach.

B. This Court Should Resolve the Split Between the Fourth and Tenth Circuits on How to Interpret the Enumerated Offense Clause in 18 U.S.C. § 3559(c)

The Fourth Circuit's opinion has created a split with the Tenth Circuit on how to interpret the enumerated offense clause of § 3559(c). Both courts have issued published opinions in the last year, but they differ sharply on whether the list of offenses Congress provides is a list of specific offenses with a discernable meaning, or whether they are merely indicative of a broad intent to include the essential nature of each offense. Because the First Step Act of 2018 just made the

definitions in § 3559(c) the basis for new sentencing enhancements for federal drug distribution offenses, this Court should resolve this split now.

The Tenth Circuit looked to the list of offenses in § 3559(c)(2)(F)(i) which included "manslaughter other than involuntary manslaughter (as described in section 1112)" and determined that textually the clause "as described in section 1112" modified only "involuntary manslaughter." *Leaverton*, 895 F.3d at 1256. As a result, "manslaughter" was not the offense described in § 1112 and instead treated the enumerated offense "as referring to the crime in 'the generic sense in which the term is now used in the criminal code of most State.'" *Id.* The Tenth Circuit reviewed the Model Penal Code definition of manslaughter as relevant to the generic offense and determined that the Oklahoma predicate offense did not qualify because, even though both included heat of passion offenses, the Oklahoma offense had been interpreted to not require an intent to kill. *Id.* Notably, the Tenth Circuit did not find relevant that the statute began with "prefatory language of greater rather than lesser inclusion" including "a Federal or State offense, by whatever designation, and wherever committed." *Cf. Id.* with App. 11a.

In contrast, the Fourth Circuit interpreted the inclusion of three specific federal robbery offenses as merely descriptive and not definitional for what "robbery" means for § 3559(c). But at the same time, the Fourth Circuit refused to find that Congress intended the generic definition of "robbery." The result is that under the Fourth Circuit's analysis of the enumerated offenses in § 3559(c) any

federal or state offense that calls itself murder, voluntary manslaughter, assault with intent to commit murder or rape, aggravated sexual abuse, sexual abuse, abusive sexual contact, kidnapping, aircraft piracy, robbery, carjacking, extortion, arson, firearms use, firearms possession counts as a serious violent felony.

Two district courts in California have disagreed. *See Minjarez*, 374 F.Supp.3d 977; *Morrison*, 2019 WL 2472520. Both the Eastern District of California and the Southern District of California have found that California second degree robbery does not categorically match the three specifically listed federal robbery offenses in § 3559 because California robbery includes "mere threats to property." *Minjarez*, 374 F.Supp.3d at 989; *Morrison*, 2019 WL 2472520 at *7. The Fourth Circuit approach would find that these offenses are covered by § 3559 because the essence of federal robbery offenses "is a theft or attempted theft by use of force." App. 14a. Unless this Court intervenes, § 3559, a significant statute that carries mandatory life penalties, will be interpreted differently in different circuits and defendants will be subject to drastically different outcomes across the federal court system.

C. The Questions Presented Are Important and Likely to Arise Frequently

The categorical approach is applied to numerous federal statutes and sentencing guidelines to determine whether or not prior offenses trigger enhancements. This same fundamental approach is routinely used by district courts for the ACCA, 18 U.S.C. § 924(c), 18 U.S.C. § 16, 18 U.S.C. § 2252, and the

career offender guideline U.S.S.G. § 4B1.2.

While in the past, the courts have infrequently been called upon to interpret § 3559(c), the recent amendment to the Controlled Substances Act has changed that. This amendment relies on the definition of "serious violent felony" from § 3559 for the meaning of the new "serious violent felony" mandatory minimum enhancement for drug crimes. In the fiscal year of 2016, § 851 Informations were filed in 757 drug trafficking cases nationwide. U.S. Sentencing Comm'n, *Application and Impact of 21 U.S.C. § 851: Enhanced Penalties for Federal Drug Trafficking Offenders*, July 2018. Critically, this data was *before* Congress amended 21 U.S.C. § 841 to increase applicable mandatory minimums where a defendant has a prior serious violent felony. After immigration cases, drug trafficking offenses were the most common federal crimes for the last fiscal year. U.S. Sentencing Comm'n, *Overview of Federal Criminal Cases, Fiscal Year 2018*, June 2019.

As a result, the proper interpretation of § 3559(c) will be an important and recurring issue. The looming specter of confusion over what offenses will trigger significant increases in applicable statutory minimums will have a coercive effect during plea bargaining. Plea bargaining is "not some adjunct to the criminal justice system; it *is* the criminal justice system." *Missouri v. Frye*, 132 S. Ct. 1399, 1407 (2012). Prosecutors already frequently file § 851 Informations with an offer to dismiss the information if a defendant will enter a guilty plea. In cases where an Information is not filed, defendants still bear the risk and uncertainty of knowing

that an enhancement may be filled if they do not plead guilty. This pressure to plead in exchange for dismissing, or never filing, an § 851 Information is largely invisible to the courts. Establishing the proper interpretation of § 3559(c) now will reduce the likelihood that defendants are pressured to plead guilty because of uncertainty over whether or not their prior offenses will qualify as serious violent felonies.

CONCLUSION

For the foregoing reasons this Court should grant the Petition for Writ of Certiorari.

Respectfully submitted,

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