

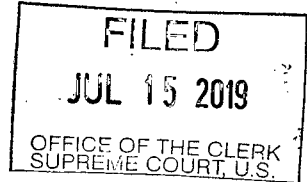
ORIGINAL

19 - 5278

No. \_\_\_\_\_

\_\_\_\_\_  
IN THE

SUPREME COURT OF THE UNITED STATES  
\_\_\_\_\_



DURYANE CHANEY  
\_\_\_\_\_

(Your Name)

— PETITIONER

vs.

UNITED STATES OF AMERICA  
\_\_\_\_\_

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

SIXTH CIRCUIT COURT OF APPEALS  
\_\_\_\_\_

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Duryane Chaney  
\_\_\_\_\_

(Your Name)

#31678-039

P.O. Box 1000  
\_\_\_\_\_

(Address)

Cresson, PA 16630  
\_\_\_\_\_

(City, State, Zip Code)

N/A  
\_\_\_\_\_

(Phone Number)

### **QUESTION(S) PRESENTED**

WHETHER THE DETERMINATION OF A SERIOUS DRUG OFFENSE UNDER THE ACCA REQUIRES THE SAME CATEGORICAL APPROACH USED IN THE DETERMINATION OF A VIOLENT FELONY, THE APPROACH JUST APPROVED IN DAVIS.

## 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:

## TABLE OF CONTENTS

OPINIONS BELOW .....	1
JURISDICTION.....	3
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED .....	4
STATEMENT OF THE CASE .....	5
REASONS FOR GRANTING THE WRIT .....	10
CONCLUSION.....	11

## INDEX TO APPENDICES

### APPENDIX A

Opinion of the United States Court of Appeals for the Sixth Circuit.

### APPENDIX B

Opinion of the District Court for the Eastern District of Michigan.

### APPENDIX C

Sixth Circuit Court of Appeals Order Denying Petition for Rehearing.

### APPENDIX D

### APPENDIX E

### APPENDIX F

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 <sup>A</sup>\_\_\_\_\_ 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☒ is unpublished.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 United States district court appears at Appendix <sup>B</sup>\_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_; 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☒ is unpublished.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.

## TABLE OF AUTHORITIES CITED

### CASES

	PAGE NUMBER
<u>United States v. Davis</u> , No. 18-431 (2019)	10, 11
<u>Johnson v. United States</u> , 133 S. Ct. 2251 (2015)	7, 10
<u>United States v. Mathews</u> , 689 F.App'x 840, 844-46 (6th Cir. 2017)	8
<u>Sessions v. Dimaya</u> , (2018)	10
<u>Shular v. United States</u> , currently on cert	11

### STATUTES AND RULES

Armed Career Criminal Act, 18 U.S.C. § 924(e)	5
-----------------------------------------------	---

### OTHER

## JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was March 11, 2019.

☐ 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: May 28, 2019, and a copy of the order denying rehearing appears at Appendix C.

☐ 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).

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

Fifth Amendment Righth to Due Process.



## STATEMENT OF THE CASE

When law enforcement officers searched Duryane Chaney's home in Detroit, Michigan, they found a loaded .38 revolver, cocaine, heroin, cocaine base, scales and narcotics paraphernalia. Chaney admitted the the gun belonged to him, and that he intended to distribute the drugs.

The gun was a problem for Chaney because, as a convicted felon with prior Michigan convictions for attempted unarmed robbery (1981) and assault with intent to do great bodily harm and felonious assault (1992), and a federal conviction for conspiracy to distribute cocaine in 2004, it was a crime for him to possess a firearm. Moreover, Chaney was on supervised release for the federal conviction when the gun and drugs were found in his home in February 2013.

Chaney waived indictment and was charged in an information with being a felon in possession of a firearm (count one); possession with intent to distribute cocaine (count two), cocaine base (count three), and heroin (count four); and possessing a firearm in furtherance of a drug trafficking crime (count five). Count one specified that Chaney was subject to sentencing under the Armed Career Criminal Act, 18 U.S.C. § 924(e), based on his prior convictions, including the 1981 attempted unarmed robbery conviction. Chaney acknowledged during the arraignment that count one required a minimum sentence of 15 year's imprisonment.

Chaney pleaded guilty to counts one and two pursuant to a plea agreement with the government, acknowledging again the he was subject to sentencing under the ACCA. The plea agreement listed

Chaney's attempted unarmed robbery conviction as a prior felony conviction. In exchange for Chaney's guilty plea, the United States agreed to dismiss the remaining counts, including two drug counts and the firearm charge in count five (which carried a mandatory minimum sentence of Five years, consecutive to any other sentence, up to life imprisonment). Chaney waived appeal if the sentence did not exceed 235 months imprisonment.

During the plea colloquy, the district judge again advised Chaney that count one required a minimum sentence of 15 years' imprisonment based on his prior felony convictions, including his attempted unarmed robbery conviction. Chaney told the court he had reviewed and discussed the charges, their sentencing consequences, and the plea agreement with his attorney and that he had no questions about them. Chaney admitted he had been convicted of the prior three felonies listed in the plea agreement (including the attempted unarmed robbery conviction) and the his plea required a mandatory minimum sentence of 15 years' imprisonment.

Despite his plea agreement with the United States, and his plea colloquy with the district judge, Chaney later objected to counting his attempted unarmed robbery conviction as a predicate violent felony under the ACCA. Chaney stated four bases for his objection: (1) the conviction occurred before the sentencing guidelines existed, (2) the charge had been "pled down" from armed robbery charge and he received a sentence of probation, (3) there was no physical force used in the crime, and (4) no

documentation showing the conduct underlying his conviction had been introduced. The government responded that Chaney's objection was a breach of plea agreement and attempted unarmed robbery qualified under the residual clause of the ACCA in any event. The court overruled Chaney's objection and found the attempted unarmed robbery qualifies under the elements clause: "Of course, a conviction for attempted unarmed robbery does involve the attempted use or threatened use of physical force. So it qualifies." The court imposed sentences of 188 months' imprisonment on the gun charge, and 120 months on the drug charge, to be served concurrently to each other but consecutive to his sentence for the supervise release violation. As provided in the plea agreement, the government moved to dismiss counts three, four and five.

Chaney filed a notice of appeal, despite his waiver, but his attorney filed a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967) and moved to withdraw. The Sixth Circuit Court of Appeals accepted the *Anders* brief, granting counsel's motion to withdraw, found that Chaney's appeal waiver precluded his appeal, and affirmed the district court's judgement.

Chaney filed a pro se motion to vacate his sentence pursuant to 28 U.S.C. § 2255 in December 2015. Chaney argued that this court's decision in *Samuel Johnson v. United States*, 133 S.Ct. 2251 (2015), holding the ACCA's residual clause is

unconstitutionally vague, means that his attempted unarmed robbery conviction no longer qualifies as a violent felony. Counsel later appeared for Chaney filed a new § 2255 motion, and later withdrew Chaney's pro se filings.

In his new, counsel assisted § 2255 motion, Chaney challenged his 1992 convictions for assault with intent to do great bodily harm and felonious assault, as well as his 1981 attempted unarmed robbery conviction. The United States argued that all three offenses qualify as a violent felony under the "elements clause" of the ACCA. Chaney filed a reply, and three more filings in support of his motion.

The district court denied Chaney's motion to vacate. Reviewing Michigan law, and the Sixth Circuit's decision in United States v. Mathews, 689 F. App'x 840,844-46 (6th Cir. 2017) (holding Michigan unarmed robbery qualifies as a violent felony under the elements clause of the ACCA), the court found that Chaney's attempted unarmed robbery conviction qualifies as a violent felony. Citing binding authority from its court, the court found that Chaney's conviction for assault with intent to do great bodily harm also qualifies as a violent felony. The district court therefore denied Chaney's motion to vacate, but issued a certificate of appealability only as to the question whether his attempt unarmed robbery conviction qualifies as a violent felony.

Chaney filed a timely notice of appeal. he later filed a notice in the Sixth Circuit stating the he did not seek to expand the certificate of appealability to additional issues.

On March 11, 2019, the Sixth Circuit issued an opinion denying COA. Chaney then filed a timely Petition for Rehearing that was ultimately denied and now files this timely Petition for Writ of Certiorari.

## REASONS FOR GRANTING THE PETITION

Petitioner asserts that his 2003 prior conviction for conspiracy to possess with intent to distribute cocaine was enhanced under the ACCA as a "serious drug offense" requires the same categorical approach used in the determination of a violent felony as United States v. Davis, No. 18-431 (2019).

In Davis, this Court most recently held that Section 924(c)(3)(B) is unconstitutionally vague, stating that "a vague law is no law" the vagueness doctrine rest on due process and separation of powers.

This Court recently applied the doctrine in two cases involving statutes that bear more than a passing resemblance to § 924 (c)(3)(B)'s residual clause Johnson v. United States, 576 U.S. \_\_\_, which address the residual clause of the Armed Career Criminal Act (ACCA), and Sessions v. Dimaya, which addressed the residual clause of 18 U.S.C. § 16.

The residual clause in each case required judges to use a "categorical approach" to determine whether an offense qualified as a violent felony or crime of violence. Judges had to disregard how the defendant actually committed the offense and instead imagine the degree of risk that would attend the idealized "ordinary cause" of the offense. Johnson. This Court held in each case that the imposition of the criminal punishment can not be made to depend on judge's estimation of the degree of risk posed by crimes imagined "ordinary case."

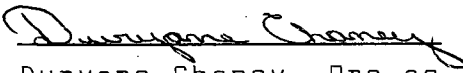
Here, petitioner contends that the same vagueness doctrine used in Davis, must also apply to "serious drug offenses" and that his petition be held in abeyance pending the outcome of Shular v. United States, thus providing petitioner an opportunity to amend his petition or provide petitioner the appropriate relief in light of Schular.

#### CONCLUSION

For all the forgoing reasons Petitioner request that his petition for Writ of Certiorari be held in abeyance.

Date: July 15, 2019

Respectfully Submitted,

  
Duryane Chaney, Pro se  
#31678-039  
FCI LORETTO  
P.O. Box 1000  
Cresson, PA 16630