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October 7, 2019

The Hon. Scott S. Harris
Clerk, Supreme Court of the United States
1 First Street, NE
Washington, DC 20543

Re: No. 19-6037, *Anzures v. United States*

Dear Mr. Harris:

I am writing this letter to call the Court's attention to a case similar to *Anzures's* which has been fully briefed and distributed for the Court's consideration at its Conference of October 10, 2019.

Like *Anzures*, the petitioner in *Levert v. United States*, No. 18-1276, was given an ACCA enhanced sentence. Like here, the district court in *Levert* used a prior conviction as an ACCA predicate. But case law post-dating the conviction made clear it is not a violent felony as defined by the ACCA's enumerated offense clause or the force clause. 18 U.S.C. § 924(e)(2)(B)(i-ii). After the ACCA's residual clause was invalidated by this Court in *Johnson v. United States*, 135 S.Ct. 2551 (2015), there is no other clause by which *Anzures's* New Mexico commercial burglary conviction or *Levert's* California robbery conviction become violent felonies. Yet because neither could prove their sentence was, in fact, based on the residual clause, the circuit courts did not relieve them of their ACCA enhanced sentences.

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Levert has asked this Court to decide how lower courts should address post-conviction claims brought under 28 U.S.C. § 2255 when the record is silent as to whether the judgment rests on a statutory clause that has been held unconstitutional or on another clause of the same statute. Pet. at i, 2. Anzures asks a similar question: Where the record is silent, is it right for lower courts to focus on the “relevant legal background” at the time of sentencing if doing so blatantly ignores controlling law in favor of now outdated earlier decisions, or should a court focus instead on a showing that the sentence was possibly predicated on a residual clause that is now unconstitutional?

Like Anzures, Levert argues this Court should grant relief because “no still valid provision of the statute [18 U.S.C. § 924(e)(2)(B)] can support the judgment.” Pet. at 6. He also gives comparable reasons for granting his writ. Both Anzures and Levert conclude that without this Court’s intervention, both are unjustly left without a way to set aside their unconstitutional sentences.

Anzures asks that this Court consider Levert’s petition and reply brief in deciding whether to grant his petition for a writ of certiorari.

Sincerely,

s/Alonzo J. Padilla

Alonzo J. Padilla

Assistant Federal Public Defender
Counsel for the Petitioner