NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

FRANKLIN ROOSEVELT MCGEE,

PETITIONER,

vs.

UNITED STATES OF AMERICA,

RESPONDENT.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

Whether a criminal offense that can be committed with a mens rea of recklessness qualifies as a "violent felony" for purposes of the Armed Career Criminal Act, 18 U.S.C. 924(e)(2)(B).

LIST OF PARTIES

All parties to the proceeding are listed in the style of the case.

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TABLE OF AUTHORITIES

Cases

Statutory Authority

Other Authority

[1] Available at: https://www.ussc.gov/sites/default/files/pdf/research-and-publications/quick-facts/Felon_In_Possession_FY18.pdf

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner, Franklin Roosevelt McGee, respectfully prays that a writ of certiorari issue to review the judgment below.

OPINION BELOW

The opinion below is available at via electronic database at McGee v. United States, No. 18-5517, 2019 U.S. App. LEXIS 32036 (6th Cir. Oct. 25, 2019), also submitted in Appendix A, electronically filed herewith.

JURISDICTION

On October 25, 2019, a three-judge panel of the Sixth Circuit Court of Appeals entered its opinion in McGee v. United States, No. 18-5517, 2019 U.S. App. LEXIS 32036 (6th Cir. Oct. 25, 2019). This Court has jurisdiction over this case pursuant to 28 U.S.C. § 1254(1).

STATUTES, ORDINANCES AND REGULATIONS INVOLVED

The Armed Career Criminal Act ("ACCA")

(1) In the case of a person who violates section 922(g) of this title and has three previous convictions by any court referred to in section 922(g)(1) of this title for a violent felony or a serious drug offense, or both, committed on occasions different from one another, such person shall be fined under this title and imprisoned not less than fifteen years, and, notwithstanding any other provision of law, the court shall not suspend the sentence of, or grant a probationary sentence to, such person with respect to the conviction under section 922(g).

(2) As used in this subsection . . .

(B) the term "violent felony" means any crime punishable by imprisonment for a term exceeding one year, or any act of juvenile delinquency involving the use or carrying of a firearm, knife, or destructive device that would be punishable by imprisonment for such term if committed by an adult, 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)(1), (2)(B).

STATEMENT OF THE CASE

This case presents a significant and frequently recurring question of criminal law that even the government has recognized requires this Court's review: whether a criminal offense that can be committed with a reckless mens rea qualifies as a "violent felony" for ACCA purposes. (See, e.g., Walker v. United States, S. Ct. No. 19-373, Govt.'s Resp. Pet. Cert., at 12-14 (filed Oct. 21, 2019) (stating issue is important and recurring, warranting this Court's review).)

Mr. McGee pled guilty to being a felon in possession of a firearm in 2008. See McGee, 2019 U.S. App. LEXIS 32036, at *2. Found to qualify as an armed career criminal, he received a sentenced of 180 months' imprisonment. Id. Two of his qualifying convictions were for Tennessee aggravated assault, one in 1986, and one in 2003. Id. at *3.

In his second motion for habeas relief under 28 U.S.C. § 2255, filed after this Court's decision in Johnson v. United States, 135 S. Ct. 2551 (2015), Mr. McGee argued in part that his 1986 and 2003 convictions for Tennessee aggravated assault did not qualify as ACCA predicates because the state could obtain a conviction by showing a mental state of mere recklessness. Id. at *1, 3. The district court denied Mr. McGee's motion, applying Circuit precedent from United States v. Verwiebe, 874 F.3d 258 (6th Cir. 2017). Id. at *3. Verwiebe reversed Circuit precedent, holding that crimes committed with a mental state of recklessness are predicate violent felonies under the ACCA. Id. (citing Verwiebe, 874 F.3d at 264). Combined with a conviction for aggravated robbery, the district court thus found that Mr. McGee had three predicate convictions for ACCA purposes. Id. at *3-4. The district court did, however, certify for appealibility the question of whether Tennessee aggravated assault is a violent felony under the ACCA because there was a petition for certiorari pending at the time in a case presenting the same question. Id.

at *4 (citing United States v. Harper, 875 F.3d 329, 330 (6th Cir. 2017) (citing Verwiebe, but calling it "mistaken"), cert. denied, Harper v. United States, 139 S. Ct. 53 (2018)).

On appeal, Mr. McGee's panel likewise found itself bound by Sixth Circuit precedent that holds that a Tennessee conviction for aggravated assault is a violent felony under the ACCA regardless of the potential for conviction for only a reckless aggravated assault. Id. at *2, 5-6. The panel stated that this Court's holding in Voisine v. United States, 136 S. Ct. 2272, 2280 (2016), overturned Circuit precedent. Id. at *6. The panel said that without an intervening decision from this Court or a decision from the Sixth Circuit sitting en banc, it was bound by the new Circuit precedent. Id. Hence, Mr. McGee's second motion for habeas relief under § 2255 was denied. Id. at *2, *7.

REASONS FOR GRANTING THE PETITION

A. There is a deep and widening Circuit split over the question regarding whether crimes with only a reckless mens rea should qualify as ACCA predicate convictions.

This case presents a deep and widely acknowledged circuit conflict on a question of statutory interpretation under the ACCA's definition of "violent felony," a provision that is of central importance in federal criminal sentencing, and which this Court has been frequently called upon to address. The government has acknowledged the importance of the question. Eight courts of appeals have addressed the question (splitting 5-3 in the government's favor), and an additional two courts of appeals are currently considering the question en banc. Perhaps most importantly, the answer to the question presented will affect the sentences of a broad group of criminal defendants. Given the depth of the conflict, there is no realistic possibility that it will be resolved without this Court's intervention.

This case could be the optimal vehicle for addressing and definitively resolving the question, though there are similar petitions for certiorari pending on this issue. It presents the question in the context of the ACCA's statutory text; there are no threshold questions about the scope of the applicable state law; and the resolution of the question presented will be outcome-dispositive. This case is just as compelling a candidate for the Court's review as the others and Mr. McGee respectfully submits that his petition for a writ of certiorari should be granted.

1. The legal backdrop for the case.

Federal law prohibits a person previously convicted of a felony from possessing firearms or ammunition. See 18 U.S.C. § 922(g)(1). Standing alone, such a conviction carries a maximum sentence of 10 years of imprisonment. See 18 U.S.C. § 924(a)(2). The ACCA, however, serves to "impos(e) enhanced punishment on armed career criminals" by requiring greater sentences for

firearms-possession offenses committed by individuals who have previously committed a certain number of predicate crimes. See Quarles v. United States, 139 S. Ct. 1872, 1879 (2019). In particular, under the ACCA a person who has previously been convicted of three or more "violent felon(ies)" faces a mandatory minimum sentence of 15 years of imprisonment for a possession offense under Section 922(g). See 18 U.S.C. 924(e)(1).

The ACCA defines a "violent felony" as follows. First, a "violent felony" includes any crime punishable by more than one year in prison that "has as an element the use, attempted use, or threatened use of physical force against the person of another." 18 U.S.C. 924(e)(2)(B)(i). This prong of the definition is commonly known as the "force" or "elements" clause. Second, a "violent felony" also includes any crime that is punishable by more than one year in prison that "is burglary, arson, or extortion, (or) involves use of explosives." 18 U.S.C. 924(e)(2)(B)(ii). This prong is commonly known as the "enumerated offenses" clause. As drafted, the ACCA also contained a third clause, which defined a violent felony to include crimes that "otherwise involve[d] conduct that presents a serious potential risk of physical injury to another." See id. (2014). This prong was commonly known as the "residual" clause.

In Johnson, this Court held that the residual clause was unconstitutionally vague. As a result, any crime that is not burglary, arson, or extortion and does not involve use of explosives must now satisfy the ACCA's force clause definition in order to qualify as a violent felony. This Court has held that Johnson applies retroactively. See Welch v. United States, 136 S. Ct. 1257, 1265 (2016). Thus, defendants sentenced under the ACCA before Johnson may challenge their sentences on the ground that their predicate offenses do not satisfy the now-narrowed definition of "violent felony."

To determine whether an offense qualifies as a "violent felony," this Court uses the familiar "categorical approach," examining the elements of the offense and not the particular facts underlying a defendant's previous conviction. See Begay v. United States, 553 U.S. 137, 141 (2008). The Court reviews the minimum conduct necessary for a conviction for the offense; only if that minimum conduct satisfies one of the ACCA definitions does the offense qualify as a predicate offense. Id. In applying the categorical approach, the Court first asks if the statute is divisible because it lists alternative elements. See Shepard v. United States, 544 U.S. 13, 25-26 (2005). If it is, the Court looks to a narrow set of documents to determine which alternative element formed the basis of the defendant's conviction; it then assesses the minimum conduct necessary for a conviction under that element. See id.; Descamps v. United States, 570 U.S. 254, 263-264 (2013).

In Leocal v. Ashcroft, 543 U.S. 1 (2004), this Court interpreted 18 U.S.C. § 16(a), which defines "crime of violence" for purposes of many federal statutes, holding that it does not encompass negligent conduct. See id. at 6-7, 9. Section 16(a) defines a "crime of violence" to include an offense that "has as an element the use, attempted use, or threatened use of physical force against the person or property of another." Aside from including offenses "against the . . . property of another," that provision is identical to the ACCA's force clause. See 18 U.S.C. § 924(e)(2)(B)(i). Arguing that negligent conduct sufficed in Leocal, the government contended "that the 'use' of force does not incorporate any mens rea component." 543 U.S. at 9. The Court declined to resolve whether "the word 'use' alone supplies a mens rea element," explaining that a focus on the word "use" was "too narrow" in the context of the statute. Leocal, 543 U.S. at 9. Instead, "(t)he critical aspect" of the provision was the limiting phrase "against the person or property of another." Id. The Court reasoned that, while it was possible to "actively employ

something in an accidental manner," it was "much less natural" to say that "a person actively employs physical force against another person by accident." Id. For that reason, the Court concluded that the provision required a "higher degree of intent" than negligence and encompassed only a narrower "category of violent, active crimes" for which Congress intended enhanced punishment. Id. at 9, 11. Following Leocal, the courts of appeals uniformly interpreted the ACCA's force clause to exclude offenses that could be committed with a mens rea of recklessness. See, e.g., Harper, 875 F.3d at 332 (collecting cases).

Then, in Voisine, this Court interpreted the definition of "misdemeanor crime of domestic violence" for purposes of a firearms-possession offense in section 922(g). See 136 S. Ct. at 2276. While the ACCA's force clause limits "violent felon(ies)" to offenses that require the use of physical force "against the person of another," the provision at issue in Voisine had no such restriction. It encompassed any offense (including a misdemeanor) that has as an element any "use or attempted use of physical force" by a person who has a specified relationship with the victim. 18 U.S.C. § 921(a)(33)(a)(ii). This Court held that offenses that could be committed with a mens rea of recklessness satisfied that broader definition. See Voisine, 136 S. Ct. at 2276. In so holding, the Court focused on the word "use," reasoning that a person can "use" force without the "purpose or practical certainty that it will cause harm." Id. at 2278-2279. For that reason, the Court concluded that reckless offenses involving the use of force were sufficient, even when the force used was not specifically directed at the person or property of another. See id. Significantly, in a footnote, this Court explicitly acknowledged that its decision "d(id) not resolve" the question whether the force clause at issue in Leocal encompassed offenses that could be committed recklessly, and it "d(id) not foreclose (the) possibility" that differences between the provisions might compel a different result. Id. at 2280 n.4.

2. The decision below implicates a conflict among the Courts of Appeals.

As numerous courts have recognized, there is an entrenched circuit conflict on the question whether offenses that can be committed recklessly satisfy the ACCA's force clause definition of "violent felony." Before this Court's decision in Voisine, all of the courts of appeals that had considered the question had agreed that such offenses do not qualify. Voisine, which interpreted a different statutory provision to encompass such offenses, brought an end to that consensus.

Since Voisine, three courts of appeals have held that the ACCA's force clause does not cover offenses that can be committed recklessly, and five others have reached the contrary conclusion. Two additional courts of appeals have agreed to consider the question en banc. In light of this playing field, the question presented undoubtedly requires resolution by this Court. Further percolation would serve no value and would merely waste judicial resources. Mr. McGee respectfully submits that the time is ripe for the Court to address the question presented and bring to an end the uncertainty in the lower courts.

a. In holding that an offense that can be committed with a mens rea of recklessness satisfies the ACCA's definition of "violent felony," the Sixth Circuit's decision squarely conflicts with the decisions of the First, Fourth, and Ninth Circuits.

The First Circuit has addressed the question presented on three separate occasions, each time unanimously holding that offenses that can be committed recklessly cannot qualify as ACCA "violent felon(ies)." In United States v. Windley, 864 F.3d 36 (2017), the First Circuit held that assault and battery with a dangerous weapon under Massachusetts law did not qualify as a "violent felony" because the offense could be committed with a mens rea of recklessness, which "does not require that the defendant intend to cause injury . . . or even be aware of the risk of serious injury that any reasonable person would perceive." Id. at 38. A mens rea of recklessness, the court explained, did not "fit with ACCA's requirement that force be used against the person of another."

Id. Similarly, in United States v. Rose, 896 F.3d 104 (1st Cir. 2018), the First Circuit held that assault with a dangerous weapon under Rhode Island law did not qualify as a "violent felony" under the force clause because there was at least a possibility that recklessness would be sufficient for conviction of that offense. See id. at 110, 114.

Both Windley and Rose relied heavily on the reasoning of Bennett v. United States, 868 F.3d 1 (1st Cir. 2017) ("Bennett I"), a decision that was later withdrawn as moot because the defendant died shortly before it was issued. See Bennett v. United States, 870 F.3d 34 (1st Cir. 2017) ("Bennett II"). In Bennett I, the First Circuit held that aggravated assault under Maine law did not satisfy the ACCA's force clause because it encompassed reckless conduct. See 868 F.3d at 4, 8. The court emphasized "the differences in contexts and purposes between the statute construed in Voisine and ACCA," and it also reasoned that the rule of lenity supported its holding. Id. at 23 (internal quotation marks and citation omitted). Those decisions, which were joined by five different judges and a retired justice (Souter), squarely conflict with the decision below.

The Fourth Circuit has similarly held that offenses that can be committed recklessly cannot qualify as ACCA "violent felon(ies)." In United States v. Hodge, 902 F.3d 420 (4th Cir. 2018), the government actually conceded, in briefing that followed this Court's decision in Voisine, that offenses that could be committed recklessly could not satisfy the ACCA's force clause. See 902 F.3d at 427. The Fourth Circuit agreed, holding that reckless endangerment under Maryland law was not a "violent felony." See id. The Fourth Circuit relied on an earlier concurring opinion by the majority of a panel that explained that the "ACCA force clause requires a higher degree of mens rea than recklessness." Id. (quoting United States v. Middleton, 883 F.3d 485, 498 (4th Cir. 2018) (Floyd, J., Joined by Harris, J. concurring) (alteration omitted).

The latest circuit to weigh in on the question presented is the Ninth Circuit, holding that offenses that can be committed recklessly cannot qualify as "violent felon(ies)" under the ACCA's force clause. In United States v. Orona, 923 F.3d 1197 (2019), the Ninth Circuit concluded that Voisine did not abrogate its prior precedent, which had held that such offenses do not qualify. See id. at 1203. The court emphasized that Voisine had expressly left open the question whether reckless conduct satisfied the provision at issue in Leocal, a provision that, like the ACCA's force clause, requires "the use . . . of physical force against the person . . . of another." See id. The Ninth Circuit recognized that its holding was contrary to that of several other circuits, but noted that it was consistent with the First Circuit. See id. 1202-1203. The government has filed a petition for rehearing en banc in Orona. (See United States v. Orona, No. 17-17508, Govt.'s Pet. for Reh'g, (filed Aug 22, 2019).

The Ninth Circuit reaffirmed this holding in United States v. Begay, 934 F.3d 1033 (9th Cir. 2019), and extended it to hold that extreme recklessness was insufficient to satisfy an almost identical force clause in the definition of another firearms offense. See id. at 1039-1040. While a dissenting judge disagreed with the majority's characterization of extreme recklessness, he did not dispute that standard recklessness would have been insufficient to satisfy the force clause. See id. at 1042-1-47 (N.R., Smith, J., dissenting). The Ninth Circuit has granted an extension for the government to file a petition for rehearing and/or rehearing en banc until Nov. 14, 2019. See United States v. Begay, No. 14-10080, 2019 U.S. App. LEXIS 26294 (9th Cir. Aug. 29, 2019).

b. In holding that an offense that can be committed with a mens rea of recklessness satisfies the ACCA's definition of "violent felony," the Sixth Circuit decision is in accord with the Fifth, Eighth Tenth or D.C. Circuits.

The Fifth Circuit has held that, in light of Voisine, the ACCA's force clause "includes reckless conduct." United States v. Burris, 920 F.3d 942, 951 (5th Cir. 2019). The court did not

consider the significance of the phrase "against the person of another" in the force clause and instead emphasized that "reckless conduct" can involve the "use" of force. Id. at 952.

Relying on Voisine, the Eighth Circuit likewise concluded, after just a single paragraph of analysis, that an offense that "required a mens rea of recklessness . . . qualified as a violent felony under the ACCA's force clause." United States v. Fogg, 836 F.3d 951, 956 (8th Cir. 2016), cert. denied, 137 S. Ct. 2117 (2017).

In United States v. Hammons, 862 F.3d 1052, 1056 (10th Cir. 2017), cert. denied, 138 S. Ct. 702 (2018), the Tenth Circuit reached the same conclusion, also with just a single paragraph of analysis. The court took the view that, for purposes of determining whether an offense is a valid ACCA predicate, "it makes no difference whether the person applying the force had the specific intention of causing harm or instead merely acted recklessly." Id. In a subsequent decision, the Tenth Circuit recognized that the First Circuit's intervening decision in Bennett "raise(d) questions" about its analysis, but concluded that it was "bound" by its decision in Hammons, absent intervention by this Court or the Tenth Circuit sitting en bnc. See United States v. Pam, 867 F.3d 1191, 1208 n.16 (10th Cir. 2017).

The D.C. Circuit has also held that, in light of Voisine, offenses that can be committed recklessly can qualify as "violent felon(ies)" under the ACCA's force clause. See United States v. Haight, 892 F.3d 1271 (D.C. Cir. 2018), cert. denied, 139 S. Ct. 796 (2019). In so holding, the D.C. Circuit "recognize(d) that the First Circuit ha(d) reached a contrary conclusion," but it "respectfully disagree(d)" with it. Id. at 1281.

c. Courts within the Eleventh and Third Circuits originally held that reckless crimes could not count as ACCA predicates, but have granted en banc review.

An Eleventh Circuit Panel originally held that offenses that can be committed recklessly cannot qualify as "violent felon(ies)" under the ACCA's force clause. See United States v. Moss, 920 F.3d 752, 754 (11th Cir. 2019). That opinion was vacated, however, because the Eleventh Circuit has determined to grant rehearing en banc. See United States v. Moss, 928 F.3d 1340 (11th Cir. 2019).

In the Third Circuit, a New Jersey Federal District Court concluded that an aggravated assault conviction was not a "crime of violence" for purposes of the identical force clause found in the Sentencing Guidelines at USSG § 4B1.2(a)(1), because the offense could have been committed recklessly. The government filed an appeal, and the Third Circuit sua sponte ordered an en banc hearing. See United States v. Santiago, No. 16-4194, Order Reh'g En Banc (3d Cir. filed June 8, 2018). Santiago was argued on October 16, 2019.

Whichever way the decisions in the Eleventh and Third Circuits go, it will only serve to deepen the rift between the Circuits. The Courts of Appeals have taken divergent and flatly inconsistent positions on whether offenses that can be committed recklessly qualify as "violent felon(ies)" under the ACCA's force clause. Several of those courts have expressly acknowledged the existence of the circuit conflict, which has only continued to deepen. The consequences of that conflict could not be more stark: if Mr. McGee's case had arisen in the First, Fourth, or Ninth Circuits, he would be home with his family today. Because his case arose in the Sixth Circuit, however, he faces the prospect of finishing the remainder of the 15-year mandatory minimum sentence imposed. Mr. McGee respectfully submits that the mature circuit conflict on the question presented warrants this Court's review.

3. The question presented is exceptionally important, warranting review in this case.

As the government has itself recognized, the question presented is tremendously important, with the ongoing conflict having a dramatic and disparate effect on scores of criminal defendants across the country. The Court's intervention is needed.

The question presented "recurs frequently and typically doubles a defendant's sentence." See Walker v. United States, 931 F.3d 467, 469 (6th Cir. 2019) (Kethledge, J., dissenting from denial of en banc rehr'g). Last year alone, more than 6,700 individuals were convicted under 18 U.S.C. § 922(g), and that number has been increasing. See U.S. Sentencing Comm'n, Quick Facts: Felon in Possession of a Firearm (Fiscal Year 2018). Hundreds of those offenders were given mandatory minimum sentences under the ACCA. Id.

From those numbers, as well as the relatively large number of reported cases addressing the question presented, there can be no doubt that the question will continue to recur frequently until this Court intervenes. The consequences for individual defendants are vast, with the answer to the question determining whether a defendant is subject to a mandatory 15-year minimum sentence, or what is often a substantially lower sentence. Id. (noting that the average ACCA sentence for a section 922(g) violation is 186 months, whereas the average non-ACCA sentence is 50 months).

What is more, the answer to the question presented will have a bearing on "various other provisions of the criminal code, as well as . . . the Sentencing Guidelines," Walker, 931 F.3d at 468 (Kethledge, J. dissenting), where Congress has employed the phrase "use of physical force against the person of another." See, e.g., Begay, 934 F.3d at 1038 (18 U.S.C. § 924(c)); United States v. Bettcher, 911 F.3d 1040, 1043 (10th Cir. 2018) (USSG § 4B1.2), petition for cert.

pending, no. 19-5652 (filed Aug. 16, 2019)[2]; United States v. Mendez-Henriquez, 847 F.3d 214, 220 (5th Cir.) (USSG § 2L1.2), cert. denied, 137 S. Ct. 2177 (2017); Fernandez-Ruiz v. Gonzales, 466 F.3d 1121, 1125 (9th Cir. 2006) (18 U.S.C. § 16(a)). Accordingly, it is no exaggeration to describe the provision at issue here as "one of the more important definitions in all of federal criminal law." Walker, 931 F.3d at 470 (Kethledge, J., dissenting from denial of rehearing en banc).

Note that undersigned counsel presented this question to the Court in January 2018, and certiorari review as denied. See Harper v. United States, 139 S. Ct. 53 (2018). Since the Court was squarely presented with the question in Harper, the circuit conflict has developed significantly: the Fourth and Ninth Circuit have now sided with the First, and the D.C. Circuit has now sided with the Fifth, Eighth and Tenth. Several judges within the Third and Eleventh Circuits have intimated that they would be on the side of the First, Fourth and Ninth, though these Circuits have now granted en banc review of the question. Indeed, the question presented has also been the subject of substantial en banc activity. As noted above, the en banc Third Circuit has already heard oral argument, and en banc petitions are still pending in the Ninth and Eleventh Circuits. In light of the extensive conflicting authority on both sides of the circuit conflict, there would be little value to additional percolation. Indeed, absent the Court's intervention, three courts of appeals will continue to expend considerable resources on en banc hearings, all to address a question that the Court will inevitably need to answer definitively. Even setting aside the vast personal stakes for "the defendants and families impacted" nationwide by the question in the interim, see Walker,

[2] This is another case in which the government has conceded that the issue is ripe for review by this Court. See Bettcher v. United States, S. Ct. No. 19-5652, Govt.'s Resp. Pet. Cert., at 6 (filed Oct. 21, 2019).

931 F.3d 470 (Stranch, J., dissenting from denial of rehearing en banc), considerations of judicial economy warrant immediate review.

In sum, this case presents the question whether a criminal offense that can be committed with a mens rea of recklessness can qualify as a "violent felony" under the ACCA's force clause. There is a deep and widely acknowledged circuit conflict on that question. Only this Court's intervention can resolve that stark conflict on the interpretation of "one of the more important definitions in all of federal criminal law." Only this Court can eliminate the uneven application of the ACCA to criminal defendants nationwide. Mr. McGee therefore respectfully requests this Court to grant his petition for certiorari and end the chaos in the lower courts on this important question.

CONCLUSION

For all of the foregoing reasons, Petitioner respectfully prays that this Court will grant certiorari to review the judgment of the Sixth Circuit in his case.

DATED: 31st day of October, 2019.

Respectfully submitted,

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