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VINCENT WILLIAMS, PETITIONER

vs.

UNITED STATES OF AMERICA, RESPONDENT

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

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QUESTIONS PRESENTED FOR REVIEW

In this habeas corpus/post-conviction, petition and question of applying the newly decided Supreme Court ruling of **Davis**, the Third Circuit Court of Appeals made an erroneous ruling by, in Vincent Williams' (Petitioner herein after referred to as "Mr Williams of Williams"); post-conviction denial, stating that "We make that determination largely for the reasons that the Government argued in its response below. Among other things (appellant) Mr Williams has shown no debateable basis to challenge his life sentences. (Appellant's) Mr Williams' remaining claims, including those he asserted in his motions for leave to file a second amended/supplemental memorandum in support of his §2255 motion and in the proposed memorandum itself, lack debateable merit as well. We further note that most of (appellant's) Mr Williams' claims either are untimely, see 28 USC §2255(f), or are unreviewable under the concurrent sentence doctrine in light of (appellant's) Mr Williams' multiple life sentences, See **Gardner v Warden Lewisberg USP**, 845 F.3d 374,378(3rd Cir. 2015) (emphasizing that relief under §2255 is limited to those "claiming the right to be released" from custody). In particular, (appellant's) Mr Williams' challenge to his conviction and current 10-year sentence under 18 USC §924(c) and (j) is not reviewable because success on that challenge would have no effect on his multiple consecutive and current life sentences." (Appendix A)

Moreover, the Third Circuit Court of Appeals never viewed Mr Williams post-conviction petition claims relating to his firearm conviction under 18 USC §924(c) and (j), in light of **Davis** or any newly decided Supreme Court decisions of **Johnson and Dimaya**. Which is in clear violation of this Court's recent ruling in the last term.

Mr Williams was also never provided the opportunity to challenge his life sentences, pursuant to his Violent Crimes in Aid of Racketeering ("VICAR") - 18 USC §1959(a)(1) in light of the Supreme Court decisions of **Johnson, Dimaya and Davis**; based on the VICAR's term "crime of violence" being substantial similar and, or identical to the definition struck down by this Court in **Johnson**, in order to overcome the Third Circuit Court of Appeals concurrent sentence doctrine that was applied to Williams' petition, and have the VICAR convictions and life sentences vacated.

Thus, the four questions presented is:

whether the Third Circuit Court of Appeals erred by not applying the Davis ruling to Mr Williams firearm habeas corpus petition

towards his firearm conviction under §924(c) and (j)?

whether the Third Circuit Court of Appeals erred by not allowing Williams to brief the issue of applying the concurrent sentence doctrine to Mr Williams post-conviction petition?

whether Mr Williams VICAR murder convictions should have been reviewed and vacated in light of Johnson, Mathis, Dimaya and Davis based on the unconstitutionally vague definition of a crime of violence?

whether the definition of murder for the purposes of 18 USC §1959 is void for vagueness after Johnson, Mathis, Dimaya and Davis?

PARTIES TO THE PROCEEDINGS IN THE COURT BELOW

1. Vincent Williams, Plaintiff/Appellant
2. United States of America, Respondent

TABLE OF AUTHORITIES

CASES

	<u>PAGE No.</u>
Benton v Maryland, 393 US 784(1969)	4
Cousins v United States, 2016 US Dist. LEXIS 109339(4th Cir.)	11
Descamps v United States, 133 S.Ct. 2276(2013)	7,11,12
DeSilva v United States, 2016 US Dist. LEXIS 151722(7th Cir.)	6
Duarte v United States, 289 F.Supp. 487(2nd Cir.)	6,8
Johnson v United States, 135 S.Ct. 2551(2015)	passim
Leocal v Ascroft, 543 US 1(2004)	passim
Mathis v United States, 136 S.Ct. 2243	6,7,8,
National Org. for Women, Inc. v Scheidler, 510 US 249(1994)	8
Rutledge v United States, 517 US 292(1996)	4
Sessions v Dimaya, 138 S.Ct. 1204(2018)	passim
Stone v Powell, 428 US 465(1976)	3
Taylor v United States, 495 US 575(1990)	2
United States v Carrillo, 229 F.3d 177(2nd Cir. 2000)	11,12
United States v Davis, 139 S.Ct. 2319(2019)	passim
United States v Fareed, 296 F.3d 243(4th Cir. 2002)	3
United States v Ferriero, 866 F.3d 107(3rd Cir. 2016)	8
United States v Ferguson, 60 F.3d 1(1st Cir. 1995)	4
United States v Fiel, 35 F.3d 997(4th Cir. 1994)	10
United States v Hopkin, 702 Fed. App. 335(6th Cir. 2017)	9
United States v Heilman, 377 Fed. Appx. LEXIS 157(3rd Cir. 2010)	7,11
United States v James, 2009 US Dist. LEXIS 23706(2nd Cir.)	9
United States v Le, 316 F. Supp. 2d 355(E.D. Va. 2004)	8
United States v Lee, 660 Fed. Appx. 8(2nd Cir. 2016)	8,9
United States v O'Neil, 2018 US Dist. LEXIS 29977(5th and 11th Cir.)....	9
United States v Mapp, 170 F.3d 328(2nd Cir. 1999)	9
United States v Marrero, 745 F.3d 389(3rd Cir. 2014)	8
United States v Robinson, 844 F.3d 137(3rd Cir. 2016)	2
United States v Ross, 801 F.3d 374(3rd Cir. 2015)	4,5

STATUTES

18 Pa. Stat. Ann. §2502(a)	8
18 USC §16	passim
18 USC §924(c)(1)(A)	passim
18 USC §1959(a)	passim
21 USC §846	3
28 USC §1257	1
28 USC §2255	passim

RULE

Rule 28(j)	2
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TABLE OF CONTENTS

	Page
OPINIONS BELOW.....	1
JURISDICTION	2
STATEMENT OF THE CASE & FACTS	1-2
REASONS FOR GRANTING THE WRIT	3
CONCLUSION	13

INDEX TO APPENDICES

Appendix A: Third Circuit Court of Appeals
Appendix B: District Court denial of relief
Appendix C: Mr. Williams Jury Instructions

No.

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VINCENT WILLIAMS,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

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

BRIEF FOR THE PETITIONER

Opinions Below

The final judgment and decree rendered by the Third Circuit Court of Appeals on August 16, 2019, denying Williams' writ of review the district court's denial of post-conviction relief is attached as Appendix A. The December 10, 2018, district court's denial of habeas corpus relief is attached as Appendix B.

**STATEMENT OF THE GROUNDS ON WHICH THE
JURISDICTION OF THE COURT IS INVOKED**

The Third Circuit Court of Appeals issued its denial of Williams' writ of review on August 16, 2019 and that ruling became final on that date. This Court has jurisdiction under 28 USC §1257 to review this petition.

STATEMENT OF THE CASE

On June 20, 2019 Mr Williams filed a habeas corpus petition pursuant to 28 USC §2255(f)(3). In that petition, Mr Williams argued that his conviction and sentence on Count 16, 18 USC §924(c)(1)(A) and (j), should be vacated in light of the *Johnson v United States*, 135 S.Ct. 2551(2015). Moreover, several months later

after this Court's decision in **Sessions v Dimaya**, 138 S.Ct. 1204(2018); Mr Williams filed a pro se Amended/Supplemental Memorandum of Law In Support of his §2255(f)(3) petition to against his claim that under the two Supreme Court opinions in **Johnson and Dimaya** that his conviction and sentence on Count 16 should be vacated along with his life sentences under the Racketeering and VICAR convictions.

On December 10, 2018 the district court denied this Section 2255(f)(3), Title 28 petition along with a denial of a certificate of appealability. This denial was based on the Government's argument that **Johnson or Dimaya** didn't apply to firearm offenses under §924(c)(1)(A), nor did the categorical approach apply to contemporaneous offenses such as §924(c)(1)(A). The Government argument was grounded on the Third Circuit Court of Appeals precedential ruling in **United States v Robinson**, 844 F.3d 137 (3rd Cir. 2016), the court held that the defendant's conviction for Hobbs Act robbery was a crime of violence under the elements clause of Section 924(c)(3)(A), where the two offenses were tried contemporaneously and the defendant was convicted of both convictions. In reaching this conclusion, the court considered the origin and reasons for the "categorical" approach announced by the Supreme Court in **Taylor v United States**, 495 US 575(1990), and determined that it did not apply where, the Section 924(c) charge is tried contemporaneously with the predicate crime of violence. **Id. at 143.**

In February of 2019, Mr Williams appealed this decision, and asked to be granted a certificate of appealability on several issues dealing with the firearm conviction, VICAR convictions and conspiracy to distribute a controlled substance conviction - which related to his RICO conviction. Soon after, this Court decided **United States v Davis**, 139 S.Ct. 2319(2019); which struck down the residual clause in §924(c)(3)(B), and decided that the categorical approach applied to the predicate offenses in §924(c)(1)(A). Mr Williams then filed a Rule 28(j) letter, asking the Third Circuit to view his request for a COA under the **Davis** decision. The Third Circuit did not.

On August 16, 2019, the Third Circuit denied any request or review for a COA, on the grounds that - **largely for the reasons that the Government argued in its responses.** The Government argument and response to Williams request for a COA was contrary to the holding of this Court in **Davis**.

REASONS FOR GRANTING THE WRIT

I. WHETHER THE THIRD CIRCUIT COURT OF APPEALS ERRED BY NOT APPLYING THE DAVIS RULING TO MR WILLIAMS HABEAS CORPUS PETITION TOWARDS HIS FIREARM CONVICTION UNDER §924(c)(1)(A) and (j)?

Mr Williams seeks the Court's intervention to prevent a manifest injustice, and to reaffirm or order the Third Circuit Court of Appeals to apply the newly decided holdings of **Davis** towards his §924(c)(1)(A) and (j) conviction.

This Court should grant certiorari, vacate the court of appeals' decision, and remand for further proceedings because the court of appeals erred in denying his Section 2255 petition without applying the **Davis** ruling to his post-conviction motion. By the Third Circuit Court of Appeals basing its decision on the Government's argument that was totally contrary to the **Davis** decision this creates a situation where the court of appeals is not in conformity with the law of the land. **United States v Fareed**, 296 F.3d 243,247(4th Cir. 2002)(federal appellate court is "bound by Supreme Court dicta almost as firmly as by the Court's outright holdings, particularly when the dicta is recent and not enfeebled by later statements"). This action by the Third Circuit creates an appearance of non-conformity with this Court's authority, views and orders.

Moreover, the question here is whether the Third Circuit erred by not applying the **Davis** ruling to Mr Williams' firearm conviction , pursuant to 18 USC §924(c)(1)(A) and (j), This answer is yes.

Accordingly, with this guidance of the Supreme Court's authority being the law of the land, Mr Williams respectfully asks the Court to reverse the Third Circuit's decision to deny Williams relief.

II. WHETHER THE THIRD CIRCUIT COURT OF APPEALS ERRED BY NOT ALLOWING WILLIAMS TO BRIEF THE ISSUE OF APPLYING THE CONCURRENT SENTENCE DOCTRINE TO MR WILLIAMS POST-CONVICTION PETITION?

This Court recognized long ago that "the core purpose of habeas corpus, essential to the proper functioning of a "free society," to "safeguard" against the wrong of "an unconstitutional loss of liberty." **Stone v Powell**, 428 US 465,491 n.31 (1976). That purpose is being thwarted in the Third Circuit in what ultimately amount to a suspension of the writ of habeas corpus in Mr Williams' case.

It is critical for this Court to reaffirm its precedence so that Mr Williams

may be able to argue in his §2255 motion, that an "unconstitutional loss of liberty" has occurred in his case. For the simple fact that, he could have shown to the Third Circuit Court of Appeals that the **Johnson and Dimaya, (and now Davis)** decisions had a tremendous affect on his firearm, RICO and VICAR convictions - which had an effect on the life sentences.*

Accordingly, Mr Williams had filed several, timely, claims in his certificate of appealability request. Which, Mr Williams argued that VICAR murder was not a crime of violence, the residual clause in §924(c)(3)(B) was unconstitutional and the federal drug statute, 21 USC §846, did not qualify as Racketeering Activity for the purpose of a §1959 offense.

The Third Circuit declined to view any of these claims because in its view, Mr Williams was not "claiming the right to be released from custody". (**Appendix A-pg. 2**) This decision was in clear violation of this several opinions and authority of this Court's ruling in **Rutledge v United States, 517 US 292,293(1996)**(refusing to apply concurrent sentence doctrine because potential future adverse use of conviction, such as delay of parole eligibility or increased sentence under recidivist statute for future offense, necessitated review); see also **Benton v Maryland, 395 US 784, 790-791 & n.6(1969)**(refusing to apply concurrent sentence doctrine because defendant might face adverse collateral consequences from potential future use of conviction under habitual offender statute); in addition see, e.g., **United States v Ferguson, 60 F.3d 1,4 n.5 (1st Cir. 1995)**(refusing to apply concurrent sentence doctrine because defendant might face adverse collateral consequences from challenged conviction). Moreover, the Third Circuit strayed from these rulings in a substantial way, as if the court of appeals were going rogue against the Highest Court of the land. A defendant, specifically Mr Williams, can no longer apply for a habeas corpus/post-conviction petition, under §2255(a) or (f), if he or she is not challenging the entire criminal conviction(s) and asking to be "released from custody". **United States v Ross, 801 F.3d 374,382(3rd Cir. 2015)**(Because we believe the burden of a special assessment -

* Mr Williams would've argued if allowed by the Third Circuit that not allowing a challenge to his VICAR convictions and sentence would present "adverse collateral consequences". For the simple reason that, the life sentences under the VICAR convictions were based on unconstitutionally vague language. In addition, he would've argued that the remaining life sentence under the Tampering with a Witness offense, Count 11, could not stand because the federal murder definition and elements were never found by the jury.

even one imposed in conjunction with a wrongful conviction - does not amount to "custody," **Ross** is not "claiming the right to be released" from "custody" and his special assessment cannot serve as the basis for a claim under section 2255.) This ruling by the Third Circuit Court of Appeals goes against all long held practices and precedence of this High Court. In addition, it goes against the plain text of §2255(a): **A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.**

Letting the Third Circuit apply the **Ross** opinion to defendants, specifically Mr Williams, would render the habeas corpus/post-conviction statutory avenue for relief null and void. This defiant act may be very close to "suspension of the writ of habeas corpus" for a certain class of defendants in the Third Circuit.

Further, by the Third Circuit harsh stance against Mr Williams, he was not allowed to brief and argued that an adverse collateral consequence occurred. An unconstitutional loss of liberty, as towards challenging the very life sentences which the Third Circuit refused to view the §2255 petition on. As stated before, Mr Williams would've argued that VICAR murder convictions were erroneous and could not be upheld. For the simple reason that, the VICAR murder convictions had to be vacated because they were based on unconstitutionally vague grounds.

Therefore, Mr Williams asks the Court to grant review, vacate the Third Circuit Court of Appeals opinion and reverse the **Ross** decision.

III. WHETHER MR WILLIAMS VICAR MURDER CONVICTIONS SHOULD HAVE BEEN REVIEWED AND VACATED IN LIGHT OF JOHNSON, MATHIS, DIMAYA AND DAVIS BASED ON THE UNCONSTITUTIONALLY VAGUE DEFINITION OF A CRIME OF VIOLENCE IN THE VICAR OFFENSE?

Mr Williams seeks the Court's power and prestige to prevent a manifest injustice, and to establish once and for all whether the **Johnson, Mathis, Dimaya and Davis** rulings that struck down the unconstitutionally vague definition of a

crime of violence applies to the VICAR offense.

The Court should grant certiorari, vacate the court of appeals' decision, and rule on whether the lower courts erred in denying Williams relief.

The question here is whether Mr Williams VICAR murder convictions should have been reviewed and vacated in light of this Court's decision in **Johnson, Mathis, Dimaya and Davis** based on the unconstitutionally vague definition of a "crime of violence" in the VICAR offense. This answer is yes.

Accordingly, in light of the intervening changes in the law involving **Johnson, Mathis, Dimaya and Davis** extending to numerous federal offenses that had set forth the term "crime of violence," and later determining them to be unconstitutionally vague; Mr Williams can show that his VICAR convictions in Counts 10, 15 and 22 must be vacated. For the simple reason that the federal offenses under VICAR conspiracy and murder -- 18 USC §§1959(a)(1) and (5), incorporates the definition of "crime of violence" set forth in 18 USC §16. **Leocal v Ashcroft, 543 US 1,6(2004)** (Title 18 USC §16 was enacted as part of the Comprehensive Crime Control Act of 1984, which broadly reformed the federal criminal code in such areas as sentencing, bail, and drug enforcement, and which added a variety of new violent and nonviolent offenses. §1001(a), 98 Stat. 2136. Congress employed the term "crime of violence" in numerous places in the Act, such as for defining the elements of particular offenses, see, e.g., 18 USC §1959(prohibiting threats to commit crimes of violence in aid of racketeering activity), or for directing when a hearing is required before a charged individual can be released on bail, see §3142(f)(requiring a pretrial detention hearing for those alleged to have committed a crime of violence). Congress therefore provided in §16 a general definition of the term "crime of violence" to be used throughout the Act. See §1001(a), 98 Stat. 2136. Section 16 has since been incorporated into a variety of statutory provisions, both criminal and noncriminal.). Therefore, with that being the case, Mr Williams could not be alleged to have committed a "crime of violence", by using unconstitutionally vague statutory terms, which is a necessary element to violate the VICAR offenses of conspiracy and murder. **DeSilva v United States, 2016 US Dist. LEXIS 151722(7th Cir. 2016)**(The term "acts that constituted the crime of violence" means the elements of the crime. In turn, "[e]lements are the constituent parts of a crime's legal definition-the things the prosecution must prove to sustain a conviction." **Mathis v United States, 136 S.Ct. 2243,2248, 195 L.Ed. 2d 604(U.S. 2016)** citing Black's law Dictionary 634 (10th ed. 2014).).

**(A) Mr Williams' VICAR murder convictions incorporated
the unconstitutionally vague language**

Thus, in order to be convicted for a VICAR murder offense it must be established and proved that a defendant committed a "crime of violence". Further, a VICAR conviction requires a proof of five elements: (1) there was an enterprise; (2) that engaged in racketeering activity; (3) affecting interstate commerce; **(4) and the defendant committed a crime of violence;** (5) for the purpose of gaining entrance to or increasing or maintaining his position in the enterprise. **United States v Heilman, 3777 Fed. App. 157(3rd Cir. 2010)** The fourth element, specific to the definition for a "crime of violence", is the key **"statutory"** element in determining if the VICAR offense has been committed by any defendant. **Johnson** and its progeny determined that this term, "crime of violence", set forth in 18 USC §16(b) was unconstitutionally vague. The district court read this same unconstitutionally vague definition for a crime of violence to Mr Williams federal jury. **See Appendix C** This instruction and language was read to the jury, in order for the Government to satisfy and prove the fourth, statutory, element of the VICAR murder offense; as required by law.

Furthermore, Mr Williams can not or should be allowed to be convicted and sentenced to three (3) life sentences based on a statutory element of VICAR murder, who's term of "crime of violence," is unconstitutionally vague.

**(B) Mr Williams' VICAR murder convictions must be vacated
in light of Johnson, Dimaya, Mathis and Davis
because VICAR murder is not a crime of violence**

This Court is familiar with the §1959(a)(1). This statute, defining violent crimes in aid of racketeering activity lists elements in the alternative, defining different section 1959 offenses based on the predicate violent crime. Therefore, the Court can use the modified categorical approach in determining if Mr Williams' VICAR convictions are crimes of violence under §16(a) or (b).

Under the modified categorical approach, the court looks at the charging documents to determine that Mr Williams was convicted of murder in aid of racketeering, in violation of §1959(a)(1). See **Descamps, 133 S.Ct. at 2284-85.**

Section 1959 reaches the generic conduct described therein, without concern

for the labels a state may use in criminalizing the conduct that qualifies as a VICAR offense.* **United States v Le**, 316 F.Supp. 2d 355,362(E.D. Va. 2004). Thus, to determine if the alleged VICAR predicate satisfies this elements of §1959 offense, the conduct must look at the elements of the VICAR predicate as it is generically defined. See also **United States v Ferriero**, 866 F.3d 107(3rd Cir. 2016).

The Third Circuit Court of Appeals provides guidance in this area of how a generic murder is defined. **United States v Marrero**, 745 F.3d 389,400(3rd cir. 2014) (we hold that murder is generically defined as causing the death of another person "either" intentionally, during the commission of dangerous felony, or through conduct evincing reckless and depraved indifference to serious dangers posed to human life.)

Jurors are never asked to specify which means of murder that a person is responsible for under VICAR. A victim can be murdered intentionally, by accident or for the purpose to further a particular enterprise endeavor. Rather, all of the terms and means, and motives go to the jury in one clump. **Duarte v United States**, 289 F. Supp. 487,491(2nd Cir.)(This subsection is found in Chapter 95 of Title 18, captioned "racketeering." It provides that a violator shall be punished "for murder, by death or life imprisonment, or a fine uder this title, or both..." §1959(a)(1), an intergal part of the anti-racketeering statute, draws no distiction between murder in the first and second degrees.)

**(1) VICAR does not require a mens rea of violent
force to be committed**

We can easily say that VICAR murder doesn't meet the criteria. For the simple reason that, VICAR murder/generic murder can be satisfied by an accidental/unintentional murder and, or by a non-violent act of poisoning a person. **United States v Lee**, 660 Fed. Appx. 8,16(2nd Cir. 2016)(murder in aid of racketeering is a * The Pennsylvania law of murder, 18 Pa. Cons. Stat. Ann. §2502(a), was read to the jury. This was so, even though circuit law didn't call for such and VICAR does not require the State law elements or evidentiary procedures to be applied and, or used in an effort to find a defendant guilty under the VICAR statute. See **National Org. for Women, Inc. v Scheidler**, 510 US 249(1994).

felony murder, the elements of purpose or motivation need only be shown with respect to the underlying felony - in this case, the robbery.). **United States v O'Neil**, 2018 US Dist. LEXIS 29977(5th and 11th Cir.)(defendant's conviction for second-degree felony murder under Washington is not a crime of violence for purposes of Section 4B1.1). Thus, this example alone disqualifies VICAR murders from qualifying as a "crime of violence" under §924(c) "force clause"; which explained beforehand requires violent force, and an intentional state of mind to commit a violent act. Generic murder does not require intentional murder to be convicted upon. **United States v Hopkin**, 702 Fed. Appx. 335,337(6th Cir. 2017)(Generic murder includes unintentional (e.g., reckless types of murder.)

Thus, its clear that the VICAR statute is written and interpreted broadly. With this broad interpretation, unintentional murders have upheld convictions under the VICAR statute - Section 1959(a)(1). See **United States v Mapp**, 170 F.3d 328, 335-336(2nd Cir. 1999)(We do not believe that section 1959 reaches only murders that were committed intentionally. Instead, it is sufficient for the government to prove that the defendant committed murder -- however that crime is defined by the underlying state or federal law -- and that he engaged in the conduct that resulted in murder, however defined with the purpose or motivation prescribed in the statute.) Moreover, the statute dictates that an accidental killing/generic murder that was committed negligently could qualify, in order to produce a conviction. Under these circumstances, VICAR cannot qualify under the 'force' clause because it could be committed by accident, even when your not trying to directly violate or commit a VICAR murder. Thus, by these circumstances being able to dictate the conviction, the **Leocal** decision clearly says that that type of reckless conduct cannot qualify as a "crime of violence" under §924(c)(3)(A). **Leocal at 8-9**.

With committing murder by accident or reckless disqualifying the VICAR offense, and by also being allowed to be convicted under the statute by committing this offense by, a non-violent act of, poisoning also closes this inquiry. **United States v James**, 2009 US Dist. LEXIS 23706(2nd Cir. 2009)(Somaipersuad died of a mixture of acute alcoholism and clorpromazine.). In the **James** decision, there were two victims who had been poisoned. The victims had been killed without anyone, the perpetrator, committing any violent act to complete the crime. Which is completely consistent with the VICAR statute. The VICAR's statutory language clearly does not require any type of physical force or anything dealing with violent force behavior in orde

to uphold a conviction. Thus, just because the title might have an ordinary person think otherwise still doesn't make it a fact since the title cannot control the language of a statute. **United States v Fiel**, 35 F.3d 997, 1005(4th Cir. 1994)

Thus, Mr Williams ask whether the VICAR murder convictions should have been reviewed and vacated in light of this Court decisions pursuant to **Johnson** and its progeny, and if so, Mr Williams respectfully asks the Court to reverse the Third Circuit Court of Appeals decision to deny relief.*

IV. WHETHER THE DEFINITION OF MURDER FOR THE PURPOSES OF 18 USC §1959 IS VOID FOR VAGUENESS AFTER JOHNSON, MATHIS, DIMAYA AND DAVIS?

The legal principles that governs the use of are well-known and firmly rooted in this Court's jurisprudence. It was just a few months ago that this Court once again reaffirmed its stance against the Government's enforcement of vague laws that deprives people of fair notice of the conduct it punishes or is so standardless that it invites arbitrary enforcement. **United States v Davis**, 139 S.Ct. 2319(2019).

Accordingly, Mr Williams was not giving a fair notice of how "murder" was supposed to be defined for the purposes of VICAR - 18 USC §1959. Thus, murder is not defined under Section 1959(a)(1). The definition of "murder" that led to Mr Williams' mandatory life sentences, on Counts 10, 15 and 22, is just such a vague law.

Moreover, the Third Circuit Court of Appeals should have let Mr Williams brief and respond to the concurrent sentence, procedural defense of the Court, then Mr Williams would've been able to argue that his life sentences should have been vacated in light of the vagueness of the definition of murder.

Section 1959(a)(1) provides, in pertinent part:

(a) Whoever, for the purpose of gaining entrance to or maintaining or increasing position in an enterprise engaged in racketeering activity,

* In Count 15, VICAR murder, is the predicate offense that's attached to the §924(j) conviction; which Mr Williams argued to the Third Circuit wasn't a crime of violence. Mr Williams takes that stand here also that, if VICAR murder is not a crime of violence it cannot be used to uphold the firearm conviction in Count 16.

murders - any individual in violation of the laws of any State or the United States, shall be punished --

(1) for murder, death or life imprisonment, or a fine under this title, or both.

"Murder" is never defined. And, the federal courts are split on the issue of how to apply and define "what type of murder" the courts assume should be followed. **Cousins v United States**, 2016 US Dist. LEXIS 109339(4th Cir. 2016)(Section 1959 reaches the generic conduct described therein, without concern for the labels a state may use in criminalizing the conduct that qualifies as a VICAR predicate. **United States v Le**, 316 F. Supp. 2d 355, 362(E.D. Va. 2004)); But see, **United States v Carrillo**, 229 F.3d 177, 184-85(2nd Cir. 2000)(a defendant charged with a state law murder offense might have a variety of legal theories that negates the offense. For example, the killing might have been accidental, the defendant might have a valid defense of self-defense. Without a complete charge on the elements of the offense, the jury would not have the tools to determine whether the state offense had, in fact, been committed.). Thus, the Third Circuit Court of Appeals have a precedence to follow the "generic" definition approach. **Ferriero at 107(3rd Cir. 2016)**. See also **Heilman at 204**. The Court used the **Carrillo** approach in Mr Williams' case, and defined murder under Pennsylvania law, 18 Pa. Cons. Ann. §2502.

These are the two arbitrary ways that the federal courts are employing because of the lack of defining murder. Both standards are erroneous, and fails to give "ordinary people fair notice of the content it punishes". Due to the layers upon layers of conduct to constitute the crime. In addition, the federal courts have for years been inviting and handing out arbitrary enforcement because of VICAR murder's lack of definition. Under the principles set forth in **Johnson**, 135 S.Ct. 2552, **Sessions v Dimaya**, 138 S.Ct. 1204(2018), and **Davis**, 139 S.Ct. 2319, this lack of definition of "murder" is void for vagueness.

In **Johnson**, the Court held that the residual clause of the definition of 'violent felony' in the Armed Career Criminal Act was void for vagueness. That clause defined violent felony as including any felony that "involves conduct that presents a serious potential risk of physical injury to another." 18 USC §924(e)(2)(B)(ii). The Court found this definition to be unconstitutionally vague because it forced courts to go beyond the elements of the crime and instead determine "whether

the prior crime 'involves conduct' that presents too much risk of physical injury." **Id. at 2557(emphasis in original)**. The problem was the "indeterminacy of the wide-ranging inquiry." **Id. at 2557**.

Here, too, because murder statutes vary between states, and the VICAR murder law is silent as to a definition of murder - including whether it includes differing degrees of murder or whether it is the generic form of murder versus murder enhancements - the statute, §1959(a)(1), is impermissibly vague and violates due process. For the simple fact that, courts are powerless to determine the actual definition because there were none prescribed by Congress in the statute.

In **Dimaya**, the Court concluded that the residual clause in the definition of "crime of violence" within the criminal code, 18 USC §16(b), was also void for vagueness. It noted that "references to a 'conviction,' 'felony,' or 'offense'... are read naturally to denote the crime as generally committed." **Id., 138 S.Ct. at 1217** (citations and internal quotation marks omitted).

Determining what a VICAR murder offense is, then, requires the same categorical approach and weaving through loop holes that fatally flawed the statute at issue in **Dimaya (and in Johnson and Davis as well)**. This is particularly true in light of "the utter impracticability of requiring a sentencing court to reconstruct, long after the original conviction, the conduct underlying that conviction." **Johnson, 135 S.Ct. at 2562**, as well as the "serious Sixth Amendment concerns" that would arise from having the judge make those factual determinations. **Descamps v United States, 570 US 254, 269(2013)**.

In **Davis**, the Court invalidated the residual clause of the definition of 'crime of violence' in 18 USC §924(c)(3)(B). It reiterated that "the imposition of criminal punishment can't be made to depend on a judge's estimation of the degree of risk posed by a crime's imagined 'ordinary case.'" **Id., 139 S.Ct. at 2326**. In the context of §1959(a)(1), of course, the judge is evaluating not the degree of risk posed, but the connection - that is, the relationship - between the defendant's 'conduct' and enterprise. The same problems that sounded the death knell for the statutes at issue in **Johnson, Dimaya and Davis**, require the definition of murder in §1959(a)(1) to be held void for vagueness as well.

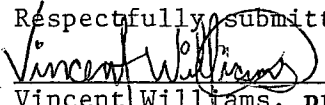
Thus, with the term "murder" under the VICAR offense being unconstitutionally vague, Mr Williams respectfully asks this Court to vacate his VICAR convictions in Counts 10, 15 and 22 and reverse the Third Circuit Court of Appeals decision, and

, or grant him the necessary relief required by law.

Conclusion

The petition for a writ of certiorari should be granted, the judgment of the Court of Appeals vacated, and the case remanded for further proceedings in light of the fact that **Johnson** and its progeny should be applied to Mr Williams habeas corpus petition on collateral review.

Respectfully submitted,

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