NO: 19-6979

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2019

JOASSAINT JOSIAH ARISTIL,

***Petitioner*,**

v.

UNITED STATES OF AMERICA,

***Respondent*.**

On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Eleventh Circuit

PETITIONER'S CORRECTED REPLY TO THE UNITED STATES' BRIEF IN OPPOSITION

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Reply to the Brief for the United States in Opposition

The Court should grant review to decide whether intimidation requires "the use, attempted use, or threatened use of physical force against the person or property of another," within the meaning of 18 U.S.C. § 924(c)(3)(A).

1. In the Brief for the United States in Opposition ("BIO"), the government argues that Mr. Aristil waived the claim herein by entering a guilty plea in the district court. The government is incorrect.

In *Class v. United States*, 138 S.Ct. 798 (2018), the Court reaffirmed the long-standing rule that "a guilty plea does not bar a claim on appeal 'where on the face of the record the court had that no power to enter the conviction or impose the sentence.'" *Id.* at 805 (quoting *United States v. Broce*, 486 U.S. 563, 569 (1989)). *See also Menna v. New York*, 423 U.S. 61, 62 n.2 (1975) (holding that a double-jeopardy claim survives a guilty plea).

The government makes a milquetoast attempt to distinguish *Class*, but cannot meaningfully do so. Its assertion that Mr. Aristil "admitted" that carjacking qualifies as a predicate crime of violence merits little response. *See* BIO 7-8. As the Court made clear just last term, whether an offense qualifies as a crime of violence under 18 U.S.C. § 924(c)(3) is determined using the categorical approach. *See United States v. Davis*, 139 S. Ct. 2319 (2019). *See also id.* at 2328 ("And everyone agrees that, in connection with the elements clause, the term "offense" carries the first, "generic" meaning."). It is a question of law, not fact. *See id.*

Like the constitutional challenge in *Class* and the double jeopardy claim in *Menna*, Mr. Aristil's claim that 18 U.S.C. § 2119 does not satisfy the use-of-force clause in 18 U.S.C § 924(c)(3)(A), does not contradict any factual allegation in the indictment or admitted at the plea colloquy. It is entirely consistent with Mr. Aristil's admission to the alleged facts, and can "be resolved without any need to venture beyond the record." *Class*, 138 S. Ct. at 804 (distinguishing *Broce*, *supra*). Hence, the claim is not waived; the issue was decided on the merits by the Court of Appeals; and the argument is ripe for review by this Court.

2. On the merits, the government's primary argument against granting review is simply that the Court has denied review in the past. BIO at 8-9 and n.2. But this just proves that Mr. Aristil has raised a persistent question of law, which affects numerous defendants and is likely to continue generating litigation until it is resolved by the Court.

3. Finally, this case presents an ideal vehicle to resolve the question of whether an offense committed by intimidation satisfies the "use-of-force" clause in 18 U.S.C. § 924(c)(3)(A). Mr. Aristil's appeal is before the Court on direct review, and avoids many of the procedural hurdles that accompany habeas proceedings. Furthermore, Mr. Aristil was convicted of **only** the carjacking and the corresponding § 924(c) offense. So, there will be no questions about prejudicial or harmless error, should the Court decide that 18 U.S.C. § 2119 does not categorically satisfy the use-of-force clause. This case thus provides an opportunity to clearly and definitively resolve the important question of federal law presented herein.

CONCLUSION

For the reasons stated herein and in Mr. Aristil's Petition for Writ of Certiorari, the Court should grant a writ of certiorari to the United States Court of Appeals for the Eleventh Circuit.

Respectfully submitted,

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