No. _____

In the Supreme Court of the United States

KEITH A. JAMES,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

PETITION FOR WRIT OF CERTIORARI

CLAUDE J. KELLY
FEDERAL PUBLIC DEFENDER
EASTERN DISTRICT OF LOUISIANA
SAMANTHA J. KUHN
COUNSEL OF RECORD

500 POYDRAS STREET, SUITE 318
HALE BOGGS FEDERAL BUILDING
NEW ORLEANS, LOUISIANA 70130
(504) 589-7930
SAMANTHA_KUHN@FD.ORG

COUNSEL FOR PETITIONER

QUESTION PRESENTED

The "force clause" of the Armed Career Criminal Act ("ACCA") defines "violent felony" as a felony that "has as an element the use, attempted use, or threatened use of physical force against the person of another." This Court has clarified that "the phrase 'physical force' means violent force—that is, force capable of causing physical pain or injury to another person," explicitly distinguishing other forms of *non*-physical force, such as "intellectual force or emotional force." *United States v. Johnson*, 559 U.S. 133, 138 (2010).

Louisiana's robbery statute criminalizes unlawful takings accomplished by the "use of force or intimidation." Louisiana caselaw makes it clear that the "force or intimidation" element is satisfied when a defendant impersonates a police officer and presents an intimidating "aura of authority" to procure the victim's property. Louisiana caselaw also makes it clear that the intimidation element can be satisfied based solely on a victim's subjective and nonspecific feeling of "being intimidated" without any actual threat by the offender. Thus, the question presented is:

Does a prior offense categorically qualify as a violent felony under ACCA's force clause if it only requires a use of "intimidation" that can be satisfied by the offender's impersonation of an authority figure, or based solely on the victim's subjective, generalized feeling of "being intimidated" without any threat of physical force?

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

IN THE
SUPREME COURT OF THE UNITED STATES

KEITH A. JAMES,
Petitioner,
v.

UNITED STATES OF AMERICA,
Respondent.

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

PETITION FOR WRIT OF CERTIORARI

Petitioner Keith James respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit.

JUDGMENT AT ISSUE

Mr. James pled guilty to possessing a firearm after being convicted of a felony, and the district court sentenced him to 188 months of imprisonment following its determination that he qualified as an Armed Career Criminal under 18 U.S.C. § 924(e) ("ACCA"). Mr. James challenged the district court's ACCA application on appeal, and a panel of the Fifth Circuit Court of Appeals affirmed his judgment in a published opinion on February 18, 2020. *See United States v. James*, 950 F.3d 289 (5th Cir. 2020). Mr. James filed a petition for rehearing en banc, which was denied on July 9, 2020. A copy of the panel's final judgment is attached to this petition as an appendix.

JURISDICTION

The judgment of the Fifth Circuit Court of Appeals was entered on February 18, 2020. Mr. James filed a timely petition for rehearing en banc on March 17, 2020, after receiving a two-week extension. The petition for rehearing en banc was denied on July 9, 2020. Mr. James's petition for a writ of certiorari is timely filed pursuant to Supreme Court Rule 13 because this petition is being filed within 90 days after the entry of the Fifth Circuit's order denying a timely petition for rehearing. This Court has jurisdiction under 28 U.S.C. § 1254(1).

FEDERAL STATUTES INVOLVED

18 U.S.C. § 924(e)(1) provides, in relevant part:

> 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 . . . such person shall be fined under this title and imprisoned not less than fifteen years . . . .

18 U.S.C. § 924(e)(2)(B)(i) defines "violent felony" as:

> 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 . . . has as an element the use, attempted use, or threatened use of physical force against the person of another[.]

STATEMENT OF THE CASE

In 2018, Keith James pled guilty to one count of being a felon in possession of a firearm, in violation of 18 U.S.C. § 922(g)(1). Although that conviction generally carries a maximum statutory penalty of ten years of imprisonment, pursuant to 18 U.S.C. § 924(a)(2), the Armed Career Criminal Act ("ACCA") imposes a statutory minimum of fifteen years of imprisonment (and a maximum of life) if the offender has three prior convictions for "serious drug offenses" or "violent felonies." 18 U.S.C. § 924(e)(1). Prior to Mr. James's sentencing, U.S. Probation determined that he qualified for the ACCA enhancement based on his prior state convictions for armed robbery in Louisiana.[1]

Under Louisiana law, armed robbery is an unlawful taking "from the person of another or that is in the immediate control of another, by use of force or intimidation, while armed with a dangerous weapon." La. REV. STAT. § 14:64. Probation determined that Louisiana armed robbery qualifies as a "violent felony" under ACCA's "force clause," which requires that the offense "ha[ve] 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). Mr. James objected to the enhancement, arguing that the "force or

---

[1] Probation also determined—and the district court agreed—that Mr. James's prior convictions for purse snatching qualified as "violent felonies" under ACCA. On appeal, however, the government conceded that Louisiana purse snatching does not qualify as a "violent felony" but argued that the error was harmless in light of its position that armed robbery so qualified. *See* Brief of Appellee, *United States v. James*, No. 18–31069, 2019 WL 1760436, at *26–27 (5th Cir. Apr. 17, 2019). The Fifth Circuit agreed that any error was harmless once it determined that Louisiana armed robbery qualifies as a violent felony under ACCA's force clause. *James*, 950 F.3d at 291 n.1. Accordingly, the sole question presented in this petition relates to the Fifth Circuit's force clause analysis for the robbery statute.

intimidation" element in Louisiana's robbery statute does not satisfy the force clause under the categorical approach because it "does not require the violent force necessary to satisfy the force clause of ACCA," particularly in light of this Court's clarification of the scope of the force clause in *United States v. Johnson*, 559 U.S. 133 (2010) ("*Johnson I*"). Probation maintained its position, relying on the Fifth Circuit's decision in *United States v. Brown*, 437 F.3d 450 (5th Cir. 2006), to conclude that the circuit court had already "ruled directly on the issue" and found that Louisiana robbery qualifies as a violent felony under ACCA.[2]

Importantly though, the Fifth Circuit's decision in *Brown* pre-dated this Court's clarification of the scope of the force clause in *Johnson I*, as well as its invalidation of the residual clause in *Johnson v. United States*, 135 S. Ct. 2551 (2015) ("*Johnson II*"). Indeed, the *Brown* court expressly relied on the now-invalid residual clause for its holding. *See Brown*, 437 F.3d at 452, 452 n.2 (relying on ACCA's residual clause as well as Louisiana's "crime of violence" definition, which encompasses offenses involving force against property and its own "substantial risk" requirement, to hold that robbery by intimidation qualifies as a violent felony); *see also* Appellant's Brief, *United States v. James*, No. 18–31069, 2019 WL 1058342, at *13–18 (5th Cir.

[2] Armed robbery is identical to the crime of "simple robbery" in Louisiana except for the presence of a dangerous weapon, which does not have to be visible or known to the victim. *Compare* La. REV. STAT. § 14:64 (Louisiana armed robbery), *with* La. REV. STAT. § 14:65 (Louisiana simple robbery); *see also State v. Johnson*, 368 So. 2d 719, 721 (La. 1979). Because the requirement of a weapon is independent from the "force or intimidation" element, and that added element cannot make an otherwise insufficient predicate into a violent felony, *see Stapleton*, 440 F.3d at 703, the force clause analysis discussed in this petition applies to Louisiana robbery generally.

Mar. 4, 2019) (discussing *Brown* holding). Nevertheless, the district court agreed with Probation and applied the enhancement to Mr. James, sentencing him to 188 months of imprisonment for his § 922(g) conviction. The district court also overruled Mr. James's related objections to his Guidelines calculation, which were similarly based on the improper classification of his prior convictions as "violent felonies" or "crimes of violence."

Mr. James appealed the district court's ACCA determination, arguing that the Fifth Circuit's 2006 decision in *Brown* is no longer binding or valid in light of this Court's decisions in *Johnson I* and *Johnson II*. He also cited several Louisiana state cases demonstrating that the "force or intimidation" element in the state's robbery statutes encompasses a broader scope of conduct than ACCA's force clause, including cases where the element was satisfied by an offender's impersonation of a police officer, and where sufficient "intimidation" was found based solely on the victim's subjective feelings of fear without any threatening action by the offender.

The Fifth Circuit panel affirmed the district court's ruling, holding that "Louisiana armed robbery is a violent felony under the ACCA's force clause." *James*, 950 F.3d at 294. The court concluded that it was bound by its previous ruling in *Brown* and rejected Mr. James's argument that *Brown* was abrogated by this Court's holdings in the *Johnson* cases. In reaching that conclusion, the panel relied on this Court's recent holding in *Stokeling v. United States*, 139 S. Ct. 544, 550 (2019), that the force clause "encompasses robbery offenses that require the criminal to overcome the victim's resistance." *See James*, 950 F.3d at 293. The panel then analogized

Stokeling to two Louisiana Supreme Court decisions from the 1980s that discussed, in general terms, the distinction between the state's robbery and theft statutes—specifically, the idea that robbery contemplates the use of "some energy or physical effort . . . in overcoming the will or resistance of the victim" and the legislature's apparent intent to emphasize "the increased risk of danger to human life posed when a theft is carried out in face of the victim's opposition." *James*, 950 F.3d at 293 (quoting *United States v. Leblanc*, 506 So. 2d 1197, 1200 (La. 1987) and *State v. Mason*, 403 So. 2d 701, 704 (La. 1981)).

The panel did not address the subsequent state caselaw explicitly holding that "[r]esistance by the victim and the use of physical force by the perpetrator are not necessary to complete a simple robbery." *State v. Jones*, 767 So. 2d 808, 810 (La. App. 2000); *see also State v. Green*, No. 2015-KA-0308, 2015 WL 9260586 (La. App. 2015); *State v. Davis*, 111 So. 3d 100 (La. App. 2012). Nor did it discuss in any detail the state caselaw cited by Mr. James showing that the "force or intimidation" element of Louisiana's robbery statute has been applied to a broader scope of conduct than that encompassed by the force clause. Instead, the panel only briefly acknowledged that two of the state cases cited by Mr. James involved "no direct threat of force" before simply stating that those cases "do not demonstrate that *Brown* has been overruled by subsequent precedent" without further explanation. *James*, 950 F.3d at 293.

Mr. James filed a petition for rehearing en banc, urging that the panel's precedential ruling conflicts with this Court's ruling in *Johnson I* in multiple ways and that the panel's failure to consider Louisiana courts' applications of the state's

robbery statute conflicts with Supreme Court and Fifth Circuit precedent regarding the proper application of the categorical approach. *See* Pet. For Rehr'g En Banc, *United States v. James*, No. 18–31069 (5th Cir. Mar. 17, 2020). The petition for rehearing en banc was denied on July 9, 2020.

REASONS FOR GRANTING THE PETITION

Prior to this Court's decision in *Johnson II*, ACCA's definition of "violent felony" included any felony that "involves conduct that presents a serious potential risk of physical injury to another" (known as the "residual clause"). In *Johnson II*, however, this Court held that "imposing an increased sentence under the residual clause of the Armed Career Criminal Act violates the Constitution's guarantee of due process." 135 S. Ct. at 2563. Thus, to qualify as a "violent felony" under ACCA today, a predicate offense must be one of the specific offenses enumerated in § 924(e)(2)(B)(ii) or have "as an element the use, attempted use, or threatened use of physical force against the person of another" (often referred to as the "force clause"). *See Stokeling*, 139 S. Ct. at 550-51.

To determine whether a state offense satisfies ACCA's force clause, courts must apply the "categorical approach" to determine whether the "minimum conduct criminalized by the state statute" satisfies the clause. *Moncrieffe v. Holder*, 569 U.S. 184, 191 (2013); *see also Taylor v. United States*, 495 U.S. 575, 600–02 (1990). "In determining what a state crime covers for purposes of this federal sentencing enhancement, federal courts look to, and are constrained by, state courts' interpretations of state law." *Stokeling*, 139 S. Ct. at 556 (Sotomayor, J., dissenting); *see also Moncrieffe*, 569 U.S. at 191 (stating that "there must be a realistic probability, not a theoretical possibility, that the State would apply its statute to conduct that falls outside of the generic definition of a crime" (internal quotation marks and

citations omitted)). Thus, if the statute has been applied by the state court to any conduct that would not satisfy ACCA's force clause, the entire statute fails as a whole.

In this case, the Fifth Circuit held that Louisiana robbery qualifies as a violent felony under the force clause based on its "use of force or intimidation" element. Louisiana caselaw, however, establishes that the "force or intimidation" element is satisfied—and a robbery committed—when a defendant commits an unlawful taking by impersonating a police officer, exhibiting an "aura of authority" that the defendant then uses to gain access to and misappropriate the victim's property. The caselaw also establishes that the "force or intimidation" element can be satisfied without any discernable threat of physical force, based solely on the victim's subjective, nonspecific feeling of "being intimidated" by the offender.

Thus, the Fifth Circuit's ruling violates the categorical approach and conflicts with this Court's decision in *Johnson I* in multiple ways, and it also contributes to complex circuit splits and conflict over the meaning and proper application of *Johnson I* to the force clause analysis. Accordingly, for the reasons discussed below, this Court's review is necessary to clarify the law and restore uniformity and fairness to federal sentencing.

I. The Fifth Circuit's precedential holding expands ACCA's force clause beyond the limitations that this Court explicitly defined in *Johnson I*.

In *Johnson I*, this Court explained that the phrase "physical force" in ACCA's force clause "plainly refers to force exerted by and through concrete bodies—distinguishing physical force from, for example, intellectual force or emotional force." 559 U.S. at 138; *see also Stokeling*, 139 S. Ct. at 152. The Court further explained

that "the phrase 'physical force' means *violent* force—that is, force capable of causing physical pain or injury to another person." *Johnson I* at 140 (emphasis added). Accordingly, if an offense can be achieved solely through the use of some non-physical, intellectual or emotional force, or if it can be accomplished without the offender using or threatning violent force, the statute is categorically broader than—and thus cannot qualify as a "violent felony" under—ACCA's force clause. Both are true of the "force or intimidation" element at issue in this case, rendering that element categorically broader than the force clause in multiple ways.

A. The "force or intimidation" element is broader than ACCA's force clause because it is satisfied when a defendant impersonates an authority figure.

First, Louisiana caselaw makes it clear that the "force or intimidation" element of the robbery statute is satisfied when a person commits an unlawful taking by impersonating a police officer, gaining access to the victim's property through an intimidating show of authority. This is precisely the type of intellectual or emotional force that this Court expressly distinguished and excluded from the reach of the force clause in *Johnson I.*

For example, in *States v. Thomas*, the Louisiana Supreme Court affirmed a simple robbery conviction when the defendant took money from the victims' vehicle "under the guise of searching the vehicle for drugs," and the victims did not even know they had been robbed until after they left the scene. *See State v. Thomas*, 447 So.2d 1053, 1055 (La. 1984). The encounter was initiated when the defendant, who had been driving behind the victims, pulled alongside their vehicle, showed a badge, and motioned for them to pull over. *Id.* at 1054. After they pulled over, he told them

that "they would be in serious trouble if they had any drugs in the truck," and the driver complied with the defendant's orders to stand behind the truck and look away while he searched the vehicle. *Id*. After they drove away, the victims discovered that money was missing from the vehicle and from the passenger's purse. *Id*. In affirming the robbery convictions, the Louisiana Supreme Court concluded that the victims "were clearly intimidated: first, by defendant's badge; second, by his threat of trouble; and third, by his general demeanor and aura of authority." *Id*. at 1055. The court further explained:

> [The defendant] took [the victims'] money under the guise of searching the vehicle for drugs, an action which might be expected of a police officer. The jury reasonably concluded that defendant made the stop, conducted the search, and misappropriated the money by use of intimidation. The face-to-face confrontation involved the increased risk of bodily harm which distinguishes robbery from theft.

Id.

Similarly, in *State v. Russell*, a Louisiana appellate court affirmed robbery convictions when the defendants approached the victims in a parked car, misrepresented themselves as police officers, removed the victims from the vehicle, asked one victim for his identification (which the victim provided), and then took the other victim's jewelry "[u]nder the guise of searching for stolen property." 607 So.2d 689, 692 (La. App. 1992). The court explained that "[t]he defendants' actions were very similar to the actions that would be expected of police officers who were conducting an investigation." *Id*. Accordingly, "any rational trier of fact could have found beyond a reasonable doubt that the defendants used force and/or intimidation to take the victims' property." *Id.*

B. The "force or intimidation" element is broader than ACCA's force clause because it can be satisfied without any actual threat of violent force.

The Fifth Circuit's ruling in this case also violates *Johnson I* because Louisiana caselaw makes it clear the "intimidation" element of the robbery statutes can be satisfied based solely on a victim's subjective, nonspecific feeling of "being intimidated" without any actual threat by the offender, much less a threat of *violent* physical force that would be sufficient to overcome a victim's resistance. *Cf. Stokeling*, 139 S. Ct. at 548.

For example, in *State v. Robinson*, a Louisiana appellate court affirmed a robbery conviction where the defendant snatched money from the cashier's hand at a drive-thru window as they were debating about what change was owed, and when the cashier asked the defendant to pull over and wait while he counted the cash in the register, the defendant merely "smiled and drove away from the scene." 713 So. 2d 828, 829–31 (La. App. 1998), *writ denied*, 794 So. 3d 782 (La. 2001). The court found that the state sufficiently proved the "force or intimidation" element beyond a reasonable doubt based solely on the fact that the cashier "was, by his own account, intimidated by defendant," even though "the evidence [did] not show that defendant used any threatening words or gestures." *Id.* at 830. Specifically, the cashier testified vaguely that the "[d]efendant's demeanor caused him concern," and that he "used slang or 'street' words that are not used in [the cashier's] neighborhood." *Id.*

Similarly, in *State v. Johnson*, a Louisiana appellate court affirmed a robbery conviction where the defendant snatched money from the victim in a bank, as she was counting it at a counter, and then ran out the door. 60 So.3d 43, 44 (La.

App. 2011). The defendant challenged the sufficiency of the evidence with respect to the "force or intimidation" element, arguing that "he made no gestures towards or physical contact with the victim and said nothing or did anything to intimidate the victim," and that "his actions of snatching the money from the bank counter before the victim could react" was insufficient. *Id.* at 45. In rejecting his argument, the court found that "the jury was reasonable in finding that [the] situation was, at the very least, intimidating" because the victim "was openly and quickly approached by a man who grabbed money from her," she "screamed at the time of the incident," and she "was crying and emotionally upset immediately after the incident." *Id.* at 46. In other words, the court found evidence sufficient to satisfy the "force or intimidation" element based solely on the victim's subjective response and the reasonably "intimidating" nature of the entire situation.

The cases described above demonstrate that the Fifth Circuit's ruling violates *Johnson I* by expanding the force clause to include offenses that can be committed by "intimidation" that is based solely on a show of authority or a victim's subjective feelings, without any threat of force. *Cf. United States v. Schaffer*, 818 F.3d 796, 798 (8th Cir. 2016) (quoting Black's Law Dictionary's definition of "threat" as a "communicated intent to inflict harm or loss on another"); *United States v. Jones*, 932 F.2d 624, 625 (7th Cir. 1991) (explaining that a "threatened use of force" must involve "a situation in which a defendant's conduct and words were *calculated to create the impression*' that the defendant may imminently use violent physical force"). This new precedent promises to have widespread impact, requiring the application of ACCA

not only to Louisiana robbery but to all prior offenses that contain a similarly overbroad "force or intimidation" elements. Thus, this Court's intervention is necessary to clarify the scope of the force clause and to ensure proper application of the categorical approach and this Court's own precedent.

II. The Fifth Circuit's ruling contributes to multiple circuit splits related to the application of *Johnson I* to the force clause analysis.

This Court's review is necessary not only to resolve this issue of critical importance for the Fifth Circuit, but also to resolve conflict among several federal Courts of Appeals. Indeed, the Fifth Circuit's ruling has created or contributed to multiple circuit splits that illustrate the disagreement and confusion among courts regarding the scope of the force clause and the impact of *Johnson I* in light of this Court's invalidation of the residual clause in *Johnson II*.

For example, while the Fifth Circuit has held that an "intimidation" element satisfied by impersonating a police officer satisfies ACCA's force clause, other circuit courts have excluded offenses that similarly can be committed by psychological force. In *United States v. Benjamin*, the Ninth Circuit determined that "felony sexual battery" did not categorically qualify as a violent crime under an identical force clause because the "unlawful restraint" element could be satisfied by either physical or "psychological" intimidation. 999 F.2d 544, at *2 (9th Cir. 1993) (unpublished). Quoting a California Court of Appeal, the Ninth Circuit explained:

> There are many situations where one is compelled, i.e., forced, to do something against one's will but the compulsion does not involve personal violence or threats of personal violence. *This is especially true when the person involved in the compulsion is an authority figure or posing as a person in authority.* The force is a psychological force compelling the victim to comply with the orders of the authority figure.

Id. (citation omitted) (emphasis added).

Similarly, in *United States v. Gillis*, the Eleventh Circuit joined other circuits in holding that federal kidnapping does not satisfy a similar force clause because it "can be committed using either physical or mental restraint." 938 F.3d 1181, 1210 (11th Cir. 2019) (emphasis in original). The court focused on the fact that the offense can be committed by "inveiglement or decoy"—*e.g.*, through deception or flattery—which only "require intellectual or emotional force, distinct from the requisite physical force." *Id.* at 1206. After reviewing caselaw applying the federal kidnapping statute in such situations, the court concluded that the caselaw "makes clear that federal kidnapping may be committed by means of inveiglement and/or decoy (without the use of physical force) and then maintained solely by psychological force." *Id.* at 1209. The court also cited a number of other circuits demonstrating that the kidnapping statute could be violated without the use of physical force. *Id.*

Additionally, several other Courts of Appeals have invalidated state robbery statutes in light of *Johnson I* and *Johnson II* because their force-related elements, like the "force or intimidation" element here, do not require an actual threat or use of violent physical force. *See, e.g.*, *United States v. Mulkern*, 854 F.3d 87, 93 (1st Cir. 2017) (holding that a robbery conviction in Maine was not a proper ACCA predicate post-*Johnson I* because Maine's highest court has held that *any* physical force with the required intent is sufficient for a conviction); *United States v. Winston*, 850 F.3d 677, 685 (4th Cir. 2017) (holding that Virginia robbery is not a violent felony under *Johnson I*); *United States v. Gardner*, 823 F.3d 793, 804 (4th Cir. 2016) (holding that

North Carolina common law robbery is not a violent felony under ACCA because the "minimum conduct necessary to sustain a conviction" does not necessarily include the level of force required under *Johnson I*); *United States v. Yates*, 866 F.3d 723, 727-28 (6th Cir. 2017) (holding that Ohio robbery does not require the level of force necessary under *Johnson I* to qualify as crime of violence under career offender guidelines); *United States v. Eason*, 829 F.3d 633, 641 (8th Cir. 2016) (holding that Arkansas robbery does not qualify as a violent felony under ACCA's force clause because Arkansas's definition of "physical force" as used in the statute "falls short of requiring" the degree of force required under *Johnson I*); *United States v. Parnell*, 818 F.3d 974, 979 (9th Cir. 2016) (holding that Massachusetts armed robbery is not a violent felony under ACCA because the force required is insufficient under *Johnson I*); *United States v. Starks*, 861 F.3d 306 (1st Cir. 2017) (same); *United States v. Jones*, 877 F.3d 884 (9th Cir. 2017) (holding that Arizona's armed robbery statute does not qualify as a violent felony under ACCA's force clause because it punishes conduct that does not involve the violent physical force described by *Johnson I*); *United States v. Walton*, 881 F.3d 768, 775 (9th Cir. 2018) (holding that Alabama armed robbery could not support sentencing enhancement under ACCA because "Alabama courts have affirmed robbery convictions . . . where the 'force' used was not violent under *Johnson I*").

Accordingly, the Fifth Circuit's precedential ruling deepens a broad and confusing circuit split that has emerged post-*Johnson II* over the proper interpretation and application of this Court's precedent in *Johnson I*. This circuit

conflict has created uncertainty and unwarranted sentencing disparities in federal sentencing. Therefore, this Court's guidance and intervention is necessary to restore uniformity and fairness to the federal court system.

CONCLUSION

For the foregoing reasons, Mr. James respectfully requests that his petition for a writ of certiorari be granted.

Respectfully submitted October 7, 2020,

/s/ Samantha Kuhn
SAMANTHA J. KUHN
Assistant Federal Public Defender
Counsel of Record
Office of the Federal Public Defender
500 Poydras Street, Suite 318
Hale Boggs Federal Building
New Orleans, Louisiana 70130
(504) 589-7930
samantha_kuhn@fd.org