No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

ALEX CORI TRIBUE,

***Petitioner*,**

v.

UNITED STATES OF AMERICA,

***Respondent*.**

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

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PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The Armed Career Criminal Act, 18 U.S.C. § 924(e), (ACCA) mandates a 15-year mandatory-minimum term of imprisonment for individuals convicted of violating 18 U.S.C. § 922(g) if they have at least three prior convictions for a "violent felony" or "serious drug offense." 18 U.S.C. § 924(e). Due process mandates that the government provide a defendant with notice prior to sentencing about what convictions it is relying on to justify the imposition of the enhancement. *United States v. Cobia*, 41 F.3d 1473, 1476 (11th Cir. 1995) ("[D]ue process requires reasonable notice of and opportunity to be heard concerning the prior convictions." (citing *Oyler v. Boles*, 368 U.S. 448, 452 (1962))); *United States v. Moore*, 208 F.3d 411, 414 (2d Cir. 2000); *United States v. O'Neal*, 180 F.3d 115, 125–26 (4th Cir. 1999).

The question presented, on which the circuits are split, is:

> Whether, on collateral review, the government may maintain a sentencing enhancement under the ACCA by substituting a different conviction that it did not provide the defendant with notice of at the original sentencing.

LIST OF PARTIES

Petitioner, Alex Cori Tribue, was the movant in the district court and the appellant in the court of appeals. Respondent, the United States of America, was the respondent in the district court and the appellee in the court of appeals.

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PETITION FOR A WRIT OF CERTIORARI

Alex Cori Tribue respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit.

OPINION AND ORDER BELOW

The Eleventh Circuit's published opinion affirming the denial of Mr. Tribue's motion to vacate his sentence under 28 U.S.C. § 2255, *Tribue v. United States*, 929 F.3d 1326 (11th Cir. 2019), is provided in Appendix B. The Eleventh Circuit's published order denying Mr. Tribue's petition for rehearing en banc, *Tribue v. United States*, 958 F.3d 1148 (11th Cir. 2020), is provided in Appendix A.

JURISDICTION

The Eleventh Circuit entered judgment on July 11, 2019. Mr. Tribue petitioned for rehearing en banc, and after an active member of the court called for a poll, the full court considered rehearing the case. On May 14, 2020, the Eleventh Circuit denied Mr. Tribue's petition.

This Court's March 19, 2020 order extended the deadline for all petitions for writs of certiorari to 150 days from the date of the lower

court order denying a petition for rehearing. This Court has jurisdiction under 28 U.S.C. § 1254(1).

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

The Fifth Amendment to the United States Constitution provides, in relevant part:

> No person shall be . . . deprived of life, liberty, or property, without due process of law.

Section 924(e) of Title 18 of the United States Code, the ACCA, provides:

> (1) In the case of a person who violates section 922(g) of this title and has three previous convictions . . . 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 . . . .
>
> (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 . . . .

Section 2255(a) of Title 28 of the United States Code, which addresses when an individual may collaterally attack a federal sentence, provides:

> 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.

INTRODUCTION

This case presents an acknowledged circuit split over whether a defendant's due process rights are violated when the government substitutes a different predicate conviction on collateral review to maintain an ACCA sentence. The Eleventh Circuit has said no; the Fourth Circuit has said yes; and the Seventh Circuit has said it depends. Because the question presented is exceptionally important, outcome determinative, and the circuit courts are unwilling to resolve their

disagreement, Mr. Tribue respectfully requests that this Court grant his petition for a writ of certiorari.

STATEMENT OF THE CASE

1. In 2013, Mr. Tribue pled guilty to a drug offense and possessing a firearm as a felon. Before sentencing, the United States Probation Office (Probation) prepared a presentence report (PSR) recommending that the district court sentence Mr. Tribue under the ACCA based on three Florida convictions—two for delivery of cocaine and one for fleeing and eluding. At sentencing, the district court adopted the PSR without change and sentenced Mr. Tribue under the ACCA to concurrent terms of 170 months' imprisonment.[1] Mr. Tribue did not seek appellate review of his conviction or sentence.

2. In 2016, Mr. Tribue moved to vacate his sentence under § 2255, arguing that his ACCA enhancement was unconstitutional in

[1] The district court could sentence Mr. Tribue below the ACCA's mandatory minimum sentence of 180 months' imprisonment because the government moved for a sentence reduction under 18 U.S.C. § 3553(e) in recognition of Mr. Tribue's substantial assistance. That said, without the ACCA enhancement, Mr. Tribue could not have received more than 120 months' imprisonment on his firearm count. Therefore, this appeal still has consequences for Mr. Tribue.

light of *Johnson v. United States*, 135 S. Ct. 2551 (2015), because his Florida conviction for fleeing and eluding no longer qualified as an ACCA predicate.[2] The government agreed that Mr. Tribue's fleeing and eluding conviction was no longer an ACCA predicate. But for the first time, it sought to rely on a third Florida conviction for delivery of cocaine. Mr. Tribue responded that the government waived reliance on that conviction by failing to rely on it at sentencing and that the government should thus be barred from relying on it in Mr. Tribue's § 2255 proceedings.

The district court denied Mr. Tribue's § 2255 motion. Appendix D. In its order, the district court determined that Mr. Tribue could not carry his burden under *Beeman v. United States*, 871 F.3d 1215 (11th Cir. 2017), to show that without the use of the residual clause he would have not been subject to the ACCA at sentencing. *Id.* Although the district court agreed that his fleeing and eluding conviction could qualify only

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[2] In *Johnson*, this Court struck down the ACCA's "residual clause," explaining that it violated the Due Process Clause because it "both denied[d] fair notice to defendants and invite[d] arbitrary enforcement by judges." 135 S. Ct. at 2557. The next year, this Court held that *Johnson*'s invalidation of the residual clause was a constitutional rule "that has retroactive effect in cases on collateral review." *Welch v. United States*, 136 S. Ct. 1257, 1268 (2016).

under the residual clause, it disagreed that the government had waived reliance on the third drug conviction. *Id.* Thus, because Mr. Tribue had three "serious drug offense[s]," he could not show he would have not been subject to the ACCA enhancement at sentencing. The district court also declined to issue a certificate of appealability (COA). *Id.*

3. Mr. Tribue filed a timely notice of appeal, and the Eleventh Circuit granted him a COA on the following issue:

> Whether the district court erred in denying relief under 28 U.S.C. § 2255 by determining that Tribue was still subject to the Armed Career Criminal Act enhancement, 18 U.S.C. § 924(e)(1)?

Appendix C.

Specifically, the Eleventh Circuit stated Mr. Tribue made a substantial showing of the denial of a constitutional right on his claim that the government waived reliance on the third delivery conviction. *Id.*

The parties proceeded to brief the issue. Shortly before Mr. Tribue filed his reply brief, the Fourth Circuit issued an opinion in *Hodge v. United States*, 902 F.3d 420 (2018). The *Hodge* court held that "the Government must identify all convictions it wishes to use to support a defendant's ACCA sentence enhancement at the time of sentencing" and

that it cannot maintain an ACCA sentence on collateral review by substituting a different conviction. 902 F.3d at 430.[3] In Mr. Tribue's reply brief, he relied mainly on *Hodge* and emphasized that permitting the government to substitute a different conviction on collateral review infringed on his right to notice of the predicates to be relied on at sentencing.

After oral argument, the Eleventh Circuit issued a published opinion affirming the denial of Mr. Tribue's § 2255 motion. Appendix B. The Eleventh Circuit held that the government could rely on the third drug conviction. *Id.* The Eleventh Circuit failed to acknowledge *Hodge* or the fact that it was creating a circuit split.

Instead, in rejecting Mr. Tribue's arguments, the Eleventh Circuit discussed three "strong reasons" for allowing the government to rely on the substituted conviction:

> First, at the original sentencing before the district court, Tribue admitted that he had all of the convictions listed in the

[3] The Fourth Circuit relied heavily on the Eleventh Circuit's precedent in coming to its conclusion. 902 F.3d at 430 (relying on *Bryant v. Warden, FCC Coleman-Medium*, 738 F.3d 1253, 1256–57 (11th Cir. 2013), *overruled on other grounds by McCarthan v. Director of Goodwill Indus. Suncoast, Inc.*, 851 F.3d 1076 (11th Cir. 2017) (en banc), and *United States v. Petite*, 703 F.3d 1290, 1292 n.2 (11th Cir. 2013), *abrogated on other grounds by Johnson*, 135 S. Ct. at 2251).

> PSI. So the factual existence of Tribue's 2007 drug conviction was not disputed at the original sentencing.
>
> Second, at the original sentencing, Tribue raised no objection to his ACCA enhancement. For example, at sentencing Tribue never claimed that his 2006 fleeing and eluding conviction did not qualify under the ACCA's elements clause or that the residual clause was void for vagueness. This reason alone suffices.
>
> Third, there is no requirement that the government prospectively address whether each and every conviction listed in the criminal history section of a PSI is an ACCA predicate in order to guard against potential future changes in the law and avoid later claims that it has waived use of those convictions as qualifying ACCA predicates. In other words, where there is no objection by the defendant to the three convictions identified as ACCA predicates, the government bears no burden to argue or prove alternative grounds to support the ACCA enhancement. If Tribue had no way to anticipate *Johnson*'s invalidation of the residual clause in the ACCA, and therefore did not object, then the government equally did not either. Further, the government did not waive reliance on other convictions in the PSI as ACCA predicates simply by not objecting to the PSI on the grounds that Tribue had more qualifying convictions than the three that the probation officer had identified as supporting the ACCA enhancement.

Id.

Given its holding that the government could rely on a different conviction on collateral review, the Eleventh Circuit held the district court correctly denied Mr. Tribue's § 2255 motion because he "ha[d] three prior convictions that qualif[y] as 'serious drug offenses.'" *Id.*

4. The Eleventh Circuit declined to rehear Mr. Tribue's case en banc, but Judge Martin, joined by Judge Jill Pryor, dissented from that decision in a published order. Appendix A. In Judge Martin's view, "[w]hen a defendant is sentenced under ACCA based on specified prior convictions, and then we learn, on collateral review, that fewer than three of the relied-upon convictions are still valid, this defendant is entitled to relief." *Id.* at 1150. She explained that the panel erred in three ways:

> First, the panel opinion incorrectly relieves the government of the burden of proving that Mr. Tribue is eligible for a longer sentence under ACCA and places the burden on him to prove he's not. Second, the panel opinion's analysis is based on an unreasonably narrow view of Eleventh Circuit precedent. Finally, the panel opinion creates a split with the Fourth and Seventh Circuits, which confronted the same question presented by Mr. Tribue's case and came out differently.

Id. As Judge Martin concluded, the panel's mistakes have serious consequences. They "deprive Mr. Tribue of any ability to get the relief the Supreme Court made available to him (and people like him) in *Johnson*. And [the panel] does so by placing procedural barriers nowhere suggested by the Supreme Court when it invalidated ACCA's residual clause." *Id.*

REASONS FOR GRANTING THE WRIT

The courts of appeals are divided on whether a defendant's due process rights are violated when the government substitutes a different conviction on collateral review to maintain an ACCA sentence. Moreover, these courts are unwilling to resolve the conflict. This Court should use this case, which squarely presents this important legal issue, to resolve the conflict.

I. The courts of appeals are openly split over the question presented.

As Judge Martin recognized, the circuits are split over whether the government, on collateral review, may for the first time rely on a different predicate offense to maintain an ACCA enhancement. 958 F.3d at 1155–57 (Martin, J., dissenting from the denial of rehearing en banc) (discussing how the panel's decision conflicts with Fourth Circuit and Seventh Circuit precedent).

A. Unlike the Eleventh Circuit, the Fourth Circuit does not allow the government to substitute different ACCA predicates on collateral review.

The Fourth Circuit, in a case that is materially identical to this one, came to a different conclusion than the Eleventh Circuit. *Hodge*, 902 F.3d at 428–32. In *Hodge*, the district court convicted the defendant of

possessing with the intent to distribute crack cocaine and possessing a gun as a felon. *Id.* at 423. Like in Mr. Tribue's case, Probation prepared a PSR in which it relied on three specific convictions to support its recommendation that the district court impose an ACCA sentence. *Id.* at 424. And just as in Mr. Tribue's case, the parties made no objections, and the district court adopted the PSR without change. *Id.*

In 2016, Mr. Hodge moved for relief under § 2255 based on *Johnson* because one of the predicates relied on at sentencing no longer qualified. *Id.* The government, as it did in Mr. Tribue's case, responded that another conviction in the PSR—a drug conviction not originally designated a predicate—could replace the now-invalidated predicate. *Id.* at 425.

But unlike the Eleventh Circuit, the Fourth Circuit rejected the government's attempt to substitute a different conviction. The *Hodge* court explained that defendants have a right to notice of what ACCA predicates the government will rely on at sentencing and that the defendant had no burden to preemptively challenge ACCA predicates not relied on by the government. *Id.* at 427–28.[4] The *Hodge* court

[4] The Fourth Circuit explained why it would defy common sense to

concluded that because the government never objected to the PSR's characterization of Hodge's prior convictions, it could not substitute a different conviction on collateral review. *Id.* Two rationales led to this conclusion.

First, Fourth Circuit concluded that the rules about forfeiture—that is, making timely objections at sentencing—should apply to defendants and the government equally. *Id.* at 429.

And second, the court noted that allowing the government to substitute different convictions on collateral review would wrongfully shift the burden of proof to defendants, depriving them of an adequate opportunity to respond. *Id.* at 430 ("The government cannot identify only some ACCA-qualifying convictions at sentencing . . . and later raise

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require a defendant to preemptively challenge unidentified ACCA predicates:

> Requiring defendants to object to . . . excluded convictions in anticipation of arguments the Government might make in a subsequent proceeding would undermine the adversarial process: It would place defense counsel in a precarious position of flagging potential predicates that neither the U.S. Probation Office nor the Government had contemplated, likely to the defendant's detriment.

Id. at 428.

additional convictions to sustain an ACCA enhancement once the burden of proof has shifted to the defendant."). As *Hodge* explains, allowing the government to substitute a different ACCA predicate at the § 2255 stage is particularly unfair because the defendant bears the burden of proving the convictions supporting his enhancement are infirm and faces greater hurdles to review of a habeas court's decision. *Id.* at 429–30.

Thus, the Fourth Circuit—presented with the exact issue as the Eleventh Circuit—reached the opposite conclusion. Under the current law, in the Eleventh Circuit, the government may substitute a different predicate conviction on collateral review to maintain an ACCA enhancement. In the Fourth Circuit, however, the government may not.

B. The Seventh Circuit sometimes allows the government to substitute different ACCA predicates on collateral review.

The circuit split discussed above is further deepened by the Seventh Circuit's opinion in *Dotson v. United States*, 949 F.3d 317 (7th Cir. 2020), which recognizes the due process concerns that motivated the Fourth Circuit but takes a fact-specific approach to whether the government may

substitute a different conviction on collateral review.[5] In her dissent, Judge Martin discussed the Seventh Circuit's opinion in *Dotson*, explaining that the Seventh Circuit's approach only further highlights how the Eleventh Circuit has gone astray. 958 F.3d at 1157 (Martin, J., dissenting from the denial of rehearing en banc).

In *Dotson*, the district court convicted the defendant of possessing a gun as a felon. 958 F.3d at 318. The government included in the indictment six prior felony convictions, including a burglary conviction. *Id.* The government, however, did not rely on that conviction to support the ACCA enhancement and instead relied on three other convictions, including dealing in cocaine and attempted robbery. *Id.* at 318–19. Nevertheless, the defendant believed his ACCA sentence was supported by the burglary conviction. *Id.* at 319.

Later, the defendant moved to vacate his sentence under *Johnson*, arguing the district court should vacate his sentence because his burglary offense and cocaine offense no longer qualified as a predicate offense. *Id.* The district court denied his motion. But the Seventh Circuit later

[5] Notably, current Supreme Court nominee, Judge Amy Coney Barrett, was on the *Dotson* panel.

held that the attempted robbery offense was no longer an ACCA predicate; the court then granted the defendant a COA in light of that holding. On appeal, the Seventh Circuit addressed whether the government could rely on a different conviction for the first time on collateral review. *Id.* at 320.

Unlike the Eleventh Circuit, the Seventh Circuit shared the Fourth Circuit's concerns that permitting the government to react to a change in the law by relying on a different conviction to maintain an ACCA enhancement was an affront to the defendant's right to notice. *Id.* at 321. But the Seventh Circuit believed those concerns were "not offended here" because, under "these unusual facts," the defendant believed the district court based his sentence on the burglary conviction. *Id.* at 321–22. Thus, the Seventh Circuit held "the government to its representations at sentencing—or, at least, what the defendant believed those to be." *Tribue*, 958 F.3d at 1148 (Martin, J., dissenting from the denial of rehearing en banc).

In coming to its fact-bound conclusion, the Seventh Circuit expressly disagreed with the "broader strokes" the Eleventh Circuit used "in deciding the same question" in Mr. Tribue's case, recognizing that the

Eleventh Circuit failed to consider how a lack of notice is unfair to the defendant. 958 F.3d at 321.[6]

II. The Eleventh Circuit's ruling is wrong.

The Fourth Circuit reached the right result in *Hodge*. The Eleventh Circuit, on the other hand, ignored the core due process concerns underlying *Hodge* and based its holding on flawed reasoning.

Permitting the government to substitute a new ACCA predicate on collateral review is fundamentally unfair and deprives a defendant of due process in at least two ways. First, the Eleventh Circuit's holding undermines a defendant's right to notice at sentencing about the predicates supporting his ACCA sentence. The Eleventh Circuit single-mindedly focused on whether Mr. Tribue had three qualifying predicate convictions. But the question is not whether the ACCA enhancement could have been applied. The question is whether the government

[6] The Seventh Circuit also observed that the Tenth Circuit "seem[ed] to have reached a similar conclusion" to the Eleventh Circuit. *Dotson*, 949 F.3d at 321 (citing *United States v. Garcia*, 877 F.3d 944, 956 (10th Cir. 2017)). But the Tenth Circuit never squarely addressed the question because the defendant never raised the issue.

provided Mr. Tribue with notice and an opportunity to be heard about the predicates supporting the enhancement.

Second, the Eleventh Circuit's opinion "incorrectly relieves the government of the burden of proving that a defendant is eligible for a longer sentence under the ACCA and places the burden on him to prove he's not." *Tribue*, 958 F.3d at 1150 (Martin, J., dissenting from the denial of rehearing en banc). The government's burden at sentencing to show a defendant is eligible for an ACCA sentence is "fundamental to the integrity of federal sentencing," and thus shifting the burden to Mr. Tribue is "fundamentally unfair." *Id.* The Eleventh Circuit's holding not only incorrectly shifts the burden of proof, it does so in the context of a collateral review proceeding, in which it is far harder for inmates to obtain relief. *Id.*[7] If the government wanted to rely on a particular conviction to support Mr. Tribue's ACCA sentence, it should have done so during his sentencing, giving Mr. Tribue notice and an adequate opportunity to respond. Allowing the government instead to substitute

[7] Indeed, in addition to a myriad of procedural hurdles attendant to habeas review, an inmate cannot even seek appellate review of a district court's determination unless he obtains a certificate of appealability. *See* 28 U.S.C. § 2253(c)(1).

a different conviction for the first time on collateral review violates Mr. Tribue's due process rights.

Rather than account for these due process concerns, the Eleventh Circuit rested its holding on three allegedly "strong reasons." On closer inspection, however, those reasons are not very strong at all—and certainly not strong enough to overcome the due process concerns ignored by the panel's opinion.

First, the Eleventh Circuit reasoned that by failing to object to the PSR, Mr. Tribue admitted that he had another qualifying conviction. *Tribue*, 929 F.3d at 1332. But the mere fact Mr. Tribue admitted he has this conviction says nothing about whether he admitted this conviction qualifies as an ACCA predicate. *See McCarthan*, 851 F.3d at 1120 (Martin, J., dissenting). He did not even know the government was relying on it as an ACCA predicate. "There is simply no justice in faulting Mr. Tribue because he did not raise a fruitless objection to the factual existence of his 2007 cocaine conviction, when this conviction was never raised at his sentencing hearing." *Tribue*, 958 F.3d at 1152 (Martin, J., dissenting from the denial of rehearing en banc); *cf. Descamps v. United States*, 570 U.S. 254, 270 (2013) ("[W]hatever [a

defendant] says, or fails to say, about superfluous facts cannot license a later sentencing court to impose extra punishment. . . . A defendant, after all, often has little incentive to contest facts that are not elements of the charged offense—and may have good reason not to. . . . . [T]he defendant may not wish to irk the prosecutor or court by squabbling about superfluous factual allegations.).

Second, the Eleventh Circuit reasoned that Mr. Tribue should be denied relief because he failed to object to his ACCA sentence at sentencing. *Tribue*, 929 F.3d at 1332. But this ignores that Mr. Tribue clearly qualified for an ACCA sentence at the time of his sentencing given that the residual clause was still in play. Under the Eleventh Circuit's reasoning, Mr. Tribue needed to lodge a frivolous objection to his sentence to be afforded his right to notice of whether the government was relying on additional predicates other than those that had been expressly identified. In that regard, "the panel opinion invites the overtaxing of our federal courts, the defense bar, and federal prosecutors." *Tribue*, 958 F.3d at 1152 (Martin, J., dissenting from the denial of rehearing en banc).

Finally, the Eleventh Circuit reasoned that because Mr. Tribue could not anticipate *Johnson* at sentencing, neither could the government. *Tribue*, 929 F.3d at 1332. But this faulty reasoning "equates the power of the prosecutor and the prosecuted," *Tribue*, 958 F.3d at 1152 (Martin, J., dissenting from the denial of rehearing en banc), and overlooks that the government had the burden to establish Mr. Tribue's ACCA enhancement at sentencing, and that burden was wrongfully shifted to Mr. Tribue on collateral review. The suggestion that both parties are being treated equally is specious at best. "The government gets to keep the longer sentence it always wanted for Mr. Tribue, while he is deprived of a fresh look at the acknowledged constitutional problems with the sentence that was imposed on him in 2013." *Id.*

III. The question presented is extremely important.

District courts sentence hundreds of defendants under the ACCA every year, and thousands of prisoners are serving ACCA sentences.[8]

[8] *See* U.S. Sentencing Comm'n, Mandatory Minimum Penalties for Firearms Offenses in the Federal Criminal Justice System at 6, 54 (Mar. 2018), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2018/20180315_Firearms-Mand-

Given the frequency with which this Court wades into the ACCA's thorny waters and the hundreds of collateral challenges prompted by these decisions, the question here is likely to reoccur.[9] Thus, the question presented affects scores of prisoners, now and into the future, and resolves whether those prisoners whose ACCA sentences were based on a non-qualifying predicate are entitled to relief. It is therefore important that this Court resolve the split here and clarify whether the government's substitution of a different conviction on collateral review to maintain an ACCA sentence violates a defendant's right to due process.

IV. The case is an excellent vehicle to resolve the conflict.

This case provides a particularly good opportunity to resolve the entrenched disagreement among the courts on the question presented. First, the parties fully litigated the question here in the district court and

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Min.pdf (stating that district courts sentence between 300 and 600 defendants under the ACCA every year).

[9] Indeed, this Court has interpreted the ACCA several times in the last decade. *See Shular v. United States,* 140 S. Ct. 779 (2020); *Quarles v. United States*, 139 S. Ct. 1872 (2019); *Stokeling v. United States,* 139 S. Ct. 544 (2019); *United States v. Stitt,* 139 S. Ct. 399 (2018); *Mathis v. United States*, 136 S. Ct. 2243 (2016); *Descamps,* 570 U.S. at 254; *Sykes v. United States,* 564 U.S. 1 (2011); *Curtis Johnson v. United States,* 559 U.S. 133 (2010).

on appeal, and the Eleventh Circuit clearly decided it. Second, the split on the question presented is squarely implicated here, and unlike *Dotson*, this case does not involve unique or disputed factual findings. Finally, if this Court adopts either the Fourth or Seventh Circuits' positions, Mr. Tribue will undoubtedly be entitled to relief on his § 2255 motion.

* * *

It is sometimes important not to miss the forest for the trees. Regardless of whether Mr. Tribue was eligible for an ACCA enhancement at the time of his sentencing, he was entitled to notice before that hearing about what predicate convictions the government was relying on to support the enhancement. Allowing the government to substitute a different conviction for the first time on collateral review, after the burden of proof has shifted to the defendant, is fundamentally unfair and violates Mr. Tribue's right to due process.

To be sure, if Mr. Tribue had been convicted in South Carolina or Indiana, instead of Florida, the district court would have granted Mr. Tribue's § 2255 motion. Neither the imposition of one of the most onerous sentencing enhancements in the federal code nor the application of the Constitution should depend on geographical happenstance. This

Court's intervention is needed.

CONCLUSION

For the above reasons, Mr. Tribue respectfully requests that this Court grant his petition for a writ of certiorari.

Respectfully submitted,

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