NO. 21-8191

IN THE

Supreme Court of the United States

_____ TERM, 20__

MICHAEL CHRISTIAN TINLIN, KWANE DEMARCHEL WHEAT, AND CARLOS DEJUAN HUTCHINSON,

Petitioners,

v.

UNITED STATES OF AMERICA,

Respondent.

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

SUPPLEMENTAL BRIEF FOR PETITIONERS

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SUPPLEMENTAL BRIEF

This supplemental brief is offered under Rule 15.8 to highlight the impact of this Court's decision in *United States v. Taylor*, 142 S. Ct. 2015 (2022), on Mr. Tinlin, Mr. Hutchinson, and Mr. Wheat's joint petition for writ of certiorari.

The Petitioners here have asked this Court to determine whether unambiguously overbroad statutory language alone is sufficient to establish that a statute is broader than a generic sentencing enhancement definition.

In *Taylor*, this Court addressed whether attempted Hobbs Act robbery was a crime of violence under 18 U.S.C. § 924(c)(3)(A). Mr. Taylor asserted that attempted Hobbs Act robbery was overbroad because it did not require a communicated threat of force. As relevant to this petition, the government asserted that Mr. Taylor needed to identify a specific case where the government had successfully prosecuted an individual for attempted Hobbs Act robbery without proving a communicated threat.

This Court rejected the government's argument. 142 S. Ct. at 2024. The Court first noted the "oddity of placing a burden on the defendant to present empirical evidence about the government's own prosecutorial habits" and as well as the practical burdens it would present, as most cases end in guilty pleas. *Id*.

The Court also found *Gonzales v. Duenas-Alvarez*, 549 U.S. 183 (2007), inapplicable when the statutory language was overbroad on its face. The Court held that *Duenas-Alvarez* was distinguishable, because in that case "the elements of the relevant state and federal offenses clearly overlapped and the only question the Court

faced was whether state courts *also* 'appl[ied] the statute in [a] special (nongeneric) manner.'" *Id.* at 2025 (quoting *Duenas-Alvarez*, 549 U.S. at 193) (alterations in original). The Court continued:

> Here, we do not reach that question because there is no overlap to begin with. Attempted Hobbs Act robbery does not require proof of any of the elements § 924(c)(3)(A) demands. That ends the inquiry, and nothing in *Duenas-Alvarez* suggests otherwise.

Id.

And it should have ended the inquiry for Mr. Tinlin, Mr. Hutchinson, and Mr. Wheat, as Judge Kelly noted in her dissent in Mr. Hutchinson's case. Their statutes of conviction did not require proof of the elements that the relevant sentencing enhancement provision demanded. *Taylor* establishes that the Eighth Circuit's reliance upon *Duenas-Alvarez* to require defendants point to a specific case is incorrect.

Taylor also noted that federalism concerns were present in *Duenas-Alvarez*, and that these concerns supported requiring a specific case example. *Id.* at 2024. In *Duenas-Alvarez*, the state statute language clearly overlapped with the federal generic definition, but the immigration petition asserted that, in state court practice, there was no overlap. *Id.* In those circumstances, the Court deemed it necessary to "test th[e petitioner's] assertion" by looking to "state decisional law" to determine "whether a 'realistic probability' existed that the State 'would apply its statute to conduct that falls outside' the federal generic definition." *Id.* at 2024-25 (quoting *Duenas-Alvarez*, 549 U.S. at 193).

Here, federalism concerns also support not requiring a specific case example when a statute is unambiguously overbroad on its face. Unlike *Duenas-Alvarez*, there is clearly *no* overlap between the state statute and federal generic definition. By requiring a case example, the Eighth and Fifth Circuits are holding that state legislatures do not mean what they say. These Circuits are ignoring clear directives from state legislatures, and failing to show deference and respect to state legislatures on how to define their own laws.

The petitioners request that this Court summarily reverse the Eighth Circuit's decisions. Summary reversal is appropriate due to the inconsistent nature of the Eighth Circuit's decisions on this issue, as noted in the joint petition for writ of certiorari.

CONCLUSION

For the foregoing reasons, Mr. Tinlin, Mr. Wheat, and Mr. Hutchinson respectfully request that the Joint Petition for Writ of Certiorari be granted.

RESPECTFULLY SUBMITTED,

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