NO. _____

In the Supreme Court of the United States

MICHAEL DEWAYNE VICKERS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

After this Court struck down the Armed Career Criminal Act's residual cause in 2015, the Fifth Circuit granted Mr. Vickers permission to file a "second or successive" motion arguing that he was no longer eligible for an ACCA sentence. *See* 28 U.S.C. § 2255(h)(2). The district court agreed that the sentence was unlawful in light of *Johnson v. United States*, 576 U.S. 591 (2015), and granted relief. The Fifth Circuit reversed that decision on the merits, then this Court overruled and vacated the Fifth Circuit merits decision. Rather than affirming the grant of relief, the Fifth Circuit ordered the district court to make additional findings to determine whether it even had jurisdiction to consider the authorized motion.

1. Was Mr. Vickers required to prove, in district court, that it is "more likely than not" that the sentencing judge "actually relied on" the ACCA's unconstitutional residual clause when imposing the original sentence?

2. If Mr. Vickers was required to prove "actual reliance" by the sentencing judge, is that a non-waivable jurisdictional requirement?

DIRECTLY RELATED PROCEEDINGS

United States v. Vickers, No. 3:16-CR-229 (N.D. Tex.)

United States v. Vickers, No. 07-10767 (5th Cir.)

United States v. Vickers, No. 08-7249 (U.S.)

Vickers v. United States, No. 3:09-CV-1777 (N.D. Tex.)

Vickers v. Maye, No. A–11–CV–958 (W.D. Tex.)

Vickers v. Maye, No. 12-50837 (5th Cir.)

Vickers v. Pearce, No. 13-556 (U.S.)

In re Vickers, No. 16-10509 (5th Cir.)

Vickers v. United States, No. 3:15-CV-3912 (N.D. Tex.)

United States v. Vickers, No. 18-10940 (5th Cir.)

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

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No _____

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PETITION FOR A WRIT OF CERTIORARI

Michael Dewayne Vickers respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

The Fifth Circuit's opinion (Petition Appendix 1a–2a) was not selected for publication in the Federal Reporter. There are three previous opinions from the Court of Appeals. Two were published, 540 F.3d 356 (App. 43a–56a), and 967 F.3d 480 (App. 5a–15a), and one was unpublished (App. 41a–42a). The opinions of the Magistrate Judge recommending collateral relief (App. 27a–40a), and of the District Court granting relief (App. 23a–26a), were not published.

JURISDICTION

The Fifth Circuit entered judgment on March 14, 2022. On June 9, 2022, Justice Alito extended the time to file a petition to July 13, 2022. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

This case involves the interpretation and application of 28 U.S.C. §§ 2244 and 2255(h). The case also touches on the Armed Career Criminal Act, 18 U.S.C. § 924(e), and Texas Penal Code § 19.02. All these provisions are reprinted in the Appendix. App. 64a–72a.

INTRODUCTION

In 2018, the district court vacated Petitioner Michael Dewayne Vickers's sentence and resentenced him to a time-served sentence because it determined that his 1982 conviction under Texas's broad definition of "murder" could no longer satisfy the Armed Career Criminal Act's definition of "violent felony," 18 U.S.C. § 924(e)(2)(B), once that definition was stripped of its unconstitutional residual clause. App. 23a–26a, 16a–17a. The Government appealed.

Until recently, the Government's sole contention was that Texas murder remains a violent felony under the ACCA's still-valid elements clause, as that clause is properly interpreted. The Fifth Circuit even agreed with that argument, initially. App. 11a–13a. No one expressed any doubt about the district court's or the Fifth Circuit's ability to decide that question.

No one, that is, until this Court overruled the Fifth Circuit's reasoning (and vitiated the Government's

merits argument) in *Borden v. United States*, 141 S. Ct. 1817 (2021). In Texas, felony murder and intentional murder are indivisible means of proving "the same offense." *Aguirre v. State*, 732 S.W.2d 320, 321 (Tex. Crim. App. 1982), on reh'g (July 1, 1987).[1] And the Government's entire merits argument was premised upon the belief that, in 1982, Texas required a mens rea of at least recklessness to convict for felony murder.[2] App. 12a–13a. Because recklessness is not a "use of physical force against" the victim, Texas murder is not a violent felony.

Rather than following this straightforward analysis (and affirming the non-ACCA sentence), the Fifth Circuit ordered the district court to "determine whether there is jurisdiction to consider Vickers's successive 28 U.S.C. § 2255 petition in light of" the Fifth Circuit's "decisions in *United States v. Wiese*, 896 F.3d 720 (5th Cir. 2018), and *United States v. Clay*, 921 F.3d 550 (5th Cir. 2019)." The court thus resolved two contentions legal questions in favor of the Government: (1) that Mr. Vickers was required to prove that it is "more likely than not" that his sentencing judge "relied on" the ACCA's residual clause back in 2007, and (2) that this is a jurisdictional

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[1] The district court held that the crime is indivisible. App. 33a, *adopted*, 26a. The Government did not object in district court, and it affirmatively "accept[ed] . . . that conclusion for the purposes of this appeal." U.S. C.A. Br. 8. Even aside from this concession, there is no serious argument to the contrary.

[2] In 2007, the Texas Court of Criminal Appeals made clear that even a negligent or strict liability felony like driving-while-intoxicated could support a felony-murder conviction. *See Lomax v. State*, 233 S.W.3d 302 (Tex. Crim. App. 2007).

requirement that the Government could not waive or forfeit.

That "jurisdictional" label was critical to the decision below, because the Government *never* raised a "relied on" argument in district court or in the first round of appellate briefing. And—as the Government candidly admitted below—its "national litigating position" is that the actual-reliance rule is non-jurisdictional and waivable. App.; 79a. In other words, the Government prevailed on a dubious "jurisdictional" theory, even though the Government itself agreed that the theory was not *really* jurisdictional.

STATEMENT

1. In 2005, Dallas Police were searching Mr. Vickers's neighborhood for a burglar. They mistook Mr. Vickers for the suspect. App. 43a–44a. By the time the complaining witness revealed that they were questioning the wrong man, police had already discovered that Mr. Vickers was carrying a .38 special revolver to protect himself and his family from the very same criminal activity the police were attempting to interrupt. App. 43a–44a. Mr. Vickers was not allowed to have the gun because he had three prior felony convictions in Texas state courts: murder,[3] burglary, and delivery of drugs. App. 6a.

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[3] "Murder" is among the most serious labels we attach to crimes, but the punishment imposed suggests that there was more to the case than the label suggests. Based on the unique facts and circumstances of the case, the state court sentenced Mr. Vickers to 180 days of "shock" incarceration, followed by

2. A jury convicted Mr. Vickers of possessing a firearm after felony conviction, 18 U.S.C. § 922(g)(1). App. 43a. Normally, that charge carries a punishment of up to 10 years in prison. 18 U.S.C. § 924(a)(2). But the sentencing judge decided that his convictions for murder and burglary were "violent felonies" and that the drug crime was a "serious drug offense"; the Court applied the Armed Career Criminal Act, 18 U.S.C. § 924(e).[4]

3. Mr. Vickers objected to the application of the ACCA on constitutional and statutory grounds, but he did not challenge the assumption that his 1982 murder conviction was a "violent felony" (as then defined). Nor did the district court volunteer any explanation about the legal analysis (if any) it performed when deciding that the murder conviction was an ACCA predicate. Whatever the district court might have thought at the time, the language of the ACCA's residual clause plainly encompassed every possible way to commit Texas murder. See 18 U.S.C. § 924(e)(2)(B)(ii) ("[T]he term 'violent felony' means any crime punishable by imprisonment for a term exceeding one year . . . that . . . otherwise involves conduct that presents a serious potential risk of

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probation. That term of probation was revoked when he pled guilty to burglary in November 1989, and he served another five months before being paroled. 5th Cir. Sealed R. 685–686, ¶¶ 24–25.

[4] The ACCA requires imprisonment of at least 180 months. 18 U.S.C. § 924(e)(1). The district court selected a sentence of 190 months, which it then adjusted down to 168 months to reflect the time Mr. Vickers was imprisoned by Texas for the same offense conduct. Pet. App. 58a.

physical injury to another . . .").[5] If someone *did* review the issue at the time, they would have seen that Fifth Circuit precedent seemed to foreclose any use of the ACCA's elements clause, as then understood.[6]

4. The Fifth Circuit affirmed the conviction and ACCA sentence on direct appeal, *United States v. Vickers*, 540 F.3d 356 (5th Cir. 2008), App. 43a–51a, and this Court denied certiorari. 555 U.S. 1088 (2008). Previous attempts at collateral attack failed.

5. In 2016, Mr. Vickers sought permission to file a "second or successive" motion to vacate his sentence in light of the new rule announced in *Johnson*. The Fifth Circuit decided that *Johnson* would have no effect on the analysis of his burglary conviction, but granted authorization for him to raise a *Johnson* challenge "with regard to his conviction of murder." App. 42a.

6. As noted above, the district court ultimately agreed that Texas murder is not a violent felony without the unconstitutional residual clause. It

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[5] This Court had already foreclosed any argument "that the residual provision is unconstitutionally vague." *James v. United States*, 550 U.S. 192, 210 (2007).

[6] *See*, e.g., United *States v. Villegas-Hernandez*, 468 F.3d 874, 879 (5th Cir. 2006) (A crime that can be committed by administering poison or tricking the victim into driving into traffic does not have as an element "the use of physical force against the person of another."); *United States v. Vargas-Duran*, 356 F.3d 598, 606 (5th Cir. 2004) (en banc) (Causing physical injury is not the same as using physical force against the victim.). In fact, the district court relied on this same line of cases when granting relief in 2018. App. 34a–35a.

vacated Mr. Vickers's ACCA sentence. The court re-sentenced him under 18 U.S.C. § 924(a)(2) to 98 months in prison. App. 17a. He was immediately released, and he successfully completed a three-year term of supervised release. He would be completely finished with the federal criminal justice system, but for the decision below.

7. The Government appealed the new sentence. It made two important concessions in its opening brief: first, the Government "accepted," "for purposes of this appeal," the district court's finding that felony murder and intentional murder are indivisible. U.S. C.A. Br. 8. Second, the Government argued that the least culpable form of the crime (felony murder) required proof of at least a reckless mental state.

8. In 2020, the Fifth Circuit reversed the district court's order granting collateral relief because it agreed with the government that Texas felony murder *used to* require a mens rea of recklessness, and that recklessly causing death satisfied the ACCA's still-valid elements clause. App. 5a–15a.

9. This Court overruled the Fifth Circuit's recklessness reasoning in *Borden v. United States,* 141 S. Ct. 480 (5th Cir. 2020), and remanded this case for further consideration. *Vickers v. United States*, 141 S. Ct. 2783 (2021). Given the two concessions mentioned above, it seemed obvious that the Fifth Circuit should affirm the new sentence and allow Mr. Vickers to remain at home with his family. But that is not what happened.

10. The Fifth Circuit remanded the case to the district court to "determine whether there is jurisdiction to consider Vickers's successive 28 U.S.C. § 2255 petition in light of our decisions in *United States v. Wiese*, 896 F.3d 720 (5th Cir. 2018), and *United States v. Clay*, 921 F.3d 550 (5th Cir. 2019)." App. 1a–2a. This timely petition follows.

REASONS FOR GRANTING THE PETITION

I. There are entrenched circuit splits on both questions presented.

The parties apparently agree that any rule requiring proof that the sentencing judge "relied on" the ACCA's residual clause is waivable and non-jurisdictional. That is reason enough to vacate the decision below and ask the Fifth Circuit to reconsider its "jurisdictional" classification of the rule.

But before addressing that agreed issue, there is a related circuit split over the burden of proof a movant in Mr. Vickers's shoes must satisfy. In other words, even if the Government had timely invoked any applicable proof-of-reliance requirement, there would still be a fight about what Mr. Vickers would need to "prove" or "show" other than (a) that his ACCA sentence was authorized by the residual clause and (b) that he is ineligible for sentencing under the ACCA without that clause.

A. The circuits are divided over a movant's burden of proof regarding a sentencing judge's state of mind.

1. In six circuits, a movant must prove that a sentencing judge was more-likely-than-not relying upon the ACCA's residual clause.

According to *United States v. Wiese*, a movant who secures prefiling authorization to raise a claim under *Johnson* and § 2255(h)(2) "must actually prove at the district court level that the relief he seeks relies either on a new, retroactive rule of constitutional law or on new evidence." 896 F.3d at 723 (citing 28 U.S.C. § 2244(b)(2), (4)). The purpose of the inquiry is "determining the mindset of a sentencing judge" when the sentence was imposed. *Id.* at 725 The Fifth Circuit later decided that "a prisoner seeking the district court's authorization to file a successive § 2255 petition raising a *Johnson* claim must show that it was more likely than not that he was sentenced under the residual clause." *United States v. Clay*, 921 F.3d 550, 559 (5th Cir. 2019), as revised (Apr. 25, 2019).

The same rule governs in the First, . . . Sixth, Eighth, Tenth, and Eleventh Circuits." *Clay*, 921 F.3d at 554–55 (citing *Dimott v. United States*, 881 F.3d 232, 243 (1st Cir. 2018); *Potter v. United States*, 887 F.3d 785, 788 (6th Cir. 2018); *Walker v. United States*, 900 F.3d 1012, 1015 (8th Cir. 2018); *United States v. Washington*, 890 F.3d 891, 896 (10th Cir. 2018); and *Beeman v. United States*, 871 F.3d 1215, 1221–22 (11th Cir. 2017)).

2. In three (or possibly four) circuits, a movant need not prove actual reliance.

Movants in the Fourth and Ninth Circuits are more fortunate. They do not have to prove that it is more likely than not that the sentencing judge actually relied on the residual clause. In those courts, a § 2255(h)(2) motion is "procedurally proper" if the movant's "ACCA-enhanced sentence 'may have been predicated on application of the now-void residual clause.'" *United States v. Hodge*, 902 F.3d 420, 426 (4th Cir. 2018) (quoting *United States v. Winston*, 850 F.3d 677, 682 (4th Cir. 2017)); accord *United States v. Geozos*, 870 F.3d 890, 896 (9th Cir. 2017) ("[W]hen it is unclear whether a sentencing court relied on the residual clause in finding that a defendant qualified as an armed career criminal, but it may have, the defendant's § 2255 claim 'relies on' the constitutional rule announced in *Johnson*."

In the Third Circuit, a movant may satisfy his gatekeeping burden "when he demonstrates that his sentence may be unconstitutional in light of the new rule of constitutional law." *United States v. Peppers*, 899 F.3d 211, 223 (3d Cir. 2018). Once the case moves to the "merits" stage, a movant must "demonstrate that his sentence necessarily implicates the residual clause, which may be shown either by evidence that the district court in fact sentenced him under the residual clause or proof that he could not have been sentenced under the elements or enumerated offenses clauses based on current case law, and that that made a difference in his sentence." *Id.* at 236 n.21.

The D.C. Circuit has not yet addressed the question, but many or all of the district judges there seem to agree that the "might have relied" approach is the correct one. *United States v. Taylor*, 272 F. Supp. 3d 127, 134 (D.D.C. 2017) (Kollar-Kotelly, J.); *United States v. Wilson*, 249 F.Supp.3d 305, 310–12 (D.D.C. 2017) (Huvelle, J.); *United States v. Brown*, 249 F. Supp. 3d 287, 291 (D.D.C. 2017) (Sullivan, J.); *United States v. Booker*, 240 F. Supp. 3d 164, 169 (D.D.C. 2017) (Friedman, J.).

3. Two circuits acknowledge the split but have not yet picked a side.

The Second and Seventh Circuits have acknowledged the existence of the "circuit split" between the "'may have relied' approach" of the Fourth and the Ninth Circuits and the "more stringent standard" of the Fifth Circuit and others, which requires "petitioners to show that it is 'more likely than not' that a sentencing court relied on the ACCA's residual clause before granting relief." *Savoca v. United States*, 21 F.4th 225, 234 n.7 (2d Cir. 2021); *see also Waagner v. United States*, 971 F.3d 647, 654 (7th Cir. 2020) ("The courts of appeals are divided on whether a petitioner who files a *Johnson*-based successive § 2255 motion must establish 'that it was more likely than not that he was sentenced under the residual clause.'"). Thus far, these two courts have not "weigh[ed] in on this dispute." *Savoca*, 21 F.4th at 234 n.7; *see Waagner*, 971 F.3d at 654 ("We have not yet taken a position on the question.").

B. The circuits also disagree about whether the proof-of-reliance requirements is jurisdictional.

If there was a "gatekeeping" problem with Mr. Vickers's authorized motion, no one seemed to notice while the case was pending in district court. The Government did not move to dismiss the case; did not argue that the motion fell outside of § 2255(h)(2); did not dispute that the motion "contain[ed]" the new rule in *Johnson*, and did not mention or invoke the substantive "gatekeeping" standards in § 2255(h) or § 2244. The same is true of the Government's Initial and Reply Briefs in the Fifth Circuit—the Government never once argued that the district court lacked power to consider whether the murder conviction remained a violent felony after *Johnson*.

As the Government conceded below, its "nationwide litigating position is that 28 U.S.C. § 2244(b)(2)(A)'s gatekeeping provision is nonjurisdictional." App. 79a. The Sixth Circuit agrees. In *United States v. Williams*, 927 F.3d 427, 436–39 (6th Cir. 2019), the Court agreed with the Government that any substantive gatekeeping standards that are derived from 28 U.S.C. § 2255(h) or § 2244(b) are, at most, waivable claims-processing rules.

But the Fifth Circuit believes that the proof-of-reliance requirement is jurisdictional. *See Wiese*, 896 F.3d at 724 (ascribing "jurisdictional" significance to the district court's gatekeeping analysis); *Clay*, 921 F.3d at 554 ("Where a prisoner fails to make the requisite showing before the district court, the district court lacks jurisdiction and must dismiss his successive petition without reaching the merits."); *In*

re Davila, 888 F.3d 179, 183 (5th Cir. 2018) ("We have previously described Section 2244 as establishing two jurisdictional 'gates' through which a petitioner must proceed to have the merits of his successive habeas claim considered.").

II. There is no statutory support for a "jurisdictional" rule requiring proof that the sentencing judge more-likely-than-not-relied on the ACCA's residual clause.

Those circuits that require proof that the sentencing judge relied on the residual clause do not all agree on the statutory support for that requirement. For federal prisoners seeking to file a successive motion, § 2255(h) requires prefiling authorization "as provided in section 2244." In *Reyes-Requena v. United States*, 243 F.3d 895 (5th Cir. 2001), the Fifth Circuit held that § 2255(h) implicitly incorporated additional aspects of the state-prisoner § 2244 procedure, including the district-court gatekeeping step found in § 2244(b)(4). This is when the *Wiese-Clay* inquiry is supposed to be performed.

If a district court is required to perform the "second" gatekeeping inquiry in § 2244(b)(4), there is debate about whether the court should utilize the substantive criteria for *state prisoners* in § 2244(b)(2), or the federal standard in § 2255(h). The provisions are not identical. *United States v. MacDonald*, 641 F.3d 596, 609 (4th Cir. 2011). For new-constitutional-rule claims, a state prisoner must show that his proposed claim "relies on" the new rule; a federal prisoner need only show that his proposed motion "contains" the new rule. *Id.*; *see also In re Hoffner*, 870 F.3d 301, 307 n.9 (3d Cir. 2017). "This 'difference in

language'—in one section, what a claim requires; in the other, what a motion requires—'demands a difference in meaning.'" *Raines v. United States*, 898 F.3d 680, 692 (6th Cir. 2018) (Cole, C.J., concurring); accord *In re Bradford*, 830 F.3d 1273, 1276 n.1 (11th Cir. 2016) (§ 2255(h) "cannot incorporate § 2244(b)(2).").

The Fifth Circuit believes that, by incorporating the appellate-court certification requirement of § 2244(b)(3), § 2255(h) also incorporates the *full* district-court review procedure in § 2244(b)(4)—including the substantive "relies on" rule. But even then, it is the *claim* that must rely on the new rule; it is irrelevant whether a previous factfinder "relied on" one provision or another. 28 U.S.C. § 2244(b)(2)(A). Neither § 2244 nor § 2255 discusses reliance by, or the "mindset" of, the original decisionmaker who committed the as-yet-unknown error. *Contra Wiese*, 896 F.3d at 725.

Even if a federal movant is, somehow, required to prove what his sentencing judge was thinking about, that non-statutory requirement *cannot* be jurisdictional. This Court "has endeavored in recent years to 'bring some discipline' to the use of the term 'jurisdictional.'" *Gonzalez v. Thaler*, 565 U.S. 134, 141 (2012). The difference between a jurisdictional rule and a non-jurisdictional rule is important:

> When a requirement goes to subject-matter jurisdiction, courts are obligated to consider sua sponte issues that the parties have disclaimed or have not presented. Subject-matter jurisdiction can never be waived or forfeited. The objections may be resurrected at

> any point in the litigation, and a valid objection may lead a court midway through briefing to dismiss a complaint in its entirety. "[M]any months of work on the part of the attorneys and the court may be wasted." Courts, we have said, should not lightly attach those "drastic" consequences to limits Congress has enacted.

Id. (citations omitted).

"A rule is jurisdictional if the Legislature clearly states that a threshold limitation on a statute's scope shall count as jurisdictional. But if Congress does not rank a statutory limitation on coverage as jurisdictional, courts should treat the restriction as nonjurisdictional." *Gonzalez*, 565 U.S. at 141–142. In other words, if Congress does not clearly describe a rule as jurisdictional, it isn't. And Congress has not clearly stated the more-likely-than-not rule in any form, much less described that rule as jurisdictional. Congress hasn't even "clearly" said the district-court standard in § 2244(b)(4) applies to § 2255(h) at all.

Gonzalez analyzed a nearly identical statutory limitation and decided that its substantive rules were nonjurisdictional. The only part of the COA statute that is clearly jurisdictional is the procedural demand found in 28 U.S.C. § 2253(c)(1)—a court or judge must issue a COA before the Court of Appeals can rule on the merits of an appeal. *Gonzalez*, 565 U.S. at 142. Unless and until that happens, appellate courts lack jurisdiction to resolve the merits. *Id.* (citing *Miller–El v. Cockrell*, 537 U.S. 322 (2003)).

But once the COA issues, the substantive requirements *not* jurisdictional. "And it would be passing strange if, after a COA has issued, each court of appeals adjudicating an appeal were dutybound to revisit the threshold showing and gauge its 'substantial[ity]' to verify its jurisdiction. That inquiry would be largely duplicative of the merits question before the court." *Gonzalez*, 565 U.S. at 143 (citations omitted).

Just so here. According to the Fifth Circuit, every federal court considering Mr. Vickers's case is obligated to engage in complex analysis of a historical question about a sentencing judge's mindset "to verify its jurisdiction." *Id.* That cannot be true.

Like the COA statute, the pre-filing authorization statute for federal prisoners has only one mandatory jurisdictional requirement, and it is procedural:

> (h) A second or successive motion *must be certified* as provided in section 2244 by a panel of the appropriate court of appeals to contain--
>
> > (1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense; or
> >
> > (2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.

28 U.S.C. § 2255(h) (emphasis added). The issuance of authorization under § 2255(h) operates just like the issuance of a COA under § 2253—once secured, the reviewing court gains jurisdiction to decide the case.

III. This case squarely presents both questions.

The Government's latest effort to return Mr. Vickers to prison invites the district court to find that it never had jurisdiction to decide whether Texas murder remained a "violent felony" without the residual clause. This so-called "jurisdictional" worry first arose nearly six years *after* the Court of Appeals granted authorization for Mr. Vickers to raise exactly that claim under *Johnson*. App. 41a–42a. And it arose nearly four years after the district court granted collateral relief and released him.

No statute requires that analysis. No sound policy reason requires that analysis. No consistent rationale has emerged to explain why the analysis is required. And even if it *is* necessary, the Government agrees that it is a waivable, non-jurisdictional rule that cannot be raised years after the parties and the courts have fully briefed and wrestled with the merits.

CONCLUSION

This Court should grant the petition and reverse the judgment of the court of appeals below.

Respectfully submitted,

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