No. _____

IN THE

Supreme Court of the United States

_____

RICKY DOUGLAS HAYNES, JR.,
***Petitioner*,**

v.

UNITED STATES OF AMERICA,
***Respondent*.**

_____

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

_____

PETITION FOR A WRIT OF CERTIORARI

_____

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QUESTIONS PRESENTED

1. Whether a sentencing judge may rely on non-elemental facts to conclude that a defendant's prior offenses were "committed on occasions different from one another" and impose the mandatory-minimum prison term under Armed Career Criminal Act (ACCA), 18 U.S.C. § 924(e)(1), or whether such facts must be charged in an indictment and proven to a jury beyond a reasonable doubt?

2. Whether the Florida offense of resisting, obstructing, or opposing an officer with violence is an ACCA "violent felony"?

RELATED PROCEEDINGS

United States v. Haynes, Nos. 6:07-cr-54-JA, 6:07-cr-73-JA (M.D. Fla. May 11, 2021)
No. 6:15-cv-1392-JA (M.D. Fla. Sept. 4, 2018)

United States v. Haynes, No. 19-12335 (11th Cir. 2022)

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Ricky Douglas Haynes, Jr., respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit.

OPINIONS BELOW

The Eleventh Circuit's opinion is unpublished, 2022 WL 3643740, and is provided in the Petition Appendix (Pet. App.) at 1a-14a, and its order denying rehearing is provided at Pet. App. 15a.

JURISDICTION

The Eleventh Circuit issued its opinion on August 24, 2022, Pet. App. 1a, and denied rehearing on November 1, 2022, *id.* at 15a. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254.

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

The Fifth Amendment (U.S. Const. amend. V) provides:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury . . . nor be deprived of life, liberty, or property, without due process of law.

The Sixth Amendment (U.S. Const. amend. VI) provides:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury. . . and to be informed of the nature and cause of the accusation . . . .

The Armed Career Criminal Act (ACCA), 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 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, and, notwithstanding any other provision of law, the court shall not suspend the sentence of, or grant a probationary sentence to, such person with respect to the conviction under section 922(g).

ACCA defines a "violent felony" to mean, in relevant part:

> [A]ny crime punishable by imprisonment for a term exceeding one year . . . that—
>
> (i) has 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) (the "elements clause").

Florida Statutes § 843.01 proscribes in relevant part:

> Whoever knowingly and willfully resists, obstructs, or opposes any officer . . . by offering or doing violence to the person of such officer . . . is guilty of a felony of the third degree . . . .

STATEMENT OF THE CASE

Over Mr. Haynes' constitutional objections, the sentencing judge found that his prior offenses were "committed on occasions different from one another" and imposed the 15-year mandatory-minimum sentence under the Armed Career Criminal Act (ACCA). The Solicitor General has now agreed, following *Wooden v. United States*, 142 S. Ct. 1063 (2022), that the Sixth Amendment jury right applies to ACCA's different-occasions requirement. Because the constitutional errors are not harmless here, Mr. Haynes respectfully requests this Court's review.

Mr. Haynes' petition also seeks to resolve the circuit split on whether the Florida offense of resisting an officer with violence is an ACCA "violent felony." This question would be outcome determinative here. Mr. Haynes accordingly requests this Court's review.

1. Mr. Haynes entered guilty pleas before the U.S. District Court for the Middle District of Florida to three drug counts, in violation of 21 U.S.C. § 841(a)(1); one count of possessing a firearm and ammunition as a convicted felon, in violation of 18 U.S.C. § 922(g)(1); and one count under 18 U.S.C. § 924(c). Docs. 155, 210.[1] The indictment did not charge, and

[1] Mr. Haynes cites the docket entries in Case No. 6:07-cr-54-JA-GJK (M.D. Fla).

Mr. Haynes did not admit at his guilty plea hearing, whether his prior offenses were "committed on occasions different from one another" as required to sentence a defendant under ACCA. Doc. 1 at 2-3; Doc. 155.

The district court sentenced Mr. Haynes to 20 years in prison, consisting of ACCA's 15-year mandatory-minimum term and § 924(c)'s 5-year consecutive penalty. Doc. 177 at 3; *see* Doc. 168 (PSR) ¶ 113; Doc. 185 at 19. Without ACCA, the statutory penalty on Mr. Haynes' § 922(g) offense would be zero to 10 years in prison. 18 U.S.C. § 924(a)(2) (2019) (applicable to Mr. Haynes). His sentencing guidelines range on all counts combined, including the § 924(c) penalty, would be only 117 to 131 months in prison. Doc. 168 (PSR) at 35; Doc. 185 at 22; *see* Doc. 210 at 1. The district judge made clear he would have imposed a lower sentence but for the "mandatory sentencing requirements." Doc. 185 at 23, 30.

Mr. Haynes' ACCA sentence is based on three prior convictions. Doc. 168 (PSR) ¶ 43. Two of these convictions arose from one federal case, with the indictment alleging that Mr. Haynes committed cocaine base offenses "[o]n or about" February 24, 2000, and March 9, 2000. Doc. 168 (PSR) at 56-57 (Case No. 00-cr-182-Orl (M.D. Fla.)).[2] These prior offenses were resolved in a plea agreement stating the offenses were sales made to an informant as part of one "continuing investigation." Doc. 172-1 at 10-11. As a result of the plea agreement, the government dismissed the one count against Mr. Haynes that would have carried a mandatory-minimum sentence. *See id.* at 1-2; Doc. 168 (PSR) at 56.

[2] Notably, the indictment in Mr. Haynes' current case listed this prior federal conviction as one conviction. *See* Doc. 1 at 3 ("a conviction for Possession With Intent to Distribute Cocaine Base, in United States District Court, Middle District of Florida, Orlando Division, Case Number 6:00-CR-182-ORL-28JGG") (bold omitted).

Mr. Haynes objected to the district court determining whether these offenses were "committed on occasions different from one another." He presented the constitutional arguments that (i) the district court was precluded from relying on any non-elemental facts, such as the alleged offense dates, to find the offenses were committed on different occasions;[3] and (ii) such facts instead had to be charged in an indictment and proven to a jury beyond a reasonable doubt.[4] The district court rejected both arguments based on Eleventh Circuit precedent, but noted that the question of whether a judge could rely on non-elemental facts for ACCA different-occasions purposes has "some traction." Doc. 183 at 8; Doc. 185 at 11-14.

The government contended to the district court that information from the indictment, plea agreement, and judgment from the prior federal case established the two drug offenses were committed on different occasions. Doc. 183 at 31-33.[5] Mr. Haynes disputed this conclusion,

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[3] Doc. 168 (PSR) at 37-38 (citing *Descamps v. United States*, 570 U.S. 254 (2013), and *Mathis v. United States*, 579 U.S. 500 (2016)); Doc. 170 at 4-8 (same); Doc. 175 at 1-4 (same). The date is not an element of these federal offenses. *See, e.g.*, *United States v. Pope*, 132 F.3d 684, 688-89 (11th Cir. 1998); *United States v. Reed*, 887 F.2d 1398, 1403 (11th Cir. 1989).

[4] Doc. 168 (PSR) at 38; Doc. 170 at 14-15.

[5] It should be noted that the ACCA penalty had been removed in Mr. Haynes' case when he was resentenced in 2012, following his first successful 28 U.S.C. § 2255 motion. *See* Pet. App. 5a-6a. During that stage of the proceedings, the government had agreed ACCA did not apply, and Mr. Haynes was resentenced to the non-ACCA statutory maximum of 10 years on the § 922(g) count. *Id.*; Doc. 133 at 5-6; 10-12; *see* Doc. 170 at 1-4; Doc. 175 at 5-6.

The instant resentencing was held on November 19, 2018, and May 31, 2019, after the district court granted Mr. Haynes' § 2255 motion attacking an unrelated error that had occurred at the 2012 resentencing—the ineffective assistance of counsel as to the sentencing guidelines career-offender enhancement and criminal history calculations. Pet. App. 7a-8a; Docs. 183, 185. The government nonetheless argued that it was entitled to a "clean slate" at the instant resentencing to correct its earlier error in "fail[ing] to notice" that the prior federal drug offenses were "on separate dates." Doc. 183 at 33-35. Mr. Haynes objected, arguing that the government had waived ACCA at the earlier stages of his case. Doc. 170 at 1-4; Doc. 175 at 5-6. The district court overruled Mr. Haynes' objection, reasoning that it was bound to apply ACCA because it is mandatory. Doc. 185 at 13. The Eleventh Circuit affirmed. Pet. App. 10a-12a. This is Mr. Haynes' direct appeal from the instant resentencing.

arguing that he had had little incentive to contest the non-elemental information in this plea-bargained case; the non-elemental facts may therefore be "'downright wrong'"; and the district court should not rely on the non-elemental information to conclude the offenses occurred on different occasions. Doc. 170 at 8-10 (quoting *Descamps*, 570 U.S. at 269-70; *Mathis*, 579 U.S. at 512); Doc. 175 at 4-5. The district court recognized the alleged offense dates here were in "temporal proximity"; but relying solely on the non-elemental offense dates, it concluded that the offenses were committed on different occasions. Doc. 185 at 11-12.

The third conviction relied on to sentence Mr. Haynes under ACCA was a 1996 Florida conviction for resisting with violence, in violation of Fla. Stat. § 843.01. Doc. 168 (PSR) ¶ 43. Mr. Haynes maintained before the district court that this offense is not an ACCA "violent felony" because it lacks the requisite "physical force" and *mens rea*, but he acknowledged circuit precedent to the contrary. Doc. 168 (PSR) at 37; Doc. 170 at 10-14; Doc. 175 at 6. The district court overruled his objections, in accordance with that precedent. Doc. 183 at 10; Doc. 185 at 12-13.

2. On direct appeal, Mr. Haynes renewed his constitutional arguments. The Eleventh Circuit affirmed, relying on its published decisions holding that a district court, rather than a jury, may make the different-occasions findings and may do so relying on non-elemental facts. Pet. App. 13a-14a (citing *inter alia United States v. Dudley*, 5 F.4th 1249 (11th Cir. 2021), *cert. denied*, 142 S. Ct. 1376 (2022)).

Mr. Haynes also contended that this Court's decision in *Borden v. United States*, 141 S. Ct. 1817 (2021), had abrogated the Eleventh Circuit's precedent holding that Florida resisting with violence is a "violent felony." The Eleventh Circuit rejected Mr. Haynes' argument, maintaining its pre-*Borden* precedent. Pet. App. 13 (citing *United States v. Deshazior*, 882 F.3d 1352 (11th

Cir. 2018); *United States v. Hill*, 799 F.3d 1318 (11th Cir. 2015); *United States v. Romo-Villalobos*, 674 F.3d 1246 (11th Cir. 2012)).

Mr. Haynes timely petitioned for rehearing. While maintaining his constitutional arguments, Mr. Haynes contended that this Court's new different-occasions standard in *Wooden* warranted a remand to the district court for further proceedings. *See* Pet. Reh'g, *United States v. Haynes*, No. 19-12335 (11th Cir. Oct. 12, 2022) ("Pet. Reh'g"). The Eleventh Circuit denied rehearing. Pet. App. 15a.

REASONS FOR GRANTING THE PETITION

1. Following this Court's decision in *Wooden*, the government has agreed that the Sixth Amendment jury-trial right attaches to whether prior offenses were committed on different occasions under ACCA. As the government acknowledges, the "different-occasions inquiry. . . goes beyond the 'simple fact of a prior conviction'" and therefore does not fall within the "narrow exception" to the constitutional rule that any fact that increases a defendant's statutory minimum or maximum penalty must be charged in an indictment and proven to a jury beyond a reasonable doubt. Gov't Br. Opp. 4-8, *Daniels v. United States*, No. 22-5102.[6]

The government has further agreed that this constitutional question is "important and frequently recurring" and "may eventually warrant this Court's review in an appropriate case." Gov't Br. Opp. 4, *Daniels v. United States*, No. 22-5102; Gov't Br. Opp. 6, *Reed v. United States*,

[6] The government suggests that, in *Wooden*, it proposed an "elements-based approach" to the different-occasions inquiry that would have permitted judicial determination. *See id.* at 6-7. But even the government's proposal would have required a consideration of non-elemental facts, such as timing. *See Wooden*, 142 S. Ct. at 1069 (outlining the government's proposed test, in which offenses "occur on different occasions when the criminal conduct necessary to satisfy the offense elements occurs at different times") (citation and internal quotation marks omitted); Gov't Br. 16-18, *Wooden v. United States*, No. 20-5279 (proposing a review of the elements and "information," such as date and location, alleged in the charging documents).

No. 22-336. Although the Court recently denied petitions raising similar questions, Mr. Haynes respectfully submits that his case presents an appropriate case for review.

First, Mr. Haynes presented his constitutional arguments in both the district court and court of appeals. He did so by expressly asserting his Fifth and Sixth Amendment indictment and jury-trial rights and objecting to the district court's reliance on non-elemental facts to find that his prior offenses were committed on different occasions under ACCA. *See* nn.3-4, *supra*; Initial Br., *United States v. Haynes*, No. 19-12335, 2021 WL 5298072, *27-30, *47-49 (11th Cir. Nov. 10, 2021) ("Initial Br."); Reply Br. *United States v. Haynes*, No. 19-12335, 2022 WL 1514697, *16-17 (11th Cir. May 6, 2022) ("Reply Br."). The question presented here is thus preserved and squarely presented.

Second, the constitutional errors in Mr. Haynes' case are prejudicial. Mr. Haynes challenged the substance of the district court's different-occasions determination below. He specifically contested the reliability of the non-elemental information from his prior case, which had been resolved through a plea bargain to avoid a mandatory-minimum penalty. Doc. 170 at 8-10; Doc. 175 at 4-5; Initial Br. at *32-34; Reply Br. at *17-18. As this Court recognized in *Descamps* and *Mathis*, a defendant in such a plea-bargained case "often has little incentive to contest facts that are not elements of the charged offense—and may have good reason not to," such as "not wish[ing] to irk the prosecutor or court by squabbling about superfluous factual allegations." Doc. 175 at 4 (quoting *Descamps*, 570 U.S. at 270; *Mathis*, 579 U.S. at 512). Mr. Haynes thus maintained his case fell squarely within this Court's recognition that non-elemental information from such plea-bargained cases "may be downright wrong" and "should not come back to haunt the defendant many years down the road by triggering a lengthy mandatory sentence." *Id.* (quoting *Descamps*, 570 U.S. at 270; *Mathis*, 579 U.S. at 512).

Mr. Haynes further challenged the district court's different-occasions determination as erroneous in light of *Wooden*. Initial Br. at *34-36; Reply Br. at *7-15. In *Wooden*, this Court set forth a multi-factor standard and explained that "the character and relationship of the offenses may make a difference." 142 S. Ct. at 1070-71. Thus, "[t]he more similar or intertwined the conduct giving rise to the offenses—the more, for example, they share a common scheme or purpose—the more apt they are to compose one occasion." *Id.* at 1071.

Here, the relatedness of the prior offenses is underscored by the federal government's own prosecution of Mr. Haynes in the prior proceeding. The offenses were charged in one indictment. Doc. 168 (PSR) at 56-57. For that to occur, the offenses had to be "of the same or similar character," be "based on the same act or transaction," or be "connected with or constitute parts of a common scheme or plan." Fed. R. Crim. P. 8(a). These offenses were of the same character; they were two cocaine base offenses. Doc. 168 (PSR) at 56-57, 61. They were not separated by any "significant intervening events," like an arrest. *Id.* ¶ 59. The offenses were resolved through a plea agreement expressly stating the offenses were drug sales made to an informant as part of one "continuing investigation." Doc. 172-1 at 10-11. And as Mr. Haynes has averred, the drug offenses comprised "one episode"; they were connected, partial sales—sales made to the same informant who was looking for one overall quantity. *See* Initial Br. at *35; Reply Br. at *14; Pet. Reh'g at 5. The government accordingly cannot establish that the constitutional errors in Mr. Haynes' case are harmless beyond a reasonable doubt.[7]

[7] Indeed, in a case afforded the jury-trial right, the jury concluded that the government had failed to meet its burden to establish that the offenses were committed on different occasions. *See* Verdict (Doc. 173), *United States v. Pennington*, No. 1:19-cr-455-WMR (N.D. Ga. Sept. 20, 2022) (concluding defendant's offenses, including two drug offenses for which he was convicted in two counties on June 10, 2013, and October 30, 2013, were not on committed on different occasions from one another).

Finally, there is little to be gained, and much to be lost, by delaying review of the question presented here. This Court does not need any further percolation in the lower courts on a constitutional question well familiar to this Court. *See, e.g., Wooden*, 142 S. Ct. at 1068 n.3 (noting amicus briefing on the Sixth Amendment question); *id.* at 1087 n.7 (Gorsuch, J., concurring in the judgment) (recognizing Fifth and Sixth Amendment question presented by the different-occasions inquiry and observing "there is little doubt" the Court will need to consider this question "soon"); *Descamps*, 570 U.S. at 269-70 (recognizing and resolving Sixth Amendment concern by limiting sentencing courts to the elements of the prior offenses for ACCA violent-felony purposes); *Mathis*, 579 U.S. at 511-12 (same). Defendants, including Mr. Haynes, are already being treated differently in the lower courts.[8] And at stake here are constitutional rights that, if not reviewed now, may be forever lost to Mr. Haynes. Mr. Haynes therefore respectfully seeks this Court's review on the important question presented in this petition.

2. Mr. Haynes also requests this Court's review to resolve the circuit split on whether the Florida offense of resisting with violence, Fla. Stat. § 843.01, is an ACCA "violent felony." *Compare* Pet. App. 13a (concluding this Florida offense is a "violent felony" under ACCA's elements clause); *United States v. Davis*, No. 21-4217, 2022 WL 12338485, *2-3 (4th Cir. Oct. 21, 2022) (concluding this Florida offense is a "crime of violence" under the sentencing guidelines' elements clause), *with United States v. Lee*, 701 F. App'x 697, 699-701 & n.1 (10th Cir. 2017)

[8] *Compare* Pet. App. 13a (relying on its published decision in *Dudley*, 5 F.4th at 1260, to reject Mr. Haynes' constitutional arguments and affirm his ACCA sentence following *Wooden*), *with* Govt. Br. Opp. 7, *Reed v. United States*, No. 22-236 (citing *United States v. Man*, No. 21-10241, 2022 WL 17260489 (9th Cir. Nov. 29, 2022) (assuming, without deciding, constitutional error occurred in light of government post-*Wooden* concession and remanding where error was not harmless).

(expressly disagreeing with the Eleventh Circuit and concluding this Florida offense is not an ACCA "violent felony"). Mr. Haynes' case is an appropriate case to resolve this question.

Mr. Haynes objected to the violent-felony determination before both the district court and court of appeals. Doc. 168 (PSR) at 37; Doc. 170 at 10-14; Doc. 175 at 6; Initial Br. at *38-45; Reply Br. at *19-26. This question is accordingly preserved.

Resolution of the question presented would also be outcome determinative. Should this Court agree that Florida resisting with violence is not an ACCA "violent felony," Mr. Haynes would be ineligible for ACCA's increased statutory penalties. *See* Doc. 168 (PSR) ¶ 43.

Finally, the Eleventh Circuit's decision is wrong:

a. Rather than requiring the government to prove that the Florida offense of resisting with violence requires the targeted, designed-to-harm intent necessary to qualify as an ACCA "violent felony," *see Borden*, 141 S. Ct. at 1825; *id*. at 1841 (Thomas, J., concurring in the judgment), the Eleventh Circuit maintained its pre-*Borden* published decisions to affirm Mr. Haynes' ACCA sentence. Pet. App. 13a. But as this Court has made clear, the government bears the burden of establishing that an offense qualifies as an ACCA predicate. *See, e.g.*, *Pereida v. Wilkinson*, 141 S. Ct. 754, 764-65 (2021).

Moreover, even though Mr. Haynes did not bear the burden, he pointed to Florida cases, including his own prosecution, to show that this Florida offense does not require that the defendant have targeted the officer with physical force or intended to cause harm to the officer. Initial Br. at *44-45; Reply Br. at *19-26. For example, in *Wright v. State*, 681 So. 2d 852, 853-54 (Fla. 5th DCA 1996), the court held that the defendant's conduct, when he "struggled, kicked, and flailed his arms and legs"—apparently while face down with an officer or officers on his back—was "sufficient to show that he offered to do violence to the officers within the meaning of section

843.01." In *State v. Green*, 400 So. 2d 1322, 1323-24 (Fla. 5th DCA 1981), the appellate court concluded that these facts—the defendant's "'wiggling and struggling' in an effort to free himself" from an officer attempting to handcuff him—"do not establish, as a matter of law, that [the defendant's] actions did not constitute 'violence'" under § 843.01. And Mr. Haynes' own prosecution illustrates the breadth of the statutory elements in Florida. Doc. 168 (PSR) ¶ 48 (resisting when he "pulled away and ran" and he "continued to resist officers by swinging his arms").

These cases demonstrate that, although § 843.01 reaches "knowing[] and willful[]" conduct, the prosecution in Florida does not have to prove that the defendant targeted the officer or designed to cause him harm. Indeed, such conduct as wiggling, struggling, flailing, and pulling away evidences, at most, an "indifference to risk" to the officer, not a "deliberate choice of wreaking harm" to the officer. *Borden*, 141 S. Ct. at 1830. Because the Eleventh Circuit affirmed, without requiring the government to meet its burden under *Borden*, Mr. Haynes respectfully seeks this Court's review.

b. The Eleventh Circuit has also incorrectly decided that this Florida offense has as an element "physical force"—that is, "force capable of causing physical pain or injury." *Johnson v. United States*, 559 U.S. 133, 140 (2010); *Stokeling v. United States*, 139 S. Ct. 544, 553 (2019). In *Borden*, this Court has now expressly applied the least-culpable-conduct rule to ACCA's elements clause. 141 S. Ct. at 1832 (citing *Moncrieffe v. Holder*, 569 U.S. 184, 190-91 (2013)). But the Eleventh Circuit affirmed Mr. Haynes' case based on in its earlier published decisions, without assessing the least culpable conduct prosecuted in Florida as resisting with violence. *Compare Lee*, 701 F. App'x at 700 n.1 (disagreeing with the Eleventh Circuit), *with* Pet. App. 13a; *Deshazior*, 882 F.3d at 1355; *Hill*, 799 F.3d at 1322-23; *Romo-Villalobos*, 674 F.3d at 1248-50.

Although Mr. Haynes did not have the burden, he pointed to Florida cases to demonstrate that this Florida offense does not require "physical force." Initial Br. at *40-42; Reply Br. at *25. For example, in *I.N. Johnson v. State*, 50 So. 529, 529-30 (Fla. 1909), the state charged the defendant with "knowingly and willfully resisting, obstructing or opposing the execution of legal process, by offering or doing violence" to an officer. 50 So. at 529.[9] The charging document alleged "a knowing and willful resistance . . . by gripping the hand of the officer and forcibly preventing him from opening the door of the room . . . thereby obstructing the officer in entering the room to make the arrest." *Id.* at 529-30. The Florida Supreme Court reviewed whether this charging document sufficiently charged the "language of the statute" or its "equivalent import." *Id.* at 529. The Florida Supreme Court held that these alleged facts were equivalent to the statute's "violence" element and affirmed the defendant's conviction. *Id.* at 529-30.

Florida has continued to prosecute resisting-with-violence offenses without requiring the level of "physical force" needed to qualify as a "violent felony." *See, e.g.*, *Green*, 400 So. 2d at 1323-24; *Wright*, 681 So. 2d at 853-54; *Miller v. State*, 636 So. 2d 144, 151 (Fla. 1st DCA 1994); *Kaiser v. State*, 328 So. 2d 570, 571 (Fla. 3d DCA 1976); *State v. Young*, 936 So. 2d 725 (Fla. 1st DCA 2006). Mr. Haynes' own prosecution again illustrates the breadth of the statutory elements in Florida. *See* Doc. 168 (PSR) ¶ 48 (resisting when he "pulled away and ran" and he "continued to resist officers by swinging his arms").

Mr. Haynes therefore respectfully requests this Court's review to resolve whether this Florida offense, which is frequently relied on to sentence defendants under ACCA, qualifies as a

[9] The charge was brought under Section 3500 of the General Statutes of 1906, a predecessor to today's § 843.01.

predicate. Mr. Haynes' case presents an appropriate case to resolve this question, as a decision in his favor would resolve that he is ineligible for ACCA.

CONCLUSION

For the foregoing reasons, the petition should be granted.

Respectfully submitted,

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