

NO. \_\_\_\_\_

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IN THE SUPREME COURT OF THE UNITED STATES

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CHRISTOPHER MALLET, PETITIONER

V.

UNITED STATES OF AMERICA, RESPONDENT

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

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PETITION FOR WRIT OF CERTIORARI

Robert M. "Robby" Golden  
Counsel of Record  
Bar # 302647  
425 W. Capitol Ave., Suite 1582  
Little Rock, AR 72201  
(501) 372-8600  
[robbygolden@robbygolden.com](mailto:robbygolden@robbygolden.com)

Attorney for Petitioner

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## **QUESTION PRESENTED**

Whether the Arkansas robbery statute categorically qualifies as a predicate violent felony under the Armed Career Criminal Act's elements clause.

## **LIST OF PARTIES**

All parties appear in the caption of the case on the cover page.

## **RELATED CASES**

None.

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**IN THE SUPREME COURT OF THE UNITED STATES.**

**PETITION FOR WRIT OF CERTIORARI**

Petitioner respectfully prays that writ of certiorari issue to review the judgment below.

**I. OPINION BELOW**

At issue in this petition is the April 27, 2023 opinion of the United States Court of Appeals for the Eighth Circuit, affirming the district court’s decision that Mr. Mallett was subject to the sentencing provisions of the Armed Career Criminal Act. United State v. Mallett, 66 F.4th 734, appears at Appendix A. In reaching its decision, the court of appeals held that the district court correctly ruled that the Arkansas robbery statute is a violent felony within the meaning of the Armed Career Criminal Act.

**II. JURISDICTION**

On April 27, 2023, the United States Court of Appeals for the Eighth Circuit issued a per curiam opinion affirming the district court. Appellant filed a timely petition for rehearing. Appellant’s petition for rehearing was denied on June 23, 2023. A copy of the order denying rehearing appears at Appendix A-4.

Jurisdiction is conferred on this Court pursuant to 28 U.S.C. § 1254(1).

**III. CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED**

18 U.S.C. § 924(e) defines “violent felony” as “any crime punishable by imprisonment for a term exceeding one year” that “has as an element the use, attempted use, or threatened use of physical force against the person of another.” § 924(e)(2)(B)(i).

## **IV. THE STATEMENT OF THE CASE**

### **A. Introduction**

On October 15, 2020, Mr. Mallett waived indictment and agreed to be charged by a superseding information. On that same day, Mr. Mallett entered a guilty plea to the superseding information charging him with one count of knowingly possessing a firearm after having been convicted of a felony offense.

At his sentencing, the district court determined that Mr. Mallett should be sentenced pursuant to the Armed Career Criminal Act based on his prior battery offense and two separate robbery convictions. The district court sentenced Mr. Mallett to a serve one hundred ninety (190) months in the custody of the Bureau of Prisons.

Mr. Mallett appealed his sentence to the United States Court of Appeals for the Eighth Circuit. The trial court's decision was affirmed. Mr. Mallett petitioned for a rehearing, and that petition was denied on June 23, 2023.

### **B. Factual background**

Mr. Mallett was arrested pursuant to an undercover operation by the Little Rock Police Department. Mr. Mallett engaged an undercover officer in a conversation about drugs and sex. He offered to get high with the undercover officer and was approached by detectives. The detectives patted Mr. Mallett down for weapons. The pat down led to a search of Mr. Mallett's front pocket where detectives located a small silver revolver with four rounds of ammunition.

## V. REASONS FOR GRANTING THE PETITION

A. *The United States Court of Appeals for the Eighth Circuit decided that the Arkansas robbery statute is categorically a violent offense for the purposes of sentencing pursuant to the Armed Career Criminal Act. Whether an offense is a violent offense pursuant to the Armed Career Criminal Act is an important question of federal law. The decision by the court of appeals conflicts with this court's decision on use of force as set out in Stokeling v. U.S., 139 S. Ct 544, 555 (2019) and Johnson v. United States, 559 U.S. 133, 140 (2010).*

The Armed Career Criminal Act (ACCA) defines a violent felony as, “any 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; 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 person.”

18 U.S.C. § 924(e)(2)(B).

In Stokeling, this Court analyzed the amount of force necessary to rise to the level of “physical force” within the meaning of ACCA. At issue was the Florida robbery statute which stated,

[r]obbery means the taking of money or other property which may be the subject of larceny from the person or custody of another, with intent to either permanently or temporarily deprive the person or the owner of the money or other property, when in the course of the taking there is the use of force, violence, assault, or putting in fear.

Fla. Stat. § 812.13(1) (1995).

The majority held that the amount of force required to commit robbery as defined in Florida qualifies as “physical force” for the purposes of ACCA. In reaching this conclusion, the Stokeling majority found that when drafted, the ACCA specifically included robbery as a predicate offense and that the U.S. code defined robbery as “any felony consisting of the taking of the property of another from the person of another by force or violence.” Stokeling v. U.S. at 550 (citing 18 U.S.C. App. § 1202 (a) (1982 ed., Supp. II)). The majority noted that the federal statute for robbery “mirrored the elements of the common-law crime of robbery, which has long required force or violence.” Id. Further, at common law, violence was committed if sufficient force was exerted to overcome the resistance encountered. Id. Examples of breaking a watch chain to steal a watch from a person or snatching a pin from a woman’s hair tearing her hair were sufficient to qualify as common-law robbery. Id. The Court held that physical force is the amount of force necessary to overcome the victim’s resistance. Under this determination of “physical force,” the majority held that robbery as defined by the Florida statute met the definition of physical force for the purposes of the ACCA.

Arkansas robbery is committed when “with the purpose of committing a felony or misdemeanor theft or resisting apprehension immediately after committing a felony or misdemeanor theft, the person employs or threatens to immediately employ physical force upon another person.” Ark. Code Ann. 5-12-102 (2022). On its face, employing or threatening to employ physical force upon another comports with the common-law definition as discussed in Stokeling. However, Arkansas has specifically defined



“physical force” as being any: (1) Bodily impact, restraint, or confinement; or (2) Threat of any bodily impact, restraint, or confinement.” Ark. Code Ann. § 5-12-101 (2022). Confinement is what distinguishes Arkansas Robbery from that of the common law definition and the Florida statute at issue in Stokeling.

This broadening of the Arkansas statute is why robbery in Arkansas is not categorically a “violent felony” for the purposes of ACCA. Stokeling holds that “‘physical force,’ or ‘force capable of causing physical pain or injury,’ includes the amount of force necessary to overcome a victim’s resistance.” Stokeling v. U.S., 139 S. Ct 544, 55 (2019) (quoting Johnson v. United States, 559 U.S. 133, 140 (2010)).

Arkansas’s choice to include restraint and confinement in the definition of physical force allows robbery to be committed without the amount of force required to overcome the victim’s resistance. Restraint and confinement are commonly defined similarly. The dictionary defines restraint as “a restraining action or influence” or “a means of restraining.” Webster’s Desk Dictionary (2001). Confine is defined as “to enclose or keep within bounds” or “to shut up, as in prison.” *Id.* Confinement when used as a noun is “a boundary or bound.” *Id.*

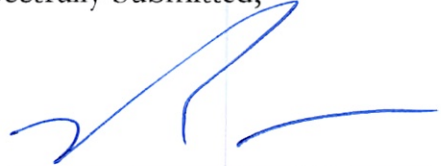
Physical force as defined by Ark. Code Ann. § 5-12-101 makes it possible for robbery to be committed without the use of any physical force. Because robbery in Arkansas can be committed merely by the use of any restraint or confinement, it does not qualify as a violent felony for the purpose of the ACCA. Therefore, the least

culpable conduct covered by Arkansas robbery does not rise to the level of force as set out by this court in Stokeling and Johnson.

## VI. CONCLUSION

For the foregoing reasons, Mr. Mallett's petition for writ of certiorari should be granted.

Respectfully Submitted,



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Robert M. "Robby" Golden  
Counsel of Record  
Bar # 302647  
3700 Cantrell Road, Suite 102  
Little Rock, AR 72202  
(501) 372-8600  
[robbygolden@robbygolden.com](mailto:robbygolden@robbygolden.com)

Attorney for Petitioner

## **VII. APPENDIX**

### **A. Index of Appendices**

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