No.

IN THE

SUPREME COURT OF THE UNITED STATES

SAMUEL LYNCH
Petitioner,

v.

UNITED STATES
Respondent.

On Petition for Writ of Certiorari
To The United States Court of Appeals
For the Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

1. Whether 18 U.S.C. § 3559(c)(1)'s residual clause is unconstitutional in light of This Court's opinions in *Dimaya* and *Johnson*?

2. Whether Florida's Aggravated Battery statute is categorically a violent felony under

   18 U.S.C. § 3559?

CORPORATE DISCLOSURE STATEMENT

There are no corporations or publicly traded companies with a stake in the outcome of this matter.

LIST OF PROCEEDINGS

1. United States v. Samuel Lynch – United States District Court for the Middle District of Florida – 8:15-cr-171-T-24JSS – Judgment Entered 05/11/2016
2. United States v. Samuel Lynch – 11th Circuit Court of Appeals – 16-12638 – affirmed 08/01/2023.

LIST OF PARTIES

Petitioner Samuel Lynch

Respondent United States

TABLE OF CONTENTS

INDEX TO APPENDICES

TABLE OF AUTHORITIES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below where the Eleventh Circuit Court of Appeals upheld the lower court's judgment and sentence. The Eleventh Circuit determined that 18 U.S.C. § 3559(c)(1)'s residual clause was not unconstitutional, therefore Mr. Lynch's multiple life sentences were valid.

OPINION BELOW

The Judgment of the Middle District of Florida appears at Appendix A to the petition. The Opinion from the Eleventh Circuit affirming the Middle District of Florida appears at Appendix B to the petition and is unpublished. No petition for rehearing was filed. These opinions are unpublished.

JURISDICTION

The date on which the United States Court of Appeals for the Eleventh Circuit entered judgment was August 1, 2023. Appendix A. The jurisdiction of this Honorable Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

This petition involves application of 18 U.S.C. § 3559(c) which states in pertinent part:

(c)IMPRISONMENT OF CERTAIN VIOLENT FELONS.—

(1)MANDATORY LIFE IMPRISONMENT.—Notwithstanding any other provision of law, a person who is convicted in a court of the United States of a serious violent felony shall be sentenced to life imprisonment if—

(A)the person has been convicted (and those convictions have become final) on separate prior occasions in a court of the United States or of a State of—

(i)

2 or more serious violent felonies; or

(ii)

one or more serious violent felonies and one or more serious drug offenses; and

(B)

each serious violent felony or serious drug offense used as a basis for sentencing under this subsection, other than the first, was committed after the defendant's conviction of the preceding serious violent felony or serious drug offense.

(2)DEFINITIONS.—For purposes of this subsection—

(F)the term "serious violent felony" means—

(i)

a Federal or State offense, by whatever designation and wherever committed, consisting of murder (as described in section 1111); manslaughter other than involuntary manslaughter (as described in section 1112); assault with intent to commit murder (as described in section 113(a)); assault with intent to commit rape; aggravated sexual abuse and sexual abuse (as described in sections 2241 and

2242); abusive sexual contact (as described in sections 2244(a)(1) and (a)(2)); kidnapping; aircraft piracy (as described in section 46502 of Title 49); robbery (as described in section 2111, 2113, or 2118); carjacking (as described in section 2119); extortion; arson; firearms use; firearms possession (as described in section 924(c)); or attempt, conspiracy, or solicitation to commit any of the above offenses; and

(ii)

any other offense punishable by a maximum term of imprisonment of 10 years or more that has as an element the use, attempted use, or threatened use of physical force against the person of another or that, by its nature, involves a substantial risk that physical force against the person of another may be used in the course of committing the offense;

STATEMENT OF THE CASE

In summary, Mr. Lynch was convicted after trial of Conspiracy to Commit Hobbs Act Robbery, multiple counts of substantive Hobbs Act Robbery, and Brandishing a firearm in the furtherance of a crime of violence, and received multiple life sentences after the Court found that Mr. Lynch qualified for mandatory life sentences under 18 U.S.C. § 3559(c). The Government relied upon A Florida Robbery Conviction, an Aggravated Battery conviction, and an Aggravated Assault conviction. On Appeal, the Government conceded that the Aggravated Assault conviction does not qualify for enhancement. Because aggravated battery is

not an enumerated offense, and does not qualify under the elements language of 18 U.S.C. § 3559, it falls under the residual clause of 18 U.S.C. § 3559(c), which contains the same faulty language as *Sessions v. Dimaya,* S.Ct. 1204 (2018).

ARGUMENT IN FAVOR OF GRANTING CERTIORARI

At sentencing, Mr. Lynch was sentenced to concurrent life sentences on counts one, two, five and seven, and consecutive life sentences on counts three and eight, due to the application of 18 U.S.C. §3559 (c)(1)(A)(i). That section provides for a mandatory life sentence if a defendant is convicted of a serious violent felony and on separate prior occasions, had been convicted of two or more serious violent felonies.

The term "serious violent felony" is defined at subsection (c)(2)(F)(i) as any of a list of enumerated offenses. It also has an elements clause requiring the use, attempted use or threatened use of physical force, and a residual clause stating: "any other offense punishable by a maximum term of imprisonment of 10 years or more that has as an element the use, attempted use, or threatened use of physical force against their person of another, or that, by its nature, involves a substantial risk that physical force against the person of another may be used in the course of committing the offense." A qualifying crime must fall under either the enumerated offenses, element clauses, or residual clauses.

Mr. Lynch has a prior conviction for Aggravated Battery on a Law Enforcement Officer With a Deadly Weapon. Florida's Aggravated Battery is

defined as a battery with intentionally or knowingly causing great bodily harm, permanent disability, or permanent disfigurement or using a deadly weapon. See Fl. Stat. §784.045 . A battery is defined as "actually and intentionally touching or striking another person against the will of the other; or intentionally causing bodily harm to another person." Fl. Stat. §784.03.

Curtis Johnson held that Florida's felony battery offense is not a violent felony for ACCA purposes because the statute does not necessarily include as an element of the offense the use of "violent force" or "force capable of causing physical pain or injury to another person." *See Johnson v. United States*, 559 U.S. 133 (2017). In determining whether or not a conviction qualifies as a crime of violence, "[a]ll that counts are the elements of the statute of conviction, not the specific conduct of a particular offender." *United States v. Davis*, 875 F.3d 592, 597 (11th Cir. 2017). Under this categorical approach, a court is required to "presume that the conviction rested upon nothing more than the least of the acts criminalized." *United States v. Howard*, 742 F.3d 1334, 1345 (11th Cir. 2014).

If a statute has alternative elements, some of which constitute a crime of violence and some that don't, the statute is "divisible" and a "modified categorical approach" is used to determine the actual offense of conviction. *Descamps v. United States*, 570 U.S. 254, 260-61 (2013). When figuring out whether a statute is divisible under *Decamps*, the court should look at jury instructions to see if a jury must find one of "alternative elements beyond a reasonable doubt, rather than just convict under a statute that happens to list alternative definitions or alternative means for

the same crime without requiring jurors to pick which one applies." *United States v. Lockett*, 810 F.3d 1262, 1267 (11th Cir. 2016). The battery statute suggests that battery is divisible into two elements, and "touch or strike" represents alternative ways of satisfying the first element: either a "touch" or a "strike" is sufficient. See Fla. Stat. §784.03(1)(a). *See State v. Weaver*, 957 So.2d 586, 587-89 (Fla. 2007) ("touching or striking" and "causing bodily harm" constitute two forms of simple battery, with "touching or striking" representing a single "form").

An Aggravated Battery incorporates the commission of a battery as element one, and then adds either the causing of great bodily harm, permanent disability, or permanent disfigurement **OR** the use of a deadly weapon. Fl. Stat. §784.045. There are two elements of aggravated battery but many ways to commit each element. Because not all the means involve the "use of force," Aggravated Battery with a deadly weapon is not a "serious violent felony."

Touching or striking does not qualify as the "use, attempted use, or threatened use of physical force against the person of another." Presuming that a conviction rested upon nothing more than the least of the acts criminalized, the act of "touching" does not constitute physical force. See *Curtis Johnson*, 559 U.S. at 133. Rather, "touching" requires the proof of only the slightest unwanted physical touch. Id. at 137. Because this element of Florida's aggravated battery statute can be satisfied by any intentional physical contact no matter how slight, it is not comparable to the elements clause of 18 U.S.C. §3559.

The use of a deadly weapon does not categorically imply the use of violent force either. Florida case law is clear that a person can "use a deadly weapon" during a battery without the weapon ever touching the victim; simply holding it is sufficient while committing a simple battery. *Severance v. State*, 972 So.2d 932, 933-34 (Fla. 4th DCA 2007).

Because the least of the criminalized acts of Aggravated Battery with a Deadly Weapon is an unwanted touching while carrying a deadly weapon, which is what must be presumed under the categorical approach, and this does not involve the use of "physical force" for 18 U.S.C. §3559 purposes.

The government filed the required notice to seek enhancement under §3559. In that notice, the Government states it would rely upon a 2005 Florida Robbery conviction, a 2007 Aggravated Battery on Law Enforcement conviction, and a 2012 Aggravated Assault with a Deadly Weapon conviction as "serious violent felonies" to enhance Mr. Lynch's penalties to mandatory life imprisonment if convicted. Mr. Lynch has no serious drug offenses that might implicate subsection (c)(1)(A)(ii). On Appeal, the Government ceded that the Aggravated Assault charge would not qualify for this enhancement. Aggravated Battery on a Law Enforcement Officer with a Deadly Weapon is not one of the enumerated offenses. Furthermore, under the prescribed categorical approach Aggravated Battery on a Law Enforcement Officer with a Deadly Weapon does not contain as an element the "use, attempted use, or threatened use of physical force against their person of another" The offense must therefore qualify under the residual clause in order for this enhancement to

apply. Unfortunately, §3559's residual clause suffers the same constitutional defects as the residual clauses in *Dimaya* and *Johnson*.

§3559's residual clause reads: "by its nature, involves a substantial risk that physical force against the person of another may be used in the course of committing the offense." This is phrased nearly identical to the residual clause in *Johnson*, which states "otherwise involves conduct that presents a serious potential risk of physical injury to another", and is in fact absolutely identical to the residual clause in *Dimaya* which states "by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense." Certainly, if the United States Supreme Court found that the residual clause in *Dimaya* was unconstitutionally vague, the same exact wording in a statute mandating mandatory life sentences must also be unconstitutional.

In fact, other Courts have already determined that the §3559 residual clause is unconstitutional. The Eastern District of California recently stated:

> The features that rendered the residual clauses unconstitutional in the *Johnson II* and *Dimaya* are equally present here. The residual clause directs a court to determine what conduct a crime's ordinary case entails without offering a "reliable way" to guide that task. This indeterminate standard is then layered onto a second layer of vagueness: "uncertainty about the level of risk that makes a crime 'violent.'". The "substantial risk" threshold in the residual clause here is identical to the statutory language in §16(b) and is,

like the "serious potential risk" in the ACCA, an "imprecise 'qualitative standard.'" Just as in *Johnson* and *Dimaya*, the "ordinary-case requirement and a fuzzy risk standard" combine to render the residual clause unconstitutionally vague.

United States v. Minjarez, 2019 WL 1209625 at *9 (March 14, 2019) (internal citations omitted)

The *Minjarez* court was not the first trial court to make this finding; the Central District of Illinois found, pre-*Dimaya*, that *Johnson*, along with Seventh Circuit cases invalidating the §16(b) residual clause, invalidated the §3559 residual clause as well:

Accordingly, the Court sees no reason to not follow circuit precedent and therefore finds that 18 U.S.C. §3559(c)(2)(F)(ii)'s "residual clause" is so similar to the "residual clauses" at issue in *Vivas–Ceja*, *Hurlburt* and *Cardena* that this Court is compelled to conclude that it too is unconstitutionally vague. The Court's application of 18 U.S.C. §3559(c) to Petitioner cannot stand.

Haynes v. United States, 237 F. Supp. 3d. 816, 823 (C.D. Ill. 2017).

CONCLUSION

The Eleventh Circuit has not taken the stance that the residual clause in 18 U.S.C. §3559 is unconstitutional. Florida's Aggravated Battery statute does not categorically qualify as a serious violent felony for §3559's purposes. It must then

fall under the §3559 residual clause. Other courts have acknowledged the §3559 residual clause defects. Accordingly, Mr. Lynch requests that This Court grant his petition for certiorari review and reverse his life sentences.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on Solicitor General of the United States, Room 5616, Department of Justice, 950 Pennsylvania Ave., N. W., Washington, DC 20530-0001 on October 28, 2023.

Christopher DeLaughter, Esquire

APPENDICES TABLE OF CONTENTS

No.

IN THE

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MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

Counsel for the petitioner asks leave to file the attached petition for writ of certiorari without prepayment of costs and to proceed *in forma pauperis*. Counsel for the petitioner was appointed pursuant to the Criminal Justice Act 18 U.S.C. § 3006.

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[DO NOT PUBLISH]

In the United States Court of Appeals

For the Eleventh Circuit

No. 16-12638

Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

SAMUEL LEE LYNCH,
REO THOMAS NANCE,

Defendants-Appellants.

Appeals from the United States District Court
for the Middle District of Florida
D.C. Docket No. 8:15-cr-00171-SCB-JSS-1

Before WILLIAM PRYOR, Chief Judge, and JILL PRYOR and TJOFLAT, Circuit Judges.

PER CURIAM:

A jury in the Middle District of Florida convicted Appellants Samuel Lee Lynch and Reo Thomas Nance of conspiracy to commit Hobbs Act robbery, in violation of 18 U.S.C. § 1951(a); Hobbs Act robbery, in violation of § 1951(a); discharging or brandishing a firearm in furtherance of a crime of violence, in violation of 18 U.S.C. § 924(c)(1)(A)(ii)–(iii); and being a felon in possession of a firearm or ammunition, in violation of 18 U.S.C. § 922(g)(1). The District Court sentenced Lynch to life in prison and Nance to 624 months in prison.

Lynch and Nance both argue on appeal that their Hobbs Act robbery convictions are not predicate crimes of violence for purposes of their § 924(c) convictions. Lynch also argues that his previous Florida felony convictions for aggravated assault with a deadly weapon and aggravated battery on a law enforcement officer with a deadly weapon are not predicate offenses for his sentencing enhancements under U.S.S.G. § 4B1.1 and 18 U.S.C. §§ 924(e) and 3559(c). After careful review, we affirm.

I.

We review *de novo* whether an offense qualifies as a crime of violence under § 924(c). *Steiner v. United States*, 940 F.3d 1282, 1288 (11th Cir. 2019) (per curiam). However, an argument raised for the

first time on appeal is reviewed only for plain error. *United States v. Rodriguez*, 751 F.3d 1244, 1251 (11th Cir. 2014). Similarly, where a defendant fails to clearly state the grounds for his objection in the district court, we review only for plain error. *United States v. Ramirez-Flores*, 743 F.3d 816, 821 (11th Cir. 2014). To establish plain error, a defendant must show "(1) error, (2) that is plain, and (3) that affects substantial rights." *Rodriguez*, 751 F.3d at 1251–52 (quoting *United States v. Moriarty*, 429 F.3d 1012, 1019 (11th Cir. 2005)). Plain error review is discretionary, but "the court of appeals should exercise its discretion to correct the forfeited error if the error seriously affects the fairness, integrity or public reputation of judicial proceedings." *Molina-Martinez v. United States*, 578 U.S. 189, 195, 136 S. Ct. 1338, 1343 (2016) (internal quotations and citations omitted).

To satisfy the plain error rule, an asserted error must be clear from the plain meaning of a statute or constitutional provision, or from a holding of this Court or the Supreme Court. *United States v. Morales*, 987 F.3d 966, 976 (11th Cir.), *cert. denied*, 142 S. Ct. 500 (2021). Even if an error was not "'plain' at the time of sentencing, . . . it is enough that the error be 'plain' at the time of appellate consideration." *United States v. Rodriguez*, 398 F.3d 1291, 1299 (11th Cir. 2005) (quoting *Johnson v. United States*, 520 U.S. 461, 468, 117 S. Ct. 1544, 1549 (1997)).

A plain error affected a defendant's substantial rights if it was prejudicial, meaning the error actually made a difference in the defendant's sentence. *Rodriguez*, 398 F.3d at 1300. If the appellate court would have to speculate that the result would have been

different, the defendant has not met the burden to show that his substantial rights have been affected. *Id.* at 1301.

In this case, neither Lynch nor Nance argued in the District Court—in their motions for judgment of acquittal or otherwise—that their convictions for Hobbs Act robbery did not qualify as crimes of violence under § 924(c). Instead, they maintained throughout the proceedings below that they were innocent of the underlying crimes. And while both objected to the entirety of the relevant offense conduct in their respective presentence investigation reports ("PSR"), they did so only on the broad grounds that they were factually innocent on all counts of conviction. Accordingly, Lynch and Nance have not properly preserved this issue for appeal, and so we review only for plain error.

Section 924(c) prohibits using or carrying a firearm during and in relation to a crime of violence or possessing a firearm in furtherance of any such crime. 18 U.S.C. § 924(c)(1). It also provides increased penalties, including a mandatory consecutive sentence, for those who brandish or discharge a firearm while committing a crime of violence. *Id.* § 924(c)(1)(A)(ii)–(iii), (c)(1)(D)(ii). A "crime of violence" within the meaning of § 924(c) means that an offense is a felony and

> (A) has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or
>
> (B) that by its nature, involves a substantial risk that physical force against the person or

> property of another may be used in the course of committing the offense.

Id. § 924(c)(3). We refer to § 924(c)(3)(A) as the "elements clause," and § 924(c)(3)(B) as the "residual clause." *See, e.g., Thompson v. United States*, 924 F.3d 1153, 1155 (11th Cir. 2019).

Lynch and Nance were convicted under § 924(c) for brandishing a firearm during the commission of a Hobbs Act robbery. Lynch was also convicted for discharging a firearm during the commission of a Hobbs Act robbery. They maintain that those convictions are invalid because Hobbs Act robbery does not qualify as a "crime of violence" under § 924(c). In *United States v. St. Hubert*, we rejected a similar challenge to a defendant's § 924(c) conviction and held that Hobbs Act robbery qualified as a crime of violence under both the elements clause and the residual clause of § 924(c)(3). 909 F.3d 335, 344–46 (11th Cir. 2018), *abrogated in part by United States v. Davis*, 139 S. Ct. 2319, 2336 (2019); *see also In re Saint Fleur*, 824 F.3d 1337, 1340–41 (11th Cir. 2016) ("Hobbs Act robbery . . . clearly qualifies as a 'crime of violence' under the [elements] clause in § 924(c)(3)(A).").

The Supreme Court subsequently held in *United States v. Davis* that the residual clause of § 924(c) was unconstitutionally vague, thus abrogating that portion of our holding in *St. Hubert*. 139 S. Ct. 2319, 2336 (2019). But the remaining *St. Hubert* holding—that Hobbs Act robbery qualified as a crime of violence under the elements clause—remains unaffected, and we are bound by it.

Because our binding precedent forecloses Lynch and Nance's argument that Hobbs Act robbery does not qualify as a "crime of violence" under § 924(c)'s elements clause, their argument fails the second prong of plain error review. The District Court, then, did not plainly err and their § 924(c) convictions are affirmed.

II.

Turning to Lynch's second argument, we review a district court's application of the Sentencing Guidelines *de novo*. *United States v. Perez*, 943 F.3d 1329, 1332 (11th Cir. 2019) (per curiam). In particular, we review the legal standard *de novo*, the district court's findings of fact for clear error, and the district court's application of the legal standard and Sentencing Guidelines to those facts *de novo*. *Id.* at 1332–33. But if a defendant fails to object to the PSR and his sentence with the requisite "specificity and clarity" to alert the government and the district court to the mistake complained of on appeal, we review only for plain error. *Ramirez-Flores*, 743 F.3d at 824. As explained above, Lynch objected to the allegations in the PSR only on the broad ground that he was not guilty of any of the crimes of which the jury convicted him. And at sentencing, he reiterated only his "general global denial" to the factual allegations in the indictment and the PSR. As such, Lynch did not properly preserve his sentencing challenges for appeal, and we review only for plain error.

Lynch challenges his sentencing enhancements under the "career offender" enhancement in U.S.S.G. § 4B1.1,[1] the Armed Career Criminal Act (the "ACCA"), 18 U.S.C. § 924(e)(1),[2] and the federal "three strikes" statute, *id.* § 3559(c)(1)(A)(i).[3] The District Court found that Lynch was a career offender and an armed career offender, and additionally that the counts for Hobbs Act robbery, conspiracy to commit Hobbs Act robbery, and discharging and brandishing a firearm all carried mandatory minimum life sentences, based on his three previous Florida convictions for aggravated assault with a deadly weapon, aggravated battery on a law enforcement officer with a deadly weapon, and robbery.

The Court thus sentenced Lynch to (1) concurrent life sentences on the Hobbs Act robbery and conspiracy to commit Hobbs Act robbery counts, pursuant to § 3559(c)(1)(a)(i); (2) 15 years to life imprisonment on the felon-in-possession counts, to run concurrently with the life sentences, pursuant to § 924(e)(1); and (3) two

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[1] The § 4B1.1 "career offender" enhancement was based on a jury convicting Lynch of violations of § 924(c) (Counts Three and Eight).

[2] The ACCA enhancement was based on a jury convicting Lynch of violations of §§ 922(g) and 924(e) (Counts Four and Nine).

[3] Prior to trial, the Government submitted a notice that it intended to pursue enhanced sentences under the three strikes statute, as it was required to do under 21 U.S.C. § 851(a)(1). The Government identified Lynch's indictments for Hobbs Act robbery (Counts Two, Five, and Seven), conspiracy to commit Hobbs Act robbery (Count One), discharging a firearm in furtherance of a crime of violence (Count Three), and brandishing a firearm in furtherance of a crime of violence (Count Eight) as potential "third strikes" that would bring 18 U.S.C. § 3559's enhanced penalties into play if Lynch were convicted.

additional life sentences for brandishing and discharging a firearm in connection with the Hobbs Act robberies, to run consecutively to each other and consecutively to the other sentences, pursuant to § 924(c)(1)(A)(ii)–(iii) and § 3559(c)(1)(A)(i). We first consider the District Court's application of the career offender enhancement and the ACCA to Lynch's sentence; we then turn to the Court's application of the three strikes statute.

A.

A defendant qualifies as a career offender under U.S.S.G. § 4B1.1 if

> (1) the defendant was at least eighteen years old at the time the defendant committed the instant offense of conviction; (2) the instant offense of conviction is a felony that is either a crime of violence or a controlled substance offense; and (3) the defendant has at least two prior felony convictions of either a crime of violence or a controlled substance offense.

U.S.S.G. § 4B1.1(a).

Lynch argues that his convictions for aggravated assault with a deadly weapon and aggravated battery on a law enforcement officer with a deadly weapon do not qualify as crimes of violence under the Guideline. For purposes of the Guideline, the term "crime of violence" means any offense under federal or state law, punishable by imprisonment for more than one year, that

> (1) has as an element the use, attempted use, or threatened use of physical force against the person of another, or
>
> (2) is murder, voluntary manslaughter, kidnapping, aggravated assault, a forcible sex offense, robbery, arson, extortion, or the use or unlawful possession of a firearm . . . or explosive material.

Id. § 4B1.2(a).

Further, under the ACCA, a defendant convicted of unlawful possession of a firearm by a convicted felon, in violation of 18 U.S.C. § 922(g), is subject to a mandatory minimum sentence of fifteen years if he has three prior felony convictions for "a violent felony or a serious drug offense." 18 U.S.C. § 924(e)(1).

As with the career offender enhancement, Lynch argues that his Florida convictions for aggravated assault with a deadly weapon and aggravated battery on a law enforcement officer with a deadly weapon do not qualify as violent felonies under the ACCA.[4] The ACCA defines the term "violent felony" as any crime punishable by a term of imprisonment 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, [or] involves use of explosives." *Id.* § 924(e)(2)(B). In addition, the Supreme Court recently held that "[o]ffenses with a *mens rea* of

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[4] Again, Lynch does not contest that his robbery conviction qualifies as a violent felony under the ACCA.

recklessness do not qualify as violent felonies under ACCA." *Borden v. United States*, 141 S. Ct. 1817, 1834 (2021).

Because the career offender Guideline's elements clause in § 4B1.2(a)(1) is identical to the ACCA's elements clause in § 924(e)(2)(B)(i), cases decided under the ACCA's elements clause are binding for the career offender Guideline's elements clause, and vice versa—i.e., what constitutes a "violent felony" under the ACCA's elements clause also constitutes a "crime of violence" under the career offender Guideline's elements clause. *United States v. Golden*, 854 F.3d 1256, 1256–57 (11th Cir. 2017) (per curiam).

1.

Lynch's prior conviction for aggravated assault under Florida law is a crime of violence under both the career offender enhancement and the ACCA. In light of *Borden*, we recently asked the Supreme Court of Florida whether Fla. Stat. § 784.011(1)—Florida's assault statute—required specific intent. *Somers v. United States*, 15 F.4th 1049, 1056 (11th Cir. 2021). The Supreme Court of Florida responded that "the first element of Florida's assault statute, § 784.011(1), required not just the general intent to volitionally take the action of threatening to do violence, but also that the actor direct the threat at a target, namely another person." *Somers v. United States*, 355 So. 3d 887, 892–93 (Fla. 2022). Upon receiving the Supreme Court of Florida's answer to our question, we held that "aggravated assault under Florida law categorically qualifies as a 'violent felony' under the ACCA's elements clause." *Somers v. United States*, 66 F.4th 890, 896 (11th Cir. 2023). Our most recent

decision in *Somers*, therefore, forecloses Lynch's argument as to his aggravated assault conviction.

2.

Turning to Lynch's conviction for aggravated battery on a law enforcement officer with a deadly weapon, according to Florida law, a person commits aggravated battery when, in the commission of a battery, he or she (1) "intentionally or knowingly causes great bodily harm, permanent disability, or permanent disfigurement"; or (2) "uses a deadly weapon." Fla. Stat. § 784.045(1)(a). A person can also commit aggravated battery in Florida by committing a battery against a person who was "pregnant at the time of the offense and the offender knew or should have known that the victim was pregnant." *Id.* at § 784.045(1)(b).

Use of the modified categorical approach is appropriate when a statute is divisible, as is Fla. Stat. § 784.045. *See Descamps v. United States*, 133 S. Ct. 2276, 2281 (2013). A divisible statute is one that "sets out one or more elements of the offense in the alternative." *Id.* If one of the alternatives qualifies under ACCA, but another does not, "the modified categorical approach permits sentencing courts to consult a limited class of documents . . . to determine which alternative formed the basis of the defendant's prior conviction." *Id.* In Lynch's case, the judgment for his prior aggravated battery conviction shows he was convicted of aggravated battery on a law enforcement officer with a deadly weapon. This means Lynch was convicted under § 784.045(1)(a).

Using the modified categorical approach, we have consistently held that aggravated battery as set out in Fla. Stat. § 784.045(1)(a) qualifies as a crime of violence under the ACCA's elements clause. *Turner v. Warden Coleman FCI (Medium)*, 709 F.3d 1328, 1341–42 (11th Cir. 2013), *abrogated on other grounds by United States v. Hill*, 799 F.3d 1319, 1321 n.1 (11th Cir. 2015); *see also United States v. Vereen*, 920 F.3d 1300, 1313–14 (11th Cir. 2019); *In re Rogers*, 825 F.3d 1335, 1341 (11th Cir. 2016). While we have not specifically addressed Florida's aggravated battery statute in light of *Borden*, we have previously held that aggravated battery under § 784.045 is a specific intent crime. *United States v. Vail-Bailon*, 868 F.3d 1293, 1299 (11th Cir. 2017) (en banc).

Lynch argues that "[b]ecause the least of the criminalized acts of Aggravated Battery with a Deadly Weapon is an unwanted touching while carrying a deadly weapon . . . and this does not involve the use of 'violent force,'" his prior conviction for aggravated battery cannot serve as a predicate offense under either the career offender enhancement or the ACCA. But *Turner*'s holding—that, using the modified categorical approach, aggravated battery under Fla. Stat. § 784.045(1)(a) qualifies as a crime of violence under ACCA's elements clause—has never been abrogated. As such, we are bound by it under the prior panel precedent rule "unless and until it is overruled or undermined to the point of abrogation by an opinion of the Supreme Court or of this Court sitting en banc." *United States v. Gillis*, 938 F.3d 1181, 1198 (11th Cir. 2019) (per curiam). The prior panel rule applies regardless of whether we believe "the prior panel's opinion to be correct, and there is no

exception to the rule where the prior panel failed to consider arguments raised before a later panel." *Id.* The District Court is also bound by our precedent and could not have erred—plainly or otherwise—in applying it; rather than telling the District Court that aggravated battery under § 784.045(1)(a) didn't qualify as a crime of violence, our precedent told the District Court that it *did*. And since aggravated battery qualifies as a violent felony under the ACCA, it qualifies as a crime of violence under the career offender enhancement. *See Golden*, 854 F.3d at 1256–57.

Accordingly, because our binding precedent dictates that Lynch's convictions for aggravated assault with a deadly weapon and aggravated battery on a law enforcement officer with a deadly weapon qualify as predicate offenses under both the career offender enhancement and the ACCA, Lynch had the requisite number of predicate offenses for each enhancement.[5] The District Court did not plainly err in applying either the career offender enhancement or the ACCA, and his sentence is affirmed in that respect.

B.

Lynch also argues for the first time on appeal that he incorrectly received life sentences under the federal "three strikes" law

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[5] The convictions that qualify Lynch for both the career offender enhancement and the ACCA are: (1) aggravated assault with a deadly weapon; (2) aggravated battery of a law enforcement officer with a deadly weapon; and (3) robbery. Only two of those convictions needed to qualify for the career offender enhancement to apply.

in 18 U.S.C. § 3559(c)(1). The relevant convictions serving as "strikes" are Lynch's previous convictions for robbery ("strike one"), aggravated battery on a law enforcement officer with a deadly weapon ("strike two"), and his convictions for Hobbs Act robbery, conspiracy to commit Hobbs Act robbery, and discharging and brandishing a firearm in furtherance of a crime of violence (each a separate "strike three" supporting a separate life sentence). Lynch only challenges the validity of strikes one and two, not strike three. That is, Lynch argues that his convictions for robbery and aggravated battery on a law enforcement officer with a deadly weapon do not qualify as serious violent felonies under the federal "three strikes" law in 18 U.S.C. § 3559(c)(1).[6]

Under the "three strikes" statute, a defendant receives a mandatory sentence of life imprisonment if he is convicted of a serious violent felony after having been previously convicted on separate occasions of two or more such felonies. *Id.* § 3559(c)(1)(A)(i). The statute defines a "serious violent felony" in two parts. First, it enumerates several offenses that plainly constitute serious violent felonies, one of which is robbery. *Id.*

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[6] The Government listed Lynch's conviction for aggravated assault as a predicate serious violent felony as well. On appeal, Lynch argued that his aggravated assault conviction could not serve as a strike for the same reasons that his aggravated battery conviction could not serve as a strike. Because the Government conceded that Lynch's conviction for aggravated assault did not qualify as a serious violent felony under the "three strikes" law, we need not address that argument.

§ 3559(c)(2)(F)(i). Second, it provides that a "serious violent felony" is also

> any other offense punishable by a maximum term of imprisonment of 10 years or more that *has as an element the use, attempted use, or threatened use of physical force against the person of another* or that, by its nature, involves a substantial risk that physical force against the person of another may be used in the course of committing the offense.

Id. § 3559(c)(2)(F)(ii) (emphasis added). Like § 924(c) and the career offender enhancement, the three strikes law can be divided into an elements clause and a residual clause at § 3559(c)(2)(F)(ii), with an additional "enumerated offenses" clause at § 3559(c)(2)(F)(i).

1.

Lynch's Florida robbery conviction qualifies as a serious felony under the enumerated offenses clause. Lynch nonetheless argues that his robbery conviction does not qualify as a "serious violent felony" by operation of the affirmative defense provision in § 3559(c)(3)(A). Under that provision, a robbery conviction does not constitute a "strike," despite its enumeration as a "serious violent felony" in § 3559(c)(2)(F)(i), if the defendant can prove by clear and convincing evidence that "no firearm or other dangerous weapon was used in the offense and no threat of use of a firearm or other dangerous weapon was involved in the offense." *Id.* § 3559(c)(3)(A); *United States v. Gray*, 260 F.3d 1267, 1278 (11th Cir. 2001). Lynch argues that his robbery conviction should not qualify

as a predicate offense under § 3559 because the PSR does not indicate that Lynch used a dangerous weapon or otherwise threatened to use such a weapon in connection with the robbery.

But Lynch did not raise this argument in either the District Court or his initial brief on appeal. That argument first appears in his reply brief, and a legal claim or argument that is not plainly and prominently raised in an initial brief before this Court is deemed forfeited. *See United States v. Campbell*, 26 F.4th 860, 873 (11th Cir. 2022) (en banc). We thus deem Lynch to have forfeited any challenge to his sentence based on whether his Florida robbery conviction qualifies as a predicate offense under the three strikes law.

2.

Lynch essentially argues that because his conviction for aggravated battery should not qualify under the elements clause in the career offender Guideline or the ACCA, it also should not qualify under the elements clause in the three strikes law. And, so the argument goes, since that conviction does not qualify as serious violent felony under either the enumerated offenses clause or the elements clause in § 3559(c)(2)(F), it could only qualify under the residual clause, which Lynch argues is unconstitutional in light of *United States v. Johnson*, 135 S. Ct. 2551 (2015), and *Sessions v. Dimaya*, 138 S. Ct. 1204 (2018).[7]

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[7] Florida aggravated battery is a second-degree felony, Fla. Stat. § 784.045(2), punishable by up to fifteen years in prison, Fla. Stat. § 775.082. It thus satisfies the ten-year-sentence requirement in § 3559(c)(2)(F)(ii).

Even assuming, *arguendo*, that § 3559(c)(2)(F)(ii)'s residual clause is unconstitutionally vague, we cannot say that the District Court plainly erred in finding that Lynch's conviction for aggravated battery on a law enforcement officer with a deadly weapon qualified as a "serious violent felony" under its elements clause. An error cannot be "plain" where there is no precedent from the Supreme Court or this Court directly resolving the issue. *United States v. Cabezas-Montano*, 949 F.3d 567, 590 (11th Cir. 2020). And no decision of the Supreme Court or this Court holds that aggravated battery on a law enforcement officer with a deadly weapon under Florida law does not qualify as a "serious violent felony" for purposes of the three strikes statute. While it does not outright hold so, our precedent actually suggests the opposite. Specifically, *Turner* held that Florida aggravated battery is a violent felony under an elements clause nearly identical to that in § 3559(c)(2)(F)(ii).

The District Court did not plainly err in finding that Lynch's robbery and aggravated battery convictions qualified as serious violent felonies under § 3559, or in imposing mandatory life sentences under the three strikes law.

III.

In sum, Hobbs Act robbery qualifies as a predicate crime of violence for a §924(c) conviction. Lynch's convictions for aggravated assault and aggravated battery of a law enforcement officer with a deadly weapon qualify as predicate offenses under the career offender enhancement and the ACCA, and the District Court did

not plainly err in applying the three strikes statute. For those reasons, both Lynch and Nance's sentences are affirmed.

AFFIRMED.

AO 245B (Rev 06/05) Sheet 1 - Judgment in a Criminal Case

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA

v.

SAMUEL LEE LYNCH

JUDGMENT IN A CRIMINAL CASE

CASE NUMBER: 8:15-cr-171-T-24JSS
USM NUMBER: 62316-018

Defendant's Attorney: Victor Martinez (CJA)

THE DEFENDANT:

__ pleaded **Guilty** to Count(s) .
__ pleaded nolo contendere to count(s) which was accepted by the court.
_X_ was found guilty on Counts One, Two, Three, Four, Five, Seven, Eight and Nine of the Third Superseding Indictment after a plea of not guilty.

TITLE & SECTION	NATURE OF OFFENSE	OFFENSE ENDED	COUNT
18 U.S.C. §§ 1951(a) and 3559(c)(1)(A)(i)	Conspiracy to interfere with commerce by robbery	April 24, 2015	One
18 U.S.C. §§ 1951(a), 2 and 3559(c)(1)(A)(i)	Interfere with commerce by robbery	March 26, 2015	Two
18 U.S.C. §§ 924(c)(1)(A)(iii), 2 and 3559(c)(1)(A)(i)	Discharging a firearm in furtherance of a crime of violence	March 26, 2015	Three
18 U.S.C. §§ 922(g)(1) and 924(e)(1)	Felon in possession of a firearm or ammunition	March 26, 2015	Four
18 U.S.C. §§ 1951(a), 2 and 3559(c)(1)(A)(i)	Interfere with commerce by robbery	April 15, 2015	Five
18 U.S.C. §§ 1951(a), 2 and 3559(c)(1)(A)(i)	Interfere with commerce by robbery	April 16, 2015	Seven
18 U.S.C. §§ 924(c)(1)(A)(ii), 2 and 3559(c)(1)(A)(i)	Brandishing a firearm in furtherance of a crime of violence	April 16, 2015	Eight
18 U.S.C. §§ 922(g)(1) and 924(e)(1)	Felon in possession of a firearm or ammunition	April 16, 2015	Nine

Continued of Page 1

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

__ The defendant has been found not guilty on count(s)
X All underlying Indictment and Superseding Indictments are dismissed on the motion of the United States.

IT IS FURTHER ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.
If ordered to pay restitution, the defendant shall notify the court and United States Attorney of any material change in economic circumstances.

Date of Imposition of Sentence: May 11, 2016

Susan C. Bucklew

SUSAN C. BUCKLEW
UNITED STATES DISTRICT JUDGE
DATE: May 11, 2016

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of **LIFE** as to Counts One, Two, Five and Seven, to run concurrent to each other. **ONE HUNDRED EIGHTY (180) MONTHS** as to Counts Four and Nine to run concurrent to each other and concurrent to the terms imposed as to Counts One, Two, Five and Seven. **LIFE** as to Counts Three and Eight, to run consecutive to each other and consecutive to any other counts of conviction,

Defendant shall be given credit toward the service of a term of imprisonment for any time he/she has spent in official detention prior to the date the sentence commences -- (1) as a result of the offense for which the sentence was imposed; or (2) as a result of any other charge for which the Defendant was arrested after the commission of the offense for which the sentence was imposed; that has not been credited against another sentence. 18 U.S.C. § 3585(b).

_X_ The court makes the following recommendations to the Bureau of Prisons: FCI Coleman, Florida.

_X_ The defendant is remanded to the custody of the United States Marshal.
__ The defendant shall surrender to the United States Marshal for this district.

__ at __ a.m./p.m. on __.
__ as notified by the United States Marshal.

__ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons.

__ before 2 p.m. on __.
__ as notified by the United States Marshal.
__ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

_____

_____

_____

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

_____
United States Marshal

By: _____
Deputy Marshal

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of FIVE (5) YEARS as to each counts 1, 2, 3, 4, 5, 7, 8 & 9 all such terms to run concurrently.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

While on supervised release, the defendant shall not commit another federal, state, or local crime, and shall not possess a firearm, ammunition, or destructive device as defined in 18 U.S.C. § 921.

The defendant shall not illegally possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, not to exceed 104 tests per year.

X The mandatory drug testing provisions of the Violent Crime Control Act are imposed. The court orders the defendant to submit to random drug testing not to exceed 104 tests per year.

X The defendant shall cooperate in the collection of DNA as directed by the probation officer.

If this judgment imposes a fine or a restitution it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant shall comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;

2) the defendant shall report to the probation officer in a manner and frequency directed by the court or probation officer;

3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;

4) the defendant shall support his or her dependents and meet other family responsibilities;

5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;

6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;

7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;

8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;

9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;

10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;

11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;

12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;

13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

SPECIAL CONDITIONS OF SUPERVISION

The defendant shall also comply with the following additional conditions of supervised release:

X The defendant shall participate, as directed by the Probation Officer, in a substance abuse program (outpatient and/or inpatient) and follow the Probation Officers instructions regarding the implementation of this court directive. Further, the defendant shall be required to contribute to the costs of services for such treatment not to exceed an amount determined reasonable by the Probation Officer's Sliding Scale for Substance Abuse Treatment Services. Upon completion of a drug or alcohol dependency treatment program the defendant is directed to submit to testing for the detection of substance use or abuse not to exceed 104 tests per year.

X The defendant shall submit to a search of his person, residence, place of business, storage units under his control, computer, or vehicle, conducted by the United States Probation Officer at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. The defendant shall inform any other residents that the premises may be subject to a search pursuant to this condition. Failure to submit to a search may be grounds for revocation.

AO 245B (Rev 06/05) Sheet 5 - Criminal Monetary Penalties

Defendant: SAMUEL LEE LYNCH
Case No.: 8:15-cr-171-T-24JSS

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	Fine	Total Restitution
Totals:	**$800**	**Waived**	$93,529.00

__ The determination of restitution is deferred until ____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

__ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

__ If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all non-federal victims must be paid before the United States.

Name of Payee	*Total Amount of Restitution Ordered	Payment
Citgo Gas Station	$350.00	
Nebraska Food Mart	$9,850.00	
Marathon Gas Station	$71,664.00	
Sunoco Gas Station	$11,665.00	
Payable to the: Clerk of U.S. District Court c/o Debt Collection 401 West Central Blvd. Orlando, Florida 32801 (For distribution of victims)		
Totals:	$93,529.00	

__ Restitution amount ordered pursuant to plea agreement $ _____.

__ The defendant shall pay interest on any fine or restitution of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

X The court determined that the defendant does not have the ability to pay interest and it is ordered that:

X the interest requirement is waived for the restitution.

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for the offenses committed on or after September 13, 1994, but before April 23, 1996.

Defendant: SAMUEL LEE LYNCH
Case No.: 8:15-cr-171-T-24JSS

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

A. X Lump sum payment of $ 800.00 due immediately.

balance due: ___ not later than _____, or

___ in accordance __ C, __ D, __ E or __ F below; or

B. __ Payment to begin immediately (may be combined with ___ C, ___ D, or ___ F below); or

C. __ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ days (e.g., 30 or 60 days) after the date of this judgment; or

D. __ Payment in equal _____(e.g., weekly, monthly, quarterly) installments of $ _____ over a period of _____, (e.g., months or years) to commence _____ (e.g. 30 or 60 days) after release from imprisonment to a term of supervision; or

E. __ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time, or

F X Special instructions regarding the payment of criminal monetary penalties: While in Bureau of Prisons custody, you shall either (1) pay at least $25 quarterly if you have a non-Unicor job or (2) pay at least 50% of monthly earnings if you have a Unicor job. If you are released from custody, your financial circumstances will be evaluated, and the Court may establish a new payment schedule accordingly. At any time during the course of post-release supervision, the victim, the government, or the defendant, may notify the Court of a material change in the defendant's ability to pay and the Court may adjust the payment schedule accordingly. The Court finds that the defendant does not have the ability to pay interest and the Court waives the interest requirement for the restitution.

Unless the court has expressly ordered otherwise, if this judgment imposes a period of imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

X Joint and Several with co defendants in case 8:15-cr-171-T-24JSS and Wilson Antonio Lopez case 8:15-cr-176-T-33TBM:

shall pay restitution in the amount of $93,529 to the victims as follows: $350 to the Citgo Gas Station; $9,850 to the Nebraska Food Mart; $71,664 to the Marathon Gas Station; and $11,665 to the Sunoco Gas Station. Restitution shall be paid jointly and severally with Reo Thomas Nance as to the Citgo Gas Station; with Brittany Jenae Hall, Christopher Marquis Fruster, and Wilson Antonio Lopez as to the Nebraska Food Mart; with Reo Thomas Nance ($71,664) as to the Marathon Gas Station; with Christopher Marquis Fruster ($664) as to the Marathon Gas Station; and with Reo Thomas Nance and Christopher Marquis Fruster as to the Sunoco Gas Station.

_ The defendant shall pay the cost of prosecution.

_ The defendant shall pay the following court cost(s):

X The defendant shall forfeit the defendant's interest in the following property to the United States:

[SEE ATTACHED ORDER OF FORFEITURES DOC's #166, 189 & #216]

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) community restitution, (6) fine interest (7) penalties, and (8) costs, including cost of prosecution and court costs.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA

v. CASE NO. 8:15-cr-171-T-24JSS

SAMUEL LEE LYNCH

FORFEITURE MONEY JUDGMENT
AND PRELIMINARY ORDER OF FORFEITURE

The United States moves pursuant to 18 U.S.C. § 981(a)(1)(C), 28 U.S.C. § 2461(c), and Rule 32.2(b)(2), Federal Rules of Criminal Procedure, for a forfeiture money judgment against defendant Samuel Lee Lynch in the amount of $93,519.00, representing the amount of proceeds obtained as a result of the conspiracy to commit armed robbery, as charged in Count One of the Third Superseding Indictment. For the violation of 18 U.S.C. § 922(g)(1) as charged in Count Nine, the United States requests a preliminary order of forfeiture for the following firearm and ammunition pursuant to 18 U.S.C. § 924(d)(1), 28 U.S.C. § 2461(c) and Rule 32.2(b)(2):

a. A Heritage Arms Rough Rider, .22 caliber rimfire revolver, serial number HR44094, which was located in the vehicle driven by defendant Samuel Lee Lynch and Christopher Marquis Fruster; and

b. One round of .22 caliber ammunition located in Lynch's apartment.

Following a jury trial, the defendant was found guilty of the offenses in violation of 18 U.S.C. § 1951(a) and 18 U.S.C. § 922(g)(1), as charged in Counts One and Nine of the Third Superseding Indictment.

Being fully advised of the relevant facts, the Court finds that the defendant obtained proceeds in the amount of $93,519.00 as a result of the conspiracy to commit armed robbery in violation of 18 U.S.C. § 1951(a), as charged in Count One of the Third Superseding Indictment. In addition, the firearm and ammunition identified above were used in, or involved in, the violation for which the defendant has been found guilty in Count Nine of the Third Superseding Indictment, in violation of 18 U.S.C. § 922(g)(1).

Accordingly, it is **ORDERED** that the motion of the United States is GRANTED.

It is FURTHER ORDERED that, pursuant to the provisions of 18 U.S.C. § 981(a)(1)(C), 28 U.S.C. § 2461(c), and Rule 32.2(b)(2), Federal Rules of Criminal Procedure, defendant Samuel Lee Lynch is jointly and severally liable to the United States of America with co-defendants Reo Thomas Nance, Christopher Marquis Fruster, and Brittany Jenae Hall for a forfeiture money judgment in the amount of $93,519.00.

It is FURTHER ORDERED that, pursuant to 18 U.S.C. § 924(d)(1), 28 U.S.C. § 2461(c), and Rule 32.2(b)(2), Federal Rules of Criminal Procedure, the firearm and ammunition described above are FORFEITED to the United States of America for disposition according to law, subject to the provisions of 21 U.S.C. § 853(n), as incorporated by 28 U.S.C. § 2461(c).

The Court retains jurisdiction to complete the forfeiture and disposition of the firearm and ammunition and any property belonging to the defendant which

the United States is entitled to seek as a substitute asset under 21 U.S.C. § 853(p), as incorporated by 28 U.S.C. § 2461(c), to satisfy the defendant's money judgment.

DONE and **ORDERED** in Tampa, Florida, on February 25, 2016.

SUSAN C. BUCKLEW
UNITED STATES DISTRICT JUDGE

Copies to:

All Parties/Counsel of Record