

No. 17-7188

IN THE
Supreme Court of the United States

WILLARD ROBINSON,
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

REPLY BRIEF FOR PETITIONER

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MAY 4TH, 2018

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REPLY BRIEF FOR PETITIONER

The Court should hold this petition for a writ of certiorari pending resolution of *Stokeling v. United States*, cert. granted No. 17-5554 (Apr. 2, 2018).

* * *

In *Stokeling*, the Court will decide whether Florida robbery is a violent felony under the elements clause of the Armed Career Criminal Act—*i.e.*, whether it has an element the use, attempted use, or threatened use of “physical force.” 18 U.S.C. § 924(e)(2)(B)(i). Central to that question is the meaning of “physical force,” as defined in *Curtis Johnson v. United States*, 559 U.S. 133 (2010). At the petition-stage, the petitioner in *Stokeling* argued that the degree of force necessary to commit Florida robbery could be minimal, and that degree of force does not satisfy *Curtis Johnson*’s definition. In opposition, the government argued that the force involved was “capable” of causing pain or injury, and for that reason it satisfied the *Curtis Johnson* definition. Thus, the dispute over that definition is at the forefront of *Stokeling*.

It was also at the forefront of the 6-5 decision in *United States v. Vail-Bailon*, 868 F.3d 1293 (11th Cir. 2017) (en banc), upon which the decision below relied. If “physical force” is measured by its “capability” of causing pain or injury, as the government argues and the *Vail-Bailon* majority concluded, then Petitioner’s Florida felony-battery conviction would satisfy the elements clause: the offensive touching did cause great bodily harm (and thus was “capable” of causing pain or injury). If, on the other hand, “physical force” is measured by its degree of force, as

Petitioner has argued and the *Vail-Bailon* dissenters concluded, then it would not satisfy the elements clause. Indeed, the government does not now dispute that his Florida felony-battery conviction could have been committed by the same degree of force that *Curtis Johnson* deemed insufficient—*i.e.*, a mere offensive touching.*

Because *Stokeling* will clarify *Curtis Johnson*’s definition of “physical force,” and the dispute over that definition lies at the heart of this case, the proper resolution is to hold this petition pending *Stokeling*. Resisting that common-sense approach (BIO 16 n.3), the government argues *Stokeling* will “not affect this case . . . because it turns on whether force sufficient to overcome resistance is force capable of causing injury—not on whether force that actually causes injury is capable of causing injury.” But that argument prematurely assumes that *Stokeling* will accept the government’s preferred “capability” understanding of *Curtis Johnson*.

If *Stokeling* does not adopt that understanding, and it instead adopts the degree-of-force understanding advocated by the petitioner there, the Petitioner here, and the *Vail-Bailon* dissenters, then that would dispose of this case. Indeed, the government does not identify any vehicle problems. And it does not dispute that, if Petitioner’s conviction is not a violent felony, he would be entitled to relief.

* That government concession obviates the separate potential obstacle to relief, embodied in the second question presented. The government acknowledges that “the *Vail-Bailon* court determined that the [felony-battery] statute was not overbroad on its face.” (BIO 18) Thus, *Vail-Bailon* did not abrogate circuit precedent holding “that an overbroad statute itself can create a realistic probability of prosecution.” (BIO 19) (citing *Vassell v. U.S. Att’y Gen.*, 839 F.3d 1352, 1362 (11th Cir. 2016)). Instead, the government reads *Vail-Bailon* as accepting Petitioner’s argument that, based on the face of the statute, felony battery may be committed by a mere touching that causes great bodily harm; the court, in its view, concluded only that such conduct categorically satisfied *Curtis Johnson*.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be held pending resolution of *Stokeling*.

Respectfully submitted,

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