

No. 17-8202

IN THE
SUPREME COURT OF THE UNITED STATES

TRACY NEIL TRUELOVE

Petitioner

v.

UNITED STATES OF AMERICA

Respondent

Reply in Support of Petition for Writ of Certiorari
To The United States Court of Appeals for the Fifth Circuit

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PETITIONER'S REPLY BRIEF

This Court should hold the instant Petition pending the outcome of the authorities discussed below.

The upcoming merits ruling *United States v. Stitt*, No. 17-765, 138 S.Ct. 1592 (Certiorari granted April 23, 2018), and *United States v. Sims*, 17-766, 138 S.Ct. 1592 (Certiorari granted April 23, 2018), and the possible merits ruling in the multiply re-listed *Quarles v. United States*, No. 17-778 (Petition for Certiorari filed November 24, 2017), would very likely address the dispositive question in this case: to what extent does an enumerated offense encompass statutes that differ from a “generic” version of the offense in purportedly “minor” ways?

That issue has divided the courts of appeals, **compare** *United States v. Mungia-Portillo*, 484 F.3d 813, 816-817 (5th Cir. 2007) **with** *United States v. Esparza-Herrera*, 557 F.3d 1019, 1023 (9th Cir. 2009), and is well-presented in *Stitt*, *Sims*, and *Quarles*. *Stitt* and *Sims* will address the fit between “generic” burglary and statutes that reach the burglary of a motor vehicle. See Petition for Certiorari in *United States v. Stitt*, 17-765, at p. I (filed November 21, 2017); Petition for Certiorari in *United States v. Sims*, 17-766, at p. I (filed November 21, 2017). If the defendants prevail in that case, it will necessarily entail a holding either that the defendant’s prior statute of conviction must match precisely with the elements of the generic offense, or that any difference between the statutes at issue and the generic offense is not so minor as may be disregarded. Similarly, *Quarles* (and the government’s Petition in *United States v. Herrold*, 17-1445 (filed April 18, 2018)), ask the Court to decide whether an offense may constitute “burglary” even if it does not require the defendant to form the intent to commit a further crime at the moment of trespass. See Petition for Certiorari in *Quarles v. United States*, No. 17-778, at p. I (filed November 24, 2017); Petition for Certiorari in *United States v. Quarles*, No. 17-1445, at p. I (filed April 18, 2018). Here,

too, a victory for the defendant would necessarily imply either the need for an absolute match between prior statute and the generic offense, or shed important light on the extent of permissible variation.

This is precisely the dispositive issue in the instant case. The chief authority relied on below, *United States v. Santiesteban-Hernandez*, 469 F.3d 376 (5th Cir. 2006) acknowledged a difference between the Texas robbery statute and generic “robbery.” *Santiesteban-Hernandez*, 469 F.3d at 381. But it further found that the differences could be disregarded as minor. *See id.*

The government thinks that this case should not be held for *Stitt* and *Quarles* for the sole reason that they “involve questions concerning the definition of generic burglary, not generic robbery.” (Brief in Opposition, at p.9). But of course the abstract concepts set forth in cases involving burglary as a generic offense have been widely applied to other prior offenses. *Taylor v. United States*, 495 U.S. 575 (1990), a burglary case, has been cited in nearly 5,000 judicial opinions, not all of which involve burglary.

The government is also incorrect in its assertion that *Stokeling v. United States*, 17-5554, 138 S.Ct. 1438 (Certiorari granted April 2, 2018), stands to shed no light on the definition of “generic robbery.” *See* (Brief in Opposition, at pp.10-11). The parties in *Stokeling* have already exchanged argument on the nature of force required by common-law robbery, and the evolution of that concept under modern statutes. *See* Petition for Certiorari in *Stokeling v. United States*, 17-5554, at pp.14-20 (filed August 4, 2017); Brief in Opposition for the United States in *Stokeling v. United States*, 17-5554, at p.13 (filed December 13, 2017). If this Court passes on the issue, it will shed important light on the required level of force for “generic robbery,” the issue on which the Fifth Circuit found Texas to diverge from most state statutes. *See Santiesteban-Hernandez*, 469 F.3d at 381.

All remaining arguments set forth in the Brief in Opposition are explicitly

trained against the possibility of a plenary grant of certiorari. *See* (Brief in Opposition, at pp.10-14). Petitioner does not seek that relief, so this Court need not consider them.

CONCLUSION

Petitioner respectfully prays that this Honorable Court hold the instant case until it renders a decision in *United States v. Stitt*, No. 17-765, 138 S.Ct. 1592 (Certiorari granted April 23, 2018), *United States v. Sims*, 17-766, 138 S.Ct. 1592 (Certiorari granted April 23, 2018), *Quarles v. United States*, No. 17-778 (Petition for Certiorari filed November 24, 2017), *Stokeling v. United States*, 17-5554, 138 S.Ct. 1438 (Certiorari granted April 2, 2018), and/or some other case addressing the required fit between a defendant's prior statute of conviction and a "generic" offense for the purposes of a criminal history enhancement. He further prays that it grant *certiorari*, vacate the judgment below, and remand in light of that case. He finally prays for such relief as to which he may be justly entitled.

Respectfully submitted this 13th day of June 2018.

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