

NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

DONALD G. ANTHONY,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

DAVID R. STICKMAN
FEDERAL PUBLIC DEFENDER

Suite 300N
222 South 15th Street
Omaha, NE 68102
(402) 221-7896

Counsel of Record for Petitioner

QUESTION PRESENTED

Whether this Court's decision in *Voisine v. United States*, which held in defining a misdemeanor crime of domestic violence that "use, attempted use, or threatened use of physical force" includes reckless conduct, should extend to the similarly-worded definition of "crime of violence" in the career offender Guidelines, or whether this Court should require a higher *mens rea* for crimes of violence to maintain the distinction between the two contexts previously recognized in *United States v. Castleman*.

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

Petitioner is Donald G. Anthony, appellant below. Respondent is the United States of America, appellee below. Petitioner is not a corporation.

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PETITION FOR A WRIT OF CERTIORARI

Donald G. Anthony respectfully petitions the Court for a writ of certiorari to review the opinion entered by the United States Court of Appeals for the Eighth Circuit on February 1, 2018.

OPINIONS BELOW

The decision of the United States Court of Appeals affirming Anthony's disputed sentence can be found at *United States v. Anthony*, 710 Fed. App'x 280 (8th Cir. 2018). A copy of this opinion is appended to this Petition. (App. A) The district court made only oral findings at Anthony's resentencing hearing, but did make Tentative Findings which comported with its ultimate ruling. Those findings, made in *United States v. Anthony*, No. 4:12CR3031 in the United States District Court for the District of Nebraska, are attached to this Petition. (App. B)

JURISDICTION

The judgment of the Court of Appeals for the Eighth Circuit was entered on February 1, 2018. Anthony has filed this Petition within ninety days of that date. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY AND GUIDELINE PROVISIONS INVOLVED

This case involves the definition of "crime of violence" contained in the career offender Guidelines, U.S.S.G. §§ 4B1.1 and 4B1.2. At the time of Anthony's

resentencing hearing, those guidelines provided, in relevant part:

U.S.S.G. § 4B1.1 Career Offender

- (a) A defendant is a career offender 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. § 4B1.2 Definition of Terms Used in Section 4B1.1

- (a) The term “crime of violence” means any offense under federal or state law, punishable by imprisonment for a term exceeding 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 described in 26 U.S.C. § 5845(a) or explosive material as defined in 18 U.S.C. § 841(c).

Donald Anthony was considered a career offender because he had two prior convictions for the Nebraska offense of assault by a confined person. Nebraska defines that offense as follows:

Neb. Rev. Stat. § 28-932 Confined person; person in legal custody of Department of Correctional Services; dangerous sex offender; assault; penalty; sentence

- (1) Any person (a)(i) who is legally confined in a jail or an adult correctional or

penal institution, (ii) who is otherwise in legal custody of the Department of Correctional Services, or (iii) who is committed as a dangerous sex offender under the Sex Offender Commitment Act and (b) who intentionally, knowingly, or recklessly causes bodily injury to another person shall be guilty of a Class IIIA felony, except that if a deadly or dangerous weapon is used to commit such assault, he or she shall be guilty of a Class IIA felony.

STATEMENT OF THE CASE

Under the career offender Guidelines, a “crime of violence” includes a crime which has, as an element, the “use, attempted use, or threatened use of physical force against the person of another.” U.S.S.G. § 4B1.2. The definition of a “misdemeanor crime of domestic violence” for purposes of the federal firearms prohibition in 18 U.S.C. § 922(g)(9) employs similar, but not identical, words. It incorporates misdemeanors that have as an element “the use or attempted use of physical force.” 18 U.S.C.A. § 921(a)(33)(A)(ii). Notwithstanding this textual similarity, this Court in *Johnson v. United States*, 559 U.S. 133 (2010) (hereinafter *Johnson I*), and *United States v. Castleman*, 134 S. Ct. 1305 (2013), held that “use . . . of physical force” may be defined differently depending on context. *Johnson I*, 559 U.S. at 139.

In *Voisine v. United States*, 136 S. Ct. 2272 (2016), this Court was asked to determine whether a “misdemeanor crime of domestic violence” under 18 U.S.C. § 922(g)(9) encompassed recklessly committed crimes. The Court held that reckless conduct qualified as “use . . . of physical force” in the domestic violence context. Mindful of *Johnson I* and *Castleman*, however, the Court limited its holding to the

definition of misdemeanor crime of domestic violence. *Voisine*, 136 S. Ct. at 2280-80 & n. 4. It left open the question of whether *Voisine* would extend to provisions like the career offender Guidelines and the Armed Career Criminal Act (ACCA), 18 U.S.C. § 924(e).

This case presents the opportunity for the Court to address this open question. The Eighth Circuit has held that *Voisine*'s holding governs the meaning of “use . . . of physical force against the person of another” in the career offender Guidelines, but other circuits disagree. With this case, the Court can bring uniformity to the application of sentencing provisions which dramatically increase a defendant's time in incarceration.

A. Anthony's original sentence as an Armed Career Criminal

In 2013, Donald Anthony pled guilty to being a felon in possession of a firearm (Count I) and possession with intent to distribute methamphetamine (Count II). He was sentenced to 188 months under the ACCA, which applies when a defendant has at least three prior convictions for a controlled substance offense or “violent felony.” 18 U.S.C. § 924(e). The court identified three convictions on Anthony's record as violent felonies: an Arkansas conviction for terroristic threatening and two Nebraska convictions for assault by a confined person.

On June 10, 2016, Anthony filed a motion to vacate his sentence under 28

U.S.C. § 2255. He argued that his prior crimes were considered “violent felonies” only because of the ACCA’s residual clause, which had been struck down in *Johnson v. United States*, 135 S. Ct. 2551 (2015) (hereinafter *Johnson II*), as unconstitutionally vague. The government conceded that Anthony’s Arkansas conviction did not qualify as a violent felony after *Johnson II*. The district court agreed and granted Anthony’s § 2255 motion. It ordered a Resentencing Report and scheduled a resentencing hearing for November 10, 2016.

B. Anthony’s post-*Johnson* sentence as a career offender

The Resentencing Report acknowledged that Anthony could no longer be sentenced under the ACCA. According to the Resentencing Report, however, Anthony’s two prior convictions for assault by a confined person remained “crimes of violence” under U.S.S.G. §§ 4B1.1 and 4B1.2 even after *Johnson II*. This determination earned Anthony a higher base offense level under U.S.S.G. § 2K2.1(a)(2). It also subjected Anthony to sentencing as a career offender under U.S.S.G. § 4B1.1.

Anthony objected to the Resentencing Report’s conclusion that his convictions for assault by a confined person qualified as crimes of violence. Anthony argued that those convictions were not enumerated offenses and did not have, as an element, “the use, attempted use, or threatened use of physical force against the person of another.”

U.S.S.G. § 4B1.2(a)(1). The Nebraska statute defining assault by a confined person covers assaults committed “intentionally, knowingly, or recklessly.” Neb. Rev. Stat. § 28-932. Anthony argued that the reckless use of force does not satisfy the “use. . . of physical force against the person of another” requirement of U.S.S.G. § 4B1.2(a)(1).

At a sentencing hearing on November 10, 2016, the district court overruled Anthony’s objection. The district court held that it was bound to do so by the Eighth Circuit’s decision in *United States v. Fogg*, 836 F.3d 951, 956 (8th Cir. 2016). The court in *Fogg* had relied on *Voisine* to reject a similar argument in an ACCA case that recklessly-inflicted force does not constitute “use . . . of physical force against the person of another.”

Anthony’s status as a career offender placed him at the statutory maximum for his gun count. The court reduced the guideline range downward due to other sentencing factors and ultimately settled on a new sentencing range of 77 to 96 months imprisonment. It sentenced Anthony to 80 months imprisonment on Count I and 80 months on Count II, with the sentences to be served concurrently. The court then added three years of supervised release on each count, with those terms to be served concurrently.

C. The Eighth Circuit’s decision upholding Anthony’s sentence

Anthony appealed his sentence to the Eighth Circuit. Aware that any panel

would be bound by *Fogg*, he originally sought an *en banc* hearing. When that request was denied, his case was submitted to a panel without argument.

As expected, the Eighth Circuit affirmed Anthony's sentence, accepting the premise in *Fogg* that *Voisine*'s interpretation of "use . . . of physical force" should govern the meaning of those words regardless of context. The court stated:

[O]ur decision here is controlled by our previous decision in *United States v. Fogg*, 836 F.3d 951 (8th Cir. 2016). There, we held that "use ... of physical force" under the ACCA includes force applied recklessly. *Id.* at 956. And "we see no reason why 'use' of force under the guidelines would mean something different from 'use' of force under the ACCA." *United States v. Ramey*, No. 16-4328, 880 F.3d 447, 448–49, 2018 WL 493122 (8th Cir. Jan 22, 2018). . . . Accordingly, we conclude that "intentionally, knowingly, or recklessly caus[ing] bodily injury to another person," Neb. Rev. Stat. § 28-932(1), constitutes a use of force under the Guidelines.

Anthony, 710 F. App'x at 281.

REASONS FOR GRANTING THE PETITION

I. The Courts of Appeals are divided over whether *Voisine*'s holding applies in the context of the career offender Guidelines and the ACCA, which serve a purpose very different from the purpose of the firearms prohibition for misdemeanor domestic offenders.

The Eighth Circuit is not the only court to apply *Voisine* to the career offender or ACCA context. Nonetheless, the Courts of Appeals are far from unanimous on the issue. The First Circuit has taken the opposite position, and a number of federal circuit judges and lower courts have expressed a need for the Supreme Court's guidance on *Voisine*'s reach.

To date, the Fifth, Sixth, and Tenth Circuits have all joined the Eighth Circuit in extending *Voisine* to the career offender guidelines and/or the ACCA. *United States v. Verwiebe*, 874 F.3d 258 (6th Cir. 2017) (“*Voisine*’s analysis applies with equal force to the Guidelines, which define crimes of violence nearly identically to § 921(a)(33)(A)(ii)”); *United States v. Pam*, 867 F.3d 1191, 1208 (10th Cir. 2017) (in light of *Voisine*, element of recklessness in statute defining prior crime does not bar conviction under the statute from constituting a violent felony under the ACCA); *United States v. Mendez-Henriquez*, 847 F.3d 214, 221-22 (5th Cir. 2017) (“[P]ost-*Voisine*, as applied within our circuit, Guidelines provisions using the language ‘has as an element the use, attempted use, or threatened use of physical force against the person of another’ are indifferent to *means rea*: we concern ourselves only with whether [the] predicate conduct was volitional.”). But even in these Circuits there are dissenters. In the Sixth Circuit, two different panels of judges considered the issue at roughly the same time. One issued its decision in *Verwiebe*, *supra*, approximately one month before the second panel completed its opinion in *United States v. Harper*, 875 F.3d 329 (6th Cir. 2017). As second in line, the panel in *Harper* was bound by the panel’s decision in *Verwiebe* to apply *Voisine* in the career offender context. Nonetheless, the judges in *Harper* wrote to express their disagreement with *Verwiebe* and illustrate why that decision was “mistaken.” *Harper*, 875 F.3d at 330.

To explain their disagreement with *Verniebe*, the judges in *Harper* borrowed the reasoning of the First Circuit in *Bennett v. United States*, 868 F.3d 1 (1st Cir. 2017). In *Bennett*, a decision eventually withdrawn due to the defendant’s death but reaffirmed by *United States v. Windley*, 864 F.3d 36 (1st Cir. 2017), the First Circuit held that *Voisine*’s definition of “use . . . of physical force” should not apply in the ACCA context. The court in *Bennett* found enough differences between the language and purposes behind the ACCA and § 921(a)(33)(A)(ii) to conclude that reckless conduct should be treated differently under the two statutes.

A second Court of Appeals has also adopted *Bennett*’s reasoning. In *United States v. Middleton*, 883 F.3d 485 (4th Cir. 2018), the Fourth Circuit considered whether the South Carolina offense of involuntary manslaughter fell within the definition of a “violent felony” under the ACCA. The entire three-judge panel agreed that the offense was not categorically a violent felony, but the reasoning of the judges diverged. In a concurring opinion, two judges agreed that the statute was overbroad because it swept in reckless conduct. *Middleton*, 883 F.3d at 493 & 497 (Floyd, J., and Harris, J., concurring). According to the concurring view, “the Supreme Court’s recent decision in *Voisine*. . . does not control how we should construe the ACCA force clause.” *Id.* at 498.

Some circuits have not yet had the opportunity to decide the effect of *Voisine*

on statutes meant to identify violent offenders. Yet these courts expect to one day be called upon to do so. *United States v. Benally*, 843 F.3d 350, 354 (9th Cir. 2016) (noting the “tension” that exists between *Voisine* and Ninth Circuit cases holding that recklessly-committed crimes are not crimes of violence); *Baptiste v. Attorney General*, 841 F.3d 601, n. 5 (3d Cir. 2016) (leaving “for another day” the question of *Voisine*’s sweep into other contexts). When these courts *are* asked to define *Voisine*’s reach, their opinions will deepen the divide on this issue.

In the meantime, as a result of the split in the circuits, sentences for similar conduct will vary greatly depending on the circuit in which a defendant finds himself. Given Congress’ desire to maintain uniformity in federal sentencing, *see Mistretta v. United States*, 488 U.S. 361, 366 (1989), such differences should not be allowed to persist. This Court should grant certiorari to resolve the conflict over *Voisine*’s application in the career offender and ACCA contexts.

II. The Court of Appeals’ decision to extend *Voisine* conflicts with this Court’s instruction to interpret “use . . . of physical force” in a manner consistent with the language, context, and purpose of the statute in which those words appear.

The Eighth Circuit’s decision not only conflicts with the decisions of other circuits, it is wrong on the merits. *Voisine*’s reasoning does not logically fit the language or purpose of the career offender Guidelines.

The Court in *Voisine* was charged with determining whether a reckless domestic assault qualified as a “misdemeanor crime of domestic violence” under 18 U.S.C. § 922(g)(9)¹. *Voisine*, 136 S. Ct. at 2277. The definition of such a crime includes any misdemeanor which has, “as an element, the use or attempted use of physical force,” committed against someone with whom the perpetrator shares a designated domestic relationship. 18 U.S.C. § 921(a)(33)(A).

Citing both “statutory text and background alike,” the Supreme Court held that “use . . . of physical force” includes force applied recklessly. *Voisine*, 136 S. Ct. at 2278. According to the Court, nothing in the word “use” suggests that § 922(g)(9) should apply exclusively to “knowing or intentional domestic assaults.” *Id.* While dictionary definitions equate “use” with “volitional action” rather than “involuntary motion,” they do not require that a particular intent accompany that volitional action. *Id.* at 2279. The word is “indifferent as to whether the actor has the mental state of intention, knowledge, or recklessness with respect to harmful consequences of his volitional conduct.” *Id.* Volitional acts with any of those mental states therefore constitute “use . . . of physical force” under the definition of a misdemeanor crime of domestic violence. *Id.*

¹Under 18 U.S.C. § 922(g)(9), the accumulation of three misdemeanor crimes of domestic violence prohibits an individual from possessing a firearm.

According to the Court, this interpretation was the only one compatible with the purpose of the statute. Congress enacted § 922(g)(9) to “close [a] dangerous loophole” in its gun control laws. *Id.* at 2276 (quoting *Castleman*, 134 S. Ct. at 1409). It wanted to ensure that perpetrators of domestic violence did not have access to firearms, but recognized that many of those perpetrators are charged with misdemeanors rather than felonies. *Id.* Meanwhile, “reckless infliction of bodily harm” is a misdemeanor in most jurisdictions. *Id.* If the definition of a misdemeanor crime of domestic violence did not include reckless crimes, a significant number of domestic offenders would be able to evade § 922(g)(9)’s firearms ban. *Id.* at 2281. Rather than adopt a reasoning counter to the goal of the statute, the Court held that a misdemeanor crime of domestic violence includes reckless conduct.

For two reasons, this analysis does not transfer to the career offender context. The first reason may be simplest: there are textual differences between § 921(a)(33)(A) and U.S.S.G. § 4B1.2. The career offender definition of “crime of violence,” like the definition of “misdemeanor crime of domestic violence,” includes the words “use . . . of physical force.” But § 4B1.2 has the additional qualifier that the force be used “against the person of another.” U.S.S.G. § 4B1.2(a)(1).

As this Court explained in *Leocal v. Ashcroft*, 543 U.S. 1 (2004), these additional words are important. In *Leocal*, the Court considered whether a lawful permanent

resident's conviction for driving under the influence of alcohol was a crime of violence under the Immigration and Nationality Act (INA), 8 U.S.C. § 1101(a)(43)(F). A "crime of violence" as referenced in the INA includes "an offense that has as an element the use, attempted use, or threatened use of physical force *against the person or property of another*." 18 U.S.C. § 16 (emphasis added).

The parties in *Leocal* made arguments similar to the arguments made in this case. The defendant contended that the word "use" suggested "the *intentional* availment of force," while the government countered that "use" does not incorporate any *mens rea* component and could even include negligent acts. *Leocal*, 543 U.S. at 5. But the Court said that the parties' focus solely on the word "use" was too narrow. *Id.* "Particularly when interpreting a statute that features as elastic a word as 'use,'" the Court said, "we construe language in its context and in light of the terms surrounding it." *Id.* Considering the *entire phrase* of "use . . . of physical force against the person or property of another," the Court found that driving under the influence could not be considered a "crime of violence." *Id.* at 1. "While one may, in theory, actively employ something in an accidental manner, it is much less natural to say that a person *actively employs physical force against another person* by accident." *Id.* at 9.

Leocal's emphasis on the words "against the person or property of another" was a significant factor in the First Circuit's decision not to extend *Voisine* to the ACCA

context. As that court explained in *Bennett*, “[t]he canon against surplusage does at least suggest that the follow-on ‘against’ phrase in ACCA must be conveying something that the phrase ‘use . . . of physical force’ does not.” *Bennett*, 868 F.3d at 20. Applying the rule of lenity, the Court held that the difference in text must be resolved in favor of the defendant. *Id.* at 23. Consistent with the First Circuit’s pre-*Voisine* precedent, the Court held that crimes with a *mens rea* element of mere recklessness were not “violent felonies” under the ACCA. *Id.*

While *Bennett* focuses primarily on the textual differences between the statutes, it also mentioned a second reason *Voisine* should not apply: the different *purposes* behind domestic violence firearm prohibitions and provisions enhancing penalties for habitual offenders. These differences, which this Court recognized in *Castleman*, make *Voisine*’s holding a poor fit in the career offender context.

In *Castleman*, the Court was asked to interpret the meaning of “physical force” in the definition for a misdemeanor crime of domestic violence. The defendant proposed the interpretation the Court had adopted for the ACCA in *Johnson I*, which equated “physical force” with “violent force.” *Johnson I*, 559 U.S. at 140. But the Court declined to adopt *Johnson I*’s meaning, holding that it “[did] not fit” in a domestic violence context. *Castleman*, 134 S. Ct. at 1410 (quoting *Johnson I*, 559 U.S. at

139). It instead adopted the common-law definition of “physical force,” which included simple battery and offensive touchings. *Id.* at 1410-11.

Three reasons drove the Court’s decision in *Castleman*. First, perpetrators of domestic violence are often prosecuted under misdemeanor battery laws. Knowing this, the Court believed it likely that “Congress meant to incorporate that misdemeanor-specific meaning of ‘force’ in defining a ‘misdemeanor crime of domestic violence.’” *Id.* at 1411. Second, while the word “violent” standing alone “connotes a substantial degree of force,” the same cannot be said of “domestic violence.” *Id.* (quoting *Johnson I*, 559 U.S. at 140). The violence in domestic violence comes not so much from the infliction of physical harm but from the subjugation of “one intimate partner to the other’s control.” *Id.* at 1412. Third, including common-law batteries as offenses which can disqualify a person from gun possession does not create an anomaly in § 922(g), since that statute already prohibits gun possession for both violent and non-violent conduct. On the other hand, including common-law battery and offensive touchings as ACCA “violent felonies” *does* create an anomaly, as those are crimes which are not typically associated with armed career criminals. *Castleman*, 134 S. Ct. at 1412.

A lack of “fit” is also the reason why *Voisine*’s holding should not be applied in the career offender context. In contrast to the purpose of § 922(g)(9), which was to

ensure that domestic violence offenders did not fall through the cracks of Congress' firearms prohibitions, the ACCA and the career offender Guidelines were designed to identify the most violent, aggressive offenders. A "use" definition that includes reckless conduct does not advance that goal. This Court recognized as much in *Begay v. United States*, 553 U.S. 137, 147 (2008), when it said it had "no reason to believe" that Congress intended to bring recklessly committed crimes within the ACCA's scope. Although much of *Begay* has been rendered moot by the Supreme Court's decision in *Johnson II*, this statement of Congressional intent remains instructive. So, too, are the words of the district court in *Bennett*, which distilled the problem with applying *Voisine* to the ACCA in the following illustration:

[I]f *Voisine*'s interpretation of "use" is applied to the ACCA, three past convictions for injuries that result from reckless plate throwing (the example discussed at length in *Voisine*), or reckless driving, could be sufficient to earn a designation as an "armed career criminal." See [*Voisine*] at *5. Labeling a thrice-convicted "Angry Plate Thrower" or "Reckless Policeman" as an "Armed Career Criminal" would appear to be the type of "comical misfit" the Supreme Court has previously indicated must be avoided when interpreting 18 U.S.C. § 924(e)(2)(B). *Id.* at *12-*15 (dissent description of the hypothetical "Angry Plate Thrower" and "Reckless Policeman") & *Castleman*, 134 S. Ct. at 1410 (explaining how *Johnson I* "declined to read the common-law meaning of "force" into ACCA's definition of a "violent felony," because [the Court] found it a "comical misfit with the defined term.")

United States v. Bennett, No. 1:16CV251, 2016 WL 3676145 at *3 (D. Maine July 6, 2016).

Voisine is also a poor fit because it was designed to address a problem that does not have a counterpart in the ACCA or career offender context. In *Voisine*, as in *Castleman* before it, this Court worried about adopting a definition of “use . . . of physical force” that would render § 922(g)(9) inoperable in a large number of states. *See Voisine*, 136 S. Ct. at 2280; *Castleman*, 134 S. Ct. at 1413. But the same concern is not present in the career offender or ACCA context. Even if reckless crimes are excluded as “crimes of violence” or “violent felonies,” plenty of other crimes in every state would still qualify as predicate offenses. *United States v. Sabetta*, 221 F. Supp. 3d. 210, 223 (D. R. I. Oct. 24, 2016). Since one of the principal concerns of *Voisine* is absent here, it makes no sense for the courts to apply *Voisine* in ACCA and career offender cases. An interpretation of “use . . . of physical force against the person of another” that is consistent with the purposes of the ACCA and career offender Guidelines is a more logical choice. The Court should grant certiorari to make it clear that interpretation excludes reckless conduct.

III. Anthony’s case is an excellent vehicle for resolving this important question.

Donald Anthony’s case is an ideal one in which to determine whether the element clauses of U.S.S.G. § 4B1.2 and the ACCA exclude recklessly-committed crimes. First, there is no ambiguity in the statute defining the prior conviction in Anthony’s case. The “reckless” *mens rea* is spelled out in the statute for assault by a

confined person, Neb. Rev. Stat. § 28-932, and Nebraska caselaw confirms that reckless assaults fall within the umbrella of the statute. *See, e.g., State v. Prnett*, 638 N.W.2d 809, 816 (Neb. 2002); *State v. Preslicka*, No. A-04-230, 2005 WL 147093 (Neb. Ct. App. Jan. 25, 2005) (unpub'd).

Second, the issue was squarely presented in the lower courts. As soon as *Johnson II* eliminated the residual clause under which Anthony's convictions were deemed to have been "violent felonies," Anthony filed a timely § 2255 motion. There would be no procedural barriers to relief, leaving the Court free to proceed directly to the statutory interpretation question.

Finally, the issue in this case is both important and recurring. Statutes that criminalize acts committed "intentionally, knowingly, or recklessly" are prevalent in many states. *Mathis v. United States*, 136 S. Ct. 2243, 2253 n. 3 (2016). If the circuits remain divided, a state crime could fall outside of the definition of "crime of violence" or "violent felony" in one circuit while triggering a career offender or ACCA enhancement in the neighboring one. When the difference between the two interpretations is of such "great consequence," *Bennett*, 868 F.3d at 23, a defendant's life should not be at the mercy of an arbitrary boundary. To bring uniformity to this important question, this Court should grant certiorari.

Conclusion

The Eighth Circuit's inclusion of reckless conduct in the Guideline definition of "crime of violence" conflicts with the interpretation of two other circuits. It also ignores this Court's instruction to interpret "crimes of violence" differently from "misdemeanor crimes of domestic violence." Defendants facing sentencing can now be subject to widely divergent sentences for similar conduct simply because of the Circuit in which they find themselves. To resolve the circuit split and correct the Eighth Circuit's error, this Court should grant certiorari.

DONALD G. ANTHONY, Petitioner,

By: s/ David R. Stickman
DAVID R. STICKMAN
Federal Public Defender
222 South 15th Street, Suite 300N
Omaha, NE 68102
telephone: (402) 221-7896
fax: (402) 221-7884
e-mail: david_stickman@fd.org
Counsel of Record for Petitioner