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In The
Supreme Court of the United States

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JERMAR HARDIN,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

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PETITION FOR WRIT OF CERTIORARI

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Dated: June 21, 2018

QUESTION PRESENTED

In *United States v. Castleman*, 134 S. Ct. 1405, 1414 (2014), this Court expressly reserved judgment on whether the “violent force” standard under *Curtis Johnson v. United States*, 559 U.S. 133 (2010), is satisfied by an offense that extends to the act of using poison to cause physical harm. That question has divided the circuits, and this case presents the Court with an opportunity to resolve it.

The question presented is:

Does the act of employing poison to commit robbery necessarily require “violent force”?

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PETITION FOR WRIT OF CERTIORARI

Petitioner Jermar Hardin respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit in this case.

DECISION BELOW

The Fourth Circuit's decision in this case is unpublished and is reprinted at App. 1a-3a.

JURISDICTION

The court of appeals entered its judgment on April 2, 2018. App. 4a. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY AND GUIDELINE PROVISIONS INVOLVED

Section 2K2.1(a)(4)(A) of the United States Sentencing Guidelines provides:

(a) Base Offense Level (Apply the Greatest):

* * * *

(4) 20, if—

(A) the defendant committed any part of the instant offense subsequent to sustaining one felony conviction of either a crime of violence or a controlled substance offense.

U.S.S.G. § 2K2.1(a)(4)(A) (2015).

Section 4B1.2(a) of the United States Sentencing Guidelines provides:

(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).

U.S.S.G. § 4B1.2 (Supp. 2015).

Section 14-87(a) of the North Carolina General Statutes provides:

(a) Any person or persons who, having in possession or with the use or threatened use of any firearms or other dangerous weapon, implement or means, whereby the life of a person is endangered or threatened, unlawfully takes or attempts to take personal property from another or from any place of business, residence or banking institution or any other place where there is a person or persons in attendance, at any time, either day or night, or who aids or abets any such person or persons in the commission of such crime, shall be guilty of a Class D felony.

N.C. Gen. Stat. § 14-87 (2016).¹

STATEMENT

This petition asks the Court to decide an issue it expressly left undecided in *United States Castleman*: namely, whether causing bodily injury through an indirect application of force, such as by using poison, “necessitate[s] violent force, under *Johnson* [*v. United States*, 559 U.S. 133, 140 (2010)]’s definition of that phrase.” 134 S. Ct. 1405, 1414-15 (2014). This issue divided the circuits before *Castleman* and continues to divide them now.

Whether a prior conviction necessitated violent force is a high-stakes determination that should not vary depending on the location of the court making that decision. That determination is an important issue in both criminal and immigration law, because often it decides whether a prior conviction qualifies as a

¹ This statute has not been amended since Hardin’s 2002 robbery offense.

“crime of violence” or a “violent felony.” In this case, it nearly doubled Jermar Hardin’s applicable sentencing range under the United States Sentencing Guidelines. In others, it raises the statutory maximum and requires the imposition of mandatory prison sentences. And in the immigration context, it can mean deportation without the possibility of return to the United States. This Court should grant a writ of certiorari and should review the judgment in this case to resolve the circuit split and ensure consistent application of federal law nationwide.

A. Legal Background

Under the United States Sentencing Guidelines, a person convicted of unlawfully possessing a firearm faces an enhanced sentence if he “committed any part of the instant offense subsequent to sustaining” at least one “felony conviction of either a crime of violence or a controlled substance offense.” U.S.S.G. § 2K2.1(a)(1)-(4). “Crime of violence” is defined in U.S.S.G. § 4B1.2(a). U.S.S.G. § 2K2.1, comment. (n.1) (2015). Section 4B1.2(a) provides in part that “‘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.” U.S.S.G. § 4B1.2(a)(1) (Supp. 2015).² Other statutes in the criminal and immigration contexts contain materially similar definitions of the term “crime of violence” or “violent felony.” *See, e.g.*, 18 U.S.C. § 924(e); 18 U.S.C. § 16(a); 18 U.S.C. § 924(c)(3)(A); 18 U.S.C. § 3559(c)(2)(F)(i).³ The

² Hardin was sentenced on August 9, 2016, after the recent amendment to § 4B1.2’s crime-of-violence definition became effective. That amendment removed the residual clause from the definition.

³ While the definitions in 18 U.S.C. §§ 16(a) and 924(c)(3)(A) also extend to the use, attempted use, or threatened use of force against property, that distinction is not relevant to the issue presented here.

Court has interpreted these terms identically and uses the decisions interpreting them interchangeably. *See Johnson v. United States*, 559 U.S. at 140 (relying on prior precedent construing “crime of violence” to construe “violent felony”).

The Court has addressed what kind of force makes an offense a violent felony or crime of violence in three cases, beginning with *Leocal v. Ashcroft*, 543 U.S. 1 (2004). There, the Court held that the term “crime of violence” in 18 U.S.C. § 16(a) “requires active employment” of force and cannot be satisfied by mere negligent conduct. *Id.* at 11. The Court reasoned that the “ordinary meaning of” the term “crime of violence,” combined with the statute’s “emphasis on the use of physical force against another person . . . suggests a category of violent, active crimes.” *Id.*

Next, this Court defined “violent” force for purposes of the Armed Career Criminal Act (ACCA) in *Johnson v. United States*, 559 U.S. 133. The Court explained that, “in the context of a statutory definition of ‘*violent* felony,’ the phrase ‘physical force’ means *violent* force—that is, force capable of causing physical pain or injury to another person.” *Id.* at 140 (emphasis in original). But because the offense addressed in *Johnson* required merely intentionally touching another person, the Court did not address whether causing physical pain or injury to another person *necessarily* requires the use of violent, physical force. *Id.* It did explain that common definitions of the term “force” “suggest a degree of power that would not be satisfied by the merest touching.” *Id.* at 139. And it stated that, “[e]ven by itself, the word ‘violent’ in § 924(e)(2)(B) connotes a substantial degree of force.” *Id.* at 140.

Then, most recently, the Court reaffirmed that “violent force” is “strong” force in *United States v. Castleman*, 134 S. Ct. 1405 (2014). There, the Court addressed the amount of force required to establish a “misdemeanor crime of domestic violence” under 18 U.S.C. § 922(g)(9), which is defined in part as a misdemeanor that “has, as an element, the use or attempted use of physical force.” 134 S. Ct. at 1410-11; see 18 U.S.C. § 921(a)(33)(A). It concluded that “Congress incorporated the common-law meaning of ‘force’—namely, offensive touching—in § 921(a)(33)(A)’s definition of a ‘misdemeanor crime of domestic violence.’” *Id.* at 1410.

While “the common-law meaning of ‘force’”—which includes “even the slightest offensive touching”—is “a ‘comical misfit’” with the definition of “violent felony” found in the ACCA, in the context of a misdemeanor crime of domestic violence, “the common-law meaning of ‘force’ fits perfectly.” *Id.* (quoting *Johnson*, 559 U.S. at 139, 145). The Court reiterated that “the word ‘violent’ or ‘violence’ standing alone ‘connotes a substantial degree of force,’” and it distinguished those terms from the term “domestic violence,” which it characterized as “a term of art encompassing acts that one might not characterize as ‘violent’ in a nondomestic context.” *Id.* at 1411.

The Court held that knowingly or intentionally causing bodily injury “necessarily involves the use of physical force. . . . in the common-law sense.” *Id.* at 1414. It rejected the lower court’s reasoning that one could cause bodily injury without the use of physical force by tricking someone into consuming a poisoned drink. Instead, it held that “the common-law concept of ‘force’ encompasses even its indirect application,” such as by poisoning someone or infecting someone with a

disease. *Id.* at 1414-15. Consequently, the Court concluded that “[i]t is impossible to cause bodily injury without applying force in the common-law sense.” *Id.* at 1415.

At the same time it reached this ruling with respect to the amount of force required for misdemeanor “domestic violence,” the Court explained that “[m]inor uses of force”—such as a squeeze that results in bruising—“may not constitute ‘violence’ in the generic sense.” *Id.* at 1412. And it expressly declined to reach the question “[w]hether or not the causation of bodily injury” such as by poisoning someone or infecting someone with a disease “necessarily entails violent force.” *Id.* at 1413, 1414. This case presents the Court with the opportunity to address that question. The need for an answer is compelling.

B. Factual and Procedural Background

1. Jermar Hardin pleaded guilty in the Western District of North Carolina to possessing a firearm after a felony conviction, in violation of 18 U.S.C. § 922(g)(1). App 2a. Over Hardin’s objection, the district court counted Hardin’s prior North Carolina conviction of robbery with a dangerous weapon as a “crime of violence” and used that prior conviction to enhance his base offense level under U.S.S.G. § 2K2.1(a)(4)(A). Transcript of Sentencing Hearing at 9-10, *United States v. Hardin*, No. 3:15-cr-255 (W.D.N.C. Aug. 8, 2016). That enhancement increased Hardin’s Guideline sentencing range from 24-to-30 months to 46-to-57 months. The district court sentenced him to 46 months’ imprisonment. App. 6a.

2. Hardin appealed to the Court of Appeals for the Fourth Circuit and filed a brief under *Anders v. California*, 386 U.S. 738 (1967), arguing that his prior offense

of robbery with a dangerous weapon under N.C. Gen. Stat. § 14-87 does not qualify as a “crime of violence” under the force clause of U.S.S.G. § 4B1.2(a). The Court of Appeals affirmed Hardin’s sentence in an unpublished decision. App. 2a. The court held that under *United States v. Burns-Johnson*, 864 F.3d 313, 315 (4th Cir.), *cert. denied*, 138 S. Ct. 461 (2017), the district court “did not err by relying on Hardin’s prior robbery with a dangerous weapon conviction to enhance his sentence for possession of a firearm after having been convicted of a crime of violence.” *Id.* In *Burns-Johnson*, the Fourth Circuit held that North Carolina robbery with a dangerous weapon “categorically qualifies as a violent felony under the ‘force clause.’” 864 F.3d at 315.

3. The Fourth Circuit has held that North Carolina common law robbery is not a “violent felony” under the ACCA’s force clause because “even *de minimis* contact can constitute the ‘violence’ necessary for a common law robbery conviction under North Carolina law.” *United States v. Gardner*, 823 F.3d 793, 803-04 (4th Cir. 2016). The “critical difference” between common law robbery and robbery with a dangerous weapon is that robbery with a dangerous weapon “is accomplished by the use or threatened use of a dangerous weapon whereby the life of a person is endangered or threatened.” *State v. Peacock*, 330 S.E.2d 190, 195 (N.C. 1985).

In *Burns-Johnson*, the appellant argued that the addition of the element requiring “use or threatened use of a dangerous weapon whereby the life of a person is endangered or threatened” does not make the offense of robbery with a dangerous weapon a “violent felony” because it does not require the use of “violent” force under

Johnson, 559 U.S. at 140. Op. Br. 11, *United States v. Burns-Johnson*, No. 16-4338 (4th Cir. Sept. 2, 2016). A person may commit the offense “with the use or threatened use” of any “dangerous weapon, implement or means.” N.C. Gen. Stat. § 14-87. And North Carolina defines “dangerous weapon” broadly enough to encompass the use of poison or drugs: “A dangerous or deadly weapon ‘is generally defined as any article, instrument or substance which is likely to produce death or great bodily harm.’” *State v. Wiggins*, 337 S.E.2d 198, 199 (N.C. Ct. App. 1985) (emphasis added) (quoting *State v. Sturdivant*, 283 S.E.2d 719, 729 (N.C. 1981)). *Burns-Johnson* argued that, because the offense can be committed by opening or threatening to open a canister of toxic gas or by putting poison or a sedative in a person’s drink, it does not require the use of violent force and is not an ACCA predicate offense. Op. Br. 14, *Burns-Johnson*; Reply Br. 17, *United States v. Burns-Johnson*, No. 16-4338 (4th Cir. Oct. 18, 2016). He also relied on the Fourth Circuit’s decision in *United States v. Torres-Miguel*, where the court held that “to constitute a predicate crime of violence . . . a state offense must constitute a *use or threatened use* of violent force, not simply *result* in physical injury or death.” 701 F.3d 165, 169 (4th Cir. 2012) (emphasis in original). In *Torres-Miguel*, the court explained that “threatening to poison another . . . involves no use or threatened use of force.” *Id.* at 168-69.

4. The Fourth Circuit rejected *Burns-Johnson*’s arguments, assuming, “without deciding, that statutory armed robbery realistically might encompass robbery by poison.” 864 F.3d at 318. Although it acknowledged its explanation in *Torres-Miguel* that “a crime may result in death or serious bodily injury without

involving use of physical force,’ such as, for example, by use of poison,” the court concluded that this Court’s decision in *Castleman* “abrogates our statement in *Torres-Miguel* that the use of poison would not constitute the use of force under *Johnson I*, 599 U.S. at 140.” *Id.* This conclusion led the Court to hold that, “even if North Carolina statutory armed robbery could be committed by use of poison, the crime necessarily still would entail the use, attempted use, or threatened use of violent physical force under the ACCA.” *Id.*

5. The Court buttressed its holding in *Burns-Johnson* with *United States v. Reid*, where it held that the Virginia offense of “knowingly and willfully inflicting bodily injury on juvenile detention facility employees” is a “violent felony” under the ACCA. *Id.* (citing *Reid*, 861 F.3d 523, 529 (4th Cir.), *cert. denied*, 138 S. Ct. 462 (2017)). In *Reid*, the court held more broadly that, “by applying the combination of *Johnson* and *Castleman*, we conclude that ACCA’s phrase ‘use of physical force’ includes force applied directly or indirectly.” 861 F.3d at 529. In yet another case interpreting the term “crime of violence,” the court held that “*Castleman* forecloses the argument that indirect means of applying force are not a use of force. . . . [I]t is enough that the individual intentionally acted to place the victim in the path of an inevitable force.” *In re Irby*, 858 F.3d 231, 235 (4th Cir. 2017); *see also United States v. Covington*, 880 F.3d 129, 134-35 (4th Cir.) (“the direct versus indirect use of force distinction articulated in *Torres-Miguel* has been abrogated by *Castleman*”), *cert. denied*, 2018 WL 1993615 (U.S. May 29, 2018); *United States v. Middleton*, 883 F.3d

485, 491 (4th Cir. 2018) (“It is well-settled that *Castleman* abrogated a portion of *Torres-Miguel*’s reasoning.”).

REASONS FOR GRANTING THE WRIT

I. This Court should grant the writ to decide whether the act of employing poison to commit a robbery necessarily entails violent force.

The Fourth Circuit’s decisions interpreting *Castleman* leave in place an entrenched circuit split that can only be resolved by this Court. Two circuits—the First and Fifth—disagree with the position taken by the Fourth Circuit and have rejected the argument that under *Castleman*, causing injury by means of indirect force necessarily requires violent force. Consequently, the circuit split will not resolve itself. It is ripe for review. And considering the interests at stake in both criminal prosecutions and immigration proceedings, the Court’s intervention is critical to correct the geographically inconsistent enforcement of federal laws that depend on interpretations of “violent felony” and “crime of violence” provisions.

A. The decision below conflicts with decisions of two courts of appeals.

The decision below conflicts with decisions of the First and Fifth Circuits. These circuits take the position that causation of physical injury with indirect force does not require “violent” force under *Johnson*.

In *Whyte v. Lynch*, the First Circuit held that Connecticut third-degree assault is not a “crime of violence” under 18 U.S.C. § 16. 807 F.3d 463, 464-65 (1st Cir. 2015). A person commits third-degree assault under Connecticut law when, “[w]ith intent to cause physical injury to another person, he causes such injury to such person or to a

third person.” *Id.* at 467-68. The court was faced with determining whether the “Connecticut statute requires the use, attempted use, or threatened use of ‘*violent force*.’” *Id.* at 468 (emphasis in original). And it concluded that “[c]ommon sense . . . suggests there exists a ‘realistic probability’ that, under this statute, Connecticut can punish conduct that results in ‘physical injury’ but does not require the ‘use of physical force.’” *Id.* at 469 (quoting *Gonzalez v. Duenas-Alvarez*, 549 U.S. 183, 193 (2007)). As an example, the court suggested that “a person could intentionally cause physical injury by ‘telling the victim he can safely back his car out while knowing an approaching car driven by an independently acting third party will hit the victim.’” *Id.* (quoting *United States v. Villegas-Hernandez*, 468 F.3d 874, 879 (5th Cir. 2006)).

In reaching its holding, the court explicitly addressed *Castleman* and rejected the government’s argument that “physical force” means the same thing in the domestic violence context that it means in the “crime of violence” context. *Id.* at 470. The court explained: “Physical force’ can mean different things depending on the context in which it appears.” *Id.* (citing *Johnson*, 559 U.S. at 139). Specifically, “[t]hough the same language can be found in the Domestic Violence Gun Offender Ban and the generic definition of ‘crime of violence’ in the U.S. Code, the two statutes serve different purposes and are doing different work. We thus reason our way through their respective puzzlements differently.” *Id.* at 471.

The Fifth Circuit has held repeatedly that causing bodily injury with indirect force does not require violent force as defined by *Johnson*. Most recently, in *United States v. Rico-Mejia*, the court held that the Arkansas offense of terroristic

threatening is not a crime of violence under U.S.S.G. § 2L1.2, which requires that the offense “have as an element the use, attempted use, or threatened use of physical force against the person of another.” 859 F.3d 318, 321 (5th Cir. 2017) (quoting § 2L1.2). Arkansas terroristic threatening includes as an element that the person “[w]ith the purpose of terrorizing another person, . . . threatens to cause death or serious bodily injury or substantial property damage to another person” or “threatens to cause physical injury or property damage to a teacher or other school employee.” *Id.* at 322 (quoting Ark. Code Ann. § 5-13-301(a)(1)).

In reaching its holding, the court relied on prior cases in which it had reasoned that “a person could cause physical injury without using physical force.” *Id.* at 321 (citing *United States v. Johnson*, 286 F. App’x 155, 157 (5th Cir. 2008) (per curiam); *Villegas-Hernandez*, 468 F.3d at 879 (“making available to the victim a poisoned drink while reassuring him the drink is safe” would cause injury without the use of violent force); *United States v. De La Rosa-Hernandez*, 264 F. App’x 446 (5th Cir. 2008) (per curiam)). The court rejected the government’s argument “that these cases have been overruled by” *Castleman*—in particular that *Castleman*’s definition of “use of physical force” includes “harm caused both directly and indirectly” and includes “administering poison or similar actions.” *Rico-Mejia*, 859 F.3d at 321. Rather, the Court explained that “[b]y its express terms, *Castleman*’s analysis is not applicable to the physical force requirement for a crime of violence, which ‘suggests a category of violent, active crimes’ that have as an element a heightened form of physical force that is narrower in scope than that applicable in the domestic violence context.” *Id.*

at 321-23 (quoting *Castleman*, 134 S. Ct. at 1411 n.4); *see also United States v. Reyes-Contreras*, 882 F.3d 113, 122-23 (5th Cir. 2018) (“*Castleman* does not on its own terms” expand the definition of violent force to “indirect causation of bodily injury.”).

B. The circuit split is mature.

While the above two circuits would disagree with the Fourth Circuit’s holding, others side with it. The Second, Third, Sixth, Seventh, Eighth, Ninth, Tenth, and Eleventh Circuits all have held that causation of physical injury even with indirect force necessarily requires the use of violent, physical force. Thus, this is a mature circuit split that will not benefit from any further percolation in the circuits. These circuits have used two approaches to reach this result. The Second and Tenth Circuits have simply applied *Castleman*’s analysis of direct-versus-indirect force to decide that force need not be directed at the victim for purposes of violent felony or crime of violence. The Seventh and Eleventh Circuits have focused on a single sentence in *Johnson* as the basis for holding that the causation of injury necessitates violent force. The Third, Sixth, Eighth, and Ninth use both approaches.

The Second Circuit and Tenth Circuits, like the Fourth, have simply reasoned that *Castleman*’s analysis of direct-versus-indirect force applies to the definitions of violent felony or crime of violence. *United States v. Hill*, 890 F.3d 51, 59 (2d Cir. 2018); *United States v. Ontiveros*, 875 F.3d 533, 538 (10th Cir. 2017), *cert. denied*, 2018 WL 1640163 (U.S. May 14, 2018). In *Hill*, the Second Circuit concluded that “placing a victim in fear of injury by threatening the indirect application of physical force” satisfies the definition of “violent force,” because Hill “offer[ed] no persuasive reason”

why *Castleman*'s analysis of direct versus indirect force should not apply. 890 F.3d at 59. Similarly, relying on *Castleman*, the Tenth Circuit concluded that "ACCA's phrase 'use of physical force' includes force applied directly or indirectly." *Ontiveros*, 875 F.3d at 538.

The Seventh and Eleventh Circuits have based their analysis of injury caused by indirect force on *Johnson*'s statement that "violent force" is "force capable of causing physical pain or injury to another person," 559 U.S. at 140. These circuits focus on the result of physical injury or pain rather than the degree of force that caused that result. The Seventh Circuit has held that "a criminal act . . . that causes bodily harm to a person necessarily entails the use of physical force to produce the harm." *United States v. Jennings*, 860 F.3d 450, 459 (7th Cir. 2017), *cert. denied*, 138 S. Ct. 701 (2018). There, the court held that this principle applies "[w]hen the defendant deliberately exposes the victim to a harmful agent (e.g., a toxin, lethal biological agent, or hidden explosive) without actually making contact with the victim's person, let alone in a way typically thought of as violent." *Id.* (citing *Castleman*, 134 S. Ct. at 1415). In the Seventh Circuit's view, even withholding food or life-saving drugs amounts to violent force "if the natural and intended result of that force is physical pain, injury, or illness . . . in the sense that *Curtis Johnson* requires." *Id.* at 459-60. In a recent, 6-5 decision, the en banc Eleventh Circuit also relied on the single statement in *Johnson* that violent force is "force capable of causing physical pain or injury," holding that "intentional force—even of the touching variety—that *in fact* causes 'great bodily harm, permanent disability, or permanent

disfigurement’ . . . necessarily constitutes force that is *capable* of causing pain or injury.” *United States v. Vail-Bailon*, 868 F.3d 1293, 1303 (11th Cir. 2017) (en banc) (quoting *Johnson*, 559 U.S. at 140) (emphasis in original); *see also United States v. Green*, 873 F.3d 846 (11th Cir. 2017) (applying *Vail-Bailon* to ACCA’s definition of violent felony).

The Third Circuit incorporated both approaches in *United States v. Chapman*, where it held that the federal offense of “mailing a communication containing a threat to injure the person” under 18 U.S.C. § 876(c) is a crime of violence under the Guidelines. 866 F.3d 129, 130 (3d Cir. 2017), *cert. denied*, 138 S. Ct. 1582 (2018). The court began its analysis with the premise that under *Johnson*, “physical force” for purposes of a crime of violence definition means “force capable of causing physical pain or injury to another person.” *Id.* at 132 (quoting *Johnson*, 559 U.S. at 140). The court then emphasized: “[i]t is important to note that the use of physical force does not require that the person employing force *directly* apply harm to—*i.e.*, strike—the victim. We derive this principle from *United States v. Castleman*, where the Supreme Court rejected the contention that knowingly or intentionally poisoning another person does not constitute a use of force.” *Id.* at 132-33. Ultimately, the court held that “the ‘use’ of ‘physical force,’ as used in § 4B1.2(a)(1), involves the intentional employment of something capable of causing physical pain or injury to another person, regardless of whether the perpetrator struck the victim’s body.” *Id.* at 133.

And it expressly rejected the argument “that there is a minimum quantum of force necessary to satisfy *Johnson*’s definition of ‘physical force.’” *Id.* at 136.

The Sixth and Eighth Circuits have applied similar reasoning. *See United States v. Verwiebe*, 874 F.3d 258, 261 (6th Cir. 2017) (“A defendant uses physical force whenever his volitional act sets into motion a series of events that results in the application of a ‘force capable of causing physical pain or injury to another person.’”); *United States v. Rice*, 813 F.3d 704, 706 (8th Cir.) (act of “employing poison knowingly as a device to cause physical harm” requires physical force), *cert. denied*, 568 U.S. 1214 (2013); *United States v. Winston*, 845 F.3d 876, 878 (8th Cir.) (violent force does not require force to “be applied directly to the body of the victim,” and there is no “daylight between physical injury and physical force”), *cert. denied*, 137 S. Ct. 2201 (2017).

While it has not expressly relied on *Castleman* in “violent felony” cases, the Ninth Circuit has expressed the view that “*Castleman* soundly rejects the idea . . . that bodily injury can occur without *some type* of physical force. . . . And taken together, *Castleman* and *Johnson* might appear to suggest that bodily injury entails violent force.” *United States v. Calvillo-Palacios*, 860 F.3d 1285, 1291 n.8 (9th Cir. 2017). Nevertheless, the Ninth Circuit has acknowledged that, in *Castleman*, “the Supreme Court reserved the question of whether bodily injury requires violent, physical force.” *Id.* at 1291. So instead of relying on *Castleman*, it has relied on its own precedents holding that “in the context of assault statutes, bodily injury entails the use of violent, physical force.” *Id.* (citing *United States v. Juvenile Female*, 566

F.3d 943 (9th Cir. 2009); *United States v. Villavicencio-Burruel*, 608 F.3d 556 (9th Cir. 2010); *United States v. Melchor-Meceno*, 620 F.3d 1180 (9th Cir. 2010); *United States v. Cabrera-Perez*, 751 F.3d 1000 (9th Cir. 2014); and *Arellano Hernandez v. Lynch*, 831 F.3d 1127 (9th Cir. 2016), *cert. denied sub nom Hernandez v. Sessions*, 137 S. Ct. 2180 (2017)). These decisions, in turn, rely on the Court’s statement in *Johnson*, 559 U.S. at 140, that violent force is force “capable of causing physical pain or injury to another person.” *E.g.*, *Villavicencio-Burruel*, 608 F.3d at 562; *Arellano Hernandez*, 831 F.3d at 1131.

C. The decision below is wrong.

The decision below, and the circuit decisions agreeing with it, are wrong because they misread *Johnson*’s interpretation of the degree of “physical force” necessary to make an offense a violent felony, and they take *Castleman*’s language about the “use” of force in poisoning cases out of context.

In *Johnson*, the Court interpreted the phrase “physical force” narrowly in the context of defining violent felonies. There, the issue was whether Florida simple battery, which can be committed with even a slight intentional touching, required “‘physical force’ within the meaning of § 924(c)(2)(B)(i).” 559 U.S. at 137, 138. The Court explained, first, that the force at issue must be “physical”: “[t]he adjective ‘physical’ . . . plainly refers to force exerted by and through concrete bodies—distinguishing physical force from, for example, intellectual force or emotional force.” *Id.* at 138. Then, the court emphasized that that the physical force used must be both of a certain degree *and* “capable of causing physical pain or injury to another person.”

Id. at 139. The Court explained that the term “force” requires a certain “degree of power”:

“force” has a number of meanings. . . . In more general usage it means “[s]trength or energy; active power; vigor; often an unusual degree of strength or energy,” “[p]ower to affect strongly in physical relations,” or “[p]ower, violence, compulsion, or constraint exerted upon a person.” *Id.*, at 985. Black’s Law Dictionary 717 (9th ed.2009) (hereinafter Black’s) defines “force” as “[p]ower, violence, or pressure directed against a person or thing.” And it defines “physical force” as “[f]orce consisting in a physical act, esp. a violent act directed against a robbery victim.” *Ibid.* All of these definitions suggest a *degree of power* that would not be satisfied by the merest touching.

Id. at 138-39 (emphasis added).

The Court distinguished these definitions from the common-law definition of “force” used in describing an element of the common-law crime of battery, because that definition is “satisfied by even the slightest offensive touching.” *Id.* at 139. And it held that the term “force” in § 924(e) does not have “the specialized meaning that it bore in the common-law definition of battery.” *Id.* This conclusion relies on *Leocal v. Ashcroft*, where the Court held that the “crime of violence” definition in 18 U.S.C. § 16 “suggests a category of violent, active crimes.” *Id.* at 140 (quoting *Leocal*, 543 U.S. at 11).

Then, the Court stated: “We think it clear that in the context of a statutory definition of “*violent felony*,” the phrase “physical force” means *violent* force—that is, force capable of causing physical pain or injury to another person.” *Id.* (emphasis in original). But it made that statement *after* having said that the definition of force suggests a certain “degree of power that would not be satisfied by the merest touching.” *Id.* at 139. Further, the Court went on to say, “[e]ven by itself, the word

‘violent’ in § 924(e)(2)(B) connotes a *substantial degree of force*. . . . When the adjective ‘violent’ is attached to the noun ‘felony,’ its connotation of *strong physical force* is even clearer.” *Id.* (emphasis added).

Johnson’s explanation of the degree of force required to establish a violent felony—“a substantial degree” of “force” or “power”—does not allow room for the inclusion of offenses that “can be committed without ever coming into contact with the victim,” such as by surreptitious poisoning or drugging. *United States v. Anderson*, 695 F.3d 390, 404 (6th Cir. 2012) (White, J., concurring). *Johnson* “found that ‘physical force’ refers to a certain threshold degree of force—it refers to the substantial degree of force that is associated with punching, kicking, and other violent acts.” *United States v. Vail-Bailon*, 868 F.3d at 1308 (Wilson, J., dissenting).

This Court has cautioned against reading a statement in one of its opinions “in isolation” rather than “alongside” the rest of the opinion. *Endrew F. ex rel. Joseph F. v. Douglas County School Dist. RE-1*, 137 S. Ct. 988, 998 (2017). But courts holding that causing injury with indirect force necessitates violent force have done just that, relying on a single statement the Court made in *Johnson*—that violent force is “force capable of causing physical pain or injury to another person”—while ignoring *Johnson*’s repeated statements that a strong *degree* of force is required for a violent felony. That approach is wrong. Under *Johnson*, if the degree of force is not substantial, the crime does not require “physical force” as required for a violent

felony, regardless of whether the insubstantial degree of force in question is capable of causing physical pain or injury to another person.

In fact, the Court’s opinion in *Castleman* demonstrates that it has never adopted a rule that indirectly using force to cause injury amounts to violent force. Justice Scalia concurred specially to set forth his opinion that the case should have been decided by applying *Johnson*’s definition of physical force, which in his view is that “‘intentionally or knowingly caus[ing] bodily injury’ . . . categorically involves the use of ‘force capable of causing physical pain or injury to another person.’” 134 S. Ct. at 1417 (Scalia, J., concurring). But the *Castleman* majority rejected Justice Scalia’s interpretation of *Johnson*, saying “[w]hether or not the causation of bodily injury necessarily entails violent force—a question we do not reach—mere offensive touching does not” and “whether or not that is so—a question we do not decide—these forms of injury do necessitate force in the common-law sense.” *Id.* at 1413, 1414. Thus, *Castleman* establishes that *Johnson* did not decide this issue and that courts are wrong to rely on *Johnson* as support for a holding that causing injury with an indirect use of force necessarily requires violent force. *See Vail-Bailon*, 868 F.3d at 1319 (Rosenbaum, J., dissenting) (*Castleman* confirms that the Supreme Court has not decided whether causation of injury requires violent force).

Further, *Castleman*’s ruling that offensive touching satisfies the force requirement of 18 U.S.C. § 921(a)(33)(A)’s definition of “misdemeanor crime of domestic violence” and that the use of poison would satisfy that definition of force does not mean that the use of poison to cause injury amounts to violent, physical force

for purposes of a “crime of violence” definition. In fact, under *Castleman*’s reasoning, the use of poison to injure someone does not involve violent force.

The Court’s reasoning in *Castleman* began with its decision in *Johnson*, where the Court found the common-law definition of “force” to be a “comical misfit” with the term “violent felony.” 134 S. Ct. at 1410 (quoting *Johnson*, 559 U.S. at 145). By contrast, the Court found that “the common-law meaning of ‘force’ fits perfectly” for the definition of “misdemeanor crime of violence.” *Id.* The Court gave, as one of its reasons for that conclusion, that “whereas the word ‘violent’ or ‘violence’ standing alone ‘connotes a substantial degree of force,’ . . . that is not true of ‘domestic violence.’” *Id.* at 1411 (quoting 559 U.S. at 140). And further, it explained that “[m]inor uses of force,” such as a squeeze to the arm that causes a bruise, “may not constitute ‘violence’ in the generic sense.” *Id.* at 1412.

When the Court considered the situation in which a person causes bodily injury by deceiving a person into drinking a poisoned beverage “without making contact of any kind,” the Court considered only the “common-law concept of ‘force,’” a concept that *Johnson* makes clear is inapplicable to the definition of violent felony. *Id.* at 1414. And, relying on cases interpreting the common-law offense of battery, it held that indirectly using force by poisoning someone amounts to “force” “in the common-law sense.” *Id.* at 1414-15. Then, the Court rejected *Castleman*’s argument that, even if the indirect use of force is sufficient, employing poison to cause injury did not amount to a “use” of force as required by the statute. *Id.* at 1415. But it did not hold that using poison requires violent force; it held that “the act of employing poison

knowingly as a device to cause physical harm” is a “use of force” in the common-law sense. *Id.* And it held that, in the common-law sense, “[t]hat the harm occurs indirectly, rather than directly (as with a kick or punch), does not matter.” *Id.* The Court summed up its rejection of Castleman’s argument about the term “use” by explaining that the “word ‘use’” does not “somehow alter[] the meaning of ‘force.’” *Id.* But nothing in the Court’s opinion suggests that its discussion of the meaning of the term “use” means that causing injury by poisoning requires violent force.

While the Court in *Castleman* said nothing about whether an indirect use of force can amount to “violent” force, *Johnson* does have something to say about that, because *Johnson* held that the common-law concept of force does not apply to the definition of violent felony. *Johnson*, 559 U.S. at 140. And it held, as the Court reiterated in *Castleman*, that “violence” “connotes a substantial degree of force.” *Castleman*, 134 S. Ct. at 1411 (quoting *Johnson*, 559 U.S. at 140). While the indirect use of force is sufficient to establish “force” under the common-law definition applicable to crimes of domestic violence, the substantial degree of force required to establish a crime of violence does not allow that leap. In the context of violent felonies, the Fifth Circuit reached the correct result when it held that “*Castleman*’s analysis is not applicable to the physical force requirement for a crime of violence, which ‘suggests a category of violent, active crimes’ that have as an element a heightened form of physical force that is narrower in scope than that applicable in the domestic violence context.” *Rico-Mejia*, 859 F.3d at 321-22 (quoting *Castleman*, 134 S. Ct. at 1411 n.4).

D. The question presented arises frequently and is important.

Courts frequently must decide whether an offense is a violent felony or a crime of violence in both criminal and immigration contexts.

Crime-of-violence enhancements under the Sentencing Guidelines significantly increase the sentence an offender faces, particularly if he has two prior convictions for crimes of violence. U.S.S.G. §§ 2K2.1, 4B1.1, 4B1.2. The ACCA's force clause is identical, and three prior violent felonies both increase a defendant's maximum sentence from 10 years to life imprisonment and make a defendant subject to a 15-year mandatory sentence. 18 U.S.C. § 924(e)(2)(B). Further, 18 U.S.C. § 3559(c) requires a mandatory life sentence for offenders who have previously been convicted of two or more serious violent felonies, defined in part as an offense punishable by 10 years or more "that has as an element the use, attempted use, or threatened use of physical force against the person of another." 18 U.S.C. § 3559(c).

Title 18 also includes a general definition of "crime of violence" that includes a force clause worded the same way as the § 4B1.2(a)'s force clause, with the addition of force against property of another. 18 U.S.C. § 16(a). Having a prior conviction for a crime of violence as defined by § 16(a) doubles the the statutory maximum faced by a defendant charged with illegal re-entry, from 10 to 20 years. 8 U.S.C. §§ 1101(43), 1326(b). Such a conviction also renders an immigrant removable from the United

States and ineligible for cancellation of removal. 8 U.S.C. §§ 1227(a)(2)(A)(iii), 1229b(a)(3).

Thus, the circuit split on whether causation of bodily injury necessarily requires violent force results in inconsistent application of federal law across multiple contexts. Further, the consequences of declaring an offense to be a “violent felony” or a “crime of violence” can be severe. For example, in this case, that determination nearly doubled Hardin’s Guideline range. For other individuals, the determination may mean mandatory life in prison or separation from their families for the rest of their lives as the result of deportation. The issue is important, and it arises frequently. The Court should address it.

E. This case is an excellent vehicle for deciding the question presented.

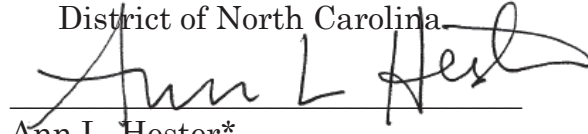
This case presents an ideal vehicle for resolving the important question presented. The outcome of this question is case dispositive, because Hardin’s only possible conviction for a crime of violence is a North Carolina robbery with a dangerous weapon. Without the crime-of-violence enhancement, Hardin’s Guidelines range is 24 to 30 months, half of the 46-to-57-month range that the district court applied.

CONCLUSION

For the foregoing reasons, this Court should grant the writ and reverse the Fourth Circuit’s decision.

Respectfully submitted,

Anthony Martinez
Federal Public Defender for the Western
District of North Carolina

A handwritten signature in black ink, appearing to read "Ann L. Hester", is written over a horizontal purple line.

Ann L. Hester*

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**Counsel of Record for Petitioner*

APPENDIX

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UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 16-4510

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JERMAR HARDIN,

Defendant - Appellant.

Appeal from the United States District Court for the Western District of North Carolina,
at Charlotte. Max O. Cogburn, Jr., District Judge. (3:15-cr-00255-MOC-DCK-1)

Submitted: March 29, 2018

Decided: April 2, 2018

Before AGEE and DIAZ, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Anthony Martinez, Federal Public Defender, Ann L. Hester, Assistant Federal Public
Defender, FEDERAL DEFENDERS OF WESTERN NORTH CAROLINA, INC.,
Charlotte, North Carolina, for Appellant. Amy Elizabeth Ray, Assistant United States
Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Asheville, North Carolina,
for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Jermar Hardin pled guilty to possession of a firearm by a person previously convicted of a felony, 18 U.S.C. § 922(g) (2012). The district court sentenced him to 46 months' imprisonment. Counsel has filed a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967), stating that, in counsel's view, there are no meritorious issues for appeal, but questioning whether the district court erred in concluding that Hardin's prior North Carolina conviction for robbery with a dangerous weapon qualifies as a crime of violence. Hardin was advised of his right to file a pro se supplemental brief, but has not done so. We affirm.

We recently held that North Carolina's offense of robbery with a dangerous weapon "categorically qualifies as a violent felony under the 'force clause' of the [Armed Career Criminal Act (ACCA), 18 U.S.C. § 924(e) (2012)]." *United States v. Burns-Johnson*, 864 F.3d 313, 315-16, 319-20 (4th Cir.), *cert. denied*, 138 S. Ct. 461 (2017). This court relies on decisions evaluating whether an offense qualifies as an ACCA violent felony "interchangeably" with decisions evaluating whether an offense qualifies as a Guidelines crime of violence. *United States v. Montes-Flores*, 736 F.3d 357, 363 (4th Cir. 2013) (internal quotation marks omitted). Accordingly, we conclude that the district court did not err by relying on Hardin's prior robbery with a dangerous weapon conviction to enhance his sentence for possession of a firearm after having been convicted of a crime of violence. See U.S. Sentencing Guidelines Manual § 2K2.1(a)(4) (2015). Further, we conclude that Hardin's 46-month sentence is reasonable. See *Gall v. United States*, 552 U.S. 38, 41 (2007); see also *United States v. Allen*, 491 F.3d 178, 193

(4th Cir. 2007) (applying an appellate presumption of reasonableness to a sentence imposed within a properly calculated advisory Guidelines range).

In accordance with *Anders*, we have reviewed the entire record in this case and have found no meritorious issues for appeal. We therefore affirm Hardin's conviction and sentence. This court requires that counsel inform Hardin, in writing, of his right to petition the Supreme Court of the United States for further review. If Hardin requests that a petition be filed, but counsel believes that such a petition would be frivolous, then counsel may move this court for leave to withdraw from representation. Counsel's motion must state that a copy thereof was served on Hardin. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

FILED: April 2, 2018

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 16-4510
(3:15-cr-00255-MOC-DCK-1)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

JERMAR HARDIN

Defendant - Appellant

J U D G M E N T

In accordance with the decision of this court, the judgment of the district court is affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

UNITED STATES DISTRICT COURT
Western District of North Carolina

UNITED STATES OF AMERICA

V.

JERMAR HARDIN

) **JUDGMENT IN A CRIMINAL CASE**
) (For Offenses Committed On or After November 1, 1987)
)
)
) Case Number: DNCW315CR000255-001
) USM Number: 24850-058
)
) Rahwa Gebre-Egziabher
) Defendant's Attorney

THE DEFENDANT:

- ☒ Pleaded guilty to count(s) 1.
☐ Pleaded nolo contendere to count(s) which was accepted by the court.
☐ Was found guilty on count(s) after a plea of not guilty.

ACCORDINGLY, the court has adjudicated that the defendant is guilty of the following offense(s):

Title and Section	Nature of Offense	Date Offense Concluded	Counts
18:922(g)(1)	Possession of a Firearm by a Convicted Felon	12/13/2014	1

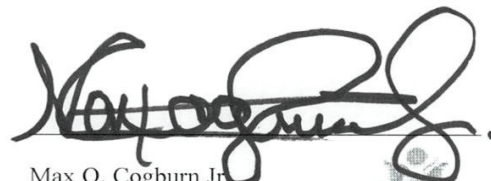
The Defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984, United States v. Booker, 125 S.Ct. 738 (2005), and 18 U.S.C. § 3553(a).

- ☐ The defendant has been found not guilty on count(s).
☐ Count(s) (is)(are) dismissed on the motion of the United States.

IT IS 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 monetary penalties, the defendant shall notify the court and United States attorney of any material change in the defendant's economic circumstances.

Date of Imposition of Sentence: 8/9/2016

Signed: August 11, 2016


Max O. Cogburn Jr.
United States District Judge

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of FORTY SIX (46) MONTHS.

- ☒ The Court makes the following recommendations to the Bureau of Prisons:
- Participation in the Federal Inmate Financial Responsibility Program.
 - Participation in any available mental health treatment programs as may be recommended by a Mental Health Professional.
 - Participation in any available educational and vocational opportunities.
 - Placed in a facility as close to Charlotte, NC as possible, consistent with the needs of BOP.
- ☒ The Defendant is remanded to the custody of the United States Marshal.
- ☐ The Defendant shall surrender to the United States Marshal for this District:
- ☐ As notified by the United States Marshal.
 - ☐ At _ on _.
- ☐ The Defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:
- ☐ As notified by the United States Marshal.
 - ☐ Before 2 p.m. on _.
 - ☐ As notified by the Probation 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 THREE (3) YEARS.

☐ The condition for mandatory drug testing is suspended based on the court's determination that the defendant poses a low risk of future substance abuse.

STANDARD CONDITIONS OF SUPERVISION

The defendant shall comply with the standard conditions that have been adopted by this court and any additional conditions ordered.

1. The defendant shall not commit another federal, state, or local crime.
2. The defendant shall refrain from possessing a firearm, destructive device, or other dangerous weapon.
3. The defendant shall pay any financial obligation imposed by this judgment remaining unpaid as of the commencement of the sentence of probation or the term of supervised release on a schedule to be established by the Court.
4. The defendant shall provide access to any personal or business financial information as requested by the probation officer.
5. The defendant shall not acquire any new lines of credit unless authorized to do so in advance by the probation officer.
6. The defendant shall not leave the Western District of North Carolina without the permission of the Court or probation officer.
7. The defendant shall report to the probation officer in a manner and frequency directed by the court or probation officer.
8. A defendant on supervised release shall report in person to the probation officer in the district to which he or she is released within 72 hours of release from custody of the Bureau of Prisons.
9. The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
10. The defendant shall support his or her dependents and meet other family responsibilities.
11. The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other activities authorized by the probation officer.
12. The defendant shall notify the probation officer within 72 hours of any change in residence or employment.
13. The defendant shall refrain from excessive use of alcohol and shall not unlawfully purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as duly prescribed by a licensed physician.
14. The defendant shall participate in a program of testing and treatment or both for substance abuse if directed to do so by the probation officer, until such time as the defendant is released from the program by the probation officer; provided, however, that defendant shall submit to a drug test within 15 days of release on probation or supervised release and at least two periodic drug tests thereafter for use of any controlled substance, subject to the provisions of 18:3563(a)(5) or 18:3583(d), respectively; The defendant shall refrain from obstructing or attempting to obstruct or tamper, in any fashion, with the efficiency and accuracy of any prohibited substance testing or monitoring which is (are) required as a condition of supervision.
15. The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
16. 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.
17. The defendant shall submit his person, residence, office, vehicle and/or any computer system including computer data storage media, or any electronic device capable of storing, retrieving, and/or accessing data to which they have access or control, to a search, from time to time, conducted by any U.S. Probation Officer and such other law enforcement personnel as the probation officer may deem advisable, without a warrant. The defendant shall warn other residents or occupants that such premises or vehicle may be subject to searches pursuant to this condition.
18. 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 by the probation officer.
19. The defendant shall notify the probation officer within 72 hours of defendant's being arrested or questioned by a law enforcement officer.
20. 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.
21. 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.
22. If the instant offense was committed on or after 4/24/96, the defendant shall notify the probation officer of any material changes in defendant's economic circumstances which may affect the defendant's ability to pay any monetary penalty.
23. If home confinement (home detention, home incarceration or curfew) is included you may be required to pay all or part of the cost of the electronic monitoring or other location verification system program based upon your ability to pay as determined by the probation officer.
24. The defendant shall cooperate in the collection of DNA as directed by the probation officer.
25. The defendant shall participate in transitional support services under the guidance and supervision of the U.S. Probation Officer. The defendant shall remain in the services until satisfactorily discharged by the service provider and/or with the approval of the U.S. Probation Officer.

ADDITIONAL CONDITIONS:

26. The defendant shall submit to a mental health evaluation and/or treatment program under the guidance and supervision of the U.S. Probation Office. The defendant shall remain in treatment and maintain use of any prescribed medications until satisfactorily discharged by the program with the approval of the Probation Office.
27. Throughout the period of supervision the probation officer shall monitor the defendant's economic circumstances and shall report to the court, with recommendations as warranted, any material changes that affect the defendant's ability to pay any court-ordered penalties.

CRIMINAL MONETARY PENALTIES

The defendant shall pay the following total criminal monetary penalties in accordance with the Schedule of Payments.

ASSESSMENT	FINE	RESTITUTION
\$100.00	\$0.00	\$0.00

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

FINE

The defendant shall pay interest on any fine or restitution of more than \$2,500.00, unless the fine or restitution is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on the Schedule of Payments may be subject to penalties for default and delinquency pursuant to 18 U.S.C. § 3612(g).

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

☒ The interest requirement is waived.

☐ The interest requirement is modified as follows:

COURT APPOINTED COUNSEL FEES

☐ The defendant shall pay court appointed counsel fees.

☐ The defendant shall pay \$0.00 towards court appointed fees.

SCHEDULE OF PAYMENTS

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

- A ☐ Lump sum payment of \$0.00 due immediately, balance due
☐ Not later than _____
☐ In accordance ☐ (C), ☐ (D) below; or
- B ☒ Payment to begin immediately (may be combined with ☐ (C), ☒ (D) below); or
- C ☐ Payment in equal Monthly (E.g. weekly, monthly, quarterly) installments of \$50.00 to commence 60 (E.g. 30 or 60) days after the date of this judgment; or
- D ☒ Payment in equal Monthly (E.g. weekly, monthly, quarterly) installments of \$ 50.00 to commence 60 (E.g. 30 or 60) days after release from imprisonment to a term of supervision. In the event the entire amount of criminal monetary penalties imposed is not paid prior to the commencement of supervision, the U.S. Probation Officer shall pursue collection of the amount due, and may request the court to establish or modify a payment schedule if appropriate 18 U.S.C. § 3572.

Special instructions regarding the payment of criminal monetary penalties:

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court costs:
- ☒ The defendant shall forfeit the defendant's interest in the following property to the United States as set forth in the Notice of Intent to Return Stolen Weapon, Document 21 entered 7/7/2016:

Unless the court has expressly ordered otherwise in the special instructions above, if this judgment imposes a period of imprisonment payment of criminal monetary penalties shall be due during the period of imprisonment. All criminal monetary penalty payments are to be made to the United States District Court Clerk, 401 West Trade Street, Room 210, Charlotte, NC 28202, except those payments made through the Bureau of Prisons' Inmate Financial Responsibility Program. All criminal monetary penalty payments are to be made as directed by the court.

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

STATEMENT OF ACKNOWLEDGMENT

I understand that my term of supervision is for a period of _____ months, commencing on _____.

Upon a finding of a violation of probation or supervised release, I understand that the court may (1) revoke supervision, (2) extend the term of supervision, and/or (3) modify the conditions of supervision.

I understand that revocation of probation and supervised release is mandatory for possession of a controlled substance, possession of a firearm and/or refusal to comply with drug testing.

These conditions have been read to me. I fully understand the conditions and have been provided a copy of them.

(Signed) _____ Date: _____
Defendant

(Signed) _____ Date: _____
U.S. Probation Office/Designated Witness