NO. 20-8053

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2020

William Leroy Sanders - Petitioner,

vs.

United States of America - Respondent.

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

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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PETITIONER'S REPLY BRIEF

When William Leroy Sanders was sentenced in 2014, the judge did not specify whether his Iowa Code § 719.1(1) (2001) conviction for Interference with Official Acts was a qualifying "violent felony" under ACCA's "elements clause," 18 U.S.C. § 924(e)(2)(B)(i), or ACCA's "residual clause," *id.* § 924(e)(2)(b)(ii). After this Court struck down the residual clause in *Johnson v. United States*, 135 S. Ct. 2551 (2015), Mr. Sanders sought 28 U.S.C. § 2255 relief from his ACCA sentence, because controlling United States Supreme Court and Iowa Supreme Court authority predating his prosecution establishes that Iowa Code § 719.1(1) is, and always has been, indivisible and categorically overbroad as an ACCA elements clause predicate.

Mr. Sanders proved in the § 2255 proceedings that the sentencing court could not have legally relied on the elements clause to conclude that his Iowa conviction

was an ACCA predicate, meaning the judge *necessarily* relied on the residual clause as the basis for his ACCA sentence. The district court denied relief, though, erring in its most fundamental task in a *Johnson*-based § 2255 review: determining the predicate statute's divisibility. The court ignored *precedential* Iowa State Supreme Court authority clearly establishing that the alternative ways of violating § 719.1(1) are "means," in favor of three *unpublished*, inapposite decisions where lower state appellate courts merely "referred" to the alternatives in § 719.1(1) as "elements." The Eighth Circuit inexplicably failed to correct the error on appeal, summarily concluding with zero explanation, and contrary to all relevant facts and controlling law, that Mr. Sanders could not prove the residual clause more likely than not led the sentencing court to apply the ACCA enhancement.

In opposing Mr. Sanders's Petition for Certiorari, the government provides a variety of reasons why this case is not appropriate for review. *See generally* Br. in Opp. pp. 6–15. Mr. Sanders vehemently disagrees, and asserts review is not only appropriate, but also in the interests of justice and legally necessary. Certiorari presents Mr. Sanders's only remaining opportunity to correct the lower courts' obvious and prejudicial errors. If not corrected, Mr. Sanders will be left serving a patently unconstitutional sentence five years in excess of the 18 U.S.C. § 922(g) statutory maximum. While there were a host of errors below, the lower courts' failure to recognize § 719.1(1)'s indivisibility alone is outcome determinative. Indeed, because § 719.1(1) is indivisible as a matter of law, he is plainly entitled to

§ 2255 relief from his ACCA sentence, and summary reversal with instructions should be granted.

Mr. Sanders indisputably carried his burden to "show that it is more likely than not that the residual clause provided the basis for an ACCA sentence." *See Walker v. United States*, 900 F.3d 1012, 1014 (8th Cir. 2018). The government's citation to the Eighth Circuit's decision in *United States v. Bell*, 445 F.3d 1086 (8th Cir. 2006), does not compel a different result. *See* Br. in Opp. p. 11. According to the respondent, *Bell* established as early as 2006 that in the Eighth Circuit, "a statute of conviction was divisible . . . so long as the statute listed alternative ways of violating the statute, regardless of whether those alternatives amounted to alternative elements or merely alternative means of fulfilling a single element." Brief in Opp. p. 11. Respectfully, *Bell* does not so hold, and in fact does not even mention, let alone discuss, divisibility or the categorical or modified categorical approaches. *See generally Bell*, 445 F.3d at 1086. Even if it did though, the case is still completely irrelevant because it was abrogated by Supreme Court authority more than a year before Mr. Sanders was sentenced.

Importantly, *Bell* was not abrogated by *Mathis v. United States*, 136 S. Ct. 2243 (2016).[1] Br. in Opp. p. 11. It was abrogated by this Court's 2013 decision in

[1] The *Mathis* Court made exceedingly clear that the case did *not* announce any new rules, and was instead merely restating what had *long* been the law. As recently summarized by the Fourth Circuit:

> *Mathis* made clear that the categorical approach has always required a look at the elements of an offense, not the facts underlying it. *See*

Descamps v. United States, which squarely held that "sentencing courts may not apply the modified categorical approach when the crime of which the defendant was convicted has a single, indivisible set of elements." 133 S. Ct. 2276, 2282 (2013) (courts must "look only to the statutory definitions – *i.e.*, the elements – of a defendant's [offense] and *not* to the particular facts underlying [the offense]" in determining whether it qualifies as an ACCA "violent felony."). The *Descamps* Court explained that "only divisible statutes enable a sentencing court to conclude that a jury (or judge at a plea hearing) has convicted the defendant of every element of the generic crime." *Id*. (emphasis added). Thus, a "prosecutor charging a

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> *Mathis*, 136 S. Ct. at 2257 ("Whether or not [alternative means of commission are] made explicit, they remain what they ever were -- just the facts, which [the] ACCA (so we have held, over and over) does not care about."). Indeed, Mathis merely repeated the "simple point" that served as "a mantra" in its ACCA decisions: "a sentencing judge may look only to the elements of the offense, not to the facts of the defendant's conduct." *Id*. at 2251 (alterations and internal quotation marks omitted); *see also id*. at 2248 ("ACCA, *as we have always understood it*, cares not a whit about [facts]." (emphasis supplied)); *id*. at 2253 ("[O]ur cases involving the modified categorical approach have already made exactly that point [i.e., that facts cannot be used to enhance a sentence]."); *id*. at 2255 ("*Descamps* made clear that when the Court had earlier said (and said and said) 'elements,' it meant just that and nothing else."); *id*. at 2257 ("Our precedents make this a straightforward case."). At the risk of "downright tedium," it listed the ACCA decisions explaining this point. *Id*. at 2252 (citing *James v. United States*, 550 U.S. 192, 127 S. Ct. 1586, 167 L.Ed.2d 532 (2007); *Sykes v. United States*, 564 U.S. 1, 131 S. Ct. 2267, 180 L.Ed.2d 60 (2011); *Descamps*, 570 U.S. at 261, 133 S. Ct. 2276).

Ham v. Breckon, 994 F.3d 682, 691–92 (4th Cir. 2021).

violation of a divisible statute must generally select the relevant element from its list of alternatives." *Id.* In Mr. Sanders's case of course, the statute was not even divisible in the first instance. But even if it was, the prosecutor *also* failed to "select the relevant element from its list of alternatives."

Other than mere non-substantive "references" to the alternatives of § 719.1(1) being "elements" in unpublished Iowa Court of Appeals decisions, there was no legal basis for the lower courts to conclude that the statute was divisible. Mr. Sanders pled guilty to an *amended* trial information that charged him with "Interference With Official Acts, 719.1(1), a Class D Felony." Neither the charging document nor any of the plea documents establish the facts underlying the conviction,[2] nor do they

[2] Under Iowa law, the facts alleged in the *original* trial information could not have transferred to the *amended* trial information. Mr. Sanders was originally charged with Assault of a Peace Officer, pursuant to Iowa Code § 708.3A. S.D. Iowa Case No. 4:16-cv-135, Doc. 3–1, p. 1. Iowa's Court Rules provide that "[a]mendment [of an indictment] is *not allowed* if substantial rights of the defendant are prejudiced by the amendment, *or if a wholly new and different offense is charged.*" Iowa Court Rule 2.4(8); *see also* Iowa Court Rule 2.5(5) (providing that all rules applicable to indictments are equally applicable to trial informations). The amended trial information alleges that Mr. Sanders committed a completely different crime than the one he was originally charged with, not a variant of assault on a peace officer, pursuant to Iowa Code § 708.3A. *Id.*, Doc. 3–1, pp. 4–5. The motion to amend does not request that the original factual allegations be included as part of the amendment. *Id.* p. 4. To the contrary, it expressly states that the reason for the amendment is because "there is a factual basis for this amendment and the undersigned believes that Interference is the more appropriate charge after reviewing *all of the evidence gathered* in this matter." *Id.* (emphasis added). The prosecutor did not allege that any particular Class D Felony alternative was the "more appropriate charge," did not identify what evidence was gathered, and did not state what facts Mr. Sanders agreed to admit to in support of the amended charge. The court's order amending the trial information simply stated that the "Trial Information . . . [is] amended to read: 'Count One Interference With Official Acts 719.1(1), a Class D Felony' instead of as originally written." By the plain words

allege *which* Class D felony alternative supports the charge, i.e., whether the crime was purportedly committed by means of (1) inflicting serious injury *or* (2) displaying a dangerous weapon *or* (3) merely being armed with a firearm. Iowa Code § 719.1(1). Each of the alternative means of committing Class D felony Interference with Official Acts are subject to the same statutory penalties. *Id.* When Iowa amended and reorganized § 719.1 in 2013, the legislature moved Class D felony violations of the statute to an individual subsection, keeping all three alternative means of committing the offense together within that subsection. *See* Iowa Code § 719.1(1) (2013) (2017). Most significantly, Iowa Supreme Court authority in effect at the time of sentencing establishes that if Mr. Sanders had gone to trial for the § 719.1(1) offense, the government could have convicted him by proving *any* of the three alternative means of committing the offense, and the jury would not have had to unanimously agree *which* of the Class D felony alternatives formed the basis for conviction. *See, e.g.*, *State v. Smithson*, 594 N.W.2d 1, 3 (Iowa 1999) ("If a trial information simply charges a violation of a statute in general terms without specifying the manner in which the offense was committed, the State may prevail by showing that the evidence is sufficient under any available theory.") (emphasis added); *State v. Duncan*, 312 N.W.2d 519, 523 (Iowa 1981) ("In this jurisdiction

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used, the trial information "as originally written" contains a factual narrative; as amended, it does not. Since it was a clear violation of Iowa's Court Rules to "amend" the original charge in Count One to a wholly new and different offense, it seems inconceivable that the factual narrative could somehow still be said to have survived.

prosecutors have long been allowed to allege facts in the alternative to meet the contingencies of proof."); *State v. Conger*, 434 N.W. 2d 406, 409 (Iowa Ct. App. 1988); *State v. Silva*, 918 N.W.2d 503 (Table), 2018 WL 1858294, at *3–4 (Iowa Ct. App. Apr. 18, 2018). The government is thus flatly incorrect when it asserts Mr. Sanders "identifies no decision of another court of appeals that has determined that Section 719.1(1) is not divisible." Br. in Opp. at 15. To the contrary, he has provided clear, binding authority from the highest appellate court in the state of Iowa.

Because the Iowa Class D felony Interference with Official Acts statute is now, and always has, been indivisible and categorically overbroad under the elements clause, the fact that Mr. Sanders may have *actually* engaged in conduct involving violent physical force is irrelevant, as is the fact that he "did not object to the [PSR's] description of the offense as 'interference with official acts causing serious injury.'"[3] *See* Br. in Opp. p. 12. Just as in *Descamps*, Mr. Sanders "may (or

[3] The fact that Mr. Sanders did not object to his 2002 conviction being captioned "Interference With Official Acts Causing Serious Injury" offers nothing to the analysis. *See also* PSR ¶ 51 (unobjected to statement that Mr. Sanders was convicted simply of "interference with official acts 719.1(1), a Class D felony"). Even assuming it is permissible to consider information in Mr. Sanders's PSR as conclusive, "Interference With Official Acts *Causing* Serious Injury" is only a simple misdemeanor under § 719.1(1) (2001), because heightened penalties under the 2001 version of the statute require a defendant to "inflict" injury in some form, not merely to "cause" it. *See, e.g.*, *State v. Dudley*, 810 N.W.2d 533 (Table), 2012 WL 170738, at *4 (Iowa Ct. App. Jan. 19, 2012) (observing that "inflict" as used in the interference statute requires "an intentional, directed action on the part of the actor," and that if the "legislature intended a *resulting* injury to be sufficient, it could have used the terms 'causes' or 'resulting in' as it has in other statutes."); *cf.*

may not) have [engaged in conduct that involved force]. But [§719.1(1)], the crime of which he was convicted—does not require the factfinder (whether judge or jury) to make that determination." *Descamps*, 133 S. Ct. at 2293. Because of that, § 719.1(1) could not have been an ACCA predicate offense in 2014 under the elements clause, and it cannot be one today. Had the sentencing judge accurately considered the law in effect at the time of Mr. Sanders's sentencing, it only could have deemed him an Armed Career Criminal under the unconstitutionally vague residual clause. Mr. Sanders is entitled to § 2255 relief from his fifteen-year § 924(e) sentence.

Mr. Sanders is also entitled to relief if § 719.1(1) *is* divisible. Indeed, certiorari is still warranted because the district court completely misapplied the modified categorical approach by relying on actual conduct, rather than simply "peek[ing]" at appropriate *Shepard* documents to discern which alternative formed the basis of conviction. *See* Pet. pp. 26–30. Moreover, even if the modified categorical approach was properly applied and points to the "inflicts serious injury" alternative, the offense clearly still would not qualify under ACCA's elements clause because Iowa law has long defined "serious injury" as including "[d]isabling mental illnesses." *Id*. pp. 23–24; *See* Iowa Code § 702.18; *State v. Holmes*, 276 N.W.2d 823, 828 (Iowa 1979) ("A disabling mental illness means an illness or condition which

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Iowa Code § 719.1(1) (2017) (providing that interference with official acts will be an aggravated misdemeanor if it "*results* in serious injury" (emphasis added)).

cripples, incapacitates, weakens or destroys a person's normal and usual mental functions."). *United States v. Chapman*, 720 F. App'x 794, 796 (8th Cir. 2018), which rejected an assertion that the internally indivisible "serious injury" definition rendered another statute overbroad, does not change this result. *See* Br. in Opp. p. 13. In *Chapman*, a per curiam panel ignored the plain language of the "serious injury" definition, because the defendant had pointed only to a "mere 'theoretical possibility' rather than a 'realistic probability,' that Iowa would apply its aggravated assault statute . . . to criminalize assault with intent to inflict a disabling mental illness alone." *Chapman*, 720 F. App'x 796. The Eighth Circuit has since held in a published decision, however, that where a "statute's reach is clear on its face, it takes no 'legal imagination' or 'improbable hypotheticals' to understand how it may be applied and to determine whether it covers conduct an analogous federal statute does not." *Gonzalez v. Wilkinson*, 990 F.3d 654, 660 (8th Cir. 2021). The plain statutory language of the Iowa statute demonstrates that *even if* § 719.1(1) were divisible, a defendant could be convicted of the "inflicts serious injury" alternative by inflicting a disabling mental illness on someone, which indisputably does not require the use, attempted use, or threatened use of violent "physical force against the person of another," as required by the elements clause, § 924(c)(2)(B)(i).[4] Once again, proper application of *Descamps* dictates that even if

[4] This Court recently held in *Borden v. United States*, 141 S. Ct. 1817, 210 L. Ed. 2d 63 (2021), that the elements clause of the ACCA does not include predicate offenses criminalizing merely reckless conduct. *Borden* emphasize that neither the "displays

the statute is divisible, Mr. Sanders's § 719.1(1) conviction is not, and never could have been an ACCA predicate under any clause *but* the residual clause. His unconstitutional fifteen year sentence must be vacated.

CONCLUSION

For the foregoing reasons and those stated in his opening brief, Mr. Sanders respectfully requests that the Petition for Writ of Certiorari be granted.

RESPECTFULLY SUBMITTED,

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a dangerous weapon" or "is armed with a firearm" alternative means could qualify as ACCA predicate offenses.