No. ______

In The Supreme Court of the United States

MELVIN MORMAN,
Petitioner,
v.
UNITED STATES,
Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

In *Johnson v. United States*, this Court invalidated the residual clause of the Armed Career Criminal Act, but left intact the two remaining definitions of a "violent felony." In Mr. Morman's case, the sentencing court did not specifically indicate whether his prior convictions qualified as "violent felonies" under the residual clause, the enumerated offenses clause, or some combination of the two. To prove that his claim falls within the scope of the new constitutional rule announced in *Johnson*, a § 2255 movant must prove that his sentence was based upon the now-defunct residual clause.

The question presented is: when the record is silent as to which enhancement clause applied, what showing is a § 2255 movant required to make to prove he is entitled to relief on the merits of his *Johnson* claim?

As the Third, Fourth, and Ninth Circuits have held, is it sufficient for the *Johnson* claimant to show that his sentence "may have" been based on the residual clause? Or, as a majority of Circuits have held, must the § 2255 movant bear the burden of showing by a preponderance of the evidence that he was sentenced solely upon the residual clause at the time of his sentencing hearing?

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PETITION FOR A WRIT OF CERTIORARI

Mr. Melvin Morman respectfully requests that this Court grant a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit.

OPINIONS BELOW

The Eleventh Circuit's order denying Mr. Morman an application for a certificate of appealability is unpublished. The order is included in Petitioner's Appendix. Pet. App. 1a.

The district court's opinion and order denying Mr. Morman's 28 U.S.C. § 2255 motion is unpublished. *Morman v. United States*, 2018 WL 3552337 (M.D. Ala. 2018) (unpublished). The opinion is included in Petitioner's Appendix. Pet. App. 1b.

JURISDICTION

The Eleventh Circuit's order in this case was issued on December 11, 2018. *See* Pet. App. 1a. No rehearing was sought, rendering the petition for writ of certiorari due on or before March 11, 2019. Mr. Morman requested and received an extension of time to file the petition until May 10, 2019. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

RELEVANT STATUTORY PROVISIONS

The Armed Career Criminal Act ("ACCA"), 18 U.S.C. § 924(e)(1), provides:

> In the case of a person who violates section 922(g) of this title and has three previous convictions by any court referred to in section

> 922(g)(1) of this title for a violent felony or a serious drug offense, or both, committed on occasions different from one another, such person shall be fined under this title and imprisoned not less than fifteen years[.]

18 U.S.C. § 924(e)(1).

The ACCA defines the term "violent felony" as any crime punishable by a term of imprisonment exceeding one year that:

> (i) has as an element the use, attempted use, or threatened use of physical force against the person of another; or
>
> (ii) is burglary, arson, or extortion, involves use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury to another.

18 U.S.C. § 924(e)(2)(B).

Section 2255(a) of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) provides:

> (a) A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.

STATEMENT OF THE CASE

A. Legal Background.

Ordinarily, a defendant convicted of possession of a firearm by a convicted felon is subject to a statutory maximum penalty of 10 years' imprisonment. 18 U.S.C. §§ 922(g)(1), 924(a)(2). However, under the ACCA, a defendant convicted under 18 U.S.C. § 922(g) is subject to a mandatory

minimum sentence of 15 years' imprisonment if he has three prior convictions for a "violent felony" or "serious drug offense." 18 U.S.C. § 924(e)(1). A "violent felony" is any offense punishable by a term of imprisonment exceeding one year that:

> (i) has as an element the use, attempted use, or threatened use of physical force against the person of another; or
>
> (ii) is burglary, arson, or extortion, involves use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury to another.

18 U.S.C. § 924(e)(2)(B). The first prong of this definition is referred to as the "elements clause," while the second prong contains the "enumerated" offenses and, finally, what is commonly called the "residual clause." *United States v. Owens*, 672 F.3d 966, 968 (11th Cir. 2012).

In *Johnson v. United States,* 135 S. Ct. 2551, 2558-63 (2015), this Court held that the residual clause of the ACCA is unconstitutionally vague because of the combined two-fold indeterminacy surrounding how to estimate the risk posed by a crime, and how much risk was required for a crime to qualify as a violent felony. This Court clarified that, in holding that the residual clause is void, it did not call into question the application of the elements clause and the enumerated offenses of the ACCA's definition of a violent felony. *Id.* The following term, this Court held that *Johnson* announced a new, substantive rule of constitutional law that has retroactive effect to cases on collateral review. *Welch v. United States*, 136 S. Ct. 1257, 1268 (2016).

28 U.S.C. § 2255 expressly authorizes a federal prisoner to file a motion collaterally attacking his sentence on the ground that "it was imposed in violation of the Constitution or laws of the United States," or that it was "in excess of the maximum authorized by law." 28 U.S.C. § 2255(a).

However, this Court has yet to address what showing a § 2255 movant is required to make to prove his *Johnson* claim when the record is silent as to which enhancement clause applied. This silence has led the federal Courts of Appeals to fall into a state of disarray when, as is often the case, the sentencing court did not specifically discuss whether a prior conviction qualified as a violent felony under the residual clause, the enumerated offenses clause, the elements clause, or some combination of the three. Accordingly, there is now an open, entrenched circuit split concerning the issue presented by these "silent record" cases.

B. Facts and Procedural History.

In July 2006, a federal grand jury returned an indictment against Mr. Morman, charging him with: two counts of stealing firearms from a licensed dealer, in violation of 18 U.S.C. § 922(u) (Counts One and Two); and one count of possession of a firearm by a convicted felon, in violation of 18 U.S.C. §§ 922(g)(1), 924(e)(1) (Count Three). The indictment alleged, specifically, that Mr. Morman was subject to an enhanced, 15-year statutory mandatory minimum as a result of the Armed Career Criminal Act ("ACCA"), and his prior

felony convictions for two counts of aggravated assault and two counts of burglary of a dwelling, in Georgia state court, in 1994.

A magistrate judge accepted Mr. Morman's plea, and adjudged him guilty.

The Presentence Investigation Report ("PSI") determined that Mr. Morman qualified as an armed career criminal under the ACCA and § 4B1.4(a), because he had "at least three prior convictions for a 'violent felony' or 'serious drug offense' *(Four Burglaries and Aggravated Assault)* committed on occasions different from one another." (emphasis added). Accordingly, the PSI applied the ACCA enhancement based on Mr. Morman's prior felony convictions for: (1) Alabama burglary, in 1990, in Case No. CC-90-135; (2) Alabama burglary third, in 1990, in Case No. CC-90-133; and (3) two counts of burglary and *one* count of aggravated assault, in Georgia, in 1994, in Case No. 94-R-40.

With respect to the first Alabama burglary conviction—Case No. CC-90-135—the PSI explained that: "The indictment charges that Mormon *unlawfully entered a building* belonging to Thomas F. Hobart, with intent to commit theft of property." Similarly, as to the Alabama burglary third conviction—Case No. CC-90-133—the PSI noted the following: "The two-count indictment reflects that Morman *unlawfully entered a building* belonging to Van Mulvehill and stole clothing and jewelry valued at $20,000." (emphasis added). Finally, with respect to the 1994 Georgia convictions, the PSI

explained that Case No. 94-R-40 involved two burglaries committed on "two separate occasions, on or about November 30, 1993, and December 6, 1993." The aggravated assault conviction occurred on the same occasion as one of the two burglaries.

At Mr. Morman's sentencing hearing in March 2007, neither party articulated any objections to the PSI, and the district court adopted the factual findings and guideline calculations contained therein. There was no discussion of the ACCA enhancement at any point during the sentencing proceedings. Mr. Morman declined to file a direct appeal.

Subsequently, on June 26, 2015, the Supreme Court decided *Johnson v. United States*, and held that the residual clause of the ACCA was unconstitutionally vague because of the uncertainty surrounding how to estimate the risk posed by a crime, and how much risk was required for a crime to qualify as a violent felony. 135 S. Ct. 2551, 2558-63 (2015).

Less than a year later, on June 22, 2016, Mr. Morman filed his initial 28 U.S.C. § 2255 motion, seeking to vacate his ACCA-enhanced, 188-month total sentence based on *Johnson*. Mr. Mormon pointed out that the only convictions that could have supported application of the ACCA enhancement were the "Alabama convictions for burglary (PSR paragraphs 39, 41) and concurrent Georgia convictions for burglary and aggravated assault (PSR paragraph 43)." Accordingly, Mr. Mormon argued that, following *Johnson*, his underlying

predicate convictions for third degree burglary no longer qualified as "violent felonies" for purposes of § 924(e)(2)(B).

The government filed a response in opposition to Mr. Morman's § 2255 motion, conceding that his *Johnson* claim was timely under § 2255(f)(3). However, the government argued that Mr. Morman was not entitled to relief on the merits of his *Johnson* claim, because he still had four prior felonies—that is, two convictions for Georgia burglary and two convictions for Alabama attempted assault—that continued to qualify as ACCA predicate offenses without regard to the residual clause.

More specifically, the government argued that Mr. Morman's two 1994 convictions for Georgia burglary continued to qualify as "violent felonies" under the enumerated offenses clause in § 924(e)(2)(B)(ii). (conceding that Mr. Morman's prior conviction for Georgia aggravated assault conviction could not have qualified as an ACCA predicate offense, because it occurred on the same occasion as one of the two burglaries). The government further asserted that Mr. Mormon's two 1990 convictions for Alabama attempted assault qualified as "violent felonies" under the elements clause in § 924(e)(2)(B)(i). Notably, the government affirmatively conceded that, at the time of Mr. Morman's sentencing hearing, the district court did not have the benefit of any *Shepard*[1] documents related to Mr. Morman's Alabama convictions for attempted assault. Nevertheless, the government asked the court to schedule an

[1] *Shepard v. United States*, 544 U.S. 13 (2005).

evidentiary hearing "so that the Court may ultimately consider *Shepard* approved documents in determining Morman's ACCA status."

Mr. Morman replied, pointing out that the PSI—and, by extension, the district court—did not rely on the two prior convictions for Alabama attempted assault in applying the ACCA enhancement. He argued that the government should not be permitted to use an evidentiary hearing on a § 2255 motion as an opportunity to correct the deficiencies in the presentation of its case at sentencing.

Subsequently, in September 2017, this Court decided *Beeman v. United States*, and addressed and addressed the interplay between *Johnson* and *Descamps* in the context of the limitations period in § 2255(f)(3), and the movant's burden of proof in § 2255 proceedings. 871 F.3d 1215, 1221-25 (11th Cir. 2017).

This district court directed the parties to file supplemental briefs addressing: (1) the impact of *Beeman* upon Mr. Morman's case; and (2) whether the belated *Shepard* documents submitted by the government could be used to determine whether Mr. Morman's Alabama attempted assault convictions could have qualified as ACCA predicates under the elements clause.

Following supplemental briefing by the parties, the district court denied Mr. Morman's § 2255 motion, with prejudice and without an evidentiary hearing. Specifically, the district court rejected Mr. Morman's *Johnson* claim based on *Beeman*, without resolving whether it was appropriate to consider

the new *Shepard* documents submitted by the government.

The district court declined to issue a COA, and Mr. Morman timely filed an appeal. The Eleventh Circuit likewise declined to issue a COA. The Court explained that, because the sentencing record did not indicate which ACCA clause the court relied on, Mr. Morman could not meet his burden of showing that the sentencing court relied solely upon the residual clause. (citing *Beeman*).

This petition for a writ of certiorari follows.

REASONS FOR GRANTING THE WRIT

I. The decisions of the federal Courts of Appeals are in conflict with one another concerning the question presented.

This Court has not yet addressed what showing a § 2255 movant is required to make to prevail on the merits of a *Johnson* claim. This silence has led the federal Courts of Appeals to fall into a state of disarray when, as is often the case, the sentencing court did not specifically discuss whether a prior conviction qualified as a violent felony under the residual clause, the enumerated offenses clause, the elements clause, or some combination of the three. Accordingly, there is now an open, entrenched circuit split concerning the issue presented by these "silent record" cases.

The Eleventh Circuit held in *Beeman*[2] that a § 2255 movant bears the burden of showing by a preponderance of the evidence that he was sentenced

[2] It is worth noting that the *Beeman* rule has already proved deeply divisive, even amongst the judges of the Eleventh Circuit. *See Beeman*, 871

solely upon the residual clause, and he may only meet this burden by establishing what occurred as a matter of historical fact at his sentencing hearing. *Beeman*, 871 F.3d at 1221-22.[3] In determining whether the § 2255 movant has met this burden and proven his *Johnson* claim, Eleventh Circuit courts must ignore this Court's intervening precedent establishing that his prior convictions do not qualify as "violent felonies" under any other enhancement provision. *See id.* at 1224 n.5.[4] Thus, a silent record is ordinarily fatal to the § 2255 movant's *Johnson* claim in the Eleventh Circuit. *Id.* at 1224.[5]

The First, Fifth, Eighth, and Tenth Circuits have each followed suit, adopting their own variations of the *Beeman* approach. *See Dimott v. United*

F.3d at 1225 (Williams, J., dissenting); *Beeman v. United States*, 899 F.3d 1218, 1224 (11th Cir. 2018) (Martin, J., dissenting from the denial of rehearing *en banc*); *Chance*, 831 F.3d at 1341 (describing the precursor to *Beeman*, *In re Moore*, as "quite wrong").

[3] "To prove a *Johnson* claim, the movant must show that—more likely than not—it was use of the residual clause that led to the sentencing court's enhancement of his sentence. If it is just as likely that the sentencing court relied on the elements or enumerated offenses clause, solely or as an alternative basis for the enhancement, then the movant has failed to show that his enhancement was due to use of the residual clause."

[4] "[A] sentencing court's decision today that [a prior conviction] no longer qualifies under present law as a violent felony under the elements clause (and thus could now qualify only under the defunct residual clause) would be a decision that casts very little light, if any, on the key question of historical fact here: whether in 2009 Beeman was, in fact, sentenced under the residual clause only."

[5] "It is no more arbitrary to have the movant lose in a § 2255 proceeding because of a silent record than to have the Government lose because of one."

States, 881 F.3d 232, 243 (1st Cir. 2018) (noting that the *Beeman* approach "makes sense"; holding that "to successfully advance a *Johnson II* claim on collateral review, a habeas petitioner bears the burden of establishing that it is more likely than not that he was sentenced solely pursuant to ACCA's residual clause"; and determining that the petitioners' § 2255 motions were untimely because they relied upon intervening, non-retroactive decisions such as *Mathis v. United States*, 136 S. Ct. 2243 (2016)); *United States v. Wiese*, 896 F.3d 720, 724 (5th Cir. 2018) (expressly joining the *Beeman* approach to silent record cases, and holding that "we must look to the law at the time of sentencing to determine whether a sentence was imposed under the enumerated offenses clause or the residual clause."); *United States v. Washington* 890 F.3d 891, 896 (10th Cir. 2018) ("we hold the burden is on the defendant to show by a preponderance of the evidence—i.e., that it is more likely than not—his claim relies on *Johnson"*); *Walker v. United States,* 900 F.3d 1012 (8th Cir. 2018) ("We agree with those circuits that require a movant to show by a preponderance of the evidence that the residual clause led the sentencing court to apply the ACCA enhancement. . . Where the record or an evidentiary hearing is inconclusive, the district court may consider 'the relevant background legal environment at the time of ... sentencing' to ascertain whether the movant was sentenced under the residual clause.").

However, the Third, Fourth, and Ninth Circuits have all reached a contrary conclusion with respect to the relevance of modern existing precedent.

For instance, in the Fourth Circuit, a *Johnson* claimant faced with a silent record satisfies the requirements of § 2255(h)(2) if he "may have" been sentenced based on the residual clause. *United States v. Winston*, 850 F.3d 677, 682 (4th Cir. 2017). Noting that "nothing in the law requires a court to specify which clause [] it relied upon in imposing a sentence," the Fourth Circuit declined to "penalize a movant for a court's discretionary choice not to specify under which clause of Section 924(e)(2)(B) an offense qualified as a violent felony." *Id.* To hold otherwise would result in arbitrary "selective application" of the new substantive rule of constitutional law announced in *Johnson*. *Id.* Accordingly, the Court held that "when an inmate's sentence may have been predicated on application of the now-void residual clause and, therefore, *may be* an unlawful sentence under the holding in *Johnson* [], the inmate has shown that he 'relied on' a new rule of constitutional law. *Id.*

The *Winston* Court further held that, once a § 2255 movant passes through the gatekeeping requirement in § 2255(h)(2)—by showing only that he may have been sentenced based upon the residual clause—the court may consider modern, existing precedent when ruling on the merits of a *Johnson* claim. *Id.* at 684 ("we now must consider under the current legal landscape whether Virginia common law robbery qualifies as a violent felony under the ACCA's force clause"). The *Winston* Court then conducted a review of post-sentencing caselaw, and determined that the petitioner's prior convictions no longer qualified as "violent" felonies without regard to the

residual clause. *Id.* at 686. Thus, unlike in the Eleventh Circuit, a silent record is not necessarily, or even ordinarily, fatal to an otherwise meritorious *Johnson* claim in the Fourth Circuit.

The Ninth and Third Circuits have followed the Fourth Circuit's lead. In *Geozos*, the Ninth Circuit addressed the requirements of § 2255(h)(2) in the context of a silent record case, and held that "when it is unclear whether a sentencing court relied on the residual clause in finding that a defendant qualified as an armed career criminal, but may have, the defendant's § 2255 claim 'relies on" the constitutional law announced in *Johnson*[.] *United States v. Geozos*, 870 F.3d 890, 896 (9th Cir. 2017). The Court explained that in silent record cases, it was "necessarily unclear whether the court relied on a constitutionally valid or a constitutionally invalid legal theory." *Id.* Therefore, the rule in such a situation is clear: "[W]here a provision of the Constitution forbids conviction on a particular ground, the constitutional guarantee is violated by a general verdict that *may have* rested on that ground." *Id.* (relying upon the "*Stromberg* principle" announced in *Stromberg v. California*, 283 U.S. 359 (1931)). Finding the § 2255(h)(2) gatekeeping requirements satisfied, the Ninth Circuit proceeded to the merits, and addressed whether the petitioner could prove his claim by reference "to the substantive law concerning the force clause as it currently stands, not the law as it was at the time of sentencing." *Id.* at 897.

The Third Circuit reached the same conclusion as the Fourth and Ninth Circuits. *United States v. Peppers*, 899 F.3d 211 (3d Cir. 2018). In *Peppers,* the Third Circuit cited approvingly from *Geozos* and *Winston*, and held that "the jurisdictional gatekeeping inquiry for second or successive § 2255 motions based on Johnson requires only that a defendant prove he might have been sentenced under the now-unconstitutional residual clause of the ACCA, not that he was in fact sentenced under that clause." *Id.* at 216. The Court further held that "a defendant seeking a sentence correction in a second or successive § 2255 motion based on Johnson, and who has used Johnson to satisfy the gatekeeping requirements of § 2255(h), may rely on post-sentencing cases (i.e., the current state of the law) to support his Johnson claim." *Id.* So, as in the Fourth Circuit and Ninth Circuits, a silent record does not prevent a § 2255 movant in Mr. Morman's position from proving his *Johnson* claim.

II. The question presented is of exceptional importance and arises frequently in the lower courts.

The question presented is one of exceptional importance, because thousands of prisoners filed § 2255 motions challenging their ACCA-enhanced sentences in the wake of *Johnson*. In many of these cases, the sentencing court had no reason to state that it was sentencing the defendant "solely upon the residual clause," as opposed to also or solely upon either the enumerated offenses clause or elements clause. In many of these silent record cases, the inmate has already served more than the 10-year statutory maximum penalty in § 924(a). Nevertheless, inmates in the Eleventh Circuit will be unable to

obtain relief on their *Johnson* claim, while identically situated inmates in the Third, Fourth, and Ninth Circuits will prevail, and be released from custody as a result of the sentencing court's discretionary—and often arbitrary—decision not to specify which enhancement clause applied.

Imagine two identically situated federal inmates who are housed together at the same federal correctional institute. Both inmates are serving time for felon in possession of a firearm, and each received an ACCA-enhanced, 15-year sentence. One inmate was sentenced in the Central District of California, while the other was sentenced in the Middle District of Florida. While shooting the breeze, they learn that they each grew up in Alabama, and were each sentenced as an armed career criminal as a result of three prior convictions for Alabama third degree burglary.

Imagine further that, after *Johnson* was decided, they each filed 28 U.S.C. § 2255 motions challenging their ACCA classification based on *Johnson*. The first inmate gets the benefit of the Ninth Circuit's case law, and leaves prison after serving the non-ACCA statutory maximum of 10 years. The second inmate is stuck with the Eleventh Circuit's contrary case law, and will spend an additional five years in prison. [6]

[6] The hypothetical is not far-fetched. Counsel for Mr. Morman has spoken with clients who have watched their fellow prisoners receive *Johnson* relief, while her clients are denied such relief solely based on the happenstance of geography.

Unless this Court grants certiorari and resolves the intractable circuit split, this scenario will continue to occur. Regardless of which side of the split this Court takes, permitting the split to fester undermines confidence in the federal courts and criminal justice system. For this reason alone, this Court should grant certiorari and finally resolve the circuit split.

III. The Eleventh Circuit's rule is incorrect.

This Court's intervening precedent is not irrelevant to determining whether a § 2255 movant has established his *Johnson* claim. As the Eleventh Circuit explained, in *Mays* and then in *Beeman* itself, "*Descamps* does not announce a new rule—*its holding merely clarified existing precedent*." *Mays v. United States*, 817 F.3d 728, 734 (11th Cir. 2016). As a result, "the rules for evaluating predicate offenses—other than under the residual clause—are the same today as they always have been." *Beeman v. United States*, 2018 WL 3853960 (11th Cir. 2018) (Martin, J., dissenting from the denial of rehearing *en banc*). Therefore, if the sentencing court applied the modified categorical approach to an indivisible statute, it was just as incorrect for it do so then as it would be now. *See id.* ("As *Descamps* explains, if the sentencing court analyzed the elements clause in a different way, the court was wrong. And the *Beeman* panel opinion binds all members of this Court to recreate and leave in place the misunderstandings of law that happened at sentencing. Ignoring for a moment that we must apply Supreme Court precedent, what is the value in binding ourselves to erroneous decisions?").

Moreover, despite *Beeman*'s insistence that it "would be arbitrary [] to treat *Johnson* claimants differently than all other § 2255 movants claiming a constitutional violation," the practical effect of its historical fact inquiry is to impose a higher burden of proof upon a *Johnson* claimant than upon any other § 2255 movant. *See Beeman*, 871 F.3d at 1224. This is so because, in order to prevail on a *Johnson* claim, a § 2255 movant must show: first, that he was sentenced under the now-invalidated residual clause of the ACCA; and, second that he could not have been sentenced under the elements clause or the enumerated offenses clause. *See, e.g., Beeman v. United States*, 871 F.3d at 1225-26 (11th Cir. 2017) (Williams, J., dissenting). When a *Johnson* claimant invokes the holding of *Descamps*, he is not doing so as part of a freestanding claim that he was erroneously sentenced as an armed career criminal under the enumerated offenses or elements clause. Rather, his contention is that he has proved the second prong of his *Johnson* claim, because the offense that qualified under the residual clause could not have alternatively have qualified under a different enhancement provision. *Id.* at 1226 ("the [*Beeman*] majority conflates Beeman's argument that he *could not have been sentenced* under the elements clause—made in the context of establishing his *Johnson* claim—with the argument that he *was improperly sentenced* under the elements clause—which would be an untimely *Descamps* claim"). By precluding a *Johnson* claimant from invoking *Descamps*, *Beeman* effectively prevents a § 2255 movant from offering what will usually be the only circumstantial evidence

available with respect to the second part of his *Johnson* claim. *Id.* ("By artificially delineating what constitutes a *Johnson* argument—and by disposing of Beeman's petition without reaching the second required showing for success on a Johnson claim—the majority elides all of Beeman's elements-clause arguments from their Johnson analysis, leaving Beeman with 'insufficient' assertions regarding the sentencing court's reliance on the residual clause, which the majority peremptorily rejects. In so doing, the majority has set up a straw man regarding Beeman's *Johnson* arguments that they then proceed to knock down.").

CONCLUSION

For the above reasons, this Court should grant this petition for writ of *certiorari*.

Respectfully submitted,

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