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Supreme Court, U.S.
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No. 08-6925

IN THE
Supreme Court of the United States

OCTOBER TERM, 2008

CURTIS DARNELL JOHNSON,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

REPLY TO BRIEF IN OPPOSITION

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In response to pages 7-8 of the Brief for the United States in Opposition:

The Florida Supreme Court has held that the Florida crime of simple battery, as committed by intentional touching, does not have as an element the use or threatened use of physical force. *State v. Hearn*, 961 So.2d 211, 218 (Fla. 2007) The court construed the statute broadly, finding that it could be violated without the use of physical force. *Id.* For its part, the Eleventh Circuit, in deciding whether that same crime was a violent felony under the Armed Career Criminal Act, applied its own independent analysis and arrived at the conclusion that the Florida crime of simple battery *does* have as an element the use or threatened use of physical force. *United States v. Johnson*, 528 F.3d 1318,

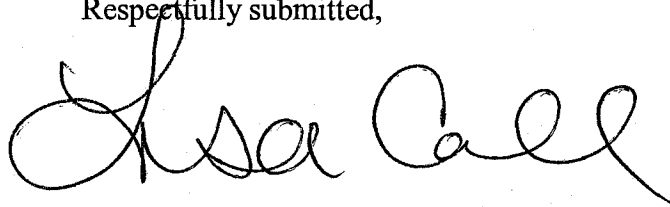
1321 (11th Cir. 2008). The court of appeals construed the statute narrowly, finding that it *could not* be violated without using physical force. *Id.*

If, as the United States argues in its brief in opposition, the court of appeals was entitled to draw its own independent conclusions regarding the statutory elements of a state offense, and was moreover entitled to construe that same state statute more narrowly than the state's highest court itself had done, Mr. Johnson's petition for writ of certiorari is due to be denied (unless, of course, this Court's grants Mr. Johnson's request to revisit its holding in *Almendarez-Torres v. United States*, 523 U.S. 224, 118 S.Ct. 1219 (1998)). If, on the other hand, as a long line of cases from this Court has held, the court of appeals was bound by the state's highest court's interpretation of its own law, *Mullaney v. Wilbur*, 421 U.S. 684, 691 (1975), and was without authority to construe the language of a state statute more narrowly than the construction given by that state's highest court, *City of Chicago v. Morales*, 527 U.S. 41, 61 (1999), Mr. Johnson's petition should be granted.

CONCLUSION

Based on the reasoning and citations of authority set forth above and in Mr. Johnson's petition for writ of certiorari, Mr. Johnson requests that this Court grant his petition for a writ of certiorari.

Respectfully submitted,

A handwritten signature in black ink that reads "Lisa Call". The signature is written in a cursive style with a large initial "L" and "C".

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PROOF OF SERVICE

I, LISA CALL, do declare that on this date, December 30, 2008, pursuant to Supreme Court Rules 29.3 and 29.4, I have served the attached RESPONSE TO BRIEF IN OPPOSITION on each party to the above proceeding, or that party's counsel, and on every other person required to be served by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid.

The names and addresses of those served are as follows:

