

No. 17-7716

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IN THE SUPREME COURT OF THE UNITED STATES

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DANIEL K. GARCIA, PETITIONER

v.

UNITED STATES OF AMERICA

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

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MEMORANDUM FOR THE UNITED STATES

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Petitioner contends (Pet. 4-9) that his prior convictions for robbery, in violation of Fla. Stat. § 812.13, were not convictions for “violent felon[ies]” under the elements clause of the Armed Career Criminal Act of 1984, 18 U.S.C. 924(e) (2) (B) (i). The Court is currently considering an identical question in Stokeling v. United States, No. 17-5554 (cert. granted Apr. 2, 2018).

Nevertheless, the petition for a writ of certiorari appears to be substantially out of time. The court of appeals issued its order denying petitioner’s motion for a certificate of appealability on July 18, 2017. Pet. App. A2. This Court’s Rules provide in pertinent part that a petition for a writ of certiorari

"is timely when it is filed \* \* \* within 90 days after entry of the judgment." Sup. Ct. R. 13.1. Although petitioner filed a motion for reconsideration of the court of appeals' order, Pet. App. A1, this Court's Rules identify a timely "petition for rehearing" as the only type of postjudgment filing in the court of appeals that would in itself extend the time for filing a petition for a writ of certiorari. Sup. Ct. R. 13.3; see 11th Cir. R. 22-1(c) ("The denial of a certificate of appealability, whether by a single circuit judge or by a panel, may be the subject of a motion for reconsideration but may not be the subject of a petition for panel rehearing or a petition for rehearing en banc."). Based on the date of the judgment, petitioner's deadline for filing a petition for a writ of certiorari was October 16, 2017, and he did not file his petition for a writ of certiorari until November 29, 2017. Although this Court has discretion to consider an untimely petition for a writ of certiorari in a criminal case if "the ends of justice so require," Schacht v. United States, 398 U.S. 58, 63-65 (1970); see Bowles v. Russell, 551 U.S. 205, 212 (2007), petitioner has not sought leave to file his petition out of time.

Accordingly, absent a sufficient justification by petitioner, the Court may wish to deny the petition for a writ of certiorari as untimely. Should the Court choose not to deny the petition as untimely, it should hold the petition pending the Court's decision

in Stokeling and then dispose of the petition as appropriate in light of that decision.\*

Respectfully submitted.

NOEL J. FRANCISCO  
Solicitor General

APRIL 2018

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\* The government waives any further response to the petition for a writ of certiorari unless this Court requests otherwise.