No. 17-9378

IN THE SUPREME COURT OF THE UNITED STATES

DARYL DIEMER, PETITIONER

v.

UNITED STATES OF AMERICA

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

MEMORANDUM FOR THE UNITED STATES

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Petitioner contends (Pet. 4-24) that the court of appeals erred in determining that his prior conviction for second-degree robbery, in violation of Missouri law, was a conviction for a "violent felony" under the elements clause of the Armed Career Criminal Act of 1984 (ACCA), 18 U.S.C. 924(e)(2)(B)(i). Petitioner argues (Pet. 5-20) that Missouri second-degree robbery may be committed by using force sufficient to overcome resistance and that it therefore does not "ha[ve] as an element the use, attempted use, or threatened use of physical force against the person of another." 18 U.S.C. 924(e)(2)(B)(i). The question petitioner presents is related to the issue currently before this Court in

Stokeling v. United States, cert. granted, No. 17-5554 (Apr. 2, 2018), which will address whether a defendant's prior conviction for robbery under Florida law satisfies the ACCA's elements clause. Because the proper disposition of the petition for a writ of certiorari may be affected by this Court's resolution of Stokeling, the petition should be held pending the decision in Stokeling and then disposed of as appropriate in light of that decision.*

Respectfully submitted.

NOEL J. FRANCISCO
Solicitor General

JULY 2018

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