

No. 17-9469

IN THE SUPREME COURT OF THE UNITED STATES

PHILLIP ANGEL GARCIA, PETITIONER

v.

UNITED STATES OF AMERICA

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

MEMORANDUM FOR THE UNITED STATES

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Petitioner contends (Pet. 24-26) that the court of appeals erred in determining that his prior conviction for third-degree robbery, in violation of New Mexico 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). The court concluded that New Mexico courts have stated that third-degree robbery may be committed only by using "force which overcomes resistance" and have "appl[ie]d th[at] standard" to exclude cases in which defendants "have used a minimal level of physical force to take a victim's property." Pet. App. A22. It therefore determined that the New Mexico offense "has 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); see Pet. App. A22. The court of appeals did not explicitly address the relationship between the force required to commit New Mexico third-degree robbery and the force required to commit robbery under Florida law, which Florida courts have described in similar terms. See Robinson v. State, 692 So. 2d 883, 887 (Fla. 1997) (“[I]n a snatching situation in Florida, force sufficient to overcome a victim’s resistance is necessary to establish robbery.”). The issue decided below may therefore overlap with 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 in Florida 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

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