

No. 18-5288

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IN THE SUPREME COURT OF THE UNITED STATES

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ROBERT SERRANO, 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 TENTH CIRCUIT

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MEMORANDUM FOR THE UNITED STATES

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NOEL J. FRANCISCO  
Solicitor General  
Counsel of Record  
Department of Justice  
Washington, D.C. 20530-0001  
SupremeCtBriefs@usdoj.gov  
(202) 514-2217

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Petitioner contends (Pet. 19-22) that the court of appeals erred in determining that his prior conviction for armed robbery, in violation of N.M. Stat. Ann. § 30-16-2 (1984), 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). In reaching that determination, the court found “dispositive” its prior decision in United States v. Garcia, 877 F.3d 944 (10th Cir. 2017), petition for cert. pending, No. 17-9469 (filed June 18, 2018). Pet. App. A2. In Garcia, the court concluded that New Mexico courts have stated that robbery under Section 30-16-2 requires proof of “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.” Id. at B10. The court in Garcia 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. B10.

The court of appeals has not explicitly considered the relationship between the force required to commit New Mexico robbery and the force required to commit Florida robbery, 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.”). To the extent that the standards are comparable, the issue addressed below may 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.\*

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

Respectfully submitted.

NOEL J. FRANCISCO  
Solicitor General

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