

No. 18-6292

IN THE SUPREME COURT OF THE UNITED STATES

ANTHONY ROBINSON, PETITIONER

v.

UNITED STATES OF AMERICA

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

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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Petitioner contends (Pet. 8) that his conviction for brandishing a firearm during and in relation to a "crime of violence," in violation of 18 U.S.C. 924(c), is invalid because he did not commit a crime of violence within the meaning of 18 U.S.C. 924(c)(3)(A). Petitioner's claim lacks merit. This Court previously denied a petition for a writ of certiorari in this case that raised the same issue. See 138 S. Ct. 215 (2017) (No. 17-5139). The same result is appropriate here.

1. As relevant here, a jury found petitioner guilty of one count of brandishing a firearm during and in relation to a "crime

of violence," in violation of 18 U.S.C. 924(c)(1)(A)(ii). Judgment 1; Pet. App. A4. The indictment specified that the crime of violence underlying the Section 924(c) conviction was robbery in violation of the Hobbs Act, 18 U.S.C. 1951(a). Indictment 1-3.

Petitioner argued for the first time on appeal that Hobbs Act robbery is not a "crime of violence" as that term is defined in 18 U.S.C. 924(c)(3)(A), but the court of appeals rejected his claim, finding no plain error. See Pet. App. A5-A6. The court stated that, "[w]hen the predicate offense, Hobbs Act robbery, and the § 924(c) offense are contemporaneous and tried to the same jury," the "jury's determination of the facts of the charged offenses unmistakably shed light on whether the predicate offense was committed with 'the use, attempted use, or threatened use of physical force against the person or property of another,'" such that a "categorical approach" that looks to the statutory definition of the underlying crime "is not necessary." Id. at A6-A7. The court thus considered the jury's finding that petitioner had brandished a firearm during a robbery in assessing whether his Section 924(c) conviction involved a "crime of violence." Id. at A13; see id. at A5-A14. Judge Fuentes concurred in the judgment, finding that "Congress intended for courts to use the categorical approach to determine what is or is not a 'crime of violence' under Section 924(c)," id. at A21, and that, applying

that approach, "Hobbs Act robbery is in fact a 'crime of violence,'" id. at A28; see id. at A21-A30.

Although the court of appeals affirmed petitioner's conviction under Section 924(c), it remanded the case for further sentencing proceedings on an unrelated ground. See Pet. App. A19-A20; Pet. 7. This Court denied a petition for a writ of certiorari. 138 S. Ct. 215 (2017) (No. 17-5139). On remand, the district court reduced petitioner's sentence, and the court of appeals summarily affirmed. See Pet. 7.

2. Petitioner contends (Pet. 8-13), as he did in his prior petition for a writ of certiorari in this case, that the court of appeals erred by failing to conduct its analysis under Section 924(c)(3)(A) using the categorical approach employed by other circuits. But petitioner's methodological criticism makes no difference because the same result would obtain in this case under a categorical approach to Section 924(c)(3)(A), as Judge Fuentes's concurring opinion illustrates.

The Hobbs Act defines robbery to require the "taking or obtaining" of personal property from another "by means of actual or threatened force, or violence, or fear of injury." 18 U.S.C. 1951(b)(1). For the reasons stated in the government's brief in opposition to the petition for a writ of certiorari in Garcia v. United States, cert. denied, 138 S. Ct. 641 (2018) (No. 17-5704), Hobbs Act robbery categorically qualifies as a crime of violence

under Section 924(c) (3) (A) because it “has as an element the use, attempted use, or threatened use of physical force against the person or property of another.” 18 U.S.C. 924(c) (3) (A); see Br. in Opp. at 7-10, Garcia, supra (No. 17-5704).¹ Every court of appeals to consider the issue has so held. See Br. in Opp. at 8, Garcia, supra (No. 17-5704). And this Court has repeatedly denied review of that issue, see id. at 5 & n.1, including in this case, 138 S. Ct. 215 (2017) (No. 17-5139), in other cases applying the same reasoning as the decision below in this case, Foster v. United States, cert. denied, No. 18-5655 (Dec. 7, 2018), in Garcia, supra, and in additional cases presenting the same question, e.g., Desilien v. United States, cert. denied, No. 17-9377 (Oct. 29, 2018); Ragland v. United States, cert. denied, No. 17-7248 (May 14, 2018); Chandler v. United States, cert. denied, No. 17-6415 (Mar. 19, 2018); Middleton v. United States, cert. denied, No. 17-6343 (Mar. 19, 2018); Jackson v. United States, cert. denied, No. 17-6247 (Feb. 20, 2018).

3. Because Hobbs Act robbery qualifies as a crime of violence under Section 924(c) (3) (A), this case does not present any question (Pet. 2) of whether the alternative definition of a “crime of violence” in 18 U.S.C. 924(c) (3) (B) is

¹ We have served petitioner with a copy of the brief in opposition in Garcia.

unconstitutionally vague. See Pet. App. A6 (declining to consider petitioner's argument concerning Section 924(c)(3)(B)). For that reason, this Court should not hold this petition for a writ of certiorari pending the Court's decision in United States v. Davis, No. 18-431, cert. granted Jan. 4, 2018, in which the Court will decide whether the subsection-specific definition of a crime of violence in Section 924(c)(3)(B) is unconstitutionally vague. See Davis, supra, Pet. i. This Court's resolution of Davis will not affect the correctness of the court of appeals' determination below that Hobbs Act robbery qualifies as a crime of violence under Section 924(c)(3)(A), and no "reasonable probability" exists that this Court's reasoning in Davis regarding Section 924(c)(3)(B) would cause the court of appeals to reconsider the "ultimate outcome" of its decision applying Section 924(c)(3)(A), Lawrence ex rel. Lawrence v. Chater, 516 U.S. 163, 167 (1996) (per curiam). Accordingly, no matter the outcome of Davis, the petition for a writ of certiorari here should be denied.²

Respectfully submitted.

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Solicitor General

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² The government waives any further response to the petition unless this Court requests otherwise.