

No. 18-6913

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IN THE SUPREME COURT OF THE UNITED STATES

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LAMAR SOWELL, 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 THIRD CIRCUIT

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MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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Petitioner contends (Pet. 5) that his convictions for brandishing and discharging a firearm during and in relation to a "crime of violence," in violation of 18 U.S.C. 924(c), are 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. The petition for a writ of certiorari should be denied.

1. As relevant here, petitioner pleaded guilty to five counts of robbery in violation of the Hobbs Act, 18 U.S.C. 1951(a); 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);

and one count of discharging a firearm during and in relation to a crime of violence, in violation of 18 U.S.C. 924(c)(1)(A)(iii). Judgment 1; Pet. 4. The indictment specified that the crimes of violence underlying each Section 924(c) conviction were separate robberies in violation of the Hobbs Act. Indictment 7-10.

Before pleading guilty, petitioner filed a motion in the district court to dismiss the Section 924(c) charges against him, arguing that Hobbs Act robbery is not a "crime of violence" as that term is defined in 18 U.S.C. 924(c)(3). See Pet. 4. The district court denied the motion, Pet. App. B, relying on the Third Circuit's decision in United States v. Robinson, 844 F.3d 137 (2016), cert. denied, 138 S. Ct. 215 (2017), petition for cert. pending, No. 18-6292 (filed Oct. 9, 2018), which reasoned that "where the offenses of Hobbs Act robbery and brandishing a gun under § 924(c)(1)(A) 'have been tried together and the jury has reached a verdict on both offenses, the Hobbs Act robbery qualifies as a crime of violence under the "elements clause" of 18 U.S.C. § 924(c)(3)(A).'" Pet. App. B2 (quoting Robinson, 844 F.3d at 139); see id. at B2-B4. The court stated that because Robinson established that petitioner had been convicted of a "crime of violence" under 18 U.S.C. 924(c)(3)(A), the court would decline to consider petitioner's argument concerning the constitutionality of the alternative definition of a "crime of violence" in Section 924(c)(3)(B). Pet. App. B4. The court of appeals granted the

government's motion for summary affirmance based on Robinson. Pet. App. A.

2. Petitioner contends (Pet. 8-14) that the court of appeals erred by relying on its decision in Robinson and failing to conduct an 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 follow in this case under a categorical approach to Section 924(c)(3)(A).

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).<sup>1</sup> Every court of appeals to consider the issue has so held. See Br. in Opp. at 8,

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<sup>1</sup> We have served petitioner with a copy of the brief in opposition in Garcia.

Garcia, supra (No. 17-5704). And this Court has repeatedly denied review of that issue, see id. at 5 & n.1, including (1) in other cases that relied on the holding in Robinson, see Foster v. United States, cert. denied, No. 18-5655 (Jan. 7, 2019); (2) in Garcia, supra; and (3) 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 unconstitutionally vague. See Pet. App. B4 (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, cert. granted, No. 18-431 (Jan. 4, 2019), 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 Pet. i, Davis, supra. This Court’s resolution of Davis will not affect the correctness of the lower courts’ determination in this

case 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 lower courts to reconsider the "ultimate outcome" of their decisions denying petitioner's claim for relief, Lawrence ex rel. Lawrence v. Chater, 516 U.S. 163, 167 (1996) (per curiam). Accordingly, the petition for a writ of certiorari should be denied.<sup>2</sup>

Respectfully submitted.

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FEBRUARY 2019

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