No. 18-6914

IN THE SUPREME COURT OF THE UNITED STATES

DANIEL ROJAS, 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 IN OPPOSITION

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Petitioner contends (Pet. 6-22) that the court of appeals erred in determining that robbery in violation of the Hobbs Act, 18 U.S.C. 1951(a), qualifies as a "crime of violence" under 18 U.S.C. 924(c)(3)(A). This Court has recently and repeatedly denied petitions for writs of certiorari challenging the circuits' consensus on the application of Section 924(c)(3)(A) to Hobbs Act robbery. See, e.g., Foster v. United States, No. 18-5655 (Jan. 7, 2019); Desilien v. United States, 139 S. Ct. 413 (2018) (No. 17-9377); Ragland v. United States, 138 S. Ct. 1987 (2018) (No. 17-7248); Robinson v. United States, 138 S. Ct. 1986 (2018) (No. 17-6927); Chandler v. United States, 138 S. Ct. 1281 (2018)

(No. 17-6415); Middleton v. United States, 138 S. Ct. 1280 (2018) (No. 17-6343); Jackson v. United States, 138 S. Ct. 977 (2018) (No. 17-6247); Garcia v. United States, cert. denied, 138 S. Ct. 641 (2018) (No. 17-5704). The same result is warranted here.

Hobbs Act robbery requires the "unlawful taking or obtaining of personal property" from another "by means of actual or threatened force, or violence, or fear of injury, immediate or future, to his person or property." 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, Hobbs Act robbery qualifies as a crime of violence under Section 924(c) 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 id. at 8.

Petitioner asks (Pet. 6-15) this Court to hold his petition for a writ of certiorari pending its disposition of Stokeling v. United States, No. 17-5554 (Jan. 15, 2019). After his petition was filed, the Court issued its decision in Stokeling. The Court in Stokeling determined that a defendant's prior conviction for robbery under Florida law satisfied the elements clause of the

[1] We have served petitioner with a copy of the government's brief in opposition in Garcia.

Armed Career Criminal Act of 1984 (ACCA), 18 U.S.C. 924(e)(2)(B)(i), which classifies as a "violent felony" an offense that requires "the use, attempted use, or threatened use of physical force against the person of another," ibid. See slip op. 2, 13. The Court explained that "the term 'physical force' in ACCA encompasses the degree of force necessary to commit common-law robbery" -- namely, "force necessary to overcome a victim's resistance." Id. at 13.

This Court's decision in Stokeling forecloses petitioner's contention (Pet. 13) that Hobbs Act robbery does not qualify as a crime of violence under Section 924(c)(3)(A) because "Hobbs Act robbery is simply a form of common-law robbery." Because "the term 'physical force' in ACCA encompasses the degree of force necessary to commit common-law robbery," Stokeling, slip op. 13, and because petitioner does not suggest that "physical force" in Section 924(c)(3)(A) has a more restrictive meaning, congruence between Hobbs Act robbery and common-law robbery would indicate that Hobbs Act robbery does qualify as a crime of violence under Section 924(c)(3)(A).

Petitioner suggests (Pet. 17-20) that a defendant can commit Hobbs Act robbery by putting the victim in fear of financial or economic loss, but he cites no case reflecting a conviction on such a theory. Instead, the only decisions he cites address Hobbs Act extortion, not Hobbs Act robbery. See, e.g., United States v.

Local 560 of Int'l Bhd. of Teamsters, 780 F.2d 267, 281-282 (3d Cir. 1986), cert. denied, 476 U.S. 1140 (1986); United States v. Zemek, 634 F.2d 1159, 1174 (9th Cir. 1980), cert. denied, 450 U.S. 916, 450 U.S. 985, and 452 U.S. 905 (1981); United States v. Iozzi, 420 F.2d 512, 515 (4th Cir. 1970), cert. denied, 402 U.S. 943 (1971). As the court of appeals determined below (Pet. App. 4a-5a), and as the government's brief in Garcia explains, those cases establish no likelihood that the distinct offense of Hobbs Act robbery could be committed by threats of future harm to intangible property interests. See Br. in Opp. at 8-10, Garcia, supra (No. 17-5704); cf. Moncrieffe v. Holder, 569 U.S. 184, 191 (2013) (a crime falls outside the statutory definition only when a "realistic probability" of overbreadth exists) (citation omitted).

Finally, no reason exists to hold the petition for a writ of certiorari pending this Court's disposition of United States v. Davis, cert. granted, No. 18-431 (Jan. 4, 2019). The question presented in Davis is whether the definition of "crime of violence" in 18 U.S.C. 924(c)(3)(B) is unconstitutionally vague. Pet. at I, Davis, supra (No. 18-431). Because petitioner's conviction for Hobbs Act robbery qualifies as a conviction for a crime of violence under Section 924(c)(3)(A), this Court's resolution of Davis will not affect the outcome of this case. See Pet. App. 4a n.1 (noting the existence of circuit precedent at the time of the decision

below already holding that Section 924(c)(3)(B) is unconstitutionally vague).

The petition for a writ of certiorari should be denied.[2]

Respectfully submitted.

NOEL J. FRANCISCO
Solicitor General

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