No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

FRANK RICHARDSON,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

On Petition for a Writ of Certiorari
to the United States Court of Appeals for the Sixth Circuit

PETITION FOR A WRIT OF CERTIORARI

By: Michael R. Dezsi (P64530)
LAW OFFICE OF MICHAEL R. DEZSI, PLLC
CJA Counsel for Petitioner
615 Griswold Street, Suite 1410
Detroit, MI 48226
(313) 879-1206
mdezsi@dezsilaw.com

QUESTIONS PRESENTED

In *Sessions v. Dimaya*, 138 S. Ct. 1204, 1223 (2018) this Court recently struck down as unconstitutionally vague the Immigration and Nationality Act's definition of crime of violence, codified at 18 U.S.C. § 16(b). This case presents three questions of first impression for this Court: (1) whether the residual clause of 18 U.S.C. § 924(c)(3)(B), which is nearly identical to § 16(b), is also unconstitutionally vague, and if so, (2) whether *aiding and abetting* Hobbs Act Robbery constitutes a crime of violence under the "force" clause of 18 U.S.C. § 924(c)(3)(A), and finally, (3) whether the lower courts are to apply the categorical approach, or modified categorical approach, when considering whether a contemporaneous charge of aiding and abetting Hobbs Act robbery is a crime of violence under § 924(c)'s force clause.

As to the first question, at least three circuit courts have recently concluded that the "residual" clause of 18 U.S.C. §n 924(c)(3)(B) is unconstitutionally vague. *United States v. Salas*, 889 F.3d 681, 686 (10th Cir. 2018); *United States v. Davis*, 909 F.3d 483 (5th Cir. 2018); *United States v. Eshetu*, 898 F.3d 36, 37-38 (D.C. Cir. 2018). The First Circuit, on the other hand, has questioned whether this Court's decision in *Dimaya* striking down § 16(b) leads to the conclusion that § 924(c)'s residual clause should be subject to the same fate under the void-for-vagueness doctrine. *Brown v. United States*, 906 F.3d 159 (Oct. 12, 2018). The Sixth Circuit, by contrast, is the only circuit to date that has upheld the constitutionality of the residual clause set forth in § 924(c)(3)(B) while finding § 16(b) to be

unconstitutional. *Compare Shuti v. Lynch*, 828 F.3d 440 (6th Cir. 2016)(holding that § 16(b) is unconstitutionally vague) *with United States v. Taylor*, 814 F.3d 340, 375 (6th Cir. 2016)(rejecting a void-for-vagueness challenge to § 924(c)'s residual clause). Accordingly, there is a circuit split as to whether § 924(c)(3)(B)'s residual clause is unconstitutionally vague.

Assuming, *arguendo*, that the Court were to strike down the residual clause of § 924(c)(3)(B), the second question presented herein is whether *aiding and abetting* Hobbs Act robbery constitutes a crime of violence under the "force" clause of § 924(c)(3)(A). While the First, Tenth, Eleventh, and now the Sixth Circuit have answered this question in the affirmative, *see United States v. Garcia-Ortiz*, 904 F.3d 102 (1st Cir. Sept. 17, 2018); *United States v. Deiter*, 890 F.3d 1203, 1215-16 (10th Cir. 2018); *In re Colon*, 826 F.3d 1301, 1305 (11th Cir. 2016), the reasoning of these circuits appears to conflicts with this Court's decision in *Rosemond v. United States*, 572 U.S. 65 (2014).

Lastly, the circuit courts are split over the question of whether the categorical approach – or modified categorical approach – is to be employed where a defendant is *contemporaneously* charged with a crime such as aiding and abetting Hobbs Act robbery and § 924(c). The majority of circuits, including the Second, Sixth, Seventh, and Eighth, have applied the categorical approach as laid out by this Court in *Taylor v. United States,* 495 U.S. 576 (1990). *United States v. Hill*, 890 F.3d 51 (2d Cir. 2018); *United States v. Gooch*, 850 F.3d 285, 291-92 (6th Cir. 2017); *United States v. Rivera*, 847 F.3d 847, 848-49 (7th Cir. 2017); *United States v. House*, 825

F.3d 381, 387 (8th Cir. 2016). By contrast, the Third Circuit has rejected the use of the categorical approach in favor of the modified categorical approach in cases involving the contemporaneous charges of Hobbs Act robbery and § 924(c). *United States v. Robinson*, 844 F.3d 137 (3d Cir. 2016). As such, there is a well-defined circuit split as to which approach is to be applied in cases such as this where a defendant is contemporaneously charged under § 924(c) and Hobbs Act robbery.

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

TABLE OF CONTENTS

INDEX TO APPENDICES

TABLE OF AUTHORITIES

CASES

STATUTES

RULES

PETITION FOR A WRIT OF CERTIORARI

Petitioner Frank Richardson petitions this Court for a Writ of Certiorari to review the decision of the United States Court of Appeals for the Sixth Circuit.

OPINIONS BELOW

The United States Court of Appeals for the Sixth Circuit resolved this case in a published opinion issued on October 11, 2018, in which it affirmed Petitioner's conviction and sentence. The Sixth Circuit's published opinion is attached to this Petition as Appendix **Exhibit A**.

JURISDICTION

The Sixth Circuit issued its published opinion in this matter on October 11, 2018. This Petition is filed within ninety days of that date, as required by Rule 13.3 of the Supreme Court Rules. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

In its First Superseding Indictment, the government charged Petitioner Frank Richardson with five counts of aiding and abetting Hobbs Act Robbery in violation of 18 U.S.C. § 1951(a) and 18 U.S.C. § 2; five counts of aiding and abetting the use of a firearm during and in relation to a crime of violence in violation of 18 U.S.C. § 924(c); and one count of being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g). The Indictment alleged that Richardson, and others, robbed various retail stores in and around Detroit, Michigan and took cell phones and a television set.

In June 2013, the matter proceeded to trial against Richardson only. The trial court instructed the jury that Petitioner was charged with separate counts of aiding and abetting a violation of Title 18 U.S.C. § 1951(a) . . . which makes it a crime to obstruct, delay or affect interstate commerce by robbery." Elaborating on aiding and abetting, the trial court instructed the jury that in order to find guilt, "it's not necessary for you to find that he personally committed the crime. You may also find him guilty if he intentionally helped in some way or encouraged someone else to commit the crime."

Ultimately, the jury returned its guilty verdict as to all counts against Richardson. On December 3, 2013, Defendant was sentenced by the district court to 1,494 months of incarceration based on the multiple § 924(c) convictions that carry mandatory statutory consecutive sentences. On July 13, 2015, the Sixth Circuit affirmed Defendant's convictions. *United States v. Richardson*, 793 F.3d 612 (6th

Cir. 2015). On April 1, 2016, the Supreme Court issued an order vacating the Sixth Circuit's Opinion and remanded the case to this Court further consideration in light of the Supreme Court's decision in *Johnson v. United States*, 135 S. Ct. 2551 (2015).

Pursuant to the Supreme Court's order, the Sixth Circuit issued an Order dated August 29, 2016 vacating Defendant's sentence and remanding this matter to the district court for reconsideration in light of *Johnson*. Defendant's re-sentencing took place on September 14, 2017, at which time the district court, without elaboration, rejected Petitioner's *Johnson*-related challenges and re-imposed the court's prior judgment of sentence. Petitioner appealed and the Sixth Circuit affirmed Richardson's convictions and sentence in a published opinion dated October 11, 2018.

Sixth Circuit's Opinion Rejecting Petitioner's Johnson-related claims

In its published opinion rejecting Richardson's *Johnson*-related claims, the panel noted that,

> After the Supreme Court decided *Johnson*, this court has rejected the argument that § 924(c)'s residual clause is unconstitutionally vague. In *United States v. Taylor*, we held that § 924(c)'s residual clause "is considerably narrower than the statute invalidated by the Court in *Johnson* . . ." 814 F.3d 340, 375 (6th Cir. 2016).
>
> In *Shuti v. Lynch*, we held that the Immigration and Nationality Act's definition of the term, crime of violence, is unconstitutionally vague. 828 F.3d 440 (6th Cir. 2016). That definition, codified at 18 U.S.C. § 16(b), is identical to the definition of crime of violence in § 924(c)'s residual clause, which we upheld in *Taylor*. Nevertheless, we distinguished the two definitions and held that our decision in *Shuti* was consistent with *Taylor*. As we explained, § 924(c) is a criminal offense that requires an

> ultimate determination of guilt beyond a reasonable doubt – by a jury, in the same proceeding. This makes all the difference." *Id.* at 449. More recently, the Supreme Court, consistent with *Shuti*, concluded that § 16(b) was unconstitutionally vague, stating that "just like ACCA's residual clause, § 16(b) 'produces more unpredictability and arbitrariness than the Due Process Clause tolerates.'" *Sessions v. Dimaya*, 138 S. Ct. 1204, 1228 (2018)(quoting *Johnson*, 135 S. Ct. at 2558).
>
> Nevertheless, we leave the continuing viability of *Taylor* to another day. In addition to the residual clause, § 924(c) supplies a separate definition of the term, crime of violence, in the force clause. 18 U.S.C. § 924(c)(3)(A).

Exhibit A, Sl. Op. at 8-9.

Having left intact the Sixth's precedent upholding the constitutionality of § 924(c)'s residual clause, the panel went on to hold that Richardson's convictions for aiding and abetting Hobbs Act robbery were categorically crimes of violence under the force clause of § 924(c)(3)(A). The panel reasoned as follows:

> there is no distinction between aiding and abetting the commission of a crime and committing the principal offense. []. For purposes of sustaining a conviction under § 924(c), it makes no difference whether Richardson was an aider and abettor or a principal.
>
> Moreover, the First, Tenth, and Eleventh Circuits have held that aiding and abetting Hobbs Act robbery is a crime of violence under § 924(c)(3)(A). *See United States v. Garcia-Ortiz*, __ F.3d __, 2018 WL 4403947, at *1, 5 (1st Cir. Sept. 17, 2018); *United States v. Deiter*, 890 F.3d 1203, 1215-16 (10th Cir. 2018); *In re Colon*, 826 F.3d 1301, 1305 (11th Cir. 2016).
>
> We agree with the First, Tenth, and Eleventh Circuits and conclude that Richardson's conviction for aiding and abetting Hobbs Act robbery satisfies the force clause. Thus, we affirm his conviction under § 924(c).

REASONS TO GRANT THE WRIT

At present, there is a split of authority within the circuits as to whether § 924(c)'s residual clause is unconstitutionally vague. In *Sessions v. Dimaya*, this Court recently concluded that 18 U.S.C. § 16(b), which definition of crime of violence is identical to § 924(c)'s residual clause, is unconstitutionally vague. To date, there are at least three circuit courts that have concluded that § 924(c)'s residual clause is unconstitutionally vague.

The First Circuit, on the other hand, has questioned whether this Court's decision in *Dimaya* striking down § 16(b) leads to the conclusion that § 924(c)'s residual clause should be subject to the same fate under the void-for-vagueness doctrine. *Brown v. United States*, 906 F.3d 159 (Oct. 12, 2018). The Sixth Circuit, by contrast, is the only circuit to date that has upheld the constitutionality of the residual clause set forth in § 924(c)(3)(B) while finding § 16(b) to be unconstitutional. *Compare Shuti v. Lynch*, 828 F.3d 440 (6th Cir. 2016)(holding that § 16(b) is unconstitutionally vague) *with United States v. Taylor*, 814 F.3d 340, 375 (6th Cir. 2016)(rejecting a void-for-vagueness challenge to § 924(c)'s residual clause).

Accordingly, this Court should grant certiorari in the instant case pursuant to Supreme Court Rule 10(a) which provides for review on certiorari if "a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter."

Assuming, *arguendo*, that § 924(c)'s residual clause is unconstitutional, there is a second circuit split as to whether the categorical approach – or modified categorical approach – is to be applied when considering whether contemporaneously charged predicate offenses constitute crimes of violence under the elements clause of § 924(c). Finally, this Court must also consider whether aiding and abetting Hobbs Act robbery is a crime of violence under § 924(c)'s force clause. Only the First, Tenth, Eleventh, and now Sixth Circuits have addressed this question and answered it in the affirmative. The reasoning of these circuits, however, appears to be contrary to this Court's decision in *Rosemond v. United States*, 134 S. Ct. 1240 (2014).

For instance, in concluding that aiding and abetting Hobbs Act robbery is a crime of violence under the force clause of § 924(c)(3)(A), the Eleventh Circuit reasoned as follows:

> Because an aider and abettor is responsible for the acts of the principal as a matter of law, an aider and abettor of a Hobbs Act robbery necessarily commits all the elements of a principal Hobbs Act robbery. And because the substantive offense of Hobbs Act robbery "has as an element the use, attempted use, or threatened use of physical force against the person or property of another," . . . then an aider and abettor of a Hobbs Act robbery necessarily commits a crime that "has as an element the use, attempted use, or threatened use of physical force against the person or property of another."

In re Colon, 826 F.3d 1301, 1305 (11th Cir. 2016).

The fact that an aider and abettor may be punished in the same fashion as the principal is without question. However, that is not the appropriate lens through

which to consider whether *aiding and abetting* Hobbs Act robbery may qualify as a predicate crime of violence under § 924(c)'s force clause. Rather, this Court has made clear that under the categorical approach the court is to focus solely on the elements of the crime of conviction to determine if such crime has as an element the use, attempted use, or threatened use of physical force against the person or property of another. See *Mathis v. United States*, 136 S. Ct. 2243 (2016).

For an individual charged with aiding and abetting under 18 U.S.C. § 2, the government need not prove, let alone allege, that the defendant committed each or all of the elements of the underlying offense. Rather, the government need only prove that the defendant: "counsels, commands, induces or procures" the commission of a federal offense. *Rosemond v. United States*, 572 U.S. 65, 70 (2014)("§ 2 reflects a centuries-old view of culpability: that a person may be responsible for a crime he has not personally carried out if he helps another to complete its commission.").

In accordance with § 2 as interpreted by this Court's precedents, it is clear that a defendant may be found guilty of aiding and abetting without having personally carried out the underlying crime. Indeed in this case, Richardson's jury was instructed that in order to find guilt, "it's not necessary for you to find that he personally committed the crime. You may also find him guilty if he intentionally helped in some way or encouraged someone else to commit the crime." Thus, accepting the jury instruction at face value it cannot be categorically true that

aiding and abetting "has as an element the use, attempted use, or threatened use of physical force against the person or property of another[.]".

Rather than focusing on the elements of the charged offense (i.e., aiding and abetting Hobbs Act Robbery), the Eleventh Circuit conflates the elements of § 2 with its concomitant punishment provision and then leaps to the untenable conclusion that "an aider and abettor of a Hobbs Act robbery necessarily commits all the elements of a principal Hobbs Act robbery." *In re Colon*, 826 F.3d at 1305. The Eleventh Circuit's reasoning squarely contradicts with *Rosemond* in which this Court noted, "[a]s almost every court of appeals has held, '[a] defendant can be convicted as an aider and abettor without proof that he participated in each and every element of the offense." *Id.* at 73 (citing *United States v. Sigalow*, 812 F.3d 783, 785 (2d Cir. 1987). Here lies the fault of the Eleventh Circuit's reasoning (which faulty reasoning was relied upon and followed by the other few circuits to consider whether aiding and abetting Hobbs Act robbery categorically constitutes a crime of violence under the force clause of § 924(c)).

Indeed, as the dissent emphasized in *In re Colon*, "I am aware of no precedent deciding the question of whether aiding and abetting a crime meets the "elements clause" definition." *In re Colon*, 826 F.3d 1301, 1306 (11th Cir. 2016) (J. Martin)(dissenting). The dissent went on to note that:

> [t]he definition requires a crime that '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). As best I can tell . . . a defendant can be

> convicted or aiding and abetting a robbery without ever using, attempting to use, or threatening to use force. []
>
> For example, the aider and abettor's contribution to a crime could be as minimal as lending the principal some equipment, sharing some encouraging words, or driving the principal somewhere. And even if [defendant's] contribution in his case involved force, this use of force was not necessarily an element of the crime, as is required to meet the 'elements clause' definition. The law has long been clear that a defendant charged with aiding and abetting a crime is not required to aid and abet (let alone actually commit, attempt to commit, or threaten to commit) every element of the principal's crime. *See Rosemond v. United States*, __ U.S. __, 134 S. Ct. 1240, 1246-47 (2014)("As almost every court of appeals has held, a defendant can be convicted as an aider and abettor without proof that he participated in each and every element of the offense.

Id. at 1306-07 (J. Martin)(dissenting). The dissent goes on to make the point that if *Johnson* does apply to invalidate the residual clause of § 924(c), "it is at least unclear whether aiding and abetting a robbery 'has as an element the use, attempted use, or threatened use of physical force.'" *Id.* at 1307 (internal citations omitted). To date, each of the circuit courts to have considered the issue of whether aiding and abetting Hobbs Act robbery categorically constitutes a crime of violence have done so based on the same faulty unconvincing reasoning as that set forth by the Eleventh Circuit's two-member majority in *In re Colon*. *See United States v. Garcia-Ortiz*, 904 F.3d 102, 109 (1st Cir. 2018)(holding that "the mandate of 18 U.S.C. § 2 . . . makes an aider and abettor 'punishable as a principal,' and thus no different for purposes of the categorical approach than one who commits the

substantive offense[.]"); *United States v. Deiter*, 890 F.3d 1203, 1215-16 (10th Cir. 2018)(same).

Adding one more layer of confusion, the circuit courts are also split on whether the categorical approach, or the modified categorical approach, should apply to contemporaneously charged offenses under § 924(c) and Hobbs Act robbery. The majority of circuits, including the Sixth Circuit in the instant case, that have considered whether Hobbs Act robbery (or aiding and abetting Hobbs Act robbery) is a crime of violence under § 924(c)'s force clause have done so under the categorical approach as laid out by this Court in *Taylor*. *United States v. Gooch*, 850 F.3d 285, 291-92 (6th Cir. 2017); *United States v. Rivera*, 847 F.3d 847, 848-49 (7th Cir. 2017); *United States v. Hill*, 890 F.3d 51 (2d Cir. 2018); *United States v. House*, 825 F.3d 381, 387 (8th Cir. 2016).

By contrast, the Third Circuit has rejected the application of the categorical approach in cases involving the contemporaneous offenses of Hobbs Act robbery and gun-related offenses under § 924(c). *United States v. Robinson*, 844 F.3d 137 (3d Cir. 2016). In *Robinson*, the Third Circuit parted ways with the majority of circuits and adopted a modified categorical approach as follows:

> In the case before us of contemporaneous offenses of Hobbs Act robbery and of brandishing a handgun, the modified categorical approach is inherent in the district court's consideration of the case because the relevant indictment and jury instructions are before the court.
>
> For this reason, the approach we adopt here recognizes the differences between § 924(c) and other statutes that require categorical analysis, while at the same time being guided by the rationales put forth in

> *Taylor* and the limits set by our Constitution. Because the determination of whether a particular crime qualifies as a "crime of violence" under § 924(c) depends upon both the predicate offense, here Hobbs Act robbery, and the contemporaneous conviction under § 924(c), the § 924(c) conviction will shed light on the means by which the predicate offense was committed. Looking at the contemporaneous conviction allows a court to determine the basis for a defendant's predicate conviction.

Robinson, 844 F.3d at 143. Despite its precedential value, subsequent panels of the Third Circuit have declined to follow *Robinson* thus creating an intra-Third circuit split. *See United States v. Lewis*, 720 Fed. Appx 111 (3d Cir. 2018)(unpublished).

In *Lewis*, the dissent colorfully criticizes the majority for its failure to follow *Robinson* thus creating an intra-circuit split:

> Were I a poet, I would opine that the 'categorical approach' is an albatross hung round my neck. But were this 'bird' really dead, I would feel no guilt for having killed it. Indeed, the categorical approach has of late received its share of deserved criticism. Chief Judge Carnes of the Eleventh Circuit lamented that the categorical approach had once again thrust him and his colleagues 'down [a] rabbit hole . . . to a realm where we must close our eyes as judges to what we know as men and women.'
>
> [S]ince *Taylor*, every landmark Supreme Court decision to apply and develop the categorical approach has done so in the context of prior convictions only. *See, e.g., Shepard v. United States*, 544 U.S. 13, 23 (2005)(analyzing prior Massachusetts burglary convictions entered upon guilty pleas and recognizing that the categorical approach served as a means of avoiding 'collateral trials' on prior convictions); *Johnson v. United States*, 559 U.S. 133, 144-45 (2010)(using the modified categorical approach to analyze a defendant's seven-year-old battery conviction); *Descamps v. United States*, 570 U.S. 254 (2013)("To determine whether a past conviction is for [a violent felony], courts use what has become

> known as the 'categorical approach.'"); *Mathis v. United States*, __ U.S. __, 136 S. Ct. 2243, 2247 (2016)("To determine whether a past conviction is for [a violent felony], courts compare the elements of the crime of conviction with the elements of the 'generic' version of the listed offense. . ."
>
> Mindful of that history and rationale, we held in *Robinson* that the categorical approach need not be applied when the facts underlying an instant offense 'have either been found by [a] jury or admitted by the defendant in a plea." The Majority chooses to ignore *Robinson* and instead points to *United States v. Chapman*, where this Court used the categorical approach to analyze a guilty plea to an instant offense. *Robinson* preceded *Chapman*; to the extent *Chapman* conflicts with *Robinson*, *Robinson* still controls.

Lewis, 720 Fed. Appx. At 118-19 (Roth, J.)(dissenting). As these cases demonstrate, there is no uniformity among the circuit courts as to whether the categorical, or modified categorical, approach applies when considering whether a defendant's predicate offenses constitutes crimes of violence under § 924(c)'s force clause.

In this case, the application of the categorical approach, versus the modified categorical approach, may affect the decision of whether Richardson's predicate offense of *aiding and abetting* Hobbs Act robbery constitutes a crime of violence under § 924(c)'s force clause. Consistent with *Rosemond*, the jury never considered – and indeed never found – that Richardson committed an offense that "has as an element the use, attempted use, or threatened use of physical force."

To be exact, the jury was instructed that in order to find guilt, "it's not necessary for you to find that he personally committed the crime. You may also find him guilty if he intentionally helped in some way or encouraged someone else to

commit the crime." Indeed, at trial the government's theory focused on Richardson's role in helping to plan and provide supplies for the robberies.

Applying the categorical approach to the instant case, the Sixth Circuit's decision finding that aiding and abetting Hobbs Act robbery constitutes a crime of violence under § 924(c)'s force clause appears without legitimate bases. While the modified categorical approach, as employed by the Third Circuit, may seem to lend some support to the conclusion that Richardson's predicate conviction of aiding and abetting Hobbs Act robbery is a crime of violence under § 924(c)'s force clause, such a conclusion can be reached only by casting aside this Court's decisions in both *Taylor* and *Mathis* which provide the framework for the two approaches.

The concurrence in *Robinson* aptly highlighted the distinction between the two approaches and noted as follows:

> I conclude 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). This position is advocated by both Robinson and the government, and is consistent with the Supreme Court's recent opinion in *Mathis v. United States* and the decisions of our sister circuits who have been confronted with the same question.
>
> In my view, Congress intended Section 924(c)(3) to define 'crime of violence' in terms of statutory elements of the contemporaneous conviction, rather than in terms of the actual underlying conduct of the defendant. My analysis is guided by the Supreme Court's decision in *Taylor v. United States*. In that case, the Supreme Court found that Congress 'intended the sentencing court to look only to the fact that the defendant had been convicted of crimes falling within certain categories, and not to the facts underlying the prior convictions' to determine

> whether sentencing enhancements apply under the Armed Career Criminal Act ("ACCA"), 18 U.S.C. § 924(e).
>
> []
>
> As the Supreme Court has reiterated, however, the modified categorical approach is approved only 'for use with statutes having multiple alternative elements. In other words, the simple fact that documents such as the indictment and the jury instructions are available does not mean that a court may look to them. As the majority notes, the modified categorical approach is not meant to supplant the categorical approach where convenient, but 'merely to help implement the categorical approach' when the court is confronted with a divisible statute.

United States v. Robinson, 844 F.3d 137, 148-49 (3d Cir. 2016)(J. Fuentes)(concurring).

The application of the modified categorical approach to the case at bar does not support a finding that Richardson's predicate offense of aiding and abetting Hobbs Act robbery constitutes a crime of violence under the force clause of § 924(c). The jury instructions, alone, make clear that there was never a finding of guilt as to any particular elements of the Hobbs Act robbery. Instead, the jury found guilt predicated solely upon aiding and abetting under the elements of 18 U.S.C. § 2. For this reason, the Court is presented with an ideal case in which to settle the circuit split as to whether the categorical, or modified categorical, approach is appropriate.

Thus, apart from the circuit split as to whether the residual clause of § 924(c) is unconstitutionally vague, this case presents the Court with the opportunity to settle a second circuit split as to whether the categorical – or modified categorical approach– is appropriate in cases such as this where a defendant is

contemporaneously charged with a crime such as aiding and abetting Hobbs Act robbery and § 924(c).

Accordingly, this Court should grant certiorari in the instant case pursuant to Supreme Court Rule 10(c) which provides for review on certiorari if "a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court[.]" Given the exceptional importance of the legal questions presented herein, this Court should grant the instant petition.

CONCLUSION

Based on the foregoing, Petitioner Frank Richardson respectfully requests that this Court grant his Writ of Certiorari and hear the merits of the questions presented herein. Alternatively, this Court should grant the petition, vacate the judgment of the lower court, and remand for further proceedings.

Respectfully submitted,

Dated December 10, 2018

Michael R. Dezsi
Counsel of Record
Law Office of Michael R. Dezsi, PLLC
615 Griswold Street, Suite 1410
Detroit, Michigan 48226