

No. 18-7204

IN THE SUPREME COURT OF THE UNITED STATES

JULIO ROLON, PETITIONER

v.

UNITED STATES OF AMERICA

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

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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This Court has granted the petition for a writ of certiorari in United States v. Davis, No. 18-431 (oral argument scheduled for Apr. 17, 2019), to consider whether the definition of a “crime of violence” in 18 U.S.C. 924(c)(3)(B) is unconstitutionally vague. Petitioner contends (Pet. 12-28) that his case presents the same issue and that the court of appeals erred in denying his request for a certificate of appealability (COA) regarding it. Petitioner’s conviction under 18 U.S.C. 924(c) (2012) does not, however, depend solely on the classification of his predicate offenses as crimes of violence under Section 924(c)(3)(B), nor would a decision vacating his Section 924(c) conviction affect his

overall sentence. The petition for a writ of certiorari should be denied.

1. Petitioner was convicted of conspiracy to possess five kilograms or more of cocaine with the intent to distribute it, in violation of 21 U.S.C. 846; attempted possession of five kilograms or more of cocaine with the intent to distribute it, in violation of 21 U.S.C. 846; conspiracy to commit robbery in violation of the Hobbs Act, 18 U.S.C. 1951(a); attempted Hobbs Act robbery, in violation of 18 U.S.C. 1951(a); conspiracy to possess a firearm in furtherance of a crime of violence and a drug trafficking crime, in violation of 18 U.S.C. 924(o) and 3559(c); possession of a firearm in furtherance of a crime of violence and a drug trafficking crime, in violation of 18 U.S.C. 924(c)(1)(A) and 3559(c); and possession of a firearm by a felon, in violation of 18 U.S.C. 922(g)(1) and 924(e)(1). Pet. App. 3, at 1-2. The district court sentenced petitioner to life imprisonment, consisting of concurrent life sentences on the two drug trafficking counts and the Section 922(g)(1) count; concurrent sentences of 240 months of imprisonment on the Hobbs Act and firearm conspiracy counts; and a consecutive life sentence on the Section 924(c) count. Id. at 3.

Section 924(c) makes it a crime to use or carry a firearm during and in relation to, or to possess a firearm in furtherance of, "any crime of violence or drug trafficking crime." 18 U.S.C.

924(c)(1)(A). The statute defines a "crime of violence" as a felony that either "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), or, "by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense," 18 U.S.C. 924(c)(3)(B). The statute defines a "drug trafficking crime" to include "any felony punishable under the Controlled Substances Act (21 U.S.C. 801 et seq.)." 18 U.S.C. 924(c)(2). Petitioner's Section 924(c) conviction was predicated on his possession of a firearm in furtherance of crimes of violence (conspiracy and attempt to commit Hobbs Act robbery), as well as on his drug trafficking crimes (conspiracy and attempt to possess cocaine with the intent to distribute it). Pet. App. 3, at 2; see Indictment 4.

Petitioner does not dispute that his predicate drug offenses qualify as "drug trafficking crime[s]" under Section 924(c)(2). Accordingly, his Section 924(c) conviction would be valid regardless of whether his Hobbs Act offenses qualify as "crime[s] of violence" under Section 924(c)(3). Because Davis concerns only the definition of a "crime of violence" in Section 924(c)(3)(B), this Court's decision in that case will not affect the validity of petitioner's conviction under Section 924(c).

2. Moreover, even if petitioner's Section 924(c) conviction were vacated, his sentence would not change. Petitioner received a consecutive life sentence under Section 924(c) in addition to three concurrent life sentences on other convictions. Those other convictions and life sentences would remain valid even if petitioner's Section 924(c) conviction were invalidated.

3. Under these circumstances, no reason exists to consider in this case whether Section 924(c) (3) (B) is unconstitutionally vague, or to hold this petition for a writ of certiorari pending the Court's decision in Davis. Nor can petitioner establish that the court of appeals erred in determining that "reasonable jurists" would not find his constitutional claim debatable, and that a COA was therefore not warranted. Pet. App. 1, at 2 (citing 28 U.S.C. 2253(c) (2)).

The petition for a writ of certiorari should be denied.*

Respectfully submitted.

NOEL J. FRANCISCO
Solicitor General

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