

No. 18-7573

IN THE SUPREME COURT OF THE UNITED STATES

MATTHEW HEARN, PETITIONER

v.

UNITED STATES OF AMERICA

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

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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Petitioner contends (Pet. 13-33) that armed bank robbery, in violation of 18 U.S.C. 2113(a) and (d), does not qualify as a "crime of violence" under 18 U.S.C. 924(c) (3) (A). This Court has recently and repeatedly denied petitions for a writ of certiorari raising the same question as this one, as well as petitions raising related questions under similarly worded federal statutes or provisions of the Sentencing Guidelines. See, e.g., Lloyd v. United States, No. 18-6269 (Feb. 19, 2019) (armed bank robbery); Johnson v. United States, 139 S. Ct. 647 (2018) (No. 18-6499) (armed bank robbery); Faurisma v. United States, 139 S. Ct. 578 (2018) (No. 18-6360) (armed bank robbery); Cadena v. United States,

139 S. Ct. 436 (2018) (No. 18-6069) (bank robbery); Patterson v. United States, 139 S. Ct. 291 (2018) (No. 18-5685) (bank robbery); Watson v. United States, 139 S. Ct. 203 (2018) (No. 18-5022) (armed bank robbery); Perry v. United States, 138 S. Ct. 1439 (2018) (No. 17-6611) (armed bank robbery); Schneider v. United States, 138 S. Ct. 638 (2018) (No. 17-5477) (bank robbery); Castillo v. United States, 138 S. Ct. 638 (2018) (No. 17-5471) (bank robbery); Stephens v. United States, 138 S. Ct. 502 (2017) (No. 17-5186) (armed bank robbery). The same result is warranted here.

Petitioner's conviction for armed bank robbery required proof that he (1) took or attempted to take money from the custody or control of a bank "by force and violence, or by intimidation," 18 U.S.C. 2113(a); and (2) either committed an "assault[]" or endangered "the life of any person by the use of a dangerous weapon or device" while committing the robbery, 18 U.S.C. 2113(d). For the reasons stated in the government's brief in opposition to the petition for a writ of certiorari in Lloyd v. United States, supra, petitioner's offense 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 6-13, Lloyd,

supra (No. 18-6269).¹ Every court of appeals to have considered the question has so held. See id. at 8-9.

Because petitioner's armed bank robbery offense qualifies as a crime of violence under Section 924(c) (3) (A), no reason exists to address petitioner's contention (Pet. 9-12) that the alternative definition of "crime of violence" in 18 U.S.C. 924(c) (3) (B) is unconstitutionally vague, or to hold the petition for a writ of certiorari pending this Court's determination of that question in United States v. Davis, cert. granted, No. 18-431 (oral argument scheduled for Apr. 17, 2019). The district court rejected petitioner's motion under 28 U.S.C. 2255 based on 18 U.S.C. 924(c) (3) (A), and expressly declined to consider petitioner's challenge to Section 924(c) (3) (B). D. Ct. Doc. 75, at 1 (July 12, 2017). Davis presents no issue related to the constitutionality of Section 924(c) (3) (A), and therefore this Court's resolution of Davis will not affect the outcome of this case.

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

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.