

No.: 18-9064

IN THE
SUPREME COURT OF THE UNITED STATES

Adonijah Lindsay,
petitioner,

v.

United States of America,
respondent.

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

REPLY TO THE UNITED STATES'S BRIEF IN OPPOSITION

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REPLY TO THE UNITED STATES'S BRIEF IN OPPOSITION

The Third Circuit denied Adonijah Lindsay a certificate of appealability because it rejected the categorical approach in the context of § 924(c). (Appx. "A"). The appellate court expressly recognized that should this Court overturn its opinion, then Mr. Lindsay should have a new day in court. (Id.). In crafting its opposition, the United States overlooks the text and tenor of the Third Circuit's opinion. Moreover, the United States raises new arguments that were not presented below and which are not conclusively resolved in the Third Circuit. Thus, the United States, effectively, request this Court become a court of "first view" rather than a "court of review". See generally **Cutter v. Wilkinson**, 544 U.S. 709, 718 n.7 (2005). A course of action this Court traditionally considers unwise. See **Haymond v. United States**, S.Ct. No. 17-1672, § IV (June 26, 2019).

Substantively, the United States overlooks that Adonijah Lindsay would not have pleaded guilty to the charges if he had been correctly informed by counsel or district court that the elements of a § 924(c) conviction required a categorical approach. Stated otherwise, in **United States v. Davis**, 139 S.Ct. 2319 (2019), this Court invalidated § 924(c)(3)(B) and required a categorical approach for deciding whether a companion offense constituted a § 924(c) predicate. The retroactively-applicable **Davis** rule revealed that Mr. Lindsay's guilty plea was constitutionally infirm, that is, because he was misinformed about the true nature of the crime, the guilty plea was neither constitutionally knowing or intelligent.

Hence, even if the United States is correct on how the **Davis** rule affects Mr. Lindsay's conviction under the categorical approach, the new rule still renders the guilty plea and the conviction upon which it is based invalid under

the retroactive rule. Jurists of reason would debate whether the district court's resolution of the § 2255 motion was correct. Correspondingly, the Third Circuit should have granted a certificate of appealability. This court should reject the Solicitor-General's recommendation, grant certiorari, vacate the Third Circuit's Order and remand the cause with instructions for the Third Circuit to issue a certificate of appealability.

Additionally, the Third Circuit effectively invited remand in its order by vacating the district court order that predetermined the validity of future filings in the light of this Court's ruling in **Davis**, stating that "[i]f the Supreme Court's ultimate decision in **United States v. Davis** is favorable to appellant [Mr. Lindsay], his pursuit of relief based on it would not be vexatious." (Appx. A at 2)(Feb. 7, 2019 Third Circuit Opinion).

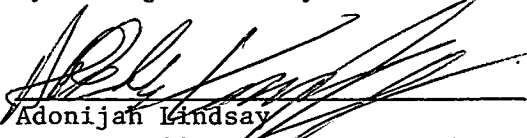
The import of the Third Circuit's order is that it, not this Court, should first decide whether a Hobbs Act Robbery is categorically violent.

It is worthwhile to note that in the Brief in Opposition's litany of Circuit Court decision on the categorically violent nature of Hobbs Act Robbery, no Third Circuit decision is recited. The Third Circuit should have an opportunity to either join the Court of Appeals consensus or conflict it, at which point the question matures for this Court's resolution. See **Haymond** (the "Circuit did not address these arguments ... and this Court normally proceeds as a court of review, not of first view.")(quoting **Cutter**, 544 U.S. at 718 n.7). The Third Circuit neither immediately below nor in binding precedent, has addressed the United States's arguments. As a matter of tradition, this Court should return the case to the court of appeals to decide the contest in the first instance.

This Court should uphold the Third Circuit's indicative preference, grant the writ, and remand to the Third Circuit to grant it the opportunity to revisit its opinion in the light of this Court declaring § 924(c)(3)(B) void.

Mr. Lindsay respectfully requests this Court grant certiorari.

Prepared with the assistance of Frank L. Amodeo and respectfully submitted by Adonijah Lindsay on this 4th day of September, 2019:



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VERIFICATION

Under penalty of perjury as authorized by 28 U.S.C. § 1746, I declare that the factual allegations and factual statements contained in this document are true and correct to the best of my knowledge.



Adonijah Lindsay