No. 19-5926

IN THE SUPREME COURT OF THE UNITED STATES

REFUGIO QUINTANAR, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the district court permissibly relied at sentencing on factual information in petitioner's presentence investigation report, where petitioner neither properly disputed the facts set forth in the report nor presented any rebuttal evidence.

2. Whether the court of appeals properly reviewed for plain error petitioner's claim that the district court relied on an impermissible factor at sentencing, where petitioner failed to object on that ground in the district court.

3. Whether the district court violated petitioner's Fifth and Sixth Amendment rights by relying on its factual findings about petitioner's juvenile misconduct in selecting a sentence within the statutory range authorized for petitioner's crime of conviction.

4. Whether petitioner's prior conviction for robbery, in violation of Texas Penal Code Ann. § 29.02 (West 2011), was a conviction for a "crime of violence" under Sentencing Guidelines § 4B1.2(a)(2) (2016).

ADDITIONAL RELATED PROCEEDINGS

United States District Court (N.D. Tex.):

United States v. Quintanar, No. 17-cr-85 (Oct. 6, 2017)

United States Court of Appeals (5th Cir.):

United States v. Quintanar, No. 17-11244 (June 13, 2019)

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OPINION BELOW

The opinion of the court of appeals (Pet. App. B1-B5) is not published in the Federal Reporter but is reprinted at 777 Fed. Appx. 706.

JURISDICTION

The judgment of the court of appeals was entered on June 13, 2019. The petition for a writ of certiorari was filed on September 11, 2019. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a guilty plea in the United States District Court for the Northern District of Texas, petitioner was convicted of possessing ammunition as a felon, in violation of 18 U.S.C. 922(g)(1). Pet. App. A1. The district court sentenced him to 96 months of imprisonment, to be followed by three years of supervised release. Id. at A1-A2. The court of appeals affirmed. Id. at B1-B5.

1. In March 2017, officers with the Fort Worth Police Department stopped a car in which petitioner was traveling for a traffic violation. Presentence Investigation Report (PSR) ¶ 8. As petitioner stepped out of the car, the officers spotted a pistol on the floorboard. PSR ¶ 9. The officers ordered petitioner to the ground, searched him, and found two fixed-blade knives in his waistband and four live rounds of ammunition in his pants pocket. Ibid. A records check revealed that petitioner had previously been convicted of one or more felonies, including a conviction for robbery in Texas state court. PSR ¶ 10.

In May 2017, a federal grand jury charged petitioner with possessing ammunition as a felon, in violation of 18 U.S.C. 922(g)(1). Indictment 1-2. Petitioner pleaded guilty without a plea agreement. C.A. ROA 34-36.

2. The Probation Office's presentence report calculated an advisory Sentencing Guidelines range of 46 to 57 months of imprisonment. PSR ¶ 77; C.A. ROA 141. The presentence report

calculated an offense level of 17, based in part on the determination that petitioner's prior conviction for Texas robbery was a conviction for a "crime of violence" for purposes of Sentencing Guidelines §§ 4B1.2 and 2K2.1(a)(4) (2016), and placed petitioner in criminal history category V. PSR ¶¶ 17, 26, 44, 77; C.A. ROA 141. The presentence report also described petitioner's extensive criminal history and Texas Youth Commission (TYC) records of his behavior while in juvenile custody. PSR ¶¶ 29-53. As relevant here, petitioner objected to the presentence report's classification of his Texas robbery conviction as a crime of violence. C.A. ROA 133-134 & n.1. He did not object to any factual statement in the presentence report. Id. at 133-135.

At sentencing, the district court rejected petitioner's objection to the presentence report's classification of his Texas robbery conviction, adopted the presentence report's factual statements "as the fact findings of the Court," and agreed with the Probation Office's calculation of a 46-to-57-month advisory Guidelines range. C.A. ROA 88. The court then recounted petitioner's criminal history, which included eight adult convictions, five adult charges that were not prosecuted, three pending criminal charges, four juvenile adjudications, and three unadjudicated juvenile incidents. Pet. App. B1-B2; C.A. ROA 93-96. The three unadjudicated juvenile incidents, as to which the information came from police reports, involved one act of vandalism and two domestic assaults. PSR ¶¶ 33-35. The court also mentioned

petitioner's TYC records from his juvenile custody, which included 280 incident reports spanning 559 pages. Pet. App. B2; C.A. ROA 93-94.

When the district court was about to announce its sentence, petitioner interjected to "object," for the first time, to the district court's "findings" adopting the presentence report's factual statements regarding petitioner's juvenile incidents. C.A. ROA 97. Petitioner grounded his objection in the Fifth Amendment right to "due process" and the Sixth Amendment rights to "fact finding conducted by a jury" and "to confront witnesses." Id. at 97-98. Petitioner did not, however, contend that any information in the presentence report was inaccurate. Ibid. The court sentenced petitioner to 96 months of imprisonment, to be followed by three years of supervised release. Pet. App. A1-A2. After the district court imposed its sentence, petitioner objected on the ground that the sentence was "procedurally and substantively unreasonable." C.A. ROA 101.

3. The court of appeals affirmed. Pet. App. B1-B5. On appeal, petitioner contended for the first time that the district court had erred by considering the TYC records, arguing that those records were analogous to "bare arrest records." Id. at B3 (citing United States v. Windless, 719 F.3d 415, 420 (5th Cir. 2013)). The court of appeals rejected that contention. Id. at B3-B4. It reasoned that, because petitioner did not object to the district court's consideration of the TYC records at sentencing, its review

was limited to plain error. Id. at B3. And it determined that petitioner failed to satisfy the plain-error standard, both because his legal argument was not clearly correct and because petitioner could not "show that the [alleged] error affected his substantial rights." Ibid. On the latter point, the court observed that "the district court primarily relied on 'other significant, permissible factors' * * * when determining that an upward variance was appropriate." Ibid. (citation omitted).

The court of appeals also rejected petitioner's contention that the district court had erred by considering the presentence report's summaries of the three unadjudicated juvenile incidents that occurred while petitioner was not in TYC custody. Pet. App. B4-B5. The court observed that the presentence report's summaries were derived from police reports, that police reports "may be sufficiently reliable" for sentencing purposes, and that a defendant "'bears the burden of presenting rebuttal evidence to demonstrate that the information in the [presentence report] is inaccurate or materially untrue.'" Id. at B4 (quoting United States v. Cervantes, 706 F.3d 603, 620-621 (5th Cir. 2013)). The court explained that petitioner had not made that showing, as "[t]he offense reports described each complainant's account of the assault" and "what the officers viewed upon arriving at the scene," and petitioner neither "claim[ed] the facts were inaccurate nor * * * provide[d] any rebuttal evidence to demonstrate the information in the PSR was unreliable." Id. at B5.

The court of appeals rejected in a footnote two additional claims, which it observed were foreclosed by circuit precedent. Pet. App. B2 n.2. First, the court explained that petitioner had no Sixth Amendment right to cross-examine out-of-court declarants at sentencing. Ibid. (citing United States v. Mitchell, 484 F.3d 762, 776 (5th Cir. 2007), cert. denied, 552 U.S. 923 (2007), and 552 U.S. 1103 (2008)). Second, the court determined that the district court appropriately applied Sentencing Guidelines § 2K2.1(a)(4) (2016) to increase petitioner's base offense level based on his Texas robbery conviction. Ibid. (citing United States v. Santiesteban-Hernandez, 469 F.3d 376, 380-381 (5th Cir. 2006), abrogated on other grounds by United States v. Rodriguez, 711 F.3d 541 (5th Cir.) (en banc), cert. denied, 571 U.S. 989 (2013)).

ARGUMENT

Petitioner raises (Pet. 12-33) four different challenges to his sentence. The court of appeals correctly rejected each of those challenges. For the sole question on which petitioner seeks plenary review, he does not identify any division of authority that this case implicates. And for the three remaining questions on which petitioner asks this Court to grant the petition, vacate, and remand, the past or pending decisions of this Court on which he relies should not affect his case.

1. Petitioner first contends (Pet. 12-19) that the district court erred in relying on factual information in the presentence report describing three unadjudicated juvenile incidents. Pet.

App. B4. The court of appeals correctly rejected that contention, and its decision does not conflict with any decision of this Court or any other court of appeals.

As the government explained in its brief in opposition in Gipson v. United States, 139 S. Ct. 2636 (2019) (No. 18-7139),[1] Federal Rule of Criminal Procedure 32(i)(3)(A) permits a district court to adopt as true any factual information in the presentence report that a defendant does not timely contest before the sentencing hearing. See Gov't Br. in Opp. at 11-14, Gipson, supra (No. 18-7139) (discussing Fed. R. Crim. P. 32). Petitioner in this case did not contest the accuracy of any facts in the presentence report in his written objections to the presentence report or at any time before sentencing. C.A. ROA 133-134 & n.1. In the absence of a timely objection, see Fed. R. Crim. P. 32(f), petitioner did not inform either the government or the court of any need to litigate the factual information in the report. The court therefore did not err in adopting that information as its own findings of fact at the sentencing hearing and in rejecting petitioner's belated "objection" to reliance on the material in the presentence report. C.A. ROA 87-88, 97-98; see Fed. R. Crim. P. 32(i)(3)(A); see also Pet. App. B5.

Petitioner's contention (Pet. 12-18) that the decision below conflicts with the decisions of other courts of appeals is

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

mistaken. As the government explained in Gipson, a narrow conflict exists among the courts of appeals on whether a bare objection to factual statements in a presentence report requires the government to introduce evidence to support those statements. Gov't Br. in Opp. at 14-18, Gipson, supra (No. 18-7139). But this case does not implicate that narrow conflict. As noted above, petitioner did not actually dispute any factual information in the presentence report. See Pet. App. B5. And petitioner does not identify any court of appeals that would preclude a sentencing court from relying on the facts in a presentence report in circumstances like these.

In any event, the narrow conflict petitioner describes would not warrant this Court's review even if this case implicated it. As the government explained in Gipson, this Court has repeatedly and recently denied petitions for writs of certiorari raising substantially the same issue. Gov't Br. in Opp. at 14-15, Gipson, supra (No. 18-7139). The same result is warranted here.

2. Petitioner next contends (Pet. 19-21) that the court of appeals erred in reviewing for plain error his procedural claim that the district court erred in considering his TYC records at sentencing. The court of appeals correctly determined that petitioner's forfeited claim was subject to plain-error review, and this Court's decision in Holguin-Hernandez v. United States, No. 18-7739 (argued Dec. 10, 2019), is unlikely to affect the proper disposition of this case.

As explained in the government's brief in opposition in White v. United States, No. 18-9692 (Oct. 9, 2019), the reasons for requiring a contemporaneous objection under Federal Rule of Criminal Procedure 51(b) apply with full force to procedural claims such as petitioner's claim that the district court relied on impermissible information at sentencing. See Gov't Br. in Opp. at 7-10, White, supra (No. 18-9692); see also Gov't Br. at 18-20, Holguin-Hernandez, supra (No. 18-7739) (July 29, 2019) (explaining that "requesting a lower sentence does not sufficiently identify an asserted procedural error to the district court").[2] Here, the court of appeals found that petitioner did not object to the district court's consideration of his TYC records at sentencing. Pet. App. B3. Instead, he specifically objected only to the procedures underlying the findings that he had committed three unrelated acts of juvenile misconduct. Ibid.; see id. at B2. Petitioner therefore did not adequately preserve his claim that the district court erred in considering his TYC records.

In Holguin-Hernandez, this Court granted certiorari to consider whether, to preserve a claim that his sentence is substantively unreasonable, a criminal defendant who has requested a shorter term of imprisonment must also object in the district court to the reasonableness of a longer term after it is ordered. Pet. Br. at I, Holguin-Hernandez, supra (No. 18-7739). The

[2] We have served petitioner with copies of the government's merits brief in Holguin-Hernandez and brief in opposition in White.

question presented in Holguin-Hernandez is not implicated here. Petitioner raised a generic post-sentencing objection that his sentence was "procedurally and substantively unreasonable." C.A. ROA 101. Petitioner also does not challenge the Fifth Circuit's application of plain-error review to a substantive-reasonableness challenge to the length of his sentence. Instead, he raised on appeal a new procedural claim relating to the district court's consideration of an assertedly impermissible factor. Pet. App. B2-B3. Because neither the parties nor the Court-appointed amicus in Holguin-Hernandez urges a position that lends support to petitioner's view, it is unlikely that this Court's decision in Holguin-Hernandez will affect the proper disposition of this case.

Petitioner nonetheless contends that this Court should hold his petition for Holguin-Hernandez because the Fifth Circuit treats claims such as petitioner's as a "species of 'substantive reasonableness.'" Pet. 20 (citing United States v. Cooks, 589 F.3d 173, 186 (5th Cir. 2009), cert. denied, 559 U.S. 1024 (2010); United States v. Broussard, 669 F.3d 537, 551 (5th Cir. 2012)). But in the court of appeals, petitioner claimed only "procedural error," contending that the district court "consider[ed] unreliable information" at sentencing. Pet. C.A. Br. 7-8 (emphasis omitted). The court of appeals accordingly relied on circuit precedent involving forfeited procedural errors in determining that petitioner's claim was subject to plain-error review. See

Pet. App. B3 (citing United States v. Chavez-Hernandez, 671 F.3d 494, 497 (5th Cir. 2012)).

In any event, petitioner's belated attempt to recast his claim in substantive-reasonableness terms is unavailing. As this Court explained in Gall v. United States, 552 U.S. 38 (2007), a claim that a sentence is substantively unreasonable asserts that "the District Judge abused his discretion in determining that the § 3553(a) factors supported [the] sentence." Id. at 56. In other words, it challenges the result of the sentencing court's evaluation process. Petitioner's claim that the court relied on unreliable information, in contrast, is an objection to the court's evaluation process itself. Cf. id. at 51 (explaining that procedural errors include "failing to consider the § 3553(a) factors" and "selecting a sentence based on clearly erroneous facts"). Moreover, irrespective of labels, a challenge to a factor as impermissible is different in kind from a challenge to the length of a sentence. See Gov't Br. in Opp. at 13 & n.2, White, supra (No. 18-9692).

3. Petitioner also contends (Pet. 21-29) that his sentence, which fell below the maximum authorized by statute, was imposed in violation of the Fifth and Sixth Amendments because the district court relied, in part, on its factual findings about petitioner's juvenile misconduct. Petitioner does not, however, seek plenary review of that issue. He instead asks (Pet. 21, 29) this Court to grant the petition for a writ of certiorari, vacate the judgment

below, and remand the case for further consideration (GVR) in light of this Court's recent decision in United States v. Haymond, 139 S. Ct. 2369 (2019). Petitioner's request lacks merit.

a. The court of appeals correctly rejected petitioner's Fifth and Sixth Amendment claims. This Court has consistently explained that sentencing courts may find facts that are relevant to selecting a sentence, so long as the sentence ultimately imposed falls within the statutory range for the offense of conviction. In United States v. Booker, 543 U.S. 220 (2005), for example, this Court observed that judges had traditionally made factual findings about conduct not proved to a jury and used those findings to determine the appropriate sentence. See, e.g., id. at 250-251. That practice, Booker explained, is constitutionally permissible because "when a trial judge exercises his discretion to select a specific sentence within a defined range, the defendant has no right to a jury determination of the facts that the judge deems relevant." Id. at 233. Since Booker, this Court has repeatedly reaffirmed that understanding of judicial discretion to find facts when sentencing within the statutory range established by the jury verdict or guilty plea. See, e.g., Alleyne v. United States, 570 U.S. 99, 116 (2013) (explaining that, within statutory limits, "broad sentencing discretion, informed by judicial factfinding, does not violate the Sixth Amendment"); Rita v. United States, 551 U.S. 338, 352 (2007) (stating that the Court's "Sixth Amendment cases do not automatically forbid a sentencing court to take

account of factual matters not determined by a jury and to increase the sentence in consequence"); Cunningham v. California, 549 U.S. 270, 285 (2007) (noting "no disagreement among the Justices" that judicial fact-finding under the Sentencing Guidelines "would not implicate the Sixth Amendment" if the Guidelines were advisory).

Petitioner's reference (Pet. 21, 29) to confrontation rights is also unavailing. This Court concluded in Crawford v. Washington, 541 U.S. 36 (2004), that the Confrontation Clause's guarantee "is most naturally read as a reference to the right of confrontation at common law, admitting only those exceptions established at the time of the founding." Id. at 54. The common-law confrontation right did not limit the evidence that could be received at sentencing. Williams v. New York, 337 U.S. 241, 246 (1949). As this Court has explained, "both before and since the American colonies became a nation," sentencing judges have been permitted "wide discretion in the sources and types of evidence used to assist [them] in determining the kind and extent of punishment to be imposed within limits fixed by law." Ibid.; see id. at 246-247 (observing that recognizing a confrontation right at sentencing under the Due Process Clause in capital cases would go beyond the traditional confrontation protection and run contrary to contemporary approaches to sentencing); see also Williams v. Oklahoma, 358 U.S. 576, 584 (1959). The district court's sentencing-related findings here accordingly did not implicate petitioner's confrontation rights.

b. Petitioner nevertheless contends that the district court's findings regarding his juvenile conduct are effectively elements of his offense of conviction, and thus implicate his confrontation rights, because they became "a tail that wags the dog" of his substantive offense of conviction -- unlawful possession of ammunition by a felon. Pet. 28 (quoting McMillan v. Pennsylvania, 477 U.S. 79, 88 (1986)). In petitioner's view (Pet. 27-29), a tail-wagging-the-dog theory is supported by this Court's recent decision in Haymond, which, he contends, "unmistakably" tethered a defendant's jury-trial right to "factors other than the effect of a disputed fact on the defendant's sentencing range." Pet. 28. Petitioner, however, has not shown a reasonable probability of prevailing on that theory.

As petitioner acknowledges (Pet. 26), in Blakely v. Washington, 542 U.S. 296 (2004), this Court expressly rejected a free-floating tail-that-wags-the-dog standard as lacking a "clear" "source" or a "precise effect." Id. at 311 n.13. Moreover, in both Apprendi v. New Jersey, 530 U.S. 466 (2000), and Alleyne, this Court reiterated that "[n]othing" in the relevant history "'suggests that it is impermissible for judges to exercise discretion -- taking into consideration various factors relating both to offense and offender -- in imposing a judgment within the range prescribed by statute.'" Alleyne, 570 U.S. at 116 (quoting Apprendi, 530 U.S. at 481) (emphasis omitted); see Booker, 543 U.S. at 233. Accordingly, no reasonable probability exists that

the court of appeals will disregard this Court's repeated statements and adopt the tail-wagging-the-dog standard that this Court has rejected.

Petitioner's reliance (Pet. 26-29) on Haymond to support such a claim is misplaced. In Haymond, four Justices concluded that the application of 18 U.S.C. 3583(k), which requires a district court to revoke supervised release and order reimprisonment for a minimum of five years for sex offenders who violate their supervised release by committing specified additional sex offenses, violated a defendant's jury-trial right. 139 S. Ct. at 2373, 2378 (opinion of Gorsuch, J.). Four other Justices concluded that the application of Section 3583(k) was constitutionally permissible, because a supervised-release revocation proceeding is not part of a "'criminal prosecution' within the meaning of the Sixth Amendment." Id. at 2391 (Alito, J., dissenting).

Justice Breyer supplied the dispositive vote in an opinion concurring in the judgment. Haymond, 139 S. Ct. at 2385-2386; see Marks v. United States, 430 U.S. 188, 193 (1977). Justice Breyer agreed "with much of the dissent," including that the Court should "not transplant" jury-trial-right cases such as Alleyne and Apprendi into "the supervised release context." Haymond, 139 S. Ct. at 2385. He nevertheless concluded that the "specific provision of the supervised-release statute" at issue in Haymond was unconstitutional because it operated "less like ordinary

revocation and more like punishment for a new offense, to which the jury right would typically attach." Id. at 2386.

Far from supporting petitioner's tail-wagging-the-dog theory, Justice Breyer's opinion expressly distinguished the "supervised-release context" at issue in Haymond from ordinary sentencings such as this case, which are governed by "the Apprendi line of cases." 139 S. Ct. at 2385. And, as explained, Apprendi forecloses petitioner's argument here. In addition, even in the supervised-release context, Justice Breyer premised his conclusion on the principle that "in an ordinary criminal prosecution, a jury must find facts that trigger a mandatory minimum prison term." Id. at 2386 (quoting Alleyne, 570 U.S. at 103) (emphasis added). This case lacks that critical feature, as any facts found by the district court did not trigger an increase in the sentencing range. Moreover, even if a tail-wagging-the-dog theory might be viable in some circumstances, the district court's consideration of three instances of unadjudicated juvenile misconduct at sentencing, as one small part of an extensive criminal history, would not suggest that it was the main driver of petitioner's sentence here.

4. Finally, petitioner contends (Pet. 30-33) that his prior conviction for robbery, in violation of Texas Penal Code Ann. § 29.02 (West 2011), does not qualify as a conviction for a crime of violence under either the elements clause or the enumerated-offenses clause of Sentencing Guidelines § 4B1.2(a)(2) (2016). Again, petitioner does not seek plenary review of that issue. He

instead asks (Pet. 32-33) this Court to GVR in light of this Court's decision in Stokeling v. United States, 139 S. Ct. 544 (2019). Petitioner's request lacks merit for at least two reasons.

First, although this Court sometimes issues a GVR order in light of an "intervening development[]" or a "recent development[]" that the court of appeals lacked the opportunity to "fully consider," Lawrence v. Chater, 516 U.S. 163, 167 (1996) (per curiam), the decision in Stokeling was neither. This Court decided Stokeling on January 15, 2019, nearly five months before the court of appeals rendered its decision in this case. Pet. App. B1. Petitioner thus had the opportunity to raise any Stokeling-based contentions below, but failed to do so.

Second, the court of appeals correctly determined that petitioner's prior conviction for Texas robbery was a conviction for a crime of violence under the enumerated-offenses clause of Sentencing Guidelines § 4B1.2(a)(2), and petitioner has not shown a reasonable probability of a different outcome in light of Stokeling. As the government explained in its recent brief in opposition in Jones v. United States, No. 19-5350 (Jan. 15, 2020), the Fifth Circuit correctly held in United States v. Santiesteban-Hernandez that the elements of robbery under Texas Penal Code Ann. § 29.02 "substantially correspond to the basic elements of the generic offense, in that they both involve theft and immediate danger to a person." 469 F.3d 376, 381 (2006), abrogated on other grounds by United States v. Rodriguez, 711 F.3d 541 (5th Cir.) (en

banc), cert. denied, 571 U.S. 989 (2013); see Gov't Br. in Opp. at 5-6, Jones, supra (No. 19-5350).[3] Texas robbery, therefore, qualifies as a crime of violence under the enumerated-offenses clause of Section 4B1.2(a)(2).

Further consideration in light of Stokeling would not have a reasonable probability of altering the outcome in this case. In Stokeling, this Court determined that a defendant's conviction for robbery under Florida law satisfied the elements clause of the Armed Career Criminal Act of 1984, 18 U.S.C. 924(e)(2)(B)(i) -- a clause worded identically to the elements clause of Sentencing Guidelines § 4B1.2(a)(1). See 139 S. Ct. at 555. But that inquiry is distinct from the generic-robbery inquiry required under Section 4B1.2(a)(2)'s enumerated-offenses clause. See Gov't Br. in Opp. at 7-9, Jones, supra (No. 19-5350); accord Santiesteban-Hernandez, 469 F.3d at 379 (Texas robbery need not "have as an element the use or threat of force against another person" to fall within "the generic, contemporary meaning of 'robbery'"); United States v. Gattis, 877 F.3d 150, 160 (4th Cir. 2017) (same for North Carolina robbery), cert. denied, 138 S. Ct. 1572 (2018); United States v. Molinar, 881 F.3d 1064, 1068-1074 (9th Cir.) (same for Arizona robbery), cert. denied, 139 S. Ct. 64 (2018).[4]

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[3] We have served petitioner with a copy of the government's brief in Jones.

[4] Because Texas robbery qualifies as generic robbery under the enumerated-offenses clause of Section 4B1.2(a)(2), no need exists to determine whether it also qualifies as a crime of violence under the elements clause -- the question that was pending before this Court in Walker v. United States, No. 19-373 (cert.

Indeed, after granting review in Stokeling, this Court denied several petitions for writs of certiorari seeking review of issues relating to the definition of generic robbery under the Guidelines, see Molinar v. United States, 139 S. Ct. 64 (2018) (No. 17-8443); Ward v. United States, 139 S. Ct. 61 (2018) (No. 17-8345); Lester v. United States, 138 S. Ct. 1604 (2018) (No. 17-8197); Blaylock v. United States, 138 S. Ct. 1584 (2018) (No. 17-8196); Morin v. United States, 138 S. Ct. 1583 (2018) (No. 17-8191); United States v. Gattis, 138 S. Ct. 1572 (2018) (No. 17-8044) -- including one petition seeking review, as the petition here does, of whether Texas robbery qualifies as generic robbery, see Truelove v. United States, 139 S. Ct. 58 (2018) (No. 17-8202). The Court should follow the same course here, particularly because petitioner identifies no conflict in the circuits on that question and because this case involves a claimed error in the application of the advisory Sentencing Guidelines that the Sentencing Commission could resolve. See, e.g., Braxton v. United States, 500 U.S. 344, 348 (1991) (explaining that the Sentencing Commission is charged with "periodically review[ing] the work of the courts" and making "whatever clarifying revisions to the Guidelines conflicting judicial decisions might suggest").

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granted Nov. 15, 2019, cert. dismissed Jan. 27, 2020), in the context of the Armed Career Criminal Act of 1984, 18 U.S.C. 924(e)(2)(B)(i).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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