

No. 19-6120

IN THE SUPREME COURT OF THE UNITED STATES

RAUL RODRIGUEZ, PETITIONER

v.

UNITED STATES OF AMERICA

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

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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Petitioner contends (Pet. 6-8) that his conviction for using or carrying a firearm during and in relation to a "crime of violence," in violation of 18 U.S.C. 924(c) (2012), is invalid because robbery in violation of the Hobbs Act, 18 U.S.C. 1951(a), is not a "crime of violence" within the meaning of 18 U.S.C. 924(c) (3) (A). That contention lacks merit, and the petition for a writ of certiorari should be denied.

1. Following a guilty plea, petitioner was convicted of robbery in violation of the Hobbs Act, 18 U.S.C. 1951(a), and using or carrying a firearm during and in relation to a "crime of violence" (the Hobbs Act robbery), in violation of 18 U.S.C.

924(c)(1)(A). Judgment 1. The court of appeals determined that petitioner's Hobbs Act robbery offense qualified 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 Pet. App. A8-A9.

In making that determination, the court of appeals relied on its earlier decision in United States v. Robinson, 844 F.3d 137 (3d Cir. 2016), cert. denied, 138 S. Ct. 215 (2017), and 139 S. Ct. 1168 (2019). See Pet. App. A8-A9. Robinson reasoned that "[w]hen the predicate offense, Hobbs Act robbery, and the § 924(c) offense are contemporaneous and tried to the same jury," the "jury's determination of the facts of the charged offenses unmistakably shed light on whether the predicate offense was committed with 'the use, attempted use, or threatened use of physical force against the person or property of another'" under Section 924(c)(3)(A), such that a "'categorical' approach" that looks to the statutory definition of the underlying crime "is not necessary." 844 F.3d at 141; see id. at 143-144 (considering jury's finding that defendant brandished a firearm during a robbery in assessing whether his Section 924(c) conviction involved a "crime of violence"). Judge Fuentes concurred in the judgment in Robinson, finding 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)(3)(A), id. at 147, and that, applying that approach, "Hobbs Act robbery is in fact a 'crime of violence,'" id. at 151.

2. a. Petitioner contends (Pet. 6-8) that the court of appeals erred by relying on its decision in Robinson and failing to conduct an analysis under Section 924(c)(3)(A) using the categorical approach employed by other circuits. But petitioner's methodological criticism makes no difference because the same result would follow in this case under a categorical approach to Section 924(c)(3)(A).

The Hobbs Act defines robbery to require the "unlawful taking or obtaining of personal property" from another "by means of actual or threatened force, or violence, or fear of injury, immediate or future, to his person or property." 18 U.S.C. 1951(b)(1). For the reasons stated in the government's brief in opposition to the petition for a writ of certiorari in Garcia v. United States, No. 17-5704 (filed Nov. 13, 2017), cert. denied, 138 S. Ct. 641 (2018), Hobbs Act robbery 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 7-10, Garcia, supra (No. 17-5704).¹ Every court of appeals to

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

consider the issue has so held. See id. at 8. And this Court has repeatedly denied review of that issue, see id. at 5 & n.1, including in both Robinson and Garcia; in other cases from the Third Circuit that have relied on the holding in Robinson;² and in additional cases challenging other circuits' application of the categorical approach to classify Hobbs Act robbery as a "crime of violence" under Section 924(c)(3)(A).³ The same result is warranted here.

b. Because Hobbs Act robbery qualifies as a crime of violence under Section 924(c)(3)(A), no reason exists to remand this case to the court of appeals for further consideration in

² See, e.g., Greer v. United States, 139 S. Ct. 2667 (2019) (No. 18-8292); Sowell v. United States, 139 S. Ct. 1324 (2019) (No. 18-6913); Foster v. United States, 139 S. Ct. 789 (2019) (No. 18-5655); Griffith v. United States, 138 S. Ct. 1165 (2018) (No. 17-6855); Thomas v. United States, 138 S. Ct. 646 (2018) (No. 17-6025); Galati v. United States, 138 S. Ct. 636 (2018) (No. 17-5229).

³ See, e.g., Hilario-Bello v. United States, No. 19-5172 (Nov. 4, 2019); Nelson v. United States, No. 19-5010 (Nov. 4, 2019); Durham v. United States, No. 19-5124 (Oct. 7, 2019); Young v. United States, No. 19-5061 (Oct. 7, 2019); Munoz v. United States, No. 18-9725 (Oct. 7, 2019); Lindsay v. United States, No. 18-9064 (Oct. 7, 2019); Hill v. United States, No. 18-8642 (Oct. 7, 2019); Duarte v. United States, 139 S. Ct. 1581 (2019) (No. 18-8329); Rojas v. United States, 139 S. Ct. 1324 (2019) (No. 18-6914); Desilien v. United States, 139 S. Ct. 413 (2018) (No. 17-9377); Ragland v. United States, 138 S. Ct. 1987 (2018) (No. 17-7248); Robinson v. United States, 138 S. Ct. 1986 (2018) (No. 17-6927); Chandler v. United States, 138 S. Ct. 1281 (2018) (No. 17-6415); Middleton v. United States, 138 S. Ct. 1280 (2018) (No. 17-6343); Jackson v. United States, 138 S. Ct. 977 (2018) (No. 17-6247).

light of United States v. Davis, 139 S. Ct. 2319 (2019). See Pet. 6. In Davis, this Court determined that the definition of a “crime of violence” in 18 U.S.C. 924(c)(3)(B) is unconstitutionally vague. 139 S. Ct. at 2336. This Court’s resolution of Davis did not affect the classification of Hobbs Act robbery as a crime of violence under Section 924(c)(3)(A), and no “reasonable probability” exists that this Court’s reasoning in Davis regarding Section 924(c)(3)(B) would cause the court of appeals to reconsider the “ultimate outcome” of its decision denying petitioner’s claim for relief. Lawrence ex rel. Lawrence v. Chater, 516 U.S. 163, 167 (1996) (per curiam).

The petition for a writ of certiorari should be denied.⁴

Respectfully submitted.

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Solicitor General

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⁴ The government waives any further response to the petition for a writ of certiorari unless this Court requests otherwise.