

# Appendix

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

**FILED**

OCT 2 2020

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

JORGE ZAMORA-SUAREZ, AKA Pedro  
Moncada,

Defendant-Appellant.

No. 17-56096

D.C. Nos. 2:16-cv-07271-TJH  
2:04-cr-00924-GAF-1

Central District of California,  
Los Angeles

ORDER

Before: HAWKINS and FRIEDLAND, Circuit Judges.

The stay entered on January 18, 2018 (Docket Entry No. 6), is lifted.

The request for a certificate of appealability (Docket Entry No. 5) is denied because appellant has not made a “substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2); *see also Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003); *United States v. Dominguez*, 954 F.3d 1251, 1260-61 (9th Cir. 2020).

Any pending motions are denied as moot.

**DENIED.**

United States District Court  
Central District of California  
Western Division

JORGE ZAMORA-SUAREZ,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

CV 16-07271 TJH  
CR 04-00924-GAF

Order

JS-6

The Court has considered Petitioner Jorge Zamora-Suarez's motion to vacate, set aside, or correct his sentence under 28 U.S.C. § 2255 or, in the alternative, request for a certificate of appealability as to his claim pursuant to 28 U.S.C. § 2253(c)(2), together with the moving and opposing papers.

Petitioner challenges his sentence under 18 U.S.C. § 924(c), which is predicated on interference with commerce by robbery ["Hobbs Act robbery"], in violation of 18 U.S.C. § 1951(a).

Section 924(c) defines "crime of violence" under § 924(c)(3)(A) [the "Force Clause"] and § 924(c)(3)(B) [the "Residual Clause"]. This Court held that the Residual Clause is unconstitutionally vague, and that certain convictions — convictions that,

1 under the categorical approach, *see Taylor v. United States*, 495 U.S. 575 (1990), fall  
 2 outside the Force Clause because the statutory elements of the conviction include  
 3 conduct falling outside the Force Clause’s definition of a “crime of violence” — must  
 4 be vacated. *See Juan Becerra-Perez v. United States*, No. 2:16-cv-07046-TJH (C.D.  
 5 Cal. Feb. 15, 2017). The Force Clause defines a “crime of violence” as a felony that  
 6 “has as an element the use, attempted use, or threatened use of physical force against  
 7 the person or property of another[.]” § 924(c)(3)(A).

8 The Hobbs Act robbery is a crime of violence under the Force Clause, as defined  
 9 in 18 U.S.C. § 924(c)(3)(A). Under Subsection (b)(1), Hobbs Act robbery punishes,  
 10 *inter alia*, the “fear of injury.” 18 U.S.C. §1951(b)(1). As this Court has previously,  
 11 and persuasively, held, the “fear of injury” prong of Hobbs Act robbery categorically  
 12 falls under the Force Clause because a Hobbs Act conviction under that prong satisfies  
 13 both the force and intent requirements of § 924(c)(3)(A). *United States v. Bailey*, No.  
 14 14-328, 2016 WL 3381218, at \*4–5 (C.D. Cal. June 8, 2016). Thus, even in view of  
 15 the most innocent statutory element, Hobbs Act robberies constitute crimes of violence  
 16 under the Force Clause.

17 A district court may issue a certificate of appealability “only if the applicant has  
 18 made a substantial showing of the denial of a constitutional right.” 28 U.S.C. §  
 19 2253(c)(2). Such a showing requires the petitioner to “demonstrate that the issues are  
 20 debatable among jurists of reason; that a court could resolve the issues [in a different  
 21 manner]; or that the questions are adequate to deserve encouragement to proceed  
 22 further.” *Lambright v. Stewart*, 220 F.3d 1022, 1025 (9th Cir. 2000) (alterations in  
 23 original, emphasis omitted). Petitioner has not made a substantial showing of the denial  
 24 of a constitutional right under any of the above bases.

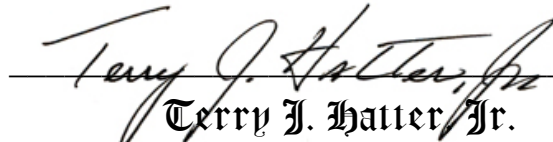
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 26 Accordingly,

27  
 28 **It is Ordered** that the motion to vacate Petitioner’s sentence under 18 U.S.C.

1 § 924(c) be, and hereby is, **Denied**.

2  
3 **It is Further Ordered** that Petitioner's request for for a certificate of  
4 appealability pursuant to 28 U.S.C. § 2253(c)(2) be, and hereby is, **Denied**.

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6 Date: July 26, 2017

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9 **Terry J. Hatter, Jr.**  
10 **Senior United States District Judge**  
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