

# Appendix

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

**FILED**

OCT 28 2020

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

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

ZELOS FIELDS,

Defendant-Appellant.

No. 17-56101

D.C. Nos. 5:16-cv-02051-TJH  
5:96-cr-00006-RT-2

Central District of California,  
Riverside

ORDER

Before: W. FLETCHER and R. NELSON, Circuit Judges.

The stay entered on January 18, 2018 (Docket Entry No. 3), is lifted.

The request for a certificate of appealability (Docket Entry No. 2) 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); *United States v. Watson*, 881 F.3d 782 (9th Cir.), *cert. denied*, 139 S. Ct. 203 (2018).

Any pending motions are denied as moot.

**DENIED.**

United States District Court  
Central District of California  
Western Division

ZELOS FIELDS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

CV 16-02051 TJH  
CR 96-00006 RT-2

Order

JS-6

The Court has considered Petitioner Zelos Fields'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 armed bank robbery, in violation of 18 U.S.C. § 2113(a) and (d), and interference with commerce by robbery ["Hobbs Act robbery"], in violation of 18 U.S.C. § 1951.

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 Sections 2113 (a) and (d) are crimes of violence under the Force Clause defined  
9 in § 924(c)(3)(A). *United States v. Wright*, 215 F.3d 1020, 1028 (9th Cir. 2000).  
10 Since *Wright*, the Ninth Circuit has reaffirmed that armed bank robbery qualifies as a  
11 crime of violence under the Force Clause. *United States v. Pritchard*, No. 15-50278,  
12 2017 WL 2219005, at \*1 (9th Cir. May 18, 2017). Subsection (a) provides for a felony  
13 conviction for bank robberies and incidental crimes committed “by force and violence,  
14 or by *intimidation*.” 18 U.S.C. § 2113(a) (emphasis added). The Ninth Circuit has  
15 defined intimidation under § 2113 to mean “wilfully to take, or attempt to take, in such  
16 a way that would put an ordinary, reasonable person in fear of bodily harm,” which  
17 comports with the requirement of a “threatened use of physical force” contained in the  
18 Force Clause. *United States v. Selfa*, 918 F.2d 749, 751 (9th Cir. 1990).

19 Similarly, subsection (d) includes “putting in jeopardy the life of any person by  
20 the use of a dangerous weapon or device.” 18 U.S.C. § 2113(d). As such, even the  
21 most innocent conduct penalized under this section would qualify as a crime of  
22 violence. *See United States v. Watson*, No. 14-00751 01 DKW, 2016 WL 866298, at  
23 \*7 (D. Haw. Mar. 2, 2016). Therefore, both subsections (a) and (d) fall within the  
24 definition of a crime of violence under 18 U.S.C. § 924(c)(3)(A). *Watson*, 2016 WL  
25 866298, at \*7. This conclusion is, further, supported by decisions in this Circuit  
26 reaching the same result. *See, e.g., McFarland v. United States*, No. CV 16-7166-  
27 JFW, 2017 WL 810267, at \*4 (C.D. Cal. Mar. 1, 2017); *United States v. Salinas*, No.  
28 1:08 CR 0338 LJO SKO, 2017 WL 2671059, at \*7 (E.D. Cal. June 21, 2017).

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

10 A district court may issue a certificate of appealability “only if the applicant has  
11 made a substantial showing of the denial of a constitutional right.” 28 U.S.C. §  
12 2253(c)(2). Such a showing requires the petitioner to “demonstrate that the issues are  
13 debatable among jurists of reason; that a court could resolve the issues [in a different  
14 manner]; or that the questions are adequate to deserve encouragement to proceed  
15 further.” *Lambright v. Stewart*, 220 F.3d 1022, 1025 (9th Cir. 2000) (alterations in  
16 original, emphasis omitted). Petitioner has not made a substantial showing of the denial  
17 of a constitutional right under any of the above bases.

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21 Accordingly,

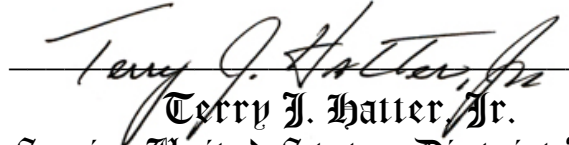
22  
23 **It is Ordered** that the motion to vacate Petitioner’s sentence under 18 U.S.C.  
24 § 924(c) be, and hereby is, **Denied**.

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26 **It is Further Ordered** that Petitioner’s request for a certificate of appealability  
27 be, and hereby is, **Denied** as moot.

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

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4 Date: July 26, 2017

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7 **Terry J. Hatter, Jr.**  
8 **Senior United States District Judge**  
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