

No. 17-1338

IN THE
Supreme Court of the United States

ROBERT E. FOX,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for Writ of Certiorari to
the United States Court of Appeals
for the Seventh Circuit

PETITION FOR REHEARING

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PETITION FOR REHEARING

Petitioner Robert E. Fox respectfully petitions under Supreme Court Rule 44 for rehearing of the Court's April 23, 2018 order denying his petition for a writ of certiorari. Specifically, Mr. Fox asks the Court to reconsider the second issue he presented in the context of the recently granted case, *Stokeling v. United States*. In support of his Petition, Mr. Fox submits a certificate of counsel pursuant to Rule 44.2

In the alternative, Mr. Fox asks that this Court hold his petition for certiorari until *Stokeling* is resolved so that the Court may consider its effect on the second question Mr. Fox presented in his petition for certiorari.

GROUND FOR REHEARING

Mr. Fox respectfully requests that the Court grant his petition for rehearing in light of its recent grant in *Stokeling v. United States*, which constitutes an intervening circumstance of a substantial effect. No. 17-5554, --- S. Ct. ---, 2018 WL 1568030 (Apr. 2, 2018) (Mem). Mr. Fox filed his petition for certiorari before this Court granted certiorari in *Stokeling* on April 2, 2018. Because the government waived its response in his case, Mr. Fox did not have an opportunity to address in a reply brief the similarities presented in *Stokeling*.

Stokeling asks whether a Florida robbery offense that includes "as an element" the common law requirement of overcoming "victim resistance" is categorically a "violent felony" under the Armed Career Criminal Act, 18 U.S.C. § 924(e)(2)(B). Under that section of the Armed Career Criminal Act, a violent felony is an offense that "has as an element the use,

attempted use, or threatened use of physical force against the person of another.” *Id.* But some appellate courts interpreted the offense to require only slight force to overcome victim resistance. The Court granted certiorari to answer whether this slight force is sufficient to constitute a “violent felony” under the categorical test this Court has applied to the Armed Career Criminal Act, a question on which the United States Courts of Appeals are divided.

The question presented in *Stokeling* is similar to the second question Mr. Fox presents in his petition for certiorari, which asked whether a Hobbs Act robbery qualifies as a “crime of violence” under 18 U.S.C. § 924(c). The statutes at issue in both *Stokeling* and *Fox* require application of the categorical approach, provided by this Court in *Taylor v. United States*, 495 U.S. 575 (1990). Like the petitioner in *Stokeling*, Mr. Fox argues the underlying offense, in this case a violation of the Hobbs Act robbery statute, does not trigger a sentencing enhancement because the statute encompasses offenses that do not involve sufficient physical force against another person. Mr. Fox’s argument in support of relief is even stronger than Mr. Stokeling’s because under the Hobbs Act, robbery may be accomplished with only the “future” “fear of injury” “to . . . property” by whatever means, and not necessarily with the use or threat of physical force. 18 U.S.C. § 1951. Thus, Hobbs Act robbery may be non-violent, requiring even less than the slight force described in *Stokeling*. Should this Court rule in *Stokeling* that the Florida robbery offense categorically does not satisfy 18 U.S.C. § 924(e)(2)(B)(i), then perforce Hobbs Act robbery cannot satisfy 18 U.S.C.

§ 924(c)(3)(A). Even a ruling rejecting Mr. Stokeling's claim may bear on the correctness of Mr. Fox's conviction.

Having granted certiorari in *Stokeling*, the Court may be inclined also to resolve the similar issue presented in this case. As alternative relief, Mr. Fox asks the Court to hold his petition until *Stokeling* is resolved, as the ruling in *Stokeling* may dictate the answer to the second Question Presented in Mr. Fox's case, so that Mr. Fox may obtain relief on direct appeal rather than on collateral review.

CONCLUSION

For the foregoing reasons, Mr. Fox requests that the Court grant this Petition for Rehearing.

Dated: May 11, 2018

Respectfully submitted,

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CERTIFICATION OF COUNSEL

I certify that the Petition for Rehearing is restricted to the grounds specified in Supreme Court Rule 44 and that it is presented in good faith and not for purposes of delay.

Dated: May 11, 2018



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