

No. 17-7197

IN THE SUPREME COURT OF THE UNITED STATES

AHMAD ADAMS, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the court of appeals erred in denying a certificate of appealability on petitioner's claim that armed bank robbery, in violation of 18 U.S.C. 2113(a) and (d), does not qualify as a "crime of violence" under 18 U.S.C. 924(c)(3).

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OPINIONS BELOW

The order of the court of appeals (Pet. App. A1, at 1-3) is unreported. The orders of the district court (Pet. App. A3, at 1-2; Pet. App. A4, at 1) are unreported.

JURISDICTION

The judgment of the court of appeals was entered on October 17, 2017. The petition for a writ of certiorari was filed on November 28, 2017. 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 Southern District of Florida, petitioner was convicted on two counts of using and carrying a firearm during and in relation to a crime of violence, in violation of 18 U.S.C. 924(c)(1)(A). Judgment 1. The district court sentenced petitioner to 360 months of imprisonment, to be followed by five years of supervised release. Id. at 2-3. Petitioner did not appeal his convictions or sentence. In 2011, the government filed a motion to reduce petitioner's sentence under Federal Rule of Criminal Procedure 35(b), based on his substantial assistance to law enforcement. The district court granted that motion and reduced petitioner's sentence to 180 months of imprisonment. 08-cr-80074 D. Ct. Doc. 50, at 1-2 (Mar. 25, 2011) (Resentencing Order). In 2016, petitioner filed a motion to vacate his sentence under 28 U.S.C. 2255. The district court denied petitioner's motion and denied his request for a certificate of appealability (COA). Pet. App. A3, at 1-2; Pet. App. A4, at 1. The court of appeals likewise denied a COA. Pet. App. A1, at 3.

1. Petitioner was a member of the "Knotty Head Clique," a gang that committed numerous armed bank robberies throughout Florida. Presentence Investigation Report (PSR) ¶ 9. Petitioner participated in at least three of those robberies in 2003 and 2004. PSR ¶¶ 11, 14-15, 22-23. The robbers' modus operandi was similar

in each case: they would steal a vehicle, drive it to a bank, enter the bank wearing masks and brandishing firearms, and threaten bank employees and customers at gunpoint. PSR ¶¶ 11, 14-15, 22-24. During one robbery, petitioner disarmed a bank security guard, pointed an assault rifle at the guard's head, and threatened to shoot him. PSR ¶ 11. During other robberies, the robbers used guns as bludgeons to strike bank employees and a customer in their heads. PSR ¶¶ 15-16, 22. The robbers stole approximately \$73,000 during the three robberies. PSR ¶¶ 11, 21-22.

2. Petitioner was charged by superseding information with two counts of using or carrying a firearm during and in relation to a "crime of violence," in violation of 18 U.S.C. 924(c)(1)(A). Pet. App. A2, at 2; see Superseding Information 1-2. The superseding information identified two underlying "crime[s] of violence" for each Section 924(c) offense: armed bank robbery, in violation of 18 U.S.C. 2113(a) and (d), and conspiracy to commit armed bank robbery, in violation of 18 U.S.C. 371. Pet. App. A2, at 2; see Superseding Information 1-2.

Petitioner pleaded guilty to both counts of the superseding information. Pet. App. A2, at 3; see Plea Agreement 1-2. The district court sentenced petitioner to 360 months of imprisonment, comprised of a statutory minimum sentence of 60 months of imprisonment on the first Section 924(c) count and a statutory

minimum consecutive sentence of 300 months on the second Section 924(c) count. Judgment 2. Petitioner did not appeal.

In 2011, the government filed a motion to reduce petitioner's sentence under Federal Rule of Criminal Procedure 35(b) based on his substantial assistance to law enforcement. 08-cr-80074 D. Ct. Doc. 47, at 1-2 (Mar. 4, 2011). The district court granted that motion and reduced petitioner's sentence to 180 months of imprisonment, including 60 months on the first Section 924(c) count and a consecutive term of 120 months on the second Section 924(c) count. Resentencing Order 1-2.

3. In 2016, petitioner filed a motion to vacate his sentence under 28 U.S.C. 2255. See 16-cv-80974 D. Ct. Doc. 8 (June 24, 2016) (Amended 2255 Mot.). Petitioner contended that his Section 924(c) convictions were invalid on the theory that armed bank robbery is not a "crime of violence" as defined in 18 U.S.C. 924(c)(3). Amended 2255 Mot. 11-29. Section 924(c)(3) defines a "crime of violence" as a felony that either "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), or, "by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense," 18 U.S.C. 924(c)(3)(B). Petitioner argued that armed bank robbery does not qualify as a crime of violence under Section 924(c)(3)(A) and that Section 924(c)(3)(B)

is unconstitutionally vague in light of Johnson v. United States, 135 S. Ct. 2551 (2015), which held that the “residual clause” of the definition of a “violent felony” in the Armed Career Criminal Act of 1984, 18 U.S.C. 924(e)(2)(B)(ii), is void for vagueness. Amended 2255 Mot. 11-29.

A magistrate judge issued a report recommending that petitioner’s motion be denied. Pet. App. A2, at 1-24. The magistrate judge determined that armed bank robbery includes as an element “the use, attempted use, or threatened use of physical force” and thus qualifies as a “crime of violence” under Section 924(c)(3)(A). Id. at 19-21. The magistrate judge further determined that petitioner had procedurally defaulted his claim that Section 924(c)(3)(B) is unconstitutionally vague by not raising it on direct appeal, id. at 9-12, and that he could not overcome that default because his offense would be a crime of violence under Section 924(c)(3)(A) regardless of whether Section 924(c)(3)(B) is invalid, id. at 11-12, 21-22.

The district court adopted the magistrate judge’s report and recommendation and denied petitioner’s motion. Pet. App. A3, at 1-2; see Pet. App. A4, at 1. The court also declined to issue a COA. Ibid.

4. The court of appeals denied petitioner’s application for a COA. Pet. App. A1, at 1-3. The court agreed with the district court that petitioner had procedurally defaulted his claim that

Section 924(c)(3)(B) is unconstitutionally vague by not raising it on direct appeal and determined that petitioner had failed to establish grounds for excusing that default. Id. at 2-3. The court of appeals reasoned that, in light of recent circuit precedent rejecting the merits of petitioner's argument that Johnson invalidated Section 924(c)(3)(B), see id. at 3 (citing Ovalles v. United States, 861 F.3d 1257, 1265-1266 (11th Cir. 2017)), he could not demonstrate prejudice from the failure to consider his defaulted claim, ibid. The court further determined that, because petitioner's claim was foreclosed by precedent, he could not show that "reasonable jurists would * * * debate the denial of his [Section] 2255 motion," as would be necessary to obtain a COA. Ibid. (citation omitted).

ARGUMENT

Petitioner contends (Pet. 9-35) that the court of appeals erred in denying a COA on his claim that armed bank robbery, in violation of 18 U.S.C. 2113(a) and (d), does not qualify as a "crime of violence" within the meaning of 18 U.S.C. 924(c)(3). That contention does not warrant review by this Court.

1. A federal prisoner seeking to appeal the denial of a motion for post-conviction relief under Section 2255 must obtain a COA. 28 U.S.C. 2253(c)(1)(B). To obtain a COA, the prisoner must make "a substantial showing of the denial of a constitutional right," 28 U.S.C. 2253(c)(2) -- that is, a "showing that reasonable

jurists could debate whether” a constitutional claim “should have been resolved in a different manner or that the issues presented were ‘adequate to deserve encouragement to proceed further.’” Slack v. McDaniel, 529 U.S. 473, 484 (2000) (quoting Barefoot v. Estelle, 463 U.S. 880, 893 n.4 (1983)); see Miller-El v. Cockrell, 537 U.S. 322, 327 (2003) (same).

Applying that standard, the court of appeals correctly denied a COA on petitioner’s claim that armed bank robbery is not a crime of violence under Section 924(c)(3). To convict a defendant of armed bank robbery, the government must prove that the defendant (1) took money from the custody or control of a bank “by force and violence, or by intimidation,” 18 U.S.C. 2113(a); and (2) either committed an “assault[]” or endangered “the life of any person by the use of a dangerous weapon or device” while committing the robbery, 18 U.S.C. 2113(d). For the reasons stated in our brief in opposition to the petition for a writ of certiorari in Stephens v. United States, cert. denied, No. 17-5186 (Dec. 4, 2017), that offense qualifies as a “crime of violence” under 18 U.S.C. 924(c)(3)(A). See Br. in Opp. at 6-9, Stephens, supra (No. 17-5186).^{*} Every court of appeals to consider whether the federal offenses of bank robbery or armed bank robbery qualify as crimes of violence under Section 924(c)(3)(A) and similar provisions has

^{*} We have served petitioner with a copy of the government’s brief in opposition in Stephens.

held that they do. Id. at 7-9. And this Court has repeatedly denied review of that issue, id. at 5 & n.2, including in Stephens, supra, and more recent cases. See, e.g., Perry v. United States, cert. denied, No. 17-6611 (Apr. 2, 2018) (armed bank robbery); Schneider v. United States, 138 S. Ct. 638 (2018) (No. 17-5477) (bank robbery); Castillo v. United States, 138 S. Ct. 638 (2018) (No. 17-5471) (bank robbery).

Petitioner contends (Pet. 31, 34-35) that, even if jurists could not reasonably debate whether the substantive offense of armed bank robbery is a crime of violence under Section 924(c)(3)(A), they could debate whether conspiracy to commit armed bank robbery is a qualifying offense. Even if that were true, however, it would not have warranted the issuance of a COA in this case. Both of the Section 924(c) counts to which petitioner pleaded guilty identified armed bank robbery as a predicate crime of violence. Pet. App. A2, at 2-3; see Superseding Information 1-2; Plea Agreement 1-2. The fact that those counts identified conspiracy to commit armed bank robbery as an additional predicate offense, see Superseding Information 1-2, is immaterial to whether petitioner's convictions under Section 924(c) are valid.

2. Because armed bank robbery qualifies as a "crime of violence" under Section 924(c)(3)(A), no reason exists to consider petitioner's argument (Pet. 9-30, 35-37) that the court of appeals erred in denying a COA on his claim that the alternative

"crime of violence" definition in 18 U.S.C. 924(c)(3)(B) is unconstitutionally vague. Nor does any reason exist to hold this petition for the decision in Sessions v. Dimaya, No. 15-1498 (reargued Oct. 2, 2017). See Pet. 9-10. Dimaya concerns the constitutionality of 18 U.S.C. 16(b), the language of which is similar to Section 924(c)(3)(B). But Dimaya presents no issue concerning a provision similar to Section 924(c)(3)(A), and thus the Court's holding in Dimaya will not resolve any question that will affect the outcome of this case.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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APRIL 2018

IN THE SUPREME COURT OF THE UNITED STATES

KEITH DESHAWN STEPHENS, 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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QUESTION PRESENTED

Whether armed bank robbery, in violation of 18 U.S.C. 2113(a) and (d), qualifies as a "crime of violence" within the meaning of 18 U.S.C. 924(c).

IN THE SUPREME COURT OF THE UNITED STATES

No. 17-5186

KEITH DESHAWN STEPHENS, 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

OPINION BELOW

The opinion of the court of appeals (Pet. App. A1-A2) is not published in the Federal Reporter but is reprinted at 689 Fed. Appx. 251.

JURISDICTION

The judgment of the court of appeals was entered on May 3, 2017. The petition for a writ of certiorari was filed on July 13, 2017. 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 Southern District of Texas, petitioner was convicted of armed bank robbery, in violation of 18 U.S.C. 2113(a), (d) and 2; and discharging a firearm during a "crime of violence," in violation of 18 U.S.C. 924(c)(1)(A)(iii) and 2. Judgment 1. The district court sentenced petitioner to 330 months of imprisonment, to be followed by five years of supervised release. Id. at 2-3. The court of appeals affirmed. Pet. App. A1-A2.

1. On July 16, 2014, three men robbed a branch of J.P. Morgan Chase Bank in Katy, Texas. Plea Agreement 9. Two of the men, Keon Jackson and Duquam Mathis, jumped over the teller counter and forced a bank employee to open the vault at gunpoint. Ibid. One of the robbers also fired a bullet into the bank's ceiling. Ibid. The robbers stole approximately \$76,000 in cash. Ibid.

Jackson and Mathis were subsequently arrested and confessed to their participation in the robbery. Plea Agreement 10-11. Both men identified petitioner as having masterminded the crime. Ibid. They explained that petitioner planned and coordinated the robbery, was in a car parked outside the bank acting as a lookout during the robbery, and remained in cell-phone contact with Jackson while the robbers were inside the bank. Ibid. A third unindicted co-conspirator confirmed those statements. Id. at 11-12. Police later searched petitioner's house and found the handgun that had been discharged during the robbery. Id. at 11.

2. A federal grand jury charged petitioner with armed bank robbery, in violation of 18 U.S.C. 2113(a), (d), and 2 (Count 1); and discharging a firearm during a "crime of violence" (i.e., the armed bank robbery charged in Count 1), in violation of 18 U.S.C. 924(c) (1) (A) (iii) and 2 (Count 2). Indictment 1-2. Petitioner pleaded guilty to both counts. Plea Agreement 1. The district court sentenced him to 330 months of imprisonment, including 210 months of imprisonment on Count 1 and a mandatory consecutive sentence of 120 months on Count 2. Judgment 2.

3. The court of appeals affirmed. Pet. App. A1-A2. Petitioner argued for the first time on appeal that armed bank robbery is not a "crime of violence" under Section 924(c) and that his conviction on Count 2 should therefore be vacated on plain-error review. Pet. C.A. Br. 12-34. Section 924(c) defines a "crime of violence" as a felony that either "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), or, "by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense," 18 U.S.C. 924(c) (3) (B). Petitioner contended that armed bank robbery does not qualify as a "crime of violence" under Section 924(c) (3) (A) because the offense may be accomplished by nonviolent "intimidation." Pet. C.A. Br. 15-27. He further argued that armed bank robbery cannot qualify as a "crime of violence" under Section 924(c) (3) (B) because that

provision is unconstitutionally vague under Johnson v. United States, 135 S. Ct. 2551 (2015). Pet. C.A. Br. 28-32.¹ Petitioner acknowledged, however, that his challenge to Section 924(c)(3)(B) was foreclosed by United States v. Gonzalez-Longoria, 831 F.3d 670 (2016) (en banc), petition for cert. pending, No. 16-6259 (filed Sept. 29, 2016), in which the Fifth Circuit held that a similarly worded statute, 18 U.S.C. 16(b), is not unconstitutionally vague in light of Johnson. Id. at 672; see Pet. C.A. Br. 28.

The government filed a motion for summary affirmance. See Gov't C.A. Mot. for Summ. Affirmance 4-7. The government noted that the Fifth Circuit had previously held that bank robbery is a "crime of violence" under Section 924(c)(3)(A). Id. at 4 (citing Royal v. Tombone, 141 F.3d 596, 601 (5th Cir. 1998)). The government also argued that, in any event, bank robbery qualifies as a "crime of violence" under Section 924(c)(3)(B) and that (as petitioner had acknowledged) Gonzalez-Longoria foreclosed a constitutional challenge to that provision. Id. at 5-7.

The court of appeals found petitioner's challenge to Section 924(c)(3)(B) to be foreclosed by Gonzalez-Longoria and summarily affirmed his conviction. Pet. App. A1-A2.

ARGUMENT

Petitioner contends (Pet. 8-18) that a writ of certiorari is warranted to consider whether the definition of a "crime of

¹ Johnson held that the "residual clause" of the Armed Career Criminal Act of 1984, 18 U.S.C. 924(e)(2)(B)(ii), is unconstitutionally vague. See 135 S. Ct. at 2557.

violence” in 18 U.S.C. 924(c)(3)(B) is unconstitutionally vague. That issue does not warrant review in the context of this case. As petitioner acknowledged in the court of appeals, he did not preserve a challenge to his Section 924(c) conviction in the district court and thus his claim is subject to review only for plain error. See Pet. C.A. Br. 12-13. Petitioner cannot establish error, plain or otherwise. Every court of appeals to consider the issue, including the Fifth Circuit, has held that bank robbery under 18 U.S.C. 2113(a), and especially armed bank robbery under 18 U.S.C. 2113(d), satisfies the definition of a “crime of violence” in 18 U.S.C. 924(c)(3)(A). That basis for upholding the judgment obviates any need for this Court to consider whether Section 924(c)(3)(B) is unconstitutionally vague. This Court has repeatedly denied petitions for writs of certiorari seeking review of whether bank robbery qualifies as a “crime of violence” under Section 924(c).² The same result is appropriate here.

1. To establish reversible plain error under Federal Rule of Criminal Procedure 52(b), a defendant must demonstrate that (1) the district court committed an “error”; (2) the error was “plain,” meaning “clear” or “obvious” under the law as it existed at the time of the relevant district court or appellate proceedings; (3) the error “affect[ed] [his] substantial rights”;

² See, e.g., Williams v. United States, No. 17-5551 (Oct. 2, 2017); Bruce v. United States, 137 S. Ct. 1580 (2017) (No. 16-7084); Fox v. United States, 137 S. Ct. 1224 (2017) (No. 16-6989); McBride v. United States, 137 S. Ct. 830 (2017) (No. 16-6475); Wingate v. United States, 136 S. Ct. 1364 (2016) (No. 15-5979).

and (4) the error "seriously affect[ed] the fairness, integrity or public reputation of judicial proceedings." United States v. Olano, 507 U.S. 725, 732 (1993) (citations omitted). "Meeting all four prongs is difficult, 'as it should be.'" Puckett v. United States, 556 U.S. 129, 135 (2009) (quoting United States v. Dominguez Benitez, 542 U.S. 74, 83 n.9 (2004)).

2. Petitioner cannot prove an error, much less a clear or obvious one. As noted above, Section 924(c)(3)(A) defines a "crime of violence" as a felony that "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). Petitioner pleaded guilty to armed bank robbery, which requires proof that the defendant (1) took money from the custody or control of a bank "by force and violence, or by intimidation," 18 U.S.C. 2113(a); and (2) either committed an "assault[]" or endangered "the life of any person by the use of a dangerous weapon or device" while committing the robbery, 18 U.S.C. 2113(d). See, e.g., Indictment 1 (alleging that petitioner and his confederates committed bank robbery "by force, violence and intimidation," and "did assault and put in jeopardy the life of another person by the use of * * * a firearm"); Plea Agreement 1, 8-9 (admitting petitioner's guilt to those charges).³

³ Petitioner notes (Pet. 4) that the indictment alleged that he and his confederates committed the robbery while "aiding and abetting each other." Indictment 1. Even under an aiding-and-abetting theory, however, the government would still have had to prove that either petitioner or his confederates committed each

Petitioner contended in the court of appeals that armed bank robbery does not categorically qualify as a "crime of violence" under Section 924(c) (3) (A) because the offense can be committed by "[i]ntimidation," which petitioner argued "does not require a threat to inflict [bodily] harm by the use of force." Pet. C.A. Br. 22. The courts of appeals have uniformly rejected that view of "intimidation." See, e.g., United States v. Armour, 840 F.3d 904, 909 (7th Cir. 2016) ("A bank employee can reasonably believe that a robber's demands for money to which he is not entitled will be met with violent force * * * because bank robbery under [Section] 2113(a) inherently contains a threat of violent physical force."); United States v. McBride, 826 F.3d 293, 296 (6th Cir. 2016) (same), cert. denied, 137 S. Ct. 830 (2017); United States v. McNeal, 818 F.3d 141, 154 (4th Cir.) (same), cert. denied, 137 S. Ct. 164 (2016); United States v. Selfa, 918 F.2d 749, 751 (9th Cir.) (same), cert. denied, 498 U.S. 986 (1990); United States v. Ferreira, 821 F.2d 1, 6 n.8 (1st Cir. 1987) (same).⁴

of the elements of the underlying offense of armed bank robbery and that petitioner was "punishable as a principal" for that offense because he took active and intentional steps to facilitate the crime. 18 U.S.C. 2(a); see Rosemond v. United States, 134 S. Ct. 1240, 1245, 1247 & n.6 (2014). The elements of the aiding-and-abetting offense are thus a superset of the elements of the substantive crime. If armed bank robbery satisfies Section 924(c) (3) (B), then aiding and abetting that offense does as well.

⁴ Petitioner's argument in the court of appeals rested on his assertion that "[i]ntimidation" could be committed through indirect means, such as by "threatening to release poison gas," and that such means do not require the application of physical force. Pet. C.A. Br. 22. That reasoning is inconsistent with

Consistent with that uniform understanding of the elements of the offense, every court of appeals to have addressed the issue, including the Fifth Circuit, has concluded that bank robbery under Section 2113(a) qualifies as a "crime of violence" within the meaning of Section 924(c) (3) (A) and similar provisions. See United States v. Ellison, 866 F.3d 32, 35-39 (1st Cir. 2017); United States v. Williams, 864 F.3d 826, 830 (7th Cir. 2017) (citing Armour, 840 F.3d at 909), cert. denied, No. 17-5551 (Oct. 2, 2017); United States v. Jones, 854 F.3d 737, 740 & n.2 (5th Cir. 2017), cert. denied, No. 17-5285 (Oct. 2, 2017); Holder v. United States, 836 F.3d 891, 892 (8th Cir. 2016) (per curiam); In re Sams, 830 F.3d 1234, 1239 (11th Cir. 2016); McNeal, 818 F.3d at 153; Johnson v. United States, 779 F.3d 125, 128-129 (2d Cir.), cert. denied, 136 S. Ct. 209 (2015); United States v. Wright, 215 F.3d 1020, 1028 (9th Cir.), cert. denied, 531 U.S. 969 (2000); Royal v. Tombone, 141 F.3d 596, 602 (5th Cir. 1998); see generally McNeal, 818 F.3d at 153 ("Our sister circuits have uniformly ruled that other federal crimes involving takings 'by force and violence, or by intimidation,' have as an element the use, attempted use, or threatened use of physical force.").

The same conclusion necessarily follows for armed bank robbery under 18 U.S.C. 2113(d), which has an additional element

this Court's decision in United States v. Castleman, 134 S. Ct. 1405 (2014), which held that the term "use * * * of physical force" in 18 U.S.C. 921(a)(33)(A) includes both the direct and indirect causation of physical harm. 134 S. Ct. at 1414-1415.

requiring that the robber actually committed an assault or otherwise put a person's life in jeopardy by the use of a dangerous weapon or device. See, e.g., In re Hines, 824 F.3d 1334, 1337 (11th Cir. 2016) (holding that "a conviction for armed bank robbery clearly meets the requirement[s]" of Section 924(c)(3)(A)).

In light of that uniform precedent, the district court did not err, much less clearly and obviously err, in determining that armed bank robbery is a "crime of violence" under Section 924(c). And because that offense qualifies as a "crime of violence" under Section 924(c)(3)(A), no reason exists to consider whether the offense would also qualify under Section 924(c)(3)(B).

3. Petitioner notes (Pet. 8) that this Court has granted a petition for a writ of certiorari in Sessions v. Dimaya, No. 15-1498 (reargued Oct. 2, 2017), to consider whether the definition of a "crime of violence" in 18 U.S.C. 16(b) is unconstitutionally vague. Although Section 16(b) and Section 924(c)(3)(B) contain similar language, the Court's decision in Dimaya will not resolve any question properly presented in this case. As explained, armed bank robbery qualifies as a "crime of violence" under Section 924(c)(3)(A), the language of which is not at issue in Dimaya. Holding this petition for the decision in Dimaya is therefore not warranted.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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OCTOBER 2017