

No. 17-8244

IN THE SUPREME COURT OF THE UNITED STATES

JAY ANTHONY RICHITELLI, PETITIONER

v.

UNITED STATES OF AMERICA

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

MEMORANDUM FOR THE UNITED STATES

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Petitioner was convicted of conspiracy to commit robbery, in violation of the Hobbs Act, 18 U.S.C. 1951(a); attempted Hobbs Act robbery, in violation of 18 U.S.C. 1951(a); and three related firearms offenses. Pet. App. A4, at 1. Pursuant to 18 U.S.C. 3559(c), the district court sentenced petitioner to life imprisonment on the Hobbs Act conspiracy and attempted Hobbs Act robbery counts. Pet. App. A4, at 2. Section 3559(c) requires a mandatory life sentence for a defendant whose current federal offense is a "serious violent felony" and who has at least two prior convictions in federal or state court for "serious violent

felonies.” 18 U.S.C. 3559(c)(1)(A)(i). The statute defines a “serious violent felony” to include (as relevant here) an offense “punishable by a maximum term of imprisonment of 10 years or more that has as an element the use, attempted use, or threatened use of physical force against the person of another or that, by its nature, involves a substantial risk that physical force against the person of another may be used in the course of committing the offense.” 18 U.S.C. 3559(c)(2)(F)(ii).

Petitioner contends (Pet. 12-22) that Section 3559(c) does not authorize his life sentence because (1) his current convictions for attempted Hobbs Act robbery and conspiracy to commit Hobbs Act robbery do not qualify as serious violent felonies under the elements provision of Section 3559(c)(2)(F)(ii); and (2) the statute’s “substantial risk” provision is unconstitutionally vague. The court of appeals denied a certificate of appealability on the ground that attempted Hobbs Act robbery “requires the actual or threatened use of force” and thus qualifies as a serious violent felony under Section 3559(c)(2)(F)(ii)’s elements provision. Pet. App. A1, at 10. That reasoning, however, is incorrect. The Hobbs Act includes robberies committed “by means of actual or threatened force or violence, or fear of injury” to the victim’s “person or property,” 18 U.S.C. 1951(b)(1) (emphasis added), while Section 3559(c) refers only to the use or threatened use of force “against the person of another,” 18 U.S.C. 3559(c)(2)(F)(ii) (emphasis added).

The court of appeals did not address whether attempted Hobbs Act robbery or conspiracy to commit Hobbs Act robbery would qualify as serious violent felonies under the "substantial risk" provision of Section 3559(c)(2)(F)(ii). That provision is similar to the definition of a "crime of violence" in 18 U.S.C. 16(b), which this Court deemed unconstitutionally vague in Sessions v. Dimaya, 138 S. Ct. 1204 (2018).

Accordingly, the appropriate course is to grant the petition for a writ of certiorari, vacate the court of appeals' judgment, and remand for further consideration of petitioner's challenge to his life sentence under 18 U.S.C. 3559(c) in light of Dimaya and the government's position set forth in this memorandum.*

Respectfully submitted.

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* Petitioner also contends (Pet. 22-42) that he is not subject to a mandatory life sentence under Section 3559(c) because his prior convictions for Florida armed robbery do not qualify as serious violent felonies under the elements provision of Section 3559(c)(2)(F)(ii). The Court is currently considering a related question in Stokeling v. United States, cert. granted, No. 17-5554 (Apr. 2, 2018). Because vacatur and remand is warranted on the threshold question of whether petitioner's Hobbs Act offenses are serious violent felonies, however, no reason exists to hold the petition for Stokeling. The government waives any further response to the petition unless this Court requests otherwise.