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8 **United States District Court**  
9 **Central District of California**  
10 **Western Division**  
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12 JOSE MANUEL IBARRA,

13 Petitioner,

14 v.

15 UNITED STATES OF AMERICA,

16 Respondent.  
17  
18

CV 16-04222 TJH  
CR 04-00755 DT

**Order**

JS-6

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

23 Petitioner challenges his sentence under 18 U.S.C. § 924(c), which is predicated  
24 on armed bank robbery, in violation of 18 U.S.C. § 2113(a) and (d).

25 Section 924(c) defines "crime of violence" under § 924(c)(3)(A) [the "Force  
26 Clause"] and § 924(c)(3)(B) [the "Residual Clause"]. This Court held that the Residual  
27 Clause is unconstitutionally vague, and that certain convictions — convictions that,  
28 under the categorical approach, *see Taylor v. United States*, 495 U.S. 575 (1990), fall

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

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

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

28 A district court may issue a certificate of appealability “only if the applicant has

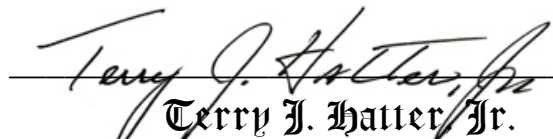
1 made a substantial showing of the denial of a constitutional right.” 28 U.S.C. §  
2 2253(c)(2). Such a showing requires the petitioner to “demonstrate that the issues are  
3 debatable among jurists of reason; that a court could resolve the issues [in a different  
4 manner]; or that the questions are adequate to deserve encouragement to proceed  
5 further.” *Lambright v. Stewart*, 220 F.3d 1022, 1025 (9th Cir. 2000) (alterations in  
6 original, emphasis omitted). Petitioner has not made a substantial showing of the denial  
7 of a constitutional right under any of the above bases.

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9 Accordingly,

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11 **It is Ordered** that the motion to vacate Petitioner’s sentence under 18 U.S.C.  
12 § 924(c) be, and hereby is, **Denied**.

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

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17 Date: July 27, 2017

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20 **Terry J. Hatter, Jr.**  
21 **Senior United States District Judge**  
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