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8 **United States District Court**
9 **Central District of California**
10 **Western Division**
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12 **JORGE ZAMORA-SUAREZ,**

13 **Petitioner,**

14 **v.**

15 **UNITED STATES OF AMERICA,**

16 **Respondent.**
17
18

CV 16-07271 TJH
CR 04-00924-GAF

Order

JS-6

19 The Court has considered Petitioner Jorge Zamora-Suarez’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 interference with commerce by robbery [“Hobbs Act robbery”], in violation of 18
25 U.S.C. § 1951(a).

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

17 A district court may issue a certificate of appealability “only if the applicant has
18 made a substantial showing of the denial of a constitutional right.” 28 U.S.C. §
19 2253(c)(2). Such a showing requires the petitioner to “demonstrate that the issues are
20 debatable among jurists of reason; that a court could resolve the issues [in a different
21 manner]; or that the questions are adequate to deserve encouragement to proceed
22 further.” *Lambright v. Stewart*, 220 F.3d 1022, 1025 (9th Cir. 2000) (alterations in
23 original, emphasis omitted). Petitioner has not made a substantial showing of the denial
24 of a constitutional right under any of the above bases.

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26 Accordingly,

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28 **It is Ordered** that the motion to vacate Petitioner’s sentence under 18 U.S.C.

1 § 924(c) be, and hereby is, **Denied**.

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

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6 Date: July 26, 2017

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9 **Terry J. Hatter, Jr.**
10 **Senior United States District Judge**