No. 24-5774

IN THE SUPREME COURT OF THE UNITED STATES

DWAYNE BARRETT, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the district court on remand must impose a sentence on petitioner for murder using a firearm during a Hobbs Act robbery, in violation of 18 U.S.C. 924(j), and also for the lesser-included offense of using a firearm during and in relation to the same Hobbs Act robbery, in violation of 18 U.S.C. 924(c).

2. Whether robbery in violation of the Hobbs Act, 18 U.S.C. 1951(a), qualifies as a "crime of violence" within the meaning of 18 U.S.C. 924(c)(3)(A).

ADDITIONAL RELATED PROCEEDINGS

United States District Court (S.D.N.Y.):

United States v. Barrett, No. 12-CR-45 (May 21, 2021)

United States v. Barrett, No. 12-CR-45 (July 17, 2014)

United States Court of Appeals (2d Cir.):

United States v. Barrett, No. 21-1379 (May 15, 2024)

United States v. Barrett, No. 14-2641 (Sept. 10, 2018)

United States v. Barrett, No. 14-2641 (Aug, 30, 2019)

Supreme Court of the United States:

Barrett v. United States, No. 18-6985 (June 28, 2019)

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OPINION BELOW

The opinion of the court of appeals (Pet. App. 1a-70a) is reported at 102 F.4th 60. Prior decisions of the court of appeals are available at 937 F.3d 126; 903 F.3d 166; and 750 Fed. Appx. 19.

JURISDICTION

The judgment of the court of appeals was entered on May 15, 2024. A petition for rehearing was denied on July 19, 2024 (Pet. App. 71a). The petition for a writ of certiorari was filed on October 15, 2024. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the Southern District of New York, petitioner was convicted on one count of conspiring to commit Hobbs Act robbery, in violation of 18 U.S.C. 1951; two counts of Hobbs Act robbery, in violation of 18 U.S.C. 1951; three counts of carrying and using a firearm during and in relation to a crime of violence, in violation of 18 U.S.C. 924(c)(1)(A); and one count of murder using a firearm during a crime of violence, in violation of 18 U.S.C. 924(j)(1) and (2). Judgment 1-2. The district court sentenced petitioner to 90 years of imprisonment, to be followed by three years of supervised release. Judgment 3-4. The court of appeals affirmed. 903 F.3d 166; 750 Fed. Appx. 19. This Court granted a petition for a writ of certiorari, vacated the judgment of the court of appeals, and remanded for further consideration in light of United States v. Davis, 588 U.S. 445 (2019).

On remand, the court of appeals vacated one Section 924(c) conviction, which had been predicated on conspiracy to commit Hobbs Act robbery, in light of Davis. 937 F.3d 126. The district court resentenced petitioner to 50 years of imprisonment, to be followed by three years of supervised release. Amended Judgment 1-4. The court of appeals affirmed petitioner's convictions but vacated petitioner's sentence and remanded for resentencing. Pet. App. 1a-70a.

1. In 2011 and 2012, petitioner and others, known as "the Crew," conspired to commit a series of violent robberies. 903 F.3d at 170-171. The Crew generally targeted small businesses believed to have cash or valuables. Id. at 170.

In one of their robberies, on October 29, 2011, petitioner and other Crew members robbed a poultry business owner, Ahmed Salahi, of $15,000. 903 F.3d at 170. They followed Salahi to a mosque and, when he exited, forced him at knifepoint into his car and drove him to his home. Ibid. While Salahi lay on the floor of his car, one Crew member held a knife to Salahi's head, another took Salahi's keys, and Crew members entered Salahi's home, where they found Salahi's brother and 8- and 10-year-old nephews. Ibid. Brandishing guns, petitioner and another Crew member ordered Salahi's brother and nephews to lie on the floor and not to make a sound. Ibid. Crew members took Salahi's money from a closet and fled. Ibid.

In another robbery, on December 12, 2011, petitioner and other Crew members robbed and killed Gamar Dafalla. Pet. App. 5a-7a. Three Crew members, traveling in petitioner's car, followed Dafalla to and from the site of a $10,000 cash sale of untaxed cigarettes. Id. at 5a. As petitioner waited in the car, the others approached the minivan in which Dafalla was traveling with two other people. Id. at 5a-6a. Crew members pressed guns against the heads of Dafalla's companions, pulled them out of the van,

took the wheel, and drove off with Dafalla. Id. at 6a. As they did so, Dafalla threw some of the money out the window. Ibid. When the Crew members realized what Dafalla had done, they shot and killed him. Ibid. Petitioner and another Crew member later threw the murder weapon into the Hudson River. Id. at 6a-7a.

2. A federal grand jury in the Southern District of New York returned an indictment charging petitioner with conspiring to commit Hobbs Act robbery, in violation of 18 U.S.C. 1951; two counts of Hobbs Act robbery, in violation of 18 U.S.C. 1951; three counts of carrying and using a firearm in relation to a crime of violence, in violation of 18 U.S.C. 924(c)(1)(A); and one count of murder using a firearm during a crime of violence, in violation of 18 U.S.C. 924(j)(1) and (2). Superseding Indictment 1-9.

The first Section 924(c) offense was predicated on the Hobbs Act conspiracy. Superseding Indictment 6. One of the Hobbs Act robbery charges was based on the robbery of Salahi, and one Section 924(c) charge was predicated on that robbery. Id. at 7-8. The other Hobbs Act robbery charge was based on the robbery in which Dafalla was killed, and the government charged both a Section 924(c) offense and a Section 924(j) offense predicated on that robbery and murder. Id. at 8-9.

A jury found petitioner guilty on all counts. Judgment 1-2. The district court sentenced petitioner to 90 years of imprisonment, to be followed by three years of supervised release.

Judgment 3-4. The sentence consisted of 20 years on the Hobbs Act conspiracy; 15 years on each of the Hobbs Act robberies, to run concurrently to each other but consecutive to the 20-year sentence on the conspiracy count; a five-year consecutive sentence for the first Section 924(c) offense; a 25-year consecutive sentence on the second Section 924(c) offense; and a 25-year consecutive sentence on the Section 924(j) offense. Judgment 3.[1] The court did not impose a sentence for the Section 924(c) offense predicated on the Dafalla robbery because the court considered that offense to be a lesser-included offense of the Section 924(j) offense for murder during the course of that robbery. Ibid.

3. The court of appeals affirmed. 903 F.3d 166; 750 Fed. Appx. 19. The court rejected petitioner's argument that his Section 924(c) convictions had to be be vacated on the ground that Hobbs Act conspiracy and Hobbs Act robbery are not crimes of violence under 18 U.S.C. 924(c)(3). Id. at 172-184. Section 924(c)(3)(A) defines "'crime of violence'" to include an offense

[1] At the time of petitioner's sentencing, Section 924(c) provided for a five-year statutory minimum sentence for a first offense and required a consecutive 25-year sentence "[i]n the case of a second or subsequent conviction under this subsection." 18 U.S.C. 924(c)(1)(C)(i) (1998). In Deal v. United States, 508 U.S. 129 (1993), this Court construed the statutory phrase "'second or subsequent conviction'" in Section 924(c) to include a defendant's second and subsequent counts of conviction under Section 924(c) even when those convictions are entered "in [a] single proceeding" along with the defendant's first Section 924(c) conviction. Id. at 131 (citation omitted); see id. at 131-134.

that is a federal felony and "has as an element the use, attempted use, or threatened use of physical force against the person or property of another." Section 924(c)(3)(B) further, and alternatively, defines "crime of violence" to include a federal felony "that 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."

The court of appeals relied on circuit precedent recognizing that Hobbs Act robbery is a crime of violence under Section 924(c)(3)(A). 903 F.3d at 174 (citing United States v. Hill, 890 F.3d 51 (2d Cir. 2018), cert. denied, 586 U.S. 1092 (2019)). It further concluded that Hobbs Act conspiracy is a crime of violence either because a conspiracy to commit a crime that satisfies the elements of Section 924(c)(3)(A) categorically entails a risk of physical force sufficient to satisfy Section 924(c)(3)(B), or under a conduct-specific approach to evaluating whether a particular defendant, like petitioner, committed a predicate crime of violence under Section 924(c)(3)(B). 903 F.3d at 175-185.

The court of appeals also rejected petitioner's argument that the district court had erred by imposing a consecutive 25-year sentence for his Section 924(j) conviction. 750 Fed. Appx. at 23. It explained that Section 924(j) incorporates the requirements of Section 924(c), which specified penalty enhancements and mandatory

consecutive sentences. Ibid.; see 18 U.S.C. 924(c)(1)(A) and (D)(ii).

4. This Court granted a petition for a writ of certiorari, vacated the judgment of the court of appeals, and remanded for further consideration in light of United States v. Davis, 588 U.S. 445 (2019). In Davis, this Court held in a case involving Hobbs Act conspiracy that the definition of "crime of violence" in Section 924(c)(3)(B) is unconstitutionally vague. Id. at 470.

On remand, the court of appeals vacated petitioner's Section 924(c) offense predicated on Hobbs Act conspiracy and remanded for resentencing, noting that the parties had agreed that the classification of Hobbs Act conspiracy as a crime of violence depended on the now-invalid Section 924(c)(3)(B) definition. 937 F.3d at 128. The court adhered, however, to the view that Section 924(j) incorporates Section 924(c)'s penalty enhancements and mandatory consecutive sentencing. Id. at 129 n.2.

The district court resentenced petitioner to 50 years of imprisonment, to be followed by three years of supervised release. Amended Judgment 3-4. The sentence consisted of concurrent 20-year sentences on the Hobbs Act conspiracy and the two Hobbs Act robberies; a consecutive five-year sentence on the Section 924(c) conviction predicated on the Salahi robbery; and a consecutive 25-year sentence on the Section 924(j) conviction predicated on the Dafalla murder. Id. at 3. The court again declined to sentence

petitioner on the lesser-included Section 924(c) offense predicated on the Daffala robbery.[2]

5. The court of appeals affirmed petitioner's convictions but again remanded for resentencing. Pet. App. 1a-70a. While the appeal was pending, this Court decided two relevant cases. In United States v. Taylor, 596 U.S. 845, 851-852 (2022), this Court held that attempted Hobbs Act robbery does not qualify as a crime of violence under Section 924(c)(3)(A). In Lora v. United States, 599 U.S. 453 (2023), the Court held that the consecutive-sentence requirement in 18 U.S.C. 924(c)(1)(D)(ii) does not apply to a sentence imposed under 18 U.S.C. 924(j).

The court of appeals recognized that completed Hobbs Act robbery remains a crime of violence under 18 U.S.C. 924(c) after Taylor. Pet. App. 36a-40a. The court explained (id. at 37a) that it had already decided that issue in United States v. McCoy, 58 F.4th 72 (2d Cir. 2023), cert. denied, 144 S. Ct. 115, and 144 S. Ct. 116 (2023). And the court observed that "[t]he ten of our sister circuits to have considered similar post-Taylor challenges

[2] At the time of petitioner's resentencing, the First Step Act of 2018 had become law. See Pub. L. No. 115-391, 132 Stat. 5194. In Section 403(a) of the First Step Act, Congress deleted Section 924(c)(1)(C)'s reference to a "second or subsequent conviction" and replaced it with the phrase "violation of this subsection that occurs after a prior conviction under this subsection has become final." § 403(a), 132 Stat. 5221-5222. The district court applied the amended version of Section 924(c)(1)(C) at the resentencing. See Pet. App. 11a-12a.

to the identification of substantive Hobbs Act robbery as a [Section] 924(c)(3)(A) crime of violence have reached the same conclusion." Pet. App. 37a (citing cases).

The court of appeals also concluded that, given this Court's decision in Lora, the district court had erred by imposing a mandatory consecutive sentence for the Section 924(j) offense on the view -- rejected in Lora -- that Section 924(j) incorporates the minimum and consecutive sentencing mandates of Section 924(c)(1). Pet. App. 44a-51a. The court could not determine based on the record whether the error was harmless, and therefore found that a remand was required. Id. at 48a-51a.

The court of appeals rejected petitioner's argument that, on remand, the Section 924(c) conviction predicated on the Dafalla robbery was a lesser-included offense of the Section 924(j) offense predicated on the same crime, such that the Double Jeopardy Clause would preclude separate sentences for each. Pet. App. 52a. The court took the view that "[a]s construed in Lora," Section 924(c)(1) and Section 924(j) are "separate offenses for which Congress has clearly authorized cumulative punishments," even when predicated on the same underlying crime. Ibid.; see id. at 61a. The court reasoned that Congress had clearly authorized cumulative punishment under each provision by (1) specifying "minimum prison terms" under Section 924(c) -- regardless of whether the proscribed use causes actual harm -- that "must run consecutively to any other

sentences imposed on a defendant," id. at 55a-56a (citing 18 U.S.C. 924(c)(1)(A) and (D)(ii)), and (2) developing a "'different approach to punishment'" for homicide crimes under Section 924(j), id. at 57a-59a (citation omitted). The court of appeals therefore stated that the district court on remand should impose a separate sentence on each of the Section 924(c) and 924(j) counts predicated on the robbery and murder of Dafalla. Id. at 52a-53a, 66a.

ARGUMENT

Petitioner contends (Pet. 8-16) that the court of appeals erred in concluding that imposing sentences on both a Section 924(c) conviction and a Section 924(j) conviction, when the offenses are based on the same underlying Hobbs Act robbery, is consistent with the Double Jeopardy Clause. That question does not warrant review in this interlocutory posture. Petitioner has not yet been resentenced, and the district court could structure the sentence -- or, consistent with its longstanding approach in cases like this one, the government would be able to seek dismissal of one of the relevant charges -- to avoid any constitutional violation or render it harmless.

Petitioner also renews his contention (Pet. 21-28) that Hobbs Act robbery is not a crime of violence under the definition of that term in Section 924(c)(3)(A). The court of appeals correctly rejected that argument, and its decision does not conflict with any decision of this Court or another court of appeals. This Court

has recently and repeatedly denied certiorari on the question whether completed Hobbs Act robbery is a crime of violence.[3] The same course is warranted here.

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[3] See, e.g., Rhodes v. United States, 2024 WL 4427011 (Oct. 7, 2024) (No. 23-7679); Boddie v. United States, 144 S. Ct. 1045 (2024) (No. 23-6656); Singletary v. United States, 144 S. Ct. 519 (2023) (No. 23-5942); Gaines v. United States, 144 S. Ct. 297 (2023) (No. 23-5377); Mendez v. United States, 143 S. Ct. 2684 (2023) (No. 22-7638); Wade v. United States, 143 S. Ct. 2649 (2023) (No. 22-7606); Garcia v. United States, 143 S. Ct. 2623 (2023) (No. 22-7527); Knight v. United States, 143 S. Ct. 2478 (2023) (No. 22-7239); Maumau v. United States, 143 S. Ct. 627 (2023) (No. 22-5538); Fierro v. United States, 142 S. Ct. 597 (2021) (No. 21-5457); Felder v. United States, 142 S. Ct. 597 (2021) (No. 21-5461); Lavert v. United States, 142 S. Ct. 578 (2021) (No. 21-5057); Ross v. United States, 142 S. Ct. 493 (2021) (No. 21-5664); Hall v. United States, 142 S. Ct. 492 (2021) (No. 21-5644); Moore v. United States, 142 S. Ct. 252 (2021) (No. 21-5066); Copes v. United States, 142 S. Ct. 247 (2021) (No. 21-5028); Council v. United States, 142 S. Ct. 243 (2021) (No. 21-5013); Fields v. United States, 141 S. Ct. 2828 (2021) (No. 20-7413); Thomas v. United States, 141 S. Ct. 2827 (2021) (No. 20-7382); Walker v. United States, 141 S. Ct. 2823 (2021) (No. 20-7183); Usher v. United States, 141 S. Ct. 1399 (2021) (No. 20-6272); Steward v. United States, 141 S. Ct. 167 (2020) (No. 19-8043); Terry v. United States, 141 S. Ct. 114 (2020) (No. 19-1282); Hamilton v. United States, 140 S. Ct. 2754 (2020) (No. 19-8188); Diaz-Cestary v. United States, 140 S. Ct. 1236 (2020) (No. 19-7334); Walker v. United States, 140 S. Ct. 979 (2020) (No. 19-7072); Tyler v. United States, 140 S. Ct. 819 (2020) (No. 19-6850); Hilario-Bello v. United States, 140 S. Ct. 473 (2019) (No. 19-5172); Nelson v. United States, 140 S. Ct. 469 (2019) (No. 19-5010); Apodaca v. United States, 140 S. Ct. 432 (2019) (No. 19-5956); Young v. United States, 140 S. Ct. 262 (2019) (No. 19-5061); Durham v. United States, 140 S. Ct. 259 (2019) (No. 19-5124); Munoz v. United States, 140 S. Ct. 182 (2019) (No. 18-9725); Lindsay v. United States, 140 S. Ct. 155 (2019) (No. 18-9064); Hill v. United States, 140 S. Ct. 54 (2019) (No. 18-8642); Greer v. United States, 139 S. Ct. 2667 (2019) (No. 18-8292); Rojas v. United States, 139 S. Ct. 1324 (2019) (No. 18-6914); Foster v. United States, 586 U.S. 1077 (2019) (No. 18-5655); Desilien v. United States, 586 U.S. 965 (2018)

Finally, because petitioner does not explain (Pet. 28-29) how this Court's forthcoming decision in Delligatti v. United States, No. 23-825 (argued Nov. 12, 2024), would affect his Section 924(c) convictions predicated on Hobbs Act robbery, the Court should not hold the petition for Delligatti.

1. Petitioner forecasts (Pet. 8-16) that his resentencing on remand will result in a double jeopardy violation. But because that resentencing has not yet occurred, petitioner has not suffered any double jeopardy violation. Nor is it likely that a violation would occur; the district court could either structure the sentence to render any double jeopardy issue harmless or, consistent with the government's typical practice in similar circumstances, the government would be able to seek dismissal of either the Section 924(c) or 924(j) count under Federal Rule of Criminal Procedure 48(a). The Court should deny the petition for a writ of certiorari and allow the resentencing to proceed.

The Double Jeopardy Clause ordinarily prohibits cumulative punishment for lesser and greater offenses arising out of the same criminal conduct. See, e.g., Brown v. Ohio, 432 U.S. 161, 168-

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(No. 17-9377); Ragland v. United States, 584 U.S. 980 (2018) (No. 17-7248); Robinson v. United States, 584 U.S. 980 (2018) (No. 17-6927); Chandler v. United States, 583 U.S. 1184 (2018) (No. 17-6415); Middleton v. United States, 583 U.S. 1183 (2018) (No. 17-6343); Jackson v. United States, 583 U.S. 1122 (2018) (No. 17-6247); Garcia v. United States, 583 U.S. 1061 (2018) (No. 17-5704).

169 (1977). "Where consecutive sentences are imposed at a single criminal trial," however, "the role of the constitutional guarantee is limited to assuring that the court does not exceed its legislative authorization." Id. at 165. Cumulative punishment is therefore permissible where Congress clearly intends that result. See, e.g., Missouri v. Hunter, 459 U.S. 359, 366 (1983); Albernaz v. United States, 450 U.S. 333, 344 (1981). For example, Congress has expressly authorized cumulative punishments for a Section 924(c) offense and a lesser-included crime of violence or drug-trafficking crime on which it is predicated. See 18 U.S.C. 924(c)(1)(A) (providing that statutory-minimum punishment for a Section 924(c) offense shall be "in addition to the punishment provided for such crime of violence or drug trafficking crime"); see also, e.g., United States v. Davis, 306 F.3d 398, 418 (6th Cir. 2002) ("Congress made itself unequivocally clear that punishment for violation of [Section 924(c)] was to be imposed in addition to punishment for committing the predicate offense.").

The United States has long taken the position that cumulative punishment under Section 924(c) and (j) for the same use of a firearm is not permitted. Most courts of appeals to have considered the question agree with that position, see, e.g., United States v. Ortiz-Orellana, 90 F.4th 689, 705 (4th Cir. 2024), petition for cert. docketed, No. 24-5040 (July 10, 2024); United States v. Palacios, 982 F.3d 920, 924-925 (4th Cir. 2020),

cert. denied, 141 S. Ct. 2826 (2021); United States v. Gonzales, 841 F.3d 339, 358 (5th Cir. 2016), cert. denied, 580 U.S. 1176 (2017); United States v. García-Ortiz, 657 F.3d 25, 28-29 (1st Cir. 2011), cert. denied, 565 U.S. 1171 (2012), though the Eleventh Circuit disagrees, see United States v. Julian, 633 F.3d 1250, 1256-1257 (2011). Consistent with the government's longstanding position, the district court declined to impose a sentence on petitioner's Section 924(c) conviction predicated on the robbery of Dafalla because it was a lesser-included offense of the Section 924(j) conviction. See Judgment 3; Amended Judgment 3.

The court of appeals, however, vacated petitioner's sentence and remanded for resentencing in light of Lora v. United States, 599 U.S. 453 (2023). Pet. App. 44a-51a. Lora held that the consecutive-sentence requirement in Section 924(c)(1)(D)(ii) does not apply to a sentence imposed under Section 924(j). The court of appeals reasoned that Lora supports the view that Sections 924(c) and 924(j) are separate offenses for which Congress clearly authorized cumulative punishments. Id. at 52a-66a. The court of appeals thus instructed the district court to impose a sentence on petitioner's lesser-included Section 924(c) count "within the sentencing regimen established by [Section] 924(c)," which would include a statutory minimum sentence imposed consecutively to the sentences on all other counts, and to also impose a sentence on petitioner for his Section 924(j) conviction (without

incorporating Section 924(c)'s mandates into that separate sentence). Id. at 66a.

This Court's decision in Lora did not interpret the statutory text in a way that would alter the prior view that Congress did not authorize cumulative punishments for Section 924(j) and Section 924(c) offenses premised on the same underlying crime. While Lora "express[ed] no position on the Government's view of double jeopardy," 599 U.S. at 461, the Court observed that, in enacting subsection (j), Congress appeared to favor more lenient "sentencing flexibility" over mandatory penalties. Id. at 462-463. And the Court stated that "the Government's view of double jeopardy" -- that a defendant cannot receive punishments under both Section 924(c) and (j) for the same underlying conduct -- "can easily be squared with [the Court's] view that subsection (j) neither incorporates subsection (c)'s penalties nor triggers the consecutive-sentence mandate." Id. at 462.[4]

Nevertheless, this Court should deny the petition in this interlocutory posture. Because the resentencing has not yet occurred, there has not been any violation of petitioner's double

[4] Although the issue is not presented in this case, a defendant may be charged, convicted, and cumulatively punished for separate Section 924(j) violations based on separate killings committed in the course of a single Section 924(c) offense. See, e.g., United States v. Curtis, 324 F.3d 501, 507-509 (7th Cir.), cert. denied, 540 U.S. 998 (2003). The unit of prosecution in a Section 924(j) case is the homicide, not the Section 924(c) violation.

jeopardy rights. Although the court of appeals' decision would require the district court to impose a statutory-minimum sentence on the Section 924(c) count predicated on the robbery of Dafalla and apparently would not allow the district court to merge that offense with the Section 924(j) offense, Pet. App. 66a; see 18 U.S.C. 924(c)(1)(A), it is possible that the court could still structure the sentence in a way that would render any double-jeopardy violation harmless, see Pet. App. 66a (expressing "no view as to the particular sentence the district court should impose on these two counts or its overall sentence"), and the government would be able to seek dismissal of one of the counts count under Federal Rule of Criminal Procedure 48(a). See, e.g., Gov't Br. at 24-25, Lora, supra (No. 22-49).

2. The courts of appeals have unanimously -- and correctly -- recognized that Hobbs Act robbery is a crime of violence under the definition of Section 924(c)(3)(A).[5] Hobbs Act robbery is the

[5] See, e.g., Diaz-Rodriguez v. United States, No. 22-1109, 2023 WL 5355224, at *1 (1st Cir. Aug. 14, 2023); United States v. Stoney, 62 F.4th 108, 113-114 (3d Cir. 2023); United States v. Ivey, 60 F.4th 99, 116-117 (4th Cir.), cert. denied, 144 S. Ct. 160 (2023); United States v. Hill, 63 F.4th 335, 363 (5th Cir.), cert. denied, 144 S. Ct. 175, 144 S. Ct. 189, 144 S. Ct. 190, 144 S. Ct. 207 (2023); United States v. Honeysucker, No. 21-2614, 2023 WL 142265, at *3 n.4 (6th Cir. Jan. 10, 2023); United States v. Worthen, 60 F.4th 1066, 1068-1071 (7th Cir.), cert. denied, 144 S. Ct. 91 (2023); United States v. Moore, No. 22-1899, 2022 WL 4361998, at *1 (8th Cir. Sept. 21, 2022); United States v. Eckford, 77 F.4th 1228, 1232-1236 (9th Cir.), cert. denied, 144 S. Ct. 521 (2023); United States v. Baker, 49 F.4th 1348, 1360 (10th Cir.

"unlawful taking or obtaining of personal property from the person * * * of another, against his will, by means of actual or threatened force." 18 U.S.C. 1951(b)(1). As the court of appeals observed (Pet. App. 37a-38a), that definition matches Section 924(c)(3)(A)'s definition of a "crime of violence" as a federal 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); see, e.g., United States v. Hill, 890 F.3d 51, 57 (2d Cir. 2018) (observing that the elements of Hobbs Act robbery "would appear, self-evidently, to satisfy" the definition of a "crime of violence" in Section 924(c)(2)(A)), cert. denied, 586 U.S. 1092 (2019).

The circuits' uniform determination that Hobbs Act robbery categorically requires the use, attempted use, or threatened use of force -- and that Hobbs Act robbery thus qualifies as a "crime of violence" under Section 924(c)(3)(A) -- is reinforced by this Court's decision in Stokeling v. United States, 586 U.S. 73 (2019). Stokeling identified common-law robbery as the "quintessential" example of a crime that requires the use or threatened used of physical force. Id. at 80 (discussing definition of "violent felony" in 18 U.S.C. 924(e)(2)(B)(i)). The elements of Hobbs Act robbery track the elements of common-law robbery in relevant

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2022); United States v. Wiley, 78 F.4th 1355, 1364–1365 (11th Cir. 2023).

respects. See id. at 77-78 (observing that common-law robbery was an "unlawful taking" by "force or violence," meaning force sufficient "'to overcome the resistance encountered'") (citation omitted).

Petitioner does not address Stokeling. Instead, he invokes (Pet. 17-27) this Court's decision in United States v. Taylor, 596 U.S. 845 (2022), which held that attempted Hobbs Act robbery is not a crime of violence under the definition in Section 924(c)(3)(A). Id. at 851-852. But as this Court explained, attempted Hobbs Act robbery is not a crime of violence because a person can commit that offense by taking a substantial step toward threatening the use of force (i.e., an attempt to threaten), without actually using, attempting to use, or threatening to use force. See ibid. Taylor did not cast doubt on the unanimous view of every court of appeals that the distinct offense of completed Hobbs Act robbery constitutes a crime of violence.

Petitioner further errs in contending (Pet. 21-24) that Hobbs Act robbery cannot qualify as a crime of violence because it could hypothetically be committed by threatening harm to oneself, if the perpetrator is also the victim's relative or in his presence. The Hobbs Act defines "'robbery'" as the unlawful taking or obtaining of property from "another" "against his will" by using actual or threatened force to that person or "his" property, or to the "person or property of a relative or member of his family or of

anyone in his company at the time of the taking or obtaining." 18 U.S.C. 1951(b)(1). Those provisions are most naturally read to refer to relatives and people in the company of the victim that are not the robber himself.

Similarly mistaken is petitioner's assertion (Pet. 24-27) that Hobbs Act robbery cannot qualify as a crime of violence because it can be committed by threatening nonphysical injury to property. The Hobbs Act would classify such conduct as the separate crime of "extortion," rather than "robbery." 18 U.S.C. 1951(b). Robbery requires that the defendant took personal property from the defendant "against his will," 18 U.S.C. 1951(b)(1); extortion, in contrast, prohibits obtaining another person's property "with his consent," where that consent is "induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right," 18 U.S.C. 1951(b)(2). See Ocasio v. United States, 578 U.S. 282, 297 (2016). At all events, petitioner identifies no decision that has construed Section 1951(b)(1) in the manner he suggests, see Pet. App. 37a & n.17, and it is implausible that Congress would have intended to exclude Hobbs Act robbery from Section 924(c)(3) in light of such unrealistic hypotheticals.

There has never been a circuit conflict on whether completed Hobbs Act robbery is a crime of violence, and as the court of appeals observed, there is consensus even after Taylor that Hobbs

Act robbery is a Section 924(c)(3)(A) crime of violence. Pet. App. 37a-38a; see p. 16 n.5, supra. This Court, moreover, has repeatedly denied certiorari on the question whether Hobbs Act robbery is a crime of violence both before and after Taylor. See p. 11 & n.3, supra. It should follow the same course here.

3. Finally, petitioner errs in suggesting (Pet. 28-29) that the Court should hold the petition for Delligatti. In Delligatti, the Court granted certiorari to address a defendant's argument that New York attempted murder, N.Y. Penal Law § 125.25(1), does not qualify as a crime of violence under Section 924(c)(3)(A) on the theory that the crime can be committed by an act of omission and therefore does not have as an element the use, attempted use, or threatened use of physical force against the person or property of another. Petitioner offers no substantial reason why his petition should be held for Delligatti other than both cases involve convictions under Section 924(c)(3). Pet. 29. Petitioner has never made any argument, including in the petition, that Hobbs Act robbery can be committed by an act of omission. Accordingly, the Court should not hold this petition for Delligatti.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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