No. 20-1459

IN THE
SUPREME COURT OF THE UNITED STATES

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United States of America,

*Petitioner*,

v.

Justin Eugene Taylor,

*Respondent*.

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On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Fourth Circuit

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**BRIEF IN OPPOSITION**

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## QUESTION PRESENTED

Whether attempted Hobbs Act robbery, which may be completed through an attempted threat alone, *see* 18 U.S.C. § 1951(a), falls outside the definition of a "crime of violence" in 18 U.S.C. § 924(c)(3)(A).

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## INTRODUCTION

The government asks this Court to short-circuit a recently emerged debate among the courts of appeals by adopting arguments the government has never presented to any federal appellate court. This Court should decline that invitation. Although the lower courts have disagreed on the question whether attempted Hobbs Act robbery is a crime of violence under 18 U.S.C. § 924(c), they have done so only recently and under varied standards of appellate review. And only one court—the Fourth Circuit—has correctly conducted the analysis this Court's cases prescribe by recognizing that Section 924(c) does not encompass attempted threats. This Court should allow further percolation so the courts of appeals can consider the merits of the Fourth Circuit's analysis and the government's novel responses. That is especially true because the Fourth Circuit's decision is sound. Because an individual may violate the Hobbs Act through attempted threats—without engaging in "the use, attempted use, or threatened use of physical force," as required by 18 U.S.C. § 924(c)(3)(A)—attempted robbery in violation of the Hobbs Act is not categorically a crime of violence and cannot support a conviction under Section 924(c). Even if this Court were inclined to address the government's novel arguments, however, this is not the right case in which to do so: The question presented is not outcome-determinative, as the decision below reserved judgment on alternative grounds on which Mr. Taylor can and should prevail. Review can await a case in which the

abstract legal issue the government presents indisputably matters. The petition should be denied.

## STATEMENT

1. In February 2009, respondent Justin Eugene Taylor was charged with, among other offenses, conspiracy to commit Hobbs Act robbery (Count Five) and attempted Hobbs Act robbery (Count Six), both in violation of 18 U.S.C. § 1951. C.A. App. 11–14. Mr. Taylor was also charged with using and carrying a firearm during and in relation to a "crime of violence" in violation of 18 U.S.C. § 924(c) (Count Seven). Count Seven listed the conspiracy alleged in Count Five and the attempted robbery alleged in Count Six as predicate offenses. *Id.*

Mr. Taylor pleaded guilty to the Hobbs Act conspiracy and Section 924(c) counts. C.A. App. 15–31. As part of his plea agreement, Mr. Taylor waived his right to challenge his convictions on appeal and his right to challenge any sentence within the applicable statutory range. *Id.* at 35. The plea agreement did not identify the predicate offense for the Section 924(c) count, *id.* 32–47, nor did the district court identify the predicate offense during Mr. Taylor's plea colloquy, *id.* 15–31. The government agreed to dismiss the remaining charges. Pet. App. 3a. The court sentenced Mr. Taylor to 240 months' incarceration for the conspiracy conviction and 120 months for the Section 924(c) conviction, to be served consecutively, for a total of 360 months. *Id.*

Mr. Taylor appealed his sentence, arguing that the district court had miscalculated his Sentencing Guidelines range. The Fourth Circuit dismissed his appeal as barred by the appellate waiver in his plea agreement, Pet. App. 3a, and this Court denied review, *see Taylor v. United States*, 564 U.S. 1029 (2011). Mr. Taylor then filed a motion under 28 U.S.C. § 2255 to vacate, set aside, or correct his sentence, which the district court denied. Pet. App. 3a.

2. In 2016, Mr. Taylor sought leave from the Fourth Circuit to file a second Section 2255 motion in light of this Court's decisions in *Johnson v. United States*, 576 U.S. 591 (2015) , and *Welch v. United States*, 136 S. Ct. 1257 (2016) . *Johnson* held that the residual clause of the Armed Career Criminal Act, 18 U.S.C. § 924(e)(2)(B)(ii)—which qualified convictions for sentence enhancement when they categorically presented a serious potential risk of physical injury to another—is unconstitutionally vague. 576 U.S. at 604–06. As a result, courts could not constitutionally enhance a defendant's sentence based on predicate offenses that qualify as violent crimes only under the residual clause. *See id.* And this Court's decision in *Welch* held that *Johnson* applies retroactively on collateral review. 136 S. Ct. at 1265. Mr. Taylor argued that the residual clause in Section 924(c) is materially identical to the residual clause invalidated in *Johnson* and, therefore, his conviction under Section 924(c) was unconstitutional. C.A. App. 65–72. The Fourth Circuit

granted Mr. Taylor permission to file his second Section 2255 petition. C.A. App. 59–60.

This Court then held in *United States v. Davis*, 139 S. Ct. 2319, 2324 (2019) , that *Johnson*'s holding applied to Section 924(c)'s residual clause. Under *Davis*'s holding, the residual clause in Section 924(c) is unconstitutionally vague, and courts cannot rely on it to support a conviction under Section 924(c). *Id.*

The district court denied Mr. Taylor's second Section 2255 motion. It held that attempted Hobbs Act robbery—one of the predicate offenses that could theoretically support Mr. Taylor's conviction under Section 924(c)—qualified as a crime of violence because it satisfied the remaining valid provision of that statute's definition of that term: those offenses that have "as an element the use, attempted use, or threatened use of physical force against the person or property of another." Pet App. 22a; *see* 18 U.S.C. § 924(c)(3)(A) (the "elements" or "force" clause). The court believed that attempted Hobbs Act robbery "invariably requires the actual, attempted, or threatened use of physical force." Pet. App. 21a.

3. Mr. Taylor appealed, and the court of appeals granted a certificate of appealability on two questions: First, whether a Section 924(c) conviction must be vacated if the indictment charged multiple predicates, one of which is invalid. And second, whether attempted Hobbs Act robbery categorically qualifies as a predicate crime of violence. C.A. App. 157.

The court of appeals vacated Mr. Taylor's Section 924(c) conviction and remanded to the district court for resentencing. Pet. App. 12a. The court first noted that the parties were in agreement that Hobbs Act conspiracy (one of the two offenses alleged) "no longer qualifies as a valid § 924(c) predicate." *Id.* 1a. The court then held that the other predicate offense—attempted Hobbs Act robbery—also failed to qualify under "the categorical approach," which requires a court to focus "on the *elements* of the prior offense rather than the *conduct* underlying the conviction." *Id.* 6a (internal quotation marks omitted). The court began by explaining that "[w]hen the elements of an offense encompass both violent and nonviolent means of commission—that is, when the offense may be committed without the use, attempted use, or threatened use of physical force—the offense is not 'categorically' a 'crime of violence.'" *Id.* Under a "straightforward application of the categorical approach," it continued, "attempted Hobbs Act robbery" does not qualify as a crime of violence because that offense "does not invariably require the use, attempted use, or threatened use of physical force." *Id.* 8a.

The Fourth Circuit explained that the government can obtain a conviction for attempted Hobbs Act robbery by proving that a defendant intended to commit robbery by threatening to use physical force and took a substantial nonviolent step toward doing so. Pet. App. 8a. In that scenario, the Fourth Circuit reasoned, the elements of attempted Hobbs Act robbery would be satisfied, but the text of Section 924(c)(3)(A)

would not be, because the defendant did not use, attempt to use, or threaten the use of physical force, but merely *attempted to threaten* to use physical force. *Id.* "The plain text of § 924(c)(3)(A) does not cover such conduct." *Id.* The Fourth Circuit noted that its holding would affect only a small percentage of cases, because most offenses implicating this question can be completed only through actual, not threatened, use of physical force, such that a defendant could not be convicted for attempting the offense based solely on an attempted threat. *Id.* 11a.

In light of its determination that neither of the predicate offenses with which Mr. Taylor was charged could support his Section 924(c) conviction, the Fourth Circuit stated that it could not reach the other question on which it had granted a certificate of appealability—whether a Section 924(c) conviction must be vacated if the indictment charged multiple predicates, one of which is invalid, and it is ambiguous "which predicate constituted the 'crime of violence' necessary to sustain his conviction." Pet. App. 2a n.1.

4. The government filed a petition for rehearing en banc, which the Fourth Circuit denied without issuing an opinion. Pet. App. 24a. The government's petition for a writ of certiorari followed.

## REASONS FOR DENYING THE PETITION

The petition relies on new arguments that the government did not present in the court of appeals—or, for that matter, in any other court of appeals. It asks this

Court to intervene to resolve a very recent circuit conflict and cut off debate before the lower courts have fully assessed the decision below and the government's new responses. This Court would benefit from its usual practice of allowing the lower courts to evaluate new arguments before addressing them itself. That is all the more true since the government's arguments are wrong and the Fourth Circuit's are correct. Finally, even if review were warranted, this would be the wrong case in which to grant it: This Court should await a case in which the legal issue would necessarily affect the outcome, which is not true here. The petition should be denied.

## I. THIS COURT'S INTERVENTION WOULD BE PREMATURE.

Although a handful of courts of appeals have expressed surface-level disagreement on the question presented, this Court's intervention would be premature. In addition to failing to consider the critical "attempted threats" issue, most of those courts reviewed (or should have reviewed) the claim for plain error only. They accordingly had no occasion to directly confront the arguments that respondent raised below. And the only court of appeals to address the issue in a preserved posture did not have the benefit of the decision below.

The government cites four decisions as allegedly parting ways with the Fourth Circuit's decision below: *United States v. Walker*, 990 F.3d 316, 329 (3d Cir. 2021); *United States v. Dominguez*, 954 F.3d 1251, 1255 (9th Cir. 2020), *petition for cert. filed*, No. 20-1000; *United States v. Ingram*, 947 F.3d 1021, 1026 (7th Cir.), *cert.*

*denied*, 141 S. Ct. 323 (2020); and *United States v. St. Hubert*, 909 F.3d 335, 351–53 (11th Cir. 2018), *cert. denied*, 139 S. Ct. 1394 (2019). *See* Pet. 19. But the courts in *Walker* and *Ingram* considered the question presented under the plain-error standard only, so it is no surprise they denied relief to the defendants there. *See Walker*, 990 F.3d at 321 n.5; *Ingram*, 947 F.3d at 1025. And while the Ninth Circuit's decision in *Dominguez* purported to consider this issue de novo, it did so under a theory that plain-error review should not apply where the court of appeals is "presented with a question that is purely one of law and where the opposing party will suffer no prejudice as a result of the failure to raise the issue in the trial court." 954 F.3d at 1256 (internal quotation marks omitted). The government itself has argued that the Ninth Circuit should have applied plain-error review. Br. in Opp. 6, *Dominguez v. United States*, No. 20-1000 (filed Apr. 30, 2021). The Eleventh Circuit in *St. Hubert* confronted the issue on direct appeal and under a de novo standard of review, but its decision predated all the others the government identifies as creating a split. As a result, the Eleventh Circuit had no opportunity to consider the Fourth Circuit's view of the law in issuing its decision.[1]

[1] Although the Second Circuit recently ruled that attempted Hobbs Act robbery is a "crime of violence" under Section 924(c), *see United States v. McCoy*, 995 F.3d 32 (2d Cir. 2021), the defendants there have sought and received extensions of time to file petitions for rehearing, *see* Dkt. Nos. 351, 353, 357, and the Second Circuit may reconsider its view.

The Fourth Circuit itself did not have the benefit of the arguments the government raises in its petition. *See infra* __. In fact, *no* court of appeals has considered the arguments the government raises here. In *Walker*, the government argued that, because Hobbs Act robbery qualifies under Section 924(c)'s elements clause, "[i]t naturally follows, as the Eleventh Circuit held [in *St. Hubert*], that attempted Hobbs Act robbery is also a predicate crime of violence under Section 924(c)'s elements clause." Gov't Br. 55, *United States v. Walker*, 2018 WL 4933477 (3d Cir. Oct. 2, 2018); *see also* Gov't Br. 15–22, *United States v. Ingram*, 2019 WL 6220019 (7th Cir. Nov. 14, 2019) (relying on *St. Hubert*); Gov't Br. 8, *United States v. Dominguez*, 2019 WL 3992694 (9th Cir. Aug. 16, 2019) ("Because Hobbs Act robbery is a crime of violence, so too is attempted Hobbs Act robbery."); Gov't Supp. Br. 6, *United States v. St. Hubert*, 2018 WL 1161293 (11th Cir. Feb. 23, 2018) (similar). These cases do not engage with the argument that carried the day in the decision below—*i.e.*, that, because the Hobbs Act's attempt provision could be violated by an *attempted threat*, it was not necessarily a crime of violence. *See, e.g.*, *Ingram*, 947 F.3d at 1026. The courts of appeals should be allowed to consider those arguments in the first instance.

There is no need to rush this Court's review. Although the government argues that a large number of convictions may be affected by the ruling below, its attempts to quantify the relevant cases overstate the scope of the problem. The government

claims that data from the Sentencing Commission shows that, in Fiscal Year 2019, 813 federal defendants were convicted under both Section 924(c) and a federal robbery statute. Pet. 21. Assuming—as the government does, *id.*—that 13% of them had Section 924(c) convictions predicated on *attempted* robbery, that means roughly 106 defendants *nationwide* in 2019 received convictions that might be affected by the Court's action here. And while the government claims that the 13% figure may be underinclusive, Pet. 21 n.*, it in fact may be overinclusive because these defendants may have other valid predicates for their Section 924(c) convictions.[2] Moreover, only a tiny fraction of those defendants would be in the Fourth Circuit, whose rule the government seeks to contest. Even among the "approximately 20 cases" "in the Eastern District of Virginia" that the government claims implicate the question presented, at least one clearly does not because the defendant has already been resentenced. Pet. 21.[3] And others may not implicate this question either.[4]

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[2] Although the government has not identified the 13 specific cases on which its 13% figure depends, it did provide respondent's counsel a list of the 100 cases it considered in making this calculation. One is the conviction in *United States v. Licht*, No. 18-cr-60248 (S.D. Fla.). But the defendant there pleaded guilty to *both* completed and attempted Hobbs Act robbery, as well as violating Section 924(c). *See* Plea Agmt. (Dkt. No. 30), *United States v. Licht*, No. 18-cr-60248 (S.D. Fla. Dec. 4, 2018). And the Section 924(c) conviction was premised on the completed Hobbs Act robbery count. *See id.* ¶ 1.

[3] *See* Order (Dkt. No. 201), *United States v. Kargbo*, No. 1:10-cr-177 (E.D. Va. Apr. 23, 2021).

[4] *See, e.g.*, Order 1 n.1 (Dkt. No. 55), *United States v. Richardson*, No. 3:13-cr-115 (E.D. Va. Feb. 27, 2020) (reserving questions of whether defendant's request for relief was untimely or procedurally defaulted); United States' Response (Dkt. No.

## II. THE FOURTH CIRCUIT'S RULING IS CORRECT.

Further percolation is especially warranted because the Fourth Circuit's straightforward application of the categorical approach—which no other lower court has come to grips with—is correct. Attempted Hobbs Act robbery does not constitute a "crime of violence" under Section 924(c)'s elements clause because it may be committed through an attempted threat of force, whereas the elements clause requires the use, attempted use, or threatened use of physical force.

1. a. A conviction for attempted Hobbs Act robbery requires the government to prove that "(1) the defendant had the culpable intent to commit Hobbs Act robbery; and (2) the defendant took a substantial step toward the completion of Hobbs Act robbery that strongly corroborates the intent to commit the offense." Pet. App. 6a. As to the first element, the Hobbs Act defines "robbery" as the "unlawful taking or obtaining of personal property from the person or in the presence of another, against his will, by means of actual or threatened force, or violence, or fear of injury, immediate or future." 18 U.S.C. § 1951(b)(1). As to the second, "a 'substantial step' is a 'direct act in a course of conduct planned to culminate in commission of a crime that is strongly corroborative of the defendant's criminal purpose.'" Pet. App. 7a

149), *United States v. Edwards*, No. 3:03-cr-204-3 (E.D. Va. Oct. 1, 2019) (arguing that defendant's request for relief was untimely); *see also* Motion (Dkt. 150), *United States v. Carr*, No. 4:06-cr-6-1 (E.D. Va. Apr. 21, 2021) (petition for compassionate release pending).

(quoting *United States v. Dozier*, 848 F.3d 180, 186 (4th Cir. 2017)); *accord* Pet. 11–12.

Putting these two elements together leads inexorably to the Fourth Circuit's conclusion that "attempted Hobbs Act robbery does not invariably require the use, attempted use, or threatened use of physical force." Pet. App. 8a. The government can obtain a conviction for attempted Hobbs Act robbery by showing that the defendant (1) intended to commit robbery by means of a *threat* to use physical force; and (2) took a substantial step corroborating that intent. In such circumstances, "[t]he substantial step need not be violent." *Id.* And "[w]here a defendant takes a nonviolent substantial step toward threatening to use physical force . . . the defendant has not used, attempted to use, or threatened to use physical force," as required to satisfy the elements clause. *Id.* Instead, "the defendant has merely *attempted to threaten* to use physical force," which is not covered by the "plain text" of Section 924(c)(3)(A). *Id.*

Take the Fourth Circuit's example: An individual intends to commit Hobbs Act robbery by passing a threatening note to a store cashier. Pet. App. 10a. He may "discuss plans with a coconspirator, and buy weapons to complete the job," *id.*, which would constitute substantial steps corroborating his intent to commit the robbery such that he could be convicted of attempted Hobbs Act robbery. But "none of this conduct involves an attempt to use physical force," or "the use of physical force," or

"the threatened use of physical force." *Id.* In other words, contrary to the government's current claim (Pet. 12), a course of conduct intended to culminate in a robbery by threats does not necessarily entail an attempted use of force. "In these circumstances, the defendant has merely taken nonviolent substantial steps toward threatening to use physical force." Pet. App. 10a. Under the categorical approach, because a non-violent method of committing the crime—an "attempt to threaten"—exists, the crime as a whole—Hobbs Act attempted robbery—does not qualify. *Descamps v. United States*, 570 U.S. 254, 261–64 (2013).

b. Other courts have reached the opposite conclusion without considering that the elements clause excludes attempted threats. Instead of confronting the text of the elements clause, these courts have adopted a flawed analysis that effectively fails to apply the categorical approach at all. *See* Pet. App. 8a–9a (discussing *Dominguez*, 954 F.3d at 1255; *Ingram*, 947 F.3d at 1026; *St. Hubert*, 909 F.3d at 351–53); *see also McCoy*, 995 F.3d at 55-57; *Walker*, 990 F.3d at 329. Their basic reasoning is that because "Hobbs Act robbery categorically constitutes a crime of violence, it follows as a matter of logic" that attempted Hobbs Act robbery also "categorically qualifies as a crime of violence." *McCoy*, 995 F.3d at 55 (citation omitted); *see also Walker*, 990 F.3d at 327; *St. Hubert*, 909 F.3d at 351; *Ingram*, 947 F.3d at 1026; *Dominguez*, 954 F.3d at 1261 (all similar). This is a logical fallacy. As already explained, attempted Hobbs

Act robbery can be committed by taking a nonviolent "substantial step" towards threatening to use force, and thus does not categorically constitute a crime of violence.

2. Confronted with the Fourth Circuit's straightforward logic, the government advances three main arguments. Each is incorrect.

*First*, the government suggests that an individual who intends to deliver a written threatening note to a cashier, but does not intend to follow through with physical harm, *and* who never actually delivers that note to anyone, has still undertaken a threat of force. Pet. 13–14. In the government's view, a scrawled note placed in one's pocket, never to see the light of day, can constitute actionable "threatened force." That is as wrong as it sounds.[5]

The government tries to bolster its illogical argument by claiming that Section 924(c)(3)(A)'s express inclusion of the "attempted use" or "threatened use of physical force" should be read to mean *attempted threatened* use of force. Pet. 15. But that is not what the statute says. *See* 18 U.S.C. § 924(c)(3)(A). And this Court presumes

[5] The government's cases (Pet. 13–14) do not support this proposition. Neither case considered a substantive or attempted Hobbs Act robbery. And in both cases, the defendant had made a threatening statement *to someone*, just not to the intended victim of the threatened harm. *See United States v. Spring*, 305 F.3d 276, 280 (4th Cir. 2002) (defendant told multiple fellow inmates he wanted to kill probation officer); *United States v. Martin*, 163 F.3d 1212, 1213 (10th Cir. 1998) (defendant "threatened to unload six bullets into [a police officer's] brain" in conversation with an informant). Indeed, the court in *Martin* considered "the key point" to be "whether the defendant intentionally communicated the threat." *Martin*, 163 F.3d at 1216 (quoting *United States v. Stevenson*, 126 F.3d 662, 664 (5th Cir. 1997)).

that Congress means what it says, not what the government wishes it said. *See Ross v. Blake*, 136 S. Ct. 1850, 1856 (2016) ("Statutory interpretation, as we always say, begins with the text.").

*Second*, the government improperly seeks to use legislative history to expand the reach of a federal criminal statute. *See* Pet. 15-16. Because Section 924(c)(3)(A) is clear and unambiguous, relying on legislative history for its interpretation is inappropriate. *See, e.g.*, *Whitfield v. United States*, 543 U.S. 209, 215 (2005). And even if the text of Section 924(c)(3)(A) were ambiguous, resorting to the legislative history to *expand* its reach would be wrong. *See United States v. R.L.C.*, 503 U.S. 291, 307 (1992) (Scalia, J., concurring) ("[I]t is not consistent with the rule of lenity to construe a textually ambiguous penal statute against a criminal defendant on the basis of legislative history."); *Carter v. Welles-Bowen Realty, Inc.*, 736 F.3d 722, 735 (6th Cir. 2013) (Sutton, J., concurring) ("The Court has all but abandoned the practice of interpreting criminal laws against defendants on the basis of legislative history."). In any event, the legislative history cannot bear the weight the government places on it. That history only speaks to *completed* robbery—not *attempted* robbery under the Hobbs Act, which can be committed merely by *attempting to threaten* force.

*Third*, the government's denial of the existence of attempted threat offenses that do not involve intent to use force is factually wrong and legally irrelevant. The government accuses the Fourth Circuit of "erroneously envision[ing] a category of

attempted Hobbs Act robberies in which the defendant took a substantial step toward completing the robbery," but that step would not constitute an "attempted use" or "threatened use" of force. Pet. 17–18 (citing *Gonzales* v. *Duenas-Alvarez*, 549 U.S. 183, 193 (2007)). As a factual matter, though, no "legal imagination," *Duenas-Alvarez*, 549 U.S. at 193, is required to envision these cases because they already exist. *See, e.g.*, *United States v. Wrobel*, 841 F.3d 450, 454–55 (7th Cir. 2016) (defendants made plans to travel to New York to commit a robbery via threats of force, with no intent to harm victim, but were arrested before they reached New York). And as a legal matter, the government's reliance on *Duenas-Alvarez* is unfounded where, as here, the statutory language literally and explicitly includes conduct (*i.e.*, attempted threat of force) that is not a "crime of violence" under the elements clause. The Hobbs Act clearly criminalizes attempted threats, and that crime is not categorically a crime of violence for the reasons provided above. *Duenas-Alvarez*'s inquiry into the probability that a defendant would be convicted of violating Section 924(c) based on an attempted threat thus has no place here because the statutory language clearly allows such a conviction. *See, e.g.*, *Hylton v. Sessions*, 897 F.3d 57, 65 & n.4 (2d Cir. 2018) (collecting cases and noting "nearly unanimous disagreement" with approach that would require *Duenas-Alvarez* analysis where the statute is clear).

For all of these reasons, the Court should decline to consider the government's new arguments for avoiding the clear application of the categorical approach to attempted Hobbs Act robbery. Instead, it should adhere to its usual approach of allowing further consideration in the lower courts before pronouncing a nationwide rule.

## III. THIS CASE IS A POOR VEHICLE FOR RESOLVING THE QUESTION PRESENTED.

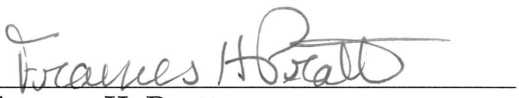
Finally, this case is a poor vehicle in which to resolve the question presented because the question is not case-dispositive. Even if this Court were to reverse the Fourth Circuit's judgment and hold that an attempted Hobbs Act robbery categorically qualifies as a crime of violence, that determination would not resolve Mr. Taylor's case. In the lower courts, Mr. Taylor advanced an alternative argument for vacatur: that his Section 924(c) conviction must be vacated because it relied on two predicate offenses, one of which (conspiracy) is indisputably invalid, and grave ambiguity exists over which offense supports the "crime of violence" element of the Section 924(c) offense. Pet. App. 2a n.1; *see United States v. Chapman*, 666 F.3d 220, 228 (4th Cir. 2012) (admission to conjunctively worded indictment charging disjunctively worded statutory offense admits only "the least serious of the disjunctive statutory conduct"); *United States v. Vann,* 660 F.3d 771, 774 (4th Cir. 2011) (en banc). The Fourth Circuit granted a certificate of appealability on this question, but ultimately determined that it could not reach the issue in light of its

holding that neither predicate offense could sustain the conviction. C.A. App. 157; Pet. App. 2a n.1. Should the Fourth Circuit's decision be reversed, Mr. Taylor should nevertheless prevail on remand on this alternative argument. That makes this case a poor vehicle to review the question presented. And where the government has offered so little reason for this Court to intervene at this early stage of the lower courts' assessment of this issue, the fact that its legal claim should have no ultimate effect on Mr. Taylor's case provides ample reason for deferring any necessary review.

## CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,



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