

Case No. 6272

IN THE
SUPREME COURT
OF THE
UNITED STATES OF AMERICA

PETITION FOR REHEARING
OF DENIAL OF REQUEST
FOR WRIT OF CERTIORARI

MOTION FOR LEAVE TO FILE OUT OF TIME REHEARING

DOMONIC DEVARRISE USHER,

Petitioner,

-vs-

UNITED STATES OF AMERICA,

Respondent.

Prepared By:

Domonic D. Usher, in pro se
FCI Williamsburg
P.O. Box 340
Salters, SC 29590

Case No. 6272

IN THE
Supreme Court of the United States

DOMONIC D. USHER,
Petitioner,

-vs-

UNITED STATES OF AMERICA,
Respondent.

Petition for Rehearing of Prior Denial
for Writ of Certiorari
of the Fourth Circuit Court of Appeals

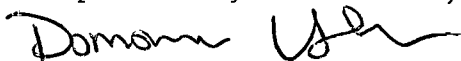
PETITION FOR OUT OF TIME REHEARING
PURSUANT TO SUPREME COURT RULE 44

"CHANGE IN CIRCUMSTANCES IN LAW"

Petitioner, Domonic D. Usher, in pro se, layman at law,
moves this Honorable Supreme Court of the United States to grant
his motion for leave to file out-of-time petition for rehearing,
and then grant his petition for rehearing based on the recent
announcement in United States v. Taylor, 142 S.Ct. 2015 (2022).
See Motion for leave to file out-of-time petition for rehearing

and petition with facts and memorandum in support, which includes prior example of prior Supreme Court cases that filed motions for leave to file out-of-time petition for rehearing. These cases hold no precedent, and cited only to show that this method of motion for leave to file out-of-time petitions have been considered by this court in the past. Premised on the foregoing, petitioner moves forward with his petition.

Respectfully submitted,



Domonic D. Usher # 55702-056
FCI Williamsburg
P.O. Box 340
Salters, SC 29590

See Attached cites and rulings. Although not precedent, the few cases in the attachment illustrates the method are have been used by this Supreme Court.

IN THE
Supreme Court of the United States

DOMONIC DEVARRISE USHER,
Petitioner,

-vs-

UNITED STATES OF AMERICA,
Respondent.

Petition for Re-Hearing
of Writ of Certiorari

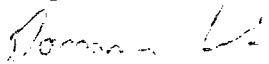
MOTION TO PROCEED IN FORMA PAUPERIS

Petitioner, Domonic D. Usher, in pro se, layman at law, seeks leave to file the attached Petition for Re-Hearing to this Supreme Court, without prepayment, if any is needed to proceed in forma pauperis.

In prior proceedings counsel was appointed in the United States Court of Appeals Fourth Circuit, and in the United States District Court for the Eastern District of North Carolina pursuant to 18 U.S.C. § 3006A

This, the 12th day of June, 2023.

Respectfully submitted,


Domonic D. Usher # 55702-056
FCI Williamsburg
P.O. Box 340
Salters, SC 29590

IN THE
Supreme Court of the United States

**Motion and Affidavit for Permission
to Appeal In Forma Pauperis**

Domonic D. Usher,
Applicant.

S.Ct. No. 20-6272

Affidavit in Support of Motion

I swear or affirm under penalty of perjury that, because of my poverty, I cannot prepay the docket fees of my appeal or post a bond for them. I believe I am entitled to redress. I swear or affirm under penalty of perjury under United States laws that my answers on this form are true and correct. (28 U.S.C. § 1746; 18 U.S.C. § 1621.)

Signed: Domonic Usher

Instructions

Complete all questions in this application and then sign it. Do not leave any blanks: if the answer to a question is "0," "none," or "not applicable (N/A)," write in that response. If you need more space to answer a question or to explain your answer, attach a separate sheet of paper identified with your name, your case's docket number, and the question number.

Date: ~~XXXXXXXXXX~~ JUNE 12th, 2023

My issues on appeal are: Application to Individual Justice seeking a determination of whether 18 U.S.C. § 924(c) or whether Applicant is serving and unlawful sentence where this Court made to recent ruling regarding the constitutionality of § 924(c).

I. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Income source	Average monthly amount during the past 12 months	Amount expected next month
---------------	---	----------------------------

	You	Spouse	You	Spouse
Employment	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Self-employment	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Income from real property (such as rental income)	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Interest and dividends	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Gifts	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Alimony	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>

Child support	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Retirement (such as social security, pensions, annuities, insurance)	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Disability (such as social security, insurance payments)	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Unemployment payments	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Public-assistance (such as welfare)	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Other (specify): <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Total monthly income:	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>

2. List your employment history, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of employment	Gross monthly pay
<u>none</u>	<u>n/a</u>	<u>n/a</u>	<u>n/a</u>
_____	_____	_____	_____
_____	_____	_____	_____

3. List your spouse's employment history, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of employment	Gross monthly pay
<u>none</u>	<u>n/a</u>	<u>n/a</u>	<u>n/a</u>
_____	_____	_____	_____
_____	_____	_____	_____

4. How much cash do you and your spouse have? \$ 0

Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Financial institution	Type of account	Amount you have	Amount your spouse has
<u>None</u>	<u>n/a</u>	\$ <u>n/a</u>	\$ <u>n/a</u>
_____	_____	\$ _____	\$ _____
_____	_____	\$ _____	\$ _____

If you are a prisoner, you must attach a statement certified by the appropriate institutional officer showing all receipts, expenditures, and balances during the last six months in your institutional accounts. If you have multiple accounts, perhaps because you have been in multiple institutions, attach one certified statement of each account.

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

None

Home (Value)	Other real estate (Value)	Motor vehicle #1 (Value)
<u>none</u>	<u>none</u>	Make & year: <u>n/a</u>
		Model: _____
		Registration #: _____
Motor vehicle #2 (Value)	Other assets (Value)	Other assets (Value)
Make & year: <u>none</u>	<u>none</u>	<u>none</u>
Model: _____	_____	_____
Registration #: _____	_____	_____

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
<u>none</u>	<u>none</u>	<u>none</u>
_____	_____	_____
_____	_____	_____

7. State the persons who rely on you or your spouse for support.

Name	Relationship	Age
<u>none</u>	<u>none</u>	<u>none</u>
_____	_____	_____
_____	_____	_____

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate.

	You	Your Spouse
Rent or home-mortgage payment (include lot rented for mobile home)	\$ <u>0</u>	\$ <u>0</u>
Are real-estate taxes included? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
Is property insurance included? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
Utilities (electricity, heating fuel, water, sewer, and telephone)	\$ <u>0</u>	\$ <u>0</u>
Home maintenance (repairs and upkeep)	\$ <u>0</u>	\$ <u>0</u>
Food	\$ <u>0</u>	\$ <u>0</u>
Clothing	\$ <u>0</u>	\$ <u>0</u>

Laundry and dry-cleaning	\$ <u>0</u>	\$ <u>0</u>
Medical and dental expenses	\$ <u>0</u>	\$ <u>0</u>
Transportation (not including motor vehicle payments)	\$ <u>0</u>	\$ <u>0</u>
Recreation, entertainment, newspapers, magazines, etc.	\$ <u>0</u>	\$ <u>0</u>
Insurance (not deducted from wages or included in Mortgage payments)	\$ <u>0</u>	\$ <u>0</u>
Homeowner's or renter's	\$ <u>0</u>	\$ <u>0</u>
Life	\$ <u>0</u>	\$ <u>0</u>
Health	\$ <u>0</u>	\$ <u>0</u>
Motor Vehicle	\$ <u>0</u>	\$ <u>0</u>
Other: <u>none</u>	\$ <u>0</u>	\$ <u>0</u>
Taxes (not deducted from wages or included in Mortgage payments) (specify): <u>none</u>	\$ <u>0</u>	\$ <u>0</u>
<hr/>		
Installment payments		
Motor Vehicle	\$ <u>0</u>	\$ <u>0</u>
Credit card (name): <u>none</u>	\$ <u>0</u>	\$ <u>0</u>
Department Store (name): <u>none</u>	\$ <u>0</u>	\$ <u>0</u>
Other: <u>none</u>	\$ <u>0</u>	\$ <u>0</u>
Alimony, maintenance, and support paid to others	\$ <u>0</u>	\$ <u>0</u>
Regular expenses for operation of business, profession, or farm (attach detailed statement)	\$ <u>0</u>	\$ <u>0</u>
Other (specify): <u>n/a</u>	\$ <u>0</u>	\$ <u>0</u>
Total monthly expenses:	\$ <u>0</u>	\$ <u>0</u>

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

☐ Yes ☒ No

If yes, describe on an attached sheet. n/a

QUESTION(S) PRESENTED

Whether Attempted Hobbs Act robbery, is still a crime of violence under the force clause of 18 U.S.C. § 924(c)(3)(A), after the Supreme Court's Ruling in United States v. Taylor, 142 S.Ct. 2015 (2022).

LIST OF ALL DIRECTLY RELATED PROCEEDINGS

United States Court of Appeals for the Fourth Circuit, In re:
Domonic D. Usher, No. 22-304 (November 8, 2022)

United States Court of Appeals for the Fourth Circuit,
United States v. Usher, No. 18-7149 (June 2020)

Supreme Court of the United States, Domonic D. Usher v.
United States, Case No. 20-6272 (2021)(Seeking a suspension
of this denial of his request for writ of certiorari.)

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JURISDICTION

The Supreme Court has Jurisdiction over this case under 28 U.S.C. § 1254(1), which authorizes the Supreme Court to review, on certiorari, cases in the Court of Appeals.

IN THE
Supreme Court of the United States

DOMONIC D. USHER,
Petitioner,

-vs-

UNITED STATES OF AMERICA,
Respondent.

Petition for Rehearing
Based on Change in Circumstances

PETITION FOR REHEARING

"CHANGE IN CIRCUMSTANCES"

Petitioner, Domonic D. Usher, in pro se, layman at law, moves this Honorable Supreme Court of the United States to grant his petition for rehearing based on the fact that he was represented by counsel in his original request for writ of certiorari, and when his request for writ of certiorari was denied, counsel failed to file a petition for rehearing pursuant to applicable Supreme Court Rule 16.3. Based on the fact that Petitioner is not an attorney and his court appointed counsel failed to exhaust all

available remedies where his client was possibly serving an unlawful sentence. In support of Petitioner's request, he states the following:

1. The Questions presented in his request for rehearing are of exceptional importance to society and will resolve subsequent arising conflicts announced in *United States v. Davis*, 139 S.Ct. 2319 (2019); and *United States v. Taylor*, 142 S.Ct. 2015 (2022).

2. There are no pending cases through which the questions could be settled by this Court.

3. Petitioner's request is not an unusual request in which a Motion for Leave to file out of time petition for rehearing out of time was granted. See *California v. Zook*, 337 U.S. 921 (1949).

4. Petitioner believes his court-appointed counsel was ineffective for not filing a timely petition for rehearing after this Supreme Court entered its judgment of denial.

5. Under the Criminal Justice Act of 1964 ("Plan") require court-appointed counsel to inform clients in writing of the right to petition for rehearing on a certiorari if so requested. Plan, Part V, § 2.

6. The remedy for a breach of this duty is re-entry of the judgment on appeal to permit the defendant, with the assistance of counsel, to file a timely petition for certiorari. See *Wilkins v. United States*, 441 U.S. 468, 470 (1979).

7. Counsel's failure to advise his client of right to petition the Court for rehearing of denial of writ of certiorari violated his Constitution right to effective assistance of

counsel. See *Strickland v. Washington*, 466 U.S. 668, 687 (1984).

8. Petitioner was denied the effective assistance of counsel mandated by the Criminal Justice Act of 1964 ("Plan"), because counsel specifically told his client that the Supreme Court does not do rehearings on denial of writ of certiorari, and that his only available remedy would be either a § 2255 or § 2241. Counsel misinformed Petitioner on the issue.

9. Under the Criminal Justice Act of 1964 requires a court-appointed counsel to inform clients in writing of the right to petition for certiorari, but does not mention whether counsel is obligated to also petition the Court for rehearing based on a blank denial. The Court should resolve that question as well.

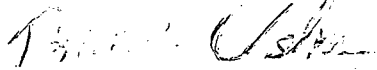
10. Petitioner is possibly serving an unlawful sentence of 2119 months (176 years) for violating Title 18 U.S.C. § 924(c) convictions which have been the subject of the Supreme Court in Davis (2019), and Taylor (2022). Notably, Petitioner's sentence is basically a death sentence.

CONCLUSION

This is a constitutionally compel issue which resulted in a fundamental unfairness of firmly established federal court proceedings against Petitioner and this Supreme Court for the United States is the only forum capable of resolving this dispute regarding the constitutionality of Title 18 U.S.C. § 924(c)'s as a whole. Premised on the foregoing, this Court should grant petitioner's motion for leave to file out of time petition for rehearing of this Court denial entered on February 22, 2021 (Case

No. 6272.) United States v. Usher, 808 Fed. Appx. 202, 2020 U.S. App. LEXIS 18122, 2020 WL 3056071 (4th Cir. N.C. June 9, 2020.), and grant his motion for this Court to vacate its prior denial of writ of certiorari, and re-enter the judgment to accommodate right to suspend its prior order of denial of writ of certiorari.

Respectfully submitted,



Domonic D. Usher # 55702-056
FCI Williamsburg
P.O. Box 340
Salters, SC 29590

I N T H E
Supreme Court of the United States

In re: Domonic D. Usher,
Petitioner. "B R I E F I N S U P P O R T"

Petitioner, Domonic D. Usher, in pro se, layman at law, moves this Honorable Supreme Court of the United States to grant petitioner's request for rehearing of its prior denial on the Writ of Certiorari cited under Usher v. United States, No. 6272, decided February 22, 2021; 134 S.Ct. 2858; 573 U.S. 938 (2021).

Petitioner also seeks leave from this Court to proceed in forma pauperis, without prepayment of cost. This petition is being presented by a pro se litigant that believes that the questions presented in this petition are of exceptional importance and will prevent a miscarriage of justice from occurring based on a number of Supreme Court rulings on the issue of Title 18 U.S.C. § 924(c). The decision in United States v. Davis, 139 S.Ct. 2319; and the decision in United States v. Taylor, 142 S.Ct. 2015, are the main topic of discussion.

I. Reason for Granting Petition

This case involves a number of question(s) of law regarding issues on the decisions announced in United States v. Davis, 139 S.Ct. 2319 (2019); and United States v. Taylor, 142 S.Ct. 2015

(2022). This is a constitutionally compelled issues which resulted in a fundamental unfairness of firmly established federal court proceedings against the Petitioner. And the grant of rehearing of denial of request for writ of certiorari entered on February 22, 2021, would not alter the decision of the Fourth Circuit Court of Appeals, but would only affirm that the federal question must be resolved. The issue(s) center around the constitutionality of this Court's most recent decision in Taylor, which is causing a bit confusion among the circuit court, and their rulings regarding the constitutionality of Title 18 U.S.C. § 924(c)'s and whether this ruling would apply to Petitioner and others similarly situated where a number of circuit courts have denied prisoner's the opportunity to proceed with a second or successive 28 U.S.C. § 2255, which denial forecloses every avenue of appeal based on their denial, which is fundamentally unfair.

II. Second or Successive 28 U.S.C. § 2255

Currently treading in the Circuit Court's of Appeal, is that Petitioner's are asked to submit a request to file a second or successive 28 U.S.C. § 2255, seeking authorization under 28 U.S.C. § 2244 for the district court to consider a second or successive application for relief under § 2255. The court's of appeals then deny their application where the order is plainly not a "judgment or decision on the merits. And because there is no possible redress from the order of denial from the court of appeals decision, where applicant's are not allowed to file a petition for rehearing of the order denying their request to file a second

or successive § 2255, nor are they allowed to file a request for writ of certiorari to this Honorable Supreme Court, seeking its supervisory power when it is warranted. The importance of this issue(s), not only affects petitioner, but others in similarly situated cases. The Fourth Circuit has ignored an important federal question in a way that it conflicts with a number of this Court's prior decisions. Such as Davis, and Taylor.

III. Background and Procedural History

Mr. Usher was sentenced to 176 years in prison based on convictions that no longer qualify as 18 U.S.C. § 924(c) predicates. The background of Mr. Usher's criminal case is given in United States v. Usher, 555 F. App'x 227, 228 (4th Cir. 2014) which is incorporated by reference:

A jury convicted Domonic Devarrise Usher on one count of conspiracy to commit violations of the Hobbs Act (interference with commerce by robbery), 18 U.S.C. § 1951(b)(2012)(Count 1), Seven Counts of interference withwith commerce by robbery, 18 U.S.C. § 2, 1951(a) (2012)(Counts 2,4,6,8,10,12, and 14), and Seven Counts of carrying and using a firearm during and in relation to a crime of violence, 18 U.S.C. §§ 2, 924(c)(1)(A) (2012)(Counts 3,5,7,9,11,13, and 15).

The district court sentenced Usher to 235 months' imprisonment on the conspiracy and each of the robbery convictions to run concurrently with each other; a mandatory consecutive eighty-four months' imprisonment on Count Three; and mandatory consecutive 300 months' imprisonment on each of the remaining four § 924(c) convictions, resulting in a cumulative sentence of 2119 months' imprisonment.

III. Second Reason for Granting Petition

Under United States v. Taylor, attempted Hobbs Act Robbery is no longer a "crime of violence" under § 924(c)(1)(A). 142 S.Ct. 2015, 2020-21 (2022).

"The Hobbs Act makes it a federal crime to commit, attempt to commit, or conspire to commit a robbery with an interstate component." Id. at 2019. The statute imposes criminal liability on:

Whoever in any way or degree obstructs, delays or commerce or movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section...

§ 1951(a)(emphasis added). "This language means that behavior that obstructs, delays, or affects commerce is a 'violation of the only if that behavior also involves robbery ... (or related attempts or conspiracies).'" *Scheidler v. Nat'l Org. for Women*, 547 U.S. 9, 17 (2006).

All of Petitioner's § 924(c)(1)(A) convictions were based on conduct that encompassed attempted Hobbs Act robberies. He was charged in each relevant count with Hobbs Act robbery and attempted Hobbs Act robbery, and he was found guilty based on the counts charged in the indictment on a general verdict form to both the completed offense and an attempt. Four each of the § 924(c)(1)(A) charges, the Fourth Superseding Indictment charged both Hobbs Act robbery and attempted Hobbs Act Robbery:

DOMONIC DEVARRISE USHER, ... aiding and abetting another, did unlawfully obstruct, delay, and affect, and attempt to obstruct, delay, and affect, commerce, as that term is defined in ... Section 1951, and the movement of articles and commodities in such commerce, by robbery ... as that term is defined in Title 18, United States Code, Section 1951, Code, Section 1951 and 2.

DOMONIC DEVARRISE USHER, ... aiding and abetting another, knowingly used and carried a firearm during and in relation to a crime of violence for which the defendant may be prosecuted in a count of the United States as alleged in Count Two of this Fourth Superseding 1 Indictment, that is, robbery affecting interstate commerce in violation of Title 18, United States Code, Section 1951, and possessed the firearm in furtherance of said crime, in violation of Title 18, United States Code, Section 924(c)(1)(A) and 2.

5:11-cr-00217-D, Docket Entry, DE-243 (emphasis added). This was different from the conspiracy offense in Count One, which charged separately that Petitioner "did knowingly and intentionally conspire to obstruct, delay and affect commerce ... by robbery." The Government's Proposed Jury Instructions were the same:

DOMONIC DEVARRISE USHER, ... aiding and abetting another, did unlawfully obstruct, delay and affect, and attempted to obstruct, delay, and affect, commerce ... by robbery ..., as that term is defined in Title 18, United States Code, Section 1951, in violation of Title 18, United States Code, Sections 1951 and 2.

Id. at 29, ECF No. 179 (emphasis added); see also id. at 30, 31, 32, 33 (same). In the same way, the jury made findings of guilt in a general verdict form that used the language in the indictment:

[T]he defendant, DOMONIC DEVARRISE USHER, aiding and abetting another, did unlawfully obstruct, delay, and affect, and attempt to obstruct, delay, and affect, commerce, by robbery ...

On Count Three of the indictment, ... the defendant, DOMONIC DEVARRISE USHER, aiding and abetting another, knowingly used and carried a firearm during and in relation to a crime of violence, that is, robbery affecting interstate commerce as alleged in Count Two...

Verdict Form, ECF No. 271.

Under controlling precedent, Petitioner was found guilty of the least culpable conduct charged in the indictment and found by

the jury--attempted Hobbs Act robbery. "The 'formal criminal charge ... is nothing more than the least serious of the disjunctive statutory conduct, not the entirety of the conduct alleged in the conjunctive." *United States v. Vann*, 660 F.3d 771, 775 (4th Cir. 2011)(en banc); *id.* at 774 ("[I]n trials by jury, it has been established that a defendant convicted under a conjunctively charged indictment cannot be sentenced--in the absence of a special verdict identifying the factual bases for conviction--to a term of imprisonment exceeding the statutory maximum for the 'least-punished' of the disjunctive statutory conduct."); *United States v. Runyon*, 994 F.3d 192, 201 (4th Cir. 2021)("In this case, the jury was not asked to indicate in its verdict form whether it was relying on conspiracy to commit murder for hire or carjacking in finding Runyon guilty under § 924(c)(1), (j)(1). Accordingly, we must assume that Runyon could have been convicted by the jury's reliance on either predicate offense, requiring us to determine whether each predicate offense qualifies as a crime of violence.")

The Hobbs Act robbery are not divisible by the completed or attempted offense when they are charged in the same count, and thus, the categorical approach is required. While the Government could have chosen to charge only Hobbs Act robbery in each count or only attempted Hobbs Act robbery, it did not do so here. See *Taylor v. United States*, 579 U.S. 301, 303 (2016)("[T]he prosecution in a Hobbs Act robbery case satisfies the Act's commerce element if it shows that the defendant robbed or attempted

to rob a drug dealer of drugs ... By targeting a drug dealer in this way, a robber necessarily affects or attempts to affect commerce over which the United States has jurisdiction."); id. at 304 ("Taylor was indicted under the Hobbs Act on two counts of affecting commerce or attempting to do so through robbery."); Callanan v. United States, 364 U.S. 587, 595-96 (1961)(agreeing "that petitioner could not be cumulatively punished for both an attempt to extort and a completed act of extortion," but holding that "has no relevance to the legal consequences of two incontestably distinctive offenses, conspiracy and the completed crime that is its object"). The modified categorical approach cannot be used when a statutory offense is indivisible. "A statute is indivisible when the jury need not agree on anything past the fact that the statute was violated. Any statutory phrase that--explicitly or implicitly--refers to multiple, alternative means of commission must still be regarded as indivisible if the jurors need not agree on which method of committing the offense the defendant used. United States v. Fuertes, 805 F.3d 485, 498 (4th Cir. 2015)(citations and internal quotation marks omitted); Descamps v. United States, 570 U.S. 254, 257 (2013)("As long as the statute itself requires only an indeterminate 'weapon,' that is all the indictment must (or is likely to) allege ... [a]nd most important, that is all the jury must find to convict the defendant.").

In United States v. Melaku, the Fourth Circuit held that

disjunctive language in a similar statute was not divisible.

"Section 1361 defines a single felony offense. The statute's plain language provides that the offense may be committed by willfully injuring or committing depredation against government property. The 'mere use of the disjunctive 'or' in the definition of a crime does not automatically render it divisible,' because the alternative may be means of commission, rather than alternative elements that must be decided upon by a fact finder." 41 F.4th 386, 390 (4th Cir. 2022). "[T]he plain text of the statute requires as an element damage to government property. 18 U.S.C. § 1361. The conduct of willfully injuring property and the conduct of committing depredation against property, as used in Section 1361, are not so dissimilar as to establish distinct crimes, but simply describe different means by which such damage or attempted damage to government property may be accomplished." Id.

Also relevant here, in *United States v. Campbell*, 22 F.4th 438, 441-42 (4th Cir. 2022), the Fourth Circuit held that a West Virginia conviction does not qualify as a Guidelines "controlled substance offense" because it punishes attempt crimes. The West Virginia statute prohibited in part delivery of a controlled substance and defined "deliver" as "the actual, constructive or attempted transfer from one person to another of "controlled substance. "In other words, the least culpable conduct criminalized by the West Virginia statute is an attempt to deliver

a controlled substance." Id.,; see also United States v. Locklear, No. 19-4443, 2022WL 2764421, at *3 (4th Cir. July 15, 2022) (applying Campbell to a North Carolina offense using the same statutory language). See United States v. Kaplan, 171 F.3d 1351, 1354 (11th Cir. 1999)("The Hobbs Act, by its own terms, encompasses the inchoate offense of attempt to extort and conspiracy to extort."); United States v. Eldridge 2 F.4th 27, 38 (2d Cir. 2021), cert. granted, judgment vacated, 142 S.Ct. 2863 (2022)(Count Six charged Eldridge with both conspiracy to commit Hobbs Act robbery and attempted Hobbs Act robbery"); United States v. Glass, 904 F.3d 319, 323 n.3 (3rd Cir. 2018)(recognizing that "deliver" under 21 U.S.C. § 802(8) includes inchoate attempt crimes); Ochoa-Salgado v. Garland, 5 F.4th 615, 618-19 (5th Cir. 2021)(similar).

Because attempted Hobbs Act robbery does not qualify as a "crime of violence" under § 924(c), Petitioner "may not be lawfully convicted and sentenced under § 924(c)." See Taylor, 142 S.Ct. at 2026. And because the fact that there is no avenue for relief from the denial of the Fourth Circuit Court of Appeals, this Court should review the district courts' sentence of Petitioner's sentence of 2,119 months of imprisonment-a sentence driven almost entirely by the stacked mandatory sentences for the Section 924(c) convictions.

Petitioner has combined Background and Procedural History with citations of law, to provide a clearer understanding of Petitioner's position and understanding of law in a pro se format.

CONCLUSION

Premised on the foregoing, and the fact that Petitioner is possibly serving an unlawful sentence of 2119 months, basically a life sentence, where the sentence is driven by the stacking of § 924(c) conviction that might be unlawful. Based on the foregoing facts presented to this Honorable Supreme Court, this Court should his request for out-of-rehearing on the judgment of denial that was entered by this Court on February 22, 2021, (Denial of Request for Writ of Certiorari), and revisit his case in the interest of justice, where a miscarriage of justice may be relevant in this matter, and for the purpose of judicial economy.

Respectfully submitted,

Domonic D. Usher

Domonic D. Usher # 55702-056
FCI Williamsburg
P.O. Box 340
Salters, SC 29590

Certificate of Certification

This petition for rehearing is being presented by a party unrepresented by counsel and the petition is restricted to the grounds specified in the petition. Specifically, whether Attempted Hobbs Act robbery, is still a crime of violence under the force clause of 18 U.S.C. § 924(c)(1)(A), after the Supreme Court's ruling in United States v. Taylor, 142 S.Ct. 2015 (2022). And it is presented in good faith and not for delay.

CERTIFICATE PURSUANT TO SUPREME COURT RULE 44.2

Respectfully submitted,



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A P P E N D I X

1. Fourteen pages of Supreme Court rulings on the issue of Motion for Leave to File a petition for out-of-time rehearing.

No. 622.

**MATTIE BRADEY, as Admr., of the Estate of Marion Thomas Bradey, Deceased,
Petitioner,**

vs.

UNITED STATES, as Represented by War Shipping Administration.†

June 3, 1946.

Held:

The motion for leave to file a petition for rehearing out of time is granted. The petition for rehearing is denied.

Mr. Justice Rutledge took no part in the consideration or decision of these applications.

326 US 795, ante, 483, 66 S Ct 484.

FOOTNOTES

† Mr. Justice Jackson took no part in the consideration or decision of the cases in which judgments or orders are this day announced.

93 LED 1729, 337 US 921 California v. Zook

No. 355.

PEOPLE OF THE STATE OF CALIFORNIA, Petitioner,

vs.

BERL B. ZOOK and Wilmer K. Craig.

336 US 725, ante, <*pg. 1730> 1005, 69 S Ct 841.

May 31, 1949.

Held:

The motion for leave to file petition for rehearing is granted. The petition for rehearing is denied.

Petition for rehearing granted. The order entered May 14, 2018, denying the petition for writ of certiorari vacated. Motion of petitioner for leave to proceed *in forma pauperis* and petition for writ of certiorari granted. Judgment vacated, and case remanded to the United States Court of Appeals for the Fifth Circuit for further consideration in light of *Sessions v. Dimaya*, 584 U.S. ____, 138 S. Ct. 1204, 200 L. Ed. 2d 549 (2018).

116 SCT 663, 133 LED2D 514, 516 US 1022 Fuentes v United States

No. 94-1412.

Josefa Fuentes, Petitioner

vs.

United States.

516 US 1022, 133 L Ed 2d 514, 1995 US LEXIS 8591, 116 SCT 663.

December 11, 1995.

On petition for rehearing. **Petition for rehearing granted.** Order entered May 30, 1995, denying the petition for a writ of certiorari vacated. Petition for a writ of certiorari granted. Judgment vacated and case remanded to the United States Court of Appeals for the Ninth Circuit for further consideration in light of Bailey v. United States, 516 US 137, 133 L Ed 2d 472, 116 S Ct 501 (1995).

Former decision, 515 US 1102, 132 L Ed 2d 254, 115 S Ct 2246.

See same case below, 37 F.3d 565.

¹⁸ The count includes untimely petitions for rehearing, successive petitions for rehearing, motions for leave to file petitions for rehearing, motions for leave to file successive petitions for rehearing, and motions and petitions for reconsideration of denial of rehearing or of leave to file petitions for rehearing. See 335 US 838 (two cases), 855, 864 (six cases), 888, 894 (two cases), 899, 900; 336 US 911, 915 (four cases), 921, 929 (two cases), 932 (two cases), 941, 955, 963, 971; 337 US 911, 920, 921 (two cases), 934, 950 (three cases), 953 (two cases), 961 (five cases); 338 US 841 (four cases), 863, 882, 889, 939, 940, 953; 339 US 906, 916, 926, 936, 950, 954, 972, 973 (three cases), 992 (two cases); 340 US 846, 848, 898, 907, 918, 939, 940; 341 US 917, 928, 933, 937, 956 (four cases); 342 US 842, 844, 856, 874, 880, 895, 899 (two cases), 907 (two cases), 915; 343 US 917 (two cases), 931, 932, 952, 959 (two cases), 989 (three cases); 344 US 848, 849, 850 (two cases), 882, 905; 345 US 914, 931 (two cases), 937 (two cases), 945, 960, 961, 971, 1003, 1004; 346 US 841, 843 (two cases, total of three petitions), 880 (three cases), 881, 904, 905 (two cases), 917, 918; 347 US 908 (two cases), 911 (two cases), 924 (three cases), 940, 1007 (three cases), 1021; 348 US 851 (two cases), 853 (two cases), 889, 904, 932, 939 (three cases), 940, 960 (two cases); 349 US 917, 925, 948, 969 (two cases); 350 US 413, 811, 854, 856, 919, 920, 955, 960, 976; 351 US 183, 915 (two cases), 928, 929, 958, 990; 352 US 860, 861 (four cases), 886, 913, 950, 977 (two cases), 1019, 1023; 353 US 918, 921.

¹⁹ See 348 US 851 (two cases), 853 (two cases), 889, 932, 939 (three cases), 940, 960 (two cases); 349 US 917, 925, 948, 969 (two cases); 350 US 854, 920, 955, 960, 976; 351 US 915 (two cases), 928, 929, 958, 990; 352 US 860, 861 (three cases), 886, 913, 977 (two cases), 1019, 1023; 353 US 918, 921.

Joseph E. Marron, Petitioner,
vs.
United States of America.

[No. 185.]

Motion for Leave to File Petition for Rehearing out of Time under Rule 30.

APPEARANCES OF COUNSEL ARGUING CASE

Mr. Benjamin B. Pettus, in behalf of Mr. Benjamin L. McKinley, for petitioner.

January 9, 1928.

Held:

Denied.

79 SCT 939, 3 LED2D 934, 359 US 985 Goldstein v United States

No. 215.

SAMUEL GOLDSTEIN, Petitioner,

vs.

UNITED STATES OF AMERICA.

359 US 985, 3 L Ed 2d 934, 79 SCT 939.

May 4, 1959.

Motion for leave to file petition for rehearing out of time denied. Mr. Justice Stewart took no part in the consideration or decision of this application.

Former Decision, 358 US 830, 3 L ed 2d 68, 79 S Ct 50.

119SCT1595, 143 LED2D 688, 526 US 1108 Vickers v Stewart

No. 98-6440.

Robert Wayne Vickers, Petitioner

vs.

Terry L. Stewart, Director, Arizona Department of Corrections, et al.

526 US 1108, 143 L Ed 2d 688, 119 S Ct 1595

May 5, 1999.

Application for stay of execution of sentence of death, presented to Justice O'Connor, and by her referred to the Court, denied. Motion for leave to file a petition for rehearing out of time denied.

Former decision, 525 US 1073, 142 L Ed 2d 669, 1999 US LEXIS 200, 119 S Ct 809.

119SCT1595, 143 LED2D 688, 526 US 1107 Vickers v Arizona

No. 88-7629 (A-920).

Robert Wayne Vickers, Petitioner

vs.

Arizona.

526 US 1107, 143 L Ed 2d 688, 119 S Ct 1595

May 5, 1999.

Application for stay of execution of sentence of death, presented to Justice O'Connor, and by her referred to the Court, denied. Motion for leave to file a petition for rehearing out of time denied.

Former decision, 497 US 1033, 111 L Ed 2d 806, 1990 US LEXIS 3534, 110 S Ct 3298.

20SCT2036, 146 LED2D 981, 529 US 1146 Clayton v Johnson

No. 99-8297 (99A956).

James Edward Clayton, Petitioner

vs.

Gary L. Johnson, Director, Texas Department of Criminal Justice, Institutional Division.

529 US 1146, 146 L Ed 2d 981, 120 S Ct 2036

May 25, 2000.

Motion for leave to file a petition for **rehearing out of time** denied. Application for stay of execution of sentence of death, presented to Justice Scalia, and by him referred to the Court, denied.

122SCT1814, 152 LED2D 669, 535 US 1049 Johnson v Maynard

No. 99-6770 (01A821).

Richard Charles Johnson, Petitioner

vs.

Gary D. Maynard, Director, South Carolina Department of Corrections, et al.

535 US 1049, 152 L Ed 2d 669, 122 S Ct 1814

May 3, 2002.

Application for stay of execution of sentence of death, presented to The Chief Justice, and by him referred to the Court, denied. Motion for leave to file a petition for rehearing out of time denied.

Former decision, 528 US 1032, 145 L Ed 2d 433, 1999 US LEXIS 7982, 120 S Ct 557.

77 SCT 1376, 1 LED2D 1441, 354 US 928 Landell v Northern Pacific R. Co.

No. 722.

GEORGE A. LANDELL, Executor, etc., et al., Petitioners,

vs.

NORTHERN PACIFIC RAILWAY CO.

354 US 928, 1 L Ed 2d 1441, 77 SCT 1376.

June 17, 1957.

Motion for leave to file Petition for rehearing out of time denied. Mr. Justice Whittaker took no part in the consideration or decision of this motion.

Former Decision, 352 US 1017, 1 L ed 2d 550, 77 S Ct 565.

See same case below, 99 App DC 169, 238 F.2d 30.

77 SCT 1281, 1 LED2D 1147, 353 US 989 Broadwell v Ohio

No. 774.

ROBERT BROADWELL and E. M. B. Ownen, Petitioners,

vs.

STATE OF OHIO.

353 US 989, 1 L Ed 2d 1147, 77 SCT 1281.

June 3, 1957.

Motion for leave to file petition for **rehearing out of time** denied. Mr. Justice Whittaker took no part in the consideration or decision of this motion.

Former Decision, 353 US 911, 1 L ed 2d 665, 77 S Ct 668.

77 SCT 1054, 1 LED2D 1139, 353 US 977 Preisler v United States

No. 621.

ANNA PREISLER, Petitioner,

vs.

UNITED STATES OF AMERICA.

353 US 977, 1 L Ed 2d 1139, 77 SCT 1054.

May 27, 1957.

Motion for leave to file petition for rehearing out of time denied. Mr. Justice Whittaker took no part in the consideration or decision of this motion.

Former Decision, 352 US 990, 1 L ed 2d 368, 77 S Ct 387.