

No. 20-6466

IN THE SUPREME COURT OF THE UNITED STATES

LOUIS ANTHONY JACKSON, PETITIONER

v.

UNITED STATES OF AMERICA

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

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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Petitioner contends (Pet. i, 5) that robbery in violation of the Hobbs Act, 18 U.S.C. 1951(a), does not qualify as a "crime of violence" under 18 U.S.C. 924(c)(3)(A), and that the court of appeals erred in denying a certificate of appealability (COA) on that claim. Those contentions lack merit. Every court of appeals that has considered the issue has determined that Hobbs Act robbery qualifies as a crime of violence under Section 924(c)(3)(A), and this Court has repeatedly denied petitions for a writ of certiorari challenging the circuits' consensus on that issue. The Court should likewise deny the petition for a writ of certiorari in this case.

1. Following a guilty plea, petitioner was convicted on two counts of using or carrying a firearm during and in relation to a crime of violence, in violation of 18 U.S.C. 924(c) and 2. Judgment 1. The information identified two Hobbs Act robberies as the underlying crimes of violence for those counts, Information 1-2, and petitioner acknowledged in his plea agreement that he had committed those robberies, Plea Agreement 2; see Statement of Facts 2. The district court accepted petitioner's guilty plea and sentenced him to 420 months of imprisonment, consisting of 120 months of imprisonment for the first Section 924(c) count and a consecutive term of 300 months of imprisonment for the second Section 924(c) count, to be followed by five years of supervised release. Judgment 2-3. Petitioner did not appeal.

In 2016, petitioner filed a motion for postconviction relief under 28 U.S.C. 2255, in which he argued (as relevant here) that his Section 924(c) convictions should be vacated on the theory that Hobbs Act robbery is not a crime of violence. D. Ct. Doc. 44, at 3-10 (June 6, 2016) (2255 Motion). Section 924(c)(3) defines a "crime of violence" as a felony offense that either "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), or, "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," 18 U.S.C.

924(c)(3)(B). Petitioner asserted that Section 924(c)(3)(B) is unconstitutionally vague in light of this Court's decision in Johnson v. United States, 576 U.S. 591 (2015), which held that the "residual clause" of the Armed Career Criminal Act of 1984, 18 U.S.C. 924(e)(2)(B)(ii), is void for vagueness, 576 U.S. at 596. See 2255 Motion 3-10. Petitioner did not address whether Hobbs Act robbery qualifies as a "crime of violence" under the alternative definition of that term in Section 924(c)(3)(A).

The district court denied petitioner's motion. D. Ct. Doc. 65 (Jan. 10, 2020) (Order). While petitioner's motion was pending, this Court had held in United States v. Davis, 139 S. Ct. 2319 (2019), that the "crime[] of violence" definition in Section 924(c)(3)(B) is unconstitutionally vague. Id. at 2336. Shortly thereafter, however, the court of appeals recognized in United States v. Mathis, 932 F.3d 242 (4th Cir.), cert. denied, 140 S. Ct. 639 and 140 S. Ct. 640 (2019), that Hobbs Act robbery qualifies as a crime of violence under the alternative definition in Section 924(c)(3)(A) because it categorically requires the use, attempted use, or threatened use of physical force. Id. at 265-266. Accordingly, the district court determined that petitioner's challenge to the classification of Hobbs Act robbery as a crime of violence was foreclosed by precedent, and denied a COA. Order 4-5.

The court of appeals likewise denied a COA, Pet. App. 1-3, finding that petitioner had not made the “substantial showing of the denial of a constitutional right” necessary to obtain one. Id. at 3 (quoting 28 U.S.C. 2253(c)(2)).

2. The lower courts correctly denied relief in this case. Hobbs Act robbery requires the “unlawful taking or obtaining of personal property” from another “by means of actual or threatened force, or violence, or fear of injury, immediate or future, to his person or property.” 18 U.S.C. 1951(b)(1). For the reasons stated in the government’s brief in opposition to the petition for a writ of certiorari in Steward v. United States, No. 19-8043 (May 21, 2020), Hobbs Act robbery qualifies as a crime of violence under Section 924(c) because it “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 Br. in Opp. at 6-12, Steward, supra (No. 19-8043).¹

Every court of appeals to have considered the question, including the court below, has recognized that Section 924(c)(3)(A) encompasses Hobbs Act robbery. See Br. in Opp. at 7, Steward, supra (No. 19-8043); see also, e.g., United States v. Melgar-Cabrera, 892 F.3d 1053, 1060-1066 (10th Cir.), cert. denied, 139

¹ We have served petitioner with a copy of the government’s brief in opposition in Steward, which is also available from this Court’s online docket.

S. Ct. 494 (2018). Petitioner notes (Pet. 5) one district court decision concluding that Hobbs Act robbery does not categorically qualify as a crime of violence under Section 924(c)(3)(A). See United States v. Chea, No. 98-cr-20005, 2019 WL 5061085 (N.D. Cal. Oct. 2, 2019). That nonprecedential decision does not create a conflict that warrants this Court's review. See Sup. Ct. R. 10; Camreta v. Greene, 563 U.S. 692, 709 n.7 (2011). And in any event, the district court's decision in Chea was abrogated by the Ninth Circuit's subsequent decision in United States v. Dominguez, 954 F.3d 1251 (2020), which squarely held that Hobbs Act robbery is a crime of violence under Section 924(c)(3)(A). Id. at 1260-1261.

In light of the circuits' consensus that Hobbs Act robbery is a crime of violence, the court of appeals did not err in determining that petitioner had failed to make the "substantial showing of the denial of a constitutional right" necessary to obtain a COA. Pet. App. 3 (quoting 28 U.S.C. 2253(c)(2)). This Court has consistently declined to review petitions for a writ of certiorari contending that Hobbs Act robbery is not a crime of violence under Section 924(c)(3)(A), see Br. in Opp. at 7-8 & n.1, Steward, supra (No. 19-8043), including in Steward, No. 19-8043 (June 29, 2020), and in subsequent cases. See, e.g., Becker v. United States, 141 S. Ct. 145 (2020) (No. 19-8459); Terry v. United States, 141 S. Ct. 114 (2020) (No. 19-1282); Hamilton v. United

States, 140 S. Ct. 2754 (2020) (No. 19-8188). The Court should follow the same course here.

The petition for a writ of certiorari should be denied.²

Respectfully submitted.

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Acting Solicitor General

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² The government waives any further response to the petition for a writ of certiorari unless this Court requests otherwise.