

IN THE SUPREME COURT OF THE UNITED STATES

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ZELOS FIELDS, PETITIONER

v.

UNITED STATES OF AMERICA

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

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MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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No. 20-7413

ZELOS FIELDS, PETITIONER

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Petitioner contends (Pet. 6-28) that both robbery in violation of the Hobbs Act, 18 U.S.C. 1951(a), and armed bank robbery, in violation of 18 U.S.C. 2113(a) and (d), do not qualify as "crime[s] of violence" within the meaning of 18 U.S.C. 924(c) (3) (A). The district court correctly rejected those contentions, and the court of appeals appropriately declined to issue a certificate of appealability.

1. A conviction for 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), cert. denied, 141 S. Ct. 167 (2020), Hobbs Act robbery qualifies as a "crime of violence" under Section 924(c)(3) 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).<sup>1</sup>

Petitioner contends (Pet. 6-13) that Hobbs Act robbery does not qualify as a crime of violence under Section 924(c)(3)(A) because Hobbs Act robbery does not require a defendant to use or threaten to use "violent" force and may be accomplished by threats to harm "intangible property." Pet. 7, 9. Those contentions lack merit for the reasons explained at pages 8 to 12 of the government's brief in opposition in Steward, supra (No. 19-8043). Every court of appeals to have considered the question, including the court below, has accordingly recognized that Section 924(c)(3)(A) encompasses Hobbs Act robbery. See id. at 7; see also, e.g., United States v. Melgar-Cabrera, 892 F.3d 1053, 1060-1066 (10th Cir.), cert. denied, 139 S. Ct. 494 (2018).

This Court has consistently declined to review petitions for a writ of certiorari asserting that Hobbs Act robbery is not a crime

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<sup>1</sup> 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.

of violence under Section 924(c)(3)(A), see Gov't Br. in Opp. at 7-8 & n.1, Steward, supra (No. 19-8043), including in Steward, 141 S. Ct. 167 (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.

2. A conviction for armed bank robbery requires proof that the defendant (1) took or attempted to take money from the custody or control of a bank "by force and violence, or by intimidation," 18 U.S.C. 2113(a); and (2) either committed an "assault[]" or endangered "the life of any person" through "the use of a dangerous weapon or device" in committing the robbery, 18 U.S.C. 2113(d). For the reasons explained in the government's brief in opposition to the petition for a writ of certiorari in Johnson v. United States, No. 19-7079 (Apr. 24, 2020), armed bank 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 Gov't Br. in Opp. at 7-25, Johnson, supra (No. 19-7079).<sup>2</sup>

Petitioner contends (Pet. 14-28) that armed bank robbery does not qualify as a crime of violence under Section 924(c)(3)(A),

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<sup>2</sup> We have also served petitioner with a copy of the government's brief in opposition in Johnson, which is also available on this Court's online docket.

asserting that robbery "by intimidation" does not require the use or threatened use of violent force, see Pet. 14-17; that federal bank robbery is not a specific-intent crime, see Pet. 17-20 (citing, inter alia, Carter v. United States, 530 U.S. 255, 268 (2000)); that federal armed bank robbery may be committed using an inoperable or fake weapon, see Pet. 21-23; and that the bank-robbery statute includes nonviolent intimidation and extortion as indivisible means of committing the offense, see Pet. 23-28. Those contentions lack merit for the reasons explained at pages 9 to 25 of the government's brief in opposition in Johnson, supra (No. 19-7079).

Every court of appeals with criminal jurisdiction, including the court below, has accordingly recognized that Section 924(c) (3) (A) and similarly worded provisions encompass the federal offenses of bank robbery or armed bank robbery. See Gov't Br. in Opp. at 7-8, Johnson, supra (No. 19-7079). This Court has repeatedly denied petitions for a writ of certiorari challenging the circuits' consensus on that issue, see id. at 8-9 & n.1, and the same result is warranted here.

The petition for a writ of certiorari should be denied.<sup>3</sup>

Respectfully submitted.

ELIZABETH B. PRELOGAR  
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MAY 2021

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<sup>3</sup> The government waives any further response to the petition unless this Court requests otherwise.