

NOS: 20-7749 and 20-7750

IN THE SUPREME COURT OF THE UNITED STATES

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ERIC KAMAHELE,  
*Petitioner,*  
v.

UNITED STATES OF AMERICA,  
*Respondent.*

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KEPA MAUMAU,  
*Petitioner,*  
v.

UNITED STATES OF AMERICA,  
*Respondent.*

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

*Reply in Support of Petition for Writ of Certiorari*

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Petitioners in this case are codefendants who were sentenced to multiple counts of violating 18 U.S.C. § 924(c) based on VICAR and Hobbs Act robbery. The government has tacitly conceded that the § 924(c) convictions based on VICAR should be vacated in light of *Borden v. United States*, No. 19-5410 (June 10, 2021). Petitioners agree that this Court should remand on their third issue presented in light of *Borden*.

The government, however, chose not to respond to Petitioners' request for review of their § 924(c) convictions based on Hobbs Act robbery. The Court should grant certiorari on these issues as well or, in the alternative, order the government to respond.

As described in Petitioners' request for a writ of certiorari, the Tenth Circuit is one of several circuits that has adopted jury instructions that extend Hobbs Act robbery to situations where the defendant threatens to harm intangible property. (Cert. Pet. 9-11.) Because this can be accomplished without the use of violent physical force, it does not categorically fall within the force clause of § 924(c). In light of the widespread use of these jury instructions, the Court should grant Petitioners' request for a writ of certiorari to decide whether Hobbs Act robbery is categorically a crime of violence under § 924(c). (See Cert. Pet. 11 (citing cases).)

This question is particularly important because the Court has granted certiorari to decide whether *attempted* Hobbs Act robbery is a crime of violence under § 924(c)'s force clause. *United States v. Taylor*, No. 20-1459, cert. granted July 2, 2021. Analytically, however, the issues presented here should be addressed prior to the issue presented in *Taylor*. If Hobbs Act robbery itself is not categorically a crime of violence, then it follows that *attempted* Hobbs Act robbery is not a crime of violence either.

Even if this Court is ultimately unpersuaded to grant certiorari on the broader question of whether Hobbs Act robbery is categorically a crime of

violence, it should grant certiorari to provide these Petitioners relief from their unconstitutional § 924(c) convictions. Their § 924(c) convictions based on Hobbs Act robbery were unconstitutional as applied because they were necessarily based on the unconstitutional residual clause of § 924(c). Here, the trial court (relying on Tenth Circuit pattern instructions) instructed the jury that Hobbs Act robbery could be committed by threatening future harm to intangible property. With the residual clause in force, this instruction was unobjectionable. However, this instruction took Petitioners' Hobbs Act robbery convictions beyond the reach of § 924(c)'s force clause. As applied here, Petitioners' § 924(c) convictions in this case were unconstitutionally based on § 924(c)'s residual clause.

Kepa Maumau and Eric Kamahele were unconstitutionally convicted and sentenced under “stacked” § 924(c) convictions that carried a mandatory 25-year minimum penalty. The Tenth Circuit’s unwillingness to correct these errors that were the result of its own model jury instructions necessitates this Court’s intervention. For these reasons, Petitioners respectfully ask this Court to grant the writ as to *all* of the questions they have presented or, in the alternative, to order the Government to respond to Petitioners’ Issues 1 and 2.

Respectfully submitted,

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