

No. 21-5013

IN THE SUPREME COURT OF THE UNITED STATES

ARNOLD COUNCIL, PETITIONER

v.

UNITED STATES OF AMERICA

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

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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Petitioner contends (Pet. 9-21) that robbery in violation of the Hobbs Act, 18 U.S.C. 1951(a), does not qualify as a "crime of violence" within the meaning of 18 U.S.C. 924(c)(3)(A). The court of appeals correctly rejected that contention, and it does not warrant further review.

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).¹

Petitioner contends (Pet. 9-18) that Hobbs Act robbery does not qualify as a crime of violence under Section 924(c)(3)(A) on the theory that 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. 14, 17. 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). And every court of appeals to have considered the issue, including the court below, has 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); Pet. 11 & n.9 (acknowledging the circuit courts’ consensus).

To the extent petitioner suggests (Pet. 11-13) that this Court’s decision in Borden v. United States, 141 S. Ct. 1817

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.

(2021), casts doubt on the courts of appeals' consensus that Hobbs Act robbery qualifies as a crime of violence under Section 924(c)(3)(A), petitioner is incorrect. In Borden, this Court determined that Tennessee reckless aggravated assault, in violation of Tennessee Code Annotated § 39-13-102(a)(2) (2003), lacks a mens rea element sufficient to qualify it as an offense involving "the use of physical force against the person of another" for purposes of the definition of "violent felony" in the Armed Career Criminal Act of 1984, 18 U.S.C. 924(e)(2)(B)(i). See 141 S. Ct. at 1825. But petitioner does not suggest that Hobbs Act robbery can be committed recklessly, and thus he provides no sound basis for concluding that Borden affects the classification of Hobbs Act robbery under Section 924(c)(3)(A).

Petitioner further contends (Pet. 19-21) that aiding and abetting Hobbs Act robbery does not qualify as a "crime of violence" under Section 924(c)(3)(A) because the offense does not require the defendant personally to use or threaten physical force. That contention lacks merit for the reasons explained at pages 8 to 9 of the government's brief in opposition to the petition for a writ of certiorari in Stallworth v. United States, No. 20-6563 (Mar. 15, 2021), cert. denied, 2021 WL 1520858 (Apr. 19, 2021).² Every court of appeals to have considered the issue, including the

² We have served petitioner with a copy of the government's brief in opposition in Stallworth, which is also available from this Court's online docket.

court below, has determined that aiding and abetting a crime that has a requisite element of the use of force under Section 924(c)(3)(A) and similar provisions qualifies as a crime of violence. See id. at 9-10; see also, e.g., United States v. Ali, 991 F.3d 561, 573-574 (4th Cir. 2021); Pet. 11-12 & n.10 (acknowledging the circuit courts' consensus).

2. This Court has consistently declined to review petitions for a writ of certiorari asserting 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, 141 S. Ct. 167 (2020), and in other cases. See, e.g., Fields v. United States, 2021 WL 2519341 (Jun. 21, 2021) (No. 20-7413); Thomas v. United States, 2021 WL 2519337 (Jun. 21, 2021) (No. 20-7382); Walker v. United States, 2021 WL 2519317 (June 21, 2021) (No. 20-7183); Usher v. United States, 141 S. Ct. 1399 (2021) (No. 20-6272); Terry v. United States, 141 S. Ct. 114 (2020) (No. 19-1282); Hamilton v. United States, 140 S. Ct. 2754 (2020) (No. 19-8188). This Court has likewise repeatedly denied review of petitions arguing that aiding and abetting Hobbs Act robbery is not a crime of violence. See, e.g., Stallworth, 2021 WL 1520858 (Apr. 19, 2021) (No. 20-6563); Becker v. United States, 141 S. Ct. 145 (2020) (No. 19-8459); Ragland v. United States, 138 S. Ct. 1987 (2018) (No. 17-7248); see also Stephens v. United States, 138 S. Ct. 502 (2017) (No. 17-5186) (denying review of petition asserting that aiding and abetting federal armed bank robbery, in

violation of 18 U.S.C. 2113(a), is not a crime of violence); Deiter v. United States, 139 S. Ct. 647 (2018) (No. 18-6424) (similar). The same course is warranted here.

This Court has granted review in United States v. Taylor, No. 20-1459 (July 2, 2021), to determine whether attempted Hobbs Act robbery qualified as a “crime of violence” under Section 924(c)(3)(A). But petitioner does not contend that Taylor has any bearing on his case, and it would not be appropriate to hold the petition here pending the outcome of Taylor because petitioner would not benefit from a decision in favor of the respondent in Taylor. Even if this Court were to conclude that attempted Hobbs Act robbery is not a crime of violence under Section 924(c)(3)(A), the Fourth Circuit in Taylor reaffirmed that completed Hobbs Act robbery qualifies as a “crime of violence,” see United States v. Taylor, 979 F.3d 203, 207-208 (2020), and the respondent in Taylor does not argue otherwise, see Br. in Opp. at 11-17, United States v. Taylor, No. 20-1459 (May 21, 2021). The Fourth Circuit has also explicitly recognized, since its decision in Taylor, that aiding and abetting Hobbs Act robbery qualifies as a crime of violence. See Ali, 991 F.3d at 573-574. Accordingly, no reasonable prospect exists that this Court’s decision in Taylor

will affect the outcome of this case, and it is unnecessary to hold this petition pending Taylor.³

Respectfully submitted.

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AUGUST 2021

³ The government waives any further response to the petition for a writ of certiorari unless this Court requests otherwise.