

No. 21-5057

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IN THE SUPREME COURT OF THE UNITED STATES

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LANCE LAMONT LAVERT, 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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Petitioner contends (Pet. 3-8) 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 the petition for a writ of certiorari should be denied.

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. 6-7) 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.” 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).

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

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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.

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, No. 20-7413 (June 21, 2021); Thomas v. United States, No. 20-7382 (June 21, 2021); Walker v. United States, No. 20-7183 (June 21, 2021); Usher v. United States, 141 S. Ct. 1399 (2021) (No. 20-6272); 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 same course is warranted here.

Petitioner errs in asserting (Pet. 3-5) that the Second, Fourth, and Tenth Circuits have divided from the other courts of appeals on that issue. Each of those courts has recognized that petitioner's offense -- completed Hobbs Act robbery -- qualifies as a crime of violence under Section 924(c)(3)(A). See United States v. Hill, 890 F.3d 51, 57-60 (2d Cir. 2018), cert. denied, 139 S. Ct. 844 (2019); United States v. Mathis, 932 F.3d 242, 265-266 (4th Cir.), cert. denied, 140 S. Ct. 639, and 140 S. Ct. 640 (2019); Melgar-Cabrera, 892 F.3d at 1060-1066 (10th Cir.). Petitioner cites (Pet. 4) United States v. Barrett, 937 F.3d 126 (2d Cir. 2019), but that decision reiterated that "substantive Hobbs Act robbery" is a crime of violence under Section 924(c)(3)(A), id. at 128-129, and vacated a Section 924(c) conviction that was predicated on the separate crime of conspiracy to commit Hobbs Act robbery, see id. at 129-130. Petitioner also cites (Pet. 5) United States v. Bowen, 936 F.3d 1091, 1107-1108

(10th Cir. 2019), but he acknowledges (Pet. 5) that Bowen did not involve Hobbs Act robbery.

Petitioner additionally invokes (Pet. 5) the Fourth Circuit's decision in United States v. Taylor, 979 F.3d 203 (2020), cert. granted, No. 20-1459 (July 2, 2021), holding that attempted Hobbs Act does not qualify as a "crime of violence" within the meaning of Section 924(c)(3)(A). See id. at 205. This Court recently granted review of that decision to address that issue. But as petitioner acknowledges (Pet. 5), the Fourth Circuit in Taylor reaffirmed that completed Hobbs Act robbery qualifies as a "crime of violence," see 979 F.3d at 207-208, 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). Petitioner errs in suggesting (Pet. 5-7) that completed and attempted Hobbs Act robbery are the same crime. To be convicted of attempted Hobbs Act robbery, a defendant must (1) have the intent to commit each element of the completed crime, and (2) take a "substantial step" toward the crime's completion. United States v. Resendiz-Ponce, 549 U.S. 102, 106-107 (2007) (citations omitted); see Braxton v. United States, 500 U.S. 344, 349 (1991). Those elements differ from the elements of the completed offense. See 18 U.S.C. 1951(a).

Petitioner does not ask this Court to hold his petition pending the Court's decision in Taylor, and that course would not be appropriate. For the reasons the Fourth Circuit explained 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), that holding would not affect the court of appeals' determination here that petitioner's completed Hobbs Act robbery qualifies as a crime of violence. See Taylor, 979 F.3d at 207-208. 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.<sup>2</sup>

Respectfully submitted.

ELIZABETH B. PRELOGAR  
Acting Solicitor General

AUGUST 2021

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