

No. 21-5457

IN THE SUPREME COURT OF THE UNITED STATES

BRIAN FIERRO, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

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

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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Petitioners contend (Pet. 14-24) that the court of appeals erred in rejecting their challenges -- which they brought in motions under 28 U.S.C. 2255 -- to their convictions under 18 U.S.C. 924(c) on the theory 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. The petition for a writ of certiorari should be denied.

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

Petitioners contend (Pet. 16-23) 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). 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. Walker, 990 F.3d 316, 325-326 (3d Cir. 2021), petition for cert. pending, No. 21-102 (filed July 22, 2021); United States v. Melgar-

¹ The government has served petitioners with a copy of the government's brief in opposition in Steward, which is also available from this Court's online docket.

Cabrera, 892 F.3d 1053, 1060-1066 (10th Cir.), cert. denied, 139 S. Ct. 494 (2018); Pet. 14 (acknowledging the consensus).

2. This Court has repeatedly and recently 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, and in other cases. See, e.g., Moore v. United States, No. 21-5066 (Oct. 4, 2021); Lavert v. United States, No. 21-5057 (Oct. 4, 2021); Copes v. United States, No. 21-5028 (Oct. 4, 2021); Council v. United States, No. 21-5013 (Oct. 4, 2021); Fields v. United States, 141 S. Ct. 2828 (2021) (No. 20-7413); Thomas v. United States, 141 S. Ct. 2827 (2021) (No. 20-7382); Walker v. United States, 141 S. Ct. 2823 (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). The same course is warranted here.

This Court has granted review in United States v. Taylor, No. 20-1459 (oral argument scheduled for Dec. 7, 2021), to determine whether attempted Hobbs Act robbery qualifies as a “crime of violence” under Section 924(c)(3)(A). Petitioners do 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 petitioners 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. for Resp. at 10-33, United States v. Taylor, No. 20-1459 (Oct. 22, 2021). Accordingly, no reasonable prospect exists that this Court's decision in Taylor will affect the outcome of this case.²

Respectfully submitted.

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OCTOBER 2021

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