

AUG 10 2021

OFFICE OF THE CLERK

No. \_\_\_\_\_

21-5589

IN THE  
SUPREME COURT OF THE UNITED STATES

Michael Gordon — PETITIONER  
(Your Name)

vs.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

The Third Circuit Court of Appeals  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Michael Gordon #6789635  
(Your Name)  
Iowa State Penitentiary  
P.O. Box 316  
(Address)

Fort Madison, Iowa 52627  
(City, State, Zip Code)

NA  
(Phone Number)

ORIGINAL

### QUESTION(S) PRESENTED

1.) Whether or not the United States District Court has jurisdiction to grant relief for a writ of Habeas Corpus pursuant to 28 U.S.C. 2241?

2.) Whether or not "aiding and abetting" Hobbs Act robbery pursuant to 18 USC 1951 categorically qualifies as a "crime of violence" under 18 USC 924 (c) (3) (B) in light of *Borden v. US*, 593 U.S. — (2021)?

3.) Whether or not when a defendant's conviction does not "specifically state" what definition of a crime of violence is based upon either 18 USC 924 (c) (3) (B) or the now defunct "residual clause" his conviction should be interpreted?

4.) Whether or not the enactment of the First Step Act's "clarification" of section 18 USC 924 (c) was an "unconstitutional act" by congress whereby "clarifying" a criminal statute and not making the clarification retroactive to cases on collateral review?

5.) Whether or not aiding and abetting Hobbs Act Robbery pursuant to 18 USC 1951 is no longer a "crime of violence" under 18 USC 924 (c) because § 924 (c) (3) (B) is unconstitutionally vague?

## LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

## RELATED CASES

United States v. Davis, 139 S.Ct. 2319 (2019)  
Borden v. U.S., 593 U.S. -- (2021)  
Johnson v. US, 559 US 133 (2010)  
Johnson v. US, 135 S.Ct. 2551 (2015)  
Sessions v. Dimaya, 138 S.Ct. 1204 (2018)  
In Re Dorsainvil, 119 F.3d 245 (3d Cir 1997)

## TABLE OF AUTHORITIES CITED

### CASES

### PAGE NUMBER

United States v. Davis, 139 S. Ct 2319 (2019) (7)  
Johnson v. US, 135 S Ct 2551 (2015) (7)  
Sessions v. Dimaya, 138 S Ct 1204 (2018) (7)  
Borden v. US, 593 US -- (2021) (7)

### STATUTES AND RULES

18 USC 1951 (7)  
18 USC 924 (c) (3) (B) (7)  
28 USC 2241 (7)  
18 USC 924 (e) (2) (B) (7)  
18 USC 2 (7)  
18 USC 16 (B) (7)  
28 USC 2255 (7)

### OTHER

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IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

**OPINIONS BELOW**

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☒ reported at # 19-3673; or,  
☐ has been designated for publication but is not yet reported; or,  
☒ is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

☒ reported at # 3:18-cv-2420; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix \_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

The opinion of the \_\_\_\_\_ court appears at Appendix \_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

## JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was June 17, 2021.

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. A \_\_\_\_\_.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was \_\_\_\_\_.  
A copy of that decision appears at Appendix \_\_\_\_\_.

☐ A timely petition for rehearing was thereafter denied on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. A \_\_\_\_\_.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED



### STATEMENT OF THE CASE

Petitioner was convicted in the United States District Court for the Southern District of Ohio, of seven (7) counts of violating the Hobbs Act (18 USC 1951) and seven (7) counts of using a firearm during a violent crime; specifically that Petitioner aided and abetted pursuant to 18 USC 2 all fourteen (14) counts.

Petitioner was sentenced to 1,651 months imprisonment and three (3) years supervised release, and his convictions and sentence were affirmed in 2000.

On September 30, 2002, the sentencing court denied Petitioner's first motion to vacate sentence under 28 USC 2255.

In 2016, Petitioner filed a motion for leave to file a second or successive motion to vacate, set aside, or correct his sentence under 28 USC 2255 on the basis of *Johnson v. US*, 135 S Ct 2551 (2015), in which this court held that the residual clause of the definition of "violent felony" in the Armed Career Criminal Act ("ACCA"), 18 USC 924 (e) (2) (B), is unconstitutionally vague.

In 2018, Petitioner filed another motion in the United States Court of Appeals for the Sixth Circuit asserting his convictions for aiding and abetting Hobbs Act robbery do not qualify as crimes of violence under 18 USC 924 (c) (3) (B) in light of the Supreme Court's decision in *Sessions v. Dimaya*, 138 S Ct 1204 (2018), holding that the identically worded definition of "crime of violence" under 18 USC 16 (B) is unconstitutionally vague.

In 2019, Petitioner again filed another motion in the United States Court of Appeals for the Sixth Circuit asserting his conviction for aiding and abetting Hobbs Act robbery do not qualify as crimes of violence in light of the Supreme Court's decision in *US v. Davis*, 139 S. Ct 2319 (2019) nullifying the "modified" categorical approach.

In 2021, the Supreme Court further concluded that any crime that has the "mens rea" of recklessness cannot categorically qualify as a violent crime even under the use-of-force definition in *Borden v. US*, 593 US -- (2021).

### REASONS FOR GRANTING THE PETITION

1.) This Honorable Court should grant this Petition to resolve "confusion" amongst the Circuit Court of Appeals and to establish clarity with regards to the "crime of violence" definition.

2.) This Honorable Court should grant this Petition to decide whether or not a Petitioner who is charged, convicted and sentenced under both the residual clause and use-of-force clause should have his convictions and sentence be invalidated.

3.) This Honorable Court should grant this Petition to decide whether or not the first step Act of 2018's "clarification" of section 18 USC 924 (c) is an "unconstitutional act" by Congress whereby clarifying a criminal statute and not making the clarification retroactive.