No. 21-7093

IN THE SUPREME COURT OF THE UNITED STATES

JAMESON LAFOREST, ROBERT WESLEY JOHNSON, AND KEITH MARVEL WALTON, PETITIONERS

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the district court plainly erred in instructing the jury, pursuant to Pinkerton v. United States, 328 U.S. 640 (1946), that petitioners could be liable for an offense committed by a co-conspirator, if that offense fell within the scope of the conspiracy, was committed in furtherance of the conspiracy, and was foreseeable as a necessary or natural consequence of the unlawful agreement.

2. Whether Pinkerton should be limited to its facts or overruled.

ADDITIONAL RELATED PROCEEDINGS

United States District Court (C.D. Cal.):

United States v. Walton, No. 16-cr-29 (Aug. 7, 2018)

United States v. Johnson, No. 16-cr-29 (Sept. 7, 2018)

United States v. LaForest, No. 16-cr-29 (Sept. 7, 2018)

United States Court of Appeals (9th Cir.):

United States v. Johnson, No. 18-50323 (Aug. 16, 2021)

United States v. Johnson, No. 19-50280 (Aug. 16, 2021)

United States v. LaForest, No. 18-50316 (Aug. 16, 2021)

United States v. LaForest, No. 19-50281 (Aug. 16, 2021)

United States v. Walton, No. 18-50262 (Aug. 16, 2021)

United States v. Walton, No. 19-50283 (Aug. 16, 2021)

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OPINION BELOW

The opinion of the court of appeals (Pet. App. 1-12) is not published in the Federal Reporter but is available at 2021 WL 3615426.

JURISDICTION

The judgment of the court of appeals was entered on August 16, 2021. A petition for rehearing was denied on October 21, 2021 (Pet. App. 13-14). The petition for a writ of certiorari was not filed until February 2, 2022, and is out of time under Rule 13.3 of the Rules of this Court. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the Central District of California, petitioners were convicted of conspiring to commit robbery in violation of the Hobbs Act, 18 U.S.C. 1951(a), Hobbs Act robbery, in violation of 18 U.S.C. 1951(a) and 2(a), and using or carrying a firearm during and in relation to a crime of violence, in violation of 18 U.S.C. 924(c)(1)(A)(ii) and 2(a). C.A. E.R. 583, 590, 597. The district court sentenced petitioner Walton to 660 months of imprisonment, to be followed by five years of supervised release, id. at 584; petitioner LaForest to 272 months of imprisonment, to be followed by five years of supervised release, id. at 591; and petitioner Johnson to 264 months of imprisonment, to be followed by five years of supervised release, id. at 598. The court of appeals affirmed. Pet. App. 1-12.

1. Petitioners were members of a large-scale conspiracy that executed a series of smash-and-grab, takeover-style robberies of jewelry stores across southern California. See generally C.A. Supp. E.R. 3196-3202; Gov't C.A. Br. 6-7. The conspiracy was overseen by planners and organizers who scouted and identified locations, planned the robberies, recruited participants, oversaw and coordinated the execution of the robberies, sold stolen merchandise, and distributed the proceeds. See, e.g., C.A. Supp. E.R. 3196-3197, 3206, 3286, 3452. Conspirators, referred to as

"players," id. at 3287, would carry out the robberies, in which they would enter stores, control customers and employees (sometimes with firearms), smash cases, and grab merchandise. Id. at 3203-3206, 3287-3288, 3301; see id. at 2661-2663, 2669-2679, 2738-2739, 2768-2769. Walton and Johnson were planners and organizers; LaForest started as a "player," but eventually assisted in selecting locations, recruiting participants, and planning robberies. See C.A. E.R. 318-320; Gov't C.A. Br. 7.

Members of the conspiracy planned more than a dozen robberies over the course of two years. See Gov't C.A. Br. 6-7. Among others, in February 2016, Walton scouted a watch store in the Del Amo mall. C.A. Supp. E.R. 3449-3451. All three petitioners then started gearing up to rob it, working together to recruit lower-level conspirators to execute the crime. See id. at 1897-1902, 2746-2747. Johnson confirmed he would contribute $100 toward obtaining a stolen car, id. at 3452, 5275, and LaForest and Johnson sent text messages reminding each other and other co-conspirators to communicate only on prepaid phones to avoid detection by law enforcement, id. at 3452-3455. On February 26, 2016, Johnson and LaForest met with several other co-conspirators to discuss and prepare for the robbery. Id. at 1914-1916, 2754-2757. Johnson and LaForest, along with other planners and organizers, distributed equipment, including hammers, backpacks, gloves, and ski masks. Id. at 1916-1917, 2758-2759. Johnson also provided a

gun, saying it would be "the element of surprise." Id. at 1917; see id. at 1918.

On February 29, 2016, members of the conspiracy -- including Johnson and LaForest -- met up before the robbery. C.A. Supp. E.R. 1926-1927, 2765-2766. At around 10:30 a.m., three lower-level co-conspirators entered the watch store. Id. at 1927-1928, 2659-2662, 2767-2768. Once inside, one co-conspirator grabbed the security guard and dragged him to the back of the store, then pointed a gun at the guard and two other employees, telling them to get on the ground. Id. at 2661-2662, 2768-2769. The other two co-conspirators used sledgehammers to smash glass cases containing Rolex watches. Id. at 2663, 2669-2670, 2738-2739, 2769. After less than two minutes, the robbers left with 30 watches worth over $430,000. Id. at 2663, 2674; see also id. at 96.

2. A federal grand jury charged 21 defendants, including petitioners, with a variety of offenses arising out of the conspiracy. Gov't C.A. Br. 6-7. One count (Count 12) charged petitioners (and others) with having "used and carried a firearm during and in relation to, and possessed that firearm in furtherance of, a crime of violence, * * * and in so doing, brandished that firearm," C.A. E.R. 348, based on the use of a firearm during the robbery of the watch store, see ibid., in violation of the substantive statute, 18 U.S.C. 924(c)(1)(A)(ii), and the aiding-and-abetting statute, 18 U.S.C. 2(a). Ibid.

Fifteen members of the conspiracy pleaded guilty; six, including petitioners, proceeded to trial. Gov't C.A. Br. 7. During petitioners' trial, the parties jointly proposed, and the court delivered, an instruction premised on Pinkerton v. United States, 328 U.S. 640 (1946), under which the jury could

> find the defendant guilty of discharging, brandishing, using, or carrying a firearm during and in relation to, or possessing a firearm in furtherance of, a crime of violence, as charged from Count[] * * * 12 of the Third Superseding Indictment if the government has proved each of the following elements beyond a reasonable doubt:
>
> First, a person committed the crime of discharging, brandishing, using, or carrying a firearm during and in relation to, or possessing a firearm in furtherance of, a crime of violence as alleged in the count under consideration.
>
> Second, that person was a member of the conspiracy charged in Count 1 of the Third Superseding Indictment.
>
> Third, that person committed the crime of discharging, brandishing, using, or carrying a firearm during and in relation to, or possessing a firearm in furtherance of, a crime of violence in furtherance of the conspiracy.
>
> Fourth, the defendant was a member of the same conspiracy charged in Count 1 of the Third Superseding Indictment at the time the offense charged in the count under consideration was committed.
>
> And, fifth, the offense fell within the scope of the unlawful agreement and could easily have been foreseen to be a necessary or natural consequence of the unlawful agreement.

C.A. Supp. E.R. 4815-4816; see C.A. E.R. 536-537. The district court also instructed the jury on aiding-and-abetting liability. C.A. Supp. E.R. 4814; see id. at 4846.

The jury found all three petitioners guilty of using or carrying a firearm during and in relation to a crime of violence, in violation of 18 U.S.C. 924(c)(1)(A)(ii). C.A. E.R. 583, 590, 597. The jury also found Walton guilty of one count of conspiring to commit Hobbs Act robbery, in violation of 18 U.S.C. 1951(a), and three counts of Hobbs Act robbery, in violation of 18 U.S.C. 1951(a); LaForest guilty of on one count of conspiring to commit Hobbs Act robbery, in violation of 18 U.S.C. 1951(a), and two counts of Hobbs Act robbery, in violation of 18 U.S.C. 1951(a); and petitioner Johnson guilty of one count of conspiring to commit Hobbs Act robbery, in violation of 18 U.S.C. 1951(a), and two counts of Hobbs Act robbery, in violation of 18 U.S.C. 1951(a). C.A. E.R. 583, 590, 597. The district court sentenced Walton to 660 months of imprisonment, id. at 584; LaForest to 272 months of imprisonment, id. at 591; and Johnson to 264 months of imprisonment, id. at 598.

3. The court of appeals affirmed. Pet. App. 1-12. The court rejected petitioners' challenge to the Pinkerton instruction, which they had raised for the first time on appeal. The court of appeals determined that the district court did not "plainly err in instructing the jury that Pinkerton liability applied to the 18 U.S.C. [] 924(c) counts." Id. at 4. The court of appeals observed that it had already rejected the contention that recent precedents of this Court foreclose Pinkerton liability

for a Section 924(c) offense, ibid., and explained that the Pinkerton instruction in this case did not constructively amend the indictment because petitioners "were charged with conspiracy to commit Hobbs Act robbery and were on notice that a Pinkerton theory of liability could be used for substantive offenses, including the § 924(c) offenses." Id. at 5; see id. at 4-5.

ARGUMENT

Petitioners contend that the district court erred in providing the jury with the parties' joint proposed instruction that was based on Pinkerton v. United States, 328 U.S. 640 (1946). Even if the Court were to disregard the untimeliness of the petition for a writ of certiorari, petitioners' contention, which is reviewable at most for plain error, lacks merit. The district court did not err -- let alone plainly err -- in providing the challenged instruction; petitioners identify no conflict in the courts of appeals; and petitioners provide no sound reason for this Court to revisit Pinkerton. The petition should be denied.

1. The petition for a writ of certiorari is untimely and may be denied on that ground alone. The court of appeals issued its decision on August 16, 2021. Pet. App. 1-12. Petitioners filed a petition for panel rehearing and rehearing en banc on September 28, 2021, which the court of appeals denied on October 21, 2021. Id. at 13-14. This Court's Rules provide in pertinent part that "if a petition for rehearing is timely filed in the lower

court by any party, * * * the [90-day] time to file the petition for a writ of certiorari for all parties (whether or not they requested rehearing or joined in the petition for rehearing) runs from the date of the denial of rehearing." Sup. Ct. R. 13.3; see Sup. Ct. R. 13.1. Accordingly, the time for filing a petition for a writ of certiorari expired on January 19, 2022. According to the docket, however, the petition was not filed until February 2, 2022, and it is therefore out of time.[1]

Although this Court has discretion to consider an untimely petition for a writ of certiorari in a criminal case if "the ends of justice so require," Schacht v. United States, 398 U.S. 58, 64 (1970); see also Bowles v. Russell, 551 U.S. 205, 212 (2007), petitioners -- who are represented by counsel -- offer neither explanation nor justification for the untimeliness of their petition, and none is apparent from the record. The Court may therefore deny the petition as untimely.

2. Even if the petition were timely, it would not warrant this Court's review. Petitioners contend that (1) the district court erred in instructing the jury on Pinkerton liability for a crime that was not the object of the charged conspiracy; (2) Pinkerton is inapplicable to Section 924(c) offenses; and (3)

[1] Petitioners' materials -- including the petition and proof of service -- are dated January 18, 2022, but the docket reflects that the petition was not filed until February 2, 2022 (and not docketed until a week later, on February 9, 2022).

Pinkerton is inapplicable to conspiracies that do not require overt acts. Those contentions are unpreserved and otherwise lack merit.

As a threshold matter, because petitioners and the government jointly proposed the Pinkerton instruction, C.A. Supp. E.R. 695, 758-759 -- and petitioners never objected to it -- petitioners' challenges to that instruction are reviewable at most for plain error, see Fed. R. Crim. P. 52(b); United States v. Olano, 507 U.S. 725, 731-732 (1993); Pet. App. 4. A defendant is entitled to plain-error relief only if he can show (1) error; (2) that is plain or obvious; (3) that affected substantial rights; and (4) that seriously affected the fairness, integrity, or public reputation of judicial proceedings. Olano, 507 U.S. at 732-736; see, e.g., Puckett v. United States, 556 U.S. 129, 135 (2009).[2] Petitioners do not attempt to meet that standard, and this case would provide a poor vehicle for addressing the questions presented.

Petitioners cannot establish error, let alone error that is plain or obvious. Petitioners primarily contend (Pet. 5-6, 11-12) that the district court erred in instructing the jury on Pinkerton liability for a crime -- violation of Section 924(c) --

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[2] Indeed, under Ninth Circuit precedent, petitioners' challenge is likely unreviewable. See, e.g., United States v. Casellas, 842 Fed. Appx. 95, 97 (2021) (unpublished) ("Because [the defendant] jointly proposed the instructions, he waived challenging them on appeal."); United States v. Guthrie, 931 F.2d 564, 567 (1991) ("When the defendant himself proposes the jury instruction he later attacks on appeal, review is denied under the 'invited error' doctrine.") (citation omitted).

that was not the object of the charged conspiracy. The court of appeals did not address that contention. See Pet. App. 4-5; Cutter v. Wilkinson, 544 U.S. 709, 718 n.7 (2005) (This Court is one "of review, not of first view."); Branzburg v. Hayes, 408 U.S. 665, 708 (1972) (declining to address in the first instance issues "not passed upon by the Court of Appeals"). In any event, this contention lacks merit.

In Pinkerton, Daniel Pinkerton and his brother were charged with a conspiracy to violate the tax laws and several substantive tax violations. Although no evidence was introduced showing that Daniel Pinkerton participated directly in the commission of the substantive offenses, the district court instructed the jury that each defendant could be found guilty of the other's substantive offenses if the defendants were both part of the same criminal conspiracy and "the acts referred to in the substantive counts were acts in furtherance [] of the unlawful conspiracy or object of the unlawful conspiracy." Pinkerton, 328 U.S. at 646 n.6; see also id. at 645. This Court affirmed Daniel Pinkerton's conviction for the substantive offenses, explaining that "so long as the partnership in crime continues, the partners act for each other in carrying it forward." Id. at 646.

"[A]cts in furtherance of the conspiracy," the Court explained, are "attributable" to each conspirator "for the purpose of holding them responsible for the substantive offense."

Pinkerton, 328 U.S. at 647; see also ibid. ("[W]hen the substantive offense is committed by one of the conspirators in furtherance of the unlawful project," "all members are responsible."). The Court noted that a "different case would arise if the substantive offense committed by one of the conspirators was not in fact done in furtherance of the conspiracy, did not fall within the scope of the unlawful project, or was merely a part of the ramifications of the plan which could not be reasonably foreseen as a necessary or natural consequence of the unlawful agreement." Id. at 647-648. But "that [wa]s not this case"; to the contrary, "there was evidence to show that these substantive offenses were in fact committed * * * in furtherance of the unlawful agreement or conspiracy existing between the brothers." Id. at 645, 648.

Here, the district court's instruction, which was jointly proposed by the parties, faithfully applied Pinkerton, instructing the jury that petitioners could be liable for the Section 924(c) offense only if that offense "fell within the scope of the unlawful agreement," was committed "in furtherance of the conspiracy," and "could easily have been foreseen to be a necessary or natural consequence of the unlawful agreement." C.A. Supp. E.R. 4815-4816; C.A. E.R. 536-537; pp. 5-6, supra. Petitioners nonetheless contend that the court erred "by giving a Pinkerton instruction for an 18 U.S.C. section 924(c) substantive offense -- Count 12 -- that was not an object of the charged * * * conspiracy." Pet.

3 (emphasis omitted); see, e.g., Pet. 7-8. But the decision in Pinkerton was not limited to that circumstance, but instead made clear that a defendant can be found guilty for a crime committed by a co-conspirator that was committed "in furtherance of the conspiracy" and was "reasonably foresee[able] as a necessary or natural consequence of the unlawful agreement." 328 U.S. at 647-648; see also id. at 646 n.6 (affirming district court's instruction to the jury that each brother could be responsible for the other's crimes if "the acts referred to in the substantive counts were acts in furtherance of the unlawful conspiracy or object of the unlawful conspiracy") (emphasis added); see pp. 10-11, supra.

This Court's subsequent cases likewise refute petitioners' reading of Pinkerton. See Smith v. United States, 568 U.S. 106, 111 (2013) (Under Pinkerton, a person who joins a conspiracy "becomes responsible for the acts of his co-conspirators in pursuit of their common plot."); Fiswick v. United States, 329 U.S. 211, 217 (1946) ("[T]he act of one partner in crime is admissible against the others where it is in furtherance of the criminal undertaking."). And to the extent that petitioners argue (Pet. 8-9, 12) that the instruction impermissibly allowed the jury to find petitioners guilty of the Section 924(c) count without proving that they possessed the mens rea necessary for the substantive crime, that argument lacks merit. The premise of Pinkerton

liability is that "when [a] substantive offense is committed by one of the conspirators in furtherance of the unlawful project," each conspirator's "criminal intent to do the act is established by the formation of the conspiracy." 328 U.S. at 647. It is therefore sufficient that a co-conspirator satisfied the elements of the substantive offense in furtherance of the conspiracy, including that offense's mens rea. See ibid.

3. Petitioners do not attempt to assert any conflict in the courts of appeals and their claim of a conflict with decisions from this Court lacks merit.

Petitioners acknowledge that "the majority of the circuit courts * * * impose Pinkerton liability for substantive offenses that are not objects of the charged conspiracy." Pet. 16-17 (collecting cases); see generally United States v. Pierce, 479 F.3d 546, 552 (8th Cir. 2007) ("Conspiracy defendants are not entitled to limit their potential Pinkerton vicarious liability to only those substantive offenses they believe are directly related to the object offense underlying the conspiracy conviction."); United States v. Odom, 13 F.3d 949, 959 (6th Cir.) ("Once a conspiracy is shown to exist, the Pinkerton doctrine permits the conviction of one conspirator for the substantive offense of other conspirators committed during and in furtherance of the conspiracy, even if the offense is not an object of the conspiracy."), cert. denied, 511 U.S. 1094, and 513 U.S. 836

(1994); United States v. Gironda, 758 F.2d 1201, 1212 (7th Cir.) (explaining that Pinkerton "impos[es] liability, not just for the object offense, but also for acts committed in furtherance of the conspiracy"), cert. denied, 474 U.S. 1004 (1985), abrogated on other grounds by United States v. Durrive, 902 F.2d 1221 (7th Cir. 1990); United States v. Alvarez, 755 F.2d 830, 850 n.24 (11th Cir. 1985) (explaining that Pinkerton liability encompasses "cases in which the substantive crime is not a primary goal of the alleged conspiracy, but directly facilitates the achievement of one of the primary goals * * * because the substantive crime is squarely within the intended scope of the conspiracy").

Petitioners assert that the district court's Pinkerton instruction, insofar as it instructed the jury on Pinkerton liability for an offense that was not the object of the charged conspiracy, violated this Court's decision in United States v. Hudson & Goodwin, 11 U.S. (7 Cranch) 32 (1812). The court of appeals did not pass on that contention, and in any event, Hudson & Goodwin -- which held that only Congress can "make an act a crime[and] affix a punishment to it," id. at 34 -- is not implicated here. Contrary to petitioners' contention (Pet. 11), courts do not "create" criminal offenses under Pinkerton; instead, Pinkerton recognized that a defendant can be held liable for a substantive offense committed by his co-conspirator in furtherance of the conspiracy, pursuant to traditional principles of vicarious

liability. See Pinkerton, 328 U.S. at 645-648; see also, e.g., United States v. Gillespie, 27 F.4th 934, 941 (4th Cir. 2022) ("The principle underlying the Pinkerton doctrine is that conspirators are each other's agents; and a principal is bound by the acts of his agents within the scope of the agency.") (citations and internal quotation marks omitted); United States v. Carter, 19 F.4th 520, 523 (1st Cir. 2021) (describing Pinkerton as a "vicarious liability theor[y]"); United States v. McCoy, 995 F.3d 32, 63 (2d Cir. 2021) (discussing "Pinkerton theory of conspiratorial vicarious liability"), petition for cert. pending, No. 21-447 (filed Sept. 15, 2021), and petition for cert. pending, No. 21-6490 (filed Nov. 24, 2021); United States v. Newman, 755 F.3d 543, 545 (7th Cir.) ("Agency is what supports mutual culpability" under Pinkerton.), cert. denied, 547 U.S. 967 (2014); United States v. Cherry, 217 F.3d 811, 819 (10th Cir. 2000) ("Under a Pinkerton theory, agency is inferred if an act is within the scope of the conspiracy, thereby resulting in the co-conspirator's individual liability under the substantive criminal law.").

Petitioners likewise err in contending (Pet. 8-9) that this Court's decisions in Rosemond v. United States, 572 U.S. 65 (2014), and Honeycutt v. United States, 137 S. Ct. 1626 (2017), support the conclusion that "Pinkerton liability does not apply to section 924(c) at all." That issue is not within the questions presented, which concern only whether a Pinkerton instruction is appropriate

for an offense that was not the object of the charged conspiracy and whether Pinkerton liability is impermissible judge-made criminal law, see Pet. i, not whether Pinkerton is specifically inapplicable to Section 924(c) offenses. Under Rule 14.1(a) of the Rules of this Court, "only the questions set forth in the petition, or fairly included therein, will be considered by the Court." Yee v. City of Escondido, 503 U.S. 519, 535 (1992) (brackets and citation omitted). But even if it were properly presented, neither Rosemond nor Honeycutt precludes Pinkerton liability for a Section 924(c) offense.

"Rosemond dealt with the aiding and abetting theory of liability for Section 924(c), not with the Pinkerton co-conspirator theory of liability." United States v. Edmond, 815 F.3d 1032, 1047 (6th Cir. 2016), cert. denied, 137 S. Ct. 619, and cert. granted, judgment vacated on other grounds, 137 S. Ct. 1577 (2017). And in so doing, Rosemond neither addressed nor altered the Pinkerton framework. "The two theories are distinct," Edmond, 815 F.3d at 1047, and either may independently support a conviction for violating Section 924(c). See United States v. Hare, 820 F.3d 93, 104-105 (4th Cir. 2016); United States v. Adams, 789 F.3d 713, 714-715 (7th Cir. 2015). And to the extent that petitioners attempt (Pet. 15) to portray Pinkerton as an end-around to the principles of accomplice liability discussed in Rosemond, they disregard Pinkerton's threshold requirements of proof of a

deliberate agreement to engage in criminal activity, and the foreseeable commission of an offense in furtherance of that unlawful agreement.

Petitioners' reliance on Honeycutt is similarly misplaced. In Honeycutt, this Court concluded that 21 U.S.C. 853 -- a criminal forfeiture statute -- does not permit a defendant to "be held jointly and severally liable for property that his co-conspirator derived from [a drug crime covered by that statute,] but that the defendant himself did not acquire." 137 S. Ct. at 1630. But in so holding, the Court specifically construed Section 853 in light of "background principles * * * of forfeiture" -- not "background principles of conspiracy liability." Id. at 1634. Indeed, the Court in Honeycutt reversed the forfeiture judgment against the defendant, but did not vacate his conspiracy conviction. Id. at 1630, 1635. Honeycutt thus has no bearing on Pinkerton's application, generally or specifically to a Section 924(c) offense. See, e.g., United States v. Henry, 984 F.3d 1343, 1355 (9th Cir.) ("Honeycutt does not apply principles of conspiracy liability."), cert. denied, 142 S. Ct. 376 (2021).

Petitioners suggest (Pet. 10-11), citing Honeycutt, that Congress obliquely foreclosed Pinkerton liability for Section 924(c) offenses by enacting Section 924(o), which specifically penalizes conspiring to violate Section 924(c) but carries a lesser sentence than a substantive Section 924(c) offense. But Section

924(c) and Section 924(o) "delineate different crimes": "Section 924(o) criminalizes conspiring to use a firearm in the commission of a violent or drug-trafficking crime, while Section 924(c) criminalizes actually using one." United States v. Luong, 627 F.3d 1306, 1309, 1311 (9th Cir. 2010), cert. denied, 565 U.S. 855 (2011). A defendant can be convicted of both a section 924(o) conspiracy and the object Section 924(c) offense; as petitioners appear to acknowledge, a defendant can be convicted of both a conspiracy to commit a crime and its actual commission. "It is well settled that the law of conspiracy serves ends different from, and complementary to, those served by criminal prohibitions of the substantive offense." United States v. Feola, 420 U.S. 671, 693 (1975). Congress would thus have seen nothing incongruous about separate convictions for a Hobbs Act conspiracy and a Section 924(c) offense foreseeably committed in furtherance of it. See ibid.; Pinkerton, 328 U.S. at 647.[3]

[3] Petitioners assert, in a footnote (Pet. 17 n.2), "that Pinkerton liability should not apply to conspiracies that do not require overt acts." That argument is not otherwise developed in the section of the petition addressing the reasons for granting the writ. See Sup. Ct. R. 14.2 (requiring that all contentions in support of granting a petition for a writ of certiorari be set forth as provided in Sup. Ct. R. 14.1(h), requiring a "direct and concise argument amplifying the reasons relied on for allowance of the writ"). Nor does such an argument fall within the scope of the questions presented as framed in the petition. See pp. 15-16, supra.

Petitioners' questions presented also ask the Court to overrule Pinkerton. Pet. i. That argument is not further

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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MAY 2022

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developed in the body of the petition. Review is thus likewise unwarranted.