No. 21-8201

IN THE SUPREME COURT OF THE UNITED STATES

JUDEL ESPINOZA-GONZALEZ, PETITIONER

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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QUESTION PRESENTED

Whether the district court correctly enforced petitioners' knowing and voluntary waivers of their rights to collaterally attack their convictions.

ADDITIONAL RELATED PROCEEDINGS

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

United States v. Espinoza-Gonzalez, No. 17-15778 (June 16, 2017) (order granting certificate of appealability)

United States v. Espinoza-Gonzalez, No. 17-15778 (Mar. 22, 2022)

United States v. Figueroa, No. 18-16151 (Oct. 1, 2020) (order granting certificate of appealability)

United States v. Figueroa, No. 18-16151 (Mar. 23, 2022)

United States v. Goldstein, No. 17-16187 (Mar. 23, 2022)

United States v. Juarez, No. 18-16145 (Oct. 1, 2020) (order granting certificate of appealability)

United States v. Juarez, No. 18-16145 (Mar. 23, 2022)

United States v. Rojo, No. 20-15708 (Oct. 1, 2020) (order granting certificate of appealability)

United States v. Rojo, No. 20-15708 (Mar. 23, 2022)

United States District Court (Nev.):

United States v. Espinoza-Gonzalez, No. 2:12-cr-217 (Feb. 19, 2013) (judgment)

United States v. Espinoza-Gonzalez, No. 2:12-cr-217 (Apr. 6, 2017) (order denying motion to vacate)

United States v. Figueroa, No. 2:11-cr-91 (Aug. 28, 2012) (judgment)

United States v. Figueroa, No. 2:11-cr-91 (May 23, 2018) (order denying motion to vacate)

United States v. Goldstein, No. 2:10-cr-525 (Sept. 29, 2014) (judgment)

United States v. Goldstein, No. 2:10-cr-525 (May 17, 2017) (order denying motion to vacate)

United States v. Juarez, No. 2:11-cr-91 (June 19, 2012) (judgment)

United States v. Juarez, No. 2:11-cr-91 (May 23, 2018) (order denying motion to vacate)

United States v. Rojo, No. 2:12-cr-216 (Dec. 21, 2012) (judgment)

United States v. Rojo, No. 2:12-cr-216 (Feb. 18, 2020) (order denying motion to vacate)

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OPINIONS BELOW

The opinions of the court of appeals (Pet. App. 1a-2a, 27a-28a, 52a-53a, 72a-73a, 95a-96a) are not published in the Federal Reporter but are reprinted at 2022 WL 848038 (petitioner Judel Espinoza-Gonzalez); 2022 WL 861035 (petitioner Jose Figueroa); 2022 WL 861040 (petitioner Frank Goldstein); 2022 WL 861032 (petitioner Raymond Juarez); and 2022 WL 861039 (petitioner Jorge Rojo). The orders of the district court denying motions for relief under 28 U.S.C. 2255 in Espinoza-Gonzalez's, Goldstein's, and Rojo's cases (Pet. App. 5a-11a, 54a-58a, 99a-104a) are reprinted, respectively, at 2017 WL 1347673, 2017 WL 2174949, and 2020 WL

821026; the orders of the district court denying motions for relief under 28 U.S.C. 2255 in Figueroa's and Juarez's cases (Pet. App. 31a-36a, 76a-81a) are unreported.

JURISDICTION

The judgment of the court of appeals was entered in Espinoza-Gonzalez's case on March 22, 2022, and in Figueroa's, Goldstein's, Juarez's, and Rojo's cases on March 23, 2022. The petition for a writ of certiorari was filed on June 17, 2022. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following guilty pleas pursuant to plea agreements in the United States District Court for the District of Nevada, petitioners were each convicted of carrying, using, brandishing, discharging, or possessing a firearm during, in relation to, or in furtherance of a crime of violence, in violation of 18 U.S.C. 924(c)(1), and other offenses. The district court sentenced petitioner Espinoza-Gonzalez to 181 months of imprisonment, to be followed by five years of supervised release (Espinoza-Gonzalez Judgment 3-4); petitioner Figueroa to 300 months of imprisonment, to be followed by five years of supervised release (Figueroa Judgment 2-3); petitioner Goldstein to 96 months of imprisonment, to be followed by five years of supervised release (Goldstein Judgment 2-3); petitioner Juarez to 230 months of imprisonment, to be followed by five years of supervised release (Juarez Judgment 2-3); and petitioner Rojo to 181 months of imprisonment, to be

followed by five years of supervised release (Rojo Judgment 3-4). Petitioners subsequently filed motions for postconviction relief under 28 U.S.C. 2255. The district court denied those motions (Pet. App. 5a-11a, 31a-36a, 54a-58a, 76a-81a, 99a-104a), and petitioners each obtained a certificate of appealability (COA), either from the district court or the court of appeals (id. at 3a-4a, 29a-30a, 58a, 74a-75a, 97a). The court of appeals affirmed the district court's denials of petitioners' motions for postconviction relief. Id. at 1a-2a, 27a-28a, 52a-53a, 72a-73a, 95a-96a.

1. a. Petitioners Espinoza-Gonzalez and Rojo kidnapped and robbed a drug courier at gunpoint. Espinoza-Gonzalez Presentence Investigation Report (PSR) 6-8; Rojo PSR 6-7. They installed emergency lights and sirens in their car to trick the drug courier into believing that the car was an unmarked police vehicle. Espinoza-Gonzalez PSR 7-8; Rojo PSR 5-6. They then stopped the drug courier in traffic, removed him from his car at gunpoint, placed him in restraints, stole the drugs he was carrying, and held him for ransom. Espinoza-Gonzalez PSR 7-8; Rojo PSR 6-7.

After waiving indictment and being charged by information in the District of Nevada, petitioners Espinoza-Gonzalez and Rojo pleaded guilty to charges of conspiring to commit Hobbs Act robbery, in violation of 18 U.S.C. 1951; Hobbs Act robbery (or aiding and abetting Hobbs Act robbery), in violation of 18 U.S.C.

1951 and 2; brandishing a firearm during and in relation to a crime of violence (Hobbs Act robbery), in violation of 18 U.S.C. 924(c)(1)(A)(ii) and 2; aiding and abetting kidnapping, in violation of 18 U.S.C. 1201 and 2; and conspiring to possess with intent to distribute 100 grams or more of heroin, in violation of 21 U.S.C. 841(a)(1), (b)(1)(B)(i), and 846. See Pet. App. 13a, 106a. In their plea agreements, Espinoza-Gonzalez and Rojo waived, among other rights, "the right to bring any collateral challenges, including any claims under 28 U.S.C. § 2255, to [their] conviction, sentence and the procedure by which the court adjudicated guilt and imposed sentence, except non-waivable claims of ineffective assistance of counsel." Id. at 18a; see id. at 112a. The district court sentenced Espinoza-Gonzalez and Rojo each to concurrent terms of 97 months of imprisonment on the non-Section 924(c) counts, and a mandatory consecutive term of 84 months of imprisonment on the Section 924(c) count, to be followed by five years of supervised release. Espinoza-Gonzalez Judgment 3-4; Rojo Judgment 3-4.

b. Petitioners Figueroa and Juarez robbed several convenience stores. Figueroa PSR 5-6; Juarez PSR 5-7. During each robbery, Figueroa and Juarez brandished a firearm; during one of them, Figueroa shot a store clerk in the abdomen. Ibid.

After indictment by a federal grand jury in the District of Nevada, petitioners Figueroa and Juarez each pleaded guilty to charges of conspiring to commit Hobbs Act robbery, in violation of

18 U.S.C. 1951; six and four counts, respectively, of Hobbs Act robbery (or aiding and abetting Hobbs Act robbery), in violation of 18 U.S.C. 1951 and 2; and discharging a firearm during a crime of violence (Hobbs Act robbery), in violation of 18 U.S.C. 924(c)(1)(A)(iii) and 2. Pet. App. 38a, 83a. In their plea agreements, Figueroa and Juarez waived, among other rights, "the right to bring any collateral challenges, including any claims under 28 U.S.C. § 2255, to [their] conviction, sentence and the procedure by which the court adjudicated guilt and imposed sentence, except non-waivable claims of ineffective assistance of counsel." Id. at 44a; see id. at 88a. The district court sentenced Figueroa to concurrent terms of 180 months of imprisonment on the non-Section 924(c) counts, and a mandatory consecutive term of 120 months of imprisonment on the Section 924(c) count, to be followed by five years of supervised release. Figueroa Judgment 2-3. The court sentenced Juarez to concurrent terms of 110 months of imprisonment on the non-Section 924(c) counts, and a mandatory consecutive term of 120 months of imprisonment on the Section 924(c) count, to be followed by five years of supervised release. Juarez Judgment 2-3.

c. Petitioner Goldstein approached an SUV at an ATM, pointed a gun at the driver, and ordered the driver to get out. Pet. App. 62a. Goldstein then drove the SUV to a pharmacy, attempted to rob the pharmacy at gunpoint, fled the pharmacy

following a skirmish with a pharmacist, and was apprehended after a police chase. Id. at 62a-63a; see id. at 54a.

Following indictment by a federal grand jury in the District of Nevada, petitioner Goldstein pleaded guilty to charges of carjacking, in violation of 18 U.S.C. 2119; Hobbs Act robbery, in violation of 18 U.S.C. 1951; and using and carrying a firearm during and in relation to a crime of violence (Hobbs Act robbery), in violation of 18 U.S.C. 924(c)(1)(A)(i). Pet. App. 60a. In his plea agreement, Goldstein waived, among other rights, "the right to bring any collateral challenges, including any claims under 28 U.S.C. § 2255, to his conviction, sentence and the procedure by which the court adjudicated guilt and imposed sentence, except non-waivable claims of ineffective assistance of counsel." Id. at 70a. The district court sentenced him to concurrent terms of 36 months of imprisonment on the non-Section 924(c) counts, and a mandatory consecutive term of 60 months of imprisonment on the Section 924(c) count, to be followed by five years of supervised release. Goldstein Judgment 2-3.

2. Petitioners moved to vacate their Section 924(c) convictions under 28 U.S.C. 2255, arguing that Hobbs Act robbery -- the predicate offense on which their Section 924(c) convictions rested -- is not a crime of violence. See Pet. App. 7a, 32a-33a, 55a-56a, 77a-78a, 102a-103a. Section 924(c)(3) defines "crime of violence" as a felony offense that either "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), or, "by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense," 18 U.S.C. 924(c)(3)(B). Petitioners asserted that Hobbs Act robbery does not qualify as a crime of violence under either provision, relying primarily on this Court's decision in Johnson v. United States, 576 U.S. 591 (2015), which held that the "residual clause" of the Armed Career Criminal Act of 1984, 18 U.S.C. 924(e)(2)(B)(ii), is unconstitutionally vague, 576 U.S. at 596. See Pet. App. 7a, 32a, 56a, 78a, 100a. This Court later held in United States v. Davis, 139 S. Ct. 2319 (2019), that the crime of violence definition in Section 924(c)(3)(B) is unconstitutionally vague as well. Id. at 2336.

The district court denied petitioners' Section 2255 motions. Pet. App. 11a, 35a, 57a, 80a, 103a. In each case, the court found that Hobbs Act robbery is a crime of violence under 18 U.S.C. 924(c)(3)(A) because it "has as an element the use, attempted use, or threatened use of physical force against the person or property of another." Pet. App. 8a-9a, 35a, 56a-57a, 80a, 102a-103a.

Petitioners each obtained a COA, either from the district court (Goldstein) or the court of appeals (Espinoza-Goldstein, Figueroa, Juarez, Rojo), on the issue of whether Hobbs Act robbery is a crime of violence under Section 924(c)(3). Pet. App. 3a, 29a, 58a, 74a, 97a.

3. The court of appeals affirmed the denial of petitioners' Section 2255 motions in unanimous, unpublished decisions. Pet. App. 1a-2a, 27a-28a, 52a-53a, 72a-73a, 95a-96a. In each case, the court determined that the petitioner had "waived" his Section 924(c) claim "by the valid collateral attack waiver in [his] plea agreement." Id. at 2a; see id. at 28a, 52a-53a, 73a, 96a. And in each case, the court rejected the petitioner's reliance on an "'illegal sentence' exception" to enforcing the collateral-attack waiver, reasoning that such an exception "does not apply where, as here, the challenge is to the validity of a conviction." Id. at 2a (citation omitted); see id. at 28a, 53a, 73a, 96a.

ARGUMENT

Petitioners contend (Pet. 10-15) that the district court erroneously enforced the collateral-attack waivers in their plea agreements. The court of appeals correctly determined that petitioners validly waived their rights to collaterally attack their convictions under 18 U.S.C. 924(c), and its unpublished dispositions do not conflict with any decision of this Court or another court of appeals. In any event, this case would be an unsuitable vehicle for resolving the question presented because petitioners' collateral attacks under 18 U.S.C. 2255 lacked merit. No further review is warranted.

1. This Court has repeatedly recognized that a defendant may validly waive constitutional and statutory rights as part of a plea agreement so long as his waiver is knowing and voluntary.

See, e.g., Ricketts v. Adamson, 483 U.S. 1, 9-10 (1987) (waiver of right to raise double-jeopardy defense); Town of Newton v. Rumery, 480 U.S. 386, 389, 398 (1987) (waiver of right to file constitutional tort action). As a general matter, statutory rights are subject to waiver in the absence of some "affirmative indication" to the contrary from Congress. United States v. Mezzanatto, 513 U.S. 196, 201 (1995). Likewise, even the "most fundamental protections afforded by the Constitution" may be waived. Ibid.

In accord with those principles, the courts of appeals have uniformly held that a defendant's voluntary and knowing waiver in a plea agreement of the right to appeal is enforceable.[1] As the courts of appeals have recognized, appeal waivers benefit defendants by providing them with "an additional bargaining chip in negotiations with the prosecution." United States v. Teeter, 257 F.3d 14, 22 (1st Cir. 2001). Appeal waivers correspondingly

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[1] See United States v. Teeter, 257 F.3d 14, 21-23 (1st Cir. 2001); United States v. Riggi, 649 F.3d 143, 147-150 (2d Cir. 2011); United States v. Khattak, 273 F.3d 557, 560-562 (3d Cir. 2001); United States v. Marin, 961 F.2d 493, 495-496 (4th Cir. 1992); United States v. Melancon, 972 F.2d 566, 567-568 (5th Cir. 1992) (per curiam); United States v. Toth, 668 F.3d 374, 377-378 (6th Cir. 2012); United States v. Woolley, 123 F.3d 627, 631 (7th Cir. 1997); United States v. Andis, 333 F.3d 886, 889-890 (8th Cir.) (en banc), cert. denied, 540 U.S. 997 (2003); United States v. Navarro-Botello, 912 F.2d 318, 320-322 (9th Cir. 1990), cert. denied, 503 U.S. 942 (1992); United States v. Hernandez, 134 F.3d 1435, 1437 (10th Cir. 1998); United States v. Bushert, 997 F.2d 1343, 1347-1350 (11th Cir. 1993), cert. denied, 513 U.S. 1051 (1994); United States v. Guillen, 561 F.3d 527, 529-532 (D.C. Cir. 2009).

benefit the government by enhancing the finality of judgments and discouraging meritless appeals. See, e.g., United States v. Guillen, 561 F.3d 527, 530 (D.C. Cir. 2009); United States v. Andis, 333 F.3d 886, 889-890 (8th Cir.) (en banc), cert. denied, 540 U.S. 997 (2003); Teeter, 257 F.3d at 22. Collateral-review waivers have the same benefits. See, e.g., DeRoo v. United States, 223 F.3d 919, 923 (8th Cir. 2000) ("The 'chief virtues' of a plea agreement * * * are promoted by waivers of collateral appeal rights as much as by waivers of direct appeal rights. Waivers preserve the finality of judgments and sentences, and are of value to the accused to gain concessions from the government.") (citation omitted).

These cases illustrate the mutual benefits of appeal and collateral-attack waivers. In Figueroa's, Juarez's, and Goldstein's cases, the government agreed to dismiss additional Section 924(c) charges, each of which carried mandatory consecutive prison sentences. Pet. App. 38a, 60a, 83a; Juarez et al. Indictment 2-8; Goldstein Indictment 2; see 18 U.S.C. 924(c)(1)(A). And in all five cases, the government stipulated to base offense levels under the Sentencing Guidelines, agreed that petitioners were entitled to a three-level reduction in their offense level for acceptance of responsibility, and promised to make the motions needed to implement that reduction. Pet. App. 13a-16a, 39a-42a, 64a-66a, 85a-86a, 108a-110a.

2. The court of appeals correctly enforced petitioners' agreements not to collaterally attack the result of those bargains. Pet. App. 1a-2a, 27a-28a, 52a-53a, 72a-73a, 95a-96a. Petitioners contend (Pet. 10-12) that collateral-attack waivers cannot be enforced against "jurisdictional challenges" and that their Section 2255 motions here raise such challenges. To support those contentions, petitioners rely on this Court's decisions in Class v. United States, 138 S. Ct. 798 (2018), Blackledge v. Perry, 417 U.S. 21 (1974), and Menna v. New York, 423 U.S. 61 (1975) (per curiam). But that reliance is misplaced.

In Class, the defendant entered into a plea agreement that waived the defendant's right to appeal certain categories of claims but "said nothing about the right to raise on direct appeal a claim that the statute of conviction was unconstitutional." 138 S. Ct. at 802. This Court made clear that the defendant's challenge to the constitutionality of the statute of conviction did "not contradict the terms of * * * the written plea agreement" and did "not fall within any of the categories of claims that [the defendant's] plea agreement forbids him to raise on direct appeal." Id. at 804-805. The Court held that, in the absence of such an express waiver, the defendant's "guilty plea by itself" did not bar him from "challenging the constitutionality of the statute of conviction on direct appeal." Id. at 803. Nothing in Class calls into question a defendant's ability to expressly waive his right to collaterally attack his conviction -- including based on claims

that his conduct no longer constitutes a federal offense -- where the waiver is otherwise knowing and voluntary.

This Court's decisions in Blackledge and Menna did not involve express appeal or collateral-attack waivers at all. The Court simply held that guilty pleas alone do not automatically waive certain categories of claims implicating "the right not to be haled into court." Blackledge, 417 U.S. at 30; see Menna, 423 U.S. at 62. Those cases therefore "do not address express waivers of appeal and collateral-attack rights," which are "enforceable even against a so-called 'jurisdictional' challenge." Oliver v. United States, 951 F.3d 841, 845 (7th Cir. 2020); see id. at 847 (enforcing collateral-attack waiver to bar Section 2255 challenge to Section 924(c) conviction).[2] Nor can petitioners even show that statutory claims like theirs -- which assert that Hobbs Act robbery does not satisfy the "crime of violence" definition in 18 U.S.C. 924(c)(3)(A) -- are the sorts of claims that would be preserved even in a case involving an unconditional plea. See Grzegorczyk v. United States, 142 S. Ct. 2580, 2580 (2022) (statement of Kavanaugh, J., respecting denial of certiorari) (explaining that court of appeals "correctly concluded that the defendant's unconditional guilty plea precluded any argument based on * * * new caselaw"); id. at 2582 (Sotomayor, J., dissenting) (describing

[2] Petitioners' reliance (Pet. 10) on United States v. St. Hubert, 909 F.3d 335 (11th Cir. 2018), cert. denied, 139 S. Ct. 1394 (2019), is misplaced for the same reason. See id. at 344 (holding that petitioner did not waive appeal right merely "by pleading guilty").

defendant's claim that crime did not qualify under Section 924(c)(3)(A)).

Petitioners also suggest (Pet. 12-13) that their claims fall within a purported exception to collateral-attack waivers for "illegal conviction[s]." As an initial matter, that suggestion runs counter to the plain language of petitioners' plea agreements. Because plea agreements are "essentially contracts," Puckett v. United States, 556 U.S. 129, 137 (2009), courts begin their analysis of a plea agreement by "examin[ing] first the text of the contract," United States v. Gebbie, 294 F.3d 540, 545 (3d Cir. 2002). The agreements in these cases expressly state that petitioners waived "the right to bring any collateral challenges, including any claims under 28 U.S.C. § 2255, to [their] conviction, sentence and the procedure by which the court adjudicated guilt and imposed sentence, except non-waivable claims of ineffective assistance of counsel." Pet. App. 18a, 44a, 70a, 88a, 112a (emphasis added). That waiver squarely encompasses petitioners' claim that Hobbs Act robbery does not qualify as a crime of violence under 18 U.S.C. 924(c)(3).

In any event, while the Ninth Circuit has articulated an exception to appeal and collateral-attack waivers for illegal sentences, see United States v. Torres, 828 F.3d 1113, 1124-1125 (2016), the court has properly recognized that no such exception applies to illegal convictions. Whereas "the sentence is beyond the control of the parties and their plea agreement," such

"uncertainty does not exist for convictions," the contours of which "are fully known when the defendant pleads guilty and waives his appellate rights." United States v. Goodall, 21 F.4th 555, 563 (9th Cir. 2021), cert. denied, 142 S. Ct. 2666 (2022). "Although there always remains a chance the law could change in the defendant's favor, the defendant knowingly and voluntarily assumes that risk because he receives a presumably favorable deal under existing law." Id. at 563-564; see Brady v. United States, 397 U.S. 742, 757 (1970) ("[A] voluntary plea of guilty intelligently made in the light of the then applicable law does not become vulnerable because later judicial decisions indicate that the plea rested on a faulty premise."). Petitioners' collateral-attack waivers thus permissibly bar their Section 2255 motions claiming that their Section 924(c) convictions are "illegal." Pet. 12.[3]

3. Petitioners err in asserting (Pet. 12-13) that the decisions below conflict with decisions from the Second, Sixth, and Tenth Circuits.

The decisions below do not conflict with the Second Circuit's decision in United States v. Borden, 16 F.4th 351 (2021). There, the government had "consented to [the defendant's] request to

[3] Petitioners briefly request that the Court "grant, vacate, and remand for consideration of the miscarriage of justice exception to enforcing the waiver in Petitioners' cases." Pet. 15. But the applicability of that exception was not pressed to or passed upon by the court of appeals in any of petitioners' cases. Nor would the court have recognized such an exception had petitioners argued for it. See Oliver, 951 F.3d at 847 (rejecting similar argument).

vacate [his] § 924(c) conviction notwithstanding the existence of a valid appeal waiver that purported to foreclose his request." Id. at 355. The court recognized that the government "could have sought to enforce the waiver provision" but opted not to do so. Id. at 355 n.1; see Wood v. Milyard, 566 U.S. 463, 474 (2012) (recognizing that government may waive reliance on procedural defense). And the court enforced an appeal waiver relating to a different issue where the government had sought enforcement. Borden, 16 F.4th at 355-356. Because the government here has sought to enforce petitioners' collateral-attack waivers rather than consenting to vacatur of their Section 924(c) convictions, the Ninth Circuit's decisions in these cases are consistent with Borden.

The decisions below are similarly consistent with those of the Sixth Circuit. In Portis v. United States, 33 F.4th 331 (2022), the Sixth Circuit -- like the Ninth Circuit here -- enforced collateral-attack waivers that barred defendants' Section 2255 motions seeking vacatur of their Section 924(c) convictions following this Court's decision in Davis. Id. at 334-339. The Sixth Circuit explained that "[t]he principle that future changes in law do not vitiate collateral-challenge waivers is mainstream," with "[a]ll circuits * * * follow[ing] this principle of plea-bargaining law." Id. at 335-336. The earlier Sixth Circuit decisions upon which petitioners rely (Pet. 13) are inapposite. United States v. McBride, 826 F.3d 293, 294-295 (6th Cir. 2016),

cert. denied, 137 S. Ct. 830 (2017), did not involve an express appeal waiver or collateral-attack waiver, see id. at 294-295, and United States v. Caruthers, 458 F.3d 459 (6th Cir.), cert. denied, 549 U.S. 1088 (2006), adopted an exception to appeal waivers for illegal sentences but did not address whether any such exception would go beyond the Ninth Circuit's to allow challenges to convictions, see id. at 471-472.

Nor have petitioners identified any conflict between the Tenth and Ninth Circuits. The Tenth Circuit's decision in United States v. Shipp, 589 F.3d 1084 (2009), did not involve a plea agreement at all. Rather, the court simply concluded that Chambers v. United States, 555 U.S. 122 (2009), applied retroactively on collateral review. Shipp, 589 F.3d at 1091. Finally, while petitioners assert (Pet. 13) that the decisions below conflict with the Ninth Circuit's "own precedent," any intra-circuit conflict would not warrant this Court's intervention. See Wisniewski v. United States, 353 U.S. 901, 902 (1957) (per curiam).

4. In any event, this case would be an unsuitable vehicle for resolving the question presented because petitioners would not be entitled to relief even in the absence of their collateral-attack waivers. Petitioners' convictions for Hobbs Act robbery qualify as crimes of violence under Section 924(c)(3)(A).

As noted, Section 924(c)(3)(A) defines "crime of violence" to include a felony that "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). 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). Those requirements match the definition of a crime of violence in Section 924(c)(3)(A). See, e.g., United States v. Hill, 890 F.3d 51, 57 (2d Cir. 2018) (observing that the elements of Hobbs Act robbery "would appear, self-evidently, to satisfy" the definition of "crime of violence"), cert. denied, 139 S. Ct. 844 (2019).

Every court of appeals to have considered the issue has recognized that Section 924(c)(3)(A) encompasses Hobbs Act robbery.[4] And this Court has consistently denied petitions for a writ of certiorari challenging the circuits' consensus on the application of Section 924(c)(3)(A) to Hobbs Act robbery.[5]

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[4] See, e.g., United States v. García-Ortiz, 904 F.3d 102, 109 (1st Cir. 2018), cert. denied, 139 S. Ct. 1208 (2019); Hill, 890 F.3d at 56-60 (2d Cir.); United States v. Scott, 14 F.4th 190, 195 n.1 (3d Cir. 2021); United States v. Mathis, 932 F.3d 242, 265-266 (4th Cir.), cert. denied, 140 S. Ct. 639, and 140 S. Ct. 640 (2019); United States v. Buck, 847 F.3d 267, 274-275 (5th Cir.), cert. denied, 137 S. Ct. 2231, and 138 S. Ct. 149 (2017); United States v. Richardson, 948 F.3d 733, 741-742 (6th Cir.), cert. denied, 141 S. Ct. 344 (2020); United States v. Rivera, 847 F.3d 847, 848-849 (7th Cir.), cert. denied, 137 S. Ct. 2228 (2017); Diaz v. United States, 863 F.3d 781, 783 (8th Cir. 2017); United States v. Tuan Ngoc Luong, 965 F.3d 973, 990 (9th Cir. 2020), cert. denied, 142 S. Ct. 336 (2021); United States v. Melgar-Cabrera, 892 F.3d 1053, 1060-1066 (10th Cir.), cert. denied, 139 S. Ct. 494 (2018); Brown v. United States, 942 F.3d 1069, 1075 (11th Cir. 2019) (per curiam).

[5] See, e.g., Felder v. United States, 142 S. Ct. 597 (2021) (No. 21-5461); Lavert v. United States, 142 S. Ct. 578 (2021) (No.

The circuits' uniform determination that Hobbs Act robbery categorically requires the use, attempted use, or threatened use of force is fortified by this Court's decision in Stokeling v. United States, 139 S. Ct. 544 (2019), which identified common-law robbery as the "quintessential" example of a crime that requires the use or threatened use of physical force. Id. at 551 (discussing definition of "violent felony" in 18 U.S.C.

21-5057); Ross v. United States, 142 S. Ct. 493 (2021) (No. 21-5664); Hall v. United States, 142 S. Ct. 492 (2021) (No. 21-5644); Moore v. United States, 142 S. Ct. 252 (2021) (No. 21-5066); Copes v. United States, 142 S. Ct. 247 (2021) (No. 21-5028); Council v. United States, 142 S. Ct. 243 (2021) (No. 21-5013); 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); Steward v. United States, 141 S. Ct. 167 (2020) (No. 19-8043); Terry v. United States, 141 S. Ct. 114 (2020) (No. 19-1282); Hamilton v. United States, 140 S. Ct. 2754 (2020) (No. 19-8188); Diaz-Cestary v. United States, 140 S. Ct. 1236 (2020) (No. 19-7334); Walker v. United States, 140 S. Ct. 979 (2020) (No. 19-7072); Tyler v. United States, 140 S. Ct. 819 (2020) (No. 19-6850); Hilario-Bello v. United States, 140 S. Ct. 473 (2019) (No. 19-5172); Nelson v. United States, 140 S. Ct. 469 (2019) (No. 19-5010); Apodaca v. United States, 140 S Ct. 432 (2019) (No. 19-5956); Young v. United States, 140 S. Ct. 262 (2019) (No. 19-5061); Durham v. United States, 140 S. Ct. 259 (2019) (No. 19-5124); Munoz v. United States, 140 S. Ct. 182 (2019) (No. 18-9725); Lindsay v. United States, 140 S. Ct. 155 (2019) (No. 18-9064); Hill v. United States, 140 S. Ct. 54 (2019) (No. 18-8642); Greer v. United States, 139 S. Ct. 2667 (2019) (No. 18-8292); Rojas v. United States, 139 S. Ct. 1324 (2019) (No. 18-6914); Foster v. United States, 139 S. Ct. 789 (2019) (No. 18-5655); Desilien v. United States, 139 S. Ct. 413 (2018) (No. 17-9377); Ragland v. United States, 138 S. Ct. 1987 (2018) (No. 17-7248); Robinson v. United States, 138 S. Ct. 1986 (2018) (No. 17-6927); Chandler v. United States, 138 S. Ct. 1281 (2018) (No. 17-6415); Middleton v. United States, 138 S. Ct. 1280 (2018) (No. 17-6343); Jackson v. United States, 138 S. Ct. 977 (2018) (No. 17-6247); Garcia v. United States, 138 S. Ct. 641 (2018) (No. 17-5704).

924(e)(2)(B)(i)). The elements of common-law robbery track the elements of Hobbs Act robbery in relevant respects. See id. at 550 (observing that common-law robbery was an "unlawful taking" by "force or violence," meaning force sufficient "'to overcome the resistance encountered'") (citation omitted).[6]

Some (but not all) petitioners now contend (Pet. 3-5) that the crime of violence underlying their Section 924(c) convictions was "aiding and abetting Hobbs Act robbery," as opposed to committing Hobbs Act robbery as a principal.[7] Petitioners' Section 2255 motions, however, characterized the offense underlying their Section 924(c) convictions as "Hobbs Act robbery" or "interference with commerce by robbery," without advancing any argument specific to aiding and abetting Hobbs Act robbery. See Espinoza-Gonzalez, D. Ct. Docs. 84 at 3-4, 85 at 3-4, 13-22; Figueroa, D. Ct. Docs. 80 at 3-4, 93 at 13-22; Juarez, D. Ct. Docs. 82 at 3-4, 92 at 12-22; Rojo, D. Ct. Docs. 87 at 3-4, 88 at 13-22. And in denying petitioners' Section 2255 motions, the district court did not discuss, much less resolve, any aiding-and-abetting theory. Pet. App. 5a-11a, 31a-36a, 54a-58a, 76a-81a, 99a-104a.

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[6] This Court's decision in United States v. Taylor, 142 S. Ct. 2015 (2022), is not to the contrary. While the Court there held that attempted Hobbs Act robbery is not a crime of violence under Section 924(c)(3)(A), it expressly distinguished "completed Hobbs Act robbery." Taylor, 142 S. Ct. at 2020.

[7] Petitioner Goldstein, who committed his crime alone, does not contend that he was convicted of aiding and abetting Hobbs Act robbery. See Pet. App. 60a.

That theory, moreover, lacks merit. Petitioners' Hobbs Act robbery offenses qualify as crimes of violence under Section 924(c)(3)(A) regardless of whether petitioners were liable for those offenses as a principal or as an aider and abettor. When a defendant is charged with an offense under an aiding-and-abetting theory, the government must prove that either the defendant or one of his accomplices committed each of the elements of the underlying offense and that the defendant was "punishable as a principal" for that offense because he took active and intentional steps to facilitate the crime. 18 U.S.C. 2(a); see Rosemond v. United States, 572 U.S. 65, 70-74 & n.6 (2014). Because the government must prove that the crime occurred, if the substantive crime "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), then a conviction for aiding and abetting that crime necessarily includes proof of that force element. Indeed, every court of appeals to have considered the question 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.[8] And this Court has consistently

[8] See, e.g., García-Ortiz, 904 F.3d at 109 (1st Cir.) (aiding and abetting Hobbs Act robbery); United States v. Caldwell, 7 F.4th 191, 212-213 (4th Cir. 2021) (aiding and abetting bank robbery); Richardson, 948 F.3d at 741-742 (6th Cir.) (aiding and abetting Hobbs Act robbery); United States v. Brown, 973 F.3d 667, 697 (7th Cir. 2020) (aiding and abetting Hobbs Act robbery), cert. denied, 141 S. Ct. 1253 (2021), 142 S. Ct. 243, 142 S. Ct. 245, and 142 S. Ct. 248 (2021), and 142 S. Ct. 932 (2022); Kidd v.

declined to review petitions for a writ of certiorari contending that aiding and abetting Hobbs Act robbery is not a crime of violence under Section 924(c)(3)(A).[9]

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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United States, 929 F.3d 578, 581 (8th Cir. 2019) (per curiam) (aiding and abetting armed robbery involving controlled substances), cert denied, 140 S. Ct. 894 (2020); Young v. United States, 22 F.4th 1115, 1123 (9th Cir. 2022) (aiding and abetting armed bank robbery); United States v. Deiter, 890 F.3d 1203, 1214-1216 (10th Cir.) (aiding and abetting bank robbery), cert. denied, 139 S. Ct. 647 (2018); In re Colon, 826 F.3d 1301, 1305 (11th Cir. 2016) (aiding and abetting Hobbs Act robbery); United States v. McGill, 815 F.3d 846, 944 (D.C. Cir. 2016) (per curiam) (aiding and abetting murder), cert. denied, 138 S. Ct. 57, and 138 S. Ct. 58 (2017).

[9] See, e.g., Hall v. United States, 142 S. Ct. 492 (2021) (No. 21-5644); Gordon v. United States, 142 S. Ct. 491 (2021) (No. 21-5589); Council v. United States, 142 S. Ct. 243 (2021) (No. 21-5013); Stallworth v. United States, 141 S. Ct. 2524 (2021) (No. 20-6563); Deiter v. United States, 139 S. Ct. 647 (2018) (No. 18-6464); Ragland v. United States, 138 S. Ct. 1987 (2018) (No. 17-7248); Stephens v. United States, 138 S. Ct. 502 (2017) (No. 17-5186).