No. 23-____

IN THE
Supreme Court of the United States

ROBERT KEVIN BODDIE,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Fourth Circuit

PETITION FOR WRIT OF CERTIORARI

G. ALAN DUBOIS
FEDERAL PUBLIC DEFENDER
EASTERN DISTRICT OF NORTH CAROLINA

JENNIFER C. LEISTEN
ASSISTANT FEDERAL PUBLIC DEFENDER
Counsel of Record
EASTERN DISTRICT OF NORTH CAROLINA
150 Fayetteville St.
Suite 450
Raleigh, N.C. 27601
(919) 856-4236
jennifer_leisten@fd.org

Counsel for Petitioner

QUESTION PRESENTED

Whether Hobbs Act robbery, as proscribed by 18 U.S.C. § 1951(a), categorically qualifies as a crime of violence under 18 U.S.C. § 924(c), in light of this Court's decision in *United States v. Taylor*, 142 S. Ct. 2015 (2022).

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTORY PROVISIONS

IN THE

Supreme Court of the United States

ROBERT KEVIN BODDIE,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

---

PETITION FOR WRIT OF CERTIORARI

Petitioner Robert Kevin Boddie respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit.

OPINION BELOW

The Fourth Circuit's unpublished opinion is available at 2023 WL 7212267, 2023 U.S. App. LEXIS 29132 (4th Cir. Nov. 2, 2023); *see also infra*, Pet. App. 1a.

LIST OF PRIOR PROCEEDINGS

(1) *United States v. Robert Kevin Boddie*, United States District Court, Eastern District of North Carolina, No. 5:19-CR-97-462-BO-1 (final judgment entered June 4, 2020).

(2) *United States v. Robert Kevin Boddie*, United States Court of Appeals for the Fourth Circuit, No. 20-4307, 2022 U.S. App, LEXIS 19776 (4th Cir. July 18, 2022).

(3) *United States v. Robert Kevin Boddie*, United States District Court, Eastern District of North Carolina, No. 5:19-CR-97-462-BO-1 (final amended judgment entered November 22, 2022).

(4) *United States v. Robert Kevin Boddie*, United States Court of Appeals for the Fourth Circuit, No. 22-4672, 2023 U.S. App, LEXIS 29132 (4th Cir. Nov. 2, 2023).

JURISDICTION

The Fourth Circuit issued its opinion on November 2, 2023. Pet. App. 1a. This Court's jurisdiction rests on 28 U.S.C. § 1254(1).

STATUTES INVOLVED

1. Title 18, United States Code, Section 1951(a) provides:

> Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined under this title or imprisoned not more than twenty years, or both.

2. Title 18, United States Code, Section 1951(b)(1) provides:

> The term "robbery" means the unlawful taking or obtaining of personal property from the person or in the presence of another, against his will, by means of actual or threatened force, or violence, or fear of injury, immediate or future, to his person or property, or property in his custody or possession, or the person or property of a relative or member of his family or of anyone in his company at the time of the taking or obtaining.

3. Title 18 of the United States Code, Section 924(c)(3) defines a "crime of violence" as:

> (3) For purposes of this subsection the term "crime of violence" means an offense that is a felony and—
>
> (A) has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or
>
> (B) that 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.

STATEMENT OF THE CASE

A. District Court Proceedings

Petitioner pled guilty in 2020 to one count of Hobbs Act robbery and aiding and abetting, in violation of 18 U.S.C. §§ 2 & 1951 (Count One), one count of brandishing a firearm in furtherance of a crime of violence, in violation of 18 U.S.C. § 924(c) (Count Two), and possession of a firearm by a convicted felon, in violation of 18 U.S.C. § 922(g)(1) (Count Three). App. 1a at 1. At sentencing, the district court imposed an aggregate term of 264 months of imprisonment. Petitioner appealed to the Fourth Circuit, which vacated the sentence and remanded the case for resentencing. App. 1a at 1. At resentencing, the district court determined that Petitioner no longer qualified for the career offender and armed career criminal enhancements in light of this Court's intervening decision in *United States v. Taylor*, 142 S. Ct. 2015 (2022). App. 1a at 2. The court sentenced Petitioner to a total term of 144 months' imprisonment. App. 1a at 3. Petitioner again appealed to the Fourth Circuit, challenging his § 924(c) conviction under *Taylor*. App. 1a at 3.

B. Court of Appeals Proceedings

On appeal, the Fourth Circuit rejected Petitioner's argument that Hobbs Act robbery is not a crime of violence under 18 U.S.C. § 924(c) in light of *Taylor*. App. 1a at 3-4. The Fourth Circuit thus affirmed the district court. This petition followed.

REASONS FOR GRANTING THE PETITION

The district court erred in sentencing Petitioner under 18 U.S.C. § 924(c), because the predicate offense, Hobbs Act robbery, does not categorically qualify as a crime of violence in light of this Court's decision in *United States v. Taylor*, 142 S. Ct. 2015 (2022). This is so for two reasons:

First, the Hobbs Act statute is an indivisible offense with alternative means—at least one of which, attempted robbery, falls outside of § 924(c)'s "crime of violence" definition after *Taylor*.

Second, Hobbs Act robbery can be committed by threatening economic harm, which is not a threat of physical force under § 924(c) after *Taylor*'s rejection of the "realistic probability" test.

Because Hobbs Act robbery does not categorically qualify as a crime of violence for purposes of § 924(c), Petitioner's § 924(c) conviction cannot be sustained and must be vacated.

A. 18 U.S.C. § 1951(a) is indivisible and categorically overbroad.

In *Taylor*, this Court held that attempted Hobbs Act robbery is not a crime of violence under the elements clause of § 924(c)(3)(A).[1] *Taylor*, 142 S. Ct. at 2020. *Taylor* explained that "[t]o determine whether a federal felony may serve as a predicate for a conviction and sentence under the elements clause . . . we must apply a 'categorical approach.'" *Id.* Under the categorical approach, Hobbs Act robbery is overbroad and does not require "the government to prove—beyond a reasonable doubt, as an element of its case—the use, attempted use, or threatened use of force." *Taylor*, 142 S. Ct. at 2020. This is because Hobbs Act robbery is an indivisible offense encompassing both attempted robbery and conspiracy to rob, *see* 18 U.S.C. § 1951(a), neither of which require physical force. A criminal statute is divisible when it "list[s] elements in the alternative, and thereby define[s] multiple crimes." *Mathis v. United States*, 579 U.S. 500, 505 (2016). But a statute that merely lists "alternative means of satisfying one (or more) of its elements" is indivisible. *Id.* at 503. Because § 1951(a) does not list elements in the alternative, but instead provides for alternative means of committing a single crime, the statute is indivisible. And because attempted Hobbs Act robbery is not a crime of violence, *see Taylor*, the statute is overbroad. Hence, Petitioner's § 924(c) conviction is invalid and should be vacated.

[1] This Court has held that the residual clause of § 924(c)(3)(B) is unconstitutionally vague. *United States v. Davis*, 139 S. Ct. 2319 (2019).

B. Substantive Hobbs Act robbery may be committed without the use, attempted use, or threatened use of physical force.

Even if § 1951(a) is a divisible offense, it is nonetheless overbroad, because it does not require "the government to prove—beyond a reasonable doubt, as an element of its case—the use, attempted use, or threatened use of force." *Taylor*, 142 S. Ct. at 2020. "Physical force" means "*violent* force" – that is "strong physical force," that is "capable of causing physical pain or injury to another person." *Johnson v. United States*, 559 U.S. 133, 140 (2010) (emphasis in original). But completed Hobbs Act robbery, as defined by § 1951(b), does not meet this requirement because it can be accomplished by putting someone in fear of future injury to his person or property, which does not require the use, attempted use, or threatened use of "violent force." *See* 18 U.S.C. § 1951(b)(1) ("[R]obbery means the unlawful taking . . . from the person or in the presence of another, against his will, by means of . . . fear of injury, immediate or future, to his person or property . . . ."); *accord United States v. Louis*, No. 21-CR-20252, 2023 WL 2240544 (S.D. Fla. Feb. 27, 2023) (dismissing § 924(c) count based on "a categorically overbroad Hobbs Act robbery offense, which allowed for the commission of Hobbs Act robbery by 'fear,'" including fear of financial loss). Because the plain text of § 1951(b)(1) encompasses a robbery accomplished through mere "fear of injury, immediate or future, to . . . property" instead of physical force, Hobbs Act robbery is facially overbroad.

Taylor makes plain that § 1951(b)(1)'s statutory overbreadth ends the inquiry: "Congress tasked the courts with a . . . straightforward job: Look at the elements of the underlying crime and ask whether they require the government to prove the

use, attempted use, or threatened use of force." *Taylor*, 142 S. Ct. at 2025. Indeed, this Court in *Taylor* explicitly rejected the government's argument that there existed no "realistic probability" that a defendant would be prosecuted for conduct that falls outside the federal generic definition. *Id.* Instead, *Taylor* explains, "[t]he statute before us asks only whether the elements of one federal law align with those prescribed in another." *Id.* Because the straightforward text of § 1951(a) encompasses robbery committed without the use, attempted use, or threatened use of physical force, the offense does not categorically qualify as a crime of violence under 18 U.S.C. § 924(c). Thus, Petitioner respectfully requests that this Court grant the petition, vacate the judgment of conviction on Count Two, and remand this case for resentencing.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

G. ALAN DUBOIS
FEDERAL PUBLIC DEFENDER
EASTERN DISTRICT OF NORTH CAROLINA

/s/ *Jennifer C. Leisten*
JENNIFER C. LEISTEN
ASSISTANT FEDERAL PUBLIC DEFENDER
Counsel of Record
EASTERN DISTRICT OF NORTH CAROLINA
150 Fayetteville St.
Suite 450
Raleigh, N.C. 27601
(919) 856-4236
jennifer_leisten@fd.org

Counsel for Petitioner

JANUARY 31, 2024