

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

STANLEY FORD,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether Hobbs Act robbery and aiding and abetting Hobbs Act robbery, 18 U.S.C. § 1951(a), are categorically crimes of violence under the elements clause of 18 U.S.C. § 924(c)(3)(A), requiring a mandatory minimum sentence of twenty-five years, where the offense encompasses threats of harm to intangible property and economic interests which do not categorically require the use, attempted use, or threat of physical violence?

TABLE OF CONTENTS

| | |
|--|----|
| QUESTION PRESENTED | i |
| PETITION FOR A WRIT OF CERTIORARI | 1 |
| OPINION BELOW | 1 |
| JURISDICTION | 2 |
| STATUTORY PROVISIONS INVOLVED | 2 |
| STATEMENT | 3 |
| REASONS FOR GRANTING THE WRIT | 5 |
| CONCLUSION | 11 |
| APPENDIX | |
| Order granting motion for summary affirmance (December 15, 2023) | 1a |

TABLE OF AUTHORITIES

FEDERAL CASES

| | |
|--|-------------|
| <i>Gonzales v. Duenas-Alvarez</i> , 549 U.S. 183 (2007) | 8 |
| <i>Johnson v. United States</i> , 559 U.S. 133 (2010) | 6 |
| <i>Leocal v. Ashcroft</i> , 543 U.S. 1 (2004) | 6 |
| <i>Stokeling v. United States</i> , 139 S. Ct. 544 (2019) | 16 |
| <i>United States v. Dominguez</i> , 954 F.3d 1251 (9th Cir. 2020) | 8 |
| <i>United States v. Dominguez</i> , 48 F.4th 1040 (9th Cir. 2022) | 8 |
| <i>United States v. Eckford</i> , 774th 1228 (9th Cir. 2023) | 6, 7, 9 |
| <i>United States v. Local 560 of the Int'l Bhd. of Teamsters</i> , 780 F.2d 267 (3d Cir. 1985) | 6 |
| <i>United States v. Mathis</i> , 932 F.3d 242 (4th Cir. 2019) | 7, 8 |
| <i>United States v. Taylor</i> , 142 S. Ct. 2015 (2022) | 5, 8, 9, 10 |

FEDERAL STATUTES

| | |
|--------------------------|-------------------|
| 18 U.S.C. § 2 | 3 |
| 18 U.S.C. § 924(c) | 3, 4, 5, 7, 9, 10 |
| 18 U.S.C. § 1951 | 2, 3, 6 |

OTHER AUTHORITIES

| | |
|---|---|
| Eleventh Circuit, Pattern Jury Instructions (Criminal Cases), O70.3 (Mar. 2022) | 7 |
|---|---|

| | |
|--|---|
| Tenth Circuit Criminal Pattern Jury Instructions, 2.70 (2021) | 7 |
| Third Circuit Model Crim. Jury Instructions 6.18.1951-4 (Jan. 2018) .. | 7 |
| Third Circuit Model Crim. Jury Instructions 6.18.1951-5 (Jan. 2018) .. | 7 |

In the Supreme Court of the United States

STANLEY FORD

V.

UNITED STATES OF AMERICA

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

PETITION FOR A WRIT OF CERTIORARI

Stanley Ford respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

OPINION BELOW

The Court of Appeals granted the government's motion to summarily affirm Mr. Ford's conviction and sentence on December 15,

2023. A copy of the order is included in the Appendix. App., *infra*, 1a.

JURISDICTION

This petition is timely filed pursuant to Sup. Ct. R. 13. Jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

18 U.S.C. § 1951 provides:

- (a) 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.
- (b) As used in this section—
 - (1) 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.

18 U.S.C. § 924(c)(3)(A) provides:

(c)(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[.]

STATEMENT

Stanley Ford was charged in the first superseding indictment filed on June 8, 2016 with conspiracy to commit Hobbs Act robbery in violation of 18 U.S.C. § 1951(a); five counts of aiding and abetting Hobbs Act robbery in violation of 18 U.S.C. §§ 2, 1951(a); and three counts of aiding and abetting use, brandishing, and discharge of a firearm in relation to a crime of violence in violation of 18 U.S.C. §§ 2, 924(c). Mr. Ford subsequently pleaded guilty, under a plea agreement, to conspiracy to commit Hobbs Act robbery, five counts of aiding and abetting Hobbs Act robbery, and one count (count three) of discharge of

a firearm in relation to Hobbs Act robbery.

The district court sentenced Mr. Ford to the mandatory minimum term of 300 months on count three, the 924(c) violation. The court imposed concurrent terms of one day on each of the remaining six counts to run consecutively to count three. The total term of imprisonment was 300 months plus one day.

Mr. Ford appealed. He argued that Hobbs Act robbery is not a predicate crime of violence under U.S.C. § 924(c)(3)(A) under the elements clause of that section. He further argued that aiding and abetting Hobbs Acts is also not a crime of violence.

The government, instead of filing a responsive brief, moved for summary affirmance based on *United States v. Eckford*, 77 4th 1228 (9th Cir. 2023), a case decided after the filing of the opening brief. *Eckford* held that Hobbs Act robbery and aiding and abetting Hobbs Act robbery qualified as crimes of violence for purposes of 924(c).

The Ninth Circuit granted the motion for summary affirmance under the compulsion of *Eckford*. Pet. App. 1a.

This petition for writ of certiorari follows.

REASONS FOR GRANTING THE PETITION

This case involves the determination of whether Hobbs Act robbery constitutes a crime of violence under 18 U.S.C. 924(c), one having an element of the use, attempted use or threatened use of physical force against the person or property of another. That affirmative determination meant a mandatory, consecutive sentence of 25 years for petitioner. But the Ninth Circuit got it wrong. Because Hobbs Act robbery can be committed by a threat to injure intangible property, it does not entail the physical force required by the statute. The issue of whether Hobbs Act robbery and attempted Hobbs Act robbery recurs frequently in federal courts and has never been determined by this Court. This case presents a perfect vehicle to decide this important issue.

This Court recently reaffirmed that the categorical approach is used “[t]o determine whether a federal felony may serve as a predicate for a conviction and sentence under the elements clause[.]” *United States v. Taylor*, 142 S. Ct. 2015, 2020 (2022). To come within the elements clause of 924(c)(3)(A)’s definition of physical force the predi-

cate offense requires (1) violent physical force capable of causing physical pain or injury to another person or property, *Stokeling v. United States*, 139 S. Ct. 544, 554 (2019) (citing *Johnson v. United States*, 559 U.S. 133, 140 (2010)); and (2) a use or threatened use of force that is intentional and not accidental or negligent, *Leocal v. Ashcroft*, 543 U.S. 1, 9 (2004). Hobbs Act robbery can be committed without violent force.

Hobbs Act robbery is defined as “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.” 18 U.S.C. § 1951(b)(1) (emphasis added). By its plain terms, Hobbs Act robbery does not necessarily involve violent force.

Property, for purposes of the Hobbs Act, is defined broadly to include “intangible, as well as tangible, property.” *United States v. Local 560 of the Int'l Bhd. of Teamsters*, 780 F.2d 267, 281 (3d Cir.

1985) (collecting cases) (describing the circuits as “unanimous” on this point). The Third, Ninth, Tenth, and Eleventh Circuits use pattern instructions that define Hobbs Act robbery to include fear of future injury to intangible property. *See* Third Circuit Model Criminal Jury Instructions 6.18.1951-4 and 6.18.1951-5 (Jan. 2018) (“[t]he term ‘property’ includes money and other tangible and intangible things of value”); Tenth Circuit Criminal Pattern Jury Instructions, 2.70 (2021) (“Property’ includes money and other tangible and intangible things of value[.]”); Eleventh Circuit, Pattern Jury Instructions (Criminal Cases), O70.3 (Mar. 2022) (“Property includes money, tangible things of value, and intangible rights that are a source or element of income or wealth.”). Intangible property cannot be injured or threatened with the physical violence required by 924(c).

Eckford, 77 F.4th at 1235, citing *United States v. Mathis*, 932 F.3d 242, 246 (4th Cir. 2019) rejected this argument by reasoning that the definition of property in 924(c) and Hobbs Act robbery must be the same: either both include intangible property or neither does. But, as shown above, Hobbs Act robbery clearly includes intangible property. And neither *Eckford* or *Mathis* explained how one could threaten to

apply physical force to intangible property or economic interests.

Citing *United States v. Dominguez*, 954 F.3d 1251 (9th Cir. 2020), *vacated*, 142 S. Ct. 2857 (2022) and *United States v. Dominguez*, 48 F.4th 1040 (9th Cir. 2022), *Eckford* alternatively reasoned that it need not analyze whether intangible economic interest require a threat of physical force because the defendant failed to point to any realistic scenario in which a robber could commit Hobbs Act robbery by placing his victim in fear of injury to an intangible economic interest—the “realistic probability” test from *Gonzales v. Duenas-Alvarez*, 549 U.S. 183, 293 (2007). *Eckford*, 77 F.4th at 1233-34.

But this Court’s recent decision in *United States v. Taylor*, 142 S. Ct. 2015 (2022) undermines the Ninth Circuit’s use of the realistic probability test in this context. In *Taylor*, the government argued that the defendant could not point to a single attempted Hobbs Act robbery prosecution that, as a factual matter, did not involve the attempted use of force. *Taylor*, 142 S. Ct. at 2024–25. This Court rejected that argument, finding the defendant’s failure to identify such a prosecution legally irrelevant. *Id.* at 2025.

Putting aside “the oddity of placing a burden on the defendant to

present empirical evidence about the government’s prosecutorial habits,” and “the practical challenges such a burden would present in a world where most cases end in plea agreements, and not all of those cases make their way into easily accessible commercial databases,” there was “an even more fundamental problem” with the government’s realistic probability theory: it “cannot be squared with the statute’s terms.” *Id.* at 2024. More specifically,

To determine whether a federal felony qualifies as a crime of violence, § 924(c)(3)(A) doesn’t ask whether the crime is *sometimes* or even *usually* associated with communicated threats of force (or, for that matter, with the actual or attempted use of force). It asks whether the government must prove, as an *element* of its case, the use, attempted use, or threatened use of force. . . .

Attempted Hobbs Act robbery does not require proof of any of the elements § 924(c)(3)(A) demands. That ends the inquiry, and nothing in [*Gonzales v. Duenas-Alvarez*, 549 U.S. 183 (2007)] suggests otherwise. . . .

In § 924(c)(3)(A), Congress did not . . . mandate an empirical inquiry into how crimes are usually committed, let alone impose a burden on the defendant to present proof about the government’s own prosecutorial habits.

Congress tasked the courts with a much more 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.

Id. At 2024-25 (emphasis in orginal).

Faithful application of the categorical test to the elements of Hobbs Act robbery shows it does not come within the definition of a crime of violence in 924(c). And given the substantial, and in the case of petitioner, disproportionate prison terms mandated by 924(c), this Court's intervention is necessary to correct the Circuit's inconsistent and incorrect application of the law.

CONCLUSION

For all the foregoing reasons, Mr. Ford submits that this Court grant his petition for a writ of certiorari.

Respectfully submitted,

DATED: March 12, 2024

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