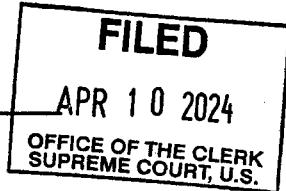


ORIGINAL

24-5050

No. _____

In The
Supreme Court of the United States



JUAN MARQUIS HOLIDAY,
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

QUESTIONS PRESENTED FOR REVIEW

Question One: Following this Court's decision in United States v. Taylor, 142 S. Ct. 2015 (2020) does aiding and abetting a completed robbery constitute a crime of violence.

PARTIES TO THE PROCEEDING

Petitioner Juan Marquis Holiday was the Defendant-Appellant in the proceedings below.

Respondent United States of America was the Plaintiff-Appellee in the proceedings below.

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APPENDIX

United States v. Holiday, No. 23-445 (9th Cir. Nov. 14, 2023)Appendix "A"
Judgment of Conviction from the United States District Court for the
Southern District of CaliforniaAppendix "B"

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OPINIONS BELOW

The opinion of the Court of Appeals is reported as United States v. Juan Marquis Holiday, No. 23-445 (9th Cir. Nov. 22, 2023) and reproduced in the attached Appendix A.

JURISDICTION

The Petitioner seeks review from this Court of the Order of the Ninth Circuit Court of Appeals dated November 22, 2024 affirming his conviction and sentence. See: *United States v. Holiday* Appendix "A". On February 08, 2024 Justice Kagan granted Petitioners Motion for an extension of time in which to file his certiorari petition. In the Order, the Court gave the Petitioner until April 20, 2024 to file his certiorari petition. See: *Holiday v. United States*, No.23A726 (US February 6, 2024).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**1. U.S. Const. amend V.**

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

2. 18 U.S.C. §1951:

Whoever in anyway 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 to do so, 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.

3. 18 U.S.C. §2

(a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.

(b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal.

STATEMENT OF THE CASE

Following a remand from this Court in light of Taylor the Petition, Juan Marquis Holiday ("Holiday"), was sentenced to a total custodial term of incarceration of 64 years and 10 months. See: *Judgment in a Criminal Case Appendix "B"*. Included in that custodial term are several counts of conviction for aiding and abetting Hobbs Act Robbery in violation of 18 U.S.C. §1951 and 18 U.S.C. §2. See: *Id.* Each of these Counts, in accordance with Ninth Circuit precedent, were classified as violent. See: *Id.* On appeal, Holiday argued¹, among other things, that aiding and abetting robbery does not constitute a crime of violence under the elements clause of the Armed Career Criminal Act. By Opinion and Order dated November 22, 2023 the Court of Appeals denied Holiday's appeal and in doing so affirmed his conviction and sentence. See: *United States v. Holiday* Appendix "A".

This timely petition for the issuance of a writ of certiorari follows.

¹ Because the arguments asserted by Holiday on appeal were, in many instances, foreclosed by circuit precedent Holiday's counsel filed a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967).

REASONS FOR GRANTING THE PETITION

I. Introduction

This Court's guidance is necessary to determine a matter of Constitutional importance. That is whether or not, following this Court's decision in *Taylor*, if aiding and abetting Hobbs Act Robbery constitutes a crime of violence under the elements clause. As set forth herein, Petitioner asserts that it does not and that's it's continued blanket classification as one runs afoul of the Constitution's due process clause.

II. Aiding and Abetting Hobbs Act Robbery Can No Longer Constitute a Crime of Violence

As explained by the Ninth Circuit the elements of aiding and abetting are "(1) that the accused has specific intent to facilitate the commission of a crime by another, (2) that the accused had the requisite intent of the underlining substantive offense, (3) that the accused assisted or participated in the commission of the underlining substantive offense, and (4) that someone committed the underlining substantive offense." See: *United States v. Singh*, 532 F. 3d 1053, 1057-58 (9th Cir. 2008). Applying these elements, the Ninth Circuit and a majority of its sister circuits have held that "aiding and abetting a crime of violence...is also a crime of violence". See: *Young v. United States*, 22 F. 4th 1115, 11123 (9th Cir. 2022). In the post *Taylor* landscape Court have held this still to be the case because "in an attempted offense there is no crime apart from the attempt, which is the crime itself whereas aiding and abetting

is a different means of committing a single crime, not a separate offense itself."

See: United States v. Eckford 77 F. 4th 1228, 1230 (June 13, 2023) (citing in part: United States v. Garcia, 400 F. 3d 816, 819 (9th Cir. 2005).

In response to the above Holiday would ask the Court to revisit the hypothetical scenario set forth by this Court in Taylor. In that scenario, Justice Gorsuch writing for the majority offered the following:

"Suppose Adam tells a friend that he is planning to rob a particular store on a particular date. He then sets about researching the business's security measure, layout, and the time of the day when its cash registers are at their fullest. He buys a ski mask, plots his escape route, and recruits his brother to drive the getaway car. Finally, he drafts a note - "your money or your life" - that he plans to pass to the cashier. The note is a bluff, but Adam hopes its implications that he is armed and dangerous will elicit a complaint response. When the day finally comes and Adam crosses the threshold into the store, the policy immediately arrest him. It turns out Adam's friend tipped them off." See: Taylor at 2018.

Now let's suppose Adam enlists the services of his friend John to conduct research into the store. Let's also assume that Adam's other friend did not tip off law enforcement and the robbery was successful. Certainly John is guilty of aiding and abetting the robbery. But John's actions were hardly violent. Yet under the current interpretation of the statute, using the categorical approach, John's research would amount to a violent act because it helped Adam commit the robbery. It is respectfully submitted that the more appropriate approach would be to look to John's specific conduct to determine whether or not his actions constitute a violent act. This individualized approach serves to promote the notion of fundamental fairness that our system is predicated upon.

To be certain, Holiday is not arguing that aiding and abetting is or can be a stand alone offense. By necessity the actions of the abettor will always relate back to the completed action. Rather Holiday's argument is that for the purposes of classification his actions *in furtherance* of the committed act should be what is considered when a determination is made as to whether or not his action constitutes a violent act. Such an approach is precisely what Justice's Thomas and Alito spoke of in their dissents in *Taylor*. See: *Taylor at 2026 (Thomas J. dissenting)*. The categorical approach to criminal statutes may work in some instances - but for the aiding and abetting statute it simply does not.

CONCLUSION

For the foregoing reasons, Holiday respectfully requests this Court grant certiorari to review the judgment of the Ninth Circuit.

Dated this 22nd day of June, 2024.

Respectfully Submitted,



Juan Marquis Holiday
Reg Number: 61872-298
USP Victorville
U.S. Penitentiary
P.O. Box 3900
Adelanto, CA 92301
Pro-Se Petitioner