CASE NO._____

In The
Supreme Court of the United States

RONALD C. CHAMPNEY,

***Petitioner*,**

v.

UNITED STATES OF AMERICA,

***Respondent*.**

Petition for Writ of Certiorari to the Court of Appeals for the Third Circuit.

Samuel J.B. Angell*
Assistant Federal Defender
David Zuckerman
Assistant Federal Defender
Federal Community Defender Office
for the Eastern District of Pennsylvania
601 Walnut Street, Suite 545 West
Philadelphia, PA 19106
(215) 928-0520
samuel_angell@fd.org
david_zuckerman@fd.org

Counsel for Petitioner

*Counsel of record for Petitioner, Ronald C. Champney
Member of the Bar of the Supreme Court

QUESTION PRESENTED

In *United States v. Taylor*, 596 U.S. 845, 846 (2022), this Court held that an *attempted* Hobbs Act robbery does not qualify as a crime of violence under 18 U.S.C. § 924(c). Unresolved by this Court, however, is whether *aiding and abetting* a Hobbs Act robbery, like attempt, is similarly not a crime of violence. There should be little debate aiding and abetting a Hobbs Act robbery can be committed by a defendant short of violence—the knowledge requirement applicable to aiders and abettors need not extend to all elements, including presumably force—and thus application of the categorical approach would seemingly be dispositive. However, the Court of Appeals for the Third Circuit, citing its own authority, *United States v. Stevens*, 70 F.4th 653, 663 (3d Cir. 2023), denied a certificate of appealability. The *Stevens* court, in contravention of *Taylor*, eschewed the categorical approach altogether as relates to the defendant's conduct, pointing to 18 U.S.C. § 2, which renders accomplices liable for the actions of the principal, including as to the firearms enhancement. And, according to the Circuit, that ended the matter.

Recently, this Court granted certiorari on a similarly unresolved issue, the application of the formal categorical approach where the crime requires proof of bodily injury or death, but can be committed by *failing* to take action. *Delligatti v. United States*, 23-825. Argument in that case is scheduled for November 12, 2024. Each case implicates the application of the categorical approach to instances where the crime can be accomplished short of violence. This Court should similarly take the opportunity to address the application of the categorical approach where the theory of liability is aiding and abetting. Thus, the questions presented are:

In light of the holding in *United States v. Taylor* that attempted Hobbs Act robbery does not qualify as a "crime of violence" under 18 U.S.C. § 924(c)(3)(A), is it debatable among jurists of reason that aiding and abetting Hobbs Act robbery is similarly not a crime of violence?

Does aiding and abetting Hobbs Act robbery qualify as a "crime of violence" under 18 U.S.C. § 924(c)(3)(A)?

PARTIES TO THE PROCEEDING

Petitioner RONALD CHAMPNEY was the appellant in the court below and Respondent UNITED STATES OF AMERICA was the appellee in the court below.

No party is a corporation.

RELATED PROCEEDINGS

United States Court of Appeals for the Third Circuit:
United States v. Champney, 24-1363 (June 26, 2024)

United States District Court for the Eastern District of Pennsylvania:
United States v. Champney, CR 98-131-3

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Ronald C. Champney respectfully petitions for a writ of certiorari to review the decision of the United States Court of Appeals for the Third Circuit in this case.

OPINIONS BELOW

The Order of the Court of Appeals for the Third Circuit (App. 1) denying a certificate of appeal is unreported. The District Court's opinion (App. 3) denying the 28 U.S.C. § 2255 petition is unreported. *United States v. Champney*, CR 98-131-3, 2024 WL 625278, at *1 (E.D. Pa. Feb. 13, 2024).

JURISDICTION

The judgment of the Court of Appeals was entered on June 26, 2024. This Court has jurisdiction under 28 U.S.C. § 1254.

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

Section 924(c)(3)(A) of the U.S. Code, 18 U.S.C. § 924(c) provides in relevant part:

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

Section 1951 of the U.S. Code,18 U.S.C. §§ 1951(a) and (b) provide in relevant part:

> (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.

Section 2 of the U.S. Code,18 U.S.C. § 2 provides in relevant part:

(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 FACTS

In 1997,[1] Ronald C. Champney was accused of participating in a five-defendant robbery and burglary ring operating in Pennsylvania and New Jersey. It was alleged that Mr. Champney was involved in three of the robberies. On July 28, 1998, he entered a guilty plea, including aiding and abetting a Hobbs Act robbery, to the following federal charges in the Eastern District of Pennsylvania:

18 U.S.C. § 1951 - Conspiracy to Commit Hobbs Act robbery (count 1)

18 U.S.C. § 371 - Conspiracy (count 2)

18 U.S.C. § 2314 - Interstate transportation of stolen property, aiding and abetting (count 3)

[1] Due to intervening state sentences, Mr. Champney, a 73 year old colon cancer survivor, only recently commenced serving his 200 month federal sentence.

> 18 U.S.C. § 1951 - Interference with commerce by robbery, aiding and abetting (counts 4 & 7)
>
> 18 U.S.C. § 924(c) - Use of a gun during a crime of violence, aiding and abetting (count 5)
>
> 18 U.S.C. § 922 (g)(1) - Possession of a firearm by a convicted felon (count 6)

On December 18, 1998, Mr. Champney was sentenced for the instant federal charges, totaling 200 months, as follows.

> 140 months as to counts one, four, six and seven, 60 months as to count two, l20 months as to count three, said sentence as to each count to be served concurrently. 60 months as to count number five [§ 924(c)] to run consecutively to the sentences imposed as to all other counts. This term of imprisonment shall run consecutively to the defendant's imprisonment under any previous State or Federal sentence.

See Amended Judgment, December 21, 1998. The Judgment of Conviction reflects the following as to the Hobbs Act counts: "Interference with commerce by robbery, aiding and abetting." *Id.*

In light of *Taylor*, on June 15, 2023 Mr. Champney filed *Petitioner's Motion For Relief From His 18 U.S.C 924(c) Conviction and Sentence (Firearms Enhancement) Pursuant to 28 U.S.C. § 2255, and Consolidated Memorandum of Law*. The § 2255 petition, his first, was denied on February 13, 2024. *U.S.A. v. Champney*, 2:98-cr-00131-RBS (Doc 311).

On March 4, 2024, the Court of Appeals remanded to the District Court for the purpose of either issuing a certificate of appealability or stating reasons why a certificate of appealability should not issue. *United States v. Champne*y, No. 24-1363 (Doc. 5).

On March 21, 2024, the District Court filed its order denying the application for a certificate of appealability. *United States v. Champney*, 2:98-cr-00131-RBS (Doc. 319). Mr. Champney thereafter sought a certificate of appealability from the Court of Appeals.

On June 26, 2024, the Court of Appeals for the Third Circuit entered an order denying a certificate of appealability. The Order reads in relevant part:

> Appellant's motion for a certificate of appealability is denied. See 28 U.S.C. § 2253(c). Jurists of reason would not debate the District Court's denial of his motion pursuant to 28 U.S.C. § 2255. *See United States v. Stevens*, 70 F.4th 653, 663 (3d Cir. 2023) (holding that aiding and abetting a completed Hobbs Act robbery is a crime of violence under 18 U.S.C. § 924(c)); *see also* 3d Cir. I.O.P. 9.1.

United States v. Champney, 24-1363 (June 26, 2024) (Doc. 18-1).

REASONS FOR GRANTING THE WRIT

This case implicates the applicability of the formal categorical elements test to 18 U.S.C. § 924(c) (firearms enhancement), where the theory of liability for the substantive crime is aiding and abetting.

I. TWO LINES OF CASES ARE IN CONFLICT AND SHOULD BE RECONCILED BY THE COURT.

Two lines of cases are in conflict and should be revisited in light of this Court's decision in *Taylor*, which held that that *attempt* to commit a Hobbs act robbery is not a crime of violence for the purposes of the § 924(c) firearms enhancement. On one hand, the Circuit Courts of Appeal have been largely uniform, pre- and post-*Taylor*, in rejecting challenges to the application of the firearms enhancement provisions of § 924(c) in completed Hobbs Act robberies where the

theory of liability was aiding and abetting, including the Third Circuit. *United States v. Stevens*, 70 F.4th 653 (3d Cir. 2023).[2]

But the courts have been likewise uniform in holding that liability for the substantive crime can attach to aiders and abettors, even absent proof that that defendant used, attempted to use, or threatened to use force. *Rosemond v. United States*, 572 U.S. 65, 73 (2014) ("As almost every court of appeals has held, a defendant can be convicted as an aider and abettor without proof that he participated in each and every element of the offense.").[3]

Taylor renders these two lines of cases irreconcilable; the mens rea standard applicable for liability under *Rosemond* fails the elements test as it does not require "the use, attempted use, or threatened use of physical force against the person or property of another."

The *Rosemond* Court ruled that § 2 aiding or abetting requires "an affirmative act in furtherance of that offense ... with the intent of facilitating the

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[2] *See also Medunjanin v. United States*, 99 F.4th 129, 135 (2d Cir. 2024) ("We now again hold that the fact that a defendant may have been convicted of an otherwise valid crime of violence based on an aiding and abetting theory of liability has no effect on the crime's validity as a § 924(c) predicate"); *United States v. Worthen*, 60 F.4th 1066, 1067–71 (7th Cir. 2023) (an aider and abettor of a substantive offense "necessarily commits all the elements" of the substantive offense); *United States v. Eckford*, 77 F.4th 1228, 1236–37 (9th Cir. 2023) ("*Taylor* dealt with an inchoate crime, an attempt, and does not undermine our precedent on aiding and abetting liability" because "aiding and abetting is a different means of committing a single crime, not a separate offense itself.") (citation and internal quotations omitted); *United States v. Wiley*, 78 F.4th 1355, 1363–65 (11th Cir. 2023) (rejecting the applicability of *Taylor* because aiding and abetting "is not a separate federal crime" like attempt (citation omitted).

[3] *United States v. Diaz-Castro*, 752 F.3d 101, 107 n.4 (1st Cir. 2014) (same).

offense's commission." 572 U.S. at 71. Or as recast, the Court stated that the "intent requirement [is] satisfied when a person actively participates in a criminal venture with full knowledge of the circumstances constituting the charged offense." *Id.* at 77. *See also id.* at 74 ("The division of labor between two (or more) confederates thus has no significance: A strategy of 'you take that element, I'll take this one' would free neither party from liability."). Strictly applied, the "knowledge" test, applicable only to some, but not all, of the elements of the substantive crime, seemingly fails the elements test as clarified in *Taylor*.

A clear conflict exists between the Third Circuit's reasoning in *Stevens* and this Court's reasoning in *Taylor* and *Rosemond*. The unresolved question is, in light of *Taylor*, how should courts apply the elements test in aiding and abetting cases. As applied to *attempted* Hobbs Act robbery and *conspiracy* to commit Hobbs Act robbery, the question has been resolved;[4] the issue presented here is similarly ripe for resolution.

II. THE CIRCUIT COURTS HAVE AVOIDED EMPLOYING THE ELEMENTS TEST TO THE DEFENDANT'S CONDUCT IN FAVOR OF A CENTURIES-OLD COMMON-LAW-DERIVED THEORY OF ACCOMPLICE LIABILITY

The requirements of the elements test are well established: "To determine whether a federal felony may serve as a predicate for a conviction and sentence under the elements clause . . . we must apply a "categorial approach." *Taylor*, 596

[4] *Taylor*, 596 U.S. at 849 (noting the Government's concession that conspiracy to commit Hobbs Act robbery is not a crime of violence); *id.* at 870 (Thomas, J., dissenting) (same).

U.S. at 850. Thus the "only relevant question is whether the federal felony at issue always requires the government to prove—beyond a reasonable doubt, as an element of its case—the use, attempted use, or threatened use of force." *Id.*

In *United States v. Stevens*, 70 F.4th 653, 663 (3d Cir. 2023), the precedent relied upon below, the Court avoided applying the elements test as relates to aiders and abettors. Instead, the Court reasoned once the modest *Rosemond* test is met, courts may jump to the substantive crime without regard to the distinct elements the government must prove the defendant committed when proceeding on an aiding and abetting theory of liability. First, it noted that "§ 924(c) lacks any personal 'use of force' requirement." 70 F.4th at 662.[5] With this as its foundation, *Stevens* moved to the operation of § 2 and held that aiding and abetting a Hobbs Act robbery, 18 U.S.C. § 1951, is a crime of violence because the acts of the principal attach to the aider and abettor as a matter of law. 70 F.4th at 662 ("because the force required for completed Hobbs Act robbery is sufficient to satisfy the elements clause, the force required for an aiding and abetting conviction is necessarily also sufficient").

Other courts have found refuge by employing a similar fiction, noting that whereas attempt is a distinct crime, aiding and abetting is merely a theory of liability. Skirting the elements test as applied to aiders and abettors, these courts hold that the elements of aiding and abetting can be ignored because 18 U.S.C. § 2,

[5] It is far from clear that this is the case. § 924 applies to "*any person* who, during and in relation to any crime of violence" uses a firearm. § 924(c)(1)(A) (emphasis supplied). By its plain language, a fair application is limited to the specific person that employs the weapon, and thus does include a "personal 'use of force.'"

is not a stand-alone statute. *Medunjanin v. United States*, 99 F.4th 129, 135 (2d Cir. 2024) ("Unlike attempt, … aiding and abetting merely assigns criminal liability; it does not define the crime."); *United States v. Eckford*, 77 F.4th 1228, 1237 (9th Cir. 2023) ("in an attempt case 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.") (internal citation and punctuation omitted); *United States v. Wiley*, 78 F.4th 1355, 1364 (11th Cir. 2023) ("Unlike attempt, aiding and abetting under § 2 is not a separate federal crime, but rather an alternative charge that permits one to be found guilty as a principal.") (internal citation and punctuation omitted); *United States v. Worthen*, 60 F.4th 1066, 1069–70 (7th Cir. 2023) ("§ 2 is not a separate federal crime" from the underlying offense, but is instead an alternative theory of liability for the commission of the principal offense.).

Whatever the theory, these cases elevate the broad common-law rule of accomplice liability embodied in 18 U.S.C. § 2[6] over the specific requirements of the elements test. The continued legitimacy of this approach is in question after *Taylor*. Compare *Rosemond*, 572 U.S. at 70 ("That provision [18 U.S.C. § 2] derives from

[6]*United States v. Peoni*, 100 F.2d 401, 402 (2d Cir. 1938) (tracing the common law origins of the 1909 amendments as far back as the 14th century, then Circuit Judge Learned Hand noted, the "substance of that formula goes back a long way"); S.Rep. No. 10, pt. 1, 60th Cong., 1st Sess. 26 (1908) ("The committee has deemed it wise to make those who are accessories before the fact at common law principal offenders, thereby permitting their indictment and conviction for a substantive offense.").

(though simplifies) common-law standards for accomplice liability.") with *Taylor*, 596 U.S. at 852 (absent satisfaction of the elements clause, "Congress has not authorized courts to convict and sentence [Taylor] to a decade of further imprisonment under § 924(c)(3)(A)."). Although Congress, over one hundred years ago, took an expansive view of accomplice liability, this does not mean it necessarily authorized additional imprisonment for aiders and abettors under § 924(c).

III. UNDER *TAYLOR*, AIDING AND ABETTING A HOBBS ACT ROBBERY IS NOT A CRIME OF VIOLENCE

Because aiding and abetting a Hobbs Act robbery can be committed without proving the use of force element, it should not qualify as a crime of violence under § 924(c)'s elements clause.

In *Taylor*, this Court employed the formal categorical approach and assessed the elements of that crime to determine whether they "always 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*, 596 U.S. at 850. It explained that the elements of attempted Hobbs Act robbery are: "(1) [t]he defendant intended to unlawfully take or obtain personal property by means of actual or threatened force, and (2) he completed a 'substantial step' toward that end." *Id*.

This Court further explained that while the first element requires an *intent to take by force*, an intention is a mental state; that element does not require use, attempted use, or threatened use of force. *Id*. ("An intention is just that, no more."). Applying these "elements," it determined that a substantial step towards a Hobbs

Act robbery could be accomplished without violence by the defendant, thus failing the elements test.

Rosemond compels the same result. Under *Rosemond*, liability for the substantive crime follows if the actor "takes an affirmative act in furtherance of that offense" and does so "with the intent of facilitating the *offense's* commission." *Rosemond*, 572 U.S. at 71 (emphasis added). But in the same breath it made clear this requirement does not extend to all necessary elements, including force. *Id.* at 73 (Congress employed "language that comprehends all assistance rendered by words, acts, encouragement, support, or presence even if that aid relates to only one (or some) of a crime's phases or elements."); *id.* (government not required to prove that defendant "participated in each and every element of the offense").

Nor does the mens rea standard articulated in *Rosemond* fill the elements gap. "What matters for purposes of gauging intent ... is that the defendant has chosen, with full *knowledge*, to participate in the illegal scheme." 572 U.S. at 78 (footnote omitted) (emphasis supplied). This amorphous standard—blurring the line between acting purposefully and acting with knowledge—prompted Justice Alito to observe, "The Court refers interchangeably to both of these tests and thus leaves our case law in the same, somewhat conflicted state that previously existed." *Id.* at 84–85 (Alito, J., dissenting). *See also* Baruch Weiss, *What Were They Thinking?: The Mental States of the Aider and Abettor and the Causer Under Federal Law*, 70 Fordham L. Rev. 1341, 1373 (2002) ("In reality, the federal case law is far from

'uniform' in its use of the 'intent' standard. It is more accurately described as hopelessly muddled and divided …").

Stevens glossed over the different mens rea applicable to aiders and abettor, as opposed to principals. All of this is well and good for liability for the robbery, but *Taylor* makes clear it is insufficient for the firearms enhancement to apply. For that, the elements test must be met.

Yet, despite *Taylor*'s clear mandate, the courts below continue to resist applying the categorical approach to a defendant's conduct where the theory of liability is aiding and abetting. The leapfrog—obviating strict application of the elements test—is accomplished by divorcing the function of 18 U.S.C. § 2 from the substantive crime. *See, e.g.*, *Medunjanin*, 99 F.4th at 135 (§ 2 "does not define the crime.").

But even these courts dig an analytical hole from which they do not attempt to emerge, acknowledging that § 2 must be read in *pari materia* with the substantive offense. *Eckford*, 77 F.4th at 1237 ("a conviction for aiding and abetting requires proof of all the elements of the completed crime plus proof of an additional element: that the defendant intended to facilitate the commission of the crime").

As recognized in *Eckford*, aiding and abetting are *elements* the Government must prove beyond a reasonable doubt in addition to the substantive crime. The metaphysical exercise of pretending these are two things rather than one has no practical significance other than to lessen the burden of proof for the Government and thwart the intent of Congress.

The dissent in *In re Colon*, 826 F.3d 1301 (11th Cir. 2016), cogently highlighted the disconnect between aiding and abetting, and the force element:

> It seems plausible that a defendant could aid and abet a robbery without ever using, threatening, or attempting any force at all. For example, the aider and abettor's contribution to a crime could be as minimal as lending the principal some equipment, sharing some encouraging words, or driving the principal somewhere. And even if Mr. Colon's contribution in his case involved force, this use of force was not necessarily an element of the crime, as is required to meet the "elements clause" definition.
>
> The law has long been clear that a defendant charged with aiding and abetting a crime is not required to aid and abet (let alone actually commit, attempt to commit, or threaten to commit) every element of the principal's crime.

Id. at 1306–07 (Martin, J., dissenting) (citing *Rosemond*, 572 U.S. at 73).

The mental state test of *Rosemond* fails the elements test on two grounds, it does not require proof of the intent applicable to principals, and does not require that that the requisite "knowledge" extend to all the elements. Under the formal categorical approach, aiding and abetting a Hobbs Act robbery *can be* committed without proof that the defendant used, attempted to use, or threatened to use force, and thus is not categorically a "crime of violence" under § 924(c)'s elements clause.

IV. THE QUESTIONS PRESENTED WARRANT REVIEW

Conspiracy to commit a Hobbs Act robbery is not a crime of violence; attempt to commit a Hobbs Act robbery is not a crime of violence. But still unresolved is whether aiding and abetting a Hobbs Act robbery is a crime of violence.

Animating *Taylor* was this Court's conviction that a defendant should not be subject to enhancement not authorized by Congress. 596 U.S. at 852 ("Mr. Taylor may be lawfully subject to up to 20 years in federal prison for his Hobbs Act

conviction, [b]ut … Congress has not authorized courts to convict and sentence him to a decade of further imprisonment under § 924(c)(3)(A).").

A similar concern obtains here. The questions presented requires this Court's intervention to provide clarity on an issue that subjects many offenders to the risk of Congressionally-unauthorized increased incarceration. A resolution would provide uniformity in decision-making and how liability should attach in different situations. Just as *Taylor* provided a vehicle to address attempted Hobbs Act robbery, this case similarly presents a question that Congress has "tasked the courts with [viewing] as a much more straightforward job." *Taylor*, 596 U.S. at 860.

CONCLUSION

For all the reasons set forth above, this Court should grant the petition for a writ of certiorari.

Respectfully submitted,

/s/ Samuel J.B. Angell

Samuel J.B. Angell
Assistant Federal Defender
David Zuckerman
Assistant Federal Defender
Federal Community Defender Office
for the Eastern District of Pennsylvania
601 Walnut Street, Suite 545 West
Philadelphia, PA 19106
(215) 928-0520
samuel_angell@fd.org
david_zuckerman@fd.org