No.

In The Supreme Court Of The United States

Martin Garcia, Fred Oaxaca, Brian Floyd, and Rondall Talley,

Petitioners,

v.

United States of America,

Respondent.

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

Joint Petition for a Writ of Certiorari

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Questions Presented for Review

The first question presented is whether Circuits have failed to apply categorical analysis to aiding and abetting's distinct elements, which do not meet the requirements of 18 U.S.C. § 924(c)(3)(A)'s force clause. Aiding and abetting Hobbs Act robbery, 18 U.S.C. §§ 1951(a) and 2, does not require as an element the use, attempted use, or threatened use, of violent physical force under 18 U.S.C. § 924(c)(3)(A)'s force clause. The Circuits confuse categorical analysis—which examines only statutory elements—with the contextually distinct rule that an aider and abettor is punishable for the acts of a principal. Thus, Circuits are not applying categorical analysis to aiding and abetting's distinct elements and are failing to assume the least culpable conduct for aiding and abetting Hobbs Act robbery. The actus reus element of aiding and abetting merely requires the defendant to aid or abet *one* element of the substantive offense, and not every element of Hobbs Act robbery requires intentional violent force against a person or property.

The second question presented is whether the Circuits have interpreted the actus reus of Hobbs Act robbery too narrowly and against its plain language by requiring violent physical force as an element. The Hobbs Act robbery statute, 18 U.S.C. § 1951(b)(1), does not require as an element the use, attempted use, or threatened use, of violent physical force. By its plain language, Hobbs Act robbery encompasses future threats to injure intangible property and does not require violent physical force.

Related Proceedings

Petitioners Martin Garcia, Fred Oaxaca, Brian Floyd, and Rondall Talley each separately moved to vacate their 18 U.S.C. § 924(c) convictions under 28 U.S.C. § 2255 in the District of Nevada. Petitioners Garcia and Oaxaca are co-defendants, and Petitioners Floyd and Talley are co-defendants in a separate, factually-unrelated case. However, each Petitioner's legal claims for relief under 28 U.S.C. § 2255 are identical. The details of each Petitioner's case are as follows.

United States v. Martin Garcia: The district court denied Garcia's motion to vacate under 28 U.S.C. § 2255 on May 23, 2023. *United States v. Garcia*, Nos. 2:20-cv-01160-RFB; 2:16-cr-00348-RFB-3 (MG-Dkt. 155)[1]; Pet. App. E. On June 4, 2024, the Ninth Circuit remanded for the district court to grant or deny a certificate of appealability (COA). The district court denied Garcia a COA on September 26, 2024. Pet. App. D. The Ninth Circuit then denied Garcia's request for a COA on November 25, 2024. *United States v. Garcia*, No. 23-4302, Dkt. 17.1 (9th Cir. Nov. 25, 2024); Pet. App. C.

United States v. Fred Oaxaca: The district court denied Oaxaca's motion to vacate under 28 U.S.C. § 2255 on May 23, 2023. *United States v. Oaxaca*, Nos. 2:20-cr-01175-RFB-1; 2:16-cr-00348-RFB-1 (FO-Dkt. 154); Pet. App. H. The Ninth Circuit remanded for the district court to grant or deny a certificate of appealability (COA). The district court denied Oaxaca a COA on January 10, 2024. Pet. App. G.

[1] Citations to district court criminal case docket documents are preceded by the respective Petitioner's initials, *e.g.*, "MG-Dkt."

The Ninth Circuit then denied Oaxaca's request for a COA on September 12, 2024. *United States v. Oaxaca*, No. 23-4299, Dkt. 14.1 (9th Cir. Sept. 12, 2024); Pet. App. F.

United States v. Brian Floyd: The district court denied Floyd's motion to vacate under 28 U.S.C. § 2255 and denied a COA on December 5, 2023. *United States v. Floyd*, Nos. 2:20-cv-01157-RFB; 2:17-cr-00404-RFB-VCF-4 (BF-Dkt. 231); Pet. App. B. The Ninth Circuit denied a COA on September 12, 2024. *United States v. Floyd*, No. 24-611, Dkt. 11.1 (9th Cir. Sept. 12, 2024); Pet. App. A.

United Sates v. Rondall Talley: The district court denied Talley's motion to vacate under 28 U.S.C. § 2255 and denied a COA on December 5, 2023. *United States v. Talley*, Nos. 2:20-cv-01188-RFB; 2:17-cr-00404-RFB-VCF-1 (RT-Dkt. 232); Pet. App. J. The Ninth Circuit denied a COA on September 13, 2024. *United States v. Talley*, No. 24-604, Dkt. 4.1 (9th Cir. Sept. 13, 2024); Pet. App. I.

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Petition for Certiorari

Petitioners Martin Garcia, Fred Oaxaca, Brian Floyd, and Rondall Talley jointly petition for a writ of certiorari to review judgments of the United States Court of Appeals for the Ninth Circuit denying relief under 28 U.S.C. § 2255. A joint petition is proper under Supreme Court Rule 12.4, as Petitioners each challenge their respective judgments on identical legal issues.

Opinions Below

The Ninth Circuit orders denying Petitioners' COA are unpublished and not reprinted. *See* Pet. App. A, C, F, I.

The district court's orders denying habeas relief for Petitioners Floyd and Talley, are unreported but reprinted at: *United States v. Floyd*, No. 2:17-cr-00404-RFB-VCF, 2023 WL 8451850 (D. Nev. Dec. 5, 2023); and *United States v. Talley*, No. 2:17-cr-00404-RFB-VCF, 2023 WL 8452193 (D. Nev. Dec. 5, 2023). *See* Pet. App. B, J. The district court's orders denying habeas relief for Petitioners Garcia and Oaxaca are unpublished and not reprinted. *See* Pet. App. E, H. The district court's order denying Oaxaca a COA is also unpublished and not reprinted. *See* App. G. The district court's order denying Garcia a COA is unpublished but reprinted at: *United States v. Oaxaca*, *et al.*, No. 2:16-cr-00348-RFB-3, 2024 WL 4332059 (D. Nev. Sept. 26, 2024). *See* Pet. App. D.

Jurisdiction

The Ninth Circuit Court of Appeals entered final orders denying COA to Petitioners on:

- November 25, 2024, as to Garcia. Pet. App. C.
- September 12, 2024, as to Oaxaca. Pet. App. F.
- September 12, 2024, as to Floyd. Pet. App. A.
- September 13, 2024, as to Talley. Pet. App. I.

This Court's jurisdiction is invoked under 28 U.S.C. § 1254. This joint petition is timely per Supreme Court Rule 13.1 because the petition is filed within 90 days of the lower court's orders denying discretionary review.

Constitutional and Statutory Provisions Involved

1. U.S. Const. amend. V: "No person shall . . . be deprived of life, liberty, or property, without due process of law.

2. Title 18, Section 924(c), of the United States Code provides in relevant part:

> (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.

3. Title 18, Section 2, of the United States Code, provides:

> (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.

4. Hobbs Act robbery, 18 U.S.C. § 1951, provides 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.

Statement of the Case

Petitioners are four of many defendants convicted and sentenced to mandatory minimum sentences under 18 U.S.C. § 924(c) where the predicate offense no longer qualifies as a crime of violence. Section 924(c) provides graduated, mandatory, consecutive sentences for using a firearm during and in relation to a crime of violence. These four Petitioners have been sentenced to collectively serve over 36 years in prison. But 77% of this total consists solely of the mandatory sentences imposed under 18 U.S.C. § 924(c).

I. Petitioners are each serving mandatory minimum sentences imposed under 18 U.S.C. § 924(c).

Petitioners' cases individually originate from the District of Nevada. Though Petitioners Garcia and Oaxaca are co-defendants, and Petitioners Floyd and Talley are co-defendants, these two cases are not factually related. The common thread among Petitioners is they are each serving mandatory minimum sentences for § 924(c) convictions based on aiding and abetting Hobbs Act robbery:

Petitioner Martin Garcia: Garcia pleaded guilty in 2016 to one count of use of a firearm during and in relation to "a crime of violence" (specifically, aiding and abetting Hobbs Act robbery) in violation of 18 U.S.C. § 924(c)(1)(A) (Count Five) and aiding and abetting Hobbs Act robbery (Counts Two and Four). MG-Dkts. 61, 66, 69. The district court sentenced Garcia to 36 months of imprisonment concurrent on Counts Two and Four, and a consecutive sentence of 84 months of imprisonment on Count Five. MG-Dkts. 76, 80. The court also imposed three years of supervised release on Counts Two and Four, and five years of supervised release on Count Five, run concurrently. MG-Dkt. 80. Garcia completed his imprisonment term and is currently serving his five-year aggregate term of supervised release.

Petitioner Fred Oaxaca: Oaxaca pled guilty in 2016 to one count of use of a firearm during and in relation to "a crime of violence" (specifically, aiding and abetting Hobbs Act robbery) in violation of 18 U.S.C. § 924(c)(1)(A) (Count Five) and three counts of aiding and abetting Hobbs Act robbery (Counts One, Two, and Three) in violation of 18 U.S.C. §§ 1951 and 2. FO-Dkts. 61, 65, 68. The district court sentenced Mr. Oaxaca to 36 months of imprisonment concurrent on Counts

One, Two, and Three, and a consecutive sentence of 84 months of imprisonment on Count. FO-Dkts. 77, 81, 84. Further, the court imposed concurrent supervised release terms of three years on Counts One, Two, and Three, and five years on Count Five. FO-Dkt. 104, p.81.[2] Oaxaca completed his imprisonment term and is currently serving his five-year aggregate term of supervised release.

Petitioner Brian Floyd: Floyd pleaded guilty in 2018 to aiding and abetting carjacking in violation of 18 U.S.C. §§ 2119 and 2 (Count One), aiding and abetting Hobbs Act robbery in violation of 18 U.S.C. §§ 1951 and 2 (Count Two), and aiding and abetting brandishing a firearm during and in relation to "a crime of violence" (specifically, aiding and abetting Hobbs Act robbery charged in Count Two) in violation of 18 U.S.C. §§ 924(c)(1)(A) and 2 (Count Three). BF-Dkt. 89, 91, 92. The district court sentenced Mr. Floyd to concurrent sentences of 3 months' imprisonment on Counts One and Two, and a consecutive sentence of 84 months' imprisonment on Count Three. BF- Dkt. 118, 120. Further, the court imposed concurrent supervised release terms of three years on Counts One and Two and five years on Count Three. BF- Dkt. 120. Floyd completed his imprisonment term and is currently serving his supervised release term.

[2] Although Oaxaca's written judgment reflects a consecutive supervision term of 84 months on Count Five, FO-Dkt. 84, at sentencing this Court verbally imposed a maximum of five years of supervision on Count Five. FO-Dkt. 104, p. 31. When, as here, the written judgment deviates from the court's unambiguous verbal pronouncement of sentence, the verbal sentence controls. *United States v. Napier*, 463 F.3d 040, 1043 (9th Cir. 2006); Fed. R. Crim. P. 35(c).

Petitioner Rondall Talley: Talley pled guilty in 2018 to aiding and abetting carjacking in violation of 18 U.S.C. §§ 2119 and 2 (Count One), aiding and abetting Hobbs Act robbery in violation of 18 U.S.C. §§ 1951 and 2 (Count Two), and aiding and abetting brandishing a firearm during and in relation to "a crime of violence" (specifically, aiding and abetting Hobbs Act robbery charged in Count Two) in violation of 18 U.S.C. §§ 924(c)(1)(A) and 2 (Count Three). RT-Dkts. 64, 68. The district court sentenced Mr. Talley to concurrent sentences of 24 months' imprisonment on Counts One and Two, and a consecutive sentence of 84 months' imprisonment on Count Three. RT-Dkts. 135, 137. Further, the Court imposed concurrent supervised release terms of three years on Counts One and Two and five years on Count Three. RT-Dkt. 137. Talley's expected release date from the Federal Bureau of Prisons is September 27, 2025.

II. Petitioners seek to vacate their § 924(c) convictions and sentences under this Court's *Johnson* and *Davis* decisions.

In 2015, this Court held the Due Process Clause precluded imposing an increased sentence under the residual clause of the Armed Career Criminal Act's ("ACCA") violent felony definition. *Johnson v. United States*, 576 U.S. 591 (2015). This Court later issued *Welch v. United States*, 578 U.S. 120, 132–34 (2016), holding *Johnson* announced a new substantive rule that applies retroactively to cases on collateral review. In June 2019, this Court issued *United States v. Davis*, 588 U.S. 445 (2019), holding the similar residual clause of 18 U.S.C. § 924(c)(3)(B) violates the Constitution's guarantee of due process.

Petitioners sought relief from their § 924(c) convictions by filing timely motions to vacate under 28 U.S.C. § 2255 in the District of Nevada. Each Petitioner asserted, under *Davis*, the § 924(c) predicate no longer qualified as a crime of violence. The district court denied each motion on its merits and denied a COA in each case. Pet. App. B, D, E, G, H, J.

III. Petitioners appealed, and the Ninth Circuit denied relief.

The Petitioners each timely appealed, requesting COAs. The Ninth Circuit denied the COA requests, finding that the Petitioners had not made a "substantial showing of a denial of a constitutional right." Pet. App. A, C, F, I.

Reasons for Granting the Petition

The first post-*Johnson* case to hold aiding and abetting Hobbs Act robbery qualified as a crime of violence under a force clause was the Eleventh Circuit's decision in *In re Colon*, 826 F.3d 1301 (11th Cir. 2016), a case not fully briefed but yet "published" under the Eleventh Circuit's questionable rules governing successor habeas applications.[3] This decision—as Eleventh Circuit Judge Martin detailed in her dissenting opinion—confused punishment liability with categorical analysis of an offense's elements to reach its erroneous holding.

Every Circuit to find aiding and abetting Hobbs Act robbery is a crime of violence since *In re Colon*—the First, Second, Third, Fourth, Fifth, Sixth, Seventh,

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[3] *See St. Hubert v. United States*, 140 S. Ct. 1727, 1728–29 (2020) (Sotomayor, J., dissenting from denial of certiorari) (noting procedural due process concerns with the Eleventh Circuit's rules governing applications for successor habeas petitions and publication of such denials) (citing *In re Colon*, 826 F.3d at 1305)).

Eighth, Ninth, and Tenth Circuits—make the same mistake by conducting no categorical analysis of aiding and abetting's distinct elements.[4] Thus, the Petitioners ask this Court to correct the Circuits' disregard of categorical analysis and instruct the Circuits that aiding and abetting Hobbs Act robbery is not a crime of violence under § 924(c)'s force clause.

I. The residual clause in 18 U.S.C. § 924(c)(3)(B) is unconstitutionally vague, and this rule applies retroactively.

Section 924(c) provides graduated, mandatory, consecutive sentences for using a firearm during and in relation to a crime of violence. The term "crime of violence" is defined as a felony that:

> (A) has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or
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> (B) 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.

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[4] *United States v. García-Ortiz*, 904 F.3d 102, 109 (1st Cir. 2018) (finding, with no categorical analysis, aiding and abetting Hobbs Act robbery is a § 924(c) crime of violence because aiders and abettors are punishable as principals), *cert. denied*, 139 S. Ct. 1208 (2019)*; United States v. McCoy*, 995 F.3d 32, 57–58 (2d Cir. 2021) (same); *United States v. McKelvey*, 773 F. App'x 74, 75 (3d Cir. 2019) (same); *United States v. Ali*, 991 F.3d 561, 573–74 (4th Cir. 2021) (same); *United States v. Hill*, 63 F.4th 335, 363 (5th Cir. 2023) (same), *cert. denied*, 144 S. Ct. 207, 217 L. Ed. 2d 68 (2023), *reh'g denied*, 144 S. Ct. 443, 217 L. Ed. 2d 246 (2023);*United States v. Richardson*, 948 F.3d 733, 741–42 (6th Cir. 2020) (same), *cert. denied*, 141 S. Ct. 344 (2020); *United States v. Brown*, 973 F.3d 667, 697 (7th Cir. 2020) (same), *cert. denied*, 141 S. Ct. 1253 (2021); *United States v. Eckford*, 77 F.4th 1228, 1237 (9th Cir. 2023), *cert. denied*, 144 S. Ct. 521 (2023) (same); *Kidd v. United States*, 929 F.3d 578, 581 (8th Cir. 2019) (same), *cert. denied*, 140 S. Ct. 894 (2020); *see also United States v. Deiter*, 890 F.3d 1203, 1214–16 (10th Cir. 2018) (finding aiding and abetting bank robbery qualifies as an ACCA violent felony because the defendant must intend to commit the underlying offense, declining to apply categorical analysis to aiding and abetting's elements), *cert. denied*, 139 S. Ct. 647 (2018).

18 U.S.C. § 924(c)(3). The first clause, § 924(c)(3)(A), is called the force clause (also called the elements clause). The second, § 924(c)(3)(B), is called the residual clause. In *Davis*, 588 U.S.at 470, this Court held § 924(c)(3)(B)'s vague residual clause violates the Due Process Clause. U.S. Const. amend. V.

Petitioners expect the government will concede, as it has done elsewhere, that *Davis* pronounced a substantive rule applying retroactively to motions to vacate brought under 28 U.S.C. § 2255.[5]

Therefore, to qualify as a § 924(c) crime of violence, aiding and abetting Hobbs Act robbery must meet the physical force clause at § 924(c)(3)(A). To qualify under the force clause, the offense must have "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). This means the offense must necessarily require two elements: (1) violent physical force capable of causing physical pain or injury to another person or property, *Stokeling v. United States*, 586 U.S. 73, 84–85 (2019) (citing *Johnson v. United States*, 559 U.S. 133, 140 (2010)); and (2) the use of force must be intentional, *Borden v. United States*, 593 U.S. 420 (2021).

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[5] Every circuit to address this question in a published opinion agrees *Davis* applies retroactively. *See King v. United States*, 965 F.3d 60, 64 (1st Cir. 2020); *Hall v. United States*, 58 F.4th 55, 60-63 (2d Cir. 2023); *In re Matthews*, 934 F.3d 296, 301 (3d Cir. 2019); *In re Thomas*, 988 F.3d 783, 789–90 (4th Cir. 2021); *United States v. Reece*, 938 F.3d 630, 635 (5th Cir. 2019); *In re Franklin*, 950 F.3d 909, 910–11 (6th Cir. 2020); *Cross v. United States*, 892 F.3d 288, 293–94 (7th Cir. 2018); *Jones v. United States*, 39 F.4th 523 (8th Cir. 2022); *United States v. Bowen*, 936 F.3d 1091, 1100 (10th Cir. 2019); *In re Hammoud*, 931 F.3d 1032, 1038–39 (11th Cir. 2019).

II. Aiding and abetting Hobbs Act robbery does not qualify as a § 924(c) crime of violence.

To establish guilt for aiding and abetting a federal offense under 18 U.S.C. § 2, a defendant need only facilitate commission of the offense—he need not participate in every offense element. *Rosemond v. United States*, 572 U.S. 65, 73 (2014). An aider and abettor, therefore, need not necessarily "use" force.

The aiding and abetting statute provides: "[w]hoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal." 18 U.S.C. § 2(a). A defendant "can be convicted as an aider and abettor without proof that he participated in each and every element of the offense." *Rosemond*, 572 U.S. at 73. Indeed, "[t]he quantity of assistance [is] immaterial, so long as the accomplice did *something* to aid the crime." *Id.* (cleaned up). An aider and abettor simply need not use, attempt to use, or threaten violent physical force to be convicted.

This Court has not addressed whether aiding and abetting Hobbs Act robbery is a crime of violence under § 924(c)'s force clause. Petitioners urge this Court to ensure Circuits follow the categorical analysis for aiding and abetting that has been outlined by three federal circuit judges in separate dissenting and concurring opinions: Judge Nguyen's concurrence and dissent in part in *United States v. Dominguez*, 954 F.3d 1251, 1262 (9th Cir. 2020), *cert. granted, judgment vacated*,

142 S. Ct. 2857 (2022), *and reinstated in part by* 48 F.4th 1040 (9th Cir. 2022);[6] Judge J. Pryor's concurrence in *Boston v. United States*, 939 F.3d 1266, 1272 (11th Cir. 2019), *cert. denied*, 141 S. Ct. 103 (2020); and Judge Martin's dissent in *In re Colon*, 826 F.3d at 1306. The categorical analysis these judges undertake and the reasoning they provide explains why aiding and abetting Hobbs Act robbery is not a crime of violence.

In denying COAs to Petitioners the Ninth Circuit did not explain its reasoning. In similar cases, the Ninth Circuit confused categorical analysis with the contextually distinct rule that an aider and abettor is punishable for the acts of a principal. But the issue here is not punishment, the issue is the distinct *statutory elements* the government must necessarily prove to convict a defendant of aiding and abetting.

A. Aiding and abetting Hobbs Act robbery has distinct elements from substantive Hobbs Act robbery.

In categorical analysis, a court must compare the statutory elements of the underlying offense with § 924(c)(3)(A)'s force clause requirements. *Davis*, 588 U.S. at 462–70. For any offense to qualify under § 924(c)'s force clause, that offense's actus reus must have "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).

[6] While *Dominguez* and Judge Nguyen's separate opinion address attempted Hobbs Act robbery, the required categorical analysis Judge Nguyen outlined applies equally to aiding and abetting Hobbs Act robbery.

There is no carve-out under *Davis* for aiding and abetting offenses—the statutory elements must be categorically analyzed.

The Ninth Circuit has long held the government must prove four elements for aiding and abetting, which are distinct from the elements of the substantive offense. *United States v. Gaskins*, 849 F.2d 454 (9th Cir. 1988). In *Gaskins*, the Ninth Circuit reversed an aiding and abetting drug conviction where the district court precluded the defense at trial from rebutting the government's required elements for aiding and abetting. *Id.* at 460. The Ninth Circuit specifically noted the distinct elements required for aiding and abetting:

> [T]he government's argument that an aider and abettor is a principal does not provide an answer to the issue before us because the argument ignores the different elements the government must prove under the two theories and ignores the different arguments that the defense may make concerning the elements of the theory involved.

Id.

The Ninth Circuit's jury instructions contain the elements of aiding and abetting Hobbs Act robbery, which are materially distinct from the elements required for substantive Hobbs Act robbery. These distinct elements are:

Aiding and Abetting	**Hobbs Act Robbery**
(1) someone else committed Hobbs Act robbery;	(1) the defendant knowingly obtained money or property from or in the presence of [name of victim];
(2) the defendant aided, counseled, commanded, induced or procured that person with respect to at least one element of Hobbs Act robbery	(2) the defendant did so by means of robbery;

(3) the defendant acted with the intent to facilitate Hobbs Act robbery; and	(3) the defendant believed that [name of victim] parted with the money or property because of the robbery; and
(4) the defendant acted before the crime was completed.	(4) the robbery affected interstate commerce.

Compare Ninth Circuit Manual of Model Criminal Jury Instructions, § 4.1 Aiding and Abetting (Rev. Sept. 2019), *with* Ninth Circuit Manual of Model Criminal Jury Instructions, § 9.8 Hobbs Act—Robbery or Attempted Robbery (Dec. 2023).

Other Circuits also require separate elements to obtain an aiding and abetting conviction, distinct from the substantive offense. *See, e.g.*, Third Circuit Model Criminal Jury Instructions, § 7.02 Accomplice Liability: Aiding and Abetting (Rev. Jan. 2024)[7] (requiring the government to prove four elements: (1) the alleged principal "committed the offense charged by committing each of the elements of the offense charged;" (2) the defendant "knew the offense charged was going to be committed or was being committed by alleged principal;" (3) the defendant "knowingly did some act for the purpose of aiding alleged principal in committing the specific offense charged and with the intent that alleged principal commit that specific offense;" and (4) the defendant "performed an act in furtherance of the offense charged."); Fifth Circuit, Pattern Jury Instructions (Criminal Cases), § 2.04 Aiding and Abetting (2024)[8] (requiring the government to prove four elements: (1)

[7] Available at https://www.ca3.uscourts.gov/model-criminal-jury-table-contents-and-instructions.

[8] Available at https://www.lb5.uscourts.gov/JuryInstructions/.

the substantive offense "was committed by some person;" (2) "the defendant associated with the criminal venture;" (3) "the defendant purposefully participated in the criminal venture;" (4) "the defendant sought by action to make that venture successful."); Sixth Circuit Pattern Criminal Jury Instructions, § 4.01 Aiding and Abetting (Jan. 2024)[9] (requiring the government to prove three elements: (1) the substantive crime "was committed;" (2) "the defendant helped to commit the crime or encouraged someone else to commit the crime;" (3) "the defendant intended to help commit or encourage the crime."); Eighth Circuit Manual of Model Criminal Jury Instructions, § 5.01 Aiding and Abetting (2023)[10] (requiring the government to prove four elements: the defendant "before or at the time the crime was committed" must have (1) "known [principal offense] was being committed or going to be committed;" (2) "had enough advance knowledge of the extent and character of [crime] that he was able to make the relevant choice to walk away from the [crime] before all elements of [principal offense] were complete;" (3) "knowingly acted in some way for the purpose of causing, encouraging, or aiding the commission of [principal offense];" (4) "intended or known [the mental state required by the principal offense].").

Accordingly, there are distinct elements required for aiding and abetting offenses that courts must analyze categorically. After all, "[t]he elements clause

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[9] Available at https://www.ca6.uscourts.gov/pattern-jury-instructions.

[10] Available at https://juryinstructions.ca8.uscourts.gov/instructions/criminal/Criminal-Jury-Instructions.pdf.

does not ask whether the defendant committed a crime of violence or attempted to commit one. It asks whether the defendant *did* commit a crime of violence—and it proceeds to define a crime of violence as a felony that includes as an element the use, attempted use, or threatened use of force." *United States v. Taylor*, 596 U.S. 845, 853 (2022) (emphasis in original). Yet the Circuits fail to apply this step.

B. The distinct elements of aiding and abetting Hobbs Act robbery do not necessarily require the use, attempted use, or threatened use of force.

This Court, in *Rosemond*, 572 U.S. 65, clarified the actus reus element of aiding and abetting merely requires the defendant to aid or abet *one* element of the substantive offense. "Even when a principal's crime involves an element of force, there is 'no authority for demanding that an affirmative act [of aiding and abetting] go toward an element considered peculiarly significant; rather, . . . courts have never thought relevant the importance of the aid rendered.'" *In re Colon*, 826 F.3d at 1307 (Martin. J., dissenting) (quoting *Rosemond*, 572 U.S. at 75).

And, in categorical analysis, a court must presume the least of the acts charged. *Borden*, 593 U.S. at 423–24; *Moncrieffe v. Holder*, 569 U.S. 184, 190–91 (2013). Here, a defendant need not aid or abet by using, attempting use, or threatening use of force. *In re Colon*, 826 F.3d at 1306-07 (Martin, J., dissenting) (noting even if a defendant did use force to aid and abet a crime, "this use of force was not necessarily an *element* of the crime, as is required to meet the 'elements clause' definition."); *Boston*, 939 F.3d at 1273–74 (Pryor, J., concurring) ("A person who aids or abets another in committing armed robbery *may* use, attempt to use, or

threaten to use physical force, or he may only be a getaway driver. Transforming that role in a crime into one that *necessarily* involves the use, attempted use, or threatened use of physical force contradicts [categorial analysis].").

The first and fourth elements of substantive Hobbs Act robbery do not require intentional violent force. Thus, the least serious way to aid and abet Hobbs Act robbery based on its distinct elements is by either obtaining money or property from or in the presence of a victim (Hobbs Act robbery's first element) or affecting interstate commerce (Hobbs Act robbery's fourth element). 18 U.S.C. § 1951.

Nor does mere intent to facilitate Hobbs Act robbery render aiding and abetting a crime of violence. *See Dominguez*, 954 F.3d at 1264–66 (Nguyen, J., concurring and dissenting in part). A court must be careful not to "bootstrap" intent to commit a crime to mean all acts of aiding and abetting include violent force. *Id.* at 1265. Rather, a crime of violence must require the government to prove the defendant intentionally used, attempted to use, or threatened to use violent force. This question differs from a defendant's general intent. *Id.* at 1266 ("a crime of violence must have as an element the [*use,*] *attempted use*[*, or threatened use*] of physical force, which is entirely different from one's *intent* to use physical force"). Circuit opinions hinging on general intent alone to find an offense is a crime of violence are thus erroneous. *Id.* at 1264–66 (listing erroneous Seventh and Tenth Circuit cases). And, as set forth below, Hobbs Act robbery lacks the specific intent to use force, thus failing to qualify as a crime of violence given *Borden*. *See infra,* p. 28.

As an example, Judge Nguyen recognized the government's concession that conspiracy to commit Hobbs Act robbery is not a crime of violence, even though conspiracy requires specific intent to commit the underlying offense. *Dominguez*, 954 F.3d at 1264–65 (Nguyen, J., concurring and dissenting in part) (citing *United States v. Espinoza-Valdez*, 889 F.3d 654, 656 (9th Cir. 2018) (holding the elements of conspiracy are "(1) an agreement to accomplish an illegal objective, and (2) the intent to commit the underlying offense")); *see also United States v. Simms*, 914 F.3d 229, 233–34 (4th Cir. 2019) (holding conspiracy to commit Hobbs Act robbery is not a crime of violence under § 924(c)'s force clause because it does not require the government to prove a qualifying act element), *cert. denied*, 140 S. Ct. 304 (2019).

When the statutory elements are facially overbroad, as here, a defendant need not provide a "realistic scenario" of non-violent conduct that would satisfy the statute. *United States v. Grisel*, 488 F.3d 844, 850 (9th Cir. 2007) (en banc), *abrogated on other grounds by United States v. Stitt*, 586 U.S. 27 (2018). Still, several scenarios illustrate aiding and abetting robbery without the use, attempted use, or threatened use of force. Judge Pryor notes a defendant need not even be present during the substantive offense to be convicted of aiding and abetting. *Boston*, 939 F.3d at 1272 (Pryor, J., concurring). Judge Martin provides several examples in which "a defendant could aid and abet a robbery without ever using, threatening, or attempting any force at all," including: "lending the principal some equipment, sharing some encouraging words, or driving the principal somewhere." *In re Colon*, 826 F.3d at 1307 (Martin, J., dissenting); *see also Boston*, 939 F.3d at

1272 (Pryor, J., concurring) (providing an example of serving as the getaway driver to principal).

The actus reus element of aiding and abetting merely requires the defendant to aid or abet *one* element of Hobbs Act robbery—not all of which encompass the use, attempted use, or threatened use of violent physical force against another person. Thus, aiding and abetting Hobbs Act robbery does not qualify under § 924(c)'s force clause.

C. An offense's punishment is irrelevant to categorical analysis of the statutory elements.

Categorical analysis considers only the statutory elements and does not consider the punishment imposed for an offense. *See Mathis v. United States*, 579 U.S. 500, 503–05 (2016) (limiting categorical analysis to statutory elements). Yet, Circuit opinions erroneously rely on aiding and abetting's punishment rather than its statutory elements. *See Eckford*, 77 F.4th at 1236–37; *Hill*, 63 F.4th at 363; *García-Ortiz*, 904 F.3d at 109; *McCoy*, 995 F.3d at 57–58; *McKelvey*, 773 F. App'x at 75; *Richardson*, 948 F.3d at 741–42; *Brown*, 973 F.3d at 697; *Kidd*, 929 F.3d at 581; *In re Colon*, 826 F.3d at 1305.

This critical flaw is detailed by Judge Martin in her dissent, which explains conspiracy is not a crime of violence even though conspirators have the same penalties as those who commit the offense. *In re Colon*, 826 F.3d at 1307–08 (Martin, J., dissenting). And Judge Nguyen noted the government conceded conspiracy to commit Hobbs Act robbery is not a crime of violence, *Dominguez*, 954 F.3d at 1265 n.3 (Nguyen, J., concurring and dissenting in part), even though the

Hobbs Act robbery statute punishes conspirators the same as principals. *See* 18 U.S.C. § 1951(a).

The correct question is not whether a defendant aids and abets a crime of violence, but whether the aiding and abetting itself qualifies as a crime of violence. *See Dominguez*, 954 F.3d at 1265 (Nguyen, J., concurring and dissenting in part). Under the correct categorical analysis outlined by several circuit judges, aiding and abetting Hobbs Act robbery is not a qualifying § 924(c) crime of violence because the government need not prove—as an element—the defendant used, attempted use, or threatened use of physical force against the person of another. Therefore, Petitioners ask this Court to grant review, rectify the Circuits' disregard of categorical analysis, and instruct the Circuits that aiding and abetting Hobbs Act robbery is not a crime of violence under § 924(c)'s force clause.

III. Hobbs Act robbery does not qualify as a crime of violence.

Even if Petitioners had been convicted of substantive Hobbs Act robbery, 18 U.S.C. § 1951(a), this offense can be committed by causing fear of future injury to intangible property. It is therefore not a § 924(c) crime of violence.

The Court should determine whether the Circuits properly interpret the Hobbs Act robbery statute, 18 U.S.C. § 1951, for crime of violence purposes. The current federal circuit consensus that Hobbs Act robbery necessarily requires the use, attempted use, or threatened use of violent physical force conflicts with the plain language of § 1951. To make the Hobbs Act robbery statute "fit" the 18 U.S.C. § 924(c)(3)(A) physical force clause definition, the current Circuit interpretations

have narrowed the conduct that Hobbs Act robbery covers. It is imperative this Court decide the proper interpretation of Hobbs Act robbery, so defendants are not mandatorily incarcerated for an overbroad offense that does not fit the § 924(c) crime of violence statutory definition.

A. Hobbs Act robbery plainly encompasses causing fear of future injury to property—either tangible or intangible.

Hobbs Act robbery, 18 U.S.C. § 1951(a), can be committed by causing fear of future injury to intangible property and thus is not a § 924(c) crime of violence. The Hobbs Act prohibits "obstruct[ing], delay[ing], or affect[ing] commerce . . . by robbery." 18 U.S.C. § 1951(a). "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) (emphases added). Hobbs Act robbery fails to qualify under § 924(c)'s force clause for at least six reasons.

First, this Court's recent *Borden* decision requires intentional use of force—there must be a "conscious object (not the mere recipient) of the force" and the defendant must make "a deliberate choice of wreaking harm on another, rather than mere indifference to risk." 593 U.S. at 430, 438. Yet Hobbs Act robbery has no such requirement. For Hobbs Act robbery, the Ninth Circuit only requires the general intent to take money or property from a person (or in the person's presence). Ninth Circuit Manual of Model Criminal Jury Instructions, § 9.8 Hobbs Act—

Robbery or Attempted Robbery (Dec. 2023); *but compare; United States v. Foppe*, 993 F.2d 1444, 1451 (9th Cir. 1993) ("Whether [the defendant] specifically intended to intimidate [the victim] is irrelevant."), *with United States v. Du Bo*, 186 F.3d 1177, 1179 (9th Cir. 1999) ("Although not stated in the Hobbs Act itself, criminal intent—acting 'knowingly or willingly'—is an implied and necessary element that the government must prove for a Hobbs Act conviction." (quoting *United States v. Soriano*, 880 F.2d 192, 198 (9th Cir. 1989)); *see also United States v. Garcia-Ortiz*, 904 F.3d 102, 108–09 (1st Cir. 2018) (noting Hobbs Act robbery includes "an implicit mens rea element of general intent . . ."); *United States v. Gray*, 260 F.3d 1267, 1283 (11th Cir. 2001) (rejecting a requirement of specific intent to commit Hobbs Act robbery). Hobbs Act robbery requires no specific intent to injure property or put a person in fear of injury. Thus, Hobbs Act robbery does not qualify under § 924(c)'s force clause because it can be violated with unintentional force. It does not require that force, attempted force, or threatened force to be intentionally directed against another person or property.

Second, the Hobbs Act's plain language criminalizes a threat of "injury, immediate or future, to his person *or property*." 18 U.S.C. § 1951(b)(1) (emphasis added). Based on its plain language, Hobbs Act robbery can be committed by threats to property. *See United States v. O'Connor*, 874 F.3d 1147, 1154, 1158 (10th Cir. 2017) (holding "Hobbs Act robbery criminalizes conduct involving threats to property," and "Hobbs Act robbery reaches conduct directed at 'property' because

the statute specifically says so"). Threats to property, however, do not require violent physical force.

Third, the Hobbs Act's plain language does not require the use or threats of violent physical force, as defined by *Stokeling*, 586 U.S. at 84–85, and instead can be committed by causing fear of future injury to property. "When interpreting a statute, we must give words their 'ordinary or natural' meaning." *Leocal v. Ashcroft*, 543 U.S. 1, 9 (2004).

Fourth, "fear of injury" to property includes not only a fear of future physical damage to tangible property, but also a fear of future economic loss or damage to intangible property. Federal circuits have long been in accord, unanimously interpreting Hobbs Act "property" to broadly 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 and describing the Circuits as "unanimous" on this point); *see also, e.g.*, *United States v. Brown*, No. 11-cr-334-APG, Dkt. 197 (D. Nev. July 28, 2015) (providing Hobbs Act robbery jury instruction that "property" includes "money and other tangible and intangible things of value" and fear as "an apprehension, concern, or anxiety about physical violence or harm or economic loss or harm"); *United States v. Nguyen*, 2:03-cr-00158-KJD-PAL, Dkt. 157 at p. 28 (D. Nev. Feb. 10, 2005) (providing Hobbs Act robbery jury instruction that "fear" includes "worry over expected personal harm or business loss, or over financial or job security").

Fifth, "fear of injury" does not encompass violent force. Instead, the Hobbs Act expressly provides alternative means encompassing violent force: "actual or threatened force, or violence." 18 U.S.C. § 1951(b)(1). Canons of statutory interpretation require giving each word meaning: "Judges should hesitate . . . to treat statutory terms [as surplusage] in any setting, and resistance should be heightened when the words describe an element of a criminal offense." *Ratzlaf v. United States*, 510 U.S. 135, 140-41 (1994); *Duncan v. Walker*, 533 U.S. 167, 174 (2001) ("It is our duty to give effect, if possible, to every clause and word of a statute.") (cleaned up). Interpreting "fear of injury" as requiring the use or threat of violent physical force would render superfluous the other alternative means of committing Hobbs Act robbery.

Sixth, intangible property—by definition—cannot be in the victim's physical custody. This preempts any argument that the fear of injury to property necessarily involves a fear of injury to the victim (or another person) by virtue of the property's proximity to the victim or another person. *United States v. Camp*, 903 F.3d 594, 602 (6th Cir. 2018) (noting Hobbs Act robbery can be committed by "threats to property alone," and such threats—"whether immediate or future—do not necessarily create a danger to the person"), *cert. denied*, 139 S. Ct. 845 (2019).

Hobbs Act robbery, therefore, can be committed via non-violent unintentional threats of future harm to an intangible property interest. Such threats are not threatening physical force—let alone the intentional violent physical force against a person or property the § 924(c)(3)(A) physical force clause requires.

B. To hold the offense is a crime of violence, Circuits have narrowly interpreted the Hobbs Act robbery statute, in conflict with its plain language.

To hold that Hobbs Act robbery qualifies as a crime of violence under the physical force clause, the Circuits erroneously interpret the Hobbs Act robbery statute to be limited to conduct involving violent physical force. *See García-Ortiz*, 904 F.3d at 106–09; *United States v. Hill*, 890 F.3d 51, 60 (2d Cir. 2016); *United States v. Walker*, 990 F.3d 316, 325–26 (3d Cir. 2021)*, vacated on other grounds*, 142 S. Ct. 2015, 2021 (2022); *United States v. Mathis*, 932 F.3d 242, 266 (4th Cir. 2019); *United States v. Buck*, 847 F.3d 267, 275 (5th Cir. 2017); *United States v. Gooch*, 850 F.3d 285, 292 (6th Cir. 2017); *United States v. Fox*, 878 F.3d 574, 579 (7th Cir. 2017); *United States v. Jones*, 919 F.3d 1064, 1072 (8th Cir. 2019); *Dominguez*, 954 F.3d at 1260; *United States v. Melgar-Cabrera*, 892 F.3d 1053, 1060–66 (10th Cir. 2018); *In re St. Fleur*, 824 F.3d 1337, 1340–41 (11th Cir. 2016).

For example, in declaring Hobbs Act robbery meets the § 924(c) physical force clause's requirements, the Fourth Circuit noted the Hobbs Act robbery statute and § 924(c)'s physical force clause both use the term "property" without further definition and reasoned there was no basis to assume a different definition of "property" applied to each. *Mathis*, 932 F.3d at 266. The Fourth Circuit failed to acknowledge the impossibility of using, attempting to use, or threatening to use physical force against intangible property, which defies physical force.

In holding the same, the Ninth Circuit recognized: "Fear of injury is the least serious way to violate [Hobbs Act robbery], and therefore, the species of the crime that we should employ for our categorical analysis." *Dominguez*, 954 F.3d at 1254,

1260. However, the Ninth Circuit erroneously focused on fear of injury to persons, not property, expressly admitting it did "not analyze whether the same would be true if the target were 'intangible economic interests,' because" it found appellant "Dominguez fail[ed] 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." *Id.*

The Ninth Circuit's "realistic scenario" requirement conflicts with this Court's precedent. When a statute's plain statutory language includes conduct broader than the crime of violence definition, "the inquiry is over" because the statute is facially overbroad. *Descamps v. United States*, 570 U.S. 254, 265 (2013). The realistic scenario requirement applies only when the breadth of the statute is not evident from its plain text. *See Taylor*, 596 U.S. at 858–59 (2022) (demonstrating the realistic scenario analysis does not apply when the statutory language is clear); *see also Gonzales v. Duenas-Alvarez*, 549 U.S. 183, 193 (2007) (instructing that courts cannot find a statute is overbroad based on "legal imagination"). Because Hobbs Act robbery does not *necessarily* require the use of intentional violent force against a person or property of another—as an element—it does not qualify as a crime of violence under § 924(c)'s physical force clause. *Moncrieffe*, 569 U.S. at 184.

Circuit model jury instructions also demonstrate the plain overbreadth of Hobbs Act robbery. The Third, Fifth, Tenth, and Eleventh Circuits use pattern Hobbs Act jury instructions defining 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 (Apr. 2024)[11] (defining "fear of injury" as when "a victim experiences anxiety, concern, or worry over expected personal physical or economic harm" and "[t]he term 'property' includes money and other tangible and intangible things of value"); Fifth Circuit, Pattern Jury Instructions (Criminal Cases) 2.73A (2024)[12] ("The term 'property' includes money and other tangible and intangible things of value."); Tenth Circuit Criminal Pattern Jury Instructions, 2.70 (Apr. 2021)[13] ("'Property' includes money and other tangible and intangible things of value that are transferable – that is, capable of passing from one person to another. 'Fear' means an apprehension, concern, or anxiety about physical violence or harm or economic loss or harm that is reasonable under the circumstances."); Eleventh Circuit, Pattern Jury Instructions (Criminal Cases), O70.3 (Aug. 2021)[14] ("Property' includes money, tangible things of value, and intangible rights that are a source or element of income or wealth. 'Fear' means a state of anxious concern, alarm, or anticipation of harm. It includes the fear of financial loss as well as fear of physical violence.").

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[11] Available at https://www.ca3.uscourts.gov/model-criminal-jury-table-contents-and-instructions.

[12] Available at https://www.lb5.uscourts.gov/JuryInstructions/.

[13] Available at https://www.ca10.uscourts.gov/sites/ca10/files/documents/downloads/Jury%20Instructions%202021%20revised%207-14-23.pdf.

[14] Available at https://www.ca11.uscourts.gov/sites/default/files/courtdocs/clk/FormCriminalPatternJuryInstructionsRevisedAUG2021.pdf.

The Modern Federal Criminal Jury Instructions also define Hobbs Act robbery as fear of future harm to intangible property. *See* 3 Modern Federal Jury Instructions-Criminal, § 50-2 (2024). The Modern Instructions define "property" as "includ[ing] money and other tangible and intangible things of value that are capable of being transferred from one person to another." *See* 3 Modern Federal Jury Instructions-Criminal, § 50-4 (2024). Robbery by "fear" is defined as "fear of injury, whether immediately or in the future," and explains "[t]he use or threat of force or violence might be aimed at . . . causing *economic* rather than physical injury." *See* 3 Modern Federal Jury Instructions-Criminal, § 50-5 (2024) (emphasis added). And the "fear of injury" sufficient for Hobbs Act robbery is further defined as "[f]ear exists if a victim experiences anxiety, concern, or worry over expected personal harm or business loss, or over financial or job security." *See* 3 Modern Federal Jury Instructions-Criminal, § 50-6 (2024). Yet these same Circuits hold Hobbs Act robbery is a § 924(c) crime of violence.

This Court's intervention is necessary to correct the Circuits' misapplication of the categorical approach.

IV. Petitioners raise issues of exceptional importance this Court has not yet addressed, particularly given § 924(c)'s consecutive, mandatory minimum sentences.

The questions presented are of exceptional importance to federal courts and defendants because of the mandatory minimum consecutive sentences ranging from

five years to life imprisonment that § 924(c) requires.[15] Petitioners are four of thousands of defendants currently serving consecutive mandatory minimum sentences for § 924(c) convictions. According to the Sentencing Commission's latest statistics, approximately 20,700 individuals (13.2% of the federal prison population) are serving a § 924(c) mandatory sentence. U.S. Sent. Comm'n, *Quick Facts: Individuals in the Federal Bureau of Prisons* (May 2024).[16] In Fiscal Year 2023, over 2,800 individuals were convicted of a § 924(c) offense, at least 23.5% of which involved a robbery offense, with an average sentence of 145 months (over 12 years) in prison. U.S. Sent. Comm'n, *Quick Facts: 18 U.S.C. § 924(c) Firearms Offenses* (June 2024).[17]

While this Court has interpreted the aiding and abetting statute, this Court has not yet addressed whether aiding and abetting Hobbs Act robbery necessarily meets the § 924(c)(3)(A) physical force clause definition of a crime of violence. *See e.g.*, *Rosemond*, 572 U.S. at 73 (clarifying proof required for aiding and abetting use of a firearm during federal drug-trafficking offense under 18 U.S.C. §§ 924(c) and 2).

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[15] Petitioners' convictions under § 924(c) also resulted in higher supervision terms than would have been imposed for Hobbs Act robbery. Because 18 U.S.C. § 924(c) carries a statutory imprisonment maximum of life imprisonment, it is a Class A felony with a five-year maximum supervised release term. In contrast, Hobbs Act robbery, with a 20-year imprisonment statutory maximum, is a Class C felony and carries a three-year maximum supervised release term. *See* 18 U.S.C. § 1951(a); 18 U.S.C. § 3559(a) (felony classifications); 18 U.S.C. § 3583(b) (authorized terms of supervised release).

[16] Available at https://www.ussc.gov/sites/default/files/pdf/research-and-publications/quick-facts/BOP_January2024.pdf.

[17] Available at https://www.ussc.gov/sites/default/files/pdf/research-and-publications/quick-facts/Section_924c_FY23.pdf.

And while this Court has also interpreted the Hobbs Act statute, this Court has not yet addressed whether the plain language of the Hobbs Act necessarily meets the 18 U.S.C. § 924(c)(3)(A) physical force clause definition of a crime of violence. *See, e.g., McDonnell v. United States,* 579 U.S. 550, 562–63, 566–71 (2016) (interpreting "official act" of Hobbs Act extortion); *Taylor v. United States*, 579 U.S. 301, 305–10 (2016) (interpreting commerce element of the Hobbs Act); *Sekhar v. United States*, 570 U.S. 729, 730 (2013) (attempting to compel a person to recommend his employer approve an investment does not attempt to "obtain[] the property of another" under the Hobbs Act).

The proper interpretation of aiding and abetting Hobbs Act requires this Court's review and intervention.

Conclusion

Petitioners request the Court grant this joint petition for a writ of certiorari.

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Respectfully submitted,

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