Docket No. ____

IN THE SUPREME COURT OF THE UNITED STATES

TASHAWN BURNS,

Petitioner,

– against –

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI

On Certiorari to the United States Court of Appeals
For the Second Circuit

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STATEMENT OF QUESTIONS PRESENTED

1. Is Hobbs Act robbery a "crime of violence" within the meaning of 18 U.S.C. § 924(c)(3)(A), a question left open after *United States v. Taylor*, 596 U.S. 845 (2022); *see United States v. Stoney*, 62 F.4th 108, 113 (3d Cir. 2023).

PARTIES TO THE PROCEEDING

The parties to the proceeding are the United States of America and petitioner Tashawn Burns.

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United States v. Burns,
Docket Nos. 24-1265-cr
2025 WL 1099558 (2d Cir. Apr. 14, 2025)

Decision: April 14, 2025

The decision of the Court of Appeals was an affirmance of the judgment conviction and sentence imposed by the United States District Court for the Western District of New York (Hon. Charles J. Siragusa, J.) United States District Court for the Eastern District of New York (Hon. Joanna Seybert, J.), entered April 23, 2024, sentencing Burns to consecutive prison terms of 36 and 84 months, totaling 120 months, upon his plea of guilty to Hobbs Act robbery and brandishing a firearm during a crime of violence

No petition for rehearing and/or rehearing en banc was filed in the circuit court.

JURISDICTIONAL STATEMENT

This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1) in that this is a petition for certiorari from a final judgment of the United States Court of Appeals for the Second Circuit in a criminal case. The instant petition is timely because the Second Circuit's decision affirming petitioner's conviction and sentence was issued on April 14, 2025. No application to extend the time to petition for certiorari has been made or granted.

CONSTITUTIONAL PROVISIONS AND STATUTES AT ISSUE

18 U.S.C. § 924(c) (in pertinent part)

(c)(1)(A) Except to the extent that a greater minimum sentence is otherwise provided by this subsection or by any other provision of law, any person who, during and in relation to any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime that provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) for which the person may be prosecuted in a court of the United States, uses or carries a firearm, or who, in furtherance of any such crime, possesses a firearm, shall, in addition to the punishment provided for such crime of violence or drug trafficking crime

(i) be sentenced to a term of imprisonment of not less than 5 years;

(ii) if the firearm is brandished, be sentenced to a term of imprisonment of not less than 7 years; and

(iii) if the firearm is discharged, be sentenced to a term of imprisonment of not less than 10 years.

[...]

(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

18 U.S.C. § 1951(b)(1)

(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

On November 24, 2020, an indictment was lodged in the United States District Court for the Eastern District of New York charging appellant Tashawn Burns with Hobbs Act conspiracy (18 U.S.C. § 1951(a)), Hobbs Act robbery (18 U.S.C. § 1951(a)), and brandishing a firearm during a crime of violence (18 U.S.C. §§ 924(c)(1)(A)(i) and 924(c)(1)(A)(ii)). (Dkt. 1).[1] The gravamen of the charges was that on September 19, 2019, Tashawn Burns, David Jones, and others intentionally obstructed, delayed and affected commerce and the movement of articles and commodities in commerce by robbing a Queens restaurant at gunpoint and taking cash proceeds. (Id.)

On December 14, 2021, a Superseding Indictment was lodged which contained the same charges but which substituted Ricardo Franco for David Jones as Burns' accomplice in the alleged robbery. (Dkt. 41).

On May 30, 2023, Burns moved to dismiss Count Three of the superseding indictment on the ground that Hobbs Act robbery was not a crime of violence within the meaning of 18 U.S.C. § 924(c). (Dkt. 80). The government opposed this motion (Dkt. 83), which was denied by order entered August 7, 2023 (Dkt. 84).

Burns also made a pro se motion to dismiss on the ground that, because the proceeds of the alleged robbery consisted of United States currency and the government could not prove that such currency was intended to be used for business

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[1] Citations to "Dkt." refer to documents on the electronic docket of Eastern District of New York case 2:20-cr-00537-JS, which will be provided to this Court upon request.

purposes, the allegations of the indictment were outside the scope of the Hobbs Act. (Dkt. 90). The government likewise opposed this motion (Dkt. 93), which was denied by order entered September 20, 2023 (Dkt. 100).

On or about September 27, 2023, following the denial of the motions to dismiss, Burns entered into a plea agreement under which he would plead guilty to Counts Two and Three of the superseding indictment. The parties stipulated that the applicable Sentencing Guideline range was 24, subject to a three-level reduction to 21 for acceptance of responsibility,[2] and that Burns's criminal history fell within Category IV. This resulted in a Sentencing Guideline range of 63-78 months; however, because Count Three carried a statutory minimum consecutive sentence of 84 months, the effective Guideline range was 147 to 162 months.

Burns agreed not to appeal or otherwise challenge the conviction or sentence in the event that he was sentenced to a prison term of 162 months or below; however, the agreement reserved the right to appeal Burns's previously-filed motion to dismiss Count 3 on the ground that Hobbs Act robbery was not a crime of violence.

Burns then completed a standard plea form (Dkt. 102) and entered a plea of guilty to Counts 2 and 3 before the Hon. Joanna Seybert of the Eastern District of New York (Dkt. 101).

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[2] The agreement provided for a further one-level acceptance of responsibility credit, but only if Burns pled guilty on or before September 25, 2023.

On February 6, 2024, the government made a sentencing submission requesting a sentence of 141 months on the ground that the robbery was at gunpoint and resulted in the theft of more than $200,000 in cash and property. (Dkt. 115). The defendant responded with a memorandum requesting leniency in light of an exceptionally severe sentence imposed in a separate Eastern District of Texas bank fraud case, which was far out of proportion to his minor role in that case. (Dkt. 129 at 2-3). Burns further pointed out that he had been incarcerated in the MDC, with extreme hardships due to persistent lockdowns, short-staffing and rotten food, for over three years. (Id. at 4-5). Burns submitted several letters from family members attesting to his experience growing up in a world where many young men went to prison and showing that he had nevertheless made a positive impression in the lives of others. (Dkt. 129-2).

On April 22, 2024, Burns appeared for sentencing before the Hon. Joanna Seybert of the Eastern District of New York, who imposed a sentence of 120 months, consisting of 36 months on Count One and a consecutive 84-month sentence on Count Three, to be followed by concurrent three-year terms of supervised release.

Judgment was entered pursuant to the district court's sentence on April 23, 2024 (Dkt. 133), and Burns filed a timely notice of appeal on the same date (Dkt. 135).

Burns thereafter submitted a brief to the Second Circuit arguing that, as reserved in his plea agreement, Hobbs Act robbery did not constitute a "crime of violence" under § 924(c). Acknowledging that the Second Circuit had, in *United States*

v. McCoy, 58 F.4th 72 (2d Cir. 2023), rejected an offhand argument that Hobbs Act robbery was not a crime of violence, Burns submitted that his plea should be vacated based on arguments not made to, and therefore not reached by, the *McCoy* court. Specifically, Burns contended that the scenarios under which a person could be convicted under the Hobbs Act included conduct which does not constitute "the use, attempted use, or threatened use of physical force against the person or *property of another*," *see* 18 U.S.C. § 924(c)(3)(A) (emphasis added), such as a threat to harm oneself and/or a threat of intangible harm to intangible property.

The government opposed Burns's appeal, relying upon *McCoy* and the subsequent decision in *United States v. Barrett*, 102 F.4th 60 (2d Cir. 2024), *cert. granted in part*, 145 S. Ct. 1307 (Mar. 3, 2025), which had regarded itself as bound by *McCoy*.

By decision and order entered April 14, 2025, the Second Circuit (Jacobs, Chin & Lohier, JJ.) affirmed the judgment against Burns. (App. 1-6).[3] Specifically, the Second Circuit panel held itself to be bound by *McCoy* and *Barrett* and that it saw no reason in this case to question the validity thereof. (App. 3-4). The panel also rejected a Commerce Clause argument made by Burns pro se. (App. 4-5).

Burns now seeks certiorari on all grounds raised below.

REASONS FOR GRANTING THE WRIT

I. HOBBS ACT ROBBERY IS NOT A CRIME UNDER § 924(C)

[3] Citations to "App." refer to the Appendix to this Petition.

Whether Hobbs Act robbery is a § 924(c) "crime of violence" is "an important question of federal law that has not been, but should be, settled by this Court," especially as lower courts have decided it "in a way that conflicts with relevant decisions of this Court" and accordingly gotten the wrong answer. Sup. Ct. R. 10(c).

A. This Question Is Recurring and Immensely Consequential, But the Circuits Have Refused to Address It Correctly

"As the government points out," Hobbs Act "'robbery frequently serv[es] as a predicate offense for § 924(c) counts.'" *United States v. Thomas*, 2019 WL 1590101, at *2 (D.D.C. 2019) (citation omitted). And 2,864 people were sentenced for violating § 924(c) in the last fiscal year. *See* https://www.ussc.gov/research/quick-facts/section-924c-firearms. The average sentence was 145 months, *id.*, reflecting § 924(c)'s mandate that a consecutive term of at least 5, 7, 10, 25 or 30 years – or life imprisonment – be imposed. *See* § 924(c)(1).

The issue here is at least as weighty as the one in *Taylor*, which asked: "Does attempted Hobbs Act robbery qualify as a 'crime of violence' under 18 U.S.C. § 924(c)(3)(A)? The answer matters because a person convicted of attempted Hobbs Act robbery alone normally faces up to 20 years in prison. But if that offense qualifies as a 'crime of violence' under § 924(c)(3)(A), the same individual may face a second felony conviction and years or decades of further imprisonment." 596 U.S. at 848. Strike the word "attempted" from this passage, and that describes this case. And as *Taylor* held as to attempted Hobbs Act robbery, completed robbery is not a "crime of violence" under § 924(c).

Taylor clarified that deciding whether an offense is a § 924(c) predicate is a "straightforward job: Look at the elements." *Id.* at 860. "The only relevant question is whether the federal felony at issue always requires the government to prove," *id.* at 850, the "use, attempted use, or threatened use of physical force against the person or property of another." § 924(c)(3)(A). And a "hypothetical" can "illustrate" why the answer is no. *Taylor*, 596 U.S. at 851.

On this basis, neither *McCoy* nor *Barrett* – the latter of which merely followed *McCoy*, and neither of which of course binds this Court – was rightly decided.

Worse than not considering his hypotheticals, *McCoy* did not analyze this question as *Taylor* requires: it did not "[l]ook at the elements" of Hobbs Act robbery, 596 U.S. at 860, or discuss whether they "always require[] the government to prove" what § 924(c)(3)(A) demands. *Id.* at 850. Rather, *McCoy* just said the defendants "presented no hypothetical case in which a Hobbs Act robbery could be committed without the use, attempted use, or threatened use of force against another person or his property." 58 F.4th at 74. So the court ruled against them, deferring to the Second Circuit's "settled understanding that completed Hobbs Act robberies are categorically crimes of violence pursuant to section 924(c)(3)(A). *See, e.g., United States v. Hill*, 890 F.3d 51, 56-60 (2d Cir. 2018)." *McCoy*, 58 F.4th at 74.

But *Hill*'s reason for rejecting an argument that Hobbs Act robbery can be committed "without the use of physical force" was that Hill relied on "hypotheticals, not actual cases," and therefore "failed to show any realistic probability that a

perpetrator could effect such a robbery in the manner he posits." 890 F.3d at 57 n.9. *Taylor* later made clear, however, the "realistic probability" test doesn't apply here: a "hypothetical" can suffice to show a crime is not a § 924(c) predicate. 596 U.S. at 851. *See also United States v. McDaniel*, 85 F.4th 176, 186 n.13 (4th Cir. 2023) (*Taylor* "clarified that . . . the 'realistic probability' test only applies when a federal court is interpreting state law.").

Thus, to summarize the circuit's ruling against Petitioner, it's based on a case (*McCoy*) that never considered his arguments, didn't perform the analysis *Taylor* requires, and deferred to a ruling (*Hill*) that employed the "realistic probability" test this Court jettisoned in *Taylor*, and is further based on another case (*Barrett*) that simply treated *McCoy* as binding and followed it blindly.

That's no way to run a railroad, and the Second Circuit is not alone. In another post-*Taylor* challenge to a § 924(c) count premised on Hobbs Act robbery, the First Circuit also refused to identify robbery's elements or discuss whether they invariably require what § 924(c)(3)(A) demands. It just said the challenge was "inconsistent with this court's precedent. *See United States v. Garcia-Ortiz*, 904 F.3d 102 (1st Cir. 2018)." *Diaz-Rodriguez v. United States*, 2023 WL 5355224, at *1 (1st Cir. 2023). But *Garcia-Ortiz* was based, like *Hill*, on the defendant's citing "no actual convictions for Hobbs Act robbery matching or approximating his theorized [nonviolent] scenario" and consequently showing no "'realistic probability' that courts would apply the law to find an offense in such a scenario." 904 F.3d at 107.

The Sixth Circuit also believes "*Taylor* did not disturb our caselaw that completed Hobbs Act robbery qualifies as a crime of violence," citing "*United States v. Gooch*, 850 F.3d 285, 292 (6th Cir. 2017)." *Varner v. United States*, 2024 WL 2830657, at *2 (6th Cir. 2024). Yet *Gooch* held, like the cases above, "a hypothetical nonviolent violation of the statute, without evidence of actual application of the statute to such conduct, is insufficient to show a 'realistic probability' that Hobbs Act robbery could encompass nonviolent conduct." 850 F.3d at 292.

The other circuits have also made clear they're not interested in reconsidering this question as *Taylor* now requires. As the Tenth Circuit has said: "Not only have we held that 'Hobbs Act robbery is a crime of violence under the elements clause,' but we have also rejected an attempt to get around that holding by raising new arguments against it." *United States v. Crocker*, 2023 WL 4247255, at *3 (10th Cir. 2023) (citation omitted). The Second Circuit did exactly that here, stating that it was bound by *McCoy* even though *McCoy* "never considered the hypothetical Hobbs Act robberies he posits." *See also, e.g., United States v. Stallings*, 2022 WL 521723, at *1 (4th Cir. 2022) (The argument that "Hobbs Act robbery does not qualify as a proper predicate for [a] § 924(c) charge . . . is foreclosed by binding precedent."); *United States v. Hill*, 63 F.4th 335, 363 (5th Cir. 2023) ("Our precedents establish that Hobbs Act robbery is a crime of violence."); *United States v. Worthen*, 60 F.4th 1066, 1068-69 (7th Cir. 2023) ("We have determined many times that" Hobbs Act robbery "'requires using or threatening force" against the person or property of another. . . . We follow

the course here."); *Wade v. United States*, 2023 WL 3592112, at *1 (9th Cir. 2023) (The "claim that Hobbs Act robbery does not qualify as a crime of violence under the elements clause of 18 U.S.C. § 924(c) is foreclosed by this court's precedent."); *United States v. Wiley*, 78 F.4th 1355, 1363-64 (11th Cir. 2023) ("Hobbs Act robbery itself qualifies as a crime of violence under § 924(c)"; the contrary "argument is foreclosed by our precedent.").

As the circuits will not budge, it falls to this Court to correctly answer the "question left open after *Taylor*." *Stoney*, 62 F.4th at 113.

B. Hobbs Act Robbery Is Not a "Crime of Violence"

Deciding whether a crime is a § 924(c) predicate is a "straightforward job: Look at the elements." *Taylor*, 596 U.S. at 860. The only question is "whether the 'least culpable' conduct that could satisfy the offense elements in a hypothetical case would 'necessarily involve[]' the 'use, attempted use, or threatened use of physical force against the person or property of another.'" *Delligatti v. United States*, No. 23-825, Brief for the United States, 2024 WL 4374209, at *6 (citations omitted).

The Hobbs Act, at 18 U.S.C. § 1951(b)(1), defines robbery 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.

Robbery is thus committed when there's a taking from a person "by means of actual or threatened force . . . to . . . a relative or member of his family." *Id.* So when someone takes from a relative by threatening harm to himself, that's robbery.

Picture a man confronting his cousin, who's just leaving her restaurant with the day's proceeds. The man puts a gun to his own head: "Give me the cash, or I'll pull the trigger." She complies. That's robbery, yet there's no actual, attempted or threatened force "against the person or property of another." § 924(c)(3)(A).

The Government has said this "is simply not robbery." 2d Cir. 21-1379, Docket Entry 113 at 14. But it tracks robbery's definition: the man succeeds in "obtaining" the cash "from the person" of his cousin "by means of . . . threatened force . . . to . . . a relative." § 1951(b)(1). In passing the "Hobbs Act," moreover, "Congress intended to make criminal all conduct within the reach of the statutory language." *United States v. Culbert*, 435 U.S. 371, 380 (1978). "The language of the Hobbs Act is unmistakably broad," *Taylor v. United States*, 579 U.S. 301, 305 (2016), and the conduct above is plainly "within [its] reach." *Culbert*, 435 U.S. at 380.

The Government has claimed "relative" means one "other than the robber." 2d Cir. 21-1379, Docket Entry 113 at 16. But the Act doesn't say that. It says robbery can be committed by threatening the victim's "relative." § 1951(b)(1). And "relative" means "relative." The Act's "words do not lend themselves to restrictive interpretation." *Culbert*, 435 U.S. at 373. "Hobbs Act robbery reaches" threats to the victim's relative "because the statute specifically says so. We cannot ignore the

statutory text and construct a narrower statute than the plain language supports." *United States v. O'Connor*, 874 F.3d 1147, 1154 (10th Cir. 2017) (citation omitted).

Indeed, the Hobbs Act says obtaining property by threatening force against "*anyone* in [the victim's] company" is robbery. § 1951(b)(1) (emphasis added). So picture the robbery above, but this time the restaurateur's employee threatens self-harm as the two leave the restaurant together. Different hypothetical, same result: robbery can be committed without any actual, attempted or threatened force "against the person or property of another." § 924(c)(3)(A).

The Government has, in fact, all but conceded this point. Besides robbers, the Hobbs Act punishes someone who "commits or threatens physical violence to *any person* or property in furtherance of a plan" to violate the Act. § 1951(a) (emphasis added). Before *Taylor*, the Second Circuit held this offense "qualifies categorically as a 'crime of violence.'" *United States v. Nikolla*, 950 F.3d 51, 52 (9th Cir. 2020). Nikolla disagreed, saying a threat to "any person" included a "threat of violence to the defendant himself," but he did "not cite to any case that applied the Hobbs Act in this way." *Id.* at 54. He thus failed the "realistic probability" test. *Id.* at 53.

Yet now that *Taylor* has discarded that test in § 924(c) cases, telling courts to simply "[l]ook at the elements" of the federal crime at issue, 596 U.S. at 860, the "Government agrees that violation of this provision does not constitute a crime of violence in light of *Taylor*." 2d Cir. 21-1379, Docket Entry 113 at 17. That's because, given the "any person" language, the Hobbs Act can "be plausibly read to

criminalize the use or threat of violence against oneself . . . , which lays outside of the boundaries of the conduct recognized by the elements clause of § 924(c)." *Seale v. United States*, 2022 WL 18024217, at *3 (D.N.J. 2022).

And just as "any person" might be the defendant himself, so too might a robbery victim's "relative" or "anyone in h[er] company" be the defendant himself. But threatening to harm oneself is no threat "against . . . another." § 924(c)(3)(A). Thus, neither the "violence to any person" crime nor robbery is a "crime of violence."

Finally, the Government has said threatening to harm oneself "more closely resembles extortion." 2d Cir. 21-1379, Docket Entry 113 at 15 n.8. If true, however, that is "beside the point. The Federal Criminal Code is replete with provisions that criminalize overlapping conduct." *Pasquantino v. United States*, 544 U.S. 349, 358 n.4 (2005). Even if the scenarios above "describe[] classic extortion . . . such conduct also satisfies the basic elements of Hobbs Act robbery," *O'Connor*, 874 F.3d at 1153, as the cash is obtained from the restaurateur "by means of . . . threatened force . . . to . . . a relative or . . . anyone in h[er] company." § 1951(b)(1).

Because Hobbs Act robbery can be committed by threatening to harm oneself, it does not have "as an element the use, attempted use, or threatened use of physical force against the person or property of another." § 924(c)(3)(A).

Hobbs Act robbery can also be committed by putting someone in "fear of injury, immediate or future, to his . . . property." § 1951(b)(1). And the "'cases interpreting the Hobbs Act have repeatedly stressed that the element of "fear" required by the Act

can be satisfied by putting the victim in fear of economic loss.'" *United States v. Capo*, 817 F.2d 947, 951 (2d Cir. 1987) (en banc; citation omitted). The model jury instructions on Hobbs Act robbery therefore say: "Fear exists if a victim experiences anxiety, concern, or worry over . . . business loss." 3 Leonard B. Sand et al., *Modern Federal Jury Instructions*, Instr. 50-6.

So picture the restaurateur again, but this time her cousin or employee says: "Give me the cash, or I'll flood the internet with claims your food made me sick." This creates a "fear of injury" in the "future" to the victim's "property," § 1951(b)(1), without the "use, attempted use, or threatened use of physical force." § 924(c)(3)(A). As this hypothetical illustrates, the "plain language of the statute provides that a Hobbs Act robbery can be accomplished by causing a victim to have 'fear of injury' to property" – loss of business for the restaurant – "without any force whatsoever." *Haynes v. United States*, 237 F. Supp. 3d 816, 826 (C.D. Ill. 2017).

The judge in *Haynes* was required to rule against the defendant, however, citing a case "in which the Seventh Circuit squarely held that a Hobbs Act robbery qualifies as a 'crime of violence' under 18 U.S.C. § 924(c)(3)(A)." *Id.* at 827.

Likewise, a judge in the Second Circuit has considered this argument, in the context of a "threat to injure 'intangible' property (*e.g.*, shares of stock)," and said it "seems possible to commit Hobbs Act robbery without simultaneously committing a 'crime of violence' pursuant to section 924(c)." *United States v. Tejada*, 2024 WL 3302491, at *6 (E.D.N.Y. 2024). *See also United States v. Loc. 560 of Int'l Bhd. of*

Teamsters, 780 F.2d 267, 281 (3d Cir. 1985) (The circuits are "unanimous" that the Hobbs Act applies to "intangible, as well as tangible, property."). But the judge was "bound by controlling Second Circuit precedent." *Tejada*, 2024 WL 3302491, at *4.

The judge in *United States v. Chea*, 2019 WL 5061085 (N.D. Cal. 2019), held "Hobbs Act robbery is not categorically a crime of violence under the elements clause of § 924(c)(3), because the offense can be committed by causing fear of future injury to property, which does not require 'physical force.'" *Id.* at *1. "Where the property in question is intangible, it can be injured without the use of any physical contact at all." *Id.* at *8. "If Congress had intended 'fear of injury' to mean 'fear of violence or violent force,' it could have said so expressly. It did not." *Id.* at *9.

The Ninth Circuit abrogated this ruling in a later case, but only because that defendant "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." *United States v. Dominguez*, 954 F.3d 1251, 1260 (9th Cir. 2020).

After *Taylor*, the Ninth Circuit acknowledged the "realistic probability test [i]s not implicated" when "comparing two federal statutes." *United States v. Eckford*, 77 F.4th 1228, 1235 (9th Cir. 2023). But it said, quoting a First Circuit case, that a "threat to injure intangible property . . . 'sounds to us like Hobbs Act *extortion*'" rather than robbery. *Id.* (quoting *García-Ortiz*, 904 F.3d at 107; emphasis in *García-Ortiz*).

Yet neither circuit recognized the U.S. Code is "replete with provisions that criminalize overlapping conduct." *Pasquantino*, 544 U.S. at 358 n.4. "'Robbery'

reaches the act of taking property by threatening future injury to [] property" even though, "[t]raditionally, that degree of attenuation is characteristic of extortion." *United States v. Lynch*, 268 F. Supp. 3d 1099, 1106 (D. Mont. 2017). This reflects the "overlap between the Hobbs Act's definitions of traditionally violent robbery and traditionally non-violent or less-violent extortion." *Id.* The Act's crimes are not mutually exclusive: even if obtaining business proceeds by threatening to disparage the business "describes classic extortion . . . such conduct also satisfies the basic elements of Hobbs Act robbery," *O'Connor*, 874 F.3d at 1153, as the proceeds are obtained "by means of . . . fear of injury . . . to . . . property." § 1951(b)(1). "We cannot ignore the statutory text and construct a narrower statute than the plain language supports." *O'Connor*, 874 F.3d at 1154.

"The language of the Hobbs Act is unmistakably broad," *Taylor*, 579 U.S. at 305, and defies "restrictive interpretation." *Culbert*, 435 U.S. at 373. "The plain text of the Hobbs Act robbery definition makes clear that it will apply to force or threats against property," *United States v. Chappelle*, 41 F.4th 102, 109 (2d Cir. 2022), and "fear of injury . . . to . . . property" is "broad enough to encompass instances of the loss of economic value rather than only a physical destruction." *Haynes v. United States*, 237 F. Supp. 3d at 826. One may therefore "commit Hobbs Act robbery without simultaneously committing a 'crime of violence,'" *Tejada*, 2024 WL 3302491, at *6, as "causing fear of future injury to property [] does not require 'physical force.'" *Chea*, 2019 WL 5061085, at *1.

In sum, for either of the reasons above or both, Hobbs Act robbery "does not require proof of *any* of the elements § 924(c)(3)(A) demands. That ends the inquiry." *Taylor*, 596 U.S. at 859 (emphasis in original).

C. This Case Is an Ideal Vehicle for Answering These Questions

The "crime of violence" question were cleanly presented and squarely decided in the court below, and each is outcome-determinative: the Second Circuit concluded Petitioner must receive prison terms he cannot receive if this Court rules for him.

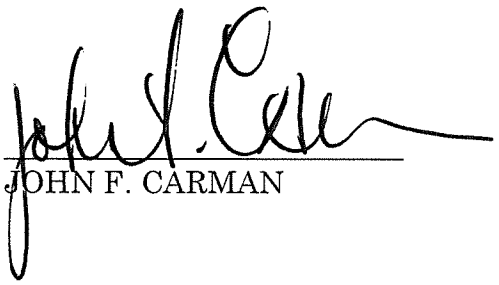
Petitioner was convicted of Hobbs Act robbery and "faces up to 20 years in prison" for that. *Taylor*, 596 U.S. at 848. "But if that offense qualifies as a 'crime of violence' under § 924(c)(3)(A)," *id.*, as the Second Circuit held it does, he must receive a consecutive prison term of at least "ten years." Pet. App. 12a. By detailing why Hobbs Act robbery is not § 924(c) predicate, however, he has shown "Congress has not authorized courts to convict and sentence him to a decade of further imprisonment under § 924(c)(3)(A)." *Taylor*, 596 U.S. at 852.

This case is an ideal vehicle for determining the lawfulness of these additional punishments, and hence, certiorari should be granted in all respects.

CONCLUSION

WHEREFORE, in light of the foregoing, this Court should grant certiorari on all issues raised in this Petition and, upon review, should vacate the judgment against petitioner and remand for such remedies as may be appropriate.

Dated: New York, NY
July __, 2025



JOHN F. CARMAN

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 14th day of April, two thousand twenty-five.

PRESENT: DENNIS JACOBS,
DENNY CHIN,
RAYMOND J. LOHIER, JR.,
Circuit Judges.

UNITED STATES OF AMERICA,

Appellee,

v. No. 24-1265-cr

TASHAWN BURNS, AKA YETTIBOSS, AKA YB,

Defendant-Appellant,

DAVID JONES, RICARDO FRANCO, AKA SLICK, AKA SLICK RICK,

Defendants.

FOR APPELLEE:	Amy Busa, Mark E. Misorek, Assistant United States Attorneys, *for* John J. Durham, United States Attorney for the Eastern District of New York, Brooklyn, NY
FOR APPELLANT:	John F. Carman, Law Office of John F. Carman, Garden City, NY

Appeal from a judgment of the United States District Court for the Eastern District of New York (Joanna Seybert, *Judge*).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of the District Court is AFFIRMED.

Defendant-Appellant Tashawn Burns appeals from an April 23, 2024 judgment of the United States District Court for the Eastern District of New York (Seybert, *J.*) convicting him, following a guilty plea, of one count of Hobbs Act robbery, in violation of 18 U.S.C. § 1951(a), and one count of brandishing a firearm during a crime of violence, in violation of 18 U.S.C. § 924(c)(1)(A)(i) and (ii). The District Court sentenced Burns principally to 120 months' imprisonment. We assume the parties' familiarity with the underlying facts and the record of prior proceedings, to which we refer only as necessary to explain

our decision to affirm.

In his counseled brief, Burns argues that his conviction under 18 U.S.C. § 924(c) must be vacated because substantive Hobbs Act robbery does not constitute a "crime of violence" under § 924(c). Burns acknowledges that his argument is foreclosed by this Court's decisions in *United States v. McCoy*, 58 F.4th 72 (2d Cir. 2023), and *United States v. Barrett*, 102 F.4th 60 (2d Cir. 2024), but he seeks to preserve the issue for in banc or Supreme Court review. As Burns recognizes, we remain "bound by prior decisions of this court unless and until the precedents established therein are reversed *en banc* or by the Supreme Court." *United States v. Jass*, 569 F.3d 47, 58 (2d Cir. 2009). In *McCoy*, after the Supreme Court remanded the case for further consideration in light of its recent decision in *United States v. Taylor*, 596 U.S. 845 (2022), we explained that "nothing in *Taylor*'s language or reasoning . . . undermines this Court's settled understanding that completed Hobbs Act robberies are categorically crimes of violence pursuant to section 924(c)(3)(A)." 58 F.4th at 74. In *Barrett*, we reaffirmed that substantive Hobbs Act robbery remains a crime of violence under § 924(c) after specifically considering and rejecting the same arguments that Burns advances — that Hobbs Act robbery could be committed by threatening

harm to oneself or by threatening nonphysical injury to intangible property. 102 F.4th at 81–83. We see no reason in this case to question the validity of *McCoy* and *Barrett* and accordingly affirm Burns's conviction under § 924(c).

In a supplemental brief filed *pro se*, Burns also contends that his Hobbs Act robbery conviction must be vacated because he did not intend to affect interstate or foreign commerce. Although Burns waived his right to appeal his Hobbs Act conviction in his plea agreement, we construe his *pro se* brief as also challenging his § 924(c) conviction, which is not barred by the appeal waiver. "[C]onstrued liberally," *see Triestman v. Fed. Bureau of Prisons*, 470 F.3d 471, 474 (2d Cir. 2006), Burns's *pro se* brief presents both a question of law — whether the Hobbs Act requires specific intent to affect interstate commerce — and a question of fact — whether there was sufficient basis in the record to find an effect on interstate commerce. We review the legal question *de novo*, *see United States v. Aleynikov*, 676 F.3d 71, 76 (2d Cir. 2012), and the District Court's determination that Burns's allocution supported his conviction for abuse of discretion, *see United States v. Adams*, 448 F.3d 492, 498 (2d Cir. 2006).

We have long held that the Hobbs Act does not require proof that a defendant specifically intended to affect interstate commerce. "[T]he

government need not prove that it was the defendant['s] purpose to affect commerce; it suffices that [his] conduct had that natural effect." *United States v. Arena*, 180 F.3d 380, 390 (2d Cir. 1999), *abrogated on other grounds by Scheidler v. Nat'l Org. for Women, Inc.*, 537 U.S. 393 (2003). Here, the record demonstrates that Burns's conduct had at least a *de minimis* effect on interstate commerce, which is enough to satisfy the Hobbs Act's jurisdictional element. *See United States v. Jamison*, 299 F.3d 114, 118 (2d Cir. 2002); *see also United States v. Orelien*, 119 F.4th 217, 225 & n.9 (2d Cir. 2024). During the plea colloquy, the Government proffered that it would have introduced evidence at trial that some of the money Burns stole was designated for payroll at a restaurant that receives out-of-state and foreign goods. Immediately following the Government's proffer, Burns pleaded guilty to the Hobbs Act and § 924(c) counts. Burns also signed a plea form asserting that he "knowingly and intentionally obstructed, delayed and affected commerce, and the movement of articles and commodities in commerce by robbery, specifically, the robbery of payroll funds" from the victim. App'x 44. Accordingly, we conclude that the District Court had a sufficient factual basis to determine that Burns's robbery affected interstate commerce, satisfying the jurisdictional element of the Hobbs Act.

CONCLUSION

We have considered Burns's remaining arguments and conclude that they are without merit. For the foregoing reasons, the judgment of the District Court is AFFIRMED.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court