

No.

In The Supreme Court Of The United States

Randy Ancheta, Eric Banks, Lance Grandberry, Cameron Muhlenberg, Vu Nguyen,
Tremayne Reeves, Quincy Stephens, and Lonnie Troy, III,

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

RENE L. VALLADARES
Federal Public Defender
*Wendi L. Overmyer
*Cristen C. Thayer
Assistant Federal Public Defender
Office of the Federal Public Defender
411 E. Bonneville, Ste. 100
Las Vegas, Nevada 89101
(702) 388-6577
Wendi_Overmyer@fd.org
Cristen_Thayer@fd.org
*Counsel for Petitioners

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Questions Presented for Review

By its plain language, Hobbs Act robbery does not have as an element the use, attempted use, or threatened use, of violent force. Hobbs Act robbery's plain language, at 18 U.S.C. § 1951(b)(1), encompasses future threats to injure intangible property, which does not require force. The question presented is whether, to make Hobbs Act robbery “fit” the 18 U.S.C. § 924(c)(3)(A) crime-of-violence physical force clause definition, the Circuits interpret Hobbs Act robbery too narrowly by requiring violent force as an element of 18 U.S.C. § 1951.

Related Proceedings

Petitioners Randy Ancheta, Eric Banks, Lance Grandberry, Cameron Muhlenberg, Vu Nguyen, Tremayne Reeves, Quincy Stephens, and Lonnie Troy each brought separate motions to vacate their respective 18 U.S.C. § 924(c) convictions under 28 U.S.C. § 2255 in the District of Nevada. The district court denied each motion on its merits and also denied each defendant a certificate of appealability (COA). The Ninth Circuit denied each defendant a COA. The specific dates for each Petitioner are:

On June 29, 2018, the district court denied Petitioner Randy Ancheta's motion to vacate under 28 U.S.C. § 2255 and denied a COA. App. B, C: 2a-5a. On October 2, 2020, the Ninth Circuit denied Ancheta a COA. App. A: 1a.

On May 15, 2018, the district court denied Petitioner Eric Bank's motion to vacate under 28 U.S.C. § 2255 and denied a COA. App. E: 7a-10a. On October 1, 2020, the Ninth Circuit denied Banks a COA. App. D: 6a.

On September 10, 2019, the district court denied Petitioner Lance Grandberry's motion to vacate under 28 U.S.C. § 2255 and denied a COA. App. G: 12a-17a. On October 1, 2020, the Ninth Circuit denied Grandberry a COA. App. F: 7a.

On June 29, 2018, the district court denied Petitioner Cameron Muhlenberg's motion to vacate under 28 U.S.C. § 2255 and denied a COA. App. I, J: 19a-22a. On October 2, 2020, the Ninth Circuit denied Muhlenberg a COA. App. H: 18a.

On March 31, 2020, the district court denied Petitioner Vu Nguyen’s motion to vacate under 28 U.S.C. § 2255 and denied a COA. App. L: 24a-29a. On October 1, 2020, the Ninth Circuit denied Nguyen a COA. App. K: 23a.

On May 18, 2018, the district court denied Petitioner Tremayne Reeves’s motion to vacate under 28 U.S.C. § 2255 and denied a COA. App. N: 31a-34a. On October 1, 2020, the Ninth Circuit denied Reeves a COA. App. M: 30a.

On February 18, 2020, the district court denied Petitioner Quincy Stephens’s motion to vacate under 28 U.S.C. § 2255 and denied a COA. App. P: 36a-41a. On October 2, 2020, the Ninth Circuit denied Stephens a COA. App. O: 35a.

On October 11, 2018, the district court denied Petitioner Lonnie Troy’s motion to vacate and on July 30, 2019, denied a COA. App. R, S: 43a-47a. On October 2, 2020, the Ninth Circuit denied Troy a COA. App. Q: 42a.

Table of Contents

Questions Presented for Review	ii
Related Proceedings.....	iii
Table of Contents	v
Petition for Certiorari.....	1
Opinions Below	1
Jurisdiction	1
Constitutional and Statutory Provisions Involved.....	2
Statement of the Case	3
I. Petitioners are convicted and sentenced to mandatory minimum sentences under 18 U.S.C. § 924(c).	3
II. Petitioners seek to vacate their § 924(c) convictions and sentences under this Court’s <i>Johnson</i> and <i>Davis</i> decisions.	6
III. Petitioners appeal to Ninth Circuit and are denied certificates of appealability.....	8
Reasons for Granting the Petition	9
I. The Circuits have narrowed the scope of Hobbs Act robbery, contravening the statute’s plain language.....	9
II. Petitioners raise an issue of exceptional importance this Court has not yet addressed, particularly given § 924(c)’s mandatory minimum sentences.	17
Conclusion.....	19
Appendix	

Table of Authorities

United States Constitution

U.S. Const. amend. V	2, 9
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Federal Cases

<i>Cross v. United States</i> , 892 F.3d 288 (7th Cir. 2018)	9
<i>Descamps v. United States</i> , 570 U.S. 254, (2013)	14
<i>Duncan v. Walker</i> , 533 U.S. 167 (2001)	12
<i>In re Franklin</i> , 950 F.3d 909 (6th Cir. 2019)	9
<i>In re Hammoud</i> , 931 F.3d 1032 (11th Cir. 2019)	9
<i>Johnson v. United States</i> , 135 S. Ct. 2551 (2015)	6
<i>King v. United States</i> , 965 F.3d 60 (1st Cir. 2020)	9
<i>Leocal v. Ashcroft</i> , 543 U.S. 1 (2004)	10, 11
<i>In re Matthews</i> , 934 F.3d 296 (3d Cir. 2019)	9
<i>McDonnell v. United States</i> , 136 S. Ct. 2355 (2016)	18
<i>Moncrieffe v. Holder</i> , 569 U.S. 184 (2013)	15
<i>Ratzlaf v. United States</i> , 510 U.S. 135 (1994)	12

<i>Rehaif v. United States</i> , 139 S. Ct. 2191 (2019)	18
<i>Sekhar v. United States</i> , 570 U.S. 729 (2013)	18
<i>In re St. Fleur</i> , 824 F.3d 1337 (11th Cir. 2016)	13
<i>Stokeling v. United States</i> , 139 S. Ct. 544 (2019)	10, 11
<i>Taylor v. United States</i> , 136 S. Ct. 2074 (2016)	18
<i>United States v. Chea</i> , No. 98-cr-40003-2 CW, 2019 WL 5061085, (N.D. Cal. Oct. 2, 2019)	11
<i>United States v. Bowen</i> , 936 F.3d 1091 (10th Cir. 2019)	9
<i>United States v. Buck</i> , 847 F.3d 267 (5th Cir. 2017)	13
<i>United States v. Camp</i> , 903 F.3d 594 (6th Cir. 2018)	12-13
<i>United States v. Davis</i> , 139 S. Ct. 2319 (2019)	7, 9
<i>United States v. Dominguez</i> , 954 F.3d 1251 (9th Cir. 2020)	8, 13, 14
<i>United States v. Fox</i> , 878 F.3d 574 (7th Cir. 2017)	13
<i>United States v. García-Ortiz</i> , 904 F.3d 102 (1st Cir. 2018)	13
<i>United States v. Gooch</i> , 850 F.3d 285 (6th Cir. 2017)	13
<i>United States v. Hill</i> , 890 F.3d 51 (2d Cir. 2016)	13

<i>United States v. Jones</i> , 919 F.3d 1064 (8th Cir. 2019)	13
<i>United States v. Local 560 of the Int’l Bhd. of Teamsters</i> , 780 F.2d 267 (3d Cir. 1985)	11
<i>United States v. Mathis</i> , 932 F.3d 242 (4th Cir. 2019)	13, 14
<i>United States v. Melgar-Cabrera</i> , 892 F.3d 1053 (10th Cir. 2018)	13
<i>United States v. O’Connor</i> , 874 F.3d 1147 (10th Cir. 2017)	11, 17
<i>United States v. Reece</i> , 938 F.3d 630 (5th Cir. 2019)	9
<i>United States v. Robinson</i> , 844 F.3d 137 (3d Cir. 2016)	13
<i>Welch v. United States</i> , 136 S. Ct. 1257 (2016)	6, 9
<i>Zhi Fei Liao v. AG U.S.</i> , 910 F.3d 714 (3d Cir. 2018)	17
Federal Statutes	
18 U.S.C. § 2	6
18 U.S.C. § 371	5
18 U.S.C. § 922	18
18 U.S.C. § 924	<i>passim</i>
18 U.S.C. § 1951	<i>passim</i>
18 U.S.C. § 2255	iii, iv, 7, 9
28 U.S.C. § 1254	2
Federal Rules	
Supreme Court Rule 12.4	1
Supreme Court Rule 13.1	2

Model Jury Instructions

Eleventh Circuit, Pattern Jury Instructions (Criminal Cases) O70.3 (Feb. 2020) .	16
Fifth Circuit, Pattern Jury Instructions (Criminal Cases) 2.73A (2019)	15
Modern Federal Jury Instructions-Criminal, § 50-2 (Nov. 2020)	16
Modern Federal Jury Instructions-Criminal, § 50-4 (Nov. 2020)	16
Modern Federal Jury Instructions-Criminal, § 50-5 (Nov. 2020)	16
Modern Federal Jury Instructions-Criminal, § 50-6 (Nov. 2020)	16
Tenth Circuit Criminal Pattern Jury Instructions, 2.70 (Feb. 2018)	15
Third Circuit Model Criminal Jury Instructions, 6.18.1951-4 (Jan. 2018)	15
Third Circuit Model Criminal Jury Instructions, 6.18.1951-5 (Jan. 2018)	15

Petition for Certiorari

Petitioners Randy Ancheta, Eric Banks, Lance Grandberry, Cameron Muhlenberg, Vu Nguyen, Tremayne Reeves, Quincy Stephens, and Lonnie Troy jointly petition for a writ of certiorari to review judgments of the United States Court of Appeals for the Ninth Circuit. A joint petition is proper under Supreme Court Rule 12.4, as Petitioners each challenge the judgments on identical issues.

Opinions Below

The opinions of the court of appeals are not published in the Federal Reporter. App. A, D, F, H, K, M, O, Q. The orders of the district court are unreported. App. B, C, E, G, I, J, L, N, P, R, S.

Jurisdiction

The Ninth Circuit Court of Appeals entered final orders in Petitioners' cases as follows:

On October 2, 2020, the Ninth Circuit denied Ancheta a COA. App. A: 1a.

On October 1, 2020, the Ninth Circuit denied Banks a COA. App. D: 6a.

On October 1, 2020, the Ninth Circuit denied Grandberry a COA. App. F: 7a.

On October 2, 2020, the Ninth Circuit denied Muhlenberg a COA. App. H: 18a.

On October 1, 2020, the Ninth Circuit denied Nguyen a COA. App. K: 23a.

On October 1, 2020, the Ninth Circuit denied Reeves a COA. App. M: 30a.

On October 2, 2020, the Ninth Circuit denied Stephens a COA. App. O: 35a.

On October 2, 2020, the Ninth Circuit denied Troy a COA. App. Q: 42a.

This Court’s jurisdiction is invoked under 28 U.S.C. § 1254(a). This joint petition is timely per Supreme Court Rule 13.1 and under this Court’s Order of March 19, 2020, extending the deadline from 90 days to 150 days to file a petition for a writ of certiorari after the lower court’s order 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 states, 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. Hobbs Act robbery, 18 U.S.C. § 1951, states, 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 eight of the many defendants convicted and sentenced to mandatory minimum sentences for a firearms offense under 18 U.S.C. § 924(c) where the predicate offense no longer qualifies as a crime of violence. Section 924(c) provides for graduated, mandatory, consecutive sentences for using a firearm during and in relation to a crime of violence. Petitioner have collectively served over 84 years in prison and, accounting for good time credit, have approximately 45½ years left to serve on their sentences.

I. Petitioners are convicted and sentenced to mandatory minimum sentences under 18 U.S.C. § 924(c).

Petitioners are currently serving mandatory minimum sentences for § 924(c) convictions, as follows:¹

In July 2012, Ancheta pled guilty to five counts of Hobbs Act robbery under 18 U.S.C. § 1951 (Counts One, Three, Five, Seven, and Nine) and one count of brandishing a firearm during and in relation to a crime of violence under 18 U.S.C. § 924(c) (Count Two). Dist. Ct. Dkt. 43. The offense underlying the § 924(c) count is Count One's Hobbs Act robbery. Dist. Ct. Dkt. 35. The district court sentenced Ancheta in December 2012 to 156 months on the Hobbs Act robbery counts, to run

¹ The "Dist. Ct. Dkt." citations refer to the respective Petitioner's case docket in the District of Nevada: *United States v. Ancheta*, No. 3:12-cr-15-PMP-WGC-1; *United States v. Banks*, No. 2:12-cr-201-KJD-VCF-2; *United States v. Grandberry*, No. 2:07-cr-60-JCM-VCF; *United States v. Muhlenberg*, No. 3:12-cr-15-HDM-WGC-2; *United States v. Nguyen*, No. 2:03-cr-158-KJD-PAL; *United States v. Reeves*, No. 2:12-cr-201-KJD-VCF-1; *United States v. Stephens*, No. 2:13-cr-351-LDG-VCF-1; and *United States v. Troy*, 2:10-cr-221-LDG-CWF.

concurrently, followed by a mandatory consecutive 84-month sentence for the § 924(c) count—totaling 240 months. Dist. Ct. Dkt. 65.

In May 2013, Banks pled guilty to two counts of Hobbs Act robbery under 18 U.S.C. § 1951 (Counts Four and Eight) and one count of brandishing a firearm during and in relation to a crime of violence under 18 U.S.C. § 924(c) (Count Nine). Dist. Ct. Dkt. 44. The offense underlying the § 924(c) count is Count Eight's Hobbs Act robbery. Dist. Ct. Dkt. 1. The district court sentenced Banks in August 2013 to 121 months on the Hobbs Act robbery counts, to run concurrently, followed by a mandatory consecutive 84-month sentence for the § 924(c) count—totaling 205 months. Dist. Ct. Dkt. 58.

In January 2008, Grandberry pled guilty to one count of Hobbs Act robbery under 18 U.S.C. § 1951 (Count Seven) and one count of discharging a firearm during and in relation to a crime of violence under 18 U.S.C. § 924(c) (Count Eight). Dist. Ct. Dkt. 67. The offense underlying the § 924(c) count is Count Seven's Hobbs Act robbery. Dist. Ct. Dkt. 1. The district court sentenced Grandberry in May 2013 to 96 months on the Hobbs Act robbery count, followed by a mandatory consecutive 120-month sentence for the § 924(c) count—totaling 165 months. Dist. Ct. Dkt. 84.

In September 2012, Muhlenberg pled guilty to four counts of Hobbs Act robbery under 18 U.S.C. § 1951 (Counts Three, Five, Seven, and Nine) and one count of brandishing a firearm during and in relation to a crime of violence under 18 U.S.C. § 924(c) (Count Ten). Dist. Ct. Dkt. 52. The offense underlying the § 924(c) count is Count Nine's Hobbs Act robbery. Dist. Ct. Dkt. 35. The district

court sentenced Muhlenberg in May 2013 to 96 months on the Hobbs Act robbery counts, to run concurrently, followed by a mandatory consecutive 84-month sentence for the § 924(c) count—totaling 180 months. Dist. Ct. Dkt. 87.

In July 2004, a jury convicted Nguyen of conspiracy to commit Hobbs Act robbery under 18 U.S.C. § 371 (Count One), Hobbs Act robbery under 18 U.S.C. § 1951 (Count Two), and aiding and abetting the discharge of a firearm during a crime of violence under 18 U.S.C. § 924(c) (Count Three). Dist. Ct. Dkt. 156, 157. The offense underlying the § 924(c) count is Count Two's Hobbs Act robbery. Dist. Ct. Dkt. 32. The district court sentenced Nguyen in May 2005 to 60 months on Count One and 63 months on Count Two, to run concurrently, followed by a consecutive 293-month sentence on the § 924(c) count, 10 years of which was mandatory—totaling 356 months. Dist. Ct. Dkt. 182.

In May 2013, Reeves pled guilty to three counts of Hobbs Act robbery under 18 U.S.C. § 1951 (Counts Two, Six, and Ten) and one count of brandishing a firearm during and in relation to a crime of violence under 18 U.S.C. § 924(c) (Count Three). Dist. Ct. Dkt. 45. The offense underlying the § 924(c) count is Count Two's Hobbs Act robbery. Dist. Ct. Dkt. 1. The district court sentenced Reeves in August 2013 to 121 months on the Hobbs Act robbery counts, to run concurrently, followed by a mandatory consecutive 84-month sentence for the § 924(c) count—totaling 205 months. Dist. Ct. Dkt. 57.

In June 2014, Stephens pled guilty to two counts of aiding and abetting Hobbs Act robbery under 18 U.S.C. §§ 1951 and 2 (Counts Three and Seven), three counts of Hobbs Act robbery under 18 U.S.C. § 1951 (Counts One, Five, and Nine), and one count of brandishing a firearm during and in relation to a crime of violence under 18 U.S.C. § 924(c) (Count Ten). Dist. Ct. Dkt. 30. The offense underlying the § 924(c) count is Count Nine’s Hobbs Act robbery. Dist. Ct. Dkt. 1. The district court sentenced Stephens in October 2014 to 67 months on Counts One, Three, Five, Seven, and Nine, to run concurrently, followed by a mandatory consecutive 84-month sentence for the § 924(c) count—totaling 151 months. Dist. Ct. Dkt. 40.

In February 2011, Troy pled guilty to two counts of Hobbs Act robbery (Counts One and Three) and one count of use of a firearm during a crime of violence under 18 U.S.C. § 924(c) (Counts Four). Dist. Ct. Dkt. 36. The offense underlying the § 924(c) count is Count Three’s Hobbs Act robbery. Dist. Ct. Dkt. 1. The district court sentenced Troy in July 2011 to 84 months’ imprisonment on the Hobbs Act robbery counts, to be served concurrently, followed by a mandatory consecutive 84-month sentence for the § 924(c) count—totaling 168 months. Dist. Ct. Dkt. 47.

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

In 2015, this Court held that imposing an increased sentence under the residual clause of the Armed Career Criminal Act’s (“ACCA”) violent felony definition violates the Constitution’s guarantee of due process. *Johnson v. United States*, 135 S. Ct. 2551 (2015). This Court later issued *Welch v. United States*, 136 S. Ct. 1257, 1267 (2016), holding *Johnson* announced a new substantive rule

applying retroactively to cases on collateral review. In June 2019, this Court issued *United States v. Davis*, 139 S. Ct. 2319 (2019), holding the 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 18 U.S.C. § 2255 raising claims under *Johnson*, later supplemented with *Davis*. All petitioners argued their § 924(c) convictions must be vacated because the predicate offense—Hobbs Act robbery—no longer qualifies as a crime of violence after *Johnson* and *Davis*.

Ancheta timely moved to vacate. Dist. Ct. Dkt. 123, 128. The government opposed relief on the merits. Dist. Ct. Dkt. 131. The district court denied the motion on the merits and denied a COA. App. B, C: 2a-5a.

Banks timely moved to vacate. Dist. Ct. Dkt. 62, 67. The government opposed relief on the merits. Dist. Ct. Dkt. 70. The district court denied the motion on the merits and denied a COA. App. E: 7a-10a.

Grandberry timely moved to vacate. Dist. Ct. Dkt. 167, 171. The government opposed relief on the merits. Dist. Ct. Dkt. 177. The district court denied the motion on the merits and denied a COA. App. G: 12a-17a.

Muhlenberg timely moved to vacate. Dist. Ct. Dkt. 135. The government opposed relief on the merits. Dist. Ct. Dkt. 138. The district court denied the motion on the merits and denied a COA. App. I, J: 19a-22a.

Nguyen timely filed a second motion to vacate, after receiving permission from the Ninth Circuit. Dist. Ct. Dkt. 241-244, 248; *United States v. Nguyen*, No.

16-72029 (9th Cir. Feb. 16, 2017). The government opposed relief on the merits. Dist. Ct. Dkt. 246. The district court denied the motion on the merits and denied a COA. App. L: 24a.

Reeves timely moved to vacate. Dist. Ct. Dkt. 64, 66. The government opposed relief on the merits. Dist. Ct. Dkt. 72. The district court denied the motion on the merits and denied a COA. App. N: 31a-34a.

Stephens timely moved to vacate. Dist. Ct. Dkt. 46, 47. The government opposed relief on the merits. Dist. Ct. Dkt. 49. The district court denied the motion on the merits and denied a COA. App. P: 36a-41a.

Troy timely moved to vacate. Dist. Ct. Dkt. 54, 55. The government opposed on the merits. Dist. Ct. Dkt. 57. The district court denied the motion, holding Troy's motion was untimely because this Court had not addressed the § 924(c) residual clause. Dist. Ct. Dkt. 64. Troy timely appealed. Dist. Ct. Dkt. 66. Because the district court failed to address whether it would grant a COA, the Circuit remanded. Dist. Ct. Dkt. 69. The district court denied Troy a COA on July 30, 2019 (post-*Davis*), still finding his motion untimely. Dist. Ct. Dkt. 70.

III. Petitioners appeal to Ninth Circuit and are denied certificates of appealability.

Petitioners timely appealed, each seeking a COA. The Ninth Circuit summarily denied a COA to each Petitioner based on its precedent holding Hobbs Act robbery is a crime of violence under the § 924(c)(3)(A) physical force clause. App. A, D, F, H, K, M, O, Q (each citing *United States v. Dominguez*, 954 F.3d 1251, 1260 (9th Cir. 2020), *petition for cert. filed*, No. 20-1000 (Jan. 21, 2021)).

Reasons for Granting the Petition

The Court should determine whether the Circuits properly interpret the Hobbs Act robbery statute, 18 U.S.C. § 1951. The current Circuit holdings that Hobbs Act robbery necessarily requires the use, attempted use, or threatened use of violent physical force conflicts with the plain language of the statute. To make the Hobbs Act robbery statute “fit” the 18 U.S.C. § 924(c)(3)(A) physical force clause definition of crime of violence, the current Circuit interpretations narrow the conduct that Hobbs Act robbery used to cover. It is imperative this Court decide the proper interpretation of Hobbs Act robbery so defendants are only mandatorily incarcerated for a firearms offense truly predicated on a violent crime.

I. The Circuits have narrowed the scope of Hobbs Act robbery, contravening the statute’s plain language.

In *Davis*, 139 S. Ct. 2319, this Court struck 18 U.S.C. § 924(c)(3)(B)’s residual clause as vague and in violation of the Due Process Clause. U.S. Const. amend. V. Petitioners expect the government will concede, as it has done here and elsewhere, that *Davis* pronounced a substantive rule applying retroactively to motions to vacate brought under 28 U.S.C. § 2255. Brief for the United States, *United States v. Davis*, S. Ct. No. 18-431, p. 52 (Feb. 12, 2019) (“A holding of this Court that Section 924(c)(3)(B) requires an ordinary-case categorical approach—and thus is unconstitutionally vague—would be a retroactive substantive rule applicable on collateral review.”) (citing *Welch*, 136 S. Ct. at 1267).²

² 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)

Therefore, to qualify as a § 924(c) predicate crime of violence, Hobs Act robbery must meet the requirements of the physical force clause of the crime of violence definition 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*, 139 S. Ct. 544, 554 (2019) (citing *Johnson v. United States*, 559 U.S. 133, 140 (2010)); and (2) the use of force must be intentional and not merely reckless or negligent, *Leocal v. Ashcroft*, 543 U.S. 1, 9 (2004).

A. By its plain language, Hobbs Act robbery 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.

(noting government concession); *In re Matthews*, 934 F.3d 296, 301 (3d Cir. 2019); *United States v. Reece*, 938 F.3d 630, 634-35 (5th Cir. 2019); *In re Franklin*, 950 F.3d 909, 910-11 (6th Cir. 2019); *Cross v. United States*, 892 F.3d 288, 293-94 (7th Cir. 2018); *United States v. Bowen*, 936 F.3d 1091, 1100 (10th Cir. 2019); *In re Hammoud*, 931 F.3d 1032, 1039 (11th Cir. 2019).

18 U.S.C. § 1951(b)(1) (emphases added). Hobbs Act robbery thus fails to qualify under § 924(c)'s force clause for at least five reasons.

First, 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"); *United States v. Chea*, No. 98-cr-40003-2 CW, 2019 WL 5061085, at *8 (N.D. Cal. Oct. 2, 2019) (same).

Second, the Hobbs Act's plain language does not require the use or threats of violent physical force, as defined by *Stokeling*, 139 S. Ct. at 554, when causing fear of future injury to property. "When interpreting a statute, we must give words their 'ordinary or natural' meaning." *Leocal*, 543 U.S. at 9.

Third, "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) (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”).

Fourth, “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.

Fifth, 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”) (emphasis in original), *cert. denied*, 139 S. Ct. 845 (2019).

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

C. 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 Dominguez*, 954 F.3d at 1260; *United States v. Mathis*, 932 F.3d 242, 266 (4th Cir. 2019); *United States v. Jones*, 919 F.3d 1064, 1072 (8th Cir. 2019); *United States v. García-Ortiz*, 904 F.3d 102, 106–09 (1st Cir. 2018); *United States v. Melgar-Cabrera*, 892 F.3d 1053, 1060–66 (10th Cir. 2018); *United States v. Hill*, 890 F.3d 51, 60 (2d Cir. 2016); *United States v. Fox*, 878 F.3d 574, 579 (7th Cir. 2017); *United States v. Gooch*, 850 F.3d 285, 292 (6th Cir. 2017); *United States v. Buck*, 847 F.3d 267, 275 (5th Cir. 2017); *Hill*, 890 F.3d at 60; *In re St. Fleur*, 824 F.3d 1337, 1340–41 (11th Cir. 2016).³

³ The Third Circuit does not apply the categorical approach in this context, but it has held that specific Hobbs Act robbery convictions qualify as crimes of violence under § 924(c)’s physical force clause. *See, e.g., United States v. Robinson*, 844 F.3d 137, 141–44 (3d Cir. 2016).

For example, in declaring Hobbs Act robbery meets the § 924(c) physical force clause’s requirements, the Fourth Circuit noted both the Hobbs Act robbery statute and § 924(c)’s physical force clause use the term “property,” without further definition, and reasoned there was no reason 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 stating that it did “*not* analyze whether the same would be true if the target were ‘intangible economic interests,’ because *Dominguez* fails 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.” 954 F.3d at 1260 (emphasis added).

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. *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 v. Holder*, 569 U.S. 184, 184 (2013).

Circuit model jury instructions further 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 (Jan. 2018)⁴ (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 (2019)⁵ (“The term ‘property’ includes money and other tangible and intangible things of value.”); Tenth Circuit Criminal Pattern Jury Instructions, 2.70 (Feb. 2018)⁶ (“‘Property’ includes money and other tangible and intangible things of value. ‘Fear’ means an apprehension, concern, or anxiety about physical violence or harm or economic loss or harm that is reasonable under the circumstances.”);

⁴ Available at <https://www.ca3.uscourts.gov/model-criminal-jury-table-contents-and-instructions>.

⁵ Available at <http://www.lb5.uscourts.gov/viewer/?/juryinstructions/fifth/crim2019.pdf>.

⁶ Available at <https://www.ca10.uscourts.gov/clerk/downloads/criminal-pattern-jury-instructions>.

Eleventh Circuit, Pattern Jury Instructions (Criminal Cases), O70.3 (Feb. 2020)⁷ (“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.”).

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 (Nov. 2020). Specifically, the Modern Instructions define “property” as “includ[ing] money and other tangible and intangible things of value which are capable of being transferred from one person to another.” *See* 3 Modern Federal Jury Instructions-Criminal, § 50-4 (Nov. 2020). 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 (Nov. 2020) (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 (Nov. 2020).

The vast majority of federal circuits hold that when a statute’s plain language sufficiently establishes overbreadth, the categorical approach does not

⁷ Available at <https://www.ca11.uscourts.gov/sites/default/files/courtdocs/clk/FormCriminalPatternJuryInstructionsCurrentComplete.pdf?revDate=20200227>.

require a “realistic scenario.” *See Zhi Fei Liao v. AG U.S.*, 910 F.3d 714, 723 n.11 (3d Cir. 2018) (collecting circuit cases); *see also United States v. O’Connor*, 874 F.3d 1147, 1154 (10th Cir. 2017) (rejecting government’s argument that defendant was required to “‘demonstrate that the government has or would prosecute’ threats to property as a Hobbs Act robbery” because the defendant “does not have to make that showing” under the categorical approach.); *United States v. Grisel*, 488 F.3d 844, 850 (9th Cir. 2007) (en banc), *abrogated on other grounds by United States v. Stitt*, 139 S. Ct. 399 (2018). Yet, these same Circuits hold Hobbs Act robbery is a § 924(c) crime of violence. This Court’s intervention is necessary to correct the Circuit’s misapplication of the categorical approach.

II. Petitioners raise an issue of exceptional importance this Court has not yet addressed, particularly given § 924(c)’s mandatory minimum sentences.

The question presented is of exceptional important to federal courts and defendants given the graduated mandatory minimum sentences ranging from five years to life that § 924(c) imposes. Petitioners are just eight of the hundreds of defendants currently serving mandatory minimum sentences for § 924(c) convictions. According to the Sentencing Commission’s latest statistics, there are 20,319 individuals (13% of the current federal prison population), serving a § 924(c) sentence. U.S. Sent. Comm’n, *Federal Offenders in Prison* (May 2019);⁸ *see also* Federal Bureau of Prisons, *Inmate Statistics, Offenses* (Jan. 16, 2021)⁹ (stating

⁸ Available at <https://www.ussc.gov/research/quick-facts/federal-offenders-prison-interactive>

⁹ Available at https://www.bop.gov/about/statistics/statistics_inmate_offenses.jsp

29,988 federal inmates are serving prison sentences for weapons offenses, making up 20.3% of the total federal prison population).

While this Court has interpreted the Hobbs Act statute over the years, 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 crime of violence. *See, e.g., McDonnell v. United States*, 136 S. Ct. 2355, 2365, 2367-70 (2016) (interpreting “official act” of Hobbs Act extortion); *Taylor v. United States*, 136 S. Ct. 2074, 2079-82 (2016) (interpreting commerce element of the Hobbs Act); *Sekhar v. United States*, 570 U.S. 729, 730 (2013) (holding that attempting to compel a person to recommend his employer approve an investment is not an attempt to “obtain[] the property of another” under the Hobbs Act). And though the Circuits unanimously interpret the Hobbs Act as necessarily requiring violent force, this interpretation is akin to the uniform misinterpretation of 18 U.S.C. § 922(g), the prohibited person in possession of a firearm statute, which this Court corrected in 2019. *Rehaif v. United States*, 139 S. Ct. 2191, 2196 (2019). The proper interpretation of the Hobbs Act similarly requires this Court’s intervention.

Conclusion

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

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Respectfully submitted,
RENE L. VALLADARES
Federal Public Defender

/s/ Wendi L. Overmyer

Wendi L. Overmyer
Assistant Federal Public Defender
Office of the Federal Public Defender
411 E. Bonneville, Ste. 250
Las Vegas, Nevada 89101
(702) 388-6577
Wendi_Overmyer@fd.org

/s/ Cristen C. Thayer

Cristen C. Thayer
Assistant Federal Public Defender
Office of the Federal Public Defender
411 E. Bonneville, Ste. 250
Las Vegas, Nevada 89101
(702) 388-6577
Cristen_Thayer@fd.org