No. 24-6312

IN THE SUPREME COURT OF THE UNITED STATES

TISHEEM RICH, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

D. JOHN SAUER
Solicitor General
Counsel of Record

MATTHEW R. GALEOTTI
ANN O'CONNELL ADAMS
Attorneys

Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

QUESTION PRESENTED

Whether robbery in violation of the Hobbs Act, 18 U.S.C. 1951(a), qualifies as a "crime of violence" within the meaning of 18 U.S.C. 924(c)(3)(A).

IN THE SUPREME COURT OF THE UNITED STATES

No. 24-6312

TISHEEM RICH, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-5a) is available at 2024 WL 4489599. The opinion of the district court is available at 2021 WL 5903486.

JURISDICTION

The judgment of the court of appeals was entered on October 15, 2024. The petition for a writ of certiorari was filed on January 13, 2024. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a guilty plea in the United States District Court for the Eastern District of New York, petitioner was convicted on one count of Hobbs Act robbery, in violation of 18 U.S.C. 1951(a); and one count of brandishing a firearm during and in relation to a crime of violence, in violation of 18 U.S.C. 924(c)(1)(A)(ii). Judgment 1. The district court sentenced petitioner to 111 months of imprisonment, to be followed by two years of supervised release. Judgment 2-3. The court of appeals affirmed. Pet. App. 1a-5a.

1. Petitioner and three others robbed two 7-Eleven stores in Queens, New York. Presentence Investigation Report (PSR) ¶ 4.

On September 2, 2014, the group entered a 7-Eleven in Flushing wearing hooded sweatshirts and masks. PSR ¶ 5. One brandished a shotgun and demanded that an employee open the cash register. Ibid. The perpetrators then went into the store's office and demanded that a store employee open the safe. Ibid. They stole money from the cash register and took money and a bag from an employee. Ibid.

Two weeks later, the same group entered a different 7-Eleven in Flushing, again wearing hoods and masks. PSR ¶ 6. One of the robbers pushed a customer to the floor at gunpoint and took the customer's identification and phone. Ibid. The group then forced the store clerk to open the cash register and give them money.

Ibid. They also stole lottery tickets and the store owner's purse. Ibid.

The customer who had been pushed to the ground flagged down a driver, who called 911. PSR ¶ 7. The suspects led police on a high-speed chase, crashed into a grocery store, and fled on foot before their car burst into flames. Ibid. The police arrested three of the suspects, but petitioner escaped. Ibid. He was arrested about four years later. PSR ¶ 11 & n.2.

2. A federal grand jury in the Eastern District of New York returned an indictment charging petitioner with two counts of conspiracy to commit Hobbs Act robbery, in violation of 18 U.S.C. 1951(a); two counts of Hobbs Act robbery, in violation of 18 U.S.C. 1951(a); and one count of using and carrying a firearm during and in relation to a crime of violence, in violation of 18 U.S.C. 924(c)(1)(A)(i) and (ii). Indictment 1-3.

Petitioner pleaded guilty to one count of Hobbs Act robbery (based on the second 7-Eleven robbery), in violation of 18 U.S.C. 1951(a); and one count of using a firearm during and in relation to a crime of violence (the Hobbs Act robbery), in violation of 18 U.S.C. 924(c)(1)(A)(ii). Pet. App. 2a. As part of his guilty plea, petitioner agreed not to appeal or collaterally attack his conviction or sentence so long the district court sentenced him to 121 months of imprisonment or less. Ibid.; Plea Agreement ¶ 4. The district court sentenced petitioner to 111 months of

imprisonment, to be followed by two years of supervised release. Judgment 2-3.

2. The court of appeals affirmed. Pet. App. 1a-5a. The court declined to address the government's argument that the appeal should be dismissed based on petitioner's appeal waiver. Id. at 3a. Instead, the court rejected on the merits petitioner's argument that Hobbs Act robbery does not qualify as a crime of violence under Section 924(c)(3)(A) in light of United States v. Taylor, 596 U.S. 845, 851-852 (2022), which invalidated attempted Hobbs Act robbery as a Section 924(c)(3)(A) predicate. Pet. App. 4a. The court observed (ibid.) that it had already decided that issue in United States v. McCoy, 58 F.4th 72 (2d Cir.) (per curiam), cert. denied, 144 S. Ct. 115, and 144 S. Ct. 116 (2023), and more recently in United States v. Barrett, 102 F.4th 60 (2d Cir. 2024), cert. granted limited to Question 1 presented by the petition, 2025 WL 663692 (Mar. 3, 2025) (No. 24-5774).

ARGUMENT

Petitioner renews his contention (Pet. 9-11) that Hobbs Act robbery is not a crime of violence under the definition of that term in 18 U.S.C. 924(c)(3)(A). The court of appeals correctly rejected that argument, and its decision does not conflict with any decision of this Court or another court of appeals. This Court has recently and repeatedly denied certiorari on the question

whether completed Hobbs Act robbery is a crime of violence.[1] Indeed, the Court declined review on that question in Barrett v.

---

[1] See, e.g., Rhodes v. United States, 145 S. Ct. 231 (2024) (No. 23-7679); Boddie v. United States, 144 S. Ct. 1045 (2024) (No. 23-6656); Singletary v. United States, 144 S. Ct. 519 (2023) (No. 23-5942); Gaines v. United States, 144 S. Ct. 297 (2023) (No. 23-5377); Mendez v. United States, 143 S. Ct. 2684 (2023) (No. 22-7638); Wade v. United States, 143 S. Ct. 2649 (2023) (No. 22-7606); Garcia v. United States, 143 S. Ct. 2623 (2023) (No. 22-7527); Knight v. United States, 143 S. Ct. 2478 (2023) (No. 22-7239); Maumau v. United States, 143 S. Ct. 627 (2023) (No. 22-5538); Fierro v. United States, 142 S. Ct. 597 (2021) (No. 21-5457); Felder v. United States, 142 S. Ct. 597 (2021) (No. 21-5461); Lavert v. United States, 142 S. Ct. 578 (2021) (No. 21-5057); Ross v. United States, 142 S. Ct. 493 (2021) (No. 21-5664); Hall v. United States, 142 S. Ct. 492 (2021) (No. 21-5644); Moore v. United States, 142 S. Ct. 252 (2021) (No. 21-5066); Copes v. United States, 142 S. Ct. 247 (2021) (No. 21-5028); Council v. United States, 142 S. Ct. 243 (2021) (No. 21-5013); Fields v. United States, 141 S. Ct. 2828 (2021) (No. 20-7413); Thomas v. United States, 141 S. Ct. 2827 (2021) (No. 20-7382); Walker v. United States, 141 S. Ct. 2823 (2021) (No. 20-7183); Usher v. United States, 141 S. Ct. 1399 (2021) (No. 20-6272); Steward v. United States, 141 S. Ct. 167 (2020) (No. 19-8043); Terry v. United States, 141 S. Ct. 114 (2020) (No. 19-1282); Hamilton v. United States, 140 S. Ct. 2754 (2020) (No. 19-8188); Diaz-Cestary v. United States, 140 S. Ct. 1236 (2020) (No. 19-7334); Walker v. United States, 140 S. Ct. 979 (2020) (No. 19-7072); Tyler v. United States, 140 S. Ct. 819 (2020) (No. 19-6850); Hilario-Bello v. United States, 140 S. Ct. 473 (2019) (No. 19-5172); Nelson v. United States, 140 S. Ct. 469 (2019) (No. 19-5010); Apodaca v. United States, 140 S. Ct. 432 (2019) (No. 19-5956); Young v. United States, 140 S. Ct. 262 (2019) (No. 19-5061); Durham v. United States, 140 S. Ct. 259 (2019) (No. 19-5124); Munoz v. United States, 140 S. Ct. 182 (2019) (No. 18-9725); Lindsay v. United States, 140 S. Ct. 155 (2019) (No. 18-9064); Hill v. United States, 140 S. Ct. 54 (2019) (No. 18-8642); Greer v. United States, 139 S. Ct. 2667 (2019) (No. 18-8292); Rojas v. United States, 139 S. Ct. 1324 (2019) (No. 18-6914); Foster v. United States, 586 U.S. 1077 (2019) (No. 18-5655); Desilien v. United States, 586 U.S. 965 (2018) (No. 17-9377); Ragland v. United States, 584 U.S. 980 (2018) (No. 17-7248); Robinson v. United States, 584 U.S. 980 (2018)

United States, 2025 WL 663692 (Mar. 3, 2025) (No. 24-5774) (granting certiorari limited to Question 1 presented by the petition), in which the petition for a writ of certiorari provided a model for petitioner's own, see Pet. 4. The same course is warranted here. Nor is there any need to hold this case pending the disposition of Delligatti v. United States, 145 S. Ct. 797 (2025), which was recently decided in a manner that confirms the correctness of the decision below. In Delligatti, the Court held that "[t]he knowing or intentional causation of injury or death, whether by act or omission, necessarily involves the use of physical force against another person." Id. at 810. Delligatti thus confirms that the decision below was correct and that further review is unwarranted.

1. a. The courts of appeals have unanimously -- and correctly -- recognized that Hobbs Act robbery is a crime of violence under the definition of Section 924(c)(3)(A).[2] The Hobbs

---

(No. 17-6927); Chandler v. United States, 583 U.S. 1184 (2018) (No. 17-6415); Middleton v. United States, 583 U.S. 1183 (2018) (No. 17-6343); Jackson v. United States, 583 U.S. 1122 (2018) (No. 17-6247); Garcia v. United States, 583 U.S. 1061 (2018) (No. 17-5704).

[2] See, e.g., Diaz-Rodriguez v. United States, No. 22-1109, 2023 WL 5355224, at *1 (1st Cir. Aug. 14, 2023); United States v. Barrett, 102 F.4th 60 (2d Cir. 2025), cert. granted limited to Question 1 presented by the petition, 2025 WL 663692 (Mar. 3, 2025) (No. 24-5774); United States v. Stoney, 62 F.4th 108, 113-114 (3d Cir. 2023); United States v. Ivey, 60 F.4th 99, 116-117 (4th Cir.), cert. denied, 144 S. Ct. 160 (2023); United States v. Hill, 63 F.4th 335, 363 (5th Cir.), cert. denied, 144 S. Ct. 175, 144 S.

Act defines robbery as the "unlawful taking or obtaining of personal property from the person * * * of another, against his will, by means of actual or threatened force." 18 U.S.C. 1951(b)(1). As the court of appeals has observed (Pet. App. 3a-5a), that definition matches Section 924(c)(3)(A)'s definition of a "'crime of violence'" as a federal felony that "has 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); see, e.g., United States v. Hill, 890 F.3d 51, 57 (2d Cir. 2018) (observing that the elements of Hobbs Act robbery "would appear, self-evidently, to satisfy" the definition of a "crime of violence" in Section 924(c)(2)(A)), cert. denied, 586 U.S. 1092 (2019).

The circuits' uniform determination that Hobbs Act robbery categorically requires the use, attempted, use, or threatened use of force -- and that Hobbs Act robbery thus qualifies as a "crime of violence" under Section 924(c)(3)(A) -- is reinforced by this Court's decision in Stokeling v. United States, 586 U.S. 73 (2019). Stokeling identified common-law robbery as the "quintessential"

Ct. 189, 144 S. Ct. 190, and 144 S. Ct. 207 (2023); United States v. Honeysucker, No. 21-2614, 2023 WL 142265, at *3 n.4 (6th Cir. Jan. 10, 2023); United States v. Worthen, 60 F.4th 1066, 1068-1071 (7th Cir.), cert. denied, 144 S. Ct. 91 (2023); United States v. Moore, No. 22-1899, 2022 WL 4361998, at *1 (8th Cir. Sept. 21, 2022); United States v. Eckford, 77 F.4th 1228, 1232-1236 (9th Cir.), cert. denied, 144 S. Ct. 521 (2023); United States v. Baker, 49 F.4th 1348, 1360 (10th Cir. 2022); United States v. Wiley, 78 F.4th 1355, 1364-1365 (11th Cir. 2023).

example of a crime that requires the use or threatened used of physical force. Id. at 80 (discussing definition of "violent felony" in 18 U.S.C. 924(e)(2)(B)(i)). The elements of Hobbs Act robbery track the elements of common-law robbery in relevant respects. See id. at 77-78 (observing that common-law robbery was an "unlawful taking" by "force or violence," meaning force sufficient "'to overcome the resistance encountered'") (citation omitted).

Petitioner does not address Stokeling. Instead, he invokes (Pet. 4-11) this Court's decision in United States v. Taylor, 596 U.S. 845 (2022), which held that attempted Hobbs Act robbery is not a crime of violence under the definition in Section 924(c)(3)(A). Id. at 851-852. But as this Court explained, attempted Hobbs Act robbery is not a crime of violence because a person can commit that offense by taking a substantial step toward threatening the use of force (i.e., an attempt to threaten), without actually using, or attempting to use, or threatening to use force. See ibid. Taylor did not cast doubt on the unanimous view of every court of appeals that the distinct offense of completed Hobbs Act robbery constitutes a crime of violence.

Petitioner further errs in contending (Pet. 10) that Hobbs Act robbery cannot qualify as a crime of violence because it could hypothetically be committed by threatening harm to oneself, if the perpetrator is also the victim's relative or in his presence. The

Hobbs Act defines "'robbery'" as the unlawful taking or obtaining of property from "another" "against his will" by using actual or threatened force to that person or "his" property, or to 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). Those provisions are most naturally read to refer to relatives and people in the company of the victim that are not the robber himself.

Similarly mistaken is petitioner's assertion (Pet. 10-11) that Hobbs Act robbery cannot qualify as a crime of violence because it can be committed by threatening nonphysical injury to property. The Hobbs Act would classify such conduct as the separate crime of "extortion," rather than "robbery." 18 U.S.C. 1951(b). Robbery requires that the defendant took personal property from the defendant "against his will," 18 U.S.C. 1951(b)(1); extortion, in contrast, prohibits obtaining another person's property "with his consent," where that consent is "induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right," 18 U.S.C. 1951(b)(2). See Ocasio v. United States, 578 U.S. 282, 297 (2016). At all events, petitioner identifies no decision that has construed Section 1951(b)(1) in the manner he suggests, and it is implausible that Congress would have intended to exclude Hobbs Act robbery from Section 924(c)(3) in light of such unrealistic hypotheticals.

There has never been a circuit conflict on whether completed Hobbs Act robbery is a crime of violence, and there is consensus even after Taylor that Hobbs Act robbery is a Section 924(c)(3)(A) crime of violence. Barrett, 102 F.4th at 82; see p. 6 & n.2, supra. This Court, moreover, has repeatedly denied certiorari on the question whether Hobbs Act robbery is a crime of violence both before and after Taylor. See p. 5 & n.1, supra. It should follow the same course here.

b. Furthermore, this case would be a poor vehicle to consider the question presented because petitioner's appeal should have been dismissed pursuant to the appeal waiver in his plea agreement, and because petitioner's claim is reviewable only for plain error.

In exchange for valuable consideration, including the dismissal of other charges, petitioner agreed "not to file an appeal or otherwise challenge * * * the conviction or sentence in the event that the Court imposes a term of imprisonment of 121 months or below," and he specifically waived the right to raise on appeal "any argument that * * * the admitted conduct does not fall within the scope of the statutes." Plea Agreement ¶ 4. This Court has repeatedly recognized that a defendant may validly waive constitutional and statutory rights as part of a plea agreement so long as his waiver is knowing and voluntary. See Garza v. Idaho, 586 U.S. 232, 238-239 (2019) (waiver of right to appeal); Ricketts

v. Adamson, 483 U.S. 1, 9-10 (1987) (waiver of right to raise double jeopardy defense); Town of Newton v. Rumery, 480 U.S. 386, 389, 398 (1987) (waiver of right to file constitutional tort action). Petitioner identifies no reason why this Court should consider his claim here, notwithstanding that petitioner knowingly and voluntarily waived that claim as a condition of his plea agreement.

Regardless, as petitioner previously acknowledged, Pet. C.A. Br. 17, his claim is subject to plain-error review, see Fed. R. Crim. P. 52(b), because he did not raise it in district court. Under the plain-error rubric, petitioner bears the burden to establish (1) "error" that (2) was "clear or obvious," (3) "affected the defendant's substantial rights," and (4) "seriously affect[ed] the fairness, integrity or public reputation of judicial proceedings." Rosales-Mireles v. United States, 585 U.S. 129, 134-135 (2018) (citation omitted); see Puckett v. United States, 556 U.S. 129, 135 (2009). "Meeting all four prongs is difficult, 'as it should be.'" Puckett, 556 U.S. at 135 (quoting United States v. Dominguez Benitez, 542 U.S. 74, 83 n.9 (2004)). Petitioner fails to show that his claim satisfies those elements.

2. Finally, petitioner's suggestion (Pet. 12-13) to hold this case pending the disposition of Delligatti has been obviated by the decision in that case -- which is adverse to his position here. In Delligatti, the Court addressed a defendant's argument

that New York attempted murder, N.Y. Penal Law § 125.25(1), does not qualify as a crime of violence under Section 924(c)(3)(A) on the theory that the crime can be committed by an act of omission and therefore does not have as an element the use, attempted use, or threatened use of physical force against the person or property of another. 145 S. Ct. at 804. The Court rejected that argument and held that "[t]he knowing or intentional causation of injury or death, whether by act or omission, necessarily involves the use of physical force against another person" within the meaning of the elements clause of Section 924(c). Id. at 810. That holding forecloses the similar theory petitioner asserts here.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

D. JOHN SAUER
Solicitor General

MATTHEW R. GALEOTTI
ANN O'CONNELL ADAMS
Attorneys

APRIL 2025