

No. 26-____

In the
Supreme Court of the United States

Ramon Aponte,

Petitioner,

v.

United States of America,

Respondent.

On Petition for a Writ of Certiorari to
The United States Court of Appeals
For the Second Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The “question left open after” this Court’s ruling in *United States v. Taylor*, 596 U.S. 845 (2022), is whether “completed Hobbs Act robbery qualifies as a crime of violence under [18 U.S.C.] § 924(c)(3)(A).” *United States v. Stoney*, 62 F.4th 108, 113 (3d Cir. 2023). Petitioner here briefed two reasons why the answer is no. Neither the District Court nor Court of Appeals rejected either reason. As it had to, the District Court denied relief under 28 U.S.C. § 2255 pursuant to circuit law. Yet both the District Court and Court of Appeals then denied Petitioner a certificate of appealability (“COA”) despite not disputing that it’s “debatable,” *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003), whether Hobbs Act robbery is a § 924(c) “crime of violence.”

The question presented is:

Whether the Court should decide the “question left open after *Taylor*,” *Stoney*, 62 F.4th at 113, or grant, vacate and remand given the erroneous denial of a COA on this undisputedly “debatable” issue. *Miller-El*, 537 U.S. at 336.

PARTIES

The Petitioner is Ramon Aponte.

The Respondent is the United States of America.

PROCEEDINGS

Aponte v. United States, 2d Cir. 23-6694, Order entered June 25, 2026.

Aponte v. United States, S.D.N.Y. 16-cv-3511, Order entered Feb. 17, 2026.

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ORDERS BELOW

The order of the United States Court of Appeals for the Second Circuit is unreported and appears at Petitioner’s Appendix (“Pet. App.”) 1a. The order of the United States District Court for the Southern District of New York is unreported and appears at 2026 WL 444646.

JURISDICTION

The District Court had jurisdiction per 28 U.S.C. § 2255; the Circuit did per § 1291 (its order was entered on June 25, 2026); and this Court does per § 1254(1).

RELEVANT PROVISIONS

“No person shall be . . . deprived of life, liberty, or property, without due process of law.” U.S. Const., Amend. V.

18 U.S.C. § 924(c)(1)(A) is violated if someone, “during and in relation to any crime of violence . . . , uses or carries a firearm, or [], in furtherance of [] such crime, possesses a firearm.”

A “‘crime of violence’ means an offense that is a felony and . . . has as an element the use, attempted use, or threatened use of physical force against the person or property of another.” 18 U.S.C. § 924(c)(3)(A).

Hobbs Act robbery is “the unlawful taking or obtaining of personal property from the person or in the presence of another, against his will, by means of actual or threatened force, or violence, or fear of injury, immediate or future, to his person or property, or property in his custody or possession, or the person or property of a relative or member of his family or of anyone in his company at the time of the taking or obtaining.” 18 U.S.C. § 1951(b)(1).

INTRODUCTION

“[A]ttempted Hobbs Act robbery [does not] qualify as a ‘crime of violence.’” *Taylor*, 596 U.S. at 848. Neither does completed robbery. Petitioner provided two reasons – detailed below and grounded in the text and caselaw of the Hobbs Act – why robbery 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). He also cited rulings accepting his arguments. And the District Court did not find fault with either of Petitioner’s points. Rather, it denied his § 2255 motion pursuant to a Second Circuit decision (which also didn’t reject Petitioner’s arguments) that completed Hobbs Act robbery is a § 924(c) predicate.

The § 2255 denial was proper: a lower court may not flout a higher one’s law. Yet that’s just what the lower courts did here by refusing to grant Petitioner a COA.

“At the COA stage,” this Court has held, “the only question is whether the applicant has shown that ‘jurists of reason *could* disagree with the district court.’” *Buck v. Davis*, 580 U.S. 100, 115 (2017) (emphasis added; quoting *Miller-El*, 537 U.S. at 327). Petitioner did more: he showed jurists of reason *have* disagreed with the district court. Because the question here is open in this Court and “debatable amongst jurists of reason,” a “COA should have issued.” *Miller-El*, 537 U.S. at 341.

That alone is enough to grant, vacate and remand. But this Court should exercise its discretion – as it has in other COA cases involving weighty matters – to answer this highly consequential question, which the circuits have gotten wrong: completed Hobbs Act robbery is not a § 924(c) “crime of violence.”

STATEMENT OF THE CASE

1. Petitioner Ramon Aponte pleaded guilty in 2003 to two § 924(c) counts of gun use during a crime of violence and one count of violating 21 U.S.C. § 843(b) by using a cell phone in furtherance of a drug conspiracy. *See Aponte v. United States*, 2023 WL 3600848, at *1-*2 (S.D.N.Y. 2023). In 2003, any second § 924(c) conviction – including a second in one case – mandated a minimum prison term of 25 years, consecutive to any other sentence. And the first § 924(c) count Aponte pleaded to was for brandishing a gun, which meant in 2003 (and still today) a minimum of 7 years. Thus, Aponte’s minimum under § 924(c) was 32 years, consecutive to the 4-year term the District Court imposed for the § 843(b) count. The total sentence was therefore 36 years (432 months) in prison. *See id.* at *2.

2. In 2015, this Court held part of the “violent felony” definition at 18 U.S.C. § 924(e)(2)(B)(ii) is “unconstitutionally vague.” *Johnson v. United States*, 576 U.S. 591, 597 (2015). It then held the “crime of violence” definition at § 924(c)(3)(B) is “unconstitutionally vague” too. *United States v. Davis*, 588 U.S. 445, 470 (2019).

As such, a “crime of violence” is limited to 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.” § 924(c)(3)(A).

Anticipating *Davis*, in 2016 Aponte filed a motion under 28 U.S.C. § 2255 challenging his § 924(c) convictions on the ground that, without the unconstitutionally vague § 924(c)(3)(B), they lacked a “crime of violence” predicate. The District Court denied that motion in 2021. It found “Aponte’s § 924(c) charges

were predicated on conspiracy to commit Hobbs Act robbery and attempted Hobbs Act robbery.” *Aponte v. United States*, 2021 WL 3475594, at *1 (S.D.N.Y. 2021). Agreeing that Hobbs Act conspiracy is not § 924(c) predicate given *Davis*, the court applied then-extant circuit law, which held “attempted Hobbs Act robbery [i]s a ‘crime of violence.’” *Id.* at *2.

Aponte appealed and, during the pendency of his appeal, this Court held “attempted Hobbs Act robbery [does not] qualify as a ‘crime of violence.’” *Taylor*, 596 U.S. at 848.

Aponte’s case thus returned to the District Court, which in 2023 again denied his § 2255 motion. This time, the court found his § 924(c) convictions were based on completed robberies, not conspiracies or attempts. *See Aponte*, 2023 WL 3600848, at *7-*9. And, per Second Circuit law, “completed Hobbs Act robberies are categorically crimes of violence.” *Id.* at *5 (quoting *United States v. McCoy*, 58 F.4th 72, 74 (2d Cir. 2023)).

Aponte moved for the COA needed to appeal the denial of his § 2255 motion. He detailed the two reasons, discussed below, why Hobbs Act robbery is not a “crime of violence,” citing rulings in which judges have agreed or were inclined to but were precluded by circuit precedent.

The government did not file a response to Aponte’s COA motion.

Without requesting a response, the District Court denied the motion. It did not reject Aponte’s arguments for why Hobbs Act robbery is not a § 924(c) predicate; nor did it dispute that his claim is “debatable amongst jurists of reason.” *Miller-El*,

537 U.S. at 336. Instead, noting that this Court has yet to “grant certiorari on the question,” the judge denied a COA because the “Second Circuit has clearly held that completed Hobbs Act robberies . . . remain crimes of violence.” *Aponte v. United States*, 2026 WL 444646, at *1 (S.D.N.Y. 2026) (emphasis in original).

3. “As that is not a valid basis for denying Aponte a COA,” he moved the Circuit for one. 2d Cir. 23-6694, Docket Entry 40 at 6 of 21. He again detailed the reasons why Hobbs Act robbery is not a § 924(c) predicate and the judges who have agreed with his arguments. *See id.* at 8-12 of 21. “Aponte’s claim that Hobbs Act robbery is not a § 924(c) predicate is clearly ‘debatable amongst jurists of reason.’ *Miller-El*, 537 U.S. at 336.” *Id.* at 12 of 21.

Once again, the government did not file a response to Aponte’s COA motion. And once again, the court did not request one.

The Circuit issued a boilerplate denial that didn’t reject Aponte’s arguments or dispute that the question here is debatable. *See* Pet. App. 1a.¹

¹ The June 25, 2026, order said the COA “denial is without prejudice to the filing of a petition for rehearing en banc.” Pet. App. 1a. Yet when Aponte filed one on August 4, it was rejected. The reason given was that the mandate had issued on July 30. *See* 2d Cir. 23-6694, Docket Entries 46, 48. But it issued in error: Aponte had 45 days from the June 25 denial of his COA motion to seek rehearing en banc, making the deadline August 9, *see* Fed. R. App. P. 40(d)(1)(A); 2d Cir. L. R. 40.2, and he timely filed his petition on August 4. *See* 2d Cir. 23-6694, Docket Entry 47.

Aponte therefore moved on August 6 to recall the mandate so his timely filed en banc petition would be accepted. *See id.*, Docket Entry 49.

As of the filing of this certiorari petition on September 21, the Circuit has taken no action on Aponte’s recall motion.

REASONS FOR GRANTING THE PETITION

I. Hobbs Act Robbery is Not a § 924(c) “Crime of Violence”

Determining if an offense is a § 924(c) predicate is a “straightforward job: Look at the elements of the [] crime and ask whether they require the government to prove,” *Taylor*, 596 U.S. at 860, the “use, attempted use, or threatened use of physical force against the person or property of another.” § 924(c)(3)(A).

When this Court decided in *Taylor* that attempted Hobbs Act robbery requires no such proof, it reversed all but one of the circuits that had weighed in. *See* 596 U.S. at 850. The odds were thus long for Taylor, and so too for Aponte: every circuit says completed Hobbs Act robbery is a § 924(c) “crime of violence.”²

The circuits are wrong.

A. Robbery Can be Committed by Threatening Self-Harm

The “Hobbs Act is unmistakably broad,” *Taylor v. United States*, 579 U.S. 301, 305 (2016), and “Congress intended to make criminal all conduct within the reach of the statutory language.” *United States v. Culbert*, 435 U.S. 371, 380 (1978). Robbery is committed when one person takes another’s property “by means of . . . threatened force” to the victim’s “relative or member of his family.” § 1951(b)(1). So,

² *See Diaz-Rodriguez v. United States*, 2023 WL 5355224 (1st Cir. 2023); *United States v. McCoy*, 58 F.4th 72 (2d Cir. 2023); *United States v. Stoney*, 62 F.4th 108 (3d Cir. 2023); *United States v. Ivey*, 60 F.4th 99 (4th Cir. 2023); *United States v. Hill*, 63 F.4th 335 (5th Cir. 2023); *United States v. Honeysucker*, 2023 WL 142265 (6th Cir. 2023); *United States v. Worthen*, 60 F.4th 1066 (7th Cir. 2023); *United States v. Moore*, 2022 WL 4361998 (8th Cir. 2022); *United States v. Eckford*, 77 F.4th 1228 (9th Cir. 2023); *United States v. Baker*, 49 F.4th 1348 (10th Cir. 2022); *United States v. Wiley*, 78 F.4th 1355 (11th Cir. 2023); *United States v. Onyewu*, ___ F.4th ___, 2026 WL 2452938 (D.C. Cir. Aug. 21, 2026).

when a robber is himself the victim's relative and takes by threatening self-harm, that is Hobbs Act robbery.

"A hypothetical helps illustrate the point." *Taylor*, 596 U.S. at 851. Picture a woman's brother confronting her as she leaves her pizzeria with the day's proceeds. He puts a gun to his own head, threatening to fire unless she hands the cash over. She complies. That is robbery: the brother takes his sister's money "by means of . . . threatened force" to her "relative or member of h[er] family," § 1951(b)(1)— himself.

Such conduct is plainly "within the reach of the statutory language," *Culbert*, 435 U.S. at 380, but it entails no actual, attempted or threatened force "against the person or property of another." § 924(c)(3)(A). Convicting the brother of robbery therefore "does not require proof of *any* of the elements § 924(c)(3)(A) demands." *Taylor*, 596 U.S. at 859 (emphasis in original).

As with robbery, stalking can be committed by "placing the victim in fear of the death of an immediate *family member*," so a "perpetrator who fits into" that "categor[y] could satisfy the elements of the [] offense[] by threatening self-harm." *United States v. Mangione*, 818 F. Supp. 3d 509, 537 (S.D.N.Y. 2026) (emphasis added). But a "threat to inflict self-harm [] cannot satisfy the requirement for use of force 'against the person or property of another.'" *Id.* at 536 (emphasis in original; quoting § 924(c)(3)(A)). Accordingly, the judge in that high-profile case dismissed § 924 charges, including a capital count, explaining that she was "duty-bound to follow binding Supreme Court precedent." *Id.* at 516.

Notably, and tellingly, the government did not appeal.

B. Robbery Can be Committed by Threatening Nonphysical Harm

Hobbs Act robbery is also committed when a person takes by putting the victim in “fear of injury, immediate or future, to his . . . property.” § 1951(b)(1).

“The definition of ‘property’ under the Hobbs Act is admittedly expansive” and includes “any valuable right considered as a source or element of wealth,” such as “the conduct of business.” *Town of West Hartford v. Operation Rescue*, 915 F.2d 92, 101 (2d Cir. 1990) (citations omitted). And “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) (citation omitted). As the model jury instructions on Hobbs Act robbery provide, fear of injury to property includes “anxiety, concern, or worry over . . . business loss.” Sand, *Modern Federal Jury Instructions*, Instr. 50-6.

Picture the pizzeria owner again, but this time her brother takes the cash by threatening to flood the internet with claims her pizza made him sick. He therefore robs her, not through “physical force,” § 924(c)(3)(A), but through “fear of injury,” in the “future, to h[er] . . . property,” § 1951(b)(1)—loss of customers. *See also United States v. Chappelle*, 41 F.4th 102, 109 (2d Cir. 2022) (The “Hobbs Act robbery definition makes clear that it will apply to force or threats against property, even in the absence of ‘proximity between the person from whom the taking occurs and the threat to property.’”) (emphasis added; citation omitted).

As with the judge in *Mangione* who endorsed the self-harm argument, judges have also endorsed this argument. In *United States v. Chea*, 2019 WL 5061085

(N.D. Cal. 2019), the court 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. “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.

Likewise, the defendant in *United States v. Louis*, S.D. Fla. 21-20252, explained that Hobbs Act robbery can be committed by “causing a victim to simply ‘fear’ a financial loss— but without causing the victim to fear *any* physical violence.” *Id.*, Docket Entry 144 at 11 (emphasis in original). The judge agreed, saying she would “decline to sentence Mr. Louis on the 924(c) counts.” *Id.*, Entry 235 at 7.

Likewise, the judge in *Haynes v. United States*, 237 F. Supp. 3d 816 (C.D. Ill. 2017), noted “Hobbs Act robbery can be accomplished by causing a victim to have ‘fear of injury’ to property, and ‘damage’ to property can be accomplished without any force whatsoever.” *Id.* at 826. The “term ‘fear of injury’ seems broad enough to encompass instances of the loss of economic value rather than only a physical destruction.” *Id.* “Nevertheless,” the Seventh Circuit had “held that a Hobbs Act robbery qualifies as a ‘crime of violence.’” *Id.* at 827. But the judge granted a COA, as the question is “ripe for debate amongst reasonable jurists.” *Id.* at 831.

The Chief Judge of the Eastern District of New York was similarly “bound by controlling Second Circuit precedent” to deem Hobbs Act robbery a § 924(c) predicate. *United States v. Tejada*, 2024 WL 3302491, at *4 (E.D.N.Y. 2024). Yet she also granted a COA, finding the defendant “made a ‘substantial showing’ that

Hobbs Act robbery is not necessarily a categorical crime of violence.” *Id.* at *6. A “threat to devalue some intangible economic interest *could* result in (1) the taking of property from another . . . (2) against his will, and (3) by means of fear of injury . . . to his . . . [intangible] property.” *Id.* (emphasis and bracketed text in opinion; citations and internal punctuation omitted). “It thus seems possible to commit Hobbs Act robbery without simultaneously committing a ‘crime of violence.’” *Id.*

II. The Circuits are Wrong and Won’t Budge

Because Hobbs Act robbery can be committed by threatening self-harm or nonphysical injury to property – neither of which requires the government to prove any “use, attempted use, or threatened use of physical force against the person or property of another,” § 924(c)(3)(A) – the crime is not a § 924(c) predicate.

Nonetheless, scores of people have been (and continue to be) sentenced to mandatory and consecutive terms of imprisonment – ranging from 5 years to life, *see* § 924(c)(1) – on the mistaken view that this offense is a “crime of violence.”

The “unnecessary deprivation of liberty particularly undermines the fairness, integrity, or public reputation of judicial proceedings.” *Rosales-Mireles v. United States*, 585 U.S. 129, 140 (2018). And “what reasonable citizen wouldn’t bear a rightly diminished view of the judicial process and its integrity if courts refused to correct obvious errors” that “require individuals to linger longer in federal prison than the law demands?” *Id.* at 141 (quoting *United States v. Sabillon-Umana*, 772 F.3d 1328, 1333 (10th Cir. 2014) (Gorsuch, J.)).

As in other COA cases posing weighty questions, this Court should decide the merits of Petitioner’s claim. *See, e.g., Buck*, 580 U.S. at 128 (holding capital litigant

“demonstrated both ineffective assistance . . . and an entitlement to relief under Rule 60(b)(6),” although Circuit “den[ied] Buck the COA required to pursue these claims”); *Welch v. United States*, 578 U.S. 120, 127 (2016) (holding *Johnson’s* invalidation of § 924(e)(2)(B)(ii) “retroactive,” although “decision under review here is the single-judge order in which the Court of Appeals denied Welch a certificate of appealability”); *Jimenez v. Quarterman*, 555 U.S. 113, 121 (2009) (“revers[ing]” lower courts’ erroneous “reading of [a] statute” on timeliness of habeas petitions, although “Court of Appeals denied a certificate of appealability”); *Penry v. Johnson*, 532 U.S. 782, 792 (2001) (holding capital jury instructions inadequate, although “Circuit denied a certificate of appealability”).

There’s no circuit split here, but that’s reason to *grant* review: the circuits have all weighed in with the wrong answer – an answer that mandates years of unlawful prison time for countless people – so it falls to this Court to correctly “settle[]” this immensely “important question of federal law.” Sup. Ct. R. 10(c).

As far as Petitioner can tell, no circuit has rejected (or been willing to hear) his argument that Hobbs Act robbery isn’t a § 924(c) predicate given that it can be committed by threatening self-harm. Aponte presented this claim and cited the *Mangione* ruling endorsing its rationale, yet the District Court and Circuit each refused even to address it— even though “courts are always obligated to consider nonfrivolous arguments presented by the parties.” *Concepcion v. United States*, 597 U.S. 481, 487 (2022). As shown, the self-harm argument is based on the plain text of the Hobbs Act, and it’s “well established that, when the statutory language is

plain, we must enforce it according to its terms.” *Jimenez*, 555 U.S. at 118. The Act covers all robberies committed by threatening to harm the victim’s “relative or member of his family.” § 1951(b)(1). There is no exception for robberies committed by relatives of the victim who take by threatening self-harm. And reading such an exception into the Act would defy Congress’s “inten[t] to make criminal all conduct within the reach of the statutory language.” *Culbert*, 435 U.S. at 380. The Act’s “purpose” is “to prohibit robbery and extortion perpetrated by anyone.” *Id.* at 377.

Further, circuits that have rejected the argument about threatening nonphysical injury to property – recall the brother’s threat to defame his sister’s business – have done so because that “sounds to us like Hobbs Act *extortion*” rather than robbery. *Eckford*, 77 F.4th at 1235 (quoting *United States v. García-Ortiz*, 904 F.3d 102, 107 (1st Cir. 2018); emphasis in *García-Ortiz*). Yet nothing in the Act says those offenses are mutually exclusive. They’re defined in separate subsections, but “overlap between [] two subsections” – even “substantial’ overlap” – “is not uncommon in criminal statutes.” *Shaw v. United States*, 580 U.S. 63, 71 (2016) (citation omitted). Even if the brother’s threat “describes classic extortion . . . , such conduct also satisfies the basic elements of Hobbs Act robbery,” *United States v. O’Connor*, 874 F.3d 1147, 1153 (10th Cir. 2017), as he takes his sister’s money by putting her in “fear of injury,” in the “future, to h[er] . . . property.” § 1951(b)(1). “Hobbs Act robbery reaches conduct directed at ‘property’ because the statute specifically says so. We cannot ignore the statutory text and construct a narrower statute than the plain language supports.” *O’Connor*, 874 F.3d at 1154.

Though the question here is undisputedly “debatable,” meaning a COA “should have issued,” *Miller-El*, 537 U.S. at 341, remanding with instructions to grant one would likely just kick the can down the road. Aponte’s appeal to a 3-judge panel would be denied given Second Circuit law that “Hobbs Act robberies are categorically crimes of violence.” *McCoy*, 58 F.4th at 74. And though Aponte’s arguments weren’t made in *McCoy*, the Circuit has refused to consider them, recently denying en banc review in a case in which they were presented. *See United States v. Thompson*, 2d Cir. 23-6627, Docket Entries 108, 110.³

There’s also no sign the other circuits will ever revisit this issue: “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.” *United States v. Crocker*, 2023 WL 4247255, at *3 (10th Cir. 2023) (citation omitted). *See also, e.g., Worthen*, 60 F.4th at 1068 (“We have determined many times that” Hobbs Act robbery “requires using or threatening force’ against the person or property of another.”) (citations omitted); *Hill*, 63 F.4th at 363 (“Our precedents establish that Hobbs Act robbery is a crime of violence.”); *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

³ Thompson has sought a writ of certiorari, but not on the issue here. His question presented is “whether the Second Circuit Court of Appeals’s rule (joined by other Courts of Appeals) that a subsequent panel must follow the precedent of a prior panel’s decision on the same issue, *even when the arguments made before the second panel are different*, violates the defendant’s constitutional rights to due process and to the effective assistance of counsel, and the right to appellate review of his claim of error.” Sup. Ct. 25-7620, Pet. at i (emphasis in original).

by binding precedent.”); *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 . . . is foreclosed by this court’s precedent.”); *Wiley*, 78 F.4th at 1363-64 (“Hobbs Act robbery itself qualifies as a crime of violence under § 924(c),” and the contrary “argument is foreclosed by our precedent.”).

In sum, remanding to grant Aponte a COA would almost certainly result in his filing a petition identical to this one next Term. Obviously, “a writ of certiorari is not a matter of right.” Sup. Ct. R. 10. Just as obviously, however, and as the courts below never disputed (let alone refuted), Aponte’s arguments have merit. The Court should decide this exceptionally “important question.” Sup. Ct. R. 10(c).

III. Undisputedly, this Question is Debatable

The Circuit did not deny that the question here, “left open after *Taylor*,” *Stoney*, 62 F.4th at 113, is “debatable amongst jurists of reason.” *Miller-El*, 537 U.S. at 341. As detailed, it’s not simply that such jurists “*could* disagree” about whether Hobbs Act robbery is a § 924(c) predicate. *Buck*, 580 U.S. at 115 (emphasis added; quoting *Miller-El*, 537 U.S. at 327). They *do* disagree. Consequently, a “COA should have issued.” *Miller-El*, 537 U.S. at 341.

If the Court declines to decide this question itself, then, it should grant Aponte’s petition, vacate the Circuit’s order denying him a COA and remand with instructions to issue the COA.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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