No._____

IN THE
SUPREME COURT OF THE UNITED STATES

_____

JAMES KELLY,
Petitioner

Vs.

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 WRIT OF CERTIORARI

_____

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QUESTION PRESENTED

Whether Hobbs Act robbery qualifies as a "crime of violence" under 18 U.S.C. 924(c)(3)(A), a question left open after *United States v. Taylor*, 596 U.S. 845 (2022), which held that attempted Hobbs Act robbery is not a "crime of violence."

PARTIES TO THE PROCEEDINGS AND RULE 29.6 STATEMENT

Petitioner is James Kelly, the defendant-appellant in the proceeding below. Respondent is the United States of America, the plaintiff-appellee below.

Pursuant to Supreme Court Rule 29.6, petitioner states that he is a natural person and not a corporation. There are not publicly held corporations involved in this proceeding. No corporate disclosure statement is therefore required.

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PETITION FOR WRIT OF CERTIORARI

Petitioner James Kelly respectfully prays for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit.

OPINION BELOW

On August 13, 2026, a three-judge panel for the United States Court of Appeals for the Second Circuit issued a summary order affirming the district court's judgment. *United States v. James Kelly*, No. 25-495-cr, 2026 WL 2342605 (Aug. 13, 2026). The order is attached as Appendix A.

JURISDICTION

The District Court had jurisdiction under 18 U.S.C. § 3231; the Second Circuit did under 28 U.S.C. § 1291; and this Court does under § 1254(1). This petition is timely filed within 90 days of the Second Circuit's summary order. *See* Sup. Ct. R. 13(1).

RELEVANT PROVISIONS

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

This Court in *United States v. Taylor*, 596 U.S. 845, 851 (2022), held that *attempted* Hobbs Act robbery is not a predicate crime of violence under 18 U.S.C. § 924(c)(3)(A). But *Taylor* "left open" the question whether "a *completed* Hobbs Act robbery qualifies as a crime of violence under § 924(c)(3)(A)." *United States v. Stoney*, 62 F.4th 108, 113 (3d Cir. 2023) (emphasis added) (citing *Taylor*, 596 U.S. at 851 ("Whatever one might say about *completed* Hobbs Act robbery, *attempted* Hobbs Act robbery does not satisfy the elements clause.") (emphasis in original)). *Taylor* resolved a circuit split regarding attempted Hobbs Act robbery, noting that the answer can mean "years or decades of further imprisonment." *Taylor*, 596 U.S. at 848. Likewise, treating substantive Hobbs Act robbery as a § 924(c) "crime of violence" can add years or decades; for Petitioner it added an extra seven years behind bars.

Taylor clarified that determining whether a crime is a § 924(c) predicate is a "straightforward job: Look at the elements…." 596 U.S. at 860. The elements of Hobbs Act robbery are such that it can be committed by threatening (1) harm to

oneself, or (2) nonphysical injury to property, neither of which entails "the use, attempted use, or threatened use of physical force against the person or property of another." § 924(c)(3)(A). The Second Circuit has acknowledged that it "never considered" these points. *United States v. Barrett*, 102 F.4th 60, 82 (2d Cir. 2024), *rev'd in part on other grounds*, *Barrett v. United States*, 607 U.S. 128 (2026). The Court should address and settle the issue.

STATEMENT OF THE CASE

Petitioner James Kelly was convicted after a jury trial of two counts of Hobbs Act robbery under 18 U.S.C. § 1951 arising from the robberies of two convenience stores in the Bronx, New York. He was also convicted under 18 U.S.C. § 924(c) of brandishing a firearm during a crime of violence. The second Hobbs Act robbery was alleged as the predicate crime of violence for the § 924(c) count. Defense counsel preserved for review an objection to the sufficiency of the evidence on all counts through a motion under Rule 29 of the Federal Rules of Criminal Procedure. *See Barrett*, 102 F.4th at 71 ("[D]efendant need not specify the ground of a Rule 29 motion in order to preserve a sufficiency claim for appeal.").

The district court sentenced Mr. Kelly to concurrent prison terms of 76 months on the two Hobbs Act robberies, and a consecutive mandatory minimum term of 84 months on the § 924(c) count for brandishing a firearm during the second Hobbs Act robbery, for a total prison sentence of 160 months.

Mr. Kelly appealed his conviction, raising two evidentiary trial issues and two sentencing issues. He also argued that the district court erred in failing to

dismiss the § 924(c) count because substantive Hobbs Act robbery does not qualify as a "crime of violence" under § 924(c)(3)(A), and thus the government did not prove an essential element of the offense. Mr. Kelly set out two reasons why the elements of Hobbs Act robbery do not require what § 924(c)(3)(A) demands and also provided hypotheticals to illustrate the point. *See* 2d Cir. 25-495, Docket Entry 28 at 34.

In an unpublished summary order, the Second circuit affirmed Mr. Kelly's conviction and sentence. The Circuit did not directly address the § 924(c) argument but instead stated it had "considered Kelly's remaining arguments, which we conclude are without merit." Pet. App. 11. Mr. Kelly did not seek *en banc* review.

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 ruled on the issue. *See* 596 U.S. at 850. The chances were thus slim for Taylor, and so too for Mr. Kelly. Every circuit says substantive Hobbs Act robbery is a § 924(c) "crime of violence."[1]

[1] *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

The circuits are wrong for the following reasons:

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, 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

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(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*, 188 F.4th 471, 487 (D.C. Cir. 2026).

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 revenue. *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*., Docket 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 certificate of appealability, 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 certificate of appealability, 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*.

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 certificate of appealability, 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 will not correct themselves

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.)).

There is no circuit split here, but that is a 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 is not a § 924(c) predicate given that it can be committed by threatening self-harm. As shown, the self-harm argument is based on the plain text of the Hobbs Act, and it is "well established that, when the statutory language is plain, we must enforce it according to its terms." *Jimenez v. Quarterman*, 555 U.S. 113, 118 (2009). 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.

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 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.").

III. This case is an ideal vehicle for answering the question.

The § 924(c) issue here was preserved in the district court through a Rule 29 motion and raised on appeal. Mr. Kelly's prison sentence was more than doubled by the consecutive sentence imposed on the § 924(c) count – he was sentenced to 76 months in prison concurrent for each of the two Hobbs Act robberies and a mandatory consecutive sentence of 84 months for the § 924(c) count, for a total prison sentence of 160 months. This case is an ideal vehicle for deciding the lawfulness of this mandatory additional punishment.

CONCLUSION

For the foregoing reasons, this Court should grant the petition for writ of certiorari.

Respectfully submitted,



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