No. 22-1190

# In the Supreme Court of the United States

LAVELLE HATLEY, PETITIONER

*v.*

UNITED STATES OF AMERICA

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

**BRIEF FOR THE UNITED STATES IN OPPOSITION**

ELIZABETH B. PRELOGAR
*Solicitor General*
*Counsel of Record*
NICOLE M. ARGENTIERI
*Acting Assistant Attorney General*
SONJA M. RALSTON
*Attorney*
*Department of Justice*
*Washington, D.C. 20530-0001*
*SupremeCtBriefs@usdoj.gov*
*(202) 514-2217*

## QUESTION PRESENTED

Whether the court of appeals correctly determined that petitioner's prior conviction for Hobbs Act robbery, in violation of 18 U.S.C. 1951, qualifies as a conviction for a "violent felony" under the Armed Career Criminal Act, 18 U.S.C. 924(e)(2)(B).

**RELATED PROCEEDINGS**

United States Court of Appeals (7th Cir.):

*United States* v. *Hatley*, No. 21-2534 (Mar. 6, 2023)

United States District Court (N.D. Ind.):

*United States* v. *Hatley*, No. 20-cr-15 (Aug. 13, 2021)

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## OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-14a) is reported at 61 F.4th 536. The order of the district court (Pet. App. 15a-25a) is unreported but is available at 2021 WL 2549332.

## JURISDICTION

The judgment of the court of appeals was entered on March 6, 2023. The petition for a writ of certiorari was filed on June 2, 2023. 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 Northern District of Indiana, petitioner was convicted of possessing a firearm following a felony conviction, in violation of 18 U.S.C. 922(g)(1). Judgment 1. The court sentenced petitioner to 180 months of

imprisonment, to be followed by two years of supervised release. Judgment 2-3. The court of appeals affirmed. Pet. App. 1a-14a.

1. In January 2020, police officers stopped petitioner for speeding, failing to wear a seatbelt, and failing to signal a turn. Pet. App. 16a. Petitioner fled and was eventually apprehended. *Ibid.* Officers discovered a revolver in petitioner's waistband. *Ibid.* Petitioner subsequently pleaded guilty to one count of possessing a firearm following a felony conviction, in violation of 18 U.S.C. 922(g)(1). Pet. App. 16a.

At the time when petitioner unlawfully possessed a firearm, the default term of imprisonment for that offense was zero to ten years. 18 U.S.C. 924(a)(2) (2012).* If the defendant has three prior convictions for "violent felon[ies]" committed on separate occasions, the Armed Career Criminal Act of 1984 (ACCA) increases that penalty to a term of 15 years to life. 18 U.S.C. 924(e)(1).

A "'violent felony'" includes "any crime punishable by imprisonment for a term exceeding one year" that either "has as an element the use, attempted use, or threatened use of physical force against the person of another" or "is burglary, arson, or extortion, [or] involves use of explosives." 18 U.S.C. 924(e)(2)(B)(i) and (ii). The first part of that definition is known as the "elements clause" or the "force clause," and the latter part is known as the "enumerated offenses clause." See *Welch* v. *United States*, 578 U.S. 120, 123 (2016).

2. The Probation Office determined that petitioner qualified for the ACCA enhancement because he had at

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* For Section 922(g) offenses committed after June 25, 2022, the default term of imprisonment is zero to 15 years. See Bipartisan Safer Communities Act, Pub. L. No. 117-159, Div. A, Tit. II, § 12004(c), 136 Stat. 1329 (18 U.S.C. 924(a)(8) (Supp. 2022)).

least three prior convictions for violent felonies committed on separate occasions: a 2010 state juvenile adjudication for a robbery at gunpoint; a 2012 state conviction for battery; and federal convictions for Hobbs Act robbery, in violation of 18 U.S.C. 1951. Presentence Investigation Report (PSR) ¶¶ 23, 29-31; see Pet. App. 2a.

Petitioner agreed that the two state convictions were ACCA predicate offenses but argued that Hobbs Act robbery is not an ACCA predicate offense. Pet. App. 2a. The district court rejected that argument. *Id.* at 15a-25a. The court observed that the Hobbs Act defines "'robbery'" in relevant part 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," 18 U.S.C. 1951(b)(1). Pet. App. 19a. And because it could "conceive of no way for a defendant to commit a Hobbs Act robbery that isn't either a generic extortion (under the enumerated clause) or involves the use of force against the person of another (the force clause)," the court reasoned that "Hobbs Act robbery necessarily falls under *either* the force clause *or* under the enumerated crime of generic extortion." *Id.* at 21a-22a.

3. The court of appeals affirmed. Pet. App. 1a-14a.

The court of appeals recognized that it was required "to apply the categorical approach" and ask "whether the elements of the defendant's prior crime (here, Hobbs Act robbery) fit within the elements of the predicate crime in the enhancement statute (here [the ACCA's violent-felony provision])." Pet. App. 3a. And the court accepted that "if there is any way to commit Hobbs Act robbery without also committing a 'violent

felony' under [the ACCA], there is no categorical fit." *Id.* at 4a.

The court of appeals further recognized that "defendants can commit Hobbs Act robbery by using force against either a person or property" and that therefore, "[t]o qualify as a violent felony under ACCA, * * * *both* ways of committing Hobbs Act robbery must fit within ACCA." Pet. App. 6a. The court observed that "a Hobbs Act robbery committed by using force against a person fits within ACCA's force clause" because "[b]oth statutes require actual or threatened physical force against another person." *Ibid.* But the court also observed that "the other way of committing Hobbs Act robbery—by using force against property—does not fit within the ACCA's force clause" because the force clause "only provides for committing force against *persons*, not property." *Ibid.*

The court of appeals determined, however, that Hobbs Act robbery committed by force against property fits within the generic definition of extortion—an offense included in the ACCA's enumerated offenses clause. Pet. App. 7a-13a. Relying on this Court's precedent, the court of appeals observed that "[g]eneric extortion" requires "'obtaining something of value from another with his consent induced by the wrongful use of force, fear, or threats.'" *Id.* at 8a (quoting *Scheidler* v. *National Org. for Women, Inc.*, 537 U.S. 393, 410 (2003)) (brackets omitted). The court compared that definition to Hobbs Act robbery, which in relevant part "requires an 'unlawful taking or obtaining of personal property from the person . . . against his will, by means of actual or threatened force' to property." *Ibid.* (quoting 18 U.S.C. 1951(b)(1)). And the court found that although the definitions have "a textual difference,"

petitioner "ha[d] not identified any examples" of Hobbs Act robbery against property that was not extortion—"let alone one rising above a 'fanciful hypothetical.'" *Id.* at 9a (brackets and citation omitted).

**ARGUMENT**

Petitioner renews his argument (Pet. 15-23) that Hobbs Act robbery is not a violent felony under the ACCA. The court of appeals correctly rejected that contention, and its decision does not conflict with any decision of this Court or of another court of appeals. Indeed, no other court of appeals has addressed whether Hobbs Act robbery qualifies as a "violent felony" under the ACCA. And to the extent there may be some tension between the court of appeals' reasoning in this case and the reasoning in decisions of other courts of appeals, that tension does not merit this Court's review. See *Black* v. *Cutter Labs.*, 351 U.S. 292, 297 (1956) ("This Court * * * reviews judgments, not statements in opinions.").

1. To determine whether a prior conviction constitutes a "violent felony" under the ACCA, courts apply a "categorical approach," which requires analysis of "the elements of the crime of conviction" rather than the defendant's own conduct in committing that crime. *Mathis* v. *United States*, 579 U.S. 500, 504 (2016). A court conducting that analysis under the enumerated offenses clause must "come up with a 'generic' version of a crime—that is, the elements of 'the offense as commonly understood.'" *Shular* v. *United States*, 140 S. Ct. 779, 783 (2020) (citation omitted). "A defendant's prior conviction under a state statute qualifies as a predicate * * * if the state statute—regardless of its 'exact definition or label'—'substantially corresponds' to or is narrower than the generic definition." *Quarles* v. *United*

*States*, 139 S. Ct. 1872, 1877 (2019) (quoting *Taylor* v. *United States*, 495 U.S. 575, 599, 602 (1990)).

Consistent with that rubric, the courts below correctly recognized that Hobbs Act robbery is categorically a violent felony because every conviction under the statute will require a jury to find either (1) that physical force against a person was employed, attempted, or threatened, which is covered by the elements clause, or (2) that the conduct constituted generic extortion, which is covered by the enumerated-offenses clause. Petitioner asserts (Pet. 17-18) that differences in wording between Hobbs Act robbery ("against [the victim's] will," 18 U.S.C. 1951(b)(1)), and the definition of generic extortion in a prior decision of this Court ("with his [wrongfully induced] consent," *Scheidler* v. *National Org. for Women, Inc.*, 537 U.S. 393, 410 (2003) (citation omitted)) proves that the elements do not match. But as a leading treatise explains, "in spite of the different expressions, there is no difference here, for both [extortion and robbery] equally require that the defendant's threats induce the victim to give up his property, something which he would not otherwise have done." 3 Wayne R. LaFave, *Substantive Criminal Law*, § 20.4(b) (3d ed. 2017) (LaFave).

Potential distinctions between the two formulations would not undermine the "substantial[] correspond[ence]," *Quarles*, 139 S. Ct. at 1877 (quoting *Taylor*, 495 U.S. at 602), between Hobbs Act robbery and generic extortion. To the extent that certain robberies—for example, "grab[bing] the victim's fingers and peel[ing] them back to steal money," *Stokeling* v. *United States*, 139 S. Ct. 544, 555 (2019)—might be against the victim's will but not with the victim's consent (induced or otherwise), such robberies would necessarily involve force

against a person, and thus fall within the elements clause. And robberies that involve force, or attempts or threats of force, purely against property—such as "'Give me $10 or I'll key your car' or 'Open the cash register or I'll tag your windows,'" *United States* v. *Becerril-Lopez*, 541 F.3d 881, 890-891 (9th Cir. 2008), cert. denied, 555 U.S. 1121 (2009)—necessarily overcome the victim's will precisely by inducing the victim to reluctantly consent to relinquish the requested item.

Petitioner's imagined case of thieves breaking into a lockbox of keys and stealing a car from a car rental company while a watchman is distracted or asleep, Pet. 19-20, does not prove otherwise, because he fails to show that it is actually Hobbs Act robbery. The Hobbs Act retains the common-law requirement that the taking be from "the person or in the presence of another." 18 U.S.C. 1951(b)(1). That requirement is part of what long distinguished simple larceny from robbery (and the compound crime of larceny from the person) and is satisfied only when the property is "close enough to the victim and sufficiently under his control" that "he could have prevented the taking" absent the defendant's use or threats of force. 3 LaFave § 20.3(c) (discussing the elements of common law robbery).

In petitioner's hypothetical, the watchman's inattentiveness or unconsciousness has undermined his ability to "prevent[] the taking." 3 LaFave § 20.3(c). See, *e.g.*, *Commonwealth* v. *Smith*, 111 Mass. 429, 430 (1873) (concluding that when property was stolen while the victim slept, the property was "not under his own protection, but under the protection of the house"); *Rex* v. *Hamilton*, (1837) 173 Eng. Rep. 394 (K.B.) 394 (finding that theft of a watch from a bedside table while the victim slept was not "from the person"). Petitioner

therefore fails to identify even a theoretical possibility of a case that meets the requirements of Hobbs Act robbery, yet falls outside the federal definition of generic extortion. And he has not identified any actual prosecutions for Hobbs Act robbery to illustrate that courts have "applied the statute in a special (nongeneric) manner," *United States* v. *Taylor*, 142 S. Ct. 2015, 2025 (2022) (quoting *Gonzales* v. *Duenas-Alvarez*, 549 U.S. 183, 193 (2007)) (brackets omitted); see Pet. App. 9a, or otherwise shown a "'realistic probability'" that the statute "'would apply * * * to conduct that falls outside' the federal generic definition," *Taylor*, 142 S. Ct. at 2025 (quoting *Duenas-Alvarez*, 549 U.S. at 193).

Petitioner notes (Pet. 21) that the Hobbs Act separately prohibits robbery and extortion, defining the latter as "the obtaining of property from another, with his consent, 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). Petitioner errs, however, in contending (Pet. 21-22) that reading Hobbs Act robbery to include generic extortion would conflate the two crimes. Robbery and extortion may overlap in many factual scenarios, which "is not uncommon in criminal statutes." *Loughrin* v. *United States*, 573 U.S. 351, 358 n.4 (2014). And Hobbs Act extortion, as defined in Section 1951(b)(2), covers conduct not covered by Hobbs Act robbery, such as takings induced by "fear of economic harm," *United States* v. *Williams*, 952 F.2d 1504, 1513 (6th Cir. 1991); see *United States* v. *Koziol*, 993 F.3d 1160, 1182 (9th Cir. 2021), cert. denied, 142 S. Ct. 1372 (2022), and takings "under color of official right," 18 U.S.C. 1951(b)(2), neither of which would be chargeable under the robbery provision. A crime in which the perpetrator, say, poses as a police officer and demands

that the victim hand something over is also better described as one of induced consent, rather than overcome will.

Finally, petitioner errs in relying (Pet. 22) on the now-invalid "residual clause" in 18 U.S.C. 924(e)(2)(B)(ii) to suggest that the preceding enumerated offenses clause must involve conduct that poses a threat of physical injury to another. The enumerated offenses plainly encompass crimes that can be committed in ways that do not inherently create such threats, such as "burglary" or "arson," *ibid.*, of a building that is entirely vacant.

2. Petitioner contends (Pet. 9-15) that the decision below conflicts with decisions of the Fourth, Sixth, and Ninth Circuits and would cause "identically situated defendants" to receive "drastically different sentences depending on the circuit in which the crime was committed." Pet. 10. But the decisions petitioner identifies involved differently situated defendants, charged under different statutes. No other court of appeals has addressed whether Hobbs Act robbery is a violent felony. And to the extent that statements in decisions petitioner identifies might be in tension with the decision below, this Court "reviews judgments, not statements in opinions." *Black*, 351 U.S. at 297.

In *United States* v. *Gardner*, 823 F.3d 793 (2016), the Fourth Circuit concluded that North Carolina common law robbery was not a violent felony under the ACCA's elements clause because it did not require a sufficient degree of force. *Id.* at 803-804. In a footnote, *Gardner* declined to classify North Carolina common-law robbery as generic extortion, stating that "[t]he element of consent 'is the razor's edge that distinguishes extortion from robbery.'" *Id.* at 802 n.5 (citation omitted). After this Court's decision in *Stokeling* v. *United States*, which

clarified the degree of force necessary under the ACCA's elements clause, see 139 S. Ct. at 548, the Fourth Circuit has reconsidered its position and "conclude[d] that North Carolina common law robbery satisfies the ACCA's physical force requirement"—and therefore is an ACCA predicate under the elements clause, *United States* v. *Dinkins*, 928 F.3d 349, 355 (2019). That result does not conflict with the decision below, and petitioner does not identify any continuing effect of the *Gardner* footnote.

In *Raines* v. *United States*, 898 F.3d 680, 688-690 (2018), the Sixth Circuit concluded that a federal conviction for collecting credit by extortionate means, in violation of 18 U.S.C. 894(a)(1), did not qualify as a violent felony under the ACCA because conduct underlying a Section 894(a)(1) conviction does not categorically involve physical force or fit within generic extortion. When determining that Section 894(a)(1) does not fit within generic extortion, the court took the view that non-consensual takings and consensual takings could meaningfully differ. *Raines*, 898 F.3d at 689-690. But the court also took the view that, "even setting aside the element of induced consent, § 894(a)(1) is broader than the generic offense of extortion in another material respect," namely, that it could apply in scenarios that do not involve personally "obtain[ing] something of value," within the scope of generic extortion. *Id.* at 690. It is thus unclear what continuing significance *Raines*'s induced consent reasoning might have. And the Sixth Circuit has not addressed the ACCA qualification of Hobbs Act robbery, the crime at issue here.

There likewise is no disagreement on the question presented between the Ninth and Seventh Circuits. In *United States* v. *Becerril-Lopez*, a Ninth Circuit panel

considered whether California robbery qualified as a "crime of violence" under Sentencing Guidelines § 2L1.2 (2004), which at that time generally mirrored the ACCA but had a longer list of enumerated offenses, including robbery. 541 F.3d at 890. California defines robbery as "'the felonious taking of personal property in the possession of another, from his person or immediate presence, and against his will, accomplished by means of force or fear,'" and further defines "[f]ear" to include fear of injury to a person or property. *Id.* at 890-891 (citation omitted). The court determined that California robbery was a crime of violence under the guideline, finding that "[t]akings through threats to property and other threats of unlawful injury fall within generic extortion" and that the statute otherwise covered only generic robbery. *Id.* at 891. In making that determination, the court emphasized—consistent with the decision below—that "[t]he 'with consent' element of generic extortion is not inconsistent with the 'against the will' element of" California robbery "for a taking involving threats to property [because] * * * 'both crimes equally require that the defendant's threats induce the victim to give up his property, something which he would not otherwise have done.'" *Id.* at 891-892 n.9 (quoting 3 LaFave § 20.4(b)).

In *United States* v. *Dixon*, 805 F.3d 1193 (2015), another Ninth Circuit panel confronted California robbery in the ACCA context. Unlike Sentencing Guidelines § 2L1.2, the ACCA's enumerated-offenses clause does not include robbery. 805 F.3d at 1197. The court noted that "the California Supreme Court clarified" after *Becerril-Lopez* that a person can commit California robbery "by *accidentally* using force." *Ibid.* And the Ninth Circuit concluded that certain violations of the

California robbery statute "do not satisfy the ACCA's definition of 'violent felony': those in which (1) the taking is not consensual (thereby failing the definition of generic extortion); and (2) the defendant uses force against a person, but only accidentally or negligently, rather than intentionally," thereby failing the requirements of the elements clause. *Ibid.*

Hobbs Act robbery, however, requires knowing or intentional force. See *e.g.*, *United States* v. *Ivey*, 60 F.4th 99, 116-117 (4th Cir.), cert. denied, No. 22-7784 (Oct. 2, 2023). The Ninth Circuit thus may well find, as the court below did, that any Hobbs Act robberies that might not be appropriately described as involving induced consent would nonetheless satisfy the ACCA's elements clause. Indeed, the example that *Dixon* cited of a case in which, in the court's view, consent was absent was one where "the defendant demanded money from the victims, struck one victim with a gun, and shot another." 805 F.3d at 1196. But "the use of force" that the Ninth Circuit deemed to "negate[ ] any possible finding that the defendant intended to take the victims' property with their consent," *ibid.*, was clearly a use of force against the person of another that would fit within the elements clause, if accompanied by the heightened mens rea required for Hobbs Act robbery. And without any precedent in the Ninth Circuit—or any circuit other than the court below—addressing Hobbs Act robbery, petitioner fails to identify a circuit conflict warranting this Court's review.

## CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

ELIZABETH B. PRELOGAR
*Solicitor General*
NICOLE M. ARGENTIERI
*Acting Assistant Attorney General*
SONJA M. RALSTON
*Attorney*

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