

Nos. 16-8777 and 16-8997

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IN THE SUPREME COURT OF THE UNITED STATES

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ANDRE LEVON GLOVER AND  
MAURICE LAMONT DAVIS, PETITIONERS

v.

UNITED STATES OF AMERICA

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ON PETITIONS FOR WRITS OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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MEMORANDUM FOR THE UNITED STATES

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Petitioners, co-defendants below, contend (16-8777 Pet. 11-15; 16-8997 Pet. 5-13) that the definition of a "crime of violence" in 18 U.S.C. 924(c)(3)(B) is unconstitutionally vague in light of Johnson v. United States, 135 S. Ct. 2551 (2015). This Court has granted review in Sessions v. Dimaya, No. 15-1498 (reargument scheduled for Oct. 2, 2017), to decide whether the similarly worded definition of a "crime of violence" in 18 U.S.C. 16(b), as incorporated into the Immigration and Nationality Act's definition of the term "aggravated felony," 8 U.S.C. 1101(a)(43), is unconstitutionally vague. The petitions for writs of certiorari

should be held pending the decision in Dimaya and then disposed of as appropriate in light of that decision.

Petitioners were convicted of committing robbery in violation of the Hobbs Act, 18 U.S.C. 1951(a); conspiracy to commit Hobbs Act robbery, in violation of 18 U.S.C. 1951(a); and two counts of using, carrying, and brandishing a firearm during and in relation to a "crime of violence," in violation of 18 U.S.C. 924(c)(1)(B)(i) and (C)(i). See 16-8997 Pet. App. A1 n.2, B1. One of the Section 924(c) counts (Count 2) identified the underlying crime of violence as conspiracy to commit Hobbs Act robbery, while the other Section 924(c) count (Count 7) identified the crime of violence as Hobbs Act robbery. See Indictment 5, 10.

Insofar as petitioners challenge their convictions on Count 7, their claims do not merit review. Section 924(c) defines a "crime of violence" as a felony that either "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), or, "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," 18 U.S.C. 924(c)(3)(B). Hobbs Act robbery requires the taking of personal property from another "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). Those requirements match the definition of a "crime

of violence" in 18 U.S.C. 924(c)(3)(A). See United States v. Hill, 832 F.3d 135, 140 (2d Cir. 2016) (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)(3)(A)).

The courts of appeals that have considered the issue, including the Fifth Circuit, agree that Hobbs Act robbery is a "crime of violence" under Section 924(c)(3)(A). See, e.g., United States v. Gooch, 850 F.3d 285, 291-292 (6th Cir. 2017), cert. denied, 137 S. Ct. 2230 (2017); United States v. Buck, 847 F.3d 267, 274-275 (5th Cir. 2017), cert. denied, 137 S. Ct. 2231 (2017), and petition for cert. pending, No. 16-9520 (filed June 6, 2017); United States v. Anglin, 846 F.3d 954, 965 (7th Cir. 2017), petition for cert. pending, No. 16-9411 (filed May 26, 2017); Hill, 832 F.3d at 140-144; United States v. House, 825 F.3d 381, 387 (8th Cir. 2016), cert. denied, 137 S. Ct. 1124 (2017); In re Fleur, 824 F.3d 1337, 1340 (11th Cir. 2016); cf. United States v. Robinson, 844 F.3d 137, 141-144 (3d Cir. 2016) (same, without applying categorical approach), petition for cert. pending, No. 17-5139 (filed July 6, 2017); 844 F.3d at 150-151 (Fuentes, J., concurring in part and concurring in the judgment) (same, applying categorical approach).<sup>1</sup> Because Hobbs Act robbery qualifies as a

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<sup>1</sup> This Court has repeatedly denied petitions seeking review of whether Hobbs Act robbery is a crime of violence under 18 U.S.C. 924(c). See, e.g., Allen v. United States, 137 S. Ct. 2231 (2017) (No. 16-9034); Gooch v. United States, 137 S. Ct. 2230 (2017) (No. 16-9008); Rivera v. United States, 137 S. Ct. 2228

"crime of violence" under Section 924(c)(3)(A), no reason exists to consider whether it would also qualify under Section 924(c)(3)(B).

Petitioners' convictions on Count 2, however, squarely implicate Section 924(c)(3)(B). As explained, the "crime of violence" at issue in that count is conspiracy to commit Hobbs Act robbery, which several courts of appeals have classified as a "crime of violence" under Section 924(c)(3)(B). See, e.g., United States v. Eshetu, 863 F.3d 946, 955-956 (D.C. Cir. 2017) (citing cases). Because the validity of Section 924(c)(3)(B) is closely related to the issue currently before this Court in Sessions v. Dimaya, supra, the petition should be held pending the decision in Dimaya and then disposed of as appropriate in light of that decision.<sup>2</sup>

Respectfully submitted.

JEFFREY B. WALL  
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(2017) (No. 16-8980); Eubanks v. United States, 137 S. Ct. 2203 (2017) (No. 16-8893).

<sup>2</sup> The government waives any further response to the petitions unless this Court requests otherwise.