IN THE
SUPREME COURT OF THE UNITED STATES

DONALD REDDICK,
PETITIONER,

18-9354

V.

UNITED STATES OF AMERICA,
RESPONDENT,

ORIGINAL

On Petitione for Writ of Certiorari
to the United States Court of Appeals
for the Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

PARTIES:

PETITIONER
Donald Reddick
USP Victorville
P.O. Box 3900
Adelanto, CA. 92301

RESPONDENT
SOLICITOR GENERAL OF THE
UNITED STATES
ROOM 5614, Department of Justice
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530

QUESTIONS PRESENTED

(1) Is federal bank robbery as defined in 18 U.S.C. §2113(a) categorically a crime of violence, where the statute does not require an intentional use, attempted use, or threatened use of violent force?

(2) Whether (Mathis) establish a new rule and standard of review to the elements of the offense rather than the (Fact) of prior conviction based upon the preponderance of evidence, effectively overruling (Alamendez-Torres) an (Apprendi) (Fact) of prior conviction standard of review based upon the preponderance of evidence standard?

(3) Whether the categorical approach to the elements of an offense as set forth in Taylor v United States, Descamps, Doctorines, progeny apply in determining whether a defendant has previously been convicted of a relevant predicate prior offense, for it to be available for enhancement based on the elements rather than the (Fact) of prior conviction by the preponderance of evidence standard under (Alamendez-Torres) and (Apprendi) for purposes of applying enhancements under provisions of the sentencing guidelines where the categorical approach governs prior convictions, the interpretive tool's of (Mathis) now governs the application of enhancements under the sentencing guidelines, because (Mathis) standard of review cares nothing about the (Fact) of prior conviction based upon the preponderance of evidence standard, rather than the elements of the prior offense. (Alamendez-Torres) and (Apprendi) yields and gives way to the new standard of review established by (Mathis)?

(3) Where a statute of conviction does'nt have as an element the use, attempteduse or threatened use of physical force against the person of another, does the offense qualify as a crime of violence?

(4)Where a statute requires the use attempted use or threatened use of physical force against the person of another, does'nt physical force absolutely have to be used to satisfy the statues requirement?

(5)Whether Supreme Court recent decision in Nelson v Colorado 137 S.Ct. 1249 (2017) is far more reaching than just acquited conduct, can it not apply to underlying facts of prior convictions based on the prepondaerance of evidence standard, where (Alamendez-Torres) (Apprendi) provides the government an avenue to circumvent the Constitution where a defendant 's prior conviction may no longer qualify based on Mathis Doctrine review to the elements rather than the facts underlying the prior conviction?

(6) Whether (Alamendez-Torres) (Apprendi) impact the district court's understanding of how a prior conviction is to be understood to apply against a defendant in light of the interpretive tool's of (Mathis). Specifically, where a prior conviction is under an (Indivisible) statue, thatisn't susceptable to the categorical approach, and (Divisible) statutes that encompasses multiple degress of risk and classes of felonys?

Under Nelson, a defendant maybe sentenced on facts arising from conduct of the instant offense, but, may not be penalized for uncharged conduct that entails any fact that could constitute elements of a seperate offense other than the instant offense of conviction

viction. Seperate elements or facts may not be considered for purposes of sentencing, this is so as emphasized in Nelson, that a state may not engage in an end-run around the consitution by characterizing at sentencing uncharged facts that are actually elements of seperate offenses other than the instant offense as mere sentencing factors. To do so eviscerates Due Process and creates a circumvention of a defendant's Consittutional Right, Protections and Garuntee's. And this is why (Alamendez-Torres) (Apprendi) was decided wrong, because where a defendant's prior conviction is under a (Indivisible) thats not susceptible to the categorical approach or (Divisible) statutes encompasses lesser included offenses a court commits reversable error that is not harmless error that is not harmless and miscalculates a defendant's base offense level criminal history category and sentencing guideline range, where no one can determine by looking to the (Fact) of prior conviction to determine whether or not the elements match that of geberic offense under the sentencing guidelines, neither can one tell just by looking to the (Fact) of prior conviction where a statute list mutiple offenses in the alternative by which a person can commit the single crime in order to determine if the offense is a guideline crime of violence or a controlled substance.

The principle of Nelson thus is this; Facts arising out of a final conviction may not also be construed as element.

(7) Whether a Superceding Indictment (No. 04-cr-436)(Nov. 17, 2004) alledging prior convictions, as predicates for enhancement relates the prior convictions with instant offense for purposes of sentencing is a <u>consolidated</u> related single-sentence for purposes of counting my

prior §4B1.1 career offender sentence. Example, 2005 Robbery instant offense of conviction, superceding indictment alledging 2 or more prior predicates (95-97) as underlying offenses for inclusion with instant offense for sentence enhancement (2005, 95-97) a consolidated related single-sentence.

(8) Whether prior §4B1.1 career offender sentence (2005, 95-97) is one predicate under §4B1.2 note (3)the provision of §4A1.2(A)(2) and (2)(A) are applicable to the counting of a prior conviction under §4B1.1. §4A1.2 note(3)(A) predicate offenses (2005-95-97) career offender sentence maybe used and counted seperately only if the sentence is not a consolidated related single-sentence. See;§4B1.2 (c) no more than (one) predicate may be used in a given (related single-sentence) (2005-95-97).

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DONALD REDDICK,
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UNITED STATES OF AMERICA,
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PETITION FOR WRIT OF CERIORARI

Petitioner Donald Reddick respectfully requests a petition for a Writ of Certiorari to reveiw the judgement of the U.S. Court of Appeals for the Seventh Circuit.

OPINIONS BELOW

The U.S. Court of Appeals for the Seeventh Circuit issued on an unpublished opinion on February 7, 2019, Case No: 17-3477, on appeal from a plea of guilty entered in the record on 1/14/2017, 2018 in Case No: 15-CR-481-1 from the U.S. District Court for the Northern District of Illinois. Petitioner failed to file a timely petitione for rehearing En Banc.

JURISDICTION

The judgement of the U.S. Court of Appeals for the Seventh Ciruit was entered on February 7, 2019, Case No: 17-3477. Petitioner did not file a timely petition for rehearing En Banc. This Court has jurisdiction pursuant to 28 U.S.C. §1254(1).

STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution provides that no person shall be deprived of life, liberty, or property without Due process of law...

The United States Sentencing Guidelines defines "crime of violence," for purposes of the Career Offender enhancement, 4b1.2, as

(a)The term "crime of violence" means any offense under federal or State law, punishable by imprisonment for a term exceeding one year, that-

(1) Has as an element the use, attempted use, or threatened use of physical force aginst the person of another, or

(2) is burglary of a dwelling, arson, or extortion, involves use of explosives, or otherwise presents a serious potential risk of physical injury to another.

The Federal bank robbery statute at 18 U.S.C. §2113(a) provides:

(a) Whoever by force and violence, or by intimidation, takes, or attempts to take, from the person or presence of another,or obtains or attempts to obtain by extortion any property or money, or any other thing of value belonging to, or in the care, custody, control, management or possession of, any Bank, Credit Union, or any Savings and Loan Association; or

Whoever enters or attempts to enter any Bank, Credit Union, or any savings and Loan Association, or any building used in whole or in part as a bank, Credit Union, or as a Savings and Loan association or building , or partt thereof, so used, any felony affecting such Bank, Credit Union, or such Savings and Loan association and in violation of any statute of the United States, or any larceny-

Shall be fined under this Title or imprisoned not more than twenty years, or both.

STATEMENT OF CASE

Petitioner Donald Reddick plead guilty to two counts of Bank Robbery under 18 U.S.C. §2113(a), and was sentenced to 135 months imprisonment. Petitioner filed a Notice of Appeal and was appointed an attorney to brief potential meritous issues. After a review of the record, the attorney's for the Petitioner sought to withdraw as Counsel under Anders v. California, 586 U.S. 738(1967), citing no issues which were not frivolous and warranted review on appeal. Petitioner filed several pro se motions wishing to contest his sentence from several aspects, most relevant to this Writ for Certiorari is Petitioner's pro se motion challenging his prior conviction for Federal Bank Robbery under 18 U.S.C. §2113(a), as a crime of violence under 4b1.2, the Career Offender portion of the guidelines. Ultimately, the United States Court of Appeals for the Seventh Circuit granted counsels request to withdraw and dismissed Petitioner's appeal. Petitioner did not file a timely request for rehearing En Banc.

Petitioner now requests for this Court to grant a Writ of Certiorari to clarify if Federal Bank Robbery under 18 U.S.C. 2113(a), is categorically a crime of violence under the enumerated offense clause in 4b1.2.

REASONS FOR GRANTING THE WRIT

This Court should grant this Writ of Certiorari because several circuits have conflicting decisions with this Court concerning the divisibility of federal bank robbery under 18 U.S.C. §2113(a), and have failed to properly apply this Courts ruling concerning how to determine whetehr or not a statute is divisible or indivisible. Furthermore while several circuits have held that federal bank robbery by intimidation-conduct that does not require any specific intent or any actual or threatened violent force- does qualify as a crime of violence under the elements clause, there should be extreme concern for the ever decreasing bar as to what actually constitutes "intimidation" in the context of sufficency cases. Considering the significant consequences attached to a bank robbery conviction and the large number of cases prosecuted federally, there should not be a bi-lateral analysis concerning what constitutes "intimidation," but rather a uniform approach should be employed.

Further guidance is necessary to bring this area of caselaw into order.

A THE CATEGORICAL ANALYSIS

To determine if an offense qualifies as a crime of violence, courts apply the categorical approach to discern the "minimum conduct criminalized"by the statute. Moncrieffe v. Holder, 133

S. Ct. 1678, 1684-85(2013). Courts must disregard the means by which the defendant committed his crime, and look only to that offense's elements." Mathis v. United States, 136 S.Ct. 2243, 2248(2016). Under the rubric, courts must presume that the conviction 'rested upon nothing more than the least of the acts criminalized. Moncrieffe, 569 U.S. at 190-191(Alterations omitted). If the statute of conviction criminalizes some conduct that does involve intentional force and some that does not, the statute of conviction is overbroad and does not categoriacally qualify as a crime of violence. Mathis, 136 S.Ct. at 2248.

The federal bank robbery statute, 18 U.S.C. 2113(a), is indivisible and because extortion-the least culpable means of committing bank robbery- does not require a violent threat of 'force 2113(a) is not a crime of violence.

Multiple circuits have reached the conclusion that bank robbery under 2113(a) is a divisible statute , reasoning that the statute lists two seperate crimes, robbery under the first paragraph and enetering a bank with the intent to committ a felony under the second paragraph. Each element can be satisified through the use of force and violence, or intimidation, or extortion These three statutory alternatives exist within a single set of elements and therfeore must be means.

For example, the Seventh Circuit's model jury instructions specifically define extortion as a "means" of violating §2113(a):

"The statute, at 2113(a), ¶1, includes a "means" of violation for whoever 'obtains or attempts to obtain by extortion.' If a defendant is charged with this means of violating the statute, the instruction should be adapted accordingly." Pattern Criminal Jury Instruction of the Seventh Circuit 539(2012 ed.)(emphasis added). The Third Circuit agreed, United States v. Askari, 140 F.3d 536, 548(3rd Cir 1998)(Holding extorion as a means of 2113(a)).

More persuasively in making the point of indivisibility concering 2113(a), is the statute's history which confirms that bank robbery is a single offense that can be accomplished by forceand violence, by intimidation, or by extortion. Until 1986 2113(a) covered only obtaining property by force and violence or by intimidation. See United States v. Holloway, 309 F.3d 649, 651 (9th Cir. 2002). a circuit split ensued over whether the statute applied to wrongful takings in which the defendant was not physically present inside the bank. H.R. Rep. No. 99-797 sec. 51 & n.16(1986)(collecting cases). Most circuits held it did cover extortionate takings. Id. Agreeing with the majority of the circuits, the 1986 amendment added language to clarify that extortion was a means of extracting money from a bank.Id. (Extortionate conduct is prosecutable under the bank robbery provision..."). This history demonstrates Congress did not intend to create a new offense by adding extortion to 2113(a), but did so to clarify that such conduct was included withini the bank robbery. In other words, obtaining property by extortion, is merely an alternative means of committing bank robbery.

Because 2113(a) lists alternative means, it is an indivisible statute. Considering several circuits have disregarded this Court's caselaw on divisibility and reached conflicting decisions, this Court should grant this Petition.

B. 2113(a) does not require the use or threat of violent force.

Petitioner submits that intimidation for purposes of the federal bank robbery statute can be, and more often than not is accomplished by a simple demand for money. While a verbal request for money may have an emotional or intellectual force on a bank teller, it does not require a threat of violent force capable of potentially causing physical pain or injury to another. Stokeling, _____S.Ct._____, 2019 WL 189343*8.

This Court has stated that there are two requirements for violent force- force that is capable of causing physical pain or injury to another person and most relevant to Petitioner's argument the force must also be intentional and not merely reckless or negligent. Leocal v. Ashcroft, 543 U.S. 1, 12-13(2004).

Because federal bank robbery as defined under 2113(a) does not require the degree of physical force envisioned in Johnson, nor the relevant intentional force, this Court should intervene.

Several circuits have applied a non-violent construction of intimidation when determining whether to affirm a bank robbery conviction, but have held that intimidation always requires a defendant to threaten the use of violent physical force. See United States v. Armour, 840 f.3d at 908(reasoning that "intimidation means the threat of force," and thus even an attempt to committ an unarmed bank robbery is a crime of violence under the elements

clause.)id. at 909. United States v. Lucas, 963 F.2d 243-44(9th Cir. 1992)(Holding that by "opening the bag and requesting the money, "the defendant employed intimidation and sustained the conviction"")United States v. Mcneal, 818 F.3d 141, 157(4th Cir. 20160, Cert. denied, 137 S.Ct. 164(2016)(Holding for crime of violence purposes that "intimidation" necessarily requires the threatened use of violent force), United States v. Brewer, 848 F.3d 711(5th Cir. 2017)(Holding for purposes of crime of violence "intimidation" necessarily requires the threatened use of violent physical force).

All of these circuits have consistently held post- Johnson that 2113(a) requires the threatened use of physical violent force, despite the non-violent construction of intimidation when determining whether to affirm a bank robbery conviction. The analysis must be unanimous and uniformly applied.

II. Federal Bank Robbery is a general intent crime.

Next, the elements clause of 4b1.2 requires that the use of violent physical force be intentional and not merely reckless or negligent. Leocal, 543 U.S.at 12-13.

This Court held that 2113(a) "contains no explicit mens rea requirement of any kind." Carter v. United States, 530 U.S. 255, 267(2000). This Court held in Carter that federal bank robbery does not require an "intent to steal or purloin."Id. In evaluating the applicable mens rea, this Court emphasized when it read into the statute "only that mens rea which is necessary to seperate

wrongful conduct from 'otherwise innocent conduct."" Id. at 269.

The Carter Court recognized bank robbery under 2113(a) "certainly should not be interpreted to apply to the hypothetical person who engages in forceful taking of money while sleepwalking (innocent if aberrant activity), "Id.,but found no basis to impose a specific intent in 2113(a), Id. at 268-69; Instead, the Carter Court determined "the presumption in favor of scienter demands only that we read subsection (a) as requiring proof of general intent-that is, that the defendant possessed knowledge with respect to the actus reus of the crime, (here the taking of property of another by force and violence or intimidation)Id. at 268.

This Courts classification of 2113(a) as ageneral intent crime in Carter means the statute requires nothing more than knowledge- a lower mens rea than the specific intent required by the elements clause.

Bank robbery by intimidation focuses on the objective reaction of the victim, not on the defendant's intent. As this Couurt has recognized, an act that turns on "whether a 'reasonable person regards the communication as a threat- regardless of what the defendant thinks," requires only a negligence standard, not intent. Elonis, 135 S.Ct. at 2011. Because jurors in a bank robbery case are called on only to judge what a reasonable bank teller would feel-- as opposed to the defendants intent--the statute can not be deemed a categorical crime of violence.

This Courtyshould grant Certiorari, to clarify that bank robbery can not be a crime of violence under the elements clause, because general intent "intimidation" does not satisfy the standard.

In United States v Coleman, No. 18-2400, (8th Cir.,March 18, 2019), on plain error review, whereas a prior conviction under 18 U.S.C. §2113 (a) mirrors the overbreath and indivisiblity of a statute as in Coleman and (720 ILCS 570) also is indivisible.

Furthermore, in D'Antoni v United States (No.18-1358) (7th Cir. February 21, 2019) D'Antoni received an enhanced sentence under the career offender provision of the 1990 United States Sentencing Guidelines, based on a prior felony drug conviction and a prior felony " crime of violence " conviction. See U.S.S.G. §4B1.1 (1990).

Relevant here, the provision's "crime of violence" definition included a residual clause encompassing any felony "involving conduct that present[ed] a serious potential risk of physical injury to another. " Id. §4B1.2(1)(ii). The guidelines were mandatory as applied to D'Antoni because he was sentenced well before the Supreme Court's decision in United States v Booker, 543 U.S. 220(2005), which held the Guidelines must be advisory to comply with the Constitution. Following Johnson V. United States, 135 S. Ct. 2551 (2015), in which the Supreme Court held the identical Armed Career Criminal Act ("ACCA") residual clause "Violent felony" definition was unconstitutionally vague, D'Antoni brought a 28 U.S.C § 2255 motion seeking resentencing. He argued Johnson applied to make § 4B1.2's residual clause "crime of violence" definition unconstitutionally vague, and he claimed the sentencing court considered one of his predicate convictions conspiracy to kill a government witness a crime of violence only under the residual clause. Although in Beckles v. United States, 137 S.Ct 886 (2017), the

Supreme Court held that Johnson did not extend to Post-Booker advisory Guidelines residual clause, in Cross V. United States, 892 F.3d 288 (7th Cir. 2018), the court held that Johnson did render the pre-Booker mandatory Guidelines residual clause unconstitutionally vague. At issue in this case is whether D'Antoni's sentence should nevertheless be affirmed because "conspiracy," murder," and manslaughter" were litsed as crimes of violence in the application notes to the 1990 version of § 4B1.§. The Seventh Circuit's unanimous en banc decision in United States v. Rollins, 836 F.3d 737
(7th Cir, 2016). answers that question: The application notes' list of qualifying crimes is valid only as an interpretation of § 4B1.2's residual clause, and because Cross invalidated that residual clause, the application notes no longer have legal force. Therefore, D'Antoni was entitled to resentencing. The Court reveresed the judgment of the district court and remanded with instructions to grant D'Antoni's sucessful §2255 motion and for resentencing in accordance with this opinion. And I raised this issue in my Pro se sentencing challenge and objections to application of 4B1. 2 based on (7th Cir) holding in Rollins) See: U.S. v. Edling (No. 16-10457) (9th Cir June 7, 2018) Their panel held; Robbery Does Not Qualify as (Extortion) under the enumerated clause, an that coercion under Nevada Revised Statue, 207.190 does not qualify as a crime of violence, because it is not one of the offenses listed in the enumerated offense clause, an is not a categorical match under the elements clause since it does not have as an element the use, attempted use or threaten use of violent physical force

against the person of another(And my trail counsel challenged whether B-R was robery at my sentencing)

Intimidation is defined as the (wrongful use of threat) an does not have as an element the use, attempted use or threatened use of physical force against the person of another. It only apply's under the crime of violence definition at 4B1.2 (A)(2) any felony involving conduct that present's a serious potential risk of physical injury to the person of another under the residual clause.

As like Cross & Davis v. U.S. (No.s 17-2282 & 17-2724) (7th Cir June 7,2018) I qualified under the career offender guideline because of the residual clause. The 7th Cir also holds Beckles apply's only to the advisory guidelines, not to mandatory sentencing Rules and Statues. Under Johnson the guidelines residual clause is unconstitutionally vague in so far as they determine mandatory sentencing ranges.

I'm challenging the governments power to constitutionally prosecute me under (2113)(a) by (Intimidation only. Because intimidation is broader that the generic definition of robbery under 4B1.2. and it is not an (Emumerated) offense under the generic definition of the (Force-Clause) and (Mathis) forcloses the possiblity that my prior convictions can serve as career offender predicates. The Supreme Court also hold's that if a jury need not unanimously agree on the (set of elements) the statue (Force-Violence) (Extortion) (Intimidation) (Larceny) in order to sustain a conviction, that offense is not available for enhancement under provisions of the sentencing guide-

lines, and because the statue is (Indivisible) a court cannot employ the categorical approach to examine the visability of my prior convictions under the generic definition of 4B1.2 career offender guideline generic definitions calling into question the government power to constitutionally prosecute me, and my guilty plea does not bar review in this circumstance. Pp.7-8.

The indictment is defective because the government narrowed the statue of conviction and did not charge the statue in whole, the government charged the defendant based on the conduct of the offense rather than the elements (Force-Violence) (Extortion) (Larceny). Effectively manipulating the statue by not charging all the elements of the statue relaxes the government burden of proof to the elements under (2113) (a) circumveting defendants rights to due process and Sixth Amendment finding beyond a reasonable doubt to all the elements of the offense.

The term at issue here do not contradict the terms of the indictment or the written declaration the terms of the indictment or the written declaration plea agreement and can be resolved on the basis of the existing record. Broce supra at 575. Where a statue has (one-set) of (Alternative-Means) without any subsections referencing lesser included offense, degrees of risk, or classes of felonies a court cannot use the indictment to narrow the elements of the statue.

CONCLUSION

For the above stated reasons, Petitioner respectfully request this Court to Grant Certiorari.

Respectfully Submitted,

Donald Reddick

Donald Reddick
Pro se litigant
USP Victorville
P.O. Box 3900
Adelanto, CA. 92301