20-7081

NO. 20-7081

ORIGINAL

IN THE SUPREME COURT

OF THE UNITED STATES

NIJUL Q. ALEXANDER,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO

THE UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

CORRECTED PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED ON REVIEW

1. Did the Third Circuit err in holding that Federal Bank Robbery is a Crime of Violence under the Element Clause of 18 U.S.C. §924(c)(3)(A) of this Court's holding in United States v. Johnson, 899 F.3d 191, 203-04 (3rd Cir.), Cert. denied 139 S. Ct. 647 (2018); United States v. Wilson, 880 F.3d 80, 88 (3rd Cir.), Cert. denied 138 S. Ct. 2586, in light of this Court's holding in Carter v. United States, 530 U.S. 255, 268 (2000), that the offense is a general intent rather than a specific intent crime, and given decades of Circuit precedent holding htat intimidation under the statute is judged by the reasonable reaction of the listener rather than by the defendant's intent?

2. Is Bank Robbery under 18 U.S.C. §2113(a) a divisible statute under the Element Clause of 18 U.S.C. §924(c) according to United States v. Butler, No. 19-10065, _____ F.3d _____ (5th Cir. 2020)?

A. Federal Bank Robbery is not a Crime of Violence under 18 U.S.C. §924(c)(3)(A) because, as authoritatively interpreted by this Court and the Circuits for decades, "Intimidation" does not require the use or threatened use of violent force

(1) The Force Clause requires a purposeful threat of Physical Force, where as Bank Robbery by intimidation is a general intent crime that does not require any intent to intimidate

(2) The Force Clause requires a threatened use of Violent Physical Force, where Bank Robbery by intimidation does not require that a defendant communicate any intent to use violence

(3) The correct interpretation of "Intimidation" under 18 U.S.C. §2113(a) is an exceptionally important question because of its broad impact on standards for conviction and sentencing.

B. Bank Robbery under 18 U.S.C. §2113(a) constitutes a divisible statute to challenge the "Crime Of Violence" under the Element Clause of 18 U.S.C. §924(c)

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PETITION FOR CERTIORARI

Petitioner Nijul Quadir Alexander respectfully petitions for a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Third Circuit in his case.

ORDERS AND JURISDICTION

The Third Circuit and District Court decisions are attached. This single petition is pursuant to and applicable with **Rule 14.** This petition is timely under **Supreme Court Rule 14.** Therefore this Court's jurisdiction is invoked under **28 U.S.C. §1254(1).**

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

The statute providing for collateral review of federal sentences is **28 U.S.C. §2255.**

Under **18 U.S.C. §924(c)(1)(A),** any person who uses a firearm "during and in relation to any crime of violence or drug trafficking crime" commits an enhanced crime and is subject to a mandatory consecutive sentence. The relevant portion of §924(c) defining a "Crime of Violence" has two clauses, commonly referred to as the Force Clause and the Residual Clause:

> (3) For purpose of this Subsection the term "Crime of Violence" means an offense that is a felony and --
>
> (A) has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or
>
> (B) that 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

Federal Bank Robbery is punished under 18 U.S.C. §2113(a) and (b) which provide:

(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, custory, control, management, or possession of, any bank, credit union or any savings and loan association; or

(b) 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, with intent to commit in such bank, credit union, or in such savings and loan association, or building, or part 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

BACKGROUND OF THE CASE

The following is the background of the case as found in the archives of Case No. 19-1971 and the associated case of originating origin:

On or about January 25, 2012 a federal grand jury sitting in Harrisburg, Pennsylvania returned a Six Count Indictment against Mr. Alexander and three others. See Doc. 1

The Grand Jury returned a Twelve (12) Count superseding indictment against the same four defendants on or about August 29, 2012. See Doc 62. Mr. Alexander thereafter pled guilty to a Seven (7) Count superseding indictment charging him with Six (6) Counts of Armed Bank Robbery in violation of, **18 U.S.C. §§2113(a) and (d);** being Counts One (1) through Six (6) - and one Count of Carrying And Using A Firearm During A "Crime Of Violence" in violation of, **18 U.S.C. §924(c)(1)(A)** of which is Count Seven (7). See Doc. 136, 151-152.

That on or about September 17, 2013 the Court sentenced the Petitioner to two hundred sixty four (264) Months of imprisonment consisting of a term of one hundred eighty (180) Months on each of Counts One (1) through Six (6) to run concurrently - and statutorily mandated - with a consecutive term of eighty-four (84) Months on Count Seven (7). **Doc 280.** See **18 U.S.C. §924(c)(1)(A)(ii).** Petitioner Alexander did not file a Direct Appeal [Due mostly in part for signing the Appellate Waivers].

Mr. Alexander filed the instant Motion/Petition **(Doc. 318)** under **§2255** to Vacate, Set Aside or Correct Sentence on or about the date of May 17, 2016 through appointed Counsel.

At the request of both parties, the Court stayed resolution of Petitioner Alexander's motion pending several Third Circuit Court of Appeals and Supreme Court decisions which had the potential to directly impact Mr. Alexander's argument(s). See Docs. 336, 339, 355 & 336. On or about the date of April 24, 2018, the Court lifted the stay and established a briefing schedule. See Doc. 363.

Mr. Alexander's Motion is now fully briefed and has been given a dispostion of 'DENIAL' a timely 'Notice Of Appeal' was filed for the request of a Certificate Of Appealability with the Third Circuit Court of Appeals that was also 'DENIED'. Now the Petitioner is in the Third Circuit Court of Appeals for his timely filed request for Rehearing/Rehearing En banc.

REASON FOR GRANTING THE WRIT

This Court Should Grant Certiorari To Resolve Two (2) Questions Of Exceptional Importance Regarding The Interpretation Of Federal Law

First, Circuit Courts continue to erroneously hold that federal Bank Robbery By Intimidation qualifies as a "Crime Of Violence" under the Force Clause of 18 U.S.C. §924(c)(3)(A) and analogous sentencing enhancement provisions. See e.g. Unite States v. Watson, 881 F.3d 782, 785 (9th Cir. 2018), Cert. denied, 139 S. Ct. 203 (Oct. 1, 2018)(holding federal bank robbery is a crime of violence under §924(c)(3)(A)); United States v. McNeal, 818 F.3d 141, 157 (4th Cir.), Cert. denied, 137 S. Ct. 164 (2016)(SAME); United States v. Brewer, 848 F.3d 711, 716 (5th Cir.2017)(holding that federal carjacking by intimidation is a crime of violence under §924(c)(3)(A)). However, "intimidation," as broadly construed by this Court in Carter v. United States, 530 U.S. 255, 268 (2000), and by the Circuits for decades, requires no specific intent on the part of the defendant, nor does it require that the defendant communicate

an intent to use violence. The Courts cannot have it both ways - either Bank Robbery requires a threat of violent force, or it doesn't. But, the same rule must apply to both sufficiency cases and to the categorical analysis. Petitioner requests Certiorari to bring internal consistency to Federal Circuit precedent interpreting the intimidation element of Federal Bank Robbery.

Second, is Bank Robbery under 18 U.S.C. §2113(a) a divisible statute to challenge the Crime of Violence pursuant to the Element Clause of 18 U.S.C. §924(c) under the Fifth Circuit's ruling in United States v. Butler, No. 19-10065 (5th Cir. 2020).

A. Federal Bank Robbery Is Not A Crime Of Violence Under 18 U.S.C. §924(c)(3)(A) Because, As Authoritatively Interpreted By This Court And The Circuits For Decades, "Intimidation" Does Not Require The Use Or Threatened Use Of Violence.

To determine if an offense qualifies as a "Crime Of Violence" under the Force Clause of §924(c), Courts must use the categorical approach to discern the "minimum conduct criminalized" by the statute at issue through an examination of cases interpreting and defining the minimum conduct. Moncrieffe v. Holder, 569 U.S. 184 (2013); See Also Davis, 139 S. Ct. 2324 (confirming that §924(c) requires the categorical approach). The least culpable conduct criminalized by Federal Armed Bank Robbery is not a match for at least two of the requirements of the Force Clause. First, the Force Clause requiers purposeful conduct.[1/] But, this Court has held that Bank

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1/ This Court recently granted certiorari in **United States v. Walker, No. 19-373 (2019)** to decide whether the Force Clause's intent component encompasses reckless as well as intentional use of force. The outcome of **Walker** will not impact the argument here because, as explained infra, the mental state for "intimidation" in the Federal Bank Robbery statute falls below the standard of recklessness.

Robbery is a general intent crime, and the Circuits have not applied any culpable Mens Rea to the intimidation element. Second, §924(c)'s Elements Clause requiers that physical force be violent in nature. But, Bank Robbery by intimidation does not require a communicated intent to use violence.

1. The Force Clause Requires A Purposeful Threat Of Physical Force Whereas Bank Robbery By Intimidation Is A General Intent Crime That Does Not Requier Any Intent To Intimidate.

In Leocal v. Ashcroft, this Court held that the "use of physical force against the person or property of another" within the meaning of §924(c) means "Active Employment" of force and "suggests a higher degree of intent than negligent or merely accidental conduct." 543 U.S. 1, 9 (2004). In the Ninth Circuit's Watson Decision, the Court considered and rejected the Defendant's claim that the mental state for a violation of §2113(a) is not a match for the Crime of Violence definition in §924(c) because the bank robbery statute permits a Defendant's conviction "if he only negligently intimidated the victim." 881 F.3d at 785. Citing Carter, the Court concluded that federal bank robbery "must at least involve the knowing use to intimidation, which necessarily entails the knowing use, attempted use, or threatened use of violent physical force." Id.

Watson's conclusion that bank robbery by intimidation requires a knowing threat of force is inconsistent with the standard announced by this Court in Carter and with the manner in which the Circuits have consistently construed the intimi-

dation element of Bank Robbery outside the Categorical Approach context. In Carter, the question under consideration was whether §2113(a) implicitly requires an "intent to steal or purloin", which in an element of the related offense of Bank Larceny in §2113(b). 530 U.S. at 267. In evaluating that question, this Court emphasized that the presumption in favor of scienter would allow it to read into the statute "only that Mens Rea which is necessary to separate wrongful conduct from 'otherwise innocent conduct.'" Id. at 269. Thus, the Court recognized that §2113(a) "certainly should not be interpreted to apply to the hypothetical person who engages in forceful taking of money whild sleepwalking (innocent, if aberrant activity)." Id. at 269. But, the Court found no basis to impose a specific intent requierment on §2113(a). Id. at 268-69. Instead, the Court detemined that "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. (emphasis in original).

Under Carter, a defendant must be aware that he or she is engaging in the action that constitutes a taking by intimidation, but the Govenrment need not prove that the defendant knew conduct was intimidation. That reading of Carter finds support in Circuit precedent both pre-dating the opinion. Prior to Carter, the Ninth Circuit defined "bank robbery by intimidation" as "willfully to take, or attempt to take, in such a way would put

an ordinary, reasonable person in fear of bodily harm." United States v. Selfa, 918 F.2d 749, 751 (9th Cir. 1990). That definition attached the willful Nems Rea solely to the "taking" element of bank robbery, not the "intimidation" element.

Other Circuit decisions reflect the same interpretation of intimidation that focuses on the objectively reasonable reaction of the victim rather than the defendant's intent. The Fourth Circuit held in United States v. Woodrup, that "the intimidation element of §2113(a) is satisfied if 'an ordinary person in the [victim's] position reasonably could infer a threat of bodily harm from the defendant's acts,' whether or not the defendant actually intended the intimidation." 86 F.3d 359, 363 (4th Cir. 1996) (quoting United States v. Wagstaff, 865 F.2d 626, 627 (4th Cir. 1989)). "Nothing in the statute even remotely suggests that the defendant must have intended to intimidate". 412 F.3d 1240, 1244 (11th Cir. 2005) .

The Eighth Circuit case of United States v. Yockel, decided three years after Carter, leaves no question on the matter: there, the Court expressly stated that a jury may not consider the defendant's mental state, even as to knowledge of the inimidating character of the offense conduct. 320 F.2d 818, 823-24 (8th Cir. 2003). In Yockel, the defendant was attempting to withdraw $5,000.00 from his bank account, but the teller could not find an account in his name. 320 F.3d at 820. Eventually, after searching numerous records for an account, the defendant told the teller, "If you want to go to heaven, you'll give me

the money." Id. at 821. The teller became fearful, and "decided to give Yockel some money in the hopes that he would leave her teller window". Id. She gave Yockel $6,000.00 and asked him, "How's that?" The defendant responded, saying, "That's great, I'll take it." Id.

The Government filed a motion in limine seeking to preclude evidence of the defendant's mental health offered to demonstrate his lack of intent to intimidate. Id. at 822. The defendant argued that the evidence was relevant because Bank Robbery requires knowledge with respect to the intimidation element of the crime. Id. The District Court disagreed and "excluded mental health evidence in its entirety as not relevant to any issue in the case." Id. The Eighth Circuit affirmed. Id. at 825. Citing Foppe, the Court held that intimidation is measured under an objective standard, without regard to the defendant's intent, and is satisfied "if an ordinary person in the teller's postition reasonably could infer a threat of bodily harm from the [defendant's] acts[.]" Id. at 824. (internal quotation marks and alterations omitted). Accordingly, the Court decided that "the mens rea element of bank robbery [does] not apply to the element of intimidation[.]" Id.

Thus, Carter and Circuit precedent together establish that a defendant is guilty of Bank Robbery by intimidation within the meaning of §2113(a) so long as the defendant engages in a knowing act that reasonably instills fear in another, without regard to the defendant's intent to intimidate. As so defined, intimidation cannot satisfy §924(c)(3)(A)'s Mens Rea standard. The fact that

§2113(a) requires a defendant "to actually know the words of and circumstances surrounding" the taking by intimidation "does not amount to a rejection of negligence." See Elonis v. United States, 135 S. Ct. 2001, 2011 (2015)(interpreting federal threat statute). Rather, a threat is committed negligently when the mental state turns on "whether a 'reasonable person' regards the communication as a threat - regardless of what the defendant thinks[.]" Id.

2. The Force Clause Requires A Threatened Use Of Violent Physical Force, Whereas Bank Robbery By Intimidation Does Not Require That A Defendant Communicate Any Intent To Use Violence.

Even if §2113(a) proscribes a sufficient Mens Rea for the "intimidation" element of the offense, the statute does not require a threatened use of violent physical force" within the meaning of the Force Clause which must be "violent force - that is, force capable of causing physical pain or injury to another person.'" 139 S. Ct. 544, 553 (2019)(quoting Johnson v. United States, 559 U.S. 133, 140 (2010)("Johnson 2010")(emphasis in original).[2/]

Physical force does not include mere offensive touching. Id. In Watson, the Ninth Circuit reasoned that, because "intimidation" in 18 U.S.C. §2113(a) must be objectively fear-producing, it satisfies the degree of force required under §924(c)'s

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[2/] Stokeling and Johnson 2010 considered the meaning of "physical force" under the ACCA. The same standard has been applied to §924(c)(3)(A). See, e.g., Watson, 881 F.3d at 784.

Force Clause. 881 F.3d at 758 ("[A] 'defendant cannot put a reasonable person in fear of bodily harm without treatening to use force capable of causing physical pain or injury.'" (quoting United States v. Gutierrez, 876 F.3d 1254 (9th Cir. 2017)). That reasoning was in error because it is the content of a communication that defines a threat, not the reaction of the victim.

As this Court recognized in Elonis, the common definition of threat typically requires a "communicated intent to inflcit harm or loss of another[.]" 135 S. Ct. at 2008 (quoting BLACK's LAW DICTIONARY 1519 (8th ed. 2004)(Emphasis added). An uncommunicated "willingness to use violent force is not the same as a threat to do so." United States v. Parness, 818 F.3d 974, 980 (9th Cir. 2016). Thus, the fact that conduct might provoke a reasonable fear of bodily harm does not prove that the defendant "communicated [an] intent to inflict harm or loss on a another." Elonis, 135 S. Ct. at 2008.

Intimidation does not require a communicated threat. For purpose of §2113(a) intimidation can be (and frequently is) accomplished by a simple demand for money, without regard to whether the bank teller is afraid. Hopkins, 703 F.2d at 1103. ("Although the evidence showed that Hoplins spoke calmly, made no threats, and was clearly unarmed, we have previously held that 'express treats of bodily harm, threatening body motions, or the physical possibility of concealed weapons' are not required for a conviction for bank robbery by intimidation" (quoting United States v. Bingham, 628 F.2d 548, 549 (9th Cir. 1980)).

In United States v. Ketchum, the defendant handed a teller

a note that read: "These people are making me do this," and then orally stated, "They are forcing me and have a gun. Please don't call the cops. I must have at least $500.00." 550 F.3d 363, 365 (4th Cir. 2008) The defendant's statement did not evidnece a treat of force by the defendant agaisnt a victim (the defendant stated that he feared violence himself), but it was still held sufficient to qualify as "intimidation" under §2113(a). Id.

Similarly, in **United States v. Lucas**, a defendant's bank robbery conviction was upheld where he placed several plastic shopping bags on the counter along with a note that read: "Give me all your money, put all your money in the bag," and then repeated, "Put it in the bag." 963 F.2d 243, 244 (9th Cir. 1992). And, in **United States v. Smith**, the Court found sufficient evidence to affirm the defendant's bank robbery conviction where the defendant told the teller he wanted to make a withdrawl, and when the teller asked if that withdrawl would be from his savings or checking account, he stated, "No, that is not what I mean. I want to make a withdrawl. I want $2,500.00 in fifties and hundreds," and then yelled, "you can blame this on the president, you can blame this on whoever you want." 973 F.2d 603 (8th Cir. 1992).

Although each of these cases involved circumstances that were deemed objectivley fear-producing, the defendants made no written, oral, or physical treats to use "violent" force if the teller refused. A simple demand for money does not implicitley carry a threat of violence because not all bank robbers are

prepared to use violent force to overcome resistance. **Parnell, 818 F.3d at 980** (rejecting a similar argument that a purse snatching necessarily implies a threat of violent force and reasoning that, "[A]lthough some [purse] snatchers are prepared to use violent force to overcome resistance, others are not").

Nor is Bank Robbery by intimidation limited to those cases where a defednatn makes a verbal demand for money. In **United States v. Slater**, defendant simply entered a bank, walked behind the counter, and removed cash from the teller's drawers, but the defendant did not speak or interact with anyone beyond telling a manager to "shut up" when she asked what he was doing. **692 F.2d 107, 107-08 (10th Cir. 1982)**; Accord **United States v. O'Bryant, 42 F.3d 1407 (10th Cir. 1994)(Table)**(Affirming finding of intimiation where the defendant reached over the counter and took money from an open teller drawer after asking the teller for change). Those Bank Robberies involved no violence, not any communicated intent to use violence, beyond that used in a typical purse snatching.

As the **Watson** Court recognized, "intimidation" under **§2113(a)** is not defined by the content of any communication, but rather by the reaction that the defendant's conduct might objectively produce. **881 F.3d at 785.** Because conduct can be frightenting, yet still not contain a threat, Bank Robbery by intimidation does not require a threatened use of violent physical force. Accordingly, the Circuits have strayed from precedent in concluding that intimidation requires a communicated threat to use violent force.

3. The Correct Interpretation Of "Intimidation" Under 18 U.S.C. §2113(a) Is An Expectionally Important Question Because Of Its Broad Impact On Standards For Conviction And Sentencing.

This Court should grant certiorari because the Circuits have, in effect, given "intimidation" under 18 U.S.C. §2113(a) two contradictory meanings depending on whether the issue arises in the sufficiency context or on review under categorical approach. Having a clear and consistant definition of the intimidation element of Federal Bank Robbery to both the Government and the defendant in prosecution for that offense, and it will assist the Courts in efficiently administering the law. Correctly understanding the scope of the intimidation element of Federal Bank Robbery is at the heart of determining whether the offense qualifies for numerous categorically-defined federal sentencing enhancements for crimes involving intentional violence, including the harsh mandatory minimum sentence required by the ACCA. Thus, the consequences viewed from either the individual perspective or at a systematic level are substantial.

4. Bank Robbery Under 18 U.S.C. §2113(a) Constitues A Divisible Statute To Challenge The "Crime Of Violence" Under The "Element Clause" Of 18 U.S.C. §924(c).

A divisible statute "lists multiple, aleternative elements", which makes comparison of the elements more difficult because it "effectively creates several different crimes". Descamps v. United States, 570 U.S. 254, 264, 133 S. Ct. 2276, 186 L.Ed.2d 438 (2013)(alteration accepted)(internal quotation

marks omitted). When faced with an offense from a divisible statute, the Court must employ the modified categorical approach to determine "which crime of the statute formed the basis of the defendant's conviction". United States v. Davis, 875 F.3d 597 (11th Cir. 2017). Under the modified categorical approach a "Court looks to a limited class of documents ... to determine what crime, with what elements a defendant was convicted of." Mathis, 136 S. Ct. at 2248.

Bank Robbery under §2113(a) cannot qualify as a "Crime Of Violence" under the "Element Clause" of §924(c) under the categorical appoach. That offense is committed, under the statutory language, when a person "by force and violence, or by intimidation, takes, or attempts to take ... or obtains or attempts to obtain by extortion any ... thing of value belonging to ... any bank." 18 U.S.C. §2113(a)(emphasis added). The statute thus allows, but does not require that "force" or "violence" be involved in the offense, instead, the crime may be committed through more "intimidation" or "extortion". Id. The statute can therefore be read - should be read - as not including use of force as an "element", and for that reason should not qualify as a "Crime Of Violence" under §924(c). Sometimes, a statute may appear to describe alternative "elements" - that is, the constituent part of a crime's legal "definition" - which the prosecution must prove to obtain a conviction - but it actually describes alternative "means". Cintron v. Unites States Att'y Gen., 882 F.3d 1380, 1384 (11th Cir. 2018). "Means", by contrast, are merely "various factual ways of committing some component of the offense [and] a

jury need not find (or the defendant admit) any particular item". **Mathis, 136 S. Ct. at 2249.** When the statute contains alternatively listed elements or means it constitutes a divisible statute. When the statute's text, state case law, and the record of conviction do not resolve whether the statute is divisible, the Court must resolve whether the statute is divisible, the Court must resolve the inquiry in favor of indivisibility. And, because the statute is indivisible and it is overboard, it must conclude that it catetorically does not qualify as a predicate offense under **ACCA.**

A recent Court of Appeals decision in **United States v. Butler, No. 19-10065, ____ F.3d ____(5th Cir. February 4, 2020),** the Court found that **18 U.S.C. §2113(a)** is divisible. While the Fifth Circuit upheld the sentence, it shows that an offense under **18 U.S.C. §2113(a)** is not necessarily a categorical crime of violence. **See Mathis, 932 F.3d at 266 (4th Cir. 2018).**

B. Section 924(c)'s "Crime Of Violence" Definition:

> **Section 924(c)** of **Title 18,** of the United States Code sets forth an offense of using or carrying a firearm during and in relation to, a "crime of violence", or possessing a firearm in furtherance of a [] "crime of violence". **Section 924(c)** defines "crime of violence as a felony that either:
>
> (A) Has as an element the use, attempted use, or threatened use of physical force agaisnt the person or property of another; or
>
> (B) That by it's nature, involves a substantial risk that physical force against the person or propety of another may be used, in the course of committing the offense.

18 U.S.C. §924(c)(3) (emphasis added). Section (A) above is known as the "Force Clause", while section (B) is known as the "Residual Clause". See United States v. Taylor, 848 F.3d 476, 491 (1st Cir. 2017); and also Davis v. United States, 139 S. Ct. 2319 (2019).

Thus, in order to qualify as a "Crime Of Violence" under §924(c)(3)(A) the offense at issue must necessarity include as an element "the use, attempted use, or threatened use of physical force agaisnt the person or property of another." 18 U.S.C. §924(c)(3)(A) (emphasis added).

"Physical force", Id. Is a tern of art that is defined as "violent", "strong", and/or "great" force "capable of causing physical pain or injury to another person." Johnson v. United States, 559 U.S. 133, 144 (2010) (Johnson I). This Court in United State v. Wilndley added a gloss to Johnson I's definition of "physical force" by holding that the punitive "Crime Of Violence" additionally msut require the intentional - not neglegent or reckless - application of force. Bennet v. United States, 868 F.3d 1, 22-23 (1st Cir. 2017)). This volitional requirement extends to threats of force.

Courts apply the "categorical approach" to determine whether a particular offense meets §924(c)' definition of "Crime Of Violence". See United States v. Taylor, 495 U.S. 575, 600 (1990); Descamps v. United States, 133 S. Ct. 2276 (2013). That approach focuses exclusively on the elements of the offense, "even ... if th[e] facts show [that the defendant] acted violently." See United States v.

Serrano-Mercado, 784 F.3d 838, 842 (1st Cir. 2015) (citation omitted). Releavantly, the categorical appraoch looks to "the least amount of force required by the [offense]." United States v. Starks, 861 F.3d 306, 324 (1st Cir. 2017); See Also Moncrieffe v. Holder, 133 S. Ct. 1678, 1684 (2013) (quoting Johnson I, 599 U.S. 137)).

To prove Bank Robbery, the Government must establish the following elements beyond a reasonable doubt:

(1) Taking or attempted taking from the person or presence of another;

(2) a motor vehicle that has been transported, shipped, or received in interstate or foreign commerce;

(3) through the use of force, violence, or intimidation;

(4) with the intent ot cause death or serious bodily harm.

United States v. Garcia-Alverz, 541 F.3d 8, 16 (1st Cir. 2008).

"Intimidation is "to make timid or fearful, to compel or deter by as if by threats."[3/] Bodily harm or injury feared "means a cut, abrasion, bruise, burn, disfigurement, physical pain, or illness, or impairment of the function of a bodily member, organ or mental faculty, or antoher other injury to the body, no matter how temporary."[4/] The Appellant submits that the offense "contemplates simply that the defendant have subjected the victim to minimal levels of fear or 'intimidation'." United States v. Burns, 160 F.3d 82, 85 (1st Cir. 1998).

3/ SEE: Intimidate, Merrian-Webster Dictionary, at: www.merriam-webster.com/dictionary/intimidation

4/ Instruction 4. 18-2113(a), (d), at: www.med.uscourts.gov.pdf.crpjilinks.pdf

Per this Court's case law and Pattern Jury Instruction, of §2119 does not require the jury to agree on the method by which the defendant gained control of the motor vehicle - i.e. if "by force and violence or by intimidation." **See United States v. Castro-Davis, 612 F.3d 53, 61 (1st Cir. 2010)**(referring to "by force and violence or by intimidation" as §2119's "second element"). This characteristic suggests carjacking's "by force and violence or by intimidation" element is indivisible, given a factfinder need not select a statutory alternative to the "exclusion of all others." **Mathis v. United States, 136 S. Ct. 2243, 2257 (2016); United States v. Faust, 853 F.3d 39, 51 (2017)** (finding Massachusetts offense of resisting arrest indivisible based partly on model jury instructions, which listed statutory alternatives "under a single element").

CONCLUSION

The Petitioner prays this Honorable Court grant this Motion For Writ of Certiorari based on the merits of the facts and information presented herein and the provisions of his 28 U.S.C. §2255 Motoin along with any other relief this Court sees fit and just.

DECLARATION

I, Nijul Q. Alexander hereby declare and affirm under penalty of perjury as set forth in the provisions of 28 U.S.C. §1746 that the statements and representations made in this pleading are true and correct to the best of my knowledge and belief as

R E L I E F R E Q U E S T E D

The Petitioner humbly asks this Honorable Court to grant this Application For A Writ Of Certiorari based on the merits of the statements, facts and information presented herein this pleading and the provisions of his 28 U.S.C. §2255 Motion along with any other relief this Court sees fit and just.

D E C L A R A T I O N

I, Nijul Q. Alexander hereby declare and affirm under penalty of perjury as set forth in the provisions of 28 U.S.C. §1746 that the statements and representations made in this pleading are true and correct to the best of my knowledge and belief on this 18 day of ~~July~~ Aug, 2020.

8/18/20

NOTARY PUBLIC TRACY LYNN JOSLYN SEAL Clay County Expires 12-22-23 STATE OF INDIANA

Respectfully Submitted,

Nijul A. Alexander
70420-067
USP - Terre Haute
P.O. Box 33
Terre Haute, Indiana 47808

C E R T I F I C A T E O F S E R V I C E

I, Nijul Q. Alexander hereby certify that a true copy of the foregoing pleading was sent by first class mail postage prepaid to: Clerk of the Court - United States Supreme Court - at: 1 First Street, N.E., Washington, D.C. 20543 on this 18

day of ~~July~~ Aug, 2020, as witnessed and affirmed by my hand below.

By: _____
Nijul Q. Alexander
70420-067