

IN THE SUPREME COURT OF THE UNITED STATES

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RONDALE YOUNG, PETITIONER

v.

UNITED STATES OF AMERICA

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

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BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the district court abused its discretion in declining to instruct the jury that -- in order to find petitioner guilty of murder in aid of racketeering, in violation of 18 U.S.C. 1959(a)(1) -- petitioner's motive to enhance his status in the racketeering enterprise had to be a but-for cause of his decision to participate in the murder.

(I)

ADDITIONAL RELATED PROCEEDING

United States Court of Appeals (9th Cir.):

United States v. Young, No. 15-50158 (Dec. 27, 2017)

IN THE SUPREME COURT OF THE UNITED STATES

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No. 21-6787

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 2-11) is not published in the Federal Reporter but is available at 2021 WL 3201103. A prior opinion of the court of appeals (Pet. App. 12-21) is not published in the Federal Reporter but is reprinted at 720 Fed. Appx. 846.

JURISDICTION

The judgment of the court of appeals was entered on July 28, 2021. A petition for rehearing was denied on October 1, 2021 (Pet. App. 1). The petition for a writ of certiorari was filed on

December 30, 2021. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a retrial before a jury in the United States District Court for the Central District of California, petitioner was convicted on one count of racketeering conspiracy, in violation of 18 U.S.C. 1962(d); one count of conspiring to murder in aid of racketeering, in violation of 18 U.S.C. 1959(a)(5); one count of murder in aid of racketeering, in violation of 18 U.S.C. 1959(a)(1); and one count of using and carrying a firearm in furtherance of murder, in violation of 18 U.S.C. 924(c) and (j)(1). Judgment 1. The district court sentenced petitioner to life imprisonment, to follow by a consecutive term of 120 months of imprisonment. Ibid. The court of appeals vacated petitioner's Section 924(j) conviction and accompanying 120-month consecutive prison term, and affirmed in all other respects. Pet. App. 2-11.

1. On August 2, 2009, Jesse McWayne -- a Pueblo Bishop Bloods gang member -- was killed during a drive-by shooting in South Los Angeles. Pet. App. 13. The officer who responded to the scene heard someone in the crowd say, "It was 38." Ibid. Forty minutes later, at a carwash in the nearby territory of the 38th Street gang, two men got out of a black Chrysler and fatally shot Francisco Cornelio. Ibid. Video surveillance and witnesses identified the black Chrysler as belonging to petitioner's mother.

Ibid. Petitioner's mother later informed investigators that petitioner had driven the car that day, and petitioner made inculpatory statements to the same effect during a custodial interview. Id. at 15, 17.

A grand jury in the Central District of California charged petitioner with one count of racketeering conspiracy, in violation of 18 U.S.C. 1962(d), one count of conspiring to murder in aid of racketeering, in violation of 18 U.S.C. 1959(a)(5); one count of murder in aid of racketeering, in violation of 18 U.S.C. 1959(a)(1); one count of using and carrying a firearm in furtherance of a crime of violence, in violation of 18 U.S.C. 924(c); and one count of using and carrying a firearm in furtherance of murder, in violation of 18 U.S.C. 924(c) and (j)(1). D. Ct. Doc. 2193 (Sept. 25, 2013). Petitioner proceeded to trial. The jury found him guilty on all counts, except for the first Section 924(c) count (stemming from a different incident), on which it acquitted him. See Gov't C.A. Br. 5.

2. The court of appeals reversed petitioner's convictions and remanded for a new trial, based on its conclusion that law enforcement had violated Miranda v. Arizona, 384 U.S. 436 (1966), and Missouri v. Seibert, 542 U.S. 600 (2004). Pet. App. 12-21. But the court of appeals rejected petitioner's contention that the district court had plainly erred in instructing the jury on the elements of the Section 1959(a) count. Id. at 19-20.

Section 1959(a), colloquially known as the violent crimes in aid of racketeering (VICAR) statute, imposes criminal penalties on an individual who, "for the purpose of \* \* \* maintaining or increasing [his] position in an enterprise engaged in racketeering activity," commits any of several specified offenses, including murder. 18 U.S.C. 1959(a). The court of appeals found that the district court had correctly instructed the jury that "the government must prove that enhancing [petitioner's] status in the enterprise was a 'substantial purpose' for the murders." Pet. App. 20. And it explained that this Court's decision in Burrage v. United States, 571 U.S. 204 (2014) -- which interpreted a causation requirement in the Controlled Substances Act (CSA), 21 U.S.C. 841(b)(1)(C), to require but-for causation -- "is not obviously applicable in the VICAR context." Pet. App. 20.

3. At petitioner's retrial, the government -- in addition to presenting evidence that petitioner was the driver of the black Chrysler implicated in Cornelio's shooting -- presented evidence that he belonged to the Pueblo Bishop Bloods gang, that the gang maintained a rivalry with the 38th Street gang, and that the two gangs frequently engaged in retaliatory murders and shootings. See Gov't C.A. Br. 6-9. The jury also heard evidence that petitioner was present when McWayne -- a fellow Pueblo Bishop Bloods gang member -- was shot less than hour before Cornelio's carwash shooting in 38th Street gang territory. Id. at 9-10. The

jury was additionally informed that, in jailhouse conversations, petitioner had described his "routine" with the Pueblo Bishop Bloods gang -- "Do a mission" -- and affirmed that he "was ready to put in work." Id. at 13 (citation omitted). The jury heard testimony that a "mission" refers to killing rival gang members and "put in work" means engaging in violence to benefit the gang. Ibid. (citation omitted). The jury also reviewed jailhouse calls where petitioner tried to identify the fellow gang member who had implicated him in the carwash shooting. Id. at 15-16.

Renewing his challenge from the first appeal, petitioner requested a jury instruction stating that, on the VICAR murder charge, the government had to prove beyond a reasonable doubt that (inter alia) he "committed the \* \* \* murder" and "would not have committed the murder but for his desire to maintain or enhance his position in the enterprise." Pet. C.A. E.R. 113. The district court declined to give petitioner's proposed charge. Id. at 43-44. The court instead instructed the jury that "the government must prove beyond a reasonable doubt that [petitioner's] purpose in committing those crimes was to gain entrance to, or to maintain, or to increase, his position in the enterprise, namely, the Pueblo Bishop Bloods." Id. at 25. The court explained that "[i]t is not necessary for the government to prove that this motive was the sole purpose, or even the primary purpose of [petitioner] in committing the charged crimes" but "need only find that enhancing

his status in the enterprise was a substantial purpose of [petitioner] or that he committed the charged crime as an integral aspect of membership in the enterprise." Ibid.

The jury found petitioner guilty on all the charged counts. Pet. App. 2-3.

4. In an unpublished memorandum opinion, the court of appeals vacated petitioner's Section 924(j) conviction and accompanying 120-month sentence, and affirmed in all other respects. Pet. App. 2-11.

The court of appeals rejected petitioner's contention that he was entitled to an instruction on the VICAR murder charge requiring the jury to find a "but-for" causal relationship between the racketeering enterprise and the murder. Pet. App. 6 (citation omitted). Relying on multiple circuit precedents, the court found that "[t]he district court correctly gave a 'substantial purpose' rather than a 'but-for cause' instruction for the VICAR purpose element." Ibid. (citing United States v. Rodriguez, 971 F.3d 1005, 1010-1011 (9th Cir. 2020), and United States v. Banks, 514 F.3d 959, 970 (9th Cir. 2008)).

Judge Watford authored a concurring opinion taking the view that, while petitioner's life sentence was required by the VICAR statute, such sentences are "unjust and unwise." Pet. App. 9.

## ARGUMENT

Petitioner contends (Pet. 7-16) that the district court erred in declining to instruct the jury that the elements of VICAR murder required a finding that his motive to maintain or enhance his position in the enterprise was the but-for cause of the murder. The court of appeals correctly rejected that contention, and its decision does not conflict with any decision of this Court or another court of appeals. Further review is unwarranted.

1. The VICAR statute imposes criminal penalties on an individual who, "for the purpose of \* \* \* maintaining or increasing [his] position in an enterprise engaged in racketeering activity," commits any of several specified offenses, including murder and conspiracy to commit murder. 18 U.S.C. 1959(a). Congress viewed the VICAR statute as a "means of proscribing murder and other violent crimes committed as an integral aspect of membership in such enterprises." United States v. Dhinsa, 243 F.3d 635, 671 (2d Cir.), cert. denied, 534 U.S. 897 (2001) (quoting United States v. Concepcion, 983 F.2d 369, 381 (2d Cir. 1992), cert. denied, 510 U.S. 856 (1993)). The ordinary meaning of the statutory language accordingly "encompasses violent crimes intended to preserve the defendant's position in the enterprise or to enhance his reputation and wealth within that enterprise." Ibid. (emphases omitted).

In keeping with the VICAR statute's plain terms, the court of appeals had previously recognized that "the purpose element does not require the Government to show that the defendant was solely, exclusively, or even primarily motivated by a desire to gain entry into, or maintain or increase his status within, the criminal organization." United States v. Banks, 514 F.3d 959, 968 (9th Cir. 2008); see Pet. App. 19-20 (citing Banks and finding no plain instructional error at petitioner's first trial). Every other court of appeals to have considered the question has taken a similar approach to the VICAR statute's purpose requirement, with many of them relying on the Second Circuit's construction of the statute in United States v. Concepcion, supra. See, e.g., United States v. Velasquez, 881 F.3d 314, 332 (5th Cir.) (per curiam), cert. denied, 139 S. Ct. 138 (2018); United States v. Hackett, 762 F.3d 493, 500 (6th Cir. 2014), cert. denied, 574 U.S. 1201 (2015); United States v. Heilman, 377 Fed. Appx. 157, 204 (3d Cir.), cert. denied, 562 U.S. 974 (2010); United States v. Smith, 413 F.3d 1253, 1277-1278 (10th Cir. 2005), cert. denied, 546 U.S. 1120 (2006); United States v. Thai, 29 F.3d 785, 817 (2d Cir. 1994). That uniform construction reflects the VICAR statute's "ordinary meaning" and the absence of any "indication that Congress meant to require proof that self-promotion was the defendant's only or primary concern." Concepcion, 983 F.2d at 381.

2. Petitioner errs in asserting (Pet. 12-13) that the court of appeals' interpretation of the VICAR statute's purpose element conflicts with this Court's decision in Burrage v. United States, 571 U.S. 204 (2014), and the Sixth Circuit's decision in United States v. Miller, 767 F.3d 585 (2014).

In Burrage, this Court examined a provision in the CSA that prescribes an enhanced penalty for a drug dealer when "death or serious bodily injury results from the use" of the drug. 21 U.S.C. 841(b) (1) (A) – (C). The Court described the "causation" requirement in that provision as a "conduct" requirement that is separate from the mens rea requirement ("knowing or intentional distribution" of drugs). Burrage, 571 U.S. at 210. Focusing on the "results from" language and background principles of causality, the Court determined that the statute requires but-for causation. Ibid. The Court added that other statutory language -- "because of," "based on," and "by reason of" -- also typically requires a but-for causal relationship. Id. at 212-213 (citations and internal quotation marks omitted).

The VICAR statute, in contrast, does not include any causation inquiry. It instead asks only whether the defendant acted "for the purpose of \* \* \* maintaining or increasing [his] position in an enterprise engaged in racketeering activity." 18 U.S.C. 1959(a) (emphasis added). As the court of appeals has previously observed, that language "differs materially" from "the 'results from'

language evaluated in Burrage." United States v. Rodriguez, 971 F.3d 1005, 1010 (9th Cir. 2020). Unlike the examples surveyed in Burrage, see 571 U.S. at 211-214, the language of the VICAR statute concerns only the existence of a particular motive, which is linked not to the crime itself, but to a goal that the defendant hopes to (but may not) achieve. That court of appeals' straightforward analysis correctly interprets both Burrage and the VICAR statute, and it reflects the longstanding position of all the courts of appeals that have construed the VICAR statute's "purpose" requirement. See p. 8, supra.

b. Contrary to petitioner's contention (Pet. 7-11), the court of appeals' reasoning in this case does not conflict with the approach taken by the Sixth Circuit.

In United States v. Hackett -- a decision issued after this Court's decision in Burrage -- the Sixth Circuit examined the VICAR statute and rejected the contention that "the government [was] required to prove the defendant acted 'solely' or 'primarily' for a gang-related purpose." 762 F.3d at 500. The court instead recognized "that VICAR's 'purpose' element is met if the jury could find that an 'animating purpose' of the defendant's action was to maintain or increase his position in the racketeering enterprise." Ibid. The court highlighted its "agree[ment] with the Ninth Circuit," on whose precedent it relied. Ibid. (citing Banks, 514 F.3d at 968). And the Ninth Circuit subsequently confirmed its

reciprocal agreement with the Sixth Circuit on the issue. Rodriguez, 971 F.3d at 1010 n.4 (citing Hackett, 762 F.3d at 500). Petitioner's assertion of a conflict between those courts is thus belied by their own characterization of their relevant decisions.

Petitioner instead relies on (Pet. 8-9) United States v. Miller, in which the Sixth Circuit concluded that the federal hate-crimes statute, 18 U.S.C. 249(a)(2)(A), requires "a showing that [the defendant] would not have acted but for the victim's actual or perceived religious beliefs." 767 F.3d at 591. In adopting that construction, the court observed that the statute punishes individuals who "willfully caus[e] bodily injury to any person because of the actual or perceived religion of that person." Ibid. (quoting 18 U.S.C. 249(a)(2)(A)) (brackets and alterations omitted). Focusing on the statute's "'because of'" language, the Sixth Circuit reasoned that Burrage had "'insisted' that 'statutes using the term "'because of'" require a showing of 'but-for causality.'" Ibid. (quoting 571 U.S. at 213) (brackets omitted).

Petitioner asserts (Pet. 8) that a conflict exists between the court of appeals' decision in this case and the Sixth Circuit's decision in Miller because, in his view, the VICAR statute and the federal hate-crimes statute carry "a similar motive or purpose element." That contention lacks merit. The Sixth Circuit in Miller specifically addressed "[t]he 'because of' element of a prosecution under the Hate Crimes Act" and held that it "requires

the government to establish but-for causation." 767 F.3d at 593. As explained above, however, no such "because of" language appears in the VICAR statute, and the Sixth Circuit itself has construed the VICAR statute not to include a but-for causation requirement. See Hackett, 762 F.3d at 500. Accordingly, no disagreement exists between the circuits on the question presented, and petitioner identifies no other basis for this Court's review.\*

#### CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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MAY 2022

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\* Petitioner's other cited authorities (Pet. 11) likewise do not conflict with the decision below. In each of the cited cases, the court interpreted a similar statutory phrase -- "because of" or "based on" -- in a state or local hate-crimes ordinance as requiring but-for causality. See State v. Street, 633 S.W.3d 468, 470 (Mo. Ct. App. 2021); see also Lucas v. United States, 240 A.3d 328, 340-342 (D.C. 2020). As discussed, however, the VICAR statute does not employ such language. Nor, in any event, could such decisions interpreting state or local law create a conflict with courts' interpretation of language in a federal statute.