No. 24-5719

IN THE

SUPREME COURT OF THE UNITED STATES

Guy Mannino, Pro Se — PETITIONER
(Your Name)

vs.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Ninth Circuit Court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Guy Mannino
(Your Name)

P.O. Box 9000 - Low
(Address)

Forrest City, Arkansas 72336
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

The U.S. Supreme Court's holdings in Taylor, Johnson, Dimaya, and Davis have consistently required the application of the categorical-approach, or the modified categorical-approach, when determining whether an offense constitutes a statutory crime of violence. The question presented, upon which the circuits are divided, is;

> When determining whether an offense qualifies as a crime of violence, may a lower court use an alternative approach that does not include the Court's categorical or modified-categorical approach?

LIST OF PARTIES

[x] All parties appear in the caption of the case on the cover page.

[ ] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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- 18 U.S.C. § 16
- 18 U.S.C. § 373
- 18 U.S.C. § 1114
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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[X] For cases from **federal courts:**

The opinion of the United States court of appeals appears at Appendix 1 to the petition and is

[X] reported at 24-1519; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the United States district court appears at Appendix 2 to the petition and is

[X] reported at 4:14-CR-00026-RRB, Doc. 253; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

[ ] For cases from **state courts:**

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

[x] For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was 6/20/24.

[ ] No petition for rehearing was timely filed in my case.

[x] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: July 4, 2024, and a copy of the order denying rehearing appears at Appendix 3.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[ ] For cases from **state courts:**

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

STATEMENT OF THE CASE

A. Statutory Background

18 U.S.C.A. § 373 — solicitation to commit a crime of violence, requires; [T]he use of another to commit a crime against another, including the use or threatened use of physical force...against another. Section 373 states;

> "Whoever, with intent that another person engage in conduct constituting a felony that has as an element the use, attempted use, or threatened use of force against property or against the person of another in violation of the laws of the United States, and under circumstances strongly corroborative of that intent, solicits, commands, induces, or otherwise endeavors to persuade such other person to engage in such conduct, shall be imprisoned...".

18 U.S.C.A. § 1114 — Protection of officers and employees of the United States provides for the safeguarding of specified persons from murder, manslaughter, and attempted murder or manslaughter. Section 1114 states;

> "Whoever kills or attempts to kill any officer or employee of the United States or of any agency in any branch of the United States Government (including any member of the uniformed services) while such officer or employee is engaged in or on account of the performance of official duties, or any person assisting such officer or employee in the performance of such duties or on account of that assistance, shall be punished —
>
> (1) in the case of murder, as provided under section 1111;
>
> (2) in the case of manslaughter, as provided under section 1112; or
>
> (3) in the case of attempted murder or manslaughter, as provided in section 1113."

On May 29, 1990 the U.S. Supreme Court decided Taylor v. U.S. (495 U.S. 575) wherein it established a rubric for the determination of whether an offense qualifies as a crime of violence. In so doing, the Court held that a sentencing court must adopt a formal categorical approach in determining whether a statute has the requisite element under the force clause of section 16(a), looking only to the fact of conviction and the statutory definition of the predicate offense, rather than to the particular underlying facts.

On March 2, 2010 the U.S. Supreme Court decided Johnson v. United States (No. 08-6925). In its holding, the Court held that a court's determination of the meaning of the term 'crime of violence" must include Section 16's emphasis on the use of physical force against another person — without reliance of Section 16's "residual clause." (also 18 UJS.C. § 924(e)(2)(B)(ii) — declining to apply residual clause).

On June 26, 2015 the U.S. Supreme Court decided Johnson II v. United States (576 U.S. 591). Here, the Court revisited the use of § 16(b), the residual clause, in defining an offense as a "violent felony" for the purposes of applying that offense to the Armed Career Criminal Act. The Court held that the residual clause of § 16(b) was unconstitutionally vague and was therefore inappropriately considered when used to define an offense as a crime of violence.

On April 17, 2018 the U.S. Supreme Court decided Sessions v. Dimaya (No. 15-1498) — distinguishing between a categorical, ordinary-case approach against a conduct-based approach — when determining whether an offense of conviction qualifies as a 'crime of violence' as defined in section 16 of title 18.

In this holding, the Court related back to its Johnson decisions that

section 16(b) is unconstitutionally vague making it void, and that its use devolves into mere guesswork and intuition by a court-inviting arbitrary enforcement while failing to provide fair notice — thus requiring a court's use of the 'categorical approach' in determination of a statute's qualification as a 'crime of violence.'

On June 24, 2019 the U.S. Supreme Court decided U.S. v. Davis (No. 18-431), in order to determine whether the residual clause of 18 U.S.C.A. § 924(c)(3)(B) was unconstitutionally vague as it relates to defining a statute as a crime of violence. The Court held it was unconstitutionally vague for reasons in accord with its recent Johnson and Dimaya holdings.

B. Factual Background

On 6/15/16 Guy Mannino was sentenced to serve 204 months of imprisonment after a jury found him guilty of violating federal laws under 18 U.S.C. § 373 — solicitation to commit a crime of violence. The underlying offense to his conviction involved an attempt to have another commit an offense under 18 U.S.C. § 1114 — attempt murder or manslaughter of officers and employees of the United States. (Case No. 4:14-CR-00026-RRB, Dist. of Alaska).

On or about November 28th, 2022 Mannino filed his statutory interpretation issue with the U.S.D.C. for the E.D. of Arkansas as a motion for relief pursuant to 28 U.S.C. § 2241 (see 2:22-CV-00216-LPR).

On or about July 25, 2023 Mannino withdrew his § 2241 motion from the Arkansas court and transferred his issue to his Alaska sentencing court for review pursuant to 18 U.S.C. § 3582, under his criminal case number 4:14-CR-00026.

On 10/30/23 the U.S.D.C. for the District of Alaska issued an order denying Mannino's § 3582 motion relating to his statutory interpretation challenge.

On 3/14/24 Mannino filed an appeal of his issue with the Ninth Circuit Court of Appeals. His case was assigned case number 24-1519.

On 6/20/24 Mannino's appeal was denied citing 'insubstantiality' as its denial rationale.

The 9th Circuit Court of Appeals issued a mandate on 7/16/24.

REASONS FOR GRANTING THE PETITION

A. The lower court's opinion conflicts with the statutory interpretation rubric established by the U.S. Supreme Court.

The Supreme Court's rubric for determining whether an offense qualifies as a crime of violence requires courts to use an inquiry known as the "categorical" approach. This means the court looks to whether the statutory elements of the offense *necessarily require* the use, attempted use, or threatened use of physical force. (see Leocal v. Ashcroft, 531 U.S. 1, 2004). The lower courts have also referred to this force clause inquiry as the *elements-based* categorical approach in order to distinguish this rubric from a facts-based inquiry.

When applying this standard, a court only needs to determine whether the same or similar language from 18 U.S.C. § 16(a) appears as an element in the offense. Section 16(a) reads;

> "[A]n offense that has has as an element the use, attempted use, or threatened use of physical force against the person or property of another."

When finding this language in a criminal statute, courts have concluded that § 16(a), and the underlying offense, are materially identical — and have treated the precedent respecting one as a controlling analysis of the other.

This treatment also works in the converse. When the language of § 16(a) *does not* appear in the underlying offense, then it cannot be said to be materially identical and therefore cannot qualify as a categorical crime of violence under the force clause of section 16(a). This disparity is at the heart of Mannino's issue.

B. The murder, manslaughter, and the attempt statutes to these offenses do not categorically qualify as crimes of violence under the Supreme Court's rubric.

The rationale for categorical analysis is simple and long-established: if Congress has conditioned a statutory penalty on commission of an offense generally—rather than on specific facts—courts must consider the crime as defined, rather than by the offender's conduct. (Shepard v. U.S., 544 U.S. 13, 2005). The text and structure of § 373 unambiguously requires courts to analyze the attributes of an offense "constituting a felony...that has as an 'element,'" —that is, categorically.

In Mannino's case, the underlying offense relied upon is 18 U.S.C. § 1114, by and through the inclusion of section 1113.

A review of sections 1114 and 1113 reveals that neither of these statutes have, as an element, the "use, attempted use, or threatened use of physical force" as required under the categorical-approach rubric.

Since the Supreme Court has always rooted the categorical approach in the statutory language chosen by Congress and consistently defended this approach as a means of effectuating congressional intent, it is plain that an act committed under sections 1114 and 1113 cannot support a conviction under § 373 because these sections cannot withstand categorical-approach analysis.

Depsite whatever a judge's personal feelings as to what does or does not constitute a crime of violence, the courts are nevertheless bound to apply the definition that Congress has prescribed.

C. Circuit courts have not followed the Supreme Court's categorical-approach vertical precedents when construing the federal murder statute—rendering the Court's crime of violence rubric a mere discordant opinion.

1. Recent circuit court precedent reveals 2 significant facts. First, every

Circuit has accepted the Court's categorical-approach rubric for determining whether an offense is a crime of violence, but secondly—when it comes to evaluating the federal murder statute—most Circuit courts have used the "substantial-step" or "malice-aforethought" standards to justify the final determinations that would have been unsupported using the categorical approach. Some examples are;

- U.S. v. Begay (33 F.4th 1081, 9th Cir., January 24, 2002)—in the dissent, the court stated: A faithful application of the categorical approach and Supreme Court precedent leads to the counter-intuitive conclusion that second degree murder is not a crime of violence. But see U.S. v. Burns LEXIS 30529, December 10, 2020: adopting a conduct-based approach to overcome the categorical-approach rubric, and recklessness exception.

- U.S. v. Pastore (83 F.4th 111, 2nd Cir., June 8, 2002)—affirming attempt murder is a crime of violence because it can be committed by way of affirmative acts or omissions, in every instance, it is his intentional use of physical force...that causes death.

- U.S. v. Hunt (LEXIS 9142, 4th Cir., April 16, 2024; following Dorsey v. U.S., 76 F.4th 1277, 9th Cir., 2023 and Alvarado-Linares v. U.S., 44 F.4th 1334, 11th Cir., 2022)—holding that a conviction for attempted murder categorically means that the defendant took a substantial step towards the use of physical force - and not just a substantial step toward the *threatened* use of physical force. (see also U.S. v. Gills, LEXIS 137939, 6th Cir., August 3, 2022).

- U.S. v. Chick (LEXIS 37550, 7th Cir., March 3, 2022)—murder is *not* a crime of violence under categorical approach, *but is* a crime of violence using an alternative standard. (see also U.S. v. Raupp, 677 F.3d 756, 7th Cir., March 9, 2012).

- Janis v. U.S. (73 F.4th 628, 8th Cir., July 14, 2023)—holding that the "malice-aforethought" element means that second degree murder involves the use of force against the person...so it is a crime of violence...and will always clear the Borden bar for recklessness.

- Sandoval-Flores v. U.S. (LEXIS 227307, 10th Cir., Dec. 16, 2022)—holding attempt murder is not a crime of violence under the categorical approach, but that neither the "substantial step" element nor the "specific intent to kill" element requires 'the use, attempted use, or threatened use of force' to conclude that it is a crime of violence.

- U.S. v. Leon (LEXIS 15885, 5th Cir., June 22, 2023)—holding murder is a crime of violence under the elements clause (see U.S. v. Smith, 957 F.3d 590, 5th Cir., 2020)—holding attempt murder is a crime of violence under the still-valid elements clause of § 924(c)(3)(A).

By deviating from the application of categorical approach, the Circuits have failed to follow the Blackletter Principle that lower courts must strictly follow vertical precedents—meaning that courts must adhere not just to the result but also to any reasoning necessary to that result. (Seminole Tribe of Florida v. Florida, 517 U.S. 44, 1996; also, The Law of Judicial Precedent, Bryan Garner, J.J. Gorsuch, Kavanaugh, Breyer, et alia).

It is Mannino's position that the circuit court's failure to follow the rubric by which they are bound, has led them to engage in an indefensible brand of Judicial activism because if a Supreme Court decision is to be modified, overruled, or disregarded, that will have to be done only by the Supreme Court. Adherence to the Court's precedent is necessary to promote consistency and predictability in the law while discouraging these types of adventurous second-guessing by widely dispensed subaltern judges.

2. The lower courts in the 9th Circuit are conflicted between their circuit's interpretive precedents, and those established by the Supreme Court.

One example demonstrating a district court's ambivalance to treat cases according to their circuit's precedent—such as that in Begay—or whether to follow the Supreme Court's holdings such as those in Taylor, Johnson, Davis, and Dimaya is as follows. (citations omitted). In U.S. v. Birdinground (U.S.

Dist. LEXIS 108428, June 28, 2018) the district court rendered an exhaustive analysis of its obligation to follow the categorical-approach rubric.

The district court noted the existence of a widely varying application of the categorical-approach based upon a court's consideration of the 'elements' and 'contexts' being considered. Ultimately, as it relates to second degree murder, the district court opined,

> "[T]he key characteristic of Congress' definition of a "crime of violence" is that it applies to categories of crimes, not to the circumstances in which an individual defendant uses or carries or possesses a firearm. Necessarily so, using a firearm as a weapon to commit a crime would make *any* crime a violent one. But if that was what Congress intended, the phrase "crime of violence" would be superfluous." Id.

As the court struggled with its competing circuit precedents it said, "maybe using a firearm as a weapon...*should* qualify as...a crime of violence, but whether it should or not is not an open question."

The court further declared that since the state's voluntary manslaughter is not identical to the federal definition, it is *not* a crime of violence under section 16(a). (citing Quijada-Aguilar v. Lynch, 799 F.3d 1303, 9th Cir., 2015). In addition, the court held that second-degree murder in violation of 18 U.S.C. § 111(a) is *not* a crime of violence because the offense may be proved on a showing of recklessness. (citing Fernandez-Ruiz v. Gonzales, 466 F.3d 1121, 9th Cir., 2006, en banc).

Ultimately, the district court resolved to hold,

> "the Court's holding in Johnson is a straightforward decision, with equally straightforward application here, and tells us how to resolve this case under § 16(b) of Title 18. (citing Dimaya, 138 S.Ct. 1223).

It further said that if the right recognized in Johnson were confined to ACCA, Dimaya would not have been decided as it was, and since, under current

Ninth Circuit law, the elements of second-degree murder fall within the same method as the provisions at issue in Johnson and Dimaya, it too is unconstitutionally vague because of its reliance on a conduct-based approach rather than on the controlling categorical approach.

D. The lower court's opinion has created an ideal opportunity to use this case as a good vehicle to resolve the merits of this issue.

The resolution of this issue will impact a significant portion § 373 cases, and may well extend to those cases related to § 1111, § 1112, and § 1113 offenses.

Mannino proposes that this Court decide this matter fully by addressing its rubric for determining whether an offense constitutes a crime of violence under categorical analysis, because if the analysis fails, then there would be no substance to connect 18 U.S.C. § 372 to § 1114 as its qualifying underlying offense.

The resolution of this issue would also extend to the manner by which violent offenses are prosecuted and treated, not only by the lower courts for sentencing purposes under U.S.S.C. guidelines, but also by the Attorney General and Department of Justice in classifying prisoners correctly as either violent of non-violent offenders with reliance upon their offense of conviction, regardless of their conduct in the commission of the offense.

E. The holdings established by the Supreme Court in Taylor, Johnson, Davis, and Dimaya have already created a strong, controlling admonition that underlies the resolution of this issue by certiorari. This matter could also be resolved by summary reversal of the lower court's decision(s) as warranted by this Court's precedents on this subject.