No.

IN THE

Supreme Court of the United States

MARCELLUS HENDERSON,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

W. Matthew Dodge
FEDERAL DEFENDER PROGRAM, INC.
101 Marietta Street, NW
Suite 1500
Atlanta, GA 30303

Nicole Ries Fox
Holly Boux
ORRICK, HERRINGTON & SUTCLIFFE LLP
2100 Pennsylvania Ave. NW
Washington, DC 20037

E. Joshua Rosenkranz
Counsel of Record
Jodie Liu
ORRICK, HERRINGTON & SUTCLIFFE LLP
51 West 52nd Street
New York, NY 10019
(212) 506-5000
jrosenkranz@orrick.com

Counsel for Petitioner

QUESTIONS PRESENTED

The federal bank robbery statute, 18 U.S.C. § 2113(a), imposes criminal liability on "[w]hoever, by force and violence, or by intimidation, takes, or attempts to take, … or obtains or attempts to obtain by extortion any property or money … [from] any bank." The so-called "elements clause" of 18 U.S.C. § 924(c) provides for enhanced sentencing penalties where a defendant uses or carries a firearm in relation to a "crime of violence," which is defined in relevant part as a felony that "has as an element the use, attempted use, or threatened use of physical force against the person or property of another." 18 U.S.C. § 924(c)(3)(A).

It is undisputed that § 2113(a) bank robbery "by extortion" cannot satisfy § 924(c)'s elements clause on its own and accordingly is not a "crime of violence" under § 924(c)(3)(A). The questions presented here, which are also presented in *Armstrong v. United States*, No. 24-__ (petition filed July 1, 2025), are:

1. Is federal bank robbery in § 2113(a) indivisible, such that no form of bank robbery qualifies as a "crime of violence" for purposes of § 924(c)?

2. If the statute is divisible, did the Eleventh Circuit err in holding that *attempted* federal bank robbery necessarily includes "the use, attempted use, or threatened use of physical force," such that it qualifies as a "crime of violence" for purposes of § 924(c)?

RELATED PROCEEDINGS

Henderson v. United States, No. 1:20-cv-01695 (N.D. Ga.) (judgment issued Mar. 16, 2021)

Henderson v. United States, No. 1:03-cr-00648 (N.D. Ga.) (judgment issued Mar. 16, 2021)

Henderson v. United States, No. 21-11740 (11th Cir.) (opinion and judgment issued April 10, 2025)

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INTRODUCTION

This case presents two important and recurring questions, which are also presented in *Armstrong v. United States*, No. 24-__ (petition filed July 1, 2025), about how to interpret the federal bank robbery statute, 18 U.S.C. § 2113(a). Both questions are the subject of well-developed and recognized circuit splits. And in both instances, the Eleventh Circuit arrived at a mistaken conclusion that contravenes the statutory text and this Court's precedents.

The first question asks if § 2113(a) is indivisible, meaning that a § 2113(a) bank robbery conviction cannot serve as the predicate offense for enhanced sentencing penalties for using or carrying a firearm in relation to a crime. While the D.C. Circuit has interpreted the statutory text as written to find the statute indivisible, several courts—including the Eleventh Circuit below—have found the statute divisible, making § 2113(a) convictions subject to enhanced penalties as "crimes of violence" under 18 U.S.C. § 924(c). That conclusion is irreconcilable with the statutory text, which repeats the same syntax to list three alternative ways to rob a bank—by force and violence, by intimidation, or by extortion. As the D.C. Circuit properly concluded, the statute does not set forth two separate crimes, and thus is indivisible.

The second question involves an equally explicit and acknowledged split among the courts of appeals. The circuits have disagreed 5-3 over whether a conviction for attempted, rather than completed, § 2113(a) bank robbery can serve as a predicate "crime of violence" for purposes of § 924(c). On this

question too, the Eleventh Circuit and the courts aligned on its side of the split have concluded, contrary to this Court's precedent and the statutory text, that the attempt offense itself requires the use, attempted use, or threatened use of physical force. The division of authority on this question presented has allowed the government to assert conflicting positions when defending convictions for attempted bank robbery, on the one hand, and § 924(c) convictions predicated on attempted bank robbery, on the other.

Neither of these questions will resolve itself absent this Court's intervention. The proper interpretation of § 2113(a) is fundamental to scores of defendants subjected to enhanced penalties under § 924(c). Indeed, the government acknowledged the scope of this issue just a few years ago, urging the Court to resolve "an important and recurring issue" about § 924(c) charges predicated on Hobbs Act robbery. Pet. for a Writ of Cert. 20-21, *United States v. Taylor*, No. 20-1459 (U.S. Apr. 14, 2021).

At this point, there is no benefit to further percolation. Many circuits have staked out their position as to both issues, and there is no reason to expect them to reconsider their positions on this now-entrenched split. This case is an ideal vehicle to decide these questions, as the issues were both directly addressed by the court of appeals and in both instances were outcome-determinative.

The petition should be granted.

OPINIONS AND ORDERS BELOW

The decision of the Eleventh Circuit, reproduced in the Petition Appendix (Pet. App.) at 1a-16a, is not reported (but is available at 2025 WL 1078231). The district court's decision, reproduced at Pet. App. 26a-43a, is not reported.

JURISDICTION

The Eleventh Circuit issued its opinion on April 10, 2025. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

18 U.S.C. § 2113, the federal bank robbery statute, states in relevant part:

> (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; …
>
> Shall be fined under this title or imprisoned not more than twenty years, or both.

18 U.S.C. § 2113(a).

18 U.S.C. § 924(c) provides sentencing penalties for using or carrying a firearm in relation to a "crime

of violence." 18 U.S.C. § 924(c)(3) defines a "crime of violence" as:

> 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.

18 U.S.C. § 924(c)(3).

STATEMENT OF THE CASE

Petitioner is convicted of using or carrying a firearm in relation to a crime of violence.

Petitioner Marcellus Henderson was one of multiple participants in a failed bank robbery attempt in October 2003. Pet. App. 6a, 27a. During the failed attempt, another participant—not Petitioner—shot and killed a bank employee. *See* Pet. App. 6a. The government charged Petitioner with conspiring to commit Hobbs Act robbery, in violation of 18 U.S.C. § 1951; aiding and abetting attempted bank robbery resulting in death, in violation of 18 U.S.C. § 2113(a), (d), and (e); and using and carrying a firearm during and in relation to a crime of violence—namely, aiding and abetting attempted bank robbery resulting in death—in violation of 18 U.S.C. §§ 2, 924(c)(1)(A)(iii), and 924(j)(1). Pet. App. 6a-7a. A jury convicted Petitioner on all counts. Pet. App. 7a.

Section 924(c), the basis of Petitioner's third count of conviction, subjects any person who uses or carries a firearm during or in relation to a "crime of violence" to a mandatory minimum sentence to be served consecutively with any other term of imprisonment. 18 U.S.C. § 924(c)(1)(A)(i), (c)(1)(D)(ii). At the time of Petitioner's conviction, § 924(c) provided two ways an offense could be a "crime of violence." Under what is known as the "elements clause," a federal felony is a "crime of violence" if it "has as an element the use, attempted use, or threatened use of physical force against the person or property of another." *Id.* § 924(c)(3)(A). Under what is known as the "residual clause," a federal felony is a "crime of violence" if it "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." *Id.* § 924(c)(3)(B).

The district court sentenced Petitioner to 20 years' imprisonment for conspiring to commit Hobbs Act robbery and a concurrent life sentence for aiding and abetting attempted bank robbery. *See* Pet. App. 7a, 48a. At the time of Petitioner's sentencing in 2006, many courts, including the Eleventh Circuit, held that attempted § 2113(a) bank robbery is a "crime of violence" for purposes of § 924(c). *See, e.g.*, *United States v. Jones*, 418 F.3d 726, 729 (7th Cir. 2005) ("Attempted bank robbery qualifies as a 'crime of violence.'"); *United States v. Cody*, 136 F. App'x 297, 299-300, 302 (11th Cir. 2005) (affirming § 924(c)(1)(A)(ii) conviction predicated on attempted § 2113 bank robbery). Based on that case law, the district court imposed an additional consecutive sentence of ten years' imprisonment for using and carrying a firearm during

and in relation to a crime of violence. Pet. App. 27a-28a & n.1. Petitioner's total sentence was life imprisonment plus ten years.

On direct appeal, the Eleventh Circuit affirmed Petitioner's convictions and sentences. Petitioner then filed unsuccessful 28 U.S.C. § 2255 post-conviction motions for relief.

Petitioner seeks post-conviction relief on the basis that attempted § 2113(a) bank robbery is not a crime of violence.

In 2019, this Court struck down § 924(c)(3)(B), the "residual clause" in the definition of a "crime of violence" under § 924(c), as unconstitutionally vague. *United States v. Davis*, 588 U.S. 445, 470 (2019). After *Davis*, a federal felony does not qualify as a "crime of violence" under § 924(c) unless it satisfies the "elements clause."

Because *Davis* announced a new substantive rule of constitutional law that applies retroactively to cases on collateral review, *In re Hammoud*, 931 F.3d 1032, 1039 (11th Cir. 2019), Petitioner filed another § 2255 motion arguing that attempted bank robbery in violation of § 2113(a) is not a "crime of violence" under the elements clause. Petitioner thus sought to vacate his § 924 conviction for using and carrying a firearm during and in relation to a crime of violence.

The district court denied the motion in March 2021, concluding that attempted bank robbery is still a crime of violence under § 924(c)'s elements clause. The court reasoned that, like completed Hobbs Act

robbery, completed bank robbery under § 2113 necessarily includes the use, attempted use, or threatened use of physical force. Pet. App. 32a-33a. Therefore, like attempted Hobbs Act robbery, attempted bank robbery must also include at least the attempted use of force. Pet. App. 33a.

The Eleventh Circuit holds that § 2113(a) bank robbery is divisible and that attempted § 2113(a) bank robbery satisfies the elements clause.

Petitioner obtained a certificate of appealability on whether attempted bank robbery qualifies as a "crime of violence" under the elements clause. The Eleventh Circuit stayed the appeal, however, when this Court granted certiorari in *United States v. Taylor*, No. 20-1459, which presented a similar question: whether attempted Hobbs Act robbery is a "crime of violence" under the same elements clause.

To answer that question, this Court applied what is known as the categorical approach. *United States v. Taylor*, 596 U.S. 845, 850 (2022). Under that approach, a federal felony is a "crime of violence" under the elements clause only if it "has *as an element* the use, attempted use, or threatened use of physical force." *Id.* (quoting § 924(c)(3)(A)). That is also to say, "the federal felony at issue" must "*always* require[] the government to prove—beyond a reasonable doubt, as an element of its case—the use, attempted use, or threatened use of force." *Id.* (emphasis added).

Applying the categorical approach, *Taylor* held that attempted Hobbs Act robbery is not a crime of violence under the elements clause. *Id.* at 851-52. It

explained that attempted Hobbs Act robbery requires only "an intention to take property by force or threat, along with a substantial step toward achieving that object," neither of which "require[s] the government to prove that the defendant used, attempted to use, or even threatened to use force against another person or his property." *Id.* at 851.

The Eleventh Circuit issued an opinion in Petitioner's case after *Taylor*. The court did not directly address Petitioner's arguments. Nor did it explain why it applied a different analysis to attempted bank robbery than *Taylor* had applied to attempted Hobbs Act robbery. Instead, the court pointed to then-recent circuit precedent concluding that attempted murder under the Violent Crimes in Aid of Racketeering Act qualifies as a § 924(c) "crime of violence." Pet. App. 19a-24a (citing *Alvarado-Linares v. United States*, 44 F.4th 1334, 1342, 1348 (11th Cir. 2022)).

On petition for rehearing, however, the Eleventh Circuit vacated its opinion and held Petitioner's case in abeyance pending a decision in *United States v. Armstrong*, No. 21-11252 (11th Cir.). Like Petitioner's case, *Armstrong* posed the question whether attempted § 2113(a) bank robbery is a § 924(c) "crime of violence."

To answer that question, however, the Eleventh Circuit first had to decide whether § 2113(a) bank robbery is "divisible." *United States v. Armstrong*, 122 F.4th 1278, 1284-85 (11th Cir. 2024). A criminal statute is "indivisible" when it sets out a single crime that might be carried out through "various factual means," and it is "divisible" when it "define[s] multiple

crimes." *Mathis v. United States*, 579 U.S. 500, 505-06 (2016). As *Armstrong* explained, § 2113(a) bank robbery requires a divisibility analysis because it covers bank robbery that occurs "by force and violence," "by intimidation," and "by extortion," the last of which cannot satisfy § 924(c)'s elements clause on its own. 122 F.4th at 1285-86. If § 2113(a) is not divisible—meaning that it merely sets out multiple means of carrying out a single crime—then the standard categorical approach applies. *Id.* at 1285. And under that approach, because a § 2113(a) offense may be carried out without satisfying the elements clause (namely, by extortion), *any* § 2113(a) offense is categorically not a crime of violence under the elements clause. *See id.* By contrast, if § 2113(a) is divisible—meaning that it sets out multiple distinct crimes—then the modified categorical approach applies. *Id.* at 1285-86. Under that approach, the court would determine which of the multiple distinct crimes served as the basis of a defendant's conviction, and then decide whether that particular crime satisfies § 924(c)'s elements clause. *See id.*

Armstrong held that § 2113(a) is divisible, thus rejecting the argument that § 2113(a) offenses categorically fail to satisfy the elements clause. *Id.* at 1287. The Eleventh Circuit rejected the position that the phrases "by force or violence," "by intimidation," and "by extortion" in § 2113(a) are "alternate means of committing one crime," the crime of bank robbery. *Id.* at 1286. Instead, it reasoned that § 2113(a) distinguished between two "separate crimes," bank robbery (which occurs "by force or violence, or by intimidation") and bank extortion (which occurs "by extortion"). *Id.* at 1286-87.

The Eleventh Circuit then turned to the second question: whether attempted § 2113(a) bank robbery is a crime of violence. It concluded that attempted § 2113(a) bank robbery can occur only "by force and violence, or by intimidation," meaning such attempts require the use, attempted use, or threatened use of force, and satisfy the elements clause. *Id.* at 1290 (quoting 18 U.S.C. § 2113(a)). The Eleventh Circuit distinguished § 2113(a) from the analogous Hobbs Act provision in *Taylor* by claiming that the latter is "structured differently" than § 2113(a), under which Congress purportedly "criminalized *only* attempts that occur 'by force and violence, or by intimidation.'" *Id.* at 1289-90 (quoting 18 U.S.C. § 2113(a)).

After deciding *Armstrong*, the Eleventh Circuit reconsidered Petitioner's appeal. First, the court applied *Armstrong*'s holding that § 2113(a) is divisible. Pet. App. 12a. It therefore ruled out any argument that Petitioner's § 2113(a) offense is not a crime of violence under the categorical approach. Second, applying the modified categorical approach to Petitioner's asserted predicate offense of attempted § 2113(a) bank robbery, the court held that the attempt offense satisfies the elements clause. Pet. App. 13a-14a. The court reasoned that Congress in § 2113(a) "chose to criminalize only attempts that occur 'by force and violence, or by intimidation,'" such that a defendant "*cannot* commit an attempted § 2113(a) robbery without actually using force or violence." Pet. App. 13a (quoting 18 U.S.C. § 2113(a)).

REASONS FOR GRANTING THE WRIT

I. The Decision Below Deepens Two Acknowledged Splits Among The Courts Of Appeals With Respect To § 2113(a).

A. The circuits are divided over the divisibility of § 2113(a) bank robbery.

There is an acknowledged split among at least six courts of appeals over whether § 2113(a) bank robbery is divisible. The D.C. Circuit has held that the statute is indivisible, such that § 2113(a) bank robbery categorically is not a crime of violence. The First, Second, Third, Ninth, and Eleventh Circuits have held the opposite. Only this Court can resolve the clear division of authority.

1. In *United States v. Burwell*, 122 F.4th 984 (D.C. Cir. 2024), the D.C. Circuit concluded that § 2113(a) bank robbery is indivisible after an exhaustive analysis of the statute. The decision rested on "[m]ultiple indicators" that Congress intended for § 2113(a) to set out different means, but not different offenses. *Id.* at 990. "Start[ing] with the plain text" of the statute, the D.C. Circuit observed that § 2113(a) "provides a single maximum penalty regardless of how" a defendant violates the provision, not different punishments depending on whether the defendant robbed a bank by force and violence, by intimidation, or by extortion. *Id.*

The D.C. Circuit identified many other textual clues as well. For instance, Congress used parallel syntax and structure to denote different "*means* of committing bank robbery": "by force and violence," "by

intimidation," or "by extortion." *Id.* (emphasis added). As further "evidence that Congress viewed" the statute as setting out "alternative *means* to commit bank robbery," it employed the language of both "intimidation" and "extortion," which are "synonyms" of one another. *Id.* at 991 (emphasis added). And Congress opted to use a comma to set off the extortion language, "rather than more disjunctive punctuation like a semicolon," which courts have found denotes a divisible clause. *Id.* at 990.

The D.C. Circuit also pointed out that the extortion language only entered into § 2113(a) when Congress amended it in 1986 through an act entitled "'Addition of Extortion to Bank Robbery Offense.'" *Id.* at 991 (quoting Criminal Law and Procedure Technical Amendments Act of 1986, Pub. L. No. 99-646, § 68, 100 Stat. 3592, 3616). The very name of the act demonstrated to the D.C. Circuit that "Congress intended to 'add' extortion to the extant offense of bank robbery, rather than to create a new separate and distinct bank extortion offense." *Id.* The D.C. Circuit thus concluded that "[t]he text, structure, and statutory history make clear that § 2113(a) is indivisible." *Id.*

2. The D.C. Circuit in *Burwell* explicitly parted ways with decisions of the First, Second, and Ninth Circuits, which are now joined by the recent decisions of the Eleventh and Third Circuits. These circuits divide § 2113(a) into two separate offenses, with one part of the statute broadly encompassing bank robbery, and another covering bank extortion.

The First Circuit has held that § 2113(a) is divisible, squarely rejecting much of the reasoning endorsed by the D.C. Circuit. *King v. United States*, 965 F.3d 60 (1st Cir. 2020). While acknowledging that § 2113(a) does not set off "force or violence, intimidation, or extortion with semicolons," the First Circuit reasoned that extortion is nevertheless distinct from the other items in the list because "the language 'or obtains or attempts to obtain' immediately precedes" it. *Id.* at 68. By contrast, the First Circuit continued, § 2113(a) "relates" "'force or violence'" and "'intimidation'" to the language "'takes, or attempts to take.'" *Id.* The First Circuit found the "distin[ction] between 'take' and 'obtain'" particularly relevant because, in the court's view, it "'tracks the common law differences between the offenses of robbery (a taking against the victim's will) and extortion (obtaining with the victim's consent).'" *Id.* (citation omitted).

The First Circuit also concluded that the 1986 statutory amendment favored a finding of divisibility, taking the opposite lesson as the D.C. Circuit. *Id.* at 68-69. According to the First Circuit, legislative history demonstrated that Congress added "extortion" to § 2113(a) was to make it more like the Hobbs Act, which "several courts" have concluded "is divisible between robbery and extortion." *Id.* Thus, the First Circuit reasoned, it made sense to "extend[] th[e] same treatment to § 2113(a) robbery and extortion." *Id.*

The Second and Ninth Circuits are in agreement. *United States v. Evans*, 924 F.3d 21 (2d Cir. 2019); *United States v. Watson*, 881 F.3d 782 (9th Cir. 2018). Both courts have held, in rather conclusory fashion, that § 2113(a) "is divisible" because it "contains at

least two separate offenses, bank robbery and bank extortion." *Watson*, 881 F.3d at 786; *accord Evans*, 924 F.3d at 28 (adopting the Ninth Circuit's divisibility ruling from *Watson*). Like the First Circuit, the Second and Ninth Circuits split § 2113(a) into two distinct crimes: bank robbery covers conduct that occurs "by force and violence, or by intimidation," while conduct that occurs "by extortion" is bank extortion. *Watson*, 881 F.3d at 786 (quoting 18 U.S.C. § 2113(a)).

After the D.C. Circuit's decision in *Burwell*, the Eleventh Circuit joined the "divisible" side of the split. In *Armstrong* and the decision below, the Eleventh Circuit echoed the First Circuit's reasoning to hold that § 2113(a) "is a divisible statute that prohibits two distinct offenses: bank robbery and bank extortion." 122 F.4th at 1286-87; Pet. App. 12a.

Most recently, the Third Circuit has further entrenched the split. *United States v. Vines*, 134 F.4th 730 (3d Cir. 2025). It has expressly acknowledged a division of authority among the courts of appeals on the divisibility of § 2113(a). *Id.* at 734. Nevertheless, the Third Circuit agreed with what it termed "th[e] near-consensus" view that the extortion clause in § 2113(a) embodies a "distinct concept[]" with "distinct requirements." *Id.* In support of that position, the Third Circuit relied principally on the "traditional[]" distinction at common law between robbery and extortion. *Id.* at 734-35.

The express disagreement among the courts of appeals thus is intractable and will persist unabated absent this Court's intervention.

B. The circuits are split 5-3 on whether attempted § 2113(a) bank robbery requires the use, attempted use, or threatened use of force.

The Eleventh Circuit's decision also deepens a split over whether attempted § 2113(a) bank robbery—as compared to completed § 2113(a) bank robbery—requires the use, attempted use, or threatened use of force. If it does not, it is not a crime of violence under § 924(c)'s elements clause. Three circuits—the Fourth, Sixth, and Ninth—have held just that, concluding that no force or violence language has been implicitly engrafted onto the "attempt[]" language in the statute. Five circuits—the Second, Third, Fifth, Seventh, and Eleventh—have held the opposite.

1. The Fourth, Sixth, and Ninth Circuits have each held that attempted § 2113(a) bank robbery does not require the government to prove the use, attempted use, or threatened use of force, even if the completed version of the offense does.

The Ninth Circuit has held that attempted bank robbery "under section 2113 requires only that the defendant intended to use force, violence or intimidation and made a substantial step toward consummating the robbery." *United States v. Moore*, 921 F.2d 207, 209 (9th Cir. 1990). "[I]t does not require the actual use of force, violence or intimidation." *Id.* The Ninth Circuit's reasoning mirrors what this Court said in *Taylor* when it held that attempted Hobbs Act robbery does not satisfy § 924(c)'s elements clause. *See id.*; *Taylor*, 596 U.S. at 851.

The Fourth Circuit has reached the same conclusion. *United States v. McFadden*, 739 F.2d 149 (4th Cir. 1984). It explicitly rejected the argument that "§ 2113(a) requires that force and violence or intimidation *must* accompany [an] attempt to" rob a bank. *Id.* at 151-52 (emphasis added). As the Fourth Circuit reasoned, that understanding of § 2113(a) would imply, for instance, that "the lives of the bank employees, the police, any innocent bystanders and the defendants themselves" would have to "be endangered before an arrest could be made for an attempted [bank] robbery." *Id.* at 151. That is because law enforcement would have to "wait until the defendants entered the bank or vicinity of the bank"—in that case, "with the[ir] sawed-off shotguns at the ready"—before arresting them. *Id.*

Finally, the Sixth Circuit agrees that attempted bank robbery under § 2113(a) does not require proof of "actual intimidation." *United States v. Wesley*, 417 F.3d 612, 617-18 (6th Cir. 2005). Instead, it noted that such a requirement "would be inconsistent with our definition of attempt crimes, and would, without reason, require proof that a defendant actually confronted someone in the bank before he could be convicted of attempted robbery." *Id.* at 618.

2. The Second, Third, Fifth, Seventh, and Eleventh Circuits have reached the opposite conclusion. As in the decision below, these courts reason that the "attempt" language in the statute cannot stand alone, and instead must be joined with the language "by force and violence, or by intimidation" earlier in the statute.

The Eleventh Circuit below held that attempted bank robbery "under § 2113(a) is a crime of violence because it requires that the government prove, as an element of the offense, the use, attempted use, or threatened use of force." Pet. App. 14a (citing *Armstrong*, 122 F.4th at 1288-91). The Eleventh Circuit had previously reached that conclusion by reasoning that *attempted* bank robbery is a "crime of violence" because *completed* bank robbery is a "crime of violence." *See, e.g.*, *United States v. Harvey*, 791 F. App'x 171, 171-72 (11th Cir. 2020) (citation omitted). In *Taylor*, however, this Court rejected that simple "syllogism" as "rest[ing] on a false premise," when it held that attempted Hobbs Act robbery does not require the use, attempted use, or threatened use of force, even if completed Hobbs Act robbery does. 596 U.S. at 851, 853. Rather, *Taylor* concluded that attempted Hobbs Act robbery requires the government to prove only that "the defendant intended to unlawfully take or obtain personal property by means of actual or threatened force, and … he completed a 'substantial step' toward that end." *Id.* at 851. Neither of those elements necessarily entails the use, attempted use, or threatened use of force. *Id.*

Nevertheless, after *Taylor*, the Eleventh Circuit paraphrased and reordered the statute to reach the same conclusion as it had before *Taylor*: that attempted § 2113(a) bank robbery itself requires an "act of intimidation," and thus still satisfies § 924(c)'s elements clause. *Armstrong*, 122 F.4th at 1289-91. Notably, the Eleventh Circuit did so over Judge Jordan's dissent pointing out that § 2113(a) "does not" "*always* require[] the government to prove—beyond a reasonable doubt, as an element of its case—the use,

attempted use, or threatened use of force" to prove attempted bank robbery. *Id.* at 1296 (Jordan, J., concurring in part and dissenting in part) (quoting *Taylor*, 596 U.S. at 850).

The Second, Third, Fifth, and Seventh Circuits have all reached the same conclusion as the Eleventh Circuit. *Vines*, 134 F.4th at 738-39; *United States v. Blake Taylor*, No. 19-10261, 2023 WL 4118572, at *1-2 (5th Cir. June 22, 2023); *United States v. Thornton*, 539 F.3d 741, 747-48 (7th Cir. 2008); *see also Collier v. United States*, 989 F.3d 212, 221 (2d Cir. 2021); *Sylla v. United States*, No. 20-CV-01608, 2023 WL 2973778, at *2-3 (S.D. Ind. Apr. 17, 2023) (relying on *Thornton* to conclude that "[a]n attempt under § 2113(a) requires actual force or intimidation"), *certificate of appealability denied*, No. 23-1895, 2024 WL 2111096 (7th Cir. Feb. 1, 2024). Like the Eleventh Circuit, those courts have so held despite *Taylor*'s holding "that attempted Hobbs Act robbery is not a crime of violence." *Vines*, 134 F.4th at 738-39; *see also Blake Taylor*, 2023 WL 4118572 at *1-2 (declining to "adopt a definition of attempted bank robbery that parallels the definition of attempted Hobbs Act robbery used in … *Taylor*").

This division of authority has allowed the government to play both sides. To defend attempted bank robbery convictions, the government has asserted that all a defendant must do to violate the statute is attempt to intimidate while attempting to rob a bank. *See, e.g.*, *United States v. Bellew*, 369 F.3d 450, 454 (5th Cir. 2004); *United States v. Patterson*, 168 F. Supp. 3d 374, 377 (D. Mass. 2016) (summarizing similar government position); *Thornton*, 539 F.3d at 747

(similar). Yet, to defend § 924(c) convictions, the government has asserted just the opposite position. *See, e.g.*, Supp. Brief of the United States at 8-9, *United States v. Armstrong*, No. 21-11252 (11th Cir. Apr. 20, 2023).

As this Court admonished in *Taylor*, however, a federal felony either is a crime of violence because it "*always* requires the government to prove—beyond a reasonable doubt, as an element of its case—the use, attempted use, or threatened use of force," or it is not a crime of violence at all. 596 U.S. at 850 (emphasis added). It cannot be that attempted bank robbery under § 2113(a) *always* requires the use of force (as in the Eleventh Circuit) and simultaneously *does not always* require the use of force (as in the Fourth, Sixth, and Ninth Circuits). That is not what "always" means. The current disarray among the courts of appeals thus urgently compels this Court's intervention.

II. The Decision Below Is Contrary To § 2113(a) And This Court's Decision In *Taylor*.

A. The Eleventh Circuit's holding that § 2113(a) is divisible is contrary to the text and structure of the statute.

This Court's intervention is required to correct the Second, Third, Fifth, Seventh, and Eleventh Circuits' erroneous reading of § 2113(a). Those courts' conclusion that § 2113(a) is divisible rests on a mistaken reading of the statute. As the D.C. Circuit correctly held, properly read, § 2113(a) is indivisible because it sets out three factual means to commit bank robbery, not two separate crimes.

Starting with the text, § 2113(a) lists three ways to rob a bank: "*by* force and violence," "or *by* intimidation," "or … *by* extortion." 18 U.S.C. § 2113(a) (emphasis added). Congress employed the same syntax for each of these three phrases: It used the preposition "by" to introduce each phrase. And it used "or" between to set off the three phrases from each other. These syntactical choices result in three parallel phrases listing three parallel methods of carrying out the same bank-robbery offense—not two distinct offenses of bank robbery and bank extortion. *Cf. United States v. Butler*, 949 F.3d 230, 234-35 (5th Cir. 2020).

That is evident also from the statute's use of synonyms—intimidation and extortion—in two of the parallel phrases. *See, e.g.*, *Extort*, Oxford English Dictionary (2d ed. 1989) (defining "extort" as "[t]o obtain from a reluctant person by violence, torture, intimidation"); *Intimidation*, Black's Law Dictionary (5th ed. 1979) (defining "intimidation" as "[u]nlawful coercion; extortion; duress; putting in fear"). As the D.C. Circuit observed, the use of synonyms demonstrates that "Congress viewed extortion and intimidation as alternative means to commit bank robbery," rather than distinct offenses. *Burwell*, 122 F.4th at 991.

The statute's grammatical choices reinforce its syntactical ones. Congress placed commas in between force and violence, intimidation, and extortion. It avoided using "more disjunctive punctuation like a semicolon," *id.* at 990, to signal special treatment for the extortion clause. And it also avoided using punctuation *after* the extortion language to separate it from the rest of the statute: The statute reads, as relevant, that bank robbery covers anyone who "obtains

or attempts to obtain by extortion any property or money or any other thing of value," 18 U.S.C. § 2113(a), without any comma or other punctuation after the word "extortion." As the D.C. Circuit observed, "[i]f 'or obtains or attempts to obtain by extortion' was a distinct element of a separate crime, then a comma would naturally follow the word 'extortion' to set off the clause." *Burwell*, 122 F.4th at 990-91.

The structure of § 2113(a) corroborates the statute's plain text. The statute separates bank robbery from the other proscribed crimes—bank burglary, bank larceny, and receiving stolen bank property—by placing the non-robbery crimes in their own separate paragraphs or subsections. *See* 18 U.S.C. § 2113(a), (b), (c). By giving each of those other offenses its own distinct paragraph or subsection, the statute makes abundantly clear that those offenses *are* divisible from bank robbery. *See, e.g.*, *Butler*, 949 F.3d at 235 (observing that because "a paragraph break often signals that a new idea is coming," it is "logical to conclude that a paragraph break in a statute signals a new offense").

The statute makes this clearer still by instituting a "sharp[] divide" between § 2113(a) bank *robbery* and § 2113(a) bank *larceny*, through the use of both a paragraph break and the only semicolon within the section. *Id.* That structural and grammatical choice equally reveals that Congress knew how to separate out a distinct offense—yet it chose not to employ such measures to distinguish extortion, which is proscribed *within* the § 2113(a) bank robbery paragraph (indeed, within the sole sentence proscribing bank robbery in the statute). *See Burwell*, 122 F.4th at 990.

To the extent legislative history is instructive, it, too, points in favor of indivisibility. The House Report accompanying the 1986 amendment explained that Congress amended "§ 2113(a) *expressly* to cover crimes of extortion directed at federally insured banks." H.R. Rep. No. 99-797, at 33 (1986) (emphasis added). That express clarification was necessary because before the amendment, courts had prosecuted "[e]xtortionate conduct … under [either] the bank robbery provision [of § 2113(a)] or the Hobbs Act." *Id.* at 32. That is, some courts had understood that "bank robbery by extortion was covered by the pre-existing statutory language" in § 2113(a) that lacked any explicit mention of extortion—when there could be no question that "just like 'force and violence' and 'intimidation,'" extortion "was simply another means of committing the same crime." *Burwell*, 122 F.4th at 991-92 (citing H.R. Rep. No. 99-797, at 33). But because some other courts before 1986 had instead prosecuted bank robbery by extortion under the Hobbs Act, all the 1986 amendment did was "clarif[y]" that bank robbery by extortion should, in fact, fall under § 2113(a) bank robbery. H.R. Rep. No. 99-797, at 33.

The title of the 1986 amendment statute further underscores the indivisibility of § 2113(a) bank robbery. Before 1986, the term "extortion" did not appear in § 2113(a). That year, Congress amended the statute "by inserting ', or obtains or attempts to obtain by extortion' after 'from the person or presence of another'." Criminal Law and Procedure Technical Amendments Act of 1986, Pub. L. No. 99-646, § 68, 100 Stat. 3592, 3616. It titled the amendment "Addition of Extortion to Bank Robbery Offense," *id.*, confirming that the amendment was merely "[a]dd[ing]

… [e]xtortion" to the existing "[b]ank [r]obbery [o]ffense." *See Dubin v. United States*, 599 U.S. 110, 120 (2023) ("This Court has long considered that 'the title of a statute and the heading of a section are tools available for the resolution of a doubt about the meaning of a statute.'" (internal quotation marks omitted)).

To the degree common-law understandings of robbery and extortion inform the reading of § 2113(a), they demonstrate that the common law envisioned extortion as a *means* of committing robbery. As Blackstone explained, "*extorting money* or [any] other thing of value … *may be robbery*" when done, for example, "by means of a charge of sodomy" or other "infamous crime[s]." *Burwell*, 122 F.4th at 992-93 (emphasis added) (quoting 4 W. Blackstone, Commentaries *244 n.14); *see also id.* at 993 ("The upshot of the common law is that some non-violent extortionate threats rose to the level of robbery."). Reflecting this, some older state statutes envisioned the same. *See, e.g.*, *United States v. Nardello*, 393 U.S. 286, 294 (1969) (explaining that Kansas "terms" extortionate activities "robbery in the third degree" (citing Kan. Stat. Ann. § 21-529 (1964))); *cf. Jones v. United States*, 526 U.S. 227, 237 (1999) (observing utility of considering state practice in reading federal statutes). The common law thus further supports an indivisibility conclusion.

In short, the text and structure of § 2113(a) make clear that it sets out three different factual means of committing bank robbery, not two distinct offenses. There can be no doubt, then, that § 2113(a) is indivisible, despite the contrary conclusions of the Eleventh Circuit and multiple other circuits.

B. The Eleventh Circuit's conclusion that attempted bank robbery is a crime of violence cannot be reconciled with the statutory text or this Court's decision in *Taylor*.

The Eleventh Circuit was also wrong to hold (along with other circuits) that attempted § 2113(a) bank robbery "always requires the government to prove—beyond a reasonable doubt, as an element of its case—the use, attempted use, or threatened use of force." *Armstrong*, 122 F.4th at 1283, 1288-91 (quoting *Taylor*, 596 U.S. at 850).

That conclusion runs contrary to this Court's instruction in *Taylor* and the text of the statute, as well as decades of precedent affirming attempted bank robbery convictions that occurred without any use of force or intimidation.

1. This Court's decision in *Taylor* compels the conclusion that attempted § 2113(a) bank robbery is not a crime of violence. *Taylor* posed the question: "What are the elements the government must prove to secure a conviction for attempted Hobbs Act robbery?" 596 U.S. at 850. To answer that question, this Court began with the observation that a *completed* Hobbs Act robbery is the "unlawful taking or obtaining of personal property from the person … of another, against his will, by means of actual or threatened force." *Id.* (quoting 18 U.S.C. § 1951(b)). "From th[at]," this Court continued, "it follows that to win a case for *attempted* Hobbs Act robbery the government must prove two things: (1) The defendant intended to unlawfully take or obtain personal property by means

of actual or threatened force, and (2) he completed a 'substantial step' toward that end." *Id.* at 851.

This Court concluded that neither of those elements requires the use, attempted use, or threatened use of force. *Id.* Even if "*completed* Hobbs Act robbery" might require "actual or threatened force" under the terms of the statute, "*attempted* Hobbs Act robbery does not." *Id.* That is because for attempted Hobbs Act robbery, while the "government must show an *intention* to take property by force or threat," "an intention is just that, no more." *Id.* And while the government must additionally prove "a substantial step toward achieving that object," that element also "does not require the government to prove that the defendant used, attempted to use, or even threatened to use force against another person or his property." *Id.*

For instance, this Court illustrated by way of hypothetical, imagine a defendant who intends to rob a store drafts a note at home—"Your money or your life"—that he plans to give to the store cashier. *Id.* at 852. But the note is a mere "bluff" (because the defendant has no intention of using any force), and the defendant never gets the chance to give the note to the cashier (because the police "immediately arrest him" when he later steps into the store). *Id.* In this scenario, "[t]here is little question the government could win a lawful conviction … for attempted Hobbs Act robbery." *Id.* "After all, [the defendant] intended" to rob the store "and his actions constituted a substantial step toward that goal." *Id.* Yet, at no point in the process did the defendant use, attempt to use, or even threaten to use force. The attempted Hobbs Act robbery thus did not satisfy the elements clause. *Id.*

Taylor applies with equal force to attempted § 2113(a) bank robbery. A *completed* § 2113(a) bank robbery entails the "tak[ing]" of bank property "by force and violence, or by intimidation." 18 U.S.C. § 2113(a). *Attempted* § 2113(a) bank robbery thus requires the government to prove that (1) the defendant intended to unlawfully take bank property by force and violence, or by intimidation, and (2) he completed a substantial step toward that end. *Cf. Taylor*, 596 U.S. at 851. As with attempted Hobbs Act robbery, however, neither element of attempted § 2113(a) bank robbery requires proof of the use, attempted use, or threatened use of force.

There are no meaningful textual distinctions between § 2113(a) and § 1951 of the Hobbs Act that would warrant a different result here. Like § 2113(a), § 1951 of the Hobbs Act expressly includes the language of "attempt." It covers anyone who commits "robbery" affecting interstate commerce, "or [who] attempts or conspires so to do." 18 U.S.C. § 1951(a). And the Hobbs Act defines "robbery" as the unlawful taking of property "by means of actual or threatened force, or violence, or fear of injury." *Id.* § 1951(b)(1). Likewise, § 2113(a) reaches anyone who "takes, or attempts to take" bank property. *Id.* § 2113(a). It further makes clear that the "tak[ing]" of bank property must occur "by force and violence, or by intimidation." *Id.* Thus, both statutes expressly include an attempt variant that is set apart from the completed version of the offense, which itself requires an element of force or violence.

Contrary to the Eleventh Circuit's position, Congress did not "codif[y] that an 'attempt' entails"

violent conduct in § 2113(a), merely by using the "attempt" language and "by force and violence, or by intimidation" language in the same statute. *See Armstrong*, 122 F.4th at 1292 (Jordan, J., concurring in part and dissenting in part) (quoting *id.* at 1289 (majority opinion)). Instead, and as with § 1951's "violence" language, § 2113(a)'s "by force and violence, or by intimidation" language establishes what the government must show to convict someone for a *completed* robbery. Thus, "attempt" is no more codified in § 2113(a) than it is in the Hobbs Act, where it is not codified at all. And "[t]here is no general federal statute" either, that "proscribes the attempt to commit a criminal offense." *Id.* at 1295 (Jordan, J., concurring in part and dissenting in part) (quoting *United States v. Rivera-Sola*, 713 F.2d 866, 869 (1st Cir. 1983)).

Where, as here, Congress has used a common-law term in a federal criminal statute and has not otherwise defined it, Congress is presumed to have adopted that term's meaning at common law. *See Morissette v. United States,* 342 U.S. 246, 263 (1952). The common-law understanding of "criminal attempt" is well-settled, and exactly what this Court spelled out in *Taylor*: "[A]s used in the law for centuries," criminal attempt requires the government to show (1) the intent to commit the underlying crime, and (2) a "substantial step" towards committing that crime. *E.g.*, *United States v. Resendiz-Ponce*, 549 U.S. 102, 106-07 (2007) (citing common-law authorities).

2. The text of the statute reinforces the conclusion compelled by *Taylor*. Section 2113(a) states, as relevant, that "[w]hoever, by force and violence, or by intimidation, takes, or *attempts to take*" bank property

has violated the statute. 18 U.S.C. § 2113(a) (emphasis added). Courts agree that "'takes' is qualified by the adverbial phrase 'by force and violence, or by intimidation' that comes right before it." *See, e.g.*, *Vines*, 134 F.4th at 735-36 (noting agreement). The textual question is whether that same adverbial phrase additionally modifies "or attempts to take." It does not.

The phrase "or attempts to take" (that is, the "attempts" phrase) is offset with commas on either side. Those commas segregate and cabin the inchoate variant—attempt—as a separate crime from completed bank robbery. And they signify that the phrase "by force and violence, or by intimidation," cannot leapfrog first over "takes," and then over the comma between takes and "or attempts to take," to also apply to the separate "attempts" offense.

The Eleventh Circuit reads the text as if the comma before the "attempts" phrase does not exist. But it "cannot be regarded as mere surplusage; [it] mean[s] something." *Carter v. United States*, 530 U.S. 255, 262 (2000) (quoting *Potter v. United States*, 155 U.S. 438, 446 (1894)); A. Scalia & B. Garner, Reading Law: The Interpretation of Legal Texts 161 (2012) ("No intelligent construction of a text can ignore its punctuation."). The only reading of § 2113(a) that gives it effect is the reading that does not carry the "by force and violence, or by intimidation" phrase over to also apply to "attempts." *See United States v. Ron Pair Enters., Inc.*, 489 U.S. 235, 241-42 (1989) (determining phrase set aside by commas stood independent from surrounding language and that "[t]his reading [was] mandated by the grammatical

structure of the statute"); *Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 385 (2013) (surplusage canon).

To try and get around the plain text of § 2113(a), courts on the Eleventh Circuit's side of the split rewrite the text. The Third Circuit resorted to breaking § 2113(a) apart and reconstituting it through competing sentence diagrams complete with checks, crosses, and arrows pointing in multiple directions. *See Vines*, 134 F.4th at 735-39. It asserted that these analyses show § 2113(a)'s "adverbial ['by force and violence, or by intimidation'] phrase" *must* "modif[y] both verbs"—takes and attempts to take. *Id.* at 735-36. The Eleventh Circuit, for its part, sought to stitch together the strip of text referencing attempt with the introductory passage referencing violence. *See Armstrong*, 122 F.4th at 1289 ("[O]ne commits an attempted bank robbery when, by force and violence or by intimidation, he attempts to take money from a … bank."). But these efforts necessarily rest on revisions and distortions of the statute's plain language. And only "Congress ha[s] the power to write new federal criminal law." *Davis*, 588 U.S. at 447-48. As written, the text of § 2113(a) crafts a stand-alone attempt offense, free of the limiting "force" phrase.

3. That attempted § 2113(a) bank robbery does not require the use, attempted use, or threatened use of force, also accords with the text's "long-encrusted connotations." *Feliciano v. Dep't of Transp.*, 145 S. Ct. 1284, 1291 (2025).

Again, as *Taylor* directed, a felony must "*always* require[] the government to prove … the use, attempted use, or threatened use of force" to be a crime

of violence. 596 U.S. at 850 (emphasis added). But "[n]early every circuit … has upheld convictions for attempted bank robbery under the first paragraph of § 2113(a) even where there was no evidence that the defendant used actual force, violence, or intimidation." *Armstrong*, 122 F.4th at 1293 (Jordan, J., concurring in part and dissenting in part).[1]

Congress is presumed to have adopted that longstanding interpretation of § 2113(a). Where Congress "re-enacts a statute without change," it is "presumed to be aware of a[] … judicial interpretation of [the] statute and to adopt that interpretation." *Lorillard v. Pons*, 434 U.S. 575, 580 (1978). That is the case here. Section 2113(a) has long been phrased as it currently is, and has survived other amendments. *Compare United States v. Jackson*, 560 F.2d 112, 116 n.5 (2d Cir. 1977) (quoting § 2113(a) as the text existed in 1977), *with* 21st Century Department of Justice Appropriations Authorization Act, Pub. L. No. 107-273, § 4002(d)(1)(C)(ii), 116 Stat. 1809 (2002))

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[1] *See, e.g.*, *United States v. Chapdelaine*, 989 F.2d 28, 30-33 (1st Cir. 1993) (upholding bank robbery conviction where defendants surveilled a bank, positioned getaway vehicles, and acquired weapons, but never entered the bank, and thus never used, attempted, or threatened to use, force, violence, or intimidation); *United States v. Jackson*, 560 F.2d 112, 114-16 (2d Cir. 1977) (same on similar facts); *United States v. Garner*, 915 F.3d 167, 169-71 (3d Cir. 2019); *McFadden*, 739 F.2d at 152 (4th Cir. 1984); *Wesley*, 417 F.3d at 617-18 (6th Cir. 2005); *United States v. Schramm*, 715 F.2d 1253, 1256 (7th Cir. 1983); *United States v. Carlisle*, 118 F.3d 1271, 1273-74 (8th Cir. 1997); *Moore*, 921 F.2d at 209 (9th Cir. 1990); *United States v. Prichard*, 781 F.2d 179, 180-82 (10th Cir. 1986); *United States v. Barriera-Vera*, 303 F. App'x 687, 695 (11th Cir. 2008).

(amending § 2113, but preserving language and punctuation of (a) as it existed for decades).

In short, both the plain text of the statute and *Taylor* make clear that the use, attempted use, or threatened use of force is not required for an attempted bank robbery conviction under § 2113(a).

III. The Questions Presented Are Important.

The questions presented are recurring issues of substantial practical importance.

Although the precise number is difficult to pinpoint, the government prosecutes at least hundreds of federal robbery cases every year.[2] Section 2113(a) prosecutions in particular are prevalent throughout the country, as evidenced by the number of courts that have weighed in on the questions presented. *Supra* § I.A.-B. And given the nature of the offense, § 2113(a) prosecutions are often accompanied by § 924(c) charges for using firearms in relation to a "crime of violence," which the government charges thousands of times a year.[3] In the past few years alone, the courts of appeals have seen numerous § 924(c) prosecutions

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[2] U.S. Courts, *Caseload Statistics Data Tables, Table D-2. U.S. District Courts—Criminal Defendants Commenced (Excluding Transfers), by Offense, During the 12-Month Periods Ending December 31, 2020 Through 2024*, https://perma.cc/HH69-23S6 (identifying 280 federal bank robbery offenses in 2024); U.S. Sentencing Commission, *Quick Facts: Robbery Offenses*, https://perma.cc/5W6F-SV26 (identifying 1,490 federal robbery offenses in fiscal year 2023).

[3] U.S. Courts, *Table D-2*, *supra* (identifying 2,098 § 924(c) offenses in 2024).

predicated on attempted § 2113(a) bank robbery. *See, e.g.*, *Vines*, 134 F.4th at 735-40; *United States v Kieffer*, No. 24-30122, 2024 WL 3898341, at *1 (5th Cir. June 14, 2024) (denying certificate of appealability); *Armstrong*, 122 F.4th at 1288-91; *Morelock v. United States*, No. 22-13439, 2025 WL 66434, at *2 (11th Cir. Jan. 10, 2025); *Cooper v. United States*, No. 20-11093, 2023 WL 2493275, at *2 (11th Cir. Mar. 14, 2023); *Smith v. United States*, No. 21-12960, 2023 WL 2810700, at *1 (11th Cir. Apr. 6, 2023).

As the government acknowledged just a few years ago when it successfully petitioned for certiorari in *Taylor*, "[t]he government frequently prosecutes Section 924(c) offenses connected to attempted Hobbs Act robberies, *as well as attempted federal bank robberies* and carjackings." Pet. for a Writ of Cert., *Taylor*, *supra*, at 20-21 (emphasis added). For that reason, the government urged the Court to resolve "an important and recurring issue" regarding § 924(c) charges predicated on attempted Hobbs Act robbery. *Id.* at 20. While the Court did so in *Taylor*, the uncertainty surrounding § 924(c) charges predicated on § 2113(a) attempted bank robbery persists—and is no less pressing than it was before *Taylor*. Courts are confused about how to apply *Taylor*'s teachings to attempted bank robbery under § 2113(a). *Supra* §§ I.B, II.

This case is even more consequential than *Taylor*, in fact, because the first question presented implicates § 924(c) charges predicated on any type of § 2113(a) bank robbery, whether completed or attempted, whereas *Taylor* addressed only § 924(c) charges predicated on attempted Hobbs Act robbery.

As the government reported when it petitioned for certiorari in *Taylor*, "approximately 13%" of § 924(c) convictions are "predicated on an attempted robbery" as opposed to a completed robbery. Pet. for a Writ of Cert., *Taylor*, *supra*, at 21. At least with respect to the first question presented, therefore, this case likely affects many times more federal criminal prosecutions than the question presented in *Taylor*.

The stakes could not be higher for criminal defendants. Section 924(c) charges carry mandatory minimum sentences that by statute must run consecutively to, not concurrently with, the sentences for any underlying charges. 18 U.S.C. § 924(c)(1)(D)(ii). These mandatory minimum sentences can range anywhere from five years to life imprisonment for each count charged. *See id.* § 924(c)(1)(A)-(C). Such severe punishments should not turn on whether a defendant is charged in one circuit or another. The disparity is even greater in district courts within the Eleventh Circuit, where Petitioner was prosecuted, which "lead the pack in imposing sentences under [§ 924(c)]." *United States v. St. Hubert*, 918 F.3d 1174, 1212 (11th Cir. 2019) (Jill Pryor, J., dissenting from denial of rehearing en banc).

The questions presented thus carry enormous practical consequences in criminal proceedings across the country.

IV. This Case Is An Ideal Vehicle To Resolve The Questions Presented.

This case is an ideal vehicle for review. Both questions are squarely presented here, with the Eleventh

Circuit expressly ruling on both the divisibility issue and the attempt issue. Resolving either of the splits in Petitioner's favor would warrant reversal.

That Petitioner was also convicted under § 2113(d) and (e) does not alter that result. Neither the appellate court nor the district court below rested its decision on whether an attempt under § 2113(d) or (e), on its own, may supply the predicate offense for Petitioner's § 924(c) conviction. The Eleventh Circuit below expressly stated that it "need not determine" whether § 2113(d) and (e) "independently qualify as crimes of violence" under the elements clause, because its conclusion as to § 2113(a) was sufficient to uphold Petitioner's § 924(c) conviction. Pet. App. 14a. Likewise, the district court's denial of Petitioner's § 2255 motion decided only that § 2113(a) satisfied § 924(c)'s elements clause, without addressing § 2113(d) or (e) at all. *See generally* Pet. App. 29a-42a.

At minimum, because the courts below never adequately considered § 2113(d) and (e), especially post-*Taylor*, the Eleventh Circuit below should remand to the district court to address those questions in the first instance.

CONCLUSION

The Court should grant this petition for a writ of certiorari.

Respectfully submitted,

W. Matthew Dodge
FEDERAL DEFENDER PROGRAM, INC.
101 Marietta Street, NW
Suite 1500
Atlanta, GA 30303

Nicole Ries Fox
Holly Boux
ORRICK, HERRINGTON & SUTCLIFFE LLP
2100 Pennsylvania Ave. NW
Washington, DC 20037

E. Joshua Rosenkranz
Counsel of Record
Jodie Liu
ORRICK, HERRINGTON & SUTCLIFFE LLP
51 West 52nd Street
New York, NY 10019
(212) 506-5000
jrosenkranz@orrick.com

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