

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

JEROME WILSON,
PETITIONER,

- VS. -

UNITED STATES OF AMERICA,
RESPONDENT.

**PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT**

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QUESTIONS PRESENTED

The career offender provision of the United States Sentencing Guidelines provides for enhanced sentences for defendants whose instant and prior offenses are for, inter alia, “crimes of violence.” U.S.S.G. § 4B1.1. Section 4B1.2 defines a “crime of violence” as any offense under federal or state law, punishable by imprisonment for a term exceeding one year, that “has as an element the use, attempted use, or threatened use of physical force against the of another.” For an offender to “use” or “threaten” force within the meaning of the element-of-force clause, he must act with knowledge or intent. The questions presented are:

1. Whether *United States v. Castleman*, 134 S.Ct. 1405 (2014), which held that the intentional causation of bodily injury necessarily involves a use of “force” as it is defined at common law, may properly be applied to the meaning of violent force in the context of “crime of violence” recidivist enhancements, such that the offense of unarmed bank robbery, 18 U.S.C. § 2113(a), which may be accomplished by intimidation—a threat of bodily harm—necessarily contemplates the use of violent physical force.

2. Whether *Carter v. United States*, 530 U.S. 255 (2000), held that the offense of unarmed bank robbery, 18 U.S.C. § 2113(a), which may be committed by means of “intimidation,” requires that a defendant have knowledge that his or her actions are objectively intimidating; and thus may categorically be a “crime of violence.”

TABLE OF CONTENTS

	PAGE
Question Presented	i
Table of Contents	ii
Table of Authorities	iv
Opinions Below	1
Jurisdictional Grounds	1
Parties to the Proceeding	2
Constitutional and Statutory Provisions Involved	2
Statement of the Case	3
Reasons for Granting the Petition	5
I. Certiorari should be granted to decide whether this Court’s holding in <i>United States v. Castleman</i> , 134 S. Ct. 1405 (2014), which addressed the meaning of common law force, applies to the meaning of violent force in the context of the Sentencing Guidelines or the Armed Career Criminal Act.	5
A. Use of force versus the causation of injury	6
B. The Third Circuit’s Application of <i>Castleman</i>	7
C. Unarmed bank robbery does not require <i>Johnson I</i> force	8
II. Certiorari should be granted to decide whether <i>Carter v. United States</i> , 530 U.S. 255 (2000), requires, under § 2113(a), that a defendant have knowledge that his or her actions are objectively intimidating.	10
A. The objectively reasonable person and negligence standard of 18 U.S.C. § 2113(a).	11
B. The Third Circuit incorrectly applied <i>Carter v. United States</i>	13
Conclusion	15

TABLE OF CONTENTS - continued

Appendices:

Third Circuit Opinion Appendix A

District Court’s Order Overruling Objection to Designation as Career Offender Appendix B

District Court’s Judgment of Conviction Appendix C

TABLE OF AUTHORITIES

FEDERAL CASES	PAGE(s)
<i>Carter v. United States</i> , 530 U.S. 255 (2000)	<i>passim</i>
<i>Descamps v. United States</i> , 133 S. Ct. 2276 (2013)	6
<i>Elonis v. United States</i> , 135 S. Ct. 2001 (2015)	11, 14
<i>Fowler v. Evans</i> , 008 WL 45805 (S.D. Cal. Jan. 2, 2008)	12
<i>Johnson v. United States</i> , 559 U.S. 133 (2010)	6, 9
<i>Leocal v. Ashcroft</i> , 543 U.S. 1 (2004)	10
<i>Mathis v. United States</i> , 136 S. Ct. 2243 (2016)	6
<i>Red v. Runnels</i> , 2009 WL 4251562 (N.D. Cal. Nov. 23, 2009)	12
<i>Tran v. Gonzales</i> , 414 F.3d 464 (3d Cir. 2005)	10
<i>United States v. Askari</i> , 140 F.3d 536 (3d Cir. 1998)	9, 11
<i>United States v. Castleman</i> , 134 S. Ct. 1405 (2014)	<i>passim</i>
<i>United States v. Chapman</i> , 866 F.3d 129 (3d Cir. 2017)	4, 7
<i>United States v. Foppe</i> , 993 F.2d 1444 (9th Cir. 1993)	11
<i>United States v. Hopkins</i> , 703 F.2d 1102 (9th Cir. 1983)	12
<i>United States v. Kelley</i> , 412 F.3d 1240 (11th Cir. 2005)	11

TABLE OF AUTHORITIES - continued

	PAGE(s)
<i>United States v. Ketchum</i> , 550 F.3d 363 (4th Cir. 2008)	9, 11
<i>United States v. McBride</i> , 826 F.3d 293 (6th Cir. 2016)	13
<i>United States v. McNeal</i> , 818 F.3d 141 (4th Cir. 2016)	8, 13
<i>United States v. Nash</i> , 946 F.2d 679 (9th Cir. 1991)	12
<i>United States v. Oliver</i> , (No. 17-2747), 2018 WL 1547595 (3d Cir. Mar. 29, 2018)	8
<i>United States v. Otero</i> , 502 F.3d 331 (3d Cir. 2007)	10
<i>United States v. O’Bryant</i> , 42 F.3d 1407 (10th Cir. 1994)	9, 12
<i>United States v. Rico-Mejia</i> , 859 F.3d 318 (5th Cir. 2017)	8
<i>United States v. Selfa</i> , 918 F.2d 749 (9th Cir. 1990)	9
<i>United States v. Slater</i> , 692 F.2d 107 (10th Cir. 1982)	12
<i>United States v. Ward</i> , 458 F. App’x 527 (6th Cir. 2012)	11
<i>United States v. Woodrup</i> , 86 F.3d 359 (4th Cir. 1996)	11
<i>United States v. Yockel</i> , 320 F.3d 818 (8th Cir. 2003)	11, 14

FEDERAL STATUTES

	PAGE(s)
18 U.S.C. § 922(g)(9)	6, 7
18 U.S.C. § 924(e)	3
18 U.S.C. § 2113(a)	<i>passim</i>

TABLE OF AUTHORITIES - continued

	PAGE(s)
18 U.S.C. § 3231	1
28 U.S.C. § 1254(1)	1
28 U.S.C. § 1291	1

SENTENCING GUIDELINES	PAGE(s)
U.S.S.G. § 4B1.1	i, 2, 3, 5
U.S.S.G. § 4B1.2	2, 4, 7

OTHER AUTHORITIES	PAGE(s)
ALI, Model Penal Code § 2.02(2)(c)	13, 14
Black’s Law Dictionary 1188 (9th ed. 2009)	6
David Gambacorta, <i>Bad Times Are Big Times for Bank Heists</i> , Philadelphia Daily News, Jan. 30, 2009	12

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UNITED STATES OF AMERICA,
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PETITION FOR WRIT OF CERTIORARI

Petitioner Jerome Wilson respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Third Circuit rendered in this case on January 17, 2018.

OPINIONS BELOW

The opinion of the court of appeals affirming the judgment is attached at Appendix A. The district court's rejection of Mr. Wilson's challenge to application of the Career Offender enhancement is at Appendix B. The judgment of conviction is at Appendix C.

JURISDICTIONAL GROUNDS

The district court had jurisdiction over this federal criminal case pursuant to 18 U.S.C. § 3231. The court of appeals had jurisdiction pursuant to 28 U.S.C. § 1291. That court issued its opinion and judgment on January 17, 2018. This petition is timely filed pursuant to Rule 13.1. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

PARTIES TO THE PROCEEDING

The caption of the case in this Court contains the names of all parties, namely, petitioner Jerome Wilson and respondent United States.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Section 2113(a) of Title 18, United States Code, provides:

Whoever, by force and violence, or by intimidation, takes, or attempts to take, from the person or presence of another . . . any property or money or any other thing of value belonging to, or in the care, custody . . . or possession of, any bank . . . shall be fined under this title or imprisoned not more than twenty years, or both.

Section 4B1.1(a) of the United States Sentencing Guidelines, provides:

A defendant is a career offender if (1) the defendant was at least eighteen years old at the time the defendant committed the instant offense of conviction; (2) the instant offense of conviction is a felony that is either a crime of violence or a controlled substance offense; and (3) the defendant has at least two prior felony convictions of either a crime of violence or a controlled substance offense.

Section 4B1.2 of the United States Sentencing Guidelines, provides:

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

(1) has as an element the use, attempted use, or threatened use of physical force against the person of another[.]

STATEMENT OF THE CASE

This case presents an opportunity for the Court to address whether the Third Circuit properly applied two of this Court’s prior decisions, *United States v. Castleman*, 134 S.Ct. 1405 (2014), and *Carter v. United States*, 530 U.S. 255 (2000), to find that convictions for unarmed bank robbery, in violation of 18 U.S.C. § 2113(a), may be deemed “crimes of violence” under the career-offender guideline. First, whether this Court’s holding in *Castleman*, which addressed the meaning of common law force, applies to the meaning of violent force in the context of the Sentencing Guidelines or the Armed Career Criminal Act, permitting an inference that a threat of bodily injury is equivalent to a use of violent force, regardless of whether actual physical force is used or contemplated.¹ Second, whether *Carter* requires under 18 U.S.C. § 2113(a) that a defendant have knowledge, rather than a reckless or negligent mens rea, that his or her actions are objectively intimidating, thereby knowingly using a threat of force.

1. Jerome Wilson, (hereinafter “Petitioner”), pled guilty in the Eastern District of Pennsylvania to three counts of bank robbery, in violation of 18 U.S.C. § 2113(a).

2. In preparation for sentencing, a probation officer prepared a presentence investigation report which applied the career-offender guideline, U.S.S.G. § 4B1.1, having concluded that unarmed bank robbery in violation of 18 U.S.C. § 2113(a)—for which Petitioner was presently convicted and for which he has twice before been convicted—is a “crime of violence” under that provision. Under the career-offender guideline, Petitioner’s sentencing range increased from 77-96 months to 151-188 months.

¹ The Armed Career Criminal Act at 18 U.S.C. § 924(e) contains a similarly worded force provision. 18 U.S.C. § 924(e)(2)(B)(i).

Through counsel, Petitioner challenged application of the career offender enhancement. Petitioner argued that the bank robbery statute was too broad to meet the definition of crime of violence at U.S.S.G. § 4B1.2, because the statute included offenses which did not require the intentional threat or use of force. Specifically, Petitioner argued that intimidation—a threat of bodily harm—does not necessarily require the use of violent physical force, and that the government’s reliance on *United States v. Castleman*, 134 S.Ct. 1405 (2014), which addressed the meaning of common law force in the misdemeanor crime of domestic violence context and held that intentional causation of bodily injury necessarily involves the use of physical force, was misplaced in the Career Offender and ACCA context.

Petitioner further argued that federal bank robbery by intimidation does not require the use or threat of force as it may be proven where a teller is objectively intimidated, without evidence that the defendant did so intentionally.

The district court overruled the objections, Pet. App. B, and sentenced Petitioner to the bottom of the career offender guideline range, 151 months’ imprisonment, Pet. App. C.

3. On appeal, the Third Circuit rejected Petitioner’s claim, holding that unarmed bank robbery by intimidation involves a threat of bodily harm which equates to a “threat of physical force.” Pet. App. A at 10.² The Court relied on similar holdings in other Circuits and its own recent decision in *United States v. Chapman*, 866 F. 3d 129 (3d Cir. 2017). Pet. App. A at 10, 11 n.6. In *Chapman*, the Third Circuit interpreted this Court’s decision in *United States v.*

² Wilson also argued that the enumerated offenses in the commentary section to the career offender guideline were—absent a residual clause—without defining authority. That enumerated list has since been moved to the body of the § 4B1.2. The Circuit declined to address the enumerated offenses clause. Pet. App. A at 5 n.2. Application of the enumerated offenses provision is not raised here.

Castleman, 134 S.Ct. 1405 (2014)—which addressed the meaning of common law force—as applicable in the Career Offender and ACCA context. The Circuit further held that pursuant to this Court’s decision in *Carter v. United States*, 530 U.S. 255 (2000), “[b]y definition, § 2113(a) requires proof that a defendant knowingly engaged in an act that would cause an ordinary bank teller to be intimidated and turn over money that the defendant knew he had no right to have.” Pet. App. A at 16.

REASONS FOR GRANTING THE PETITION

Certiorari should be granted to settle two important questions of federal law: whether the Third Circuit properly applied this Court’s holding in *United States v. Castleman*, 134 S.Ct. 1405 (2014), which addressed the meaning of common law force, to the meaning of violent force in the context of the Sentencing Guidelines or the Armed Career Criminal Act; and second, whether *Carter v. United States*, 530 U.S. 255 (2000), may properly be read to require that a defendant have knowledge that his or her actions are objectively intimidating for prosecution under 18 U.S.C. § 2113(a).

I. Certiorari should be granted to decide whether this Court’s holding in *United States v. Castleman*, 134 S.Ct. 1405 (2014), which addressed the meaning of common law force, applies to the meaning of violent force in the context of the Sentencing Guidelines or the Armed Career Criminal Act.

Pertinent here, the career offender provision of the Sentencing Guidelines provides for enhanced sentences for certain defendants whose instant offense is for a “crime of violence” or “serious drug offense,” and who have two prior convictions for a “crime of violence” or “serious drug offense.” U.S.S.G. § 4B1.1. Section 4B1.2(a) defines a “crime of violence” as any offense under federal or state law, punishable by imprisonment for a term exceeding one year, that “has

as an element the use, attempted use, or threatened use of physical force against the of another[.]”³

A. *Use of force versus the causation of injury*

In *Johnson v. United States*, 559 U.S. 133, 140 (2010) (*Johnson I*), in examining whether an element requires the use of force, this Court explained that the term must be understood to connote “strong physical force.” Emphasizing that the term is used to define a category of “felony,” this Court read “force” to call to mind a tradition of crimes involving “‘extreme physical force, such as murder, forcible rape, and assault and battery with a dangerous weapon.’” *Id.* at 140-41 (quoting *Black’s Law Dictionary* 1188 (9th ed. 2009)). Thus, “the phrase ‘physical force’ means *violent* force — that is, force capable of causing physical pain or injury to another person.” *Id.* at 140 (emphasis in original).

In *United States v. Castleman*, 134 S. Ct. 1405 (2014), this Court construed legislation directed at persons with convictions for a “misdemeanor crime of domestic violence,” and held that in such context “the knowing or intentional causation of bodily injury necessarily involves the use of physical force.” 134 S. Ct. at 1414. At issue in *Castleman* was whether a prior state conviction qualified as a “misdemeanor crime of domestic violence,” an element of *Castleman*’s conviction under 18 U.S.C. § 922(g)(9) (possession of a firearm by a person convicted of a

³ In determining whether an offense qualifies as a “crime of violence,” courts must use the categorical approach. The categorical approach permits a court to “look only to the statutory definitions—i.e., the elements—of a defendant’s [offense] and not to the particular facts underlying [the offense].” *Descamps v. United States*, 133 S. Ct. 2276, 2283 (2013) (citation omitted). In other words, the court must determine not what the defendant did (or is accused of doing), but how broadly the statute sweeps, in order to ascertain whether the use or threat of force is a “constituent part of the crime’s legal definition.” *Mathis v. United States*, 136 S.Ct. 2243, 2248 (2016).

domestic violence misdemeanor). The Court examined the common-law meaning of “physical force,” which encompasses “even the slightest offensive touching,” and held that Congress intended to adopt this broad meaning in the context of the domestic-violence disqualification for firearm possession. 134 S.Ct. at 1414. At the same time, this Court expressly distinguished the common-law definition from Congress’ narrower use of the term applicable here under the *Johnson I* decision. *Id.* Specifically, this Court reiterated that the common-law definition *does not apply* to statutes governed by the *Johnson* definition of physical force (there, ACCA; here, U.S.S.G. § 4B1.2): “We declined [in *Johnson I*] to read the common-law meaning of ‘force’ into ACCA’s definition of ‘violent felony,’ In defining a ‘violent felony,’ we held, ‘the phrase physical force must mean violent force.’” 134 S.Ct. at 1410. Accordingly, *Castleman* involved an entirely different definition of “physical force,” limited to the discrete context of misdemeanor crimes of domestic violence under 18 U.S.C. § 922(g)(9). The much narrower definition of “physical force” adopted by this Court in *Johnson I* applies here.

B. The Third Circuit’s Application of Castleman

Recently, in *United States v. Chapman*, 866 F.3d 129 (3d Cir. 2017), the Third Circuit applied the reasoning of *United States v. Castleman*, 134 S.Ct. 1405 (2014), and held that “the ‘use’ of ‘physical force,’ as used in U.S.S.G. § 4B1.2(a)(1), involves the intentional employment of something capable of causing physical pain or injury to another person,” but “does not require that the person employing the force *directly* apply harm to—i.e. strike—the victim.” *Id.* at 123-

33. The Third Circuit’s interpretation virtually eliminates the distinction between the causation of injury and the use of force.⁴

Petitioner asserts that the Circuit erred in *Chapman*, and consequently the decision below, in its application of *Castleman* in this context. As explained above, the *Castleman* decision addressing the meaning of common law force in the context of misdemeanor crimes of domestic violence, rather than the meaning of violent force in the context of the Armed Career Criminal Act or the Sentencing Guidelines, and explicitly declined to address “[w]hether or not the causation of bodily injury necessarily entails violent force.” 134 S.Ct. at 1413. See *United States v. McNeal*, 818 F.3d 141, 156 n.10 (4th Cir. 2016) (describing argument that *Castleman* abrogated distinction between use of force and causation of injury as a “dubious proposition”); *United States v. Rico-Mejia*, 859 F.3d 318, 322 (5th Cir. 2017) (“By its express terms, *Castleman*’s analysis is not applicable to the physical force requirement for a crime of violence, which ‘suggests a category of violent, active crimes’ that have as an element a heightened form of physical force that is narrower in scope than that applicable in the domestic violence context.”) (quoting *Castleman*, 134 S.Ct. at 1411 n. 4).

C. *Unarmed bank robbery does not require Johnson I force*

The unarmed bank robbery statute, 18 U.S.C. § 2113(a) provides, in pertinent part: “Whoever, by force and violence, or by intimidation, takes, or attempts to take, from the person or presence of another . . . any property or money or any other thing of value belonging to, or in the care, custody . . . or possession of, any bank . . .” “As used in Section 2113(a), the term

⁴ Causation of bodily injury through acts of neglect or omission appear to remain beyond the scope of using force. See *United States v. Oliver*, (No. 17-2747), 2018 WL 1547595, at *3 (3d Cir. Mar. 29, 2018) (unpublished).

‘intimidation’ means ‘to make fearful or put into fear.’ *United States v. Askari*, 140 F.3d 536, 541 (3d Cir.), opinion vacated and superseded on other grounds on reconsideration, 159 F.3d 774 (3d Cir. 1998), as amended (Nov. 5, 1997); *United States v. Selfa*, 918 F.2d 749, 751 (9th Cir. 1990) (“intimidation” under section 2113(a) means “wilfully to take, or attempt to take, in such a way that would put an ordinary, reasonable person in fear of bodily harm”) (citations omitted).

Put simply, a teller may be placed in fear of bodily injury by threats that do not contemplate “strong” force of the kind “exerted by and through concrete bodies,” and thus is not a threat of “force” as that term is used in recidivist enhancements like the career offender guideline. *Johnson I*, 559 U.S. at 138. This scenario is not only conceivable, but not uncommon. See *United States v. Ketchum*, 550 F.3d 363, 365 (4th Cir. 2008) (upholding conviction where defendant handed a teller a note that read: “These people are making me do this,” and then stated, “They are forcing me and have a gun. Please don’t call the cops. I must have at least \$500.”); *United States v. O’Bryant*, 42 F.3d 1407 (10th Cir. 1994) (Table) (affirming a finding of intimidation where the defendant merely reached over the counter and took money from an open teller drawer after asking the teller for change); *United States v. Andrew Wolthuis*, W.D. Mich. Case No. 15-cr-00146, Dkt No. 32 at 2 (government summarizing facts of robbery as follows: “The defendant entered the bank wearing a white Tyvek jumpsuit and a mask, and carrying a clipboard and briefcase marked “Pest Control.” The defendant handed the bank manager a note, stating that he was in possession of anthrax. The defendant brought a clear container of white protein powder that he intended to pass off as anthrax, but he forgot it in his pickup truck, which was parked outside of the bank. The manager took the defendant’s briefcase, filled it with small bills summing to \$1,812, and returned it to him. The defendant asked to go to the vault, the manager refused, and the defendant left the bank.”).

Accordingly, this Court should grant certiorari to clarify that *United States v. Castleman*, does not apply to the meaning of violent force in the context of the Sentencing Guidelines or the Armed Career Criminal Act, and therefore unarmed bank robbery, which does not require the use of violent force, is not categorically a “crime of violence.”

II. Certiorari should be granted to decide whether *Carter v. United States*, 530 U.S. 255 (2000), requires, under § 2113(a), that a defendant have knowledge that his or her actions are objectively intimidating.

The second notable feature of “force” as used in provisions like § 4B1.2(a)(1) concerns the requisite mental state. For an offender to “use” or “threaten” force within the meaning of the element-of-force clause, he must act with knowledge or intent. *Tran v. Gonzales*, 414 F.3d 464, 470 (3d Cir. 2005); *see also United States v. Otero*, 502 F.3d 331, 335 (3d Cir. 2007) (offense must be “committed through intentional use of force against another rather than reckless or grossly negligent conduct”). Thus, it is not enough for an offense to have as an element the causation of “serious bodily injury.” *See Leocal v. Ashcroft*, 543 U.S. 1, 7 (2004). This Court has cautioned as to mental state that “we cannot forget that we ultimately are determining the meaning of the term ‘crime of violence.’” *Leocal*, 543 U.S. at 11.

In the context of unarmed bank robbery pursuant to § 2113(a), Courts of Appeals have long recognized that “intimidation” may be shown without evidence the defendant *intentionally* threatened anyone. Nevertheless, the Third Circuit has interpreted this Court’s decision in *Carter v. United States*, to require proof of knowledge as to the intimidation element. Pet. App. A at 16.

A. *The objectively reasonable person and negligence standard of 18 U.S.C. § 2113(a).*

While the term intimidation means to make fearful or put into fear, this need not be the defendant's purpose or intent. Rather, the inquiry looks to the objective character of the defendant's conduct:

In determining whether intimidation is present, an objective standard is employed from the perspective of the victim, *i.e.*, “whether an ordinary person in the teller's position reasonably could infer a threat of bodily harm from the defendant's acts.”

Askari, 140 F.3d 536 at 541 (quoting *United States v. Woodrup*, 86 F.3d 359, 363 (4th Cir. 1996)) (additional internal quotation marks omitted). *See also United States v. Kelley*, 412 F.3d 1240, 1244 (11th Cir. 2005) (A defendant “can be convicted ... even if he did not intend for an act to be intimidating.”); *United States v. Yockel*, 320 F.3d 818, 824 (8th Cir. 2003) (showing “intimidation” turns on what an “ordinary person ... reasonably could infer” from the defendant's conduct); and *United States v. Foppe*, 993 F.2d 1444, 1451 (9th Cir. 1993) (“objective test focusing on the accused actions”) (internal quotation marks omitted).

This Court has made clear that this objective-perspective-of-an-ordinary-person standard is customarily used to define a *mens rea* of negligence. *Elonis v. United States*, 135 S.Ct. 2001, 2011 (2015). This application of the negligence standard may be seen cases in which Section 2113(a) convictions are obtained without proof of more than negligence or recklessness as to force. In many Circuits, a simple demand for money, without any intent whatsoever shown, is sufficient to establish intimidation under § 2113(a). *See United States v. Ward*, 458 F. App'x 527, 528 (6th Cir. 2012) (recounting named bank's “policy” under which “teller is to follow the robber's demands without regard to whether the teller thinks the robber is serious”) (not precedential); *United States v. Ketchum*, 550 F.3d 363, 365 (4th Cir. 2008) (upholding conviction

where defendant handed a teller a note that read: “These people are making me do this,” and then stated, “They are forcing me and have a gun. Please don’t call the cops. I must have at least \$500.”); *United States v. O’Bryant*, 42 F.3d 1407 (10th Cir. 1994) (Table) (affirming a finding of intimidation where the defendant merely reached over the counter and took money from an open teller drawer after asking the teller for change); *United States v. Nash*, 946 F.2d 679, 681 (9th Cir. 1991) (“[T]he threat implicit in a written or verbal demand for money is sufficient evidence to support [a] jury’s finding of intimidation.”); *United States v. Hopkins*, 703 F.2d 1102, 1103 (9th Cir. 1983) (upholding a conviction where “the evidence showed that [the defendant] spoke calmly, made no threats, and was clearly unarmed” because “‘express threats of bodily harm, threatening body motions, or the physical possibility of concealed weapon[s]’ are not required for a conviction for bank robbery by intimidation.”); *United States v. Slater*, 692 F.2d 107, 107–08 (10th Cir. 1982) (defendant entered a bank, walked behind the counter, and removed cash from the tellers' drawers, but did “not speak or interact with anyone, beyond telling a bank manager to ‘shut up.’”); *Fowler v. Evans*, 2008 WL 45805 (S.D. Cal. Jan. 2, 2008) (recounting prosecution in which teller testified he supplied money not out of fear but in compliance with bank policy); *Red v. Runnels*, 2009 WL 4251562, *6 (N.D. Cal. Nov. 23, 2009) (defendant acted “knowing that banks had a policy of not asking questions when being robbed”).

A defendant might also lack the requisite intent as a function of diminished capacity. Many persons prosecuted under § 2113(a) act in desperate hopes of obtaining money to feed a drug addiction. See David Gambacorta, *Bad Times Are Big Times for Bank Heists*, Philadelphia Daily News, Jan. 30, 2009, at 3 (quoting FBI special agent’s statement that “most” demand-note robberies are committed by “pathetic drug addicts”). The addled robber might act without much hope his note will work and without thought of consequences — which is to say, recklessly. See

ALI, Model Penal Code § 2.02(2)(c) (defining recklessness as “conscious disregard” of substantial risk). Moreover, the robber’s appearance might, without his even realizing it, sway the teller and the jury. For instance, the robber might be physically large, exhibit tattoos, or dress in a manner popularly associated with criminal activity.

Since both the negligently wishful robber and the addled one could be convicted without proof of a mens rea greater than recklessness, unarmed bank robbery under § 2113(a) does not require the use or intentional threat of force. It is not categorically a “crime of violence.”

B. The Third Circuit incorrectly applied Carter v. United States

The Third Circuit below held that pursuant to this Court’s decision in *Carter v. United States*, 530 U.S. 255 (2000), “[b]y definition, § 2113(a) requires proof that a defendant knowingly engaged in an act that would cause an ordinary bank teller to be intimidated and turn over money that the defendant knew he had no right to have.” Pet. App. A at 16. This is inconsistent with the long history of precedent interpreting § 2113(a) as well as a misreading of *Carter*.⁵

In *Carter*, this Court considered whether a conviction under 18 U.S.C. § 2113(a), requires that a defendant have the intent to steal. 530 U.S. at 261. The Court found that “the concerns underlying the presumption in favor of scienter are fully satisfied, for a forceful taking—even by a defendant who takes under a good-faith claim of right” because such would “fall[] outside the realm of ... ‘otherwise innocent’” conduct. *Id.* at 269–270. As to intent, this Court said only “we

⁵ Other Circuits have similarly interpreted *Carter* and held offenses under § 2113 qualify as crimes of violence under force clauses, each of those cases incorrectly construes § 2113(a) to require a mens rea greater than negligence. See e.g. *United States v. McNeal*, 818 F.3d 141, 155 (4th Cir. 2016) (§ 2113(d); citing *Carter*); *United States v. McBride*, 826 F.3d 293, 296 (6th Cir. 2016) (citing *Carter*).

read subsection (a) as requiring proof of *general intent*—that is, that the defendant possessed knowledge with respect to the *actus reus* of the crime (here, the taking of property of another by force and violence or intimidation).” *Id.* at 268 (emphasis in original). This reference to “general intent” and the “actus reus” conveys no more than that a defendant need be aware of “the contents and context” of his actions, not that he know a reasonable person could infer a genuine threat under the circumstances. Thus, a defendant need only know or intend to engage in some action, not that his actions will be deemed objectively intimidating. The language in *Carter* does not mean that a defendant must act knowingly with respect to intimidation, *i.e.*, that he must be aware intimidation on the part of the teller is “practically certain.” Model Penal Code §§ 2.02(2)(a)-(b) (defining mens rea of “knowingly”). The *mens rea* as to intimidation, therefore, remains one of negligence. *Elonis*, 135 S.Ct. at 2011; *see also Yockel*, 320 F.3d at 823 (explaining *Carter*).

A history of prosecutions of the negligently wishful and the addled robber, without proof of *mens rea* greater than recklessness, is irreconcilable with the Third Circuit’s interpretation of *Carter*, to require a knowledge that one’s actions are objectively intimidating. This Court should grant certiorari to clarify that *Carter v. United States*, does not hold that § 2113(a) requires proof of knowledge with respect to the intimidation element, and therefore unarmed bank robbery does not require the use or threat of force necessary to be categorically a “crime of violence.”

CONCLUSION

Accordingly, certiorari should be granted to resolve whether this Court's holding in *United States v. Castleman*, applies to the meaning of violent force in the context of the Sentencing Guidelines or the Armed Career Criminal Act; and whether *Carter v. United States* requires, under § 2113(a), that a defendant have knowledge, rather than a reckless or negligent mens rea, that his or her actions are objectively intimidating, thereby knowingly using a threat of force.

Respectfully submitted,

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