No. _____

In the
Supreme Court of the United States

RONALD DEWITT VINES

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

This case implicates multiple acknowledged circuit splits as to how the categorical approach should apply to 18 U.S.C. § 2113, the federal bank robbery statute. Petitioner was convicted of one count under § 2113(d), based on an attempt to commit a violation of § 2113(a), and a second count under 18 U.S.C. § 924(c). The first paragraph of § 2113(a) provides that, "[w]hoever 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" belonging to a bank, shall be guilty of a crime. The circuits have split 5-1 as to whether this provision is divisible. And the circuits have further split 4-3 as to whether attempted bank robbery is a crime of violence under § 924(c). Section 2113(d) complicates things even more. It punishes anyone who, "in attempting to commit, any offense defined in subsection[] (a) . . . assaults any person, or puts in jeopardy the life of any person by the use of a dangerous weapon or device." The circuits have divided over the elements necessary to sustain a conviction under this subsection as well.

The question presented is:

Whether attempted armed bank robbery under 18 U.S.C. § 2113(d) and the first paragraph of § 2113(a) involves the "use, attempted use, or threatened use of force" in all possible hypothetical circumstances, such that it qualifies as a crime of violence under § 924(c).

STATEMENT OF RELATED PROCEEDINGS

United States v. Vines, No. 2:18-cr-00013-PD (E.D. Pa.) (judgment issued September 11, 2023)

United States v. Vines, No. 23-2843 (3d Cir.) (opinion and judgment issued April 21, 2025, and rehearing petition denied June 17, 2025)

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PETITION FOR WRIT OF CERTIORARI

The decision below deepens three entrenched circuit splits, two of which the panel expressly acknowledged. The majority's decision also contradicts the text of the federal bank robbery statute, 18 U.S.C. § 2113. It conflicts with this Court's precedent regarding when an attempt crime qualifies as a "crime of violence" under the categorical approach. *See United States v. Taylor*, 596 U.S. 845, 851-52 (2022). And, paradoxically, its holding that attempted bank robbery is a crime of violence makes it *more* difficult to secure a conviction for the underlying predicate offense. This Court should grant certiorari to bring clarity to this important area of law.

This Court's caselaw on crimes of violence in the context of 18 U.S.C. § 924(c) and statutes like it has caused considerable confusion. However, the basic rule of the categorical approach can be stated quite simply: "The only relevant question is whether the federal felony at issue 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" against another person. *Id.* at 850.

Attempted bank robbery does not qualify as a crime of violence. In fact, Petitioner *himself* did not use, attempt to use, or threaten the use of force in the failed bank robbery that led to his conviction. And, in the proceedings below, Petitioner—along with the dissenting member of the panel—identified several ways by which a person could be convicted of the crime at issue without using force against another.

In holding otherwise, the court below erred at every turn. It first held that the statute at issue set

out multiple crimes, and thereby wrongly excluded offending conduct that plainly would not involve the use of force. Then, the majority interpreted the narrowed crime to require an additional element. Under this mistaken reading—which clashes with the common-law conception of attempt—a person has not attempted bank robbery until he has actually confronted a bank employee. Finally, the majority brushed aside unambiguous statutory language demonstrating that a person could violate the statute by jeopardizing his *own* life, rather than the life "of another." 18 U.S.C. § 924(c)(3)(A). On each of these issues, the decision below was incorrect—and in the process it further entrenched multiple circuit splits.

Moreover, the circuit splits here are interlocking. They subject defendants to different statutory standards under § 2113 and additional mandatory minimum sentences under § 924(c) based on the happenstance of geography. And this case is an ideal vehicle for addressing all three splits together at once. The Court should thus grant certiorari to restore uniformity in the law and provide much needed guidance on these important issues.

OPINIONS BELOW

The Third Circuit's opinion is reported at 134 F.4th 730 and reproduced at Pet.App.1a. The district court's opinion is unpublished and reproduced at Pet.App.29a.

JURISDICTION

The Third Circuit issued its opinion on April 21, 2025, and denied a timely rehearing petition on June

17, 2025. Pet.App.48a. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The following statutory provisions are reproduced in the Appendix: 18 U.S.C. § 924(c), 18 U.S.C. § 2113(a), and 18 U.S.C. § 2113(d). Pet.App.50a-52a.

STATEMENT OF THE CASE

A. Legal Background

Federal law prohibits the use of a firearm "during and in relation to any crime of violence." 18 U.S.C. § 924(c)(1)(A). The term "crime of violence" is defined by statute. *Id.* § 924(c)(3). As enacted, that statute could be satisfied if the crime fit either of two alternate definitions. This Court has since invalidated the latter of those definitions—the so-called "residual clause" in § 924(c)(3)(B)—as unconstitutionally vague. *United States v. Davis*, 588 U.S. 445, 470 (2019).

But the so-called "elements clause" remains. *Taylor*, 596 U.S. at 849. The elements clause provides that a crime of violence is 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).

To determine whether a given felony is a crime of violence, courts must apply the "categorical approach." *Taylor*, 596 U.S. at 850. This analysis "precludes" inquiring into the particular facts of conviction. *Id.* Instead, "[t]he only relevant question is whether the federal felony at issue 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." *Id.* If there is any hypothetical circumstance

under which such proof is not required, then the felony is not a crime of violence and cannot serve as a predicate for a § 924(c) conviction. *See id.* at 851-52.

In some instances, a single statute may set out multiple crimes. If so, the statute is said to be "divisible." *Mathis v. United States*, 579 U.S. 500, 505 (2016). For a divisible statute, the "modified categorical approach" applies. *Id.* This approach allows the court to look to a "limited class of documents" to determine which of the various crimes enumerated by the statute is the actual crime of conviction. *Id.* The analysis then proceeds consistent with the categorical approach. *See Descamps v. United States*, 570 U.S. 254, 257 (2013). And the court determines whether the crime of conviction is a crime of violence sufficient to serve as a § 924(c) predicate.

In *Taylor*, this Court vacated a § 924(c) conviction predicated on attempted Hobbs Act robbery. 596 U.S. at 860. In so ruling, it reasoned that "[t]he elements clause does not ask whether the defendant committed a crime of violence *or* attempted to commit one." *Id.* at 853. The clause instead "asks whether the defendant *did* commit a crime of violence" as defined by statute. *Id.* Attempted Hobbs Act robbery requires the government to prove an "inten[t]" to commit the crime and a "substantial step" toward that end. *Id.* at 851 (quotation marks omitted). And that substantial step need not involve a violent act. *See id.* at 852. Thus, the inchoate offense is not a crime of violence. *See id.* at 854.

Petitioner in this case was also convicted of violating § 924(c) predicated on an inchoate robbery offense. Pet.App.35a. His conviction rests on

attempted armed bank robbery under § 2113(a) & (d). Pet.App.30a-31a. Section 2113(d) states that: "Whoever, in committing, or in attempting to commit, any offense defined in subsections (a) and (b) of this section, assaults any person, or puts in jeopardy the life of any person by the use of a dangerous weapon or device [commits a crime against the United States]." 18 U.S.C. § 2113(d).

Section 2113(a)'s first paragraph, charged below, provides:

> 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 [commits a crime against the United States].

Id. § 2113(a).

B. Factual Background

In 2017, Petitioner and his two sons drove to a bank in Holland, Pennsylvania. Pet.App.2a. One of Petitioner's sons put on a face mask and accosted a bank teller on her way into the bank. *Id.* He forced her inside at gunpoint. *Id.* Another bank teller, arriving at work, spotted the altercation. *Id.* Petitioner saw this and directed his son to abandon the robbery attempt. *Id.* The three men left the scene and were arrested soon thereafter. *Id.* There is no indication in the record that Petitioner himself committed, threatened, or attempted to use violence.

C. Procedural History

The United States charged Petitioner with two crimes: attempted armed bank robbery in violation of 18 U.S.C. § 2113(d) ("Count One"); and carrying and brandishing a firearm during a crime of violence in violation of 18 U.S.C. § 924(c)(1) ("Count Two"). Pet.App.34a-35a. Petitioner pleaded guilty to both counts. Pet.App.34a. The district court sentenced him to 72 months' imprisonment on Count One and to an additional 84 months' imprisonment on Count Two. Pet.App.36a. The sentences run consecutively as required by statute. *Id.*

Petitioner moved pro se for a writ of habeas corpus, arguing that Count Two must be vacated because his predicate conviction for attempted armed bank robbery is not a crime of violence. Pet.App.29a-30a. The district court denied the motion and granted a certificate of appealability. *Id.*

A divided panel of the Third Circuit affirmed Petitioner's conviction and sentence. Pet.App.2a. Judge Roth dissented. Pet.App.18a. She reasoned that an attempted bank robbery is indistinguishable "from any other generic attempt crime." Pet.App.22a. "And because *Taylor* makes clear that merely taking a substantial step towards committing a robbery (even a robbery in which force is planned) does not constitute using, attempting to use, or threatening to use force, it follows that the 'attempt' language in § 2113(d) does not render that statute a crime of violence." *Id.*

REASONS FOR GRANTING THE PETITION

The decision below contradicts this Court's precedent and exacerbates three established circuit splits—two of which the Third Circuit expressly acknowledged in its opinion. Rather than allow different rules to apply to different defendants based on the happenstance of geography, this Court should grant certiorari to resolve these important issues.

I. The Decision Below Deepens Three Entrenched Circuit Splits.

A. The Circuits Are Divided Over the Divisibility of Section 2113(a).

The opinion below acknowledges that the circuits are split on whether § 2113(a) is divisible. Pet.App.6a. And that threshold question is critical when conducting a categorical analysis for the federal bank robbery statute. If § 2113(a) defines only a single crime, then the least culpable conduct—bank robbery by extortion—renders all convictions under the statute not a crime of violence. But if the statute "set[s] out two separate, divisible crimes" of "bank robbery and bank extortion," then the analysis must proceed further. *Id.*

1. In the D.C. Circuit, the first paragraph of § 2113(a) is "indivisible as to extortion." *United States v. Burwell*, 122 F.4th 984, 986 (D.C. Cir. 2024). That paragraph defines only "a single crime," which can be committed by any of three alternate means: force and violence, intimidation, or extortion. *Id.* at 989. In other words, "extortion is a factual means of bank robbery, rather than an element of an entirely separate offense." *Id.* at 986.

The D.C. Circuit reasoned by looking to the "text, structure, and statutory history" bearing on divisibility. *Id.* at 991. As it explained, the three alternate means of violating the statute all have a "single maximum penalty," are all grouped in a "single paragraph" set off from another paragraph, and are divided by a comma, "rather than more disjunctive punctuation like a semicolon." *Id.* at 990. These characteristics indicate that the statute "is best read to contain two distinct elements: coming into possession of bank property and the unlawful means by which that occurs." *Id.* at 991. "Indeed, the 1986 amendment was titled 'Addition of Extortion to Bank Robbery Offense,' which suggests 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.* (internal citation omitted). That offense of bank robbery is not a crime of violence, because, as the government has conceded, "extortion need not involve the use or threat of force." *Id.* at 986.

2. Five circuits have reached the opposite conclusion.

The Ninth Circuit and the Second Circuit have done so in "cursory" fashion. *Id.* at 995-96 (citing *United States v. Watson*, 881 F.3d 782 (9th Cir. 2018); *United States v. Evans*, 924 F.3d 21 (2d Cir. 2019)). The Ninth Circuit provided only a single sentence on this point, relying on precedent that nowhere addressed the categorical approach. *See Watson*, 881 F.3d at 786. And the Second Circuit simply imported the same unreasoned holding. *See Evans*, 924 F.3d at 28 (citing *Watson*, 881 F.3d at 786).

The First Circuit provided more analysis to arrive at the same mistaken result. *See King v. United States*, 965 F.3d 60 (1st Cir. 2020). It reasoned that, because the verb associated with extortion ("obtains") varies from that associated with force, violence, or intimidation ("takes"), the syntax is indicative of distinctive crimes. *Id.* at 68. From there, the court tacked on legislative history and cited the Second and Ninth Circuit's opinions to conclude that § 2113(a) is indivisible. *Id.* at 68-70.

The Eleventh Circuit adopted the First Circuit's reasoning. *See United States v. Armstrong*, 122 F.4th 1278, 1286-87 (11th Cir. 2024).[1] It also held that "robbery and extortion are alternate elements—amounting to separate crimes—not alternate means of committing one crime." *Id.* at 1286.

And, in this case, the Third Circuit held that extortion is divisible from the rest of the statute's first paragraph. Pet.App.6a. It came to this conclusion by reference to English common law conceptions of robbery and extortion, as well as the opinions of the First, Second, Ninth, and Eleven Circuits. *See* Pet.App.6a-7a. That reasoning had not moved the D.C. Circuit. In its view, "the common law differences between robbery and extortion are far more facile" than the decision below suggests, and the text makes clear that "Congress took a different tack in § 2113(a)." *Burwell*, 122 F.4th at 996.

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[1] There are currently pending petitions for certiorari in *Armstrong v. United States*, No. 25-5063 (petition filed July 1, 2025), and another case from the Eleventh Circuit, *Henderson v. United States*, No. 25-13 (petition filed July 1, 2025).

Thus, six circuits have now squarely decided the issue—and cannot agree on whether § 2113 is divisible. That circuit split alone warrants this Court's intervention.

B. The Circuits Are Divided Over Whether Attempted Bank Robbery Is a Crime of Violence.

But the split of authority continues beyond divisibility. As the opinion below acknowledges, the courts of appeals are also deeply divided on whether attempted federal bank robbery is a crime of violence—regardless of whether § 2113(a) is divisible. *See* Pet.App.8a. Indeed, courts have acknowledged this split for decades. *See United States v. Bellew*, 369 F.3d 450, 456 (5th Cir. 2004); *see also Armstrong*, 122 F.4th at 1290 n.5 (collecting cases); *United States v. Jackson*, 2025 WL 1169649, at *6 (10th Cir. Apr. 22, 2025) (same).

Multiple courts have now firmly settled on each side of the divide. Three courts of appeals—the Fourth, Sixth, and Ninth Circuits—have held that attempted federal bank robbery is not a crime of violence. Four courts of appeals, including the Third Circuit below, have held the opposite. Another has equivocated. And that division of authority affects not only the applicability of § 924(c), but also the amount of proof required to sustain a conviction under § 2113(a) itself. This Court should resolve this well-developed split.

1. The Fourth, Sixth, and Ninth Circuits have the better view. Attempted federal bank robbery predicated on the first paragraph of § 2113(a) does not

categorically require the use, attempted use, or threatened use of force.

The Fourth Circuit staked out this position long ago in *United States v. McFadden*, 739 F.2d 149, 151 (4th Cir. 1984). There, the defendants argued that "force and violence or intimidation must accompany the attempt to take property from the custody or possession of the bank." *Id.* at 151. But the Fourth Circuit was unconvinced. Under well-settled principles of criminal law, an attempt requires only "an act or omission constituting a *substantial step* in a course of conduct planned to culminate in his commission of the crime." *Id.* at 152 (emphasis added) (quoting Model Penal Code § 5.01(c)). That means a defendant can commit attempted bank robbery in all sorts of ways that do not require the use of force. *See id.* For example, defendants could be convicted where they had: "discussed their plans," "reconnoitered the banks in question," "assembled . . . weapons and disguises," and "proceeded to the area of the bank." *Id.* That activity no doubt constitutes a "substantial step" toward bank robbery, yet none of it involves violence. *Id.* It follows that attempted bank robbery is not a crime of violence under the categorical approach.

Similarly, a person may be convicted of attempted bank robbery in the Sixth Circuit without any proof that he used, attempted to use, or threatened to use force. *See United States v. Wesley*, 417 F.3d 612, 618 (6th Cir. 2005). In so holding, the Sixth Circuit—like the Fourth—squarely rejected the argument that "the statute requires proof that the defendant actually committed an act of intimidation, or of force and violence, in order to be convicted of attempted bank

robbery." *Id.* Instead, the Sixth Circuit held that the government need only prove the defendant's intent and that he undertook a "substantial step" toward commission of the crime. *Id.* To hold otherwise "would, without reason, require proof that a defendant actually confronted someone in the bank before he could be convicted of attempted robbery." *Id.*

So, too, in the Ninth Circuit. There, an attempt "[c]onviction 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). It "does not require the actual use of force, violence, or intimidation." *Id.* In turn, attempted bank robbery "does not satisfy the elements clause" and is not a crime of violence. *United States v. Hogue*, 2023 WL 5973111, at *1 (9th Cir. Sept. 14, 2023) (citing *Moore*, 921 F.2d at 209).

2. At least four circuits are on the other side of the divide, including the Third Circuit below, *see* Pet.App.14a. In these circuits, a substantial step toward completion of a bank robbery is not sufficient to convict for attempt. Instead, the government must show the actual application of force, violence or intimidation in commission of the attempt. As a result, police are "required to delay arrest until innocent bystanders are imperiled." *Moore*, 921 F.2d at 209.

A case from the Fifth Circuit illustrates this strange approach. In *Bellew*, the court explicitly "reject[ed] the opposing interpretation" adopted by its sister circuits and instead held that § 2113(a) requires proof of *actual* "force and violence or intimidation" to

secure a conviction. 369 F.3d at 454. That led the court to vacate the convictions of a would-be robber who "enter[ed] the Bank" that he intended to rob, armed with a briefcase containing a gun. *Id.* at 451-52. Bellew went free because—despite the substantial steps he took toward robbing the bank—he "did not use 'force and violence or intimidation.'" *Id.* at 454. Thus, attempted bank robbery in the Fifth Circuit "involves the actual use of force or intimidation" and is a crime of violence under § 924(c). *United States v. Blake Taylor*, 2023 WL 4118572, at *1 (5th Cir. June 22, 2023) (citing *Bellew*, 369 F.3d at 454).

Other circuits have held the same. In the Seventh Circuit, "actual force and violence or intimidation is required for a conviction under the first paragraph of § 2113(a), whether the defendant succeeds (takes) or fails (attempts to take) in his robbery attempt." *United States v. Thornton*, 539 F.3d 741, 747 (7th Cir. 2008). The Eleventh Circuit likewise holds that "attempted bank robbery categorically requires proof 'that the defendant used, attempted to use, or threatened to use force.'" *Armstrong*, 122 F.4th at 1289 (citation omitted); *accord Henderson v. United States*, 2025 WL 1078231, at *5 (11th Cir. Apr. 10, 2025).

3. The Second Circuit, for its part, seems to have weighed in on both sides of the divide. More recently, it held that a conviction for attempted bank robbery "requires that both the completed crime and its attempt be effectuated 'by force, violence, or by intimidation.'" *Collier v. United States*, 989 F.3d 212, 221 (2d Cir. 2021) (quoting 18 U.S.C. § 2113(a)). Under that interpretation, "attempted bank robbery is

a categorical match for a crime of violence" under the elements clause. *Id.* (citing 18 U.S.C. § 924(c)(3)(A)). Yet, the Second Circuit rejected that precise interpretation in a prior decision. *See United States v. Jackson*, 560 F.2d 112, 116 (2d Cir. 1977) (rejecting defense argument that the statute requires proof of "actual use of force, violence, or intimidation").

Whichever side the Second Circuit falls on, though, the split will remain. This Court should grant certiorari to resolve this split among the lower courts.

C. The Circuits Are Divided Over the Elements Necessary to Sustain a Conviction Under Section 2113(d).

Although the court below did not acknowledge it, this case implicates a third division of authority concerning the proper construction of § 2113(d). At least two circuits construe § 2113(d) attempts in a way that does not require proof of the use, attempted use, or threatened use of force. Four circuits hold the opposite.

1. The Eleventh Circuit has held that an attempted armed bank robbery under § 2113(d) can be proven by evidence of specific intent "to assault someone or place their lives in danger by use of a weapon" coupled with a "substantial step" toward the same. *United States v. Perez*, 350 F. App'x 425, 429 (11th Cir. 2009) (citing *United States v. Yost*, 479 F.3d 815, 819 (11th Cir. 2007)). That court thus sustained a conviction where the defendant "prepared to hand the teller a note threatening to use a gun if she did not give him money." *Id.* That "substantial step" of drafting the note and approaching the bank teller was enough to

violate § 2113(d)—even though it entailed no actual use, attempted use, or threat to use force. *Id.*

The Fourth Circuit has reached the same conclusion. In *United States v. Straite*, 576 F. App'x 211, 214 (4th Cir. 2014), the court upheld a conviction for attempted armed bank robbery even though the defendant never used, attempted, or threatened to use force. The defendant "briefly attempt[ed] to enter the bank" to rob it, but he "got back into the Jeep" when he met a locked door. *Id.* at 213. No violence was used, attempted, or threatened. *See id.*

2. Other courts have construed § 2113(d) differently. In the Fifth Circuit, for example, § 2113(a) is treated as "a lesser included offense" of § 2113(d). *Burger v. United States*, 454 F.2d 723, 724 (5th Cir. 1972). Accordingly, the court has construed § 2113(d) attempts to require "proof of all of the elements of § 2113(a)." *United States v. Duffey*, 456 F. App'x 434, 442 (5th Cir. 2012). And, because, in the Fifth Circuit, "the first paragraph of § 2113(a) requires evidence of the use of 'force and violence' or 'intimidation,' charges under § 2113(d), premised upon violations of the first paragraph of subsection (a), *ipso facto* require evidence of the use of 'force and violence' or 'intimidation.'" *Id.* at 442-43.

The Seventh Circuit, meanwhile, has held that an attempted armed bank robbery conviction under subsection (d) must include proof of intimidation, force, or violence. *See United States v. Armour*, 840 F.3d 904, 908-09 (7th Cir. 2016). Like the Fifth Circuit, it treats § 2113(a) as a "lesser included offense." *United States v. Dixon*, 790 F.3d 758, 761 (7th Cir. 2015). And so "for the same reasons that" the

Seventh Circuit believes "robbery by intimidation under § 2113(a) qualifies as a crime of violence under § 924(c)," it has extended that ruling to "robbery by assault by a dangerous weapon or device under § 2113(d)." *Armour*, 840 F.3d at 809.

Finally, the court below held that attempted armed bank robbery must involve the use of force or intimidation against another person, largely because it believed § 2113(a) qualifies as a crime of violence. Pet.App.16a. *But see* Pet.App.20a (Roth, J., dissenting in part) ("Unlike its counterpart, § 2113(d)'s attempt provision does not contain any language even arguably suggesting the defendant must commit the underlying attempt forcibly.").

This case thus implicates three independent splits among the courts of appeals. There is no reason to believe that the circuits will converge on these divisive issues. Only this Court can restore uniformity to the law. And this case presents a clean opportunity to address all three divisions at once.

II. The Decision Below Is Wrong.

Not only have the issues in this case split the lower courts thrice over, but the decision below staked itself out on the wrong side of each of those divides. The majority relied on a series of interpretive errors to hold that attempted armed bank robbery is a crime of violence. And that mistaken approach ultimately runs headlong into this Court's precedent.

A. The Lower Court's Reading Is Contrary to the Text of the Bank Robbery Statute.

The decision below committed several textual mistakes. *First*, because the first paragraph of

§ 2113(a) is indivisible, it cannot support a crime-of-violence finding here. *Second*, because the term "attempt" in § 2113(d) is distributed across the statute, that section would not qualify as a crime of violence even if § 2113(a) were a crime of violence when charged alone. *Third*, because the structure of § 2113(d) requires reference to the common law of attempt, the statute should be read to incorporate those principles. And, *fourth*, because the statute authorizes conviction for jeopardizing the life of "any person"—including the defendant—it does not "ha[ve] 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) (emphasis added).

1. Section 2113(a)'s First Paragraph Is Indivisible.

The court below started off on the wrong foot by holding that the first paragraph of § 2113(a) is divisible. Pet.App.5a. It is not. That is because the first paragraph of § 2113(a) can be violated by "extortion." And because extortion does not in every instance involve the use, attempted use, or threatened use of force—even for a completed offense—it is no crime of violence for an attempt.

The D.C. Circuit's reasoning in *Burwell* is persuasive on this point. As it explained, "[f]orce and violence, intimidation, and extortion are three ways a person might rob a bank" under § 2113(a). 122 F.4th at 986. But this trio of phrases does not somehow create two separate crimes of "bank robbery" and "bank extortion." *Contra* Pet.App.6a. To the contrary, Congress introduced all three means of robbing a bank with parallel syntax, using the same "by"

preposition—"by force and violence," "by intimidation," "by extortion." 18 U.S.C. § 2113(a). It placed these three "in a list inside a single paragraph." *Burwell*, 122 F.4th at 990. And it separated these three methods of violating subsection (a)'s first paragraph by commas, "rather than more disjunctive punctuation like a semicolon." *Id.* There is no punctuation after the word "extortion" either, which would naturally be used to indicate that term was part of a separate clause. *Id.* at 990-91.

Congress also showed that it knew how to denote separate offenses right within § 2113. It separated the offense of bank burglary from bank robbery by a semicolon and a paragraph break in § 2113(a). And it separated bank larceny and receipt of stolen bank property by placing them in their own subsections. *See* 18 U.S.C. § 2113(b)-(c). The absence of these structural features in the conduct enumerated by the first paragraph indicates that Congress did not aim to subdivide the paragraph into separate offenses.

The title of the statute lends further support to this understanding. *See Dubin v. United States*, 599 U.S. 110, 120-21 (2023) ("'[T]he 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." (citation omitted)). The 1986 amendment that included the extortion language was entitled "Addition of Extortion to Bank Robbery Offense." Criminal Law and Procedure Technical Amendments Act of 1986, Pub. L. No. 99-646, § 68, 100 Stat. 3592, 3616. This "suggests 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." *Burwell*, 122 F.4th at 991.

Statutory context only reinforces what the text, syntax, and structure make clear. Prior to the 1986 revision, "federal courts were 'divided over the question whether § 2113(a) proscribed extortionate conduct.'" *Id.* (alterations adopted) (quoting H.R. Rep. No. 99-797, at 32 (1986)). So, as the House Report explained, Congress added the reference to extortion in order to "clarify" that § 2113(a) covered extortionate conduct all along, just like violence and intimidation. H.R. Rep. No. 99-797, at 33. Congress "was not creating an altogether separate offense." *Burwell*, 122 F.4th at 992. This background explains why Congress made the drafting decisions that it did. But regardless of why it made those decisions, the plain text of the statute, as enacted, indicates that bank robbery is a single indivisible offense.

In short, bank robbery by extortion is the "least culpable" conduct proscribed by the first paragraph of § 2113(a). *Borden v. United States*, 593 U.S. 420, 424 (2021) (plurality op.). Extortion need not involve the use, attempted use, or threatened use of force. It follows that the indivisible statute cannot qualify as a crime of violence. And that does not change when this paragraph is incorporated into subsection (d)—as it was in Petitioner's charge, *see* Pet.App.31a. This Court should apply the text as written.

2. Section 2113(d)'s "Attempt" Language Is Distributed Across the Statute.

Even if the first paragraph of § 2113(a) were divisible—which it is not—that would not convert the conviction at issue into a crime of violence. Petitioner

was convicted of violating § 2113(d)'s attempt provision. And, "[u]nlike its counterpart [in § 2113(a)], § 2113(d)'s attempt provision does not contain any language even arguably suggesting the defendant must commit the underlying attempt forcibly." Pet.App.20a (Roth, J., dissenting in part).

The decision below glossed over this distinction. It defined the elements of § 2113(a) and concluded that those elements are "incorporated into" § 2113(d) wholesale. Pet.App.8a (alteration adopted and quotation marks omitted). Thus, it reasoned, there is no need to parse the language of § 2113(d). Pet.App.15a-16a. That is incorrect.

To understand why, § 2113(d) can be thought of as having fixed language and incorporated language. The incorporated language is brought over from another subsection—in this case, from the first paragraph of § 2113(a). The fixed language is:

> Whoever, in committing, or in attempting to commit, any offense defined in subsections (a) and (b) of this section, assaults any person, or puts in jeopardy the life of any person by the use of a dangerous weapon or device [commits a crime against the United States].

18 U.S.C. § 2113(d).

Most relevant for present purposes is that the statute is concerned with "attempting to commi[t] any offense defined in subsection[] (a)." *Id.* This reference to "attempt" qualifies every element of the incorporated language for a completed offense, but it does not *also* bring over § 2113(a)'s attempt language. There is, after all, no such thing as an attempt to attempt to commit a crime. So, even if the language

of § 2113(a) narrowed *its* construction of attempt to require force, § 2113(d)'s reference to attempt does no such thing.

That distinction creates a critical difference. The language incorporated from subsection (a) provides that a crime is committed by a person who "by force and violence, or *by intimidation*, takes, or attempts to take, from the person or presence of another . . . money or any other thing of value." 18 U.S.C. § 2113(a) (emphasis added). Thus, an attempt for purposes of subsection (d) can include an attempt to intimidate. That clearly does not require the use, attempted use, or threatened use of force. *Cf. Taylor*, 596 U.S. at 852.

3. The Decision Below Wrongly Disregarded the Common Law Conception of Attempt.

The problems with the majority's interpretation do not stop there. Section 2113(d) contemplates that language may be incorporated from either § 2113(a) or § 2113(b). But subsection (b) does not include any reference to attempt. *See* 18 U.S.C. § 2113(b). Thus, when a § 2113(d) attempt predicated on a subsection (b) offense is charged, *see, e.g.*, *United States v. Willis*, 102 F.3d 1078, 1082 (10th Cir. 1996), the only relevant language of "attempt" appears in subsection (d)'s fixed language. This demonstrates that "§ 2113(d) creates a substantive attempt crime, rather than simply incorporating some other attempt provision by reference." Pet.App.22a (Roth, J., dissenting in part).

For that reason, it does not make sense to simply "graft[] § 2113(a)'s forcible attempt standard onto § 2113(d)." Pet.App.20a (Roth, J., dissenting in part). The majority's contrary reading is at odds with the

structure of the statute. It is more appropriate to conclude—consistent with the plain text of the law, *see supra* Section II.A.2—that the "attempt" is connected to the crime of conviction: here, § 2113(d).

That language does not require the use of force. The undefined term "attempt" has a "well-settled meaning" at common law, and so the Court must "bring[] the old soil with it." *Sekhar v. United States*, 570 U.S. 729, 732-33 (2013) (citations omitted). A common law attempt requires only "inten[t] to commit the completed offense" and a "'substantial step toward completing the offense." *United States v. Resendiz-Ponce*, 549 U.S. 102, 106-07 (2007) (citation omitted). Thus, only intent and a substantial step are necessary to convict a person of attempted bank robbery—armed or otherwise.[2] And even the majority below recognized that the "common law definition[] of attempt" does "not require force." Pet.App.13(a). It simply substituted its reading of subsection (a)'s attempt language for the more pertinent attempt language in subsection (d).

4. Section 2113(d) Contemplates Violence Against "Any Person," Not the "Person of Another."

Because the language incorporated from subsection (a) cannot constitute a crime of violence on

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[2] In fact, that is precisely the view that the United States has historically advanced when charging and convicting § 2113 attempts in the Third Circuit. *See, e.g.*, Br. for United States at 20, *United States v. Washington*, No. 20-2333 (3d Cir. Dec. 1, 2022) (acknowledging that the defendant was convicted of attempted bank robbery under an "interpretation of the statute" requiring only proof of intent and a substantial step).

its own, any indication to the contrary must flow from the fixed language of § 2113(d). There is no such language. The majority pointed to the following phrase: "assaults any person, or puts in jeopardy the life of any person by the use of a dangerous weapon or device." 18 U.S.C. § 2113(d). But this language is insufficient to create a categorical crime of violence.

That is because § 924(c) requires that a crime of violence be committed against "the person . . . *of another*." *Id.* § 924(c)(3)(A) (emphasis added). By contrast, a defendant can violate the final clause of subsection (d) by jeopardizing "the life of *any person*." *Id.* § 2113(d) (emphasis added). These terms are different, and this Court "presume[s] differences in language like this convey differences in meaning." *Henson v. Santander Consumer USA Inc.*, 582 U.S. 79, 86 (2017). The phrase "any person" is broader.

That creates a problem for the Government under the categorical approach. By its plain text, § 2113(d) can be violated by the defendant bringing into jeopardy his or her *own* life. *See United States v. Bolden*, 741 F. Supp. 3d 280, 286 (E.D. Pa. 2024); Pet.App.23a-25a (Roth, J., dissenting in part). Thus, it can be violated without the use of force against "the person or property of another." 18 U.S.C. § 924(c)(3)(A).

To demonstrate, consider a hypothetical would-be bank robber named Eve, who drafts a note with which she intends to intimidate the teller. She puts the note in her pocket and heads for the bank. In her car is a firearm that she carries as a matter of course. She has no intent to bring the weapon inside the bank. Police, tipped off, stop her before she arrives. Then, in a

desperate attempt to escape, she points the gun at her own head. *Cf. Bellew*, 369 F.3d at 452. Eve has attempted to commit a bank robbery under the first paragraph of § 2113(a). In so doing, she has put into jeopardy the life of "any person" by the use of a dangerous weapon. But the person put in jeopardy was herself. Eve did not threaten the teller. Thus, Eve's conviction could be obtained under subsection (d) without proof of "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) (emphasis added). The same goes for "a robber who arrives at a bank with an unloaded weapon, placing his own life in serious jeopardy from responding police." Pet.App.24a (Roth, J., dissenting in part); *see also McLaughlin v. United States*, 476 U.S. 16, 18 (1986) (affirming § 2113(d) conviction where petitioner wielded an "unloaded gun," in part because the display of an unloaded gun "creates an immediate danger that a violent response will ensue").

The majority did not grapple with this linguistic distinction, deeming it a "wrinkle" that had been "ironed out by [Third Circuit] precedent." Pet.App.15a-16a. But that precedent never dealt with § 2113(d)'s "any person" language either. *See United States v. Wilson*, 880 F.3d 80 (3d Cir. 2018) (applying § 2113(a)); *United States v. Jordan*, 96 F.4th 584, 594 (3d Cir. 2024) (relying on *Wilson* and *United States v. Johnson*, 899 F.3d 191, 203 (3d Cir. 2018)). And a straightforward reading of the statutory text shows that attempted armed bank robbery is not a crime of violence.

B. The Lower Court's Reading of § 2113 Is Contrary to this Court's Precedent.

In addition to misapplying the statutory text, the decision below is at odds with this Court's precedent.

In *Taylor*, this Court held that attempted Hobbs Act robbery is not a crime of violence. 596 U.S. at 860. The *completed* version of the crime, in every iteration, might involve the use, attempted use, or threatened use of force. *Id.* at 851. But the inchoate offense does not. That is because the term "attempt" is undefined in the Hobbs Act. Thus, it is presumed to take on its common law meaning. *See id.* (citing *Resendiz-Ponce*, 549 U.S. at 127). "[I]t follows that to win a case for *attempted* Hobbs Act robbery," the government need only prove an "intent[]" to commit an action that would constitute the crime and a "substantial step" toward that end. *Id.* Neither element requires violence. "[A]n intention is just that, no more." *Id.* And a substantial step toward robbery need not involve violence either. There will be cases "where the actor does not actually harm anyone or even threaten harm." *Id.* at 851-52 (citation omitted) (offering hypothetical involving would-be robber "Adam").

As in the Hobbs Act context, Section 2113 does not define the term "attempt." Thus, the common law analysis for attempt should apply. And, as in the Hobbs Act context, neither the elements of "intent" nor a "substantial step" toward robbing a bank necessarily involves the use, attempted use, or threatened use of force. Because the means of completing § 2113(a) include extortion or intimidation, an attempt to complete § 2113(a) might involve only attempted extortion or intimidation. Neither action necessarily

involves violence. *See Taylor*, 596 U.S. at 852 (reasoning that attempted threatening is not a crime of violence). And § 924(c) criminalizes the use of firearms when actually committing crimes of violence—not attempting to commit them. *Id.* at 853.

Taylor therefore confirms that attempted armed bank robbery is not a crime of violence. The lower court erred in reaching the opposite result.

III. The Question Presented Is Exceptionally Important, And This Case Presents An Ideal Vehicle For Resolving It.

The question presented in this case is exceptionally important. For starters, § 924(c) carries harsh mandatory minimums that must run consecutively to the predicate convictions. That can result in exceptionally long terms of imprisonment. In Petitioner's case, for example, the additional imprisonment totals seven years. Pet.App.36a. The government's ability to exercise such significant power against individuals and deprive them of their liberty should not vary by dint of sheer geographic coincidence.

At the same time, the lower court's decision paradoxically *limits* law enforcement's ability to prosecute the predicate crime in certain jurisdictions. That is because it ratchets up the elements of the attempt crime to require the actual, attempted, or threatened use of force, despite the lack of any such requirement in the statute. That sort of hydraulic effect thus doubly distorts the statutory regime.

Consider the sets of facts that—under the theory of the Third Circuit and others like it—are insufficient

to convict a person of attempted bank robbery. In the Seventh Circuit, "actual force and violence or intimidation is required for a conviction under the first paragraph of § 2113(a), whether the defendant succeeds (takes) or fails (attempts to take) in his robbery attempt." *Thornton*, 539 F.3d at 748. So, in *Thornton*, the court held that the defendant appearing at the entrance to a bank wearing a disguise and carrying a duffle bag that an onlooker thought contained a gun was insufficient to win a conviction for attempted bank robbery. *Id.* at 750. Even the onlooker's fear that "the man had a gun and might shoot him" was insufficient to tip the scales in favor of conviction. *Id.*

In the Fifth Circuit, a man entered a bank wearing an "obvious wig" and carrying a briefcase with a gun, instructions on how to rob a bank, and a demand note. *Bellew*, 369 F.3d at 451. He realized that police had been tipped off and left the bank. *Id.* at 451-52. A three-hour standoff commenced. *Id.* At one point, he put the gun to his own head. *Id.* Nevertheless, the Fifth Circuit held that he had not committed attempted bank robbery because he had only attempted intimidation. *Id.* at 453-54.

In another case from the Fifth Circuit, a group of men armed with guns drove to a bank in a stolen vehicle. *Duffey*, 456 F. App'x at 442. They waited in the parking lot for their ringleader's signal. *Id.* But they left when the ringleader called it off. *Id.* On a second occasion at a different location, the same ringleader told the same group that he was ready to commence the robbery. *Id.* FBI agents surveilling the scene then moved in to make the arrests. *Id.* The

defendants were at the scene, ready to commit the crime, but the Fifth Circuit held that there was no proof of actual force, violence, or intimidation. *Id.* at 444. So, it held such conduct insufficient to prove attempted armed bank robbery. *See id.*

These sorts of cases demonstrate the pressing need for this Court to resolve these important issues. Reading the statute as the Third Circuit now does, "without reason, require[s] proof that a defendant actually confronted someone in the bank before he c[an] be convicted of attempted robbery." *Wesley*, 417 F.3d at 618. Such backwards statutory construction "require[s] that the lives of the bank employees, the police, any innocent bystanders and the defendants themselves be endangered before an arrest [can] be made for an attempted robbery of the bank by use of force and violence or intimidation." *McFadden*, 739 F.2d at 151. That is not what the statute provides.

By contrast, in the Fourth, Sixth, and Ninth Circuits, the interpretation of attempts involving the first paragraph of § 2113(a) ensures that "[p]olice are not required to delay arrest until innocent bystanders are imperiled." *Moore*, 921 F.2d at 209 (citing *Jackson*, 560 F.2d at 116). The Court should adopt that interpretation for the entire country.

Additionally, the prosecution of § 924(c) offenses are "frequently" predicated on attempted bank robberies. Pet. for Writ of Cert. at 20-21, *United States v. Taylor*, No. 20-1459 (U.S. Apr. 14, 2021). This issue is thus "important and recurring" for Petitioner and those similarly situated, just as it was for the Government in *Taylor*. *See id.* at 20.

Moreover, this case is an ideal vehicle to resolve the issues presented. The Government and the lower court appropriately treated the merits of the "crime of violence" question as dispositive to the outcome here. The question presented by this petition and the issues involved have been preserved and exhaustively briefed. The panel decisions fully fleshed out the issues. The majority acknowledged two of the three circuit splits. The dissent demonstrates a studied and countervailing perspective on the merits. And the circuit splits involved are mature and entrenched.

Not only that, but this case enables the Court to bring seriously needed clarity to multiple, interlocking issues in this important area of criminal law. The court below decided three separate issues, any or all of which this Court may find dispositive for Petitioner. And it premised its opinion on the interpretation of both subsections (a) and (d). In that way, this case provides a clean opportunity for the Court to resolve three highly consequential circuit splits regarding the federal bank robbery statute.

* * *

Petitioner was convicted of using a firearm in furtherance of a crime of violence. But he did not use, attempt to use, or threaten to use force or violence. In five different circuits—separated by three different splits in authority—his conduct would not suffice to uphold his unlawful conviction and the lengthy seven-year sentence to which it subjected him. This Court should grant review to bring coherence to the federal bank robbery statute and resolve these significant splits in authority.

CONCLUSION

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

Respectfully submitted,

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July 25, 2025

APPENDIX

TABLE OF APPENDICES

APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT, FILED APRIL 21, 2025

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 23-2843

UNITED STATES OF AMERICA

v.

RONALD DEWITT VINES,

Appellant.

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. No. 2:18-cr-00013-001)
District Judge: Honorable Paul S. Diamond

Argued: December 11, 2024

Before: BIBAS, CHUNG, and ROTH, *Circuit Judges*

Filed: April 21, 2025

OPINION OF THE COURT

BIBAS, *Circuit Judge.*

Once in a blue moon, the categorical approach ends up in the right place. Ronald Vines and his sons tried

to rob a bank at gunpoint. He pleaded guilty to both attempted armed bank robbery and brandishing a gun while committing a crime of violence. Now he challenges his second conviction, insisting that attempted armed bank robbery is not a crime of violence because someone can attempt an armed bank robbery without using force, violence, or intimidation.

He is wrong. Even without a weapon, attempted bank robbery under 18 U.S.C. § 2113(a)'s first paragraph is a crime of violence because it requires making the attempt "by force and violence, or by intimidation." And adding a gun makes the robbery no less violent. § 2113(d). Common sense tells us that, but so does the categorical approach. This is the rare night when the blue moon has risen. So the District Court rightly upheld Vines's conviction and sentence.

I. Vines Tried to Rob a Bank at Gunpoint

One morning, Vines and his two adult sons left the house on a mission. They got a loaded rifle, a loaded revolver, a face mask, body armor, zip ties, a police scanner, handheld radios, and a tarp and hit the road. The road led to the bank, where they hung up the tarp outside, hid behind it, and watched the bank tellers arrive. While Vines and one of his sons waited behind the tarp, the other son put on the face mask, grabbed the revolver, and snuck up on a teller. He forced her inside at gunpoint but was spotted by another employee who screamed and fled, drawing attention. Vines signaled for his son to flee, so they hopped back into the car and hit the road again. This time, their trip was cut short by police.

Appendix A

Vines pleaded guilty to two federal crimes. The first was attempted armed bank robbery under 18 U.S.C. §§ 2113(d) & 2 (aiding and abetting). That violation was based on attempting to violate § 2113(a), specifically the first clause of the first paragraph, which criminalizes bank robbery. The second crime piggybacked on the first: brandishing a gun while committing *a crime of violence* (the attempted armed bank robbery), in violation of 18 U.S.C. §§ 924(c)(1)(A)(ii) & 2 (aiding and abetting).

Because Vines's lawyer neither objected to his § 924(c) charge nor appealed, Vines had to challenge his conviction and sentence collaterally. *See* 28 U.S.C. § 2255. He claimed that his conviction for attempted armed bank robbery was not a crime of violence under § 924(c). The District Court denied that motion but granted a certificate of appealability. On appeal, Vines got permission also to argue that his plea lawyer was ineffective for not asserting that attempted armed bank robbery is not a crime of violence. Both claims turn on pure legal issues, so we review them de novo. *United States v. Jenkins*, 68 F.4th 148, 151 (3d Cir. 2023).

II. We Apply the Categorical Approach to § 2113(d) and the Robbery Clause of the First Paragraph of § 2113(a)

To figure out if Vines's § 2113(d) conviction was a predicate crime of violence under § 924(c), we use the much-maligned categorical approach. *United States v. Jordan*, 96 F.4th 584, 589 (3d Cir. 2024). That approach forbids us to consider what Vines *actually* did. Instead,

it forces us to imagine the least violent conduct that a hypothetical defendant *might* have done to be convicted of this crime. *Moncrieffe v. Holder*, 569 U.S. 184, 191, 133 S. Ct. 1678, 185 L. Ed. 2d 727 (2013); *Mathis v. United States*, 579 U.S. 500, 504, 136 S. Ct. 2243, 195 L. Ed. 2d 604 (2016). Here, that means concocting the least culpable violation of § 2113(d) and asking whether it "match[es] the elements of" a crime of violence as defined in § 924(c)(3)(A). *Mathis*, 579 U.S. at 504.

Before we get to that matching, we must first figure out the elements of § 2113(d). Statutes often are divisible: They "list elements in the alternative, and thereby define multiple crimes." *Mathis*, 579 U.S. at 505. But we can separate out these crimes and focus on only the elements that were "integral to the defendant's conviction." *Id.*

We start with Vines's conviction for attempted armed bank robbery. Section 2113(d) applies to:

> Whoever, in committing, or in attempting to commit, any offense defined in subsections (a) and (b) of this section, assaults any person, or puts in jeopardy the life of any person by the use of a dangerous weapon or device.

So a conviction under § 2113(d) can be based on either (a) or (b) and "incorporates each subsection's elements." *Jordan*, 96 F.4th at 591. Subsections (a) and (b) apply to different kinds of bank theft: (a) covers robbery, extortion, and burglary, while (b) covers larceny. We have already held that these subsections are divisible from each other.

Id. at 590. And Vines pleaded guilty to violating subsection (a), so we can focus just on that subsection. The subsection has two paragraphs: the first covering robbery and extortion; the second, burglary. We have already held that the first paragraph is divisible from the second, and Vines pleaded guilty to violating the first. *Id.* So we can focus on that paragraph alone.

But now we must dive a level deeper. Subsection (a)'s first paragraph contains two separate clauses: one criminalizes taking a bank's property (or attempting to take it) "by force and violence, or by intimidation"; the other bars "obtain[ing] or attempt[ing] to obtain" a bank's property "by extortion." § 2113(a). We ask whether these clauses are divisible or must be analyzed together. We hold that they are divisible.

A person violates the first paragraph of § 2113(a) if he:

> 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.

18 U.S.C. § 2113(a) (first paragraph).

Here is that paragraph with each clause split out:

> [*First clause: bank robbery*] by force and violence, or by intimidation, takes, or attempts to take, from the person or presence of another,

or

> [*Second clause: bank extortion*] obtains or attempts to obtain by extortion [various types of bank property, like its money].

Id. (line breaks added).

Almost all our sister circuits that have addressed the question agree that these two clauses set out two separate, divisible crimes: bank robbery and bank extortion. *King v. United States*, 965 F.3d 60, 69 (1st Cir. 2020); *United States v. Evans*, 924 F.3d 21, 28 (2d Cir. 2019); *United States v. Watson*, 881 F.3d 782, 786 (9th Cir. 2018); *United States v. Armstrong*, 122 F.4th 1278, 1286 (11th Cir. 2024). *Contra United States v. Burwell*, 122 F.4th 984, 986 (D.C. Cir. 2024).

That near-consensus is sound. The first clause applies to someone who uses force, violence, or intimidation to take something: in other words, robbery. 18 U.S.C. § 2113(a); *see* 4 William Blackstone, *Commentaries* *241-42. And the second clause explicitly requires extortion. Those distinct concepts have distinct requirements. Robbery traditionally meant taking something from someone against her will. *See id.*; 1 Matthew Hale, *The History*

of the Pleas of the Crown *532. By contrast, extortion traditionally meant taking someone else's property with the victim's consent but inducing that consent wrongfully. *See Scheidler v. Nat'l Org. for Women, Inc.*, 537 U.S. 393, 403, 123 S. Ct. 1057, 154 L. Ed. 2d 991 (2003); *United States v. Harris*, 916 F.3d 948, 954-55 (11th Cir. 2019). That explains why the first clause requires "tak[ing], or attempt[ing] to take" something, while the second clause requires only "obtain[ing], or attempt[ing] to obtain" it. § 2113(a).

Now turn back to the crime that Vines was charged with. A conviction for attempted armed bank robbery under § 2113(d) requires proof of *both* (1) the elements of attempted bank robbery under § 2113(a)'s paragraph one, clause one, *and* (2) the elements of attempted *armed* bank robbery under § 2113(d). If either provision requires force or threatened force, then Vines's conviction was for a crime of violence and satisfies § 924(c). *United States v. Wilson*, 880 F.3d 80, 83 (3d Cir. 2018); *Jordan*, 96 F.4th at 594. As we will explain, both are crimes of violence.

That is where we part ways with the dissent. Although our dissenting colleague would find that § 2113(a) controls the definition of *completed* armed bank robbery, the dissent would bypass § 2113(a) when defining attempts. The dissent would instead find that there is a separate standalone crime of attempted armed bank robbery under § 2113(d) where the meaning of attempt is given content by the common law, rather than § 2113(a). But the dissent does not explain why we would apply § 2113(a) only in part (that is, only to completed crimes) when analyzing

crimes set forth in § 2113(d). There is no such thing as a freestanding conviction for attempted bank robbery under § 2113(d); it must also satisfy the elements of § 2113(a) that we already have held are "incorporate[d]" into it. *Id.* at 591. If a conviction under § 2113(d) must incorporate elements that make it a crime of violence, it defies common sense not to call it one.

III. Attempted Armed Bank Robbery Is a Crime of Violence

A. Attempted bank robbery under § 2113(a) is a crime of violence

1. *Attempted bank robbery requires force, violence, or intimidation*. Like almost all our sister circuits, we have held that completed bank robbery under § 2113(a) is a crime of violence. *Wilson*, 880 F.3d at 88. *But see Burwell*, 122 F.4th at 987. But we have never addressed whether *attempted* bank robbery is, and our sister circuits are divided. *Compare Collier v. United States*, 989 F.3d 212, 221 (2d Cir. 2021) (holding that attempted bank robbery requires force or intimidation), *United States v. Bellew*, 369 F.3d 450, 454 (5th Cir. 2004) (same), *and United States v. Thornton*, 539 F.3d 741, 747 (7th Cir. 2008) (same), *with United States v. McFadden*, 739 F.2d 149, 151-52 (4th Cir. 1984) (holding that attempted bank robbery does not require force or intimidation), *United States v. Wesley*, 417 F.3d 612, 618 (6th Cir. 2005) (same), *and United States v. Moore*, 921 F.2d 207, 209 (9th Cir. 1990) (same).

This disagreement stems from a seeming ambiguity in § 2113(a). Recall that the first clause of the first paragraph applies to:

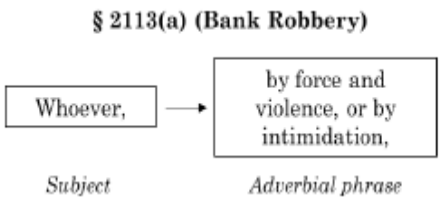
Appendix A

> Whoever, by force and violence, or by intimidation, takes, or attempts to take, from the person or presence of another [property of a bank].

18 U.S.C. § 2113(a).

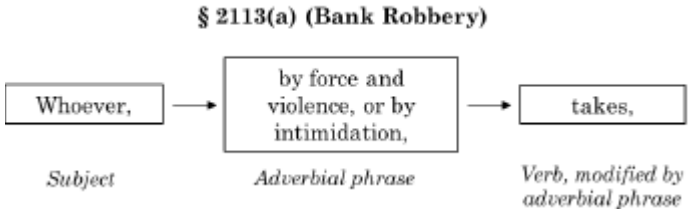
All courts agree that the verb "takes" is qualified by the adverbial phrase "by force and violence, or by intimidation" that comes right before it. The supposed ambiguity is whether that same adverbial phrase also modifies "attempts to take." If it does, then the attempt must be carried out "by force and violence, or by intimidation." We hold that this adverbial phrase does modify both verbs. So even for an attempt, the government must prove force, violence, or intimidation.

On close inspection, the ambiguity evaporates. We start and end with the text, proceeding left to right. Section 2113(a) kicks off with a subject immediately followed by an adverbial phrase:



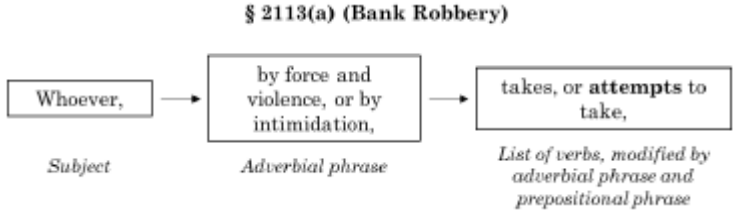
The adverbial phrase comprises two parts. First comes "by force and violence," followed with "or by

intimidation." The latter is offset by commas. It is not the most elegant wordsmithing, to be sure, but it gets the point across: Whatever follows will be modified by the adverbial phrase. Sure enough, right after the second comma comes the first item of a short list: a main verb ("takes"). The preceding adverbial phrase qualifies how the actor must do that taking: "by force or violence, or by intimidation." So far, so good.

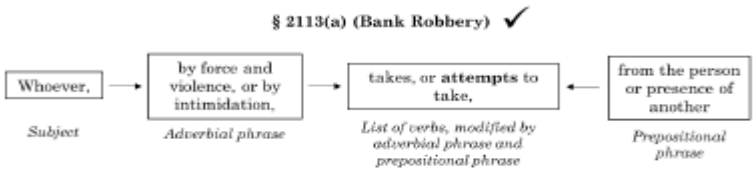


Right after the first verb, "takes," comes another comma introducing the second verb in the list: the phrase "or attempts to take." The adverbial phrase modifies both verbs. When a qualifier precedes a list, we read it most naturally as traveling all the way down the list unless some punctuation, grammar, or syntax signals otherwise. *Flores-Figueroa v. United States*, 556 U.S. 646, 650, 129 S. Ct. 1886, 173 L. Ed. 2d 853 (2009). This inference is especially strong where, as here, the items have a "parallel construction." Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 147-48 (2012) (collecting examples).

Appendix A

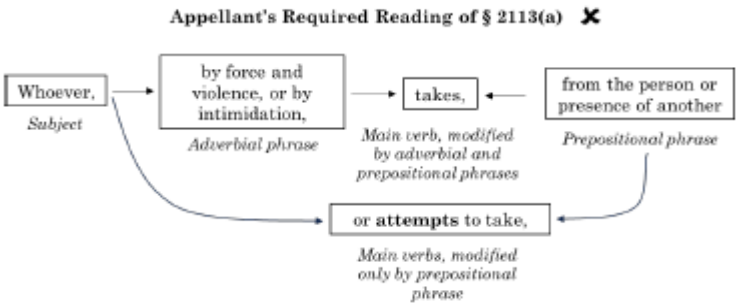


This reading fits with the structure of the rest of the sentence. Right after the two verbs comes the prepositional phrase "from the person or presence of another." The sentence is a sandwich. The two main verbs sit between two modifying phrases that operate on both. First, the adverbial phrase *before* the verbs clarifies that either a taking or an attempt must be done by force, violence, or intimidation. Then, the prepositional phrase *after* the verbs clarifies that a taking or attempt must involve taking from someone else, as our Court has already hinted. *See Wilson*, 880 F.3d at 84-85. The most natural reading of the sentence is that both phrases modify both verbs, as shown below.



Any other reading of the sentence would mangle it. To read the *preceding* adverbial phrase to apply only to a successful taking, but the *following* prepositional phrase to apply to both, would require the asymmetric contortion below that Vines's reading implies.

Appendix A



Thus, any conduct that violates the robbery clause of § 2113(a), whether by attempt or not, is a crime of violence under § 924(c)(3)(A).

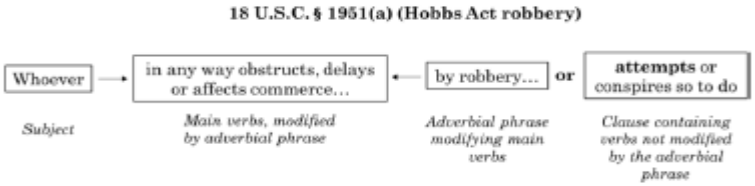
2. *Vines's counterarguments fall flat.* Resisting our common-sense reading, Vines offers two responses. Neither works.

First, Vines invokes the Supreme Court's ruling in *United States v. Taylor*, 596 U.S. 845, 142 S. Ct. 2015, 213 L. Ed. 2d 349 (2022). But that case is inapt. True, *Taylor* held that attempted Hobbs Act robbery is not a crime of violence. *Id.* at 851. But that was because the verb "attempt" works differently in the Hobbs Act. That Act applies to:

> Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do. . . .

18 U.S.C. § 1951(a).

In § 2113(a) both sets of verbs are the sandwich's filling. By contrast, in the Hobbs Act, the main verbs are the bread. Between those slices of bread is the adverbial phrase that introduces a force element: "by robbery." That phrase most naturally applies only to what precedes it, not to what precedes *and* follows it: "[A] limiting clause or phrase . . . should ordinarily be read as modifying only the noun or phrase that it immediately follows." *Jama v. Immigration & Customs Enforcement*, 543 U.S. 335, 343, 125 S. Ct. 694, 160 L. Ed. 2d 708 (2005) (ellipsis in original) (internal quotation marks omitted). This makes sense because the crime is one unit with two parts: (1) obstructing, delaying, or affecting commerce (2) by robbery.



The "so to do" in the "attempts" clause refers to the underlying crime: obstructing, delaying, or affecting commerce *by robbery*. The verb "attempt" is unmodified. With no statutory language requiring the attempt to be made by force, *Taylor* applied the Model Penal Code and common law definitions of attempt, which do not require force. *See* 596 U.S. at 851-52; *McFadden*, 739 F.2d at 152. Thus, there is no force or violence element in attempted Hobbs Act robbery: It just requires showing that "[t]he defendant intended to unlawfully take personal property by means of actual or threatened force" and completed a substantial step toward doing so. *Taylor*, 596 U.S. at

851. By contrast, § 2113(a) is more specific: The adverbial phrase requiring force, violence, or intimidation limits the verb "attempt." Not every attempt counts—only those done by force, violence, or intimidation do. Because the Hobbs Act is built differently from § 2113(a), we read it differently. So *Taylor* does not apply, and we do not import the common law of attempt into § 2113(a).

Vines's second rejoinder is just as unpersuasive. He insists that the Third Circuit already read the common law of attempt into § 2113(a) in *United States v. Garner*, 915 F.3d 167, 170 (3d Cir. 2019). We did not. To be sure, we recited § 2113(a)'s elements as requiring only a substantial step toward committing bank robbery. *Id.* Yet that case did not ask, let alone turn on, whether § 2113(a) was a crime of violence. And "[q]uestions which merely lurk in the record, neither brought to the attention of the court nor ruled upon, are not considered as having been so decided as to constitute precedents." *Grant v. Shalala*, 989 F.2d 1332, 1341 (3d Cir. 1993) (Alito, J.) (quoting *Webster v. Fall*, 266 U.S. 507, 511, 45 S. Ct. 148, 69 L. Ed. 411 (1925)).

In short, one cannot be convicted under the robbery clause of § 2113(a)'s first paragraph without committing a crime of violence. We could stop there, as both sides agree that Vines's conviction rested on that clause. But even if we were only to consider only § 2113(d), he would fare no better.

B. Attempted armed bank robbery under § 2113(d) is also a crime of violence

Adding a dangerous weapon to attempted bank robbery does not make the crime less violent. Recall that § 2113(d) is the *armed* bank robbery statute. It applies to:

> Whoever, in committing, or in attempting to commit, any offense defined in subsections (a) and (b) of this section, assaults any person, or puts in jeopardy the life of any person by the use of a dangerous weapon or device. . . .

18 U.S.C. § 2113(d).

When paired with § 2113(a)'s first paragraph, that is a crime of violence. Thanks to the categorical approach, though, this conclusion is not obvious. Although § 2113(d) requires force, the wrinkle is that a defendant need jeopardize only "the life of *any* person." *Id.* (emphasis added). Yet a crime of violence requires using force "against the person or property *of another*." 18 U.S.C. § 924(c)(3)(A) (emphasis added). Vines argues that an armed bank robber could jeopardize his own life, stopping the two statutes from lining up.

But that wrinkle has been ironed out by our precedent. First, *Wilson* held that bank robbery under § 2113(a) "clearly does involve the threatened use of physical force against the person *of another*." 880 F.3d at 84-85 (internal quotation marks omitted; emphasis added). Then *Jordan* relied on that holding. Because § 2113(a) requires force

"against the person of another," we reasoned, a conviction for completed armed bank robbery under § 2113(d) based on § 2113(a) could only have involved force against someone else. 96 F.4th at 594. That logic applies equally to an attempt; in either case, § 2113(a)'s robbery clause requires force against someone else. Our dissenting colleague misses that point.

In short, § 2113(d) requires force or intimidation, and § 2113(a) clarifies that the defendant must have used the force or intimidation against someone else. Even if § 2113(a)'s first paragraph were not independently a crime of violence, together these provisions would add up to one.

* * * * *

No matter how you slice it, attempted armed bank robbery under § 2113(d) predicated on § 2113(a)'s robbery clause is a crime of violence under § 924(c)(3)(A). Because the statute's language is unambiguous, we do not reach the rule of lenity.

IV. Vines's Counsel Was Effective

Finally, Vines claims that his lawyer was ineffective because he did not argue that attempted armed bank robbery is not a crime of violence at the plea hearing or sentencing. To claim ineffective assistance of counsel, Vines must show not only that his lawyer performed deficiently, but that the deficient performance prejudiced him. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984).

Yet any purported deficiency did not prejudice Vines. If his lawyer had objected, that objection would have failed because, as we hold, his arguments would have been meritless. The only alleged prejudice is that Vines says he would not have pleaded guilty to the § 924(c) charge. Although a higher prison sentence counts as prejudice, "the likelihood of a different result must be substantial, not just conceivable." *Harrington v. Richter*, 562 U.S. 86, 112, 131 S. Ct. 770, 178 L. Ed. 2d 624 (2011). When a defendant alleges that he pleaded guilty only because his counsel was ineffective, he must ordinarily show that he "likely would have succeeded at trial" in winning a better outcome. *Hill v. Lockhart*, 474 U.S. 52, 59, 106 S. Ct. 366, 88 L. Ed. 2d 203 (1985). He has not shown that. He can only speculate that a properly instructed jury would have rejected either charge at trial. "Mere speculation" is not enough to show prejudice. *Byrd v. Workman*, 645 F.3d 1159, 1168 (10th Cir. 2011). We will not treat counsel's failure to raise a meritless argument as prejudicial. *See Sperry v. McKune*, 445 F.3d 1268, 1275 (10th Cir. 2006) ("[I]f the issue is meritless, its omission will not constitute deficient performance." (internal quotation marks omitted)).

* * * * *

Although the categorical approach often leads to unusual places, today we arrive at a recognizable stop. Attempted bank robbery under § 2113(a)'s first paragraph is a crime of violence. And doing it while armed, under § 2113(d), does not make it any less violent. Thus, we will affirm the District Court's order denying Vines's collateral attack.

ROTH, *Circuit Judge*, dissenting in part.

The majority focuses nearly all its analysis on a crime for which Ronald Vines was not convicted. And the crime for which he *was* convicted does not categorically require the actual, attempted, or threatened use of force against another. Thus, while I concur with much of the majority's reasoning, I respectfully dissent from its ultimate disposition.

I.

I agree with the majority that, under 18 U.S.C. § 2113(a), robbery and extortion constitute divisible offenses.[1] I further agree that, under § 2113(a), attempted robbery requires the actual use of force, violence, or intimidation. And, like the majority, I do not believe that *United States v. Garner* ties our hands (although I view this as a closer question than does the majority).[2]

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1. I see no sound basis for distinguishing § 2113(a) from 18 U.S.C. § 1951(a), whose robbery and extortion provisions, we have already established, are divisible. *See United States v. Robinson*, 844 F.3d 137, 149-50 (3d Cir. 2016) (Fuentes J., concurring) (concluding that § 1951(a)'s proscription of "affect[ing] commerce . . . by robbery or extortion" was divisible, and that its "robbery" clause constituted a crime of violence); *United States v. Walker*, 990 F.3d 316, 325-26 (3d Cir. 2021) (adopting the *Robinson* concurrence's reasoning as "thoroughly persuasive"), *cert. granted and vacated on other grounds*, 142 S. Ct. 2858, 213 L. Ed. 2d 1084 (2022); *United States v. Stoney*, 62 F.4th 108, 113-14 (3d Cir. 2023) (confirming that *Walker* remains good law as to completed robbery).

2. The majority writes that *Garner* "did not ask, let alone turn on, whether § 2113(a) was a crime of violence." That is

technically true—but only technically. James Garner was arrested long before he had the chance to use violence. *See United States v. Garner*, 915 F.3d 167, 170 (3d Cir. 2019). As such, our holding that sufficient evidence supported his conviction turned *entirely* on our expressed understanding that § 2113(a) could be violated without force—the very approach our Court now rejects. Indeed, the government's briefing in *Garner* relied on the precise caselaw we now repudiate. If *Garner* fails to bind us, it is instead because neither party contested the interpretation of § 2113, or informed us another interpretation was possible. Whether that is enough to free our hands remains unfortunately murky.

On the one hand, the Supreme Court has long held that it is not bound by its prior resolution of antecedent legal issues where that resolution received little or no analysis. *See, e.g., Brecht v. Abrahamson*, 507 U.S. 619, 630-31, 113 S. Ct. 1710, 123 L. Ed. 2d 353 (1993); *Cross v. Burke*, 146 U.S. 82, 87, 13 S. Ct. 22, 36 L. Ed. 896 (1892); *United States v. More*, 7 U.S. 159, 3 Cranch 159, 172, 2 L. Ed. 397 (1805). And while our fealty to prior panels is more inexorable, at least some version of that rule applies at our level as well. *See Grant v. Shalala*, 989 F.2d 1332, 1341 (3d Cir. 1993). On the other hand, our sister-circuits have widely agreed that, if *stare decisis* is to have any force, there cannot be an "overlooked reason or argument exception to the prior-panel-precedent rule." *In re Lambrix*, 776 F.3d 789, 794 (11th Cir. 2015); *see also, e.g., Brumbach v. United States*, 929 F.3d 791, 795 (6th Cir. 2019); *Silva v. Garland*, 993 F.2d 705, 717 (9th Cir. 2021); *Cohen v. Office Depot*, 204 F.3d 1069, 1076 (11th Cir. 2000); *Phonometrics, Inc. v. Choice Hotels Int'l, Inc.*, 21 Fed. Appx. 910, 912 (Fed. Cir. 2001). Where the line falls between an unanalyzed issue and an overlooked argument will often (I suspect usually) be unclear. And, given the profound implications for our judicial system, further *en banc* guidance in this area is sorely needed. But, pending such guidance, I am persuaded that *Garner*'s cursory and underbriefed discussion of § 2113(a) (which had no bearing on the issues which prompted us to label that decision precedential) falls within the *Grant* exception. I caution, however, that whatever latitude this Court affords itself

Had Ronald Vines been convicted of generic attempted robbery under § 2113(a), I would concur with the majority that he was guilty of a crime of violence under 18 U.S.C. 924(c). But Ronald Vines was convicted under 18 U.S.C. § 2113**(d)**. And for all the persuasiveness of the majority's textual analysis, *none of it* focuses on the provision that is actually in front of us.

That matters. Unlike its counterpart, § 2113(d)'s attempt provision does not contain any language even arguably suggesting the defendant must commit the underlying attempt forcibly. Instead, it merely requires an offender to "attempt[] to commit, any offense defined in subsections (a) and (b)."[3]

In grafting § 2113(a)'s forcible attempt standard onto § 2113(d), the majority implicitly rewrites the text of § 2113(d) so that, rather than read "whoever, in committing or attempting to commit, any offense," it reads "whoever, in committing any offense or in committing **the attempt provision** of any offense." That contortion, which has no basis in the statute, is no less textually questionable than

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in departing from I.O.P. 9.1 (which, at bottom, is a doctrine of court administration) should not be read reflexively to authorize the same latitude for district courts (whose constitutional duty to obey our rulings does not hinge on their confidence in our issue-spotting). *See Royal Canin U.S.A., Inc. v. Wullschleger*, 604 U.S. 22, 43, 145 S. Ct. 41, 220 L. Ed. 2d 289 n.10 (2025).

3. 18 U.S.C. § 2113(d). That Congress may have wished to permit conviction under § 2113(d) for attempts that did not progress far enough to violate § 2113(a) is unsurprising, given the increased risk to the public posed by § 2113(d) violations.

the inside-out sandwiches the majority decries.

The majority's approach is also demonstratively untenable in the context of § 2113(d).[4] By its express terms, an attempted violation of § 2113(d) can be predicated on violating either § 2113(a) (bank robbery) *or* § 2113(b) (bank larceny), and at least one of our sister circuits has upheld § 2113(d) charges based solely on an attempted violation of § 2113(b).[5] This is true even though § 2113(b) does not contain an attempt provision, and it is well-recognized that a defendant cannot be prosecuted for attempting to violate § 2113(b) alone.[6] Yet the single instance of the word "attempting" in § 2113(d) can obviously only have one meaning.[7] It follows that—regardless of which predicate

4. *United States v. Loniello*, 610 F.3d 488, 496 (7th Cir. 2010) (noting that each subsection of § 2113 constitutes a separate, independent offense).

5. *See United States v. Willis*, 102 F.3d 1078, 1082 (10th Cir. 1996). *See generally Reno v. Bossier Parish School Bd.*, 528 U.S. 320, 120 S. Ct. 866, 145 L. Ed. 2d 845 (2000) ("[W]e refuse to adopt a construction that would attribute different meanings to the same phrase in the same sentence

6. *See generally United States v. Hopkins*, 703 F.2d, 1102, 1104 (9th Cir. 1983) (noting that § 2113(b) does not criminalize attempt); *Willis*, 102 F.3d at 1082 (noting that § 2113(b) cannot support a freestanding attempt conviction).

7. *See Reno v. Bossier Parish School Bd.*, 528 U.S. 320, 329, 120 S. Ct. 866, 145 L. Ed. 2d 845 (2000) ("[W]e refuse to adopt a construction that would attribute different meanings to the same phrase in the same sentence, depending on which object it is modifying.")

offense it is based on—§ 2113(d) creates a substantive attempt crime, rather than simply incorporating some other attempt provision by reference.[8]

Without interpolating § 2113(a)'s forcible attempt requirement, there is nothing to distinguish § 2113(d) from any other generic attempt crime—which requires only "an act amounting to a 'substantial step' toward the commission of that crime" (in this case, completed bank robbery under § 2113(a)).[9] And because *Taylor* makes clear that merely taking a substantial step towards committing a robbery (even a robbery in which force is planned) does not constitute using, attempting to use, or threatening to use force, it follows that the "attempt" language in § 2113(d) does not render that statute a crime of violence under § 924(c).[10]

II.

That is, of course, not the end of the story, because § 2113(d) also requires a defendant to "assault[] any

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8. The government did not dispute at oral argument that (in keeping with the plain reading of his indictment) Vines' conviction was predicated on the "attempt" prong of § 2113(d). I therefore need not address whether the government could theoretically charge a defendant with armed attempted bank robbery, basing itself entirely on the *completed* prong of § 2113(d) but using the *attempt* prong of § 2113(a) as the predicate offense.

9. *Garner*, 915 F.3d at 170 (quoting *United States v. Hsu*, 155 F.3d 189, 202 (3d Cir. 1998)).

10. *See United States v. Taylor*, 596 U.S. 845, 860, 142 S. Ct. 2015, 213 L. Ed. 2d 349 (2022).

person, or put[] in jeopardy the life of any person by the use of a dangerous weapon or device."[11] It is tempting to read this provision as an alternative ground for deeming § 2113(d) a crime of violence, regardless of its relationship to § 2113(a). But, like most temptations, this one leads astray. While § 2113(d)'s aggravating factors certainly entail the "use, threatened use, or attempted use of force," they do not require that force to be exerted against a third party, do not require that force to be knowing, and, accordingly, do not provide an independent basis for deeming § 2113(d) a crime of violence.

A.

As the majority acknowledges, a crime whose force element could theoretically be self-directed is not a crime of violence for the purpose of § 924.[12] Yet, as the majority recognizes, § 2113(d) can be facially violated by a defendant who "assaults *any person*, or puts in jeopardy the life of *any person*."[13] And while it is questionable if someone can assault himself, it is certainly possible for a defendant to put his own life in jeopardy while trying to rob a bank. Consider a robber who holds a gun to his own head and threatens self-harm unless a teller (or potential co-conspirator) cooperates, or one who starts

11. 18 U.S.C. § 2113(d).

12. *See United States v. Davis*, 53 F.4th 168, 171 (4th Cir. 2022); *see also Torres v. Lynch*, 578 U.S. 452, 465-66, 136 S. Ct. 1619, 194 L. Ed. 2d 737 (2016) (interpreting a nearly identical crime-of-violence provision).

13. 18 U.S.C. § 2113(d) (emphasis added).

driving to the robbery site with a loaded weapon he does not subjectively intend to use.[14] Or consider a robber who arrives at a bank with an unloaded weapon, placing his own life in serious jeopardy from responding police.[15]

Recognizing that the plain text of § 2113(d) would allow for conviction under these scenarios, the majority seeks refuge under our holding in *Jordan*. But it misapplies that precedent. In *Jordan*, we noted that to commit *completed* bank robbery under § 2113(a) a defendant must use force against "another."[16] We further noted that aggravated bank robbery under § 2113(d) requires a defendant to

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14. *See Portee v. United States*, 941 F.3d 263, 271-73 (7th Cir. 2019) (collecting examples of defendants prosecuted for violent offenses based on a self-endangerment theory).

15. *See McLaughlin v. United States*, 476 U.S. 16, 17-18, 106 S. Ct. 1677, 90 L. Ed. 2d 15 (1986) (holding that the use of an unloaded firearm can justify conviction under § 2113(d) because of the "immediate danger that a violent response will ensue"); *United States v. Dixon*, 982 F.2d 116, 123 (3d Cir. 1992) (noting that the "increased chance of an armed response creates a greater risk to the physical security of victims, bystanders, and even the perpetrators[.]" (internal quotation omitted)); *see also United States v. Benson*, 918 F.2d 1, 4 (1st Cir. 1990) (affirming § 2113(d) conviction where defendant's mock gun "put in jeopardy the lives of the teller and other persons at the robbery scene, even including appellant"); *United States v. Martinez-Jimenez*, 864 F.2d 664, 666-67 (9th Cir. 1989) (holding that the use of a toy gun "creates a greater risk to the physical security of victims, bystanders, and even the perpetrators").

16. 96 F.4th at 593-94 (quoting *United States v. Wilson*, 880 F.3d 80, 84-85 (3d Cir. 2018)).

both (1) commit completed generic robbery under § 2113(a) **and** (2) satisfy an aggravating factor.[17] We therefore held that, regardless of whether § 2113(d)'s aggravating factor required force, the crime as a whole was a crime of violence. But in committing completed robbery under subsection (a) the defendant had already done everything he needed to do to satisfy § 924(c). Such a completed bank robbery has no bearing on Ronald Vines' conviction under the *attempt* prong of § 2113(d).

Unlike completed robbery, the minimum conduct needed to satisfy the *attempted* robbery prong of § 2113(d), for which Vines was convicted, is (1) *attempting* to violate § 2113(a) and (2) satisfying an aggravating factor. As discussed above, the first element does not qualify as using, threatening to use, or attempting to use force at all.[18] We know that from *Taylor*. And because the aggravating factor itself does not require the use of force against another, it follows that neither prong of *attempted* robbery under § 2113(d) necessarily satisfies § 924(c).

B.

It is well-settled that, to qualify as a crime of violence under 924(c), an offense must involve the purposeful or

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17. *Id.*

18. While I reach this conclusion because the attempt prong in § 2113(d) does not incorporate by reference the "by force and violence, or by intimidation" clause in § 2113(a), I note that the same would hold if the attempt prong of § 2113(a) were itself not a crime of violence—as the majority assumes *arguendo* in its discussion of § 2113(d).

knowing (not just reckless) use of force.[19] In addition to not necessarily involving the use of force against *another*, the second prong of § 2113(d) further fails to meet § 924(c)'s force requirement because it does not require the knowing use of force.

Section 2113(d)'s reference to "us[ing] a dangerous weapon or device" to put "in jeopardy the life of any person" does not on its face contain any requirement that the defendant *knowingly* place some life in danger—and courts have long interpreted such language as subsuming reckless conduct as well.[20] Further, it is not hard to think

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19. *See Borden v. United States*, 593 U.S. 420, 445, 141 S. Ct. 1817, 210 L. Ed. 2d 63 (2021); *see also Delligatti v. United States*, 145 S.Ct. 797, 808 n.5, 221 L. Ed. 2d 303 (2025); *Tran v. Gonzales*, 414 F.3d 464, 470-72 (3d Cir. 2005) (holding that conspiracy to commit reckless burning was not a crime of violence because it could be violated recklessly).

20. *See Voisine v. United States*, 579 U.S. 686, 692-93, 136 S. Ct. 2272, 195 L. Ed. 2d 736 (2016) (holding that the phrase "use or attempted use of physical force" without further qualification criminalizes even reckless conduct); *United States v. Mills*, 1 F.3d 414, 420-21 (6th Cir. 1993), *abrogated in part on other grounds by Montejo v. Louisiana*, 556 U.S. 778, 797, 129 S. Ct. 2079, 173 L. Ed. 2d 955 (2009) (affirming conviction under an identically worded statute based purely on reckless conduct). It is true that the Court of Appeals for the Ninth Circuit appears to have held that § 2113(d) requires the knowing use of force. *See United States v. Buck*, 23 F.4th 919, 929 (9th Cir. 2022) (asserting without analysis that "§ 2113(d) requires that the robber knowingly made one or more victims at the scene of the robbery aware that he had a gun" (cleaned up)). But Buck based this assertion on *United States v. Henry*, 984 F.3d 1343, 1358 (9th Cir. 2021), which in turn cited

of plausible examples where an attempted armed bank robber could place others' lives at risk recklessly, such as by accidentally discharging a firearm,[21] or crashing a car while speeding to the robbery site.[22] All such scenarios would be covered by § 2113(d), but they would lack the requisite *mens rea* for a crime of violence.[23] And because

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United States v. McDuffy, 890 F.3d 796, 799 (9th Cir. 2018), which in turn relied on *United States v. Odom*, 329 F.3d 1032, 1035 (9th Cir. 2003), which based itself on the Supreme Court's conclusion in *Bailey v. United States* that "using" a firearm under a parallel statute required "active employment." 516 U.S. 137, 143, 116 S. Ct. 501, 133 L. Ed. 2d 472 (1995). The Supreme Court has since clarified that, as used in *Bailey*, this phrase included reckless (as well as knowing) conduct. *Voisine*, 579 U.S. at 695-96.

21. *See Dean v. United States*, 556 U.S. 558, 576, 129 S. Ct. 1849, 173 L. Ed. 2d 785 (2009) (noting that an "individual who brings a loaded weapon to commit a crime runs the risk that the gun will discharge accidentally"); *United States v. Jackson*, 534 Fed. Appx. 917, 920 (11th Cir. 2013) (noting that "an accidental discharge of a firearm is a reasonably foreseeable result of bringing a gun to an attempted bank robbery").

22. *See Mills*, 1 F.3d at 420-21 (treating a speeding car as a "dangerous device"). That the defendant may have intended to commit the § 2113(a) predicate offense is irrelevant. *Borden* does not just require that a defendant commit *some* knowing crime and, simultaneously, commit a crime involving force—it requires the force itself (or threatened or attempted force) be used knowingly. *See* 593 U.S. at 432 (holding that a defendant who "has not used force 'against' another person in the targeted way that clause requires" has not committed a crime of violence).

23. In *Jordan*, we noted that a completed violation of § 2113(a) requires the knowing use of force, and therefore concluded that a completed violation of § 2113(d) does as well. 96 F.4th at 594. As

any mismatch is enough to render a crime nonviolent, it follows that § 2113(d) is categorically not a crime of violence under § 924(c).

* * *

The categorical approach has as many critics as there are judges. The conclusions it yields are often counterintuitive, counter-logical, and contrary to what Congress likely intended. But it is the law, and fairly applying it compels the conclusion that 18 U.S.C. § 2113(d) is not a crime of violence. Because the majority concludes otherwise, I respectfully dissent.

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already discussed, *supra* n.18, that syllogism has no relevance when it comes to *attempted* violations of § 2113(d).

APPENDIX B — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA, FILED SEPTEMBER 11, 2023

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Crim. No. 18-13-1

UNITED STATES OF AMERICA

v.

RONALD DEWITT VINES

Filed September 11, 2023

ORDER

On August 25, 2021, Ronald Vines appeared before me and pled guilty to: (1) attempted armed bank robbery and aiding and abetting in violation of 18 U.S.C. §§ 2113(d) and 2 (Count 1); and (2) using, carrying, and brandishing a firearm during a crime of violence and aiding and abetting in violation of 18 U.S.C. §§ 924(c)(1) and 2 (Count 2). On May 3, 2022, I sentenced Vines to 72 months' imprisonment on Count 1, 84 months' imprisonment on Count 2 to run consecutively (for a total of 156 months' imprisonment), and 5 years' supervision on each of Counts 1 and 2 to run concurrently with each other.

Vines has filed a *pro se* Motion for Leave to File a 28 U.S.C. § 2255(f) Writ of Habeas Corpus, which the Government opposes. (Doc. Nos. 149, 150, 151.) Vines

argues that "attempted [b]ank robbery cannot meet the elements clause of being a violent offense under [§] 924(c)." (Doc. No. 150 at 2.) I disagree and so will deny his Motions.

If a person is convicted of attempted armed bank robbery, he or she faces up to 25 years in prison. *See* 18 U.S.C. § 2113(d). If the offense also qualifies as a crime of violence under § 924(c), the person faces an additional felony conviction and further punishment. *United States v. Stoney*, 62 F.4th 108, 110 (3d Cir. 2023) (citing 18 U.S.C. § 924(c); *United States v. Taylor*, 142 S. Ct. 2015, 2019 (2022)). Section 924(c) defines a "crime of violence" to be "an offense that is a felony and has as an element the use, attempted use, or threatened use of physical force against the person or property of another." *Id.* at 110-11 (citing 18 U.S.C. § 924(c)) (referring to the clause as the "elements clause").

To determine whether a particular offense qualifies as a crime of violence under § 924(c), I apply the categorical approach. *Id.* at 113. This precludes any inquiry into the underlying facts or analysis of how a defendant actually committed the crime. *Id.* Instead, I look only to the statutory definitions (i.e., the elements) of the crime. *Id.* Accordingly, the question presented here is whether the federal felony at issue 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. *Id.*

Title 18 of United States Code § 2113, which Vines pled guilty to, provides in relevant part:

Appendix B

> (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;
>
> . . . .
>
> (d) Whoever, in committing, or in attempting to commit, any offense defined in subsections (a) and (b) of this section, *assaults any person, or puts in jeopardy the life of any person by the use of a dangerous weapon or device*, shall be fined under this title or imprisoned not more than twenty-five years, or both.

18 U.S.C. § 2113 (emphasis added); *see also Sylla v. United States*, No. 20-1608, 2023 WL 2973778, at *2 (S.D. Ind. Apr. 17, 2023).

The *Taylor* Court held that an attempted Hobbs Act robbery does not qualify as a crime of violence under § 924(c). *Taylor*, 142 S. Ct. at 2021 ("[N]o element of attempted Hobbs Act robbery requires proof that the defendant used, attempted to use, or threatened to use force."); *see also Stoney*, 62 F.4th at 110-11. Unlike attempted Hobbs Act robbery, however, Sections 22113(a) and 2113(d) explicitly require the use, attempted use, or threatened use of physical force. *E.g.*, *Sylla*, 2023 WL

2973778, at *3 ("An attempt under § 2113(a) requires actual force or intimidation."); *United States v. Wilson*, 880 F.3d 80, 85 (3d Cir. 2018) ("§ 2113(a)'s prohibition on taking the 'property or money or any other thing of value' either 'by force and violence, or by intimidation" has as an element the 'threat of force'"); *United States v. Thornton*, 539 F.3d 741, 747 (7th Cir. 2008) ("[A]ctual force and violence or intimidation is required for a conviction under the first paragraph of § 2113(a), whether the defendant succeeds (takes) or fails (attempts to take) in his robbery attempt."); *United States v. Johnson*, 899 F.3d 191, 202-04 (3d Cir. 2018) (§ 2113(d) bank robbery is a crime of violence); *Rosado v. United States*, No. 19-17220, 2022 WL 3273908, at *7 (D.N.J. Aug. 11, 2022) ("§§ 2113(d) and 2113(a) bank robbery, as well as aiding and abetting an armed bank robbery under § 2, are categorically crimes of violence").

Accordingly, Vines's § 2113(d) conviction "constitutes a crime of violence under the force clause" and his challenges to his conviction and sentence based on *Taylor* are without merit. *See Sylla*, 2023 WL 2973778, at *3; *see also Smith v. United States*, No. 21-12960, 2023 WL 2810700, at *1 (11th Cir. Apr. 6, 2023) (a conviction for attempted armed bank robbery is a "crime of violence" under the still-constitutional elements clause).

* * *

AND NOW, this 11th day of September, 2023, it is hereby **ORDERED** that Defendant's Motion and related filings (Doc. Nos. 149, 150) are **DENIED**. His Motions

to Dismiss and for Case Status (Doc. Nos. 156, 157) are **DENIED as moot**.

AND IT IS SO ORDERED.

/s/ Paul S. Diamond
Paul S. Diamond, J.

APPENDIX C — JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA, FILED MAY 6, 2022

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

Case Number: DPAE2:18CR000013-001
USM Number: 76408-066

UNITED STATES OF AMERICA

v.

RONALD DEWITT VINES

Rossman Thompson
Defendant's Attorney

Filed May 6, 2022

JUDGMENT IN A CRIMINAL CASE

THE DEFENDANT:

☑ pleaded guilty to count(s) 1 and 2 of the Indictment on 8/25/2021.

☐ pleaded nolo contendere to count(s) _____ which was accepted by the court.

☐ was found guilty on count(s) _____ after a plea of not guilty.

Appendix C

The defendant is adjudicated guilty of these offenses:

Title & Section	**Nature & Offense**	**Offense Ended**	**Count**
18 USC 2113(d)	Attempted armed bank robbery and aiding and abetting	11/16/2007	1
18 USC 924(c)(1) & 2	Using, carrying and brandishing a firearm during a crime of violence and aiding and abetting	11/16/2007	2

The defendant is sentenced as provided in pages 2 through __7__ of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☐ Count(s) _____
☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

Appendix C

5/3/2022
Date of Imposition of Judgment

/s/ Paul S. Diamond
Signature of Judge

Paul S. Diamond, U.S. District Court Judge
Name and Title of Judge

5/5/2022
Date

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:

72 Months on Count 1 and 84 Months on Count 2 to run consecutively to the 72 Month term of imprisonment imposed on Count 1 for a total of 156 Months.

☑ The court makes the following recommendations to the Bureau of Prisons:

It is also recommended defendant participate in a program aimed at obtaining a GED, learning a vocation, or improving the defendant's literacy, or employment skills in order to develop or improve skills needed to obtain and maintain gainful employment. It is also recommended defendant be designated to a facility close to Philadelphia, PA.

☑ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____ .

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____ at _____ , with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

Appendix C

SUPERVISED RELEASE

Upon release from impisonment, you will be on supervised release for a term of:

5 Years on each of Counts 1 and 2 to run concurrently with each other.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.

2. You must not unlawfully possess a controlled substance.

3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

   ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*

4. ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*

5. ☑ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*

6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*

7. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to

a different probation office or within a different time frame.

2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.

3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.

4. You must answer truthfully the questions asked by your probation officer.

5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.

6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.

7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.

8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.

9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.

10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).

11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.

12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.

13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____ Date _____

SPECIAL CONDITIONS OF SUPERVISION

The defendant shall refrain from the illegal possession and use of drugs and shall submit to urinalysis or other forms of testing to ensure compliance. It is further ordered that

the defendant shall submit to evaluation and treatment as approved by the U. S. Probation Office. The defendant shall abide by the rules of any program and shall remain in treatment until satisfactorily discharged with the approval of the Court.

It is also recommended defendant participate in a program aimed at obtaining a GED, learning a vocation, or improving the defendant's literacy, education level, or employment skills in order to develop or improve skills needed to obtain and maintain gainful employment. The defendant shall remain in any recommended program until completed or until such time as the defendant is released from attendance by the probation officer.

Payment of the Special Assessment is a condition of Supervised Release and the defendant shall satisfy the amount due in monthly installments of not less than $50.00.

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	Restitution	Fine	AVAA Assessment*	JVTA Assessment**
TOTALS	$ 200.00	$ 0.00	$0.00	$ 0.00	$0.00

☐ The determination of restitution is deferred until _____ . An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	**Total Loss*** **	**Restitution Ordered**	**Priority or Percentage**
TOTALS	$ 0.00	$ 0.00	

☐ Restitution amount ordered pursuant to plea agreement $ _____

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the
☐ fine ☐ restitution is modified as follows:

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.
** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.
*** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A ☑ Lump sum payment of $ 100.00 due immediately, balance due

☐ not later than _____ , or
☑ in accordance with ☐ C, ☐ D, ☐ E, or
☑ F below, or

B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or

C ☐ Payment in equal _____ *(e.g., weekly, monthly, quarterly)* installments of $ _____ over a period of _____ *(e.g., months or years)*, to commence _____ *(e.g., 30 or 60 days)* after the date of this judgment; or

D ☐ Payment in equal _____ *(e.g., weekly, monthly, quarterly)* installments of $ _____ over a period of _____ *(e.g., months or years)*, to commence _____ *(e.g., 30 or 60 days)* after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within _____ *(e.g., 30 or 60 days)* after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☑ Special instructions regarding the payment of criminal monetary penalties.

The defendant shall make payments in the amount of $25.00 per quarter from any wages he may earn in prison in accordance with The Bureau of Prisons' Inmate Financial Responsibility Program. Any portion of the special assessment that is not paid in full at the time of release from imprisonment shall become a condition of Supervised Release and shall be paid at the rate of $50.00 per month to commence 30 days after release from confinement.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

Appendix C

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Case Number
Defendant and Co-Defendant Names
(including defendant number)

Total Amount	Joint and Several Amount	Corresponding Payee, if appropriate

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☑ The defendant shall forfeit the defendant's interest in the following property to the United States:

Taurus, Model Ultralite, .38 caliber revolver, bearing serial number RB45029; a Ruger, Model 10/22, .22 caliber rifle, bearing serial number 257-87588, with attached scope; fifteen live rounds of .38 caliber ammunition; twenty-two live rounds of .22 caliber ammunition; two body armor vests; and a soft rifle case.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTA assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

APPENDIX D — SUR PETITION FOR REHEARING OF THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT, FILED JUNE 17, 2025

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 23-2843
(E.D. Pa. No. 2:18-cr-00013-001)

UNITED STATES OF AMERICA

v.

RONALD DEWITT VINES,

Appellant.

Filed June 17, 2025

SUR PETITION FOR REHEARING

Present: CHAGARES, *Chief Judge*, and HARDIMAN, SHWARTZ, KRAUSE, RESTREPO, BIBAS, PORTER, MATEY, PHIPPS, FREEMAN, MONTGOMERY-REEVES, CHUNG, and ROTH,* *Circuit Judges*

The petition for rehearing filed by Appellant in the above-captioned case having been submitted to the judges who participated in the decision of this Court and to all

* Judge Roth's vote is limited to panel rehearing only.

the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the judges of the circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en banc is **DENIED**.

By the Court,

/s/Stephanos Bibas
Circuit Judge

Dated: June 17, 2025
PDB/cc: All Counsel of Record

APPENDIX E — 18 U.S.C. § 2113

18 U.S.C. § 2113. Bank robbery and incidental crimes

(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; or

Whoever enters or attempts to enter any bank, credit union, or any savings and loan association, or any building used in whole or in part as a bank, credit union, or as a savings and loan association, with intent to commit in such bank, credit union, or in such savings and loan association, or building, or part thereof, so used, any felony affecting such bank, credit union, or such savings and loan association and in violation of any statute of the United States, or any larceny –

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

* * *

(d) Whoever, in committing, or in attempting to commit, any offense defined in subsections (a) and (b) of this section, assaults any person, or puts in jeopardy the life of any person by the use of a dangerous weapon or device, shall be fined under this title or imprisoned not more than twenty-five years, or both.

* * *

APPENDIX F — 18 U.S.C. § 924

18 U.S.C. § 924. Penalties

* * *

(c)(1)(A) Except to the extent that a greater minimum sentence is otherwise provided by this subsection or by any other provision of law, any person who, during and in relation to any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime that provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) for which the person may be prosecuted in a court of the United States, uses or carries a firearm, or who, in furtherance of any such crime, possesses a firearm, shall, in addition to the punishment provided for such crime of violence or drug trafficking crime –

> **(i)** be sentenced to a term of imprisonment of not less than 5 years;
>
> **(ii)** if the firearm is brandished, be sentenced to a term of imprisonment of not less than 7 years; and
>
> **(iii)** if the firearm is discharged, be sentenced to a term of imprisonment of not less than 10 years.

* * *

(3) For purposes of this subsection the term "crime of violence" means an offense that is a felony and –

(A) has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or

(B) that by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

* * *