No. 25-106

In the Supreme Court of the United States

RONALD DEWITT VINES, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether assaulting or putting in jeopardy the life of a person by the use of a dangerous weapon or device during the commission of an attempted bank robbery, in violation of 18 U.S.C. 2113(d), is a "crime of violence" as defined by 18 U.S.C. 924(c)(3)(A).

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-28a) is reported at 134 F.4th 730. The opinion of the district court (Pet. App. 29a-33a) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on April 21, 2025. A petition for rehearing was denied on June 17, 2025 (Pet. App. 48a-49a). The petition for a writ of certiorari was filed on July 25, 2025. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a guilty plea in the United States District Court for the Eastern District of Pennsylvania, petitioner was convicted of assaulting and putting in jeopardy the life of a person by the use of a dangerous weapon in the commission of an attempted bank robbery,

in violation of 18 U.S.C. 2 and 2113(d), and of using, carrying, and brandishing a firearm during and in relation to a crime of violence, in violation of 18 U.S.C. 2 and 924(c)(1). Judgment 1; Indictment 1-3. The district court sentenced him to 156 months of imprisonment, to be followed by five years of supervised release. Judgment 2-3. Petitioner did not appeal, but he later moved to vacate or set aside his Section 924(c) conviction under 28 U.S.C. 2255. The district court denied his motion, Pet. App. 29a-33a, and the court of appeals affirmed, *id.* at 1a-28a.

1. On the morning of November 16, 2017, petitioner and his two adult sons attempted to rob a bank in Holland, Pennsylvania. Gov't C.A. Br. 4. Petitioner hung a tarp in a wooded area outside the bank, and the men hid behind it while employees of the bank arrived for work. *Ibid.*; see Presentence Investigation Report (PSR) ¶ 18.

One of petitioner's sons, armed with a gun and wearing a face mask, approached an employee and forced her inside the bank. Pet. App. 2a. The robbery was foiled when a second employee arrived, saw the crime in progress, and screamed—drawing public attention. *Ibid.* Petitioner signaled to abort the robbery, and the men fled without having obtained any money. PSR ¶¶ 19-20.

Petitioner and his sons were caught by the police in a traffic stop a short time later. PSR ¶ 20. Petitioner was wearing body armor and carrying zip ties and .38 caliber ammunition. *Ibid.* In the car, the police found a loaded .38 caliber revolver, a loaded rifle with an attached scope and ammunition, more zip ties, a police scanner, handheld radios, and a face mask. *Ibid.*

2. A grand jury in the Eastern District of Pennsylvania returned an indictment charging petitioner with knowingly assaulting and putting in jeopardy the life of

a person by the use of a dangerous weapon in the commission of an attempted bank robbery, or aiding and abetting that offense, in violation of 18 U.S.C. 2 and 2113(d), and using, carrying, and brandishing a firearm during and in relation to a crime of violence, or aiding and abetting that offense, in violation of 18 U.S.C. 2 and 924(c)(1). Indictment 1-3.

Section 924(c) criminalizes using or carrying a firearm "during and in relation to any crime of violence," and provides that if the firearm is "brandished," the defendant shall, in addition to the punishment for the crime of violence, be sentenced to a minimum of seven years of imprisonment. 18 U.S.C. 924(c)(1)(A) and (ii). Section 924(c)(3) defines the term "crime of violence" in two parts, with both an elements-based clause and a residual clause covering other offenses. Specifically, a "crime of violence" is any felony that "(A) has as an element the use, attempted use, or threatened use of physical force against the person or property of another," or "(B) that by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense." 18 U.S.C. 924(c)(3).

The indictment in petitioner's case specified that the predicate crime of violence for the Section 924(c) count was armed attempted bank robbery, in violation of 18 U.S.C. 2113(d), as charged in the first count. Indictment 3. Section 2113(d) provides that "[w]hoever, 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 federal crime. 18 U.S.C. 2113(d). Section 2113(a), in turn, provides that "[w]hoever, by force and violence,

or by intimidation, takes, or attempts to take, from the person or property of another, or obtains or attempts to obtain by extortion any property or money or any other thing of value" in the custody of a federally insured bank commits a federal crime. 18 U.S.C. 2113(a).

Petitioner agreed to plead guilty under Federal Rule of Criminal Procedure 11(c)(1)(C), with the parties jointly proposing "a total term of 156 months' imprisonment." C.A. App. 72. The district court accepted the plea agreement and imposed the requested sentence of imprisonment, to be followed by five years of supervised release. Pet. App. 3a; see Judgment 2-3. Petitioner did not appeal.

3. Petitioner subsequently filed a pro se motion to vacate or set aside his Section 924(c) conviction and sentence under 28 U.S.C. 2255. C.A. App. 232-244. Petitioner contended that his trial counsel had been ineffective for having "failed to raise a claim that attempted bank robbery was not a crime of violence under [Section] 924(c)," and that he was actually innocent of the Section 924(c) offense. *Id.* at 236-237.

The district court denied petitioner's motion. Pet. App. 29a-33a. The court observed that under the categorical approach applicable to determining "whether a particular offense qualifies as a crime of violence" as defined by Section 924(c)'s elements clause, the relevant question is whether a conviction "always requires the Government to prove * * * the use, attempted use, or threatened use of force." *Id.* at 30a. And the court explained that attempted bank robbery is a crime of violence because acting by "force and violence or intimidation" is an element of the offense. *Id.* at 32a (citation omitted).

4. The district court later granted a certificate of appealability, and petitioner appealed. C.A. App. 18-20. The court of appeals affirmed. Pet. App. 1a-28a.

As an initial matter, the court of appeals explained that, for purposes of the categorical approach, some statutes are "divisible," meaning that they "'list elements in the alternative, and thereby define multiple crimes.'" Pet. App. 4a (quoting *Mathis* v. *United States*, 579 U.S. 500, 505 (2016)). And the court found that 18 U.S.C. 2113(d) is divisible as between offenses based on Subsection (a) or Subsection (b); that petitioner had pleaded guilty to an offense based on Subsection (a); and that the categorical inquiry should therefore "focus just on that subsection." *Id.* at 4a-5a.

The court of appeals observed that it had already found, in a prior case, that the two paragraphs of Section 2113(a)—one covering bank robbery and bank extortion, and the other bank burglary—are divisible from each other. Pet. App. 5a. And in this case, it further examined the first paragraph—which 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" in the custody of a federally insured bank commits a felony, 18 U.S.C. 2113(a)—and found that bank robbery (and attempted bank robbery) and bank extortion are likewise separate offenses. See Pet. App. 5a-8a.

The court of appeals then explained here that attempted bank robbery is a crime of violence because the government must prove that the defendant acted "by force and violence, or by intimidation." 18 U.S.C. 2113(a). The court observed that the adverbial phrase containing that requirement immediately precedes a

short list of verbs—"takes, or attempts to take," *ibid.*—and is "read * * * most naturally" as modifying both items in the list. Pet. App. 10a.

The court of appeals rejected petitioner's suggestion that the force, violence, or intimidation requirement does not carry through to armed attempted bank robbery under Section 2113(d). Pet. App. 8a. The court explained that a conviction under Section 2113(d) not only requires proof of the elements in Section 2113(d)—*e.g.*, that the defendant was armed—but "must also satisfy the elements of § 2113(a) that * * * are 'incorporated' into it." *Ibid.* (brackets and citation omitted). The court emphasized that "[a]dding a dangerous weapon to attempted bank robbery" under Section 2113(d) "does not make the crime less violent." *Id.* at 15a. And it observed that the force, violence, or intimidation requirement categorically requires actual, attempted, or threatened force against the "person or property *of another*," such that Section 2113(d) satisfies the definition of a crime of violence. *Ibid.* (quoting 18 U.S.C. 924(c)(3)(A)).

Judge Roth dissented in part. Pet. App. 18a-28a. She "agree[d] with the majority that * * * robbery and extortion constitute divisible offenses" and that "attempted robbery requires the actual use of force, violence, or intimidation." *Id.* at 18a. But she would have held that a violation of Section 2113(d) does not incorporate Section 2113(a)'s "forcible attempt requirement." *Id.* at 22a. She would have further held that the additional elements required to prove a violation of Section 2113(d) do not themselves satisfy Section 924(c)'s elements clause including because, in her view, they would allow for conviction where the defendant put only his own life in jeopardy. See *id.* at 22a-28a.

ARGUMENT

Petitioner contends (Pet. 16-26) that assaulting or putting in jeopardy the life of a person through the use of a dangerous weapon in the course of attempted bank robbery, in violation of 18 U.S.C. 2113(d), is not a "crime of violence" as defined by 18 U.S.C. 924(c)(3)(A). The court of appeals correctly rejected that contention, and its decision does not implicate any division of authority warranting this Court's review at this time. Every court of appeals to have squarely considered the question has concluded that armed attempted bank robbery under Section 2113(d) is a crime of violence. Petitioner therefore fails to establish that the result in this case would have been different in any other circuit. The petition for a writ of certiorari should be denied.*

1. The court of appeals correctly recognized that Section 2113(a)'s first paragraph is divisible and defines the elements of two discrete crimes: bank robbery and bank extortion. Pet. App. 5a-7a. Petitioner's contrary view of the divisibility question (Pet. 17-19) lacks merit for the reasons set forth in the government's brief in opposition in *Henderson* v. *United States*, petition for cert. pending, No. 25-13 (filed July 1, 2025). See Br. in Opp. at 9-17, *Henderson*, *supra* (No. 25-13) (*Henderson* Br. in Opp.).

Petitioner principally relies (Pet. 17-19) on the D.C. Circuit's decision in *United States* v. *Burwell*, 122 F.4th 984 (2024). Departing from the otherwise-uniform consensus in the courts of appeals, that decision took the

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* Similar questions are presented in the petitions for writs of certiorari in *Henderson* v. *United States*, No. 25-13 (filed July 1, 2025), and *Armstrong* v. *United States*, No. 25-5063 (filed July 3, 2025). The government has served petitioner with a copy of the government's brief in opposition in *Henderson*.

view that Section 2113(a) is "indivisible as to extortion" and that the singular robbery/extortion offense is not a crime of violence under Section 924(c)(3)(A) because "extortion can be accomplished using a threat of something other than violence," *id.* at 989. But the D.C. Circuit's reasoning in that case is mistaken. See *Henderson* Br. in Opp. at 13-17. Among other things, the D.C. Circuit failed to give effect to the differing terms "take" and "obtain," misread the statutory history, and disregarded the common-law roots from which Section 2113(a) is drawn.

The recent and shallow disagreement in the courts of appeals created by the D.C. Circuit's outlier decision in *Burwell* does not warrant further review at this time, including because the practical significance of *Burwell* remains unclear. See *Henderson* Br. in Opp. at 16. In particular, the D.C. Circuit has not yet resolved whether the aggravated crime under 18 U.S.C. 2113(d) is a crime of violence under Section 924(c)(3)(A). See *ibid.* It has therefore not addressed the specific issue presented here.

2. The court of appeals also correctly recognized that the definition of a "crime of violence" in Section 924(c)(3)(A) encompasses not only the divisible crime of bank robbery under Section 2113(a), but also the crime of attempted bank robbery. See Pet. App. 8a-14a. That result follows naturally from the text and structure of the statute, which make clear that the phrase "by force and violence, or by intimidation" modifies both "takes" and "attempts to take," 18 U.S.C. 2113(a). See Pet. App. 9a-12a; *Henderson* Br. in Opp. at 17-18. Accordingly, to prove an attempted bank robbery, the government must prove that the defendant acted "by force and violence, or by intimidation," not merely that the defend-

ant intended to do so and took a substantial step toward committing the robbery. 18 U.S.C. 2113(a).

Contrary to petitioner's suggestion (Pet. 24-26), attempted bank robbery under Section 2113(a) is different in that respect from the attempted Hobbs Act robbery offense at issue in *United States* v. *Taylor*, 596 U.S. 845 (2022). See *Henderson* Br. in Opp. at 18-19. The text and structure of the Hobbs Act, 18 U.S.C. 1951, led this Court to conclude in *Taylor* that "there is no force or violence element in attempted Hobbs Act robbery." Pet. App. 13a. But the court of appeals correctly recognized that Section 2113(a) is "built differently." *Id.* at 14a. In Section 2113(a), "[t]he adverbial phrase requiring force, violence, or intimidation limits the verb 'attempt.'" *Ibid.* The text thus makes clear that only attempted bank robberies that are in fact "done by force, violence, or intimidation" violate the statute. *Ibid.*

Petitioner errs in asserting (Pet. 10) that the courts of appeals are divided on whether "attempted federal bank robbery is a crime of violence." The only circuits to have squarely addressed the question have agreed that attempted bank robbery under Section 2113(a) is a crime of violence for purposes of Section 924(c)'s elements clause because an element of the offense—even on an attempt theory—is that the defendant acted "by force and violence, or by intimidation." 18 U.S.C. 2113(a); see *Henderson* Br. in Opp. at 19-21.

As the government acknowledged in its brief in opposition in *Henderson* (at 20), the Fourth, Sixth, and Ninth Circuits have concluded that the government is not required to prove that the defendant acted by force and violence, or by intimidation, in order to sustain a conviction for attempted bank robbery under Section 2113(a). Cf. Pet. 10-12 (citing the same decisions); Pet.

App. 8a (same). The relevant decisions, however, did not contain extensive reasoning, did not directly address whether Section 2113(a) satisfies Section 924(c)'s elements clause, and largely predate *Taylor*.

The only post-*Taylor* decision that petitioner identifies (Pet. 12) is *United States* v. *Hogue*, No. 20-30043, 2023 WL 5973111 (9th Cir. Sept. 14, 2023). The Ninth Circuit concluded in that case that attempted bank robbery in violation of Section 2113(a) does not constitute a "crime of violence" as defined by the then-applicable version of the advisory Sentencing Guidelines. *Id.* at *1. As the Ninth Circuit acknowledged, however, the Guidelines have since been amended on a prospective basis to ensure that any attempt to commit a crime of violence is itself treated as a crime of violence for Guidelines purposes. *Id.* at *2; see Sentencing Guidelines § 4B1.2(a)(1) and (d). And to the extent that the reasoning in *Hogue* would carry over to Section 924(c), the unpublished memorandum disposition in that case would not bind a future panel of the Ninth Circuit.

At least since *Taylor*, the government has consistently taken the position that attempted bank robbery under Section 2113(a) requires proof of force and violence or intimidation—as the Second, Third, Fifth, and Seventh Circuits have held. See *Henderson* Br. in Opp. at 20. If a conflict on the application of Section 924(c) to the divisible attempted bank robbery offense were to develop, the Court could consider at that time whether certiorari would be warranted. But any intervention in this case would be premature.

3. Finally, the court of appeals correctly determined that the enhanced offense defined by Section 2113(d) "is also a crime of violence." Pet. App. 15a. That determination does not conflict with the decision of any other

court of appeals and does not otherwise warrant review. See *Henderson* Br. in Opp. at 21-23.

Section 2113(d) states that "[w]hoever, 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(d). Petitioner is mistaken in asserting (Pet. 19-21) that Section 2113(d)'s reference to "committing, or * * * attempting to commit" a violation of Section 2113(a) or (b), 18 U.S.C. 2113(d), creates a distinct form of attempt liability that does not incorporate Section 2113(a)'s limitation criminalizing only those attempted robberies that occur "by force and violence, or by intimidation," 18 U.S.C. 2113(a). The "attempting to commit" clause is necessary because Section 2113(b) does not itself criminalize attempt. It is not applicable to Section 2113(a), which itself criminalizes attempt. If it were, then it would on its face criminalize an "attempt to attempt to commit a crime," Pet. 20, which even petitioner recognizes to be implausible, *ibid.*

Petitioner's only support for his interpretation of Section 2113(d) consists of Judge Roth's partial dissent here, see Pet. App. 23a-25a, and unpublished decisions of the Fourth and Eleventh Circuits rejecting sufficiency challenges to Section 2113(d) convictions, see Pet. 14-15 (citing *United States* v. *Perez*, 350 Fed. Appx. 425, 429 (11th Cir. 2009) (per curiam), and *United States* v. *Straite*, 576 Fed. Appx. 211, 214 (4th Cir.) (per curiam), cert. denied, 574 U.S. 986 (2014)). Those unpublished decisions did not address Section 924(c)'s elements clause and would not be controlling on any future panel. As the court of appeals here correctly rec-

ognized (Pet. App. 15a), a violation of Section 2113(d) predicated on an attempted bank robbery under Section 2113(a) incorporates the latter's requirement that even an attempted robbery must be proven to have been accomplished "by force and violence, or by intimidation." 18 U.S.C. 2113(a); see Pet. App. 7a-8a; Gov't C.A. Br. 20-23.

Additionally, Section 2113(d) contains its own separate requirement of proof that the defendant "assault[ed] any person, or put[] in jeopardy the life of any person by the use of a dangerous weapon or device." 18 U.S.C. 2113(d). Under circuit precedent, "[o]ne cannot assault a person, or jeopardize his or her life with a dangerous weapon, unless one uses, attempts to use, or threatens physical force." *United States* v. *Johnson*, 899 F.3d 191, 204 (3d Cir.), cert. denied, 586 U.S. 1054 (2018). Petitioner's only argument to the contrary is his hypothesis that Section 2113(d) could be violated by proof that the defendant put "his or her *own* life" in jeopardy, Pet. 23, rather than threatening the "person * * * of another," 18 U.S.C. 924(c)(3)(A). Petitioner does not identify any circuit that has endorsed that interpretation of Section 2113(d). Although the phrase "any person" could in the abstract include the defendant himself, Section 2113(d) uses that phrase in the more particularized context of criminalizing assault ("assaults any person"), and a person cannot assault himself. 18 U.S.C. 2113(d); see *Black's Law Dictionary* 140 (12th ed. 2024) (defining "assault" as "[t]he threat or use of force *on another* that causes that person to have a reasonable apprehension of imminent harmful or offensive conduct") (emphasis added). Congress presumably meant for the same phrase to mean the same thing when used later in the same sentence of Section

2113(d), in the clause regarding putting in jeopardy the life of "any person." 18 U.S.C. 2113(d).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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