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Supreme Court, U.S.  
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No. \_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES

MELVIN RAY, PETITIONER

vs.

UNITED STATES OF AMERICA, RESPONDENT

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ON PETITION FOR A WRIT OF CERTIORARI TO  
THE FIFTH CIRCUIT COURT OF APPEALS

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PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

This case presents questions of exceptional national importance with implications for the uniformity of federal criminal law and the protection of constitutional rights. The Fifth Circuit's interpretation of aiding and abetting bank robbery as a "crime of violence" under 18 U.S.C. 924(c)(3) sidesteps the categorical approach, conflicts with other circuits, and exposes defendants to overbroad and unpredictable liability.

Simultaneously, the statutory and jurisdictional reach of 18 U.S.C. 2113(a), including reliance on the "substantial effects" test, raises legal and constitutional questions concerning federal prosecutorial authority, the government's burden to establish jurisdiction, Congress's limited authority, and limits of the Necessary and Proper Clause.

QUESTIONS PRESENTED:

- 1) Whether the Fifth Circuit's interpretation of aiding and abetting bank robbery as a "crime of violence" under 924(c)(3)(A) sidesteps the categorical approach, conflicts with other circuits and deprives defendants of due process under the Fifth Amendment?
- 2) Whether 18 U.S.C. 2113(a) exceeds Congress's enumerated powers by extending federal jurisdiction to intrastate robberies under the "substantial effects" test?

**PARTIES TO THE PROCEEDINGS  
AND RELATED PROCEEDINGS**

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The parties to the proceedings below are as follows:

- Melvin Ray, Petitioner
- Solicitor General, Respondent
- Fifth Circuit Court of Appeals, judgment that is the subject of this petition

The related proceedings below are:

- 1) United States v. Ray, No. 24-20358, Application  
for Certificate of Appealability the United States  
District Court for the Southern District of Texas  
USDC Nos. 4:24-CV-748, 4:19-CR-380-1

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PETITION FOR WRIT OF CERTIORARI

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Melvin Ray, Petitioner, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

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The opinion of the U.S. Court of Appeals for the Fifth Circuit for the Fifth Circuit is unpublished and reproduced in Petitioner's Appendix A. The order denying Petitioner 2255 motion is reproduced at Appendix B.

JURISDICTION

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Petitioner, moving pro se, filed a timely 28 U.S.C. 2255 motion to vacate his sentence which the District Court denied on July 30, 2024. Petitioner seek a certificate of appealability to appeal the District Court's denial of his 28 U.S.C 2255 motion which the Fifth Circuit Court of Appeals denied on January 7, 2025. This court has jurisdiction under 28 U.S.C 1254(1).

STATUTES AND REGULATORY PROVISIONS  
INVOLVED

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The pertinent statutory and regulatory provisions involved in this case are:

18 U.S.C. 2113(a): Governs federal bank robbery and addresses jurisdiction for federally insured banks

18 U.S.C. 924(c)(3)(A): Defines "crime of violence" for federal sentencing

Fifth Amendment: Guarantees due process

Necessary and Proper Clause

( U.S. Const. art.1, section 8, cl. 18): Limits Congressional power to execute enumerated powers.

18 U.S.C. § 2: a person is liable as a principal if he "aids, abets, counsels, commands, induces or procures" commission of an offense



## SUMMARY OF THE ARGUMENT

### I. Aiding and Abetting Liability under 18 U.S.C. 2 Creates a Dragnet

- The Fifth Circuit interprets aiding and abetting bank robbery as categorically a "crime of violence" under 924(c).
- This includes minimal participation (e.g., getaway driver, proving information), sidestepping the categorical approach.
- The decision conflicts with Taylor (1990); Descamps (2013); Mathis (2016); and Taylor (2022)

### II. Circuit Split and National Importance

- Fifth Circuit case Hill conflict with other circuits regarding both aiding and abetting liability and 2113(a) scope.
- Supreme Court review is necessary to ensure uniformity interpretation of federal criminal law

### III. Department of Justice Overreach

- DOJ prosecutorial practice relies on the Fifth Circuit's dragnet theory, applying 924(c) to minimal or nonviolent conduct.
- SCOTUS intervention is required to prevent further expansion of criminal liability beyond constitutional and statutory limits.

### IV. 18 U.S.C. 2113(a) Exceeds Congress's Enumerated Powers

- Extending federal jurisdiction to intrastate robberies under the "substantial effects" test risk granting Congress a general police power, prohibited by Lopez, 514 U.S. 549 (1995).
- Even under rational basis review, applying 2113(a) to a purely intrastate, non-economic robberies fails to demonstrate a sufficient nexus to interstate commerce
- Raises constitutional concerns under the Necessary and Proper Clause and limits of congressional authority

STATEMENT OF THE CASE

Petitioner plead guilty to two counts of aiding and abetting bank robbery, in violation of 18 U.S.C. 2113(a) and 2, one count of aiding and abetting armed bank robbery, in violation of 18 U.S.C. 2113(a) and (d), and 2, and one count of aiding and abetting the brandishing of a firearm during and in relation to a crime of violence, in violation of 18 U.S.C. 924(c) and 2. Petitioner challenge these convictions under 28 U.S.C. 2255, arguing that:

- 1) Aiding and Abetting Liability under 18 U.S.C. 2 was improperly applied in a way that creates a dragnet of criminal liability, punishing minimal or nonviolent conduct.
- 2) 2113(a) exceeds Congress's enumerated powers and relies on an overbroad "substantial effect" test that conflicts with constitutional limits.

The District Court denied relief, and the Fifth Circuit affirmed, creating a circuit split and raising questions of constitutional and national importance.

## REASONS FOR GRANTING THE WRIT

### I. Fifth Circuit Precedent Sidesteps the Categorical Approach and Ignores Least Culpable Conduct

"Fifth Circuit has decided an important federal question that conflicts with relevant decisions of this Court, and that has been, but should be, settled by this Court, S.Ct. Rule 10(c),- namely, whether aiding and abetting bank robbery constitutes a 'crime of violence' under 18 U.S.C. 924(c)(3). This conflicts with categorical approach decisions of this Court, including *Taylor v. United States*, 495 U.S. 575 (1990); *Descamps v. United States*, 570 U.S. 254 (2013); *Mathis v. United States*, 579 U.S. 500 (2016); and *Taylor v. United States*, 596 U.S. 845 (2022), and is exemplified by Fifth Circuit decision such as *United States v. Hill*, 63 F.4th 335 (2023) where the court upheld broad 924(c) liability for aiding and abetting Hobbs Act robbery, including nonviolent participation."

- The Fifth Circuit sidestepped this analysis by reasoning that aiding and abetting is not a separate offense but merely a theory of liability. Because 18 U.S.C. 2 makes aiders "punishable as principals," the panel held that the predicate share the same elements as the substantive offense - here, bank robbery, which circuit precedents has held it to be a crime of violence.
- But that reasoning collapses the categorical approach into fiction. The key question is not whether 18 U.S.C. 2 is a separate offense; it is whether a conviction under 18 U.S.C. 2 for aiding and abetting bank robbery necessarily requires proof of violent force. The answer is plainly no: one can aid and abet by providing nonviolent assistance.
- By ignoring the least culpable aider's conduct, the Fifth Circuit effectively conducted a conduct-based inquiry - contrary to *Taylor*, *Descamps*, and *Mathis*. Those decisions rejected attempts to expand categorical analysis by importing facts or ignoring the breadth of statutory coverage.
- This creates a dragnet interpretation of federal law, sweeping in conduct such as being a getaway driver or providing inside information - conduct that is not inherently violent. Such a reading sidesteps the categorical approach, conflicts with other circuits, and undermines the Fifth Amendment's guarantee of due process.
- Treating any participation as a "crime of violence."
- Punish minimal or nonviolent conduct (getaway driver, inside assistance).
- Conflicts with other circuits (D.C., 2d, 7th, 11th).
- Violates Fifth Amendment due process right.

### II. Circuit Split Demonstrates National Importance

Several circuits apply the Fifth Circuit expansive readings:

- *United States v. Garcia*, 904 F.3d 102, 109 (1st Cir. 2018)
- *United States v. McKelvey* 773 F. App'x 74, 75 (3d Cir. 2019)

- United States v. Caldwell, 7 F.4th 191, 212-13 (4th Cir. 2021)
- United States v. Richardson, 948 F.3d 733, 742 (6th Cir. 2020)
- Young v. United States, 22 F.4th 1115, 1122-23 (9th Cir. 2022)
- United States v. Deiter, 890 F.3d 1203, 1214-16 (10th Cir. 2018)

These courts have adopted an elements- equivalence theory that essentially bypasses categorical analysis, assuming that aiding and abetting cannot be distinguished from the principal's crime.

By contrast, other circuits have express deep reservations about that equivalence, noting that derivative theories of liability can sweep more broadly than the substantive crime.

- United States v. Winstead, 890 F.3d 1082 (D.C. Cir. 2018)
- United States v. Scott, 990 F.3d 94 (2d Cir. 2021)
- United States v. Worthen, 60 F.4th 1066 (7th Cir. 2023)
- United States v. Eason, 953 F.3d 1184 (11th Cir. 2020)

These decisions recognized that treating accomplice as categorically violent collapses the categorical inquiry into a fiction, ignoring the statutory breadth of 18 U.S.C. 2.

- Supreme Court intervention is necessary to prevent fragmentation of federal criminal law because the Court of Appeals are divided on how the categorical approach applies to determine liability theories such as aiding and abetting. The Fifth Circuit's dragnet theory that all aiders and abettors are categorically guilty of a "crime of violence" whenever the substantive offense qualifies is neither universal nor harmonious with this Court's precedents.

### III. Department of Justice Overreach

- The Department of Justice's reliance on this dragnet theory of liability extends federal power beyond constitutional limits. By treating every participant in aiding and abetting cases as categorically violent, DOJ prosecutors transform 924(c) into a tool of nationwide overreach. This Court's intervention is required to restore fairness and prevent the categorical approach from being hollowed out. Just as Taylor resolved widespread disagreement over attempt liability, review is now needed to decide whether aiding and abetting predicates categorically qualify as a crime of violence.

### IV. Statutory and Constitutional Limits Under 18 U.S.C. 2113(a)

"The Fifth Circuit has decided an important question of federal law that conflicts with relevant decisions of this Court, and that has not been, but should be, settled by this Court, S.Ct. Rule 10(c), namely, whether 18 U.S.C. 2113(a) may be applied to intrastate robberies under the 'substantial effects' test. This raises questions of federal jurisdiction and Congress's limited authority, as recognized in *United States v. Lopez*, 514 U.S. 549 (1995), and *United States v. Wiltberger*, 5 L. Ed 37 (1820)."

#### 1. FDIC Coverage and Federal Jurisdiction

- FDIC does not cover robbery losses
- Extending 2113(a) risks giving Congress a general police power, which it does not possess

#### 2. Substantial Effects Test, *Lopez*, *Wiltberger*, and Rational Basis Review

- The "substantial effects" test relieves the government of its burden to prove interstate impact

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- Lopez (1995) confirms that non-economic intrastate robberies fall outside Congress's commerce clause authority
  - Wiltberger (1820) establish historical limits on federal criminal jurisdiction
  - Even under rational basis review, extending jurisdiction to intrastate robberies may fail to show a sufficient nexus to Congress's power
  - Raises constitutional questions about enumerated powers and the Necessary and Proper Clause

### CONCLUSION

Petitioner respectfully requests that the Court grant this Petition for Writ of Certiorari, review the Fifth Circuit's judgment, and provide guidance on:

- Proper application of 924(c)(3)(A) and the categorial approach, including minimal and nonviolent conduct and limiting dragnet interpretation
- Legal and Constitutional reach of 2113(a), considering federal jurisdiction, commerce, Congress's limited authority, the Necessary and Proper Clause, and rational basis considerations, in light of Supreme Court precedent.

Respectfully submitted,

Melvin Ray

Date: 9-23-2025