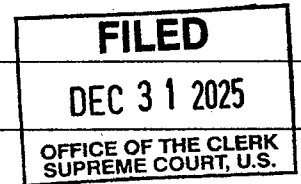


No. 25-7174

ORIGINAL

IN The
Supreme Court of the United States
June term 2026

Eric Beverly,
Petitioner,

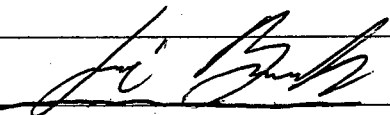


v.
United States of America
Respondent.

Petition for writ of certiorari

On Petition for writ of certiorari to the
United States Court of Appeals for the
Fifth Circuit.

Respectfully Submitted,



Eric Beverly

#13934-479

USP Pollock

P.O. Box 2009

Pollock LA 71467

Questions Presented

On (2255)^{2257a} (C.O.A) Severly Supplemented his Brief with D.C. Circuit new Ruling in law, Federal law and how the statute is Being View according to Congress, D.C. Circuit defines if a case can be charged by force or by fraud it's not a (C.O.V) Crime of violence, There's a split in the circuits, The Fifth circuit is taking the conduct approach, when Congress intended when reading Federal Statutes you apply the Categorical approach, which looks at the statutory elements of the offense, Not the defendants actual conduct.

Judgment Affirmed.

In light of the foregoing, the question presented is as follows:

Whether the appeals Court/en banc erred in the fifth circuit, 2113(a), this statute Congress intended to be used for multi-charges. This Court should

grant certiorari if (i) 2113(a) can be committed more than one way, (ii) If a case can be committed more than two-ways it's not a crime of violence (C.O.V) This court should grant certiorari in this case to decide this question and, and upon review, should reverse the judgment of the Fifth Circuit.

Parties to The Proceedings

All parties to the proceedings are named in the caption of the case before the court.

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This Court should grant certiorari because the Fifth Circuit denied Beverly not because of the merits, only because they were foreclosed by Fifth Circuit precedent which means there's a split in the circuits between D.C. Circuit and the Fifth Circuit.

2113(a) is not a crime of violence according to the D.C. Circuit, This Court should grant certiorari to decide this question, and upon review, should reverse the judgment of the fifth circuit.

- - - Appendix and Attachments - - -

Appendix A: District Court denying Rehearing on (C.O.A) United States v. Beverly, 4:22-CV-7961 (march 14, 2025)

- - - Appendix and Attachments - - -

Appendix B: United States v. Beverly, NO. 24-20241 consolidated with NO. 25-20120 (sept 9, 2025). Denied Appeal to C.O.A

- - - Appendix and Attachments - - -

Appendix C: Order Denying Beverly rehearing on en banc, United States Court of Appeal, United States v. Beverly, NO. 24-20241

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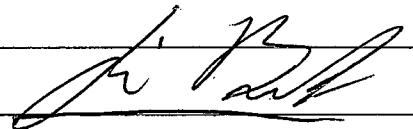
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Certificate of Word
Count

This petition for writ of certiorari
contains under 6,500 words in
proportionally spaced typeface.


Eric Berdy

PRAYER

The Petitioner, Eric Beverly (Living man) Respectfully prays that a writ of certiorari be granted to review the Judgment and opinion (en banc) of the United States Court of Appeals for the Fifth Circuit issued on Oct 23 2025.

Opinion Below

The original Judgment to vacate 2255 was filed in the Oct 24 2023, on May 13 2024 The District Court in Houston adopted memorandum opinion Denying Beverly (2255 motion).

Beverly Appealed.

Beverly Filed A C.O.A Certificate of Appealability May 29 2024. (Doc 328)

Sept 9, 2025 The C.O.A was Denied.

Beverly Filed with the (En Banc) and was Denied (Doc 362) Oct 23 2025 without Reciting Reason why he was Denied still to This Day.

On Beverly's motion En Banc for Reconsideration he argued That a 2113(a) Bank Robbery is not a crime

of violence Due to the reading of the statute.

18 U.S.C. § 2113(a)

(2) The statute says 2113(a) Bank Robbery can be committed two ways by force or by Extortion

(2) Any crime or statute that can be committed more than one way is not a crime of violence.

(3) 18 U.S.C. 924(c) cannot be attached to a crime that is not a crime of violence. Beverly was charged with 18 U.S.C. § 924(c)(1)(A)(ii)

The fifth circuit Court of Appeals stated that. Beverly cites a recent case from the United States Court of Appeals for the District of Columbia Circuit, Burwell v. United States, to argue that his conviction for carrying a firearm during a crime of violence should be vacated because that circuit recently held that federal armed robbery under 18 U.S.C. § 2113(a) is not a crime of violence under 18 U.S.C. § 924(c). 122 F.4th 984, 997 CD.C. CV. 2024J.
The court go on to state The following

Beverly's argument is foreclosed by Fifth Circuit precedent in *United States v. Brewer*, 898 F.3d 711, 713-16 (5th Cir. 2017), and *United States v. Pervis*, 937 F.3d 546, 552-53 (5th Cir. 2019) (holding that § 2113(a) is a crime of violence under 18 U.S.C. § 924 (c)(3)(A)). See also *United States v. Butler*, 949 F.3d 230, 234-36 (5th Cir. 2020) (holding that 2113(a) is divisible as applied to the Armed Career Criminal Act.) (DOC 346) see Exhibit #A

The Fifth Circuit Court of Appeals erred in its order Sept 9, 2025 By not viewing Beverly's claims on the merits only denying by saying he abandoned them, Beverly put the District Court on notice about the *Burwell*, *Hewitt* and etc. Beverly made a substantial showing of denial of Constitutional right with the *Burwell* case, because Jurist did not get to hear this in the jury instructions which is a Fifth Amendment violation,

Jurisdiction

On Oct 23 2025, The United States Court of Appeals for the Fifth Circuit entered it's unpublished Judgment and opinion affirming the Judgment (en Banc) on Cases 24-20241 United States vs Eric Beverly, This petition is filed within ninety days after entry of Judgment. See. Sup. Ct. R. 13.1 and 13.3 Jurisdiction of the Court is invoked under Section 1254(1), Title 28, United States Code.

Federal Statutes Involved

18 U.S.C. § 2113(a)

(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.

18 U.S.C. §§ 924 (c)(1)(A)(ii)

(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

(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

Statement of The Case

A. Course of Proceedings And Facts

On May 25, 2016, Beverly was charged by superseding indictment with multiple offenses stemming from government's unproven allegations that

he participated in a series of armed bank robberies and attempted bank robberies in the Houston area from July 2014 to May 2015. Gregory Barber, Julien Francis, and Jarrick Hosking were charged in the same indictment.

On October 25, 2017, Beverly alone was charged in a Fourteen Count Superseding Indictment with armed bank robbery, attempted bank robbery, and brandishing a firearm during a crime of violence in the Houston area from approximately August 25, 2014 to May 2, 2015.

In counts one, three, five, seven, nine, and thirteen of the Superseding Indictment, Beverly, was charged with armed bank robbery. In count 11s, Beverly was charged with attempted armed bank robbery. The alleged robbery crimes were in violation of 18 U.S.C §§ 2113(a), (d), and 2. In counts two, four, six, eight, ten, twelve and fourteen of the Superseding

Indictment, Beverly was charged with the related firearm offenses, brandishing a firearm during the commission of a crime of violence, in violation of 18 U.S.C §§ 924 (c) (1) (A) (ii)

On May 28, 2015, The government filed an application pursuant to 18 U.S.C § 2703(c), 18 U.S.C. § 2703(d), and 47 U.S.C § 1002 directing the Service provider for telephone number 346-932-1846, to provide records and other information for that telephone number like

GPS tracking and CSLI. The government Alleged in the 2703(d), application that the telephone number belonged to Jeremy Davis who is not charged in the instant case. United States Magistrate Judge Francis Stacey signed an order on May 28, 2018 directing the telephone service provider, T-Mobile, to disclose the information set forth in the order provided as part of the 18 U.S.C § 2703(d) application.

In motion to suppress, Beverly argued that the Government prepared cell phone

data charts which it intended to introduce as evidence, and a warrant that included misleading information which led the Magistrate issuing an order for the search of the telephone number 281-623-8877, Alleged to have belonged to Beverly.

The district court suppressed the warrant and the order. The government appealed, The appeals court Fifth circuit reversed The district court Judge court order. United States v. Beverly, 943 F. 3d 225 (5th Cir. 2019) A trial ensued on remand.

After a two-day trial, on February 26, 2020 the Jury found Beverly not guilty on Counts Three and Four of The Superseding Indictment, but rendered guilty verdicts on the remaining counts.

Ultimately, Beverly was sentenced to time served on Counts one, Five, Seven, Nine, Eleven, and Thirteen to run concurrently, and 84 months as to each of the remaining counts

to run consecutively for a total of 504 months (42 years). Beverly was ordered to serve three years of Supervised release on all counts to run concurrently.

On Sept 9 2020 Beverly file for direct appeal and was Denied they only viewed for plain error because his lawyer never lodge for a writ.

August 26 2022 Beverly filed a 2255 and was denied May 2024 Beverly filed for C.O.A and a new law came about United States v. Burwell (Dec 14 2024) (D.C. Circuit). When the 5th circuit appeals court Remand Beverly's case back to the district court, Beverly supplemented his case with the Burwell case in the District court, court Denied Beverly went back to the Appeals court, Also denied in En banc

Basis of Federal Jurisdiction in The United States District Court

This case was brought as a federal criminal prosecution involving armed robbery, attempted armed robbery, and brandishing a firearm during a crime of violence in violation of 18 U.S.C. §§ 924(c)(1)(A)(i), 2113(a), (d), and 2.

The district court therefore had jurisdiction pursuant to 18 U.S.C. §§ 3231

Reason For Granting The Writ

This Court should grant certiorari because the Fifth Circuit denied Beverly not because of the merits, only because they were foreclosed by Fifth Circuit precedent which means there is a split in the circuits between D.C. Circuit and the Fifth Circuit. 2113(a) is not a crime of violence according to the D.C. Circuit. This Court should grant certiorari to decide this question, and upon review, should reverse the judgment of the Fifth Circuit.

Arguments

A Jury convicted Beverly of four counts of aiding and abetting armed bank robbery, one count of aiding and abetting attempted armed bank robbery, and five counts of aiding and abetting brandishing a firearm during a crime of violence. Beverly contends 2113(a) is not a crime of violence see; Exhibit A and Exhibit B.

Under Federal law 18 U.S.C § 924, a crime of violence generally means a felony that;

has an element the use, attempted use, or threatened use of physical force against the person or property of another," or by its nature involves a substantial risk that such force may be used.

Courts usually use the categorical approach, which looks at the statutory elements of the offense, not the defendant's actual conduct, to decide whether a

prior conviction qualifies as a crime of violence. Jurors in Beverly's trial was instructed to find Beverly guilty on a 924(c) count if they find him guilty on the Bank Robbery 2113(a).

Two ways of committing the crime, if a single statute defines one crime that can be committed in multiple ways (for example, by force or by fraud), and Jurors do not have to agree on which way was used, those are alternative means, not separate elements.

When at least one of those means does not require violent physical force, the offense is not categorically a crime of violence, because a conviction under that statute does not necessarily rest on the use, attempted use, or threatened use of violent force. If the statute is indivisible and includes both violent and non-violent means under a single set of elements, then the conviction cannot qualify as a crime of violence under the categorical approach. Federal courts and the Supreme Court in Mathis v. United States ⁽²⁰¹⁶⁾ have emphasized that "a single statute may list alternative methods of satisfying one element, it remains a single indivisible crime. 18 U.S.C. § 2113(a), isn't a crime of violence under § 924(c). The statute criminalizes bank robbery completed "by force and violence, or by intimidation or by extortion. D.C. circuit precedent holds that when done by force and violence, or by intimidation, bank robbery satisfies § 924(c)'s requirements. United States v. Carr, 946 F.3d 598, 599 (D.C. Cir 2020)

Yet all parties here agree that when done by extortion, bank robbery no longer is a crime of violence. The statute is indivisible and merely sets forth three alternative means - force and violence, intimidation, and extortion - of completing the same crime. We apply the categorical approach to determine whether an offense in question satisfies § 924(c)'s elements clause. *United States v. Taylor*, 596 U.S.

845, 850, 142 S. Ct. 2015, 213 L. Ed. 2d 349 (2022)

2113(a) Bank Robbery can be committed two ways, by violence or by extortion. Therefore it cannot be a crime of violence. All Beverly's 924(c) counts must be vacated due to the indivisible statute.

Conclusion

Beverly ask for the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully Submitted

Date:

December 31, 2025

Eric Beverly

Eric Beverly

#13934-479

USP pollock

P.O. Box 2099

Pollock LA, 71467

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