No.

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 2026

ROBERT MANNING,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. In a prosecution for a violent crime in aid of racketeering, does the United States District Judge have the discretion to bifurcate the element which requires an underlying predicate crime from the elements of enterprise and pattern of racketeering?

2. May the court sustain a conviction for VICAR murder when there is insufficient evidence to prove each element of the underlying state crime?

LIST OF ALL PARTIES

1. Petitioner Robert Manning

2. Respondent United States of America

3. Jamare Coats was a codefendant in the court below, but is not a party to this Petition.

There are no stock symbols associated with any of the parties.

TABLE OF CONTENTS

INDEX TO APPENDIX

TABLE OF AUTHORITIES

Supreme Court Cases

Federal Circuit Cases

State Court Cases

Statutes

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

Petitioner Robert Manning respectfully petitions this Court for a writ of certiorari to review the decision of the United States Court of Appeals for the Ninth Circuit issued on August 20, 2026, affirming the judgment of conviction. Appx. A, B.

OPINION BELOW

The decision of the United States Court of Appeals for the Ninth Circuit affirming petitioner's conviction and sentence is published, reported at *United States v. Manning,* 151 F.4th 1144 (9th Cir. 2025) and is attached as Appendix A to this petition. An additional memorandum disposition affirming petitioner's conviction and sentence is unpublished and is attached as Appendix B to this petition.

JURISDICTION

The judgment of the United States Court of Appeals for the Ninth Circuit affirming petitioner's judgment of conviction and sentence was entered on August 20, 2026. Appx. A, B. This Petition is filed within 90 days of April 6, 2026, the date on which the Ninth Circuit denied a timely filed petition for rehearing. Appx. C. Petitioner invokes this Court's jurisdiction under 28 U.S.C. § 1254(1).

STATUTES, RULES AND CONSTITUTIONAL PROVISIONS INVOLVED

18 U.S.C. § 1959 provides:

> (a) Whoever, as consideration for the receipt of, or as consideration for a promise or agreement to pay, anything of pecuniary value from an enterprise engaged in racketeering activity, or for the purpose of gaining entrance to or maintaining or increasing position in an enterprise engaged in racketeering activity, murders, kidnaps, maims, assaults with a dangerous weapon, commits assault resulting in serious bodily injury upon, or threatens to commit a crime of violence against any individual in violation of the laws of any State or the United States, or attempts or conspires to do so, shall be punished—
>
> (1) for murder, by death or life imprisonment....

STATEMENT OF THE CASE

Petitioner Robert Manning and codefendant Jamare Coats were convicted of VICAR murder in violation of 18 U.S.C. § 1959(a)(1) after a 14-day jury trial. The case arose out of a shooting in which there were serious questions whether petitioner Manning, his codefendant Jamare Coats, and the actual killer, Sean Harrison, acted in self-defense. The decedent, Misterdee Simmons, was the person who first opened fire on the crowded sidewalk. Harrison, who fired eleven rounds into Simmons from close range, testified that he acted in self-defense and for the defense of his family members who were present at the community center. Manning never even drew his gun, and Coats initially hid in an alcove and only shot in Simmons's direction while fleeing the scene.

On the day of the shooting, March 23, 2019, a large funeral repast was held at the Fillmore Heritage Center, located on Fillmore St. in San Francisco's Fillmore district. That same day Sean Harrison -- the actual killer -- arranged to meet his cousin Donte Armstrong in San Francisco to celebrate Armstrong's birthday. Harrison met Armstrong at the Fillmore Heritage Center. Another of Harrison's cousins, petitioner Robert Manning also was present at the center. The repast was in progress, with music, dancing, food, and drinks. Both Harrison and Manning had additional relatives and friends present there.

After socializing for about 20 minutes, Harrison, Armstrong, and Manning went back to their parked cars and smoked some marijuana. Manning showed Harrison two guns. Then, they drank and continued socializing. After a time, Armstrong, Manning, codefendant Jamare Coats, Harrison and another cousin, Tasha, returned to the Heritage Center where they visited with friends and relatives.

While Harrison was talking to his aunt, he noticed Armstrong having a verbal altercation with an unknown man, later identified as Misterdee Simmons. Harrison went over to Armstrong and four unidentified men joined Simmons. Manning and Jamare Coats came over to Armstrong's side.

Armstrong and Simmons continued to exchange insults. Then, Simmons pulled out a firearm and threatened them all, saying "You bitch-ass niggas better stop playing with me before I air it out." Harrison said "air it out" means to start shooting.

Harrison, Manning and Coats promptly left the Heritage Center. Manning and Harrison headed to Manning's parked car where they obtained two pistols, with each man taking one. They tucked the guns into their pants and walked slowly back to the Heritage Center. They did not discuss a plan. Although Harrison claimed he was backing up Manning, video showed that at one point, Manning was behind Harrison. Meanwhile, Jamare Coats moved his car closer to the Heritage Center.

On the way back to the Center, Harrison, Manning and Coats encountered Armstrong who told them It’s all good, don’t trip my brother,” that “Rico” (one of Harrison’s brothers) had it under control. Armstrong said Rico had gotten Simmons out of the Center. Harrison remained concerned, however, because his brother was dealing with an angry armed man and he continued toward the Center because his brother was present. Harrison testified that Manning expressed anger that the gun had been pulled.

At this point, the street was moderately crowded and there were still many people, including Harrison and Manning’s family members, inside the Heritage Center.

As they neared the Center, two street violence prevention workers tried to block Manning and Coats from proceeding forward, but they went around them. No one attempted to stop Harrison or Armstrong who preceded Manning up the block toward the Center. At this point, Simmons was standing about ten feet away from the Center’s front doors. Simmons held his gun in his right hand and several men were standing with him.

Armstrong continued toward Simmons and Harrison walked behind him to support him. Harrison was focused on Simmons, who was holding the gun. Simmons fired at Harrison who immediately pulled out his gun and returned fire, emptying his clip into Simmons. When he finished firing, Simmons was down, but alive and still shooting. For his part, Simmons shot Harrison in the foot, and also shot several bystanders.

Coats was a little behind Harrison and dove for the building's alcove. He and Simmons also exchanged fire. While Coats and Simmons were firing, Harrison fled. Coats soon followed.

Manning neither pulled his gun nor fired. He apparently continued north on Fillmore immediately before the shooting.

Harrison, who fired the bullets that killed Simmons, consistently stated and testified at trial that he acted in self-defense when he shot Simmons. Harrison firmly stated he had no intention of shooting at Simmons until Simmons fired at him. He returned to the repast armed after being threatened by Simmons, because he had family members there. Both Harrison's testimony and the video evidence showed that Simmons fired at Harrison first. When Harrison learned he was to be charged federally upon his anticipated release from state custody he decided to cooperate, and pleaded guilty pursuant to a cooperation agreement. Under that agreement, Harrison avoided a VICAR murder charge, pleading guilty to using a firearm which caused death under 18 U.S.C. § 924(j). He anticipated a sentence of less than ten years based upon his cooperation.

Following a jury verdict of guilty, petitioner was sentenced to a mandatory term of life imprisonment.

REASONS FOR GRANTING THE WRIT

A. This Court should grant certiorari to clarify that district courts have discretion to bifurcate the elements of the offense in VICAR and RICO cases to prevent undue prejudice.

This Court should grant certiorari to address the important question whether, in a VICAR murder trial, a district court possesses the discretion to bifurcate the elements of the offense by first trying the underlying predicate crime, and allowing presentation of evidence concerning the enterprise element only after the jury has found the defendant guilty of the underlying crime.

The district judge in this case believed that an acquittal was possible. He expressed concern that the government's presentation of gang evidence to prove the VICAR purpose element of the offense would prejudice the defendants and prompt the jury to convict out of bias. Initially, the district judge proposed bifurcating the question whether a murder occurred from the question whether that murder was committed for a gang-related purpose. Ultimately, however, the court concluded that the Ninth Circuit's decision in *United States v. Barker,* 1 F.3d 957 (9th Cir. 1993), *opinion amended on denial of reh'g*, 20 F.3d 365 (9th Cir. 1994), precluded bifurcation.

A split Ninth Circuit panel affirmed, finding that *Barker* applied to VICAR crimes – indeed, to all crimes. Appx. A. Two judges concluded that district courts could not bifurcate the evidence concerning a racketeering enterprise from the evidence concerning whether a murder occurred. *Manning,* 151 F.4th at 1148. The majority relied on *Barker* which rejected bifurcation on a 18 U.S.C. § 922(g) charge. The majority commented "*Barker's* core rationale transcends § 922(g) or any particular criminal offense" because "[a] central animating principle of *Barker* is that bifurcating the trial on the elements of a single criminal charge would redefine the offense itself." *Id.* at 1152. The majority concluded it, too, was bound by *Barker,* and found the outcome "broadly consistent with the body of precedent on this type of bifurcation question." *Id.* at 1155.

Judge Berzon disagreed that bifurcation was barred by Ninth Circuit authority. *Manning,* 151 F.4th at 1164 (Berzon, J., dissenting in part). She explained that the majority's view that *Barker* stands for the proposition that trial on different elements of a single offense can never be bifurcated "dramatically overstates *Barker's* actual holding." *Id.* at 1165. In Judge Berzon's view, "Expanding *Barker's* § 922(g)(1) holding to VICAR despite the sharp divergence between the two statutes has no basis in precedent or logic." *Id.* Furthermore, "there were compelling reasons here to separate the trial on VICAR's violent crime element from the trial on its additional requirements, as the district court recognized." *Id.* Judge Berzon would have reversed and remanded for a new trial. *Id.*

The Ninth Circuit's ruling that bifurcation was impermissible is flawed. District courts should have the discretion in the appropriate case to bifurcate the murder charge from the question of enterprise. Circuit authority now unduly restricts the discretion of a district judge to tailor trial procedure in a manner best appropriate to assure due process.

Bifurcation is a well-established method for trial courts to manage cases involving more than one discrete area of evidence. For example, in cases where a defendant has been charged with a substantive crime under a recidivist or habitual-criminal statute, courts may bifurcate the proceedings such that trial is held first on the substantive offense, and second on the question of whether the defendant had the requisite number or type of prior convictions. In *Spencer v. Texas,* 385 U.S. 554, 567-68 (1967), the Supreme Court described as "probably the fairest" procedure the one in which "only the allegations relating to the substantive crime [are] read to the jury. If the defendant is convicted, the prior-offense elements are then read to the jury which considers any factual issues raised." *Id.* at 566-67.

Bifurcation is frequently used in civil cases. *See City of Los Angeles v. Heller,* 475 U.S. 796, 799-800 (1986)(affirming bifurcation of question whether a constitutional violation occurred from the question whether the city or members of the police commission were liable for the violation). It is common in capital cases as well. *E.g., Marshall v. Lonberger,* 459 U.S. 422, 456 (1983) (Stevens, Brennan, Marshall, and Blackmun, JJ., dissenting).

Bifurcation of gang or enterprise evidence was in the interests of justice here, and would be in many similar RICO cases. Evidence of gang affiliation is inherently prejudicial. *United States v. Abel*, 469 U.S. 45, 52-53 (1984); *United States v. Takahashi*, 205 F.3d 1161, 1164 (9th Cir. 2000). Testimony regarding gang crimes creates the risk that the jury will equate evidence of gang affiliation or activity with guilt of the charged crimes. *United States v. Hankey,* 203 F.3d 1160, 1170 (9th Cir. 2000). Yet, undue prejudice can be readily avoided by bifurcating the question of gang purpose from that of the underlying charge. *State v. Galtney,* No. A07-1631, 2008 WL 5135647, at *4 n.1 (Minn. Ct. App. Dec. 9, 2008); *cf. Gonzalez v. State,* 131 Nev. 991, 1003 (2015) (holding that trial court abused discretion in refusing to bifurcate guilt and gang-enhancement portions of trial); *see also United States v. Coonan,* 839 F.2d 886, 888-92 (2d Cir. 1988)(rejecting government's resistance to special verdicts in RICO conspiracy prosecution and noting that government was not entitled to the prejudicial effect stemming from evidence regarding violent and criminal acts). In *Conkling v. Turner,* 18 F.3d 1285, 1294 (5th Cir. 1994), the Fifth Circuit recognized the potential for prejudice and approved of the district court's decision to bifurcate a civil RICO trial so that the jury would first consider whether a single predicate act had occurred. *Id.* The trial judge, reasoning that the plaintiff would not be able to show any pattern of racketeering activity unless he could show that a particular agreement had been fraudulently induced, tried that issue alone before proceeding to the other acts. *Id.* at 1292. When the jury found no fraud in the agreement in question, the district court dismissed the entire RICO case as a matter of law. *Id.* at 1292-93. The Fifth Circuit, citing *Coonan,* affirmed, commenting "RICO cases appear to be specially suited for trial limitation." *Id.* at 1293-94.

VICAR crimes are particularly suited for bifurcation. VICAR is an atypical statute: it incorporates, as one element, the commission of "an entirely separate state or federal crime." *United States v. Manning,* 151 F.4th at 1167 (Berzon, J., dissenting); see also id. at 1169 ("VICAR is foundationally different from § 922(g)(1) because of its unusual crime-within-a-crime structure.").) The underlying predicate crime includes all of the elements of the relevant predicate violation, which frequently is a crime defined by a State. *Id.* The stakes are extremely high in VICAR cases: the defendant is faced with substantial federal prison terms arising out of the commission of a state crime plus its relationship to an enterprise, which is itself broadly defined. These factors strongly support allowing a district court to bifurcate resolution of the underlying crime from the presentation of evidence concerning the enterprise elements.

The panel majority expressed concern that preventing juries from considering all of the required elements at once would run counter to the general presumption against special verdicts in criminal cases. This concern is poorly taken.

The presumption against special verdicts is designed to protect *defendants. Id.* at 1170 ("The worry behind the disfavor of special verdicts is that requiring the jury to answer additional questions . . . might unfairly nudge the jury toward a guilty verdict.")(Berzon, J., dissenting in part). There is no reason to suspect that bifurcation would increase the chances of a conviction, and even if there were, defendants could "waive any impairment of their jury rights that might ensue." *Id.* at 1171. Moreover, special verdicts have become a common feature of modern federal practice, routinely applied to findings of special sentencing factors, including in RICO prosecutions.

The majority justified forbidding bifurcation in VICAR cases to preserve largely because it believed the government was entitled to present evidence about all of the elements, including the racketeering enterprise. 151 F.4th at 1158. This, the panel concluded, was not unduly prejudicial because of the nature of the charges. In this way, the panel majority adopts the position that the government is entitled to present a plethora of prejudicial evidence concerning an enterprise that may not have involved the charged defendants. The decision invites government overreach.

Here, bifurcating the underlying state law crime from the question of enterprise would not have removed any factual question from the jury's consideration. Petitioner contested all elements of the case. Had bifurcation occurred, the jury merely would have decided the question whether an enterprise motive was present after it first determined whether a murder had occurred. All of the elements were at issue and, if the government proved the defendants committed a murder, would be able to present evidence that the murder was committed in aid of racketeering.

Finally, bifurcation likely would have changed the outcome. This was a case in which the evidence that defendants Coats and Manning were guilty of murder was weak at best. The state had declined to bring charges. If the jury had not been inundated with prejudicial "enterprise" evidence involving other individuals, it likely would not have found the "state or federal crime" element of VICAR murder to be met. The prejudicial impact of the wealth of enterprise evidence on Manning and Coats cannot be overstated. Bifurcation would have protected their right to a fair trial, as the experienced district judge recognized, and it would not have harmed or hindered any countervailing interest.

This Court should issue the writ to clarify the district court's discretion to bifurcate the resolution of elements in VICAR cases.

B. This Court should grant certiorari to address the relationship of state law and 18 U.S.C. § 1959 charges based on a state law crime. In cases where a VICAR crime is based upon a state law predicate, courts must abide by state law in assessing whether sufficient evidence for conviction is present.

The panel disposition disregarded California law in evaluating the sufficiency of the evidence. The panel's treatment of the sufficiency challenge expanded VICAR beyond its statutory limits: allowing a VICAR conviction even when the defendant would not be convicted of the underlying state predicate crime. Such rulings expand the already broad RICO and VICAR statutes beyond their intent, effectively federalizing any and all violent crimes.

To sustain a conviction for VICAR murder, the defendant must first be validly convicted of murder under the relevant law – here, California state law. California has unique rules applicable to murder and particularly to those charged only as aiders and abettors. In this case, the government prosecuted petitioner only as an aider and abettor. Under California law, there is insufficient evidence to convict petitioner of murder; this went unrecognized by the United States Court of Appeals for the Ninth Circuit.

A necessary element of both generic murder and murder as defined by the California Penal Code is malice aforethought. Cal. Pen. Code § 187(a). California recognizes two types of malice: express or implied. Cal. Pen. Code § 188. Express malice is present when the defendant manifests a deliberate intent to kill. Malice is implied "when no considerable provocation appears, or when the circumstances attending the killing show an abandoned and malignant heart." *Id.* Here, given that Manning was charged only as an aider and abettor, the government argued principally that he acted with implied malice.

California has another requirement: an aider and abettor must aid the commission of the life endangering act. *People v. Reyes,* 14 Cal.5th 981, 988 (Cal. 2023). Moreover, the defendant's own act – as opposed to his intent – must have been a substantial factor contributing to the death. *People v. Jennings,* 50 Cal.4th 616, 643 (Cal. 2020). The causation requirement has particular force with regard to aiding and abetting liability, because in California, merely creating a dangerous situation does not satisfy the causation requirement. *Reyes,* 14 Cal.5th at 989. "Acts that merely create a dangerous situation where death is possible depending on how circumstances unfold do not, without more satisfy this causation requirement." *Reyes,* 14 Cal.5th at 989. The defendant's own act, as distinct from a codefendant's acts, must itself satisfy all of the elements for implied malice. *Id.* at 989-90. Petitioner's actions here satisfied neither the causation requirement, nor met the standard for express or implied malice.

1. There was insufficient evidence that petitioner's act was sufficient to support a conclusion that it was a substantial factor contributing to death.

Here, petitioner's own acts may have created a dangerous situation, but under California law, his actions were not the proximate cause of the victim's death. A review of California law demonstrates the evidence is insufficient.

Construed in favor of the verdict, the evidence showed that at most, petitioner provided a firearm to the actual shooter (who did not plan to shoot anyone), traveled back to the scene of the conflict, and may have said some angry words. These facts are legally insufficient to support the murder conviction under California law.

The California Supreme Court has held that providing support to fellow gang members who then commit a murder is insufficient to support a murder conviction on an aiding and abetting theory. *People v. Reyes,* 14 Cal.5th at 984-85. In *Reyes,* the California Supreme Court ruled that intentionally traveling with fellow gang members into rival gang territory, knowing that a compatriot was armed, was not the proximate cause of a coparticipant's shooting of another. *Id.* at 989-90. The *Reyes* defendant had been convicted of murder for a killing committed by a fellow gang member; the evidence showed that a group of gang members, including the defendant, chased a car and one person shot and killed the driver. *Id.* at 984-85. As here, the prosecution argued that the defendant aided and abetted the murder by backing up fellow gang members. *Id.* at 985-86. Similarly, the *Reyes* prosecutor argued that the jury could infer from the surrounding facts that the defendant agreed to serve as backup, much like the prosecutor here. The *Reyes* prosecutor pointed to defendant's knowledge that his compatriot was armed with a firearm. And, later that day, the defendant used the same gun in a violent assault. *Id.* at 986.

The California Supreme Court ruled that this evidence was insufficient to show the defendant committed an act that actually helped the shooter commit the homicide. 14 Cal. 5th at 989. *Reyes'* holding establishes that the act of providing a gun to Harrison and traveling back toward an armed assailant did not create the requisite high degree of probability that death would result that is necessary to sustain a murder conviction under California law. *Id.*; *cf. People v. Powell,* 63 Cal. App. 5th 689, 709, 713 (Cal. App. 2021)(defendant guilty of aiding and abetting implied malice murder where he participated in violent home invasion and fatal beating of victim).

Importantly, the record lacks evidence that Manning urged anyone to fire such that words could constitute a proximate cause. Manning's actions of providing a firearm to Harrison, who was licensed to own a firearm, lacked a criminal history, and was not an engaged gang member are legally insufficient to provide a factual basis for an act that proximately caused Simmons' death. Such an act must at least be a knowing act that creates a danger to human life. *Reyes,* 14 Cal.5th at 988. Manning's actions are insufficient under California law.

The insufficiency of evidence under California law is further established by the shooter's own record: Harrison had no criminal history at all. Thus, his background did not permit an inference that petitioner, in providing a firearm to Harrison and returning to the scene of the verbal altercation, would have expected Harrison to shoot. Accordingly, there is insufficient evidence suggesting that Manning intentionally aided Harrison in performing an act that was inherently dangerous to human life. The lack of proximate causation, as interpreted by California law, dooms the murder conviction.

2. There is insufficient evidence to prove that Manning acted with express or implied malice.

California defines express malice as possessing the intent to kill – not merely to harm or threaten. *People v. Vargas,* 84 Cal.App.5th 943, 945 (Cal. App. 2022). An aider and abettor may only be convicted of murder if there is evidence he shared the perpetrator's specific intent to kill. *People v. Beeman,* 35 Cal.3d 547, 560 (Cal. 1984); *People v. McCoy,* 25 Cal.4th 1111, 1118 (Cal. 2001) (For direct aiding and abetting liability, specific intent crimes require an aider and abettor to '"share the specific intent of the perpetrator . . . .'".)

When a defendant is not the actual killer, the prosecution must provide evidence that supports an inference of intent to kill. Such evidence includes, for example, that the defendant participated in planning a murder, ordered or directed the murder, or explicitly advised and encouraged another to commit the murder. *People v. Lopez,* 56 Cal. 4th 1028, 1070 (Cal. 2013). The level of proof for an aider and abettor is necessarily higher, because unlike an actual killer, intent cannot be inferred from an aider and abettor's homicidal actions.

Manning never expressed, through words or actions, the intent to kill. Although he provided Harrison with a firearm and returned to the Center, where an armed Simmons was present, he did nothing more. He was angry and said some angry words. But neither Harrison nor anyone else testified that Manning urged anyone to start shooting. These actions do not constitute express malice, because they do not support a conclusion that Manning possessed the intent to kill – nor even that Harrison possessed the intent to kill such that Manning could have shared it.

To be convicted of California murder on an implied malice theory, the prosecution must prove the defendant (a) intentionally committed an act; (b) the natural and probable consequences of the act were dangerous to human life; (c) at the time he acted, he knew his act was dangerous to human life; and (d) he deliberately acted with conscious disregard for human life. *Reyes, supra,* 14 Cal.5th at 988.

The panel concluded there was sufficient evidence of implied malice, arguing that the jury could have concluded that in intentionally arming himself and Harrison, Manning acted with implied malice. Appx. B at 4. This conclusion is contradicted by California law – which must be treated as controlling given that the charge was based on a California state murder. Again, "backing up" fellow gang member – even an armed one -- does not constitute implied malice. *Reyes,* 14 Cal.5th at 989-90. Even chasing after a rival gang member is insufficient to show the defendant committed an act that actually helped the shooter commit the homicide. *Id.* at 989.

Under California law, Manning's act of providing a gun to Harrison and traveling back toward an armed assailant did not create the requisite high degree of probability that death would result required to sustain a jury finding of implied malice. *Id.* Implied malice demands evidence supporting an inference that Manning knew it was likely Harrison would fire. But Harrison himself had no history of violence or criminal activity. No evidence provided an inference that Manning had reason to believe Harrison would shoot at Simmons. Accordingly, there is insufficient evidence suggesting that Manning intentionally aided Harrison in performing an act that was inherently dangerous to human life. Manning may have created a dangerous situation, but that is not the equivalent of causing the shooting. California law requires more and accordingly, more must be required to sustain a conviction for VICAR murder.

CONCLUSION

Based on the foregoing reasons, this Court should issue the writ of certiorari, consider the questions presented on their merits, and reverse petitioner's VICAR murder conviction.

Dated: July 2, 2026

Respectfully submitted,

/s/ Karen L. Landau
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