

No. 26-_____

IN THE
Supreme Court of the United States

WILBER VIGIL-BENITEZ,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

**On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Eleventh Circuit**

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether 18 U.S.C. § 1959(a)(1) requires proof that the defendant personally acted for the purpose of gaining entrance to, or maintaining or increasing his own position in, a racketeering enterprise, where the government concedes he already held full membership.

2. Whether a jury instruction permitting conviction where the killing was merely 'an integral aspect of membership in the enterprise', language used in pattern instructions across multiple circuits, impermissibly relieves the government of proving that statutory purpose element.

PARTIES TO THE PROCEEDING

The parties to the proceedings in the Eleventh Circuit Court of Appeals include the United States of America and Petitioner Wilber Vigil-Benitez. There are no parties to the proceedings other than those named in the petition.

RELATED PROCEEDINGS

The following proceedings are directly related to this Petition: *United States v. Wilber Vigil-Benitez*, No. 25-11475, *aff'd sentence*, *United States v. Vigil-Benitez*, 2026 WL 1146624 (11th Cir. April 28, 2026).

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PETITION FOR WRIT OF CERTIORARI

Petitioner, Wilber Vigil-Benitez, respectfully petitions this Court for a writ of certiorari to review the *Opinion* rendered by the Eleventh Circuit Court of Appeals on April 28, 2026.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Eleventh Circuit (App. 1a–9a) is unpublished and is available at 2026 WL 1146624. The judgment and orders of the United States District Court for the Southern District of Florida (No. 22-Cr-60078-RAR) are unreported.

STATEMENT OF JURISDICTION

The Eleventh Circuit entered judgment on April 28, 2026, issuing a per curiam opinion affirming petitioners' conviction. App.1. The mandate issued on May 28, 2026. This Court has jurisdiction to review the Eleventh Circuit's judgment under 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The portion of the statutory provision at issue, Title 18, United States Code, Sections 1959 and 2, Murder in Aid of Racketeering, reads in relevant part:

(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 so to do, shall be punished...

The Fifth Amendment to the United States Constitution provides in relevant part: No person shall be . . . deprived of life, liberty, or property, without due process of law. . .

The Sixth Amendment to the United States Constitution provides in relevant part: In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury . . .

STATEMENT OF THE CASE

Petitioner Wilber Vigil-Benitez respectfully petitions this Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit. The Eleventh Circuit affirmed the conviction in a written nine-page opinion. See, App. 1.

On March 12, 2024, a federal grand jury returned a four count Second Superseding Indictment in this case. All of the defendants were charged in at least one of the four counts with Murder in Aid of Racketeering, in violation of Title 18, United States Code, Sections 1959 and 2 (Doc. 169). Petitioner Wilber Vigil-Benitez was charged in the Second Superseding Indictment with one count of murder in aid of racketeering in Count three. (Doc. 169, Count 3). The Second Superseding Indictment contains underlying general allegations that MS-13 was a racketeering enterprise, as defined by Title 18, United States Code, Sections 1959(b)(1) and 1961(1), and that Vigil-Benitez was a member of MS-13 and an associate of the Guanacos Lil Cycos clique of MS-13. (Doc. 169).

On January 16, 2025, January 21, January 22, January 23, January 24, January 27, January 28, and January 29 (Doc. 287, 288, 290, 292, 293, 294, 295, 296) Petitioner was tried, and found guilty as charged on Count 3 of the indictment (Doc. 299).

From the outset, Petitioner's counsel took the position that Vigil-Benitez was merely present. In opening statement, Petitioner's counsel argued that Wilbur Vigil-Benitez was merely present:

And that's how it happened. Wilber just jumped in the car. He didn't know where they were going, had no idea what they were gonna do or what they had planned. He wasn't involved in it. He was just merely present.

(Doc. 301, Page 18:16-19).

Vigil-Benitez's counsel told the jury that the court would instruct them on mere presence. (Doc. 301, Page 19:15-20).

During the Rule 29 hearing, the government conceded that Vigil-Benitez "was already a full member and/or homeboy at the time," but argued that he was nonetheless liable because "he is aiding and abetting the others for trying to gain entrance too." (Doc. 306, Page 114:2-5). The government likewise recognized that the directive to kill the victim was aimed at associates who needed membership, not Vigil-Benitez. (Doc. 306, Page 164):

MR. DOBBINS: But I believe Ardilla also testified that he thought that was directed to the associates because –

THE COURT: They weren't made.

MR. DOBBINS: -- they were the ones that were expected to get in there to start earning their stripes, if you will.

THE COURT: Right. Right.

MR. DOBBINS: They're not directed to the defendant or anybody other than the people that were participating. Because according to Ardilla, the defendant stabs first. So there's no reason to say to the defendant, you better get in there. It's to the other people. Right.

The defense requested a “mere presence” instruction, but the court declined, finding that the instruction was unnecessary because there was evidence the defendant participated in the killing. (Doc. 306, Pages 124-125). Defense counsel objected to the final jury charge on the ground that, as written, it implied “mere presence” was sufficient to convict. (Doc. 306, Pages 125:21-126:6).

The court initially instructed the jury that co-defendant Wilson Tirado-Silva's (“Sombra”) testimony could be used for the limited purpose of determining whether MS-13 is a racketeering enterprise and whether Vigil-Benitez was involved in the enterprise. (Doc. 302, Pages 228:22-229:4). The court later instructed the jury that part of Sombra's testimony could be used as direct evidence of Vigil-Benitez's involvement in the murder. (Doc. 303, Page 6:15-22).

Petitioner Vigil-Benitez was found guilty on Count 3 of the indictment (Doc. 299). On April 23, 2025, Vigil-Benitez was sentenced to life imprisonment, 5 years supervised release, \$7,000 in restitution and \$100 special assessment (Doc. 351, 352). Vigil-Benitez timely filed a Notice of Appeal on April 28, 2025 (Doc. 363) and the Eleventh Circuit affirmed his conviction in a nine-page unpublished opinion: *United States v. Vigil-Benitez*, 25-11475 (11th Cir. April 28, 2026), App. 1.

REASONS FOR GRANTING THE PETITION

Certiorari is warranted because the 'integral aspect of membership' formulation, now embedded in pattern jury instructions used across the federal courts, allows juries to convict under § 1959(a)(1) without finding that the defendant himself acted for the purpose of gaining, maintaining, or increasing his own position, contrary to the statute's text. This recurring instructional practice, and its consequences for defendants who are already full members of an enterprise, warrants this Court's review. This case squarely presents the question because the government's own evidence establishes Petitioner's pre-existing full membership in his clique, eliminating any dispute that the jury convicted him without the statutorily required personal purpose.

The 'integral aspect of membership' formulation did not originate below, and it did not originate as a statement of the offense's elements. It appears in the Senate Report accompanying § 1959, which described the purpose clause as reaching violent crimes committed 'as an integral aspect of membership' in a racketeering enterprise. S. Rep. No. 225, 98th Cong., 1st Sess. 304 (1983), reprinted in 1984 U.S.C.C.A.N. 3182, 3483. The Second Circuit quoted that language in *United States v. Concepcion*, 983 F.2d 369, 381 (2d Cir. 1992), not as an element, but to explain why the statute does not require that self-promotion be the defendant's sole or principal motive. That explanatory gloss has since been transposed into pattern jury instructions as an independent basis for conviction, permitting a jury to convict on a finding that the killing was 'an integral aspect of membership' without ever finding the personal

purpose the statute requires. The question whether a legislative-history phrase may substitute for the statutory element is accordingly not confined to this case or this defendant.

THE DISTRICT COURT'S INSTRUCTION ALLOWED THE JURY
TO CONVICT WITHOUT FINDING THAT VIGIL-BENITEZ
PERSONALLY ACTED TO GAIN, MAINTAIN, OR INCREASE HIS
OWN POSITION, AS § 1959(a)(1) REQUIRES

Section 1959 criminalizes murder committed “for the purpose of gaining entrance to or maintaining or increasing position in an enterprise engaged in racketeering activity.” 18 U.S.C. § 1959(a)(1). A person commits a violent crime in aid of racketeering “when he commits,” or conspires to commit, “a particular kind of violent crime such as ‘murder’ ‘for the purpose of gaining entrance to or maintaining or increasing position in an enterprise engaged in racketeering activity.’” *Alvarado Linares v. United States*, 44 F.4th 1334, 1339 (11th Cir. 2022) (quoting 18 U.S.C. § 1959(a)). The statute ties motive to the defendant’s own relationship to the enterprise. It does not punish violence because it benefits the enterprise, enforces its rules, or assists other members’ advancement.

Each statutory alternative concerns the defendant personally. “Gaining entrance” refers to the defendant’s own entry. “Maintaining position” refers to the defendant’s own standing. “Increasing position” refers to the defendant’s own advancement. The phrase “for the purpose of” imposes a specific intent requirement. The statute does not allow conviction where only others, and not the defendant, gain status. See *United States v. McClaren*, 13 F.4th 386, 403 (5th Cir. 2021) (government must prove, among other elements, that “the defendant committed a violent crime”

“for the purpose of promoting his position in [the] racketeering enterprise” (citation omitted)). Cf. *United States v. Bruno*, 383 F.3d 65, 84–85 (2d Cir. 2004) (reversing § 1959(a)(1) conviction where defendant's only claimed status motive was a close relationship with another member, and where evidence showed his role in the crime actually diminished his standing in the enterprise)."

The district court nevertheless instructed the jury that it could convict if enhancing Vigil Benitez's status was a substantial purpose or if he committed the crime “as an integral aspect of membership in the enterprise.” (Doc. 297, Page 19). By placing that phrase in the disjunctive, the instruction treated an explanatory inference as though it were an element, thereby altering the structure of the offense. Under the statute and *Alvarado Linares*, the jury had to find a personal purpose to gain entrance to, or maintain or increase position in, the enterprise. The instruction instead allowed the jury to convict without that finding.

Moreover, in every affirmed case, the defendant had something to gain; here, he had only company. The government's own trial theory made the point. At the Rule 29 hearing, the prosecutor conceded Vigil Benitez “was already a full member and or homeboy at the time,” but argued liability because “he is aiding and abetting the others for trying to gain entrance too.” (Doc. 306, Page 114:2 5). The prosecutor acknowledged that the directive to kill targeted associates who “were the ones that were expected to get in there to start earning their stripes,” and that they were “not directed to the defendant.” (Doc. 306, Page 164). That is not proof that Vigil Benitez acted for the purpose of gaining entrance to, or maintaining or increasing, his own

position and the Court's interpretation of the statute expands the statute impermissibly.

One may assist a crime, but one may not outsource one's motives. The "aiding and abetting" qualifier applies to the actus reus, committing the murder, not to the mens rea. It cannot satisfy § 1959(a)(1) to show that Vigil Benitez helped others gain or maintain position. The statute requires that he killed, or aided a killing, for the purpose of his own status.

The record confirms the absence of personal purpose and confirms that others, not Vigil Benitez, stood to gain. Sombra testified Vigil Benitez "was not part of GLCS, but rather a clique called Delicias." (Doc. 302, Page 141:25 142:4). Therefore, Petitioner could not have satisfied the statute's requirement that: he committed his crimes because he knew it was expected of him by reason of his membership (in an enterprise he did not belong to), or to enhance membership (in an enterprise he did not belong to). Sombra testified that GLCS members who were not already "homeboys" received "credit" for killing the victim. (Doc. 302, Page 165:17 22). Bigfoot explained that "[a]ll of us that were not homeboys went up." (Doc. 304, Page 97:19 21). Ardilla testified that he was made a homeboy because of the killing. (Doc. 305, Page 144:8 145:3). Those facts align with the government's concession that the directive targeted associates who needed to earn status, not a homeboy who already had it, and was a member of a different clique.

The government's own evidence also undercuts the claim that murder functions as a necessary "integral aspect" of membership in a way that could

substitute for the statutory purpose element. Government witnesses acknowledged one could become a homeboy without killing. (Doc. 302, Page 187:11 14; Doc. 303, Page 60:21 61:14). Wilmar Viera Gonzalez testified that he personally did not kill a rival gang member when he advanced to homeboy status because he was a “good member.” (Doc. 303, Page 16:18 24). He also testified that he rose to high rank after one murder and one extortion. (Doc. 303, Page 61:22 64:1, 17 19). Those facts matter because they show that even within the gang’s own hierarchy, the link between status and a particular killing is contingent, not inherent. The Eleventh Circuit incorrectly allowed the conviction even though Petitioner had requested a jury instruction of mere presence based on the statutory requirements. (Doc. 289, Page 2).

The evidence established that Vigil Benitez already held full membership. Government witnesses admitted he was already a homeboy who had been given an MS tattoo, proving full membership. (Doc. 304, Page 72:23 74:1). And a government agent in an audio exhibit noted: “[h]e was already in homeboy status; the others that participated were not... And in his mind, he doesn’t have to [participate in the killing] because he’s already reached that status a homeboy”. (Exh. 31, Page 116). That is not defense gloss. That is the government’s own evidence describing the absence of a personal status motive.

This instructional error relieved the government of proving an essential statutory element and required reversal. See *United States v. Bush*, 110 F.4th 1246, 1251 (11th Cir. 2024). The jury charge allowed conviction even if only others, and not Vigil Benitez, gained status. Under a correct charge, the jury had to determine

whether Vigil Benitez personally acted for the purpose of his own position. The given charge allowed it to bypass that question.

CONCLUSION

For the foregoing reasons, this Court should grant the Petition for a Writ of Certiorari.

Respectfully submitted,

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