No. 26-6069 ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED
MAY - 1 2026
OFFICE OF THE CLERK

MICKAEL N. OLIVER,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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06/23/2026

QUESTIONS PRESENTED

Question 1:

Whether robbery of United States property under 18 U.S.C. § 2114(a) is a "crime of violence" under 18 U.S.C. § 924(c)(3)(A)?

Question 2:

Whether a district court may dispose of a 28 U.S.C. § 2255 motion on the pleadings when the movant's allegations are unrebutted and not contradicted by the record?

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LIST OF PARTIES

The parties to this case are listed in the caption; Mickael N. Oliver and the United States of America.

LIST OF PARTIES

All parties appear in the caption on the cover page of this Petition.

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ON PETITION FOR WRIT OF CERTIORARI
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PETITION FOR A WRIT OF CERTIORARI

Petition Mickael N. Oliver respectfully seeks a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit.

OPINION BELOW

The opinion below is unpublished and is reprinted in the Appendix to this Petition.

JURISDICTION

The Eighth Circuit issued its decision on February 6 2026.* Hence, this Petition is timely. This Court has jurisdiction to review the Eighth Circuit's denial of a Certificate of Appealability under 28 U.S.C. § 1254.

RELEVANT STATUTORY PROVISIONS

This Petition involves 18 U.S.C. § 2114(a), which is reprinted in full in the Appendix to this Petition.

STATEMENT OF THE CASE

A. The Controlled Buys

As a young man, Petitioner was shot in the head in an apparent attempt on his life. PSR ¶ 94. He was hospitalized, endured physical rehabilitation, and was discharged to recuperate at his mother's home. *Id.* While Petitioner was recuperating, the Government paid an informant—himself a convicted felon—to lure Petitioner, who was poor, into selling firearms. PSR ¶¶ 1-4. The Government's purpose was to ensnare Petitioner in illegal conduct so that it could leverage his cooperation in an ongoing investigation. PSR ¶ 4. The informant succeeded. Over the course of several months and numerous transactions, Petitioner sold firearms to the paid informant. PSR ¶¶ 5-6, 8, 27.

* This petition seeks review of the judgment dated December 1, 2025 by the Eighth Circuit in No. 25-3061, for which a timely petition for rehearing was denied on February 6, 2026.

B. The October 19, 2017 Transaction

On October 19, 2017, Petitioner and the paid informant met at Petitioner's mother's home for what was their tenth firearms transaction. PSR ¶ 39. During the meeting, the informant began inspecting a loaded firearm. PSR ¶ 40. He decided to purchase it, but began fumbling with the loaded weapon as he counted out the purchase money. *Id.* The informant's handling of the loaded firearm caused Petitioner—still recovering from a gunshot wound to the head—to, in Petitioner's own words to investigators afterword, "spazz out." *Id.* Petitioner picked up a rifle, pointed it at the informant, and told him to "get the fuck out." *Id.*

Petitioner did not tell the informant to leave the money behind. PSR ¶ 41. The informant nonetheless left the money on the counter and ran from the house, screaming—inaccurately—that he had been robbed. *Id.* Government agents surveilling the transaction swarmed the area and arrested Petitioner. *Id.* In his post-arrest interview, Petitioner explained that he had "got paranoid at the end" and "didn't want to fuck with" the informant that day—statements consistent with a traumatic stress reaction to a loaded firearm being waved in his face by an acquaintance who was, unbeknownst to Petitioner, a Government informant. Petitioner did not intend to rob the informant; he was, as he told investigators, "spazzing out."

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C. Indictment, Trial, and Direct Appeal

On November 16, 2017, a grand jury indicted Petitioner on multiple firearms counts under 18 U.S.C. §§ 922(g)(3), 922(j), 923(a), 924(a)(2), and 924(a)(1)(D); aiding and abetting under §§ 2 and 922(d)(1); robbery of United States property with a deadly weapon under 18 U.S.C. § 2114(a); and brandishing a firearm during a crime of violence under 18 U.S.C. § 924(c)(1)(A)(ii). Petitioner proceeded to a jury trial.

The jury never heard the key facts surrounding the alleged robbery. It did not hear that Petitioner had recently been shot in the head; that he had been diagnosed with a series of mental-health conditions as a result; that the paid informant was fumbling a loaded firearm in Petitioner's face; that the informant was Petitioner's only customer; or that Petitioner never told the informant to leave the money behind. To emphasize the point: the jury never heard that the paid informant was fumbling a loaded firearm directly in Petitioner's face.

At trial, the informant himself testified—implausibly—that while watching surveillance video of the transaction, he could not remember what Petitioner had told him to put down. Crim. Doc. 244 at 51 (Q: what is he telling you to put down? A: I don't remember. I don't know sir."). Trial counsel never conducted a pretrial investigation and never cross-examined the informant on the facts of the transaction; the district court later

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characterized the cross-examination as "off-based" and limited to collateral matters such as whether the informant paid taxes on his Government compensation. Crim Doc. 244 at 76.

Petitioner was convicted on all counts. After trial, U.S. Probation prepared the Presentence Investigation Report ("PSR"). The PSR revealed the true facts around the alleged robbery. Specifically, the PSR revealed that the paid informant had been waiving a loaded firearm in Petitioner's face immediately before the alleged robbery. PSR ¶ 40. This revelation is conclusive evidence of what an effective pretrial investigation or cross-examination of the paid informant would have revealed.

Petitioner was sentenced to 204 months' imprisonment. On direct appeal, the Eighth Circuit affirmed, describing the Government's evidence as "clear, corroborated by video recordings, and essentially uncontroverted." *United States v. Oliver*, 90 F.4th 1222,1225 (8th Cir. 2024).

D. Section 2255 Proceedings

Petitioner timely filed a motion under 28 U.S.C. § 2255 raising two grounds. In Ground One, Petitioner alleged that trial counsel rendered constitutionally ineffective assistance by (a) failing to investigate the facts of the alleged robbery, (b) failing to introduce evidence concerning Petitioner's recent gunshot injury and resulting mental-health diagnoses, (c) failing to cross-examine the informant about his fumbling of the loaded firearm, and

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(d) failing to present evidence showing that Petitioner's conduct was inconsistent with a predatory robbery. In Ground Two, Petitioner alleged that counsel was ineffective for failing to challenge 18 U.S.C. § 2114(a) as a predicate "crime of violence" under 18 U.S.C. § 924(c)(3)(A).

The district court dismissed both grounds without an evidentiary hearing. On Ground One, the district court held that Petitioner had not identified a witness who could provide for the admission of the relevant medical records, had not demonstrated that further cross-examination "would have been fruitful," and had failed to rebut a presumption that counsel's inaction constituted a reasonable trial strategy—even though trial counsel submitted no affidavit addressing his pretrial investigation or strategy.

On Ground Two, the district court held, relying on out-of-circuit authority, that Petitioner was convicted of the aggravated version of § 2114(a) and that the aggravated version is a crime of violence. The district court denied a certificate of appealability. On August 8, 2025, Petitioner filed a timely motion to alter, amend, or vacate the judgement under Federal Rules of Civil Procedure 59(e) and 60(b); the district court denied that motion on August 21, 2025. Petitioner timely appealed and applied to the Eighth Circuit for a certificate of appealability, which the Eighth Circuit denied.

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REASONS FOR GRANTING THE PETITION

This case presents two recurring questions of federal law whose resolution will shape the administration of justice in every federal judicial district. The first—whether robbery of United States property under 18 U.S.C. § 2114(a) is a "crime of violence" under 18 U.S.C. § 924(c)(3)(A)—is the latest in a line of categorical-approach questions that this Court has repeatedly found worthy of review. See, e.g., *Delligatti v. United States*, 145 S. Ct. 797 (2025); *United States v. Taylor*, 596 U.S. 845 (2022); *Borden v. United States*, 593 U.S. 420 (2021). The lower courts are divided; the Eighth Circuit has not yet spoken; and the question determines whether thousands of § 2114(a) defendants face consecutive mandatory minimums under § 924(c). The second question—whether a district court may dispose of a § 2255 motion on the pleadings when the movant's allegations are unrebutted and not contradicted by the record— squarely implicates this Court's decision in *Fontaine v. United States*, 411 U.S. 213 (1973), and recurs in § 2255 litigation throughout the federal system. Both questions deserve this Court's plenary review.

A. The Circuits Are Divided On Whether § 2114(A) Is A Crime Of Violence Under § 924(C)(3)(A), And The Issue Is Squarely Presented Here

18 U.S.C. § 924(c)(3)(A) defines a "crime of violence" as a felony that "has as an element the use, attempted use, or threatened use of physical force

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against the person or property of another." This Court has long held that "physical force" in this context means "violent force"—that is, "force capable of causing physical pain or injury to another person." *Johnson v. United States*, 559 U.S. 133, 140 (2010). To determine whether an offense qualifies, courts apply the categorical approach, asking only whether the offense "always involves" such force. *Delligatti*, 145 S. Ct. at 803. "If the offense can be committed without the use, attempted use, or threatened use of force, it is not a crime of violence under the elements clause." *Id.*

Applied faithfully, that test excludes 18 U.S.C. § 2114(a). 18 U.S.C. § 2114(a) is divisible into a basic offense, punishable by up to ten years, and an aggravated offense, punishable by up to twenty-five years. The basic offense is plainly not a crime of violence: it is satisfied by an attempt to rob United States property, and this Court held in *Taylor* that attempted robbery is not a crime of violence because the Government need prove only an intent to commit it—steps that may involve no force whatsoever. 596 U.S. at 851 (observing that attempted robbery could be completed by, for example, purchasing a ski mask or plotting an escape route). The aggravated version fares no better. It is violated by any person who commits a "subsequent offense" under § 2114(a)—so two attempted § 2114(a) robberies, neither of which is a crime of violence, aggregate into an aggravated violation. Even if the aggravated subsection is further divided into wounding, putting-life-in-

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jeopardy, and subsequent-offense variants, the putting-life-in-jeopardy variant of which Petitioner was convicted can be satisfied without any use, attempted use, or threatened use of force capable of causing physical pain or injury.

Multiple circuits have affirmed convictions under 18 U.S.C. § 2114(a)'s predecessor and its present form where the defendant neither used nor threatened violent force. Nearly a century ago, the Eighth Circuit affirmed a conviction under 18 U.S.C. § 2114(a)'s predecessor statute against a robber who carried only an unloaded gun. *Madigan v. United States*, 23 F.2d 180 (8th Cir. 1927). An unloaded firearm is, by definition, incapable of exerting force "capable of causing physical pain or injury to another person." *Johnson*, 559 U.S. at 140. The Sixth Circuit has reached the same result, holding that the Government need not prove the gun was loaded to sustain an aggravated § 2114(a) conviction. *Kirk v. United States*, 457 F.2d 400 (6th Cir. 1972). The Fifth and Seventh Circuits have gone further still, holding that a defendant may be convicted of aggravated § 2114(a) even where the weapon remained concealed in a pocket throughout the encounter and was never displayed or mentioned. *United States v. Ruiz*, 986 F.2d 905 (5th Cir. 1993) (defendant "used" a weapon to put life in jeopardy by keeping it is his pocket during an attempted robbery of a military store); *United States v. Rodriguez*, 925 F.2d 1049 (7th Cir. 1991) (aggravated § 2114(a) conviction affirmed where co-

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conspirator kept weapon in his pocket throughout confrontation). A firearm never seen by the victim cannot, as a categorical matter, threaten force capable of causing physical pain or injury.

Despite these authorities, several circuits have concluded that aggravated § 2114(a) is a crime of violence—often by relying on decisions that pre-date the categorical approach's consolidation or that improperly rest on case-specific facts. See *Pannell v. United States*, 115 F.4th 154 (2d Cir. 2024); *United States v. Bryant*, 949 F.3d 168 (4th Cir. 2020); *Knight v. United States*, 936 F.3d 495 (6th Cir. 2019); *United States v. Enoch*, 865 F.3d 575 (7th Cir. 2017); *United States v. Buck*, 23 F.4th 919 (9th Cir. 2021). The Seventh Circuit's decision in *Enoch* is illustrative: when confronted with the obvious tension between its holding that aggravated § 2114(a) is categorically a crime of violence and its earlier holding in *Rodriguez* did not, the Seventh Circuit noted that the case before it involved brandishing. 865 F.3d at 581-82. But that kind of fact-bound distinction is precisely what the categorical approach forbids. *Delligatti*, 145 S. Ct. at 803. A lower court cannot convert an offense that can be committed without violent force into a crime of violence by pointing to a defendant who happened to commit it violently.

At least one district court has acknowledged the confusion in this area and granted a certificate of appealability on the exact issue presented here. See *Williams v. United States*, No. C16-5559 (E.D. Wash. Mar. 29, 2017)

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(finding the issue debatable because "the Ninth Circuit has not previously considered the level of force required" under § 2114(a) in relation to *Johnson*). The First, Second, Fourth, Sixth, and Ninth Circuits have likewise heard § 2255 appeals on whether § 2114(a) is a crime of violence, meaning a certificate of appealability was granted in those cases. See *Fortez-Garcia v. United States*, 130 F.4th 18 (1st Cir. 2025); *Pannell*,115 F.4th 154; *Bryant*, 949 F.3d 168; *Knight*, 936 F.3d 495; *Buck*, 23 F.4th 919. The Eighth Circuit stands apart as one of the few courts of appeals to have resisted deciding the issue on the merits, declining to grant a certificate of appealability even in light of the categorical approach and this Court's recent precedents.

This disarray is intolerable. Whether § 2114(a) is a crime of violence determines whether a defendant faces a consecutive mandatory-minimum sentence under § 924(c)—often a five-,seven-,or ten-year enhancement stacked on top of the § 2114(a) sentence itself. Petitioner was sentenced to 204 months' imprisonment; a correct answer to this question would substantially reduce that sentence. Thousands of federal defendants charged under § 2114(a) face the same question every year, and a defendant's sentence should not turn on the circuit in which he is prosecuted. This Court's recent decisions in *Taylor* and *Delligatti* supply the analytical framework; only this Court can apply that framework to § 2114(a) in a manner that binds the lower courts.

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B. The Decision Below Conflicts With This Court's Decision In *Fontaine* And Deepens An Entrenched Circuit Conflict Over Evidentiary Hearings In § 2255 Cases

Section 2255(b) provides that a district court shall hold a prompt evidentiary hearing on a § 2255 motion "[u]nless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief." In *Fontaine v. United States*, 411 U.S. 213 (1973), this Court held that an evidentiary hearing is required whenever the petitioner's allegations are not affirmatively contradicted by the existing record and are not patently frivolous. See also *Aron v. United States*, 291 F.3d 708, 715 n.6 (11th Cir. 2002) ("if the [movant's] allegations are not affirmatively contradicted by the record and the claims are not patently frivolous, the district court is required to hold an evidentiary hearing.").

The district court here inverted that rule. Petitioner's § 2255 motion alleged that trial counsel failed to conduct any pretrial investigation, failed to investigate Petitioner's recent gunshot injury and resulting mental-health diagnoses, failed to interview the paid informant or otherwise develop the facts of the October 19 transaction, and failed to cross-examine the informant on his fumbling of the loaded firearms. Trial counsel did not submit a rebuttal affidavit. Nothing in the record affirmatively contradicted any of these allegations. Under § 2255(b) and *Fontaine*, an evidentiary hearing was required. Instead, the district court faulted Petitioner for failing to identify

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the specific witness who would have introduced the medical records and for failing to establish that further cross-examination "would have been fruitful"—burdens that can only be discharged at an evidentiary hearing, not at the pleading stage.

The court of appeals compounded the error by declining to grant a certificate of appealability. Under *Barefoot v. Estelle*, 463 U.S. 880 (1983), a certificate must issue whenever the issue is "debatable among jurists of reason," "could be resolved in a different manner" by another court, or is adequate to deserve encouragement to proceed further." *Id.* at 893 n.4, 894. Whether the district court correctly held Petitioner to the merits burden at the pleading stage is at least debatable under *Fontaine*, and the Eighth Circuit's denial of a certificate of appealability forecloses any merits review of this important issue. The circuits are divided over the threshold showing a § 2255 movant must make to obtain an evidentiary hearing and over whether trial counsel's silence can be treated as acquiescence in the movant's allegations. This Court's intervention is needed to restore the rule that this Court announced in *Fontaine* and to ensure that ineffective-assistance claims—which ordinarily cannot be raised on direct appeal—receive the evidentiary development Congress contemplated in § 2255(b).

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C. This Case Is An Ideal Vehicle For Resolving Both Questions

This case is an ideal vehicle. The § 2114(a) question is a pure question of law governed by the categorical approach, which this Court has repeatedly applied in recent Terms. There are no disputed facts: Petitioner was convicted of the putting-life-in-jeopardy variant of aggravated § 2114(a) and, in the same indictment, of brandishing a firearm in furtherance of that offense under § 924(c). a decision that § 2114(a) is not categorically a crime of violence would vacate the § 924(c) conviction and substantially reduce Petitioner's 204-month sentence. The question is outcome-determinative and cleanly presented.

The § 2255 hearing question is likewise cleanly presented. Trial counsel submitted no affidavit. The record contains no affirmative contradiction of Petitioner's allegations. The district court denied relief on the pleadings, and the court of appeals refused to permit any further review. The procedural posture is as narrow as could be imagined, and any decision by this Court would offer clear guidance on the interplay between § 2255(b), *Fontaine*, and the certificate-of-appealability framework of *Barefoot*.

Finally, the equities strongly favor review. Petitioner, a young man recovering from a gunshot wound to the head, was lured into firearms transactions by Government-paid felon. On the tenth such transaction, the informant fumbled a loaded firearm in Petitioner's face; Petitioner—in his

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own words to investigators—"spazzed out," pointed a rifle at the informant, and told him to leave. The informant ran from the house screaming, inaccurately, that he had been robbed. Petitioner never told the informant to leave the money; the informant left the money voluntarily. These facts at least raise a reasonable doubt whether Petitioner intended a robbery or experienced a post-traumatic stress reaction to a loaded firearm being waved in his face. The jury never heard any of it. Whether a man in Petitioner's position—recently shot, diagnosed with mental-health conditions, entrapped into sales by a Government informant—can be convicted of robbery and sentenced to seventeen years on this record without any investigation by counsel is a question that deserves this Court's attention.

CONCLUSION

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

Dated: May 1, 2026

Respectfully submitted,



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RULE 33 CERTIFCATION

The undersigned certifies that the above Petition for a Writ of Certiorari complies with the page count limitation of Supreme Court Rule 33. This document was prepared in 13-point Century Font. Its body contains less than 40 pages.



Mickael N. Oliver

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