No. 13-9026

In the Supreme Court of the United States

LARRY WHITFIELD, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES

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QUESTION PRESENTED

While fleeing from police after an aborted bank robbery, petitioner invaded an elderly woman's home, forced her to go with him to a room where they could not be seen by officers searching the neighborhood, and required her to remain there until she had a heart attack and stopped breathing. The question presented is whether a reasonable jury could have found that petitioner's conduct violated 18 U.S.C. 2113(e), which makes it a crime for a bank robber to "force[] any person to accompany him without the consent of such person" in "attempting to avoid apprehension for the commission" of a bank robbery or attempted bank robbery.

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OPINIONS BELOW

The opinion of the court of appeals (J.A. 18a-22a) is not published in the *Federal Reporter*, but is reprinted in 548 Fed. Appx. 70. An earlier opinion of the court of appeals (J.A. 24a-66a) is reported at 695 F.3d 288.

JURISDICTION

The judgment of the court of appeals (J.A. 23a) was entered on December 10, 2013. The petition for a writ of certiorari was filed on March 7, 2014, and was granted on June 23, 2014. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

The relevant statutory provisions are set forth in the appendix to this brief. App., *infra*, at 1a-5a.

STATEMENT

Following a jury trial in the United States District Court for the Western District of North Carolina, petitioner was convicted of attempted bank robbery, in violation of 18 U.S.C. 2113(a) (Count 1); conspiring to carry a firearm during an attempted bank robbery, in violation of 18 U.S.C. 924(*o*) (Count 2); carrying a firearm during and in relation to an attempted bank robbery, in violation of 18 U.S.C. 924(c) (Count 3); and forceful accompaniment resulting in death while attempting to avoid apprehension for an attempted bank robbery, in violation of 18 U.S.C. 2113(e) (Count 4). He was sentenced to life imprisonment on Count 4, concurrent terms of 240 months of imprisonment on Counts 1 and 2, and a consecutive term of 60 months of imprisonment on Count 3. The court of appeals affirmed in part, vacated in part, and remanded for resentencing. J.A. 24a-66a. This Court denied a petition for a writ of certiorari. 133 S. Ct. 1461 (2013).

On remand, the district court resentenced petitioner to 264 months of imprisonment on Count 4 and left the rest of his sentence unchanged. J.A. 70a. The court of appeals affirmed. *Id.* at 18a-22a.

1. Section 2113 of Title 18 prohibits a variety of offenses against banks and other financial institutions and prescribes a range of sentences that escalate with the gravity of the offense. Section 2113(b) provides that bank larceny is punishable by up to one year of imprisonment, or up to ten years if more than $1000 is stolen. See *Carter* v. *United States*, 530 U.S. 255, 262-263 (2000). Section 2113(c) imposes the same punishment on anyone who knowingly receives the proceeds of a violation of Section 2113(b). *Id.* at 263. Section 2113(a) establishes greater punishments for bank

robbery, providing a sentence of up to 20 years of imprisonment for anyone who "takes, or attempts to take," bank property "by force and violence, or by intimidation." 18 U.S.C. 2113(a). Section 2113(a) also provides the same penalty for extortion and for entering or attempting to enter a bank with intent to commit a felony inside.

Subsections (d) and (e) define "aggravated form[s] of [bank] robbery." *Jones* v. *United States*, 526 U.S. 227, 236 (1999). Section 2113(d) increases the maximum punishment to 25 years of imprisonment if a person, "in committing, or in attempting to commit, any offense defined in subsections (a) and (b)" uses a dangerous weapon to "assault[] any person" or to "put[] in jeopardy the life of any person." 18 U.S.C. 2113(d); see *Simpson* v. *United States*, 435 U.S. 10, 11 n.6 (1978). Section 2113(e) applies to anyone who, "in committing any offense defined in [Section 2113], or in avoiding or attempting to avoid apprehension for the commission of such offense, or in freeing himself or attempting to free himself from arrest or confinement for such offense, kills any person, or forces any person to accompany him without the consent of such person." 18 U.S.C. 2113(e). A violation of Section 2113(e) that does not result in death carries a minimum sentence of ten years of imprisonment and an implied maximum of life. See *United States* v. *Turner*, 389 F.3d 111, 120-121 (4th Cir. 2004), cert. denied, 544 U.S. 935 (2005). If death results from the crime, Section 2113(e) requires a sentence of "death or life imprisonment." 18 U.S.C. 2113(e).[1]

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[1] Under 18 U.S.C. 3559(c), certain recidivist offenders are subject to a mandatory sentence of life in prison for any bank robbery

2. On September 26, 2008, petitioner and Quanterrious McCoy attempted to rob the Fort Financial Credit Union in Gastonia, North Carolina. J.A. 25a. The two men drove to the credit union armed with a .357 magnum handgun and an assault rifle. *Ibid.* When they passed through the credit union's exterior doors, their weapons set off a metal detector and an automatic lock prevented them from opening the inner doors to the lobby. *Ibid.* Petitioner shook the inner doors in an attempt to gain entry, but the lock held and the robbery was thwarted. *Ibid.*

Petitioner and McCoy fled in their car, pursued by police who had been alerted to the attempted robbery by credit union employees. J.A. 26a. After a brief chase reaching speeds approaching 100 miles per hour, their getaway car collided with another vehicle, slid off the highway, and became stuck in a dirt median. *Ibid.*; C.A. App. 357-358, 378-379. Petitioner and McCoy fled on foot into a wooded neighborhood, splitting up and discarding their guns. J.A. 26a.

Police officers began to search the neighborhood. They soon found and arrested McCoy, but petitioner evaded capture for several hours by hiding in two houses. J.A. 26a-28a. He first kicked in the door to a home owned by Tina Walden. *Id.* at 26a. When Walden returned from work, petitioner met her at the door, brandished a knife, and instructed Walden to "shut up and come in." *Id.* at 26a. (citation omitted). Walden instead turned and ran, and petitioner fled as well, discarding the knife along the way. *Ibid.*

Petitioner next went to the home of Herman and Mary Parnell, entering through the unlocked front

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involving death, serious bodily injury, a dangerous weapon, or a threat of a dangerous weapon.

door. J.A. 26a. "As soon as [he] walked through [the door to] the house," he encountered Mrs. Parnell, who was 79 years old and home by herself. *Id.* at 128a; see *id.* at 26a, 112a, 154a. Mrs. Parnell "immediately became very upset and began to cry." *Id.* at 26a-27a. Stating that he "needed a place to hide," *id.* at 128a, 165a, petitioner "directed" Mrs. Parnell to go with him from the living room to a computer room down the hall, "where they could not be seen by the police" searching the neighborhood, *id.* at 65a. The door to the computer room was approximately nine feet down a hallway from the living room, a total of roughly 20 feet from the front door. *Id.* at 176a.

Mrs. Parnell told petitioner that he "need[ed] to leave," J.A. 159a, but petitioner refused to go and "required Mrs. Parnell to stay in the computer room," *id.* at 65a. Petitioner then attempted to arrange his escape from the area, texting and calling his friend Tamecia Sanders for a ride. *Id.* at 27a. Sanders spoke with petitioner several times as she drove to pick him up, and phone records show that petitioner was in the Parnell home for more than an hour. C.A. App. 770-771. Sanders also spoke directly to Mrs. Parnell, who provided her with driving directions. J.A. 27a. But Sanders was unable to get to the Parnell residence because police officers had blocked off the street. *Id.* at 102a-103a. Other officers continued to search the neighborhood, and at times petitioner could see them in the Parnells' backyard. *Id.* at 159a, 161a.

After she encountered the police roadblock, Sanders, who was still on the phone with petitioner, heard Mrs. Parnell say that she was having trouble breathing. J.A. 103a. Sanders advised petitioner to step out of the room to "give [Mrs. Parnell] a minute" and to

call an ambulance. *Id.* at 27a (brackets in original; citation omitted). Petitioner left Mrs. Parnell in the computer room, but did not call an ambulance. *Ibid.* Shortly thereafter, petitioner told Sanders that Mrs. Parnell had stopped breathing, that she "appeared to be unconscious," and that she "may have died," but he still did not attempt to summon help. *Ibid.*

Some time later, petitioner ended his call with Sanders and fled from the home when a neighbor knocked on the front door to check on Mrs. Parnell. J.A. 27a-28a. Petitioner was eventually discovered hiding in the nearby woods and arrested. *Id.* at 28a. In the meantime, Mr. Parnell returned home to find his wife motionless in a chair in the computer room. *Ibid.* He attempted CPR and called 911, but Mrs. Parnell was never revived, having suffered a fatal heart attack. *Ibid.*

2. A federal grand jury returned an indictment charging petitioner and McCoy with attempted bank robbery, in violation of 18 U.S.C. 2113(a) (Count 1); conspiring to carry a firearm during an attempted bank robbery, in violation of 18 U.S.C. 924(*o*) (Count 2); and carrying a firearm during and in relation to an attempted bank robbery, in violation of 18 U.S.C. 924(c) (Count 3). Petitioner was also charged with "forc[ing Mrs. Parnell] to accompany him without her consent, and kill[ing] [her]" while attempting to avoid apprehension for the attempted bank robbery, in violation of 18 U.S.C. 2113(e) (Count 4). J.A. 75a-79a.

a. The evidence at trial included statements petitioner made to police following his arrest. Petitioner admitted that he had entered the Parnell home, but he initially denied speaking with Mrs. Parnell and signed

a written statement falsely asserting that she had been "asleep" in the computer room the entire time he had been in the house. J.A. 126a-127a; see *id.* at 148a. In response to further questioning, petitioner admitted that he had encountered Mrs. Parnell "as soon as" he entered the home and that he had "asked her to go into the computer room" or "guided" her there. *Id.* at 65a, 128a, 155a-156a. But he still attempted to minimize his culpability, falsely maintaining that he had left Mrs. Parnell alone after directing her into the computer room, that she had been "sleeping" when he left the house, and that he could "hear her breathing" while she slept. *Id.* at 128a; see *id.* at 157a-163a.

b. After the close of the government's case, petitioner moved for a judgment of acquittal on Count 4. He argued, among other things, that the evidence was insufficient to prove that he had "forced Mrs. Parnell to accompany him anywhere." J.A. 40a (citation omitted). The district court denied the motion, and also denied petitioner's renewed motion after the close of all of the evidence. *Ibid.*

The district court instructed the jury that, to find petitioner guilty on Count 4, it had to find that he committed the attempted bank robbery alleged in Count 1 and that, in attempting to avoid apprehension for that offense, he either killed Mrs. Parnell or forced her to accompany him without her consent. J.A. 115a. The court then instructed the jury that if it found that petitioner "forced [Mrs.] Parnell to accompany him," it should decide "whether that forced accompaniment resulted in [her] death." *Ibid.* The court further instructed, without objection by petitioner, that "the term 'forced accompaniment' includes[] forcing a person to move from one part of a building to another

against her will" and that the government is not required to prove "that the defendant crossed a property line, moved a person a particular number of feet, held the person for a particular period of time, or placed the person at a certain level of danger." *Id.* at 116a; see C.A. App. 931-939.

c. The jury found petitioner guilty on all counts. J.A. 118a-120a. On Count 4, the jury found that petitioner did not kill Mrs. Parnell, but that he forced her to accompany him and that the forced accompaniment resulted in Mrs. Parnell's death. *Id.* at 119a. The district court sentenced petitioner to life in prison on Count 4, as Section 2113(e) requires for a violation resulting in death where capital charges are not brought. *Id.* at 43a & n.7. The court also sentenced petitioner to two terms of 240 months of imprisonment on Counts 1 and 2, to be served concurrently with each other and with the sentence on Count 4, and to a consecutive term of 60 months of imprisonment on Count 3. *Id.* at 43a.

3. The court of appeals affirmed in part, vacated in part, and remanded for resentencing on Count 4. J.A. 18a-66a.

a. As relevant here, the court of appeals rejected petitioner's contention that the evidence was insufficient to allow the jury to find that he violated Section 2113(e) by forcing Mrs. Parnell to accompany him. J.A. 64a-65a.[2] Petitioner principally argued that "the

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[2] Petitioner states (Br. 9-10) that he argued on appeal that the jury instructions "defined forced accompaniment too broadly," but he did not challenge the instruction on the degree of movement required by Section 2113(e). Instead, he argued only that other portions of the instructions constituted plain error because they allowed jury to convict based on a finding of mere confinement

prosecution failed to produce any evidence that he had threatened Mrs. Parnell" because he had merely "guided" or "asked" her to go into the computer room. *Id.* at 65a. The court was "entirely unpersuaded" by that argument, "declin[ing] to accept that an ostensible 'request' by a physically agile twenty-year-old male attempting to evade apprehension for an attempted bank robbery constitutes anything less than a real threat, particularly when aimed at a fragile seventy-nine-year-old woman during a terrifying invasion of her home." *Ibid.* The court explained that "there was ample evidence that [petitioner] wanted to position Mrs. Parnell in the computer room where they could not be seen by the police"; that petitioner had "admitted that he directed Mrs. Parnell to the computer room"; and that "when she attempted to defy his instructions by insisting that he leave the home, [petitioner] required Mrs. Parnell to stay in the computer room." *Ibid.*

The court of appeals acknowledged that petitioner "required Mrs. Parnell to accompany him for only a short distance within her own home, and for a brief period," but concluded that "no more is required to prove that a forced accompaniment occurred." J.A. 65a. The court relied on circuit precedent holding that "[b]y its plain terms, [Section 2113(e)] reaches a defendant who forces any person to accompany him" and contains "no requirement that the government prove that the defendant crossed a property line" or "traverse[d] a particular number of feet." *Turner*, 389 F.3d at 119-120 (citation omitted); see J.A. 65a.

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rather than forced accompaniment—an argument that the court of appeals rejected and that petitioner does not renew here. J.A. 53a-55a; see Pet. C.A. Br. 42-43.

b. Although it upheld petitioner's conviction for forcing Mrs. Parnell to accompany him, the court of appeals held that he was improperly convicted of an additional offense not charged in the indictment—a forced accompaniment resulting in death. J.A. 55a-64a. The court explained that, in its view, Section 2113(e) defines three crimes: a killing offense, a forced-accompaniment offense, and a forced accompaniment resulting in death offense. *Id.* at 28a-30a, 57a-58a. The court concluded that the indictment charged only the killing and forced-accompaniment offenses and that the district court constructively amended the indictment by instructing the jury on the death-results offense as well. *Id.* at 56a-62a. The court therefore vacated petitioner's conviction on the death-results offense and remanded with instructions "to amend the judgment to reflect [his] conviction on the forced accompaniment offense" and to "resentence him accordingly." *Id.* at 63a-64a.

3. Petitioner sought a writ of certiorari, and this Court denied the petition. 133 S. Ct. 1461 (2013).

4. Meanwhile, on remand, the district court determined that petitioner's advisory Guidelines range for the forced-accompaniment offense was governed by Sentencing Guidelines § 2B3.1(c)(1), which provides that if a robbery results in a death, the offense level is determined under Section 2A1.1, the first-degree murder Guideline. C.A. Supp. App. 67-70; see Sentencing Guidelines §§ 2A1.1, comment. (n.1), 2B3.1(c)(1) (2009). The court found that the first-degree murder Guideline applied because it was "clear" from the medical testimony and other evidence at trial "that Mrs. Parnell's death was caused by [petitioner's] conduct." C.A. Supp. App. 67-68. Sec-

tion 2A1.1 provides for an offense level of 43, but the court departed downward by five levels because petitioner did not intentionally or knowingly cause Mrs. Parnell's death. *Id.* at 86; see Sentencing Guidelines § 2A1.1, comment. (n.2(B)) (2009). The resulting advisory Guidelines range was 235 to 293 months of imprisonment. *Id.* Ch. 5, Pt. A.

The district court resentenced petitioner to 264 months of imprisonment, the middle of the applicable Guidelines range. J.A. 19a; see C.A. Supp. App. 86. The court emphasized the "egregious nature" of petitioner's conduct, noting that in addition to attempting an armed bank robbery, he "let Mrs. Parnell die" by "ignor[ing]" opportunities to summon help when the stress associated with his invasion of her home caused her to have a heart attack. J.A. 122a, 124a. The court left the remainder of petitioner's sentence unchanged, which yielded an aggregate sentence of 324 months of imprisonment: concurrent terms of 240, 240, and 264 months on Counts 1, 2, and 4, and a consecutive term of 60 months on Count 3. C.A. Supp. App. 91.

5. The court of appeals affirmed in an unpublished per curiam decision rejecting petitioner's challenges to his revised sentence. J.A. 18a-22a.

SUMMARY OF ARGUMENT

Section 2113(e) of Title 18 prescribes greater penalties for a bank robber who, "in avoiding or attempting to avoid apprehension for the commission of" an offense under Section 2113, "forces any person to accompany him without the consent of such person." Petitioner violated that statute when he invaded the Parnell home and directed Mrs. Parnell to go with him to a room where they could not be seen by the police. He does not dispute that he was "attempting to avoid

apprehension for the commission" of an attempted bank robbery that violated Section 2113(a). He also no longer challenges the jury's finding that he "force[d]" Mrs. Parnell to go with him without her consent. He contends only that no reasonable jury could have found that he forced Mrs. Parnell to "accompany" him because, in his view (Br. 12), a forced accompaniment occurs only when "a defendant forces a victim to travel with him for a *substantial* distance, such as when a robber takes a hostage out of the bank." The court of appeals correctly held that Section 2113(e) contains no such limitation.

A. The text of Section 2113(e) provides no support for petitioner's substantial-distance requirement. The word "accompany" typically connotes joint movement, but it does not require travel over any particular distance and readily encompasses movement from one room to another. In *Oregon* v. *Elstad*, 470 U.S. 298 (1985), for example, this Court wrote that police officers found a suspect in his bedroom and "asked him to get dressed and to accompany them into the living room." *Id.* at 300. Dictionary definitions and many other examples confirm that the Court's usage of the word was both proper and common.

B. The natural interpretation of Section 2113(e)'s text is consistent with the statutory context and structure. To be forced to accompany a bank robber is a terrifying experience for the victim and increases the risk of death or injury even if the forced accompaniment occurs entirely inside a bank or other building. Robberies involving such conduct are properly subject to Section 2113(e)'s increased penalties.

Petitioner asserts (Br. 3, 23) that the court of appeals' reading would make "virtually every bank rob-

bery" subject to Section 2113(e) because robbers "almost invariably exert some control over the movement of the bank's employees" and customers. That is incorrect both legally and factually. Because Section 2113(e) covers only forced *accompaniment*, it does not reach a robber who directs employees and customers to move around the bank without accompanying them. And because most bank robberies are accomplished through means that do not involve any forced movement at all—such as the presentation of a demand note to a teller—giving forced accompaniment its natural scope will not transform the typical bank robbery into an aggravated offense.

Petitioner also errs in contending (Br. 25-27) that Section 2113(e)'s text should be artificially narrowed because the forced-accompaniment offense previously carried a potential sentence of death. When the statute was enacted in 1934, Congress reasonably concluded that the heightened dangers to innocent victims and the need for deterrence could warrant the ultimate punishment for the most extreme forms of the offense. But in 1994, following changes in this Court's capital-punishment jurisprudence, Congress amended the statute to eliminate the possibility of a capital sentence for a violation of Section 2113(e) not resulting in death. The context and structure of the current statute provide no reason to depart from Section 2113(e)'s natural meaning.

C. The court of appeals' approach is also consistent with Section 2113(e)'s limited legislative history. Petitioner relies on committee reports referring to Section 2113(e)'s predecessor as prohibiting "kidnapping" in the course of a bank robbery. Congress did not, however, incorporate the elements of kidnapping

into the statute. In any event, when Section 2113(e)'s predecessor was enacted in 1934, kidnapping was not understood to require that the victim be moved any particular distance.

D. The court of appeals' interpretation of Section 2113(e) does not yield absurd results. Congress reasonably concluded that a robber who forces one or more victims to accompany him is more culpable than an offender who commits an unaggravated robbery violating Section 2113(a) or a simple armed robbery violating Section 2113(d). Moreover, the Sentencing Guidelines and the discretion of sentencing judges ensure that a robber who shoots a victim or engages in similar aggravating conduct without violating Section 2113(e) will receive a higher sentence than an unarmed robber who merely forces a victim to accompany him for a short distance. Petitioner has therefore identified no anomalous results—much less the sort of absurdity that would warrant a departure from the statutory text.

E. Petitioner, his amici, and the handful of lower-court judges that have endorsed departures from Section 2113(e)'s text have advocated a variety of conflicting approaches, all of which lack merit. Petitioner's proposal that a victim must be transported a "substantial" distance is vague and unworkable. A requirement that the victim travel a particular number of feet or move into or out of a building would be arbitrary. And an approach based on the law of kidnapping would be both legally unsound and a source of confusion. Some state courts have held that moving or confining a victim will not support a separate conviction for kidnapping if it is "incidental" to another offense, such as a robbery or rape. But those courts

have struggled to develop and apply a consistent approach. And the concerns motivating their efforts do not apply to Section 2113(e), which does not define a separate crime of kidnapping but rather specifies that a bank robbery involving forced accompaniment is an aggravated offense warranting increased penalties.

F. Finally, petitioner's reliance on the rule of lenity is misplaced. The rule applies only where a statute contains a grievous ambiguity. It has no role to play where, as here, the text, structure, and other indicators of a statute's meaning leave no doubt that it covers the conduct at issue.

ARGUMENT

PETITIONER WAS PROPERLY CONVICTED OF VIOLATING 18 U.S.C. 2113(e) BY FORCING ANOTHER PERSON TO ACCOMPANY HIM IN ATTEMPTING TO AVOID APPREHENSION FOR AN ATTEMPTED BANK ROBBERY

A. The Text Of Section 2113(e) Unambiguously Covers Petitioner's Conduct

1. As petitioner acknowledges (Br. 15), the interpretation of Section 2113(e) must begin "with the language of the statute itself," *United States* v. *Ron Pair Enters.*, 489 U.S. 235, 241 (1989), construed "in accord with its ordinary or natural meaning," *Smith* v. *United States*, 508 U.S. 223, 228 (1993). The language in Section 2113(e) making it a crime for a bank robber to "force[] any person to accompany him" was first enacted in 1934. Act of May 18, 1934, ch. 304, § 3, 48 Stat. 783 (App., *infra*, at 4a-5a). Then as now, to "accompany" another person meant "[t]o go with or attend as a companion or associate" or "to go along with." *Webster's New International Dictionary of the*

English Language 16 (2d ed. 1934) (*Webster's Second*); see *Funk & Wagnall's New Standard Dictionary of the English Language* 20 (1946) (*Funk & Wagnall's*) ("To go with, or be associated with, as a companion, an attendant, or a retinue; escort or convoy."); cf. *Webster's Third New International Dictionary of the English Language* 12 (1993) ("to go with or attend as an associate or companion" or "go along with").

Inserting that definition into Section 2113(e) demonstrates that the statute applies to anyone who, "in avoiding or attempting to avoid apprehension for the commission of" an offense under Section 2113, "forces any person to [go with him as a companion or associate] without the consent of such person." Petitioner's conduct falls squarely within that description: He forced Mrs. Parnell to go with him from her living room to her computer room without her consent, J.A. 65a, and he did so in "attempting to avoid apprehension" for an attempted bank robbery—indeed, "[petitioner] wanted to position Mrs. Parnell in the computer room where they could not be seen by the police" searching the neighborhood. *Ibid.*

2. Petitioner previously took the position that the word "accompany" was "silent as to the amount of 'movement or travel' required." Pet. 17 (citation omitted). Changing course, he now maintains (Br. 16) that the ordinary meaning of "accompany" requires "substantial movement" and that it would be "awkward" or "uncommon" to use it to describe movement over a shorter distance or between rooms in a home. It is of course true that one can accompany another person on a long trip. But it is equally proper—and entirely commonplace—to say that a person accompanies someone from one room to another. In *Oregon* v.

Elstad, 470 U.S. 298 (1985), this Court wrote that police officers found a suspect in his bedroom and "asked him to get dressed and to accompany them into the living room." *Id.* at 300. In *Washington* v. *Chrisman*, 455 U.S. 1 (1982), the Court explained that a police officer "accompan[ied]" a college student "from the public corridor of the dormitory into his room." *Id.* at 6. Other examples abound.[3] Nor is that usage a recent innovation. In *Breese* v. *United States*, 226 U.S. 1 (1912), Justice Holmes, writing for the Court, stated that the members of a grand jury "did not accompany" the foreman when he brought an indictment to the court from "a room adjoining the court room." *Id.* at 7.

This Court's repeated use of "accompany" to refer to joint movement from one room to another is neither

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[3] See, *e.g.*, *Georgia* v. *Randolph*, 547 U.S. 103, 147 (2006) (Thomas, J., dissenting) ("The police accompanied Mrs. Coolidge [from the front door of her home] to the bedroom."); *Vernonia Sch. Dist. 47J* v. *Acton*, 515 U.S. 646, 650 (1995) (describing a procedure in which an adult monitor "accompan[ies]" a student into a locker room for drug testing); *Moran* v. *Burbine*, 475 U.S. 412, 448 (Stevens, J., dissenting) ("[Two police officers] accompanied [a third officer] 'back into [an adjacent] room.'"); *Florida* v. *Royer*, 460 U.S. 491, 494 (1983) (plurality opinion) ("[Detectives] asked Royer to accompany them to a room, approximately 40 feet away, adjacent to the [airport] concourse."); *United States* v. *Mendenhall*, 446 U.S. 544, 548 (1980) ("Agent Anderson asked the respondent if she would accompany him to the airport DEA office * * * , which was located up one flight of stairs about 50 feet from where the respondent had first been approached."); *Moore* v. *Illinois*, 408 U.S. 786, 793 (1972) (police officers "accompanied [a witness] into the courtroom"); see also *McCullen* v. *Coakley*, 134 S. Ct. 2518, 2528 (2014) (explaining that escorts "greet women as they approach [a] clinic, accompanying them through [35-foot buffer] zones to the clinic entrance").

awkward nor idiosyncratic. "The greatest of writers have used the word with this meaning," *Muscarello* v. *United States*, 524 U.S. 125, 129 (1998), describing one person "accompan[ying]" another person "into [a] room," Charles Dickens, *David Copperfield* 570 (Vintage Books 2008) (1850); "out of [a] room," Jane Austen, *Pride & Prejudice* 143 (Penguin Books 2003) (1813); "to the door," Willa Cather, *One of Ours* 260 (Alfred A. Knopf, Inc. 1922); "upstairs," *id.* at 108; William Makepeace Thackeray, *Vanity Fair* 264 (Penguin Books 2001) (1848); and "toward" a person from across the room at a party, Henry James, *The Portrait of a Lady* 410 (Alfred A. Knopf, Inc. 1991) (1881).

Consider also some recent examples from the *New York Times*, which demonstrate that a person can "accompan[y]" another person "across [a] locker room,"[4] "to [a] seat[]" in a theater,[5] "to the stage" at an awards ceremony,[6] "to the altar" at a wedding,[7] "to [a] room" from a hotel hallway,[8] or "to [a patient's] room" in a hospital.[9] Again, this usage is not novel. In

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[4] Dave Anderson, *Chrebet Has His Legacy. He Should Take It Home*, N.Y. Times, Nov. 7, 2005, at D5.

[5] Joe Rogers, *Metropolitan Diary*, N.Y. Times, Jan. 10, 2005, at B2.

[6] Manohla Dargis, *'Amour,' a Wrenching Love Story, Wins at Cannes*, N.Y. Times, May 28, 2012, at C1.

[7] Elisabetta Povoledo, *Same-Sex Couple Say, 'I Do,' as Italy Sticks to 'I Don't,'* N.Y. Times, May 28, 2013, at A7.

[8] William Neuman & Michael S. Schmidt, *Woman Recounts Quarrel Leading to Agent Scandal*, N.Y. Times, Apr. 19, 2012, at A1.

[9] Nell Burger Kirst, *Medical Care That Transcends Words*, N.Y. Times, Jan. 5, 2010, at D5.

an example of particular relevance here, a 1930 article reported that a robber "accompanied [a bank employee] into the vault" during a robbery. *Bank Bandits Get $59,616 in Chicago*, N.Y. Times, Dec. 7, 1930, at 26.[10]

3. These numerous counterexamples refute petitioner's contention that the ordinary meaning of "accompany" requires travel over a substantial distance. Petitioner's arguments are also unpersuasive on their own terms.

First, petitioner notes (Br. 16) that contemporary dictionaries defined "accompany" in part as to "escort," *Funk & Wagnall's* 20, or to go with as "an attendant" or "a companion," *ibid.*; see *Webster's Second* 16. Petitioner asserts (Br. 17) that those terms "typically" imply substantial movement. But he provides no support for that assertion, and it is incorrect. One can "escort" a person for a short distance, such as from a dentist's office "back to the waiting room," *Francis* v. *Franklin*, 471 U.S. 307, 310 (1985), or from a courtroom "to the jury room," *Gonzales* v. *Beto*, 405 U.S. 1052, 1059 (1972) (Rehnquist, J., dissenting). And "attendant" and "companion" are broad terms that do not necessarily signify movement at all, let

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[10] See also, *e.g.*, J.D. Phillips, *New Cabinet Takes Control in Havana; Labor Ends Strike*, N.Y. Times, Aug. 15, 1933, at 1 (aides "accompanied" the new Cuban president "out on a second floor balcony"); *Boy Hero Receives Run of White House*, N.Y. Times, Apr. 30, 1931, at 3 (a guide "accompanied" a White House guest from one room to another); *13 Insane Convicts Escape in Michigan*, N.Y. Times, June 4, 1930, at 14 (inmates "forced [guards] to accompany them" from an upper floor of a prison hospital "to the first floor"); *Snook Goes to Chair for Slaying Girl*, N.Y. Times, Mar. 1, 1930, at 18 (guards "accompanied" prisoner into execution chamber).

alone require travel for a substantial distance. See *Webster's Second* 178 (an "attendant" is "[o]ne who attends or accompanies in any character whatever"); *id.* at 542 (a "companion" is "[o]ne who accompanies or is in company with another for a longer or shorter period").

Second, petitioner contends (Br. 18-19) that all of the uses of "accompany" in the 1934 edition of the United States Code "refer to substantial movement," typically international or interstate travel. But that observation merely reflects the subjects addressed by federal statutes at the time—it scarcely demonstrates that the contemporary meaning of "accompany" was *limited* to long-distance travel. Petitioner does not, for example, suggest that Congress used some other term to describe joint movement over shorter distances, such as between rooms. Petitioner's argument based on contemporary statutes also proves too much. If the meaning of "accompany" were restricted to travel of the sort addressed in the 1934 Code provisions he cites, Section 2113(e) would not apply to a robber who took a hostage out of the bank and released her several blocks or even several miles away, because no 1934 provision addressed movement over such a relatively short distance.

4. As numerous courts of appeals have recognized, therefore, Section 2113(e), by its "plain terms," does not require "'that the defendant cross[] a property line,'" "'that the [hostage] traverse a particular number of feet, that the [hostage] be held against [her] will for a particular time period, or that the [hostage] be placed in a certain quantum of danger.'" *United States* v. *Turner*, 389 F.3d 111, 119-120 (4th Cir. 2004) (quoting *United States* v. *Bauer*, 956 F.2d 239, 241

(11th Cir.) (per curiam), cert. denied, 506 U.S. 976 (1992)), cert. denied, 544 U.S. 935 (2005). "[T]he statute plainly, and only, requires accompaniment that is forced and without consent"; it does not include any "qualifying language" justifying an analysis of the "substantiality" of the forced accompaniment. *United States* v. *Strobehn*, 421 F.3d 1017, 1019 (9th Cir. 2005), cert. denied, 547 U.S. 1005 (2006). "The statute simply requires what it says: forced accompaniment without consent. It is an apt description for what [petitioner] compelled [Mrs. Parnell] to do." *United States* v. *Davis*, 48 F.3d 277, 279 (7th Cir. 1995).

Petitioner effectively seeks to insert words into the statute by reading Section 2113(e) to apply only when a bank robber "forces any other person to accompany him *for a substantial distance*." But this Court has repeatedly declined to "read[] words or elements into a statute that do not appear on its face," *Bates* v. *United States*, 522 U.S. 23, 29 (1997); see also, *e.g.*, *Brogan* v. *United States*, 522 U.S. 398, 406, 412 (1998); *United States* v. *Wells*, 519 U.S. 482, 490-493 (1997). The court of appeals thus correctly rejected petitioner's attempt to "engraft onto [Section] 2113(e) an element that Congress did not see fit to include." *Turner*, 389 F.3d at 119.

B. Statutory Context And Structure Reinforce The Natural Reading Of Section 2113(e)'s Text

The words of a statute must, of course, "be read in their context and with a view to their place in the overall statutory scheme." *Davis* v. *Michigan Dep't of Treasury*, 489 U.S. 803, 809 (1989). But the structure of Section 2113 and the relevant statutory context further confirm that Section 2113(e) should be construed according to its plain terms.

1. As petitioner observes (Br. 21), Section 2113's structure suggests that Congress intended to authorize escalating penalties for increasingly serious offenses, and that it prescribed greater minimum and maximum sentences for violations of Section 2113(e) because it viewed a crime involving forced accompaniments as potentially more serious than a robbery covered by Section 2113(a) or a robbery involving a dangerous weapon punishable under Section 2113(d). Nothing in that structure suggests, let alone requires, a departure from Section 2113(e)'s text.

In some cases, violations of Section 2113(e) involve robbers who take hostages with them as they flee from the bank. See, *e.g.*, *United States* v. *Pridgen*, 898 F.2d 1003, 1003 (5th Cir. 1990); *United States* v. *Bates*, 896 F.2d 912, 913 (5th Cir.), cert. denied, 496 U.S. 929, and 496 U.S. 942 (1990). Other violations involve robbers who confront bank employees in their homes and force them to go to the bank to complete the robbery. See, *e.g.*, *United States* v. *Wilson*, 787 F.2d 375 (8th Cir.), cert. denied, 479 U.S. 857, and 479 U.S. 865 (1986). It is common ground that such offenses terrorize the victims and expose them to greater risks of physical injury or death, amply justifying the increased penalties provided by Section 2113(e). Cf. Pet. Br. 26-27.

At the same time, "many" of the cases prosecuted under Section 2113(e) involve forced accompaniment over "short distances, such as from the door of the bank to the vault inside, or within the bank." 3 Leonard B. Sand et al., *Modern Federal Jury Instructions* § 53.05, at 53-76 (2014). Such cases also entail greater trauma and heightened risks for victims—and more culpable conduct by the offenders. In *Davis*, for ex-

ample, the robber seized an employee as she was opening the front door, "jammed [a gun] into her side," and then "paraded [her] about the credit union * * * all the while holding the gun to her side and threatening to kill her." 48 F.3d at 278. In *United States* v. *Sanchez*, 782 F. Supp. 94 (C.D. Cal. 1992), a robber seized an employee, held a "long butcher knife" to her throat while he demanded money from her colleagues, and then "forcibly marched her * * * toward the exit door," releasing her just before leaving the bank. *Id.* at 94-95. In *United States* v. *Lewis*, No. 3:08-cr-175, 2012 WL 2366436 (S.D. Ohio June 21, 2012), robbers "forced a teller * * * to accompany them to a separate area within the bank," "ordered [her] to open the safe," and then fired a handgun "in close proximity to her" in an effort "to motivate [her] to open the safe." *Id.* at *1. In *United States* v. *Whitley*, 734 F.2d 994 (4th Cir. 1984), cert. denied, 474 U.S. 873 (1985), the robber "grabb[ed] a bank employee around the neck and h[eld] a gun to her head," "backed out of the bank still holding the employee, then pushed her aside and fled." *Id.* at 996. And in *United States* v. *Reed*, 26 F.3d 523 (5th Cir. 1994), cert. denied, 513 U.S. 1157 (1995), an employee who was forced to accompany the robber into and around the bank at gunpoint suffered from "post-traumatic stress syndrome" as a result. *Id.* at 530.

All of those cases involved increased physical risks to the victims and conduct more culpable than an unaggravated bank robbery punishable under Section 2113(a) or a simple armed bank robbery punishable under Section 2113(d), which applies whenever a robber displays a weapon. See, *e.g.*, *McLaughlin* v. *Unit-*

ed States, 476 U.S. 16, 16-17 (1986). Yet petitioner's proposed substantial-distance requirement would apparently exclude all of them from the reach of Section 2113(e).

2. Petitioner's principal structural argument, echoed by his amici, is that the court of appeals' reading of Section 2113(e) makes that provision applicable to "virtually every bank robbery," (Br. 3, 14), and thereby "all but erase[s] the statutory distinction between a basic offense under [Section] 2113(a) and an aggravated offense under [Section] 2113(e)" (Br. 13).[11] Petitioner reasons (Br. 22) that in the absence of a substantial-distance requirement, Section 2113(e) "would include conduct that occurs routinely in, and is merely incidental to, ordinary bank robberies." That argument rests on a legal error and a mistaken factual premise.

Petitioner's legal error is his assumption (Br. 22) that the court of appeals' reading of Section 2113(e) covers any robber who "exert[s] some control over the movement of the bank's employees" or customers. In fact, Section 2113(e) prohibits forced *accompaniment*, not forced movement. A robber who "who orders a teller to retrieve money from the vault or a customer to lie down on the floor" (Pet. Br. 2) would not be covered under any interpretation of the statute because he has not forced his victims to *accompany* him at all. Petitioner is similarly mistaken in assuming

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[11] See CACL Amicus Br. 3 (asserting that the court of appeals' reading would "turn almost every mine-run bank robbery into a violation of [Section] 2113(e)"); NACDL Amicus Br. 8 ("[I]t is difficult to imagine the course of a bank robbery that does not, at some point, involve the forced movement of individuals in some respect.").

(Br. 22) that the court of appeals' interpretation of Section 2113(e) would reach a "robber who directs a customer to move from the window to the back wall and then takes a few steps in that direction himself." A forced accompaniment occurs when a robber coerces his victims to "go with" him. *Webster's Second* 16. That joint movement is lacking when a robber instructs his victims to move to one side of the bank and then separately takes a few steps in the same direction himself.

Petitioner's mistaken factual premise is his assertion (Br. 22) that bank robbers "almost invariably exert some control over the movement" of employees and customers. That characterization may accord with the portrayal of bank robbery in the movies. In reality, however, so-called "takeover robberies," in which armed intruders assume control of a bank and direct the movements of those inside, are relatively uncommon.[12] A more typical fact pattern is a "note job" in which a single robber passes a demand note to a teller, with or without displaying a weapon, and then walks out of the bank. "Robbers often wait in the teller's line with legitimate customers," and "[i]n many robberies, the event is handled so discreetly that other customers and even other employees are not even aware that a crime has occurred until after the robber has left the premises."[13]

Available statistics further undermine petitioner's claim that bank robberies inevitably involve forced

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[12] Deborah Lamm Weisel, Office of Community Oriented Policing Servs., U.S. Dep't of Justice, *Problem-Oriented Guides for Police: Bank Robbery* 13-14 (Mar. 2007), http://www.cops.usdoj.gov/Publications/e03071267.pdf.

[13] *Id.* at 9.

movement or forced accompaniment. The Federal Bureau of Investigation (FBI) determined that in 2011—the most recent year for which statistics are available—the vast majority of bank robberies were limited to the bank's teller counter. FBI, *Bank Crime Statistics 2011*, http://www.fbi.gov/stats-services/publications/bank-crime-statistics-2011/bank-crime-statistics-2011. Only a fraction—fewer than 400 of more than 5000 total robberies—involved the vault, safe deposit, or office areas of the bank. *Ibid.* Weapons were used in less than a third of the incidents, and hostages were taken in only 17 of them. *Ibid.*

That picture is corroborated by Sentencing Commission data. The robbery Guideline provides enhancements if a victim is "abducted" or "physically restrained" during the offense. Sentencing Guidelines § 2B3.1(b)(4). In 2013, the abduction enhancement was applied in only five percent of robberies.[14] The physical-restraint enhancement—which is applicable when a robber forces a victim to move around a bank, see *United States* v. *Albritton*, 622 F.3d 1104, 1107-1108 (9th Cir. 2010)—was applied in only 12.6 percent of robberies.[15]

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[14] U.S. Sentencing Comm'n, *Use of Guidelines and Specific Offense Characteristics* 16 (2013), http://www.ussc.gov/sites/default/files/pdf/research-and-publications/federal-sentencing-statistics/guideline-application-frequencies/2013/Use_of_Guidelines_and_Specific_Offense_Characteristics_Guideline_Calculation_Based.pdf (*Use of Guidelines*).

[15] *Use of Guidelines* 16. These statistics include all robberies, not just bank robberies, but more than half of the robberies involved the application of an enhancement under Sentencing Guidelines § 2B3.1(b)(1), which applies only if the robbery targeted a "financial institution or post office." See *ibid.*

"A cursory search of the Federal Reporter," *Burrage* v. *United States*, 134 S. Ct. 881, 891 (2014), provides further evidence that forced accompaniment is not a feature of mine-run bank robberies. In many cases, it appears that the perpetrator simply approached a teller, demanded money (with or without brandishing a weapon), and then left. See, *e.g.*, *United States* v. *Reyes*, No. 12-50386, 2014 WL 4358454, at *2 (9th Cir. Sept. 4, 2014); *United States* v. *Marsico*, No. 13-3709, 2014 WL 4212571, at *1 (3d Cir. Aug. 27, 2014); *United States* v. *Anderson*, 755 F.3d 782, 789 (5th Cir. 2014); *United States* v. *Senymanola*, 559 Fed. Appx. 568, 569 (7th Cir. 2014); *United States* v. *Palmisano*, 559 Fed. Appx. 135, 136 (3d Cir. 2014); *United States* v. *Sim*, 556 Fed. Appx. 726, 728 (10th Cir. 2014); *United States* v. *Maynard*, 743 F.3d 374, 376 (2d Cir. 2014); *United States* v. *Jemine*, 555 Fed. Appx. 624, 624 (7th Cir. 2014); *United States* v. *Starnes*, 552 Fed. Appx. 520, 521 (6th Cir. 2014) (per curiam). In others, robbers reached or leapt over counters to remove cash from teller drawers themselves, but again without forcing bank employees or others to accompany them, or even to move. See, *e.g.*, *United States* v. *Feliciano*, 761 F.3d 1202, 1206 (11th Cir. 2014); *United States* v. *Garnett*, 564 Fed. Appx. 959, 960-961 (11th Cir. 2014) (per curiam).[16]

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[16] The only authority on which petitioner relies (Br. 22), the Fifth Circuit's decision in *Reed*, provides no support for his position. In that case, the Fifth Circuit stated that bank robberies "*often*" involve forced movement and that such movement will "*sometimes*" occur in concert with the movement of the robber himself. 26 F.3d at 527 (emphases added). Those statements do not suggest that "virtually every bank robbery" involves forced accompaniment (Pet. Br. 3, 14), and in any event the Fifth Circuit itself cited no authority to support its empirical assertions.

Contrary to petitioner's characterization, therefore, adhering to a natural reading of Section 2113(e) would not result in "nearly every" bank robbery being subject to Section 2113(e)'s enhanced penalties. *Bailey* v. *United States*, 516 U.S. 137, 144 (1995); see *Simpson* v. *United States*, 435 U.S. 6, 11 n.6 (1978) (rejecting a reading of Section 2113(d) that, by definition, would have swept in every robbery committed by "force and violence" in violation of Section 2113(a)). The majority of robberies will continue to be governed by Sections 2113(a) and 2113(d), and Section 2113(e) will continue to apply only in the unusual cases in which a robber forces a victim to accompany him. An atextual substantial-distance requirement is not needed to preserve Section 2113(e)'s place in the statutory scheme.

3. Petitioner also contends (Br. 25-27) that Section 2113(e) should be read to require a substantial movement of the victim because, when Section 2113's predecessor was enacted in 1934, it permitted a sentence of death for a forced-accompaniment offense "if the verdict of the jury shall so direct." § 3, 48 Stat. 783. Petitioner maintains (Br. 26) that in light of the potential imposition of the death penalty, Section 2113(e) must be narrowly limited to conduct comparable to "homicide." But Section 2113's predecessor was drafted long before this Court's modern capital sentencing jurisprudence made homicide a unique basis for imposing the death penalty. Although not all violations are of equal severity, forced-accompaniment offenses can involve multiple victims and traumatizing risks of death or serious injury. In 1934, Congress reasonably concluded that, in an extreme case, retribution and deterrence could warrant the ultimate

punishment for a bank robbery involving forced accompaniment. But it does not follow that Congress intended to restrict the scope of the offense to conduct warranting such severe punishment. To the contrary, even petitioner's reading of the statute reaches offenses less culpable than homicide—for example, a case in which "the robber [took] a hostage out of the bank door while fleeing" (Br. 26), but released the victim unharmed shortly thereafter. The 1934 statute criminalized a range of conduct of varying degrees of culpability and relied on juries to identify those extreme cases warranting a capital sentence.[17]

In any event, as petitioner acknowledges (Br. 27), Congress amended Section 2113(e) in 1994 to eliminate the death penalty as a punishment for a violation of Section 2113(e) unless the defendant killed a victim or the forced accompaniment resulted in death. Federal Death Penalty Act of 1994, Pub. L. No. 103-322, § 60003(a)(9), 108 Stat. 1969. Petitioner's argument based on Section 2113(e)'s penalties rests on the principle that that the words of a statute must be "read in their context." *Davis*, 489 U.S. at 809; see Pet. Br. 19-20. But Congress altered that context when it amended the statute, and a now-repealed penalty provides no structural or contextual basis for an artificially narrow reading of the statute's text. Cf. *Vermont Agency of Natural Res.* v. *United States ex rel. Stevens*, 529 U.S. 765, 786 n.17 (2000) ("[I]t is well established that a court can, and should, interpret the text of one statute in the light of * * * surrounding

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[17] In fact, it appears that no defendant was executed for a violation of Section 2113(e) that did not result in a fatality. See Death Penalty Information Ctr., *Federal Executions 1927-2003*, http://www.deathpenaltyinfo.org/federal-executions-1927-2003.

statutes, even those subsequently enacted."). Petitioner contends (Br. 27) that because the 1994 amendment did not modify the phrase "forces any person to accompany him," the meaning of that phrase must be interpreted based on its original context in the 1934 statute. But this Court rejected a similar argument in *Smith*, holding that even if the surrounding context in a prior version of 18 U.S.C. 924(c) had indicated that Congress intended the term "use" to have a "limited scope," such a limitation had to be rejected as inconsistent with the "language and structure" of the amended statute. 508 U.S. at 236-237; cf. *United States* v. *Ressam*, 553 U.S. 272, 277 (2008) (interpreting statutory language in light of a subsequent amendment to a related provision).[18]

C. Section 2113(e)'s Legislative History Is Consistent With A Straightforward Reading Of Its Text

Because the meaning of Section 2113(e) is unambiguous, "there is no reason to resort to legislative

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[18] If the scope of Section 2113(e)'s forced-accompaniment offense had been authoritatively construed at the time of the 1994 amendment, Congress might have been presumed to have incorporated that interpretation when it amended the statutory penalties without changing the relevant language. Cf. *Lorillard* v. *Pons*, 434 U.S. 575, 580 (1978). As of 1994, however, only three courts of appeals had addressed the degree of movement required by the forced-accompaniment offense, and they had adopted differing views. See *Reed*, 26 F.3d at 527 (holding that movement across a bank's threshold was sufficient, but stating in dicta that movement within a bank would not be); *Bauer*, 956 F.2d at 241 (holding that Section 2113(e) does not "require that the hostages traverse a particular number of feet" or "cross[] a property line"); *United States* v. *Marx*, 485 F.2d 1179, 1186 (10th Cir. 1973) (holding that movement into and around the victim's house was insufficient), cert. denied, 416 U.S. 986 (1974).

history." *United States* v. *Gonzales*, 520 U.S. 1, 6 (1997); accord *Boyle* v. *United States*, 556 U.S. 938, 950 (2009). In any event, the legislative history of Section 2113's predecessor is "meager," *Prince* v. *United States*, 352 U.S. 322, 328 (1957); *Jerome* v. *United States*, 318 U.S. 101, 104 (1943), and provides no basis for giving the word "accompany" anything other than its ordinary meaning.

1. Petitioner notes (Br. 27-28) that Section 2113(e)'s predecessor was enacted at a time when "notorious" bank robbers such as John Dillinger and Baby Face Nelson sometimes used hostages as human shields on the running boards of their getaway cars. He asserts (Br. 28-29) that "[it] was surely this type of extreme conduct * * * that motivated Congress's decision" to enact the statute. But if that were so, Congress had no reason to exclude robbers who used bank employees and customers as human shields within the bank and its immediate vicinity—conduct that likewise placed the hostages in grave danger. See, *e.g.*, *Outlaws Rob Bank, Kill a Policeman*, N.Y. Times, Jan. 16, 1934, at 42 (robbers used an employee "as a shield [as] they walked out the door" of the bank and "across the sidewalk" to their car while exchanging gunfire with police); *Ohio College Student Used as Shield by Bank Robber Who Wounds Cashier*, N.Y. Times, Oct. 7, 1933, at 3 (robber used a customer as "an unwilling shield" during a shoot-out in a bank).

In any event, "it is not, and cannot be, [this Court's] practice to restrict the unqualified language of a statute to the particular evil that Congress was trying to remedy." *Brogan*, 522 U.S. at 403. "[S]tatutory prohibitions often go beyond the principal evil [identified by Congress] to cover reasonably compa-

rable evils, and it is ultimately the provisions of our laws rather than the principal concerns of our legislators by which we are governed." *Oncale* v. *Sundowner Offshore Servs., Inc.*, 523 U.S. 75, 79 (1998); accord *DePierre* v. *United States*, 131 S. Ct. 2225, 2235 (2011).

2. Petitioner also observes (Br. 29) that the committee reports on the original version of Section 2113 stated that Section 2113(e)'s predecessor punished "kidnapping" in the course of a bank robbery. H.R. Rep. No. 1461, 73d Cong., 2d Sess. 1 (1934) (House Report); S. Rep. No. 537, 73d Cong., 2d Sess. 1 (1934) (Senate Report). Petitioner therefore contends (Br. 29-30) that the forced-accompaniment offense should be construed in accordance with the contemporary understanding of kidnapping and that, at the time, kidnapping required transportation of the victim for a substantial distance. That chain of reasoning suffers from multiple flaws.

First, petitioner relies on two committee reports totaling slightly less than three pages of text, and each report included only a brief description of Section 2113(e)'s predecessor. House Report 1; Senate Report 1. As the Ninth Circuit has explained, it is natural to use "kidnapping" as a "shorthand description" for Section 2113(e)'s forced-accompaniment offense because the statute "contemplates moving someone by force to someplace he doesn't want to go." *Strobehn*, 421 F.3d at 1019. But shorthand references in two abbreviated committee reports do not justify the conclusion that Congress meant to incorporate the elements of kidnapping into Section 2113(e).

Second, petitioner is wrong to assert (Br. 29-30) that in 1934 kidnapping was understood to require

substantial movement of the victim. By that time, the common law rule that a kidnapping occurs only when the victim is transported out of the country had long been abolished. See 2 Joel Prentiss Bishop, *Bishop on Criminal Law* § 750, at 573-574 (9th ed. 1923). Instead, kidnapping was generally defined as "a false imprisonment aggravated by conveying the imprisoned person to some other place." *Ibid.* And during that era, state kidnapping statutes were "interpreted broadly, with the result that almost any movement of the victim satisfie[d] the statutory requirement." Note, *A Rationale of the Law of Kidnapping*, 53 Colum. L. Rev. 540, 545 (1953); accord 3 Wayne R. LaFave, *Substantive Criminal Law* § 18.1(b), at 8 (2d ed. 2003) (LaFave) ("[E]arlier cases took the position that any asportation, no matter how short in time and distance, would suffice."). State courts thus sustained kidnapping convictions where defendants moved victims for relatively short distances, such as from a bank's teller counter "to the vault of the bank" during a robbery, *People* v. *Johnston*, 140 Cal. App. 729, 733 (Cal. Ct. App. 1934), or "from one portion of [a] house to another," *People* v. *Dugger*, 54 P.2d 707, 708 (Cal. 1936).[19]

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[19] See also, *e.g.*, *Cox* v. *State*, 177 N.E. 898, 900 (Ind. 1931) (defendant moved the victim down an alley, a distance of roughly ninety feet); *State* v. *Taylor*, 293 N.W. 219, 224 (N.D. 1940) (defendant forced the victim to drive "a short distance" out of a parking space); see generally *People* v. *Raucho*, 47 P.2d 1108, 1112-1113 (Cal. Ct. App. 1935) ("There is nothing in the law which requires that the victim of a kidnapping shall be transported a mile, a furlong, or any particular distance; and it is only required that there be an actual asportation of the victim without regard to the extent or degree of such movement.").

Third, petitioner goes astray in relying (Br. 30) on the 1932 federal kidnapping statute's requirement that that the kidnapper transport the victim "in interstate or foreign commerce." Act of June 22, 1932, ch. 271, 47 Stat. 326. As the statute's wording makes clear, the requirement that the victim cross state lines was a jurisdictional element included to invoke Congress's Commerce Clause authority. See *Perez* v. *United States*, 402 U.S. 146, 150 (1971); Hugh A. Fisher & Matthew F. McGuire, *Kidnapping and the So-Called Lindbergh Law*, 12 N.Y.U. L.Q. Rev. 646, 655-662 (1935). It thus sheds no light on the degree of movement Congress understood to be required for a kidnapping.

D. Interpreting Section 2113(e) In Accordance With Its Natural Meaning Does Not Yield Absurd Results

Petitioner contends (Br. 31-34) that Section 2113(e) must be interpreted to require movement over a substantial distance in order to avoid absurd results. But he provides no evidence of absurdity in the four circuits that have rejected an atextual substantial-distance requirement since as early as 1992. See *Strobehn*, 421 F.3d at 1019-1020; *Turner*, 389 F.3d at 119-120; *Davis*, 48 F.3d at 278-279; *Bauer*, 956 F.2d at 241. His arguments are also unpersuasive on their own terms.

1. Petitioner first argues (Br. 31) that "[i]t would be absurd * * * to treat an unarmed robber who orders a teller to walk with him into the vault as more culpable than one who shoots and wounds the teller." But the government's interpretation of Section 2113(e) does not yield that result. Under Section 2113(e), an unarmed bank robber who forced a teller to accompany him into the vault would be subject to a

statutory minimum sentence of ten years of imprisonment and a maximum sentence of life. 18 U.S.C. 2113(e). But the robber who shot the teller would face stiffer penalties: He would obviously be guilty of violating Section 2113(d) by "assault[ing] [a] person" with "a dangerous weapon" during a bank robbery, an offense carrying a maximum sentence of 25 years of imprisonment. 18 U.S.C. 2113(d). But he would also be guilty of violating 18 U.S.C. 924(c), which provides that a person who discharges a firearm during and in relation to a crime of violence, including a bank robbery, is subject to a "term of imprisonment of not less than 10 years," which must run consecutively to the sentence on the underlying offense. 18 U.S.C. 924(c)(1)(A)(iii), (D)(ii) and (3). The shooter in petitioner's example would therefore be subject to the same statutory minimum (ten years) and the same statutory maximum (life in prison on the Section 924(c)(1) charge) as the robber who violated Section 2113(e), but would face two convictions rather than one and would be required to serve the resulting sentences consecutively.

Petitioner's hypothetical example thus demonstrates no "anomaly"—let alone one that "rises to the level of absurdity" required to justify a departure from the statute's plain terms. *Carter* v. *United States*, 530 U.S. 255, 263 (2000). And, more broadly, the relevant provisions of the Sentencing Guidelines and the discretion of sentencing judges mitigate or eliminate the disparities petitioner fears. As the Eleventh Circuit explained, factors such as the length and duration of the forced accompaniment and the degree of danger to which the victim was exposed "may bear upon the defendant's sentence for forcible

accompaniment" even though "they do not affect the underlying conviction." *Bauer*, 956 F.2d at 241. The robbery Guideline takes into account a variety of aggravating circumstances, prescribing enhancements for threats, the use of weapons, abductions, confinements, injuries to victims, and the amount of loss. See Sentencing Guidelines § 2B3.1(b). And the sentencing ranges prescribed under Section 2113(a), Section 2113(d), and Section 2113(e) substantially overlap. An offender who commits a violation of Section 2113(e) without other aggravating factors is likely to receive a sentence near the ten-year minimum established by that provision. See, *e.g.*, *United States* v. *Bowser*, No. 12-50207, 2014 WL 2599629, at *1 (9th Cir. June 11, 2014) (120 months); *United States* v. *Williams*, 500 Fed. Appx. 364, 364 (6th Cir. 2012) (135 months). In this case, in contrast, petitioner's "egregious" conduct, J.A. 122a, would have yielded a sentence considerably longer than ten years even if his Section 2113(e) conviction had been set aside and he had been sentenced under Section 2113(a) and the accompanying firearms charges alone.[20]

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[20] Petitioner is wrong to assert (Br. 11) that he would have faced a lower Guidelines range absent his forced-accompaniment conviction. Even if petitioner had been convicted only of the attempted bank robbery charged in Count 1 and the firearms offenses charged in Counts 2 and 3, the offense level for the attempted bank robbery would have been governed by the first-degree murder Guideline because the district court found that petitioner's conduct in fleeing from that offense caused Mrs. Parnell's death. See Sentencing Guidelines § 2B3.1(c)(1) (2009); see also *id.* § 1B1.3(a)(1) (providing that the applicable offense level is determined based on conduct that occurred "in the course of attempting to avoid detection" for the offense as well as during the offense itself); J.A. 21a (upholding the district court's application of the first-degree

2. Petitioner next contends (Br. 32-34) that the court of appeals' interpretation "makes the applicability of [Section] 2113(e) turn on a factual distinction largely irrelevant to culpability: whether the victim's movement occurs roughly in concert with the robber." But that argument merely reflects a disagreement with Congress's conclusion that increased punishment is warranted for robberies involving forced accompaniment—which, by definition, is "movement * * * in concert with the robber." Even if petitioner's contention had merit as a policy matter, it would not justify a departure from the statute. Where, as here, the relevant statute is clear, "it is not for the courts to carve out statutory exceptions based on judicial perceptions of good sentencing policy." *Gonzales*, 520 U.S. at 10.

In fact, however, it was entirely reasonable for Congress to conclude that a robber who forces a victim to accompany him is deserving of greater punishment—and to provide that such increased punishment is appropriate even if the forced accompaniment does not cover a long distance or extend beyond the bank. A forced accompaniment often involves a direct application of physical force to the victim's person. See, *e.g.*, *United States* v. *Banks-Giombetti*, 245 F.3d 949,

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murder Guideline "because [Mrs.] Parnell's death occurred during the course of [petitioner's] attempted robbery"). The forced-accompaniment conviction thus made no difference in petitioner's Guidelines calculation. And although the applicable Guidelines range would have exceeded the 20-year statutory maximum sentence for attempted bank robbery in violation of Section 2113(a), the Guidelines provide that in such circumstances a court should impose consecutive sentences "to the extent necessary to produce a combined sentence equal to the total punishment" called for under the Guidelines. Sentencing Guidelines § 5G1.2(d) (2009).

951 (7th Cir. 2001) (per curiam) (robber who broke into a woman's home while fleeing "pulled her down a flight of stairs, causing her to hit her head on the floor and crack several teeth"); *Davis*, 48 F.3d at 278 (a robber "jammed [a gun] into [an employee's] side); *Whitley*, 734 F.2d at 996 (a robber "grabb[ed] a bank employee around the neck and h[eld] a gun to her head"). Such conduct creates an obvious risk of physical injury and can be highly traumatizing. By definition, a forced accompaniment also requires the victims to remain in close proximity to the robber, where they are subject to continued physical force and threats of violence. See, *e.g.*, *Sanchez*, 782 F. Supp. at 94-95 (robber held a knife to an employee's throat, threatening to kill her unless other employees provided money); *Lewis*, 2012 WL 2366436, at *1 (robbers fired a gun "in close proximity" to an employee to encourage her to open a safe). Finally, the continued proximity to the robber also increases the danger to the victims by placing them in the crossfire in the event of a violent confrontation between the robber and a security guard, a police officer, or an armed bystander. See, *e.g.*, *Green* v. *Freeman*, 434 F. Supp. 2d 1172, 1173-1174 (M.D. Ala. 2005) (customer accidentally shot by police "as [a robber] dragged her across the bank back towards the door"); cf. *McLaughlin*, 476 U.S. at 18 (noting that an armed bank robbery "creates an immediate danger that a violent response will ensue").

E. Petitioner And His Amici Have Not Identified A Viable Alternative Interpretation Of Section 2113(e)

Petitioner, his amici, and the handful of judicial opinions that have departed from the text of Section 2113(e) advocate a range of different—and contradic-

tory—interpretations of the statute. All of those approaches are unsound.

1. Petitioner contends that Section 2113(e) requires that the robber force the victim to accompany him for a "substantial" distance. But aside from suggesting (Pet. Br. 3, 12, 14, 26) that this requirement is satisfied "where a defendant takes a hostage with him in escaping from the bank," petitioner provides no indication of what constitutes a "substantial" distance. To the extent that petitioner advocates a rule based solely on the number of feet the robber forces the victim to move, no court has endorsed such an interpretation—and with good reason. Any limitation based on distance alone would necessarily be arbitrary and would have no basis in the statutory text.

The same is true of an interpretation of "accompany" that turns on whether the robber forced a victim to enter or exit a bank or other building. The Fifth Circuit appeared to endorse such an approach, holding that any forced accompaniment into or out of a bank satisfies the statutory requirement, but suggesting in dicta that movement within a bank is per se insufficient. *Reed*, 26 F.3d at 527-528. Under that approach, a robber who moved his victim a few feet across a bank's threshold would be covered, see, *e.g.*, *United States* v. *Carr*, 761 F.3d 1068, 1077-1079 (9th Cir. 2014), but one who terrorized a hostage for a longer period and covered a greater distance within the bank would escape increased punishment so long as he released the hostage before leaving, see, *e.g.*, *Sanchez*, 782 F. Supp. at 94-95.

2. Some judges have advocated an approach under which the "substantiality" of a forced accompaniment must be assessed on a case-by-case basis in light of its

"duration, distance and any change in environment tending to increase the danger to which the victim is exposed, other than danger inherent in the underlying offense." *Sanchez*, 782 F. Supp. at 97; see *Strobehn*, 421 F.3d at 1026 (B. Fletcher, J., dissenting) (same). But that multifactor inquiry intended to assess a particular defendant's culpability is not a permissible substitute for the straightforward factual inquiry Congress prescribed. Congress enacted a statute increasing the applicable penalties whenever a robber "forces any person to accompany him." 18 U.S.C. 2113(e). Courts are not free to conclude that only some forced accompaniments qualify based on nonstatutory considerations such as distance, duration, and the danger to the victim.

3. Finally, petitioners' amici advocate an interpretation based on the law of kidnapping, relying either on the Model Penal Code (NACDL Br. 18-22) or on state cases decided since the 1960s (CACL Br. 4-20). That approach should be rejected for several reasons.

First, the word "kidnapping" does not appear in Section 2113(e), and the statute does not "incorporate the elements of a kidnapping offense." *Strobehn*, 421 F.3d at 1019. To the contrary, in prescribing increased punishment for a robber who "forces any person to accompany him," Congress used language that differs markedly from common-law or traditional statutory definitions of kidnapping. Cf. 18 U.S.C. 1201(a) (kidnapping statute prescribing punishment for anyone who "unlawfully seizes, confines, inveigles, decoys, kidnaps, abducts, or carries away and holds for ransom or reward or otherwise any person"). As this Court has held in interpreting another provision of Section 2113, it is inappropriate to impute a com-

mon-law meaning to a statute when "Congress simply describes an offense analogous to a common-law crime without using common-law terms." *Carter*, 530 U.S. at 264-265. And it would be particularly inappropriate to interpret Section 2113(e) based on developments in the law of kidnapping that did not occur until decades after the statute was enacted. See Model Penal Code § 212, at 208 (1980) (the Code was "designed to effect a major restructuring of the law of kidnapping as it existed at the time the Model Code was drafted").

Second, the concerns behind the Model Penal Code and the state cases on which petitioners' amici rely have no application to Section 2113(e). The drafters of the Code and some state courts have attempted to limit the scope of kidnapping to exclude "those confinements or movements of a victim that are merely incidental to and necessary for the commission of another crime," such as robbery or rape. *State* v. *Salamon*, 949 A.2d 1092, 1117 (Conn. 2008); see Model Penal Code § 212.1, at 220-221 (explaining that the Code's definition of kidnapping sought to exclude movements or confinements that are "part and parcel" of a robbery, rape, or other offense "and not an independent wrong"). The rationale for that limitation is that a defendant should not be subject to the greater penalties for kidnapping if the movement or confinement at issue "is merely incidental to another offense" subject to lesser punishment. LaFave § 18.1(b), at 11.

Those concerns do not apply in the context of Section 2113(e). State kidnapping statutes typically encompass confinement as well as forced movement and thus might sweep in every instance of robbery, rape, and other offenses that inevitably involve some detention of the victim. See LaFave § 18.1(b), at 9-12.

Section 2113(e), in contrast, covers only forced accompaniment—a feature that is not present in all or even most bank robberies. See pp. 24-28, *supra*. Even more to the point, Section 2113(e) does not define a standalone offense or seek to punish "an independent wrong," Model Penal Code § 212.1, at 221. Rather, Congress framed the statute as an "aggravated form[] of [bank] robbery," *Jones* v. *United States*, 526 U.S. 227, 236 (1999), and increased the applicable penalties for robberies that include forced accompaniments. Giving the statute its natural meaning thus raises no risk of "cumulative penalties or of higher sanctions" than Congress intended to authorize. Model Penal Code § 212.1, at 221.

Third, an approach based on the law of kidnapping would be difficult to apply. The Model Penal Code requires proof that the defendant removed a person "a substantial distance from the vicinity where he is found," but, like petitioner, provides little or no guidance on what qualifies as a "substantial" distance. Model Penal Code § 212.1, at 223.[21] And state courts that have held that kidnapping does not include movements or confinements that are "incidental" to another crime have struggled to define and apply a consistent approach, yielding "much uncertainty" and "confusion * * * even in states where numerous appellate decisions have purported to clarify" the issue. John L. Diamond, *Kidnapping: A Modern*

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[21] The Code also provides that a kidnapping occurs if the victim is removed "from his place of residence or business." Model Penal Code § 212.1, at 209. That rule would yield the odd result that a robber who took an employee out of the bank would be covered, but one who forced a customer to accompany him for the same distance might escape punishment.

Definition, 13 Am. J. Crim. L. 1, 3-4 (1985). One court surveyed the law in this area and found "splinter[ed]" decisions and inconsistent results on similar facts, with "cases sustaining and cases reversing separate kidnapping convictions" in every category of circumstances. *State* v. *Stouffer*, 721 A.2d 207, 213 (Md. 1998); see LaFave § 18.1(b), at 10 (describing the "varying results" reached by state courts). For example, the New York Court of Appeals reversed kidnapping convictions in a case where the defendant raped his victims after transporting them from Manhattan to Queens. *People* v. *Lombardi*, 229 N.E.2d 206, 207-209 (N.Y. 1967). Other cases, in contrast, have held that movements as short as "one city block" are sufficient to sustain a separate kidnapping conviction. See, *e.g.*, *Lee* v. *State*, 932 S.W.2d 756, 759 (Ark. 1996); *In re Earley*, 534 P.2d 721, 724 (Cal. 1975). And still other cases applying the "incidental" approach have concluded that even movement within a home or building during a robbery can be sufficient to sustain a kidnapping conviction. See, *e.g.*, *Douglas* v. *State*, 879 A.2d 594, 600 (Del. 2005); *State* v. *Burden*, 69 P.3d 1120, 1121, 1127-1128 (Kan. 2003); *Hutchins* v. *State*, 867 P.2d 1136, 1139-1140 (Nev. 1994). This Court should decline to import a similar level of uncertainty into Section 2113(e).

F. The Rule Of Lenity Does Not Apply

Finally, petitioner's appeal to the rule of lenity (Br. 34-35) is misplaced. The rule applies only if, "at the end of the process of construing what Congress has expressed," *Callanan* v. *United States*, 364 U.S. 587, 596 (1961), "there is a grievous ambiguity," *Muscarello*, 524 U.S. at 139 (internal quotation marks and citations omitted), or an "equipoise of competing rea-

sons [that] cannot otherwise be resolved," *Johnson* v. *United States*, 529 U.S. 694, 713 n.13 (2000). There is no ambiguity here—much less "grievous ambiguity" or "equipoise." The text of Section 2113(e)'s forced-accompaniment offense unambiguously encompasses forcing a victim to accompany the robber from one room to another, and that interpretation is consistent with the statute's structure, purpose, and history. The rule of lenity "cannot dictate an implausible interpretation of a statute, nor one at odds with the generally accepted contemporary meaning of a term." *Smith*, 508 U.S. at 240 (citation omitted).

CONCLUSION

The judgment of the Fourth Circuit should be affirmed.

Respectfully submitted.

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APPENDIX

1. 18 U.S.C. 2113 provides:

Bank robbery and incidental crimes

(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.

(b) Whoever takes and carries away, with intent to steal or purloin, any property or money or any other thing of value exceeding $1,000 belonging to, or in the care, custody, control, management, or possession of any bank, credit union, or any savings and loan association, shall be fined under this title or imprisoned not more than ten years, or both; or

Whoever takes and carries away, with intent to steal or purloin, any property or money or any other thing of value not exceeding $1,000 belonging to, or in the care, custody, control, management, or possession of any bank, credit union, or any savings and loan association, shall be fined under this title or imprisoned not more than one year, or both.

(c) Whoever receives, possesses, conceals, stores, barters, sells, or disposes of, any property or money or other thing of value which has been taken or stolen from a bank, credit union, or savings and loan association in violation of subsection (b), knowing the same to be property which has been stolen shall be subject to the punishment provided in subsection (b) for the taker.

(d) Whoever, in committing, or in attempting to commit, any offense defined in subsections (a) and (b) of this section, assaults any person, or puts in jeopardy the life of any person by the use of a dangerous weapon or device, shall be fined under this title or imprisoned not more than twenty-five years, or both.

(e) Whoever, in committing any offense defined in this section, or in avoiding or attempting to avoid apprehension for the commission of such offense, or in freeing himself or attempting to free himself from arrest or confinement for such offense, kills any person, or forces any person to accompany him without the consent of such person, shall be imprisoned not

less than ten years, or if death results shall be punished by death or life imprisonment.

(f) As used in this section the term "bank" means any member bank of the Federal Reserve System, and any bank, banking association, trust company, savings bank, or other banking institution organized or operating under the laws of the United States, including a branch or agency of a foreign bank (as such terms are defined in paragraphs (1) and (3) of section 1(b) of the International Banking Act of 1978), and any institution the deposits of which are insured by the Federal Deposit Insurance Corporation.

(g) As used in this section the term "credit union" means any Federal credit union and any State-chartered credit union the accounts of which are insured by the National Credit Union Administration Board, and any "Federal Credit Union" as defined in section 2 of the Federal credit union Act. The term "State-chartered credit union" includes a credit union chartered under the laws of a State of the United States, the District of Columbia, or any commonwealth, territory, or possession of the United States.

(h) As used in this section, the term "savings and loan association" means—

(1) a Federal savings association or State savings association (as defined in section 3(b) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)))

having accounts insured by the Federal Deposit Insurance Corporation; and

(2) a corporation described in section 3(b)(1)(C) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(1)(C)) that is operating under the laws of the United States.

2. The Act of May 18, 1934, ch. 304, 48 Stat. 783, provides:

AN ACT

To provide punishment for certain offenses committed against banks organized or operating under laws of the United States or any member of the Federal Reserve System.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That as used in this Act the term "bank" includes any member bank of the Federal Reserve System, and any bank, banking association, trust company, savings bank, or other banking institution organized or operating under the laws of the United States.

Sec. 2. (a) Whoever, by force and violence, or by putting in fear, feloniously takes, or feloniously attempts to take, from the person or presence of another any property or money or any other thing of value belonging to, or in the care, custody, control, manage-

ment, or possession of, any bank shall be fined not more than $5,000 or imprisoned not more than twenty years, or both.

(b) Whoever, in committing, or in attempting to commit, any offense defined in subsection (a) of this section, assaults any person, or puts in jeopardy the life of any person by the use of a dangerous weapon or device, shall be fined not less than $1,000 nor more than $10,000 or imprisoned not less than five years nor more than twenty-five years, or both.

Sec. 3. Whoever, in committing any offense defined in this Act, or in avoiding or attempting to avoid apprehension for the commission of such offense, or in freeing himself or attempting to free himself from arrest or confinement for such offense, kills any person, or forces any person to accompany him without the consent of such person, shall be punished by imprisonment for not less than 10 years, or by death if the verdict of the jury shall so direct.

Sec. 4. Jurisdiction over any offense defined by this Act shall not be reserved exclusively to courts of the United States.

Approved, May 18, 1934