

WHEN SILENCE COUNTS AS VIOLENCE: THE SUPREME COURT DECIDES
UNITED STATES V. DELLAGATTI

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In [*United States v. Delligatti*](#), the Supreme Court faced a question at the intersection of criminal law’s oldest principles and its modern statutory machinery: Can a person who intentionally causes bodily harm through omission—by doing nothing at all—be said to have “used physical force” under [18 U.S.C. § 924\(c\)\(3\)\(A\)](#)? The Court answered yes. In doing so, it extended the reach of the “[crime of violence](#)” definition to include not only affirmative acts of violence, but also purposeful inaction, intended to result in harm.

Section 924(c) is a federal statute that mandates additional, consecutive prison terms for individuals who use or carry a firearm while committing a “crime of violence.” The statute defines such a crime in two clauses. The elements clause, at issue here, applies to felonies that have as an element “the use, attempted use, or threatened use of physical force against the person or property of another.” The residual clause, a catchall for offenses involving a substantial risk of force, was struck down in [*United States v. Davis*](#) as unconstitutionally vague. Though it is a federal law that provides for the sentence enhancement, *state or federal* law can define the underlying crime of violence.

Salvatore Delligatti’s conviction under § 924(c) stemmed from an attempted mob hit gone awry. Acting on behalf of the [Genovese crime family](#), Delligatti arranged the attempted murder of Joseph Bonelli and provided firearms to gang members enlisted to carry it out. The underlying offense was attempted murder under the federal [VICAR statute \(18 U.S.C. § 1959\)](#), which in this case was predicated on [New York’s second-degree murder statute](#). That statute criminalizes intentionally causing death—including through omission, such as when a parent fails to feed a child.

[Delligatti argued](#) that because New York’s law permits convictions based on failure to act (i.e., omission), it does not categorically require the “use of physical force,” and thus cannot serve as a predicate crime of violence allowing for enhancement under § 924(c). The [Second Circuit disagreed](#), relying on its prior en banc decision in [*United States v. Scott*](#), and the Supreme Court granted certiorari to resolve the question.

Justice Thomas, writing for the majority, leaned heavily on [*United States v. Castleman*](#), where the Court held that “the knowing or intentional causation of bodily injury necessarily involves the use of physical force.” Though *Castleman* concerned a different statute—[§ 922\(g\)\(9\)](#), related to misdemeanor domestic violence—the Court found the reasoning applicable here. In *Castleman*, the Court reasoned that *indirect* force—like poisoning—still qualifies as physical force, rejecting the idea that force must be a fist to the face. Thomas extended this to § 924(c), arguing that deliberate omissions causing harm (e.g., letting a child drink bleach) are no different. “Use,” Thomas wrote, can mean wielding natural forces via inaction, like “using” rain to wash a car by leaving it outside.

The Court underscored that physical force need not be exerted through direct physical confrontation. Causing harm by poison, disease, or another agent qualifies. [Justice Scalia’s *Castleman* concurrence](#), later adopted in [*Stokeling v. United States*](#), made clear that knowingly causing injury necessarily involves “force capable of causing physical pain or injury”—the standard set in [*Johnson v. United States*](#). Under this view, the way force is applied—directly or indirectly—is legally irrelevant as long as the intention is to cause injury.

The Court rejected the notion that omissions fall outside the statutory scope of “use.” To the contrary, it reasoned, one can “use” something by deliberately but passively allowing it to operate. A person may “use” the rain to wash a car or “use” darkness to conceal a movement. Likewise, a parent who allows a child to ingest bleach to cause harm has “used” the bleach’s properties as an instrument of violence.

The phrase “against the person of another” also posed no barrier to the Court’s conclusion. The Court interpreted this clause to refer to the object of the force, not the method. So long as the harm is intended and directed at a specific individual, the requirement is met—regardless of whether the force is applied through action or omission.

To reinforce its holding, the Court drew on history and statutory context. Murder, it noted, is the paradigmatic crime of violence. And under both common law and modern statutes, murder has long been understood to include killings committed through omission—provided the actor had a legal duty to intervene. [In 1986, when Congress enacted the elements clause](#), at least 33 states treated omissions as capable of giving rise to criminal liability. Leading treatises, [the Model Penal Code](#), and early American case law confirmed the same

Excluding statutes that include omission-based offenses from the definition of “crime of violence,” the Court reasoned, would lead to the absurd result of carving out second-degree murder—one of the most serious crimes in any legal system—from a statute designed to enhance penalties precisely for violent crimes. Such an interpretation would defy both common sense and the plain legislative purpose, severely undermining the statutory framework’s coherence and effectiveness.

Joined by Justice Jackson, Justice Gorsuch, [writing in dissent](#), offered a sharp textualist counterpoint. He argued that the elements clause requires active, violent force, and that omissions—by definition—are passive. He invoked the precedents from [*Bailey*](#), [*Johnson*](#), and [*Leocal*](#) to argue that “use” means volitional action, not merely letting nature take its course.

The majority pushed back. *Bailey*, it said, dealt with firearm possession, not force; *Johnson* involved degrees of contact, not causation; and *Leocal* focused on negligence. None, the Court insisted, undermined the foundational point from *Castleman* and *Stokeling*: if you cause physical harm intentionally, you have used force, whether by hand, by tool, or by silence.

The dissent also warned against relying on legislative purpose or “ordinary meaning” divorced from statutory text. The majority replied that when interpreting a statutory definition—especially one defining “crimes of violence”—it is entirely appropriate to consider the conventional

understanding of the phrase. Murder, it reiterated, is the archetypal violent crime. To interpret the statute such that “crime of violence” excludes second-degree murder would render that term unrecognizable.

In the end, the Court held that intentionally or knowingly causing bodily harm or death—even by omission—constitutes the use of physical force under § 924(c)(3)(A). Convictions under New York’s second-degree murder statute, which includes omission-based killings, therefore qualify. Because Delligatti’s VICAR charge was predicated on an attempt to commit that offense, it falls within the statute, thus allowing the sentence enhancement.

The Court affirmed the [Second Circuit’s judgment](#).

The Court’s decision in *Delligatti* is more than a straightforward application of precedent. It is a rearticulation of how federal law understands force itself. By collapsing the formal wall between acts and omissions, the Court has signaled that what matters most in determining whether force is present is not how harm is inflicted, but whether the defendant aimed to cause harm and used some physical mechanism—direct or indirect—to achieve it.

It is a ruling with real consequences, extending the reach of federal firearm sentencing enhancements and reshaping the conceptual boundary between passive cruelty and active violence. Whether one sees that as doctrinal evolution or textual overreach may depend on one’s jurisprudential lens. But what is certain is this: silence, when paired with intent and consequence, can speak forcefully in the eyes of the law.