

No. 18-7232

IN THE SUPREME COURT OF THE UNITED STATES

ARTHUR SANCHEZ, PETITIONER

v.

UNITED STATES OF AMERICA

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

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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Petitioner contends (Pet. 9-23) that his prior conviction for third-degree robbery, in violation of N.M. Stat. Ann. § 30-16-2 (2001), does not qualify as a “violent felony” under the elements clause of the Armed Career Criminal Act of 1984 (ACCA), 18 U.S.C. 924(e), because it does not “ha[ve] as an element the use, attempted use, or threatened use of physical force against the person of another,” 18 U.S.C. 924(e)(2)(B)(i). This Court has recently denied other petitions for writs of certiorari presenting that same question. See Serrano v. United States, No. 18-5288 (Feb. 25, 2019); Garcia v. United States, No. 17-9469 (Feb. 25, 2019). The same result is warranted here.

After the petition for a writ of certiorari in this case was filed, this Court issued its decision in Stokeling v. United States, 139 S. Ct. 544 (2019). The Court in Stokeling determined that a defendant's prior conviction for robbery under Florida law satisfied the ACCA's elements clause. Id. at 555. The Court explained that "the term 'physical force' in ACCA encompasses the degree of force necessary to commit common-law robbery" -- namely, "force necessary to overcome a victim's resistance." Ibid.

This Court's decision in Stokeling forecloses petitioner's contention (Pet. 9-23) that New Mexico robbery, in violation of Section 30-16-2, does not qualify as a violent felony under the ACCA's elements clause. Petitioner himself acknowledges (Pet. 13-14) that New Mexico robbery -- like Florida robbery -- requires "using force to overcome resistance." Because "'physical force'" under the ACCA encompasses "force necessary to overcome a victim's resistance," Stokeling, 139 S. Ct. at 555, and because New Mexico robbery requires such force, see, e.g., Pet. 5, 9, 13-15; Pet. App. 3a, the court of appeals correctly determined that petitioner's prior conviction for New Mexico robbery, in violation of Section 30-16-2, was an ACCA predicate, Pet. App. 3a.

Petitioner separately contends (Pet. 24-39) that his prior convictions for aggravated assault with a deadly weapon, in violation of N.M. Stat. Ann. § 30-3-2(A) (1996), and aggravated battery with a deadly weapon, in violation of N.M. Stat. Ann. § 30-3-5(C) (2001), were not convictions for violent felonies under

the ACCA's elements clause. For the reasons stated in the government's brief in opposition to the petition for a writ of certiorari in Marquez v. United States, cert. denied, 139 S. Ct. 940 (No. 18-6097), New Mexico aggravated assault with a deadly weapon satisfies the ACCA's elements clause because employing a deadly weapon when committing an assault "necessarily threatens the use of physical force," Pet. App. 2a (citation omitted); see U.S. Br. in Opp. at 12-18, Marquez, supra (No. 18-6097).¹ For similar reasons, New Mexico aggravated battery with a deadly weapon -- which requires employing a deadly weapon when committing a battery with the "intent to injure" another, N.M. Stat. Ann. § 30-3-5(A) (2001) -- likewise "necessarily threatens the use of physical force.'" Pet. App. 3a (citation omitted). The court of appeals therefore correctly determined that petitioner's prior New Mexico convictions for aggravated assault with a deadly weapon and aggravated battery with a deadly weapon satisfy the ACCA's elements clause, and its decision does not conflict with any decision of this Court or another court of appeals.

The petition for a writ of certiorari should be denied.²

¹ We have served petitioner with a copy of the government's brief in opposition in Marquez.

² The government waives any further response to the petition for a writ of certiorari unless this Court requests otherwise.

Respectfully submitted.

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