

No. 19-7527

IN THE SUPREME COURT OF THE UNITED STATES

MARCUS RASHAWN SMITH, PETITIONER

v.

UNITED STATES OF AMERICA

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

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

NOEL J. FRANCISCO
Solicitor General
Counsel of Record
Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

IN THE SUPREME COURT OF THE UNITED STATES

No. 19-7527

MARCUS RASHAWN SMITH, PETITIONER

v.

UNITED STATES OF AMERICA

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

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner raises (Pet. 11-18) a procedural due process challenge to the court of appeals' practice of affording precedential weight to published orders denying applications for leave to file second or successive motions under 28 U.S.C. 2255. Petitioner's constitutional challenge does not warrant review for the reasons stated on pages 12 to 15 of the government's brief in opposition to the petition for a writ of certiorari in Mack v. United States, No. 19-6355 (Apr. 10, 2020).¹

¹ We have served petitioner with a copy of the government's brief in opposition in Mack. Other pending petitions raise similar claims. See Br. in Opp. at 9 n.1, Mack, supra (No. 19-6355).

In any event, further review is unwarranted because the precedential order on which the court of appeals relied in this case, see Pet. App. 6 (citing In re Sams, 830 F.3d 1234, 1239 (11th Cir. 2016)), correctly determined that bank robbery in violation of 18 U.S.C. 2113(a) qualifies as a “crime of violence” under 18 U.S.C. 924(c) (3) (A). A conviction for bank robbery requires proof that the defendant took or attempted to take money from the custody or control of a bank “by force and violence, or by intimidation.” 18 U.S.C. 2113(a). For the reasons stated on pages 7 to 25 of the government’s brief in opposition to the petition for a writ of certiorari in Johnson v. United States, No. 19-7079 (Apr. 24, 2020), bank robbery qualifies as a crime of violence under Section 924(c) because it “has as an element the use, attempted use, or threatened use of physical force against the person or property of another,” 18 U.S.C. 924(c) (3) (A).² Every court of appeals to have considered this question has recognized that Section 924(c) (3) (A), or a similarly worded provision, encompasses federal bank-robbery offenses. See Br. in Opp. at 7-8, Johnson, supra (No. 19-7079) (citing decisions that apply such provisions to bank robbery, and to armed bank robbery for reasons that apply equally to bank robbery). This Court has recently and repeatedly denied petitions

² Although Johnson itself involves armed bank robbery, the government’s brief in opposition explains why bank robbery alone, in violation of 18 U.S.C. 2113(a), qualifies as a crime of violence. We have served petitioner with a copy of the government’s brief in opposition in Johnson.

for a writ of certiorari challenging the circuits' consensus on that issue.³

The petition for a writ of certiorari should be denied.⁴

Respectfully submitted.

NOEL J. FRANCISCO
Solicitor General

MAY 2020

³ See, e.g., Johnson v. United States, 139 S. Ct. 647 (2018) (No. 18-6499); Cadena v. United States, 139 S. Ct. 436 (2018) (No. 18-6069); Patterson v. United States, 139 S. Ct. 291 (2018) (No. 18-5685); Schneider v. United States, 138 S. Ct. 638 (2018) (No. 17-5477); Castillo v. United States, 138 S. Ct. 638 (2018) (No. 17-5472).

⁴ The government waives any further response to the petition for a writ of certiorari unless this Court requests otherwise.