

No. 19-7672

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IN THE SUPREME COURT OF THE UNITED STATES

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DONTE DESHAWN ALSTON, PETITIONER

v.

UNITED STATES OF AMERICA

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

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MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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Petitioner raises (Pet. 6-15) 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), which the government is filing contemporaneously with this brief.<sup>1</sup>

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<sup>1</sup> We have served petitioner with a copy of the government's brief in opposition in Mack, which will also be available from the

In any event, further review is unwarranted because the precedential order on which the court of appeals relied in this case, see Pet. App. 3 (citing In re Hines, 824 F.3d 1334, 1337 (11th Cir. 2016)), correctly determined that armed bank robbery in violation of 18 U.S.C. 2113(a) and (d) qualifies as a "crime of violence" under 18 U.S.C. 924(c)(3)(A). A conviction for armed bank robbery requires proof that the defendant (1) 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); and (2) either committed an "assault[]" or endangered "the life of any person by the use of a dangerous weapon or device" while committing the robbery, 18 U.S.C. 2113(d). For the reasons stated on pages 6 to 13 of the government's brief in opposition to the petition for a writ of certiorari in Lloyd v. United States, No. 18-6269 (Jan. 9, 2019), armed 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).<sup>2</sup> Every court of appeals to have considered this question has so held.

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Court's online docket at <https://www.supremecourt.gov/docket/docketfiles/html/public/19-6355.html>. Other pending petitions raise similar claims. See Br. in Opp. at 9 n.1, Mack, supra (No. 19-6355).

<sup>2</sup> We have served petitioner with a copy of the government's brief in opposition in Lloyd, which is also available from the Court's online docket at <https://www.supremecourt.gov/docket/docketfiles/html/public/18-6269.html>.

See Br. in Opp. at 8-9, Lloyd, supra (No. 18-6269). This Court has recently and repeatedly denied petitions for a writ of certiorari challenging the circuits' consensus on the application of Section 924(c)(3)(A) -- and similarly worded federal statutes and provisions of the Sentencing Guidelines -- to bank robbery and armed bank robbery.<sup>3</sup>

The petition for a writ of certiorari should be denied.<sup>4</sup>

Respectfully submitted.

NOEL J. FRANCISCO  
Solicitor General

APRIL 2020

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<sup>3</sup> See, e.g., Myrie v. United States, 140 S. Ct. 452 (2019) (No. 19-5392) (armed bank robbery); Lockwood v. United States, 139 S. Ct. 2648 (2019) (No. 18-8799) (armed bank robbery); Cirino v. United States, 139 S. Ct. 2012 (2019) (No. 18-7680) (armed bank robbery); Winston v. United States, 139 S. Ct. 1637 (2019) (No. 18-8525) (armed bank robbery); Hearn v. United States, 139 S. Ct. 1620 (2019) (No. 18-7573) (armed bank robbery); Landingham v. United States, 139 S. Ct. 1620 (2019) (No. 18-7543) (armed bank robbery); Scott v. United States, 139 S. Ct. 1612 (2019) (No. 18-8536) (armed bank robbery); Lloyd v. United States, 139 S. Ct. 1167 (2019) (No. 18-6269) (armed bank robbery); Johnson v. United States, 139 S. Ct. 647 (2018) (No. 18-6499) (bank robbery); Faurisma v. United States, 139 S. Ct. 578 (2018) (No. 18-6360) (armed bank robbery); Cadena v. United States, 139 S. Ct. 436 (2018) (No. 18-6069) (bank robbery); Patterson v. United States, 139 S. Ct. 291 (2018) (No. 18-5685) (bank robbery); Watson v. United States, 139 S. Ct. 203 (2018) (No. 18-5022) (armed bank robbery); Perry v. United States, 138 S. Ct. 1439 (2018) (No. 17-6611) (armed bank robbery); Schneider v. United States, 138 S. Ct. 638 (2018) (No. 17-5477) (bank robbery); Castillo v. United States, 138 S. Ct. 638 (2018) (No. 17-5472) (bank robbery); Stephens v. United States, 138 S. Ct. 502 (2017) (No. 17-5186) (armed bank robbery).

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