

No. 19-8899

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IN THE SUPREME COURT OF THE UNITED STATES

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MICHAEL WAYNE BLANCHE, 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 NINTH CIRCUIT

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MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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Petitioner contends (Pet. 7-22) that aiding and abetting armed bank robbery, in violation of 18 U.S.C. 2113(a) and (d), and 2, is not a "crime of violence" under 18 U.S.C. 924(c) (3) (A). That contention lacks merit. The petition for a writ of certiorari should be denied.

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" through "the use of a dangerous

weapon or device" in committing the robbery, 18 U.S.C. 2113(d). For the reasons stated in 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), 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). See Br. in Opp. at 7-25, Johnson, supra (No. 19-7079).<sup>1</sup> Every court of appeals with criminal jurisdiction, including the court below, has recognized that Section 924(c)(3)(A) and similarly worded provisions encompass federal bank robbery and armed bank robbery. See id. at 7-8. This Court has recently and repeatedly denied petitions for a writ of certiorari challenging the circuits' consensus on that issue. See id. at 7-8 & n.1.

Petitioner contends (Pet. 8-16) that, even if armed bank robbery is a "crime of violence," aiding and abetting bank robbery is not. The court of appeals, however, did not reach that issue, because it concluded that the verdict form in petitioner's case -- considered in conjunction with the indictment, jury instructions, and trial transcript -- reflected a specific finding that petitioner committed armed bank robbery both as a principal and as an aider and abettor. Pet. App. 3; see id. at 4-6 (Miller,

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<sup>1</sup> We have served petitioner with a copy of the government's brief in opposition in Johnson. That brief is also available on this Court's electronic docket.

J., concurring in the judgment) (interpreting the record differently but determining that aiding and abetting federal armed bank robbery is a crime of violence). This Court should not address that issue in the first instance. Cf. Cutter v. Wilkinson, 544 U.S. 709, 718 n.7 (2005) ("[W]e are a court of review, not of first view."). Although petitioner suggests (Pet. 12) that the trial record supports an "interpretation of the verdict" under which at least some jurors may have determined that he was guilty of armed bank robbery based solely on an aiding-and-abetting theory, that factbound disagreement with the court of appeals' decision does not warrant this Court's review. See United States v. Johnston, 268 U.S. 220, 227 (1925).

In any event, for the reasons stated in the government's brief in opposition to the petition for a writ of certiorari in Mojica v. United States, No. 19-35 (Nov. 22, 2019), cert. denied, 140 S. Ct. 911 (2020), aiding and abetting armed bank robbery qualifies as a crime of violence under Section 924(c)(3)(A). See Br. in Opp. at 8-10, Mojica, supra (No. 19-35).<sup>2</sup> Every court of appeals to have considered the question has determined that aiding and abetting a crime that has the requisite element of force under Section 924(c)(3)(A) and similar provisions qualifies as a crime of violence. See id. at 9-10 (citing cases); see also Pet. App.

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<sup>2</sup> We have served petitioner with a copy of the government's brief in opposition in Mojica. That brief is also available on this Court's electronic docket.

5-6 (Miller, J., concurring). This Court has recently and repeatedly denied review of that issue. See Br. in Opp. at 10, Mojica, supra (No. 19-35) (citing cases); see also, e.g., Becker v. United States, No. 19-8459 (June 22, 2020); Rodriguez v. United States, No. 19-8053 (Apr. 20, 2020); Kidd v. United States, 140 S. Ct. 894 (No. 19-6108). The same result is appropriate here.

The petition for a writ of certiorari should be denied.<sup>3</sup>

Respectfully submitted.

JEFFREY B. WALL  
Acting Solicitor General

SEPTEMBER 2020

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<sup>3</sup> The government waives any further response to the petition unless this Court requests otherwise.