

No. 20-6622

IN THE SUPREME COURT OF THE UNITED STATES

DEVON MITCHELL, PETITIONER

v.

UNITED STATES OF AMERICA

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

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ELIZABETH B. PRELOGAR
Acting Solicitor General
Counsel of Record
Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

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Petitioner contends (Pet. 12-17) that armed bank robbery, in violation of 18 U.S.C. 2113(a) and (d), does not qualify as a "crime of violence" within the meaning of 18 U.S.C. 924(c)(3)(A). The district court correctly rejected that contention, and the court of appeals appropriately declined to issue a certificate of appealability.

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 explained 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).¹

Petitioner contends that armed bank robbery does not qualify as a crime of violence under Section 924(c) (3) (A), asserting that robbery "by force and violence" does not require physical force. Pet. 15-17 (citation omitted). That contention lacks merit for the reasons explained at pages 9 to 15 of the government's brief in opposition in Johnson, supra (No. 19-7079). 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 8-9 & n.1, and the same result is warranted here.

¹ We have served petitioner with a copy of the government's brief in opposition in Johnson, which is also available from this Court's online docket.

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

Respectfully submitted.

ELIZABETH B. PRELOGAR
Acting Solicitor General

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² The government waives any further response to the petition unless this Court requests otherwise.