

No. 20-6742

IN THE SUPREME COURT OF THE UNITED STATES

EDWARD DAVIS, PETITIONER

v.

UNITED STATES OF AMERICA

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

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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Petitioner contends (Pet. 5-6) that bank robbery, in violation of 18 U.S.C. 2113(a), 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 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 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), bank robbery qualifies as crimes 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 bank robbery does not qualify as a crime of violence under Section 924(c) (3) (A), asserting that robbery "by intimidation" does not require a threat of violent force. See Pet. 5-6. That contention lacks merit for the reasons explained at pages 9 to 20 of the government's brief in opposition in Johnson, supra (No. 19-7079). Petitioner further contends that the bank-robbery statute includes nonviolent means of committing the offense, and that Section 2113(a) is indivisible. See Pet. 5-6. That contention likewise lacks merit. The courts of appeals have uniformly recognized that Section 2113(a) is divisible because its separate paragraphs establish distinct offenses with different elements. See, e.g., United States v. Butler, 949 F.3d 230, 234-236 (5th Cir. 2020) (explaining why Section 2113(a) is divisible under Mathis v. United States, 136 S. Ct. 2243, 2248-2249 (2016), and observing that "other circuits have uniformly treated

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.

section 2113(a) as divisible"); see also Indictment 1 (charging that petitioner "did by force, violence and intimidation take from the person and presence of an employee of [a bank] currency belonging to" the bank).

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 Br. in Opp. at 7-8, Johnson, supra (No. 19-7079). 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, and the same result is warranted here.

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

Respectfully submitted.

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