

23-825 DELLIGATTI V. UNITED STATES

DECISION BELOW: 83 F.4th 113

LOWER COURT CASE NUMBER: 18-2482, 18-2610

QUESTION PRESENTED:

Under 18 U.S.C. § 924(c)(3)(A), a felony qualifies as a "crime of violence" if it "has as an element the use, attempted use, or threatened use of physical force against the person or property of another." Courts have disagreed about how to apply use-of-force language to crimes that require proof of a victim's bodily injury or death but can be committed by *failing* to take action.

In the decision below, the Second Circuit held that any crime requiring proof of death or bodily injury categorically involves the use of physical force, even if it can be committed through inaction-such as by failing to provide medicine to someone who is sick or by failing to feed a child. That ruling reflects the law in eight circuits.

Two courts of appeals, by contrast, have held that the use of force is *not* an element of such crimes if the crime may be committed by inaction. One of those courts recently rejected the government's petition for rehearing en banc, which had argued that any crime requiring proof of bodily injury or death necessarily involves the use, attempted use, or threatened use of physical force.

The question presented is:

Whether a crime that requires proof of bodily injury or death, but can be committed by failing to take action, has as an element the use, attempted use, or threatened use of physical force.

CERT. GRANTED 6/3/2024