No. 18-6706

IN THE SUPREME COURT OF THE UNITED STATES

JEREMIAH DAVIS, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the Tennessee offense of aggravated assault, in violation of Tenn. Code. Ann. § 39-13-102(a)(1) (1991), is a "violent felony" under the Armed Career Criminal Act of 1984, 18 U.S.C. 924(e).

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-7a) is reported at 900 F.3d 733. The opinion of the district court (Pet. App. 8a-28a) is reported at 262 F. Supp. 3d 539. A prior opinion of the court of appeals is not published in the Federal Supplement, but is reprinted at 52 Fed. Appx. 738.

JURISDICTION

The judgment of the court of appeals was entered on August 16, 2018. The petition for a writ of certiorari was filed on November 13, 2018. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a guilty plea in the United States District Court for the Eastern District of Tennessee, petitioner was convicted on one count of possession of a firearm by a felon, in violation of 18 U.S.C. 922(g)(1). Pet. App. 1a; Presentence Investigation Report (PSR) ¶¶ 1-2. The district court sentenced petitioner to 180 months of imprisonment, to be followed by five years of supervised release. Pet. App. 27a. The court of appeals affirmed. Id. at 2a. In 2016, petitioner moved to vacate his sentence pursuant to 28 U.S.C. 2255. The district court granted petitioner's motion and resentenced him to time served. Pet. App. 8a-28a. The court of appeals reversed. Id. at 1a-7a.

1. In August 2000, petitioner, who had several prior felony convictions, possessed a loaded firearm. PSR ¶¶ 4-5. Petitioner showed the firearm to a law enforcement officer during an interview at his girlfriend's home and admitted that the firearm belonged to him. PSR ¶ 5. A grand jury returned an indictment charging petitioner with one count of possession of a firearm by a felon, in violation of 18 U.S.C. 922(g)(1), and petitioner pleaded guilty to that offense. PSR ¶¶ 1-2.

Under 18 U.S.C. 924(a)(2), the default term of imprisonment for the offense of possession of a firearm by a felon is zero to 120 months. The Armed Career Criminal Act of 1984 (ACCA), 18 U.S.C. 924(e)(1), however, prescribes a term of 15 years to

life if the defendant has "three previous convictions * * * for a violent felony or a serious drug offense" committed on different occasions. The ACCA defines a "violent felony" to include any crime punishable by more than one year of imprisonment that "has as an element the use, attempted use, or threatened use of physical force against the person of another" (the "elements clause"); "is burglary, arson, * * * extortion [or] involves use of explosives" (the "enumerated felonies clause"); or "otherwise involves conduct that presents a serious potential risk of physical injury to another" (the "residual clause"). 18 U.S.C. 924(e)(2)(B); Welch v. United States, 136 S. Ct. 1257, 1261 (2016).

Prior to sentencing, the Probation Office determined that petitioner had three prior Tennessee aggravated assault convictions that constituted "violent felon[ies]" for purposes of the ACCA: two convictions under the pre-1993 version of the statute, Tenn. Code Ann. §§ 39-13-101, 39-13-102(a) (1991), and one conviction under the post-1993 version of the statute, id. §§ 39-13-101, 39-13-102(a) (1991 & Supp. 1994). Pet. App. 8a-9a. The district court agreed that petitioner qualified for sentencing under the ACCA and sentenced petitioner to 180 months of imprisonment. Id. at 9a. The court of appeals affirmed petitioner's conviction and sentence. 52 Fed. Appx. 738.

2. In 2015, this Court held in Johnson v. United States, 135 S. Ct. 2551 (2015), that the ACCA's residual clause is

unconstitutionally vague. Id. at 2557. Less than a year later, petitioner filed a motion under 28 U.S.C. 2255 to vacate his sentence, arguing that his two pre-1993 Tennessee aggravated assault convictions qualified as ACCA predicates only under the now-invalidated residual clause. Because the district court had denied a previous "pro se motion to 'correct sentence,'" the district court "believed [the new petition] to be a successive petition," and it transferred the filing to the court of appeals for authorization. Pet. App. 9a. The court of appeals determined that petitioner's motion was his first Section 2255 petition, such that it required no authorization, and returned the petition to the district court. Ibid.

The district court granted petitioner's motion for relief. Pet. App. 8a-28a. At the time of his 1991 and 1992 aggravated assault convictions, Tennessee defined assault to include "[i]ntentionally, knowingly or recklessly caus[ing] bodily injury to another"; "[i]ntentionally or knowingly caus[ing] another to reasonably fear imminent bodily injury"; or "[i]ntentionally or knowingly caus[ing] physical contact with another [where] a reasonable person would regard the contact as extremely offensive or provocative." Tenn. Code Ann. § 39-13-101(a) (1991). Subsection (a)(1) of Tennessee's aggravated assault statute, under which petitioner was convicted, see Pet. App. 4a-7a, provided that "[a] person commits aggravated assault who: (1) Commits an assault

as defined in § 39-13-101 and: (A) Causes serious bodily injury to another; or (B) Uses or displays a deadly weapon." Tenn. Code Ann. § 39-13-102(a)(1) (1991). Subsection (a)(1) thus covered the intentional, knowing, and reckless variants of aggravated assault, with all three variants treated as Class C felonies.[1]

Records from petitioner's prior state convictions revealed that his 1991 conviction involved "shooting [a victim] with a deadly weapon, causing serious bodily injury to the victim," while his 1992 conviction involved "fir[ing] a handgun at [a victim], striking him in the chest and causing serious bodily injury." Pet. App. 5a (citations omitted); see id. at 14a. The district court found, however, that the documents of conviction did not "foreclose the possibility that at least one of [p]etitioner's aggravated assault convictions involved reckless -- as opposed to intentional or knowing -- conduct." Ibid. Relying on a Sixth Circuit decision concluding that reckless aggravated assault does not qualify as a violent felony under the ACCA's elements clause, the district court reasoned that petitioner's ACCA sentence could be supported only

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[1] In 1993 -- after petitioner committed his first two aggravated assaults, but before he committed his third -- Tennessee revised the governing statute to separate reckless aggravated assault from knowing or intentional aggravated assault and reclassified the former as a Class D felony. Tenn. Code Ann. § 39-13-102(a)(1), (2) and (d) (Supp. 1994); see generally United States v. McMurray, 653 F.3d 367, 372 n.2 (6th Cir. 2011). Petitioner does not dispute that his conviction for aggravated assault under the post-1993 statute qualifies as a violent felony under the ACCA. Pet. App. 2a, 11a; Pet. 2, 8-9.

by the now-invalidated residual clause. Id. at 23a-27a (citing United States v. McMurray, 653 F.3d 367, 377 (2011)). The court granted relief and resentenced petitioner to time served. Id. at 28a.

3. The court of appeals reversed. On appeal, petitioner "mostly abandon[ed]" his argument that "because Tennessee aggravated assault can be committed with a mental state of recklessness, his two convictions were not predicate crimes under the ACCA's [elements] clause." Pet. App. 3a-4a. He did so, the court observed, "for good reason," namely that "[a]fter the district court's decision," the court of appeals had held in United States v. Verwiebe 874 F.3d 258 (6th Cir. 2017), cert. denied, 139 S. Ct. 63 (2018), "that a mental state of recklessness is sufficient to qualify a conviction as a crime of violence under the [elements] clause." Pet. App. 4a.

The court of appeals explained that Verwiebe had followed this Court's "intervening" decision in Voisine v. United States, 136 S. Ct. 2272 (2016), which "necessarily overturned" the previous circuit precedent on which the district court had relied. Pet. App. 4a. Voisine interpreted the phrase "use of physical force" in the definition of "'misdemeanor crime of domestic violence'" in 18 U.S.C. 921(a)(33)(A)(ii), and held that a "person who assaults another recklessly 'uses' force, no less than one who carries out that same action knowingly or intentionally." 136 S. Ct. at 2280

(brackets omitted). The Court explained that the "dominant formulation" of recklessness requires a person "to 'consciously disregard' a substantial risk that the conduct will cause harm to another." Id. at 2278 (brackets and citation omitted). The Court thus recognized that "reckless behavior" involves "acts undertaken with awareness of their substantial risk of causing injury" and that "[t]he harm such conduct causes is the result of a deliberate decision to endanger another." Id. at 2279.

In Verwiebe, the court of appeals explained that "Voisine's analysis applies with equal force" to the elements clause in the Sentencing Guidelines' definition of "crime of violence." 874 F.3d at 262. The court observed that "Voisine's key insight" -- "that the word 'use' * * * does not require a purposeful or knowing state of mind" -- applied to the term "use" in Sentencing Guidelines § 4B1.2(a). 874 F.3d at 262-263 (citation omitted). The court thus found that the federal offense of serious-bodily-injury assault, 18 U.S.C. 113(a)(6), under which "recklessness suffices for conviction," necessarily involves the use of force against the person of another. Id. at 262.

The court of appeals in this case observed that it had "subsequently applied Verwiebe specifically to the Tennessee aggravated assault statute, concluding that reckless aggravated assault in Tennessee is a crime of violence under the [elements] clause." Pet. App. 4a (citing United States v. Harper, 875 F.3d

329, 330 (6th Cir. 2017), cert. denied, 139 S. Ct. 53 (2018)). "Although both Verwiebe and Harper dealt with the [elements] clause under [Sentencing Guidelines] § 4B1.2," the court continued, "their holdings apply equally to the ACCA's [elements] clause because both clauses have consistently been construed to have the same meaning." Ibid. (citing United States v. Patterson, 853 F.3d 298, 305 (6th Cir. 2017), cert. denied, 138 S. Ct. 273 (2017)). It thus found that petitioner's aggravated-assault convictions were convictions for violent felonies under the ACCA. Pet. App. 4a.[2]

ARGUMENT

Petitioner contends (Pet. 5-9) that his prior convictions for aggravated assault with a deadly weapon under Tenn. Code. Ann. § 39-13-102(a)(1) (1991) do not qualify as violent felonies under the ACCA because Tennessee aggravated assault can be committed by reckless driving resulting in injury. Further review of that contention is not warranted. The court of appeals correctly

[2] The court of appeals also rejected petitioner's argument that the government had not adequately supported its contention that petitioner's two pre-1993 convictions were for the Section 39-13-101(a)(1) variant of aggravated assault, rather than the Section 39-13-101(a)(2) or (a)(3) variants, which in petitioner's view did not satisfy the elements clause. Pet. App. 4a-7a. The court determined that the statute was divisible and that the charging documents offered by the government demonstrated that petitioner was convicted under Subsection (a)(1). Ibid. As discussed below, petitioner does not challenge that determination in this Court.

determined that Tennessee reckless aggravated assault has as an element the "use, attempted use, or threatened use of physical force against the person of another," 18 U.S.C. 924(e)(2)(B)(i). This Court has repeatedly and recently denied petitions for writs of certiorari raising similar questions,[3] and the same result is warranted here. Although a shallow and recent circuit conflict exists on whether to carve out from the ACCA's violent-felony definition an exception for assaults that can be committed through reckless driving resulting in injury, that issue does not currently warrant this Court's review. Review of that issue is particularly unwarranted in this case because petitioner did not timely raise, and the court of appeals did not address, the reckless-driving argument.

1. a. The court of appeals correctly determined that petitioner's convictions for aggravated assault -- which required proof that (1) petitioner recklessly caused serious bodily injury or (2) he recklessly caused bodily injury while using or displaying a deadly weapon -- involved the "use, attempted use, or threatened use of physical force against the person of another," 18 U.S.C. 924(e)(2)(B)(i), and thus qualify as violent felonies under the

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[3] See Haight v. United States, cert. denied, No. 18-370 (Jan. 7, 2019) (applicability of Voisine to the ACCA's elements clause); Ramey v. United States, 139 S. Ct. 84 (2018) (No. 17-8846) (applicability of Voisine to Sentencing Guidelines); Verwiebe v. United States, 139 S. Ct. 63 (2018) (No. 17-8413) (same); Harper v. United States, 139 S. Ct. 53 (2018) (No. 17-7613) (same).

ACCA's elements clause. That determination follows from this Court's determination in Voisine v. United States, 136 S. Ct. 2272 (2016), that, in the context of 18 U.S.C. 922(g)(9), the "use . . . of physical force" includes reckless conduct. Id. at 2278 (citation omitted).

This Court explained in Voisine that the word "'use'" requires the force to be "volitional" but "does not demand that the person applying force have the purpose or practical certainty that it will cause harm, as compared with the understanding that it is substantially likely to do so." 136 S. Ct. at 2279. The Court observed that the word "'use'" "is indifferent as to whether the actor has the mental state of intention, knowledge, or recklessness with respect to the harmful consequences of his volitional conduct." Ibid. The Court rejected the contention that its precedent "suggests a different conclusion -- i.e., that 'use' marks a dividing line between reckless and knowing conduct," explaining instead the key "distinction [is] between accidents and recklessness." Ibid. Thus, under Voisine, "[a]s long as a defendant's use of force is not accidental or involuntary, it is 'naturally described as an active employment of force,' regardless of whether it is reckless, knowing, or intentional." United States v. Haight, 892 F.3d 1271, 1281 (D.C. Cir. 2018) (quoting Voisine, 136 S. Ct. at 2279), cert. denied, No. 18-370 (Jan. 7, 2019).

b. Petitioner does not dispute (Pet. 5-9) that the term "use of force" in the ACCA can encompass reckless conduct. He does not contend (ibid.) that the court of appeals' decision in United States v. Verwiebe, 874 F.3d 258, 262 (6th Cir. 2017), cert. denied, 139 S. Ct. 63 (2018), improperly applied Voisine's logic to the Sentencing Guidelines. Nor does he argue (Pet. 5-9) that Voisine's logic is inapplicable to the ACCA. Instead, petitioner more narrowly contends (Pet. 5-7) that the elements clause does not cover Tennessee reckless aggravated assault in particular, because defendants may be convicted of that crime for recklessly using a car as a deadly weapon to assault their victims.[4] In other words, petitioner seeks a carve-out from the ACCA's violent-felony definition for reckless assaults that can be committed using a vehicle.

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[4] Under the pre-1993 statute, a defendant could be convicted for recklessly causing serious bodily injury with a car, or for recklessly causing injury while using or displaying a car as a deadly weapon, where the evidence supported a finding that the defendant was "aware of but consciously disregarded a substantial and unjustifiable risk" to others and "the risk" was "of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the accused person's standpoint." State v. Norris, 874 S.W.2d 590, 594 (Tenn. Crim. App. 1993) (citation omitted), overruled on other grounds by State v. Imfeld, 70 S.W.3d 698 (Tenn. 2002); see also State v. Primeaux, No. 4, 1988 WL 3912, at *1 (Tenn. Crim. App. Jan. 20, 1988) (unpublished) (upholding aggravated assault conviction where driving defendant acted "recklessly under circumstances manifesting extreme indifference to the value of human life") (citation omitted).

The argument in the petition is not properly before this Court because it was not properly pressed or passed upon below. As the court of appeals observed, petitioner on appeal "mostly abandon[ed]" the argument that "because Tennessee aggravated assault can be committed with a mental state of recklessness, his two convictions were not predicate crimes under the ACCA's use-of-force clause." Pet. App. 3a-4a. In his brief, petitioner argued for affirmance on the alternate ground that the government failed to present sufficient documentation to support its contention that petitioner's convictions rested on Section 39-13-102(a)(1), rather than one of the other subsections that, in petitioner's view, would not qualify as a violent felony for reasons other than the mental-state issue. See Pet. C.A. Br. 8, 15-20; Gov't C.A. Reply Br. 2 & n.3. The court of appeals rejected that argument, see Pet. App. 4a-7a, and petitioner does not renew it in this Court.

Petitioner first raised the reckless-driving argument in a letter to the court of appeals pursuant to Federal Rule of Appellate Procedure 28(j) filed the day before oral argument. See Pet. Letter (July 30, 2018). The Sixth Circuit does not address arguments that are not raised in a party's merits brief, see United States v. Lopez-Medina, 461 F.3d 724, 743 (2006), and it did not address petitioner's reckless-driving argument in this case, see Pet. App. 1a-7a. This Court therefore should not consider the

argument. See United States v. Williams, 504 U.S. 36, 41 (1992) (explaining that this Court's "traditional rule * * * precludes a grant of certiorari" when "'the question presented was not pressed or passed upon below.'") (citation omitted); Cutter v. Wilkinson, 544 U.S. 709, 718 n.7 (2005) ("[W]e are a court of review, not of first view.").

In any event, petitioner's request for a reckless-driving exception to the ACCA's elements clause lacks merit. Voisine itself considered a Maine assault statute that, like the Tennessee provision, prohibited the reckless causation of bodily injury without limitation as to the manner in which the injury was caused. See Voisine, 136 S. Ct. at 2277 (citing Me. Rev. Stat. Ann. tit. 17-A, § 207(1)(A)). Indeed, the dissent in Voisine specifically objected to the majority's holding on the ground that Maine reckless assault could be committed through reckless driving. See Voisine, 136 S. Ct. at 2284 (Thomas, J., dissenting) ("By criminalizing all reckless conduct, the Maine statute captures conduct such as recklessly injuring a passenger by texting while driving resulting in a crash."); id. at 2287-2290 ("part[ing] company" with the majority because, in the dissent's view, a conviction for, inter alia, recklessly causing injury by driving does not constitute the "use" of force).[5]

[5] Petitioner's argument (Pet. 7) that the court of appeals in this case "extended" Verwiebe's reasoning to assaults that can be committed by reckless driving is similarly misplaced. Like the

The Court's determination in Voisine that the Maine assault statute categorically required "use" of force, even though it covered reckless driving, was sound. There is "no reason to treat reckless driving as categorically different than other forms of reckless conduct." United States v. Mann, 899 F.3d 898, 905-906 (10th Cir. 2018), petition for cert. pending, No. 18-7500 (filed Jan. 15, 2019). For example, a defendant who, while driving through a residential neighborhood, "tailgat[es]" a driver and "zoom[s] around him," "turn[s] a sharp curve * * * at a high rate of speed," and, without applying his brakes, "collide[s] head-on with [another] car," "very severely injuring" two passengers, State v. Norris, 874 S.W.2d 590, 592-594, 596 (Tenn. Crim. App. 1993), overruled on other grounds by State v. Imfeld, 70 S.W.3d 698 (Tenn. 2002), employs force against his victims as surely as one who "throws a plate in anger against the wall near where his wife is standing," Voisine, 136 S. Ct. at 2279.

Tennessee aggravated assault statute, the federal provision at issue in Verwiebe covers defendants who, while consciously disregarding a known risk of injury to others, use a car to seriously injure another person. See, e.g., United States v. Zunie, 444 F.3d 1230, 1232, 1235-1236 (10th Cir. 2006); United States v. Loera, 923 F.2d 725, 727-728 (9th Cir.), cert. denied, 502 U.S. 854 (1991). As the court of appeals observed in United States v. Harper, 875 F.3d 329 (6th Cir. 2017), cert. denied, 139 S. Ct. 53 (2018), there is "no basis to distinguish the reckless-assault offense in Verwiebe" from the Tennessee aggravated-assault statute at issue here. Id. at 330.

Petitioner errs in suggesting that "reckless driving resulting [in] injury is distinct from other crimes of recklessness" and is instead "similar to" the driving-under-the-influence crime considered by this Court in Begay v. United States, 553 U.S. 137 (2008), abrogated by Johnson, supra. Pet. 6 (citations and internal quotation marks omitted). Begay addressed the scope of the now-invalidated ACCA residual clause; it did not consider the elements clause, 18 U.S.C. 924(e)(2)(B)(i). And the driving-under-the-influence statute at issue in Begay "impose[d] strict liability, criminalizing conduct in respect to which the offender need not have had any criminal intent at all." 553 U.S. at 146. Someone convicted under such a statute has not necessarily acted in "a purposeful, violent, and aggressive manner," id. at 145-146, or "use[d] * * * physical force against the person * * * of another," Leocal v. Ashcroft, 543 U.S. 1, 9 (2004) (quoting 18 U.S.C. 16(a)); see id. at 13 (holding that Florida driving-under-the-influence statute, which "do[es] not require any mental state with respect to the use of force against another person," does not qualify as a "crime of violence" under 18 U.S.C. 16(a), but reserving "the question whether a state or federal offense that requires proof of the reckless use of force against the person or property of another" would qualify).

The same cannot be said of a defendant convicted for reckless aggravated assault for "volitional conduct" involving "a

deliberate decision to endanger another." Voisine, 136 S. Ct. at 2278-2279. Indeed, while petitioner argues (Pet. 9) that only "violent repeat offenders" should be subject to sentencing under the ACCA, he fails adequately to explain why employing physical force in conscious disregard for the harm it may cause another person -- with a car or otherwise -- cannot fairly be described as "violent." See The Random House College Dictionary 1469 (1980) (defining "violent" to include "characterized by or arising from injurious or destructive force"); Webster's New Collegiate Dictionary 1297 (1981) (defining "violent" to include "marked by extreme force or sudden intense activity").

2. Petitioner asserts (Pet. 5-9) that the courts of appeals are divided over whether Voisine applies to "crimes that can be committed by recklessly driving." The existing, shallow disagreement on that question does not currently warrant this Court's review.

Petitioner acknowledges (Pet. 6) that the Sixth, Tenth, and D.C. Circuits have applied Voisine's reasoning to assaults that can be committed by reckless driving.[6] See Harper, 875 F.3d 329,

[6] The Fifth Circuit has determined that Voisine's logic applies to the Sentencing Guidelines in the context of a reckless crime that cannot be committed through reckless driving. See United States v. Howell, 838 F.3d 489, 500-503 (2016), cert. denied, 137 S. Ct. 1108 (2017) (finding that Texas assault by strangulation is a crime of violence under Sentencing Guidelines § 4B1.2(a)). The Ninth Circuit has suggested in dicta that Voisine's reasoning applies to 18 U.S.C. 16 and 924(c). United States v. Benally, 843 F.3d 350, 354 (2016).

329 (6th Cir. 2017) (Tennessee reckless aggravated assault is a crime of violence under Sentencing Guidelines § 4B1.2(a)), cert. denied, 139 S. Ct. 53 (2018); Mann, 899 F.3d 898 (10th Cir.) (federal serious-bodily injury assault is a crime of violence under 18 U.S.C. 924(c) (2012)); Haight, 892 F.3d 1271 (D.C. Cir.) (D.C. assault with a dangerous weapon is an ACCA crime of violence). Although the Sixth and D.C. Circuits did not address the issue directly, the Tenth Circuit has expressly rejected a request to "carv[e] out an exception for, at least, offenses that encompass reckless driving." Mann, 899 F.3d at 905.

The First Circuit, meanwhile, has not carved out an exception from Voisine for assaults that can be committed by reckless driving, as petitioner advocates here, but instead has concluded that no "crimes with a mens rea of recklessness may be violent felonies under the [ACCA's] force clause." United States v. Rose, 896 F.3d 104, 109 (2018). Only the Eighth Circuit has both applied Voisine's reasoning to the ACCA, see United States v. Fogg, 836 F.3d 951 (2016), cert. denied, 137 S. Ct. 2117 (2017), and, relying on pre-Voisine precedent, carved out an exception for "the unadorned offense of reckless driving resulting in injury," United States v. Fields, 863 F.3d 1012, 1015 (2017) (quoting United States v. Ossana, 638 F.3d 895, 901 n.6 (2011)). That decision remains the subject of some debate within the Eighth Circuit. See United States v. Ramey, 880 F.3d 447, 449 (8th Cir. 2018) (questioning,

in dicta, "the vitality of [Ossana] after Voisine and Fogg"), cert. denied, 139 S. Ct. 84 (2018); Fields, 863 F.3d at 1016 (Loken, J., dissenting) ("[P]rior decisions holding that recklessly driving a motor vehicle can never be a 'crime of violence' * * * were wrongly overbroad when decided, and they have been overruled or significantly restricted by subsequent Supreme Court and Eighth Circuit decisions."); but see, e.g., United States v. Schneider, 905 F.3d 1088, 1091-1092 (8th Cir. 2018) (applying Fields to find that North Dakota aggravated assault statute, which "covers reckless driving," is not a crime of violence under the Sentencing Guidelines).

The shallow disagreement regarding whether to exempt assaults that may be committed by reckless driving from the ACCA and other similar statutory or Guidelines provisions does not warrant this Court's review at this time and in this case. Other circuits are currently considering whether to carve out from Voisine's reasoning an exception for assaults that can be committed by reckless driving. See, e.g., United States v. Santiago, No. 16-4194 (3d Cir.) (oral argument scheduled for May 5, 2019). Thus, the Court will have other opportunities to consider the question presented should it wish to do so. Moreover, this case would be a particularly inappropriate vehicle for the Court's review because, as discussed above, petitioner did not timely press, and

the court of appeals did not pass on, the reckless-driving argument.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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