

No. 19-6025

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IN THE SUPREME COURT OF THE UNITED STATES

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JAVIER SEGOVIA-LOPEZ, 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 FIFTH CIRCUIT

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MEMORANDUM FOR THE UNITED STATES

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Petitioners<sup>1</sup> contend (Pet. 13-23) that their prior convictions for assault under Tex. Penal Code § 22.01(a) or aggravated assault under Tex. Penal Code § 22.02(a) do not qualify as aggravated felonies under 8 U.S.C. 1326(b)(2), on the theory that an offense that can be committed with a mens rea of recklessness does not include as an element the “use, attempted use, or threatened use of physical force against the person or property of another” under 18 U.S.C. 16(a). See 8 U.S.C. 1101(a)(43) (defining “aggravated

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<sup>1</sup> The petition for a writ of certiorari was filed on behalf of petitioners Javier Segovia-Lopez, Rolando Daniel Garcia-Hernandez, Javier Fuentes-Rodriguez, and Oscar Segura-Romera, all of whom were convicted and sentenced separately. See Pet. ii.

felony” for purposes of Section 1326(b)(2) to include any “crime of violence” as defined in Section 16(a)). This Court has granted review in Walker v. United States, cert. granted, No. 19-373 (Nov. 15, 2019), to address whether crimes that can be committed with a mens rea of recklessness can satisfy the definition of a “violent felony” under a similarly worded provision of the Armed Career Criminal Act of 1984, 18 U.S.C. 924(e)(2)(B)(i). The petition for a writ of certiorari should therefore be held pending this Court’s decision in Walker and then disposed of as appropriate in light of that decision.<sup>2</sup>

Respectfully submitted.

NOEL J. FRANCISCO  
Solicitor General

JANUARY 2020

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<sup>2</sup> The government waives any further response to the petition for a writ of certiorari unless this Court requests otherwise.