

No. 19-6186

IN THE SUPREME COURT OF THE UNITED STATES

LATROY LEON BURRIS, PETITIONER

v.

UNITED STATES OF AMERICA

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

MEMORANDUM FOR THE UNITED STATES

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Following a guilty plea in the United States District Court for the Northern District of Texas, petitioner was convicted of possession of a firearm by a felon, in violation of 18 U.S.C. 922(g)(1), and possession of a controlled substance with intent to distribute, in violation of 21 U.S.C. 841(a)(1) and (b)(1)(C). Pet. App. 55a. Petitioner's sentence on the firearm count was imposed pursuant to the Armed Career Criminal Act of 1984 (ACCA), 18 U.S.C. 924(e), which applies if the defendant had "three previous convictions" for "violent felon[ies]" or "serious drug offense[s]" committed on different occasions. 18 U.S.C.

924(e) (1). Petitioner was sentenced to 188 months of imprisonment, to be followed by three years of supervised release. Pet. App. 56a-57a. The court of appeals affirmed. Id. at 1a-24a.

Petitioner contends (Pet. 10-18) that one of his prior convictions, for robbery under Tex. Penal Code Ann. § 29.02(a) (West 1989), does not qualify as a "violent felony" under the ACCA's "elements clause." Specifically, petitioner argues that Texas robbery can be committed with a mens rea of recklessness and 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 of another," 18 U.S.C. 924(e) (2) (B) (i).

This Court has granted review in Walker v. United States, cert. granted, No. 19-373 (Nov. 15, 2019), to address that issue. The petition for a writ of certiorari in this case should therefore be held pending the decision in Walker and then disposed of as appropriate in light of that decision.*

Respectfully submitted.

NOEL J. FRANCISCO
Solicitor General

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* The government waives any further response to the petition for a writ of certiorari unless this Court requests otherwise.