

No. 19-6633

IN THE SUPREME COURT OF THE UNITED STATES

ADRIAN AUSBERRY, PETITIONER

v.

UNITED STATES OF AMERICA

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

MEMORANDUM FOR THE UNITED STATES

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Petitioner contends (Pet. 9-15) that his prior conviction for Tennessee aggravated assault under Tenn. Code Ann. § 39-13-102(a) (2005) does not qualify as a “crime of violence” under Sentencing Guidelines § 4B1.2(a)(1) and that his base offense level thus could not be increased under Sentencing Guidelines § 2K2.1(a)(4). Specifically, petitioner argues 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” under Sentencing Guidelines § 4B1.2(a)(1). 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 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.