

No. 19-6908

IN THE SUPREME COURT OF THE UNITED STATES

MARGARITO OLVERA-MARTINEZ, 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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Petitioner contends (Pet. 13-23) that his prior conviction for assault under Tex. Penal Code Ann. § 22.01(a)(1) (West 2010) does not qualify as an aggravated felony 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 8 U.S.C. 16(a). See 8 U.S.C. 1101(a)(43)(F) (defining “aggravated 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 Borden v. United States, No. 19-5410 (Mar. 2, 2020), 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 Court's resolution of that question could potentially affect the court of appeals' disposition of this case. The petition for a writ of certiorari should therefore be held pending the decision in Borden 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.