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IN THE  
SUPREME COURT OF THE UNITED STATES

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TEDAREL PRESTON,

*Petitioner,*

v.

UNITED STATES OF AMERICA,

*Respondent.*

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On Petition for Writ of Certiorari to the  
United States Court of Appeals  
for the Eleventh Circuit

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**PETITION FOR WRIT OF CERTIORARI**

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## **QUESTION PRESENTED FOR REVIEW**

- I. Whether a criminal offense with a reckless *mens rea* qualifies as a “violent felony” under the elements clause of the Armed Career Criminal Act, 18 U.S.C. § 924(e)(2)(B)(i).

## **INTERESTED PARTIES**

There are no parties to the proceeding other than those named in the caption of the case.

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Tedarel Preston respectfully petitions the Supreme Court of the United States for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit, rendered and entered in case number 18-12343 in that court on April 17, 2019, *United States v. Tedarel Preston*, and the denial of the Petition for Rehearing *En Banc* which was denied on January 24, 2020, which affirmed the judgment and commitment of the United States District Court for the Southern District of Florida.

## **OPINION BELOW**

A copy of the decision of the United States Court of Appeals for the Eleventh Circuit, which affirmed the judgment and commitment of the United States District Court for the Southern District of Florida, is contained in the Appendix (A-1), and a copy of the denial of the Petition for Rehearing *En Banc* is contained in the Appendix (A-2).

## **STATEMENT OF JURISDICTION**

Jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1) and PART III of the RULES OF THE SUPREME COURT OF THE UNITED STATES. The decision of the court of appeals was entered on April 17, 2019, and the Petition for Rehearing *En Banc* was denied of January 24, 2020. This petition is timely filed pursuant to SUP. CT. R. 13.3, as extended by Order of this Court on March 20, 2020. The district court had jurisdiction because petitioner was charged with violating federal criminal laws. The court of appeals had jurisdiction pursuant to 28 U.S.C. § 1291 and 18 U.S.C. § 3742, which provide that courts of appeals shall have jurisdiction for all final decisions of United States district courts.

## **STATUTORY AND OTHER PROVISIONS INVOLVED**

Petitioner intends to rely upon the following constitutional provisions, treaties, statutes, rules, ordinances and regulations:

Under the Armed Career Criminal Act, the term “violent felony” means, in relevant part, a felony that “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).

## **STATEMENT OF THE CASE**

On January 11, 2018, Mr. Preston was charged in a one count indictment with possession of a firearm and ammunition on December 29, 2017, in Broward County, Florida, having been previously convicted of a felony. (Dist. Ct. DE:6). Mr. Preston proceeded to trial and was convicted of the one count of the indictment. (Dist. Ct. DE:44). According to the PSI, Mr. Preston qualified as an armed career criminal and had a total of V criminal history points, resulting in an applicable Guideline range of 210 to 262 months. (PSI 48, 49, 90). Mr. Preston objected to the finding in the PSI in Paragraph 19, that Mr. Preston’s conviction for aggravated assault, and shooting into a dwelling house, and possession of short-barreled shotgun (Case No: 90-25458CJA10A), qualified as a “crime of violence” pursuant to the elements clause of the armed career criminal act (ACCA). (DE:65). The court sentenced Mr. Preston to the fifteen-year minimum mandatory sentence. (Dist. Ct. DE:69). This aggravated assault conviction was one of three that qualified him for an enhanced sentence under ACCA. Without this conviction Mr. Preston would not qualify for the ACCA enhancement.

Mr. Preston argued that the aggravated assault offense did not have as an element the use, attempted use, or threatened use of physical force because it could be committed recklessly. He acknowledged that his position was foreclosed by the

Eleventh Circuit opinion in *Turner v. Warden Coleman FCI*, 709 F.3d 1328, 1338 (11th Cir. 2013). But he argued that *Turner* had overlooked Florida decisional law, which made clear that assault could be committed recklessly, and several courts (including the Eleventh Circuit at the time) had held that reckless conduct did not satisfy the ACCA’s elements clause. He sought to preserve his argument for further review.

The Eleventh Circuit affirmed. Citing *Turner* and its progeny, the court then reiterated that it had “held that the Florida crime of aggravated assault is categorically a violent felony under the ACCA,” and that precedent “foreclosed” Petitioner’s argument to the contrary. App. 3a–4a. Accordingly, the court upheld his sentence. App. 4a. Mr. Preston filed a Petition for Rehearing *En Banc*. That Petition was denied on January 24, 2020.

## REASONS FOR GRANTING THE WRIT

### I. THIS COURT WILL DECIDE IN *BORDEN* WHETHER OFFENSES WITH A RECKLESS *MENS REA* SATISFIES THE ACCA'S ELEMENTS CLAUSE

This Court accepted Certiorari in *Borden v. United States* on March 2, 2020, which presented the following issue: “Does the ‘use of force’ clause in the Armed Career Criminal Act (the “ACCA”), 18 U.S.C. § 924(e)(2)(B)(i) encompass crimes with a *mens rea* of mere recklessness.” The *Borden* case is from the Sixth Circuit and addresses a Tennessee aggravated assault statute that is very similar to the Florida aggravated assault statute which can also be committed with a *mens rea* of mere recklessness. There is presently a Circuit split on whether reckless conduct satisfies the ACCA elements clause. That is the issue being presented by Mr. Preston who was sentenced with the ACCA enhancement for a conviction for Florida’s aggravated assault statute. Accordingly, a favorable decision in *Borden* would vindicate Petitioner’s argument that he was erroneously classified as an armed career criminal and make his statutory maximum sentence ten years. Because the *Borden* decision may prove dispositive with respect to his ACCA enhancement, Petitioner respectfully requests that the Court hold this petition for that forthcoming decision.

## CONCLUSION

For the foregoing reasons, the Court should hold this petition for Borden. If Borden is resolved in the petitioner's favor, the Court should grant certiorari, vacate the judgment below, and remand for further proceedings.

Respectfully submitted,

MICHAEL CARUSO

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June 18, 2020