

NO: 19-8929

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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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REPLY BRIEF FOR PETITIONER

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## REPLY BRIEF FOR PETITIONER

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### I.

#### **The Courts of Appeals are divided regarding whether the use of force clause in the ACCA encompasses crimes committed recklessly.**

The government asserts in its Brief in Opposition to Mr. Preston’s Petition for Certiorari that “[T]he court of appeals’ decision in this case did not discuss whether Florida aggravated assault can be committed recklessly, or whether that would affect the court’s analysis under ACCA.” But instead, the court relied on a prior Circuit opinion of *Turner v. Warden Coleman FCI (Medium)*, 109 F.3d 1328, 1338 (11<sup>th</sup> Cir.), cert. denied, 570 U.S. 925 (2013). (Brief in Opposition p. 5). Although it is true that the Circuit did rely on *Turner*. However, it was Mr. Preston’s entire argument that Mr. Preston’s prior aggravated assault conviction under Florida law could be committed with a *mens rea* of recklessness, and therefore, did not qualify as an ACCA violent prior under the Elements Clause of ACCA. Additionally, that *Turner* was wrongfully decided because the Court did not follow the categorical approach as dictated by this Court in *Moncrieffe v. Holder*, 133 S. Ct. 1678 (2013), *Descamps v. United States*, \_\_\_\_ U.S. \_\_\_, 133 S. Ct. 2276 (2013), and *Mathis v. United States*, 136 S. Ct. 2243 (2016).

Mr. Preston also expressly recognized the fact that there is a split in the Circuits regarding precisely the issue presented in his case; whether his prior conviction which could be committed with a *mens rea* of recklessness could qualify

“violent felony” prior conviction under the Elements Clause of the ACCA. (Initial Brief pp. 25-30). The same Circuit split that was recognized by this Court in *Borden v. United States*, No. 19-5410 (oral argument scheduled for Nov. 3, 2020). Which was the same question Mr. Preston presented below, and in his Petition for Certiorari. Therefore, Mr. Preston raised and preserved, the issue presently pending before this Court in *Borden*.

## CONCLUSION

For the foregoing reasons, the Court should hold this petition for the Court’s decision in *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,

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October 9, 2020