

NO: 19-8929

IN THE
SUPREME COURT OF THE UNITED STATES

TEDAREL PRESTON,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

REPLY BRIEF FOR PETITIONER

MICHAEL CARUSO
Federal Public Defender
Bonnie Phillips-Williams
Assistant Federal Public Defender
Counsel for Petitioner
150 West Flagler Street, Suite 1500
Miami, Florida 33130-1555
Telephone (305) 536-6900

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REPLY BRIEF FOR PETITIONER

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 (11th 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,

MICHAEL CARUSO
Federal Public Defender

By: s/ Bonnie Phillips-Williams
Bonnie Phillips-Williams
Assistant Federal Public Defender
Counsel for Petitioner

Miami, Florida
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