

No. 20-5434

IN THE SUPREME COURT OF THE UNITED STATES

TRESHUN DEVONTE BATES, 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. 4-6) that the court of appeals erred in determining that his prior conviction for assault on a public servant, in violation of Texas Penal Code Ann. § 22.01(b)(1) (West Supp. 2018), was a “crime of violence” under Sentencing Guidelines § 4B1.2(a)(1). Petitioner argues (Pet. 4-6) 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 Borden v. United States, No. 19-5410 (oral argument heard Nov. 3, 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.

JEFFREY B. WALL
Acting Solicitor General

NOVEMBER 2020

* The government waives any further response to the petition for a writ of certiorari unless this Court requests otherwise.