

No. 20-5584

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IN THE SUPREME COURT OF THE UNITED STATES

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DAVID MATTHEWS, PETITIONER

v.

UNITED STATES OF AMERICA

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ON PETITION FOR A WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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MEMORANDUM FOR THE UNITED STATES

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Petitioner contends (Pet. 3-5) that his two prior convictions for robbery, in violation of Tex. Penal Code Ann. § 29.02 (2017), do not qualify as violent felonies under the Armed Career Criminal Act of 1984 (ACCA), 18 U.S.C. 924(e)(2)(B)(i). Petitioner argues (Pet. 3-5) 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,” as required by the ACCA, 18 U.S.C. 924(e)(2)(B)(i). This Court has granted review in Borden v. United States, No. 19-5410 (argued Nov. 3, 2020), to address that question. 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

DECEMBER 2020

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