

No. 20-6130

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IN THE SUPREME COURT OF THE UNITED STATES

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DESMOND HOWARD GREER, 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. 6-9) that the court of appeals erred in determining that his prior convictions for assault of a family member by impeding breathing or circulation, in violation of Texas Penal Code Ann. § 22.01(b)(2)(B) (West 2011), and assault of a family member after a prior conviction, in violation of Texas Penal Code Ann. § 22.01(b)(2)(A) (West 2011), were “crime[s] of violence” under Sentencing Guidelines § 4B1.2(a)(1). Petitioner argues (Pet. 6-9) 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

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.