

No. 20-6541

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IN THE SUPREME COURT OF THE UNITED STATES

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ALEJANDRO PINEDA-CAMPUZANO, 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. 14-25) that he should have been treated as eligible for a sentence beneath the applicable statutory minimum, under the safety-valve statute, 18 U.S.C. 3553(f). The safety-valve statute provides that a defendant is ineligible for sentencing beneath a statutory minimum if he has "a prior 2-point violent offense, as determined under the sentencing guidelines." 18 U.S.C. 3553(f)(1)(C). The relevant definition of "violent offense" in 18 U.S.C. 3553(g) includes any "crime of violence" as defined in 18 U.S.C. 16(a). Petitioner contends (Pet. 14-25) that his prior conviction for assault, in violation of Tex. Penal Code § 22.01(a) (West 2017), does not qualify as a "violent offense,"

on the theory 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 or property of another" under Section 16(a).

This Court has granted review in Borden v. United States, No. 19-5410 (argued 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.

ELIZABETH B. PRELOGAR  
Acting Solicitor General

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