

No. 20-7280

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IN THE SUPREME COURT OF THE UNITED STATES

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MICHAEL DEWAYNE VICKERS, 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. 11-24) that his 1982 conviction for murder, in violation of Texas Penal Code § 19.02(a) (1974), does not qualify as a violent felony under the Armed Career Criminal Act of 1984 (ACCA), 18 U.S.C. 924(e). Although petitioner contends (Pet. 11-19) that the court of appeals incorrectly interpreted Texas law to have required a minimum mens rea of recklessness to support his particular murder conviction, he also contends (Pet. 20-24) that, even assuming that recklessness was required, 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" within the

meaning of 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 the latter question. 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

APRIL 2021

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