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IN THE  
SUPREME COURT OF THE UNITED STATES

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ELIJAH JONES,

*Petitioner,*

v.

UNITED STATES OF AMERICA,

*Respondent.*

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On Petition for Writ of Certiorari to the  
United States Court of Appeals  
for the Eleventh Circuit

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**PETITION FOR WRIT OF CERTIORARI**

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MICHAEL CARUSO  
Federal Public Defender  
BONNIE PHILLIPS-WILLIAMS  
Assistant Federal Public Defender  
Counsel for Petitioner  
150 West Flagler Street, Suite 1500  
Miami, Florida 33130-1555  
Telephone (305) 536-6900

*\*Counsel for Petitioner*

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## **QUESTION PRESENTED FOR REVIEW**

- I. Whether the “use of force” clause in the Armed Career Criminal Act (the “ACCA”), 18 U.S.C. § 924(e)(2)(B)(i) encompass crimes with a *mens rea* of recklessness?

## **INTERESTED PARTIES**

There are no parties to the proceeding other than those named in the caption of the case.

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Elijah Jones respectfully petitions the Supreme Court of the United States for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit, rendered and entered in case number 18-15210 in that court on October 8, 2020, *United States v. Innocent and Jones*, which affirmed the judgment and commitment of the United States District Court for the Southern District of Florida.

## **OPINION BELOW**

A copy of the decision of the United States Court of Appeals for the Eleventh Circuit, which affirmed the judgment and commitment of the United States District Court for the Southern District of Florida, is contained in the Appendix (A-1).

## **STATEMENT OF JURISDICTION**

Jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1) and PART III of the RULES OF THE SUPREME COURT OF THE UNITED STATES. The decision of the court of appeals was entered on October 8, 2020. This petition is timely filed pursuant to SUP. CT. R. 13.1 as extended by Order of this Court on March 20, 2020. The district court had jurisdiction because petitioner was charged with violating federal criminal laws. The court of appeals had jurisdiction pursuant to 28 U.S.C. § 1291 and 18 U.S.C. § 3742, which provide that courts of appeals shall have jurisdiction for all final decisions of United States district courts.

## **STATUTORY AND OTHER PROVISIONS INVOLVED**

Petitioner intends to rely upon the following constitutional provisions, treaties, statutes, rules, ordinances and regulations:

Under the Armed Career Criminal Act, the term “violent felony” means, in relevant part, a felony that “has as an element the use, attempted use, or threatened use of physical force against the person of another.” 18 U.S.C. § 924(e)(2)(B)(i).

## STATEMENT OF THE CASE

Mr. Jones was charged by indictment with possession of a firearm and ammunition on January 10, 2018, having been previously convicted of a felony in violation of 18 U.S.C. § 922(g)(1). (DE:1). Mr. Jones proceeded to trial, and was convicted of the sole count of the indictment. Mr. Jones was sentenced to a term of imprisonment of one hundred eighty months, followed by four years of supervised release, pursuant to the Armed Career Criminal Act (ACCA) due to a Florida aggravated assault conviction. (DE:56).

Mr. Jones argued that the aggravated assault offense did not have as an element the use, attempted use, or threatened use of physical force because it could be committed recklessly. He acknowledged that his position was foreclosed by the Eleventh Circuit opinion in *Turner v. Warden Coleman FCI*, 709 F.3d 1328, 1338 (11th Cir. 2013). But he argued that *Turner* had overlooked Florida decisional law, which made clear that assault could be committed recklessly, and several courts (including the Eleventh Circuit at the time) had held that reckless conduct did not satisfy the ACCA's elements clause. He sought to preserve his argument for further review.

The Eleventh Circuit affirmed. Citing *Turner* and its progeny, the court then reiterated that it had “held that the Florida crime of aggravated assault is categorically a violent felony under the ACCA,” and that precedent “foreclosed” Petitioner’s argument to the contrary. Accordingly, the court upheld his sentence.

## REASONS FOR GRANTING THE WRIT

### I. THIS COURT WILL DECIDE IN *BORDEN* WHETHER OFFENSES WITH A RECKLESS *MENS REA* SATISFIES THE ACCA'S ELEMENTS CLAUSE

This Court accepted Certiorari in *Borden v. United States* on March 2, 2020, which presented the following issue: “Does the ‘use of force’ clause in the Armed Career Criminal Act (the “ACCA”), 18 U.S.C. § 924(e)(2)(B)(i) encompass crimes with a *mens rea* of mere recklessness.” The *Borden* case is from the Sixth Circuit and addresses a Tennessee aggravated assault statute that is very similar to the Florida aggravated assault statute which can also be committed with a *mens rea* of mere recklessness. Only by carefully considering the Florida Court of Appeals decisions such as *LaValley v. State*, 633 So.2d 1126 (Fla. 5th DCA 1995); *Kelly v. State*, 552 So.2d 206 (Fla. 5th DCA 1989); *Green v. State*, 315 So.2d 499 (4th DCA 1975); and *DuPree v. State*, 310 So.2d 396 (Fla. 2nd DCA 1975), is it clear that notwithstanding the phrase “intentional, unlawful” in Fla. Stat. § 784.021, prosecutors in Florida will prosecute – and can convict – a defendant for “aggravated assault” under Fla. Stat. § 784.021 upon a showing of mere “culpable negligence,” which is akin to “recklessness.” *See generally United States v. Garcia-Perez*, 779 F.3d 278, 285 (5th Cir. 2015) (equating Florida’s “culpable negligence” standard with “recklessness”).

Additionally, there is presently a Circuit split on whether reckless conduct satisfies the ACCA elements clause. The First Circuit has held that it does not. *See United States v. Windley*, 864 F.3d 36, 37–39 & n.2 (1st Cir. 2017) (endorsing and

adopting reasoning in *United States v. Bennett*, 888 F.3d 1 (1st Cir. 2017); *United States v. Rose*, 896 F.3d 104, 109–10 (1st Cir. 2018) (following *Windley*). In *Bennett*, a case for which Justice Souter was on the panel, the First Circuit explained that *Voisine* did not control due to differences between § 921(a)(33)(A) on the one hand, and § 16(a) and the ACCA on the other. Due to those differences, the court found it uncertain whether the ACCA’s elements clause applied to reckless conduct, and it therefore held that it did not under the rule of lenity. *Id.* at 2–3, 8, 23. The majority of a Fourth Circuit panel has since agreed with *Bennet*’s reasoning and rejected the contrary conclusion reached by other courts. See *United States v. Middleton*, 883 F.3d 485, 498–500 & n.3 (4th Cir. 2018) (Floyd, J., concurring in part and concurring in the judgment, joined by Harris, J.).

By contrast, the Fifth, Sixth, Eighth, Tenth, and D.C. Circuits have held that, in light of *Voisine*, reckless conduct does satisfy the elements clause of the ACCA or the Guidelines. However, they have done so either with little analysis or have improperly discounted material distinctions between the § 16(a)/ACCA and § 921(a)(33)(A). See *United States v. Haight*, 892 F.3d 1271, 1280–81 (D.C. Cir. 2018) (Kavanaugh, J.) (ACCA), *cert. petition filed* (Sept. 20, 2018) (U.S. No. 18-370); *United States v. Verwiebe*, 874 F.3d 258, 262 (6th Cir. 2017) (Guidelines); *United States v. Pam*, 867 F.3d 1191, 1207–08 & n.16 (10th Cir. 2017) (ACCA); *United States v. Mendez-Henriquez*, 847 F.3d 214, 220–22 (5th Cir. 2017) (Guidelines); *United States v. Fogg*, 836 F.3d 951, 956 (8th Cir. 2016) (ACCA).

That is the issue being presented by Mr. Jones who was sentenced with the ACCA enhancement for a conviction for Florida's aggravated assault statute. Accordingly, a favorable decision in *Borden* would vindicate Petitioner's argument that he was erroneously classified as an armed career criminal and make his statutory maximum sentence ten years. Because the *Borden* decision may prove dispositive with respect to his ACCA enhancement, Petitioner respectfully requests that the Court hold this petition for that forthcoming decision.

## CONCLUSION

Based upon the foregoing petition, the Court should grant a writ of certiorari to the Court of Appeals for the Eleventh Circuit.

Respectfully submitted,

MICHAEL CARUSO  
Federal Public Defender

By: Bonnie Phillips-Williams  
Bonnie Phillips-Williams  
Assistant Federal Public Defender  
Counsel for Petitioner

Miami, Florida  
March 8, 2021