

No. 20-7609

IN THE SUPREME COURT OF THE UNITED STATES

RAYNAL KING & HOWARD R. ROSS, III, PETITIONERS

v.

UNITED STATES OF AMERICA

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

MEMORANDUM FOR THE UNITED STATES

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Petitioners contend (Pet. 17-22) that their convictions for a kidnapping resulting in death, in violation of 18 U.S.C. 1201(a), do not qualify as "crime[s] of violence" for purposes of 18 U.S.C. 924(j), asserting that their offenses do not include as an element the "use, attempted use, or threatened use of physical force against the person or property of another," 18 U.S.C. 924(c) (3) (A). In Borden v. United States, 141 S. Ct. 1817 (2021), this Court determined that Tennessee reckless aggravated assault, in violation of Tenn. Code Ann. § 39-13-102(a)(2) (2003), lacks a mens rea element sufficient to satisfy the definition of "violent felony" in the Armed Career Criminal Act of 1984, 18 U.S.C.

924 (e) (2) (B) (i). Because the decision below rests on the premise that offenses requiring proof of reckless conduct satisfy the similar elements clause in 18 U.S.C. 924(c) (3) (A), see Pet. App. 9a-11a, the appropriate disposition is to grant the petition for a writ of certiorari, vacate the decision below, and remand the case for further consideration in light of Borden.*

Respectfully submitted.

BRIAN H. FLETCHER
Acting Solicitor General

AUGUST 2021

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