

Nos. 20-7749 and 20-7750

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IN THE SUPREME COURT OF THE UNITED STATES

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ERIC KAMAHELE, PETITIONER

v.

UNITED STATES OF AMERICA

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KEPA MAUMAU, PETITIONER

v.

UNITED STATES OF AMERICA

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ON PETITIONS FOR WRITS OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT

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MEMORANDUM FOR THE UNITED STATES

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Petitioners contend (Pets. 6, 16)<sup>1</sup> that their convictions for assault with a dangerous weapon, in violation of 18 U.S.C. 1959(a)(3) -- known as the violent crimes in aid of racketeering (VICAR) statute -- no longer qualify as "crime[s] of violence"

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<sup>1</sup> Although petitioners each filed a petition for a writ of certiorari, the petitions are substantively identical, including with respect to the pages cited.

under 18 U.S.C. 924(c) after United States v. Davis, 139 S. Ct. 2310 (2019). Specifically, petitioners contend (Pets. 6, 16) that their VICAR convictions were predicated on state assault statutes -- Utah aggravated assault, in violation of Utah Code Ann. §§ 76-5-102 and 76-5-103(1)(a) (2008), and Arizona aggravated assault, in violation of Ariz. Rev. Stat. §§ 13-1203 and 13-1204(A)(2) (2008) -- that 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), because they can be committed with a mens rea of recklessness.

In Borden v. United States, No. 19-5410 (June 10, 2021), this Court determined that Tennessee reckless aggravated assault, in violation of Tenn. Code Ann. § 39-13-102(a)(2), lacks a mens rea element sufficient to 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). Accordingly, the appropriate course is to grant the petitions for writs of certiorari, vacate the decision below, and remand the cases for further consideration in light of Borden.<sup>2</sup>

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<sup>2</sup> The government waives any further response to the petitions for writs of certiorari unless this Court requests otherwise.

Respectfully submitted.

ELIZABETH B. PRELOGAR  
Acting Solicitor General

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