

No. 20-7790

IN THE SUPREME COURT OF THE UNITED STATES

ROLANDO VILLARREAL, PETITIONER

v.

UNITED STATES OF AMERICA

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

MEMORANDUM FOR THE UNITED STATES

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Petitioner contends (Pet. 12-16) that his prior convictions for aggravated assault, in violation of Texas Penal Code § 22.02(a), do not qualify as “violent felon[ies]” under the Armed Career Criminal Act of 1984 (ACCA), 18 U.S.C. 924(e), on the ground 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 of another,” 18 U.S.C. 924(e) (2) (B) (i). 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 ACCA's definition of a "violent felony." It is not clear whether, or to what extent, the decision below in this case might have relied on a rationale that is contrary to the reasoning of Borden. The appropriate disposition is therefore 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.

ELIZABETH B. PRELOGAR
Acting Solicitor General

JULY 2021

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