

No. 20-7855

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IN THE SUPREME COURT OF THE UNITED STATES

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JAMES AYERS, 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 SIXTH CIRCUIT

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MEMORANDUM FOR THE UNITED STATES

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Petitioner contends (Pet. 11-14) that his prior conviction for aggravated assault, in violation of Tenn. Code Ann. § 39-13-102(a)(1) (1991), does not qualify as a violent felony under the Armed Career Criminal Act of 1984, 18 U.S.C. 924(e), on the theory 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, 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) (2003), lacks a mens rea element sufficient to satisfy

the ACCA's definition of a "violent felony." 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

JUNE 2021

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