

No. 20-7855

IN THE SUPREME COURT OF THE UNITED STATES

JAMES AYERS, PETITIONER

v.

UNITED STATES OF AMERICA

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

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

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