No. 20-8421

IN THE SUPREME COURT OF THE UNITED STATES

BRAULIO PEREZ, PETITIONER

v.

UNITED STATES OF AMERICA

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

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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Petitioner contends (Pet. 26) that his prior convictions for robbery, in violation of Fla. Stat. § 812.13(1) (1993), and resisting an officer with violence, in violation of Fla. Stat. § 843.01 (1987), do not qualify as "violent felon[ies]" under the Armed Career Criminal Act of 1984 (ACCA), 18 U.S.C. 924(e), or render him an "armed career criminal" under Sentencing Guidelines § 4B1.4(a), in light of this Court's decision in Borden v. United States, 141 S. Ct. 1817 (2021). In Borden, 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 a "violent felony" under

the ACCA, 18 U.S.C. 924(e)(2)(B)(i). A remand for further consideration in light of Borden is not warranted, however, because the resolution of the question presented in Borden does not bear on the reasoning or result of the decision below.

The court of appeals' classification of petitioner's prior conviction for Florida robbery relied on its decision in Welch v. United States, 958 F.3d 1093, 1097 (11th Cir. 2020) (per curiam), and this Court's decision in Stokeling v. United States, 139 S. Ct. 544, 554-555 (2019). See Pet. App. A1, at 11. In Stokeling, this Court held that "[r]obbery under Florida law * * * qualifies as a 'violent felony' under ACCA's elements clause." 139 S. Ct. at 555. Petitioner does not explain how this Court's decision in Borden has undermined that holding, or how the Florida robbery statute, which specifically requires the "use of force, violence, assault, or putting in fear" to divest a victim of property, Fla. Stat. § 812.13(1) (1993), would implicate the mental-state issue in Borden to begin with.

The court of appeals' classification of petitioner's prior conviction for resisting an officer with violence, in violation of Fla. Stat. § 843.01 (1987), likewise did not implicate that issue. The court relied on its prior decision in United States v. Hill, 799 F.3d 1318, 1322 (11th Cir. 2015) (per curiam), which explained that the offense qualifies as a violent felony under the ACCA's elements clause because violence is a necessary element of the offense under state law. See Pet. App. A1, at 10-11. And the

Florida statute expressly requires the conduct underlying the resisting an officer with violence offense to be "knowing[] and willful[]." Fla. Stat. § 843.01 (1987). Petitioner does not explain how this Court's decision in Borden could nevertheless apply or how it would undermine the court of appeals' determination in Hill. This Court has recently and repeatedly denied similar petitions for writs of certiorari involving the Florida offense of resisting an officer with violence.[1] The same result is warranted here.

The petition for a writ of certiorari should be denied.[2]

Respectfully submitted.

BRIAN H. FLETCHER
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[1] See Bennett v. United States, 140 S. Ct. 2518 (2020) (No. 19-6370); Tinker v. United States, 140 S. Ct. 1137 (2020) (No. 19-6618); Starks v. United States, 140 S. Ct. 898 (2020) (No. 19-5129); Jackson v. United States, 140 S. Ct. 137 (2019) (No. 18-8941); Gubanic v. United States, 139 S. Ct. 77 (2018) (No. 17-8764); Jones v. United States, 138 S. Ct. 2622 (2018) (No. 17-7667).

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