

No. 21-5017

IN THE SUPREME COURT OF THE UNITED STATES

ANGEL MONDRAGON GARCIA, 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. 9-12) that his prior conviction for aggravated assault, in violation of Tex. Penal Code § 22.02(a) (West 2009), does not qualify as an “aggravated felony” under 8 U.S.C. 1326(b)(2), in light of this Court’s decision in Borden v. United States, 141 S. Ct. 1817 (2021). See 8 U.S.C. 1101(a)(43)(F) (defining “aggravated felony” for purposes of Section 1326(b)(2) to include any “crime of violence” as defined in 18 U.S.C. 16(a)). 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 Armed Career

Criminal Act of 1984, 18 U.S.C. 924(e)(2)(B)(i). The appropriate disposition is 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.

BRIAN H. FLETCHER
Acting Solicitor General

SEPTEMBER 2021

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