

No. 21-5501

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IN THE SUPREME COURT OF THE UNITED STATES

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MICHAEL DAVID MCCALL, 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 FIFTH CIRCUIT

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MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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BRIAN H. FLETCHER  
Acting Solicitor General  
Counsel of Record  
Department of Justice  
Washington, D.C. 20530-0001  
SupremeCtBriefs@usdoj.gov  
(202) 514-2217

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Petitioner contends (Pet. 5-9) that the court of appeals erred in determining that his three prior convictions for burglary of a habitation and one prior conviction for burglary of a building, in violation of Texas Penal Code Ann. § 30.02(a) (West 2008, 2013 & 2014), constitute convictions for “burglary” under the Armed Career Criminal Act of 1984 (ACCA), 18 U.S.C. 924(e)(2)(B)(ii). For the reasons explained in the government’s brief in opposition to the petition for a writ of certiorari in Herrold v. United States, 141 S. Ct. 273 (2020) (No. 19-7731), that contention lacks merit and does not warrant this Court’s review. See Gov’t Br. in

Opp. at 11-16, Herrold, supra (No. 19-7731).<sup>1</sup> This Court has recently and repeatedly denied petitions for writs of certiorari raising the same question regarding Texas Penal Code Ann. § 30.02(a). See Adams v. United States, No. 20-8082 (Oct. 4, 2021); Smith v. United States, No. 20-6773 (Apr. 19, 2021); Lister v. United States, 141 S. Ct. 1727 (2021) (No. 20-7242); Webb v. United States, 141 S. Ct. 1448 (2021) (No. 20-6979); Wallace v. United States, 141 S. Ct. 910 (2020) (No. 20-5588); Herrold v. United States, supra (No. 19-7731). The Court has likewise recently and repeatedly denied petitions for writs of certiorari raising the identical question with respect to Tennessee's burglary statute. See Gann v. United States, No. 20-7701 (Oct. 4, 2021); Greer v. United States, 140 S. Ct. 1234 (2020) (No. 19-7324); Ferguson v. United States, 139 S. Ct. 2712 (2019) (No. 17-7496). The same result is warranted here.<sup>2</sup>

Respectfully submitted.

BRIAN H. FLETCHER  
Acting Solicitor General

OCTOBER 2021

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<sup>1</sup> We have served petitioner with a copy of the government's brief in opposition in Herrold, which is also available on this Court's online docket.

<sup>2</sup> The government waives any further response to the petition for a writ of certiorari unless this Court requests otherwise.