

No. 21-5975

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IN THE SUPREME COURT OF THE UNITED STATES

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MODESTO BALDERAS, 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

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Petitioner contends (Pet. 5-18) that his prior conviction for robbery, in violation of Tex. Penal Code Ann. § 29.02 (West 1994), does not qualify as a "violent felony" under the Armed Career Criminal Act of 1984, 18 U.S.C. 924(e)(2)(B)(i), 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). The appropriate course 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.

ELIZABETH B. PRELOGAR  
Solicitor General

DECEMBER 2021

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