

No. 21-5975

IN THE SUPREME COURT OF THE UNITED STATES

MODESTO BALDERAS, 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

ELIZABETH B. PRELOGAR
Solicitor General
Counsel of Record
Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

IN THE SUPREME COURT OF THE UNITED STATES

No. 21-5975

MODESTO BALDERAS, 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

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

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