

DEC 20 2022

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No. 22-6697

IN THE

SUPREME COURT OF THE UNITED STATES

Ervin Harris — PETITIONER  
(Your Name)

vs.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. Court of Appeals for the Eleventh Circuit

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Ervin Harris #17647-104  
(Your Name)

FCC Coleman Medium, P.O. Box 1032  
(Address)

Coleman, Florida 33521-1032  
(City, State, Zip Code)

N/A  
(Phone Number)

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SUPREME COURT, U.S.

## QUESTION(S) PRESENTED

Whether Petitioner is actually innocent of his aggravated and forcible assault offense, in light of Borden v. United States, 141 S. Ct. 1817 (2021)?

## LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

## RELATED CASES

## TABLE OF AUTHORITIES CITED

(All Page Numbers are from "Reasons for Granting the Petition")

### CASES

### PAGE NUMBER

Borden v. United States, 141 S. Ct. 1817 (2021).....1, 2

### STATUTES AND RULES

18 U.S.C. § 111.....1, 2

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18 U.S.C. § 111(b).....1, 2

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IN THE  
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix B to the petition and is

☐ reported at N/A; or,  
☐ has been designated for publication but is not yet reported; or,  
☒ is unpublished.

The opinion of the United States district court appears at Appendix A to the petition and is

☐ reported at N/A; or,  
☐ has been designated for publication but is not yet reported; or,  
☒ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix N/A to the petition and is

☐ reported at N/A; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

The opinion of the N/A court appears at Appendix N/A to the petition and is

☐ reported at N/A; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

## JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was September 29, 2022.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: N/A, and a copy of the order denying rehearing appears at Appendix N/A.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (date) in Application No. N/A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was N/A.  
A copy of that decision appears at Appendix N/A.

☐ A timely petition for rehearing was thereafter denied on the following date: N/A, and a copy of the order denying rehearing appears at Appendix N/A.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (date) in Application No. N/A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

Fifth Amendment of the United States Constitution

Sixth Amendment of the United States Constitution

18 U.S.C. § 111



## STATEMENT OF THE CASE

Petitioner Ervin Harris was arrested in 2018 for Title 18 U.S.C. §§ 111(a)(1) and (b), concerning an aggravated forcible assault of federal officers. Petitioner unknowingly pled guilty and was sentenced to 110 months in a federal prison, unconstitutionally, in violation of the Petitioner's Fifth and Sixth Amendment rights to due process and to counsel's violation of the plea agreement, for which Petitioner pled to an open plea and was given 110 months, thereby making Petitioner's plea involuntary and unknowing. Petitioner states the following "Reasons for Granting the Petition" in this writ of certiorari, which is based on denials from the lower courts. Petitioner hopes this writ will be granted in this Honorable United States Supreme Court.

## REASONS FOR GRANTING THE PETITION

Petitioner understands that this Honorable United States Supreme Court does not have to accept this writ of certiorari, because the U.S. Supreme Court has discretion as to which cases are heard. However, Petitioner is requesting that this Honorable Court accept his case, based on Borden v. United States, 141 S. Ct. 1817 (2021), because Petitioner's federal offense for Title 18 U.S.C. § 111 was based on recklessness with no intentional conduct, nor "specific conduct." Petitioner's crime was without deliberate conduct. Yet, the lower court and the U.S. District Court refused to even address Petitioner's issue in their order of denial. This is why Petitioner is requesting this Honorable Court to accept this Petition for a Writ of Certiorari.

### ARGUMENT ONE

Whether Borden v. United States, 141 S. Ct. 1817 (2021), applies to Petitioner's 18 U.S.C. § 111 status, based on Petitioner's unintentional conduct that was not deliberate

Petitioner never intentionally, nor forcibly assaulted a federal officer, in violation of 18 U.S.C. § 111(a)(1) and (b), regarding Case No. 18-20693-CR-RAR. Petitioner never deliberately nor intentionally assaulted a federal officer at all.

Petitioner was indicted for two counts of forcibly assaulting federal officers. Petitioner never ever deliberately nor with any specific intent assaulted any federal officers. Petitioner pled guilty involuntarily to Count one of his indictment, based on Title 18 U.S.C. § 111, but according to Borden, supra, Petitioner's plea is unknowingly based on his unintentional conduct with officers that were not deliberate nor intentional, nor with deliberate conduct, nor with specific conduct, but conduct that was reckless and unintentional.

Petitioner is therefore actually innocent of his aggravated and forcible assault charge in light of Borden. Petitioner is also actually innocent of duplicitous counts regarding Section 111 of forcible assault, because of Borden, supra. Petitioner's plea was therefore unknowing and involuntary, based on Borden, supra.

Petitioner's claim of relief in this case for this writ is that he is actually innocent of forcible and aggravating assault, especially when the Petitioner was really also the one being assaulted by both federal officers, as Petitioner attempted to prevent himself from being assaulted by these two federal officers.

Even though Petitioner was charged with two counts of aggravating forcible assault, Count two was dismissed, and he was left with Count one, Section 111, which was with mens rea of recklessness, which does not count as, nor qualify as, a violent felony under Borden, supra. 141 S. Ct. at 1834. Borden exposes a serious defect in the Petitioner's unknowing plea that was involuntary based on Borden, supra, and establishing Petitioner as being actually innocent of his unknowing plea.

Petitioner asks that this Honorable Court remand his 110 month sentence back to the U.S. District Court, based on Borden regarding Petitioner's unknowing plea of 18 U.S.C. §§ 111(a)(1) and (b), Count one offense, for which was an unknowing plea, regarding Borden, supra, and Borden's requirements, for which Petitioner is actually innocent of his unknowing plea.

Petitioner hopes and prays for a remand back to the lower court, based on all of the facts in this Writ of Certiorari.

### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

  
Ervin Harris 17047-104

Date: December 20, 2022