



**U.S. Department of Justice**

Office of the Solicitor General

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*Washington, D.C. 20530*

January 23, 2020

Honorable Scott S. Harris  
Clerk  
Supreme Court of the United States  
One First Street, N.E.  
Washington, D.C. 20543

Re: Walker v. United States, No. 19-373

Dear Mr. Harris:

On January 22, 2020, counsel for petitioner informed the Court that petitioner James Walker has passed away. The government agrees that, consistent with the Court's ordinary practice, the Court should therefore dismiss the writ of certiorari in this case.

This case raised the question whether an offense that can be committed with a mens rea of recklessness can include as an element the "use, attempted use, or threatened use of physical force against the person of another" under the Armed Career Criminal Act of 1984 (ACCA), 18 U.S.C. 924(e)(2)(B)(i). Notably, the Court appears to be holding several other petitions for writs of certiorari that raise the same question, and it may wish to grant one of those petitions as a substitute for this case.

In the view of the government, Burris v. United States, No. 19-6186 (filed Oct. 3, 2019), would provide the most suitable substitute for Walker, as the first question presented in that case involves a challenge to the application of the ACCA based on the same Texas robbery offense at issue in Walker. If the Court grants the petition in Burris, limited to the first question presented, it could expedite the briefing to consider the case this Term, given that substantial briefing on the merits has already been completed in Walker. The parties to Burris have agreed that, if the Court wishes to schedule oral argument this Term, petitioner would consent to file his opening brief within 30 days of the order granting the writ of certiorari, and the government would consent to file its response brief within 25 days after the brief for petitioner is filed. Alternatively, if the Court does not wish to expedite the briefing schedule, the parties would, of course, be willing to brief the case on an ordinary schedule for consideration next Term.

Before the Court granted certiorari in Walker, the government had observed that Borden v. United States, No. 19-5410 (filed July 24, 2019), would also be a suitable vehicle for considering the question of whether offenses with a mens rea of recklessness can satisfy 18 U.S.C.

924(e)(2)(B)(i). Burris, however, would be a superior substitute for Walker. First, as mentioned, Burris involves the same underlying offense at issue in Walker. Second, the panel in Borden appeared to believe that the question presented involved the “crime of violence” designation under the Sentencing Guidelines, when it actually arose under the ACCA. See United States v. Borden, 769 Fed. Appx. 266 (6th Cir. 2019).

Accordingly, for the reasons stated above, the government agrees that the Court should dismiss the writ of certiorari in Walker. If the Court does so, the government recommends that the Court grant a writ of certiorari in Burris, limited to the first question presented, and expedite the briefing schedule if the Court wishes to schedule oral argument this Term.

Sincerely,

Noel J. Francisco  
Solicitor General

cc: See Attached Service List

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