No. 17-7521

IN THE SUPREME COURT OF THE UNITED STATES

SADONNIE MARQUIS KITCHEN, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether petitioner's prior conviction for "trafficking in illegal drugs" by possessing between four and 14 grams of morphine, opium, oxycodone, hydrocodone, or hydromorphone, in violation of Fla. Stat. § 893.135(1)(c)(1)(a) (2009), was a conviction for a "controlled substance offense" for purposes of Sentencing Guidelines § 4B1.2(b) (2015).

2. Whether 18 U.S.C. 922(g)(1) exceeds Congress's authority under the Commerce Clause, U.S. Const. Art. I, § 8, Cl. 3.

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OPINION BELOW

The opinion of the court of appeals (Pet. App. A1-A4) is not published in the Federal Reporter but is reprinted at 705 Fed. Appx. 842.[1]

JURISDICTION

The judgment of the court of appeals was entered on August 14, 2017. A petition for rehearing was denied on October 20, 2017 (Pet. App. B2). The petition for a writ of certiorari was filed

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[1] The appendix to the petition for a writ of certiorari is not consecutively paginated. This brief refers to the pages in each lettered appendix as if they were consecutively paginated.

on January 18, 2018. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a guilty plea in the United States District Court for the Middle District of Florida, petitioner was convicted of possession of a firearm by a felon, in violation of 18 U.S.C. 922(g)(1). Judgment 1. He was sentenced to 57 months of imprisonment, to be followed by 36 months of supervised release. Judgment 2-3. The court of appeals affirmed. Pet. App. A1-A4.

1. On October 29, 2015, two police officers were looking for petitioner in an area of Tampa, Florida, based on an outstanding arrest warrant. D. Ct. Doc. 19, at 2 (Mar. 14, 2016). The officers observed petitioner enter an apartment. Ibid. When one of the officers approached the apartment, petitioner fled through a back door. Ibid. Once outside, petitioner removed a pistol from one of his pockets and threw it on top of a patio roof. Ibid.

A federal grand jury in the Middle District of Florida indicted petitioner on one count of possession of a firearm by a felon, in violation of 18 U.S.C. 922(g)(1). Indictment 1. Petitioner pleaded guilty. Judgment 1.

2. The Sentencing Guideline for possession of a firearm by a felon, in violation of 18 U.S.C. 922(g)(1), provides for a base offense level of 20 if the defendant has a prior "felony conviction

of either a crime of violence or a controlled substance offense." Sentencing Guidelines § 2K2.1(a)(4)(A) (2015). Section 4B1.2(b) defines a "controlled substance offense" as "an offense under federal or state law, punishable by imprisonment for a term exceeding one year, that prohibits the manufacture, import, export, distribution, or dispensing of a controlled substance * * * or the possession of a controlled substance * * * with intent to manufacture, import, export, distribute, or dispense." Id. § 4B1.2(b); see id. § 2K2.1, comment. (n.1).

The Probation Office found that petitioner had a 2010 conviction for "[t]rafficking in [i]llegal [d]rugs" by possessing between four and 14 grams of morphine, opium, oxycodone, hydrocodone, or hydromorphone, in violation of Fla. Stat. § 893.135(1)(c)(1)(a) (2009). Presentence Investigation Report (PSR) ¶ 43; see Pet. App. C1, C8, C10.[2] The Probation Office determined that petitioner's Florida trafficking conviction qualified as a "controlled substance offense" and assigned him a base offense level of 20. PSR ¶ 18. The Probation Office then applied a two-level enhancement because petitioner's Section 922(g)(1) offense involved a stolen firearm, PSR ¶ 19, and a three-

[2] After petitioner's offense and conviction, Section 893.135 was amended to remove hydrocodone and oxycodone from the list of illegal drugs in Subsection (1)(c)(1). See Fla. Stat. § 893.135(1)(c)(1) (2015). Section 893.135 now prohibits "trafficking in hydrocodone" and "trafficking in oxycodone" in separate subsections. Id. § 893.135(1)(c)(2), (3) (2017).

level reduction for acceptance of responsibility, PSR ¶¶ 25-26. Based on a total offense level of 19 and a criminal history category of V, the Probation Office calculated an advisory guidelines range of 57 to 71 months of imprisonment. PSR ¶ 92.

Petitioner objected to that calculation, arguing that his Florida trafficking conviction did not qualify as a "controlled substance offense" because Florida's drug-trafficking statute "does not require, as an element, the intent to distribute or dispense the narcotics." D. Ct. Doc. 30, at 26 (May 27, 2016) (Addendum to PSR); see Sent. Tr. 5-8. The district court overruled petitioner's objection and adopted the Probation Office's calculation of the advisory guidelines range. Sent. Tr. 12. The court sentenced petitioner to 57 months of imprisonment. Id. at 23.

3. The court of appeals affirmed in an unpublished, nonprecedential opinion. Pet. App. A1-A4.

a. Relying on circuit precedent, the court of appeals determined that petitioner's "conviction under Florida's drug-trafficking statute -- even if based on mere possession of the requisite amount of drugs -- is a controlled substance offense." Pet. App. A3. The court explained that in United States v. James, 430 F.3d 1150 (11th Cir. 2005), aff'd on other grounds, 550 U.S. 192 (2007), overruled on other grounds by Johnson v. United States, 135 S. Ct. 2551 (2015), it had determined that "Florida's drug-

trafficking statute infers intent to distribute from the amount of drugs possessed." Pet. App. A3. The court also explained that in United States v. Madera-Madera, 333 F.3d 1228 (11th Cir.), cert. denied, 540 U.S. 1026 (2003), it had determined that a similar conviction under Georgia's drug-trafficking statute qualified as "a 'drug trafficking offense' under a guidelines provision worded identically to § 4B1.2(b)." Pet. App. A2 (citation omitted). The court concluded that, under James and Madera-Madera, "Florida's drug-trafficking statute, like Georgia's statute, infers intent to distribute based on the amount of the drugs and satisfies the 'controlled substance offense' definition." Id. at A3.

b. The court of appeals also rejected petitioner's contention -- "raised for the first time on appeal" -- that 18 U.S.C. 922(g)(1) exceeds Congress's power under the Commerce Clause. Pet. App. A3. Reviewing only for plain error, the court determined that, under circuit precedent, Section 922(g) is "facially constitutional" and "constitutional as applied here," where petitioner admitted that "the firearm was manufactured outside the state of Florida." Id. at A4 (citing United States v. Wright, 607 F.3d 708, 715-716 (11th Cir. 2010)).

ARGUMENT

Petitioner contends (Pet. 6-11) that the court of appeals erred in determining that his prior conviction for "trafficking in illegal drugs" by possessing between four and 14 grams of morphine,

opium, oxycodone, hydrocodone, or hydromorphone, in violation of Fla. Stat. § 893.135(1)(c)(1)(a) (2009), was a conviction for a "controlled substance offense" for purposes of Sentencing Guidelines § 4B1.2(b) (2015). The court of appeals' decision is correct and does not conflict with any decision of this Court. Although the courts of appeals disagree on whether a state conviction for possession of a controlled substance may qualify as a "controlled substance offense" or "drug trafficking offense" under the Guidelines if the offense does not include a formal element of intent to distribute, the Sentencing Commission is capable of resolving the disagreement by amending the Guidelines. The Court has previously denied review of a similar question, see Campos v. United States, 565 U.S. 964 (2011) (No. 11-5343), and the same result is warranted here.[3]

Petitioner also contends (Pet. 11-13) that 18 U.S.C. 922(g)(1) exceeds Congress's authority under the Commerce Clause. Petitioner forfeited that contention below, and the court of appeals' decision rejecting the contention on plain-error review does not conflict with any decision of this Court or another court of appeals. The petition for a writ of certiorari should be denied.

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[3] A similar issue is raised in the pending petitions for writs of certiorari in Orr v. United States, No. 17-7717 (filed Jan. 31, 2018), and Dover v. United States, No. 17-7991 (filed Mar. 1, 2018).

1. a. Petitioner is correct (Pet. 7-9) that the courts of appeals are divided on whether a state conviction for possession of a controlled substance may qualify as a "controlled substance offense" or "drug trafficking offense" under the Guidelines if the offense does not include a formal element of intent to distribute. Under the Guidelines, a "controlled substance offense" or "[d]rug trafficking offense" is defined, in relevant part, as "an offense under federal or state law * * * that prohibits * * * the possession of a controlled substance * * * with intent to manufacture, import, export, distribute, or dispense." Sentencing Guidelines § 4B1.2(b) (2015); see id. § 2L1.2, comment. (n.1(B)(iv)) (defining "[d]rug trafficking offense" similarly). The Eleventh Circuit has concluded that a state conviction for possession of a controlled substance may satisfy that definition even if the offense does not include a formal element of intent to distribute. See United States v. Madera-Madera, 333 F.3d 1228, 1232-1234 (11th Cir.) (construing "drug trafficking offense" under Section 2L1.2), cert. denied, 540 U.S. 1026 (2003). The Fifth, Sixth, and Ninth Circuits have concluded that the definition requires a formal element of intent to distribute. See United States v. Sarabia-Martinez, 779 F.3d 274, 276-277 (5th Cir. 2015) (construing "drug trafficking offense" under Section 2L1.2); United States v. Lopez-Salas, 513 F.3d 174, 179 (5th Cir. 2008) (per curiam) (same); United States v. Villa-Lara, 451 F.3d 963,

965 (9th Cir. 2006) (same); see also United States v. Montanez, 442 F.3d 485, 493-494 (6th Cir. 2006) (construing "controlled substance offense" under Section 4B1.2).[4]

b. The disagreement in the courts of appeals does not warrant this Court's review. Even when the Sentencing Guidelines were mandatory, this Court stated that it would not ordinarily resolve circuit conflicts over interpretation of the Guidelines because Congress expected the Sentencing Commission itself to do so through amendments to the Guidelines and commentary. See Braxton v. United States, 500 U.S. 344, 347-349 (1991) (declining to resolve circuit conflict on guidelines provision). As the Court noted, the Commission is charged by Congress with "periodically review[ing] the work of the courts" and making "whatever clarifying revisions to the Guidelines conflicting judicial decisions might suggest." Id. at 348; see United States v. Booker, 543 U.S. 220,

[4] Petitioner is mistaken in contending (Pet. 8-9) that the Eleventh Circuit's decision in Madera-Madera is contrary to the Tenth Circuit's decision in United States v. Herrera-Roldan, 414 F.3d 1238 (2005), a case involving the Guidelines' definition of a "drug trafficking offense." Although the Tenth Circuit in Herrera-Roldan declined "to infer an intent to distribute based on the structure of the Texas statutory scheme," id. at 1241, it did not foreclose the possibility that a different State's scheme could "imply an intent to distribute from the fact of possession" and thereby satisfy the relevant definition, id. at 1243; see id. at 1242 (explaining that Georgia's scheme, which "draws a clear line at a particular quantity of drugs * * * at which point it no longer distinguishes between simple possession and other acts," "gives rise to the inference that Georgia is punishing not just simple possession, but possession with an implied intent to distribute").

263 (2005) ("The Sentencing Commission will continue to collect and study appellate court decisionmaking. It will continue to modify its Guidelines in light of what it learns, thereby encouraging what it finds to be better sentencing practices."); Buford v. United States, 532 U.S. 59, 66 (2001) ("Insofar as greater uniformity is necessary, the Commission can provide it."); 82 Fed. Reg. 39,949, 39,950 (Aug. 22, 2017) (identifying the "[r]esolution of circuit conflicts as warranted" as among the Commission's "priorities" for the guidelines "amendment cycle ending May 1, 2018"). The Court in Braxton further observed that Congress's decision to "grant[] the Commission the unusual explicit power to decide whether and to what extent its amendments reducing sentences will be given retroactive effect" has led the Court to be even "more restrained and circumspect in using [its] certiorari power as the primary means of resolving such [circuit] conflicts." 500 U.S. at 348 (emphasis omitted).

The Court's longstanding reluctance to decide interpretive questions about the Guidelines is even more appropriate after Booker, which rendered the Guidelines advisory only. See 543 U.S. at 243. Even if this Court were to agree with petitioner that a state conviction for possession of a controlled substance may not qualify as a "controlled substance offense" or "drug trafficking offense" under the Guidelines unless the offense includes a formal element of intent to distribute, district courts would remain free

to consider such convictions in fashioning the ultimate sentence under 18 U.S.C. 3553(a). See, e.g., 18 U.S.C. 3661; Booker, 543 U.S. at 251-252. Indeed, in Lopez-Salas, the Fifth Circuit vacated the defendant's sentence on the ground that his conviction under the North Carolina statute at issue in that case did not qualify as a "drug trafficking offense" for purposes of Section 2L1.2, but it noted that the district court could nonetheless impose an upward variance on remand based on that conviction. 513 F.3d at 180-181. Conversely, district courts now have discretion to vary below a properly calculated guidelines sentence based on the considerations set forth in 18 U.S.C. 3553(a).[5]

c. In any event, the court of appeals correctly determined that petitioner's prior conviction for "trafficking in illegal drugs" by possessing between four and 14 grams of morphine, opium, oxycodone, hydrocodone, or hydromorphone, in violation of Fla. Stat. § 893.135(1)(c)(1)(a) (2009), was a conviction for a "controlled substance offense" for purposes of Sentencing Guidelines § 4B1.2(b) (2015), which defines that term to include "an offense under * * * state law * * * that prohibits * * *

[5] Petitioner acknowledges (Pet. 9) that the definition of a "serious drug offense" under the Armed Career Criminal Act of 1984 (ACCA), 18 U.S.C. 924(e), contains "different language" from the Guidelines' definition of a "controlled substance offense" or "drug trafficking offense." Accordingly, even if this Court were to agree with petitioner that the court of appeals' interpretation of the guidelines definition is overly broad, such a decision would not control the interpretation of the ACCA.

the possession of a controlled substance * * * with intent to manufacture, import, export, distribute, or dispense."

Florida generally divides drug possession crimes into three tiers: (1) possession of any amount of a controlled substance, Fla. Stat. § 893.13(6)(a) (2017); (2) possession with intent to distribute a controlled substance, id. § 893.13(1)(a); and (3) "trafficking" in a controlled substance, which includes possessing, selling, purchasing, or manufacturing at least a specified amount of the drug, id. § 893.135. See Pet. App. A3. Petitioner was convicted of a "[t]rafficking" offense under Section 893.135(1)(c)(1) for possessing illegal drugs. PSR ¶ 43; see Pet. App. C1, C8, C10.[6] At the time of his offense, Section 893.135(1)(c)(1) provided that any person who knowingly possessed between four grams and 30 kilograms of morphine, opium, oxycodone,

[6] In a supplemental brief, petitioner contends that the case should be remanded in light of two recent Eleventh Circuit decisions determining that Section 893.135(1)(c)(1) is not divisible. Supp. Br. 1-2 (citing Cintron v. U.S. Att'y Gen., 882 F.3d 1380 (2018), and Francisco v. U.S. Att'y Gen., No. 15-13223, 2018 WL 1249998 (Mar. 12, 2018)). Petitioner argued in the district court, however, that Section 893.135(1)(c)(1) is divisible. See D. Ct. Doc. 30, at 27; Sent. Tr. 5-6 ("[W]e would argue, or maybe concede would be the better word, that this is a divisible statute and the Court could use the modified categorical approach in looking at this, these Shepard documents.") (underlining added). Petitioner has thus waived any contention to the contrary and invited any error in applying the modified categorical approach in this case. See Johnson v. United States, 318 U.S. 189, 200-201 (1943); Shields v. United States, 273 U.S. 583, 586 (1927); United States v. Ross, 131 F.3d 970, 988 (11th Cir. 1997).

hydrocodone, or hydromorphone was guilty of "trafficking in illegal drugs," "a felony of the first degree." Fla. Stat. § 893.135(1)(c)(1) (2009). Section 893.135(1)(c)(1)(a) further provided that if, as in petitioner's case, the amount possessed was "4 grams or more, but less than 14 grams," "such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years." Id. § 893.135(1)(c)(1)(a); see Mathis v. United States, 136 S. Ct. 2243, 2256 (2016) ("If statutory alternatives carry different punishments, then * * * they must be elements.").

It is well-settled that possession of a large amount of drugs can demonstrate beyond a reasonable doubt the intent to distribute those drugs. See, e.g., Madera-Madera, 333 F.3d at 1233; United States v. Franklin, 728 F.2d 994, 998-999 (8th Cir. 1984) (collecting cases from other circuits). Florida's drug-trafficking statute reflects that principle. See Pet. App. A3 ("Florida's drug-trafficking statute infers intent to distribute from the amount of drugs possessed."). Indeed, the statute itself states that it is targeted at "trafficking in illegal drugs." Fla. Stat. § 893.135(1)(c)(1) (2009). Possession of between four and 14 grams of morphine, opium, oxycodone, hydrocodone, or hydromorphone in violation of Fla. Stat. § 893.135(1)(c)(1)(a) (2009) therefore qualifies as "an offense under * * * state law * * * that prohibits * * * the possession of a controlled substance * * * with intent to manufacture, import, export,

distribute, or dispense." Sentencing Guidelines § 4B1.2(b) (2015).

A contrary conclusion would lead to the "anomalous result" that a defendant convicted of possession with intent to distribute even a small amount of the illegal drugs listed in Fla. Stat. § 893.135(1)(c)(1) (2009) would qualify for enhanced sentencing under the Guidelines, while a defendant like petitioner, who was convicted of the "more serious" offense of trafficking in four grams or more of those drugs, would not. Madera-Madera, 333 F.3d at 1233-1234. Such an outcome would contradict the Sentencing Commission's intent in amending Sentencing Guidelines § 2L1.2 in 2001 to provide more graduated enhancements based on the seriousness of the defendant's prior offense. See id. at 1234 ("[T]he purpose of the 2001 amendment was to ensure that those illegal alien defendants with more severe prior offenses received more severe sentences."). It would also run afoul of 18 U.S.C. 3553(a)(6)'s direction to avoid unwarranted disparities in sentencing.

Petitioner contends (Pet. 10) that his Florida conviction for "trafficking in illegal drugs" does not qualify as a "controlled substance offense" because intent to distribute is not a formal element of the offense. Under the Guidelines, however, the relevant portion of the definition of a "controlled substance offense" does not turn on whether intent to distribute is itself

a formal element of the offense that must separately be proved to secure a conviction, but instead on whether the statute of conviction "prohibits" possession with intent to distribute. Sentencing Guidelines § 4B1.2(b) (2015) (emphasis added). Immediately before defining the term "controlled substance offense" to include an offense under state law that "prohibits" possession with intent to distribute, Section 4B1.2 defines the term "crime of violence" to include "any offense * * * , punishable by imprisonment for a term exceeding one year, that * * * has as an element the use, attempted use, or threatened use of physical force against the person of another." Id. § 4B1.2(a) (emphasis added).

The Sentencing Commission's use of the disparate phrases "prohibits" and "has as an element" in close proximity within the same guideline section demonstrates that it did not intend the two phrases to have the same meaning. Cf., e.g., Russello v. United States, 464 U.S. 16, 23 (1983) ("Where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.") (brackets and citation omitted). Rather, the word "prohibits" makes clear that the term "controlled substance offense" may include even those state offenses that do not have as a formal element an intent to distribute, where (as here) the

statutory context of the state offense illustrates that it necessarily reflects such criminal behavior.

Contrary to petitioner's contention (Pet. 7-8), the court of appeals' decision does not conflict with Taylor v. United States, 495 U.S. 575 (1990), Descamps v. United States, 570 U.S. 254 (2013), or Mathis v. United States, supra. Those decisions endorsed a "categorical approach," Taylor, 495 U.S. at 600, to determining whether a prior offense is one that can trigger a sentencing enhancement under the Armed Career Criminal Act of 1984, 18 U.S.C. 924(e). Under that approach, courts look to "the statutory definitions of the prior offenses, and not to the particular facts underlying those convictions." Taylor, 495 U.S. at 600. The court of appeals' determination in this case rested on the statutory definition of the offense of "trafficking in illegal drugs," Fla. Stat. § 893.135(1)(c)(1)(a) (2009), not any particular facts underlying petitioner's prior conviction. And as explained above, unlike other guidelines predicates, a "controlled substance offense" is not strictly defined by reference to formal offense "elements," such that the categorical approach would require a solely element-based analysis.

Petitioner's reliance (Pet. 6) on Salinas v. United States, 547 U.S. 188 (2006) (per curiam), is likewise misplaced. In Salinas, the Solicitor General acknowledged that the Fifth Circuit had incorrectly determined that a conviction for "simple

possession" of a controlled substance qualified as a "controlled substance offense" under the Guidelines. Id. at 188. Petitioner's prior conviction in this case, however, was not for simple possession -- i.e., possession of any amount of a controlled substance. See Madera-Madera, 333 F.3d at 1231-1232. Rather, petitioner's conviction was for the more serious offense of possession of a specified amount of drugs from which "Florida's drug-trafficking statute infers intent to distribute." Pet. App. A3. The decision below accordingly does not conflict with any decision of this Court.

2. Petitioner separately contends (Pet. 11-13) that Section 922(g)(1) exceeds Congress's authority under the Commerce Clause. The court of appeals' decision rejecting that argument does not conflict with any decision of this Court or another court of appeals. Following this Court's decision in United States v. Lopez, 514 U.S. 549 (1995), on which petitioner relies (Pet. 11-12), the courts of appeals uniformly have held that Section 922(g)'s prohibition against possessing a firearm that has previously moved in interstate commerce falls within Congress's Commerce Clause authority.[7] The Court has recently and repeatedly

[7] See, e.g., United States v. Weems, 322 F.3d 18, 25-26 (1st Cir.), cert. denied, 540 U.S. 892 (2003); United States v. Santiago, 238 F.3d 213, 215-217 (2d Cir.) (per curiam), cert. denied, 532 U.S. 1046 (2001); United States v. Singletary, 268 F.3d 196, 198-205 (3d Cir. 2001), cert. denied, 535 U.S. 976 (2002); United States v. Gallimore, 247 F.3d 134, 137-138 (4th Cir. 2001); United States v. Daugherty, 264 F.3d 513, 518 (5th

denied petitions for writs of certiorari challenging the constitutionality of Section 922(g)(1) under the Commerce Clause.[8] The same result is warranted here, particularly given that petitioner's claim was not raised in the district court and therefore is subject to review only for plain error. Pet. App. A2, A4.

Cir. 2001), cert. denied, 534 U.S. 1150 (2002); United States v. Henry, 429 F.3d 603, 619-620 (6th Cir. 2005); United States v. Williams, 410 F.3d 397, 400 (7th Cir. 2005); United States v. Stuckey, 255 F.3d 528, 529-530 (8th Cir.), cert. denied, 534 U.S. 1011 (2001); United States v. Davis, 242 F.3d 1162, 1162-1163 (9th Cir.) (per curiam), cert. denied, 534 U.S. 878 (2001); United States v. Dorris, 236 F.3d 582, 584-586 (10th Cir. 2000), cert. denied, 532 U.S. 986 (2001); United States v. Scott, 263 F.3d 1270, 1271-1274 (11th Cir. 2001) (per curiam), cert. denied, 534 U.S. 1166 (2002).

[8] See, e.g., Massey v. United States, 138 S. Ct. 500 (2017) (No. 16-9376); Moorefield v. United States, 138 S. Ct. 154 (2017) (No. 16-9549); Brice v. United States, 137 S. Ct. 812 (2017) (No. 16-5984); Pulley v. United States, 137 S. Ct. 81 (2016) (No. 15-9452); Isom v. United States, 137 S. Ct. 45 (2016) (No. 15-9109); Crouch v. United States, 137 S. Ct. 43 (2016) (No. 15-8974); James v. United States, 136 S. Ct. 2509 (2016) (No. 15-8227); Moore v. United States, 136 S. Ct. 2488 (2016) (No. 15-8601); Fisk v. United States, 136 S. Ct. 2485 (2016) (No. 15-7855); Delgado v. United States, 136 S. Ct. 2485 (2016) (No. 15-7850); Gibson v. United States, 136 S. Ct. 2484 (2016) (No. 15-7475); Lockamy v. United States, 136 S. Ct. 852 (2016) (No. 15-7047); Dixon v. United States, 136 S. Ct. 280 (2015) (No. 15-5768); Torres-Colon v. United States, 136 S. Ct. 185 (2015) (No. 15-5104).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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MARCH 2018