No. 19-5478

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IN THE SUPREME COURT OF THE UNITED STATES

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WILFREDO ROY MADRIGAL, 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 ELEVENTH CIRCUIT

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# MEMORANDUM FOR THE UNITED STATES

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Petitioner contends (Pet. 8-20) that his prior Florida convictions for selling cocaine, in violation of Fla. Stat. § 893.13(1)(a)(1) (2003) and Fla. Stat. § 893.13(1)(c)(1) (2006), do not qualify as "controlled substance offense[s]" for purposes of Sentencing Guidelines § 4B1.2(b) (2018). Specifically, petitioner argues (Pet. 8-13) that only state drug offenses that categorically match the elements of a "generic" analogue satisfy Section 4B1.2(b), and that his Florida drug convictions do not match the generic analogue because the relevant Florida drug statutes do not contain a mens rea element with respect to the illicit nature

of the substances. This Court has granted review in Shular v. United States, No. 18-6662 (June 28, 2019), to decide whether a state drug offense must categorically match the elements of a "generic" analogue to qualify as a "serious drug offense" under the Armed Career Criminal Act of 1984, 18 U.S.C. 924(e)(2)(A)(ii). The proper disposition of the petition for a writ of certiorari may be affected by this Court's resolution of Shular. See United States v. Smith, 775 F.3d 1262, 1267 (11th Cir. 2014) (rejecting arguments as to both 18 U.S.C. 924(e)(2)(A)(ii) and Sentencing Guidelines § 4B1.2(b) for related reasons), cert. denied, 135 S. Ct. 2827 (2015); see also Pet. App. A1, at 1 (relying on Smith in determining that petitioner's convictions for violating provisions of Fla. Stat. § 893.13 (2003 & 2006) constituted "controlled substance offense[s]" under Sentencing Guidelines § 4B1.2(b) (citation omitted)). The petition in this case should therefore be held pending the decision in Shular and then disposed of as appropriate in light of that decision.*

Respectfully submitted.

NOEL J. FRANCISCO
Solicitor General

SEPTEMBER 2019

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