

No. 19-5575

IN THE SUPREME COURT OF THE UNITED STATES

ANTWAINE ENTA YARBROUGH, 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

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Petitioner contends (Pet. 5-8) that the court of appeals erred in determining that his prior Texas convictions for possession with intent to deliver cocaine and delivery of cocaine qualify as "serious drug offense[s]" under the Armed Career Criminal Act of 1984, 18 U.S.C. 924(e) (2) (A) (ii). Specifically, petitioner states (Pet. 5, 7) that the relevant Texas drug statutes, Tex. Health & Safety Code Ann. §§ 481.112 (West Supp. 1997 & West 2003) and 481.002(8) (West 1992 & 2003), prohibit an "offer to sell, or * * * possession with intent to offer * * * for sale," Pet. 7, a controlled substance -- conduct that, according to petitioner, does

not “involv[e] manufacturing, distributing, or possessing with intent to manufacture or distribute, a controlled substance” under Section 924(e) (2) (A) (ii). Pet. 5 (quoting 18 U.S.C. 924(e) (2) (A) (ii)); see Pet. 7. 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 Section 924(e) (2) (A) (ii). As petitioner observes (Pet. 5, 7-8), the proper disposition of the petition for a writ of certiorari may be affected by this Court’s resolution of Shular. 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
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* The government waives any further response to the petition for a writ of certiorari unless this Court requests otherwise.