

No. 19-6114

IN THE SUPREME COURT OF THE UNITED STATES

ANTWOYN ANDERSON, PETITIONER

v.

UNITED STATES OF AMERICA

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

MEMORANDUM FOR THE UNITED STATES

NOEL J. FRANCISCO
Solicitor General
Counsel of Record
Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

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Following a guilty plea in the Southern District of Florida, petitioner was convicted on one count of possession of a firearm by a felon, in violation of 18 U.S.C. 922(g)(1), and one count of possession of a controlled substance, in violation of 21 U.S.C. 844(a). Pet. App. 5a. He was sentenced to 235 months of imprisonment, to be followed by five years of supervised release. Id. at 6a-7a. In imposing a sentence on the firearm count, the district court applied an enhancement under the Armed Career Criminal Act of 1984 (ACCA), 18 U.S.C. 924(e), on the basis of petitioner's three prior convictions for "a violent felony or a

serious drug offense," 18 U.S.C. 924(e) (1): two convictions for possession of cocaine with intent to distribute, sell, or manufacture, in violation of Fla. Stat. § 893.13 (2010) and Fla. Stat. § 893.13 (2012), and one conviction for aggravated assault, in violation of Fla. Stat. § 784.07(2) (c) (2009). Pet. App. 2a; see Gov't C.A. Br. 2-4.

Petitioner contends (Pet. 4-5) that his prior Florida convictions for possession of cocaine with intent to distribute, sell, or manufacture, in violation of Fla. Stat. § 893.13, do not qualify as "serious drug offense[s]" under the ACCA, 18 U.S.C. 924(e) (2) (A) (ii). Specifically, petitioner argues (Pet. 2-3) that only state drug offenses that categorically match the elements of a generic analogue satisfy Section 924(e) (2) (A) (ii), and that his Florida drug convictions do not match the generic analogue because the Florida drug statute does 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, 139 S. Ct. 2773 (2019) (No. 18-6662), to address that issue. The petition for a writ of certiorari should therefore be held pending the decision in Shular and then disposed of as appropriate in light of that decision.

Petitioner alternatively contends (Pet. 5-10) that his prior Florida conviction for aggravated assault, in violation of Fla. Stat. § 784.07(2) (c), does not qualify as a "violent felony" under the ACCA, on the theory that an offense that can be committed with a mens rea of recklessness does not include as an element the "use,

attempted use, or threatened use of physical force against the person or property of another," 18 U.S.C. 924(e)(2)(B)(i). For the reasons explained in the government's briefs in Walker v. United States, No. 19-373 (filed Oct. 21, 2019), and Borden v. United States, No. 19-5410 (filed Oct. 21, 2019), although the court below correctly resolved that question, the issue has divided the courts of appeals and warrants this Court's review.¹ If this Court's decision in Shular does not resolve the validity of petitioner's ACCA enhancement, the petition for a writ of certiorari should therefore be further held pending this Court's disposition of the petitions for writs of certiorari in Borden and Walker, and then be disposed of as appropriate. But in light of the potentially dispositive Shular issue, this case is not itself a suitable vehicle for further review.²

Respectfully submitted.

NOEL J. FRANCISCO
Solicitor General

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¹ We have served petitioner with a copy of the government's brief in Walker.

² The government waives any further response to the petition for a writ of certiorari unless this Court requests otherwise.