

No. 19-6586

IN THE SUPREME COURT OF THE UNITED STATES

SHANE INGHELS, PETITIONER

v.

UNITED STATES OF AMERICA

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

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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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Petitioner contends (Pet. 12-26) that the court of appeals erred in determining that his prior Indiana conviction for dealing in methamphetamine qualifies as a "serious drug offense" under the Armed Career Criminal Act of 1984 (ACCA), 18 U.S.C. 924(e) (2) (A) (ii). Specifically, petitioner states (Pet. 18-21) that the Indiana methamphetamine statute, Ind. Code § 35-48-4-1.1 (2008), prohibits financing the manufacture or delivery of methamphetamine and asserts that such conduct 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. 19. This Court recently denied review of a similar claim in the context of Indiana's general drug statute, Ind. Code § 35-48-4-1 (2011). See Woods v. United States, No. 19-5491 (Nov. 12, 2019). The same course is warranted here.

As petitioner notes (Pet. 12), 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). Holding the petition in this case for Shular is unnecessary, however, because petitioner would not benefit even if this Court in Shular interprets the ACCA as requiring the state drug offense to be "synonymous with 'manufacturing, distributing, or possessing with intent to manufacture or distribute, a controlled substance.'" Pet. 19 (quoting 18 U.S.C. 924(e)(2)(A)(ii)). Even if portions of Indiana's methamphetamine statute were overbroad under that interpretation of Section 924(e)(2)(A)(ii), that would not affect petitioner's specific prior conviction for a crime that is defined under a different portion of that statute.

The courts below correctly found (Pet. App. 6-7, 16) that petitioner's prior conviction qualifies as a "serious drug offense" under the ACCA because the Indiana statute is divisible into multiple offenses, and records of petitioner's conviction show that his conviction was for an offense that would not be overbroad even under the interpretation of Section

924 (e) (2) (A) (ii) urged in Shular. A statute is divisible if it sets forth alternative elements that comprise different crimes, rather than multiple means of committing the same crime. Mathis v. United States, 136 S. Ct. 2243, 2248 (2016). Indiana's methamphetamine statute prohibits (A) manufacturing, (B) financing the manufacturing of, (C) delivering, and (D) financing the delivery of methamphetamine. Ind. Code § 35-48-4-1.1(a)(1) (2008). It also prohibits possession of methamphetamine with the intent to do each of those things. Id. § 35-48-4-1.1(a)(2). The different activities that are prohibited are different crimes under Indiana law.

As the court of appeals has previously observed, "Indiana courts treat [Section] 35-48-4-1(a)" -- Indiana's general drug statute that employs language identical to the methamphetamine statute at issue here -- "as divisible." United States v. Smith, 921 F.3d 708, 714 (7th Cir.) (citation omitted), cert. denied, No. 19-6144 (Nov. 12, 2019). For example, they treat a delivery offense as a separate crime from a manufacturing offense. See, e.g., Eckelbarger v. State, 51 N.E.3d 169, 170 (Ind. 2016) (per curiam) (identifying separate counts of conviction for "dealing in methamphetamine (by delivery)" and "dealing in methamphetamine (by manufacture)"); Collins v. State, 659 N.E.2d 509, 510 (Ind. 1995) (identifying "deliver[y]" as an element of Indiana's drug statute). Such an offense would therefore also be a separate crime from the financing offense that petitioner asserts is overbroad.

Although petitioner disputes that determination (Pet. 21-26), the question whether Indiana's statute is divisible does not warrant this Court's review because it is fundamentally a question of state law. This Court has a "settled and firm policy of deferring to regional courts of appeals in matters that involve the construction of state law," and petitioner provides no reason to deviate from that practice in this case. Bowen v. Massachusetts, 487 U.S. 879, 908 (1988); see Elk Grove Unified Sch. Dist. v. Newdow, 542 U.S. 1, 16 (2004). And here, the state-court charging document shows that petitioner was convicted of "knowingly manufac[t]ur[ing] methamphetamine." Pet. App. 7. Petitioner's prior conviction was thus a conviction for a manufacturing crime that is a "serious drug offense" under the ACCA irrespective of the question presented in Shular. See 18 U.S.C. 924(e) (2) (A) (ii) (defining a "serious drug offense" to include a state offense "involving manufacturing * * * a controlled substance"). The petition for a writ of certiorari should be denied.*

Respectfully submitted.

NOEL J. FRANCISCO
Solicitor General

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